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Presidential Documents

Title 3—

The President

Executive Order 13283 of January 21, 2003

Establishing the Office of Global Communications

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

Section 1. *Establishment of the Office of Global Communications.* There is hereby established within the White House Office an Office of Global Communications (the "Office") to be headed by a Deputy Assistant to the President for Global Communications.

Sec. 2. *Mission.* The mission of the Office shall be to advise the President, the heads of appropriate offices within the Executive Office of the President, and the heads of executive departments and agencies (agencies) on utilization of the most effective means for the United States Government to ensure consistency in messages that will promote the interests of the United States abroad, prevent misunderstanding, build support for and among coalition partners of the United States, and inform international audiences. The Office shall provide such advice on activities in which the role of the United States Government is apparent or publicly acknowledged.

Sec. 3. *Functions.* In carrying out its mission:

(a) The Office shall assess the methods and strategies used by the United States Government (other than special activities as defined in Executive Order 12333 of December 4, 1981) to deliver information to audiences abroad. The Office shall coordinate the formulation among appropriate agencies of messages that reflect the strategic communications framework and priorities of the United States, and shall facilitate the development of a strategy among the appropriate agencies to effectively communicate such messages.

(b) The Office shall work with the policy and communications offices of agencies in developing a strategy for disseminating truthful, accurate, and effective messages about the United States, its Government and policies, and the American people and culture. The Office may, after consulting with the Department of State and obtaining the approval of the Assistant to the President for National Security Affairs on the President's behalf, work with cooperating foreign governments in the development of the strategy. In performing its work, the Office shall coordinate closely and regularly with the Assistant to the President for National Security Affairs, or the Assistant's designee.

(c) The Office shall work with appropriate agencies to coordinate the creation of temporary teams of communicators for short-term placement in areas of high global interest and media attention as determined by the Office. Team members shall include personnel from agencies to the extent permitted by law and subject to the availability of personnel. In performing its functions, each information team shall work to disseminate accurate and timely information about topics of interest to the on-site news media, and assist media personnel in obtaining access to information, individuals, and events that reinforce the strategic communications objectives of the United States and its allies. The Office shall coordinate when and where information teams should be deployed; provided, however, no information team shall be deployed abroad without prior consultation with the Department of State and the Department of Defense, and prior notification to the Office of the Assistant to the President for National Security Affairs.

(d) The Office shall encourage the use of state-of-the-art media and technology and shall advise the United States Government of events, technologies, and other communications tools that may be available for use in conveying information.

Sec. 4. *Administration.* The Office of Administration within the Executive Office of the President shall provide the Office with administrative and related support, to the extent permitted by law and subject to the availability of appropriations, as directed by the Chief of Staff to the President to carry out the provisions of this order.

Sec. 5. *Relationship to Other Interagency Coordinating Mechanisms.* Presidential direction regarding National Security Council-related mechanisms for coordination of national security policy shall apply with respect to the Office in the same manner as it applies with respect to other elements of the White House Office. Nothing in this order shall be construed to impair or otherwise affect any function assigned by law or by the President to the National Security Council or to the Assistant to the President for National Security Affairs.

Sec. 6. *Continuing Authorities.* This order does not alter the existing authorities of any agency. Agencies shall assist the Deputy Assistant to the President for Global Communications, to the extent consistent with applicable law and direction of the President, and to the extent such assistance is consistent with national security objectives and with the mission of such agencies, in carrying out the Office's mission.

Sec. 7. *General Provisions.*

(a) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or equity by any party against the United States, its agencies, instrumentalities or entities, its officers or employees, or any other person.

(b) Nothing in this order shall be construed to grant to the Office any authority to issue direction to agencies, officers, or employees.

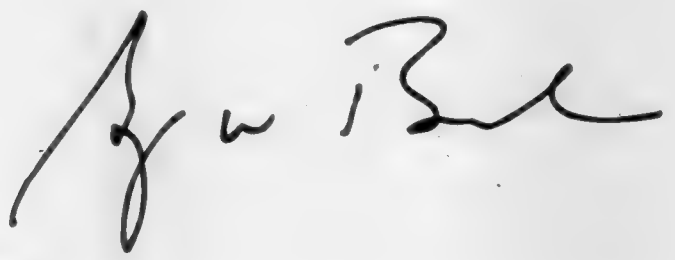

THE WHITE HOUSE,
January 21, 2003.

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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 02–121–2]

Mexican Fruit Fly; Addition of Regulated Area

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are revising the Mexican fruit fly regulations by adding a portion of Los Angeles County, CA, to the existing regulated area and restricting the interstate movement of regulated articles from that area. This action is necessary to prevent the spread of the Mexican fruit fly into noninfested areas of the United States.

DATES: This interim rule was effective January 17, 2003. We will consider all comments that we receive on or before March 25, 2003.

ADDRESSES: You may submit comments by postal mail/commercial delivery or by e-mail. If you use postal mail/commercial delivery, please send four copies of your comment (an original and three copies) to: Docket No. 02–121–2, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 02–121–2. If you use e-mail, address your comment to *regulations@aphis.usda.gov*. Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and "Docket No. 02–121–2" on the subject line.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at *http://www.aphis.usda.gov/ppd/rad/webrepor.html*.

FOR FURTHER INFORMATION CONTACT: Mr. Stephen A. Knight, Senior Staff Officer, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737–1236; (301) 734–8247.

SUPPLEMENTARY INFORMATION:

Background

The Mexican fruit fly (*Anastrepha ludens*) is a destructive pest of citrus and many other types of fruit. The short life cycle of the Mexican fruit fly allows rapid development of serious outbreaks that can cause severe economic losses in commercial citrus-producing areas.

The Mexican fruit fly regulations, contained in 7 CFR 301.64 through 301.64–10 (referred to below as the regulations), were established to prevent the spread of the Mexican fruit fly to noninfested areas of the United States. The regulations impose restrictions on the interstate movement of regulated articles from the regulated areas.

In an interim rule effective on December 13, 2002, and published in the **Federal Register** on December 23, 2002 (67 FR 78127–78128, Docket No. 02–121–1), we amended the regulations by adding a portion of Los Angeles County, CA, as a regulated area. Prior to the effective date of that rule, the only areas regulated for the Mexican fruit fly were portions of Texas. In this interim rule, we are designating an additional portion of Los Angeles County, CA, as a regulated area.

Section 301.64–3 provides that the Deputy Administrator for Plant Protection and Quarantine, Animal and Plant Health Inspection Service (APHIS), shall list as a regulated area each quarantined State, or each portion of a quarantined State, in which the Mexican fruit fly has been found by an inspector, in which the Deputy Administrator has reason to believe the Mexican fruit fly is present, or that the Deputy Administrator considers necessary to regulate because of its proximity to the Mexican fruit fly or its inseparability for quarantine enforcement purposes from localities in which the Mexican fruit fly occurs.

Less than an entire quarantined State is designated as a regulated area only if the Deputy Administrator determines that the State has adopted and is enforcing a quarantine or regulation that imposes restrictions on the intrastate movement of the regulated articles that are substantially the same as those that are imposed with respect to the interstate movement of the articles and the designation of less than the entire State as a regulated area will otherwise be adequate to prevent the artificial interstate spread of the Mexican fruit fly.

Recent trapping surveys by inspectors of California State and county agencies and by APHIS inspectors reveal that an additional portion of Los Angeles County, CA, is infested with the Mexican fruit fly.

Accordingly, to prevent the spread of the Mexican fruit fly to noninfested areas of the United States, we are amending the regulations in § 301.64–3 by adding that portion of Los Angeles County, CA, to the existing regulated area for the Mexican fruit fly. The addition is described in detail in the rule portion of this document. The Deputy Administrator has determined that it is not necessary to designate the entire State of California as a regulated area.

Emergency Action

This rulemaking is necessary on an emergency basis to prevent the Mexican fruit fly from spreading to noninfested areas of the United States. Under these circumstances, the Administrator has determined that prior notice and opportunity for public comment are contrary to the public interest and that there is good cause under 5 U.S.C. 553 for making this rule effective less than 30 days after publication in the **Federal Register**.

We will consider comments we receive during the comment period for this interim rule (*see* **DATES** above). After the comment period closes, we will publish another document in the **Federal Register**. The document will include a discussion of any comments

we receive and any amendments we are making to the rule.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review under Executive Order 12866.

This rule restricts the interstate movement of regulated articles from an area in Los Angeles County, CA. Within the regulated area there are approximately 389 small entities that may be affected by this rule. These include 351 fruit sellers, 3 growers, 33 nurseries, 1 certified farmers' market, and 1 swapmeet. These 389 entities comprise less than 1 percent of the total number of similar entities operating in the State of California. Additionally, these small entities sell regulated articles primarily for local intrastate, not interstate, movement, so the effect, if any, of this rule on these entities appears to be minimal.

The effect on those few entities that do move regulated articles interstate will be minimized by the availability of various treatments that, in most cases, will allow these small entities to move regulated articles interstate with very little additional cost.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

National Environmental Policy Act

An environmental assessment and finding of no significant impact have been prepared for this interim rule. The site-specific environmental assessment provides a basis for the conclusion that the implementation of integrated pest management to eradicate the Mexican fruit fly will not have a significant impact on human health and the natural environment. Based on the finding of no significant impact, the Administrator of the Animal and Plant Health Inspection Service has determined that an environmental impact statement need not be prepared.

The environmental assessment and finding of no significant impact were prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

Copies of the environmental assessment and finding of no significant impact are available for public inspection in our reading room. (information on the location and hours of the reading room is provided under the heading **ADDRESSES** at the beginning of this document). In addition, copies may be obtained from the individual listed under **FOR FURTHER INFORMATION CONTACT.**

Paperwork Reduction Act

This interim rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

Accordingly, we are amending 7 CFR part 301 as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

1. The authority citation for part 301 continues to read as follows:

Authority: 7 U.S.C. 7711, 7712, 7714, 7731, 7735, 7751, 7752, 7753, 7754, and 7760; 7 CFR 2.22, 2.80, and 371.3.

Section 301.75–15 also issued under sec. 204, Title II, Pub. L. 106–113, 113 Stat. 1501A–293; sections 301.75–15 and 301.75–16 also issued under sec. 203, Title II, Pub. L. 106–224, 114 Stat. 400 (7 U.S.C. 1421 note).

2. In § 301.64–3, paragraph (c), under the heading "California", the entry for Los Angeles County is revised to read as follows:

§ 301.64–3 Regulated areas.

* * * * *

(c) * * *

California

Los Angeles County. That portion of the county in the South Pasadena and Monterey Park areas bounded by a line as follows: Beginning at the intersection of Valley Boulevard and Peck Road; then south on Peck Road to Workman Mill Road; then southwest on Workman Mill Road to Norwalk Boulevard; then southwest on Norwalk Boulevard to Whittier Boulevard; then northwest on Whittier Boulevard to Passons Boulevard; then southwest on Passons Boulevard to Washington Boulevard; then northwest on Washington Boulevard to Paramount Boulevard; then southwest on Paramount Boulevard to East Slauson Avenue; then west on East Slauson Avenue to U.S. Interstate 710; then northwest on U.S. Interstate 710 to U.S. Interstate 5; then northwest on U.S. Interstate 5 to South Indiana Street; then north on South Indiana Street to North Indiana Street; then north on North Indiana Street to Cesar Chavez Avenue; then northwest on Cesar Chavez Avenue to North Soto Street; then north on North Soto Street to Valley Boulevard; then west on Valley Boulevard to North Main Street; then west on North Main Street to Daly Street; then north on Daly Street to Pasadena Avenue; then north on Pasadena Avenue to North Figueroa Street; then southwest on North Figueroa Street to Cypress Avenue; then northwest on Cypress Avenue to Eagle Rock Boulevard; then northeast on Eagle Rock Boulevard to Colorado Boulevard; then east on Colorado Boulevard to West Colorado Boulevard; then northeast on West Colorado Boulevard to State Highway 710; then north on State Highway 710 to U.S. Interstate 210; then north on U.S. Interstate 210 to West Washington Boulevard; then east on West Washington Boulevard to East Washington Boulevard; then southeast on East Washington Boulevard to East Sierra Madre Boulevard; then east on East Sierra Madre Boulevard to Sierra Madre Villa Avenue; then south on Sierra Madre Villa Avenue to North Rosemead Boulevard; then southeast on North Rosemead Boulevard to Rosemead Boulevard; then south on Rosemead Boulevard to Longden Avenue; then east on Longden Avenue to Encinita Avenue; then south on Encinita Avenue to Las Tunas Drive; then east on Las Tunas Drive to Temple City Boulevard; then south on Temple City Boulevard to Olive Street; then east on Olive Street to Baldwin Avenue; then south on Baldwin Avenue to Lower Azusa Road; then east on Lower Azusa Road to Arden Drive; then south on Arden Drive to Valley Boulevard; then southeast on Valley Boulevard to the point of beginning.

* * * * *

Done in Washington, DC, this 17th day of January 2003.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 03–1609 Filed 1–23–03; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 354

[Docket No. 02–085–2]

AQI User Fees: Extension of Current Fees Beyond Fiscal Year 2002

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule as final rule.

SUMMARY: We are adopting as a final rule, without change, an interim rule that amended the regulations to ensure that fiscal year 2002 user fee rates remain in effect beyond fiscal year 2002 until the fees are revised.

EFFECTIVE DATE: The interim rule became effective on September 3, 2002.

FOR FURTHER INFORMATION CONTACT: For information concerning program operations, contact Mr. Jim Smith, Director, Port Operations, Plant Health Programs, PPQ, APHIS, 4700 River Road Unit 60, Riverdale, MD 20737–1236; (301) 734–8295. For information concerning rate development, contact Ms. Donna Ford, PPQ User Fees Section Head, FMD, MRPBS, APHIS, 4700 River Road Unit 54, Riverdale, MD 20737–1232; (301) 734–5901.

SUPPLEMENTARY INFORMATION:

Background

Section 2509(a) of the Food, Agriculture, Conservation, and Trade Act of 1990 (21 U.S.C. 136a), referred to below as the FACT Act, authorizes the Animal and Plant Health Inspection Service to collect user fees for agricultural quarantine and inspection (AQI) services. The FACT Act was amended by § 917 of the Federal Agricultural Improvement and Reform Act of 1996 (Pub. L. 104–127), on April 4, 1996.

In an interim rule effective and published in the **Federal Register** on September 3, 2002 (67 FR 56217–56218, Docket No. 02–085–1), we amended the user fee regulations in 7 CFR part 354 to ensure that fiscal year 2002 rates remain in effect beyond fiscal year 2002 until the fees are revised.

Comments on the interim rule were required to be received on or before November 4, 2002. We did not receive any comments. Therefore, for the reasons given in the interim rule, we are adopting the interim rule as a final rule.

This action also affirms the information contained in the interim rule concerning Executive Order 12866 and the Regulatory Flexibility Act, Executive Orders 12372 and 12988, and the Paperwork Reduction Act.

Further, for this action, the Office of Management and Budget has waived its review under Executive Order 12866.

List of Subjects in 7 CFR Part 354

Exports, Government employees, Imports, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Travel and transportation expenses.

PART 354—OVERTIME SERVICES RELATING TO IMPORTS AND EXPORTS; AND USER FEES

Accordingly, we are adopting as a final rule, without change, the interim rule that amended 7 CFR part 354 and that was published at 67 FR 56217–56218 on September 3, 2002.

Authority: 7 U.S.C. 2260; 21 U.S.C. 136 and 136a; 49 U.S.C. 80503; 7 CFR 2.22, 2.80, and 371.3.

Done in Washington, DC, this 16th day of January 2003.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 03–1607 Filed 1–23–03; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 82

[Docket No. 02–117–3]

Exotic Newcastle Disease; Additions to Quarantined Area

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the exotic Newcastle disease regulations by quarantining Clark County, NV, and a portion of Nye County, NV, and prohibiting or restricting the movement of birds, poultry, products, and materials that could spread exotic Newcastle disease from the quarantined area. This action is necessary on an emergency basis to prevent the spread of exotic Newcastle disease from the quarantined area.

DATES: This interim rule was effective January 17, 2003. We will consider all comments that we receive on or before March 25, 2003.

ADDRESSES: You may submit comments by postal mail/commercial delivery or by e-mail. If you use postal mail/commercial delivery, please send four copies of your comment (an original and three copies) to: Docket No. 02–117–3, Regulatory Analysis and Development, PPD, APHIS, Station 3C71; 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 02–117–3. If you use e-mail, address your comment to *regulations@aphis.usda.gov*. Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and "Docket No. 02–117–3" on the subject line.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at *http://www.aphis.usda.gov/ppd/rad/webrepor.html*.

FOR FURTHER INFORMATION CONTACT: Dr. Aida Boghossian, Senior Staff Veterinarian, Emergency Programs Staff, VS, APHIS, 4700 River Road Unit 41, Riverdale, MD 20737–1231; (301) 734–8073.

SUPPLEMENTARY INFORMATION:

Background

Exotic Newcastle disease (END) is a contagious and fatal viral disease affecting the respiratory, nervous, and digestive systems of birds and poultry. END is so virulent that many birds and poultry die without showing any clinical signs. A death rate of almost 100 percent can occur in unvaccinated poultry flocks. END can infect and cause death even in vaccinated poultry.

The regulations in "Subpart A—Exotic Newcastle Disease (END)" (9 CFR 82.1 through 82.15, referred to below as the regulations) were established to prevent the spread of END in the United States in the event of an outbreak. In § 82.3, paragraph (a) provides that any area where birds or poultry infected with END are located will be designated as a quarantined area, and that a quarantined area is any geographical area, which may be a premises or all or part of a State, deemed by epidemiological evaluation to be

sufficient to contain all birds or poultry known to be infected with or exposed to END. Less than an entire State will be designated as a quarantined area only if the State enforces restrictions on intrastate movements from the quarantined area that are at least as stringent as the regulations. The regulations prohibit or restrict the movement of birds, poultry, products, and materials that could spread END from quarantined areas. Areas quarantined because of END are listed in § 82.3, paragraph (c).

On October 1, 2002, END was confirmed in the State of California. The disease was confirmed in backyard poultry, which are raised on private premises for hobby, exhibition, and personal consumption, and in commercial poultry.

In an interim rule effective on November 21, 2002, and published in the **Federal Register** on November 26, 2002 (67 FR 70674–70675, Docket No. 02–117–1), we amended the regulations in § 82.3(c) by quarantining Los Angeles County, CA, and portions of Riverside and San Bernardino Counties, CA, and restricting the interstate movement of birds, poultry, products, and materials that could spread END from the quarantined area.

In a second interim rule effective on January 7, 2003, and published in the **Federal Register** on January 13, 2003 (68 FR 1515–1517, Docket No. 02–117–2), we further amended § 82.3(c) by adding Imperial, Orange, San Diego, Santa Barbara, and Ventura Counties, CA, and the previously non-quarantined portions of Riverside and San Bernardino Counties, CA, to the list of quarantined areas. Because the Secretary of Agriculture signed a declaration of extraordinary emergency with respect to the END situation in California on January 6, 2003 (*see* 68 FR 1432, Docket No. 03–001–1, published January 10, 2003), that second interim rule also amended the regulations to provide that the prohibitions and restrictions that apply to the interstate movement of birds, poultry, products, and materials that could spread END will also apply to the intrastate movement of those articles in situations where the Secretary of Agriculture has issued a declaration of extraordinary emergency (new § 82.16).

On January 16, 2003, END was confirmed in backyard poultry on a premises in Las Vegas, NV. Therefore, in this interim rule we are amending § 82.3(c) by designating as a quarantined area all of Clark County, NV, and that portion of Nye County, NV, that lies south of U.S. Highway 95 and east of State Highway 373 and by prohibiting or restricting the movement of birds, poultry, products, and materials that could spread END from the quarantined area. As provided for by the regulations in § 82.3(a), this quarantined area encompasses the area where poultry infected with END were located and a surrounding geographical area deemed by epidemiological evaluation to be sufficient to contain all birds or poultry known to be infected with or exposed to END.

Emergency Action

This rulemaking is necessary on an emergency basis to prevent the spread of END. Under these circumstances, the Administrator has determined that prior notice and opportunity for public comment are contrary to the public interest and that there is good cause under 5 U.S.C. 553 for making this rule effective less than 30 days after publication in the **Federal Register**.

We will consider comments that we receive during the comment period for this interim rule (see **DATES** above). After the comment period closes, we will publish another document in the **Federal Register**. The document will include a discussion of any comments we receive and any amendments we are making to the rule.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review under Executive Order 12866.

This rule amends the regulations by quarantining Clark County, NV, and a portion of Nye County, NV, and prohibiting or restricting the movement of birds, poultry, products, and materials that could spread END from the quarantined area. This action is necessary on an emergency basis to prevent the spread of END from the quarantined area.

This emergency situation makes timely compliance with section 604 of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) impracticable. We are currently assessing the potential economic effects of this action on small entities. Based on that assessment, we will either certify that the rule will not have a significant economic impact on a substantial number of small entities or publish a final regulatory flexibility analysis.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (*See* 7 CFR part 3015, subpart V.)

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are in conflict with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 9 CFR Part 82

Animal diseases, Poultry and poultry products, Quarantine, Reporting and recordkeeping requirements, Transportation.

Accordingly, 9 CFR part 82 is amended as follows:

PART 82—EXOTIC NEWCASTLE DISEASE (END) AND CHLAMYDIOSIS; POULTRY DISEASE CAUSED BY SALMONELLA ENTERITIDIS SEROTYPE ENTERITIDIS

1. The authority citation for part 82 continues to read as follows:

Authority: 7 U.S.C. 8301–8317; 7 CFR 2.22, 2.80, and 371.4.

2. In § 82.3, paragraph (c) is amended by adding, in alphabetical order, an entry for Nevada to read as follows:

§ 82.3 Quarantined areas.

* * * * *

(c) * * *

* * * * *

Nevada

Clark County. The entire county.

Nye County. That portion of the county that lies south of U.S. Highway 95 and east of State Highway 373.

Done in Washington, DC, this 17th day of January 2003.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 03–1608 Filed 1–23–03; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–SW–41–AD; Amendment 39–13021; AD 2003–02–05]

RIN 2120–AA64

Airworthiness Directives; Eurocopter France Model AS350B, AS350BA, AS350B1, AS350B2, AS350B3, AS350C, AS350D, AS350D1, AS355E, AS355F, AS355F1, AS355F2, and AS355N Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) for certain Eurocopter France (Eurocopter) model helicopters. This action requires measuring the diameter of the sliding door roller (roller) and the dimensions of the front end opening of the sliding door middle rail (rail) to determine if excessive wear exists, and if necessary, installing a placard prohibiting the operation of the sliding door during flight. This amendment is prompted by an incident in which a roller came out of the middle rail during a door-opening operation in flight. The actions specified in this AD are intended to prevent the roller from coming out of the middle rail when opening the door, which could lead to the sliding door separating from the helicopter during flight, damage to critical flight components, and subsequent loss of control of the helicopter.

DATES: Effective February 10, 2003.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of February 10, 2003.

Comments for inclusion in the Rules Docket must be received on or before March 25, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 2002-SW–41–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137. You may also send comments electronically to the Rules Docket at the following address: *9-asw-adcomments@faa.gov*.

The service information referenced in this AD may be obtained from American Eurocopter Corporation, 2701 Forum Drive, Grand Prairie, Texas 75053–4005, telephone (972) 641–3460, fax (972) 641–3527. This information may be examined at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Gary Roach, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Rotorcraft Standards Staff, Fort Worth, Texas 76193–0111, telephone (817) 222–5130, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION: The Direction Generale De L'Aviation Civile (DGAC), which is the airworthiness authority for France, notified the FAA that an unsafe condition may exist on Eurocopter Model AS350 and AS355 helicopters. The DGAC advises that there has been one report of a sliding door aft roller dislodgment in flight due to severe wear on the rail.

Eurocopter has issued Alert Telex No. 05.00.41, applicable to Model AS350 helicopters, and Alert Telex No. 05.00.39, applicable to Model AS355 helicopters, both dated May 16, 2002, which specify measuring the diameter of the sliding door aft roller and rail opening dimension to determine wear, and prohibit operating the door during flight if certain dimensions are exceeded. The DGAC classified these alert telexes as mandatory and issued AD No. 2002–344–093(A), applicable to Model AS350 helicopters, and AD No. 2002–345–070(A), applicable to Model AS355 helicopters, both dated June 26, 2002, to ensure the continued airworthiness of these helicopters in France.

These helicopter models are manufactured in France and are type certificated for operation in the United States under the provisions of 14 CFR 21.29 and the applicable bilateral agreement. Pursuant to the applicable bilateral agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of these type designs that are certificated for operation in the United States.

This unsafe condition is likely to exist or develop on other helicopters of the same type designs registered in the United States. Therefore, this AD is being issued to prevent the roller from coming out of the middle rail when operating the door, which could lead to the sliding door separating from the helicopter during flight and possibly damaging critical flight components, resulting in subsequent loss of control of the helicopter. This AD requires, before further flight and thereafter at intervals not to exceed 100 hours time-in-service, measuring the diameter of the roller and the dimensions of the front end opening of the sliding door rail for wear, and if necessary, installing a placard prohibiting operating the sliding door during flight. The actions must be accomplished in accordance with the alert telexes described previously. The short compliance time involved is required because the previously described critical unsafe condition can adversely affect the controllability or structural integrity of the helicopter. Therefore, measuring the diameter of the roller and the dimensions of the rail to determine if excessive wear exists, and if necessary, installing a placard prohibiting the opening of the sliding door during flight is required prior to further flight, and this AD must be issued immediately.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

The FAA estimates that 50 helicopters will be affected by this AD, that it will take approximately 1 work hour to measure the roller and rail, and 1 work hour to make and apply a placard to the inside door, if necessary, and that the average labor rate is $60 per work hour. Required parts will cost approximately $10 per helicopter if installing a placard is necessary. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $21,500 per year, assuming each helicopter in the fleet is measured 6 times per year, assuming no placards will be necessary.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD

action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their mailed comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 2002–SW–41–AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

2003–02–05 Eurocopter France: Amendment 39–13021. Docket No. 2002–SW–41–AD.

Applicability: Model AS350B, AS350BA, AS350B1, AS350B2, AS350B3, AS350C, AS350D, AS350D1, AS355E, AS355F, AS355F1, AS355F2, and AS355N helicopters, with sliding door middle rail (middle rail) left upper, part number (P/N) 350A21–1027–36, left lower, P/N 350A21–1027–20, right upper, P/N 350A21–1027–39, right lower, P/N 350A21–1027–21, sliding door roller (roller), P/N 350A25–1274–24, and plate support, P/N 350A21–1335–20, installed, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required before further flight, unless accomplished previously, then at intervals not to exceed 100 hours time-in-service (TIS).

To prevent the roller from coming out of the middle rail when operating the door, which could lead to the sliding door separating from the helicopter during flight, damage to critical flight components, and subsequent loss of control of the helicopter, accomplish the following:

(a) Measure the diameter of the roller and the dimensions of the front end opening of the middle rail in accordance with the Accomplishment Instructions, paragraph 2.B., of Eurocopter Alert Telex No. 05.00.41, applicable to Model AS350 helicopters, and Eurocopter Alert Telex No. 05.00.39, applicable to Model AS355 helicopters, both dated May 16, 2002 (Alert Telexes).

(1) If the rail opening or roller diameter is beyond the permissible limits stated in the Accomplishment Instructions, paragraph 2.B.1., of the Alert Telexes, make a placard that states "DO NOT OPERATE DOOR IN FLIGHT" and attach it to the inside of the sliding door. The lettering on the placard must be at least ¼-inch tall and obvious to the crew.

(2) If the sliding door is placarded to prohibit door operation during flight, it is not necessary to measure the roller or rail.

Note 2: Replacing the worn parts does not terminate the requirement to make the measurements required by paragraph (a) of this AD at intervals not to exceed 100 hours TIS.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Rotorcraft Standards Staff, Rotorcraft Directorate, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Rotorcraft Standards Staff.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Rotorcraft Standards Staff.

(c) Special flight permits may be issued in accordance with 14 CFR 21.197 and 21.199 to operate the helicopter to a location where the requirements of this AD can be accomplished, so long as the cabin door is not operated during the flight.

(d) The measuring shall be done in accordance with Eurocopter Alert Telex No. 05.00.41, applicable to Model AS350 helicopters, and Eurocopter Alert Telex No. 05.00.39, applicable to Model AS355 helicopters, both dated May 16, 2002. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from American Eurocopter Corporation, 2701 Forum Drive, Grand Prairie, Texas 75053–4005, telephone (972) 641–3460, fax (972) 641–3527. Copies may be inspected at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on February 10, 2003.

Note 4: The subject of this AD is addressed in Direction Generale De L'Aviation Civile (France) AD No. 2002–344–093(A), applicable to Model AS350 helicopters, and AD No. 2002–345–070(A), applicable to Model AS355 helicopters, both dated June 26, 2002.

Issued in Fort Worth, Texas, on January 11, 2003.

David A. Downey,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 03–1190 Filed 1–23–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–SW–33–AD; Amendment 39–13023; AD 2003–02–06]

RIN 2120–AA64

Airworthiness Directives; Bell Helicopter Textron Canada Limited Model 407 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) for Bell Helicopter Textron Canada Limited (Bell) Model 407 helicopters. This action requires visually inspecting certain tailboom gearbox support castings (castings) for cracks and replacing the tailboom assembly if a crack is found. This amendment is prompted by an incident in which a crack was discovered on the casting that holds the tail rotor gearbox and vertical fin. The actions specified in this AD are intended to detect a crack in the casting and prevent failure of the casting, loss of the vertical fin and tail rotor, and subsequent loss of control of the helicopter.

DATES: Effective February 10, 2003.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of February 10, 2003.

Comments for inclusion in the Rules Docket must be received on or before March 25, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 2002–SW–33–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137. You may also send comments electronically to the Rules Docket at the following address: *9–asw–adcomments@faa.gov*.

The service information referenced in this AD may be obtained from Bell Helicopter Textron Canada, 12,800 Rue de l'Avenir, Mirabel, Quebec J7J1R4, telephone (450) 437–2862 or (800) 363–8023, fax (450) 433–0272. This information may be examined at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the **Federal Register**, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Sharon Miles, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Regulations Group, Fort Worth, Texas 76193–0111, telephone (817) 222–5122, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION: Transport Canada, the airworthiness authority for Canada, notified the FAA that an unsafe condition may exist on Bell Model 407 helicopters. Transport Canada advises that there has been one occurrence of a cracked tail rotor gearbox support casting that is part of the tailboom assembly. They state that the crack originated from a weld repair made during fabrication of the part and that Bell has identified other castings that have the same repair and potential for cracking.

Bell has issued Bell Helicopter Textron Alert Service Bulletin, No. 407–02–53, dated June 5, 2002, which specifies a procedure for determining if an affected tailboom and casting are installed, and specifies an initial and 25-hour time-in-service recurring visual inspections of the casting for cracks. Transport Canada classified this alert service bulletin as mandatory and issued AD No. CF–2002–32R1, dated July 31, 2002, to ensure the continued airworthiness of these helicopters in Canada.

This helicopter model is manufactured in Canada and is type certificated for operation in the United States under the provisions of 14 CFR 21.29 and the applicable bilateral agreement. Pursuant to the applicable bilateral agreement, Transport Canada has kept the FAA informed of the situation described above. The FAA has examined the findings of Transport Canada, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

This unsafe condition is likely to exist or develop on other helicopters of the same type design registered in the United States. Therefore, this AD is being issued to detect a crack in the casting and prevent failure of the casting, loss of the vertical fin and tail rotor, and subsequent loss of control of the helicopter. This AD requires determining if an affected tailboom assembly and casting are installed, and if so, visually inspecting the casting for a crack before further flight at intervals not to exceed 25 hours time-in-service (TIS). Replacing any tailboom assembly that has a cracked casting is also required before further flight. The actions must be accomplished in accordance with the alert service bulletin described previously. Replacing the tailboom with a tailboom assembly having a serial number other than those listed in the Applicability section of this AD is a terminating action for the requirements of this AD. The short compliance time involved is required because the previously described critical unsafe condition can adversely affect the controllability and structural integrity of the helicopter. Therefore, inspecting for a crack in affected castings is required within 10 hours TIS or 7 days, whichever occurs first, and this AD must be issued immediately.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

The FAA estimates that 284 helicopters will be affected by this AD and that it will take approximately 1.5 work hours to determine if an affected tailboom assembly and casting are installed and 25 work hours to replace a tailboom. There are seven helicopters that will require repetitively inspecting the affected casting; it will take approximately 1 work hour to conduct the visual inspection of the casting. The average labor rate is $60 per work hour. If a crack is found in the casting, required parts will cost approximately $64,578 per helicopter. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $573,786, assuming (1) a one-time inspection for 284 helicopters to determine if affected tailbooms and castings are installed; and (2) the tailboom is replaced on the seven helicopters after 204 repetitive inspections. The manufacturer states that they are offering a prorated warranty credit for replacement tailboom, P/N 407–030–801–203.

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in

evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their mailed comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 2002–SW–33–AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket.

A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

2003–02–06 Bell Helicopter Textron Canada Limited: Amendment 39–13023. Docket No. 2002–SW–33–AD.

Applicability: Model 407 helicopters, serial numbers (S/N) 53000 through 53475, with tailboom assemblies, part numbers (P/Ns) 407–030–801–105 or –107, or 407–530–014–103, having S/N 53390 through 53440, 53449, BP921, BP1014, and tail rotor gearbox support casting (casting), part number (P/N) 406–030–121–105, having S/N 980867/01–2, 980867/01–3, 980867/01–4, 980867/01–5, 980867/01–8, 980867/01–9, and 980867/01–10, installed, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To detect a crack in the casting, failure of the tail rotor, loss of the tailboom, and subsequent loss of control of the helicopter, accomplish the following:

(a) Within 10 hours time-in-service (TIS) or 7 days, whichever occurs first, determine if an affected tailboom is installed, and if so, determine if an affected casting is installed, in accordance with Part I of the Accomplishment Instructions in Bell Helicopter Textron Alert Service Bulletin No. 407–02–53, dated June 5, 2002 (ASB), except reporting to the manufacturer is not required.

(b) If an affected tailboom and casting are installed, before further flight and thereafter at intervals not to exceed 25 hours TIS until replacement tailboom, P/N 407–030–801–203, is installed, visually inspect the casting for a crack in accordance with Part II, steps 3–5 and 8, of the Accomplishment Instructions of the ASB, except that reporting to the manufacturer is not required.

(1) If a crack is found, before further flight, replace the tailboom assembly with an airworthy tailboom assembly having a serial number other than those serial-numbered tailboom assemblies listed in the Applicability section of this AD.

(2) If a crack is found, report the following information within 7 days to the FAA, Rotorcraft Directorate, ASW–111, Attention: Sharon Miles, 2601 Meacham Blvd., Fort Worth, TX 76137; or via Email to: *sharon.y.miles@faa.gov;* or via FAX at (817) 222–5961: Tailboom P/N, S/N, number of hours TIS, crack location, and crack size. Information collection requirements contained in this AD have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

(c) Replacing the tailboom with a tailboom assembly having a serial number other than those listed in the Applicability section of this AD is a terminating action for the requirements of this AD.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Regulations Group, Rotorcraft Directorate, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Regulations Group.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Regulations Group.

(e) Special flight permits may be issued in accordance with 14 CFR 21.197 and 21.199 to operate the helicopter to a location where the requirements of this AD can be accomplished.

(f) Determining if affected parts are installed and visually inspecting for a crack shall be done in accordance with Bell Helicopter Textron Alert Service Bulletin, No. 407–02–53, dated June 5, 2002, Part I and Part II, Accomplishment Instructions. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Bell Helicopter Textron Canada, 12,800 Rue de l'Avenir, Mirabel, Quebec J7J1R4, telephone (450) 437–2862 or (800) 363–8023, fax (450) 433–0272. Copies may be inspected at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment becomes effective on February 10, 2003.

Note 3: The subject of this AD is addressed in Transport Canada (Canada) AD CF–2002–32R1, dated July 31, 2002.

Issued in Fort Worth, Texas, on January 14, 2003.

David A. Downey,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 03–1304 Filed 1–23–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 101

[T.D. 03–05]

Consolidation of Customs Drawback Centers

AGENCY: Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document adopts as a final rule, with a clarification, the proposed amendments to the Customs Regulations that reflect the closure of the Customs Drawback Centers located at the ports of Boston, Massachusetts; Miami, Florida; and New Orleans, Louisiana. The closing of the three Drawback Centers is part of a planned consolidation and is intended to promote operational efficiency in the processing of drawback claims.

EFFECTIVE DATES: This regulation becomes effective January 24, 2003. The closing of the Customs Drawback Center located at the port of New Orleans, LA becomes effective February 24, 2003. The closing of the Customs Drawback Centers located at the ports of Boston, MA and Miami, FL become effective July 23, 2003.

FOR FURTHER INFORMATION CONTACT: Sherri Lee Hoffman, Entry and Drawback Management, Office of Field Operations, U.S. Customs Service, Tel. (202) 927–0300.

SUPPLEMENTARY INFORMATION:

Background

Since 1996, Customs has recognized a decrease in both the number of drawback claims and the amount of drawback payments. To verify these trends, and to determine how to most efficiently operate the Drawback Program, Customs conducted an internal evaluation of the program. Customs also retained the services of an independent contractor to review the Drawback Program to ensure that the agency's findings were valid. The findings of both the agency-led review and the independent contractor's assessment indicated the benefits of consolidating the processing of drawback claims by reducing the number of Drawback Centers.

In a Notice to Congress on March 12, 2001, filed in accordance with 19 U.S.C. 2075, Customs proposed the closure of four Drawback Centers. The Senate Finance and House Ways and Means Committees concurred with the proposal for consolidation, but with the recommendation that only three Drawback Centers be eliminated and the San Francisco Drawback Center remain operational. The Commissioner of Customs concurred with this recommendation and it was proposed to phase-in the closure of the Drawback Centers located at the ports of Boston, MA; Miami, FL; and New Orleans, LA.

On August 21, 2002, Customs published in the **Federal Register** (67 FR 54137) a proposed amendment to the Customs Regulations to reflect the planned closure of these Customs Drawback Centers, and a request for public comment regarding the proposed actions. In that document, Customs described a phased-in closure process whereby the Customs Drawback Centers located at the ports of Boston and New Orleans would close 30 days from the date a final rule adopting the proposed changes was published in the **Federal Register**, and the Drawback Center located at the port of Miami would close 180 days from such date. The document also stated that any unliquidated drawback claims that remained at each of these Drawback Centers twelve months after their respective closing dates would be transferred to another Drawback Center for processing as follows: Remaining claims from Boston would be transferred to the New York/Newark, NJ Drawback Center; remaining claims from New Orleans would be transferred to the Houston Drawback Center; and remaining claims from Miami would be transferred to the Chicago Drawback Center.

In accordance with the proposal, the five Drawback Centers located at the ports of New York/Newark, NJ; Houston, TX; Chicago, IL; Los Angeles, CA; and San Francisco, CA, will remain operational.

Discussion of Comments

Fourteen comments were received in response to the solicitation of public comment published in the August 21, 2002, **Federal Register** document. A description of the comments received, together with Customs analyses, is set forth below.

Comment: Several commenters expressed concern that closure of three Drawback Centers will negatively impact the level of service at the remaining Drawback Centers. Specific comments were submitted regarding anticipated inefficiencies at the remaining Drawback Centers resulting from:

- Reduction in full-time Customs Drawback Specialist positions;
- Increased workload for remaining Drawback Specialists and failure to utilize existing Drawback personnel to their potential;
- Transfer of backlogged drawback cases;
- Lack of specific published proposals demonstrating how service levels will be maintained; and
- Lack of realistic methods of determining which Drawback Centers should have been closed;

Customs Response: To ensure that the level of service at the remaining Drawback Centers will remain the same as before the consolidation, Customs reviewed the workload of each Center and assessed the burden of any workload that would be transferred to another Drawback Center as result of the consolidation. The determination as to which Drawback Centers would receive drawback cases that remain unliquidated twelve months after closure of a Center was based upon this review. It is noted, however, that the workload transfers that were described in the August 21, 2002, **Federal Register** document have been changed, due to further internal analysis of workloads, staffing and backlogs, and are described in the section of this document entitled "Further Customs Analysis," set forth below.

Regarding staffing issues, Customs recognizes that Drawback personnel levels at the remaining Drawback Centers will have to be routinely reviewed to ensure that the centers are able to sustain pre-consolidation levels of service. Customs is striving to automate and simplify the drawback process to reduce the workload of Drawback Specialists. In an effort to utilize Drawback personnel to their potential, Drawback Specialists will continue to receive annual training.

The Customs Drawback Program has evolved over the years, and the processing procedures in place today are to ensure that the workload increases do not create unworkable backlogs and preserve a pre-consolidation level of service to the trade.

Lastly, Customs notes that its determination to close three Drawback Centers was based on a detailed internal evaluation of the program, as well as the findings of an independent contractor. The findings of the agency-led review and the independent contractor's assessment were based on facts and clearly indicated the benefits of consolidation of the program.

Comment: Two commenters requested that the requirement to re-apply for a new letter of intent to operate under a general drawback ruling when transferring from one drawback center to another be waived.

Customs response: Claimants will not have to re-file a general drawback ruling request at the Drawback Center designated to receive their claims. If, however, a claimant opts to file a claim at a Drawback Center other than the one designated to receive their claims, that claimant will have to file a new letter of intent to operate under a general drawback ruling at that location.

Comment: Several commenters questioned whether consolidating the drawback program would subvert the intent of Congress to assist in increasing U.S. exports.

Customs response: Consolidation of the drawback program will not negatively impact U.S. exports.

Comment: One commenter objected to the fact that the identity of the independent contractor brought in to perform the review of the Drawback Program was not made public.

Customs response: The purpose of retaining an independent contractor was to have an unbiased third party conduct a review of the Drawback Program. Individuals seeking more information may file a request for information pursuant to the Freedom of Information Act (5 U.S.C. 552).

Comment: Several commenters noted that although the number of drawback claims has decreased, the volume of import and export shipments that appear on claims has increased.

Customs response: Customs has data that reflects that the number of underlying imports in 2001 decreased over 40% from 1999 levels. While it is true that more exports are being claimed in a summarized format, consolidation of the drawback program is a legitimate means of increasing the program's efficiency without impairing U.S. exports.

Comment: Two commenters questioned why claimants are not allowed to file a single application for the waivers and privileges set forth in §§ 191.91, 191.92 and 191.195 of the Customs Regulations (*i.e.*, waiver of prior notice of intent to export, accelerated payment, certification in the drawback compliance program).

Customs response: Claimants do have the option of filing a single application for these waivers and privileges pursuant to 19 CFR 191.93.

Comment: Several commenters noted that all Drawback Specialists must now perform more mandatory audits and/or desk reviews as ordered by the General Accounting Office (GAO).

Customs response: Customs has enhanced the processing procedures for drawback so that fewer full desk reviews are completed by each Drawback Specialist. Audits are completed by Regulatory Auditors with input from the Drawback Specialist. It is noted that the number of audits over the years has remained consistent.

Comment: One commenter noted that the proposed rulemaking should have stated that only a customs broker requires a license/permit to file a drawback claim, and not a drawback claimant.

Customs response: Customs agrees; the background section of the proposed rulemaking published in the **Federal Register** (67 FR 54137) on August 21, 2002, should have specified that a drawback claimant's customs broker must possess a district or national permit to file a drawback claim.

Comment: One commenter questioned whether a broker must file drawback claims via the Automated Broker Interface (ABI) to have a national permit, and noted that the Customs Regulations permit drawback claims to be filed either manually or electronically (via ABI).

Customs response: Section 111.19(f) of the Customs Regulations (19 CFR 111.19(f)) allows for national broker permits under any of the circumstances described in § 111.2(b)(2)(i) (19 CFR 111.2(b)(2)(i)). Section 111.2(b)(2)(i)(B) allows for electronic (ABI) drawback claims. There is no allowance in § 111.2(b)(2)(i) for manual drawback claims. Drawback claims may be filed manually by brokers with a district permit. *See* 19 CFR 111.2(b)(2)(ii).

Comment: Several commenters noted that by closing Drawback Centers, Customs will be unable to liquidate and audit drawback claims within the three year time period allowed by law.

Customs response: As stated previously, Customs believes that consolidation of the Drawback Program will bring about more efficient and effective drawback claim processing, and thereby claims should get liquidated more expeditiously. It is noted that there is no legal or regulatory requirement to liquidate or audit a drawback claim within three years. A drawback claimant is required to retain records for three years after payment of a drawback claim. *See* 19 CFR 163.4(b)(1). If drawback is paid via accelerated payment, pursuant to 19 CFR 191.92, and the three year time period to retain records expires prior to the underlying claim being liquidated, there may be instances where the records necessary to verify a claim are no longer available. This problem, however, has no bearing on the consolidation of the Drawback Program. It is further noted that audits are performed on unliquidated drawback claims, and this document does not make any changes to the Regulatory Audit functions of drawback.

Comment: One commenter viewed the requirement to provide advance notification to Customs of any changes to a drawback claim as impractical, and questioned who, within Customs, should be notified in such instances.

Customs response: Notification of changes to a drawback claim should be provided to the Drawback Specialist handling the original claim.

Comment: One commenter questioned whether the Government will actually save money by closing three Drawback Centers and reducing personnel, given the fact that no specific information as to the expected savings have been presented.

Customs response: The proposed rulemaking published in the August 21, 2002, **Federal Register** stated that the consolidation is "intended to promote operational efficiency in the processing of drawback claims." The document does not suggest savings as a reason for the consolidation.

Comment: One commenter noted that consolidation of the Drawback Program will necessitate submission of drawback applications to Customs Drawback Centers that are outside the Customs port areas most familiar with the claimant/company and thereby further increase delays and backlogs. Additionally, if drawback claims are required to be submitted at ports other than the port of import, the process of obtaining records will be more difficult, time-consuming and expensive.

Customs response: The Drawback Program is not currently a port-specific program. Therefore, Drawback Specialists are already adept at reviewing claims that originate from outside their geographical area. Also, the process of transmitting or shipping data to other Customs ports is already followed by all ports that do not have a Drawback Center.

Comment: One commenter requested that Customs publish each Drawback Center's drawback claims filing statistics (*i.e.*, dollar amounts claimed, number of drawback personnel assigned to the Drawback Center, number of exports being claimed).

Customs response: Relevant export data is unavailable because it is not part of Customs automated system. The other types of drawback statistics specified in the comment may be available by information requests made pursuant to the Freedom of Information Act (5 U.S.C. 552).

Comment: One commenter noted that a decline in the number of drawback claims suggests that existing Drawback Centers have idle time and that

privileges and claims should all be approved on time, including those applications made at Customs Headquarters.

Customs response: Applications for privileges are not approved at Customs Headquarters. Customs is being proactive, rather than reactive, by consolidating the Drawback Program and ensuring that Drawback resources are used optimally.

Comment: One commenter stated that Customs will increase costs by closing some of the Drawback Centers because a Drawback Specialist usually visits the drawback claimant with an Auditor and this will increase Customs travel expenses. In a related comment, several commenters noted that by closing the Boston Drawback Center, Customs expenses will increase because Auditors and Inspectors will have to travel to remote customs sites beyond their port's geographical area to review and audit drawback claims.

Customs response: A Drawback Specialist does not always accompany an Auditor. Moreover, Drawback Specialists are technical experts that an Auditor can consult as a resource either electronically or telephonically. Customs already incurs some of these travel expenditures in that a drawback claimant can use any of the eight existing Drawback Centers and does not always choose to file a drawback claim at the Center located nearest the claimant. Regarding the comment directed at the Boston Drawback Center, it is noted that Auditors and Inspectors are located throughout the Customs Service. Regulatory Auditors will remain in Boston, as well as other sites. Inspectors located at the port of export will perform the export examinations, as they always have. They perform functions separate from those of a Drawback Specialist and the role of Inspectors will not be affected by the consolidation.

Comment: Several commenters stated that the cost of staffing and training new Drawback personnel will be significant.

Customs response: The remaining Drawback Centers have well-trained, capable staffs and there is no need to immediately increase staffing levels at those Centers. New staff will be hired to replace personnel lost through attrition or retirement and to accommodate any sustained increase in drawback filings nationwide.

Comment: Several commenters noted that as proposed Free Trade Agreements and yearly reductions in duty rates will eventually eliminate the need for drawback, closure of the Drawback Centers at this time is unwarranted.

Customs response: Customs views a consolidated, more efficient Drawback Program as consistent with the trade trends cited in the comment above.

Comment: Several commenters are of the view that it is not prudent to change the Drawback Program during this time of transition of the Customs Service to the Homeland Security Department and that any such changes will distract from the goals of fighting terrorism.

Customs response: Customs is of the view that the agency's efforts regarding anti-terrorism and its move to the Homeland Security Department will not be impacted by any of the changes to the Drawback Program discussed in this document.

Comment: Several commenters questioned why California will have two Drawback Centers operating after the consolidation, even though Boston has more volume than the Los Angeles Drawback Center. The commenters also suggested documenting the length of time it takes certain Drawback Centers to process drawback claims and correcting inefficiencies.

Customs response: As stated above, many factors were taken into consideration in making the determination to close the Boston Drawback Center. Regarding workload volume, Customs notes that the volume at the Boston and Los Angeles Centers is approximately the same.

Comment: Several commenters stated that exporters will have their costs increased by having to submit drawback applications and claims to remote Drawback Centers. The commenters also expected increased delays in having to wait for shipment inspections and payment of drawback claims.

Customs response: Exporters file their claims at the port of exportation. A Drawback Center has no bearing on the export process. There is no reason to believe there will be any delays in shipment inspections, as there have been no changes made to this process.

Further Customs Analysis

Customs has determined that based on the above comments, no change is necessary to the proposed rulemaking published in the **Federal Register** on August 21, 2002 (67 FR 54137). However, it has come to Customs attention, upon further review of the proposed consolidation, that a redistribution of the workload that is to be transferred from the closed Drawback Centers, as well as an extension of the time period that the Boston Drawback Center will remain operational, will assist in maintaining the level of service at the remaining Drawback Centers that existed prior to consolidation.

The original phased-in consolidation plan, which detailed the transfer of remaining unliquidated drawback cases and the time frames for Drawback Center closures, as published in the August 21, 2002, **Federal Register** document, remains in effect except for the following changes:

(1) Drawback claims that remain unliquidated twelve months after closure of the Miami Drawback Center and require Customs review will be forwarded to the Los Angeles Drawback Center (not to the Chicago Drawback Center); and

(2) The Drawback Center at the port of Boston, MA will close 180 days from the date of publication of this document in the **Federal Register** (not 30 days from such date as originally planned). As of that date, drawback claims will no longer be accepted at the Boston Drawback Center and claims must be filed at one of the five remaining Drawback Centers. Drawback claims submitted to the Boston Drawback Center after this date will be rejected. Once rejected, it is the responsibility of the claimant to ensure timely filing of the drawback claim at one of the five remaining Drawback Centers. Customs personnel at the port of Boston will continue to process drawback claims for a period of 12-months after closure of the Boston Drawback Center. After this time, all remaining unliquidated drawback claims filed at the Boston Drawback Center prior to its closure that require Customs review will be forwarded to the Chicago Drawback Center for final processing (not to the New York/Newark Drawback Center as originally planned).

Conclusion

After analysis of the comments and further review of the matter, Customs has determined to adopt as a final rule the amendments proposed in the Notice of Proposed Rulemaking published in the **Federal Register** (67 FR 54137) on August 21, 2002.

Inapplicability of Delayed Effective Date

Although this final rule was issued after a notice for public comments, it is not subject to the notice and public procedure requirements of 5 U.S.C. 553 because it relates to agency management and organization. Customs solicited and reviewed comments as a courtesy to the public. Accordingly, there is no requirement for a delayed effective date for this regulation.

The Regulatory Flexibility Act and Executive Order 12866

Because these amendments relate to agency management and organization, they are not subject to the notice and public procedure requirements of 5 U.S.C. 553. Accordingly, this document is not subject to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Agency organization matters, such as this proposed closing of three Customs Drawback Centers, are not subject to Executive Order 12866.

Drafting Information

The principal author of this document was Ms. Suzanne Kingsbury, Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices participated in its development.

List of Subjects in 19 CFR Part 101

Customs duties and inspection, Customs ports of entry.

Amendments to the Regulations

For the reasons set forth in the preamble, amend part 101 of the Customs Regulations (19 CFR 101) as follows:

PART 101—GENERAL PROVISIONS

1. The general authority citation for part 101 continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 2, 66, 1202 (General Note 23, Harmonized Tariff Schedule of the United States), 1623, 1624, 1646a.

Section 101.3 and 101.4 also issued under 19 U.S.C. 1 and 58b;

* * * * *

§ 101.3 [Amended]

2. In § 101.3, the table in paragraph (b)(1) is amended by removing the plus sign in the "Ports of entry" column before the column listings for "Miami" under the state of Florida, "New Orleans" under the state of Louisiana, and "Boston" under the state of Massachusetts.

Robert C. Bonner,

Commissioner of Customs.

Approved: January 22, 2003.

Timothy E. Skud,

Deputy Assistant Secretary of the Treasury.

[FR Doc. 03–1758 Filed 1–23–03; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9038]

RIN 1545–BB46

Statutory Mergers and Consolidations

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final and temporary regulations.

SUMMARY: This document contains temporary regulations that define the term *statutory merger or consolidation* as that term is used in section 368(a)(1)(A). These regulations affect corporations engaging in statutory mergers and consolidations, and their shareholders. The text of the temporary regulations also serves as the text of the proposed regulations set forth in the notice of proposed rulemaking on this subject in the proposed rules section in this issue of the **Federal Register**.

DATES: *Effective Date:* These regulations are effective January 24, 2003.

FOR FURTHER INFORMATION CONTACT: Richard M. Heinecke or Reginald Mombrun at (202) 622–7930 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

A. Section 368(a) Generally

The Internal Revenue Code of 1986 (Code) provides general nonrecognition treatment for reorganizations specifically described in section 368(a). Section 368(a)(1)(A) provides that the term *reorganization* includes "a statutory merger or consolidation." Section 1.368–2(b)(1) currently provides that a statutory merger or consolidation must be "effected pursuant to the corporation laws of the United States or a State or Territory or the District of Columbia."

B. Disregarded Entities Generally

A business entity (as defined in § 301.7701–2(a)) that has only one owner may be disregarded as an entity separate from its owner for Federal tax purposes. Examples of disregarded entities include a domestic single member limited liability company that does not elect to be classified as a corporation for Federal tax purposes, a corporation (as defined in § 301.7701–2(b)) that is a qualified REIT subsidiary (within the meaning of section 856(i)(2)) (hereinafter referred to as "QRS"), and a corporation that is a qualified subchapter S subsidiary (within the meaning of section 1361(b)(3)(B)) (hereinafter sometimes referred to as "QSub").

Because a QRS and QSub are corporations under state law, state merger laws generally permit them to merge with other corporations. In addition, many state merger laws permit a limited liability company (LLC) to merge with another LLC or with a corporation.

C. Previous Proposals of Regulations

On May 16, 2000, the IRS and Treasury issued a notice of proposed rulemaking (REG–106186–98; 65 FR 31115) (hereinafter referred to as the 2000 proposed regulations) providing that neither the merger of a disregarded entity into a corporation nor the merger of a corporation into a disregarded entity would qualify as a reorganization under section 368(a)(1)(A). While commentators generally agreed that the merger of a disregarded entity into a corporation should not qualify as a reorganization under section 368(a)(1)(A), commentators asserted that the merger of a corporation into a disregarded entity with a corporate owner should be able to qualify as a reorganization under section 368(a)(1)(A).

On November 15, 2001, after consideration of the comments received regarding the 2000 proposed regulations, the IRS and Treasury withdrew the 2000 proposed regulations (REG–106186–98; 66 FR 57400) and issued another notice of proposed rulemaking (REG–126485–01; 66 FR 57400) (hereinafter referred to as the 2001 proposed regulations).

The 2001 proposed regulations provide that, for purposes of section 368(a)(1)(A), a statutory merger or consolidation must be effected pursuant to the laws of the United States or a State or the District of Columbia. Pursuant to such laws, the following events must occur simultaneously at the effective time of the transaction: (1) All of the assets (other than those distributed in the transaction) and liabilities (except to the extent satisfied or discharged in the transaction) of each member of one or more combining units (each a transferor unit) become the assets and liabilities of one or more members of one other combining unit (the transferee unit); and (2) the combining entity of each transferor unit ceases its separate legal existence for all purposes. For this purpose, a combining entity is a business entity that is a corporation (as defined in § 301.7701–2(b)) that is not a disregarded entity)

and a combining unit is a combining entity and all of its disregarded entities.

The 2001 proposed regulations provide that the merger of a disregarded entity into a corporation will not qualify as a statutory merger or consolidation under section 368(a)(1)(A) because all of the transferor unit's assets may not be transferred to the transferee unit and the separate legal existence of the combining entity of the transferor unit does not terminate as a matter of law. The 2001 proposed regulations, however, generally provide that the merger of a corporation into a disregarded entity will qualify as a statutory merger or consolidation if it satisfies the requirements of the regulations.

No public hearing regarding the 2001 proposed regulations was requested or held. Nonetheless, a number of written comments were received.

Explanation of Provisions

The IRS and Treasury have studied the comments received regarding the 2001 proposed regulations. Although the IRS and Treasury are continuing to study a number of the comments received regarding the proposed regulations, in response to a number of comments requesting immediate guidance in this area upon which taxpayers may rely, the IRS and Treasury are promulgating these regulations as temporary regulations in this Treasury Decision. The temporary regulations retain the general framework of the 2001 proposed regulations, but make certain modifications in response to comments received. The following sections describe a number of the most significant comments and the extent to which they have been incorporated in these temporary regulations. Further changes to the temporary regulations, however, are possible before these regulations are finalized.

A. Definition of Combining Entity

As described above, the 2001 proposed regulations define a combining entity as a business entity that is a corporation that is not a disregarded entity. Although the preamble to the 2001 proposed regulations clarifies that, for this purpose, the term corporation is defined as provided in § 301.7701–2(b), commentators requested that that clarification also be provided in the text of the regulations. In response to these comments, the temporary regulations provide that a combining entity is a corporation (as defined in § 301.7701–2(b)) that is not a disregarded entity.

B. The All of the Assets Requirement

As stated above, the 2001 proposed regulations require that all of the assets of a transferor unit become the assets of a transferee unit. A number of comments were received regarding this requirement. The following paragraphs describe these comments and the extent to which the temporary regulations reflect them.

One comment suggested that the regulations be amended to clarify that whether the all of the assets requirement is satisfied is determined by reference to the assets of the transferor unit immediately prior to the merger. These temporary regulations add an example that illustrates that a transaction that is preceded by a distribution by the transferor unit to its shareholders may qualify as a statutory merger under these temporary regulations, even if the "substantially all" requirement applicable to certain other types of reorganizations would not be satisfied. The example is provided solely to illustrate the meaning of the all of the assets requirement. No inference is intended regarding the shareholder level and other tax consequences of the transaction described therein.

Another comment stated that the proposed regulations are unclear as to whether a transaction in which an entity that is disregarded as an entity separate from the combining entity of the transferor unit becomes an entity that is disregarded as an entity separate from the combining entity of the transferee unit satisfies the all of the assets requirement. These temporary regulations amend *Example 2* of the 2001 proposed regulations, as described below, to clarify that this transaction may satisfy the all of the assets requirement and, therefore, qualify as a statutory merger or consolidation.

C. The Cessation of Separate Legal Existence Requirement

The 2001 proposed regulations require that the combining entity of each transferor unit "ceases its separate legal existence for all purposes." One comment requested that the phrase "for all purposes" be deleted from this requirement. The comment suggested that under some corporate laws a merged corporation may continue its existence for a specified time period and for certain limited purposes, such as bringing and defending against lawsuits. This limited continued existence of a combining entity of a transferor unit, the comment suggested, should not prevent a transaction from being treated as failing to satisfy the requirement that the combining entity of each transferor unit cease its separate legal existence for all purposes.

The IRS and Treasury do not believe that the deletion of "for all purposes" from the regulation will alter the terms of the requirement. Nonetheless, these temporary regulations provide that this requirement will be satisfied even if, pursuant to the laws of the United States or a State or the District of Columbia, after the effective time of the transaction, the combining entity of the transferor unit (or its officers, directors, or agents) may act or be acted against, or a member of the transferee unit (or its officers, directors, or agents) may act or be acted against in the name of the combining entity of the transferor unit, provided that such actions relate to assets or obligations of the combining entity of the transferor unit that arose, or relate to activities engaged in by such entity, prior to the effective time of the transaction, and such actions are not inconsistent with the all of the assets requirement.

D. Example 2 of the 2001 Proposed Regulations

A number of comments were received regarding *Example 2* of the 2001 proposed regulations, which involves the merger of a target corporation into a disregarded entity. The last sentence of the facts of *Example 2* states that, "[p]rior to the transaction, [the combining entity of the transferor unit] is not treated as owning any assets of an entity that is disregarded as an entity separate from its owner for Federal tax purposes." One commentator indicated that it is not clear why this fact is relevant to the conclusion that the transaction qualifies as a statutory merger or consolidation and suggested either deleting or clarifying this fact.

As described above, in order to qualify as a statutory merger or consolidation, all of the assets of a transferor unit must become assets of the transferee unit. In order to determine whether this requirement has been satisfied, it is necessary to know whether the combining entity of the transferor unit owns the interests of any entity that is disregarded as an entity separate from its owner for Federal tax purposes. The last sentence of the facts of *Example 2* was merely intended to convey the fact that the only assets of the transferor unit were those that the combining entity owned directly. To clarify the significance of this fact, the temporary regulations amend the analysis in *Example 2* to indicate that the transaction would still qualify as a statutory merger or consolidation even if the combining entity of the transferor unit were treated as owning assets of an

entity that is disregarded as an entity separate from the combining entity of the transferor unit for Federal tax purposes, provided that those assets become assets of the transferee unit.

E. Additional Examples

One commentator suggested that the scope of the proposed regulations be clarified through additional examples. The following paragraphs describe the suggested examples and the extent to which they have been incorporated in these temporary regulations.

1. QSub That Becomes a C Corporation

A QSub may cease to be a disregarded entity because of an event that renders the subsidiary ineligible for QSub status, such as a merger into an entity owned by a C corporation. For example, suppose Z, an S corporation, owns all of the stock of B, a QSub, and Z merges with and into X, an entity that is disregarded as an entity separate from Y, a C corporation. B's status as a QSub will terminate at the end of the day on which the merger occurs. *See* Treas. Reg. § 1.1361–5(a)(1)(iii). A commentator suggested that, in this case, it is not clear whether B is a member of the transferor unit. If B were treated as a member of the transferor unit, the transaction may not qualify as a statutory merger or consolidation because the assets of B may not become assets of the transferee unit. If, however, B were not treated as a member of the transferor unit, the transaction may qualify as a statutory merger or consolidation. The commentator suggested that B should not be treated as a member of the transferor unit. Alternatively, the commentator suggested that the principles of *Example 9* of § 1.1361–5(b)(3) could be applied to this case. In *Example 9* of § 1.1361–5(b)(3), the acquisition of the stock of a QSub is treated as a transfer of the QSub's assets followed by the transfer of those assets by the acquirer to a new corporation.

The IRS and Treasury agree with the commentator that the principles illustrated by *Example 9* of § 1.1361–5(b)(3) apply to determine whether the merger of Z into X qualifies as a statutory merger or consolidation. In particular, the transaction should be treated as a transfer of B's assets to X followed by a transfer of such assets by X to a new corporation. Accordingly, the transaction may qualify as a statutory merger or consolidation provided that the other requirements of a statutory merger or consolidation are satisfied. These temporary regulations include an example illustrating this result.

2. Transitory Surviving Disregarded Entity

One commentator suggested that the 2001 proposed regulations be amended to provide an example in which the surviving disregarded entity in an otherwise qualifying statutory merger or consolidation is transitory. For example, suppose corporation Z merges into X, an entity that is disregarded as separate from corporation Y. In the transaction, the shareholders of Z exchange their Z stock for Y stock. Immediately after the merger of Z into X and as part of a plan that includes that merger, X merges into Y. The commentator noted that, in Rev. Rul. 72–405 (1972–2 C.B. 217), the IRS held that a forward triangular merger of a target corporation into a newly formed controlled corporation of a parent corporation followed by the liquidation of the controlled corporation into the parent corporation would be treated as a reorganization under section 368(a)(1)(C) rather than a reorganization under sections 368(a)(1)(A) and 368(a)(2)(D). The commentator suggested that the principles of Revenue Ruling 72–405 should not be applied to prevent the merger of Z into X from qualifying as a reorganization under section 368(a)(1)(A).

The IRS and Treasury agree that the merger of Z into X followed by the merger of X into Y does not implicate the principles of Revenue Ruling 72–405. Because the merger of X into Y does not alter the identity of the tax owner of the former assets of X, that merger would be disregarded. The IRS and Treasury do not believe that an additional example is necessary to illustrate this result.

F. The Domestic Entity Requirement

The 2001 proposed regulations provide that a transaction in which any of the assets and liabilities of a combining entity of a transferor unit become assets and liabilities of one or more disregarded entities of the transferee unit cannot qualify as a statutory merger or consolidation unless such combining entity, the combining entity of the transferee unit, such disregarded entities, and each business entity through which the combining entity of the transferee unit holds its interests in such disregarded entities is organized under the laws of the United States or a State or the District of Columbia. One commentator suggested that where an entity that is disregarded as an entity separate from the combining entity of the transferor unit becomes an entity that is disregarded as an entity separate from the combining entity of the transferee unit, whether such disregarded entity is organized under the laws of the United States or a State or the District of Columbia is not relevant to whether the transaction qualifies as a statutory merger or consolidation. The IRS and Treasury agree and have clarified the domestic entity requirement to exclude such disregarded entities.

Another comment suggested that the domestic entity requirement be eliminated for the disregarded entity into which a target corporation is merged and each business entity through which the combining entity holds its interests in the disregarded entity into which a target corporation is merged. Although these temporary regulations retain that requirement for those entities, as described in the preamble to the 2001 proposed regulations, the IRS and Treasury are continuing to consider further revisions to the regulations under section 368(a)(1)(A) to address statutory mergers and consolidations that involve one or more foreign corporations, including transactions involving a disregarded entity.

Special Analyses

It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the regulation does not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Code, these temporary regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these temporary regulations is Richard M. Heinecke, Office of Associate Chief Counsel (Corporate). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and record keeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. In § 1.368–2, paragraph (b)(1) is revised to read as follows:

§ 1.368–2 Definition of terms.

* * * * *

(b)(1) For rules regarding statutory mergers or consolidations on or after January 24, 2003, *see* § 1.368–2T(b)(1). For rules regarding statutory mergers or consolidations before January 24, 2003, *see* § 1.368–2(b)(1) as in effect before January 24, 2003 (*see* 26 CFR part 1, revised April 1, 2002).

* * * * *

Par. 3. Section 1.368–2T is added to read as follows:

§ 1.368–2T Definition of terms (temporary).

(a) [Reserved]. For further guidance, *see* § 1.368–2(a).

(b)(1)(i) *Definitions.* For purposes of this paragraph (b)(1), the following terms shall have the following meanings:

(A) *Disregarded entity.* A disregarded entity is a business entity (as defined in § 301.7701–2(a) of this chapter) that is disregarded as an entity separate from its owner for Federal tax purposes. Examples of disregarded entities include a domestic single member limited liability company that does not elect to be classified as a corporation for Federal tax purposes, a corporation (as defined in § 301.7701–2(b) of this chapter) that is a qualified REIT subsidiary (within the meaning of section 856(i)(2)), and a corporation that is a qualified subchapter S subsidiary (within the meaning of section 1361(b)(3)(B)).

(B) *Combining entity.* A combining entity is a business entity that is a corporation (as defined in § 301.7701–2(b) of this chapter) that is not a disregarded entity.

(C) *Combining unit.* A combining unit is composed solely of a combining entity and all disregarded entities, if any, the assets of which are treated as owned by such combining entity for Federal tax purposes.

(ii) *Statutory merger or consolidation generally.* For purposes of section 368(a)(1)(A), a statutory merger or consolidation is a transaction effected pursuant to the laws of the United States or a State or the District of Columbia, in which, as a result of the operation of such laws, the following events occur simultaneously at the effective time of the transaction—

(A) All of the assets (other than those distributed in the transaction) and liabilities (except to the extent satisfied or discharged in the transaction) of each member of one or more combining units (each a transferor unit) become the assets and liabilities of one or more members of one other combining unit (the transferee unit); and

(B) The combining entity of each transferor unit ceases its separate legal existence for all purposes; provided, however, that this requirement will be satisfied even if, pursuant to the laws of the United States or a State or the District of Columbia, after the effective time of the transaction, the combining entity of the transferor unit (or its officers, directors, or agents) may act or be acted against, or a member of the transferee unit (or its officers, directors, or agents) may act or be acted against in the name of the combining entity of the transferor unit, provided that such actions relate to assets or obligations of the combining entity of the transferor unit that arose, or relate to activities engaged in by such entity, prior to the effective time of the transaction, and such actions are not inconsistent with the requirements of paragraph (b)(1)(ii)(A) of this section.

(iii) *Statutory merger or consolidation involving disregarded entities.* A transaction effected pursuant to the laws of the United States or a State or the District of Columbia in which any of the assets and liabilities of a combining entity of a transferor unit become assets and liabilities of one or more disregarded entities of the transferee unit is not a statutory merger or consolidation within the meaning of section 368(a)(1)(A) and paragraph (b)(1)(ii) of this section unless such combining entity, the combining entity of the transferee unit, such disregarded entities other than entities that were disregarded entities of the transferor unit immediately prior to the transaction, and each business entity through which the combining entity of the transferee unit holds its interests in such disregarded entities is organized under the laws of the United States or a State or the District of Columbia.

(iv) *Examples.* The following examples illustrate the rules of paragraph (b)(1) of this section. In each of the examples, except as otherwise provided, each of V, Y, and Z is a domestic C corporation. X is a domestic limited liability company. Except as otherwise provided, X is wholly owned by Y and is disregarded as an entity separate from Y for Federal tax purposes. The examples are as follows:

Example 1. Divisive transaction pursuant to a merger statute. (i) Under State W law, Z transfers some of its assets and liabilities to Y, retains the remainder of its assets and liabilities, and remains in existence following the transaction. The transaction qualifies as a merger under State W corporate law. Prior to the transaction, Y is not treated as owning any assets of an entity that is disregarded as an entity separate from its owner for Federal tax purposes.

(ii) The transaction does not satisfy the requirements of paragraph (b)(1)(ii)(A) of this section because all of the assets and liabilities of Z, the combining entity of the transferor unit, do not become the assets and liabilities of Y, the combining entity and sole member of the transferee unit. In addition, the transaction does not satisfy the requirements of paragraph (b)(1)(ii)(B) of this section because the separate legal existence of Z does not cease for all purposes. Accordingly, the transaction does not qualify as a statutory merger or consolidation under section 368(a)(1)(A).

Example 2. Merger of a target corporation into a disregarded entity in exchange for stock of the owner. (i) Under State W law, Z merges into X. Pursuant to such law, the following events occur simultaneously at the effective time of the transaction: all of the assets and liabilities of Z become the assets and liabilities of X and Z's separate legal existence ceases for all purposes. In the merger, the Z shareholders exchange their stock of Z for stock of Y. Prior to the transaction, Z is not treated as owning any assets of an entity that is disregarded as an entity separate from its owner for Federal tax purposes.

(ii) The transaction satisfies the requirements of paragraph (b)(1)(ii) of this section because the transaction is effected pursuant to State W law and the following events occur simultaneously at the effective time of the transaction: all of the assets and liabilities of Z, the combining entity and sole member of the transferor unit, become the assets and liabilities of one or more members of the transferee unit that is comprised of Y, the combining entity of the transferee unit, and X, a disregarded entity the assets of which Y is treated as owning for Federal tax purposes, and Z ceases its separate legal existence for all purposes. Paragraph (b)(1)(iii) of this section does not apply to prevent the transaction from qualifying as a statutory merger or consolidation for purposes of section 368(a)(1)(A) because each of Z, Y, and X is a domestic entity. Accordingly, the transaction qualifies as a statutory merger or consolidation for purposes of section 368(a)(1)(A). The result would be the same if Z were treated as owning assets of an entity that is disregarded as an entity separate from Z, regardless of whether such disregarded entity became an entity disregarded as an entity separate from Y as a result of the transaction, or merged into X or a domestic entity disregarded as an entity separate from Y.

Example 3. Merger of a target S corporation that owns a QSub into a disregarded entity. (i) The facts are the same as in *Example 2*, except that Z is an S corporation and owns all of the stock of U, a QSub.

(ii) The deemed formation by Z of U pursuant to § 1.1361–5(b)(1) (as a consequence of the termination of U's QSub election) is disregarded for Federal income tax purposes. The transaction is treated as a transfer of the assets of U to X, followed by X's transfer of these assets to U in exchange for stock of U. *See* § 1.1361–5(b)(3), *Example 9*. The transaction will, therefore, satisfy the

requirements of paragraph (b)(1)(ii) of this section because the transaction is effected pursuant to State W law and the following events occur simultaneously at the effective time of the transaction: all of the assets and liabilities of Z and U, the sole members of the transferor unit, become the assets and liabilities of one or more members of the transferee unit that is comprised of Y, the combining entity of the transferee unit, and X, a disregarded entity the assets of which Y is treated as owning for Federal tax purposes, and Z ceases its separate legal existence for all purposes. Paragraph (b)(1)(iii) of this section does not apply to prevent the transaction from qualifying as a statutory merger or consolidation for purposes of section 368(a)(1)(A) because each of Z, Y, and X is a domestic entity. Moreover, the deemed transfer of the assets of U in exchange for U stock does not cause the transaction to fail to qualify as a statutory merger or consolidation. *See* § 368(a)(2)(C). Accordingly, the transaction qualifies as a statutory merger or consolidation for purposes of section 368(a)(1)(A).

Example 4. Triangular merger of a target corporation into a disregarded entity. (i) The facts are the same as in *Example 2*, except that V owns 100 percent of the outstanding stock of Y and, in the merger of Z into X, the Z shareholders exchange their stock of Z for stock of V. In the transaction, Z transfers substantially all of its properties to X.

(ii) The transaction is not prevented from qualifying as a statutory merger or consolidation under section 368(a)(1)(A), provided the requirements of section 368(a)(2)(D) are satisfied. Because the assets of X are treated for Federal tax purposes as the assets of Y, Y will be treated as acquiring substantially all of the properties of Z in the merger for purposes of determining whether the merger satisfies the requirements of section 368(a)(2)(D). As a result, the Z shareholders that receive stock of V will be treated as receiving stock of a corporation that is in control of Y, the combining entity of the transferee unit that is the acquiring corporation for purposes of section 368(a)(2)(D). Accordingly, the merger will satisfy the requirements of section 368(a)(2)(D).

Example 5. Merger of a target corporation into a disregarded entity owned by a partnership. (i) The facts are the same as in *Example 2*, except that Y is organized as a partnership under the laws of State W and is classified as a partnership for Federal tax purposes.

(ii) The transaction does not satisfy the requirements of paragraph (b)(1)(ii)(A) of this section. All of the assets and liabilities of Z, the combining entity and sole member of the transferor unit, do not become the assets and liabilities of one or more members of a transferee unit because neither X nor Y qualifies as a combining entity. Accordingly, the transaction cannot qualify as a statutory merger or consolidation for purposes of section 368(a)(1)(A).

Example 6. Merger of a disregarded entity into a corporation. (i) Under State W law, X merges into Z. Pursuant to such law, the following events occur simultaneously at the effective time of the transaction: all of the assets and liabilities of X (but not the assets and liabilities of Y other than those of X) become the assets and liabilities of Z and X's separate legal existence ceases for all purposes.

(ii) The transaction does not satisfy the requirements of paragraph (b)(1)(ii)(A) of this section because all of the assets and liabilities of a transferor unit do not become the assets and liabilities of one or more members of the transferee unit. The transaction also does not satisfy the requirements of paragraph (b)(1)(ii)(B) of this section because X does not qualify as a combining entity. Accordingly, the transaction cannot qualify as a statutory merger or consolidation for purposes of section 368(a)(1)(A).

Example 7. Merger of a corporation into a disregarded entity in exchange for interests in the disregarded entity. (i) Under State W law, Z merges into X. Pursuant to such law, the following events occur simultaneously at the effective time of the transaction: all of the assets and liabilities of Z become the assets and liabilities of X and Z's separate legal existence ceases for all purposes. In the merger of Z into X, the Z shareholders exchange their stock of Z for interests in X so that, immediately after the merger, X is not disregarded as an entity separate from Y for Federal tax purposes. Following the merger, pursuant to § 301.7701–3(b)(1)(i) of this chapter, X is classified as a partnership for Federal tax purposes.

(ii) The transaction does not satisfy the requirements of paragraph (b)(1)(ii)(A) of this section because immediately after the merger X is not disregarded as an entity separate from Y and, consequently, all of the assets and liabilities of Z, the combining entity of the transferor unit, do not become the assets and liabilities of one or more members of a transferee unit. Accordingly, the transaction cannot qualify as a statutory merger or consolidation for purposes of section 368(a)(1)(A).

Example 8. Merger transaction preceded by distribution. (i) Z operates two unrelated businesses, Business P and Business Q, each of which represents 50 percent of the value of the assets of Z. Y desires to acquire and continue operating Business P, but does not want to acquire Business Q. Pursuant to a single plan, Z sells Business Q for cash to parties unrelated to Z and Y in a taxable transaction, and then distributes the proceeds of the sale pro rata to its shareholders. Then, pursuant to State W law, Z merges into Y. Pursuant to such law, the following events occur simultaneously at the effective time of the transaction: all of the assets and liabilities of Z related to Business P become the assets and liabilities of Y and Z's separate legal existence ceases for all purposes. In the merger, the Z shareholders exchange their Z stock for Y stock. Prior to the transaction, Z is not treated as owning any assets of an entity that is disregarded as an entity separate from its owner for Federal tax purposes.

(ii) The transaction satisfies the requirements of paragraph (b)(1)(ii) of this section because the transaction is effected pursuant to State W law and the following events occur simultaneously at the effective time of the transaction: all of the assets and liabilities of Z, the combining entity and sole member of the transferor unit, become the assets and liabilities of Y, the combining entity and sole member of the transferee unit, and Z ceases its separate legal existence for all purposes. Paragraph (b)(1)(iii) of this section does not apply to prevent the transaction from qualifying as a statutory merger or consolidation for purposes of section 368(a)(1)(A) because each of Z and Y is a domestic entity. Accordingly, the transaction qualifies as a statutory merger or consolidation for purposes of section 368(a)(1)(A).

(v) *Effective dates.* This paragraph (b)(1) applies to transactions occurring on or after January 24, 2003. Taxpayers, however, may apply these regulations in whole, but not in part, to transactions occurring before January 24, 2003, provided that, if the taxpayer is the acquiring corporation (or a shareholder of the acquiring corporation whose tax treatment of the transaction reflects the tax treatment by the acquiring corporation, such as a shareholder of an acquiring S corporation), the target corporation (and the shareholders of the target corporation whose tax treatment of the transaction reflects the tax treatment by the target corporation) also applies these regulations in whole, but not in part, to the transaction, and if the taxpayer is the target corporation (or a shareholder of the target corporation whose tax treatment of the transaction reflects the tax treatment by the target corporation), the acquiring corporation (and the shareholders of the acquiring corporation whose tax treatment of the transaction reflects the tax treatment by the acquiring corporation) also applies these regulations in whole, but not in part, to the transaction. For all other transactions, *see* § 1.368–2(b)(1) as in effect before January 24, 2003 (*see* 26 CFR part 1, revised April 1, 2002).

(b)(2) through (k) [Reserved]. For further guidance, *see* § 1.368–2(b)(2) through (k).

David A. Mader,

Assistant Deputy Commissioner of Internal Revenue.

Approved: January 17, 2003.

Pamela F. Olson,

Assistant Secretary of the Treasury.

[FR Doc. 03–1544 Filed 1–23–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF JUSTICE

Parole Commission

28 CFR Part 2

Paroling, Recommitting, and Supervising Federal Prisoners: Prisoners Serving Sentences Under the District of Columbia Code

AGENCY: United States Parole Commission, Justice.

ACTION: Final rule.

SUMMARY: The U.S. Parole Commission is amending its rules which govern the hearing process for District of Columbia parolees and supervised releasees who are arrested on warrants charging them with violations which may result in revocation and return to prison. The amended rules implement a consent decree issued by the U.S. District Court for the District of Columbia, in Long v. Gaines, Civil Action No. 01–0010 (EGS), dated December 17, 2002. This consent decree obliges the Commission to adopt as final rules the interim rules which the Commission published on January 18, 2002, and requires certain additional provisions relating to District of Columbia parolees who are arrested in jurisdictions outside the District of Columbia. The Commission has decided, in addition, to adopt the same procedures for District of Columbia supervised releasees. These procedures are intended to give the Commission a swift and efficient revocation hearing process which will minimize the Commission's use of the jail housing resources of the District of Columbia Department of Corrections, without impeding the Commission's ability to make a thorough assessment of the charges in each case.

DATES: This final rule will take effect February 24, 2003.

FOR FURTHER INFORMATION CONTACT: Michael A. Stover, Office of General Counsel, U.S. Parole Commission, 5550 Friendship Blvd., Chevy Chase, Maryland 20815, telephone (301) 492–5959. Please note that questions about this **Federal Register** publication are welcome, but inquiries concerning individual cases cannot be answered.

SUPPLEMENTARY INFORMATION: In Long v. Gaines, 167 F. Supp. 2d 75 (D.D.C. 2001), the U.S. District Court for the District of Columbia held that the Parole Commission's rules governing the revocation process for District of Columbia parolees were unconstitutional with respect to the time deadlines for making determinations of probable cause and completing the revocation process. On December 17, 2002, the Court vacated its orders and judgment in Long v. Gaines, and entered a consent decree by which the Commission has agreed to withdraw its appeal to the U.S. Court of Appeals for the District of Columbia Circuit, and to adopt as final rules the rules which it adopted to carry out the compliance plan which the district court approved on November 21, 2001. The consent decree also includes certain additional provisions regarding DC Code parolees who are arrested in jurisdictions outside the District of Columbia.

Although the revocation hearing process adopted by these amended rules imposes deadlines for making probable cause and final revocation decisions which are shorter than the Commission believes to be required by the Constitution, the Commission believes that this approach makes sense in the context of a municipal correctional system with seriously strained jail housing resources. The shorter the average stay of each arrested parolee prior to a final disposition of the revocation charges, the faster the parolee can either be released or transferred to a Bureau of Prisons facility, thus limiting the total parolee population in the custody of the DC Department of Corrections at any given time. The most important feature of the revocation system which the Commission has developed as a result of Long v. Gaines is the rule which requires the scheduling of a fixed date for the revocation hearing as soon as probable cause is found, and which prohibits postponement requests submitted to the Commission less than fifteen days before a scheduled hearing except for compelling reasons. By reducing the possibilities for tactical delays which in the past made the Commission's revocation caseload in the District of Columbia nearly unmanageable, this rule permits the Commission to process a very substantial caseload in an orderly manner. An efficient revocation process also maximizes the Commission's ability to revoke the paroles of high-risk parole violators and expeditiously remove them from the community.

Under these amended rules, an examiner of the Commission will make a determination of probable cause no later than five days from arrest, and will hold a revocation hearing not later than 65 days from arrest. The examiner will also have the authority to order the release of the parolee if no probable cause is found, and to set a date for the revocation hearing if probable cause is found. The Commission will issue a final decision no later than 21 days from the revocation hearing (*i.e.*, 86 days from arrest). However, in the case of a parolee who admits all charges, waives the right to a local revocation hearing, or is convicted of a new crime, the Commission will conduct an "institutional revocation hearing" as provided in its original rules. The amended rules also require the Commission to ensure that: (1) Each parolee is given notice of the time and purpose of the probable cause hearing and the charged violations; (2) each parolee is provided, prior to the revocation hearing, with disclosure of the evidence to be relied upon by the Commission in determining whether parole was violated and, if so, whether to revoke parole; and (3) each parolee's arguments and evidence are given to the Commission before it renders a final decision.

With respect to parolees arrested outside the District of Columbia, but within the Washington DC Metropolitan Area, and who have not sustained new criminal convictions, the rules provide that an examiner of the Commission will conduct a probable cause hearing within five days of the parolee's arrival at a facility where probable cause hearings are conducted. Normally, the probable cause hearing will be conducted at the DC Jail following the transfer of the parolee from the local jail facility (in Maryland or Virginia) to which the parolee was taken immediately following arrest. The U.S. Marshals Service has issued instructions to all of its U.S. Marshals regarding timely notifications and transfers of parolees for probable cause hearings, which should make it possible for this new procedure to be successful.

Finally, the Commission has decided to extend the revocation procedures set forth in these rules to District of Columbia supervised release cases, even though District of Columbia supervised releasees are not members of the Long v. Gaines class and are not covered by the consent decree of December 17, 2002. (Sentences imposed for D.C. Code crimes committed within the District of Columbia since August 5, 2000, no longer include parole, but instead carry terms of supervised release which come under the Commission's jurisdiction.) In the Commission's judgment, these rules provide the most efficient revocation system for both parolees and supervised releasees in the District of Columbia, and correspondingly the best means of protecting the public safety.

Implementation

The Commission's regulations at 28 CFR 2.98 through 2.105, and 28 CFR 2.211 through 2.218, as amended by this

publication, will be followed by the Commission in the case of all District of Columbia Code parolees and supervised releasees who are arrested and held in the Washington, DC metropolitan area on warrants charging a violation or violations of parole or supervised release. In the case of District of Columbia Code parolees and supervised releasees who are arrested and held outside the Washington, DC metropolitan area on warrants charging a violation or violations of parole or supervised release, the revocation rules applicable to U.S. Code parolees shall apply. Where preliminary interviews are required, the Commission will request the local U.S. Probation Office to conduct a preliminary interview as required by 28 CFR § 2.48 (a) within 3 to 5 days of the Commission being notified by the U.S. Marshals Service of the parolee's arrest, unless exceptional circumstances require additional time not to exceed 10 days.

Regulatory Assessment Requirements

The U.S. Parole Commission has determined that these final rule amendments do not constitute a significant rule within the meaning of Executive Order 12866. The amended rules will not have a significant economic impact upon a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 605(b), and are deemed by the Commission to be rules of agency practice that do not substantially affect the rights or obligations of non-agency parties pursuant to Section 804(3)(C) of the Congressional Review Act.

List of Subjects in 28 CFR Part 2

Administrative practice and procedure, Prisoners, Probation and parole.

Adoption of Amended Rules

Accordingly, the interim rule amendments to 28 CFR Part 2, Subchapter C, Sections 2.98 through 2.105, which were published at 67 FR 2569 on January 18, 2002, are adopted by the Commission as final rules with revisions to Section 2.101 as set forth below. In addition, the Commission adopts amendments to 28 CFR Part 2, Subchapter D, which are also set forth below.

PART 2—[AMENDED]

1. The authority citation for 28 CFR Part 2 continues to read as follows:

Authority: 18 U.S.C. 4203(a)(1) and 4204(a)(6).

2. Revise §2.101 (a) and (b), to read as follows:

§ 2.101 Probable cause hearing and determination.

(a) *Hearing.* A parolee who is retaken and held in custody in the District of Columbia on a warrant issued by the Commission, and who has not been convicted of a new crime, shall be given a probable cause hearing by an examiner of the Commission no later than five days from the date of such retaking. A parolee who is retaken and held in custody outside the District of Columbia, but within the Washington DC metropolitan area, and who has not been convicted of a new crime, shall be given a probable cause hearing by an examiner of the Commission within five days of the parolee's arrival at a facility where probable cause hearings are conducted. The purpose of a probable cause hearing is to determine whether there is probable cause to believe that the parolee has violated parole as charged, and if so, whether a local or institutional revocation hearing should be conducted. If the examiner finds probable cause, the examiner shall schedule a final revocation hearing to be held within 65 days of such parolee's arrest.

(b) *Notice and opportunity to postpone hearing.* Prior to the commencement of each docket of probable cause hearings in the District of Columbia, a list of the parolees who are scheduled for probable cause hearings, together with a copy of the warrant application for each parolee, shall be sent to the D.C. Public Defender Service. At or before the probable cause hearing, the parolee (or the parolee's attorney) may submit a written request that the hearing be postponed for any period up to thirty days, and the Commission shall ordinarily grant such requests. Prior to the commencement of the probable cause hearing, the examiner shall advise the parolee that the parolee may accept representation by the attorney from the D.C. Public Defender Service who is assigned to that docket, waive the assistance of an attorney at the probable cause hearing, or have the probable cause hearing postponed in order to obtain another attorney and/or witnesses on his behalf. In addition, the parolee may request the Commission to require the attendance of adverse witnesses (*i.e.*, witnesses who have given information upon which revocation may be based) at a postponed probable cause hearing. Such adverse witnesses may be required to attend either a postponed probable cause hearing, or a combined postponed probable cause and local revocation hearing, provided the parolee meets the requirements of § 2.102(a) for a local revocation hearing. The parolee shall also be given notice of the time and place of any postponed probable cause hearing.

* * * * *

3. Section 2.211 is amended as follows:

a. Amend paragraph (a) (1) by removing "preliminary interview" and adding in its place "probable cause hearing'.

b. Revise paragraph (f) to read as follows:

§ 2.211 Summons to appear or warrant for retaking releasee.

* * * * *

(f) A summons or warrant issued pursuant to this section shall be accompanied by a warrant application (or other notice) stating:

(1) The charges against the releasee;

(2) The specific reports and other documents upon which the Commission intends to rely in determining whether a violation of supervised release has occurred and whether to revoke supervised release;

(3) Notice of the Commission's intent, if the releasee is arrested within the District of Columbia, to hold a probable cause hearing within five days of the releasee's arrest;

(4) A statement of the purpose of the probable cause hearing;

(5) The days of the week on which the Commission regularly holds its dockets of probable cause hearings at the Central Detention Facility;

(6) The releasee's procedural rights in the revocation process; and

(7) The possible actions that the Commission may take.

4. Section 2.212 is amended to read as follows:

a. Revise paragraph (b) to read as set forth below.

b. Amend paragraph (e) by removing "preliminary interview" and adding in its place "probable cause hearing'.

§ 2.212 Execution of warrant and service of summons.

* * * * *

(b) Upon the arrest of the releasee, the officer executing the warrant shall deliver to the releasee a copy of the warrant application (or other notice provided by the Commission) containing the information described in § 2.211(f).

* * * * *

5. Section 2.214 is revised to read as follows:

§ 2.214 Probable cause hearing and determination.

(a) *Hearing.* A supervised releasee who is retaken and held in custody in the District of Columbia on a warrant

issued by the Commission, and who has not been convicted of a new crime, shall be given a probable cause hearing by an examiner of the Commission no later than five days from the date of such retaking. A releasee who is retaken and held in custody outside the District of Columbia, but within the Washington D.C. metropolitan area, and who has not been convicted of a new crime, shall be given a probable cause hearing by an examiner of the Commission within five days of the releasee's arrival at a facility where probable cause hearings are conducted. The purpose of a probable cause hearing is to determine whether there is probable cause to believe that the releasee has violated the conditions of supervised release as charged, and if so, whether a local or institutional revocation hearing should be conducted. If the examiner finds probable cause, the examiner shall schedule a final revocation hearing to be held within 65 days of the releasee's arrest.

(b) *Notice and opportunity to postpone hearing.* Prior to the commencement of each docket of probable cause hearings in the District of Columbia, a list of the releasees who are scheduled for probable cause hearings, together with a copy of the warrant application for each releasee, shall be sent to the D.C. Public Defender Service. At or before the probable cause hearing, the releasee (or the releasee's attorney) may submit a written request that the hearing be postponed for any period up to thirty days, and the Commission shall ordinarily grant such requests. Prior to the commencement of the probable cause hearing, the examiner shall advise the releasee that the releasee may accept representation by the attorney from the D.C. Public Defender Service who is assigned to that docket, waive the assistance of an attorney at the probable cause hearing, or have the probable cause hearing postponed in order to obtain another attorney and/or witnesses on his behalf. In addition, the releasee may request the Commission to require the attendance of adverse witnesses (*i.e.*, witnesses who have given information upon which revocation may be based) at a postponed probable cause hearing. Such adverse witnesses may be required to attend either a postponed probable cause hearing, or a combined postponed probable cause and local revocation hearing, provided the releasee meets the requirements of § 2.215(a) for a local revocation hearing. The releasee shall also be given notice of the time and place of any postponed probable cause hearing.

(c) *Review of the charges.* At the beginning of the probable cause hearing, the examiner shall ascertain that the notice required by § 2.212(b) has been given to the releasee. The examiner shall then review the violation charges with the releasee and shall apprise the releasee of the evidence that has been submitted in support of the charges. The examiner shall ascertain whether the releasee admits or denies each charge listed on the warrant application (or other notice of charges), and shall offer the releasee an opportunity to rebut or explain the allegations contained in the evidence giving rise to each charge. The examiner shall also receive the statements of any witnesses and documentary evidence that may be presented by the releasee. At a postponed probable cause hearing, the examiner shall also permit the releasee to confront and cross-examine any adverse witnesses in attendance, unless good cause is found for not allowing confrontation. Whenever a probable cause hearing is postponed to secure the appearance of adverse witnesses (or counsel in the case of a probable cause hearing conducted outside the District of Columbia), the Commission will ordinarily order a combined probable cause and local revocation hearing as provided in paragraph (i) of this section.

(d) *Probable cause determination.* At the conclusion of the probable cause hearing, the examiner shall determine whether probable cause exists to believe that the releasee has violated the conditions of release as charged, and shall so inform the releasee. The examiner shall then take either of the following actions:

(1) If the examiner determines that no probable cause exists for any violation charge, the examiner shall order that the releasee be released from the custody of the warrant and either reinstated to supervision, or discharged from supervision if the term of supervised release has expired.

(2) If the hearing examiner determines that probable cause exists on any violation charge, and the releasee has requested (and is eligible for) a local revocation hearing in the District of Columbia as provided by § 2.215 (a), the examiner shall schedule a local revocation hearing for a date that is within 65 days of the releasee's arrest. After the probable cause hearing, the releasee (or the releasee's attorney) may submit a written request for a postponement. Such postponements will normally be granted if the request is received no later than fifteen days before the date of the revocation hearing. A request for a postponement that is received by the Commission less than fifteen days before the scheduled date of the revocation hearing will be granted only for a compelling reason. The releasee (or the releasee's attorney) may also request, in writing, a hearing date that is earlier than the date scheduled by the examiner, and the Commission will accommodate such request if practicable.

(e) *Institutional revocation hearing.* If the releasee is not eligible for a local revocation hearing as provided by §.2.215 (a), or has requested to be transferred to an institution for his revocation hearing, the Commission will request the Bureau of Prisons to designate the releasee to an appropriate institution, and an institutional revocation hearing shall be scheduled for a date that is within ninety days of the releasee's retaking.

(f) *Digest of the probable cause hearing.* At the conclusion of the probable cause hearing, the examiner shall prepare a digest summarizing the evidence presented at the hearing, the responses of the releasee, and the examiner's findings as to probable cause.

(g) *Release notwithstanding probable cause.* Notwithstanding a finding of probable cause, the Commission may order the releasee's reinstatement to supervision or release pending further proceedings, if it determines that:

(1) Continuation of revocation proceedings is not warranted despite the finding of probable cause; or

(2) Incarceration pending further revocation proceedings is not warranted by the frequency or seriousness of the alleged violation(s), and the releasee is neither likely to fail to appear for further proceedings, nor is a danger to himself or others.

(h) *Conviction as probable cause.* Conviction of any crime committed subsequent to the commencement of a term of supervised release shall constitute probable cause for the purposes of this section, and no probable cause hearing shall be conducted unless a hearing is needed to consider additional violation charges that may be determinative of the Commission's decision whether to revoke supervised release.

(i) *Combined probable cause and local revocation hearing.* A postponed probable cause hearing may be conducted as a combined probable cause and local revocation hearing, provided such hearing is conducted within 65 days of the releasee's arrest and the releasee has been notified that the postponed probable cause hearing will constitute his final revocation hearing. The Commission's policy is to conduct a combined probable cause and

local revocation hearing whenever adverse witnesses are required to appear and give testimony with respect to contested charges.

(j) *Late received charges.* If the Commission is notified of an additional charge after probable cause has been found to proceed with a revocation hearing, the Commission may:

(1) Remand the case for a supplemental probable cause hearing if the new charge may be contested by the releasee and possibly result in the appearance of witness(es) at the revocation hearing;

(2) Notify the releasee that the additional charge will be considered at the revocation hearing without conducting a supplemental probable cause hearing; or

(3) Determine that the new charge shall not be considered at the revocation hearing.

6. Section 2.215 (f) is revised to read as follows:

§ 2.215 Place of revocation hearing.

* * * * *

(f) A local revocation hearing shall be held not later than sixty-five days from the retaking of the releasee on a supervised release violation warrant. An institutional revocation hearing shall be held within ninety days of the retaking of the releasee on a supervised release violation warrant. If the releasee requests and receives any postponement, or consents to any postponement, or by his actions otherwise precludes the prompt completion of revocation proceedings in his case, the above-stated time limits shall be correspondingly extended.

* * * * *

7. Section 2.216 is amended by revising paragraph (e) and adding paragraphs (g) and (h) to read as follows:

§ 2.216 Revocation hearing procedure.

* * * * *

(e) All evidence upon which a finding of violation may be based shall be disclosed to the alleged violator before the revocation hearing. Such evidence shall include the Community Supervision Officer's letter summarizing the releasee's adjustment to supervision and requesting the warrant, all other documents describing the charged violation or violations, and any additional evidence upon which the Commission intends to rely in determining whether the charged violation or violations, if sustained, would warrant revocation of supervised release. If the releasee is represented by an attorney, the attorney shall be provided, prior to the revocation hearing, with a copy of the releasee's presentence investigation report, if such report is available to the Commission. If disclosure of any information would reveal the identity of a confidential informant or result in harm to any person, that information may be withheld from disclosure, in which case a summary of the withheld information shall be disclosed to the releasee prior to the revocation hearing.

* * * * *

(g) At a local revocation hearing, the Commission shall secure the presence of the releasee's Community Supervision Officer, or a substitute Community Supervision Officer who shall bring the releasee's supervision file if the releasee's Community Supervision Officer is not available. At the request of the hearing examiner, such officer shall provide testimony at the hearing concerning the releasee's adjustment to supervision.

(h) After the revocation hearing, the hearing examiner shall prepare a summary of the hearing that includes a description of the evidence against the releasee and the evidence submitted by the releasee in defense or mitigation of the charges, a summary of the arguments against revocation presented by the releasee, and the examiner's recommended decision. The hearing examiner's summary, together with the releasee's file (including any documentary evidence and letters submitted on behalf of the releasee), shall be given to another examiner for review. When two hearing examiners concur in a recommended disposition, that recommendation, together with the releasee's file and the hearing examiner's summary of the hearing, shall be submitted to the Commission for decision.

8. Section 2.217 (a) (1) is amended by removing "preliminary interview" and adding in its place "probable cause hearing".

9. Section 2.218 (g) is revised to read as follows:

§ 2.218 Revocation decisions.

* * * * *

(g) Decisions under this section shall be made upon the concurrence of two Commissioner votes, except that a decision to override an examiner panel recommendation shall require the concurrence of three Commissioner votes. The final decision following a local revocation hearing shall be issued within 86 days of the retaking of the releasee on a supervised release violation warrant. The final decision following an institutional revocation hearing shall be issued within 21 days of the hearing, excluding weekends and holidays.

Dated: January 16, 2003.

Edward F. Reilly, Jr.

Chairman, U.S. Parole Commission.

[FR Doc. 03–1593 Filed 1–23–03; 8:45 am]

BILLING CODE 4410–31–P

DEPARTMENT OF JUSTICE

28 CFR Part 16

[AAG/A Order No. 002–2003]

Privacy Act of 1974; Implementation

AGENCY: Department of Justice.

ACTION: Interim Rule with Request for Comments.

SUMMARY: This interim rule with request for comments implements the Privacy Act of 1974, as amended (5 U.S.C. 552a, Pub. L. 93–579). This regulation exempts five Privacy Act systems of records of the Department of Justice, Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF), from the subsections of the Privacy Act listed below. The five systems of records listed below are described in today's notice section of the **Federal Register**. As described in the rule, the exemptions are necessary to protect law enforcement and investigatory information and functions of ATF, and will be applied only to the extent that information in a record is subject to exemption pursuant to 5 U.S.C. 552a(j) and (k).

DATES: This rule is effective on January 24, 2003. Written comments must be submitted on or before March 25, 2003.

ADDRESSES: All comments concerning this interim rule should be mailed to: Mary Cahill, Management and Planning Staff, Justice Management Division, Department of Justice, Washington, DC 20530 (1400 National Place Building).

FOR FURTHER INFORMATION CONTACT: Mary Cahill (202) 307–1823.

SUPPLEMENTARY INFORMATION: On November 25, 2002, the President signed into law the Homeland Security Act of 2002, Pub. L. 107–296, 116 Stat. 2135 (2002). Under Title XI, Subtitle B of the Act, the "authorities, functions, personnel, and assets" of the Bureau of Alcohol, Tobacco, and Firearms are transferred to the Department of Justice, with the exception of certain enumerated authorities that were retained by the Department of the Treasury. The functions retained by the Department of the Treasury are the responsibility of a new Alcohol and Tobacco Tax and Trade Bureau. Section 1111 of the Homeland Security Act

further provides that the Bureau will retain its identity as a separate entity within the Department of Justice known as the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF). The transfer takes effect January 24, 2003.

In accordance with the requirements of the Privacy Act of 1974, as amended, 5 U.S.C. 552a, ATF is publishing its Privacy Act systems of records and converting certain ATF systems of records from Department of the Treasury systems to Department of Justice systems pursuant to the reorganization and transfer of ATF to the Department of Justice. (The publication of these systems of records as Justice systems does not rescind the Treasury/ATF systems of records, as they govern the Alcohol and Tobacco Tax and Trade Bureau within the Department of the Treasury.) There has been no change in the maintenance or operations of the systems of records by ATF, nor has there been a change in the exemptions claimed. Rather, these systems notices are being published to reflect the transfer of ATF to the Department of Justice.

Because the transfer of ATF to the Department of Justice is effective on January 24, 2003, it is necessary to immediately establish all appropriate exemptions to the Privacy Act in order to protect law enforcement and investigatory information and functions of ATF. These exemptions must be effective on January 24, 2003, the date of the transfer. It would be contrary to the public interest to allow the disclosure of information that could compromise ongoing investigations and law enforcement activities of the ATF. Accordingly, pursuant to the good cause exceptions found at 5 U.S.C. 553(b)(3)(B) and (d)(3), the Department finds that notice and public procedure on this rule are impracticable and contrary to the public interest.

After considering the comments received, the Department will issue a final rule.

Regulatory Flexibility Act

This interim rule relates to individuals, as opposed to small business entities. Nevertheless, pursuant to the requirements of the Regulatory Flexibility Act 5 U.S.C. 601–612, the interim rule will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 28 CFR Part 16

Administrative practices and procedures, Courts, Freedom of Information, and Privacy.

Pursuant to the authority vested in the Attorney General by 5 U.S.C. 552a and delegated to me by Attorney General Order 793–78, it is proposed to amend 28 CFR part 16 as follows:

PART 16—[AMENDED]

Subpart E—Exemption of Records Systems under the Privacy Act

1. The authority citation for part 16 continues to read as follows:

Authority: 5 U.S.C. 301, 552, 552a, 552b(g), 553; 18 U.S.C. 4203(a)(1); 28 U.S.C. 509, 510, 534; 31 U.S.C. 3717, 9701.

2. Section 16.106 is added to subpart E to read as follows:

Subpart E—Exemptions of Records Systems Under the Privacy Act

§ 16.106 Exemption of the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF)—Limited Access.

(a) The following system of records is exempt from 5 U.S.C. 552a(c)(3) and (4), (d)(1), (2), (3) and (4), (e)(1), (2), and (3), (e)(4)(G), (H) and (I), (e)(5) and (8), (f) and (g).

(1) Criminal Investigation Report System (JUSTICE/ATF–003).

(2) These exemptions apply only to the extent that information in this system is subject to exemption pursuant to 5 U.S.C. 552a(j)(2). Where compliance would not appear to interfere with or adversely affect the overall law enforcement process, ATF may waive the applicable exemption.

(b) Exemptions from the particular subsections are justified for the following reasons:

(1) From subsection (c)(3) because making available to a record subject the accounting of disclosures from records concerning him/her would reveal investigative interest not only of ATF, but also of the recipient agency. This would permit the record subject to take measures to impede the investigation, e.g., destroy evidence, intimidate potential witnesses or flee the area to avoid the thrust of the investigation.

(2) From subsection (c)(4) because an exemption being claimed for subsection (d) makes this subsection inapplicable.

(3) From subsections (d)(1), (e)(4)(G) and (H), (f) and (g) because these provisions concern individual access to investigative records, compliance with which could compromise sensitive information, interfere with the overall law enforcement process by revealing a pending sensitive investigation, possibly identify a confidential source or disclose information, including actual or potential tax information, which would constitute an unwarranted invasion of another individual's personal privacy, reveal a sensitive investigative technique, or constitute a potential danger to the health or safety of law enforcement personnel.

(4) From subsection (d)(2) because, due to the nature of the information collected and the essential length of time it is maintained, to require ATF to amend information thought to be incorrect, irrelevant or untimely, would create an impossible administrative and investigative burden by forcing the agency to continuously retrograde its investigations attempting to resolve questions of accuracy, etc.

(5) From subsections (d)(3) and (4) because these subsections are inapplicable to the extent exemption is claimed from (d)(1) and (2).

(6) From subsection (e)(1) because: (i) It is not possible in all instances to determine relevancy or necessity of specific information in the early stages of a criminal or other investigation.

(ii) Relevance and necessity are questions of judgment and timing; what appears relevant and necessary when collected ultimately may be deemed unnecessary. It is only after the information is assessed that its relevancy and necessity in a specific investigative activity can be established.

(iii) In any investigation, ATF might obtain information concerning violations of law not under its jurisdiction, but in the interest of effective law enforcement, dissemination will be made to the agency charged with enforcing such law.

(iv) In interviewing individuals or obtaining other forms of evidence during an investigation, information could be obtained, the nature of which would leave in doubt its relevancy and necessity. Such information, however, could be relevant to another investigation or to an investigative activity under the jurisdiction of another agency.

(7) From subsection (e)(2) because the nature of criminal and other investigative activities is such that vital information about an individual can only be obtained from other persons who are familiar with such individual and his/her activities. In such investigations it is not feasible to rely upon information furnished by the individual concerning his own activities.

(8) From subsection (e)(3) because disclosure would provide the subject with substantial information that could impede or compromise the investigation. The individual could seriously interfere with undercover investigative activities and could take steps to evade the investigation or flee a specific area.

(9) From subsection (e)(4)(I) because the categories of sources of the records in these systems have been published in the **Federal Register** in broad generic terms in the belief that this is all that subsection (e)(4)(I) of the Act requires. In the event, however, that this subsection should be interpreted to require more detail as to the identity of sources of the records in these systems, exemption from this provision is necessary in order to protect the confidentiality of the sources of criminal and other law enforcement information. Such exemption is further necessary to protect the privacy and physical safety of witnesses and informants.

(10) From subsection (e)(5) because in the collection of information for law enforcement purposes it is impossible to determine in advance what information is accurate, relevant, timely and complete. With the passage of time, seemingly irrelevant or untimely information may acquire new significance as further investigation brings new details to light. The restrictions imposed by subsection (e)(5) would restrict the ability of trained investigators and intelligence analysts to exercise their judgment in reporting on investigations and impede the development of criminal intelligence necessary for effective law enforcement.

(11) From subsection (e)(8) because the notice requirements of this provision could seriously interfere with a law enforcement activity by alerting the subject of a criminal or other investigation of existing investigative interest.

(c) The following system of records is exempt from 5 U.S.C. 552a(c)(3), (d)(1), (2), (3) and (4), (e)(1), (e)(4)(G), (H) and (I), and (f).

(1) Internal Security Record System (JUSTICE/ATF–006).

(2) These exemptions apply only to the extent that information in this system is subject to exemption pursuant to 5 U.S.C. 552a(k)(2) and (k)(5). Where compliance would not appear to interfere with or adversely affect the overall law enforcement process, ATF may waive the applicable exemption.

(d) Exemptions from the particular subsections are justified for the following reasons:

(1) From subsection (c)(3) because to provide the subject with an accounting of disclosures of records in this system could inform that individual of the existence, nature, or scope of an actual or potential law enforcement investigation, and thereby seriously impede law enforcement efforts by permitting the record subject and other persons to whom he might disclose the records to avoid criminal penalties, civil remedies, or other measures.

(2) From subsection (d)(1) because disclosure of records in the system could reveal the identity of confidential sources and result in an unwarranted invasion of the privacy of others. Disclosure may also reveal information relating to actual or potential criminal investigations. Such breaches would restrict the free flow of information which is vital to the law enforcement process and the determination of an applicant's qualifications.

(3) From subsection (d)(2) because, due to the nature of the information collected and the essential length of time it is maintained, to require ATF to amend information thought to be incorrect, irrelevant or untimely, would create an impossible administrative and investigative burden by forcing the agency to continuously retrograde its investigations attempting to resolve questions of accuracy, etc.

(4) From subsections (d)(3) and (4) because these subsections are inapplicable to the extent exemption is claimed from (d)(1) and (2).

(5) From subsection (e)(1) because it is often impossible to determine in advance if investigative records contained in this system are accurate, relevant, timely, complete, or of some assistance to either effective law enforcement investigations, or to the determination of the qualifications and suitability of an applicant. It also is necessary to retain this information to aid in establishing patterns of activity and provide investigative leads. Information that may appear irrelevant, when combined with other apparently irrelevant information, can on occasion provide a composite picture of a subject or an applicant which assists the law enforcement process and the determination of an applicant's suitability qualifications.

(6) From subsection (e)(4)(G) and (H), and (f) because these provisions concern individual access to investigative records, compliance with which could compromise sensitive information, interfere with the overall law enforcement or qualification process by revealing a pending sensitive investigation, possibly identify a confidential source or disclose information which would constitute an unwarranted invasion of another individual's personal privacy, reveal a sensitive investigative technique, or constitute a potential danger to the health or safety of law enforcement personnel. In addition, disclosure of information collected pursuant to an employment suitability or similar inquiry could reveal the identity of a source who provided information under an express promise of confidentiality, or could compromise the objectivity or fairness of a testing or examination process.

(7) From subsection (e)(4)(I) because the categories of sources of the records in these systems have been published in the **Federal Register** in broad generic terms in the belief that this is all that subsection (e)(4)(I) of the Act requires. In the event, however, that this subsection should be interpreted to require more detail as to the identity of sources of the records in these systems, exemption from this provision is necessary in order to protect the confidentiality of the sources of criminal and other law enforcement information. Such exemption is further necessary to protect the privacy and physical safety of witnesses and informants.

(e) The following system of records is exempt from 5 U.S.C. 552a(c)(3), (d)(1), (2), (3) and (4), (e)(1), (e)(4)(G), (H) and (I), and (f).

(1) Personnel Record System (JUSTICE/ATF–007).

(2) These exemptions apply only to the extent that information in this system is subject to exemption pursuant to 5 U.S.C. 552a(k)(5). Where compliance would not appear to interfere with or adversely affect the overall law enforcement process, ATF may waive the applicable exemption.

(f) Exemptions from the particular subsections are justified for the following reasons:

(1) From subsection (c)(3) because making available to a record subject the accounting of disclosures from records concerning him/her would reveal the existence, nature, or scope of an actual or potential personnel action. This would permit the record subject to take measures to hamper or impede such actions.

(2) From subsections (d)(1), (e)(4)(G) and (H), and (f) because many persons are contacted who, without an assurance of anonymity, refuse to provide information concerning a candidate for a position with ATF. Access could reveal the identity of the source of the information and constitute a breach of the promise of confidentiality on the part of ATF. Such breaches ultimately would restrict the free flow of information vital to a determination of a candidate's qualifications and suitability.

(3) From subsection (d)(2) because, due to the nature of the information collected and the essential length of time it is maintained, to require ATF to amend information thought to be incorrect, irrelevant or untimely, would

create an impossible administrative and investigative burden by forcing the agency to continuously retrograde its investigations attempting to resolve questions of accuracy, etc.

(4) From subsections (d)(3) and (4) because these subsections are inapplicable to the extent exemption is claimed from (d)(1) and (2).

(5) From subsection (e)(1) because:

(i) It is not possible in all instances to determine relevancy or necessity of specific information in the early stages of a personnel-related action.

(ii) Relevance and necessity are questions of judgment and timing; what appears relevant and necessary when collected ultimately may be deemed unnecessary. It is only after the information is assessed that its relevancy and necessity in a specific investigative activity can be established.

(iii)ATF might obtain information concerning violations of law not under its jurisdiction, but in the interest of effective law enforcement, dissemination will be made to the agency charged with enforcing such law.

(iv) In interviewing individuals or obtaining other forms of evidence during an investigation, information could be obtained, the nature of which would leave in doubt its relevancy and necessity. Such information, however, could be relevant to another investigation or to an investigative activity under the jurisdiction of another agency.

(6) From subsection (e)(4)(I) because the categories of sources of the records in these systems have been published in the **Federal Register** in broad generic terms in the belief that this is all that subsection (e)(4)(I) of the Act requires. In the event, however, that this subsection should be interpreted to require more detail as to the identity of sources of the records in these systems, exemption from this provision is necessary in order to protect the confidentiality of the sources of criminal and other law enforcement information. Such exemption is further necessary to protect the privacy and physical safety of witnesses and informants.

(g) The following systems of records are exempt from 5 U.S.C. 552a(c)(3), (d)(1), (2), (3) and (4), (e)(1), (e)(4)(G), (H) and (I), and (f).

(1) Regulatory Enforcement Record System (JUSTICE/ATF–008).

(2) Technical and Scientific Services Record System (JUSTICE/ATF–009).

(3) These exemptions apply only to the extent that information in this system is subject to exemption pursuant to 5 U.S.C. 552a(k)(2). Where compliance would not appear to interfere with or adversely affect the overall law enforcement process, ATF may waive the applicable exemption.

(h) Exemptions from the particular subsections are justified for the following reasons:

(1) From subsection (c)(3) because making available to a record subject the accounting of disclosures from records concerning him/her would reveal investigative interest, whether civil, criminal or regulatory, not only of ATF, but also of the recipient agency. This would permit the record subject to take measures to impede the investigation, *e.g.*, destroy evidence, intimidate potential witnesses or flee the area to avoid the thrust of the investigation thus seriously hampering the regulatory and law enforcement functions of ATF.

(2) From subsections (d)(1), (e)(4)(G) and (H), and (f) because these provisions concern individual access to investigative and compliance records, disclosure of which could compromise sensitive information, interfere with the overall law enforcement and regulatory process by revealing a pending sensitive investigation, possibly identify a confidential source or disclose information, including actual or potential tax information, which would constitute an unwarranted invasion of another individual's personal privacy, reveal a sensitive investigative technique, or constitute a potential danger to the health or safety of law enforcement personnel.

(3) From subsection (d)(2) because, due to the nature of the information collected and the essential length of time it is maintained, to require ATF to amend information thought to be incorrect, irrelevant or untimely, would create an impossible administrative and investigative burden by forcing the agency to continuously retrograde its investigations and compliance actions attempting to resolve questions of accuracy, etc.

(4) From subsections (d)(3) and (4) because these subsections are inapplicable to the extent exemption is claimed from (d)(1) and (2).

(5) From subsection (e)(1) because:

(i) It is not possible in all instances to determine relevancy or necessity of specific information in the early stages of a criminal, civil, regulatory, or other investigation.

(ii) Relevance and necessity are questions of judgment and timing; what appears relevant and necessary when collected ultimately may be deemed unnecessary. It is only after the information is assessed that its relevancy and necessity in a specific investigative or regulatory activity can be established.

(iii) In any investigation or compliance action ATF might obtain information concerning violations of law not under its jurisdiction, but in the interest of effective law enforcement, dissemination will be made to the agency charged with enforcing such law.

(iv) In interviewing individuals or obtaining other forms of evidence during an investigation, information could be obtained, the nature of which would leave in doubt its relevancy and necessity. Such information, however, could be relevant to another investigation or compliance action or to an investigative activity under the jurisdiction of another agency.

(6) From subsection (e)(4)(I) because the categories of sources of the records in these systems have been published in the **Federal Register** in broad generic terms in the belief that this is all that subsection (e)(4)(I) of the Act requires. In the event, however, that this subsection should be interpreted to require more detail as to the identity of sources of the records in these systems, exemption from this provision is necessary in order to protect the confidentiality of the sources of criminal, regulatory, and other law enforcement information. Such exemption is further necessary to protect the privacy and physical safety of witnesses and informants.

Dated: January 17, 2003.

Paul R. Corts,

Assistant Attorney General for Administration.

[FR Doc. 03–1575 Filed 1–23–03; 8:45 am]

BILLING CODE 4410–FB–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP San Diego 03–005]

RIN 2115–AA97

Safety Zone: San Diego Bay, CA

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on the navigable waters of San Diego Bay in support of the Gatorade January 24th Fireworks Show. This temporary safety zone is necessary to provide for the safety of the crews, spectators, participants of the event, participating vessels, other vessels, and users of the

waterway. Persons and vessels are prohibited from entering into, transiting through, or anchoring within this safety zone unless authorized by the Captain of the Port, or his designated representative.

DATES: This rule is effective from 8:45 p.m. to 9:45 p.m. (PST) on January 24, 2003.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket [COTP San Diego 03–005] and are available for inspection or copying at Marine Safety Office San Diego, 2716 North Harbor Drive, San Diego, CA 92101–1064 between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Petty Officer Austin Murai, USCG, c/o U.S. Coast Guard Captain of the Port, telephone (619) 683–6495.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. Final approval and permitting of this event were not issued in time to engage in full notice and comment rulemaking. Publishing a NPRM and delaying the effective date would be contrary to the public interest since the event would occur before the rulemaking process was complete.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. In addition to the reasons stated above, it would be contrary to the public interest not to publish this rule because the event has been permitted and participants and the public require protection.

Background and Purpose

Gatorade is sponsoring a fireworks show in San Diego Bay, CA on January 24, 2003. The fireworks show will be part of the weeklong Super Bowl XXXVII event known locally as the NFL Experience. The fireworks event involves one (1) barge, to be used as a platform for the launching of fireworks. This barge will be loaded with fireworks and thus contain a large amount of explosives. In order to establish a buffer around this hazardous situation, this rule will establish a safety zone around the barge. This temporary safety zone is necessary to provide for the safety of the crews, spectators, and participants of the Gatorade January 24th Fireworks Show. The proposed temporary safety zones are also necessary to protect other vessels and users of the waterway.

Discussion of Rule

This safety zone is necessary for the Gatorade January 24th Fireworks Show, which will take place on January 24, 2003 starting at 8:45 p.m. (PST) and ending at 9:45 p.m. (PST). The event involves one (1) barge, to be used as a platform for the launching of fireworks.

The temporary safety zone includes the area 120 yards around the fireworks barge anchored off of Southwest Marine Shipyard. The exact coordinates can be found in the regulatory text. This temporary zone will establish a safety buffer around the fireworks barge, which is necessary to provide for the safety of all involved in the event and other users of the waterway. Persons and vessels are prohibited from entering into, transiting through, or anchoring within these safety zones unless authorized by the Captain of the Port, or his designated representative.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979).

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. This proposed safety zone would not have a significant economic impact on a substantial number of small entities because this zone is limited in scope and duration (in effect for only one (1) hour on January 24, 2003). Vessel traffic will still be able to pass around the zone. The Coast Guard will also issue broadcast notice to mariner alerts via VHF–FM marine channel 16 before the safety zone is enforced.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Petty Officer Austin Murai, Marine Safety Office San Diego at (619) 683–6495.

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive

Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

To help the Coast Guard establish regular and meaningful consultation and collaboration with Indian and Alaskan Native tribes, we published a notice in the **Federal Register** (66 FR 36361, July 11, 2001) requesting comments on how to best carry out the Order. We invite your comments on how this proposed rule might impact tribal governments, even if that impact may not constitute a "tribal implication" under the Order.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have considered the environmental impact of this proposed rule and concluded that, under figure 2–1, paragraph (34)(g), of Commandant Instruction M16475.lD, this rule is categorically excluded from further environmental documentation because we are establishing a safety zone. A "Categorical Exclusion Determination" is available in the docket where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard is amending 33 CFR part 165 as follows:

PART 165— REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, 160.5; 49 CFR 1.46.

2. Add new § 165.T11–043 to read as follows:

§ 165.T11–043 Safety Zone; San Diego Bay, CA.

(a) *Location.* The temporary safety zone includes the area extending 120 yards around a point at 32° 41′08″N, 117° 08′51″W. All coordinates are North American Datum 1983.

(b) *Effective period.* This section will be enforced from 8:45 p.m. (PST) to 9:45 p.m. (PST) on January 24, 2003. If the event concludes prior to the scheduled termination time, the Captain of the Port will cease enforcement of this safety zone and will announce that fact via Broadcast Notice to Mariners.

(c) *Regulations.* In accordance with the general regulations in § 165.23 of this part, entry into, transit through, or anchoring within this safety zone by all vessels is prohibited, unless authorized by the Captain of the Port, or his designated representative. Mariners requesting permission to transit through the safety zone may request authorization to do so from the Patrol Commander. The Patrol Commander may be contacted via VHF–FM Channel 16.

Dated: January 15, 2003.

S.P. Metruck,

Commander, U.S. Coast Guard, Captain of the Port, San Diego.

[FR Doc. 03–1597 Filed 1–23–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP San Diego 03–002]

RIN 2115–AA97

Security Zone; Waters Adjacent to Embarcadero Park and Campbell Shipyard, San Diego, CA

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary security zone in the waters adjacent to Embarcadero Park and Campbell Shipyard, San Diego Bay, San Diego, CA. This temporary security zone is necessary to ensure the safety of the participants, spectators and users of the waterway during the National Football League Super Bowl XXXVII NFL Experience event. Persons and vessels are prohibited from entering into, transiting through, or anchoring within the security zone unless authorized by the Captain of the Port, or his designated representative.

DATES: This rule is effective from 8 a.m. (PDT) on January 18, 2003 to 2 a.m. (PDT) January 27, 2003.

ADDRESSES: Documents indicated in this preamble as being available in the docket, are part of docket COTP San Diego 03–002 and are available for inspection or copying at U.S. Coast Guard Marine Safety Office San Diego, CA, 2716 N. Harbor Drive, San Diego, CA 92101, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Petty Officer First Class Jeff Brown, Marine Safety Office San Diego, at (619) 683–6495.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. Due to the complex planning for this event many details were not finalized in time to publish a notice of proposed rulemaking. Publishing a NPRM and delaying the effective date would be contrary to the public interest since the event would occur before the rulemaking process was complete.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. In addition to the reasons

stated above, it would be contrary to the public interest since action is needed to ensure the protection of the public and commercial structures and individuals near or in this structure during the National Football League Super Bowl XXXVII NFL Experience event.

Background and Purpose

Due to the high profile of the Super Bowl, this action is necessary to ensure public safety and prevent sabotage or terrorist acts against the public and commercial structures and individuals near or in this structure during the NFL Experience event to be held at Embarcadero Park and Campbell Shipyard.

The security zone consists of the navigable waters surrounding Embarcadero Park and Campbell Shipyard. The security zone follows along the northern portion of the designated channel in this area as to not impact traffic in the channel. The exact coordinates can be found in the regulatory text.

The zone will be in effect from 8 a.m. (PDT) on January 18, 2003 to 2 a.m. (PDT) January 27, 2003.

Coast Guard and San Diego Harbor Police will patrol and enforce the security zone. See 33 CFR 6.04–11, Assistance of other agencies.

Persons and vessels wishing to enter into or transit through this security zone are required to receive authorization by the Captain of the Port, or his designated representative.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979).

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

The Super Bowl committee has leased out the entire area affected by this Security zone with the exception to the Marriott Marina. The owners and operators of this marina will not be prohibited from transiting in and out of the marina at their leisure. All vessels will be authorized to transit through the zone after receiving permission from the Captain of the Port or his designated representative. Any vessel transiting through this zone is required to transit at a speed of not greater than 5 knots, excluding Coast Guard and Harbor Police vessels patrolling the security zone. Before the effective period, Marine Safety Office San Diego will issue maritime advisories to users of San Diego Bay.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. If your small business or organization is affected by this rule or if you have questions concerning its provisions or options for compliance, please contact Petty Officer First Class Jeff Brown, U.S. Coast Guard Marine Safety Office San Diego at (619) 683–6495. Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

To help the Coast Guard establish regular and meaningful consultation and collaboration with Indian and Alaskan Native tribes, we published a notice in the **Federal Register** (66 FR 36361, July 11, 2001) requesting comments on how to best carry out the Order. We invite your comments on how this proposed rule might impact tribal governments, even if that impact may not constitute a "tribal implication" under the Order.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply,

Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

The Coast Guard considered the environmental impact of this rule and concluded that under figure 2–1, paragraph (34)(g)), of Commandant Instruction M16475.lD, this rule is categorically excluded from further environmental documentation. A "Categorical Exclusion Determination" is available in the docket for inspection or copying where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and record-keeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; 49 CFR 1.46.

2. Add new temporary § 165.T11–040 is added to read as follows:

§ 165.T11–040 Security Zone, Waters adjacent to Embarcadero Park and Campbell Shipyard, San Diego, CA.

(a) *Location.* The security zone consists of the navigable waters surrounding Embarcadero Park and Campbell Shipyard. The security zone follows along the northern portion of the designated channel in this area as to not impact traffic in the channel. The limits of the security zone are more specifically defined as the area enclosed by the following points: starting on shore at 32° 42′30″ N, 117° 10′12″ W; then extending southwesterly to 32° 42′34″ N, 117° 10′22″ W; thence southerly to 32° 42′04″ N, 117° 10′08″ W; then southeasterly to 32° 42′09″ N, 117° 09′52″ W; then south to 32° 42′04″ N, 117° 09′44″ W, then easterly to a point on shore at 32° 42′08″ N, 117° 09′31″ W. All coordinates are North American Datum 1983.

(b) *Effective period.* The zone will be in effect from 8 a.m. (PDT) on January 18, 2003 to 2 a.m. (PDT) January 27, 2003. If the need for the security zone ends before the scheduled termination time, the Captain of the Port will cease enforcement of this security zone and will announce that fact via Broadcast Notice to Mariners.

(c) *Regulations.* In accordance with the general regulations in § 165.33 of this part, entry into, transit through, or anchoring within the security zone by all vessels is prohibited, unless authorized by the Captain of the Port, or his designated representative. The San Diego Harbor Police may assist the Coast Guard in the patrol and enforcement of this security zone. Vessels requesting transit through the security zone will need to contact the Coast Guard patrol boat in the area via VHF-FM channel 16 prior to entering the zone. Upon authorization to enter the security zone, any vessel transiting through this zone is required to transit at a speed of not greater than 5 knots. All Coast Guard and Harbor Police vessels patrolling and enforcing the security zone are exempt from the 5 knot speed limit. All other general regulations of § 165.33 of this part apply in the security zone established by this temporary regulation.

Dated: January 15, 2003.

S.P. Metruck,

Commander, U.S. Coast Guard, Captain of the Port, San Diego, California.

[FR Doc. 03–1598 Filed 1–23–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP San Diego 03–004]

RIN 2115–AA97

Security Zone: Waters Adjacent to National City Marine Terminal, San Diego, CA

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary security zone in the waters adjacent to the National City Marine Terminal, San Diego Bay, San Diego, CA. This action is needed to protect the U.S. Naval vessel(s) and their crew(s) during a military outload evolution at the National City Marine Terminal from sabotage, or other subversive acts, accidents, criminal actions or other causes of a similar nature. Entry, transit, or anchoring in this zone is prohibited unless authorized by the Captain of the Port (COTP) San Diego, or his designated representative.

DATES: This rule is effective from 12 p.m. (noon) (PDT) on January 17, 2003 to 12 p.m. (noon) (PDT) on March 17, 2003.

ADDRESSES: Documents indicated in this preamble as being available in the docket, are part of docket [COTP San Diego 03–004], and are available for inspection or copying at U.S. Coast Guard Marine Safety Office San Diego, 2716 N. Harbor Dr. San Diego CA, 92101, between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander Rick Sorrell, Chief of Port Operations, U.S. Coast Guard Marine Safety Office San Diego, at (619) 683–6495.

SUPPLEMENTARY INFORMATION:

Regulatory Information

This action is needed to protect the U.S. Naval vessel(s) and their crew(s) during a military outload evolution at the National City Marine Terminal from sabotage, or other subversive acts, accidents, criminal actions or other causes of a similar nature. This temporary security zone is necessary for protection of operations during a military outload in support of Operation Enduring Freedom in the area and for the protection of the operations from compromise and interference.

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM because it is not required in this instance. Any delay in implementing this rule would be contrary to the public interest since immediate action is necessary to ensure the protection of the vessel and their crews during a military outload as well as for the public and national security.

In keeping with the requirements of 5 U.S.C. 553(d) (3), the Coast Guard also finds that good cause exists for making this regulation effective less than 30 days after publication in the **Federal Register**.

Due to complex planning, national security reasons, and coordination with all military schedules, information regarding the precise location and date of the event necessitating promulgation of this security zone and other logistical details surrounding the event were not provided until a date fewer than 30 days prior to the event. Due to the sensitive nature of the operations involved, it was

necessary for this information to be finalized at a later date.

Furthermore, in order to protect the interests of national security, the Coast Guard is promulgating this temporary regulation to provide safety and security of the U.S. Naval vessel(s) in the navigable waters of the United States. As a result, the enforcement of this security zone is a function directly involved in, and necessary to military operations. Accordingly, based on the military function exception set forth in the Administrative Procedure Act, 5 U.S.C. 553(a) (1), notice and comment rule-making and advance publication, pursuant to 5 U.S.C. 553(b) and (d), are not required for this regulation.

Background and Purpose

This action is needed to protect the U.S. Naval vessel(s) and their crew(s) during a military outload evolution at the National City Marine Terminal from sabotage, or other subversive acts, accidents, criminal actions or other causes of a similar nature. This temporary security zone is necessary for protection of operations during a military outload in the area and for the protection of the operations from compromise and interference.

The security zone consists of the navigable waters surrounding the National City Marine Terminal and encompassing Sweetwater Channel. The limits of this security zone are more specifically defined as the area enclosed by the following points: starting on shore at 32° 39′25″ N 117° 07′15″ W, then extending northerly to 32° 39′32″ N 117° 07′16″ W, then extending westerly to 32° 39′29″ N 117° 07′36″ W, then southerly to 32° 39′05″ N 117° 07′34″ W, and then easterly to shore at 32° 39′06″ N 117° 07′14.5″ W. All coordinates are North American Datum 1983.

This zone will be in effect from 12 p.m. (noon) (PDT) on January 17, 2003 to 12 p.m. (noon) (PDT) on March 17, 2003.

The security zone will be enforced by Coast Guard patrol craft and San Diego Harbor Police as enlisted by the COTP. See 33 CFR 6.04–11, Assistance of other agencies.

Persons and vessels are prohibited from entering into or transiting through this security zone unless authorized by the Captain of the Port, or his designated representative.

This security zone is established pursuant to the authority of the Magnuson Act regulations promulgated by the President under 50 U.S.C. 191, including subparts 6.01 and 6.04 of Part 6 of Title 33 of the Code of Federal Regulations. Vessels or persons violating this section are subject to he penalties set forth in 50 U.S.C. 192 which include seizure and forfeiture of the vessel, a monetary penalty of not more than $12,500, and imprisonment for not more than 10 years.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT)(44 FR 11040, February 26, 1979).

Due to National Security interests, the implementation of this security zone is necessary for the protection of the United States and its people. The size of the zone is the minimum necessary to provide adequate protection for the U.S. Naval vessel(s), their crew(s), adjoining areas, and the public. Most of the entities likely to be affected are pleasure craft engaged in recreational activities and sightseeing. Any hardships experienced by persons or vessels are considered minimal compared to the national interest in protecting U.S. Naval vessel(s), their crew(s), and the public. Accordingly, full regulatory evaluation under paragraph 10 (e) of the regulatory policies and procedures of the DOT is unnecessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. The Coast Guard coordinated with known private business owners in an effort to reduce any substantial impact on business.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we offer to assist small entities in understanding the rule so that they may better evaluate its effects on them and participate in the rulemaking process. If your small business or organization is affected by this rule or if you have questions concerning its provisions or options for compliance, please contact Lieutenant Commander Rick Sorrell, Chief of Port Operations, U.S. Coast Guard Marine Office San Diego at (619) 683–6495.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule and have determined that this rule does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that Order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have considered the environmental impact of this rule and concluded that under figure 2–1, paragraph (34)(g), of Commandant Instruction M16475.lD, this rule is categorically excluded from further environmental documentation because we are establishing a security zone. A "Categorical Exclusion Determination" and checklist are available in the docket for inspection or copying where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and record-keeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191, 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; 49 CFR 1.46.

2. Add new temporary § 165.T11–042 is added to read as follows:

§ 165.T11–042 Security Zone; National City Marine Terminal, San Diego, CA.

(a) *Location.* The security zone consists of the navigable waters surrounding the National City Marine Terminal and encompassing Sweetwater Channel. The limits of this security zone are more specifically defined as the area enclosed by the following points: starting on shore at 32°39′25″ N 117°07′15″ W, then extending northerly to 32°39′32″ N 117°07′16″ W, then extending westerly to 32°39′29″ N 117°07′36″ W, then southerly to 32°39′05″ N 117°07′34″ W, and then easterly to shore at 32°39′06″ N 117°07′14.5″ W. All coordinates are North American Datum 1983.

(b) *Effective dates.* This security zone will be in effect from 12 p.m. (noon) (PDT) on January 17, 2003 to 12 p.m. (noon) (PDT) on March 17, 2003.

(c) *Enforcement.* This security zone is necessary to protect a military outload evolution which directly impacts national security. If the need for the security zone ends before the scheduled termination time, the Captain of the Port will cease enforcement of this security zone and will announce that fact via Broadcast Notice to Mariners.

(d) *Regulations.* In accordance with the general regulations in § 165.33 of this part, entry into, transit through, or anchoring within the security zone by all vessels is prohibited, unless authorized by the Captain of the Port, or his designated representative. All other general regulations of § 165.33 of this part apply in the security zone established by this section.

(e) The U.S. Coast Guard may be assisted in the patrol and enforcement of this security zone by the San Diego Harbor Police.

Dated: January 15, 2003.

S.P. Metruck,

Commander, U.S..Coast Guard, Captain of the Port, San Diego, California.

[FR Doc. 03–1599 Filed 1–23–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 17

RIN 2900–AK08

Payment or Reimbursement for Emergency Treatment Furnished at Non-VA Facilities

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document affirms amendments to VA's medical regulations establishing provisions for payment or reimbursement for certain non-VA emergency services furnished to veterans for nonservice-connected conditions. Those amendments were made by an interim final rule and were necessary to implement provisions of "The Veterans Millennium Health Care and Benefits Act." Based on comments received from the public in response to the interim final rule, some changes are added for purposes of clarity.

DATES: Effective Date: March 25, 2003.

FOR FURTHER INFORMATION CONTACT: Roscoe Butler, Chief, Policy & Operations, Health Administration Service (10C3), Veterans Health Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–8302. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: An interim final rule amending VA's medical regulations at 38 CFR 17.1000–1008 was published in the **Federal Register** on July 12, 2001. These amendments implemented the provisions of section 111 of Public Law 106–117, The Veterans Millennium Health Care and Benefits Act. These statutory provisions, which are set forth at 38 U.S.C. 1725, authorize VA to establish provisions regarding payment of or reimbursement for the reasonable value of non-VA emergency services provided for nonservice-connected conditions of certain veterans who have no medical insurance and no other recourse for payment.

We provided a 60-day comment period that ended September 10, 2001 for comments on the interim final rule, including comments on the information collection provisions (except for the emergency information collection approval provisions which had a deadline for comments of July 19, 2001). We received no comments as to the emergency approval. Nevertheless, we did receive comments on the interim final rule and on the information collection provisions.

Conditions for Reimbursement or Payment for Emergency Services

One commenter requested clarification regarding when a facility will be considered to have held itself out as providing emergency care pursuant to § 17.1002(a). They believe that this language is unclear as currently written. No changes are made based on this comment. We believe that the current language is sufficiently descriptive to identify appropriate facilities that provide emergency services to the public without being unduly restrictive, especially in regard to facilities located in rural areas.

This commenter further stated agreement that veterans should be encouraged to seek care at the closest emergency department, regardless of whether it is a VA or other Federal facility, when they believe this is necessary. The commenter further stated that VA should also be aware that state and local Emergency Medical Services (EMS) regulations or ordinances may require that a patient always be taken to the closest emergency department, regardless of his or her status as a veteran. In such cases, they indicated that § 17.1002 (c) should be met. We concur with the comment, but no changes are made since, in our opinion, § 17.1002 (c) states that proposition and reasonably permits that interpretation under those facts.

Another commenter suggested that the inclusion of the parenthetical information in § 17.1002(d) may be redundant and therefore unnecessary. No change is made based on this comment. In our opinion, § 17.1002(d) appropriately interprets the legislative authority.

Another commenter suggested that VA clarify in § 17.1002(d) that the determination of a safe transfer is to be made solely by the attending emergency care physician provider. No change to § 17.1002 is made based on this comment. Section 17.1002(d) is concerned with review of claims for payment, not with clinical determinations concerning transfer of patients. Moreover, § 17.1006 already identifies the appropriate VA clinical officials who are responsible for making all needed medical determinations in connection with VA's review of a claim for reimbursement or payment of the costs of non-VA emergency treatment rendered to a veteran.

This commenter also suggested that VA clarify that payment or reimbursement may be made in situations where the veteran is discharged (as opposed to transfer). The commenter is concerned that § 17.1002(d) could be interpreted to preclude payment or reimbursement where the veteran was discharged after receiving emergency treatment. We agree and have incorporated that term as appropriate.

One commenter suggested that VA remove the 24-month requirement in § 17.1002(e) because otherwise VA may process numerous claims which will have to be denied due to the providers' inability to determine whether the veterans had received care during that time-period. Based on the comment, we believe modifying the certification requirement in § 17.1004(b) to exclude confirmation of enrollment status and receipt of VA care within the previous 24 months preceding the furnishing of the emergency care will clarify that the onus is not on the provider but, rather, on VA to certify this information. We believe this satisfies the commenter's concern.

Delegations of Authority

One commenter agrees that VA's physicians must make all clinical determinations required for purposes of § 17.1002. However, the commenter advises VA to instruct its physicians to apply a prudent lay person standard, not the higher standard of a medical professional, when making determinations under § 17.1002(b) and (c). No changes are made based on this comment. We believe the existing regulation adequately provides that the prudent lay person standard applies to both the initial evaluation and treatment of the emergent medical condition.

48-Hour Notice

One commenter stated that the 48-hour notice provision was too broad and should be amended to apply only to patients who are admitted to a facility for inpatient care. We concur and have changed that provision accordingly.

Claims

One commenter believes that the false claims notice in § 17.1004(b) should be eliminated since the current HCFA 1500 form includes a similar false claims notice. While we agree that the additional certification would not be necessary when the HCFA 1500 form is submitted, the rule allows for claims to be submitted on other standard medical billing forms, such as the UB92 form. Consequently, we have amended the rule to require the additional certification only when the form used does not contain a similar false claims notice.

Another commenter stated that requiring a separate written certification would preclude filing claims electronically. This commenter suggests that provisions be made to accept claims centrally and electronically to limit claims filing and processing costs. No changes are made based on this comment. VA is currently exploring centralizing the payment process and utilizing industry standards, such as electronic claims processing, fraud detection, and claims scrubbing.

One commenter states that VA's regulations provide for detailed timeframes for filing claims, but that there are no corresponding provisions establishing prompt payment by VA to claimants. No changes are made based on this comment. VA is studying the feasibility of centralizing the payment process, which would take into account prompt payment requirements.

One commenter indicated that filing a claim within the time periods of § 17.1004(d) is unrealistic. In support of his position, the commenter explains that in many emergency conditions the patient is unable to communicate coverage information to the provider when presenting for emergency care services. The commenter therefore recommends adding a provision to § 17.1004(d) to allow for claims to be submitted within 90-days after the date the veteran provided evidence to the facility/provider of emergency treatment of the veteran's eligibility for coverage under this rule.

No changes are made based on this comment. Adding such a provision would be at cross-purposes with this rule, which was designed to help ensure that claims are decided in a reasonable period of time. We believe that the rule provides ample time for the veteran, the veteran's family, or the veteran's legal representative to provide the required information, as the 90-day periods do not generally begin until after seminal events, *e.g.*, the veteran's discharge or death, by which time the veteran, the veteran's family, or the veteran's legal representative has been made aware of the veteran's personal liability for the non-VA emergency medical treatment rendered and the need to gather the veteran's insurance and other payment information.

Payment Limitations

Several commenters stated that § 17.1005(b) provides that reimbursement for payment for emergency treatment may be made only for the period from the beginning of the treatment until such time as the veteran could be transferred safely to a VA facility or other federal facility. They asked that we modify this statement by adding "initial evaluation and" before "treatment." We concur with these

comments and have changed that provision accordingly.

Another commenter suggested that VA provide payment for emergency treatment sought by veterans under the prudent layperson standard in § 17.1002(b) from the beginning of treatment (including the evaluation) until the attending emergency physician provider determines the veteran is stabilized and may be safely transferred to a VA facility, other Federal facility, or discharged. No change to § 17.1002 is made based on this comment. Section 17.1006 already identifies the appropriate VA clinical officials who are responsible for making all needed medical determinations in connection with VA's review of a claim for reimbursement or payment for the costs of non-VA emergency treatment rendered to a veteran.

Further, this commenter believes that "emergency treatment" should be clarified to include "evaluation" of the condition. No change is made based on this comment. This is covered by the prudent layperson standard.

Another commenter strongly believes that VA should periodically re-examine the reimbursement rate under § 17.1005(a). That provision currently provides that VA will pay the lesser of the amount for which the veteran is personally liable or 70% of the amount under the applicable Medicare fee schedule. No change is made based on this comment. Medicare rates are adjusted annually. Consequently, VA's 70% rule will effectively reflect annual adjustments made to applicable Medicare rates.

Emergency Transportation

One commenter recommended that VA pay for emergency transportation services in cases where a "prudent lay person" would reasonably expect that the absence of such transport would result in placing the health of such individual in serious jeopardy. In the commenter's view, it would be unjust to hold the veteran liable for the cost of emergency transportation if they erroneously but reasonably believed those services were needed. No change is made based on this comment, which we interpret as essentially seeking to delete the limitations in § 17.1003. A claim for reimbursement for payment of emergency transport services under this section must, similar to other emergency medical services which are the subject of a claim under this rule, meet all the conditions of 38 U.S.C. 1725 to be reimbursable or payable at VA expense. We therefore do not make the recommended changes as the rule is consistent with statutory authority. We also note that because emergency transportation is subject to the requirements of 38 U.S.C. 1725, this section already incorporates a prudent lay person standard.

Paperwork Reduction Act

OMB has approved the information collections in §§ 17.004, 17.1007, and 17.1008 under control number 2900–0620. VA is not authorized to impose a penalty on persons for failure to comply with information collection requirements which do not display a current OMB control number, if required.

Compliance With the Congressional Review Act and E.O. 12866—Cost-Benefit Analysis

This rule is necessary to implement the provisions of section 111 of Public Law 106–117, The Veterans Millennium Health Care and Benefits Act. These provisions, which are set forth at 38 U.S.C. 1725, authorize VA to establish a mechanism for payment of or reimbursement for the reasonable value of non-VA emergency services provided for nonservice-connected conditions of certain veterans who have no medical insurance and no other recourse for payment. This rule would directly impact these veterans positively by avoiding full recourse or payment responsibility for medical care and resulting potential debt collection repercussions. This rule implements a detailed statutory mandate, and we found no potentially effective and reasonably feasible alternatives.

We estimate that the five-year cost of this rule from appropriated funds would be $2.1 billion in benefits costs and $21 million in government operating expenses. Since it is likely that the adoption of the rule may have an annual effect on the economy of $100 million or more, the Office of Management and Budget has designated this rule as a major rule under the Congressional Review Act, 5 U.S.C. 802, and an economically significant regulatory action under Executive Order 12866, Regulatory Planning and Review. The following information is provided pursuant to the Congressional Review Act and Executive Order 12866.

I. Benefits Costs

The estimated cost for implementation of the emergency care provisions of the Millennium Act are based on enrollment projections developed by a private actuarial firm and contained in the FY 2001 Enrollment Level Decision Analysis. This baseline population was adjusted, using a survey of enrollees and existing enrollment databases, to calculate the projected number of veterans who had no private or public insurance and who had used VA care within the previous 24 months. These adjustments reflect the criteria contained in the Millennium Act.

Private sector ER-related health care utilization was adjusted to reflect veteran enrollee demographics and relative morbidity, as well as uninsured enrollee reliance on the VA health care system. These utilization estimates, along with Medicare allowable charge levels, were applied to the estimated 990,000 veteran enrollees affected by the emergency care provisions. This resulted in projected estimates for emergency room visits ($93,480,145), ambulance use ($34,108,803), and ER-related inpatient care ($468,221,072). The total of $595,810,019 was then multiplied by the 70 percent reimbursement rate VA will use to pay emergency care providers. This comes to $417,067,014.

This total, however, reflects full implementation of the emergency care provisions. VA believes that it will take time before both providers and eligible veterans are aware of these new benefits and begin to submit acceptable bills to VA for reimbursement. Current experience shows that without widespread dissemination of information, there is limited use of these benefits. VA believes that with the publication of final regulations the submission of claims will increase significantly and could reach 50 percent of the full implementation costs in the first full year after the rule is in effect. Only experience will demonstrate the real demand for this new benefit.

II. Administrative Costs

The administrative workload caused by this rule is expected to be 241,457 claims filed in 2001. Administrative workloads assume that not all claims would be granted; it is probable that non-VA related claims will be received from veterans who are not eligible. Medical Care costs are computed on the average cost of a GS4/5 @ $12/hour × 30 minutes × 241,457 claims/60 which equals $1,448,742.00. In addition, the clinical review costs are estimated at $46/hour × 15 minutes × 241,457 claims/60 which equals $2,776,755.00 for total Medical Care costs of $4,225,497.

OMB Review

This document has been reviewed by the Office of Management and Budget under Executive Order 12866.

Regulatory Flexibility Act

The Secretary hereby certifies that this final rule would not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. This rule would apply only to an extremely small amount of the business of a hospital or health care provider. Otherwise, the rule would only apply to individuals. Accordingly, pursuant to 5 U.S.C. 605(b), this rule is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before developing any rule that may result in an expenditure by State, local, or tribal governments, in the aggregate, or by the private sector of $100 million or more in any given year. This rule would have no consequential effect on State, local, or tribal governments.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance numbers for the programs affected by this rule are 64.005, 64.007, 64.008, 64.009, 64.010, 64.011, 64.012, 64.013, 64.014, 64.015, 64.016, 64.018, 64.019, 64.022, and 64.025.

List of Subjects in 38 CFR Part 17

Administrative practice and procedure, Alcohol abuse, Alcoholism, Claims, Day care, Dental health, Drug abuse, Foreign relations, Government contracts, Grant programs-health, Grant programs-veterans, Health care, Health facilities, Health professions, Health records, Homeless, Medical and dental schools, Medical devices, Medical research, Mental health programs, Nursing homes, Philippines, Reporting and recordkeeping requirements, Scholarships and fellowships, Travel and transportation expenses, Veterans.

Approved: October 11, 2002.

Anthony J. Principi,

Secretary of Veterans Affairs.

Accordingly, the interim final rule amending 38 CFR part 17 which was published at 66 FR 36467 on July 12, 2001 is adopted as a final rule with the following changes:

PART 17—MEDICAL

1. The authority citation for part 17 continues to read as follows:

Authority: 38 U.S.C. 501, 1721, unless otherwise noted.

§ 17.1000 [Amended]

2. The Note following § 17.1000 is amended by removing "Health" and adding, in its place, "In cases where a patient is admitted for inpatient care, health"; and removing "the veteran begins receiving" and adding, in its place, "admission for".

§ 17.1002 [Amended]

3. In § 17.1002, paragraph (d) is amended by removing "safely" and adding, in its place, "safely discharged or".

§ 17.1004 [Amended]

4. In § 17.1004, paragraph (b) is amended by removing "1500). The" and adding, in its place, "1500). Where the form used does not contain a false claims notice, the"; and by removing "and 17.1003." and adding, in its place, "(except for paragraph (e)) and 17.1003."

§ 17.1005 [Amended]

5. In § 17.1005, paragraph (b) is amended by removing "beginning of the" and adding, in its place, "beginning of the initial evaluation"; and by removing, "transferred safely", and adding, in its place, "safely discharged or transferred".

[FR Doc. 03–1577 Filed 1–23–03; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[WI112–01–7342b, FRL–7411–5]

Approval and Promulgation of Air Quality Implementation Plans; Wisconsin; Northern Engraving Environmental Cooperative Agreement

AGENCY: Environmental Protection Agency.

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a June 12, 2002, request from Wisconsin to revise its State Implementation Plan (SIP) for a source specific revision for Northern Engraving Corporation (NEC). Section 110 of the Clean Air Act (Act), 42 U.S.C. 7410, provides the authority for a state to provide a plan for the implementation, maintenance, and enforcement of the national ambient air quality standards in each air quality control region. The Wisconsin Department of Natural Resources (WDNR) and EPA entered into a memorandum of agreement concerning implementation of a joint cooperative pilot program and agreed to pursue regulatory innovation at two NEC facilities in Holmen, Wisconsin and Sparta, Wisconsin. Because portions of the Environmental Cooperative Agreement with NEC supercedes portions of rules in the Wisconsin SIP, a source-specific SIP revision is required.

DATES: This rule is effective on March 25, 2003, unless EPA receives adverse written comments by February 24, 2003. If EPA receives adverse comments, EPA will publish a timely withdrawal of the rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: You may inspect copies of the documents relevant to this action during normal business hours at the following location: United States Environmental Protection Agency Region 5, 77 West Jackson Boulevard, Chicago, Illinois, 60604.

Send written comments to: Robert Miller, Chief, Permits and Grants Section, United States Environmental Protection Agency (AR–18J), 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Constantine Blathras at (312) 886–0671.

SUPPLEMENTARY INFORMATION: On March 25, 1999, the WDNR and the EPA entered into a memorandum of agreement concerning implementation of the joint state/EPA agreement to pursue regulatory innovation and the Wisconsin Environmental Cooperation Pilot Program. On June 7, 2002, Thomas V. Skinner, Regional Administrator, EPA Region 5, sent a letter to Darrell Bazzell, Secretary, WDNR, containing EPA's final response to the WDNR's innovation proposal for alternative permit conditions at the NEC facilities. The NEC facilities affected by this agreement are the Holmen facility, located at 1023 Sand Lake Road, Holmen, La Crosse County, Wisconsin, and the Sparta facility, located at 803 South Black River Street, Sparta, Monroe County, Wisconsin. Both La Crosse and Monroe counties are classified as unclassifiable/attainment for ozone, as of November 15, 1990. Volatile organic compounds are a precursor to ozone. Each facility's permit includes facility-wide emission rates for volatile organic compounds and hazardous air pollutants.

The innovative components of the proposal for the NEC Sparta and Holmen facilities include: (1) Waiver from the requirements that facilities obtain a new permit prior to

construction; (2) waiver from the requirement that facilities receive an appropriate permit prior to operating new process equipment; (3) waiver in the facilities' minor source permits of individual process line latest available control technology requirements for controlling volatile organic compound emissions; and (4) record keeping and reporting flexibility.

The Environmental Cooperative Agreement, specifically section XII (Operational Flexibility and Variances), proposes to establish new requirements for the two NEC facilities. The proposed new requirements would replace or revise certain requirements that might otherwise apply to those sources. Some of the requirements to be replaced or revised are currently embodied in Wisconsin's SIP for meeting air quality objectives. In such cases, the proposed flexibility in the Environmental Cooperative Agreement cannot be granted by WDNR unless the new requirements are first approved by EPA as a source-specific revision to the SIP.

The WDNR submitted the following portions of Section XII of the Environmental Cooperative Agreement (Operational Flexibility and Variances) as a source-specific SIP revision:

1. *Item:* Waiver from the requirements to obtain a construction permit prior to commencing construction of new process equipment, commencing modification of existing equipment, or relocating existing process equipment of a minor stationary source between the facilities covered by this Agreement.

Previous Requirements Superseded by this Agreement: Requirement to obtain a construction permit prior to construction, reconstruction, replacement, relocation of modification of a minor stationary source that is not otherwise exempt under section Natural Resources (NR) 406.04, Wisconsin Administrative (Wis. Adm.) Code. (NR 406.03, Wis. Adm. Code)

New Requirement

a. New Equipment Construction and Modification: The permittee may commence construction or modification (but not operation) of new process equipment prior to obtaining a construction permit, provided the following conditions are met. These conditions do not apply if a proposed project is exempt from the requirement to obtain a construction permit, pursuant to section NR 406.04, Wis. Adm. Code. (section 299.80(2)(h) and (4)(b), Wisconsin Statutes (Wis.Stats.))

(1) The permittee shall submit the following information to the Department of Natural Resources, La Crosse Area Office, 3550 Mormon Coulee Road, Room 104, La Crosse, WI 54601 or other location specified by the Department:

(a) Two copies of a complete construction and operating permit application describing the proposed equipment;

(b) An application fee of $1,350 or other amount as required by section NR 410.03(1)(d), Wis. Adm. Code; and

(c) Information describing how the interested persons group was notified of the proposed project. (sections 299.80(10) and (11)(b). Wis. Stats.)

(2) The Department shall process the permit application in accordance with sections 285.60 through 285.69, Wisconsin Statutes and sections NR 406 and NR 407, Wis. Adm. Code, however, the permittee need not wait for permit issuance to commence construction. The Department shall process the permit application as both a construction permit and a significant revision to the operation permit, and issue both permits simultaneously to reduce the administrative burden of issuing a construction permit that expires 18 months after issuance followed by an operation permit. The Department shall send an invoice outlining the fees required for processing the construction permit for the proposed project, including the fees for an expedited permit review authorized under section NR 410.03(o), Wis. Adm. Code, less the $1,350 permit application fee. (sections 299.80(2)(h), (4)(b), (10) and (11)(b), Wis. Stats.)

(3) The permittee shall pay the total amount of the fee invoice within 30 days of receipt.[1] (s. 299.80(10), Wis. Stats.)

(4) The permittee shall continue to comply with all the requirements of Part I.A. of the permit so long as the cooperative agreement is in affect.[2] (s. 299.80(2)(h) and (4)(b), Wis. Stats.)

(5) Nothing in this section or in any Cooperative Agreement between the Department and the permittee shall be construed as a guarantee that the Department will issue an air pollution control construction and operation permit for a proposed project. The decision on whether to approve a permit application will be made according to the requirements of chapters NR 400 through NR 499, Wis. Adm. Code and s. 285.60 through 285.69, Wis. Stats. If the Department denies a permit application pursuant to ss 285.61 through 285.64, Wis. Stats. all costs and risks associated with installing and operating the proposed equipment shall be incurred solely by the permittee. In the event that the construction and operation permit application for the proposed project is denied, the permittee shall cease construction of the equipment in question immediately.

b. New Equipment Operation: The permittee may operate new process equipment, provided one of the following alternate scenarios are met. The conditions do not apply if a proposed project is exempt from the requirement to obtain a construction permit, pursuant to s. NR 406.04, Wis. Adm. Code. (s. 299.80(2)(h) and (4)(b), Wis. Stats.)

(1) Alternate Scenario #1: The permittee may operate new process equipment provided the permittee submits a complete construction and operation permit application as required by the conditions of I.A.5.a. *and* the Department issues a construction permit pursuant to ss. 285.60 through 285.69, Wis. Stats and ss. NR 406 and NR 407, Wis. Adm. Code. The permittee shall operate the new process equipment in compliance with the conditions contained in any construction permit issued by the Department. (s. NR 406.03, Wis. Adm. Code)

(2) Alternate Scenario #2: The permittee may initially operate new process equipment prior to obtaining a construction permit provided the permittee submits a complete

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[1] Pursuant to s. 299.80(10), Wis. Stats., a participant in a cooperative agreement shall pay the same fees required under chs. 280 to 295, Wis. Stats. that it would be required to pay if it had not entered into a cooperative agreement. Therefore, while the requirement to obtain a construction permit prior to installation is waived, the permittee is still required to pay the fees that would have been assessed had a construction permit been issued under ch. NR 406, wis. Adm. Code.

[2] By continuing to comply with the facility wide emission limitations outlined in Part I.A., the net emissions increase from any new sources or relocation of any existing sources from other facilities will not exceed the major stationary source levels of s. NR 405.02(22)(a), Wis. Adm. Code triggering Prevention of Significant Deterioration (PSD) Requirements. The existing facility potential emissions of all criteria pollutants are less than 250 tons per year and the facility is not included in the source categories listed in s. NR 405.07(4), Wis. Adm. Code. Therefore, the existing facility is a synthetic minor source for PSD purposes. Note: This facility is not located in an area designated nonattainment. Also, by continuing to comply with the facility wide emissions limitations, the potential emissions increase from any new sources or relocated existing sources will not exceed 100 tons per year after controls for any criteria pollutant. Therefore none of the changes will be considered a Type II action requiring an environmental assessment. Finally, by continuing to comply with the facility wide emission limitations, the facility will not become a major source for the Operating Permits Program under 40 CFR Part 70 (Part 70) purposes for either volatile organic compound or hazardous air pollutant emissions. Requirement I.A.5.a.(1)(g) of the permit requires that any changes that result in potential facility wide emissions of particulate matter, sulfur dioxide, nitrogen oxide or carbon monoxide emissions exceeding 100 tons per year, must follow permit issuance requirements of chs. NR 406 and NR 407, Wis. Adm. Code.

construction and operation permit application as required by the conditions of I.A.5.a. *and* the following conditions are met: (s. 299.80(2)(h) and (4)(b), Wis. Stats.)

(a) The permittee shall submit two copies of the following information to the Department of Natural Resources, La Crosse Area Office, 3550 Mormon Coulee Road, Room 104, La Crosse, WI, 54601 *or* other location specified by the Department, 14 calendar days prior to the date of initial operation:

(i) Information identifying all applicable requirements from the Wisconsin Statutes, Wisconsin Administrative Code, and the Act for the proposed equipment;

(ii) A quantification of the air pollution emissions that would result from the proposed project;

(iii) A computer dispersion modeling analysis showing the National Ambient Air Quality Standards will be protected if the proposed project results in an increase in potential particulate matter, sulfur dioxide, nitrogen oxide, and/or carbon monoxide emissions.

(iv) A computer dispersion modeling analysis showing the Acceptable Ambient Concentrations will be protected if the proposed project results in an increase in emissions of any hazardous air pollutant listed in ch. NR 445, Wis. Adm. Code so that the resulting facility total emissions of the hazardous air pollutant are above the corresponding Table Value(s) OR results in the emission of any hazardous air pollutant listed in ch. NR 445, Wis. Adm. Code that was not previously emitted, at a rate greater than its corresponding Table Value(s); and

(v) An analysis showing the proposed project will not cause the total facility wide potential emissions of particulate matter, sulfur dioxide, nitrogen oxides or carbon monoxide to exceed 100 tons per year. Any proposed new or relocated source that will result in the facility wide potential emissions of any one of these pollutants exceeding 100 tons per year is not eligible for this waiver. If the facility wide potential emissions of any one of the pollutants would be greater than 100 tons per year as the result of a proposed project, the permittee shall comply with the construction permit requirements outlined in ch. NR 406, Wis. Adm. Code and the significant operation permit revision requirements of s. NR 407.13, Wis. Adm. Code.[3] (ss. 299.80(10) and (11)(b), Wis. Stats.)

(b) The Department has 14 calendar days from the date that all the information outlined in (a) is received to request additional information or object to the proposed project. If the Department requests additional information during the original 14 calendar day period the Department shall have an additional 7 calendar days from the date of receipt of the information to request additional information or object to the proposed project. Under no scenario shall the Department have less than 14 days to review original submittal. If the Department does not respond within 14 calendar days from the date that all the information outlined in (a) is submitted, or within 7 days from the date that any additional information requested by the Department is submitted, whichever is later, the permittee may commence initial operation of the proposed equipment. The Department may provide written approval to commence initial operation of the proposed equipment prior to the end of the 14 calendar day period. If this is the case the permittee may commence initial operation upon receipt of this written approval. (ss. 299.80(2)(h) and (11)(b), Wis. Stats.)

(3) *Alternate Scenario #3:* The permittee may initially operate new process equipment prior to obtaining a construction permit provided the permittee submits a complete construction and operation permit application as required by the conditions of I.A.5.a. *and* the following conditions are met: (s. 299.80(2)(h) and (4)(b), Wis. Stats.)

(a) The Department provides written approval to commence initial operation of the proposed equipment. This written approval shall only be provided after the Department completes an air quality dispersion modeling analysis to ensure that the national ambient air quality standards and acceptable ambient concentrations will be protected while the proposed equipment is operating; (s. NR 406.09, Wis. Adm. Code)

(b) The permittee shall comply with any specific conditions included in the Department's written approval to commence initial operation;

(4) The permittee shall continue to comply with all the requirements of Part I.A. of this permit so long as the cooperative agreement is in affect.[4] (s. 299.80(2)(h) and (4)(b), Wis. Stats.)

(5) Nothing in this section or in any Cooperative Agreement between the Department and the permittee shall be construed as a guarantee that the Department will issue an air pollution control construction and operation permit for a proposed project. The decision on whether to approve a permit application will be made according to the requirements of chapters NR 400 through NR 499, Wis. Adm. Code and s. 285.60 through 285.69, Wis. Stats. If the Department denies a permit application pursuant to ss 285.61 through 285.64, Wis. Stats. all costs and risks associated with installing and operating the proposed equipment shall be incurred solely by the permittee. In the event that the construction and operation permit application for the proposed project is denied, the permittee shall cease construction and/or operation of the equipment in question immediately.

2. Item: *(Sparta Only—Processes P32, P33, P56, P42, and P44)* Waiver from the requirements for Processes P32, P33, P56, P42 and P44 at the Sparta facility to comply with the reasonable available control technology (RACT) requirements for controlling volatile organic compound emissions. *Previous Requirements Superseded by this Agreement (source of the requirement):*

(1) *3 Roll Coating Machines P32:* Requirement to limit volatile organic compound emissions from a miscellaneous metal parts or products coating line using baked or specially cured coating technology to not more

[3] This requirement is necessary because if the potential emissions of particulate matter, sulfur dioxide, nitrogen oxide or carbon monoxide emissions exceed 100 tons, the facility would be considered a major source for Part 70 purposes and would be required to obtain either a Part 70 source permit or a synthetic minor, non-Part 70 source permit containing conditions that limit the potential emissions of all criteria pollutants to less than 100 tons per year.

[4] By continuing to comply with the facility-wide emission limitations outlined in Part I.A., the net emissions increase from any new sources or relocation of any existing sources from other facilities will not exceed the major stationary source levels of s. NR 405.02(22)(a), Wis. Adm. Code triggering Prevention of Significant Deterioration (PSD) Requirements. The existing facility potential emissions of all criteria pollutants are less than 250 tons per year and the facility is not included in the source categories listed in s. NR 405.07(4), Wis. Adm. Code, therefore the existing facility is a synthetic minor source for PSD purposes. Note: This facility is not located in an area designated nonattainment. Also, by continuing to comply with the facility wide emissions limitations, the potential emissions increase from any new sources or relocated existing sources will not exceed 100 tons per year after controls for any criteria pollutant. Therefore none of the changes will be considered a Type II action requiring an environmental assessment. Finally, by continuing to comply with the facility wide emission limitations, the facility would not become a major source for Part 70 purposes for either volatile organic compound or hazardous air pollutant emissions. Requirement I.A.5.a.(1)(g) of this permit requires that any changes that result in potential facility wide emissions of particulate matter, sulfur dioxide, nitrogen oxide or carbon monoxide emissions exceeding 100 tons per year follow permit issuance requirements of chapters NR 406 and NR 407, Wis. Adm. Code.

than: (a) 4.3 pounds per gallon of coating, excluding water, delivered to a coating applicator that applies clear coatings; (b) 3.5 pounds per gallon of coating, excluding water, delivered to a coating applicator that applies extreme performance coatings; (c) 3.0 pounds per gallon of coating, excluding water, delivered to a coating applicator for all other coatings. (*s. NR 422.15(2), Wis. Adm. Code, the Specific Emission Limitation for volatile organic compounds in condition I.C.1. and conditions I.C.2.c., I.C.2.d., and I.C.2.e of Air Pollution Control Permit 92–POY–157 and the Specific Emission Limitation for volatile organic compounds in condition I.A.1. and conditions I.A.2.c., I.A.2.d., and I.A.2.e. of Air Pollution Control Permit 91–POY–088)*

(2) *2 Metal Spray Booths P33:* Requirement to limit volatile organic compound emissions from a miscellaneous metal parts or products coating line using baked or specially cured coating technology to not more than: (a) 4.3 pounds per gallon of coating, excluding water, delivered to a coating applicator that applies clear coatings; (b) 3.5 pounds per gallon of coating, excluding water, delivered to a coating applicator that applies extreme performance coatings; (c) 3.0 pounds per gallon of coating, excluding water, delivered to a coating applicator for all other coatings. (*s. NR 422.15(2), Wis. Adm. Code, the Specific Emission Limitation for volatile organic compounds in condition I.A.1. and conditions I.A.2.c., I.A.2.d., and I.A.2.e. of Air Pollution Control Permit 91–POY–157, and the Specific Emission Limitation for volatile organic compounds in condition I.D.1. of Air Pollution Control Permit 91–POY–088.*)

(3) *Roll Coating Line with Electric Oven P56:* Requirement to limit volatile organic compound emissions from a miscellaneous metal parts or products coating line using baked or specially cured coating technology to not more than: (a) 4.3 pounds per gallon of coating, excluding water, delivered to a coating applicator that applies clear coatings; (b) 3.5 pounds per gallon of coating, excluding water, delivered to a coating applicator that applies extreme performance coatings; (c) 3.0 pounds per gallon of coating, excluding water, delivered to a coating applicator for all other coatings. (*s. NR 422.15(2), Wis. Adm. Code, the Specific Emission Limitation for volatile organic compounds in condition I.F.1. and conditions I.F.2.c. of Air Pollution Control Permit 93–IRS–040.*)

(4) *Two Roll Coaters with Two Electric Drying Ovens P42:* Requirement to limit volatile organic compound emissions from a miscellaneous metal parts or products coating line using baked or specially cured coating technology to not more than: (a) 4.3 pounds per gallon of coating, excluding water, delivered to a coating applicator that applies clear coatings; (b) 3.5 pounds per gallon of coating, excluding water, delivered to a coating applicator that applies extreme performance coatings; (c) 3.0 pounds per gallon of coating, excluding water, delivered to a coating applicator for all other coatings. (*s. NR 422.15(2), Wis. Adm. Code.*)

(5) *Spray Booth P44:* Requirement to limit volatile organic compound emissions from a miscellaneous metal parts or products coating line using baked or specially cured coating technology to not more than: (a) 4.3 pounds per gallon of coating, excluding water, delivered to a coating applicator that applies clear coatings; (b) 3.5 pounds per gallon of coating, excluding water, delivered to a coating applicator that applies extreme performance coatings; (c) 3.0 pounds per gallon of coating, excluding water, delivered to a coating applicator for all other coatings. (*s. NR 422.15(2), Wis. Adm. Code.*)

New Requirement: Volatile organic compound emissions from the entire Northern Engraving Corporation, Sparta facility may not exceed 85 tons per year averaged over each 12 consecutive month period.

3. *Item:* Waiver from individual process line latest available control technique (LACT) requirements for controlling volatile organic compound emissions.

Previous Requirements Superseded by this Agreement (source of the requirement): Requirement to control volatile organic compound emissions from process lines on which construction or modification commenced on or after August 1, 1979, and which are not subject to emission limitations listed elsewhere in chs. NR 419 to 423, by at least 85 percent or where 85 percent control had been demonstrated to be technologically infeasible, to control volatile organic compounds using the latest available control techniques and operating practices demonstrating best current technology, as approved by the Department. (*s. NR 424.03(2)(b) and (c), Wis. Adm. Code*)

Holmen—LACT Permit Requirements

Process P03: Permit 91–POY–126—Condition: I.D.1.

Specific Emission limitation for VOCs
Process P08: Permit 91–POY–126—Condition: I.E.1.

Specific Emission Limitation for VOCs
Process P09: Permit: 91–POY–126—Condition: I.A.1.

Specific Emission Limitation for VOCs
Alteration EOP–10–KJC–83–32–081 dated May 27, 1987 for PSMG–04, PSO–21H, PSO–11–H, PSO–12–H, PSO–18–H and PSO–19–H

Alteration of EOP–10–JKC–83–32–081 dated February 12, 1985 Condition: I.A.44.Emission Limitation for Organic Compounds and I.A.50. Emission Limitation for Organic Compounds EOP–10–JKC–83–32–081—Condition: I.A.38. Emission Limitation of Organic Compounds, I.A.39. Emission Limitation of Organic Compounds, I.A.42. Emission Limitation for Organic Compounds Process P50: s. NR 424.03(2)(b) and (c), Wis. Adm. Code

Sparta—LACT Permit Requirements

Process P30: Permit 642025010–N01—Condition: I.A.2.

Specific Emission Limitation for VOCs EOP–10–KJC–83–42–077—Condition:I.A.5.

Specific Emission Limitation for VOCs Process P37: Permit 92–POY–068—Condition: I.B.

Specific Emission Limitation for VOCs EOP–10–KJC–83–32–077A—Condition I.A.4.

Specific Emission limitation for VOCs EOP–10—KJC–83–32–077—Condition I.A.8.

Specific Emission Limitation for VOCs Process P57: Permit 64025010–N01—Condtion I.A.1.

Specific Emission Limitation for VOCs Process P91: Permit 93–IRS–040—Condition I.D.1.

Specific Emission Limitation for VOCs.
Process P41: s. NR 424.03(2)(b) and (c), Wis. Adm. Code
Process P42: s. NR 424.03(2)(b) and (c), Wis. Adm. Code
Process P43: s. NR 424.03(2)(b) and (c), Wis. Adm. Code
Process P44: s. NR 424.03(2)(b) and (c), Wis. Adm. Code

New Requirement: Volatile organic compound emissions from each of the Sparta and Holmen NEC facilities may not exceed 85 tons per year averaged over each 12 consecutive month period.

4. *Item:* Monthly rather than daily record keeping requirements and six month emission reporting.

Previous Requirements Superseded by this Agreement (source of the requirement): The following permit conditions require Northern Engraving to keep daily records:

Holmen—Daily Recordkeeping Requirements

Section NR 439.04(3), Wis. Adm.

Code

Permit 91–POY–126—Condition I.II.5.
Alteration of permit EOP–10–KJC–83–32–081 dated 2/20/90 Condition I.B.13.

Sparta—Daily Recordkeeping Requirements

Sections NR 439.04(5)(e) and (g) and NR 439.04(3), Wis. Adm. Code

Permit 92–POY–157—Conditions I.I.A.2.b., I.I.A.2.f., I.I.A.2.g., I.I.C.2.b., I.I.C.2.f., and I.I.C.2.g.
Permit 91–POY–088—Conditions I.I.A.2.b., I.I.A.2.d., and I.I.A.2.e.
Permit 93–IRS–040—Condition I.I.F.2.b.

New Requirement: To demonstrate compliance status with the facility wide emission limitations for volatile organic compounds and hazardous air pollutants, NEC would be required to keep monthly records of emissions from each facility and report actual emission every 6 months as follows:

(1) Each month the permittee shall calculate the total volatile organic compound emissions from the facility as follows:

$$E = (1\ ton/2000\ lbs) \times \{[(U_1 \times W_1 \times C_1) + (U_2 \times W_2 \times C_2) + \ldots + (U_n \times W_n \times C_n)] - [(S_1 \times P_1) + (S_2 \times P_2) + \ldots + (S_m \times P_m)]\}$$

where:

E is the monthly VOC emissions (tons/month);

U is the monthly usage of each ink, coating, solvent, or other VOC containing material used during the month (gallons/month);

W is the density of each ink, coating, solvent, or other VOC containing material used during the month (pounds/gallon)

C is the VOC content of each ink, coating, solvent, or other VOC containing material used during the month expressed as a weight fraction (*i.e.* if a material is 25% VOC by weight C would be 0.25);

n identifies each ink, coating, solvent or other VOC containing material used during the month;

S is the amount of each spent ink, coating, solvent or other VOC containing material recovered and shipped off site each month (gallons/month);

P is the VOC content of each spent ink, coating, solvent or other VOC containing material recovered and shipped off site each month in pounds per gallon;

m identifies each spent ink, coating, solvent or other VOC containing material recovered and shipped off site during the month. (s. NR 407.09(4)(a)1., Wis. Adm. Code)

(2) To demonstrate compliance with condition I.A.1.a.(1), the permittee shall calculate the total volatile organic compound emissions from the facility over each 12 consecutive month period by summing the monthly volatile organic compound emissions as calculated in I.A.1.b.(1) for each consecutive 12-month period. This calculation shall be performed within 20 calendar days of the end of each month for the previous 12 consecutive month period. (s. NR 407.09(4)(a)1., Wis. Adm. Code)

(3) The permittee shall use U.S. EPA Method 24, or coating manufacturer's formulation data to determine the VOC content (Cn) and the density (Wn) of the inks, coatings, solvents or other VOC containing materials used. In case of an inconsistency between the Method 24 results and the formulation data, the Method 24 results will govern. (s. NR 439.04(1)(d), Wis. Adm. Code)

(4) The permittee shall analyze the spent ink, coating, solvent and other VOC containing material recovered and shipped off site to determine the VOC content (P) no less than: (a) each time there is a substantial change to materials or process operations that may affect the characteristics of the waste stream; or (b) quarterly, which ever is most frequent. (s. NR 439.04(1)(d), Wis. Adm. Code)

(5) The permittee shall keep records of the following for each ink, coating, solvent, or other VOC containing material used at the facility:

(a) A unique name or identification number; and

(b) The VOC content, expressed as a weight fraction (C_n). (s. NR 439.04(1)(d), Wis. Adm. Code)

(6) The permittee shall keep monthly records of:

(a) The amount of each ink, coating, solvent, or other VOC containing material used in gallons per month (U_n);

(b) The density of each ink, coating, solvent, or other VOC containing material used in pounds per gallon (W_n);

(c) The amount of spent ink, coating, solvent, or other VOC containing material recovered and shipped off site in gallons per month (S_m);

(d) The VOC content of each spent ink, coating, solvent or other VOC containing material recovered and shipped off site in pounds per gallon (P_m).

(e) The total monthly VOC emissions from the facility in tons per month (E), as calculated in I.A.1.b.(1); and

(f) The total VOC emissions from the facility in tons per year as calculated in I.A.1.b.(2). (s. NR 439.04(1)(d), Wis. Adm. Code)

(7) Each month the permittee shall calculate the total emissions of *each hazardous air pollutant* from the facility regulated by the Act as follows:[5]

$$E_x = (1\ ton/2000\ lbs) \times \{[(U_1 \times W_1 \times H_1) + (U_2 \times W_2 \times H_2) + \ldots + (U_n \times W_n \times H_n)] - [(S_1 \times I_1) + (S_2 \times I_2) + \ldots + (S_m \times I_m)]\}$$

where:

E_x is the monthly emissions of each hazardous air pollutant regulated by the Act (tons/month);

x identifies each HAP emitted from the facility

U is the monthly usage of each ink, coating, solvent, or other HAP containing material used during the month (gallons/month);

W is the density of each ink, coating, solvent, or other HAP containing material used during the month (pounds/gallon)

H is the HAP content of each ink, coating, solvent, or other HAP containing material used during the month expressed as a weight fraction (*i.e.* if a material is 25% HAP by weight H would be 0.25);

n identifies each ink, coating, solvent or other HAP containing material used during the month;

S is the amount of each spent ink, coating, solvent or other HAP containing material recovered and shipped off site each month (gallons/month);

I is the HAP content of each spent ink, coating, solvent or other HAP containing material recovered and shipped off site each month in pounds per gallon;

m identifies each spent ink, coating, solvent or other HAP containing material recovered and shipped off site during the month. (s. NR 407.09(4)(a)1., Wis. Adm. Code)

(8) To demonstrate compliance with condition I.A.2.a.(1), the permittee shall calculate the emissions of each hazardous air pollutant regulated by the Act over each 12 consecutive month period by summing the monthly emissions of each hazardous air pollutant regulated by the Clean Air Act (the Act) as calculated in I.A.2.b.(1) for each consecutive 12-month period. This calculation shall be performed within 20 calendar days of the end of each month for the previous 12 consecutive month period. (s. NR 407.09(4)(a)1., Wis. Adm. Code)

(9) Each month the permittee shall calculate the *total* emissions of hazardous air pollutants regulated by the Act as follows:

$$E_{hap} = E_x$$

where:

[5] This calculation shall be performed for each hazardous air pollutant regulated by the Act that is emitted from the facility.

E_{hap} is the monthly total emissions of all hazardous air pollutants regulated by the Act that are emitted by the facility (tons/month);

E_x is the monthly emissions of each hazardous air pollutant regulated by the Act (tons/month) as calculated in I.A.2.b.(1); x identifies each HAP emitted from the facility. (s. NR 407.09(4)(a)1., Wis. Adm. Code)

(10) To demonstrate compliance with condition I.A.2.a.(2), the permittee shall calculate the total emissions of *all* hazardous air pollutants regulated by the Act over each 12 consecutive month period by summing the monthly emissions of all hazardous air pollutants regulated by the Act as calculated in I.A.2.b.(3) for each consecutive 12-month period. This calculation shall be performed within 15 calendar days of the end of each month for the previous 12 consecutive month period. (s. NR 407.09(4)(a)1., Wis. Adm. Code)

(11) The permittee shall use coating manufacturer's formulation data to determine the HAP content (Hn) of the inks, coatings, solvents or other HAP containing materials used. (s. NR 439.04(1)(d), Wis. Adm. Code)

(12) The permittee shall analyze the spent ink, coating, solvent and other HAP containing material recovered and shipped off site to determine the HAP content (H) no less than: (a) each time there is a substantial change to materials or process operations that may affect the characteristics of the waste stream; or (b) quarterly, whichever is more frequent. (s. NR 439.04(1)(d), Wis. Adm. Code)

(13) The permittee shall keep records of the following for each ink, coating, solvent, or other HAP containing material used at the facility:

(a) A unique name or identification number; and

(b) The weight fraction of each HAP contained in the material (H_n). (s. NR 439.04(1)(d), Wis. Adm. Code)

(14) The permittee shall keep monthly records of:

(a) The amount of each ink, coating, solvent, or other HAP containing material used in gallons per month (U_n);

(b) The density of each ink, coating, solvent, or other HAP containing material used in pounds per gallon (W_n);

(c) The amount of spent ink, coating, solvent, or other HAP containing material recovered and shipped off site in gallons per month (S_m);

(d) The amount of each HAP contained in each spent ink, coating, solvent or other HAP containing material recovered and shipped off site in pounds per gallon (I_m);

(e) The facility total monthly emissions of each HAP in tons per month (E_x), as calculated in I.A.2.b.(1);

(f) The total monthly HAP emissions from the facility in tons per month (E_{hap}), as calculated in I.A.2.b.(3);

(g) The facility total emissions of each HAP in tons per year as calculated in I.A.2.b.(2).

(h) The total HAP emissions from the facility in tons per year as calculated in I.A.2.b.(4). (s. NR 439.04(1)(d), Wis. Adm. Code)

(15) Report actual facility wide volatile organic compound and hazardous air pollutant emissions as follows:

(a) The permittee shall submit a report summarizing the actual, facility wide volatile organic compound and hazardous air pollutant emissions for each consecutive 12-month period as calculated in conditions I.A.1.b.(2) and I.A.2.b.(2) and (4), every 6 months.

(b) The period addressed by the report shall be the 6 month period starting on the date the Cooperative Agreement is signed or other date agreed upon and approved by WDNR, EPA and the permittee, and each subsequent 6 month period thereafter.

(c) A copy of the report shall be submitted to the WDNR (Marty Sellers, Air Management Engineer, Department of Natural Resources, 3550 Mormon Coulee Road, La Crosse, WI 54601) and the U.S. EPA (Steve Rothblatt, Branch Chief, Air Program Branch, U.S. EPA, 77 W. Jackson Blvd., Mailcode: (AR–18J), Chicago, IL 60604) within 20 days following the end of the reporting period.

(d) If the report shows the actual facility wide volatile organic compound or hazardous air pollutant emissions have exceeded 50 percent of the allowable limitations outlined in conditions I.A.1.a and I.A.2.a.(1) and (2), the permittee shall provide an explanation why emissions reached the levels that they did and how they intend to ensure emissions will not exceed the allowable limitations outlined in conditions I.A.1.a. and I.A.2.a.(1) and (2). (s. NR 439.03(1)(a), Wis. Adm. Code)

Administrative Review

The EPA is publishing this SIP revision approval without prior proposal, because EPA views this as a noncontroversial revision and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, EPA is proposing to approve the SIP revision should adverse written comments be filed. The approval of this SIP revision will be effective without further notice unless EPA receives relevant adverse written comments by February 24, 2003. Should EPA receive such comment, we will publish a final rule informing the public that this action will not take effect. Any parties interested in commenting on this action should do so at this time. If we do not receive comments, this action will be effective on March 25, 2003.

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number or small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain an unfunded mandate nor does it significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This rule does not have tribal implications, because it will not have a substantial direct effect on one or more Indian tribes, or on the relationship between the federal government and Indian tribes, or on the distribution of power and responsibilities between the federal government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications, because it does not have substantial direct effects on the states, or the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Act. Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19855, April 23, 1997), applies to any rule that is both economically significant, as defined under Executive Order 12866, and concerns an environmental health

or safety risk that EPA has reason to believe may have a disproportionate effect on children. This rule is not subject to Executive Order 13045 because it is not economically significant.

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTA), 15 U.S.C. 272 note, requires federal agencies to use technical standards that are developed or adopted by voluntary consensus to carry out policy objectives, so long as such standards are not inconsistent with applicable law or otherwise impracticable. In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Act. Absent a prior existing requirement for the state to use voluntary consensus standards, EPA has no authority to disapprove a SIP submission for failure to use such standards, and it would thus be inconsistent with applicable law for EPA to use voluntary consensus standards in place of a SIP submission that otherwise satisfies the provisions of the Act. Therefore, the requirements of section 12(d) of the NTTA do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, (5 U.S.C. 801 *et seq.*), as added by the Small Business Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and the Comptroller General of the United States. The EPA will submit a report containing this rule and other required information to the United States Senate, the United States House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under Section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 25, 2003. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged late in proceedings to enforce its requirements.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Hazardous air pollutants, Volatile organic compounds.

Dated: October 24, 2002.

Bharat Mathur,

Acting Regional Administrator, Region 5.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMEND_D]

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart YY—Wisconsin

2. Section 52.2570 is amended by adding paragraph (c)(107) to read as follows:

§ 52.2570 Identification of plan.

* * * * *

(c) * * *

(107) On June 12, 2002, the Wisconsin Department of Natural Resources submitted a site specific revision to its SIP for emissions from Northern Engraving Corporation's Holmen and Sparta facilities in the form of a Environmental Cooperative Agreement for incorporation into the federally enforceable State Implementation Plan. It consists of portions of the Environmental Cooperative Agreement which supersede portions of rules in the State Implementation Plan. The Cooperative Agreement establishes an exemption for pre-construction permitting activities for certain physical changes or changes in the method of operation at the Northern Engraving Corporation's Holmen and Sparta facilities.

(i) Incorporation by reference.

(A) The following provisions of the Environmental Cooperative Agreement between Northern Engraving Corporation (NEC) and the Wisconsin Department of Natural Resources signed on June 10, 2002: Section XI of the Environmental Cooperative Agreement (Operational Flexibility and Variances) and Part IA. of Appendix C.3: Specific Permit Conditions under the Environmental Cooperative Agreement for NEC's Sparta facility.

[FR Doc. 03–1516 Filed 1–23–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[DC039–2030; MD073–3101; VA090–5063; FRL–7441–9]

Determination of Nonattainment as of November 15, 1999, and Reclassification of the Metropolitan Washington, DC Ozone Nonattainment Area; District of Columbia, Maryland, Virginia

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is taking final action to issue a determination that the Metropolitan Washington, D.C. serious ozone nonattainment area (hereinafter referred to as the Washington area) did not attain the 1-hour ozone national ambient air quality standard (NAAQS) by the November 15, 1999 Clean Air Act (CAA) deadline for serious ozone nonattainment areas. As a result, the Washington area is reclassified by operation of law as a severe ozone nonattainment area on the effective date of this rule. The District of Columbia, the State of Maryland and the Commonwealth of Virginia each must submit by March 1, 2004, a State Implementation Plan (SIP) revision for the Washington area that meets the severe area ozone nonattainment area requirements of CAA section 182(d). Finally, EPA is adjusting the dates by which the area must achieve a nine (9) percent reduction in ozone precursor emissions to meet the 2002 rate-of-progress (ROP) requirement and adjusting contingency measure requirements as this relates to the 2002 ROP milestone. In an Order entered on December 18, 2002, the United States District Court for the District of Columbia directed EPA to publish a final action in the **Federal Register** determining whether the Washington area had attained the applicable ozone standard under the CAA and any reclassification of the area required as a result of this determination. This final determination and this notice are in direct response to and comply with the Court's order.

DATES: This final rule is effective on March 25, 2003.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

FOR FURTHER INFORMATION CONTACT: Christopher Cripps, (215) 814–2179, or by e-mail at *Cripps.Christopher @epa.gov.*

SUPPLEMENTARY INFORMATION: The use of "we," "us," or "our" in this document refers to EPA.

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I. What Is the Background for This Rule?

A. When Did EPA Propose to Reclassify the Washington Area?

On November 13, 2002, EPA proposed to find that the Washington serious ozone nonattainment area did not attain the 1-hour ozone NAAQS by November 15, 1999, the attainment deadline for serious ozone nonattainment areas under CAA section 181(a). *See* 67 FR 68805. The proposed finding was based upon ambient air quality data from the years 1997, 1998, 1999. These data showed that the 1-hour ozone NAAQS of 0.12 parts per million (ppm) had been exceeded on an average of more than one day per year over this three-year period and that the area did not qualify for an attainment date extension under section 181(a)(5). EPA also proposed that the appropriate reclassification of the area was to severe ozone nonattainment.

B. What Is the Washington Ozone Nonattainment Area?

For the purposes of this final rule, the Washington ozone nonattainment area (the Washington area) consists of: the District of Columbia; Calvert, Charles, Frederick, and Montgomery, Prince Georges counties in Maryland; and, the counties of Arlington, Fairfax, Loudoun, Prince William and Stafford and the cities of Alexandria, Fairfax, Falls Church, Manassas, and Manassas Park in Virginia. *See* 40 CFR 81.309, 40 CFR 81.321 and 40 CFR 81.347.

C. What Is a SIP?

Section 110 of the CAA requires states to develop air pollution regulations and control strategies to ensure that state air quality meet the NAAQS established by EPA. These ambient standards are established under section 109 of the CAA, and they currently address six criteria pollutants: carbon monoxide, nitrogen dioxide, ozone, lead, particulate matter, and sulfur dioxide.

Each state must submit these regulations and control strategies to us for approval and incorporation into the Federally-enforceable SIP.

Each Federally-approved SIP protects air quality primarily by addressing air pollution at its point of origin. These SIPs can be extensive. They may contain state regulations or other enforceable documents and supporting information such as emission inventories, monitoring networks, and modeling demonstrations.

D. What Is the NAAQS for Ozone?

The NAAQS for ozone is expressed in two forms which are referred to as the 1-hour and 8-hour standards. Table 1 summarizes the ozone standards.

Standard	Value	Type	Method of compliance
1-hour	0.12 ppm	Primary and Secondary	Must not be exceeded, on average, more than one day per year over any three-year period at any monitor within an area.
8-hour annual	0.08 ppm	Primary and Secondary	The average of the fourth highest daily maximum 8-hour average ozone concentration measured at each monitor over any three-year period.

(Primary standards are designed to protect public health and secondary standards are designed to protect public welfare and the environment.)

The 1-hour ozone standard of 0.12 parts per million (ppm) was promulgated in 1979. The 1-hour ozone standard continues to apply to the Washington area, and it is the classification of the Washington area with respect to the 1-hour ozone standard that is addressed in this document.

E. How Did EPA Apply the CAA Provisions Regarding Determinations of Nonattainment and Reclassifications to the Washington Area?

On November 13, 2002, EPA proposed its finding that the Washington area did not attain the 1-hour ozone standard by the applicable date (67 FR 68805). In that notice of proposed rulemaking we discussed how we believed the provisions of section 181(b)(2), the relevant sections of the CAA regarding determinations of attainment and reclassifications for failure to attain, would apply to the Washington area. *See* 67 FR at 68806 to 68808. The proposed finding was based upon ambient ozone concentration data for the period 1997 through 1999, from the monitoring sites in the Washington area, several of which recorded an average of more than one exceedance per day per year.

Section 181(b)(2)(A) of the Clean Air Act requires that when EPA determines that an area has not attained the standard by its statutorily required date the area shall be reclassified by operation of law to the higher of—

(1) The next higher classification for the area, or

(2) The classification applicable to the area's design value as determined at the time EPA publishes its notice that the area failed to attain.

Even if a serious area's design value at the time of reclassification is lower than the design value for serious areas that serious area cannot be reclassified to a lower classification because the minimum statutory classification resulting from a failure to attain is severe.

The air quality data upon which we made the proposed finding of failure to attain the ozone NAAQS were available for comment in our November 13, 2002, notice of proposed rulemaking. For a listing of the average number of days when ambient ozone concentrations exceeded the one-hour ozone standard, *See* 67 FR at 68807–68808 (November 13, 2002). We received no adverse comments pertaining to that air quality data and the proposed determination of noattainment.

EPA has determined that the relevant air quality data for the period of 1997 through 1999, inclusive, for the Washington area shows that the Washington area contained at least one monitor with an average annual number of expected exceedances that was greater than the 1.0 allowed by the 1-hour ozone NAAQS. Although currently classified as a "serious" nonattainment area, if the Washington area were being

classified for the first time today, the classification applicable to the area's design value would be "marginal." However, section 181(b)(2)(A)(1) requires that an area be reclassified to the higher of its current design value or the next higher classification (with the exception that no area can reclassified to "extreme"). "Severe," not "marginal," is the next higher nonattainment classification from "serious" under CAA. Therefore, we make the determination pursuant to section 181(b)(2)(B) of the CAA that the Washington area did not attain the one-hour ozone standard by the November 15, 1999, attainment date, and that the area is reclassified by operation of law to severe nonattainment on the effective date of this rule.

F. Why Is This Action Necessary?

On November 13, 2002, the Sierra Club filed a complaint in the United States District Court for the District of Columbia against EPA (*Sierra Club* v. *Whitman*, No. 1:02CV02235(JR)) regarding, among other things, the attainment status and classification of the Washington area. On December 18, 2002, the United States District Court for the District of Columbia issued an order directing EPA to publish, by January 27, 2003, a determination of whether the Washington area had attained the applicable ozone standard under the CAA. The Court also ordered EPA to publish in the **Federal Register** a notice of a final action reflecting both this determination and any reclassification of the area required as a result of the determination. Our final determination and this notice comply with the Court's Order.

II. What Does This Action Do?

In this action, EPA is issuing a final determination that the Washington area did not attain the 1-hour ozone NAAQS by November 15, 1999, as prescribed in section 181 of the CAA, in fulfilling our nondiscretionary duty pursuant to the CAA. As a result of this final determination, the Washington area is reclassified by operation of law to severe ozone nonattainment pursuant to section 181(b)(2) of the CAA. In addition, this action sets the dates by which the District of Columbia (the District), Maryland and Virginia (collectively referred to as "the States") each must submit SIP revisions addressing the CAA's pollution control requirements for severe ozone nonattainment areas (the "severe area SIP") and to attain the 1-hour NAAQS for ozone. The required post-1999 ROP nine percent reduction originally was required by November 15, 2002 under the CAA. However, that date has elapsed. Therefore, in this action EPA is allowing the District, Maryland and Virginia to demonstrate that the first required post-1999 nine percent ROP is achieved as expeditiously as practicable after November 15, 2002, but in any case no later than November 15, 2005. EPA is allowing the District, Maryland and Virginia to key contingency measures for the 2002 ROP milestone to this new date.[1]

III. What Public Comments Were Received and What are EPA's Responses?

In the November 13, 2002, notice of proposed rulemaking (67 FR 68805) for this action, EPA proposed: (1) To find that the Metropolitan Washington, DC serious ozone nonattainment area has failed to attain the one-hour ozone NAAQS by November 15, 1999, and, as a consequence, the Washington area would be reclassified as a severe nonattainment area; (2) to require the District of Columbia, the State of Maryland and the Commonwealth of Virginia to submit revisions to their State Implementation Plan (SIP) that adopt the severe area requirements by the earlier of one year after the effective date of a final action on the attainment determination or March 1, 2004; and (3) to allow the District, Maryland and Virginia to adjust the dates by which the area must achieve a nine percent reduction in ozone precursor emissions to meet the 2002 rate-of-progress requirement to a date as expeditiously as practicable (but in no case any later than November 15, 2005), and to adjust the contingency measure requirement as this relates to the 2002 rate-of-progress requirement accordingly.

We solicited public comments on these issues discussed in the notice of proposed rulemaking as well as other relevant matters. We received comment letters from Earth Justice Legal Defense Fund (on behalf of the Sierra Club), the Virginia Department of Transportation, Dominion Energy and three residents of the Washington area.

In this document, EPA is responding to adverse comments that are germane to this final action and which were submitted in response to the November 13, 2002, notice of proposed rulemaking (67 FR 68805).

EPA received no adverse comments pertaining to the data used for our nonattainment determination, and therefore we are making the determination that Washington did not attain by its attainment deadline.

A. Finding of Failure to Attain and Reclassification to Severe

Summary of Comments in Support of EPA's Proposed Action

EPA received comments supporting the determination of nonattainment and the change in the classification from serious to severe. One resident of the District expressed concern about personal health effects of breathing air in the District which the commenter believes is not as clean as in more rural areas. Another commenter stated support for the proposed finding of failure to attain and stated concurrence that the resulting reclassification by operation of law should result in a severe classification.

Comments Adverse to EPA's Proposed Action

Comment #1: We received one comment that stated the major reason that the Washington, area is being reclassified from serious to severe is because of transport from outside the area. The commenter claimed that other States and industries in the "Ohio Valley" have not reduced emissions soon enough to enable the Washington area attain by 1999.

Response #1: While EPA agrees that the Washington area is significantly affected by transport from outside the area, the U.S. Court of Appeals for the D.C. Circuit ruled on July 2, 2002 that EPA is precluded from extending the Washington area's attainment date unless the extension qualifies under CAA section 181(a)(5) or it involves reclassification to a higher classification. With respect to attainment date extensions, the D.C. Circuit also ruled that the plain language of the Clean Air Act "sets a deadline without an exception for setbacks owing to ozone transport." Therefore, the Court held that EPA is without authority to extend the attainment deadline for the Washington area unless we also reclassify the area as a severe nonattainment area. *See Sierra Club* v. *Whitman*, 294 F.3d 155, 163 (D.C. Cir. 2002).

EPA is issuing a final finding that the Washington area failed to attain the 1-hour ozone NAAQS and is reclassified by operation of law to severe nonattainment.

[1] The severe area ROP plan will also have to provide for the second increment of post-1999 ROP for the period 2002 to 2005 and thus must achieve a minimum of 18 percent emission reduction from base line emissions by November 15, 2005.

B. Severe Area SIP Revision Submittal Schedule

Comments Supporting a Shorter Schedule and on Application of Section (i)

One commenter submitted extensive comments in opposition to the proposed schedule for submittal of the severe area SIP.

This commenter claims EPA's use of section 182(i) is arbitrary and capricious and contrary to law. The commenter notes that the CAA set deadlines for SIP submittals for serious and severe areas in CAA sections 182(c)(2) and (d). The commenter claims those deadlines are not subject to adjustment and have long passed.

This commenter noted the following deadlines as examples:

(1) November 15, 1992: "VMT offset" SIP due under CAA section 182(d)(1).

(2) November 15, 1992: NSR program mandated by CAA sections 172(c)(5) and 173 including the lower stationary source major source thresholds for severe areas.

(3) November 15, 1994: for the attainment demonstration due under CAA sections 182(c)(2) and (d).

(4) December 31, 2000: SIP provision due under CAA section 182(d)(3) to fulfill the requirements of section 185.

The commenter claims that section 182(i) requires areas to met the deadlines of sections 182(b)–(d) and allows EPA to adjust those deadlines only to the extent necessary or appropriate to assure consistency among the required submissions. The commenter claims that EPA has not provided a rationale why the proposed schedule is necessary and appropriate and therefore EPA must make immediate "findings of incompleteness" under section 110(k)(1)(B).

The commenter further claims the proposed schedule has other problems in that the schedule runs afoul of the statutory attainment and ROP deadlines:

(1) The 2002 ROP plan will be due 16 months after the 2002 milestone date,

(2) The first potential sanction could only be imposed by August-September 2005 around 34 months after the 2002 ROP milestone date and around two months before the attainment date.

(3) The second potential sanction and the mandate for any needed Federal Implementation Plan would not come due until after the attainment deadline of November 15, 2005. Thus the commenter concludes the proposed schedule also is contrary to the CAA in that the plans would not be submitted and implemented prior to ROP and attainment deadlines.

With regard to the 2002 milestone, the commenter further claims that the Courts have already said that the Washington area SIP ROP plan is deficient and must be disapproved because the plan fails to provide an annual average of three percent ROP after November 15, 1999. The commenter's theory is that section 182(c)(2)(B) mandates post-1999 ROP even for serious areas and that the submittal deadline for this SIP is November 15, 1994. Under this theory the commenter concludes the EPA has no authority to extend the deadline for submittal of the ROP plans since the statutory due date of November 15, 1994 is past.

The same commenter further asserts that even if EPA could lawfully extend the submittal date (although the commenter disputes this very point) the standard for submission should be "as soon as possible." The commenter submitted a schedule recently developed by the Metropolitan Washington Air Quality Committee (MWAQC) [2] that the commenter interprets as a demonstration that the air quality planning agencies could develop the entire severe area SIP by July 2003. The commenter maintains that EPA must set the submittal date to no later than the date the air quality planning agencies maintain is necessary to finish the task.

One other commenter urged EPA to be proactive in enforcing the severe area requirements and urged EPA to enable an expeditious switch from the MOBILE5 to MOBILE 6.

Response to Comments Supporting a Shorter Schedule and on Application of Section 182(i)

Response to Comment on Section 182(i): EPA's exercise of discretion under section 182(i) to adjust the submission deadlines for the severe area requirements that become applicable to the D.C. area for the first time upon the effective date of the area's reclassification is not arbitrary or capricious, and is in keeping with the terms and purpose of the statute. Section 182(i) states that the Administrator may adjust applicable deadlines (other than attainment dates) to the extent such adjustment is necessary or appropriate to assure consistency among the required submissions of new requirements applicable to an area which has been reclassified. Where a submission date has passed and is therefore impossible to meet, EPA has concluded that the Administrator may establish a later date. EPA has applied this interpretation in its prior reclassification rulemaking actions. *See* Santa Barbara, California, (62 FR 65025, December 10, 1997); Phoenix, Arizona (62 FR 60001, November 6, 1997); and Dallas-Fort Worth, Texas (63 FR 8128, February 18, 1998). The structure of the Clean Air Act itself reinforces this interpretation. Under the Act, the original dates for submissions for areas initially classified as serious, severe, and extreme areas was 1994. The attainment date for serious areas is 1999. Thus the Act does not require EPA to make a determination of whether or not a serious area met its 1999 attainment deadline until more than five years after the original submission date for areas originally classified as severe. Since the original 1992, 1994 and 2000 submission dates have elapsed, it is impossible for EPA to establish any of these as the submission deadline for a newly reclassified area.

EPA has determined that in light of the fact that the original submission dates for severe areas have elapsed prior to the time that we issued the proposed reclassification rulemaking for the Washington area, it is a reasonable exercise of EPA's discretion to adjust the applicable submission deadlines in order to ensure consistency among the new requirements. Because it is impossible for the state to meet long-expired deadlines, EPA must set new deadlines that will ensure consistency of submissions for requirements that the state is only being notified that it must meet. This is entirely in keeping with the discretion that Congress accorded EPA in section 182(i), and with EPA's prior reclassification rulemakings making appropriate adjustments to submission deadlines. Because the States must now meet newly imposed requirements such as post-1999 ROP and additional severe area control requirements, EPA must set prospective submission dates, and has authority under section 182(i) to make these dates consistent.

To interpret the Clean Air Act as the commenter suggests would give the reclassification retroactive effect by holding the States in default of their submission obligations before the events necessary to trigger that obligation (reclassification) has occurred. Until EPA acts to reclassify an area, the states are under no obligation to make the required submissions. To subject them to a lapsed deadline after reclassification would be patently unfair and contrary to the statute's intent. Giving the submission deadlines

[2] The commenter identified this agency as the Metropolitan Washington Council of Governments (MWCOG).

retroactive effect would also be inconsistent with the Administrative Procedure Act, 5 U.S.C. 553(d), which requires that before a rule takes effect, persons affected will have advance notice of its requirements. A failure to meet an obligation, especially one accompanied by sanctions, cannot occur in advance of the imposition of that obligation. The obligation to submit requirements to meet the severe area classification did not exist for the Washington area prior to the final action that reclassifies the area. Giving retroactive effect to the old SIP submission deadlines would also preclude EPA from exercising the discretion with respect to setting the deadlines for these submissions that is specifically afforded by section 182(i).

In *Sierra Club* v. *Whitman*, 130 F. Supp.2d 78 (D.D.C. 2001), *affirmed*, 285 F.3d 63 (D.C. Cir. 2002), a case involving the reclassification of the St. Louis nonattainment area, the District Court refused to interpret the reclassification provisions as authorizing relief that would treat submission deadlines as having lapsed prior to EPA having issued a reclassification rulemaking. The court stated that such an interpretation "could 'create * * * an injustice at the hands of the court itself.'" 130 F. Supp.2d at 94. Such relief "could throw the (area) into extreme noncompliance." *Id.* The court refused to impose such relief when it "could effectively penalize the state and local entities that are required to comply with EPA findings." *Id.* In the St. Louis case, the Sierra Club demanded not only retroactive reclassification, but also demanded that the district court declare that "the State of Missouri has failed to file a SIP revision that comports with the requirements of section 7511a(c) by the statutory deadline of May 15, 1998," *id.* at 87, a date that had long since passed. The district court refused to do so, recognizing that this would unfairly penalize the States, which are entitled to rely on EPA's actions in anticipating the burdens that will be imposed pursuant to the CAA. Imposition of sanctions would also have unfair adverse consequences for emissions sources.

The D.C. Circuit upheld the District court's ruling. "In any event, what Sierra Club sought—to have the effective date of EPA's court-ordered determination converted to the date the statute envisioned, rather than the actual date of EPA's action—was a form of relief the district court quite properly rejected." *Sierra Club* v. *Whitman* 285 F.3d 63, 68 (D.C. Cir. 2002). The D.C. Circuit continued: "Although EPA failed to make the nonattainment determination within the statutory time frame, Sierra Club's proposed solution only makes the situation worse. Retroactive relief would likely impose large costs on the States, which would face fines and suits for not implementing air pollution prevention plans in 1997, even though they were not on notice at the time." *Id. See also NRDC* v. *EPA*, 22 F.3d 1125 (D.C. Cir. 1994).

EPA believes that it has provided an adequate rationale for its exercise of discretion in setting the applicable submission deadlines, and that it would be unreasonable and inappropriate to make the "immediate findings of incompleteness" that the commenter suggests.

Response to Comment on ROP Submissions

The Commenter's contention that the ROP submissions are inadequate also ignores the fact that reclassification is occurring in 2003, and thus it is impossible for the State to meet the 2002 milestone date. See the discussion in the preceding paragraphs regarding the impossibility of meeting deadlines that have already passed, and the ROP discussion in the following paragraphs.

The commenter claims that "the rate of progress plans for the Washington area are already deficient because they fail to provide for the post-1999 progress mandated by section182(c)(2)(B). *Sierra Club* v. *Whitman*, 294 F.2d 155, 163 (D.C. Cir. 2002)." The commenter claims plans to fulfill the post-1999 ROP obligation we due to EPA by November 15, 1994, and that because such plans were never submitted, EPA must therefore "disapprove those plans immediately."

With respect to the claim that EPA must disapprove these previously submitted ROP plans, this claim is not relevant to the proposed action, which was for the reclassification of the Washington area concurrent with the establishment of a reasonable deadline for submitting SIP revisions. EPA will be taking a separate action on the submitted ROP plans, which will address their approvability.

With respect to the claim that the area was required to submit to EPA a plan to fulfill post-1999 ROP by November 15, 1994, the commenter ignores the context of the Circuit Court's decision with respect to post-1999 ROP obligations. The Circuit Court was merely agreeing with an observation made by the plaintiff that "*with an attainment date in 2005*, 'the rate of progress plan for the Washington area had to demonstrate a 9% reduction in emissions from 1996 to 1999, another 9% from 1999 to 2002, and another 9% from 2002 to 2005'" (emphasis added).

However, the Circuit Court vacated as contrary to the statute EPA's approval of a 2005 attainment date for the Washington area to attain as serious area. 294 F.2d at 164. Consequently, until the effective date of final action to reclassify the Washington area as a severe nonattainment area with an attainment date of November 15, 2005, the attainment date for the Washington area remained the November 15, 1999 date for serious areas. Indeed, it is the failure of the Washington area to attain the one-hour ozone NAAQS by November 15, 1999 that results in the area being reclassified as a severe area.

As a serious area with a lapsed attainment date of November 15, 1999, the Washington area had no legal obligation to provide for post-1999 ROP. As noted by the Circuit Court, only an area with an attainment date of 2005 has a legal obligation to provide for post-1999 ROP. The Washington area will not have an attainment date of 2005 until the effective date of its reclassification as a severe area. A serious area has an obligation to provide for ROP until its attainment date, which is 1999. *See* section 182(c)(2)(B) and section 181(a)(1). Not until it is reclassified to severe does an area have a later attainment date and a consequent obligation to provide for ROP until that later attainment date (2005 in the case of the Washington area). *See* section 182(d). As explained elsewhere in this section of this document in the responses regarding application of section 182(i), the Administrative Procedure Act requires that new obligations, such as the one to demonstrate post-1999 ROP for an area reclassified to severe nonattainment, cannot be imposed retroactively.

Response to Comment on Findings of Incompleteness

One commenter suggests that because EPA has not provided a rationale why the proposed schedule is necessary and appropriate the SIP is past due (under the schedule provisions of section 182(b)–(d)) and thus EPA must make immediate "findings of incompleteness" under section 110(k)(1)(B). As discussed in previous paragraphs of this document, EPA disagrees with the commenter that section 182(i) prohibits EPA from providing the state with time to submit a SIP consistent with its reclassification from serious to severe. As provided in the preceding paragraphs, EPA has concluded that it is reasonable and appropriate to provide the state until March 1, 2004, to submit

a SIP based on its reclassification. Thus, there is no SIP due yet and there is no basis to find that the state failed to submit a complete SIP. To the extent the commenter is suggesting that EPA determine the area's serious area SIP to be incomplete, EPA notes that the serious area SIP revisions for which EPA has not issued a final action were deemed complete or deemed complete by operation of law under CAA section 110(k)(1)(B). These serious area SIP revisions and their submission dates are listed in the following table.

TABLE 2.–SUBMITTAL DATES OF SERIOUS AREA SIP REVISIONS

[Post-1996 ROP Plans and Contingency Measure Plans]

	District of Columbia	Maryland	Virginia
Initial submittal dates	November 10, 1997	December 24, 1997	December 19, 1997.
Amendment dates	May 25, 1999	May 20, 1999	May 25, 1999.
Attainment Demonstrations			
Initial submittal dates	April 24, 1998	April 29, 1998	April 29, 1998.
Amendment dates	October 27, 1998	August 17, 1998	August 18, 1998.
Supplemental dates	February 16, 2000	February 14, 2000 (MD SIP No. 00–01)	February 9, 2000.
Supplemental dates	March 22, 2000	March 31, 2000 (MD SIP No. 00–02)	March 31, 2000.

All the attainment demonstration SIP revisions were deemed complete by operation of law under CAA section 110(k)(1)(B) six-months after the dates listed in the preceding table. Therefore, the latest of these revisions related to the attainment demonstration, those submitted in March 2000, were complete by operation of law on or prior to October 1, 2000.

On November 3, 1997, the District submitted the Post-1996 plan to EPA as a proposed revision to the District's SIP. On December 10, 1997, EPA determined that the Post-1996 plan fulfilled the completeness criteria set out at 40 CFR part 51, appendix V (1991), as amended by 57 FR 42216 (August 26, 1991). On May 25, 1999, the District submitted a revised Post-1996 plan document to EPA as a revision to the District's SIP. On July 14, 1999, EPA determined that this revised Post-1996 plan fulfilled the completeness criteria set out at 40 CFR part 51, appendix V.

On December 24, 1997, Maryland submitted the Post-1996 plan to EPA as a proposed revision to Maryland's SIP. On January 14, 1998, EPA determined that the Post-1996 plan fulfilled the completeness criteria set out at 40 CFR part 51, appendix V. On May 20, 1999, Maryland submitted a revised Post-1996 plan document to EPA as a revision to Maryland's SIP. On July 14, 1999, EPA determined that this revised Post-1996 plan fulfilled the completeness criteria set out at 40 CFR part 51, appendix V.

On December 19, 1997, Virginia submitted the Post-1996 plan to EPA as a proposed revision to Virginia's SIP. On January 12, 1998, EPA determined that the Post-1996 plan fulfilled the completeness criteria set out at 40 CFR part 51, appendix V (1991). On May 25, 1999, Virginia submitted a revised 1999 Post-1996 plan document to EPA as a revision to Virginia's SIP. On July 26, 1999, EPA determined that this revised Post-1996 plan fulfilled the completeness criteria set out at 40 CFR part 51, appendix V.

EPA believes that it has provided an adequate rationale for its exercise of discretion in setting the applicable submission deadlines, and that it would be unreasonable, inappropriate and contrary with applicable law to make the "immediate findings of incompleteness" that the commenter suggests.

Response to Comment That July 2003 Should Be the Submittal Date

One commenter submitted a schedule that was presented to the Transportation Planning Board (TPB) at their December 18, 2002, meeting. EPA does not disagree that this schedule was developed on December 4, 2002, and adopted by the Metropolitan Washington Air Quality Committee (MWAQC). However, this schedule clearly shows three parallel tracks of activities: the first is the "SIP schedule"; the second is "State Action Deadlines"; and the third is "TPB Conformity". The schedule says that in January 2003 the preliminary shortfall analysis for 2005 will be completed. The same document says that in February 2003 the States will provide schedules for Title I modifications.

The severe area SIP has many elements. One is a ROP plan for the post-1999 ROP milestone years to include conformity budgets, emission target levels determinations, and future year emissions levels projections. Another is revisions to the area's mobile source emissions estimates for the base year and previously submitted 2005 budgets using MOBILE6. Historically, the MWAQC develops these elements of the SIP, ensures inter-State coordination and ensures that appropriate consultation regarding the mobile source emissions budgets with the transportation planning agencies occurs. However, it is the States, not MWAQC, that must adopt the MWAQC plans for inclusion in each State's SIP. Historically, the States have had to adopt control measure regulations to support the MWAQC air quality plans and meet CAA requirements for nonattainment areas.

The severe area SIP elements that will require action by the District, Virginia and Maryland include any needed changes to each jurisdiction's new source review permitting rules to incorporate the severe area offset ratios and major source thresholds or to lower reasonable available control technology major source thresholds. Other examples could include adoption of regulations to address any post-1999 ROP plan reduction needs not provided by the current control strategies in the SIPs and to address contingency measure requirements.

The District of Columbia, Virginia and Maryland each have written to EPA indicating that they support the date of March 1, 2004, to complete the total severe area SIP package. These States have clarified that MWAQC's use of the term "severe area SIP" does not mean the total package.

The Maryland Department of the Environment (MDE) understands that MWAQC's plan is to finalize and forward a recommended SIP revision to the States in July 2003. MDE indicates that MDE will need to complete additional tasks after the MWAQC completes its work on the severe area SIP for the Washington area. These tasks

include promulgating the new mandatory Title I provisions like New Source Review, contingency measures and any shortfall measures that result from the MWAQC process. Maryland has already started to draft regulations for some of these SIP elements, but believes that it will take until March 1, 2004 to finalize many of the rules that will need to be included as part of the final SIP submittal.

The District of Columbia Department of Health, Division of Air Quality (DC DAQ), points out that the schedule adopted by the MWAQC is very aggressive and establishes milestones and actions for which MWAQC is responsible, but it does not include all the steps involved in developing a complete SIP.

DC DAQ notes it can not complete by July 2003 either the regulatory process for the required Title I NSR changes or the NO_X RACT determinations for sources that emit between 25 and 50 tons per year by July 2003. The DC DAQ notes it cannot complete these in less than six months and notes the normal schedule for adoption of rules is ten months. The DC DAQ has informed us that any measures identified as RACM will require time beyond July 2003 for the development of implementation plans and schedules.

The Virginia Department of Environmental Quality (DEQ) points out that the schedule adopted by the MWAQC is very aggressive and establishes milestones and actions for which MWAQC is responsible, but it does not include all the steps involved in developing a complete SIP.

DEQ notes it can not complete by 2004 either the regulatory process for the additional rulemakings required or the NO_X RACT determinations for sources that emit between 25 and 50 tons per year before March 2004. DEQ is currently working on both of these tasks. DEQ has informed us that any measures identified as RACM will require time beyond July for the development of implementation plans and schedules.

Given that the contingency measures or other necessary measures (e.g., any remaining reasonably available control measures or measure needed to uncover a shortfall found by the ROP planning which is scheduled to be available only in January 2003) have not been selected (or even identified), EPA does not believe that any State could adopt new measures between January and July 2003. Nothing from the States indicates otherwise.

For the reasons set forth above, we cannot conclude from the information before us that the schedule provided by the one commenter reflects the intention that all three States would submit complete severe area SIP packages to EPA by July 2003. Indeed, three of the States have informed us that they could not meet, and have never intended or committed to meet, a July 2003 SIP submittal deadline.

Likewise, information received from the States provides no reason to extend the severe area SIP submittal date beyond what we proposed on November 13, 2002. We proposed a submittal date of one year after the effective date of a final reclassification to severe but not later than March 1, 2004. Because one year after the effective date of this action will be past March 1, 2004, we are setting a deadline for the submission of the severe area SIP as March 1, 2004.

Comments Supporting a Longer Schedule Than That Proposed

Two commenters asserted that one year to develop the severe area SIP is insufficient given the length of time required by one state's regulatory adoption process and the need to allow time to identify additional control measure needs to meet the severe area requirement. The first of these two commenters noted that one state needed 18 months to adopt control regulations while the second stated that the same state would require 18 to 24 months for this process. The first of these two commenters urged EPA to set the due date for submittal of the severe area SIP to 24 months. The second of these two commenters urged EPA to add at least six months to the proposed March 1, 2004, date found in the proposal or to allow enforceable commitments.

EPA's Response To Comment on Need for a Longer Schedule for Submission

EPA believes that the deadlines it has set for submission of the severe area requirements are consistent with the Clean Air Act and are adequate for the area to achieve compliance. EPA has discretion to adjust deadlines under section 182(i). EPA believes that a period up to eighteen months would be consistent with the Act, since under section 110(k)(5) the Clean Air Act SIP revision provision, states have up to 18 months to submit a SIP revision after receiving a SIP call notice.

Given that the States have indicated in this case that March 1, 2004, is not unreasonable, and we received no adverse comments from the states during the comment period indicating that they could not meet this deadline, EPA is setting a deadline for the submission of the severe area SIP as March 1, 2004.

C. Rate-of-Progress (ROP) and Contingency Measures for 2002

Comments in Support of Allowing the States To Adjust the 2002 Milestone

One commenter supported the "expeditious" standard as being appropriate. Another commenter agreed with EPA that the nine percent reduction should be achieved as soon as practicable after November 15, 2002.

Comments in Opposition To Allowing the States To Adjust the 2002 Milestone

One commenter stated that EPA cannot move the November 15, 2002, statutory deadline for the 2002 ROP reduction of nine percent between November 15, 1999, and November 15, 2002. The commenter claims that the ROP plan for the Washington area has to demonstrate a nine percent reduction in emissions between November 15, 1999, and November 15, 2002, (as well as nine percent between November 15, 1996, and November 15, 1999, and another nine percent between November 15, 2002, and November 15, 2005). The commenter claims that if the states cannot show a nine percent reduction between November 15, 1999 and November 15, 2002, then the states must implement the only alternative scheme allowed by statute, namely that of section 182(c)(2)(B)(ii).

The same commenter asserts that even if the statute were not explicit as to the ROP deadline, the proposed "as expeditiously as practicable" standard should be "as soon as possible with every control measure." The commenter further asserts that the term "practicable" in "as expeditiously as practicable" is not defined in terms of what factors will go into the determination and thus could be used to nullify the statutory deadline.

This commenter further asserts that EPA does not have the statutory authority to move the 2002 ROP milestone date and thus there is no need for the contingency plan requirement to account for a date other than November 15, 2002.

Response: With respect to the assertion that EPA lacks authority to allow the States to demonstrate the first required post-1999 nine percent ROP, due under the statute by November 15, 2002, as expeditiously as practicable, EPA disagrees, in light of the fact that the statutory deadline has passed. It is impossible for the states to demonstrate any progress by a date that passed before the time the area became classified a severe area and thus first became subject to the requirement to demonstrate post-1999 ROP. EPA agrees that the Washington area must now

demonstrate such progress, but reasonably concludes that the states must have some time in which to actually develop and implement the measures to achieve such ROP. EPA has addressed similar issues on several occasions in the past when areas for various reasons have not timely submitted progress SIPs, and when the date for achieving progress had passed prior to EPA action on a progress SIP. EPA has routinely concluded in these circumstances that the area should demonstrate the required ROP as expeditiously as practicable once the statutory date for achieving such ROP had passed. *See, e.g.*, 65 FR 31485 (May 18, 2000), 63 FR 28898 (May 27, 1998), 62 FR 31343 (June 9, 1997). Even though, as the commenter points out, there is no provision in the statute expressly addressing the situation where an area has failed to timely submit a progress SIP, EPA must fill the statutory gap where such SIPs are submitted after the date for achieving progress, and EPA has reasonably done so in this case by following its past practice of requiring such SIPs to demonstrate ROP as expeditiously as practicable. Although no court has directly addressed the issue of the propriety of this "as expeditious as practicable" standard, courts have addressed other issues concerning ROP plans submitted after the statutory date for achieving ROP, which have demonstrated ROP as expeditiously as practicable, without expressing any concern with that standard. *See, e.g., Sierra Club* v. *EPA*, 252 F.3d 943 (8th Cir. 2001) (Court upheld calculation methods used in 15 percent ROP plan submitted three years after statutory date demonstrating achievement of ROP seven years after statutory date).

The commenter indicates that the only statutory provision allowing less than a nine percent reduction by 2002 is CAA section 182(c)(2)(B)(ii). However, the commenter misconstrues that section which provides for areas to demonstrate that they have adopted various feasible measures in exchange for achieving a less than nine percent reduction. Although this provision would remain available to the Washington area states should they be unable to demonstrate the required average annual three percent reduction after November 15, 1996, through the attainment date of November 15, 2005, EPA did not propose to allow the states to show less than the nine percent reduction. EPA merely acknowledged in the proposal that the statutory date for achieving the nine percent reduction had passed and that in such event the states should demonstrate the full nine percent reduction as expeditiously as practicable.

The commenter also objects to the observed stringency of the "as expeditious as practicable" standard, citing a case involving the 1987 attainment date in the 1977 version of the Clean Air Act, in which the court held that once an attainment date has passed an area must demonstrate attainment "as soon as possible with every available control measure." *Delaney* v. *EPA*, 898 F.2d 687, 691 (9th Cir. 1990). However, that case was interpreting EPA's 1981 guidance on planning for post-1987 attainment, in which EPA had indicated that areas which could not attain by 1987 should identify all "measures possible in a longer time frame that, together with the measures already evaluated, will result in attainment as quickly as possible after 1987." 46 FR 7186, 7188 (January 22, 1981). Subsequent to the *Delaney* opinion, EPA published a **Federal Register** notice in which it clarified that the agency never intended that its 1981 guidance be interpreted to require the imposition of draconian control measures, nor to require immediate attainment after 1987 if only such measures could produce it. 55 FR 38326 (September 17, 1990). To avoid future misinterpretation of this guidance, EPA then revoked those aspects of the 1981 guidance requiring the use of "all possible measures" after 1987. *Id.*, at 38327. The EPA instead concluded that Federal and State post-1987 planning should attain the standard "as expeditiously as practicable," as required by section 172(a)(2). EPA concluded that the statute does not require measures that are absurd, unenforceable, or impracticable, and thus that, after 1987, EPA would equate its interpretation of the Ninth Circuit's standard in *Delaney* of attainment "as soon as possible" absent absurd, impossible, or unenforceable measures with the statutory test of attainment "as expeditiously as practicable." *Id.* This is the interpretation EPA has consistently held since that time, as noted in the various **Federal Register** actions mentioned above where areas have missed statutory deadlines for attainment or ROP.

Moreover, EPA notes that one court, while finding *Delaney* not precisely on point for its purpose of fashioning a remedy in a citizen's enforcement action, nevertheless made some instructive observations on the relationship between the two standards. The Court noted that: "[A]lthough the Delaney opinion utilized the 'as soon as possible' standard employed by EPA guidelines, it did not do so out of rejection of the 'practicable' standard or out of concern that the two standards differed. Rather it simply had no occasion to compare them. Indeed the Delaney court appeared to blur them when it criticized Arizona for rejecting measures without demonstrating that such measures were 'impracticable' or unreasonable." *Citizens for a Better Environment* v. *Deukmejian*, 746 F. Supp. 976, 985 (N.D. Cal. 1990). The Court went on to observe that: "As a practical matter, however, no Court will use its equitable powers to impose remedies that are irrational, albeit 'possible.' Thus as long as time is considered paramount, and the term 'practical' is strictly construed in keeping with the purposes of the Act, the 'as expeditiously as practicable' standard should yield no less results than an 'as soon as possible' standard." *Id.*

The Court concluded that "when properly interpreted, there is no practical difference between the two standards." *Id.* EPA agrees with this assessment.

The commenter further complains that EPA's standard does not impose any particular deadline, and that it is too vague and undefined. However, the standard is the very one established in the statute for attainment of the standard, and years of experience in implementation of the statute has provided EPA and the states sufficient familiarity with the standard. Finally, the commenter notes that the states have already submitted ROP plans which the D.C. Circuit has allegedly found deficient for failure to include progress through 2002, thus warranting disapproval. As we stated previously this claim is not relevant to the proposed action, which was for reclassification of the Washington area concurrent with the establishment of a reasonable deadline for submitting SIP revisions. The commenter's contention that the ROP submissions are inadequate for not having ROP for 2002 and 2005 also ignores the fact that reclassification is occurring in 2003, and thus it is impossible for the State to meet the 2002 milestone date. Refer to the discussion in the preceding section entitled "Severe Area SIP Revision Submittal Schedule" regarding the impossibility of meeting deadlines that have already passed, and the ROP discussion regarding the Washington area's post-1999 ROP obligation that appears elsewhere in this document.

The severe area ROP plan will also have to provide for the second increment of post-1999 ROP for the period 2002 to 2005 and thus must

achieve a minimum of 18 percent emission reduction from base line emissions by November 15, 2005. Therefore, this delay does not reduce the overall ROP obligation.

With respect to the claim that EPA incorrectly asserted that contingency plans would need to account for any adjustment in the 2002 ROP milestone date, EPA disagrees. As discussed in the preceding paragraphs, EPA reasonably concluded that after 2002 the 2002 ROP milestone date should be adjusted to be "as expeditiously as practicable," and thus contingency measures would properly be keyed to this new date.

The requirements for contingency measures for failure to attain the 1-hour ozone NAAQS by November 15, 2005 or a 2005 ROP milestone failure are not affected by this action.

D. Triggering Implementation of Contingency Measures

Summary of Public Comments Received and EPA's Response

Comment: One commenter urged EPA to specify in the final rulemaking that any adjustment of the 2002 ROP milestone would not trigger or require the implementation of contingency measures in the area.

Response: EPA believes that allowing the first required post-1999 nine percent ROP, due by November 15, 2002, to be demonstrated as expeditiously as practicable after that date does not trigger the need to implement contingency measures prior to that date.

EPA is allowing the District, Maryland and Virginia to demonstrate that the first required post-1999 nine percent ROP, due under the statute by November 15, 2002, as expeditiously as practicable after that date in the event that control measures currently in the SIPs of the District, Maryland and Virginia or already promulgated by EPA, have not already achieved the required nine percent reduction by November 15, 2002. This first post-1999 ROP reduction has to be from base line emissions and account for growth in emissions through November 15, 2002. We have noted that for the Washington area there are emission reductions not relied on or credited in the ROP plan accruing between November 15, 1999, and November 15, 2002, from the January 1, 2000, implementation of phase 2 of the reformulated gasoline program, NO_X reductions beyond RACT, and other on-road measures, such as the national low emission vehicle (NLEV) program, and a variety of off-road national emissions reduction programs. *See* 66 FR at 615, January 3, 2001. These measures have and will continue to provide additional reductions beyond those credited in the area's post-1996 ROP for the November 15, 1999, ROP milestone. These measures meet the ROP creditablity requirements of CAA sections 182(b) and (c) because these measures are already in the approved SIPs or are rules promulgated by the EPA. However, EPA had insufficient information at the time of the November 13, 2002, notice of proposed rulemaking (and currently still has insufficient information) to determine whether or not these measures achieve the required nine percent reduction in base line emissions for the first post-1999 period. One major factor in demonstrating ROP for any milestone year is the release of a revised mobile source emissions factor model, MOBILE6. As discussed elsewhere in this document, as well as in the November 13, 2002, notice of proposed rulemaking (67 FR at 68811) the revised MOBILE6 model must be used for the severe area SIP and the MOBILE6 model must be used to redetermine 1990 base line emissions and prior target levels, as well as the new 2002 and 2005 year target levels and control strategy projections.

In the event that the Washington area can demonstrate that the required nine percent reduction occurred by November 15, 2002, (with the current SIP plus Federal measures), then the contingency requirement will not be triggered. In the event the area cannot demonstrate the required nine percent reduction did occur by November 15, 2002, (with the current SIP plus Federal measures) then EPA has determined that the District, Maryland and Virginia ROP SIP would be able to adjust the milestone date for the first required post-1999 nine percent ROP to a date that is as expeditiously as practicable after November 15, 2002. As explained in prior paragraphs, this is because the statutory 2002 ROP date lapsed before the area was first classified as severe ozone nonattainment. Only a finding that the area failed to achieve the required reductions by that new milestone could trigger the need to implement contingency measures.

E. Impacts on Mobile Source Emissions Budgets and Transportation Planning

Summary of Public Comments Received and EPA's Response

Comment #1: One commenter stated agreement with our assessment that a portion of the Washington area air quality problem is due to transport and agreement that there has been improvement in ozone air quality in the area. For these reasons the commenter asserted that the area should not be subjected to punitive measures such as sanctions, nor subject to lapses or "freezes" of the transportation planning processes.

Response #1: This action does not create a "conformity freeze" or impose sanctions.[3] Under section 179(a), sanctions can result from an EPA finding that a State failed to submit a required SIP revision (or has submitted one that does not meet the completeness requirements of the CAA and EPA regulations) or other required submission required under the CAA, result from a disapproval of a required submission, or result from a finding that a State is not implementing all or part of its approved SIP.[4] Likewise, under the conformity rule, 40 CFR part 93, a conformity freeze only results when EPA disapproves a ROP or attainment demonstration SIP revision without making a protective finding. *See* 40 CFR 93.120(a)(2). This final rule does none of these things.

Comment #2: One commenter asserted that transportation planning should not be subject to a conformity freeze due to action on the plans subject to the July 2, 2002, Court ruling on EPA's January 3, 2001, final rule on the Washington area SIP.

Response #2: This comment is not germane to this action. EPA did not propose action on any SIP revision in the November 13, 2002, notice of proposed rulemaking. The action EPA takes on the SIP revisions formerly covered by the now vacated January 3, 2001, final rule will be the subject of separate rulemaking action(s). EPA intends to establish in a forthcoming notice of proposed rulemaking in the **Federal Register** a separate public comment period on these SIP revisions.

Comment #3: One commenter stated that the District, Maryland and Virginia had provided MOBILE5 budgets for the Washington area that were found to be adequate. This commenter claimed these budgets were consistent with the attainment plan and were the most-recent budgets at the time these budgets were developed. The commenter urged that no conformity freeze should ensue because these budgets are adequate. This commenter urged EPA to allow the area to continue to use any adequate MOBILE5 derived budgets until

[3] In a conformity freeze the only transportation projects that could be found to conform would be those included in the first three years of the currently conforming transportation plan and transportation improvement program (TIP). No new plans, TIPs, or plan/TIP amendments could be found to conform after the effective date of the disapproval.

[4] EPA's completeness criteria that are promulgated pursuant to section 110(k)(1) of the CAA are found in appendix V to 40 CFR part 51.

MOBILE6 based budgets are found to be adequate.

Response #3: This action has no effect on the adequacy status of budgets or the determination of which budgets are in effect. These comments are not germane to this action because EPA did not propose any action on any budgets in the November 13, 2002, notice of proposed rulemaking.

Our discussion of conformity issues in the November 13, 2002, notice of proposed rulemaking was only for the purpose of informing the public of the status of the separate process related to the adequacy status of the budgets in the SIP for which EPA's approval was vacated by the July 2, 2002, court ruling. EPA has taken no final action with respect to adequacy and thus the budgets in the vacated SIPs currently can not be used for conformity. The previously approved ROP budgets in the 15 percent ROP SIPs are currently in effect. (*See* 64 FR 42629, August 5, 1999, 65 FR 44686, July 19, 2000, and 65 FR 59727, October 6, 2000.) *See* the discussion under section XIII of the notice of proposed rulemaking entitled "What are the Transportation Conformity Implications of Reclassification?" (67 FR at 68810, November 13, 2002).

F. MOBILE6 Model and the Submittal Schedule

In the November 13, 2002, notice of proposed rulemaking, we discussed the MOBILE6 release to interpret and reiterate application of our guidance affiliated with the January 29, 2002, official release of the MOBILE6 emission factor model to the SIP revisions that the Washington area needed to prepare if the area was reclassified to severe.

Summary of Public Comments Received and EPA's Responses

Comment #1: One commenter claims the MOBILE5 emission factor model lacks the ability to predict real emissions because it uses average trip speed to predict emissions and thus misses the influence of variations in speed on emissions. The commenter further claims that MOBILE6 will have the same imperfection because it merely substitutes average speed on each link for average trip speed. The commenter asserts that MOBILE6 will be replaced in a few years, that this planned replacement shows MOBILE6 is inadequate and that tax dollars should not be spent on using a model that is inadequate for its intended purpose.

Response #1: In the November 13, 2002, notice of proposed rulemaking, we discussed the MOBILE6 release to interpret and reiterate application of our guidance affiliated with the January 29, 2002, official release of the MOBILE6 emission factor model to the severe area SIP revisions that would become due if the Washington area was reclassified to severe. As a consequence, application of our guidance policy relating to the phase-in of MOBILE6 will require additional plan development in the case of the Washington area that would not have occurred otherwise. This increase in scope of the severe area SIP development is one factor in setting the deadline for submission of the severe area SIP.

The Washington area States had submitted a plan to demonstrate that the Washington area would attain the ozone NAAQS by November 15, 2005, once transport-controls implemented in upwind areas have had time to take effect. This plan included, among other things, 2005 motor vehicle emissions budgets, a ROP plan through 1999 and the approved 1990 base year emission inventory. The District, Maryland and Virginia had used the MOBILE5b model to quantify the on-road mobile source emissions for the ROP plan through 1999, the 2005 motor vehicle emissions budgets and the 1990 base year inventory.

If the Washington area had been reclassified to severe nonattainment well before the release of MOBILE6 the existing submittals might have formed part of the severe area SIP by adding the other elements including (but not limited to) ROP plans through 2005, contingency measures and revised major stationary source thresholds and severe area offset ratios. In the absence of an official release of MOBILE6, the States could have continued to use MOBILE5b to develop the missing ROP plans for 2002 and 2005 and to revise the 2005 attainment motor vehicle emissions budgets to reflect any new transportation control measures that might be adopted.

However, MOBILE6, which has been officially released, incorporates numerous changes in emissions that necessitate a revision to the 1990 base year inventory which is, among other things, the planning base line from which the 2002 and 2005 ROP targets are calculated. The changes incorporated into MOBILE6 were not merely limited to coding in the effects of new regulations under the federal motor vehicle control program but also looked at factors and data that result in changed emission rates for 1999 and earlier years. MOBILE6 is a major revision of the MOBILE model. The revision is based on much new data, but also on new understanding of vehicle emission processes. It includes the effects of regulations that have been issued since MOBILE5b was released, and it includes new features designed to make the model more useful. The improvements in the data and calculations have led to improved estimates of highway vehicle emissions. In some cases, the updated MOBILE6 emissions are significantly different from the emissions estimated with MOBILE5.

In the November 13, 2002, notice of proposed rulemaking, EPA intended to state our position that the severe area ROP plan and attainment demonstration need to use MOBILE6 to calculate ROP targets, ROP and attainment motor vehicle emissions budgets using MOBILE6. Because MOBILE6 is the best model currently available and has been officially released, EPA reaffirms that MOBILE6 must be used by Maryland, Virginia and the District of Columbia to quantify mobile source emissions levels and benefits of mobile source emissions control measures and programs when developing the severe area SIP for the Washington area. These uses include (but are not limited to) revision of the1990 base year emissions inventory, development of the target levels for the 2002 and 2005 ROP plans future year emissions projections, and development of motor vehicle emissions budgets.

EPA is currently developing the framework for the model that will eventually replace MOBILE6. While work has begun on the new model, we estimate that it will not be completed until the fall of 2005. In other words, based on EPA's current schedule it is likely that the new model will not be available more than one or two months prior to the area's attainment date of November 15, 2005. Therefore, it is not possible for EPA to allow the area to wait until the new model is available to submit the severe area SIP revisions that are required. For areas reclassified under section 181(b), pursuant to section 182(i) of the CAA EPA can adjust applicable deadlines (other than the attainment date) such as those for submission of a SIP to meet a new classification or achievement of rate-of-progress, but EPA cannot delay the date by which the Washington area must submit the severe area SIP revision submissions past the attainment date.

With regard to the influence of speeds on emissions, EPA concludes that MOBILE6 provides the best estimates of mobile source emissions currently available including consideration of the effects of speed on emissions. Thus EPA believes it is appropriate for the Washington area to use MOBILE6 for current SIP planning. This is for the

reasons discussed in the preceding paragraphs: (1) MOBILE6 is the best model currently available and has been officially released; (2) EPA believes it is unlikely a new model will become available within the time period before the severe area SIPs are due; and (3) because the release date of any successor model cannot be forecast at this time, EPA cannot delay the submittal date indefinitely.

Comment #2: One commenter agreed with EPA that the July 2, 2002, Court ruling vacated approval of the commitment to revise the transportation conformity budgets within one year of the official release of MOBILE6. This commenter urged EPA to set the date by which the area must set transportation conformity budgets using MOBILE6 to coincide with the date by which the severe area plan elements must be submitted.

Response #2: In the November 13, 2002, notice of proposed rulemaking, we discussed the MOBILE6 release to interpret and reiterate application of our guidance affiliated with the January 29, 2002, official release of the MOBILE6 emission factor model to the SIP revisions that would become due if the Washington area was reclassified to severe. Given the time that has now elapsed since the release of the MOBILE6, EPA believes that application of our policy and guidance related to the release of the MOBILE6 model means that MOBILE6 is the only proper model to be used for any motor vehicle emissions budgets submitted to fulfill the severe area requirements.[5]

EPA did not propose action on any SIP revision or on any enforceable commitment in the November 13, 2002, notice of proposed rulemaking for this action. Any action EPA takes on the SIP revisions formerly covered by the now vacated January 3, 2001, final rule will be the subject of separate rulemaking action(s). EPA will establish in a forthcoming notice of proposed rulemaking in the **Federal Register** a separate public comment period on these SIP revisions. EPA anticipates it would not set any different date for submittal of the budgets than the date for submittal of the ROP and attainment demonstration SIP revisions.

G. Need for Mid-Course Review

Summary of Public Comments Received

One commenter agreed with EPA that the July 2, 2002, Court ruling vacated approval of the commitment to perform a mid-course review (MCR). The commenter contended that the schedule for submittal of the severe area SIP might well negate the need for a MCR and asked EPA to specify whether the severe area SIP needs to include a MCR.

EPA's Response

EPA disagrees that the schedule set in this final rule fully negates the need for a commitment to a MCR.

Our 1996 modeling guidance recognizes a need to perform a MCR review as a means for addressing uncertainty in the modeling results.[6] Because of the uncertainty in long term projections, EPA believes a viable attainment demonstration that relies on WOE needs to contain provisions for periodic review of monitoring, emissions, and modeling data to assess the extent to which refinements to emission control measures are needed.

On March 28, 2002, EPA issued further guidance on the performance of the MCR.[7] In this memorandum covered the overall MCR process and timing, including the potential consequences of findings that progress toward attainment is, or is not, being made; guidance for situations where failure to make progress is due to transport; and a special schedule for other (*e.g.*, moderate or serious) ozone nonattainment areas with attainment dates of 2004 or earlier. This memorandum revised some of the earlier policy related to areas in the east significantly affected by transport. Originally we required the Washington area to provide an enforceable commitment to perform the MCR following the 2003 ozone season and to submit the results to EPA by the end of the review year (*i.e.*, December 31, 2003). We chose the end of calendar year 2003 because at the time we had thought that an analysis in 2003 would be most robust since some or all of the regional NO_X emission reductions should be achieved by that date.

In our January 2002, guidance we noted that if a State's implementation plan relies on regional control measures, for a MCR to be useful, a substantial portion of these measures need to have been implemented prior to the most recent ozone season in the nonattainment area for which the MCR is being performed. For example, if NO_X SIP call measures are implemented by the spring of 2004, and those measures are an important part of the strategy for meeting the NAAQS in a particular nonattainment area, the MCR should include data from the Summer of 2004.[8] EPA has already concluded that the Washington area is significantly affected by transport and issued the NO_X SIP call to prohibit specified amounts of emissions of one of the main precursors of ground-level ozone, NO_X, to reduce ozone transport across State boundaries in the eastern half of the United States. *See* 63 FR 57356, October 27, 1998).

While the District, Maryland and Virginia may be able to perform some aspects of the MCR before submission of the severe area SIP, they will not be able to incorporate 2004 air quality data into the analysis. The 2004 air quality data should be the first to reflect control of NO_X throughout the entire eastern half of the United States. EPA believes that the appropriate submission date for the MCR for the Washington area is no later than December 31, 2004, in order to include air quality data that reflects at least one full season of regional NO_X controls. Given that the schedule set in this final rule requires submission of the severe area SIP before December 31, 2004, EPA believes that the Washington area needs to revise its commitment to perform a MCR as part of its severe area SIP. The revised commitment would not have to provide an administrative review of additional measures adopted after reclassification to severe, but would have to address other aspects of a MCR.

H. Guidance on Offsetting Growth in Emissions Due to Growth in Vehicle Miles Traveled (VMT)

Summary of Public Comments Received

One commenter asked for clarification regarding a statement made regarding the enforceable transportation control strategies requirement of section 182(d)(1). The text at issue in the proposal was found in item number four in section XII of the proposed rule (67 FR at 68810) which was entitled "What would a Reclassification Mean for the Washington Area?", November 13, 2002). The commenter noted a discrepancy between the description in the notice of proposed rulemaking and the language found in the statute. The commenter stated that section 182(d)(1) of the CAA requires a State to submit a

[5] The applicable guidance and policy can be found in the January 18, 2002, joint memorandum from John S. Seitz and Margo Tsirigotis Oge entitled "Policy Guidance for the Use of MOBILE6 in SIP Development and Transportation Conformity."

[6] *See* "Guidance on Use of Modeled Results to Demonstrate Attainment of the Ozone NAAQS", EPA–454/B–95–007, June 1996.

[7] *See* "Mid-Course Review Guidance for the 1-Hour Ozone Nonattainment Areas that Rely on Weight-of-Evidence for Attainment Demonstration," from Lydia N. Wegman, Director, Air Quality Strategies & Standards Division, OAQPS and J. David Mobley, Acting Director, Emissions, Monitoring and Analysis Division, OAQPS, dated March 28, 2002, and *see* "Recommended Approach For Performing Mid-course Review of SIP's To Meet The 1-hour NAAQS For Ozone," January 2002.

[8] *Ibid.*

revision "that identifies and adopts specific enforceable transportation control strategies and transportation control measures to offset any growth in emissions from growth in vehicle miles traveled or numbers of vehicle trips in such area and to attain reduction in motor vehicle emissions as necessary, in combination with other emission reduction requirements of this subpart, to comply with the requirements of subsection (b)(2)(B) and (c)(2)(B) (pertaining to periodic emissions reduction requirements). The State shall consider measures specified in section 108(f), and choose from among and implement such measures as necessary to demonstrate attainment." In contrast the notice of proposed rulemaking stated "[e]nforceable transportation control strategies and measures to offset projected growth in vehicle miles traveled or number of vehicle trips as necessary to demonstrate attainment and to achieve periodic emissions reduction requirements".

The commenter asserted that if EPA was changing the requirement for the Washington area from a requirement for measures to offset growth in vehicle emissions due to VMT growth or number of vehicle trips as necessary to attain or achieve ROP to one requiring measures to offset VMT growth or number of vehicle trips then EPA needs to conduct formal notice and comment rulemaking.

EPA's Response

EPA intent in section XII entitled "What would a Reclassification Mean for the Washington Area" of the notice of proposed rulemaking was not to change any requirement or any change current guidance or policy. In section XII of the notice of proposed rulemaking we merely outlined some of the major planning elements that the Washington area would have to include in a severe area SIP. EPA agrees that the summary description provided in the notice of proposed rulemaking would have better reflected the statutory requirement if it had said "enforceable transportation control strategies and measures to offset any growth in emissions due to projected growth in vehicle miles traveled or number of vehicle trips as necessary to demonstrate attainment and to achieve periodic emissions reduction requirements."

I. 2002 Air Quality Data and Air Quality Improvement Since 1990

Summary of Public Comments Received

One commenter does not agree with EPA's statement in the notice of proposed rulemaking that the air quality in the Washington area has improved significantly since 1990. The commenter claims the notice failed to consider air quality data for the 2002 ozone season and that the 2002 ozone season was the worst in a decade because their were nine days during which at least one monitor exceeded the 1-hour ozone NAAQS.

EPA's Response

Some of the air quality data trends presented in the notice of proposed rulemaking were for informational purposes only and do not form the basis for the action we announce in this document. The data relevant for purposes of making the statutory determination of whether the area attained by its deadline is that which shows the area did not attain by November 15, 1999.

As explained elsewhere in this document, section 181(b)(2)(A) of the Clean Air Act requires that when EPA determines that an area has not attained the standard by its statutorily required date the area shall be reclassified by operation of law to the higher of—

(1) The next higher classification for the area, or

(2) The classification applicable to the area's design value as determined at the time EPA publishes its notice that the area failed to attain.

Therefore, even if a serious area's design value at the time of reclassification is lower than the design value for serious nonattainment, that serious area cannot be reclassified to a lower classification because the minimum reclassification resulting from a failure to attain is severe. Likewise, the maximum reclassification is severe because even if an area's design value is beyond the extreme threshold section 181(b)(2) prohibits an area failing to attain from being reclassified to extreme nonattainment.

Therefore, unlike a marginal or moderate nonattainment area where the design value at the time of the reclassification could have a bearing on the final classification resulting from a failure to attain, a serious area can only be reclassified under section 181(b)(2) to severe nonattainment upon a finding of failure to attain because the only operative provision is that which requires reclassification to the next higher classification.

The design value data in the notice of proposed rulemaking was presented mainly as an indicator that had the area been classified for the first time, the area would have been classified as marginal.

The relevant air quality data for EPA's final determination of a failure to attain is that which shows the area contained at least one monitor with an average annual number of expected exceedances for the 1997 through 1999, inclusive, period.

With respect to the 2002 air quality data , we did not present it in the notice of proposed rulemaking for the simple reason that insufficient final data was available for us to make a proper comparison with prior years data at the time the notice of proposed rulemaking was drafted.

Even taking into account the 2002 data, the Washington area's design value corresponds to that of a marginal area. The Washington area's air quality has by this measure improved from the time it was classified as a serous area based upon its design value.

J. Adequacy of Current SIP Submittals

Summary of Public Comments Received

One commenter does not agree that the Washington area states had ever submitted a modeled demonstration of attainment for the area.

EPA's Response

This comment is not germane to this action. EPA did not propose action on any SIP revision in the November 13, 2002, notice of proposed rulemaking. What action EPA takes on the SIP revisions formerly covered by the now vacated January 3, 2001, final rule will be the subject of separate rulemaking action(s). EPA will establish in a forthcoming notice of proposed rulemaking in the **Federal Register** a separate public comment period on these SIP revisions.

IV. What Is the Impact of Reclassification on Title V Operating Permit Programs?

In the November 13, 2002, notice of proposed rulemaking, EPA noted that additional sources would become subject to the Title V major stationary source operating permit program as a collateral consequence of a reclassification of the Washington area to severe. The affected sources are those with a potential to emit of more than 25 tons per year of either VOC or NO_X or both VOC and NO_X. Any newly major stationary sources must submit a timely Title V permit application. "A timely application for a source applying for a part 70 permit for the first time is one that is submitted within 12 months after the source becomes subject to the permit program or on or before such earlier date as the permitting authority may establish." *See* 40 CFR 70.5(a)(1) and *see* 40 CFR 71.5(a)(1). On the effective date of this action that can be found in the **DATES** section of this final rule, the

12 month (or earlier date set by the applicable permitting authority) time period to submit a timely application will commence in accordance with the state Title V program regulations applicable to that source.[9]

V. Final Action

For the reasons set forth in the notice of proposed rulemaking and in this final rulemaking notice, EPA has determined that the Washington ozone nonattainment area failed to attain the 1-hour ozone NAAQS by November 15, 1999, as required by section 181(a) of the CAA, and the Washington ozone nonattainment area is reclassified by operation of law to severe ozone nonattainment pursuant to section 181(b)(2) of the CAA.

A. What Is the New Attainment Date for the Washington Area?

Under section 181(a)(1) of the CAA, the new attainment deadline for the Washington area as a serious ozone nonattainment areas reclassified to severe under section 181(b)(2) is to attain the 1-hour ozone NAAQS as expeditiously as practicable but no later than November 15, 2005, which is the date applicable to the new severe nonattainment classification.

B. When Must District of Columbia, Maryland and Virginia Submit SIP Revisions Fulfilling the Requirements for Severe Ozone Attainment Areas?

Under section 181(a)(1) of the Act, the attainment deadline for serious ozone nonattainment areas reclassified to severe under section 181(b)(2) is as expeditiously as practicable but no later than November 15, 2005. Under section 182(i), such areas are required to submit SIP revisions addressing the severe area requirements for the 1-hour ozone NAAQS. Under section 182(d), severe area plans are required to meet all the requirements for serious area plans plus the requirements for severe areas, including, but not limited to: (1) A 25 ton per year major stationary source threshold; (2) additional reasonably available control technology (RACT) rules for sources subject to the new lower major applicability cutoff; (3) a new source review (NSR) offset requirement of at least 1.3 to 1; (4) a post-1999 rate-of-progress plan with on-road mobile source emission budgets in emission reductions of ozone precursors of at least 3 percent per year from November 15, 1999 until the attainment date; and (5) a fee requirement for major sources of volatile organic compounds (VOC) and nitrogen oxides (NO_x) should the area fail to attain by 2005.[10] We have issued a "General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990" that sets forth our preliminary views on these section 182 requirements and how we will act on SIPs submitted under Title I. *See* 57 FR 13498 (April 16, 1992) and 57 FR 18070 (April 28, 1992).

The District's, Maryland's and Virginia's severe ozone SIP for the Washington area must also contain adopted regulations, and/or enforceable commitments to adopt and implement control measures in regulatory form by specified dates, sufficient to make the required rate-of-progress and to attain the 1-hour ozone NAAQS as expeditiously as practicable but no later than November 15, 2005. Section 182(i) further provides that we may adjust the CAA deadlines for submitting these severe area SIP requirements. In addition to establishing a new attainment date, EPA must also address the schedule by which the District, Maryland and Virginia are required to submit SIP revisions meeting the CAA's pollution control requirements for severe areas.

For the reasons set forth in the notice of proposed rulemaking and this final rulemaking notice and pursuant to section 182(i) of the CAA, EPA is requiring the District of Columbia, Maryland and Virginia to submit SIP revisions addressing the CAA's pollution control requirements for severe ozone nonattainment areas by March 1, 2004.

C. What Will Be the Rate-of-Progress (ROP) and Contingency Measure Schedules?

For the reasons set forth in the notice of proposed rulemaking and this final rulemaking notice and pursuant to section 182(i) of the CAA, EPA is allowing the District, Maryland and Virginia to demonstrate the first required post-1999 nine percent ROP, due under the CAA by November 15, 2002, as expeditiously as practicable after that date (but in any case no later than November 15, 2005) in the event that control measures currently in the SIPs of the District, Maryland and Virginia or already promulgated by EPA do not achieve the required nine percent reduction by November 15, 2002.

The severe area SIP will have to provide for a total of a 18 percent reduction from base line emissions between November 15, 1999, through November 15, 2005. Because the 2002 ROP deadline is now past, the first 9 percent reduction requirement for the period 1999 to 2002 will have to be achieved as expeditiously as practicable after November 15, 2002. The second 9 percent reduction in base line emissions must be achieved by November 15, 2005, to address the 2002 through 2005 ROP requirement. Additionally, the area must submit adequate on-road mobile source emission budgets consistent with the 2002 and 2005 ROP plans.

Because EPA is allowing the District, Maryland and Virginia to demonstrate the first required post-1999 nine percent ROP, due under the CAA by November 15, 2002, as expeditiously as practicable after that date (but in any case no later than November 15, 2005), EPA is also allowing the District, Maryland and Virginia to adopt contingency measures keyed to this new date.

VI. Statutory and Executive Order Reviews

A. Executive Order 12866, Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), EPA is required to determine whether regulatory actions are significant and therefore should be subject to Office of Management and Budget (OMB) review, economic analysis, and the requirements of the Executive Order. The Executive Order defines a "significant regulatory action" as one that is likely to result in a rule that may meet at least one of the four criteria identified in section 3(f), including, under paragraph (1), that the rule may "have an annual effect on the economy of $100 million or more or adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local or tribal governments or communities."

The Agency has determined that the finding of nonattainment would result in none of the effects identified in section 3(f) of the Executive Order. Under section 181(b)(2) of the CAA, determinations of nonattainment are based upon air quality considerations and the resulting reclassifications must occur by operation of law. They do not, in and of themselves, impose any new requirements on any sectors of the economy. In addition, because the statutory requirements are clearly defined with respect to the differently classified areas, and because those

[9] Or, in the absence of an applicable state permit program covering the affected source, *see* 40 CFR 71.5(a)(1).

[10] Section 182(d)(3) sets a deadline of December 31, 2000, to submit the plan revision requiring fees for major sources should the area fail to attain. This date can be adjusted pursuant to CAA section 182(i). We proposed to adjust this date to coincide with the submittal deadline for the rest of the severe area plan requirements.

requirements are automatically triggered by classifications that, in turn, are triggered by air quality values, determinations of nonattainment and reclassification cannot be said to impose a materially adverse impact on state, local, or tribal governments or communities.

B. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 *note*) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This final action to reclassify the Washington, DC area as a severe ozone nonattainment area and to adjust applicable deadlines does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

C. Paperwork Reduction Act

This final action to reclassify the Washington, DC area as a severe ozone nonattainment area and to adjust applicable deadlines does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

D. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

Determinations of nonattainment and the resulting reclassification of nonattainment areas by operation of law under section 181(b)(2) of the CAA do not in and of themselves create any new requirements. Instead, this rulemaking only makes a factual determination, and does not directly regulate any entities. *See* 62 FR 60001, 60007–8, and 60010 (November 6, 1997) for additional analysis of the RFA implications of attainment determinations. Therefore, pursuant to 5 U.S.C. 605(b), I certify that this final action does not have a significant impact on a substantial number of small entities within the meaning of those terms for RFA purposes.

E. Unfunded Mandates Reform Act

Under section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to state, local, or tribal governments in the aggregate, or to the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA believes, as discussed previously in this document, that the finding of nonattainment is a factual determination based upon air quality considerations and that the resulting reclassification of the area must occur by operation of law. Thus, EPA believes that the proposed finding does not constitute a Federal mandate, as defined in section 101 of the UMRA, because it does not impose an enforceable duty on any entity.

F. Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be economically significant as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. This final action is not subject to Executive Order 13045 because this is not an economically significant regulatory action as defined by Executive Order 12866.

G. Executive Order 13132, Federalism

Executive Order 13132, entitled Federalism (64 FR 43255, August 10, 1999) requires EPA to develop an accountable process to ensure "meaningful and timely input by state and local officials in the development of regulatory policies that have Federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government." Under Executive Order 13132, EPA may not issue a regulation that has Federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal Government provides the funds necessary to pay the direct compliance costs incurred by state and local governments, or EPA consults with state and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has Federalism implications and that preempts state law unless the Agency consults with state and local officials early in the process of developing the proposed regulation. This determination of nonattainment and the resulting reclassification of a nonattainment area by operation of law will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because this action does not, in and of itself, impose any new requirements on any sectors of the economy, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. Thus, the requirements of section 6 of the Executive Order do not apply to these actions.

H. Executive Order 13175, Coordination With Indian Tribal Governments

This final rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

I. Executive Order 13211, Actions that Significantly Affect Energy Supply, Distribution, or Use

Under Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001), EPA must prepare for those matters identified as significant energy actions. A "significant energy action" is any action by an agency (normally published in the **Federal Register**) that promulgates or is expected to lead to the promulgation of a final rule or regulation, including notices of inquiry, advance notices of proposed rulemaking, and notices of proposed rulemaking that is a significant regulatory action under Executive Order 12866 and, and is likely to have a significant adverse effect on the supply, distribution, or use of energy. Under Executive Order 12866, this action is not a "significant regulatory action." For this reason, the proposed finding of nonattainment and reclassification is also not subject to Executive Order 13211.

J. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

K. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 25, 2003. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action to reclassify the Washington, DC area as a severe ozone attainment area and to adjust applicable deadlines may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2)).

List of Subjects in 40 CFR Part 81

Environmental protection, Air pollution control, National parks, Wilderness areas.

Dated: January 15, 2003.

Donald S. Welsh,

Regional Administrator, Region III.

Accordingly, 40 CFR part 81 is amended as follows:

PART 81—[AMENDED]

1. The authority citation for part 81 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

2. Section 81.309 is amended by revising the ozone table entry for the Washington area to read as follows:

§ 81.309 District of Columbia.

* * * * *

DISTRICT OF COLUMBIA—OZONE

[1-Hour Standard]

Designated area	Designation		Classification	
	Date[1]	Type	Date[1]	Type
Washington Area: Washington Entire Area	.....	Nonattainment	3/25/03	Severe

[1] This date is November 15, 1990, unless otherwise noted.

* * * * *

3. Section 81.321 is amended by revising the ozone table entry for the Washington, DC area to read as follows:

§ 81.321 Maryland.

* * * * *

MARYLAND—OZONE

[1-Hour Standard]

Designated area	Designation		Classification	
	Date[1]	Type	Date[1]	Type
* * * * * * *				
Washington, DC Area:				
Calvert County	.....	Nonattainment	3/25/03	Severe
Charles County	.....	Nonattainment	3/25/03	Severe
Frederick County	.....	Nonattainment	3/25/03	Severe
Montgomery County	.....	Nonattainment	3/25/03	Severe
Prince George's County	.....	Nonattainment	3/25/03	Severe
* * * * * * *				

[1] This date is October 18, 2000, unless otherwise noted.

* * * * *

4. Section 81.347 is amended by revising the ozone table entry for the Washington area to read as follows:

§ 81.347 Virginia.

* * * * *

VIRGINIA—OZONE

[1-Hour Standard]

Designated area	Designation		Classification	
	Date[1]	Type	Date[1]	Type
* * * * * * * *				
Washington, DC Area:				
Alexandria		Nonattainment	3/25/03	Severe
Arlington County		Nonattainment	3/25/03	Severe
Fairfax		Nonattainment	3/25/03	Severe
Fairfax County		Nonattainment	3/25/03	Severe
Falls Church		Nonattainment	3/25/03	Severe
Loudoun County		Nonattainment	3/25/03	Severe
Manassas		Nonattainment	3/25/03	Severe
Manassas Park		Nonattainment	3/25/03	Severe
Prince William County		Nonattainment	3/25/03	Severe
Stafford County		Nonattainment	3/25/03	Severe
* * * * * * * *				

[1] This date is October 18, 2000, unless otherwise noted.

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[FR Doc. 03–1515 Filed 1–23–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2002–0086; FRL–7187–3]

Oxadiazon; Tolerance Revocations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document revokes all tolerances for residues of the herbicide oxadiazon. The regulatory actions in this document are part of the Agency's reregistration program under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), and the tolerance reassessment requirements of the Federal Food, Drug, and Cosmetic Act (FFDCA) section 408(q), as amended by the Food Quality Protection Act (FQPA) of 1996. By law, EPA is required by August 2006 to reassess the tolerances in existence on August 2, 1996. The regulatory actions in this document pertain to the revocation of 16 tolerances which were previously reassessed and counted.

DATES: This regulation is effective April 24, 2003. Objections and requests for hearings, identified by docket identification (ID) number OPP–2002–0086, must be received on or before March 25, 2003.

ADDRESSES: Written objections and hearing requests may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit IV. of the **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Joseph Nevola, Registration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW.,Washington, DC 20460–0001; telephone number: (703) 308–8037; e-mail address: nevola.joseph@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer.

Potentially affected entities may include, but are not limited to:

- Crop production (NAICS 111)
- Animal production (NAICS 112)
- Food manufacturing (NAICS 311)
- Pesticide manufacturing (NAICS 32532)

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of This Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket ID number OPP–2002–0086. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at http://www.epa.gov/fedrgstr/. A frequently updated electronic version of 40 CFR part 180 is available at http://www.access.gpo.gov/nara/cfr/cfrhtml_00/Title_40/40cfr180_00.html, a beta site currently under development.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at http://www.epa.gov/edocket/ to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select "search," then key in the appropriate docket ID number.

II. Background

A. What Action is the Agency Taking?

In the **Federal Register** of August 1, 2001 (66 FR 39705) (FRL–6786–4), EPA issued a proposed rule to revoke all tolerances for oxadiazon and tetradifon. Also, the August 1, 2001 proposal provided a 60-day comment period which invited public comment for consideration and for support of tolerance retention under FFDCA standards.

This final rule revokes all FFDCA tolerances for residues of the herbicide oxadiazon because this pesticide active ingredient is not registered under FIFRA for food uses. The tolerances revoked by this final rule are no longer necessary to cover residues of the relevant pesticides in or on domestically treated commodities or commodities treated outside but imported into the United States. Oxadiazon is no longer used on the commodities associated with those tolerances within the United States. No one commented that there was a need for EPA to retain the tolerances to cover oxadiazon residues in or on imported foods. However, EPA did receive a comment regarding the need for the Agency to retain tetradifon tolerances.

EPA has historically expressed a concern that retention of tolerances that are not necessary to cover residues in or on legally treated foods has the potential to encourage misuse of pesticides within the United States. Thus, it is EPA's policy to issue a final rule revoking those tolerances for residues of pesticide chemicals for which there are no active registrations under FIFRA, unless any person commenting on the proposal demonstrates a need for the tolerance to cover residues in or on imported commodities or domestic commodities legally treated.

Generally, EPA will proceed with the revocation of these tolerances on the grounds discussed in Unit II.A. if one of these conditions applies, as follows:

1. Prior to EPA's issuance of a section 408(f) order requesting additional data or issuance of a section 408(d) or (e) order revoking the tolerances on other grounds, commenters retract the comment identifying a need for the tolerance to be retained.

2. EPA independently verifies that the tolerance is no longer needed.

3. The tolerance is not supported by data that demonstrate that the tolerance meets the requirements under FQPA.

Today's final rule does not revoke those tolerances for which EPA received comments stating a need for the tolerance to be retained. In response to the proposal published in the **Federal Register** of August 1, 2001 (66 FR 39705), EPA did receive comment regarding the need to retain tetradifon tolerances, as follows:

1. *Tetradifon.* EPA received a comment from Uniroyal Chemical, who requested the retention of tetradifon tolerances. Uniroyal noted that it had submitted certain studies to EPA in 1998 and 1996 and awaits determination of their acceptability by the Agency, and until those determinations are made cannot decide whether to support the tetradifon tolerances. Uniroyal added it would support two tolerances to allow importation of those tetradifon-treated food commodities, but did not name them.

In follow-up communication, Uniroyal expressed interest in maintaining tolerances for apples, citrus, and some vegetables, but did not commit to support any tetradifon tolerances. Also, in follow-up communication, Uniroyal acknowledged that it has not pursued correspondence with EPA since 1998 regarding disposition of the submitted studies nor submitted a registration petition.

Agency Response. EPA is still evaluating the issues described in the comment. Therefore, EPA is not taking final action on the tetradifon tolerances in 40 CFR 180.174 at this time, but may do so after evaluation of these issues.

No comments were received by the Agency concerning oxadiazon.

2. *Oxadiazon.* There have been no active registrations for oxadiazon concerning food uses since 1991. In a confirmatory letter to EPA, dated January 24, 2001, the registrant maintained its previous position that it will not support the 16 oxadiazon tolerances; although, it is supporting the continued (noncrop) use of oxadiazon for turf and ornamentals. Therefore, EPA is revoking all the tolerances in 40 CFR 180.346 for the combined residues of the herbicide oxadiazon and its metabolites in or on milk; cattle, fat; cattle, meat; cattle, meat byproducts; goats, fat; goats, meat; goats, meat byproducts; hogs, fat; hogs, meat; hogs, meat byproducts; horses, fat; horses, meat; horses, meat byproducts; sheep, fat; sheep, meat; and sheep, meat byproducts. The Agency is removing 40 CFR 180.346 in its entirety.

In addition, because EPA determined on April 21, 2002 that there is no reasonable expectation of finite residues of oxadiazon and its metabolites in or on meat, milk, poultry, and egg commodities, the 16 associated tolerances for livestock commodities were considered by the Agency to no longer be needed under 40 CFR 180.6(a)(3). Therefore, on June 3, 2002, the Agency considered the FQPA safety finding to be met and counted the 16 oxadiazon livestock tolerances as reassessed. Copies of these Agency memoranda will be placed in the public docket.

B. What is the Agency's Authority for Taking this Action?

It is EPA's general practice to propose revocation of tolerances for residues of pesticide active ingredients on crop uses for which FIFRA registrations no longer exist. EPA has historically been concerned that retention of tolerances that are not necessary to cover residues in or on legally treated foods may encourage misuse of pesticides within the United States. Nonetheless, EPA will establish and maintain tolerances even when corresponding domestic uses are canceled if the tolerances, which EPA refers to as "import tolerances," are necessary to allow importation into the United States of food containing such pesticide residues. However, where there are no imported commodities that require these import tolerances, the Agency believes it is appropriate to revoke tolerances for unregistered pesticides in order to prevent potential misuse.

C. When Do These Actions Become Effective?

These actions become effective 90 days following publication of this final rule in the **Federal Register**. EPA has delayed the effectiveness of these revocations for 90 days following publication of this final rule to ensure that all affected parties receive notice of EPA's actions. Consequently, the effective date is April 24, 2003. For this final rule, tolerances that were revoked because registered uses did not exist concerned uses which have been canceled for more than a year. Therefore, commodities containing

these pesticide residues should have cleared the channels of trade.

Any commodities listed in the regulatory text of this document that are treated with the pesticides subject to this final rule, and that are in the channels of trade following the tolerance revocations, shall be subject to FFDCA section 408(1)(5), as established by the FQPA. Under this section, any residue of these pesticides in or on such food shall not render the food adulterated so long as it is shown to the satisfaction of FDA that: (1) The residue is present as the result of an application or use of the pesticide at a time and in a manner that was lawful under FIFRA, and (2) the residue does not exceed the level that was authorized at the time of the application or use to be present on the food under a tolerance or exemption from a tolerance. Evidence to show that food was lawfully treated may include records that verify the dates that the pesticide was applied to such food.

D. What is the Contribution to Tolerance Reassessment?

By law, EPA is required by August 2006 to reassess the tolerances in existence on August 2, 1996. As of January 3, 2003, EPA has reassessed over 6,490 tolerances. In this final rule, EPA is revoking 16 tolerances. These tolerances were previously reassessed and counted as described in Unit II.A.

III. Are There Any International Trade Issues Raised by this Final Action?

EPA is working to ensure that the U.S. tolerance reassessment program under FQPA does not disrupt international trade. EPA considers Codex Maximum Residue Limits (MRLs) in setting U.S. tolerances and in reassessing them. MRLs are established by the Codex Committee on Pesticide Residues, a committee within the Codex Alimentarius Commission, an international organization formed to promote the coordination of international food standards. When possible, EPA seeks to harmonize U.S. tolerances with Codex MRLs. EPA may establish a tolerance that is different from a Codex MRL; however, FFDCA section 408(b)(4) requires that EPA explain in a **Federal Register** document the reasons for departing from the Codex level. EPA's effort to harmonize with Codex MRLs is summarized in the tolerance reassessment section of individual REDs. The U.S. EPA has developed guidance concerning submissions for import tolerance support (65 FR 35069, June 1, 2000) (FRL–6559–3). This guidance will be made available to interested persons. Electronic copies are available on the internet at http://www.epa.gov/. On the Home Page select "Laws and Regulations," then select "Regulations and Proposed Rules " and then look up the entry for this document under "**Federal Register**—Environmental Documents." You can also go directly to the "**Federal Register**" listings at http://www.epa.gov/fedrgstr/.

IV. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections.

A. What Do I Need to Do to File an Objection or Request a Hearing?

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number OPP–2002–0086 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before March 25, 2003.

1. *Filing the request.* Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900C), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. You may also deliver your request to the Office of the Hearing Clerk in Rm.104, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (703) 603–0061.

2. *Tolerance fee payment.* If you file an objection or request a hearing, you must also pay the fee prescribed by 40 CFR 180.33(i) or request a waiver of that fee pursuant to 40 CFR 180.33(m). You must mail the fee to: EPA Headquarters Accounting Operations Branch, Office of Pesticide Programs, P.O. Box 360277M, Pittsburgh, PA 15251. Please identify the fee submission by labeling it "Tolerance Petition Fees."

EPA is authorized to waive any fee requirement "when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection." For additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305–5697, by e-mail at tompkins.jim@epa.gov, or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

3. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit IV.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.1. Mail your copies, identified by docket ID number OPP–2002–0086, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.1. You may also send an electronic copy of your request via e-mail to: opp-docket@epa.gov. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

B. When Will the Agency Grant a Request for a Hearing?

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following:

There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

V. Statutory and Executive Order Reviews

This final rule revokes tolerances established under section 408 of the FFDCA. The Office of Management and Budget (OMB) has exempted this type of action (i.e., a tolerance revocation for which extraordinary circumstances do not exist) from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any other Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note).

Pursuant to the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Agency previously assessed whether revocations of tolerances might significantly impact a substantial number of small entities and concluded that, as a general matter, these actions do not impose a significant economic impact on a substantial number of small entities. This analysis was published on December 17, 1997 (62 FR 66020), and was provided to the Chief Counsel for Advocacy of the Small Business Administration. Taking into account this analysis, and available information concerning the pesticides listed in this rule, I certify that this action will not have a significant economic impact on a substantial number of small entities. Specifically, as per the 1997 notice, EPA has reviewed its available data on imports and foreign pesticide usage and concludes that there is a reasonable international supply of food not treated with oxadiazon. Furthermore, the Agency knows of no extraordinary circumstances that exist as to the present revocations that would change EPA's previous analysis. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of the FFDCA. For these same reasons, the Agency has determined that this rule does not have any "tribal implications" as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes." This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

VI. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: January 3, 2003.

Marcia E. Mulkey,

Director, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346(a) and 371.

§ 180.346 [Removed]

2. Section 180.346 is removed.

[FR Doc. 03–1518 Filed 1–23–03; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL–7442–8]

Ohio: Final Authorization of State Hazardous Waste Management Program Revision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA is granting Ohio final authorization of revisions to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). EPA published a proposed rule on October 21, 2002, and provided an opportunity for public comment. The public comment period ended on December 5, 2002. EPA received no comments. No further opportunity for public comment will be provided. EPA has determined that Ohio's revisions satisfy all requirements necessary for final authorization and is authorizing Ohio's revised program through this final action.

EFFECTIVE DATE: Final authorization for revisions to Ohio's hazardous waste management program will become effective on January 24, 2003.

FOR FURTHER INFORMATION CONTACT: Ms. Judy Feigler, Ohio Regulatory Specialist, U.S. Environmental Protection Agency, Waste, Pesticides and Toxics Division (DM–7J), 77 W. Jackson Blvd., Chicago, Illinois 60604, phone number: (312) 886–4179.

SUPPLEMENTARY INFORMATION:

A. Why Are Revisions to State Programs Necessary?

States that have received final authorization from EPA under RCRA section 3006(b), 42 U.S.C. 6926(b), must maintain a hazardous waste program which is equivalent to, consistent with, and no less stringent than the federal program. As the federal program changes, states must revise their programs and ask EPA to authorize the revisions. Revisions to state programs may be necessary when federal or state statutory or regulatory authority is modified or when certain other changes occur. Most commonly, states must revise their programs because of changes to EPA's regulations in 40 Code of Federal Regulations (CFR) parts 124, 260 through 266, 268, 270, 273 and 279.

B. What Were the Comments and Responses to EPA's Proposal?

On October 21, 2002, EPA published a proposed rule (see 67 FR 64594). In the rule, EPA proposed granting authorization of revisions to Ohio's hazardous waste program and provided an opportunity for public comment. EPA received no comments on the proposal.

C. What Decisions Have We Made in This Rule?

EPA has determined that Ohio's revisions to its authorized program meet all the statutory and regulatory requirements established by RCRA. Therefore, EPA grants Ohio final authorization to operate its hazardous waste program with the revisions described in the authorization application. Ohio now has responsibility for permitting treatment, storage, and disposal facilities (TSDFs) within its borders (except in Indian country) and for carrying out the aspects of the RCRA program described in its revised program application, subject to the limitations of the Hazardous and Solid Waste Amendments of 1984 (HSWA). New federal requirements and prohibitions imposed by federal regulations promulgated by EPA under the authority of HSWA take effect in authorized states before the states are authorized for the requirements. Thus, EPA implements those requirements and prohibitions in Ohio, including issuing permits, until Ohio is granted authorization to do so.

D. What Revisions Are We Authorizing With Today's Action?

On June 25, 2002, Ohio submitted a complete program revision application, seeking authorization of its revisions in accordance with 40 CFR 271.21. EPA now makes a final decision that Ohio's hazardous waste management program, as revised, satisfies all requirements under RCRA necessary to qualify for final authorization. Therefore, EPA grants Ohio final authorization for the program revisions described in the October 21, 2002, proposed rule (67 FR 64594). For further details, see the October 21, 2002 proposed rule.

E. What Is the Effect of Today's Authorization Decision?

The effect of this decision is that a facility in Ohio that is subject to RCRA will now have to comply with the authorized state requirements in lieu of the corresponding federal requirements in order to comply with RCRA. Such facilities must also comply with any applicable federally-issued requirements, such as, for example, HSWA regulations issued by EPA for which Ohio has not received authorization, and RCRA requirements that are not supplanted by authorized state-issued requirements. Ohio will issue permits for all provisions for which it is authorized and will administer the permits that it issues. Ohio continues to have enforcement responsibility under its state hazardous waste management program for violations of that program, but EPA retains authority under RCRA sections 3007, 3008, 3013 and 7003 (42 U.S.C. 6927, 6928, 6934 and 6973) which includes, among others, the authority to:

- Conduct inspections and require monitoring, tests, analyses or reports;
- Enforce RCRA requirements and suspend or revoke permits; and
- Take enforcement action regardless of whether Ohio has taken its own actions.

Today's action to approve these revisions does not impose additional requirements on the regulated community because the regulations included in the program revisions affected by this authorization decision are already effective under state law and are not changed by today's action.

F. Who Handles Permits After the Authorization Takes Effect?

Ohio will issue permits for all provisions for which it is authorized and will administer the permits that it issues. EPA will continue to administer any RCRA hazardous waste permits or portions of permits that EPA issued prior to the effective date of this authorization, until they expire or are terminated. EPA will not issue any more new permits or new portions of permits for the provisions for which Ohio is authorized after the effective date of this authorization. EPA will continue to implement and issue permits for HSWA requirements for which Ohio is not yet authorized.

G. What Has Ohio Previously Been Authorized for?

Ohio initially received final authorization effective June 30, 1989 (54 FR 27170–27174, June 28, 1989) to implement the RCRA hazardous waste management program. We granted authorization for changes to Ohio's program effective June 7, 1991 (56 FR 14203, April 8, 1991), as corrected June 7, 1991 (56 FR 28808, June 19, 1991); effective September 25, 1995 (60 FR 51244, July 27, 1995); and effective December 23, 1996 (61 FR 54950, October 23, 1996).

H. What Is the Effect of Authorizing Ohio for These Revisions on Indian Country (18 U.S.C. 1151) in Ohio?

Ohio is not authorized to carry out its hazardous waste program in "Indian

country," as defined in 18 U.S.C. 1151. Indian country includes:

1. All lands within the exterior boundaries of Indian reservations within or abutting the State of Ohio;

2. Any land held in trust by the U.S. for an Indian tribe; and

3. Any other land, whether on or off an Indian reservation that qualifies as Indian country. Therefore, this action has no effect on Indian country. EPA retains the authority to implement and administer the RCRA program in Indian country. However, at this time, there is no Indian country within the State of Ohio.

I. What Is Codification and Is EPA Codifying Ohio's Hazardous Waste Program as Authorized in This Rule?

Codification is the process of placing a state's statutes and regulations that comprise the state's authorized hazardous waste program into the Code of Federal Regulations. We do this by referencing the authorized state rules in 40 CFR part 272. We reserve the amendment of 40 CFR part 272, subpart P, for authorization of Ohio's program revisions until a later date.

J. Administrative Requirements

The Office of Management and Budget has exempted RCRA authorization from the requirements of Executive Order 12866 (58 FR 51735, October 4, 1993), and therefore this action is not subject to review by OMB. Furthermore, this action is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866. This action authorizes State requirements for the purpose of RCRA 3006 and imposes no additional requirements beyond those imposed by state law. This authorization will effectively suspend the applicability of certain federal regulations in favor of Ohio's program, thereby eliminating duplicate requirements in the state. Authorization will not impose any new burdens on small entities. Accordingly, I certify that this action will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this action authorizes pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). This action does not have tribal implications within the meaning of Executive Order 13175 (65 FR 67249, November 9, 2000). This action will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely authorizes state requirements as part of the state RCRA hazardous waste program without altering the relationship or the distribution of power and responsibilities established by RCRA. This action also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant and it does not make decisions based on environmental health or safety risks. This action does not include environmental justice-related issues that require consideration under Executive Order 12898 (59 FR 7929, February 16, 1994).

Under RCRA section 3006(b), EPA grants a state's application for authorization as long as the state meets the criteria required by RCRA. It would thus be inconsistent with applicable law for EPA, when it reviews a state authorization application, to require the use of any particular voluntary consensus standard in place of another standard that otherwise satisfies the requirements of RCRA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings' issued under the executive order. This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this document and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 271

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indians-lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements.

Authority: This action is issued under the authority of sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act, as amended, 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: January 9, 2003.

Bharat Mathur,

Deputy Regional Administrator, Region 5.

[FR Doc. 03–1626 Filed 1–23–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 312

[FRL–7442–4]

RIN 2050–AF05

Clarification to Interim Standards and Practices for All Appropriate Inquiry Under CERCLA and Notice of Future Rulemaking Action

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to clarify a provision included in recent amendments to the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). Specifically, today's direct final rule addresses the interim standard set by Congress in the Small Business Liability Relief and Brownfields Revitalization Act ("the Brownfields Law") for conducting "all appropriate inquiry" to establish that a landowner had no reason to know of contamination at a property under CERCLA liability provisions prior to purchasing the property. Today's action clarifies that, in the case of property purchased on or after May 31, 1997, the requirements for conducting "all appropriate inquiry," including the

conduct of such activities to establish an innocent landowner defense under CERCLA, also will be satisfied through the use of ASTM Standard E1527–2000, entitled "Standard Practice for Environmental Site Assessment: Phase 1 Environmental Site Assessment Process." In addition, recipients of brownfields site assessment grants will be in compliance with the all appropriate inquiry requirements if they comply with the ASTM Standard E1527–2000.

DATES: This rule is effective on March 25, 2003, without further notice, unless EPA receives adverse comment by February 24, 2003. If we receive such comment, we will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

ADDRESSES: Comments on today's direct final rule may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions provided in paragraph B of the **SUPPLEMENTARY INFORMATION** section below. Please reference Docket number SFUND–2002–0007 when submitting your comments.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA/CERCLA Call Center at 800–424–9346 or TDD 800–553–7672 (hearing impaired). In the Washington, DC metropolitan area, call 703–412–9810 or TDD 703–412–3323.

For more detailed information on specific aspects of this rule, contact Patricia Overmeyer, Office of Brownfields Clean up and Redevelopment (5105T), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460–0002, 202–566–2774. *overmeyer.patricia@epa.gov.*

SUPPLEMENTARY INFORMATION:

General Information

A. How Can I Get Copies of the Background Materials Supporting Today's Direct Final Rule or Other Related Information?

1. EPA has established an official public docket for this direct final rule under Docket ID No. SFUND–2002–0007. The official public docket consists of the documents specifically referenced in this rule and other information related to this direct final rule. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the EPA Docket Center located at 1301 Constitution Ave. NW, Washington, DC 20004. This Docket Facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding federal holidays. To review docket materials, it is recommended that the public make an appointment by calling (202) 566–0276. The public may copy a maximum of 100 pages from any regulatory docket at no charge. Additional copies cost $0.15/page.

2. *Electronic Access.* You may access this **Federal Register** document electronically through the EPA Internet under the **Federal Register** listings at *http://www.epa.gov/fedrgstr/.*

You may use EPA Dockets at *http://www.epa.gov/edocket/* to access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the docket identification number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI, and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified above.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the Docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff. For additional information about EPA's electronic public docket visit EPA Dockets online or see 67 FR 38102, May 31, 2002.

B. How and To Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA will not consider late comments in formulating a final decision.

1. *Electronically.* If you submit an electronic comment as prescribed below, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the party submitting the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket,* and follow the online instructions for submitting comments. To access EPA's electronic public

docket from the EPA Internet Home Page, select "Information Sources," "Dockets," and "EPA Dockets." Once in the system, select "search," and then key in Docket ID No. SFUND–2002–0007. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

2. E-mail. Comments may be sent by electronic mail (e-mail) to *Superfund.Docket@epamail.epa.gov*. Make sure this electronic copy is in an ASCII format that does not use special characters or encryption. Cite the docket Number SFUND–2002–0007 in your electronic file. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the Docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

3. Disk or CD ROM. You may submit comments on a disk or CD ROM that you mail to the mailing address identified above. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

4. By Mail. Send two (2) copies of your comments to: EPA Docket Center, U.S. Environmental Protection Agency Headquarters, Mail Code 5305T, 1200 Pennsylvania Ave., NW., Washington, DC, 20460, Attention Docket ID No. SFUND–2002–0007.

5. By Hand Delivery or Courier. Deliver your comments to: EPA Docket Center, EPA West Building, Room B–102, 1301 Constitution Ave., NW., Washington, DC, 20007. Attention Docket ID No. SFUND–2002–0007. Such deliveries are only accepted during the Docket's normal hours of operation as identified above.

Regulated Entities

Entities potentially regulated by this action include public and private parties who, as bona fide prospective purchasers, contiguous property owners, or innocent landowners, purchase property and intend to claim a limitation on CERCLA liability in conjunction with the property purchase. In addition, any entity conducting a site characterization or assessment with a brownfields grant awarded under CERCLA section104(k)(2)(B)(ii) will be affected by today's action. This includes state, local and Tribal governments that receive brownfields site assessment grants. A summary of the potentially affected industry sectors (by NAICS codes) is displayed in the table below.

Industry category	NAICS code
Real Estate	531
Insurance	52412
Banking/Real Estate Credit	52292
Environmental Consulting Services	54162
State, Local and Tribal Government	N/A

The list of potentially affected entities in the above table may not be exhaustive. Our aim is to provide a guide for readers regarding those entities that EPA is aware potentially could be affected by this action. However, this action may affect other entities not listed in the table. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding section entitled **FOR FURTHER INFORMATION CONTACT.**

Preamble

I. Statutory Authority
II. Background
III. Today's Action
IV. Future Rulemaking Setting Standards for "All Appropriate Inquiry"
V. Statutory and Executive Order Reviews

I. Statutory Authority

This direct final rule clarifies provisions included in section 223 of the Small Business Liability Relief and Brownfields Revitalization Act which amends section 101(35)(B) of CERCLA (42 U.S.C. 9601(35)) and clarifies interim standards for the conduct of "all appropriate inquiry" for obtaining CERCLA liability relief and for conducting site characterizations and assessments with the use of brownfields grant monies.

II. Background

On January 11, 2002, President Bush signed the Small Business Liability Relief and Brownfields Revitalization Act ("the Brownfields Law"). In general, the Act amends CERCLA and provides funds to assess and clean up brownfields sites; clarifies CERCLA liability provisions related to innocent purchasers of contaminated properties; and provides funding to enhance State and Tribal clean up programs. In part, subtitle B of Title II of the Act revises some of the provisions of CERCLA section 101(35) and provides some Superfund liability limitations for bona fide prospective purchasers and contiguous property owners, in addition to clarifying the requirements necessary to establish the innocent landowner defense under CERCLA. Among the requirements added to CERCLA is the requirement that such parties undertake "all appropriate inquiry" into prior ownership and use of certain property.

The Act requires EPA to develop regulations within two years which will establish standards and practices for how to conduct all appropriate inquiry. In addition, in the Brownfields Law, Congress established, as the Federal interim standard for conducting all appropriate inquiry, the procedures of the American Society for Testing and Materials (ASTM) including Standard E1527–97 (entitled "Standard Practice for Environmental Site Assessment: Phase 1 Environmental Site Assessment Process"). This interim standard applies to properties purchased on or after May 31, 1997 until EPA promulgates Federal regulations establishing standards and practices for conducting all appropriate inquiry.

Today's direct final rule clarifies that persons may use the current ASTM standard, E1527–2000 for conducting all appropriate inquiry and establishing the innocent landowner defense under CERCLA section 101(35)(B) for properties purchased on or after May 31, 1997, while continuing also to recognize use of ASTM's previous standard, E1527–97.

Following enactment of the Brownfields Law, EPA received inquiries from interested parties expressing concerns that the ASTM standard for all appropriate inquiry that was cited in the Act (*i.e.*, ASTM's 1997 standard) has been updated and consequently is no longer available from ASTM. The ASTM standard cited in the Brownfields Law has been updated and replaced with ASTM's revised standard, "Standard E1527–2000." The revised standard has the same name as the previous standard. The revised standard is not significantly different from the previous standard. Revisions to the 1997 standard that are incorporated into the E1527–2000 updated standard include provisions for potential expansion of an assessment, guidance for better identification of the purpose of the assessment, a provision for inquiring about historical remediation, a provision for facilitating reconstruction of the assessment by a different assessor, and amended guidance for selecting an environmental professional. A summary of the revisions made to the 1997 ASTM standard and included in the 1527–2000 standard is provided in the document "Overview of Additions and Modifications to ASTM 1527–2000

Standard from the 1997 ASTM Standard." A copy of this document, as well as an annotated copy of the 1997 ASTM standard identifying the specific modifications incorporated into the ASTM 2000 standard, is included in the regulatory docket for today's rule.

EPA believes that it is consistent with Congressional intent to require the use of the most current standards available until EPA has promulgated its standard and not to require the use of standards that have been superseded or that generally are not available. In addition, Congress did not intend to place an undue burden on interested parties seeking to obtain and implement the standard. Given that the version of the ASTM standard cited in the Brownfields Law is no longer available, such an undue burden may occur, if EPA does not undertake today's action. In particular, recipients of grant monies awarded under the new Brownfields Law may experience an undue burden, if required to comply with the ASTM standard that no longer is available or recognized as the current industry standard. Therefore, with today's action, EPA is clarifying that for the purposes of CERCLA section 101 (35)(B), until the Agency promulgates regulations implementing standards for all appropriate inquiry, parties may use either the procedures provided in ASTM E1527–2000, entitled "Standard Practice for Environmental Site Assessment: Phase I Environmental Site Assessment Process," or the standard ASTM E1527–97. EPA has determined that it is reasonable to promulgate this clarification as a direct final rule that is effective immediately, rather than delay promulgation of the clarification until after receipt and consideration of public comments, to avoid any further confusion with regard to the acceptable standard for conducting all appropriate inquiry and to ensure that new grant recipients are not placed under any undue burden.

III. Today's Action

EPA is publishing this direct final rule because the Agency wants to reduce any undue burden placed upon grant recipients. In addition, the Agency views this as a noncontroversial action and anticipates no adverse comment. We believe that today's action is reasonable and can be promulgated without consideration of public comment because it: (1) Allows for the use of the updated version of the standard cited in the Brownfields Law, while also allowing the use of the former version, and the updated version of the standard is similar to, and not significantly different than, the previous standard; (2) reduces the burden of obtaining an appropriate standard, given that the standard cited in the Brownfields Law is no longer available; and (3) this action merely clarifies an interim standard that is effective only until EPA promulgates a final rule replacing the interim standard.

Although we view today's action as noncontroversial, in the "Proposed Rules" section of today's **Federal Register**, we are publishing a separate proposed rule containing the clarification summarized above. That proposed rule will serve as the proposal to be revised, if adverse comments are received. If EPA does not receive adverse comment in response to this rule prior to February 24, 2003, this rule will become effective on March 25, 2003, without further notice. If EPA receives adverse comment, we will publish a timely withdrawal of this rule in the **Federal Register** informing the public that the rule will not take effect. We will address all public comments in a subsequent final rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time and before February 24, 2003.

IV. Future Rulemaking Setting Standards for "All Appropriate Inquiry"

EPA also is announcing today its progress in developing regulatory standards for conducting "all appropriate inquiry." The Brownfields Law requires that EPA promulgate such standards within two years of enactment of the law, or by January 2004. Congress included in the Brownfields Law a list of criteria that the Agency must address in the regulations establishing standards and practices for conducting all appropriate inquiry (section 101(35)(2)(B)(ii)). The Act also requires that parties receiving funding under the Federal brownfields program to conduct site assessments must conduct the site assessment in accordance with the standards and practices for all appropriate inquiry established under the same provision of the Act.

EPA is soliciting the advice and input of public and private stakeholder groups in developing the regulations for conducting all appropriate inquiry in accordance with the criteria set forth by Congress. We understand that voluntary standards developed by standards developing organizations, such as the ASTM 1527–2000 standard, are available and are currently being used to conduct all appropriate inquiry in conjunction with private real estate property transactions. In addition, site assessment protocols have been established under the Federal Superfund remedial action and RCRA corrective action programs, as well as within State clean up programs. We intend to develop Federal regulations that build upon the depth of experience accrued in both the public and private sectors in implementing these standards and programs. We believe that building upon currently available private sector standards for undertaking all appropriate inquiry as well as building on the experience of state and Federal government site assessment programs is the most efficient and economical way to develop Federal regulatory standards that will both meet the criteria set in the Brownfields Law and ensure minimal disruption to the private market and State and Federal site assessment programs.

To ensure that we obtain a diverse array of input from both private sector stakeholders and state program officials, EPA is developing the federal regulations by soliciting private and public sector input under the convening stage of the negotiated rulemaking process, and may supplement our information gathering through the conduct of public meetings. We initiated the convening stage of a negotiated rulemaking process to identify appropriate stakeholder groups and solicit advice and input from experienced public and private sector users of similar standards. Following an evaluation of stakeholder interests and input during the convening process, we either will announce our intent to continue with a negotiated rulemaking process, or announce our intent to solicit public input, by way of an additional notice or a public meeting, on options for a proposed rulemaking that will set standards for all appropriate inquiry. We anticipate announcing our intended approach for the development of a proposed rulemaking in the **Federal Register** during the winter of 2003. Any questions regarding our future regulatory effort should be directed to the parties listed above in the section entitled **FOR FURTHER INFORMATION CONTACT.**

V. Statutory and Executive Order Reviews

a. Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and is therefore not subject to review by the Office of Management and Budget.

b. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 FR U.S.C. 3501 *et seq.*)

c. The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the APA or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. This action will not have a significant impact on a substantial number of small entities because it does not create any new requirements.

d. Because the purpose of today's action is to make a clarification that does not create any new requirements it has no economic impact and is not subject to sections 202 and 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pubic Law 104–4). In addition, this action does not significantly or uniquely affect small governments or impose a significant intergovernmental mandate, as described in sections 203 and 204 of UMRA.

e. This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999).

f. This rule does not have tribal implications, as specified by Executive Order 13175 (65 FR 67249, November 6, 2000).

g. This rule is not subject to Executive Order 13045 (62 FR 1985, April 23, 1997), because it is not economically significant.

h. This rule is not subject to Executive Order 13211, "Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

i. This action does involve technical standards; therefore, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272) apply. The NTTAA was signed into law on March 7, 1996 and, among other things, directs the National Institute of Standards and Technology (NIST) to bring together federal agencies as well as state and local governments to achieve greater reliance on voluntary standards and decreased dependence on in-house standards. It states that use of such standards, whenever practicable and appropriate, is intended to achieve the following goals: (a) Eliminate the cost to the government of developing its own standards and decrease the cost of goods procured and the burden of complying with agency regulation; (b) provide incentives and opportunities to establish standards that serve national needs; (c) encourage long-term growth for U.S. enterprises and promote efficiency and economic competition through harmonization of standards; and (d) further the policy of reliance upon the private sector to supply Government needs for goods and services. The Act requires that federal agencies adopt private sector standards, particularly those developed by standards developing organizations (SDOs), wherever possible in lieu of creating proprietary, non-consensus standards. Today's action is compliant with the spirit and requirements of the NTTAA, given that the interim standard for all appropriate inquiry that is the subject of today's action is a private sector standard developed by a standard developing organization. Today's action allows for the use of the American Society for Testing and Materials (ASTM) standard known as Standard E1527–2000 and entitled "Standard Practice for Environmental Site Assessment: Phase 1 Environmental Site Assessment Process" as the interim standard for conducting all appropriate inquiry for properties purchased on or after May 31, 1997, or in the alternative, the use of Standard E1527–97, and entitled "Standard Practice for Environmental Site Assessment: Phase 1 Environmental Site Assessment Process."

j. Today's action does not involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994).

k. The Congressional Review Act (5 U.S.C. 801 *et seq.*), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A Major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2). This rule will be effective March 25, 2003 unless EPA publishes a withdrawal in the **Federal Register**.

List of Subjects in 40 CFR Part 312

Environmental protection, Administrative practice and procedure, Hazardous substances, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: January 17, 2003.

Christine Todd Whitman,

Administrator.

For the reasons set out in the preamble, title 40 chapter J of the code of Federal Regulations is amended as follows:

1. Title 40 Chapter J is amended by adding new part 312 to read as follows:

PART 312—INNOCENT LANDOWNERS, STANDARDS FOR CONDUCTING ALL APPROPRIATE INQUIRY

Subpart A—Introduction

Sec.

312.1 Purpose and applicability.
312.2 Standards and practices for all appropriate inquiry.

Subpart B—[Reserved]

Authority: Section 101(35)(B) of CERCLA, as amended, 42 U.S.C. 9601(3)(B).

Subpart A—Introduction

§ 312.1 Purpose and applicability.

(a) *Purpose.* The purpose of this section is to provide standards and procedures for "all appropriate inquiry" for the purposes of CERCLA section 101(35)(B).

(b) *Applicability.* This section is applicable to: potential innocent landowners conducting all appropriate inquiry under section 101(35)(B) of CERCLA; bona fide prospective purchasers defined under section 101(40) of CERCLA; contiguous property owners under section 107(q) of CERCLA; and persons conducting site characterization and assessments with the use of a grant awarded under CERCLA section 104(k)(2)(B)(ii).

§ 312.2 Standards and practices for all appropriate inquiry.

(a) With respect to property purchased on or after May 31, 1997, the procedures of the American Society for Testing and Materials (ASTM)1527–97 and the procedures of the American Society for Testing and Materials (ASTM) 1527–2000, both entitled "Standard Practice for Environmental Site Assessment: Phase 1 Environmental Site Assessment Process," shall satisfy the requirements for conducting "all appropriate inquiry" under section 101(35)(B)(i)(I) of CERCLA, as amended

by the Small Business Liability Relief and Brownfields Revitalization Act.

[FR Doc. 03–1631 Filed 1–23–03; 8:45 am]
BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 482

[CMS–3050–F]

RIN 0938–AK40

Medicare and Medicaid Programs; Hospital Conditions of Participation: Quality Assessment and Performance Improvement

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Final rule.

SUMMARY: This final rule requires hospitals to develop and maintain a quality assessment and performance improvement (QAPI) program. In the December 19, 1997 **Federal Register**, we published a proposed rule to revise the hospitals conditions of participation (CoPs). The QAPI CoP was one of the conditions included in the proposed rule. We separated the QAPI CoP from the larger set of hospital CoPs so that it could be published in advance of the remaining CoPs to implement the Administration's initiatives regarding medical errors. QAPI focuses provider efforts on the actual care delivered to patients, the performance of the hospital as an organization, and the impact of treatment furnished by the hospital on the health status of its patients. Specifically, it is important to note that a QAPI is not designed to measure a hospital's quality, but rather a minimum requirement that the hospital systematically examine its quality and implement specific improvement projects on an ongoing basis. State agencies (SAs) during their surveys, review all aspects of a hospital's operations and this review provides a framework in which the SA can assess a hospital's QAPI program. In addition, the QAPI entails all activities required for measuring quality of care and maintaining it at acceptable levels. This typically includes—

- Identifying and verifying quality-related problems and their underlying cause;
- Designing and implementing corrective action activities to address deficiencies; and
- Following up to determine the degree of success of an intervention and to detect new problems and opportunities for improvement.

Performance improvement activities aim to improve overall performance assuming that there is no permanent threshold for good performance. Under performance improvement framework, hospitals will continuously study and improve the processes of healthcare and delivery of service.

EFFECTIVE DATE: These regulations are effective on March 25, 2003.

FOR FURTHER INFORMATION CONTACT: Nancy Archer, (410) 786–0596; Mary Collins, (410) 786–3189; Monique Howard, (410) 786–3869; Jeannie Miller, (410) 786–3164;

SUPPLEMENTARY INFORMATION:

I. Background

A. General

In the December 19, 1997 **Federal Register** (62 FR 66726), we published a proposed rule entitled "Medicare and Medicaid Programs; Hospital Conditions of Participation; Provider Agreements and Supplier Approval" to revise the entire set of Conditions of Participation (CoPs) for hospitals. The CoPs are the requirements that hospitals must meet to participate in the Medicare and Medicaid programs. The CoPs are intended to protect patient health and safety and to ensure that high quality care is provided to all patients. The State survey agencies (SAs), in accordance with section 1864 of the Social Security Act (the Act), survey hospitals to assess compliance with the CoPs. The SAs conduct surveys using the instructions in the State Operations Manual (SOM), (Health Care Financing Administration (HCFA) Publication No. 7). The SOM contains the regulatory language of the CoPs as well as interpretive guidelines and survey procedures and probes that elaborate on regulatory intent and give guidance on how to assess provider compliance. Under § 489.10(d), the SAs determine whether hospitals have met the CoPs and report their recommendations to us.

Under the authority of section 1865 of the Act and the regulations at § 488.5, hospitals accredited by the Joint Commission on Accreditation of Healthcare Organizations (JCAHO) or the American Osteopathic Association (AOA) are deemed to meet the requirements in the CoPs, and therefore, are not routinely surveyed for compliance by the SAs. However, all Medicare and Medicaid participating hospitals are required to be in compliance with our CoPs regardless of their accreditation status.

B. Patient Safety and Medical Errors

In 1999, the Institute of Medicine (IOM) published a report entitled "To Err is Human: Building a Safer Health System," which highlighted patient injuries associated with medical errors. In this report, the IOM defined an error as the following: "An error is defined as the failure of a planned action to be completed as intended or the use of a wrong plan to achieve an aim." The IOM report also indicated that an estimated 44,000 to 98,000 Americans die annually as a result of preventable medical errors. The results of the report have generated substantial media, public, Congressional, and Departmental concerns regarding patients health and safety.

As recommended by the IOM, the Quality Interagency Coordination Task Force (QuIC), evaluated and responded to the recommendations in the IOM report with a strategy to identify patient safety issues and to reduce the number of errors by 50 percent over the next 5 years. In an effort to thoroughly consider all of the relevant issues related to medical errors, the QuIC expanded the IOM's definition to read as follows: "An error is defined as the failure of a planned action to be completed as intended or the use of a wrong plan to achieve an aim. Errors can include problems in practice, products, procedures, and systems." We have adopted the QuIC revised definition of an error.

Accordingly, the QAPI CoP has been separated from the larger set of CoPs and published in an accelerated timeframe because it provides the framework to implement the Administration's initiatives designed to help distinguish and avoid mistakes in the healthcare delivery system. In addition, we are requiring that a hospital's QAPI program be an ongoing program that shows measurable improvement in indicators for which there is evidence that they will improve health outcomes and identify and reduce medical errors. The remaining provisions of the hospital CoPs will be published at a later date.

Many people believe that medical errors involve medication (for example, an incorrect or improper dosage of medicine) or surgical errors (for example, incorrect site amputation). However, there are many other types of medical errors including—

- Diagnostic errors (for example, misdiagnoses leading to an incorrect choice of therapy or treatment, failure to use an indicated diagnostic test, misinterpretation of test results, and

failure to properly act on abnormal test results);

- Equipment failures (for example, a defibrillator without working batteries, or inadvertent dosing of medications in a short time frame due to intravenous pumps with valves that are easily dislodged);
- Infections (for example, nosocomial and post-surgical wound infections);
- Blood transfusion-related injuries (for example, hemolytic blood transfusion reactions); and
- Deaths due to seclusion or restraint use.

Harm experienced while receiving healthcare services is a growing concern for the American public. While both the public and the private sectors have made notable contributions to reducing preventable medical errors, additional and aggressive efforts are needed to further reduce these types of incidents. Therefore, we are publishing this final rule, with some modification in response to comments, to guide improved patient safety in the hospital setting.

Medical errors can be difficult to recognize in healthcare due to the variations in individuals' responses to treatment. In addition, medical professionals may not recognize that a particular product or procedure may have contributed to or caused a problem since the patient is already ill or the event appears unrelated to the product or procedure. Because medical errors usually affect only a single patient at a time, they are treated as isolated incidents and little attention, if any, is drawn to these problems. Finally, the healthcare community acknowledges that errors are most likely under reported due to malpractice threats and practitioner confidentiality concerns. All of these factors explain the ongoing invisibility of medical errors despite the existence of research that documents their high prevalence. The IOM report recommended the following:

- Action to reduce preventable medical errors;
- Implementation of a system of public accountability;
- The development of a knowledge base system regarding medical errors; and
- A culture change in healthcare organizations in order to promote the recognition of errors and improve patient safety.

C. Balancing Collegial and Regulatory Modes of Oversight

The proposed revision of the hospital CoPs is part of a larger effort to bring about improvement in the quality of care furnished to beneficiaries through a patient-centered approach to healthcare delivery, quality improvement, and integration of care, as well as our quality of care oversight responsibilities.

The fundamental purpose of the QAPI CoP is to set a clear expectation that hospitals must take a proactive approach to improve their performance and focus on improved patient care. We stress improvement in systems in order to improve processes and patient outcomes. This is not meant to suggest that we plan to abandon our regulatory role. In fact, this approach reinforces our primary responsibility for assuring patient safety and protection through our delegated regulatory authority.

We must note that accreditation surveys for deemed status performed by JCAHO, AOA, and any other national accrediting organization recognized by us in the future, are performed under an extension of our authority. Onsite accreditation surveys may serve as the basis for enforcement activity since accreditation organizations' standards are determined by us to meet or exceed our own CoPs. SAs acting as our regulatory agents perform validation, recertification, and complaint surveys in hospitals to determine compliance with the CoPs.

During surveys the QAPI program will be evaluated for its hospital-wide effectiveness on the quality of care provided. The impact of the program will be assessed during a survey, as surveyors are looking at data gathered at different points in time, compared, and actions taken based on that comparison. The hospitals will be analyzing data and evaluating the effectiveness of their own program continually.

Whenever the state agency surveyors enter the hospital to conduct a survey they will evaluate the hospital's program and its own internal evaluation process along with an evaluation of all hospital services. When there is an onsite review of the hospital's QAPI program, the surveyors determine whether or not the hospital is meeting the QAPI CoP requirements. Following the existing survey process and procedures, if the SA determines that the hospital is significantly out of compliance with the QAPI CoP requirements, the hospital will be scheduled for termination from the Medicare and Medicaid programs. The hospital is then given the opportunity to submit a plan of correction. The SA would conduct a follow-up survey to assess whether the hospital is now in compliance with all of the requirements, prior to the actual termination taking place.

Three to five years after the implementation of this final rule, we will assess Online Survey Certification and Reporting System (OSCAR) data and evaluate how well hospitals have implemented the QAPI process. During this time, we will also assess the state of the art for quality improvement practices.

Similarly, we view the Quality Improvement Organizations (QIOs) (formally known as Peer Review Organizations (PROs)) operating in a largely "penalty-free" environment, as our quality improvement agents. Each State has a QIO that contracts with Medicare to monitor and improve the care delivered to beneficiaries. Each QIO operates under a contract know as a "statement of work" governed by extensive portions of Titles 11 and 18 of the Act, as amended by the Peer Review Improvement Act of 1982. Specific QIO tasks fall under three areas of responsibility, as provided in the Act and reiterated in the statement of work:

- Improve quality of care for beneficiaries by ensuring that beneficiary care meets professionally recognized standards of health care;
- Protect the integrity of the Medicare trust fund by ensuring that Medicare only pays for services and items that are reasonable and medically necessary and that are provided in the most appropriate (for example, economical setting);
- Protect beneficiaries by expeditiously addressing individual cases, such as beneficiary complaints, provider-issued notices of noncoverage, Emergency Medical Treatment and Active Labor Act (EMTALA) violations and other statutory responsibilities.

We look to the QIOs to advance quality of care in the hospital environment. We view accreditation deeming activities as part of our overall responsibility to certify providers for program participation.

II. Legislation

Section 1861(e)(1) through (9) of the Act: (1) Defines the term "hospital"; (2) lists the statutory requirements that a hospital must meet to be eligible for Medicare participation; and (3) specifies that a hospital must also meet other requirements as the Secretary finds necessary in the interest of the health and safety of the hospital's patients. Under this authority, the Secretary has established in the regulations 42 CFR part 482, the requirements that a hospital must meet to participate in the Medicare program. Under section 1865 of the Act and 42 CFR 488.5 of the regulations, hospitals that are accredited by the JCAHO or the AOA are not routinely surveyed by SAs for compliance with the CoPs but are

deemed to meet most of the requirements based on their accreditation.

Section 1905(a) of the Act provides that Medicaid payments may be applied to hospital services. The regulations at § 440.10(a)(3)(iii) require hospitals to meet the Medicare CoPs to qualify for participation in Medicaid.

III. Provisions of the Proposed QAPI CoP

We proposed revisions of the CoPs that emphasized lessening Federal regulation: (1) To eliminate unnecessary structural and process requirements; (2) focus on outcomes of care; (3) allow greater flexibility to hospitals and practitioners to meet quality standards; and (4) place a strong emphasis on quality assessment and performance improvement.

The proposed provisions of the QAPI CoPs included three standards that addressed the scope and direction of the performance improvement program, discussed the hospital entity that is responsible and accountable for the QAPI activities, and retained the current requirement on autopsies (existing § 482.22(d)). In addition, we proposed 12 critical areas in which hospitals must, at a minimum, objectively evaluate their performance.

We solicited comments on the feasibility of national outcome-based performance measures for hospitals and the minimum level requirements for performance improvement activities. We did not include in the hospital CoPs any requirement for hospitals to collect and report certain standard data items that could produce quality of care predictors in the future. However, we did invite public comment on the following seven key questions regarding the development and implementation of hospital-based performance measures.

(1) Should CMS assume a leadership role in developing the measures?

(2) How should CMS proceed to develop and implement the measures?

(3) If CMS does not assume a leadership role in this area and hospitals invest in the development of multiple systems, would the overall burden be greater than if a single system had been imposed at the outset?

(4) If CMS does not assume a leadership role in this area and individual hospitals adopt multiple systems that produce nonstandardized data, to what extent would it be difficult to make comparisons between hospitals?

(5) Should CMS require or encourage hospitals to use the standardized measures that some accredited hospitals are using?

(6) Would it be appropriate for CMS to include "placeholder" language in the revised CoPs concerning the eventual need for hospitals to report relevant data, or is this premature?

(7) If CMS includes "placeholder" language, what changes should we make to these proposed requirements to set the stage for the development and implementation of such a system?

IV. Analysis of and Responses to Public Comments

We received over 1,200 comments in response to the QAPI requirements presented in the December 19, 1997 proposed rule. These comments were from hospitals, professional organizations, accrediting bodies, practitioners, and other individuals. Summaries of the public comments received and our responses to those comments are set forth below.

A. Regulatory Approach

We asked for comments on the fundamental shift in our regulatory focus for quality from the current approach that identifies and corrects problems in patient care delivery to an approach that emphasizes improving patient outcomes and satisfaction using a data-driven QAPI program.

Comment: The majority of commenters expressed support for our change in philosophy and the introduction of the new QAPI CoP, stating this approach will create more consistency between accrediting and regulatory bodies' standards.

Response: We appreciate the support. One of our initiatives is to revise many of the provider CoPs, including hospitals, so that they focus on outcomes of care and eliminate unnecessary procedural requirements.

Comment: A commenter requested clarification regarding whether this requirement applies to all patients or only Medicare patients.

Response: This requirement as well as all of the other hospital CoPs applies to all Medicare- and Medicaid-participating hospitals; therefore, all patients receiving services provided by these hospitals are protected by this requirement. Moreover, these standards govern quality of care issues for the hospital and its practitioners and contractors.

Comment: Many commenters were against promulgating a final regulation that is too prescriptive. They emphasized that what is needed, above all, is flexibility to design a program that meets the needs of hospitals of varying sizes and specialties, rather than a "one-size-fits-all" regulation.

Response: We agree and believe that the proposed QAPI condition was designed to incorporate flexibility with the appropriate amount of accountability. We have made several revisions to the QAPI condition, to increase its flexibility and accountability, and minimize burden.

Comment: Some commenters stated that the proposed QAPI condition is process-oriented and conflicts with our intent of reducing process-oriented requirements. In addition, the commenters stated that we should allow hospitals to pursue quality improvement in whatever manner they choose.

Response: We recognize that by permitting hospitals to evaluate themselves in the 12 specific areas we believe are critical to hospital performance, the proposed QAPI appeared prescriptive in nature. Based on public comments, we have deleted the proposed requirement for hospitals to assess their performance in 12 specific areas. We agree that hospitals should be able to pursue quality improvement in a manner of their choosing. We encourage hospitals to identify and resolve performance problems specific to their situations in the most effective and efficient manner possible. The provisions also require collaboration between all hospital departments and services, to ensure that all entities are included, to the greatest extent possible, in the QAPI program. After monitoring, tracking, and assessing performance in all areas of hospital service and operations, the hospital has the flexibility to design a program to address its specific needs. We also believe giving the hospital flexibility to design its own program provides the hospital with the flexibility to adopt its own best practices in specific areas. (for example, hospital staff education, record reviews, and information technology). We believe that it is critically important that hospitals examine the adequacy of their information technology and identify opportunities to improve and expand the use of such technologies to prevent medical errors and improve quality of care. This Administration is committed to working with other public and private stakeholders to develop means for improving and expanding the use of information technologies (for example, bar coding and computerized physician order entry systems) in health care settings.

Comment: Some commenters were concerned that our proposal to have an outcome-oriented and patient-centered regulatory approach would eliminate structure and standardized practice

patterns and ultimately jeopardize patient safety.

Response: We did not intend to suggest that hospitals eliminate the standardization of care when appropriate and effective. We believe that one of the most effective means of reducing errors is by standardizing processes wherever possible. For example, by standardizing drug doses and times of administration, the advantages in efficiency as well as in error reduction are obvious. By mandating a QAPI CoP that focuses on performance improvement activities, we expect hospitals to conduct systematic internal QAPI activities including the application of standards of care and best practices throughout the institution. For example, if standardizing insulin coverage sliding scales in the intensive care unit decreased the incidence of hypoglycemia by 25 percent, we would expect the hospital to determine other areas that would benefit from the standardized approach. After making this determination, hospitals should implement and track actions and determine a mechanism to assure achievement of goals and sustained improvement.

Comment: A commenter suggested strengthening the regulation text by adding the phrase "hospital-wide" as used in the preamble.

Response: We agree with the commenter and have made the appropriate changes to § 482.21. The change in language recognizes the importance of assuring that the QAPI program reflects the complexity of the hospital's organization and services.

Comment: Some commenters believed that medical staff provisions should not be deleted as they are not entirely captured in this QAPI provision.

Response: In the December 19, 1997 proposed rule, we proposed to eliminate several process-oriented requirements, currently set forth in §§ 482.12 and 482.22, relating to the composition, organization, and conduct of a hospital's medical staff. We have decided to defer any decision regarding the proposal to delete these requirements until the remaining hospital CoPs are published in their entirety.

B. Other QAPI Approaches

We solicited comments on other possible approaches to the QAPI condition to ensure that hospitals invest substantial effort in QAPI. In addition, we solicited comments on how we might offer a more precise explanation of our expectations.

Comment: Several commenters made recommendations for more precise ways to measure performance. One commenter suggested that we use historical billing data to establish minimum benchmarks or standards of performance as a basis for the performance-based reimbursement system, stating that financial incentives are the best way to motivate change and improve performance. Other commenters stated that a combination of outcome data and the assessment of structured quality improvement processes would be more effective. However, most commenters overwhelmingly expressed concerns that we should develop a final requirement that would allow for flexibility.

Response: We appreciate the commenters' suggestions for more precise ways to measure performance but we believe that these suggestions are more prescriptive than the proposed strategy. In addition, we currently do not have a basis or statutory authority for a performance-based reimbursement system based on benchmarks developed from historical billing data. We agree that using outcome data in combination with assessing the structure of the QAPI program and processes of the hospital would be very effective. However, standardized outcome measures that can be used nationwide have not been established to date so this is not feasible at this time. We believe that the QAPI requirements presented in this final rule address the flexibility concerns of the majority of commenters.

Comment: Several commenters suggested creating a transition period in order to ease the burden of creating a QAPI program.

Response: Since hospitals are currently required to have an "effective, hospital-wide quality assurance program" in accordance with § 482.21, we do not believe a transition period is necessary.

Comment: Many commenters stated the proposed QAPI requirements will substitute high-level hospital-wide QI processes for more effective, focused, department-level performance improvement. These commenters suggested strengthening the language by adding sentinel events to the minimum performance elements.

Response: We agree that hospitals should consider adverse events in the development of its QAPI strategy. We expect hospitals to implement an internal error reduction system. Adverse event tracking and analysis of underlying causes are an effective way to determine issues involving medical errors. We emphasize the need for hospitals to assess processes and systems that affect patient care and quality. Section 482.21(c) requires the hospital(s) to establish priorities, and identify areas of risk that affect patient safety. We believe that the identification of adverse events and analyses of events must be an integral part of the hospital's QAPI program, as the analyses will lead to better protections for patients.

JCAHO's performance improvement strategy is consistent with our approach. Their standards require hospitals to collect data to monitor performance of processes that involve risks or may result in sentinel events. Similarly, § 482.21(c) requires hospitals to consider prevalence and severity of identified problems and to give priority to improvement activities that affect clinical outcomes, patient safety, and quality of care. In order to meet the requirements, a hospital should consider information from its own risk-management data or from external sources of information (for example, hospital industry data on problem-prone processes, JCAHO's list of frequently occurring sentinel events; data from the National Patient Safety Foundation) and quality indicators from the Healthcare Cost and Utilization Project (HCUP QIs), as possible data measures to assist hospitals in designing their QAPI programs pertinent data and information from our "science partner" the Agency for Healthcare Research and Quality (AHRQ) (*http://www.arhq.gov/data/hcup/qiact.htm*).

C. Minimum Elements for a QAPI Program

We proposed that the hospital's QAPI program consist of assessment activities in a minimum of 12 areas. We also asked for comments on the minimum content of the QAPI program.

Comment: We received many comments citing concerns in the medical community about the broad language of the proposed rule regarding minimum performance areas and associated projects, and the possibility that it could be interpreted to mean that hospitals must perform 12 simultaneous projects. Commenters stated that projects in all areas would be too prescriptive and burdensome, and suggested allowing hospitals to prioritize and implement improvement activities based upon self-assessment. It was stressed that small hospitals would have difficulty identifying measures predictive of outcomes in all 12 areas and low patient volumes in rural hospitals would produce data of little value.

Response: We proposed 12 specific areas of self-assessment, which we believe are critical to a hospital's evaluation of its performance. However, we gave serious consideration to

commenters' concerns regarding burden and the misunderstanding of the self-assessment in the 12 areas and have eliminated this requirement. In this final rule, although we have not specifically prescribed areas to be assessed, the CoP requirement is for the hospital's QAPI program to be, but not be limited to, an ongoing program that shows measurable improvement in indicators for which there is evidence that they will improve health outcomes and identify and reduce medical errors. Section 482.21(c) requires that hospitals set priorities for performance improvement based on the prevalence and severity of identified problems. Hospitals are expected to assess all areas of hospital services and operations, and based on that information prioritize the improvement activities that most directly affect patient safety and clinical outcomes. The most important aspect of a QAPI program is the implementation of actions based on the hospital's assessment of its improvement needs. The hospital must use the data collected and make changes in its processes or programs to improve patient outcomes. When adverse outcomes are identified, hospitals must, when applicable, perform system and process analyses and take action to achieve and sustain long-term corrections. These actions could include changes in protocols and systems and staff education and training.

We recognize the special needs and circumstances of rural hospitals. We also recognize that the collection and analysis of clinical outcome data could represent some increase in burden on some hospitals, particularly on the nonaccredited hospitals that are subject to our survey process. Nonaccredited hospitals typically are smaller than most accredited hospitals, are located in sparsely populated areas, and may not have the resources for extensive data gathering and reporting. For these reasons, the framework established by the QAPI CoP is flexible enough to recognize the unique circumstances and characteristics of hospitals. The QAPI CoP affords the hospital the flexibility to identify processes targeted for improvement based on its unique needs, priorities and patients. Hospitals that have more resources may be able to produce more sophisticated measures that involve more complex issues, but the focus for all hospitals is that they make an aggressive and continuous effort to improve performance and address patient safety issues. Moreover, we would expect the processes targeted for improvement to change over time as the hospital succeeds in its initial efforts.

Comment: Some commenters agreed with our rationale for the inclusion of these areas stating these can point to opportunities for improvement in both hospital and practitioner performance.

Response: Although we agree that our rationale for listing these 12 areas represent identifiable opportunities around which a hospital could develop a QAPI program, we determined that a far more valuable approach, at this time, would be to allow hospitals the flexibility to identify their own areas to address. Characteristics of healthcare delivery are too diverse and hospitals strengths and weaknesses are too varied to take such a narrow approach.

Comment: We were asked to clarify how a hospital would show sustained improvement in all 12 areas, anticipating it would be too difficult to select measures to guarantee and improve patient outcomes.

Response: As stated above, we have eliminated the 12 areas presented in the proposed rule. One of the benefits of operationalizing a QAPI program is that, because it is a continuous process, it affords the hospital a mechanism for evaluating its own improvement efforts. Specifically, the process of improvement includes—

- Identification of an organization's critical patient care and services components;
- Application of performance measures that are predictive of quality outcomes that would result from delivery of the patient care and services; and
- Continuous use of a method of data collection and evaluation that identifies or triggers further opportunities for improvement.

Comment: Commenters requested that we clarify and define the list of 12 areas, but the overwhelming majority of commenters strongly encouraged the deletion of the list. These commenters argued it would be more effective to allow hospitals to assess, measure and analyze themselves, but concurred with the identification of hospital processes and functions that could produce valuable information. Alternatives were given such as the adaptation of JCAHO's standards, or us merely providing the components of the QAPI program and giving the hospital the flexibility to create a program of its own design.

Response: As stated previously, we have eliminated the list of 12 areas for self-assessment. The regulations provide the components of a QAPI program and allow for individual hospital flexibility in implementation.

Comment: Some commenters suggested that nonaccredited hospitals be exempt from QAPI requirements until we provide scientific evidence that participation in external measurement systems by nonaccredited hospitals improves patient care.

Response: We cannot relinquish our responsibility for assuring quality healthcare to all patients. We believe that we have provided hospitals with enough flexibility and have identified enough resources for improving the process of patient care to facilitate the development of an effective QAPI program by a hospital of any size. Therefore, we do not believe there is a need to differentiate our expectations for accredited and nonaccredited hospitals.

D. Data

We proposed that hospitals use hospital-specific data (for example, medical record and committee information), including QIO, and other relevant data as an integral part of its QAPI program. In this final rule under § 482.21(b), program data, we use the phrase "quality indicator data including patient care data, and other relevant data," since hospital-specific data, is covered under "other relevant data." The infrastructure of performance improvement activities is based on the collection of data. Analysis of this data allows hospitals to identify trends, identify process variations, and assess performance patterns. We recognize there may be some costs associated with data collection, and realize it is not feasible nor desirable to collect data on everything. Therefore, we have given the hospital the flexibility to establish, through its priorities and needs, the areas on which to focus. Data collection should focus on areas of prevalence and the severity of identified problems, giving consideration to patient safety and quality of care. The governing body must determine priorities regarding which processes to monitor with data collection and the subsequent development of planned improvement efforts, as needed.

E. Improvement Projects and QIO Projects

In the preamble to the proposed rule, we asked whether we should require a hospital to engage in a minimum number of improvement projects that are based upon their own performance assessments. In the proposed regulation text, we stated that hospitals must track performance to assure that improvements are sustained. We asked for comment on the advisability and necessity of such a requirement, and

also on the best approaches to achieve this minimum level of effort. We also proposed that if a hospital chooses not to participate in a QIO project, it must be able to demonstrate, to the SA, a level of achievement through its own QAPI strategy comparable to or better than expected from QIO participation.

Comment: A commenter stated QAPI should not be required without the supporting scientific evidence showing QAPI improves patient care.

Response: The current quality assurance CoP (§ 482.21) has been in effect since 1986. At that time the healthcare industry as a whole embraced a quality assurance approach to measuring and improving the care delivered to patients. The 1986 CoP reflected state-of-the-art practices. Since that time, the healthcare industry has moved toward a QAPI approach in the delivery and measurement of patient care. The proposed rule was intended to update the existing quality assurance CoP to reflect current practice in quality improvement. We proposed to change the focus of a hospital's quality assurance activities from one that relies on a problem-focused approach of quality assurance to one that focuses on systemic quality improvements, that parallels the JCAHO's overhaul of its accreditation standards.

We specifically requested public comment on the approach as well as the advisability and necessity of the proposed requirements. Commenters were in favor of and supported the continuance of the existing quality assurance CoP. However, they were overwhelmingly opposed to the proposed QAPI requirement that mandated assessment in 12 predetermined areas, stating that this was too rigid and prescriptive.

As stated earlier, we restructured the final rule based on public comments and have eliminated the proposed provision requiring assessment in 12 predetermined areas. We believe that this final rule gives the hospital the flexibility to establish a QAPI program that meets our requirements by conducting systems or process analysis and taking actions to afford long-term correction and improvement of identified or potential problems.

Comment: Several commenters stated that the final regulation should specify both a minimum level of scope, as well as a minimum number of improvement projects. One commenter added the number of improvement projects required should be based on the percentage of all patients receiving services at the hospital. Conversely, the overwhelming majority of commenters were strongly against any such requirement, favoring an approach where the hospital would be required to demonstrate to the SA what projects they are doing and what progress is being achieved.

Response: We considered specific requirements regarding the number, scope, and complexity of projects to be performed by each hospital. In the preamble of the proposed rule, we specifically stated that at a minimum, we were considering requiring that the number of distinct successful improvement activities to be conducted annually be proportional to the scope and complexity of the hospital's programs and we also presented other alternatives for consideration. We decided not to base the number of projects on discharges, number of beds, or operational areas as proposed. Based on public comments, we have decided to require hospitals to document what quality projects are being conducted, the reasons for conducting these projects, and measurable progress achieved on these projects. In fulfilling the QAPI regulatory requirements for collection and use of clinical data, we anticipate that hospitals will make use of information technologies. Indeed, we believe that the effective use of information technology (IT) systems (for example computerized physician order entry systems (CPOE) or barcoding) could over time prove invaluable to the improvement of quality and safety of patient care. As an alternative to a performance improvement project, we added a provision, § 482.21(d)(2), that allows hospitals to invest in information technology; that is, we will allow hospitals to undertake a program of investment and development of IT system that are geared to improvements in patient safety and quality, in place of a QAPI project. In recognition of the time required to develop and implement this type of system, we will not require that such activities have a demonstrable benefit in their initial stages, but we would expect that quality improvement goals and their achievement would be incorporated in the plan for the program. Initial stages of development, include activities such as installation of hardware and software, testing of an installed system, training of staff, piloting the system, and hospital-wide implementation of the system. Upon implementation of the system, monitoring will begin and data will be collected over time as part of the process to evaluate the impact of the new system on patient safety and quality. We believe that this modification demonstrates this Administration's deep commitment to patients, high quality care, and flexibility to our partners. This approach will allow hospitals the flexibility to invest appropriate efforts in their quality program and the freedom to make decisions about the best way to improve the quality of care.

Comment: A commenter stated that we have failed to identify the specific outcomes hospitals should achieve, measure, and report. The commenter advocated uniform, standardized measures.

Response: Our long-term goal is the identification of a standardized measure set for hospitals. However, since these measures have not yet been identified, we expect hospitals to engage in activities based on analyses of their own data, initiatives that promote patient safety, improve quality of care, and increase patient satisfaction. One goal of this rule is to stimulate providers to develop and pursue a wide variety of information and data, from internal and external sources, to guide their improvement efforts. External sources of information and data can include organizations like the National Quality Forum (NQF), QIOs, and accrediting bodies.

Comment: Commenters agreed with the concept of performance improvement, but stated most aspects of quality depend on judgments and subjective assessments. These commenters questioned if quality improvement would be quantified into numerical values, and if so, what numerical value would demonstrate optimum performance, and what should be done if that level is not achieved.

Response: Through our survey process, we intend to assess the hospitals' success in using its own objective data, assessing performance, prioritizing improvement efforts, and demonstrating that sustained improvements have taken place. In the future, based on a set of standardized performance measures that can be used nationwide, some improvement efforts might by quantified into numeric values. However, as stated in the 1999 IOM report, continuous improvement assumes there is no threshold for good performance. The central premise is that healthcare systems should never be content with present performance. Rather, providers of healthcare services should continuously study and improve the process of healthcare and service delivery.

Comment: One commenter proposed a revision to the following requirement: The hospital must take actions that result in performance improvements and must track performance to assure that improvements are sustained. The

commenter proposed the requirement should read: "The hospital must take quality assessment and improvement actions that result in improved performance outcomes for identified problems." Several other commenters wrote seeking clarification regarding the meaning of the phrase, "improvements that are sustained."

Response: We did not accept the commenter's proposed language verbatim, but we did modify the language. The evaluation should enable a facility to judge where resources need to be focused for priority improvement efforts, while assuring sustained improvement in areas where improvement goals have been achieved. For example, if project(s) to improve reduction in antimicrobial resistance have produced successful improvements in the physician's antibiotic prescribing patterns and in the facility's anti-microbial resistance rate, a hospital might defer funding for this effort to focus on another priority topic. At the same time, success with the first project must be sustained, and where possible, improved further over time. Lessons learned from past projects should be incorporated into staff training and evaluations, where appropriate. The evaluation "loop" of setting priorities for improvement, tracking results and determining continued use of resources based on priorities must include continued evaluation of outcomes in "past" improvement projects and staff education in a manner determined by the facility. These activities should lead to long-term correction and improvement of identified focus areas.

Comment: A commenter stated that not all hospital departments and services, for example marketing and maintenance, should be included in QAPI programs. The commenter also recommended that the language of the requirement be changed to delete the word "all."

Response: We did not accept the commenter's suggestion to delete the word "all." We believe that all hospital departments and services furnished under contract or arrangement, must be involved in the hospital-wide QAPI program. The hospital's marketing program may be instrumental in increasing patient satisfaction and performing post-hospital surveys. The hospital's maintenance program may be instrumental in decreasing the potential for infections. There are many ways to involve all areas of the hospital. This final rule, although flexible, requires hospitals to consider the entire scope of its services and operations. However, we reiterate that although a hospital is required to monitor and track performance in all areas of its operations, it must use this surveillance activity to help set priorities for the remainder of its QAPI program including data collection, development of performance measures, and the selection of specific quality improvement projects.

Comment: The overwhelming majority of commenters wrote that not all QIO data is relevant and timely and sought clarification regarding how a hospital choosing not to participate in a QIO project would demonstrate that its own QAPI strategy is comparable to or better than that expected from QIO participation. Some commenters requested clarification regarding demonstrating "value," as well as the determination of a "sufficient" project.

Response: We share the commenters' concern and as a result, we are revising the proposed regulation text, now § 482.21(d)(4) of this final rule, to require projects of comparable effort. Through our QIOs, we are working to reduce errors of omission for 39 million Medicare beneficiaries. Under their current performance-based contracts, QIOs are working to prevent failures and delays in delivering services for breast cancer, diabetes, heart attack, heart failure, pneumonia, and stroke. These efforts have already decreased mortality for heart attack victims. In assessing projects, hospitals should consider the number of patients affected, range of services covered, the projected magnitude of the benefit to individual patients, as well as the actual changes achieved by the project versus the actual changes achieved by participants in the QIO project. Any improvements in care made by hospitals working with the QIOs on their projects would transfer to better care and services to all patients served by these hospitals. Although hospitals are not required to participate in QIO projects, the hospital must document what quality projects are being conducted, the reason for conducting these projects, and that the measurable progress achieved on these projects demonstrate that the projects are of comparable effort. A hospital can compare its own projects to QIO cooperative projects if the following techniques are used as guidance:

- Improvement Projects—These projects are based upon the hospital's own assessments of its performance and show measured, sustained results that actually benefit patients. Because most organizations identify more improvement opportunities than they can initiate, improvement project priorities have to be set. These priorities must be endorsed by the hospital's governing body. Although we do not require a specific number of projects, we do expect the number of distinct improvement projects conducted annually to be proportional to the scope and complexity of the hospital's program. JCAHO states in its Comprehensive Accreditation Manual for Hospitals that certain criteria—the expected impact on performance; and the selection of a high-risk, high-volume, or problem-prone process to monitor— are helpful in setting project improvement priorities. We are adopting a parallel philosophy by specifying at § 482.21(c) that a hospital must prioritize its performance activities, which must focus on high-risk, high volume, or problem-prone areas; consider the incidence, prevalence, and severity of the problem in those areas; and affect clinical outcomes, patient safety, and quality of care. Therefore, we are giving the hospital the flexibility to determine the areas that require performance projects.
- Quality Improvement Organization Projects—There are two basic areas of consideration used when establishing criteria for selection of QIO projects: identifying clinical topics and prioritizing clinical topics. These criteria were designed to ensure that a project has the greatest likelihood of significantly impacting the health outcomes of Medicare beneficiaries. Hospitals should utilize these same criteria in determining which projects best encompass the needs of their particular hospital, and in determining if projects identified by the hospital would be comparable to the expected outcomes of those identified by their QIO.

Comment: Many commenters understood that the proposed requirement would mean that hospitals would have to demonstrate they are doing as "good of a job" as a QIO if they chose not to participate in QIO projects. These commenters, however, stated that this process would be burdensome for hospitals, and would be counterproductive to the goal of establishing positive cooperative relationships.

Response: We disagree. The requirement is to demonstrate a comparable effort. Since the requirement is to invest equal effort, the following material is included as guidance only as how to better make these decisions.

There are four criteria that QIOs use to assess when identifying clinical topics: prevalence, science, measurability and the opportunity to improve care. These criteria address the

issues central to identifying appropriate clinical topics and quality indicators. The remaining criteria are relevant in establishing priorities among those clinical topics that meet the first four criteria (essentially, determining how you can best allocate limited resources to obtain the greatest improvement for the most beneficiaries). We are providing additional guidance regarding the use of criteria for identifying clinical topics as follows:

• Prevalence, Incidence and Disease Impact—The burden (morbidity, mortality) of the clinical condition or medical procedure under consideration is great for the population affected. The burden within a subpopulation (for example, minority, disabled, at-risk) may be another consideration that is taken into account.

• Science—There should be scientific consensus through multiple independent observations or clinical trials that changing a process or procedure of care will measurably improve patient outcomes. Note that we are adopting the operational definition of the term "scientific consensus" by the Office of Medical Applications of Research in the Office of the Director of the National Institutes of Health as follows:

* * * (T)he (consensus) statement reflects the unified view of a panel of thoughtful people who understand the issues before them and have carefully examined and discussed the scientific data available on these issues. The creative work of the panel is to synthesize this information, along with sometimes conflicting interpretations of the data, into clear and accurate answers to the questions posed to the panel.

• Measurability—The process(es) or outcome(s) of care for the topic can be stated in clearly defined, discrete, and quantifiable data elements from data sources which are valid and reliable; accessible in a timely manner; from appropriate care settings; and when necessary, span the continuum of care. In addition to the final measures of outcome, interim measures of progress toward achieving the quality improvement goal are desirable.

• Opportunity to Improve Care—Not only should the process or outcome be measurable, there should be a gap between current performance and what can reasonably be achieved. The wider the gap between the present situation and what is feasibly achievable, the greater the opportunity is for improvement. Additionally, there must be a feasible means of narrowing that gap. Merely measuring the problem is not sufficient; you must also be reasonably certain your actions can improve the situation.

Clinical topics meeting the above criteria should be further prioritized. The following criteria should be helpful in that process. Although it is likely that no topic will consistently meet all of the criteria, proposed topics can be compared on the basis of the number and degree to which the criteria are met.

• Previous Projects or Pilot Studies—Demonstrate or provide a citation that demonstrate previous experience with the proposed project methodology or demonstrate that a project of similar design can reasonably be expected to improve healthcare outcomes. Potential priority topics may have been the subject of previous successful projects by QIOs or other organizations. Here, the focus is on selecting topics for which quality improvement has previously been demonstrated or on replicating successful project methodologies.

• Adequate Program Resources—Consider whether you have adequate resources (time, personnel, and funding) to implement the quality improvement project. Alternative potential projects with similar costs should be compared for their relative potential benefit. Whenever feasible, topics that make use of existing data sets should be selected.

• Availability of Partnerships—Select topics that allow you to collaborate with other providers and national, regional, and local organizations with similar goals. Collaboration with other organizations is encouraged for several reasons: planning, implementation, and analytic costs can be shared; planned, coordinated differences in project methods can be compared for efficacy and cost; local lessons learned can be shared and compared; and ideas for second and subsequent improvement cycles can be gathered.

• Ability to Enable or Facilitate Ongoing Quality Improvement—Select topics and interventions that are likely to foster or enhance the development of quality improvement efforts which extend to care processes and conditions beyond those targeted by the improvement project. Some topics may be selected, in part, because of the learning value to the intended user (for example, demonstrating principles and methods that can be applied by the user to other topics) and the ability to sustain the improvements that they trigger.

• Likelihood of Success (Readiness)—Identify topics that are of interest to the relevant stakeholders who will be asked to make improvements. This criterion recognizes the fact that significant improvement is not likely to occur if some pivotal individuals (for example, chiefs of Medicine, department heads, and clinical leaders) do not welcome or are not capable of participating in the project.

Comment: Several commenters stated that the regulation should eliminate the requirement to use QIO data. Others suggested that hospitals, especially rural hospitals, should be required to only use QIO data that is relevant to its own QAPI programs.

Response: A hospital is not required to use QIO data. The QAPI program must incorporate quality indicator data that may include data, for example, QIO data or other relevant data.

Comment: Several commenters stated that the quality of care and patient outcomes should be the focus of the QAPI program, not the usage of specific data. Some commenters stated the proposed data requirement was too prescriptive and unclear. Others stated that many providers are unaware of what "QIO data" is, how to access it, and the associated costs, if any. Several commenters requested this provision be removed.

Response: As stated previously, there is no requirement to use QIO data. QIO data is generally relevant information submitted to (or received) from the hospital's QIO. It can be a good source of quality indicator data to inform the hospital of areas where improvements are necessary. It is important that each quality improvement project have valid and representative baseline data; however, that baseline data may be from QIO data or from another source.

Comment: A commenter stated QIO cooperative projects, rules, and policies are already established and stated referring to them in regulatory text is unnecessary.

Response: As stated before, the QIOs are making great strides in national quality projects; however, hospitals are free to work on projects of their own design as long as the effort is comparable to QIO projects. Our intent is to allow hospitals the greatest flexibility, by offering options and examples.

F. Assessment of Compliance and Enforcement

Through our survey process, we intend to assess whether hospitals have all of the components of a QAPI program in place. The SAs will expect hospitals to demonstrate, with objective data, that improvements have taken place in actual care outcomes, processes of care, patient satisfaction levels, hospital operations, or other performance indicators.

Comment: Many commenters strongly supported our proposal to require,

through the survey process, an assessment of the hospital's success in using performance measures and objective data to demonstrate improvements have occurred.

Response: We are encouraged by the comments that support the proposed survey focus for the QAPI requirements. Further, we recognize the need for appropriate training of our surveyors. We do not intend for surveyors to judge the measures used by a hospital. Instead, we will train the SAs to assess the hospital's success in its own efforts to improve its performance. The surveyors will ensure that the number of distinct successful improvement activities conducted annually are proportional to the scope and complexity of the hospital services, operations and patient acuity, and that improvement activities demonstrate sustained improvement over time.

Comment: A commenter stated JCAHO should be involved in enforcement, emphasizing the hospital's familiarity with the current JCAHO requirements regarding QAPI.

Response: We disagree. JCAHO is an accreditation organization that sets healthcare standards but it does not have the direct authority to enforce our regulatory requirements. We also note that compliance with our quality standards is assessed either through an accreditation process that we have determined meets or exceeds our requirements or through the survey and certification process conducted by SAs under contractual agreements with us. Ultimately, we are responsible for enforcing our own requirements; and therefore have the following hospital quality oversight responsibilities: (1) Being a prudent purchaser of quality hospital services; (2) establishing minimum standards to ensure the health and safety of our beneficiaries through the CoPs; (3) ensuring that hospitals are in compliance with the CoPs; and (4) promoting quality improvement in hospitals.

Comment: Many commenters expressed concern over the lack of clarity regarding the specific documentation hospitals are required to provide to surveyors to indicate compliance on surveys and the correlation of this information in determining how these regulations improve and protect the quality of care and increase patient satisfaction. Commenters also questioned the hospital's ability to deny access to information collected for quality activities, citing confidentiality and fear of disclosure.

Response: As previously stated, surveyors will not judge the various measures used by a hospital in its QAPI program. In general, a hospital should maintain materials and documentation that it deems necessary to objectively demonstrate its QAPI goals and outcomes to a surveyor. The surveyor should, at a minimum, expect a hospital to have documentation that describes the program; assessment information (data); the rationale for prioritized improvement projects; and the progress that has been achieved. The SAs and we have the legal authority to review records pertaining to the operation of the provider, including patient medical records (including, medical error reports, and peer review information), when these documents are necessary to determine whether the provider is in compliance with the statutory and regulatory requirements for Medicare and Medicaid participation. Section 1864 of the Act authorizes SAs to determine whether an entity meets hospital qualification under section 1861 of the Act. Included in these qualifications are requirements concerning patient records, hospital administration, and medical and nursing services. The surveyor must have access to the hospital and patient records as necessary to determine compliance for participation in the Medicare program. Also, the facility denial of access to our surveyors or us may prevent us from determining that facility's compliance with program requirements. Therefore, under the statute and regulations, we may need to pursue termination proceedings.

This information is protected by the provision of section 1106 of the Act, 42 CFR 401, as well as, the survey agency's responsibilities for protecting the confidentiality of documents, as set out in sections 3300–3316 and 3318 of the State Operations Manual.

G. Responsibilities of the Hospital's Governing Body

We proposed that the hospital's governing body, medical staff, and administrative officials are responsible for ensuring that the hospital-wide QAPI efforts address identified priorities in the hospital and for implementing and evaluating improvement actions.

Comment: A commenter stated that all of proposed § 482.25(b) should be deleted because it is included in the opening paragraph for the QAPI CoP.

Response: Accountability and leadership are vital to any QAPI program, and the hospital's leadership (for example, administration and governing body) must provide the foundation for its establishment. There must be an explicit organizational goal that is demonstrated by clear leadership and support. With this, the hospital and its staff would be more likely to consider the quality program as a high priority and initiative. We have expanded the proposed standard entitled "Program Responsibilities" and renamed it "Executive Responsibilities" to more appropriately reflect the scope and intent of this standard. The organization's governing body must have an ongoing commitment to creating safe systems of care. The IOM report, "To Err is Human," states, "Senior level leadership should define program objectives, plans, personnel and budget, and should monitor QAPI activities by requiring reports to the executive committee and board of directors." The executive responsibilities standard clarifies that it is the responsibility of the hospital's governing body to establish a culture of safety and quality and to define the importance of QAPI activities throughout the institution. The culture of a hospital plays a critical role in how well patient safety and quality of care are viewed throughout the institution. The standard also requires the governing body to ensure that the hospital-wide QAPI efforts address priorities for improved quality of care and patient safety and that all improvement actions are evaluated.

Comment: A commenter stated that the governing body should not be held accountable for the performance of independent contractors in the medical staff because the governing body lacks the scientific knowledge to judge physicians.

Response: We are not asking, nor do we expect, the governing body to "judge" physicians or any member of the multidisciplinary team. The governing body is responsible for assuring that there is an ongoing, effective, internal QAPI program and that this program methodically identifies and addresses priorities in the hospital and initiates efforts to evaluate and address improvement actions. The analysis of these projects and events identified by the quality initiative is an integral part of the program. It is not a separate function performed by the governing body. We expect hospitals to learn from these efforts and initiate plans and actions to improve patient care outcomes, safety, and satisfaction.

H. Autopsies

We proposed that hospitals must attempt to secure autopsies in all cases of unusual deaths and in the interest of medical, legal, and educational endeavors. The mechanism for documenting permission to perform an

autopsy must be defined. There must be a system for notifying the medical staff, specifically the attending practitioner, when performing an autopsy.

Comment: A few commenters asked why we would give hospitals (instead of the medical staff) the responsibility for securing autopsies and then notifying the medical staff and attending practitioner. These commenters suggested that this authority be maintained under the auspices of the physician. Conversely, other commenters supported this shift of authority, but strongly opposed the elimination of the medical staff CoP, stating this group is essential for quality oversight of any hospital. There were other commenters that requested that we delete the autopsy requirements and administrative assessments. These commenters believe that these requirements were particularly burdensome and may have an adverse effect on patient care or are too difficult to measure.

Response: We have removed the proposed standard for autopsies under the QAPI condition. However, we will retain the current autopsy requirements at § 482.22. This requirement states that the medical staff should attempt to secure autopsies in all cases of unusual deaths and of medical, legal and educational interests.

I. Future Development of a Core Set of Evidenced-Based Standardized Measures for Hospitals

We have a national strategy for standardizing performance measurement and data collection that is, in part, an outgrowth of the creation of a National Forum for Health Care Quality Measurement and Reporting (National Quality Forum (NQF)). In May 1999, the NQF was organized in the private sector and brought together private and public purchasers and stakeholders to reach a consensus on standardizing a national approach to performance measurement in healthcare. The NQF adopted the concepts of our guiding principles and incorporated them into its own national strategy to standardize performance.

The three principles that guide our national performance measurement strategy are as follows:

- *Performance measures should be consumer- and purchaser-driven.* A major challenge for us is to determine value through quality measurement and to use the information to purchase better healthcare services for beneficiaries. This should be done through collaboration with other purchasers.
- *Performance measures and the collection tools needed to collect them should be in the public domain with a publicly held copyright.* This means that the public good is served through a broader access to the measures and data collection tools. Further, the government and the public need unrestricted access to the measures and measurement systems to be able to adopt, collect, revise and report results to the public.
- *The content and collection of data and performance measures derived from that data should be standardized.* Standardization leads to more useful information for consumers and purchasers and reduces the burden for providers and plans.

Our performance measurement strategy is designed to achieve our mission of: (1) Providing consumer information that assists beneficiaries in making choices in healthcare; (2) setting process and outcome criteria to which plans/providers are held accountable; and (3) facilitating quality improvement activities at the program level focusing on national Medicare and Medicaid key clinical priorities at the plan and provider level.

1. Why Standardized Measures?

Quality improvement is difficult to measure and accountability for quality improvement may be a new concept for some providers of care. A quality improvement program is developed from the collection of data within a facility that are analyzed and used internally to develop and measure the impact of standards of practice, processes, and systems. The organization learns to compare its measured performance results, using appropriate risk-adjustment techniques, with standardized benchmarks used nationally to evaluate how well it is doing compared to similar institutions across the nation. In order to develop these standardized benchmarks, we participate in pilot projects with our QIOs and accrediting bodies. We are committed to partnering with consumers, health plans, providers, purchasers, States, industry and professional representatives, and accrediting organizations over time, to identify key performance measures of quality that guide what institutions can measure internally for comparisons of standardized measures. Standardization of these measures is key to assure comparability of performance and to make these measures appropriate for accountability purposes. Further refinement and testing of select measures that are suitable for public reporting of comparisons of performance among like-providers is part of the long-range plan for the use of standardized measures. Ultimately, a continuous process of refinement and flexibility in the selection of a core set of standardized measures is our long-term goal. The requirement for hospitals to conduct ongoing monitoring and evaluation of their internal processes and systems through the QAPI program will continue to be a part of the effort for improving the quality of care provided. Standardized measurements will complement QAPI, not replace it.

2. How Will This Program Be Implemented in Hospitals?

We are engaged in multiple initiatives that address the development of a core set of evidence-based standardized performance measures, which will be universally applied to hospitals. One initiative is a pilot project where we intend to work with multiple partners, including the JCAHO and the QIOs, in the development of a core set of evidence-based standardized performance measures, which are expected to be presented to the NQF for endorsement. Additionally, we are working with other organizations, like the NQF, on an initiative that will further the national private/public effort to standardize a core set of hospital performance measures that include patient safety measures. Until a core set of measures is developed, we expect hospitals to conduct their QAPI programs using pertinent objective measures of performance. Hospitals also have the opportunity to pursue measurement of clinical practices in focus areas of national high priority. One example of this could be a hospital's assessment of physician prescribing patterns in comparison to evidence-based clinical guidelines, in an effort to reduce the prevalence of antimicrobial resistant organisms.

3. Reporting

Since the standardized measures project would involve the Federal government, as well as accrediting bodies and other organizations, its development would not only lessen the burden on hospitals but would also support our goal of developing a regulation that would be universally endorsed. In this process, we will determine how data could be collected, validated, and presented to the general public, and determine the impact of providing this type of information. In the December 19, 1997 proposed rule we stated the following:

Under this proposed rule, we would require a hospital to engage in a quality assessment and performance improvement program that uses objective measures, but we are not

proposing that a hospital be required to participate in a system of performance measurement at this time * * * however, we intend to develop such a requirement for inclusion in our final rule and welcome public comments addressing the appropriateness of such a requirement or how it could best be structured.

In this final rule, we are not setting a requirement for using and reporting on a core set of evidence-based performance measures. Once the evidence and methodologies to support a set of performance measures that can be used nationwide are available, we will assess issues such as commonality of data elements, standardization, and reporting systems. We will inform hospitals and the public of the specifics of and the methods for reporting these performance measures via future rulemaking. This will give the public the opportunity to comment on the core measures before implementation.

4. Core Set of Standardized Performance Measures

In the December 19, 1997 preamble to the proposed QAPI Condition, we also asked for responses and comments to seven questions we posed to the public regarding the development of standardized performance measures for hospitals.

a. *Question 1:* Should CMS assume a leadership role in developing the measures?

Comment: Several commenters stated that we should assume a leadership role in developing a national database of clinical outcomes accessible to all healthcare provider organizations. We received comments from providers as well as practitioners stating that it was the Federal Government's responsibility to set quality standards for the nation with its parallel roles of protecting consumers and supporting healthcare professionals.

Response: We remain committed to our leadership role of protecting consumers and supporting healthcare professionals. We are exploring the concept of requiring Medicare- and Medicaid-participating hospitals to report on a standardized set of performance measures that can be used nationwide. Currently, we are negotiating the terms of a pilot project. The pilot project will be conducted through a collaborative effort among several States, accrediting bodies, and QIOs. These organizations will evaluate a set of standardized performance measures that can be used nationwide. We believe the outcome of this project will yield valuable information regarding the efficacy of data, as well as the effectiveness of requiring Medicare- and Medicaid-participating hospitals to report on a standardized set of performance measures that can be used for national comparative studies.

Comment: Many commenters stated our role should be limited to convening a group of experts and stakeholders to develop performance measures, while others argued that we should not be involved in this process or limit its role to nonaccredited hospitals. Some commenters believed that we should not enter into public/private partnerships to develop measures, stating high accreditation costs would be passed on to consumers. While others stated an outcome measure database should be developed with input from CMS regional office and State agency staff.

Response: We have established a performance measurement leadership agenda to pursue standardization of hospital performance measurement. We plan to work with organizations like the NQF, hospital associations, and accrediting organizations to standardize a core set of hospital performance measures. Through the QIO Program 6th Scope of Work, we currently have performance measures for pneumonia, heart failure, stroke, acute myocardial infarction, diabetes, and breast cancer to offer as a starting point. As stated earlier, we are exploring conducting a pilot program to test these and other standardized measures. One goal of the QIO program is to improve the quality of care to Medicare and Medicaid beneficiaries, which is parallel with our oversight responsibilities.

Before proposing new provider requirements, we routinely network with healthcare providers, regional and State agency staff, and other interested stakeholders so that what is proposed reflects optimal provider practices, to yield optimal results. Finally, although the majority of commenters favored a standardized approach, opinions varied with respect to whom should take the leadership role in the development of these standards.

Comment: Many commenters disagreed with our goal of creating standardized performance measures. These commenters stated this approach should not be required and strongly felt that a national quality assessment database should not be established because comparisons between hospitals will not be meaningful or reliable. Additionally, other commenters expressed concern that there is no basis for recommending one indicator over another, and that reliable and valid measures do not currently exist. It was further argued, that the infrastructure and data elements for performance standards are not available, stating that clear data definitions are needed before a core data set may be implemented to increase the hospital's understanding of what is being measured and how it is being measured.

Response: As we stated previously, we believe that standardization of these measures is key to assuring comparability of performance and to making these measures appropriate for accountability purposes. Further refinement and testing of select measures that are suitable for public reporting of comparisons of performance among like-providers is part of our long-range plan. Ultimately, a continuous process of refinement and flexibility in the selection of a core set of standardized measures will benefit both hospitals and beneficiaries as individual hospital performance on standardized measures will invoke appropriate improvement activities to improve overall patient care.

b. *Question 2:* How should CMS proceed to develop and implement the measures?

Comment: Several commenters stated that QIOs should formalize a national database.

Response: We plan to utilize all available resources, including QIOs and organizations like the NQF, to formalize and finalize a source for comparable data to be used nationwide. We currently have some data entry software systems that we offer to providers. The systems have tutorial help for users to gain an overall understanding of the applications, with emphasis on designing data entry systems, explaining how to create an analysis, and evaluating the quality of the abstracted data.

Comment: Some commenters were concerned with the impact that the requirements would have on rural hospitals and suggested that we defer to JCAHO's ORYX. The commenters believe that ORYX recognizes these needs.

Response: We do not agree with deferring to the JCAHO to establish a set of standardized performance measures for Medicare- and Medicaid-participating hospitals. However, we recognize the JCAHO's efforts with regard to performance measures and we acknowledge the need to collaborate with accrediting bodies to facilitate the most appropriate principles for standardizing performance measures. While we are aware that there is no single system available for the measurement of a hospital's performance, we are also aware of efforts by the hospital industry to find ways to increase the use of the systems

that are currently available. In response to the unique needs of rural hospitals, we want to assure these hospitals that our goal for the utilization of performance measures considers the hospital's size and available resources. We will take into account the special circumstances faced by rural hospitals and ensure their needs are considered when developing performance standards in the future.

Meaningful performance programs are often derived from simple designs that use direct and uncomplicated measures. One of the factors that has impeded this progress is the lack of standardization where possible. These comments reinforce the importance of our adoption of a national performance measurement strategy.

Comment: Commenters stated that we should defer to the private sector until the field of clinical outcome measures has matured, stating there is a lack of consensus in this area. Commenters suggested that we clarify our intent by addressing such issues as data element definition, risk-adjustment methodologies, audit criteria, and modification of existing commercial monitoring systems before mandating a Federal requirement.

Response: We agree that these issues must be addressed before proceeding to mandate utilization of a core set of performance measures. We plan to work with all of our partners, stakeholders, and other interested parties in developing these outcome measures and believe this will provide scientific evidence needed for our national performance measurement strategy.

Comment: A commenter stated we must develop an outcomes survey process independent of JCAHO, noting current significant inconsistencies between JCAHO and State survey agency findings.

Response: We intend, through our survey process, to assess the hospital's success in using performance measures principally in terms of whether the hospital can demonstrate with objective data that sustained improvements have taken place. We recognize the need for surveyor training and education in the area of quality improvement. We do not intend and would not be in a position to judge the measures ourselves. Instead, we would assess the hospital's use of these measures to improve its performance. Whenever the state agency surveyors enter the hospital to conduct a survey they will evaluate the hospital's program and its own internal evaluation process. When there is an onsite review of the hospital's QAPI program, the surveyors determine whether or not the hospital is meeting the QAPI CoP requirements. Following the existing survey process and procedures, if the SA determines that the hospital is significantly out of compliance with the QAPI CoP requirements, the hospital will be scheduled for termination from the Medicare and Medicaid programs. The hospital is then given the opportunity to submit a plan of correction. The SA would conduct a follow-up survey to assess whether the hospital is now in compliance with all of the requirements, prior to the actual termination taking place.

Regarding the survey process, our survey process is developed independent of JCAHO's. In addition, we have an ongoing effort with JCAHO to address inconsistency in survey findings.

c. *Question 3:* If CMS does assume a leadership role in this area and hospitals invest in the development of multiple systems, would the overall burden be greater than if a single system had been imposed at the outset?

Comment: The majority of commenters focused on the burden that this requirement would impose on hospitals and the healthcare industry. These commenters argued that the increased burden is due to the lack of standardization among technology companies and programs, not due to lack of interest and willingness of providers. These commenters offered the suggestion that we develop and require a single set of performance measures, but allow hospitals to develop their own system as long as it meets established criteria. In like spirit, commenters suggested requiring companies that develop approved systems to include specific attributes of the prescribed measurement system that will be evaluated. The overall tone of the comments genuinely stressed the need for adequate time for any system implementation once decided. Commenters also requested an exemption for rural hospitals stating the needs of these facilities are unique and would not be best served by such a standardized system.

Response: We will consider all possibilities that will reduce burden and enhance a hospital's ability to successfully transition to a single system. We continue to consider the geographical and financial needs of individual hospitals, but we strive to offer the same basic protections and safeguards to all patients regardless of the hospital in which they receive services.

Comment: A commenter stated that we should use available resources, such as Medicare-contracted utilization and quality assurance organizations, QIOs, and other resources. This commenter requested that we outline the current resources that are available to hospitals via these organizations.

Response: It is our intention to avail ourselves of quality assessment resources. We have considered integrating standardized measurement data sets into a system that could provide access, by an institution, to data reported to a QIO.

d. *Question 4:* If CMS does not assume a leadership role in this area and individual hospitals adopt multiple systems that produce nonstandardized data, to what extent would it be difficult to make comparisons between hospitals?

Comment: Several commenters strongly disagreed with our proposal to allow multiple systems to be used in making comparisons between hospitals. They believe that inherent differences in systems and lack of uniformity provide too many variables to accurately compare hospitals.

Response: We understand the commenters' concerns. Many hospitals will need more experience with data collection methods and in the design, implementation, and monitoring of improvement projects. We realize the difficulty in assessing comparability of hospital performance without the requirement of hospitals to utilize like systems. As stated in the December 19, 1997 preamble of the proposed rule, we sought comment on establishing evaluation criteria that must be a part of the system or systems the hospital may choose.

Currently, hospitals across the country use a wide variety of measurement systems and performance indicators to assess the quality of care delivered. The number of these performance measures has increased in recent years. Hospitals are committing substantial and increasing resources for data collection and measurement, as both consumers and purchasers demand greater accountability from their healthcare providers. Since the various measures are not standardized, the data cannot be used to make accurate comparisons about the quality of care among hospitals.

In December 2002, the American Hospital Association (AHA), the Federation of American Hospitals (FAH), and the Association of American Medical Colleges launched a national voluntary initiative to collect and report hospital quality performance information. This effort is intended to make critical information about hospital performance accessible to the pubic and to inform and invigorate efforts to

improve quality. Voluntary reporting is an essential first step to realize this goal. An important component of this coordinated effort is the identification and development of tools for standardizing data collection and making these tools readily available to the industry. We have tools available for utilization that are refined as needed, to include relevant data elements that capture the information needed or the clinical area under assessment. For example, data elements used for collecting information about a patient's experience with acute myocardial infarction would include portions that differ from data elements needed to collect information about a patient's experience with pneumonia. We recognize that not only are the tools important, but even more important are clear definitions to allow consistent categorization and counting of events or values for measurement. Future priorities and measures will be informed by a forthcoming report from the IOM that will identify 15 to 20 priority areas for quality improvement. Measures will be drawn from those endorsed by NQF; measures will be sought that respond to the six aims set forth in IOM's "Crossing the Quality Chasm," and where possible will include cross-cutting measures. The entire spectrum of stakeholders will be engaged to work toward focusing national public reporting of hospital performance on agreed-upon priorities and NQF-endorsed measures.

Comment: Some commenters stated that JCAHO and NCQA have standardized indicator systems; and therefore, we should not proceed unless it can consolidate and remove existing systems. Numerous commenters stated that the burden should not be placed on the hospitals to invest resources in the development of individual hospital systems, in lieu of the increased resources needed for the collection and analysis of outcome data.

Response: We are aware that there may be costs assumed by hospitals in choosing different systems. The methods and processes for collection of data vary widely. Our interest lies within the ability of hospitals to be measured against one another when different systems are used. We did not specifically propose that hospitals be required to participate with other hospitals in a system of performance measurement. Although we stated this was our intention for inclusion in the final rule, standardized outcome measures that can be used nationwide have not been established; therefore, we have not set forth this requirement in the final rule. Regarding the existence of proprietary indicator systems, we have no authority to "remove" these systems.

e. *Question 5:* Should CMS require or encourage hospitals to use standardized measures that some accredited hospitals are using?

Comment: Some commenters supported using standardized measures used by accredited hospitals. In contrast, many commenters believed that the measures used by accredited hospitals are outdated.

Response: We intend to require that hospitals use standardized measures. We are committed to advancing the scientific effort already underway nationally to standardize the specifications of measures (that is, the data dictionaries and other elements that define quality indicators). We are working in partnership with the QIO program, State initiatives, the NQF or similar organizations, and accrediting bodies in national efforts being conducted to identify and develop standardized specifications. These specifications would then be presented to the NQF or similar organizations for endorsement and subsequently published in future rulemaking. Our position is that any system of measures that incorporates these specifications would be acceptable for use by hospitals. Our concern focuses on how a measure of quality can be standardized for longitudinal comparative purposes among similar hospitals and includes public reporting. Purchasers and consumers benefit from the establishment of measures that could be used to publicly report hospital-specific performance across the full spectrum of hospitals in the United States. Hospitals benefit from a reduction in burden in data collection and measurement, and an ability to obtain comparative data to evaluate and improve their performance. A collaborative effort to develop standardized measures will provide the basis for an initial measurement set for assessment and reporting of hospital performance. Having purchasers and consumers provide the leadership in defining key content areas for the first set of measures and obtaining consensus around these validated measures as a standardized reporting set would be a major achievement in improving the quality of care in the nation. For example, standardized measures of medical errors could be used widely as part of a hospital's medical error reduction program and ultimately for accountability. We believe that requiring standardized data collection and reporting on consensus-developed, scientifically based measures, is an opportunity for hospitals, purchaser and consumers to work jointly to improve the quality of hospital care. The precise measures to be required will be determined by the Secretary and communicated to the public for comment before they are initiated.

Comment: Some commenters stated that the area of performance improvement needs further development before we require specific measures.

Response: We agree that there is not a wide menu of available performance measures that have proven to be reliable and valid that could be offered to a hospital to use. Currently, we have not set forth requirements; therefore, hospitals will be able to evaluate themselves on their own data.

f. *Question 6:* Would it be appropriate for CMS to include "placeholder" language in the revised CoPs concerning the eventual need for hospitals to report relevant data, or is this premature?

Comment: The majority of commenters agreed with our plan and supported the goals and objectives of a core set of standardized measures. Some commenters believed that these measures should not replace organization-specific projects. They stated that the technical issues surrounding data definitions, uniform systems, and burden, specifically regarding the ability of hospitals to utilize existing information systems, would have to be addressed.

Response: In the preamble of the proposed rule, we solicited public comment on standards regarding the development and implementation of a standardized set of performance measures to be used nationwide. At that time, we did not propose a requirement for hospitals to participate in a system of performance measurement with other hospitals but we stated that we intend to in the future. We recognize the specific issues that need to be addressed (for example, technical issues surrounding data definitions, uniform systems, and costs) before implementation of a set of standardized performance measures that can be used nationwide. Hopefully, these measures will help hospitals to identify organizational-specific projects.

Comment: Many commenters supported our approach to include placeholder language, because commenters believe it will take a minimum of 2 years for us to develop standardized measures. Some commenters stated placeholder language is premature pending extensive research to insure the accuracy of standardized data, concluding that the QAPI condition be modified at a later date as necessary. Others felt this unnecessary

due to the requirement for accrediting bodies to report data.

Response: We remain committed to developing a core set of standardized performance measures but we have decided not to include "placeholder" language in this final rule. A core set of standardized performance measures, as well as the method of reporting these measures, will be defined in a future rulemaking document.

g. *Question 7:* If CMS should include "placeholder" language, what changes should we make to these proposed requirements to set the stage for the development and implementation of such a system?

Comment: Several commenters wanted to know our projected timeframes for implementation. Others requested that we clarify whether standardized reporting and performance measures will be based solely on standardized clinical data and not on individual programs or projects at the hospital level.

Response: We realize that hospitals will need more experience with data collection methods for standardized measurement. Implementation timeframes for the standardized performance measures and the data to be reported will be presented to the public for comment in a separate rulemaking document.

Comment: Many commenters stated that the primary purpose for establishing a core set of measures is not quality improvement, but rather public accountability and data comparison. These commenters stated that meaningful improvement is best achieved by allowing caregivers the flexibility to identify opportunities for improvement. Commenters added that our focus should be on the hospital's mission and patient quality of care needs.

Response: We agree that a major reason for reporting on standardized data and core measures is public accountability and data comparison. However, we do not believe this QAPI regulation prohibits the hospital from exploring its own methods and implementing actions that are specific to its institution. Furthermore, we are committed to increasing consumer and patient awareness and facilitating the use of healthcare quality information in making key healthcare decisions.

Comment: A commenter suggested that we develop a preliminary set of measures from data on adverse patient events while a complete set of measures is being developed.

Response: After the release of the IOM report, "To Err is Human," as well as the response by the QuIC, the NQF was given the task of identifying a list of adverse events that should never occur, however, the task has not been completed. We expect, as a part of the hospital's error reduction program, that each hospital will assess institutional adverse events and incorporate this information into its QAPI. For example, if the hospital has had patients that experience adverse reactions, serious harm, or death due to the incorrect administration of intravenous potassium, the hospital should perform an analysis of these events to determine the process that allowed these mistakes and initiate a plan to correct the problem.

Comment: Several commenters stated that we should defer to JCAHO and not create a separate system of performance measures for hospitals, stating the proposed requirement is not consistent with JCAHO's agenda for change.

Response: Although we value JCAHO's role in hospital oversight and quality improvement initiatives, we have responsibility and accountability for quality of care in Medicare- and Medicaid-participating hospitals. We believe that we must directly establish a system of performance measurement for hospitals and maintain a leadership role in hospital oversight. In addition, we are aware of JCAHO's agenda for change. Our representatives sit on key measurement committees and on the various JCAHO clinical advisory panels charged with selection of the initial set of measures. CMS and JCAHO will strive to minimize burden on hospitals through the selection of a single set of core measures. Finally, we are incorporating criteria that will create a minimum amount of burden on hospitals, especially those hospitals that are subject to more than one method of surveillance.

5. Nonaccredited Hospital Participation in Performance Measurement

We also invited comment on whether we should require nonaccredited hospitals to participate in one or more performance measurement systems as part of their overall QAPI program (both internally and externally). We received a number of comments on this provision.

Comment: Many commenters supported the requirement that these hospitals participate in a facility-specific or internal QAPI program. They also stated that for external participation (that is, comparison against national benchmarks) it is premature to propose a specific set of quality indicators or performance measures for nonaccredited hospitals.

Response: We do not expect the same utilization of performance measures for small hospitals as we would for large hospitals. We recognize that collection and analysis of clinical outcome data may represent an increased burden on some hospitals, particularly on the nonaccredited hospitals that are routinely subject to our survey process. These nonaccredited hospitals typically are smaller than accredited hospitals, located in more sparsely populated areas, and may not have the resources for extensive data gathering and reporting. Given the uncertain readiness of some individual hospitals to comply with performance expectations under this final rule, quantitative analysis of the effects of these proposed changes is not possible. Hospitals with QAPI programs already in place that meet these requirements, at a minimum level if not in whole, may see little increased burden. However, nonaccredited hospitals are still required to follow this CoP as participants in the Medicare and Medicaid programs. Rather than mandating specific areas of assessment and data collection, this final rule gives hospitals flexibility to identify their own measures of performance for the activities they identify as priorities.

Comment: Some commenters offered suggestions that hospitals be allowed the option of using measures developed by QIOs because these measures will have wider application.

Response: Although hospitals are not required to participate with QIOs on their projects, we recommend that the QIO be used as a resource. By working with its QIO, a hospital will reap the benefits of a more standardized, streamlined, and cost-effective approach to quality improvement.

J. Reporting

As stated earlier, since the standardized measures project would involve the Federal government, as well as accrediting bodies and other organizations like the NQF, its development would not only lessen the burden on hospitals but would also support our goal of developing a regulation that would be universally endorsed by all. In that process, we would determine how data can be collected, validated, and presented to the general public, and determine the impact of providing this type of information. In the proposed rule, we considered requiring hospitals to report certain data elements (for example, patient falls, injuries, and medication errors) to us to serve as the basis of a performance database, which could then be used for provider improvement, consumer information, and other

purposes; however, sufficient work in this area has not been performed. Therefore, we have not included a requirement for hospitals to report certain data elements in this final rule. As standardized measures are developed and implemented, they will complement, not replace the QAPI process.

Comment: Commenters cited the importance of the provision requiring hospitals to share collected information with patients and consumers, and supported information sharing to facilitate decisions based on quality. Many of these commenters felt as though it was not only prudent, but the Federal government's responsibility to ensure the availability of this information.

Response: We agree. We have the responsibility to increase awareness of patient safety issues and the role beneficiaries can play in enhancing patient safety in general. We would like to enable patients and family members to become more involved in their care and to be active participants in the decision-making that impacts their care. We support the development of patient safety messages and themes that can be used by healthcare purchasers, and consumers to guide their choices in the selection of quality healthcare.

V. Provisions of the Final Rule

Since this final rule sets forth the requirements for the QAPI CoP only, we are placing the QAPI CoP with the existing hospital CoPs under Subpart C—Basic Hospital Functions at § 482.21 that will replace the existing Quality Assurance requirements. The five standards in this CoP will set forth the requirements for the development of an effective ongoing hospital-wide QAPI program that will focus on indicators related to improve health outcomes and prevention, and reduction of medical errors. As with the existing CoPs, the enforceability of the CoPs will be rooted in the evidence found during the onsite survey. The requirements of the QAPI CoP are as follows:

Section 482.21

This condition requires that hospitals must develop, implement, maintain, and evaluate their own QAPI programs. We have retained the provision requiring the hospital's QAPI program to reflect the complexity of the hospital's services and operations. We state that the QAPI program must be hospital-wide, ongoing and focus on indicators related to improved health outcomes. We also added language to—(1) stress the importance of the inclusion of measures that foster the prevention and reduction of medical errors; and (2) require hospitals to maintain and demonstrate evidence of its QAPI program for review by CMS.

Section 482.21(a)

The first standard, Program Scope, requires that a hospital's QAPI program include an ongoing program that shows measurable improvements in indicators for which there is evidence that they will improve health outcomes, and identify and reduce medical errors. There is also a provision that the hospital must measure, analyze, and track quality indicators, including adverse patient events, and other aspects of performance that assess processes of care, hospital service and operations. We have deleted the proposed requirement for the mandated assessment of 12 minimum areas.

Section 482.21(b)

The second standard, Program Data, provides the framework and clearly defines the expectations for hospitals regarding data the hospital must use as part of its QAPI program. It contains the provisions presented in the proposed rule, that described the type of data to be used including patient care and other data, for example, information submitted to, or received from, the hospital's Quality Improvement Organization.

Section 482.21(c)

The third standard, Program Activities, has been added to clarify the hospital's responsibilities. This section contains a requirement on setting priorities for performance improvement, previously found in the proposed rule at § 482.25(a)(5), with some modifications based on comments. The first requirement under the program activities standard requires hospitals to set priorities for improvement, considering prevalence and severity or incidence, or both, of high-risk, high volume or problem prone areas, and giving priority to improvement activities that affect health outcomes, patient safety, and quality of care. A hospital's performance improvement activities should track adverse patient events, analyze their causes, and implement preventive actions and mechanisms of feedback and learning throughout the hospital. This must include incidents of medical errors and adverse patient events. Finally, hospitals are required to take actions that result in performance improvements. After implementing actions, the hospital must measure its success and track its performance to assure that improvements are sustained.

Section 482.21(d)

The fourth standard, Performance Improvement Projects, has been added to distinguish the requirements for improvement projects from program activities as requested by the commenters. We require that the number of distinct improvement projects conducted annually must be proportional to the scope and complexity of the hospital's services and operations. Demonstration of minimum effort will be achieved by requiring hospitals to document what projects they are conducting, the reason for conducting these projects, and measurable progress achieved. The standard does not require hospitals to participate in a QIO cooperative project but its own projects are required to be of comparable effort.

Section 482.21(e)

The fifth standard, Executive Responsibilities, clarifies our intent to hold the hospital's leadership responsible and accountable for QAPI activities. We have maintained the requirement ensuring that a hospital-wide QAPI program addresses priorities and implements, maintains, and evaluates all improvement actions. This standard is further strengthened by requiring the hospital's governing body to provide strong, clear, and visible attention to setting expectations for safety and for allocating adequate resources for measuring, assessing, improving, and sustaining the hospital's performance and for reducing risks to patients.

VI. Regulatory Impact Analysis

A. Introduction

We have examined the impact of this rule as required by Executive Order 12866 and the Regulatory Flexibility Act (Pub. L. 96–354). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits, including potential economic, environmental, public health and safety effects, distributive impacts, and equity.

We generally prepare a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612), unless we certify that a final rule would not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and government agencies. We consider most hospitals small entities, either by nonprofit status or by

having revenues between $6 million and $29 million. Individuals and States are not considered small entities. We certify that this final rule will not have a significant impact on small entities.

Also, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. That analysis must conform to the revision of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 100 beds. We certify that this final rule will not have a significant impact on a substantial number of small rural hospitals.

Section 202 of the Unfunded Mandate Reform Act of 1995 also requires that agencies assess anticipated costs and benefits for any rule that may result in an expenditure in any 1 year by State, local, or tribal governments, in the aggregate, or by the private sector, of $110 million. This final rule has no mandated effect on State, local, tribal governments, or on the private sector that reach the threshold of section 202.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct compliance costs on State and local governments, preempts State law, or otherwise has Federalism implications.

In 1994, we invited all interested parties to a town hall meeting to discuss our plans to set forth regulations to establish a new approach to improving the quality of healthcare provided in hospitals. Parties from the Association of Health Facility Survey Agencies, hospital associations, and other stakeholders were in attendance. These agencies were given the opportunity to provide input and were generally in favor of our plans.

We welcomed comments on our December 1997 proposed rule. We received a number of comments on our QAPI CoP but we did not receive any comments indicating that States would be adversely affected by this rulemaking.

Thus, we have examined this final rule and have determined that this final rule will not have a negative impact on the rights, rules and responsibilities of State, local or tribal governments.

B. Anticipated Effects

In December 1997, we proposed to revise all of the hospital CoPs that emphasized lessening Federal regulations to eliminate unnecessary structural and process requirements, to focus on outcomes of care, to allow greater flexibility to hospitals and practitioners to meet quality standards, and to place a stronger emphasis on QAPI.

Within this newly revised CoP we proposed to establish a QAPI program that encompasses all hospital services and operations. We solicited comments on the QAPI provisions and received overwhelming support for its establishment. There was consensus among, provider, public, professional organizations, accrediting organizations, and the Congress that supported its establishment. The need again arose for a program due to serious concern regarding patient safety and medical errors after publication of the 1999 IOM's report along with the response to the report. These factors led us to set forth this final rule to ensure high quality of care in a safe environment in our nation's hospitals.

1. Effect on Hospitals

Given the shift to regulatory flexibility, for the most part, we are not prescribing the exact process hospitals must follow to meet the regulatory requirements of the QAPI CoP. However, the following components must be established and maintained in the development of a QAPI program: hospitals will be required to have a QAPI program encompassing all services and operations that focuses on indicators related to improved health outcomes and the prevention and reduction of medical errors.

Some hospitals may need to revise their existing programs to conform to this regulation; however, we do not believe this CoP will impose a significant economic burden above what hospitals are already doing to meet the current quality assurance CoP.

Currently under § 482.21, hospitals must ensure that there is an effective, hospital-wide quality assurance program to evaluate the provisions of patient care. Under the existing requirement hospitals must have a written plan of implementation, this plan must include all organized services and contractors. The hospital is also required to document appropriate remedial actions to address deficiencies found through the quality assurance program, as well as the outcome of the remedial actions. However, as a hospital's QAPI program matures, we expect that hospitals will be engaging in quality improvement activities in an expanding number of areas as resources are redirected from areas of program success to new areas, but existing improvements are sustained.

This QAPI CoP focuses provider efforts on the actual care delivered to the patient, the performance of the hospital as an organization, and the impact of the treatment furnished by the hospital on the health status of its patients. In developing this CoP, we have included structure and process-oriented requirements only where we believe they are essential to achieving desired patient outcomes or preventing harmful outcomes. This approach is intended to incorporate into our regulations current best practices in well-managed hospitals, relying on each hospital to identify and resolve its performance problems in the most effective and efficient manner possible.

This QAPI CoP is in fact an extension and modification of the existing quality assurance CoP found at § 482.21. We anticipate that hospitals, both large and small, rural and urban, will or already use a variety of data to inform their internal QAPI programs. Some of these data may be measures designed by the hospital itself, while others will be developed through research or by consensus groups or other sources outside the hospital. Thus, the impact will vary according to each hospitals current quality improvement activities and programs. The impact will also vary and is subject in large part to their decision-making, current policies and procedures, and level of compliance with existing quality assurance regulations. It is important to note that due to the flexibility of these provisions, the extent of the economic impact of most of these requirements is dependent upon decisions made by the hospital. We believe that this CoP will minimize the administrative burden on hospital's to comply with detailed Federal requirements. Instead, this QAPI CoP will provide hospitals with more flexibility to determine how best to pursue our shared quality of care objectives in the most cost-effective manner.

We expect hospitals to develop different approaches to compliance based on their varying resources, patient populations and other factors. There are several provisions that will impact the hospital's processes to a greater or lesser degree. Specifically, this CoP does introduce a new concept that the hospital will have to develop an internal error prevention and reduction program to ensure optimum outcomes for its patients.

The requirements of the rule effect current industry practice. Therefore, hospitals with QAPI programs already in place that meet these requirements, at a minimum level if not in whole, may see little increased burden. Hospitals

that do not meet the current QA CoP, may encounter an increased burden in the short-term because resources would have to be devoted to the development of a QAPI program that covers the complexity and scope of the particular hospital's services. Based upon information that we do possess, small and rural hospitals may be the least prepared and may experience an increased burden in implementation of a QAPI program. However, even in the situations where the proposed requirements could result in some immediate costs to an individual hospital (that is, the development and utilization of performance measures to be used in their QAPI program), we believe the changes the hospital would make would produce real but difficult to estimate long-term economic benefits to the hospital, such as cost-effective performance practices or higher patient satisfaction that could lead to increased business for the hospital. Additionally, as hospitals are encouraged to choose projects that reflect the scope of their services, it will become increasingly difficult to quantify the burden of data collection. As QAPI projects vary within each hospital and amongst all hospitals, so will the quantity of and the time required for data collection. Overall, we believe that the benefits of complying with the QAPI CoP will outweigh any associated burden.

For the sake of quantitative analysis, we have based our figures on all hospitals having to develop or update their QAPI program. The projected training time for staff is expected to cost an average hospital allocating a group of 10 clinicians with various duties and responsibilities, approximately $840 based on a average hourly rate of $28 per hour (3 hours x $28 per hour x 10 clinicians = $840). We have proposed 12 hours of training for the QAPI coordinator, which is projected to cost $360, based on a average salary of $30 per hour (12 hours x $30 per hour x 1 coordinator). The total hourly burden for each hospital is projected to be 42 hours (3 hours x 10 staff) and (12 hours x 1 coordinator).

Hours/ Estimated salary/Number of hospitals	Annual burden hours	Annual cost estimate
10 clinicians × 6,069 hospitals × 3 hours × $28 per hour	182,070	$5,097,960
1 coordinator × 6,069 hospitals × 12 hours × $30 per hour	72,828	2,184,840
Subtotal	254,898	7.3 million

We estimate that the burden associated with updating and in some instances, writing the internal policies would be an average of 8 hours annually. If the updating or writing of the internal policies is done by the nurse coordinator, we estimate the cost at $240 a year (8 hours X 30 per hour). However, we believe that this figure may be much lower, since many hospitals have existing internal quality improvement programs.

Hours/ Estimated salary/ Number of hospitals	Annual cost estimate
1 coordinator × $30 per hour × 8 hours × 6,069 hospitals	$1,456,560

We also note that the following factors may also affect the costs of updating and writing of the internal policies:

- *Additional Staff Costs.* Examples of these costs include— (1) physician or other professional staff reviewing the internal policies; and (2) clerical staff providing typing, printing, or copying support.
- *Staff Training Costs.* Staff may need additional training to write, update or review the hospital's internal policies.
- *Printing and Copying Costs.* These costs are dependent upon the magnitude of the hospital's changes to its internal policies and the number of copies of the policy that are made available to staff.

Policy development is necessary to patient health and safety because the by-laws provide the framework within which all patient care services are furnished. The initial development of the by-laws will take approximately 2.5 hours. Not more than 2 hospitals a year become certified under Medicare and Medicaid.

Requirement	Number of hospitals	Annual hours per hospital	Annual burden hours
Policy Development	6,069	8	48,552

Hours/Estimated salary/Number of hospitals	Annual burden hours	Annual cost estimate
2.5 hours × 2 hospitals	5	
5 physicians × .40 hours each × $65 per hour × 2 hospitals		$260.00
1 clerical × .50 hours × $6 per hour × 2 hospitals		6.00
Subtotals	5	266.00

2. Effect on Beneficiaries

The Federal Government plays many important roles that affect the quality of healthcare Americans receive. In fact, the Federal Government is the largest purchaser and provider of healthcare services in the United States. Our goal is to improve the care delivered by providers and purchased on behalf of Federal beneficiaries, and to facilitate hospitals in developing the infrastructure needed to improve their hospital services. The implementation of the QAPI CoP will benefit and protect not only Medicare and Medicaid beneficiaries, but all patients receiving care in any of the approximately 6,100 Medicare-participating hospitals (that is, short-term, psychiatric, rehabilitation, long-term, children's, and alcohol-drug), including small rural hospitals. We believe the patient will benefit from the hospital establishing a QAPI program, making quality of care and patient safety

priorities. We also believe the implementation of the QAPI CoP will lead to an increase in quality care, optimal patient outcomes and a reduction in the number of medical errors.

3. Effect on the Medicare and Medicaid Programs

We do not expect the implementation of the new QAPI CoP to generate any significant cost to the Medicare or Medicaid programs. As our budget pays for survey and certification activities by the States and States already survey hospitals for compliance with the existing hospital quality assurance CoP, surveyors will only change their focus when surveying from a quality assurance approach to a QAPI approach. Surveyors will be trained on the QAPI approach during their normally scheduled training on the hospital CoPs. Therefore, we believe that there will be no additional costs associated with this training. However, as the QAPI program progresses in individual hospitals, surveyors may have to spend more time evaluating an increasingly robust quality program. These efforts are difficult to quantify.

C. Alternatives Considered

We considered adding requirements that were more prescriptive in nature. However, in response to public comments, and in recognition that this requirement will apply to hospitals of varying size, operating in wide ranges of localities, serving diverse populations, we opted not to utilize this approach. Development of more detailed strategies and policies to comply with the requirement will be left to the discretion of each hospital.

We originally proposed that hospitals use 12 minimum performance areas as the foundation for the QAPI program. However, after analysis of public comments and literature, we agreed with commenters that specifying 12 minimum areas for analysis as part of a hospital's QAPI program was too prescriptive. These commenters argued it would be more effective to allow hospitals to assess, measure, and analyze themselves, but concurred with the identification of hospital processes and functions that could produce valuable information. Alternatives were given, such as, the adaptation of JCAHO's standards, or by us merely providing the components of the QAPI program and giving the hospital the flexibility to create a program of its own design. Some commenters suggested that nonaccredited hospital be exempt from QAPI requirements until we provide scientific evidence that participation in such programs improves patient care.

Based on public comments, we have deleted the proposed requirement for hospitals to assess their performance in 12 specific areas. We agree that hospitals should be able to pursue quality improvement in a manner of their choosing. Regarding the exemption of nonaccreditied hospitals, we cannot relinquish our responsibility for assuring quality healthcare for all patients. We believe that we have provided hospitals with enough flexibility and have identified enough resources for improving the process of patient care to facilitate the development of an effective QAPI program by a hospital of any size. Therefore, we do not believe there is a need to differentiate our expectations for accredited and nonaccredited hospitals.

In the proposed rule, we also solicited comment on standards regarding the development and implementation of a set of evidence-based standardized performance measures. At that time, we did not propose a requirement for hospitals to participate in a system of performance measurements with other hospitals, but we stated that we intend to do so in the future. Many commenters supported our approach to include placeholder language, because commenters believe it will take a minimum of 2 years for us to develop standardized measures. Some commenters stated placeholder language is premature pending extensive research to insure the accuracy of standardized data, concluding that the QAPI condition be modified at a later date as necessary. In this final rule, we have considered public comments and are not setting a requirement for using and reporting on a core set of performance measures. Once the evidence and methodologies to support a set of performance measures that can be used nationwide are available, we will inform hospitals and the public of the specifics of and the methods for reporting these performance measures for future rulemaking. This will give the public the opportunity to comment on the core measures before implementation.

Our goal is to foster and stimulate a culture of shared learning that will help to identify processes, systems, and even events that potentially or actually lead to error or poor quality care and less than optimal patient outcomes. We believe that this final rule will enable hospitals to identify and resolve performance problems specific to their situations in the most effective and efficient manner possible.

Although we view the anticipated results of this regulation as beneficial to the Medicare and Medicaid programs, as well as to Medicare beneficiaries and Medicaid recipients and State governments, it is impossible to quantify meaningfully a projection of the future effects of this standard in the event of noncompliance issues.

We believe that the foregoing analysis concludes that this regulation would not have any significant impact on the aforementioned providers. Also, the burden associated with this requirement will vary, in some instances be greater, depending on the sophistication of the hospital current QA program.

In accordance with the provisions of Executive Order 12866, this final rule was reviewed by the Office of Management and Budget.

VII. Collection of Information Requirements

Under the Paperwork Reduction Act of 1995, agencies are required to provide 60-day notice in the **Federal Register** and solicit public comment before a collection of information requirement is submitted to the Office of Management and Budget (OMB) for review and approval. In order to fairly evaluate whether an information collection should be approved, section 43506(c)(2)(a) of the Paperwork Reduction Action of 1995 requires that we solicit comment on the following issues:

- Whether the information collection is necessary and useful to carry out the proper functions of the agency;
- The accuracy of the agency's estimate of the information collection burden;
- The quality, utility, and clarity of the information collection burden; and
- Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

Therefore, we are soliciting public comment on each of these issues for the information collection requirements summarized and discussed below.

The title and description of the individual information collection requirements are shown below with an estimate of the annual reporting and recordkeeping burden. Included in the estimate, is the time for searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the QAPI process, including education and feedback.

Section 482.21 Condition of Participation: Quality Assessment and Performance Improvement

This revised section requires the hospital to develop, implement, and maintain an ongoing effective hospital-wide, data driven, QAPI program. The current requirements provided for the operation of an internal quality assurance program to evaluate the provision of patient care. The revised condition further requires hospitals to examine its methods and practices of providing care, identify opportunities to improve its performance, and then take actions that result in higher quality of care and improved safety for hospital patients. We have not prescribed the structures and methods for implementing this requirement and have focused the condition toward the expected results of the program. This provides flexibility to the hospital, as it is free to develop a creative program that meets the needs of the hospital and reflects the scope of its services. We believe that developing the data systems necessary to implement a QAPI program and internal policies governing the hospitals approach to the development, implementation, maintenance, and evaluation of the QAPI program will impose minimal burden, depending somewhat on the level of compliance with the existing quality assurance requirements. Flexibility is provided to the hospitals to ensure that each program reflects the scope of its services and operations. We believe this requirement provides a performance expectation of hospital's setting their own goals and using information to continuously strive to improve their performance over time. Given the variability across the hospitals in size and experience and the flexibility provided by the regulation, we believe the burden associated with these requirements governing the approach to the development, implementation, and evaluation of the QAPI program will reflect that diversity. We want to provide flexibility and do not want to be prescriptive in defining hourly parameters; however, we need to quantify the burden § 482.21 associated with this requirement.

We estimate that the burden associated with updating and in some instances, developing a QAPI program would be an average of 80 hours annually (although this figure may be much lower, since many hospitals have existing internal quality improvement programs).

Requirement	Number of hospitals	Annual hours per hospital	Annual burden hours
QAPI Program Development	6,069	80	485,520

Section 482.21(b) Standard: Program Data

This regulation would require data collection and necessitates staff training on data collection. Again, we estimate the burden associated with this requirement would vary, depending on the sophistication of the hospital's quality assurance programs currently in place.

Requirement	Number of personnel per hospital	Annual hours	Number of hospitals	Annual burden
Training	10 clinicians	3 hours	6,069	182,070
	1 coordinator	12 hours	6,069	72,828
Data Collection and Analysis		80 hours	6,069	485,520
Subtotal				740,418

Section 482.21(c) Standard: Program Activities

The current QA CoP requires hospitals to document appropriate remedial actions, and address deficiencies found through its QA program. The new QAPI CoP replaces the existing QA CoP by focusing on the continuous improvement of the hospital as an organization requiring hospitals to track incidents, analyze their causes, and share and implement preventive actions and mechanisms of feedback and learning throughout the facility. We realize it is neither practical nor economically feasible to collect data and analyze all areas, processes, and systems of the hospital. Therefore, we are requiring the hospital's governing body to ensure the priorities set by the QAPI program are reflective of the hospitals services, ensure quality of care, and protect the safety of the patients. The burden associated with these requirements are captured above in sections 482.21 (a) and (b).

Section 482.21(d) Standard: Performance Improvement Projects

This new requirement reflects an interdisciplinary, coordinated approach to performance improvement. The proposed new performance improvement projects requirement sets forth the requirement that each hospital must establish a mechanism that further explores the specific needs identified in the organization's assessment. This mechanism of action is a performance improvement project. These projects demonstrate the hospital's ability to: identify problems; evaluate and track quality indicators, or other aspects of performance; and implement actions or adopt changes that reflect processes of care and hospital operations. The hospital must be able to document and demonstrate to the SA what quality improvement projects are being conducted, the reasons for conducting these projects, and the measurable progress achieved on these projects.

We believe, that in order to comply with this QA CoP, hospitals, for the most part, are already documenting their efforts as remedial actions. Nevertheless, we are estimating the QAPI coordinators document the projects being conducted, the reason for the projects, and the measurable progress on these projects.

Requirement	Number of personnel per hospital	Annual hours per hospital	Number of hospitals	Annual hours
PIP Documentation	Coordinator	32 hours	6,069	194,208
Subtotal				194,208

Section 482.21(e) Standard: Executive Responsibilities

The participating hospitals must have in writing by-laws governing the medical staff and the governing body. This incorporation of executive responsibilities pertaining to QAPI would be a one-time development by an administrative team consisting of medical staff or an appointed committee of 5 physicians and one clerical personnel. We are not associating burden with this requirement, as by-laws should be updated regularly as a normal function of the hospital. This requirement is necessary to patient health and safety because the by-laws provide the framework within which all patient care services are furnished. The initial development of the by-laws will take approximately 2.5 hours. Not more than 2 hospitals a year become certified under Medicare and Medicaid. Therefore, since this requirement impacts less than 10 hospitals on an annual basis this requirement is exempt from the PRA.

We have submitted a copy of this final rule to OMB for its review of the information collection requirements in § 482.21.

If you have any comments on any of the information collection and record keeping requirements, please mail the original and three copies directly to the following:

Centers for Medicare & Medicaid Services, Office of Information Services, Standards and Security Group Division of CMS Enterprise, Standards Room N2–14–26, 7500 Security Blvd., Baltimore, Maryland 21244–1850, *Attention:* John Burke CMS–3050–F; and

Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, *Attention:* Brenda Aguilar, CMS Desk Officer CMS–3050–F.

List of Subjects in 42 CFR Part 482

Grant programs-health, Hospitals, Medicaid, Medicare, Reporting and recordkeeping requirements.

For the reasons stated in the preamble of this final rule, 42 CFR chapter IV is amended as set forth below:

PART 482—CONDITIONS OF PARTICIPATION FOR HOSPITALS

1. The authority citation for part 482 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

Subpart C—Basic Hospital Functions

2. In §482.21 the heading and text are revised to read as follows:

§ 482.21 Condition of participation: Quality assessment and performance improvement program.

The hospital must develop, implement, and maintain an effective, ongoing, hospital-wide, data-driven quality assessment and performance improvement program. The hospital's governing body must ensure that the program reflects the complexity of the hospital's organization and services; involves all hospital departments and services (including those services furnished under contract or arrangement); and focuses on indicators related to improved health outcomes and the prevention and reduction of medical errors. The hospital must maintain and demonstrate evidence of its QAPI program for review by CMS.

(a) *Standard: Program scope.* (1) The program must include, but not be limited to, an ongoing program that shows measurable improvement in indicators for which there is evidence that it will improve health outcomes and identify and reduce medical errors.

(2) The hospital must measure, analyze, and track quality indicators, including adverse patient events, and other aspects of performance that assess processes of care, hospital service and operations.

(b) *Standard: Program data.* (1) The program must incorporate quality indicator data including patient care data, and other relevant data, for example, information submitted to, or received from, the hospital's Quality Improvement Organization.

(2) The hospital must use the data collected to—

(i) Monitor the effectiveness and safety of services and quality of care; and

(ii) Identify opportunities for improvement and changes that will lead to improvement.

(3) The frequency and detail of data collection must be specified by the hospital's governing body.

(c) *Standard: Program activities.* (1) The hospital must set priorities for its performance improvement activities that—

(i) Focus on high-risk, high-volume, or problem-prone areas;

(ii) Consider the incidence, prevalence, and severity of problems in those areas; and

(iii) Affect health outcomes, patient safety, and quality of care.

(2) Performance improvement activities must track medical errors and adverse patient events, analyze their causes, and implement preventive actions and mechanisms that include feedback and learning throughout the hospital.

(3) The hospital must take actions aimed at performance improvement and, after implementing those actions, the hospital must measure its success, and track performance to ensure that improvements are sustained.

(d) *Standard: Performance improvement projects.* As part of its quality assessment and performance improvement program, the hospital must conduct performance improvement projects.

(1) The number and scope of distinct improvement projects conducted annually must be proportional to the scope and complexity of the hospital's services and operations.

(2) A hospital may, as one of its projects, develop and implement an information technology system explicitly designed to improve patient safety and quality of care. This project, in its initial stage of development, does not need to demonstrate measurable improvement in indicators related to health outcomes.

(3) The hospital must document what quality improvement projects are being conducted, the reasons for conducting these projects, and the measurable progress achieved on these projects.

(4) A hospital is not required to participate in a QIO cooperative project, but its own projects are required to be of comparable effort.

(e) *Standard: Executive responsibilities.* The hospital's governing body (or organized group or individual who assumes full legal authority and responsibility for

operations of the hospital), medical staff, and administrative officials are responsible and accountable for ensuring the following:

(1) That an ongoing program for quality improvement and patient safety, including the reduction of medical errors, is defined, implemented, and maintained.

(2) That the hospital-wide quality assessment and performance improvement efforts address priorities for improved quality of care and patient safety; and that all improvement actions are evaluated.

(3) That clear expectations for safety are established.

(4) That adequate resources are allocated for measuring, assessing, improving, and sustaining the hospital's performance and reducing risk to patients.

(5) That the determination of the number of distinct improvement projects is conducted annually.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; Program No. 93778, Medical Assistance)

Dated: March 28, 2002.

Thomas A. Scully,

Administrator, Centers for Medicare & Medicaid Services.

Dated: September 23, 2002.

Tommy G. Thompson,

Secretary.

[FR Doc. 03–1293 Filed 1–23–03; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 2, 21 and 101

[ET Docket No. 00–258; FCC 02–304]

Advanced Wireless Services

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allocates spectrum for advanced services in the 1710–1755 MHz, 2110–2150–MHz, and 2150–2155 MHz bands. The goal of this document is to promote the provision of advanced wireless services to the public, which supports the Commission's obligations under section 706 of the 1996 Telecommunication Act.

DATES: Effective February 24, 2003.

FOR FURTHER INFORMATION CONTACT: Jamison Prime, Office of Engineering and Technology, (202) 418–7474.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Second Report and Order,* ET Docket No. 00–258, FCC 02–304, adopted November 7, 2002, and released November 15, 2002. The full text of this document is available for inspection and copying during regular business hours in the FCC Reference Center (Room CY–A257), 445 12th Street, SW., Washington, DC 20554. The complete text of this document also may be purchased from the Commission's copy contractor, Qualex International, 445 12th Street, SW., Room, CY–B402, Washington, DC 20554. The full text may also be downloaded at: *http://www.fcc.gov.* Alternative formats are available to persons with disabilities by contacting Brian Millin at (202) 418–7426 or TTY (202) 418–7365.

Summary of the Second Report and Order

1. This *Second Report and Order* allocated 90 MHz of spectrum in the 1710–1755 MHz and 2110–2155 MHz bands that can be used for Advanced Wireless Service (AWS). This spectrum comes from bands that the Commission previously identified as candidate bands for the provision of AWS, and includes spectrum used by Federal government entities that is slated for transfer to non-Federal government use, spectrum currently used by fixed microwave services and designated for emerging technologies, and spectrum currently used by the Multipoint Distribution Service (MDS).

Spectrum for AWS

2. 1710–1755 MHz—The 1710–1755 MHz band was initially identified in 1995 for transfer from Federal government use to mixed Federal government/non-Federal government use. At that time, National Telecommunications Information Administration (NTIA) determined that this band could be made available to non-Federal government users in 2004. NTIA also identified certain incumbent Federal government facilities that may continue to operate in the band and must be protected from interference. In its *2002 Viability Assessment,* NTIA outlined additional steps for reaccommodating existing Federal government users in the band segment, including some that have a right to remain in the band indefinitely. The NTIA plan offered a mechanism that could largely clear the band of Federal government users no later than December 31, 2008.

3. Commenters note that the 1710–1755 MHz band enjoys many characteristics that make it suitable for AWS. They note it is already being used in many countries for 2G-style wireless services so it is likely to promote global spectrum harmonization in the long term, which in turn will foster roaming, and economies of scale that can translate into lower development costs and manufacturing efficiencies. They further state that this band can also help ensure that United States residents enjoy the same level of advanced services as in other countries. The parties observe that the 1710–1755 MHz band is slated to be made available for non-Federal Government commercial use, and that the *2002 Viability Assessment* offers a plan that can make the band even more useful for AWS. Catholic Television Network also states that the band "offers better propagation characteristics," than other bands under consideration. We also note that the band size—45 megahertz would provide flexibility to accommodate a variety of channelization plans.

4. We find that it serves the public interest to allocate the 1710–1755 MHz band segment for mobile and fixed services on a co-primary basis contingent on its becoming available for non-Federal government mixed use January 1, 2004. In addition, we are removing the fixed and mobile allocations from the Federal government Table in the 1710–1755 MHz band, except as specified in the new United States footnote US378, which codifies Federal government residual rights. We also retain and modify footnote US311 in the Table of Frequency Allocations. This footnote identifies certain pre-existing radio astronomy activities that exist between 1718.8 MHz and 1722.2 MHz at observatories set forth in Appendix F of the *Notice of Proposed Rule Making* (NPRM) 66 FR 7438, January 23, 2001. Because radio astronomy facilities in this band operate on an unprotected basis, we conclude that it is not necessary to add rules setting forth coordination procedures and exclusion zones, as the National Academies of Science (NAS) suggests. The footnote, modified to update the list of radio astronomy facilities, will serve to apprise parties of these operations.

5. 2110–2150/2150–2155 MHz—Currently, the 2110–2150 band is used in the United States primarily for non-Federal Government fixed and mobile services licensed under the Fixed Microwave Service in part 101 of the rules, the Public Mobile Services under part 22 of the rules, and the Domestic Public Fixed Radio Services under part 21 of the rules. Federal government use of this band is generally on a secondary basis and is limited to space research earth stations for earth-to-space transmissions in the 2110–2120 MHz portion of the band. The Commission

originally identified this band for new advanced fixed and mobile services in the 1992 *Emerging Technologies* proceeding and adopted rules and procedures to permit new licensees to relocate existing fixed service microwave licensees from this spectrum band.

6. The 2110–2150 MHz band is already allocated to the fixed and mobile services on a primary basis, and thus it is not necessary that we reallocate this spectrum in order to make it available for AWS use. Instead we re-designate the band for new uses consistent with the general outline of our *Emerging Technologies* proceeding. We also note that the Balanced Budget Act of 1997 (BBA–97) identifies the 2110–2150 MHz band for advanced wireless use and specifies that the band must be assigned under the competitive bidding procedures.

7. In addition, we note that the National Aeronautical and Space Administration (NASA) operates on a primary basis a station in the 2110–2120 MHz band at Goldstone, California as part of the Space Research service. This station, which is authorized via United States footnote US252, is used by NASA's Deep Space Network (DSN) for uplink transmissions to interplanetary spacecraft. In the *NPRM*, we proposed not to relocate this facility. Moreover, the DSN earth station transmits with a nominal EIRP of 105.5 dBW. In the NPRM, we noted that during command link operations it is likely that mobile receivers on the 2110–2120 MHz segment (and possibly in adjacent bands above 2120 MHz) will not be able to operate within the areas surrounding Goldstone.

8. We examined the interference characteristics of the Goldstone DSN facility and based on its typical operation pattern, which is intermittent, the amount of its signal that would be blocked by terrain in many directions, and the low population density in the areas near Goldstone, we conclude that a significant amount of interference should not occur to AWS. Therefore, we will not formally restrict use of the 2110–2120 MHz band in the vicinity of Goldstone. However, we anticipate that this band will be unusable for advanced services at certain times in the immediate vicinity of Goldstone, and expect that potential licensees will take this fact into account and will develop their business and service plans accordingly. We believe that such an approach is practical, given the comments of the AWS proponents that discussed Goldstone interference, and we will work cooperatively with JPL and other interested parties to insure that our approach does in fact achieve its goals.

9. The 2150–2160 MHz band is allocated internationally to the fixed and mobile services on a primary basis and is regulated under part 21 of our rules as part of MDS. This band is generally operated as two channels—Channel 1 (2150–2156 MHz) and Channel 2A (2156–2160 MHz). In addition, licensees may use channel 2 (2156–2162 MHz) on a limited basis in 50 cities. MDS may also use spectrum in the 2500–2690 MHz band.

10. The Commission concludes that the record supports reallocation of 5 megahertz of spectrum at 2150–2155 MHz to add a mobile allocation to support the provision of AWS. Because this spectrum is contiguous to the 2110–2150 MHz band, this reallocation will allow efficiencies in deploying new AWS. For example, there will be only one point where AWS and MDS bands are adjacent and interference issues will need to be addressed. We note that the 2150–2155 MHz band is part of the "worldwide" IMT–2000 base station transmit band that extends from 2110 MHz to 2170 MHz. Thus our action here more closely aligns U.S. spectrum with allocations in the rest of the world and could lead to lower equipment costs and promote global roaming. Furthermore, this action will provide two contiguous 45 megahertz blocks of paired spectrum (*i.e.*, 1710–1755 MHz paired with 2110–2155 MHz), and provide more options for assigning large spectrum blocks suitable for AWS use.

11. The Commission recognizes that our decision here to reallocate the 2150–2155 MHz band from MDS to AWS use requires that we address certain issues regarding MDS operations. In particular, we will have to consider relocation spectrum and propose relocation procedures for MDS, keeping in mind the need to avoid disruption to existing customers. Because we do not anticipate licensing the band for new services until after we adopt service rules, and because the companion Federal government transfer spectrum in the 1710–1755 MHz band will not be available until 2004, there is sufficient time for us to identify in a separate proceeding to be initiated in the near future any necessary relocation spectrum for MDS licensees and to craft appropriate relocation procedures. In addressing relocation, however, we recognize the importance of avoiding unnecessary delay so as to minimize uncertainty to existing licensees.

12. We now turn to the relocation procedures for incumbent fixed microwave service licensees that currently operate in the 2110–2150 MHz band. Because this band was identified and reallocated for new uses in the *Emerging Technologies* proceeding, a mechanism already exists to clear these incumbent licensees. In the *NPRM*, we noted that fixed microwave service incumbents holding primary status (*see Second Report and Order, footnote 149*), in the 2110–2150 MHz band are entitled to compensation for relocation of facilities under these policies. *See Emerging Technologies Third Report and Order and Memorandum Opinion and Order*, 8 FCC Rcd 6589 (1993) 58 FR 46547, September 2, 1993. New licensees may relocate incumbent licensees' systems at their option. In general, a new licensee will relocate an incumbent system if it determines that the incumbent system will cause interference to the new licensee's system. The main elements of the relocation process include a set negotiation period or periods, usually triggered at the request of the new licensee; a requirement that the parties negotiate in good faith during the mandatory negotiation period; and the right of the incumbent to be relocated to comparable facilities at the expense of the new licensee. The relocation compensation includes all engineering, equipment, site, and FCC fees. The new licensee must complete all activities necessary for implementing the replacement facilities, and must test the new facilities to ensure comparability with the existing facilities. *See generally* 47 CFR 101.69 through 101.99. We further noted that certain fixed microwave incumbents in the 2110–2150 MHz band segment consist of links that are paired with frequencies in the 2165–2200 MHz band, which was previously reallocated to support MSS. Moreover, some microwave licensees at 2110–2115 MHz have paired links in the 2160–2165 MHz band.

13. In the *NPRM*, we noted that it would be possible for both relocation procedures to apply to the same new entrant in the 2110–2150 MHz band—the modified MSS relocation procedure for a link paired between the 2110–2150 MHz and 2165–2200 MHz bands and the *Emerging Technologies* procedure for all other relocations (including the relocation of a link paired between the 2110–2150 MHz and 2160–2165 MHz bands). We thus proposed to use the modified procedure for the relocation of any incumbent user in order to provide a single relocation process for this band. For microwave links paired in the 2110–2150 and 2160–2165 MHz bands, a new licensee would be required to relocate both paths (if such a relocation had not yet been done), but would retain a right

to seek reimbursement of 50 percent of its relocation costs from the licensee that ultimately uses frequencies in the second path. All new licensees, regardless of whether they relocate paired or unpaired microwave incumbents, would be subject to the modified relocation rules (such as the shortened mandatory negotiation period).

14. We conclude that the modified relocation procedures, as proposed, represent the best course. A unified approach to our rules and procedures serves the public interest, and can promote the rapid development of AWS, which many commenters support. Moreover, if the demand for the advanced services is as robust as commenters claim, incumbent licensees should find new licensees particularly eager to reach relocation agreements so as not to be competitively disadvantaged by a delay in their service deployment. Finally, we note that under our basic relocation principles, incumbents retain a right to comparable facilities. We stress that we are not altering this process, nor an incumbent's right to seek relief if it believes the relocation process has not been conducted in good faith. We observe, however, that we may need to modify the reimbursement provisions if MDS is reassigned to the 2155–2165 MHz band because Fixed Service microwave operations in the 2160–2165 MHz band would have to be relocated. Under the current rules, for example, MDS would have to reimburse a new AWS entrant who is trying to clear paired microwave links at 2110–2115 and 2160–2165 MHz.

Other Bands

15. 1755–1850 MHz. In the *NPRM*, we identified the 1755–1850 MHz band for consideration for the provision of AWS. The 1755–1770 MHz band segment was considered as part of the initial NTIA studies, and was again evaluated in the *2002 Viability Assessment*. In this most recent review, NTIA concluded that the 1755–1850 MHz band is not viable for use by AWS due to the extensive and critical Federal Government operations in the band, including DOD mobile systems operating in the 1755–1850 MHz range that "have recently been elevated in importance due [to] the war on terrorism, homeland defense, and possible requirements for ballistic missile defense." Moreover, NTIA was unable to identify alternative spectrum bands that could readily accommodate many of these systems, including air combat training systems, the Land Warrior systems, and DOD satellite telemetry, tracking and command facilities that operate in the 1761–1842 MHz band segment and which cannot be easily re-tuned. The 1770–1850 MHz band segment was previously rejected by NTIA as incompatible for shared use and was not included in the most recent band evaluation process. Throughout the evaluation process, Federal Government users have consistently expressed skepticism that any portion of the 1755–1850 MHz band segment can be made available for advanced commercial wireless systems, either through relocation of Federal users or by shared use. Moreover, NTIA anticipates that the process that will allow it to relocate Federal users from the 1710–1755 MHz band segment will result in system relocations to spectrum above 1755 MHz, as well as a generally more intensive use of the 1770–1850 MHz band segment for existing, relocated, and new systems. We note that some commenters identify benefits from the use of this band for AWS, including regional harmonization and the possibility that allocation of the 1755–1850 MHz band (in conjunction with the 1710–1755 MHz band) would serve as a catalyst for making these frequencies as globally accepted as the core bands identified in IMT–2000.

16. Given the statements by NTIA regarding the intense use of this band by military users and other Federal Government agencies that provide critical safety-of-life operations, and the concern expressed by many commenters about clearing existing government users, we conclude that this band is too encumbered to be used for the provision of AWS. We note that while some comments suggest that we explore a combination of sharing and migration for incumbent users, NTIA and other commenters do not believe that co-channel sharing is possible. We acknowledge the *2002 Viability Assessment's* conclusion that "[a] leap forward in technology may permit extensive sharing in all bands below 3 GHz in the future," but that until such developments occur, it appears that use of the 1755–1770 MHz band for advanced wireless applications is not technically viable. Accordingly, we conclude that the 1755–1850 MHz band is not suitable for the provision of AWS at this time.

17. Currently Allocated Spectrum. In the *NPRM*, we noted that currently allocated spectrum may also be suitable for the provision of AWS. This spectrum includes television bands that were reallocated to commercial fixed, mobile, and broadcast services and are in the process of being vacated as part of the transition to digital television. We note that the disposition of these bands has taken place in separate proceedings. The record in the instant proceeding contains nothing that would cause us to revisit these decisions, nor to reassess our general conclusion that the reallocated television bands will be available for new uses, including AWS. However, we reach an opposite conclusion with respect to the 2390–2400 MHz band. The record reflects little support for AWS use of this band, which is designated for UPCS and Amateur Service use, and the *2002 Viability Assessment* identified this spectrum as suitable replacement spectrum for some Government systems currently operating in the 1710–1755 MHz band. Therefore, we will not further examine the possible use of the 2390–2400 MHz band for the provision of AWS.

18. The 90 megahertz of spectrum that has been allocated will promote the robust deployment of AWS, and we will continue to strive to make allocation decisions that can lead to the widescale deployment of innovative new services. Moreover, technological developments may foster further efficiencies in the deployment of AWS. These technologies include software defined radio (SDR) and adaptive antenna technology (increasing directionality) or new modulation or coding techniques (more information in the same spectrum) that may allow for greater spectral efficiency than that which is typically associated with current wireless systems. Finally, we stress that this action is part of a continuing effort to identify and evaluate both the current and future spectrum needs for AWS. The further decisions that we make in this continuing proceeding may well result in the allocation of additional spectrum for commercial use, including the provision of AWS.

Final Regulatory Flexibility Analysis

19. As required by the Regulatory Flexibility Act (RFA)[1] an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *Notice of Proposed Rulemaking and Order* (NPRM),[2] as well as the *Memorandum Opinion and Order and Further Notice of Proposed Rule Making* (Further NPRM), 66 FR 47591, September 13,

[1] *See* 5 U.S.C. 603. The RFA (codified at 5 U.S.C. 601–612) has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Public Law 104–121, title II, 110 Stat. 857 (1996).

[2] Amendment of part 2 of the Commission's rules to Allocate Spectrum Below 3 GHz for Mobile and Fixed Services to Support the Introduction of New Advanced Wireless Services, Including Third Generation Wireless Systems, ET Docket No. 00–258, *Notice of Proposed Rulemaking and Order*, 16 FCC Rcd 596 (2001).

2001.[3] The Commission sought written public comments on the proposals in the *NPRM* and *Further NPRM*, including comment on each IRFA. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.[4]

Need for, and Objectives of, the Second Report and Order

20. The goal of the *Second Report and Order* (Second R&O) is to promote the provision of advanced wireless services (AWS) to the public, which in turn supports our obligations under section 706 of the 1996 Telecommunication Act[5] and, more generally, serves the public interest by promoting rapid and efficient radio communication facilities.

21. The *Second R&O* discusses the need for spectrum allocations of sufficient size and with particular characteristics so as to allow for the provision of AWS, and evaluates spectrum that could be allocated to support these services. Specifically, the *Second R&O* allocates spectrum that is suitable for advanced services in the 1710–1755 MHz, 2110–2150 MHz, and 2150–2155 MHz bands.

Summary of Significant Issues Raised by Public Comments in Response to the IRFA

22. There were no comments filed that specifically addressed the rules and policies proposed in the IRFA.

Description and Estimate of the Number of Small Entities to Which the Rules Will Apply

23. The RFA directs agencies to provide a description of, and, where feasible, an estimate of, the number of small entities that may be affected by the rules adopted herein.[6] The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."[7] In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.[8] A "small business concern" is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).[9]

24. A small organization is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field."[10] Nationwide, as of 1992, there were approximately 275,801 small organizations.[11] "Small governmental jurisdiction" generally means "governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than 50,000."[12] As of 1992, there were approximately 85,006 governmental entities in the United States.[13] This number includes 38,978 counties, cities, and towns; of these, 37,566, or 96%, have populations of fewer than 50,000.[14] The Census Bureau estimates that this ratio is approximately accurate for all governmental entities. Thus, of the 85,006 governmental entities, we estimate that 81,600 (96%) are small entities.

25. *Fixed Microwave Services.* Microwave services include common carrier,[15] private-operational fixed,[16] and broadcast auxiliary radio services.[17] At present, there are approximately 22,015 common carrier fixed licensees and 61,670 private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services. The Commission has not yet defined a small business with respect to microwave services. For purposes of this FRFA, we will use the SBA's definition applicable to wireless and other telecommunications companies—*i.e.*, an entity with no more than 1,500 persons.[18] According to Census Bureau data for 1997, there were 977 firms in this category, total, that operated for the entire year.[19] Of this total, 965 firms had employment of 999 or fewer employees, and an additional 12 firms had employment of 1,000 employees or more.[20] Thus, under this size standard, the great majority of firms can be considered small.

26. We note that the number of firms does not necessarily track the number of licensees. We estimate that all of the Fixed Microwave licensees (excluding broadcast auxiliary licensees) would qualify as small entities under the SBA definition. Of these licenses, approximately 8,210 are issued for frequencies in the *Emerging Technologies* bands affected by this proceeding. In addition, these bands contain approximately 70 licenses in the paging and radiotelephone service and the general aviation and air-ground radio telephone services. Thus, assuming that these entities also qualify as small businesses, as many as 8,280 small business licensees could be affected by the rules we adopt. We note that these entities have been subject to relocation under rules originally adopted ten years ago in the Commission's *Emerging Technologies* proceeding. The *Second Report and Order* anticipates that these general relocation rules will continue to apply to FS microwave licensees and does not modify the class of licensees that are subject to these relocation provisions.

27. *Multipoint Distribution Service (MDS).* This service has historically provided primarily point-to-multipoint, one-way video services to subscribers, and Local Multipoint Distribution Service (LMDS).[21] The Commission

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[3] Amendment of part 2 of the Commission's rules to Allocate Spectrum Below 3 GHz for Mobile and Fixed Services to Support the Introduction of New Advanced Wireless Services, including Third Generation Wireless Systems, ET Docket No. 00–258, ET Docket No. 95–18, and IB Docket No. 99–81, *Memorandum Opinion and Order and Further Notice of Proposed Rule Making*, 16 FCC Rcd 16043 (2001) 66 FR 47591, September 13, 2001.

[4] *See* 5 U.S.C. 604.

[5] Section 706 of the Communications Act of 1934, as amended, codified at 47 U.S.C. 157.

[6] 5 U.S.C. 604(a)(3).

[7] 5 U.S.C. 601(6).

[8] 5 U.S.C. 601(3) (incorporating by reference the definition of "small-business concern" in the Small Business Act, 15 U.S.C. 632). Pursuant to 5 U.S.C. 601(3), the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**."

[9] 15 U.S.C. 632.

[10] 5 U.S.C. 601(4).

[11] Department of Commerce, U.S. Bureau of the Census, 1992 Economic Census, Table 6 (special tabulation of data under contract to Office of Advocacy of the U.S. Small Business Administration).

[12] 5 U.S.C. 601(5).

[13] U.S. Dept. of Commerce, Bureau of the Census, "1992 Census of Governments."

[14] *Id.*

[15] 47 CFR 101 *et seq.* (formerly, part 21 of the Commission's rules).

[16] Persons eligible under parts 80 and 90 of the Commission's rules can use Private Operational-Fixed Microwave services. *See* 47 CFR parts 80 and 90. Stations in this service are called operational-fixed to distinguish them from common carrier and public fixed stations. Only the licensee may use the operational-fixed station, and only for communications related to the licensee's commercial, industrial, or safety operations.

[17] Auxiliary Microwave Service is governed by part 74 of title 47 of the Commission's rules. *See* 47 CFR part 74 *et seq.* Available to licensees of broadcast stations and to broadcast and cable network entities, broadcast auxiliary microwave stations are used for relaying broadcast television signals from the studio to the transmitter, or between two points such as a main studio and an auxiliary studio. The service also includes mobile TV pickups, which relay signals from a remote location back to the studio.

[18] 13 CFR 121.201, NAICS code 517212 (formerly 513322).

[19] U.S. Census Bureau, 1997 Economic Census, Subject Series: Information, "Employment Size of Firms Subject to Federal Income Tax: 1997," Table 5, NAICS code 517212 (issued Oct. 2000).

[20] *Id.* The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is "Firms with 1,000 employees or more."

[21] For purposes of this item, MDS includes single channel Multipoint Distribution Service (MDS) and

recently amended its rules to allow MDS licensees to provide a wide range of high-speed, two-way services to a variety of users.[22] In connection with the 1996 MDS auction, the Commission defined small businesses as entities that had annual average gross revenues for the three preceding years not in excess of $40 million.[23] The Commission established this small business definition in the context of this particular service and with the approval of the SBA.[24] The MDS auction resulted in 67 successful bidders obtaining licensing opportunities for 493 Basic Trading Areas (BTAs).[25] Of the 67 auction winners, 61 met the definition of a small business. At this time, we estimate that of the 61 small business MDS auction winners, 48 remain small business licensees. In addition to the 48 small businesses that hold BTA authorizations, there are approximately 392 incumbent MDS licensees that are considered small entities.[26] After adding the number of small business auction licensees to the number of incumbent licensees not already counted, we find that there are currently approximately 440 MDS licensees that are defined as small businesses under either the SBA or the Commission's rules. Because the Commission's action only affects MDS operations in the 2150–2155 MHz band, the actual number of MDS providers who will be affected by the *Second Report and Order* will only represent a small fraction of those 440 small business licensees.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

28. The *Second R&O* addressed the possible use of frequency bands below 3 GHz to support the introduction of new AWS, but does not propose service rules. Thus, the item contains no new reporting, recordkeeping, or other compliance requirements. Because the item does not establish procedures for the relocation of MDS incumbents from the 2150–2155 MHz band, there are no new compliance requirements for MDS at this time.

Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

29. The RFA requires an agency to describe any significant alternatives that it has considered in developing its approach, which may include the following four alternatives (among others): "(1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities."[27]

30. Providing spectrum to support the introduction of new advanced mobile and fixed terrestrial wireless services is critical to the continuation of technological advancement. First and foremost, the Commission believes that our proposal to explore the possible use of several frequency bands that could offer a wide range of voice, data, and broadband services over a variety of mobile and fixed networks may provide substantial new opportunities for small entities.

31. However, we realize that some entities must be displaced to clear a sufficient quantity of contiguous spectrum to support new services. We endeavored to avoid this effect by identifying unencumbered spectrum, but spectrum in the suitable frequency range is heavily used already and a sufficient amount of unencumbered spectrum simply does not exist. We have therefore sought to minimize an adverse impact by proposing to reallocate frequency bands for those incumbents, including small entities, which might be accommodated in other spectrum and could be relocated more easily. The spectrum we allocate in the 1710–1755 MHz band is currently used for Federal government services, and therefore there are no non-Federal government incumbent small entities that will be displaced by the reallocation of this band. Similarly, as noted in paragraph 28 of the *Second R&O*, the 2110–2150 MHz band was previously identified as an Emerging Technology band, and relocation procedures already exist for incumbents in this band. These existing procedures (as modified in the *Second R&O*) should serve to ease the relocation of small entity incumbents in the 2110–2150 MHz band, and make reallocation of this band preferable to the reallocation of other bands where we would have to establish new relocation rules.

32. Finally, the Commission has already received extensive comments in this proceeding on issues related to the possible reallocation of the 2150–2160 MHz (2.1 GHz) spectrum for advanced wireless purposes. Comments filed by the multipoint distribution/instructional television fixed services industry and several equipment manufacturers argue that the 2.1 GHz band is necessary for the continued roll-out of fixed wireless services across the country. Other commenters support the use of 2.1 GHz for advanced wireless services. Although many commenters ask that we reallocate a large contiguous spectrum block to include the entire 2150–2160 MHz band, we instead decide to reallocate 5 megahertz in the 2150–2160 MHz band as part of a 45 megahertz block of contiguous spectrum that can be used to provide advanced services. By doing so, we satisfy the need to designate a large block of contiguous spectrum that can be paired in order to allow for the deployment of advanced services (and thus, serve the goals of this proceeding). However, by allocating 5 megahertz of existing MDS spectrum, we retain greater flexibility to accommodate small entities that are MDS licensees than had we redesignated the entire 2.1 GHz MDS spectrum. For example, paragraph 39 of the *Second Report and Order*, notes that we retain the option to realign MDS spectrum to a 10 megahertz block in the 2155–2165 MHz band. Had we reallocated the entire 2.1 GHz MDS spectrum, as some commenters had suggested, this option would not have been available.

Report to Congress

33. The Commission will send a copy of the *Second Report and Order* including this FRFA, in a report to be sent to Congress pursuant to the

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the Multichannel Multipoint Distribution Service (MMDS). *See* 66 FR 36177.

[22] Amendment of parts 21 and 74 to Enable Multipoint Distribution Service and Instructional Television Fixed Service Licensees to Engage in Fixed Two-Way Transmissions, MM Docket No. 97–217, *Report and Order*, 13 FCC Rcd 19112 (1998), *recon.*, 14 FCC Rcd 12764 (1999), *further recon.*, 15 FCC Rcd 14566 (2000).

[23] 47 CFR 21.961 and 1.2110.

[24] Amendment of parts 21 and 74 of the Commission's Rules with Regard to Filing Procedures in the Multipoint Distribution Service and in the Instructional Television Fixed Service and Implementation of Section 309(j) of the Communications Act—Competitive Bidding, MM Docket No. 94–131, *Report and Order*, 10 FCC Rcd 9589, 9670 (1995), 60 FR 36524 (July 17, 1995).

[25] Basic Trading Areas (BTAs) were designed by Rand McNally and are the geographic areas by which MDS was auctioned and authorized. *See id.* at 9608.

[26] 47 U.S.C. 309(j). (Hundreds of stations were licensed to incumbent MDS licensees prior to implementation of section 309(j) of the Communications Act of 1934, 47 U.S.C. 309(j)). For these pre-auction licenses, the applicable standard is SBA's small business size standard for "other telecommunications" (annual receipts of $12.5 million or less). *See* 13 CFR 121.201.

[27] 5 U.S.C. 603(c)(1) through (c)(4).

Congressional Review Act.[28] In addition, the Commission will send a copy of the Second Report and Order, including this FRFA, to the Chief Counsel for Advocacy of the SBA.

Ordering Clauses

34. Pursuant to sections 1, 4(i), 7(a), 301, 302(a), 303(f), 303(g), 303(r), 307, 308, 309(j), 316, and 332 of the Communications Act of 1934, as amended, 47 U.S.C. sections 151, 154(i), 157(a), 301, 302(a), 303(f), 303(g), 303(r), 307, 308, 309(j), 316, and 332 the Second Report and Order is hereby adopted. The rules set forth will become effective February 24, 2003.

35. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this *Second Report and Order,* including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

[28] *See* 5 U.S.C. 801(a)(1)(A).

List of Subjects

47 CFR Part 2

Communications equipment.

47 CFR Part 21

Communications equipment, Radio.

47 CFR Part 101

Communications equipment, Radio, Reporting and recordkeeping requirements.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Rule Changes

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR parts 2, 21, and 101 as follows:

PART 2—FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS

1. The authority citation for part 2 continues to read as follows:

Authority: 47 U.S.C. 154, 302a, 303, and 336, unless otherwise noted.

2. Section 2.106, the Table of Frequency Allocations, is amended as follows:

a. Revise pages 47 and 49.

b. In the list of United States (US) Footnotes, remove footnote US256, revise footnote US311, and add footnote US378.

c. In the list of non-Federal Government (NG) Footnotes, revise footnote NG153 and add footnote NG176.

§ 2.106 Table of Frequency Allocations.

The revisions and additions read as follows:

* * * * *

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International Table			United States Table		FCC Rule Part(s)
Region 1	Region 2	Region 3	Federal Government	Non-Federal Government	
1670-1675 METEOROLOGICAL AIDS FIXED METEOROLOGICAL-SATELLITE (space-to-Earth) MOBILE 5.380 5.341			1670-1675 5.341 US211 US362	1670-1675 FIXED MOBILE except aeronautical mobile 5.341 US211 US362	Wireless Communications (27)
1675-1690 METEOROLOGICAL AIDS FIXED METEOROLOGICAL-SAT-ELLITE (space-to-Earth) MOBILE except aeronautical mobile 5.341	1675-1690 METEOROLOGICAL AIDS FIXED METEOROLOGICAL-SAT-ELLITE (space-to-Earth) MOBILE except aeronautical mobile MOBILE-SATELLITE (Earth-to-space) 5.341 5.377	1675-1690 METEOROLOGICAL AIDS FIXED METEOROLOGICAL-SAT-ELLITE (space-to-Earth) MOBILE except aeronautical mobile 5.341	1675-1700 METEOROLOGICAL AIDS (radiosonde) METEOROLOGICAL-SATELLITE (space-to-Earth)		
1690-1700 METEOROLOGICAL AIDS METEOROLOGICAL-SAT-ELLITE (space-to-Earth) Fixed Mobile except aeronautical mobile 5.289 5.341 5.382	1690-1700 METEOROLOGICAL AIDS METEOROLOGICAL-SAT-ELLITE (space-to-Earth) MOBILE-SATELLITE (Earth-to-space) 5.289 5.341 5.377 5.381	1690-1700 METEOROLOGICAL AIDS METEOROLOGICAL-SAT-ELLITE (space-to-Earth) 5.289 5.341 5.381	5.289 5.341 US211		
1700-1710 FIXED METEOROLOGICAL-SAT-ELLITE (space-to-Earth) MOBILE except aeronautical mobile 5.289 5.341	1700-1710 FIXED METEOROLOGICAL-SAT-ELLITE (space-to-Earth) MOBILE except aeronautical mobile MOBILE-SATELLITE (Earth-to-space) 5.289 5.341 5.377	1700-1710 FIXED METEOROLOGICAL-SAT-ELLITE (space-to-Earth) MOBILE except aeronautical mobile 5.289 5.341 5.384	1700-1710 FIXED G118 METEOROLOGICAL-SAT-ELLITE (space-to-Earth) 5.289 5.341	1700-1710 METEOROLOGICAL-SAT-ELLITE (space-to-Earth) Fixed 5.289 5.341	
1710-1930 FIXED MOBILE 5.380 5.384A 5.388A			1710-1755 5.341 US311 US378	1710-1755 FIXED MOBILE 5.341 US311 US378 NG176	

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2110-2345 MHz (UHF) — Page 49

International Table			United States Table		FCC Rule Part(s)
Region 1	Region 2	Region 3	Federal Government	Non-Federal Government	
2110-2120 FIXED MOBILE 5.388A SPACE RESEARCH (deep space) (Earth-to-space) 5.388			2110-2120 US252	2110-2155 FIXED NG23 MOBILE US252	Public Mobile (22) Fixed Microwave (101)
2120-2160 FIXED MOBILE 5.388A 5.388	2120-2160 FIXED MOBILE 5.388A Mobile-satellite (space-to-Earth) 5.388	2120-2160 FIXED MOBILE 5.388A 5.388	2120-2200	2155-2160 FIXED NG23	Domestic Public Fixed (21) Fixed Microwave (101)
2160-2170 FIXED MOBILE 5.388A 5.388 5.392A	2160-2170 FIXED MOBILE MOBILE-SATELLITE (space-to-Earth) 5.388 5.389C 5.389D 5.389E 5.390	2160-2170 FIXED MOBILE 5.388A 5.388		2160-2165 FIXED NG23 NG153 MOBILE	Domestic Public Fixed (21) Public Mobile (22) Fixed Microwave (101)
2170-2200 FIXED MOBILE MOBILE-SATELLITE (space-to-Earth) 5.351A 5.388 5.389A 5.389F 5.392A				2165-2200 MOBILE-SATELLITE (space-to-Earth) NG23 NG168	Satellite Communications (25)
2200-2290 SPACE OPERATION (space-to-Earth) (space-to-space) EARTH EXPLORATION-SATELLITE (space-to-Earth) (space-to-space) FIXED MOBILE 5.391 SPACE RESEARCH (space-to-Earth) (space-to-space)			2200-2290 SPACE OPERATION (space-to-Earth) (space-to-space) EARTH EXPLORATION-SATELLITE (space-to-Earth) (space-to-space) FIXED (line-of-sight only)	2200-2290	

* * * * *

United States (US) Footnotes

* * * * *

US311 Radio astronomy observations may be made in the bands 1350–1400 MHz, 1718.8–1722.2 MHz, and 4950–4990 MHz on an unprotected basis at the following radio astronomy observatories:

Allen Telescope Array, Hat Creek, California	Rectangle between latitudes 40° 00′ N and 42° 00′ N and between longitudes 120° 15′ W and 122° 15′ W.
NASA Goldstone Deep Space Communications Complex, Goldstone, California.	80 kilometers (50 mile) radius centered on latitude 35° 18′ N, longitude 116° 54′ W.
National Astronomy and Ionosphere Center, Arecibo, Puerto Rico ...	Rectangle between latitudes 17° 30′ N and 19° 00′ N and between longitudes 65° 10′ W and 68° 00′ W.
National Radio Astronomy Observatory, Socorro, New Mexico	Rectangle between latitudes 32° 30′ N and 35° 30′ N and between longitudes 106° 00′ W and 109° 00′ W.
National Radio Astronomy Observatory, Green Bank, West Virginia	Rectangle between latitudes 37° 30′ N and 39° 15′ N and between longitudes 78° 30′ W and 80° 30′ W.
National Radio Astronomy Observatory, Very Long Baseline Array Stations.	80 kilometer radius centered on:
	Latitude (North) / Longitude (West)
Brewster, WA	48° 08′ / 119° 41′
Fort Davis, TX	30° 38′ / 103° 57′
Hancock, NH	42° 56′ / 71° 59′
Kitt Peak, AZ	31° 57′ / 111° 37′
Los Alamos, NM	35° 47′ / 106° 15′
Mauna Kea, HI	19° 48′ / 155° 27′
North Liberty, IA	41° 46′ / 91° 34′
Owens Valley, CA	37° 14′ / 118° 17′
Pie Town, NM	34° 18′ / 108° 07′
Saint Croix, VI	17° 46′ / 64° 35′
Owens Valley Radio Observatory, Big Pine, California	Two contiguous rectangles, one between latitudes 36° 00′ N and 37° 00′ N and between longitudes 117° 40′ W and 118° 30′ W and the second between latitudes 37° 00′ N and 38° 00′ N and between longitudes 118° 00′ W and 118° 50′ W.

In the bands 1350–1400 MHz and 4950–4990 MHz, every practicable effort will be made to avoid the assignment of frequencies to stations in the fixed and mobile services that could interfere with radio astronomy observations within the geographic areas given above. In addition, every practicable effort will be made to avoid assignment of frequencies in these bands to stations in the aeronautical mobile service which operate outside of those geographic areas, but which may cause harmful interference to the listed observatories. Should such assignments result in harmful interference to these observatories, the situation will be remedied to the extent practicable.

* * * * *

US378 In the band 1710–1755 MHz, Federal government stations in the fixed and mobile services shall operate on a primary basis until reaccommodated in accordance with the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999. Further, Federal government stations may continue to operate in the band 1710–1755 MHz as provided below:

(a) Federal fixed microwave and tactical radio relay stations may operate indefinitely on a primary basis at the sites listed below:

Location	Coordinates	Radius of operation (km)
Cherry Point, NC	34° 58′ N 076° 56′ W	80
Yuma, AZ	32° 32′ N 113° 58′ W	80

(b) Federal fixed microwave and tactical radio relay stations may operate on a secondary basis, and shall not cause harmful inference to, and must accept harmful interference from, primary non-Federal government operations at the sites listed below:

Location	Coordinates	Radius of operation (km)
China Lake, CA	35° 41′ N 117° 41′ W	80
Eglin AFB, FL	30° 29′ N 086° 31′ W	80

Location	Coordinates	Radius of operation (km)
Pacific Missile Test Range/Point Mugu, CA	34° 07′ N 119° 30′ W	80
Nellis AFB, NV	36° 14′ N 115° 02′ W	80
Hill AFB, UT	41° 07′ N 111° 58′ W	80
Patuxent River, MD	38° 17′ N 076° 25′ W	80
White Sands Missile Range, NM	33° 00′ N 106° 30′ W	80
Fort Irwin, CA	35° 16′ N 116° 41′ W	50
Fort Rucker, AL	31° 13′ N 085° 49′ W	50
Fort Bragg, NC	35° 09′ N 079° 01′ W	50
Fort Campbell, KY	36° 41′ N 087° 28′ W	50
Fort Lewis, WA	47° 05′ N 122° 36′ W	50
Fort Benning, GA	32° 22′ N 084° 56′ W	50
Fort Stewart, GA	31° 52′ N 081° 37′ W	50

(c) In the sub-band 1710–1720 MHz, precision guided munitions shall operate on a primary basis until inventory is exhausted or until December 31, 2008, whichever is earlier.

* * * * *

Non-Federal Government (NG) Footnotes

* * * * *

NG153 The band 2160–2165 MHz is reserved for future emerging technologies on a co-primary basis with the fixed and mobile services. Allocations to specific services will be made in future proceedings. Authorizations in the band 2160–2162 MHz for stations in the Multipoint Distribution Service applied for after January 16, 1992, shall be on a secondary basis to emerging technologies.

* * * * *

NG176 The allocations to the fixed and mobile services in the band 1710–1755 MHz shall come into effect on January 1, 2004.

PART 21—DOMESTIC PUBLIC FIXED RADIO SERVICES

3. The authority citation for part 21 continues to read as follows:

Authority: Secs. 1, 2, 4, 201–205, 208, 215, 218, 303, 307, 313, 403, 404, 410, 602, 48 Stat. as amended, 1064, 1066, 1070–1073, 1076, 1077, 1080, 1082, 1083, 1087, 1094, 1098, 1102, 47 U.S.C. 151, 154, 201–205, 208, 215, 218, 303, 307, 313, 314, 403, 404, 602, 47 U.S.C. 552, 554.

§ 21.50 [Removed and reserved]

4. Remove and reserve § 21.50.

PART 101—FIXED MICROWAVE SERVICES

5. The authority citation for part 101 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

6. Section 101.69 is amended by revising paragraph (d) introductory text to read as follows:

§ 101.69 Transition of the 1850–1990 MHz, 2110–2150 MHz, and 2160–2200 MHz bands from the fixed microwave services to personal communications services and emerging technologies.

* * * * *

(d) Relocation of FMS licensees in the 2110–2150 and 2160–2200 MHz bands will be subject to mandatory negotiations only. Mandatory negotiation periods are defined as follows:

* * * * *

7. Section 101.73 is amended by revising the first and second sentences in paragraph (d) introductory text and the first and second sentences in paragraph (d)(3) to read as follows:

§ 101.73 Mandatory negotiations.

* * * * *

(d) Provisions for Relocation of Fixed Microwave Licensees in the 2110–2150 and 2160–2200 MHz bands. Mandatory negotiations will commence when the ET licensee informs the fixed microwave licensee in writing of its desire to negotiate. * * *

* * * * *

(3) *Operating Costs.* Operating costs are the cost to operate and maintain the FMS system. ET licensees would compensate FMS licensees for any increased recurring costs associated with the replacement facilities (*e.g.*, additional rental payments, and increased utility fees) for five years after relocation. ET licensees could satisfy this obligation by making a lump-sum payment based on present value using current interest rates. * * *

* * * * *

8. Section 101.75 is amended by revising paragraph (d) to read as follows:

§ 101.75 Involuntary relocation procedures.

* * * * *

(d) *Twelve-month trial period.* If, within one year after the relocation to new facilities, the FMS licensee demonstrates that the new facilities are not comparable to the former facilities, the ET licensee must remedy the defects or pay to relocate the microwave licensee to one of the following: its former or equivalent 2 GHz channels, another comparable frequency band, a land-line system, or any other facility that satisfies the requirements specified in paragraph (b) of this section. This trial period commences on the date that the FMS licensee begins full operation of the replacement link. If the FMS licensee has retained its 2 GHz authorization during the trial period, it must return the license to the Commission at the end of the twelve months. FMS licensees relocated from the 2110–2150 and 2160–2200 MHz bands may not be returned to their former 2 GHz channels. All other remedies specified in paragraph (d) are available to FMS licensees relocated from the 2110–2150 MHz and 2160–2200 MHz bands, and may be invoked whenever the FMS licensee demonstrates that its replacement facility is not comparable, subject to no time limit.

9. Section 101.99 is amended by revising the section heading and paragraph (a) to read as follows:

§ 101.99 Reimbursement and relocation expenses in the 2110–2150 MHz and 2160–2200 MHz bands.

(a) Whenever an ET licensee (including Mobile-Satellite Service licensees) in the 2110–2150 or 2160–2200 MHz bands relocates an incumbent paired microwave link with one path in the 2110–2150 MHz band and the paired path in the 2160–2200 MHz band, the ET licensee is entitled to reimbursement of 50% of its relocation costs from any subsequently entering ET

licensee which would have been required to relocate the same fixed microwave link.

* * * * *

[FR Doc. 03–1457 Filed 1–23–03; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF VETERANS AFFAIRS

48 CFR Parts 801, 806, 812, 837, 852, and 873

RIN 2900–AI71

VA Acquisition Regulation: Simplified Acquisition Procedures for Health-Care Resources

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document amends the Department of Veterans Affairs Acquisition Regulation (VAAR) to establish simplified procedures for the competitive acquisition of health-care resources, consisting of commercial services or the use of medical equipment or space pursuant to statute. The Veterans' Health Care Eligibility Reform Act of 1996 authorized VA to prescribe simplified procedures for the procurement of health-care resources. This rule prescribes those procedures.

EFFECTIVE DATE: February 24, 2003.

FOR FURTHER INFORMATION CONTACT: Dennis Foley, (202) 273–9225, Office of the General Counsel, Professional Staff Group V; or Don Kaliher, (202) 273–8819, Acquisition Resources Service, Office of Acquisition and Materiel Management, Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420.

SUPPLEMENTARY INFORMATION: On June 7, 2001, we published in the **Federal Register** (66 FR 30659) a proposed rule to amend the Department of Veterans Affairs Acquisition Regulation (VAAR), pursuant to 38 U.S.C. 8151–8153, to establish simplified procedures for the competitive acquisition of health-care resources consisting of commercial services or the use of medical equipment or space.

Comments were solicited concerning the proposal for 60 days, ending August 6, 2001. We did not receive any comments.

The information presented in the proposed rule document still provides a basis for this final rule. In addition, the proposed rule requested Paperwork Reduction Act (PRA) comments concerning the collection of information regarding clauses for use in both commercial and non-commercial item and service solicitations and contracts. No comments were received by VA or the Office of Management and Budget (OMB).

Therefore, based on the rationale set forth in the proposed rule document, we are adopting the provisions of the proposed rule as a final rule with no changes, except for a non-substantive change to reflect, at 48 CFR 801.301–70(c), the PRA clearance numbers assigned by OMB to clauses 852.207–70 and 852.237–7.

Unfunded Mandates

The Unfunded Mandates Reform Act requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before developing any rule that may result in an expenditure by State, local, or tribal governments, in the aggregate, or by the private sector of $100 million or more in any given year. This rule would have no consequential effect on State, local, or tribal governments.

Executive Order 12866

This document has been reviewed by the Office of Management and Budget under Executive Order 12866.

Regulatory Flexibility Analysis

This rule may have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. An Initial Regulatory Flexibility Analysis was published in the **Federal Register** on June 7, 2001, (66 FR 30672) as part of the proposed rule. No comments were received. As required by the RFA (5 U.S.C. 601 *et. seq.*), the following Final Regulatory Flexibility Analysis is set forth.

a. A succinct statement of the need for and the objectives of the rule.

Response: The rule amends the VAAR to implement the provisions of 38 U.S.C. 8151–8153, which authorize the Secretary of Veterans Affairs, in consultation with the Administrator of Federal Procurement Policy, to prescribe simplified procedures for the procurement of health-care resources. We believe the simplified procedures will allow VA to become more efficient in procuring health-care resources.

The objective of the rule is to allow VA to become more efficient in procuring health-care resources and thereby strengthen the medical programs of the Department and improve the quality of health care provided to veterans.

b. A summary of the significant issues raised by public comments in response to the initial regulatory flexibility analysis, a summary of the agency's assessment of such issues, and a statement of any changes made in the proposed rule as a result of such comments.

Response: No public comments were received and no changes were made to the proposed rule.

c. A description of and an estimate of the number of small entities to which the rule will apply or an explanation of why no such estimate is available.

Response: The small entities that could be affected by the rule are any small entities that provide commercial services or the use of medical equipment or space to the health-care industry.

We do not have precise figures on the number of small entities that could potentially be affected by the rule. Any small entity that provides, or wishes to provide, commercial services or the use of medical equipment or space to VA health-care facilities could potentially be affected.

However, the rule will not apply to the majority of VA acquisitions. The rule applies only to competitive acquisitions of commercial services or the use of medical equipment or space conducted by the Veterans Health Administration (VHA) and which specifically reference the authority of 38 U.S.C. 8153. The rule does not apply to acquisitions of supplies or equipment made on behalf of VHA or to acquisitions made on behalf of the Veterans Benefits Administration (VBA) or the National Cemetery Administration (NCA). Except for section 873.108(b), the rule does not apply to VHA sole source acquisitions from affiliated institutions or entities associated with affiliated institutions. The authority for VHA to contract on a sole source basis with an institution affiliated with VA or with a medical practice group or other approved entity associated with an affiliate, addressed in the rule at 873.108(b), is authorized by law and is not dependent upon this rulemaking. The rule does not apply to acquisitions of services for which other specific authorities apply, such as acquisitions of nursing home care services, which are acquired under the authority of 38 U.S.C. 1720, or to acquisitions of non-commercial services, such as construction.

We have no relevant data regarding commercial service acquisitions below $25,000. However, we expect little application of the rule to acquisitions below $25,000. Existing FAR provisions for such acquisitions are already very simple and the provisions of the rule likely would not provide a significant benefit to the Government to warrant

use of this authority for such low dollar value acquisitions.

In Fiscal Year (FY) 1998, VHA reported approximately 6,000 individual service transactions valued in excess of $25,000 to the Federal Procurement Data System. This 6,000 figure excludes classification codes C, architect/engineer; E, purchase of structures; Q402, nursing home; Y, construction; and Z, maintenance of real property; all of which we believe are not covered by the rule. Of those 6,000 transactions, approximately 3,000 were awarded to small businesses and approximately 900 were awarded to non-profit businesses. Similar figures were reported for FY 1999. Of the total acquisition dollars associated with these 6,000 annual awards, we estimate that in FY 1998, approximately 42 percent, and in FY 1999, approximately 44 percent, were awarded to small businesses.

d. A description of the projected reporting, recordkeeping, and other compliance requirements of the rule, including an estimate of the classes of small entities which will be subject to the requirement, and the type of professional skills necessary for preparation of the report or record.

Response: The reporting or recordkeeping requirements of the clauses at section 852.207–70, Report of employment under commercial activities, and section 852.237–7, Indemnification and Medical Liability Insurance, were discussed in the Paperwork Reduction Act (PRA) portion of the proposed rule, published in the **Federal Register** on June 7, 2001 (66 FR 30671). The clause at section 852.207–70 requires the contractor, on contracts where current VA employees are displaced, to report on employment openings and on efforts to hire displaced VA employees. The clause at section 852.237–7 requires contractors, on contracts for nonpersonal health-care services, to provide evidence of liability insurance. The final rule imposes no new reporting or recordkeeping requirements not already required by the VAAR. Currently, the VAAR requires that these clauses be included in all applicable solicitations and contracts, *i.e.*, contracts where VA employees might be displaced (852.207–70) or contracts for nonpersonal health-care services (852.237–7). The rule provides clarification that these clauses would continue to be required in all applicable service contracts, including commercial service contracts issued under the authority of 38 U.S.C. 8153. Small entities currently holding contracts where VA employees might be displaced or contracts for nonpersonal health-care services are required to provide employment reports or evidence of liability insurance, as applicable. Under the rule, there is no change to those requirements and no new added requirements. There are no additional small entities affected by the rule that would not already be affected by the current regulations. No professional skills are necessary to comply with these reporting and recordkeeping requirements.

e. A description of the steps the agency has taken to minimize the significant economic impacts on small entities consistent with the stated objectives of applicable statutes, including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule, and the reasons for rejecting each of the other significant alternatives.

Response: We believe that, with two exceptions (1. and 2. below), the provisions of the rule, where those provisions differ from the FAR, are small business/large business neutral, *i.e.*, they would have neither a positive nor a negative impact on small business or large business. The two exceptions concern the authority to waive FAR small business set-aside requirements and the provisions concerning the transmission of solicitation notices to the Governmentwide point of entry (GPE).

1. The rule at section 873.107 contains a provision allowing the head of the contracting activity (HCA) to waive the requirement to set aside an acquisition for small business. The HCA must determine that the waiver is in the best interest of the Government. The availability of this authority may result in acquisitions where small businesses have to compete against large businesses rather than compete only against other small businesses.

The alternatives to this waiver authority that were considered in order to limit the impact of the rule on small businesses included having no waiver authority, limiting the application of that authority to specific types of acquisitions, such as acquisitions for medical services, or limiting the authority to acquisitions in excess of a certain dollar threshold. For the reasons stated below, we determined to place no limits, other than those contained in the rule, on the application of this waiver authority.

As noted above, the rule would only apply to a limited number of acquisitions. We believe the waiver authority would be used in very few of those limited number of acquisitions, primarily in acquisitions where it is critical to broaden the pool of sources considered in order to obtain the highest quality patient care services at reasonable prices. In such cases, it would not be in VA's best interest to exclude non-profit teaching hospitals and universities and other similar high quality large businesses from the competition. Small businesses could still compete and would have an equal opportunity to be considered for award. The availability of this authority, while most critical to direct patient care service acquisitions, could be a necessary element of other commercial service acquisitions that are critical to the optimum functioning of the medical centers.

In some limited circumstances, the waiver authority of section 873.107 may have a beneficial impact on small entities. VA has authority to contract on a sole source basis with medical schools, hospitals, and clinics affiliated with VA. Medical schools, hospitals, and clinics are almost exclusively large or nonprofit businesses. Under the FAR, if a VA medical center wishes to seek competition for services currently being acquired from its affiliate, the affiliate would be excluded from bidding on that competition if there were two or more small businesses capable of providing the services. It is in VA's best interest to obtain state-of-the-art medical services from the highest qualified sources at reasonable prices. Without the waiver authority, VA medical centers would most likely continue to award sole source contracts to their affiliates rather than seek competition, since, under a competitive solicitation, those affiliates might be excluded as potential sources for those services due to the current FAR requirement to set acquisitions aside for small business. While VA medical centers might be willing to consider other sources, they generally are unwilling to exclude their affiliates as potential sources. However, under the waiver procedures of the rule, VA medical centers would no longer be required to set an acquisition aside for small business and exclude their affiliates from consideration. Accordingly, VA medical centers may be more likely to issue competitive solicitations for highly technical medical services rather than acquire such services on a sole source basis from their affiliates. Rather than reducing small business access to VA acquisitions of medical services, the waiver process could result in increased access to such acquisitions by small businesses. In this regard, VA intends to monitor, through the Federal Procurement Data System, the use of the procedures provided in this rule and the

impact on VA's socioeconomic programs.

2. The FAR requires that all proposed acquisitions, including sole source acquisitions, exceeding $25,000, with certain exceptions, be transmitted to the GPE. The rule differs from the FAR in several ways. First, it provides, at section 873.108(a), that acquisitions exceeding the simplified acquisition threshold (SAT) (currently $100,000) would not have to be announced in the GPE. Rather, the rule requires that contracting officers publicly announce such proposed acquisitions utilizing a medium designed to obtain competition to the maximum extent practicable. The rule lists a number of examples for where the announcements may be announced, including the GPE. The intent of the rule is to maximize the dissemination of information regarding such proposed acquisitions, not to limit dissemination. Most acquisitions for services are of interest only to the local community. In many cases, it is impossible for a firm located some distance from a VA medical center to provide coronary bypass operations, X-ray or oncology services, or other services necessary to operate the medical center, on a timely basis. We believe that both small and large local service providers of health-care resources (*e.g.*, hospitals and clinics) are more likely to be made aware of acquisition opportunities if the acquisitions are announced in mediums that are seen and read by the local service community or if they are contacted directly. Accordingly, we believe this provision of the rule will tend to increase competition rather than decrease competition and will provide small businesses with increased opportunities.

Second, the rule at section 873.108(b) provides that sole source acquisitions from institutions affiliated with VA and from medical practice groups and other entities associated with an affiliated institution are exempt from the requirement for synopsis in the GPE. 38 U.S.C. 8153 specifically authorizes VA to acquire health-care resources on a sole source basis from institutions affiliated with VA and from medical practice groups and other entities associated with an affiliated institution. Exempting such acquisitions from synopsis in the GPE is consistent with statute, which imposes no requirement for VA to solicit and consider any other offers. Thus, this provision of the rule will have no impact on competition, since competition is not required under any circumstances.

Section 873.108(b) also exempts from publication sole source acquisitions of hospital care, medical services, and other health-care services from any source, whether or not the source is affiliated with VA. However, as required by 38 U.S.C. 8153(a)(3)(D), acquisitions from non-affiliates, if conducted on a sole source basis, must still be justified and approved. Acquisitions for hospital care, medical services, or other health-care services would usually be conducted on a sole source basis only if there was an emergency need for such services. Otherwise, the acquisitions would likely be conducted competitively, if not acquired from an affiliate. The FAR provides an exemption from synopsis in the GPE under conditions of unusual or compelling urgency and where the Government would be seriously injured by any delay due to the publication requirement. We expect that most of the sole source acquisitions of hospital care, medical services, and other health-care services covered by this provision will be conducted under conditions of unusual or compelling urgency. Such acquisitions would include emergency hospital care for a veteran in an area not served by a nearby VA medical center. Even under the FAR, this type of acquisition is exempt from synopsis in the GPE by virtue of its being an urgent and compelling acquisition. This provision of the rule will simplify the acquisition process by freeing the contracting officer from having to make individual determinations regarding publication for each sole source acquisition of hospital care, medical services, and other health-care services. Since we expect most such acquisitions to already be exempt under the FAR, we believe this provision will have little, if any, impact on competition or on awards to small businesses.

Third, the rule at section 873.108(c) exempts acquisitions below the SAT from the requirement for public announcement, including synopsis in the GPE. However, the rule at section 873.104 requires the contracting officer to seek competition to the maximum extent practicable and to permit all responsible sources, as appropriate, to submit a bid, proposal, or quotation. In addition, for acquisitions below the SAT, section 873.111 states that contracting officers should solicit a sufficient number of sources to promote competition to the maximum extent practicable. Section 873.107 requires that acquisitions be set aside for small business. These provisions tend to mitigate any negative impact that section 873.108(c) may have on small businesses.

The alternatives to the above provisions regarding public announcements in the GPE that were considered were to eliminate these provisions and follow the provisions of the FAR or to limit the exemptions to specific categories of acquisitions, such as acquisitions for medical services. The objectives of the rule are to allow VA to become more efficient in procuring health-care resources. The intent of this rule is to provide procurement processes that are simpler and less time consuming than those of the FAR. As discussed above, we believe that the flexibility to select the public medium that best captures the awareness of interested sources will enable the Department to maximize the effective distribution of information on VA solicitations and more efficiently take advantage of competition without decreasing competition. For this reason, the provisions regarding publicizing contract actions have been retained without change.

List of Subjects

48 CFR Parts 801 and 852

Government Procurement, Reporting and recordkeeping requirements.

48 CFR Parts 806, 812, 837, and 873

Government Procurement.

Approved: October 11, 2002.

Anthony J. Principi,

Secretary of Veterans Affairs.

For the reasons set forth in the preamble, 48 CFR chapter 8 is amended as follows:

PART 801—VETERANS AFFAIRS ACQUISITION REGULATIONS SYSTEM

1. The authority citation for part 801 continues to read as follows:

Authority: 38 U.S.C. 501 and 40 U.S.C. 486(c).

801.301–70 [Amended]

2. The chart in section 801.301–70, paragraph (c) is amended by adding two OMB information collection approval numbers to read as follows:

801.301–70 Paperwork Reduction Act requirements.

* * * * *

48 CFR part or section where identified and described	Current OMB control No.
. . . . .	
852.207–70	2900–0590
. . . . .	
852.237–7	2900–0590
. . . . .	

801.602–70 [Amended]

3. In 801.602–70, paragraphs (a)(4)(vi) and (a)(4)(vii) are revised to read as follows:

801.602–70 Legal/technical review requirements to be met prior to contract execution.

(a) * * *

(4) * * *

(vi) Competitive contracts exceeding $1.5 million and noncompetitive contracts exceeding $500,000 for the acquisition of scarce medical specialist services acquired under the authority of 38 U.S.C. 7409.

(vii) Competitive contracts exceeding $1.5 million and noncompetitive contracts exceeding $500,000 for the acquisition of health-care resources acquired under the authority of 38 U.S.C. 8151–8153.

* * * * *

801.602–71 [Amended]

4. In 801.602–71, paragraph (b)(2) is revised to read as follows:

801.602–71 Processing contracts for legal/technical review.

* * * * *

(b) * * *

(2) Proposed contracts and agreements for scarce medical specialist services or for the mutual use or exchange of use of health-care resources, as specified in 801.602–70(a)(4)(vi) and (a)(4)(vii), will be forwarded to Central Office in accordance with Veterans Health Administration directives and VA Manual M–1, Part 1, Chapter 34, for review and submission to the Office of the General Counsel (025).

* * * * *

801.602–72 [Amended]

5. In 801.602–72, paragraph (b) is revised to read as follows:

801.602–72 Documents to be submitted for legal review.

* * * * *

(b) For proposed contracts and agreements for scarce medical specialist services or for the mutual use or exchange of use of health-care resources, as specified in 801.602–70(a)(4)(vi) and (a)(4)(vii), the documents referred to in VA Manual M–1, Part 1, Chapter 34.

* * * * *

PART 806—COMPETITION REQUIREMENTS

6. The authority citation for part 806 continues to read as follows:

Authority: 38 U.S.C. 501 and 40 U.S.C. 486(c).

7. Section 806.302–5 is amended by:

a. Revising paragraph (b).

b. Redesignating paragraph (c) as paragraph (d).

c. Adding a new paragraph (c).

The revision and addition read as follows:

806.302–5 Authorized or required by statute.

* * * * *

(b) Contracts or agreements for the mutual use or exchange of use of health-care resources, consisting of commercial services, the use of medical equipment or space, or research, negotiated under the authority of 38 U.S.C. 8151–8153, are approved for other than full and open competition only when such contracts or agreements are with institutions affiliated with the Department of Veterans Affairs, pursuant to 38 U.S.C. 7302, with medical practice groups or other approved entities associated with affiliated institutions (entities will be approved if determined legally to be associated with affiliated institutions), or with blood banks, organ banks, or research centers. The justification and approval requirements of FAR 6.303 and VAAR 806.304 do not apply to such contracts or agreements.

(c) Contracts or agreements for the mutual use or exchange of use of health-care resources, consisting of commercial services or the use of medical equipment or space, negotiated under the authority of 38 U.S.C. 8151–8153, and not acquired under the authority of paragraph (b) of this section, may be conducted without regard to any law or regulation that would otherwise require the use of competitive procedures for procuring resources, provided the procurement is conducted in accordance with the simplified procedures contained in (VAAR) 48 CFR part 873. The justification and approval requirements of FAR 6.303 and 806.304 shall apply to such contracts or agreements conducted on a sole source basis.

* * * * *

PART 812—ACQUISITION OF COMMERCIAL ITEMS

8. The authority citation for part 812 continues to read as follows:

Authority: 38 U.S.C. 501 and 40 U.S.C. 486(c).

9. In 812.301, paragraph (c) is revised and paragraph (g) is added to read as follows:

812.301 Solicitation provisions and contract clauses for the acquisition of commercial items.

* * * * *

(c) The provisions and clauses in the following VAAR sections must be used, when appropriate, in accordance with the prescriptions contained therein or elsewhere in the VAAR, in requests for quotations, solicitations, or contracts for the acquisition of commercial items:

(1) 852.207–70, Report of employment under commercial activities.

(2) 852.211–71, Guarantee clause.

(3) 852.211–72, Inspection.

(4) 852.211–73, Frozen processed foods.

(5) 852.211–74, Telecommunications equipment.

(6) 852.211–75, Technical industry standards.

(7) 852.214–70, Caution to bidders-bid envelopes.

(8) 852.216–70, Estimated quantities for requirements contracts.

(9) 852.229–70, Purchases from patient's funds.

(10) 852.229–71, Purchases for patients using Government funds and/or personal funds of patients.

(11) 852.233–70, Protest content.

(12) 852.237–7, Indemnification and Medical Liability Insurance.

(13) 852.237–70, Contractor responsibilities.

(14) 852.237–71, Indemnification and insurance (vehicle and aircraft service contracts).

(15) 852.252–1, Provisions or clauses requiring completion by the offeror or prospective contractor.

(16) 852.270–1, Representatives of contracting officers.

(17) 852.270–2, Bread and bakery products.

(18) 852.270–3, Purchase of shellfish.

* * * * *

(g) When soliciting for commercial services or the use of medical equipment or space under the authority of part 873 and 38 U.S.C. 8151–8153, the provisions and clauses in the following VAAR sections may be used in accordance with the prescriptions contained therein or elsewhere in the VAAR:

(1) 852.273–70, Late offers.

(2) 852.273–71, Alternative negotiation techniques.

(3) 852.273–72, Alternative evaluation.

(4) 852.273–73, Evaluation—health-care resources.

(5) 852.273–74, Award without exchanges.

PART 837—SERVICE CONTRACTING

10. The authority citation for part 837 continues to read as follows:

Authority: 38 U.S.C. 501 and 40 U.S.C. 486(c).

11. Section 837.403 is amended by revising the first sentence of the paragraph to read as follows:

837.403 Contract clause.

The contracting officer shall insert the clause at 852.237–7, Indemnification and Medical Liability Insurance, in lieu of FAR Clause 52.237–7, in solicitations and contracts for nonpersonal health-care services, including solicitations and contracts for nonpersonal health-care services awarded under the authority of 38 U.S.C. 8151–8153 and (VAAR) 48 CFR part 873. * * *

PART 852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

12. The authority citation for part 852 continues to read as follows:

Authority: 38 U.S.C. 501 and 40 U.S.C. 486(c).

13. In section 852.207–70, the introductory text is revised to read as follows:

852.207–70 Report of employment under commercial activities.

As prescribed in 807.304–77 and 873.110, the following clause must be included in A–76 cost comparison solicitations and solicitations issued under the authority of 38 U.S.C. 8151–8153 which may result in the conversion, from in-house to contract performance, of work currently being performed by VA employees:

* * * * *

14. Section 852.273–70 is added to read as follows:

852.273–70 Late offers.

As prescribed in 873.110(a), insert the following provision:

Late Offers (Jan 2003)

This provision replaces paragraph (f) of FAR provision 52.212–1. Offers or modifications of offers received after the time set forth in a request for quotations or request for proposals may be considered, at the discretion of the contracting officer, if determined to be in the best interest of the Government. Late bids submitted in response to an invitation for bid (IFB) will not be considered.

(End of provision)

15. Section 852.273–71 is added to read as follows:

852.273–71 Alternative negotiation techniques.

As prescribed in 873.110(b), insert the following provision:

Alternative Negotiation Techniques (Jan 2003)

The contracting officer may elect to use the alternative negotiation techniques described in section 873.111(e) of 48 Code of Federal Regulations Chapter 8 in conducting this procurement. If used, offerors may respond by maintaining offers as originally submitted, revising offers, or submitting an alternative offer. The Government may consider initial offers unless revised or withdrawn, revised offers, and alternative offers in making the award. Revising an offer does not guarantee an offeror an award.

(End of provision)

16. Section 852.273–72 is added to read as follows:

852.273–72 Alternative evaluation.

As prescribed in 873.110(c), insert the following provision:

Alternative Evaluation (Jan 2003)

(a) The Government will award a contract resulting from this solicitation to the responsible offeror submitting the lowest priced offer that conforms to the solicitation. During the specified period for receipt of offers, the amount of the lowest offer will be posted and may be viewed by—[*Contracting officer insert description of how the information may be viewed electronically or otherwise*]—. Offerors may revise offers anytime during the specified period. At the end of the specified time period for receipt of offers, the responsible offeror submitting the lowest priced offer will be in line for award.

(b) Except when it is determined not to be in the Government's best interest, the Government will evaluate offers for award purposes by adding the total price for all options to the total price for the basic requirement. The Government may determine that an offer is unacceptable if the option prices are materially unbalanced. Evaluation of options shall not obligate the Government to exercise the option(s).

(End of provision)

17. Section 852.273–73 is added to read as follows:

852.273–73 Evaluation—health-care resources.

As prescribed in 873.110(d), in lieu of FAR provision 52.212–2, the contracting officer may insert a provision substantially as follows:

Evaluation—Health-Care Resources (January 2003)

(a) The Government will award a contract resulting from this solicitation to the responsible offeror whose offer, conforming to the solicitation, will be most advantageous to the Government, price and other factors considered. The following information or factors shall be used to evaluate offers:

—[*Contracting officer insert evaluation information or factors, such as technical capability to meet the Government's requirements, past performance, or such other evaluation information or factors as the contracting officer deems necessary to evaluate offers. Price must be evaluated in every acquisition. The contracting officer may include the evaluation information or factors in their relative order of importance, such as in descending order of importance. The relative importance of any evaluation information must be stated in the solicitation.*]—

(b) Except when it is determined not to be in the Government's best interest, the Government will evaluate offers for award purposes by adding the total price for all options to the total price for the basic requirement. The Government may determine that an offer is unacceptable if the option prices are materially unbalanced. Evaluation of options shall not obligate the Government to exercise the option(s).

(c) If this solicitation is a request for proposals (RFP), a written notice of award or acceptance of an offer, mailed or otherwise furnished to the successful offeror within the time for acceptance specified in the offer, shall result in a binding contract without further action by either party. Before the offer's specified expiration time, the Government may accept an offer (or part of an offer), whether or not there are negotiations after its receipt, unless a written notice of withdrawal is received before award.

(End of provision)

18. Section 852.273–74 is added to read as follows:

852.273–74 Award without exchanges.

As prescribed in 873.110(e), insert the following provision:

Award Without Exchanges (Jan 2003)

The Government intends to evaluate proposals and award a contract without exchanges with offerors. Therefore, each initial offer should contain the offeror's best terms from a cost or price and technical standpoint. However, the Government reserves the right to conduct exchanges if later determined by the contracting officer to be necessary.

(End of provision)

19. Part 873 is added to read as follows:

PART 873—SIMPLIFIED ACQUISITION PROCEDURES FOR HEALTH-CARE RESOURCES

Sec.

873.101 Policy.
873.102 Definitions.
873.103 Priority sources.
873.104 Competition requirements.
873.105 Acquisition planning.
873.106 Presolicitation exchanges with industry.
873.107 Socioeconomic programs.
873.108 Publicizing contract actions.
873.109 General requirements for acquisition of health-care resources.

873.110 Solicitation provisions.
873.111 Acquisition strategies for health-care resources.
873.112 Evaluation information.
873.113 Exchanges with offerors.
873.114 Best value pool.
873.115 Proposal revisions.
873.116 Source selection decision.
873.117 Award to successful offeror.
873.118 Debriefings.

Authority: 38 U.S.C. 8151–8153.

873.101 Policy.

The simplified acquisition procedures set forth in this Department of Veterans Affairs Acquisition Regulation (VAAR) part apply to the acquisition of health-care resources consisting of commercial services or the use of medical equipment or space. These procedures shall be used in conjunction with the Federal Acquisition Regulation (FAR) and other parts of VAAR. However, when a policy or procedure in FAR or another part of VAAR differs from the procedures contained in this part, this part shall take precedence. These procedures contain more flexibility than provided in FAR or elsewhere in VAAR.

873.102 Definitions.

Commercial service means a service, except construction exceeding $2,000 and architect-engineer services, that is offered and sold competitively in the commercial marketplace, is performed under standard commercial terms and conditions, and is procured using firm-fixed price contracts.

Health-care providers includes health-care plans and insurers and any organizations, institutions, or other entities or individuals who furnish health-care resources.

Health-care resource includes hospital care and medical services (as those terms are defined in section 1701 of title 38 United States Code (U.S.C.), any other health-care service, and any health-care support or administrative resource, including the use of medical equipment or space.

873.103 Priority sources.

Without regard to FAR 8.001(a)(2), except for the acquisition of services available from the Committee for Purchase From People Who Are Blind or Severely Disabled, pursuant to the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) and FAR subpart 8.7, there are no priority sources for the acquisition of health-care resources consisting of commercial services or the use of medical equipment or space.

873.104 Competition requirements.

(a) Without regard to FAR part 6, if the health-care resource required is a commercial service, the use of medical equipment or space, or research, and is to be acquired from an institution affiliated with the Department in accordance with section 7302 of title 38 U.S.C., including medical practice groups and other approved entities associated with affiliated institutions (entities will be approved if determined legally to be associated with affiliated institutions), or from blood banks, organ banks, or research centers, the resource may be acquired on a sole source basis.

(b) Acquisition of health-care resources identified in paragraph (a) of this section are not required to be publicized as otherwise required by 873.108 or FAR 5.101. In addition, written justification, as otherwise set forth in section 303(f) of the Federal Property and Administration Services Act of 1949 (41 U.S.C. 253(f)) and FAR part 6, is not required.

(c) Without regard to FAR 6.101, if the health-care resource required is a commercial service or the use of medical equipment or space, and is to be acquired from an entity not described in paragraph (a) of this section, contracting officers must seek competition to the maximum extent practicable and must permit all responsible sources, as appropriate under the provisions of this part, to submit a bid, proposal or quotation (as appropriate) for the resources to be procured and provide for the consideration by the Department of bids, proposals, or quotations so submitted.

(d) Without regard to FAR 5.101, acquisition of health-care resources identified in paragraph (c) of this section shall be publicized as otherwise required by 873.108. Moreover, for any such acquisition described in paragraph (c) of this section to be conducted on a sole source basis, the contracting officer must prepare a justification that includes the information and is approved at the levels prescribed in section 303(f) of the Federal Property and Administration Services Act of 1949 (41 U.S.C. 253(f)) and FAR part 6.

873.105 Acquisition planning.

(a) Acquisition planning is an indispensable component of the total acquisition process.

(b) For the acquisition of health-care resources consisting of commercial services or the use of medical equipment or space, where the acquisition is expected to exceed the simplified acquisition threshold (SAT), an acquisition team must be assembled. The team shall be tailored by the contracting officer for each particular acquisition expected to exceed the SAT. The team should consist of a mix of staff, appropriate to the complexity of the acquisition, and may include contracting, fiscal, legal, administrative, and technical personnel, and such other expertise as necessary to assure a comprehensive acquisition plan. The team should include the small business advocate representing the contracting activity or a higher level designee and the SBA Procurement Center Representative (PRC), if available. As a minimum, the team must include the contracting officer and a representative of the requesting service.

(c) Prior to determining whether a requirement is suitable for acquisition using these simplified acquisition procedures, the contracting officer or the acquisition team, as appropriate, must conduct market research to identify interested businesses. It is the responsibility of the contracting officer to ensure the requirement is appropriately publicized and information about the procurement opportunity is adequately disseminated as set forth in 873.108.

(d) In lieu of the requirements of FAR part 7 addressing documentation of the acquisition plan, the contracting officer may conduct an acquisition strategy meeting with cognizant offices to seek approval for the proposed acquisition approach. If a meeting is conducted, briefing materials shall be presented to address the acquisition plan topics and structure in FAR 7.105. Formal written minutes shall be prepared to summarize decisions, actions, and conclusions and included in the contract file, along with a copy of the briefing materials.

873.106 Presolicitation exchanges with industry.

(a) This section shall be used in lieu of FAR part 10, except as provided in paragraph (b)(3)of this section. In conducting market research, exchange of information by all interested parties involved in an acquisition, from the earliest identification of a requirement through release of the solicitation, is encouraged. Interested parties include potential offerors, end users, Government acquisition and support personnel, and others involved in the conduct or outcome of the acquisition. The nature and extent of presolicitation exchanges between the Government and industry shall be a matter of the contracting officer's discretion (for acquisitions not exceeding the simplified acquisition threshold) or the acquisition team's discretion, as coordinated by the contracting officer.

(b) Techniques to promote early exchange of information include—

(1) Industry or small business conferences;

(2) Public hearings;
(3) Market research in accordance with FAR 10.002(b), which shall be followed to the extent that the provisions therein would provide relevant information;
(4) One-on-one meetings with potential offerors;
(5) Presolicitation notices;
(6) Draft Requests for proposals (RFPs);
(7) Requests for information (RFIs);
(8) Presolicitation or preproposal conferences;
(9) Site visits;
(10) Electronic notices (*e.g.*, Internet); and
(11) Use of the Procurement Marketing and Access Network (PRO–NET).

873.107 Socioeconomic programs.

(a) *Implementation.* This section provides additional authority, over and above that found at FAR 19.502, to waive small business set-asides. For acquisitions above the micro-purchase threshold, if, through market research, the contracting officer determines that there is reasonable expectation that reasonably priced bids, proposals, or quotations will be received from two or more responsible small businesses, a requirement for health-care resources must be reserved for small business participation. Without regard to FAR 13.003(b)(1), 19.502–2, and 19.502–3, the head of the contracting activity (HCA) may approve a waiver from the requirement for any set-aside for small business participation when a waiver is determined to be in the best interest of the Government.

(b) *Rejecting Small Business Administration (SBA) recommendations.* (1) The contracting officer (or, if a waiver has been approved in accordance with paragraph (a) of this section, the HCA) must consider and respond to a recommendation from an SBA representative to set a procurement aside for small business within 5 working days. If the recommendation is rejected by the contracting officer (or, if a waiver has been approved, by the HCA) and if SBA intends to appeal that determination, SBA must, within 2 working days after receipt of the determination, notify the contracting officer involved of SBA's intention to appeal.

(2) Upon receipt of the notification of SBA's intention to appeal and pending issuance of a final Department appeal decision to SBA, the contracting officer involved must suspend action on the acquisition unless a determination is made in writing by the contracting officer that proceeding to contract award and performance is in the public interest. The contracting officer must promptly notify SBA of the determination to proceed with the solicitation and/or contract award and must provide a copy of the written determination to SBA.

(3) SBA shall be allowed 10 working days after receiving the rejection notice from the contracting officer (or the HCA, if a waiver has been approved) for acquisitions not exceeding $5 million, or 15 working days after receiving the rejection notice for acquisitions exceeding $5 million, to file an appeal. SBA must notify the contracting officer within this 10 or 15 day period whether an appeal has, in fact, been taken. If notification is not received by the contracting officer within the applicable period, it shall be deemed that an appeal was not taken.

(4) SBA shall submit appeals to the Secretary. Decisions shall be made by the Procurement Executive, whose decisions shall be final.

(c) *Contracting with the Small Business Administration (the 8(a) Program).* The procedures of FAR 19.8 shall be followed where a responsible 8(a) contractor has been identified.

(d) *Certificates of Competency and determinations of responsibility.* The Director, Office of Small and Disadvantaged Business Utilization (OSDBU), Department of Veterans Affairs (VA), and the Assistant Administrator, Office of Industrial Assistance, Small Business Administration (SBA), shall serve as ombudsmen to assist VA contracting officers on any issues relating to Certificates of Competency (COC). Copies of all COC referrals to SBA shall be submitted to the Director, OSDBU (00SB).

873.108 Publicizing contract actions.

(a) Without regard to FAR 5.101, all acquisitions under this part 873, except as provided in paragraph (b) of this section, for dollar amounts in excess of the simplified acquisition threshold (SAT), as set forth in FAR part 13, shall be publicly announced utilizing a medium designed to obtain competition to the maximum extent practicable and to permit all responsible sources, as appropriate under the provisions of this part, to submit a bid, proposal, or quotation (as appropriate).

(1) The publication medium may include the Internet, including the Governmentwide point of entry (GPE), and local, regional or national publications or journals, as appropriate, at the discretion of the contracting officer, depending on the complexity of the acquisition.

(2) Without regard to FAR 5.203, notice shall be published for a reasonable time prior to issuance of a request for quotations (RFQ) or a solicitation, depending on the complexity or urgency of the acquisition, in order to afford potential offerors a reasonable opportunity to respond. If the notice includes a complete copy of the RFQ or solicitation, a prior notice is not required, and the RFQ or solicitation shall be considered to be announced and issued at the same time.

(3) The notice may include contractor qualification parameters, such as time for delivery of service, credentialing or medical certification requirements, small business or other socio-economic preferences, the appropriate small business size standard, and such other qualifications as the contracting officer deems necessary to meet the needs of the Government.

(b) The requirement for public announcement does not apply to sole source acquisitions, described in 873.104(a), from institutions affiliated with the Department in accordance with section 7302 of title 38 U.S.C., including medical practice groups and other approved entities associated with affiliated institutions (entities will be approved if determined legally to be associated with affiliated institutions), or from blood banks, organ banks, or research centers. In addition, the requirement for public announcement does not apply to sole source acquisitions of hospital care and medical services (as those terms are defined in section 1701 of title 38 U.S.C.) or any other health-care services, including acquisitions for the mutual use or exchange of use of such services. However, as required by 38 U.S.C. 8153(a)(3)(D), acquisitions from non-affiliates, if conducted on a sole source basis, must still be justified and approved (see 873.104(d)).

(c) For acquisitions below the SAT, a public announcement is optional.

(d) Each solicitation issued under these procedures must prominently identify that the requirement is being solicited under the authority of 38 U.S.C. 8153 and part 873.

873.109 General requirements for acquisition of health-care resources.

(a) *Source selection authority.* Contracting officers shall be the source selection authority for acquisitions of health-care resources, consisting of commercial services or the use of medical equipment or space, utilizing the guidance contained in this part 873.

(b) *Statement of work/Specifications.* Statements of work or specifications must define the requirement and should, in most instances, include qualifications or limitations such as time limits for delivery of service, medical certification or credentialing restrictions, and small business or other socio-economic preferences. The contracting officer may include any other such terms as the contracting officer deems appropriate for each specific acquisition.

(c) *Documentation.* Without regard to FAR 13.106–3(b), 13.501(b), or 15.406–3, the contract file must include:

(1) A brief written description of the procedures used in awarding the contract;

(2) The market research, including the determination that the acquisition involves health-care resources;

(3) The number of offers received; and

(4) An explanation, tailored to the size and complexity of the acquisition, of the basis for the contract award decision.

(d) *Time for receipt of quotations or offers.* (1) Without regard to FAR 5.203, contracting officers shall set a reasonable time for receipt of quotations or proposals in requests for quotations (RFQs) and solicitations.

(2) Without regard to FAR 15.208 or 52.212–1(f), quotations or proposals received after the time set forth in an RFQ or request for proposals (RFP) may be considered at the discretion of the contracting officer if determined to be in the best interest of the Government. Contracting officers must document the rationale for accepting quotations or proposals received after the time specified in the RFQ or RFP. This paragraph (d)(2) shall not apply to RFQs or RFPs if alternative evaluation techniques described in 873.111(e)(1)(ii) are used. This paragraph (d)(2) does not apply to invitations for bid (IFBs).

(e) *Cancellation of procurements.* Without regard to FAR 14.404–1, any acquisition may be canceled by the contracting officer at any time during the acquisition process if cancellation is determined to be in the best interest of the Government.

873.110 Solicitation provisions.

(a) As provided in 873.109(d), contracting officers shall insert the provision at 852.273–70, Late offers, in all requests for quotations (RFQs) and requests for proposals (RFPs) exceeding the micro-purchase threshold.

(b) The contracting officer shall insert a provision in RFQs and solicitations, substantially the same as the provision at 852.273–71, Alternative negotiation techniques, when either of the alternative negotiation techniques described in 873.111(e)(1) will be used.

(c) The contracting officer shall insert the provision at 852.273–72, Alternative evaluation, in lieu of the provision at 52.212–2, Evaluation—Commercial Items, when the alternative negotiation technique described in 873.111(e)(1)(ii) will be used.

(d) When evaluation information, as described in 873.112, is to be used to select a contractor under an RFQ or RFP for health-care resources consisting of commercial services or the use of medical equipment or space, the contracting officer may insert the provision at 852.273–73, Evaluation—health-care resources, in the RFQ or RFP in lieu of FAR provision 52.212–2.

(e) As provided at 873.113(f), if award may be made without exchange with vendors, the contracting officer shall include the provision at 852.273–74, Award without exchanges, in the RFQ or RFP.

(f) The contracting officer shall insert the clauses at FAR 52.207–3, Right of First Refusal of Employment, and at 852.207–70, Report of employment under commercial activities, in all RFQs, solicitations, and contracts issued under the authority of 38 U.S.C. 8151–8153 which may result in a conversion, from in-house performance to contract performance, of work currently being performed by Department of Veterans Affairs employees.

873.111 Acquisition strategies for health-care resources.

Without regard to FAR 13.003 or 13.500(a), the following acquisition processes and techniques may be used, singly or in combination with others, as appropriate, to design acquisition strategies suitable for the complexity of the requirement and the amount of resources available to conduct the acquisition. These strategies should be considered during acquisition planning. The contracting officer shall select the process most appropriate to the particular acquisition. There is no preference for sealed bid acquisitions.

(a) *Request for quotations.* (1) Without regard to FAR 6.1 or 6.2, contracting officers must solicit a sufficient number of sources to promote competition to the maximum extent practicable and to ensure that the purchase is advantageous to the Government, based, as appropriate, on either price alone or price and other factors (*e.g.*, past performance and quality). RFQs must notify vendors of the basis upon which the award is to be made.

(2) For acquisitions in excess of the SAT, the procedures set forth in FAR part 13 concerning RFQs may be utilized without regard to the dollar thresholds contained therein.

(b) *Sealed bidding.* FAR part 14 provides procedures for sealed bidding.

(c) *Negotiated acquisitions.* The procedures of FAR parts 12, 13, and 15 shall be used for negotiated acquisitions, except as modified in this part.

(d) *Multiphase acquisition technique.* (1) *General.* Without regard to FAR 15.202, multiphase acquisitions may be appropriate when the submission of full proposals at the beginning of an acquisition would be burdensome for offerors to prepare and for Government personnel to evaluate. Using multiphase techniques, the Government may seek limited information initially, make one or more down-selects, and request a full proposal from an individual offeror or limited number of offerors. Provided that the notice notifies offerors, the contracting officer may limit the number of proposals during any phase to the number that will permit an efficient competition among proposals offering the greatest likelihood of award. The contracting officer may indicate in the notice an estimate of the greatest number of proposals that will be included in the down-select phase. The contracting officer may down-select to a single offeror.

(2) *First phase notice.* In the first phase, the Government shall publish a notice (see 873.108) that solicits responses and that may provide, as appropriate, a general description of the scope or purpose of the acquisition and the criteria that will be used to make the initial down-select decision. The notice may also inform offerors of the evaluation criteria or process that will be used in subsequent down-select decisions. The notice must contain sufficient information to allow potential offerors to make an informed decision about whether to participate in the acquisition. The notice must advise offerors that failure to participate in the first phase will make them ineligible to participate in subsequent phases. The notice may be in the form of a synopsis in the Governmentwide point of entry (GPE) or a narrative letter or other appropriate method that contains the information required by this paragraph.

(3) *First phase responses.* Offerors shall submit the information requested in the notice described in paragraph (d)(2) of this section. Information sought in the first phase may be limited to a statement of qualifications and other appropriate information (*e.g.*, proposed technical concept, past performance information, limited pricing information).

(4) *First phase evaluation and down-select.* The Government shall evaluate all offerors' submissions in accordance with the notice and make a down-select decision.

(5) *Subsequent phases.* Additional information shall be sought in the second phase so that a down-select can be performed or an award made without exchanges, if necessary. The contracting officer may conduct exchanges with remaining offeror(s), request proposal revisions, or request best and final offers, as determined necessary by the contracting officer, in order to make an award decision.

(6) *Debriefing.* Without regard to FAR 15.505, contracting officers must debrief offerors as required by 873.118 when they have been excluded from the competition.

(e) *Alternative negotiation techniques.* (1) Contracting officers may utilize alternative negotiation techniques for the acquisition of health-care resources. Alternative negotiation techniques may be used when award will be based on either price or price and other factors. Alternative negotiation techniques include but are not limited to:

(i) Indicating to offerors a price, contract term or condition, commercially available feature, and/or requirement (beyond any requirement or target specified in the solicitation) that offerors will have to improve upon or meet, as appropriate, in order to remain competitive.

(ii) Posting offered prices electronically or otherwise (without disclosing the identity of the offerors) and permitting revisions of offers based on this information.

(2) Except as otherwise permitted by law, contracting officers shall not conduct acquisitions under this section in a manner that reveals the identities of offerors, releases proprietary information, or otherwise gives any offeror a competitive advantage (see FAR 3.104).

873.112 Evaluation information.

(a) Without regard to FAR 15.304 (except for 15.304(c)(1) and (c)(3), which do apply to acquisitions under this authority), the criteria, factors, or other evaluation information that apply to an acquisition, and their relative importance, are within the broad discretion of agency acquisition officials as long as the evaluation information is determined to be in the best interest of the Government.

(b) Price or cost to the Government must be evaluated in every source selection. Past performance shall be evaluated in source selections for negotiated competitive acquisitions exceeding the SAT unless the contracting officer documents that past performance is not an appropriate evaluation factor for the acquisition.

(c) The quality of the product or service may be addressed in source selection through consideration of information such as past compliance with solicitation requirements, technical excellence, management capability, personnel qualifications, and prior experience. The information required from quoters, bidders, or offerors shall be included in notices or solicitations, as appropriate.

(d) The relative importance of any evaluation information included in a solicitation must be set forth therein.

873.113 Exchanges with offerors.

(a) Without regard to FAR 15.201 or 15.306, negotiated acquisitions generally involve exchanges between the Government and competing offerors. Open exchanges support the goal of efficiency in Government by providing the Government with relevant information (in addition to that submitted in the offeror's initial proposal) needed to understand and evaluate the offeror's proposal. The nature and extent of exchanges between the Government and offerors is a matter of contracting officer judgment. Clarifications, communications, and discussions, as provided for in the FAR, are concepts not applicable to acquisitions under this part 873.

(b) Exchanges with potential offerors may take place throughout the source selection process. Exchanges may start in the planning stages and continue through contract award. Exchanges should occur most often with offerors determined to be in the best value pool (see 873.114). The purpose of exchanges is to ensure there is mutual understanding between the Government and the offerors on all aspects of the acquisition, including offerors' submittals/proposals. Information disclosed as a result of oral or written exchanges with an offeror may be considered in the evaluation of an offeror's proposal.

(c) Exchanges may be conducted, in part, to obtain information that explains or resolves ambiguities or other concerns (*e.g.*, perceived errors, perceived omissions, or perceived deficiencies) in an offeror's proposal.

(d) Exchanges shall only be initiated if authorized by the contracting officer and need not be conducted with all offerors.

(e) *Improper exchanges.* Except for acquisitions based on alternative negotiation techniques contained in 873.111(e)(1), the contracting officer and other Government personnel involved in the acquisition shall not disclose information regarding one offeror's proposal to other offerors without consent of the offeror in accordance with FAR parts 3 and 24.

(f) Award may be made on initial proposals without exchanges if the solicitation states that the Government intends to evaluate proposals and make award without exchanges, unless the contracting officer determines that exchanges are considered necessary.

873.114 Best value pool.

(a) Without regard to FAR 15.306(c), the contracting officer may determine the most highly rated proposals having the greatest likelihood of award based on the information or factors and subfactors in the solicitation. These vendors constitute the best value pool. This determination is within the sole discretion of the contracting officer. Competitive range determinations, as provided for in the FAR, are not applicable to acquisitions under this part 873.

(b) In planning an acquisition, the contracting officer may determine that the number of proposals that would otherwise be included in the best value pool is expected to exceed the number at which an efficient, timely, and economical competition can be conducted. In reaching such a conclusion, the contracting officer may consider such factors as the results of market research, historical data from previous acquisitions for similar services, and the resources available to conduct the source selection. Provided the solicitation notifies offerors that the best value pool can be limited for purposes of making an efficient, timely, and economical award, the contracting officer may limit the number of proposals in the best value pool to the greatest number that will permit an efficient competition among the proposals offering the greatest likelihood of award. The contracting officer may indicate in the solicitation the estimate of the greatest number of proposals that will be included in the best value pool. The contracting officer may limit the best value pool to a single offeror.

(c) If the contracting officer determines that an offeror's proposal is no longer in the best value pool, the proposal shall no longer be considered for award. Written notice of this decision must be provided to unsuccessful offerors at the earliest practicable time.

873.115 Proposal revisions.

(a) Without regard to FAR 15.307, the contracting officer may request proposal revisions as often as needed during the proposal evaluation process at any time prior to award from vendors remaining in the best value pool. Proposal revisions shall be submitted in writing. The contracting officer may establish a common cutoff date for receipt of proposal revisions. Contracting officers may request best and final offers. In any case, contracting officers and acquisition team members must safeguard proposals, and revisions thereto, to avoid unfair dissemination of an offeror's proposal.

(b) If an offeror initially included in the best value pool is no longer considered to be among those most likely to receive award after submission of proposal revisions and subsequent evaluation thereof, the offeror may be eliminated from the best value pool without being afforded an opportunity to submit further proposal revisions.

(c) Requesting and/or receiving proposal revisions do not necessarily conclude exchanges. However, requests for proposal revisions should advise offerors that the Government may make award without obtaining further revisions.

873.116 Source selection decision.

(a) An integrated comparative assessment of proposals should be performed before source selection is made. The contracting officer shall independently determine which proposal(s) represents the best value, consistent with the evaluation information or factors and subfactors in the solicitation, and that the prices are fair and reasonable. The contracting officer may determine that all proposals should be rejected if it is in the best interest of the Government.

(b) The source selection team, or advisory boards or panels, may conduct comparative analysis(es) of proposals and make award recommendations, if the contracting officer requests such assistance.

(c) The source selection decision must be documented in accordance with FAR 15.308.

873.117 Award to successful offeror.

(a) The contracting officer shall award a contract to the successful offeror by furnishing the contract or other notice of the award to that offeror.

(b) If a request for proposal (RFP) process was used for the solicitation and if award is to be made without exchanges, the contracting officer may award a contract without obtaining the offeror's signature a second time. The offeror's signature on the offer constitutes the offeror's agreement to be bound by the offer. If a request for quotation (RFQ) process was used for the solicitation, and if the contracting officer determines there is a need to establish a binding contract prior to commencement of work, the contracting officer should obtain the offeror's acceptance signature on the contract to ensure formation of a binding contract.

(c) If the award document includes information that is different than the latest signed offer, both the offeror and the contracting officer must sign the contract award.

(d) When an award is made to an offeror for less than all of the items that may be awarded and additional items are being withheld for subsequent award, each notice shall state that the Government may make subsequent awards on those additional items within the offer acceptance period.

873.118 Debriefings.

Offerors excluded from a request for proposals (RFP) may submit a written request for a debriefing to the contracting officer. Without regard to FAR 15.505, preaward debriefings may be conducted by the contracting officer when determined to be in the best interest of the Government. Post-award debriefings shall be conducted in accordance with FAR 15.506.

[FR Doc. 03–1578 Filed 1–23–03; 8:45 am]

BILLING CODE 8320–01–P

Proposed Rules

Federal Register
Vol. 68, No. 16
Friday, January 24, 2003

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–ANE–05–AD]

RIN 2120–AA64

Airworthiness Directives; Pratt & Whitney JT8D Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The Federal Aviation Administration (FAA) proposes to supersede an existing airworthiness directive (AD), that is applicable to Pratt & Whitney JT8D–1, –1A, –1B, –7, –7A, –7B, –9, –9A, –11, –15, –15A, –17, –17A, –17R, and –17AR turbofan engines. That AD currently requires a determination of the utilization rate and protective coating type of the 7th, 8th, 9th, 10th, 11th, and 12th stage high pressure compressor (HPC) disks, and removal, inspection for corrosion, and recoating of those HPC disks based on utilization rate. This proposal would require removal and replacement of protective coating of 7th, 8th, 9th, 10th, 11th, and 12th stage HPC disks, initial and repetitive inspections for corrosion pits and cracks, and removal from service as required. This proposal is prompted by operator reports of cracks found on several JT8D steel HPC disks since the existing AD was published. The actions specified in the proposed AD are intended to prevent fracture of the HPC disks, which can result in uncontained release of engine fragments, inflight engine shutdown, and airframe damage.

DATES: Comments must be received by March 25, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 97–ANE–05–AD, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may be inspected at this location, by appointment, between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. Comments may also be sent via the Internet using the following address: "*9-ane-adcomment@faa.gov*". Comments sent via the Internet must contain the docket number in the subject line.

The service information referenced in the proposed rule may be obtained from Pratt & Whitney, 400 Main St., East Hartford, CT 06108; telephone (860) 565–6600, fax (860) 565–4503. This information may be examined, by appointment, at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: Christopher Spinney, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7175; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 97–ANE–05–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRM's

Any person may obtain a copy of this NPRM by submitting a request to the FAA, New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 97–ANE–05–AD, 12 New England Executive Park, Burlington, MA 01803–5299.

Discussion

On May 29, 1998, the FAA issued AD 98–12–07, Amendment 39–10563 (63 FR 31340, June 9, 1998), to supersede AD 94–20–01, Amendment 39–9020 (59 FR 49175, September 27, 1994). AD 98–12–07 requires a determination of the utilization rate and protective coating type of the 7th, 8th, 9th, 10th, 11th, and 12th stage HPC disks, and removal, inspection for corrosion, and recoating of those HPC disks based on utilization rate, and shortens the inspection interval for certain low utilization disks. That action was prompted by a report of an additional uncontained 9th stage HPC disk failure due to corrosion pitting. That condition, if not corrected, could result in uncontained release of engine fragments, inflight engine shutdown, and airframe damage.

Since that AD was issued, operators have found cracks on various JT8D steel HPC disks. Some of these cracks originate in the tierod hole area of the disk. The inspection intervals in AD 98–12–07 do not account for risk of fractures originating from tierod hole areas. This proposal is a result of a complete re-assessment of the risks associated with a disk fracture due to a corrosion pit. Since the tierod hole corrosion does not correlate well with the utilization rate of the disks, that calculation has been eliminated from the proposal. Also, because the thin-webbed 9th stage disk represents a higher risk of fracture than other part numbers, a tighter inspection interval has been assigned to those parts.

Manufacturer's Service Information

The FAA has reviewed and approved the technical contents of Pratt & Whitney Alert Service Bulletin (ASB) No. A6431, dated November 27, 2002, that describes procedures for initial and repetitive inspections to detect corrosion on HPC disks, and removal

from service of HPC disks corroded beyond serviceable limits. This ASB supersedes ASB No. 6038, referenced in AD 98–12–07.

Differences Between This Proposal and the Manufacturer's Service Information

Although PW ASB No. A6431 dated November 27, 2002, refers to the ASB issuance date for computing compliance intervals, this proposal calls for computing compliance intervals based on the effective date of the AD.

FAA's Determination of an Unsafe Condition and Proposed Actions

Since an unsafe condition has been identified that is likely to exist or develop on other Pratt & Whitney JT8D–1, –1A, –1B, –7, –7A, –7B, –9, –9A, –11, –15, –15A, –17, –17A, –17R, and –17AR turbofan engines of this same type design, the proposed AD would supersede AD 98–12–07 to require removal and replacement of coating of 7th, 8th, 9th, 10th, 11th, and 12th stage HPC disks, initial and repetitive inspections for corrosion pits and cracks, and removal from service as required. The actions are required to be done in accordance with the alert service bulletin described previously.

Economic Analysis

At the time of publication of AD 98–12–07, there were approximately 11,119 engines of the affected design in the worldwide fleet. The FAA estimated that 6,815 engines installed on aircraft of U.S. registry were affected by AD 94–20–01, and 2 work hours would be necessary to determine the utilization rate and type of surface treatment. Based on domestic fleetwide data, the FAA estimated that approximately 8.7% or 593 engines were considered to have low utilization rates. Approximately 8.6 work hours would be required to remove these engines from the aircraft, 500 work hours to tear down, deblade, and to reassemble the engine, and 8.6 work hours to reinstall the reassembled engines. The FAA estimated 69% of the removed engines would require scrapping the disks. The FAA assumed that 3 disks per engine may require replacement, and the cost of a new disk would be approximately $7,000. The average labor rate is $60 per work hour. Based on these figures, the total cost of AD 94–20–01 on U.S. operators was estimated to be $ 14,279,542. The cost increase between AD 94–20–01 and the superseding AD, AD 98–12–07 was based on the increased inspections of some low utilization disks. The FAA estimated 31% of the low utilization disks required an additional inspection. The cost of these additional inspections was estimated to be $4,426,658. The cost increase between AD 98–12–07 and this proposal is based on the increased domestic fleet size that will be effected by this proposal. The FAA currently estimates the domestic fleet of engines affected by this AD to be 1,800 engines. This is an increase of 1,023 engines or 1.32 times the total number of engines effected by the two previous AD's. The total cost of the previous two AD's was $18,706,200, therefore, the total cost of this AD is $24,692,184, and the cost increase associated with this proposal is $5,985,985.

Regulatory Analysis

This proposed rule does not have federalism implications, as defined in Executive Order 13132, because it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the FAA has not consulted with State authorities prior to publication of this proposed rule.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39–10563, (63 FR 31340 June 9, 1998), and by adding a new airworthiness directive:

Pratt & Whitney: Docket No. 97–ANE–05–AD. Supersedes AD 98–12–07, Amendment 39–10563.

Applicability: This airworthiness directive (AD) is applicable to Pratt & Whitney (PW) JT8D–1, –1A, –1B, –7, –7A, –7B, –9, –9A, –11, –15, –15A, –17, –17A, –17R, and –17AR turbofan engines. These engines are installed on, but not limited to Boeing 737 and 727 series, and McDonnell Douglas DC–9 series airplanes.

Note 1: This AD applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Compliance with this AD is required as indicated, unless already done.

To prevent fracture of the 7th, 8th, 9th, 10th, 11th, and 12th stage high pressure compressor (HPC) disks, which can result in uncontained release of engine fragments, inflight engine shutdown, and airframe damage, do the following:

(a) Perform initial and repetitive inspections of HPC disks for corrosion pits and cracks after stripping the protective coating in accordance with the intervals and procedures specified in the compliance section and accomplishment instructions of PW Alert Service Bulletin (ASB) No. 6431, dated November 27, 2002.

(b) Before further flight, replace HPC disks found with corrosion pits or cracks beyond serviceable limits as defined by PW ASB No. 6431, dated November 27, 2002.

(c) For the purposes of this AD, use the effective date of this AD for computing compliance intervals whenever PW ASB No. A6431, dated November 27, 2002, refers to the issuance date of the ASB.

Alternative Methods of Compliance

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office (ECO). Operators must submit their request through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, ECO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the ECO.

Special Flight Permits

(e) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197

and 21.199) to operate the airplanes to a location where the requirements of this AD can be done.

Issued in Burlington, Massachusetts, on January 16, 2003.

Francis A. Favara,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 03–1543 Filed 1–23–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–126485–01]

RIN 1545–BA06

Statutory Mergers and Consolidations

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations; notice of public hearing; and withdrawal of previous notice of proposed rulemaking.

SUMMARY: In the rules and regulations section of this issue of the **Federal Register**, the IRS is issuing temporary regulations relating to transactions involving corporations engaging in statutory mergers and consolidations. The text of those regulations also serves as the text of these proposed regulations. This document also provides notice of a public hearing on these proposed regulations. This document also withdraws the notice of proposed rulemaking published in the **Federal Register** at 66 FR 57400 (REG–126485–01) on November 15, 2001.

DATES: Written or electronic comments and outlines of topics to be discussed at the public hearing scheduled for May 21, 2003 at 10 a.m. must be received by April 24, 2003.

ADDRESSES: Send submissions to: CC:ITA:RU (REG–126485–01), Room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044.

Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 5 p.m. to: CC:ITA:RU (REG–126485–01), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. Alternatively, taxpayers may submit electronic comments directly to the IRS Internet site at *http://www.irs.gov/regs.* The public hearing will be held in room 4718 of the Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Richard M. Heinecke or Reginald Mombrun at (202) 622–7930; concerning submissions of comments, the hearing, and/or to be placed on the building access list to attend the hearing, Guy R. Traynor, (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background and Explanation of Provisions

On November 15, 2001, the IRS and Treasury published in the **Federal Register** at 66 FR 57400 a notice of proposed rulemaking (REG–126485–01) under section 368(a)(1)(A) of the Internal Revenue Code of 1986 (Code). Those proposed regulations are withdrawn.

Temporary regulations in the rules and regulations section of this issue of the **Federal Register** amend the Income Tax Regulations (26 CFR part 1) relating to section 368(a)(1)(A). The temporary regulations set forth certain definitions and explanations with respect to certain transactions that qualify as statutory mergers and consolidations. The text of those regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the amendments.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because these regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact.

Comments and Requests for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight copies) or electronic comments that are submitted timely to the IRS. The IRS and Treasury Department specifically request comments on the clarity of the proposed rule and how it may be made easier to understand. All comments will be available for public inspection and copying.

A public hearing has been scheduled for May 21, 2003, beginning at 10 a.m. in room 4718 of the Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Due to building security procedures, visitors must enter at the Constitution Avenue entrance. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 30 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit written comments and an outline of the topics to be discussed and the time to be devoted to each topic (signed original and eight copies) by April 24, 2003. A period of 10 minutes will be allotted to each person for making comments. An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal author of these regulations is Richard M. Heinecke, Office of Associate Chief Counsel (Corporate). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Withdrawal of Proposed Amendments

Accordingly, under the authority of 26 U.S.C. 7805, the proposed amendment to 26 CFR part 1 that was published in the **Federal Register** on Thursday, November 15, 2001 (66 FR 57400), is withdrawn.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. In § 1.368–2, paragraph (b)(1) is revised to read as follows:

§ 1.368–2 Definition of terms.

(The text of proposed § 1.368–2 is the same as the text of § 1.368–2T published elsewhere in this issue of the **Federal Register**.)

Approved: January 17, 2003.

David A. Mader,

Assistant Deputy Commissioner of Internal Revenue.

[FR Doc. 03–1545 Filed 1–23–03; 8:45 am]

BILLING CODE 4830–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[WI112–01–7342a; FRL–7411–6]

Approval and Promulgation of Implementation Plans; Wisconsin

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to approve a revision to the Wisconsin regulations as they pertain to Northern Engraving Corporation (NEC) facilities in Holmen and Sparta, Wisconsin, as requested by the State of Wisconsin on June 12, 2002. This State Implementation Plan (SIP) revision makes changes to Wisconsin air pollution control rules federally enforceable. The rule revisions modify the emission limits adopted by the State which are part of the current Wisconsin SIP. The revised rules, specifically portions of the Environmental Cooperative Agreement with NEC, supercede portions of the rules in the Wisconsin SIP.

In the "Rules and Regulations" section of this **Federal Register**, EPA is approving the State's request as a direct final rule without prior proposal because EPA views this action as noncontroversial and anticipates no adverse comments. The rationale for approval is set forth in the direct final rule. If EPA receives no written adverse comments, EPA will take no further action on this proposed rule. If EPA receives written adverse comment, we will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect. In that event, EPA will address all relevant public comments in a subsequent final rule based on this proposed rule. In either event, EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

DATES: Comments on this action must be received by February 24, 2003.

ADDRESSES: Written comments should be mailed to: Robert B. Miller, Chief, Permits and Grants Section, Air Programs Branch (AR–18J), United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604. A copy of the State's request is available for inspection at the above address.

FOR FURTHER INFORMATION CONTACT: Constantine Blathras at (312) 886–0671.

SUPPLEMENTARY INFORMATION:

I. What action is EPA taking today?
II. Where can I find more information about this proposal and corresponding direct final rule?

I. What Action Is EPA Taking Today?

The EPA is proposing to approve a revision to the Wisconsin regulations as they pertain to NEC's Holmen and Sparta, Wisconsin facilities as requested by the State of Wisconsin on June 12, 2002. The SIP revision makes changes to Wisconsin air pollution control rules federally enforceable. These rule changes were made at the request of NEC and the State of Wisconsin and they apply to the operation of the NEC Holmen and Sparta facilities. The rule revisions modify the emission limits adopted by the State of Wisconsin which are part of the current Wisconsin SIP. The rule revisions, portions of the Environmental Cooperative Agreement, supercede portions of rules in the Wisconsin SIP requiring a source-specific SIP revision.

II. Where Can I Find More Information About This Proposal and Corresponding Direct Final Rule?

For additional information see the direct final rule published in the rules and regulations section of this **Federal Register**.

Authority: 42 U.S.C. 4201 *et seq.*

Dated: October 24, 2002.

Bharat Mathur,

Acting Regional Administrator, Region 5.

[FR Doc. 03–1517 Filed 1–23–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 312

[FRL–7442–5]

RIN 2050–AF05

Clarification to Interim Standards and Practices for All Appropriate Inquiry Under CERCLA and Notice of Future Rulemaking Action

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing a clarification to a provision included in recent amendments to the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). Specifically, today's proposed rule addresses the interim standard set by Congress in the Small Business Liability Relief and Brownfields Revitalization Act ("the Brownfields Law") for conducting "all appropriate inquiry" to establish that a landowner had no reason to know of contamination at a property under CERCLA liability provisions prior to purchasing the property. EPA is proposing a clarification to the interim standard established in the Brownfields Law. The clarification is that in the case of property purchased on or after May 31, 1997, the requirements for conducting "all appropriate inquiry," including the conduct of such activities to establish an innocent landowner defense under CERCLA, also will be satisfied through the use of ASTM Standard E1527–2000, entitled "Standard Practice for Environmental Site Assessment: Phase 1 Environmental Site Assessment Process." EPA is proposing that recipients of brownfields site assessment grants also will be in compliance with the all appropriate inquiry standards if they comply with the ASTM Standard E1527–2000.

DATES: EPA will accept public comments on this proposed rule until February 24, 2003. If we receive no adverse comment by this date, we will not take further action on this proposed rule. If we receive adverse comment, we will address all public comments in a subsequent final rule based on this proposed rule. We will not institute a second comment period on this action.

ADDRESSES: Comments on today's proposed rule may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions provided in paragraph I.B. of the **SUPPLEMENTARY INFORMATION** section below. Please reference Docket number SFUND–2002–0007 when submitting your comments.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA/CERCLA Call Center at 800–424–9346 or TDD 800–553–7672 (hearing impaired). In the Washington, DC metropolitan area, call 703–412–9810 or TDD 703–412–3323.

For more detailed information on specific aspects of this proposed rule, contact Patricia Overmeyer, Office of Brownfields Clean up and Redevelopment (5105T), U.S.

Environmental Protection Agency, 1200 Pennsylvania Avenue, NW, Washington, DC 20460–0002, 202–566–2774. *overmeyer.patricia@epa.gov.*

SUPPLEMENTARY INFORMATION:

General Information

A. How Can I Get Copies Of The Background Materials Supporting Today's Proposed Rule or Other Related Information?

1. EPA has established an official public docket for this proposed rule under Docket ID No. SFUND–2002–0007. The official public docket consists of the documents specifically referenced in this proposed rule and other information related to this proposed rule. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the EPA Docket Center located at 1301 Constitution Ave. NW., EPA West Building, Room B–102, Washington, DC 20004. This Docket Facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding federal holidays. To review docket materials, it is recommended that the public make an appointment by calling (202) 566–0276. The public may copy a maximum of 100 pages from any regulatory docket at no charge. Additional copies cost $0.15/page.

2. *Electronic Access.* You may access this **Federal Register** document electronically through the EPA Internet under the **Federal Register** listings at *http://www.epa.gov/fedrgstr/.*

You may use EPA Dockets at *http://www.epa.gov/edocket/* to access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the docket identification number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI, and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified above.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the Docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff. For additional information about EPA's electronic public docket visit EPA Dockets online or see 67 FR 38102, May 31, 2002.

B. How and To Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA will not consider late comments in formulating a final decision.

1. *Electronically.* If you submit an electronic comment as prescribed below, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the party submitting the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket*, and follow the online instructions for submitting comments. To access EPA's electronic public docket from the EPA Internet Home Page, select "Information Sources," "Dockets," and "EPA Dockets." Once in the system, select "search," and then key in Docket ID No. SFUND–2002–0007. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

2. *E-mail.* Comments may be sent by electronic mail (e-mail) to *Superfund.Docket@epamail.epa.gov.* Make sure this electronic copy is in an ASCII format that does not use special characters or encryption. Cite the docket Number F–2002–0007 in your electronic file. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the Docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

3. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified above. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

4. *By Mail.* Send two (2) copies of your comments to: EPA Docket Center, U.S. Environmental Protection Agency Headquarters (EPA, HQ), Mail Code

5305T, 1200 Pennsylvania Ave., NW, Washington, DC, 20460, Attention Docket ID No. SFUND–2002–0007.

5. *By Hand Delivery or Courier.* Deliver your comments to: EPA Docket Center, EPA West Building Room No. B–102, 1301 Constitution Ave., NW., Washington, DC, 20004. Attention Docket ID No. SFUND–2002–0007. Such deliveries are only accepted during the Docket's normal hours of operation as identified above.

Regulated Entities

Entities potentially regulated by this action include public and private parties who, as bona fide prospective purchasers, contiguous property owners, or innocent landowners, purchase property and intend to claim a limitation on CERCLA liability in conjunction with the property purchase. In addition, any entity conducting a site characterization or assessment with a brownfields grant awarded under CERCLA section 104(k)(2)(B)(ii) will be affected by today's action. This includes state, local and Tribal governments that receive brownfields site assessment grants. A summary of the potentially affected industry sectors (by NAICS codes) is displayed in the table below.

Industry category	NAICS code
Real Estate	531
Insurance	52412
Banking/Real Estate Credit	52292
Environmental Consulting Services	54162
State, Local and Tribal Government	N/A

The list of potentially affected entities in the above table may not be exhaustive. Our aim is to provide a guide for readers regarding those entities that EPA is aware potentially could be affected by this action. However, this action may affect other entities not listed in the table. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding section entitled **FOR FURTHER INFORMATION CONTACT.**

Preamble

I. Statutory Authority
II. Background
III. Today's Action
IV. Future Rulemaking Setting Standards for "All Appropriate Inquiry"
V. Statutory and Executive Order Reviews

I. Statutory Authority

This proposed rule clarifies provisions included in section 223 of the Small Business Liability Relief and Brownfields Revitalization Act which amends section 101(35)(B) of CERCLA (42 U.S.C. 9601(35)) and proposes to clarify interim standards for the conduct of "all appropriate inquiry" for obtaining CERCLA liability relief and for conducting site characterizations and assessments with the use of brownfields grant monies.

II. Background

On January 11, 2002, President Bush signed the Small Business Liability Relief and Brownfields Revitalization Act ("the Brownfields Act"). In general, the Act amends CERCLA and provides funds to assess and clean up brownfields sites; clarifies CERCLA liability provisions related to innocent purchasers of contaminated properties; and provides funding to enhance State and Tribal clean up programs. In part, subtitle B of Title II of the Act revises some of the provisions of CERCLA section 101(35) and provides some Superfund liability limitations for bona fide prospective purchasers and contiguous property owners, in addition to clarifying the requirements necessary to establish the innocent landowner defense under CERCLA. Among the requirements added to CERCLA is the requirement that such parties undertake "all appropriate inquiry'into prior ownership and use of certain property.

The Brownfields Law requires EPA to develop regulations within two years which will establish standards and practices for how to conduct all appropriate inquiry. In addition, the Brownfields Law establishes interim standards for conducting all appropriate inquiry that will remain in effect until EPA promulgates regulations. Congress established, as the federal interim standard for conducting all appropriate inquiry, the procedures of the American Society for Testing and Materials (ASTM) including Standard E1527–97 (entitled "Standard Practice for Environmental Site Assessment: Phase 1 Environmental Site Assessment Process"). This interim standard applies to properties purchased on or after May 31, 1997 until EPA promulgates federal regulations establishing standards and practices for conducting all appropriate inquiry.

EPA is proposing to clarify that persons may use the current ASTM standard, E1527–2000 for conducting all appropriate inquiry and establishing the innocent landowner defense under CERCLA section 101(35)(B) for properties purchased on or after May 31, 1997, while continuing also to recognize use of ASTM's previous standard, E1527–97.

Following enactment of the Brownfields Law, EPA received inquiries from interested parties expressing concerns that the ASTM standard for all appropriate inquiry that was cited in the law (*i.e.*, ASTM's 1997 standard) has been updated and consequently is no longer available from ASTM. The ASTM standard cited in the Brownfields Law has been updated and replaced with ASTM's revised standard, "Standard E1527–2000." The revised standard has the same name as the previous standard. The revised standard is not significantly different from the previous standard. Revisions to the 1997 standard that are incorporated into the E1527–2000 updated standard include provisions for potential expansion of an assessment, guidance for better identification of the purpose of the assessment, a provision for inquiring about historical remediation, a provision for facilitating reconstruction of the assessment by a different assessor, and amended guidance for selecting an environmental professional. A summary of the revisions made to the 1997 ASTM standard and included in the 1527–2000 standard is provided in the document "Overview of Additions and Modifications to ASTM 1527–2000 Standard from the 1997 ASTM Standard." A copy of this document, as well as an annotated copy of the 1997 ASTM standard identifying the specific modifications incorporated into the ASTM 2000 standard, is included in the regulatory docket for today's proposed rule.

EPA believes that it is consistent with Congressional intent to require the use of the most current standards available until EPA has promulgated its standard and not to require the use of standards that have been superseded or that generally are not available. In addition, Congress did not intend to place an undue burden on interested parties seeking to obtain and implement the standard. Given that the version of the ASTM standard cited in the Brownfields Law is no longer available, such an undue burden may occur, if EPA does not undertake today's action. In particular, recipients of grant monies awarded under the new Brownfields Law may experience an undue burden, if required to comply with the ASTM standard that no longer is available or recognized as the current industry standard. Therefore, with today's action, EPA is proposing that for the purposes of CERCLA section 101(35)(B), until the Agency promulgates regulations implementing standards for all appropriate inquiry parties may use either the procedures provided in ASTM E1527–2000, entitled "Standard Practice for Environmental Site

Assessment: Phase I Environmental Site Assessment Process," or the standard ASTM E1527–97.

III. Today's Action

EPA is proposing to revise the interim standard for all appropriate inquiry to allow for the use of the ASTM 1527–2000 standard to reduce any undue burden placed upon brownfields grant recipients. The Agency views this as a noncontroversial action and anticipates no adverse public comment on this proposed revision. We believe that today's action is appropriate because it: (1) Allows for the use of the updated version of the standard cited in the Act, while not disallowing the use of the former version, and the updated version of the standard is similar to, and not significantly different than, the previous standard; (2) reduces the burden of obtaining an appropriate standard, given that the standard cited in the Brownfields Law is no longer available; and (3) this action merely clarifies an interim standard that is effective only until EPA promulgates a final rule replacing the interim standard.

Because we view today's action as noncontroversial, in the "Rules and Regulations" section of today's **Federal Register**, we are publishing the clarification to the interim standard for all appropriate inquiry as a direct final rule. We are publishing the direct final rule without prior proposal because we view this as a noncontroversial clarification and we anticipate no adverse comment. We explain our reasons for this action above. If we receive no adverse comment, we will not take further action on this proposed rule. If we receive adverse comment, we will withdraw the direct final rule and it will not take effect. We may address public comments in a subsequent final rule based on this proposal. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

IV. Future Rulemaking Setting Standards for "All Appropriate Inquiry"

EPA also is announcing today its progress in developing regulatory standards for conducting "all appropriate inquiry." The Brownfields Law requires that EPA promulgate such standards within two years of enactment of the law, or by January 2004. Congress included in the Brownfields Law a list of criteria that the Agency must address in the regulations establishing standards and practices for conducting all appropriate inquiry (section 101(35)(2)(B)(ii)). The Act also requires that parties receiving funding under the federal brownfields program to conduct site assessments must conduct the site assessment in accordance with the standards and practices for all appropriate inquiry established under the same provision of the Act.

EPA is soliciting the advice and input of public and private stakeholder groups in developing the regulations for conducting all appropriate inquiry in accordance with the criteria set forth by Congress. We understand that voluntary standards developed by standards developing organizations, such as the ASTM 1527–2000 standard, are available and are currently being used to conduct all appropriate inquiry in conjunction with private real estate property transactions. In addition, site assessment protocols have been established under the federal Superfund remedial action and RCRA corrective action programs, as well as within State clean up programs. We intend to develop federal regulations that build upon the depth of experience accrued in both the public and private sectors in implementing these standards and programs. We believe that building upon currently available private sector standards for undertaking all appropriate inquiry as well as building on the experience of state and federal government site assessment programs is the most efficient and economical way to develop federal regulatory standards that will both meet the criteria set in the Brownfields Law and ensure minimal disruption to the private market and state and federal site assessment programs.

To ensure that we obtain a diverse array of input from both private sector stakeholders and state program officials, EPA is developing the federal regulations by soliciting private and public sector input under the convening stage of the negotiated rulemaking process, and may supplement our information gathering through the conduct of public meetings. We initiated the convening stage of a negotiated rulemaking process to identify appropriate stakeholder groups and solicit advice and input from experienced public and private sector users of similar standards. Following an evaluation of stakeholder interest and input during the convening process, we either will announce our intent to continue with a negotiated rulemaking process, or announce our intent to solicit public input, by way of an additional notice or a public meeting, on options for a proposed rulemaking that will set standards for all appropriate inquiry. We anticipate announcing our intended approach for the development of a proposed rulemaking in the **Federal Register** by the winter of 2003. Any questions regarding our future regulatory effort should be directed to the parties listed above in the section entitled **FOR FURTHER INFORMATION CONTACT**.

V. Statutory and Executive Order Reviews

a. Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and is therefore not subject to review by the Office of Management and Budget.

b. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 FR U.S.C. 3501 *et seq.*)

c. The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the APA or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. This action will not have a significant impact on a substantial number of small entities because it does not create any new requirements.

d. Because the purpose of today's action is to make a clarification that does not create any new requirements it has no economic impact and is not subject to sections 202 and 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pubic Law 104–4). In addition, this action does not significantly or uniquely affect small governments or impose a significant intergovernmental mandate, as described in sections 203 and 204 of UMRA.

e. This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999).

f. This rule does not have tribal implications, as specified by Executive Order 13175 (65 FR 67249, November 6, 2000).

g. This rule is not subject to Executive Order 13045 (62 FR 1985, April 23, 1997), because it is not economically significant.

h. This rule is not subject to Executive Order 13211, "Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

i. This action does involve technical standards; therefore, the requirements of

section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272) apply. The NTTAA was signed into law on March 7, 1996 and, among other things, directs the National Institute of Standards and Technology (NIST) to bring together federal agencies as well as state and local governments to achieve greater reliance on voluntary standards and decreased dependence on in-house standards. It states that use of such standards, whenever practicable and appropriate, is intended to achieve the following goals: (a) Eliminate the cost to the government of developing its own standards and decrease the cost of goods procured and the burden of complying with agency regulation; (b) provide incentives and opportunities to establish standards that serve national needs; (c) encourage long-term growth for U.S. enterprises and promote efficiency and economic competition through harmonization of standards; and (d) further the policy of reliance upon the private sector to supply Government needs for goods and services. The Act requires that federal agencies adopt private sector standards, particularly those developed by standards developing organizations (SDOs), wherever possible in lieu of creating proprietary, non-consensus standards. Today's action is compliant with the spirit and requirements of the NTTAA, given that the interim standard for all appropriate inquiry that is the subject of today's action is a private sector standard developed by a standard developing organization. Today's action allows for the use of the American Society for Testing and Materials (ASTM) standard known as Standard E1527–2000 and entitled "Standard Practice for Environmental Site Assessment: Phase 1 Environmental Site Assessment Process" as the interim standard for conducting all appropriate inquiry for properties purchased on or after May 31, 1997, or in the alternative, the use of Standard E1527–97, and entitled "Standard Practice for Environmental Site Assessment: Phase 1 Environmental Site Assessment Process."

j. Today's action does not involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994).

k. The Congressional Review Act (5 U.S.C. 801 *et seq.*), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A Major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2). This rule will be effective March 25, 2003 unless EPA publishes a withdrawal in the **Federal Register**.

List of Subjects in 40 CFR Part 312

Environmental protection, Administrative practice and procedure, Hazardous substances, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: January 17, 2003.

Christine Todd Whitman,

Administrator.

For the reasons set out in the preamble, we propose to amend title 40 chapter J of the code of Federal Regulations as follows:

1. Title 40 Chapter J is amended by adding new part 312 to read as follows:

PART 312—INNOCENT LANDOWNERS, STANDARDS FOR CONDUCTING ALL APPROPRIATE INQUIRY

Subpart A—Introduction

Sec.

312.1 Purpose and applicability.
312.2 Standards and practices for all appropriate inquiry.

Subpart B—[Reserved]

Authority: Section 101(35)(B) of CERCLA, as amended, 42 U.S.C. 9601(35)(B).

Subpart A—Introduction

§ 312.1 Purpose and applicability.

(a) Purpose. The purpose of this section is to provide standards and procedures for "all appropriate inquiry" for the purposes of CERCLA section 101(35)(B).

(b) *Applicability.* This section is applicable to: potential innocent landowners conducting all appropriate inquiry under section 101(35)(B) of CERCLA; bona fide prospective purchasers definedunder section 101(40) of CERCLA; contiguous property owners under section 107(q) of CERCLA; and persons conducting site characterization and assessments with the use of a grant awarded under CERCLA section 104(k)(2)(B)(ii).

§ 312.2 Standards and practices for all appropriate inquiry.

(a) With respect to property purchased on or after May 31, 1997, the procedures of the American Society for Testing and Materials (ASTM) 1527–97 and the procedures of the American Society for Testing and Materials (ASTM) 1527–2000, both entitled "Standard Practice for Environmental Site Assessment: Phase 1 Environmental Site Assessment Process," shall satisfy the requirements for conducting "all appropriate inquiry" under section 101(35)(B)(i)(I) of CERCLA, as amended by the Small Business Liability Relief and Brownfields Revitalization Act.

[FR Doc. 03–1630 Filed 1–23–03; 8:45 am]
BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Chapter IV

[CMS–6012–N4]

RIN 0938–AM40

Medicare Program; Negotiated Rulemaking Committee on Special Payment Provisions and Requirements for Prosthetics and Certain Custom-Fabricated Orthotics; Meeting Announcement

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice of meetings.

SUMMARY: In accordance with section 10(a) of the Federal Advisory Committee Act, this notice announces additional public meetings of the Negotiated Rulemaking Committee on Special Payment Provisions and Requirements for Prosthetics and Certain Custom-Fabricated Orthotics. The Committee was mandated by section 427 of the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000 (BIPA).

DATES: The next two negotiated rulemaking committee meetings will be held March 10 and 11, from 9 a.m. to 5 p.m. e.s.t. and April 7 and 8, 2003 from 8 a.m. to 4 p.m. e.s.t.

These meetings are open to the public, and subsequent meetings will be announced in the **Federal Register**.

ADDRESSES: The Committee meetings will be held at the Hilton Pikesville at 1726 Reisterstown Road, Baltimore, MD 21208 (Telephone 410–653–1100). Any subsequent meetings will be held at locations to be announced.

FOR FURTHER INFORMATION CONTACT: Theresa Linkowich, (410) 786–9249 (General inquiries concerning prosthetics and custom-fabricated orthotics), Centers for Medicare & Medicaid Services (CMS), 7500 Security Blvd, Baltimore MD 21244; or Lynn Sylvester, 202–606–9140, Federal Mediation and Conciliation Services, 2100 K Street, NW., Washington, DC 20427; or Ira Lobel, 518–431–0130, Federal Mediation and Conciliation Services, Clinton Square, Room 952, Albany, NY 12207

SUPPLEMENTARY INFORMATION: We published a document in the **Federal Register** on July 26, 2002 (FR pages 48839–48840) announcing the establishment of the negotiated rulemaking committee to advise us on developing a proposed rule that would establish special payment provisions and requirements for suppliers of prosthetics and certain custom-fabricated orthotics under the Medicare program. The notice also announced dates for the Committee's first two meetings on October 1–3, 2002 and October 29–31, 2002. On November 22, 2002 (FR page 70358), a notice of meetings was published in the **Federal Register** announcing the third meeting held January 6 and 7, 2003, and the fourth meeting which will be held February 10 and 11, 2003.

Through face-to-face negotiations, these meetings will help the Committee to reach consensus on the substance of the proposed rule. If consensus is reached, the Committee will transmit to us a report containing required information for developing a proposed rule and we will use the report as the basis for the proposed rule. The Committee is responsible for identifying the key issues, gauging their importance, analyzing the information necessary to resolve the issues, arriving at a consensus, and recommending the text and content of the proposed regulation. Detailed information is available on the CMS Internet Home Page: *http://cms.hhs.gov/faca/prosthetics/* or by calling the Federal Advisory Committee Hotline at (410) 786–9379.

The Agendas for the March 10 and 11 meeting and April 7 and 8 meeting will cover the following:

1. Review of the February 10 and 11 minutes. (March 10 and 11) and review of the March 10 and 11 minutes (April 7 and 8).
2. Discussion of statutory terms to be further defined by regulation.
3. Discussion on L codes.
4. Discussion on supplier and practitioner qualifications as set forth in the statute.
5. Presentation of Computer Assisted Design (CAD)
6. Presentation by National Orthotic Manufacturers Association (NOMA)
7. Oral comments from members of the public.

Public Participation

All interested parties are invited to attend these public meetings, but attendance is limited to the space available. No advance registration is required. Seating will be available on a first-come first-served basis. Individuals requiring sign language interpretation for the hearing impaired or other special accommodations should contact Theresa Linkowich, *tlinkowich@cms.hhs.gov* or call (410) 786–9249 at least 10 days before the meeting. The Committee has the authority to decide to what extent oral presentations by members of the public may be permitted at the meeting. Oral presentations will be limited to statements of fact and views, and shall not include any questioning of the Committee members or other participants unless the facilitators have specifically approved these questions. The number of oral presentations may be limited by the time available.

Interested parties can file statements with the Committee. Mail written statements to the following address: Federal Mediation and Conciliation Services, 2100 K Street, NW., Washington, DC 20427, Attention: Lynn Sylvester, or call Lynn Sylvester at (202) 606–9140.

Additional Meetings

Meetings will be held as necessary. We will publish notices of future meetings in the **Federal Register**. All future meetings will be open to the public without advance registration.

Authority: Federal Advisory Committee Act (5 U.S.C. App. 2) (Catalog of Federal Domestic Assistance Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: January 17, 2003.

Thomas A. Scully,

Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 03–1651 Filed 1–23–03; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 216

[Docket No. 030114011–3011–01, I.D. 122702A]

Petition To Designate Alaska Transient Killer Whales as Depleted; Finding

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of finding; request for information.

SUMMARY: NMFS received a petition to designate a group of transient killer whales as depleted under the Marine Mammal Protection Act (MMPA). This group of killer whales, identified as the AT1 group, inhabits Prince William Sound/Kenai Fjords, AK. NMFS finds that the petition presents substantial information indicating that the petitioned action may be warranted and will initiate a status review promptly. NMFS solicits information and comments from the public that may contribute to the status review:

DATES: Information and comments on the action must be received by March 10, 2003.

ADDRESSES: A copy of the petition may be requested from, and information and comments on this action should be submitted to, Assistant Administrator for Protected Resources, NMFS, 709 W. 9th St, Juneau, AK 99802–1668. Comments will not be accepted if submitted via email or the Internet; however, comments may be sent via fax to (907) 586–7012.

FOR FURTHER INFORMATION CONTACT: Kaja Brix, NMFS, Alaska Region (907) 586–7235 or Tom Eagle, NMFS, Office of Protected Resources, (301) 713–2322 ext. 105.

SUPPLEMENTARY INFORMATION:

Electronic Access

Reference materials regarding this rule, including the petition, its attachments, and marine mammal stock assessment reports, may be obtained from the Internet at http://www.fakr.noaa.gov.

Background

A stock is depleted under the MMPA when its abundance is below optimum sustainable population (OSP) levels. OSP is the population size that falls within a range from the population level of a given species or stock which is the

largest supportable within the ecosystem (carrying capacity or K) to the population level that results in the maximum net productivity level (MNPL). MNPL is the greatest net annual increment in population numbers resulting from additions to the population due to reproduction less losses due to natural mortality. Historically, MNPL has been expressed as a range of values (between 50 and 70 percent of the carrying capacity (K)) determined theoretically by estimating what stock size, in relation to the original stock size, will produce the maximum net increase in population (42 FR 12010, March 1, 1977). NMFS has used the mid-point of this range (i.e. 60 percent of K) to determine whether a stock is depleted (42 FR 64548, December 27, 1977; 45 FR 72178, October 31, 1980).

On November 13, 2002, NMFS received a petition from the Alaska Center for the Environment, Alaska Community Action on Toxics, Center for Biological Diversity, Coastal Coalition, Defenders of Wildlife, the Eyak Preservation Council, and the National Wildlife Federation, to designate the AT1 group of transient killer whales (Orcinus orca) as a depleted stock under the MMPA. The petitioners note that the AT1 group of killer whales is currently considered part of the eastern North Pacific transient killer whale stock. However, they present information to support their assertion that the AT1 group is a separate stock. The petitioners also present information to support their assertion that this group of killer whales is depleted. Copies of the petition are available from NMFS (see **ADDRESSES** and Electronic Access).

Pursuant to Section 115(a)(3)(A) of the MMPA, NMFS published a notice in the **Federal Register** that the petition had been received and was available for public review (67 FR 70407, November 22, 2002). In response to its announcement that the petition had been received, NMFS received numerous comments from the public. These comments urge NMFS to designate AT1 killer whales as a depleted stock. None of the comments, however, contained substantive information in addition to the information contained in the petition. Therefore, responses to the comments are not necessary.

Section 115(a)(3)(B) of the MMPA requires NMFS to publish a notice in the **Federal Register** as to whether the petition presents substantial information indicating that the petitioned action may be warranted. After reviewing information presented in the petition, which is summarized in the next section of this notice, NMFS finds that the petitioners present substantial information indicating that the petitioned action may be warranted.

As required by the MMPA, NMFS will promptly begin a status review of AT1 killer whales. NMFS must publish a proposed rule as to the status of the stock no later than 210 days after receipt of the petition. The status review will address whether the AT1 group is a separate stock under the MMPA and whether this potential stock is depleted.

The Petition

The petition presents information on the classification of killer whales in general and of the AT1 killer whales in particular. The petition also presents information on the changes in the size of the group over the last 20 years and identifies potential causes of decline in numbers of these animals.

Killer whales of the North Pacific are generally classified by type: resident, transient, or offshore. Little information is available on the offshore animals due to the difficulty of studying these whales. Resident killer whales are well studied, as are some groups of transients.

The main distinguishing feature between the residents and transients is their mutually exclusive prey base, with residents eating fish and transients consuming marine mammals. These two types of killer whales may be found in overlapping geographic ranges; however, they do not interact. The primary social structure of both groups is the matriline, dominated by a matriarchal female, her offspring, and direct descendants.

Permanently associating matrilines are generally termed pods. Animals remain within the pod for life, and breeding apparently takes place between whales from different pods. Pods of whales can be distinguished genetically, by within-group associations and based on acoustic patterns. Although transient whales tend to form looser associations than residents (and as such the "pod" terminology is not applied to transients), they can nevertheless be distinguished based on similar genetic and demographic factors.

AT1 killer whales are transients. In NMFS' marine mammal stock assessment reports, AT1 killer whales are currently included with two other groups of transient killer whales in the eastern North Pacific stock (Angliss et al. 2001). The eastern North Pacific stock of transient killer whales is comprised of the west coast transients found from northern Southeast Alaska to central California; the Gulf of Alaska transients; and the AT1 transients.

Although the range of these transient groups overlap, they do not associate. The Gulf of Alaska and AT1 whales inhabit the waters of Alaska exclusively. The Gulf of Alaska transients are occasionally found in Prince William Sound, whereas the AT1 group inhabits the waters of Prince William Sound and the Kenai Fjords and has not been observed elsewhere.

AT1 Killer Whales as a Separate Stock

The petitioners suggested that the AT1 group of killer whales was a separate stock based upon genetic and behavioral information and argued that the AT1 group should be managed separately. Petitioners provided detailed discussion of information supporting the identification of AT1 killer whales as a separate stock in a letter to NMFS dated July 18, 2002, which was a comment on NMFS' draft 2002 marine mammal stock assessment reports. That letter was incorporated by reference into the petition.

The petitioners suggested that evidence from analyses of mitochondrial DNA indicated that females do not emigrate from or immigrate to the AT1 group. The petitioners also suggested that nuclear DNA from analyses of microsatellites indicated a lack of male or female mediated gene flow between the AT1 group and other groups of killer whales.

The petitioners stated that AT1 transients have never been seen with other transient killer whales. The AT1 group has been sighted only in the waters of Prince William Sound and the Kenai Fjords, and other transient killer whales occupy these areas only occasionally. The petitioners also noted that AT1 transients are most frequently seen foraging near shore, and other transient killer whales are less frequently seen near shore.

Further, petitioners noted that the AT1 group is readily distinguishable from other transient killer whales in the Gulf of Alaska in hunting and communication patterns. Whereas other transient killer whales prey extensively upon Steller sea lions, AT1 transients prey primarily on harbor seals and Dall's porpoise. The petitioners concluded that these genetic and behavioral differences are sufficient evidence upon which to identify the AT1 group as a separate population stock. The petitioners also noted that the Alaska Scientific Review Group, an independent advisory group established according to section 117 of the MMPA, has recommended that NMFS recognize the AT1 group as a separate stock.

AT1 Group as Depleted

Information on AT1 population size included in the petition shows that this group of whales numbered 22 animals in 1984, with the last calf being born in that year. The group now numbers 9 animals; less than half the size of the population prior to the Exxon Valdez oil spill in 1989. Two adult males in the group have been confirmed dead in the last 2 years. The current composition includes only 4 females, 2 of which are reproductively senescent.

Using the definition of depleted described above (see Background) and assuming a conservative estimate of K at the historical abundance level of 22 animals, the petitioners suggested that the current abundance of 9 animals is below OSP (i.e, less than 60 percent of the historical abundance, which is 13 animals) and, therefore, that the AT1 group of killer whales is depleted.

The petitioners present several factors that they consider may be causes of the decline of the AT1 group: the Exxon Valdez oil spill; chemical contaminants; increased vessel traffic; and reduction in available prey species. Crude oil exposure could be a factor in the decline of AT1 whales as they were seen immediately after the 1989 Exxon Valdez spill swimming in the crude oil around the tanker. Chemical contamination may also play a role in their decline. Analysis of blubber samples from the male AT1 group member that died in 2000 showed very high levels of contaminants. The AT1 group may also be exposed to increasing underwater vessel noise as the number of vessels with access to Prince William Sound increases due to the recent road access to Whittier. Finally, the harbor seal population in Prince William Sound, one of the main prey items of the AT1 group, has declined substantially in the past, and recently harbor seal numbers have continued declining at about eight percent per year.

Status Review

As the initial task under the upcoming status review, NMFS must evaluate the information in the petition and other information related to whether or not AT1 killer whales are a separate population stock. If NMFS determines that the AT1 group is a separate stock, NMFS would then evaluate whether it is depleted under the MMPA. NMFS is aware of the information related to abundances in 1984 and the present and is not aware of additional information related to historical or current abundance. NMFS notes that the Marine Mammal Commission has advised that the AT1 group should be recognized as a separate population stock and that it is below its MNPL.

Information Solicited

NMFS solicits comments and information related to this petition and the status of AT1 killer whales. NMFS is specifically interested in comments and additional information related to (1) the identification of AT1 killer whales as a population stock, (2) the historical or current abundance of this group, (3) factors that may be affecting the group, and (4) conservation measures that may promote their recovery.

Authority: Authority: 16 U.S.C. 1361 *et seq.*

Dated: January 17, 2003.

William T. Hogarth,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 03–1650 Filed 1–23–03; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 021213310–2310–01; I.D. 101702B]

RIN 0648–AP92

Individual Fishing Quota (IFQ) Program for Pacific Halibut and Sablefish; Revisions to Recordkeeping and Reporting Requirements

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes regulations to implement Amendment 72 to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (Amendment 72) and Amendment 64 to the Fishery Management Plan for Groundfish of the Gulf of Alaska (Amendment 64) (collectively, Amendments 72/64). This action would revise certain recordkeeping and reporting requirements for the Individual Fishing Quota (IFQ) Program for fixed gear Pacific halibut and sablefish fisheries and the Western Alaska Community Development Quota (CDQ) Program for the Pacific halibut fishery. This action is necessary to improve IFQ fishing operations, while complying with IFQ Program requirements; to improve NMFS' ability to efficiently administer the program; and to improve the clarity and consistency of IFQ Program regulations. This action is intended to meet the conservation and management requirements of the Northern Pacific Halibut Act of 1982 (Halibut Act) with respect to halibut and of the Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. 1801 *et seq.*, (Magnuson-Stevens Act) with respect to sablefish and to further the goals and objectives of the groundfish Fishery Management Plans (FMPs).

DATES: Comments must be received at the following address no later than February 24, 2003.

ADDRESSES: Comments should be sent to Sue Salveson, Assistant Administrator, Sustainable Fisheries Division, Alaska Region, NMFS; P.O. Box 21668, Juneau, AK 99802–1668, Attn: Lori Gravel-Durall) or delivered to the Federal Building, 709 West 9th Street, Room 401, Juneau, AK. Comments may be sent via facsimile to 907–586–7465. Comments will not be accepted if submitted via e-mail or the Internet. Copies of Amendment 72/64 of the FMPs and the Regulatory Impact Review/Initial Regulatory Flexibility Analysis (RIR/IRFA) prepared for this action may also be obtained from the same address, or by calling the Alaska Region, NMFS, at 907–586–7228. Send comments on collection-of-information requirements to NMFS, Alaska Region, and to the Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget (OMB), Washington, DC 20503 (Attn: NOAA Desk Officer).

FOR FURTHER INFORMATION CONTACT: Patsy A. Bearden, 907–586–7228 or *patsy.bearden@noaa.gov.*,

SUPPLEMENTARY INFORMATION:

Background and Need for Action

NMFS manages the groundfish fisheries in the Exclusive Economic Zone (EEZ) off Alaska according to fishery management plans prepared by the North Pacific Fishery Management Council (Council) under the authority of the Magnuson-Stevens Act. The FMPs are implemented by regulations at 50 CFR part 679. General regulations that also pertain to these fisheries appear in subpart H to 50 CFR part 600.

Regulations codified at 50 CFR part 679 implement the IFQ Program, a limited access system for management of the Pacific halibut (*Hippoglossus stenolepis*) and sablefish (*Anoplopoma fimbria*) fixed gear fisheries in and off Alaska.

The IFQ Program, a limited access management system for the fixed gear Pacific halibut and sablefish fisheries off Alaska, was approved by NMFS in January 1993 and fully implemented beginning in March 1995. The IFQ Program for the sablefish fishery is implemented by the FMPs and Federal regulations under 50 CFR part 679 under authority of the Magnuson-Stevens Act. The IFQ Program for the halibut fishery is implemented by Federal regulations promulgated under the authority of the Halibut Act. Further information on the rationale for and implementation of the IFQ Program is contained in the preamble to the final rule published in the **Federal Register**, November 9, 1993 (58 FR 59375). Regulations implementing the IFQ Program have been revised numerous times since 1993 to refine program operations.

This action would amend the regulatory text establishing Recordkeeping and Reporting (R&R) requirements for the groundfish fishery as well as the IFQ program requirements. Removal of the IFQ Shipment Report and of the IFQ Vessel Clearance would affect other IFQ procedures and forms—the IFQ Landing Report, IFQ Prior Notice of Landing (PNOL), and IFQ Departure Report—as well as definitions, groundfish R&R procedures and forms, the Product Transfer Report (PTR) and Vessel Activity Report (VAR). Revisions are made to the regulatory text to accommodate the procedural changes.

The need, justification, and economic impacts for the actions in this proposed rule, as well as impacts of the alternatives considered, were analyzed in the RIR/IRFA prepared for this action (*see* **ADDRESSES**).

The revisions to the regulations at 50 CFR part 679 are presented below in the order they appear in the regulations.

Section 679.2 Definitions

This action would revise the definitions: "Authorized officer," "Clearing officer," "IFQ landing," and "IFQ Registered Buyer." "Authorized officer," would be revised to cross-reference the definition of "Authorized officer" at 50 CFR 600.10.

Location	Existing text	Proposed text
Definition for "Authorized officer".	Authorized officer means, for purposes of recordkeeping and reporting, a NOAA special agent, a NOAA fishery enforcement officer or USCG fisheries enforcement personnel.	Means: (1) Any commissioned, warrant, or petty officer of the USCG; (2) Any special agent or fishery enforcement officer of NMFS; (3) Any officer designated by the head of any Federal or State agency that has entered into an agreement with the Secretary and the Commandant of the USCG to enforce the provisions of the Magnuson-Stevens Act or any other statute administered by NOAA; or (4) Any USCG personnel accompanying and acting under the direction of any person described in paragraph (1) of this definition.
Definition for "Clearing officer"	Means a NMFS special agent, a NMFS fishery enforcement officer, or a NMFS enforcement aide who performs the function of clearing vessels at one of the primary ports listed in Table 14 to this part.	Means a NOAA Fisheries Office for Law Enforcement (OLE) special agent, an OLE fishery enforcement officer, or an OLE enforcement enforcement aide.
Definition for "IFQ landing"	Means the unloading or transferring of any IFQ halibut, IFQ sablefish, or produts thereof from the vessel that harvested such fish or the removal from the water of a vessel containing IFQ halbiut, IFQ sablefish, or products thereof.	Means the unloading or transferring of any IFQ halibut, CDQ halibut, IFQ sablefish, or products thereof from vessel that harvested such fish or the removal from the water of a vessel containing IFQ halibut, CDQ halibut, IFQ sablefish, or products thereof.
Definition for "IFQ permit holder".	§ 679.4(d)(3)(B)	§ 679.4(d)(1).
Definition for "IFQ Registered Buyer".	§ 679.4(d)(2)	§ 679.4(d)(3).
Definition for "Transfer"	(2) *IFQ/CDQ fisheries.* Any loading, offloading, shipment or receipt of any groundfish product.	(2) *IFQ halibut, CDQ halibut, IFQ sablefish.* Any loading, offloading, shipment or receipt of any IFQ halibut, CDQ halibut, IFQ sablefish product.

Section 679.4(d) IFQ Permits

In response to the removal of "Vessel Clearance" and "Shipment Report" and to the revision of "Departure Report," this action would reorganize the regulatory text in the IFQ permits section. Detailed changes to § 679.4(d) are presented below:

§ 679.4 paragraph	Redesignated as	No change	Revised	Removed	Added
(d) heading	.....	.....	X		
Introductory (d)(1)	Introductory (d).				
(d)(1) heading	.....	.....	X		
(d)(1)(i)	(d)(1)	.....	X	.....	
(d)(4)(i)	(d)(1)(i).				
(d)(6)(i)	(d)(1)(ii)	.....	X		
(d)(2) heading	.....	.....	X		
(d)(4)(ii)	(d)(2)(i)	.....	X		
(d)(1)(ii)	(d)(2)(ii)	.....	X		
(d)(3)(i)(C)	(d)(2)(iii)	.....	X		
(d)(3) heading	.....	.....	X		
(d)(2)	(d)(3).				

§ 679.4 paragraph	Redesignated as	No change	Revised	Removed	Added
(d)(4)(iii)	(d)(3)(i)		X		
(d)(3)(i)(B)				X	
Introductory (d)(2)	(d)(3)(ii).				
(d)(2)(i)	(d)(3)(ii)(A).				
(d)(2)(ii)	(d)(3)(ii)(B).				
(d)(2)(iii)	(d)(3)(ii)(C)		X		
(d)(3)(ii)	(d)(3)(iii)		X		
(d)(3)(iv)					X
(d)(4) heading			X		
(d)(3)(i)(A)	(d)(4).				
(d)(5)			X		
(d)(6)(i)				X	
(d)(6)(ii)	(d)(6)(i)		X		
(d)(6)(iii)	(d)(6)(ii)		X		
(d)(7)			X		

Revisions to the regulatory text are presented below, showing the location of the text, the current text, and the proposed text.

Location § 679.4 paragraph	Existing text	Proposed text
(d) heading	IFQ Permits.	IFQ permits, IFQ cards, and IFQ Registered Buyer permits.
(d)(1) heading	General.	IFQ permit.
(d)(1)(i)	(d)(4)(i) *IFQ permit.* An IFQ permit authorizes the person identified on the permit to harvest IFQ halibut or IFQ sablefish from a specified IFQ regulatory area at any time during an open fishing season during the fishing year for which the IFQ permit is issued until the amount harvested is equal to the amount specified under the permit, or until it is revoked, suspended, or modified under 15 CFR part 904.	(d)(1)(i) An IFQ permit authorizes the person identified on the permit to harvest IFQ halibut or IFQ sablefish from a specified IFQ regulatory area at any time during an open fishing season during the fishing year for which the IFQ permit is issued until the amount harvested is equal to the amount specified under the permit, or until it is revoked, suspended, or modified under 15 CFR part 904.
(d)(1)(ii)	(d)(1)(i) A copy of an IFQ permit that specifies the IFQ regulatory area and vessel category in which IFQ halibut or IFQ sablefish may be harvested by the IFQ permit holder; and (d)(6)(i) IFQ permit. A legible copy of any IFQ permit issued under this section must be carried on board the vessel used by the permitted person to harvest IFQ halibut or IFQ sablefish at all times that such fish are retained on board.	(d)(1)(ii) A legible copy of any IFQ permit that specifies the IFQ regulatory area and vessel length overall from which IFQ halibut or IFQ sablefish may be harvested by the IFQ permit holder must be carried on board the vessel used by the permitted person to harvest IFQ halibut or IFQ sablefish at all times that such fish are retained on board.
(d)(2) heading	Registered buyer permit.	IFQ card.
(d)(2)(i)	(d)(4)(ii) *IFQ card.* An IFQ card authorizes the individual identified on the card to land IFQ halibut or IFQ sablefish for debit against the specified IFQ permit until the card expires, or is revoked, suspended, or modified under 15 CFR part 904, or cancelled on request of the IFQ permit holder.	(d)(2)(i) An IFQ card authorizes the individual identified on the card to land IFQ halibut or IFQ sablefish for debit against the specified IFQ permit until the card expires, or is revoked, suspended, or modified under 15 CFR part 904, or cancelled on request of the IFQ permit holder.
(d)(2)(ii)	(d)(1)(ii) *IFQ card.* An original IFQ card issued by the Regional Administrator. (d)(6)(ii) *IFQ card.* Except as specified in 679.42(d), an individual that is issued an IFQ card must remain aboard the vessel used to harvests IFQ halibut or IFQ sablefish with that card during all fishing operations until arrival at the point of landing and during all IFQ landings.	(d)(2)(ii) An original IFQ card issued by the Regional Administrator must be on board the vessel that harvests IFQ halibut or IFQ sablefish at all times that such fish are retained on board. Except as specified in 679.42(d), an individual that is issued an IFQ card must remain aboard the vessel used to harvest IFQ halibut or IFQ sablefish with that card during the IFQ fishing trip and at the landing site during all IFQ landings.
(d)(2)(iii)	(d)(3)(i)(C) *IFQ card.* Each IFQ card issued by the Regional Administrator will display an IFQ permit number and the individual authorized by the IFQ permit holder to land IFQ halibut or IFQ sablefish for debit against the permit holder's IFQ.	(d)(2)(iii) Each IFQ card issued by the Regional Administrator will display an IFQ permit number, the name of the individual authorized by the IFQ permit holder to land IFQ halibut or IFQ sablefish for debit against the permit holder's IFQ. In addition, IFQ cards issued to hired masters representing permit holders per 679.42(i) and (j) will also display the ADF&G vessel identification number of the authorized vessel.
(d)(3) heading	How do I obtain an IFQ permit, IFQ card, or Registered Buyer Permit?	Registered Buyer permit.
(d)(3)(ii)(C)	(d)(2)(iii) A vessel operator who obtains a vessel clearance or submits a departure report (see 679.5(1)(5)(iv).	(d)(3)(ii)(C) A vessel operator who submits a Departure Report (see 679.5(l)(4)).
(d)(3)(iii)	(d)(3)(ii) *Registered Buyer permits.* Registered buyer permits will be renewed or issued annually by the Regional Administrator to persons that have a registered buyer application approved by the Regional Administrator.	(d)(3)(iii) A Registered Buyer permit is issued on a 3-year cycle by the Regional Administrator to persons that have a Registered Buyer application approved by the Regional Administrator.

Location § 679.4 paragraph	Existing text	Proposed text
(d)(4) heading	Duration.	Issuance.
(d)(5)	The IFQ permits issued under this section are not transferable, except as provided under 679.41. IFQ cards and Registered Buyer permits issued under this paragraph (d) are not transferable.	The quota shares and IFQ issued under this section are not transferable, except as provided under 679.41. IFQ cards and Registered Buyer permits issued under this paragraph (d) are not transferable.
(d)(6)(i)	(d)(6)(ii) *IFQ card.* Except as specified in § 679.42(d), an individual who is issued an IFQ card must remain aboard the vessel used to harvest IFQ halibut or IFQ sablefish with that card during all fishing operations until arrival at the point of landing and during all IFQ landings. The IFQ cardholder must present a copy of the IFQ permit and the original IFQ card for inspection on request of any authorized officer, clearing officer, or registered buyer purchasing IFQ species. Nothing in this paragraph would prevent an individual who is issued an IFQ card from being absent from the vessel used to harvest IFQ halibut or IFQ sablefish between the time the vessel arrives at the point of landing until the commencement of landing.	(d)(6)(i) *IFQ permit and card.* The IFQ cardholder must present a copy of the IFQ permit and the original IFQ card for inspection on request of any authorized officer or Registered Buyer receiving IFQ species. Nothing in this paragraph would prevent an individual who is issued an IFQ card from being absent from the vessel used to harvest IFQ halibut or IFQ sablefish from the time the vessel arrives at the point of landing and the commencement of landing.
(d)(6)(ii)	(d)(6)(iii) *Registered buyer permit.* A legible copy of the Registered Buyer permit must be present at the location of an IFQ landing and must be made available for inspection on request of any authorized officer or clearing officer.	(d)(6)(ii) *Registered Registered buyer permit.* A legible copy of the Registered Buyer permit must be present at the location of an IFQ landing and must be made available by the Registered Buyer's representative for inspection on request of any authorized officer.
(d)(7)	§ 679.5(e)(7)(ii).	§ 679.5(l)(7)(ii).

Section 679.5(a)(15) IFQ/groundfish Transfer Document Comparison

In response to the removal of the IFQ Vessel Clearance and the IFQ Shipment Report, the regulatory text in § 679.5(a)(15), the revised procedures for the Product Transfer Report, and the in-text table that compares the transfer documents are reorganized and revised.

The introductory paragraph (a)(15) of this section would be revised to include an explanation of the "X" symbols in the body of the table.

The in-text table would be restructured to provide for the removal of the IFQ Vessel Clearance and the IFQ Shipment Report. The columns across the top of the table are revised by removing the columns entitled: "IFQ Vessel Clearance" and "IFQ Shipment Report," and adding columns entitled: "IFQ Landing Report Receipt." Cross-referencing paragraph numbers previously located within table columns are relocated to rows in the table for easier reading. New headings are added to indicate activity, *e.g.*, submitting a report to NMFS, issuing a receipt to the public, and possessing a receipt. A new column heading "SUBMITTAL" would be added to group together those forms that require submittal to NMFS over the subheadings "VAR," "PTR," "IFQ Trans-shipment Authorization," and "IFQ Departure Report." Another new column heading "ISSUE" would be placed over the subheading "IFQ Dockside Sales Receipt." A third heading "POSSESS" would be placed over the subheading "IFQ Landing Report Receipt." The rows of the table are revised as follows:

§ 679.5, paragraph	Redesignated as	No change	Revised	Removed	Added
(a)(15) heading			X		
(a)(15)(i)			X		
(a)(15)(iii)	(a)(15)(ii)		X		
(a)(15)(iv)	(a)(15)(iii)		X		
(a)(15)(v)	(a)(15)(iv)		X		
(a)(15)(vi)	(a)(15)(v)		X		
(a)(15)(vii)	(a)(15)(vi)		X		
(a)(15)(vii)					X
(a)(15)(viii)			X		

Section 679.5(g) Product Transfer Report (PTR)

Currently, the groundfish PTR is used to document movement of groundfish product from a shoreside facility or from a processor vessel, while the IFQ Shipment Report is used to document IFQ fish transfer from an IFQ Registered Buyer. This action would combine the groundfish PTR and the IFQ Shipment Report into one form, a revised PTR, that would be used to document transfer of non-IFQ groundfish, donated prohibited species, all halibut and all sablefish. Although a copy of the Shipment Report currently is required to accompany the IFQ shipment, the proposed action would remove this requirement when using a PTR.

The detailed changes to the regulations describing the PTR are presented below:

§ 679.5, paragraph	Redesignated as	No change	Revised	Removed	Added
(g) heading			X		
(g)(2)(iii)	(g)(1)		X		

§ 679.5, paragraph	Redesignated as	No change	Revised	Removed	Added
(g)(1)(i), (ii), (iii), and (iv)			X		
(g)(1)(v) heading					X
(g)(1)(v)(A)					X
(l)(3)(iv)	(g)(1)(v)(B)		X		
(l)(3)(i)(D)	(g)(1)(vi)		X		
Introductory (g)(2)			X		
(g)(2), (g)(2)(i), (ii), (iii)			X		
Introductory (g)(3)				X	
(g)(3)(i)		X			
(g)(3)(ii)			X		
(g)(3)(iii), (iv)				X	
(g)(4) heading			X		
(g)(4)(i)(A), (B)				X	
(g)(4)(ii)(A)	Introductory (g)(4)		X		
(g)(5), (g)(6)	(g)(6), (g)(7)				
Introductory (g)(5)	Introductory (g)(6)		X		
(g)(5)(i)	(g)(6)(i)		X		
(g)(5)(v)	(g)(6)(ii)		X		
(g)(5)(ii)	(g)(6)(iii)		X		
(g)(5)(iii)	(g)(6)(iv)		X		
(g)(5)(iv)	(g)(6)(v)		X		
(g)(6)(i)	(g)(7)(i)		X		
(g)(6)(ii)	(g)(7)(ii)		X		
New (g)(5) heading					X
(g)(4)(ii)(B)				X	
(g)(4)(ii)(C)	New introductory (g)(5)		X		
New (g)(5)(i), (ii), (iii), (iv)					X

The in-text table (new paragraph (g)(5)(iv)) of this section would be revised by separating the information into more distinct categories by dividing the columns to read "Receiver," "Date & time of product transfer," "Location of product transfer," and "Mode of transportation and intended route." Existing information would be reformatted to fit within these columns.

Section 679.5(k) Vessel Activity Report (VAR)

The VAR documents whether a vessel has onboard any fish or fish products, regardless of species. The VAR is submitted to NMFS before the vessel crosses the seaward boundary of the EEZ off Alaska or crosses the U.S.-Canada international boundary between Alaska and British Columbia. This action would revise the procedure for interaction of the VAR with IFQ reports due to the removal of the IFQ Vessel Clearance and the IFQ Shipment Report.

Detailed changes in § 679.5(k)(1) are presented below:

§ 679.5, paragraph	Redesignated as	No change	Revised	Removed	Added
Introductory (k)(1)	(k)(1)(i)		X		
(k)(1)(i)	(k)(1)(ii)		X		
(k)(1)(ii)	(k)(1)(iii)		X		
(k)(1)(iv)			X		

Revisions to the regulatory text are presented below, showing the location of the text, the current text, and the proposed text.

Location § 679.5, paragraph	Current text	Proposed text
(k)(1)(i)	Introductory (k)(1) Except as noted in paragraphs (k)(1)(iii) and (iv) of this section, the operator of a catcher vessel greater than 60 ft (18.3 m) LOA, a catcher/processor, or a mothership holding a Federal fisheries permit issued under this part and carrying fish or fish product onboard must complete and submit a VAR by FAX or electronic file to OLE, Juneau, AK before the vessel crosses the seaward boundary of the EEZ off Alaska or crosses the U.S.-Canadian international boundary between Alaska and British Columbia.	(k)(1)(i) *Fish or fish product onboard.* Except as noted in paragraph (k)(1)(iv) of this section, the operator of a catcher vessel greater than 60 ft (18.3 m) LOA, a catcher/processor, or a mothership required to hold a Federal fisheries permit issued under this part and carrying fish or fish product onboard must complete and submit a VAR by FAX or electronic file to OLE, Juneau, AK (907–586–7313) before the vessel crosses the seaward boundary of the EEZ off Alaska or crosses the U.S.-Canadian international boundary between Alaska and British Columbia.
(k)(1)(ii)	(k)(1)(i) *Both groundfish and IFQ fish.* If a vessel is carrying both groundfish and IFQ halibut or IFQ sablefish, the operator must submit a VAR in addition to a Vessel Departure Report (VDR) or a Vessel Clearance (VC).	(k)(1)(ii) *Combination of non-IFQ groundfish, IFQ halibut, CDQ halibut, and IFQ sablefish.* If a vessel is carrying non-IFQ groundfish and IFQ halibut, CDQ halibut or IFQ sablefish, the operator must submit a VAR in addition to an IFQ Departure Report per paragraph (1)(4) of this section.
(k)(1)(iii)	(k)(1)(ii) *Revised VAR.* If groundfish are landed at a port other than the one specified, submit a revised VAR showing the actual port of landing.	(k)(1)(iii) *Revised VAR.* If fish or fish products are landed at a port other than the one specified on the VAR, the vessel operator must submit a revised VAR showing the actual port of landing before any fish are offloaded.

Location § 679.5, paragraph	Current text	Proposed text
(k)(1)(iv)	*Exemption: IFQ departure report.* If a vessel is carrying only IFQ halibut or IFQ sablefish onboard and the operator has submitted a Departure Report per paragraph (1)(5)(iii)(B) of this section, a VAR is not required.	*Exemption: IFQ departure report.* If a vessel is carrying only IFQ halibut or IFQ sablefish onboard and the operator has submitted an IFQ Departure Report per paragraph (1)(4) of this section, a VAR is not required.

Section 679.5(l)(1) IFQ Prior Notice of Landing (PNOL)

The intent of the PNOL is to provide International Pacific Halibut Commission (IPHC) monitoring personnel and OLE personnel advance notice of vessel IFQ landings. Under current regulations, the operator of any vessel intending to make a landing of IFQ halibut, CDQ halibut, or IFQ sablefish must submit a PNOL to OLE 6 hours before making the landing.

This action would revise the PNOL procedure by changing the prior notification from 6 hours to 3 hours. This change would provide adequate monitoring and enforcement opportunities. The 3-hour time limit would result in improved economic efficiency in the fishery, allowing an overall exvessel price for IFQ fish to improve for a vessel operator due to additional time to seek out more competitive marketing opportunities. IFQ card holders and Registered Buyers would have more flexibility during their business negotiations. In general, this action would relieve burdens on small entities, which include Registered Buyers. It may contribute to increased competition in the delivery market for IFQ halibut and sablefish. It could benefit consumers and even cause Registered Buyers to expand into more markets (*i.e.*, fresh fish). The estimated number of directly regulated small entities would include approximately 3,485 holders of halibut QS, 872 holders of sablefish QS, approximately 290 hired masters, and all six of the CDQ groups hold CDQ halibut.

In addition, vessels would be required to report "location of landings" rather than "Registered Buyer." This change would provide IPHC and OLE personnel with the exact location of the landing, which is needed to plan monitoring activities, while not requiring a vessel to commit to a specific processor.

Detailed changes to the PNOL regulatory text are presented below:

§ 679.5, paragraph	Redesignated as	No change	Revised	Removed	Added
(l) heading			X		
Introductory (l)			X		
(l)(1) heading			X		
(l)(1)(i) heading			X		
(l)(1)(i)	(l)(1)(i)(A)		X		
(l)(1)(ii)	(l)(1)(i)(B)		X		
(l)(1)(v)	(l)(1)(ii)		X		
Introductory (l)(1)(iii)					
(l)(1)(iii)(A)		X			
(l)(1)(iii)(B), (C)			X		
(l)(1)(iii)(D)		X			
(l)(1)(iii)(E)				X	
(l)(1)(iii)(F) thru (H)	(l)(1)(iii)(E) thru (G)				
(l)(1)(iii)(H)				X	
(l)(1)(iv)			X		

Revisions to the regulatory text are presented below, showing the location of the text, the current text, and the proposed text.

Location § 679.5, paragraph	Current text	Proposed text
(l) heading	IFQ and CDQ halibut recordkeeping and reporting.	IFQ Program recordkeeping and reporting.
Introductory (l)	In addition to the recordkeeping and reporting requirements in this section and as prescribed in the annual management measures published in the FEDERAL REGISTER pursuant to § 300.62 of this title, the following IFQ reports are required, when applicable: prior notices of landing, landing report, shipment report, transshipment authorization, vessel clearance, and IFQ departure report.	In addition to the recordkeeping and reporting requirements in this section and as prescribed in the annual management measures published in the FEDERAL REGISTER pursuant to § 300.62 of this title, the following reports and authorizations are required, when applicable: IFQ Prior Notice of Landing, Product Transfer Report (*see* 679.5(g)), IFQ Landing Report, IFQ Transshipment Authorization, and IFQ Departure Report.
(l)(1) heading	Prior notice of IFQ landing.	IFQ Prior Notice of Landing (PNOL).
(l)(1)(i) heading	Applicability.	Time limits and submittals.
(l)(1)(i)(A)	(l)(1)(i) Except as provided in paragraph (l)(1)(iv) of this section, the operator of any vessel making an IFQ landing must notify OLE, Juneau, AK no fewer than 6 hours before landing IFQ halibut or IFQ sablefish, unless permission to commence an IFQ landing within 6 hours of notification is granted by a clearing officer.	(l)(1)(i)(A) Except as provided in paragraph (l)(1)(iv) of this section, the operator of any vessel making an IFQ landing must notify OLE, Juneau, AK no fewer than 3 hours before landing IFQ halibut or IFQ sablefish, unless permission to commence an IFQ landing within 3 hours of notification is granted by a clearing officer.
(l)(1)(i)(B)	(l)(1)(ii) *Time limits.* A prior notice of landing must be made to the toll-free telephone number 800–304–4846 or to 907–586–7202 between the hours of 0600 hours, A.l.t., and 2400 hours, A.l.t.	(l)(1)(i)(B) A PNOL must be made to the toll-free telephone number 800–304–4846 or to 907–586–7163 between hours of 0600 hours, A.l.t., and the 2400 hours, A.l.t.

Location § 679.5, paragraph	Current text	Proposed text
(l)(1)(ii)	(l)(1)(iii) *Information required.* A prior notice of landing must include the following:	(l)(1)(ii) *Information required.* A PNOL must include the following:
(l)(1)(iii)(B)	Name and permit number of the Registered Buyer who will be responsible for completion and submittal of the IFQ Landing Report(s);	Port of landing and port code from Table 14 to this part;
(l)(1)(iii)(C)	The location of the landing (port name or code).	Exact location of landing within the port, *i.e.*, dock name, harbor name, facility name, or geographical coordinates (latitude and longitude of position in degrees and minutes).
(l)(1)(iv)	(iv) *Exemption.* An IFQ landing of halibut of 500 lb (0.23 mt) or less of IFQ weight determined pursuant to § 679.42(c)(2) and concurrent with a legal landing of salmon or a legal landing of lingcod harvested using dinglebar gear is exempt from the PNOL required by this section.	(iv) *Exemption.* An IFQ landing of halibut of 500 lb or less of IFQ weight determined pursuant to § 679.42(c)(2) and concurrent with a legal landing of salmon or a legal landing of lingcod harvested using dinglebar gear is exempt from the PNOL required by this section.

Section 679.5(l)(2) IFQ Landing Report

Reporting of IFQ harvests is accomplished through electronic submittal of an IFQ Landing Report, which may be submitted by an IFQ cardholder at an automated transaction terminal, through the Internet, and with approval by FAX. A Registered Buyer submits the Landing Report within 6 hours after all fish are landed and prior to shipment or departure of the delivery vessel from the landing site. This action would revise the regulatory text and the procedure for submittal of the IFQ Landing Report for clarity and simplicity. Similar topics are combined under one heading. In some cases, long paragraphs are divided into two paragraphs. Cross references are added to ensure ease of reading. Some telephone numbers are revised. Detailed changes to the regulatory text describing the IFQ Landing Report are presented below:

§ 679.5, paragraph	Redesignated as	No change	Revised	Removed	Added
Heading for (l)(2)			X		
Heading for (l)(2)(i)			X		
(l)(2)(i)(B)	(l)(2)(i)(A)		X		
New (l)(2)(i)(B)					X
New (l)(2)(i)(C)					X
New (l)(2)(i)(D)					X
New (l)(2)(i)(E)					X
Heading for (l)(2)(iv)	heading for (l)(2)(ii)		X		
(l)(2)(iv)(A)	(l)(2)(ii)(A)		X		
(l)(2)(iv)(B)				X	
(l)(2)(i)(A)	(l)(2)(ii)(B)			X	
(l)(2)(vi)(N)				X	
(l)(2)(vi)	(l)(2)(iii)				
Newly redesignated (l)(2)(iii)(B)			X		
Newly redesignated (l)(2)(iii)(J)			X		
Newly redesignated (l)(2)(iii)(K)			X		
Newly redesignated (l)(2)(iii)(M)			X		
New (l)(2)(iv) and (iv)(A)					X
(l)(2)(ii)(A) except last sentence; last sentence of (l)(2)(ii)(A); (l)(2)(ii)(B).	(l)(2)(iv)(A)		X		
(l)(2)(ii)(D)	(l)(2)(iv)(B)				
(l)(2)(iv)(B) heading					X
(l)(2)(vii); (l)(2)(ii)(E); (l)(2)(iii)(A); (l)(2)(vii)	(l)(2)(iv)(C)		X		
(l)(2)(iv)(D) heading					X
Third sentence of (l)(2)(ii)(C)	(l)(2)(iv)(D)		X		

Revisions to the regulatory text are presented below, showing the location of the text, the current text, and the proposed text.

Location § 679.5, paragraph	Current text	Proposed text
(l)(2) heading	Landing report	IFQ landing report
(l)(2)(i) heading	Applicability	Requirements
(l)(2)(i)(A)	(l)(2)(i)(B) All IFQ catch retained onboard a vessel at commencement of a landing must be weighed and debited from the IFQ permit holder's account under which the catch was harvested.	(l)(2)(i)(A) *All IFQ catch debited.* All IFQ halibut, CDQ halibut, and IFQ sablefish catch must be weighed and debited from the IFQ permit holder's account under which the catch was harvested.
(l)(2)(i)(D)	(l)(2)(ii)(C) Once landing operations have commenced, the IFQ cardholder and the harvesting vessel may not leave the landing site until the IFQ account is properly debited. . . .	(l)(2)(i)(D) *Remain at landing site.* Once landing operations have commenced, the IFQ cardholder and the harvesting vessel may not leave the landing site until the IFQ account is properly debited (as defined in paragraph (l)(2)(iv)(D)).

Location § 679.5, paragraph	Current text	Proposed text
(l)(2)(i)(E)	(l)(2)(ii)(C) . . . The offloaded IFQ species may not be moved from the landing site until the IFQ landing report is received by OLE, Juneau, AK and the IFQ cardholder's account is debited. . . .	(l)(2)(i)(E) *No movement of IFQ species.* The offloaded IFQ species may not be properly moved from the landing site until the IFQ Landing Report is received by OLE, Juneau, AK and the IFQ cardholder's account is properly debited (as defined in paragraph (l)(2)(iv)(D)).
(l)(2)(ii) heading	(l)(2)(iv) *Time limits and submittals*	(l)(2)(ii) *Time limits*
(l)(2)(ii)(A)	(l)(2)(iv)(A) An IFQ landing may commence only between 0600 hours, A.l.t., and 1800 hours, A.l.t., unless permission to land at a different time (waiver) is granted in advance by a clearing officer.	(l)(2)(ii)(A) A landing of IFQ halibut, CDQ halibut, or IFQ sablefish may commence only between 0600 hours, A.l.t., and 1800 hours, A.l.t., unless permission to land at a different time (waiver) is granted in advance by a clearing officer.
(l)(2)(ii)(B)	(l)(2)(i)(A) A Registered Buyer must report an IFQ landing within 6 hours after all such fish are landed and prior to shipment of said fish or departure of the delivery vessel from the landing site.	(l)(2)(ii)(B) A Registered Buyer must submit a completed IFQ Landing Report within 6 hours after all such fish are landed and prior to shipment or transfer of said fish from the landing site.
(l)(2)(iii)(B)	(l)(2)(vi)(B) Location of the IFQ landing (port code or if at sea, lat. and long.)	(l)(2)(iii)(B) Location of the IFQ landing (port code or if at sea, latitude and longitude of position in degrees and minutes).
(l)(2)(iii)(J)	(l)(2)(vi)(J)(*1*) Except as indicated in paragraph (l)(2)(vi)(J)(2) of this section, for each ADF&G statistical area of harvest, the species codes, product codes, and initial accurate scale weight (in pounds or to the nearest thousandth of a metric ton) made at the time of offloading for IFQ species sold and retained. (l)(2)(vi)(J)(*2*) If the vessel operator is a Registered Buyer reporting the IFQ landing, the accurate weight of IFQ sablefish processed product obtained before the offload may be substituted for the initial accurate scale weight at time of offload.	(l)(2)(iii)(J) For each ADF&G statistical area of harvest, the species codes, product codes, and initial accurate scale weight (in pounds or to the nearest thousandth of a metric ton) made at the time of offloading for IFQ species sold and retained. Exception: if the vessel operator is the Registered Buyer reporting the IFQ landing, the accurate weight of IFQ sablefish processed product obtained before the offload may be substituted for the initial accurate scale weight at time of offload.
(l)(2)(iii)(K)	(l)(2)(vi)(K) Whether ice and slime is present on the fish as offloaded from the vessel (YES or NO). Fish which have been washed prior to weighing or which have been offloaded from refrigerated salt water are not eligible for a 2 percent deduction for ice and slime and must indicate NO SLIME & ICE.	(l)(2)(iii)(K) Whether ice and slime are present on the fish as offloaded from the vessel. Fish which have been washed prior to weighing or which have been offloaded from refrigerated salt water are not eligible for a 2 percent deduction for ice and slime and must indicate NO SLIME & ICE.
(l)(2)(iii)(M)	(l)(2)(ii)(C) . . . After the Registered Buyer enters the landing data in the transaction terminal or the Internet submission form(s) and a receipt is printed, the IFQ cardholder must sign the receipt to acknowledge the accuracy of the landing report. . . . (l)(2)(iii)(B) The manual landing report must be signed by the Registered Buyer or his/her representative, and the IFQ cardholder to acknowledge the accuracy of the landing report, and by the OLE representative to show that the IFQ cardholder's account was debited consistent with the landing report. (l)(2)(vi)(M) Signature of Registered Buyer representative. (l)(2)(vi)(N) Signature of IFQ/CDQ cardholder.	(l)(2)(iii)(M) After the Registered Buyer enters the landing data in the transaction terminal or the Internet submission form(s) or submits a manual landing report by FAX, and a receipt is printed, the Registered Buyer or his/her representative, and the IFQ cardholder must sign the receipt(s) to acknowledge the accuracy of the Landing Report.
(l)(2)(iv)(A)	(l)(2)(ii)(A) *Electronic landing report.* (A) Except as indicated in paragraphs (l)(2)(ii)(D) and (E) of this section, electronic landing reports must be submitted to OLE, Juneau, AK using magnetic strip cards issued by NMFS, Alaska Region, and transaction terminals with printers driven by custom-designed software as provided and/or specified by NMFS, Alaska Region. It is the responsibility of the Registered Buyer to locate or procure a transaction terminal and report as required.	(l)(2)(iv)(A) Except as indicated in paragraphs (l)(2)(iv)(B) and (C) of this section, electronic landing reports must be submitted to OLE, Juneau, AK using magnetic strip cards issued by NMFS, Alaska Region, and transaction terminals with printers driven by custom-designed software as provided and/or specified by NMFS, Alaska Region. The Registered Buyer must locate or procure a transaction terminal and report as required.
(l)(2)(iv)(C)	(l)(2)(ii)(E) Waivers from the electronic reporting requirement can only be granted in writing on a case-by-case basis by a local clearing officer (l)(2)(iii)(A) If a waiver has been granted pursuant to paragraph (l)(2)(ii) of this section, manual landing instructions must be obtained from OLE, Juneau, AK at (800) 304–4846. Completed manual landing reports must be submitted by FAX to OLE, Juneau, AK at (907) 586–7313. (l)(2)(vii) *Manual landing report.* When a waiver is issued pursuant to paragraph (l)(2)(ii)(A) of this section, additional information is required. In addition to the information required in paragraph (l)(2)(vi) of this section, the following information is required to complete a landing report using a manual landing report:	(l)(2)(iv)(C) Waivers from the transaction terminal or Internet reporting requirement can only be granted in writing on a case-by-case basis by a local clearing officer. If a waiver is granted, manual landing instructions must be obtained from OLE, Juneau, AK at (800) 304–4846. Registered Buyers must complete and submit manual Landing Reports by FAX to OLE, Juneau, AK at (907)586–7313. When a waiver is issued, the following additional information is required: whether the manual landing report is an original or revised; name, telephone number, and FAX number of individual submitting the manual landing report.

Location § 679.5, paragraph	Current text	Proposed text
(l)(2)(iv)(D)	(l)(2)(ii)(C) . . . A properly concluded transaction terminal receipt, printed Internet submission receipt, or manual landing report receipt received by FAX from OLE, Juneau, AK constitutes confirmation. . . .	(l)(2)(iv)(D) *Properly debited landing.* A properly concluded transaction terminal receipt, printed Internet submission receipt, or manual Landing Report receipt received by FAX from OLE, Juneau, AK, and signed by the OLE representative constitutes confirmation.

Section 679.5(l)(3)

IFQ Shipment Report. This action would remove the requirement for submittal of an IFQ Shipment Report. Currently, an IFQ Shipment Report is used by OLE to monitor and inspect shipments of IFQ halibut, CDQ halibut, and IFQ sablefish to verify proper accounting for fish landings. The Shipment Report documents the first receiver of the IFQ halibut, CDQ halibut or IFQ sablefish. Each Registered Buyer, other than those conducting dockside sales, must complete and submit a written Shipment Report or a bill of lading containing the same information as a Shipment Report for each shipment or transfer of CDQ halibut, IFQ halibut and IFQ sablefish.

Currently, a groundfish PTR is used by OLE to monitor and inspect shipments of groundfish to verify proper accounting for all non-IFQ groundfish landings by documenting the first receiver of the groundfish. Each mothership, catcher/ processor, shoreside processor, or stationary floating processor must complete a written PTR for each shipment or transfer of groundfish.

This action would combine these two forms into one. Under this action, Registered Buyers would submit a PTR for transfer or shipments of all halibut and all sablefish. Groundfish processors would submit a PTR for transfer or shipments of non-IFQ groundfish. If a participant is both a groundfish processor and a Registered Buyer, he or she would submit a PTR for transfer or shipments of non-IFQ groundfish, all halibut and all sablefish. This proposed change would maintain existing data-collection, monitoring, and enforcement capabilities, while reducing the paperwork submittal and storage by the fishing industry.

The specific proposed change to the IFQ Shipment Report regulatory text is presented below: all of § 679.5(l)(3) would be removed, except that some paragraphs are indicated elsewhere as redesignated for inclusion in other sections.

IFQ Dockside Sales Receipt. Regulations pertaining to the IFQ dockside sales receipt would be moved from § 679.5(l)(3)(iv) and placed at § 679.5(l)(5). Regulatory text would be revised by removing "shipment report" and adding in its place "PTR". The Registered Buyer must issue a dockside sales receipt in lieu of a PTR. No changes in the procedure of issuing a dockside sales receipt would occur as a result of this rule. A person holding a valid IFQ permit, CDQ halibut permit, IFQ card, and Registered Buyer permit may conduct a dockside sale of IFQ halibut or IFQ sablefish to a person who has not been issued a Registered Buyer permit. The purpose of reporting the amount of IFQ fish involved in a dockside sale is to provide OLE with the ability to monitor and inspect the shipment of IFQ fish to determine whether there was proper accounting for all IFQ fish landed.

Section 679.5(l)(4)

IFQ Transshipment Authorization. Regulations pertaining to the IFQ transshipment authorization would be moved from § 679.5(l)(4) and placed at § 679.5(l)(3). No changes in the procedure of transshipment authorization would occur as a result of this rule. Currently, if a person intends to transship processed IFQ halibut, IFQ sablefish, or CDQ halibut between vessels, authorization from a OLE clearing officer to do so must be obtained for each instance of transshipment. The request must be made at least 24 hr before the transshipment is intended to commence.

IFQ Departure Report. Regulations pertaining to the IFQ departure report would be moved from § 679.5(l)(5)(xi) and placed at § 679.5(l)(4). Some of the information originally requested as part of a Vessel Clearance would be added to the IFQ Departure Report. Instead of obtaining an IFQ Vessel Clearance at a principal port prior to departing the waters of the EEZ adjacent to the jurisdictional waters of the State of Alaska, the territorial sea of the State of Alaska, or the internal waters of the State of Alaska, a vessel operator would call OLE by telephone and provide the answers to OLE questions listed on the Departure Report. Detailed changes to the IFQ Departure Report regulatory text are presented below:

§ 679.5, paragraph	Redesignated as	No Change	Revised	Removed	Added
(l)(5)(xi) heading	(l)(4) heading	.....	.....	.....	.....
(l)(4)(i) heading	.....	.....	.....	.....	X
(l)(4)(i)(A) heading	.....	.....	.....	.....	X
(l)(5)(xi)(A)	(l)(4)(i)(A)	.....	X	.....	.....
(l)(5)(vii)	(l)(4)(i)(B)	.....	X	.....	.....
(l)(5)(iii)	(l)(4)(i)(C)	.....	X	.....	.....
(l)(5)(ix)	(l)(4)(i)(D)	.....	X	.....	.....
(l)(5)(iv)	(l)(4)(i)(E)	.....	X	.....	.....
(l)(5)(viii)	(l)(4)(ii)	.....	X	.....	.....
(l)(5)(viii)(H)	(l)(4)(ii)(A)	.....	.....	.....	.....
(l)(5)(viii)(B)	(l)(4)(ii)(B)	.....	.....	.....	.....
(l)(5)(viii)(D)	(l)(4)(ii)(C)	.....	X	.....	.....
(l)(5)(viii)(C)	(l)(4)(ii)(D)	.....	X	.....	.....
(l)(5)(viii)(G)	(l)(4)(ii)(E)	.....	X	.....	.....
(l)(5)(viii)(E)	(l)(4)(ii)(F)	.....	X	.....	.....
(l)(5)(viii)(F)	(l)(4)(ii)(G)	.....	.....	.....	.....
(l)(5)(viii)(I)	.....	.....	.....	X	.....

Revisions to the regulatory text are presented below, showing the location of the text, the current text, and the proposed text.

§679.5, paragraph	Current text	Proposed text
(l)(4)	(l)(5)(xi) Departure report	(l)(4) Departure report.
(l)(4)(i)(A)	(l)(5)(xi)(A) A vessel operator who intends to obtain a vessel clearance outside the State of Alaska must submit an IFQ departure report, by telephone, to OLE, Juneau, AK at 907–586–7225 or 800–304–4846.	(l)(4)(i)(A) *Time limit and submittal.* A vessel operator who intends to make an IFQ halibut, CDQ halibut or IFQ sablefish landing at any location other than in an IFQ regulatory area or in the State of Alaska must submit an IFQ Departure Report, by telephone, to OLE, Juneau, AK at 800–304–4846 or 907–586–7163 between the hours of 0600 hours, A.l.t., and 2400 hours, A.l.t.
(l)(4)(i)(B)	(l)(5)(vii) *Completion of fishing.* An IFQ vessel operator who obtains an IFQ vessel clearance may only obtain that IFQ vessel clearance after completion of all fishing. If any fishing takes place after issuance of an IFQ vessel clearance, the vessel operator must obtain a new IFQ vessel clearance.	(l)(4)(i)(B) *Completion of fishing.* A vessel operator must submit an IFQ Departure Report after completion of all fishing and prior to departing the waters of the EEZ adjacent to the jurisdictional waters of the State of Alaska, the territorial sea of the State of Alaska, or the internal waters of the State of Alaska when IFQ halibut, CDQ halibut or IFQ sablefish are on board.
(l)(4)(i)(C)	(l)(5)(iii) A vessel operator obtaining an IFQ vessel clearance or submitting a departure report must have a Registered Buyer permit.	(l)(4)(i)(C) *IFQ Registered Buyer permit.* A vessel operator submitting an IFQ Departure Report must have a Registered Buyer permit.
(l)(4)(i)(D)	(ix) *First landing of any species.* A vessel operator must land and report all IFQ species on board at the same time and place as the first landing of any species harvested during an IFQ fishing trip.	(l)(4)(i)(D) *First landing of any species.* A vessel operator submitting an IFQ Departure Report must submit IFQ Landing Reports for all IFQ halibut, CDQ halibut and IFQ sablefish on board at the same time and place as the first landing of any IFQ species.
(l)(4)(i)(E)	(l)(5)(iv) *IFQ permits on board.* A vessel operator obtaining an IFQ vessel clearance must ensure that one or more IFQ cardholders is on board with enough remaining IFQ balance to harvest amounts of IFQ fish equal to or greater than all IFQ halibut and IFQ sablefish on board.	(l)(4)(i)(E) *IFQ permits on board.* A vessel operator submitting an IFQ Departure Report must ensure that one or more IFQ cardholders are on board with enough remaining IFQ balance to harvest amounts of IFQ halibut, CDQ halibut or IFQ sablefish equal to or greater than all IFQ halibut, CDQ halibut and IFQ sablefish on board.
(l)(4)(ii)	(l)(5)(viii) *Required information.* To obtain an IFQ vessel clearance, the vessel operator must provide the following information to the clearing officer:	(l)(4)(ii) *Required information.* When submitting an IFQ Departure Report, the vessel operator must provide the following information:
(l)(4)(ii)(C)	(l)(5)(viii)(D) Vessel operator's IFQ Registered Buyer permit number.	(l)(4)(ii)(C) Vessel operator's name and IFQ Registered Buyer permit number.
(l)(4)(ii)(D)	(l)(5)(viii)(C) Name and permit numbers of IFQ permits used to harvest IFQ species on board.	(l)(4)(ii)(D) Halibut IFQ permit numbers and sablefish IFQ permit numbers of IFQ cardholders on board.
(l)(4)(ii)(E)	(l)(5)(viii)(G) IFQ areas of harvest.	(l)(4)(ii)(E) Halibut Regulatory Areas or Sablefish Regulatory Areas of harvest or both.
(l)(4)(ii)(F)	(l)(5)(viii)(E) Estimated total weight of IFQ halibut on board (1b/kg/mt).	(l)(4)(ii)(F) Estimated total weight of IFQ halibut or CDQ halibut on board (lb/kg/mt).

Section 679.5(l)(5)

IFQ Vessel Clearance. OLE reports that 65 Vessel Clearances were processed in 2001. This indicates that a relatively small number of all vessels making IFQ landings would be directly regulated by this provision. The Vessel Clearance requirement would be replaced with a verbal "Departure Report" submitted by telephone prior to leaving the jurisdiction of the Council. This would mean vessels would not have to meet an OLE officer dockside at a Primary Port. A Departure Report would be required for vessels delivering their IFQ fish outside Alaska.

All of paragraph (l)(5) of this section would be removed, except that some paragraphs are indicated elsewhere as redesignated for inclusion in other sections. This action would also amend the FMPs so that the intent of the FMPs incorporates the practical limitations of OLE to meet the requirements of the FMPs. OLE personnel are not currently able to effectively determine catch quantity at the Vessel Clearance port and are unable to seal a vessel's hold without compromising vessel safety.

Landing Verification and Record Retention. In this section, all of the regulatory text regarding landing verification and record retention would be placed under (l)(5).

Section 679.5(l)(6)

Sampling. All of the regulatory text regarding sampling would be placed under (l)(6). Detailed changes are given below:

§679.5, paragraph	Redesignated as	No change	Revised	Removed	Added
(l)(5) heading			X		
first sentence of (l)(2)(v)	(l)(5)(i)		X		
(l)(6)	(l)(5)(ii)		X		
(l)(6) heading			X		
First sentence of (l)(2)(v)	(l)(6)(i)		X		
Second sentence of (l)(2)(v)	(l)(6)(ii)		X		

Section 679.7 Prohibitions

This action would amend § 679.7(f)(6) to include the IFQ card requirement for a hired master. In addition, § 679.7(f)(12) would be revised to change the submittal time limit for the PNOL from 6 hours to 3 hours prior notice. Detailed changes are presented below:

§ 679.7, paragraph	Redesignated as	No change	Revised	Removed	Added
(f)(6)			X		
(f)(12)			X		

Revisions to the regulatory text are presented below, showing the location of the text, the current text, and the proposed text.

Location § 679.7, paragraph	Remove . . .	Add
(f)(6)	Make an IFQ halibut, IFQ sablefish, or CDQ halibut landing without an IFQ or CDQ card in the name of the individual making the landing.	*Landing.* (i) *IFQ or CDQ card.* Make an IFQ halibut, IFQ sablefish, or CDQ halibut landing without an IFQ or CDQ card in the name of the individual making the landing. (ii) *Hired master.* Make an IFQ halibut, IFQ sablefish, or CDQ halibut landing without an IFQ or CDQ card listing the name of the hired master and the name of the vessel making the landing.
(f)(12)	Make an IFQ landing without prior notice of landing and before 6 hours after such notice, except as provided in § 679.5.	Make an IFQ landing without a PNOL and before 3 hours after such notice, except as provided in § 679.5

Section 679.32 Groundfish and Halibut CDQ Catch Monitoring

This action would revise the reference in paragraph (f)(2)(iv) of this section to include paragraph (g) of this section for the PTR and paragraph (l) of this section for IFQ R&R. This would be necessary because participants in the CDQ halibut fishery are required to follow the IFQ regulations for R&R given in paragraph (l) of this section and requirements to file the PTR in paragraph (g) of this section.

Revisions to the regulatory text are presented below, showing the location of the text, the current text, and the proposed text.

Location § 679.32, paragraph	Remove . . .	Add
(f)(2)(iv)	A person may land halibut CDQ only if he or she has a valid halibut CDQ card, and that person may deliver halibut CDQ only to a person with a valid registered buyer permit. The person holding the halibut CDQ card and the Registered Buyer must comply with the requirements of § 679.51(l)(1) and (l)(2).	A person may land halibut CDQ only if he or she has a valid halibut CDQ card, and that person may deliver halibut CDQ only to a person with a valid registered buyer permit. The person holding the halibut CDQ card and the Registered Buyer must comply with the requirements of § 679.5(g) and (l).

Section 679.42 Limitations on Use of QS and IFQ

This action would correct the regulatory text of § 679.42 by removing incorrect reference to §.679.42(k), by separating the text into numbered subparagraphs, and by correcting the metric "equivalent" to 5,000 lb. The amounts described by pounds and metric tons are not equal, and this regulation is stating an exact amount in both pounds and metric tons. Other detailed changes for § 679.42 are presented below:

§ 679.42, paragraph	Redesignated as	No change	Revised	Removed	Added
(a)			X		
(c)(1)(ii)			X		
(c)(1)(iv)			X		
(c)(2)(i)			X		

Revisions to the regulatory text are presented below, showing the location of the text, the current text, and the proposed text.

Location § 679.42, paragraph	Current text	Proposed text
(a)	The QS or IFQ specified for one IFQ regulatory area must not be used in a different IFQ regulatory area. Except as provided in paragraph (k) of this section or in § 679.41(i)(1) of this part, the IFQ assigned to one vessel category must not be used to harvest IFQ species on a vessel of a different vessel category. Notwithstanding. § 679.40(a)(5)(ii) of this part, IFQ assigned to vessel Category B must not be used on any vessel less than or equal to 60 ft (18.3 m) LOA to harvest IFQ halibut in IFQ regulatory area 2C or IFQ sablefish in the IFQ regulatory area east of 140° W. long. unless such IFQ derives from blocked QS units that result in IFQ of less than 5,000 lb (2.3 mt), based on the 1996 TAC for fixed gear specified for the IFQ halibut fishery and the IFQ sablefish fishery in each of these two regulatory areas.	(1) The QS or IFQ specified for one IFQ regulatory area must not be used in a different IFQ regulatory area. (2) Except as provided in § 679.41(i)(1) of this part, the IFQ assigned to one vessel category must not be used to harvest IFQ species on a vessel of a different vessel category. (3) Notwithstanding § 679.40(a)(5)(ii) of this part, IFQ assigned to vessel Category B must not be used on any vessel less than or equal to 60 ft (18.3 m) LOA to harvest IFQ halibut in IFQ regulatory area 2C or IFQ sablefish in the IFQ regulatory area east of 140° W. long. unless such IFQ derives from blocked QS units that result in IFQ of less than 5,000 lb, based on the 1996 TAC for fixed gear specified for the IFQ halibut fishery and the IFQ sablefish fishery in each of these two regulatory areas.
(c)(1)(ii)	Be aboard the vessel at all times during the fishing operation.	Be aboard the vessel at all times during the fishing trip and present during the landing.
(c)(1)(iv)	Sign the IFQ landing report required by § 679.5(l)(2)(ii)(C) and (iii)(B).	Sign the IFQ Landing Report required by § 679.5(l)(2)(iv)(D).
(c)(2)(i)	Except as provided in § 679.5(l)(2)(vi)(J)(*2*), if offload of unprocessed IFQ halibut, CDQ halibut or IFQ sablefish from a vessel, the scale weight of the halibut or sablefish product actually measured at the time of offload, as required by § 679.5(l)(2)(vi) to be included in the IFQ Landing Report.	Except as provided in § 679.5(l)(2)(iii)(J), if offload of unprocessed IFQ halibut, CDQ halibut or IFQ sablefish from a vessel, the scale weight of the halibut or sablefish product actually measured at the time of offload, as required by § 679.5(l)(2)(iii) to be included in the IFQ Landing Report.

Section 679.43 Determinations and Appeals

In addition to the changes in R&R for groundfish and the IFQ Program, paragraph 679.43(c) would be revised to correct the address for the Office of Administrative Appeals.

Revisions to the regulatory text are presented below, showing the location of the text, the current text, and the proposed text.

Paragraph	Current text	Proposed text
679.43(c)	Appeals must be in writing and must be submitted to the Office of Administrative Appeals, P.O. Box 21668, Juneau, AK 99802 or delivered to: Federal Building, 709 West 9th St., Room 801, Juneau, AK..	Appeals must be in writing and must be mailed to the: National Marine Fisheries Service, Office of Administrative Appeals, P.O. Box 21668, Juneau, AK 99802–1668 or delivered to: National Marine Fisheries Service, Attention: Appeals (OAA) 709 West 9th St., Room 453, Juneau, AK 99801.

Tables

Tables 14a, b, and c to 50 CFR part 679 are revised by removing the coordinates and indications for IFQ primary ports of landing and by indicating "other" for each State and Canada. The port of Vancouver, Canada, and code number 803 are added to Table 14b.

Classification

This proposed rule has been determined to be not significant for purposes of E.O. 12866.

This rule does not duplicate, overlap, or conflict with other Federal regulations.

This rule contains collection-of-information requirements subject to the Paperwork Reduction Act (PRA) and which have been approved by OMB. These requirements are listed by OMB control number.

OMB No. 0648–0272. These requirements and their associated burden estimates per response are: 18 minutes for Landing Report and 12 minutes for Transshipment Authorization.

This proposed rule also contains revised requirements that have been submitted to OMB for approval. These requirements are listed by OMB control number.

OMB No. 0648–0213. This requirement and its associated burden estimate per response is: 14 minutes for Vessel Activity Report.

OMB No. 0648–0272. These revised requirements and their associated burden estimates per response are: 12 minutes for IFQ Prior Notice of Landing; 6 minutes for IFQ Departure Report; 6 minutes for IFQ Dockside sales receipt; 18 minutes for Shipment Report are removed; and 12 minutes for Vessel Clearance are removed.

OMB No. 0648–0213. This revised requirement and its associated burden estimate per response is: 20 minutes for Product Transfer Report.

Response times include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Public comment is sought regarding: Whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology.

Send comments on these or any other aspects of the collection of information to NMFS, Alaska Region (see

ADDRESSES), and to OMB at the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 (Attention: NOAA Desk Officer).

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

In general, these actions would improve the efficiency of data collection required under existing IFQ regulations and stem from a joint collaboration of the NOAA Office of Law Enforcement (OLE), Alaska Region, and members of the affected industry. Together, they agreed to changes to the R&R requirements for the IFQ program. These changes were further reviewed by the United States Coast Guard, the Council, and the International Pacific Halibut Commission. An IFQ Implementation Team has recommended adoption of these measures to the Council.

These actions would result in removing the IFQ Shipment Report and IFQ Vessel Clearance. As a consequence of their removal, other forms such as the IFQ Landing Report, IFQ Prior Notice of Landing, IFQ Departure Report, the Product Transfer Report and Vessel Activity Report are proposed to be changed. Definitions for "authorized officer", "clearing officer" and "IFQ landing" would be revised. Overall, these changes will result in improved economic efficiency for the affected fisheries by allowing the vessel operators additional time to find competitive prices at the processors. Furthermore, the action would relieve burdens on small entities, as concluded in the Regulatory Impact Review (RIR), by simplifying, combining and clarifying reporting forms and requirements.

NMFS determined that this proposed rule warrants a Categorical Exclusion from National Environmental Policy Act (NEPA) requirements for an EA. The changes proposed in this action are consistent with the intent and purpose of the Halibut Act with respect to halibut, the Magnuson-Stevens Act with respect to sablefish, and the groundfish FMPs.

These proposed actions—FMP amendments and amendment to regulations promulgated under the Groundfish FMP and Halibut Act—have been evaluated to determine the appropriateness of a Categorical Exclusion for preparation of a NEPA analysis. According to agency NEPA guidance found at NAO 216–6, Section 5.05b, to qualify for a categorical exclusion from NEPA analysis, this agency needs to determine if (1) a prior NEPA analysis for the same action demonstrated that the action will not have significant impacts on the quality of the human environment; or (2) the proposed action is likely to result in significant impacts as defined in 40 CFR 1508.27. Further, according to section 6.02 of NAO 216–6, an action is disqualified from Categorical Exclusions for several reasons, including: (1) The action may be reasonably expected to jeopardize the sustainability of any target or non-target species that may be affected by the action; (2) the action may reasonably be expected to cause substantial damage to the ocean and coastal habitats and/or essential fish habitats defined under the MSA and identified in the FMPs; (3) the action may be reasonably expected to have a substantial adverse impact on public health or safety; (4) the action may be reasonably expected to adversely affect endangered or threatened species, marine mammals, or critical habitat of these species; (5) the action may be reasonably expected to result in cumulative effects that could have a substantial effect on the target species or non-target species; (6) the action may be expected to have a substantial impact on biodiversity and ecosystem function within the affected area; (7) if significant social or economic impacts are interrelated with significant natural or physical environmental effects than an Environmental Impact Statement (EIS) should discuss all the effects on the human environment; and (8) the degree to which the effects on the quality of the human environment are likely to be highly controversial.

For the following reasbns, and in consideration of guidance under NAO 216–6, the prior NEPA analyses—the SEIS for Groundfish of the GOA and the SEIS for the Halibut IFQ program—provide sufficient analysis of the direct, indirect and cumulative impacts of the recordkeeping and reporting component to the IFQ fisheries affected here. Further, none of the considerations under section 6.02 exist here given: (1) The nature of the action and its goals, that is that the action is a refinement of recordkeeping and reporting and seeks to reduce the time required for complying with such; and (2) that the action will reduce the window of time required for vessels to alert the agency that they will be offloading catch at processors.

As determined in the accompanying RIR and IRFA analyses, conservation and management goals will be unaffected by the actions. The actions will not affect public health and safety and are not controversial. Because the actions do not alter fishing but rather landings and reporting, the actions will not affect the target or non-target species that are caught pursuant to the IFQ programs affected here. The actions do not establish any precedent or decision in principle about future proposals or result in cumulatively significant impacts nor have any adverse impacts on endangered or threatened species or their habitats.

In conclusion, these actions would improve the efficiency of data collection required under existing IFQ regulations and would implement those recommendations received from industry, enforcement and management. Based on the foregoing conclusions, these revisions to recordkeeping and reporting for the IFQ fisheries would not substantively alter environmental impacts already analyzed within existing environmental documents.

NMFS prepared an initial regulatory flexibility analysis that describes the impact this proposed rule, if adopted, would have on small entities.

The legislative authority for these actions is the Magnuson-Stevens Fishery Conservation and Management Act, Public Law (Pub. L.) 94–265, 16 U.S.C. 1801 (Magnuson-Stevens Act), and the Northern Pacific Halibut Act of 1982 (NPHA) Public Law 97–176, 16 U.S.C. 773 c (c).

Action 1

Under current regulations, operators of vessels making halibut or sablefish IFQ landings must notify the NOAA Fisheries Office for Law Enforcement six hours before the landing and must include the name of the Registered Buyer to whom they are delivering the IFQ fish. These regulations have been found to put IFQ fishermen at a disadvantage in their negotiations with Registered Buyers, to make it more difficult for Registered Buyers to market fresh product, and to reduce the ability of IFQ fishermen to respond to changing business conditions. The preferred alternative for this action would address these problems by reducing the notification time from six hours to three, and by eliminating the requirement that persons landing IFQ fish include the name of the Registered Buyer in the notification. Persons landing IFQ fish only would have to include the location of the landing in the notification.

The maximum number of directly regulated small entities would be approximately 3,485 holders of halibut QS, and 872 holders of sablefish QS. In addition, all six of the CDQ groups hold

CDQ halibut QS and would be directly regulated. A total of 270 individual fishermen landed CDQ halibut in 2001 and may be directly regulated by this regulatory change. NMFS/RAM issued 694 permits for Registered Buyers in 2001, and, of these, 215 reported landings. Registered Buyers also would be directly regulated by this change.

In general, this proposed rule would relieve burdens on small entities, especially vessel owners of IFQ's. Proposed changes may contribute to increased competition in the delivery market for IFQ halibut and sablefish and thus may have some adverse impact on less economically efficient Registered Buyers. There are no data available on whether or not this impact will occur, or on how serious it may be.

This action does not impose new record keeping requirements or duplicate, overlap or conflict with other Federal rules. NMFS considered an alternative to totally eliminate the prior notice of landing requirement. This might have relieved more of the burden on small entities (although it might still have adversely impacted less efficient Registered Buyers). However, this alternative would have adversely affected data-collection, monitoring, and enforcement operations. NMFS also considered an alternative to randomly apply the prior notice requirements to vessels. Under this system, some vessels would be relieved of a prior notice burden, but all vessels would have been subjected to additional "hail-out" reporting burdens when they put to sea. Port-sampling might be adversely impacted, with biases introduced into sampling methods that might affect the quality of data used in stock assessments. Therefore, neither of these alternatives was chosen as the preferred alternative.

Action 2

At the present time, vessels may only begin to land IFQ catch between 6 a.m. and 6 p.m. (the "offload window"). Industry has expressed an interest in extending the offload window later in the evening. However, industry has also indicated that if the preferred alternative in Action 1 were taken, the flexibility provided would make it unnecessary to extend the window. The preferred alternative, therefore, is continuation of the status quo.

The maximum number of affected small entities would be the approximately 3,485 persons (individuals, corporations, and other entities) who held halibut QS; 872 persons held sablefish QS. In addition, all six of the CDQ groups that hold CDQ halibut would be affected. A total of 270 individuals landed CDQ halibut in 2001 and may be affected by this regulation. NMFS/RAM issued 694 permits for Registered Buyers in 2001, and, of these, 215 reported landings. Registered Buyers also would be affected by this change in regulation.

This action does not appear to have an adverse impact on small entities. This action does not impose new record keeping requirements or duplicate, overlap, or conflict with other Federal rules.

Action 3

The preferred alternative for this action eliminates the requirement for vessels to pull into port to obtain a vessel clearance prior to leaving the EEZ off Alaska. IFQ permit holders state that the requirement is onerous and costly when they have to divert to come dockside for a clearance. They also say there are not enough port options for obtaining clearance in a timely fashion. The objective of this action is to reduce the burden on fishermen by substituting a verbal "departure report" for the currently-required vessel clearance. A verbal report would not diminish the ability to monitor and enforce catch reporting/quota requirements on vessels leaving the jurisdiction of the Council since other reporting mechanisms are available in the port of delivery to monitor those vessels.

As proposed, this preferred alternative for Action 3 would directly regulate the 1,451 unique vessels which made IFQ halibut landings, and 433 unique vessels which made sablefish landings in 2001. OLE reports that 65 vessel clearances were processed in 2001. This indicates that a relatively small number of all vessels making IFQ landings would be directly regulated by this provision, because to obtain the highest quality product, vessels generally offload halibut as soon as possible at a port of Alaska.

NMFS has not identified any adverse impacts to small entities from this action. It does not impose new record keeping requirements or duplicate, overlap or conflict with other federal rules. NMFS is not aware of any alternatives in addition to the alternatives considered that would accomplish the objectives of the Magnuson-Stevens Act and other applicable statutes and that would minimize the economic impact of the proposed rule on small entities.

Action 4

Regulations currently require that Registered Buyers of IFQ sablefish and halibut and CDQ sablefish report landings on a shipment report. Processors are required to report groundfish landings on a separate product transfer report (PTR). Those processors that are also Registered Buyers must submit a PTR for groundfish and a shipment report for IFQ halibut and sablefish and for CDQ halibut. The IFQ fishing industry has expressed concern that this report is duplicative. The purpose of this action is to improve the transfer procedure paperwork and to eliminate some occurrence of duplication. For example under current regulations, an offload of IFQ halibut or sablefish generally also includes incidental groundfish harvest. A PTR is created for the incidental groundfish; a shipment report is created for the IFQ halibut or sablefish. In other words, two pieces of paper document one offload. With the proposed combination of the IFQ shipment report and the groundfish product transfer report, both the IFQ fish and the incidental groundfish would be reported on one document.

As proposed, the preferred alternative for action 4 would directly regulate Registered Buyers, all of whom are assumed to be "small business," based upon RFA criteria. NMFS/RAM issued 694 permits for Registered Buyers in 2001, and, of these, 215 reported landings. Therefore, some multiple of 215 shipment reports and an estimated two-thirds of these, or 144 PTRs, were submitted by Registered Buyers in 2001. The proposed change would eliminate the 144 PTRs.

This action would impose no adverse impacts on small entities, and it does not appear to impose new record keeping requirements or duplicate, overlap, or conflict with other Federal rules.

A copy of this analysis is available from NMFS (see **ADDRESSES**).

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Recordkeeping and reporting requirements.

Dated: January 6, 2003.

Rebecca Lent,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set forth in the preamble, 50 CFR part 679 is proposed to be amended as follows:

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

1. The authority citation for 50 CFR part 679 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.*, 1801 *et seq.*, and 3631 *et seq.*

2. In § 679.2, revise in alphabetical order the definitions for "Authorized officer," "Clearing officer," "IFQ landing," "IFQ Permit Holder," "IFQ Registered Buyer," and "Transfer" to read as follows:

§ 679.2 Definitions.

Authorized officer means:

(1) Any commissioned, warrant, or petty officer of the USCG;

(2) Any special agent or fishery enforcement officer of NMFS;

(3) Any officer designated by the head of any Federal or state agency that has entered into an agreement with the Secretary and the Commandant of the USCG to enforce the provisions of the Magnuson-Stevens Act or any other statute administered by NOAA; or

(4) Any USCG personnel accompanying and acting under the direction of any person described in paragraph (1) of this definition.

* * * * *

Clearing officer means, a NOAA Fisheries Office for Law Enforcement (OLE) special agent, an OLE fishery enforcement officer, or an OLE enforcement aide.

* * * * *

IFQ landing means, the unloading or transferring of any IFQ halibut, CDQ halibut, IFQ sablefish, or products thereof from the vessel that harvested such fish or the removal from the water of a vessel containing IFQ halibut, CDQ halibut, IFQ sablefish, or products thereof.

IFQ permit holder means the person identified on an IFQ permit, at the time a landing is made, as defined at § 679.4(d)(1).

* * * * *

IFQ registered buyer means the person identified on a Registered Buyer permit, as defined at § 679.4(d)(3).

* * * * *

Transfer means:

(1) *Groundfish fisheries of the GOA and BSAI.* Any loading, offloading, shipment or receipt of any groundfish product by a mothership, catcher/processor, shoreside processor, or stationary floating processor, including quantities transferred inside or outside the EEZ, within any state's territorial waters, within the internal waters of any state, at any shoreside processor, stationary floating processor, or at any offsite meal reduction plant.

(2) *IFQ halibut, CDQ halibut, IFQ sablefish.* Any loading, offloading, shipment or receipt of any IFQ halibut, CDQ halibut, IFQ sablefish product, including quantities transferred inside or outside the EEZ, within any state's territorial waters, within the internal waters of any state, at any shoreside processor, stationary floating processor, or at any offsite meal reduction plant.

* * * * *

3. In § 679.4, paragraph (d) is revised to read as follows:

§ 679.4 Permits.

* * * * *

(d) *IFQ permits, IFQ cards, and IFQ Registered Buyer permits.* The permits and cards described in this section are required in addition to the permit and licensing requirements prescribed in the annual management measures published in the **Federal Register** pursuant to § 300.62 of chapter III of this title and in the permit requirements of this section.

(1) *IFQ permit.* (i) An IFQ permit authorizes the person identified on the permit to harvest IFQ halibut or IFQ sablefish from a specified IFQ regulatory area at any time during an open fishing season during the fishing year for which the IFQ permit is issued until the amount harvested is equal to the amount specified under the permit, or until it is revoked, suspended, or modified under 15 CFR part 904.

(ii) A legible copy of any IFQ permit that specifies the IFQ regulatory area and vessel length overall from which IFQ halibut or IFQ sablefish may be harvested by the IFQ permit holder must be carried on board the vessel used by the permitted person to harvest IFQ halibut or IFQ sablefish at all times that such fish are retained on board.

(2) *IFQ card.* (i) An IFQ card authorizes the individual identified on the card to land IFQ halibut or IFQ sablefish for debit against the specified IFQ permit until the card expires, or is revoked, suspended, or modified under 15 CFR part 904, or cancelled on request of the IFQ permit holder.

(ii) An original IFQ card issued by the Regional Administrator must be on board the vessel that harvests IFQ halibut or IFQ sablefish at all times that such fish are retained on board. Except as specified in § 679.42(d), an individual that is issued an IFQ card must remain aboard the vessel used to harvest IFQ halibut or IFQ sablefish with that card during the IFQ fishing trip and at the landing site during all IFQ landings.

(iii) Each IFQ card issued by the Regional Administrator will display an IFQ permit number, the name of the individual authorized by the IFQ permit holder to land IFQ halibut or IFQ sablefish for debit against the permit holder's IFQ. In addition, IFQ cards issued to hired masters representing permit holders per § 679.42(i) and (j) will also display the ADF&G vessel identification number of the authorized vessel.

(3) *Registered Buyer permit.* (i) A Registered Buyer permit authorizes the person identified on the permit to receive and make an IFQ landing by an IFQ permit or card holder at any time during the fishing year for which it is issued until the Registered Buyer permit expires, or is revoked, suspended, or modified under 15 CFR part 904.

(ii) A Registered Buyer permit is required of:

(A) Any person who receives IFQ halibut, CDQ halibut or IFQ sablefish from the person(s) who harvested the fish;

(B) Any person who harvests IFQ halibut or IFQ sablefish and transfers such fish in a dockside sale, outside of an IFQ regulatory area, or outside the State of Alaska.

(C) A vessel operator who submits a Departure Report (*see* § 679.5(l)(4))

(iii) A Registered Buyer permit is issued on a 3-year cycle by the Regional Administrator to persons that have a Registered Buyer application approved by the Regional Administrator.

(iv) A Registered Buyer permit is in effect from the date of issuance through the end of the current NMFS 3-year cycle, unless it is revoked, suspended, or modified under § 600.735 or § 600.740 of this chapter.

(4) *Issuance.* The Regional Administrator will renew IFQ permits and cards annually or at other times as needed to accommodate transfers, revocations, appeals resolution, and other changes in QS or IFQ holdings, and designation of masters under § 679.42.

(5) *Transfer.* The quota shares and IFQ issued under this section are not transferable, except as provided under § 679.41. IFQ cards and Registered Buyer permits issued under this paragraph (d) are not transferable.

(6) *Inspection.* (i) *IFQ permit and card.* The IFQ cardholder must present a copy of the IFQ permit and the original IFQ card for inspection on request of any authorized officer or Registered Buyer receiving IFQ species. Nothing in this paragraph would prevent an individual who is issued an IFQ card from being absent from the vessel used to harvest IFQ halibut or IFQ sablefish from the time the vessel arrives at the point of landing and the commencement of landing.

(ii) *Registered Buyer permit.* A legible copy of the Registered Buyer permit must be present at the location of an IFQ landing and must be made available by the Registered Buyer's representative for inspection on request of any authorized officer.

(7) *Validity.* An IFQ permit issued under this part is valid only if all IFQ fee liability of the IFQ permit holder that is due as a result of final agency action has been paid as specified in §§ 679.45 and 679.5(l)(7)(ii).

* * * * *

4. In § 679.5, paragraphs (a)(1)(ii)(A) and (B), (a)(15), (g), (k), and (l) are revised to read as follows:

§ 679.5 Recordkeeping and reporting.

(a) * * *

(1) * * *

(ii) * * *

(A) *Groundfish received.* A shoreside processor, stationary floating processor, mothership, or buying station subject to recordkeeping and reporting requirements must report all groundfish and prohibited species received, including fish received from vessels not required to have a federal fisheries permit; and fish received under contract for handling or processing for another processor.

(B) *Groundfish transferred.* A shoreside processor, stationary floating processor, or mothership subject to recordkeeping and reporting requirements must report all groundfish and prohibited species transferred out of the facility or off the vessel.

* * * * *

(15) *IFQ/groundfish transfer comparison.* The operator, manager, or Registered Buyer may refer to the following table for submittal, issuance, and possession requirements for each type of IFQ or non-IFQ groundfish transfer activity. The locations of the paragraphs that describe the requirements of each activity are also given.

	Submittal			Issue		Possess
	VAR	PTR	IFQ Transshipment Authorization	IFQ Departure Report	IFQ Dockside Sale Receipt	IFQ Landing Report Receipt
(i) If a catcher vessel, mothership or catcher/processor leaving or entering Alaska with non-IFQ groundfish and no IFQ product onboard (*see* § 679.5(k)))	X					
(ii) If a vessel leaving Alaska with IFQ sablefish or IFQ halibut but no other non-IFQ groundfish onboard (*see* § 679.5(l)(4))				X		
(iii) If a vessel leaving Alaska with IFQ sablefish or IFQ halibut and other non-IFQ groundfish onboard (*see* § 679.5(k) and 679.5(l)(4))	X			X		
(iv) Transfer of non-IFQ groundfish (*see* § 679.5(g))		X				
(v) Transfer of IFQ species from an IFQ Registered Buyer (*see* § 679.5(g))		X				
(vi) Transfer of IFQ species from IFQ Cardholder with a IFQ Registered Buyer permit in a dockside sale (*see* § 679.5(l)(5))					XXX	
(vii) Transfer of IFQ species from landing site to IFQ Registered Buyer's processing facility (*see* § 679.5(g)(1)(vi))						XX
(viii) Transfer of IFQ processed product between vessels (*see* § 679.5(l)(3))			XXXX			

X Indicates under what circumstances each report is submitted;
XX Indicates that the document must accompany the transfer of IFQ species from landing site to processor;
XXX Indicates receipt must be issued to each receiver in a dockside sale;
XXXX Indicates authorization must be obtained.

* * * * *

(g) *Product Transfer Report (PTR).* (1) *General Requirements.* Except as provided in paragraphs (g)(1)(i) through (vi) of this section, the operator of a mothership or catcher/processor, the manager of a shoreside processor or stationary floating processor must complete and submit a separate PTR for each transfer (shipment or receipt) of groundfish and donated prohibited species caught in groundfish fisheries. In addition, IFQ Registered Buyers must submit a separate PTR for each transfer (shipment only) of halibut or sablefish for which the Registered Buyer submitted an IFQ or CDQ Landing Report or was required to submit an IFQ or CDQ Landing Report. A PTR is not required to accompany a shipment or transfer.

(i) *Exemption: Bait sales (non-IFQ groundfish only).* The operator or manager may aggregate individual sales or transfers of non-IFQ groundfish to vessels for bait purposes during a day onto one PTR when recording the amount of such bait product leaving a facility that day.

(ii) *Exemption: Retail sales.* For retail sales destined for human consumption and weighing less than 10 lb or 4.5 kilograms, the operator, manager, or IFQ Registered Buyer may aggregate and record on one PTR, the amount of such retail product transferred during one calendar day.

(iii) *Exemption: Wholesale sales (non-IFQ groundfish only).* The operator or manager may aggregate and record on one PTR, wholesale sales of non-IFQ groundfish by species when recording the amount of such wholesale species leaving a facility in one calendar day, if invoices detailing destinations for all of the product are available for inspection by an authorized officer.

(iv) *Exemption: IFQ Registered Buyers.* IFQ Registered Buyers are not required to submit a PTR for "receipt" of IFQ halibut, CDQ halibut, or IFQ sablefish.

(v) *Exemption: Dockside sales (IFQ only).* (A) A person holding a valid IFQ permit, IFQ card, and IFQ Registered Buyer permit may conduct a dockside sale of IFQ halibut or IFQ sablefish to a person who has not been issued an IFQ Registered Buyer permit.

(B) An IFQ Registered Buyer conducting dockside sales must issue a receipt to each individual receiving IFQ halibut or IFQ sablefish in lieu of a PTR. This receipt must include the date of sale or transfer, the IFQ Registered Buyer permit number, and the weight by product of the IFQ sablefish or IFQ halibut transferred.

(vi) *Exemption: transfer directly from the landing site to a processing facility (IFQ only).* A PTR is not required for transportation of unprocessed IFQ species directly from the landing site to a processing facility for processing the IFQ species, provided the following conditions are met:

(A) A copy of the IFQ Landing Report receipt (Internet or transaction terminal

receipt) documenting the IFQ landing accompanies the offloaded IFQ species while in transit.

(B) A copy of the IFQ Landing Report receipt is available for inspection by an authorized officer.

(C) For IFQ species transported in this manner, the IFQ Registered Buyer submitting the IFQ Landing Report must still complete a PTR for each transfer of IFQ halibut and IFQ sablefish from the processing facility.

(2) *Time limits and submittal.* The operator of a mothership or catcher/processor, an IFQ Registered Buyer, or manager of a shoreside processor or stationary floating processor must:

(i) *Record on PTR.* Record all product transfer information on a PTR within 2 hours of the completion of the transfer.

(ii) *Submit original PTR.* Submit by FAX or electronic file a copy of each PTR to OLE, Juneau, AK (907–586–7313), by 1200 hours, A.l.t., on the Tuesday following the end of the applicable weekly reporting period in which the transfer occurred.

(iii) *Submit revised PTR.* Ensure that, if any information on the original PTR changes prior to the first destination of the shipment, a revised PTR is submitted by FAX or electronic file to OLE, Juneau, AK (907–586–7313), by 1200 hours, A.l.t., on the Tuesday following the end of the applicable weekly reporting period in which the change occurred.

(3) *General information.* The operator, manager, or IFQ Registered Buyer must record on a PTR:

(i) Whether original or revised PTR;

(ii) Whether you are the shipper or receiver;

(iii) Whether the shipment or receipt is for any combination of non-IFQ groundfish, IFQ products, or CDQ halibut products and record information for each product transferred per paragraph 679.5(g)(4) through (7). If shipment consists of donated prohibited species caught while participating in groundfish fisheries, mark the box "groundfish."

(4) *Receiver information.* If documenting receipt of non-IFQ groundfish, the operator or manager must check "Receiver'; enter your representative's name, telephone number, and FAX number; start and finish date and time of product transfer, position of product transfer (if applicable), port or location of transfer and:

Enter under "Receiver"	Enter under "Shipper"
Your processor's name and Federal fisheries or Federal processor permit.	Other processor's name, and Federal fisheries or Federal processor permit (if applicable).

(5)(i) *Shipper Information.* If documenting transfer of product away from your facility or transfer of product off of your vessel, the operator, manager, or IFQ Registered Buyer must enter your representative's name, telephone number, and FAX number, check "Shipper" and:

If you are shipping	Enter under "Shipper"
(A) Non-IFQ groundfish	Your processor's name, Federal fisheries or Federal processor permit number.
(B) IFQ halibut, CDQ halibut or IFQ sablefish	IFQ Registered Buyer name and permit number.
(C) Both non-IFQ groundfish and IFQ halibut, CDQ halibut or IFQ sablefish on the same PTR.	Your processor's name and Federal fisheries permit number or Federal processor permit number; or your IFQ Registered Buyer's name and permit number.

(ii) Using descriptions from the following table, enter receiver information, date and time of product transfer, location of product transfer *e.g.*, port, position coordinates, or city), mode of transportation, and intended route.

If you are the shipper and ...	Then enter ...			
	Receiver	Date & Time of Product Transfer	Location of Product Transfer	Mode of Transportation & Intended Route
(A) Receiver is on land and transfer involves one van, truck, or vehicle.	Receiver name and Federal fisheries or Federal processor permit number (if any).	Date and time when shipment leaves the plant.	Port or city of product transfer.	Name of the shipping company; destination city and state or foreign country.
(B) Receiver is on land and transfer involves multiple vans or trucks.	Receiver name and Federal fisheries or Federal processor permit number (if any).	Date and time when loading of vans or trucks is completed each day.	Port or city of product transfer.	Name of the shipping company; destination city and state or foreign country.
(C) Receiver is on land and transfer involves one airline flight.	Receiver name and Federal fisheries or Federal processor permit number (if any).	Date and time when shipment leaves the plant.	Port or city of product transfer.	Name of the airline company; destination airport city and state.
(D) Receiver is on land and transfer involves multiple airline flights.	Receiver name and Federal fisheries or Federal processor permit number (if any).	Date and time of shipment when the last airline flight of the day leaves.	Port or city of product transfer.	Name of the airline company(s); destination airport(s) city and state.
(E) Receiver is a vessel and transfer occurs at sea.	Vessel name and call sign	Start and finish dates and times of transfer.	Transfer position coordinates in latitude and longitude, in degrees and minutes.	The first destination of the vessel.

If you are the shipper and ...	Then enter ...			
	Receiver	Date & Time of Product Transfer	Location of Product Transfer	Mode of Transportation & Intended Route
(F) Receiver is a vessel and transfer takes place in port.	Vessel name and call sign	Start and finish dates and times of transfer.	Port or position of product transfer.	The first destination of the vessel.
(G) Receiver is an agent (buyer, distributor, or shipping agent) and transfer is in a containerized van.	Agent name and location (city, state).	Transfer start and finish dates and times.	Port, city, or position of product transfer.	Name (if available) of the vessel transporting the van; destination port.
(H) You are aggregating individual retail sales for human consumption in quantities less than 10 lb (0.0045 mt) per sale during a day onto one PTR.	"RETAIL SALES"	Time of the first sale of the day; time of the last sale of the day.	Port or city of product transfer.	n/a.
(I) You are aggregating individual bait sales during a day onto one PTR (non-IFQ groundfish only).	"BAIT SALES"	Time of the first sale of the day; time of the last sale of the day.	Port or city of product transfer.	n/a/.
(J) *Non-IFQ Groundfish only.* You are aggregating wholesale non-IFQ groundfish product sales by species during a single day onto one PTR and maintaining invoices detailing destinations for all of the product for inspection by an authorized officer.	"WHOLESALE SALES" ...	Time of the first sale of the day; time of the last sale of the day.	Port or city of product transfer.	n/a.

(6) *Products shipped or received.* The operator, manager, or IFQ Registered Buyer must record the following information for each product transferred:

(i) *Species code and product code.* The species code and product code (Tables 1 and 2 to this part).

(ii) *Species weight.* Use only if recording two or more species with one or more product types contained within the same production unit. Enter the actual scale weight of each product of each species to the nearest kilogram or pound (indicate which). If not applicable, enter "n/a" in the species weight column. If using more than one line to record species in one carton, use a brace "}" to tie the carton information together.

(iii) *Number of units.* Total number of production units (blocks, trays, pans, individual fish, boxes, or cartons; if iced, enter number of totes or containers).

(iv) *Unit weight.* Unit weight (average weight of single production unit as listed in "No. of Units" less packing materials) for each species and product code in kilograms or pounds (indicate which).

(v) *Total weight.* Total weight for each species and product code of shipment less packing materials in kilograms or pounds (indicate which).

(7) *Total or partial offload.* (i) If a mothership or catcher/processor, the operator must indicate whether the transfer is a total or partial offload.

(ii) If a partial offload, for the products remaining on board after the transfer, the operator must enter: species code, product code, and total product weight to the nearest kilogram or pound (indicate which) for each product.

* * * * *

(k) *U.S. Vessel Activity Report (VAR)*—(1) *Who needs to submit a VAR?*—(i) *Fish or fish product onboard.* Except as noted in paragraph (k)(1)(iv) of this section, the operator of a catcher vessel greater than 60 ft (18.3 m) LOA, a catcher/processor, or a mothership required to hold a Federal fisheries permit issued under this part and carrying fish or fish product onboard must complete and submit a VAR by FAX or electronic file to OLE, Juneau, AK (907–586–7313) before the vessel crosses the seaward boundary of the EEZ off Alaska or crosses the U.S.-Canadian international boundary between Alaska and British Columbia.

(ii) *Combination of non-IFQ groundfish, IFQ halibut, CDQ halibut, and IFQ sablefish.* If a vessel is carrying non-IFQ groundfish and IFQ halibut, CDQ halibut or IFQ sablefish, the operator must submit a VAR in addition to an IFQ Departure Report per paragraph (l)(4) of this section.

(iii) *Revised VAR.* If fish or fish products are landed at a port other than the one specified on the VAR, the vessel operator must submit a revised VAR showing the actual port of landing before any fish are offloaded.

(iv) *Exemption: IFQ Departure Report.* If a vessel is carrying only IFQ halibut, CDQ halibut, or IFQ sablefish onboard and the operator has submitted an IFQ Departure Report per paragraph (l)(4) of this section, a VAR is not required.

(2) *Information required.* Whether original or revised VAR; name and Federal fisheries permit number of vessel; type of vessel (whether catcher vessel, catcher/processor, or mothership); and representative information (see paragraph (b)(2) of this section).

(i) *Return report.* "Return," for purposes of this paragraph, means returning to Alaska. If the vessel is crossing into the seaward boundary of the EEZ off Alaska or crossing the U.S.-Canadian international boundary between Alaska and British Columbia into U.S. waters, indicate a "return" report and enter:

(A) Intended Alaska port of landing (see Table 14 to this part);

(B) Estimated date and time (hour and minute, Greenwich mean time) the vessel will cross;

(C) The estimated position coordinates the vessel will cross.

(ii) *Depart report.* "Depart" means leaving Alaska. If the vessel is crossing out of the seaward boundary of the EEZ off Alaska or crossing the U.S.-Canadian international boundary between Alaska and British Columbia into Canadian waters, indicate a "depart" report and enter:

(A) The intended U.S. port of landing or country other than the United States;

(B) Estimated date and time (hour and minute, Greenwich mean time) the vessel will cross;

(C) The estimated position coordinates in latitude and longitude the vessel will cross.

(iii) *The Russian Zone.* Indicate whether your vessel is returning from fishing in the Russian Zone or is departing to fish in the Russian Zone.

(iv) *Fish or fish products.* For all fish or fish products (including non-groundfish) on board the vessel, enter: Harvest zone code; species codes; product codes; and total fish product weight in lbs or to the nearest 0.001 mt.

(l) *IFQ halibut, CDQ halibut or IFQ sablefish recordkeeping and reporting.* In addition to the recordkeeping and reporting requirements in this section and as prescribed in the annual management measures published in the **Federal Register** pursuant to §300.62 of this title, the following reports and authorizations are required, when applicable: IFQ Prior Notice of Landing, Product Transfer Report (*see* § 679.5(g) of this section), IFQ Landing Report, IFQ Transshipment Authorization, and IFQ Departure Report.

(1) *IFQ Prior Notice of Landing (PNOL)*—(i) *Time limits and submittal.* (A) Except as provided in paragraph (l)(1)(iv) of this section, the operator of any vessel making an IFQ landing must notify OLE, Juneau, AK, no fewer than 3 hours before landing IFQ halibut or IFQ sablefish, unless permission to commence an IFQ landing within 3 hours of notification is granted by a clearing officer.

(B) A PNOL must be made to the toll-free telephone number 800–304–4846 or to 907–586–7163 between the hours of 0600 hours, A.l.t., and 2400 hours, A.l.t.

(ii) *Revision to PNOL.* The operator of any vessel wishing to land IFQ halibut or IFQ sablefish before the date and time (A.l.t.) reported in the PNOL or later than 2 hours after the date and time (A.l.t.) reported in the PNOL must submit a new PNOL as described in paragraphs (l)(1)(i) and (iii) of this section.

(iii) *Information required.* A PNOL must include the following:

(A) Vessel name and ADF&G vessel registration number;

(B) Port of landing and port code from Table 14 to this part;

(C) Exact location of landing within the port (*i.e.*, dock name, harbor name, facility name, or geographical coordinates);

(D) The date and time (A.l.t.) that the landing will take place;

(E) Species and estimated weight (in pounds) of the IFQ halibut or IFQ sablefish that will be landed;

(F) IFQ regulatory area(s) in which the IFQ halibut or IFQ sablefish were harvested; and

(G) IFQ permit number(s) that will be used to land the IFQ halibut or IFQ sablefish and Registered Buyer name.

(iv) *Exemption.* An IFQ landing of halibut of 500 lb or less of IFQ weight determined pursuant to § 679.42(c)(2) and concurrent with a legal landing of salmon or a legal landing of lingcod harvested using dinglebar gear is exempt from the PNOL required by this section.

(2) *IFQ landing report*—(i) *Requirements*—(A) *All IFQ catch debited.* All IFQ halibut, CDQ halibut, and IFQ sablefish catch must be weighed and debited from the IFQ permit holder's account under which the catch was harvested.

(B) *Single offload site for halibut.* The vessel operator who lands IFQ halibut or CDQ halibut must continuously and completely offload at a single offload site all halibut on board the vessel.

(C) *Single offload site for sablefish.* The vessel operator who lands IFQ sablefish must continuously and completely offload at a single offload site all sablefish on board the vessel.

(D) *Remain at landing site.* Once landing operations have commenced, the IFQ cardholder and the harvesting vessel may not leave the landing site until the IFQ account is properly debited (as defined in paragraph (l)(2)(iv)(D) of this section).

(E) *No movement of IFQ halibut, CDQ halibut, or IFQ sablefish.* The offloaded IFQ halibut, CDQ halibut, or IFQ sablefish may not be moved from the landing site until the IFQ Landing Report is received by OLE, Juneau, AK, and the IFQ cardholder's account is properly debited (as defined in paragraph (l)(2)(iv)(D) of this section).

(ii) *Time limits.* (A) A landing of IFQ halibut, CDQ halibut, or IFQ sablefish may commence only between 0600 hours, A.l.t., and 1800 hours, A.l.t., unless permission to land at a different time (waiver) is granted in advance by a clearing officer.

(B) A Registered Buyer must submit a completed IFQ Landing Report within 6 hours after all IFQ halibut, CDQ halibut, or IFQ sablefish are landed and prior to shipment or transfer of said fish from the landing site.

(iii) *Information required.* The Registered Buyer must enter accurate information contained in a complete IFQ Landing Report as follows:

(A) Date and time (A.l.t.) of the IFQ landing;

(B) Location of the IFQ landing (port code or if at sea, lat. and long.);

(C) Name and permit number of the IFQ card holder;

(D) Name and permit number of Registered Buyer receiving the IFQ species;

(E) The harvesting vessel's name and ADF&G vessel registration number;

(F) Gear type used to harvest IFQ species;

(G) Alaska State fish ticket number(s) for the landing;

(H) ADF&G statistical area of harvest reported by the IFQ cardholder;

(I) If ADF&G statistical area is bisected by a line dividing two IFQ regulatory areas, the IFQ regulatory area of harvest reported by the IFQ cardholder;

(J) For each ADF&G statistical area of harvest, the species codes, product codes, and initial accurate scale weight (in pounds or to the nearest thousandth of a metric ton) made at the time of offloading for IFQ species sold and retained. Exception: if the vessel operator is the Registered Buyer reporting the IFQ landing, the accurate weight of IFQ sablefish processed product obtained before the offload may be substituted for the initial accurate scale weight at time of offload.

(K) Whether ice and slime are present on the fish as offloaded from the vessel. Fish which have been washed prior to weighing or which have been offloaded from refrigerated salt water are not eligible for a 2-percent deduction for ice and slime and must indicate NO SLIME & ICE.

(L) If IFQ halibut is incidental catch concurrent with legal landing of salmon or concurrent with legal landing of lingcod harvested using dinglebar gear.

(M) After the Registered Buyer enters the landing data in the transaction terminal or the Internet submission form(s) and a receipt is printed, the Registered Buyer, or his/her representative, and the IFQ cardholder must sign the receipt(s) to acknowledge the accuracy of the Landing Report.

(iv) *Submittals*—(A) *Transaction terminal.* Except as indicated in paragraphs (l)(2)(iv)(B) and (C) of this

section, electronic Landing Reports must be submitted to OLE, Juneau, AK, using magnetic strip cards issued by NMFS, Alaska Region, and transaction terminals with printers driven by custom-designed software as provided and/or specified by NMFS, Alaska Region. The Registered Buyer must locate or procure a transaction terminal and report as required. The IFQ cardholder must initiate a Landing Report by using his or her own magnetic card and personal identification number (PIN).

(B) *Internet.* Electronic Landing Reports may be submitted to OLE, Juneau, AK, using Internet submission methods as provided and/or specified by NMFS, Alaska Region. It is the responsibility of the Registered Buyer to obtain at his or her own expense, hardware, software and Internet connectivity to support Internet submissions and report as required.

(C) *Manual landing report.* Waivers from the transaction terminal or Internet reporting requirement can only be granted in writing on a case-by-case basis by a local clearing officer. If a waiver is granted, manual landing instructions must be obtained from OLE, Juneau, AK, at 800–304–4846. Registered Buyers must complete and submit manual Landing Reports by FAX to OLE, Juneau, AK, at 907–586–7313. When a waiver is issued, the following additional information is required: Whether the manual Landing Report is an original or revised; and name, telephone number, and FAX number of individual submitting the manual Landing Report.

(D) *Properly debited landing.* A properly concluded transaction terminal receipt, printed Internet submission receipt, or manual Landing Report receipt received by FAX from OLE, Juneau, AK, and signed by an OLE representative constitutes confirmation that OLE received the Landing Report and that the cardholder's account was properly debited.

(3) *Transshipment authorization.* (i) No person may transship processed IFQ halibut or IFQ sablefish between vessels without authorization by a local clearing officer. Authorization from a local clearing officer must be obtained for each instance of transshipment at least 24 hours before the transshipment is intended to commence.

(ii) *Information required.* To obtain a Transshipment Authorization, the vessel operator must provide the following information to the clearing officer:

(A) Date and time (A.l.t.) of transshipment;

(B) Location of transshipment;

(C) Name and ADF&G vessel registration number of vessel offloading transshipment;

(D) Name of vessel receiving the transshipment;

(E) Product destination;

(F) Species and product type codes;

(G) Total product weight;

(H) Time (A.l.t.) and date of the request;

(I) Name, telephone number, FAX number (if any) for the person making the request.

(4) *IFQ Departure Report*—(i) *General Requirements*—(A) *Time limit and submittal.* A vessel operator who intends to make an IFQ halibut, CDQ halibut, or IFQ sablefish landing at any location other than in an IFQ regulatory area or in the State of Alaska must submit an IFQ Departure Report, by telephone, to OLE, Juneau, AK, at 800–304–4846 or 907–586–7163 between the hours of 0600 hours, A.l.t., and 2400 hours, A.l.t.

(B) *Completion of fishing.* A vessel operator must submit an IFQ Departure Report after completion of all fishing and prior to departing the waters of the EEZ adjacent to the jurisdictional waters of the State of Alaska, the territorial sea of the State of Alaska, or the internal waters of the State of Alaska when IFQ halibut, CDQ halibut, or IFQ sablefish are on board.

(C) *IFQ Registered Buyer permit.* A vessel operator submitting an IFQ Departure Report must have an IFQ Registered Buyer permit.

(D) *First landing of any species.* A vessel operator submitting an IFQ Departure Report must submit IFQ Landing Reports for all IFQ halibut, CDQ halibut, and IFQ sablefish on board at the same time and place as the first landing of any IFQ species.

(E) *IFQ permits on board.* A vessel operator submitting an IFQ Departure Report must ensure that one or more IFQ cardholders are on board with enough remaining IFQ balance to harvest amounts of IFQ halibut, CDQ halibut or IFQ sablefish equal to or greater than all IFQ halibut, CDQ halibut and IFQ sablefish on board.

(ii) *Required information.* When submitting an IFQ Departure Report, the vessel operator must provide the following information:

(A) Intended date, time (A.l.t.), and location of landing;

(B) Vessel name and ADF&G registration number;

(C) Vessel operator's name and IFQ Registered Buyer permit number;

(D) Halibut IFQ Permit numbers and sablefish IFQ Permit numbers of IFQ cardholders on board;

(E) Halibut Regulatory Areas or Sablefish Regulatory Areas of harvest or both;

(F) Estimated total weight of IFQ halibut or CDQ halibut on board (lb/kg/mt);

(G) Estimated total weight of IFQ sablefish on board (lb/kg/mt).

(5) *Landing verification, inspection and record retention*—(i) *Verification and inspection.* Each IFQ landing and all fish retained on board the vessel making an IFQ landing are subject to verification and inspection by authorized officers.

(ii) *Record retention.* The IFQ cardholder must retain a legible copy of all Landing Report receipts and the Registered Buyer must retain a copy of all reports and receipts required by this section and make them available for inspection by an authorized officer:

(A) Until the end of the fishing year during which the records were made and for as long thereafter as fish or fish products recorded are retained; and

(B) Upon request of an authorized officer for 3 years after the end of the fishing year during which the records were made.

(6) *Sampling*—(i) Each IFQ halibut landing and all fish retained on board a vessel making an IFQ landing are subject to sampling by NMFS-authorized observers.

(ii) Each IFQ halibut landing is subject to sampling for biological information by persons authorized by the IPHC.

* * * * *

5. In § 679.7, paragraphs (f)(6) and (f)(12) are revised to read as follows:

§ 679.7 Prohibitions.

* * * * *

(f) * * *

(6) *Landing*—(i) *IFQ or CDQ card.* Make an IFQ halibut, IFQ sablefish, or CDQ halibut landing without an IFQ or CDQ card in the name of the individual making the landing.

(ii) *Hired master.* Make an IFQ halibut, IFQ sablefish, or CDQ halibut landing without an IFQ or CDQ card listing the name of the hired master and the name of the vessel making the landing.

* * * * *

(12) Commence an IFQ landing without a Prior Notice of Landing (PNOL), before the date and time stated on the PNOL, or more than 2 hours after the date and time stated on the PNOL, except as provided in § 679.5(l)(1).

* * * * *

6. In § 679.32, paragraph (f)(2)(iv) is revised to read as follows:

§ 679.32 Groundfish and halibut CDQ catch monitoring.

* * * * *

(f) * * *

(2) * * *

(iv) *Landings.* A person may land halibut CDQ only if he or she has a valid CDQ card, and that person may deliver halibut CDQ only to a person with a valid Registered Buyer permit. The person holding the halibut CDQ card and the Registered Buyer must comply with the requirements of § 679.5(g) and (l).

* * * * *

7. In § 679.42, paragraphs (a), (c)(1)(ii), (c)(1)(iv), and (c)(2)(i) are revised to read as follows:

§ 679.42 Limitations on use of QS and IFQ.

(a) *IFQ regulatory area and vessel category.* (1) The QS or IFQ specified for one IFQ regulatory area must not be used in a different IFQ regulatory area.

(2) Except as provided in § 679.41(i)(1) of this part, the IFQ assigned to one vessel category must not be used to harvest IFQ species on a vessel of a different vessel category.

(3) Notwithstanding § 679.40(a)(5)(ii), IFQ assigned to vessel Category B must not be used on any vessel less than or equal to 60 ft (18.3 m) LOA to harvest IFQ halibut in IFQ regulatory area 2C or IFQ sablefish in the IFQ regulatory area east of 140° W. long. unless such IFQ derives from blocked QS units that result in IFQ of less than 5,000 lb (2.268 mt), based on the 1996 TAC for fixed gear specified for the IFQ halibut fishery and the IFQ sablefish fishery in each of these two regulatory areas.

* * * * *

(c) * * *

(1) * * *

(ii) Be aboard the vessel at all times during the fishing trip and present during the landing.

* * * * * *

(iv) Sign the IFQ Landing Report required by § 679.5(l)(2)(iii)(M) or § 679.5(l)(2)(iv)(C).

(2) * * *

(i) Except as provided in § 679.5(l)(2)(iii)(J), if offload of unprocessed IFQ halibut, CDQ halibut or IFQ sablefish from a vessel, the scale weight of the halibut or sablefish product actually measured at the time of offload, as required by § 679.5(l)(2)(iii) to be included in the IFQ Landing Report.

* * * * *

8. In § 679.43, paragraph (c)is revised to read as follows:

§ 679.43 Determinations and appeals.

* * * * *

(c) *Submission of appeals.* Appeals must be in writing and must be mailed to the: National Marine Fisheries Service, Office of Administrative Appeals (OAA), P. O. Box 21668, Juneau, AK 99802–1668, or delivered to National Marine Fisheries Service, Attention: Appeals (OAA), 709 W. 9th Street, Room 453, Juneau, AK 99801.

* * * * *

9. In part 679, Tables 14a, 14b, and 14c are revised to read as follows:

TABLE 14A TO PART 679. PORT OF LANDING CODES, ALASKA [1]

Port name	NMFS code	ADF&G code
Adak	186	ADA
Akutan	101	AKU
Akutan Bay	102	
Alitak	103	ALI
Anchor Point	104	
Anchorage	105	ANC
Angoon	106	ANG
Aniak		ANI
Anvik		ANV
Atka	107	ATK
Auke Bay	108	
Baranof Warm Springs.	109	
Beaver Inlet	110	
Bethel		BET
Captains Bay	112	
Chefornak	189	
Chignik	113	CHG
Chinitna Bay	114	
Cordova	115	COR
Craig	116	CRG
Dillingham	117	DIL
Douglas	118	
Dutch Harbor/Unalaska.	119	DUT
Edna Bay	121	
Egegik	122	EGE
Ekuk		EKU
Elfin Cove	123	ELF
Emmonak		EMM
Excursion Inlet	124	XIP
False Pass	125	FSP
Fairbanks		FBK
Galena		GAL
Glacier Bay		GLB
Glennallen		GLN
Gustavus	127	GUS
Haines	128	HNS
Halibut Cove	130	
Hollis	131	
Homer	132	HOM
Hoonah	133	HNH
Hooper Bay	188	
Hydaburg		HYD
Hyder	134	HDR
Ikatan Bay	135	
Juneau	136	JNU
Kake	137	KAK
Kaltag		KAL
Kasilof	138	KAS
Kenai	139	KEN
Kenai River	140	
Ketchikan	141	KTN
King Cove	142	KCO
King Salmon	143	KNG
Kipnuk	144	
Klawock	145	KLA
Kodiak	146	KOD
Kotzebue		KOT
La Conner		LAC
Mekoryuk	147	
Metlakatla	148	MET
Moser Bay		MOS
Naknek	149	NAK
Nenana		NEN
Nikiski (or Nikishka)	150	NIK
Ninilchik	151	NIN
Nome	152	NOM
Nunivak Island		NUN
Old Harbor	153	OLD
Other Alaska [1]	499	UNK
Pelican	155	PEL
Petersburg	156	PBG
Point Baker	157	
Port Alexander	158	PAL
Port Armstrong		PTA
Port Bailey	159	PTB
Port Graham	160	GRM
Port Lions		LIO
Port Moller		MOL
Port Protection	161	
Portage Bay (Petersburg).	162	
Quinhagak	187	
Resurrection Bay	163	
Sand Point	164	SPT
Savoonga	165	
Seldovia	166	SEL
Seward	167	SEW
Sitka	168	SIT
Skagway	169	SKG
Soldotna		SOL
St. George	170	STG
St. Lawrence	171	
St. Mary		STM
St. Paul	172	STP
Tee Harbor	173	
Tenakee Springs	174	TEN
Thorne Bay	175	
Togiak	176	TOG
Toksook Bay	177	
Tununak	178	
Ugadaga Bay	179	
Ugashik		UGA
Unalakleet		UNA
Valdez	181	VAL
Wasilla		WAS
West Anchor Cove	182	
Whittier	183	WHT
Wrangell	184	WRN
Yakutat	185	YAK

[1] To report a landing at a location not currently assigned a location code number: use the code for "Other" for the state or country at which the landing occurs and notify NMFS of the actual location so that the list may be updated. For example, to report a landing for Levelock, Alaska if there is currently no code assigned, use "499" "Other, AK".

TABLE 14B TO PART 679.—PORT OF LANDING CODES: CALIFORNIA, OREGON, CANADA

Port name	NMFS code	ADF&G code
California:		
Eureka	500	EUR
Fort Bragg	501	
Other California	599	
Oregon:		
Astoria	600	AST
Lincoln City	602	
Newport	603	NPT
Olympia	.....	OLY
Portland	.....	POR
Warrenton	604	
Other Oregon	699	
Canada:		
Port Edward	800	
Port Hardy	801	
Prince Rupert	802	PRU

TABLE 14B TO PART 679.—PORT OF LANDING CODES: CALIFORNIA, OREGON, CANADA—Continued

Port name	NMFS code	ADF&G code
Vancouver	803	
Other Canada	899	

TABLE 14C TO PART 679.—WASHINGTON PORT OF LANDING CODES

Port name	NMFS code	ADF&G code
Anacortes	700	ANA
Bellevue	701	
Bellingham	702	
Blaine	.....	BLA
Edmonds	703	
Everett	704	

TABLE 14C TO PART 679.—WASHINGTON PORT OF LANDING CODES—Continued

Port name	NMFS code	ADF&G code
Fox Island	706	
Ilwaco	707	
La Conner	708	LAC
Mercer Island	709	
Nagai Island	710	
Port Angeles	711	
Port Orchard	712	
Port Townsend	713	
Rainier	714	
Seattle	715	SEA
Tacoma	.....	TAC
Other Washington	799	

[FR Doc. 03–704 Filed 1–23–03; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register
Vol. 68, No. 16
Friday, January 24, 2003

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

[Docket No. 03–001–2]

Declaration of Extraordinary Emergency Because of Exotic Newcastle Disease in Nevada

Exotic Newcastle disease (END) has been confirmed in the State of Nevada. The disease has been confirmed in backyard poultry, which are raised on private premises for hobby, exhibition, and personal consumption. Previously, END had been confirmed in the State of California, and on January 6, 2003, the Secretary of Agriculture signed a declaration of extraordinary emergency with respect to the END situation in California (*see* 68 FR 1432, Docket No. 03–001–1, published January 10, 2003).

END is a contagious and fatal viral disease affecting domestic, wild, and caged poultry and birds. It is one of the most infectious diseases of poultry in the world, and is so virulent that many birds die without showing any clinical signs. A death rate of almost 100 percent can occur in unvaccinated poultry flocks. END can infect and cause death even in vaccinated poultry. This disease in poultry and birds is characterized by respiratory signs accompanied by nervous manifestations, gastrointestinal lesions, and swelling of the head.

END is spread primarily through direct contact between healthy birds or poultry and the bodily discharges of infected birds or poultry. Within an infected flock, END is transmitted by direct contact, contaminated feeding and watering equipment, and aerosols produced by coughing, gasping, and other respiratory disturbances. Dissemination between flocks over long distances is often due to movement of contaminated equipment and service personnel, such as vaccination crews. Movement of carrier birds and those in an incubating stage accounts for most of the outbreaks in the pet bird industry.

The existence of END in Nevada represents a threat to the U.S. poultry and bird industries. It constitutes a real danger to the national economy and a potential serious burden on interstate and foreign commerce. The United States Department of Agriculture (the Department) has reviewed the measures being taken by Nevada to control and eradicate END and has consulted with the appropriate State government and Indian tribal officials in Nevada. Based on such review and consultation, the Department has determined that the measures being taken by the State are inadequate to control or eradicate END. Therefore, the Department has determined that an extraordinary emergency exists because of END in Nevada.

This declaration of extraordinary emergency authorizes the Secretary to (1) hold, seize, treat, apply other remedial actions to, destroy (including preventative slaughter), or otherwise dispose of, any animal, article, facility, or means of conveyance if the Secretary determines the action is necessary to prevent the dissemination of END and (2) prohibit or restrict the movement or use within the State of Nevada, or any portion of the State of Nevada, of any animal or article, means of conveyance, or facility if the Secretary determines that the prohibition or restriction is necessary to prevent the dissemination of END. The appropriate State government and Indian tribal officials in Nevada have been informed of these facts.

EFFECTIVE DATE: This declaration of extraordinary emergency shall become effective January 17, 2003.

Ann M. Veneman,
Secretary of Agriculture.

[FR Doc. 03–1610 Filed 1–23–03; 8:45 am]
BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Forest Service

Yakutat Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Yakutat Resource Advisory Committee will meet in Yakutat, Alaska. The purpose of the meeting is to continue business of the Yakutat Resource Advisory Committee. The committee was formed to carry out the requirements of the Secure Rural Schools and Self-Determination Act of 2000. The agenda for this meeting is to finalize the form that the Yakutat Resource Advisory Committee will use to solicit project proposals and to determine what criteria they will use to select projects. The intent of the meeting is also to share with the public the project proposal process.

DATES: The meeting will be held February 7, 2003 from 6–9 p.m. and will continue on February 8, 2003 from 9–12 a.m., if necessary.

ADDRESSES: The meeting will be held at the Kwaan Conference Room, 712 Ocean Cape Drive, Yakutat, Alaska. Send written comments to Tricia O'Connor, c/o Forest Service, USDA, PO Box 327, Yakutat, AK 99689, (907) 784–3359 or electronically to *poconnor@fs.fed.us.*

FOR FURTHER INFORMATION CONTACT: Tricia O'Connor, District Ranger and Designated Federal Official, Yakutat Ranger District, (907) 784–3359.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Council discussion is limited to Forest Service staff and Council members. However, persons who wish to bring resource projects or other Resource Advisory Committee matters to the attention of the Council may file written statements with the Council staff before or after the meeting. Public input sessions will be provided and individuals who made written requests by January 31, 2003 will have the opportunity to address the Council at those sessions.

Dated: January 14, 2003.

Patricia M. O'Connor,
District Ranger, Yakutat Ranger District, Tongass National Forest.

[FR Doc. 03–1570 Filed 1–23–03; 8:45 am]
BILLING CODE 3410–11–M

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions

AGENCY: Committee for Purchase from People Who Are Blind or Severely Disabled.

ACTION: Proposed Additions to Procurement List.

SUMMARY: The Committee is proposing to add to the Procurement List services

to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

Comments Must Be Received On or Before: February 23, 2003.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION CONTACT: Sheryl D. Kennerly, (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a) (2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, the entities of the Federal Government identified in the notice for each service will be required to procure the services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities. I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the services to the Government.

2. If approved, the action will result in authorizing small entities to furnish the services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the services proposed for addition to the Procurement List. Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following services are proposed for addition to Procurement List for production by the nonprofit agencies listed:

Services

Service Type/Location: Electronic Service Customer Representative Service, Securities & Exchange Commission Library, Washington, DC.

NPA: Columbia Lighthouse for the Blind, Washington, DC.

Contract Activity: U.S. Securities and Exchange Commission, Alexandria, Virginia.

Service Type/Location: Housekeeping Services, Veterans Affairs Medical Center, Clarksburg, West Virginia.

NPA: Job Squad, Inc., Clarksburg, West Virginia.

Contract Activity: Department of Veterans Affairs, Coatesville, Pennsylvania.

Service Type/Location: Janitorial/Grounds Maintenance, Immigration and Naturalization Service—Sector Headquarters, Imperial, California.

NPA: Association for Retarded Citizens—Imperial Valley, El Centro, California

Contract Activity: Immigration and Naturalization Service, DOJ.

G. John Heyer,

General Counsel.

[FR Doc. 03–1662 Filed 1–23–03; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions and Deletions

AGENCY: Committee for Purchase from People Who Are Blind or Severely Disabled.

ACTION: Additions to and Deletions from Procurement List.

SUMMARY: This action adds to the Procurement List a product and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes from the Procurement List a product and services previously furnished by such agencies.

EFFECTIVE DATE: February 23, 2003.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION CONTACT: Sheryl D. Kennerly, (703) 603–7740.

SUPPLEMENTARY INFORMATION:

Additions

On September 13, November 29, and December 6, 2002, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (67 FR 58013, 71133, and 72640) of proposed additions to the Procurement List.

The following comments pertain to the Custodial Service, Walter Reed Army Medical Center.

Comments were received from a small disadvantaged business firm which holds a contract for other custodial services at Walter Reed Army Medical Center under the 8(a) Program. The commenter noted that it had been pursuing the custodial service being added to the Procurement List for several years, and that a number of its other contracts are expiring and not being replaced by new work. Consequently, the commenter believes that loss of the opportunity to win the contract for the custodial service being added to the Procurement List will constitute a severe adverse impact on the firm.

The Committee does not consider the loss of an opportunity to bid for contracts on this service, by itself, to constitute severe adverse impact on a firm, as no firm is guaranteed a contract under the competitive bidding system. The commenting firm has not held a contract for the custodial service being added to the Procurement List, so it cannot be said to be dependent on such a contract. The Committee originally contemplated adding the entire custodial service at Walter Reed Army Medical Center to the Procurement List, but declined to do so in order to minimize impact on the commenting firm. The commenter will retain its current contract at Walter Reed Army Medical Center and will remain eligible to pursue contracting opportunities in the 8(a) Program, as well as other competitive opportunities, for the near future. At the commenter's request, the Committee has facilitated discussions between the commenter and the nonprofit agency which will provide the service being added to the Procurement List, with a view toward further mitigating impact on the contractor through possible subcontracting opportunities. Accordingly, the Committee does not believe that addition of this portion of the custodial service at Walter Reed Army Medical Center to the Procurement List at this time will constitute severe adverse impact on the commenting firm.

The following material pertains to all of the items being added to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the product and services and impact of the additions on the current or most recent contractors, the Committee has determined that the product and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4. I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the product and services to the Government.

2. The action will result in authorizing small entities to furnish the product and services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the product and services proposed for addition to the Procurement List.

Accordingly, the following product and services are added to the Procurement List:

Product

Product/NSN: Marker, Dry Erase, Premium, 7520–00–NIB–1428
NPA: Dallas Lighthouse for the Blind, Inc., Dallas, Texas
Contract Activity: Office Supplies & Paper Product Acquisition Center, New York, New York

Services

Service Type/Location: Custodial Service, Walter Reed Army Medical Center, Main Section, Washington, DC, Forest Glen Section, Montgomery County, MD: Buildings 1, 5, 11, 52, 53, 92, 121, 154, 156, 163, 169, 178, 500, 501, 508, 511, 512, 601, 602, 604, and 605
NPA: Mt. Vernon-Lee Enterprises, Inc., Springfield, Virginia
Contract Activity: MEDCOM Contracting Center-NA, Washington, DC
Service Type/Location: Medical Transcription, Department of Veterans Affairs, VAMC Boise, Idaho
NPA: The Lighthouse of Houston, Houston, Texas
Contract Activity: Veterans Affairs Medical Center, Boise, Idaho

Deletions

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action may not result in any additional reporting, recordkeeping or other compliance requirements for small entities.

2. The action may result in authorizing small entities to furnish the product and service to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the product and service deleted from the Procurement List.

After consideration of the relevant matter presented, the committee has determined that the product and service listed below are no longer suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

Accordingly, the following product and service are deleted from the Procurement List:

Product

Product/NSN: Aerosol Paint, Lacquer, 8010–00–958–8147
NPA: The Lighthouse for the Blind, Inc., St Louis, Missouri
Contract Activity: GSA, Hardware & Appliances Center, Kansas City, Missouri

Service

Service Type/Location: Base Supply Center, New Orleans Naval Support Activity, New Orleans, Louisiana
NPA: Raleigh Lions Clinic for the Blind, Inc., Raleigh, North Carolina
Contract Activity: Department of the Navy, New Orleans, Louisiana

G. John Heyer,

General Counsel.

[FR Doc. 03–1663 Filed 1–23–03; 8:45 am]

BILLING CODE 6353–01–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Institute of Standards and Technology (NIST).

Title: Survey of Advanced Technology Program Joint Venture Participants.

Form Number: None.

OMB Approval Number: None.

Type of Request: Regular.

Number of Respondents: 547.

Average Hours Per Response: 30 minutes for the Company survey; 15 minutes for the Nonprofit Organization survey; and 10 minutes for the Inactive Company survey.

Needs and Uses: This information collection is for program evaluation of the Advanced Technology Program (ATP). Research and development (R&D) collaborations and strategic alliances across companies and organizations have become increasingly important in industry. A key mission of the ATP as defined by statute is to support R&D joint ventures. This information collection and analysis will further ATP's mission by providing better understanding of R&D collaborations in general, and ATP Joint Ventures in particular.

Affected Public: Business or other for-profit organizations, not-for-profit institutions.

Frequency: One-time only.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Jacqueline Zeiher, (202) 395–4638.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *DHynek@doc.gov*).

Written comments and recommendations for this proposed information collection should be sent within 30 days of publication of this notice to Jacqueline Zeiher, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: January 17, 2003.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 03–1586 Filed 1–23–03; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-823–808]

Certain Cut-to-Length Carbon Steel Plate from Ukraine; Administrative Review of Suspension Agreement; Extension of Time Limits

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Extension of Time Limits.

SUMMARY: The Department of Commerce (the Department) is extending the time limits for the final results of the 2000–2001 administrative review of the suspension agreement on cut-to-length carbon steel plate from Ukraine.

EFFECTIVE DATE: January 24, 2003.

FOR FURTHER INFORMATION CONTACT: Patricia Tran at (202) 482–1121 or Robert James at (202) 482–0649, Antidumping and Countervailing Duty Enforcement Group III, Office Eight, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION: On December 9, 2002, we published the preliminary results of this administrative review. *See Certain Cut-*

to-Length Carbon Steel Plate from Ukraine; Notice of Preliminary Results of Administrative Review of the Suspension Agreement 67 FR 72916 (December 9, 2002). Currently, the final results in this administrative review are due on April 8, 2003. Pursuant to section 751(a)(3)(A) of the Tariff Act, the Department may extend the deadline for completion of an administrative review if it determines that it is not practicable to complete the final results of the review within the normal statutory time limit. Due to the complexity of the issues present in this administrative review, including affiliated party sales, and because the Department must conduct verifications of several discreet entities, the Department determines it is not practicable to complete this review within the normal statutory time limit. Therefore, the Department is extending the time limits for completion of the final results until June 9, 2003, in accordance with section 751(a)(3)(A) of the Tariff Act of 1930, as amended.

Dated: January 15, 2003.

Joseph A. Spetrini,

Deputy Assistant Secretary for Import Administration, Group III.

[FR Doc. 03–1654 Filed 1–23–03; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A-570–855]

Certain Non-Frozen Apple Juice Concentrate From the People's Republic of China: Extension of Time Limit for the Preliminary Results of the 2001–2002 Antidumping Duty Administrative Review and New Shipper Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Extension of Time Limit.

SUMMARY: The Department of Commerce is extending the time limit for the preliminary results of the 2001–2002 administrative review of the antidumping duty order and new shipper review on certain non-frozen apple juice concentrate from the People's Republic of China. The period of review is June 1, 2001, through May 31, 2002. This extension is made pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended.

EFFECTIVE DATE: January 24, 2003.

FOR FURTHER INFORMATION CONTACT: Audrey Twyman, or John Brinkmann, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–3534, or (202) 482–4126, respectively.

SUPPLEMENTARY INFORMATION:

Statutory Time Limits

Section 751(a)(3)(A) of the Tariff Act of 1930 ("the Act") requires the Department of Commerce ("Department") to issue the preliminary results of an administrative review within 245 days after the last day of the anniversary month of an order for which a review is requested and a final determination within 120 days after the date on which the preliminary results are published. However, if it is not practicable to complete the review within the time period, section 751(a)(3)(A) of the Act allows the Department to extend these deadlines to a maximum of 365 days and 180 days, respectively. The order in this review was published on June 5, 2000. (*See Notice of Amended Determination of Sales at Less than Fair Value and Antidumping Duty Order: Certain Non-frozen Apple Juice Concentrate from the PRC*, 65 FR 35606 (June 5, 2000)).

Background

On July 24, 2002, the Department published in the **Federal Register** the notice of initiation of the antidumping administrative review on certain non-frozen apple juice concentrate from the People's Republic of China (PRC). (*See Notice of Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 67 FR 48435 (July 24, 2002)). The preliminary results are currently due on March 2, 2003. On July 24, 2002, the Department also published in the **Federal Register** the notice of initiation of antidumping new shipper review on certain non-frozen apple juice concentrate from the People's Republic of China (PRC). (**SEE NOTICE OF INITIATION OF ANTIDUMPING NEW SHIPPER REVIEW**, 67 FR 48440 (July 24, 2002)). On July 26, 2002, Gansu Tongda Fruit Juice and Beverage Co., Ltd., the respondent in the new shipper review, submitted a letter consenting to alignment of the new shipper review with the 2001–2002 administrative review pursuant to 19 CFR 351.214(j)(3).

Extension of Time Limits for Preliminary Results

Due to the complexity of the issues involving surrogate selection and factor values, it is not practicable to complete this review within the originally anticipated time limit (*i.e.*, March 2, 2003). Therefore, in accordance with section 751(a)(3)(A) of the Act, the Department is postponing the preliminary results of this administrative review for 120 days, until no later than June 30, 2003.

This notice is published pursuant to sections 751(a)(1) and 777(i)(1) of the Act.

Dated: January 17, 2003.

Susan Kuhbach,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. 03–1653 Filed 1–23–03; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 012103A]

Proposed Information Collection; Comment Request; Northwest Region Federal Fisheries Permits

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before March 25, 2003.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Kevin A. Ford, NOAA Fisheries, Northwest Region, 206–526–6115 or e-mail at *kevin.ford@noaa.gov*.

SUPPLEMENTARY INFORMATION:

I. Abstract

Two data collections dealing with Federal fishery permits affect participants in the groundfish fishery off Washington, Oregon, and California (WOC). The two data collections involve: (1) exempted fishing; and (2) limited entry permits for commercial fishermen.

Exempted (experimental) fishing permits are issued to applicants for fishing activities that would otherwise be prohibited. The information provided by applications allows the National Marine Fisheries Service (NMFS) to evaluate the consequences of the exempted fishing activity and weigh the benefits and costs. Permittees are required to file reports on the results of the experiments and in some cases individual vessels are required to provide minimal data reports. There is also a requirement for a call-in notification prior to a fishing trip. This information allows NOAA Fisheries to evaluate techniques used and decide if management regulations should be changed.

A Federal permit is required to commercially catch groundfish, and permits are endorsed for one or more of three gear types (trawl, longline, and fish pot). Participation in the fishery and access to permits have been limited as a way of controlling the overall fleet harvest capacity. Limited entry permits must be renewed annually and are transferable. Permit owners must fill out renewal forms annually and must fill out transfer forms, as needed.

II. Method of Collection

Permit applications, renewals, and transfers are made on NOAA Fisheries forms. Renewal of limited entry permits also may be completed electronically using an online form on the Fishery Permit Office Web site. The exempted fishing data reports from individual vessels may be submitted in person, faxed, or submitted by telephone by the vessel owner or operator to NOAA Fisheries or the states of Washington, Oregon, or California.

III. Data

OMB Number: 0648–0203.
Form Number: None.
Type of Review: Regular submission.
Affected Public: Business or other for-profit organizations.
Estimated Number of Respondents: 707.
Estimated Time Per Response: 20 minutes for a limited entry permit renewal or transfer; 60 minutes for an experimental fishery permit application; 60 minutes for an experimental fishery permit summary report; 10 minutes for an experimental fishery data report; and 2 minutes for an experimental fishery call-in notification prior to a fishing trip.
Estimated Total Annual Burden Hours: 341.
Estimated Total Annual Cost to Public: $46,616.

IV. Request for Comments

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: January 16, 2003

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 03–1646 Filed 1–23–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 012103B]

Proposed Information Collection; Comment Request; Groundfish Tagging Program

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before March 25, 2003.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Phillip Rigby at 907–789–6653, or at *Phillip.Rigby@noaa.gov*.

SUPPLEMENTARY INFORMATION:

I. Abstract

The groundfish tagging program provides scientists with information necessary for effective conservation, management, and scientific understanding of the groundfish fishery off Alaska and the Northwest Pacific. The program area includes the Pacific Ocean off Alaska (the Gulf of Alaska, the Bering Sea and Aleutian Islands Area, and the Alexander Archipelago of Southeast Alaska), California, Oregon, and Washington. Fish movement information from recovered tags is used in population dynamics models for stock assessment.

II. Method of Collection

This is a volunteer program requiring the actual tag from the fish to be returned, along with recovery information. Reporting forms with pre-addressed and postage-free envelopes are distributed to processors and catcher vessels. The tag information will be edited and entered into the computer data base. Each person returning a tag will receive information on the release site, growth, and depth and area changes, as well as a reward of a cap.

III. Data

OMB Number: 0648–0276.
Form Number: None.
Type of Review: Regular submission.
Affected Public: Business or other for-profit organizations, individuals or households.
Estimated Number of Respondents: 820.
Estimated Time Per Response: 5 minutes for returning a regular tag; and 20 minutes for returning an internal archival tag.
Estimated Total Annual Burden Hours: 73.
Estimated Total Annual Cost to Public: $0.

IV. Request for Comments

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information

on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: January 16, 2003.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 03–1647 Filed 1–23–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 012103C]

Proposed Information Collection; Comment Request; Northeast Region Multispecies Party/Charterboat Closed Area Exemption Program

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before March 25, 2003.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Thomas Warren at 978–281–9250, or to *Thomas.Warren@noaa.gov*.

SUPPLEMENTARY INFORMATION:

I. Abstract

Northeast multispecies party and charter vessels must obtain a letter of authorization from NOAA in order to fish for multispecies in certain areas of the Gulf of Maine closed to commercial fishing (Nantucket Lightship Area Closure, Rolling Closures, Cashes Ledge Area Closure, and Western Gulf of Maine Area Closure). Because party or charter vessels may hold commercial fishing permits, the authorization program allows NOAA to enforce closed area requirements and ensure that fish harvested under recreational rules are not sold by party and charter vessels.

II. Method of Collection

Requests are made by telephone or in person.

III. Data

OMB Number: 0648–0412.

Form Number: None.

Type of Review: Regular submission.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 528.

Estimated Time Per Response: 2 minutes.

Estimated Total Annual Burden Hours: 18.

Estimated Total Annual Cost to Public: $0.

IV. Request for Comments

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: January 16, 2003.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 03–1648 Filed 1–23–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 012103D]

Proposed Information Collection; Comment Request; Paperwork Submissions Under the Coastal Zone Management Act Federal Consistency Requirements

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before March 25, 2003.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to David Kaiser, 301–713–3098, ext. 144 or at *David.Kaiser@noaa.gov*.

SUPPLEMENTARY INFORMATION:

I. Abstract

A number of paperwork submissions are required by the Coastal Zone Management Act (CZMA), 16 U.S.C. 1456, and by NOAA to provide a reasonable, efficient and predictable means of complying with the CZMA requirements. The requirements are detailed in 15 CFR Part 930. The information will be used by coastal States with Federally-approved Coastal Zone Management Programs to determine if Federal agency activities, Federal license or permit activities, and Federal assistance activities that affect a State's coastal zone are consistent with the States' programs.

II. Method of Collection

Paper submissions are made following regulatory guidance. No forms are used.

III. Data

OMB Number: 0648–0411.

Form Number: None.

Type of Review: Regular submission.

Affected Public: State, Local, or Tribal Government; individuals or households; business or other for-profit organizations; and Federal government.

Estimated Number of Respondents: 4,111.

Estimated Time Per Response: 8 hours for a State objection or concurrence letter for a consistency certification or determination; 4 hours for a State request for review of unlisted activities; 1 hour for public notice requirements for a project; 4 hours for a request for remedial action of a supplemental review; 1 hour for coordination of a listing notice; 2 hours for a request for Secretarial mediation; and 200 hours for an appeal. These are average estimates and burden can significantly vary based on the individual situation.

Estimated Total Annual Burden Hours: 20,331.

Estimated Total Annual Cost to Public: $8,000,000.

IV. Request for Comments

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: January 16, 2003.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 03–1649 Filed 1–23–03; 8:45 am]

BILLING CODE 3510–08–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Federal Consistency Appeal by Islander East Pipeline Company From an Objection by the Connecticut Department of Environmental Protection

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (Commerce).

ACTION: Notice of appeal, request for comment, and notice of availability of appeal documents.

SUMMARY: The Islander East Pipeline Company has filed an administrative appeal with the Department of Commerce (Consistency Appeal of Islander East Pipeline Company, L.L.C.) asking that the Secretary of Commerce override the State of Connecticut's objection to Islander East's proposed natural gas pipeline. The pipeline would extend from an interconnection with an existing pipeline near North Haven, Connecticut, to a terminus on Long Island, New York, affecting the natural resources or land and water uses of Connecticut's coastal zone. This document: (a) Provides public notice of the appeal; (b) announces an opportunity for public comment on the appeal; and (c) identifies locations where documents comprising the appeal record will be available for review.

DATES: Public comments on the appeal must be received by May 8, 2003.

ADDRESSES: All e-mail comments on issues relevant to the Secretary's decision of this appeal may be submitted to *IslanderEast.comments@noaa.gov*. Comments may also be sent by mail to the Office of the General Counsel for Ocean Services, National Oceanic and Atmospheric Administration, U.S. Department of Commerce, 1305 East-West Highway, Silver Spring, MD 20910. Materials from the appeal record will be available at the internet site *www.ogc.doc.gov/czma.htm* and at the Office of the General Counsel for Ocean Services. Also, public filings made by the parties to the appeal will be available for review at the Connecticut Department of Environmental Protection, 79 Elm Street, Hartford, CT.

FOR FURTHER INFORMATION CONTACT: Branden Blum, Senior Counselor, via e-mail at *gcos.inquiries@noaa.gov*, or at 301–713–2967, extension 186.

SUPPLEMENTARY INFORMATION:

I. Notice of Appeal

Islander East Pipeline Company, L.L.C. (Islander East or Appellant) filed a notice of appeal with the Secretary of Commerce (Secretary) pursuant to section 307(c)(3)(A) of the Coastal Zone Management Act of 1972 (CZMA), as amended, 16 U.S.C. 1451 *et seq.*, and the Department of Commerce's implementing regulations, 15 CFR part 930, subpart H, (revised, effective January 8, 2001). The appeal is taken from an objection by the Connecticut Department of Environmental Protection (State) to Islander East's consistency certification for U.S. Army Corps of Engineers and Federal Energy Regulatory Commission permits to construct and operate a natural gas pipeline. The certification is required to indicate that the project is consistent with the State's coastal management program. The project would cross portions of the Long Island Sound, affecting the natural resources or land and water uses of Connecticut's coastal zone.

The Appellant request that the Secretary override the State's consistency objections on the two substantive grounds provided in the CZMA. The first ground requires the Secretary to determine that the proposed activity is "consistent with the objectives" of the CZMA. To make this determination, the Secretary must find that: (1) The proposed activity furthers the national interest as articulated in section 302 or 303 of the CZMA, in a significant or substantial manner; (2) the national interest furthered by the proposed activity outweighs the activity's adverse coastal effects, when those effects are considered separately or cumulatively; and (3) no reasonable alternative is available that would permit the proposed activity to be conducted in a manner consistent with the enforceable policies of the State of Connecticut's coastal zone management program. 15 CFR 930.121.

The second substantive ground for overriding a State's objection considers whether the proposed activity is necessary in the interest of national security. To reach this conclusion, the Secretary must find that a national defense or other national security interest would be significantly impaired if the activity in question was not permitted to go forward as proposed. 15 CFR 930.122.

II. Public Comments

Written public comments are invited on any of the issues that the Secretary must consider in deciding this appeal. Comments must be received by May 8,

2003, and may be submitted by e-mail to *IslanderEast.comments@noaa.gov*. Comments may also be sent by mail to the Office of the General Counsel for Ocean Services, National Oceanic and Atmospheric Administration (NOAA). Comments will be made available to the Appellant and the State; they will also be posted on a Department of Commerce website identified below.

III. Appeal Documents

The Secretary has required that Islander East file its initial brief and supplementary information on February 10, 2003, and that the State of Connecticut file its initial brief and supplementary material on March 24, 2003. NOAA intends to provide the public with access to all materials and related documents comprising the appeal record via the internet at *www.ogc.doc.gov/czma.htm*, except that certain materials or documents or portions thereof may be withheld if they contain confidential materials, critical energy infrastructure information, national security information or other types of information that would be inappropriate for public release. In addition, technical constraints may limit the internet availability of certain documents, such as oversized maps or exceedingly lengthy publications. All public materials and documents will be available during business hours at the NOAA Office of the General Counsel for Ocean Service. In addition, the State of Connecticut will make copies of public filings by the parties available for review during business hours at the office of the Connecticut Department of Environmental Protection.

(Federal Domestic Assistance Catalog No. 11.419 Coastal Zone Management Program Assistance)

Dated: January 21, 2003.

James R. Walpole,

General Counsel.

[FR Doc. 03–1634 Filed 1–23–03; 8:45 am]

BILLING CODE 3510–08–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 020814191–2191–01]

Establishment of a Joint or Cooperative Institute Within the National Oceanic and Atmospheric Administration (NOAA) Office of Oceanic and Atmospheric Research (OAR) Joint and Cooperative Institute Program

AGENCY: Office of Oceanic and Atmospheric Research; National Oceanic and Atmospheric Administration; Department of Commerce.

ACTION: Notice of Request for Letters of Intent and Guidelines for Submission of Full Proposals.

SUMMARY: NOAA invites interested institutions to submit Letters of Intent (LOI) indicating interest in establishing a Joint or Cooperative Institute within the National Oceanic and Atmospheric Administration (NOAA) Office of Oceanic and Atmospheric Research (OAR) Joint and Cooperative Institute Program. The proposed name of the Joint Institute will be the Cooperative Institute for Climate Applications and Research. The OAR Joint and Cooperative Institute Program is listed in the CFDA under number 11.432, Office of Oceanic and Atmospheric Research (OAR) Joint and Cooperative Institutes.

The Institutes represent a close link between OAR laboratories, other branches of NOAA and the external research community. NOAA collaborates on cooperative research activities and provides financial support to enhance the public benefits to be derived from these research activities. The Institutes are established based on their geographical proximity to a NOAA facility, and/or their expertise in areas related to the mission of the NOAA/OAR research laboratories.

DATES: Letters of Intent should be submitted no later than February 24, 2003. Response letters will be issued from NOAA approximately 45 days after the date of the **Federal Register** Announcement. Institutions will be informed of the submittal date for full proposals in the response letter.

ADDRESSES: Letters of Intent and proposals should be submitted to: Dr. Ants Leetmaa; NOAA Geophysical Fluid Dynamics Laboratory; Forrestral Campus Rt. 1; P.O. Box 308; Princeton, NJ 08452–0308.

An Application Kit can be obtained from: Mr. Michael Nelson; NOAA Grants Management Division; Silver Spring Metro Center Bldg. 2, Room 9348; Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Dr. Ants Leetmaa; NOAA Geophysical Fluid Dynamics Laboratory; Forrestral Campus Rt. 1; P.O. Box 308; Princeton, NJ 08452–0308.

SUPPLEMENTARY INFORMATION:

I. Program Authority

Authority: 49 U.S.C. 44720; 33 U.S.C. 883d; 15 U.S.C. 2907; 15 U.S.C. 2931.

II. Program Description

Funding: The base funding for the Institute is expected to be $100,000 per year. However, funding is contingent upon availability of funds and is at the sole discretion of NOAA.

The funding instrument will be a Cooperative Agreement based on the envisioned substantial involvement of NOAA scientists in projects undertaken by the Institute. NOAA collaborates on cooperative research activities and provides financial support to enhance the public benefits to be derived from these research activities. NOAA envisions a sharing of expertise between GFDL and the proposed Institute in the areas of: earth system modeling, modern and paleoclimatic observations, and climate variability and change applications research. Funding for non-U.S. institutions and contractual arrangements for services and products for delivery to NOAA are not available under this announcement. The award will have an initial base term of five years. An OAR-sponsored, independent panel will conduct a review of the Institute during the fourth year of the five year term. The Panel's findings and recommendations will serve as the basis for renewal of the Institute for an additional five years.

Program Priorities: The Institute will be affiliated with the Geophysical Fluid Dynamics Laboratory (GFDL) located in Princeton, New Jersey. The Institute will align itself with the following GFDL research priorities:

a. *Earth System modeling:* Including, but not limited to, the development of dynamical models of the global climate system, and the production of forecasts of the long-term variability of the climate.

b. *Modern and paleoclimatic observations:* including but not limited to standard hydrographic observations and the construction and analysis of new proxies (*e.g.* geochemical and isotopic tracers in deep-sea sediments, aquifers, tree rings and ice cores) for studies of climate variability and change, including abrupt climate changes.

c. *Climate variability and change applications research:* including but not limited to the study of communication between forecasters and users of forecasts; the application of climate variability and change information to decision making in fields such as water resources, agriculture, human health, and policy making; and institutional mechanisms for responding to climate variability and change information.

The Institute is meant to be an integral component in a coordinated

research effort to produce the best possible forecasts of climate variability and change and to aid in the development of forecast guidance products that are socially and economically useful to decision makers. The Institute will promote research efforts designed to (1) develop coupled models of the global atmosphere, ocean, and land surface to serve as a basis for improved climate variability and change simulations and forecasts, (2) produce and analyze modern and paleoclimatic data that will be required for the verification of the simulations and forecasts, and (3) explore and develop methods that will facilitate the effective dissemination of the forecasts to decision makers.

III. Eligibility

Extramural eligibility is limited to U.S. institutions. Universities, non-profit organizations, for-profit organizations, State and local governments, and Indian Tribes, are included among entities eligible for funding under this announcement.

IV. Evaluation Criteria

Consideration for financial assistance will be given to those proposals that address the Program Priorities listed above and meets the following evaluation criteria. Equal weight is assigned to each of the criteria.

a. *Scientific Merit:* Intrinsic scientific value of the proposed research.

b. *Program Relevance:* Applicability to the OAR Joint and Cooperative Institute Program as described in Section II, Program Description.

V. Submission Requirements

The guidelines for proposal preparation provided below are mandatory. Failure to heed these guidelines will result in proposals being returned without review.

a. *Letters of Intent:* (1) Letters of Intent (LOI) are required prior to submission of a full proposal. (2) The LOI should be no more than ten pages in length and should include the name and institution of the principal investigator. (3) The LOI should provide a concise description of the proposed work. (4) The LOI should also provide a detailed description of the resources and capabilities of the host institution, specifically scientific expertise, specialized facilities, ongoing research activities, and educational and training programs. (5) Evaluation will be by OAR program management, according to the evaluation criteria for full proposals described above. (6) Institutions with an LOI deemed unresponsive will not be encouraged to submit full proposals, however they will not be precluded from submitting a full proposal.

b. *Full Proposals:* All proposals should include the following elements:

(1) *Signed title page:* The title page should be signed by the Principal Investigator (PI) and the institutional representative. The PI and institutional representative should be identified by full name, title, organization, telephone number, and address.

(2) *Abstract:* A one page abstract must be included and should contain a brief summary of the work to be completed. The abstract should appear on a separate page, headed with the proposal title, institution(s) investigators(s) , total proposed cost and budget period.

(3) *Statements of work:* All proposals should provide detailed five-year plans for climate variability and change modeling and prediction research, modern and paleoclimatic observations, and climate forecast applications which build upon the program outlined in the LOI. The following areas must be addressed in the proposal: Proposed mechanisms for the development and implementation of climate model improvements; creation and maintenance of a modern and paleoclimatic data base; strategy for generating experimental forecasts guidance products and their effective dissemination to decision makers. The proposed work should be described, including identification of the problems, scientific objectives, proposed methodology, and relevance to the program priorities listed above. Factors, such as readiness of needed infrastructure, ease of interaction with scientists at GFDL, amount and type of NOAA support presently received, benefits of the proposed work to the general public, the scientific community, and decision makers, should be described. Results from related projects previously and presently supported by NOAA should be included.

(4) *Budget:* Applicants must submit a budget using the Standard Form 424a(4–92), Budget Information—Non-Construction Programs. The form is included in the standard NOAA application kit.

(5) *Vita:* An abbreviated Curriculum Vita for the PI should be included. Reference lists should be limited to all publications in the last three years with up to five other relevant papers.

(6) *Current and pending Federal support:* Each investigator should submit a list that includes project title, supporting agency with grant number, investigator months, dollar value and duration. Requested values should be listed for pending federal support.

VI. Selection Procedures

All proposals will be evaluated in accordance with the above evaluation criteria by an independent peer review panel consisting of both NOAA and non-NOAA Federal experts. The panel will review and discuss each proposal and, based on the above evaluation criteria, make a consensus recommendation of the most meritorious and relevant proposal to the Selecting Official.

The Selecting Official may either accept the recommendation or select another proposal based on the following program policy factor: geographic diversity within the existing Joint Institute program. The selected proposal will be forwarded to the Grants Officer for action and the successful applicant notified.

VII. Other Requirements

(1) Applications under this program are not subject to Executive Order 12372, "Intergovernmental Review of Federal Programs."

(2) In accordance with Federal statutes and regulations, no person on grounds of race, color, age, sex, national origin, or disability shall be excluded from participation in, denied benefits of, or be subjected to discrimination under any program or activity receiving financial assistance. The NOAA Office of Oceanic and Atmospheric Research does not have direct Telephone Device for the Deaf (TDD) capabilities, but can be reached through the State of Maryland-supplied TDD contact number, 800–735–2258, between the hours of 8 a.m.–4:30 p.m.

(3) The Department of Commerce Pre-Award Notification of Requirements for Grants and Cooperative Agreements contained in the **Federal Register** Notice of October 1, 2001, (66 FR 49917), as amended by the **Federal Register** notice published on October 30, 2002 (67 FR 66109), is applicable to this solicitation.

VIII. Classification

This notice has been determined to be not significant for purposes of Executive Order 12866. This notice contains collection-of-information requirements subject to the Paperwork Reduction Act. The use of Standard Forms 424, 424A, and SF–LLL has been approved by OMB under the respective control numbers 0348–0043, 0348–0044, and 0348–0046. Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the Paperwork Reduction Act, unless that collection displays a currently valid OMB control number.

It has been determined that this notice does not contain policies with Federalism implications as that term is defined in Executive Order 13132. Because notice and comment are not required under 5 U.S.C. 553, or any other law, for this notice relating to public property, loans, grants benefits or contracts (5 U.S.C. 553(a)), a Regulatory Flexibility Analysis is not required and has not been prepared for this notice, 5 U.S.C. 601 *et seq.*

Dated: January 15, 2003.

Louisa Koch,

Deputy Assistant Administrator, Office of Oceanic and Atmospheric Research, National Oceanic and Atmospheric Administration.

[FR Doc. 03–1643 Filed 1–23–03; 8:45 am]

BILLING CODE 3510–KB–P

DEPARTMENT OF COMMERCE

Technology Administration

Proposed Information Collection; Comment Request; Commercial Space Launch Range User Requirements

ACTION: Notice.

SUMMARY: The Department of Commerce (DOC), as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on the continuing and proposed information collection, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before March 25, 2003.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to the attention of Paula Trimble, Technology Policy Analyst, Office of Space Commercialization, (202) 482–4574. In addition, written comments may be sent via e-mail to *SpaceInfo@ta.doc.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

The information collected would allow the DOC Office of Space Commercialization (DOC/OSC) and the Federal Aviation Administration (FAA) to follow the terms of a Memorandum of Agreement (MOA) with the U.S. Air Force to ensure consideration of commercial space launch range users' needs in the Air Force's range modernization planning. Air Force endorsement of this arrangement, and industry support for the process expressed through FAA's FACA-compliant Commercial Space Transportation Advisory Committee (COMSTAC), are highly significant, because this is the first time these parties have all agreed to a single formal communication channel for commercial range requirements. Based on experience with response to a preliminary October 2001 **Federal Register** (FR) information request, respondents to subsequent biannual FR solicitations are expected to be less than ten in number and to include the three companies that currently launch vehicles from the two major federal ranges, one or more new companies that may be planning to initiate launch services there, and one or more non-profit or state government entities electing to comment on range needs.

II. Method of Collection

Responses would normally be submitted as hard copy to the DOC/OSC and FAA docket addresses specified in the **Federal Register** announcement. Only for responses sent to FAA would the option be available to submit comments electronically, via the Internet to the FAA website address specified in the announcement.

III. Data

OMB Number: 0692–0009.
Form Numbers: None.
Type of Review: Regular submission.
Affected Public: Business or other for-profit organizations; not-for-profit institutions; state, local, or tribal government.
Estimated Number of Respondents: 7.
Estimated Time Per Response: 10 hours.
Estimated Total Annual Respondent Burden Hours: 70.
Estimated Total Annual Respondent Cost Burden: $0.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, *e.g.*, the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: January 17, 2003.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 03–1587 Filed 1–23–03; 8:45 am]

BILLING CODE 3510–18–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board

AGENCY: Department of Defense.

ACTION: Notice of Advisory Committee Meeting.

SUMMARY: The Defense Science Board (DSB) Task Force on the Role and Status of DoD Red Teaming Activities will meet in closed session on February 26, 2003; and March 24, 2003; at Strategic Analysis Inc., 3601 Wilson Boulevard, Arlington, VA. This Task Force will review the role and status of Red Teaming in the Department of Defense (DoD) and recommend ways to make it a more effective tool.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition, Technology & Logistics on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings, the Defense Science Board Task Force will review and evaluate current and past Red Team activities within the Department of Defense and its agencies, as well as other government and non-government organizations (including those initiated since September 11). The Task Force will prepare recommendations that are relevant to red teaming that portrays both state and non-state adversaries. It will also look at how the Department should work with other government departments and agencies to foster effective red teaming. The Task Force will address issues of red team products, processes and organization.

In accordance with Section 10(d) of the Federal Advisory Committee Act, Public Law 92–463, as amended (5 U.S.C. App. II), it has been determined that these Defense Science Board Task Force meetings concern matters listed in 5 U.S.C. 552b(c)(1) and that, accordingly, these meetings will be closed to the public.

Dated: January 17, 2003.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 03–1595 Filed 1–23–03; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF EDUCATION

Tech-Prep Demonstration Program

AGENCY: Office of Vocational and Adult Education, Department of Education.

ACTION: Notice of proposed requirements, proposed priorities and proposed selection criteria for Fiscal Year (FY) 2003 and subsequent years.

SUMMARY: The Assistant Secretary for the Office of Vocational and Adult Education proposes requirements, priorities and selection criteria under the Tech-Prep Demonstration Program (TPDP). The Assistant Secretary will use these requirements, priorities and selection criteria for a competition in fiscal year (FY) 2003 and may use them in later years. We intend these requirements, priorities and selection criteria to support the four basic education reform principles underlying the No Child Left Behind Act of 2001 (NCLB): Stronger accountability for results, increased flexibility and local control, expanded options for parents, and an emphasis on teaching methods that have been proven to work. We take this action to clarify the Department's expectations regarding this program, so that TPDP-funded projects will help students, schools and teachers in their efforts to improve student achievement, meet high standards for high school graduation, and increase transition and persistence rates in postsecondary education.

DATES: We must receive your comments on or before February 24, 2003.

ADDRESSES: Address all comments about these proposed priorities to Karen Stratman Clark, U.S. Department of Education, OVAE, MES Room 5223, 400 Maryland Avenue SW., Washington DC 20202–7100. If you prefer to send your comments through the Internet, use the following address: *Karen.clark@ed.gov.* You must include the term "TPDP Proposed Requirements" in the subject line of your electronic message.

FOR FURTHER INFORMATION CONTACT: Karen Clark. Telephone: (202) 205–3779. or via Internet: *karen.clark@ed.gov.*

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339. Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT**.

Invitation to Comment

We invite you to submit comments regarding these proposed requirements, priorities and selection criteria. To ensure that your comments have maximum effect in developing the notice of final priorities, we urge you to identify clearly the specific proposed requirement, priority or selection criterion that each comment addresses.

We invite you to assist us in complying with the specific requirements of Executive Order 12866 and its overall requirement of reducing regulatory burden that might result from these proposed priorities. Please let me know of any further opportunities we should take to reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the program.

During and after the comment period, you may inspect all public comments about these proposed priorities in Room 4328, 330 C Street, SW., Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Eastern time, Monday through Friday of each week except Federal holidays.

Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record

On request, we will supply an appropriate aid, such as a reader or print magnifier, to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for these proposed priorities. If you want to schedule an appointment for this type of aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

SUPPLEMENTARY INFORMATION: We propose to establish program requirements, priorities, selection criteria and a project period for the TPDP, which is authorized by section 207 of the Carl D. Perkins Vocational and Technical Education Act of 1998 (Perkins III). TPDP provides grants to consortia to carry out tech-prep education projects that involve the location of a secondary school on the site of a community college, a business as a member of the consortium, and the voluntary participation of secondary school students. We proposed to fund projects that, following an initial recruitment period, would enroll a new student cohort in each year of the project, in addition to continuing support for each previous TPDP student cohort.

Eligibility

To be eligible for funding under the TPDP, a consortium must include at least one member in each of the following three categories:

(1) A local educational agency, an intermediate educational agency, an area vocational and technical education school serving secondary school students, or a secondary school funded by the Bureau of Indian Affairs;

(2)(a) A nonprofit institution of higher education that offers a 2-year associate degree, 2-year certificate, or 2-year postsecondary apprenticeship program, or (b) a proprietary institution of higher education that offers a 2-year associate degree program; and

(3) A business.

Under the provisions of section 204(a)(1) of Perkins III, to be eligible for consortium membership both nonprofit and proprietary institutions of higher education must be qualified as institutions of higher education pursuant to section 102 of the Higher Education Act of 1965 (HEA), including institutions receiving assistance under the Tribally Controlled College or University Assistance Act of 1978 (25 U.S.C. 1801 *et seq.*) and tribally controlled postsecondary vocational and technical institutions.

In addition, nonprofit institutions of higher education are eligible only if they are not prohibited from receiving assistance under HEA, title IV, part B (20 U.S.C. 1071 *et seq.*), pursuant to the provisions of HEA section 435(a)(3) (20 U.S.C. 1083(a)). Proprietary institutions of higher education are eligible only if they are not subject to a default management plan required by the Secretary.

Under the provisions of section 204(a)(2), consortia also may include one or more: (1) Institutions of higher education that award baccalaureate degrees; (2) employer organizations; or (3) labor organizations.

Requirements

To achieve the purposes of section 207 of Perkins III, we propose to establish the following requirements. These requirements would apply to all applicants seeking funding under this competition.

(1) Each applicant must submit a signed Consortium Agreement (Agreement), providing evidence that each of the categories of membership required under Section 207 has been satisfied, and that each of the required members is eligible for membership

under the provisions of Perkins III. The Agreement must contain a signature of commitment from any participating secondary school, community college, and business member, affirming that those entities have formed a consortium to develop, implement and sustain a TPDP project as described under Section 207 of Perkins III. The Agreement Also must describe the roles and responsibilities of each consortium member within the proposed project. The format for the Agreement will be included in the Notice Inviting Applications.

(2) Each applicant must submit enrollment goals for the number of students in each student cohort to be enrolled in each year of the TPDP project.

(3) Each applicant must provide an assurance that it will enroll its first student cohort and begin classes no later than September of the calendar year after the year in which the grant award is made, and enroll its second, third, and fourth student cohorts by September of each subsequent year of the proposed project.

(4) Each applicant must submit a complete Proposed Project Course Sequence Plan ("the Plan") to demonstrate how the proposed instructional program represents a sequential, four-year program of study that meets the specific criteria set forth in sections 202(a)(3) and 204(c) of Perkins III. The Plan must list the course sequences for each program of study within the proposed TPDP project, describing the specific academic and technical coursework required for all four years of the program. The Plan also must summarize program entrance requirements and specify the associate degree or postsecondary certificate to be earned upon completion of the program. The format for the Plan will be included in the Notice Inviting Applications.

(5) Each TPDP-funded project must involve a secondary school physically located on the site of a community college and provide a complete program of academic and technical coursework at the community college that, at a minimum, meets State requirements for high school graduation. Students must be enrolled full-time in the high school on the community college campus. However, enrolled students may participate in extra curricular activities at their original high school. Proposed projects that involve only the "virtual" location of a secondary school on the site of a community college, and projects that involve only satellite community college sites located on the premises of secondary schools, are not eligible for support under this competition.

(6) Each TPDP-funded project must carry out an evaluation to determine the impact of the project on a comprehensive set of student outcomes, including: Academic and technical skills achievement; high school graduation; enrollment and completion of postsecondary education; postsecondary remedial coursework; and labor market entry. In conducting this evaluation, each TPDP project must use either an experimental design, in which students are randomly assigned to the demonstration program or another program, or a quasi-experimental design, in which each program participant is matched with a non-participant possessing similar pre-program characteristics, such as test scores on State academic assessments, grade point average, class rank, technical coursework or course of study, and Socioeconomic status.

(7) Each TPDP project must submit annual reports of anticipated enrollment. The reports of anticipated enrollment must include the number of students in each cohort enrolled for the coming year and, if that differs from the enrollment goals stated in the approved application, the reasons. The reports of anticipated enrollment will be due at the end of April of each project year.

(8) Each TPDP project must submit annual project performance reports and a final project performance report.

Both the annual and final performance reports must summarize the TPDP project's progress and significant accomplishments, both with respect to the process of implementation and the outcomes of student participation; provide data regarding enrollment, persistence, and program completion for each student cohort; identify barriers to continued progress and outline solutions; include a progress report on and an analysis of the findings of the project evaluation; and review prospects for sustained operations after the cessation of Federal support. The annual and final performance reports will be due within 90 days of the end of each project year or of the end of the project.

Funded projects would be required to comply with all requirements adopted in the Notice of final requirements, priorities, and selection criteria to be published in the **Federal Register**. Failure to comply with any applicable program requirement may subject a grantee to special conditions, withholding, or termination.

Selection Criteria

We propose to use the following selection criteria to evaluate applications for new grants under this competition. The maximum score for all of the following criteria is 100 points. The maximum score for each criterion and sub-criterion is indicated in parentheses.

(a) *Quality of the project design.* (40 points)

In determining the quality of the design of the proposed project, we consider the following factors:

(1) The extent to which the applicant demonstrates its readiness to implement a complete, career-oriented, 4-year program of study, as evidenced by a formal articulation agreement concerning the structure, content and sequence of all academic and technical courses to be offered in the proposed tech prep program and, if applicable, the conditions under which dual credit will be awarded. (8 points)

(2) The extent to which the proposed instructional program will meet high academic standards that equal or exceed those established by the State. (4 points)

(3) The extent to which the applicant has aligned its secondary academic and technical course offerings and requirements for program completion with the entrance requirements for the corresponding postsecondary degree or certificate program. (4 points)

(4) The extent to which the applicant presents a detailed student recruitment plan that is likely to be effective in fulfilling the project's enrollment goals for each year of the project. (8 points)

(5) The extent to which the proposed project will provide comprehensive academic and career counseling and other support services to participating students at both the secondary and postsecondary levels, to ensure their persistence in the program and attainment of a postsecondary degree or certificate. (8 points)

(6) The extent to which the proposed project will provide high quality, sustained, and intensive professional development for instructors, counselors and administrators involved in the program. (8 points)

(b) *Quality of the management plan.* (15 points)

In determining the quality of the management plan for the proposed project, we consider the following factors:

(1) The extent to which the management plan outlines specific, measurable goals, objectives, and outcomes to be achieved by the proposed project. (5 points)

(2) The extent to which the management plan assigns responsibility

for the accomplishment of project tasks to specific project personnel, and provides timelines for the accomplishment of project tasks. (5 points)

(3) The extent to which the time commitments of the project director and other key personnel are appropriate and adequate to achieve the objectives of the proposed project. (5 points)

(c) *Quality of project personnel.* (15 points)

In determining the quality of project personnel, we consider the following factors:

(1) The extent to which the applicant encourages applications for employment from members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability. (5 points)

(2) The qualifications, including relevant training and experience, of the project director. (5 points)

(3) The qualifications, including relevant training and experience, of key project personnel, including teachers, counselors, administrators, and project consultants. (5 points)

(d) *Adequacy of resources.* (10 points)

In determining the adequacy of resources for the proposed project, we consider the following factors:

(1) The adequacy of support, including facilities, equipment, supplies, and other resources, from the participating institutions. (5 points)

(2) The extent to which the budget is adequate and costs are reasonable in relation to the objectives and design of the proposed project. (5 points)

(e) *Quality of the project evaluation.* (20 points)

In determining the quality of the evaluation, we consider the following factors:

(1) The extent to which the application presents a feasible, credible plan for project evaluation and includes: the type of design to be used; outcomes to be examined; and how participants will be assigned to the program or matched for comparison to non-program participants (10 points)

(2) The extent to which the evaluation will provide reports or other documents at appropriate intervals to be used for continuous program improvement. (4 points)

(3) The extent to which the proposed evaluation will be conducted by an independent evaluator with the necessary background and technical expertise to carry out the evaluation. (6 points)

Discussion of Priorities

Following the comment period, we will announce the final requirements, priorities, and selection criteria in a notice in the **Federal Register.** We will determine the final requirements, priorities and selection criteria after considering responses to this notice and other information available to the Department. This notice does not preclude us from proposing or funding additional priorities, subject to meeting applicable rulemaking requirements.

Note: This notice does *not* solicit applications. In any year in which we choose to use one or more of these proposed priorities, we invite applications through a notice in the **Federal Register**. When inviting applications we designate each priority as absolute, competitive preference, or invitational. The effect of each type of priority follows:

Absolute priority: Under an absolute priority we consider only applications that meet the priority (34 CFR 75.105(c)(3)).

Competitive preference priority: Under a competitive preference priority we give competitive preference to an application by either (1) awarding additional points, depending on how well or the extent to which the application meets the competitive preference priority (34 CFR 75.105(c)(2)(i); or (2) selecting an application that meets the competitive priority over an application of comparable merit that does not meet the priority (34 CFR 75.105(c)(2)(ii)).

Invitational priority: Under an invitational priority we are particularly interested in applications that meet the invitational priority. However, we do not give an application that meets the invitational priority a competitive or absolute preference over other applications (34 CFR 75.105(c)(1)).

Priorities

Proposed Priority 1

Under this proposed priority, we would give competitive preference by awarding up to 5 additional points to applications that require all teachers teaching core academic subjects to be highly qualified, as such term is defined by section 9101 (23) of the ESEA, as amended by NCLB. NOTE: ESEA defines core academic subjects as English, reading or language arts, mathematics, science, foreign languages, civics and government, economics, arts, history and geography.

Proposed Priority 2

Under this proposed priority, we would give competitive preference by awarding up to 5 additional points to applications that require each participating student, as a condition of high school graduation, to pass at least one high school level test (either a comprehensive test covering a variety of courses in a subject area or a high school end-of-course test) in English language arts, mathematics, and science. To receive any points under this priority, applicants must describe their specific high school graduation requirements.

Proposed Priority 3

Under this proposed priority, we would give competitive preference by awarding up to 5 additional points to applications that offer the proposed TPDP project as an alternative for students attending secondary schools that have been identified for school improvement under section 1116(b)(1) of the Elementary and Secondary Education Act of 1965 (ESEA), as amended by the No Child Left Behind Act of 2001; or include the proposed TPDP project in a corrective action or restructuring plan to improve student academic achievement at secondary schools identified for school improvement under section 116 of the ESEA. To receive any points under this priority, applicants must provide evidence of a school's designation under section 1116 of the ESEA.

Project Period

We have concluded that funding multi-year projects for a project period of five years entirely from the Fiscal Year 2002 appropriation will be necessary for TPDP grantees to fully meet the statutory purposes of Section 207 and the requirements of this notice. Such a funding arrangement will enable projects to engage in an adequate recruitment effort to meet their enrollment goals, and implement both the full, two-year secondary component and the full, two-year postsecondary component of the TPDP project for the first student cohort during the grant award period.

Intergovernmental Review

This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and actions for this program.

Applicable Program Regulations: 34 CFR parts 74–79.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/legislation/FedRegister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register.** Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.access.gpo.gov/nara/index.html.* Catalog of Federal Domestic Assistance Number: 84.353.

Program Authority: 20 U.S.C. 2328.

Dated: January 22, 2003.

Carol D'Amico,

Assistant Secretary for Vocational and Adult Education.

[FR Doc. 03–1791 Filed 1–23–03; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Agency Information Collection Under Review by the Office of Management and Budget (OMB)

AGENCY: Department of Energy.

ACTION: Submission for OMB review, comment request.

SUMMARY: The Department of Energy (DOE) has submitted an information collection package to the OMB for renewal under the Paperwork Reduction Act of 1995. The package requests a 3-year extension of its affiliated sources information collection, OMB control number 1910–5111. This information collection package covers collection of information necessary to provide the contracting officer with complete information on potential organizational conflicts involved in teaming arrangements. Departmental management uses the information to exercise management oversight regarding the implementation of applicable statutory and regulatory requirements and obligations. The collection of this information is critical to ensure that the Government has sufficient information to judge the degree to which awardees meet the terms of their agreements and ensure that improper organization conflicts are not created.

DATES: Comments regarding the information collection package should be submitted to the OMB Desk Officer at the following address no later than February 24, 2003. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the OMB Desk Officer of your intention to do so as soon as possible. The Desk Officer may be telephoned at (202) 395–3084. (Also notify the DOE contact listed in this notice.)

ADDRESSES: Address comments to the DOE Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10102, 735 17th Street, NW., Washington, DC 20503. Comments should also be addressed to Susan L. Frey, Director, Records Management Division, IM–11/Germantown Bldg., Office of Business and Information Management, Office of the Chief Information Officer, U.S. Department of Energy, 1000 Independence Ave, SW, Washington, DC 20585–1290.

SUPPLEMENTARY INFORMATION: This package contains (1) *OMB Control No.* 1910–5111 (2) *Package Title:* Purchasing by DOE Management and Operating Contractors from Contractor Affiliated Sources; (3) *Type of Respondents:* DOE Management and Operating Contractors; (4) *Estimated Number of responses:* 20; (5) *Estimated Total Burden Hours:* 100; (6) *Purpose:* This information is required by the Department to ensure that programmatic and administrative management requirements and resources are managed efficiently and effectively. The package contains 1 information and/or recordkeeping requirement, that is, the provision found at 48 CFR 952.209–8, Organizational Conflicts of Interest Disclosure—Advisory and Assistance Services.

Statutory Authority: Sec. 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 (Pub. L. 104–13).

Issued in Washington, DC, on January 17, 2003.

Susan L. Frey,

Director, Records Management Division, Office of Business and Information Management, Office of the Chief Information Officer.

[FR Doc. 03–1639 Filed 1–23–03; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Agency Information Collection Under Review by the Office of Management and Budget (OMB)

AGENCY: Department of Energy.

ACTION: Submission for OMB review; comment request.

SUMMARY: The Department of Energy (DOE) has submitted an information collection package to OMB for renewal under the Paperwork Reduction Act of 1995. The package requests a 3-year extension of its reporting and record keeping requirements for the Make-or-Buy Plans, OMB Control Number 1910–5102. This information is required by the Department to ensure whether DOE's management and operating contractors are subcontracting in the most cost-effective and efficient manner.

DATES: Comments regarding the information collection package should be submitted to the OMB Desk Officer no later than February 24, 2003. If you anticipate submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the OMB Desk Officer of your intention to do so as soon as possible. The Desk Officer may be telephoned at (202) 395–3087.

ADDRESSES: Address comments to DOE Desk Officer, Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget, Docket Library, Room 10102, 725 17th Street, NW., Washington, DC 20503. Comments should also be addressed to Susan L. Frey, Director, Records Management Division, Office of Business and Information Management, Office of the Chief Information Officer, IM–11/Germantown Bldg., U.S. Department of Energy, Washington, DC 20585–1290, or E-mail *susan.frey@hq.doe.gov.* (Also notify Irma Brown, Office of Procurement and Assistance Policy (ME–62), Washington, DC 20585 or E-mail *irma.brown@hq.doe.gov*).

SUPPLEMENTARY INFORMATION: The package contains (1) *Title:* Make-or-Buy Plans; (2) *Current OMB Control Number:* 1910–5102; (3) *Type of Respondents:* DOE management and operating contractors and offsite contractors; (4) *Estimated Number of Responses:* 36; (5) *Estimated Total Burden Hours:* 7,800, including record keeping hours, required to provide the information; (6) *Purpose:* This information is required by the Department to ensure whether DOE's management and operating contractors are subcontracting in the most cost-effective and efficient manner and to exercise management and oversight of DOE contractors; (7)

Number of Collections: The package contains 1 information and/or record keeping requirement.

Statutory Authority: Sec. 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 (Pub. L. 104–13).

Issued in Washington, DC on January 17, 2003.

Susan L. Frey,

Director, Records Management Division, Office of Records and Business Management, Office of the Chief Information Officer.

[FR Doc. 03–1640 Filed 1–23–03; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

[Docket Nos. EA–247–A and EA–248–A]

Application to Export Electric Energy; Constellation NewEnergy, Inc.

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of Application.

SUMMARY: Under two separate applications, Constellation NewEnergy, Inc. (Constellation) has applied for authority to transmit electric energy from the United States to Mexico and from the United States to Canada pursuant to section 202(e) of the Federal Power Act.

DATES: Comments, protests or requests to intervene must be submitted on or before February 24, 2003.

ADDRESSES: Comments, protests or requests to intervene should be addressed as follows: Office of Coal & Power Import/Export (FE–27), Office of Fossil Energy, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585–0350 (FAX 202–287–5736).

FOR FURTHER INFORMATION CONTACT: Rosalind Carter (Program Office) 202–586–7983 or Michael Skinker (Program Attorney) 202–586–6667.

SUPPLEMENTARY INFORMATION: Exports of electricity from the United States to a foreign country are regulated and require authorization under section 202(e) of the Federal Power Act (FPA) (16 U.S.C. 824a(e)).

On November 8, 2002, the Office of Fossil Energy (FE) of the Department of Energy (DOE) received two separate applications from Constellation for authorization to transmit electric energy from the United States to Mexico and from the United States to Canada. Constellation is a Delaware corporation and a wholly-owned subsidiary of Constellation Energy Group, Inc., a public utility holding company. Constellation is engaged in the marketing of electric energy and power at wholesale and retail throughout North America. Constellation does not own or control any facilities used for the generation, transmission, or distribution of electric energy nor does it have a franchised electric power service area. Constellation will purchase the power to be exported from electric utilities and federal power marketing agencies within the United States.

In FE Docket No. EA–247–A, Constellation NewEnergy proposes to export electric energy to Mexico and to arrange for the delivery of those exports to Mexico over the international transmission facilities owned by San Diego Gas and Electric Company, El Paso Electric Company, Central Power and Light Company, and Comision Federal de Electricidad, the national utility of Mexico. In FE Docket No. EA–248–A, Constellation NewEnergy proposes to export electric energy to Canada and to arrange for the delivery of those exports to Canada over the international transmission facilities owned by Basin Electric Power Cooperative, Bonneville Power Administration, Citizens Utilities, Eastern Maine Electric Cooperative, International Transmission Company, Joint Owners of the Highgate Project, Long Sault, Inc., Maine Electric Power Company, Maine Public Service Company, Minnesota Power, Inc., Minnkota Power Cooperative, New York Power Authority, Niagara Mohawk Power Corporation, Northern States Power, and Vermont Electric Transmission Company.

The construction of each of the international transmission facilities to be utilized by Constellation NewEnergy, as more fully described in the applications, has previously been authorized by a Presidential permit issued pursuant to Executive Order 10485, as amended.

On November 13, 2001, and on November 26, 2001, FE issued Order Nos. EA–247 and EA–248, granting AES New Energy, Inc. authority to export electric energy to Mexico and to Canada, respectively. As a result of a change in the upstream corporate ownership of AES New Energy, Inc. and a subsequent name change to Constellation, the subject applications have been submitted so that export authority may be obtained in the name of the new corporate entity.

Procedural Matters

Any person desiring to become a party to this proceeding or to be heard by filing comments or protests to these applications should file a petition to intervene, comment or protest at the address provided above in accordance with §§ 385.211 or 385.214 of the FERC's Rules of Practice and Procedures (18 CFR 385.211, 385.214). Fifteen copies of each petition and protest should be filed with the DOE on or before the date listed above.

Comments on the Constellation applications to export electric energy to Mexico and/or Canada should be clearly marked with Docket EA–247–A and/or Docket EA–248–A, respectively. Additional copies are to be filed directly with Cathy Barron, Constellation NewEnergy, Inc., 535 Boylston Street, Top Floor, Boston, Massachusetts 02116 *AND* R. Michael Sweeney, Jr., Troutman Sanders LLP, 401 9th Street, NW., Ste. 1000, Washington, DC 20004.

A final decision will be made on these applications after the environmental impacts have been evaluated pursuant to the National Environmental Policy Act of 1969, and a determination is made by the DOE that the proposed action will not adversely impact on the reliability of the U.S. electric power supply system.

Copies of these applications will be made available, upon request, for public inspection and copying at the address provided above or by accessing the Fossil Energy Home Page at *http://www.fe.doe.gov*. Upon reaching the Fossil Energy Home page, select "Regulatory Programs," then "Electricity Regulation," and then "Pending Proceedings" from the options menus.

Issued in Washington, DC, on January 17, 2003.

Anthony J. Como,

Deputy Director, Electric Power Regulation, Office of Coal & Power Import/Export, Office of Coal & Power Systems, Office of Fossil Energy.

[FR Doc. 03–1642 Filed 1–23–03; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Oak Ridge Reservation

AGENCY: Department of Energy.

ACTION: Notice of Open Meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Oak Ridge. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meeting be announced in the **Federal Register**.

DATES: Wednesday, February 12, 2003, 6 p.m.

ADDRESSES: DOE Information Center, 475 Oak Ridge Turnpike, Oak Ridge, TN.

FOR FURTHER INFORMATION CONTACT: Pat Halsey, Federal Coordinator, Department of Energy Oak Ridge Operations Office, PO Box 2001, EM–90, Oak Ridge, TN 37831. Phone (865) 576–4025; Fax (865) 576–5333 or e-mail: *halseypj@oro.doe.gov*.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda:

• The meeting will focus on long-term stewardship issues at the Oak Ridge Reservation. Lorene Sigal, a former Oak Ridge SSAB member, will give a brief history of the evolution of stewardship issues, an overview of current Oak Ridge SSAB stewardship activities, and a summary of national initiatives.

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Pat Halsey at the address or telephone number listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of five minutes to present their comments.

Minutes: Minutes of this meeting will be available for public review and copying at the Department of Energy's Information Center at 475 Oak Ridge Turnpike, Oak Ridge, TN between 8 a.m. and 5 p.m. Monday through Friday, or by writing to Pat Halsey, Department of Energy Oak Ridge Operations Office, PO Box 2001, EM–90, Oak Ridge, TN 37831, or by calling her at (865) 576–4025.

Issued at Washington, DC on January 21, 2003.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 03–1641 Filed 1–23–03; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 400–038]

Willard Janke v. Public Service Company of Colorado; Notice Granting Extension of Time to File Answer to Complaint

January 17, 2003.

On January 3, 2003, notice was issued of Willard Janke's complaint against the Public Service Company of Colorado (Public Service), the licensee for the Tacoma-Ames Project No. 400. The notice established January 21, 2003, as the deadline for filing the answer to the complaint.

On January 15, 2003, Public Service filed a motion requesting an extension to January 24, 2003, of the deadline for filing its answer. Public Service has shown good cause for granting the extension. Accordingly, its request is granted and its answer must be filed on or before January 24, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–1615 Filed 1–23–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 516]

South Carolina Electric & Gas Company; Notice of Meeting to Discuss Construction Status for Saluda Dam

January 17, 2003.

The Federal Energy Regulatory Commission (FERC) will hold an informational meeting to discuss ongoing construction activities and scheduling for the Saluda Seismic Remediation Project, FERC No. 516. The Saluda Project is located on the Saluda River in Richland, Lexington, Saluda, and Newberry counties, near Columbia, South Carolina.

South Carolina Electric & Gas Company (SCE&G) issued the contract for construction on August 12, 2002 to Barnard Construction Company. Mobilization of construction equipment and site preparation work has started. Work, including installation of a complex dewatering system, is underway with a considerable number of wells installed. Many other construction activities are ongoing.

The informational meeting will take place on February 6, 2003 from 6–8:30 p.m. at the Embassy Suites Hotel, Columbia-Greystone, 200 Stoneridge Drive, Columbia, SC 29210. FERC and SCE&G staff will discuss ongoing activities and schedule and respond to questions.

Please direct any questions about this meeting to Constantine G. Tjoumas at (202) 502–6734.

Magalie R. Salas,

Secretary.

[FR Doc. 03–1616 Filed 1–23–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–135–000]

Williams Gas Pipelines Central, Inc.; Notice of Technical Conference

January 17, 2003.

In the Commission's order issued on December 31, 2002,[1] in the above-captioned docket, the Commission directed that a technical conference be held to address certain issues, as set forth in the Commission's order.

Take notice that the technical conference will be held on Tuesday, February 11, 2003, at 10 a.m., in a room to be designated at the offices of the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

All interested parties and Staff are invited to attend.

Magalie R. Salas,

Secretary.

[FR Doc. 03–1619 Filed 1–23–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG03–35–000, et al.]

AEG Operations. LLC., et al.; Electric Rate and Corporate Filings

January 16, 2003

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. AEG Operations, LLC

[Docket No. EG03–35–000]

Take notice that on January 10, 2003, AEG Operations, LLC (AEG Operations)

[1] Williams Gas Pipelines Central, Inc., 101 FERC 61,407 (2002).

filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to part 365 of the Commission's regulations.

AEG Operations will operate and maintain the electric generating facility (the Facility) owned and currently operated by Mirant Neenah, LLC (Mirant Neenah). The Facility's entire output currently is sold on a long-term basis to a third party not affiliated with the Applicant. The Mirant Neenah Facility is located at Neenah, Wisconsin, and comprises two gas-fired turbine generators rated at 309 MW total generating capacity. AEG Operations' principal business offices are located at One Mid-America Plaza, Suite 518, Oakbrook Terrace, Illinois, 60181–4705.

Comment Date: February 6, 2003.

2. PacifiCorp

[Docket No. ER03–410–000]

Take notice that on January 14, 2003, PacifiCorp, tendered for filing in accordance with 18 CFR 35 of the Commission's Rules and Regulations Amendment No. 2 to the Power Marketing and Resource Management Service Agreement with Deseret Generation & Transmission Co-Operative.

PacifiCorp states that copies of this filing were supplied to the Utah Public Service Commission and the Public Utility Commission of Oregon.

Comment Date: February 4, 2003.

3. Arizona Public Service Company, El Paso Electric Company, Public Service Company of New Mexico, and Southern California Edison Company; Filing of Funding Agreement

[Docket No. ER03–411–000]

Take notice that on January 14, 2003, Arizona Public Service Company, El Paso Electric Company, Public Service Company of New Mexico, and Southern California Edison Company tendered for filing a Funding Agreement for the design, engineering and construction services associated with the facilities necessary to interconnect the Rudd Transmission Line to the ANPP High Voltage Switchyard between the Rudd Line Participants and Salt River Project Agricultural Improvement and Power District, as Operating Agent for the ANPP Switchyard Participants.

Comment Date: February 4, 2003.

4. Florida Power & Light Company

[Docket No. ER03–412–000]

Take notice that on January 14, 2003 Florida Power & Light Company (FPL) tendered for filing a Notice of Termination of an Interconnection & Operation Agreement (IOA) between FPL and Duke Energy Fort Pierce, LLC (Duke Energy). Termination of the IOA has been mutually agreed to by FPL and Duke Energy. FPL requests that the termination be made effective December 23, 2002.

Comment Date: February 4, 2003.

Standard Paragraph

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number filed to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866)208–3676, or for TTY, contact (202)502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. 03–1620 Filed 1–23–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2232–428—North Carolina and South Carolina]

Duke Energy Corporation; Notice of Availability of Draft Environmental Assessment

January 17, 2003.

In accordance with the National Environmental Policy Act of 1969, as amended, and the Federal Energy Regulatory Commission's (Commission) regulations (18 CFR part 380), Commission staff have reviewed a proposed Revised Shoreline Management Plan (SMP) for the Catawba-Wateree Project (FERC No. 2232), and have prepared a draft Environmental Assessment on the proposed plan. The project is located on the Catawba River in North Carolina and South Carolina.

Specifically, the project licensee (Duke Energy Corporation) has requested Commission approval of the SMP. The proposed SMP is intended to supercede the approved SMP including the classification maps. The draft EA addresses proposed revisions to SMP for the Catawba-Wateree Project. The SMP and maps address the allowable uses of 1,727 miles of shoreline for the 11 project reservoirs located in North Carolina and South Carolina. In the draft EA, Commission staff have analyzed the probable environmental effects of implementing the proposed SMP and have concluded that approval of the proposed SMP, with appropriate environmental measures, would not constitute a major Federal action significantly affecting the quality of the human environment.

Copies of the draft EA are available for review in Public Reference Room 2-A of the Commission's offices at 888 First Street, NE., Washington, DC. The draft EA also may be viewed on the Commission's Internet Web site (*http://www.ferc.gov*) using the "FERRIS" link. Additional information about the project is available from the Commission's Office of External Affairs, at (202) 502–6088 or on the Commission's Web site using the FERRIS link. Click on the FERRIS link, enter the docket number excluding the last three digits in the Docket Number field. Be sure you have selected an appropriate date range. For assistance with FERRIS, contact *FERCOnlineSupport@ferc.gov* or call toll-free at (866) 208–3676, or for TTY contact (202) 502–8659. The FERRIS link on the FERC's Internet Web site also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

Any comments on the draft EA should be filed within 30 days of the date of this notice and should be addressed to Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Please reference "Catawba-Wateree Hydroelectric Project, FERC Project No. 2232–428" on all comments. Comments may be filed electronically via the

Internet in lieu of paper. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Magalie R. Salas,

Secretary.

[FR Doc. 03–1617 Filed 1–23–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM98–1–000]

Regulations Governing Off-the-Record Communications; Public Notice

January 17, 2003.

This constitutes notice, in accordance with 18 CFR 385.2201(h), of the receipt of exempt and prohibited off-the-record communications.

Order No. 607 (64 FR 51222, September 22, 1999) requires Commission decisional employees, who make or receive an exempt or a prohibited off-the-record communication relevant to the merits of a contested on-the-record proceeding, to deliver a copy of the communication, if written, or a summary of the substance of any oral communication, to the Secretary.

Prohibited communications will be included in a public, non-decisional file associated with, but not part of, the decisional record of the proceeding. Unless the Commission determines that the prohibited communication and any responses thereto should become part of the decisional record, the prohibited off-the-record communication will not be considered by the Commission in reaching its decision. Parties to a proceeding may seek the opportunity to respond to any facts or contentions made in a prohibited off-the-record communication, and may request that the Commission place the prohibited communication and responses thereto in the decisional record. The Commission will grant such requests only when it determines that fairness so requires. Any person identified below as having made a prohibited off-the-record communication should serve the document on all parties listed on the official service list for the applicable proceeding in accordance with Rule 2010, 18 CFR 385.2010.

Exempt off-the-record communications will be included in the decisional record of the proceeding, unless the communication was with a cooperating agency as described by 40 CFR 1501.6, made under 18 CFR 385.2201(e)(1)(v).

The following is a list of exempt and prohibited off-the-record communications recently received in the Office of the Secretary. These filings are available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866)208–3676, or for TTY, contact (202)502–8659.

EXEMPT

Docket No.	Date filed	Presenter or requester
1. Project Nos. 2897–000, 2931–000, 2932–000, 2941–000, 2942–000	1–06–03	Dana Paul Murch.
2. Project No. 1927–000	1–13–03	James A. Caplan.
3. Project No. 719–000	1–13–03	Reid R. Brown.
4. Project No. 2574–032	1–13–03	Pat Weslowski.
5. CP02–396–000	1–13–03	Garland Pardue.
6. Project Nos. 20–000, 472–000, 2401–000	1–13–03	Susan Giannettino.
7. Project No. 719–007	1–17–03	Charles Hall.

Magalie R. Salas,

Secretary.

[FR Doc. 03–1618 Filed 1–23–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER02–2001–000]

Electric Quarterly Reports; Revised Public Utility Filing Requirements Docket No. RM01–8–000; Notice of Extension of Time

January 17, 2003.

On December 19, 2002, the Commission issued Order 2001–C, specifying details about the requirement for utilities to file a list of conforming contracts (as mandated in Order 2001) and requiring future Electric Quarterly Reports to be filed using the new Electric Quarterly Report Submission Software. Both the list of conforming contracts and the fourth quarter Electric Quarterly Report are due to be filed on or before January 31, 2003.

Numerous filers have requested an extension of time in order to compile the required data and adjust to the new software requirements. In consideration of this situation, notice is hereby given that the time to file the list of conforming contracts and the fourth quarter 2002 Electric Quarterly Report is extended to and including February 14, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–1614 Filed 1–23–03; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[OAR–2003–0006, FRL–7441–3]

Agency Information Collection Activities: Proposed Collection; Comment Request; Mobile Source Emission Factor On-Highway Recruitment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit the following continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB): Mobile Source Emission Factor On-Highway Recruitment (OMB Control No. 2060–0078; EPA ICR No. 0619.10) expiring 06/30/2003. Before submitting the ICR to OMB for review and approval, EPA

is soliciting comments on specific aspects of the proposed information collection as described below. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before March 25, 2003.

ADDRESSES: Follow the detailed instructions in the **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Carl Scarbro, Assessment and Standards Division, Office of Transportation and Air Quality, AATC, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 734–214–4209; fax number: 734–214–4939; e-mail address: *scarbro.carl@epa.gov*.

SUPPLEMENTARY INFORMATION: EPA has established a public docket for this ICR under Docket ID number OAR–2003–0006, which is available for public viewing at the Office of Air and Radiation Docket in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Office of Air and Radiation Docket is (202) 566–1742. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket*. Use EDOCKET to obtain a copy of the draft collection of information, submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA and OMB within 60 days of this notice, and according to the following detailed instructions: Submit your comments to EPA online using EDOCKET (our preferred method), by e-mail to *a-and-r-docket@epamail.epa.gov*, or by mail to: EPA Docket Center, Environmental Protection Agency, Mailcode 6102T, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, see EPA's **Federal Register** notice describing the electronic docket at 67 FR 38102 (May 31, 2002), or go to *www.epa.gov./edocket*.

Affected entities: Entities potentially affected by this action are owners of on-highway vehicles.

Title: Mobile Source Emission Factor On-Highway Recruitment (OMB Control No. 2060–0078; EPA ICR No. 0619.10) expiring 06/30/2003.

Abstract: The EPA Emission Inventory Group, through contractors, solicits the general public to voluntarily offer their vehicle for emissions testing. There are two methods used to solicit the general public for participation in Emission Factors Program (EFP):

1. Postal cards are sent to a random selection of vehicle owners using State motor vehicle registration lists; and

2. A random selection of motor vehicle owners, who arrive at State inspection stations on an annual or biennial schedule, are solicited.

The legislative basis for the Emission Factors Program is section 103(a)(1)(2)(3) of the Clean Air Act, which requires the Administrator to "conduct * * * research, investigations, experiments, demonstrations, surveys, and studies relating to the causes, effects, extent, prevention, and control of air pollution" and "conduct investigations and research and make surveys concerning any specific problem of air pollution in cooperation with any air pollution control agency * * *"

EPA uses the data from the EFP to verify predictions of the computer model known as MOBILE, which calculates the contribution of mobile source emissions to ambient air pollution. MOBILE is used by EPA, state and local air pollution agencies, the automotive industry, and other parties that are interested in estimating mobile source emissions. These estimates, when generated by governments are the basis for State Implementation Plans (SIPs), and Reasonable Further Progress (RFP) reports for the attainment status assessments for the National Ambient Air Quality Standards (NAAQS).

Furthermore, the EFP data collected under this ICR will be used to construct a new model to replace MOBILE, the "Multi-scale Motor Vehicle & Equipment Emission System" (MOVES). MOVES will be based on field sample data as opposed to laboratory simulations. This change is due to recommendations made to EPA by the National Research Council, the Office of Management and Budget and is enabled by the availability of suitable technology for the collection of emission and activity data while the vehicles are being used by their owners/operators. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

The EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Burden Statement: Public reporting burden for this collection of information is estimated to average 10 minutes to 2 hours per response, including the time for reviewing instructions, delivering the vehicle for testing, installing or uninstalling field sampling equipment on the vehicle, or in some instance filling out a travel log. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and

providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Dated: January 16, 2003.

Carl A. Scarbro,

Environmental Protection Specialist, Office of Air and Radiation, Office of Transportation and Air Quality, Assessment and Standards Division, Air Toxics Center.

[FR Doc. 03–1625 Filed 1–23–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6636–9]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7167 or *http://www.epa.gov/compliance/nepa/.*

Weekly receipt of Environmental Impact Statements filed January 13, 2003 through January 17, 2003, pursuant to 40 CFR 1506.9.

EIS No. 030023, Final EIS, FHW, OH, KY, Ironton-Russell Bridge Replacement Project, LAW–93C–0.00, PID 17359, Structurally-Deficient and Functionally-Obsolete Bridge Replacement, Funding, NPDES, U.S. Coast Guard Section 9 Bridge Permits and U.S. Army COE Section 10 and 404 Permits Issuance, Lawrence County, OH and Greenup County, KY, Wait Period Ends: February 24, 2003, Contact: Pete Jilek (614) 280–6835.

EIS No. 030024, Draft EIS, AFS, County Line-Fourmile Project, To Implement Management Direction as Outlined in the Allegheny National Forest Land and Resource Management Plan, Bradford Ranger District, Warren and McKean Counties, PA, Comment Period Ends: March 10, 2003, Contact: Jim Apgar (814) 362–4613.

EIS No. 030025, Draft EIS, AFS, ID, Upper Bear Timber Sale Project, Proposal to Reduce Fuels, Manage Forest Vegetation and Roads Management, Payette National Forest, Council Ranger District, Adams County, ID, Comment Period Ends: March 10, 2003, Contact: Mary Farnsworth (208) 253–0100.

EIS No. 030026, Final EIS, AFS, ID, Middle-Black Analysis Project, Proposes Vegetative Management, Watershed Restoration, and Noxious Weed Activities Aimed at Ecosystem Restoration, Clearwater National Forest, North Fork Ranger District, Clearwater County, ID, Wait Period Ends: February 24, 2003, Contact: Tam White (208) 476–8226.

EIS No. 030027, Final EIS, SFW, AK, Swanson River Satellites Natural Gas Exploration and Development Project, Evaluation of a Right-of-Way Permit Application and U.S. Army COE Section 404 and NPDES Permits Issuance, Kenai National Wildlife Refuge, Kenai Peninsula, AK, Wait Period Ends: February 24, 2003, Contact: Brian L. Anderson (907) 786–3379.

EIS No. 030028, Final EIS, FTA, FL, Tampa Rail Project, Transportation Improvements, Light Rail Transit (LRT) or Diesel Multiple Unit (DMU) Vehicles, City of Tampa, Hillsborough County, FL, Wait Period Ends: February 24, 2003, Contact: Derek R. Scott (404) 562–3524.

EIS No. 030029, Draft EIS, AFS, CA, Blue Fire Forest Recovery Project, Proposal to Move the Existing Condition Caused by the Blue Fire of 2001 Towards the Desired Condition, Modoc National Forest, Warner Mountain Ranger District, Lassen and Modoc Counties, CA, Comment Period Ends: March 10, 2003, Contact: Edith Asrow (530) 279–6116.

EIS No. 0230030, Draft EIS, NPS, AR, Arkansas Post National Memorial General Management Plan, Implementation, Osotouy Unit, Arkansas and Mississippi Rivers, Arkansas County, AR, Comment Period Ends: March 25, 2003, Contact: Nick Chevance (402) 221–7286.

EIS No. 030031, Draft EIS, JUS, CA, Juvenile Justice Facility and East County Hall of Justice, Proposal to Evaluates two Projects that could be Constructed at one (Combined Siting) or (Separate Siting), Alamenda County, CA, Comment Period Ends: March 10, 2003, Contact: Paul DeLameter (202) 514–7903.

Amended Notices

EIS No. 020511, Draft EIS, COE, MD, Aberdeen Proving Ground (APG) Project, To Conduct Research and Development, Test and Evaluate Ordnance, Military Equipment and to Train Personnel, Chesapeake Bay, Hartford, Baltimore, Kent and Cecil Counties, MD, Comment Period Ends: February 18, 2003, Contact: Tracy Dunne (410) 278–2479. Revision of FR Notice Published on 12/20/2002: CEQ Comment Period Ending 2/3/2003 has been Extended to 2/18/2003.

Dated: January 21, 2003.

Joseph C. Montgomery,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 03–1621 Filed 1–23–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6637–1]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 564–7167.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in the **Federal Register** dated April 12, 2002 (67 FR 17992).

Draft EISs

ERP No. D–AFS–J65368–UT Rating LO, Duck Creek—Swains Access (Duck/Swains), Management Project, Wildlife Habitat, Soil and Watershed Conditions and Motorized Vehicle Use Management Improvements, Dixie National Forest, Cedar City Ranger District, Iron, Garfield and Kane Counties, UT.

Summary: EPA expressed lack of objections and fully supports closing excess, redundant and damaging roads with appropriate mitigation measures to decrease road density.

ERP No. D–AFS–L65406–ID Rating LO, North Kennedy-Cottonwood Stewardship Project, Existing Transportation System Modifications and Forest Health Improvements through Vegetation Management both Commercial and Non-Commercial Methods, Boise National Forest, Emmett Ranger District, Gem and Valley Counties, ID.

Summary: EPA expressed lack of objections with the proposed action. EPA suggested that additional information on the road closure/management and revegetation measures to improve habitat to meet Forest Plan Wildlife Recovery goals should be included in the Final EIS.

ERP No. D–COE–L36115–WA Rating EC2, Centralia Flood Damage Reduction Project, Chehalis River, Lewis and Thurston Counties, WA.

Summary: EPA expressed environmental concerns and

recommended that the Corps improve the Purpose and Need Statement, provide additional and/or revised alternatives, supply supportive information on environmental sustainability, disclose compliance with floodplain management (Executive Order 110998) and address approved flood maps, and address indirect and cumulative impacts for this proposed project.

ERP No. D–FRC–L05228–ID Rating NS, Bear River Hydroelectric Project, Application for a New License (Relicense) for Three Existing Hydroelectric Projects: Soda (FERC No. 20–019), Grace-Cove (FERC No. 2401–007) and Oneida (FERC No. 472–017), Bear River Basin, Caribou and Franklin Counties, ID.

Summary: EPA used a screening tool to conduct a limited review of the draft EIS. Based on the screen, EPA does not foresee having any environmental objections to the proposed project. Therefore, a detailed review of the draft EIS was not conducted.

ERP No. D–IBR–K39076–00 Rating EC2, Navajo Reservoir Operations, Operational Changes to Navajo Dam and Reservoir, Related Flow Recommendation, Implementation and Funding, Navajo Unit-San Juan River, NM, CO and UT.

Summary: EPA has environmental concerns with the long-term sustainability of additional water development in the Basin and urged an equitable balance of available water supplies, water supply commitments, and environmental needs. EPA strongly encouraged development of the Memorandum of Agreement to protect water released for endangered species from diversion by intervening appropriators. While EPA supports reoperation of Navajo Dam to implement the Flow Recommendations, EPA has concerns regarding water quality, mitigation, indirect and cumulative impacts, monitoring and the adaptive management plan.

ERP No. D–NOA–K91011–00 Rating EC2, 2003 Pacific Coast Groundfish Fishery, Groundfish Acceptable Biological Catch and Optimum Yield Specifications and Management Measures, Implementation, WA, OR and CA.

Summary: EPA has environmental concerns based on insufficient information on stock rebuilding, enforcement of harvest measures, relationship between federal and state groundfish fisheries, trawl vessels exemptions, indirect impacts and tribal fishing rights.

ERP No. D–SFW–K64022–CA Rating EC2, Aquatic Habitat Conservation Plan and Candidate Conservation Agreement with Assurances to Conserve Habitat for and Mitigate Impacts on Six Aquatic Species, USFWS Enhancement of Survival Permit and an USMFS Incidental Take Permit Issuance, Humboldt and Del Norte Counties, CA.

Summary: EPA commended the approach of developing a comprehensive aquatic management strategy to address potential impacts to listed and potentially listed fish and amphibian species, but expressed specific environmental concerns related to water temperature impacts.

ERP No. D–USN–K52004–CA Rating EC2, Advanced Amphibious Assault Vehicle (AAAV) Development, Replacement and Establishment, Implementation, Del Mar Basin Area of Marine Base Corps (MCB) Camp Pendelton, San Diego County, CA.

Summary: EPA expressed environmental concerns, noting that additional mitigation may be available to potentially reduce the project's environmental impacts, including impacts to (non-ocean) surface water quality and air quality.

ERP No. DA–FAA–E40785–FL Rating EC2, Fort Lauderdale-Hollywood International Airport, Runway 9R–2FL Expansion and other Associated Improvements, New Information concerning the Predicted Number of Residents Impacted by Noise for Alternatives using 2000 Census Block Data or Field Inspection, Funding, Broward County, FL.

Summary: EPA continues to have environmental concerns with noise regarding the residences located south of the runway proposed for extension. Additional mitigation through residential acquisition over time was requested.

Final EISs

ERP No. F–COE–K39073–CA, Middle Creek Flood Damage Reduction and Ecosystem Restoration Project located between Highway 20 and Middle Creek immediately northwest of Clear Lake, Implementation, Lake County, CA.

Summary: EPA reviewed the EIS and found that the document adequately addresses the issues raised in our comment letter on the DEIS.

ERP No. F–IBR–K31003–CA, Imperial Irrigation District Water Conservation and Transfer Project and Draft Habitat Conservation Plan (HCP), Implementation and U.S. Fish and Wildlife Service Section 10 Incidental Take Permit Approval and Issuance, Colorado River, Imperial County, CA.

Summary: EPA continues to have environmental objections to the potential adverse impacts on surface and groundwater quality, air quality and biological resources and believes these objections could be addressed by the new proposed Habitat Conservation Plan and the Salton Sea Restoration Project.

ERP No. F–IBR–K39072–00, Implementation Agreement (IA), Inadvertent Overrun and Payback Policy (IOP) and Related Federal Actions, Implementation, Quantification Settlement Agreement (QSA), Lower Colorado River, in the States of AZ, CA and NV.

Summary: EPA continues to have environmental concern with the potential cumulative impacts on water quality constituents in drinking water sources and cumulative impacts on Indian Trust assets. EPA believes these concerns could be addressed by the new proposed Habitat Conservation Plan and the Salton Sea Restoration Project.

ERP No. F–NAS–A12043–00, PROGRAMMATIC—MARS Exploration Rover—2003 (MER–2003) Project, Continuing the Long-Term Exploration of MARS, Implementation.

Summary: EPA has no objection to the proposed action.

Dated: January 21, 2003.

Joseph C. Montgomery,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 03–1622 Filed 1–23–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7442–6]

Clean Air Scientific Advisory Committee, Notification of Public Advisory Committee Meeting; Teleconference Consultation on Project Work Plan for Revised Air Quality Criteria for Ozone and Related Photochemical Oxidants

ACTION: EPA Clean Air Scientific Advisory Committee, Notification of Public Advisory Committee Meeting; Teleconference Consultation on Project Work Plan for Revised Air Quality Criteria for Ozone and Related Photochemical Oxidants.

SUMMARY: Pursuant to the Federal Advisory Committee Act (FACA), as amended (5 U.S.C. App.), Public Law 92–463, notice is hereby given that the Clean Air Scientific Advisory Committee (CASAC) of the U.S. Environmental Protection Agency's (EPA or Agency) Science Advisory Board (SAB) will meet via teleconference on Thursday, February 6,

2003, from 10 a.m. to 1 p.m. eastern time. This teleconference meeting will be hosted out of Conference Room 6013, U.S. EPA, Ariel Rios Federal Building North, 1200 Pennsylvania Avenue, NW., Washington, DC 20004. The meeting is open to the public; however, due to limited space, seating will be on a first-come basis. The public may also attend via telephone, however, lines may be limited. Information on how to participate is provided below.

Purpose of this Meeting: The purpose of this public teleconference meeting is for the CASAC to conduct a consultation with EPA on the Project Work Plan for Revised Air Quality Criteria for Ozone and Related Photochemical Oxidants. (*Note:* A full CASAC review of the first revised draft AQCD for ozone and related photochemical oxidants is scheduled to take place later this calendar year, and will be announced via a separate **Federal Register** notice.)

Background: EPA promulgates National Ambient Air Quality Standards (NAAQS) based on scientific information assessed in air quality criteria documents (AQCD) issued under the Clean Air Act (CAA), section 108. The CAA also requires periodic (*i.e.*, every five years) revision of criteria and review of NAAQS. Furthermore, section 109 of the CAA directed the establishment of the CASAC (42 U.S.C. 7409). The CASAC has a statutorily-mandated responsibility under the CAA to review and offer scientific and technical advice to the EPA Administrator on the air-quality criteria and regulatory documents which form the basis for the NAAQS. The previous AQCD for ozone, published in July 1996, provided the scientific basis for EPA's promulgation, in July 1997, of a new eight-hour NAAQS for ground-level ozone.

The Project Work Plan for Revised Air Quality Criteria for Ozone and Related Photochemical Oxidants was prepared by EPA's Office of Research and Development (ORD) National Center for Environmental Assessment (NCEA), located at Research Triangle Park (RTP), NC. The plan presents information on EPA's approach to assessing the latest available scientific information to be incorporated into a revised Ozone AQCD, identifies key issues to be addressed in the Ozone AQCD, and includes brief summaries of legislative requirements and the history of previous ozone criteria revisions and NAAQS reviews. ORD will prepare a draft revised Ozone AQCD and subject it to review at expert peer-review workshops, by the public, and by the CASAC.

The main purpose of the forthcoming revised AQCD for Ozone and Related Photochemical Oxidants is to critically evaluate and assess the latest scientific knowledge useful in indicating the kind and extent of all identifiable effects on public health and welfare which may be expected from the presence of these pollutants in the ambient air. ORD will place emphasis on assessment of health and environmental effects information. Other scientific information will also be evaluated, in part to provide a better understanding of key issues such as those associated with ozone photochemistry; issues on environmental ozone concentrations attributable to anthropogenic and background sources; and issues related to the health and environmental effects associated with changes in solar UV radiation and global warming, as mediated by changes in tropospheric ozone. The final Ozone AQCD document will be used by EPA's Office of Air Quality Planning and Standards (OAQPS) in its review of the Ozone NAAQS.

FOR FURTHER INFORMATION CONTACT: To participate in this meeting, contact Mr. Fred Butterfield, CASAC Designated Federal Officer, U.S. EPA Science Advisory Board (1400A), Suite 6450CC, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone/voice mail at (202) 564–4561; fax at (202) 501–0582; or via e-mail at: *butterfield.fred@epa.gov*. Members of the public desiring additional information about the meeting locations or the call-in number for the teleconference must contact Mr. Butterfield at the addresses and numbers identified above.

Submitting Public Comments: The CASAC will make a brief period of time available during the teleconference meeting to take public comments on the subject of the consultation. This oral public comment period will be no more than 15 minutes in length and will be divided among all speakers who register in advance. Registration is on a first-come basis. Speakers who have been granted time on the agenda may not yield their time to other speakers. Those wishing to speak but who are unable to register in time may provide their comments in writing. Requests for oral comments must be in writing (e-mail, fax or mail) and received by Mr. Butterfield at the address above no later than noon eastern time on February 4, 2003.

Availability of Review Material: There is only one document that is the subject of the CASAC consultation: NCEA's Project Work Plan for Revised Air Quality Criteria for Ozone and Related Photochemical Oxidants. This document is available electronically at the following URL address: *http://cfpub.epa.gov/ncea/cfm/recordisplay.cfm?deid=55125*. For information and any questions pertaining to the review document, please contact Mr. James Raub, NCEA-RTP, via telephone: (919) 541–4157; fax: 919–541–1818; or e-mail: *raub.james@epa.gov*.

Providing Oral or Written Comments: It is the policy of the EPA Science Advisory Board to accept written public comments of any length, and to accommodate oral public comments whenever possible. The EPA Science Advisory Board expects that public statements presented at its meetings will not be repetitive of previously-submitted oral or written statements. Specific instructions are as follows:

Oral Comments: In general, each individual or group requesting an oral presentation at a face-to-face meeting will be limited to a total time of 10 minutes (unless otherwise indicated above). For teleconference meetings, opportunities for oral comment will usually be limited to no more than three minutes per speaker and no more than 15 minutes total (unless otherwise indicated above). Deadlines for getting on the public speaker list for a meeting are given above. Speakers who plan to attend the teleconference meeting in person should bring at least 25 copies of their comments and presentation slides for distribution to the reviewers and public at the meeting.

Written Comments: Although the SAB accepts written comments until the date of the meeting, written comments are requested to be provided so that they will be received in the SAB Staff Office at least one week prior to the meeting date, in order for the comments to be made available to the reviewers at the meeting for their consideration. Comments should be supplied to the appropriate DFO at the address/contact information noted above, as follows: one hard copy with original signature and one electronic copy via e-mail (acceptable file formats: Adobe Acrobat [.pdf], WordPerfect or MS Word). Those providing written comments who also attend the meeting are requested to bring 25 copies of their comments for public distribution.

Meeting Access: Individuals requiring special accommodations at this meeting, including wheelchair access to the conference room, should contact Mr. Butterfield at least five business days prior to the meeting (*i.e.*, by Thursday, January 30) so that appropriate arrangements can be made.

General Information: The SAB was statutorily-established in 1978 (42 U.S.C. 4365) to provide independent scientific and technical advice, consultation, and recommendations to the EPA Administrator on the technical basis for Agency positions and regulations. Additional information concerning the EPA Science Advisory Board, including its structure, function, and composition, may be found on the EPA SAB Web site at: *http://www.epa.gov/sab;* and in the EPA Science Advisory Board FY2001 Annual Staff Report, which is available from the EPA SAB Publications Staff at phone: (202) 564–4533; via fax at: (202) 501–0256; or on the SAB Web site at: *http://www.epa.gov/sab/annreport01.pdf.*

Dated: January 16, 2003.

A. Robert Flaak,

Acting Deputy Director, EPA Science Advisory Board Staff Office.

[FR Doc. 03–1628 Filed 1–23–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7442–7]

Good Neighbor Environmental Board Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting.

SUMMARY: The next meeting of the Good Neighbor Environmental Board, a federal advisory committee that reports to the President and Congress on environmental and infrastructure projects along the U.S. border with Mexico, will take place in Washington, D.C. on February 18 and 19, 2003. It is open to the public.

DATES: On February 18, a special half-day session called "Border Environmental Forecast 2003" will begin at 9 a.m. (registration at 8:30 a.m.) and end at 12 noon, followed by the Board's Strategic Planning Session from 2 p.m to 5:30 p.m. On February 19, the Board will hold its routine business meeting from 8 a.m. to 12 noon. A pre-meeting orientation session for new members will take place from 4–6 p.m. on February 17.

ADDRESSES: The meeting site is the Hotel Washington located at the corner of 15th St. NW. and Pennsylvania Ave. (515 15th Street, NW., Pennsylvania Ave.) Washington, DC 20004.

The closest metro is Metro Center (on the Red Line).

FOR FURTHER INFORMATION CONTACT: Elaine M. Koerner, Designated Federal Officer for the Good Neighbor Environmental Board, Office of Cooperative Environmental Management, Office of the Administrator, USEPA, MC1601A, 1200 Pennsylvania Ave. NW., Washington, DC 20004, (415) 972–3437, *koerner.elaine@epa.gov.*

Meeting Access: Individuals requiring special accommodation at this meeting, including wheelchair access to the conference room, should contact the Designated Federal Officer at least five business days prior to the meeting so that appropriate arrangements can be made.

SUPPLEMENTARY INFORMATION: *Agenda:* The Border Environmental Forecast 2003 seminar is one of three activities scheduled for February 18 and 19. This three-hour expert Forecast seminar will begin at 9 a.m. (registration at 8:30 a.m.) and conclude at noon. In keeping with a similar session hosted last year, two panels of border-region experts will forecast the most pressing environmental challenges the border region will face in the year ahead. Immediately following the seminar, from 12 to 12:30 p.m. a public comment session will take place. During the afternoon of February 18, the Board will hold its annual Strategic Planning Session; a Road Map for the year ahead and criteria for measuring its effectiveness are among the products to be developed. The following morning, February 19, the Board will hold a routine business meeting. All of these activities are open to the public.

Public Attendance: The public is welcome to attend all portions of the meeting. Members of the public who plan to file written statements and/or make brief (suggested 5-minute limit) oral statements at the public comment session are encouraged to contact the Designated Federal Officer for the Board prior to the meeting.

Background: The Good Neighbor Environmental Board meets three times each calendar year at different locations along the U.S.-Mexico border and also holds an annual strategic planning session. It was created by the Enterprise for the Americans Initiative Act of 1992. An Executive Order delegates implementing authority to the Administrator of EPA. The Board is responsible for providing advice to the President and the Congress on environmental and infrastructure issues and needs within the States contiguous to Mexico in order to improve the quality of life of persons residing on the United States side of the border. The statute calls for the Board to have representatives from U.S. Government agencies; the governments of the States of Arizona, California, New Mexico and Texas; and private organizations with expertise on environmental and infrastructure problems along the southwest border. The U.S. Environmental Protection Agency gives notice of this meeting of the Good Neighbor Environmental Board pursuant to the Federal Advisory Committee Act (Public Law 92–463).

Dated: January 13, 2003.

Oscar Carrillo,

Acting Desiignate Federal Officer.

[FR Doc. 03–1627 Filed 1–23–03; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Submitted to OMB for Review and Approval

January 13, 2003.

SUMMARY: The Federal Communications Commissions, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before February 24, 2003. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commission, Room 1–A804, 445 12th Street, SW., Washington, DC 20554 or via the Internet to *lesmith@fcc.gov*.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via the Internet at *lesmith@fcc.gov*.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0387.

Title: On Site Verification of Field Disturbance Sensors—Section 15.201(d).

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 200.

Estimated Time per Response: 18 hours.

Frequency of Response: Recordkeeping; one time and on occasion reporting requirement; third party disclosure.

Total Annual Burden: 3,600 hours.

Total Annual Cost: $40,000.

Needs and Uses: FCC rules permit the operation of field disturbance sensors in the low VHF region of the spectrum. To monitor non-licensed field disturbance sensors operating in the low VHF television bands, a unique procedure for on-site equipment testing of the systems is required to ensure suitable safeguards for the operation of these devices. Data are retained by the holder of the equipment authorized/issued by the FCC and made available only at the request of the Commission.

OMB Control Number: 3060–0436.

Title: Equipment Authorization—Cordless Telephone Security Coding.

Form Number: N/A.

Type of Review: Extension of currently approved collection.

Respondents: Businesses or other for-profit entities.

Number of Respondents: 100.

Estimated Time Per Response: 1.5 hours.

Frequency of Response: Recordkeeping; one time and on-occasion reporting requirements; third party disclosure.

Total Annual Burden: 150 hours.

Total Annual Cost: None.

Needs and Uses: The FCC requires cordless telephone security features protect the public switched telephone network from unintentional line seizure and telephone dialing. These features prevent unauthorized access to the telephone line, the dialing of calls in response to signals other than those from the owner's handset, and the unintentional ringing of a cordless telephone handset. Use of the cordless telephone security features reduces the harm caused by some cordless telephones to the "911" Emergency Service Telephone System and the telephone network in general.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 03–1655 Filed 1–23–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission

January 14, 2003.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before February 24, 2003. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Judith Boley Herman, Federal Communications Commission, Room 1–C804, 445 12th Street, SW., DC 20554 or via the Internet to *jboley@fcc.gov*.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judith Boley Herman at 202–418–0214 or via the Internet at *jboley@fcc.gov*.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0798.

Title: FCC Application for Wireless Telecommunications Bureau Radio Service Authorization.

Form Nos.: FCC Form 601.

Type of Review: Revision of a currently approved collection.

Respondents: Individuals or households, business or other for-profit, not-for-profit institutions, state, local or tribal government.

Number of Respondents: 242,555.

Estimated Time Per Response: 1.25 hours.

Frequency of Response: On occasion and every 10 years reporting requirements, third party disclosure requirement, recordkeeping requirement.

Total Annual Burden: 212,235 hours.

Total Annual Cost: $48,510,000.

Needs and Uses: The FCC Form 601 is a consolidated, multi-part application form, or "long form" that is used for general market-based licensing and site-by-site licensing in the Wireless Telecommunications Radio (WTB) Services' Universal Licensing System (ULS). The FCC Form 601 is composed of a main form that contains the administrative information and a series of schedules used for filing technical information. Respondents are encourages to file electronically. The form has been modified to adopt requirements in various Commission rulemakings. Additionally, the Commission is increasing the number of respondents for potential winners to file in upcoming auctions, thus removing the need for repetitive emergency clearances submitted to OMB due to auction related changes (additional radio services necessary for auction winners).

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 03–1656 Filed 1–23–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL HOUSING FINANCE BOARD

Sunshine Act Meeting Notice; Announcing an Open Meeting of the Board

TIME AND DATE: 3 p.m. Wednesday, January 29, 2003.

PLACE: Board Room, Second Floor, Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006.

STATUS: The entire meeting will be open to the public.

MATTERS TO BE CONSIDERED:

- Rescission of Finance Board Resolutions Governing the Federal Home Loan Bank of Atlanta's Affordable Multifamily Participation Program.
- Community Investment Cash Advance—Approval of Claritas, Inc. as Data Source for Determining Area Median Incomes.
- Appointment of Federal Home Loan Bank Directors.
- Delegation of Authority.

CONTACT PERSON FOR MORE INFORMATION: Elaine L. Baker, Secretary to the Board, (202) 408–2837.

Arnold Intrater,
General Counsel
[FR Doc. 03–1778 Filed 1–22–03; 1:40 pm]
BILLING CODE 6725–01–P

FEDERAL MARITIME COMMISSION

[Docket No. 02–06]

Hudson Shipping (Hong Kong) Ltd. D/B/A Hudson Express Lines; Possible Violations of Section 10(a)(1) of the Shipping Act of 1984; Notice of Amended Order of Investigation

On April 5, 2002, the Federal Maritime Commission ("Commission") served an Order of Investigation and Hearing ("Order") on Hudson Shipping (Hong Kong) Ltd. d/b/a Hudson Express Lines ("Hudson"), instituting a proceeding to determine whether Hudson violated section 10(a)(1) of the Shipping Act of 1984 ("Shipping Act") and, in the event violations are found, whether penalties should be assessed and, if so, in what amount and whether a cease and desist order should be issued. Notice of the Order was published in the **Federal Register** on April 18, 2002 (67 FR 19185).

Notice is hereby given that on January 17, 2003, the Commission amended the Order to also determine whether Hudson violated section 19(b)(1) of the Shipping Act; whether, in the event violations of section 19(b)(1) of the Shipping Act are found, civil penalties should be assessed against Hudson and in what amount; and whether, in the event violations are found, an appropriate cease and desist order should be issued.

Any person having an interest in participating in this proceeding may file a petition for leave to intervene in accordance with Rule 72 of the Commission's rules of practice and procedure, 46 CFR 502.72.

Bryant L. VanBrakle,
Secretary.
[FR Doc. 03–1590 Filed 1–23–03; 8:45 am]
BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Federal Maritime Commission.

TIME AND DATE: 10 a.m.—January 29, 2003.

PLACE: 800 North Capitol Street, NW., First Floor Hearing Room, Washington, DC.

STATUS: Closed.

MATTERS TO BE CONSIDERED: 1. Docket No. 02–02—Canaveral Port Authority—Possible Violations of Section 10(b)(10), Unreasonable Refusal to Deal or Negotiate.

CONTACT PERSON FOR MORE INFORMATION: Bryant L. VanBrakle, Secretary, (202) 523–5725.

Bryant L. VanBrakle,
Secretary.
[FR Doc. 03–1790 Filed 1–22–03; 2:06 pm]
BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 18, 2003.

A. Federal Reserve Bank of Cleveland (Stephen J. Ong, Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101–2566:

1. McCreary National Bancorp, Inc., Corbin, Kentucky; to become a bank holding company by acquiring 100 percent of the voting shares of McCreary National Bank, Whitley City, Kentucky.

B. Federal Reserve Bank of Richmond (A. Linwood Gill, III, Vice President) 701 East Byrd Street, Richmond, Virginia 23261–4528:

1. Forest Merger Corporation and FBR TRS Holdings, Inc., both in Arlington, Virginia; to become bank holding companies by merging with Friedman, Billings, Ramsey Group, Inc., and FBR Asset Investment Corporation, both in Arlington, Virginia, and thereby indirectly acquiring FBR Bancorp, Inc., Arlington, Virginia, and FBR National Bank and Trust, Bethesda, Maryland. After the merger, Applicants would be renamed Friedman, Billings, Ramsey Group, Inc.

Applicants also have applied to acquire indirectly more than 5 percent of the voting shares of Bancorp Rhode Island, Inc., Providence, Rhode Island, and thereby indirectly acquire Bank Rhode Island, East Providence, Rhode Island; The Banc Corporation, Birmingham, Alabama, The Bank, Warrior, Alabama; and Pacific Union Bank, Los Angeles, California.

Board of Governors of the Federal Reserve System, January 17, 2003.

Robert deV. Frierson,
Deputy Secretary of the Board.
[FR Doc. 03–1574 Filed 1–23–03; 8:45 am]
BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C.

1843) (BHC Act) and Regulation Y (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 6, 2003.

A. Federal Reserve Bank of Chicago (Phillip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. Bank One Corporation, Chicago, Illinois; to expand to not more than 15 percent of its total consolidated capital stock and surplus its investments in community development activities, pursuant to section 225.28(b)(12)(i) of Regulation Y.

Board of Governors of the Federal Reserve System, January 17, 2003.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc.03–1573 Filed 1–23–03; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Committee on Vital and Health Statistics: Meeting

Pursuant to the Federal Advisory Committee Act, the Department of Health and Human Services announces the following advisory committee meeting.

Name: National Committee on Vital and Health Statistics (NCVHS), Subcommittee on Standards and Security.

Time and Date: 9 a.m. to 5 p.m., January 29, 2003; 9 a.m. to 1 p.m., January 30, 2003.

Place: Hubert H. Humphrey Building, Room 705A, 200 Independence Avenue SW., Washington, DC.

Status: Open.

Purpose: The agenda for Wednesday, January 29th includes presentations from three panels (health care providers, health plans, and health researchers) on current coding practices for Complementary Alternative Medicine (CAM) services and therapies. The presentations and question and answer periods will be followed by a Roundtable discussion among the panelists. The morning session on the 30th will be an interactive discussion with industry representatives regarding ways to improve the Health Insurance Portability and Accountability Act of 1996 (HIPAA) standards maintenance and update process.

CONTACT PERSON FOR MORE INFORMATION:

Substantive program information as well as summaries of meetings and a roster of Committee members may be obtained from Karen Trudel, Senior Technical Advisor, Security and Standards Group, Centers for Medicine and Medicaid Services, MS: C5–24–04, 7500 Security Boulevard, Baltimore, MD 21244–1850, telephone: 410–786–9937; or Majorie S. Greenberg, Executive Secretary, NCVHS, National Center for Health Statistics, Centers for Disease Control and Prevention, Room 1100, Presidential Building, 6525 Belcrest Road, Hyattsville, Maryland 20782, telephone: (301) 458–4245. Information also is available on the NCVHS home page of the HHS Web site: *http://www.ncvhs.hhs.gov/* where an agenda for the meeting will be posted when available.

Dated: January 14, 2003.

James Scanlon,

Acting Director, Office of Science and Data Policy, Office of the Assistant Secretary for Planning and Evaluation.

[FR Doc. 03–1606 Filed 1–23–03; 8:45 am]

BILLING CODE 4151–05–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–2177–PN]

RIN 0938–AM38

Medicare and Medicaid Programs; Application by the Joint Commission on Accreditation of Healthcare Organizations (JCAHO) for Hospices

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Proposed notice.

SUMMARY: This proposed notice announces the receipt of an application from the Joint Commission on Accreditation of Healthcare Organizations (JCAHO) for continued recognition as a national accreditation program for hospices that wish to participate in the Medicare or Medicaid programs. The Social Security Act requires that within 60 days of receipt of an organization's complete application, the Secretary publish a notice identifying the national accreditation body making the request, describing the nature of the request, and providing at least a 30-day public comment period.

DATES: We will consider comments if we receive them at the appropriate address, as provided below, no later than 5 p.m. on February 24, 2003.

ADDRESSES: In commenting, please refer to file code CMS–2177–PN.

Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission. Mail written comments (one original and three copies) to the following address only: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–2177–PN, P.O. Box 8013, Baltimore, MD 21244–8013.

Please allow sufficient time for mailed comments to be timely received in the event of delivery delays.

If you prefer, you may deliver (by hand or courier) your written comments (one original and three copies) to one of the following addresses: Room 443–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201, or Room C5–14–03, 7500 Security Boulevard, Baltimore, MD 21244–1850.

Comments mailed to the addresses indicated as appropriate for hand or courier delivery may be delayed and could be considered late.

For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Cindy Melanson, (410) 786–0310.

SUPPLEMENTARY INFORMATION:

Inspection of Public Comments: Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, at the headquarters of the Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, Maryland 21244, Monday through Friday of each week from 8:30 a.m. to 4 p.m. To schedule an appointment to view public comments, phone (410) 786–7197.

Copies: To order copies of the **Federal Register** containing this document, send your request to: New Orders, Superintendent of Documents, PO Box 371954, Pittsburgh, PA 15250–7954. Specify the date of the issue requested and enclose a check or money order payable to the Superintendent of Documents, or enclose your Visa or Master Card number and expiration

date. Credit card orders can also be placed by calling the order desk at (202) 512–1800 or by faxing to (202) 512–2250. The cost for each copy is $10. As an alternative, you can view and photocopy the **Federal Register** document at most libraries designated as Federal Depository Libraries and at many other public and academic libraries throughout the country that receive the **Federal Register**.

This **Federal Register** document is also available from the **Federal Register** online database through *GPO Access*, a service of the U.S. Government Printing Office. The Web site address is: *http://www.access.gpo.gov/nara/index.html.*

I. Background

Under the Medicare program, eligible beneficiaries may receive covered services in a hospice provided certain requirements are met. Section 1861 (dd)(1) of the Social Security Act (the Act) establishes distinct criteria for facilities seeking designation as a hospice program. Regulations concerning provider agreements are at 42 CFR part 489, and those pertaining to activities relating to the survey and certification of facilities are at 42 CFR part 488. In 42 CFR part 418, we specify the conditions that a hospice must meet in order to participate in the Medicare program, the scope of covered services, and the conditions for Medicare payment for hospice care.

Generally, to enter into an agreement, a hospice facility must first be certified by a State survey agency as complying with our conditions or requirements. Following that certification, the hospice is subject to routine monitoring by a State survey agency to ensure continuing compliance. As an alternative to surveys by State agencies, section 1865(b)(1) of the Act provides that, if the Secretary finds that, through accreditation by a national accreditation body, a provider entity demonstrates that all of our applicable conditions and requirements are met or exceeded, the Secretary will deem that the provider entity has met the applicable Medicare requirements. Accreditation by an accreditation organization is voluntary and is not required for Medicare participation.

Section 1865(b)(1) of the Act provides that, if a provider entity demonstrates through accreditation by an approved national accreditation organization that all applicable Medicare conditions are met or exceeded, CMS shall "deem" those provider entities as having met the requirements. Section 1865(b)(2) of the Act further requires that the Secretary's findings concerning review and reapproval as a recognized accreditation program for hospices consider the reapplying accreditation organization's—

- Requirements for accreditation;
- Survey procedures;
- Ability to provide adequate resources for conducting required surveys;
- Ability to supply information for use in enforcement activities;
- Monitoring procedures for provider entities found out of compliance with the conditions or requirements; and
- Ability to provide the Secretary with necessary data for validation.

Section 1865(b)(3)(A) of the Act requires that the Secretary publish a notice within 60 days of receipt of a written request; the notice must—

- Identify the national accreditation body making the request;
- Describe the nature of the request; and
- Provide at least a 30-day public comment period.

In addition, we must publish a finding of approval or denial of the application within 210 days from the receipt of the completed request.

Our regulations concerning reapproval of accrediting organizations are set forth at § 488.4 and § 488.8(d)(3). Our regulations require accreditation organizations to reapply for continued approval of deeming authority every 6 years or sooner, as we determine.

JCAHO's term of approval as a recognized accreditation program for hospices expires June 18, 2003.

The purpose of this proposed notice is to inform the public of our consideration of JCAHO's request for approval of continued deeming authority for hospices. This notice also solicits public comment on the ability of JCAHO requirements to meet or exceed the Medicare conditions for participation for hospices.

II. Evaluation of Deeming Authority Request

On November 26, 2002, JCAHO submitted all the necessary materials to enable us to make a determination concerning its request for reapproval as a deeming organization for hospices. Under section 1865(b)(2) of the Act and our regulations at § 488.8 (Federal review of accreditation organizations), our review and evaluation of JCAHO will be conducted in accordance with, but not necessarily limited to, the following factors:

- The equivalency of JCAHO standards for hospice care as compared with our comparable hospice conditions of participation as described in our regulations at § 418.1 through § 418.405.
- JCAHO's survey process to determine the following:
  - —The composition of the survey team, surveyor qualifications, and the ability of the organization to provide continuing surveyor training.
  - —The comparability of JCAHO processes to those of State agencies, including survey frequency, and the ability to investigate and respond appropriately to complaints against accredited facilities.
  - —JCAHO's processes and procedures for monitoring providers or suppliers found out of compliance with JCAHO program requirements. These monitoring procedures are used only when JCAHO identifies noncompliance. If noncompliance is identified through validation reviews, the survey agency monitors corrections as specified at § 488.7 (d).
  - —JCAHO's capacity to report deficiencies to the surveyed facilities and respond to the facility's plan of correction in a timely manner.
  - —JCAHO's capacity to provide us with electronic data in ASCII comparable code, and reports necessary for effective validation and assessment of the organization's survey process.
  - —The adequacy of JCAHO's staff and other resources, and its financial viability.
  - —JCAHO's capacity to adequately fund required surveys.
  - —JCAHO's policies with respect to whether surveys are announced or unannounced.
  - —JCAHO's agreement to provide us with a copy of the most current accreditation survey together with any other information related to the survey as we may require (including corrective action plans).

III. Response to Public Comments and Notice Upon Completion of Evaluation

Because of the large number of items of correspondence we normally receive on **Federal Register** documents published for comment, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the **DATES** section of this preamble and will respond to the public comments in the preamble to that document.

Upon completion of our evaluation, including evaluation of comments received as a result of this notice, we will publish a final notice in the **Federal Register** announcing the result of our evaluation.

In accordance with the provisions of Executive Order 12866, the Office of Management and Budget did not review this proposed notice.

Authority: Section 1865 of the Social Security Act (42 U.S.C. 1395bb)

(Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program; No. 93.773 Medicare—Hospital Insurance Program; and No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: January 16, 2003.

Thomas A. Scully,

Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 03–1589 Filed 1–23–03; 8:45 am]

BILLING CODE 4121–PN–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–3113–N]

Medicare Program; Meeting of the Medicare Coverage Advisory Committee—March 12, 2003

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice.

SUMMARY: This notice announces a public meeting of the Medicare Coverage Advisory Committee (the Committee). The Committee provides advice and recommendations to us about clinical issues. Among other things, the Committee advises us on whether adequate evidence exists to determine whether specific medical items and services are reasonable and necessary under Medicare law. The Committee will discuss and make recommendations concerning the quality of the evidence and related issues for the use of a left ventricular assist device as "destination" (permanent) therapy in end-stage heart failure patients who are not eligible for a heart transplant. Notice of this action is given under the Federal Advisory Committee Act (5 U.S.C. App. 2, section 10(a)(1) and (a)(2)).

DATES: *The Meeting:* The public meeting announced will be held on Wednesday, March 12, 2003 from 7:30 a.m. until 3:30 p.m., E.S.T.

Deadline for Presentations and Comments: Interested persons may present data, information, or views orally or in writing, on issues pending before the committee. Written presentations and comments must be submitted to the Executive Secretary by February 20, 2003, 5 p.m., E.S.T.

Special Accommodations: Persons attending the meeting who are hearing or visually impaired, or have a condition that requires special assistance or accommodations, are asked to notify the Executive Secretary by February 26, 2003 (see **FOR FURTHER INFORMATION CONTACT**).

ADDRESSES: *The Meeting:* The meeting will be held at the Baltimore Convention Center, Room 338–339, One West Pratt Street, Baltimore, MD 21201.

Presentations and Comments: Submit formal presentations and written comments to Kimberly Long, Executive Secretary, by telephone at 410–786–5702 or by e-mail at *klong@cms.hhs.gov;* Office of Clinical Standards and Quality; Centers for Medicare & Medicaid Services; 7500 Security Boulevard; Mail Stop C1–09–06; Baltimore, MD 21244.

Web site: You may access up-to-date information on this meeting at *www.cms.gov/coverage.*

Hotline: You may access up-to-date information on this meeting on the CMS Advisory Committee Information Hotline, 1–877–449–5659 (toll free) or in the Baltimore area (410) 786–9379.

FOR FURTHER INFORMATION CONTACT: Kimberly Long, Executive Secretary, by telephone at (410) 786–5702 or by e-mail at *klong@cms.hhs.gov.*

SUPPLEMENTARY INFORMATION: On December 14, 1998, we published a notice in the **Federal Register** (63 FR 68780) to describe the Medicare Coverage Advisory Committee (the Committee), which provides advice and recommendations to us about clinical issues. A revised charter was signed by the Secretary on November 22, 2002 (67 FR 79124). This notice announces the following public meeting of the Committee.

Meeting Topic

The Committee will discuss the evidence, hear presentations and public comment, and make recommendations regarding the use of a left ventricular assist device as "destination" (permanent) therapy in end-stage heart failure patients who are not eligible for a heart transplant. Background information about this topic, including panel materials, is available on the Internet at *http://www.cms.hhs.gov/coverage.*

Procedure and Agenda

This meeting is open to the public. The Committee will hear oral presentations from the public for approximately 45 minutes. The Committee may limit the number and duration of oral presentations to the time available. If you wish to make formal presentations, you must notify the Executive Secretary named in the **FOR FURTHER INFORMATION CONTACT** section, and submit the following by the *Deadline for Presentations and Comments* date listed in the **DATES** section of this notice: a brief statement of the general nature of the evidence or arguments you wish to present, and the names and addresses of proposed participants. A written copy of your presentation must be provided to each Panel member before offering your public comments. We will request that you declare at the meeting whether or not you have any financial involvement with manufacturers of any items or services being discussed (or with their competitors).

After the public and CMS presentations, the Committee will deliberate openly on the topic. Interested persons may observe the deliberations, but the Committee will not hear further comments during this time except at the request of the chairperson. The Committee will also allow a 15-minute unscheduled open public session for any attendee to address issues specific to the topic. At the conclusion of the day, the members will vote and the Committee will make its recommendation.

Authority: 5 U.S.C. App. 2, section 10(a)(1) and (a)(2).

(Catalog of Federal Domestic Assistance Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: January 14, 2003.

Robert A. Streimer,

Acting Director, Office of Clinical Standards and, Quality, Centers for Medicare & Medicaid Services.

[FR Doc. 03–1588 Filed 1–23–03; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99E–5112]

Determination of Regulatory Review Period for Purposes of Patent Extension; NOVOSEVEN

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for NOVOSEVEN and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human biological product.

ADDRESSES: Submit written comments and petitions to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to http://www.fda.gov/dockets/ecomments.

FOR FURTHER INFORMATION CONTACT: Claudia V. Grillo, Office of Regulatory Policy (HFD–013), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–3460.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Public Law 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Public Law 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human biological products, the testing phase begins when the exemption to permit the clinical investigations of the biological becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human biological product and continues until FDA grants permission to market the biological product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human biological product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human biological product NOVOSEVEN (rhFVIIa). NOVOSEVEN is indicated for the treatment of bleeding episodes in hemophilia A or B patients with inhibitors to Factor VIII or Factor IX. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for NOVOSEVEN (U.S. Patent No. 4,784,950) from ZymoGenetics, Inc., and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated October 4, 2000, FDA advised the Patent and Trademark Office that this human biological product had undergone a regulatory review period and that the approval of NOVOSEVEN represented the first permitted commercial marketing or use of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for NOVOSEVEN is 3,954 days. Of this time, 2,904 days occurred during the testing phase of the regulatory review period, while 1,050 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(i)) became effective*: May 29, 1988. FDA has verified the applicant's claim that the date the investigational new drug application became effective was on May 29, 1988.

2. *The date the application was initially submitted with respect to the human biological product under section 351 of the Public Health Service Act (42 U.S.C. 262)*: May 10, 1996. FDA has verified the applicant's claim that the product license application (PLA) for NOVOSEVEN (PLA 96–0597) was initially submitted on May 10, 1996.

3. *The date the application was approved*: March 25, 1999. FDA has verified the applicant's claim that PLA 96–0597 was approved on March 25, 1999.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 1,826 days of patent term extension.

Anyone with knowledge that any of the dates as published are incorrect may submit to the Dockets Management Branch (see **ADDRESSES**) written or electronic comments and ask for a redetermination by March 25, 2003. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by July 23, 2003. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch. Three copies of any information are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: December 19, 2002.

Jane A. Axelrad,

Associate Director for Policy, Center for Drug Evaluation and Research.

[FR Doc. 03–1567 Filed 1–23–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Transmissible Spongiform Encephalopathies Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Transmissible Spongiform Encephalopathies Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on February 20, 2003; 8 a.m. to 5:30 p.m.

Location: Holiday Inn, Ballroom, Two Montgomery Village Ave., Gaithersburg, MD.

Contact Person: William Freas or Sheila D. Langford, Center for Biologics Evaluation and Research (HFM–71), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1449, 301–827–0314, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12392. Please call the Information Line for up-to-date information on this meeting.

Agenda: On February 20, 2003, the committee will listen to updates on: Implementation of the variant Creutzfeldt-Jakob Disease (vCJD)

guidance ("Guidance for Industry: Revised Preventive Measures to Reduce the Possible Risk of Transmission of Creutzfeldt-Jakob Disease (CJD) and Variant Creutzfeldt-Jakob Disease (vCJD) by Blood and Blood Products"; this guidance can be accessed at http://www.fda.gov/cber/guidelines.htm) and its affect on blood supply, and an update on bovine spongiform encephalopathy epidemiology and food chain controls. The committee will then discuss consideration of labeling claims for transmissible spongiform encephalopathy (TSE) agent clearance in plasma derivatives.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by February 13, 2003. Oral presentations from the public will be scheduled between approximately 10:10 a.m. to 10:30 a.m. and between approximately 3 p.m. to 3:40 p.m. on February 20, 2003. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before February 13, 2003, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact William Freas or Sheila D. Langford at least 7 days in advance of the meeting.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: January 14, 2003.

Linda Arey Skladany,

Associate Commissioner for External Relations.

[FR Doc. 03–1566 Filed 1–23–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection: Comment Request

In compliance with the requirement for opportunity for public comment on proposed data collection projects (section 3506(c)(2)(A) of title 44, United States Code, as amended by the Paperwork Reduction Act of 1995, Public Law 104–13), the Health Resources and Services Administration (HRSA) publishes periodic summaries of proposed projects being developed for submission to OMB under the Paperwork Reduction Act of 1995. To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, call the HRSA Reports Clearance Officer on (301) 443–1129.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information should have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Proposed Project: The National Sample Survey of Registered Nurses 2004 (OMB No. 0915–0192)—Revision

The National Sample Survey of Registered Nurses (NSSRN) is carried out to assist in fulfilling two Congressional mandates. Section 792 of the Public Health Service Act (42 U.S.C. 295k), calls for the collection and analysis of data on health professions. Section 806 (f) of the Public Health Service Act (42 U.S.C. 296e) requires that discipline specific workforce information and analytical activities are carried out as part of the advanced nursing education, workforce diversity, and basic nursing education and practice programs.

Government agencies, legislative bodies and health professionals used data from previous national sample surveys of registered nurses to inform workforce policies. The information from this survey will continue to serve policy makers, and other consumers. Furthermore data collected in this survey will assist in determining the impact that changes in the health care system is having on employment status of registered nurses (RNs), the setting in which they are employed and the proportion of RNs who are employed full time and part time in nursing. The data will also indicate the number of RNs who are employed in jobs unrelated to nursing.

The proposed survey design for the 2004 NSSRN follows that of the previous seven surveys. A probability sample is selected from a sampling frame compiled from files provided by the State Boards of Nursing in the 50 States and the District of Columbia. These files constitute a multiple sampling frame of all RNs licensed in the 50 States and the District of Columbia. Sampling rates are set for each State based on considerations of statistical precision of the estimates and the costs involved in obtaining reliable national and State level estimates.

Each sampled nurse will be asked to complete a self-administered questionnaire, which includes items on educational background, duties, employment status and setting, geographic mobility, and income.

Estimated burden is as follows:

	Number of respondents	Responses per respondent	Total responses	Hours per response	Total burden hours
Questionnaires	39,360	1	39,360	.33	12,989

Send comments to Susan Queen, Ph.D., HRSA Reports Clearance Officer, Room 16C–17, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: January 17, 2003.

Jane M. Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 03–1568 Filed 1–23–03; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Supporting Networks of HIV Care; National Training and Technical Assistance Cooperative Agreements Announcement of Sole Source Awards

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Announcement of Sole Source Awards.

SUMMARY: The Health Resources and Services Administration (HRSA) announces the funding of two sole source cooperative agreements of fiscal year (FY) 2002 Health and Human Services Minority AIDS Initiative (MAI) funds. The two organizations funded will implement the Supporting Networks of HIV Care, National Training and Technical Assistance Cooperative Agreements. These cooperative agreements are an essential part of the HRSA HIV/AIDS Bureau's (HRSA/HAB) response to the severe and ongoing HIV/AIDS crisis within racial and ethnic minority communities.

Recipients of these two awards are Communities Advocating for Emergency Assistance and Relief (CAEAR) Coalition Foundation in the amount of $2,200,000 and the National Minority AIDS Council (NMAC) in the amount of $600,000. Funds are awarded for a 1-year project period starting September 30, 2002, and ending September 29, 2003.

In partnership with HRSA/HAB, these two cooperative agreements will provide training, education, technical assistance, and related informational resources to non-profit, minority community- and faith-based organizations (C/FBOs) serving people of color living with and affected by HIV/AIDS. Select minority C/FBOs will receive assistance in response to their specific needs. The assistance will be designed to improve staff capabilities and organizational capacity for the provision of high quality, comprehensive HIV primary health care, and support services. C/FBOs that receive Ryan White Comprehensive AIDS Response Emergency (CARE) Act funds directly from HRSA/HAB for service delivery are not eligible for assistance. The long-term goal of these cooperative agreements is to increase and improve HIV primary care infrastructure in communities of color. A related goal is to equip organizations serving communities of color to become new members of the CARE Act community.

Assistance will be provided in the following areas: staff and board development and management, needs assessment, strategic planning, linkages and referrals, clinical and support service delivery and management, financial management, resource development, management information systems, quality management, program evaluation, and the Ryan White Comprehensive AIDS Resources Emergency (CARE) Act. Services will be available through these cooperative agreements by early January 2003. The HRSA/HAB will have direct involvement in all planning, implementation, and evaluation related activities to ensure timely execution of work plans and quality in the delivery of services and the development of materials.

Background: The CAEAR Coalition Foundation and NMAC were found uniquely qualified to administer this cooperative agreement given their organizational characteristics, strengths and experience working directly with HRSA/HAB. Both organizations have significant experience developing successful activities and programs to support HIV/AIDS service providers nationally.

The CAEAR Coalition Foundation was formed by communities affected by the HIV/AIDS epidemic during the initial authorization of the Ryan White CARE Act. For a little over a decade, CAEAR Coalition Foundation has been a leading voice in HIV/AIDS service delivery and planning. The CAEAR Coalition Foundation represents over 250 governmental and CBOs, including Titles I and III grantees, and the communities they serve. Their membership is significant given its inclusion of organizations serving large metropolitan areas (500,000+ residents) most severely impacted by HIV/AIDS. It also includes CBOs in rural, underserved, and racial/ethnic minority communities facing existing and emerging HIV epidemics. The CAEAR Coalition Foundation's close relationship with relevant CARE Act grantees and other organizations nationally will allow for extensive outreach and identification of organizations in most need of this type of assistance. The CAEAR Coalition Foundation conducts a variety of research projects and educational activities to increase provider and patient knowledge about care, treatment, and support services and strategies to fight the HIV epidemic. The CAEAR Coalition Foundation works to stay abreast of the current needs of providers and address those needs. There is no other national AIDS organization with CAEAR Coalition Foundation membership and CARE Act expertise. CAEAR Coalition Foundation has experience managing HRSA funds and related initiatives.

Since 1987, NMAC has worked to develop leadership and capacity within communities of color to address HIV infection. NMAC is the only national organization founded specifically to support minority CBOs to foster new leadership and address the unique challenges HIV/AIDS presents for racial/ethnic minorities. Over 3,000 minority CBOs have joined. NMAC is the only national minority AIDS organization providing on-line training, technical assistance, and "chat room" opportunities for minority CBOs. NMAC's Web site receives approximately 36,000 hits per day. NMAC's LifeLine provides e-mail announcements to over 8,000 governmental and non-governmental organizations and individuals regarding the availability of grants for HIV service delivery, opportunities for training and TA, national conferences, and other important updates. NMAC has experience managing MAI funds and implementing related activities in the areas of HIV/AIDS treatment, fiscal management, board development, effective utilization of technology, and community planning.

FOR FURTHER INFORMATION CONTACT: Additional information may be obtained from Ms. Rene Sterling, HIV/AIDS Bureau, 5600 Fishers Lane, Room 7–47, Rockville, MD 20857; telephone (301) 443–7778, fax (301) 594–2835; e-mail *RSterling@hrsa.gov*.

Paperwork Reduction Act

If there is a data collection associated with this application OMB approval will be sought.

Dated: January 15, 2003.

Elizabeth M. Duke,

Administrator.

[FR Doc. 03–1569 Filed 1–23–03; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel, In Vivo Cellular and Molecular Imaging Centers (ICMICs).

Date: March 10–11, 2003.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Gaithersburg Marriott Washingtonian Center, 9751 Washingtonian Boulevard, Gaithersburg, MD 20878.

Contact Person: Kenneth L. Bielat, PhD, Scientific Review Administrator, Division of Extramural Affairs, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, Room 7147, Bethesda, MD 20892, (301) 496–7576, *bielatk@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: January 15, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–1562 Filed 1–23–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Research Resources; Notice of Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meetings.

The meetings will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Center for Research Resources Initial Review Group, Comparative Medicine Review Committee.

Date: February 4–5, 2003.

Open: February 4, 2003, 8 a.m. to 8:30 a.m.

Agenda: To discuss program planning and other issues.

Place: Gaithersburg Marriott, Washingtonian Center, 9751 Washingtonian Blvd., Gaithersburg, MD 20878.

Closed: February 4, 2003, 8:30 a.m. to Adjournment.

Agenda: To review and evaluate grant applications.

Place: Gaithersburg Marriott, Washingtonian Center, 9751 Washingtonian Blvd., Gaithersburg, MD 20878.

Contact Person: Camille M. King, Ph.D., Scientific Review Administrator, Office of Review, National Center for Research Resources, National Institutes of Health, One Rockledge Centre, MSC 7965, 6705 Rockledge Drive, Suite 6018, Bethesda, MD 20892–7965, (301) 435–0815, *kingc@ncrr.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Center for Research Resources Initial Review Group, Clinical Research Review Committee.

Date: February 12–13, 2003.

Open: February 12, 2003, 8 a.m. to 9 a.m.

Agenda: To discuss program planning and other issues.

Place: Holiday Inn Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Closed: February 12, 2003, 9 a.m. to Adjournment.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Sheryl K. Brining, Ph.D., Scientific Review Administrator, Office of Review, National Center for Research Resources, National Institutes of Health, One Rockledge Centre, MSC 7965, 6705 Rockledge Drive, Suite 6018, Bethesda, MD 20892–7965, (301) 435–0809, *brinings@ncrr.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333; 93.371, Biomedical Technology; 93.389, Research Infrastructure, National Institutes of Health, HHS)

Dated: January 15, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–1547 Filed 1–23–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Research Resources; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Center for Research Resources Special Emphasis Panel, Biomedical Research Technology.

Date: February 10–11, 2003.

Time: February 10, 2003, 8 a.m. to Adjournment.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, MD 20814.

Contact Person: Mohan Viswanathan, PhD, Scientific Review Administrator, National Center for Research Resources, National Institutes of Health, Office of Review, 6705 Rockledge Drive, MSC 7965, One Rockledge Centre, Room 6018, Bethesda, MD 20892, (301) 435–0829, *viswanathanm@ncrr.nih.gov*.

Name of Committee: National Center for Research Resources Special Emphasis Panel, Biomedical Research Technology.

Date: February 12, 2003.

Time: 8 a.m. to Adjournment.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, MD 20814.

Contact Person: Carol Lambert, PhD, Scientific Review Administrator, Office of Review, National Center for Research

Resources, National Institutes of Health, 6705 Rockledge Drive, MSC 7965, One Rockledge Centre, Room 6018, Bethesda, MD 20892, (301) 435–0814, *lambertc@ncrr.nih.gov*.

Name of Committee: National Center for Research Resources Special Emphasis Panel, Science Education Partnership Award.

Date: February 25–27, 2003.

Time: February 25, 2003, 8 a.m. to Adjournment.

Agenda: To review and evaluate grant applications.

Place: Bethesda Residence Inn, 7335 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: D. G. Patel, BPHA, MSC, MA, Scientific Review Administrator, Office of Review, National Center for Research Resources, 6705 Rockledge Drive, MSC 7965, Room 6018, Bethesda, MD 20892–7965, (301) 435–0811.

(Catalogue of Federal Domestic Assistance Program Nos. 93.305, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333; 93.371, Biomedical Technology; 93.389, Research Infrastructure, National Institutes of Health, HHS)

Dated: January 15, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–1548 Filed 1–23–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel. NHLBI, Mentored Scientist Development Award.

Date: March 6–7, 2003.

Time: 7:30 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Roy L White, PhD., Scientific Review Administrator, Review Branch, Room 7192, Division of Extramural Affairs, National Heart, Lung, and Blood Institute, National Institutes of Health, 6701 Rockledge Drive, MSC 7924, Bethesda, MD 20892, 301–435–0287.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: January 15, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–1555 Filed 1–23–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel.

Date: February 25, 2003.

Time: 9 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: St. Gregory Hotel, 2033 M Street, NW., Washington, DC 20036.

Contact Person: Irina Gordienko, Scientific Review Administrator, Division of Extramural Activities, National Heart, Lung, and Blood Institute, National Institutes of Health, 6701 Rockledge Drive, Room 7180, MSC 7924, Bethesda, MD 20892, 301–435–0270.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: January 15, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–1556 Filed 1–23–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel, Structure and Function of Vascular Integrins.

Date: February 24, 2003.

Time: 6:30 p.m. to 10:30 p.m.

Agenda: To review and evaluate grant applications.

Place: St. Gregory Hotel, 2033 M Street, NW., Washington, DC 20036.

Contact Person: Irina Gordienko, Scientific Review Administrator, Division of Extramural Activities, National Heart, Lung, and Blood Institute, National Institutes of Health, 6701 Rockledge Drive, Room 7180, MSC 7924, Bethesda, MD 20892, (301) 435–0270.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: January 15, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–1557 Filed 1–23–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel, Acute Lung Injury SCCOR RFA–HL–02–014.

Date: February 27–28, 2003.

Time: 8 a.m to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Contact Person: Chitra Krishnamurti, PhD, Scientific Review Administrator, Review Branch, Room 7206, Division of Extramural Affairs, National Heart, Lung, and Blood Institute, National Institutes of Health, 6701 Rockledge Drive, MSC 7924, Bethesda, MD 20892.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: January 15, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–1558 Filed 1–23–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel, COPD Clinical Research Network—Data Coordinating Center.

Date: March 6–7, 2003.

Time: 8 a.m. to 5 p.m..

Agenda: To review and evaluate grant applications.

Place: Sheraton Columbia Hotel, 10207 Wincopin Circle, Ellicott Conference Room, Columbia, MD 21044.

Contact Person: Patricia A. Haggerty, PhD, Scientific Review Administrator, Review Branch, Division of Extramural Affairs, National Heart, Lung, and Blood Institute, National Institutes of Health, 6701 Rockledge Drive, Room 7188, Bethesda, MD 20892, (301) 435–0280.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: January 15, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–1559 Filed 1–23–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant application and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel, Vascular Cell Function and Atherosclerosis.

Date: February 25, 2003.

Time: 8 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: Double Tree Rockville, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: William J. Johnson, Scientific Review Administrator, NHLBI Review Branch, Division of Extramural Affairs, Two Rockledge Centre, Room 7184, MSC7924, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 435–0275.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: January 15, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–1560 Filed 1–23–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel, Lipid and Lipoprotein Metabolism in Atherosclerosis.

Date: February 25, 2003.

Time: 12 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Double Tree Rockville, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: William J. Johnson, Scientific Review Administrator, NHLBI Review Branch, Division of Extramural Affairs, Two Rockledge Centre, Room 7184, MSC7924, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 435–0275.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: January 15, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–1561 Filed 1–23–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel Food & Waterborne Diseases Integrated Research Network: Coordinating & Biostatistics Center.

Date: February 5, 2003.

Time: 1 p.m. to 4 p.m.

Agenda: To review and evaluate contract proposals.

Place: 6700 B Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Eleazar Cohen, Ph.D., Scientific Review Administrator, NIAID/DEA, Scientific Review Program, Room 2217, 6700B Rockledge Drive, MSC–7616, Rockville, MD 20892 (301) 496–2550.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: January 15, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–1549 Filed 1–23–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Microbiology, Infectious Diseases and AIDS Initial Review Group, Microbiology and Infectious Diseases Research Committee.

Date: February 12–14, 2003.

Time: February 12, 2003, 8:30 a.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: One Washington Circle Hotel, One Washington Circle, Washington, DC 20037.

Time: February 13, 2003, 8:30 a.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: One Washington Circle Hotel, One Washington Circle, Washington, DC 20037.

Time: February 14, 2003, 8:30 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: One Washington Circle Hotel, One Washington Circle, Washington, DC 20037.

Contact Person Gary S. Madonna, PhD, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIAID, NIH, Room 2149, 6700–B Rockledge Drive, MSC 7616, Bethesda, MD 20892–7616, 301–496–3528, *gm12w@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: January 15, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–1550 Filed 1–23–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institutes of Allergy and Infectious Diseases Special Emphasis Panel, Respiratory Pathogens Reference Laboratory Support.

Date: February 7, 2003.

Time: 10 a.m. to 12 p.m.

Agenda: To review and evaluate contract proposals.

Place: 6700–B Rockledge Drive, NIH/NIAID, Bethesda, MD 20814, (Telephone Conference Call).

Contact Person: Paula S. Strickland, PhD, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIAID, NIH, Room 2217, 6700–B Rockledge Drive, MSC 7616, Bethesda, MD 20892–7616, 301–496–2550.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855; Allergy, Immunology, and Transplantation Research: 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: January 15, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–1551 Filed 1–23–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel. Autoimmunity Centers of Excellence.

Date: February 5–7, 2003.

Time: 8:30 a.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Cheryl K. Lapham, PhD, Scientific Review Administrator, Scientific Review Program, National Institute of Allergy and Infectious Diseases, DEA/NIH/DHHS, 6700–B Rockledge Drive, MSC 7616, Room 2156, Bethesda, MD 20892–7616, 301–496–2550, *clapham@niaid.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Research, National Institutes of Health, HHS)

Dated: January 15, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–1552 Filed 1–23–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel. Specialized Centers of Research.

Date: March 3, 2003.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Double Tree Rockville, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Aftab A. Ansari, PhD, Scientific Review Administrator, National Institute of Arthritis and Musculoskeletal and Skin Diseases, 6701 Democracy Plaza, Bethesda, MD 20892, (301) 594–4952.

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: January 15, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–1553 Filed 1–23–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel. Comprehensive International Program of Research on AIDS (CIPRA), UO1, Exploratory/Developmental Grant Program.

Date: January 24, 2003.

Time: 11:30 a.m. to 12:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6700–B Rockledge Drive, 5200, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Peter R. Jackson, PhD, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIAID, NIH, Room 2154, 6700–B Rockledge Drive, MSC 7616, Bethesda, MD 20892–7616, (301) 496–2550, *pjackson@niaid.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel. Comprehensive International Program of Research on AIDS (CIPRA), RO3, Planning and Organization Grant.

Date: January 24, 2003.

Time: 12:30 p.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6700–B Rockledge Drive, 5200, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Peter R. Jackson, PhD, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIAID, NIH, Room 2154, 6700–B Rockledge Drive, MSC 7616, Bethesda, MD 20892–7616, (301) 496–2550, *pjackson@niaid.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: January 15, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–1554 Filed 1–23–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Environmental Health Sciences Special

Emphasis Panel, Review of Program Project Applications (PO1s).

Date: February 21, 2003.

Time: 9:30 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: NIEHS, Rall Building, Conference Room 101–A, Research Triangle Park, NC 27709.

Contact Person: Linda K Bass, PhD, Scientific Review Administrator, Scientific Review Branch, Office of Program Operations, Division of Extramural Research and Training, Nat. Institute of Environmental Health Sciences, P.O. Box 12233, MD EC–30, Research Triangle Park, NC 27709, (919) 541–1307.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel, Review of R01 Grant Applications.

Date: March 3, 2003.

Time: 3 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: NIEHS, Building 4401, East Campus, 122, Research Triangle Park, NC 27707, (Telephone Conference Call).

Contact Person: Linda K Bass, PhD, Scientific Review Administrator, Scientific Review Branch, Office of Program Operations, Division of Extramural Research and Training, Nat. Institute of Environmental Health Sciences, P.O. Box 12233, MD EC–30, Research Triangle Park, NC 27709, (919) 541–1307.

(Catalogue of Federal Domestic Assistance Program Nos. 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing; 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences, National Institutes of Health, HHS)

Dated: January 15, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–1563 Filed 1–23–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Deafness and Other Communication Disorders; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Board of Scientific Counselors, NIDCD.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Institute on Deafness and Other Communication disorders, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, NIDCD.

Date: March 28, 2003.

Open: 7:45 a.m. to 8:15 a.m.

Agenda: Reports from Institute Staff.

Place: National Institutes of Health, 5 Research Court, Rockville, MD 20850.

Closed: 8:15 a.m. to 5:30 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Institutes of Health, 5 Research Court, Rockville, MD 20850.

Contact Person: Robert J. Wenthold, PhD, Director, Division of Intramural Research, National Institute on Deafness and Other Communication Disorders, 5 Research Court, Room 2B28, Rockville, MD 20852, 301–402–2829.

In the interest of security, NIH has instituted stringent procedures for entrance into the building by non-government employees. Persons without a government I.D. will need to show a photo I.D. and sign-in at the security desk upon entering the building.

(Catalogue of Federal Domestic Assistance Program Nos. 93.173, Biological Research Related to Deafness and Communicative Disorders, National Institutes of Health, HHS)

Dated: January 15, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–1564 Filed 1–23–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4809–N–04]

Federal Property Suitable as Facilities to Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

EFFECTIVE DATE: January 24, 2003.

FOR FURTHER INFORMATION CONTACT: Mark Johnston, Department of Housing and Urban Development, Room 7262, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 708–2565, (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 court order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.), HUD publishes a Notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless. Today's Notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: January 16, 2003.

John D. Garrity,

Director, Office of Special Needs Assistance Programs.

[FR Doc. 03–1413 Filed 1–23–03; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Notice of Intent To Prepare an Environmental Impact Statement for the Proposed Drilling of Additional Exploration and Development Natural Gas Wells in and Adjacent to the Muddy Ridge and Pavilion Fields and the Surrounding Areas, Wind River Indian Reservation, Fremont County, WY

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice advises the public that the Bureau of Indian Affairs (BIA), in cooperation with the Shoshone and Arapahoe Tribes and the Bureau of Land Management (BLM), intends to gather information necessary for preparing an Environmental Impact Statement (EIS) for the drilling of additional exploration and development natural gas wells in and adjacent to the Muddy Ridge and Pavilion fields and the surrounding areas, Wind River Indian Reservation, Fremont County, Wyoming. The

purpose of the proposed action is to meet the Tribes' need to maximize their economic benefit from this trust resource. A description of the proposed project, location, and environmental consideration to be addressed in the EIS are provided in the **SUPPLEMENTARY INFORMATION** section.

DATES: Written comments on the scope and content of the EIS must arrive by February 25, 2003.

ADDRESSES: You may mail or hand carry written comments to Ray A. Nation, Environmental Coordinator, Bureau of Indian Affairs, Wind River Agency, P.O. Box 158, Fort Washakie, Wyoming 82514.

FOR FURTHER INFORMATION CONTACT: Ray A. Nation, (307) 332–3718, or Stuart Cerovski, (307) 332–8426.

SUPPLEMENTARY INFORMATION: The Wind River Natural Gas Development Project area is generally located in Townships 3 and 4 North, Range 2 through 5 East, in Fremont County, Wyoming. The project area contains about 92,000 acres.

The Wind River Project consists of the drilling of up to 325 new wells in the project area over the next 20 years. Economic conditions and the evaluation of the drilling results would determine the actual number of wells that would be drilled. In addition, the project will require the construction of 325 associated lease roads (excluding 153 existing wells), 78 miles of new natural gas pipeline (excluding 62 existing miles), and 18,175 horsepower of new compression on approximately six new sites on private, federal and tribal lands. This 18,175 horsepower will increase the current 14,540 horsepower natural gas compression capacity total to 32,715 horsepower.

During the drilling and construction phase, the proposed well pads, pipelines and roads would result in the short-term disturbance of approximately 1,863 acres, or 2.02 percent of the total surface area in the project area. Well pads would be reduced in size following the completion of drilling operations, and pipeline right-of-ways restored upon completion of construction. Long-term disturbance would affect approximately 922 acres or 1.00 percent of the total surface area.

The Wind River Project area currently contains two active natural gas fields that are predominantly developed under 40 and 20-acre spacing, depending upon formation. An existing road network developed to service existing drilling and production activities access the Wind River Project area, but it is expected that the drilling of additional wells within the project area would require the construction of additional roads. Existing pipelines and new pipelines, including new gathering lines, looplines and tie-ins to existing interstate pipelines, would transport the produced gas within the project area.

While the Wind River environmental analysis is being conducted, the BIA/BLM will allow some drilling of wells within the proposed project area. Interior drilling will be monitored by the BIA/BLM to ensure that activities do not adversely affect the environment or prejudice the completion of the environmental analysis.

Public Comment Availability

Public meetings on the scope and content of the EIS were held on October 22, 2002, in Pavilion, Wyoming, and October 23, 2002, in Fort Washakie, Wyoming. Comments from these meetings, plus all others we receive, including names and addresses of respondents, will be available for public review at the mailing address shown in the **ADDRESSES** section, during regular business hours, 8 a.m. to 5 p.m., Monday through Friday, except holidays. Individual respondents may request confidentiality. If you wish us to withhold your name and/or address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comment. Such requests will be honored to the extent allowed by law. We will not, however, consider anonymous comments. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses will be made available for public inspection in their entirety.

Authority

This notice is published in accordance with section 1503.1 of the Council on Environmental Quality Regulations (40 CFR parts 1500 through 1508) implementing the procedural requirements of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*), and the Department of the Interior Manual (516 DM 1–6), and is in the exercise of authority delegated to the Assistant Secretary—Indian Affairs by 209 DM 8.1.

Dated: January 10, 2003.

Aurene M. Martin,

Acting Assistant Secretary—Indian Affairs.

[FR Doc. 03–1592 Filed 1–23–03; 8:45 am]

BILLING CODE 4310–W7–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–962–1410–HY–P; F–14940–P, F–14940–R, F–14940–S, F–14940–C2, DYA–9]

Alaska Native Claims Selection

AGENCY: Bureau of Land Management, DOI.

ACTION: Notice of decision approving lands for conveyance.

SUMMARY: As required by 43 CFR 2650.7(d), notice is hereby given that an appealable decision approving lands for conveyance pursuant to the Alaska Native Claims Settlement Act will be issued to Dinyea Corporation for lands in Tps. 14 and 15 N., R. 8 W., and T. 14 N., R. 9 W., Fairbanks Meridian, Alaska, located in the vicinity of Stevens Village, Alaska, aggregating 21,488.29 acres. Notice of the decision will also be published four times in the *Fairbanks Daily News-Miner.*

DATES: The time limits for filing an appeal are:

1. Any party claiming a property interest which is adversely affected by the decision shall have until February 24, 2003 to file an appeal.

2. Parties receiving service of the decision by certified mail shall have 30 days from the date of receipt to file an appeal.

Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart E, shall be deemed to have waived their rights.

ADDRESSES: A copy of the decision may be obtained from: Bureau of Land Management, Alaska State Office, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7599.

FOR FURTHER INFORMATION CONTACT: Jerri Sansone, (907) 271–3231.

Jerri Sansone,

Land Law Examiner, Branch of ANCSA Adjudication.

[FR Doc. 03–1540 Filed 1–23–03; 8:45 am]

BILLING CODE 4310–$$–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–130–1020–PG; GP3–0061]

Call for Nominations for the Eastern Washington Resource Advisory Council

AGENCY: Bureau of Land Management (BLM).

ACTION: Notice of Resource Advisory Council call for nominations.

SUMMARY: The purpose of this notice is to solicit public nominations for the Bureau of Land Management (BLM) Eastern Washington Resource Advisory Council (RAC) that has an open position to represent environmental/conservation interests. This position will expire in 2006. The RAC provides advice and recommendations to the BLM and the USDA Forest Service on land use planning and management of public lands within their geographic areas. Public nominations will be considered for 60 days after the publication date of this notice.

The Federal Land Policy and Management Act (FLPMA) directs the Secretary of the Interior to involve the public in planning and issues related to management of lands administered by BLM.

Section 309 of FLPMA directs the Secretary to select 10- to 15-member citizen-based advisory councils that are established and authorized consistent with requirements of the Federal Advisory Committee Act (FACA). As required by the FACA, RAC membership must be balanced and representative of the various interests concerned with management of public lands.

Individuals may nominate themselves or others. Nominees for the Eastern Washington RAC must be residents of Washington. Nominees will be evaluated based on their education, training, experience, and their knowledge of the geographical area of the RAC. Nominees should have demonstrated a commitment to collaborative resource decision-making. All nominations submitted must include letters of reference from represented interests or organizations, a completed background information nomination form, as well as any other information that speaks to the nominee's qualifications.

DATES: All nominations should be received in the Oregon BLM State Office by March 24, 2003.

FOR FURTHER INFORMATION CONTACT: Pam Robbins: (503) 808–6306, *pam_robbins@blm.gov*, BLM State Office, 333 Southwest 1st Avenue, Portland, Oregon 97204.

Dated: January 17, 2003.

Joseph K. Buesing,

District Manager.

[FR Doc. 03–1594 Filed 1–23–03; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–310–0777–XG]

Notice of Resource Advisory Council Vacancy

AGENCY: Bureau of Land Management; Northeast California Resource Advisory Council; Susanville, California.

ACTION: Notice of vacancy and call for nominations.

SUMMARY: Pursuant to authorities in the Federal Advisory Committees Act (Pub. L. 92–463) and the Federal Land Policy and Management Act (Pub. L. 94–579), the U. S. Bureau of Land Management is seeking nominations to fill a vacant seat on the Northeast California Resource Advisory Council. The person selected to fill the vacancy will complete an unexpired term that ends in September 2004. The appointee will be eligible to compete for the full three-year term when the current term expires.

SUPPLEMENTARY INFORMATION: The council vacancy is in membership category three: persons representing issues and concerns of Native American Tribes. The appointment will be made by the Secretary of the Interior, as are all BLM Resource Advisory Council appointments. The person selected must have knowledge or experience in the interest area specified, and must have knowledge of the geographic area under the council's purview (the northeast portion of California and the northwest corner of Nevada).

Qualified applicants must have demonstrated a commitment to collaborate with varied interests to solve a broad spectrum of natural resource issues.

Nomination forms are available by contacting BLM Public Affairs Officer Joseph J. Fontana, 2950 Riverside Drive, Susanville, CA 96130; by telephone (530) 252–5332; or e-mail, *jfontana@ca.blm.gov*. Nominations must be returned to: Bureau of Land Management, 2950 Riverside Drive, Susanville, CA 96130, Attention Public Affairs Officer by February 24, 2003. Individuals can nominate themselves, or interest groups can submit nominations. Nominations must include letters of support from the interest groups the nominee will represent.

FOR ADDITIONAL INFORMATION: Contact BLM Alturas Field Manager Tim Burke at (530) 233–4666, or Public Affairs Officer Joseph J. Fontana at the above phone or e-mail address.

Joseph J. Fontana,

Public Affairs Officer.

[FR Doc. 03–1660 Filed 1–23–03; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–110–6333–JE; HAG03–0004]

Notice of Intent To Prepare an Environmental Impact Statement for Restoration and Timber Salvage Within the Timbered Rock Fire, Medford District, OR

AGENCY: Bureau of Land Management, U.S. Department of the Interior.

ACTION: Notice of intent to prepare an Environmental Impact Statement (EIS) and conduct public scoping for restoration and timber salvage within the Timbered Rock Fire, Medford District, Oregon.

SUMMARY: This document provides notice that the Bureau of Land Management (BLM) intends to prepare an EIS for the restoration and timber salvage within the Timbered Rock Fire, Medford District, Oregon. This planning activity encompasses 11,755 acres of BLM-administered land that was burned in the summer of 2002 Timbered Rock Wildfire, which burned in total 26,974 acres. This EIS will fulfill the needs and obligations set forth by the National Environmental Policy Act (NEPA), the Federal Land Policy and Management Act (FLPMA), and BLM management policies. The BLM will work collaboratively with interested parties to identify the management decisions that are best suited to local, regional, and national needs and concerns. The public scoping process will help identify issues to be addressed, possible alternatives, data gaps, and possible conflicts with existing management direction. The purpose of the EIS is to take a more detailed look at restoration activities, salvage logging opportunities, and opportunities for long-term resource studies.

DATES: This notice initiates the public scoping process. Comments on issues and the scope of the analysis can be submitted in writing to the address listed below and will be accepted throughout the creation of the EIS. All public meetings will be announced through the local news media, newsletters, and the Washington/Oregon BLM Web site (*http://www.or.blm.gov*) at least 15 days prior

to the event. The minutes and list of attendees for each meeting will be available to the public and open for 30 days following the publication of this notice to any participant who wishes to clarify the views they expressed. Early participation is encouraged and will help determine the future management of the public lands burned by the Timbered Rock Fire.

ADDRESSES: Written comments should be sent to the Bureau of Land Management, ATTN: Jean Williams, 3040 Biddle Road, Medford, OR 97504. Comments, including names and street addresses of respondents, will be available for public review at the Medford District office during regular business hours (7:45 AM to 4:30 PM) Monday through Friday, except holidays, and may be published as part of the environmental analysis or other related documents. Individual respondents may request confidentiality. If you wish to withhold your name or address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comment. Such requests will be honored to the extent allowed by law. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public inspection in their entirety.

FOR FURTHER INFORMATION CONTACT: For further information, and/or to have your name added to our mailing list, contact Jean Williams at (541) 618–2385 or John Bergin at (541) 618–2265.

SUPPLEMENTARY INFORMATION: Restoration of lands and economic recovery of resources damaged by wildfire are important activities following control of wildfires. The level and intensity of these activities can vary greatly depending upon a variety of factors. Public lands administered by the BLM in the Timbered Rock Fire are located entirely within a Late-Successional Reserve (LSR) and Tier 1 Key watershed and contains 18 owl activity centers. These land use allocations will have an effect on restoration actions and salvage opportunities that will be addressed in the Environmental Impact Statement. The environmental analyses will, as appropriate, address a range of restorative options, salvage opportunities, and potential long-term study opportunities. A No Action Alternative will be analyzed. One or more of the alternatives may address some modification to Standards and Guidelines from the Northwest Forest Plan (NFP), the Medford District Resource Management Plan (RMP), and site-specific LSR Assessments (LSRA) that apply to the fire. Input from the scoping process will be used to determine the scope of the analysis consistent with the requirements of 40 CFR 1501.7 and 1508.22. The scoping process includes:

- Defining the scope of the analysis and the nature of the decisions to be made.
- Identify the issues for consideration within the environmental analyses;
- Identify possible alternatives;
- Identify possible or potential environmental effects;
- Identify groups or individuals that would be interested in or affected by the restorative or economic recovery actions.

The BLM will seek information, comments, and assistance from Federal, State, and local agencies and other individuals, organizations, or businesses interested in or affected by the actions. Disciplines that may be included on the analysis team include forestry, soils, hydrology, fisheries, wildlife, fuels management, and others.

Possible cooperating agencies include the U.S. Fish and Wildlife Service, the National Marine Fisheries Service, the Army Corps of Engineers, and the Rogue River National Forest. The public is asked to identify issues they believe should be assessed in the Environmental Impact Statement and provide ideas and suggestions on restorative actions and economic recovery of timber resources and alternatives they think should be considered.

Dated: December 4, 2002.

Kathy Eaton,

Acting Oregon/Washington State Director.

[FR Doc. 03–1539 Filed 1–23–03; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UT–010–1232–HB–UT17–24–1A]

Notice of Final Supplementary Rules on Public Lands in Utah

AGENCY: Bureau of Land Management, Interior.

ACTION: Final supplementary rules for certain public lands managed by the Bureau of Land Management within the Little Sahara Special Recreation Management Area, Fillmore Field Office, Utah.

SUMMARY: The Bureau of Land Management (BLM) is issuing final supplementary rules to apply to the public lands within the Little Sahara Special Recreation Management Area, Fillmore Field Office, Utah. The rules are necessary for the management of actions, activities, and public use on certain public lands which may have or are having adverse impacts on persons using public lands, on property, and on resources located on public lands located in, or acquired for inclusion within, the Little Sahara Special Recreation Management Area.

EFFECTIVE DATE: February 24, 2003.

ADDRESSES: Mail: Bureau of Land Management, 35 E 500 N, Fillmore, Utah 84631. Personal or messenger delivery: 35 E 500 N, Fillmore, Utah 84631.

FOR FURTHER INFORMATION CONTACT: Ferris Clegg, Bureau of Land Management, Richfield Field Office, 150 East 900 North, Richfield, Utah 84701. Telephone (435)896–1500.

SUPPLEMENTARY INFORMATION:

I. Publication of Proposed Supplementary Rules and Discussion of Comments

The proposed supplementary rules for the Little Sahara Special Recreation Management Area were published in the **Federal Register** on August 22, 2002 (67 FR 54456), and allowed 30 days for public comment.

We received no comments on the proposed supplementary rules. Therefore, we are publishing them as final supplementary rules without change, except for the following:

(1) We are correcting typographical or printing errors that appeared in the proposed supplementary rules;

(2) We are editorially changing the heading of Sec. 3.0 from "Permits and Fees" to "Fees and Contracts," which better reflects the contents of the following two sections; and

(3) We are adding to Sec. 1.2 the requirement that drivers must have either a valid motor vehicle operator's license or a safety certificate issued by the Utah Division of Parks and Recreation. We also removed the erroneous requirement in this section of the proposed supplementary rules that a child must be 8 years old or older to ride as a passenger on an OHV. These are not policy changes, but rather amendments to conform with Utah State law and rules (The Utah Off-Highway Vehicle Act, and The Utah Board of Parks and Recreation Rules, 41–22–30. Supervision, Safety Certificate, or Driver License Required—Penalty).

II. Discussion of the Supplementary Rules

The Utah State Director of the Bureau of Land Management is establishing these supplementary rules under 43 CFR 8365.1–6. They are necessary for the protection of persons, property and public lands and resources within—

- The Little Sahara Special Recreation Management Area,
- Lands acquired for inclusion in the Little Sahara Special Recreation Management Area, and
- All lands that may be incorporated into the Little Sahara Special Recreation Management Area.

These rules are in addition to and supplement the regulations found in 43 CFR part 8300.

The affected lands are located in the following areas:

Salt Lake Base Meridian

T.12S., R.4W.
Sec. 19, lots 3 and 4, E½SW¼, and SE¼;
Sec. 20, W½SW¼, and SE¼SW¼;
Sec. 28, S½SW¼;
Sec. 29, W½NE¼, SE¼NE¼, W½, and SE¼;
Secs. 30 to 33, inclusive;
Sec. 34, SW¼NW¼, SW¼, and S½SE¼.
T.13S., R.4W.
Secs. 3 to 10, inclusive;
Sec. 15, N½, SW¼, N½SE¼, and SW¼SE¼;
Secs. 16 to 21, inclusive;
Sec. 22, NW¼, W½SW¼;
Sec. 28, lots 1, 2, 3, and 4;
Sec. 29, lots 1, 2, 3, and 4, SW¼NE¼, S½NW¼, SW, and W½SE¼;
Sec. 30 and 31;
Sec 32, W½E½, W½.
T.14S., R4W.
Sec. 5, lots 1, 2, 3, and 4, S½N½, SW¼, and W½SE¼;
Secs. 6 and 7;
Sec. 8, W½;
Sec. 17, W½NW¼;
Sec. 18, T.12S., R5W.;
Sec. 24, S½;
Sec. 25 to 29, inclusive;
Sec .30, SE¼NE¼, SE¼SW¼, and SE¼;
Secs. 31 to 36, inclusive.
T.13S., R5W.
Secs. 1 to 36, inclusive.
T.14S., R5W.
Secs. 1 to 5, inclusive;
Sec. 6, lots 1 to 9, inclusive, S½NE¼, SE¼NW¼, E½SW¼, and SE¼;
Sec. 7, E½;
Secs. 8 to 15, inclusive;
Sec. 16, N½;
Sec. 17, N½;
Sec. 18, NE¼NE¼;
Secs. 22 to 24, inclusive.

III. Procedural Requirements

Executive Order 12866, Regulatory Planning and Review

These supplementary rules are not a significant regulatory action and are not subject to review by Office of Management and Budget under Executive Order 12866. These supplementary rules will not have an effect of $100 million or more on the economy. They are directed at preventing unlawful personal behavior on public lands, for purposes of protecting public health and safety. They will not adversely affect, in a material way, the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities. These proposed supplementary rules will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. The supplementary rules do not alter the budgetary effects of entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients; nor do they raise novel legal or policy issues. The supplementary rules merely enable BLM law enforcement personnel to enforce state laws where appropriate on public lands.

National Environmental Policy Act

BLM has prepared an environmental assessment (EA) and has found that the supplementary rules do not constitute a major Federal action significantly affecting the quality of the human environment under section 102(2)(C) of the Environmental Protection Act of 1969 (NEPA), 42 U.S.C. 4332(2)(C). The supplementary rules will enable BLM law enforcement personnel to cite persons not obeying the rules of the Little Sahara Special Recreation Area for the purpose of protecting public health and safety. BLM has placed the EA and the Finding of No Significant Impact (FONSI) on file in the BLM Administrative Record at the address specified in the **ADDRESSES** section.

Regulatory Flexibility Act

Congress enacted the Regulatory Flexibility Act of 1980, as amended, 5 U.S.C. 601–612, (RFA) to ensure that Government regulations do not unnecessarily or disproportionately burden small entities. The RFA requires a regulatory flexibility analysis if a rule will have a significant economic impact, either detrimental or beneficial, on a substantial number of small entities. The supplementary rules do not pertain specifically to commercial or governmental entities of any size, but contain rules to protect the health and safety of individuals, property, and resources on the public lands. Therefore, BLM has determined under the RFA that these supplementary rules will not have a significant economic impact on a substantial number of small entities.

Small Business Regulatory Enforcement Fairness Act (SBREFA)

These supplementary rules do not constitute a "major rule" as defined in SBREFA (5 U.S.C. 804(2)). Again, the supplementary rules pertain only to individuals who may use the public lands. In this respect, the regulation of such use is necessary to protect the public lands and facilities and those, including small business concessioners and outfitters, who use them. The supplementary rules have no effect on business-commercial or industrial use of the public lands.

Unfunded Mandates Reform Act

These supplementary rules do not impose an unfunded mandate on state, local, or tribal governments or the private sector of more than $100 million per year; nor do these supplementary rules have a significant or unique effect on state, local, or tribal governments or the private sector. The supplementary rules do not require anything of state, local, or tribal governments. Therefore, BLM is not required to prepare a statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*)

Executive Order 12630, Governmental Actions and Interference With Constitutionally Protected Property Rights (Takings)

The supplementary rules do not represent a governmental action capable of interfering with constitutionally protected property rights. The supplementary rules do not address property rights in any form, and do not cause the impairment of anyone's property rights. Therefore, the Department of the Interior has determined that the supplementary rules will not cause a taking of private property or require further discussion of takings implications under this Executive Order.

Executive Order 13132, Federalism

The supplementary rules will not have a substantial direct effect on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. The supplementary rules apply in only one state, Utah, and do not address jurisdictional issues involving the state government. Therefore, in accordance with Executive Order 13132, BLM has determined that these supplementary rules do not have sufficient Federalism

implications to warrant preparation of a Federalism Assessment.

Executive Order 12988, Civil Justice Reform

Under Executive Order 12988, Utah State Office of BLM has determined that these supplementary rules will not unduly burden the judicial system and that they meet the requirements of sections 3(a) and 3(b)(2) of the Order.

Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

In accordance with E.O. 13175, we have found that this final rule would not include policies that have tribal implications. The rule would not affect lands held for the benefit of Indians, Aleuts, and Eskimos. The rule would apply only to persons driving OHVs on certain public lands in Utah.

Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This rule is not a significant energy action. It will not have an adverse effect on energy supplies. It will have no discernible effect on the production or sale of energy minerals, and any effect on the consumption of such minerals, either in manufacturing OHV equipment or traveling to OHV areas, will be imperceptible, since the provision should not have a measurable effect on either activity.

Paperwork Reduction Act

These supplementary rules do not contain information collection requirements that the Office of Management and Budget must approve under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.*

Author

The principal author of these supplementary rules is Ferris Clegg of the Fillmore Field Office, assisted by Ted Hudson of the Regulatory Affairs Group, Washington Office, BLM.

Dated: October 17, 2002.

Sally Wisely,

State Director.

Supplementary Rules, Little Sahara Special Recreation Management Area

Sec. 1.0 Vehicle Equipment Requirements

Sec. 1.1 Safety Flags

a. A safety flag is required on all off-highway vehicles. This includes all all-terrain vehicles (ATVs), dirt bikes and dune buggies. You must not operate, or give any person permission to operate, an off-highway vehicle that is not equipped with a safety flag within the Little Sahara Special Recreation Management Area.

b. The safety flag must be—

1. Red or orange in color and a minimum of six by 12 inches;

2. Attached to the off-highway vehicle in such a manner that the top of the flag is at least eight feet above the surface of level ground.

Sec. 1.2 Minimum Age

a. You must be 8 years of age or older, and you must carry on your person either a valid motor vehicle operator's license or the appropriate safety certificate issued by the Utah Division of Parks and Recreation, to operate an off-highway vehicle within the Little Sahara Special Recreation Management Area.

b. You must not give any child under 8 years of age permission to operate any off-highway vehicle within the Little Sahara Special Recreation Management Area.

Sec. 1.3 Protective Headgear

a. You must not operate or ride on an off-highway vehicle within the Little Sahara Special Recreation Management Area unless you are wearing properly fitted, safety-rated protective headgear designed for motorized vehicle use, if you are under the age of 18.

b. You must not give permission to any person under the age of 18 to operate or ride on an off-highway vehicle within the Little Sahara Special Recreation Management Area unless that person is wearing properly fitted, safety-rated protective headgear designed for motorized vehicle use.

Sec. 2.0 Prohibited Acts

Sec. 2.1 Government Property

You must not vandalize, climb on or otherwise interfere or tamper with any building, structure, sign, water line, water tank, equipment, or any other government property or government contracted property within the Little Sahara Special Recreation Management Area.

Sec. 2.2 Spray Paint

The following are prohibited:

a. The use of spray paint or paint-ball guns within the Little Sahara Special Recreation Management Area except for:

1. The official business of any Federal, state, county, or local governmental entity, or

2. The necessary performance of work related to the maintenance or construction of any authorized improvements or facilities on public lands;

b. The possession of spray paint containers within the Little Sahara Special Management Area, except when such containers of spray paint are located—

1. In the trunk of a motor vehicle; or

2. In some other portion of the motor vehicle designed for the storage of luggage and not normally occupied by or readily accessible to the operator or passengers, if the motor vehicle is not equipped with a trunk.

Sec. 2.3 Glass Containers

Within the Little Sahara Special Recreation Management Area, you must not possess glass containers outside of vehicles, camp trailers, or tents.

Sec. 2.4 Bonfires

You must not knowingly create or maintain any large bonfire within the area of Little Sahara Special Recreation Management Area. For the purpose of this supplemental rule, a large bonfire means a fire with flames over three feet tall or a fire that cannot be contained in a 3-foot diameter area.

Sec. 2.5 Wooden Pallets

You must not bring into the Little Sahara Special Recreation Management Area or possess within the Little Sahara Special Recreation Management Area any pallets or lumber or wood products with nails or other metal objects affixed to such wood, lumber or wood products. You may carry or possess wood or lumber so long as they do not have nails or other metal objects attached to them.

Sec. 3.0 Fees and Contracts

Sec. 3.1 Fees

Except as provided in Sec. 3.2 of these supplementary rules—

a. You must not enter the Little Sahara Special Recreation Management Area by any means or ways, public or private, without properly paying required fees.

b. You must not enter, camp, park, or stay longer than one hour within the Little Sahara Special Recreation Management Area without properly paying required fees.

Sec. 3.2 Contracts

a. You may not enter the Little Sahara Special Recreation Management Area without paying required fees, unless you have a current, valid, annual pass contract or obtain a temporary contract in lieu of fees from BLM and sign it in the presence of the issuing officer.

b. You must not violate the terms, conditions, and stipulations of your current annual pass contract or a temporary contract in lieu of fees under paragraph a. of this section.

Sec. 4.0 Penalties

Under the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1733(a)), if you knowingly and willfully violate or fail to comply with any of the supplementary rules provided in this notice, you may be subject to a fine under 18 U.S.C. 3571 or other penalties in accordance with 43 U.S.C. 1733.

[FR Doc. 03–1541 Filed 1–23–03; 8:45 am]

BILLING CODE 4310–DQ–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–920–1050–ET; WYW 155144]

Notice of Proposed Withdrawal and Opportunity for Public Meeting; Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management proposes to withdraw 1,360 acres of public land for a period of 20 years to protect important paleontological resources within the Red Gulch Dinosaur Tracksite. This notice segregates the land for up to 2 years from surface entry and mining. The land will remain open to mineral leasing.

EFFECTIVE DATE: Comments and requests for a public meeting must be received on or before April 24, 2003.

ADDRESSES: Comments and meeting requests should be sent to the Wyoming State Director, Bureau of Land Management, P.O. Box 1828, Cheyenne, Wyoming 82003–1828.

FOR FURTHER INFORMATION CONTACT: Janet Booth, BLM Wyoming State Office, 307–775–6124.

SUPPLEMENTARY INFORMATION: The Bureau of Land Management has filed an application to withdraw the following described public land from settlement, sale, location, or entry under the general land laws, including the mining laws, but not the mineral leasing laws, subject to valid existing rights:

Sixth Principal Meridian

T. 52 N., R. 91 W.,
Sec. 17, S½NE¼ and SE¼;
Sec. 20, N½, SE¼, and NE¼SW¼;
Sec. 21, NE¼, W½, N½SE¼, and SW¼SE¼.

The area described contains 1,360 acres in Big Horn County.

The purpose of the proposed withdrawal is to protect important paleontological resources of the Bureau of Land Management's Red Gulch Dinosaur Tracksite located near Shell, Wyoming.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the Wyoming State Director of the Bureau of Land Management.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal. All interested persons who desire a public meeting for the purpose of being heard on the proposed withdrawal should submit a written request to the Wyoming State Director within 90 days from the date of publication of this notice. If the authorized officer determines that a public meeting will be held, a notice of the time and place will be published in the **Federal Register** at least 30 days before the scheduled date of the meeting.

This application will be processed in accordance with the regulations set forth in 43 CFR part 2300.

For a period of 2 years from the date of publication of this notice in the **Federal Register**, the land described above will be segregated as specified above unless the application is denied or cancelled or the withdrawal is approved prior to that date. Licenses, permits, cooperative agreements, or discretionary land use authorizations of a temporary nature which would not impact or impair the existing values of the area may be allowed with the approval of an authorized officer of the Bureau of Land Management during the segregative period.

Dated: January 14, 2003.

Alan L. Kesterke,

Associate State Director.

[FR Doc. 03–1542 Filed 1–23–03; 8:45 am]

BILLING CODE 4310–22–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–462]

In the Matter of Certain Plastic Molding Machines with Control Systems Having Programmable Operator Interfaces Incorporating General Purpose Computers, and Components Thereof II; Notice of Commission Decision To Reverse an ALJ Determination on Statutory Authority and To Vacate ALJ Order No. 29; Termination of the Investigation

AGENCY: International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to reverse an ALJ determination that subsection 337(g)(2) of the Tariff Act of 1930, as amended, 19 U.S.C. 1337(g)(2), contains the authority to issue a general exclusion order in an investigation in which all respondents appeared and have been terminated on the basis of settlement agreements. The Commission has also determined to vacate ALJ Order No. 29, denying a motion for summary determination of violation. Finally, the Commission has determined to terminate this investigation without reaching the issue of violation. The Commission will issue its Opinion shortly.

FOR FURTHER INFORMATION CONTACT: Jean Jackson, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–3104. Copies of the ALJ's order and all other nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS–ON–LINE) at *http://dockets.usitc.gov/eol/public.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted the above-referenced investigation on August 23, 2001, based on a complaint filed by Milacron, Inc. (Milacron) of Cincinnati, OH, against 11 respondents. 66 FR 44374 (2001). The complaint, as supplemented, alleged violations of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337) in the importation into the United States, sale for importation, and sale within the United States after importation of certain plastic molding machines with control systems having programmable operator interfaces incorporating general purpose computers, and components thereof, by reason of infringement of claims 1–4 and 9–13 of U.S. Patent No. 5,062,052. All named respondents have been terminated from the investigation on the basis of settlement agreements.

On April 18, 2002, Milacron filed a motion to amend the procedural schedule so that it would have an opportunity to file a motion for summary determination of violation of section 337 and to request a general exclusion order. On April 24, 2002, the ALJ issued Order No. 27, granting Milacron's request to amend the procedural schedule in the investigation to allow Milacron the opportunity to file a motion for summary determination of violation and to seek a general exclusion order under Commission rule 210.16 (c)(2). On May 17, 2002, complainant filed its motion for summary determination and request for a recommendation supporting a general exclusion order.

On June 11, 2002, the ALJ issued Order No. 29 denying Milacron's motion for summary determination of violation. On June 18, 2002, the ALJ issued a one-

paragraph ID (Order No. 30) terminating the investigation. On June 24 and June 25, 2002, respectively, Milacron and the IA petitioned for review of the ID and appealed Order No. 29.

The Commission determined to review and reverse the ALJ's ID terminating the investigation. 67 FR 47569 (July 19, 2002). The Commission also determined to review the ALJ's determination in Order No. 29 that the Commission has the statutory authority under section 337(g)(2) to issue a general exclusion order in an investigation in which all respondents have settled with complainant, and requested briefing on the issues under review. *Id.* Complainant and the IA filed briefs in response to the Commission's notice of review.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in sections 210.24, 210.43(d), 210.44, and 210.45 of the Commission's rules of practice and procedure (19 CFR 210.24, 210.43(d), 210.44, and 210.45).

By order of the Commission.

Issued: January 21, 2003.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 03–1652 Filed 1–23–03; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–485]

Certain Truck Bed Ramps and Components Thereof; Notice of Investigation

AGENCY: International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on December 20, 2002, under section 337 of the Tarrif Act of 1930, as amended 19 U.S.C. 1337, on behalf of Charles D. Walkden of Homer, Alaska. An amended complaint was filed on January 7, 2003. The complaint, as amended, alleges violations of section 337 in the importation of certain truck bed ramps and components thereof by reason of infringement of claim 1 of U.S. Patent No. 5,795,125. The complaint further alleges that an industry in the United States exists as required by subsection (a)(2) of section 337.

The complainant requests that the Commission institute an investigation and, after the investigation, issue a permanent exclusion order and permanent cease and desist orders.

ADDRESSES: The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Room 112, Washington, DC 20436, telephone 202–205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server at *http://www.usitc.gov*. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS–ON–LINE) at *http://dockets.usitc.gov/eol/public*.

FOR FURTHER INFORMATION CONTACT: Thomas S. Fusco, Office of Unfair Import Investigations, U.S. International Trade Commission, telephone 202–205–2571.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in § 210.10 of the Commission's rules of practice and procedure, 19 CFR 210.10 (2002).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on January 16, 2003, *ordered that*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation, of certain truck bed ramps or components thereof by reason of infringement of claim 1 of U.S. Patent No. 5,795,125, and whether an industry in the United States exists as required by subsection (a)(2) of section 337.

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is—Charles D. Walkden, 4178 Kachemak Way, Homer, Alaska 99603.

(b) The respondents are the following companies alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

ETEC, 2310 Hanselman Avenue, Saskatoon SK, Canada, S7L5Z3.
Textron Inc., 40 Westminister Street, Providence, Rhode Island 02903.
VIP Distributing, 1220 East 68th, Unit 101, Anchorage, Alaska 99518.
Southwest Distributing Co., Highway 183 North, P.O. Box 456, Clinton, Oklahoma 73601.
Hamilton Equipment Inc., 567 South Reading Road, Ephrata, Pennsylvania 17522.

(3) For the investigation so instituted, the Honorable Charles E. Bullock is designated as the presiding administrative law judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with § 210.13 of the Commission's rules of practice and procedure, 19 CFR § 210.13. Pursuant to 19 CFR §§ 201.16(d) and 210.13(a), such responses will be considered by the Commission if received no later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint will not be granted unless good cause therefor is shown. Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and to authorize the administrative law judge and the Commission, without further notice to that respondent, to find the facts to be as alleged in the complaint and this notice and to enter both an initial determination and a final determination containing such findings, and may result in the issuance of a limited exclusion order or a cease and desist order or both direct against that respondent.

By order of the Commission.

Issued: January 17, 2003.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 03–1613 Filed 1–23–03; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, As Amended

Consistent with Departmental policy, 28 CFR § 50.7, notice is hereby given that on January 7, 2003, a proposed

consent decree in *United States* v. *Town of Middletown*, Civil Action No. 03–011T, was lodged with the United States District Court for the District of Rhode Island. This proposed consent decree resolves the United States' claims on behalf of the Department of the Interior ("DOI") under the Comprehensive Environment Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. 9601 *et seq.*, against the Town of Middletown ("the Town") for response costs that have been or will be incurred at the former Town of Middletown Landfill ("the Site") located within and adjacent to the Saschuest Point National Wildlife Refuge, Rhode Island.

The constant decree requires the Town to pay $1.5 million to the United States as reimbursement for the past and future costs of the cleanup of the Site.

The Department of Justice will receive comments relating to the proposed Consent Decree for a period of thirty (30) days from the date of this publication. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, PO Box 7611, Washington, DC 20044, and should refer to *United States* v. *Town of Middletown*, D.J. Ref.# 90–11–3–07264.

The proposed consent decree may be examined at the office of the United States Attorney, Fleet Center, 50 Kennedy Plaza, 8th Floor, Providence, RI 02903, and at the Office of the Solicitor, U.S. Department of the Interior, 1849 C. St., NW., Washington, DC 20240–001 (contact John Seymour: (202) 219–3383). A copy of the proposed consent decree may also be obtained by mail from the Department of Justice Consent Decree Library, PO Box 7611, Washington, DC 20044. In requesting a copy, please enclose a check (there is a 25 cent per page reproduction cost) in the amount of $4.50 payable to the "U.S. Treasury."

Ronald G. Gluck,

Assistant Chief, Environmental Enforcement Section, Environment & Natural Resources Division.

[FR Doc. 03–1584 Filed 1–23–03; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

[AAG/A Order No. 001–2003]

Privacy Act of 1974; Systems of Records

On November 25, 2002, the President signed into law the Homeland Security Act of 2002, Pub. L. 107–296, 116 Stat. 2135 (2002). Under Title XI, Subtitle B of the Act, the "authorities, functions, personnel, and assets" of the Bureau of Alcohol, Tobacco, and Firearms are transferred to the Department of Justice, with the exception of certain enumerated authorities that were retained by the Department of the Treasury. The functions retained by the Department of the Treasury are the responsibility of a new Alcohol and Tobacco Tax and Trade Bureau. Section 1111 of the Homeland Security Act further provides that the Bureau will retain its identity as a separate entity within the Department of Justice known as the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF). The transfer takes effect January 24, 2003.

In accordance with the requirements of the Privacy Act of 1974, as amended, 5 U.S.C. 552a, ATF is publishing its Privacy Act systems of records and converting certain ATF systems of records from Department of the Treasury systems to Department of Justice systems pursuant to the reorganization and transfer of ATF to the Department of Justice.

ATF is designating the following systems of records as Department of Justice systems: ATF–001, Administrative Record System; ATF–003, Criminal Investigation Report System; ATF–006, Internal Security Record System; ATF–007, Personnel Record System; ATF–008, Regulatory Enforcement Record System; ATF–009, Technical and Scientific Services Record System; and ATF–010, Training and Professional Development System. ATF–010, Training and Professional Development Records, is a new notice covering non-federal training participants. ATF–006, Internal Security Record System, was previously published and in effect through 1998, when it was deleted as covered by a Department of the Treasury System notice, Treasury–007, Personnel Security System. Because ATF will no longer be covered by the Treasury notice, the ATF notice for Internal Security Record System–006 is being republished. All other systems notices were previously published by ATF and have been continuously in effect.

There has been no change in the maintenance or operations of the systems of records by ATF. Rather, these systems notices are being published to reflect the transfer of ATF to the Department of Justice. Some revisions were made to update authorities, to clarify certain descriptions of categories, and to revise or add routine uses in accordance with Department of Justice format and practices. A routine use is also being added to allow disclosures to the Treasury Department, Alcohol and Tobacco Tax and Trade Bureau employees, when necessary to accomplish a Department of Justice or Department of the Treasury function related to the system of records. Disclosures will not be made under the new system of records or under new routine uses until after the 30-day comment period, except with respect to disclosures to employees of the Alcohol and Tobacco Tax and Trade Bureau who have a need for the records in the performance of their duties during the transition. Such disclosures will be treated as intra-agency disclosures for purposes of section 552a(b)(1) of the Privacy Act.

The publication of these systems of records as Justice systems does not rescind the Treasury/ATF systems of records, as they govern the Alcohol and Tobacco Tax and Trade Bureau within the Department of the Treasury.

Due to the transfer to the Department of Justice, the following Department of Justice Department-wide notices are applicable to ATF: DOJ–001, Accounting Systems for the Department of Justice; DOJ–002, Department of Justice Computer Systems Activity and Access Records; DOJ–003, Correspondence Management Systems for the Department of Justice; DOJ–004, Freedom of Information Act, Privacy Act, and Mandatory Declassification Review Requests and Administrative Appeals for the Department of Justice; DOJ–005, Nationwide Joint Automated Booking System; DOJ–006, Personnel Investigation and Security Clearance Records for the Department of Justice; DOJ–007, Reasonable Accommodations for the Department of Justice; Justice/JMD–005, Grievance Records; Justice/JMD–017, Department of Justice Employee Transportation Facilitation System; Justice/JMD–012, Department of Justice Call Detail Records and Justice/DAG–011, Miscellaneous Attorney Personnel Records System.

A comment period will be held for the systems of records published by ATF today. In accordance with 5 U.S.C. 552(e)(4) and (11), the public is given a 30-day period in which to comment; and the Office of Management and Budget (OMB), which has oversight responsibility under the Act, requires a 40-day period in which to conclude its review of the systems. Therefore, please submit any comments by February 24, 2003. The public, OMB, and Congress are invited to submit any comments to Mary E. Cahill, Management and Planning Staff, Justice Management Division, Department of Justice, Washington, DC 20530 (Room 1400 National Place Building).

In accordance with 5 U.S.C. 552a(r), the Department has provided a report to OMB and the Congress.

Dated: January 17, 2003.

Paul R. Corts,

Assistant Attorney General for Administration.

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ATF–003—Criminal Investigation Report System
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JUSTICE/ATF–001

SYSTEM NAME:

Administrative Record System-Justice/ATF–001.

SYSTEM LOCATION:

Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), 650 Massachusetts Avenue, NW., Washington, DC 20226. Components of this record system are geographically dispersed throughout the Bureau's field offices. A list of field offices is available by writing to the Chief, Disclosure Division, Room 8400, 650 Massachusetts Avenue, NW., Washington, DC 20226.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

(1) Present employees of the Bureau of ATF. (2) Former employees of the Bureau of ATF. (3) Claimants against the Bureau of ATF.

CATEGORIES OF RECORDS IN THE SYSTEM:

Documents related to claims submitted including: (1) Accident Report—vehicle; (2) Fatality reports; (3) Injury reports; (4) Chief Counsel and District Counsel memoranda and opinions.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

(1) Federal Claims Collection Act. (2) Federal Property and Administration Services Act of 1949, as amended. (3) Federal Tort Claims Act. (4) Military Personnel and Civilian Claims Act. (5) Occupational Safety and Health Act of 1970. (6) Small Claims Act. (7) 5 U.S.C. 1302, 3301, 3302.

PURPOSE(S):

The purpose of this system is to resolve claims submitted to the Bureau of Alcohol, Tobacco, Firearms and Explosives.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

A record in this system may be disclosed as a routine use:

A. To a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of, and at the request of, the individual who is the subject of the record.

B. To contractors, grantees, experts, consultants, students, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for the federal government, when necessary to accomplish an agency function related to this system of records.

C. In the event that a record in this system, either alone or in conjunction with other information, indicates a violation or potential violation of law—criminal, civil, or regulatory in nature—the relevant records may be referred to the appropriate federal, state, local, foreign, or tribal law enforcement authority or other appropriate agency charged with the responsibility for investigating or prosecuting such violation or charged with enforcing or implementing such law.

D. To officials and employees of a federal agency or entity, including the White House, which requires information relevant to a decision concerning the hiring, appointment, or retention of an employee; the issuance of a security clearance; the execution of a security or suitability investigation; the classification of a job; or the issuance of a grant or benefit.

E. In an appropriate proceeding before a court or administrative or regulatory body when records are determined by the Department of Justice to be arguably relevant to the proceeding.

F. To an actual or potential party to litigation or the party's authorized representative for the purpose of negotiation or discussion on such matters as settlement, plea bargaining, or in informal discovery proceedings.

G. To the news media and the public pursuant to 28 CFR 50.2 unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

H. To federal, state, and local licensing agencies or associations, which require information concerning the suitability or eligibility of an individual for a license or permit.

I. To the General Services Administration and National Archives and Records Administration in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

J. To a former employee of the Department for purposes of: responding to an official inquiry by a federal, state, or local government entity or professional licensing authority, in accordance with applicable Department regulations; or facilitating communications with a former employee that may be necessary for personnel-related or other official purposes where the Department requires information and/or consultation assistance from the former employee regarding a matter within that person's former area of responsibility.

K. To such recipients and under such circumstances and procedures as are mandated by federal statute or treaty.

L. To an organization or individual in either the public or private sector where there is reason to believe the recipient is or could become the target of a particular criminal activity or conspiracy, to the extent the information is relevant to the protection of life or property.

M. To individuals and organizations to the extent necessary to obtain relevant information needed by the Bureau to render a decision in regard to an administrative matter.

N. To Treasury Department, Alcohol and Tobacco Tax and Trade Bureau employees, when necessary to accomplish a Treasury Department or Department of Justice function related to this system of records.

O. To unions recognized as exclusive bargaining representatives in accordance with provisions contained in the Civil Service Reform Act of 1978, 5 U.S.C. 7111 and 7114.

P. To complainants and/or victims to the extent necessary to provide such persons with information and explanations concerning the progress and/or results of the investigation or case arising from the matters of which they complained and/or of which they were a victim.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Active records are stored in file folders in security filing cabinets. Inactive records are stored in file folders at Federal Records Centers. Records are also stored in electronic media.

RETRIEVABILITY:

Records are retrieved by name of individual.

SAFEGUARDS:

Direct access is restricted to personnel in the Department of Justice in the

performance of their duty. Records are transmitted to routine users on a need to know basis or where a right to access is established, and to others upon verification of the substance and propriety of the request. These records are stored in lockable metal file cabinets in rooms locked during non-duty hours. The records stored in electronic media are password protected.

RETENTION AND DISPOSAL:

Records are retained in accordance with General Records Schedules Numbers 1 through 23 issued by the National Archives and Records Administration, and Bureau of Alcohol, Tobacco, Firearms and Explosives records control schedules numbers 101 and 201 and disposed of by shredding or burning.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Director, Office of Management/Chief Financial Officer, Bureau of Alcohol, Tobacco, Firearms and Explosives, 650 Massachusetts Avenue, NW., Washington, DC 20226.

NOTIFICATION PROCEDURE:

See "Record access procedures" below.

RECORD ACCESS PROCEDURES:

For records accessible through the Privacy Act, a request should be made in writing and mailed to the Disclosure Division, Privacy Act Request, Bureau of Alcohol, Tobacco, Firearms and Explosives, 650 Massachusetts Avenue, NW., Washington, DC 20226. The envelope and the letter should be clearly marked "Privacy Access Request." The request should include a general description of the records sought and must include the requester's full name, current address, and date and place of birth. The request must be signed, dated, and either notarized or submitted under penalty of perjury.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information maintained in the system should direct their request according to the Record Access procedures listed above, stating clearly and concisely what information is being contested, the reasons for contesting it, and the proposed amendment to the information sought. Some information is not subject to amendment, such as tax return information.

RECORD SOURCE CATEGORIES:

(1) Administrative records; (2) Claimants; (3) Doctors; (4) Employee records; (5) Fiscal records; (6) Former employees of the Bureau of ATF; (7) Former employers; (8) General Services Administration; (9) Individuals who have information relevant to claims; (10) Inspections records; (11) Internal Investigation reports; (12) Police reports; (13) Present employees of the Bureau of ATF; (14) Supervisors; (15) Witnesses; (16) Insurance companies.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

JUSTICE/ATF–003

SYSTEM NAME:

Criminal Investigation Report System, Justice/ATF–003.

SYSTEM LOCATION:

Bureau of Alcohol, Tobacco, Firearms and Explosives, 650 Massachusetts Avenue, NW., Washington, DC 20226. Components of this record system are geographically dispersed throughout Bureau of Alcohol, Tobacco, Firearms and Explosives' field offices. A list of field offices is available by writing to the Chief, Disclosure Division, Room 8400, 650 Massachusetts Avenue, NW., Washington, DC 20226.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

(1) Criminal offenders or alleged criminal offenders acting alone or in concert with other individuals and suspects who have been or are under investigation for a violation or suspected violation of laws enforced by the Bureau; (2) Criminal offenders or alleged criminal offenders acting alone or in concert with individuals who have been referred to the Bureau of Alcohol, Tobacco, Firearms and Explosives by other law enforcement agencies, governmental units or the general public; (3) Informants; (4) Persons who come to the attention of the Bureau in the course of criminal investigations; (5) Persons who have been convicted of a crime punishable by imprisonment for a term exceeding one year and who have applied for relief from disabilities under Federal law with respect to the acquisition, receipt, transfer, shipment, or possession of firearms and explosives and whose disability was incurred by reason of such conviction; (6) Victims of crimes; (7) Witnesses.

CATEGORIES OF RECORDS IN THE SYSTEM:

(a) Records containing information compiled for the purpose of identifying individual criminal offenders and alleged offenders and consisting of identifying data and notations of arrest, the nature and disposition of criminal charges, sentencing, confinement, release, and parole and probation status; (b) Records containing information compiled for the purpose of a criminal investigation, including reports of informants and investigators, and associated with an identifiable individual; (c) Records containing reports identifiable to an individual compiled at various stages of the process of enforcement of criminal laws from arrest or indictment through release from supervision; (d) Records compiled and maintained by the Bureau as generally described in (a), (b), and (c) above including the following: (1) Abandoned property reports; (2) ATF Criminal Investigation Reports; (3) ATF referrals to foreign, Federal, state, and local law enforcement agencies; (4) Chief and Regional Counsel opinions; (5) Contemporaneous investigative notes; (6) Criminal investigatory correspondence from and to foreign, Federal, state and local law enforcement agencies; (7) Criminal intelligence information on individuals suspected to be violating ATF laws and regulations; (8) Documentary proof of defendant's criminal record, identity, or lack of registration of National Firearms Act (N.F.A.) (as amended) firearm(s); (9) FBI Criminal Record Reports; (10) Fingerprints and palmprints; (11) Fugitive arrest warrants; (12) Handwriting exemplars; (13) Records of violations and reputation; (14) Illicit liquor and raw material surveys; (15) Laboratory reports of evidence analysis; (16) Memoranda of expected testimony of witnesses; (17) Organized crime members violating or suspected of violating ATF laws; (18) Parole and pardon reports; (19) Personal histories (address, employment, social security number, financial background, physical description, *etc.*); (20) Photographs; (21) Purchase of evidence records; (22) Records of electronic surveillance by ATF; (23) Records received in response to summons and subpoenas; (24) Reliefs from disability; (25) Reports of interview with witnesses; (26) Search warrants and affidavits for search warrants; (27) Seized property reports; (28) Criminal records concerning firearms, explosives and alcohol; (29) Special agent's daily activity diary (accessible by date only); (30) State and local law enforcement criminal investigative reports; (31) Statements of defendants; (32) Statements of witnesses; (33) Summons and subpoenas issued pursuant to criminal investigations; (34) Voice prints; (35) Wagering tax suspected violators; (36) Warning and demand letters; (37) Criminal violation reports (a formal report compiling all or portions of the foregoing for prosecutive purposes).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

(1) 26 U.S.C. Chapter 40; (2) 26 U.S.C. Chapter 53, as amended; (3) 26 U.S.C. Chapters 61 through 80, as amended; (4) 18 U.S.C. Chapter 40; (5) 18 U.S.C. Chapter 44; (6) 18 U.S.C. Chapter 59; (7) 18 U.S.C. Chapter 114; (8) 22 U.S.C. 227; (9) 18 U.S.C. 1952; (10) Public Law 107–296.

PURPOSE(S):

The purpose of this system is to suppress traffic in distilled spirits and tobacco products on which taxes have not been paid; to enforce the Federal laws relating to the illegal possession and use of firearms, destructive devices, explosives, explosive materials; and to assist Federal, state, local and foreign law enforcement agencies in reducing crime and violence.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

A record in this system may be disclosed as a routine use:

A. To a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of, and at the request of, the individual who is the subject of the record.

B. To contractors, grantees, experts, consultants, students, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for the federal government, when necessary to accomplish an agency function related to this system of records.

C. To appropriate federal, state, local, foreign, or tribal law enforcement authorities for law enforcement purposes—criminal, civil, or regulatory.

D. To officials and employees of a federal agency or entity, including the White House, which requires information relevant to a decision concerning the hiring, appointment, or retention of an employee; the issuance of a security clearance; the execution of a security or suitability investigation; the classification of a job; or the issuance of a grant or benefit.

E. In an appropriate proceeding before a court or administrative or regulatory body when records are determined by the Department of Justice to be arguably relevant to the proceeding.

F. To an actual or potential party to litigation or the party's authorized representative for the purpose of negotiation or discussion on such matters as settlement, plea bargaining, or in informal discovery proceedings.

G. To the news media and the public pursuant to 28 CFR 50.2 unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

H. To federal, state, and local licensing agencies or associations, which require information concerning the suitability or eligibility of an individual for a license or permit.

I. To the General Services Administration and National Archives and Records Administration in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

J. To a former employee of the Department for purposes of: Responding to an official inquiry by a federal, state, or local government entity or professional licensing authority, in accordance with applicable Department regulations; or facilitating communications with a former employee that may be necessary for personnel-related or other official purposes where the Department requires information and/or consultation assistance from the former employee regarding a matter within that person's former area of responsibility.

K. To such recipients and under such circumstances and procedures as are mandated by federal statute or treaty.

L. To an organization or individual in either the public or private sector where there is reason to believe the recipient is or could become the target of a particular criminal activity or conspiracy, to the extent the information is relevant to the protection of life or property.

M. To individuals and organizations in the course of an investigation to the extent necessary to obtain information pertinent to the investigation.

N. To Treasury Department, Alcohol and Tobacco Tax and Trade Bureau employees, when necessary to accomplish a Treasury Department or Department of Justice function related to this system of records.

O. To criminal or national security intelligence gathering organizations for the purpose of identifying and suppressing the activities of international and national criminals and terrorists.

P. To insurance companies making determinations regarding claims in cases where the Bureau has conducted or is conducting an arson investigation.

Q. To unions recognized as exclusive bargaining representatives in accordance with provisions contained in the Civil Service Reform Act of 1978, 5 U.S.C. 7111 and 7114.

R. To complainants and/or victims to the extent necessary to provide such persons with information and explanations concerning the progress and/or results of the investigation or case arising from the matters of which they complained and/or of which they were a victim.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Active records are stored in file folders in secure filing cabinets. Inactive records are stored in file folders at Federal Records Centers. Records are also stored in electronic media.

RETRIEVABILITY:

Records are retrieved by name, date of birth, social security number, other unique identifier, investigation number, serial number of firearm, or a combination of any of these; plus date and geographical location of incident giving rise to investigation.

SAFEGUARDS:

Direct access restricted to personnel in the Department of Justice in the performance of their duty. Transmitted to routine users on a need to know basis and to others upon verification of the substance and propriety of the request. Stored in lockable file cabinets in rooms locked during non-duty hours. The records stored in electronic media are password protected.

RETENTION AND DISPOSAL:

Records are retained in accordance with General Records Schedules numbers 1 through 23 issued by the National Archives and Records Administration, and Bureau of Alcohol, Tobacco, Firearms and Explosives Records Control Schedules numbers 101 and 201 and disposed of by shredding or burning. Records on tape or on-line mass storage are disposed of by degaussing.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Director, Firearms Explosive & Arson; Assistant Director, Field Operations; and Assistant Director, Science & Technology, Bureau of Alcohol, Tobacco, Firearms and Explosives, 650 Massachusetts Avenue, NW., Washington, DC 20226.

NOTIFICATION PROCEDURE:

See "Record access procedures" below.

RECORD ACCESS PROCEDURES:

For Records Accessible through the Privacy Act, mail a request in writing to the Disclosure Division, Privacy Act Request, Bureau of Alcohol, Tobacco, Firearms and Explosives, 650 Massachusetts Avenue, NW.,

Washington, DC 20226, with the envelope and the letter clearly marked "Privacy Access Request." The request should include a general description of the records sought and must include the requester's full name, current address, and date and place of birth. The request must be signed and dated and either notarized or submitted under penalty of perjury. Some information may be exempt from access provisions as described in the section entitled "Exemptions claimed for the system." An individual who is the subject of a record in this system may access those records that are not exempt from disclosure. A determination whether a record may be accessed will be made at the time a request is received.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information maintained in the system should direct their request according to the Record Access procedures listed above, stating clearly and concisely what information is being contested, the reasons for contesting it, and the proposed amendment to the information sought. Some information is not subject to amendment, such as tax return information. Some information may be exempt from contesting record procedures as described in the section entitled "Exemptions claimed for the system." An individual who is the subject of a record in this system may amend those records that are not exempt. A determination whether a record may be amended will be made at the time a request is received.

RECORD SOURCE CATEGORIES:

Categories of individuals covered by the system: (1) Federal, state and local agencies; (2) witnesses; (3) employers; (4) professional organizations; (5) victims; (6) criminal offenders or alleged criminal offenders; (7) fiscal records; (8) inspection records; (9) investigation records; (10) persons having knowledge of potential criminal activity; and (11) other persons listed in "Categories of individuals covered by the system" in this notice.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Pursuant to 5 U.S.C. 552a(j)(2), the Attorney General has exempted records in this system from subsections (c)(3) and (4), (d)(1), (2),(3) and (4), (e)(1), (2) and (3), (e)(4)(G), (H), and (I), (e)(5) and (8), (f) and (g) of the Privacy Act. Rules have been promulgated in accordance with the requirement of 5 U.S.C. 553(b), (c) and (e) and are published in today's **Federal Register**.

JUSTICE/ATF.006

SYSTEM NAME:

Internal Security Record System-Justice/ATF–006.

SYSTEM LOCATION:

Bureau of Alcohol, Tobacco, Firearms and Explosives, 650 Massachusetts Avenue, NW., Washington, DC 20226.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

(1) Present employees of the Bureau of ATF; (2) Former employees of the Bureau of ATF; (3) Applicants for employment; (4) Non-Bureau employees involved in criminal acts toward Bureau employees and Bureau property; (5) Individuals who were interviewed by Internal Affairs Special Agents; (6) Contract employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

(1) Records containing investigative material compiled for law enforcement purposes including information relating to: (a) Conduct of employees and contract employees; (b) Integrity of employees; (2) Records containing investigative material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment or access to classified information including reports relating to security clearances of employees.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

18 U.S.C. 201, Executive Order 10450, Executive Order 11222.

PURPOSE(S):

This system is used to assure the Bureau Director, the Department of Justice, and the public that the Bureau is taking strong and vigorous steps to maintain the highest standards of integrity, loyalty, conduct, and security among Bureau personnel and contract employees. When a criminal investigation results in a compilation of information contained in this system, the information so compiled shall be transferred to the ATF Criminal Investigation Report System and shall become a part of that system for all purposes of the Privacy Act of 1974.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

A record in this system may be disclosed as a routine use:

A. To a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of, and at the request of, the individual who is the subject of the record.

B. To contractors, grantees, experts, consultants, students, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for the federal government, when necessary to accomplish an agency function related to this system of records.

C. In the event that a record in this system, either alone or in conjunction with other information, indicates a violation or potential violation of law—criminal, civil, or regulatory in nature—the relevant records may be referred to the appropriate federal, state, local, foreign, or tribal law enforcement authority or other appropriate agency charged with the responsibility for investigating or prosecuting such violation or charged with enforcing or implementing such law.

D. To officials and employees of a federal agency or entity, including the White House, which requires information relevant to a decision concerning the hiring, appointment, or retention of an employee; the issuance of a security clearance; the execution of a security or suitability investigation; the classification of a job; or the issuance of a grant or benefit.

E. In an appropriate proceeding before a court or administrative or regulatory body when records are determined by the Department of Justice to be arguably relevant to the proceeding.

F. To an actual or potential party to litigation or the party's authorized representative for the purpose of negotiation or discussion on such matters as settlement, plea bargaining, or in informal discovery proceedings.

G. To the news media and the public pursuant to 28 CFR 50.2 unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

H. To federal, state, and local licensing agencies or associations, which require information concerning the suitability or eligibility of an individual for a license or permit.

I. To the General Services Administration and National Archives and Records Administration in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

J. To a former employee of the Department for purposes of: Responding to an official inquiry by a federal, state, or local government entity or professional licensing authority, in accordance with applicable Department regulations; or facilitating communications with a former employee that may be necessary for

personnel-related or other official purposes where the Department requires information and/or consultation assistance from the former employee regarding a matter within that person's former area of responsibility.

K. To such recipients and under such circumstances and procedures as are mandated by federal statute or treaty.

L. To an organization or individual in either the public or private sector where there is reason to believe the recipient is or could become the target of a particular criminal activity or conspiracy, to the extent the information is relevant to the protection of life or property.

M. To individuals and organizations in the course of an investigation to the extent necessary to obtain information pertinent to the investigation.

N. To Treasury Department, Alcohol and Tobacco Tax and Trade Bureau employees, when necessary to accomplish a Treasury Department or Department of Justice function related to this system of records.

O. To unions recognized as exclusive bargaining representatives in accordance with provisions contained in the Civil Service Reform Act of 1978, 5 U.S.C. 7111 and 7114.

P. To complainants and/or victims to the extent necessary to provide such persons with information and explanations concerning the progress and/or results of the investigation or case arising from the matter of which they complained and/or of which they were a victim.

Q. To designated officers and employees of state or local (including the District of Columbia) law enforcement or detention agencies in connection with the hiring or continued employment of an employee or contractor, where the employee or contractor would occupy or occupies a position of public trust as a law enforcement officer or detention officer having direct contact with the public or with prisoners or detainees, to the extent that the information is relevant and necessary to the recipient agency's decision.

R. To the Office of Personnel Management, Merit Systems Protection Board, Equal Employment Opportunity Commission, Federal Labor Relations Authority, and the Office of Special Counsel for the purpose of properly administering Federal personnel systems or other agencies' systems in accordance with applicable laws, Executive Orders, and regulations.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Active records stored in file folders in security filing cabinets and computer system (hard disk). Inactive records stored in file folders at Federal Records Center.

RETRIEVABILITY:

Records are retrieved by name.

SAFEGUARDS:

Direct access restricted to personnel in Department of the Justice in the performance of their duty. Transmitted to routine users on a need to know basis and to others upon verification of the substance and propriety of the request. Stored in lockable metal file cabinets in rooms locked during non-duty hours.

RETENTION AND DISPOSAL:

Records are retained in accordance with General Records Schedules Numbers 1 through 20 issued by the National Archives and Records Administration, and Bureau of Alcohol, Tobacco, Firearms and Explosives Records Control Schedules numbers 101 and 201 and disposed of by shredding or burning.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Director (Office of Inspection), Bureau of Alcohol, Tobacco, Firearms and Explosives, 650 Massachusetts Avenue, N.W., Washington, DC 20226.

NOTIFICATION PROCEDURE:

See "Record access procedures" below.

RECORD ACCESS PROCEDURES:

For records accessible through the Privacy Act, address a request in writing to Disclosure Division, Privacy Act Request, Bureau of Alcohol, Tobacco, Firearms and Explosives, 650 Massachusetts Avenue, NW., Washington, DC 20226, with the envelope and the letter clearly-marked "Privacy Access Request." The request should include a general description of the records sought and must include the requester's full name, current address, and date and place of birth. The request must be signed, dated and either notarized or submitted under penalty of perjury. Some information may be exempt from access provisions as described in the section entitled "Exemptions claimed for the system." An individual who is the subject of a record in this system may access those records that are not exempt from disclosure. A determination whether a record may be accessed will be made at the time a request is received.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information maintained in the system should direct their request according to the Record Access procedures listed above, stating clearly and concisely what information is being contested, the reasons for contesting it, and the proposed amendment to the information sought. Some information is not subject to amendment, such as tax return information. Some information may be exempt from contesting record procedures as described in the section entitled "Exemptions claimed for the system." An individual who is the subject of a record in this system may amend those records that are not exempt. A determination whether a record may be amended will be made at the time a request is received.

RECORD SOURCE CATEGORIES:

Examples include: (1) Employees of this Bureau; (2) Internal Investigative report forms; (3) Witnesses; (4) Informants; (5) Federal, state and local enforcement agencies; (6) Employers; (7) Educational institutions; (8) Credit agencies; (9) Neighbors; (10) References; (11) Professional Organizations; (12) Other government agencies; (13) Claimants; (14) Victims.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Pursuant to 5 U.S.C. 552a(k)(5) (relating to security clearances) and (k)(2) (relating to conduct and integrity), the Attorney General has exempted records in this system from subsections (c)(3), (d)(1), (2), (3) and (4), (e)(1), (e)(4)(G), (H), and (I) and (f) of the Privacy Act. Rules have been promulgated in accordance with the requirement of 5 U.S.C. 553(b), (c) and (e) and are published in today's **Federal Register**.

JUSTICE/ATF–007

SYSTEM NAME:

Personnel Record System-Justice/ ATF–007

SYSTEM LOCATION:

Bureau of Alcohol, Tobacco, Firearms and Explosives, 650 Massachusetts Avenue, NW., Washington, DC 20226. Components of this record system are geographically dispersed throughout the Bureau's field offices. A list of field offices is available by writing to the Chief, Disclosure Division, Room 8400, 650 Massachusetts Avenue, NW., Washington, DC 20226.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

(1) Present Employees of the Bureau of ATF; (2) Former Employees of the Bureau of ATF; (3) Applicants for employment with ATF.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records include: (1) Allotment and Dues; (2) Annual Tax Reports; (3) Applicants for employment; (4) Applications for reassignment; (5) Awards, honors, and fellowship records; (6) Classification appeal records; (7) Death claim records; (8) Educational history; (9) Employee indebtedness records; (10) Employees qualified as Grievance Examiners; (11) Employee Suggestions; (12) Employee history; (13) Employee relations case file; (14) Equal employment opportunity records; (15) Health maintenance records; (16) Insurance records; (17) Military history; (18) Occupational injuries, disabilities, and Worker's Compensation Records; (19) Official personnel folder; (20) Outside employment and identification numbers, business or professional records; (21) Outside employment; (22) Outside financial interests; (23) Overtime and/or Premium Pay records; (24) Performance evaluation records; (25) Personal history; (26) Position description records; (27) Promotion/ Selection Certificates Records; (28) Property custody records; (29) Retirement records; (30) Records of security clearance; (31) Statement of career goals; (32) Supervisory or managerial potential records; (33) Temporary assignments and details; (34) Time application reports and records; (35) Training record; (36) U.S. Savings Bond participation records; (37) Upward mobility applications; (38) Vehicle accidents; (39) Withholding tax records; (40) Work schedule records; (41) Chief Counsel and Regional Counsel memoranda and opinions; (42) Government passport records.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

(1) 5 U.S.C. Chapter 29, Subchapter II; (2) 5 U.S.C. Chapters 31 and 33; (3) 5 U.S.C. Chapter 43; (4) 5 U.S.C. Chapter 45; (5) 5 U.S.C. Chapter 51; (6) 5 U.S.C. Chapter 55, subchapter III; (7) 5 U.S.C. Chapter 61; (8) 5 U.S.C. Chapter 75; (9) 5 U.S.C. Chapter 83; (10) 5 U.S.C. 301; 31 CFR 2.28; 5 CFR 550.122, 550.183; (11) 5 U.S.C. 4503; (12) 5 U.S.C. 5101–5115; (13) 5 U.S.C. 7151–7154; (14) 5 U.S.C. 7901; (15) Public Law 92–261 (Equal Employment Act of 1972); (16) Public Law 93–579; (Federal Employees Compensation Act); (17) Occupational Safety and Health Act of 1970; (18) Executive Order 10561; (19) Executive Order 11222; (20) Executive Order 11478; (21) Executive Order 11491.

PURPOSE(S):

The purpose of this system is to provide a source of factual data about a person's Federal employment while in the service of the Bureau of Alcohol, Tobacco, Firearms and Explosives.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

A record in this system may be disclosed as a routine use:

A. To a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of, and at the request of, the individual who is the subject of the record.

B. To contractors, grantees, experts, consultants, students, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for the federal government, when necessary to accomplish an agency function related to this system of records.

C. In the event that a record in this system, either alone or in conjunction with other information, indicates a violation or potential violation of law—criminal, civil, or regulatory in nature—the relevant records may be referred to the appropriate federal, state, local, foreign, or tribal law enforcement authority or other appropriate agency charged with the responsibility for investigating or prosecuting such violation or charged with enforcing or implementing such law.

D. To officials and employees of a federal agency or entity, including the White House, which requires information relevant to a decision concerning the hiring, appointment, or retention of an employee; the issuance of a security clearance; the execution of a security or suitability investigation; the classification of a job; or the issuance of a grant or benefit.

E. In an appropriate proceeding before a court or administrative or regulatory body when records are determined by the Department of Justice to be arguably relevant to the proceeding.

F. To an actual or potential party to litigation or the party's authorized representative for the purpose of negotiation or discussion on such matters as settlement, plea bargaining, or in informal discovery proceedings.

G. To the news media and the public pursuant to 28 CFR 50.2 unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

H. To federal, state, and local licensing agencies or associations, which require information concerning the suitability or eligibility of an individual for a license or permit.

I. To the General Services Administration and National Archives and Records Administration in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

J. To a former employee of the Department for purposes of: responding to an official inquiry by a federal, state, or local government entity or professional licensing authority, in accordance with applicable Department regulations; or facilitating communications with a former employee that may be necessary for personnel-related or other official purposes where the Department requires information and/or consultation assistance from the former employee regarding a matter within that person's former area of responsibility.

K. To such recipients and under such circumstances and procedures as are mandated by federal statute or treaty.

L. To an organization or individual in either the public or private sector where there is reason to believe the recipient is or could become the target of a particular criminal activity or conspiracy, to the extent the information is relevant to the protection of life or property.

M. To individuals and organizations to the extent necessary to obtain relevant information needed by the Bureau to render a decision in regard to a personnel matter.

N. To Treasury Department, Alcohol and Tobacco Tax and Trade Bureau employees, when necessary to accomplish a Treasury Department or Department of Justice function related to this system of records.

O. To unions recognized as exclusive bargaining representatives in accordance with provisions contained in the Civil Service Reform Act of 1978, 5 U.S.C. 7111 and 7114.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Active records are stored in file folders in security filing cabinets. Inactive records are stored in file folders at Federal Records Centers. Records are also stored in electronic media.

RETRIEVABILITY:

Records are retrieved by name, date of birth, social security number, employee identification number, or a combination of any of these four.

SAFEGUARDS:

Direct access is restricted to personnel in the Department of Justice in the performance of their duty. Records are transmitted to routine users on a need to know basis or where a right to access is established, and to others upon verification of the substance and propriety of the request. These records are stored in lockable file cabinets in rooms locked during non-duty hours. The records stored in electronic media are password protected.

RETENTION AND DISPOSAL:

Records are retained in accordance with General Records Schedules numbers 1 through 23 issued by the National Archives and Records Administration, and Bureau of Alcohol, Tobacco, Firearms and Explosives Records Control Schedules numbers 101 and 201 and disposed of by shredding, burning or by degaussing.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Director, Office of Science and Technology; Assistant Director, Public and Governmental Affairs; and Assistant Director, Management/Chief Financial Officer, Bureau of Alcohol, Tobacco, Firearms and Explosives, 650 Massachusetts Avenue, NW., Washington, DC 20226.

NOTIFICATION PROCEDURE:

See "Record access procedures" below.

RECORD ACCESS PROCEDURES:

For records accessible through the Privacy Act, mail a request in writing to the Disclosure Division, Privacy Act Request, Bureau of Alcohol, Tobacco, Firearms and Explosives, 650 Massachusetts Avenue, NW., Washington, DC 20226, with the envelope and the letter clearly marked "Privacy Access Request." The request should include a general description of the records sought and must include the requester's full name, current address, and date and place of birth. The request must be signed, dated, and either notarized or submitted under penalty of perjury. Some information may be exempt from access provisions as described in the section entitled "Exemptions claimed for the system." An individual who is the subject of a record in this system may access those records that are not exempt from disclosure. A determination whether a record may be accessed will be made at the time a request is received.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information maintained in the system should direct their request according to the Record Access procedures listed above, stating clearly and concisely what information is being contested, the reasons for contesting it, and the proposed amendment to the information sought. Some information is not subject to amendment, such as tax return information. Some information may be exempt from contesting record procedures as described in the section entitled "Exemptions claimed for the system." An individual who is the subject of a record in this system may amend those records that are not exempt. A determination whether a record may be amended will be made at the time a request is received.

RECORD SOURCE CATEGORIES:

Examples include: (1) Administrative Records; (2) Applicants for employment with the Bureau; (3) Acquaintances; (4) Business and professional associates; (5) Creditors; (6) Criminal records; (7) Educational Institutions attended; (8) Employee records; (9) Equal Employment Opportunity Commission; (10) Financial institutions; (11) Fiscal records; (12) Former employees; (13) Former employers; (14) Inspection records; (15) Internal investigation reports; (16) Internal Revenue Service; (17) Military records; (18) Outside employers; (19) Physicians; (20) Police reports; (21) Position classification specialists; (22) Psychiatrists; (23) References; (24) Supervisors; (25) Training officers; (26) Unions, accredited; (27) Office of Personnel Management; (28) Witnesses.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Pursuant to 5 U.S.C. 552a(k)(5) the Attorney General has exempted records in this system from subsections (c)(3), (d)(1), (2), (3) and (4), (e)(1), (e)(4)(G), (H), and (I) and (f) of the Privacy Act. Rules have been promulgated in accordance with the requirement of 5 U.S.C. 553(b), (c) and (e) and are published in today's **Federal Register**.

JUSTICE/ATF–008

SYSTEM NAME:

Regulatory Enforcement Record System—Justice/ATF–008.

SYSTEM LOCATION:

Bureau of Alcohol, Tobacco, Firearms and Explosives, 650 Massachusetts Avenue, NW., Washington, DC 20226. Components of this system of records are also geographically dispersed throughout ATF's district and field offices. A list of field offices is available by writing to the Chief, Disclosure Division, Room 8400, 650 Massachusetts Avenue, NW., Washington, DC 20226.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have been issued permits or licenses, have filed applications with ATF, have registered with ATF, or are responsible persons or employees of a licensee or permittee to the extent that the records concern private individuals or entrepreneurs, including, but not limited to: (a) Explosives licensees, employees and responsible persons; (b) Claimants for refund of taxes; (c) Federal Firearms Licenses, employees and responsible persons (d) Collectors of firearms or ammunition; (e) Importers of firearms or ammunition, and (f) Users of explosive materials.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records containing investigative material compiled for law enforcement purposes which may consist of the following: (1) Abstracts of offers in compromise; (2) Administrative law judge decisions; (3) Assessment records: (a) notices of proposed assessments, (b) notices of shortages or losses, (c) notices to IRS to assess taxes, (d) recommendation for assessments, (4) Claim records: (a) claims; (b) letters of claim rejection; (c) sample reports; (d) supporting data; (e) vouchers and schedules of payment; (5) Comments on proposed rulemakings; (6) Complaints from third parties; (7) Correspondence concerning records in this system and related matters; (8) Financial statements; (9) Inspection and investigation reports; (10) Joint demands on principals and sureties for payment of excise tax liabilities; (11) Letters of reprimand; (12) Lists of permittees and licensees; (13) Lists of officers, directors and principal stockholders; (14) Mailing lists and addressograph plates; (15) Notices of delinquent reports; (16) Offers in compromise; (17) Operation records: (a) operating reports, (b) reports of required inventories, (c) reports of thefts or losses of firearms, (d) reports of thefts of explosive materials, (e) transaction records, (f) transaction reports; (18) Orders of revocation, suspension or annulment of permits or licenses; (19) District and Chief Counsel opinions and memoranda; (20) Reports of violations; (21) Permit status records; (22) Qualifying and background records: (a) access authorizations, (b) advertisement records, (c) applications, (d) bonds, (e) business histories, (f) criminal records, (g) diagrams of premises, (h) educational histories, (i) employment histories, (j) environmental records, (k) financial data, (l) formula approvals, (m) label approvals, (n) licenses, (o) notices, (p) permits, (q) personal references, (r) plant profiles, (s) plant capacities, (t)

plats and plans, (u) registrations, (v) sample reports, (w) signature authorities, (x) special permissions and authorizations, (y) statements of process; (23) Show cause orders; (24) Tax records: (a) control cards relating to periodic payment and prepayment of taxes, (b) excise and special tax returns, (c) notices of tax discrepancy or adjustment.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

(1) 26 U.S.C. 7011; (2) 18 U.S.C. 923(a); (3) 18 U.S.C. 923(b); (4) 18 U.S.C. 843(a); (5) 22 U.S.C. 2278; (6) 26 U.S.C. 6001; (7) 26 U.S.C. 6011(a); (8) 26 U.S.C. 6201; (9) 26 U.S.C. 7122; (10) 18 U.S.C. 843(d); (11) 18 U.S.C. 923(f); (12) Pub. L. 107–296.

PURPOSE(S):

The purpose of this system is to determine suitability, eligibility or qualifications of individuals who are engaged or propose to engage in activities regulated by ATF; achieve compliance with laws under ATF's jurisdiction; interact with Federal, state and local governmental agencies in the resolution of problems relating to industrial development, revenue protection, public health, ecology, and other areas of joint jurisdictional concern. When a criminal investigation results in a compilation of information contained in this system of records, the information shall be transferred to the Justice/ATF—Criminal Investigation Report System and shall become part of that system for all purposes of the Privacy Act of 1974.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

A record in this system may be disclosed as a routine use:

A. To a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of, and at the request of, the individual who is the subject of the record.

B. To contractors, grantees, experts, consultants, students, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for the federal government, when necessary to accomplish an agency function related to this system of records.

C. In the event that a record in this system, either alone or in conjunction with other information, indicates a violation or potential violation of law—criminal, civil, or regulatory in nature—the relevant records may be referred to the appropriate federal, state, local, foreign, or tribal law enforcement authority or other appropriate agency charged with the responsibility for investigating or prosecuting such violation or charged with enforcing or implementing such law.

D. To officials and employees of a federal agency or entity, including the White House, which requires information relevant to a decision concerning the hiring, appointment, or retention of an employee; the issuance of a security clearance; the execution of a security or suitability investigation; the classification of a job; or the issuance of a grant or benefit.

E. In an appropriate proceeding before a court or administrative or regulatory body when records are determined by the Department of Justice to be arguably relevant to the proceeding.

F. To an actual or potential party to litigation or the party's authorized representative for the purpose of negotiation or discussion on such matters as settlement, plea bargaining, or in informal discovery proceedings.

G. To the news media and the public pursuant to 28 CFR 50.2 unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

H. To federal, state, and local licensing agencies or associations, which require information concerning the suitability or eligibility of an individual for a license or permit.

I. To the General Services Administration and National Archives and Records Administration in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

J. To a former employee of the Department for purposes of: responding to an official inquiry by a federal, state, or local government entity or professional licensing authority, in accordance with applicable Department regulations; or facilitating communications with a former employee that may be necessary for personnel-related or other official purposes where the Department requires information and/or consultation assistance from the former employee regarding a matter within that person's former area of responsibility.

K. To such recipients and under such circumstances and procedures as are mandated by federal statute or treaty.

L. To an organization or individual in either the public or private sector where there is reason to believe the recipient is or could become the target of a particular criminal activity or conspiracy, to the extent the information is relevant to the protection of life or property.

M. To individuals and organizations to the extent necessary to obtain or verify information pertinent to the Bureau's decision to grant, deny or revoke a license or permit, or pertinent to an ongoing investigation.

N. To Treasury Department, Alcohol and Tobacco Tax and Trade Bureau employees, when necessary to accomplish a Treasury Department or Department of Justice function related to this system of records.

O. To national and international intelligence gathering organizations for the purpose of identifying international and national criminals involved in consumer fraud, revenue evasion or crimes.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in file folders in filing cabinets and in electronic media.

RETRIEVABILITY:

Records are retrieved by name, permit or license number, by document locator number, or by employer identification number (EIN).

SAFEGUARDS:

Direct access restricted to personnel in the Department of Justice in the performance of their duty. Transmitted to routine users on a need to know basis and others upon verification of the substance and propriety of the request. Stored in file cabinets in rooms locked during non-duty hours. The records stored in electronic media are password protected.

RETENTION AND DISPOSAL:

Records are retained in accordance with General Records Schedules numbers 1 through 20 issued by the National Archives and Records Administration, and Bureau of Alcohol, Tobacco, Firearms and Explosives Records Control Schedules numbers 101 and 201 and disposed of by shredding, burning or by degaussing.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Director, Firearms Explosive & Arson; Field Operations; and Assistant Director, Science & Technology, Bureau of Alcohol, Tobacco, Firearms and Explosives, 650 Massachusetts Avenue, NW., Washington, DC 20226.

NOTIFICATION PROCEDURE:

See "Record access procedures" below.

RECORD ACCESS PROCEDURES

For Records Accessible through the Privacy Act, mail a written request to the Disclosure Division, Privacy Act Request, Bureau of Alcohol, Tobacco, Firearms and Explosives, 650 Massachusetts Avenue, NW., Washington, DC 20226, with the envelope and the letter clearly marked "Privacy Access Request." The request should include a general description of the records sought and must include the requester's full name, current address, and date and place of birth. The request must be signed, dated, and either notarized or submitted under penalty of perjury. Some information may be exempt from access provisions as described in the section entitled "Exemptions claimed for the system." An individual who is the subject of a record in this system may access those records that are not exempt from disclosure. A determination whether a record may be accessed will be made at the time a request is received.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information maintained in the system should direct their request according to the Record Access procedures listed above, stating clearly and concisely what information is being contested, the reasons for contesting it, and the proposed amendment to the information sought. Some information is not subject to amendment, such as tax return information. Some information may be exempt from contesting record procedures as described in the section entitled "Exemptions claimed for the system." An individual who is the subject of a record in this system may amend those records that are not exempt. A determination whether a record may be amended will be made at the time a request is received.

RECORD SOURCE CATEGORIES:

Examples include: (1) Acquaintances; (2) Bureau personnel; (3) Business and professional associates; (4) Creditors; (5) Criminal records; (6) Financial institutions; (7) Former employers; (8) Internal Revenue Service; (9) Military records; (10) Physicians; (11) Psychiatrists; (12) References; (13) Police reports; (14) Witnesses; (15) Federal law enforcement agencies; (16) State law enforcement agencies; (17) Local law enforcement agencies; (18) State regulatory agencies; (19) Federal regulatory agencies; (20) Local regulatory agencies; (21) Chief Counsel's opinions; (22) Regional Counsel's opinions; (23) Chief Counsel's memoranda; (24) Regional Counsel's memoranda; (25) Field investigation reports; (26) Third parties.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Pursuant to 5 U.S.C. 552a(k)(2), the Attorney General has exempted records in this system from subsections (c)(3), (d)(1), (2), (3) and (4), (e)(1), (e)(4)(G), (H), and (J) and (f) of the Privacy Act. Rules have been promulgated in accordance with the requirement of 5 U.S.C. 553(b), (c) and (e) and are published in today's **Federal Register**.

JUSTICE/ATF–009

SYSTEM NAME:

Technical and Scientific Services Record System Justice/ATF–009.

SYSTEM LOCATION:

Bureau of Alcohol, Tobacco, Firearms and Explosives, 650 Massachusetts Avenue, NW., Washington, DC 20226. Components of this record system are geographically dispersed throughout Bureau of Alcohol, Tobacco, Firearms and Explosives' field offices. A list of field offices is available by writing to the Chief, Disclosure Division, Room 8400, 650 Massachusetts Avenue, NW., Washington, DC 20226.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals covered may include: (1) Applicants to register firearms under the National Firearms Act; (2) Importers of implements of war as defined under the Mutual Security Act of 1954 and the Arms Export Control Act of 1976; (3) Licensed importers registered under the Mutual Security Act of 1954 and the Arms Export Control Act of 1976; (4) Manufacturers of National Firearms Act firearms that are exempt from payment of Special (Occupational) tax provisions; (5) Non-Bureau chemists certified to make analysis of alcoholic beverages; (6) Persons involved in explosives tagging and detection program; (7) Registered owners of National Firearms Act firearms; (8) Special (Occupational) taxpayers as defined under Title II of the Gun Control Act of 1968; (9) Victims of explosives; (10) Individuals involved in Government funded research projects.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records may include: (1) Alteration records of registered National Firearms Act firearms; (2) Applications to register firearms and destructive devices under the National Firearms Act; (3) Applications to import articles on the United States Munitions list; (4) Blueprints; (5) Certifications of payment of Special (occupational) tax payments; (6) Changes of address for owner of firearms registered under the National Firearms Act; (7) Claims for erroneous Special (Occupational) taxes payments; (8) Descriptions of Inventions; (9) Delinquency notices regarding proof of importation of National Firearms Act firearms; (10) Explosive reports; (11) Non-Bureau chemists' statements of qualification; (12) Patent information; (13) Registrations of firearms and destructive devices under the National Firearms Act; (14) Registration of war trophy firearms; (15) Requests and authorizations for temporary movement and/or temporary storage of National Firearms Act firearms; (16) Technical and scientific data; (17) Transaction records concerning National Firearms Act firearms; (18) Trade secrets; (19) United States Government contracts to manufacturers of National Firearms Act firearms; (20) Chief Counsel and Regional Counsel memoranda and opinions.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

(1) 18 U.S.C. Chapter 40; (2) 18 U.S.C. Chapter 44; (3) 26 U.S.C. 6001(a); (4) 26 U.S.C. 6201; (5) 26 U.S.C. 7011; (6) Executive Order 11958; (7) Public Law 107–296.

PURPOSE(S):

The purpose of this system is to provide technical, investigative and scientific support and expertise to Criminal and Regulatory Enforcement activities of the Bureau; to other Federal, state, local and foreign law enforcement agencies; and to provide scientific support and expertise to those industries involved in activities regulated by the Bureau. When a criminal investigation results in a compilation of information contained in this system, the information so compiled shall be transferred to the Justice/ATF—Criminal Investigation Report System and shall become a part of that system for all purposes of the Privacy Act of 1974.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

A record in this system may be disclosed as a routine use:

A. To a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of, and at the request of, the individual who is the subject of the record.

B. To contractors, grantees, experts, consultants, students, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for the federal government, when necessary to

accomplish an agency function related to this system of records.

C. In the event that a record in this system, either alone or in conjunction with other information, indicates a violation or potential violation of law—criminal, civil, or regulatory in nature—the relevant records may be referred to the appropriate federal, state, local, foreign, or tribal law enforcement authority or other appropriate agency charged with the responsibility for investigating or prosecuting such violation or charged with enforcing or implementing such law.

D. To officials and employees of a federal agency or entity, including the White House, which requires information relevant to a decision concerning the hiring, appointment, or retention of an employee; the issuance of a security clearance; the execution of a security or suitability investigation; the classification of a job; or the issuance of a grant or benefit.

E. In an appropriate proceeding before a court or administrative or regulatory body when records are determined by the Department of Justice to be arguably relevant to the proceeding.

F. To an actual or potential party to litigation or the party's authorized representative for the purpose of negotiation or discussion on such matters as settlement, plea bargaining, or in informal discovery proceedings.

G. To the news media and the public pursuant to 28 CFR 50.2 unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

H. To federal, state, and local licensing agencies or associations, which require information concerning the suitability or eligibility of an individual for a license or permit.

I. To the General Services Administration and National Archives and Records Administration in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

J. To a former employee of the Department for purposes of: responding to an official inquiry by a federal, state, or local government entity or professional licensing authority, in accordance with applicable Department regulations; or facilitating communications with a former employee that may be necessary for personnel-related or other official purposes where the Department requires information and/or consultation assistance from the former employee regarding a matter within that person's former area of responsibility.

K. To such recipients and under such circumstances and procedures as are mandated by federal statute or treaty.

L. To an organization or individual in either the public or private sector where there is reason to believe the recipient is or could become the target of a particular criminal activity or conspiracy, to the extent the information is relevant to the protection of life or property.

M. To individuals and organizations to the extent necessary to obtain or verify information pertinent to the Bureau's decision to grant, deny, or revoke a license or permit, or pertinent to an ongoing investigation.

N. To Treasury Department, Alcohol and Tobacco Tax and Trade Bureau employees, when necessary to accomplish a Treasury Department or Department of Justice function related to this system of records.

O. To insurance companies making determinations regarding claims in cases where the Bureau has conducted or is conducting an arson investigation.

P. To national and international intelligence gathering organizations for the purpose of identifying international and national criminals involved in consumer fraud, revenue evasion or crimes.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING; RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in file folders and in electronic media.

RETRIEVABILITY:

Records are retrieved by name, by other unique identifier, control number, serial number of National Firearms Act firearms.

SAFEGUARDS:

Records are stored in file cabinets locked during non-duty hours. The records stored in electronic media are password protected.

RETENTION AND DISPOSAL:

Records are retained in accordance with General Records Schedules numbers 1 through 20 issued by the National Archives and Records Administration, and Bureau of Alcohol, Tobacco, Firearms and Explosives Records Control Schedules numbers 101 and 201 and disposed of by shredding or burning. Records stored on tape discs or on-line mass storage are disposed of by degaussing.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Director, Firearms Explosive & Arson; Assistant Director, Field Operations; and Assistant Director, Science & Technology, Bureau of Alcohol, Tobacco, Firearms and Explosives, 650 Massachusetts Avenue, NW., Washington, DC 20226..

NOTIFICATION PROCEDURE:

See "Record access procedures" below.

RECORD ACCESS PROCEDURES:

If records are accessible through the Privacy Act, mail a written request to the Disclosure Division, Privacy Act Request, Bureau of Alcohol, Tobacco, Firearms and Explosives, 650 Massachusetts Avenue, NW., Washington, DC 20226, with the envelope and the letter clearly marked "Privacy Access Request." The request should include a general description of the records sought and must include the requester's full name, current address, and date and place of birth. The request must be signed, dated, and either notarized or submitted under penalty of perjury. Some information may be exempt from access provisions as described in the section entitled "Exemptions claimed for the system." An individual who is the subject of a record in this system may access those records that are not exempt from disclosure. A determination whether a record may be accessed will be made at the time a request is received.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information maintained in the system should direct their request according to the Record Access procedures listed above, stating clearly and concisely what information is being contested, the reasons for contesting it, and the proposed amendment to the information sought. Some information is not subject to amendment, such as tax return information. Some information may be exempt from contesting record procedures as described in the section entitled "Exemptions claimed for the system." An individual who is the subject of a record in this system may amend those records that are not exempt. A determination whether a record may be amended will be made at the time a request is received.

RECORD SOURCE CATEGORIES:

Examples include: (1) Individuals; (2) Companies; (3) Corporations; (4) Firearms Licensees; (5) Explosive Licensees; (6) Explosive Permittees; (7) Bureau personnel; (8) Federal law enforcement agencies; (9) State law enforcement agencies; (10) Local law enforcement agencies; (11) Foreign law enforcement agencies; (12) Federal

Regulatory agencies; (13) State Regulatory agencies; (14) Local Regulatory agencies; (15) Non-Bureau Chemists.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Pursuant to 5 U.S.C. 552a(k)(2), the Attorney General has exempted records in this system from subsections (c)(3), (d)(1), (2),(3) and (4), (e)(1), (e)(4)(G), (H), and (I) and (f) of the Privacy Act. Rules have been promulgated in accordance with the requirement of 5 U.S.C. 553(b), (c) and (e) and are published in today's **Federal Register**.

JUSTICE/ATF–010

SYSTEM NAME:

Training and Professional Development Record System-Treasury/ ATF–010.

SYSTEM LOCATION:

Bureau of Alcohol, Tobacco, Firearms and Explosives, 650 Massachusetts Avenue, NW., Washington, DC 20226. Components of this record system are geographically dispersed throughout the Bureau's field offices. A list of field offices is available by writing to the Chief, Disclosure Division, 650 Massachusetts Avenue, NW., Washington, DC 20226.

CATEGORIES OF INDIVIDUALS COVERED IN THE SYSTEM:

Non-ATF individuals applying for ATF training and/or professional development; those instructors for ATF training and/or professional development; possible emergency contacts and/or supervisors' names are collected from the trainee.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records may include: (a) Name, (b) office address, (c) telephone number, (d) fax number, (e) social security information, (f) firearms qualifications, (g) eligibility of instructors, (h) certifications held by instructors, (i) courses previously taught by instructors, (j) home address, date of birth, (k) position title, (l) length of time in public service, (m) time on current assignment, number of years in current position, (n) name and telephone number of immediate supervisor, (o) education experience, (p) related occupational experience, (q) blood type, (r) military experience, (s) law enforcement experience, (t) description of duties and responsibilities, (u) internet address, (v) pager number, (w) smoking preference, (x) Chief Counsel and Regional Counsel memoranda and opinions, and (y) other information as needed or required for training or instructor determination or safety.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 4104; Executive Order No. 11348 as amended by Executive Order No. 12107 (1978).

PURPOSE(S):

The purpose of this system is to provide basic data about ATF instructors and those trained by ATF.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS, AND THE PURPOSES OF SUCH USES:

A record in this system may be disclosed as a routine use:

A. To a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of, and at the request of, the individual who is the subject of the record.

B. To contractors, grantees, experts, consultants, students, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for the federal government, when necessary to accomplish an agency function related to this system of records.

C. In the event that a record in this system, either alone or in conjunction with other information, indicates a violation or potential violation of law—criminal, civil, or regulatory in nature—the relevant records may be referred to the appropriate federal, state, local, foreign, or tribal law enforcement authority or other appropriate agency charged with the responsibility for investigating or prosecuting such violation or charged with enforcing or implementing such law.

D. To officials and employees of a federal agency or entity, including the White House, which requires information relevant to a decision concerning the hiring, appointment, or retention of an employee; the issuance of a security clearance; the execution of a security or suitability investigation; the classification of a job; or the issuance of a grant or benefit.

E. In an appropriate proceeding before a court or administrative or regulatory body when records are determined by the Department of Justice to be arguably relevant to the proceeding.

F. To an actual or potential party to litigation or the party's authorized representative for the purpose of negotiation or discussion on such matters as settlement, plea bargaining, or in informal discovery proceedings.

G. To the news media and the public pursuant to 28 CFR 50.2 unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

H. To federal, state, and local licensing agencies or associations, which require information concerning the suitability or eligibility of an individual for a license or permit.

I. To the General Services Administration and National Archives and Records Administration in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

J. To a former employee of the Department for purposes of: responding to an official inquiry by a federal, state, or local government entity or professional licensing authority, in accordance with applicable Department regulations; or facilitating communications with a former employee that may be necessary for personnel-related or other official purposes where the Department requires information and/or consultation assistance from the former employee regarding a matter within that person's former area of responsibility.

K. To such recipients and under such circumstances and procedures as are mandated by federal statute or treaty.

L. To an organization or individual in either the public or private sector where there is reason to believe the recipient is or could become the target of a particular criminal activity or conspiracy, to the extent the information is relevant to the protection of life or property.

M. To individuals and organizations to the extent necessary to verify their qualifications or eligibility for training.

N. To Treasury Department, Alcohol and Tobacco Tax and Trade Bureau employees, when necessary to accomplish a Treasury Department or Department of Justice function related to this system of records.

O. To unions recognized as exclusive bargaining representatives in accordance with provisions contained in the Civil Service Reform Act of 1978, 5 U.S.C. 7111 and 7114.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records are stored in security filing cabinets. Records are also stored in electronic media.

RETRIEVABILITY:

Records are retrieved by name, agency and/or office location, social security number or any of the above.

SAFEGUARDS:

Paper records are kept in locked filing cabinets in locked rooms during non-business hours. Electronic media records are password protected.

RETENTION AND DISPOSAL:

Records are retained in accordance with General Records Schedules numbers 1 through 23 issued by the National Archives and Records Administration, and the Bureau of Alcohol, Tobacco, Firearms and Explosives Control Schedules number 101 and 201 and disposed of by shredding, burning or by degaussing.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Director, Training and Professional Development, Bureau of Alcohol, Tobacco, Firearms and Explosives, 650 Massachusetts Avenue, NW., Washington, DC 20226.

NOTIFICATION PROCEDURE:

See "Record access procedures" below.

RECORD ACCESS PROCEDURES:

For records accessible through the Privacy Act, mail a request in writing to the Disclosure Division, Privacy Act Request, Bureau of Alcohol, Tobacco, Firearms and Explosives, 650 Massachusetts Avenue, NW., Washington, DC 20226, with the envelope and the letter clearly marked "Privacy Access Request." The request should include a general description of the records sought and must include the requester's full name, current address, and date and place of birth. The request must be signed and dated and either notarized or submitted under penalty of perjury.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information maintained in the system should direct their request according to the Record Access procedures listed above, stating clearly and concisely what information is being contested, the reasons for contesting it, and the proposed amendment to the information sought. Some information is not subject to amendment, such as tax return information.

RECORD SOURCE CATEGORIES:

Examples include: Administrative records, applications submitted by non-ATF individuals seeking ATF training and applications submitted by instructors.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 03–1576 Filed 1–23–03; 8:45 am]

BILLING CODE 4410–FB–P

DEPARTMENT OF LABOR

Employment Standards Administration Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended; 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department.

Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S–3014, Washington, DC 20210.

Withdrawn General Wage Determination Decisions

This is to advise all interested parties that the Department of Labor is withdrawing, from the date of this notice, General Wage Decisions as listed below.

MS020057 See MS020056
OR020017 See OR020003

Contracts for which bids have been opened shall not be affected by this notice. Also, consistent with 29 CFR 1.6(c)(2)(i)(A), when the opening of bids is less than ten (10) days from the date of this notice, this action shall be effective unless the agency finds that there is insufficient time to notify bidders of the change and the finding is documented in the contract file.

Modification to General Wage Determination Decisions

The number of the decisions listed to the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and related Acts" being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

Connecticut
CT020001 (Mar. 1, 2002)

Volume II

Pennsylvania
PA020001 (Mar. 1, 2002)
PA020002 (Mar. 1, 2002)
PA020003 (Mar. 1, 2002)
PA020004 (Mar. 1, 2002)
PA020005 (Mar. 1, 2002)
PA020006 (Mar. 1, 2002)
PA020007 (Mar. 1, 2002)
PA020008 (Mar. 1, 2002)
PA020009 (Mar. 1, 2002)
PA020010 (Mar. 1, 2002)
PA020013 (Mar. 1, 2002)
PA020014 (Mar. 1, 2002)
PA020016 (Mar. 1, 2002)
PA020017 (Mar. 1, 2002)
PA020018 (Mar. 1, 2002)
PA020019 (Mar. 1, 2002)
PA020020 (Mar. 1, 2002)
PA020021 (Mar. 1, 2002)
PA020023 (Mar. 1, 2002)
PA020024 (Mar. 1, 2002)
PA020025 (Mar. 1, 2002)
PA020026 (Mar. 1, 2002)
PA020027 (Mar. 1, 2002)
PA020029 (Mar. 1, 2002)
PA020030 (Mar. 1, 2002)
PA020031 (Mar. 1, 2002)
PA020032 (Mar. 1, 2002)
PA020035 (Mar. 1, 2002)
PA020038 (Mar. 1, 2002)
PA020040 (Mar. 1, 2002)
PA020042 (Mar. 1, 2002)
PA020051 (Mar. 1, 2002)
PA020052 (Mar. 1, 2002)
PA020053 (Mar. 1, 2002)
PA020054 (Mar. 1, 2002)
PA020055 (Mar. 1, 2002)
PA020059 (Mar. 1, 2002)
PA020060 (Mar. 1, 2002)
PA020061 (Mar. 1, 2002)
PA020065 (Mar. 1, 2002)

Volume III

Florida
FL020001 (Mar. 1, 2002)
FL020009 (Mar. 1, 2002)
FL020016 (Mar. 1, 2002)
FL020017 (Mar. 1, 2002)
FL020032 (Mar. 1, 2002)
FL020034 (Mar. 1, 2002)
FL020046 (Mar. 1, 2002)
FL020076 (Mar. 1, 2002)
FL020100 (Mar. 1, 2002)
Georgia
GA020053 (Mar. 1, 2002)
Mississippi
MS020055 (Mar. 1, 2002)
MS020056 (Mar. 1, 2002)

Volume IV

Wisconsin
WI020011 (Mar. 1, 2002)

Volume V

Kansas
KS020007 (Mar. 1, 2002)
KS020009 (Mar. 1, 2002)
KS020010 (Mar. 1, 2002)
KS020011 (Mar. 1, 2002)
KS020012 (Mar. 1, 2002)
KS020013 (Mar. 1, 2002)
KS020016 (Mar. 1, 2002)
KS020018 (Mar. 1, 2002)
KS020019 (Mar. 1, 2002)
KS020020 (Mar. 1, 2002)
KS020021 (Mar. 1, 2002)
KS020023 (Mar. 1, 2002)
KS020025 (Mar. 1, 2002)
KS020026 (Mar. 1, 2002)
KS020029 (Mar. 1, 2002)
KS020035 (Mar. 1, 2002)
KS020069 (Mar. 1, 2002)
KS020070 (Mar. 1, 2002)
Missouri
MO020001 (Mar. 1, 2002)
MO020013 (Mar. 1, 2002)
MO020015 (Mar. 1, 2002)
MO020020 (Mar. 1, 2002)
MO020042 (Mar. 1, 2002)
MO020044 (Mar. 1, 2002)
MO020054 (Mar. 1, 2002)
MO020058 (Mar. 1, 2002)
Oklahoma
OK020013 (Mar. 1, 2002)
OK020015 (Mar. 1, 2002)
OK020016 (Mar. 1, 2002)
OK020018 (Mar. 1, 2002)
OK020034 (Mar. 1, 2002)
OK020035 (Mar. 1, 2002)
OK020036 (Mar. 1, 2002)
OK020037 (Mar. 1, 2002)
OK020038 (Mar. 1, 2002)
Texas
TX020003 (Mar. 1, 2002)
TX020007 (Mar. 1, 2002)
TX020010 (Mar. 1, 2002)
TX020015 (Mar. 1, 2002)
TX020055 (Mar. 1, 2002)
TX020060 (Mar. 1, 2002)
TX020061 (Mar. 1, 2002)
TX020062 (Mar. 1, 2002)
TX020063 (Mar. 1, 2002)
TX020096 (Mar. 1, 2002)

Volume VI

Oregon
OR020001 (Mar. 1, 2002)
OR020002 (Mar. 1, 2002)
OR020004 (Mar. 1, 2002)
Washington
WA020001 (Mar. 1, 2002)
WA020002 (Mar. 1, 2002)
WA020003 (Mar. 1, 2002)
WA020006 (Mar. 1, 2002)
WA020010 (Mar. 1, 2002)

Volume VII

Arizona
AZ020001 (Mar. 1, 2002)
AZ020005 (Mar. 1, 2002)
AZ020006 (Mar. 1, 2002)
California
CA020002 (Mar. 1, 2002)
CA020004 (Mar. 1, 2002)
CA020009 (Mar. 1, 2002)
CA020013 (Mar. 1, 2002)
CA020028 (Mar. 1, 2002)
CA020029 (Mar. 1, 2002)
CA020030 (Mar. 1, 2002)
CA020032 (Mar. 1, 2002)
CA020037 (Mar. 1, 2002)
Hawaii
HI020001 (Mar. 1, 2002)

General Wage Determination Publication

General wage determination issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage determinations Issued Under the Davis-Bacon and Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

General wage determinations issued under the Davis-Bacon and related Acts are available electronically at no cost on the Government Printing Office site at *http://www.access.gpo.gov/davisbacon*. They are also available electronically by subscription to the Davis-Bacon Online Service (*http://davisbacon.fedworld.gov*) of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at 1–800–363–2068. This subscription offers value-added features such as electronic deliver of modified wage decisions directly to the user's desktop, the ability to access prior wage decisions issued during the year, extensive Help desk Support, etc.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the six separate Volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC this 16th Day of January 2003.

Carl J. Poleskey,

Chief, Branch of Construction Wage Determinations.

[FR Doc. 03–1407 Filed 1–23–03; 8:45 am]

BILLING CODE 4510–27–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. NRTL1–2001]

TUV Product Services GmbH, Application for Expansion of Recognition

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice.

SUMMARY: This notice announces the application of TUV Product Services GmbH for expansion of its recognition as a Nationally Recognized Testing

Laboratory under 29 CFR 1910.7, and presents the Agency's preliminary finding. This preliminary finding does not constitute an interim or temporary approval of this application.

DATES: You may submit comments in response to this notice, or any request for extension of the time to comment, by (1) regular mail, (2) express or overnight delivery service, (3) hand delivery, (4) messenger service, or (5) FAX transmission (facsimile). Because of security-related problems there may be a significant delay in the receipt of comments by regular mail. Comments (or any request for extension of the time to comment) must be submitted by the following dates:

Regular mail and express delivery service: Your comments must be postmarked by February 10, 2003.

Hand delivery and messenger service: Your comments must be received in the OSHA Docket Office by February 10, 2003. OSHA Docket Office and Department of Labor hours of operation are 8:15 a.m. to 4:45 p.m.

Facsimile and electronic transmission: Your comments must be sent by February 10, 2003.

ADDRESSES: *Regular mail, express delivery, hand-delivery, and messenger service:* You must submit three copies of your comments and attachments to the OSHA Docket Office, Docket NRTL1–2001, Room N–2625, U.S. Department of Labor, Occupational Safety and Health Administration, 200 Constitution Avenue, NW., Washington, DC 20210. Please contact the OSHA Docket Office at (202) 693–2350 for information about security procedures concerning the delivery of materials by express delivery, hand delivery and messenger service.

Facsimile: If your comments, including any attachments, are 10 pages or fewer, you may fax them to the OSHA Docket Office at (202) 693–1648. You must include the docket number of this notice, Docket NRTL1–2001, in your comments.

Internet access to comments and submissions: OSHA will place comments and submissions in response to this notice on the OSHA Webpage *http://www.osha.gov*. Accordingly, OSHA cautions you about submitting information of a personal nature (*e.g.*, social security number, date of birth). There may be a lag time between when comments and submissions are received and when they are placed on the Webpage. Please contact the OSHA Docket Office at (202)693–2350 for information about materials not available through the OSHA Webpage and for assistance in using the Webpage to locate docket submissions. Comments and submissions will also be available for inspection and copying at the OSHA Docket Office at the address above.

Extension of Comment Period: Submit requests for extensions concerning this notice to: Office of Technical Programs and Coordination Activities, NRTL Program, Occupational Safety and Health Administration, U.S. Department of Labor, Room N3653, 200 Constitution Avenue, NW., Washington, DC 20210. Or fax to (202) 693–1644.

FOR FURTHER INFORMATION CONTACT: Bernard Pasquet, Office of Technical Programs and Coordination Activities, NRTL Program, Room N3653 at the address shown immediately above for the program, or phone (202) 693–2110.

SUPPLEMENTARY INFORMATION:

Notice of Application

The Occupational Safety and Health Administration (OSHA) hereby gives notice that TUV Product Services GmbH (TUVPSG) has applied for expansion of its current recognition as a Nationally Recognized Testing Laboratory (NRTL). TUVPSG's expansion request covers the use of additional test standards. OSHA's current scope of recognition for TUVPSG may be found in the following informational web page: *http://www.osha-slc.gov/dts/otpca/nrtl/tuvpsg.html*.

OSHA recognition of any NRTL signifies that the organization has met the legal requirements in § 1910.7 of title 29, Code of Federal Regulations (29 CFR 1910.7). Recognition is an acknowledgment that the organization can perform *independent* safety testing and certification of the specific products covered within its scope of recognition and is not a delegation or grant of government authority. As a result of recognition, employers may use products "properly certified" by the NRTL to meet OSHA standards that require testing and certification.

The Agency processes applications for initial recognition or for expansion or renewal of this recognition following requirements in Appendix A to 29 CFR 1910.7. This appendix requires that the Agency publish two notices in the **Federal Register** in processing an application. In the first notice, OSHA announces the application and provides its preliminary finding and, in the second notice, the Agency provides its final decision on an application. These notices set forth the NRTL's scope of recognition or modifications of this scope. We maintain an informational web page for each NRTL, which details its scope of recognition. These pages can be accessed from our Web site at *http://www.osha-slc.gov/dts/otpca/nrtl/index.html*.

The most recent notices published by OSHA for TUVPSG's recognition covered its initial recognition, which became effective on July 20, 2001 (66 FR 38032).

The current address of the facility (site) that OSHA recognizes for TUVPSG is: TUV Product Services GmbH, Ridlerstrasse 65, D–80339, Munich, Germany.

General Background on the Application

TUVPSG has submitted an application, dated August 1, 2002 (*see* Exhibit 7), to expand its recognition to use 46 additional test standards. The NRTL Program staff has determined that two test standards cannot be included in the expansion because they are not "appropriate test standards," within the meaning of 29 CFR 1910.7(c). The staff makes similar determinations in processing expansion requests from any NRTL. Therefore, OSHA would approve 44 test standards for the expansion, which are listed below. One of the test standards requested by TUVPSG, UL 3101–2–20, is listed below using its current designation, UL 61010A–2–020.

As part of OSHA's regular audit of TUVPSG, NRTL Program assessment staff learned of TUVPSG's planned request for expansion and reviewed the NRTL's capability to test to the standards listed below. In a memo, dated July 31, 2002, (*see* Exhibit 8) the OSHA assessor recommended the expansion request.

TUVPSG seeks recognition for testing and certification of products for demonstration of conformance to the following 44 additional test standards.

UL 197 Commercial Electric Cooking Appliances
UL 250 Household Refrigerators and Freezers
UL 429 Electrically Operated Valves
UL 474 Dehumidifiers
UL 484 Room Air Conditioners
UL 499 Electric Heating Appliances
UL 749 Household Dishwashers
UL 859 Household Electric Personal Grooming Appliance
UL 873 Temperature-Indicating and -Regulating Equipment
UL 921 Commercial Electric Dishwashers
UL 923 Microwave Cooking Appliances
UL 935 Fluorescent-Lamp Ballasts
UL 982 Motor-Operated Household Food Preparing Machines
UL 998 Humidifiers
UL 1004 Electric Motors
UL 1005 Electric Flatirons
UL 1026 Electric Household Cooking and Food Serving Appliances
UL 1082 Household Electric Coffee Makers and Brewing-Type Appliances
UL 1083 Household Electric Skillets and Frying-Type Appliances

UL 1278 Movable and Wall- or Ceiling-Hung Electric Room Heaters
UL 1310 Class 2 Power Units
UL 1411 Transformers and Motor Transformers for Use In Audio-, Radio-, and Television-Type Appliances
UL 1431 Personal Hygiene and Health Care Appliances
UL 1492 Audio-Video Products and Accessories
UL 1594 Sewing and Cutting Machines
UL 1647 Motor-Operated Massage and Exercise Machines
UL 1993 Self-Ballasted Lamps and Lamp Adapters
UL 2601–1 Medical Electrical Equipment, Part 1: General Requirements for Safety
UL 60335–1 Safety of Household and Similar Electrical Appliances, Part 1; General Requirements
UL 60335–8 Household and Similar Electrical Appliances, Part 2: Particular Requirements for Shavers, Hair Clippers, and Similar Appliances
UL 60335–2–34 Household and Similar Electrical Appliances, Part 2; Particular Requirements for Motor-Compressors
UL 60730–1A Automatic Electrical Controls for Household and Similar Use; Part 1: General Requirements
UL 60730–2–7 Automatic Electrical Controls for Household and Similar Use; Part 2: Particular Requirements for Timers and Time Switches
UL 60730–2–10A Automatic Electrical Controls for Household and Similar Use; Part 2: Particular Requirements for Motor Starting Relays
UL 60730–2–11A Automatic Electrical Controls for Household and Similar Use; Part 2: Particular Requirements for Energy Regulators
UL 60730–2–12A Automatic Electrical Controls for Household and Similar Use; Part 2: Particular Requirements for Electrically Operated Door Locks
UL 60730–2–13A Automatic Electrical Controls for Household and Similar Use; Part 2: Particular Requirements for Humidity Sensing Controls
UL 60730–2–14 Automatic Electrical Controls for Household and Similar Use; Part 2: Particular Requirements for Electric Actuators
UL 60730–2–16A Automatic Electrical Controls for Household and Similar Use; Part 2: Particular Requirements for Automatic Electrical Water Level Controls
UL 61010A–2–010 Electrical Equipment for Laboratory Use; Part 2: Particular Requirements for Laboratory Equipment for the Heating of Materials
UL 61010A–2–020 Electrical Equipment for Laboratory Use; Part 2: Particular Requirements for Laboratory Centrifuges
UL 61010A–2–041 Electrical Equipment for Laboratory Use; Part 2: Particular Requirements for Autoclaves Using Steam for the Treatment of Medical Materials and for Laboratory Processes
UL 61010A–2–051 Electrical Equipment for Laboratory Use; Part 2: Particular Requirements for Laboratory Equipment for Mixing and Stirring
UL 61010A–2–061 Electrical Equipment for Laboratory Use; Part 2: Laboratory Atomic Spectrometers with Thermal Atomization and Ionization

OSHA's recognition of TUVPSG, or any NRTL, for a particular test standard is limited to equipment or materials (*i.e.*, products) for which OSHA standards require third party testing and certification before use in the workplace. Consequently, any NRTL's scope of recognition excludes any product(s) that fall within the scope of a test standard, but for which OSHA standards do not require NRTL testing and certification.

Many of the UL test standards listed above also are approved as American National Standards by the American National Standards Institute (ANSI). However, for convenience, we use the designation of the standards developing organization (*e.g.*, UL 1026) for the standard, as opposed to the ANSI designation (*e.g.*, ANSI/UL 1026). Under our procedures, any NRTL recognized for an ANSI-approved test standard may use either the latest proprietary version of the test standard or the latest ANSI version of that standard. (Contact ANSI or the ANSI Web site (*http://www.ansi.org*) and click "NSSN" to find out whether or not a test standard is currently ANSI-approved.)

Preliminary Finding

TUVPSG has submitted an acceptable request for expansion of its recognition. As previously mentioned, in connection with the request, OSHA has performed an on-site review (evaluation) of TUVPSG's testing capability relative to the standards listed above. The NRTL has resolved any discrepancies noted by the assessor following the review, and the assessor factored such resolution into the memo on the recommendation (*see* Exhibit 8).

Following a review of the application file, the assessor's memo, and other pertinent information, the NRTL Program staff has concluded that OSHA can grant to TUVPSG the expansion of recognition to include the test standards listed above. The staff therefore recommended to the Assistant Secretary that the application be preliminarily approved, subject to the above condition.

Based upon the recommendations of the staff, the Assistant Secretary has made a preliminary finding that TUV Product Services GmbH can meet the requirements as prescribed by 29 CFR 1910.7 for the expansion of recognition, subject to the above condition. This preliminary finding, however, does not constitute an interim or temporary approval of the applications for TUVPSG.

OSHA welcomes public comments, in sufficient detail, as to whether TUVPSG has met the requirements of 29 CFR 1910.7 for expansion of its recognition as a Nationally Recognized Testing Laboratory. Your comments should consist of pertinent written documents and exhibits. To consider a comment, OSHA must receive it at the address provided above (*see* **ADDRESSES**), no later than the last date for comments (see **DATES** above). Should you need more time to comment, OSHA must receive your written request for extension at the address provided above no later than the last date for comments. You must include your reason(s) for any request for extension. OSHA will limit any extension to 30 days, unless the requester justifies a longer period. We may deny a request for extension if it is frivolous or otherwise unwarranted. You may obtain or review copies of TUVPSG's request, the assessor's memo, and all submitted comments, as received, by contacting the Docket Office, Room N2625, Occupational Safety and Health Administration, U.S. Department of Labor, at the above address. Docket No. NRTL1–2001 contains all materials in the record concerning TUVPSG's application.

The NRTL Program staff will review all timely comments and, after resolution of issues raised by these comments, will recommend whether to grant TUVPSG's expansion request. The Assistant Secretary will make the final decision on granting the expansion, and in making this decision, may undertake other proceedings that are prescribed in Appendix A to 29 CFR 1910.7. OSHA will publish a public notice of this final decision in the **Federal Register**.

Signed in Washington, DC this 15th day of January, 2003.

John L. Henshaw,

Assistant Secretary.

[FR Doc. 03–1602 Filed 1–23–03; 8:45 am]

BILLING CODE 4510–26–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–261]

Carolina Power & Light Co.; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR–23, issued to Carolina Power & Light

Company (the licensee), for operation of the H. B. Robinson Steam Electric Plant, Unit No. 2 (HBRSEP2), located in Darlington County, South Carolina.

The proposed amendment would revise the applicable Technical specifications (TS) requirements for rod position monitoring during the current operating cycle (Cycle 22) to allow the use of an alternate method of determining rod position. This will be effective until repair of the indication system can be completed during the next shutdown of sufficient duration.

The reason for the exigency is due to the unanticipated failure of the HBRSEP2 analog rod position indicator for Control Rod H–10 in Shutdown Bank B that was declared inoperable on December 22, 2002. Additionally, there is a concern regarding excessive system wear and potential increase for a malfunction or failure.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

Pursuant to 10 CFR 50.91(a)(6) for amendments to be granted under exigent circumstances, the NRC staff must determine that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

An evaluation of the proposed change has been performed in accordance with 10 CFR 50.91(a)(1) regarding no significant hazards considerations, using the standards in 10 CFR 50.92(c). A discussion of these standards as they relate to this amendment request follows:

1. The Proposed Change Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated.

The proposed change provides an alternative method for verifying the position of one control rod in a shutdown bank of rods. The proposed change meets the intent of the current TS by ensuring verification of the position of this rod once every eight hours. The proposed change only provides an alternative method of monitoring rod position and does not change the assumptions or results of any previously evaluated accident.

Therefore, operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The Proposed Change Does Not Create the Possibility of a New or Different Kind of Accident From Any Previously Evaluated.

As described above, the proposed change only provides an alternative method of determining the position of one control rod in a shutdown bank of rods. No new accident initiators are introduced by the proposed alternative method of performing rod position verification. The proposed change does not affect the reactor protection system or the reactor control system. Hence, no new failure modes are created that would cause a new or different kind of accident from any accident previously evaluated.

Therefore, operation of the facility in accordance with the proposed amendment would not create the possibility of a new or different kind of accident from any previously evaluated.

3. The Proposed Change Does Not Involve a Significant Reduction in the Margin of Safety.

The Bases of TS 3.1.7 states that the operability of the rod position indicators is required to determine control rod positions and thereby ensure compliance with the control rod alignment and insertion limits. The proposed change does not alter the requirement to determine rod position, but provides an alternative method for determining the position of the affected rod. As a result, the initial conditions of the accident analyses are preserved, and the consequences of previously analyzed accidents are unaffected.

Therefore, operation of the facility in accordance with the proposed amendment would not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 14 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 14-day notice period. However, should circumstances change during the notice period, such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 14-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike, Rockville, Maryland.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By February 24, 2003, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714,[1] which is available at the Commission's PDR, located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike, Rockville, Maryland, and available electronically on the Internet at the NRC Web site *http://www.nrc.gov/reading-rm/doc-collections/cfr/*. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the

[1] The most recent version of Title 10 of the Code of Federal Regulations, published January 1, 2002, inadvertently omitted the last sentence of 10 CFR 2.714(d) and subparagraphs (d)(1) and (2), regarding petitions to intervene and contentions. For the complete, corrected text of 10 CFR 2.714(d), please see 67 FR 20884 (April 20, 2002).

Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If the amendment is issued before the expiration of the 30-day hearing period, the Commission will make a final determination on the issue of no significant hazards consideration. If a hearing is requested, the final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's PDR, located at One White Flint North, Public File Area O1 F21,11555 Rockville Pike, Rockville, Maryland, by the above date. Because of continuing disruptions in delivery of mail to United States Government offices, it is requested that petitions for leave to intervene and requests for hearing be transmitted to the Secretary of the Commission either by means of facsimile transmission to 301–415–1101 or by e-mail to *hearingdocket@nrc.gov*. A copy of the request for hearing and petition for leave to intervene should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and because of continuing disruptions in delivery of mail to United States Government offices, it is requested that copies be transmitted either by means of facsimile transmission to 301–415–3725 or by e-mail to OGCMailCenter@nrc.gov. A copy of the request for hearing and petition for leave to intervene should also be sent to William D. Johnson, Vice President and Corporate Secretary, Carolina Power & Light Company, Post Office Box 1551, Raleigh, North Carolina 27602, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated January 16, 2003, which is available for public inspection at the Commission's PDR, located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike, Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC web site *http://www.nrc.gov/reading-rm/adams.html*. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov*.

Dated at Rockville, MD, this 17th day of January 2003.

For the Nuclear Regulatory Commission.

Chandu P. Patel,

Project Manager, Section 2, Project Directorate II, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 03–1636 Filed 1–23–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–346]

FirstEnergy Nuclear Operating Co; Notice of Withdrawal of Application for Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of FirstEnergy Nuclear Operating Company (the licensee) to withdraw its March 30, 2001, application for proposed amendment to Facility Operating License No. NPF–3 for the Davis-Besse Nuclear Power Station, Unit No. 1, located in Ottawa County, Ohio.

The proposed amendment would have revised the Technical Specifications regarding surveillance

testing of the watertight enclosure for Decay Heat Removal System valves DH–11 and DH–12 to decrease the frequency of functional testing.

The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on May 30, 2001 (66 FR 29355). However, by letter dated December 20, 2002, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated March 30, 2001, and the licensee's letter dated December 20, 2002, which withdrew the application for license amendment. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, Public File Area O1F21, 11555 Rockville Pike, Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams/html.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, or 301–415–4737 or by e-mail to *pdr@nrc.gov.*

Dated at Rockville, MD, this 17th day of January 2003.

For the Nuclear Regulatory Commission.

Jon Hopkins,

Senior Project Manager, Section 2, Project Directorate III, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 03–1635 Filed 1–23–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 72–26–ISFSI; ASLBP No. 02–801–01–ISFSI]

Atomic Safety and Licensing Board; Pacific Gas and Electric Co.; (Diablo Canyon Power Plant Independent Spent Fuel Storage Installation); Notice (Notice of Opportunity To Make Oral or Written Limited Appearance Statements)

January 16, 2003.

Before Administrative Judges: G. Paul Bollwerk, III, Chairman, Dr. Jerry R. Kline, Dr. Peter S. Lam.

The Atomic Safety and Licensing Board hereby gives notice that, in accordance with 10 CFR 2.715(a), the Board will conduct sessions to provide the public with an opportunity to make oral limited appearance statements in connection with this proceeding regarding the December 21, 2001 application of Pacific Gas and Electric Company (PG&E) under 10 CFR part 72 for permission to construct and operate an independent spent fuel storage installation (ISFSI) at its Diablo Canyon Power Plant (DCPP) site near San Luis Obispo, California.

A. Date, Time, and Location of Oral Limited Appearance Statement Sessions

These sessions will be on the following dates at the specified location and times:

1. *Date:* Sunday, March 23, 2003.
Time: Afternoon Session (if there is sufficient interest)—3 p.m. to 7 p.m. Pacific Standard Time (PST).
Location: Embassy Suites Hotel, San Luis Obispo Room, 333 Madonna Rd., San Luis Obispo, California 93405.

2. *Date:* Monday, March 24, 2003.
Times: Morning Session (if there is sufficient interest)—10 a.m. to Noon PST, Afternoon Session—1:30 p.m. to 4:30 p.m. PST, Evening Session—6:30 p.m. to 9:30 p.m. PST.
Location: Same as Session 1 above.

B. Participation Guidelines for Oral Limited Appearance Statements

Any person not a party, or the representative of a party, to the proceeding will be permitted to make an oral statement setting forth his or her position on matters of concern relating to this proceeding. Although these statements do not constitute testimony or evidence, they nonetheless may help the Board and/or the parties in their consideration of the issues in this proceeding.

Oral limited appearance statements will be entertained during the hours specified above, or such lesser time as may be necessary to accommodate the speakers who are present. In this regard, if all scheduled and unscheduled speakers present at a session have made a presentation, the Licensing Board reserves the right to terminate the session before the ending time listed above. The Licensing Board also reserves the right to cancel the Sunday afternoon and/or Monday morning sessions scheduled above if there has not been a sufficient showing of public interest as reflected by the number of preregistered speakers.

The time allotted for each statement normally will be no more than five minutes, but may be further limited depending on the number of written requests to make an oral statement that are submitted in accordance with section C below and/or the number of persons present at the designated times. In addition, although an individual may request an opportunity to speak at more than one session, the Licensing Board reserves the right to defer an additional presentation by the same individual until after it has heard from speakers who have not had an opportunity to make an initial presentation.

C. Submitting a Request To Make an Oral Limited Appearance Statement

Persons wishing to make an oral statement who have submitted a timely written request to do so will be given priority over those who have not filed such a request. To be considered timely, a written request to make an oral statement must be mailed, faxed, or sent by e-mail so as to be received by close of business (4:30 p.m. EST) on *Friday, March 14, 2003.* The request must specify the date (March 23 or March 24) and the session on that day (morning, afternoon or evening) during which the requester wishes to make an oral statement. Based on its review of the requests received by March 14, 2003, the Licensing Board may decide that the Sunday afternoon and/or Monday morning sessions will not be held due to lack of adequate interest in those sessions.

Written requests to make an oral statement should be submitted to:

Mail: Office of the Secretary, Rulemakings and Adjudications Staff, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

Fax: (301) 415–1101 (verification (301) 415–1966).

E-mail: hearingdocket@nrc.gov.

In addition, using the same method of service, a copy of the written request to make an oral statement should be sent to the Chairman of this Licensing Board as follows:

Mail: Administrative Judge G. Paul Bollwerk, III, Atomic Safety and Licensing Board Panel, Mail Stop T–3F23, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

Fax: (301) 415–5599 (verification (301) 415–7550).

E-mail: pah@nrc.gov and *gpb@nrc.gov.*

D. Submitting Written Limited Appearance Statements

As the Board noted previously in its December 27, 2002 notice of hearing (68 FR 391 (Jan. 3, 2003)), a written limited appearance statement can be submitted at any time. Such statements should be sent to the Office of the Secretary using

the methods prescribed above, with a copy to the Licensing Board Chairman.

E. Availability of Documentary Information Regarding the Proceeding

Documents relating to this proceeding are available for public inspection at the Commission's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, or electronically from the publicly available records component of NRC's document system (ADAMS). ADAMS is accessible from the NRC Web site at *http://www.nrc.gov/reading-rm/adams.html* (the Public Electronic Reading Room). Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC PDR reference staff by telephone at 1–800–397–4209 or 301–415–4737, or by e-mail to *pdr@nrc.gov*.

It is so *ordered*.

Dated: January 16, 2003.

For the Atomic Safety and Licensing Board.*

G. Paul Bollwerk, III,

Administrative Judge.

[FR Doc. 03–1538 Filed 1–23–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 40–8905]

Notice of Receipt of Mill Demolition Plan for Rio Algom Mining LLC's Ambrosia Lake Uranium Mill Facility, New Mexico, and Opportunity to Provide Comments and to Request a Hearing

I. Introduction

The Nuclear Regulatory Commission (NRC) has received, by letter dated December 10, 2002, a proposed mill demolition plan for the removal of the mill located at Rio Algom Mining Limited Liability Corporation's uranium mill facility at Ambrosia Lake, New Mexico. In accordance with License Condition #29 of NRC Source Materials License, SUA–1473, the mill demolition plan describes the demolition of the structural features associated with the Ambrosia Lake uranium mill facility. The plan addresses the removal of surface structures in preparation for subsequent implementation of the surface reclamation release phase of the overall site decommission process.

II. Opportunity to Provide Comments

The NRC is providing notice to individuals in the vicinity of the facility that the NRC is in receipt of this request, and will accept comments concerning this action within 30 days of the publication of this notice in the **Federal Register**. The comments may be provided to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room T–6 D59, Two White Flint North, 11545 Rockville Pike, Rockville, MD 20852, from 7:30 a.m. until 4:15 p.m. on Federal workdays.

III. Opportunity to Request a Hearing

The NRC hereby provides notice that this is a proceeding on an application for an amendment of a license falling within the scope of subpart L, "Informal Hearing Procedures for Adjudications in Materials and Operator Licensing Proceedings" of NRC's rules and practice for domestic licensing proceedings in 10 CFR part 2. Whether or not a person has or intends to provide comments as set out in Section II above, pursuant to § 2.1205(a), any person whose interest may be affected by this proceeding may file a request for a hearing in accordance with § 2.1205(d). A request for a hearing must be filed within 30 days of the publication of this **Federal Register** notice.

The request for a hearing must be filed with the Office of the Secretary, either:

(1) By delivery to the Rulemaking and Adjudications Staff of the Office of the Secretary of the Commission at One White Flint North, 11555 Rockville Pike, Rockville, MD 20852; or

(2) By mail or telegram addressed to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Rulemaking and Adjudications Staff. Because of continuing disruptions in the delivery of mail to United States Government offices, it is requested that requests for hearing also be transmitted to the Secretary of the Commission either by means of facsimile transmission to 301–415–1101, or by e-mail to *hearingdocket@nrc.gov*.

In accordance with 10 CFR 2.1205(f), each request for a hearing must also be served, by delivering it personally or by mail, to:

(1) The applicant, Rio Algom Mining Limited Liability Corporation, 6305 Waterford Blvd., Suite 400, Oklahoma City, OK 73118, Attention: W. Paul Goranson; and

(2) The NRC staff, by delivery to the General Counsel, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852, or by mail addressed to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Because of continuing disruptions in the delivery of mail to United States Government offices, it is requested that requests for hearing also be transmitted to the Office of the General Counsel, either by means of facsimile transmission to 301–415–3725, or by email to *OGCMailCenter@nrc.gov*.

In addition to meeting other applicable requirements of 10 CFR part 2 of the NRC's regulations, a request for a hearing filed by a person other than an applicant must describe in detail:

(1) The interest of the requestor;

(2) How that interest may be affected by the results of the proceeding, including the reasons why the requestor should be permitted a hearing, with particular reference to the factors set out in § 2.1205(h);

(3) The requestor's areas of concern about the licensing activity that is the subject matter of the proceeding; and

(4) The circumstances establishing that the request for a hearing is timely in accordance with § 2.1205(d).

IV. Further Information

The application for the license amendment and proposed decommissioning and reclamation plan are available for inspection at NRC's Public Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html* [ADAMS Accession Number ML030070154]. Documents may also be examined and/or copied for a fee, at the NRC's Public Document Room, located at One White Flint North, 11555 Rockville Pike, Rockville, MD 20852. Any questions with respect to this action should be referred to Jill Caverly, Fuel Cycle Facilities Branch, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Mail Stop T8–A33, Washington, DC 20555–0001. Telephone: (301) 415–6699, Fax: (301) 415–5390.

Dated at Rockville, Maryland, this _16th day of January 2003.

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* Copies of this notice were sent this date by Internet e-mail transmission to counsel for (1) applicant PG&E; (2) petitioners San Luis Obispo Mother For Peace, *et al.*; (3) San Luis Obispo County, California, the Port San Luis Harbor District, the California Energy Commission, the Avila Beach Community Services District, and the Diablo Canyon Independent Safety Committee; and (4) the NRC staff.

For the U.S. Nuclear Regulatory Commission:

Daniel M. Gillen

Chief, Fuel Cycle Facilities Branch, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 03–1638 Filed 1–23–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–438 and 50–439]

Tennessee Valley Authority; Bellefonte Nuclear Plant, Units 1 and 2; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an extension of the Construction Permit No. CPPR–122 for Bellefonte Nuclear Plant (BLN), Unit 1, and CPPR–123 for BLN, Unit 2, issued to the Tennessee Valley Authority (TVA) (permittee). The facility is located about 6 miles east-northeast of Scottsboro, Alabama, on the west shore of the Guntersville Reservoir at Tennessee River Mile 392, in Jackson County, Alabama. Therefore, as required by 10 CFR 51.21, the NRC is issuing this environmental assessment and finding of no significant impact.

Environmental Assessment

Identification of Proposed Action

The proposed action would extend the construction permit expiration date for BLN, Unit 1, from October 1, 2001, to October 1, 2011, and the construction permit expiration date for BLN, Unit 2, from October 1, 2004, to October 1, 2014. The proposed action is in response to TVA's request, dated July 11, 2001.

The Need for the Proposed Action

The proposed action is needed because construction of BLN, Units 1 and 2, is not yet completed. TVA requested the extension to allow it to maintain the choice of a full range of competitive energy sources. The request was made because of the increase in the electrical demand in the TVA region.

Environmental Impacts of the Proposed Action

The environmental impacts associated with the construction of the facility have been previously discussed and evaluated in the Final Environmental Statement (FES), June 1974, prepared as part of the NRC staff's review of the construction permit application. Because of the passage of time from the issuance of the FES, the staff requested additional information in a June 5, 2002, letter to TVA to determine if the conclusions reached in the June 1974 FES remain valid. TVA responded to these questions in a letter dated August 26, 2002.

In its August 26, 2002, response, TVA addressed the impact of resumption of construction in the following areas: Archaeological sites and historic properties, disturbance of land, socioeconomic impacts, additional cumulative impacts from other projects in the area, and threatened and endangered species. Highlights of TVA's response follow. TVA stated that no additional archaeological sites have been identified in areas that might be affected by the resumption of construction activities. No future disturbance is currently contemplated on or adjacent to known archaeological sites. The NRC staff asked TVA how they responded to the recommendation by the Alabama Historical Commission on adaptive re-use of the 1845 Tavern and Inn. TVA responded that the building has been removed since 1974 when it was determined that site was eligible for placement on the National Register of Historic Places. The 1845 Tavern and Inn is not on TVA property, and the buildings were removed by the owners. Before construction of the existing site facilities, the Alabama State Historic Preservation Office approved the design and indicated that no mitigation would be required.

Regarding disturbance of land, TVA stated that almost all of the construction required for completion of the BLN site as a two-unit nuclear plant has been started and very few facilities remain that would require new land disturbance. TVA stated that the remaining construction that would require new land disturbance are as follows:

1. If construction resumes, it is planned to eventually move (re-route) the first half mile of the south entrance road such that it would still join Jackson County Highway 33, but to an intersection which is about 1200 feet east of the current connection point. The site has completed an environmental assessment for this change which would improve traffic visibility and thereby increase commuter safety. Some new ground would be disturbed for this road, but there are no associated significant environmental impacts.

2. If construction resumes, some new backfill borrow pits may be required to obtain clay. These would likely be made in undisturbed ground east of the main site power plant buildings. The topsoil would be removed temporarily and replaced to restore the sites after clay removal. Tree cover would be removed in this process.

3. Meteorological monitoring requirements have changed, which might necessitate construction of a new environmental data station. This new facility could possibly be sited on undisturbed soil.

4. Construction of the startup and recirculation equipment building for Unit 2 has not been initiated; however, the site for this building is disturbed ground very close to the south side of the Unit 2 auxiliary building. Other potential construction activities on disturbed ground include increasing the size of the construction and administration building (CAB); additional fire protection tanks by the CAB; additional waste tanks adjacent to the Unit 1 reactor building; and completion of the auxiliary feedwater pipe trench near the Unit 2 reactor building. The power stores building may be enlarged, and new plant security requirements may necessitate changes to the gatehouse.

The FES evaluated the terrestrial and aquatic impacts due to construction of the BLN, Units 1 and 2. Included in these impacts were development of access corridors (roads), and clearing and excavation for all construction. The FES requires a construction monitoring program to monitor the effect of these activities on the environment. If construction is resumed, these activities will be monitored by the construction monitoring program and, therefore, the conclusions of the FES regarding potential land disturbance remain valid.

The socioeconomic impacts have changed since the 1974 FES was issued. In 1970, the population in the surrounding area was 39,202 and in 2000, the population was 59,926. The 1974 FES estimated a peak workforce of 2,300 people. The actual workforce peaked at 4,600 people prior to construction being suspended in 1988. TVA estimates that the workforce required to complete construction will peak at 4,600. The staff questioned if these changes to the demographics of the region may lead to significant socioeconomic impacts different from those previously evaluated in the FES. Examples of these impacts are demands on the local schools, hospitals, public facilities, utilities (*e.g.*, water use), transportation infrastructure, and construction worker shortages. TVA responded that:

The FES addressed both temporary impacts to community facilities and services which would occur during the construction period and those which would occur from the permanent workforce. Significant impacts were not expected in either case, but the FES concluded that facilities and services such as schools would unavoidably be stressed by construction and operation of BLN. Consequently, TVA committed to monitoring the situation and to working with local and state officials to mitigate any unacceptable adverse conditions which might result.

The currently larger projected construction workforce will likely result in greater

socioeconomic impacts that [sic] those projected in the FES. Two more recent Environmental Impact Statements analyze potential impacts at higher levels than those in the FES. The first of these analyzed potential impacts of converting and operating the Bellefonte site as a fossil-fueled power plant (Final Environmental Impact Statement for the Bellefonte Conversion Project, Tennessee Valley Authority, October 1997). The second analyzed the impacts associated with the production of tritium at various TVA nuclear sites, including the BLN site (Final Environmental Impact Statement for the Production of Tritium in a Commercial Light Water Reactor, U.S. Department of Energy, DOE/EIS—0288, March 1999). Impacts of a peak construction employment level of 4,500, almost the same as now projected, were analyzed in the latter report. Based on these analyses, we would anticipate that about 1,500 workers would move into the area at peak construction (at sometime during the fourth year of construction). Of these, about 1,100 are likely to move to Jackson County, and the remainder to surrounding counties. This number of movers would result directly in a population increase in Jackson County of about 3,000 persons or less at peak construction. The maximum impact on Jackson County schools is estimated to be somewhat less than 1,000 additional students, roughly a ten percent increase. This level of impact, however, would be only for a short time with lesser impacts leading up to this peak and following it. Impacts on other public services, such as hospitals, transportation, and utilities are discussed in more detail in the documents referenced above. They would be significant at or near peak, but the higher levels would have a relatively short duration. Possible impacts on construction worker shortages would depend on the magnitude of other construction projects in the larger area around the BLN site. The labor market area for construction workers is much larger than for most other types of work, and construction workers typically move around within large areas thereby decreasing the likelihood of significant problems for other construction projects. All of these impacts would occur gradually, as the construction workforce builds up to its peak during the fourth year. If construction resumes, TVA will work with state and local officials and civic groups mitigate possible adverse socioeconomic impacts caused by activities undertaken to complete construction of BLN or to operate the plant after its completion.

Based on TVA's response, and the recent environmental impact statements cited above, the NRC staff concludes that, while the impacts will be larger if construction resumes, the mitigative actions will be commensurate with the larger impacts and, therefore, the conclusions reached in the FES remain valid.

The staff questioned if there were any projects or activities occurring or planned for the area that may lead to additional cumulative impacts to the surrounding population or to the natural environment. TVA responded that, in general, this growth has consisted of numerous small-to-medium size changes rather than one or a few very large events, except for the starting and stopping of TVA nuclear construction. The projected construction employment would be a major addition to the economy of Jackson County. However, many of the workers would live elsewhere in the labor market area, including some who would temporarily relocate. Within the construction labor market area, the employment increase at peak construction would be about 46 to 50 percent of the recent annual increase in employment. During most of the construction period, however, the level would be smaller. In contrast to construction at or near peak, operating employment levels would be small compared to the normal growth of the area. In the 1974 FES, TVA committed to work with state and local officials and civic groups throughout the construction and operation of the BLN site to mitigate the possible socioeconomic impacts. Based on the above commitment contained in the FES, the conclusion of the FES remains valid.

Regarding threatened and endangered species, the NRC staff, in its June 5, 2002, letter, asked if any biota has been added to or removed from the list of threatened or endangered species for the BLN site environs (including transmission line rights-of-way) based on field studies or revisions to the threatened and endangered species list since the 1974 FES. TVA responded that no species indigenous to the BLN site have been added to the federal or state lists of threatened or endangered species since the original FES. The Peregrine Falcon has been delisted. Two species, the Bald Eagle and Indiana Bat, are currently listed as threatened or endangered for Jackson County, Alabama, by the Environmental Protection Agency. Osprey, Pandion haliaetus, is not federally listed, but is listed as threatened by the State of Alabama. Population levels of osprey have been increasing on Guntersville Lake, and several nests have been observed in the vicinity of Coon and Crow Creeks. This species would use shoreline habitats fronting the BLN site for foraging. The current list of federally threatened or endangered species for Jackson County, Alabama, contains several species which were not identified or discussed in the original FES for BLN. However, none of these except the Gray Bat are known to occur at or adjacent to the BLN site, including transmission line rights-of-way, and none of these were added based on field studies at the BLN site. Gray bats forage in the sloughs and main channel of the Tennessee River. However, because of the nature of the activities undertaken at the plant and the distance of these plant activities from the foraging area, Gray Bats would not be adversely impacted by the proposed actions.

The staff also questioned if there were any known potential adverse impacts to any listed or candidate species that might result from the resumption of construction at BLN. TVA responded that resumption of construction activities at BLN would not be expected to cause adverse impacts to any Federal or State-listed or candidate species or their habitats. This is primarily because almost all ground or river disturbance construction activities have long since been completed. Therefore, resumption of construction is unlikely to have any significant effect on threatened or endangered species at BLN.

Since almost all of the construction required for completion of BLN as a two-unit nuclear plant has already been, at least, started, very few facilities remain that would require new land disturbance; therefore, most of the construction impacts discussed in the FES have already occurred. This action would extend the period of construction as described in the FES. It does not invalidate any of the conclusions reached in the 1974 FES. The proposed extension will not allow any work to be performed that is not already allowed by the existing construction permit. The extension will grant TVA more time to complete construction in accordance with the previously approved construction permit. In addition, it is the policy of the Commission that a licensee will notify the NRC at least 120 days before plant construction is expected to resume.

Based on the foregoing, the NRC staff has concluded that the proposed action would have no significant environmental impact. Because this action would only extend the period of construction activities described in the FES, it does not involve any different impacts or a significant change to those impacts described and analyzed in the FES. Consequently, an environmental impact statement addressing the proposed action is not required.

Environmental Impacts of the Alternatives to the Proposed Action

A possible alternative to the proposed action would be to deny the request. This would result in expiration of the construction permit for BLN, Units 1 and 2. This option would require submittal of another application for

construction in order to allow the permittee to complete construction of the facility with no significant environmental benefit. The environmental impacts of the proposed action and alternative action are similar.

Alternative Use of Resources

This action does not involve the use of resources not previously considered in the FES for BLN, Units 1 and 2.

Agencies and Persons Contacted

In accordance with its stated policy, the staff consulted with the Alabama State Official, Mr. David Walter of the Alabama Office of Radiation Control, regarding the environmental impact of the proposed action. The State official had no comments.

For further details with respect to this action, see the licensee's request for extension dated July 11, 2001, and its response to the staff's request for additional information dated August 26, 2002.

Finding of No Significant Impact

On the basis of the environmental assessment, the NRC concludes that this action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for this action. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, Public File Area 01–F21, 11555 Rockville Pike, Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html*. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC PDR Reference staff by telephone at 1–800–397–4209 or 301–415–4737, or by e-mail to *pdr@nrc.gov*.

Dated at Rockville, Maryland, this 16th day of January 2003.

For the Nuclear Regulatory Commission.

Allen G. Howe,

Chief, Section 2, Project Directorate II, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 03–1637 Filed 1–23–03; 8:45 am]

BILLING CODE 7590–01–P

POSTAL SERVICE

Notice of Meeting

AGENCY: Postal Service.

ACTION: Notice of meeting.

SUMMARY: The Postal Service will hold the first meeting of a Consensus Committee to develop recommendations for revision of USPS STD 4B, which governs the design of apartment house mailboxes. The committee will develop and adopt its recommendations through a consensus process. The committee will consist of persons who represent the interests affected by the proposed rule, including apartment house type mailbox manufacturers, mailbox distributors, mailbox installers and servicers, postal customers, and apartment house builders, owners and managers.

Meeting Dates: The first committee meeting is tentatively scheduled to begin at 9 a.m. on February 5th and continue into February 6th, 2003.

Meeting Place: Loews L'Enfant Plaza Hotel, 480 L'Enfant Plaza, SW., Washington, DC 20024..

FOR FURTHER INFORMATION CONTACT: Jeffery W. Lewis, (202) 268–4757.

SUPPLEMENTARY INFORMATION: Mail comments and all other communications regarding the committee to Jeffery W. Lewis, U.S. Postal Service Headquarters, 475 L'Enfant Plaza, SW., Room 7142, Washington, DC 20260. Committee documents will be available for public inspection and copying between 9 a.m. and 4 p.m. weekdays at the address above. Persons intending to attend the February 5th and 6th, 2003, meeting should send a fax to Monica J. Skinner at 202–268–5418 as soon as possible with the person's name and organizational affiliation, if any. For additional information regarding the USPS STD 7A Consensus Committee, *see* **Federal Register** Vol. 68, No. 3, p. 530 (January 6, 2003).

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 03–1582 Filed 1–23–03; 8:45 am]

BILLING CODE 7710–12–P

SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration on the New York Stock Exchange, Inc. (Cornerstone Strategic Value Fund, Inc., Common Stock, $.01 Par Value) File No. 1–09555

January 17, 2003.

Cornerstone Strategic Value fund, Inc., a Maryland corporation ("Issuer"), has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to Section 12(d) of the Securities and Exchange Act of 1934 ("Act")[1] and rule 12d2–2(d) thereunder,[2] to withdraw its Common Stock, $.01 par value ("Security"), from listing and registration on the New York Stock Exchange, Inc. ("NYSE" or "Exchange").

The Board of Directors of the Issuer ("Board") approved a resolution on December 2, 2002 to withdraw the Issuer's Security from listing on the NYSE. In making its decision to withdraw the Security from the Exchange, the Board determined that it was in the Issuer's best interest to delist from the NYSE and list on the American Stock Exchange LLC ("Amex") due to the continued decline in the level of net assets which would affect the Issuer's ability to remain listed on the NYSE. The Issuer anticipates that it will begin trading on the Amex once the Issuer is delisted from the NYSE.

The Issuer stated in its application that it has complied with the NYSE's rules governing an issuer's voluntary withdrawal of a security from listing and registration. The Issuer's application relates solely to the Security's withdrawal from listing on the NYSE and from registration under Section 12(b) of the Act[3] and shall not affect its obligation to be registered under Section 12(g) of the Act.[4]

Any interested person may, on or before February 10, 2003, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609, facts bearing upon whether the application has been made in accordance with the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

[1] 15 U.S.C. 78*l*(d).
[2] 17 CFR 240.12d2–2(d).
[3] 15 U.S.C. 78*l*(b).
[4] 15 U.S.C. 78*l*(g).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Jonathan G. Katz,

Secretary.

[FR Doc. 03–1605 Filed 1–23–03; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration on the New York Stock Exchange, Inc. (Cornerstone Total Return Fund, Inc., Common Stock, $.01 Par Value) File No. 1–31582

January 17, 2003.

Cornerstone Total Return Fund, Inc., a New York corporation ("Issuer"), has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to Section 12(d) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 12d2–2(d) thereunder,[2] to withdraw its Common Stock $.01 par value ("Security"), from listing and registration on the New York Stock Exchange, Inc. ("NYSE" or "Exchange").

The Board of Directors of the Issuer ("Board") approved a resolution on December 2, 2002 to withdraw the Issuer's Security from listing on the NYSE. In making its decision to withdraw the Security from the Exchange, the Board determined that it was in the Issuer's best interest to delist form the NYSE and list on the American Stock Exchange LLC due to the continued decline in the level of net assets which would affect the Issuer's ability to remain listed on the NYSE. The Company anticipates that it will begin trading on the Amex once the Issuer is delisted from the NYSE.

The Issuer stated in its application that it has complied with the NYSE's rules governing an issuer's voluntary withdrawal of a security from listing and registration. The Issuer's application relates solely to the Security's withdrawal from listing on the NYSE and from registration under Section 12(b) of the Act[3] and shall not affect its obligation to be registered under Section 12(g) of the Act.[4]

Any interested person may, on or before February 10, 2003, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609, facts bearing upon whether the application has been made in accordance with the rules of the NYSE and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Jonathan G. Katz,

Secretary.

[FR Doc. 03–1604 Filed 1–23–03; 8:45 am]

BILLING CODE 8010–01–M

[5] 17 CFR 200.30–3(a)(1).
[1] 15 U.S.C. 78*l*(d).
[2] 17 CFR 240.12d2–(d).
[3] 15 U.S.C. 78*l*(b).
[4] 15 U.S.C. 78*l*(g).

SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration on the New York Stock Exchange, Inc. (Progressive Return Fund, Inc., Common Stock, $.001 Par Value) File No. 1–10341

January 17, 2003.

Progressive Return Fund, Inc., a Maryland corporation ("Issuer"), has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to Section 12(d) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 12d2–2(d) thereunder,[2] to withdraw its Common Stock, $.001 par value ("Security"), from listing and registration on the New York Stock Exchange, Inc. ("NYSE" or "Exchange").

The Board of Directors of the Issuer ("Board") approved a resolution on December 2, 2002 to withdraw the Issuer's Security from listing on the NYSE. In making its decision to withdraw the Security from the Exchange, the Board determined that it was in the Issuer's best interest to delist from the NYSE and list on the American Stock Exchange LLC ("Amex") due to the continued decline in the level of net assets which would affect the Issuer's ability to remain listed on the NYSE. The Issuer anticipates that it will begin trading on the Amex once the Issuer is delisted from the NYSE.

The Issuer stated in its application that it has complied with the NYSE's rules governing an issuer's voluntary withdrawal of a security from listing and registration. The Issuer's application relates solely to the Security's withdrawal from listing on the NYSE and from registration under Section 12(b) of the Act[3] and shall not affect its obligation to be registered under Section 12(g) of the Act.[4]

Any interested person may, on or before February 10, 2003, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609, facts bearing upon whether the application has been made in accordance with the rules of the NYSE and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Jonathan G. Katz,

Secretary.

[FR Doc. 03–1603 Filed 1–23–03; 8:45 am]

BILLING CODE 8010–01–M

[5] 15 CFR 200.30–3(a)(1).
[1] 15 U.S.C. 78*l*(d).
[2] 17 CFR 240.12d2–2(d).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47202; File No. SR–MSRB–2002–14]

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Notice of Filing of Proposed Rule Change Relating to Market Emergencies

January 16, 2003.

Pursuant to section 19(b)(1) of the Securities and Exchange Act of 1934 (the "Exchange Act") and Rule 19b–4 thereunder,[1] notice is hereby given that on December 11, 2002, the Municipal Securities Rulemaking Board ("MSRB" or "Board") filed with the Securities and Exchange Commission ("SEC" or "Commission") a proposed rule change (File No. SR–MSRB–2002–14) (the "proposed rule change") described in Items I, II, and III below, which Items have been prepared by the MSRB. The SEC is publishing this notice to solicit comments on the proposed rule change from interested persons.

[3] 15 U.S.C. 78*l*(b).
[4] 15 U.S.C. 78*l*(g).
[5] 17 CFR 200.30–3(a)(1).
[1] 15 U.S.C. 78s(b)(1) and 17 CFR 240.19b–4 thereunder.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The MSRB is filing a proposed rule change concerning market emergencies consisting of an Interpretation of its Rule G–17, on conduct of municipal securities activities and an amendment to its Rule A–4, on meetings of the Board.

The text of the proposed rule change follows. Italics indicate proposed additions.

Rule G–17. Conduct of Municipal Securities Activities

Interpretation of Rule G–17—Effecting Transactions During Market Emergency

It is inconsistent with the principles of fair dealing embodied in Rule G–17 for a broker, dealer or municipal securities dealer to effect transactions in municipal securities during a market emergency. For purposes of this interpretation, a market emergency is any situation causing a substantial failure in any of the systems necessary for clearance, settlement, confirmation, payment, or delivery of transactions in municipal securities or in other systems necessary for the prompt execution and consummation of municipal securities transactions or the fair and accurate pricing of municipal securities. In determining whether such a market emergency exists, a broker, dealer or municipal securities dealer shall rely upon the issuance of official announcements by the MSRB concerning market emergencies, which shall be issued after consultation with the Securities and Exchange Commission. Official announcements by the MSRB on market emergencies will be communicated to brokers, dealers and municipal securities dealers through news outlets commonly used in the municipal securities industry, by posting on the MSRB's World Wide Web site at www.msrb.org, and by transmittal of the announcement to the electronic mail addresses provided to the MSRB by brokers, dealers and municipal securities dealers under Rule G–40. Such official announcements will include information on the nature of the market emergency and affected systems, the nature and scope of transactions affected, and the status of the market emergency and its expected duration, if that is known.

Rule A–4. Meetings of the Board

(a) through (d) No Change.

(e) Special Meetings on Market Emergencies. Notwithstanding anything in these rules to the contrary, the following procedures govern special meetings to act on market emergencies: (i) notice of special telephone conference call meeting on a market emergency shall be sent to all Board members by the Executive Director, or in the absence of the Executive Director, by his or her designee: (A) as soon as possible after credible information is received suggesting the existence of a market emergency, and (B) during the existence of a declared market emergency, within 24 hours of a request by any Board member; (ii) notice of a special meeting on a market emergency, including a description of the proposed Board action and instructions for joining the conference call, shall be given by telephone and by e-mail to all Board members; (iii) the Executive Director, or his or her designee, shall consult with the Commission on the emergency situation prior to a special meeting on a market emergency, if possible; (iv) the quorum requirement for a special meeting on a market emergency shall be five members and there shall be no requirement that at least one public representative, one broker-dealer representative and one bank representative be present; and (v) any action taken at such a meeting shall be by a majority vote of Board members attending the meeting and shall be limited to declaring a market emergency or ending a declared market emergency. For purposes of this paragraph (e), the meaning of the term "market emergency" shall be as defined in "Notice of Interpretation of Rule G–17—Effecting Transactions During Market Emergency," dated_____.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the SEC, the MSRB included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The MSRB has prepared summaries, set forth in Section A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(1) Purpose

After the events of September 11, 2001, staff of the Commission and the MSRB met to discuss how the municipal securities market functioned in the aftermath of the attacks on the World Trade Center. On September 11, and in the days following, MSRB monitored the municipal securities market through its contacts with dealers, clearing corporations and information providers.

Although the effect on lower Manhattan was severe, because the municipal securities market is decentralized, the municipal securities market as a whole was not affected to the same degree as securities exchanges physically located near the disaster. On September 11, some trading in municipal securities occurred, albeit a very limited amount. Based on transactions reported to the MSRB's Transaction Reporting System, trade volume reached 8,244 trades by September 13 and 17,941 trades by September 17. On September 19 and 20 transaction volume reached 23,996 and 26,155 trades respectively. Prior to September 11, in a typical day, 27,000 transactions were processed.

Aside from dealer operations in Manhattan, in general, the infrastructure and systems necessary for processing transactions in the municipal securities market functioned in the days after September 11. Clearance and settlement systems for municipal securities transactions provided by Depository Trust and Clearing Corporation (DTCC) remained operational, although telecommunications problems in Manhattan did affect the ability of dealers in that area to exchange data with DTCC. The problems with clearing bank functions that disrupted the government securities market did not substantially affect the municipal securities market.

Despite the resilience of municipal securities market systems and infrastructure on September 11, there remains a concern about what might have happened if the situation had been different. Had systems or infrastructure critical to the municipal securities market been disabled by the disaster, no legal or regulatory mechanism existed to temporarily halt trading. For example, any problems with central clearance and settlement systems are of an immediate concern, since the accumulation of unsettled trades, particularly in a volatile or chaotic market, presents risks to all segments of the market. Commission staff accordingly have asked MSRB to consider rulemaking to provide a procedure for a trading halt should a market emergency disable critical market systems or infrastructure in the future.

The proposed rule change would provide such a procedure. Should a similar situation occur in the future, MSRB would review conditions in the

market through its contacts with dealers, clearing agencies and vendors of critical services to the market just as it did after September 11. The proposed rule change, however, includes changes to MSRB's administrative procedures in Rule A–4 allowing special MSRB telephone conference call Board meetings on market emergencies to occur without the normal notice requirement of seven days or the normal quorum requirement of two-thirds of the Board's members. The proposed rule change also includes a format interpretation of Rule G–17, on fair practice, that would prohibit dealers from trading for the duration of a market emergency declared by the MSRB. These proposed rule changes thus provide a procedure for instituting a trading halt should a market emergency necessitate one in the future.

The proposed rule change specifically identifies the channels by which MSRB would make information known to municipal securities dealers in the event of a market emergency. It notes that this will be done through new outlets commonly used in the municipal securities industry, postings on the MSRB's Web site and by transmitting announcements to the electronic mail addresses provided to the MSRB by dealers under Rule G–40, on electronic mail contacts. Having an announced, written procedure for dealer notification would add a level of preparedness if a market emergency actually occurs. Just as important, it provides dealers with clear direction on where to look if the situation is uncertain and questions exist about whether an emergency has been declared. This also will help dealers determine if any other emergency rulemaking is in effect. After September 11 there was some confusion among municipal securities dealers about whether the regular-way settlement cycle for municipal securities had been changed to T+5 from the T+3 cycle mandated under MSRB Rules G–12(b)(ii) and G–15(b)(ii). This apparently was the result of announcements made concerning transactions in government bonds. In monitoring clearance and settlement data after September 11, the MSRB observed that some dealers were, as a practice, submitting all of their regular-way trades with a T+5 settlement date. Among other problems, this caused trade-matching failures in the central comparison system for inter-dealer transactions. The notification procedure for market emergency declaration will help direct the attention of dealers in municipal securities to the MSRB for announcements on possible rule changes in the wake of an emergency and thus should help to avoid similar confusion in the future.[2]

The proposed rule change's interpretation of Rule G–17 follows a principle of securities law that a dealer must not "accept or execute any order for the purchase or sale of securities or induce or attempt to induce such purchase or sale if the dealer does not have the personnel and facilities to enable prompt execution and consummation of the transactions."[3] The MSRB believes that, where a substantial failure has occurred in the systems necessary for clearance, settlement, confirmation, payment or delivery of transactions in municipal securities, or in other systems necessary for the prompt execution and consummation of municipal securities transactions or the fair and accurate pricing of municipal securities, it may become necessary, for the overall protection of market participants, to halt trading by all dealers.[4] Clearance and settlement systems are a particular concern because of counter-party risk that escalates when unsettled transactions grow during volatile or chaotic markets. Other situations possibly warranting a temporary halt in trading might include a massive failure of telecommunication systems, or the corruption of essential data used by the municipal securities industry (for example, through a computer virus).

Interpretation of Rule G–17

The proposed Interpretation of Rule G–17 has the following elements:

- It is a violation of Rule G–17 for a dealer to continue to effect transactions in municipal securities during an MSRB-declared "market emergency."
- A "market emergency" for this purpose is defined as "a situation causing substantial failure in any of the systems necessary for clearance, settlement, confirmation, payment or delivery of transactions in municipal securities, or in other systems necessary for the prompt execution and consummation of municipal securities transactions or the fair and accurate pricing of municipal securities."
- Prior to acting on a market emergency, MSRB will consult with the SEC.
- Official announcements by the MSRB on market emergencies will be communicated to dealers through news outlets commonly used in the municipal securities industry, by posting on the MSRB's World Wide Web site at *http://www.msrb.org*, and by transmittal of the announcement to the electronic mail addresses provided to the MSRB by dealers under Rule G–40.

Amendment to Rule A–4

Prior to making any decision on a specific market emergency, the MSRB will hold a special Board meeting to share information and discuss the situation. The MSRB's current procedure for holding special Board meetings is contained in Rule A–4. Among other provisions, the rule states that the Secretary of the Board will call special meetings at the request of the Chairman or at the written request of three or more members. Seven days written notice, signed by the Secretary of the Board (or three days notice if given or sent by telephone, e-mail or personal delivery), is required for special meetings. The quorum for any Board meeting is two-thirds of the Board (normally ten members), with at least one securities firm representative, one bank dealer representative and one public member. Formal action requires an affirmative vote of the majority of the Board (normally eight members).

During a time of crisis, market participants would want to know fairly quickly whether trading is to be halted. The existing seven-day and three-day notice requirements for special Board meetings thus seem impractical. Moreover, establishing communication with at least ten Board members and securing eight affirmative votes also might present a problem, particularly if the emergency in question affects the infrastructure of one or more major financial centers and members cannot be reached. The proposed rule change would streamline the process specifically for market emergency meetings. The proposed amendments to Rule A–4 provides the following procedure:

- The Executive Director, or his or her designee, will schedule a special telephone conference call meeting on the possible declaration of a market

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[2] The proposed rule change addresses only the procedure for announcing trading halts. Should changes in existing MSRB rules be necessary during an emergency, these could be adopted by the MSRB and approved summarily by the SEC. Section 19(b)(3)(B) of the Exchange Act grants the SEC authority to approve proposed rule changes summarily when "it appears to the Commission that such action is necessary for the protection of investors, the maintenance of fair and orderly markets, or the safeguarding of securities or funds."

[3] *See, e.g.*, Release No. 8363 (July 29, 1968), 33 FR 11150 (August 7, 1968).

[4] The scope of the proposed rule change does not include the issuance of "regulatory halts" similar to those issued by exchanges and other SROs to stop trading in a specific security pending the announcement of news, or to allow news to be absorbed by the market before trading continues. Since this situation would not constitute an emergency effecting essential systems and market infrastructure, it is not included within the definition of a market emergency.

emergency as quickly as possible after receipt of credible evidence that a market emergency exists.

• At least one hour's advance notice of a special meeting on a market emergency will be sent to each Board member by telephone and e-mail.

• The Executive Director, or his or her designee, will consult with the SEC prior to each special meeting if this is possible. (Note that consultation with SEC would be required by the interpretation of Rule G–17 governing trading halts. Thus, consultation with the SEC would have to occur prior to any formal declaration of market emergency even if it does not occur prior to the meeting.)

• The quorum of ten members generally necessary for a Board meeting is replaced for special meetings on market emergencies with a quorum of five members. The general requirement that a member be present from each of the three statutory categories (securities firm, bank dealer, public member) does not apply.

• The requirement in the proposed rule change that all Board members be sent a notice of the special meeting by both telephone and e-mail is to ensure that as many Board members as possible, including those from all three statutory categories, can be included in the meeting. While the five-person quorum requirement does not contain any distributional requirements, Board staff shall endeavor, to the extent circumstances permit, to have at least one broker-dealer, one bank, and one issuer representative at the special meetings. To that end, Board staff shall obtain from each Board member contract information that will help ensure the ability of the staff to get notice of a special meeting to such persons in market emergency situations.

• Board action at a meeting on a market emergency is limited to declaring a market emergency or ending a declared market emergency.

• A majority vote of members attending the meeting (not necessarily a majority of the Board) is required to take action.

• Once a market emergency has been declared, the Executive Director, or his or her designee, will schedule additional special conference call meetings on the market emergency within 24 hours after any request to do so by a Board member.

(2) Basis

The MSRB believes the proposed rule change is consistent with section 15B(b)(2)(C) of the Exchange Act, which provides that the MSRB's rules:

* * * be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade * * * and to protect investors and the public interest. * * *[5]

B. Self-Regulatory Organization's Statement on Burden on Competition

The MSRB does not believe that the proposed rule change will impose any burden on competition in that it applies equally to all dealers in municipal securities.

C. Self-Regulatory Organization's Statement of Comments on the Proposed Rule Change Received From Member, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for SEC Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the SEC may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the self-regulatory organization consents, the SEC will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the forgoing, including whether the proposed rule is consistent with the Exchange Act. Persons making written submission should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the SEC, and all written communications relating to the proposed rule change between the SEC and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the SEC's Public Reference Room. Copies of the filing will also be available for inspection and copying at the MSRB's principal offices. All submissions should refer to File No. SR–MSRB–2002–14 and should be submitted by February 14, 2003.

[5] 15 U.S.C. 78o–4(b)(2)(c).

For the SEC by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–1581 Filed 1–23–03; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47208; File No. SR–NASD 2002–157]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change Regarding ACT Risk Management

January 16, 2003.

I. Introduction

On October 31, 2002, the National Association of Securities Dealers, Inc. ("NASD" or "Association"), through its subsidiary The Nasdaq Stock Market, Inc. ("Nasdaq"), submitted to the Securities and Exchange Commission ("SEC" or "Commission") pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change regarding the risk management function provided by Nasdaq's Automated Confirmation Transaction Service. The proposed rule change was published for public comment in the **Federal Register** on December 16, 2002.[3] The Commission received no comments on the proposal. This order approves the proposal.

II. Description of the Proposed Rule Change

Nasdaq proposed changes to NASD Rule 6150 regarding the risk management function provided by Nasdaq's Automated Confirmation Transaction Service ("Act"). Upon approval of the proposed rule change, Nasdaq will permit members to voluntarily utilize the ACT risk management function, provided that they utilize another risk management tool of equal quality and that they and the correspondent firms for whom they clear trades continue to report clearing-eligible trades to ACT in compliance with applicable ACT rules.

III. Discussion

The Commission finds that the proposed rule change is consistent with

[6] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 46948 (December 4, 2002), 67 FR 77117.

section 15A of the Act[4] and the rules and regulations thereunder applicable to a national securities association. In particular, the Commission finds that the proposed rule change is consistent with section 15A(b0(6) of the Act[5] which requires, among other things, that the rules of the association be designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, and in general, to protect investors and the public interest.[6]

The ability of NASD clearing members to adequately assess the risk of their correspondent firms is critical to the protection of investors and the public interest, as required by the Act. Therefore, the Commission finds that the proposed rule change is consistent with the Act because the proposal seeks to ensure that all NASD clearing members retain the ability to monitor the trading activities and risk exposures of their correspondent firms, either by using the ACT risk management program, or another risk management tool comparable to ACT's risk management program. The proposed rule change also fosters cooperation and coordination with persons engaged in the regulating, clearing, settling, and processing of information with respect to and facilitating transactions in securities because it ensures that NASD clearing members utilize a risk management tool that monitors the acceptable levels of credit and risk exposure for correspondent firms, which helps to ensure the rapid and reliable comparison and settlement of transactions.

IV. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[7] that the proposed rule change (SR–NYSE–2002–57) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–1579 Filed 1–2–03; 8:45 am]

BILLING CODE 8010–01–M

[4] 15 U.S.C. 78o–3.

[5] 15 U.S.C. 78o–3(b)(6).

[6] In approving this rule, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[7] 15 U.S.C. 78s(b)(2).

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47191; File No. SR–NASD–2003–4]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed rule Change by the National Association of Securities Dealers, Inc. Relating to the Primex Auction System®

January 15, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 14, 2003, the National Association of Securities Dealers, Inc., through its subsidiary The Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. Nasdaq has designated this proposal as effective upon filing pursuant to section 19(b)(3)(A)(iii) of the Act,[3] and subparagraph (f)(2) of Rule 19b–5.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

1. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq is filing a proposed rule change to continue operating Nasdaq's application of the Primex Auction System® ("Primex" or "System") as a Pilot Trading System pursuant to Rule 196–5 of the Act,[5] until February 14, 2003, or until the Commission permanently approves Primex, whichever period is shorter. Pursuant to paragraph (f) of Rule 19b–5,[6] Nasdaq is filing this proposed rule change as effective immediately. This filing does not propose any rule language changes.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Section A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Primex Auction System is a facility of Nasdaq that has been operating as a Pilot Trading System ("PTS"), as defined in Paragraph (c)(2) of Rule 19b–5 of the Act.[7] As such, Nasdaq was not required to file a proposed rule change under Rule 19b–4 of the Act[8] as long as the Primex maintained its status as a PTS. Under paragraph (c)(2) of rule 16b–5, a system must comply with three criteria to maintain its status as a PTS.[9] One such criteria is that, for each security traded in the PTS, the PTS can not trade more than one percent of the average daily consolidated trading volume of any such security, during at least two of the last four consecutive calendar months. Nasdaq represents that Primex exceeded this threshold for many securities. Therefore Nasdaq filed a proposed rule change seeking permanent approval of Primex.[10] Nasdaq also filed a proposed rule change to continue operating the System or up to six months while the Commission considered granting permanent approval.[11] This six-month period expired on October 31, 2002. On October 31, 2002, Nasdaq filed a proposed rule change, which was effective upon filing, to continue to operate Primex as a PTS until November 30, 2002.[12] On November 26, 2002, Nasdaq field a proposed rule change, which was effective upon filing, to continue to operate Primex as a PTS

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CPR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–5(f)(2).

[5] 17 CFR 240.19b–5.

[6] 17 CFR 240.19b–4(f).

[7] 17 CFR 240.19b–5(c)(2).

[8] 17 CFR 240.19b–4.

[9] Pursuant to Rule 129b-5(c)92), to qualify as a Pilot Trading System, a system must: (1) Be in operation for less than two years; (2) with respect to each security traded on such Pilot Trading System, during at least two of the last four consecutive calendar months, has traded no more than one percent of the average daily trading volume, in the United States; and (3) with respect to all securities traded on such Pilot Trading System, during at least two of the last four consecutive calendar months, has traded no more than 20 percent of the average daily trading volume of all trading systems operated by the self-regulatory organization.

[10] Securities Exchange Act Release No. 45983 (May 23, 2002) 67 FR 38152 (May 31, 2002).

[11] Securities Exchange Act Release No. 45982 (May 23, 2002) 67 FR 38163 (May 31, 2002).

[12] Securities Exchange Act Release No. 46756 (October 31, 2002), 67 FR 68221 (November 8, 2002).

until January 15, 2003.[13] The Commission is still considering Nasdaq's filing seeking permanent approval of Primex. Accordingly, Nasdaq is filing this proposed rule change to continue operating Primex as a PTS until February 14, 2003, or until the Commission grants permanent approval, which ever period is shorter. Primex continues to operate in the manner described in the Form Pilot filing, as amended.[14]

2. Statutory Basis

Nasdaq believes the proposed rule change is consistent with the provisions of sections 15A(b)(6)[15] and 11A(a)(1) of the Act.[16] Section 15A(b)(6) of the Act[17] requires the rules of the NASD to be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest; and not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers. Section 11A(a)(1) of the Act[18] sets forth a finding of Congress that new data processing and communications techniques create opportunity for more efficient and effective market operations.

Nasdaq believes this proposed rule change is consistent with the NASD's obligations under the Act, as well as the finding of Congress, because it will allow Nasdaq to continue operating Primex while the Commission considers permanent approval. Among other things, the System provides members with an additional electronic, execution system, which is designed to provide members with flexibility in executing orders and the opportunity to obtain price improvement. To ensure the protection of investors, orders will not be executed at prices inferior to the National Best Bid or Offer.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective upon filing pursuant to section 19(b)(3)(A)(iii) of the Act,[19] and subparagraph (f)(2) of Rule 19b–5 thereunder,[20] because the proposal will permit Nasdaq to continue operating Primex as a PTS while the Commission considers granting permanent approval. The proposal does not modify any rule or the operation of Primex.

At any time within 60 days of the filing of a rule change pursuant to section 19(b)(3)(A) of the Act,[21] the Commission may summarily abrogate the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–2003–4 and should be submitted by February 14, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[22]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–1580 Filed 1–23–03; 8:45 am]

BILLING CODE 8010–01–M

[13] Securities Exchange Act Release No. 46924 (November 27, 2002), 67 FR 72715 (December 6, 2002).

[14] Form Pilot—NASD–2001–01

[15] 15 U.S.C. 78*o*–3(b)(6).

[16] 15 U.S.C. 78k–1(a)(1).

[17] 15 U.S.C. 78*o*–3(b)(6).

[18] 15 U.S.C. 78k–1(a)(1).

[19] 15 U.S.C. 78s(b)(3)(A)(iii).

[20] 17 CFR 240.19b–4(f)(5).

[21] 15 U.S.C. 78s(b)(3)(A).

[22] 17 CFR 200.30–3(a)(12).

STATE DEPARTMENT

[Public Notice 4220]

Overseas Security Advisory Council (OSAC) Meeting Notice: Closed Meeting

The Department of State announces a meeting of the U.S. State Department—Overseas Security Advisory Council on February 25 and 26, at the Biscayne Bay Marriott, Miami, Florida. Pursuant to Section 10 (d) of the Federal Advisory Committee Act and 5 U.S.C. 552b, (c)(1) and (4), it has been determined the meeting will be closed to the public. Matters relative to classified national security information as well as privileged commercial information will be discussed. The agenda will include updated committee reports, a world threat overview and a round table discussion that calls for the discussion of classified and corporate proprietary/security information as well as private sector physical and procedural security policies and protective programs at sensitive U.S. Government and private sector locations overseas.

For more information contact Marsha Thurman, Overseas Security Advisory Council, Department of State, Washington, DC 20522–1003, phone: 202–663–0533.

Dated: January 9, 2003.

Peter E. Bergin,

Director of the Diplomatic Security Service, Department of State.

[FR Doc. 03–1644 Filed 1–23–03; 8:45 am]

BILLING CODE 4710–24–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 23

[Docket No. CE195; Special Conditions No. 23–135–SC]

Special Conditions: Adam Aircraft Industries; Model A500 CarbonAero Airplane, Installation of Full Authority Digital Engine Control (FADEC) System and the Protection of the System From the Effects of High Intensity Radiated Fields (HIRF)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued for the Adam Aircraft Industries Model A500 CarbonAero airplane. This airplane will have a novel or unusual design feature(s) associated with the installation of an engine that uses an electronic engine control system in place of the engine's mechanical system. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: The effective date of these special conditions is December 30, 2002. Comments must be received on or before February 24, 2003.

ADDRESSES: Comments on this proposal may be mailed in duplicate to: Federal Aviation Administration (FAA), Regional Counsel, ACE–7, Attention: Rules Docket, Docket No. CE195, 901 Locust, Room 506, Kansas City, Missouri 64106, or delivered in duplicate to the Regional Counsel at the above address. Comments must be marked: Docket No. CE195. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Wes Ryan, Federal Aviation Administration, Aircraft Certification Service, Small Airplane Directorate, ACE–111, 901 Locust, Room 301, Kansas City, Missouri 64106; 816–329–4127 fax 816–329–4090.

SUPPLEMENTARY INFORMATION: The FAA has determined that notice and opportunity for prior public comment hereon are impracticable because these procedures would significantly delay issuance of the design approval and thus delivery of the affected aircraft. In addition, the substance of these special conditions has been subject to the public comment process in several prior instances with no substantive comments received. The FAA therefore finds that good cause exists for making these special conditions effective upon issuance.

Comments Invited

Interested persons are invited to submit such written data, views, or arguments as they may desire. Communications should identify the regulatory docket or special condition number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Administrator. The special conditions may be changed in light of the comments received. All comments received will be available in the Rules Docket for examination by interested persons, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must include a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. CE195." The postcard will be date stamped and returned to the commenter.

Background

On March 23, 2001, Adam Aircraft Industries applied for a type certificate for their new Model A500 CarbonAero. The Model A500 CarbonAero is powered by two reciprocating engines equipped with electronic engine control systems with full authority capability in place of the hydromechanical control systems.

Type Certification Basis

Under the provisions of 14 CFR part 21, § 21.17, Adam Aircraft Industries must show that the Model A500 CarbonAero meets the applicable provisions of 14 CFR part 23, as amended by Amendments 23–1 through 23–54, Federal Aviation Regulations part 36 with amendments effective on the date of certification, and any special conditions found necessary.

If the Administrator finds that the applicable airworthiness regulations (*i.e.*, 14 CFR part 23) do not contain adequate or appropriate safety standards for the Model A500 CarbonAero because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

In addition to the applicable airworthiness regulations and special conditions, the Model A500 CarbonAero must comply with the fuel vent and exhaust emission requirements of 14 CFR part 34 and the noise certification requirements of 14 CFR part 36, and the FAA must issue a finding of regulatory adequacy pursuant to § 611 of Public Law 92–574, the "Noise Control Act of 1972."

Special conditions, as appropriate, as defined in 11.19, are issued in accordance with § 11.38, and become part of the type certification basis in accordance with § 21.17(a)(2).

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same novel or unusual design feature, the special conditions would also apply to the other model under the provisions of § 21.101(a)(1).

Novel or Unusual Design Features

The Model A500 CarbonAero will incorporate the following novel or unusual design features:

The Model A500 CarbonAero airplane will use an engine that includes an electronic control system with full engine authority capability.

Many advanced electronic systems are prone to either upsets or damage, or both, at energy levels lower than analog systems. The increasing use of high power radio frequency emitters mandates requirements for improved high intensity radiated fields (HIRF) protection for electrical and electronic equipment. Since the electronic engine control system used on the Adam Aircraft Model A500 CarbonAero will perform critical functions, provisions for protection from the effects of HIRF should be considered and, if necessary, incorporated into the airplane design data. The FAA policy contained in Notice 8110.71, dated April 2, 1998, establishes the HIRF energy levels that airplanes will be exposed to in service. The guidelines set forth in this Notice are the result of an Aircraft Certification Service review of existing policy on HIRF, in light of the ongoing work of the Aviation Rulemaking Advisory Committee (ARAC) Electromagnetic Effects Harmonization Working Group (EEHWG). The EEHWG adopted a set of HIRF environment levels in November 1997 that were agreed upon by the FAA, JAA, and industry participants. As a result, the HIRF environments in this notice reflect the environment levels recommended by this working group.

This notice states that a FADEC is an example of a system that should address the HIRF environments.

Even though the control system will be certificated as part of the engine, the installation of an engine with an electronic control system requires evaluation due to the possible effects on or by other airplane systems (*e.g.*, radio interference with other airplane electronic systems, shared engine and airplane power sources). The regulatory requirements in 14 CFR part 23 for evaluating the installation of complex systems, including electronic systems, are contained in § 23.1309. However, when § 23.1309 was developed, the use of electronic control systems for engines was not envisioned; therefore, the § 23.1309 requirements were not applicable to systems certificated as part of the engine (reference § 23.1309(f)(1)). Also, electronic control systems often require inputs from airplane data and power sources and outputs to other airplane systems (*e.g.*, automated cockpit powerplant controls such as mixture setting). Although the parts of the system that are not certificated with the engine could be evaluated using the criteria of § 23.1309, the integral nature of systems such as these makes it unfeasible to evaluate the airplane portion of the system without including the engine portion of the system. However, § 23.1309(f)(1) again prevents complete evaluation of the installed airplane system since evaluation of the engine system's effects is not required.

Therefore, special conditions are proposed for the Adam Aircraft Model A500 CarbonAero airplane to provide HIRF protection and to evaluate the installation of the electronic engine control system for compliance with the requirements of § 23.1309(a) through (e) at Amendment 23–49.

Applicability

As discussed above, these special conditions are applicable to the Model A500 CarbonAero. Should Adam Aircraft Industries apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design feature, the special conditions would apply to that model as well under the provisions of § 21.101.

Conclusion

This action affects only certain novel or unusual design features on one model, Model A500 CarbonAero, of airplanes. It is not a rule of general applicability, and it affects only the applicant who applied to the FAA for approval of these features on the airplane.

Under standard practice, the effective date of final special conditions would be 30 days after the date of publication in the **Federal Register**; however, as the certification date for the Adam Aircraft Industries Model A500 CarbonAero is imminent, the FAA finds that good cause exists to make these special conditions effective upon issuance.

List of Subjects in 14 CFR Part 23

Aircraft, Aviation safety, Signs and symbols.

Citation

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113 and 44701; 14 CFR 21.16 and 21.17; and 14 CFR 11.38 and 11.19.

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for Adam Aircraft Industries Model A500 CarbonAero airplanes.

1. *High Intensity Radiated Fields (HIRF) Protection.* In showing compliance with 14 CFR part 21 and the airworthiness requirements of 14 CFR part 23, protection against hazards caused by exposure to HIRF fields for the full authority digital engine control system, which performs critical functions, must be considered. To prevent this occurrence, the electronic engine control system must be designed and installed to ensure that the operation and operational capabilities of this critical system are not adversely affected when the airplane is exposed to high energy radio fields.

At this time, the FAA and other airworthiness authorities are unable to precisely define or control the HIRF energy level to which the airplane will be exposed in service; therefore, the FAA hereby defines two acceptable interim methods for complying with the requirement for protection of systems that perform critical functions.

(1) The applicant may demonstrate that the operation and operational capability of the installed electrical and electronic systems that perform critical functions are not adversely affected when the aircraft is exposed to the external HIRF threat environment defined in the following table:

Frequency	Field strength (volts per meter)	
	Peak	Average
10 kHz–100 kHz	50	50
100 kHz–500 kHz	50	50
500 kHz–2 MHz	50	50
2 MHz–30 MHz	100	100
30 MHz–70 MHz	50	50
70 MHz–100 MHz	50	50
100 MHz–200 MHz	100	100
200 MHz–400 MHz	100	100
400 MHz–700 MHz	700	50
700 MHz–1 GHz	700	100
1 GHz–2 GHz	2000	200
2 GHz–4 GHz	3000	200
4 GHz–6 GHz	3000	200
6 GHz–8 GHz	1000	200
8 GHz–12 GHz	3000	300
12 GHz–18 GHz	2000	200
18 GHz–40 GHz	600	200

The field strengths are expressed in terms of peak root-mean-square (rms) values.

(2) The applicant may demonstrate by a system test and analysis that the electrical and electronic systems that perform critical functions can withstand a minimum threat of 100 volts per meter peak electrical strength, without the benefit of airplane structural shielding, in the frequency range of 10 KHz to 18 GHz. When using this test to show compliance with the HIRF requirements, no credit is given for signal attenuation due to installation. Data used for engine certification may be used, when appropriate, for airplane certification.

2. *Electronic Engine Control System.* The installation of the electronic engine control system must comply with the requirements of § 23.1309(a) through (e) at Amendment 23–46. The intent of this requirement is not to re-evaluate the inherent hardware reliability of the control itself, but rather determine the effects, including environmental effects addressed in § 23.1309(e), on the airplane systems and engine control system when installing the control on the airplane. When appropriate, engine certification data may be used when showing compliance with this requirement.

Issued in Kansas City, Missouri on December 30, 2002.

James E. Jackson,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–1664 Filed 1–23–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Aviation Rulemaking Advisory Committee Meeting

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of public meeting.

SUMMARY: This notice announces a public meeting of the FAA's Aviation Rulemaking Advisory Committee to discuss rotorcraft issues.

DATES: The meeting will be held on February 11, 2003, 3 p.m. CST.

ADDRESSES: The meeting will be held at the Dallas Convention Center, Room D–175, 650 S. Griffin Street, Dallas, TX 75202, telephone (214) 939–2700.

FOR FURTHER INFORMATION CONTACT: Caren Centorelli, Office of Rulemaking, ARM–200, FAA, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267–8199, e-mail *caren.centorelli@faa.gov*.

SUPPLEMENTARY INFORMATION: The referenced meeting is announced pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. II).

The agenda will include:

- Discussion and approval of the Critical Parts proposed Advisory Circular material package.
- Working Group Status Reports.
- Fatigue Tolerance Evaluation of Metallic Structures.
- Damage Tolerence and Fatigue Evaluation of Composite Rotorcraft Structure.
- FAA Status Report.
- Performance and Handling Qualities Requirements Notice of Proposed Rulemaking.

Attendance is open to the interested public but will be limited to the space available. The FAA will arrange teleconference capability for individuals wishing to join in by teleconference if we receive that notification 10 calendar days before the meeting. Arrangements to participate by teleconference can be made by contacting the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Callers outside the area will be responsible for paying long-distance charges.

The public must make arrangements to present oral statements at the meeting. Written statements may be presented to the committee at any time by providing 16 copies to the Assistant Chair or by providing the copies at the meeting.

If you are in need of assistance or require a reasonable accommodation for the meeting, please contact the person listed under the heading **FOR FURTHER INFORMATION CONTACT.** In addition, sign and oral interpretation, as well as a listening device, can be made available at the meeting if requested 10 calendar days before the meeting. Arrangements may be made by contacting the person listed under the heading **FOR FURTHER INFORMATION CONTACT.**

Issued in Washington, DC, on January 17, 2003.

Anthony F. Fazio,

Executive Director, Aviation Rulemaking Advisory Committee.

[FR Doc. 03–1596 Filed 1–23–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Aviation Rulemaking Advisory Committee Meeting on Transport Airplane and Engine Issues

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of public meeting.

SUMMARY: This notice announces a public meeting of the FAA's Aviation Rulemaking Advisory Committee (ARAC) to discuss transport airplane and engine (TAE) issues.

DATES: The meeting is scheduled for February 4–5, 2003, beginning at 9 am on February 4. Arrange for oral presentations by January 31.

ADDRESSES: The Boeing Company, 1200 Wilson Boulevard, Room 234, Arlington, VA.

FOR FURTHER INFORMATION CONTACT: Effie M. Upshaw, Office of Rulemaking, ARM–209, FAA, 800 Independence Avenue, SW., Washington, DC 20591, Telephone (202) 267–5075, or e-mail at *effie.upshaw@faa.gov*.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. app. III), notice is given of an ARAC meeting to be held February 4–5 in Arlington, VA.

The agenda will include:

February 4

- Opening Remarks.
- FAA Report.
- Joint Aviation Authorities Report.
- Transport Canada Report.
- Executive Committee Report.
- Harmonization Management Team Report.
- ARAC Tasking Priorities and Cost-Benefit Analysis Methods Discussions.
- Engine Harmonization Working Group (HWG) Report and Approval.
- Loads and Dynamics HWG Report and Approval.
- Human Factors HWG Report.
- Mechanical Systems HWG Report.
- Ice Protection HWG Report.
- Design for Security HWG Report and Approval.

February 5

- General Structures HWG Report.
- Airworthiness Assurance Working Group Report.
- Powerplant Installations HWG Report.
- Written or verbal reports, as required, may be provided for the Continued Airworthiness Working Group and the following HWGs: Electromagnetic Effects, Flight Test, Avionics, Seat Test, Flight Control, Flight Guidance, System Design and Analysis, and Electrical Systems.

Three HWGs (Engine, Loads and Dynamics, and Design for Security) will be submitting final documents for approval:

1. The Engine HWG will seek approval of documents addressing engine critical parts integrity requirements;

2. The Loads and Dynamics HWG will seek approval of documents addressing ground load, landing loads conditions, and towing loads; and

3. The Design for Security HWG will seek approval of documents addressing aircraft features and protetions for the cabin, flight deck, and cargo compartments from the effects of an explosive device, including fire, smoke, and noxious vapors.

Attendance is open to the public, but will be limited to the availability of meeting room space and telephone lines. Visitor badges are required to gain entrance to the Boeing building where the meeting is being held. Please confirm your attention with the person listed in the **FOR FURTHER INFORMATION CONTACT** section no later than January 31. Please provide the following information: full legal name, country of citizenship, and name of your company, if applicable.

For those participating by telephone, the call-in number is (206) 655–0054, Passcode 923071#. Details are also available on the ARAC calendar at *http://www.faa.gov/avr/arm/araccal/htm*. To ensure that sufficient telephone lines are available, please notify the person listed in the **FOR FURTHER INFORMATION CONTACT** section of your intent by January 31. Callers outside the Washington metropolitan area will be responsible for paying long distance charges.

The public must make arrangements by January 31 to present oral statements

at the meeting. Written statements may be presented to the committee at any time by providing 25 copies to the Assistant Executive Director for Transport Airplane and Engine issues or by providing copies at the meeting. Copies of the documents to be presented to ARAC for decision or as recommendations to the FAA may be made available by contacting the person listed under the heading **FOR FURTHER INFORMATION CONTACT.**

If you are in need of assistance or require a reasonable accommodation for the meeting or meeting documents, please contact the person listed under the heading **FOR FURTHER INFORMATION CONTACT.** Sign or oral interpretation, as well as a listening device, can be made available if requested 10 calendar days before the meeting.

Issued in Washington, DC on January 17, 2003.

Tony F. Fazio,

Director, Office of Rulemaking.

[FR Doc. 03–1600 Filed 1–23–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application 03–08–C–00–JAX, Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Jacksonville International Airport, Jacksonville, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Jacksonville International Airport under the provisions of the 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before February 24, 2003.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Orlando Airports District Office, 5950 Hazeltine National Drive, Suite 400, Orlando, Florida 32822.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to John D. Clark, III, President of the Jacksonville Airport Authority at the following address: 2010 Barnstormer Road, Jacksonville, Florida 32218.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Jacksonville Airport Authority under § 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Richard Owen, Program Manager, Orlando Airports District Office, 5950 Hazeltine National Drive, Suite 400, Orlando, Florida 32822, (407) 812–6331, extension 19. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Jacksonville International Airport under the provisions of the 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On January 15, 2003, the FAA determined that the application to impose and use the revenue from a PFC submitted by the Jacksonville Airport Authority was substantially complete within the requirements of § 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than April 30, 2003.

The following is a brief overview of the application.

Proposed charge effective date: January 1, 2004

Proposed charge expiration date: July 1, 2007

Level of the proposed PFC: $4.50

Total estimated PFC revenue: $40,175,750

Brief description of proposed project(s): Checked baggage explosive detection system, Access control and communication center upgrades, and Centralized security checkpoint/west courtyard.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Non-scheduled/on-demand air taxi operators (ATCO) filing FAA Form 1800–31.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA regional Airports office located at: Federal Aviation Administration, Airports Division, ASO–600, 1701 Columbia Avenue, College Park, Georgia 30337.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Jacksonville Airport Authority.

Issued in Orlando, FL, on January 15, 2003.

W. Dean Stringer,

Manager, Airports District Office.

[FR Doc. 03–1667 Filed 1–23–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Departmental Offices; Treasury Department Order Establishing the Alcohol and Tobacco Tax and Trade Bureau

AGENCY: Department of the Treasury, Departmental Offices.

ACTION: Notice.

SUMMARY: The Department of the Treasury is publishing a revision to Treasury Order 120–01 to formally establish within the Department the Alcohol and Tobacco Tax and Trade Bureau.

DATES: This Order is effective January 24, 2003.

FOR FURTHER INFORMATION CONTACT: Marc A. Rigrodsky, Senior Counsel, Office of the Assistant General Counsel (General Law and Ethics), 202–622–1181 (not a toll-free call).

SUPPLEMENTARY INFORMATION: On November 25, 2002, the President signed into law the Homeland Security Act of 2002 (Pub. L. 107–296). Section 1111(c) of that Act transferred to the Department of Justice certain authorities, functions, personnel, and assets of the Bureau of Alcohol, Tobacco and Firearms (ATF), including the related functions of the Secretary of the Treasury. The Act also established within the Department of the Treasury the Tax and Trade Bureau (TTB).

On January 24, 2003, TTB assumes responsibility from ATF for the administration and enforcement of the following laws: chapter 51 ("Distilled spirits, wines, and beer") and 52 ("Tobacco products and cigarette papers and tubes") of the Internal Revenue Code of 1986 (Code); sections 4181 (Firearms—"Imposition of tax") and 4182 ("Exemptions") of the Code; and title 27, United States Code ("Intoxicating Liquors"). Revised Treasury Order 120–01 ensures that the TTB Administrator may exercise the authorities, perform the functions, and carry out the duties of the Secretary with respect to these laws. To avoid confusion over TTB's mission, the revised order also redesignates the TTB as the Alcohol and Tobacco Tax and Trade Bureau.

The text of the Order follows.

Dated: January 21, 2003.

Richard S. Carro,

Senior Advisor to the General Counsel, (Regulatory Affairs).

Treasury Order 120–01 (Revised)
Date: January 21, 2003.
Subject: Alcohol and Tobacco Tax and Trade Bureau

1. Establishment. By virtue of section 1111(d) of the Homeland Security Act of

2002, Title XI, Subtitle B, Pub. L. No. 107–296, 116 Stat. 2274, codified at 6 U.S.C. section 531(d), and by the authority vested in the Secretary of the Treasury ("Secretary") under 26 U.S.C. 7801(a) and 31 U.S.C. section 321(b), the Tax and Trade Bureau is established within the Department.

2. Designation of the Tax and Trade Bureau as the Alcohol and Tobacco Tax and Trade Bureau. The Tax and Trade Bureau is designated as the Alcohol and Tobacco Tax and Trade Bureau ("TTB"). The head of the TTB is the Administrator ("Administrator"), who is appointed by the Secretary, and who shall perform duties as assigned by the Secretary or his designee.

3. Authorities, Functions, and Powers of the Administrator. The Administrator shall exercise the authorities, perform the functions, and carry out the duties of the Secretary in the administration and enforcement of:

a. Chapters 51 and 52 of the Internal Revenue Code of 1986;

b. Sections 4181 and 4182 of the Internal Revenue Code of 1986; and

c. Title 27, United States Code.

4. Former Authorities of the Director, ATF. The Administrator shall have all authorities delegated to the Director of the Bureau of Alcohol, Tobacco and Firearms in effect on January 23, 2003, that are related to the administration and enforcement of the laws specified in paragraph 3. The Administrator shall possess full authority, powers, and duties to administer the affairs of and to perform the functions of TTB, including, without limitation, all management and administrative authorities and responsibilities similarly granted and assigned to Bureau Heads or Heads of Bureaus in Treasury Orders and Treasury Directives.

5. Completed Administrative Actions, Pending Proceedings, and Regulations.

a. All completed administrative actions of the Bureau of Alcohol, Tobacco and Firearms, including but not limited to orders, determinations, rules, regulations, personnel actions, permits, agreements, grants, contracts, certificates, licenses, registrations, privileges and forms issued, adopted or executed in connection with the administration and enforcement of the laws specified in paragraph 3 on or before January 23, 2003, shall continue in effect until superseded or revised.

b. The terms "Director, Bureau of Alcohol, Tobacco and Firearms," "Director," and similar references wherever used in completed administrative actions issued, adopted or executed in connection with the administration and enforcement of the laws specified in paragraph 3 on or before January 23, 2003, shall mean the Administrator. The terms "ATF officer" or "appropriate ATF officer," and all references to officers or employees of the Bureau of Alcohol, Tobacco and Firearms in completed administrative actions issued, adopted or executed in connection with the administration and enforcement of the laws specified in paragraph 3 on or before January 23, 2003, shall apply to officers or employees of TTB.

c. Proceedings pending in the Bureau of Alcohol, Tobacco and Firearms on January 23, 2003, relating to the administration and enforcement of the laws specified in paragraph 3, including but not limited to notices of proposed rulemaking, applications for licenses, permits, certificates, grants, and financial assistance, and personnel actions and other administrative proceedings, shall be under the authority of the Secretary and are delegated to the Administrator consistent with delegations from the Secretary to the Director of the Bureau of Alcohol, Tobacco and Firearms in effect on January 23, 2003.

d. Regulations for the purposes of carrying out the authorities, functions, and duties delegated to the Administrator may be issued by him with the approval of the Secretary or his designee.

6. *Redelegation.* The Administrator may delegate any of the authority vested under this Order. All delegations of authority in existence on January 23, 2003, by the Director of the Bureau of Alcohol, Tobacco and Firearms related to the administration and enforcement of the laws specified in paragraph 3 to positions established within TTB shall remain in effect until superseded or revised.

7. *Ratification.* Any action heretofore taken that is consistent with this Order is hereby affirmed and ratified.

8. *Privacy Act of 1974, as Amended, Systems of Records.* All systems of records of the Bureau of Alcohol, Tobacco and Firearms related to the administration and enforcement of the laws specified in paragraph 3 that were in effect on January 23, 2003, shall be TTB systems of records and shall continue to be covered by the **Federal Register** notice published on August 30, 2001, at 66 **Federal Register** 45893, until superseded or revised.

9. *Cancellations.*

a. Treasury Order 120–01, "Establishment of the Bureau of Alcohol, Tobacco and Firearms," dated June 6, 1972, is cancelled.

b. Treasury Order 120–02, "Trafficking in Contraband Cigarettes," dated December 5, 1978, is cancelled.

c. Treasury Order 120–03, "Transfer of Functions to the Director, Bureau of Alcohol, Tobacco and Firearms, to Administer and Enforce, 26 U.S.C. 4181 and 4182, Relating to Excise Tax on Firearms," dated November 5, 1990, is cancelled.

d. Treasury Directive 15–12, "Delegation of Authority to the Director, Bureau of Alcohol, Tobacco and Firearms, to Investigate Violations of 18 U.S.C. §§ 1956 and 1957," dated November 5, 2001, is cancelled.

10. *Authorities.* Section 1111 of the Homeland Security Act of 2002, Title XI, Subtitle B, Pub. L. No. 107–296, 116 Stat. 2274, codified 6 U.S.C. section 531, 26 U.S.C. Section 7801(a), and 31 U.S.C. Section 321(b).

11. *Effective Date:* January 24, 2003.

12. *Office of Primary Interest:* Alcohol and Tobacco Tax and Trade Bureau.

Kenneth W. Dam,

Acting Secretary of the Treasury.

[FR Doc. 03–1690 Filed 1–23–03; 8:45 am]

BILLING CODE 4810–25–P

Federal Register

Friday,
January 24, 2003

Part II

Department of Health and Human Services

Centers for Medicare & Medicaid Services

42 CFR Parts 433 and 438
Medicaid Program; External Quality Review of Medicaid Managed Care Organizations; Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Parts 433 and 438

[CMS–2015–F]

RIN 0938–AJ06

Medicaid Program; External Quality Review of Medicaid Managed Care Organizations

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Final rule.

SUMMARY: This final rule establishes requirements and procedures for external quality review (EQR) of Medicaid managed care organizations (MCOs) and prepaid inpatient health plans (PIHPs). It defines who qualifies to conduct EQR and what activities can be conducted as part of EQR. In addition, under certain circumstances, this rule allows State agencies to (1) use findings from particular Medicare or private accreditation review activities to avoid duplicating review activities, or (2) exempt certain Medicare MCOs and PIHPs from all EQR requirements. Also, this rule allows the payment of enhanced Federal financial participation (FFP) at the 75 percent rate for the administrative costs of EQRs or EQR activities that are conducted by approved entities.

EFFECTIVE DATE: These regulations are effective on March 25, 2003. Provisions that must be implemented through contracts with MCOs, PIHPs, and external quality review organizations (EQROs) are effective with contracts entered into or revised on or after 60 days following the publication date. States have up until March 25, 2004 to bring contracts into compliance with the final rule provisions.

FOR FURTHER INFORMATION CONTACT: Kristin Fan, (410) 786–4581.

SUPPLEMENTARY INFORMATION: To order copies of the **Federal Register** containing this document, send your request to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954. Specify the date of the issue requested and enclose a check or money order payable to the Superintendent of Documents, or enclose your Visa or Master Card number and expiration date. Credit card orders can also be placed by calling the order desk at (202) 512–1800 or by faxing to (202) 512–2250. The cost for each copy is $10. As an alternative, you can view and photocopy the **Federal Register** document at most libraries designated as Federal Depository Libraries and at many other public and academic libraries throughout the country that receive the **Federal Register**.

This **Federal Register** document is also available from the **Federal Register** online database through GPO access, a service of the U.S. Government Printing Office. The Website address is *http://www.access.gpo.gov/nara/index.html.*

I. Background

A. The Balanced Budget Act of 1997

The Balanced Budget Act of 1997 (BBA) added to the Social Security Act (the Act) a new section 1932 that pertains to Medicaid managed care. Most of the provisions of section 1932 of the Act will be implemented in accordance with the Medicaid managed care final rule that was published in the **Federal Register** on June 14, 2002 (67 FR 40988).

Section 1932(c) of the Act, added by section 4705 of the BBA, describes how quality measurement and performance improvement methods should be applied to Medicaid managed care programs through two specific approaches:

- All State agencies must develop and implement a quality assessment and improvement strategy that includes—(1) Standards for access to care; (2) examination of other aspects of care and services related to improving quality; and (3) monitoring procedures for regular and periodic review of the strategy. (This requirement was addressed in the Medicaid managed care final rule published June 14, 2002.)
- State agencies that contract with Medicaid managed care organizations (MCOs) must provide for an annual external, independent review of the quality outcomes, timeliness of, and access to the services included in the contract between the State agency and the MCO. (This requirement is addressed in this rule.)

Section 1932(c) of the Act also requires the Secretary—

In consultation with the States, to establish a method for identifying entities qualified to conduct external quality review (EQR) (section 1932(c)(2)(A)(ii) of the Act); and

In coordination with the National Governors Association (NGA), to contract with an independent quality review organization to develop the protocols to be used in EQRs (section 1932(c)(2)(A)(iii) of the Act).

Two other provisions of section 1932(c) of the Act are pertinent to this rule. They are (1) the requirement that the results of EQRs be made available to participating health care providers, enrollees and potential enrollees (section 1932(c)(2)(A)(iv) of the Act), and (2) the provision that a State agency may, at its option—

- Take steps to ensure that an EQR does not duplicate a review conducted either by a private independent accrediting organization or as part of an external review conducted under the Medicare program (section 1932(c)(2)(B) of the Act); and
- Exempt an MCO from EQR under certain specified conditions (section 1932(c)(2)(C) of the Act).

Section 4705(b) of the BBA amended section 1903(a)(3)(C) of the Act to provide for increased Federal financial participation (FFP) (75 percent) for the administrative costs the State incurs for EQR or EQR activities performed by specified entities under section 1932(c)(2)(A) of the Act.

B. Proposed Rule

On December 1, 1999 we published a proposed rule in the **Federal Register** (64 FR 67223) to implement the EQR statutory provisions. A summary of the specific provisions of the proposed regulations precedes each section of the comments and responses below. In the proposed rule, we discussed the two major purposes we had in developing the rule: (1) To provide flexibility for State agencies, and (2) to reflect the well-accepted advances in the technology of quality measurement and improvement. For a more detailed discussion of our basis and purpose for the approach taken in the December 1, 1999 proposed rule, see the preamble to that document at 64 FR 67223.

We received 29 comments from States, national and State organizations, health plans, advocacy groups, and other individuals on the December 1, 1999 proposed rule. The comments generally pertained to the types of entities that can be EQROs, EQR activities, nonduplication and exemption provisions, and dissemination of EQR rules. We carefully reviewed and considered all the comments we received.

C. Agency Information Collection Activities

On November 23, 2001 we published a notice in the **Federal Register** (66 FR 58741) to comply with the requirement of section 3506 (c)(2)(A) of the Paperwork Reduction Act of 1995. We invited public comment regarding the burden estimate or any other aspect of the EQR protocols we developed in accordance with section 1932(c)(2)(A)(iii) of the Act. This

provision required that we contract with an independent quality review organization to develop protocols to be used with respect to EQRs required by statute. In response to the requirement under section 1932(c)(2)(A)(iii) of the Act, we contracted with the Joint Commission on Accreditation of Health Care Organizations (JCAHO) which developed nine protocols and one appendix to several of the protocols in six quality improvement areas. We received 13 comments on the November 23, 2001 **Federal Register** notice. We carefully reviewed and considered all the comments we received.

II. Provisions of the Proposed Rule and Discussion of Public Comments

A. Basis, Scope and Applicability. (Formerly § 438.1), (Now § 438.310)

In this section we proposed to apply provisions to MCOs, prepaid health plans (PHPs), and entities with comprehensive risk contracts that are exempted by statute from the requirements in section 1903(m) of the Act, health insuring organizations (HIOs).

Comment: Many commenters supported the application of this rule to all three of the above types of entities. One commenter, though not opposed to the inclusion of PHPs, expressed concern about the cost of this requirement when applied to entities that provide services to small populations. The commenter suggested that the regulation apply only to entities to the extent feasible for the study being performed. Another commenter did not agree that the provisions should apply to PHPs and stated that there is no specific reference in Federal law to these organizations and that we have gone beyond the explicit language in section 1932(c) of the Act.

Response: We continue to believe these provisions should apply to most capitated health plans that are not MCOs, but that provide inpatient services. The Medicaid managed care final rule eliminated the term PHP and replaced it with two types of entities—prepaid inpatient health plans (PIHPs) and prepaid ambulatory health plans (PAHPs). That rule, under the authority of section 1902(a)(4) of the Act, which authorizes the Secretary to establish requirements necessary "for proper and efficient operation of the plan," applies the provisions related to a State's quality strategy to PIHPs but not to PAHPs. It does not apply these quality provisions to PAHPs because these entities provide a more limited array of services (for example, transportation or dental), and we do not believe it appropriate to require States to include these entities in their State quality strategies due to the burden it would impose. We, therefore, are revising this rule to be consistent with the Medicaid managed care final rule (§ 438.204(d)) and apply the EQR provisions to PIHPs as specified at § 438.310. We have also made changes to clarify the applicability of this rule to HIOs to be consistent with the Medicaid managed care final rule.

We do not agree with the commenter that we should exempt entities that have smaller enrolled populations from these requirements. Sections 1932(c)(2)(B) and (C) of the Act specifically identify the circumstances under which an entity may be fully or partially exempt from EQR.

Comment: One commenter asked if we intend to hold Indian Health Services (IHS) and 638 Tribal Facilities to the same standard as MCOs to ensure the quality of care provided to Native Americans.

Response: If an IHS entity or 638 Tribal Facility meets the definition of an MCO or PIHP, it would be subject to these provisions.

Comment: One commenter does not believe that primary care case management (PCCM) programs should be subject to these requirements. Another commenter believes that the activities in the December 1, 1999 proposed rule should be applied to PCCM programs.

Response: The statute does not extend the EQR requirement to PCCMs and the Conference Report, pages 859–860, makes clear that PCCMs were specifically excluded from the requirements. We have used the authority of section 1902(a)(4) of the Act to extend the EQR provision to PIHPs because, like MCOs, PIHPs provide inpatient services and are capitated. If a PCCM meets the definition of a PIHP, then it would be subject to the provisions of this rule. However, traditional PCCMs are reimbursed on a fee-for-service (FFS) basis along with a case management fee. Under that reimbursement arrangement, the PCCM would not be subject to the EQR requirements.

Comment: Many commenters recommended that external review also examine subcontracting managed care entities. One commenter suggested that the definition of quality be expanded to include services provided through subcontracts with MCOs.

Response: The MCO or PIHP is fully responsible (§ 438.230 of the Medicaid managed care final rule) for all activities delegated to another entity. Therefore, the EQR should include information on all beneficiaries and the structure and operations of all entities that provide Medicaid services under either the prime contract or subcontract. At § 438.320, we revised our definition of EQR to clarify our intent that the EQR provisions apply to all services received by Medicaid beneficiaries regardless of whether those services are provided by the MCO or PIHP directly or through a subcontract.

Comment: One commenter is concerned that this rule applies the EQR requirement to PHPs despite the BBA's statutory reference only to organizations under section 1903(m) of the Act. The commenter asked us to clarify whether we intend to apply these requirements to any entity that is paid on a prepaid capitation basis for services furnished to enrollees, even if the PHP is not at any financial risk for those services.

Response: As noted in an earlier response, the EQR provisions will apply to a PIHP defined in the Medicaid managed care final rule as an entity that "provides medical services to enrollees under contract with the State agency, and on the basis of prepaid capitation payments, or other payment arrangement that do not use State plan payment rates and that provides, arranges, or otherwise has the responsibility for the provision of any inpatient hospital or institutional services for its enrollees * * *" We do not apply these quality provisions to PAHPs because these entities provide a more limited array of services (for example, transportation or dental), and we do not require States to include these entities in their State quality strategies due to the burden it would impose. The application of this rule to PIHPs is not based on section 1903(m) of the Act. It is based on section 1902(a)(4) of the Act that authorizes the Secretary to establish requirements necessary "for the proper and efficient operation of the plan." We believe this is consistent with congressional intent.

PIHP and PAHP designation is not based on whether an entity is at financial risk for services provided. Designation is based on prepaid capitation payments for a scope of services. Even though there will be few PIHPs that are not at financial risk, due to the scope of services these entities provide (for example, inpatient services), we believe they should be subject to EQR provisions.

B. Definitions (Formerly § 438.2), (Now § 438.320)

This section of the proposed rule defined "EQR" and "EQRO." It also defined the terms "quality" and "validation" as they pertain to EQR.

Comment: One commenter concurred with our requirement that EQR be a multipronged approach which recognizes that none of the activities alone can ensure quality in the complex Medicaid population. One commenter supported the definitions as proposed.

Response: We appreciate that the commenters agreed with our approach to EQR and the proposed definitions. We have retained the multipronged approach to EQR as proposed in the proposed rule.

Comment: One commenter asked that the definition of quality include assessments of structure and process as well as measurements of health and functional outcomes. Several commenters recommended that the definition of quality include both clinical and nonclinical measures of consumer satisfaction and define quality in a way that would be meaningful to people with disabilities. One commenter stated that this definition should address the multifaceted needs of people who have chronic and disabling conditions, for whom there is little likelihood of demonstrable improvement. The commenter recommended that we convene focus groups of consumers, including people with disabilities and families of children with disabilities, to identify how quality should be defined from the consumer's perspective and that the definition should not focus solely on health outcomes. One commenter concurred with the definition of quality as proposed.

Response: We agree with the commenter that the proposed definition of quality did not address situations when beneficiaries have conditions where maintenance or improvement of health outcomes is not likely. We have, therefore, revised the definition to mean the degree to which an MCO or PIHP increases the likelihood of desired health outcomes through the provision of health services that are consistent with current professional knowledge. The revision is consistent with the Institute of Medicine's definition of quality. We do not agree with the remaining recommendations by commenters on how to revise the definition of quality because we think that the commenters' concerns are addressed by other provisions of the regulation. Under § 438.358, we identify three activities that must be conducted to provide information for the EQR. These activities also are required in the Medicaid managed care final rule. They include: (1) The review of compliance with structural and operation standards; (2) the validation of performance measures;[1] and (3) the validation of performance improvement projects. The optional EQR-related activities are activities that some States currently conduct as part of EQR and we believe are also appropriate to an assessment of quality (such as consumer surveys). We are providing States with the flexibility to determine which, if any, of these optional activities will be included in the EQR and what types of performance measures and performance improvement projects to require of their contracting MCOs and PIHPs. We suggest in the performance improvement project protocol that projects be conducted to address both clinical and nonclinical areas that cover the various categories of beneficiaries and services provided. We also note, as stated in the Medicaid managed care final rule, that EQR is a part of the State's quality strategy, and therefore, States are to provide for the input of Medicaid beneficiaries and other stakeholders in this component of the strategy.

Comment: One commenter suggested amending the definition of EQR to read "* * * quality of health care services furnished or contracted for by each MCO * * *"

Response: We agree with this comment and, as stated previously, have revised the final rule to clarify our intent that the EQR provisions apply to all services received by Medicaid beneficiaries regardless of whether those services are provided by the MCO or PIHP directly or through a subcontract (§ 438.320).

Comment: Several commenters stated that the definition of EQR too narrowly limits the scope of EQR because the definition implies that EQR is primarily concerned with analysis and evaluation of data rather than with collection of data. One of the commenters expressed concern that this would limit the EQRO's ability to identify and bring to the State's attention individual quality of care concerns revealed during data abstraction, or to provide provider-specific feedback on performance measures. The commenter recommended that the rule avoid any reference to "aggregate" information in the definition of EQR. One commenter recommended that the definition of EQR include the development of aggregated data. Another commenter stated that external review should not be limited to the review of information. The commenter believes the external review of plans should include an on-site review of provider practices and procedures and that data alone are insufficient to evaluate performance.

Response: We do not agree that the definition of EQR limits the scope of EQR. We define EQR as the analysis and evaluation of aggregated information. That aggregated information, according to this rule, must be obtained from activities that are consistent with protocols, as defined in this rule, to ensure that data to be analyzed are collected using sound methods widely used in the industry. For each activity, as specified in § 438.364, the entity conducting the activity must report on the objectives, technical methods of data collection and analysis, a description of the data obtained, and conclusions drawn from each activity. Therefore, as part of these activities, the entity conducting them will need to identify and assess quality of care concerns revealed by the activities. The EQR analysis will incorporate findings from all activities, including the evaluation of MCO or PIHP structure and operations. The findings of the overall analysis will need to include an assessment of the strengths and weakness with respect to quality, timeliness, and access of care, and make recommendations for MCO or PIHP improvement in the EQR results as required under § 438.364. Further, we note that under the BBA statutory provisions, EQR is a review of a Medicaid MCO under contract to the State. EQR of individual providers or provider practices is not provided for in the BBA. We believe that the appropriate unit of analysis of EQR is the MCO and PIHP, not individual practitioners.

C. State Responsibilities (§ 438.350)

This section of the proposed rule set forth the State's responsibilities related to EQR. We proposed that each State agency that contracts with MCOs, PHPs, or other entities that have comprehensive risk contracts must, except as provided in § 438.362, ensure that (1) An annual EQR is performed for these contracting entities by a qualified EQRO; (2) the EQRO has sufficient information to use in performing the review; (3) the information that the State agency provides to the EQRO is obtained through methods consistent with protocols specified by CMS; and (4) the results of the EQR are made

[1] In the Medicaid managed care final rule under § 438.240(c)(2) we permit States to calculate performance measures on the MCO's/PIHP's behalf in place of the MCO/PIHP calculating and reporting performance measures to the State. Under this circumstance, the validation of MCO/PIHP performance measures is not required as a mandatory activity but the State must submit the State-calculated performance measures to the EQRO for the EQR function as specified under § 438.358(b)(2). This issue is addressed later in the preamble in response to a comment.

available, upon request, to specified groups and to the general public.

Section 1932(c)(2)(A) of the Act requires that each contract with an MCO "provide for an annual (as appropriate) external independent review, conducted by a qualified independent entity * * *" In this section we interpreted the parenthetical statement (for which there is no explanation in the legislative history) to be a reference to those MCOs that may be exempted from EQR under section 1932(c)(2)(C) of the Act on the basis of "deemed compliance." We invited comment on other possible interpretations, which are discussed at the end of this section.

Comment: One commenter noted they concurred with this section of the rule.

Response: We appreciate the commenter's support for the provisions in this section of the proposed rule and retain the provision that requires the State to ensure that the EQRO has information obtained from EQR-related activities and that the information provided is obtained through methods consistent with the EQR protocols established under § 438.352 in this final rule.

Comment: Several commenters asked us for a definition, or the criteria that we will use to determine if State-established protocols are consistent with those developed by us. One of the commenters noted that it would be difficult for all States to follow a single set of protocols because State Medicaid programs vary as to structure, capacity, funding, and governing laws. One commenter asked that we also establish criteria for denominators, numerators, and units of measurement for performance measures. Other commenters concurred with the requirement to use protocols that are "consistent with" rather than "identical to" those developed by us to accommodate the rapidly changing field of quality assessment and improvement.

Response: Section 1932(c)(2)(A)(iii) of the Act required the Secretary in coordination with the National Governors Association, to contract with an independent quality review organization to develop protocols to be used in EQR. In planning for the development of the protocols, we had to determine the level of detail to be specified in each of the protocols. Because States have flexibility to choose what aspects of quality to measure and in order to accommodate different methodological approaches to studying quality, we contracted for the development of protocols that specified activities and steps of data collection and analysis that would produce valid and reliable information. These apply regardless of the data collected or the topics that States choose. Protocols will be considered "consistent" with ours to the extent that they affirmatively address each element specified in § 438.352, including the activities and steps for collecting data. We have revised the regulations under § 438.352(c) to clarify that instead of following "detailed procedures," the EQR-related activities follow "activities and steps" specified for accurate, valid, and reliable data collection.

Comment: One commenter recommended that external review be required every 3 years rather than on an annual basis. The commenter noted that the National Committee for Quality Assurance (NCQA) requires a standard external review every 3 years and believes that this rule and the protocols should not set a standard more stringent than the industry standard.

Response: Section 1932(c)(2)(A)(i) of the Act clearly states that contracts "shall provide for an annual (as appropriate) external independent review." We discuss later in this preamble why the parenthetical was not intended to modify what is otherwise an explicit requirement that EQR be conducted annually. An annual EQR has been a statutory requirement since 1986 under section 1902(a)(30)(C) of the Act. Pub. L. 106–113 made it clear that the provision was being replaced by 1932(c)(2) of the Act. We further note that the EQR described in this rule is very different from the accreditation review performed by NCQA. However, in the monitoring for compliance with the standards protocol that provides accreditation-like data, we only provide that information from a review of compliance with standards be generated every 3 years. This is consistent with the industry standard.

Comment: One commenter asked for confirmation that § 438.356(a) allows for EQR for a single MCO or PIHP to be performed by more than one EQRO.

Response: We are revising proposed § 438.356(a) to clarify that while we allow a State to contract with different EQROs to conduct EQR and EQR-related activities for a single MCO or PIHP, we believe and continue to require that the final analysis of all the information, as distinguished from the EQR-related activities, be performed by a single EQRO. This provides State flexibility to use different contractors to conduct different activities. Section 438.350 addresses the analysis and evaluation of information derived from mandatory and any optional activities. We believe that a single EQRO should perform this function to ensure that one entity receives all the available information and draws the overall conclusions about a particular MCO or PIHP. To clarify our intent to require that one EQRO perform the overall analysis (that is, conduct EQR) but that multiple EQROs may conduct EQR-related activities, we revised the language from the proposed rule to (1) remove the reference to "other related activities" in the definition of EQR, (2) add the reference to EQR-related activities to the definition of EQRO at § 438.320, and (3) add the reference to EQR-related activities to § 438.370 which provides for the 75 percent enhanced match. We also revised § 438.356(a) to clarify that States may only contract with one entity for EQR but may contract with multiple entities to conduct EQR-related activities.

Comment: One commenter recommended the addition of language allowing States the option to employ alternative quality assessment and improvement methods approved by CMS to substitute for the EQR requirements. The revised language should emphasize the State's responsibility under section 1932(c)(1)(A) of the Act to develop and implement a quality assessment and performance improvement (QAPI) strategy that includes, but is not restricted to. EQR-related activities. If CMS seeks to define minimum specifications for a State's QAPI strategy, those specifications should be set out in a proposed rule and subject to public review and comment.

Response: Our Medicaid managed care final rule outlined the elements of a State quality strategy, of which EQR is one element. States have the flexibility to determine how to ensure the quality strategy elements are designed and implemented. The public had the opportunity to review and comment on the proposed elements in the Medicaid managed care proposed rule published August 20, 2001 in the **Federal Register** (66 FR 43614). The EQR proposed rule addresses EQR in greater detail than does the managed care final rule, including what activities can be funded under the EQR enhanced matching rate. In this final rule, we describe optional EQR-related activities for which a State can obtain the enhanced Federal match under § 438.370. We believe we have provided States with the flexibility to design their EQR to best meet State needs while at the same time ensuring, through the three mandatory activities, that essential quality activities are conducted.

Comment: Several commenters recommended that we require that States coordinate their EQR with the State's quality strategy established

under § 438.200 through § 438.204 of the Medicaid managed care rule and that EQR evaluate compliance with standards for quality, timeliness, and access in § 438.206 through § 438.242 of the Medicaid managed care proposed rule.

Response: We agree with the commenter. The Medicaid managed care final rule provides that an annual EQR be one element of a State's quality strategy. The EQR rule provides that information from a review of compliance with structural standards (including quality, timeliness, and access) be used in the EQR. Because of this we believe that the two rules together will require each State to coordinate its EQR with all other components of its State strategy.

Comment: One commenter agreed with our interpretation of the statutory provision requiring an external review annually "as appropriate" as being a reference to the deemed compliance provision. The commenter also suggested that reasons for not conducting a review be expanded to include (1) when the MCO is new and there are no historical records and (2) when the population of the MCO is too small to conduct a particular study.

Response: We disagree that newly contracting MCOs and PIHPs should not be subject to EQR. New MCOs and PIHPs will be required to meet structural standards, and we believe that information about MCO and PIHP compliance with these standards should be subject to EQR. We understand that the calculation of performance measures and the implementation of performance improvement projects require time to complete and may not be available at the time of the EQR. Therefore, while we acknowledge there are mandatory activities for EQR that may not be possible the first year of an MCO's or PIHP's operations, we do not agree that the MCO or PIHP should be entirely exempt from EQR. We also do not agree that small population size should be a reason to exempt an MCO or PIHP from EQR. Rather, the State, or MCO or PIHP if the State permits, should choose a performance improvement topic for which the entity has a sufficient number of enrollees to conduct a valid study.

Comment: Several commenters believe that the "as appropriate" parenthetical allows CMS the discretion to interpret EQR time frames more broadly and to give States discretion to require EQRs less frequently than annually. One commenter suggested that "as appropriate" modifies the word "annual," not "review."

Response: We do not believe that the Congress intended for us or the States to have discretion to provide for reviews less frequently than annually. As discussed above, section 1932(c)(2) of the Act replaces a statutory requirement for annual review that has applied since 1986. There is no indication in the legislative history that the Congress intended to change this. To the contrary, there is a persuasive alternative explanation for the Congress having inserted the parenthetical language. Section 1932(c) of the Act, unlike section 1902(a)(30)(C) of the Act has exemptions from the EQR requirement. Annual reviews for exempt entities are not appropriate.

Comment: One commenter interpreted the parenthetical to allow States to conduct reviews more frequently, not less frequently. If the EQR identified problems, the EQRO could be authorized to conduct follow-up evaluations, as appropriate, to ensure progress toward compliance.

Response: We do not agree with the commenter's interpretation because we believe that if problems are identified in the reports that the EQRO provides the States, the States can follow-up on any corrective action. Because we were not persuaded by any of the comments received for a different or additional interpretation of the parenthetical "as appropriate," we are retaining in the final rule the interpretation that it refers to "deemed compliance" under section 1932(c)(2)(C) of the Act.

D. External Quality Review Protocols (§ 438.352)

In this section, we proposed that EQR protocols must specify: (1) The data to be gathered, that is, the substantive areas to be covered by the protocol; (2) the sources of the data; (3) detailed procedures to be followed in collecting the data to promote its accuracy, validity, and reliability; (4) the proposed methods for valid analysis and interpretation of the data; and (5) all instructions, guidelines, worksheets and any other documents or tools necessary for implementing the protocol. At the time the proposed rule was published, the protocols were under development. The strategy and timeline for protocol development were undertaken in response to BBA language that directed the Secretary to "contract with an independent quality review organization" to develop the protocols. The contract procurement process and scope of work necessitated that the protocols be completed after publication of the proposed rule. On November 23, 2001, we published a notice in the **Federal Register** (66 FR 58741) announcing the completion of the protocols and asking for comment on their burden or any other aspect of the protocols. Comments received on the November 23, 2001 **Federal Register** notice are addressed later in this preamble.

In developing the protocols, we instructed our contractor to draw from existing protocols that have been tested for reliability and validity and that have been used in the public and private sectors to conduct reviews of the quality of MCO and PHP services, consistent with current industry practice. We also expressed a preference for protocols that are in the public domain. The principle reason for not including the protocols in our regulation is because quality measurement is a rapidly changing field. The protocols must be revised regularly to reflect the changing state-of-the-art in quality improvement. Protocols developed in the private sector for validation of performance measures and administration of consumer surveys are usually revised annually. The delays inherent in revising regulations would make it difficult to make frequent changes. In addition, the protocols are detailed and lengthy, as they provide optional worksheets and recording documents in addition to the required activities and steps.

We proposed that all activities that provide information for EQR must be undertaken consistent with the protocols. Use of the CMS protocols or others consistent with ours will ensure that the conduct of the activities is methodologically sound, thereby maintaining a standard of quality for the review. However, by requiring protocols that are "consistent," rather than "identical," with those that we specify, we leave the States free to improve their protocols continuously, as the art and science of quality measurement improves.

Comment: One commenter asked that the protocols not pose an undue burden on physicians, clinical, or nonclinical personnel, noting that many physicians contract with more than one MCO and that duplicative information gathering should be avoided.

Response: EQR focuses on the MCO's and PIHP's structure and processes, and their ability to manage access to and provide quality services to Medicaid beneficiaries. The review process is not directed to individual physicians or other clinical or nonclinical personnel. However, it will be necessary for MCOs and PIHPs to request information from providers in order to conduct some of the activities required in this regulation. In recognition of the potential for burden, our request for proposal (RFP) to procure the development of the

protocols specified that, "the protocols must be sensitive to the effect the burden to produce or provide additional data and information will have on organizations' ability to carry on their day-to-day operations." We also specified that the protocols incorporate, as much as feasible, the tools, techniques, and methods to assess and improve health care quality already in place in the private sector. As a result, we believe the protocols impose the minimal additional burden necessary to carry out the statutory requirement.

Comment: In order to allow for parents to choose an MCO for their child on the basis of pediatric care, one commenter stated that the protocols should require that data on pediatric populations be analyzed apart from data on the MCO's adult population. The commenter also suggested that pediatricians and pediatric subspecialists have input into the development of the protocols.

Response: As required by statute, the protocols were developed by an independent quality review organization. In the scope of work for that contract, we required that the organization convene a panel composed of (1) current EQRO contractors; (2) CMS representatives; (3) State Medicaid agency directors, (4) managed care directors and quality system managers; (5) State licensure agencies; (6) advocacy groups; (7) health plans; (8) accrediting agencies; and (9) other experts in the area of quality improvement. A number of these panel members had experience with child health issues. We published a notice in the **Federal Register** on November 23, 2001 announcing the completion of the protocols and asking for comment on their burden. At the same time, the protocols were also made available on our website. The protocols are a methodologically sound set of generic instructions that will guide the reviewer in assessing quality. These instructions can be used for the entire Medicaid population in the MCO or PIHP or, in some instances, can be used for subpopulations such as children who receive Medicaid services. Some protocols address how MCOs, PIHPs, and States can stratify by specific populations, such as older adults or children with special health care needs. In addition, we note that States currently use many performance measures related to care for children. We, therefore, do not believe it necessary for the protocols to address pediatric populations apart from adult populations.

Comment: One commenter asked that we provide a definition for and examples of performance measures and performance improvement projects. One commenter agreed that we should not include the protocols in the proposed rule, given the dynamic state of quality evaluation and measurement. The commenter asked that we clarify what protocols for "calculating performance measures" means, that is to clarify whether it refers to protocols for the development of measures, the calculation of performance thresholds from reported measures, or some other EQR function.

Response: The definition and explanations of performance measurement and performance improvement projects are discussed in both the Medicaid managed care final rule and, in detail, in the protocols for calculating performance measures, validating performance measures, conducting performance improvement projects and validating performance improvement projects. In general, we refer to performance measurement as the calculation of the rate at which a desired event occurs. Readers are referred to the protocols available at *http://www.cms.hhs.gov/medicaid/managedcare/mceqrhmp.asp* for further discussion.

Comment: Many commenters believed that the protocols should require MCOs to report on Americans with Disabilities Act (ADA) compliance issues for themselves and their providers to ensure that persons with disabilities have an opportunity to benefit from covered services that is equal to persons without disabilities.

Response: Compliance with the ADA provisions is addressed in the Medicaid managed care final rule and in the EQR protocol entitled Monitoring Medicaid Managed Care Organizations (MCOs) and Prepaid Inpatient Health Plans (PIHPs)—a protocol for determining compliance with the Medicaid managed care final rule provisions. It is the State's responsibility to ensure that its MCOs and PIHPs comply with Federal laws, including ADA.

Comment: Many commenters recommended that the sample for calculating performance measures, including baseline and follow-up measures for performance improvement projects, should be sufficient to look at specific measures of clinical care; and that the protocols should describe how reviewers will analyze the quality of care when data are missing. The commenters also believed that the protocols should require that MCOs use a common core of widely used, objective performance measures that are issued annually and revised as needed to reflect advances in performance measurement, that these measures and their methods of calculation be publicly available, and that they include measures for persons with special health care needs. The commenters also recommended that MCOs be required to (1) collect specified HEDIS measures; (2) conduct the Consumer Assessment of Health Plan Study (CAHPS) survey; and (3) conduct a focus study annually of specialized services to persons with special health care needs. The EQR should evaluate these measures in making findings on the quality of care. Finally, the commenters asked that instructions be provided on how to adapt the measures to FFS and PCCM settings and for those enrolled less than 12 months.

Response: As stated before, the protocols are a set of methodologically sound generic instructions that will guide a reviewer in assessing quality. The protocols include instructions on proper sampling methodology, assessing missing data, and processes for analyzing data. The protocols do not specify which performance measures are to be used. Performance measures are chosen by the State or MCO or PIHP and will vary over time. The Medicaid managed care final rule gives us the authority to require specific performance measures and levels if we decide to do so in the future. The results of the EQR, however, will be made available to the public upon request and will identify the specific measures collected, the technical methods of data collection and analysis, and the conclusions drawn from the data.

The BBA placed the requirement for EQR on capitated managed care programs, but not on FFS or PCCM settings. Therefore, we do not in this rule provide an explanation of how to adapt these activities to the FFS/PCCM environment. We do, however, encourage States to address the quality of care provided in these service delivery systems. Through a new partnership initiative with State Medicaid and State Children's Health Insurance Programs (SCHIP), we will be discussing how best to apply performance measures to these two delivery systems.

Comment: One commenter asked that we retain the ability of State agencies to continue to improve the protocols as advancement occurs in the art and science of quality measurement. Several commenters stated that because the protocols may quickly become out of date because the field of quality improvement is constantly changing, they should not be promulgated as regulation. These commenters were concerned about CMS developing

detailed and lengthy protocols instead of either guidelines for States or streamlined protocols that specify only the basics for ensuring statistically sound, reliable, and valid results. One of these commenters stated that our intent appears to limit State flexibility and suggested that CMS significantly simplify the protocols to ensure feasibility for State agencies. This commenter also asked that CMS obtain State input on the draft protocols.

Several commenters believed that CMS should require that States use the protocols. One commenter felt that the proposed rule allows States to develop their own external review protocols. This commenter asked CMS to mandate the use of the protocols in order to comply with section 1932(c)(2)(A)(iii) of the Act which directs the Secretary to "* * * contract with an independent quality review organization to develop protocols to be used in external reviews conducted * * *" The commenter asserted that mandating the protocols would promote efficiency, lessen burden on the States, and promote the development of standardized data and information about services provided in Medicaid managed care.

Response: This regulation provides States with the option to use the protocols developed by us or protocols that are consistent with our protocols. We believe that by allowing States to use "consistent" protocols, States will be able to improve the protocols over time as the state-of-the-art advances and at the same time ensure that reliable and valid methods are used when conducting EQR-related activities.

The protocol documents include a discussion of the activities and steps necessary to soundly conduct the quality assessment function addressed by each protocol. In addition, each protocol includes guidance on how to implement the essential elements of the protocol as well as optional worksheets and appendices that States may use at their discretion. The activities and steps contained in the protocols are generic, relatively brief, but contain the essential components for a methodologically sound review that the statute envisions. Therefore, we believe that the protocols allow for State flexibility while ensuring the methodologically sound and valid EQR.

Comment: Several commenters noted that it is difficult to determine the full extent of the impact of the protocols on EQR activities until they are published. These commenters stated that they hope the protocols will respect States' individuality and provide flexibility whenever possible to allow for tailoring of EQR activities to local conditions and circumstances. One commenter further stated that there are many clinical guidelines and protocols that are already published, easily available, and in current use (for example, those developed by the Agency for Health Care Policy and Research (AHCPR) now the Agency for Health Care Research and Quality (AHRQ), American Heart Association, etc * * *) that are not mentioned in the proposed rule.

Another commenter stated that the protocols should be subject to full public scrutiny because they carry the full weight of the regulation. The commenter believes the protocols significantly exceed both the intent of the Congress in the BBA and the proper role of this regulation. Specifically, the commenter noted that the statute does not specify the activities that the protocols should address or other details included. The commenter was also concerned that States will find the 75 percent match for EQR activities a strong incentive to outsource this function, which the commenter believes appropriately rests with the government. As a result, this commenter believes that activities now done by the State according to locally developed protocols will be shifted to contract staff to be performed using externally derived standard protocols.

Another commenter asked that current State practices not be totally dismissed and that consideration be given to the quality improvement system for managed care (QISMC) standards and how they can be incorporated into the EQR process.

Response: We published a notice in the **Federal Register** on November 23, 2001 (64 FR 58741) announcing the completion of the protocols and asking for comment on their burden. At that time, the protocols were also made available on our website. Comments on the protocols and our responses are incorporated in this preamble. We believe the protocols are generic and can be used by all States. They are not clinical protocols like those published by AHCPR (now AHRQ), the American Heart Association, and other organizations. We believe that the protocols are consistent with the intent of the Congress in the BBA. We also note that we have provided States with great flexibility to conduct all EQR-related activities, allowing States to perform EQR-related activities either themselves or through the use of contractors, as long as they are performed consistent with our protocols. While the enhanced Federal financial match for EQR-related activities is not available under the statute if conducted by State personnel, other provisions of Medicaid law provide for enhanced Federal financial match for qualified medical activities when conducted by State staff who qualify as skilled and professional medical personnel.

The protocols are based on existing protocols already in use in the public and private sector. The contractor used QISMC guidelines as well as other public and private sector protocols in developing all the protocols. With respect to the QISMC standards (as opposed to their interpretive guidelines) we note, for Medicaid, that the QISMC standards were superceded by the Medicaid managed care final rule. QISMC standards are no longer current for the Medicaid program. For each protocol developed, specific information can be found in the protocol regarding which public and private sector protocols were reviewed and the extent to which they were incorporated.

Comment: One commenter was concerned that the JCAHO does not have a traditional background in this area and may take a different approach than NCQA.

Response: The BBA specified that the protocols be developed by an "independent quality review organization." The JCAHO was selected through an open competitive procurement process, which required them to provide evidence of their experience in protocol development. In addition, they developed the EQR protocols using existing protocols widely used in the public and private sector, including protocols used by national accrediting organizations, and national consulting firms which have developed quality measurement tools for us in the past.

Comment: One commenter asked if health plans will have to create an entirely different audit response to the protocols in addition to responding to the existing standards of NCQA and of other State entities.

Response: Because the protocols were based on quality assessment approaches already in use by public and private quality oversight organizations, we believe that the methods MCOs and PIHPs use to respond to existing private and public sector audits will be able to be used to respond to EQR. In addition, the nonduplication provisions under § 438.360 are revised in the final rule to allow States in certain circumstances to exempt both Medicare+Choice (M+C) organizations and MCOs and PIHPs meeting standards of national accrediting organizations approved and recognized by CMS for M+C deeming

from compliance with some structural standards.

Comment: One commenter stated that the protocols being developed are, in fact, EQR-related activity protocols and that there does not appear to be any protocol that will guide the analysis and evaluation of the data and information provided by these EQR-related activities. This may cause the analysis and evaluation to vary due to lack of equivalent specifications for these processes. The commenter recommended that the rule more clearly define requirements for EQR and distinguish between EQR and EQR-related activities.

Response: The commenter is correct that we do not provide a protocol for the analysis and evaluation of information provided as a result of the EQR activities in the aggregate. We do not believe that we should develop a protocol for the analysis and evaluation of all EQR information. The information derived from EQR activities will vary enormously. For instance, the variation in the types of services provided and the populations covered under the MCO and PIHP contract will impact the performance measures chosen and performance improvement projects to be conducted. Other activities are optional for States. The approach to analysis depends upon the findings of the individual EQR-related activities and we expect these findings to be as individual as the MCOs and PIHPs being reviewed. Therefore, we do not believe that we can adequately predict all the possible variations of information that will be provided to an EQRO and, therefore, we do not provide for a protocol on how to conduct an analysis and evaluation of this information. We believe it is more appropriate for us to require that the activities that provide information for the analysis and evaluation be done in a methodologically sound manner. We do specify qualifications for EQROs and thereby believe that EQROs will have the skills necessary to perform qualitative and quantitative analysis of EQR-related information and draw proper conclusions. In addition, each EQRO must provide results as specified in § 438.364 that include a technical report specifying the objectives of, methods used, description of data obtained, and conclusions drawn from the EQR.

Comment: Many commenters were concerned that there has been no public review process for the protocols and that the meetings of the expert panel have been closed to the public. The commenters recommended that the public have the opportunity to review and comment on the draft protocols, that the protocols be issued annually, and the public have the opportunity to comment on any changes to the protocols. The commenters also stated that the protocols should be made publicly available on the CMS website. Several commenters asked that we provide an opportunity for interested parties and the public to comment on the protocols. They noted that providing the opportunity for all affected entities to review and provide comment on the protocols before they are finalized will allow for a better quality product and lend credibility to the protocols. One of the commenters further noted that even though CMS convened an expert panel to review the protocols as they were being developed, consumer participation was very limited.

Response: As stated earlier, on November 23, 2001, we published a notice in the **Federal Register** announcing the completion of the protocols and requesting comment on their burden or on any other aspect of the protocols. Comments on that notice and our responses to those comments are incorporated into this preamble. We will be publishing a notice in the **Federal Register** every 3 years on the protocols as required by the Paperwork Reduction Act. This notice will provide the opportunity for the public to comment on the burden or any other aspect of the protocols. The protocols are available to the public on the CMS Web site at *http://www.cms.hhs.gov/medicaid/managedcare/mceqrhmp.asp*.

Comment: One commenter requested that in developing the protocols, JCAHO take into consideration that some factors that affect MCO performance are not within the control of the MCO, such as instability in eligibility status and changes in the characteristics of the enrolled Medicaid population.

Response: We agree that measuring performance on the Medicaid population needs to take into account issues such as changes in eligibility status. The protocol on performance measures recognizes those issues.

Comment: Because of the length of the protocols and the need to change them on an ongoing basis, one commenter requested that we clarify that the protocols be issued as guidelines rather than requirements and that we clarify the flexibility States will have in implementing them.

Response: Section 1932(c)(2)(A)(ii) of the BBA requires that protocols be used in the conduct of EQR activities. We provide States the option to use our protocols or protocols consistent with those we develop.

E. Qualifications of External Quality Review Organizations (§ 438.354)

Section 438.354 of the proposed rule set forth the requirements that an entity would be required to meet in order to qualify as an EQRO under the new BBA external review provisions in section 1932(c)(2) of the Act. The proposed rule did not specify categories of entities that would be qualified to perform EQR under section 1932(c)(2) of the Act. This is a departure from the existing external review requirement in section 1902(a)(30)(C) of the Act (which will no longer be in effect when these final regulations are implemented), under which only certain entities could perform external review. (These entities were: (1) A "quality improvement organization" (QIO) that contracts with Medicare to perform review (QIOs were formerly known as quality control peer review organizations, or "PROs"); (2) an entity that meets the requirements to contract with Medicare as a QIO; and (3) a private accreditation body. Only contracts with the first two categories were eligible for a 75 percent matching rate under the pre-BBA rules.)

Under proposed § 438.354, in order to qualify, entities would be required to meet specified competence and independence standards. We proposed two tests of independence. Under the first proposed test, the EQRO and any subcontractors would have to be independent from the State Medicaid agency and from any MCO or PHP they review. Second, the relationship between the MCO/PHP and the EQRO could not involve any potential conflicts of interest. We specifically requested comments on (1) how better to identify situations that create conflict of interest; (2) the proposal to allow State entities to qualify as EQROs; and (3) our decision in the proposed rule to apply the "independence" requirement to subcontractors as well as contractors.

We also proposed that EQROs be selected by State agencies through an open, competitive procurement process. As noted in the preamble to the proposed rule, CMS would not, under our proposal, approve EQR contracts. However, contracts entered into by the States would be subject to review to ensure that, as a condition for FFP at the 75 percent rate, the State agency followed all applicable procedures and criteria. This proposed procedure is consistent with current practice, which is for State agencies to use competitive procurements to select EQROs that perform review under section 1902(a)(30)(C) of the Act. It is also standard practice for our regional office staff to monitor implementation of

Medicaid managed care initiatives. For EQR, regional office staff may review the State's most recent RFP for external review services, the EQR contract, or the EQR reports.

Comment: One commenter asked that a review of the current EQR process under section 1902(a)(30)(C) of the Act be performed by an independent review body to assist the Secretary in deciding whether current contractors are performing adequately.

Response: Section 1932(c)(2)(A)(ii) of the Act clearly instructed us, in consultation with States, to establish a method to identify entities qualified to conduct EQR. We chose to pursue a method that would allow States to have access to the greatest number of entities with the qualifications necessary to perform EQR and EQR-related activities. Therefore, we did not limit ourselves to a review of current contractors. permitted to perform review under section 1902(a)(30)(C) of the Act, but attempted to discern all types of contractors that States have found capable of performing EQR-related activities. We believe this will provide States with much needed flexibility to promote greater competition and improvement among potential EQR contractors.

Comment: One commenter supported the provisions in the proposed rule that allowed for a variety of organizations to serve as an EQRO, but cautioned that EQRO criteria should include an unbiased approach to managed care. The commenter expressed concern that an anti-managed care organization could be awarded the contract, and that this would adversely affect the organization's ability to objectively make an assessment of MCO strengths and weaknesses and making recommendations for improvement.

Response: A State may contract with any entity to conduct EQR as long as the entity meets the competency and independence criteria. EQR is an important component of a State's quality strategy, and we trust that States will select entities to conduct EQR that will perform objective reviews.

Comment: Many commenters supported this provision because it provides States with more flexibility to contract with a range of organizations while still obtaining the 75 percent matching rate currently limited to contracts with QIOs, and entities that meet the requirements to contract as QIOs. Several of these commenters specifically supported the competence and independence standards proposed. One commenter agreed that the regulation should require organizational qualifications.

One commenter, however, found the requirements vaguely defined, and recommended that we stipulate additional requirements, such as proper licensure or certification from accrediting organizations for performance of validation of performance measures and surveys. Another commenter expressed concern that the proposed competency criteria would encourage the use of entities that are less qualified than the QIOs with which most States currently contract. The commenter believed that QIOs as nonprofit organizations, were independent, objective, and had access to needed physicians and experience in quality improvement. The commenter recommended that § 438.354(b)(1) be revised to read, "require an organization to have staff with appropriate credentials and demonstrated experience."

Response: The BBA required us to work in consultation with States to establish a method for the identification of entities qualified to conduct EQR. We believe that had the Congress desired to retain the three categories of entities allowed to perform EQR under section 1902(a)(30)(C) of the Act, it would have done so. Similarly, the Congress could have easily stated that only QIOs should perform EQR. The Congress chose neither of these approaches, but instead asked us to establish a method to identify qualified entities. We believe that the Congress chose to respond to States' frequently stated desires to have a greater range of organizations with which to contract. Therefore, under the auspices of the National Academy for State Health Policy (NASHP), we worked with States, consumer advocates, and other stakeholders to provide us with their recommendations on a methodology to identify qualified entities. Many commenters strongly supported the competency provisions, we proposed under § 438.354(b). Therefore, the final rule retains these requirements from the proposed rule. We leave it up to States to determine if they would like to impose additional requirements such as certified vendors. We agree that demonstrated experience should be required of an EQRO, and in response to this comment, we have changed § 438.354 (b)(1) to require staff with demonstrated experience.

We also made some revisions to proposed § 438.354(a) to clarify that these provisions apply to those entities a State contracts with as an "EQRO," regardless of whether the EQRO performs EQR or specific EQR-related activities.

Comment: One commenter felt that the proposed conflict of interest requirements failed to recognize that since the State contracts with the EQRO, the EQRO would be reluctant to tell the State what it may not want to hear. The commenter recommended having the EQRO funded by an external Federal agency, such as AHRQ (formerly AHCPR), or to require or create financial incentives to have the State report on comparable performance measures for all MCOs licensed in the State.

Response: Section 1932(c)(2) of the Act explicitly requires States that contract with Medicaid MCOs to provide for an EQR of each MCO, and provides for an enhanced Federal match rate for this review. We believe that it is clear that the Congress intended that States share the costs of EQR, and be the contracting party. We do not agree with the commenter's assumption that the State will not want to be informed if an MCO or PIHP is not performing adequately. We believe the provisions in this rule will encourage States to use EQROs to conduct numerous quality activities, both because of the flexibility that the rule provides to States, and because of the availability of the 75 percent enhanced match for these activities without regard to whether the entity performing review is a QIO or meets the requirements to contract as a QIO.

Comment: One commenter requested that EQROs be required to include clinical staff with pediatric training in order to be qualified to review a Medicaid MCO. One commenter recommended that the entity be required to have staff with knowledge of section 504 of the Rehabilitation Act of 1973, and of titles II and III of the ADA, based on the commenter's research suggesting that individuals who have mobility impairments routinely encounter physical barriers to care. The commenter's research also indicated that access to preventive care was significantly lower for individuals who use wheelchairs, and few PHPs know which of their clinicians are accessible to patients with mobility or sensory impairments.

Response: We do not agree that it is necessary to include specific requirements for EQROs to have clinical staff with pediatric training in order to qualify to review an MCO or PIHP. Section 438.354(b)(3) requires that the organization have the clinical skills necessary to carry out the EQR activity, which we believe requires that the EQRO or its subcontractor have the necessary training. We also do not agree with the commenter's suggestion that we specifically require an entity to have staff with knowledge of the Rehabilitation Act or the ADA. While

MCOs and PIPHs are required to comply with these laws, there are separate enforcement mechanisms for ensuring compliance with their provisions. We note that it is the responsibility of an EQRO to assess the MCO's or PIHP's ability to provide access to services in a timely manner. If this is accomplished for all enrollees, this would, in effect, constitute compliance with these laws. Through its review of compliance with State-established structural standards, as required in § 438.358(b)(3) of the final rule, the EQRO must ensure that Medicaid beneficiaries, including those who are disabled, do not encounter barriers to care.

Comment: One commenter suggested modifying proposed § 438.354(b)(1)(iii) to read "* * * include quality assessment and improvement technologies and methods."

Response: We agree with the commenter's suggestion that the word "methods" be used and believe that this term already encompasses technologies that may be employed by the State as a method for assessing and improving quality. Accordingly, in response to this comment, we are revising § 438.354(b)(1)(iii) to use the word "methods."

Comment: One commenter supported our proposal to allow State agencies to qualify as EQROs in certain situations. Another commenter believed it would also be appropriate for the State HMO licensing organization to be eligible to be an EQRO. Conversely, one commenter felt that EQROs should be independent of most State agencies, particularly Medicaid purchasing or managed care licensing authorities. Another commenter believed that it was extremely important that the definition of independence be explicit for State Medicaid agencies, and that CMS's regional offices should review determinations as to the independence to make sure that true independence is obtained. This was based on concern over what the commenter saw as an inherent conflict of interest permitted under our proposed rule. In the commenter's view, this conflict arises from the fact that State agencies, departments, and universities are ultimately accountable to State legislatures and the Governor who act on purchasing decisions made by the State Medicaid agency, and who appoint members to boards of these entities. One commenter expressed the view that no State agency is truly independent and recommended prohibiting State entities from serving as EQROs.

Response: Section 1932(c)(2) of the Act requires that a State contract with an independent organization in order to get the enhanced 75 percent FFP for EQR. The expert panel composed of State representatives, advocacy organizations, and other stakeholders that was convened under the auspices of the NASHP recommended that we allow State agencies to qualify under certain circumstances as EQROs. Because we agree with this recommendation and believe it to be reasonable with the safeguards on independence we have in place, the final rule retains the independence requirements that permit State Agencies under certain circumstances to qualify as EQROs. We note that we have received only a few comments opposing our proposal to let State entities qualify as EQROs. CMS regional office staff will assess the EQRO contracts to ensure compliance with the provisions of this rule as part of regular monitoring reviews.

Comment: One commenter did not agree with the requirement that a State entity be governed by a board or similar body, the majority of whose members are not government employees, in order to qualify as an EQRO. The commenter believed that State universities should be permitted to be EQROs because they can produce high quality work for significantly less cost than QIOs.

Response: We understand that the requirement will limit the number of State entities that can qualify as EQROs, including some State universities. We took this recommendation from the expert panel convened under the auspices of the NASHP. This panel included State licensure and Medicaid representatives. We are aware that several States have State entities that meet the criteria set forth in the proposed rule. We have received minimal comments opposing this provision. We conclude that this is a feasible arrangement, and think that the provisions related to the governing board are appropriate and necessary in order to fulfill a requirement for meaningful independence. We also believe it represents a reasonable compromise between banning State entities altogether, and allowing any entity to serve as an EQRO. Therefore, the final rule retains the governing board provision.

Comment: One commenter representing a Medicaid program not operating in the continental United States felt that the proposed independence criteria would have the effect of precluding all of its governmental procurement possibilities related to EQR. The commenter recommended that the independence criteria be waived, or that implementation be postponed, due to the financial burden the commenter believed that the rule would impose on it because it would have to contract with EQROs in the continental USA.

Response: The statute requires that the EQRO be an independent entity. Consistent with the interpretation of "independence" under the existing external review requirement in section 1902(a)(30)(C) of the Act, we interpret this to mean independent from both the MCO/PIHP and from the State. Thus, it is not clear how this final rule would create a financial burden by referring a contract with an outside entity, since this is already required. We do not agree that exceptions should be made based on a Medicaid program's ability to contract with an EQRO locally. We recognize that many State agencies, departments, and universities do not meet these criteria. However, as noted above, several States do have State entities that meet the independence criteria. We also note that this regulation provides more flexibility than in the past for a variety of organizations to qualify as EQROs.

Comment: One commenter disagreed with our proposal to apply the independence requirement to subcontracts, suggesting that this would result in States being unable to take advantage of the experience of nationally renowned experts affiliated with academic health centers that have ownership interests in MCOs that serve Medicaid beneficiaries. In contrast, one commenter endorsed applying independence criteria to EQRO subcontractors as balanced and reasonable.

Response: The independence provisions are broad enough to allow for a variety of organizations to qualify as EQROs and a variety of experts to subcontract with EQROs. In formulating the provisions, we sought balance between providing flexibility to States to choose from numerous qualified entities, and ensuring that entities were sufficiently independent from the State and the MCOs and PIHPs. We realize these requirements will limit some contracting opportunities when experts or the organizations for which they work do not meet the independence criteria.

Comment: Many commenters agreed with the expert panel recommendation that the EQRO should not share management or corporate board membership with the MCO it reviews. The commenters also suggested that the individuals employed by the EQRO or subcontracting with the EQRO should be free of any potential conflicts of interest with the MCO that they review.

Response: In the preamble of the proposed rule, we explained that we did not solely rely upon the recommendation that an EQRO should not share management or corporate board membership with the MCO it reviews, because we do not think this criterion is stringent enough to ensure against conflict of interest. Therefore, we incorporated in § 438.354(c)(3)(i), the concepts of "control" in 48 CFR 19.101, which effectively preclude affiliation between the EQRO and the MCO/PIHP under review. Specifically, this means that there can be no control through common management (which includes interlocking management, common facilities, and newly organized concerns) as well as through stock ownership, stock options and convertible debentures, voting trusts, and contractual relationships (which includes joint ventures, that is, procurement and property sale assistance and franchise and license agreements). We retain this provision in our final rule. In order to provide further clarification in § 438.354(c)(3)(i) of the final rule (§ 438.354(c)(3) of the proposed rule), we now specify the different types of control addressed in § 19.101. In determining whether this type of control exists, the details in § 19.101 under each category would apply.

Comment: Several commenters recommended strengthening the requirements for EQRO independence from MCOs by revising § 438.354(c)(3) to read as follows: "A private entity may not (1) have managed care licensing authority, including the authority to certify managed care plans in compliance with standards that serve as the basis for deemed certification with Federal or State regulatory standards; (2) deliver any health care or related services to Medicaid recipients for which it is paid by the Medicaid State agency or by a managed care plan. Related services include enrollment services, grievance resolution, external review of health care coverage decisions, or other similar activities; (3) conduct, on the State's behalf, any other ongoing Medicaid program operations related to oversight of the quality of MCO services; and (4) have financial interest that would prevent it from exercising independent judgement when engaging in EQRO activities." The commenters also suggested adding a new § 438.354(c)(4) providing that "a private entity must be governed by a board or similar body, the majority of whose members are not MCO employees." Another commenter did not agree with the provision that prohibits an organization from performing EQR if it also conducts ongoing Medicaid program operations related to quality, arguing it could be less expensive to use a single contractor to perform multiple functions. One of the commenters found the definition of control in 48 CFR 19.101 a useful concept, but felt that it has little relevance to the potential organizational relationships between EQROs and MCOs in the Medicaid program.

Response: The independence criteria set forth in the proposed rule did not address those private organizations that provide health care services to Medicaid beneficiaries or that conduct ongoing Medicaid program operations related to quality. We agree with the commenters that organizations performing these functions have a conflict of interest. Therefore, in response to this comment, we are revising § 438.354(c)(3)(ii) in this final rule to preclude private organizations, as well as State entities, that provide health care services to Medicaid beneficiaries from qualifying as EQROs. We also are revising § 438.354(c)(3)(iii) to preclude private organizations as well as State entities, that conduct ongoing Medicaid managed care operations related to quality from qualifying as EQROs. We narrow the scope of this provision from entities that conduct program operations to entities that conduct managed care related operations in order to allow States to contract with entities that conduct quality activities for the States such as FFS medical and utilization review activities. We agree with the last commenter who agrees that it will be more efficient for States to use a single contractor to perform multiple functions; therefore, we intend to allow entities that conduct limited quality activities such as providing technical assistance to States in the collection of encounter data or who assist the State in other quality improvement areas to qualify as an EQRO. These activities would not be considered ongoing operations conducted on behalf of the State.

We do not permit an entity to qualify as an EQRO if that entity conducts activities that State staff would otherwise conduct in Medicaid managed care program operations related to quality oversight. As an example, a State university or consulting firm that designs and implements or has significant responsibility for the State's Medicaid managed care program operations would not qualify as independent.

We do not agree with the commenter who recommended that the independence provisions should preclude any organization from being an EQRO that has the authority to certify managed care plans in compliance with standards that serve as the basis for deemed certification with Federal or State regulatory standards. These organizations, while they may provide services under contract to a State, follow their own independently set standards and procedures. We believe that States should be permitted to contract with these organizations to consolidate review processes. This is consistent with congressional intent as indicated by the nonduplication and deemed compliance provisions in sections 1932(c)(2)(B) and (C) of the Act.

As stated above, we agree with the commenters' suggestions to revise the independence criteria as it applies to private organizations that deliver health care services to Medicaid beneficiaries or who, on behalf of the State, conduct Medicaid managed care program operations related to quality. However, we do not agree with the commenters' suggestions to add to this provision health care-related services such as enrollment services, grievance resolution, and review of health care coverage decisions. We leave it to the States to determine if health care-related services are Medicaid managed care program operations related to quality, in which case the organizations would be precluded from qualifying as an EQRO. In addition, States have the flexibility to adopt a more strict standard for "independence" if they wish and to deny entities that provide any health care-related services from contracting as an EQRO.

We agree with the commenters' suggestions that the final regulation include a provision to prohibit an EQRO from having a financial interest that would prevent it from exercising independent judgement when engaging in EQRO activities. The types of "control" addressed in 48 CFR 19.101 address financial relationships involving such things as stock options and convertible debentures. To be consistent with other CMS regulations, however, and in order to respond to this comment, we believe the financial relationship between organizations must be addressed in the conflict of interest requirements. Therefore, we revised § 438.354(c)(3)(iv) to address direct and indirect financial relationships. We also have added a definition for financial relationships under § 438.320.

We believe the language in proposed § 438.354(c)(2) addresses the suggestion by one commenter that we add a provision requiring a private entity to be governed by a board or similar body, the majority of whose members are not

MCO employees. By referencing 48 CFR 19.101, specifically § 19.101(f)(1), a concern is considered controlling through interlocking management if officers, directors, employees, or principal stockholders serve as a working majority of the board of directors or officers of another concern. As noted above, to provide clarification, the final rule under § 438.354(c)(3)(i) (§ 438.354(c)(3) of the proposed rule) specifies the elements that constitute control of one entity over another as those in 48 CFR 19.101.

Comment: Several commenters expressed support for our independence requirements. One commenter supported our proposal to allow States to contract with entities that possess the necessary skill and expertise to conduct the mandatory and optional EQR activities, but suggested that we query State agencies for specific citations or contract language that they have used to define independence, or for concrete examples of situations that may create conflicts of interest. The commenter also suggested that we consider delineating specific competence standards for each of the mandatory activities. One commenter agreed that it is critical for CMS to establish a set of criteria to which States must adhere when selecting EQROs.

Response: At the expert panel meeting convened under the auspices of the NASHP, we asked the panel for recommendations on how to define conflict of interest. This panel included State representatives as well as representatives from advocacy organizations and other stakeholders. The expert panel recommended that independence be established by requiring the disclosure of any ownership interest of greater than 5 percent of the entity seeking to become an EQRO. As was discussed in the proposed rule, we believe this "disclosure of ownership" requirement is inadequate to ensure independence, first, because is does not preclude an entity from being an EQRO but only requires disclosure of the financial interest, and second, because there may be other types of conflicts such as interlocking management, common facilities, and so forth. Moreover, in the proposed rule, we requested comments on how better to identify situations that create conflict of interest. As noted above, we made some changes based on comments we received.

We do not believe that it is necessary for us to revise the competency requirements to address each EQR activity. The criteria outlined in the proposed rule were intentionally broad to provide States with the flexibility to contract with one or multiple entities that have the skills necessary to conduct the particular activity/activities under contract. For example, if a State wants to have one of its EQROs conduct only encounter data validation, to meet the requirement under § 438.354(b)(3), the EQRO would not need to possess the clinical skills but would need the "nonclinical skills" in its organization (or through a subcontract) to conduct encounter validation.

Comment: A commenter believed that the proposed rule did not make clear who, specifically, would be responsible for designating an entity as an EQRO. The commenter recommended that this responsibility rest in our Office of Clinical Standards and Quality, as it already has oversight responsibility for Medicare's Health Care Quality Program.

Response: Under this rule, States are required to select and thereby designate EQROs through an open, competitive procurement process. CMS will not be designating EQROs, as it currently does in the case of QIOs and entities claiming that they meet the standards to contract as a QIO. When monitoring State Medicaid managed care programs, CMS regional office staff have the opportunity to review RFPs, contracts, and EQR results to ensure compliance with the EQR provisions.

F. State Contract Options (§ 438.356)

This section set forth proposed requirements State agencies would be required to follow, and options that they would have selecting EQROs. We proposed that State agencies may contract with more than one EQRO. The final rule in § 438.356 (a)(1) and (a)(2) reflects clarifications made to the provisions based on comments discussed in an earlier section of the preamble.

We also proposed that each EQRO be permitted to use subcontractors. EQROs that use subcontractors are accountable for, and required to oversee, all EQR activities performed by the subcontractors. In addition, we proposed that each EQRO be required to meet the competency requirements, and each EQRO and EQRO subcontractor be required to meet the independence requirement. We also proposed that State agencies follow an open competitive procurement process that is in accordance with State law and regulation and consistent with 45 CFR part 74, as it applies to State procurement of Medicaid services.

Comment: Several commenters supported the language in § 438.356 as proposed. One commenter specifically agreed that all subcontractors should be required to meet the test of independence, and that the contract must be procured through a competitive bid process.

Response: We appreciate the commenter's support for the provisions, and have retained them in the final rule.

Comment: One commenter believed that a competitive bidding process was the most appropriate way for States to secure efficient cost-effective reviews.

Response: We agree that competitive bidding provides the best means to select a qualified contractor at the best price, and we retain the requirement for competitive procurement of EQROs in the final rule.

Comment: One commenter asked us to clarify whether the State Medicaid agency could contract directly with a State organization without using a competitive procurement process if the State organization otherwise meets the standard of being "independent," and meets the requirements of a qualified EQR.

Response: The Department of Health and Human Services has regulations governing the extent to which States are required to competitively procure contracts. Those regulations apply to EQRO contract as cited under § 438.356(e).

G. Activities Related to External Quality Review (§ 438.358)

Section 438.358 proposed a requirement that EQR utilize information obtained from specified mandatory activities that must be performed by the State agency, a State agent, or the EQRO. Proposed § 438.358 also identified optional activities that the State agency or its agent may perform, or have the EQRO perform, to produce additional information for use in EQR. The mandatory activities are consistent with the requirements set forth in the Medicaid managed care final rule. The optional activities were not included in that rule. They are, however, activities that States have had their EQR contractors perform in the past.

We proposed that each year, the EQRO must use information obtained from the validation of performance improvement projects performed that year, and the validation of performance measures reported that year, by the MCO. To be consistent with the private sector, however, we proposed that information used by the EQRO from a review of MCO and PHP compliance with State structural and operational standards be from the most recent review performed within the previous 3 years.

Proposed § 438.358 also would allow States to have their EQROs provide technical guidance to groups of MCOs and PHPs to assist them in conducting the mandatory and optional EQR-related activities.

Comment: One commenter requested that States be required to provide technical support to MCOs to ensure that pediatric measures are implemented. The commenter also expressed a concern that the proposed EQR regulations did not separately address children with special health care needs, noting that it was critical that CMS require State Medicaid managed care programs to provide adequate protections and considerations for these children.

Response: States have the flexibility to provide technical support to MCOs and PIHPs on pediatric measures as well as generic measures, preventive care measures, measures for disabled adults, or any other measures. This rule does not require this technical support, however, because we do not believe that it would be necessary in all cases.

With respect to special needs children, this regulation implements the BBA EQR provisions by specifying who is qualified to conduct EQR and what information should be included in such a review. The Medicaid managed care final rule requires States to have quality strategies that must include procedures that assess the quality and appropriateness of services provided to all Medicaid enrollees under MCO and PIHP contracts. This includes children with special health care needs. The EQR will evaluate activities undertaken by MCOs and PIHPs in accordance with the State strategies. States can elect to have their MCOs and PIHPs determine what measures to collect or States can require MCOs and PIHPs to collect specified measures appropriate to the populations served.

Comment: One commenter strongly recommended that these regulations mandate that States require MCOs to develop and administer a provider satisfaction survey. The commenter thought this would allow the MCOs to use the results of the surveys to identify additional approaches to enhance quality of care. It also would allow States to identify MCOs that may be poised to experience a rapid withdrawal of providers, which could place beneficiaries at risk of having difficulty accessing care, or otherwise disrupt their medical home. Another commenter felt that the validation of consumer or provider surveys would be difficult. This commenter asked whether we were proposing that EQROs contact respondents to ask them if the answers that were recorded were the answers given.

Response: This rule does not require that States have their MCOs and PIHPs develop or administer consumer or provider surveys. It does, however, allow States to have their EQRO administer or validate a consumer or provider survey, and receive the 75 percent enhanced match for this activity as long as the EQR survey protocol or a consistent protocol to the one we developed is used. The EQR survey protocol does not require that respondents be contacted to validate survey responses. We agree that this would be costly and burdensome. The survey protocols outlines generic steps that must be followed to ensure reliable and valid methodological approaches to administer and validate surveys.

Comment: One commenter recommended that we require that EQROs measure and report the participation of pediatricians, pediatric medical subspecialists, and pediatric surgical specialists when conducting activities related to the establishment of provider networks.

Response: EQRO reviews for compliance with structural and operational standards will include a review of the delivery network. The review will ensure, consistent with the Medicaid managed care final rule, that MCOs and PIHPs maintain and monitor a network of appropriate providers to furnish services covered under the contract and that they consider the anticipated Medicaid enrollment with particular attention to the needs of enrolled children; the expected utilization of services; and the geographic location of providers and enrollees. When developing and maintaining their provider network, MCOs and PIHPs will also need to consider the characteristics and health care needs of enrollees.

Comment: One commenter believed that while it arguably was reasonable to require external auditing of broad, publicly disclosed quality performance measures, the same mandate should not be imposed on other quality improvement data such as the findings of focused clinical studies. In this commenter's view, these types of data are intended to promote MCO self-assessment and stimulate quality improvement activities, and should not be subject to an external audit.

Response: We do not agree with the commenter that the findings of focused studies or other quality improvement projects should not be subject to an EQR. Our Medicaid managed care final rule requires MCOs and PIHPs that contract with States to provide Medicaid services to conduct performance improvement projects, calculate performance measures, and comply with structural and operational standards. In order to ensure compliance with these requirements, we believe a review of all these activities is essential to determine the quality, timeliness, and access to services provided to Medicaid beneficiaries. However, § 438.364 requires that only the aggregated findings of the EQRO analysis of all information derived from the EQR activities be produced, and it is only this summary information that is to be made available to the public upon request.

Comment: One commenter believed that it was vital to include in EQR a range of activities beyond "focused studies" and medical record review. This commenter felt that the mandatory activities proposed would require the collection and use of data from multiple sources, and that we may want to consider mandating the validation of primary data sources such as encounter data and survey data. Another commenter asked that focused studies be a mandatory activity, and that MCOs be required to show measurable improvement in them. One commenter supported our establishing mandatory activities as well as the optional activities that are eligible for the 75 percent matching rate.

Response: We are aware of the importance of the integrity of the MCO's and PIHP's underlying information systems for the conduct of some EQR activities, and we address this issue in the protocols for review for compliance with structural and operational standards, performance measures, and encounter data. We do not include focused studies as one of the mandatory activities in this regulation because the Medicaid managed care final rule requires that MCOs and PIHPs conduct performance improvement projects. A performance improvement project begins with a focused study to select a clinical or nonclinical topic and measure performance in that area, but takes steps beyond a focused study to implement activities to improve performance. This regulation requires that the State include information regarding the validation of these studies as part of EQR.

Comment: Several commenters were concerned that this rule potentially would permit EQROs to analyze and evaluate data collected by a party not subject to the same conflict of interest requirements as the EQRO. These commenters were concerned that the EQRO would be held accountable for the validity, accuracy, and reliability of

the MCOs' projects without necessarily having access to the raw data. One of the commenters suggested that there be continued discussions with the QIO community about the need for raw data files from MCOs in order to evaluate the performance improvement projects and performance measures. The commenter also felt that EQR performance measures should be standardized and consistent to allow comparisons among the States, and among the MCOs operating in more than one State. Another commenter recommended that the final rule require that EQR activities be carried out by the EQRO. If the information provided for the EQR is collected by the State or another agency, the commenter suggested that the EQRO be required to validate the data or information before analyzing it or forming conclusions about quality, timeliness, and access.

Response: In order to receive the enhanced 75 percent Federal match provided for in section 1903(a)(3)(C)(ii) of the Act, we believe most States will use an EQRO to conduct the mandatory EQR-related activities. However, in order to provide flexibility to States to coordinate their quality oversight activities, we permit States or their agents to perform the mandatory EQR activities, and only require that States use an EQRO for the conduct of EQR (as defined under § 438.320) and for the production of the EQR results as specified under § 438.364. If a State chooses not to have an EQRO conduct the mandatory activities, the State still needs to use, or have its contractor use, our protocols or protocols that are consistent with ours when conducting these activities. The State will also need to provide the EQRO with the information specified under § 438.364(a)(1)(i) through paragraph (iv) for each of the EQR-related activities as required in § 438.350(b). We believe this last requirement may not have been clear in our proposed rule, and we have therefore provided a cross-reference to § 438.364(a)(1)(i) through paragraph (iv) in § 438.350(d) in this final rule. This clarification addresses the comments above by identifying the types of information we expect to be provided to an EQRO if the State or a contractor other than the EQRO is conducting the EQR-related activity. We also provide clarifying language in a new § 438.358(a) of this final rule, which sets forth a general rule making clear that a State can conduct, or have another State contractor or the EQRO conduct, the mandatory and optional EQR-related activities that provide information for the EQR function.

We do not agree that the EQRO must revalidate activities already validated by the State or another State contractor that uses our protocols. We believe the use of the protocols will ensure that each of the activities, including an assessment of the underlying data systems, is conducted using reliable and valid methods.

We are not requiring standardized performance measures. In our Medicaid managed care final rule, we require States to require MCOs and PIHPs to use standard measures. The Medicaid managed care final rule also gives CMS the authority to prescribe standard measures in consultation with States and other stakeholders. Currently, States have the flexibility to determine which measures they will require of their MCOs and PIHPs. The CMS protocol for performance measures sets out a standard method to validate performance measures. We have also developed a protocol for calculating performance measures, as this is an optional EQR-related activity.

Comment: One commenter believed that allowing the use of information obtained by the State or its agent for EQR means the information is not truly independent. The commenter further contended that the methods used by the State or its agent do not have to be consistent with the EQR protocols, since the State or its agent is not an EQRO.

Response: Consistent with provisions at § 438.350(b) and (c), whoever conducts the mandatory or optional EQR-related activities must use the protocols or methods consistent with the protocols. We have made this clear in the final rule.

Comment: Several commenters noted that the activities under § 438.358 are currently in some cases conducted by the State, the county, or both. They added that having the EQRO perform this same activity, or even review these activities would be redundant and costly. One of these commenters suggested that we allow these activities to be done directly through the State or county survey process.

Response: EQR-related activities may be conducted by the State or by any State contractor other than the MCO or PIHP as long as the activities are conducted consistent with our protocols. However, if a State chooses to have its EQRO conduct these activities it can obtain the enhanced 75 percent Federal match under section 1903(a)(3)(C)(ii) of the Act.

Comment: One commenter asked that we clarify whether information derived from optional activities performed by other fiscal government agencies could be used by the EQRO.

Response: As long as the other agency uses our protocols or methods consistent with the protocols, the information derived from EQR-related activities performed by other State agencies can be used as part of EQR. The State, however, would not be able to receive the enhanced 75 percent Federal match unless the other government agency qualified as an EQRO, and the contract to conduct the activities was procured consistent with § 438.356(e). We clarify in this final rule that the information obtained from optional EQR-related activities must be from information derived from optional activities conducted within the preceding 12 months.

Comment: Several commenters believed that MCOs should be required to report on standardized performance measures for specific conditions. One of these commenters also recommended that MCOs be required to report on aggregate measures of changes in health status for all people who meet a definition of disability. The commenter further urged that the development of these measures be a priority for both quality assurance and reimbursement purposes.

Response: As stated previously, the Medicaid managed care final rule provides States with the authority to specify what performance measures to require their MCOs and PIHPs to calculate and report. We are allowing this flexibility because State Medicaid managed care programs differ in the services they contract for and the populations served by MCOs and PIHPs. We think it is important that States be able to make comparisons across their contracting MCOs and PIHPs and, where this information is available, we require that it be provided as part of the EQR results as specified in § 438.364(a)(4). However, while the Medicaid managed care final rule provides CMS with the ability to prescribe performance measures in consultation with States and other stakeholders, at this time we are not requiring the collection of comparative data nationwide.

We are also not requiring that States collect health status information from their MCOs and PIHPs. States are free to do this if they choose, and an increasing number of States are assessing the health status of MCO and PIHP enrollees for purposes of risk adjusting payments, or for quality activities. This rule also allows States to have their EQRO administer consumer surveys and obtain an enhanced Federal match of 75 percent. Approximately 30 States currently administer consumer surveys, primarily the CAHPS survey, which collects health status information from the perspective of consumers.

Comment: One commenter felt that the EQR-related activities were not clearly defined, and were limited in scope. The proposed language did not appear to the commenter to require the State to provide actual data to the EQRO, only information on the validation of the data. The commenter was concerned that the State could report to the EQRO that the data are valid, without actually providing the data itself.

Response: We do not agree with the commenter that the EQR-related activities are limited in scope. The activities reflect those that States have used existing EQR contractors to conduct in the past. These activities are more fully explained in the protocols that we reference in this final rule. On November 23, 2001, we published a notice in the **Federal Register** announcing the completion of these protocols noting their availability on our website and asking for comment on the extent to which they impose a burden, as well as any other issues the commenters wished to raise. Our protocols clearly define EQR activities, and the steps needed to conduct these activities in a valid and reliable manner. As noted in the preamble of our proposed rule, the full content of the protocols themselves was not included in the proposed rule, and is not included in this final rule because the protocols are more detailed than appropriate for Federal regulations, will need to be revised as the state-of-the-art of quality improvement changes, and States may use other protocols as long as they are consistent with those we developed. The need for the EQRO to have raw data will depend on the activities a State chooses to have its EQRO perform. For the actual conduct of EQR as defined in § 438.320, as well as the mandatory activities, access to raw data will not be needed. If the EQRO conducts all of the mandatory activities, it will be responsible for validating the methodological approach used by the MCO and PIHP for the conduct of performance improvement projects, and the calculation of performance measures. Regardless of who conducts the EQR-related activities, the CMS protocols, or a method consistent with the CMS protocols, must be used, and the information derived from the activity, as specified in § 438.364(a)(1)(i) through paragraph (iv), must then be provided to the EQRO.

Comment: One commenter did not support our decision to make performance improvement projects a mandatory activity, while focused studies are an optional activity. The commenter expressed concern that performance measures tend to focus on things that are easy to fix, and do not always provide a reliable picture of quality across a broad range of concerns.

Response: As the state-of-the-art of quality assessment and improvement has changed, we have found it more suitable to implement performance improvement projects than focused studies. Focused studies aim to assess the quality of care provided at a point in time, whereas performance improvement projects, in addition to assessing a focused area of care at a point in time, aim to initiate an intervention to improve care over time. In our proposed rule, we discussed the limitations of solely using focused studies, without information from other quality activities, to assess the care provided to all enrollees of a State Medicaid managed care program. It is for these reasons that improvement projects are mandatory while focused studies are optional. We note, however, that States may employ focused studies and use an EQRO to conduct this activity, thus accessing the enhanced 75 percent Federal match under section 1903(a)(3)(C)(ii) of the Act.

In this rule, we provide for a multipronged approach to quality improvement that uses information from three sources: (1) Determination of compliance with standards, (2) validation of performance improvement projects, and (3) validation of performance measures. We believe that this approach will provide for a reliable assessment of the quality, timeliness, and access to care provided to Medicaid beneficiaries by an MCO/PIHP.

Comment: One commenter interpreted the proposed rule to prohibit States and EQROs from conducting focused studies, and to instead require States to perform comprehensive reviews of all areas of the MCO contracts every year. This commenter recommended that we reconsider the scope of annual review, suggesting that a 1 year cycle does not allow sufficient time to procure an EQR contract, conduct and complete EQR activities, and report results on the EQR as specified in this rule. The commenter also recommended that we allow for a multiyear rotational approach to quality measurement and improvement (for example, rotate specified performance measures, focused clinical topic reviews). One commenter similarly believed that 1 year was too short a period of time in which to conduct the activities under § 438.358 (a)(1)(i) and (ii) of the proposed rule. This commenter suggested that this time period instead be left up to the State agency. Another commenter recommended that we require only that the information used by the EQRO for validation of performance improvement projects be from the most recent review performed within the previous 3 years, rather than requiring a yearly review.

Response: Section 1932(c)(2) of the Act requires an annual external review. In the final rule, we require that there be three sources of information used in this review. First, for performance improvement projects, this final rule requires that there be performance improvement projects underway during the previous 12 months. We understand that an MCO or PIHP may have multiple projects underway at a given time, and these projects may be at various stages of implementation. In response to this comment, we have revised the language under proposed § 438.358(a)(1)(i) (now § 438.358(b)(1)) to clarify that performance improvement projects need to be underway during the preceding 12 months, instead of having been completely performed during the preceding 12 months. Consistent with private sector practices, we therefore would allow States to use a multiyear rotational approach when conducting performance improvement projects and calculating performance measures. Second, for performance measures, the rule requires that one or more measures be reported annually. Finally, as was indicated in our proposed rule, EQR also needs to employ information from a review of structural and operational standards, conducted within the previous 3-year period.

Comment: Many commenters suggested that the list of mandatory activities include an examination of reasons for disenrollment and termination.

Response: Under § 438.358(b)(3) of this final rule, we require a review of MCO and PIHP compliance with State standards, in accordance with the Medicaid managed care final rule. This includes standards for enrollment and disenrollment. The Medicaid managed care final rule includes standards for disenrollments requested by the beneficiary, as well as those requested by the MCO or PIHP. In addition, the Medicaid managed care final rule requires MCO and PIHP compliance with State standards for health information systems. As part of the health system provisions, we require that the State ensure that the MCO or PIHP information system provides information including, but not limited to, utilization rates, grievances, and numbers of appeals and disenrollments. We believe these provisions adequately address the commenter's concern, and

that no additional requirements are necessary.

Comment: One commenter noted that there was no cross-reference in the proposed EQR rule to the requirements in the then proposed Medicaid managed care rule that required MCOs to measure performance and conduct performance projects, and to comply with State-mandated standards. The commenter suggested that we make this cross-reference to the applicable sections in the Medicaid managed care rule.

Response: We have in this final rule added cross-references to the appropriate citations in the Medicaid managed care final rule.

Comment: One commenter recommended that we establish a core set of State standards for MCOs and evaluate these during the EQR process. The commenter was concerned that allowing States to determine the measures to be collected would provide little or no comparable plan or State level data.

Response: We do not agree that this rule should specify standardized performance measures for States or their contracting MCOs and PIHPs. The Medicaid managed care final rule specifies that States, through their contracts, must require their MCOs and PIHPs to calculate performance measures or submit data to the State that enables the State to measure MCO's or PIHP's performance. Many States currently require that standard performance measures be collected across MCOs. In addition, we believe that States will require that specified measures be calculated over time to enable the State to evaluate MCO and PIHP performance. In § 438.364(a)(4), we require that the EQR results include comparative information, as determined appropriate by the State. Furthermore, § 438.10(i)(2)(ii) of the Medicaid managed care final rule requires, for those States that provide for mandatory managed care under section 1932(a)(1)(A) of the Act, that the State provide comparative information annually. This must include, to the extent available, quality and performance indicators as required under § 438.10(i)(3)(iv). In addition, the Medicaid managed care final rule provides that CMS may, in collaboration with States and other stakeholders, prescribe standard performance measures.

Comment: One commenter asked us to clarify how proposed § 438.358(a)(1) fulfills the statutory requirement of EQR, and specifically how this information relates to a review of "the quality outcomes and timeliness of, and access to, the items and services for which the managed care organization is responsible under the contract."

Response: In order to make an assessment about the quality, timeliness, and access to services provided by MCOs and PIHPs, there must be information from which an assessment can be made. Section 1932(c)(A)(iii) of the Act required us, in coordination with the NGA, to contract with an independent quality review organization to develop protocols to be used in EQR. In order to develop protocols, we first needed to define EQR, as it was not defined under section 1902(a)(30)(C) of the Act. We also needed to determine what activities we consider necessary or appropriate to provide information for a quality review. The EQR activities in § 438.358(b) and (c) are activities that (1) the expert panel convened under the auspices of the NASHP recommended be included as part of EQR; (2) a survey of States by the Department of Health and Human Services' Office of Inspector General identified as quality review activities used by States; and (3) a survey of States by NASHP confirmed as activities most frequently used by States for EQR. The EQRO must develop a report, based on the information provided, as specified in § 438.364, that includes a detailed assessment of each MCO's and PIHP's strength and weaknesses with respect to the quality, timeliness, and access to health care services furnished to Medicaid beneficiaries.

Comment: A commenter noted that the rule does not clearly identify which entities are qualified and competent to undertake the validation of performance measures and performance improvement projects. In the commenter's view, as drafted, the rule could be interpreted as allowing entities other than EQROs, including the State or the MCO itself, to undertake these tasks. The commenter recommended that we clarify what types of entities can engage in validation activities and at a minimum require those entities to be competent and independent.

Response: The State, an EQRO, or other State contractor can undertake any of the EQR-related activities. However, it is only when an EQRO, that meets the competency and independence criteria, conducts any of these activities that a State can obtain the enhanced 75 percent Federal match under section 1903(a)(3)(C)(ii) of the Act. Regardless of who conducts the activity, the CMS protocols (or other protocols consistent with ours) must be used to gather information for the mandatory and optional activities used in EQR. We did not intend to allow the MCO or PIHP itself to be able to conduct any EQR-related activities and in response to this comment we have revised § 438.358 so that it is clear that "the agent" must be an entity other than an MCO or PIHP.

Comment: One commenter recommended that we modify the regulation to grant State agencies the discretion to adapt these requirements to more appropriately address the circumstances of small or new MCOs and PHPs. The commenter suggested that enrollment in some MCOs and PHPs may be too small for an EQRO to validate the data for performance improvement projects or performance measures. Similarly, for an MCO that is not yet operational or which has only been operating for a short amount of time, there may be insufficient experience to use to evaluate for compliance with standards.

Response: We do not agree that we should modify the regulation to allow States to adapt the requirements to address small or new MCOs and PIHPs. If enrollment in an MCO or PIHP is small, the entire applicable population, as opposed to a sample, can be used when conducting performance improvement projects, calculating performance measures, or validating these activities. Regarding compliance with State standards, all MCOs and PIHPs that contract with a State to provide Medicaid services must be in compliance with the contracting requirements in the Medicaid managed care final rule. Regardless of when the EQR is conducted, MCOs and PIHPs should have procedures in place to be compliant with these provisions. Therefore, an assessment of compliance with these standards must be conducted and the findings provided to the EQRO to make its assessment regarding quality, timeliness, and access to services provided by the MCO or PIHP to Medicaid beneficiaries.

Comment: One commenter felt that State Medicaid agency staff should conduct the review of MCO compliance with structural and operational standards, as the review requires extensive knowledge of the State Medicaid program, its regulations, and the MCO contract. This commenter believed that this requirement was duplicative of current practice and unnecessarily burdensome, and did not provide States needed flexibility to choose which activities it wants to have its EQRO conduct. The commenter suggested deleting this provision. Another commenter urged that the review of compliance with standards be an optional instead of mandatory activity. The commenter noted that States conduct this activity through

various means, and that mandating this be done through EQR would mean an increase in Federal and State funding for the EQR contract. One commenter believed that the proposed requirement for review of structural and operational standards went beyond the statute's reference to "quality outcomes, and timeliness of, and access to items and services for which the organization is responsible under contract." This commenter recommended that we reevaluate the extent of this review to ensure that it is consistent with the intent of the statute. The commenter further noted that this review was so broad that it would encompass most of the areas currently reviewed by States under their general contract responsibilities.

Response: States are not required to contract with an EQRO to conduct a review of the MCO's or PIHP's compliance with State structural and operational standards. A State can conduct this activity using the CMS protocols or protocols consistent with ours and provide the results of the review to the EQRO. The regular 50 percent administrative FFP match would be available to the State for this activity if it is not conducted by the EQRO. The EQRO will use this information in conjunction with information derived from the other two mandatory activities and any optional EQR-related activities conducted to determine quality of, timeliness of, and access to the quality of care provided by the MCO or PIHP. This final rule provides States with the flexibility to determine which activities it wants to have its EQRO conduct. Although we prescribe mandatory activities, which are consistent with the requirements set forth in the Medicaid managed care final rule, the State does not have to have its EQRO conduct these activities. A State is only required to have an EQRO conduct the analysis and evaluation of the information derived from the activities to determine if an MCO or PIHP is providing access to quality services. We do not believe that the scope of the mandatory activities goes beyond the statutory provisions under section 1932(c) of the Act which require States to have a quality assessment and improvement strategy which includes access standards, and measures to assess care, including grievance procedures and marketing and information standards. Furthermore, the statute requires that States implement monitoring strategies that address the quality and appropriateness of care. We, therefore, retain the review of MCO and PIHP compliance with State standards as a mandatory activity in our final rule.

Comment: One commenter believed that the intent and usefulness of the proposed language in § 438.358 requiring the EQR to "use information" obtained from the mandatory and optional EQR-related activities was unclear. The commenter recommended changing the language to read "The State or the EQRO shall/must conduct" the EQR-related activities.

Response: Sections 1932(c)(2)(A)(ii) and (iii) of the Act required us to (1) in consultation with States, develop a method to identify qualified entities for the conduct of EQR, and (2) in coordination with the NGA, develop protocols to be used in EQR. In order for us to determine who was qualified to conduct EQR and for us to develop protocols to be used in an EQR we first needed to define EQR. Based on the advice of an expert panel convened under the auspices of the NASHP, the proposed rule, and this final rule, define EQR as the analysis and evaluation by an EQRO of aggregated information. Based on this definition, the expert panel confirmed the types of activities that would produce information as it relates to the quality, timeliness of, and access to care provided to our beneficiaries. These are the mandatory and optional activities found in this section of our rule. To provide consistency with the definition of EQR, and because we do not require that States contract with an EQRO to conduct these activities, we retain the language that an EQR must use information derived from the EQR-related activities in the final rule.

Comment: Many commenters did not agree with our proposal to require that information be used from a review of structural standards every 3 years, and cited the statutory language requiring "an annual * * *" review. Many commenters recommended that all activities be done annually, citing reasons such as the changing status of provider networks, and pressures to control utilization. One commenter claimed that we did not adequately explain our rationale for permitting the use of data and information that may be up to 3 years old. The commenter argued that given the volatility of both the managed care market place and State Medicaid programs, the problems identified in Medicaid managed care systems throughout the country, and the fact that the majority of beneficiaries are children, allowing the use of 3-year-old data was inadequate. The commenter suggested that an evaluation of quality, timeliness, and access to services must be timely to allow for effective interventions to correct the problems.

Response: Reviews of MCO and PIHP compliance with structural and operational standards are very time consuming and costly. To be consistent with private industry standards, we proposed that information from the review of MCO and PIHP compliance with standards be from the most recent review conducted within the previous 3 years. Both NCQA and JCAHO perform their accreditation reviews once every 3 years. As stated earlier, our rule takes a multipronged approach to quality assessment and improvement. This is one reason why we require the EQR to use information from a minimum of the three mandatory activities to render a decision regarding the quality and timeliness of and beneficiary access to health care services. We believe that this comprehensive approach addresses the commenters' concerns, and that annual reviews for compliance with structural standards is not justified.

H. Nonduplication of Mandatory Activities (§ 438.360)

Proposed § 438.360 provided State agencies, under certain circumstances, the option not to require a review of MCO or PHP compliance with certain structural and operational standards specified in proposed § 438.358(a)(2) if the MCO or PHP is a certified M+C organization with a current Medicare contract, and has been evaluated and approved by us, our contractor, or certain approved accrediting organizations as a part of accreditation for compliance with these standards. The December 1, 1999 proposed rule also provided that a State agency under certain circumstances may similarly avoid duplicate reviews of all mandatory activities (listed in paragraphs (a)(1) and (a)(2) of proposed § 438.358) for any MCO or PHP that serves only individuals who are eligible for both Medicare and Medicaid. Under the December 1, 1999 proposed rule, if the State agency exercises this option, each MCO and PHP must make available to the State agency all reports, findings, and other results of the Medicare quality review or the accreditation survey that is to substitute for the Medicaid review.

Comment: Several commenters supported provisions designed to avoid duplication in the EQR process.

Response: We retain the nonduplication provisions in the final rule while providing clarifying language on their applicability, as discussed in responses to comments below, in order to better explain our intent.

Comment: Several commenters asked that the provisions in this section not be restricted to Medicaid MCOs that have M+C contracts. The commenters believe that the BBA does not restrict the nonduplication provision to these organizations.

Response: We agree with the commenters that the BBA does not require that an M+C contract be in place in order for the nonduplication provisions to apply. In response to these comments, we have changed the final rule to allow States, under certain circumstances, to elect not to review structural and operational standards of an MCO or PIHP that has been accredited by a national accrediting organization approved by CMS under the procedures in 42 CFR 422.158 as applying standards at least as stringent as Medicare, where the standards are comparable to those imposed by the State under § 438.204(g). The EQRO must review the reports, findings, and other results of the accreditation review to use in the EQR.

Comment: Several commenters recommended that we amend our regulations to permit accreditation programs that address only a portion of the § 438.358(a)(2) requirements. One commenter wanted us to retain the provision that allows an EQRO to use a review conducted by a private accrediting organization, or as part of an external review conducted under the Medicare program. Another commenter suggested that we revise § 438.360(b) to allow a State to exempt an MCO from a review of the mandatory activities, as opposed to exempting the MCO from the mandatory activities.

Response: We agree with the commenters that a State should be permitted to use only certain portions of a Medicare or accreditation review in place of a portion of a Medicaid review. As stated above, the final rule provides States with the option of using a Medicare or (if approved by CMS under § 422.158) private accreditation review to serve as the Medicaid compliance review of any or all of the standards required to meet provisions under § 438.204(g) as long as the MCO or PIHP meets the requirements of § 438.360(b) or (c). Because we received numerous comments on the applicability of this provision, we have revised the language in this section to more clearly explain our intent to apply it to MCOs and PIHPs that have been reviewed by an accrediting organization approved under § 422.158. We also clarified the regulations text to better identify the activities and standards to which this section applies, and what information needs to be provided to States and us to comply with this provision.

Comment: One commenter did not agree with provisions in § 438.360(b)(3) or (c)(3) requiring that a State receive a copy of all findings pertaining to the most recent accreditation review. The commenter contended that standard-specific information is adequate and that all review materials such as noted deficiencies, corrective action plans, and summaries of unmet accreditation requirements are excessive and unnecessary. The commenter suggested that we require MCOs to provide the State with applicable reports, findings, and results. Many commenters agreed that we should require that States receive and review information from the Medicare review or accreditation review.

Response: We agree that requiring all reports, findings, and other results of the Medicare review or accreditation review could be excessive. We have revised the language § 438.360(b)(3) and (c)(3) to reflect that the reports, findings, and results provided can be limited to those applicable to the standards for which the Medicare or accreditation review or quality activities will substitute for the Medicaid review activities.

Comment: One commenter asked us to clarify whether the nonduplication provision exempts the MCO from a review for compliance with standards, such as enrollee rights, maintaining a grievance system, or using practice guidelines. One commenter recommended that we allow deeming of credentialing and recredentialing requirements if the MCO is NCQA certified.

Response: We provide that the State may permit the findings from other allowable reviews to substitute for a duplicate review of the structure and operations of the MCO or PIHP. Under this provision, an MCO or PIHP is not exempted from a review of standards under § 438.204(g). Rather, States are permitted the option of using Medicare reviews or accreditation findings, including a review of credentialing and recredentialing procedures, instead of conducting a separate (and potentially duplicative) review, as long as the provisions under § 438.360 are met. This would apply to information on compliance with standards such as the requirements set forth in proposed § 438.358(a)(2)(i) through (a)(2)(xiii) cited by the commenter.

Comment: Many commenters agreed that external reviews need to validate performance measures specific to the Medicaid population in the case of Medicaid contracts. In contrast, one commenter recommended that an MCO fully accredited by a private accrediting organization should also be exempt from calculating performance measures (for example, HEDIS). The commenter believed that this would eliminate the need for new-capacity building or criteria to ensure consistency.

Response: We do not agree that an accredited MCO or PIHP should be exempt from a validation of performance measures calculated under § 438.358(a)(1) unless it provides services to dual eligibles only. As stated in our December 1, 1999 proposed rule, we believe the types of data collected, measures calculated, and studies conducted, on the Medicare population would differ from those for the Medicaid population unless the MCO or PIHP served only dually eligible Medicare and Medicaid beneficiaries. We believe this argument is also valid when applied to the commercial population. We, therefore, retain the language as written in the December 1, 1999 proposed rule. We note that if the accrediting organization, acting as the EQRO of the State, validates the performance measures required of the MCO or PIHP by the State, the State can obtain the 75 percent match under section 1903(a)(3)(C)(ii) of the Act for having the accrediting organization conduct that activity.

Comment: One commenter recommended that we revise the regulation to give State agencies discretion to determine what EQR activities are duplicative.

Response: We do not agree that States should have discretion to determine what EQR activities are duplicative. Except in the case of an MCO or PIHP that provides services to dual eligibles only, we limit the nonduplication provisions to the structure and operational standards reviewed under § 438.358(b)(3).

Comment: Several commenters noted that accrediting organizations differ in how they characterize the status conferred when MCOs meet their accreditation standards. For example, these commenters pointed out that not all accrediting organizations use the term "full accreditation." One commenter recommended that we clarify proposed § 438.360(b)(2)(ii) to avoid confusion regarding what accreditation level must be attained to meet the requirements of the paragraph. Another commenter asked us to clarify "fully accredited" and recommended that we negotiate with accreditors seeking to be recognized under this section to determine what type of accreditation would meet the intent of this section.

Response: We understand that accrediting organizations use different terms to describe the extent to which MCOs or PIHPs meet their standards. However, in this provision of the regulation, we are not requiring that the MCO or PIHP achieve a certain level of accreditation. Rather, we are allowing States to use information gathered in the private accreditation process that is shared with the State to assess compliance. To make this more clear, in response to this comment, we have removed the term "fully accredited" from the regulations text. We also have revised the language of this section in order to make our intent more clear. We now specify that accrediting organizations that have been approved by us for M+C deeming under § 422.158 meet the requirements of this provision.

Comment: Several commenters did not agree with permitting States to avoid mandatory activities by relying upon information gathered from a Medicare or private accreditation review in order to assess MCO compliance with structural and operational standards. Some of these commenters specifically strongly opposed the exemption from mandatory activities when an MCO has a Medicare contract. They believed that activities such as review for the availability of services, establishment of provider networks, enrollee information, confidentially, and use of practice guidelines all have Medicaid and pediatric components that would not be examined under a Medicare review. If an exemption is allowed, the commenters suggested that additional activities be required to ensure compliance in problem-prone or sensitive areas that reviews by Medicare or private accrediting organizations may not adequately address. One of the commenters recommended that if an MCO is being considered for the exemption, that there must be substantial overlap between the Medicare and Medicaid products in (1) geographic service area, (2) network composition and management, (3) quality management structures and processes, and (4) levels of accreditation. Many commenters suggested that unless our quality review or accreditation has established the quality of the Medicaid provider network and administrative structures, these activities should not be exempted under nonduplication.

Response: The Congress clearly intended that we provide States the option to avoid duplicating review activities conducted for Medicare or by accrediting organizations. We limit the applicability of this provision to the mandatory activity designed to help States assess structural and operational standards for all MCOs and PIHPs other than those serving only dual eligibles. For the latter, under § 438.360, we also permit States to use this option with respect to the validation of performance measures or the validation of performance improvement projects. We believe proposed § 438.360 generally places sufficient parameters on States that choose to exercise this option.

We retain the provision that permits States to use this option to assess compliance with standards. We note that § 438.207 of the Medicaid managed care final rule requires that MCOs and PIHPs submit documentation to the State of compliance with requirements in the Medicaid managed care final rule that requires MCOs and PIHPs to maintain a network of providers that is sufficient in number, mix, and geographic distribution to meet the needs of the enrollees in the MCO or PIHP. In addition, § 438.207 requires that any time there has been a significant change in MCO or PIHP operations that would affect adequate capacity, additional documentation must be submitted. We believe this information adequately complements any review of availability of services that would be conducted by Medicare or an accrediting organization that provides information for the EQR.

We are concerned, however, that the wording of proposed § 438.360 has caused some confusion about the intent of this provision. Specifically, our words "A State may exempt an MCO from mandatory activities * * *" may be interpreted by some as exempting an MCO or PIHP from oversight, rather than an exemption from State Medicaid reviews that duplicate Medicare and private accreditation reviews. To clarify this, we have removed the word "exempt" from this provision in the final rule (noting also that the Congress did not use this word in the corresponding statutory provision) and replaced it with language reflecting the fact that these provisions do not exempt MCOs from review for compliance with structural and operational standards, but instead permit States to use information generated through Medicare or private accreditation review to assess compliance with these standards, in lieu of engaging in their own otherwise "mandatory" review activity.

In addition, in response to the commenters' concerns about permitting States to substitute Medicare or private accreditation review for direct State review, we are adding a new paragraph (4) to § 438.360(b) and (c) requiring that States identify in their qualities strategies those standards and activities they plan to monitor through the use of Medicare or private accreditation review data, and explain why direct State review would "be duplicative." This will help ensure that this approach is only taken when State review would truly be needlessly duplicative of review already performed.

Comment: One commenter was concerned that proposed § 438.360 appeared to allow the nonduplication exemptions to last indefinitely, and believed that it was not unusual for plan performance to vary significantly from year to year due to organizational changes. The commenter recommended that States be required to develop mechanisms to periodically re-evaluate MCO compliance with standards during the course of a 3-year period, and to re-institute a direct Medicaid agency review if accreditation, Medicare, or State oversight indicate potential quality problems.

One of the commenters cited recent OIG studies that identified significant issues with accrediting bodies, and did not think that States should relinquish their direct MCO oversight responsibilities to the accreditation industry.

Response: Neither the statutory nor conference committee language discussed any time limit on a State using Medicare or accreditation review data in its assessment of an MCO or PIHP in lieu of a direct Medicaid review. We believe it appropriate to allow States to make the determination as to whether this remains appropriate. We note that the new paragraph (4) that we have added to § 438.360(b) and (c) requires that States explain and justify their use of this approach, and believe that it is appropriate to permit the approach to be used for so long as this justification remains valid. Therefore, we do not specify a time limit in the final rule.

With respect to the commenter's recommendation for periodic re-evaluation every 3 years, § 438.360 requires that information obtained from a Medicare review or a review by an accrediting organization be provided to the State, which must then provide the information to the EQRO for use in the EQR. Because this information must be obtained from a review of compliance with standards conducted within the past 3 years, this requirement should address the changes in plan performance that the commenter is concerned about. Moreover, the Medicaid managed care final rule requires that States have a quality strategy that has procedures for assessing the quality and appropriateness of care provided to

Medicaid beneficiaries, and that States must regularly monitor and evaluate MCO and PIHP compliance with operational standards.

As noted in earlier responses, we believe the Congress clearly intended States to have the option of avoiding duplicate reviews of MCOs that have been accredited by a national accrediting organization, and we accordingly allow for this in the final rule.

Comment: One commenter recommended that we clarify that States may only eliminate elements of the EQR process, whether mandatory or optional, if components of the M+C evaluation process or private accreditation review are the same as or similar to those of the Medicaid review process. Several commenters felt that this provision should address two concepts: whether the standard or requirement is duplicative, and whether the methodology of the review is duplicative. One commenter asked that we clarify what we mean when we say, under § 438.360(b)(2), that the "* * * methodologies must be * * * established by the State, not CMS." The commenter noted that it is the State, not CMS, that establishes the standards for the mandatory activity under § 438.358(a)(2) and therefore it is not clear what benchmark we intend to use to determine comparability.

Response: This section of the regulation applies only to mandatory activities as specified in § 438.358(b). Because the optional activities are not required, we do not address optional activities in the nonduplication provisions. As stated earlier, we have clarified the regulations text to better explain that Medicare or accreditation standards must be comparable to those established by the State. We have removed the reference to standards and review procedures needing to be as stringent as those established by CMS because we agree with the commenter, that it is the State, not CMS, that will establish standards to comply with § 438.204 of the Medicaid managed care final rule. As for review methodology, the statute required that we establish protocols to be used in EQR. The protocols we developed include generic activities and steps to be followed to ensure that the EQR activities are conducted in a reliable and valid manner.

Comment: One commenter asked that, because implementation of proposed § 438.360(b)(2)(ii) would depend upon our approval and recognition of private accrediting organizations under § 422.158 as having standards and review procedures as stringent as those established by Medicare, we move forward to make these later determinations so this provision can be implemented in a timely fashion when these regulations become final.

Response: We have already received and approved applications for M+C deeming from several accrediting organizations: (1) NCQA, (2) JCAHO, and (3) the Accreditation Association for Ambulatory Health Care (AAAHC).

Comment: One commenter was confused about the distinction between proposed § 438.360 and proposed § 438.362, and felt they were redundant. The commenter also objected to our provisions applying to dual eligibles, specifically the State's option of permitting information obtained from performance improvement projects and performance measures specific to dual eligibles to substitute for Medicaid specific information.

Response: We do not agree that § 438.360 and § 438.362, which permit States to exempt an MCO or PIHP from EQR in its entirety, are redundant. However, we agree that proposed § 438.360 was potentially confusing in its use of the word "exempt." We have revised the language in § 438.360 to clarify that § 438.360 allows States to use the findings of Medicare or accreditation reviews in place of a Medicaid review in order to avoid duplication, but does not exempt MCOs or PIHPs from EQR, as does § 438.362 where it applies. We think that there is a clear distinction between § 438.360 under which analysis and evaluation of information must still be conducted, and § 438.362 under which the MCO or PIHP is exempted from the EQR function. We disagree with the commenter concerning the appropriateness of the dual eligible provision. In the case of dual eligibles, Medicare review necessarily is targeted to the population involved. We therefore believe that Medicaid review could be particularly duplicative in this case.

Comment: One commenter requested that if accreditation is to be used as the basis for exemption, regulations require that the MCO be specifically accredited with respect its Medicaid line of business, and that information from this Medicaid enrollee review be provided to the State.

Response: We do not agree that we should limit the applicability of the nonduplication provisions in § 438.360 to MCOs or PIHPs accredited specifically for their Medicaid product. Most accrediting organizations do not conduct separate reviews for an MCO's or PIHP's Medicaid product. With respect to the commenter's second point, we do require that the findings of the accreditation be provided to the State and then, in turn, to the EQRO to be used as part of the EQR.

Comment: One commenter urged that we allow for the use of review findings of related "focus studies" of groups that Medicaid serves (for example, the elderly or disabled) which are conducted by other types of certified Medicare organizations.

Response: As long as a focused study is conducted using a methodology consistent with our protocols, and the study population is composed of Medicaid beneficiaries, a State can have its EQRO use the review findings. In addition, if the organization that conducts the focused study is the State's EQRO, the State can obtain the 75 percent enhanced match for its review of these findings.

Comment: One commenter believed that the activities under proposed § 438.358(a)(2) are not the same regardless of the populations served, and specifically that there is a difference when serving individuals with disabilities. To address this concern, the commenter felt that the EQRO must be knowledgeable and sensitive to people with disabilities in order to effectively assess an MCO's compliance with standards.

Response: As specified in § 438.354, an EQRO must meet certain competency requirements, including having staff with knowledge of Medicaid beneficiaries. In addition, our Medicaid managed care final rule requires, under the State's quality strategy, that the State have procedures in place for assessing the quality and appropriateness of care and services furnished to enrollees with special health care needs. This includes individuals with disabilities.

Comment: One commenter recommended that audits conducted by the State licensing organization be coordinated with the EQRO, and that the audit of components conducted by the State licensing organization be "deemed" to have been performed by the contracted EQRO.

Response: States can use their State licensing organization to assess MCO or PIHP compliance with State standards, or perform any of the mandatory or optional EQR-related activities identified in § 438.358. If a State wants to use this information for the EQR, the review must, at a minimum, use our protocols or protocols that are consistent with ours. Thus, there would be no reason to "deem" these reviews to have been performed by the EQRO, other than to claim the 75 percent match that would apply if the EQRO performed these functions. As noted

above, however, if a State uses entities other than EQROs to perform activities, the 75 percent match rate under section 1903(a)(3)(C)(ii) of the Act would not be available. We hope and anticipate that States will coordinate the EQR and EQR-related activities with other State quality activities currently in place.

Comment: Many commenters believed that direct Medicaid agency external reviews should always be performed with respect to grievance systems because these commenters believe that the Medicaid fair hearings process is unique.

Response: The EQRO is not responsible for reviewing the State's fair hearing process. It must review information about the MCO or PIHP internal grievance system. In order for a State to use a Medicare or accreditation compliance determination to substitute for a Medicaid review of the MCO's or PIHP's grievance system, the State will need to address in its quality strategy the basis for considering the Medicare or accrediting organization's standard comparable to the State's grievance processes standard that needs to comply with the provisions of subpart F of the Medicaid managed care final rule.

Comment: One commenter expressed concern that we excluded Medicare beneficiaries who are eligible for Medicaid as a result of spenddown requirements from the definition of dually eligible persons.

Response: We have not excluded from the definition of dually eligible those Medicare beneficiaries who are eligible for Medicaid as a result of spenddown requirements. We consider any person who is receiving both Medicare and Medicaid benefits as a "dually eligible" person.

Comment: One commenter believed that the meaning of MCO in proposed § 438.360, and § 438.362 was not clear. The commenter noted that corporate entities may be wholly owned subsidiaries of other corporate entities, and may hold multiple licenses. The commenter also noted that in some cases a plan may have a large Medicaid product and a very small Medicare product, calling into question the assumption that adequate management of the Medicare enrollees is an appropriate proxy for their Medicaid enrollees. The commenter recommended a more complete definition of MCO, as it relates to the MCO's Medicare and Medicaid product lines being incorporated into the rule.

Response: The definition of MCO as used in this regulation is defined in § 438.2 of the Medicaid managed care final rule. According to this definition, an MCO is the entity that holds the Medicaid comprehensive risk contract. We believe that this definition addresses the commenter's concern, as the Medicare review provisions will only apply if the same entity that holds the Medicaid contract holds the Medicare contract.

Comment: One commenter recommended that we make clear that a State may undertake optional EQR activities, even if it has exempted an MCO from a portion of or all of the mandatory activities.

Response: A State may conduct the optional EQR activities when it uses Medicare or accreditation review findings for the mandatory activities. As long as the State uses the protocols developed by us or protocols consistent with ours, the information derived from the optional activities can be used in the EQR.

Comment: One commenter believed that when an MCO is accredited by a private accrediting body, the States should be strongly encouraged not to duplicate the review performed by the private accrediting body.

Response: The final rule provides States the option to use the findings of an accrediting body instead of conducting its own review of MCO or PIHP compliance with certain standards, if the MCO or PIHP has been accredited by a national accrediting organization recognized by us. We believe that States should have the discretion to make this decision, and individuals who believe that this option should be adopted should encourage States to do so.

I. Exemption From External Quality Review (§ 438.362)

Proposed § 438.362 provided an option for a State agency to exempt an MCO or PHP from the EQR requirements in section 1932(c)(2)(A) of the Act if: (1) The MCO or PHP has a current Medicare contract under part C of title XVIII or under section 1876 of the Act; and (2) for at least 2 years, the MCO or PHP has satisfied EQR requirements under section 1932(c)(2)(A) of the Act with respect to its Medicaid contract. In addition, we proposed that the Medicaid and Medicare contracts be required to cover all or part of the same geographic area. We also proposed that the State agency require each exempted MCO and PHP to annually provide the State with copies of all Medicare reviews performed by us, by our agent or any private accrediting organization, with respect to the quality, timeliness, and access to its services.

Comment: Many commenters opposed this exemption of certain MCOs from EQR. One of the commenters felt that this provision completely abrogates the responsibility of the States and CMS to monitor the quality of Medicaid managed care systems for children. One commenter agreed with this provision, as long as it was an option for States.

Response: In the BBA, the Congress expressly provided States with the option of exempting from EQR those MCOs that provide Medicare services and also have had experience serving the Medicaid population. This provision, however, does not exempt States from monitoring MCOs and PIHPs for compliance with the mandatory activities listed in § 438.358. These activities, required of MCOs and PIHPs under our Medicaid managed care final rule, are essential to ensure the quality of services provided to Medicaid beneficiaries by MCOs and PIHPs. For example, the BBA requires that States have a quality strategy in place when contracting with MCOs and PIHPs. States will still need to ensure MCO and PIHP compliance with the BBA provisions and our regional offices will continue to monitor States for compliance regardless of whether or not an EQR is conducted.

Comment: One commenter asked how this provision would impact a Medicaid plan that gave up its M+C product. Specifically, the commenter asked if there would be an immediate requirement for an EQRO review.

Response: Under § 438.362(a)(1), the MCO and PIHP must have a current Medicare contract. Therefore, as EQR is an annual requirement, the year following the termination of the M+C plan, the State is required to contract with an EQRO to, at a minimum, review and analyze information from the validation of performance improvement projects conducted by the MCO or PIHP and performance measures calculated by the MCO or PIHP that year. The State will also need to ensure MCO or PIHP compliance with structural and operational standards. If the MCO or PIHP had been reviewed by Medicare or an accrediting organization within the previous 3 years, that information could be used in the EQR. If this were the year that the MCO or PIHP was to be reviewed for structural and operation standards, the State or its contractor, or the EQRO would have to conduct a review.

Comment: Several commenters asked us to clarify who we considered appropriate to determine whether an MCO or PIHP performed acceptably in previously conducted EQRs, as this was not a requirement under the section 1902(a)(30)(C) of the Act EQR requirements. Some of the commenters

stated that it would not be appropriate for the State to make the determination, as the independent nature of the EQR might be compromised. Many commenters asked us to clarify what we consider to be acceptable performance and recommended that an MCO or PHP be required to perform acceptably on quality, timeliness, and access in order for a State to allow for the exemption.

Response: Whether an MCO or PIHP has performed acceptably is determined by the State based on the results of the EQR, which must include a detailed assessment of each MCO's and PIHP's strengths and weaknesses with respect to quality, timeliness, and access to health care services provided to Medicaid beneficiaries. If a State elects to exempt an MCO or PIHP from an EQR it must, as specified in § 438.362(a)(3), ensure that an MCO or PIHP not only have had a Medicaid contract for 2 years but that the MCO or PIHP has also been subject to an EQR as specified in this rule. This effectively means that no MCO or PIHP could be exempted under § 438.362 until EQR under this final rule is in effect for at least 2 years. As long as the provisions under this section are met, the State will determine the length of time for which it will exempt an MCO or PIHP from EQR. The State will be able to use information obtained from the Medicare or accreditation reviews, as the submission of Medicare review findings is required under § 438.362(b).

Comment: One commenter was concerned that similar geographic coverage areas do not necessarily ensure similar administration, networks, benefits, and quality improvement projects for the different beneficiaries who are served by the Medicare and Medicaid programs. Another commenter agreed with the requirement that the two contracts cover the same geographic area, but was concerned that practice patterns tend to vary geographically for given clinical topics and specific types of treatment. The commenter suggested we change the geographic requirement to require similar or identical service areas instead of overlapping areas. Two commenters supported the requirement that the two contracts cover all or part of the same geographic area, but suggested that we include additional requirements that the two contracts must (1) include the same provider networks and (2) offer the same or similar benefit and services to consumers. The commenters believe this is important because M+C plans serve markedly different populations, provide different benefit packages, and often offer different provider networks than Medicaid plans. One commenter asked us to clarify whether the Medicaid and Medicare services areas have to be identical for MCOs and PHPs to qualify for exemption.

Response: Under § 438.362(a)(2), we require that the Medicare and Medicaid contracts cover all or part of the same geographic area in order for a State to exempt the MCO or PIHP from EQR. We required an overlap of service areas in this provision because we believe this will increase the likelihood that the findings from the Medicare review will serve as a proxy indicator of the care delivered to the MCO's or PIHP's Medicaid beneficiaries. We have made some clarifying language changes to the regulations text in the final rule to more clearly state our intent that the contracts must cover all or part of the same geographic area within the State that is allowing the MCO or PIHP exemption from EQR. However, we think that requiring identical service areas or the same or similar benefit packages is too restrictive, and may effectively exclude the use of an exemption intended by the Congress.

Comment: Several commenters asked that we not restrict the exemption provision to M+C organizations, but also allow it to apply to MCOs and PHPs that have undergone or achieved "excellent" status by a private accreditation review.

Response: In the BBA, the Congress applied the total exemption in section 1932(c)(2)(C) of the Act only to M+C organizations. Consequently, we have not applied this provision to commercial MCOs and PIHPs. However, we address nonduplication provisions related to EQR activities as they apply to private accreditation under § 438.360.

Comment: Several commenters concurred with the requirement that an MCO or PHP must demonstrate acceptable performance determined by the EQR for the 2-year period before exemption. One of these commenters, however, was concerned that the regulation appears to allow exempt status to last indefinitely, and noted that it is not unusual for plan performance to vary significantly from year to year due to organizational changes. Several commenters recommended that States be required to develop mechanisms to periodically re-evaluate an MCO's exempt status, and to re-institute EQR if accreditation, Medicare, or State oversight indicate potential quality problems. One commenter opposed our proposal to require that the MCO have complied with EQR requirements for 2 prior years. This commenter believed that this interpretation was unduly restrictive, and inappropriately limited the discretion given to State agencies to exempt MCOs based on the State agencies' experience with the MCOs or PHPs.

Response: We believe that the language in this rule properly reflects congressional intent to allow States the option to exempt a Medicare MCO from EQR. Once an entity is exempted, and continues to meet the criteria for exemption, we believe that the Congress intended that the Medicare quality review requirements serve as a proxy for the Medicaid EQR requirements. Because the State will have access under § 438.362(b) to data from these reviews, any problems that develop should be recognized through this process. We thus do not believe it would be appropriate to require States affirmatively to re-evaluate an MCO's or PIHP's EQR-exempt status.

With respect to our requirement that 2 years of success in Medicaid EQR be required, as noted in the preamble to the proposed rule, we considered several interpretations of the statutory provision that requires at least 2 years of Medicaid contracting in order for this exemption to apply. We concluded that the Congress' intent in requiring 2 years of Medicaid contracting experience was to ensure that the MCO had sufficient quality measures in place to meet Medicaid EQR standards before it could be exempted from Medicaid review. Since these EQR standards are new, this necessarily would require that an MCO have a Medicaid contract for 2 years under these EQR requirements before the exemption in § 438.362 would apply. This ensures that all MCOs and PIHPs have been subject to Medicaid EQR at some point, and have been found to be compliant with Medicaid standards in this review.

We emphasize again, however, that the EQR requirements, from which MCOs and PIHPs can be exempted under § 438.362 are only one part of the Quality Strategy provided for in the BBA. Other BBA provisions require States contracting with MCOs to ensure the quality and appropriateness of care and services furnished to Medicaid beneficiaries. We believe that if States find MCOs or PIHPs not to be providing appropriate quality care, they would exercise their option to require an EQR.

Comment: Many commenters agreed that MCOs should be required to submit copies of reviews performed by Medicare or an accrediting organization. One commenter did see the benefit in receiving Medicare review reports. One of the commenters cautioned that accreditation reviews are generally performed less frequently than annually.

Response: We only require that information from the Medicare or

accreditation review be provided annually. We are not requiring that Medicare or accreditation reviews be conducted annually. If no new information is obtained in a specific year, it is not necessary for the MCO or PIHP to provide the State information provided the previous year. If a State chooses to exempt the MCO or PIHP, this does not relieve the State from ensuring that access to timely and quality services is being provided. Findings from a Medicare or accreditation review will provide the State a useful source of information to determine access to quality services for Medicaid beneficiaries. To better explain the types of information we are requiring be provided if a State chooses this option, and to address situations in which an entity is accredited by a private accrediting body approved by CMS under § 422.158, we have added clarifying language that makes a distinction between when a Medicare review is conducted by us or our contractor and when an accreditation review based on deemed compliance by such an approved entity. The findings of an accreditation review of an MCO or PIHP must be from a review of the Medicare line of business as this provision only applies to an M+C organization.

Comment: Many commenters recommended that MCOs that have established distinct provider networks for Medicaid and Medicare beneficiaries not be exempt from EQRs.

Response: As explained in an earlier response, we attempted to address differences inherent in Medicare and Medicaid contracts by requiring the contracts to have some geographic overlap. We do not believe, however, it is necessary or appropriate to require that Medicare and Medicaid beneficiaries of the MCO or PIHP use the same providers. We believe that an MCO or PIHP that demonstrates satisfactory compliance in M+C external review has demonstrated that it has appropriate quality safeguards in place, and that these would extend to all providers, whether seen by Medicare, Medicaid, or commercial enrollees.

We note that in providing for this exemption in section 1932(c)(2)(C) of the Act, the Congress did not require that Medicare and Medicaid enrollees use the same providers. It did require, however, that the entity have 2 years of Medicaid contracting experience. Under our interpretation of this requirement, discussed in a previous comment response, an MCO or PIHP would be required to demonstrate satisfactory results from 2 years of Medicaid EQR under part 438 before it would be eligible for the exemption under § 438.362. Thus, even if different providers are used by Medicaid enrollees than Medicare enrollees, the MCO or PIHP would have demonstrated for 2 years that the Medicaid providers performed satisfactorily in EQR before being exempted from this review. Having already demonstrated that its Medicaid providers met quality standards, the fact that it continues to satisfy quality standards in future years under Medicare external review is an indication that the entity is continuing its level of commitment to quality.

Comment: Many commenters recommended that the regulations specify that in the case of mergers and acquisitions, MCOs be treated as new contractors in the Medicaid program, and be subject to an EQR.

Response: We do not agree with the commenter that the regulations should specify that all MCOs and PIHPs that have been acquired or merged with another MCO or PIHP be treated as new contractors. There are a variety of scenarios that occur when a merger or acquisition occurs as indicated by the complex rules that govern how private accrediting organizations address these situations. In addition, States have their own laws and regulations governing mergers and acquisitions. We, therefore, believe the States are in the best position to determine quality improvement requirements for newly formed entities and this regulation provides States the option to allow for the exemption as long as all the provisions in this section are met.

Comment: One commenter asked that we revise § 438.362(b)(1) to specify that the State agency must require each exempted MCO to provide it annually with copies of Medicaid reviews performed by State agents or any private accrediting organization with respect to the quality, timeliness, and access to services instead of Medicare review findings.

Response: We are not revising § 438.362(b)(1) to require Medicaid review findings be submitted to the State because if a State or its agent conducted a review, there would be no need to require the MCO or PIHP to submit the review findings, as the State would already have this information. There is a need, however, for the MCO or PHP to submit Medicare review findings if a State chooses to exempt an MCO or PIHP from EQR, which is why this requirement is included in § 438.362(b). The exemption provision does not relieve a State from the responsibility for ensuring the adequacy of care provided by an MCO or PIHP, and the data from Medicare quality reviews are a source of information that will be necessary for States to use to determine the appropriateness of exempting an MCO or PIHP from an EQR the following year.

Comment: One commenter recommended allowing States the flexibility to decide if their Medicaid services can properly be evaluated by a Medicare review.

Response: States have the flexibility to determine if Medicaid services can be appropriately evaluated by a Medicare review. This provision provides States with the option to exempt an MCO or PIHP from EQR. It does not require the exemption.

J. External Quality Review Results (§ 438.364)

In § 438.364, we proposed a requirement that the product of EQR be a detailed technical report, containing (1) a detailed assessment of each MCO's and PHP's strengths and weaknesses with respect to quality of the health care services furnished to Medicaid enrollees, (2) recommendations for improving the quality of the services furnished by each MCO and PHP, (3) comparative information about all MCOs and PHPs as determined appropriate by the State agency, and (4) an assessment of the degree to which each MCO and PHP addressed effectively the recommendations for quality improvement, as made by the EQRO during the previous year's EQR. Proposed § 438.364 also specified that the State must provide the results of the EQR to members of the general public upon request, and that the information released may not disclose the identity of any patient.

Comment: One commenter suggested that, because of the differing nature of adult and child health care needs, all data produced during the course of an EQR should be available by age groups so that parents may choose an MCO on the basis of the provision of quality pediatric care.

Response: This rule requires information from a variety of activities to be provided to an EQRO and included in the analysis and evaluation of the care provided by MCOs and PIHPs. Not all of the EQR activities provide detailed information that can be broken out by age groups or other categories. For example, a review for compliance with structural and operational standards would not yield beneficiary specific information. However, encounter data could potentially provide that information. In addition, the populations served by MCOs and PIHPs are likely to vary along multiple dimensions, including age,

income, diagnosis, and ethnic group. Because of the variability in the populations served by particular MCOs and PIHPs, we have provided States flexibility to determine the content of the results made available and the manner in which it is presented. To the extent that this information identifies quality issues pertaining to a specific population, the State may include that information in the results it makes available. However, we are not in the final rule requiring that EQR results be available by age groups, as this may not always be possible or appropriate for a given MCO or PIHP or for given data.

Comment: One commenter contended that not all quality improvement studies monitor quality, timeliness, and access. The commenter accordingly suggested that neither the State nor the EQRO should be required to summarize the strengths and weaknesses of the MCO or PIHP for each of these elements. The commenter also believed that if multiple studies are conducted, project time lines are not likely to coincide. In addition, the commenter recommended that proposed § 438.364(a)(5) be revised to require "An assessment of the degree to which each MCO has addressed effectively the recommendations for quality improvement as made by the EQRO during the previous measurement of the measure or of a similar measure, as appropriate to the study performed."

Response: The commenter suggesting that the State or EQR should not be required to summarize strengths and weaknesses of an MCO or PIHP for "each of the elements" of quality, timeliness, and access implies that the results of the EQR process need not address all three of these areas. Because section 1932(c)(2)(A) of the Act requires that an annual EQR include all three of these elements, it is essential that strengths and weakness identified by the EQR process with regard to each are described in the results. Because there appears to be confusion on this point, we have revised § 438.364(a)(1) to specifically reference "timeliness and access."

The commenter's suggestion that § 438.364(a)(5) be revised to permit the use of a "previous measurement of a measure," as opposed to the previous year's EQR recommendations (as the baseline against which improvements in MCO or PIHP performance are assessed) is inconsistent with the clear direction of section 1932(c)(2) of the Act that EQR be an annual review. Further, the Medicaid managed care final rule requires performance measurement and improvement projects be underway on an annual basis. Consequently, we retain but modify the language of the proposed rule requiring the EQR to contain as assessment, as opposed to a "detailed" assessment of the degree to which each MCO and PIHP has addressed effectively the recommendations for quality improvement, as made by the EQRO during the previous year's EQR.

Comment: One commenter believed that the reference to "strengths and weaknesses" in proposed § 438.364(a)(2) implies a subjectivity that the commenter found inappropriate in carrying out the EQRO's responsibilities. The commenter recommended that the EQRO be required to report objectively on the performance of each MCO based on the measures selected. This commenter also questioned whether having an EQRO make recommendations for improving care and assessing the degree to which an MCO has met the previous year's recommendations are appropriate elements of the reports, because this is currently—and appropriately in the commenter's view—the province of the State (that is, identifying deficiencies in contract performance and holding MCOs accountable for correcting these deficiencies). The commenter requested that we exclude from the EQR reports, an EQRO's recommendations for improving care and assessing the degree to which the previous year's recommendations were met. If we retain these provisions, the commenter asked that § 438.364(a)(3) be revised to (1) allow the MCO the opportunity to submit a corrective action plan, which, if accepted would be adopted by the EQRO as its recommendation or (2) at a minimum, have the opportunity to comment on the EQRO's proposed recommendations. The commenter also suggested that § 438.364(a)(5) be revised so that the recommendations made by the EQRO are reviewed and approved by the State before finalizing the recommendations.

Response: We do not agree with the commenter that the report of EQR results should not address MCO and PIHP strengths and weaknesses. While we agree that the EQRO should consider the information produced by various EQR-related activities in an objective manner, the results of the analysis and evaluation of information will likely identify differences in the performance of MCOs and PIHPs with respect to issues under study. We believe that it is reasonable to expect the EQRO to be able to identify MCOs and PIHPs that had higher or lower scores on the State's standardized performance measures, and MCOs and PIHPs that had stronger evidence of compliance with certain standards. It is also reasonable for interested parties to expect this information to be publicly available. We note that this is common practice in the private sector where private accrediting organizations release comparative information on health plans.

We agree with the commenter that the State is the entity responsible for holding MCOs and PIHPs accountable for contract performance. The EQR is a source of information States can use to determine the adequacy of MCO and PIHP contractual performance regarding quality, timeliness, and access to services. The State may choose to require MCOs and PIHPs to submit corrective action plans based on the EQR results. In addition, as the State is the entity that holds the contract with the EQRO, the State may specify that it have the opportunity to review, comment, or approve the recommendations. The EQR results will be provided to us upon request, and will most often be requested and used by our regional office staff when conducting managed care program monitoring reviews. As a result, we retain the language included in the proposed rule.

Comment: One commenter concurred with proposed § 438.364, and specifically supported the requirement that EQR results (including assessments of MCO strengths and weaknesses and recommendations for improvement) be documented in sufficient detail and made publicly available. The commenter felt this was vital in order to allow interested parties to evaluate the conclusions of the EQR. Another commenter concurred with proposed § 438.364, and noted that the report required therein could be made available on the internet, to all interested parties, thus reducing the burden of report distribution.

Response: We agree with the commenters. Because the proposed language at § 438.364(b) could be interpreted to require the release of information in hard copy format only, in response to this comment we have modified the regulations text to indicate that the State must provide the information specified in paragraph (a) of this section, upon request, through print and electronic media, to interested parties.

Comment: One commenter noted that State staff currently perform the activities in paragraph (a)(2) of proposed § 438.364, and that requiring an EQRO to do this would increase the cost of the EQRO contract. The commenter also believed that the EQRO should not be making recommendations on improving the health care services furnished by each MCO, as specified under paragraphs (a)(3) and (a)(5) of proposed

§ 438.364. The commenter felt that the MCO should be responsible for designing interventions for improving its members' quality of care, and the EQR process should evaluate the effectiveness of these MCO interventions. Another commenter recommended these sections be deleted, contending that the Act does not require an external entity to perform any of the activities listed under paragraphs (a)(2) through (a)(5).

Response: As stated earlier, we agree that the State is ultimately responsible for rendering decisions about MCO and PIHP performance, and that EQR results represent one source of information States can use to determine MCO and PIHP performance. However, the Congress, in the BBA, stated that the EQRO is to perform a review of "the quality outcomes and timeliness of, and access to the items and services for which the organization is responsible." The Congress further required that the results of the reviews be made available to multiple parties. We believe that a review requires the EQRO to make judgements regarding the MCOs' and PIHPs' performance in these areas and that the judgements can reasonably be expected to point to the MCOs' and PIHPs' strengths and weaknesses, recommendations about the quality, timeliness, and access to services provided by MCOs and PIHPs, and for how to make improvements. In order to enable the EQR process to be as effective and useful as possible, we retain these provisions in the final rule.

Comment: One commenter recommended that the regulation specify that the EQR results be made available in alternative formats for persons with sensory impairments, when requested.

Response: This comment appropriately suggests accommodations for persons with disabilities. At the end of § 438.364(b), in response to this comment we have added a sentence requiring States to make the EQR results available in alternative formats for persons with sensory impairments when requested.

Comment: Several commenters believed that while it may make sense to mandate disclosure of valid, reliable, and objective performance, and satisfaction measures, States should not be required to disclose the results of other health plan operations, such as contractual compliance, and quality improvement studies. In the view of these commenters, EQR activities should promote a frank assessment of performance in order to provide MCOs and PIHPs the knowledge necessary to perform better in the future. The commenters suggested that if the results of quality improvement studies were made public, MCOs would not treat the process as an unfettered opportunity to assess their own performance. Instead, the commenters believed they would tend to conduct studies in a way that is likely to generate favorable outcomes and, thereby, meaningful quality improvement efforts. One of these commenters also noted that if the primary audience for this information was Medicaid enrollees, we needed to consider whether such a detailed technical report would be relevant to our beneficiaries' needs.

Response: As we indicated in the preamble to the proposed rule, we proposed to require only that summary information made generally available is sufficient to enable interested parties to evaluate the conclusions of the EQR. The State is not expected to provide more detailed underlying data to beneficiaries or the general public. However, to clarify the level of detail to be provided in the EQR results, in response to this comment, we are revising § 438.364(a)(1)(iii) to require only that a description of data be provided in the technical report, as opposed to requiring that the actual data obtained be provided. Our intention was never to require that raw data be provided. In addition, as noted above, we are providing clarifying language in § 438.364(a)(1) to make clear that the technical report conclusions address timeliness and access to care as well as quality of care.

We note that section 1932(c)(2)(A)(iv) of the Act specifies that EQR results be made available to providers, enrollees, and potential enrollees. In the proposed rule, we broadened this requirement to specify that the results be made available to the general public. To ensure that adequate information is available for beneficiaries, as well as providers, beneficiary advocates, and other stakeholder, we believe that some detail in the report is warranted. In addition to making the EQR results available, States have the flexibility to repackage these results in order to address specific audiences more appropriately.

Comment: Many commenters agreed with our effort to ensure public access to EQR results. The commenters also recommended that the findings of private accreditation reviews be made available to the public when they substitute for all or part of the EQR. They stated that this is consistent with the President's Advisory Commission of Consumer Protection and Quality in the Health Care Industry recommendation that when a private accreditation is used, there must be full disclosure of the standards, survey protocols, and the detailed information from the surveys.

Response: Section 438.364 identifies the results of the EQR process that must be made available and to whom it must be made available. When an EQRO is using private accreditation or Medicare review results under the nonduplication option under § 438.360, the EQR results, in accordance with § 438.364(a)(1), must still include the information required under paragraphs (a)(1)(i) through (a)(1)(iv) of this section. We believe that when a State chooses to use the results of a Medicare or private accreditation review to replace a Medicaid review, that there must be information on the data obtained from the Medicare or accreditation review and conclusions drawn from the data consistent with § 438.364(a)(1)(iii) and (a)(1)(iv).

Comment: One commenter asked us to clarify whether the regulation envisions that the full technical report be available to the public, or whether only certain information about the technical report will be made available. The commenter recommended that we establish guidelines for preparation of a summary report that must be developed from the technical report. The commenter believes that a summary report will be more useful to the public and will avoid the potential for the release of proprietary information that might appear in the reports.

Response: As we stated in the preamble of the proposed rule, we are only requiring that States make available summary-level information that is "sufficient to enable interested parties to evaluate the conclusions of the EQR." The State is not expected to provide more detailed underlying data or proprietary information to beneficiaries or the general public. As we noted earlier, to provide clarification on the level of detail to be provided in the EQR results, we are revising § 438.364 (a)(1)(iii) to require that a description of data be provided in the technical report as opposed to requiring that the data obtained be provided.

K. Federal Financial Participation (FFP) (§ 438.370)

Proposed § 438.370 provided that FFP would be available (1) at the 75 percent rate for EQR, the conduct of EQR activities, and the production of EQR results, by EQROs and their subcontractors, and (2) at the 50 percent rate for EQR-related activities performed by entities not qualifying as EQROS. The 50 percent rate applies even if the activities are of the same type as those that would be matched at the 75 percent rate if performed by an EQRO.

Comment: Several commenters asked us to clarify whether a State must contract with an EQRO in order to fulfill its EQR obligations under these regulations, and specifically whether it would fail to fulfill its obligation under the law if it contracts with an entity not qualified to be an EQRO.

Response: To fulfill its obligations under this regulation, a State must contract with an EQRO to conduct an analysis and evaluation of the aggregated information produced from, at a minimum, the mandatory EQR-related activities and produce the EQR results as required under § 438.364. In response to this comment, we have made clarifying changes to § 438.370 to better explain for what activities and functions States can obtain a 75 percent, or 50 percent match. That is, States can obtain the 75 percent enhanced match for EQR (the analysis and evaluation of information produced from EQR-related activities), EQR-related activities, and the production of EQR results as long as these functions and activities are conducted by an EQRO. States can obtain the 50 percent match for EQR-related activities conducted by entities not qualified as EQROs. However, States must contract with an EQRO that meets the requirements of § 438.354 to perform the EQR function of analyzing and evaluating the aggregate information from EQR-related activities. If a State did not so contract, it would be out of compliance with the requirement in section 1932(c)(2) of the Act for EQR.

Comment: One commenter asked whether the enhanced FFP is available for the optional activities a State may include in an EQR. Another commenter supported the enhanced FFP rates provided for in the Act.

Response: The enhanced FFP is available for the optional EQR activities as long as they are conducted by an EQRO that meets the requirements of § 438.354 using the appropriate CMS protocol or a consistent protocol.

Comment: One commenter requested clarification as to whether the upper payment limit (UPL) can be adjusted to take into account administrative expenses and if not, whether States will be able to request waivers of the UPL to reflect these additional expenses.

Response: The Medicaid managed care final regulation replaced the UPL requirements at § 447.361 with new rate setting rules (§ 438.6) by incorporating and expanding requirements for actuarial soundness. These new requirements recognize administrative costs and allow for States to adjust capitation rates to reflect MCO and PIHP administrative costs.

Comment: One commenter recommended that we revise § 438.370 to require States to appropriate a portion of the enhanced FFP to cover each MCO's administrative cost associated with meeting this EQR requirement.

Response: We believe that the statute does not permit States to use the enhanced funds to pay for MCO and PIHP administrative costs associated with EQR. The 75 percent enhanced match is only available for costs incurred by States for contracting with an EQRO. However, as noted above, with the elimination of the UPL, States now reflect administrative costs in capitation payments to MCOs and PIHPs.

Comment: One commenter asked us to clarify whether validation activities are reimbursable at the 75 percent enhanced FFP rate for EQR activities.

Response: The following validation activities are reimbursable at the 75 percent enhanced match as long as they are conducted by an EQRO that meets the requirements of § 438.354 and the EQRO uses protocols developed by us, or protocols consistent with our protocols: validation of performance measures, validation of performance improvement projects, validation of consumer or provider surveys, and validation of encounter data.

L. Miscellaneous Comments on the Preamble of the December 1, 1999 Proposed Rule

We noted in the preamble to the proposed rule that we followed two principles in its development: first, to provide flexibility to State agencies; and second, to reflect well-accepted advances in the methods of quality measurement and improvement.

The proposed rule also acknowledged that in a separate rule published in 1998, we had proposed to eliminate the requirements in § 434.53 that States have a system of periodic medical audits.

The proposed rule included a proposed effective date of 60 days following publication with provisions that must be implemented through contracts with EQROs to be effective with contracts entered into or revised on or after 60 days, but no longer than 12 months from the effective date. We received the following comments relating to the above issues.

Comment: Several commenters expressed support for the approach taken in the proposed rule in providing flexibility for States, and asked us to retain mechanisms States already have in place for EQR. Several commenters, however, found that the proposed rule did not afford States the flexibility and discretion afforded by the BBA. One commenter argued that States that demonstrate that their quality improvement processes meet or exceed the goals of these regulations should be permitted to continue with current arrangements. The commenter further contended that section 1932(c)(1)(B) of the Act, which requires that the Secretary's standards not preempt any State standards that are more stringent than those in the proposed rule, supports their position.

Response: Section 1932(c)(1)(B) of the Act refers to the quality assessment and improvement strategy that States are required to develop and implement. The components of this strategy were set forth in the Medicaid managed care final rule published on June 14, 2002. The EQR requirement is one component of this overall State strategy. We agree that the statute allows States to exceed the requirements of the quality assessment and improvement strategy as outlined in the Medicaid managed care final rule. However, the BBA also required the Secretary to undertake the activities set forth in this rule; that is, establish a method for identifying qualified entities to conduct EQR, develop protocols to be used for EQR, and otherwise implement the EQR provisions of the BBA. States will continue to have the flexibility to exceed the requirements included in this rule and conduct optional EQRO-related activities.

Comment: Several commenters asked us to explain how QISMC, the final Medicaid rules, and the EQR compose a cohesive vision and how States should integrate the proposed rule into other quality assessment and performance improvement activities. One of the commenters believed that the proposed rule appeared to set a standard for an overall evaluation rather than a specific external review study. Since QISMC sets overall standards, the commenter believed that a nonduplicative connection to QISMC was important. The second commenter asked us to clarify how the EQR regulations will fit in with current and pending State requirements.

Response: This final rule, as did the proposed rule, provides for an overall evaluation by an EQRO of the MCO's or PIHP's ability to provide timely and quality services to Medicaid beneficiaries as required by section 1932(c)(2) of the Act. The mandatory EQR activities are based on standards and activities that States must have in place under subpart D of the Medicaid managed care final rule.

Key elements of the QISMC document were incorporated into the Medicaid

managed care final rule, as appropriate. However, in other instances the QISMC standards, which we previously offered to States as guidelines and not requirements, were not appropriate as requirements in the regulations text. Further, the QISMC standards in a number of ways have become outdated. For example, the QISMC document does not sufficiently address individuals with special health care needs. Individuals looking for a cohesive vision of a quality improvement system for Medicaid managed care should look to three documents: (1) The Medicaid managed care final rule, (2) this EQR final rule, and (3) the EQR protocols developed in response to the BBA statutory requirement. The QISMC document has been superseded by these three documents for the purposes of Medicaid. Each of these documents is accompanied by text describing how they should be integrated into State quality improvement systems.

Comment: One commenter contended that the proposed rule significantly reduced State flexibility in defining the content and cycle of EQR, exacerbated what the commenter considered a double standard for quality oversight between Medicaid FFS and Medicaid managed care, and placed new requirements on States not previously required of managed care programs. The commenter was concerned that this rule would create another reason to discourage MCOs and potentially PIHPs (especially those that provide behavioral health services) from participating in Medicaid resulting in fewer managed care options for Medicaid agencies and beneficiaries.

Response: We do not agree that this regulation significantly reduces State flexibility. EQR is not a new requirement on States. EQR has been a requirement for States contracting with MCOs since section 1902(a)(30)(C) of the Act was enacted in OBRA 1986. The BBA introduced new requirements for EQR and provided parameters we are obligated to follow in developing this regulation. The new requirement in section 1932(c)(2)(A)(iii) of the Act that protocols be developed which must be followed by States necessarily limits State flexibility to some extent. However, we believe that we have provided appropriate flexibility in implementing this statutory requirement. To do this, in collaboration with an expert panel that included State participants, we defined what activities we considered to be essential for an EQR. The statute also requires that EQR be conducted annually. While flexibility as the nature of review under EQR may have been limited somewhat by the requirement in section 1932(c)(2)(a)(iii) of the Act that protocols be followed, the new rule provides States with substantial new flexibility by allowing an expansion of the types of entities with which States can contract to conduct EQR activities, and extends the 75 percent match rate to these types of entities. In addition, this final rule allows a State to conduct EQR-related activities itself or through other State contractors. Thus, we do not believe that this rule will discourage managed care contracting.

Comment: One commenter expressed concern that the rule will limit a State's ability to maintain and improve distinct State quality initiatives due to more extensive Federal quality improvement initiatives. Specifically, the commenter believes the rule would require States to either externalize or duplicate ongoing State quality improvement activities.

Response: We do not believe that these EQR requirements will result in a duplication of any ongoing State quality improvement activities. A State may conduct any of the EQR-related activities internally or through other State contractors. The State will need to conduct the activities using our protocols or protocols consistent with ours if the information is to be used as part of the EQR. Therefore, at a minimum, our protocols or protocols consistent with ours must be used for the mandatory activities. As stated earlier, the protocols are generic instructions to ensure that the activities are conducted in a methodologically sound manner. If a State chooses to conduct EQR activities internally or have a State contractor other than the EQRO conduct the activities, the State expenses will be matched at 50 percent. States must contract with an EQRO for only one function, that is for the analysis and evaluation of the aggregated information provided from the EQR activities and the development of the EQR results. States can also continue to conduct other quality initiatives outside of the scope of EQR and claim the 50 percent administrative match.

Comment: One commenter contended that the proposed rule exceeded our statutory authority. Specifically, the commenter argued that with this rule, we effectively assumed control of a State's quality assessment and performance improvement strategy by specifying (1) the details of QI activities through detailed protocols developed without input from individual States, and (2) which activities can be performed by a State government entity, and which must be delegated to the EQRO. The commenter recommended that the proposed rule be withdrawn and redrafted to: (1) Allow for public review and comment of the protocols, and (2) permit States to carry out their statutory responsibilities as reflected in section 1932 (c)(1)(A) of the Act. The commenter also doubted that uniformity of EQR results could be accomplished in light of State programs that demand custom-tailored management and oversight models.

Response: We do not agree that we have exceeded our statutory authority in developing this regulation. The statute clearly required us to develop protocols to be used in the external review. We developed the protocols, as mandated, through an independent quality review organization with the guidance of an expert panel that included State representation, as required by the statute. A **Federal Register** notice announcing the completion of the protocols was published on November 23, 2001 (66 FR 58741). In that notice, we asked for comment on the extent to which burdens were imposed by the protocols, or on any other aspect of the protocols. Comments received from that solicitation, and our responses, are included in the preamble to this final rule.

We also believe we have provided significant flexibility to States as to which activities must be performed by an EQRO, as the only activity that must be conducted by the EQRO is the analysis and evaluation of the aggregated information produced from the EQR activities, and production of the results of that review as defined in § 438.364. The State can conduct the mandatory EQR-related activities, or have another State contractor conduct these activities, as long as the State uses our protocols or protocols consistent with ours.

Comment: One commenter believed that the EQR activities in the proposed rule were duplicative of the scope of work required in Independent External Evaluations of waivers under section 1915(b) of the Act, and recommended that the proposed rule be withdrawn until we develop a unified, coordinated approach to waiver oversight.

Response: The EQR activities in this rule are not duplicative of activities conducted as a part of independent assessments under section 1915(b) of the Act. The independent assessment requirement is a review of a State's mandatory managed care program under the authority of section 1915(b) of the Act. It reviews how adequately a State ensures access to quality services in the mandatory managed care waiver program, and the costs of the waiver program. The unit of analysis of the

independent assessment under section 1915(b) of the Act is the State's managed care program as a whole, not individual MCOs or PIHPs. In contrast, the EQR review is a review of individual MCOs and PIHPs. The EQR requirement applies to all MCOs and PIHPs regardless of whether the program is voluntary or mandatory or whether it is authorized under a waiver. Further, EQR is conducted annually, whereas the review under section 1915(b) of the Act is conducted for the first 2-year period of the waiver, and the first renewal period (assuming the review results are acceptable). In addition, the independent assessment that we require in the case of a waiver under section 1915(b) of the Act applies to PCCM programs as well as programs with capitated arrangements. The EQR requirement does not apply to PCCM programs.

Comments: One commenter supported the proposed elimination of the requirement in § 434.53 for a system of periodic medical audits.

Response: While we note that this comment does not directly pertain to this proposed rule, we agree with the commenter. We believe that the system of periodic medical audits under § 434.53 is an out-dated approach to quality assessment and improvement which would be duplicative of EQR activities. (In this sense, the matter is relevant to this final rule.) Consequently, the Medicaid managed care final rule published on June 14, 2002 eliminated this requirement, as well as other regulations in subpart E of part 434.

Comment: Several commenters thought the proposed time period for bringing contracts into compliance with the new EQR requirements did not provide sufficient time for States. One commenter suggested that the new EQR rules apply to contracts entered into or revised on or after 90 days, but no longer than 18 months from the effective date. One commenter believed that States needed more than a year to implement this rule. One commenter recommended implementation of the redrafted rule on January 1 to be consistent with NCQA and other planning cycles and allow up to 180 days before implementation.

Response: To be consistent with the Medicaid managed care final rule, we have retained the effective date of this rule to be 60 days following its publication. However, we have revised the time frame for provisions to be implemented through contracts with MCOs, PIHPs, and EQROs so that they must be effective with contracts entered into or revised on or after 60 days following the publication date. States have up until no longer than 12 months from the effective date to bring contacts into compliance with the final rule provisions.

M. Collection of Information Requirements: December 1, 1999 Proposed Rule

In the December 1, 1999 proposed rule, we asked for comment on the following provisions that contain information collection requirements: nonduplication of mandatory activities (§ 438.360), exemption from external quality review (§ 438.362), and external quality review results (§ 438.364).

A. General Comments

Comment: One commenter contended that the burden to the MCO of working with the EQRO is not included.

Response: As part of the MCO and PIHP contracts with States, MCOs and PIHPs are required to work with States on a routine basis. This includes working with State contractors. We do not believe that working with EQROs adds burden for MCOs and PIHPs but continue to believe that it is part of the normal course of business for MCOs and PIHPs with Medicaid contracts. Further, a requirement for EQR is not new. It has been in place since the late 1980's under section 1902(a)(30)(C) of the Act.

Comment: One commenter felt that while the financial impact of this rule may be difficult to quantify, the proposed regulations would significantly increase the time and administrative burden on States, EQROs, MCOs, and PHPs well beyond the hourly estimates in the preamble.

Response: We do not agree that the regulation will significantly increase the time and administrative burden of States, EQROs, MCOs, and PIHPs beyond what we estimated in the proposed rule. Through our data and information collection, we know that the EQR-related activities referenced in this rule are those that are already typically required by States. Similarly, MCOs have previously been complying with EQR requirements subsequent to the enactment of section 1902(a)(30)(C) of the Act in 1986.

Section 438.360 Nonduplication of Mandatory Activities

Comment: Several commenters argued that the estimate of the total burden for the State for the proposed nonduplication provisions was too low, and asked how the estimate of 4 hours was determined. One commenter asked what data the MCO would need to provide to the State under proposed § 438.360(b)(2) and (c)(2).

Response: We estimated that it would take State staff approximately 4 hours to collect, copy, and disseminate the reports, findings, and other results of Medicare reviews or information obtained from the accreditation reviews and sent to the State. Because we received several comments indicating that this estimate was low, but commenters did not provide us with what they believe the estimate to be, we have increased the burden hours by 100 percent, to 8 hours. In accordance with § 438.360(b)(3) of the final rule, the MCO or PIHP needs to provide to the State any reports, findings, or results from an accreditation review or our review for Medicare for the standards in § 438.204(g) that are being substituted in place of a Medicaid review. In addition, if the MCO or PIHP provides services to dually eligible individuals and the State allows the MCO or PIHP to provide information from a Medicare review of performance measures and performance improvement projects for the EQR in place of separate Medicaid measures and projects, under § 438.360(c)(3), the MCO or PIHP will need to provide the results of Medicare review activities to the State.

Section 438.362 Exemption From External Quality Review

We did not receive any comments on the information collection burdens associated with complying with this provision.

Section 438.364 External Quality Review Results

Comment: One commenter noted that the preamble of the proposed rule addresses the burden of disseminating information, but not of creating the content listed. The commenter believed that the burden for creating the information required to comply with § 438.364(a)(2) would be significant, and would serve no purpose other than to comply with the rule. The commenter recommended deleting § 438.364(a)(2). Several commenters argued that the effort to compile and aggregate the data, analyze, and formulate the review reports will take a significant number of hours above the estimated number.

Response: The proposed rule did not address the burden of conducting EQR activities, because we had not completed the protocols at the time the proposed rule was published. A request for comment on the information collection requirement burden of the protocols was solicited in our November 23, 2001 **Federal Register** notice. We did, however, address in the proposed rule the burden associated with creating the EQR results report. We estimated

that it would take 160 hours for an EQRO to prepare and submit the EQR results. Since we received several comments stating that it would take more time than the 160 hours we proposed, but commenters did not provide us with time estimates, we are increasing the burden hours by 25 percent.

We do not agree that the burden of § 438.364(a)(2) is significant, or that it serves no useful purpose. We believe that an assessment of the strengths and weaknesses of MCOs and PIHP performance as it relates to the quality, timeliness, and access to health care services was the intent of the statutory provision that requires the results of EQR be made available to beneficiaries and providers. We retain these EQR results provisions in the final rule.

N. Impact Statement

To comply with Executive order 12866 and the Regulatory Flexibility Act we examined the impact of the December 1, 1999 proposed rule. We determined that the net impact of the proposed rule would be below the $100 million annual threshold, and that a regulatory impact analysis was, therefore, not required.

Comment: Several commenters believed that the proposed rule would result in greater costs and burden to States and MCOs than we estimated in the impact statement. The commenters stated that we did not estimate the increased costs to States and MCOs for external review for compliance with standards. The commenter also felt that we did not consider the negative impact of external auditing on other MCO activities, or new and ongoing infrastructure and labor, needed to comply with these provisions. One commenter contended that these activities would require MCOs and their providers to devote significant staff time to collect, organize, and prepare for review of large quantities of quality assurance data. Another commenter felt that due to the independence requirements, the net results would be that fewer entities would qualify to conduct EQR.

Response: We do not agree with these comments. The only activity that must be conducted by an EQRO is the analysis and evaluation of the information obtained from the EQR activities. If a State chooses to, it can conduct any of the EQR-related activities and receive the 50 percent administrative match as long as the activities are conducted using our protocols or protocols consistent with those we developed. In addition, many States are already conducting or having State contractors conduct many of the EQR activities. As we stated in our proposed rule, most States are already obtaining a 75 percent matching rate for many of these activities and we, therefore, believe there will not be a significant increase in Medicaid expenditures, and that no new significant infrastructure will be needed. We do not believe that this requirement will cause MCOs to devote significantly more time to collect, organize, and prepare for EQR than is already required by States to ensure compliance with their contracts with MCOs and PIHPs.

Because this will be a new requirement on PIHPs, we acknowledged in the proposed rule that there may be additional cost to the Federal government, since States currently conducting these activities receive a 50 percent administrative match, but under this rule they can now obtain the enhanced 75 percent FFP. We do not believe these costs are significant. Based on an analysis of 2001 Quality Improvement Organization funding on the CMS–64, we estimate a cost of $5,800,000.

Comment: One commenter, while supportive of holding MCOs accountable by measuring quality of care, noted that there is no such requirement for the Medicaid FFS program, and that these costs are, therefore, not reflected in the rate-setting methodology for managed care plans. This commenter also noted that undertaking these reviews has a significant cost implication for both the MCOs and the State.

Response: The statutory quality assessment provisions implemented in this final rule do not apply to the Medicaid FFS program. Moreover, there is no statutory or legislative history to indicate that the Congress intended that these provisions should apply to Medicaid FFS. The Collection of Information Requirements and Impact Statement address what we believe to be the cost implications of this requirement as it pertains to Medicaid capitated programs. We note that in the Medicaid managed care final rule, a new methodology was adopted for setting capitation rates. This methodology permits States to reflect MCO and PIHP administrative costs (including costs of complying with quality assessment requirements that do not apply under FFS Medicaid) in capitation rates.

Comment: One commenter believed that requiring an independent organization to conduct a review of an MCO's structural and operational standards would add an additional administrative expense to the program.

Response: States currently review MCOs and PIHPs for compliance with State standards. If conducted by the State, this expense is reimbursed at a 50 percent administrative match. However, some States currently define this activity as part of EQR, and thus receive the 75 percent enhanced Federal match. Under the provisions of this rule, if a State chooses to contract with an EQRO to conduct a review of MCO and PIHP compliance with State standards, a State can obtain a 75 percent enhanced match rate. While this may increase Federal expenditures, we do not believe that the increase will be significant, as some States already have their EQROs conduct this activity. Thus, we do not believe this affects our conclusions regarding the need for a regulatory impact analysis.

Comment: One commenter believed that the proposed reporting requirement would increase costs.

Response: States currently have their EQROs develop reports. We believe that this will not add significantly to the current costs incurred by the Medicaid program.

Comment: One commenter believed that our proposed decision to extend EQR requirements to PHPs would increase costs to States, and that we have not fully analyzed this financial impact.

Response: We stated in our proposed rule that applying this provision to PHPs might result in additional costs. Although States are currently conducting a variety of quality activities with their PIHPs and receiving a 50 percent administrative match for their costs, they now may obtain the enhanced 75 percent FFP match for these activities. Again, while this will result in some additional Federal costs, State costs will decline. We do not believe these costs are significant. As stated in a previous response, based on an analysis of 2001 Quality Improvement Organization funding from the CMS–64, we estimate a cost of $5,800,000.

Comment: One commenter was concerned about the cost of responding to additional EQR requirements, and the potential for duplication and administrative burden to comply with QISMC, the Medicaid rules, and EQR rules.

Response: We do not foresee that there will be any duplication of effort between complying with the BBA provisions, including the EQR provisions, and QISMC. As we stated previously, QISMC has been superseded by the Medicaid managed care final rules that incorporate key elements of the QISMC document.

III. Collection of Information Requirements: November 23, 2001 Federal Register Notice: Discussion of Public Comments

Many of the comments we received in response to the November 23, 2001 **Federal Register** notice were issues pertaining to the December 1, 1999 proposed rule, as opposed to collection of information requirements or other issues concerning the protocols. Most of those issues were addressed in the previous section that responded to comments received on the December 1, 1999 proposed rule. This section addresses comments related to the burden estimates and any other aspect of the collection of information. We believe that burden estimates apply to the following sections of the regulation: EQR protocols (§ 438.352), Nonduplication of mandatory activities (§ 438.360), Exemption from EQR (§ 438.362), and EQR results (§ 438.364). We first address general comments.

A. General Comments

Comment: Several commenters did not agree with the methodology we used to estimate costs associated with implementing EQR. One commenter believes the methodology is flawed and our projected costs may be significantly lower than actual costs because our sample was too small and the range of estimates is too large for cost averaging. The commenter is also concerned that the methodology does not account for indirect costs such as rent, transportation, and medical record photocopies. The commenter recommended that indirect costs that account for geographic variation should be added to accurately predict the cost of using the protocols. One commenter stated that our approach did not include a determination of whether the function performed by the sampled EQROs approximated the functions that would need to be conducted in accordance with the protocols. The commenter further noted that because we estimated a range of hours for conducting EQR-related activities, we have not provided a representative assessment of the burden to perform the EQR activities. The commenter recommended we develop a more accurate projection of hours and costs associated with performing these activities consistent with the protocols.

Response: While the actual number of EQROs we interviewed was relatively small, as stated in our November 23, 2001 **Federal Register** notice, these EQROs had reviewed 16 managed care programs in 8 States (Arizona, California, the District of Columbia, Maryland, New Mexico, Nevada, Tennessee, and West Virginia). Each of these States contract with a different number of MCOs to provide Medicaid services, ranging from States contracting with a few MCOs to States with several dozen MCOs. So, even though the number of EQROs we interviewed was small, we believe we chose EQROs that represented a broad range of experience in terms of the number of MCOs they review, as well as representing an adequate geographic mix.

We also recognize that using a broad range of hours given by the interviewed EQROs to estimate the average number of hours it will take to conduct each activity may overestimate or underestimate the actual costs. However, by showing the ranges of costs we averaged, we show the variability across States that are inherent when conducting quality review activities. As stated above, we believe the interviewed EQROs represent an adequate number of MCOs reviewed. In addition, even though we did not specifically ask each EQRO about the methodology that they used to conduct the EQR activities, the protocols represent generic activities and steps that are followed in both the public and private sector. We, therefore, believe that the activities for which we collected cost information were conducted using a methodology consistent with our protocols. Moreover, we have no reason to believe that the interviewed EQROs' estimates provided did not include indirect costs for conducting EQR activities. Because the commenters did not suggest a specific methodology or what other data should be used in such a methodology, we retain the methodology used in the November 23, 2001 **Federal Register** notice. We have updated the estimates based on more current data on the number of MCOs and PIHPs contracting with State Medicaid agencies to provide services to Medicaid beneficiaries.

Comment: One commenter objected to our not including the time necessary for MCOs to collect and submit the information necessary to perform the functions identified under § 438.358, activities related to EQR. The commenter recommended that we interview health plans to determine the estimates for this activity and include them in our analysis.

Response: We agree with the commenter and include burden estimates in this final rule to address the time and costs associated with MCO and PIHP submission of information necessary for the validation of performance measures, validation of performance improvement projects, and a review for compliance with structural and operational standards. The protocols for all three of these activities require that documentation be provided by the MCO or PIHP. We do not anticipate, however, that new documentation will need to be developed. For example, the documentation review activity that occurs when a review for compliance with standards is conducted includes a review of reports, policies, and surveys that already exist. We believe that it will take each MCO or PIHP approximately 4 weeks of one full-time equivalent employee to prepare the information to be submitted for the three mandatory activities and we have added this estimate under § 438.352, the EQR protocols.

Comment: Two commenters believe the protocols will result in significant burdens in the areas of data collection, duplication of management oversight, and financial costs to the State and its contracting MCOs. One commenter estimated the new costs associated with the three mandatory activities and the overall EQR will be an additional $250,000 per MCO. Another commenter believes the cost per MCO would be approximately $424,000 for the three mandatory activities. The commenters noted there will be additional indirect cost incurred by the State to administer and oversee the EQRO contracts, and by the MCOs associated with the annual preparation for the three mandatory activities.

Response: We do not agree that the protocols will cause significant financial costs to MCOs and States, cause significant burdens in the areas of data collection, or duplicate other oversight activities. Many States already require their contracting MCOs and PIHPs to conduct performance improvement projects, calculate performance measures, and comply with State standards. The three mandatory activities that ensure compliance with these requirements are also already conducted by many States. However, States may not be contracting with their EQRO for the conduct of all these activities. As stated earlier in this preamble, the State can conduct these activities itself or contract with an EQRO or other entity for the conduct of the EQR-related activities. If the State contracts with an EQRO, it will receive the enhanced 75 percent FFP. If States are not currently contracting with their EQROs for these activities and decide to contract with their EQRO for EQR-related activities under this authority, it will decrease their costs related to quality activities, as opposed to increasing their costs.

We believe that the EQR mandatory activities can easily be incorporated into existing State quality assessment systems and will not duplicate existing oversight activities. The conduct of EQR and the conduct of EQR-related activities is required as part of the quality strategy under § 438.204 of the Medicaid managed care final rule and MCO quality assessment and performance improvement program requirements under § 438.240 of the Medicaid managed care final rule. Furthermore, we believe that there will not be additional costs incurred by the State to administer and oversee the EQRO contracts since this is already an existing requirement on States and MCOs under OBRA 1986. Because the commenters did not provide us with an alternative methodology to use or evidence to support their statement, we retain the approach taken in the November 23, 2001 **Federal Register** notice on the information collection requirements and in the impact statement in the December 1, 1999 proposed rule.

Comment: One commenter disagreed with our assumption that the implementation of EQR would not have an increased cost to the Federal government. The commenter did not agree that the costs incurred with current EQR activities are representative of costs that would be incurred under the new requirement. The commenter argued that States currently contract with EQROs for a more limited scope of activities.

Response: Our December 1, 1999 proposed rule acknowledged that there is likely to be an increase in Federal expenditures but that we did not anticipate this to be a significant increase. We agree with the commenter that the scope of work may be different under the BBA EQR requirements than it was under the OBRA 1986 requirements. However, we do not believe that the cost difference will be significant and it is likely that there could be a decrease. By expanding the pool of organizations available to conduct EQR, State agencies may be able to negotiate savings. We also hope that additional savings will be realized through opportunities afforded by this rule to coordinate EQR activities with other quality and oversight activities.

As stated in our December 1, 1999 proposed rule, we expect some increase in expenditures since we are applying the EQR requirement to PIHPs. We do not expect this to be a significant increase in expenditures because States already conduct quality review activities on PIHPs and receive a 50 percent FFP. Now States will be able to qualify for the enhanced 75 percent FFP.

Section 438.352 EQR Protocols—General Comments

Comment: One commenter believes the scope of the protocols could result in excessive burdens and they should be revised.

Response: For several reasons, we do not agree that the scope of the protocols will result in excessive burdens. First, all protocols are based on procedures already in use in the private sector. These protocols, therefore, are consistent with common industry practice in widespread use today. Second, many States and MCOs and PIHPs are already conducting these activities, using methods consistent with or more intensive than the activities and steps found in these protocols. For example, many State agencies are using the CAHPS surveys. The protocols for administering these surveys are consistent with our survey protocol, but much more prescriptive. Similarly, many States are also requiring validation of performance measures or encounter data using approaches consistent with these protocols. Third, the States have the option to use the protocols we developed or protocols consistent with ours. The protocols also include sample worksheets that can be used or modified at the State's discretion. Fourth, we note that States are only required to use three of the nine protocols that we have developed; the other six protocols are developed for optional activities that States can choose to undertake or not, at their discretion. For these reasons, we believe the protocols will not be excessively burdensome, and we retain the scope of the protocols as introduced through the November 23, 2001 **Federal Register** notice.

Comment: One commenter recommended that there be a better explanation of the use and purpose of the protocols.

Response: Section 1932 (c)(2)(iii) of the Act required us, in coordination with NGA, to contract with an independent quality review organization to develop protocols to be used as part of EQR. The purpose of the protocols is to provide EQROs with a set of generic instructions that ensure that EQR activities are conducted using sound methodological principles. To provide ongoing explanation about the use of the protocols, we have created a Web site at *http://www.cms.hhs.gov/medicaid/managedcare/mceqrhmp.asp* that presents the protocols and an explanation of their intended use.

Comment: One commenter recommended that we not base the protocols on Federal or industry guidelines and standards, but that we incorporate these standards by reference.

Response: We disagree with the commenter. We purposefully directed our contractor to develop the protocols following protocols and quality review activities currently used in the managed care and quality oversight industries. We believe it is important to take advantage of the knowledge and experience that exists in the Medicare program and the private sector. Consistency with these approaches will also minimize the burden of complying with the protocols.

Comment: One commenter believes that the activities in this protocol will result in the State agency becoming the accrediting agency for Medicaid managed care, increasing the scope of prescribing and monitoring necessary by the State.

Response: We disagree with the commenter. The purpose of the three mandatory EQR-related activities is to ensure that MCOs and PIHPs are in compliance with §§ 438.204(g) and 438.240 of the Medicaid managed care final rule. However, many States currently conduct these activities. States that do not currently monitor for compliance with quality standards, monitor MCO and PIHP quality improvement projects or require the calculation of performance measures will need to initiate these activities. We believe that monitoring for these activities is consistent with the intent of the BBA EQR statutory provision to ensure that MCOs and PIHPs are providing access to timely and quality services.

Comment: One commenter believes the protocols are very clear in describing what information needs to be collected.

Response: We agree with the commenter and retain the activities and steps in the protocols introduced through the November 23, 2001 **Federal Register** notice.

Comment: One commenter believes that the protocols lack an evidenced-based approach to quality improvement. Another commenter believes that measuring MCO performance should be oriented to empirical performance outcomes and applied against quantifiable baselines and benchmarks rather than determining compliance through document reviews and interviews.

Response: We disagree with the first commenter. As we explained above, these protocols were developed

consistent with protocols and quality review activities currently used in the managed care and quality oversight industries. Further, the protocols addressing performance improvement projects explicitly incorporate provisions addressing the use of clinical and nonclinical evidence in the selection of quality indicators. We agree with the second commenter that MCO and PIHP performance should be oriented towards performance outcomes that are measured against baselines and benchmarks. This is one reason why the information obtained from the validation of performance measures and the validation of performance projects is to be included as part of the EQR function. We also believe however, that a review of the MCO's and PIHP's compliance with State standards is essential for determining whether access to quality and timely services is provided. We believe this information used in conjunction with the information obtained from the validation of performance measures and performance improvement projects provides for both a qualitative and quantitative approach to assessing MCO and PIHP performance.

Comment: One commenter recommended that specific clinical areas (for example, early and periodic screening, diagnosis, and treatment (EPSDT) reporting) be addressed in multiple protocols.

Response: We believe that a variety of both clinical and nonclinical areas of care need to be assessed by the State and MCO or PIHP over time. However, we do not specify in regulation or in our protocols what those specific clinical and nonclinical areas should be because we believe that States should have the discretion to identify priority topics based on their knowledge of the public health priorities in the State, the health care needs of their beneficiaries, and based on discussions with beneficiaries and other stakeholders in the State. If we do decide that it is necessary to identify national priority topics, § 438.240(a)(2) of the Medicaid managed care final rule provides us with the authority to do so in consultation with States and other stakeholders.

Comment: One commenter asked that the protocols reflect our review criteria for children with special needs.

Response: When States require children with special health care needs to enroll in a capitated Medicaid managed care program, they must follow the review criteria provided in the January 19, 2001 State Medicaid Directors' letter. The Medicaid managed care final rule includes standards States must comply with when contracting with MCOs and PIHPs that enroll Medicaid beneficiaries, including children with special health care needs. These standards address the principles on which the review criteria are based. This protocol does not put forth any new standards, but identifies methods to determine compliance with current standards.

Comment: One commenter suggested that the protocols require the validation of performance measures submitted by MCOs, unless the measures were validated by a reliable entity using comparable standards.

Response: If performance measures are validated by an entity using an approach consistent with our protocol, only the information obtained from that review needs to be provided to the EQRO to be used as part of the EQR function. The review activity itself need not be duplicated. In addition, if the entity qualifies as an EQRO, the State can capture the enhanced 75 percent Federal match.

Comment: One commenter recommended that assessments of quality should include multiple sources of information including audits, certifications of sufficient networks and systems, and other submissions the MCO has provided to the State outside of the review process.

Response: We agree with the commenter that information from multiple sources should be included as part of the EQR. We believe we have accomplished this through the multipronged approach we have provided for in this final rule. The EQR will include information from the validation of performance improvement projects, the validation of performance measures, and a review for compliance with standards that may include plan network adequacy information, service authorization procedures, and other documentation that attests to the structural and operational components of the MCO or PIHP.

B. Protocol for Determining Compliance With Structural and Operational Standards

1. General Comments

Comment: The commenter believes that because we used a combination of private sector protocols in the development of the protocol for compliance with structural and operational standards, our protocol is likely to be more burdensome than that of any one private sector protocol.

Response: We reviewed a number of private sector protocols in the development of the protocol for compliance with structural and operational standards. We identified those elements common to all and used those as a basis for the protocol. Our protocol is not an additive combination of private sector protocols. Conversely, it is a synthesis or a streamlining of common elements found in multiple private sector protocols. Consequently, we do not believe our protocol is more burdensome than any one private sector protocol.

Comment: One commenter argued that CMS, for Medicare, is changing its onsite review process so this will be less frequent and more targeted. Medicare is also streamlining its review guide and will be reviewing less documentation and including more self-auditing by MCOs. The commenter recommended that we adopt a similar approach.

Response: The process for how this protocol will be used is set forth in this final rule, which contains provision for less frequent monitoring, and under certain circumstances, for the nonduplication of activities conducted under the Medicare program reviews or independent accreditation surveys. Through these regulatory provisions, we believe we have adopted a streamlined approach to quality review, similar to that used by Medicare.

Comment: One commenter is concerned that this protocol requires intensive onsite reviews to determine compliance with the structural and operational standards required in the Medicaid managed care final rule. The commenter believes that to meet the goals of EQR, it is not necessary to include all the areas identified in the monitoring protocol and that States should not be required to use this approach. One commenter believes that the guidance on the onsite review process is prescriptive and it is unlikely that the EQRO will need or use this detailed level of guidance. In general, the commenter believes the protocol is overly detailed and should be simplified to examine major structural and process requirements.

Response: The degree to which the protocol relies upon onsite reviews is consistent with the degree to which onsite review is used by private accrediting bodies. Therefore, we do not believe the onsite review specified in our protocol is too intensive. In the private sector, when an accrediting body has a standard, they monitor for compliance with it through a combination of interview activities and document review. We have followed this private sector approach and intend that all Federal requirements be monitored for compliance. Because the protocol contains only "potential" interview questions and documents for

"potential" review, States, in using the protocol, will be able to target the reviews as they determine appropriate. We believe the protocol provides an appropriate amount of detail needed to reflect the scope and depth of the quality review activities to be conducted. We note in the protocol that, although the EQR activities must be consistent with the protocol, they need not be identical, thus providing the option for the States to prescribe a less detailed level of activity to the EQRO.

Comment: One commenter recommended that documents be obtained in advance and that multiple fact-finding efforts occur over time before conducting the onsite reviews. This allows State staff to be better prepared and is less disruptive for MCO staff.

Response: The EQR protocols are designed for use by EQROs which in many circumstances are not likely to be staffed by State personnel. However, State staff conducting compliance reviews may also use the protocols at their discretion. The protocols specify that documents may be obtained in advance, and reviewers, though not directed to do so, are not precluded from performing these activities over time.

Comment: One commenter recommended that the protocol include the review of previous monitoring reports and that the MCO's efforts and progress in correcting past problems be noted.

Response: We agree with the commenter. Therefore, in the final protocol, we have added that, before the onsite visit, reports on previous reviews and subsequent MCO and PIHP corrective actions be reviewed to identify areas on which the EQRO might need to focus the current monitoring activities.

Comment: One commenter recommended that the protocol include a mechanism for the State to prepare and submit oversight findings to the MCO and approaches to follow-up to ensure that corrective action has occurred. The commenter also recommended that every onsite review end with an exit interview to focus the MCO's attention on those areas the State is concerned about and intends to address in the findings and recommendations report.

Response: We agree with the commenter that evaluation results need to be reported to the MCO or PIHP. This reporting is common practice upon completion of a performance evaluation and a number of strategies are available for this reporting. We describe four possible alternatives for reporting in the protocol, but States are not precluded from selecting other alternatives that might include exit interviews with the MCO or PIHP at the conclusion of the onsite review.

Comment: One commenter recommended simplifying the compliance scoring system and placing greater emphasis on objective indicators of organizational performance such as performance improvement projects and survey results.

Response: We agree that other sources of information may provide information pertaining to MCO/PIHP compliance with the regulatory provisions, and we list some of these sources in the protocol under Activity 5, "Collecting Accessory Information." In defining regulatory compliance, we have indicated that the State Medicaid agency will need to identify the level of compliance it requires and what rating or scoring system is to be used. In the protocol, we offer examples of common approaches, but because there is no evidence that one scoring system is better than all others, we allow States the discretion to select the scoring system to be used.

Comment: One commenter believes that of the four alternatives listed in the protocol for reporting evaluation results to the State Medicaid agency, neither the first nor the fourth alternative is acceptable. The commenter claims the first alternative makes information vital to the review; that is, the reviewers' analysis, unavailable to the State, while the fourth alternative represents a complete delegation of the State's monitoring responsibility to the EQRO.

Response: We do not agree with the commenter. In the first alternative, analysis is guaranteed based upon the definition of EQR in this final rule. According to that definition, EQR requires "the analysis and evaluation of aggregated information." In the fourth alternative, reporting is accomplished based on pre-established State thresholds and guidelines, and therefore does not represent a complete delegation of the State's monitoring responsibility to the EQRO. The four alternatives listed in the protocol are possible scoring strategies; we state in the protocol that other options are available for use by States.

Comment: One commenter recommended that States require EQROs to use a standard written reporting tool.

Response: We agree with the commenter and have included a sample document and reporting tool (Appendix C, Attachment C of the final protocol) for this purpose. However, we allow States to modify this sample tool or develop another standard reporting tool, at their discretion.

Comment: One commenter noted that many questions are broad and not well written so the nature of the response being sought is unclear. The commenter recommended that the entire section for interviews should be reviewed in the context of whether the EQR rule is being exceeded by the data required during the interviews. Several commenters recommended that the interview section be dramatically shortened by eliminating duplicate questions and by deleting questions whose answers cannot be evaluated against the State's MCO contract specifications or a specific provision in the rule.

Response: We do not agree that we should more narrowly construct or abbreviate the interview questions. We have included a range of potential interview questions related to the subject matter of the regulatory provisions for reviewer use in prompting discussion. We expect, in practice, the reviewers will customize the interviews as necessary to clarify issues and confirm document findings. In the protocol, we compiled questions related to the regulatory provisions for each group of interview participants; for example, MCO or PIHP leadership, enrollee services staff. While this format creates some redundancy among the interview groups, we believe it facilitates the interviews by enabling each interview group's questions to stand alone. We also note that it is common practice in private accreditation reviews to ask the same or similar questions of different MCO or PIHP staff and also to review documents to support information obtained from interviews to determine if the information obtained from multiple sources converges and reaffirms the EQROs conclusions.

Comment: One commenter believes the protocols are bureaucratic and administratively burdensome and that there is a lack of evidence of the success of this type of process-oriented oversight. The commenter further stated that the level of detail is excessive to ensure conformance with MCO contracts and the BBA rule, and that the purpose is not for an accreditation.

Response: The protocols are based upon the common elements found in compliance protocols used by private sector accrediting bodies and the Medicare program. Consequently, we do not believe they are overly bureaucratic, administratively burdensome, or without a sound evidentiary basis. We also have followed the private sector approach in specifying that all standards, in this case the Federal

requirements, be monitored for compliance. We believe the protocol provides an appropriate amount of detail needed to reflect the scope and depth of the quality review activities to be conducted. We note again that the specific interview questions are suggestions only, and we expect the questions to be customized for each review.

Comment: One commenter claimed that some informational items the EQRO is to collect from the State Medicaid agency do not exist as contract provisions and may not exist as other standard documents. This will create additional paperwork. The commenter recommended that the EQRO should only verify that the State's managed care contracts require compliance with applicable State and Federal laws.

Response: We do not agree with the commenter. The background information that the EQRO will need to collect from the State under this protocol includes written documentation of those standards, requirements, or decisions pertaining to MCOs and PIHPs that the State established to comply with the regulatory requirements that implement the BBA provisions governing standards for contracts with MCOs and PIHPs. This information is needed to assess MCO or PIHP compliance with those regulatory provisions for which the State is required to establish certain standards.

Comment: One commenter claimed that the number and types of documents the EQRO is to obtain from the MCO are too extensive and that many of the Code of Federal Regulations citations used to justify the collection of documentation are incorrect and do not relate to the topic. The commenter recommended that the protocol be reviewed for incorrect citations and references and that corrections be made.

Response: We do not agree with the commenter. We believe the documents listed are those needed to evaluate MCO or PIHP compliance with the Medicaid regulatory provisions. The regulatory provisions cited indicate where information obtained from the documents can be applied in the review process. For example, although § 438.214 pertains to credentialing and recredentialing, this provision is applicable to oversight of delegated activities, if the MCO or PIHP delegates credentialing to another entity.

Comment: One commenter recommended that Appendix B to this protocol have a cross-reference table that summarizes each interview question with the respective oversight organization documentation listed.

Response: We believe the format for the protocol itself is generally comparable to the recommended cross-reference table for Appendix B (Attachment B of the final protocol). The protocol includes a table cross-walking the review documentation with the related regulatory provisions. The subsequent interview sections then aggregate the interview questions by regulatory provision for each interview group.

Comment: One commenter was concerned that we do not include information available from consumers as a source of information to be used in this protocol. Several commenters believe this protocol does not go far enough to examine actual practices of MCOs' or beneficiaries' experience with care; rather, it focuses on policies and procedures. One commenter recommended the protocol include interviews with State Medicaid personnel and providers, and input from consumers, consumer advocates, and people with special health care needs.

Response: We agree that providers, consumers, and others mentioned may offer further information about MCO or PIHP performance; however, interviewing these groups requires additional time and substantial resources. Therefore, in this protocol, we have made provider and contractor interviews optional. However, we have further promulgated a separate protocol for the use of provider and consumer surveys as a source of information that can be used for EQR at the option of the State. We believe that mandating additional surveys as a part of this protocol would be burdensome and unnecessary.

Comment: One commenter believes the MCOs can prepare in advance for the review. The commenter recommended reviewers should interview providers and beneficiaries not preselected by the MCOs to ensure compliance with established policies.

Response: We agree with the commenter's concern regarding preselection. For the reasons previously noted, however, provider interviews are an optional part of this protocol. Consumer and provider surveys are also specified as a separate, optional EQR-related activity for securing input from beneficiaries and providers.

Comment: One commenter recommended that among document review and interviews, we include in our approach extensive file review.

Response: We are unsure what files the commenter is proposing for review. The approach used in the protocol is the same approach used by the private sector accrediting bodies and in the Medicare program. If the commenter is referring to medical record review, these are included and discussed in the protocols for validating and conducting performance improvement projects and validating and calculating performance measures.

Comment: One commenter suggested that because a core component of quality programs is responsibility for the program at the highest level of the organization, we include a discussion of committee structure and committee oversight in the overview section.

Response: We assume the commenter is referring to the MCO or PIHP's quality assurance committee and oversight. The protocol addresses compliance with the standards required in the Medicaid managed care final rule. Because committee structure and committee oversight as a core component of quality programs is not included as a standard in the Medicaid managed care final rule, it would not be appropriate to require it in the protocol.

Comment: One commenter believes that the pertinent issue in team development (p. 6 of the protocol) is the identification of the specific functions to be reviewed and the assignment of appropriate personnel to the task, not the size of the team.

Response: We agree that an important consideration in the development of the review team is the determination of the types of personnel appropriate for the review as related to the functions to be reviewed. Therefore, we have specified the desirability of reviewers possessing knowledge of Medicaid and managed care, and experience and familiarity with the regulatory provisions, the evaluation process, and performance expectations.

Comment: One commenter recommended that we include in the list of documents on page 18, committee minutes, vendor oversight committee, and committee structure of the quality program.

Response: The list of documents on page 18 refers to the documents used for determining compliance with specific regulatory provisions. Because the commenter has not stated what regulatory provisions these documents would be used to address, we are unclear as to how to propose their use and have not included them in the document list.

2. Provider/Contractor Services

Comment: One commenter recommended that the review of credentialing files by the EQRO be deleted because the criteria for auditing the files are inadequate. The commenter

recommended that the element be simplified to call for the EQRO to review MCO credentialing policies and procedures for conformance with State contract requirements.

Response: We disagree with the commenter. We believe that a review of policies and procedures alone, when the opportunity exists to review documents providing direct evidence of compliance or noncompliance with the policies and procedures, is a more effective review mechanism. This is consistent with the approach used by private sector accrediting bodies and in the Medicare program.

3. Staff Planning/Education/Development

Comment: One commenter suggested that the requirement for the MCO to produce staff handbooks and information about staff training and orientation be dropped for lack of specificity or rewritten to make clear what criteria the auditors are to use in reviewing the required materials.

Response: We indicate on the list of documents the regulatory provisions to which each document applies. In this instance, staff handbooks and information about staff training and orientation pertain to the requirement that staff be educated about the enrollee's right to receive adequate information; for example, information on disenrollment rights and hearing and appeals. We have specified interview questions for MCO/PIHP leadership, provider and contract services staff, and enrollee services staff concerning how appropriate staff are informed regarding the enrollee right to information. We believe this provides sufficient clarity with respect to the criteria reviewers are looking for and we retain the references to the staff handbook, staff training, and orientation.

Comment: One commenter suggested that the interview questions include probes to determine how staff are trained to comply with Federal and State laws, and how staff advise enrollees of their rights. The commenter recommended further that interview questions address the content, frequency, and thoroughness of the training to confirm no major area of law is overlooked.

Response: We have specified staff handbooks, and orientation and training curriculum, in the list of documents to be reviewed and included interview questions to confirm MCO/PIHP compliance with the regulatory requirements pertaining to enrollee rights and compliance with Federal and State laws. However, if issues arise during the document review concerning the adequacy of the staff's training regarding these provisions, reviewers are directed to explore them during the interviews. We believe this direction affords the reviewers the flexibility necessary to appropriately tailor the review activity. Further, we do not believe it is possible, given the diversity among States and MCO/PIHPs and the scope of the review itself, to include in the list of potential interview questions probes to explore all applicable State laws.

4. Consumer Protections

Comment: One commenter recommended that the protocol include the monitoring of the Medicaid managed care final rule provisions related to consumer protections. The commenter specified for inclusion provisions addressing: the free choice of providers for family planning services (§ 431.51); prohibition on provider discrimination (§ 438.12); availability of out-of-network providers in rural areas (§ 438.52(b)); disenrollment rights as a result of grievance procedures, and related notice and appeal rights (§ 438.56(d) and (f)); enrollee rights regarding treatment, second opinions, and medical record access and correction (§ 438.100); marketing activities (§§ 438.104, 438.700(b)); liability for payment beyond what is legally allowable (§ 438.106); program integrity requirements (§ 438.608); imposition of sanctions (§ 438.700); and multiple charges and denial of services for inability to pay cost sharing (§ 447.53).

Response: We have listed in the protocol documents for review to determine compliance with regulatory provisions related to prohibition on provider discrimination; disenrollment rights as a result of grievance procedures, and related notice and appeal rights (§ 438.56(d)); and enrollee rights regarding treatment, second opinions, and medical record access and correction. We further agree with the commenter and have amended the protocol to include review of the MCO/PIHP's relevant policies and procedures to assess compliance with the regulatory requirements pertaining to the free choice of providers for family planning services; liability for payment beyond what is legally allowable; and multiple charges and denial of services for inability to pay cost sharing. However, the provisions concerning availability of out-of-network providers in rural areas; marketing activities (§ 438.700(b)); program integrity requirements (§ 438.608); and imposition of sanctions (§ 438.700) are responsibilities of the State and not the MCO/PIHP and, therefore, we have not included them as a focus of this protocol. The regulatory requirements in § 438.104, while they pertain to MCO/PIHP marketing activities, are contract requirements that do not directly provide information on quality and are more particular to a State responsibility. Because the protocol is designed to determine MCO/PIHP compliance, we believe it would not be appropriate to monitor these latter activities through the protocol.

5. Enrollee Services

Comment: One commenter believes a State can contract with the MCO to provide information to potential enrollees, and recommends the protocol monitor the MCO's compliance with these informational requirements.

Response: In the August 20, 2001 Medicaid managed care proposed rule, we stated that "it would be unreasonable to require every MCO/PIHP to provide the relevant information to all potential enrollees." We believe the MCO/PIHP should not be contracted by the State to undertake this responsibility, and explained in the proposed rule that "the State agency is the more appropriate entity to do" the potential enrollee informing. This requirement was, therefore, not included in our Medicaid managed care final rule and we are not changing the protocol to monitor the MCO's/PIHP's compliance with providing information to potential enrollees.

Comment: One commenter recommended the protocol include a standard reflecting the regulatory requirement for the provision to enrollees of information on services not provided due to moral or religious objections.

Response: We agree with the commenter. The protocol identifies the section of the regulation that requires enrollees to be provided with information about services that are not provided by the MCO or PIHP because of moral or religious objections. It also identifies relevant documents to be reviewed to determine compliance (see pages 22 and 77 of the protocol). These documents include Medicaid enrollee service policies and procedures, statement of enrollee rights, and marketing materials.

Comment: One commenter believes the protocol should include guidance on how to measure the adequacy of the MCO's activities to inform enrollees. The commenter recommends the protocol include additional guidance on the fourth grade reading-level standard for materials, and confirmation that written materials are at an understandable grade level and in

alternative forms to accommodate individuals with sight impairments.

Response: We note that we have provided guidance on this issue in the August 2001 proposed Medicaid managed care rule. In the preamble to the August 2001 proposed rule, we indicated that materials should be understandable to enrollees at a fourth to fifth grade reading level, or at another level established by the State agency that adequately reflects the potential population to be enrolled. Materials should use an easily readable typeface, frequent headings, and should provide short, simple explanations of key concepts. Technical or legal language should be avoided whenever possible. We proposed further that enrollment notices as well as informational and instructional materials relating to enrollment take into account the specific needs of enrollees and potential enrollees, including furnishing information in alternative formats for the visually impaired and for individuals with limited reading proficiency. Also, in 1999, we developed and distributed to the State Medicaid agencies and made available to others a guide entitled, "Writing and Designing Print Materials for Beneficiaries: A Guide for State Medicaid Agencies." The guide was produced to assist States and MCOs/PIHPs in the creation of materials appropriate for their Medicaid populations. We believe the guidance that we have provided in the August 2001 proposed rule and through this guide is appropriate and reflects the current state-of-the-art. Because there is no state-of-the-art standard to apply in measuring the adequacy of the MCO's/PIHP's efforts to inform enrollees, we decline to do so in this protocol.

Comment: One commenter recommended that we monitor the States' definition of what constitutes a "significant change" in certain MCO structural and operational features to ensure the State's definition of "significant change" is reasonable and fair to enrollees, and that we provide guidance on what parameters a State can use in setting the definitional standards.

Response: The protocol addresses the extent to which an MCO/PIHP, as opposed to the State, complies with the requirements in the Medicaid managed care final rule. Section 438.10(f)(4) of the Medicaid managed care final rule specifies that the definition of "significant change" is the State's responsibility. It, therefore, would not be appropriate to include in the protocol the monitoring of the State's definition. Monitoring of States occurs through separate activities conducted by our regional offices. Further, as we stated previously, the protocol is not intended as a mechanism to impose additional quality standards on MCOs/PIHPs or States. Therefore, we do not believe it appropriate to provide guidance in the protocol on what parameters a State can use in setting the definitional standards.

Comment: One commenter noted that the interview questions are good initial probes, but suggested the protocol include additional guidance to more fully probe the MCO's dissemination of enrollee information, and require interviews of providers and enrollees regarding the quality of the informational materials.

Response: We specify in the protocol that reviewers should tailor the interviews as necessary to clarify and confirm document findings. We believe this direction affords the reviewers sufficient flexibility to more fully probe areas as appropriate. Further, we do not believe it is possible, given the diversity among States and MCOs/PIHPs and the scope of the review itself, to include in the list of potential interview questions probes to explore every possible problem or issue that might arise. Provider interviews are time and resource intensive, but because they offer an opportunity to secure additional information regarding MCO/PIHP performance, we have included them as an optional activity if informational needs warrant them and resources permit. We provide for the consideration of enrollee input by including the review of the results of Medicaid beneficiary surveys as accessory information under Activity 5.

Comment: One commenter believes the protocol does not adequately address linguistic issues. The commenter recommended that the review confirm that MCOs collect required language information on enrollees and recognize non-English speakers in all transactions. The commenter suggested further that the protocol include the review of documentation regarding professional translations of written materials, and interviews to assess the quality of the written translations and the MCO's oral interpretation practices and resources.

Response: We believe the protocol does adequately address linguistic issues. In Appendix B (page 79, Attachment B of the final protocol), among the materials to be obtained from the State, we include information on the language(s) that the State Medicaid agency has determined are prevalent in the MCO's/PIHP's geographic service area. On page 85, we direct the reviewer to look at marketing, enrollment and other informational and instructional materials relating to enrollment, enrollee handbooks, new enrollee materials, statements of enrollee rights, and other written materials routinely prepared for Medicaid enrollees and potential enrollees to determine whether these materials are available in the language(s) that have been identified as prevalent within the MCO/PIHP's particular service area. Further, the Medicaid managed care final rule at § 438.204(b)(2) requires States to identify the primary language spoken by each Medicaid enrollee and provide this information to the MCO/PIHP at the time of enrollment. Finally, we believe requiring EQRO re-review of translated materials is more burdensome than appropriate and therefore have not included it in the protocol.

6. Enrollee-Provider Communication

Comment: One commenter objected to the implication that by contract MCOs may place limits on providers' communication with enrollees about reproductive health services. The commenter recommended that the protocol include document review and interview questions to address whether reproductive health services are provided and whether restrictions are placed on provider communication. The commenter suggested further that for MCOs that exclude any reproductive health services the State monitor enrollee access to the full scope of services. The commenter noted a potential correlation between restricted access to reproductive health care services and poor outcomes in other women's health areas, and recommended the State monitor related health outcomes and comparison of rates to those of MCOs without restrictions.

Response: Appendix B of the protocol (Attachment B of the final protocol) specifies documents for review and interview questions to address whether the MCO/PIHP has any moral or religious objection to providing, reimbursing for, or providing coverage of, a counseling or referral service for a particular Medicaid service or services. This would include reproductive health services. For counseling and referral services the MCO/PIHP does not cover because of moral or religious objections, the Medicaid managed care final rule at § 438.10(f)(6)(xii) specifies that it is the State's responsibility to provide enrollees with information on where and how to obtain the service(s). The protocol is designed to address MCO/PIHP compliance with the BBA regulatory standards. Consequently, State monitoring of enrollee access to

the full scope of services and State monitoring of health outcomes in other women's health areas for enrollees with restricted access to reproductive health care services, and comparison of these rates to those of MCO/PIHPs without restrictions is beyond the scope of the protocol.

7. Emergency Services

Comment: One commenter suggested that the interview questions concerning inappropriate use of emergency rooms emphasize a comparison of their inappropriate use with access to routine and urgent care.

Response: We agree with the commenter and have therefore expanded the relevant interview questions in Appendix B of the protocol (Attachment B of the final protocol) under § 438.210 that addresses coverage and authorization of services to inquire about the potential relationship between inappropriate emergency room use and enrollee access to routine and urgent care.

8. Delivery Network

Comment: One commenter recommended that the protocol, in reviewing the MCO's/PIHP's network of appropriate providers, consider specifically the providers needed to meet the needs of pregnant women, children and individuals with special needs, particularly those targeted for enrollment.

Response: In the Medicaid managed care final rule at § 438.206, we require the MCO/PIHP to establish a network of appropriate providers that considers the "expected utilization of services, considering Medicaid enrollee characteristics and health care needs." We intend and expect that MCOs and PIHPs that serve pregnant women and individuals with special health care needs will consider their characteristics and needs. However, we do not explicitly identify them in this protocol because they are not explicitly mentioned in the regulation in this provision and because not all MCOs and PIHPs may serve pregnant women and individuals with special health care needs.

9. Access

Comment: One commenter suggested that the review address transportation services to network providers and out-of-network providers for enrollees without access within established time and distance standards, and for enrollees with disabilities and special needs.

Response: The regulations do not contain standards for the provision of transportation services to network or out-of-network providers, or for enrollees with disabilities and special needs. In addition, transportation is a service that may or may not be included under the MCO/PIHP contract. Therefore, in the protocol's document review and interview questions, we include only those transportation issues addressed in the regulation.

Comment: One commenter recommended that the monitoring of access to out-of-network providers include a review of the procedures for determining when in-plan access is unavailable and out-of-network services are appropriate; obtaining access to out-of-network services; and for providing in-plan services for enrollees denied out-of-network access.

Response: The protocol specifies a review of the MCO's/PIHP's administrative policies and procedures pertaining to the use of out-of-network providers. Although we reference documents by generic name or title, we explain that what is important is the presence or absence of evidence to determine compliance with the specified regulatory provision. We anticipate reviewers will use the relevant documents to determine compliance with all aspects of the regulatory provision regarding out-of-network access including those identified by the commenter.

Comment: One commenter suggested that the document review include policies, procedures, and criteria for determining that second opinions are rendered by qualified providers.

Response: We agree with the commenter. The protocol specifies a review of the MCO's/PIHP's administrative policies and procedures for providing enrollees with a second opinion from a qualified health care professional. As previously indicated, although the documents are referred to by generic name or title, we explain that what is important is the presence or absence of evidence to determine compliance with the regulatory provision. We anticipate reviewers will use the relevant documents to determine compliance with all aspects of the regulatory provision requiring that second opinions are rendered by qualified providers.

Comment: One commenter recommended that the document review related to direct access to women's health services be expanded to include materials produced by the State to inform MCOs and by MCOs to inform providers. The commenter suggested further that the review include policies and procedures for implementing direct access to these services.

Response: Within the review of enrollee rights, the protocol specifies a review of staff and provider orientation, education, and training curricula and materials, and other provider and staff communication tools for evidence that staff and providers consider, among the enrollees' rights, direct access to women's health services. We also specify the review of the results of MCO/PIHP monitoring of complaints and grievances, enrollee survey or other MCO/PIHP sources of enrollee information to detect violations of enrollee rights, including the provision of direct access to women's health services. However, we do not include in the protocol a review of materials produced by the State because the protocol is a review of MCOs or PIHPs, not State Medicaid agencies. Review of State compliance with Federal requirements is carried out by our regional office staff through a separate process.

Comment: One commenter recommended that the reviewer monitor the time it takes for enrollees to obtain appointments with network providers.

Response: We agree with the commenter. Our protocol directs the reviewers to obtain the State Medicaid agency's standards for timely access and to review documents showing how the MCO/PIHP ensures compliance and continuously monitors its network providers for compliance with the timely access standards. The protocol lists some acceptable mechanisms the MCO/PIHP may use for monitoring compliance.

Comment: One commenter suggested that inappropriate use of emergency rooms be evaluated according to the "reasonable lay person" standard. The commenter also recommended that the monitoring of emergency room use consider access to nonemergent care and follow-up outreach and education for enrollees using emergency rooms for nonemergency care.

Response: The protocol monitors MCO/PIHP application of the prudent layperson standard in the regulation at § 438.114. As we indicated in our response to a previous comment on emergency room use, we have added an interview question to inquire about the potential relationship between inappropriate emergency room use and enrollee access to routine and urgent care. However, MCO/PIHP follow-up outreach and education for enrollees using emergency rooms for nonemergency care is not a regulatory requirement, and it would be inappropriate to include it in the protocol.

Comment: One commenter suggested expanding the protocol's activities to include the review of training curricula and materials on cultural and linguistic competency, including the scope and depth of the training, its frequency, and extent of staff attendance; the procedures for the translation and testing of enrollee informational materials; and arrangements with community-based organizations representing relevant ethnic groups.

Response: We disagree with the commenter. Our protocol addresses the extent to which an MCO/PIHP complies with the regulatory provisions that implement the Medicaid managed care sections of the BBA. The Medicaid managed care final rule, at § 438.206(c)(2), requires that MCOs/PIHPs participate in the State's efforts to promote the culturally competent delivery of services. Therefore, the protocol specifies a review of documents for evidence of the MCO's/PIHP's participation in the relevant State efforts. The inclusion of additional requirements not required by regulation within the protocol would be inappropriate.

10. Coordination & Continuity of Care

Comment: One commenter recommended that the review of coordination and continuity of care include interview questions regarding the provision of any specialty care services currently not provided in-network, and MCO efforts to make these services available in-network. The commenter also suggested that the interview questions be expanded to inquire what proportion of Medicaid enrollees with special health care needs have a person or entity formally designated as primarily responsible for coordinating their health care services.

Response: We agree, in part, with the commenter. Consequently, we have added an interview question for the organization leaders to inquire about the provision of any specialty care services currently not provided in-network. We have not added questions about MCO or PIHP efforts to make these services available in-network because it is not clear whether or not it is always necessary that all specialty services be provided by in-network providers. We have added additional potential interview questions for enrollee services staff to determine what proportion of Medicaid enrollees with special health care needs have a person or entity formally designated as primarily responsible for coordinating their health care services.

Comment: One commenter believes the protocol should differentiate between gatekeeping activities that are involved with utilization control and care coordination and case management functions that are related to supporting service access and coordination. The commenter believes further that reviewers should consider the MCOs' scope of responsibility for EPSDT case management, and how these services are provided or referrals are made.

Response: We agree with the commenter that a State may want to differentiate between care coordination models. In so doing, a State may decide to explicitly address care coordination for EPSDT care management. We specify in the protocol that MCOs/PIHPs may establish different coordination mechanisms, and in monitoring for compliance with the requirements for care coordination, direct the reviewers to obtain the State's requirements for MCO/PIHP care coordination programs.

Comment: One commenter recommended that the interview protocol address how and who conducts the MCOs' health screens; how the MCO assesses enrollee needs and determines if the provider is qualified to perform the assessment; how enrollees access case management services; how an enrollee's need for a treatment plan is determined; and how the providers are informed of the process. The commenter also suggested additional interview questions to address the number of treatment plans developed by categories of individuals, the number of denied requests for treatment plans and the reason for denial, and the number of treatment plans denied.

Response: The protocol includes interviewer questions for the case managers and care coordinators and for the enrollee services staff regarding the implementation of health screens, the conduct of health assessments for Medicaid enrollees, processes for care coordination, and procedures to determine how an enrollee's need for a treatment plan is determined. The protocol's interview questions for the provider/contractor services staff probe how providers are made aware of and are involved in procedures for assessments, treatment planning, and care coordination. We agree with the commenter regarding the need to explore the MCO's/PIHP's treatment planning. We have revised the protocol to include a series of questions for the case managers and care coordinators concerning the number of treatment plans developed, the number of denied requests for treatment plans and the reason for denial, and the number of treatment plans denied. However, our revision will not include a review of the treatment plans by categories of individuals. We do not require specific categories and, therefore, have no standard against which to measure the MCO's/PIHP's performance.

11. Prior Authorization

Comment: One commenter believes the protocol should include a review of prior authorization procedures and policies and a determination of their reasonableness, reflection of good medical practice, and timely application. The commenter suggested reviewers monitor the number of and reasons for delayed expedited requests, and the health consequences associated with prior authorization delays and denials of expedited authorizations. The commenter further believes the MCOs' informal communications with providers should be monitored, including the handling of provider telephone inquiries, resulting changes to the course of treatment, and provision of enrollee notice and appeal rights.

Response: We agree with the commenter regarding the need to determine compliance with the requirement for timely prior authorization decisions, and therefore have included in the protocol document review and interview questions to determine compliance. However, the regulations include no standards for the reasonableness of the policies and procedures or for their reflection of good medical practice; these issues are therefore beyond the scope of the protocol that is designed to assess compliance with the Medicaid managed care regulatory requirements.

We also agree with the commenter's suggestion to review the number and reasons for delayed expedited requests. We have revised the document review for service authorizations to include the review of tracking logs or other authorization record-keeping documents to address number and reasons for delayed expedited requests.

We do not agree with the suggestion to monitor health consequences associated with prior authorization delays and denials of expedited authorizations. We believe that determinations on whether health consequences were due to authorization delays or denials, or to the normal progression of the enrollees' health condition would be subjective. Further, States are required to maintain records of grievances and appeals and review this information as part of the State quality strategy. If enrollees' health outcomes are adversely affected by the MCO's/PIHP's handling of service authorization requests, this should become evident to the State through this grievance and appeals review.

Therefore, we have not added this review activity to the protocol. We are also not requiring the EQR to review informal communication with providers. Informal communications by their nature do not routinely involve written documentation, and we believe it would be burdensome to require reviewers to monitor verbal exchanges.

Comment: One commenter recommended that the interview questions address the MCO's process and criteria for extensions of the standard 14 days for regular prior authorization decisions.

Response: We disagree with the commenter: timeframes for standard prior authorization decisions are established by the State. The protocol addresses compliance with the standard requirements in the Medicaid managed care final rule. Because extensions to State-established timeframes for standard authorization decisions is not included in the regulations addressing enrollee services, it would be inappropriate to include it in the protocol.

12. Enrollment & Disenrollment

Comment: One commenter believes that the protocol should provide guidance to reviewers concerning when it is appropriate for enrollees to use the MCO's grievance process before the State makes a determination on the enrollee's disenrollment request.

Response: The Medicaid managed care regulation does not specify the circumstances under which it is appropriate for enrollees to use the MCO's/PIHP's grievance process before the State makes a determination on the enrollee's disenrollment request. The protocol is designed to address MCO/PIHP compliance with the regulatory provisions and is not intended as a vehicle for either specifying additional requirements or providing guidance.

Comment: One commenter recommended the protocol include comparisons of MCO disenrollment rates and default or automatic enrollment rates because high rates can signify quality or access problems in the former instance and information deficits in the latter.

Response: While we agree with the commenter that disenrollment rates and default or automatic enrollment rates may be correlated, we do not agree that a comparison of rates alone will suffice. Instead, we have revised the protocol to specify that the document review include the MCO/PIHP disenrollment rates, and that the review of the disenrollment sample determine if a relationship exists between the enrollees requesting disenrollment and enrollees enrolled in the MCO/PIHP automatically or by default.

13. Grievance System

Comment: One commenter suggested that the protocol include review of policies and interview questions to ensure the MCO does not deter enrollees from requesting fair hearings. The commenter recommended further that the reviewer consider the number of grievances and fair hearings versus the population served, and determine whether grievances are held in suspense at certain levels of the review process or enrollees are deterred from filing or pursuing grievance or fair hearing requests. The commenter also suggested the reviewer convene focus groups concerning how the grievance system is working.

Response: We believe the protocol, in the portion addressing review of documents related to enrollee grievances, appeals and State fair hearings, addresses the MCO/PIHP compliance with the regulatory provisions, and in so doing, ensures that the MCO/PIHP does not deter enrollees from requesting fair hearings or pursuing grievance or fair hearing requests. The protocol specifies a review of logs, registries, or other MCO/PIHP documentation of appeals, grievances, and requests for State fair hearings made by Medicaid enrollees. Further, States are required to maintain records of grievances and appeals and review this information as part of the State quality strategy. If grievances are held in suspense, this should become evident to the State through this grievance and appeals review. We believe that focus groups, like provider and consumer interviews, are time and resource intensive. Therefore, we include consideration of other accessory information, such as beneficiary surveys that may offer information on how the grievance system is working but do not require in this protocol that the reviewer convene focus groups.

Comment: One commenter believes that notice of action requirements (for denial, reduction or termination of services) apply to all types of plans and asked that this be clearly stated in the protocol. The commenter further suggested the protocol include interview questions to probe the actions that trigger notices required by due process of the law, and a review of the MCO's notices to determine that the notices comply with the legal requirements for adequate notice of hearing rights, assure enrollees the care they receive will not be affected because a grievance has been filed, are in languages prevalent in the service area, and clearly specify the action the MCO is taking.

Response: The protocol is designed to specifically determine MCO and PIHP compliance with provisions in the Medicaid managed care final rule, regardless of whether or not the provisions apply to other types of managed care plans. We have, therefore, addressed these two entities in assessing compliance with the requirements concerning notice of action. We believe a document review is more effective for this issue than interview questions as an approach to compliance determination. Furthermore, the protocol includes the review of a sample of MCO/PIHP notices to determine the extent to which notices include the legal requirements for adequate notice of hearing rights and specify the action the MCO/PIHP is taking. We agree with the commenter and have expanded this review to determine that notices include assurances that enrollees will not be treated differentially, and are in languages prevalent in the service area. We believe that by reviewing a sample of beneficiaries that have been denied services and the reasons for denials, reviewers will identify those actions that trigger notices required by due process of the law.

Comment: One commenter believes the protocol fails to ascertain the extent to which enrollees have realistic access to the grievance process. The commenter recommended that the protocol include interview questions concerning the process and frequency by which enrollees are informed of the grievance procedures. The commenter also suggested reviewers monitor the timeliness of grievance processing, interview enrollees regarding the free exercise of their rights, and review the MCO's procedures for supplying translation and interpretation services during the grievance process.

Response: As we noted in the prior response, we believe a document review is more effective than interview questions in determining compliance with these provisions. The protocol includes the review of the MCO/PIHP's administrative procedures and policies as well as a sample of MCO/PIHP notices. We agree with the commenter that reviewers should monitor the timeliness of grievance processing and review the MCO's/PIHP's procedures for supplying translation and interpretation services during the grievance process. Therefore, we have specified that in reviewing the sample of notices, the reviewer should determine the timeliness of grievance processing, and have included a review of the MCO's/PIHP's procedures for supplying

translation and interpretation services during the grievance process. However, since enrollee interviews are time and resource intensive and beneficiary survey results are specified for consideration as accessory information, we have not included this activity.

Comment: One commenter recommended reviewers interview enrollees to determine how they are informed of the right to request continuation of benefits pending resolution of an appeal or fair hearing, and whether continuing benefits were received when requested. The commenter also suggested that the reviewers compare the MCO's policies with the enrollees' experiences.

Response: As noted previously, enrollee interviews are time and resource intensive and are therefore not a review activity included in the protocol. Instead, reviewers are directed to review the results of beneficiary surveys as accessory information. The protocol also specifies a review of the MCO/PIHP administrative policies and procedures, and the review of a sample of notices, to determine the extent to which enrollees are informed of their right to request continuation of benefits pending resolution of an appeal or fair hearing. The findings from the document reviews can then be compared to the survey results as suggested by the commenter.

Comment: One commenter disagreed with the protocol not permitting the combination of case manager and care coordinator interviews with other interviews. The commenter further recommended the protocol include interview questions for case managers and care coordinators on the enrollees' process for accessing case management services to ensure consistency with MCO policies, the procedures for interfacing with carved-out or other services not covered by the MCO, and the ease of accessing specialist care.

Response: The protocol specifies that the case manager's and care coordinator's interviews may be combined with the Medical Director interview or the Utilization Management interview. This option is consistent with the process used by private accrediting bodies and in the Medicare program reviews. The protocol specifies potential interview questions for case managers and care coordinators to confirm MCO/PIHP compliance with the regulatory requirements pertaining to enrollee rights, service access, and coordination and continuity of care. However, if issues arise during the document review concerning the process for accessing case management services, for interfacing with carved-out or other services not covered by the MCO, or the ease of accessing specialist care, reviewers are directed to explore them during the interviews. We believe this direction affords the reviewers the flexibility necessary to appropriately tailor the review activity to the structure, operations, and circumstances identified for each MCO/PIHP. Further, we do not believe it is possible, given the diversity among States and MCOs/PIHPs and the scope of the review itself, to include in the list of potential interview questions probes to explore every possible problem or issue that might arise.

Comment: One commenter believes that in collecting accessory information it is important to consider non-Medicaid enrollee survey results and compare these to the Medicaid results to ensure all enrollees are receiving the same level of care.

Response: We believe there are numerous analyses of EQR-related activities that can be undertaken. Specifically, the results of compliance monitoring, encounter data, and performance measurements can all be compared, contrasted, analyzed, and correlated. We do not believe the Federal government can or should specify a single set of analyses that will yield the most useful information for all States and MCOs/PIHPs. We believe that States will choose their EQROs on the basis of their demonstrated competence in quality review and analysis, and we defer to the State's decisions about the lines of inquiry EQROs should pursue regarding all EQR-related data, including surveys of Medicaid enrollees and possible comparisons to Medicare enrollees, commercial enrollees, and SCHIP enrollees.

C. Protocols for Calculating or Validating Performance Measures

Comment: One commenter asked that clarification be provided regarding the collection and validation of performance measures. The commenter is concerned that there is no description of essential EQRO activities to ensure that the performance measures being used by the State are scientifically sound, meaningful, valid, and reproducible. The commenter does not believe that the collection methodology outlined in the protocols will ensure valid and reliable measures. The commenter recommended that we take steps to ensure that EQROs use only evidence-based performance measures.

Response: We disagree with the commenter. The protocols outline a methodology to be used in the validation or calculation of performance measures to ensure that valid and reliable measures are calculated or to determine the extent to which valid and reliable measures have been calculated by the MCO/PIHP. The protocols were designed to be consistent with approaches used by NCQA and Medicare QIOs but to also describe how to validate or calculate measures such as those found in HEDIS as well as those developed by States or other groups or organizations. We advocate the calculation of measures that have been tested and accepted in the private and public sectors but provide States with the flexibility to develop measures or use measures developed by others that meet their program needs.

In addition to specifying essential activities to be conducted as part of performance measure validation or calculation, we have provided an Appendix to this protocol that provides guidance on how to assess an MCO's or PIHP's underlying information system (IS) to ensure that valid and reliable data are used in the calculation of the performance measures. The IS assessment may be conducted as part of this protocol by the EQRO validating or calculating the performance measures, or the EQRO may review an assessment conducted by another party.

Comment: One commenter believes that States have already invested substantial resources in establishing systems to carry out performance measurement activities and that it is not clear how these established systems can be adapted easily to meet the requirements of the protocols.

Response: Because the essential components of the protocols are accepted practice in both the public and private sector, we expect that States will not have to significantly adapt their approaches to performance measurement. The performance measures protocols are to be used for validating measures calculated by the MCO or PIHP as required by the Medicaid managed care final rule or for calculating additional measures as directed by the State. State approaches to performance measurement might vary but we expect States to require the essential components of the protocol for performance measurement activities—review of MCO/PIHP data management processes, evaluation of compliance with specifications for performance measures, and verification of performance measurement.

Comment: One commenter believes this protocol is outdated and suggested we reference current industry tools. Another commenter argued that the performance measure validation process is heavily biased toward proprietary systems entities developed in the

business of accreditation. The commenter believes this bias limits flexibility in the process and promotes a narrow view of performance measurement and jeopardizes State's ability to be innovative in performance measurement.

Response: One reason we did not include the protocols in a regulation was because we recognize that the protocols will need to be updated as the state-of-the-art in quality assessment and improvement changes. However, we believe that the activities listed in the protocol are still those in current use in the industry. Further, to be in compliance with the EQR rule, States only need to ensure that our protocols or those consistent with ours are used.

In addition, we do not agree that the protocol is biased toward proprietary systems. We used three sources to develop the performance measures protocols (that is, NCQA's HEDIS validation protocol, IPRO documents, and documents from the MEDSTAT group). We identified activities common to these tools and incorporated those activities to ensure valid and reliable methods are used when calculating or validating performance measures. Only one of these tools was developed by an organization that is in the business of accreditation, and we do not agree that the performance measures protocol limits State flexibility in the performance measures development process. We provide States with the flexibility to use established measures or to develop their own measures. We recommend, however, when States choose to develop or use measures not widely used in the private and public sector, that these measures should be evidenced-based and tested.

Comment: Several commenters believe the process described for validating performance measures is bureaucratic and administratively burdensome. The commenters state that they do not understand the value of interviewing MCO staff and believe annual onsite review is not necessary and is burdensome.

Response: The process in the protocols for validating performance measures is consistent with the process used in the private sector and the Medicare program. We drew from established tools in the development of these protocols. The protocol includes interviewing MCO and PIHP staff in addition to reviewing MCO/PIHP documentation of how performance measures are produced. The purpose of interviewing staff is not to obtain information that can otherwise be obtained from documentation. It is to supplement and confirm information as needed. In the protocol, interviews of MCO/PIHP personnel are identified as an effective mechanism to understanding an MCO's/PIHP's IS and its application to performance measurement. While much information can be obtained by reviewing an MCOs/PIHPs internal documents describing its IS, we believe that interviews with MCO/PIHP staff can be a helpful adjunct to the review of IS documents in understanding the issues the MCO/PIHP has with respect to ISs and how it affects the MCO's/PIHP's production of performance measures.

Comment: One commenter argued that some States calculate and report MCO-level performance measures and therefore, much of what is contained in the calculating performance measures protocol is not applicable to MCOs, but is applicable to the State.

Response: We recognize that States may have MCOs and PIHPs submit encounter data to them instead of performance measures and, therefore, the State may be the entity calculating the performance measure. We have allowed for this in the quality assessment and performance improvement program requirements specified in § 438.240 of the Medicaid managed care final rule. However, regardless of who calculates the performance measures, MCO and PIHP-level performance measures must be calculated as required by the Medicaid managed care final rule and, if calculated by the MCO/PIHP, must be validated to provide information for the EQR function. We have added clarifying language under § 438.358(b)(2) to recognize that States may be calculating the MCO/PIHP performance measures and in this circumstance the State would provide the information obtained from this activity to the EQRO for the EQR function.

Comment: One commenter suggested combining the validating performance measures protocol and the calculating performance measures protocol to reduce the length and complexity of the two protocols.

Response: We purposefully provided separate protocols for each EQR-related activity. Even though some of the protocols are variations on a theme (for example, validating performance measures and calculating measures) we wanted to provide stand-alone documents for each activity. In addition, though the protocols are variations on a theme, the activities do differ somewhat and we believe the clearest way to present the information is in separate documents.

Comment: One commenter argued that the 30 sample medical record review recommended in the protocol for performance measures not calculated with administrative data only will add tremendous cost, is needlessly intrusive, and is very time consuming.

Response: This aspect of the protocol illustrates what we mean when we say that States must use protocols that are consistent with (but not identical to) our protocols. In this protocol, onsite Activity 4 is the "Assessment of Processes to Produce Numerators." To be consistent with our protocol, the EQRO must perform this activity (that is, assess the MCOs' or PIHPs' processes to produce the performance measure numerator). In our description of Activity 4, we describe how this activity is to be conducted and state that this activity should include a review of a sample of the medical records used to determine the numerator. Thirty medical records is the number that was included in the private sector protocols we reviewed. However, EQROs may use another sample size and still be consistent with our protocol. Our protocol endorses the policies found in private sector protocols, that require a sufficient number of medical records be reviewed to validate a reported numerator for a given performance measure. As stated previously, however, activities used to provide information for the EQR must be conducted "consistent with" our protocols. "Consistent with" means that the protocols used contain all of the activities and steps included in our protocols. How EQROs and States implement the activities and steps is left to their discretion.

Comment: One commenter suggested we add lab data as a data source to calculating performance measures numerators (page 8, item 4).

Response: We agree with the commenter and have added laboratory data as a possible data source for calculating performance measures.

Comment: One commenter suggested some editorial changes.

Response: We have made editorial changes that were recommended where we thought appropriate and helpful.

Comment: One commenter suggested on page 15 we add "place of service" to the list of claims and encounter data elements to be assessed when assessing the integrity of the MCO's/PIHP's IS.

Response: We agree with the commenter and have added place of service to the list of claims and encounter data elements that may be used to conduct performance measurement.

D. Protocols for Conducting or Validating Performance Improvement Projects and Conducting Focused Studies

Comment: One commenter believes all the activities in this protocol are reasonable.

Response: We agree and retain the activities in the protocol.

Comment: One commenter asked for clarification of why the protocol for conducting performance improvement projects was developed. The commenter questioned the value of this protocol since the EQRO is not affiliated with any MCO and has no way to implement performance improvement initiatives affecting the actual delivery of care. The commenter recommended eliminating this protocol.

Response: This protocol was developed to provide EQROs and States guidance on the activities required when conducting performance projects as an optional EQR-related activity that qualifies for 75 percent FFP. A State may itself, through another State contractor, or through the EQRO, have additional performance improvement projects conducted other than those required to be conducted by the MCO/PIHP under § 438.240(b)(1) of the Medicaid managed care final rule and § 438.358(b)(1) of this rule. As long as the project is conducted consistent with the protocol, the information can be provided to the EQRO and be included as part of the EQR function. If the State itself or other State contractor conducts the activity, the State would not qualify for the 75 percent enhance match. If the EQRO conducts the performance improvement project, the State could claim the enhanced match. We developed separate protocols for the conduct of performance improvement projects and the validation of performance improvement projects to have stand-alone documents.

Comment: One commenter recommended that the focused study protocol be combined with the validating performance improvement projects protocol. The resulting protocol should be an optional protocol to be used at the State's discretion. One commenter recommended that the validating performance improvement projects and conducting performance improvement projects protocols be combined.

Response: We have developed separate protocols for validating and conducting performance improvement projects and for conducting a focused study of health care quality in order to provide stand-alone documents for each of the EQR-related activities. The focused study protocol and the conducting performance improvement projects protocol are to be used at the State's discretion if it decides to include information from these optional EQR-related activities as part of the EQR. In contrast, validating performance improvement projects conducted by MCOs/PIHPs is a mandatory activity. Although these protocols have much in common, there are some differences and we believe it is more helpful to the readers and users of the protocols to present these similar, but different activities in separate documents.

Comment: One commenter argued that the focused study protocol is biased towards proprietary measurement systems, that we advocate the use of indicators that are generally used in the public health community such as those developed by NCQA and the Foundation for Accountability (FACCT). The commenter recommended that the protocol be neutral in tone and approach the topic of performance measure selection from the perspective of State preferences and existing or evolving State-specified systems.

Response: We agree with the commenter that we advocate the use of performance indicators that are generally used in the public health and managed care industry. This is because these measures have been tested for validity and reliability and are widely accepted in the public and private sectors. However, we also, in the performance measures (both conducting and validating) and focused study protocols state that other indicators may be used. We recommend that these indicators be developed on the basis of current clinical practice guidelines or clinical literature derived from health services research or findings of expert or consensus panels.

Comment: One commenter suggested we add appointment availability studies, network assessment studies, open-closed panel reports, member and provider satisfaction survey data, and provider language reports as potential sources of information for selecting study topic for performance improvement projects or focused studies of health care quality.

Response: We agree with the commenter and have revised the potential sources of supporting information section, under Activity "Selecting the Study Topic," in the performance improvement projects (conducting and validating) and focused studies protocols to include the following: data on appointments and provider networks such as access, open and closed panels, and provider language spoken. Data from surveys was already included in this section in each protocol.

Comment: One commenter suggested we add a discussion of service needs for special needs populations to the list of methods for selecting the study topic.

Response: We recommend in this section that topics should reflect high-volume or high-risk conditions of populations served, including populations with special health care needs such as children in foster care, adults with disabilities, and the homeless. We further state that although these populations may be small, their special health care needs place them at high risk. We believe these provisions address the commenter's concerns and that no change is needed.

Comment: One commenter believes that our rationale for reliable data collection only addresses clinical data collection. The commenter suggested we add a section for service studies such as appointment availability and that methods to implement this include review of appointment books, and "secret shopper" techniques when someone calls to make an appointment. These kinds of indicators require scripts and very clear definitions of items such as acute care, emergent care, and routine care.

Response: We agree with the commenter that we did not include a discussion on data collection issues when using nonclinical data. We have added a paragraph in the performance improvement projects (both conducting and validating) and focused studies protocols to address this issue.

E. Protocol for Validating Encounter Data

Comment: One commenter stated that the protocol does not allow for the fact that encounter data may be used for risk adjusted payment and/or other utilization data analysis purposes.

Response: Accurate and reliable encounter data is crucial to performing any analysis of utilization data, and in particular to the development of capitated payments which are based on utilization data. This protocol specifies processes for assessing the completeness and accuracy of the encounter data MCOs and PIHPs submit to the State. We believe this protocol for validation of encounter data accommodates the multiple purposes for which encounter data are used.

Comment: One commenter stated that this protocol is long, detailed, needlessly prescriptive and biased toward the MEDSTAT and HEDIS models. The commenter also stated that since States generally have encounter data validation processes in place, this

protocol will be redundant and should therefore be dropped, reformatted as technical assistance or combined with other protocols to reduce the length and complexity of the protocols.

Response: In developing this protocol (as with all the protocols) we instructed our contractor to draw from existing protocols that have been tested and used in the public and private sectors, and that are consistent with current industry practice. The elements contained in the MEDSTAT and HEDIS tools are consistent with other validation processes reviewed, and contain generic activities and steps that include the essential components of a methodologically sound review of encounter data. By requiring protocols that are "consistent with," rather than "identical," we believe that we have allowed for State flexibility while ensuring a minimum standard of quality. Since the validation of encounter data is an optional EQR-related activity, States have the option to conduct this activity or not. Consequently, we do not believe this protocol is redundant, needlessly prescriptive, or biased.

Comment: One commenter believes this protocol should address State data issues and improvements that may impede the ability of MCOs and PHPs to improve their data quality. These issues include the inability of the State to receive MCO and PHP data, unclear data specifications to MCOs and PHPs, and State policies and procedures.

Response: Section 4705(a)(2) of the BBA specifies that EQR be a review of MCOs. Therefore, these protocols focus on MCOs and PIHPs, not on the State. State Medicaid agencies have available to them a variety of approaches that use contractors to strengthen their Medicaid Management Information System (MMIS). Additionally, we have funding opportunities that assist States with improvements to their MMIS. We, therefore, are not modifying this protocol to address State Medicaid agency data issues.

Comment: One commenter asked for clarification about the purpose of the chart on page 11, including how the categories were decided upon, and who will calculate the elements.

Response: The "Acceptable Error Rates Specifications and Identified Areas of Concern Form," is meant to serve as an example of a tool that an EQRO can use when assessing rates of accuracy and completeness for each data field. This tool can be used at the State's or EQRO's discretion. It may be adapted to meet individual State standards, or a State or EQRO may decide to develop a similar tool. Its purpose is to illustrate that States need to specify what error rate they will determine to be acceptable for the various types of encounter data to be submitted to them. The categories of "encounter type" were determined by the subcontractor that developed this protocol based on its extensive experience as a contractor to us and State Medicaid agencies on the production, assessment, and improvement of encounter data. The acceptable error rates should be specified by the State.

Comment: One commenter recommended against an analysis of mandatory fields (page 16) because these items are generally mandatory and an MCO's submission would not be accepted if any of the fields were not complete.

Response: We do not agree that an MCO's/PIHP's submission would not be accepted if any of the fields were not complete. State Medicaid agencies determine the acceptable levels of missing, surplus, or erroneous data. States also determine the standards for encounter data accuracy and completeness, to which encounter data submitted by MCOs and PIHPs will be compared. This protocol recommends that the encounter data validation process analyze and interpret the data in submitted fields to determine if the information is of the type that was requested by the State Medicaid agency, and if the values are valid and reasonable.

Comment: One commenter believes that because an MCO does not participate in or control the process of documenting the service in the medical record and subsequent billing that is based upon the medical record, there is no possibility for payor misbehavior.

Response: This protocol specifies processes for assessing the completeness and accuracy of encounter data MCOs/PIHPs submit. The protocol references reviews of medical records as an activity that is conducted to verify the accuracy of the automated data submitted, using the medical record as the point of reference. Payor misbehavior is not the issue. The issue addressed by this protocol is the accuracy of the information a provider submits, through the MCO/PIHP to the State, and the extent to which the MCO/PIHP has procedures in place to promote the accuracy and completeness of the data submitted by their providers.

Comment: One commenter believes the acceptable error rates form (page 5) is not information that can be assessed during an onsite visit.

Response: The Acceptable Error Rate form is a tool that can be used by the State or EQRO to document whether the MCO/PIHP has exceeded the acceptable error rate for each encounter type, and whether any concerns have been raised that trigger the need for further investigation. The protocol does not specify at what location (State Medicaid agency offices, MCO or PIHP offices, or EQRO offices) compliance with acceptable error rates is to be determined. The location where this form is to be constructed or used is to be determined by the State.

Comment: One commenter suggested that the protocol address rejected data.

Response: Activity 3, "Analyze Electronic Encounter Data for Completeness and Accuracy," represents the core of the process the EQRO will use to test the validity of the encounter data. Activity 3 is designed to yield information about the general magnitude of missing encounter data, and should identify problems in the MCO's/PIHP's process for compiling and submitting encounter data. Rejected data should be included in the evidence of and reasons for an MCO's/PIHP's inability to submit encounter data. Additionally, Appendix Z (Information Systems Capabilities Assessment) asks what happens to the encounter if one or more required fields are missing, incomplete, or invalid.

Comment: One commenter suggested that the protocol address additional significant issues in performing data accuracy assessments. The commenter further recommended that it be clear before proceeding if the data are pre- or post-edits and whether they are from the MCO, the State, or from the State's data warehouse.

Response: We do not understand what the commenter is referring to when suggesting that the protocol address additional significant issues in performing accuracy assessments. In response to the second comment, the data that the protocol addresses is MCO/PIHP level data, and where the data resides is unique to each State. The protocol addresses encounter data submitted by the MCO/PIHP to the State. Therefore, the data would include any edits made by the MCO/PIHP. The State will need to identify to the EQRO the extent to which it has performed any edits of the data submitted by the MCO/PIHP.

Comment: One commenter suggested that the protocol address benchmark data that can be used to help determine data completeness.

Response: The use of benchmarks is discussed in a number of the Steps in Activities 2 and 3. The protocol does not specify exact benchmarks that are to be used because benchmarks should be

tailored to each State's status with respect to the accuracy and completeness of its encounter data. The protocol instead discusses how the EQRO should use benchmarks for testing the quality of data. Additionally, the protocol indicates the source for some benchmarks, and in some cases, provides instructions for EQROs to develop certain benchmarks.

Comment: One commenter suggested that the protocol address incorporation of vendor data in reporting to the State.

Response: We agree that vendor data should be included when reporting to the State. That is why we reference the importance of vendor data when assessing the MCO's/PIHP's capability to produce accurate and complete encounter data in Activity 2. Activity 2 directs the EQRO to conduct an IS assessment that is consistent with the process described in Appendix Z. Appendix Z includes as elements that impact the accuracy and completeness of encounter data, the MCO's/PIHP's data submission policies, and the contract requirements for vendors and contractors.

F. Information Systems Capabilities Assessment (Appendix Z)

Comment: One commenter believes the level of detail required in the information systems capabilities assessment (ISCA) tool is excessive. The commenter does not believe that the reviewer should have the option of asking for the source code for a variety of computer and report programs. Moreover, the commenter stated that MCOs do not necessarily have the source code because that information may be proprietary and may be the property of a vendor.

Response: We do not agree that the ISCA tool requires an excessive level of detail. A number of public and private sector protocols and tools were examined to promote consistency between this assessment and similar public and private sector activities. We also disagree with the comment that the reviewer does not need the source codes used to perform various calculations, and because these codes are proprietary the MCO/PIHP would not have access to this documentation. The source codes referred to in the protocol are codes used in the programs written by MCO/PIHP staff or by their contractors to calculate continuous enrollment or other calculations using MCO/PIHP administrative data. Consequently, whenever the accuracy of calculations performed by the MCO/PIHP impact on other aspects of the quality measurement; for example, performance measures, the EQRO will require source codes to validate the accuracy of those calculations. These source codes should, therefore, be available to the MCO/PIHP.

Comment: One commenter believes the onsite activities under this Appendix probe policies and procedures not subject to regulation and that they are not relevant to the State MCO contract.

Response: We disagree with the premise that the policies and procedures related to the MCO/PHP ISCA are not subject to regulation. This Appendix relates to three different regulatory provisions. Under § 438.242 of the Medicaid managed care final rule, the State must ensure, through its contracts, that each MCO/PIHP maintains an IS that accurately and completely collects, analyzes, integrates, and reports data on utilization, enrollment and disenrollment. Additionally, § 438.240 stipulates that the State must require MCOs/PIHPs to have an ongoing quality assessment and improvement program for which accurate and complete data is an essential element. Further, in § 438.350 of this final rule, each State is required to provide its EQRO information obtained through methods consistent with these protocols. In our contractor's review of private sector industry and Medicare practices, it was determined that an assessment of an MCO's/PIHP's IS is an essential component of validation of encounter data and performance measurement.

Comment: One commenter believes that this Appendix is outdated and suggested the encounter data protocol should reference current industry available tools.

Response: When we started developing the protocols we used the most recent version of the public and private sector tools referenced. These private and public sector tools have since been updated. However, because we developed the protocols as generic activities and steps to be used in the conduct of the EQR-related activities, we do not agree that the protocols are outdated. Furthermore, in this final rule we allow for use of other protocols, as long as they are consistent (that is, contain the activities and steps identified in these protocols) with those we have developed.

Comment: One commenter believes that States may routinely assess MCO IS capabilities and in these cases this protocol is of limited applicability.

Response: To avoid duplication, in all the protocols calling for an ISCA, we state that the EQRO may use information about the MCO/PIHP ISCA obtained from an ISCA conducted by another party as part of another review such as the validation of performance measures, validation of encounter data, or a review for compliance with standards. If the ISCA was performed by another party as part of another review, the State or EQRO should obtain a copy of the assessment, review it to determine if the findings are current, consistent with this Appendix, and where appropriate, seek more recent or additional information. If a recent assessment has not been conducted, an ISCA that is consistent with this Appendix should be conducted.

G. Protocols for Administering or Validating Surveys

Comment: One commenter argued that the protocol for administering a survey is very prescriptive and the value of such a detailed protocol is questionable particularly when States choose to follow the recommended CAHPS survey method. The commenter asked us to clarify how much latitude there was to follow the CAHPS methodology.

Response: The administration of validation of consumer or provider surveys of quality of care are optional EQR-related activities. If a State elects to have its EQR perform these activities and to qualify for the 75 percent enhanced match, our protocol or a protocol consistent with ours must be used. Our protocol includes generally accepted practices of survey design and implementation. We relied upon, but condensed, generally accepted principles of survey design and administration discussed in textbooks and other health services publications. Although many States use CAHPS surveys (and the CAHPS survey methodology would meet the requirements of this protocol) it was necessary to put forth this protocol to cover those instances when States desired to use a survey other than a CAHPS survey.

Comment: One commenter asked us to clarify the distinctions between the two survey protocols.

Response: The first protocol applies to the situation in which the State or its agent administers a survey, that is, designs and/or conducts a survey. Administration of a survey may include the design and implementation of a new survey or the modification of an existing survey and its implementation.

The second protocol applies to the situation in which the State or its agent validates the use of a survey administered or conducted by another party. The process of validation is necessary to ensure that the survey results are both reliable and valid. In

this protocol, survey validation is limited to a review of the survey procedures. The validation process does not include collecting survey data anew from respondents to verify their responses.

Comment: One commenter believes that beta testing all surveys and the additional questions to members and providers would be time consuming and cost prohibitive.

Response: The protocols do not suggest beta testing of all surveys. Instead, they acknowledge the commitment of time and resources and the demands on survey respondents that make such an activity infeasible. The protocol suggests that survey validation be limited to a review of survey procedures.

H. Other Appendices (Attachments to Final Protocols)

Comment: One commenter recommended that we explain the obligations of the State or the EQRO with regard to the documents included in the appendices (for example, what is the role of the documents and how the documents are to be used).

Response: With the exception of Appendix Z, ISCA for MCOs and PIHPs, the appendices (Attachments to the final protocols) provide additional guidance to States and EQROs on how to implement the EQR-related activities. The information contained in the appendices (Attachments to the final protocols) are to be used at the discretion of the State or EQRO based on the particular circumstances of the activity being conducted and other means of obtaining needed information.

I. Section 438.360 (Nonduplication of Mandatory Activities)

Comment: One commenter believes the estimates of the time necessary to collect the information under this provision are too low. In addition, the commenter believes that this function needs to be performed by both professional staff and clerical staff and that a blend of the hourly costs should be used to determine the estimated costs.

Response: As we stated earlier, because we received several comments indicating that this estimate is low but commenters did not provide us with what they believe the correct estimate to be, we have increased the burden hours by 100 percent to 8 hours. We have taken the commenters recommendation and blended the hourly costs to reflect that both professional and clerical staff will partake in this effort.

J. Section 438.362 (Exemption From EQR)

No comments were received on this section.

K. Section 438.364 (EQR Results)

No comments were received on this section.

IV. Provisions of the Final Regulation

For the most part, this final rule adopts the provisions of the December 1, 1999 proposed rule. In response to public comments, we have made clarifying wording changes. Those provisions of this final rule that differ from the provisions of the December 1, 1999 proposed rule follow.

Section 438.310—Basis, Scope, and Applicability

We have revised this section to reference the applicability of this rule to PIHPs. We have added the reference to PIHPs throughout the rule as appropriate.

Section 438.320—Definitions

We have revised this section by adding clarifying language to the definitions for the terms "EQR" and "EQRO" and adding a definition for the term "financial relationship." The definition of EQR has been revised to clarify that this rule applies to the care provided to Medicaid beneficiaries that receive health care services furnished by MCO and PIHP subcontractors as well as MCOs and PIHPs. This definition has also been revised to clarify that EQR-related activities are not considered part of the EQR function. We have revised the definition of EQRO to mean an organization that conducts the EQR function as well as EQR-related activities. EQR-related activities had not previously been included in the EQRO definition. As a result of this clarifying language, how we use the terms EQR, EQR-related activities, and EQRO needed to be changed in several sections of this rule.

Section 438.350—State Responsibilities

We have revised this section to add clarifying language that the information provided to the EQRO is consistent with the information we require as part the EQR results; for each EQR-related activity that provides information for the EQR, the EQRO must have the objectives of the activity, the methods of data collection and analysis, a description of the data obtained, and the conclusions drawn.

Section 438.352—External Quality Review Protocols

We have revised this section to add clarifying language at paragraph (c) of this section to explain what we meant by each protocol must specify the "detailed procedures" to be followed in collecting the data to promote its accuracy, validity, and reliability. We have changed the wording of "detailed procedures" to "activities and steps" to be consistent with how the EQR protocols have been designed.

Section 438.354—Qualifications of External Quality Review Organizations

We have revised this section to add at paragraph (b)(1) that the EQRO must have "demonstrated experience" as well as knowledge of the Medicaid recipients, policies, data systems, and processes; managed care delivery systems, organizations, and financing; quality assessment and improvement methods, and research design and methodology.

We have revised paragraph (c) of this section to require that all EQROs, as opposed to only State entities that qualify as EQROs, may not deliver any health care services to Medicaid beneficiaries, or conduct on the State's behalf ongoing Medicaid managed care program operations related to the oversight of MCO or PIHP quality of services. This later provision has been revised to apply only to Medicaid managed care operations as opposed to all Medicaid program operations. This provides States the opportunity to contract with a broader group of entities than was provided for in the December 1, 1999 proposed rule.

We have also revised paragraph (c) of this section to add clarifying language to explain how "control" is defined in 48 CFR 19.101. In addition, we have added a provision that prohibits an entity from qualifying as an EQRO if it has a financial relationship with an MCO or PIHP that it will review as an EQRO.

Section 438.356—State Contract Options

We have revised paragraph (a) of this section to clarify that States may only contract with one entity for EQR alone or EQR and other EQR-related activities, but may contract with multiple entities to conduct additional EQR-related activities.

Section 438.358—Activities Related to External Review

We have revised this section by adding cross-references to the Medicaid managed care final rule. We have made these cross-references throughout this rule where appropriate. We had not

included these cross-references in the December 1, 1999 proposed rule as the Medicaid managed care final rule had not yet been published.

We have added a general rule under paragraph (a) to clarify that the mandatory and optional EQR related activities can be conducted by the State, the State's agent that is not an MCO or PIHP, or an EQRO.

We have revised paragraph (b)(1) to clarify that information from the validation of performance improvement projects that are underway, as opposed to those being performed, must be obtained from the MCO or PIHP. We have revised paragraph (b)(2) to clarify that information on performance measures can be obtained from either those calculated by the MCO/PIHP and validated by the State or its agent, or those calculated by the State on behalf of the MCO/PIHP. We have also revised (b)(3) by eliminating the reference to specific State standards. These are now referenced in the aggregate by our cross-reference to the Medicaid managed care final rule provision. We have also revised paragraph (c) to clarify that information from optional activities must be from information derived within the preceding 12 months.

Section 438.360—Nonduplication of Mandatory Activities

We have revised this section by removing the word "exempt." Using this word caused confusion with the "exemption of EQR requirements" under § 438.362. In its place, we provide language that explains that the nonduplication provisions allow States to use information from either a Medicare or accreditation review for certain standards and activities in place of a Medicaid review.

We have also revised this section to allow States to apply this provision to MCOs and PIHPs that provide health care services to commercial consumers of health care as well as Medicare beneficiaries. We have further revised this section to clarify that national accrediting organizations are those organizations that have been approved and recognized for M+C deeming. We have made this clarification throughout the rule as appropriate.

We have restructured this section by revising paragraph (b) so it applies to both M+C and MCOs and PIHPs that provide services to commercial consumers and have revised paragraph (c) to address additional provisions for those MCOs and PIHPs providing services to dually eligible beneficiaries only. Under paragraph (b) and (c), we have added a provision that requires the State in its quality strategy to identify those standards and activities for which it will substitute the Medicare or accreditation review for the Medicaid review. In addition, we require the State to explain the rationale for why the State considers the standards or activities duplicative.

Section 438.362—Exemption From External Quality Review

We have revised paragraph (a)(2) to clarify that the Medicare and Medicaid contract must overlap geographically within the State when it exempts the MCO or PIHP from EQR. The December 1, 1999 proposed rule did not require that the overlap be within the State.

We have revised (b)(1) to clarify that information from Medicare reviews is to be obtained by the State from the MCO or PIHP. The language in the December 1, 1999 proposed rule could have been misinterpreted to mean that the State had to obtain the information from CMS or its agent. We have also revised paragraph (b)(2) to clarify that the MCO or PIHP must provide the State a copy of the accreditation review findings as opposed to ensuring the State receives a copy.

Section 438.364—External Quality Review Results

We have revised paragraph (a)(1) to clarify that in the detailed report, conclusions are drawn as to the timeliness of and access to care as well as the quality of care. We have revised paragraph (a)(1)(iii) to clarify that the detailed report should include a "description" of the data obtained for each EQR-related activity as opposed to the data obtained. We did not intend for the raw data to be provided as part of the EQR results. We have also revised paragraph (a)(2) to require an assessment of the MCO's and PIHP's strengths and weaknesses be addressed as opposed to a "detailed" assessment of the MCO's and PIHP's strengths and weaknesses.

We have revised paragraph (b) to require that the EQR results, upon request, be made available in alternative formats for persons with sensory impairments and that the EQR results be made available through electronic as well as printed copies.

Section 438.370—Federal Financial Participation

We have revised (a) to clarify that 75 percent FFP is also available for the production of the EQR results.

V. Collection of Information Requirements

Under the Paperwork Reduction Act of 1995 (PRA), we are required to provide a 30-day notice in the **Federal Register** and solicit public comment before a collection of information requirement is submitted to the Office of Management and Budget (OMB) for review and approval. In order to fairly evaluate whether an information collection should be approved by OMB, section 3506(c)(2)(A) of the PRA requires that we solicit comment on the following issues:

- The need for the information collection and its usefulness in carrying out the proper functions of our agency.
- The accuracy of our estimate of the information collection burden.
- The quality, utility, and clarity of the information to be collected.
- Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

Therefore, we are soliciting public comment on each of these issues for §§ 438.352, 438.360, 438.362 and 438.364 of this document that contain information collection requirements.

We published a notice in the **Federal Register** on November 23, 2001, to give the public a 60-day period in which to comment. The basic purpose was to afford the public an opportunity to comment on the protocols. We have addressed the comments received in response to this **Federal Register** notice in section III. above.

For purposes of this requirement, we incorporated Medicaid managed care data from the 2001 Medicaid enrollment report. As of June 2001, there were 329 MCOs (this includes 5 HIOs that must adhere to the EQR requirements of this regulation), and 129 mental health and substance abuse PIHPs.

§ 438.358 (Activities related to EQR)—For each MCO and PIHP, the EQR must use information from the following activities:

(1) Validation of performance improvement projects required by the State to comply with requirements set forth in § 438.240(b)(1) and that were under way during the preceding 12 months.

(2) Validation of MCO or PIHP performance measures reported (as required by the State) or MCO or PIHP performance measure calculated by the State during the preceding 12 months to comply with requirements set forth in § 438.240(b)(2).

(3) A review, conducted within the previous 3-year period, to determine the MCO's or PIHP's compliance with standards (except with respect to standards under §§ 438.240(b)(1) and (2), for the conduct of performance improvement projects and calculation of performance measures, respectively)

established by the State to comply with the requirements of § 438.204(g).

In addition, if a State, at its option, wishes to provide additional information to its EQRO, and to have CMS provide 75 percent FFP in the costs of producing this information, then the additional information must be produced through activities identified as optional activities in this final rule and also must be produced in a manner consistent with (as opposed to identical to) the protocols for these six optional activities. These six optional activities are (1) validation of client level data such as claims and encounters, (2) administration or validation of a survey, (3) calculation of performance measures, (4) conduct of performance improvement projects, and (5) conduct of focused studies of quality of care.

The burden associated with this requirement is the time and effort for a State, EQRO, or other State contractor, to conduct and document the findings of the three mandatory activities—the validation of performance improvement projects conducted by the MCO/PIHP, the validation of performance measures calculated by the MCO/PIHP, and a review of MCO/PIHP compliance with structural and operational standards. Each of these activities will need to be conducted on the 329 MCOs and 129 PIHPs that we estimate are currently providing Medicaid services. The types of services provided by these managed care entities and the number of performance improvement projects conducted and performance measures calculated will vary.

We interviewed four EQROs who in 2000 reviewed MCOs/PIHPs in 16 mandatory or voluntary managed care programs in eight States. Based on the information provided by the four EQROs, we confirmed that the hours and costs to conduct these activities vary. The information provided includes: (1) It takes 25 to 138 hours at a cost of $2,000 to $10,000 to validate a performance improvement project conducted by an MCO/PIHP; (2) it takes 12 to 202 hours at a cost of $1,200 to $7,000 to validate a performance measure calculated by an MCO/PIHP; and it takes 200 to 800 hours at a cost of $11,000 to $49,000 to review for MCO/PIHP compliance with structural and operational standards. Based on the submitted information, it takes an average of 65, 53, and 361 hours, respectively, to conduct the above mandatory EQR activities. Therefore, the average total burden associated with this requirement is 479 hours x 458 entities (329 MCOs + 129 PIHPs). Assuming wages of $63 per hour for professionals to comply with the requirement, the cost is $13,821,066.

For the optional EQR activities—validation of client level data (such as claims and encounters), administration or validation of consumer or provider surveys, calculation of performance measures, conduct of performance improvement projects, and conduct of focused studies—we have no data to estimate the hours associated with how long it will take to conduct these activities. We, therefore, estimate that it will take 350 hours to validate client level data and 50 hours to validate consumer or provider surveys. We estimate it will take three times as long to calculate performance measures as it takes on average to validate (159 hours) and three times as long to conduct performance improvement projects and focused studies as it takes on average to validate performance improvement projects (195 hours). We also estimate that it will take three times as long to administer a consumer or provider survey than it takes to validate a survey (150 hours).

Based on 2001 State reported data, we know that of the 42 States that had capitated programs (MCOs or PIHPs) in 2001, 29 (69 percent) had their EQROs validate MCO/PIHP encounter data, 18 (43 percent) had their EQRO administer or validate consumer or provider surveys, 12 (29 percent) had their EQRO calculate performance measures, 16 (38 percent) had their EQRO conduct performance improvement projects, and 32 (76 percent) had their EQRO conduct focused studies. Using the aforementioned percentages and applying them to the number of MCOs and PIHPs, we estimate that States will contract with their EQROs to validate the encounter data of 316 MCOs/PIHPs, administer or validate consumer or provider surveys of 197 MCOs/PIHPs, calculate performance measures of 133 MCOs/PIHPs, conduct performance improvement projects of 174 MCOs/PIHPs, and conduct focused studies of 348 MCOs/PIHPs.

We, therefore, estimate the average total burden associated with conducting each optional EQR activity as follows:

- Validating client level data 350 hours × 316 MCOs/PIHPs = 110,600 hours.
- Validating consumer or provider surveys 50 hours × 98 MCOs/PIHPs (½ of 197 MCO/PIHPs that administered or validated surveys) = 4,900 hours.
- Administering consumer or provider surveys 150 hours x 99 MCOs/PIHPs (½ of 197 MCO/PIHPs that administered or validated surveys) = 14,850 hours.
- Calculating performance measures 159 hours × 133 MCOs/PIHPs = 21,147 hours.
- Conducting performance improvement projects 195 hours × 174 MCOs/PIHPs = 33,930 hours.
- Conducting focused studies 159 hours × 348 = 55,332 hours.

Assuming a wage of $63 per hour for professionals to comply with the requirement, the cost of conducting the optional EQR activities is (240,759 hours × $63) $15,167,817. We solicit comments specifically on this issue because we had no data on which to base the estimated hours for the conduct of each of the optional EQR activities.

The burden estimate associated with this requirement also includes the time and effort for an MCO/PIHP to prepare the information necessary for the EQRO or other State contractor to conduct the three mandatory activities—the validation of performance improvement projects conducted by the MCO/PIHP, the validation of performance measures calculated by the MCO/PIHP, and a review of MCO/PIHP compliance with structural and operational standards. We estimate that it will take each MCO and PIHP 160 hours to prepare this documentation. We believe one-half of the time preparing the information will be done by professional staff at $63 per hour and the other one-half of the time preparing the information will be done using clerical staff at $12 per hour. Therefore, to comply with the requirement, the cost of compiling the necessary information is (458 MCOs/PIHPs × (80 hours × $63 + 80 hours × $12) $2,748,000.

§ 438.360 (Nonduplication of mandatory activities)—In order to avoid duplication, the State agency may allow the MCO/PIHP to substitute information from a Medicare or accreditation review for the Medicaid review if specified conditions are met. To demonstrate compliance with these requirements an MCO/PIHP must provide to the State agency reports, findings, and other results of the Medicare or private accreditation review. The burden associated with these requirements is the time and effort for an MCO/PIHP to disclose the reports, findings, and other results of the Medicare or private accreditation review to the State agency. Of the 329 MCOs and 129 PIHPs providing Medicaid services, approximately 122 are Medicaid-only MCOs. We believe that there is the potential for States to allow the remaining 336 MCOs/PIHPs to take advantage of the nonduplication provision and that these MCOs/PIHPs will be required to disclose the necessary information to each State

agency. We estimate that it will take each MCO 8 hours to disclose the necessary documentation to the State, 4 hours of professional time and 4 hours of clerical time. Therefore, the total burden associated with this requirement is 336 MCOs/PIHPs × 8 hours = 2688 annual burden hours. At $37.50 per hour ($12 + $63/2), the cost will be $100,800.

This section also requires that a State agency provide the reports, findings, and other results of the Medicare or private accreditation review to the appropriate EQRO. We estimate that it will take, on average, 8 hours for a State to disclose the necessary documentation to the appropriate EQRO. The total annual burden associated with this requirement is 2688 hours ($37.50 per hour) and $100,800.

This section also requires a State to include in its quality strategy information concerning the activities or standards for which it is obtaining information from Medicare or an accrediting organization. We believe that the burden for this information collection requirement is included in the burden addressed in the Medicaid managed care rule and approved under OMB number 0938.

§ 438.362 (Exemption from EQR)—Each year, exempted MCOs/PIHPs must provide to the State agency the most recent Medicare review findings reported to the MCO/PIHP. This information must include (1) all data, correspondence, information, and findings pertaining to the MCO's/PIHP's compliance with Medicare standards for access, quality assessment and performance improvement, health services, or delegation of these activities; (2) all measures of the MCO's/PIHP's performance; and (3) the findings and results of all performance improvement projects pertaining to Medicare enrollees.

If an exempted MCO/PIHP has been reviewed by a private accrediting organization and the survey results have been used to either fulfill certain requirements for Medicare external review under 42 CFR part 422, subpart D or to deem compliance with Medicare requirements as provided in § 422.156, the MCO/PIHP must submit a copy of all findings pertaining to its most recent accreditation review to the State agency. These findings must include accreditation survey results of evaluation of compliance with individual accreditation standards, noted deficiencies, corrective action plans, and summaries of unmet accreditation requirements.

The burden associated with these requirements is not applicable for 2 years following the final publication of this regulation. After 2 years, the time and effort for an exempted MCO/PIHP to disclose the findings of its most recent Medicare or private accreditation review to the State agency will be the burden associated with these requirements. We estimate, of the approximately 202 MCOs that potentially may provide Medicare services in addition to Medicaid services, State agencies will allow for approximately 10 percent of the MCOs to be exempt from the EQR requirement. We further estimate that it will take each MCO 8 hours to prepare and submit the necessary documentation to the State agency. Therefore, the total burden associated with this requirement is 10 percent of 202 MCOs × 8 hours = 160 annual burden hours. At a cost of $37.50 ($12 + $63/2) per hour, we assume a total cost of $6,000.

§ 438.364 (EQR results)—The EQRO responsible for the EQR function will be required to provide to the State agency a detailed technical report that describes for each mandatory and optional activity undertaken for the EQR, the objectives, technical methods of data collection and analysis, a description of the data obtained, conclusions drawn from the data, and the manner in which the conclusions were drawn as to the quality of the care furnished by the MCO/PIHP. In addition, the report must include: (1) An assessment of each MCO's/PIHP's strengths and weaknesses with respect to the quality, timeliness, and access to health care services furnished to Medicaid beneficiaries; (2) recommendations for improving the quality of health care services furnished by each MCO/PIHP; (3) as the State agency determines methodologically appropriate, comparative information about all MCOs/PIHPs, and (4) an assessment of the degree to which each MCO/PIHP has addressed effectively the recommendations for quality improvement, as made by the EQRO during the previous year's EQR.

The burden associated with this requirement is the time and effort for an EQRO to submit to a State agency a detailed technical report for each EQR conducted. We estimate that it will take an EQRO 200 hours to prepare and submit the necessary documentation to the State agency. Therefore, the total burden associated with this requirement is 458 technical reports (329 MCOs + 129 PIHPs) × 200 hours = 91,600 annual burden hours. Assuming wages of $63 per hour for professionals to comply with this requirement, the cost is $5,770,800.

This section also requires each State agency to provide copies of technical reports, upon request, to interested parties such as participating health care providers, enrollees and potential enrollees of the MCO/PIHP, beneficiary advocate groups, and members of the general public.

The burden associated with this requirement is the time and effort for a State agency to disclose copies of a given technical report to interested parties. We estimate that on average, it will take a State agency 8 hours to disclose the required information. Therefore, the total burden associated with this requirement is 329 MCOs + 129 PIHPs × 25 requests per MCO or PIHP × 8 hours = 91,600 annual burden hours and a cost ($12 per hour) of $1,099,200.

The information collection requirements contained in this final rule will be submitted to OMB for review. In accordance with the Paperwork Reduction Act, these requirements will not go into effect until approved by OMB.

If you comment on any of these information collection and record keeping requirements, please mail 3 copies directly to the following:

Centers for Medicare & Medicaid Services, Office of Information Services, Security and Standards Group, Division of CMS Enterprise Standards, Room N2–14–26, 7500 Security Boulevard, Baltimore, MD 21244–1850; Attn: Julie Brown, HCFA–2015–F; and

Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, Attn: Brenda Aguilar, CMS Desk Officer.

VI. Regulatory Impact Analysis

A. Overall Impact

We have examined the impacts of this rule as required by Executive Order 12866 (September 1993, Regulatory Planning and Review) the Regulatory Flexibility Act (RFA) (September 19, 1980, Pub. L. 96–354), section 1102(b) of the Social Security Act, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), and Executive Order 13132. Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits, including potential economic, environmental, public health and safety effects, distributive impacts, and equity. A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more in any one year).

The RFA requires agencies to analyze options for regulatory relief of small entities. For purposes of the RFA, we prepare a regulatory flexibility analysis unless we certify that a rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, nonprofit organizations, and governmental agencies. Most hospitals and other providers and suppliers are small entities, either by nonprofit status or by having revenues of $5 to $25 million or less annually. Individuals and States are not included in the definition of a small entity.

Section 1102(b) of the Act requires us to prepare a regulatory impact analysis for any proposed rule that may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside a Metropolitan Statistical Area and has fewer than 100 beds.

The Unfunded Mandates Reform Act (Pub. L. 104–4) requires that agencies prepare an assessment of anticipated costs and benefits before proposing any rule that may result in an annual expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $110 million or more. This rule does not impose any mandates on State, local, or tribal governments, or the private sector that will result in an annual expenditure of $110 million or more.

Under Executive Order 13132, we are required to adhere to certain criteria regarding Federalism in developing regulations. We have determined that this regulation will not significantly affect States rights, roles, and responsibilities. Section 1903(a)(30)(C) of the Act currently requires an EQR for each contract a State has with a section 1903(m) organization. In accordance with section 4705 of the BBA, this rule will establish requirements and procedures for EQR of Medicaid MCOs. We require States to ensure that an annual EQR is performed by a qualified EQRO for each contracting MCO, the EQRO has adequate information to carry out the review, and that the results of the reviews are made available to interested parties such as participating health care providers, enrollees, advocate groups, and the general public. We also require that these EQR provisions apply to PIHPs and certain entities with comprehensive risk contracts that have been exempted from the requirements of section 1903(m) of the Act. We believe this is consistent with the intent of the Congress in enacting the quality provisions of the BBA. This rule would not require State agencies to dismantle EQR mechanisms that they have used to meet section 1902 (a)(30)(C) of the Act and which they have found to be effective and efficient. Rather, this rule would provide States greater flexibility in the types of entities they may use to conduct EQR.

We worked closely with States in developing this regulation. Specifically, in accordance with section 1932(c)(2)(A)(ii) of the Act, which requires the Secretary to consult with States to establish a method for identifying entities qualified to conduct EQR, we met with States and other stakeholders under the auspices of the NASHP to establish a criteria to identify qualified entities. Most of the recommendations made at this meeting have been incorporated into this rule. For recommendations not accepted, an explanation was provided in the December 1, 1999 proposed rule.

In addition, section 1932(c)(2)(A)(iii) of the Act requires the Secretary to coordinate with the NGA in contracting with an independent quality review organization to develop protocols to be used in EQR. To meet this requirement, we issued a request for proposal for one or more contractors to develop a set of review protocols for EQROs to use in the conduct of EQRs. Two State representatives selected by the NGA were members of the panel that reviewed and rated responding proposals. Moreover, part of the development of the EQR protocols includes convening an expert panel for review and comment of the protocols. State representatives were included in this process.

B. Anticipated Effects

In publishing this final rule, we considered two main alternatives. The first was to allow this final rule to be published, incorporating public comments on the proposed rule. The second alternative was to implement the provisions of the BBA as written, without expanding the regulations beyond the statutory language. We believe this final rule as written was the appropriate alternative to choose. Used in conjunction with the Medicaid Managed Care final rule published June 14, 2002, this final rule is a necessary tool for States to use to create and maintain strong, viable Medicaid managed care programs that deliver high quality health care in their State marketplaces and health care delivery systems. Further, we felt this final rule was necessary to implement the Congress' directive to the Secretary to establish a method for identifying entities qualified to conduct EQR.

We do not anticipate that the provisions in this final rule will have a substantial economic impact on most hospitals, including small rural hospitals. The BBA provisions include some new requirements on State agencies and MCOs, but not directly on individual hospitals. The impact on individual hospitals will vary according to each hospital's current and future contractual relationships with MCOs. Furthermore, the impact will also vary according to each hospital's current procedures and level of compliance with existing law and regulation pertaining to Medicaid managed care. For these reasons, this final rule will not have a significant impact on the operations of a substantial number of hospitals. The only other small entity affected by these regulations would be the EQROs. However, this rule does not impose additional burdens on them. Instead, the rule offers these organizations the benefit of opportunities for additional revenues. Thus we certify that this rule will not have a significant economic impact on a substantial number of small entities.

We do not anticipate a significant increase in Medicaid expenditures as a result of the publication of these regulations for the following reasons. First, approximately 42 States are currently obtaining 75 percent enhanced FFP for EQR activities carried out by QIOs and organizations that meet the requirements to contract with Medicare as a QIO. Permitting these State agencies to claim 75 percent matching for EQR activities conducted by the additional types of entities allowed by these regulations would therefore not result in increased costs to the extent that State agencies switch from QIO or organizations that meet the requirements to contract with Medicare as a QIO to these other entities. Moreover, we believe that, by expanding the pool of organizations available to conduct EQR, State agencies may be able to negotiate savings compared to current costs of dealing with PRO and PRO-like organizations. Additional savings may be realized through opportunities afforded by the final rule to coordinate EQR activities with quality reviews conducted for other purposes. Additional costs may arise where State agencies currently conduct quality review activities at 50 percent Federal matching rate that would now qualify for 75 percent, and from new EQR activities undertaken as a result of the BBA requirements.

In addition, even though we extend this requirement to PIHPs, again we do

not expect this to significantly increase Medicaid expenditures. PIHP costs account for approximately 5 percent of the payments we make to capitated arrangements. Furthermore, State agencies currently conduct quality review activities on PIHPs at a 50 percent Federal matching rate. Additional costs may arise for States' quality review activities that would now qualify for 75 percent and for new quality review activities undertaken as a result of the activities required in this rule.

Although we cannot quantify these various cost and savings effects, we believe that their net impact would be well below the $100 million threshold for a major rule, and therefore that a regulatory impact analysis is not required. We do not believe that this final rule will cause MCOs to devote significantly more time to collect, organize and prepare for EQR than is already required by States. While the scope of work for EQR may be different under this final rule, we do not believe that the cost difference will be significant and States may actually be able to achieve savings since we are expanding the pool of organizations available to conduct EQR. Further, additional savings may also be realized through opportunities afforded by this rule to coordinate EQR activities with other quality and oversight activities. We acknowledge with the increased opportunity to contract with other qualified entities to conduct EQR, more States may avail themselves the 75 percent match for EQR activities. However, we do not believe this would represent a significant cost impact.

C. Conclusion

For these reasons, we are not preparing analyses for either the RFA or section 1102(b) of the Act because we have determined, and we certify, that this rule will not have a significant economic impact on a substantial number of small entities or a significant impact on the operations of a substantial number of small rural hospitals.

In accordance with the provisions of Executive Order 12866, this regulation was reviewed by the Office of Management and Budget.

List of Subjects

42 CFR Part 433

Administrative practice and procedure, Child support, Claims, Grant programs-health, Medicaid, Reporting and record keeping requirements.

42 CFR Part 438

Grant Programs—health, Managed care entities, Medicaid, Quality assurance, Reporting and record keeping requirements.

For the reasons set forth in the preamble, the Centers for Medicare & Medicaid Services amends 42 CFR chapter IV as set forth below.

PART 433—STATE FISCAL ADMINISTRATION

A. Amend part 433 as set forth below.

1. The authority citation for part 433 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

2. In § 433.15, add a new paragraph (b)(10) to read as follows:

§ 433.15 Rates of FFP for administration.

* * * * *

(b) * * *

(10) Funds expended for the performance of external quality review or the related activities described in § 438.358 of this chapter when they are performed by an external quality review organization as defined in § 438.320 of this chapter: 75 percent.

B. Add a new subpart E to part 438 to read as set forth below.

PART 438—MANAGED CARE

Subpart E—External Quality Review

Sec.

438.310 Basis, scope, and applicability.
438.320 Definitions.
438.350 State responsibilities.
438.352 External quality review protocols.
438.354 Qualifications of external quality review organizations.
438.356 State contract options.
438.358 Activities related to external quality review.
438.360 Nonduplication of mandatory activities.
438.362 Exemption from external quality review.
438.364 External quality review results.
438.370 Federal financial participation.

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

Subpart E—External Quality Review

§ 438.310 Basis, scope, and applicability.

(a) *Statutory basis.* This subpart is based on sections 1932(c)(2), 1903(a)(3)(C)(ii), and 1902(a)(4) of the Act.

(b) *Scope.* This subpart sets forth requirements for annual external quality reviews of each contracting managed care organization (MCO) and prepaid inpatient health plan (PIHP), including—

(1) Criteria that States must use in selecting entities to perform the reviews;

(2) Specifications for the activities related to external quality review;

(3) Circumstances under which external quality review may use the results of Medicare quality reviews or private accreditation reviews; and

(4) Standards for making available the results of the reviews.

(c) *Applicability.* The provisions of this subpart apply to MCOs, PIHPs, and to health insuring organizations (HIOs) that began on or after January 1, 1986 that the statute does not explicitly exempt from requirements in section 1903(m) of the Act.

§ 438.320 Definitions.

As used in this subpart—

EQR stands for external quality review.

EQRO stands for external quality review organization.

External quality review means the analysis and evaluation by an EQRO, of aggregated information on quality, timeliness, and access to the health care services that an MCO or PIHP, or their contractors furnish to Medicaid recipients.

External quality review organization means an organization that meets the competence and independence requirements set forth in § 438.354, and performs external quality review, other EQR-related activities as set forth in § 438.358, or both.

Financial relationship means—

(1) A direct or indirect ownership or investment interest (including an option or nonvested interest) in any entity. This direct or indirect interest may be in the form of equity, debt, or other means and includes any indirect ownership or investment interest no matter how many levels removed from a direct interest; or

(2) A compensation arrangement with an entity.

Quality, as it pertains to external quality review, means the degree to which an MCO or PIHP increases the likelihood of desired health outcomes of its enrollees through its structural and operational characteristics and through the provision of health services that are consistent with current professional knowledge.

Validation means the review of information, data, and procedures to determine the extent to which they are accurate, reliable, free from bias, and in accord with standards for data collection and analysis.

§ 438.350 State responsibilities.

Each State that contracts with MCOs or PIHPs must ensure that—

(a) Except as provided in § 438.362, a qualified EQRO performs an annual EQR for each contracting MCO or PIHP;

(b) The EQRO has sufficient information to use in performing the review;

(c) The information used to carry out the review must be obtained from the EQR-related activities described in § 438.358.

(d) For each EQR-related activity, the information must include the elements described in § 438.364(a)(1)(i) through (a)(1)(iv);

(e) The information provided to the EQRO in accordance with paragraph (c) of this section is obtained through methods consistent with the protocols established under § 438.352; and

(f) The results of the reviews are made available as specified in § 438.364.

§ 438.352 External quality review protocols.

Each protocol must specify—

(a) The data to be gathered;

(b) The sources of the data;

(c) The activities and steps to be followed in collecting the data to promote its accuracy, validity, and reliability;

(d) The proposed method or methods for validly analyzing and interpreting the data once obtained; and

(e) Instructions, guidelines, worksheets, and other documents or tools necessary for implementing the protocol.

§ 438.354 Qualifications of external quality review organizations.

(a) *General rule.* The State must ensure that an EQRO meets the requirements of this section.

(b) *Competence.* The EQRO must have at a minimum the following:

(1) Staff with demonstrated experience and knowledge of—

(i) Medicaid recipients, policies, data systems, and processes;

(ii) Managed care delivery systems, organizations, and financing;

(iii) Quality assessment and improvement methods; and

(iv) Research design and methodology, including statistical analysis.

(2) Sufficient physical, technological, and financial resources to conduct EQR or EQR-related activities.

(3) Other clinical and nonclinical skills necessary to carry out EQR or EQR-related activities and to oversee the work of any subcontractors.

(c) *Independence.* The EQRO and its subcontractors are independent from the State Medicaid agency and from the MCOs or PIHPs that they review. To qualify as "independent"—

(1) A State agency, department, university, or other State entity may not have Medicaid purchasing or managed care licensing authority; and

(2) A State agency, department, university, or other State entity must be governed by a Board or similar body the majority of whose members are not government employees.

(3) An EQRO may not—

(i) Review a particular MCO or PIHP if either the EQRO or the MCO or PIHP exerts control over the other (as used in this paragraph, "control" has the meaning given the term in 48 CFR 19.101) through—

(A) Stock ownership;

(B) Stock options and convertible debentures;

(C) Voting trusts;

(D) Common management, including interlocking management; and

(E) Contractual relationships.

(ii) Deliver any health care services to Medicaid recipients;

(iii) Conduct, on the State's behalf, ongoing Medicaid managed care program operations related to oversight of the quality of MCO or PIHP services, except for the related activities specified in § 438.358; or

(iv) Have a present, or known future, direct or indirect financial relationship with an MCO or PIHP that it will review as an EQRO.

§ 438.356 State contract options.

(a) The State—

(1) Must contract with one EQRO to conduct either EQR alone or EQR and other EQR-related activities; and

(2) May contract with additional EQROs to conduct EQR-related activities as set forth in § 438.358.

(b) Each EQRO must meet the competence requirements as specified in § 438.354(b).

(c) Each EQRO is permitted to use subcontractors. The EQRO is accountable for, and must oversee, all subcontractor functions.

(d) Each EQRO and its subcontractors performing EQR or EQR-related activities must meet the requirements for independence, as specified in § 438.354(c).

(e) For each contract, the State must follow an open, competitive procurement process that is in accordance with State law and regulations and consistent with 45 CFR part 74 as it applies to State procurement of Medicaid services.

§ 438.358 Activities related to external quality review.

(a) *General rule.* The State, its agent that is not an MCO or PIHP, or an EQRO may perform the mandatory and optional EQR-related activities in this section.

(b) *Mandatory activities.* For each MCO and PIHP, the EQR must use information from the following activities:

(1) Validation of performance improvement projects required by the State to comply with requirements set forth in § 438.240(b)(1) and that were underway during the preceding 12 months.

(2) Validation of MCO or PIHP performance measures reported (as required by the State) or MCO or PIHP performance measure calculated by the State during the preceding 12 months to comply with requirements set forth in § 438.240(b)(2).

(3) A review, conducted within the previous 3-year period, to determine the MCO's or PIHP's compliance with standards (except with respect to standards under §§ 438.240(b)(1) and (2), for the conduct of performance improvement projects and calculation of performance measures respectively) established by the State to comply with the requirements of § 438.204(g).

(c) *Optional activities.* The EQR may also use information derived during the preceding 12 months from the following optional activities:

(1) Validation of encounter data reported by an MCO or PIHP.

(2) Administration or validation of consumer or provider surveys of quality of care.

(3) Calculation of performance measures in addition to those reported by an MCO or PIHP and validated by an EQRO.

(4) Conduct of performance improvement projects in addition to those conducted by an MCO or PIHP and validated by an EQRO.

(5) Conduct of studies on quality that focus on a particular aspect of clinical or nonclinical services at a point in time.

(d) *Technical assistance.* The EQRO may, at the State's direction, provide technical guidance to groups of MCOs or PIHPs to assist them in conducting activities related to the mandatory and optional activities that provide information for the EQR.

§ 438.360 Nonduplication of mandatory activities.

(a) *General rule.* To avoid duplication, the State may use, in place of a Medicaid review by the State, its agent, or EQRO, information about the MCO or PIHP obtained from a Medicare or private accreditation review to provide information otherwise obtained from the mandatory activities specified in § 438.358 if the conditions of paragraph (b) or paragraph (c) of this section are met.

(b) *MCOs or PIHPs reviewed by Medicare or private accrediting*

organizations. For information about an MCO's or PIHP's compliance with one or more standards required under § 438.204(g), (except with respect to standards under §§ 438.240(b)(1) and (2), for the conduct of performance improvement projects and calculation of performance measures respectively) the following conditions must be met:

(1) The MCO or PIHP is in compliance with standards established by CMS for Medicare+Choice or a national accrediting organization. The CMS or national accreditation standards are comparable to standards established by the State to comply with § 438.204(g) and the EQR-related activity under § 438.358(b)(3).

(2) Compliance with the standards is determined either by—

(i) CMS or its contractor for Medicare; or

(ii) A private national accrediting organization that CMS has approved as applying standards at least as stringent as Medicare under the procedures in § 422.158.

(3) The MCO or PIHP provides to the State all the reports, findings, and other results of the Medicare or private accreditation review applicable to the standards provided for in § 438.204(g); and the State provides the information to the EQRO.

(4) In its quality strategy, the State identifies the standards for which the EQR will use information from Medicare or private accreditation reviews, and explains its rationale for why the standards are duplicative.

(c) *Additional provisions for MCOs or PIHPs serving only dually eligibles.* The State may use information obtained from the Medicare program in place of information produced by the State, its agent, or EQRO with respect to the mandatory activities specified in § 438.358 (b)(1) and (b)(2) if the following conditions are met:

(1) The MCO or PIHP serves only individuals who receive both Medicare and Medicaid benefits.

(2) The Medicare review activities are substantially comparable to the State-specified mandatory activities in § 438.358(b)(1) and (b)(2).

(3) The MCO or PIHP provides to the State all the reports, findings, and other results of the Medicare review from the activities specified under § 438.358(b)(1) and (b)(2) and the State provides the information to the EQRO.

(4) In its quality strategy, the State identifies the mandatory activities for which it has exercised this option and explains its rationale for why these activities are duplicative.

§ 438.362 Exemption from external quality review.

(a) *Basis for exemption.* The State may exempt an MCO or PIHP from EQR if the following conditions are met:

(1) The MCO or PIHP has a current Medicare contract under part C of title XVIII or under section 1876 of the Act, and a current Medicaid contract under section 1903(m) of the Act.

(2) The two contracts cover all or part of the same geographic area within the State.

(3) The Medicaid contract has been in effect for at least 2 consecutive years, before the effective date of the exemption and during those 2 years the MCO or PIHP has been subject to EQR under this part, and found to be performing acceptably with respect to the quality, timeliness, and access to health care services it provides to Medicaid recipients.

(b) *Information on exempted MCOs or PIHPs.* When the State exercises this option, the State must obtain either of the following:

(1) *Information on Medicare review findings.* Each year, the State must obtain from each MCO or PIHP that it exempts from EQR the most recent Medicare review findings reported on the MCO or PIHP including—

(i) All data, correspondence, information, and findings pertaining to the MCO's or PIHP's compliance with Medicare standards for access, quality assessment and performance improvement, health services, or delegation of these activities;

(ii) All measures of the MCO's or PIHP's performance; and

(iii) The findings and results of all performance improvement projects pertaining to Medicare enrollees.

(2) *Medicare information from a private, national accrediting organization that CMS approves and recognizes for Medicare+Choice deeming.*

(i) If an exempted MCO or PIHP has been reviewed by a private accrediting organization, the State must require the MCO or PIHP to provide the State with a copy of all findings pertaining to its most recent accreditation review if that review has been used for either of the following purposes:

(A) To fulfill certain requirements for Medicare external review under subpart D of part 422 of this chapter.

(B) To deem compliance with Medicare requirements, as provided in § 422.156 of this chapter.

(ii) These findings must include, but need not be limited to, accreditation review results of evaluation of compliance with individual accreditation standards, noted deficiencies, corrective action plans, and summaries of unmet accreditation requirements.

§ 438.364 External quality review results.

(a) *Information that must be produced.* The State must ensure that the EQR produces at least the following information:

(1) A detailed technical report that describes the manner in which the data from all activities conducted in accordance with § 438.358 were aggregated and analyzed, and conclusions were drawn as to the quality, timeliness, and access to the care furnished by the MCO or PIHP. The report must also include the following for each activity conducted in accordance with § 438.358:

(i) Objectives.

(ii) Technical methods of data collection and analysis.

(iii) Description of data obtained.

(iv) Conclusions drawn from the data.

(2) An assessment of each MCO's or PIHP's strengths and weaknesses with respect to the quality, timeliness, and access to health care services furnished to Medicaid recipients.

(3) Recommendations for improving the quality of health care services furnished by each MCO or PIHP.

(4) As the State determines, methodologically appropriate, comparative information about all MCOs and PIHPs.

(5) An assessment of the degree to which each MCO or PIHP has addressed effectively the recommendations for quality improvement made by the EQRO during the previous year's EQR.

(b) *Availability of information.* The State must provide copies of the information specified in paragraph (a) of this section, upon request, through print or electronic media, to interested parties such as participating health care providers, enrollees and potential enrollees of the MCO or PIHP, recipient advocacy groups, and members of the general public. The State must make this information available in alternative formats for persons with sensory impairments, when requested.

(c) *Safeguarding patient identity.* The information released under paragraph (b) of this section may not disclose the identity of any patient.

§ 438.370 Federal financial participation.

(a) FFP at the 75 percent rate is available in expenditures for EQR (including the production of EQR results) and EQR-related activities set forth in § 438.358 conducted by EQROs and their subcontractors.

(b) FFP at the 50 percent rate is available in expenditures for EQR-

related activities conducted by any entity that does not qualify as an EQRO.

(Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance)

Dated: August 6, 2002.

Thomas A. Scully,

Administrator, Centers for Medicare & Medicaid Services.

Approved: October 3, 2003.

Tommy G. Thompson,

Secretary.

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Part III

Department of Health and Human Services

Centers for Medicare & Medicaid Services
Centers for Disease Control and Prevention

42 CFR Part 493
Medicare, Medicaid, and CLIA Programs; Laboratory Requirements Relating to Quality Systems and Certain Personnel Qualifications; Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

Centers for Disease Control and Prevention

42 CFR Part 493

[CMS–2226–F]

RIN 0938–AK24

Medicare, Medicaid, and CLIA Programs; Laboratory Requirements Relating to Quality Systems and Certain Personnel Qualifications

AGENCY: Centers for Disease Control and Prevention (CDC) and Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Final rule.

SUMMARY: This final rule revises and responds to comments on certain laboratory requirements issued pursuant to the Clinical Laboratory Improvement Amendments of 1988 (CLIA), Pub. L. 100–578. Specifically, this final rule sets forth requirements for certain quality control (QC) provisions and personnel qualifications; consolidates and reorganizes the requirements for patient test management, QC, and quality assurance; and changes the consensus required for grading proficiency testing challenges.

To ensure a smooth transition to the new provisions for directors of high complexity testing who are not board certified (but who have doctoral degrees), we will not be holding facilities out of compliance with the provisions of the rule concerning directors who are not board certified until the effective date of this new rule, to the extent the facilities are otherwise in compliance with the requirements for laboratory directors.

EFFECTIVE DATES: This final rule is effective on April 24, 2003, except § 493.1443(b)(3) is effective on February 24, 2003.

Compliance Dates: To ensure a clear transition from the board certification provisions of the former rule at 42 CFR 493.1443(b)(2) that have a compliance date of December 31, 2002 (as set forth in 65 FR 82941), we will not be holding facilities out of compliance with the former rule until the effective date of the parallel provisions of this new rule to the extent that facilities are otherwise in compliance with the regulations for laboratory directors.

FOR FURTHER INFORMATION CONTACT: Rhonda S. Whalen (CDC), (770) 488–8155, Judith A. Yost (CMS), (410) 786–3531.

SUPPLEMENTARY INFORMATION:

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I. Background

On February 28, 1992, we published a final rule with comment period in the **Federal Register** (57 FR 7002) that set forth the requirements for laboratories that are subject to the Clinical Laboratory Improvement Amendments of 1988 (CLIA).

Under the provisions of the sentence following section 1861(s)(15) through 1861(s)(17) of the Social Security Act, (the Act) any laboratory that wants to be paid for services furnished to Medicare beneficiaries must meet the requirements of section 353 of the Public Health Services Act. Subject to specified exceptions, all laboratories, regardless of whether they receive payment from the Medicare or Medicaid programs must have a current and valid CLIA certificate to test human specimens. The February 28, 1992 final rule with comment period established uniform requirements based on the complexity of testing performed by laboratories regardless of the laboratory's location, size, or type. In the interest of public health, we included requirements in the February 28, 1992 final rule with comment period to ensure the quality of laboratory services.

We recognized that it would take time and resources for laboratories to understand and to implement the new requirements contained in the February 28, 1992 final rule with comment period. This final rule completes the phase-in of certain requirements where the comments supported taking this action.

The phased-in provision included quality control (QC) requirements applicable to moderate complexity tests and the date by which an individual with a doctorial degree must possess board certification to qualify as a director of a laboratory that performs high complexity testing.

During the phase-in, the Food and Drug Administration (FDA) was to establish a process to review and clear manufacturers' QC instructions for CLIA QC purposes. Because the CLIA program is user fee funded, we decided it would be prudent to wait until the phase-in period ended before implementing the FDA QC review. This afforded us the survey experience necessary to determine whether an additional FDA review process beyond that already in place as part of the premarket review would be of benefit to laboratories. We realized through our experience inspecting laboratories that an additional FDA review would not be of such benefit. We decided to remove this prospective provision. Therefore, we are removing all references to the FDA CLIA QC clearance process that was not implemented.

The phase-in effective dates contained in the February 28, 1992 final rule with comment period were further extended in the final rules with comment period published on December 6, 1994 in the **Federal Register** (59 FR 62606), May 12, 1997 in the **Federal Register** (62 FR 25855), October 14, 1998 in the **Federal Register** (63 FR 55031), and December 29, 2000 in the **Federal Register** (65 FR 82941).

The extensions allowed previously unregulated laboratories time to understand and implement these requirements. The extensions also provided the Department of Health and Human Services (HHS) additional time to issue revised QC requirements, review board certification program requests for approval, and ensure that laboratory directors with a doctoral degree had sufficient time to successfully complete the requirements for board certification.

On December 28, 2001, we published a proposed rule in the **Federal Register** (66 FR 67163) seeking comments on provisions to revise and expand the qualification requirements by which an individual with a doctoral degree in a chemical, physical, biological, or clinical laboratory science from an accredited institution may qualify to serve as a director of a laboratory performing high complexity testing. The

three proposed alternative qualification pathways were as follows:

- On or after January 1, 2003, be certified and continue to be certified by a board approved by HHS.
- Before January 1, 2003, must have served or be serving as a director of a laboratory performing high complexity testing and must have at least 2 years of laboratory training or experience, or both; and 2 years experience directing or supervising high complexity testing.
- Have at least 6 years of laboratory training or experience, or both, including 2 years of experience directing or supervising high complexity testing.

In this final rule, effective April 24, 2003, all laboratories must meet and follow the QC requirements. In addition, we are setting forth qualification requirements for an individual with a doctoral degree to serve as a director of a laboratory performing high complexity testing. Effective February 24, 2003, an individual with a doctoral degree may qualify to serve as a director of a laboratory that performs high complexity testing if he or she is certified and continues to be certified by a board approved by HHS; or before the effective date of this rule, has served or is serving as a director of a laboratory performing high complexity testing and has acquired at least 2 years of laboratory training or experience, or both, and 2 years of experience directing or supervising high complexity testing.

The qualification requirements for high complexity laboratory directors that are contained in this final rule will become effective February 24, 2003. To ensure a smooth transition to these new provisions, we will not be holding facilities out of compliance with the Board certified regulations of the former rule until the effective date of this new rule, to the extent the facilities are otherwise in compliance with the regulations for laboratory directors.

In addition, we are addressing the comments received in response to the February 28, 1992 final rule with comment period concerning part 493 of title 42 of the Code of Federal Regulations (CFR), subparts I, J, K, M, and P; comments received in response to the date-extension rules for certain provisions of subparts K and M; and comments to the December 28, 2001 proposed rule regarding qualification requirements for directors of laboratories performing high complexity testing.

II. Highlights and Organization of Final Rule

This regulation contains revisions to part 493 of title 42 of the CFR. We have renamed, reorganized, and consolidated similar requirements into one section, deleted duplicate requirements, and reworded numerous requirements to maintain and/or clarify their original intent, making the revised regulation easier to read and understand. In addition to specific changes to subparts I, J, K, M, and P, applicable technical and conforming changes were also made to other subparts.

The organization of this regulation now reflects the flow of a patient specimen through the laboratory, that is, from receipt of the specimen with the test request through test performance and test result reporting. In addition, this final rule more accurately describes the testing requirements and laboratory assessment activities.

In this final rule, the former Subpart I—Proficiency Testing Programs for Tests of Moderate Complexity (Including the Subcategory), High Complexity, or Any Combination of These Tests has been renamed Proficiency Testing Programs for Nonwaived Testing. In addition, in each specialty and subspecialty area of the subpart, we are restoring the requirement for the 80 percent agreement used by proficiency testing programs prior to the February 28, 1992 final rule with comment period.

The requirements formerly in Subpart J—Patient Test Management for Moderate Complexity (Including the Subcategory), High Complexity, or Any Combination of These Tests; Subpart K—Quality Control for Tests of Moderate Complexity (Including the Subcategory), High Complexity, or Any Combination of These Tests; and Subpart P—Quality Assurance for Moderate Complexity (Including the Subcategory) or High Complexity Testing, or Any Combination of These Tests, are consolidated and reorganized into a new Subpart J—Facility Administration for Nonwaived Testing, and Subpart K—Quality Systems for Nonwaived Testing.

As revised by this issuance, subpart J consolidates and clarifies the facility administration requirements for laboratories performing nonwaived testing. These include requirements for facility space, utilities and safety, transfusion services, and record and specimen retention. Also, subpart J now specifies that laboratories must comply with Federal, State, and local laboratory requirements. This will allow CMS to support a Federal, State, or local government that seeks to protect the public from actions it finds would be detrimental to public health. In addition, the requirements formerly at § 493.1111 (now at § 493.1242(c)) have been revised to allow CLIA-certified laboratories to refer specimens to laboratories operated under the Veterans Administration (VA), the Department of Defense (DOD), and CLIA-exempt laboratories within a State whose licensure program has been granted approval under subpart E.

Requirements pertaining to the total testing process (preanalytic, analytic, and postanalytic) are now in subpart K. Specifically, subpart K has been revised to eliminate the QC requirements formerly at § 493.1202 and provisions pertaining to the FDA review and approval of manufacturers' test system QC for CLIA purposes as specified at § 493.1203 in the February 28, 1992 final rule with comment period. Also, subpart K is now structured to correlate with the movement of a specimen through the laboratory from acquisition to examination or testing, and reporting of results. The requirements were not substantively changed to correspond to the testing process, but we did eliminate redundant requirements and revise others for clarification.

In addition, subpart K now incorporates the requirements formerly in Subpart P—Quality Assurance; Moderate Complexity (Including the Subcategory) or High Complexity Testing, or Any Combination of These Tests. These requirements are now located under the appropriate sections in subpart K, that is, General Laboratory Systems, Preanalytic Systems, Analytic Systems, and Postanalytic Systems. We listed the quality assurance (renamed quality assessment (QA) to more clearly reflect the activities performed) activities for each phase of testing. For example, QA requirements for preanalytic activities, such as monitoring the medical necessity and completeness of test request information solicited and obtained by the laboratory, now appear at the end of the preanalytic section of subpart K under § 493.1249. We believe that integrating the QA requirements into the various phases of the testing process enhances the understanding of the vital and important role QA plays in ensuring that quality services are provided by the laboratory throughout the entire testing process. To further emphasize and clarify the essential components of a comprehensive QA program, we are reiterating in each assessment section the laboratory's responsibility to: (1) Establish and follow written polices and procedures for an ongoing mechanism to monitor and assess each of its activities; (2) take corrective actions, as necessary, based on these assessments; (3) review the effectiveness of the assessments and corrective actions

taken; (4) revise policies and procedures, as necessary, to prevent recurrences of problems; (5) discuss the assessment activities and findings with the appropriate staff; and (6) document all assessment activities. To ensure the clarity of this final rule, many of the QA requirements from the former subpart P had to be rewritten.

To conform with the names of the new subparts I, J, and K, the former Subpart M—Personnel for Moderate Complexity (Including the Subcategory) and High Complexity Testing has been renamed Personnel for Nonwaived Testing. In subpart M, we are finalizing the qualification requirements for directors of laboratories performing high complexity testing at § 493.1443(b)(3). In addition, we are revising § 493.1443(b)(3)(i) by removing the reference to specific boards approved by HHS. All HHS-approved boards are listed on the Internet at *http://cms.hhs.gov/clia/dirc/con.asp*. HHS-approved boards will also be listed in Appendix C of the State Operations Manual (CMS Pub. 7), subpart M. This change will allow greater flexibility to update the list of HHS-approved boards. Also, we are announcing two new HHS-approved boards; the National Registry for Clinical Chemistry at the doctoral level and the American Board of Forensic Toxicology.

To clarify these changes, we have provided a distribution table, which contains a detailed list of sections that have been removed or redesignated.

III. Distribution Table

The following crosswalk table enables the reader to easily locate where the requirements from the former rule have been relocated. It lists the former section titles along with the section titles as they appear in this final rule. In addition, the reorganized regulation now follows the path of patient specimens as they proceed through the clinical laboratory. This organizational structure was adopted at the recommendation of the Clinical Laboratory Improvement Advisory Committee to assist laboratories in better understanding the basic CLIA requirements.

TABLE.—CROSSWALK

Former requirements and former sections (part 493, subparts J, K, M, and P)	Requirements in this final rule (part 493, subparts J, K, and M)	Sections in this final rule
Patient test management; moderate complexity (including the subcategory), or high complexity testing, or any combination of these tests:		
§ 493.1101—Introductory text	Specimen identification and integrity	§§ 493.1232;
	Preanalytic systems	493.1240;
	Postanalytic systems	493.1290
Procedures for specimen submission and handling:		
§ 493.1103(a)	Specimen identification and integrity	§§ 493.1232;
	Specimen submission, handling, and referral	493.1242(a)(1) through (a)(6);
	Procedure manual	493.1251(b)(1)
§ 493.1103(b)	Specimen submission, handling, and referral	§§ 493.1242(a)(8) and (d);
	Procedure manual	493.1251(b)(1)
§ 493.1103(c)	Removed	
Test requisition:		
§ 493.1105—Introductory text	Retention requirements	§§ 493.1105(a)(1);
	Test request	493.1241(a), (b), (c), and (d)
§ 493.1105(a)	Test request	§ 493.1241(c)(2)
§ 493.1105(b)	Test request	§ 493.1241(c)(1)
§ 493.1105(c)	Test request	§ 493.1241(c)(4)
§ 493.1105(d)	Test request	§ 493.1241(c)(6)
§ 493.1105(e)	Test request	§ 493.1241(c)(3) and (c)(7)
§ 493.1105(f)	Test request	§§ 493.1241(c)(3), (c)(5), and (c)(8)
	Specimen submission, handling, and referral	493.1242(a)(3)
Test records:		
§ 493.1107—Introductory text	Retention requirements	§§ 493.1105(a)(3);
	Specimen identification and integrity	493.1232;
	Test records	493.1283(a)(4) and (b)
§ 493.1107(a)	Test records	§ 493.1283(a)(1)
§ 493.1107(b)	Specimen submission, handling, and referral	§§ 493.1242(b);
	Test records	493.1283(a)(2)
§ 493.1107(c)	Test records	§ 493.1283(a)(3)
§ 493.1107(d)	Test records	§ 493.1283(a)(4)
Test report:		
§ 493.1109—Introductory text	Retention requirements	§§ 493.1105(a)(3)(ii), (a)(6)(i), (a)(6)(ii) and (b);
	Postanalytic systems	493.1290;
	Test report	493.1291(b), (c)(3), and (f)
§ 493.1109(a)	Confidentiality of patient information	§§ 493.1231;
	Postanalytic systems	493.1290;
	Test report	493.1291(a) and (c)(3)
§ 493.1109(b)	Test report	§§ 493.1291(c)(2), (c)(4), and (c)(6)
§ 493.1109(c)	Test report	§ 493.1291(c)(7)
§ 493.1109(d)	Test report	§ 493.1291(d)
§ 493.1109(e)	Test report	§ 493.1291(f)
§ 493.1109(f)	Procedure manual	§§ 493.1251(b)(13);
	Test report	493.1291(g)

TABLE.—CROSSWALK—Continued

Former requirements and former sections (part 493, subparts J, K, M, and P)	Requirements in this final rule (part 493, subparts J, K, and M)	Sections in this final rule
§493.1109(g)	Test report	§493.1291(e)
§493.1109(h)	Test report	§493.1291(j)
Referral of specimens:		
§493.1111—Introductory text	Specimen submission, handling, and referral	§493.1242(c)
§493.1111(a)	Test report	§493.1291(i)(1)
§493.1111(b)	Test report	§493.1291(i)(2)
§493.1111(c)	Test report	§493.1291(i)(3)
General quality control; moderate complexity (including the subcategory) or high complexity testing, or any combination of these tests:		
§493.1201(a)	Removed	
§493.1201(a)(1)	Removed	
§493.1201(a)(2)	Facility Administration	§§493.1100
	General laboratory systems	493.1230
	Preanalytic systems	493.1240
	Analytic systems	493.1250
	Control Procedures	493.1256(d)
	Postanalytic systems	493.1290
§493.1201(b)	Analytic systems	§§493.1250;
	Procedure manual	493.1251(b)(7)
Moderate or high complexity testing, or both, Effective from September 1, 1992 to December 13, 2000:		
§493.1202(a)	Facility administration	§§493.1100;
	Subpart K—Quality systems for nonwaived testing.	493.1201 through 493.1227
§493.1202(b)	Facility administration	§§493.1100;
	Subpart K—Quality systems for nonwaived testing.	493.1201 through 493.1227
§493.1202(c)	Facility administration	§§493.1100;
	Subpart K—Quality systems for nonwaived testing.	493.1201 through 493.1227
§493.1202(c)(1)	Test systems, equipment, instruments, reagents, materials, and supplies.	§§493.1252(a);
	Maintenance and function checks	493.1254(a)(1) and (a)(2)
	Control procedures	493.1256(d)(2)
§493.1202(c)(2)	Procedure manual	§493.1251
§493.1202(c)(3)	Calibration and calibration verification procedures.	§493.1255
§493.1202(c)(4)	Control procedures	§493.1256
§493.1202(c)(5)	Control procedures	§493.1256(d)(1)
§493.1202(c)(6)	Corrective actions	§493.1282
§493.1202(c)(7)	Retention requirements	§493.1105(a)(3)
Moderate or high complexity testing, or both effective beginning 12/31/00:		
§493.1203—Introductory text	Removed	
§493.1203(a)	Removed	
§493.1203(b)	Removed	
Facilities:		
§493.1204—Introductory text	Facilities	§493.1101(a)
§493.1204(a)	Facilities	§§493.1101(a)(1) and (a)(2)
§493.1204(b)	Facilities	§493.1101(d)
Test methods, equipment, instrumentation, reagents, materials, and supplies:		
§493.1205—Introductory text	Facility Test systems, equipment, instruments, reagents, materials, and supplies.	§§493.1101(b); 493.1252
§493.1205(a)	Test systems, equipment, instruments, reagents, materials, and supplies.	§493.1252(a)
§493.1205(b)	Facilities	§493.1101(b)
§493.1205(c)	Test systems, equipment, instruments, reagents, materials, and supplies.	§493.1252(b)
§493.1205(c)(1)	Test systems, equipment, instruments, reagents, materials, and supplies.	§493.1252(b)
§493.1205(c)(1)(i)	Test systems, equipment, instruments, reagents, materials, and supplies.	§493.1252(b)(1)
§493.1205(c)(1)(ii)	Test systems, equipment, instruments, reagents, materials, and supplies.	§493.1252(b)(2)
§493.1205(c)(1)(iii)	Test systems, equipment, instruments, reagents, materials, and supplies.	§493.1252(b)(3)

TABLE.—CROSSWALK—Continued

Former requirements and former sections (part 493, subparts J, K, M, and P)	Requirements in this final rule (part 493, subparts J, K, and M)	Sections in this final rule
§ 493.1205(c)(1)(iv)	Test systems, equipment, instruments, reagents, materials, and supplies.	§ 493.1252(b)(4)
§ 493.1205(c)(2)	Corrective actions	§ 493.1282(b)(3)
§ 493.1205(d)	Test systems, equipment, instruments, reagents, materials, and supplies.	§ 493.1252(c)
§ 493.1205(d)(1)	Test systems, equipment, instruments, reagents, materials, and supplies.	§ 493.1252(c)(1)
§ 493.1205(d)(2)	Test systems, equipment, instruments, reagents, materials, and supplies.	§ 493.1252(c)(2)
§ 493.1205(d)(3)	Test systems, equipment, instruments, reagents, materials, and supplies.	§ 493.1252(c)(3)
§ 493.1205(d)(4)	Test systems, equipment, instruments, reagents, materials, and supplies.	§ 493.1252(c)(4)
§ 493.1205(e)	Test systems, equipment, instruments, reagents, materials, and supplies.	§ 493.1252(d)
§ 493.1205(e)(1)	Test systems, equipment, instruments, reagents, materials, and supplies.	§§ 493.1252(d);
	Immunohematology	493.1271(b)
§ 493.1205(e)(2)	Test systems, equipment, instruments, reagents, materials, and supplies.	§ 493.1252(e)
Procedure manual:		
§ 493.1211(a)	Procedure manual	§ 493.1251(a)
§ 493.1211(b)	Procedure manual	§ 493.1251(b)
§ 493.1211(b)(1)	Procedure manual	§ 493.1251(b)(1)
§ 493.1211(b)(2)	Procedure manual	§ 493.1251(b)(2)
§ 493.1211(b)(3)	Procedure manual	§§ 493.1251(b)(3);
	Histocompatibility	493.1278(d)(7)
§ 493.1211(b)(4)	Procedure manual	§ 493.1251(b)(4)
§ 493.1211(b)(5)	Procedure manual	§ 493.1251(b)(5)
§ 493.1211(b)(6)	Procedure manual	§ 493.1251(b)(6)
§ 493.1211(b)(7)	Procedure manual	§ 493.1251(b)(7)
§ 493.1211(b)(8)	Procedure manual	§ 493.1251(b)(8)
§ 493.1211(b)(9)	Procedure manual	§ 493.1251(b)(9)
§ 493.1211(b)(10)	Procedure manual	§ 493.1251(b)(10)
§ 493.1211(b)(11)	Procedure manual	§ 493.1251(b)(11)
§ 493.1211(b)(12)	Procedure manual	§ 493.1251(b)(12)
§ 493.1211(b)(13)	Specimen submission, handling, and referral	§§ 493.1242(a)(4);
	Procedure manual	493.1251(b)(1)
§ 493.1211(b)(14)	Procedure manual	§ 493.1251(b)(13)
§ 493.1211(b)(15)	Procedure manual	§ 493.1251(b)(14)
§ 493.1211(b)(16)	Procedure manual	§ 493.1251(b)(1)
§ 493.1211(c)	Procedure manual	§ 493.1251(c)
§ 493.1211(d)	Procedure manual	§ 493.1251(d)
§ 493.1211(e)	Procedure manual	§ 493.1251(d)
§ 493.1211(f)	Procedure manual	§ 493.1251(d)
§ 493.1211(g)	Retention requirements	§§ 493.1105(a)(2);
	Procedure manual	493.1251(e)
Establishment and verification of method performance specifications:		
§ 493.1213—Introductory text	Removed	
§ 493.1213(a)	Establishment and verification of performance specifications.	§ 493.1253(a)
§ 493.1213(b)(1)	Removed	
§ 493.1213(b)(2)	Establishment and verification of performance specifications.	§§ 493.1253(b)(1) and (2)
§ 493.1213(b)(2)(i)	Establishment and verification of performance specifications.	§§ 493.1253(b)(1) and (b)(2)
§ 493.1213(b)(2)(i)(A)	Establishment and verification of performance specifications.	§§ 493.1253(b)(1)(i)(A) and (b)(2)(i)
§ 493.1213(b)(2)(i)(B)	Establishment and verification of performance specifications.	§§ 493.1253(b)(1)(i)(B) and (b)(2)(ii)
§ 493.1213(b)(2)(i)(C)	Establishment and verification of performance specifications.	§ 493.1253(b)(2)(iii)
§ 493.1213(b)(2)(i)(D)	Establishment and verification of performance specifications.	§ 493.1253(b)(2)(iv)
§ 493.1213(b)(2)(i)(E)	Establishment and verification of performance specifications.	§§ 493.1253(b)(1)(i)(C) and (b)(2)(v)
§ 493.1213(b)(2)(i)(F)	Establishment and verification of performance specifications.	§§ 493.1253(b)(1)(ii) and (b)(2)(vi)
§ 493.1213(b)(2)(i)(G)	Establishment and verification of performance specifications.	§ 493.1253(b)(2)(vii)

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§ 493.1213(b)(2)(ii)	Establishment and verification of performance specifications.	§ 493.1253(b)(3)
§ 493.1213(c)	Establishment and verification of performance specifications.	§ 493.1253(c)
Equipment maintenance and function checks:		
§ 493.1215—Introductory text	Removed	
§ 493.1215(a)—Title only	Removed	
§ 493.1215(a)(1)	Removed	
§ 493.1215(a)(1)(i)	Removed	
§ 493.1215(a)(1)(ii)	Removed	
§ 493.1215(a)(2)—Lead-in only	Removed	
§ 493.1215(a)(2)(i)	Maintenance and function checks	§ 493.1254(b)(1)(i)
§ 493.1215(a)(2)(ii)	Maintenance and function checks	§ 493.1254(b)(1)(ii)
§ 493.1215(a)(2)(iii)	Maintenance and function checks	§ 493.1254(b)(1)(ii)
§ 493.1215(b)	Removed	
§ 493.1215(b)(1)	Removed	
§ 493.1215(b)(1)(i)	Removed	
§ 493.1215(b)(1)(ii)	Removed	
§ 493.1215(b)(2)	Removed	
§ 493.1215(b)(2)(i)	Maintenance and function checks	§ 493.1254(b)(2)(i)
§ 493.1215(b)(2)(ii)	Maintenance and function checks	§ 493.1254(b)(2)(ii)
§ 493.1215(b)(2)(iii)	Maintenance and function checks	§ 493.1254(b)(2)(ii)
Calibration and calibration verification procedures:		
§ 493.1217—Introductory text	General Provisions—Definitions Calibration and calibration verification procedures.	§§ 493.2; 493.1255
§ 493.1217(a)	Removed	
§ 493.1217(b)—Lead-in only	Removed	
§ 493.1217(b)(1)	Calibration and calibration verification procedures.	§ 493.1255(a)
§ 493.1217(b)(1)(i)	Calibration and calibration verification procedures.	§ 493.1255(a)(1)
§ 493.1217(b)(1)(ii)	Calibration and calibration verification procedures.	§ 493.1255(a)(2)
§ 493.1217(b)(1)(ii)(A)	Calibration and calibration verification procedures.	§ 493.1255(a)(2)(ii)
§ 493.1217(b)(1)(ii)(B)	Calibration and calibration verification procedures.	§ 493.1255(a)(2)(i)
§ 493.1217(b)(1)(iii)	Calibration and calibration verification procedures.	§ 493.1255(a)(3)
§ 493.1217(b)(2)	Calibration and calibration verification procedures.	§ 493.1255(b)
§ 493.1217(b)(2)(i)	Calibration and calibration verification procedures.	§ 493.1255(b)(1)
§ 493.1217(b)(2)(ii)	Calibration and calibration verification procedures.	§ 493.1255(b)(2)
§ 493.1217(b)(2)(ii)(A)	Calibration and calibration verification procedures.	§ 493.1255(b)(2)(i)
§ 493.1217(b)(2)(ii)(B)	Removed	
§ 493.1217(b)(2)(ii)(B)(1)	Removed	
§ 493.1217(b)(2)(ii)(B)(2)	Calibration and calibration verification procedures.	§ 493.1255(b)(2)(ii)
§ 493.1217(b)(2)(ii)(C)	Calibration and calibration verification procedures.	§ 493.1255(b)(3)
§ 493.1217(b)(2)(ii)(C)(1)	Calibration and calibration verification procedures.	§ 493.1255(b)(3)(i)
§ 493.1217(b)(2)(ii)(C)(2)	Calibration and calibration verification procedures.	§ 493.1255(b)(3)(ii)
§ 493.1217(b)(2)(ii)(C)(3)	Calibration and calibration verification procedures.	§ 493.1255(b)(3)(iii)
§ 493.1217(b)(2)(ii)(C)(4)	Calibration and calibration verification procedures.	§ 493.1255(b)(3)(iv)
§ 493.1217(b)(3)	Calibration and calibration verification procedures.	§ 493.1255(a) and (b)
Control procedures:		
§ 493.1218	Control procedures	§ 493.1256(a)
§ 493.1218(a)	Removed	
§ 493.1218(b)—Partial removed	Control procedures	§ 493.1256(b), (c)(1), and (c)(2)
§ 493.1218(b)(1)	Control procedures	§ 493.1256(d)(3)(ii)
§ 493.1218(b)(2)	Control procedures	§ 493.1256(d)(3)(i)
§ 493.1218(b)(3)	Control procedures	§ 493.1256(d)(5)

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Former requirements and former sections (part 493, subparts J, K, M, and P)	Requirements in this final rule (part 493, subparts J, K, and M)	Sections in this final rule
§493.1218(b)(3)(i)	Control procedures	§493.1256(d)(5)
§493.1218(b)(3)(ii)	Control procedures	§493.1256(d)(5)
§493.1218(b)(4)	Control procedures	§§493.1256(d)(3)(ii) and (d)(3)(iv)
§493.1218(b)(5)	Control procedures	§493.1256(h)
§493.1218(c)	Control procedures	§493.1256(d)(8)
§493.1218(d)	Control procedures	§493.1256(d)(10)(i)
§493.1218(d)(1)	Control procedures	§493.1256(d)(10)(ii)
§493.1218(d)(2)	Control procedures	§493.1256(d)(10)(iii)
§493.1218(e)	Control procedures	§493.1256(f)
§493.1218(f)	Control procedures	§493.1256(e)
§493.1218(f)(1)	Control procedures	§493.1256(e)(1)
§493.1218(f)(2)	Control procedures	§493.1256(e)(2)
§493.1218(f)(3)	Control procedures	§§493.1256(e)(3);
	Histopathology	493.1273(a)
§493.1218(f)(4)	Control procedures	§493.1256(e)(4)(5)
Remedial actions:		
§493.1219—Introductory text	Corrective actions	§493.1282(a) and (b)
§493.1219(a)	Corrective actions	§493.1282(b)(1)
§493.1219(a)(1)	Corrective actions	§493.1282(b)(1)(i)
§493.1219(a)(2)	Corrective actions	§493.1282(b)(1)(ii)
§493.1219(a)(3)	Corrective actions	§493.1282(b)(1)(iii)
§493.1219(b)	Corrective actions	§493.1282(b)(2)
§493.1219(c)	Test report	§493.1291(h)
§493.1219(d)	Test report	§493.1291(k)
§493.1219(d)(1)	Test report	§493.1291(k)(1)
§493.1219(d)(2)	Test report	§493.1291(k)(2)
§493.1219(d)(3)	Retention requirements	§§493.1105(a)(6);
	Test report	493.1291(k)(3)
Quality control records:		
§493.1221	Retention requirements	§493.1101(e);
		493.1105(a)(3)(i) through (a)(3)(ii);
	Test systems, equipment, instruments, reagents, material, and supplies performance.	493.1252(b);
	Establishment and verification of performance	493.1253(c);
	Maintenance and function checks	493.1254(a), (b)(1)(ii), and (b)(2)(ii);
	Calibration and calibration verification procedures.	493.1255(a) and (b);
	Control procedures	493.1256(g);
	Bacteriology	493.1261(c);
	Mycobacteriology	493.1262(c);
	Mycology	493.1263(c);
	Parasitology	493.1264(d);
	Virology	493.1265(b);
	Routine chemistry	493.1267(d);
	Hematology	493.1269(d);
	Immunohematology	493.1271(f);
	Histopathology	493.1273(f);
	Cytology	493.1274(h);
	Clinical Cytogenetics	493.1276(e);
	Histocompatibility	493.1278(g)
Quality control-specialties and subspecialties for tests of moderate or high complexity; or both:		
§493.1223	Control Procedures	§§493.1256(a), (b), (c), (d)(1), and (2);
Microbiology:		
§493.1225	Removed	
Bacteriology:		
§493.1227—Introductory text	Bacteriology	§493.1201
§493.1227(a)—Partially removed	Bacteriology	§493.1261(a)
Bacteriology:		
§493.1227(a)(1)—Partially removed	Control procedures	§§493.1256(d)(3)(ii), (d)(3)(iv), and (e)(1);
	Bacteriology	493.1261(a)(1)
§493.1227(a)(2)	Control procedures	§§493.1256(e)(1) and (e)(2);
	Bacteriology	493.1261(a)(2)
§493.1227(a)(3)	Bacteriology	§493.1261(a)(3)
§493.1227(b)	Control procedures	§493.1256(e)(1)
§493.1227(c)	Bacteriology	§493.1261(b)
§493.1227(c)(1)	Bacteriology	§493.1261(b)(2)
§493.1227(c)(2)	Bacteriology	§493.1261(b)(1)
Mycobacteriology:		
§493.1229—Introductory text	Mycobacteriology	§493.1202

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§ 493.1229(a)	Mycobacteriology	§ 493.1262(a)
§ 493.1229(b)	Control procedures	§ 493.1256(e)(3)
§ 493.1229(c)	Control procedures	§§ 493.1256(e)(2);
	Mycobacteriology	493.1262(a)
§ 493.1229(d)	Mycobacteriology	§§ 493.1262(b)(1) through (b)(3)
Mycology:		
§ 493.1231—Introductory text	Mycology	§ 493.1203
§ 493.1231(a)	Control procedures	§§ 493.1256(e)(1) and (e)(4)
§§ 493.1231(b)	Control procedures	§ 493.1256(e)(1)
§ 493.1231(c)	Control procedures	§ 493.1256(e)(2)
§ 493.1231(d)	Mycology	§§ 493.1263(b)(1) through (b)(3)
Parasitology:		
§ 493.1233—Introductory text	Parasitology	§ 493.1204
§ 493.1233(a)	Parasitology	§ 493.1264(a)
§ 493.1233(b)	Parasitology	§ 493.1264(b)
§ 493.1233(c)	Parasitology	§ 493.1264(c)
Virology:		
§ 493.1235—Introductory text	Virology	§ 493.1205
§ 493.1235(a)	Facilities	§§ 493.1101(b);
	Test systems, equipment, instruments, reagents, material, and supplies.	493.1252(a)
§ 493.1235(b)	Virology	§§ 493.1265(b);
	Test records	493.1283(a)(4)
§ 493.1235(c)	Virology	§ 493.1265(a)
Diagnostic immunology:		
§ 493.1237	Removed	
Syphilis serology:		
§ 493.1239—Introductory text	Syphilis serology	§ 493.1207
§ 493.1239(a)	Test systems, equipment, instruments, reagents, materials, and supplies.	§ 493.1252(a)
§ 493.1239(b)	Control procedures	§ 493.1256(d)(3)(iii)
§ 493.1239(c)	Control procedures	§§ 493.1256(a) and (d)(3)(ii);
§ 493.1239(d)	Control procedures	§ 493.1256(f)
§ 493.1239(e)	Immunohematology	§ 493.1271(b)
General immunology:		
§ 493.1241	General immunology	§ 493.1208
§ 493.1241(a)	Control procedures	§ 493.1256(d)(3)(iii)
§ 493.1241(b)	Control procedures	§ 493.1256(a)
§ 493.1241(c)	Control procedures	§ 493.1256(f)
§ 493.1241(d)—Lead-in only	Removed	
§ 493.1241(d)(1)	Immunohematology	§ 493.1271(b)
§ 493.1241(d)(2)	Immunohematology	§ 493.1271(b)
Chemistry:		
§ 493.1243	Removed	
Routine chemistry:		
§ 493.1245—Introductory text	Routine chemistry	§§ 493.1210; 493.1267
§ 493.1245(a)	Routine chemistry	§ 493.1267(a)
§ 493.1245(b)	Routine chemistry	§ 493.1267(b)
§ 493.1245(c)	Routine chemistry	§ 493.1267(b)
§ 493.1245(d)	Routine chemistry	§ 493.1267(c)
Endocrinology:		
§ 493.1247	Endocrinology	§ 493.1212
Toxicology:		
§ 493.1249—Introductory text	Toxicology	§§ 493.1213;
	Control procedures	493.1256(d)(4)
§ 493.1249(a)	Control procedures	§ 493.1256(d)(4)(i)
§ 493.1249(b)	Control procedures	§ 493.1256(d)(4)(ii)
Urinalysis:		
§ 493.1251—Introductory text only	Urinalysis	§ 493.1211
Hematology:		
§ 493.1253	Hematology	§ 493.1215
§ 493.1253(a)	Hematology	§§ 493.1269(a)(1) and (a)(2)
§ 493.1253(b)	Control procedures	§ 493.1256(d)
§ 493.1253(c)	Hematology	§ 493.1269(b)
§ 493.1253(d)	Hematology	§ 493.1269(c)
§ 493.1253(d)(1)	Hematology	§ 493.1269(c)(1)
§ 493.1253(d)(2)	Hematology	§ 493.1269(c)(2)
Pathology:		
§ 493.1255	Removed	
Cytology:		
§ 493.1257—Introductory text	Cytology	§ 493.1221

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§ 493.1257(a)	Cytology	§ 493.1274(b)
§ 493.1257(a)(1)	Cytology	§ 493.1274(b)(1)
§ 493.1257(a)(2)	Cytology	§ 493.1274(b)(2)
§ 493.1257(a)(3)	Cytology	§ 493.1274(b)(3)
§ 493.1257(a)(4)	Cytology	§ 493.1274(e)(4)
§ 493.1257(a)(5)	Cytology	§ 493.1274(a)
§ 493.1257(b)	Cytology	§ 493.1274(d)
§ 493.1257(b)(1)	Cytology	§§ 493.1274(d)(2) and (d)(2)(iv)
§ 493.1257(b)(2)	Cytology	§ 493.1274(d)(2)(iii)
§ 493.1257(b)(3)	Cytology	§ 493.1274(g)
§ 493.1257(b)(3)(i)	Cytology	§ 493.1274(d)(2)(i)
§ 493.1257(b)(3)(ii)	Cytology	§ 493.1274(d)(2)(ii)
§ 493.1257(c)	Cytology	§ 493.1274(e)(1)
§ 493.1257(c)(1)	Cytology	§§ 493.1274(e)(1)(i) through (e)(1)(v), and (e)(2)
§ 493.1257(c)(2)	Cytology	§ 493.1274(e)(3)
§ 493.1257(c)(3)	Cytology	§ 493.1274(d)(1)(i)(B)
§ 493.1257(c)(4)	Cytology	§ 493.1274(d)(1)
§ 493.1257(c)(4)(i)	Cytology	§§ 493.1274(d)(1)(i) and (d)(4)
§ 493.1257(c)(4)(ii)	Cytology	§ 493.1274(d)(1)(ii)
§ 493.1257(d)	Cytology	§ 493.1274(c)
§ 493.1257(d)(1)	Cytology	§ 493.1274(c)(1)
§ 493.1257(d)(1)(i)	Cytology	§ 493.1274(c)(1)(i)
§ 493.1257(d)(1)(ii)	Cytology	§ 493.1274(c)(4)
§ 493.1257(d)(1)(iii)	Cytology	§ 493.1274(c)(1)(ii)
§ 493.1257(d)(2)	Cytology	§ 493.1274(c)(2)
§ 493.1257(d)(3)	Cytology	§ 493.1274(c)(3)
§ 493.1257(d)(4)	Cytology	§§ 493.1274(c)(5)(i) through (c)(5)(vi)
§ 493.1257(d)(5)	Cytology	§ 493.1274(c)(6)
§ 493.1257(e)—Lead-in only	Removed	
§ 493.1257(e)(1)	Cytology	§ 493.1274(e)(4)
§ 493.1257(e)(2)	Cytology	§ 493.1274(e)(5)
§ 493.1257(f)	Cytology	§ 493.1274(e)(6)
§ 493.1257(g)	Retention requirements, Cytology	§§ 493.1105(a)(7)(i)(A); 493.1274(f)(2) through (f)(4)
Histopathology:		
§ 493.1259—Introductory text	Histopathology	§ 493.1219
§ 493.1259(a)	Histopathology	§ 493.1273(a)
§ 493.1259(b)	Retention requirements, Histopathology	§§ 493.1105(a)(7)(i)(B) and (a)(7)(ii); 493.1273(b)
§ 493.1259(c)	Facilities; Retention requirements, Histopathology.	§§ 493.1101(e); 493.1105(a)(7)(iii); 493.1273(b)
§ 493.1259(d)	Histopathology	§ 493.1273(d)
§ 493.1259(e)	Histopathology	§ 493.1273(e)
Oral pathology:		
§ 493.1261	Oral pathology	§ 493.1220
Radiobioassay:		
§ 493.1263	Radiobioassay	§ 493.1226
Histocompatibility:		
§ 493.1265—Introductory text	Histocompatibility	§ 493.1227
§ 493.1265(a)	Histocompatibility	§ 493.1278(f)
§ 493.1265(a)(1)	Histocompatibility	§ 493.1278(e)(2)
§ 493.1265(a)(1)(i)	Histocompatibility	§ 493.1278(e)(2)(i)
§ 493.1265(a)(1)(ii)	Histocompatibility; Procedure manual	§§ 493.1278(e)(1); 493.1251(b)(3)
§ 493.1265(a)(1)(iii)	Histocompatibility	§ 493.1278(e)(2)(ii)
§ 493.1265(a)(1)(iv)	Procedure manual	§§ 493.1251(b)(3) and (b)(13)
§ 493.1265(a)(2)	Histocompatibility	§ 493.1278(f)
§ 493.1265(a)(2)(i)	Histocompatibility	§ 493.1278(f)(2)
§ 493.1265(a)(2)(ii)	Histocompatibility	§§ 493.1278(d)(4) through (d)(5)
§ 493.1265(a)(3)—Lead-in only	Removed	
§ 493.1265(a)(3)(i)	Test systems, equipment, instruments, reagents, materials, and supplies.	§ 493.1252(b);
	Specimen submission, handling, and referral	§ 493.1242(a)(4)
§ 493.1265(a)(3)(ii)	Histocompatibility	§ 493.1278(a)(1)
§ 493.1265(a)(3)(iii)—Partially removed	Specimen identification and integrity, Histocompatibility; Test records.	§§ 493.1232; 493.1278(a)(2) 493.1283(a)(1)
§ 493.1265(a)(4)	Histocompatibility	§ 493.1278(a)(3)
§ 493.1265(a)(5)	Test systems, equipment, instruments, reagents, materials, and supplies.	§§ 493.1252(c)(1) through (c)(4)
§ 493.1265(a)(6)	Histocompatibility	§ 493.1278(b)
§ 493.1265(a)(6)(i)	Histocompatibility	§ 493.1278(b)(2)

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§ 493.1265(a)(6)(ii)	Histocompatibility	§ 493.1278(b)(3)
§ 493.1265(a)(6)(iii)	Histocompatibility	§ 493.1278(b)(5)(v)
§ 493.1265(a)(7)	Histocompatibility	§ 493.1278(b)(5)
§ 493.1265(a)(7)(i)	Histocompatibility	§ 493.1278(b)(5)(i)
§ 493.1265(a)(7)(ii)	Histocompatibility	§ 493.1278(b)(5)(ii)
§ 493.1265(a)(7)(iii)	Histocompatibility	§ 493.1278(b)(5)(iv)
§ 493.1265(a)(7)(iv)	Histocompatibility	§ 493.1278(b)(5)(iii)
§ 493.1265(a)(8)	Histocompatibility	§ 493.1278(d)
§ 493.1265(a)(8)(i)	Histocompatibility	§ 493.1278(d)(5)
§ 493.1265(a)(8)(i)(A)	Histocompatibility	§ 493.1278(d)(5)
§ 493.1265(a)(8)(i)(B)	Histocompatibility	§ 493.1278(d)(5)
§ 493.1265(a)(8)(ii)	Histocompatibility	§ 493.1278(d)(3)
§ 493.1265(a)(8)(ii)(A)	Histocompatibility	§ 493.1278(d)(3)
§ 493.1265(a)(8)(ii)(B)	Test systems, equipment, instruments, reagents, materials, and supplies.	§ 493.1252(b)
§ 493.1265(a)(9)—Lead-in only	Removed	
§ 493.1265(a)(9)(i)	Histocompatibility	§§ 493.1278(b)(6) and (d)(6)
§ 493.1265(a)(9)(i)(A)	Histocompatibility	§§ 493.1278(b)(6)(i) and (d)(6)(i)
§ 493.1265(a)(9)(i)(B)	Histocompatibility	§§ 493.1278(b)(6)(ii) and (d)(6)(ii)
§ 493.1265(a)(9)(i)(C)	Histocompatibility	§ 493.1278(b)(6)(iii)
§ 493.1265(a)(9)(ii)	Histocompatibility	§§ 493.1278(c) and (e)(3)
§ 493.1265(a)(10)	Histocompatibility	§§ 493.1278(a) and (f)
§ 493.1265(a)(11)	Immunohematology	§ 493.1271
§ 493.1265(a)(12)	Histocompatibility	§ 493.1278(a)(4)
§ 493.1265(a)(13)	Removed	
§ 493.1265(a)(14)	Histocompatibility	§ 493.1278(a)(5)
§ 493.1265(b)	Histocompatibility	§ 493.1278(f)
§ 493.1265(b)(1)	Histocompatibility	§ 493.1278(f)(1)
§ 493.1265(b)(2)	Histocompatibility	§ 493.1278(f)(1)
§ 493.1265(b)(3)	Histocompatibility	§ 493.1278(f)(3)
§ 493.1265(c)	Histocompatibility	§§ 493.1278(a) through (c)
§ 493.1265(d)	Immunohematology	§ 493.1271(b)
Clinical cytogenetics:		
§ 493.1267—Introductory text	Clinical cytogenetics	§ 493.1225
§ 493.1267(a)	Cytogenetics	§ 493.1276(c)
§ 493.1267(b)	Cytogenetics	§§ 493.1276(b)(1) through (b)(3)
§ 493.1267(c)	Cytogenetics	§ 493.1276(a)
§ 493.1267(d)	Cytogenetics	§ 493.1276(d)
Immunohematology:		
§ 493.1269—Introductory text	Immunohematology	§ 493.1217
§ 493.1269(a)	Immunohematology	§ 493.1271(a)(1)
§ 493.1269(b)	Immunohematology	§ 493.1271(a)(2)
§ 493.1269(c)	Immunohematology	§ 493.1271(a)(3)
§ 493.1269(d)	Immunohematology	§ 493.1271(a)
Transfusion services and bloodbanking:		
§ 493.1271—Partially removed	Requirements for transfusion services and Subpart M.	§ 493.1103; § 493.1449(b) and (q)
Immunohematological collection, processing, dating periods, labeling and distribution of blood and blood products:		
§ 493.1273—Introductory text	Immunohematology	§ 493.1271(b)
§ 493.1273(a)	Immunohematology	§ 493.1271(b)
§ 493.1273(b)	Immunohematology	§ 493.1271(b)
§ 493.1273(c)	Immunohematology	§ 493.1271(b)
§ 493.1273(d)	Requirements for transfusion services	§ 493.1103(c)(2)
Blood and blood products storage facilities:		
§ 493.1275(a)	Immunohematology	§ 493.1271(c)
§ 493.1275(a)(1)	Immunohematology	§ 493.1271(c)(1)
§ 493.1275(a)(2)	Immunohematology	§ 493.1271(c)(2)
§ 493.1275(b)	Requirements for transfusion services	§ 493.1103(c)(1)
Arrangement for services:		
§ 493.1277	Requirements for transfusion services	§ 493.1103(a)
Provision of testing:		
§ 493.1279—Partially removed	Requirements for transfusion services	§§ 493.1103(b)
Retention of samples of transfused blood:		
§ 493.1283	Immunohematology	§ 493.1271(d)
Investigation of transfusion reactions:		
§ 493.1285	Requirements for transfusion services; Immunohematology.	§§ 493.1103(d); 493.1271(e)(1)and (e)(2)

TABLE.—CROSSWALK—Continued

Former requirements and former sections (part 493, subparts J, K, M, and P)	Requirements in this final rule (part 493, subparts J, K, and M)	Sections in this final rule
Quality assurance for Moderate Complexity (including the Subcategory) or High Complexity Testing, or Any Combination of These Tests:		
§493.1701	Introduction; General laboratory systems; General laboratory systems assessment; Preanalytic Systems; Test request; Preanalytic systems assessment; Analytic Systems; Analytic systems assessment; Postanalytic Systems; Postanalytic systems assessment.	§§493.1200; 493.1230; 493.1239; 493.1240; 493.1241(e); 493.1249; 493.1250; 493.1289; 493.1290; 493.1299
Patient test management assessment:		
§493.1703—Introductory text	General laboratory systems; General laboratory systems assessment; Preanalytic Systems; Preanalytic systems assessment; Postanalytic Systems; Postanalytic systems assessment.	§§493.1230; 493.1239(a) and (b); 493.1240; 493.1249(a) and (b); 493.1290; 493.1299(a) and (b)
§493.1703(a)	Preanalytic systems assessment	§§493.1249(a) and (b)
§493.1703(b)	Preanalytic systems assessment	§§493.1249(a) and (b)
§493.1703(c)	Preanalytic systems assessment	§§493.1249(a) and (b)
§493.1703(d)	Postanalytic systems assessment	§§493.1299(a) and (b)
§493.1703(e)	Test Report; Postanalytic systems assessment.	§§493.1291(a), (g), and (h); 493.1299(a) and (b)
§493.1703(f)	Facilities; Postanalytic systems assessment	§§493.1101(e) 493.1299(a) and (b)
Quality control assessment:		
§493.1705—Introductory text	Analytic Systems; Analytic system assessment.	§§493.1250; 493.1289(a) and (b)
§493.1705(a)	Analytic system assessment	§§493.1289(a) and (b)
§493.1705(b)	Analytic system assessment	§§493.1289(a) and (b)
§493.1705(c)	Analytic system assessment; Postanalytic systems assessment.	§§493.1289(a) and (b); 493.1299(a) and (b)
Proficiency testing assessment:		
§493.1707	General laboratory systems; Evaluation of proficiency testing; General laboratory systems assessment.	§§493.1230; 493.1236(a)(1); 493.1239(a) and (b)
Comparison of test results:		
§493.1709		
§493.1709(a)	Comparison of test results	§493.1281(a)
§493.1709(b)	Evaluation of proficiency testing	§493.1236(c)(1)
Relationship of patient information to patient test results:		
§493.1711—Introductory text	Comparison of test results; Analytic systems assessment.	§§493.1281(b); 493.1289(a) and (b)
§493.1711(a)	Comparison of test results	§493.1281(b)(1)
§493.1711(b)	Comparison of test results	§493.1281(b)(2)
§493.1711(c)	Comparison of test results	§493.1281(b)(3)
§493.1711(d)	Comparison of test results	§493.1281(b)(4)
§493.1711(e)	Comparison of test results; Analytic systems assessment.	§§493.1281(b)(5); 493.1289(a) and (b)
Personnel assessment:		
§493.1713	Personnel competency assessment policies; General laboratory systems assessment.	§§493.1235; 493.1239(a) and (b)
Communications:		
§493.1715	Communications; General laboratory systems assessment.	§§493.1234; 493.1239(a) and (b)
Complaint investigations:		
§493.1717	Complaint investigations; General laboratory systems assessment.	§§493.1233; 493.1239(a) and (b)
Quality assurance review with staff:		
§493.1719	General laboratory systems assessment; Preanalytic systems assessment; Analytic systems assessment; Postanalytic systems assessment.	§§493.1239(b) and (c); 493.1249(b) and (c); 493.1289(b) and (c); 493.1299(b) and (c)
Quality assurance records:		
§493.1721	Retention requirements; General laboratory systems assessment; Analytic systems assessment.	§§493.1105(a)(5) and (b); 493.1239(c); 493.1249(c); 493.1289(c); 493.1299(c)

IV. Analysis and Responses to Public Comments

We received numerous comments on the final rule with comment period published on February 28, 1992 in the **Federal Register**. These comments were from State agencies, proficiency testing programs, professional organizations, the Clinical Laboratory Improvement Advisory Committee (CLIAC), laboratories, physicians, and the general public. Summaries of the public comments received and our responses to those comments are set forth below.

Subpart I—Proficiency Testing Programs for Tests of Moderate Complexity (Including the Subcategory), High Complexity, or Any Combination of These Tests

We received a number of comments on the topic of proficiency testing. We intend to publish a notice of proposed rulemaking addressing proficiency testing issues in more detail in the future. We have, however, determined that it would be appropriate to include in this final rule a change that we believe is necessary to improve the operation of the CLIA proficiency testing program, related to the percentage of required agreement among participant or reference laboratories. Thus, we are addressing only one of the changes requested by the commenters and recommended by the CLIAC.

Specific comments received and response to comments regarding subpart I are set forth below.

Comment: A few commenters, professional organizations, and proficiency testing programs expressed their concerns over the change to a 90 percent consensus requirement to be reached before a proficiency testing sample could be graded. Commenters felt there should be a grade assigned to their samples. One commenter stated that their laboratory paid for samples, so grading should be required. Proficiency testing programs had similar opinions. The CLIAC recommended reducing the consensus required for grading proficiency testing challenges to decrease the number of ungradeable samples as ungraded proficiency testing is not effective in assisting laboratories in their quality assessment of test performance.

Response: We agree with the commenters and are changing the percentage of required agreement among participant or referee laboratories to 80 percent in the specialties and subspecialties where 90 percent agreement was previously required.

Subpart J—Patient Test Management for Moderate Complexity (Including the Subcategory), High Complexity, or Any Combination of These Tests

Following publication of the final rule with comment period, we received approximately 150 comments regarding subpart J. The comments were in response to the requirements for specimen submission and handling; test requisition including oral requests and authorized persons; and test records and test reports, including confidentiality and referral of specimens. The majority of the commenters disagreed with some portion of the requirements and some commenters requested clarification of certain requirements while others offered specific revised language.

Specific comments received and responses to comments regarding subpart J are set forth below.

Comment: A number of State agencies disagreed with our removal of the requirement that laboratories comply with applicable Federal, State, and local laws.

Response: We agree with the commenters and are reinstating the requirement now at § 493.1101(c). As part of the partnering relationship with State agencies and local governments, the reinstatement of this requirement will allow us to support a State or local government that seeks to protect the public from actions it finds would be detrimental to public health.

Comment: Some commenters disagreed with requiring written authorization for oral test requests, describing the difficulties that this requirement causes.

Response: We acknowledge that when a laboratory asks that an oral request for patient testing be followed with a written request, there is no guarantee that one will be received. On January 19, 1993, we published a technical correction in the **Federal Register** (58 FR 5215) and (58 FR 5229) that amended the requirement formerly at § 493.1105. This requirement, now at § 493.1241(b), states that oral requests for laboratory tests are permitted only if the laboratory requests written or electronic authorization for testing within 30 days of the oral request and documents the efforts made to obtain a written or electronic authorization.

Comment: We received several comments recommending information the laboratory should solicit and obtain on the test requisition. Specifically, the commenters believe the age and sex of the patient, time of specimen collection, and the specimen source should be included since they are pertinent to either how the laboratory processes the specimen and/or how the test results are interpreted.

Response: We agree with the commenters. The requirement, formerly at § 493.1105(f), requires the laboratory to ensure that the requisition or test authorization includes any additional information relevant and necessary for accurate and timely testing and result reporting (for clarity, we are adding "interpretation" if applicable to this requirement). The requirement, now at § 493.1241(c)(3), specifies that the laboratory must request the patient's sex and age or date of birth as normal values and interpretation of test results are often dependent on this information. Concurrently, we are redesignating age or date of birth requirements, formerly at § 493.1105(e), for Pap smear requisitions to test requests (now at § 493.1241(c)(3)). The time of specimen collection must also be requested when it is relevant for the testing to be performed. For example, this information is important when interpreting the results of peak and trough therapeutic drug assays. In addition, we are requiring that specimen source, when appropriate, be solicited on the test requisition. Specimen handling, preservation, and preparation (for example, use of proper transfer media, inoculation of media in microbiology and clinical cytogenetics, and the application of appropriate normal values reported with patient test results) are dependent on the origin of the specimen. Therefore, we are including specimen source, when appropriate, as part of the laboratory's submission, handling, and referral procedures (now at § 493.1242(a)(3)). We are also requiring specimen source to be included on the test report if warranted (now at § 493.1291(c)(5)). This routine laboratory practice was inadvertently omitted from the final rule with comment period.

Comment: One organization representing members of the laboratory community objected to the amount of information that a laboratory must have on the test requisition, specifically the information that is needed when submitting a Pap smear. The organization stated that laboratories do not have access to patient records and are dependent on the authorized person ordering the test to provide this information. The organization agreed the information was important but assumed we would prohibit testing if all information was not obtained by the laboratory.

Response: We agree with the commenter that the information being requested is important. Therefore, we are retaining the test request

requirements formerly at § 493.1105, (now at § 493.1241(c)) as relevant information necessary for proper test performance and interpretation. The test requisition requirements do not prohibit laboratories from performing the testing if the requested information is missing. Although we expect laboratories to obtain this information when possible, the potential negative impact of the missing information on the test results may be addressed or noted on the report.

Comment: One State health department requested modification of the requirement for recording the time of specimen receipt into the laboratory, stating we should require the time of receipt only if it is pertinent to sample integrity, test method, or procedure.

Response: We disagree with the commenter. Recording the date and time of specimen receipt enables the laboratory to determine the elapsed time between specimen receipt and reporting of patient test results. It also provides a mechanism to monitor transportation times for specimens referred to the laboratory. Therefore, we are retaining this requirement formerly at § 493.1107(b) (now at § 493.1242(b)).

Comment: One commenter stated the final rule with comment period did not require a person's name or unique identifier on the test report.

Response: We agree with the commenter that the final rule with comment period did not specifically require a patient's name or unique identifier as part of the test report formerly at § 493.1109. Therefore, we are adding at § 493.1291(c)(1), a requirement for the laboratory report to include the patient's name with an identification number, or a unique patient identifier and identification number to ensure positive patient identification. The patient's name alone is not a unique identifier, and when used on the test report, the patient's name must be accompanied by an identification or accession number. When a patient's name is not used for confidentiality purposes, or when the identity of the person is not known, a unique patient identifier must be submitted with the specimen. The laboratory must also use an identification number. In reviewing the report requirements formerly at § 493.1109(b), interpretation was omitted. Therefore, we are adding interpretation to the test report requirements at § 493.1291(c)(6) for those test results that require supplemental information.

Comment: Some commenters disagreed with requiring the name and address of the laboratory performing the test on the test report. They believed that too much information would make the report crowded and confusing. Another comment received from a professional organization acknowledged the benefit of this requirement, but stated its application to cumulative reports causes disruption of data presentation and utility of the report and, in some cases, the information cannot reasonably be included.

Response: We agree the name and address of the laboratory performing the test is an essential piece of information that must be included on the test report. It provides a contact for the individual who requested or is using the test results when additional information is needed for result interpretation and patient care. If a laboratory determines its reports are crowded or confusing, it has complete latitude and responsibility to reorganize the report in a manner that will correct the problem as specified formerly at § 493.1703 (now at § 493.1299). A laboratory that generates cumulative reports may use a single character identifier (for example, an asterisk or subscript) to identify a particular reference laboratory that performed the test. This information (the name and address of the reference laboratory) may be defined on a subsequent page or on the back of the report. Laboratories may develop other formats to meet this requirement. However, we are retaining the requirement formerly at § 493.1109(b) (now at § 493.1291(c)(2)) to include the name and address of the laboratory where the test was performed.

Comment: One commenter questioned the appropriateness of maintaining test records in the patient's chart or medical record.

Response: The CLIA regulation does not preclude laboratories from storing test records in a patient's chart or medical record; however, records must include the following:

- Test analysis (including instrument printouts, if applicable).
- Identity of the personnel performing the test.

To retain this type of information in a patient's chart or medical record may be cumbersome and impractical for QA activities; however, it is at the discretion of the laboratory.

Comment: One commenter questioned whether computer records of reports are acceptable in lieu of paper files.

Response: The requirement formerly at § 493.1109(h) specifies that all test reports or an exact duplicate of each test report must be maintained by the laboratory in a manner that permits ready identification and timely accessibility. The information contained on the test report may be manually written, generated by an electronic system, maintained on microfilm, or any other means, provided it contains all of the information that was on the original test report. Therefore, we are deleting the reference to "exact duplicate" that was contained in the former § 493.1109(h), and amending the language now at § 493.1291(j) to clarify that the laboratory must be able to retrieve a copy of the original report. We are also making a conforming change in the retention requirement for test reports (now at § 493.1105(a)(6)).

Comment: Many commenters stated that the removal of the subpart on laboratory information systems (LIS) was inappropriate and not logical considering the current and future direction of collection and dissemination of laboratory data. Other commenters indicated that the current method of reporting patient results and the laboratory computer system was overlooked.

Response: We agree with all of the commenters and are addressing some of the commenters' concerns pertaining to electronic patient and testing information by doing the following:

- Adding a requirement at § 493.1101(e) for laboratories to store and maintain records in a manner that ensures proper preservation. Proper storage of patient records that are collected in a LIS is essential for record preservation and accurate recall of patient information. Without proper storage and maintenance of records, the timeframes, identification, and the accessibility of records will not be possible.
- Incorporating a requirement at § 493.1241(e) for laboratories using LIS to ensure that the requisition information is accurately transcribed or entered. The laboratory may establish its own mechanism to meet this requirement, possibly through random checks or representative sampling of LIS patient testing information verified against that submitted on the original test request.
- Adding a requirement at § 493.1291(a) that requires laboratories to ensure patient test results are accurately and reliably sent from the point of data entry to the final report's destination in a timely manner. We are providing frequently encountered reporting scenarios that must be reviewed by the laboratory to ensure the accuracy and reliability of the transmitted patient result information.
- Requiring at § 493.1291(c) that the date of the test report be identified on the report. This date must be maintained as the date testing results

were generated as a final report and must not change on copies reported at a later date.

The above requirements are intended to respond in part to the commenters' requests. We intend to publish, at a later date, a rule specific to laboratory information systems. For example, requirements for the establishment and verification of system programs, system security, system and device maintenance, system operator functions and responsibilities, and system backups.

Comment: One commenter was concerned about limited record storage space on-site and asked if off-site storage of records would be acceptable provided the laboratory was able to produce these records during an inspection.

Response: Records may be stored at a place of the laboratory's choosing providing the storage is appropriate and the laboratory can produce the documents within a reasonable time during the course of an inspection as required at § 493.1773(c).

Comment: Several commenters disagreed with the requirement to retain records for a minimum of 2 years or 5 years, depending upon the type of record. A professional organization questioned whether instrument printouts must be retained for 2 years if appropriate data are saved in a retrievable manner. Other commenters felt that 3 months, and, in one case, 6 months, would be sufficient time to retain instrument printouts.

Response: We believe all records related to testing, for example, records of test requests, patient test records including, if applicable, instrument printouts, and copies of test reports are essential for the ongoing QA reviews performed by the laboratory. Instrument printouts are test records and are sometimes used as test reports and for these reasons must be retained for the appropriate length of time unless all information is duplicated in another record system. Additionally, CLIA requires biennial certification that includes an inspection of the laboratory's activities for compliance with CLIA requirements by either an on-site inspection of the laboratory or a self-assessment inspection through use of the Alternate Quality Assessment Survey (AQAS). These inspections require a review of the testing performed by the laboratory since the previous biennial inspection. Two years is the minimum amount of time records must be retained to ensure that they are available for review at inspection. However, we are clarifying the record retention requirements for immunohematology and blood and blood products formerly at § 493.1107 introductory text and § 493.1221 (now at § 493.1105(a)(3)(ii)) and formerly at § 493.1109 introductory text (now at § 493.1105(a)(6)(i)) to ensure consistency with the FDA requirements for these types of records.

Subpart K—Quality Control for Tests of Moderate Complexity (Including the Subcategory), High Complexity, or Any Combination of These Tests

In the final rule with comment period, the QC rules are located in subpart K and include the general QC requirements and specific QC requirements for each specialty and subspecialty of testing. A phase-in period provided less stringent general QC requirements for unmodified moderate complexity tests approved by the FDA through the premarket notification 510(k) or premarket approval (PMA) process.

Following publication of the final rule with comment period, we received approximately 1,030 comments. Of these comments, 280 were directed at the general QC requirements, 67 pertained to the specialty and subspecialty QC requirements, and approximately 680 pertained to cytology and histopathology requirements. The majority of the comments disagreed with some portion of the requirements, indicating that the final rule with comment period was either too restrictive or too lenient. Some commenters requested clarification of certain requirements, while others offered specific revised language. A few comments agreed with the final rule with comment period, while others indicated the requirements had either been misinterpreted or misread. We addressed some of the commenters' issues in a technical correction published on January 19, 1993 in the **Federal Register** (58 FR 5215).

In evaluating the comments and considering the types of revisions to make in this subpart, we obtained recommendations from the CLIAC and consulted with various professional organizations and laboratory personnel. In September 1996, we participated in public discussions at a 2-day meeting in Atlanta, Georgia. At the public meeting, manufacturers, laboratory organizations, and State representatives made presentations concerning QC principles, control materials and systems, manufacturers' recommendations, costs associated with control testing, and personnel implications. Their recommendation was to make changes to accommodate new technology. Our changes in this final rule are based on the advice and comments we received.

Specific comments and response to comments regarding subpart K are set forth below.

Comment: We received mixed comments concerning the general QC requirements. Some commenters felt the QC requirements were burdensome and would increase the cost of testing and asked that these requirements be deleted or revised. Conversely, some commenters agreed with the requirements, indicating that QC is absolutely essential to producing accurate test results and is good laboratory practice. Others stated the requirements of subpart K were both reasonable and attainable. A few commenters requested further clarification.

Response: We agree with the comments that QC procedures are essential to good laboratory practice and production of accurate test results. Control procedures verify that the patient results are substantially unaffected by day-to-day variation caused by the test system, environment, or operator. While the requirement for implementing QC may initially increase the cost of testing in some settings, it may decrease the long term cost as improved accuracy and reliability of testing reduces the need for retesting and unnecessary procedures or treatments.

Comment: A manufacturer's organization requested that § 493.1202(c) be revised to include those products not subject to the FDA clearance process to allow laboratories performing these tests to meet the phase-in QC requirements.

Response: We agree that the regulation needs to be revised to include these products, and provisions addressing these products were added in the revisions to the regulations published in the January 19, 1993 technical corrections (58 FR 5215). Since these products are not evaluated by the FDA, they could not be included under § 493.1202(c) but were added to § 493.1202(b) and subject to all applicable standards of subpart K.

Comment: Comments were divided concerning the phase-in of the general QC requirements. Some commenters agreed with the phase-in while others were opposed. Some commenters felt that following manufacturers' instructions should be sufficient to meet the CLIA QC requirements. Others expressed concern that FDA would not complete the review and approval of manufacturers' QC instructions by September 1, 1994. Most commenters opposed the phase-in provision. Some

commenters were concerned that manufacturers' QC protocols cleared by the FDA might be less stringent than the CLIA QC requirements. Other commenters disagreed with having two sets of general QC requirements, and other commenters were confused about the phase-in requirements and requested clarification.

Response: We implemented a phase-in of the general QC requirements to allow previously unregulated laboratories performing only FDA-approved or cleared, unmodified, and moderate complexity testing sufficient time to implement effective QC programs. During the phase-in, the FDA was to establish a process to review and clear manufacturers' QC instructions for CLIA QC purposes. Under this process, laboratories could meet certain CLIA QC requirements by following the FDA-approved manufacturers' QC instructions. On four occasions, we extended the phase-in of the general QC requirements that are currently in effect until December 31, 2002. However, because the CLIA program is user fee funded, we decided it would be prudent to wait until the phase-in period ended before implementing the FDA QC review. This afforded us the survey experience necessary to determine whether an additional FDA review would be of benefit to laboratories. We realized through our experience inspecting laboratories that an additional FDA review would not be of such benefit. Therefore, in this final rule, we are eliminating the phase-in requirements and establishing minimum general quality system requirements applicable to all nonwaived testing, regardless of complexity. In addition, we are removing all references to the FDA QC clearance process that was not implemented. However, we agree with the commenters that it is essential for laboratories to perform testing according to the manufacturers' test system instructions as required formerly at § 493.1202(c)(1) (now at § 493.1252(a)).

Comment: A few comments were received in response to the environmental and safety requirements at § 493.1204. Some commenters indicated that the requirements were too lenient. Others were opposed to exempting moderate complexity testing from the requirements at § 493.1204 during the phase-in, stating that all laboratories should be subject to these requirements.

Response: We agree with the commenters and therefore are retaining the requirement formerly at § 493.1204 (now at § 493.1101, subpart J) and applying it to both moderate and high complexity testing. In addition, we are providing some flexibility to the requirement formerly at § 493.1204(b) (now at § 493.1101(d)) that requires laboratories to post safety precautions. The revisions now require that safety procedures be accessible rather than posted.

Comment: We received several comments concerning the requirements at § 493.1205. Most commenters opposed the requirement prohibiting the use of expired reagents. One commenter requested clarification of § 493.1205(c)(1) that requires the laboratory to define criteria for reagent and specimen storage conditions.

Response: We understand the concerns expressed regarding the use of rare and expensive reagents and materials beyond their expiration dates. However, the manufacturer has the responsibility for establishing expiration dates that ensure the reagents and materials will perform properly when used for patient testing. In addition, any changes in the labeling of *in-vitro* diagnostics must comply with Food, Drug, and Cosmetic Act requirements. Therefore, we are not making any revisions to the requirement formerly at § 493.1205(e)(1) (now at § 493.1252(d)) prohibiting the use of expired reagents and other materials.

In regard to licensed biological and blood products, any exceptions to dating requirements must be granted by the FDA in the form of an amendment to the product license. In this final rule, we are consolidating all requirements pertaining to the immunohematological testing and distribution of blood and blood products (now at § 493.1271(b)).

We are adding language to the requirement formerly at § 493.1205(c)(1) to clarify how the laboratory establishes and uses its criteria for storing reagents and patient specimens. The requirement now at § 493.1252(b), states that the laboratory must define criteria for those conditions in the manufacturer's test system instructions, when available, that are essential for proper storage of reagents and specimens, and accurate and reliable test system operation and test result reporting. The criteria must be consistent with the manufacturers' instructions, if provided. These conditions must be monitored, documented, and include (1) water quality; (2) temperature; (3) humidity; and (4) electrical tolerances.

Comment: One commenter agreed with the requirements at § 493.1211, Procedure manual. Another commenter suggested that the procedure manual requirements be deleted. Two commenters opposed permitting the use of the manufacturer's package insert to satisfy the requirements at §§ 493.1211(b)(1) through 493.1211(b)(13). Another commenter suggested that laboratories be required to retain each procedure's original specifications and instructions for use as provided by the manufacturer, and maintain a list of any alterations or changes in the procedure manual.

Response: We disagree with the commenter who requested that the procedure manual requirements be deleted. All laboratories must maintain and follow procedure manual instructions in order to provide uniform patient testing. Therefore, we are retaining the requirements for a procedure manual now at § 493.1251. Laboratories may use the manufacturer's test system instructions to meet many of the procedure manual requirements, but must supplement them with any laboratory-specific information related to its testing and reporting practices. Examples are the laboratory's procedures for reporting patient test results, including panic values or alert values, corrective actions to follow when test systems become inoperable, and criteria for specimen referral. The use of the manufacturer's test system instructions to meet many of the procedure manual requirements is permitted to ensure that laboratories follow the manufacturer's instructions for patient testing and to minimize the burden on laboratories in developing procedure manuals.

For clarity and consistency, we are reiterating the requirements formerly at §§ 493.1103(a) and 493.1211(b)(14) (now at §§ 493.1242 and 493.1251) that the laboratory have written policies and procedures for specimen submission. In addition, we included language now at § 493.1251(b)(13) to clarify the use of laboratory information systems for entering patient test results.

In addition, we agree with the commenter that laboratories must have copies of test procedures. Therefore, we are retaining the requirement now at § 493.1251(e) that laboratories must maintain a copy of the procedure with the dates of initial use and discontinuance for 2 years after a procedure is no longer used.

Comment: Several commenters opposed the requirement at § 493.1211 for the director to approve, date, and sign the procedure manual, approve any change in procedure, or re-approve the manual should there be a change in directorship. One commenter suggested that the requirement be revised to state each procedure must be approved by the director before patient testing.

Response: The director is the individual ultimately responsible for the operation and administration of the

testing facility and is therefore responsible for authorizing all testing procedures and any alterations or revisions of these procedures. If a change in directorship occurs, re-approval of the manuals by the new director is necessary since he or she assumes responsibility for all testing procedures and any alterations or revisions of the procedures. We agree with the comment stating that each procedure should be approved by the director before patient testing. Therefore, we are revising the requirement formerly at § 493.1211(d) (now at § 493.1251(d)) to specify that the director reviews each procedure and change in procedure before use. We are also emphasizing that we do not expect laboratories to suspend testing for those procedures already in use that may not have been approved before patient testing. However, effective April 24, 2003, all alterations in current procedures and all newly implemented procedures must be reviewed and signed by the director before use.

In addition, we are revising the requirement formerly at § 493.1211(e) (now at § 493.1251(d)) to include the provision that requires procedures to be re-approved if the directorship changes. Section 493.1251(d) now states, "procedures and changes in procedures must be approved, signed, and dated by the current laboratory director before use." If the directorship changes, the current director would not be expected to suspend testing to review the procedures in use or changes to procedures approved by the previous director. However, the current director must review all procedures in use by the laboratory in a timely manner.

Comment: Approximately one third of the comments received disagreed with § 493.1213, Establishment and verification of method performance specifications. Some individuals opposed verifying the manufacturer's performance specifications for those methods cleared by FDA as meeting certain CLIA requirements for QC. One commenter disagreed with the requirement to establish performance specifications for those methods developed in-house, modified by the laboratory, or not cleared by FDA as meeting certain CLIA QC requirements. Another individual suggested that the standard be retroactive and apply to all test methods. One commenter asked that this standard be revised to state, "The provisions of this section are not retroactive for previously unregulated laboratories. Previously unregulated laboratories are not required * * *."

Response: We understand the commenters' concerns about the time and resources necessary to establish or verify performance specifications. However, these requirements ensure that the laboratory has either established test system performance specifications or verified that it can obtain the manufacturer's performance specifications in the laboratory's environment using the laboratory's testing personnel. In addition, establishment or verification of performance specifications are integral to the laboratory's establishment of appropriate and effective QC and calibration protocols. These protocols must include descriptions of the numbers, types, and concentrations of all calibration and control materials, as well as the performance intervals. Calibration and control protocols based on unverified performance specifications could result in poorly controlled and inaccurate testing. In the interest of establishing appropriate calibration and control practices and improving the reliability, accuracy, and usefulness of patient testing, we are retaining the requirements formerly at § 493.1213, and are now applying them to nonwaived testing at § 493.1253.

Laboratories employing methods (not modified by the laboratory) that have manufacturer-established performance specifications must demonstrate before reporting patient test results that they can obtain performance specifications for accuracy, precision, and reportable range of test results for the test system, comparable to those established by the manufacturer. The laboratory director must decide the extent to which these performance specifications are verified based on the method, testing conditions, and personnel performing the test.

In addition, we are clarifying when a laboratory must establish test system performance specifications (for example, laboratories using a test system in which the manufacturer does not provide performance specifications) now at § 493.1253(b)(2). Laboratories must, before reporting patient test results, establish, as applicable, performance specifications for the following performance characteristics: (1) Accuracy; (2) precision; (3) analytical sensitivity; (4) analytical specificity, including interfering substances; (5) reportable range of test results for the test system; (6) reference intervals (normal ranges); and (7) any other performance characteristic required for test performance.

Section 493.1253(b)(1) uses the term "FDA-cleared or approved test system" as defined (at § 493.2, Definition) in the November 9, 1997 revisions to the Food, Drug and Cosmetic Act (Pub. L. 105–115), to mean a test system cleared or approved by the FDA through either the premarket notification (510(k)) or premarket approval (PMA) process for *in-vitro* diagnostic use. This includes test systems exempt from FDA premarket clearance or approval.

Regulations do not have retroactive effect. The CLIA requirement's effective date became applicable to newly regulated laboratories on September 1, 1992. Those laboratories that were subject to regulations prior to this September 1, 1992 effective date were already required to validate test procedures under former Federal regulations before the CLIA requirements were implemented. This rule does not have a retroactive effect. Laboratories performing unmodified moderate complexity tests cleared or approved by the FDA are not required to retroactively verify the manufacturer's performance specifications. The results of the laboratory's control procedures, proficiency testing (required under subpart H) and assessment activities are used to verify test performance. However, as of April 24, 2003, laboratories must, before testing, either verify or establish performance specifications for any new test system.

Comment: Some commenters expressed approval of the requirements for the establishment and verification of a test system's method performance specifications before its use, and maintaining records of this activity while the test system is used for patient testing.

Response: We accept these positive comments and are retaining the requirements for the establishment and verification of method performance specifications formerly at § 493.1213 (now at § 493.1253). However, we realize the QC record retention requirements formerly at § 493.1221 may have been misinterpreted as permitting the laboratory to discard method performance specification records after a 2-year period even though the method may have continued to be used beyond this timeframe. Therefore, the analytic systems record retention requirement formerly at § 493.1221 (now at § 493.1105(a)(3)(i)) specifies that records of the laboratory's establishment and verification of method performance specifications must be retained for the period of time the test system is in use by the laboratory, but not less than 2 years. In addition, we are revising the original QC record retention requirement to accommodate the reorganization of the regulation and clarify its intent.

Comment: A few commenters disagreed in general with the

requirements at § 493.1215, Equipment maintenance and function checks. Other commenters requested clarification. One commenter felt that the requirements were too stringent, and another offered specific language for revision. One commenter felt CMS, not the manufacturer, should establish the frequency for performing function checks.

Response: Equipment maintenance and function checks are necessary to ensure accurate and reliable test performance. We are relocating the requirement formerly at § 493.1215 (now at § 493.1254) and renaming it Maintenance and function checks. Laboratories using unmodified manufacturers' equipment, instruments, or test systems must perform maintenance and function checks as defined by the manufacturer with at least the frequency specified by the manufacturer. Laboratories must also document maintenance and function checks performed. We are adding language at § 493.1254(a)(2) requiring that function checks be within the manufacturer's established limits before conducting patient testing. We are also retaining the present requirement (now at § 493.1254(b)) for laboratories to establish protocols that ensure proper test system performance, accurate and reliable test results and test reporting for equipment, instruments, or test systems developed in-house, commercially available but modified by the laboratory, or when protocols for maintenance and function checks are not provided by the manufacturer. In addition, laboratories must document the maintenance and function checks performed.

Under this final rule, we are not defining intervals for the performance of maintenance or function checks because the manufacturer is better able to define the appropriate procedures and intervals necessary to maintain and ensure proper equipment, instrument, and test system performance.

Comment: Several commenters suggested that § 493.1217, calibration and calibration verification, or substantially equivalent requirements, should also apply to FDA-approved or cleared, unmodified moderate complexity testing at § 493.1202(c). In addition, we received comments requesting clarification of § 493.1217. One commenter stated that CMS, not the manufacturer, should establish the frequency of calibration. A manufacturer commented that a loose interpretation of the calibration verification requirement to assay calibration materials in the same manner as patient samples is needed for certain blood gas analytes because buffers and gases used to calibrate the instruments are not like patient samples and cannot be assayed in the same manner as patient samples.

Response: We agree with the commenters and are specifying in this final rule that effective, April 24, 2003, calibration and calibration verification requirements (now at § 493.1255) will apply to all nonwaived testing.

To respond to the commenters' concerns that the calibration and calibration verification requirements are unclear, we are making some minor revisions in language for clarification purposes and removing duplicate requirements. For example, the definitions of calibration and calibration verification and reportable range are being slightly modified (now at § 493.2). We are also removing the requirement formerly at § 493.1217(b)(2)(ii)(B)(1) for laboratories to perform calibration verification using calibration materials appropriate for the methodology and, if possible, traceable to a reference method or reference material of known value to allow laboratories flexibility in choosing materials for calibration verification.

In addition, we are retaining the requirement for laboratories, at a minimum, to perform calibration and calibration verification procedures using the manufacturers' test system instructions and the criteria verified or established by the laboratory formerly at §§ 493.1217(b)(1) and 493.1217(b)(2) (now at §§ 493.1255(a)(1), 493.1255(a)(2), 493.1255(b)(1) and 493.1255(b)(2)). We are also retaining the requirement that calibration must be performed whenever calibration verification procedures are unacceptable and calibration verification be performed using a minimum of 3 values to verify the laboratory's reportable range, at least once every 6 months or whenever an event occurs as specified formerly at § 493.1217(b)(2)(ii)(C) (now at § 493.1255(b)(3)).

In response to the comment that the frequency of calibration be mandated by CMS, we are retaining the requirement formerly at § 493.1217(b)(1) (now at § 493.1255(a)) that requires laboratories to calibrate according to the manufacturer's instructions, if provided, and the laboratory's specifications. We believe that laboratories should perform calibration at the interval specified by the manufacturer to ensure proper instrument and test system performance. For calibration verification formerly at § 493.1217(b)(2) (now at § 493.1255(b)), laboratories are to follow the manufacturer's specifications and the laboratory's established protocols for calibration verification that must be performed at least once every 6 months. We believe this is the maximum interval allowable for verifying accuracy and stability. In addition, we are emphasizing that these regulations set forth minimal requirements. In establishing or verifying performance specifications as required at § 493.1253, the laboratory may find it necessary to calibrate or verify calibration more frequently or to use more calibration materials than required at § 493.1255.

In response to the comment concerning the inability of testing calibration materials (buffers and gases) in the same manner as patient specimens when verifying the calibration of blood gas assays, we are retaining the additional requirements for routine chemistry formerly at § 493.1245 (now at § 493.1267) that supersede the general calibration and calibration requirements at § 493.1255. Section 493.1267(a) specifically addresses calibration and calibration verification of blood gas analyses and states the laboratory must calibrate or verify calibration according to the manufacturer's specifications and with at least the frequency recommended by the manufacturer. As long as the laboratory follows the manufacturer's calibration and calibration verification instructions for the blood gas instrument, the CLIA requirements for calibration and calibration verification are met.

Comment: We received many comments concerning various components of § 493.1218, Control procedures. Some commenters misread the CLIA regulation, and others offered specific language for revision. Most commenters opposed testing two levels of control material each day of use. One commenter indicated that the CLIA requirements are burdensome and will increase the cost of testing. Some commenters expressed concern that the requirements are arbitrary and do not recognize unit use test systems. Another commenter asked if procedural controls may be used to satisfy the control requirements.

Response: We appreciate the commenters' concerns about the frequency and costs of performing control testing. However, CLIA regulations will continue to describe the purpose of control procedures, that is, to assess the accuracy and precision of test performance. The control procedures must monitor the complete analytical process by detecting immediate errors (those that occur due to test system failure, adverse environmental conditions or operator performance problems) and monitor over time the accuracy and precision of test performance that can be influenced by

subtle changes in test system performance, environmental conditions, and variance in operator performance (for example, different operators and same operator variations in specimen handling and testing).

In response to the comments concerning unit use test systems and the use of procedural controls, we are making allowances for the use of procedural controls in Appendix C of the State Operations Manual (CMS Pub. 7) when equivalent quality procedures can be demonstrated.

In addition, we are providing a definition for test system (now at § 493.2). A test system is the instructions and all of the instrumentation, equipment, reagents, and/or supplies needed to perform an assay or examination and generate test results.

A control material must detect errors in the entire testing process. It must also monitor the quality of the results provided by the test system. It may be supplied by the test system manufacturer or another source. We are also relocating the requirement for control materials to be tested in the same manner as patient samples formerly at § 493.1218(c) (now at § 493.1256(d)(8)) and clarifying that this requirement applies to control materials and that over time control testing must be rotated among all operators who perform the testing (now at § 493.1256(d)(7)).

We are reducing the frequency of testing control materials from "each run" to "each day of testing." We are retaining the former requirements for qualitative procedures (test positive and negative control materials) and quantitative procedures (test two levels of control material). For test procedures producing graded or titered results, we are relocating the requirement to test a negative control and a control of graded or titered reactivity from Syphilis serology and General immunology formerly at §§ 493.1239(b) and 493.1241(a), respectively (now at § 493.1256(d)(3)(iii)).

As part of updating the requirements for new technology and test methodologies formerly at § 493.1218(b)(3) (now § 493.1256(d)(5)), we are revising the wording of the control requirement for electrophoresis procedures.

Comment: One commenter urged that we remove specific stipulations for frequencies of performing QC or calibrations and substitute reference to an agency or professional association guidelines. The commenter also recommended that we accept alternate approaches suggested by a manufacturer as documented in test system instructions approved by the FDA. Another commenter suggested that § 493.1218(a) be revised to state, "that the laboratory should run controls as specified by the manufacturer's instructions." Several commenters and one organization stated it is the laboratory director's responsibility to design the control system needed to achieve the desired quality.

Response: We consider the requirements established in subpart K as the minimum control measures needed to ensure accurate and reliable test results. According to the requirements formerly at § 493.1213 (now at § 493.1253), each laboratory must verify or establish a test system's method performance specifications and use this information in determining appropriate calibration and control protocols. This may include more frequent testing and greater numbers of materials than specifically provided under CLIA regulations. For example, the laboratory is required to perform calibration and control procedures in the manner necessary to ensure quality results. In cases where the manufacturer's instructions require more stringent testing of calibrators, control materials, or both, the laboratory is required to follow the manufacturer's instructions. Therefore, we are clarifying that laboratories must follow the manufacturer's instructions for control testing if they meet or exceed the requirements now at § 493.1256(d)(3).

We agree with the comment concerning the laboratory director's responsibility to determine appropriate control procedures to monitor the complete analytical process. This requirement is specified in CLIA regulations under the director's responsibilities at § 493.1407(e)(5) for moderate complexity testing and § 493.1445(e)(5) for high complexity testing.

Comment: A commenter suggested that acceptable control materials are two samples of different concentrations of controls or two concentrations of calibration material of a different lot other than the lot used for assay calibration, or any combination that results in both normal and abnormal values.

Response: We agree with the commenter and emphasize that any calibrator used as control material must be of a different lot number than the one(s) used to establish a cutoff value or calibrate the assay. Therefore, we are revising this requirement formerly at § 493.1218(b)(2)(now at § 493.1256(d)(9)) to clarify that the calibrators used as control materials must be of different concentrations than the calibrators employed to set instrumentation. We recommend that the acceptable range of control materials reflect some clinical decision points, both normal and abnormal.

Comment: One commenter suggested that § 493.1218(d) be revised to include a provision that if the performance specifications at § 493.1213 are exceeded, the laboratory must take corrective action before patient testing can continue.

Response: We agree with the commenter. The requirements formerly at § 493.1219(a) (now at § 493.1282(b)(1)) require corrective action, and the requirements formerly at § 493.1701 (now at § 493.1289(b)) require the laboratory to review the effectiveness of its corrective actions and, if necessary, revise policies and procedures to prevent recurring problems.

Comment: One commenter disagreed with the requirement to check each batch or shipment of media.

Response: The CLIA regulations allow laboratories to use the manufacturer's QC checks of certain media, provided the manufacturer's product insert specifies that the manufacturer's QC checks meet the NCCLS standards for media QC formerly at § 493.1218(f)(4), now addressed in Appendix C of the State Operations Manual (CMS Pub. 7). For media not included by NCCLS, we believe it is critical that the laboratory check each batch of media to ensure that it is not contaminated, supports growth of appropriate organisms, and elicits the correct biochemical response(s). The former § 493.1218(f)(4) (now § 493.1256(e)(4)) clarifies that media checks must be performed before, or concurrent with, initial use of media.

Comment: A few commenters expressed disagreement with the requirement to evaluate the detection phase of direct antigen systems and the extraction phase when it is included.

Response: We believe the laboratory must verify that all steps of a testing procedure are functioning properly to prevent erroneous results. Therefore, we are retaining the requirement formerly at § 493.1218(b)(4) (now at § 493.1256(d)(3)(iv)) that requires laboratories to test two control materials, one that is capable of detecting errors in the extraction phase.

Comment: One commenter agreed with requiring the determination of statistical parameters for each lot of calibration or control materials.

Response: We are retaining the requirement formerly at § 493.1218(d)(2) (now at § 493.1256(d)(10)(i)) for laboratories to have statistical

parameters for each lot of control material. In addition, we are clarifying that the requirement applies to controls with quantitative results. When calibration materials (not used to establish a cutoff value or calibrate the test system) are used as control materials, the laboratory must have statistical parameters for each lot of calibration material.

Comment: Some comments received were in reference to § 493.1219, Remedial actions. One commenter requested clarification and another requested deletion of § 493.1219(a)(2) that requires the laboratory to document all remedial action taken when patient test results are outside of the laboratory's reportable range for the test system. One individual asked for clarification of § 493.1219(d)(3) that requires the laboratory to maintain exact duplicates of both original and corrected reports for 2 years when errors in the reported test results are detected. One commenter suggested that no patient results that are less than the lowest calibrator or higher than the highest calibrator can be reported unless they are reported as less than or greater than the lowest or highest calibrator or the patient specimen is diluted to determine a higher value.

Response: The requirement formerly at § 493.1219(a)(2) (now at § 493.1282(b)(1)(ii)) requires documentation of all remedial actions (now "corrective" actions) when patient values are outside of the laboratory's reportable range of patient test results. The documentation can be an instrument printout or other document that reflects the problem, corrective action, and outcome. The laboratories must retain this information for the required period and the corrective actions themselves may be as elementary as diluting and retesting the specimen. We are not making any revisions to this requirement.

The requirement formerly at § 493.1219(d)(3) (now at § 493.1105(a)(6)) requires the laboratory to maintain a copy of the original report, or be able to retrieve a copy of the original report and the corrected report for 2 years. Copies of test reports may be manually written, photocopies, electronically generated, or maintained on microfilm provided they contain all of the information supplied on the original test record or report.

We agree with the suggestion that results outside of the reportable range of the test system may not be reported without corrective action or explanatory remarks. Therefore, requirements formerly at § 493.1219 (now at § 493.1282, Corrective actions) require laboratories to have corrective action policies and procedures that are followed as necessary to maintain the laboratory's operation for testing patient specimens in a manner that ensures accurate and reliable patient test results and reports. This includes policies governing the reporting of patient results that exceed the reportable range of the test system. The analytic assessment requirements at § 493.1289 require the laboratory to monitor and evaluate the corrective actions taken and revise policies and procedures as necessary to prevent recurrences of problems.

Comment: One commenter suggested that CLIA rules require all original worksheets and instrument printouts to be retained for 6 months, indicating that some laboratories destroy, delete, or erase records of unacceptable QC in order to avoid showing remedial action and reassessment of all patient tests results associated with the failure.

Response: We understand the concerns expressed by the commenter. However, we believe the CLIA regulations adequately address documenting all control procedures performed formerly at § 493.1221 (now at §§ 493.1256(g) and 493.1105(a)(3)), maintaining records of all control procedures performed formerly at § 493.1221 (now § 493.1105(a)(3)), assessing corrective actions taken formerly at § 493.1705 (now at §§ 493.1289(a) and (b)) and retention of the original worksheets and instrument printouts for a period of 2 years or more formerly at § 493.1107 (now at § 493.1105(a)(3)). We also believe that if the laboratory deletes or alters a control result in any manner, it is expected that the laboratory will document the exact circumstances in which deletion or alteration occurred and document all corrective actions taken to prevent reoccurrence.

Comment: One commenter felt that there should be a requirement that any abnormal, life-threatening, or panic value result obtained on a moderate complexity test should be repeated by a more accurate method of testing.

Response: The requirement formerly at § 493.1109(f) (now at § 493.1251(b)(13)) requires laboratories to develop written procedures for reporting life-threatening results (panic or alert values). In addition, under the requirement formerly at § 493.1109(f) (now § 493.1291(g)) laboratories must immediately alert the individual or entity that requested the test and, if applicable, the individual responsible for using the test results when any test result indicates an imminently life-threatening condition. In addition, it is the responsibility of each laboratory to ensure that the results it reports are accurate. Repeat testing is one method of verifying the test results. However, it is up to each laboratory to determine the protocols it will follow to confirm the test results that it reports.

Section 493.1223 Condition: Quality Control-Specialties and Subspecialtes for Tests of Moderate or High Complexity, or Both

Specific comments received and response to comments regarding § 493.1223, specialty or subspecialty control requirements are set forth below.

Comment: One commenter stated that the specialty and subspecialty QC requirements are too lenient.

Response: The specialty and subspecialty QC requirements are minimum requirements that reflect good laboratory practice and must be followed by all laboratories performing nonwaived testing. However, based on the laboratory's establishment and verification of its test systems' performance specifications (now at § 493.1253), the laboratory may determine that, to ensure accurate and reliable test results, it must implement more stringent control procedures than the minimum requirements imposed. In addition, it is the laboratory director's responsibilities to ensure that the laboratory has systems that ensure the quality of the laboratory services provided and identify failures in quality as they occur (§§ 493.1407(e)(5) and 493.1445(e)(5)).

Comment: One commenter disagreed with § 493.1223 stating a laboratory could lose approval to perform testing in an entire specialty or subspecialty if it is deficient in performing QC for a single test. The commenter urged that the language be changed to "Failure to satisfy requirements for an individual test or analyte would result in loss of approval for that test or analyte only."

Response: We emphasize that CLIA certification of laboratories is not granted on a test-by-test basis, but by specialty or subspecialty of testing. Therefore, if a laboratory has significant problems related to only one test or analyte in a specialty or subspecialty and the laboratory fails to correct those problems, it could jeopardize its certification for the specialty or subspecialty area. For example, the laboratory is notified in writing of the deficiencies found during a survey and is given an opportunity to correct the deficiencies. If the laboratory does not correct the deficiencies, sanctions could be imposed as specified in Subpart R—Enforcement Procedures. Therefore, we are deleting the enforcement

information formerly at § 493.1223 because subpart R contains this information. In addition, revocation of specialty or subspecialty certification for problems related to a particular test would be taken only as a last resort.

Sections 493.1225 Condition: Microbiology; 493.1227 Condition: Bacteriology; 493.1229 Condition: Mycobacteriology; 493.1231 Condition: Mycology; 493.1233 Condition: Parasitology; and 493.1235 Condition: Virology

Specific comments received and response to comments regarding §§ 493.1225, 493.1227, 493.1229, 493.1231, 493.1233, and 493.1235 are set forth below.

Comment: A professional organization, the American Society for Microbiology (ASM), commented that the CLIA QC requirements should be revised over time as new information is made available about the performance parameters of reagents or test systems. At a CLIAC meeting, this organization presented data on control failures for commercial microbiology reagents and stains and suggested that the current frequencies for control testing of a number of microbiology tests or reagents are excessive. ASM collected the data via two surveys of 304 clinical microbiology laboratories that perform varying levels of microbiological testing. It included failure rates for a total of 14,731 lots of reagents and stains, representing 21 different tests. Reagents and stains for 11 of the tests surveyed currently have control testing frequencies specified in the CLIA regulations: catalase, oxidase, coagulase plasma, *Salmonella* antisera, *Shigella* antisera, Gram stain reagents, optochin, bacitracin, Cefinase™ (beta lactamase), X and V factor strips and disks, and germ tube test. In this final rule, specific control testing frequencies are not given for eight reagents (spot indole, staphylococcal latex reagents, streptococcal latex grouping reagents, PYR disks, deoxycholate, KOH (fungal), LAP disks, and ALA) and two stains (lactophenol cotton blue and methylene blue). Based on the results of their surveys, the ASM proposed that laboratories should only be required to test new lot numbers of those commercial microbiology reagents that had a 98 percent or greater success rate (all reagents they surveyed met this requirement). In addition to testing each new lot, ASM recommended that laboratories test *Salmonella* and *Shigella* antisera every 6 months thereafter. ASM recommended that for epidemiological testing conducted in public health laboratories, the frequency for testing Salmonella and Shigella antisera should be determined by the periodicity supported by each laboratory's data.

In making this presentation, ASM stated that the changes they were proposing would improve the cost effectiveness of the CLIA program and quality assurance programs in clinical laboratories without compromising public health. The CLIAC supported the proposal and recommended the incorporation of these changes into the CLIA regulations.

Response: We appreciate the efforts of ASM, and the data they provided. The survey results provided the supporting information and data needed to revise the control testing frequency requirements. Based on the low failure rates for the commercial microbiology reagents surveyed, we agree it is adequate to test the majority of these reagents with each batch (prepared in-house), lot number (commercially prepared), and shipment when prepared or opened for positive, negative, and graded reactivity, as applicable. We also agree with checking antisera initially and once every 6 months thereafter except for epidemiological testing that is not subject to CLIA.

For two of the stains surveyed, the Gram stain and methylene blue, we do not agree that the low failure rate of the reagents is sufficient reason to decrease the stringency of the control requirements. The Gram stain procedure uses several reagents and has multiple steps that require specific timing for accurate results. Also, interpretation of the stained smear requires individual skill and expertise. By decreasing the frequency of control testing for this procedure to once every batch, lot number, and shipment, small laboratories that perform only rare Gram stains on direct specimens may not test controls for a period of months. We do not believe this is appropriate for a critical test used, in some cases, to presumptively diagnose an infectious disease (for example, direct smear for *Neisseria gonorrhoeae*). For this reason, we are maintaining the current weekly control testing requirement for Gram stain in addition to testing with each new batch, lot number and shipment.

Similar to the Gram stain usage in small laboratories, methylene blue stains may not be performed for an extended period of time, especially in laboratories that do not routinely use this staining procedure. We do not believe it is overly burdensome to require control testing of this stain each day of use.

In making the revisions discussed above, we deleted the specific control requirements for the reagents surveyed by ASM in the subspecialties of bacteriology formerly at § 493.1227 (now at § 493.1261) and mycology formerly at § 493.1231 (now at § 493.1263), except for requiring in bacteriology that the Gram stain be tested each week of use, and antisera be tested when each batch, lot number, and shipment is prepared or opened, and once every 6 months thereafter. We are also requiring in mycology that the laboratory check each batch, lot number, and shipment of lactophenol cotton blue when prepared or opened for intended reactivity with control organisms. Additional control testing for lactophenol cotton blue is not required. The required control testing frequencies for other reagents and stains will default to the general control procedures requirements formerly at § 493.1218(f) (now at § 493.1256(e)(1) and (2)). The general control requirements for reagents include testing each batch (prepared in-house), lot number (commercially prepared) and shipment when prepared or opened. The general control requirements for stains (for example, methylene blue) include testing staining materials for intended reactivity each day of use. As indicated by ASM, we believe these changes will decrease the cost of microbiology testing, without significantly affecting the quality of the test results.

The CLIAC requested further input from ASM on appropriate control requirements for microbiology. ASM submitted the following recommendations based on consultation with clinical microbiologists:

- The mycology requirement (for auxanographic media for nitrate assimilation) to check the nitrate reagent each day of use with a peptone control is not relevant since most laboratories no longer perform this test for fungal identification. This requirement could be deleted, and if laboratories do use the procedure, it would be sufficient to perform control testing with each batch or lot.
- The requirement for parasitology laboratories to check permanent stains, each month of use, with a fecal sample should be changed to "with a fecal sample or commercial QC slide."
- To control the decontamination process for mycobacteriology culture specimens, process a specimen containing *Mycobacterium fortuitum* with each new lot number or batch of decontaminating agent.
- The frequency of control testing should be standardized for all microbiology subspecialties. Although there has been no data collected for reagents or stains used in subspecialties

other than bacteriology, ASM suggested that it was their experience that these reagents and stains perform as well as the reagents surveyed for bacteriology.

• Molecular amplification control procedures should adhere to standards outlined in the NCCLS document "Molecular Diagnostic Methods for Infectious Diseases, MM3–A, 1995." At a minimum, control procedures for these tests should validate cell lysis, absence of inhibitors, absence of contamination, and adequate amplification. The following controls should be included with each run:

• Positive control (low range of assay sensitivity).

• One to five negative controls.

• Internal control.

• Quantitative assays should include two to three standards of known copy number. For microbial genotyping, control procedures should include at least two isolates of the same species being tested. One isolate should have the same phenotype as the unknown, and one should be a different phenotype.

Response: Our responses to the above recommendations are set forth below.

We agree that the mycology requirement for control testing of nitrate assimilation on auxanographic media is not relevant for the large majority of laboratories performing fungal identification, and have deleted that requirement. If laboratories use the procedure, they will be required, as stated formerly at § 493.1218(f) (now at § 493.1256(e)(1)) to test the medium and reagents with each batch (prepared in-house), lot number (commercially prepared), and shipment when prepared or opened. This will be the same control testing as required for other reagents and media used for fungal identification procedures.

The language formerly at § 493.1233(c) (now at § 493.1264(c)) requires laboratories to check permanent stains each month of use by using a fecal sample control. This terminology does not preclude the use of a fecal sample as a control or a commercially prepared control slide. The requirement remains as written in existing CLIA regulations; however, we will note this clarification in Appendix C of the State Operations Manual (CMS Pub. 7).

We recognize ASM's concern that the mycobacteriology decontamination process be monitored and adequately controlled to ensure that the decontaminating agent is of the proper strength to kill contaminating organisms without destroying mycobacteria (especially *Mycobacterium tuberculosis*). However, the method they suggested for doing this is only one way in which it may be accomplished. There are a number of other ways in which this process may be controlled (for example, monitoring the contamination rate over time to ensure the appropriate organisms are being killed). In an effort to maintain flexibility in CLIA regulations, in this final rule, we are not adding this ASM proposed control requirement to those for mycobacteriology. As noted formerly at § 493.1103(a) (now at § 493.1232), the laboratory must establish and follow written policies and procedures that assure optimum integrity of patient specimens from the time they are collected until testing has been completed and results reported. In addition, former § 493.1103(a) (now at § 493.1242(a)(6)) requires laboratories to have and follow written policies and procedures for specimen processing, and former § 493.1703 (now at §§ 493.1249(a) and (b)) requires the monitoring and assessment of these policies and procedures, and the implementation of corrective actions to resolve problems that are identified. These requirements ensure that the processing of mycobacterial specimens is monitored, assessed, and controlled, while allowing the laboratory to use any of several acceptable methods to do so.

We agree with ASM that, whenever possible, the frequency for control testing should be standardized for all microbiology subspecialties. Frequencies for individual reagents and stains are not specified in CLIA regulation for mycology and virology. For parasitology, a frequency requirement (to test once a month) is only given for permanent stains. The frequency requirement for all other reagents and stains in these subspecialties is the default contained in the general control procedure requirements that are now at § 493.1256(e)(1) and (2).

We agree appropriate requirements for molecular amplification procedures are needed, and that the NCCLS standards are an excellent reference for laboratories to use. Requirements addressing most of the recommendations made by ASM for amplification procedures are included in CLIA regulations, although not as specifically as suggested by this organization. CLIA regulations require the laboratory director to have control procedures to monitor the complete analytic process. For amplification procedures this includes, in general, validating cell lysis and ensuring absence of inhibitors, absence of contamination, and adequate amplification. The CLIA requirements for control procedures for all tests are now at § 493.1256(d). This provision requires all laboratories to follow manufacturer's instructions for control testing, and to, at minimum, conduct a test that includes two control materials of different concentrations (a positive and negative control are required for qualitative tests) on each day patient specimens are tested. CLIA regulations require that if the laboratory determines additional numbers or types of controls, or a greater frequency of running controls is needed to detect immediate error and monitor test performance over time, the numbers, types, and or frequency of controls must be increased accordingly.

While we agree with the recommendation made by ASM describing the positive and negative controls that should be used for molecular amplification procedures, the CLIA control requirements are minimum requirements and do not specify that a positive control must be at the low range of assay sensitivity, or that more than one negative control be tested daily. Likewise, these minimum requirements do not specify the types of controls that must be included with microbial genotyping, but only that two controls must be tested each day patient specimens are tested.

However, if test system instructions specify such control testing, or if the laboratory determines (during its initial evaluation of the test system at § 493.1253) that more controls are needed, the additional control testing must be performed.

For molecular amplification procedures, ASM also recommended the inclusion of an internal control in each run, primarily to detect inhibition of the amplification process. We agree that for some amplification procedures the presence of inhibitors or interfering substances in certain specimens may cause false negative test results, and that for these procedures, a control system is necessary to detect inhibition. However, as noted by NCCLS, inhibitors are not a significant source of false negative results for every test, and if inhibitors or interfering substances are encountered only rarely, NCCLS does not recommend running controls for inhibition. Therefore, we have added a requirement at § 493.1256(d)(3)(v) that states, if reaction inhibition is a significant source of false negative results, the laboratory must include a control system to detect such inhibition.

In response to the ASM recommendation that quantitative assays include two to three standards of known copy number, as stated above, under CLIA regulations, quantitative

tests must include at least two control materials of different concentrations per day. Standards may be used in lieu of control materials, as long as they are not the same as the materials used to calibrate the test system or establish a cutoff.

In reviewing the CLIA regulations concerning control procedures and QA requirements for molecular amplification procedures, the CLIAC discussed appropriate control procedures and QA for genetic testing (September 16, 1998 through September 17, 1998). CLIAC recommended that controls for genetic testing should be considered for laboratories in general, including ensuring that adequate controls are in place to minimize contamination. This is especially important when performing molecular amplification procedures. To ensure the control of contamination, we have amended the requirements for facilities, formerly at § 493.1204(a) (now at § 493.1101(a)) to require laboratories to be constructed, arranged, and maintained to minimize contamination of patient specimens, equipment, instruments, reagents, materials, and supplies. A uni-directional workflow must be maintained for molecular amplification procedures not contained in closed systems. This must include physically separate areas for specimen preparation, amplification and product detection and, as applicable, reagent preparation. We believe these measures will decrease the potential for contamination to the extent possible in a clinical laboratory.

Comment: Several commenters requested clarification of the control requirements for kit systems used for bacterial and fungal identification. One commenter specifically requested the addition of a provision at § 493.1231, Mycology, that would require the testing of each new shipment of test kits or strips used for organism identification with organisms giving positive and negative reactions for each test before or concurrent with testing of clinical isolates. Another commenter questioned whether these systems would be subject to the requirement described at § 493.1202(c)(4) to test at least two levels of control materials each day of testing.

Response: We agree with the commenter that in mycology, or any other subspecialty area of microbiology, new shipments of test kits or strips used for organism identification should be tested with organisms giving positive and negative reactions for each test before or concurrent with initial testing of clinical isolates. This includes identification kits or panels that are inoculated and read manually, and those that are part of an automated instrument system. We are retaining the requirement formerly at § 493.1218(f)(1) (now at § 493.1256(e)(1)) that laboratories check each batch (prepared in-house), lot number (commercially prepared), shipment of reagents, disks, stains, antisera, and identification systems (systems using two or more substrates and/or reagents) when prepared or opened for positive and negative reactivity. We do not believe additional testing of these systems is needed if they are stored and maintained under appropriate conditions. Further testing is only necessary if labile reagents must be prepared or used each time the kit is used or if specified by the manufacturer.

Comment: Several commenters requested clarification of the control requirement at § 493.1218(b)(1) for qualitative tests as applied to microbiology procedures. The commenters asked which of the biochemical tests or media used for microbial identification would be considered qualitative tests.

Response: Biochemical tests using specific reagents or growth tests that employ selective or differential media (for example, indole tests, citrate media) that are a part of the total system of identification from culture are not considered qualitative tests in microbiology. Therefore, we are retaining the requirement formerly at § 493.1218(f)(1) (now at § 493.1256(e)(1)) that states laboratories must check each new batch (prepared in-house), lot number (commercially prepared), and shipment when prepared or opened for positive, negative, and graded reactivity, if applicable. Specifically, former § 493.1218(f)(4) (now at § 493.1256(e)(1) and (4)) requires each batch of media to be checked before or concurrent with initial use for sterility, and its ability to support, select, or inhibit growth, as intended, and/or provide the appropriate biochemical response. The manufacturer's control checks of media may be used if the product insert specifies they meet the NCCLS standards for media control testing. These individual procedures do not require control checks with each run of patient specimens or further testing unless specified by the manufacturer or under specialty or subspecialty control requirements. Biochemical tests or media that provide microbial identification from a direct specimen or culture (for example, direct antigen tests for group A streptococcus, bacterial serotyping from culture) are considered qualitative microbiology tests and are graded for reactivity. We are retaining the control procedures requirements for qualitative test systems formerly at § 493.1218(b)(1) (now at § 493.1256(d)(3)(ii)).

Comment: One commenter recommended we add "XV discs or strips" to § 493.1227(a)(2) that requires testing both positive and negative control organisms each week of use, and delete § 493.1227(b) that requires testing the XV discs or strips with only a positive control organism each week of use.

Response: Testing of XV discs or strips was limited to only a positive control each week of use because there is no known available control to check negative reactivity for the group of organisms that this test identifies. We are deleting the specific QC requirements for testing X, V, and XV disks or strips. These disks or strips are now subject to the general control procedure requirements formerly at § 493.1218(f)(1) (now at § 493.1256(e)(1)) that include testing each new batch (prepared in-house), lot number (commercially prepared), and shipment when prepared or opened for positive and negative reactivity. Since there is no control available to check negative reactivity for XV disks or strips, the use of only a positive control for XV disks or strips will be deemed to meet the CLIA regulation as specified in Appendix C of the State Operations Manual (CMS Pub. 7).

Comment: Several commenters recommended we change the control requirement for daily testing of antimicrobial susceptibility procedures to a weekly requirement, as specified by NCCLS. One commenter also suggested manufacturers develop control procedures consistent with NCCLS antimicrobial susceptibility testing standards whenever feasible.

Response: CLIA requires daily control checks for antimicrobial susceptibility testing, formerly at § 493.1227(c)(2) (now at § 493.1261(b)(1)) unless CMS approves a procedure that provides equivalent quality testing as specified in Appendix C of the State Operations Manual (CMS Pub. 7). In this case, the procedure providing equivalent quality testing is the NCCLS standard allowing the laboratory to perform weekly control testing of antimicrobial susceptibility procedures after establishing accuracy control limits through initial daily testing. The laboratory may continue performing weekly control testing provided the control results do not exceed the established limits.

Comment: One commenter requested clarification of the control requirements for antimicrobial susceptibility testing

with regard to the frequency of testing the disks, media, and overall procedure. The commenter felt that there is a contradiction between §§ 493.1227(c) and (c)(2) and that one of these statements should be deleted.

Response: In the former regulation, antimicrobial susceptibility testing requires that whenever a new batch of media or a new lot number and shipment of antimicrobial agents (disks) are put into use, the laboratory must verify that the media and agents perform within acceptable control parameters for testing. Following this initial verification that the test components (that is, media and antimicrobial agents) are working appropriately, the test procedure must be checked routinely with appropriate control strains to ensure that it is being performed accurately and all components of the procedure continue to work properly. This routine control procedure must be performed each day of patient testing or can be performed weekly. The weekly QC testing will be deemed to meet CLIA requirements, if performed as specified in the approved procedure providing equivalent quality testing in Appendix C of the State Operations Manual (CMS Pub. 7). The control organisms must be within established control limits before patient results can be reported.

Although we did not intend for the requirements at §§ 493.1227(c) and (c)(2) to appear contradictory, we are revising the language now at § 493.1261(b) for clarification of these requirements. In addition, we are making conforming changes to the language pertaining to the requirements for antimycobacterial and antifungal susceptibility testing for consistency and to be current with testing performed in these subspecialties. These requirements, formerly at §§ 493.1229(d) and 493.1231(d), are now at §§ 493.1262(b) and 493.1263(b).

Comment: A number of commenters stated the control requirements for identification procedures used in mycobacteriology at § 493.1229(a) should not selectively require positive and negative acid-fast control organisms to check the iron-uptake test each day of use while requiring only a positive acid-fast control for all other procedures. The commenters recommended that all identification procedures used in mycobacteriology be tested each day of use with an acid-fast organism that produces a positive result, and an acid-fast organism that produces a negative result.

Response: We agree with these commenters and because the incidence of infection caused by a variety of mycobacteria is increasing significantly, it is important for laboratories to accurately identify individual species within this genus. This results in increasing numbers and types of identification procedures being performed and it is critical that the accuracy of each of these tests be verified each day of use. This can best be ensured each day of use by including both an acid-fast control organism that produces a positive reaction and an acid-fast control organism that produces a negative reaction for each test. We are revising the requirement formerly at § 493.1229(a) (now at § 493.1262(a)) to reflect this change.

Comment: One commenter expressed concerns regarding the expense of testing controls and stated that the frequency for checking positive and negative reactivity of the BACTEC NAP test used to identify *M. tuberculosis* should be changed from each day of use to each week of use. This commenter suggested the requirement for testing a positive control each day of use could be satisfied by subculturing the growth from the BACTEC bottle to a solid media to detect appropriate colony and microscopic morphology.

Response: The control requirements were written to address test complexity and specialties or subspecialties of testing, not specific test systems or procedures. Test-specific CLIA regulations are only developed when tests are not adequately addressed in the general or specialty or subspecialty requirements. The commenter requested a change in CLIA regulation because of the expense of performing controls each time the BACTEC NAP test is set up. The alternative method that the commenter suggests for a positive control is not actually a control on the ability of the NAP test to inhibit growth of *M. tuberculosis,* but is a confirmatory test for the presence of this organism.

Although we agree with confirming results of the NAP test, it is not the same as using positive and negative control organisms to check the NAP vials for their ability to inhibit growth of *M. tuberculosis* and to allow growth of other mycobacteria. However, we understand the financial concerns associated with running positive and negative controls each day of use for this test. Since the test has a growth control included as part of each test, and the manufacturer indicates the media is stable and does not recommend testing positive and negative organisms as frequently as each day of use, we agree with the commenter that laboratories should only be required to check positive and negative control organisms each week of use. In addition, we are specifying this requirement as provided at § 493.1256 as an alternative procedure in Appendix C of the State Operations Manual (CMS Pub. 7).

Comment: One commenter stated positive and negative reactivity should be checked each day of use for all acid-fast staining procedures, rather than each week of use.

Response: We agree with the commenter that both fluorochrome and conventional acid-fast stains should be tested more frequently than each week of use and that both positive and negative control organisms should be tested. Nonpathogenic mycobacteria in water supplies have been found to contaminate buffers, rinse water, or other reagents, producing false positive staining results. Given the widespread use of acid-fast stains with the increasing incidence of mycobacterial disease, it is critical that the accuracy of these tests be verified each day of use. Therefore, we are deleting the requirements formerly at §§ 493.1229(b) through 493.1229(c) for testing fluorochrome and conventional acid-fast stains each week of use. The requirement for testing conventional acid-fast stains will now default to the general control requirement for stains formerly at § 493.1218(f)(2) (now at § 493.1256(e)(2)) that requires testing staining materials for intended reactivity each day of use. For stains that provide positive and negative reactivity (intended reactivity), we are revising the language to clarify that stains must be tested with positive and negative controls each day of use. By eliminating the subspecialty requirement for fluorochrome acid-fast stains, the general control requirement for fluorescent stains formerly at § 493.1218(f)(3) (now at § 493.1256(e)(3)) becomes applicable to these procedures. This general requirement specifies testing for positive and negative reactivity each time of use. It is appropriate to require the same control testing for fluorochrome acid-fast stains as are required for all other fluorescent stains.

Comment: One commenter recommended the deletion in bacteriology of testing positive and negative organisms each week of use for acid-fast stains as required in § 493.1227(a)(2) and replacement of the mycology term "acid-fast stain" at § 493.1231(c), with "modified acid-fast stain." This commenter emphasized that acid-fast stains are used in mycobacteriology rather than bacteriology, and that the procedure for staining used in mycology is a modification of the acid-fast stains performed in mycobacteriology.

Response: We agree with this commenter on both of these points. Although acid-fast stains are occasionally performed in bacteriology, by deleting the requirement in bacteriology for testing acid-fast stains each week of use; it defaults to the general requirement formerly at § 493.1218(f)(2) (now at § 493.1256(e)(2)) that requires laboratories to test staining materials for their intended reactivity (including positive and negative reactivity, as appropriate) each day of use. We agree with the commenter that the staining procedure in mycology is a modification of acid-fast stain used in mycobacteriology; therefore, we are deleting the requirement formerly at § 493.1231(c) for performing control testing each week of use for (modified) acid-fast stains. Again, this results in the control requirement for these stains defaulting to the general requirement for testing each day of use and is reasonable based on the fact that we are now requiring positive and negative controls for all acid-fast stains each day of use.

Comment: One commenter stated that the control regulation for mycology and mycobacteriology should require the use of a safety cabinet when testing in these specialty areas.

Response: We agree with the commenter that safety is an important factor in laboratory testing, formerly at § 493.1204(b) (now at § 493.1101(d)) and laboratories are required to maintain a safe testing environment. Safety precautions must be established and observed to ensure protection from biohazardous materials. Under §§ 493.1445(e)(2) and 493.1407(e)(2), the laboratory director is responsible for ensuring a safe environment is provided for employees conducting non-waived testing. In addition, other government agencies enforce State and local laws and other Federal standards that ensure protection of employees and the public from biohazardous materials. These agencies include the Occupational Safety and Health Administration and the Environmental Protection Agency.

Comment: One commenter stated that the wording at § 493.1235(c) is inappropriate. The commenter recommended the replacement of the word "culture" (referring to uninoculated controls) with "incubate" or "hold." This individual stated that the use of the term culture as specified at § 493.1235(c) generally means to inoculate and inspect for growth.

Response: We agree with this commenter and are replacing the term "culture" with the term "incubate" formerly at § 493.1235(c) (now at § 493.1265).

Comment: A commenter requested clarification of the control requirements for virology as they pertain to direct antigen detection. This commenter recommended the addition of a statement to § 493.1235 following paragraph (c) that would read "The above QC requirements are not applicable to virology testing performed using direct antigen detection methods."

Response: We agree with the commenter that the wording formerly at § 493.1235(c) needs clarification. There are several types of tests that identify viruses, but this requirement only applies to cell culture methodologies used to isolate and identify viruses. Therefore, we are changing the language for this requirement, now at § 493.1265(a), to make it specific to cell culture methodologies.

Sections 493.1237 Condition: Diagnostic Immunology; 493.1239 Condition: Syphilis Serology; and 493.1241 Condition: General Immunology

Specific comments received and response to comments regarding §§ 493.1237, 493.1239, and 493.1241 are set forth below.

Comment: A commenter stated § 493.1239(e) and § 493.1241(d), which refer to facilities manufacturing blood and blood products, should be deleted. This individual believes CLIA regulations should not cover manufacturing requirements.

Response: We disagree with the commenter. These requirements refer to testing requirements under CLIA regulations (donor specimens) regardless of where the testing is performed. However, we are moving these requirements, formerly under the subspecialties of syphilis serology and general immunology, and placing them with other requirements addressing the immunohematological collection, processing, dating, labeling, testing, and distribution of blood and blood products now at § 493.1271, Immunohematology (formerly at § 493.1273(a)).

Comment: One commenter requested clarification of the QC requirements for serological testing (both syphilis serology and general immunology) to run patient specimens concurrently with a positive serum control of known titer or controls of graded reactivity, if applicable, and a negative control. Specifically, this commenter questioned if these requirements refer to the additional controls run on a new kit to verify reproducibility, or if they pertain to the daily testing of the positive controls supplied in commercial kits. Other commenters objected to including two control materials each time patient testing is performed. One commenter thought only a positive control was necessary for immunology tests if the patient results were negative.

Response: We agree with the commenters who objected to the syphilis serology and routine immunology requirements requiring two control materials each time patient testing is performed. With the development of more accurate and stable test systems, the requirements formerly at § 493.1239(b) and § 493.1241(a) for assaying controls concurrently with patient specimens are excessive for many of the test systems. We are, therefore, deleting these requirements. Laboratories performing these tests will now need to meet the applicable control procedures at § 493.1256. In addition, the laboratory must meet the requirements that pertain to establishing or verifying a test system's performance specifications before putting a new test system into routine use formerly at § 493.1213 (now at § 493.1253).

We disagree with the comment that testing only a positive control is sufficient if the patient results are negative. Laboratories, at a minimum, must follow the manufacturer's instructions and for qualitative tests, assay a positive and negative control each day of patient testing (now at § 493.1256(d)(3)(ii)). For procedures producing graded or titered results, a control material with graded or titered reactivity, as applicable, and a negative control material must be assayed each day testing is performed formerly at §§ 493.1239(b) and 493.1241(a) (now at § 493.1256(d)(3)(iii)). The control material supplied in commercial kits (test systems) may be used to meet the requirements formerly at §§ 493.1239(b) and 493.1241(a) (now at § 493.1256(d)(3)(iii)) providing the material is of known reactivity (titered or graded, as applicable) and is not the same material used to establish a cutoff or calibrate the test system if calibration of the test system is required (now at 493.1256(d)(9)).

Section 493.1245 Condition: Routine Chemistry

Specific comments received and response to comments regarding § 493.1245 are set forth below.

Comment: One commenter expressed concern that §§ 493.1245(c) and (d) could be interpreted to mean that the same material could be used to calibrate the instrument and verify or control the test run for blood gas analyzers. The commenter stated that this would not

detect problems arising from deteriorated or contaminated calibrating solutions. The commenter also recommended the reference to calibrators be deleted from these sections and that control testing be performed using only control material.

Response: We agree with this commenter. It was never our intent to infer by the wording of these requirements that calibration material used to calibrate a test system could be used as a control to monitor the test system's performance. However, we allow the use of calibration material as a control material provided it is from a different lot number than that used to calibrate the test system or establish a cut-off. Therefore, we are clarifying the use of calibration materials as control materials (now at § 493.1256(d)(9)), and eliminating the terms "calibration" and "calibration material" from the blood gas analysis requirements (now at § 493.1267).

Comment: One commenter stated testing one sample of blood gas control per 8 hours of patient testing is not sufficient and is inconsistent with the general requirement for quantitative tests at § 493.1218(b)(2) that requires two controls of different concentrations with each run of patient specimens. This commenter recommended that at least two levels of control be required every 8 hour shift.

Response: We revised the general control requirement formerly at § 493.1218(b) (now at § 493.1256(d)). The requirement now specifies, at a minimum, assaying two levels of control materials each day patient specimens are tested. We are deleting the term "run" from the regulation. Also, laboratories must perform control testing using the number and frequency specified by the manufacturer or established by the laboratory when those frequencies meet or exceed the minimum requirement. Therefore, the minimum control requirement for quantitative tests, unless a more frequent interval is recommended by the test system's manufacturer or the laboratory, is two control materials of different concentrations each day patient specimens are tested.

The requirement for one control material per 8 hours for blood gas analyses, formerly at § 493.1245 (now at § 493.1267) exceeds these general QC requirements. The blood gas control requirements also require the laboratory to use a combination of control materials that check low and high values each day of testing. In addition, for blood gas instruments that do not internally verify calibration at least every 30 minutes, the laboratory must include one sample of control material each time patient samples are tested. This final rule provides minimum requirements. Based on the laboratory's verification of the test system's performance specifications before routine patient use (now at § 493.1253) and establishment of its control procedures (now at § 493.1256(d)), the laboratory may determine that it needs to run additional control materials or run control materials at a more frequent interval to assure accurate and reliable test results.

Section 493.1249 Condition: Toxicology

Specific comments received and response to comments regarding § 493.1249 are set forth below.

Comment: One commenter asked that the term "drug abuse screening using thin layer chromatography" at § 493.1249, Toxicology be modified to read "drugs-of-abuse screening using thin layer chromatography" ("drugs-of-abuse" is defined by the National Institute for Drugs of Abuse now National Substance Abuse and Mental Services Health Administration Laboratory Certification Program). This commenter also requested deletion of the requirement under § 493.1249(b) for at least one control sample to be processed and included in each chamber, stating that all environmental, chemical and material variables within a chamber are visualized by running calibration materials. The commenter added that controls should be analyzed with each run, and that each run should not exceed a 24 hour period.

Response: We agree with the commenter that the control requirements formerly at § 493.1249 are not clear; therefore, we are revising the language to clarify the requirements. We are moving the requirements for thin layer chromatography to § 493.1256(d)(4) under Control procedures. In addition, we are revising the term "drug abuse screening" to read "all known substances or drug groups" identified and reported by the laboratory, to accommodate the wider use of the technology. However, we disagree with the commenter's statement that analyzing one control material per 24 hours is sufficient. If extractions and tests are performed more frequently than once per 24 hours, each "plate" or "card" (formerly referred to as "chamber") must be spotted with at least one sample of control material to ensure that appropriate separation, and as applicable, extraction took place. The inclusion of a calibration material containing all known substances or drug groups reported by the laboratory using thin layer chromatography on each plate or card ensures appropriate identification of the substances or drugs in patient specimens.

Section 493.1253 Condition: Hematology

Specific comments received and response to comments regarding § 493.1253 are set forth below.

Comment: We received several comments requesting the deletion of QC requirements in hematology because they would increase laboratory costs.

Response: We agree with the commenters that the requirement to include two levels of control material each 8 hours of testing for automated hematology analyzers (for example, cell counters and differential counters) is somewhat excessive in light of the proven stability and reliability of these instruments. Therefore, we are deleting the specialty-specific control requirement for automated hematology analyzers formerly at § 493.1253(b), and are requiring laboratories to meet the general control requirements (now at § 493.1256(d)) when using automated hematology analyzers. However, the manufacturer's instructions and the laboratory's evaluation of the instruments' stability, environmental effects, and operator variance will determine the actual number, type, and frequency of testing control materials. At a minimum, the laboratories will have to test two control materials of different concentrations each day.

Comment: One commenter requested that we remove the requirement for duplicative testing of patient and control specimens for manual coagulation tests, as required at § 493.1253(d)(2), since proficiency testing requirements do not allow for duplicative testing.

Response: We disagree with the commenter and are retaining the requirement for duplicative testing of patient specimens and control materials for manual coagulation testing (now at § 493.1269(c)(2)). CLIA regulations for proficiency testing (PT) (§ 493.801(b)(2)) require the laboratory to test PT samples the same number of times that it routinely tests patients' samples. Therefore, since patient specimens must be routinely tested in duplicate, PT samples for manual coagulation testing must also be tested in duplicate.

Section 493.1257 Condition: Cytology and Section 493.1259 Condition: Histopathology

Approximately 66 percent of the 1,030 comments received concerning the final rule with comment period,

subpart K, were in response to the cytology requirements. The comments were primarily from professional organizations, cytotechnologists, pathologists, and other physicians. The major issues that commenters addressed include—

(1) Workload limits; (2) review of reactive reparative cases by a technical supervisor; (3) the 10 percent rescreen of negative cases screened by a cytotechnologist; and (4) the 5-year retrospective review of negative smears from patients with a current high grade lesion.

Specific comments and response to comments regarding §§ 493.1257 and 493.1259 are set forth below.

Comment: Several commenters stated the language "non automated microscopic technique" used to describe the slides that are counted in the workload limit is inappropriate and might be confused with slides that are screened using a motorized mechanical stage or with slides that are read by an automated instrument.

Response: We agree with the commenters and are removing the wording "non automated microscopic technique." We also want to emphasize that slides that are read with a human component must be included in the 100 slide limit; slides that are read by an automated instrument that do not require human review are not included in the workload limit.

Comment: A number of commenters and one cytology organization were opposed to establishing the workload limit at 100 slides examined in a 24 hour period. A few commenters felt the workload limit was too restrictive, while other commenters and the cytology organization indicated the limit was too high.

Response: The CLIA statute at section 353(f)(4)(B)(i) specifically states that the standards must establish "the maximum number of cytology slides that any individual may screen in a 24 hour period." Limiting the number of slides that may be examined in 24 hours to no more than 100 is the absolute maximum workload limit for an individual. However, we agree with the commenters that this may not be an appropriate workload for all individuals. To clarify our position, formerly at § 493.1257(b)(1) (now at § 493.1274(d)(2)), we specify that the Federal workload limit was not to be used as a performance target for cytology personnel. In addition, we specified formerly at § 493.1257(c)(4) (now at § 493.1274(d)(1)) that the cytology technical supervisor must establish a workload limit (not to exceed 100 slides examined per 24 hours) for each person examining slides and that at least every 6 months, the technical supervisor must re-evaluate and adjust, if necessary, each individual's workload limit. In addition, we are emphasizing that the workload limit applies only to individuals and does not apply to automated slide examination systems that may be used to screen slides and identify those smears requiring no human microscopic examination.

Comment: One organization asked whether the workload requirements are applicable to technical supervisors or only to cytotechnologists. Several commenters suggested the workload requirement only applies to cytotechnologists.

Response: The workload requirements apply to any individual who performs primary screening of cytology slides. This may be a technical supervisor or a cytotechnologist. We are also clarifying that while tissue pathology slides and previously examined gynecologic and nongynecologic slides are not included in the 100-slide workload limit for technical supervisors, the technical supervisor must subtract the time spent evaluating these slides and the time spent on any nonscreening duties from the time spent screening slides to appropriately adjust the workload.

Comment: Many commenters and the cytology professional organizations opposed the workload provision to count as one-half slide those smears made using automated, semiautomated, or other liquid-based slide preparatory techniques that result in cell dispersion over one-half or less of the slide. Some commenters indicated that this workload limit should apply only to nongynecologic preparations, while others thought it premature to use this calculation for any cytologic preparations until sufficient scientific studies have been completed to document the establishment of a workload limit appropriate for these preparatory techniques.

Response: In order to address concerns of the commenters, we are making several clarifications. First, the 200-slide workload limit was initially established in the February 28, 1992 final rule with comment period published in the **Federal Register** (57 FR 7002) in response to innovations in cytology preparatory techniques and acknowledgment that slide preparations that only occupy a portion of the slide will not count as a whole slide. Slide preparations (gynecologic and nongynecologic) made using automated, semi-automated, or other liquid-based preparatory techniques that result in a specimen that only occupies a small portion of the slide, are counted as one-half slide. Second, on January 19, 1993, we published a final rule with comment period in the **Federal Register** (57 FR 5212) removing gynecologic preparations. On July 22, 1993, we published a technical correction notice in the **Federal Register** (58 FR 39154) that inadvertently reinserted gynecologic preparations. In addition, Cytyc, manufacturer of ThinPrep ™, agrees that a 200-slide workload limit is too high for gynecologic preparations and has requested that the 200 slide workload limit not be applicable to gynecologic slides. We agree with the commenters and Cytyc corporation, and we are eliminating gynecologic slides from the 200-slide workload limit (now at § 493.1274(d)(2)(iii)). The 200-slide workload limit will only apply to nongynecologic slides.

Comment: Many Commenters and the Cytology organizations agreed that a workload limit was appropriate for gynecologic preparations. However, they were opposed to establishing a workload limit for nongynecologic smears because these preparations vary greatly in specimen type or source, preparatory techniques, and cellularity requiring various time frames for evaluation. The commenters acknowledged the difficulty in establishing a workload limit for individuals who examine nongynecologic preparations exclusively or a combination of gynecologic and nongynecologic smears. For fine needle aspirations, several organizations suggested using the methodology employed by New York State to prorate nongynecologic preparations, that is, for cases involving one to three slides, each slide is counted as one and for cases having four or more slides, a maximum of three slides are counted for workload purposes.

Response: We agree with the commenters that it is easier to establish a workload limit for gynecologic smears than for nongynecologic preparations because of the variability in nongynecologic preparations; however, the statute requires us to determine the maximum number of cytology slides that an individual can screen in a 24-hour period. Therefore, the workload limit is applicable to all cytology slides, including gynecologic and nongynecologic preparations. Concerning the New York State proration of nongynecologic slides, this practice is no longer in use in New York.

Comment: Several individuals asked for clarification on the specific guidelines that a technical supervisor should use to determine the maximum workload for an individual. Some

commenters noted the technical supervisor may have to justify a workload that is lower than 100 slides to hospital and laboratory administrators.

Response: Formerly at § 493.1257(c)(4)(i), individual workload is based on the performance evaluation described formerly at § 493.1257(c)(3). Therefore, we are revising the requirement, now at § 493.1274(d)(1)(i), to make it more understandable. Performance must be evaluated using the following: (1) Re-evaluation of 10 percent of the cases interpreted to be negative by cytotechnologists; and (2) comparing the cytotechnologist's interpretation with the final diagnosis on cases of atypical squamous cells of undetermined significance (ASC–US), low-grade squamous intraepithelial lesion(LSIL), high-grade squamous intraepithelial lesion (HSIL), glandular epithelial cell abnormalities, or other malignant neoplasms. However, the evaluations listed in the former CLIA regulations must be viewed as minimal requirements and the laboratory may have additional mechanisms or criteria to evaluate individual performance. For example, the following provisions in the CLIA regulations may be used: (1) Number of discrepant findings on the retrospective review of previous negative cases from patients with a current HSIL, adenocarcinoma or other malignant neoplasm; (2) individual statistics evaluated against the laboratory's overall statistics; and (3) competency assessment activities.

Comment: Many of the commenters and the cytology organizations suggested that the requirement for confirmation of cases by the technical supervisor be limited to those having atypical squamous or glandular cells, or any premaligment or malignant cell changes. The commenters suggested deleting the reference requiring confirmation of "reactive or reparative changes," stating that the requirement was excessive. Other commenters recommended changes to allow technical supervisors the discretion to determine the level of supervisions, that is, review of cases with benign cellular changes, needed by each employee. In addition, several commenters suggested we revise the language to include the Bethesda terminology.

Response: We have not removed all reference to reactive and reparative changes because many laboratories still use this classification. The regulation, however, incorporates the Bethesda terminology, which provides for a uniform categorization of the cellular changes seen in gynecologic cytology. Most of the slides formerly classified as having "reactive and reparative" changes that would have exhibited marked or extensive cellular changes on technical review will, therefore, be classified as ASC–US or as having a squamous cell abnormality under the Bethesda terminology. As specified at § 493.1274(e), all of these slides are required to be reviewed by the technical supervisor. However, we have retained the classification reactive and "reparative changes," and similar cellular changes under the Bethesda category "Negative for Intraepithelial Lesion or Malignancy" that would formerly have been categorized as reactive or reparative to encompass those slides needing review by the technical supervisor. Technical supervisors continue to have the discretion to review more cases as necessary to train and manage cytotechnologists under their supervision. Although we are not requiring the use of the Bethesda terminology, the majority of the laboratories have adopted it, and we encourage other to do the same.

Comment: One organization stated that the technical supervisor's signature on the worksheet is acceptable documentation for the review of abnormal gynecologic cases. For nongynecologic cases, the organization suggested that laboratories allow the technical personnel to verify the final computer generated report that would include the name of the technical supervisor who reviewed the case. Another commenter asked for clarification on electronic signatures and whether CLIA regulations allow electronic requisitions.

Response: We do not believe that any change in the CLIA regulations is appropriate. The final report must be verified by the technical supervisor who reviewed the case and signs the report, and electronic signatures must be authorized and verified by the technical supervisor who signs the report. As specified at § 493.1241, electronic requisitions are acceptable, as long as the requisition contains the required information.

Comment: Several commenters, including one cytology organization, disagreed with requiring laboratories to rescreen 10 percent of the cases interpreted to be normal or negative by cytotechnologists. One organization stated the 10 percent rescreen is a statistically invalid mechanism for reducing the false negative rate and suggested the requirement be replaced by a goal-oriented statistically valid system for promoting laboratory QC. One organization was opposed to requiring laboratories to complete the 10 percent rescreen before reporting patient results.

Response: The CLIA statute requires "* * * random rescreening of cytology specimens determined to be in the benign category * * *" Accordingly, random rescreening of negative cases is required in CLIA rules. We view the 10 percent rescreen as a minimum requirement and only one component of the laboratory's control procedures and QA activities. In addition, rescreening is supported by the results of cytology surveys conducted under CMS contract that includes rescreening approximately 0.1 percent of the laboratory's caseload. In many of these surveys, diagnostic discrepancies were noted between the contractor's evaluation of patient specimens and the results reported by the laboratory, even though the sample rescreened was less than 10 percent of the laboratory's caseload. The control procedures, including the 10 percent rescreen, assess the quality of the laboratory's results, and the rescreen must be completed before issuing patient reports on the slides selected for the 10 percent rescreen as specified formerly at § 493.1257(d)(1)(iii) (now at § 493.1274(c)(1)(ii)).

Comment: One commenter asked whether the 10 percent re-evaluation of negative cases could be performed by the same individual who performed the primary review.

Response: The 10 percent rescreen of negative cases is one provision of the cytology control procedures specified formerly at § 493.1257(d) requiring laboratories to have a program designed to detect errors in cytology examinations. This provision is now at § 493.1274(c). Ten percent of the cases interpreted as negative by cytotechnologists must be reevaluated by a cytology technical supervisor qualified under §§ 493.1449(b) or 493.1449(k), a cytology general supervisor qualified under § 493.1469(b)(2), or a cytotechnologist qualified under § 493.1483 who has the experience specified in § 493.1469(b)(2). For laboratories with a solo pathologist (no cytotechnologists), the 10 percent rescreen need not be performed; however, the following cytology QC procedures must be performed: a laboratory comparison of clinical information and histopathology reports (as specified at § 493.1274(c)(2)), a retrospective rescreen of normal and negative cases received within the previous 5 years from a patient with a current high grade lesion (as specified at § 493.1274(c)(3)) and annual statistical evaluation (as specified at § 493.1274(c)(5)).

Comment: Many cytology organizations disagreed with requiring review of all normal or negative slides from the previous 5 years for any patient having a current high grade intraepithelial lesion or above. The commenters felt that the 5-year review was unreasonable and unnecessarily burdensome and suggested that the review include only the two most recent smears, if available in the laboratory. A number of commenters noted the error at § 493.1257(d)(3) in referring to patients with "a current high grade or above intraepithelial lesion . . ." and suggested rewording the requirement for retrospective review of negative cases from patients having a "current high grade intraepithelial lesion or cancer."

Response: We are not reducing the requirement for review of negative cases from the previous 5 years for patients having a current high grade intraepithelial lesion or cancer because the law requires ". . . for each abnormal cytological result, rescreening of *all* (emphasis added) prior cytological specimens for the patient, if available." However, we appreciate and agree with the commenters' suggestion about rewording the requirement, formerly at § 493.1257(d)(3) (now at § 493.1274(c)(3)) to reflect current terminology.

Comment: One organization asked for clarification on the time frame for completion of the retrospective review of cases with a current high grade lesion or above and the histology and cytology correlation.

Response: The retrospective review and the histology and cytology correlation are part of the control procedures and must be completed in a timely manner. Since there is a possibility that this QC activity could result in the issuance of a corrected report that may affect patient treatment, the laboratory must have procedures in place that include time frames for these activities.

Comment: Several commenters and cytology organizations disagreed with requiring laboratories to compare the case reviews of each individual with the laboratory's overall statistical values. The commenters stated that the case mix (specimens from various clinics with different patient populations) varies and these statistics should not be used to assess individual performance. In smaller laboratories the statistical comparison may not be valid due to the small numbers. It was suggested that laboratories be given flexibility to determine the best approach for implementing the control procedure requirements and evaluating individual performance.

Response: We established these requirements as a result of comments provided in response to the proposed rule that was published on May 21, 1990 in the **Federal Register** (55 FR 20896). The commenters stated that reviewing the laboratory's data provided useful information on overall laboratory practice as well as individual performance. We believe these requirements have provided valuable information for assessment of laboratory and individual performance; therefore, we are not making any revisions. However, laboratories may document situations that affect the laboratory's statistics and individual case reviews.

Comment: One cytology organization was opposed to requiring laboratories to document cases for which histologic reports were unavailable for comparison with abnormal gynecologic results, stating that it was time consuming and burdensome and provided no benefit to the patient.

Response: In an attempt to minimize the burden, (now at § 493.1274(c)(5)(iv)), we are requiring documentation of only the number of cases that have histology correlation. We believe this information is necessary to determine the laboratory's success in obtaining histology reports for the histology and cytology correlation.

Section 493.1259 Condition: Histopathology

Specific comments received and response to comments regarding § 493.1259 are set forth below.

Comment: Two medical professional organizations disagreed with the requirements at § 493.1259(c) that precluded neurologists from examining nerve and muscle biopsies. Also, in May 1993, CLIAC recommended that neurologists with specialized training and board certification qualify as technical supervisors, general supervisors, and testing personnel of neuromuscular histology. Without recognition of this training, neurologists would be required to refer neuromuscular tissue specimens to an anatomic pathologists for examination.

Response: We are amending the histopathology QC requirements formerly at § 493.1259(c) (now at § 493.1273(c)) to allow individuals who have successfully completed a training program approved by HHS to examine and provide reports for neuromuscular pathology. In Appendix C of the State Operations Manual (CMS Pub. 7), subpart K, we will specify that the training program developed by the American Academy of Neurology Committee for Neuromuscular Pathology is approved by HHS. We are making the change to § 493.1273 rather than the personnel requirements in subpart M, because in this final rule, we are limiting the personnel revisions to the phase-in provisions addressed in the December 28, 2001 proposed rule. HHS received numerous personnel comments in response to the February 28, 1992 final rule with comment period which we intend to address in a future regulation.

Section 493.1265 Condition: Histocompatibility

Specific comments received and response to comments regarding § 493.1265 are set forth below.

Comment: Several commenters were pleased with the final CLIA rule for histocompatibility testing and felt the majority of the concerns raised over the proposed rule had been addressed. They noted the requirements now generally reflect the state of the art laboratory practices in this specialty area of testing that is continuing to evolve.

Response: We appreciate this acknowledgment of the efforts made in developing the histocompability QC requirements specified in the final rule with comment period that was published on February 28, 1992 in the **Federal Register** (57 FR 7170). In our continuing endeavor to represent current technology and practice, we are updating some of the terminology and references used in this section. We are also deleting several requirements that are duplicative of requirements found elsewhere in the CLIA regulation. In addition, we are adding clarifying language and reorganizing the requirements in this section that apply to HLA typing, disease associated studies, antibody screening, crossmatching, transplantation, and general requirements that apply to every histocompatibility laboratory regardless of the testing and services offered by the laboratory.

Comment: One commenter requested the requirements for histocompatibility testing be separated into three groups: solid organ transplantation, including renal; bone marrow transplantation; and histocompatibility testing for transfusion services.

Response: We acknowledge that the organization of the histocompatibility requirements found in the final rule with comment period may have caused some confusion to the reader trying to determine what testing requirements apply to each type of organ or tissue transplant. While there are various ways to group the requirements in this specialty, we are reorganizing this section by first delineating the general requirements for histocompatibility

testing (now at § 493.1278(a)) and specifying the requirements for HLA typing (now at § 493.1278(b)), disease associated studies (now at § 493.1278(c)), antibody screening (now at § 493.1278(d)), crossmatching (now at § 493.1278(e)) and transplantation (now at § 493.1278(f)). In addition, we believe this reorganization, along with other revisions, will greatly enhance the readability of this section and clarify the requirements that must be met for each type and level of histocompatibility testing performed by the laboratory.

Comment: One commenter pointed out the requirement at § 493.1265(a)(4) that addresses reagent typing sera inventories prepared in-house should also require that the specificity of the reagent be indicated. The commenter also requested clarification of the term "typing tray" used at § 493.1265(a)(9)(i) since the term can refer to any 96, 72, or 60 well microtiter tray used in the HLA laboratory. The commenter stated that without clarification, it is unclear whether the control requirements specified at this requirement refer only to trays used for HLA typing or if they include trays run in an attempt to identify the presence of circulating HLA antibodies.

Response: We agree that reagent specificity must be indicated on the laboratory's in-house prepared reagent typing sera inventory and are amending the requirement now at § 493.1278(a)(3) accordingly.

The commenter is correct to question the scope of the requirement formerly at § 493.1265(a)(9)(i) that addressed control requirements for typing trays. In addition, the term "typing tray" is somewhat restrictive in that testing performed with newer and emerging technologies may not necessarily use microtiter trays. Therefore, we are revising the requirement for clarification, and, with the reorganization of this section, § 493.1278(b)(6) now describes the controls a laboratory must use for each HLA typing, and § 493.1278(d)(6) addresses the controls a laboratory must use when performing antibody screening.

Comment: One commenter requested that the CLIA regulations mandate HLA antibody identification when panel screening studies indicate the presence of a lymphocyte-reactive antibody. In addition, the laboratory should determine if this is an autoantibody or alloantibody. The commenter also requested the CLIA rule require that the specific technique used in HLA antibody screening be at least as sensitive as the complement-dependent lymphocytotoxicity technique used in the final donor crossmatch.

Response: Histocompatibility testing is a rapidly evolving, highly complex specialty. Its role in predicting long-term allograft survival is the subject of numerous research studies. Not all antibody reactions have a defined specificity, and the clinical relevancy of each antibody has not been established. Mandatory antibody identification may be impractical, if not impossible, and uninformative in these cases. However, we agree that antibody identification must be performed when appropriate to support clinical transplant protocols and § 493.1445(e)(3)(i) requires the laboratory director to select test methods that are capable of providing the quality of results required for patient care. It is the laboratory director's responsibility to institute more stringent testing protocols as necessary for quality patient care. Therefore, we are adding a requirement at § 493.1278(d)(7) for laboratories that perform antibody identification to have available and follow written criteria and procedures for antibody identification to the level appropriate to support clinical transplant protocol.

We agree with the commenter that the laboratory must use a technique that detects HLA-specific antibody with a specificity equivalent or superior to that of the basic complement-dependent microlymphocytotoxicity assay. In addition, to detect antibodies to HLA Class II antigens, the laboratory must use a method that distinguishes antibodies to HLA Class II antigens from antibodies to Class I antigens. We are adding these two new requirements at §§ 493.1278(d)(1) and 493.1278(d)(2).

To ensure quality laboratory practices and for consistency with the two new requirements, we are specifying that techniques used for crossmatching must be documented to have increased sensitivity in comparison with the basic complement-dependent microlymphocytotoxicity assay (now at § 493.1278(e)(1)). In addition, when performing HLA typing, the laboratory must use a technique that is established to optimally define, as applicable, HLA Class I and II specificities (now at § 493.1278(b)(1)).

Comment: A number of commenters were opposed to the elimination of mandatory monthly screening for HLA antibodies, since most, if not all, laboratories lack access to accurate information regarding each potential transplant recipient's exposure to sensitizing events. This is compounded by the probability that not all potentially sensitizing events have been identified. A few commenters acknowledged that the cost of monthly screening can be prohibitive and suggested there may be some instances when monthly screening may not be necessary. However, most commenters agreed that studies need to be done to determine the optimum frequency of antibody screening.

Response: We agree with the commenters and recognize the importance of developing an accurate immunological history of the potential transplant recipient and the difficulty of identifying and obtaining information on all potential sensitizing events. We also appreciate the efforts to control healthcare costs by eliminating unnecessary and or redundant testing. To provide flexibility and allow responsiveness to emerging research data and information, we are revising the requirements formerly at §§ 493.1265(a)(2)(ii) and (a)(8)(i) (now at §§ 493.1278(d)(4) and (d)(5)) to require the laboratory to make a reasonable attempt to have available monthly serum specimens for all potential transplant recipients for periodic antibody screening and crossmatch. In this regard, the laboratory must have available and follow a policy, consistent with clinical transplant protocols for the frequency of screening potential transplant recipient sera for preformed HLA-specific antibodies.

Comment: Three commenters noted that DNA typing involves the genes rather than the expressed antigens; therefore, § 493.1265(a)(10) would be more accurate if changed to read, "Compatibility testing for HLA class II polymorphisms should utilize techniques, for example, mixed lymphocyte culture, homozygous typing cells, or DNA analysis."

Response: We agree with the commenters that the wording of the requirement formerly at § 493.1265(a)(10) is somewhat inaccurate and also believe that the requirement may be too restrictive for future methodologies, technologies, and transplantation protocols. Therefore, we are deleting this requirement for the laboratory to use specific techniques, for example, mixed lymphocyte cultures, to determine HLA Class II incompatibilities.

Comment: One commenter stated that the requirement at § 493.1265(a)(13) to have histocompatibility testing personnel evaluate unknowns on a monthly basis is excessive and should be reduced to once every 6 months.

Response: Histocompatibility testing is a highly complex specialty with great potential for harm to the patient if the testing is incorrectly performed. CLIA regulations specify formerly at

§ 493.1445(e)(13) that the director has to ensure that policies and procedures are established for monitoring employee competency and to identify needs for remedial training or continuing education. Monitoring employee competency may include the evaluation of previously tested specimens as unknowns. However, we are deleting this former requirement at § 493.1265(a)(13) because we believe it is somewhat duplicative of the laboratory director responsibility.

Comment: Three commenters, including a professional organization, recommended that living transplants be deleted from § 493.1265(b)(2) that requires the performance of mixed lymphocyte cultures or other augmented testing to evaluate HLA class II compatibility. The commenters stated that although appropriate for bone marrow transplantation, mixed lymphocyte culture is performed rarely in living-related kidney transplantation where HLA Class II compatibility and genetic linkages can be adequately determined using serological methods. In addition, the commenters maintained that mixed lymphocyte culture tests were unnecessary in solid organ transplants and not considered a contraindication to this type of transplantation.

Response: We agree with the commenters. The phrase, "and living transplants," formerly at § 493.1265(b)(2), was deleted in a technical correction notice published on January 19, 1993. In addition, we recognize the evolving nature of transplant medicine makes it difficult to prescribe standards for testing protocols that may be quickly outdated with emerging research data and information, for example, graft survival, acute, and chronic rejection. For this reason we are revising the requirements formerly at §§ 493.1265(b) and (c) that specified the type of testing to be performed for each transplant type. We are requiring (now at § 493.1278(f)(1)) that laboratories performing histocompatibility testing for transfusion and transplantation purposes have available, and follow, written policies and protocols specifying the histocompatibility testing to be performed for each type of cell, tissue, or organ to be transfused or transplanted. The laboratory's policies must address, as applicable, testing protocols for cadaver donor, living, living-related and combined organ and tissue transplants; the level of testing required to support clinical transplant protocols (for example, HLA typing at the antigen or allele level); and any additional testing required for patients at high risk for allograft rejection. In addition, we believe this less prescriptive, but laboratory-specific requirement provides the flexibility required to ensure laboratory practice that is responsive to advances in transplantation medicine and laboratory methodologies and technology.

Comment: One commenter stated that the requirement, at § 493.1265(b)(3), to provide the results of the final crossmatch before nonrenal solid organ transplantation when the recipient has demonstrated presensitization is not necessarily relevant or realistic for all types of grafts. The commenter cited the short viability time of certain organs (heart and lung) and unpublished data pertaining to the nonrelationship between high-titered positive donor T cell crossmatches and liver allograft survival.

Response: We agree with the commenter that the period of time that organs, for example, the liver, pancreas, and heart remain viable after removal from the donor is often not sufficient for the laboratory to complete the crossmatch. The regulation formerly at § 493.1265(b)(3) (now at § 493.1278(f)(3)) has been revised to require laboratories to develop and follow policies for testing and providing results of final crossmatches when the recipient has demonstrated presensitization by prior serum screening. In addition, the policy must address emergency transplant situations that would not allow time for the laboratory to perform prospective crossmatches. In addition, we would like to clarify that the intent of § 493.1278(f)(3) is not to preclude the use of crossmatch-positive nonrenal organs and tissues but to ensure, whenever possible, the availability of all pertinent test results on which the physician(s) may base their decision to proceed with the transplant.

Section 493.1267 Condition: Clinical Cytogenetics

Specific comments received and response to comments regarding § 493.1267 are set forth below.

Comment: One commenter suggested the cross-references to subpart K at § 493.1267 list only those portions that apply to cytogenetic testing so that, for example, the general requirement for testing positive and negative controls is not referenced. The commenter suggested at the very least, Appendix C (Survey Procedures and Interpretative Guidelines for Laboratories and Laboratory Services) of the State Operations Manual (CMS Pub. 7) should instruct CLIA surveyors to ignore this requirement when inspecting a cytogenetics laboratory.

Response: The task of delineating all applicable requirements of subpart K for each specialty or subspecialty of testing would require continuous revision and updating for new test systems and emerging technologies. For this reason, the requirement (now at § 493.1225) remains unchanged and continues to direct laboratories to comply with the requirements of subpart K that are applicable to the testing being performed. However, Appendix C of the State Operations Manual will give guidance to surveyors concerning the control requirements for clinical cytogenetics. As specified now at § 493.1256(e)(2), each day of use, the laboratory is required to test the positive and negative reactivity of staining materials to ensure predictable staining characteristics. Media must be checked for sterility and to ensure that it supports growth of the appropriate tissues as required now at § 493.1256(e)(4). As for materials to demonstrate chromosome abnormalities, for example, linkage, breakage, or translocation, Appendix C of the State Operations Manual (CMS Pub. 7) states that these materials are not routinely available; however, an alternative procedure for the immediate assessment and monitoring of all testing over time must be instituted by the laboratory as specified now at § 493.1256(h).

Comment: A few commenters stated laboratory testing of sex chromatin by Barr body analysis or by "Y" body analysis is not considered the standard of practice for the diagnosis of individuals with sex chromosome aneuploidy, citing the well documented frequency of mosaicism in individuals with sex chromosome aneuploidy that leads to false negatives. Therefore, they strongly recommend not employing this testing as a screening test and deleting it from the list of tests that are performed in cytogenetics laboratories.

Response: We agree with the commenters and are deleting the requirements pertaining to the performance of X and Y chromatin counts for sex determination that were formerly at § 493.1267(a). In this final rule at § 493.1276(c), we are now requiring full chromosome analysis for sex determination.

Comment: A few commenters questioned the requirement that chromosome resolution be sufficient to support the reported result. One commenter stated that this is a "catch 22" in that a low resolution study reported as normal in a patient with an abnormality only detectable at a higher level of resolution would be wrong, however, the low resolution analysis would be in support of the reported

normal diagnosis. The commenters suggested establishing a specific band level of resolution that would be dependent upon the type of study requested.

Response: We are revising the requirement formerly at § 493.1267(b) (now § 493.1276(b)(2)) for clarity. The requirement now states that the resolution used must be appropriate for the type of tissue or specimen, and that the type of study required is based on the clinical information provided to the laboratory.

Comment: One commenter suggested that substituting the words "photographic karyotypes" for "photographs" would correctly reflect what cytogeneticists read.

Response: We are adding new language to the CLIA regulation formerly at § 493.1267(c) (now at § 493.1276(a)) to specify karyotypes in addition to photographs.

Comment: A few commenters disagreed with the CLIA regulation requiring "appropriate nomenclature" and felt the CLIA regulation should require the use of the International System of Cytogenetic Nomenclature in reporting all cases because it is the only recognized system that exists and anything else would be homemade and impossible to interpret other than by that particular laboratory.

Response: We agree with the commenters and are replacing the words "appropriate nomenclature" formerly at § 493.1267(d) (now at § 493.1276(d)) with the words "the International System of Cytogenetic Nomenclature."

Comment: One commenter stated that failure rate is an aspect of cytogenetic testing and that it is not addressed by CLIA regulations. The commenter also stated that failure rate can provide valuable information about a laboratory's capabilities and be easily evaluated by an individual lacking specific expertise in cytogenetics. The commenter stated that accepted standards for study failure rates exist for the various types of tests done in cytogenetic laboratories.

Response: We agree that study and culture failure rates can be a useful tool in evaluating a cytogenetic laboratory's performance. However, the study must be evaluated carefully because many factors outside of the laboratory's control may influence the rates, for example, specimen transit time and conditions. In addition, what constitutes failure must be clearly defined. For this reason, we are not mandating failure rates but encourage laboratories to monitor these rates as part of a QA program.

Comment: One commenter recommended gestational alpha-fetoprotein (AFP) be recognized as an analyte. Gestational AFP testing should not be included under Immunology, where AFP is used as a tumor marker.

Response: Although the analyte alpha-fetoprotein may be used for genetic screening, the test does not entail chromosomal examination (that is, cytogenetics). Measurement of this analyte may be used for non-cytogenetic purposes. CLIA certifies laboratories in both the subspecialty of routine chemistry and general immunology for gestational and maternal AFP.

Section 493.1273 Standard: Immunohematological Collection, Processing, Dating Periods, Labeling and Distribution of Blood and Blood Products

Specific comments received and response to comments regarding § 493.1273 are set forth below.

Comment: One commenter requested the addition of requirements to § 493.1273 regarding the use of bar code systems for the identification of blood and blood products, stating that laboratories should document the accuracy of bar codes before putting the systems into use, and as a continuing part of quality assurance while the systems are in use.

Response: We agree with the commenter that the accuracy and ongoing reliability of bar code systems used for the identification of blood and blood products is an important quality issue for laboratories that use them. Laboratories involved in collecting, processing, dating, labeling, testing, and distributing blood and blood products are required to conform to the FDA requirements for blood and blood products at 21 CFR parts 606, 640, 21 CFR 610.40, and 610.53. Specifically, 21 CFR 606.121: Container label, permits the use of container labels that bear encoded information in the form of machine-readable symbols approved for use by the Director, Center for Biologics Evaluation and Research, FDA, and refers to FDA's "Guideline for Uniform Labeling of Blood and Blood Components," that addresses blood product labeling requirements, including standards for bar codes. Also, 21 CFR 606.140 requires the laboratory to have control procedures that provide for monitoring the reliability, accuracy, precision, and performance of laboratory test procedures and instruments.

Comment: A laboratory surveyor asked why CLIA personnel are responsible for surveying large sections of the FDA's regulations. Since CLIA is a self-funded program, the commenter wondered if the FDA reimbursed the CLIA program for these services.

Response: The commenter is correct in questioning the role of the CLIA surveyors' inspection responsibilities. We have corrected the citations from 21 CFR to specify in 42 CFR part 493 the exact requirements that must be met under the CLIA regulations. The revised citations are now at §§ 493.1105(a)(1)(i), 493.1271(a)(1) and (b). When reviewed, the actual time expended surveying sections of the FDA's regulation was minimal. Sister agencies such as the FDA and CMS frequently assist one another without charge when expenditures to provide such assistance are *de minimis*.

Subpart M—Personnel for Moderate Complexity (Including the Subcategory) and High Complexity

In the February 28, 1992 final rule with comment period, the personnel requirements are located in subpart M and include qualification requirements for individuals to direct a laboratory performing high complexity testing. A phase-in period was provided for individuals with a doctoral degree to obtain board certification. In response to the publication of the date extension rules, we received comments suggesting that we develop alternative provisions to qualify individuals with a doctoral degree on the basis of laboratory training or experience, instead of requiring board certification. On December 28, 2001, we published a proposed rule in the **Federal Register** (66 FR 67163) that included provisions to end the phase-in period and revise and expand the qualifications required for an individual with a doctoral degree to direct a laboratory performing high complexity testing.

Following publication of the proposed rule, we received 113 comment letters, which contained approximately 300 comments. Of these, 168 comments agreed with one or more provisions in the proposed rule, 120 comments disagreed with at least one of the provisions, 6 comments addressed the education requirements, and 1 comment reflected misinterpretation of the proposed requirements. Fifty-three of the 113 comment letters specifically addressed qualification requirements for directors of laboratories performing histocompatibility testing.

Specific comments received and responses to comments regarding the proposed rule are set forth below.

Comment: The majority of the comments on the first provision (at the proposed and former § 493.1443(b)(3)(i)) agreed with requiring board certification

as a qualification requirement for individuals having a doctoral degree to serve as high complexity laboratory directors. These commenters emphasized the role of board certification in ensuring that individuals have specific training and experience, as well as uniform and broad-based clinical knowledge, skills and competencies. In addition, at the CLIAC meeting held on January 30, 2002 through January 31, 2002, CLIAC expressed strong support for board certification for laboratory directors and suggested the recent efforts of the boards to provide more flexible routes to certification would allow more individuals to meet the certification requirements. CLIAC and other commenters also felt that the documentation of continuing education required for retaining board certification is essential in ensuring that individuals maintain the professional abilities needed to direct laboratories that provide services in the multifaceted, constantly changing high complexity testing category. The few comments opposed to board certification indicated certification does not ensure the performance of individuals and that employee skill validation is the responsibility of the employer. These commenters also noted the absence of evidence documenting that certified individuals perform better than noncertified individuals.

Response: We agree with the comments supporting board certification and are maintaining the former requirements at § 493.1443(b)(3)(i) requiring board certification as one of the pathways for qualifying individuals with a doctoral degree as directors of laboratories performing high complexity testing. Although certification does not provide absolute assurance that individuals will effectively fulfill the responsibilities required of directors, it is a recognized benchmark of competency and an appropriate mechanism for qualifying individuals to serve as laboratory directors. In addition, the ongoing continuing education required by each of the HHS-approved boards to retain certification helps ensure these individuals maintain a current knowledge base.

Comment: A State Health Department and one laboratory professional organization requested that all HHS-approved boards and the criteria for board approval be listed in the regulations. One of these commenters asked whether the phrase "* * * be certified and continue to be certified * * *" included in the proposed rule at § 493.1443(b)(3)(i) means that HHS will require board recertification when required by an HHS-approved board. In addition, a few commenters disagreed with board recertification.

Response: A total of eight certification boards have been approved by HHS. Four boards are listed in the former regulations at § 493.1443(b)(3)(i): The American Board of Medical Microbiology; the American Board of Clinical Chemistry; the American Board of Bioanalysis; and the American Board of Medical Immunology. On July 8, 1996, we published a notice in the **Federal Register** (61 FR 35736), that announced HHS approval of two boards: The American Board of Histocompatibility and Immunogenetics and the American Board of Medical Genetics. In this final rule, we are announcing HHS-approval of two additional boards: the National Registry for Clinical Chemistry at the doctoral level and the American Board of Forensic Toxicology. However, in this final rule, we are deleting the reference at § 493.1443(b)(3)(i) to the specific boards approved by HHS. Currently, all HHS-approved boards are listed on the Internet at *http://www.cms.hhs.gov/clia/dirc/con.asp*. In the future, boards approved by HHS will also be listed in Appendix C of the State Operations Manual (CMS Pub. 7), subpart M. Removing the list of approved boards from the regulations and placing the list in Appendix C will allow greater flexibility to update the list of HHS-approved boards.

In response to the comments suggesting that the criteria for determining HHS-approval of certification boards be included in the regulations, we do not believe that regulations, which specify standards that must be met by covered entities, should include details of an administrative process. All boards approved by HHS have been determined to have comparable certification requirements. In the "Conditions for Coverage of Services of Independent Laboratories" published in the September 19, 1974 **Federal Register** (39 FR 33693), the laboratory director qualification requirements included provisions for qualifying individuals with a doctoral degree. One option was certification by one of three boards (American Board of Medical Microbiology, the American Board of Clinical Chemistry, and the American Board of Bioanalysis). Subsequently, all boards approved by HHS have been determined to have certification requirements comparable to those three boards originally recognized. Any board may request HHS approval by submitting their request for board certification to CMS. This information will be evaluated to determine if the board's certification requirements are comparable to those currently approved boards.

With respect to requiring recertification, it was always the intent of the former regulations, that individuals with a doctoral degree qualifying under § 493.1443(b)(3)(i) must be, and continue to be, certified by an HHS-approved board. If a board requires recertification and an individual fails to recertify and loses board certification, this individual would no longer meet the director qualification requirement at § 493.1443(b)(3)(i). In this final rule, and as proposed in the December 28, 2001 proposed rule, we are revising the language at § 493.1443(b)(3)(i) for clarification.

Comment: A number of comments agreed with the second provision (at proposed § 493.1443(b)(3)(ii)) allowing individuals having a doctoral degree, who are serving or have served as directors of laboratories performing high complexity testing under the current regulations' phase-in provision, to continue to qualify without obtaining board certification. However, a few commenters felt this provision should be temporary, with a date specified by which board certification would be required to maintain qualification. One commenter urged that a date be established (and not extended) to conclude this qualification provision. A State Health Department interpreted the requirements in this provision to mean that a total of 4 years of experience is required, and that the training and experience and director and/or supervisory experience cannot be gained concurrently. This commenter also suggested this experience be postdoctoral experience.

Response: We agree the second proposed qualification provision is needed to allow ("grandfather") individuals who have served or are currently serving as directors of high complexity testing to continue to serve. We also agree that a date needs to be specified to conclude this qualification pathway and the training and experience requirements clarified; however, we do not agree that the training and experience must be postdoctoral. We believe laboratory training and experience obtained while an individual is working toward obtaining a doctoral degree is pertinent and appropriate, and should be considered as meeting the requirement.

In this final rule, at § 493.1443(b)(3)(ii), we are specifying February 24, 2003, as the effective date

for this final rule's personnel qualification requirements, and we are clarifying the training and experience requirements individuals must meet. To ensure a smooth transition to the new provisions for directors of high complexity testing who are not board certified (but who have doctoral degrees), we will not be holding facilities out of compliance with the provisions of the rule concerning directors who are not board certified until the effective date of this new rule, to the extent the facilities are otherwise in compliance with the requirements for laboratory directors. Individuals must, therefore, as of February 24, 2003, have at least 2 years of training or experience, or both; and 2 years of experience directing or supervising high complexity testing.

Comment: Several commenters (including one laboratory professional organization and one certification board) felt continuing education should be added as a requirement to the second proposed provision.

Response: We acknowledge that continuing education is important; however, the proposed rule did not include a continuing education component for this provision. In addition, when "grandfathering" individuals who are serving or who have served in a particular position, minimum qualification requirements are considered so as not to disenfranchise these individuals. Finally, while regulations specify minimum requirements, States, accreditation organizations, and certification boards may establish more stringent requirements.

Comment: The majority of the commenters were opposed to including the third provision (at proposed § 493.1443(b)(3)(iii)). While there was general agreement that training and experience is essential for direction of high complexity testing, a few commenters (including a certification board and a laboratory professional organization) noted that training and experience vary greatly and it would be inappropriate to use training and experience as sole criteria to qualify individuals with a doctoral degree to direct high complexity testing. CLIAC also recommended that this provision be eliminated because it would not provide adequate documentation of the knowledge and skills needed for directorship of high complexity testing, lacks a mechanism to ensure continued competency, and is not commensurate with the high complexity laboratory director responsibilities. Several commenters noted that this proposed qualification pathway might result in an increase in the quantity of individuals qualified to direct high complexity testing at the expense of quality, which is in part attributed to a competent workforce. Although a few commenters agreed with this proposed provision to provide qualification specifications based on training and experience in lieu of board certification, they suggested revisions to make the provision more stringent and felt continuing education should be added to ensure that individuals maintain competency.

Response: We agree with the comments expressing disagreement with the third proposed qualification pathway and are not including it in this final rule. Although high complexity procedures comprise less than 20 percent of the laboratory procedures categorized, these are the most complex tests requiring a broad-based knowledge and the highest skills to fulfill the director responsibilities (formerly at § 493.1445) and ensure quality testing. Therefore, we believe the knowledge and training of a high complexity laboratory director with a doctoral degree can best be demonstrated through board certification. In addition, in the former regulations, we provided phase-in qualification requirements that allow individuals with a doctoral degree to qualify based on training and experience in lieu of board certification until the specified expiration date. As mentioned earlier, on five separate occasions, we extended the phase-in provision to allow time for directors who were not board certified to complete the certification requirements and for HHS to review and approve certification boards. During the 10 years the phase-in provision has been in affect, HHS has approved five additional boards and we believe sufficient time has been provided for individuals to become aware of the board certification requirement. Moreover, recent efforts of certification boards have provided additional routes to certification, allowing more individuals to meet the certification requirements.

In this final rule, board certification will be required for an individual with a doctoral degree seeking to become a high complexity laboratory director on and after February 24, 2003. However, as previously mentioned, we are allowing individuals, who qualified under the phase-in provision and are now serving or have served as directors of laboratories performing high complexity testing, to continue to serve as laboratory directors.

Comment: A few commenters disagreed with requiring a doctoral degree as the minimum education requirement for directors of laboratories performing high complexity testing. They suggested that individuals with an appropriate master's degree and progressive experience in the clinical laboratory (5 to 10 years) should be able to qualify.

Response: We believe the doctoral degree is an appropriate minimum education requirement for directors of laboratories performing high complexity testing. It is commensurate with the responsibilities of a high complexity laboratory director, as specified in the former regulations at § 493.1445, and consistent with the education requirements and responsibilities specified for the other laboratory personnel categories described in subpart M of the regulations.

Comment: Several commenters from local, county, and public health officials in a State disagreed with the doctoral degree requirement and cited the State Code that allows an individual with a baccalaureate or master's degree to direct a public health laboratory. The commenters noted that although the public health laboratories currently have a director who meets the CLIA regulations, many of these directors qualified under the former regulations at § 493.1443(b)(5), the "grandfather" provision that qualifies individuals if on or before February 28, 1992, they were qualified as a director under State law. Many of these directors will retire within 5 years.

Response: For the reasons stated previously, we believe the education requirements for directors of high complexity laboratories are appropriate and should not be lowered. In addition, as noted by the commenters, the February 28, 1992 final rule with comment period included a grandfather provision that qualified individuals that were serving as laboratory directors under State law on or before that date. We also provided a phase-in provision, which allows individuals with doctoral degrees time to obtain board certification by the specified expiration date. The phase-in provision was extended on multiple occasions and during this 10-year period HHS has approved five additional boards. We believe sufficient time has been provided for individuals to become aware of the requirements. In this regard, the State revised its statutes in a February 18, 1998 amendment and now requires any city or county public health laboratory and its personnel to comply with the CLIA regulations.

Comment: One commenter thought the proposed regulation would only allow physicians to serve as directors of laboratories performing high complexity testing.

Response: Although physicians with certain training or experience are qualified to serve as directors of laboratories performing high complexity testing, the notice of proposed rulemaking only included proposed revisions to the qualification requirements by which an individual with a doctoral degree may serve as a director of a laboratory that performs high complexity testing.

Comment: We received numerous comments on the qualification requirements for directors of laboratories performing histocompatibility testing. The majority of this group of commenters, which included the American Society of Histocompatibility and Immunogenetics (ASHI), and the American Board of Histocompatibility and Immunogenetics (ABHI), were in support of requiring specific histocompatibility training and experience for directors of laboratories performing histocompatibility testing. Specifically, they were in favor of requiring individuals with a doctoral degree to either meet the histocompatibility technical supervisor requirements specified in the former regulations at § 493.1449(o) and be certified by ABHI; or be serving or have served as a director of a histocompatibility laboratory and meet the histocompatibility technical supervisor requirements at § 493.1449(o). Opposing comments expressed concern that ASHI's proposal would exclude qualified individuals currently serving as directors of laboratories performing histocompatibility testing and is unnecessarily restrictive in an effort to protect the employment of those individuals who possess ABHI certification.

Response: We do not agree that the qualifications for directors of laboratories performing histocompatibility testing, which is categorized as high complexity testing, need to be revised to include specific histocompatibility training and education requirements. We note the revisions suggested by ASHI would establish higher director qualification requirements for individuals having a doctoral degree than for physicians who direct laboratories performing histocompatibility testing. In addition, these suggested changes to the qualifications for directors of laboratories performing histocompatibility testing would be inconsistent with the former qualifications required to direct laboratories performing other testing specialties. Although the commenters maintained that histocompatibility is highly complex and requires specialized skills for direction, other specialty areas (for example, cytogenetics and pathology) are also complex and require specialized technical expertise. Under the CLIA regulations, the requirements for specialty training and experience are included under the qualification requirements for the technical supervisor, which vary depending on the specialty of service. The December 28, 2001 proposed regulation did not include technical supervisor requirements, and we are not making any changes to the former requirements for technical supervisors.

In addition, several commenters mistakenly thought that having the director meet the histocompatibility technical supervisor requirements would eliminate the need for two individuals. Two individuals are only needed when a particular individual is unable to meet both the laboratory director and histocompatibility technical supervisor qualification requirements.

Finally, while regulations specify the minimum requirements for compliance, accreditation organizations may establish higher requirements for laboratory accreditation.

Subpart P—Quality Assurance for Moderate Complexity (Including the Subcategory), High Complexity Testing, or Any Combination of These Tests

Following publication of the February 28, 1992 final rule with comment period, we received approximately 25 comments in reference to subpart P. The comments were in response to the requirements for enforcement of a written quality assurance policy. The laboratory's policy was required to address the ongoing and overall monitoring and evaluation of the quality of the total testing process and the laboratory's policies and procedures, identifying and correcting problems to ensure the accurate, reliable, and prompt reporting of test results, and to ensure the adequacy and competency of the staff. Over half of the comments received agreed with most of the requirements. Approximately 25 percent of the comments disagreed with some of the requirements or offered specific revised language.

Specific comments and responses regarding subpart P are set forth below.

Comment: One commenter suggested that the CLIA regulation specify who has primary responsibility for QA activities by adding a statement, for example, "The laboratory director is responsible for ensuring that a quality assurance program is established and maintained."

Response: We agree with the commenter. A requirement already appears at §§ 493.1407(e)(5) and 493.1445(e)(5), moderate complexity and high complexity laboratory director responsibilities, respectively, and states "The laboratory director must ensure that the quality control and quality assessment programs are established and maintained to ensure the quality of laboratory services provided and to identify failures in quality as they occur." In addition, we are now providing an introduction at § 493.1200, subpart K that provides an overview of what quality systems include, the importance of ongoing assessment of these systems, and the laboratory's responsibility for establishment and maintenance of appropriate policies and procedures. The term "quality assurance" is synonymous with the term "quality assessment." In addition, we are also making conforming changes ("assessment" replaces "assurance") where appropriate.

Comment: One commenter suggested adding text at § 493.1709, Comparison of test results, that would acknowledge the role the manufacturer may have in verifying the accuracy and reliability of test results at least twice a year. Other commenters suggested language to clarify that tests not included under subpart I, performed by the laboratory at various (multiple) testing sites, must also be evaluated twice a year.

Response: Manufacturers are not precluded from providing services to laboratories to assist in verification of the accuracy and reliability of test procedures. However, it is ultimately the responsibility of the laboratory to develop and implement protocols for the biannual evaluation and comparison of test results obtained using the different methodologies and instruments employed by the laboratory and various testing sites the laboratory may have (for example, central laboratory, satellite laboratories, point-of-care testing). In addition, the laboratory must, twice a year, verify the accuracy of any test it performs that is not listed in subpart I. Therefore, we believe the requirements, formerly at § 493.1709 (now at §§ 493.1281 and 493.1236), clearly state the testing that must be evaluated and the requirements remain unchanged.

Comment: We received a comment agreeing with the requirement at § 493.1707, Proficiency testing assessment. The commenter stated that all proficiency testing (PT) results that were not correct should be investigated. Another commenter stated that all regulated analytes must be graded or the PT program must notify HHS and the

affected laboratory of any challenge, analyte, or test method for which it cannot produce a grade and the reasons why grading is not possible. A few commenters strongly disagreed with the practice of assigning a 100 percent score to PT analytes when the laboratory has not earned the score. The commenters stated that this practice penalizes laboratories that have correctly performed testing on all PT samples and causes laboratories that receive false representation of a grade to believe their test performance is exemplary, when it has not been comparatively evaluated. Additionally, laboratory testing problems that exist are not identified; therefore, no corrective actions are taken.

Response: Individual responses to the above comments are as follows:

• We agree with the commenter and are retaining the requirement formerly at § 493.1707 (now at § 493.1236) for the laboratory to review and evaluate results obtained on proficiency testing. PT result review is part of the QA process.

• We anticipate all regulated analytes (those listed in subpart I) will be graded by approved PT programs. The commenter is correct that, in some cases, not all challenges have been graded. Occasionally, as new methodologies or new instrumentation are developed for tests listed in subpart I, PT material is not always available or compatible with the new methods or instruments. In order to ensure that laboratories using new methodologies or instruments evaluate their performance, we are (now at § 493.1236(c)(2)) requiring laboratories to verify twice annually the accuracy of tests listed in subpart I for which compatible PT material is not available from approved programs.

• We agree with the commenter's recommendation to require PT programs to notify the laboratories and HHS of any challenge, analyte, or test method that cannot produce a grade and the reasons why grading is not possible. As CDC and CMS perform the annual review of PT programs required by the CLIA statute, programs must submit an annual report and, if needed, an interim report that identifies any previously unrecognized sources of variability in kits, instruments, methods, or PT samples that adversely affect the programs' ability to evaluate laboratory performance. This requires PT programs to report problems to CMS. We are also requiring programs to notify laboratories (on the laboratory's PT results report) of exceptions and/or problems that precluded an analyte from being graded.

• We appreciate the commenters' concerns regarding false grading; however, there are reasons why false grading occurs. Almost all areas of testing under PT must be graded on an overall basis, that is, each analyte score under a subspecialty or specialty is averaged on each testing event to provide the laboratory with an overall subspecialty or overall specialty score. In order to determine an overall score, each analyte must receive a numerical score to allow the overall specialty or subspecialty to be graded. The circumstances that a PT program may assign an analyte score that does not reflect the laboratory's true test performance include: (1) Analyte evaluation does not produce at least 90 percent agreement among participant or referee laboratories that is required by regulation (the laboratory receives 100 percent score); (2) laboratory did not participate in the testing event (the laboratory receives zero percent score); or (3) laboratory's PT results were received after the cut-off date for receipt (the laboratory receives a score of zero percent for the late return of results). In response to the commenters' concerns, we are now requiring at § 493.1236(a)(2) that the laboratory verify the accuracy of the analytes for which a grade was assigned that did not reflect its true testing performance.

V. Provisions of the Final Rule

In response to public comments on the final rule with comment period and to provide policy clarifications, we made a number of changes in this final rule, which are summarized as follows:

Subpart A—General Provisions (Definitions)

• We added at § 493.2 the definitions for the terms "calibration," "calibration verification," "FDA-cleared or approved test system," "reportable range," and "test system."

• We revised § 493.3(b)(3) to remove the words "National Institutes on Drug Abuse (NIDA)" and add, in their place, the agency's new name, "Substance Abuse and Mental Health Services Administration (SAMHSA)."

• We revised § 493.20 by removing the reference to "subpart P" and adding the cross reference to "§ 493.1773."

• We revised § 493.25 by removing the reference to "subpart P" and adding the cross reference to "§ 493.1773."

Subpart C—Registration Certificate, Certificate for Provider-performed Microscopy Procedures, and Certificate of Compliance

• We revised § 493.43(a) by removing the words "tests of moderate complexity (including the subcategory) or high complexity, or any combination of these tests," and adding, in their place, the words "nonwaived testing."

• We revised § 493.45 by removing the reference to "subpart P."

• We revised § 493.47 by removing the reference to "subpart P".

• We revised § 493.47(c)(3) by removing the cross reference to "§ 493.1776" and adding, in its place, a cross reference to "§§ 493.1773" and "493.1775."

• We revised § 493.49 by removing the reference to "subpart P."

Subpart F—General Administration

• We added at § 493.643(c)(3)(ix) the word "Clinical before the word "Cytogenetics" to correct a technical error. The word was inadvertently omitted from the final rule with comment period.

Subpart H—Participation In Proficiency Testing for Laboratories Performing Nonwaived Testing

• We revised the heading of subpart H to read "Participation In Proficiency Testing for Laboratories Performing Nonwaived Testing."

• We revised "§ 493.801(a)(2)(ii)" by removing the cross reference to "§ 493.1709" and adding, in its place, "§ 493.1236(c)(1)."

• We revised "§ 493.803(a)" by removing the words "tests of moderate complexity (including the subcategory), and/or high complexity" and adding, in their place, the words "nonwaived testing."

• We revised the heading of § 493.807 to read "Condition: Reinstatement of laboratories performing nonwaived testing."

Subpart I—Proficiency Testing Programs for Nonwaived Testing

• We revised the heading of subpart I to read "Proficiency Testing Programs for Nonwaived Testing."

• We revised this subpart by changing the 90 percent consensus requirement to 80 percent consensus.

• We revised § 493.945 by removing the cross reference to "§ 493.1257" and adding in its place §§ 493.1105(a)(7)(i)(A) and 493.1274(f)(2)."

Revisions to Subpart J and K

As stated in section II of this preamble (Highlights and Organization of Final Rule), we have consolidated and reorganized the requirements formerly in Subpart J—Patient Test Management for Moderate Complexity (Including the Subcategory), High Complexity, or Any Combination of These Tests, Subpart K—Quality Control for Tests of Moderate Complexity (Including the

Subcategory), High Complexity, or Any Combination of These Tests, and Subpart P—Quality Assurance for Moderate Complexity (Including the Subcategory) or High Complexity Testing, or Any Combination of These Tests, into a new Subpart J—Facility Administration for Nonwaived Testing, and Subpart K—Quality Systems for Nonwaived Testing. Below, we have only set forth substantive revisions to subparts J and K.

Subpart J—Facility Administration for Nonwaived Testing

- We revised the heading of subpart J to read Facility Administration for Nonwaived Testing.
- We revised subpart J to consist of §§ 493.1100 through 493.1105.
- We specified now at § 493.1100 that laboratories performing nonwaived testing must meet the applicable standard level requirements in §§ 493.1101 through 493.1105.
- We added the requirement now at § 493.1101(c) that laboratories must comply with Federal, State, and local requirements concerning laboratories and ensure that adequate safety precautions are in place to provide protection from laboratory hazards.
- We revised the language now at § 493.1101(d) (formerly at § 493.1204(b)) requiring safety procedures to be accessible rather than posted.
- We clarified the record keeping requirements now at § 493.1101(e) for laboratories to store and maintain records in a manner that ensures proper preservation. This clarification applies to the requirements now at § 493.1771(c) and (d), and former §§ 493.1105, 493.1107, and 493.1221 introductory text.
- We removed the language formerly at § 493.1103(c) regarding laboratories providing oral instruction to patients as a supplement to written instructions, when appropriate.
- We clarified the requirement now at § 493.1103(d) (formerly at § 493.1271) that the facility must report transfusion reactions to the laboratories and, as appropriate, to Federal and State authorities.
- We revised the language now at § 493.1105(a)(3)(i) (formerly at § 493.1221) to specify that the laboratory must retain records of test system performance specifications that the laboratory establishes or verifies under § 493.1253 for the period of time the laboratory uses the test system but no less than 2 years.
- We revised the language now at § 493.1105(a)(3)(ii) (formerly § 493.1107 introductory text) and § 493.1105(a)(6)(i) (formerly § 493.1109 introductory text) to specify the record retention requirements for immunohematology and blood and blood products to ensure consistency with the FDA requirements.
- We revised the requirement now at § 493.1105(a)(6) (formerly § 493.1109 introductory text) to remove the words "exact duplicate" and specify that the laboratory must be able to retrieve a copy of the original report.

Subpart K—Quality Systems for Nonwaived Testing

- We revised the heading of subpart K to read "Quality Systems for Nonwaived Testing."
- We revised subpart K to consist of §§ 493.1200 through 493.1299.
- We revised the introductory text now at § 493.1200 to provide an overview of quality systems, including the importance of ongoing assessment of these systems, and the laboratory's responsibility for establishment and maintenance of appropriate policies and procedures.
- We removed the lead-in paragraph formerly at § 493.1201(a) explaining the division between general QC and the QC for the specialties and subspecialties.
- We removed the requirement formerly at § 493.1201(a)(1) regarding the clearance process for alternative QC procedures that were never established by the FDA.
- We removed the requirement formerly at § 493.1203 regarding the clearance process for moderate complexity testing.
- We redesignated the requirement formerly at § 493.1205 regarding test methods, equipment, instrumentation, reagents, materials, and supplies. We incorporated the majority of these provisions into § 493.1252. The requirements formerly at § 493.1205(b) are now at § 493.1101(b) and the biologic product dating requirements formerly at § 493.1205(e) are now at § 493.1271(b).
- We removed the requirement formerly at § 493.1213(b)(1) regarding the QC clearance process for the manufacturer's process for verification of performance specifications for new patient testing devices introduced by the laboratory.
- We removed the requirement formerly at § 493.1215(a)(1) regarding the CLIA QC clearance process for maintenance of equipment, instruments, and test systems.
- We removed the requirement formerly at § 493.1217(a) regarding the CLIA QC clearance process for use of the manufacturer's instructions for calibration and calibration verification procedures.
- We removed the requirement formerly at § 493.1217(b)(2)(ii)(B)(1) (calibration verification requirement) regarding use of calibration materials traceable to a reference method or reference material of known value to allow flexibility in choosing material for calibration verification.
- We removed the requirements formerly at § 493.1225, the Condition of Microbiology, as it is a duplicate of the requirements under the Conditions of Bacteriology, Mycobacteriology, Mycology, Parasitology, and Virology, now at §§ 493.1201, 493.1202, 493.1203, 493.1204, and 493.1205, respectively.
- We clarified the requirement now at § 493.1236 (formerly at § 493.1707) that laboratories must verify the accuracy of any analyte, specialty, or subspecialty when it is assigned a proficiency testing score that does not reflect laboratory test performance.
- We added the requirement now at § 493.1236(c)(2) that laboratories verify twice annually the accuracy of tests listed in subpart I for which compatible PT material is not available from approved PT programs.
- We removed the requirement formerly at § 493.1237, the Condition of Diagnostic Immunology, as it is a duplicate of the requirements under the Conditions of Syphilis Serology and General Immunology now at §§ 493.1207 and 493.1208, respectively.
- We revised the language now at § 493.1241(b) (formerly at § 493.1105) to clarify that an oral request for laboratory tests is permitted only if laboratory requests written or electronic authorization for testing within 30 days of the oral request and documents the efforts made to obtain a written or electronic authorization.
- We revised the language now at § 493.1241(c)(3) (formerly at § 493.1105(e) and (f)) to specify that the test requisition must solicit the patient's sex and age or date of birth.
- We added the requirement now at § 493.1241(c)(5) (formerly § 493.1105(f)) that the laboratory must ensure that the test requisition solicits the source of the specimen when appropriate.
- We revised the language now at § 493.1241(c)(7) (formerly at § 493.1105(e)) removing the age or date of birth requirement for Pap smear requisitions because it is now a requirement for all test requisitions at § 493.1241(c)(3).
- We revised the requirement now at § 493.1241(e) (formerly § 493.1701) to provide clarification that if the laboratory transcribes or enters test requisition or authorization information into a record system or laboratory information system, the laboratory must

ensure that the information is transcribed or entered accurately.

• We revised the requirement now at § 493.1242(a)(3) (formerly § 493.1105(f)) clarifying that the specimen source requirement, when appropriate, is part of the laboratory's submission, handling, and referral procedures.

• We removed the requirement formerly at § 493.1243, the Condition of Chemistry, as it is a duplicate requirement under the Conditions of Routine Chemistry at § 493.1210, Urinalysis at § 493.1211, Endocrinology at § 493.1212, and Toxicology at § 493.1213.

• We clarified the requirement now at § 493.1251(b)(13) (formerly at § 493.1211(b)(14)) that the procedure manual must include in the test procedure the laboratory's system for entering results in the patient record and reporting patient results including the protocol for reporting panic or alert values, when appropriate.

• We revised the language now at § 493.1251(d) (formerly at § 493.1211(d)) to provide that procedures and changes in procedures must be approved, signed, and dated by the current laboratory director before use.

• We revised the language now at § 493.1252(b) (formerly §§ 493.1202(c)(1) and 493.1205(c)) to specify that the laboratory's criteria for storage of reagents and specimens and test system operations must be consistent with the manufacturer's instructions, when available.

• We revised the language now at § 493.1253(a) (formerly at § 493.1213(a)) to provide that laboratories are not required to verify or establish performance specifications for any test system used by the laboratory before April 24, 2003.

• We revised the language now at § 493.1253(b)(1) (formerly at § 493.1213(b)(2)) by adding the words "FDA-cleared or approved test system" to the requirements regarding verification of performance specifications.

• We revised the heading now at § 493.1254 (formerly § 493.1215) to read "Maintenance and function checks."

• We revised the language now at § 493.1254(a)(2) (formerly at § 493.1215(b)(2)(ii)) regarding function checks by removing the word "laboratory" and adding, in its place, the word "manufacturers."

• We clarified the requirement now at § 493.1254(a)(2) (formerly at §§ 493.1202(c)(1) and 493.1215(b)(2)(ii)) to require that function checks be within the manufacturer's established limits before conducting patient testing.

• We removed the requirement formerly at § 493.1255, the Condition of Pathology, as it is a duplicate requirement under the Conditions of Histopathology, Oral Pathology and Cytology now at §§ 493.1219, 493.1220, and 493.1221, respectively.

• We revised the language now at § 493.1256 by removing the mandatory concurrent control testing requirements formerly at §§ 493.1237 Diagnostic immunology; 493.1239 Syphilis serology; and 493.1241 General immunology. We now require two levels of QC materials once each day of testing.

• We revised the language now at § 493.1256(d) (formerly at § 493.1218(b)) reducing the requirement by removing the specialty-specific control requirements (formerly at § 493.1253(b)) for automated hematology analyzers. We now require two levels of control materials once each day of testing.

• We revised the language now at § 493.1256(d)(3) (formerly at § 493.1218(b)) to clarify that QC materials are assayed or examined each day of patient testing.

• We revised the requirement now at § 493.1256(d)(3) for hematology by reducing the required frequency for control testing (formerly at § 493.1253(b)) from once each 8 hours of operation to once each day of testing.

• We added the requirement now at § 493.1256(d)(3)(v) that the laboratory must use a control system capable of detecting reaction inhibition when performing molecular amplification procedures in which inhibition is a significant source of false negative results.

• We removed the term "drug abuse screening" at § 493.1256(d)(4)(i), and added the term "all known substances or drug groups" identified and reported by the laboratory to accommodate the wider use of the technology.

• We revised the language now at § 493.1256(d)(5) (formerly at § 493.1218(b)(3)) to clarify that the laboratory must for each electrophoretic procedure, include, concurrent with patient specimens, at least one control material containing the substances being identified or measured.

• We revised the language now at § 493.1256(e)(2) (formerly § 493.1218(f)(2)) to clarify the use of staining materials.

• We clarified the use of calibration materials now at § 493.1256(d)(9) (formerly at § 493.1218(h)(2)) to provide that calibration material used as a control material must be from a different lot number than that used to establish a cut-off value or to calibrate the test system.

• We revised the requirement now at § 493.1261 by incorporating the bacteriology requirements formerly at § 493.1227.

• We revised the language now at § 493.1261 (formerly § 493.1227), reducing the requirements by removing the reference to specific control requirements in the subspecialty of bacteriology.

• We revised the requirement now at § 493.1262 by incorporating the mycobacteriology requirements formerly at § 493.1229.

• We added a requirement in mycobacteriology now at § 493.1262(a) (formerly § 493.1229(a)) for an acid fast control organism that produces a negative reaction.

• We revised the requirement now at § 493.1263 by incorporating the mycology requirements formerly at § 493.1231.

• We revised the requirement now at § 493.1263(a) (formerly at § 493.1218(f)(2)). We reduced the requirement to QC certain staining materials each day of use to only checking each batch, lot number, and shipment of lactophenol cotton blue when prepared or opened for intended reactivity.

• We revised the requirement now at § 493.1263(b) (formerly § 493.1213(d)) by reducing the requirement for daily testing to merely testing each batch of media and each lot number and shipment of antifungal agents before or concurrent with initial use.

• We revised the requirement now at § 493.1264 by incorporating the parasitology requirements formerly at § 493.1233.

• We revised the requirement now at § 493.1265 by incorporating the virology requirements formerly at § 493.1235.

• We removed the requirement formerly at § 493.1265(a)(10) that required the laboratory to use specific techniques such as mixed lymphocyte cultures to determine HLA Class II incompatibilities.

• We removed the requirement formerly at § 493.1265(a)(13) that required histocompatibility testing personnel to evaluate unknowns on a monthly basis because it is duplicative of the laboratory director responsibilities at § 493.1445(e).

• We revised the requirement now at § 493.1267 by incqrporating the routine chemistry requirements formerly at § 493.1245.

• We revised the language now at § 493.1267(b) (formerly at §§ 493.1245(c) and (d)) by removing reference to the words "calibration and calibration material" from the blood gas requirements. However, we allow

calibration material as a control material provided it is from a different lot number than that used to calibrate the test system or establish a cut-off.

• We revised the requirements now at § 493.1269 by incorporating the hematology requirements formerly at § 493.1253.

• We revised the requirement now at § 493.1271 by incorporating the immunohematology requirements formerly at §§ 493.1239(e), 493.1241(d), 493.1269, 493.1273, 493.1275, 493.1283, and 493.1285.

• We revised the requirement now at §§ 493.1271(a)(1) and (b) (formerly §§ 493.1269(a) and 493.1273) to cite the specific 21 CFR requirements that must be met under the CLIA regulations.

• We revised the requirement now at § 493.1273 by incorporating the histopathology requirements formerly at § 493.1259.

• We added a requirement at § 493.1273(a) (formerly at § 493.1259) that the laboratory must check immunohistochemical stains for positive and negative reactivity each time of use in order to be consistent with the general QC requirements at § 493.1256(e)(3).

• We revised the language now at § 493.1273(c) (formerly at § 493.1259(b)) to add that an individual who has successfully completed a training program in neuromuscular pathology approved by HHS may examine and provide reports for neuromuscular pathology.

• We revised the requirement now at § 493.1274 by incorporating the cytology requirements formerly at § 493.1257.

• We revised the language now at § 493.1274(d)(2)(iii) (formerly at § 493.1257(b)(2)) by removing the reference to gynecologic slides from the 200-workload limit that applies only to nongynecologic slides.

• We revised the language now at § 493.1274(e)(1) (formerly at 493.1257(c)(1)) by removing the requirement that a technical supervisor review cases categorized as reactive and reparative changes.

• We revised the requirement now at § 493.1276 (formerly at § 493.1267) by incorporating the clinical cytogenetics requirements.

• We clarified the requirement at § 493.1276(a) (formerly §§ 493.1107 and 493.1267(c)) by specifying that the laboratory must have policies and procedures for ensuring accurate and reliable patient specimen identification for karyotypes.

• We revised the requirement now at § 493.1276(b)(2) (formerly at § 493.1267(b)) to specify that the laboratory must have records that document that the resolution used was appropriate for the type of tissue or specimen, and the type of study required based on the clinical information provided to the laboratory.

• We revised the language now at § 493.1276(c) (formerly at § 493.1267(a)) by removing the requirements pertaining to the performance of X and Y chromatin counts for sex determination and requiring full chromosome analysis for sex determination.

• We revised the language now at § 493.1276(d) (formerly at § 493.1267(d)) by removing the reference to the words "appropriate nomenclature" and specifying that the laboratory report must use the International System of Cytogenetic Nomenclature.

• We revised the requirement now at § 493.1278 by incorporating the histocompatibilty requirements formerly at § 493.1265.

• We added the requirement now at § 493.1278(a)(3) that reagent specificity is required when reagent typing sera inventory is prepared in-house.

• We added requirements now at § 493.1278(b)(1) that the laboratory must use a technique that is established to optimally define, as applicable, HLA Class I and II specificity.

• We added requirements at § 493.1278(d)(1) and (d)(2) to specify that the laboratory must use a technique that detects HLA specific antibody with a specificity equivalent or superior to that of the basic complement-dependent microlymphocytotoxicity assay, and use a method that distinguishes antibodies to HLA class II antigens from antibodies to Class I antigens.

• We revised the language now at § 493.1278(d)(4) and (d)(5) (formerly at 493.1265(a)(2)(ii) and (a)(8)(i)) to require laboratories to make a reasonable attempt to have available monthly serum specimens for periodic antibody screening and crossmatch, and have available and follow a written policy consistent with clinical transplant protocols for the frequency of performing antibody screening.

• We added the requirement now at § 493.1278(d)(7) to specify that for antibody screening, the laboratory must, as applicable, have available, and follow criteria and procedures for antibody identification to the level appropriate to support clinical transplant protocol.

• We revised the language now at § 493.1278(e)(1) (formerly § 493.1265(a)(1)(ii) to clarify that the techniques for crossmatching must be documented to have increased sensitivity in comparison to the basic complement-dependent microlymphocytoxicity assay.

• We revised the requirement now at § 493.1278(f)(1) (formerly at § 493.1265(b) and (c)) that requires specific testing protocols to be less prescriptive and allow laboratories to define testing policies and protocols for each type of cell, tissue, or organ to be transfused or transplanted.

• We clarified the requirement now at § 493.1278(f)(3) (formerly at § 493.1265(b)(3)) that the laboratory must have available, and follow, policies that address when HLA testing and final crossmatches are required for presensitized non-renal transplant recipients.

• We clarified the requirements now at § 493.1291(a) (formerly at § 493.1109(a)) to provide that the laboratory must have adequate systems in place to ensure test results and other patient specific data are accurately and reliably transmitted from the point of data entry (whether interfaced or entered manually) to final report destination, in a timely manner.

• We clarified the requirement at § 493.1291(c)(3) (formerly at §§ 493.1109 and 493.1109(a)) to specify that the date of the test report must be identified on the report.

• We clarified the requirement now at § 493.1291(c)(5) (formerly at § 493.1109) to indicate that the test report must include the specimen source, if applicable.

• We added language relevant to interpretation to the test report requirements now at § 493.1291(c)(6) (formerly § 493.1109(b)) for those test results that require supplemental information.

• We revised the language now at § 493.1291(j) (formerly § 493.1109(h)) by removing the words "exact duplicate" and clarified the language by specifying that all test reports or records of the information on the test reports must be maintained by the laboratory in a manner that permits ready identification and timely accessibility.

Subpart M—Personnel for Nonwaived Testing

• We revised the heading of subpart M to read "Personnel for Nonwaived Testing" to conform with the names of the new subparts J and K.

• We revised § 493.1359(a)(3) by removing the reference to "subpart P."

• We revised § 493.1407(e)(5) by removing the word "assurance" and, adding in its place, the word "assessment."

• We revised § 493.1443(b)(3) to allow individuals with a doctoral degree who are serving or have served as directors of laboratories performing high complexity testing before February 24,

2003, under the phase-in provision, to continue to qualify as directors of laboratories performing high complexity testing.

- We revised the requirement at § 493.1443(b)(3)(i) by removing the list of HHS-approved boards. We are placing the list in Appendix C of the State Operation Manual (CMS Pub. 7) to allow more timely updates.
- We revised § 493.1445(e)(5) to refer to the quality assessment program.
- We revised § 493.1451(c)(4) by removing the reference to § 493.1257(c) and adding, in its place § 493.1274(d) and (e).
- We revised § 493.1471(b)(2) and § 493.1485(a) by removing "§ 493.1257(d)," and adding, in its place, "§ 493.1274(c)."

Removal of Subpart P

As stated in section II of this preamble (Highlights and Organization of Final Rule), we incorporated the former "Subpart P—Quality Assurance; Moderate Complexity (Including the Subcategory) or High Complexity Testing, or Any Combination of These Tests" under the appropriate sections now located in Subpart K, General Laboratory Systems, Preanalytic Systems, Analytic Systems, and Postanalytic Systems.

Subpart R—Enforcement Procedures

- We revised § 493.1844 by removing the reference to "subpart P."

Subpart T—Consultations

- We revised § 493.2001(e)(1) to read "Criteria for categorizing nonwaived testing."
- We revised § 493.2001(e)(4) to read "Facility administration and quality systems standards;"

VI. Collection of Information Requirements

Under the Paperwork Reduction Act (PRA) of 1995, we are required to provide 60-day notice in the **Federal Register** and solicit public comment before a collection of information is submitted to the Office of Management and Budget (OMB) for review and approval. In order to fairly evaluate whether an information collection should be approved by OMB, section 3506(c)(2)(A) of the PRA requires that we solicit comment on the following issues:

- The need for the information collection and its usefulness in carrying out the proper functions of our agency.
- The accuracy of our estimate of the information collection burden.
- The quality, utility, and clarity of the information to be collected.
- Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

We are soliciting public comment on each of these issues for the sections that contain new information collection requirements. Except as indicated below, all of the information collection burden in this final rule has been approved by the OMB under approval number 0938–0612 through June 2004.

Because the sections in this final rule are a reorganization of former sections, the burden approval numbers cited state the best approximation we could make for which combinations of former burden numbers match with the sections as specified in this final rule. Our approximations are as follows:

Section 493.1105 Standard: Retention Requirements

Under paragraph (a)(6), Test reports, the laboratory must retain or be able to retrieve a copy of the original report (including final, preliminary, and corrected reports) at least 2 years after the date of reporting.

The change in this paragraph is that now the laboratory has the option of either retaining a copy of the report or having the capability of generating a copy of the report. This revision does not change the burden captured under OMB approval number 0938–0612.

Section 493.1241 Standard: Test Request

At paragraph (c), the laboratory must ensure that the written or electronic test requisition solicits the following:

- The sex and age or date of birth of the patient.
- The source of the specimen, as appropriate.
- The date and, if appropriate, time of specimen collection.
- Any additional information relevant and necessary to a specific test to ensure accurate and timely testing, and reporting of results, including interpretation, if applicable.

These new requirements mandate that laboratories solicit the sex and age or date of birth of the patient and, if appropriate, the source of the specimen and the time of specimen collection on the test request. In addition, the requirements clarify that the relevant information needed to ensure accurate and timely testing and reporting of results includes relevant information for interpretation of results.

We believe the burden of soliciting this information is minimal, as it is routinely captured by laboratories as part of good business practices. Therefore, while this information collection requirement is subject to the PRA, we believe the burden is exempt as defined in 5 CFR 1320.3(b)(2) because the time, effort, and financial resources necessary to comply with the requirement are incurred by persons in the normal course of their activities.

Section 493.1242 Standard: Specimen Submission, Handling, and Referral

At paragraph (a), we are clarifying the requirement, formerly at § 493.1103(a), that the laboratory's written policies and procedures for specimen labeling specify that the patient's name or unique patient identifier, and when appropriate, specimen source be on the specimen label. This revision does not add additional reporting burden for this requirement under OMB approval number 0938–0612.

Section 493.1251 Standard: Procedure Manual

Paragraph (b)(13) requires that the procedure manual include the laboratory's system for entering results in the patient record and reporting patient results including, when appropriate, the protocol for reporting "panic or alert values."

This requirement, formerly at § 493.1211(b)(14), now includes the provision for a written procedure describing the laboratory's processes for entering results into patient records. This revision does not change the paperwork burden captured for this requirement under OMB approval number 0938–0612.

Section 493.1253 Standard: Establishment and Verification of Performance Specifications

Each laboratory that introduces an unmodified, FDA-cleared or approved test system must, before reporting patient test results, demonstrate that it can obtain performance specifications comparable to those established by the manufacturer for the specified performance characteristics.

In addition, each laboratory that uses a test system in which performance specifications are not provided by the manufacturer, modifies an FDA-cleared or approved test system or introduces a test system not subject to FDA clearance or approval (includes standardized methods and methods developed in-house) must, before reporting patient test results, establish for each test system the performance specifications for specified performance characteristics.

Based upon the performance specifications verified or established, the laboratory must determine calibration procedures and control

procedures. Also, the laboratory must have documentation of the laboratory's performance of all activities specified in this section.

This is a 2-part requirement and will affect laboratories differently depending on whether they are verifying or establishing performance specifications for a test method. In addition, it only applies to new laboratories and new tests instituted in existing laboratories on and after April 24, 2003. Therefore, the number of laboratories needing to meet this requirement will be minimal. While this is a new requirement for some laboratories performing testing using unmodified, moderate complexity test systems approved or cleared by the FDA, it only applies to tests newly introduced into existing laboratories and to all tests in laboratories first established on or after April 24, 2003. In addition, it is common practice for test system manufacturers to perform or provide extensive assistance with this quality control activity when a laboratory buys or leases an instrument or other new test system. Thus, in practice, most of the burden for recording and documenting the quality control requirements are already born by the test system manufacturers. We do not believe that this burden will be shifted to the laboratory. Also, accrediting organizations and States with licensure programs, after which the CLIA requirements were modeled, have traditionally required laboratories to perform these activities. Therefore, while this information collection requirement is subject to the PRA, the burden is exempt as defined in 5 CFR 1320.3(b)(2) because the time, effort, and financial resources necessary to comply with the requirement are incurred by persons in the normal course of their activities.

Section 493.1256 Control Procedures

These requirements were previously at § 493.1218 and approved under OMB approval number 0938–0612. The burden associated with these requirements involves the documentation of the control results and corrective action taken when control results do not meet the laboratory's acceptability criteria. Therefore, we are revising the paperwork requirements to some extent.

Under paragraph (d), the laboratory must do the following, as applicable:

- In paragraphs (d)(3)(i) and (ii), for each quantitative and qualitative procedure, include two control materials of different concentrations and a positive and negative control material, respectively.

There may be increased reporting for unmodified moderate complexity tests (formerly at § 493.1202(c)) whose manufacturer's instructions did not include these requirements. The burden for the remainder of the tests is captured for this requirement under OMB approval number 0938–0612.

- In paragraph (d)(3)(iii), for each semiquantitative procedure, include a negative control material and, as applicable, a control material with graded or titered reactivity.

There will be an increase in paperwork burden for unmodified moderate complexity tests (formerly at § 493.1202(c)) whose manufacturer's instructions did not include this requirement and for tests not subject to the specialty requirements formerly at §§ 493.1239(b) or 493.1241(a). The burden for the remainder of these tests for this requirement is captured under OMB approval number 0938–0612.

- In paragraph (d)(3)(v), for each molecular amplification procedure, include two control materials and, if reaction inhibition is a significant source of false negative results, a control material capable of detecting inhibition.

There will be increased burden for recording the additional control results, when needed. The burden of recording the former control results is captured for this requirement under OMB approval number 0938–0612.

- In paragraph (d)(6), when a complete change of reagents is introduced, major preventive maintenance is performed, or any critical part that may influence test performance is replaced, the laboratory must, before resuming patient testing perform control material testing as specified under paragraph (d) of this section.

There will be an increase in burden for tests whose manufacturer's instructions did not include the requirements for control material testing specified under paragraph (d) of this section. The burden for the remainder of the tests is captured for this requirement under OMB approval number 0938–0612.

- Under paragraph (d)(10)(iii), when control materials providing quantitative results are used, statistical parameters for unassayed materials must be established over time by the laboratory through concurrent testing of control materials having previously determined statistical parameters.

There will be an increase in reporting for moderate complexity tests formerly subject to the phase-in at § 493.1202(c). The burden for the remainder of these tests is captured under OMB approval number 0938–0612.

In paragraph (e)(3), the laboratory must check fluorescent and immunohistochemical stains for positive and negative reactivity each time of use. Therefore, reporting will increase from one to two control results in the subspecialty of histopathology for tests performed using immunohistochemical stains. For mycobacteriology, recording control results will increase from each week of use to each time of use for fluorochrome acid-fast stains. The burden of reporting one control result is captured for these requirements under OMB approval number 0938–0612.

Under the former OMB approval, we allotted 5 minutes per day for the reporting requirements in the former § 493.1218. This time allotment was based on the assumption that most of the previously unregulated laboratories were performing moderate complexity testing and ran a total of four QC samples daily. This time allotted included reporting for the burden associated with all the specialties and subspecialties; therefore, we believe the burden was slightly underestimated.

We are allotting 5 minutes per day to perform this documentation for the specialties and subspecialties (except bacteriology, mycobacteriology, hematology, and histopathology) and are adjusting this burden to reflect the number of laboratories currently affected by this rule. We are addressing the specialties and subspecialties of bacteriology, mycobacteriology, hematology, and histopathology separately. We are assuming laboratories are documenting control activities on an average of 6 days per week. Therefore, the burden for the specialties and subspecialties (except bacteriology, mycobacteriology, hematology and histopathology) can be calculated as 5 min./day × 24 days/month = 120 min./month = 2 hrs./month 2 hrs./month × 12 months/yr. = 24 hours/laboratory/yr.

The total estimated burden for this requirement (now at § 493.1256) is 27,685 laboratories (total number of laboratories minus the number of waived laboratories, provider performed microscopy (PPM) laboratories, and previously regulated laboratories) × 24 hrs./yr. = 664,440 hrs./yr.

Section 493.1261 Standard: Bacteriology

For the subspecialty of bacteriology, in this final rule at paragraph (a), the laboratory must check the following for positive and negative reactivity using control organisms:

- Each day of use for beta-lactamase methods other than Cefinase™.
- Each week of use for Gram stains.

• When each batch (prepared in-house), lot number (commercially prepared), and shipment of antisera is prepared or opened and once every 6 months thereafter.

In paragraph (b), for antimicrobial susceptibility tests, the laboratory must check each batch of media, lot number, and shipment of antimicrobial agent(s) before, or concurrent with, initial use, using approved reference organisms and, each day tests are performed, the appropriate control organisms must be used to check the procedure.

Former Burden

In the former regulation, laboratories had to check catalase, coagulase, beta-lactamase, and oxidase reagents using a positive and negative control material each day of use. In addition, the laboratories had to check bacitracin, optochin, ONPG, XV, X, and V disks or strips using a positive and negative control material each week of use. We estimate that most bacteriology laboratories operate an average of 6 days per week; therefore, we allowed an average of 2.5 minutes per day to document the results of control testing for the reagents listed above. This resulted in the former burden, 2.5 min./day × 24 days/month = 60 min./month = 1 hr./month 1 hr./month × 12 months/year = 12 hrs./laboratory/yr.

Under the former regulation, the estimated burden for documenting control testing for the reagents above was 27,443 bacteriology laboratories × 12 hrs./yr. = 329,316 hrs./yr.

Change in Burden

In this final rule, we are allowing laboratories to check each batch, lot number and shipment of reagents (catalase, coagulase, and oxidase), disks (bacitracin, optochin, ONPG, X, V, and XV), stains, antisera, and identification systems for positive and negative reactivity, and graded reactivity if applicable. For purposes of calculating the burden, we are assuming that laboratories receive a new shipment of reagents on the average of once per month. Since the burden with documenting control testing for susceptibility tests remain the same, we are considering the burden for documenting control testing for this subspecialty to be reduced by 2.5 min./day × 23 days/month = 57.5 min./month = 0.96 hrs./month 0.96 hrs./month × 12 months/yr. = 11.5 hours/ laboratory/yr.

The total estimated reduction in burden for this requirement is 27,443 bacteriology laboratories × 11.5 hrs./yr. = 315,595 hrs./yr.

Burden in This Final Rule

The estimated burden for documenting control testing for bacteriology reagents under this final rule is 329,316 hrs./yr.—315,595 hrs./yr. = 13,721 hrs./yr.

Section 493.1262 Standard: Mycobacteriology

For the subspecialty of mycobacteriology, in this final rule at paragraph (a), each day of use, the laboratory must check all reagents or test procedures used for mycobacteria identification with at least one acid-fast organism that produces a positive reaction and with an acid-fast organism that produces a negative reaction.

Former Burden

In the former regulation, we included the requirements to document the results of control testing with the general QC procedures. However, since these documentation requirements are now under the condition, Analytic systems at § 493.1250, we have removed these documentation requirements from the general QC procedures and placed them in the subspecialty of mycobacteriology at § 493.1262.

In the former regulation, the laboratory was required, each day of use, to check all reagents or test procedures for mycobacteria identification with an acid-fast positive control organism (except the iron uptake test, which also requires a negative control). Assuming that only 35.4 percent (see section VII of this final rule, Regulatory Impact Analysis) of mycobacteriology laboratories perform identification procedures, and test an average of twice weekly, the former burden for documenting the positive control reaction for mycobacteria identification reagents and tests can be estimated as 2 min/day × 8 days/month = 16 min./month = 0.27 hrs./month × 12 months/yr. = 3.24 hrs./laboratory/yr.

The total estimated burden for documenting the positive control result is 1,127 mycobacteriology laboratories × 3.24 hrs./yr. = 3,651 hrs./yr.

As mentioned previously, the former regulation also required that the laboratory check positive and negative control materials for fluorochrome acid-fast stains each week of use and check a positive control material for other acid-fast stains each week of use. The former burden for all mycobacteriology laboratories to document these control results is estimated as 1 min/day × 4 days/month = 4 min./month × 12 months/yr. = 48 min./laboratory/yr. = 0.8 hrs./laboratory/yr.

The total estimated burden for documenting control testing for acid-fast and fluorochrome acid-fast stains is 3,185 mycobacteriology laboratories × 0.8 hrs./yr. = 2,548 hrs./yr.

The former total burden for documenting control testing for mycobacteria identification reagents and tests, and acid-fast, and fluorochrome acid-fast stains was 3,651 hrs./year + 2,548 hrs./year = 6,199 hrs/yr.

Change in Burden

Since documentation of the positive control reaction was previously required for mycobacteria identification reagents and tests and the number of laboratories performing mycobacteriology remains constant, we also estimated the increase in burden for documenting the negative control material for identification reagents and tests to be one-half the previous burden, which is ½ of 3,651 hrs./yr. (from above) = 1,826 hrs./yr.

The change in burden for increasing the frequency of acid-fast and fluorochrome acid-fast stains to daily and adding a negative acid-fast stain result is calculated as 1.5 min/day × 26 days/month = 39 min./month = 0.65 hrs./month × 12 months/yr. = 7.8 hrs./laboratory/yr.

The total increase in burden for these documentation requirements for acid-fast and fluorochrome acid-fast stains is 3,185 laboratories × 7.8 hrs./yr. = 24,843 hrs./yr.

The total increase in burden for documenting control testing for mycobacteria identification reagents and tests, acid-fast, and fluorochrome acid-fast stains is 1,826 hrs./yr. + 24,843 hrs./yr. = 26,669 hrs./yr.

Burden in This Final Rule

The total estimated burden under this final rule for documenting control testing for mycobacteria identification reagents and tests, acid-fast, and fluorochrome acid-fast stains is 6,199 hrs./yr. + 26,669 hrs./yr. = 32,868 hrs./yr.

Section 493.1263 Standard: Mycology

In the former regulation for mycology, each week of use, the laboratory was required to check all procedures for mycological identification (including germ tube test) using an organism that produces a positive reaction. Under this final rule, the requirement is eliminated. This deletion results in the QC requirements for the germ tube test to default to the general QC requirements at § 493.1256(e)(1). The general requirements specify QC testing with each new batch, lot number or shipment of reagents. Because this is a minimal decrease (we estimate the change in frequency from weekly to monthly) in burden for documenting the result of a

single control, we are unable to accurately estimate the change.

Similarly, in paragraph (a), the laboratory must check each batch, lot number and shipment of lactophenol cotton blue for intended reactivity with control organism(s). Previously, control testing of this stain was required daily. As described above, since the decrease in this burden for documenting a single control result is minor, we are unable to accurately estimate the change.

Section 493.1269 Standard: Hematology

In the former regulations for the specialty of hematology, under paragraph (b), nonmanual hematology testing systems, excluding coagulation, the laboratory was required to include two levels of control materials each 8 hours of operation. In this final rule, this requirement has been revised from every 8 hours to each day of testing under § 493.1256 and results in decreased reporting.

The revisions to this requirement result in a decrease in documenting control results since the requirement has been revised from every 8 hours to each day of testing.

Previously, we had included these reporting requirements with the general QC procedures. However, since these requirements are now under the condition, Analytic systems, at § 493.1250, we have removed these hematology requirements from the general QC procedures and placed them under Control procedures at § 493.1256.

Former Burden: Hospital and Independent Laboratories

The total number of laboratories performing hematology testing is 32,753. Of this total, 5,329 are hospitals, 3,867 are independent laboratories, 17,844 are physician's office laboratories (POLs), and 5,713 fall into a miscellaneous category of others. We assume that this burden will affect most hospitals and independent laboratories since these laboratories typically operate 24 hours per day for 30 days a month. Therefore, the burden for these laboratories is 5 min./day × 30 days/month = 150 min./month = 2.5 hrs./month 2.5 hrs./month × 12 = 30 hrs./laboratory/yr. 9,196 hospital and independent laboratories × 30 hrs./yr. = 275,880 hrs./yr.

Change in Burden: Hospital and Independent Laboratories

Since this final rule will only require controls once a day, we are allowing a ⅔ decrease in burden for these laboratories. Therefore, the decrease in burden will be ⅔ of 275,880 hrs./yr. = 183,920 hrs/yr.

In addition, the new burden for hospital and independent laboratories is 275,880 hrs/yr.—183,920 hrs./yr. = 91,960 hrs./yr.

Former Burden: POLs

For POLs that only perform hematology for 8 hours a day, there is no reduction in burden. However, many POLs have operating hours that range from 9 to 10 hours a day and these laboratories are currently required to run control materials twice a day. In estimating the burden for this category of laboratories, we are including the POLs and the "other" category for a total of 23,557 laboratories. In addition, we estimate that 50 percent (11,779) of these laboratories operate on a 9 or 10-hour day for 20 days a month and must run control materials twice a day. Therefore, the burden is 3.5 min./day × 20 days/month = 70 min./month = 1.2 hrs./month × 12 months/yr. = 14 hours/laboratory/yr. × 11,779 laboratories (operating on a 9 or 10 hour day) = 164,906 hrs./yr.

The remaining 50 percent of the POLs that only operate on an 8-hour day have no change in burden that is, 1.75 min./day × 20 days/month = 35 min./month = 0.6 hrs./month 0.6 hrs./month × 12 months/yr. = 7 hours/laboratory/yr. 11,779 laboratories (operating on an 8-hour day) × 7 hours/yr. = 82,453 hrs./yr.

Change in Burden: POLs

In this final rule, all laboratories will only be required to run control materials once each day. Therefore, the POLs operating on a 9 or 10-hour schedule will have their burden decreased by 50 percent. The estimated decrease in burden for this group of laboratories under this requirement is 11,779 POLs (operating on 9 or 10 hour day) × 7 hrs./yr. = 82,453 hrs./yr.

Former Burden: Total

The total estimated burden was 275,880 hrs./yr. (hospital and independent laboratories) + 164,906 hrs./yr. (POLs operating on a 9 or 10 hour day) + 82,453 hrs./yr. (POLs operating on an 8 hour day) = 523,239 hrs./yr.

Change in Burden: Total

The total estimated decrease in burden for this requirement under this final rule is 183,920 hrs./yr. (hospital and independent laboratories) + 82,453 hrs./yr. (POLs) = 266,373 hrs./yr.

Burden in This Final Rule

The total estimated burden under this final rule is 91,960 hrs./yr. (hospital and independent laboratories) + 164,906 hrs./yr. (total POLs, those operating on a 9 or 10 hour day and those operating on an 8 hour day) = 256,866 hrs./yr.

Section 493.1273 Standard: Histopathology

The revisions to this requirement result in an increase in reporting from one control slide to two control slides for each group of slides for immunohistochemical stains. Previously, we included these reporting requirements with the general QC procedures. The requirements are now under the condition Analytic systems at § 493.1250 as requirements for Histopathology at § 493.1273. Although this is an increase in reporting from one control slide to two, we cannot estimate the laboratory burden because we do not know the number of laboratories that perform immunohistochemical stains or how often the staining is performed. Additionally, many of the laboratories performing immunohistochemical stains were already testing both a positive and negative control material, and some immunohistochemical stains can be checked for a negative reaction on the same slide that contains positive reactive cells. We expect that this revision will only affect a limited number of laboratories, and the increase in burden will be small.

Section 493.1278 Standard: Histocompatibility

In the former § 493.1265(a)(13), the laboratory was required to have, at least once each month, each individual performing tests evaluate a previously tested specimen as an unknown to verify his or her ability to reproduce test results. Records of the results for each individual had to be maintained. These requirements are deleted in this final rule.

Former Burden

There is a reduction in burden for this specialty since, in this final rule, we are no longer requiring the laboratories to, at least once each month, have each individual performing tests evaluate a previously tested specimen as an unknown to verify his or her ability to reproduce test results. Therefore, we estimate that the former reporting burden for this activity to be 3 min./day for each individual, or 3 min./day × 1 month = 3 min./month × 12 months/yr. = 36 min/yr. = 0.6 hrs/individual/yr.

We estimate an average histocompatibility laboratory to employ three individuals. Therefore, the former

burden is three individuals × 0.6 hrs./yr. = 1.8 hrs/laboratory/yr.

There are 264 laboratories performing histocompatibility testing; therefore, the estimated burden for this requirement in this final rule is 264 histocompatibility laboratories × 1.8 hrs./yr. = 475 hrs./yr.

Change in Burden

Since this burden is not required in this final rule, we estimate the decrease in burden to be 475 hrs./yr.

Section 493.1291 Test Report

The following information collection requirements under paragraph (c) are new: The test report must indicate (1) either the patient's name and identification number or a unique patient identifier and identification number; (2) the test report date; and (3) the specimen source, when appropriate.

While this information collection requirement is subject to the PRA, we believe the burden with it is exempt as defined in 5 CFR 1320.3(b)(2) because the time, effort, and financial resources necessary to comply with the requirement are incurred by persons in the normal course of their activities.

If you comment on these information collection and record keeping requirements, please mail copies directly to the following:

Centers for Medicare & Medicaid Services,

Office of Strategic Operations and Regulatory Affairs, ORDI, DRD–B, Attn: Julie Brown, Room N2–14–26, 7500 Security Boulevard, Baltimore, MD 21244–1850.

Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, Attn: Brenda Aguilar, CMS Desk Officer.

VII. Regulatory Impact Analysis

Overall Impact

We have examined the impacts of this rule as required by Executive Order 12866 (September 1993, Regulatory Planning and Review), the Regulatory Flexibility Act (RFA) (September 16, 1980, Pub. L. 96–354), section 1102(b) of the Social Security Act, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), and Executive Order 13132.

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more in any 1 year). This regulation has no budget implications that impact Medicare benefit payments. We have, however, performed a complete regulatory impact analysis, although the specified thresholds to require a full analysis may not have been met.

The RFA requires agencies to analyze options for regulatory relief of small businesses. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and government agencies. Most hospitals and most other providers and suppliers are small entities, either by nonprofit status or by having revenues of $11.5 million or less in any 1 year. For purposes of the RFA, all laboratories are considered to be small entities. Individuals and States are not included in the definition of a small entity.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 100 beds.

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule that may result in an expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $110 million. This final rule does not mandate any requirements for State, local, or tribal governments, or by the private sector. Therefore, we certify that this rule would not have a significant economic impact on a substantial number of small entities or a significant impact on the operations of a substantial number of small rural hospitals.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State and Local governments, preempts State law, or otherwise has Federalism implications. We have determined that this final rule does not significantly affect States' rights, roles, and responsibilities.

A. Executive Summary

This final rule includes changes that will impact many laboratories and indirectly impact manufacturers of test systems and controls. Most laboratories that perform nonwaived testing will be affected. This includes laboratories performing unmodified moderate complexity testing approved or cleared by the FDA, and laboratories testing in microbiology, syphilis serology, immunology, and hematology. Although we had insufficient data and information to calculate some of the costs and savings that may result from these changes, we estimate the overall impact will result in a savings of approximately $23 to $38 million the first year and $101 to $166 million over the next 5 years (Tables 1 and 2). The term "savings" as used in this RIA is defined as reduced compliance costs for laboratories subject to the CLIA regulations.

The most significant change in this final rule is related to the delayed effective dates (phase-in period) that allowed laboratories performing unmodified moderate complexity testing approved or cleared by the FDA to meet certain general QC requirements. Laboratories performing this type of testing did not have to verify methods before their introduction for patient testing or to periodically verify calibration. As shown in Table 1, we expect this change to immediately impact 29,601 Certificate of Compliance and COLA-accredited laboratories. We estimate the cost of completing the QC phase-in period to be between $28.3 million and $37.1 million the first year and between $124.1 and $162.5 million over the next 5 years.

Additional changes in this final rule will impact laboratories performing various specialties and subspecialties. The impact of these changes will vary depending on the volume and frequency of testing being done in each specialty or subspecialty.

Overall, the changes in microbiology will result in significant savings of approximately $55.9 million the first year and $245.2 million over the next 5 years. The changes in bacteriology and mycology are based on data demonstrating that for several reagents, QC is not required as frequently as required under the previous regulation. We assume the changes in bacteriology will affect 27,443 laboratories and result in immediate savings of $62.4 million and aggregate savings of $273.7 million over the next 5 years. In addition, we expect changes in mycology to affect 9,059 laboratories with immediate annual savings of $1.4 million and approximately $6.1 million savings over the next 5 years. For mycobacteriology, we are requiring more frequent QC testing and expecting this change to affect 3,185 laboratories with an estimated increase in costs of $7.9

million the first year and $34.6 million over the next 5 years.

Laboratories performing testing in syphilis serology (7,634), immunology (20,665), and hematology (32,753) can perform less frequent QC testing. We are unable to estimate the savings because we do not know how often the testing will be performed.

Finally, we are including a number of other changes that we are not considering burdensome. In many cases, we expect these other changes to have positive impacts; however, we are not able to quantify the consequences. Among these changes is the completion of the phase-in period for the laboratory director qualification requirement for high complexity testing that allowed an individual with a doctoral degree and the specified training and experience to qualify as a director of a laboratory performing high complexity testing in lieu of board certification up until December 31, 2002. To ensure a smooth transition to the new provisions for directors of high complexity testing who are not board certified (but who have doctoral degrees), we will not be holding facilities out of compliance with the provisions of the rule concerning directors who are not board certified until the effective date of this new rule, to the extent the facilities are otherwise in compliance with the requirements for laboratory directors. This means that on and after February 24, 2003, individuals with a doctoral degree who have not been grandfathered in as directors will need to be board certified to serve as directors of laboratories performing high complexity testing. The grandfather provision allows those individuals with a doctoral degree who have served or are currently serving as high complexity laboratory directors and have at least 2 years of training or experience, or both; and 2 years of experience directing or supervising high complexity testing as of December 31, 2002 to continue in this capacity without obtaining board certification. In the absence of this provision, the experienced individuals who have a doctoral degree without board certification and have served or are serving as directors of laboratories performing high complexity testing would be ineligible to continue serving as a director, resulting in costly and disruptive burdens associated with currently employed individuals obtaining board certification and laboratories replacing currently serving directors.

In summary, in the first year, we estimate the sum of all costs to be $36.2 to $45.0 million with savings of $63.8 million and a net saving of $18.8 to $27.6 million the first year. Over the next 5 years, we estimate the sum of all costs to be $158.7 to $197.3 million, a total saving of $279.8 million, and a net saving of $82.5 to $121.0 million.

In addition to overall monetary savings, this analysis acknowledges the potential for improvements in test accuracy and lower error rates in patient testing. We expect there to be improvements in the accuracy of patient testing and in accuracy of moderate complexity testing resulting from performance of method verification and calibration verification, and additional QC testing in mycobacteriology. We also expect more timely identification of potential laboratory errors resulting from the grading of more proficiency testing (PT) challenges.

TABLE 1.—IMPACTS DUE TO REGULATORY CHANGES: FIRST YEAR AND 5 YEAR TOTALS

	First year		5 Year total	
	Labs affected	Savings (costs)†	Labs affected	Savings (costs)†
Method Verification	11,248	($11.3–20.1)	29,601	($49.6–88.0)
Calibration Verification	29,601	(17.0)	29,601	(74.5)
Microbiology Changes				
Bacteriology	27,443	62.4	27,443	273.7
Mycology	9,059	1.4	9,059	6.1
Mycobacteriology	3,185	(7.9)	3,185	(34.6)
Microbiology Total		55.9		245.2
Less QC for Other Specialties				
Syphilis serology	7,634	Unknown savings	7,634	Unknown savings
Immunology	20,665	Unknown savings	20,665	Unknown savings
Hematology	32,753	Unknown savings	32,753	Unknown savings
Total		18.8–27.6		82.5–121.0

†In millions of dollars.

TABLE 2.—IMPACTS DUE TO REGULATORY CHANGES: ANNUAL IMPACTS OVER 5 YEARS

	Savings (costs)†					
	Year 1	Year 2	Year 3	Year 4	Year 5	5-Year total
Method Verification	($11.3–20.1)	($10.6–18.8)	($9.9–17.6)	($9.2–16.4)	($8.6–15.3)	($49.6–88.0)
Calibration Verification	(17.0)	(15.9)	(14.8)	(13.9)	(13.0)	(74.5)
Microbiology Changes:						
Bacteriology	62.4	58.3	54.5	50.9	47.6	273.7
Mycology	1.4	1.3	1.2	1.1	1.1	6.1
Mycobacteriology	(7.9)	(7.4)	(6.9)	(6.4)	(6.0)	(34.6)
Microbiology Total.	55.9	52.2	48.8	45.6	42.7	245.2
Less QC for Other Specialties:						
Syphilis serology	Unknown	Unknown	Unknown	Unknown	Unknown	Unknown
Immunology	Unknown	Unknown	Unknown	Unknown	Unknown	Unknown

TABLE 2.—IMPACTS DUE TO REGULATORY CHANGES: ANNUAL IMPACTS OVER 5 YEARS—Continued

	Savings (costs)†					
	Year 1	Year 2	Year 3	Year 4	Year 5	5-Year total
Hematology	Unknown	Unknown	Unknown	Unknown	Unknown	Unknown
Total	18.8–27.6	17.5–25.7	16.4–24.1	15.3–22.5	14.4–21.1	82.5–121.0

† In millions of dollars.
Changes discounted at 7 percent compounded annually after Year 1.

B. Introduction

The changes in this final rule will have some impact upon nearly all laboratories performing nonwaived testing. The nature and magnitude of the specific effects on any particular laboratory will depend upon the volume and types of testing performed and the QC requirements it met under the former regulation. The most significant impact will be on laboratories performing unmodified moderate complexity testing approved or cleared by the FDA that have been following the minimal QC requirements provided during the QC phase-in period. With the completion of the phase-in, these laboratories may now be required to follow more stringent QC procedures.

QC Phase-in Requirements

Under the February 28, 1992 final rule with comment period implementing the Clinical Laboratory Improvement Amendments of 1988 (CLIA), many laboratories that had never been regulated were required for the first time to establish and perform minimum QC and quality assurance practices. Most previously unregulated laboratories were performing primarily waived or moderate complexity testing using unmodified commercial test systems. Acknowledging the burden of coming under regulation for the first time, we created a phase-in period that allowed laboratories performing unmodified moderate complexity testing approved or cleared by the FDA to perform less stringent QC procedures than laboratories performing modified moderate complexity or high complexity testing. In addition, our intent was that when the phase-in period was complete, all laboratories performing nonwaived testing would be subject to the same QC requirements. This final rule is ending the phase-in period for QC that had been extended to December 31, 2002. The QC requirements for laboratories performing unmodified moderate complexity testing are now essentially equivalent to the requirements for modified moderate complexity, and high complexity testing.

As part of the QC phase-in, the FDA was to establish a process for review and clearance of manufacturers' test system instructions for compliance with certain CLIA QC requirements. This provision would have allowed laboratories to meet the CLIA QC requirements by following the manufacturers' FDA-approved or cleared instructions. However, because the CLIA program is user fee funded, we decided it would be prudent to wait until the phase-in period ended before implementing the FDA QC review. This afforded us the survey experience necessary to determine whether an additional FDA review process beyond that already in place as part of premarket review would be of benefit to laboratories. We realized through our experience inspecting laboratories that an additional FDA review would not be of such benefit. Therefore, this prospective provision was removed in this rule.

Moderate Complexity Testing

With implementation of this final rule, laboratories performing unmodified, FDA approved or cleared moderate complexity testing must now, as applicable—

- Augment procedure manual instructions;
- Monitor laboratory environmental conditions that affect reagent storage and test system operation;
- Verify or establish performance specifications for newly introduced test systems;
- Record or document equipment maintenance and function checks;
- Perform calibration verification; and
- Follow control procedures that monitor the accuracy and precision of the testing process.

These changes will primarily impact Certificate of Compliance and COLA-accredited laboratories, because these laboratories perform the bulk of the commercial, unmodified moderate complexity testing that was subject to the QC phase-in requirements.

Moderate and High Complexity Testing

This final rule updates requirements and recognizes the improvements in technology and stability of reagents by reducing the frequency of QC testing in several specialty and subspecialty areas that include both moderate and high complexity testing. For the following specialties and subspecialties, we reduced the frequency of QC testing, relieving laboratory burden and lowering the cost per test:

- Decreased frequency of QC testing for bacteriology and mycology reagent checks.
- Decreased frequency of QC testing for general immunology and syphilis serology to daily testing from concurrent with patient testing.
- Decreased frequency for hematology QC testing to each day of use from each 8 hours of operation.

For the subspecialty of mycobacteriology, we increased the frequency of QC testing for the following:

- Added a requirement for testing negative controls to check stains and reagents.
- Increased frequency for checking fluorochrome and acid fast stains.

Laboratory Director

We are completing the phase-in qualification requirements for high complexity laboratory director that allows individuals with a doctoral degree to qualify based on training and experience in lieu of board certification until February 24, 2003. With the implementation of this final rule on February 24, 2003, board certification will be required. To ensure a smooth transition to the new provisions for directors of high complexity testing who are not board certified (but who have doctoral degrees), we will not be holding facilities out of compliance with the provisions of the rule concerning directors who are not board certified until the effective date of this new rule, to the extent the facilities are otherwise in compliance with the requirements for laboratory directors. This new final rule permits those individuals who qualified under the

phase-in provision and have served or are serving as directors of laboratories performing high complexity testing and have at least 2 years of training or experience, or both, and 2 years of experience directing or supervising high complexity testing to continue to serve as directors.

Miscellaneous Changes

There are a number of minor, miscellaneous changes. Some, like the change in the consensus requirements for PT grading from 90 percent to 80 percent, are the result of comments made to the former regulation. For the most part, these changes are considered to have no significant positive or negative impact. We consider many of them to be clarifications of implied requirements, or standard laboratory practices already in place, such as the requirement for laboratories to verify accuracy of analytes, subspecialties and specialties assigned a PT score that does not reflect the laboratories' actual test performance. In many cases, we have moved specific sections to make the regulation fit within the new regulatory framework (movement of the specimen through the laboratory) and to make the requirements easier to read and comprehend. While we expect positive benefits from these clarifications, it would be impossible to quantify these benefits.

C. Methodology and Approach

Basis for Estimates and Reliability of Projections

These projections are based upon some necessary assumptions concerning the current and future status of laboratory practices, technological advances, and the marketplace, making some degree of inaccuracy unavoidable. As each change is considered, the assumptions are stated. Due to the limitations in our data and information, we used a range of reasonable alternatives to estimate future events and reflect our degree of uncertainty. For much of this analysis, we use well-defined data from CMS Online Survey and Certification Reporting System (OSCAR) (2001) concerning laboratory demographics and test volume. When using less defined data, we made projections on the more costly side to provide an estimation of maximal impact.

We estimate the impact of these regulatory changes for those entities that these changes may affect, and we project the impact over the next 5 years. The completion of the QC phase-in period affects a portion of laboratories performing unmodified moderate complexity testing cleared by the FDA. Other changes in specialty and subspecialty QC requirements affect laboratories performing both moderate and high complexity testing. The changes in the high complexity laboratory director requirements primarily affect laboratories performing high complexity testing that need to hire a director on or after February 24, 2003. As appropriate for each specific change, in addition to the impacts on laboratories, we considered the potential impacts on manufacturers of laboratory test systems, controls, and calibration materials, and possible impacts on patients.

For this analysis, CDC used the services of Research Triangle Institute (RTI) to assist with data collection and cost-benefit analyses. RTI used data concerning current testing practices to estimate both immediate consequences and the impact over the next 5 years. A 7 percent discount rate was applied for projections after the first year, consistent with OMB recommendations (Economic Analysis of Federal Regulations under Executive Order 12866). Both RTI and HHS have sought data from a number of sources, including scientific articles, Government reports, CMS data, CDC studies, including data from CDC cooperative agreements, industry reports, reports by marketing consultants, interviews with manufacturers and laboratorians, and studies by professional groups, like the American Medical Association.

For each specific regulatory change, we outline the parties these changes will affect, methodological approach, necessary assumptions and limitations in the reliability of the conclusions, and possible alternatives.

D. Impacts

This discussion of regulatory impacts is organized as follows:

- Section 1 contains the demographics of the laboratories that the completion of the QC phase-in will impact.
- Section 2 has specific provisions not required during the phase-in period that certain laboratories will now need to meet.
- Section 3 has changes in specialty and subspecialty QC, including changes in microbiology, immunology, syphilis serology, and hematology.
- Section 4 has the completion of the phase-in requirements for laboratory directors.
- Section 5 contains miscellaneous changes, Including the change from 90 percent to 80 percent consensus requirements for PT results grading.

In this final rule impact analysis, for each regulatory change, as appropriate, our discussion is organized under the following topics:

- Rationale.
- Methodology.
- Benefits.
- Costs.
- Alternative approaches.

1. Laboratories Affected by Completion of the QC Phase-in Characteristics of Affected Laboratories Laboratory Demographics

The total number of certified and exempt laboratories in the United States (U.S.) is 174,856 (Table 5). This number includes a total of 168,688 CLIA-certified laboratories (96 percent), consisting of 91,540 laboratories with Certificates of Waiver (52 percent), 38,304 with Certificates for Provider-Performed Microscopy (PPM, 22 percent), 22,720 with Certificates of Compliance (13 percent), and 16,124 with Certificates of Accreditation (9 percent) (OSCAR, April 2001). In addition, there are 6,168 laboratories in the CLIA-exempt States of New York and Washington (4 percent).

This final rule will not affect the 74 percent of clinical laboratories holding Certificates of Waiver and PPM (129,844 laboratories). Laboratories with a Certificate of Waiver are only subject to limited CLIA requirements, they must only perform waived tests and tests cleared by the FDA for home use, follow manufacturer's instructions for testing, and maintain their waived certificates. Laboratories with a Certificate for PPM procedures must meet applicable requirements in subparts J and K of this final rule (formerly subparts J, K, and P). PPM procedures were not under the QC phase-in; therefore, PPM procedures were subject to the more stringent requirements in subpart K of the February 28, 1992 final rule with comment period. However, there are no QC materials for most PPM procedures.

For this analysis, we assume that all Certificate of Compliance laboratories perform some moderate complexity testing and that these laboratories have been meeting only the minimum QC requirements for FDA-cleared, unmodified moderate complexity test systems under the requirements of the QC phase-in period. In addition, we assume the completion of the QC phase-in would affect all of these laboratories (22,720 laboratories or 13 percent).

Similarly, we assume that the completion of the QC phase-in will affect the COLA-accredited laboratories because COLA's requirements are equivalent to the CLIA QC phase-in requirements. Therefore, these changes

will impact COLA laboratories (6,881 laboratories, 4 percent) when COLA revises its requirements to be equivalent to this final rule. Laboratories accredited by organizations other than COLA currently have QC requirements that are more stringent than those under the CLIA QC phase-in. With the adoption of the requirements in this final rule, CLIA requirements will more closely resemble these accrediting organizations' standards for QC.

Therefore, we estimate that these QC changes will immediately affect 29,601 laboratories (17 percent of the Nation's laboratories). These laboratories consist of those with a Certificate of Compliance (22,720) and COLA-accredited (6,881) laboratories. The 22,720 Certificate of Compliance laboratories that this QC change may affect consist of 1,392 Hospital (6 percent of laboratories with a Certificate of Compliance), 2,593 Independent (11 percent), 14,687 physician office laboratories (POLs) (65 percent), and 4,048 Other (18 percent) laboratories (Table 3). Since the majority of COLA laboratories are POLs (95 percent, COLA estimate), we assume all COLA laboratories are POLs for this analysis. The estimated total number of POLs that these QC changes will impact is 21,568, which comprise the largest portion of the 29,601 laboratories (73 percent) we estimated will be affected by this regulation. However, the affected POLs constitute only 22 percent of all U.S. POLs and 12 percent of all laboratories in the country. The vast majority (77 percent) of POLs hold Certificates of Waiver or PPM. In addition, changes in this final rule will not immediately affect most U.S. hospital laboratories because they are typically accredited, rather than Certificate of Compliance laboratories. The additional laboratory types in the CMS OSCAR (2001) database classified as "Independent," are typically referral testing sites, and "Other" laboratories generally perform testing at a variety of healthcare sites including home health testing and nursing homes.

Although the percentages of laboratories with each certificate type remained relatively stable over the past several years, the absolute numbers show trends toward lower complexity certificates (waiver and PPM). For example, from 1998 to 2001, the number of laboratories with Certificates of Compliance decreased by 20 percent (5,604), and an increase occurred for both Waiver (+9 percent; 7,628) and PPM (+12 percent; 3,988) laboratories (Table 4). We expect this trend to continue in the future because of the widening availability of waived tests, many of which are considered important for on-site testing in POLs. Therefore, the long-term impact of this regulation may be mitigated by this continuing decrease in the number of Certificate of Compliance laboratories.

TABLE 3.—CERTIFICATE TYPE BY LABORATORY TYPE

Laboratory type[5]	Certificate type[1]										
	Compliance		Waiver		Accreditation		PPM		State exempt[4]		All
	N[2]	%[3]	N	%	N	%	N	%	N	%	N
Hospital	1,392	15	1,231	14	5,475	62	224	3	498	6	8,820
Independent	2,593	51	910	18	937	18	131	3	515	10	5,086
Physician Office	14,687	15	42,927	44	6,416	7	31,510	33	1,391	1	96,931
Other	4,048	7	46,472	76	3,296	5	6,439	10	3,764	2	64,019
All	22,720	13	91,540	53	16,124	10	38,304	22	6,168	2	174,856

[1] OSCAR, 2001.
[2] Number of Laboratories.
[3] Column Percent.
[4] Data from NY and WA States.
[5] Self Reported.

TABLE 4.—CHANGES IN CERTIFICATE TYPE, 1998 TO 2001

Certificate type[1]	1998		1999		2000		2001	
	N[2]	%[3]	N	%	N	%	N	%
Compliance	28,324	17	27,819	16	25,145	15	22,720	13
Waiver	83,912	52	87,754	52	89,998	52	91,540	54
Accreditation	16,469	10	17,337	10	15,885	9	16,124	10
PPM	34,316	21	36,789	22	37,535	22	38,304	22
All	163,021	100	169,700	100	171,736	100	171,010	100

[1] OSCAR, 2001.
[2] Number of Laboratories.
[3] Column Percent.

Specific Impact Dependent on Test Volume and Laboratory Type

Certificate of Compliance laboratories comprise 13 percent of U.S. laboratories and perform 991 million (19 percent) of the 5.3 billion tests annually in the U.S. (OSCAR, 2001). Our estimate of 5.3 billion tests for the year 2001 is consistent with the estimate of 5.9 billion tests for 1996 by Hoerger, Eggleston, Lindrooth and Basker (1997) and the estimate of 5.7 billion tests for the year 2000 in an Institute of Medicine report (Institute of Medicine, 2000). The average annual test volume per Certificate of Compliance laboratory is 43,618; however, the test volume distribution is skewed. Most (69 percent) Certificate of Compliance laboratories perform less than 10,000 tests per year, with 42 percent performing less than 2,000. For COLA laboratories, the average annual test volume is approximately 5,000 tests per laboratory (COLA, personal communication, June 2001), making the aggregate annual test volume for all

COLA laboratories 34 million tests. Among the Certificate of Compliance laboratories, POLs and laboratories under the classification as "Other" tend to have low annual test volumes, while Hospital and Independent laboratories have higher test volumes (Table 5).

This final rule will affect some aspect of these laboratories differently depending upon their annual test volume and the number of different test procedures they perform. Generally, laboratories performing a limited number of different tests will be impacted less than laboratories performing a greater number of tests. The low volume laboratories, POLs and Others, will be less impacted because they tend to have more limited test menus than those in Hospitals and Independent laboratories. However, the proportionate costs of testing are greater in low volume laboratories (Tershakovec, Brannon, Bennett, and Shannon, 1995) because of the overhead cost, including those related to CLIA.

Another major determinate of the impact of this final rule that correlates with test volume is the extent of quantitative testing performed using moderate complexity instrumentation. A CDC survey of laboratories found, for example, that among Certificate of Compliance laboratories, the use of quantitative testing instrumentation was extremely variable. Use of hematology analyzers varied from a low of 36 percent among Independent laboratories to a high of 77 percent among Hospital laboratories; for chemistry analyzers, the lowest frequency (20 percent) was among POLs, while Hospital laboratories had the highest use (83 percent) (Steindel, Rauch, Simon, and Handsfield, 2000). This survey was an unbiased on-site inventory of test systems and sampling was weighted to reflect the composition of U.S. laboratories.

We also anticipate that among Certificate of Compliance POLs, the practice size will affect the magnitude of the impact. Studies also show that practice size correlates directly with the extent of on-site testing (Ambulatory Sentinel Practitioner Network, 1996). Therefore, we expect the aggregate impact of this final rule to be less among solo practices since they perform less testing. However, solo practices have fewer employees and financial resources to execute aspects of this final rule, which may increase burden.

TABLE 5.—ANNUAL TEST VOLUMES BY LABORATORY TYPE, CERTIFICATE OF COMPLIANCE LABORATORIES ONLY, OSCAR, APRIL 2001

Laboratory type [1]	Total number of laboratories	Total number of tests [2]	Average number of tests per laboratory	Number and percent of laboratories grouped by annual test volume							
				≤2,00 tests/yr		2,000–10,000 tests/yr		10,000–25,000 tests/yr		>25,000 tests/yr	
				N [3]	% [4]	N	%	N	%	N	%
Hospital	1,392	354	254,310	444	32	56	4	148	11	744	53
Independent	2,593	307	118,396	572	22	481	18	433	17	1,107	43
Physician Office	14,687	147	10,008	6,899	47	4,681	32	1,617	11	1,490	10
Other	4,048	183	45,207	1,614	40	968	24	578	14	888	22
All	22,720	991	43,618	9,529	42	6,186	27	2,776	12	4,229	19

[1] Self-reported.
[2] In millions.
[3] Number of laboratories.
[4] Column percent.

2. Specific Changes Associated with Completion of the QC Phase-in Period

a. Procedure Manuals

Rationale

During the QC phase-in period, laboratories performing commercial, unmodified moderate complexity testing must "have a procedure manual describing the processes for testing and reporting patient test results." With the completion of the phase-in, laboratories performing this type of testing will now be subject to more specific, comprehensive procedure manual requirements. Some laboratories may need to augment their current procedure manuals to meet the new requirements. Although we are unable to estimate the number of laboratories and the specific procedure manual changes they will need to make, we estimate that all Certificate of Compliance and COLA laboratories will require changes to their procedure manual.

In addition, laboratories must now document the dates of initial use and discontinuance for each procedure; and all procedures and procedural changes must be approved, signed, and dated by the current laboratory director before use.

Benefits

A comprehensive and up-to-date procedure manual is essential to ensure reliable and reproducible performance among individuals and is considered one hallmark of good laboratory practice and a necessary component of quality management.

Costs

For those Certificate of Compliance and COLA laboratories that need to amend procedure manual instructions, the cost will vary depending on the extent to which they may need to create procedural elements and the number of procedures performed in each laboratory. The cost for each laboratory will be the cost of the labor to augment documentation and the laboratory director's time in reviewing, signing, and dating procedures. We estimate that these costs will be minimal since most Certificate of Compliance and COLA laboratories do not perform a large number of test procedures and many may already have the documentation. We are unable to estimate the total cost for this requirement since we have no estimate on the extent to which procedure documentation will be necessary.

b. Test Systems, Equipment, Instruments, Reagents, Materials, and Supplies

Rationale

With the completion of the QC phase-in, laboratories performing commercial, unmodified moderate complexity testing must now meet the provisions at § 493.1252 for test systems, equipment, instruments, reagents, materials, and supplies. During the phase-in, these laboratories were required to "follow the manufacturer's instructions for instrument or test system operation and test performance," which would include most of the requirements listed in § 493.1252. However, now laboratories must monitor and document conditions essential for "proper storage of reagents and specimens, accurate and reliable test system operation and test result reporting." These conditions include "water quality, temperature, humidity, and protection of equipment and instruments from electrical interruptions and fluctuations that adversely affect patient test results and test reports."

Benefits

Monitoring and documenting environmental and other conditions necessary for proper reagent and specimen storage and test performance is essential to ensure quality test results. When conditions are outside of the prescribed acceptable range, corrective action can be taken. Without monitoring and documentation, laboratories may not be aware of conditions that may adversely affect patient test results.

Costs

The costs to implement this requirement will be minimal and will include labor to develop and maintain a monitoring and documentation system. We do not know the extent to which the specific commercial, moderate complexity procedures used in each laboratory will require monitoring of each of these conditions or the extent to which laboratories are already performing monitoring and documentation of these conditions. Therefore, we are unable to estimate a total cost for this requirement.

c. Method Verification

Rationale

Method verification is performed when a new test is brought into the laboratory and before beginning patient testing and result reporting. It consists of studies to verify that the laboratory can obtain accuracy, precision, reportable range and reference intervals with the new test system comparable to the manufacturer's specifications. During the QC phase-in period, laboratories could introduce testing using commercial, unmodified moderate complexity test systems approved or cleared by the FDA without verifying manufacturer's performance specifications (accuracy, precision, and reportable range of patient test results) before testing patient's specimens. On April 24, 2003, all laboratories must perform method verification when instituting any new moderate complexity test and before testing patient specimens, as specified in § 493.1253.

Methodology

To determine the possible impact, we did an estimate of the cost of assays to verify manufacturers' performance claims for commercial, unmodified moderate complexity tests expected to be introduced annually among the affected laboratories. For this analysis, we assumed that existing moderate complexity test systems would be retired and replaced with a new test system approximately every 5 years according to data available for a small population of laboratories. In addition, for cost calculations, we estimated the number of verification data points needed and the costs in terms of labor, materials, and reagents to perform these studies.

The cost of method verification is typically greater for quantitative tests than qualitative tests. In most cases, fewer specimens and less labor and reagents are required to verify the performance of qualitative tests. We do not know the fraction of new tests that are qualitative, so we treated all tests as if they are quantitative to calculate the maximal impact. Also, we assumed that the laboratories that this change will affect have not been performing method verification. However, we know that some manufacturers currently offer on-site verification assistance, and we expect that practice to continue; therefore, we may be overestimating the impact.

Estimates of the Incidence of New Test Introduction

Data describing how frequently new tests or test systems are introduced into laboratories were limited. For one estimate, we used the percentages of laboratories expected to add zero, one, two, three, four, or five moderate complexity tests to their test menus from a survey of laboratories participating in the Pacific Northwest Laboratory Medicine Sentinel Monitoring Network (LaBeau, Simon, and Steindel, 1999). Laboratories were asked how many nonwaived new tests they added to their test menus between April 1997 and April 1999. Although these percentages are for a 2-year time period, we conservatively assumed that all tests were adopted during the last year of the period. We assumed that the incidence of test introduction is roughly the same for the affected laboratories as for the Sentinel Monitoring Network. Multiplying these percentages by the total number of laboratories (29,601), we calculated the number of laboratories that are expected to add at least one test to their test menus in a year, approximately 11,248 (38 percent) (Table 6).

Estimate of Analyzer Replacement

Because of the small sample size, we were not confident that the survey of laboratories in the Pacific Northwest Laboratory Medicine Sentinel Monitoring Network accounted for the replacement of existing multiple analyte analyzers. Replacement of an obsolete analyzer with a new model requires verification for each analyte. Therefore, the cost of replacing analyzers depends upon the existing number of analyzers, the number of years of operation before replacement, the number of tests each analyzer performs, and the labor and reagent cost per assay for method verification. We assumed laboratories replace analyzers every 5 years and, therefore, compute the number of analyzers of each type that would require replacement each year by dividing the number of analyzers by five.

NICLTS data (Steindel, *et al* 2000) gave us the percentage of Certificate of Compliance POL, Hospital, Independent and Other laboratories having chemistry, hematology, therapeutic drug, ligand, reproductive hormone, and immunology analyzers. To determine the total number of each kind of analyzer to be replaced over the next 5 years, we multiplied these percentages by the number of Certificate of Compliance and COLA laboratories of each laboratory type to obtain the number of laboratories having each kind of analyzer, and then totaled the analyzers in each laboratory type (Table 7).

Benefits

To ensure accuracy and precision, it is especially important to demonstrate acceptable performance for a new test method before testing patient specimens. Comparing results of the new method with the manufacturer's claims and the current method, if the method is being replaced, can detect biases and problems with

reproducibility and linearity. Also, an evaluation of the appropriateness of the reference interval ensures that the test can differentiate a normal result from one suggesting a disease process. It is difficult to estimate the number of mistakes that can be averted by method verification. However, it is considered a hallmark of good laboratory practice to prevent errors when introducing a new test system, by verifying acceptable performance of the new methodology before testing patient specimens.

Costs

Number of Tests Needed To Verify Method Performance Specifications (Per Analyte)

There are no standards of practice established for method verification, and there is great variability in what laboratories currently do to verify performance specifications. The NCCLS has published several guidelines for verification of the elements of acceptable performance. One way to document performance is to use NCCLS protocols, document EP15–P for accuracy and precision, EP6–P for linearity (reportable range), and C28–A for reference intervals. The three separate protocols require a total of 120 assays, at a minimum. Reducing this number can be accomplished by performing some of the analyses together using the same specimens. Therefore, our estimate using the NCCLS protocol, in which we assumed a range of 120 to 150 assays per analyte or test, may overestimate the number of assays required.

Reagent Costs

We estimated the cost for reagents by obtaining price quotes from reagent manufacturers (Beckman-Coulter, Dade-Behring and Roche Diagnostics). Because the price estimates vary with test volumes, we assumed a moderate test volume with an average cost across analyzers to estimate an average reagent cost. We also estimated an average reagent cost to be $1.79 per test. We did not include costs for calibration or QC materials. However, many manufacturers provide assistance to laboratories for method verification, and this assistance many times includes providing reagents to the laboratory free of charge. Although manufacturers will incur some cost for reagents, the cost is significantly less than the retail sales price we quote.

Labor Estimates

Because we do not know the average number of analytes per test system, we assumed a broad range of analyst time (4 to 16 hours) at a rate of $17.90 per hour (Ward-Cook and Tannar, 2001). We are also assuming 1 hour of laboratory director time at a rate of $33.45 per hour (Bureau of Labor Statistics Occupational Outlook Handbook, 2000–2001 edition).

Materials

For the NCCLS approach, patient materials would suffice; however, these must be tested on a separate analyzer that serves as a reference for accuracy determinations. In addition, we are assuming that previously tested, stored patient samples would be used; therefore, we included locating previously tested patient materials in labor costs.

Total Costs

Based on the incidence of introduction of individual tests reported in the Pacific Northwest Laboratory Medicine Sentinel Monitoring Network survey (LaBeau, *et al* 1999), the cost of the requirement to perform method verification among affected laboratories can range from $8.3 to $15.3 million the first year (Table 6). Considering the costs of method verification for replacement analyzers, the costs can range between $3.0 and $4.8 million (Table 7). Therefore, the total first year expense for method verification may range from $11.3 to $20.1 million. The aggregate impact for method verification, with a discount over the next 5 years, may range from $49.6 to $88.0 million.

TABLE 6.—IMPACT OF METHOD VERIFICATION, NEW SINGLE TESTS

Number of tests	Percent adding	Number of laboratories adding	Number of tests added	Med tech labor cost (range)*	Lab director labor cost*	Total labor cost (range)*	Reagent cost (range)*	Total cost methods (range)
0	62	18,353	0	0	0	0	0	0
1	16	4,736	4,736	$0.34–1.36	$0.16	$0.50–$1.52	$1.02–1.27	$1.51–2.79
2	8	2,368	4,736	0.34–1.36	0.16	0.50–1.52	1.02–1.27	1.51–2.79
3	5	1,480	4,440	0.32–1.27	0.15	0.47–1.42	0.95–1.19	1.42–2.61
4	4	1,184	4,736	0.34–1.36	0.16	0.50–1.52	1.02–1.27	1.51–2.79
5	5	1,480	7,400	0.53–2.12	0.25	0.78–2.37	1.59–1.99	2.37–4.38
			26,048	1.87–7.47	0.88	2.75–8.35	5.60–6.99	8.32–15.33

* Millions of dollars

TABLE 7.—IMPACT OF METHOD VERIFICATION, ANALYZER REPLACEMENT

Analyzer type	Number of analyzers	Number of analyzers replaced each year	Medical technologist labor cost*	Laboratory director labor cost*	Total labor cost*	Reagent cost *	Total replacement cost *
TDM	3,230	646	$46.3–185.0	$21.6	$67.9–206.6	$0.45–0.56	$0.51–0.76
Chemistry	7,657	1,531	109.6–438.6	51.2	160.9–489.8	1.10–1.38	1.26–1.87
Hematology	12,439	2,488	178.1–712.5	83.2	261.3–795.7	0.27–0.34	0.53–1.13
Ligands	3,404	681	48.7–195.0	22.8	71.5–217.7	0.25–0.33	0.32–0.52
Reproduction	930	186	13.3–53.3	6.2	19.5–59.5	0.27–0.33	0.29–0.39
Immunology	223	45	3.2–12.8	1.5	4.7–14.3	0.06–0.08	0.07–0.09
			399.3–1,597.1	$186.5	585.8–1,783.7	2.18–2.72	2.98–4.77

TDM = Therapeutic drug Monitoring.
* Thousands of dollars.
* Millions of dollars.

Assumes tests per analyzer: TDM = 2, Chemistry = 15, Hematology = 1, Ligands, Reproduction & Immunology = 5

Assumes reagent cost per test: TDM = $2.88, Chemistry = $0.40, Hematology = $0.90, Ligands = $3.00, Reproduction = $2.38, Immunology = $2.38

Reliability of Estimates

The impact of method verification on any particular laboratory will depend on how many tests are introduced in any given year. The impact will be more on laboratories that are frequently expanding test menus, replacing test methods or test systems rather than those maintaining test menus and test systems. Obviously, any start-up laboratory performing nonwaived testing would be verifying the entire test menu. Nearly two-thirds of the laboratories in the Pacific Northwest Sentinel Network introduced no test systems during the 2-year interval and none introduced more than five (LaBeau, et al, 1999). Therefore, we believe while our estimates may accurately describe the impact on the universe of affected laboratories, for any particular laboratory, we may have underestimated or overestimated the consequences.

Discussions with manufacturers revealed that assistance with method verification is often included in the cost of buying or leasing an instrument or other new test system, regardless of the size of the laboratory. Regardless of whether the manufacturer assists in the verification process, the laboratory or the manufacturer or both will incur costs. What is relevant to the impact is whether the frequency of the method verification will change. Since method verification already frequently occurs in the absence of regulation and manufacturers often provide assistance, our estimate of the total cost of method verification probably overstates the incremental impact of the new requirement. However, we were unable to quantify how frequently method verification is performed currently, thereby preventing us from precisely estimating the incremental change in the frequency of method verification when this regulation becomes effective. Therefore, we may have overstated or understated the number of assays that laboratories will actually do to verify performance.

d. Calibration Verification

Rationale

During the phase-in period, laboratories performing unmodified moderate complexity testing cleared by the FDA performed testing without meeting the calibration verification requirement. On April 24, 2003, the phase-in period ends, and all laboratories must perform calibration verification at least every 6 months for each quantitative nonwaived test, as appropriate. Calibration verification is done to ensure that the test results are accurate throughout the reportable range of patient results for each test system.

Methodology

To determine the impact, we estimated the number of laboratories these changes will affect, their current menus of quantitative tests for which calibration verification would be applicable, the number of data points needed for verification and the costs in terms of labor, verification materials and reagents.

Number of Laboratories This Change Will Impact

We assumed that this QC change will affect all 29,601 laboratories, since Certificate of Compliance and COLA laboratories perform some moderate complexity testing. In addition, we assumed these laboratories have not been performing calibration verification on commercial, unmodified moderate complexity test systems.

Laboratory Menus of Tests With Verifiable Calibration

Calibration verification is performed for quantitative testing. For this analysis, we focused on multi-test clinical analyzers for which calibration verification materials are commercially available. Specifically, we estimated the fraction of laboratories that have analyzers for performing quantitative tests for chemistry, therapeutic drug monitoring, ligands, reproductive hormone testing, hematology, and immunology. By "ligands" we mean analytes measured by immunoassay, for example carcinoembryonic antigen, cortisol, and folate.

Number of Analytes Per Analyzer

For the purposes of estimating reagent consumption, we estimated the number of analytes being done by multi-test analyzers. We assumed that the variability of laboratory types and sizes would affect the number of different tests being performed; however, we were unable to account for the variability in this model. Because POLs comprise the largest portion of the laboratories that these changes will affect and POLs tend to have relatively limited test menus, we assumed most laboratory menus to be minimal among those laboratories that these changes will affect.

In order to estimate the number of analytes per laboratory, we analyzed data from three proficiency testing programs that target POLs (Medical Laboratory Evaluation, American Proficiency Institute, and College of American Pathologists' Excel) as a gauge of the numbers of tests offered among those laboratories these changes will affect. From these data, we estimated average test menus of fifteen chemistry analytes, two therapeutic drugs, one hematology analyte, and five for each ligand, immunology, and reproductive testing analyzer. Using this model, the specific number of analytes that must be verified has little impact on the estimates because most of the expense is in the verification kits.

Number of Data Points To Verify Calibration

At a minimum, laboratories must check three points in the reportable range to verify calibration, that is, the low, mid, and high points of the range. Although there is no requirement to perform duplicate testing at each level, it adds information about precision while adding very little to the cost of the procedure. Therefore, we included duplicate testing. We estimated that six data points are the minimum for adequate calibration verification, three concentrations in duplicate. Since calibration verification must be performed at least twice yearly, laboratories must collect a total of at least twelve data points for each analyte every year.

Benefits

We believe that calibration verification can reduce errors in patient testing by periodically providing information on the accuracy of an assay after it is calibrated, after any major maintenance or after problems are detected in routine QC. However, we are not aware of any studies demonstrating the affect of calibration verification on error rates.

Labor Costs

For estimates of labor costs, we assumed that 2 hours per year will be sufficient for each analyte for both performing the assay and inspecting the results for acceptable performance. This estimate may be too low in some instances and too high in others. The cost of the analyst time, $17.90 per hour, is the 2000 mean wage per hour for a staff medical technologist from Ward-Cook and Tannar (2001). In addition, we assumed that the labor cost of calibration verification per year is the

time we estimated it takes to perform the calibration verification (2 hours), multiplied by the analyst wage per hour ($17.90).

Cost of Verification Materials

Materials used for calibration verification span the reportable range of the method, and target values are assigned independently using accurate test methods. Acceptable materials are proficiency testing material, altered and unaltered previously tested patient specimens, primary standards or reference materials, independent calibrators, or materials for demonstrating linearity or calibration verification kits. For this analysis, we assumed laboratories will purchase calibration verification kits. However, all materials mentioned above may be used as long as the entire reportable range is tested with at least three concentrations and the nominal concentrations are independently assigned with a valid test methodology. Also, we assumed that a laboratory with any multi-test analyzer would buy a product to verify calibration of all tests the analyzer is capable of performing. We may be overestimating the cost because some laboratories do not perform all tests available on an analyzer, or we may be underestimating the cost by not including individual tests that may not be offered on a multi-test analyzer.

Our evaluation shows the costs were roughly similar for the various calibration verification products. The cost of calibration verification kits was obtained from several different suppliers of calibration verification materials (College of American Pathologists, CASCO NERL Diagnostics, Align, Sigma, R&D Systems, and Streck Laboratories). The average cost for a year's worth of calibration verification materials for comparable products was used as the cost of verification materials for each analyzer type .

Reagent Costs

We estimated the cost of reagents from price quotes by analyzer manufacturers (Beckman-Coulter, Dade-Behring, and Roche Diagnostics). This cost varies with test volume. We used the moderate volume estimate provided by these manufacturers for each analyzer type, since most of the laboratories that these changes will affect perform low to moderate test volumes. We calculated the total cost of reagents by multiplying the cost of reagents per test times the number of analytes per analyzer, the minimum number of tests per calibration verification, and the frequency of calibration verification, which we assumed to be, at a minimum, biannually.

Scope of Impact

Based upon these assumptions and estimates, we calculated the total cost of the requirement to perform calibration verification for laboratories that these changes will affect to be $17.0 million the first year, and the discounted cost will be $74.5 million by the end of the next 5 years (Table 8).

The impact to an individual laboratory will be proportional to the number of quantitative tests that need calibration verification. Larger laboratories with more analyzers and methods will need to perform calibration verification on more methods than smaller laboratories with fewer methods. Larger laboratories may also have more instrument repairs and reagent changes that may make it necessary to perform calibration verification more than twice a year. Therefore, large laboratories are more likely to incur a greater increase in the cost of calibration verification than small laboratories.

In addition, some manufacturers may furnish calibration verification materials and assist in the performance of calibration verification as part of their service. We cannot estimate the extent that this may happen; therefore, we may have overestimated the total cost.

TABLE 8.—IMPACT OF REQUIREMENT FOR CALIBRATION VERIFICATION

Test category	Laboratories affected for each test category	Labor costs per year	Cost of verification materials per year	Cost of reagents per year	Total costs per laboratory	Total costs per year †
Ther. Drug Monitoring *	3,230	$35.80	$413.00	$69.12	$517.77	$1.67
Chemistry	7,657	35.80	707.00	72.00	815.05	6.24
Hematology	12,439	35.80	575.00	10.80	621.60	7.73
Ligands	3,404	35.80	207.00	36.00	278.80	0.95
Reproductive	930	35.80	158.00	142.80	336.15	0.31
Immunology	223	35.80	150.00	142.80	328.10	0.07
Total	.....	.....	.....	.....	.....	16.98

*Therapeutic drug monitoring.
†Cost in millions.

e. Documentation of Maintenance and Function Checks

Rationale

During the QC phase-in period, laboratories performing commercial, unmodified moderate complexity testing were required to "follow manufacturer's instructions for instrument or test system operation and test performance." Therefore, if the manufacturer had specific instrument maintenance procedures or function checks, the laboratories were required to perform them. With the completion of the phase-in, these laboratories must perform the maintenance and function checks according to the manufacturer, but also document their performance and results, as appropriate, and ensure that function checks are within the manufacturer's established limits before patient testing is conducted as specified in § 493.1254.

Benefits

Documentation of routine instrument maintenance and function checks provides a record for the laboratory to attest maintenance was performed according to the required schedule and to ensure that instrument function is within acceptable limits whenever patient testing is performed. This documentation is an essential element of good laboratory practice and laboratory quality management.

Costs

For those laboratories that have not been documenting maintenance and function checks, the cost to initiate this

process will depend on the labor needed to develop a documentation system. Subsequent costs will be for the labor necessary to maintain documentation, the number of instruments involved and the extent to which documentation is not currently being done. We have no data to estimate the total cost to fulfill this requirement; however, it will be of minimal impact.

f. Control Procedures

Rationale

The intent of the CLIA regulation was to impose the same requirements on all U.S. laboratories, regardless of testing site, in order to assure the public that minimum standards for quality testing were met wherever testing was performed. Under the QC phase-in requirements, laboratories performing testing using unmodified moderate complexity test systems approved or cleared by the FDA were required to test two levels of control materials each day of testing. Since many laboratories had never been regulated, they were given a phase-in period to allow them to become accustomed to meeting requirements for QC. During the phase-in, laboratories, could through the guidance in Appendix C of the State Operations Manual (SOM), use test system internal checks and controls, for example, built in procedural or electronic checks, as a substitute for one or both levels of traditional external liquid controls.

With the completion of the QC phase-in, all laboratories performing nonwaived testing are subject to the requirements specified in § 493.1256 for control procedures. The minimal number of control materials and frequency for control testing remains unchanged, two levels of control materials at least once each day of testing. We will continue to allow flexibility for laboratories to follow control procedures determined to be equivalent to testing two levels of external controls each day of testing.

We are acknowledging that laboratory technology has become simpler since the initial CLIA regulations were promulgated, and simplification and improvements are continuing. These technological advances may allow for control procedures equivalent to the traditional daily evaluation of two levels of external control materials, for example, the use of internal checks and internal controls or performance of control procedures at a frequency other than daily.

Additionally, laboratories must now meet some requirements for control use and acceptability that were not included for FDA-cleared, unmodified moderate complexity testing during the phase-in period. This includes testing controls in the same manner as patient specimens, rotating control testing among all operators who perform specific tests, and verifying the criteria for control results acceptability for quantitative tests.

Benefits

The requirements for control procedures between those in effect during the phase-in and this final rule are similar. While enforcement was permissive during the phase-in, there were no specific guidelines for laboratories to follow. With this final rule, laboratories will have guidance on what control procedures are acceptable (criteria will be specified in the SOM). In addition, the regulatory language is more specific, providing laboratories more detailed descriptions of what is required. Also, with the recognition that technology has and continues to improve, manufacturers will have more incentive to continue simplifying and improving technology to further reduce the cost of QC.

Costs

Most information on the prevalence of the reliance on internal checks and controls in lieu of using traditional external controls is anecdotal (American Association for Clinical Chemistry, 1999). A study by the Pacific Northwest Laboratory Medicine Sentinel Monitoring Network (LaBeau, et al, 1999), demonstrates that the majority of the 83 laboratories completing the survey used mechanisms other than daily testing of traditional external liquid controls for a total of 184 nonwaived tests. These control mechanisms included built-in controls, procedural controls, electronic control cartridges or devices, and control strips. Although external controls were used with 85 percent of these tests, the frequency varied. Only 15 percent used external controls daily, while the majority of the laboratories (64 percent) used external controls with each kit or lot of reagents. However, this study sample size is too small to draw general conclusions about the use of control procedures in most laboratories. Since we anticipate maintaining the status quo allowing the use of internal checks and internal controls, and the testing of external control materials at the frequency currently being performed in most laboratories for unmodified moderate complexity testing, there will be no impact on the cost.

All laboratories must now verify control results acceptability for quantitative testing. Laboratories affected by the completion of the QC phase-in might incur costs to establish this practice, since this is a new requirement. This verification is simply done through repetitive testing to ensure that the laboratory's results are within the control manufacturer's statistical parameters for the particular test system in use. We have no data on the current prevalence of this activity for those laboratories that this change may affect. For laboratories that have not been performing this verification, the costs they will incur will be for the reagents and controls for replicate testing and for the labor in testing and evaluating the statistical parameters. In many cases, replicate control testing can be done concurrent with patient testing, if the control results are within the manufacturer's stated range, reducing the cost of this requirement. Laboratories not performing this verification will use controls at an increased rate; however, they may offset this cost by the ability to use more internal or procedural QC. We have insufficient data to estimate the total costs for this requirement.

Alternative Approaches

In revising these regulations, we considered maintaining the QC phase-in requirements for QC. These phase-in requirements were intended to temporarily exempt most previously unregulated laboratories from the more stringent QC requirements such as calibration verification and method verification. Previously unregulated laboratories have had sufficient time to become familiar with regulatory requirements. Although few studies have been done linking the performance of QC procedures with patient results (Astles, et al, 1998), the standards specified in this final rule are generally considered to be basic quality requirements. Also, to maintain the phase-in requirements would create a permanent inappropriate discrepancy between what is required among the laboratories having different types of certificates and between moderate and high complexity testing. Accredited laboratories, with the exception of those accredited by COLA, and State-exempt laboratories are already required to meet more stringent QC practices than those allowed during the phase-in. We believe the completion of the QC phase-in requirements is in the best interest of the public to ensure the minimum quality laboratory standards regardless of testing site and the type of testing performed.

3. Changes in Specialty and Subspecialty QC Requirements

a. Changes to Specific Microbiology QC Rationale

We are changing the requirements for some specific QC practices in microbiology in response to public comments, including recommendations made by the American Society for Microbiology (ASM). The changes affect the subspecialties of microbiology, including bacteriology, mycobacteriology, and mycology.

In 1996, the ASM (ASM, 1996) reported to the CLIAC a study of QC failures for 304 laboratories and nearly 15,000 commercial reagent lots representing 21 different bacteriology and mycology tests. QC failure rates for the reagents studied were 0.3 percent overall. The individual failure rate for each reagent was less than 2 percent, except for X factor strips/disks, which was 2.13 percent. The results of this study prompted the ASM to propose that reagent QC be required only with each new lot for commercial microbiology reagents having a 98 percent or greater success rate. On the basis of these study results and ASM's recommendations, in this regulation, we are lowering the required frequency for reagent QC for several bacteriology tests and two mycology tests (Table 9).

For mycobacteriology, we are increasing some QC requirements based on public comments, making them equivalent with standards that already exist (Table 9). False positive results have been reported in testing for M. tuberculosis (Burman, Stone, Reeves, et al, 1997). At the same time, the incidence of infection caused by other mycobacteria requiring additional testing for accurate identification is increasing significantly. To some extent, false positive results leading to inaccurate diagnoses and unnecessary or inappropriate therapy could be reduced by including a negative reagent control with biochemical identification tests. Therefore, in this regulation, negative controls are now required in addition to positive controls each day of use for mycobacteriology reagents. In addition, positive and negative controls are now required each day of use for acid-fast stains, and each time of use for fluorochrome stains. The revised requirements are justified by the important public health consequences of accurate and timely identification of mycobacteria, including M. tuberculosis.

TABLE 9.—CHANGES TO MICROBIOLOGY QC REQUIREMENTS

Existing regulations	New regulations (specified in this rule)
Bacteriology	
Each day of use, check catalase, coagulase, beta-lactamase and oxidase reagents and DNA probes using a positive and negative control.	(NC) Each day of use, check beta-lactamase, (other than cefinase (D)) and DNA probes using a positive and negative control.
Each week of use check bacitracin, optochin, ONPG, X, and V discs or strips using a positive and negative control.	(D) Check each batch, lot number and shipment of reagents (catalase, coagulase, and oxidase), disks (bacitracin, optochin, ONPG, X, V and XV), stains, antisera and identification systems for positive and negative reactivity, and graded reactivity if applicable.
Each month of use check antisera using a positive and negative control	(D) Check each batch, lot number and shipment of antisera when prepared or opened and once every 6 months thereafter using a positive and negative control.
Mycobacteriology	
Each day of use, check iron uptake test using a positive and negative acid-fast organism and check all other reagents or test procedures using a positive acid-fast organism.	(I) Each day of use, check all mycobacteriology reagents ((NC) iron uptake test) using a positive and negative acid-fast organism.
Each week of use check acid-fast stains using positive control	(I) Each day of use, check acid fast stains using a positive and negative controls.
Each week of use, check fluorochrome acid-fast stains using positive and negative controls.	(I) Each time of use, check fluorochrome stains using positive and negative controls.
Mycology	
Each day of use, test staining materials (lactophenol cotton blue) for intended reactivity.	(D) Check each batch, lot number and shipment of lactophenol cotton blue when prepared or opened for intended reactivity.
Each week of use, check biochemical tests and mycological identification tests (germ tube) with a positive control.	(D) Check each batch, lot number and shipment of reagents, disks, stains, antisera and identification systems for positive and negative reactivity.

D = Decreased QC Testing.
I = Increased QC Testing.
NC = No change.

Methodology

The number of laboratories impacted by the QC changes for the microbiology subspecialties of bacteriology, mycobacteriology, and mycology includes laboratories issued a Certificate of Compliance or a Certificate of Accreditation performing testing in the applicable subspecialties of microbiology according to the CMS OSCAR (2001) database. The number also includes the 1,448 laboratories performing testing in bacteriology, mycobacteriology, and mycology laboratories in the exempt States.

In estimating the cost of materials for changes to the microbiology QC requirements, we used information from several different microbiology reagent manufacturers and distributors (Remel, Becton Dickinson, and Fisher), including average list prices or suggested retail prices for reagents and supplies (we acknowledge some laboratories receive lower prices through negotiated discounts or purchasing agreements). We estimated the time and amount of reagent needed to perform QC testing and maintain records for the affected tests in the applicable subspecialties, through discussions with experts in microbiology.

For the tests the QC changes will affect, the cost of QC organisms was considered negligible since organisms may be preserved and recultivated on an ongoing basis. Although the cost of maintaining cultures, including media and supplies, and the time spent in preservation and recultivation may be considerable, the changes in this final rule will not cause complete elimination of QC organism testing; therefore, the cost of culture maintenance will not

change. On the other hand, in mycobacteriology, negative control organisms are now required for biochemical identification tests. Although this could result in some initial expense if new organisms must be purchased, significant cost should not be incurred, since in some cases the same organism may be used as a control for more than one test, and some of the organisms used for negative controls may be organisms already used as positive controls for different biochemical tests.

For estimating labor costs (the larger component of the QC cost for many tests), we used the 2000 mean wage per hour for a staff medical technologist (Ward-Cook and Tannar, 2001), divided by 60 minutes per hour to calculate the cost per minute ($0.30). The cost of labor is the sum of the time required to perform QC and maintain the QC records, multiplied by the calculated wage per minute. The total cost of QC per test is the sum of the labor and material costs.

Bacteriology

We estimate that the QC changes for bacteriology will affect 27,443 laboratories, consisting of 26,610 laboratories in the CMS OSCAR (2001) database and an additional 833 bacteriology laboratories in exempt States. The changes pertain to reagents commonly used to identify bacteria. Although these reagents are primarily used for high complexity culture and identification procedures that may not be performed in a number of physician office laboratories or laboratories that perform only moderate complexity testing, we included all bacteriology laboratories in our estimates because some physician office laboratories perform high complexity culture and identification procedures, and at least one of the reagents may be used for moderate complexity tests. We realize the number of bacteriology laboratories that these QC changes affect may be overestimated.

As recommended by ASM, we are reducing QC testing to every batch, lot number, and shipment, for 10 commercial bacteriology reagents. Under the previous QC requirements for catalase, coagulase, oxidase, and beta-lactamase, QC testing was additionally required each day of use. The previous QC requirements for bacitracin, optochin, ONPG, X, V, and XV strips and disks were to test each week of use after initial testing of each batch, lot number, and shipment of reagent. For antisera (including *Salmonella* and *Shigella* antisera), we are reducing the QC testing requirements from every month of use, to every 6 months after initial QC testing.

Mycobacteriology

We expect the QC changes will affect a total of 3,185 mycobacteriology laboratories in various degrees, depending upon the services they provide. This includes 2,903 laboratories in the CMS OSCAR (2001) database and 282 laboratories in exempt States. Based on estimates of the levels of mycobacteriology testing performed in the U.S. (CDC, 1995), all mycobacteriology laboratories perform acid-fast stains and could be impacted by the changes to the QC requirements for this testing. However, according to the estimates above, only 35.4 percent (1,127) of mycobacteriology laboratories perform mycobacterial organism identification, including 24.4 percent that perform acid-fast stains, primary culture, and identification (at least of *M. tuberculosis* complex), and 11.0 percent that perform acid-fast stains, primary culture, identification, and drug-susceptibility testing. Therefore, this number represents the maximum number of laboratories that could be fully impacted by all QC changes for this subspecialty.

For acid-fast stains, we are now requiring positive and negative control organisms to be QC tested each day of use rather than each week of use. In addition, we are now requiring that fluorochrome acid-fast stains be QC tested each time of use rather than each week of use. Although not all mycobacteriology laboratories perform both types of stains on a daily basis, the specific percentage of laboratories performing each type of stain is unavailable. We conservatively estimated that the QC change will affect all mycobacteriology laboratories for both staining procedures and will require the laboratories to perform QC testing for each procedure at least daily. However, professional standards of practice recommend QC for acid-fast stains each time of use, and the QC changes will not impact laboratories following these guidelines.

For conventional biochemical reagents and test procedures for mycobacterial identification from culture, we are now requiring that a negative control organism be tested in addition to a positive control organism each day of use. Based on the biochemical tests used for mycobacterial identification as listed in *Essential Procedures for Clinical Microbiology* (Eisenburg, 1998), we estimate 10 additional negative controls for biochemical tests may be performed by each laboratory depending on the organism to be identified. However, our estimates of the additional QC required and number of laboratories that these changes will impact could be inflated for several reasons. First, many mycobacteriology laboratories now use molecular methods for organism identification in lieu of conventional biochemical tests (we are not changing the QC requirements for molecular methods). According to an ASM survey presented to the CLIAC in 1999, 78 percent of the responding laboratories performing mycobacterial identification used molecular methods. It is likely that this percentage will increase in the future as new technology continues to be developed. Second, a significant number of mycobacteriology laboratories only identify *M. tuberculosis* and do not use biochemical tests to identify additional species of mycobacteria. Last, professional standards and at least one accreditation organization already recommend or require a negative control in addition to a positive control for each identification test; therefore, the increase in the requirement will not impact laboratories already meeting these standards. Since sufficient data are not available to quantify these considerations, we estimate a maximum of 35.4 percent of mycobacteriology laboratories will have to perform additional QC for conventional biochemical tests.

Mycology

We are reducing the QC testing for the germ tube test by eliminating the positive control each week of use after initial testing of positive and negative controls with every batch, lot number, and shipment. We are also reducing the QC testing for lactophenol cotton blue from checking this stain for intended reactivity each day of use, to requiring QC testing only with each batch, lot number, and shipment. We do not expect the QC changes to affect all 18,117 laboratories performing mycology testing (17,784 mycology laboratories in the CMS OSCAR (2001) database and 333 mycology laboratories in exempt States), since the impact of decreasing the QC testing will differ among laboratories depending on the testing performed and the numbers of positive cultures obtained by these laboratories. For both the germ tube test and the lactophenol cotton blue stain, we conservatively estimate that the reduction in QC testing will affect 50 percent of the total laboratories (9,059), those being hospital and independent laboratories that would perform the high complexity culture procedures that require the use of these reagents.

Benefits

Bacteriology

Reducing the QC testing requirements for bacteriology results in a significant decrease in costs for the laboratory, including savings in reagents, supplies, and labor. To estimate the impact of these reductions, the QC cost associated with the changes must be compared to the current cost of QC testing. We assumed laboratories are currently performing QC testing for each batch, lot number, and shipment of reagents; therefore, this practice is not affected by these QC changes. For catalase, coagulase, oxidase, and beta-lactamase, eliminating the daily QC requirement results in a savings for each of these tests equivalent to the cost of the daily QC. Similarly, by eliminating the weekly QC requirement for bacitracin, optochin, ONPG, X, V, and XV strips and disks, there is a savings for each of these tests equivalent to the cost of the weekly QC. For antisera (for example, *Salmonella, Shigella* typing sera), we are reducing QC testing from every month of use to testing once every 6 months after the initial QC testing of each batch, lot number, and shipment of reagent. Assuming an average shelf life of 2 years before expiration results in cost saving of 20 QC tests.

In addition to the direct financial savings in bacteriology laboratories, reducing the QC testing will also result in a time savings equal to the time previously required to perform the testing and maintain QC records on a daily, weekly, or monthly basis. This time saving could lead to increased productivity in bacteriology laboratories.

To calculate the savings by reducing requirements for QC testing in bacteriology, we estimated the baseline expenses per laboratory for performing each QC test. In calculations for beta-lactamase testing, as per the ASM study, we assume laboratories use Cefinase™ as their method of testing. After estimating the cost per individual QC test (positive and negative controls), we then determined the change in cost per day, week, and year (Table 10). In determining these changes, we considered the decrease in frequency of testing for each reagent (previously daily vs. weekly vs. monthly). To calculate weekly changes, we used an average of 6 days per week for laboratory operations, recognizing that while most hospital laboratories operate 7 days a week, physician office laboratories (that perform some culture and identification procedures) may only operate 5 days a week. Since we estimate all bacteriology laboratories use all tests for which QC is reduced, to determine the total annual savings per laboratory, we added the QC savings for each individual test.

To estimate the total annual savings in QC costs for all bacteriology laboratories, we multiplied the total annual savings per laboratory by the number of laboratories affected (27,443), and estimated a total cost savings of $62.4 million the first year.

TABLE 10.—CHANGE IN COST PER TEST FOR REVISED BACTERIOLOGY QC REQUIREMENTS

Reagent	Labor cost*	Reagent amount	Reagent cost	Total cost per test	Change in cost per day	Change in cost per week	Change in cost per year
Catalase	$0.60	1 drop	$0.08	$0.68	−$0.68	−$4.08	−$212.16
Coagulase	0.60	2 drops	0.17	0.77	−0.77	−4.62	−240.24
Oxidase	0.60	1 drop	0.06	0.66	−0.66	−3.96	−205.92
Cefinase	0.60	2 discs	2.65	3.25	−3.25	−19.50	−1,014.00
Bacitracin	0.60	2 discs	0.40	1.00	−0.17	−1.00	−52.00
Optochin	0.60	2 discs	0.33	0.93	−0.16	−0.93	−48.36
ONPG	0.60	2 discs	0.98	1.58	−0.26	−1.58	−82.16
X	0.60	2 strips	1.60	2.20	−0.37	−2.20	−114.40
V	0.60	2 strips	1.60	2.20	−0.37	−2.20	−114.40
XV	0.60	2 strips	1.60	2.20	−0.37	−2.20	−114.40
Antisera	0.60	2 drops	6.98	7.58	−0.24	−1.46	−75.80
Total							−2,273.84

* Labor cost estimate for each reagent includes one minute to perform QC test and one minute for recording and monitoring QC results.

Mycobacteriology

Erroneous test results can lead to inaccurate diagnoses and unnecessary or inappropriate therapy. When this pertains to *M. tuberculosis* or other mycobacteria currently emerging as significant pathogens, it could have substantial cost implications or adverse health outcomes due to the side effects of drugs used to treat infections caused by these organisms. Therefore, it is critical for laboratories to rapidly detect mycobacteria and accurately identify individual species within this genus. For laboratories performing acid-fast and/or fluorochrome acid-fast stains, accuracy is best ensured by including positive and negative controls each day (acid-fast) and each time (fluorochrome acid-fast) of use. For laboratories using conventional biochemical tests to identify mycobacteria, erroneous test results can most likely be prevented by including a positive and negative control organism for each test each day of use. Although difficult to quantify, the increased costs for additional QC testing are outweighed by the benefits of prompt, accurate mycobacterial detection and identification, and appropriate therapy for mycobacterial infections.

Mycology

Reducing the QC testing requirements for the germ tube test and lactophenol cotton blue stain will result in a cost and time savings for mycology laboratories. Since weekly QC is eliminated for the germ tube test, the financial savings will equal the cost of weekly QC, and the time savings will equal the time spent on a weekly basis performing and recording QC for this test. For lactophenol cotton blue, required QC testing each day of use is now eliminated. The cost and time savings resulting from this reduction is based on calculations assuming this test is performed an average of twice a week, when positive fungal cultures are detected.

We estimated the savings for QC testing in mycology by determining baseline expenses for each germ tube test labor ($0.90) and materials ($0.73), and each lactophenol cotton blue test labor ($0.60) and materials ($0.06), followed by calculation of the weekly and annual savings that will be realized

by reducing the QC frequency for these tests. Since we estimate that these changes will affect 50 percent of mycology laboratories, the total annual cost savings in mycology will be the annual savings per laboratory multiplied by half the number of mycology laboratories (9,059), an estimated total cost savings of $1.4 million the first year.

Costs

Mycobacteriology

We estimated the cost for the changes to mycobacteriology QC testing in the same manner as we estimated savings for bacteriology (Table 11). However, in mycobacteriology, not all laboratories will be affected for every test, since no more than 35.4 percent of laboratories perform organism identification. Therefore, when estimating the overall costs of increasing the mycobacteriology QC requirements, we considered the difference in the number of affected laboratories in the calculations.

When calculating costs for the acid-fast and fluorochrome acid-fast stains, we estimated that for each test, mycobacteriology laboratories would test two QC slides on at least a daily basis. Although QC is required each time of use for fluorochrome acid-fast stains (which can differ from each day of use), we assume QC would be performed daily and that each laboratory performs both acid-fast and fluorochrome acid-fast stains daily and will incur an increase in QC testing costs for both methods. However, some mycobacteriology laboratories use only one method of staining, and some laboratories already check QC slides each time of use. The percentage of laboratories using each type of stain exclusively or already performing QC each time of use is not available. Therefore, our estimate of the cost impact of this increase in QC testing is higher than the actual costs that will be incurred. When calculating the weekly QC testing costs for acid-fast stains, we used 7 days for laboratory operations, taking into account the CDC recommended turnaround time of 24 hours (Huebner, Good and Tokars, 1993) for reporting acid-fast smears.

TABLE 11.—CHANGE IN COST PER TEST FOR REVISED MYCOBACTERIOLOGY QC REQUIREMENTS

	Labor cost	Reagent amount	Reagent cost	Total cost per test	Change in cost per day	Change in cost per week	Change in cost per year
Identification Tests[1]	[2] $6.00	Variable	$20.46	$26.46	+$7.56	+$52.92	+$2,751.84
Acid-fast Stains	[3] 1.80	2–3 mL of 3 solutions	0.61	2.41	+2.41	+14.46	+751.92
Fluorochrome Stains	[3] 1.80	2–3 mL of 3 solutions	0.60	2.40	+2.40	+14.40	+748.80
Total							+4,252.56

[1] Estimate includes the following tests: arylsulfatase, 68 degree catalase, semi-quantitative catalase, NaCl tolerance, niacin, nitrate, pyrazinamidase, tellurite reduction, Tween 80 hydrolysis, and urease.

[2] Combined labor cost estimate for each reagent/test includes one minute to perform QC test and one minute for recording and monitoring QC results.

[3] Labor cost estimate for each stain procedure includes five minutes to perform QC test and one minute for recording and monitoring QC results.

For conventional biochemical reagents and identification procedures used on mycobacterial culture isolates, we calculated the potential cost increase for adding a negative control to each test based on 10 biochemical reagents (or tests) used for mycobacterial identification, as listed in Essential Procedures for Clinical Microbiology (Eisenburg, 1998). Although several additional biochemical tests can be used in the conventional scheme of mycobacterial identification, most of these tests were not included in our calculations since they are growth tests on certain selective media, which would not be subject to increased QC requirements. The iron-uptake test was also not included in our calculations since a negative control was previously required for this test. In estimating the change in cost for these identification procedures, the cost of labor for these tests was first calculated for a single test and then multiplied by 10. We assume the same approximate time is required to perform and record each QC test. The total reagent cost was determined by adding the cost of reagents for each individual test. The total cost for all 10 tests is the sum of the labor and reagent costs. Since in most laboratories these tests are performed less frequently than acid-fast stains or bacteriology identification tests, our estimates assume that each of these tests would be run twice per week. The additional cost for each laboratory per week is equal to twice the total cost for all 10 tests, and the additional annual cost per laboratory is estimated on the basis of this total weekly cost.

To estimate the total annual increase in the cost of QC for mycobacteriology, we multiplied the increased costs for acid-fast and fluorochrome stains by the total 3,185 mycobacteriology laboratories, and multiplied the increased costs for conventional biochemical identification tests by 35.4 percent of the total number of laboratories (1,127), and then added these amounts. We estimated the total cost increase would be $7.9 million the first year.

Error Rates

Bacteriology

We do not expect increased error rates in patient testing for the QC changes in bacteriology. As reported in the ASM study, the QC failure rates for laboratories participating in the study translated into one failure for all reagents surveyed every 53 years (ASM, 1996). Since in many cases, a single reagent or test is only a part of a bacterial identification scheme, these rare failures are not likely to lead to errors in organism identification or patient testing.

Mycology

We expect no additional errors as a result of the decreased requirements for QC in mycology.

Scope of Impact

The changes in QC requirements for microbiology laboratories will result in significant cost savings overall, on an annual and 5-year basis, when considering the net effect of the changes being implemented in the subspecialties of bacteriology, mycobacteriology, and mycology. The decreased QC requirements in bacteriology and mycology are expected to impact all U.S. laboratories performing this testing under a Certificate of Compliance, Certificate of Accreditation, or State exemption. We estimate the total cost savings for each microbiology laboratory

performing bacteriology testing to be $2,274 the first year. By multiplying this number by the total number of bacteriology laboratories (27,443), we estimate the total savings for bacteriology laboratories to be $62.4 million the first year and the overall savings over the next 5 years to be approximately $273.7 million for bacteriology.

For mycology, we estimate the total cost savings the first year per laboratory will be $153, and the change will affect 9,059 mycology laboratories with total savings of $1.4 million. We estimate overall savings will be $6.1 million for the next 5 years.

Although the increase in QC requirements for mycobacteriology will result in increased costs for microbiology laboratories conducting this testing, the impact will not affect all laboratories to the same extent, as previously explained. In fact, laboratories previously following professional standards of practice for mycobacteriology will not be impacted at all by these QC changes. Mycobacteriology laboratories will likely incur increased QC costs for acid-fast and/or fluorochrome stains, an estimated maximum increase of $1,501 per laboratory the first year, and $4.8 million overall, assuming laboratories use both methods of staining, and did not previously test controls each time of use. Since only 35.4 percent of mycobacteriology laboratories perform organism identification, the impact of increasing the QC requirements for certain identification tests will affect significantly fewer laboratories. We calculated this increase to cost $2,752 per laboratory the first year, with a maximum cost of $3.1 million overall. However, as explained previously in the Mycobacteriology subsection of the Methodology section, we believe this cost impact is overestimated for the increased QC for biochemical identification tests. Evidence shows that with newer technology, fewer laboratories use the older conventional tests, and this is expected to further decrease as technology continues to improve. In addition, laboratories offering limited services may not use as many biochemical identification tests if they only identify a limited number of organisms. Last, since professional standards and an accreditation organization already recommend or require negative control organisms, many laboratories may already be including the controls we are now requiring in this regulation. Therefore, the combined annual estimate of increased QC costs for mycobacteriology laboratories of $7.9 million overall and the next 5 year estimate of $34.6 million are likely inflated to some degree.

To summarize, the total savings in QC testing costs that will result from the changes in the microbiology requirements is the sum of the savings in the subspecialties of bacteriology and mycology, minus the cost increases in the subspecialty of mycobacteriology, a minimum total cost savings for microbiology laboratories of $55.9 million the first year. The savings projected over the next 5 years are approximately $245.2 million.

Alternative Approaches

For bacteriology and mycology, one alternative approach would be to continue to require QC testing for all reagents at the same frequencies as specified in the February 1992 regulations. However, there are no data that support continuing these frequencies to ensure the quality of patient testing. We believe if the previous frequencies were maintained, the total financial costs in labor and materials would far exceed the possible benefits in detecting problems with reagents. Another approach we considered is QC testing less frequently than with every batch, lot number and shipment of reagents (catalase, coagulase, beta-lactamase, oxidase, and germ tube test), disks and strips (bacitracin, optochin, ONPG, X, V, and XV), stains (lactophenol cotton blue), and antisera. However, because damage or improper handling of each batch, lot, or shipment can result in compromised reagent integrity, we did not consider this to be acceptable. We also considered leaving the requirement for monthly testing of antisera in place, but since there are no data to support this frequency, and the ASM data showed the reagents are relatively stable, we considered QC testing every 6 months adequate for these relatively expensive reagents with extended shelf lives.

For mycobacteriology, we considered not requiring a negative control with daily use of identification reagents, and not requiring QC daily for acid-fast stains, and each time of use for fluorochrome stains. However, the expense of increasing these requirements is relatively small because so few laboratories are impacted and in practice the incremental impact of adding a second control is relatively small. We cannot quantify the impact on error rates of not implementing these changes, but false positive tests in mycobacteriology can result in considerable extra expense in patient care.

b. Changes in Required QC Frequency for Syphilis Serology, Immunology, and Hematology

Syphilis Serology

We estimated that the reduction in frequency for syphilis serology QC testing may affect 7,634 laboratories (Certificate of Compliance (3,068), Certificate of Accreditation (4,070), and State-exempt (496)) (OSCAR, 2001 and the States of New York and Washington). Laboratories will be required to run controls each day patient specimens are tested, rather than each time they are tested. For laboratories testing patient specimens more than once a day, this change will result in a cost savings. However, we cannot estimate the amount of savings, because we do not know how many of these laboratories conduct testing more than once per day.

Immunology

There are a total of 20,665 laboratories (Certificate of Compliance (9,728), Certificate of Accreditation (10,285), and State-exempt (652)) performing immunology testing that may be affected by the reduction in the frequency for immunology QC testing. Under this final rule, laboratories must perform control procedures each day of testing, rather than concurrent with each testing event. We do not know how many of these laboratories test patient specimens more than once per day for each immunology procedure; therefore, we cannot estimate the cost savings if control procedures are performed less frequently. However, these provisions for the frequency of control testing do not supercede manufacturers' instructions or laboratory specifications that may require control testing more frequently; for example, each time patient specimens are tested.

Hematology

For hematology, we are reducing the required frequency for control testing from once each 8 hours of operation to once each day of testing. There are a total of 32,753 laboratories (Certificate of Compliance (16,332), Certificate of Accreditation (15,477), and State-exempt (944)) that perform hematology testing to which this change may apply. We do not know the exact number of laboratories that this change will affect because this change will only impact laboratories performing testing longer than 8 hours per day. However, we expect it will affect most hospital laboratories and many independent laboratories, since the majority of hospitals and independent laboratories operate 24 hours per day. For these

laboratories, if manufacturer instructions and laboratory specifications allow, performance of two control testing events per day can be eliminated for each hematology analyzer. Therefore, the aggregate savings may be significant, but we cannot estimate the impact.

Alternative Approaches

For these three changes, the aggregate impact will be a cost savings; however, we have insufficient information to estimate the reduced burden or savings in reduced analyst time, cost of reagents, and control materials associated with the reduced frequency of control material testing. We considered leaving the requirements for control procedures unchanged; however, based upon the current stability of the test systems used in these three areas, we have determined that few additional testing errors would be prevented by more frequent control testing.

4. Completion of Laboratory Director Phase-in

We are completing the phase-in qualification requirement for high complexity laboratory director that allows individuals with a doctoral degree to qualify based on training and experience in lieu of board certification. With the implementation of this final rule, board certification will be required under one provision. However, under the second provision, we are allowing individuals, who qualified under the phase-in provision and who have served or are now serving as directors of laboratories performing high complexity testing and have at least 2 years of training or experience, or both, and 2 years of experience directing or supervising high complexity testing to continue to serve as laboratory directors. To ensure a smooth transition to the new provisions for directors of high complexity testing who are not board certified (but who have doctoral degrees), we will not be holding facilities out of compliance with the provisions of the rule concerning directors who are not board certified until the effective date of this new rule, to the extent the facilities are otherwise in compliance with the requirements for laboratory directors.

Rationale

Personnel qualifications are considered an essential benchmark of performance and requiring appropriate qualifications for the complexity level of testing performed by the laboratory is in the best interest of quality testing. High complexity testing requires more extensive knowledge, training, and experience to perform the management and administrative duties necessary to ensure that personnel are competent, methodologies are appropriate, and the quality control and quality assessment programs are suitable for the testing performed. The high complexity laboratory director qualification requirements in this final rule balance the quality concerns with the need to ensure continued access to high complexity testing.

Methodology

To determine the impact of these laboratory director qualification requirements over time on laboratories performing high complexity testing, we estimated the number of high complexity laboratories potentially impacted and the number of qualified individuals available to serve as high complexity laboratory directors during the next 5 years.

Laboratory Demographics

Using the CMS OSCAR (2001) database, we have determined that approximately 8,000 of the 22,720 Certificate of Compliance (COC) laboratories (35 percent, or 4.7 percent of all CLIA laboratories) perform some high complexity testing. To determine the total number of Certificate of Accreditation (COA) laboratories that perform high complexity testing, we included the approximately 9,200 laboratories accredited by five of the CLIA-approved accreditation organizations (American Association of Blood Banks, American Osteopathic Association, American Society for Histocompatibility and Immunogenetics, College of American Pathologists, and Joint Commission on Accreditation of Healthcare Organizations). The majority of these laboratories are independent or hospital-based and are assumed to perform some high complexity testing. We also estimated that approximately 1,700 of the 6,881 COLA-accredited laboratories (25 percent) perform some high complexity testing. In addition, the number of high complexity laboratories in the two CLIA-exempt States, New York (540) and Washington (235), is approximately 775 laboratories (New York and Washington, personal communication, March 2002). Therefore, the total number of CLIA laboratories (including New York and Washington) performing some high complexity testing in the United States is estimated to be approximately 19,700 laboratories.

As previously mentioned and illustrated at Table 4, the percentages of laboratories with each certificate type have remained stable over the past several years; however, the absolute numbers show trends toward lower complexity levels (waiver and PPM). While we expect this trend to continue in the future because of the widening availability of waived tests, we assume that COC laboratories switching to waiver and PPM certificates are those that perform only moderate complexity testing and the number of COC laboratories performing some high complexity testing will remain stable. In addition, we assume the number of accredited laboratories performing some high complexity testing will remain fairly stable, as has been the trend in the past several years.

High Complexity Laboratory Director Demographics

We also used the OSCAR (2001) database to identify the CLIA qualification requirements by which those individuals currently serving as laboratory directors of COC high complexity laboratories qualified. Using this data, we have calculated that 28 percent of these laboratories are directed by board-certified pathologists; 56 percent by licensed physicians with laboratory training or experience; 5 percent by individuals with doctoral degrees; 3 percent by individuals who have been serving as laboratory directors and were qualified as a laboratory director on or before February 28, 1992 (according to the March 14, 1990 final rule with comment period (55 FR 9538) published in the **Federal Register**); 7 percent by individuals who on or before February 28, 1992 were qualified under State law to direct a laboratory in the State in which the laboratory was located; and less than 1 percent by individuals who meet the qualifications currently at § 493.1443(b)(6) for the subspecialty of oral pathology.

We assume individuals currently serving as high complexity laboratory directors will retire at approximately the same rate as projected for the general population; that is, on average 3.8 percent per year for fiscal years 2001 through 2005 (U.S. Office of Personnel Management, Central Personnel Data Files, 2000). Therefore, we anticipate 3.8 percent of the approximately 19,700 high complexity laboratories (750) will need to hire a new laboratory director each year for the next 5 years. Pool of Individuals Qualified to Serve as High Complexity Laboratory Directors.

Using data (September 2000) from the American Board of Medical Specialties (ABMS), we estimated the total number of physicians that have 1 year of

laboratory training during medical residency to be 17,400. In addition, ABMS reports 5,784 pathologists received board certification over the past 10 years. This number is consistent with the Accreditation Council for Graduate Medical Education's (ACGME) data indicating there are approximately 2,660 anatomical and clinical pathology residents enrolled through the current academic year (ending June 2002). These residents will be eligible for board certification over the next 4 years.

The total number of board-certified doctoral-degreed individuals is estimated to be 2,090 (American Board of Bioanalysis (ABB), American Board of Clinical Chemistry (ABCC), American Board of Forensic Toxicology (ABFT), American Board of Medical Genetics (ABMG), American Board of Medical Laboratory Immunology (ABMLI), American Board of Medical Microbiology (ABMM), and National Registry of Certified Chemists (NRCC)). In addition, one HHS-approved board reports an average of 8 individuals receiving certification annually, another board reports an average of 11 annually, and a third board reports 37 annually (AAB, ABCC, ABFT, ABMLI, ABMM, NRCC, personal communication, March 2002).

Based on the data provided by the HHS-approved boards, ABMS, and ACGME, we believe there will be a sufficient number of individuals available to fill the possible 750 high complexity laboratory director vacancies per year over the next 5 years. Moreover, only 5 percent of the COC high complexity laboratories currently employ a laboratory director with a doctoral degree. We believe the percentage of COA and Washington State high complexity laboratories employing a laboratory director with a doctoral degree may be about the same or lower. Therefore, we estimate that approximately 180 of the 958 COC, COA, and Washington State high complexity laboratories that employ a doctoral-degreed individual as a laboratory director may have to replace their director during the next 5 years (36 annually). We did not include the high complexity laboratories in New York because they require laboratory directors to have "specific" training or experience in the specialty(ies) of testing the laboratory performs.

Benefits

Impact

There will be no immediate impact because the second provision included in this final rule allows individuals who have served or are currently serving as laboratory directors and have at least 2 years of training or experience, or both, and 2 years of experience directing or supervising high complexity testing to continue in their capacity without obtaining board certification. This provision circumvents the costly and disruptive burdens associated with currently employed individuals obtaining board certification and laboratories, which perform high complexity testing, replacing currently serving directors..

With regard to future impact, available data indicate there are ample numbers of qualified individuals available to fill the estimated annual high complexity laboratory director vacancies over the next 5 years. In addition, the CLIA regulations permit qualified individuals to direct up to five laboratories, which may further lessen the burden associated with replacing retiring laboratory directors. However, States and accrediting organizations may have more stringent qualification requirements for laboratory directors and affected laboratories would need to continue to meet these requirements.

Costs

The provisions in this final rule at § 493.1443(b)(3), will have no immediate costs, and we believe the costs over the next 5 years will be no greater than the costs laboratories performing high complexity testing currently experience when replacing directors.

Alternative Approaches

In the December 28, 2001 proposed rule, we considered qualifying individuals with a doctoral degree and 6 years of laboratory training and experience, or both (including 2 years experience directing or supervising high complexity testing), as directors of laboratories performing high complexity testing. While we offered this as an alternative qualification pathway, we agree with the majority of commenters and the CLIAC recommendation that the provision is not commensurate with the responsibilities of a high complexity laboratory director or consistent with the qualification requirements and responsibilities specified for the other CLIA laboratory personnel categories. Moreover, we have determined that this qualification pathway is not needed to ensure a sufficient pool of qualified individuals to serve as high complexity laboratory directors and thus continued access to high complexity testing.

5. Miscellaneous Changes

The reorganization of this final rule reflects the flow of laboratory testing (from receipt of the specimen through test performance, test reporting and systems' assessments), eliminates duplicative requirements, and rewords certain requirements. In response to comments received to previous rulemakings, wherever possible we have made changes to the regulations to reduce the burden and expense to laboratories. Also, in recognition of new and emerging technologies and methodologies, obsolete requirements have been deleted and a few new requirements have been added. Listed below are several of these revisions, not yet discussed in this impact analysis, which may result in some change in costs or burden for laboratories. While we believe the change in costs or burden, or both, will be relatively minor, lack of data and information makes these estimates either difficult or impossible to quantify.

Revisions Resulting in No Change in Burden and Costs

The FDA QC review process was intended to be implemented when the QC phase-in ended, but we established through our survey process that the review would be not be of benefit to laboratories. Because this review was not implemented, there is no impact.

- Records of test system performance specifications established or verified as required under § 493.1253 must be retained for the period of time the test system is in use. Because this information provides important data about the laboratory's test system performance (for example, accuracy, precision, and reportable range of patient results) that the laboratory is required (formerly at § 493.1109(g), now at § 493.1291(e)) to provide to clients upon request, laboratories should have already been maintaining this information. Therefore, there is no additional burden with this change.
- When a laboratory transcribes or enters test requisition or authorization information into a record or information system, it must ensure that the information is transcribed or entered accurately. Formerly at § 493.1701, laboratories were responsible for identifying and correcting problems and ensuring accurate, reliable, and prompt reporting of test results. Inaccurate transcription of test requisition or authorization information would be one example of a problem, if left uncorrected, that could interfere with both the reporting of test results and the accuracy of the results. For this reason, we believe this new requirement should have no impact on the laboratory's burden or costs.

• Section 493.1254 now specifies that when using unmodified manufacturer's equipment, instrument or test systems, the laboratory must follow the manufacturer's instructions for maintenance and function check protocols rather than establish its own. While this revision results in a less stringent requirement than that specified under former § 493.1215, we do not anticipate a change (decrease) in burden or costs to the laboratory because following the manufacturer's instructions for maintenance and function checks when using unmodified equipment, instruments, or test systems was acceptable practice for meeting the former requirement.

• In the specialty of histocompatibility now at § 493.1278, the laboratory's reagent typing inventory must indicate reagent specificity as well as the previously required source, bleeding date and identification number, and volume remaining. Indicating a reagent's specificity in the laboratory's reagent inventory is routine laboratory practice that was inadvertently not addressed in the regulations. This new requirement for documentation of reagent specificity will have no impact on the laboratory's burden or costs.

Revisions Resulting in a Decrease in Burden or Costs.

• We are eliminating the requirement under the specialty of histocompatibility for each individual performing testing to evaluate previously tested specimens monthly as specified formerly at § 493.1265. The mechanism for and frequency of competency assessment of histocompatibility testing personnel will now be determined, as it is in all other laboratory specialties and subspecialties, by the laboratory's technical consultant or supervisor under §§ 493.1413(b)(8) and (9) and 493.1449(b)(8) and (9), respectively. Although this is a reduction in burden, we cannot estimate the cost savings.

• For laboratories performing histocompatibility testing, we are eliminating the specified frequencies for screening potential transplant recipient sera for performed HLA–A and B antibodies (formerly at § 493.1265(a)(8)(i)). Instead, in this final rule at § 493.1278(d)(5), we are requiring the laboratory to have available and follow a policy, consistent with clinical transplant protocols, for the frequency of such antibody screening. While this is most likely a reduction in burden, we cannot estimate the cost savings, since emerging data and research information will be an ongoing factor in determining appropriate screening frequencies.

• For the performance of non-renal transplantation in an emergency situation, we are eliminating the requirement that the results of final crossmatches be available before the transplantation when the recipient demonstrates presensitization by prior serum screening. In this final rule at § 493.1278(f)(3) (formerly at § 493.1265(b)(3)), the laboratory must have available, and follow, policies that address when HLA testing and final crossmatches are required for presensitized non-renal transplant recipients. We cannot estimate the savings from this reduction.

Revisions for Which There May Be a Negligible Increase in Burden or Costs

• The laboratory must ensure a uni-directional workflow for molecular amplification systems that are not contained in enclosed systems. This includes maintaining physically separate areas for specimen preparation, amplification and product detection and reagent preparation, as applicable. This is a recommended guideline for good laboratory practice by several laboratory professional organizations. Although we are unable to estimate the number of laboratories that perform molecular amplification with open systems without following the recommended guideline, we expect the number to be small and any increase in burden or cost with meeting this new requirement, now at § 493.1101, negligible.

• If the laboratory ceases operation, it must make provisions to ensure that all records, slides, blocks, and tissues are maintained for the applicable time frames. We anticipate that this change now at § 493.1105 will affect few laboratories; however, we cannot estimate the number or associated cost.

• In the former requirements at §§ 493.911(c)(1), 493.913(c)(1), 493.915(c)(1), 493.917(c)(1), 493.919(c)(1), 493.923(b)(1), 493.927(c)(1), 493.931(c)(1), 493.933(c)(1), 493.937(c)(1), and 493.941(c)(1) PT programs were required to grade PT results by first comparing the laboratory's response to the response which reflects agreement of either 90 percent of 10 or more referee laboratories or 90 percent or more of all participating laboratories. If this consensus agreement requirement was met, then the results could be graded based on their values relative to the established correct response for each PT analyte, subspecialty, or specialty. If the consensus requirement was not met, then laboratories were not graded and received an acceptable score, by default. As a consequence of this, a portion of those laboratories receiving ungraded PT results may have failed to recognize that their actual PT performance was not acceptable and only realized that their performance was unacceptable when their PT results were reviewed as part of an inspection. Thus, in some instances laboratories failed to make appropriate corrections to testing problems, identified by unacceptable PT performance, in a timely manner. Now at §§ 493.911(c)(1), 493.913(c)(1), 493.915(c)(1), 493.917(c)(1), 493.919(c)(1), 493.923(b)(1), 493.927(c)(1), 493.931(c)(1), 493.933(c)(1), 493.937(c)(1), and 493.941(c)(1), the consensus agreement requirement is lowered to 80 percent. Fewer PT results will be ungraded and a portion of those laboratories previously not graded due to a lack of consensus will receive an unacceptable PT grade. Thus, these laboratories will be alerted to potential testing problems sooner. Also, with the change at § 493.1236(b)(2), which now requires all laboratories to verify testing accuracy for any analyte, subspecialty, or specialty assigned a PT score that does not reflect the laboratory's actual PT performance, an additional number of laboratories may become cognizant of their poor testing performance sooner than when PT results are not graded and they receive an acceptable score by default. The combination of fewer ungraded PT results with the requirement for all laboratories to review and verify their PT results, especially when they are deemed questionable by the PT program, will result in these laboratories, in a more timely manner, identifying and correcting potential sources of error which may not have been otherwise detected, thereby increasing overall laboratory accuracy. However, there may be some burden for those laboratories that are now required to verify testing accuracy but are having no real problem with testing. Since verifying testing accuracy whenever there is a potential likelihood of error is generally regarded as good laboratory practice, and in most instances the laboratory's routine use of QC may be used to verify testing accuracy, this should not be considered burdensome. Likewise, PT programs may be slightly inconvenienced by the need to change their grading algorithms to accommodate the 80 percent consensus requirement. However, it is the responsibility of PT programs to assist laboratories in assessing their testing performance by providing PT samples that can be appropriately graded.

Although these changes may affect laboratories and PT programs, the impact is not quantifiable and is considered minor compared to the overall beneficial effect of improved laboratory testing accuracy.

- Test requisitions or other written or electronic authorizations for testing must include the patient's sex and age or date of birth as specified now at § 493.1241. We expect a negligible increase in burden or cost because the patient's age or date of birth was required for Pap smears, formerly at § 493.1105(e), and most laboratories are already obtaining the patient's gender, since it is frequently necessary for appropriate test interpretation (as required formerly at § 493.1105(f)). The number of laboratories that have not been requesting the patient's gender and age or date of birth is unknown.
- The laboratory must use a control system capable of detecting reaction inhibition when performing molecular amplification procedures in which inhibition is a significant source of false negative results. This is a recommended guideline for good laboratory practice by several laboratory professional organizations and is now specified at § 493.1256(d)(3)(v). While we are unable to estimate the incidence of reaction inhibition or number of laboratories performing molecular amplification procedures without following the recommended guideline, we expect the number to be small and any increase in burden and/or cost with meeting this new requirement negligible.
- The laboratory must check immunohistochemical stains for positive and negative reactivity each time of use. Although this is an increase from the requirement (formerly at § 493.1259, now at § 493.1273(a)) to check special stains for positive reactivity, we cannot estimate the laboratory impact because we do not know the number of laboratories that perform immunohistochemical stains or how often the staining is performed. We expect this change to affect a small number of laboratories, and the increase in burden and costs will be small.
- In the specialty of clinical cytogenetics, sex determination must be performed by full chromosome analysis. Formerly, in clinical cytogenetics at § 493.1267(a) (now at § 493.1276(c)), full chromosome analysis was only required as a confirmatory test when the laboratory obtained atypical results on X and Y chromatin counts. Several commenters stated that due to the frequency of mosaicism in individuals with sex chromosome anueploidy, Barr body and "Y" body analysis is no longer considered the standard of practice for sex determination and should be eliminated from the cytogenetics laboratory test menu. Several laboratory professional organizations consider sex determination by full chromosome analysis the standard for good laboratory practice; therefore, we added this requirement. Although we are unable to estimate the number of cytogenetics laboratories that perform sex determination other than by full chromosome analysis, we expect the number to be small and any increase in burden or cost with meeting this requirement negligible.
- The requirements for the test report (formerly at § 493.1109, now at § 493.1291) must include the patient's name and identification number, or unique patient identifier and identification number; the test report date; and if appropriate, the specimen source. These are standard practices in most laboratories and the impact on burden or cost is expected to be minor.

In accordance with Executive Order 12866, this regulation was reviewed by the Office of Management and Budget.

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List of Subjects in 42 FR Part 493

Grant programs—health, Health facilities, Incorporation by Reference, Laboratories, Medicaid, Medicare, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Centers for Medicare & Medicaid Services is amending 42 CFR Chapter IV part 493 as set forth below:

PART 493—LABORATORY REQUIREMENTS

1. The authority citation for part 493 continues to read as follows:

Authority: Sec. 353 of the Public Health Service Act, secs. 1102, 1861(e), the sentence following sections 1861(s)(11) through 1861(s)(16) of the Social Security Act (42 U.S.C. 263a, 1302, 1395x(e), and the sentence following 1395x(s)(11) through 1395x(s)(16)).

Subpart A—General Provisions

2. In § 493.2, the introductory text is republished, and the following definitions are added in alphabetical order to read as follows:

§ 493.2 Definitions

As used in this part, unless the context indicates otherwise—

* * * * *

Calibration means a process of testing and adjusting an instrument or test system to establish a correlation between the measurement response and the concentration or amount of the substance that is being measured by the test procedure.

Calibration verification means the assaying of materials of known concentration in the same manner as patient samples to substantiate the instrument or test system's calibration throughout the reportable range for patient test results.

* * * * *

FDA-cleared or approved test system means a test system cleared or approved by the FDA through the premarket notification (510(k)) or premarket approval (PMA) process for in-vitro diagnostic use. Unless otherwise stated, this includes test systems exempt from FDA premarket clearance or approval.

* * * * *

Reportable range means the span of test result values over which the laboratory can establish or verify the accuracy of the instrument or test system measurement response.

* * * * *

Test system means the instructions and all of the instrumentation, equipment, reagents, and supplies needed to perform an assay or examination and generate test results.

* * * * *

§ 493.3 [Amended]

3. Amend § 493.3, as follows:

a. In paragraph(b)(3), remove the words "National Institutes on Drug Abuse (NIDA)" and add, in their place, the words "Substance Abuse and Mental Health Services Administration (SAMHSA)".

b. In paragraph (b)(3), remove the word "NIDA" and add, in its place, the word "SAMHSA".

§ 493.20 [Amended]

3a. Amend § 493.20, as follows:

a. In paragraph (b), remove the reference to "subpart P".

b. In paragraph (b), remove the cross reference to "§ 493.1777" and add, in its place "§§ 493.1773 and 493.1777".

c. In paragraph (c), remove the cross reference to "§§ 493.15(e) and 493.1775" and add, in its place, "§§ 493.15(e), 493.1773, and 493.1775".

§ 493.25 [Amended]

4. Amend § 493.25 as follows:

a. In paragraph (b), remove the reference to "subpart P".

b. In paragraph (c), remove the reference to "subpart P".

c. In paragraph (c), remove "§ 493.1777" and add, in its place, "§§ 493.1773 and 493.1777".

d. In paragraph (d), remove the reference to "subpart P".

e. In paragraph (d), remove the cross reference to "§§ 493.15(e) and 493.1775" and add, in its place, "§§ 493.15(e), 493.1773, and 493.1775".

Subpart C—Registration Certificate, Certificate for Provider-Performed Microscopy Procedures, and Certificate of Compliance

§ 493.43 [Amended]

6. In § 493.43(a), remove the words "tests of moderate complexity (including the subcategory) or high complexity, or any combination of these tests," and add, in their place, the words "nonwaived testing".

§ 493.45 [Amended]

7. In § 493.45(c)(3), remove the reference to "subpart P".

§ 493.47 [Amended]

8. Amend § 493.47 as follows:

a. In paragraph (c)(2), remove the reference to "subpart P".

b. In paragraph (c)(3), remove the cross reference to "§ 493.1776" and add, in its place, "§§ 493.1773 and 493.1775".

§ 493.49 [Amended]

9. In § 493.49(a)(3), remove the reference to "subpart P".

Subpart F—General Administration

§ 493.643 [Amended]

10. In § 493.643(c)(3)(ix), add the word "Clinical" before the word "Cytogenetics".

Subpart H—Participation in Proficiency Testing for Laboratories Performing Nonwaived Testing

11. Revise the heading of Subpart H to read as set forth above.

§ 493.801 [Amended]

12. In § 493.801(a)(2)(ii), remove the cross reference to "§ 493.1709" and add, in its place, "§ 493.1236(c)(1)".

§ 493.803 [Amended]

13. In § 493.803(a), remove the words "tests of moderate complexity (including the subcategory) and/or high complexity" and add, in their place, the words "nonwaived testing".

§ 493.807 [Amended]

14. Revise the heading of §493.807 to read as follows:

§ 493.807 Condition: Reinstatement of laboratories performing nonwaived testing.

Subpart I—Proficiency Testing Programs for Nonwaived Testing

15. Revise the heading of subpart I to read as set forth above.

§§ 493.911, 493.913, 493.915, 493.917, 493.919, 493.923, 493.927, 493.931, 493.933, 493.937, and 493.941 [Amended]

16. In §§ 493.911(c)(1), 493.913(c)(1), 493.915(c)(1), 493.917(c)(1), 493.919(c)(1), 493.923(b)(1), 493.927(c)(1), 493.931(c)(1), 493.933(c)(1), 493.937(c)(1), and 493.941(c)(1), remove "90 percent" and add, in its place, "80 percent" wherever it appears.

§ 493.945 [Amended]

17. In § 493.945(a)(1), remove "§ 493.1257" and add, in its place,

"§§ 493.1105(a)(7)(i)(A) and 493.1274(f)(2)".

18. Subpart J, consisting of §§ 493.1100 through 493.1105, and subpart K, consisting of §§ 493.1200 through 493.1299, are revised to read as follows:

Subpart J—Facility Administration for Nonwaived Testing

Sec.

493.1100 Condition: Facility administration.
493.1101 Standard: Facilities.
493.1103 Standard: Requirements for transfusion services.
493.1105 Standard: Retention requirements.

Subpart K—Quality Systems for Nonwaived Testing

493.1200 Introduction.
493.1201 Condition: Bacteriology.
493.1202 Condition: Mycobacteriology.
493.1203 Condition: Mycology.
493.1204 Condition: Parasitology.
493.1205 Condition: Virology.
493.1207 Condition: Syphilis serology.
493.1208 Condition: General immunology.
493.1210 Condition: Routine chemistry.
493.1211 Condition: Urinalysis.
493.1212 Condition: Endocrinology.
493.1213 Condition: Toxicology.
493.1215 Condition: Hematology.
493.1217 Condition: Immunohematology.
493.1219 Condition: Histopathology.
493.1220 Condition: Oral pathology.
493.1221 Condition: Cytology.
493.1125 Condition: Clinical cytogenetics.
493.1226 Condition: Radiobioassay.
493.1227 Condition: Histocompatibility.

General Laboratory Systems

493.1230 Condition: General laboratory systems.
493.1231 Standard: Confidentiality of patient information.
493.1232 Standard: Specimen identification and integrity.
493.1233 Standard: Complaint investigations.
493.1234 Standard: Communications.
493.1235 Standard: Personnel competency assessment policies.
493.1236 Standard: Evaluation of proficiency testing performance.
493.1239 Standard: General laboratory systems assessment.

Preanalytic Systems

493.1240 Condition: Preanalytic systems.
493.1241 Standard: Test request.
493.1242 Standard: Specimen submission, handling, and referral.
493.1249 Standard: Preanalytic systems assessment.

Analytic Systems

493.1250 Condition: Analytic systems.
493.1251 Standard: Procedure manual.
493.1252 Standard: Test systems, equipment, instruments, reagents, materials, and supplies.
493.1253 Standard: Establishment and verification of performance specifications.
493.1254 Standard: Maintenance and function checks.
493.1255 Standard: Calibration and calibration verification procedures.
493.1256 Standard: Control procedures.
493.1261 Standard: Bacteriology.
493.1262 Standard: Mycobacteriology.
493.1263 Standard: Mycology.
493.1264 Standard: Parasitology.
493.1265 Standard: Virology.
493.1267 Standard: Routine chemistry.
493.1269 Standard: Hematology.
493.1271 Standard: Immunohematology.
493.1273 Standard: Histopathology.
493.1274 Standard: Cytology.
493.1276 Standard: Clinical cytogenetics.
493.1278 Standard: Histocompatibility.
493.1281 Standard: Comparison of test results.
493.1282 Standard: Corrective actions.
493.1283 Standard: Test records.
493.1189 Standard: Analytic systems assessment.

Postanalytic Systems

493.1290 Condition: Postanalytic systems.
493.1291 Standard: Test report.
493.1299 Standard: Postanalytic systems assessment.

Subpart J—Facility Administration for Nonwaived Testing

§ 493.1100 Condition: Facility administration.

Each laboratory that performs nonwaived testing must meet the applicable requirements under §§ 493.1101 through 493.1105, unless HHS approves a procedure that provides equivalent quality testing as specified in Appendix C of the State Operations Manual (CMS Pub. 7).

§ 493.1101 Standard: Facilities.

(a) The laboratory must be constructed, arranged, and maintained to ensure the following:

(1) The space, ventilation, and utilities necessary for conducting all phases of the testing process.

(2) Contamination of patient specimens, equipment, instruments, reagents, materials, and supplies is minimized.

(3) Molecular amplification procedures that are not contained in closed systems have a uni-directional workflow. This must include separate areas for specimen preparation, amplification and product detection, and, as applicable, reagent preparation.

(b) The laboratory must have appropriate and sufficient equipment, instruments, reagents, materials, and supplies for the type and volume of testing it performs.

(c) The laboratory must be in compliance with applicable Federal, State, and local laboratory requirements.

(d) Safety procedures must be established, accessible, and observed to ensure protection from physical, chemical, biochemical, and electrical hazards, and biohazardous materials.

(e) Records and, as applicable, slides, blocks, and tissues must be maintained and stored under conditions that ensure proper preservation.

§ 493.1103 Standard: Requirements for transfusion services.

A facility that provides transfusion services must meet all of the requirements of this section and document all transfusion-related activities.

(a) *Arrangement for services.* The facility must have a transfusion service agreement reviewed and approved by the responsible party(ies) that govern the procurement, transfer, and availability of blood and blood products.

(b) *Provision of testing.* The facility must provide prompt ABO grouping, D(Rho) typing, unexpected antibody detection, compatibility testing, and laboratory investigation of transfusion reactions on a continuous basis through a CLIA-certified laboratory or a laboratory meeting equivalent requirements as determined by CMS.

(c) *Blood and blood products storage and distribution.* (1) If a facility stores or maintains blood or blood products for transfusion outside of a monitored refrigerator, the facility must ensure the storage conditions, including temperature, are appropriate to prevent deterioration of the blood or blood product.

(2) The facility must establish and follow policies to ensure positive identification of a blood or blood product recipient.

(d) *Investigation of transfusion reactions.* The facility must have procedures for preventing transfusion reactions and when necessary, promptly identify, investigate, and report blood and blood product transfusion reactions to the laboratory and, as appropriate, to Federal and State authorities.

§ 493.1105 Standard: Retention requirements.

(a) The laboratory must retain its records and, as applicable, slides, blocks, and tissues as follows:

(1) *Test requisitions and authorizations.* Retain records of test requisitions and test authorizations, including the patient's chart or medical record if used as the test requisition or authorization, for at least 2 years.

(2) *Test procedures.* Retain a copy of each test procedure for at least 2 years after a procedure has been discontinued. Each test procedure must include the dates of initial use and discontinuance.

(3) *Analytic systems records.* Retain quality control and patient test records (including instrument printouts, if applicable) and all analytic systems activities specified in §§ 493.1252 through 493.1289 for at least 2 years. In addition, retain the following:

(i) Records of test system performance specifications that the laboratory establishes or verifies under § 493.1253 for the period of time the laboratory uses the test system but no less than 2 years.

(ii) Immunohematology records, blood and blood product records, and transfusion records as specified in 21 CFR 606.160(b)(3)(ii), (b)(3)(v), and (d).

(4) *Proficiency testing records.* Retain all proficiency testing records for at least 2 years.

(5) *Laboratory quality systems assessment records.* Retain all laboratory quality systems assessment records for at least 2 years.

(6) *Test reports.* Retain or be able to retrieve a copy of the original report (including final, preliminary, and corrected reports) at least 2 years after the date of reporting. In addition, retain the following:

(i) Immunohematology reports as specified in 21 CFR 606.160(b)(3)(ii), (b)(3)(iv), and (d).

(ii) Pathology test reports for at least 10 years after the date of reporting.

(7) *Slide, block, and tissue retention—*

(i) *Slides.*

(A) Retain cytology slide preparations for at least 5 years from the date of examination (see § 493.1274(f) for proficiency testing exception).

(B) Retain histopathology slides for at least 10 years from the date of examination.

(ii) *Blocks.* Retain pathology specimen blocks for at least 2 years from the date of examination.

(iii) *Tissue.* Preserve remnants of tissue for pathology examination until a diagnosis is made on the specimen.

(b) If the laboratory ceases operation, the laboratory must make provisions to ensure that all records and, as applicable, slides, blocks, and tissue are maintained and available for the time frames specified in this section.

Subpart K—Quality Systems for Nonwaived Testing

§ 493.1200 Introduction.

(a) Each laboratory that performs nonwaived testing must establish and maintain written policies and procedures that implement and monitor quality systems for all phases of the total testing process (that is, preanalytic, analytic, and postanalytic) as well as general laboratory systems.

(b) Each of the laboratory's quality systems must include an assessment component that ensures continuous improvement of the laboratory's performance and services through ongoing monitoring that identifies, evaluates and resolves problems.

(c) The various components of the laboratory's quality systems are used to meet the requirements in this part and must be appropriate for the specialties and subspecialties of testing the laboratory performs, services it offers, and clients it serves.

§ 493.1201 Condition: Bacteriology.

If the laboratory provides services in the subspecialty of Bacteriology, the laboratory must meet the requirements specified in §§ 493.1230 through 493.1256, § 493.1261, and §§ 493.1281 through 493.1299.

§ 493.1202 Condition: Mycobacteriology.

If the laboratory provides services in the subspecialty of Mycobacteriology, the laboratory must meet the requirements specified in §§ 493.1230 through 493.1256, § 493.1262, and §§ 493.1281 through 493.1299.

§ 493.1203 Condition: Mycology.

If the laboratory provides services in the subspecialty of Mycology, the laboratory must meet the requirements specified in §§ 493.1230 through 493.1256, § 493.1263, and §§ 493.1281 through 493.1299.

§ 493.1204 Condition: Parasitology.

If the laboratory provides services in the subspecialty of Parasitology, the laboratory must meet the requirements specified in §§ 493.1230 through 493.1256, § 493.1264, and §§ 493.1281 through 493.1299.

§ 493.1205 Condition: Virology.

If the laboratory provides services in the subspecialty of Virology, the laboratory must meet the requirements specified in §§ 493.1230 through 493.1256, § 493.1265, and §§ 493.1281 through 493.1299.

§ 493.1207 Condition: Syphilis serology.

If the laboratory provides services in the subspecialty of Syphilis serology, the laboratory must meet the requirements specified in §§ 493.1230 through 493.1256, and §§ 493.1281 through 493.1299.

§ 493.1208 Condition: General immunology.

If the laboratory provides services in the subspecialty of General immunology, the laboratory must meet the requirements specified in §§ 493.1230 through 493.1256, and §§ 93.1281 through 493.1299.

§ 493.1210 Condition: Routine chemistry.

If the laboratory provides services in the subspecialty of Routine chemistry, the laboratory must meet the requirements specified in §§ 493.1230 through 493.1256, § 493.1267, and §§ 493.1281 through 493.1299.

§ 493.1211 Condition: Urinalysis.

If the laboratory provides services in the subspecialty of Urinalysis, the laboratory must meet the requirements specified in §§ 493.1230 through 493.1256, and §§ 493.1281 through 493.1299.

§ 493.1212 Condition: Endocrinology.

If the laboratory provides services in the subspecialty of Endocrinology, the laboratory must meet the requirements specified in §§ 493.1230 through 493.1256, and §§ 493.1281 through 493.1299.

§ 493.1213 Condition: Toxicology.

If the laboratory provides services in the subspecialty of Toxicology, the laboratory must meet the requirements specified in §§ 493.1230 through 493.1256, and §§ 493.1281 through 493.1299.

§ 493.1215 Condition: Hematology.

If the laboratory provides services in the specialty of Hematology, the laboratory must meet the requirements specified in §§ 493.1230 through 493.1256, § 493.1269, and §§ 493.1281 through 493.1299.

§ 493.1217 Condition: Immunohematology.

If the laboratory provides services in the specialty of Immunohematology, the laboratory must meet the requirements specified in §§ 493.1230 through 493.1256, § 493.1271, and §§ 493.1281 through 493.1299.

§ 493.1219 Condition: Histopathology.

If the laboratory provides services in the subspecialty of Histopathology, the laboratory must meet the requirements specified in §§ 493.1230 through 493.1256, § 493.1273, and §§ 493.1281 through 493.1299.

§ 493.1220 Condition: Oral pathology.

If the laboratory provides services in the subspecialty of Oral pathology, the laboratory must meet the requirements specified in §§ 493.1230 through 493.1256, and §§ 493.1281 through 493.1299.

§ 493.1221 Condition: Cytology.

If the laboratory provides services in the subspecialty of Cytology, the

laboratory must meet the requirements specified in §§ 493.1230 through 493.1256, § 493.1274, and §§ 493.1281 through 493.1299.

§ 493.1225 Condition: Clinical cytogenetics.

If the laboratory provides services in the specialty of Clinical cytogenetics, the laboratory must meet the requirements specified in §§ 493.1230 through 493.1256, § 493.1276, and §§ 493.1281 through 493.1299.

§ 493.1226 Condition: Radiobioassay.

If the laboratory provides services in the specialty of Radiobioassay, the laboratory must meet the requirements specified in §§ 493.1230 through 493.1256, and §§ 493.1281 through 493.1299.

§ 493.1227 Condition: Histocompatibility.

If the laboratory provides services in the specialty of Histocompatibility, the laboratory must meet the requirements specified in §§ 493.1230 through 493.1256, § 493.1278, and §§ 493.1281 through 493.1299.

General Laboratory Systems

§ 493.1230 Condition: General laboratory systems.

Each laboratory that performs nonwaived testing must meet the applicable general laboratory systems requirements in §§ 493.1231 through 493.1236, unless HHS approves a procedure, specified in Appendix C of the State Operations Manual (CMS Pub. 7), that provides equivalent quality testing. The laboratory must monitor and evaluate the overall quality of the general laboratory systems and correct identified problems as specified in § 493.1239 for each specialty and subspecialty of testing performed.

§ 493.1231 Standard: Confidentiality of patient information.

The laboratory must ensure confidentiality of patient information throughout all phases of the total testing process that are under the laboratory's control.

§ 493.1232 Standard: Specimen identification and integrity.

The laboratory must establish and follow written policies and procedures that ensure positive identification and optimum integrity of a patient's specimen from the time of collection or receipt of the specimen through completion of testing and reporting of results.

§ 493.1233 Standard: Complaint investigations.

The laboratory must have a system in place to ensure that it documents all complaints and problems reported to the laboratory. The laboratory must conduct investigations of complaints, when appropriate.

§ 493.1234 Standard: Communications.

The laboratory must have a system in place to identify and document problems that occur as a result of a breakdown in communication between the laboratory and an authorized individual who orders or receives test results.

§ 493.1235 Standard: Personnel competency assessment policies.

As specified in the personnel requirements in subpart M, the laboratory must establish and follow written policies and procedures to assess employee and, if applicable, consultant competency.

§ 493.1236 Standard: Evaluation of proficiency testing performance.

(a) The laboratory must review and evaluate the results obtained on proficiency testing performed as specified in subpart H of this part.

(b) The laboratory must verify the accuracy of the following:

(1) Any analyte or subspecialty without analytes listed in subpart I of this part that is not evaluated or scored by a CMS-approved proficiency testing program.

(2) Any analyte, specialty or subspecialty assigned a proficiency testing score that does not reflect laboratory test performance (that is, when the proficiency testing program does not obtain the agreement required for scoring as specified in subpart I of this part, or the laboratory receives a zero score for nonparticipation, or late return of results).

(c) At least twice annually, the laboratory must verify the accuracy of the following:

(1) Any test or procedure it performs that is not included in subpart I of this part.

(2) Any test or procedure listed in subpart I of this part for which compatible proficiency testing samples are not offered by a CMS-approved proficiency testing program.

(d) All proficiency testing evaluation and verification activities must be documented.

§ 493.1239 Standard: General laboratory systems assessment.

(a) The laboratory must establish and follow written policies and procedures for an ongoing mechanism to monitor, assess, and, when indicated, correct problems identified in the general laboratory system requirements specified at §§ 493.1231 through 493.1236.

(b) The general laboratory systems assessment must include a review of the effectiveness of corrective actions taken to resolve problems, revision of policies and procedures necessary to prevent recurrence of problems, and discussion of general laboratory systems assessment reviews with appropriate staff.

(c) The laboratory must document all general laboratory systems assessment activities.

Preanalytic Systems

§ 493.1240 Condition: Preanalytic systems.

Each laboratory that performs nonwaived testing must meet the applicable preanalytic system(s) requirements in §§ 493.1241 and 493.1242, unless HHS approves a procedure, specified in Appendix C of the State Operations Manual (CMS Pub. 7), that provides equivalent quality testing. The laboratory must monitor and evaluate the overall quality of the preanalytic systems and correct identified problems as specified in § 493.1249 for each specialty and subspecialty of testing performed.

§ 493.1241 Standard: Test request.

(a) The laboratory must have a written or electronic request for patient testing from an authorized person.

(b) The laboratory may accept oral requests for laboratory tests if it solicits a written or electronic authorization within 30 days of the oral request and maintains the authorization or documentation of its efforts to obtain the authorization.

(c) The laboratory must ensure the test requisition solicits the following information:

(1) The name and address or other suitable identifiers of the authorized person requesting the test and, if appropriate, the individual responsible for using the test results, or the name and address of the laboratory submitting the specimen, including, as applicable, a contact person to enable the reporting of imminently life threatening laboratory results or panic or alert values.

(2) The patient's name or unique patient identifier.

(3) The sex and age or date of birth of the patient.

(4) The test(s) to be performed.

(5) The source of the specimen, when appropriate.

(6) The date and, if appropriate, time of specimen collection.

(7) For Pap smears, the patient's last menstrual period, and indication of whether the patient had a previous abnormal report, treatment, or biopsy.

(8) Any additional information relevant and necessary for a specific test to ensure accurate and timely testing and reporting of results, including interpretation, if applicable.

(d) The patient's chart or medical record may be used as the test requisition or authorization but must be available to the laboratory at the time of testing and available to CMS or a CMS agent upon request.

(e) If the laboratory transcribes or enters test requisition or authorization information into a record system or a laboratory information system, the laboratory must ensure the information is transcribed or entered accurately.

§ 493.1242 Standard: Specimen submission, handling, and referral.

(a) The laboratory must establish and follow written policies and procedures for each of the following, if applicable:

(1) Patient preparation.

(2) Specimen collection.

(3) Specimen labeling, including patient name or unique patient identifier and, when appropriate, specimen source.

(4) Specimen storage and preservation.

(5) Conditions for specimen transportation.

(6) Specimen processing.

(7) Specimen acceptability and rejection.

(8) Specimen referral.

(b) The laboratory must document the date and time it receives a specimen.

(c) The laboratory must refer a specimen for testing only to a CLIA-certified laboratory or a laboratory meeting equivalent requirements as determined by CMS.

(d) If the laboratory accepts a referral specimen, written instructions must be available to the laboratory's clients and must include, as appropriate, the information specified in paragraphs (a)(1) through (a)(7) of this section.

§ 493.1249 Standard: Preanalytic systems assessment.

(a) The laboratory must establish and follow written policies and procedures for an ongoing mechanism to monitor, assess, and when indicated, correct problems identified in the preanalytic systems specified at §§ 493.1241 through 493.1242.

(b) The preanalytic systems assessment must include a review of the effectiveness of corrective actions taken to resolve problems, revision of policies and procedures necessary to prevent recurrence of problems, and discussion of preanalytic systems assessment reviews with appropriate staff.

(c) The laboratory must document all preanalytic systems assessment activities.

Analytic Systems

§ 493.1250 Condition: Analytic systems.

Each laboratory that performs nonwaived testing must meet the applicable analytic systems requirements in §§ 493.1251 through 493.1283, unless HHS approves a procedure, specified in Appendix C of the State Operations Manual (CMS Pub. 7), that provides equivalent quality testing. The laboratory must monitor and evaluate the overall quality of the analytic systems and correct identified problems as specified in § 493.1289 for each specialty and subspecialty of testing performed.

§ 493.1251 Standard: Procedure manual.

(a) A written procedure manual for all tests, assays, and examinations performed by the laboratory must be available to, and followed by, laboratory personnel. Textbooks may supplement but not replace the laboratory's written procedures for testing or examining specimens.

(b) The procedure manual must include the following when applicable to the test procedure:

(1) Requirements for patient preparation; specimen collection, labeling, storage, preservation, transportation, processing, and referral; and criteria for specimen acceptability and rejection as described in § 493.1242.

(2) Microscopic examination, including the detection of inadequately prepared slides.

(3) Step-by-step performance of the procedure, including test calculations and interpretation of results.

(4) Preparation of slides, solutions, calibrators, controls, reagents, stains, and other materials used in testing.

(5) Calibration and calibration verification procedures.

(6) The reportable range for test results for the test system as established or verified in § 493.1253.

(7) Control procedures.

(8) Corrective action to take when calibration or control results fail to meet the laboratory's criteria for acceptability.

(9) Limitations in the test methodology, including interfering substances.

(10) Reference intervals (normal values).

(11) Imminently life-threatening test results or panic or alert values.

(12) Pertinent literature references.

(13) The laboratory's system for entering results in the patient record and reporting patient results including, when appropriate, the protocol for reporting imminent life threatening results, or panic, or alert values.

(14) Description of the course of action to take if a test system becomes inoperable.

(c) Manufacturer's test system instructions or operator manuals may be used, when applicable, to meet the requirements of paragraphs (b)(1) through (b)(12) of this section. Any of the items under paragraphs (b)(1) through (b)(12) of this section not provided by the manufacturer must be provided by the laboratory.

(d) Procedures and changes in procedures must be approved, signed, and dated by the current laboratory director before use.

(e) The laboratory must maintain a copy of each procedure with the dates of initial use and discontinuance as described in § 493.1105(a)(2).

§ 493.1252 Standard: Test systems, equipment, instruments, reagents, materials, and supplies.

(a) Test systems must be selected by the laboratory. The testing must be performed following the manufacturer's instructions and in a manner that provides test results within the laboratory's stated performance specifications for each test system as determined under § 493.1253.

(b) The laboratory must define criteria for those conditions that are essential for proper storage of reagents and specimens, accurate and reliable test system operation, and test result reporting. The criteria must be consistent with the manufacturer's instructions, if provided. These conditions must be monitored and documented and, if applicable, include the following:

(1) Water quality.

(2) Temperature.

(3) Humidity.

(4) Protection of equipment and instruments from fluctuations and interruptions in electrical current that adversely affect patient test results and test reports.

(c) Reagents, solutions, culture media, control materials, calibration materials, and other supplies, as appropriate, must be labeled to indicate the following:

(1) Identity and when significant, titer, strength or concentration.

(2) Storage requirements.

(3) Preparation and expiration dates.

(4) Other pertinent information required for proper use.

(d) Reagents, solutions, culture media, control materials, calibration materials,

and other supplies must not be used when they have exceeded their expiration date, have deteriorated, or are of substandard quality.

(e) Components of reagent kits of different lot numbers must not be interchanged unless otherwise specified by the manufacturer.

§ 493.1253 Standard: Establishment and verification of performance specifications.

(a) *Applicability.* Laboratories are not required to verify or establish performance specifications for any test system used by the laboratory before April 24, 2003.

(b)(1) *Verification of performance specifications.* Each laboratory that introduces an unmodified, FDA-cleared or approved test system must do the following before reporting patient test results:

(i) Demonstrate that it can obtain performance specifications comparable to those established by the manufacturer for the following performance characteristics:

(A) Accuracy.

(B) Precision.

(C) Reportable range of test results for the test system.

(ii) Verify that the manufacturer's reference intervals (normal values) are appropriate for the laboratory's patient population.

(2) *Establishment of performance specifications.* Each laboratory that modifies an FDA-cleared or approved test system, or introduces a test system not subject to FDA clearance or approval (including methods developed in-house and standardized methods such as text book procedures, Gram stain, or potassium hydroxide preparations), or uses a test system in which performance specifications are not provided by the manufacturer must, before reporting patient test results, establish for each test system the performance specifications for the following performance characteristics, as applicable:

(i) Accuracy.

(ii) Precision.

(iii) Analytical sensitivity.

(iv) Analytical specificity to include interfering substances.

(v) Reportable range of test results for the test system.

(vi) Reference intervals (normal values).

(vii) Any other performance characteristic required for test performance.

(3) *Determination of calibration and control procedures.* The laboratory must determine the test system's calibration procedures and control procedures based upon the performance specifications verified or established under paragraph (b)(1) or (b)(2) of this section.

(c) *Documentation.* The laboratory must document all activities specified in this section.

§ 493.1254 Standard: Maintenance and function checks.

(a) *Unmodified manufacturer's equipment, instruments, or test systems.* The laboratory must perform and document the following:

(1) Maintenance as defined by the manufacturer and with at least the frequency specified by the manufacturer.

(2) Function checks as defined by the manufacturer and with at least the frequency specified by the manufacturer. Function checks must be within the manufacturer's established limits before patient testing is conducted.

(b) *Equipment, instruments, or test systems developed in-house, commercially available and modified by the laboratory, or maintenance and function check protocols are not provided by the manufacturer.* The laboratory must do the following:

(1)(i) Establish a maintenance protocol that ensures equipment, instrument, and test system performance that is necessary for accurate and reliable test results and test result reporting.

(ii) Perform and document the maintenance activities specified in paragraph (b)(1)(i) of this section.

(2)(i) Define a function check protocol that ensures equipment, instrument, and test system performance that is necessary for accurate and reliable test results and test result reporting.

(ii) Perform and document the function checks, including background or baseline checks, specified in paragraph (b)(2)(i) of this section. Function checks must be within the laboratory's established limits before patient testing is conducted.

§ 493.1255 Standard: Calibration and calibration verification procedures.

Calibration and calibration verification procedures are required to substantiate the continued accuracy of the test system throughout the laboratory's reportable range of test results for the test system. Unless otherwise specified in this subpart, for each applicable test system the laboratory must do the following:

(a) Perform and document calibration procedures—

(1) Following the manufacturer's test system instructions, using calibration materials provided or specified, and with at least the frequency recommended by the manufacturer;

(2) Using the criteria verified or established by the laboratory as specified in § 493.1253(b)(3)—

(i) Using calibration materials appropriate for the test system and, if possible, traceable to a reference method or reference material of known value; and

(ii) Including the number, type, and concentration of calibration materials, as well as acceptable limits for and the frequency of calibration; and

(3) Whenever calibration verification fails to meet the laboratory's acceptable limits for calibration verification.

(b) Perform and document calibration verification procedures—

(1) Following the manufacturer's calibration verification instructions;

(2) Using the criteria verified or established by the laboratory under § 493.1253(b)(3)—

(i) Including the number, type, and concentration of the materials, as well as acceptable limits for calibration verification; and

(ii) Including at least a minimal (or zero) value, a mid-point value, and a maximum value near the upper limit of the range to verify the laboratory's reportable range of test results for the test system; and

(3) At least once every 6 months and whenever any of the following occur:

(i) A complete change of reagents for a procedure is introduced, unless the laboratory can demonstrate that changing reagent lot numbers does not affect the range used to report patient test results, and control values are not adversely affected by reagent lot number changes.

(ii) There is major preventive maintenance or replacement of critical parts that may influence test performance.

(iii) Control materials reflect an unusual trend or shift, or are outside of the laboratory's acceptable limits, and other means of assessing and correcting unacceptable control values fail to identify and correct the problem.

(iv) The laboratory's established schedule for verifying the reportable range for patient test results requires more frequent calibration verification.

§ 493.1256 Standard: Control procedures.

(a) For each test system, the laboratory is responsible for having control procedures that monitor the accuracy and precision of the complete analytical process.

(b) The laboratory must establish the number, type, and frequency of testing control materials using, if applicable, the performance specifications verified

or established by the laboratory as specified in § 493.1253(b)(3).

(c) The control procedures must—

(1) Detect immediate errors that occur due to test system failure, adverse environmental conditions, and operator performance.

(2) Monitor over time the accuracy and precision of test performance that may be influenced by changes in test system performance and environmental conditions, and variance in operator performance.

(d) Unless CMS approves a procedure, specified in Appendix C of the State Operations Manual (CMS Pub. 7), that provides equivalent quality testing, the laboratory must—

(1) Perform control procedures as defined in this section unless otherwise specified in the additional specialty and subspecialty requirements at §§ 493.1261 through 493.1278.

(2) For each test system, perform control procedures using the number and frequency specified by the manufacturer or established by the laboratory when they meet or exceed the requirements in paragraph (d)(3) of this section.

(3) At least once each day patient specimens are assayed or examined perform the following for—

(i) Each quantitative procedure, include two control materials of different concentrations;

(ii) Each qualitative procedure, include a negative and positive control material;

(iii) Test procedures producing graded or titered results, include a negative control material and a control material with graded or titered reactivity, respectively;

(iv) Each test system that has an extraction phase, include two control materials, including one that is capable of detecting errors in the extraction process; and

(v) Each molecular amplification procedure, include two control materials and, if reaction inhibition is a significant source of false negative results, a control material capable of detecting the inhibition.

(4) For thin layer chromatography—

(i) Spot each plate or card, as applicable, with a calibrator containing all known substances or drug groups, as appropriate, which are identified by thin layer chromatography and reported by the laboratory; and

(ii) Include at least one control material on each plate or card, as applicable, which must be processed through each step of patient testing, including extraction processes.

(5) For each electrophoretic procedure include, concurrent with patient specimens, at least one control material containing the substances being identified or measured.

(6) Perform control material testing as specified in this paragraph before resuming patient testing when a complete change of reagents is introduced; major preventive maintenance is performed; or any critical part that may influence test performance is replaced.

(7) Over time, rotate control material testing among all operators who perform the test.

(8) Test control materials in the same manner as patient specimens.

(9) When using calibration material as a control material, use calibration material from a different lot number than that used to establish a cut-off value or to calibrate the test system.

(10) Establish or verify the criteria for acceptability of all control materials.

(i) When control materials providing quantitative results are used, statistical parameters (for example, mean and standard deviation) for each batch and lot number of control materials must be defined and available.

(ii) The laboratory may use the stated value of a commercially assayed control material provided the stated value is for the methodology and instrumentation employed by the laboratory and is verified by the laboratory.

(iii) Statistical parameters for unassayed control materials must be established over time by the laboratory through concurrent testing of control materials having previously determined statistical parameters.

(e) For reagent, media, and supply checks, the laboratory must do the following:

(1) Check each batch (prepared in-house), lot number (commercially prepared) and shipment of reagents, disks, stains, antisera, and identification systems (systems using two or more substrates or two or more reagents, or a combination) when prepared or opened for positive and negative reactivity, as well as graded reactivity, if applicable.

(2) Each day of use (unless otherwise specified in this subpart), test staining materials for intended reactivity to ensure predictable staining characteristics. Control materials for both positive and negative reactivity must be included, as appropriate.

(3) Check fluorescent and immunohistochemical stains for positive and negative reactivity each time of use.

(4) Before, or concurrent with the initial use—

(i) Check each batch of media for sterility if sterility is required for testing;

(ii) Check each batch of media for its ability to support growth and, as appropriate, select or inhibit specific organisms or produce a biochemical response; and

(iii) Document the physical characteristics of the media when compromised and report any deterioration in the media to the manufacturer.

(5) Follow the manufacturer's specifications for using reagents, media, and supplies and be responsible for results.

(f) Results of control materials must meet the laboratory's and, as applicable, the manufacturer's test system criteria for acceptability before reporting patient test results.

(g) The laboratory must document all control procedures performed.

(h) If control materials are not available, the laboratory must have an alternative mechanism to detect immediate errors and monitor test system performance over time. The performance of alternative control procedures must be documented.

§ 493.1261 Standard: Bacteriology.

(a) The laboratory must check the following for positive and negative reactivity using control organisms:

(1) Each day of use for beta-lactamase methods other than Cefinase™.

(2) Each week of use for Gram stains.

(3) When each batch (prepared in-house), lot number (commercially prepared), and shipment of antisera is prepared or opened, and once every 6 months thereafter.

(b) For antimicrobial susceptibility tests, the laboratory must check each batch of media and each lot number and shipment of antimicrobial agent(s) before, or concurrent with, initial use, using approved control organisms.

(1) Each day tests are performed, the laboratory must use the appropriate control organism(s) to check the procedure.

(2) The laboratory's zone sizes or minimum inhibitory concentration for control organisms must be within established limits before reporting patient results.

(c) The laboratory must document all control procedures performed, as specified in this section.

§ 493.1262 Standard: Mycobacteriology.

(a) Each day of use, the laboratory must check all reagents or test procedures used for mycobacteria identification with at least one acid-fast organism that produces a positive reaction and an acid-fast organism that produces a negative reaction.

(b) For antimycobacterial susceptibility tests, the laboratory must

check each batch of media and each lot number and shipment of antimycobacterial agent(s) before, or concurrent with, initial use, using an appropriate control organism(s).

(1) The laboratory must establish limits for acceptable control results.

(2) Each week tests are performed, the laboratory must use the appropriate control organism(s) to check the procedure.

(3) The results for the control organism(s) must be within established limits before reporting patient results.

(c) The laboratory must document all control procedures performed, as specified in this section.

§ 493.1263 Standard: Mycology.

(a) The laboratory must check each batch (prepared in-house), lot number (commercially prepared), and shipment of lactophenol cotton blue when prepared or opened for intended reactivity with a control organism(s).

(b) For antifungal susceptibility tests, the laboratory must check each batch of media and each lot number and shipment of antifungal agent(s) before, or concurrent with, initial use, using an appropriate control organism(s).

(1) The laboratory must establish limits for acceptable control results.

(2) Each day tests are performed, the laboratory must use the appropriate control organism(s) to check the procedure.

(3) The results for the control organism(s) must be within established limits before reporting patient results.

(c) The laboratory must document all control procedures performed, as specified in this section.

§ 493.1264 Standard: Parasitology.

(a) The laboratory must have available a reference collection of slides or photographs and, if available, gross specimens for identification of parasites and use these references in the laboratory for appropriate comparison with diagnostic specimens.

(b) The laboratory must calibrate and use the calibrated ocular micrometer for determining the size of ova and parasites, if size is a critical parameter.

(c) Each month of use, the laboratory must check permanent stains using a fecal sample control material that will demonstrate staining characteristics.

(d) The laboratory must document all control procedures performed, as specified in this section.

§ 493.1265 Standard: Virology.

(a) When using cell culture to isolate or identify viruses, the laboratory must simultaneously incubate a cell substrate control or uninoculated cells as a negative control material.

(b) The laboratory must document all control procedures performed, as specified in this section.

§ 493.1267 Standard: Routine chemistry.

For blood gas analyses, the laboratory must perform the following:

(a) Calibrate or verify calibration according to the manufacturer's specifications and with at least the frequency recommended by the manufacturer.

(b) Test one sample of control material each 8 hours of testing using a combination of control materials that include both low and high values on each day of testing.

(c) Test one sample of control material each time specimens are tested unless automated instrumentation internally verifies calibration at least every 30 minutes.

(d) Document all control procedures performed, as specified in this section.

§ 493.1269 Standard: Hematology.

(a) For manual cell counts performed using a hemocytometer—

(1) One control material must be tested each 8 hours of operation; and

(2) Patient specimens and control materials must be tested in duplicate.

(b) For all nonmanual coagulation test systems, the laboratory must include two levels of control material each 8 hours of operation and each time a reagent is changed.

(c) For manual coagulation tests—

(1) Each individual performing tests must test two levels of control materials before testing patient samples and each time a reagent is changed; and

(2) Patient specimens and control materials must be tested in duplicate.

(d) The laboratory must document all control procedures performed, as specified in this section.

§ 493.1271 Standard: Immunohematology.

(a) *Patient testing.* (1) The laboratory must perform ABO grouping, D(Rho) typing, unexpected antibody detection, antibody identification, and compatibility testing by following the manufacturer's instructions, if provided, and as applicable, 21 CFR 606.151(a) through (e).

(2) The laboratory must determine ABO group by concurrently testing unknown red cells with, at a minimum, anti-A and anti-B grouping reagents. For confirmation of ABO group, the unknown serum must be tested with known A1 and B red cells.

(3) The laboratory must determine the D(Rho) type by testing unknown red cells with anti-D (anti-Rho) blood typing reagent.

(b) *Immunohematological testing and distribution of blood and blood products.* Blood and blood product testing and distribution must comply with 21 CFR 606.100(b)(12); 606.160(b)(3)(ii) and (b)(3)(v); 610.40; 640.5(a), (b), (c), and (e); and 640.11(b).

(c) *Blood and blood products storage.* Blood and blood products must be stored under appropriate conditions that include an adequate temperature alarm system that is regularly inspected.

(1) An audible alarm system must monitor proper blood and blood product storage temperature over a 24-hour period.

(2) Inspections of the alarm system must be documented.

(d) *Retention of samples of transfused blood.* According to the laboratory's established procedures, samples of each unit of transfused blood must be retained for further testing in the event of transfusion reactions. The laboratory must promptly dispose of blood not retained for further testing that has passed its expiration date.

(e) *Investigation of transfusion reactions.* (1) According to its established procedures, the laboratory that performs compatibility testing, or issues blood or blood products, must promptly investigate all transfusion reactions occurring in facilities for which it has investigational responsibility and make recommendations to the medical staff regarding improvements in transfusion procedures.

(2) The laboratory must document, as applicable, that all necessary remedial actions are taken to prevent recurrences of transfusion reactions and that all policies and procedures are reviewed to assure they are adequate to ensure the safety of individuals being transfused.

(f) The laboratory must document all control procedures performed, as specified in this section.

§ 493.1273 Standard: Histopathology.

(a) Fluorescent and immunohistochemical stains must be checked for positive and negative reactivity each time of use. For all other differential or special stains, a control slide of known reactivity must be stained with each patient slide or group of patient slides. Reaction(s) of the control slide with each special stain must be documented.

(b) The laboratory must retain stained slides, specimen blocks, and tissue remnants as specified in § 493.1105. The remnants of tissue specimens must be maintained in a manner that ensures proper preservation of the tissue specimens until the portions submitted for microscopic examination have been examined and a diagnosis made by an

individual qualified under §§ 493.1449(b), (l), or (m).

(c) An individual who has successfully completed a training program in neuromuscular pathology approved by HHS may examine and provide reports for neuromuscular pathology.

(d) Tissue pathology reports must be signed by an individual qualified as specified in paragraph (b) or, as appropriate, paragraph (c) of this section. If a computer report is generated with an electronic signature, it must be authorized by the individual who performed the examination and made the diagnosis.

(e) The laboratory must use acceptable terminology of a recognized system of disease nomenclature in reporting results.

(f) The laboratory must document all control procedures performed, as specified in this section.

§ 493.1274 Standard: Cytology.

(a) *Cytology slide examination site.* All cytology slide preparations must be evaluated on the premises of a laboratory certified to conduct testing in the subspecialty of cytology.

(b) *Staining.* The laboratory must have available and follow written policies and procedures for each of the following, if applicable:

(1) All gynecologic slide preparations must be stained using a Papanicolaou or modified Papanicolaou staining method.

(2) Effective measures to prevent cross-contamination between gynecologic and nongynecologic specimens during the staining process must be used.

(3) Nongynecologic specimens that have a high potential for cross-contamination must be stained separately from other nongynecologic specimens, and the stains must be filtered or changed following staining.

(c) *Control procedures.* The laboratory must establish and follow written policies and procedures for a program designed to detect errors in the performance of cytologic examinations and the reporting of results. The program must include the following:

(1) A review of slides from at least 10 percent of the gynecologic cases interpreted by individuals qualified under §§ 493.1469 or 493.1483, to be negative for epithelial cell abnormalities and other malignant neoplasms (as defined in paragraph (e)(1) of this section).

(i) The review must be performed by an individual who meets one of the following qualifications:

(A) A technical supervisor qualified under §§ 493.1449(b) or (k).

(B) A cytology general supervisor qualified under § 493.1469.

(C) A cytotechnologist qualified under § 493.1483 who has the experience specified in § 493.1469(b)(2).

(ii) Cases must be randomly selected from the total caseload and include negatives and those from patients or groups of patients that are identified as having a higher than average probability of developing cervical cancer based on available patient information.

(iii) The review of those cases selected must be completed before reporting patient results.

(2) Laboratory comparison of clinical information, when available, with cytology reports and comparison of all gynecologic cytology reports with a diagnosis of high-grade squamous intraepithelial lesion (HSIL), adenocarcinoma, or other malignant neoplasms with the histopathology report, if available in the laboratory (either on-site or in storage), and determination of the causes of any discrepancies.

(3) For each patient with a current HSIL, adenocarcinoma, or other malignant neoplasm, laboratory review of all normal or negative gynecologic specimens received within the previous 5 years, if available in the laboratory (either on-site or in storage). If significant discrepancies are found that will affect current patient care, the laboratory must notify the patient's physician and issue an amended report.

(4) Records of initial examinations and all rescreening results must be documented.

(5) An annual statistical laboratory evaluation of the number of—

(i) Cytology cases examined;

(ii) Specimens processed by specimen type;

(iii) Patient cases reported by diagnosis (including the number reported as unsatisfactory for diagnostic interpretation);

(iv) Gynecologic cases with a diagnosis of HSIL, adenocarcinoma, or other malignant neoplasm for which histology results were available for comparison;

(v) Gynecologic cases where cytology and histology are discrepant; and

(vi) Gynecologic cases where any rescreen of a normal or negative specimen results in reclassification as low-grade squamous intraepithelial lesion (LSIL), HSIL, adenocarcinoma, or other malignant neoplasms.

(6) An evaluation of the case reviews of each individual examining slides against the laboratory's overall statistical values, documentation of any discrepancies, including reasons for the deviation and, if appropriate, corrective actions taken.

(d) *Workload limits.* The laboratory must establish and follow written policies and procedures that ensure the following:

(1) The technical supervisor establishes a maximum workload limit for each individual who performs primary screening.

(i) The workload limit is based on the individual's performance using evaluations of the following:

(A) Review of 10 percent of the cases interpreted as negative for the conditions defined in paragraph (e)(1) of this section.

(B) Comparison of the individual's interpretation with the technical supervisor's confirmation of patient smears specified in paragraphs (e)(1) and (e)(3) of this section.

(ii) Each individual's workload limit is reassessed at least every 6 months and adjusted when necessary.

(2) The maximum number of slides examined by an individual in each 24-hour period does not exceed 100 slides (one patient specimen per slide; gynecologic, nongynecologic, or both) irrespective of the site or laboratory. This limit represents an absolute maximum number of slides and must not be employed as an individual's performance target. In addition—

(i) The maximum number of 100 slides is examined in no less than an 8-hour workday;

(ii) For the purposes of establishing workload limits for individuals examining slides in less than an 8-hour workday (includes full-time employees with duties other than slide examination and part-time employees), a period of 8 hours is used to prorate the number of slides that may be examined. The formula—

$$\frac{\text{Number of hours examining slides} \times 100}{8}$$

is used to determine maximum slide volume to be examined;

(iii) Nongynecologic slide preparation made using liquid-based slide preparatory techniques that result in cell dispersion over one-half or less of the total available slide may be counted as one-half slide; and

(iv) Technical supervisors who perform primary screening are not required to include tissue pathology slides and previously examined cytology slides (gynecologic and nongynecologic) in the 100 slide workload limit.

(3) The laboratory must maintain records of the total number of slides examined by each individual during

each 24-hour period and the number of hours spent examining slides in the 24-hour period irrespective of the site or laboratory.

(4) Records are available to document the workload limit for each individual.

(e) *Slide examination and reporting.* The laboratory must establish and follow written policies and procedures that ensure the following:

(1) A technical supervisor confirms each gynecologic slide preparation interpreted to exhibit reactive or reparative changes or any of the following epithelial cell abnormalities:

(i) Squamous cell.

(A) Atypical squamous cells of undetermined significance (ASC–US) or cannot exclude HSIL (ASC–H).

(B) LSIL-Human papillomavirus (HPV)/mild dysplasia/cervical intraepithelial neoplasia 1 (CIN 1).

(C) HSIL-moderate and severe dysplasia, carcinoma in situ (CIS)/CIN 2 and CIN 3 or with features suspicious for invasion.

(D) Squamous cell carcinoma.

(ii) Glandular cell.

(A) Atypical cells not otherwise specified (NOS) or specified in comments (endocervical, endometrial, or glandular).

(B) Atypical cells favor neoplastic (endocervical or glandular).

(C) Endocervical adenocarcinoma in situ.

(D) Adenocarcinoma endocervical, adenocarcinoma endometrial, adenocarcinoma extrauterine, and adenocarcinoma NOS.

(iii) Other malignant neoplasms.

(2) The report of gynecologic slide preparations with conditions specified in paragraph (e)(1) of this section must be signed to reflect the technical supervisory review or, if a computer report is generated with signature, it must reflect an electronic signature authorized by the technical supervisor who performed the review.

(3) All nongynecologic preparations are reviewed by a technical supervisor. The report must be signed to reflect technical supervisory review or, if a computer report is generated with signature, it must reflect an electronic signature authorized by the technical supervisor who performed the review.

(4) Unsatisfactory specimens or slide preparations are identified and reported as unsatisfactory.

(5) The report contains narrative descriptive nomenclature for all results.

(6) Corrected reports issued by the laboratory indicate the basis for correction.

(f) *Record and slide retention.* (1) The laboratory must retain all records and slide preparations as specified in § 493.1105.

(2) Slides may be loaned to proficiency testing programs in lieu of maintaining them for the required time period, provided the laboratory receives written acknowledgment of the receipt of slides by the proficiency testing program and maintains the acknowledgment to document the loan of these slides.

(3) Documentation of slides loaned or referred for purposes other than proficiency testing must be maintained.

(4) All slides must be retrievable upon request.

(g) *Automated and semi-automated screening devices.* When performing evaluations using automated and semi-automated screening devices, the laboratory must follow manufacturer's instructions for preanalytic, analytic, and postanalytic phases of testing, as applicable, and meet the applicable requirements of this subpart K.

(h) The laboratory must document all control procedures performed, as specified in this section.

§ 493.1276 Standard: Clinical cytogenetics.

(a) The laboratory must have policies and procedures for ensuring accurate and reliable patient specimen identification during the process of accessioning, cell preparation, photographing or other image reproduction technique, photographic printing, and reporting and storage of results, karyotypes, and photographs.

(b) The laboratory must have records that document the following:

(1) The media used, reactions observed, number of cells counted, number of cells karyotyped, number of chromosomes counted for each metaphase spread, and the quality of the banding.

(2) The resolution is appropriate for the type of tissue or specimen and the type of study required based on the clinical information provided to the laboratory.

(3) An adequate number of karyotypes are prepared for each patient.

(c) Determination of sex must be performed by full chromosome analysis.

(d) The laboratory report must include a summary and interpretation of the observations, number of cells counted and analyzed, and use the International System of Cytogenetic Nomenclature.

(e) The laboratory must document all control procedures performed, as specified in this section.

§ 493.1278 Standard: Histocompatibility.

(a) *General.* The laboratory must meet the following requirements:

(1) An audible alarm system must be used to monitor the storage temperature of specimens (donor and recipient) and reagents. The laboratory must have an emergency plan for alternate storage.

(2) All patient specimens must be easily retrievable.

(3) Reagent typing sera inventory prepared in-house must indicate source, bleeding date and identification number, reagent specificity, and volume remaining.

(4) If the laboratory uses immunologic reagents (for example, antibodies, antibody-coated particles, or complement) to facilitate or enhance the isolation of lymphocytes, or lymphocyte subsets, the efficacy of the methods must be monitored with appropriate quality control procedures.

(5) Participate in at least one national or regional cell exchange program, if available, or develop an exchange system with another laboratory in order to validate interlaboratory reproducibility.

(b) *HLA typing.* The laboratory must do the following:

(1) Use a technique(s) that is established to optimally define, as applicable, HLA Class I and II specificities.

(2) HLA type all potential transplant recipients at a level appropriate to support clinical transplant protocol and donor selection.

(3) HLA type cells from organ donors referred to the laboratory.

(4) Use HLA antigen terminology that conforms to the latest report of the World Health Organization (W.H.O.) Committee on Nomenclature. Potential new antigens not yet approved by this committee must have a designation that cannot be confused with W.H.O. terminology.

(5) Have available and follow written criteria for the following:

(i) The preparation of cells or cellular extracts (for example, solubilized antigens and nucleic acids), as applicable to the HLA typing technique(s) performed.

(ii) Selecting typing reagents, whether prepared in-house or commercially.

(iii) Ensuring that reagents used for typing are adequate to define all HLA–A, B and DR specificities that are officially recognized by the most recent W.H.O. Committee on Nomenclature and for which reagents are readily available.

(iv) The assignment of HLA antigens.

(v) When antigen redefinition and retyping are required.

(6) Check each HLA typing by testing, at a minimum the following:

(i) A positive control material.

(ii) A negative control material in which, if applicable to the technique performed, cell viability at the end of

incubation is sufficient to permit accurate interpretation of results. In assays in which cell viability is not required, the negative control result must be sufficiently different from the positive control result to permit accurate interpretation of results.

(iii) Positive control materials for specific cell types when applicable (that is, T cells, B cells, and monocytes).

(c) *Disease-associated studies.* The laboratory must check each typing for disease-associated HLA antigens using control materials to monitor the test components and each phase of the test system to ensure acceptable performance.

(d) *Antibody Screening.* The laboratory must do the following:

(1) Use a technique(s) that detects HLA-specific antibody with a specificity equivalent or superior to that of the basic complement-dependent microlymphocytotoxicity assay.

(2) Use a method that distinguishes antibodies to HLA Class II antigens from antibodies to Class I antigens to detect antibodies to HLA Class II antigens.

(3) Use a panel that contains all the major HLA specificities and common splits. If the laboratory does not use commercial panels, it must maintain a list of individuals for fresh panel bleeding.

(4) Make a reasonable attempt to have available monthly serum specimens for all potential transplant recipients for periodic antibody screening and crossmatch.

(5) Have available and follow a written policy consistent with clinical transplant protocols for the frequency of screening potential transplant recipient sera for preformed HLA-specific antibodies.

(6) Check each antibody screening by testing, at a minimum the following:

(i) A positive control material containing antibodies of the appropriate isotype for the assay.

(ii) A negative control material.

(7) As applicable, have available and follow written criteria and procedures for antibody identification to the level appropriate to support clinical transplant protocol.

(e) *Crossmatching.* The laboratory must do the following:

(1) Use a technique(s) documented to have increased sensitivity in comparison with the basic complement-dependent microlymphocytotoxicity assay.

(2) Have available and follow written criteria for the following:

(i) Selecting appropriate patient serum samples for crossmatching.

(ii) The preparation of donor cells or cellular extracts (for example, solubilized antigens and nucleic acids), as applicable to the crossmatch technique(s) performed.

(3) Check each crossmatch and compatibility test for HLA Class II antigenic differences using control materials to monitor the test components and each phase of the test system to ensure acceptable performance.

(f) *Transplantation.* Laboratories performing histocompatibility testing for transfusion and transplantation purposes must do the following:

(1) Have available and follow written policies and protocols specifying the histocompatibility testing (that is, HLA typing, antibody screening, compatibility testing and crossmatching) to be performed for each type of cell, tissue or organ to be transfused or transplanted. The laboratory's policies must include, as applicable—

(i) Testing protocols for cadaver donor, living, living-related, and combined organ and tissue transplants;

(ii) Testing protocols for patients at high risk for allograft rejection; and

(iii) The level of testing required to support clinical transplant protocols (for example, antigen or allele level).

(2) For renal allotransplantation and combined organ and tissue transplants in which a kidney is to be transplanted, have available results of final crossmatches before the kidney is transplanted.

(3) For nonrenal transplantation, if HLA testing and final crossmatches were not performed prospectively because of an emergency situation, the laboratory must document the circumstances, if known, under which the emergency transplant was performed, and records of the transplant must reflect any information provided to the laboratory by the patient's physician.

(g) The laboratory must document all control procedures performed, as specified in this section.

§ 493.1281 Standard: Comparison of test results.

(a) If a laboratory performs the same test using different methodologies or instruments, or performs the same test at multiple testing sites, the laboratory must have a system that twice a year evaluates and defines the relationship between test results using the different methodologies, instruments, or testing sites.

(b) The laboratory must have a system to identify and assess patient test results that appear inconsistent with the following relevant criteria, when available:

(1) Patient age.

(2) Sex.

(3) Diagnosis or pertinent clinical data.

(4) Distribution of patient test results.

(5) Relationship with other test parameters.

(c) The laboratory must document all test result comparison activities.

§ 493.1282 Standard: Corrective actions.

(a) Corrective action policies and procedures must be available and followed as necessary to maintain the laboratory's operation for testing patient specimens in a manner that ensures accurate and reliable patient test results and reports.

(b) The laboratory must document all corrective actions taken, including actions taken when any of the following occur:

(1) Test systems do not meet the laboratory's verified or established performance specifications, as determined in § 493.1253(b), which include but are not limited to—

(i) Equipment or methodologies that perform outside of established operating parameters or performance specifications;

(ii) Patient test values that are outside of the laboratory's reportable range of test results for the test system; and

(iii) When the laboratory determines that the reference intervals (normal values) for a test procedure are inappropriate for the laboratory's patient population.

(2) Results of control or calibration materials, or both, fail to meet the laboratory's established criteria for acceptability. All patient test results obtained in the unacceptable test run and since the last acceptable test run must be evaluated to determine if patient test results have been adversely affected. The laboratory must take the corrective action necessary to ensure the reporting of accurate and reliable patient test results.

(3) The criteria for proper storage of reagents and specimens, as specified under § 493.1252(b), are not met.

§ 493.1283 Standard: Test records.

(a) The laboratory must maintain an information or record system that includes the following:

(1) The positive identification of the specimen.

(2) The date and time of specimen receipt into the laboratory.

(3) The condition and disposition of specimens that do not meet the laboratory's criteria for specimen acceptability.

(4) The records and dates of all specimen testing, including the identity

of the personnel who performed the test(s).

(b) Records of patient testing including, if applicable, instrument printouts, must be retained.

§ 493.1289 Standard: Analytic systems assessment.

(a) The laboratory must establish and follow written policies and procedures for an ongoing mechanism to monitor, assess, and when indicated, correct problems identified in the analytic systems specified in §§ 493.1251 through 493.1283.

(b) The analytic systems assessment must include a review of the effectiveness of corrective actions taken to resolve problems, revision of policies and procedures necessary to prevent recurrence of problems, and discussion of analytic systems assessment reviews with appropriate staff.

(c) The laboratory must document all analytic systems assessment activities.

Postanalytic Systems

§ 493.1290 Condition: Postanalytic systems.

Each laboratory that performs nonwaived testing must meet the applicable postanalytic systems requirements in § 493.1291 unless HHS approves a procedure, specified in Appendix C of the State Operations Manual (CMS Pub. 7) that provides equivalent quality testing. The laboratory must monitor and evaluate the overall quality of the postanalytic systems and correct identified problems as specified in § 493.1299 for each specialty and subspecialty of testing performed.

§ 493.1291 Standard: Test report.

(a) The laboratory must have adequate manual or electronic systems in place to ensure test results and other patient-specific data are accurately and reliably sent from the point of data entry (whether interfaced or entered manually) to final report destination, in a timely manner. This includes the following:

(1) Results reported from calculated data.

(2) Results and patient-specific data electronically reported to network or interfaced systems.

(3) Manually transcribed or electronically transmitted results and patient-specific information reported directly or upon receipt from outside referral laboratories, satellite or point-of-care testing locations.

(b) Test report information maintained as part of the patient's chart or medical record must be readily available to the laboratory and to CMS or a CMS agent upon request.

(c) The test report must indicate the following:

(1) For positive patient identification, either the patient's name and identification number, or an unique patient identifier and identification number.

(2) The name and address of the laboratory location where the test was performed.

(3) The test report date.

(4) The test performed.

(5) Specimen source, when appropriate.

(6) The test result and, if applicable, the units of measurement or interpretation, or both.

(7) Any information regarding the condition and disposition of specimens that do not meet the laboratory's criteria for acceptability.

(d) Pertinent "reference intervals" or "normal" values, as determined by the laboratory performing the tests, must be available to the authorized person who ordered the tests and, if applicable, the individual responsible for using the test results.

(e) The laboratory must, upon request, make available to clients a list of test methods employed by the laboratory and, as applicable, the performance specifications established or verified as specified in § 493.1253. In addition, information that may affect the interpretation of test results, for example test interferences, must be provided upon request. Pertinent updates on testing information must be provided to clients whenever changes occur that affect the test results or interpretation of test results.

(f) Test results must be released only to authorized persons and, if applicable, the individual responsible for using the test results and the laboratory that initially requested the test.

(g) The laboratory must immediately alert the individual or entity requesting the test and, if applicable, the individual responsible for using the test results when any test result indicates an imminent life-threatening condition, or panic or alert values.

(h) When the laboratory cannot report patient test results within its established time frames, the laboratory must determine, based on the urgency of the patient test(s) requested, the need to notify the appropriate individual(s) of the delayed testing.

(i) If a laboratory refers patient specimens for testing—

(1) The referring laboratory must not revise results or information directly related to the interpretation of results provided by the testing laboratory;

(2) The referring laboratory may permit each testing laboratory to send the test result directly to the authorized person who initially requested the test. The referring laboratory must retain or be able to produce an exact duplicate of each testing laboratory's report; and

(3) The authorized person who orders a test must be notified by the referring laboratory of the name and address of each laboratory location where the test was performed.

(j) All test reports or records of the information on the test reports must be maintained by the laboratory in a manner that permits ready identification and timely accessibility.

(k) When errors in the reported patient test results are detected, the laboratory must do the following:

(1) Promptly notify the authorized person ordering the test and, if applicable, the individual using the test results of reporting errors.

(2) Issue corrected reports promptly to the authorized person ordering the test and, if applicable, the individual using the test results.

(3) Maintain duplicates of the original report, as well as the corrected report.

§ 493.1299 Standard: Postanalytic systems assessment.

(a) The laboratory must establish and follow written policies and procedures for an ongoing mechanism to monitor, assess and, when indicated, correct problems identified in the postanalytic systems specified in § 493.1291.

(b) The postanalytic systems assessment must include a review of the effectiveness of corrective actions taken to resolve problems, revision of policies and procedures necessary to prevent recurrence of problems, and discussion of postanalytic systems assessment reviews with appropriate staff.

(c) The laboratory must document all postanalytic systems assessment activities.

Subpart M—Personnel for Nonwaived Testing

19. Revise the heading of Subpart M to read as set forth above.

§ 493.1359 [Amended]

20. § 493.1359(b)(2), remove the reference to "subpart P".

§ 493.1407 [Amended]

21. In § 493.1407(e)(5), remove the word "assurance" and, add in its place, the word "assessment".

22. In § 493.1443, paragraph (b) introductory text is republished, and paragraph (b)(3) is revised to read as follows:

§ 493.1443 Standard: Laboratory director qualifications.

* * * * *

(b) The laboratory director must—

* * * * *

(3) Hold an earned doctoral degree in a chemical, physical, biological, or clinical laboratory science from an accredited institution and—

(i) Be certified and continue to be certified by a board approved by HHS; or

(ii) Before February 24, 2003, must have served or be serving as a director of a laboratory performing high complexity testing and must have at least—

(A) Two years of laboratory training or experience, or both; and

(B) Two years of laboratory experience directing or supervising high complexity testing.

* * * * *

§ 493.1445 [Amended]

23. In § 493.1445(e)(5), remove the word "assurance" and add, in its place, the word "assessment".

§ 493.1451 [Amended]

24. In § 493.1451(c)(4), remove the cross reference to "§ 493.1257(c)" and add, in its place, "§ 493.1274(d) and (e)".

§ 493.1471 and § 493.1485 [Amended]

25. In §§ 493.1471(b)(2) and 493.1485(a), remove the cross reference to "§ 493.1257(d)" and add, in its place, "§ 493.1274(c)".

Subpart P—[Reserved]

26. Subpart P consisting of §§ 493.1701 through 493.1721, is removed and reserved.

Subpart R—Enforcement Procedures

§ 493.1844 [Amended]

27. In § 493.1844(c)(1), remove the reference to "subpart P".

Subpart T—Consultations

§ 493.2001 [Amended]

28. Amend § 493.2001 as follows:

a. In paragraph (e)(1), remove the words "tests and examinations of moderate complexity (including the subcategory) and high complexity" and add, in their place, the words "nonwaived testing".

b. Revise paragraph (e)(4) to read as follows:

* * * * *

(e) * * *

(4) Facility administration and quality systems standards.

* * * * *

Dated: October 7, 2002.

Thomas A. Scully,

Administrator, Centers for Medicare & Medicaid Services.

Dated: December 13, 2002.

Tommy G. Thompson,

Secretary.

[FR Doc. 03–1230 Filed 1–23–03; 8:45 am]

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Federal Register

Friday,
January 24, 2003

Part IV

Department of Labor

Pension and Welfare Benefits Administration

29 CFR Parts 2520, et al.

Final Rule Relating to Notice of Blackout Periods to Participants and Beneficiaries; Civil Penalties and Conforming Technical Changes on Civil Penalties Under ERISA; Final Rules

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

29 CFR Part 2520

RIN 1210–AA90

Final Rule Relating to Notice of Blackout Periods to Participants and Beneficiaries

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Final rule.

SUMMARY: This document contains a final rule under new section 101(i) of the Employee Retirement Income Security Act of 1974 (the Act or ERISA). Section 101(i) of ERISA, which was enacted into law on July 30, 2002 as part of the Sarbanes-Oxley Act of 2002 (the SOA), provides that written notice is to be provided to affected participants and beneficiaries of individual account plans of any "blackout period" during which their right to direct or diversify investments, obtain a loan or obtain a distribution under the plan may be temporarily suspended. The final rules provide guidance to plan sponsors, administrators, participants and beneficiaries regarding the requirements for furnishing notices of blackout periods in individual account pension plans.

DATES: *Effective date:* This final rule is effective January 26, 2003. *Applicability date:* This final rule shall apply to blackout periods commencing on or after January 26, 2003.

FOR FURTHER INFORMATION CONTACT: Janet A. Walters, Office of Regulations and Interpretations, Pension and Welfare Benefits Administration, U.S. Department of Labor, Washington, DC 20210, (202) 693–8510 (not a toll free number).

SUPPLEMENTARY INFORMATION:

A. Background

The Sarbanes-Oxley Act of 2002 (the SOA), Pub. L. 107–204, was enacted on July 30, 2002. Section 306(b)(1) of the SOA amended section 101 of ERISA to add a new subsection (i), requiring that administrators of individual account plans provide notice to affected participants and beneficiaries in advance of the commencement of any blackout period. For purposes of this notice requirement, a blackout period generally includes any period during which the ability of participants or beneficiaries to direct or diversify assets credited to their accounts, to obtain loans from the plan or to obtain distributions from the plan will be temporarily suspended, limited or restricted. The most common reasons for imposition of a blackout period include changes in investment alternatives or recordkeepers, and corporate mergers, acquisitions, and spin-offs that impact the pension coverage of groups of participants.

ERISA section 101(i)(6) provides that the Secretary shall issue model notices that meet the requirements of subsection (i). A model notice is included as part of this final rule.

Section 306(b)(3) of the SOA amends ERISA section 502 to establish a new civil penalty applicable to a plan administrator's failure or refusal to provide the blackout notice required by section 101(i) of ERISA. Final rules implementing this civil penalty appear elsewhere in today's issue of the **Federal Register**.

On October 21, 2002, the Department published an interim final rule, including a model notice, in the **Federal Register** (67 FR 64766) for public comment. The Department received 14 comment letters in response to its request for comments. Set forth below is an overview of the final rule and the public comments submitted on the interim final rule.

B. Overview of Final Rule and Comments

1. General

Paragraph (a) of § 2520.101–3 of the final rule, like the interim final rule, describes the general requirement of section 101(i) of ERISA that administrators of certain individual account plans provide notice of blackout periods to participants and beneficiaries whose rights under the plan will be temporarily suspended, limited or restricted by a blackout period (the "affected participants and beneficiaries"), as well as to issuers of employer securities held by the plan.

2. Content of the Notice § 2520.101–3(b)(1)

Paragraph (b)(1) of § 2520.101–3 of the final rule, like the interim final rule, sets forth the content requirements for notices to be furnished to affected participants and beneficiaries. Paragraph (b)(1) provides that the notices shall be written in a manner calculated to be understood by the average plan participant and sets forth the specific content requirements applicable to the notices. The content requirements of the regulation essentially track the requirements of section 101(i)(2)(A) of the Act. Paragraph (b)(1)(ii), like the interim final rule, provides that the notice must include a description of the rights otherwise available under the plan to affected participants and beneficiaries that will be temporarily suspended during the blackout period, in addition to the identification of the investments subject to the blackout period.

Paragraph (b)(1)(iii) requires that the notice set forth information concerning the length of the blackout period. The interim final rule required that the notice set forth the expected beginning date and ending date of the blackout period. A number of commenters expressed concern about the difficulty of projecting thirty or more days in advance the specific beginning and ending dates of a blackout period, noting that a wide range of events (*e.g.*, problems with plan records or recordkeeper, extensive document reviews and data reconciliation, required modifications to systems and software) that may affect actual dates. As a result of such events, commenters state that specific dates are likely to be missed, and updated notices with their attendant costs would have to be furnished. In an effort to avoid this problem, sponsors and fiduciaries may be encouraged to establish unnecessarily long blackout periods, thereby depriving participants and beneficiaries of their right to exercise their affected rights for a longer period of time. To address this problem, commenters suggested that the notice be permitted to identify a range of dates during which the blackout period might begin and end. The suggestions included: A range of plus or minus 3 business days, 5 days, 7 days; identification of the "week of ___" during which blackout period might begin and end; and a description of events that might result in the end of the blackout period. Some commenters suggested that where a range of dates is provided, participants also would be furnished a toll-free number or web site that would enable them to determine the specific date on which the blackout period began and ended. One commenter suggested that where other than a specific date is given in the notice, a subsequent less formal notice should be provided to inform the participants of the beginning or ending of the blackout.

The Department continues to believe that it is important that participants and beneficiaries have sufficiently specific information to factor the duration of the blackout into their pre-blackout period investment and other decisions and to apprise participants and beneficiaries as to when they will be able to recommence exercising their rights

under the plan. However, the Department also recognizes the difficulty of projecting specific beginning and ending dates thirty or more days in advance of a blackout period and that there may be significant costs to providing updated notices, most or all of which will be charged to the individual accounts of the plans' participants.

The Department is persuaded that allowing a limited range of dates for purposes of defining the beginning and ending dates for a blackout period in the required notice will serve to provide participants and beneficiaries with adequate pre-blackout period planning information, provided that they also have access during such dates to information to determine whether the blackout period has begun or ended. In addition, the Department is persuaded that such an approach will help to reduce plan administrative costs that might otherwise result from multiple notices; thereby preserving assets for the retirement security of plan participants and beneficiaries.

As amended, paragraph (b)(1)(iii) permits the notice to describe the length of the blackout period by reference to either: (A) The expected beginning date and ending date of the blackout period; or (B) the calendar week during which the blackout period is expected to begin and end, provided that during such weeks information as to whether the blackout period has begun or ended is readily available, without charge, to affected participants and beneficiaries, such as via a toll-free number or access to a specific web site, and the notice describes how to access the information.

The Department decided to permit reference to "the calendar week" because, unlike 3 or 5 or 7 day, plus or minus, ranges, it provides both the flexibility for plan administrators and a clearer degree of certainty for plan participants and beneficiaries. As reflected in the description of the change, specific information must be readily available, without charge, to participants and beneficiaries during the identified "week of____" as to whether the blackout has begun or ended. The regulation provides examples as how this requirement can be satisfied, namely via a toll-free number or access to a specific web site. "Calendar week" is defined in the regulation, at paragraph (d)(5) to mean "a seven day period beginning on Sunday and ending on Saturday."

For example, in the case of a plan that expects to have a four week blackout period beginning February 10, 2003 and ending March 7, 2003, the notice of the blackout period could, in accordance with the final rule, indicate that the blackout period for the plan will begin "the week of February 9, 2003 and end the week of March 2, 2003." The notice also would have to indicate the means by which participants and beneficiaries can determine, during the weeks of February 9 and March 2, whether the blackout period has begun or ended. It is the view of the Department that, given the benefits to affected participants and beneficiaries of specific beginning and ending dates, the regulation should not be construed to preclude the use of a specific beginning date and a "week of ____" ending date, or the converse.

The Department notes that, in the case of a plan that permits participants to exercise their rights up to the commencement of the blackout period (*e.g.*, as might be the case where participants are permitted to trade daily), the timing of the advance notice must be calculated back from the earliest possible beginning date identified in the notice. For example, in the case of a plan identifying the blackout period as beginning the "week of February 9," February 9 will be the beginning of the blackout period for purposes of applying the timing rule of the regulation.

The Department has modified paragraph 3 of the model notice (at paragraph (e)(2) of the final rule) to reflect the availability of alternative approaches to describing the length of the blackout period.

Finally, some commenters noted that blackout periods often affect certain rights longer than others (*e.g.*, a 20 day blackout for loans and a 10 day blackout for distributions and investment changes) and requested clarification that one notice describing the different blackout periods is permitted under the regulation. There is nothing in the regulation that is intended to limit the ability of plan administrators to use a single notice to describe different blackout periods, provided that the advance notice and other requirements of the regulation can be satisfied with respect to such blackout periods.

Paragraph (b)(1)(iv) of the final rule, like the interim final rule, requires the inclusion of a statement advising participants and beneficiaries to review their current investments in light of their inability to direct or diversify their assets during the blackout period and provides that use of the advisory statement contained in paragraph 4 of the model notice (at paragraph (e)(2)) will satisfy this content requirement for the notice.

With regard to paragraph 4 of the model, commenters requested a clarification that the sentences relating to the risks of investments in individual securities are not required in those instances where a plan does not permit investments in such securities. Paragraph 4 of the model in the final rule, therefore, has been modified to clarify that the last two sentences are required only where the plan permits investments in individual securities.

Section 101(i)(2)(A)(v) of the Act provides that the notice shall contain "such other matters as the Secretary may require by regulation." In this regard, the Department added, for purposes of the interim final rule, two informational items.

First, given the importance of adequate advance notice of blackout periods to plan participants and beneficiaries, paragraph (b)(1)(v) of the interim final rule provided that, where notices are furnished less than 30 days in advance of the last date on which affected participants and beneficiaries could exercise affected rights immediately before the commencement of the blackout period, the notice must contain a general statement concerning the Federal law requirement of 30 days advance notice and an explanation as to why such notice could not be furnished. The requirement for a general statement in paragraph (b)(1)(v)(A) would be satisfied if the notice contains the general statement appearing in paragraph 5(A) of the model notice (at paragraph (e)(2)). Paragraph (b)(1)(v) would not apply to the exceptions in paragraph (b)(2)(ii)(C) involving blackout periods in connection with mergers, acquisitions, divestitures, or similar transactions inasmuch as notices of such blackout periods are required to be furnished as soon as reasonably possible. (See ERISA section 101(i)(3).) The Department received no comments on paragraph (b)(1)(v) and is adopting the provision without change in the final rule.

Second, the Department had determined that the notice should contain the name, address and telephone number of a person who can answer questions concerning the blackout period. Specifically, paragraph (b)(1)(vi) provided that the notice must contain the name, address and telephone number of the plan administrator or other person responsible for answering questions regarding the blackout period. The Department received one comment on this provision requesting a clarification that the contact person is not required to be an individual and could be the department employing the individual who would be answering questions (such as the benefits department). The regulation is not intended to require the

identification of a specific person. Rather, the regulation is intended to require the identification of a sufficiently specific source for answering questions concerning the blackout period that participants and beneficiaries will not be confused as to whom their questions should be addressed. The Department has modified paragraph (b)(1)(vi) of the final rule and paragraph 6 of the model notice (at paragraph (e)(2) of the final rule) by substituting "contact" for "person" to clarify this matter.

Finally, two commenters requested a clarification that notice of blackout periods may be furnished with other information, such as information relating to the change in service providers. There is nothing in the regulation that is intended to preclude blackout notice information from being furnished with other plan information, including benefit statements. However, given the importance of the blackout notice information to participants and beneficiaries, plan administrators should take steps to ensure that the blackout notice information is prominently identified in the furnished materials.

3. Timing of the Notice § 2520.101–3(b)(2)

Paragraph (b)(2) of the final rule, like the interim final rule, describes the timing requirements applicable to furnishing the notice to affected participants and beneficiaries. Paragraph (b)(2)(i) of the interim final rule provided that notice shall be furnished at least 30 days, but not more than 60 days, in advance of the last date on which affected participants and beneficiaries could exercise their affected rights immediately before the commencement of any blackout period. Some commenters indicated that the 30 day window created by the regulation within which to provide notices to affected participants and beneficiaries was not sufficient to prepare and furnish notices and suggested that the regulation extend the 60 day maximum period for furnishing advance notice to 90 days. One commenter suggested changing the minimum notice requirement to 45 days and the maximum period to 90 days, while another commenter suggested changing the minimum requirement to 60 days and the maximum requirement to 90 days to enable furnishing of the notice with quarterly benefit statements. After careful consideration of the comments on this provision, the Department has determined to retain the provision of the interim final rule without change.

The Department continues to believe that the 30 day minimum and 60 day maximum advance notice requirements of the interim final rule serve to ensure that affected participants and beneficiaries have sufficiently timely notice to enable them to both to consider the effects of the blackout period on their investments and financial plans and to take action, if appropriate, in anticipation of the blackout period. The 30-day minimum notice requirement is based on the statutory standard set forth in section 101(i)(2)(B) of ERISA. The 60-day maximum period is intended to ensure that notice is not furnished so far in advance of the commencement date so as to undermine the importance of the notice to affected participants and beneficiaries. The Department is concerned that if the only blackout notice is furnished 90 days in advance, many participants and beneficiaries would be inclined to defer consideration of the effects of the period on their individual accounts and some would, by virtue of the passage of time, forget altogether. As noted in the preamble to the interim final rule, there is nothing in the regulation that precludes an administrator from supplementing the requirements of the regulation, by furnishing earlier or more frequent notices than that required by regulation, provided that at least one notice is provided to participants and beneficiaries that complies with the timing and content of the rule. The Department also notes that, in most instances, plan administrators will have the flexibility to determine a beginning date for the blackout period that would permit timely notification of the blackout period to be made with the quarterly benefit statements furnished to affected participants and beneficiaries.

Like the interim final rule, the final rule requires that the notice periods be counted back from the last date on which the participant or beneficiary could exercise the affected rights immediately before the commencement of the blackout period. One commenter requested a clarification that the time period must take into account implementation of the exercised rights of the participant or beneficiary. The point of the advance notice is to enable participants and beneficiaries to take action in anticipation of a blackout period. Accordingly, merely affording participants or beneficiaries the opportunity to give investment instruction, or request a loan, or request a distribution without the ability to have such instruction or request implemented prior to the blackout period would be contrary to both the regulation and the statute. Therefore, plan administrators must take into account plan requirements, procedures and other factors that may affect implementation of participant or beneficiary instructions or requests in determining the last date on which participants and beneficiaries could exercise the affected rights before the commencement of the blackout period.

The timing rules are exemplified by the following. In the case of an individual account plan that provides for daily trading, the 30-day period would be counted back from the date immediately preceding the commencement of a blackout period affecting the right to trade. In the case of a plan that permits participants to direct their investments during the first fifteen days of each month, if a plan administrator determines that in order to change recordkeepers, participant direction of their investments will have to be suspended from the 1st to the 15th of May. If the 30-day notice period were counted from the date immediately preceding the commencement of the blackout period, notice could be provided on April 1st, thereby affording participants only 15 days (April 1st–15th) to consider and take action in anticipation of the blackout period. Under the regulation, notice is required to be furnished at least 30 days in advance of the last date on which participants could exercise the affected rights immediately before the commencement of the blackout period. In the immediate example, the last date on which participants could take action in anticipation of the blackout period would be April 15th; accordingly notice would have to be provided to participants not later than March 16th.

As with the interim final rule, all references in the regulation to "days" are references to calendar days, not business days, unless specifically noted otherwise.

Like the interim final rule, the final rule, at paragraph (b)(2)(ii)(A) and (B), sets forth two circumstances under which the 30-day advance notice requirement does not apply. The first circumstance is where a deferral of the blackout period would result in a violation of the exclusive purpose and prudence requirements of section 404(a)(1)(A) and (B) of the Act. For example, the ABC Company has announced that it is filing Chapter 11 bankruptcy. The ABC company's 401(k) plan has ABC common stock as one of its investment options. F, the 401(k) plan fiduciary and administrator, determines that, given this event, it would be prudent to temporarily

suspend investments in the ABC company stock, effective immediately. In such a situation, F would not, pursuant to § 2520.101–3(b)(2)(ii)(A), be required to give 30 days notice to the affected participants and beneficiaries, but would be required to notify them in writing as soon as possible of the blackout period.

The second circumstance under which the 30-day advance notice requirement does not apply is where commencement of the blackout period is due to events that were unforeseeable or circumstances that were beyond the control of the plan administrator. For example, the DEF company's profit-sharing plan's recordkeeper has informed plan administrator G that due to a major computer failure, the computer program for recording and processing loans and distributions from the plan has been incapacitated and that it will take approximately ten days to fix the system. In such a situation, G would not, pursuant to § 2520.101–3(b)(2)(ii)(B), be required to give 30 days' notice to the affected participants and beneficiaries of their temporary inability to receive loans and distributions from the plan, but would be required to notify them as soon as reasonably possible, unless G determines that such notice in advance of the termination of the blackout is impracticable. The Department anticipates that plan administrators will rely on this exception only in rare circumstances. In this regard, the Department notes that problems attendant to changes in recordkeepers will rarely be unforeseeable or beyond the control of the plan.

In both of the foregoing circumstances, a plan fiduciary, which can be the plan administrator, must make a written determination with respect to the exceptions to the 30-day advance notice requirement. Like the interim final rule, paragraph (b)(2)(iv) of the final rule requires that such determinations be dated and signed by a plan fiduciary.

Section 101(i)(3) of ERISA provides that in any case in which a blackout period applies only to one or more participants or beneficiaries in connection with a merger, acquisition, divestiture, or similar transaction involving the plan or plan sponsor and occurs solely in connection with becoming or ceasing to be a participant or beneficiary under the plan by reason of such merger, acquisition, divestiture, or similar transaction, the 30-day advance notice requirement shall be treated as met if the notice is furnished to such participants and beneficiaries to whom the blackout period applies as soon as reasonably practicable. Like paragraph (b)(2)(ii)(C) of the interim final rule, the final rule makes clear that notice to such participants and beneficiaries is an exception to the general rule that the 30-day notice be furnished to all affected participants and beneficiaries.

One commenter requested that the foregoing exception be extended to situations where the affected participants participate in both plans immediately before a plan merger and to situations where a plan merger or spin-off is not the result of a corporate merger, acquisition, divestiture or similar transaction. The Department believes that the exception at issue was intended to be applied to the narrow circumstances set forth in the statute. Moreover, the Department is not persuaded, on the basis of the information provided, that the burdens attendant to providing advance notice in the circumstances described by the commenter outweigh the benefits of the notice to affected participants and beneficiaries.

Paragraph (b)(2)(iii), like the interim final rule, provides that, in any case in which the 30-day advance notice rule is not required to be applied, the administrator is required to provide notice as soon as reasonably possible under the circumstances, unless such notice in advance of the termination of the blackout period is impracticable. If, therefore, a plan administrator or other fiduciary concludes under such circumstances that notice could not be furnished in sufficient time in advance of the termination of the blackout period to alert participants and beneficiaries of the termination date and resumption of plan rights, no notice would be required to be provided under this section. Such might be the case where the need for a blackout period is determined only a few days before the beginning of the blackout period and the blackout period is only a few days in duration.

One commenter requested as a clarification as to whether the ability to furnish sufficient advance notice is determined by reference to the ability of the plan administrator to provide such notice to all affected participants and beneficiaries. It is the view of the Department that paragraph (b)(2)(iii), as well as paragraph (b)(4) relating to changes in the length of the blackout period, require that an administrator take steps to furnish notice as soon as reasonably possible to all affected participants and beneficiaries and, therefore, to the extent that an administrator has the ability to furnish notice to some participants and beneficiaries earlier than other participants and beneficiaries, which may be the case where electronic disclosure is available, the administrator has an obligation to provide such notice, even though providing advance notice to other participants and beneficiaries (*e.g.*, by mail) may be impracticable.

Two commenters suggested that the timing rules should not apply with respect to new participants inasmuch as furnishing such notice as part of the plan enrollment package might be a problem because different third-party vendors may prepare the materials and, in addition, new participants are likely to have little, if any, funds that would be affected by the blackout period. The Department is not persuaded that administrative burdens and small account balances justify an exception to the timing rules for new plan participants. Accordingly, no exception from the timing requirements has been adopted for new participants. The Department notes, however, that if an employee becomes a participant after blackout notices have been furnished to the plan's participants and beneficiaries, the administrator would be required to furnish a notice to the newly eligible employee as soon as reasonably possible pursuant to the exception in § 2520.101–3(b)(2)(ii)(B).

4. Form and Manner of Furnishing Notice § 2520.101–3(b)(3)

Like the interim final rule, paragraph (b)(3) of the final rule provides that the blackout notice must be in writing and may be furnished in any manner permitted under 29 CFR 2520.104b–1, including through electronic media. One commenter indicated that the "reasonably accessible" standard of the SOA is intended to be broader than the standards under § 2520.104b–1 and the regulation, therefore should be modified accordingly. The Department disagrees with the commenter's interpretation of the statute. It is the view of the Department that the standards set forth in § 2520.104b–1(c), relating to the use of electronic media, are intended to ensure reasonable access to electronic communications by participants and beneficiaries consistent with the statute. Accordingly, the provision of the interim final regulation is being retained without modification.

In the preamble to the interim final rule, the Department indicated that a blackout notice will be considered furnished as of the date of mailing, if mailed by first class mail, or as of the date of electronic transmission, if transmitted electronically. Two commenters indicated that the circumstances under which a notice is considered to be furnished should be

expanded to include delivery by overnight mail, third class mail, private delivery services, and interoffice mail. It is the view of the Department that interoffice mail is essentially hand delivery and, therefore, a document would not be considered furnished until received by the participant. On the other hand, the Department agrees that with the commenters that there are other methods of delivery that should be accorded the same deference as electronic transmission and first class mail. In this regard, it is the view of the Department that a blackout notice will be considered furnished on the date of mailing if it is accomplished by first class mail, certified mail or Express Mail; or on the date of delivery to a "designated private delivery service" within the meaning of 26 U.S.C. 7502(f). In the case of notices furnished electronically, notices will be considered furnished on the date of transmission.

One commenter requested clarification of whether furnishing notice to the last known address of a participant or beneficiary is sufficient. Furnishing a notice to the last known address of a participant or beneficiary would be sufficient where the plan utilizes a method of delivery described in § 2520.104b–1 and the fiduciaries of the plan have taken reasonable steps to keep plan records up-to-date and to locate lost or missing participants.

5. Changes in Length of Blackout Period § 2520.101(b)(4)

Paragraph (b)(4) describes the notice requirements applicable to changes in the length of the blackout period. The final rule, like the interim final rule, provides that the administrator is required to provide all affected participants and beneficiaries with an updated notice explaining the reasons for the change in the date(s) and identifying all material changes in the information contained in the prior notice. The updated notice must be provided as soon as reasonably possible, unless such notice in advance of termination of the blackout period is impracticable. In this regard, the Department reiterates that to the extent that an administrator has the ability to furnish notice to some participants and beneficiaries earlier than other participants and beneficiaries, which may be the case where electronic disclosure is available, the administrator has an obligation to provide such notice, even though providing advance notice to other participants and beneficiaries (*e.g.*, by mail) may be impracticable.

6. Notice to Issuer of Employer Securities § 2520.101–3(c)

Paragraph (c) of § 2520.101–3 of the final rule, like the interim final rule, describes the plan administrator's obligation to provide notice of a blackout period to the issuer of employer securities held by the plan and subject to the blackout period. Paragraph (c)(1) generally provides that the content and timing requirements applicable to the furnishing of notices to participants and beneficiaries also apply to the furnishing of notices to the issuer of employer securities. As with the interim final rule, it is the view of the Department that a plan administrator may satisfy its obligation to notify the issuer by providing the same notice furnished to participants and beneficiaries. Paragraph (c)(2) provides that the notice of the blackout period shall be furnished to the agent for service of legal process for the issuer, unless the issuer has provided the plan administrator the name of another person for service of such notice. Paragraph (c)(2) is intended to ensure that there is no ambiguity as to whom the administrator must serve notice of the blackout period. Pursuant to section 306(a)(6) of the SOA, issuers are required to notify directors, executive officers, and the Securities and Exchange Commission of the blackout period.

Three commenters suggested that notice to the issuer should not be required when the plan administrator and issuer are the same person. The Department does not believe that merely because an issuer and the plan administrator may, as a technical matter, be the same legal entity, that the parties will necessarily be privy to the same information. Nonetheless, there is nothing in the regulation that precludes an issuer of employer securities from designating the plan administrator as the party to receive notices of blackout periods. The Department has amended the regulation, at § 2520.101–3(c), to add a new subparagraph (3) making clear that where an issuer designates the administrator as the person to be furnished notice of a blackout period, the issuer shall be deemed to have been furnished notice on the same date as notice is furnished to affected participants and beneficiaries, thereby relieving the administrator of the obligation to notify itself of a blackout period.

7. Definitions § 2520.101–3(d)

a. "Blackout Period"

Paragraph (d)(1) of § 2520.101–3 defines the term "blackout period." The interim final rule adopted the definition set forth in ERISA section 101(i)(7). The Department received a number of comments on the interim final regulation requesting clarification of specific exclusions from the "blackout period" definition, as well as clarification that certain suspensions, limitations or restrictions imposed on an individual participant's account do not constitute a blackout period as contemplated by the statute or regulation.

"Regularly Scheduled" Exclusion

One commenter requested a clarification that the provisions of paragraph (d)(1)(ii)(B), relating to "a regularly scheduled suspension, limitation or restriction," not only applies to those that are plan changes, but also to preexisting plan features. Another commenter requested clarification that "a regularly scheduled suspension, limitation, or restriction" may, for purposes of the exclusion, be contained in and disclosed via enrollment forms, investment policies and other documents pursuant to which the plan is established or operated.

First, the Department does not believe that Congress, in enacting ERISA section 101(i)(7), intended to include preexisting regularly scheduled suspensions, limitations, or restrictions in the definition of the blackout period to the extent such suspensions, limitations, or restrictions are disclosed to participants and beneficiaries. In this regard, the Department notes that section 101(i)(7)(A) of ERISA and paragraph (d)(1)(i) of the regulation, in defining "blackout period," references "any period for which any ability of participants or beneficiaries under the plan, which is otherwise available under the terms of such plan, to direct or diversify assets * * *." (Emphasis supplied). The Department reads the clause "which is otherwise available under the terms of such plan" as referring to preexisting regularly scheduled suspensions, limitations or restrictions. The Department also notes that the "blackout period" definition contained in SOA section 306(a)(4), to be administered by the Securities and Exchange Commission, generally provides that a blackout period does not include "a regularly scheduled period," if such period is incorporated into the plan and timely disclosed to employees. Nonetheless, in an effort to clarify this issue and more closely align the exclusion in ERISA section 101(i)(7)(B)(ii) with SOA section 306(a),

the Department has amended paragraph (d)(1)(ii)(B) of the regulation.[1]

As amended, paragraph (d)(1)(ii)(B) excludes from the definition of blackout period a suspension, limitation or restriction "which is a regularly scheduled suspension, limitation, or restriction under the plan (or change thereto), provided that such suspension, limitation or restriction (or change) has been disclosed to affected plan participants and beneficiaries through the summary plan description, a summary of material modifications, materials describing specific investment alternatives under the plan and limits thereon or any changes thereto, participation or enrollment forms, or any other documents and instruments pursuant to which the plan is established or operated that have been furnished to such participants and beneficiaries." This amendment also serves to clarify that "regularly scheduled suspensions, limitations and restrictions" may be set forth in and disclosed to participants and beneficiaries in a variety of documents.

The amendment to paragraph (d)(1)(ii)(B), by reference to "materials describing specific investment alternatives under the plan and limits thereon," also is intended to make clear that restrictions on investments or delays in payment or transfers applicable to particular investments are encompassed within the exclusion to the extent disclosed to affected participants and beneficiaries. Similarly, limits on the ability of participants and beneficiaries to give investment instruction (such as limits on the ability of participants to trade daily) would be covered by the exclusion as a "regularly scheduled suspension, limitation or restriction" to the extent disclosed to affected participants and beneficiaries.

A number of commenters requested clarification that quarterly freezes on trading involving employer stock, timed to coincide with earnings reports and intended to prevent insider trading, whether fixed dates or determined on a quarter-by-quarter basis, do not constitute blackout periods within the meaning of the regulation when plan materials disclose the dates or explain how the dates will be determined. It is the view of the Department that such restrictions on trading employer securities would be "regularly scheduled" to the extent the event (*i.e.*, release of the company's quarterly earnings report) and the restriction (freeze on trading employer securities) and the period of the restriction are described in plan materials and disclosed to the plan's affected participants and beneficiaries.

[1] Section 101(i)(5) of ERISA, as added by SOA section 306(b), provides that the Secretary may establish by regulation additional exceptions to the requirements of subsection (i) of section 101 (the blackout notice requirements) which the Secretary determines are in the interest of participants and beneficiaries. The Department finds the amendment to paragraph (d)(1)(ii)(B) of the regulation to be in the interest of participants and beneficiaries.

QDRO Exclusion

A number of commenters also expressed concern that the language of paragraph (d)(1)(ii)(C), relating to suspensions, limitations, or restrictions as a result of a qualified domestic relations order (QDRO), did not take into account the obligations of a plan administrator to impose certain restrictions on the account of a participant during the pendency of a determination as to whether a domestic relations order is qualified. Given the specific obligations imposed on plan administrators pursuant to ERISA section 206(d)(3)(H), the Department does not believe that Congress, in drafting section ERISA 101(i)(7)(B)(iii), intended to limit the subject exclusion only to those restrictions arising after a determination that a domestic relations order is qualified. Accordingly, the Department has amended paragraph (d)(1)(ii)(C) to clarify the application of the exclusion to restrictions imposed during the pendency of a QDRO determination. As amended, paragraph (d)(1)(ii)(C) excludes a suspension, limitation or restriction "which occurs by reason of a qualified domestic relations order or by reason of a pending determination (by the plan administrator, by a court of competent jurisdiction or otherwise) whether a domestic relations order filed (or reasonably anticipated to be filed) with the plan is a qualified order within the meaning of section 206(d)(3)(B)(i) of ERISA."[2]

Individual Participant Actions

Commenters generally requested clarification that the term "blackout period" is not intended to include account restrictions triggered by individual participant actions. Examples of such actions include: Receipt of a tax levy, a dispute over a deceased participant's account among putative beneficiaries, failure of a participant to obtain a PIN number, or allegations that the participant committed a fiduciary breach or crime involving the plan. It is the view of the Department that Congress did not intend to encompass within the meaning of "blackout period" restrictions on investment direction, plan loans and plan distributions imposed solely in response to an action involving an individual participant and affecting only the account of that participant, such as those actions identified in the preceding sentence. Rather, the blackout notice requirements are intended to ensure that plan participants and beneficiaries are afforded advance notice of plan-imposed restrictions on their rights in order that they may take appropriate steps in anticipation of the restriction. In the case of actions involving individual participants, the Department agrees with commenters that the affected participant or beneficiary typically will already have notice of any restriction and reasons for such restriction. In response to these comments, the Department has amended the definition of blackout period at paragraph (d)(2) of the regulation to clarify that suspensions, limitations and restrictions precipitated by a participant's action or the action of a third-party with respect to an individual participant's account are excluded from the definition of "blackout period." Specifically, new paragraph (d)(2)(D) excludes from definition of blackout periods, a suspension, limitation and restriction that "occurs by reason of an act or a failure to act on the part of an individual participant or by reason of an action or claim by a party unrelated to the plan involving the account of an individual participant.[3]

[2] Pursuant to the Department's authority under section 101(i)(5) of ERISA, the Department finds the amendment to paragraph (d)(1)(ii)(C) to be in the interest of plan participants and beneficiaries.

Permanent Restrictions

Commenters, noting that the definition of "blackout period" refers to rights that are "temporarily suspended, limited or restricted," requested clarification that permanent elimination of certain rights would not constitute a "blackout period." Examples cited by the commenters included: Permanent restriction on new contributions to an investment option, replacement of one investment option with another of a similar type, and termination of the plan. The Department agrees that the blackout notice requirements were not

[3] Section 101(i)(5) of ERISA, as added by SOA section 306(b), provides that the Secretary may establish by regulation additional exceptions to the requirements of subsection (i) of section 101 (the blackout notice requirements) which the Secretary determines are in the interest of participants and beneficiaries. The Department finds this amendment to paragraph (d)(2) of the regulation to be in the interest of participants and beneficiaries.

intended to apply to rights that are eliminated, as opposed to temporarily suspended, limited or restricted. Accordingly, a permanent restriction on new contributions to an investment option, replacement of one investment option with another, a plan termination and similar types of permanent restrictions would not in and of themselves be events that give rise to a blackout notice obligation under the regulation. However, if, in connection with implementing a permanent restriction, some rights would be temporarily suspended, limited or restricted, the blackout notice requirements would apply to such temporary restriction. For example, in replacing investment option A with investment option B, the plan permanently restricts new contributions to option A and during the transfer of funds from option A to option B temporarily suspends participant direction of the funds transferred to option B for 5 days during which transfers and accounts will be reconciled. In this situation, the restriction on new contributions to option A would not constitute a blackout period, but the 5 day temporary restriction on the direction of funds in option B would constitute a blackout period with respect to which notice must be provided under the regulation. On the other hand, if there was no restriction on the direction of funds in option B or if the restriction was for 3 or fewer consecutive business days, there would be no blackout period with regard to such funds under the regulation.

One commenter requested a clarification that a blackout period does not occur solely because of the bankruptcy of an employer and the appointment of a bankruptcy trustee or as a result of abandonment of a plan by the plan sponsor. Such actions would, in the view of the Department, result in a blackout period only if the rights of participants and beneficiaries to direct investments, obtain a loan or obtain a distribution are temporarily suspended, limited or restricted within the meaning of the regulation. In the event there is a blackout period in connection with such actions, notice would have to be provided by the plan administrator or the party assuming the responsibilities of the plan administrator.

One commenter requested clarification that the definition of "blackout period" does not extend to suspensions, limitations or restrictions of services (such as investment education, investment advice, retirement counseling, financial planning) that may facilitate the exercise of a participant's and beneficiary's right to diversify their assets, obtain a loan or obtain a distribution. It is the view of the Department that to the extent such services are not required in order for a participant or beneficiary to exercise his or her right to direct investments, obtain a loan or obtain a distribution, the suspension, limitation or restriction of such services would not give rise to a blackout period within the meaning of the regulation.

b. "One-Participant Retirement Plan"

As with the interim final rule, the final rule adopts the statutory definition of "one-participant retirement plan" set forth in section 101(i)(8)(B) of ERISA, as amended by section 306(b)(1) of the SOA. One commenter suggested the definition of "one-participant retirement plan" be amended to apply the definition in 29 CFR § 2510.3–3(c)(1) and (2) for purposes of the blackout notice requirements. The Department has not adopted this suggestion and retained the statutory definition "one-participant retirement plan" without change.

c. "Issuer"

Like the interim final rule, paragraph (d)(4) of the final rule defines the term "issuer" for purposes of the blackout notice provisions. Consistent with the provisions of section 2(a)(7) of the SOA, issuer means an issuer as defined in section 3 of the Securities Exchange Act of 1934 (15 U.S.C. 78c),[4] the securities of which are registered under section 12 of the Securities Exchange Act of 1934, or that is required to file reports under section 15(d) of the Securities Exchange Act of 1934, or files or has filed a registration statement that has not yet become effective under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*), and that it has not withdrawn.

d. Miscellaneous

In response to requests from two commenters, the Department provides the following clarifications. First, references to plan administrator and administrator in the regulation mean the "administrator" as defined in section 3(16)(A) of ERISA. Second, the term "affected participant" as used in the regulation means participants and beneficiaries whose rights under the plan are affected by the suspension, limitation, or restriction of their right to direct or diversity assets, obtain a loan or obtain a distribution. Employees who are eligible but who have not elected to participate in the plan would not be "affected participants" within the meaning of the regulation.

8. Model Notice § 2520.101–3(e)

Paragraph (e) of § 2520.101–3 provides a model notice to facilitate compliance with the blackout notice requirements by plan administrators. Use of the model is not mandatory. However, like the interim final rule, the final rule provides that use of the advisory statement set forth at paragraph 4 of the model notice will be deemed to satisfy the notice content requirements of paragraph (b)(1)(iv) of the rule pertaining to advising participants and beneficiaries about the importance of reviewing their plan investments in anticipation of their inability to direct or diversify their investments during the blackout period. The final rule, like the interim final rule, also provides that use of the general statement set forth in paragraph 5 of the model notice will be deemed to satisfy the requirement of paragraph (b)(1)(v)(A) that the notice contain a general statement that Federal law requires furnishing of blackout notices in advance of the blackout period.

This model is intended to deal solely with the content requirements prescribed in paragraph (b)(1) and not other matters with respect to which disclosure may be required, such as changes in investment options.

As discussed earlier, the model notice has been revised to accommodate changes in the final rule. Paragraph 3 of the model (relating to length of the blackout period) has been changed to reflect alternative approaches to describing the length of the blackout period and paragraph 4 (encouraging participants and beneficiaries to review their investments in anticipation of the blackout period) has been modified to make clear that the last two sentences of the paragraph (relating to investments in individual securities) apply only to plans that offer investments in individual securities. Paragraph 6 of the model also was modified to make clear that individual persons are not required to be named as contacts for information about blackout periods.

[4] Section 3 of the Securities Exchange Act of 1934 defines the term "issuer" to mean any person who issues or proposes to issue any security; except that with respect to certificates of deposit for securities, voting-trust certificates, or collateral-trust certificates, or with respect to certificates of interest or shares in an unincorporated investment trust not having a board of directors or of the fixed, restricted management, or unit type, the term "issuer" means the person or persons performing the acts and assuming the duties of depositor or manager pursuant to the provisions of the trust or other agreement or instrument under which such securities are issued; and except that with respect to equipment-trust certificates or like securities, the term "issuer" means the person by whom the equipment or property is, or is to be, used.

One commenter suggested that paragraph 4 of the model not be required when notice is furnished as soon as reasonably possible under the circumstances, but after the date on which affected participants and beneficiaries can take action in anticipation of the blackout period. The Department agrees that including paragraph 4 of the model in a notice furnished after the date on which participants and beneficiaries can effectuate changes in anticipation of the blackout period will be of no value to participants and beneficiaries and, accordingly, may be deleted.

One commenter suggested that the model advise participants of the tax consequences relating to net unrealized appreciation of employer securities upon distribution from a plan. The Department believes that, while such information may be useful to participant, the information goes beyond the scope of the intended blackout notice. The Department notes, however, that there is nothing in the regulation which precludes the furnishing information with the blackout period notice that may be helpful to plan participants and beneficiaries.

9. Effective Date § 2520.101–3(f)

Paragraph (f) of § 2520.101–3 sets forth the effective date of the final rule. Like the interim final rule, paragraph (f) provides that the rule is effective on January 26, 2003, the effective date of the SOA section 306 amendments to ERISA. Paragraph (f) provides that the notice requirements shall apply to blackout periods commencing on or after January 26, 2003, and that, for blackout periods beginning between January 26, 2003 and February 25, 2003, plan administrators shall furnish notice as soon as reasonably possible. This provision is intended to ensure that a statutorily required notice be provided with respect to blackout periods which commence before February 26, 2003. In no event, however, is a blackout notice required to be furnished under the regulation prior to the January 26 effective date. Pursuant to section 553(c) of the Administrative Procedure Act, the Department finds good cause for this rule to be effective less than 30 days after publication. The Department believes that having the rule effective on the effective date of the underlying statutory provisions will avoid confusion for plan administrators. Moreover, the limited extent of the differences between the instant rule and the interim rules will minimize any difficulties in complying with the rule by the effective date.

C. Regulatory Impact Analysis

Summary

The costs associated with this final rule arise primarily from the statutory requirement to prepare and distribute advance notices of the imposition of blackout periods. The aggregate costs for plans required to provide this notice are estimated to be $13.9 million per year. The benefits afforded participants and beneficiaries and plan administrators by the statute and final rule cannot be quantified, but are expected to be substantial. These requirements will ensure that notices are always provided, are timely, and have appropriate content. Economic benefits will accrue to participants or beneficiaries as a result of their enhanced ability to exercise control over their retirement plan assets with adequate information to inform their decisions. The assurance of receiving advance notice of events that may be critical to participant decisionmaking will increase confidence in the security of retirement assets and promote plan participation. The statute and this guidance will also assist plan administrators in their efforts to fulfill their obligations to participants and beneficiaries.

Benefits and Costs

The SOA amendments to ERISA and this implementing guidance will have several important benefits. First, while commenters on the interim final rule confirm that many plan administrators currently provide disclosures similar to those required by the statute and interim final rule, these new requirements will ensure that appropriate information is provided in a consistent and timely manner.

This advance knowledge will have economic value and increase confidence in the security of retirement savings. Timely notice and an understanding of the reasons for and expected duration of a blackout period will benefit participants and beneficiaries economically by offering them ample opportunity to assess their current investment decisions, and to adjust their exposure to loss if they wish to do so, to the extent possible within the existing options available under the plan. Advance notice of blackout periods cannot eliminate fluctuations of market value during a period when existing investment instructions cannot be modified. However, notice will allow affected participants and beneficiaries to maximize their exercise of control as they deem appropriate in their individual circumstances.

Assurance of the opportunity to exercise control with adequate knowledge, in advance of events that will affect their ability to exercise control, will increase participant and beneficiary confidence that the plan is being operated appropriately. Participants frequently express concern when significant changes are made to plan options, or when rights previously available are temporarily limited. Assuring that they will have knowledge of the timing and reasons for such changes should serve to promote confidence in the security of retirement savings and support continued growth in participation in the retirement plans offered by plan sponsors.

Second, guidance on the statutory notice requirement will benefit plan sponsors and administrators by clarifying the manner in which they may discharge their obligation to ensure that participants and beneficiaries have access to information necessary to make informed and meaningful investment decisions. Blackout periods occur for a variety of reasons. Their occurrence and timing are often, but not always, within the control of the plan administrator. The most common reasons for imposition of a blackout period include changes in investment alternatives or recordkeepers, and corporate mergers, acquisitions, and spin-offs that impact the pension coverage of groups of participants. Plan administrators will wish to ensure that proper accounting and record transfer is accomplished as timely and accurately as possible, while at the same time advising participants about important matters affecting their rights under the plan.

The value of these benefits cannot be specifically quantified. However, the conclusion that advance notice of blackout periods produces economic benefits is consistent with mainstream economic theory and corroborated by evidence. For example, theory posits that financial market prices respond quickly to new information. Delays in executing trades have been shown to be costly. Advance notice of a blackout in trading enables affected participants to adjust their positions to manage their exposure to such costs. The benefits are expected to outweigh the costs of the statute and the final rule.

Administrators of about 85,150 affected plans are estimated to incur costs of approximately $13.9 million each year to prepare and distribute blackout notices to 12 million covered participants. This total consists of about $8 million per year for 295,000 small plans (an average of about $110 per plan), and $5.8 million per year for 45,000 large plans (an average of about $510 per plan). These costs are primarily attributable to the effect of the

statutory provisions, and would in fact be estimated to be greater in the absence of a model notice due to higher notice drafting time. Because plans commonly provide advance notice of blackout periods voluntarily, much of this cost is inherent in normal business practice, and the incremental cost attributable to the advance notice requirement will be less than total estimated here. Because the costs of the statute arise from notice provisions, the data and methodology used in developing these estimates are fully described in the Paperwork Reduction Act section of this statement of regulatory impact.

Although the Department requested input from the public concerning the assumptions used in developing these estimates, the likely frequency of blackout periods, the sources of variability in the costs and benefits of providing notices, and any potential differential impacts on small plans, it received a limited number of comments addressing economic impact. As noted earlier in this preamble, several commenters indicated that the interim final rule's requirement for the disclosure of specific beginning and ending dates in the blackout notice, and a corresponding frequency of the requirement for subsequent notices arising from the inability to predict specific dates, would add to the burden of the blackout notice requirement. The Department has made certain modifications in the final rule to address these concerns. A comment was also received with respect to the Department's assumptions with respect to the use of electronic methods of communication. This comment is addressed in the Paperwork Reduction Act statement below.

Executive Order 12866

Under Executive Order 12866 (58 FR 51735), the Department must determine whether a regulatory action is "significant" and therefore subject to review by the Office of Management and Budget (OMB). Section 3(f) of the Executive Order defines a "significant regulatory action" as an action that is likely to result in a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also referred to as "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. It has been determined that this final rule is significant within the meaning of section 3(f)(4) of the Executive Order. OMB has, therefore, reviewed the final rule pursuant to the Executive Order.

Paperwork Reduction Act

At the time of publication of the interim final rule, the Department of Labor submitted the information collection request (ICR) included in the interim final rule to OMB for review and clearance in accordance with the emergency review procedures of the Paperwork Reduction Act of 1995 (PRA 95). OMB subsequently approved the information collection using emergency clearance procedures on December 5, 2002. This emergency clearance will expire on April 30, 2003. As a consequence, the information collection included in this final rule is being submitted at this time for continuing approval. The burden estimates are unchanged, and terms of the final rule that constitute collections of information are not substantively or materially changed. A copy of the ICR with applicable supporting statement may be obtained by calling the Department of Labor, Ms. Marlene Howze, at (202) 693–4158, or by e-mail to *Howze-Marlene@dol.gov*.

Comments and questions about the ICR should be submitted to the Office of Management and Budget, Office of Information and Regulatory Affairs, ATTN: Desk Officer for the Pension and Welfare Benefits Administration, Room 10235, 725 17th Street, NW., Washington, DC 20503 ((202) 395–7316). Comments should be submitted to OMB by February 24, 2003 to ensure their consideration.

The Department and OMB are particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Information Collection Provisions

The information collection provisions of this final rule are found in paragraphs (a), (b)(2)(ii)(A) and (B), (b)(2)(iv), (b)(4), and (c)(1). A model notice is provided in paragraph (e) to facilitate compliance and moderate the burden associated with supplying notices to participants and beneficiaries as described in the final rule. Use of the model notice is not mandatory, and the addition of other relevant information to the advance notice should not be viewed as restricted by the model. Modifications described earlier in this preamble to paragraphs (b)(1)(iii)(A) and (B) allowing the use under specific circumstances of a limited range of beginning and ending dates rather than specific dates should serve to allow for greater flexibility and limit the number of follow-up notices required pursuant to paragraph (b)(4). New paragraph (c)(3) clarifies that where an issuer designates the plan administrator as the person to receive notice under paragraphs (c)(1), the plan administrator need not supply this notice separately to itself. This modification may eliminate the need for duplicate notification under some circumstances. Neither of these changes is considered to constitute a substantive or material change to the existing approved information collection.

Comments

As noted, the Department received comments concerning the difficulty of including specific beginning and ending dates in the notice pursuant to paragraphs (b)(1)(iii), and the applicability of the notice requirement of paragraph (c) when an issuer designates the plan administrator as the party to receive notices of blackout periods affecting securities of the issuer. The Department has addressed these and other issues raised by commenters with modifications previously described in this preamble. In addition, one commenter expressed the view that the Department's estimates were understated to the extent that they incorporated the use of electronic media for distribution of the notices. The commenter further stated that the use of electronic technology for communicating with participants and

beneficiaries is generally not viable due to the absence of computer capability in certain industries. While the Department did not describe its methodology for incorporating electronic disclosure assumptions in detail in the interim final rule, the methodology does take a variety of factors into account, including the distribution of plan sponsors and participants across industries, data related to access to computers in different industries, survey data on the use of electronic communication methods by plan sponsors and administrators, and comments received in response to the Department's Notice of Proposed Rulemaking on Use of Electronic Communication and Recordkeeping Technologies by Employee Pension and Welfare Benefit Plans (64 FR 4506, January 28, 1999; finalized April 9, 2002, 67 FR 17264).

Specifically, in order to develop estimates of distribution expenses saved through the use of electronic communication technologies, the Department utilized a Census Bureau household survey published in 2001 on computer use [5] and a separate 1999 Census Bureau household survey [6] on pension and health benefit plan participation. Analysis of this information indicates that approximately 21 percent of participants have appropriate access to electronic media at their workplaces, and another 38 percent have such access at home. The pension and health coverage rates were then applied to the computer use rates industry-by-industry to account for the likelihood that computer use is greater among plan participants and especially among large plan participants, because such participants are concentrated in certain industries (*e.g.*, the financial services industry).

The Department then looked at each disclosure required under Title I of ERISA to evaluate the extent to which plan administrators might consider electronic distribution appropriate. For purposes of the required notices of blackout periods, it was assumed that in most cases where plan administrators and participants had consistent access to computers, these notices would be distributed electronically. This is because it is believed that plan administrators will consider the information time sensitive, because electronic distribution is cost effective, and because the investment companies that provide administrative services for many individual account plans commonly communicate with customers in an electronic format.

While the description of the use of electronic technologies in the preamble to the interim final rule may have been read to suggest that most or all blackout notices were expected to be delivered electronically, the delivery of the majority of notices is in fact still estimated to occur by first class mail. About 38 percent of such notices are expected to be delivered electronically. While the Department agrees with the commenter that many plans will derive no benefit from electronic distribution, it has carefully considered its approach to estimating distribution savings for plans situated to make use of electronic technologies, and continues to believe that the approach supports reasonable estimates.

Accordingly, it has not modified its previous assumptions concerning the likely methods of delivery for notices of blackout periods.

Burden Estimates

In order to estimate the potential costs of the notice provisions of section 101(i) of ERISA and this final rule, the Department tabulated the number of participant-directed individual account plans and the number of participants, inactive participants and beneficiaries who have not taken distributions, in those plans using the plans' Form 5500 filings for 1998, the most recent year currently available. The Department then projected these counts forward, producing estimates of 295,000 small and 45,000 large participant-directed individual account plans in 2002 (totaling 341,000). Participant counts were also projected, resulting in estimates of 7.4 million small plan participants and 40.4 large plan participants (totaling 47.8 million) in 2002 that would potentially be affected by blackout notices. A more detailed explanation of the methods and data used in these projections, as well as assumptions underlying the proportion of these plans and participants expected to be affected each year may be found in the preamble to the interim final rules.

Based on available data, the Department assumes that 25% percent of potentially affected plans will impose a blackout period in any given year. The resulting numbers of plans and participants assumed to be affected by the notice provisions annually are 85,150 and about 12 million, respectively.

The availability of a model notice as provided in paragraph (e) will lessen the time otherwise required to draft a required notice. In developing burden estimates, the Department has allowed one-half hour for drafting of the elements of the form by the plan administrator, and one hour for legal review of the drafted notice, the latter expense to be incurred as a payment of fees for outside services. This accounts for the burden of preparing the notice, which is estimated at 42,600 hours, and $6.4 million. No additional preparation time is accounted for to draft the notice required to be provided to an issuer of employer securities under paragraph (c), because this final rule requires the content and timing of that notice to be the same as the notice prepared for the purpose of paragraph (b)(1). The burden of this notice would be driven by the number of plans rather than participants, and the notice would be required in far more limited circumstances than the notice to participants under paragraph (b)(1), as it pertains only to the issuer's securities affected by the blackout period in the plan. In addition, based on the addition of paragraph (c)(3), when the issuer designates the plan administrator as the party to receive of blackout periods involving securities of the issuer, the plan administrator is not required to provide this notice separately to itself. This modification should serve to reduce the number of these notices because the issuer and plan administrator are in some instances the same entity; however, the magnitude of the reduction cannot be estimated. Because only a small segment of participant directed individual account plans holds employer securities that would be subject to the requirements of paragraph (c), the cost of delivering such notices is estimated to be negligible.

The estimated burden for distribution of blackout notices takes several factors into account, including an assumed number of participants affected annually, the number of the notices that will be distributed electronically, and on paper, and the differential costs of electronic and paper distribution methods. The estimates of the rate of use of electronic distribution methods are consistent with those used in determining the savings associated with the Department's Final Rules Relating to Use of Electronic Communication and Recordkeeping Technologies by Employee Pension and Welfare Benefit Plans (67 FR 17264, April 9, 2002). Those participants not calculated to receive notice electronically are

[5] "Home Computers and Internet Use in the United States: August 2000," U.S. Census Bureau Current Population Reports (September 2001).

[6] Contingent Work Supplement to the February, 1999 Current Population Survey, U.S. Census Bureau.

assumed to receive the notice on paper. Paper distribution is estimated to require one minute per notice for copying and mailing, plus $0.40 for paper and postage. No time or direct cost is attributed to electronic distribution methods other than the time required to prepare the notice, because it is assumed that notices are drafted in electronic form, plan administrators use existing infrastructure to communicate electronically, and the cost of electronic transmission is negligible. Paper notice distribution is estimated to require 123,500 hours, and cost about $3 million annually.

The Department considers that this distribution burden estimate is conservatively high due to the fact that many plans already provide advance notices in the event of the imposition of a blackout period, that most blackout periods arise from changes in investment providers or recordkeepers, and that this advance notice either is or will be included with other informational materials that would ordinarily be supplied to participants or beneficiaries to implement that change. Commenters were generally in agreement with these assumptions.

No additional burden is included for the requirements for written documentation that is to be dated and signed under paragraphs (b)(2)(ii)(A) and (B) and (b)(2)(iv). It is assumed that written documentation is normally maintained in the circumstances described, and that the burden of adding a signature or providing a limited number of copies upon request would be negligible.

Further, no additional burden is estimated for subsequent notices required due to changes described in paragraph (b)(4). The Department has no basis for an estimate of the frequency of changes in the length of blackout periods. Further, the Department believes that, although a cost is incurred to do so, plan administrators typically inform participants of changes in the duration of a blackout period as part of their reasonable and customary business practices. It is acknowledged that the content and timing might be modified based on the provisions of the SOA and this final rule, however. As noted earlier, the modification of the interim final rule provision describing the nature of the information to be included on blackout period beginning and ending dates should serve to minimize the number of subsequent notices and their attendant costs by clarifying for plan administrators the extent to which their usual practices conform to the provisions of the final rule.

The current estimates of annual respondents, responses, and hour and cost burdens are shown below.

Type of Review: Extension of a currently approved collection.

Agency: Department of Labor, Pension and Welfare Benefits Administration.

Title: Notice of Blackout Period under ERISA.

OMB Number: 1210–0122.

Affected Public: Individuals or households; Business or other for-profit; Not-for-profit institutions.

Respondents: 85,150.

Frequency of Response: On occasion.

Responses: 11,956,000.

Estimated Total Burden Hours: 166,129.

Total Annual Cost (Operating and Maintenance): $ 9,351,400.

OMB will consider comments submitted in response to this request in its review of the request for an extension of the emergency approval of the ICR; these comments will also become a matter of public record.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) (RFA), imposes certain requirements with respect to federal rules that are subject to the notice and comment requirements of section 553(b) of the Administrative Procedure Act (5 U.S.C. 551 *et seq.*) and that are likely to have a significant economic impact on a substantial number of small entities. For purposes of its analyses under the RFA, PWBA continues to consider a small entity to be an employee benefit plan with fewer than 100 participants. The basis of this definition is found in section 104(a)(2) of ERISA, which permits the Secretary of Labor to prescribe simplified annual reporting for pension plans that cover fewer than 100 participants. Because this guidance is issued as a final rule pursuant to the authority and deadlines prescribed in section 306(b)(2) of the SOA, RFA does not apply, and regulatory flexibility analysis is not required.

The terms of the statute pertaining to the required notices to plan participants and beneficiaries in the event of a blackout do not vary relative to plan size. This final rule addresses the statutory provisions, which are self-executing and do not afford the Department with substantial discretion to exercise regulatory flexibility with respect to small plans. While a cost is expected to be associated primarily with the statutory provisions, the Department believes that the final rule imposes no additional cost on small plans. The Department nevertheless requested comments concerning any special issues facing small plans with respect to blackout notices, and any alternatives consistent with the objectives of the statute that may serve to facilitate compliance. No comments were received in response.

As to the potential impact of the final rule on small plans, the Department notes that available data suggest that about 341,000 plans, or 47 % of all plans are potentially impacted by the enactment of a blackout notice requirement, in that they are individual account plans that permit any form of individual investment direction.

The statutory blackout notice requirement will potentially affect a significant number of small plans. About 87% of the potentially affected plans are small. However, although most affected plans are small, the participants in those plans represent only about 16% of the 47.8 million potentially affected participants. Based on the assumption that plans will impose a blackout period once every four years on average, about 73,800 small plans and 11,400 large plans will prepare and distribute notices annually. The small affected plans represent about 10% of all pension plans, while the large affected plans represent about 2% of all plans. Affected participants (1.9 million in small plans, and 10.1 million in large plans) represent approximately 2% and 9% of all plan participants, respectively.

The substance of the required notice is likely to be prepared once per plan for each applicable blackout period and distributed to the multiple affected participants. The fixed cost of preparing the notice is estimated at approximately $100 for both large and small plans. The total cost to affected small plans for both preparation and distribution is expected to be an average of about $110 per year. The comparable annual average cost to large plans of about $510 is substantially greater due to the greater numbers of participants in these plans, and the costs attendant to distribution of the notices.

Congressional Review Act

The rules being issued here are subject to the Congressional Review Act provisions of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et seq.*) and have been transmitted to Congress and the Comptroller General for review. The rule is not a "major rule" as that term is defined in 5 U.S.C. 804, because it is not likely to result in (1) an annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, or federal, State, or local

government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets.

Unfunded Mandates Reform Act

For purposes of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), as well as Executive Order 12875, this final rule does not include any Federal mandate that may result in expenditures by State, local, or tribal governments, and does not impose an annual burden exceeding $100 million on the private sector.

Federalism Statement

Executive Order 13132 (August 4, 1999) outlines fundamental principles of federalism and requires the adherence to specific criteria by federal agencies in the process of their formulation and implementation of policies that have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. This final rule does not have federalism implications because it has no substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Section 514 of ERISA provides, with certain exceptions specifically enumerated, that the provisions of Titles I and IV of ERISA supersede any and all laws of the States as they relate to any employee benefit plan covered under ERISA. The requirements implemented in this final rule do not alter the fundamental reporting and disclosure requirements of the statute with respect to employee benefit plans, and as such have no implications for the States or the relationship or distribution of power between the national government and the States.

List of Subjects in 29 CFR Part 2520

Employee benefit plans, Employee Retirement Income Security Act, Pensions, and Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, amend part 2520 of Title 29 of the Code of Federal Regulations as follows:

PART 2520—RULES AND REGULATIONS FOR REPORTING AND DISCLOSURE

1. The authority citation for part 2520 continues to read as follows:

Authority: 29 U.S.C. 1021–1025, 1027, 1029–31, 1059, 1134 and 1135; Secretary of Labor's Order No. 1–87.

Sections 2520.102–3, 2520.104b–1 and 2520.104b–3 also issued under 29 U.S.C. 1003, 1171–73, 1185 and 1191–94; and under sec. 101(g)(4), Pub. L. 104–191, 110 Stat. 1936.

Sections 2520.104b–1 and 2520.107 also issued under sec. 1510, Pub. L. 105–34, 111 Stat. 788.

Section 2520.101–3 also issued under sec. 306(b)(2), Pub. L. 107–204, 116 Stat. 745.

2. Revise § 2520.101–3 to read as follows:

§ 2520.101–3 Notice of blackout periods under individual account plans.

(a) *In general.* In accordance with section 101(i) of the Act, the administrator of an individual account plan, within the meaning of paragraph (d)(2) of this section, shall provide notice of any blackout period, within the meaning of paragraph (d)(1) of this section, to all participants and beneficiaries whose rights under the plan will be temporarily suspended, limited, or restricted by the blackout period (the "affected participants and beneficiaries") and to issuers of employer securities subject to such blackout period in accordance with this section.

(b) *Notice to participants and beneficiaries*—(1) *Content.* The notice required by paragraph (a) of this section shall be written in a manner calculated to be understood by the average plan participant and shall include—

(i) The reasons for the blackout period;

(ii) A description of the rights otherwise available to participants and beneficiaries under the plan that will be temporarily suspended, limited or restricted by the blackout period (*e.g.*, right to direct or diversify assets in individual accounts, right to obtain loans from the plan, right to obtain distributions from the plan), including identification of any investments subject to the blackout period;

(iii) The length of the blackout period by reference to:

(A) The expected beginning date and ending date of the blackout period; or

(B) The calendar week during which the blackout period is expected to begin and end, provided that during such weeks information as to whether the blackout period has begun or ended is readily available, without charge, to affected participants and beneficiaries, such as via a toll-free number or access to a specific web site, and the notice describes how to access the information;

(iv) In the case of investments affected, a statement that the participant or beneficiary should evaluate the appropriateness of their current investment decisions in light of their inability to direct or diversify assets in their accounts during the blackout period (a notice that includes the advisory statement contained in paragraph 4. of the model notice in paragraph (e)(2) of this section will satisfy this requirement);

(v) In any case in which the notice required by paragraph (a) of this section is not furnished at least 30 days in advance of the last date on which affected participants and beneficiaries could exercise affected rights immediately before the commencement of the blackout period, except for a notice furnished pursuant to paragraph (b)(2)(ii)(C) of this section:

(A) A statement that Federal law generally requires that notice be furnished to affected participants and beneficiaries at least 30 days in advance of the last date on which participants and beneficiaries could exercise the affected rights immediately before the commencement of a blackout period (a notice that includes the statement contained in paragraph 5. of the model notice in paragraph (e)(2) of this section will satisfy this requirement), and

(B) An explanation of the reasons why at least 30 days advance notice could not be furnished; and

(vi) The name, address and telephone number of the plan administrator or other contact responsible for answering questions about the blackout period.

(2) *Timing.* (i) The notice described in paragraph (a) of this section shall be furnished to all affected participants and beneficiaries at least 30 days, but not more than 60 days, in advance of the last date on which such participants and beneficiaries could exercise the affected rights immediately before the commencement of any blackout period.

(ii) The requirement to give at least 30 days advance notice contained in paragraph (b)(2)(i) of this section shall not apply in any case in which—

(A) A deferral of the blackout period in order to comply with paragraph (b)(2)(i) of this section would result in a violation of the requirements of section 404(a)(1)(A) or (B) of the Act, and a fiduciary of the plan reasonably so determines in writing;

(B) The inability to provide the advance notice of a blackout period is due to events that were unforeseeable or

circumstances beyond the reasonable control of the plan administrator, and a fiduciary of the plan reasonably so determines in writing; or

(C) The blackout period applies only to one or more participants or beneficiaries solely in connection with their becoming, or ceasing to be, participants or beneficiaries of the plan as a result of a merger, acquisition, divestiture, or similar transaction involving the plan or plan sponsor.

(iii) In any case in which paragraph (b)(2)(ii) of this section applies, the administrator shall furnish the notice described in paragraph (a) of this section to all affected participants and beneficiaries as soon as reasonably possible under the circumstances, unless such notice in advance of the termination of the blackout period is impracticable.

(iv) Determinations under paragraph (b)(2)(ii)(A) and (B) of this section must be dated and signed by the fiduciary.

(3) *Form and manner of furnishing notice.* The notice required by paragraph (a) of this section shall be in writing and furnished to affected participants and beneficiaries in any manner consistent with the requirements of § 2520.104b–1 of this chapter, including paragraph (c) of that section relating to the use of electronic media.

(4) *Changes in length of blackout period.* If, following the furnishing of a notice pursuant to this section, there is a change in the length of the blackout period (specified in such notice pursuant to paragraph (b)(1)(iii) of this section), the administrator shall furnish all affected participants and beneficiaries an updated notice explaining the reasons for the change and identifying all material changes in the information contained in the prior notice. Such notice shall be furnished to all affected participants and beneficiaries as soon as reasonably possible, unless such notice in advance of the termination of the blackout period is impracticable.

(c) *Notice to issuer of employer securities.* (1) The notice required by paragraph (a) of this section shall be furnished to the issuer of any employer securities held by the plan and subject to the blackout period. Such notice shall contain the information described in paragraph (b)(1)(i), (ii), (iii) and (vi) of this section and shall be furnished in accordance with the time frames prescribed in paragraph (b)(2) of this section. In the event of a change in the length of the blackout period specified in such notice, the plan administrator shall furnish an updated notice to the issuer in accordance with the requirements of paragraph (b)(4) of this section.

(2) For purposes of this section, notice to the agent for service of legal process for the issuer shall constitute notice to the issuer, unless the issuer has provided the plan administrator with the name of another person for service of notice, in which case the plan administrator shall furnish notice to such person. Such notice shall be in writing, except that the notice may be in electronic or other form to the extent the person to whom notice must be furnished consents to receive the notice in such form.

(3) If the issuer designates the plan administrator as the person for service of notice pursuant to paragraph (c)(2) of this section, the issuer shall be deemed to have been furnished notice on the same date as notice is furnished to affected participants and beneficiaries pursuant to paragraph (b) of this section.

(d) *Definitions.* For purposes of this section—

(1) *Blackout period*—

(i) *General.* The term "blackout period" means, in connection with an individual account plan, any period for which any ability of participants or beneficiaries under the plan, which is otherwise available under the terms of such plan, to direct or diversify assets credited to their accounts, to obtain loans from the plan, or to obtain distributions from the plan is temporarily suspended, limited, or restricted, if such suspension, limitation, or restriction is for any period of more than three consecutive business days.

(ii) *Exclusions.* The term "blackout period" does not include a suspension, limitation, or restriction—

(A) Which occurs by reason of the application of the securities laws (as defined in section 3(a)(47) of the Securities Exchange Act of 1934);

(B) Which is a regularly scheduled suspension, limitation, or restriction under the plan (or change thereto), provided that such suspension, limitation or restriction (or change) has been disclosed to affected plan participants and beneficiaries through the summary plan description, a summary of material modifications, materials describing specific investment alternatives under the plan and limits thereon or any changes thereto, participation or enrollment forms, or any other documents and instruments pursuant to which the plan is established or operated that have been furnished to such participants and beneficiaries;

(C) Which occurs by reason of a qualified domestic relations order or by reason of a pending determination (by the plan administrator, by a court of competent jurisdiction or otherwise) whether a domestic relations order filed (or reasonably anticipated to be filed) with the plan is a qualified order within the meaning of section 206(d)(3)(B)(i) of the Act; or

(D) Which occurs by reason of an act or a failure to act on the part of an individual participant or by reason of an action or claim by a party unrelated to the plan involving the account of an individual participant.

(2) *Individual account plan.* The term "individual account plan" shall have the meaning provided such term in section 3(34) of the Act, except that such term shall not include a "one-participant retirement plan" within the meaning of paragraph (d)(3) of this section.

(3) *One-participant retirement plan.* The term "one-participant retirement plan" means a one-participant retirement plan as defined in section 101(i)(8)(B) of the Act.

(4) *Issuer.* The term "issuer" means an issuer as defined in section 3 of the Securities Exchange Act of 1934 (15 U.S.C. 78c), the securities of which are registered under section 12 of the Securities Exchange Act of 1934, or that is required to file reports under section 15(d) of the Securities Exchange Act of 1934, or files or has filed a registration statement that has not yet become effective under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*), and that it has not withdrawn.

(5) *Calendar week.* For purposes of paragraph (b)(1)(iii)(B), the term "calendar week" means a seven day period beginning on Sunday and ending on Saturday.

(e) *Model notice*—(1) *General.* The model notice set forth in paragraph (e)(2) of this section is intended to assist plan administrators in discharging their notice obligations under this section. Use of the model notice is not mandatory. However, a notice that uses the statements provided in paragraphs 4. and 5.(A) of the model notice will be deemed to satisfy the notice content requirements of paragraph (b)(1)(iv) and (b)(1)(v)(A), respectively, of this section. With regard to all other information required by paragraph (b)(1) of this section, compliance with the notice content requirements will depend on the facts and circumstances pertaining to the particular blackout period and plan.

(2) *Form and content of model notice.*

Important Notice Concerning Your Rights Under The [Enter Name of Individual Account Plan]

[Enter date of notice]

1. This notice is to inform you that the [enter name of plan] will be [enter reasons for blackout period, as appropriate: changing investment options, changing recordkeepers, etc.].

2. As a result of these changes, you temporarily will be unable to [enter as appropriate: direct or diversify investments in your individual accounts (if only specific investments are subject to the blackout, those investments should be specifically identified), obtain a loan from the plan, or obtain a distribution from the plan]. This period, during which you will be unable to exercise these rights otherwise available under the plan, is called a "blackout period." Whether or not you are planning retirement in the near future, we encourage you to carefully consider how this blackout period may affect your retirement planning, as well as your overall financial plan.

3. The blackout period for the plan [enter the following as appropriate: is expected to begin on [enter date] and end [enter date]/is expected to begin during the week of [enter date] and end during the week of [enter date]. During these weeks, you can determine whether the blackout period has started or ended by [enter instructions for use toll-free number or accessing web site].

4. [*In the case of investments affected by the blackout period, add the following:* During blackout period you will be unable to direct or diversify the assets held in your plan account. For this reason, it is very important that you review and consider the appropriateness of your current investments in light of your inability to direct or diversify those investments during the blackout period. For your long-term retirement security, you should give careful consideration to the importance of a well-balanced and diversified investment portfolio, taking into account all your assets, income and investments.] [If the plan permits investments in individual securities, add the following: You should be aware that there is a risk to holding substantial portions of your assets in the securities of any one company, as individual securities tend to have wider price swings, up and down, in short periods of time, than investments in diversified funds. Stocks that have wide price swings might have a large loss during the blackout period, and you would not be able to direct the sale of such stocks from your account during the blackout period.]

5. [*If timely notice cannot be provided (see paragraph (b)(1)(v) of this section) enter:* (A) Federal law generally requires that you be furnished notice of a blackout period at least 30 days in advance of the last date on which you could exercise your affected rights immediately before the commencement of any blackout period in order to provide you with sufficient time to consider the effect of the blackout period on your retirement and financial plans. (B) [Enter explanation of reasons for inability to furnish 30 days advance notice.]]

6. If you have any questions concerning this notice, you should contact [enter name, address and telephone number of the plan administrator or other contact responsible for answering questions about the blackout period].

(f) *Effective date.* This section shall be effective and shall apply to any blackout period commencing on or after January 26, 2003. For the period January 26, 2003 to February 25, 2003, plan administrators shall furnish notice as soon as reasonably possible.

Dated: January 16, 2003.

Ann L. Combs,

Assistant Secretary, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 03–1430 Filed 1–23–03; 8:45 am]

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DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

29 CFR Parts 2560 and 2570

RIN 1210–AA91, RIN 1210–AA93

Civil Penalties Under ERISA Section 502(c)(7) and Conforming Technical Changes on Civil Penalties Under ERISA Sections 502(c)(2), 502(c)(5) and 502(c)(6)

AGENCY: Pension and Welfare Benefits Administration, Department of Labor.

ACTION: Final rules.

SUMMARY: This document contains final rules that implement the civil penalty provision in section 502(c)(7) of the Employee Retirement Income Security Act of 1974 (the Act or ERISA) adopted as part of the Sarbanes-Oxley Act of 2002 (SOA). The final rules establish procedures relating to the assessment of civil penalties by the Department of Labor (Department) under section 502(c)(7) of ERISA for failures or refusals by plan administrators to provide notices of a blackout period as required by section 101(i) of ERISA. This document also contains final rules making conforming and technical changes to the agency's rules of practice and procedure for other civil penalties under section 502(c) of ERISA. The final rules affect employee benefit plans, plan sponsors, administrators and fiduciaries, and plan participants and beneficiaries.

DATES: *Effective date:* These final rules are effective January 26, 2003.

FOR FURTHER INFORMATION CONTACT: Susan Elizabeth Rees, Office of Regulations and Interpretations, Pension and Welfare Benefits Administration, U.S. Department of Labor, Washington, DC 20210, (202) 693–8537 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

A. Background

The Sarbanes-Oxley Act of 2002 (the SOA), Pub. L. 107–204, was enacted on July 30, 2002. Section 306(b)(1) of the SOA amended section 101 of ERISA to add a new subsection (i), requiring that administrators of individual account plans provide notice to affected participants and beneficiaries in advance of the commencement of any blackout period. For purposes of this notice requirement, a blackout period generally includes any period during which the ability of participants or beneficiaries to direct or diversify assets credited to their accounts, to obtain loans from the plan or to obtain distributions from the plan will be temporarily suspended, limited or restricted. Elsewhere in the **Federal Register** today, the Department has published a final rule, to be codified at 29 CFR 2520.101–3, implementing the notice requirements in ERISA section 101(i).

Section 306(b)(3) of SOA amended section 502(c) of ERISA to add a new paragraph (7) establishing a civil penalty for an administrator's failure or refusal to provide timely notice of a blackout period to participants and beneficiaries. Specifically, section 502(c)(7) provides that the Secretary may assess a civil penalty of up to $100 a day from the date of the plan administrator's failure or refusal to provide notice to a participant or beneficiary in accordance with ERISA section 101(i).

On October 21, 2002, the Department published interim rules implementing section 502(c)(7) of ERISA in the **Federal Register** (67 FR 64774) for public comment. The interim rules established procedures relating to the assessment and administrative review of civil penalties by the Department under section 502(c)(7) for failures or refusals by plan administrators to provide notice of a blackout period as required by section 101(i) of ERISA and 29 CFR 2520.101–3. The interim rules also made changes to the existing civil penalty rules under ERISA sections 502(c)(2), 502(c)(5), and 502(c)(6) to incorporate certain technical improvements being adopted as part of the section 502(c)(7) implementing regulations.

The Department received 7 comments on the section 502(c)(7) interim rules in response to its request for comments. Set forth below is an overview of the final rules, which adopt the interim

rules with a technical addition to address the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended, and a discussion of the public comments.

B. Overview of Final Rules and Public Comments

1. Assessment of Civil Penalties for Violations of Section 101(i) of ERISA—§ 2560.502c–7

Section 2560.502c–7 addresses the general application of section 502(c)(7) of ERISA, under which the administrator of an individual account plan shall be liable for civil penalties assessed by the Secretary in each case in which there is a failure or refusal to provide to an affected participant or beneficiary notice of a blackout period as required under section 101(i) of ERISA and § 2520.101–3. Section 2560.502c–7 defines terms, sets forth how the maximum penalty amounts are computed, and identifies the period for which a penalty is assessed. The section also sets forth the rule that prior to assessing a penalty under ERISA section 502(c)(7), the Department must provide the plan administrator with written notice of intent to assess a penalty, and provide the administrator with the opportunity to request that a penalty not be assessed upon a showing of compliance with ERISA section 101(i), or be waived, in whole or in part, upon a showing that there were mitigating circumstances justifying a waiver or reduction of the penalty for noncompliance. Section 2560.502c–7 also establishes certain procedural rules regarding deadlines and service requirements in connection with penalty assessment proceedings, and the consequences of failure to comply therewith. The section clarifies the personal liability of the plan administrator for penalties assessed. Specifically, the section provides that, if more than one person is responsible as administrator for the failure to provide the required blackout notice, all such persons shall be jointly and severally liable for such failure, and that the liability is a personal liability of the person against whom the penalty is assessed and not a liability of the plan. Finally, the section provides that the plan administrator has the opportunity to contest the assessment in administrative proceedings governed by Part 2570 of Title 29 of the Code of Federal Regulations, described below.

Several commenters requested that § 2560.502c–7(b)(1) be changed to shorten the maximum period for which a civil penalty may be assessed. Under the interim rule, the amount assessed under section 502(c)(7) for each separate violation is to be determined by the Department, taking into consideration the degree and/or willfulness of the failure or refusal to provide a notice of blackout period. The rule further provides that the maximum amount assessed for each violation shall not exceed $100 a day,[1] computed from the date of the administrator's failure or refusal to provide a notice of blackout period up to and including the date that is the final day of the blackout period for which the notice was required. The interim rule defines a failure or refusal to provide a notice of blackout period to mean a failure or refusal to provide notice of a blackout period to an affected plan participant or beneficiary at the time and in the manner prescribed by section 101(i) of the Act and § 2520.101–3. For purposes of calculating the amount to be assessed, a failure or refusal to provide a notice of blackout period with respect to any single participant or beneficiary is treated as a separate violation under section 101(i) of the Act and § 2520.101–3.

In general, the commenters requested that the rule be amended to provide that the penalty would only apply to the extent that a notice is late, *i.e.*, only days prior to the date on which notice is actually given would be counted in determining the penalty, and that the penalty calculation period would run to the end of the blackout period only in cases where no notice is provided. The commenters expressed concern that the interim rule exposes plan administrators who make a good faith effort to comply to potentially substantial penalties even in cases where the blackout notice is only one or two days late. These commenters suggested that their proposed change would give plan administrators an incentive to provide the notice as quickly as possible, even if late.

The blackout notice requirements are intended to ensure that plan participants and beneficiaries are afforded advance notice of plan imposed restrictions on their rights in order that they may take appropriate steps in anticipation of the restriction. The SOA expressly provides in section 502(c)(7) that the beginning date for calculating the penalty is the date of the administrator's failure or refusal to provide a notice of blackout period, but does not, however, specify an ending date for the penalty calculation. In adding section 101(i) to Title I of ERISA, the SOA established a 30-days advance notice requirement and listed exceptions to that general rule where less than 30 days notice was permitted. Failure to provide a timely blackout notice, therefore, serves to deprive affected participants and beneficiaries of the full period of time Congress concluded was the minimum period necessary for those individuals to sufficiently consider effects of the blackout period on their investments and financial plans. Accordingly, providing participants and beneficiaries a late notice does not serve to correct the violation. Moreover, the situations in which penalties are most likely to be assessed in this area are those where it already has been determined that the failure is not due to events that were unforeseeable or beyond the control of the plan administrator, nor due to avoiding a breach of fiduciary responsibility.

In connection with a failure to provide timely notice, when an administrator provides notice would be one factor to be taken into account in determining the degree or willfulness of a violation. In this regard, the Department would, for example, also take into account the feasibility of delaying the blackout period so as to provide the required advance notice, the length of time between the late issuance and the beginning of the blackout period, the effect of the lateness on the ability of affected participants and beneficiaries to take appropriate steps in anticipation of the restriction, actions implemented by the administrator to ameliorate adverse effects on participants and beneficiaries, and the length of the blackout period itself. Further, the Department notes that the ability of administrators to submit statements of reasonable cause (§ 2560.502c–7(e)) and to appeal civil penalty determinations (§ 2560.502c–7(h)) under the final rules ensures that administrators have the opportunity to pursue waivers or reductions of penalty amounts.

Several commenters sought clarification regarding whether the Department would waive penalties under § 2560.502c–7(d) in cases

[1] As discussed in more detail in a following section of this preamble, this document also contains a technical amendment to section § 2560.502c–7(b) designed to reflect the requirements of the Federal Civil Penalties Inflation Adjustment Act of 1990 (the 1990 Act), Pub. L. 101–410, 104 Stat. 890, as amended by the Debt Collection Improvement Act of 1996 (the Act), Pub. L. 104–134, 110 Stat. 1321–373. The Act amended the 1990 Act to require generally that federal agencies adjust certain civil monetary penalties for inflation no later than 180 days after the enactment of the Act, and at least once every four years thereafter, in accordance with the guidelines specified in the 1990 Act. The Act specifies that any such increase in a civil monetary penalty shall apply only to violations that occur after the date the increase takes effect.

involving inadvertent and minor violations. For example, one commenter suggested that the rule be clarified to indicate that civil penalties will not be assessed if a plan administrator, acting reasonably and in good faith, inadvertently fails to furnish a timely blackout notice to a small percentage of those entitled to receive the notice. Another commenter suggested that mistakes, such as misaddressed envelopes, misspelled names, especially occurring as the new blackout notification procedures are implemented, should be dealt with leniently where the errors are inadvertent and/or de minimus. Another commenter suggested that a plan administrator who makes reasonable good faith efforts to provide notices and who promptly corrects any failure that is brought to its attention should not be penalized.

As noted above, decisions regarding a waiver or reduction of penalty assessments will take into account a variety of factors on the facts and circumstances involved in each case. For this reason, it is not feasible to list specific criteria in the regulation that would be treated as mitigating circumstances in every case. Although, as also noted above, the Department will consider whether administrators acted reasonably and in good faith, and whether mistakes were inadvertent and promptly addressed, the provision in the interim rule allowing administrators to make showings regarding the "degree and/or willfulness" of the violation gives ample opportunity for extenuating circumstances to be raised and considered in the penalty assessment proceedings.

Another commenter requested clarification regarding how the Department will apply § 2560.502c–7(j), which provides that, "if more than one person is responsible as administrator for the failure to provide a notice of blackout period * * * all such persons shall be jointly and severally liable for such failure." Section 502(c)(7) states that the civil penalty is assessable against a "plan administrator." As the Department stated in the preamble to its parallel final rule, to be codified at 29 CFR 2520.101–3, implementing the notice requirements in ERISA section 101(i), references to plan administrator and administrator mean the "administrator" as defined in section 3(16)(A) of ERISA. In that regard, section 2560.502c–7(a)(1) expressly provides that "the administrator (within the meaning of section 3(16)(A) of the Act) of an individual account plan * * * shall be liable for civil penalties assessed by the Secretary under section 502(c)(7) * * *" The joint and several liability provision in § 2560.502c–7(j) is intended to make it clear that where the administrator is more than one person, *e.g.*, a committee, joint board, or other group of individuals, each person may be held separately liable for a notice violation under the civil penalty regulation.

One commenter suggested that the regulation be amended to include a one-year limit from the date a blackout period commences on the Department's ability to issue a notice of intent to assess civil penalties under section 502(c)(7). The Department notes that there is nothing in Title I of ERISA that establishes such a time limit on the Department's ability to assess civil penalties under section 502(c)(7), or under any of the other provisions of section 502(c) pursuant to which the Department has the authority to assess civil penalties for violations of Title I of ERISA. Accordingly, the Department does not believe it would be appropriate to adopt such a time limit as part of this rulemaking.

The same commenter also expressed concern that § 2560.502c–7(f) was "harsh" in providing that an administrator who fails to respond to a notice of intent to assess a penalty will be deemed to have admitted the facts alleged in the notice and waived the right to appear and contest the penalty assessment. A similar default provision applies in connection with the Department's other civil penalty proceedings under section 502(c) of the Act, and it is designed to ensure the Secretary's ability to effectively enforce section 502(c) of ERISA. Accordingly, the Department is not making any change to this provision in the final rule.

One commenter expressed concern about the assessment of substantial civil penalties for violations of the notice required to be provided by the administrator to the issuer under section 101(i)(2)(E) of ERISA in cases where the plan administrator is the issuer or an affiliate. The Department notes that section 502(c)(7) provides for a penalty to be assessed against a plan administrator for a "failure or refusal to provide notice to participants and beneficiaries in accordance with section 101(i)." In the Department's view, the section 502(c)(7) penalty is not applicable for failures to provide the notice to issuers required under section 101(i)(2)(E).

2. Procedures for Administrative Review of Assessment of Civil Penalties Under ERISA Section 502(c)(7)—§ 2570.130 et seq.

The interim rules added to part 2570, Subpart G, section 2570.130 through section 2570.141, to establish procedures for hearings before an Administrative Law Judge (ALJ) with respect to assessment by the Department of a civil penalty under ERISA section 502(c)(7), and for appealing an ALJ decision to the Secretary or his or her delegate. With regard to such procedures, the Secretary has established the Pension and Welfare Benefits Administration (PWBA) within the Department for purposes of carrying out most of the Secretary's responsibilities under ERISA. See Secretary's Order 1–87, 52 FR 13139 (April 27, 1987). The Department received no comments on these procedural rules, and, therefore, the final rules are issued without change from the interim rules.

3. Conforming Changes to Existing Civil Penalties Rules Under ERISA Sections 502(c)(2), 502(c)(5) and 502(c)(6)—§§ 2560.502c–2, 2560.502c–5, 2560.502c–6, and Subparts C, E, and F of Part 2570

The interim rules also amended the existing civil penalty assessment regulations under ERISA sections 502(c)(2), 502(c)(5) and 502(c)(6) in part 2560 and in Part 2570 of subchapter G, to conform them to the rules of practice and procedure being adopted for penalty proceedings under ERISA section 502(c)(7) in 29 CFR 2560.502c–7 and part 2570 Subpart G. The amendments affect certain rules for penalty assessment and administrative review in § 2560.502c–2, § 2560.502c–5, § 2560.502c–6, and subparts C, E, and F of Part 2570. The primary amendments were intended to conform the filing and service rules under § 2560.502c–2, § 2560.502c–5 and § 2560.502c–6 to those being adopted for proceedings under § 2560.502c–7. In addition, §§ 2560.502c–2(d) and (e), §§ 2560.502c–5(d) and (e), and §§ 2560.502c–6(d) and (e) were amended to use the clarifying language adopted in §§ 2560.502c–7(d) and (e) that better describes the statement of reasonable cause and penalty waiver procedures.

The Department received no comments in response to its request for comments on the conforming technical amendments to § 2560.502c–2, § 2560.502c–5, § 2560.502c–6, and subparts C, E, and F of Part 2570 which were adopted in the interim rule.

Therefore, except for the technical changes noted below intended to address the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended, the interim rules are being adopted as final rules without change.

4. Technical Changes to §§ 2560.502c–2(b), 2560.502c–5(b), 2560.502c–6(b), 2560.502c–7(b), To Reflect the Requirements of the Federal Civil Penalties Inflation Adjustment Act of 1990, as Amended

This document also contains technical amendments to § 2560.502c–2(b), § 2560.502c–5(b), § 2560.502c–6(b), and § 2560.502c–7(b), regarding the maximum penalty amounts that may be assessed. The amendments are designed to reflect the requirements of the Federal Civil Penalties Inflation Adjustment Act of 1990 (the 1990 Act), Pub. L. 101–410, 104 Stat. 890, as amended by the Debt Collection Improvement Act of 1996 (the Act), Pub. L. 104–134, 110 Stat. 1321–373. The Act amended the 1990 Act to require generally that federal agencies adjust certain civil monetary penalties for inflation no later than 180 days after the enactment of the Act, and at least once every four years thereafter, in accordance with the guidelines specified in the 1990 Act, as amended. The Act specifies that any such increase in a civil monetary penalty shall apply only to violations that occur after the date the increase takes effect. The Department's civil monetary penalty inflation adjustment regulations are codified in part 2575 of Title 29 of the Code of Federal Regulations.[2] The technical amendments to § 2560.502c–2(b), § 2560.502c–5(b), § 2560.502c–6(b), and § 2560.502c–7(b) in this document are being made under section 505 of ERISA which authorizes the Department to prescribe such regulations as the Secretary finds necessary or appropriate to carry out the provisions of Title I of ERISA. As a general matter, the Administrative Procedure Act (APA) requires rulemakings to be published in the **Federal Register** and also mandates that an opportunity for comments be provided when an agency promulgates regulations. Section 553(b)(3)(B) of the APA exempts certain rules or agency procedures from the notice and comment requirements when an agency finds for good cause that notice and public comment are impracticable, unnecessary, or contrary to the public interest. The Department finds for good cause that notice and comment on these technical amendments to § 2560.502c–2(b), § 2560.502c–5(b), § 2560.502c–6(b), and § 2560.502c–6(b) is unnecessary. The amendments merely confirm that the maximum amount of the civil penalty assessable by the Department under its implementing regulations is the maximum amount stated in sections 502(c)(2), 502(c)(5), 502(c)(6), and 502(c)(7), or such other maximum amount as may be established by regulation pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended. Accordingly, the Secretary determined that these technical changes were appropriate to issue in final form.

5. Effective Date

These final rules are effective January 26, 2003. The final rules establishing procedures relating to the assessment of civil penalties by the Department under section 502(c)(7) of ERISA shall apply to failures or refusals by plan administrators to provide notices of a blackout period as required by section 101(i) of ERISA and 29 CFR 2520.101–3 on or after that date. Pursuant to section 553(c) of the APA, the Department finds good cause for these rules to be effective less than 30 days after publication. The Department believes that having the blackout notice civil penalty rules effective on the effective date of the underlying statutory provisions will avoid confusion for plan administrators, and the amendments to the existing civil penalty rules under ERISA sections 502(c)(2), 502(c)(5), and 502(c)(6) merely incorporate certain technical improvements being adopted as part of the section 502(c)(7) implementing regulations. Moreover, the limited extent of the differences between the instant rule and the interim rules will minimize any difficulties in complying with these rules by the effective date.

C. Regulatory Impact Analysis

Executive Order 12866

Under Executive Order 12866 (58 FR 51735), the Department must determine whether a regulatory action is "significant" and therefore subject to review by the Office of Management and Budget (OMB). Section 3(f) of the Executive Order defines a "significant regulatory action" as an action that is likely to result in a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also referred to as "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. The Department has determined that these final rules relating to the assessment of civil monetary penalties under section 502(c)(7) of ERISA are significant in that they provide guidance on the administration and enforcement of the notice provisions of section 101(i) of ERISA. Separate guidance on the notice requirements of section 101(i) (Final Rule Relating to Notice of Blackout Periods to Participants and Beneficiaries), also published in today's issue of the **Federal Register**, is also considered significant within the meaning of section 3(f)(4) of the Executive Order. Accordingly, OMB has reviewed the final rules pertaining to both the blackout notice and the related civil penalty pursuant to the terms of the Executive Order.

The principal benefit of the statutory penalty provisions and these final rules will be greater adherence to the requirement of ERISA section 101(i) that plan administrators provide advance written notice to participants and beneficiaries in individual account retirement plans whose existing rights to direct investments in their accounts or to obtain loans or distributions will be suspended or limited. The implementation of orderly and consistent processes for the assessment of penalties and the review of such assessments will also be beneficial for plan administrators. The procedures established in these final rules will also allow facts and circumstances related to a failure or refusal to provide appropriate notice to be presented by a plan administrator and to be taken into consideration by the Department in assessing penalties under ERISA section 502(c)(7).

[2] The Department will be publishing shortly a separate final rule implementing the required inflation adjustment for this adjustment cycle. Application of the required methodology will result in a small increase in only two Title I civil penalty amounts. Specifically, the civil monetary penalty set by ERISA section 502(c)(5) for a failure or refusal on the part of certain administrators to file Form M–1 information with the Department as required by ERISA section 101(g) will be adjusted from $1,000 to $1,100 per day, and the civil monetary penalty set by ERISA section 502(c)(6) for a failure on the part of the plan administrator to furnish certain plan documents to the Secretary on request will be adjusted from $100 to $110 per day with the penalty cap being adjusted from $1,000 to $1,100 per request. No adjustments were required for any other civil penalties under Title I of ERISA.

The rate of failure or refusal to provide blackout notices where required, and the dollar value of penalties to be assessed in those cases cannot be predicted. The civil penalty provisions of the statute and these final rules impose no mandatory requirements or costs, except where a plan administrator has failed to provide the notice required in ERISA section 101(i).

The technical amendments conforming the existing regulatory provisions relating to the assessment of civil penalties under sections 502(c)(2), (c)(5), and (c)(6) of ERISA are procedural in nature, and similarly impose no additional requirements or costs.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) (RFA), imposes certain requirements with respect to federal rules that are subject to the notice and comment requirements of section 553(b) of the Administrative Procedure Act (5 U.S.C. 551 *et seq.*) and that are likely to have a significant economic impact on a substantial number of small entities. For purposes of its analyses under the RFA, PWBA continues to consider a small entity to be an employee benefit plan with fewer than 100 participants. The basis of this definition is found in section 104(a)(2) of ERISA, which permits the Secretary of Labor to prescribe simplified annual reporting for pension plans that cover fewer than 100 participants. Because this guidance was originally issued an interim final rule pursuant to the authority and deadlines prescribed in sections 306(b)(2) of SOA, RFA does not apply, and regulatory flexibility analysis is not required. However, in the interim final rule, the Department requested comments regarding any special issues facing small plans, or any alternative approaches that would assist small plans with compliance with respect to the assessment of civil penalties under ERISA section 502(c)(7) and the conforming amendments to existing administrative and procedural regulations relating to the assessment of civil penalties under ERISA sections 502(c)(2), (c)(5), and (c)(6). No such comments were received.

The terms of the statute pertaining to the assessment of civil penalties for failure to provide notices to plan participants and beneficiaries in the event of a blackout do not vary relative to plan or plan administrator size. The operation of the statute will normally result in the assessment of lower penalties where small plans are involved because a violation with respect to a single participant or beneficiary is treated as a separate violation for purposes of calculating the penalty. The opportunity for a plan administrator to present facts and circumstances related to a failure or refusal to provide appropriate notice that may be taken into consideration by the Department in assessing penalties under ERISA section 502(c)(7) may offer some degree of flexibility to small entities subject to penalty assessments. Penalty assessments will have no direct impact on small plans because the plan administrator assessed a civil penalty is personally liable for the payment of that penalty pursuant to section 2560.502c–7(j).

Paperwork Reduction Act

This Final Rule on Assessment of Civil Penalties under ERISA section 502(c)(7) is not subject to the requirements of the Paperwork Reduction Act of 1995 (PRA 95) (44 U.S.C. 3501 *et seq.*) because it does not contain a collection of information as defined in 44 U.S.C. 3502(3). Information otherwise provided to the Secretary in connection with the administrative and procedural requirements of these final rules is excepted from coverage by PRA 95 pursuant to 44 U.S.C. 3518(c)(1)(B), and related regulations at 5 CFR 1320.4(a)(2) and (c). These provisions generally except information provided as a result of an agency's civil or administrative action, investigation, or audit. This exception also applies to the conforming amendments to administrative and procedural rules pertaining to the civil penalty provisions of ERISA sections 502(c)(2), 502(c)(5), and 502(c)(6).

Congressional Review Act

The rules being issued here are subject to the Congressional Review Act provisions of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et seq.*) and have been transmitted to Congress and the Comptroller General for review. The rule is not a "major rule" as that term is defined in 5 U.S.C. 804, because it is not likely to result in (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, or federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets.

Unfunded Mandates Reform Act

For purposes of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), as well as Executive Order 12875, these rules do not include any Federal mandate that may result in expenditures by State, local, or tribal governments, and does not impose an annual burden exceeding $100 million on the private sector.

Federalism Statement

Executive Order 13132 (August 4, 1999) outlines fundamental principles of federalism and requires the adherence to specific criteria by federal agencies in the process of their formulation and implementation of policies that have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. These final rules do not have federalism implications because it has no substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Section 514 of ERISA provides, with certain exceptions specifically enumerated, that the provisions of Titles I and IV of ERISA supersede any and all laws of the States as they relate to any employee benefit plan covered under ERISA. The requirements implemented in these final rules do not alter the fundamental reporting and disclosure, or administration and enforcement provisions of the statute with respect to employee benefit plans, and as such have no implications for the States or the relationship or distribution of power between the national government and the States.

List of Subjects

29 CFR Part 2560

Employee benefit plans, Employee Retirement Income Security Act, Law enforcement, Pensions.

29 CFR Part 2570

Administrative practice and procedure, Employee benefit plans, Employee Retirement Income Security Act, Law enforcement, Pensions.

In view of the foregoing, Parts 2560 and 2570 of Chapter XXV of title 29 of the Code of Federal Regulations are amended as follows:

PART 2560—RULES AND REGULATIONS FOR ADMINISTRATION AND ENFORCEMENT

1. The authority citation for Part 2560 continues to read as follows:

Authority: 29 U.S.C. 1132, 1135, and Secretary's Order 1–87, 52 FR 13139 (April 21, 1987).

Section 2560.503–1 also issued under 29 U.S.C. 1133.

Section 2560.502(c)(7) also issued under sec. 306 (b)(2) of Pub. L. 107–204, 116 Stat. 745.

2. Revise § 2560.502c–2, paragraphs (b)(1), (d), (e), (f), (g), (h), and (i) to read as follows:

§ 2560.502c–2 Civil penalties under section 502(c)(2).

* * * * *

(b) *Amount assessed.* (1) The amount assessed under section 502(c)(2) of the Act shall be determined by the Department of Labor, taking into consideration the degree and/or willfulness of the failure or refusal to file the annual report. However, the amount assessed under section 502(c)(2) of the Act shall not exceed $1,000 a day (or such other maximum amount as may be established by regulation pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended), computed from the date of the administrator's failure or refusal to file the annual report and, except as provided in paragraph (b)(2) of this section, continuing up to the date on which an annual report satisfactory to the Secretary is filed.

* * * * *

(d) *Reconsideration or waiver of penalty to be assessed.* The Department may determine that all or part of the penalty amount in the notice of intent to assess a penalty shall not be assessed on a showing that the administrator complied with the requirements of section 101(b)(1) of the Act or on a showing by the administrator of mitigating circumstances regarding the degree or willfulness of the noncompliance.

(e) *Showing of reasonable cause.* Upon issuance by the Department of a notice of intent to assess a penalty, the administrator shall have thirty (30) days from the date of service of the notice, as described in paragraph (i) of this section, to file a statement of reasonable cause explaining why the penalty, as calculated, should be reduced, or not be assessed, for the reasons set forth in paragraph (d) of this section. Such statement must be made in writing and set forth all the facts alleged as reasonable cause for the reduction or nonassessment of the penalty. The statement must contain a declaration by the administrator that the statement is made under the penalties of perjury.

(f) *Failure to file a statement of reasonable cause.* Failure of an administrator to file a statement of reasonable cause within the thirty (30) day period described in paragraph (e) of this section shall be deemed to constitute a waiver of the right to appear and contest the facts alleged in the notice of intent, and such failure shall be deemed an admission of the facts alleged in the notice for purposes of any proceeding involving the assessment of a civil penalty under section 502(c)(2) of the Act. Such notice shall then become a final order of the Secretary, within the meaning of § 2570.61(g) of this chapter, forty-five (45) days from the date of service of the notice.

(g) *Notice of the determination on statement of reasonable cause.* (1) The Department, following a review of all the facts alleged in support of no assessment or a complete or partial waiver of the penalty, shall notify the administrator, in writing, of its determination to waive the penalty, in whole or in part, and/or assess a penalty. If it is the determination of the Department to assess a penalty, the notice shall indicate the amount of the penalty, not to exceed the amount described in paragraph (c) of this section. This notice is a "pleading" for purposes of § 2570.61(m) of this chapter.

(2) Except as provided in paragraph (h) of this section, a notice issued pursuant to paragraph (g)(1) of this section, indicating the Department's intention to assess a penalty, shall become a final order, within the meaning of § 2570.61(g) of this chapter, forty-five (45) days from the date of service of the notice.

(h) *Administrative hearing.* A notice issued pursuant to paragraph (g) of this section will not become a final order, within the meaning of § 2570.61(g) of this chapter, if, within thirty (30) days from the date of the service of the notice, the administrator or a representative thereof files a request for a hearing under §§ 2570.60 through 2570.71 of this chapter, and files an answer to the notice. The request for hearing and answer must be filed in accordance with § 2570.62 of this chapter and § 18.4 of this title. The answer opposing the proposed sanction shall be in writing, and supported by reference to specific circumstances or facts surrounding the notice of determination issued pursuant to paragraph (g) of this section.

(i) *Service of notices and filing of statements.* (1) Service of a notice for purposes of paragraphs (c) and (g) of this section shall be made:

(i) By delivering a copy to the administrator or representative thereof;

(ii) By leaving a copy at the principal office, place of business, or residence of the administrator or representative thereof; or

(iii) By mailing a copy to the last known address of the administrator or representative thereof.

(2) If service is accomplished by certified mail, service is complete upon mailing. If service is by regular mail, service is complete upon receipt by the addressee. When service of a notice under paragraph (c) or (g) of this section is by certified mail, five (5) days shall be added to the time allowed by these rules for the filing of a statement, or a request for hearing and answer, as applicable.

(3) For purposes of this section, a statement of reasonable cause shall be considered filed:

(i) Upon mailing, if accomplished using United States Postal Service certified mail or Express Mail;

(ii) Upon receipt by the delivery service, if accomplished using a "designated private delivery service" within the meaning of 26 U.S.C. 7502(f);

(iii) Upon transmittal, if transmitted in a manner specified in the notice of intent to assess a penalty as a method of transmittal to be accorded such special treatment; or

(iv) In the case of any other method of filing, upon receipt by the Department at the address provided in the notice of intent to assess a penalty.

* * * * *

3. Revise § 2560.502c–5, paragraphs (b)(1), (d), (e), (f), (g), (h), and (i) to read as follows:

§ 2560.502c–5 Civil penalties under section 502(c)(5).

* * * * *

(b) *Amount assessed.* (1) The amount assessed under section 502(c)(5) of the Act shall be determined by the Department of Labor, taking into consideration the degree and/or willfulness of the failure or refusal to file the report. However, the amount assessed under section 502(c)(5) of the Act shall not exceed $1,000 a day (or such other maximum amount as may be established by regulation pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended), computed from the date of the administrator's failure or refusal to file the report and, except as provided in paragraph (b)(2) of this section, continuing up to the date on which a report meeting the requirements of

section 101(g) and § 2520.101–2, as determined by the Secretary, is filed.

* * * * *

(d) *Reconsideration or waiver of penalty to be assessed.* The Department may determine that all or part of the penalty amount in the notice of intent to assess a penalty shall not be assessed on a showing that the administrator complied with the requirements of section 101(g) of the Act or on a showing by the administrator of mitigating circumstances regarding the degree or willfulness of the noncompliance.

(e) *Showing of reasonable cause.* Upon issuance by the Department of a notice of intent to assess a penalty, the administrator shall have thirty (30) days from the date of service of the notice, as described in paragraph (i) of this section, to file a statement of reasonable cause explaining why the penalty, as calculated, should be reduced, or not be assessed, for the reasons set forth in paragraph (d) of this section. Such statement must be made in writing and set forth all the facts alleged as reasonable cause for the reduction or nonassessment of the penalty. The statement must contain a declaration by the administrator that the statement is made under the penalties of perjury.

(f) *Failure to file a statement of reasonable cause.* Failure of an administrator to file a statement of reasonable cause within the thirty (30) day period described in paragraph (e) of this section shall be deemed to constitute a waiver of the right to appear and contest the facts alleged in the notice of intent, and such failure shall be deemed an admission of the facts alleged in the notice for purposes of any proceeding involving the assessment of a civil penalty under section 502(c)(5) of the Act. Such notice shall then become a final order of the Secretary, within the meaning of § 2570.91(g) of this chapter, forty-five (45) days from the date of service of the notice.

(g) *Notice of the determination on statement of reasonable cause.* (1) The Department, following a review of all the facts alleged in support of no assessment or a complete or partial waiver of the penalty, shall notify the administrator, in writing, of its determination to waive the penalty, in whole or in part, and/or assess a penalty. If it is the determination of the Department to assess a penalty, the notice shall indicate the amount of the penalty, not to exceed the amount described in paragraph (c) of this section, and a brief statement of the reasons for assessing the penalty. This notice is a "pleading" for purposes of § 2570.91(m) of this chapter.

(2) Except as provided in paragraph (h) of this section, a notice issued pursuant to paragraph (g)(1) of this section, indicating the Department's intention to assess a penalty, shall become a final order, within the meaning of § 2570.91(g) of this chapter, forty-five (45) days from the date of service of the notice.

(h) *Administrative hearing.* A notice issued pursuant to paragraph (g) of this section will not become a final order, within the meaning of § 2570.91(g) of this chapter, if, within thirty (30) days from the date of the service of the notice, the administrator or a representative thereof files a request for a hearing under §§ 2570.90 through 2570.101 of this chapter, and files an answer to the notice. The request for hearing and answer must be filed in accordance with § 2570.92 of this chapter and § 18.4 of this title. The answer opposing the proposed sanction shall be in writing, and supported by reference to specific circumstances or facts surrounding the notice of determination issued pursuant to paragraph (g) of this section.

(i) *Service of notices and filing of statements.* (1) Service of a notice for purposes of paragraphs (c) and (g) of this section shall be made:

(i) By delivering a copy to the administrator or representative thereof;

(ii) By leaving a copy at the principal office, place of business, or residence of the administrator or representative thereof; or

(iii) By mailing a copy to the last known address of the administrator or representative thereof.

(2) If service is accomplished by certified mail, service is complete upon mailing. If service is by regular mail, service is complete upon receipt by the addressee. When service of a notice under paragraph (c) or (g) of this section is by certified mail, five (5) days shall be added to the time allowed by these rules for the filing of a statement, or a request for hearing and answer, as applicable.

(3) For purposes of this section, a statement of reasonable cause shall be considered filed:

(i) Upon mailing, if accomplished using United States Postal Service certified mail or Express Mail;

(ii) Upon receipt by the delivery service, if accomplished using a "designated private delivery service" within the meaning of 26 U.S.C. 7502(f);

(iii) Upon transmittal, if transmitted in a manner specified in the notice of intent to assess a penalty as a method of transmittal to be accorded such special treatment; or

(iv) In the case of any other method of filing, upon receipt by the Department at the address provided in the notice of intent to assess a penalty.

* * * * *

4. Revise § 2560.502c–6, paragraphs (b)(1), (d), (e), (f), (g), (h), and (i) to read as follows:

§ 2560.502c–6 Civil penalties under section 502(c)(6).

* * * * *

(b) *Amount assessed.* (1) The amount assessed under section 502(c)(6) of the Act shall be determined by the Department of Labor, taking into consideration the degree and/or willfulness of the failure or refusal to furnish any document or documents requested by the Department under section 104(a)(6) of the Act. However, the amount assessed under section 502(c)(6) of the Act shall not exceed $100 a day or $1,000 per request (or such other maximum amounts as may be established by regulation pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended), computed from the date of the administrator's failure or refusal to furnish any document or documents requested by the Department.

* * * * *

(d) *Reconsideration or waiver of penalty to be assessed.* The Department may determine that all or part of the penalty amount in the notice of intent to assess a penalty shall not be assessed on a showing that the administrator complied with the requirements of section 104(a)(6) of the Act or on a showing by the administrator of mitigating circumstances regarding the degree or willfulness of the noncompliance.

(e) *Showing of reasonable cause.* Upon issuance by the Department of a notice of intent to assess a penalty, the administrator shall have thirty (30) days from the date of service of the notice, as described in paragraph (i) of this section, to file a statement of reasonable cause explaining why the penalty, as calculated, should be reduced or not be assessed, for the reasons set forth in paragraph (d) of this section. Such statement must be made in writing and set forth all the facts alleged as reasonable cause for the reduction or nonassessment of the penalty. The statement must contain a declaration by the administrator that the statement is made under the penalties of perjury.

(f) *Failure to file a statement of reasonable cause.* Failure to file a statement of reasonable cause within the 30 day period described in paragraph (e)

of this section shall be deemed to constitute a waiver of the right to appear and contest the facts alleged in the notice of intent, and such failure shall be deemed an admission of the facts alleged in the notice for purposes of any proceeding involving the assessment of a civil penalty under section 502(c)(6) of the Act. Such notice shall then become a final order of the Secretary, within the meaning of § 2570.111(g) of this chapter, forty-five (45) days from the date of service of the notice.

(g) *Notice of determination on statement of reasonable cause.* (1) The Department, following a review of all of the facts alleged in support of no assessment or a complete or partial waiver of the penalty, shall notify the administrator, in writing, of its determination not to assess or to waive the penalty, in whole or in part, and/or assess a penalty. If it is the determination of the Department to assess a penalty, the notice shall indicate the amount of the penalty, not to exceed the amount described in paragraph (c) of this section. This notice is a "pleading" for purposes of § 2570.111(m) of this chapter.

(2) Except as provided in paragraph (h) of this section, a notice issued pursuant to paragraph (g)(1) of this section, indicating the Department's intention to assess a penalty, shall become a final order, within the meaning of § 2570.111(g) of this chapter, forty-five (45) days from the date of service of the notice.

(h) *Administrative hearing.* A notice issued pursuant to paragraph (g) of this section will not become a final order, within the meaning of § 2570.91(g) of this chapter, if, within thirty (30) days from the date of the service of the notice, the administrator or a representative thereof files a request for a hearing under §§ 2570.110 through 2570.121 of this chapter, and files an answer to the notice. The request for hearing and answer must be filed in accordance with § 2570.112 of this chapter and § 18.4 of this title. The answer opposing the proposed sanction shall be in writing, and supported by reference to specific circumstances or facts surrounding the notice of determination issued pursuant to paragraph (g) of this section.

(i) *Service of notices and filing of statements.* (1) Service of a notice for purposes of paragraphs (c) and (g) of this section shall be made:

(i) By delivering a copy to the administrator or representative thereof;

(ii) By leaving a copy at the principal office, place of business, or residence of the administrator or representative thereof; or

(iii) By mailing a copy to the last known address of the administrator or representative thereof.

(2) If service is accomplished by certified mail, service is complete upon mailing. If service is by regular mail, service is complete upon receipt by the addressee. When service of a notice under paragraph (c) or (g) of this section is by certified mail, five (5) days shall be added to the time allowed by these rules for the filing of a statement, or a request for hearing and answer, as applicable.

(3) For purposes of this section, a statement of reasonable cause shall be considered filed:

(i) Upon mailing, if accomplished using United States Postal Service certified mail or Express Mail;

(ii) Upon receipt by the delivery service, if accomplished using a "designated private delivery service" within the meaning of 26 U.S.C. 7502(f);

(iii) Upon transmittal, if transmitted in a manner specified in the notice of intent to assess a penalty as a method of transmittal to be accorded such special treatment; or

(iv) In the case of any other method of filing, upon receipt by the Department at the address provided in the notice of intent to assess a penalty.

* * * * *

5. Revise § 2560.502c–7 to read as follows:

§ 2560.502c–7 Civil penalties under section 502(c)(7).

(a) *In general.* (1) Pursuant to the authority granted the Secretary under section 502(c)(7) of the Employee Retirement Income Security Act of 1974, as amended (the Act), the administrator (within the meaning of section 3(16)(A) of the Act) of an individual account plan (within the meaning of section 101(i)(8) of the Act and § 2520.101–3(d)(2) of this chapter), shall be liable for civil penalties assessed by the Secretary under section 502(c)(7) of the Act for failure or refusal to provide notice of a blackout period to affected participants and beneficiaries in accordance with section 101(i) of the Act and § 2520.101–3 of this chapter.

(2) For purposes of this section, a failure or refusal to provide a notice of blackout period shall mean a failure or refusal, in whole or in part, to provide notice of a blackout period to an affected plan participant or beneficiary at the time and in the manner prescribed by section 101(i) of the Act and § 2520.101–3 of this chapter.

(b) *Amount assessed.* (1) The amount assessed under section 502(c)(7) of the Act for each separate violation shall be determined by the Department of Labor, taking into consideration the degree and/or willfulness of the failure or refusal to provide a notice of blackout period. However, the amount assessed for each violation under section 502(c)(7) of the Act shall not exceed $100 a day (or such other maximum amount as may be established by regulation pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended), computed from the date of the administrator's failure or refusal to provide a notice of blackout period up to and including the date that is the final day of the blackout period for which the notice was required.

(2) For purposes of calculating the amount to be assessed under this section, a failure or refusal to provide a notice of blackout period with respect to any single participant or beneficiary shall be treated as a separate violation under section 101(i) of the Act and § 2520.101–3 of this chapter.

(c) *Notice of intent to assess a penalty.* Prior to the assessment of any penalty under section 502(c)(7) of the Act, the Department shall provide to the administrator of the plan a written notice indicating the Department's intent to assess a penalty under section 502(c)(7) of the Act, the amount of such penalty, the number of participants and beneficiaries on which the penalty is based, the period to which the penalty applies, and the reason(s) for the penalty.

(d) *Reconsideration or waiver of penalty to be assessed.* The Department may determine that all or part of the penalty amount in the notice of intent to assess a penalty shall not be assessed on a showing that the administrator complied with the requirements of section 101(i) of the Act or on a showing by the administrator of mitigating circumstances regarding the degree or willfulness of the noncompliance.

(e) *Showing of reasonable cause.* Upon issuance by the Department of a notice of intent to assess a penalty, the administrator shall have thirty (30) days from the date of service of the notice, as described in paragraph (i) of this section, to file a statement of reasonable cause explaining why the penalty, as calculated, should be reduced, or not be assessed, for the reasons set forth in paragraph (d) of this section. Such statement must be made in writing and set forth all the facts alleged as reasonable cause for the reduction or nonassessment of the penalty. The statement must contain a declaration by the administrator that the statement is made under the penalties of perjury.

(f) *Failure to file a statement of reasonable cause.* Failure to file a statement of reasonable cause within the

30 day period described in paragraph (e) of this section shall be deemed to constitute a waiver of the right to appear and contest the facts alleged in the notice of intent, and such failure shall be deemed an admission of the facts alleged in the notice for purposes of any proceeding involving the assessment of a civil penalty under section 502(c)(7) of the Act. Such notice shall then become a final order of the Secretary, within the meaning of § 2570.131(g) of this chapter, forty-five (45) days from the date of service of the notice.

(g) *Notice of determination on statement of reasonable cause.* (1) The Department, following a review of all of the facts in a statement of reasonable cause alleged in support of no assessment or a complete or partial waiver of the penalty, shall notify the administrator, in writing, of its determination on the statement of reasonable cause and its determination whether to waive the penalty in whole or in part, and/or assess a penalty. If it is the determination of the Department to assess a penalty, the notice shall indicate the amount of the penalty assessment, not to exceed the amount described in paragraph (c) of this section. This notice is a "pleading" for purposes of § 2570.131(m) of this chapter.

(2) Except as provided in paragraph (h) of this section, a notice issued pursuant to paragraph (g)(1) of this section, indicating the Department's determination to assess a penalty, shall become a final order, within the meaning of § 2570.131(g) of this chapter, forty-five (45) days from the date of service of the notice.

(h) *Administrative hearing.* A notice issued pursuant to paragraph (g) of this section will not become a final order, within the meaning of § 2570.131(g) of this chapter, if, within thirty (30) days from the date of the service of the notice, the administrator or a representative thereof files a request for a hearing under §§ 2570.130 through 2570.141 of this chapter, and files an answer to the notice. The request for hearing and answer must be filed in accordance with § 2570.132 of this chapter and § 18.4 of this title. The answer opposing the proposed sanction shall be in writing, and supported by reference to specific circumstances or facts surrounding the notice of determination issued pursuant to paragraph (g) of this section.

(i) *Service of notices and filing of statements.* (1) Service of a notice for purposes of paragraphs (c) and (g) of this section shall be made:

(i) By delivering a copy to the administrator or representative thereof;

(ii) By leaving a copy at the principal office, place of business, or residence of the administrator or representative thereof; or

(iii) By mailing a copy to the last known address of the administrator or representative thereof.

(2) If service is accomplished by certified mail, service is complete upon mailing. If service is by regular mail, service is complete upon receipt by the addressee. When service of a notice under paragraph (c) or (g) of this section is by certified mail, five (5) days shall be added to the time allowed by these rules for the filing of a statement or a request for hearing and answer, as applicable.

(3) For purposes of this section, a statement of reasonable cause shall be considered filed:

(i) Upon mailing, if accomplished using United States Postal Service certified mail or Express Mail;

(ii) Upon receipt by the delivery service, if accomplished using a "designated private delivery service" within the meaning of 26 U.S.C. 7502(f);

(iii) Upon transmittal, if transmitted in a manner specified in the notice of intent to assess a penalty as a method of transmittal to be accorded such special treatment; or

(iv) In the case of any other method of filing, upon receipt by the Department at the address provided in the notice of intent to assess a penalty.

(j) *Liability.* (1) If more than one person is responsible as administrator for the failure to provide a notice of blackout period under section 101(i) of the Act and its implementing regulations (§ 2520.101–3 of this chapter), all such persons shall be jointly and severally liable for such failure.

(2) Any person, or persons under paragraph (j)(1) of this section, against whom a civil penalty has been assessed under section 502(c)(7) of the Act, pursuant to a final order, within the meaning of § 2570.131(g) of this chapter, shall be personally liable for the payment of such penalty.

(k) *Cross-reference.* See §§ 2570.130 through 2570.141 of this chapter for procedural rules relating to administrative hearings under section 502(c)(7) of the Act.

PART 2570—PROCEDURAL REGULATIONS UNDER THE EMPLOYEE RETIREMENT INCOME SECURITY ACT

6. The authority citation for Part 2570 continues to read as follows:

Authority: 29 U.S.C. 1021, 1108, 1132, 1135, 5 U.S.C. 8477; Reorganization Plan No. 4 of 1978; Secretary of Labor's Order 1–87.

Subpart G is also issued under sec. 306(b)(2) of Pub.L. 107–204, 116 Stat. 745.

7. Revise § 2570.61(c) to read as follows:

§ 2570.61 Definitions.

* * * * *

(c) *Answer* means a written statement that is supported by reference to specific circumstances or facts surrounding the notice of determination issued pursuant to § 2560.502c–2(g) of this chapter.

* * * * *

8. Revise § 2570.64 to read as follows:

§ 2570.64 Consequences of default.

For 502(c)(2) civil penalty proceedings, this section shall apply in lieu of § 18.5(a) and (b) of this title. Failure of the respondent to file an answer to the notice of determination described in § 2560.502c–2(g) of this chapter within the 30 day period provided by § 2560.502c–2(h) of this chapter shall be deemed to constitute a waiver of his or her right to appear and contest the allegations of the notice of determination, and such failure shall be deemed to be an admission of the facts as alleged in the notice for purposes of any proceeding involving the assessment of a civil penalty under section 502(c)(2) of the Act. Such notice shall then become the final order of the Secretary, within the meaning of § 2570.61(g) of this subpart, forty-five (45) days from the date of service of the notice.

9. Revise § 2570.94 to read as follows:

§ 2570.94 Consequences of default.

For 502(c)(5) civil penalty proceedings, this section shall apply in lieu of § 18.5(a) and (b) of this title. Failure of the respondent to file an answer to the notice of determination described in § 2560.502c–5(g) of this chapter within the 30 day period provided by § 2560.502c–5(h) of this chapter shall be deemed to constitute a waiver of his or her right to appear and contest the allegations of the notice of determination, and such failure shall be deemed to be an admission of the facts as alleged in the notice for purposes of any proceeding involving the assessment of a civil penalty under section 502(c)(5) of the Act. Such notice shall then become a final order of the Secretary, within the meaning of § 2570.91(g) of this subpart, forty-five (45) days from the date of the service of the notice.

10. Revise § 2570.114 to read as follows:

§ 2570.114 Consequences of default.

For 502(c)(6) civil penalty proceedings, this section shall apply in lieu of § 18.5(a) and (b) of this title. Failure of the respondent to file an answer to the notice of determination described in § 2560.502c–6(g) of this chapter within the 30 day period provided by § 2560.502c–6(h) of this chapter shall be deemed to constitute a waiver of his or her right to appear and contest the allegations of the notice of determination, and such failure shall be deemed to be an admission of the facts as alleged in the notice for purposes of any proceeding involving the assessment of a civil penalty under section 502(c)(6) of the Act. Such notice shall then become the final order of the Secretary, within the meaning of § 2570.111(g) of this subpart, forty-five (45) days from the date of service of the notice.

11. Revise Subpart G to Part 2570 to read as follows:

Subpart G—Procedures for the Assessment of Civil Penalties under ERISA Section 502(c)(7)

Sec.

2570.130 Scope of rules.
2570.131 Definitions.
2570.132 Service: Copies of documents and pleadings.
2570.133 Parties, how designated.
2570.134 Consequences of default.
2570.135 Consent order or settlement.
2570.136 Scope of discovery.
2570.137 Summary decision.
2570.138 Decision of the administrative law judge.
2570.139 Review by the Secretary.
2570.140 Scope of review.
2570.141 Procedures for review by the Secretary.

Subpart G—Procedures for the Assessment of Civil Penalties Under ERISA Section 502(c)(7)

§ 2570.130 Scope of rules.

The rules of practice set forth in this subpart are applicable to "502(c)(7) civil penalty proceedings" (as defined in § 2570.131(n) of this subpart) under section 502(c)(7) of the Employee Retirement Income Security Act of 1974, as amended (the Act). The rules of procedure for administrative hearings published by the Department's Office of Administrative Law Judges at Part 18 of this title will apply to matters arising under ERISA section 502(c)(7) except as modified by this subpart. These proceedings shall be conducted as expeditiously as possible, and the parties shall make every effort to avoid delay at each stage of the proceedings.

§ 2570.131 Definitions.

For 502(c)(7) civil penalty proceedings, this section shall apply in lieu of the definitions in § 18.2 of this title:

(a) *Adjudicatory proceeding* means a judicial-type proceeding before an administrative law judge leading to the formulation of a final order;

(b) *Administrative law judge* means an administrative law judge appointed pursuant to the provisions of 5 U.S.C. 3105;

(c) *Answer* means a written statement that is supported by reference to specific circumstances or facts surrounding the notice of determination issued pursuant to § 2560.502c–7(g) of this chapter;

(d) *Commencement of proceeding* is the filing of an answer by the respondent;

(e) *Consent agreement* means any written document containing a specified proposed remedy or other relief acceptable to the Department and consenting parties;

(f) *ERISA* means the Employee Retirement Income Security Act of 1974, as amended;

(g) *Final order* means the final decision or action of the Department of Labor concerning the assessment of a civil penalty under ERISA section 502(c)(7) against a particular party. Such final order may result from a decision of an administrative law judge or the Secretary, the failure of a party to file a statement of reasonable cause described in § 2560.502c–7(e) of this chapter within the prescribed time limits, or the failure of a party to invoke the procedures for hearings or appeals under this title within the prescribed time limits. Such a final order shall constitute final agency action within the meaning of 5 U.S.C. 704;

(h) *Hearing* means that part of a proceeding which involves the submission of evidence, by either oral presentation or written submission, to the administrative law judge;

(i) *Order* means the whole or any part of a final procedural or substantive disposition of a matter under ERISA section 502(c)(7);

(j) *Party* includes a person or agency named or admitted as a party to a proceeding;

(k) *Person* includes an individual, partnership, corporation, employee benefit plan, association, exchange or other entity or organization;

(l) *Petition* means a written request, made by a person or party, for some affirmative action;

(m) *Pleading* means the notice as defined in § 2560.502c–7(g) of this chapter, the answer to the notice, any supplement or amendment thereto, and any reply that may be permitted to any answer, supplement or amendment;

(n) *502(c)(7) civil penalty proceeding* means an adjudicatory proceeding relating to the assessment of a civil penalty provided for in section 502(c)(7) of ERISA;

(o) *Respondent* means the party against whom the Department is seeking to assess a civil sanction under ERISA section 502(c)(7);

(p) *Secretary* means the Secretary of Labor and includes, pursuant to any delegation of authority by the Secretary, any assistant secretary (including the Assistant Secretary for Pension and Welfare Benefits), administrator, commissioner, appellate body, board, or other official; and

(q) *Solicitor* means the Solicitor of Labor or his or her delegate.

§ 2570.132 Service: Copies of documents and pleadings.

For 502(c)(7) penalty proceedings, this section shall apply in lieu of § 18.3 of this title.

(a) *General.* Copies of all documents shall be served on all parties of record. All documents should clearly designate the docket number, if any, and short title of all matters. All documents to be filed shall be delivered or mailed to the Chief Docket Clerk, Office of Administrative Law Judges, 800 K Street, NW., Suite 400, Washington, DC 20001–8002, or to the OALJ Regional Office to which the proceeding may have been transferred for hearing. Each document filed shall be clear and legible.

(b) *By parties.* All motions, petitions, pleadings, briefs, or other documents shall be filed with the Office of Administrative Law Judges with a copy, including any attachments, to all other parties of record. When a party is represented by an attorney, service shall be made upon the attorney. Service of any document upon any party may be made by personal delivery or by mailing a copy to the last known address. The Department shall be served by delivery to the Associate Solicitor, Plan Benefits Security Division, ERISA section 502(c)(7) Proceeding, P.O. Box 1914, Washington, DC 20013. The person serving the document shall certify to the manner and date of service.

(c) *By the Office of Administrative Law Judges.* Service of orders, decisions and all other documents shall be made by regular mail to the last known address.

(d) *Form of pleadings.* (1) Every pleading shall contain information indicating the name of the Pension and

Welfare Benefits Administration (PWBA) as the agency under which the proceeding is instituted, the title of the proceeding, the docket number (if any) assigned by the Office of Administrative Law Judges and a designation of the type of pleading or paper (*e.g.*, notice, motion to dismiss, etc.). The pleading or paper shall be signed and shall contain the address and telephone number of the party or person representing the party. Although there are no formal specifications for documents, they should be typewritten when possible on standard size 8½ x 11 inch paper.

(2) Illegible documents, whether handwritten, typewritten, photocopied, or otherwise, will not be accepted. Papers may be reproduced by any duplicating process provided all copies are clear and legible.

§ 2570.133 Parties, how designated.

For 502(c)(7) civil penalty proceedings, this section shall apply in lieu of § 18.10 of this title.

(a) The term "party" wherever used in this subpart shall include any natural person, corporation, employee benefit plan, association, firm, partnership, trustee, receiver, agency, public or private organization, or government agency. A party against whom a civil penalty is sought shall be designated as "respondent." The Department shall be designated as the "complainant."

(b) Other persons or organizations shall be permitted to participate as parties only if the administrative law judge finds that the final decision could directly and adversely affect them or the class they represent, that they may contribute materially to the disposition of the proceedings and their interest is not adequately represented by existing parties, and that in the discretion of the administrative law judge the participation of such persons or organizations would be appropriate.

(c) A person or organization not named as a respondent wishing to participate as a party under this section shall submit a petition to the administrative law judge within fifteen (15) days after the person or organization has knowledge of or should have known about the proceeding. The petition shall be filed with the administrative law judge and served on each person who or organization that has been made a party at the time of filing. Such petition shall concisely state:

(1) Petitioner's interest in the proceeding;

(2) How his or her participation as a party will contribute materially to the disposition of the proceeding;

(3) Who will appear for petitioner;

(4) The issues on which petitioner wishes to participate; and

(5) Whether petitioner intends to present witnesses.

(d) Objections to the petition may be filed by a party within fifteen (15) days of the filing of the petition. If objections to the petition are filed, the administrative law judge shall then determine whether petitioner has the requisite interest to be a party in the proceedings, as defined in paragraph (b) of this section, and shall permit or deny participation accordingly. Where petitions to participate as parties are made by individuals or groups with common interests, the administrative law judge may request all such petitioners to designate a single representative, or he or she may recognize one or more of such petitioners. The administrative law judge shall give each such petitioner, as well as the parties, written notice of the decision on his or her petition. For each petition granted, the administrative law judge shall provide a brief statement of the basis of the decision. If the petition is denied, he or she shall briefly state the grounds for denial and shall then treat the petition as a request for participation as *amicus curiae*.

§ 2570.134 Consequences of default.

For 502(c)(7) civil penalty proceedings, this section shall apply in lieu of § 18.5(a) and (b) of this title. Failure of the respondent to file an answer to the notice of determination described in § 2560.502c–7(g) of this chapter within the 30 day period provided by § 2560.502c–7(h) of this chapter shall be deemed to constitute a waiver of his or her right to appear and contest the allegations of the notice of determination, and such failure shall be deemed to be an admission of the facts as alleged in the notice for purposes of any proceeding involving the assessment of a civil penalty under section 502(c)(7) of the Act. Such notice shall then become the final order of the Secretary, within the meaning of § 2570.131(g) of this subpart, forty-five (45) days from the date of service of the notice.

§ 2570.135 Consent order or settlement.

For 502(c)(7) civil penalty proceedings, the following shall apply in lieu of § 18.9 of this title.

(a) *General.* At any time after the commencement of a proceeding, but at least five (5) days prior to the date set for hearing, the parties jointly may move to defer the hearing for a reasonable time to permit negotiation of a settlement or an agreement containing findings and an order disposing of the whole or any part of the proceeding. The allowance of such a deferral and the duration thereof shall be in the discretion of the administrative law judge, after consideration of such factors as the nature of the proceeding, the requirements of the public interest, the representations of the parties, and the probability of reaching an agreement which will result in a just disposition of the issues involved.

(b) *Content.* Any agreement containing consent findings and an order disposing of a proceeding or any part thereof shall also provide:

(1) That the order shall have the same force and effect as an order made after full hearing;

(2) That the entire record on which any order may be based shall consist solely of the notice and the agreement;

(3) A waiver of any further procedural steps before the administrative law judge;

(4) A waiver of any right to challenge or contest the validity of the order and decision entered into in accordance with the agreement; and

(5) That the order and decision of the administrative law judge shall be final agency action.

(c) *Submission.* On or before the expiration of the time granted for negotiations, but, in any case, at least five (5) days prior to the date set for hearing, the parties or their authorized representative or their counsel may:

(1) Submit the proposed agreement containing consent findings and an order to the administrative law judge; or

(2) Notify the administrative law judge that the parties have reached a full settlement and have agreed to dismissal of the action subject to compliance with the terms of the settlement; or

(3) Inform the administrative law judge that agreement cannot be reached.

(d) *Disposition.* In the event a settlement agreement containing consent findings and an order is submitted within the time allowed therefor, the administrative law judge shall issue a decision incorporating such findings and agreement within 30 days of his receipt of such document. The decision of the administrative law judge shall incorporate all of the findings, terms, and conditions of the settlement agreement and consent order of the parties. Such decision shall become final agency action within the meaning of 5 U.S.C. 704.

(e) *Settlement without consent of all parties.* In cases in which some, but not all, of the parties to a proceeding submit a consent agreement to the administrative law judge, the following procedure shall apply:

(1) If all of the parties have not consented to the proposed settlement submitted to the administrative law judge, then such non-consenting parties must receive notice, and a copy, of the proposed settlement at the time it is submitted to the administrative law judge;

(2) Any non-consenting party shall have fifteen (15) days to file any objections to the proposed settlement with the administrative law judge and all other parties;

(3) If any party submits an objection to the proposed settlement, the administrative law judge shall decide within 30 days after receipt of such objections whether he shall sign or reject the proposed settlement. Where the record lacks substantial evidence upon which to base a decision or there is a genuine issue of material fact, then the administrative law judge may establish procedures for the purpose of receiving additional evidence upon which a decision on the contested issues may reasonably be based;

(4) If there are no objections to the proposed settlement, or if the administrative law judge decides to sign the proposed settlement after reviewing any such objections, the administrative law judge shall incorporate the consent agreement into a decision meeting the requirements of paragraph (d) of this section.

§ 2570.136 Scope of discovery.

For 502(c)(7) civil penalty proceedings, this section shall apply in lieu of § 18.14 of this title.

(a) A party may file a motion to conduct discovery with the administrative law judge. The motion for discovery shall be granted by the administrative law judge only upon a showing of good cause. In order to establish "good cause" for the purposes of this section, a party must show that the discovery requested relates to a genuine issue as to a material fact that is relevant to the proceeding. The order of the administrative law judge shall expressly limit the scope and terms of discovery to that for which "good cause" has been shown, as provided in this paragraph.

(b) A party may obtain discovery of documents and tangible things otherwise discoverable under paragraph (a) of this section and prepared in anticipation of or for the hearing by or for another party's representative (including his or her attorney, consultant, surety, indemnitor, insurer, or agent) only upon showing that the party seeking discovery has substantial need of the materials or information in the preparation of his or her case and that he or she is unable without undue hardship to obtain the substantial equivalent of the materials or information by other means. In ordering discovery of such materials when the required showing has been made, the administrative law judge shall protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of an attorney or other representatives of a party concerning the proceeding.

§ 2570.137 Summary decision.

For 502(c)(7) civil penalty proceedings, this section shall apply in lieu of § 18.41 of this title.

(a) *No genuine issue of material fact.* (1) Where no issue of a material fact is found to have been raised, the administrative law judge may issue a decision which, in the absence of an appeal pursuant to §§ 2570.139 through 2570.141 of this subpart, shall become a final order.

(2) A decision made under paragraph (a) of this section shall include a statement of:

(i) Findings of fact and conclusions of law, and the reasons therefor, on all issues presented; and

(ii) Any terms and conditions of the rule or order.

(3) A copy of any decision under this paragraph shall be served on each party.

(b) *Hearings on issues of fact.* Where a genuine question of a material fact is raised, the administrative law judge shall, and in any other case may, set the case for an evidentiary hearing.

§ 2570.138 Decision of the administrative law judge.

For 502(c)(7) civil penalty proceedings, this section shall apply in lieu of § 18.57 of this title.

(a) *Proposed findings of fact, conclusions, and order.* Within twenty (20) days of the filing of the transcript of the testimony, or such additional time as the administrative law judge may allow, each party may file with the administrative law judge, subject to the judge's discretion, proposed findings of fact, conclusions of law, and order together with a supporting brief expressing the reasons for such proposals. Such proposals and briefs shall be served on all parties, and shall refer to all portions of the record and to all authorities relied upon in support of each proposal.

(b) *Decision of the administrative law judge.* Within a reasonable time after the time allowed for the filing of the proposed findings of fact, conclusions of law, and order, or within thirty (30) days after receipt of an agreement containing consent findings and order disposing of the disputed matter in whole, the administrative law judge shall make his or her decision. The decision of the administrative law judge shall include findings of fact and conclusions of law with reasons therefor upon each material issue of fact or law presented on the record. The decision of the administrative law judge shall be based upon the whole record. In a contested case in which the Department and the Respondent have presented their positions to the administrative law judge pursuant to the procedures for 502(c)(7) civil penalty proceedings as set forth in this subpart, the penalty (if any) which may be included in the decision of the administrative law judge shall be limited to the penalty expressly provided for in section 502(c)(7) of ERISA. It shall be supported by reliable and probative evidence. The decision of the administrative law judge shall become final agency action within the meaning of 5 U.S.C. 704 unless an appeal is made pursuant to the procedures set forth in §§ 2570.139 through 2570.141 of this subpart.

§ 2570.139 Review by the Secretary.

(a) The Secretary may review a decision of an administrative law judge. Such a review may occur only when a party files a notice of appeal from a decision of an administrative law judge within twenty (20) days of the issuance of such decision. In all other cases, the decision of the administrative law judge shall become final agency action within the meaning of 5 U.S.C. 704.

(b) A notice of appeal to the Secretary shall state with specificity the issue(s) in the decision of the administrative law judge on which the party is seeking review. Such notice of appeal must be served on all parties of record.

(c) Upon receipt of a notice of appeal, the Secretary shall request the Chief Administrative Law Judge to submit to him or her a copy of the entire record before the administrative law judge.

§ 2570.140 Scope of review.

The review of the Secretary shall not be a de novo proceeding but rather a review of the record established before the administrative law judge. There shall be no opportunity for oral argument.

§ 2570.141 Procedures for review by the Secretary.

(a) Upon receipt of the notice of appeal, the Secretary shall establish a briefing schedule which shall be served on all parties of record. Upon motion of one or more of the parties, the Secretary may, in his or her discretion, permit the submission of reply briefs.

(b) The Secretary shall issue a decision as promptly as possible after receipt of the briefs of the parties. The Secretary may affirm, modify, or set aside, in whole or in part, the decision on appeal and shall issue a statement of reasons and bases for the action(s) taken. Such decision by the Secretary shall be final agency action within the meaning of 5 U.S.C. 704.

Signed at Washington, DC this 16th day of January, 2003.

Ann L. Combs,

Assistant Secretary, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 03–1431 Filed 1–23–03; 8:45 am]

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Federal Register

Friday,
January 24, 2003

Part V

Department of the Treasury

Bureau of Alcohol, Tobacco and Firearms
Alcohol and Tobacco Tax and Trade Bureau
27 CFR Parts 46, 47 et al.

Department of Justice

Bureau of Alcohol, Tobacco and Firearms, and Explosives

27 CFR Parts 447, 478 et al.
Reorganization of Title 27, Code of Federal Regulations; Final Rule

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

Alcohol and Tobacco Tax and Trade Bureau

27 CFR Parts 46, 47, 55, 178, and 179

[T.D. ATF–487]

RIN: 1512–AD06

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms, and Explosives

27 CFR Parts 447, 478, 479, 555, and 646

[OLC No. 01–03]

Reorganization of Title 27, Code of Federal Regulations

AGENCIES: Department of the Treasury; Department of Justice.

ACTION: Final rule.

SUMMARY: The Homeland Security Act of 2002 divides the Bureau of Alcohol, Tobacco and Firearms, Department of the Treasury, into two separate agencies, the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) in the Department of Justice, and the Alcohol and Tobacco Tax and Trade Bureau (TTB) in the Department of the Treasury. These changes require reorganization of title 27 of the Code of Federal Regulations. This final rule renames chapter I, establishes a new chapter II in 27 CFR, and removes certain regulations from chapter I and recodifies them in the new chapter II.

DATES: This rule is effective on January 24, 2003.

FOR FURTHER INFORMATION CONTACT: Lisa M. Gesser, Regulations Division, Alcohol and Tobacco Tax and Trade Bureau, 650 Massachusetts Avenue NW., Washington, DC 20226; 202–927–9347.

SUPPLEMENTARY INFORMATION:

Background

On November 25, 2002, the President signed into law the Homeland Security Act of 2002, Pub. L. No. 107–296, 116 Stat. 2135 (2002). Under title XI, subtitle B, section 1111 of the Act, the "authorities, functions, personnel, and assets" of the Bureau of Alcohol, Tobacco and Firearms, Department of the Treasury (the Bureau), are transferred to the Department of Justice, with the exception of certain enumerated authorities that are retained by the Department of the Treasury. The authorities retained by the Secretary of the Treasury include the administration and enforcement of chapters 51 and 52 of the Internal Revenue Code, sections 4181 and 4182 of the Internal Revenue Code, and title 27 of the United States Code.

Section 1111 of the Homeland Security Act further provides that the Bureau will retain its identity as a distinct entity within the Department of Justice known as the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF). The functions retained by the Department of the Treasury are the responsibility of a new Alcohol and Tobacco Tax and Trade Bureau (TTB). The split of the Bureau's functions takes effect on January 24, 2003.

Reorganization of Title 27 CFR

Title 27, Code of Federal Regulations (27 CFR), currently contains one chapter titled "Chapter I—Bureau of Alcohol, Tobacco and Firearms, Department of the Treasury." Since the Act divides the Bureau into two separate bureaus, this final rule reorganizes 27 CFR into two chapters, one for each new agency. The current chapter I will be retitled "Chapter I—Alcohol and Tobacco Tax and Trade Bureau, Department of the Treasury." Chapter I will retain all current alcohol and tobacco regulations (except those relating to contraband cigarettes), as well as those related to the Federal firearms and ammunition excise tax. The newly established chapter II will be titled "Chapter II—Alcohol, Tobacco, Firearms, and Explosives, Department of Justice." Chapter II will initially contain the four existing 27 CFR parts concerning firearms and explosives that are being moved from chapter I and recodified in the new chapter. Chapter II will also contain the existing regulations concerning contraband cigarettes.

This final rule does not make any changes to the current requirements of the regulations in 27 CFR. It merely divides the Bureau's current regulations between the new TTB and ATF. In the near future, TTB and the Department of Justice will individually make the necessary technical corrections to their regulations required by the division of the Bureau into the two new bureaus. This may include changes to agency names and addresses, agency acronyms, Web site addresses, delegation order numbers, position titles, and cross references within the regulations.

As noted, this final rule removes four existing parts and one existing subpart in 27 CFR concerning firearms, ammunition, explosives, and contraband cigarettes from chapter I and recodifies them in the new chapter II. These are:

- Part 46, Subpart F—Distribution of Cigarettes, which becomes part 646;
- Part 47, Importation of Arms, Ammunition and Implements of War, which becomes part 447;
- Part 55, Commerce in Explosives, which becomes part 555;
- Part 178, Commerce in Firearms and Ammunition, which becomes part 478; and
- Part 179, Machine Guns, Destructive Devices, and Certain Other Firearms, which becomes part 479.

The following are derivation tables for each of these recodified parts:

DERIVATION TABLE FOR PART 447

The requirements of section:	Are derived from section:
Subpart A	
447.1	47.1
447.2	47.2
Subpart B	
447.11	47.11
Subpart C	
447.21	47.21
447.22	47.22
Subpart D	
447.31	47.31
447.32	47.32
447.33	47.33
447.34	47.34
447.35	47.35
Subpart E	
447.41	47.41
447.42	47.42
447.43	47.43
447.44	47.44
447.45	47.45
447.46	47.46
Subpart F	
447.51	47.51
447.52	47.52
447.53	47.53
447.54	47.54
447.55	47.55
447.56	47.56
447.57	47.57
447.58	47.58
Subpart G	
447.61	47.61
447.62	47.62
447.63	47.63

DERIVATION TABLE FOR PART 478

The requirements of section:	Are derived from section:
Subpart A	
478.1	178.1
478.2	178.2
Subpart B	
478.11	178.11
Subpart C	
478.21	178.21
478.22	178.22
478.23	178.23
478.24	178.24
478.25	178.25
478.25a	178.25a
478.26	178.26
478.27	178.27
478.28	178.28
478.29	178.29
478.29a	178.29a
478.30	178.30
478.31	178.31
478.32	178.32
478.33	178.33
478.33a	178.33a
478.34	178.34
478.35	178.35
478.36	178.36
478.37	178.37
478.38	178.38
478.39	178.39
478.39a	178.39a
478.40	178.40
478.40a	178.40a
Subpart D	
478.41	178.41
478.42	178.42
478.43	178.43
478.44	178.44
478.45	178.45
478.46	178.46
478.47	178.47
478.48	178.48
478.49	178.49
478.50	178.50
478.51	178.51
478.52	178.52
478.53	178.53
478.54	178.54
478.55	178.55
478.56	178.56
478.57	178.57
478.58	178.58
478.59	178.59
478.60	178.60
Subpart E	
478.71	178.71
478.72	178.72
478.73	178.73
478.74	178.74
478.75	178.75
478.76	178.76
478.77	178.77
178.78	178.78

DERIVATION TABLE FOR PART 478—Continued

The requirements of section:	Are derived from section:
Subpart F	
478.91	178.91
478.92	178.92
478.93	178.93
478.94	178.94
478.95	178.95
478.96	178.96
478.97	178.97
478.98	178.98
478.99	178.99
478.100	178.100
478.101	178.101
478.102	178.102
478.103	178.103
Subpart G	
478.111	178.111
478.112	178.112
478.113	178.113
478.113a	178.113a
478.114	178.114
478.115	178.115
478.116	178.116
478.117	178.117
478.118	178.118
478.119	178.119
478.120	178.120
Subpart H	
478.121	178.121
478.122	178.122
478.123	178.123
478.124	178.124
478.124a	178.124a
478.125	178.125
478.125a	178.125a
478.126	178.126
478.126a	178.126a
478.127	178.127
478.128	178.128
478.129	178.129
478.131	178.131
478.132	178.132
478.133	178.133
478.134	178.134
Subpart I	
478.141	178.141
478.142	178.142
478.143	178.143
478.144	178.144
478.145	178.145
478.146	178.146
478.147	178.147
478.148	178.148
478.149	178.149
478.150	178.150
478.151	178.151
478.152	178.152
478.153	178.153
Subpart J [Reserved]	
Subpart K	
478.171	178.171

DERIVATION TABLE FOR PART 479

The requirements of section:	Are derived from section:
Subpart A	
479.1	179.1
Subpart B	
479.11	179.11
Subpart C	
479.21	179.21
479.22	179.22
479.23	179.23
479.24	179.24
479.25	179.25
479.26	179.26
Subpart D	
479.31	179.31
479.32	179.32
479.32a	179.32a
479.33	179.33
479.34	179.34
479.35	179.35
479.36	179.36
479.37	179.37
479.38	179.38
479.39	179.39
479.40	179.40
479.41	179.41
479.42	179.42
479.43	179.43
479.44	179.44
479.45	179.45
479.46	179.46
479.47	179.47
479.48	179.48
479.49	179.49
479.50	179.50
479.51	179.51
479.52	179.52
Subpart E	
479.61	179.61
479.62	179.62
479.63	179.63
479.64	179.64
479.65	179.65
479.66	179.66
479.67	179.67
479.68	179.68
479.69	179.69
479.70	179.70
479.71	179.71
Subpart F	
479.81	179.81
479.82	179.82
479.83	179.83
479.84	179.84
479.85	179.85
479.86	179.86
479.87	179.87
479.88	179.88
479.89	179.89
479.90	179.90
479.91	179.91
479.92	179.92

DERIVATION TABLE FOR PART 479—Continued

The requirements of section:	Are derived from section:
479.93	179.93
Subpart G	
479.101	179.101
479.102	179.102
479.103	179.103
479.104	179.104
479.105	179.105
Subpart H	
479.111	179.111
479.112	179.112
479.113	179.113
479.114	179.114
479.115	179.115
479.116	179.116
479.117	179.117
479.118	179.118
479.119	179.119
479.120	179.120
479.121	179.121
479.122	179.122
Subpart I	
479.131	179.131
Subpart J	
479.141	179.141
479.142	179.142
Subpart K	
479.151	179.151
479.152	179.152
Subpart L	
479.161	179.161
479.162	179.162
479.163	179.163
Subpart M	
479.171	179.171
479.172	179.172
Subpart N	
479.181	179.181
479.182	179.182
Subpart O	
479.191	179.191
479.192	179.192
479.193	179.193

DERIVATION TABLE FOR PART 555

The requirements of section:	Are derived from section:
Subpart A	
555.1	55.1
555.2	55.2
Subpart B	
555.11	55.11
Subpart C	
555.21	55.21
555.22	55.22
555.23	55.23
555.24	55.24
555.25	55.25
555.26	55.26
555.27	55.27
555.28	55.28
555.29	55.29
555.30	55.30
555.31	55.31
555.32	55.32
Subpart D	
555.41	55.41
555.42	55.42
555.43	55.43
555.44	55.44
555.45	55.45
555.46	55.46
555.47	55.47
555.48	55.48
555.49	55.49
555.50	55.50
555.51	55.51
555.52	55.52
555.53	55.53
555.54	55.54
555.55	55.55
555.56	55.56
555.57	55.57
555.58	55.58
555.59	55.59
555.60	55.60
555.61	55.61
555.62	55.62
555.63	55.63
Subpart E	
555.71	55.71
555.72	55.72
555.73	55.73
555.74	55.74
555.75	55.75
555.76	55.76
555.77	55.77
555.78	55.78
555.79	55.79
555.80	55.80
555.81	55.81
555.82	55.82
555.83	55.83
Subpart F	
555.101	55.101
555.102	55.102
555.103	55.103
555.104	55.104
555.105	55.105
555.106	55.106
555.107	55.107
555.108	55.108
555.109	55.109
Subpart G	
555.121	55.121
555.122	55.122
555.123	55.123
555.124	55.124
555.125	55.125
555.126	55.126
555.127	55.127
555.128	55.128
555.129	55.129
555.130	55.130
Subpart H	
555.141	55.141
555.142	55.142
Subpart I	
555.161	55.161
555.162	55.162
555.163	55.163
555.164	55.164
555.165	55.165
555.166	55.166
Subpart J	
555.180	55.180
555.181	55.181
555.182	55.182
555.183	55.183
555.184	55.184
555.185	55.185
555.186	55.186
Subpart K	
555.201	55.201
555.202	55.202
555.203	55.203
555.204	55.204
555.205	55.205
555.206	55.206
555.207	55.207
555.208	55.208
555.209	55.209
555.210	55.210
555.211	55.211
555.212	55.212
555.213	55.213
555.214	55.214
555.215	55.215
555.216	55.216
555.217	55.217
555.218	55.218
555.219	55.219
555.220	55.220
555.221	55.221
555.222	55.222
555.223	55.223
555.224	55.224

DERIVATION TABLE FOR PART 646

The requirements of section:	Are derived from section:
646.141	46.141
646.142	46.142
646.143	46.143
646.146	46.146
646.147	46.147
646.150	46.150
646.153	46.153
646.154	46.154
646.155	46.155

Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1995, Public Law 104–13, 44 U.S.C. chapter 35, and its implementing regulations, 5 CFR part 1320, do not apply to this final rule because there are no new or revised recordkeeping or reporting requirements.

Regulatory Flexibility Act

Because no notice of proposed rulemaking is required for this rule under the Administrative Procedure Act (5 U.S.C. 553), the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply.

Executive Order 12866

This final rule is not a significant regulatory action as defined in Executive Order 12866. Accordingly, this final rule is not subject to the analysis this Executive Order requires.

Administrative Procedure Act

Because this final rule merely makes technical amendments to improve the organization of the regulations, no notice of proposed rulemaking and public comment period is required under 5 U.S.C. 553(b)(B). Similarly, because this final rule makes no substantive changes and is merely a recodification of existing regulations, this final rule is not subject to the effective date limitation of 5 U.S.C. 553(d).

Drafting Information

The principal author of this document is Lisa M. Gesser, Regulations Division, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects

27 CFR Part 46

Administrative practice and procedure, Authority delegations, Cigars and cigarettes, Claims, Excise taxes, Packaging and containers, Penalties, Reporting and recordkeeping requirements, Seizures and forfeitures, Surety bonds, Tobacco.

27 CFR Part 47

Administrative practice and procedure, Arms control, Arms and munitions, Authority delegation, Chemicals, Customs duties and inspection, Imports, Penalties, Reporting and recordkeeping requirements, Scientific equipment, Seizures and forfeitures.

27 CFR Part 55

Administrative practice and procedure, Authority delegations, Customs duties and inspection, Explosives, Hazardous materials, Imports, Penalties, Reporting and recordkeeping requirements, Safety, Security measures, Seizures and forfeitures, Transportation, Warehouses.

27 CFR Part 178

Administrative practice and procedure, Arms and munitions, Authority delegations, Customs duties and inspection, Domestic violence, Exports, Imports, Law enforcement personnel, Military personnel, Nonimmigrant aliens, Penalties, Reporting requirements, Research, Seizures and forfeitures, Transportation.

27 CFR Part 179

Administrative practice and procedure, Arms and munitions, Authority delegations, Customs duties and inspection, Exports, Imports, Military personnel, Penalties, Reporting requirements, Research, Seizures and forfeitures, Transportation.

27 CFR Part 447

Administrative practice and procedure, Arms control, Arms and munitions, Authority delegation, Chemicals, Customs duties and inspection, Imports, Penalties, Reporting and recordkeeping requirements, Scientific equipment, Seizures and forfeitures.

27 CFR Part 478

Administrative practice and procedure, Arms and munitions, Authority delegations, Customs duties and inspection, Domestic violence, Exports, Imports, Law enforcement personnel, Military personnel, Nonimmigrant aliens, Penalties, Reporting requirements, Research, Seizures and forfeitures, Transportation.

27 CFR Part 479

Administrative practice and procedure, Arms and munitions, Authority delegations, Customs duties and inspection, Exports, Imports, Military personnel, Penalties, Reporting requirements, Research, Seizures and forfeitures, Transportation.

27 CFR Part 555

Administrative practice and procedure, Authority delegations, Customs duties and inspection, Explosives, Hazardous materials, Imports, Penalties, Reporting and recordkeeping requirements, Safety, Security measures, Seizures and forfeitures, Transportation, Warehouses.

27 CFR Part 646

Administrative practice and procedure, Authority delegations, Cigars and cigarettes, Claims, Excise taxes, Packaging and containers, Penalties, Reporting and recordkeeping requirements, Seizures and forfeitures, Surety bonds, Tobacco.

Authority and Issuance

For the reasons discussed in the preamble, the Department of the Treasury and the Department of Justice amend title 27 of the Code of Federal Regulations as follows:

TITLE 27—ALCOHOL, TOBACCO PRODUCTS AND FIREARMS

CHAPTER I—ALCOHOL AND TOBACCO TAX AND TRADE BUREAU, DEPARTMENT OF THE TREASURY

1. Revise the title of 27 CFR chapter I to read as set forth above.

CHAPTER II—BUREAU OF ALCOHOL, TOBACCO, FIREARMS, AND EXPLOSIVES, DEPARTMENT OF JUSTICE

Subchapter A [Reserved]

Subchapter B—Firearms and Ammunition

Subchapter C—Explosives

Subchapter D—Miscellaneous Regulations Relating To Alcohol and Tobacco

2. Amend title 27 CFR by establishing chapter II and its related subchapters to read as set forth above.

Chapter I, Subchapter C

PART 47—[REDESIGNATED AS PART 447]

3. Transfer 27 CFR part 47 from chapter I, subchapter C, to chapter II, subchapter B and redesignate as 27 CFR part 447.

Chapter II, Subchapter B

PART 447—IMPORTATION OF ARMS, AMMUNITION AND IMPLEMENTS OF WAR

4. The authority citation for the newly redesignated 27 CFR part 447 continues to read as follows:

Authority: 22 U.S.C. 2778.

5. Amend the newly redesignated part 447 as follows:

AMENDMENT TABLE FOR PART 447

Amend:	By removing the reference to:	And adding in its place:
§ 447.2(a)	§ 47.21	§ 447.21
§ 447.2(a) (two times)	Part 178	Part 478
§ 447.2(a) (two times)	Part 179	Part 479
§ 447.2(b)	Part 178 or 179	Part 478 or 479
§ 447.2(b)	Part 178 or 27 CFR Part 179	Part 478 or 479
§ 447.2(b)	Parts 178 and 179	Parts 478 and 479
§ 447.2(c)	Part 178	Part 478
§ 447.11, definition of "Appropriate ATF officer"	Part 47	Part 447
§ 447.11, definition of "Defense articles" (two times).	§ 47.21 or § 47.22	§ 447.21 or § 447.22
§ 447.11, definition of "Import list"	§ 47.21	§ 447.21
§ 447.11, definition of "This chapter" (two times).	Chapter I	Chapter II
§ 447.34(a)	Parts 178 and 179	Parts 478 and 479
§ 447.34(b)	§ 178.129	§ 478.129
§ 447.34(b)	Part 178	Part 478
§ 447.41(a)	Parts 178 or 179	Parts 478 or 479
§ 447.41(b)	178.115	478.115
§ 447.42(a)(1) (introductory paragraph)	§ 47.41	§ 447.41
§ 447.42(b)	§ 55.183 of this title	§ 555.183 of this chapter
§ 447.52(e) (introductory text)	Part 179	Part 479
§ 447.52(e) (introductory text)	178.118	478.118
§ 447.56(a)	Parts 178 and 179	Parts 478 and 479
§ 447.57(a)(1)	Parts 178 or 179	Parts 478 or 479
§ 447.57(b)(2)	§ 178.118	§ 478.118

Chapter I, Subchapter C

PART 55—[REDESIGNATED AS PART 555]

6. Transfer 27 CFR part 55 from chapter I, subchapter C, to chapter II, subchapter C and redesignate as 27 CFR part 555.

Chapter II, Subchapter C

PART 555—COMMERCE IN EXPLOSIVES

7. The authority citation for the newly redesignated 27 CFR part 555 continues to read as follows:

Authority: 18 U.S.C. 847.

8. Amend the newly redesignated part 555 as follows:

AMENDMENT TABLE FOR PART 555

Amend:	By removing the reference to:	And adding in its place:
§ 555.2	Part 178	Part 478.
§ 555.2	Part 179	Part 479.
§ 555.2	Part 47	Part 447.
§ 555.11, definition of "Explosive materials"	§ 55.23	§ 555.23.
§ 555.26(a)(1)	§ 55.105(c)	§ 555.105(c).
§ 555.26(d)	§ 55.180	§ 555.180.
§ 555.41(b) (introductory text)	§ 55.42	§ 555.42.
§ 555.41(b) (introductory text)	§ 55.45	§ 555.45
§ 555.41(c)	§ 55.43	§ 555.43.
§ 555.41(c)	§ 55.45	§ 555.45.
§ 555.45(b)	§ 55.41(a)	§ 555.41(a).
§ 555.46(a)	§ 55.45	§ 555.45.
§ 555.46(b)	§ 55.45	§ 555.45.
§ 555.49(b)(6)	§ 55.202	§ 555.202.
§ 555.49(c)	§ 55.83 or § 55.142	§ 555.83 or § 555.142.
§ 555.49(c)	§ 55.142	§ 555.142.
§ 555.52(a)	§ 55.202	§ 555.202.
§ 555.52(a)	§ 55.41(b)	§ 555.41(b).
§ 555.52(b)	§ 55.202	§ 555.202.
§ 555.53	§ 55.59	§ 555.59.
§ 555.55	§ 55.202	§ 555.202.
§ 555.57	§ 55.45	§ 555.45.
§ 555.57	§ 55.42(b) or § 55.43(b)	§ 555.42(b) or § 555.43(b).
§ 555.58	§ 55.45	§ 555.45.
§ 555.61	§ 55.128	§ 555.128.
§ 555.71	§ 55.74	§ 555.74.
§ 555.72	§ 55.49	§ 555.49.

AMENDMENT TABLE FOR PART 555—Continued

Amend:	By removing the reference to:	And adding in its place:
§ 555.73	§ 55.77	§ 555.77.
§ 555.73	§ 55.82	§ 555.82.
§ 555.74 (two times)	§ 55.71	§ 555.71.
§ 555.75	§ 55.77	§ 555.77.
§ 555.76(b) (introductory text)	§ 55.79	§ 555.79.
§ 555.76(b)(3)	§ 55.45	§ 555.45.
§ 555.76(c)	§ 55.81	§ 555.81.
§ 555.77	§ 55.73 or § 55.75	§ 555.73 or § 555.75.
§ 555.78	§§ 55.73 and 55.75	§§ 555.73 and 555.75.
§ 555.79	§ 55.73 or § 55.75	§ 555.73 or § 555.75.
§ 555.79	§ 55.75	§ 555.75.
§ 555.79	§ 55.76(b)	§ 555.76(b).
§ 555.102(b)	§ 55.103	§ 555.103.
§ 555.102(b)	§ 55.105(d)	§ 555.105(d).
§ 555.103(e)	§ 55.51	§ 555.51.
§ 555.104 (introductory text)	§ 55.49(a)	§ 555.49(a).
§ 555.104 (introductory text)	§ 55.103	§ 555.103.
§ 555.105(b) (two times)	§ 55.126	§ 555.126.
§ 555.105(f)	§ 55.103(a)	§ 555.103(a).
§ 555.106(a)	§ 55.105(c)	§ 555.105(c).
§ 555.106(c)(1)	§ 55.142(d) and (e)	§ 555.142(d) and (e).
§ 555.106(d)	§ 55.105(g)	§ 555.105(g).
§ 555.108(a)	§ 55.103	§ 555.103.
§ 555.108(c)	Part 47	Part 447.
§ 555.108(d)	§ 55.183	§ 555.183.
§ 555.121(a)(2)	§ 55.128	§ 555.128.
§ 555.121(b)	§ 55.24	§ 555.24.
§ 555.122(a)(4)	§ 55.127	§ 555.127.
§ 555.122(e)	§ 55.126	§ 555.126.
§ 555.123(a)(4)	§ 55.127	§ 555.127.
§ 555.123(f)	§ 55.126	§ 555.126.
§ 555.124(a)(4)	§ 55.127	§ 555.127.
§ 555.124(f)	§ 55.126	§ 555.126.
§ 555.125(a)(4)	§ 55.127	§ 555.127.
§ 555.125(c)	§ 55.124(c)	§ 555.124(c).
§ 555.125(d)	§ 55.126	§ 555.126.
§ 555.126(b)	§ 55.105(c)	§ 555.105(c).
§ 555.127	§§ 55.122, 55.123, 55.124, and 55.125	§§ 555.122, 555.123, 555.124, and 555.125.
§ 555.127	§ 55.30	§ 555.30.
§ 555.128	§ 55.61	§ 555.61.
§ 555.129	§ 55.180	§ 555.180.
§ 555.141(a) (introductory text)	§§ 55.180 and 55.181	§§ 555.180 and 555.181.
§ 555.165	§ 55.30	§ 555.30.
§ 555.180(d)(4)	§ 55.202(a)	§ 555.202(a).
§ 555.182 (introductory text)	§§ 55.180 and 55.181	§§ 555.180 and 555.181.
§ 555.183(a)	§ 55.180(b)	§ 555.180(b).
§ 555.183(b)	§ 55.182	§ 555.182.
§ 555.201(a)	§ 55.29	§ 555.29.
§ 555.201(c)	§ 55.63	§ 555.63.
§ 555.201(d)	§§ 55.221 through 55.224	§§ 555.221 through 555.224.
§ 555.201(e)	§ 55.202(a)	§ 555.202(a).
§ 555.202(a)	§ 55.201(e)	§ 555.201(e).
§ 555.202(c)	§ 55.11	§ 555.11.
§ 555.203 (introductory text)	§ 55.202	§ 555.202.
§ 555.203(a)	§§ 55.206 and 55.213	§ 555.206 and 555.213.
§ 555.203(b)	§§ 55.206, 55.208(b), and 55.213	§§ 555.206, 555.208(b), and 555.213.
§ 555.203(c)	§§ 55.206 and 55.213	§§ 555.206 and 555.213.
§ 555.203(d)	§§ 55.206(b), 55.210(b), and 55.213	§§ 555.206(b), 555.210(b), and 555.213.
§ 555.203(d)	§§ 55.206(c), 55.211(b), and 55.213	§§ 555.206(c), 555.211(b), and 555.213.
§ 555.203(d)	§§ 55.206(a), 55.210(b), and 55.213	§§ 555.206(a), 555.210(b), and 555.213.
§ 555.203(e)	§§ 55.206(c), 55.211(b), and 55.213	§§ 555.206(c), 555.211(b), and 555.213.
§ 555.205(d)	§ 55.106	§ 555.106.
§ 555.206(a)	§ 55.218	§ 555.218.
§ 555.206(b) (two times)	§ 55.219	§ 555.219.
§ 555.206(b)	§ 55.224	§ 555.224.
§ 555.206(c)(1)	§ 55.218	§ 555.218.
§ 555.206(c)(2)	§ 55.220	§ 555.220.
§ 555.206(c)(2)	§ 55.218	§ 555.218.
§ 555.208(b)(1)	§ 55.213	§ 555.213.
§ 555.211(b)(1)	§ 55.206	§ 555.206.
§ 555.218, Notes to the Table of Distances for Storage of Explosives (paragraph 1).	§ 55.11	§ 555.11.

AMENDMENT TABLE FOR PART 555—Continued

Amend:	By removing the reference to:	And adding in its place:
§ 555.220, Notes of Table of Separation Distances of Ammonium Nitrate and Blasting Agents from Explosives or Blasting Agents (paragraph 2).	§ 55.218	§ 555.218.
§ 555.220, Notes of Table of Separation Distances of Ammonium Nitrate and Blasting Agents from Explosives or Blasting Agents (paragraph 3).	§ 55.218	§ 555.218.
§ 555.220, Notes of Table of Separation Distances of Ammonium Nitrate and Blasting Agents from Explosives or Blasting Agents (paragraph 6).	§ 55.218	§ 555.218.
§ 555.223, table notes (paragraph 3)	§ 55.222	§ 555.222.
§ 555.223, table notes (paragraph 3)	§§ 55.218 and 55.224	§§ 555.218 and 555.224.
§ 555.223, table notes (paragraph 5)	§ 55.222	§ 555.222.
§ 555.224, center column in table	§ 55.218	§ 555.218.
§ 555.224, table notes (paragraph 4)	§ 55.218	§ 555.218.

Chapter I, Subchapter M

PART 178—[REDESIGNATED AS PART 478]

9. Transfer 27 CFR part 178 from chapter I, subchapter M, to chapter II, subchapter B and redesignate as 27 CFR part 478.

Chapter II, Subchapter B

PART 478—COMMERCE IN FIREARMS AND AMMUNITION

10. The authority citation for the newly redesignated 27 CFR part 478 continues to read as follows:

Authority: 5 U.S.C. 552(a); 18 U.S.C. 847, 921–930; 44 U.S.C. 3504(h).

11. Amend the newly redesignated part 478 as follows:

AMENDMENT TABLE FOR PART 478

Amend:	By removing the reference to:	And adding in its place:
Editorial Note	Part 178	This part.
§ 478.2	Part 179	Part 479.
§ 478.2	Part 47	Part 447.
§ 478.11 (Editorial Note:)	§ 178.11	§ 478.11.
§ 478.28(c)	Part 179	Part 479.
§ 478.29(b)	§ 178.96(c)	§ 478.96(c).
§ 478.29(c)	§§ 178.30 and 178.97	§§ 478.30 and 478.97.
§ 478.36(a)	Part 179	Part 479.
§ 478.36(b)	Part 179	Part 479.
§ 478.37(c)	§ 178.149	§ 478.149.
§ 478.39(b)(2)	§ 178.151	§ 478.151.
§ 478.40(b)(9)	§ 178.153	§ 478.153,
§ 478.40(c)(5)	§ 178.132	§ 478.132.
§ 478.40a(b)(5)	§ 178.153	§ 478.153.
§ 478.40a(c)(5)	§ 178.132	§ 478.132.
§ 478.41(b)	§ 178.42	§ 478.42.
§ 478.41(b)	§ 178.44	§ 478.44.
§ 478.41(b)	§ 178.47	§ 478.47.
§ 478.41(b)	§ 178.50	§ 478.50.
§ 478.41(c)	§ 178.42	§ 478.42.
§ 478.41(c)	§ 178.44	§ 478.44.
§ 478.41(c)	§ 178.47	§ 478.47.
§ 478.41(d)	§ 178.93	§ 478.93.
§ 478.45 (two times)	§ 178.44	§ 478.44.
§ 478.47(c)	§ 178.78, § 178.143, or § 178.144	§ 478.78, § 478.143, or § 478.144.
§ 478.47(c)	§ 178.144	§ 478.144.
§ 478.50(c)	§ 178.100	§ 478.100.
§ 478.50(d)	§ 178.100	§ 478.100.
§ 478.51	§ 178.56	§ 478.56.
§ 478.52(a)	§ 178.44	§ 478.44.
§ 478.52(b)	§ 178.71	§ 478.71.
§ 478.54	§ 178.44	§ 478.44.
§ 478.55	§ 178.44	§ 478.44.
§ 478.57(a)	§ 178.127	§ 478.127.
§ 478.57(b)	§ 178.40(b)	§ 478.40(b).
§ 478.57(b)	§§ 178.40(c) and 178.132	§§ 478.40(c) and 478.132.
§ 478.57(c)	§ 178.40a(b)	§ 478.40a(b).
§ 478.57(c)	§§ 178.40a(c) and 178.132	§§ 478.40a(c) and 478.132.

AMENDMENT TABLE FOR PART 478—Continued

Amend:	By removing the reference to:	And adding in its place:
§ 478.71	§ 178.47	§ 478.47.
§ 478.72	§ 178.47	§ 478.47.
§ 478.73(b)	§ 178.74	§ 478.74.
§ 478.92(a)(4)(iii)	§ 178.11	§ 478.11.
§ 478.93	§ 178.50	§ 478.50.
§ 478.93	§ 178.99(c)	§ 478.99(c).
§ 478.93	§ 178.125(a)	§ 478.125(a).
§ 478.95	§ 178.94	§ 478.94.
§ 478.96(b)	§ 178.102(a)	§ 478.102(a).
§ 478.96(b)	§ 178.124	§ 478.124.
§ 478.96(c)(1)(ii)	§ 178.102	§ 478.102.
§ 478.96(c)(1)(iii)	§ 178.124	§ 478.124.
§ 478.97(a)	§ 178.99(b) or § 178.99(c)	§ 478.99(b) or § 478.99(c).
§ 478.97(a)	§ 178.102	§ 478.102.
§ 478.98(b) (two times)	Part 179	Part 479.
§ 478.99(a)	§ 178.96(c)	§ 478.96(c).
§ 478.99(a)	§ 178.97	§ 478.97.
§ 478.99(c)(1)	§ 178.143	§ 478.143.
§ 478.99(c)(1)	§ 178.144	§ 478.144.
§ 478.99(c)(5)	§ 178.32(f)	§ 478.32(f).
§ 478.99(d)(3)	§ 178.149	§ 478.149.
§ 478.99(e)	§ 178.125(c)	§ 478.125(c).
§ 478.100(a)(1)	§ 178.91	§ 478.91.
§ 478.102(a)(3)	§ 178.124(c)	§ 478.124(c).
§ 478.102(b)	§ 178.129	§ 478.129.
§ 478.102(d)(2)	Part 179	Part 479.
§ 478.102(d)(3)	§ 178.150	§ 478.150.
§ 478.102(e)	§ 178.131	§ 478.131.
§ 478.112(a)	§ 178.11	§ 478.11.
§ 478.112(d)(2)	§ 178.92	§ 478.92.
§ 478.113(a)	§ 178.11	§ 478.11.
§ 478.116	§ 178.119(b)	§ 478.119(b).
§ 478.118	Part 47	Part 447.
§ 478.118	Part 179	Part 479.
§ 478.119(c)(7)	§ 178.40a(b)	§ 478.40a(b).
§ 478.119(f)(2)	§ 178.92	§ 478.92.
§ 478.119(g)	§ 178.116	§ 478.116.
§ 478.121(a)	§ 178.129	§ 478.129.
§ 478.121(a)	§ 178.125	§ 478.125.
§ 478.121(b) (two times)	§ 178.23	§ 478.23.
§ 478.121(d)	§ 178.100(c)	§ 478.100(c).
§ 478.122(b)	§ 178.149	§ 478.149.
§ 478.122(d)	§§ 178.124 and 178.125	§§ 478.124 and 478.125.
§ 478.123(b)	§ 178.149	§ 478.149.
§ 478.123(b)	§ 178.122	§ 478.122.
§ 478.123(d)	§§ 178.124 and 178.125	§§ 478.124 and 478.125.
§ 478.124(c)(3)(i)	§ 178.11	§ 478.11.
§ 478.124(c)(3)(ii)	§ 178.11	§ 478.11.
§ 478.124(c)(3)(iv)	§ 178.102	§ 478.102.
§ 478.124(d)	§ 178.96(c)	§ 478.96(c).
§ 478.124(f)	§ 178.102(a)	§ 478.102(a).
§ 478.124a(a) (two times)	§ 178.125	§ 478.125.
§ 478.124a(e) (introductory text)	§ 178.124(c)	§ 478.124(c).
§ 478.124a(e)(2)	§ 178.96(c)	§ 478.96(c).
§ 478.124a(f)	§ 178.124(f)	§ 478.124(f).
§ 478.125(b)	§ 178.122(b)	§ 478.122(b).
§ 478.125(c) (two times)	§ 178.99(e)	§ 478.99(e).
§ 478.125(c)	§ 178.122(b)	§ 478.122(b).
§ 478.125(e)	§ 178.124a	§ 478.124a.
§ 478.125(f)(2)(i)	§ 178.11	§ 478.11.
§ 478.125(f)(2)(ii)	§ 178.11	§ 478.11.
§ 478.125a(a) (introductory text)	§ 178.102	§ 478.102.
§ 478.125a(a)(2)	§ 178.125(e)	§ 478.125(e).
§ 478.125a(a)(3)	§ 178.125(e)	§ 478.125(e).
§ 478.129(b)	§ 178.124(b)	§ 478.124(b).
§ 478.129(c)	§ 178.150(c)	§ 478.150(c).
§ 478.129(f)	§§ 178.40(c) and 178.132	§§ 478.40(c) and 478.132.
§ 478.131(a)(1)	§ 178.102(d)	§ 478.102(d).
§ 478.131(a)(1)	§ 178.102(a)	§ 478.102(a).
§ 478.131(a)(2)	§ 178.102(d)(1)	§ 478.102(d)(1).
§ 478.131(a)(3)	§§ 178.102(d)(3) and 178.150	§§ 478.102(d)(3) and 478.150.
§ 478.131(a)(3)	§ 178.129(c)	§ 478.129(c).

AMENDMENT TABLE FOR PART 478—Continued

Amend:	By removing the reference to:	And adding in its place:
§ 478.132(b)(2)	§ 178.40(b)(7) and 178.40(b)(3)	§§ 478.40(b)(7) and 478.40(b)(3).
§ 478.133	§ 178.40(c)	§ 478.40(c).
§ 478.141 (introductory and text)	§§ 178.32(a)(9) and (d)(9) and 178.99(c)(9)	§§ 478.32(a)(9) and (d)(9) 478.99(c)(9).
§ 478.144(a)	§ 178.32	§ 478.32.
§ 478.144(i)(1)	§ 178.32(a)	§ 478.32(a).
§ 478.145	§ 178.98	§ 478.98.
§ 478.147	§ 178.124(a)	§ 478.124(a).
§ 478.149	§§ 178.37and 178.99(d)	§§ 478.37 and 478.99(d).
§ 478.150(a) (introductory text)	§ 178.102(d)(3)	§ 478.102(d)(3).
§ 478.150(a) (introductory text)	§ 178.102(a)(1)	§ 478.102(a)(1).
§ 478.150(c)	§ 178.129(c)	§ 478.129(c).
§ 478.151(a)	§ 178.39	§ 478.39.
§ 478.153	§ 178.40	§ 478.40.
§ 478.153	§ 178.40a	§ 478.40a.

Chapter I, Subchapter M

PART 179—[REDESIGNATED AS PART 479]

12. Transfer 27 CFR part 179 from chapter I, subchapter M to chapter II, subchapter B and redesignate as 27 CFR part 479.

Chapter II, Subchapter B

PART 479—MACHINE GUNS, DESTRUCTIVE DEVICES, AND CERTAIN OTHER FIREARMS

13. The authority citation for the newly redesignated 27 CFR part 479 continues to read as follows:

AMENDMENT TABLE FOR PART 479

Amend:	By removing the reference to:	And adding in its place:
§ 479.25	§ 179.24	§ 479.24.
§ 479.31(a)	§ 179.32	§ 479.32.
§ 479.31(b)	§§ 179.38–179.39	§§ 479.38–479.39.
§ 479.32(b)	§ 179.32a	§ 479.32a.
§ 479.32a(a)	§ 179.32	§ 479.32.
§ 479.34(b)(3)	§ 179.35	§ 479.35.
§ 479.34(b)(6)	Part 178	Part 478.
§ 479.34(e)	§ 178.44(a)	§ 478.44(a).
§ 479.38	§ 179.46	§ 479.46.
§ 479.42	§ 179.49	§ 479.49.
§ 479.43	§ 179.42	§ 479.42.
§ 479.44	§ 179.42	§ 479.42.
§ 479.44	§ 179.34	§ 479.34.
§ 479.46	§ 179.34	§ 479.34.
§ 479.48	§ 179.34	§ 479.34.
§ 479.49	§ 179.46	§ 479.46.
§ 479.49	§ 179.50	§ 479.50.
§ 479.50	§ 179.51	§ 479.51.
§ 479.52	§ 179.23	§ 479.23.
§ 479.62	§ 179.63	§ 479.63.
§ 479.62	§ 179.67	§ 479.67.
§ 479.69	§ 179.62	§ 479.62.
§ 479.70	§ 179.62	§ 479.62.
§ 479.84	§ 179.85	§ 479.85.
§ 479.87	§ 179.67	§ 479.67.
§ 479.89	§ 179.90	§ 479.90.
§ 479.90(b)	§ 179.85	§ 479.85.
§ 479.91	§ 179.90	§ 479.90.
§ 479.92	§ 178.28	§ 478.28.
§ 479.93	§ 178.98	§ 478.98.
§ 479.111(a)(3)	Part 178	Part 478
§ 479.111(b)	Part 178	Part 478.
§ 479.111(c)	Part 178	Part 478.
§ 479.112(a)	§ 178.112	§ 478.112.
§ 479.118	§ 179.117	§ 479.117.
§ 479.119	§ 178.28	§ 478.28.
§ 479.120	§ 179.118	§ 479.118.
§ 479.120	§ 179.172	§ 479.172.
§ 479.121	§§ 179.114 and 179.115	§§ 479.114 and 479.115.
§ 479.122(a)	Part 47	Part 447.
§ 479.131	Part 178	Part 478.

Authority: 26 U.S.C. 7805.

14. Amend the newly redesignated part 479 as follows:

AMENDMENT TABLE FOR PART 479—Continued

Amend:	By removing the reference to:	And adding in its place:
§ 479.192	Part 178	Part 478.
§ 479.193	Part 47	Part 447.

Chapter I, Subchapter B

PART 46—[AMENDED]

15. Transfer 27 CFR part 46, subpart F (§§ 46.141–46.155), from chapter I, subchapter B, to 27 CFR, chapter II, subchapter D and redesignate as "Part 646—Contraband Cigarettes".

Chapter II, Subchapter D

PART 646—CONTRABAND CIGARETTES

16. Add an authority citation for the newly redesignated 27 CFR part 646 to read as follows:

Authority: 18 U.S.C. 2341–2346, unless otherwise noted.

17. Amend the newly redesignated part 646 as follows:

AMENDMENT TABLE FOR PART 646

Amend:	By removing the reference to:	And adding in its place:
§ 646.141 (section heading)	Subpart	Part.
§ 646.142	Subpart	Part.
§ 646.143 (introductory text)	Subpart	Part.
§ 646.146	Subpart	Part.
§ 646.146	§ 46.147	§ 646.147.
§ 646.147(a) (introductory text)	§ 46.143	§ 646.143.
§ 646.147(b)	§ 46.143	§ 646.143.
§ 646.150(a)	§§ 46.146 and 46.147	§§ 646.146 and 646.147.
§ 646.153 (introductory text)	§§ 46.146 through 46.147	§§ 646.146 through 646.147
§ 646.154(b)	Subpart	Part.

Dated: January 14, 2003.

Bradley A. Buckles,

Director, Bureau of Alcohol, Tobacco and Firearms.

Dated: January 15, 2003.

Timothy E. Skud,

Deputy Assistant Secretary, (Regulatory, Tariff and Trade Enforcement).

Dated: January 21, 2003.

Joan L. Larsen,

Deputy Assistant Attorney General.

[FR Doc. 03–1657 Filed 1–23–03; 8:45 am]

BILLING CODE 4810–31–P; 4410–19–P

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Federal Register

Friday,
January 24, 2003

Part VI

Department of Transportation

Transportation Security Administration

49 CFR Part 1540

Threat Assessments Regarding Citizens of the United States and Alien Holders Who Hold or Apply for FAA Certificates; Final Rules

DEPARTMENT OF TRANSPORTATION

Transportation Security Administration

49 CFR Part 1540

[Docket No. TSA–2002–13732; Amendment No. 1540–3]

RIN 2110–AA14

Threat Assessments Regarding Citizens of the United States Who Hold or Apply for FAA Certificates

AGENCY: Transportation Security Administration (TSA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: This final rule establishes the procedure by which TSA will notify the subject individual and the Federal Aviation Administration (FAA) of TSA's assessment that an individual who is a citizen of the United States and holds or is applying for an FAA airman certificate, rating, or authorization poses a security threat. This procedure provides such individuals notice and an opportunity to be heard before TSA makes a final decision, while furthering the federal government's important and immediate interest in protecting national security and providing the nation with a safe and secure transportation system.

DATES: Effective on January 24, 2003. Submit comments by March 25, 2003.

ADDRESSES: Address your comments to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number TSA–2002–13732 at the beginning of your comments, and you should submit two copies of your comments. If you wish to receive confirmation that TSA received your comments, include a self-addressed, stamped postcard.

You may also submit comments through the Internet to *http://dms.dot.gov*. You may review the public docket containing comments to these regulations in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Dockets Office is on the plaza level of the NASSIF Building at the Department of Transportation at the above address. Also, you may review public dockets on the Internet at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Brandon Straus, Office of the Chief Counsel, Transportation Security Administration, 400 Seventh Street, SW., Washington, DC 20590–0001; telephone (202) 493–1224; e-mail: *brandon.straus@tsa.dot.gov*. For information regarding the Economic Analysis, contact Jenny R. Randall, Economist, Office of Security Regulation & Policy, Transportation Security Administration, 400 Seventh Street, SW., Washington, DC 20590–0001; telephone (202) 385–1554; e-mail: jenny.randall@tsa.dot.gov.

SUPPLEMENTARY INFORMATION:

Comments Invited

This final rule is being adopted without prior notice and prior public comment. However, the Regulatory Policies and Procedures of the Department of Transportation (DOT) (44 FR 1134; February 26, 1979) provide that, to the maximum extent possible, operating administrations within DOT should provide an opportunity for public comment on regulations issued without prior notice. Accordingly, interested persons are invited to participate in this rulemaking by submitting written data, views, or arguments. We also invite comments relating to the economic, environmental, energy, or federalism impacts that might result from adopting this amendment. The most helpful comments will reference a specific portion of the rule, explain the reason for any recommended change, and include supporting data. See **ADDRESSES** above for information on how to submit comments.

We will file in the docket all comments we receive, as well as a report summarizing each substantive public contact with TSA personnel concerning this rulemaking. The docket is available for public inspection before and after the comment closing date.

We will consider all comments we receive on or before the closing date for comments. We will consider comments filed late if it is possible to do so without incurring expense or delay. We may change these rules in light of the comments we receive.

Electronic Access

You can get an electronic copy using the Internet by:

(1) Searching the Department of Transportation's electronic Docket Management System (DMS) Web page (*http://dms.dot.gov/search*);

(2) Accessing the Government Printing Office's Web page at *http://www.access.gpo.gov/su_docs/aces/aces140.html*; or

(3) Visiting the TSA's Law and Policy Web page at *http://www.tsa.dot.gov/public/index.jsp*.

In addition, copies are available by writing or calling the individual in the **FOR FURTHER INFORMATION CONTACT** section. Make sure to identify the docket number of this rulemaking.

Small Entity Inquiries

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 requires the TSA to comply with small entity requests for information and advice about compliance with statutes and regulations within the TSA's jurisdiction. Any small entity that has a question regarding this document may contact the person listed in **FOR FURTHER INFORMATION CONTACT.** Persons can obtain further information regarding SBREFA on the Small Business Administration's Web page at *http://www.sba.gov/advo/laws/law_lib.html*.

Background

Following the terrorist attacks on the United States on September 11, 2001, Congress recognized the need for a fundamental change in the federal government's approach to ensuring the security of civil aviation. The September 11 attacks highlighted the fact that the security of the civil aviation system is critical to national security and essential to the basic freedom of Americans to move in intrastate, interstate, and international transportation. *See* H. R. Conf. Rep. 107–296, 107th Cong., 1st Sess. 53 (2001).

In order to address the need for heightened security in civil aviation and other modes of transportation, Congress passed the Aviation and Transportation Security Act (ATSA), Pub. L. 107–71, 115 Stat. 597 (November 19, 2001). ATSA established the TSA within DOT, operating under the direction of the Under Secretary of Transportation for Security (Under Secretary). TSA is responsible for security in all modes of transportation regulated by DOT, including civil aviation. Accordingly, ATSA transferred the responsibility for civil aviation security from the FAA to TSA.

ATSA Requirements

As part of its security mission, TSA is responsible for assessing intelligence and other information in order to identify individuals who pose a threat to transportation security and to coordinate countermeasures with other Federal agencies, including the FAA, to address such threats. *See* 49 U.S.C. 114(f)(1)–(5), (h)(1)–(4). Specifically, Congress required TSA to work with the FAA Administrator to take actions that may affect aviation safety or air carrier operations. 49 U.S.C. 114(f)(13).

In the course of carrying out this responsibility, TSA receives information from other federal agencies and other

sources identifying specific individuals who pose security threats. TSA also receives, on a regular basis, copies of the airmen registry from the FAA.[1] In some cases, individuals identified by other agencies as security threats hold or have applied for airman certificates, ratings, or authorizations, such as pilot certificates, mechanic certificates, and special purpose pilot authorizations, issued by the FAA under 49 U.S.C. Chapter 447. Individuals who pose security threats and hold FAA certificates, ratings, or authorizations are in positions to disrupt the transportation system and harm the public.

In ATSA, Congress specifically required the Under Secretary to establish procedures to notify the FAA Administrator, among others, of the identity of individuals known to pose, or suspected of posing, a threat of air piracy or terrorism, or a threat to airline or passenger safety. 49 U.S.C. 114(h)(2). Congress required the FAA Administrator to "make modifications in the system for issuing airman certificates related to combating acts of terrorism." 49 U.S.C. 44703(g).

The Under Secretary has an express mandate to identify and coordinate countermeasures to address threats to the transportation system. In addition, Congress has expressly directed TSA to work with the FAA Administrator with respect to actions that may affect aviation safety or air carrier operations and to communicate information to the FAA regarding individuals who pose a security threat. Therefore, TSA is adopting the procedures set forth herein to notify the FAA of a security threat concerning a U.S. citizen who holds or is applying for an FAA certificate, rating, or authorization.

Congress has given the TSA broad powers related to the security of civil aviation, including the authority to receive, assess, and distribute intelligence information related to transportation security. The TSA is charged with serving as the primary liaison for transportation security to the intelligence and law enforcement communities. *See* 49 U.S.C. 114(f)(1) and (5). The Under Secretary is uniquely situated as an expert in transportation security, based on his functions, responsibilities, duties, and powers, to determine whether sufficient cause exists to believe that an individual poses a threat to aviation security. Congress, in ATSA, committed to the TSA's discretion the role of assessing such threats and communicating them to other agencies, including the FAA, for appropriate action.

In ATSA, Congress also created the Transportation Security Oversight Board (TSOB). 49 U.S.C. 115. The members include the Secretary of Transportation, the Attorney General, the Secretary of Defense, the Secretary of the Treasury, and the Director of the Central Intelligence Agency, or such officials' designees, as well as one member appointed by the President to represent the National Security Council and one member appointed by the President to represent the Office of Homeland Security. The Under Secretary is required to consult with the TSOB in establishing procedures for notifying the Administrator of the identity of individuals known to pose, or suspected of posing, a risk of air piracy or terrorism, or a threat to airline or passenger safety. 49 U.S.C. 114(h)(2). The Under Secretary has consulted with the TSOB regarding the procedures set forth in this rule.

Discussion of the Final Rule

This final rule adds a new § 1540.115 to 49 CFR part 1540, entitled "Threat assessments regarding citizens of the United States holding or applying for FAA certificates, ratings, or authorizations." New § 1540.115 sets forth the procedure that TSA follows when notifying the FAA of certain individuals who pose a security threat.

Section 1540.115(a) provides that the notification procedure applies when TSA has determined that an individual holding or applying for an FAA airman certificate, rating, or authorization poses a security threat. This rule applies to citizens of the United States. A separate rule published in this **Federal Register** applies to aliens.

Section 1540.115(b) of the final rule sets forth the definitions of certain terms used in the rule, some of which are discussed further below.

Under § 1540.115(c) of the final rule, an individual poses a security threat if the individual is suspected of posing or is known to pose: (1) A threat to transportation or national security; (2) a threat of air piracy or terrorism; (3) a threat to airline or passenger security; or (4) a threat to civil aviation security. This definition is based on 49 U.S.C. 114(f) and (h), which authorize the Under Secretary to identify and counter threats to the transportation system and to communicate information to the FAA regarding individuals who pose a security threat.

While the Under Secretary has been granted full discretion to conduct threat assessments and act upon them, TSA recognizes that notifying the FAA that an individual poses a security threat will have significant consequences. Further, the individual may have information that he or she may wish the Under Secretary to consider in making a final decision. Accordingly, the procedure in this final rule provides an individual with an opportunity to respond before the Under Secretary makes a decision on the threat assessment.

Section 1540.115(d) of this final rule makes clear that the individual may, if he or she so chooses, be represented by counsel, at his or her own expense, in the proceedings described in the final rule.

Section 1540.115(e)(1) provides that if the Assistant Administrator for Intelligence for TSA (Assistant Administrator) determines that an individual poses a security threat, the Assistant Administrator will serve upon that individual an Initial Notification of Threat Assessment and serve it upon the FAA. This Initial Notification will form the basis for the FAA to delay the issuance of or to suspend the individual's certificate, rating, or authorization pending completion of TSA's process.

Section 1540.115(e)(2) provides that not later than 15 calendar days after the date of service of the Initial Notification, the individual may serve a written request for copies of releasable materials upon which the Initial Notification was based.

In this section "date of service" has the same meaning as the definition of that term in the Rules of Practice in Transportation Security Administration Civil Penalty Actions and TSA's Investigative and Enforcement Procedures. *See* 49 CFR 1503.211(d). We note that, while § 1503.211(e) of the Rules of Practice also provides for additional time for a party to act after service by mail, this rule incorporates additional time in the stated time frames and no additional time will be added for that purpose under this rule.

Section 1540.115(e)(3) provides that not later than 30 calendar days, or such longer period as TSA may determine for good cause, after TSA receives the individual's request for copies of the releasable materials, TSA will respond.

Under Section 1540.115(e)(4), not later than 15 calendar days after the date of service of the Initial Notification or the date of service of TSA's response to the individual's request for releasable materials, if such a request was made, the individual may serve a written reply to the Initial Notification. The reply may include any information that the individual believes the Under Secretary

[1] The registry is formally known as the "Comprehensive Airmen Information System."

should consider in making a final decision.

Section 1540.115(e)(5) provides that not later than 30 calendar days, or such longer period as TSA may determine for good cause, after TSA receives the individual's reply, TSA serves a final decision in accordance with paragraph (f) of this section.

TSA recognizes that this process provides shorter time periods for the individual and TSA to act than in many administrative proceedings. However, recognizing that the individual's certificate, rating, or authorization will be delayed or suspended by the FAA during this period, this procedure is designed to permit TSA to make a final determination quickly, ensuring that the affected individual obtains a prompt review of any issues that are raised. At the same time, TSA is committed to providing adequate process to those individuals who are subject to the procedure. Therefore, this rule provides for three levels of administrative review of TSA's determination that an individual poses a security threat. Unlike the procedure applicable to alien holders of or applicants for certificates, this rule, which applies only to citizens of the United States, provides for a separate review by the Under Secretary. Only after the Under Secretary has reviewed the relevant information and confirmed the two prior determinations of the Assistant Administrator and the Deputy Administrator, is TSA's determination final. This difference between the two rules reflects the greater level of process due to citizens of the United States under law. TSA believes this process provides adequate and appropriate procedural safeguards for the interests of United States citizens.

Under § 1540.115(f), the Deputy Administrator of TSA reviews the Initial Notification of Threat Assessment, the materials upon which the Initial Notification was based, the individual's reply, if any, and any other materials or information available to him. The Deputy Administrator will undertake a de novo review to determine whether the individual poses a security risk.

If the Deputy Administrator determines that the individual poses a security threat, the Under Secretary reviews the Initial Notification, the individual's reply, if any, and any other materials or information available to him. If the Under Secretary determines that the individual poses a security threat, TSA serves upon the individual a Final Notification of Threat Assessment and serves a copy upon the FAA Administrator. The Final Notification includes a statement that the Under Secretary has personally reviewed the Initial Notification, the individual's reply, if any, any other information or materials available to him, and has determined that the individual poses a security threat. This Final Notification will form the basis of the FAA's revocation of, or denial of, the individual's certificate, rating, or authorization.

If the Deputy Administrator does not determine that the individual poses a security threat, or upon review, the Under Secretary does not determine that the individual poses a security threat, TSA serves upon the individual a Withdrawal of the Initial Notification and serves a copy to the FAA.

Section 1540.115(g) provides that in connection with this section, TSA does not disclose to the individual classified information, as defined in Executive Order 12968 section 1.1(d), and TSA reserves the right not to disclose any other information or material not warranting disclosure or protected from disclosure under law, such as sensitive security information (SSI), sensitive law enforcement and intelligence information; sources, methods, means, and application of intelligence techniques; and identities of confidential informants, undercover operatives, and material witnesses.

In most cases, the determination that an individual poses a security threat will be based, in large part or exclusively, on classified national security information, unclassified information designated as SSI, or other information that is protected from disclosure by law, such as the Freedom of Information Act (FOIA). *See* 5 U.S.C 552(b)(1), (2), (7).

Classified national security information is information that the President or another authorized Federal official has determined, pursuant to Executive Order (EO) 12958, must be protected against unauthorized disclosure in order to safeguard the security of American citizens, the country's democratic institutions, and America's participation within the community of nations. *See* E.O. 12958 (60 FR 19825, April 20, 1995). E.O. 12968 prohibits Federal employees from disclosing classified information to individuals who have not been cleared to have access to such information under the requirements of that EO. *See* E.O. 12968 sec. 3.2(a), 6.2(a)(1) (60 FR 40245, Aug. 7, 1995). If the Assistant Administrator has determined that an individual who is the subject of a threat assessment proceeding poses a threat to transportation security, that individual will not be able to obtain a clearance to have access to classified national security information, and TSA has no authority to release such information to that individual.

The denial of access to classified information under these circumstances is consistent with the treatment of classified information under the FOIA, which specifically exempts such information from the general requirement under FOIA that all government documents are subject to public disclosure. *See* 5 U.S.C. 522(b)(1).

SSI is unclassified information that is subject to disclosure limitations under statute and TSA regulations. *See* 49 U.S.C. 114(s); 49 CFR part 1520. Under 49 U.S.C. 114(s), the Under Secretary may designate categories of information as SSI if release of the information would be detrimental to the security of transportation. The SSI designation allows TSA to limit disclosure of this information to people with a need to know in order to carry out regulatory security duties. *See* 49 CFR 1520.5(b).

Among the categories of information that the Under Secretary has defined as SSI by regulation is information concerning threats against transportation. *See* 49 CFR 1520.7(i). Thus, information that TSA obtains indicating that an individual poses a security threat, including the source of such information and the methods through which the information was obtained, will commonly be SSI or classified information. The purpose of designating such information as SSI is to ensure that those who seek to do harm to the transportation system and their associates and supporters do not obtain access to information that will enable them to evade the government's efforts to detect and prevent their activities. Disclosure of this information, especially to an individual specifically suspected of posing a threat to the aviation system, is precisely the type of harm that Congress sought to avoid by authorizing the Under Secretary to define and protect SSI.

Other types of information also are protected from disclosure by law due to their sensitivity in law enforcement and intelligence. In some instances, the release of information about a particular individual or his supporters or associates could have a substantial adverse impact on security matters. The release of the identities or other information regarding individuals related to a security threat determination by TSA could jeopardize sources and methods of the intelligence community, the identities of confidential sources, and techniques and procedures for law enforcement investigations or prosecution. *See* 5

U.S.C 552(b)(7)(D), (E). Release of such information also could have a substantial adverse impact on ongoing investigations being conducted by federal law enforcement agencies, possibly giving a terrorist organization or other group a roadmap of the course and progress of an investigation. In certain instances, release of information could alert a terrorist's coconspirators to the extent of the federal investigation and the imminence of their own detection, thus provoking flight. Those without access to information about the progress of federal investigations are not in a meaningful position and therefore cannot make judgments about the risk of release of information about that investigation that TSA has relied upon in making a security threat determination.

This intelligence "mosaic" dilemma has been well recognized by the courts in concluding both that they are ill-suited to second guess the Executive Branch's determination and that seemingly innocuous production should not be made. The business of foreign intelligence gathering in this age of computer technology is more akin to the construction of a mosaic than it is to the management of a cloak-and-dagger affair. Thousands of pieces of seemingly innocuous information can be analyzed and fitted into place to reveal with startling clarity how the unseen whole must operate. The Fourth Circuit Court of Appeals has observed:

> The significance of one item of information may frequently depend upon knowledge of many other items of information. What may seem trivial to the uninformed, may appear of great moment to one who has a broad view of the scene and may put the questioned item of information in its proper context. The courts, of course are ill-equipped to become sufficiently steeped in foreign intelligence matters to serve effectively in the review of secrecy classifications in this area.

United States v. *Marchetti*, 466 F.2d 1309, 1318 (4th Cir.), *cert. denied*, 409 U.S. 1063 (1972). *Halkin* v. *Helms*, 598 F. 2d 1 (D.C. Cir 1978). *See also e.g., Kasza* v. *Browner*, 133 F. 3d 1159, 1166 (9th Cir. 1998) (Quoting Halkin); *J Roderick MacArthur Foundation* v. *Federal Bureau of Investigation*, 102 F.3d 600, 604 (D.C. Cir 1996) ("As we have said before, "Intelligence gathering is akin to the construction of a mosaic' "(citation omitted)).

For the reasons discussed above, TSA will not provide to the individual under these procedures any classified information, and TSA reserves the right not to disclose SSI or other sensitive material not warranting disclosure or protected from disclosure under law.

Good Cause for Immediate Adoption

This action is being taken without providing the opportunity for notice and comment, and it provides for immediate effectiveness upon adoption. The Under Secretary has determined this action is necessary to prevent imminent hazard to aircraft, persons, and property within the United States. TSA, after consultation with the FAA, has determined that this action is necessary to minimize security threats and potential security vulnerabilities to the fullest extent possible. The FAA, TSA, and other federal security organizations have been concerned about the potential use of aircraft to carry out terrorist acts in the United States since September 11. This rule codifies the fundamental and inherently obvious principle that a person who TSA determines poses a security threat should not hold an FAA-issued airman certificate.

The Under Secretary finds that notice and comment are unnecessary, impracticable, and contrary to the public interest, pursuant to section 553 of the Administrative Procedure Act (APA). Section 553(b) of the APA permits an agency to forgo notice and comment rulemaking when "the agency for good cause finds * * * that notice and public procedures thereon are impracticable, unnecessary, or contrary to the public interest." The use of notice and comment prior to issuance of this rule could delay the ability of TSA and the FAA to take effective action to keep persons found by TSA to pose a security threat from holding an airman certificate. Further, the Under Secretary finds that good cause exists under 5 U.S.C. 553(d) for making this final rule effective immediately upon publication. This action is necessary to prevent a possible imminent hazard to aircraft, persons, and property within the United States.

Economic Analyses

Changes to Federal regulations must undergo several economic analyses. First, E.O. 12866 directs each Federal agency to propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Office of Management and Budget directs agencies to assess the effect of regulatory changes on international trade. Fourth, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more annually (adjusted for inflation).

This regulatory evaluation applies to both this rule, which applies to U.S. citizens, and to the corresponding rule, which applies to aliens. While, to date, all individuals whom the Under Secretary has assessed as threats have been aliens, TSA is not able to predict which individuals, who may be subject to TSA threat assessments, may be citizens of the United States or aliens in the future. This regulatory evaluation examines the costs and benefits of TSA notifying the FAA of its assessment that an individual holding or applying for an FAA certificate, rating, or authorization poses a security threat. TSA is taking this action in an ongoing effort to improve national security. The procedure of notification and action taken by the FAA and TSA could prevent aircraft, persons, and property in the United States from imminent peril by the denial or revocation of FAA certificates, ratings, or authorizations of those individuals who pose a security threat.

The Assistant Administrator for Intelligence makes a determination regarding an individual posing a security threat who also holds or is applying for an FAA certificate, rating, or authorization. The Assistant Administrator then issues an Initial Notification to the FAA Administrator and the subject individual. At that time, the individual has the opportunity to act in three ways: (1) Reply and request the materials that the determination is based on; (2) reply without requesting materials; or (3) do nothing. The Deputy Administrator reviews the Initial Notification, and the Under Secretary makes the final review. TSA issues the Final Notification or a Withdrawal of Initial Notification to the FAA Administrator and the subject individual. It is the FAA Administrator who will take action and deny or revoke the FAA certificate, rating, or authorization if the Under Secretary determines that the individual poses a security threat. There are over 3.75 million holders of airmen certificates, ratings, or authorizations, who are subject to this final rule.

TSA has determined that this rule is not, in economic impact, a "significant regulatory action" as defined in E.O. 12866, Regulatory Planning and Review, but due to the potential public interest in this rule it is considered to be a "significant regulatory action" under

that Executive Order and under the DOT Regulatory Policies and Procedures. TSA determines this final rule does not have a significant economic impact on a substantial number of small entities. Regarding paperwork reduction, there are no new requirements for the collection of information associated with this rule. In terms of international trade, the rule will neither impose a competitive trade disadvantage to U.S. aircraft operators operating overseas nor foreign aircraft operators deplaning or enplaning passengers within the United States. In terms of the Unfunded Mandates Act, the rule will not contain any Federal intergovernmental mandates or private sector mandates.

Introduction and Background

ATSA (49 U.S.C. 114) makes TSA responsible for security in all modes of transportation regulated by DOT, including civil aviation. Additionally, ATSA transferred the duty of ensuring civil aviation security from the FAA to TSA. To carry out its security mission, TSA must assess intelligence and other information in order to identify individuals who pose a threat to security. In doing so, TSA must coordinate with other federal agencies, including the FAA, to address these threats. 49 U.S.C. 114(f)(13) specifically requires TSA to work with the FAA Administrator to take actions that may affect aviation safety or air carrier operations.

While performing the duty of ensuring civil aviation security, TSA receives information from other agencies and other sources identifying particular individuals who pose security threats. In some cases, these individuals hold airman certificates, ratings, or authorizations, such as pilot or mechanic certificates, ratings, or authorizations that were issued by the FAA in accordance with 49 U.S.C. Chapter 447. These individuals who pose security threats and hold FAA certificates, ratings, or authorizations are in positions to disrupt the civil aviation transportation system and harm the public.

In ATSA, Congress specifically required the Under Secretary to establish procedures to notify the FAA Administrator, among others, of the identities of individuals who are known to pose or suspected of posing a threat of air piracy or terrorism or a threat to airline or passenger safety. 49 U.S.C. 114(h)(2). Additionally, in 49 U.S.C. 44703(g), as amended by ATSA section 129, Congress required the FAA Administrator to make modifications to the system used for issuing aviation certificates, ratings, or authorizations in order to make the system more effective in combating acts of terrorism.

The Under Secretary has determined that TSA must notify the FAA when TSA's threat assessment reveals an individual who holds an FAA certificate, rating, or authorization or is an applicant for such certification poses a security threat. This determination is based on the Congressional authorization for the Under Secretary to identify and counter threats to transportation security and Congress's express direction that TSA work with the FAA Administrator in taking actions that may affect aviation security or air carrier operations and to communicate information to the FAA regarding individuals who pose a security threat.

Cost of Compliance

TSA has performed an expected cost-benefit analysis for the final rule. To date, from a pool of approximately 1.35 million holders of airmen certificates issued by the FAA in the last ten years, TSA has identified 11 persons who are security threats. Estimating the number of FAA certificates that will be issued in the next ten years, from 2003 to 2012, TSA has found that an estimated nine persons out of an estimated 1.11 million airmen certificates over the ten years will be flagged or at least one person per year. If, however, the estimates are off by as much as a factor of ten, TSA estimates that approximately 100 persons may be impacted over the ten-year period. This estimates equates to ten persons per year over the ten-year period.

This rule allows an impacted party to respond to the TSA-issued Initial Notification in order to refute the finding of the security threat assessment. To date, seven individuals or 63.64 percent from the 11 identified are in the process of responding to a threat assessment notice from TSA. Assuming this percentage will remain relatively constant, TSA calculated a minimum and maximum number of impacted persons who will respond ranging from one person to six persons per year. Using the value of passenger time per hour for general aviation from "Economic Values for Valuation of Federal Aviation Administration Investment and Regulatory Programs (Values)" (FAA–APO–98–8) as a proxy for the wage rate of the impacted party, TSA estimated the approximate costs to respond to an Initial Notification without legal counsel to be $31.10 per hour in 2001 dollars. TSA assumed it would take an impacted person five hours to respond to the Initial Notification via a written letter requesting releasable materials upon which the decision was made, review any TSA materials, and write a response based upon these materials. An additional $20 was added to cover any costs of postage, copying, and stationery costs. Therefore, the total estimated cost for an individual to respond to TSA's Initial Notification equals approximately $176 per person in 2001 dollars. If an individual chooses to hire legal counsel, the cost rises to approximately $1000 to $1500 based on five hours legal time at between $200–300 per hour.

TSA projected the costs of this rule for impacted parties over the ten-year period of 2003–2012. The range of one person refuting per year without legal counsel to six persons per year refuting with legal counsel was used for analysis. Costs were discounted over the ten-year period using the standard seven percent discount rate as dictated by the Office of Management and Budget (Circular A–94). The total costs for this rule projected over the next ten years ranges from $1,755 (if one person per year responds on his/her own without legal counsel) to $71,735 (if six persons per year hire legal counsel to respond to findings) in 2001 discounted dollars.

Analysis of Benefits

This rule is intended to enhance aviation security. Congress has mandated that the Under Secretary identify and counter threats to the transportation system and national security, as well as, work with the FAA Administrator to take actions that may affect aviation safety or air carrier operations and to communicate information to the FAA regarding individuals who pose a security threat. The primary benefit of the rule will be increased protection to Americans and others from acts of terrorism. The changes envisioned in this rule are an integral part of the total program needed to prevent a criminal or terrorist incident in the future.

Since the mid-1980s, the major goals of aviation security have been to prevent bombing and sabotage incidents. The individuals covered by this rule hold airman certificates, ratings, or authorizations, such as pilot and mechanic certificates, ratings, or authorizations, issued by the FAA under 49 U.S.C. Chapter 447. These certificates, ratings, or authorizations allow these individuals access to aircraft while in maintenance and repair, to fly aircraft, or to operate aircraft navigational equipment. These individuals are in unique positions to disrupt the civil air transportation system and harm the public through acts of air piracy, sabotage, or misuse of

the aircraft. As such, these individuals could represent a definitive threat to security.

Comparison of Costs and Benefits

It is estimated this rule will have insignificant incurred costs when compared to the potential benefits. The potential benefits are huge in the number of lives and amount of property within the United States saved from a catastrophic terrorist act by this rule. As such, the small amount of costs and the large positive value of the cost-benefit analysis support the rule as cost-beneficial.

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (RFA) established "as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the businesses, organizations, and governmental jurisdictions subject to regulation." To achieve that principle, the RFA requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions. The RFA covers a wide-range of small entities, including small businesses, not-for-profit organizations and small governmental jurisdictions.

Agencies must perform a review to determine whether a proposed or final rule will have a significant economic impact on a substantial number of small entities. If the determination is that it will, the agency must prepare a regulatory flexibility analysis as described in the RFA. However, if an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the RFA provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

TSA has determined that this rule will not have a significant economic impact on a substantial number of small entities, pursuant to the RFA, 5 U.S.C. 605(b). This determination is based on the fact that the rule affects only individuals, not entities. Additionally, based on the comparison of costs and benefits set forth above, the costs incurred by individuals will be insignificant compared to potential benefits of the rule. Therefore, pursuant to the RFA, 5 U.S.C. 605(b), TSA certifies that this rule will not have a significant impact on a substantial number of small entities. The FAA has also issued a final rule regarding denial and revocation of FAA-issued certificates, ratings, or authorizations and has determined that such denial or revocation will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) requires that the TSA consider the impact of paperwork and other information collection burdens imposed on the public. We have determined that there are no new requirements for information collection associated with this final rule. An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a current valid Office of Management and Budget (OMB) control number.

International Trade Impact Statement

The Trade Agreement Act of 1979 prohibits Federal agencies from engaging in any standards or related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety and security, are not considered unnecessary obstacles. The statute also requires consideration of international standards, and where appropriate, that they be the basis for U.S. standards. The TSA has assessed the potential effect of this rulemaking and has determined that it will have only a domestic impact and, therefore, no effect on any trade-sensitive activity.

Unfunded Mandates Determination

The Unfunded Mandates Reform Act of 1995 (the Act), enacted as Pub. L. 104–4 on March 22, 1995, is intended, among other things, to curb the practice of imposing unfunded Federal mandates on State, local, and tribal governments.

Title II of the Act requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in a $100 million or more expenditure (adjusted annually for inflation) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a "significant regulatory action."

This final rule does not contain such a mandate. Therefore, the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply.

Executive Order 13132, Federalism

TSA has analyzed this final rule under the principles and criteria of Executive Order 13132, Federalism. We determined that this action will not have a substantial direct effect on the States, or the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government, and therefore does not have federalism implications.

Environmental Analysis

TSA has reviewed this action for purposes of the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4347) and has determined that this action will not have a significant effect on the human environment.

Energy Impact

The energy impact of this final rule has been assessed in accordance with the Energy Policy and Conservation Act (EPCA) Pub. L. 94–163, as amended (42 U.S.C. 6362). We have determined that this rulemaking is not a major regulatory action under the provisions of the EPCA.

List of Subjects in 49 CFR Part 1540

Air carriers, Aircraft, Airports, Law enforcement officers, Reporting and recordkeeping requirements, Security measures.

The Amendment

In consideration of the foregoing, the Transportation Security Administration amends Chapter XII of Title 49, Code of Federal Regulations, as follows:

PART 1540—CIVIL AVIATION SECURITY: GENERAL RULES

1. The authority citation for part 1540 continues to read as follows:

Authority: 49 U.S.C. 114, 5103, 40119, 44901–44907, 44913–44914, 44916–44918, 44935–44936, 44942, 46105.

2. Amend part 1540 by adding § 1540.115 to read as follows:

§ 1540.115 Threat assessments regarding citizens of the United States holding or applying for FAA certificates, ratings, or authorizations.

(a) *Applicability.* This section applies when TSA has determined that an individual who is a United States citizen and who holds, or is applying for, an airman certificate, rating, or authorization issued by the Administrator, poses a security threat.

(b) *Definitions.* The following terms apply in this section:

Assistant Administrator means the Assistant Administrator for Intelligence for TSA.

Date of service means—

(1) The date of personal delivery in the case of personal service;

(2) The mailing date shown on the certificate of service;

(3) The date shown on the postmark if there is no certificate of service; or

(4) Another mailing date shown by other evidence if there is no certificate of service or postmark.

Deputy Administrator means the officer next in rank below the Under Secretary of Transportation for Security.

FAA Administrator means the Administrator of the Federal Aviation Administration.

Individual means an individual whom TSA determines poses a security threat.

Under Secretary means the Under Secretary of Transportation for Security.

(c) *Security threat.* An individual poses a security threat when the individual is suspected of posing, or is known to pose—

(1) A threat to transportation or national security;

(2) A threat of air piracy or terrorism;

(3) A threat to airline or passenger security; or

(4) A threat to civil aviation security.

(d) *Representation by counsel.* The individual may, if he or she so chooses, be represented by counsel at his or her own expense.

(e) *Initial Notification of Threat Assessment.* (1) *Issuance.* If the Assistant Administrator determines that an individual poses a security threat, the Assistant Administrator serves upon the individual an Initial Notification of Threat Assessment and serves the determination upon the FAA Administrator. The Initial Notification includes—

(i) A statement that the Assistant Administrator personally has reviewed the materials upon which the Initial Notification was based; and

(ii) A statement that the Assistant Administrator has determined that the individual poses a security threat.

(2) *Request for Materials.* Not later than 15 calendar days after the date of service of the Initial Notification, the individual may serve a written request for copies of the releasable materials upon which the Initial Notification was based.

(3) *TSA response.* Not later than 30 calendar days, or such longer period as TSA may determine for good cause, after receiving the individual's request for copies of the releasable materials upon which the Initial Notification was based, TSA serves a response. TSA will not include in its response any classified information or other information described in paragraph (g) of this section.

(4) *Reply.* The individual may serve upon TSA a written reply to the Initial Notification of Threat Assessment not later than 15 calendar days after the date of service of the Initial Notification, or the date of service of TSA's response to the individual's request under paragraph (e)(2) if such a request was served. The reply may include any information that the individual believes TSA should consider in reviewing the basis for the Initial Notification.

(5) *TSA final determination.* Not later than 30 calendar days, or such longer period as TSA may determine for good cause, after TSA receives the individual's reply, TSA serves a final determination in accordance with paragraph (f) of this section.

(f) *Final Notification of Threat Assessment.* (1) *In general.* The Deputy Administrator reviews the Initial Notification, the materials upon which the Initial Notification was based, the individual's reply, if any, and any other materials or information available to him.

(2) *Review and Issuance of Final Notification.* If the Deputy Administrator determines that the individual poses a security threat, the Under Secretary reviews the Initial Notification, the materials upon which the Initial Notification was based, the individual's reply, if any, and any other materials or information available to him. If the Under Secretary determines that the individual poses a security threat, the Under Secretary serves upon the individual a Final Notification of Threat Assessment and serves the determination upon the FAA Administrator. The Final Notification includes a statement that the Under Secretary personally has reviewed the Initial Notification, the individual's reply, if any, and any other materials or information available to him, and has determined that the individual poses a security threat.

(3) *Withdrawal of Initial Notification.* If the Deputy Administrator does not determine that the individual poses a security threat, or upon review, the Under Secretary does not determine that the individual poses a security threat, TSA serves upon the individual a Withdrawal of the Initial Notification and provides a copy of the Withdrawal to the FAA Administrator.

(g) *Nondisclosure of certain information.* In connection with the procedures under this section, TSA does not disclose to the individual classified information, as defined in Executive Order 12968 section 1.1(d), and reserves the right not to disclose any other information or material not warranting disclosure or protected from disclosure under law.

Issued in Washington, DC on January 21, 2003.

J.M. Loy,

Under Secretary of Transportation for Security.

[FR Doc. 03–1682 Filed 1–22–03; 10:09 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Transportation Security Administration

49 CFR Part 1540

[Docket No. TSA–2002–13733; Amendment No. 1540–4]

RIN 2110–AA17

Threat Assessments Regarding Alien Holders of, and Applicants for, FAA Certificates

AGENCY: Transportation Security Administration (TSA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: This final rule establishes the procedure by which TSA will notify the subject individual and the Federal Aviation Administration (FAA) of TSA's assessment that an individual who is an alien and who holds or is applying for an FAA airman certificate, rating, or authorization poses a security threat. This procedure provides such individuals notice and an opportunity to be heard before TSA makes a final decision, while furthering the federal government's important and immediate interest in protecting national security and providing the nation with a safe and secure transportation system.

DATES: Effective on January 24, 2003. Submit comments by March 25, 2003.

ADDRESSES: Address your comments to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number TSA–2002–13733 at the beginning of your comments, and you should submit two copies of your comments. If you wish to receive confirmation that TSA received your comments, include a self-addressed, stamped postcard.

You may also submit comments through the Internet to *http://dms.dot.gov*. You may review the public docket containing comments to these regulations in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal

holidays. The Dockets Office is on the plaza level of the NASSIF Building at the Department of Transportation at the above address. Also, you may review public dockets on the Internet at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Brandon Straus, Office of the Chief Counsel, Transportation Security Administration, 400 Seventh Street, SW., Washington, DC 20590–0001; telephone (202) 493–1224; e-mail: *brandon.straus@tsa.dot.gov*. For information regarding the Economic Analysis, contact Jenny R. Randall, Economist, Office of Security Regulation & Policy, Transportation Security Administration, 400 Seventh Street, SW., Washington, DC 20590–0001; telephone (202) 385–1554; e-mail: *jenny.randall@tsa.dot.gov*.

SUPPLEMENTARY INFORMATION:

Comments Invited

This final rule is being adopted without prior notice and prior public comment. However, the Regulatory Policies and Procedures of the Department of Transportation (DOT) (44 FR 1134; February 26, 1979) provide that, to the maximum extent possible, operating administrations within DOT should provide an opportunity for public comment on regulations issued without prior notice. Accordingly, interested persons are invited to participate in this rulemaking by submitting written data, views, or arguments. We also invite comments relating to the economic, environmental, energy, or federalism impacts that might result from adopting this amendment. The most helpful comments will reference a specific portion of the rule, explain the reason for any recommended change, and include supporting data. See **ADDRESSES** above for information on how to submit comments.

We will file in the docket all comments we receive, as well as a report summarizing each substantive public contact with TSA personnel concerning this rulemaking. The docket is available for public inspection before and after the comment closing date.

We will consider all comments we receive on or before the closing date for comments. We will consider comments filed late if it is possible to do so without incurring expense or delay. We may change these rules in light of the comments we receive.

Electronic Access

You can get an electronic copy using the Internet by:

(1) Searching the Department of Transportation's electronic Docket Management System (DMS) Web page *(http://dms.dot.gov/search)*;

(2) Accessing the Government Printing Office's Web page at *http://www.access.gpo.gov/su_docs/aces/aces140.html*; or

(3) Visiting the TSA's Laws and Regulations Web page at *http://www.tsa.dot.gov/law_policy/law_policy_index.shtm*.

In addition, copies are available by writing or calling the individual in the **FOR FURTHER INFORMATION CONTACT** section. Make sure to identify the docket number of this rulemaking.

Small Entity Inquiries

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 requires the TSA to comply with small entity requests for information and advice about compliance with statutes and regulations within the TSA's jurisdiction. Any small entity that has a question regarding this document may contact the person listed in **FOR FURTHER INFORMATION CONTACT**. Persons can obtain further information regarding SBREFA on the Small Business Administration's Web page at *http://www.sba.gov/advo/laws/law_lib.html*.

Background

Following the terrorist attacks on the United States on September 11, 2001, Congress recognized the need for a fundamental change in the federal government's approach to ensuring the security of civil aviation. The September 11 attacks highlighted the fact that the security of the civil aviation system is critical to national security and essential to the basic freedom of Americans to move in intrastate, interstate, and international transportation. *See* H.R. Conf. Rep. 107–296, 107th Cong., 1st Sess. 53 (2001).

In order to address the need for heightened security in civil aviation and other modes of transportation, Congress passed the Aviation and Transportation Security Act (ATSA), Pub. L. 107–71, 115 Stat. 597 (November 19, 2001). ATSA established the TSA within DOT, operating under the direction of the Under Secretary of Transportation for Security (Under Secretary). TSA is responsible for security in all modes of transportation regulated by DOT, including civil aviation. Accordingly, ATSA transferred the responsibility for civil aviation security from the FAA to TSA.

ATSA Requirements

As part of its security mission, TSA is responsible for assessing intelligence and other information in order to identify individuals who pose a threat to transportation security and to coordinate countermeasures with other Federal agencies, including the FAA, to address such threats. *See* 49 U.S.C. 114(f)(1)–(5), (h)(1)–(4). Specifically, Congress required TSA to work with the FAA Administrator to take actions that may affect aviation safety or air carrier operations. 49 U.S.C. 114(f)(13).

In the course of carrying out this responsibility, TSA receives information from other federal agencies and other sources identifying specific individuals who pose security threats. TSA also receives, on a regular basis, copies of the airmen registry from the FAA.[1] In some cases, individuals identified by other agencies as security threats hold or have applied for airman certificates, ratings, or authorizations, such as pilot certificates, mechanic certificates, and special purpose pilot authorizations, issued by the FAA under 49 U.S.C. Chapter 447. Individuals who pose security threats and hold FAA certificates, ratings, or authorizations are in positions to disrupt the transportation system and harm the public.

In ATSA, Congress specifically required the Under Secretary to establish procedures to notify the FAA Administrator, among others, of the identity of individuals known to pose, or suspected of posing, a threat of air piracy or terrorism, or a threat to airline or passenger safety. 49 U.S.C. 114(h)(2). Congress required the FAA Administrator to "make modifications in the system for issuing airman certificates related to combating acts of terrorism." 49 U.S.C. 44703(g).

Based on the Under Secretary's express mandate to identify and coordinate countermeasures to address threats to the transportation system, as well as Congress's express direction for TSA to work with the FAA Administrator with respect to actions that may affect aviation safety or air carrier operations and to communicate information to the FAA regarding individuals who pose a security threat, TSA is adopting the procedures set forth herein to notify the FAA when TSA's threat assessment reveals that an alien who is an FAA certificate, rating, or authorization holder or applicant poses a security threat.

Congress has given the TSA broad powers related to the security of civil aviation, including the authority to receive, assess, and distribute intelligence information related to

[1] The registry is formally known as the "Comprehensive Airmen Information System."

transportation security. The TSA is charged with serving as the primary liaison for transportation security to the intelligence and law enforcement communities. *See* 49 U.S.C. 114(f)(1) and (5). The Under Secretary is uniquely situated as an expert in transportation security, based on his functions, responsibilities, duties, and powers, to determine whether sufficient cause exists to believe that an individual poses a threat to aviation security. Congress, in ATSA, committed to the TSA's discretion the role of assessing such threats and communicating them to other agencies, including the FAA, for appropriate action.

In ATSA, Congress also created the Transportation Security Oversight Board (TSOB). 49 U.S.C. 115. The members include the Secretary of Transportation, the Attorney General, the Secretary of Defense, the Secretary of the Treasury, and the Director of the Central Intelligence Agency, or such officials' designees, as well as one member appointed by the President to represent the National Security Council and one member appointed by the President to represent the Office of Homeland Security. The Under Secretary is required to consult with the TSOB in establishing procedures for notifying the FAA Administrator of the identity of individuals known to pose, or suspected of posing, a risk of air piracy or terrorism, or a threat to airline or passenger safety. 49 U.S.C. 114(h)(2). The Under Secretary has consulted with the TSOB regarding the procedures set forth in this rule.

Discussion of the Final Rule

This final rule adds a new § 1540.117 to 49 CFR part 1540, entitled "Threat assessments regarding aliens holding or applying for FAA certificates, ratings, or authorizations." New § 1540.117 sets forth the procedure that TSA follows when notifying the FAA of certain individuals who pose a security threat.

Section 1540.117(a) provides that the notification procedure applies when TSA has determined that an individual holding or applying for an FAA airman certificate, rating, or authorization poses a security threat.

This rule applies to aliens, not to citizens of United States. A separate rule published in this **Federal Register** applies to United States citizens. The agency is not required to afford aliens the same processes afforded to United States citizens who apply for or hold airman certificates. Pursuant to 49 U.S.C. 44703(e), the FAA Administrator may restrict or prohibit issuance of an airman certificate to an alien for any reason. Additionally, the FAA Administrator may make issuing the certificate to an alien dependent on a reciprocal agreement with the government of a foreign country. At this time, TSA has determined that certain aliens pose a security threat, but has not made such a determination as to any U.S. citizen.

As discussed further below, under the final rule the Deputy Administrator of TSA makes the final security threat determination, under a delegation of authority from the Under Secretary. The Deputy Administrator is the officer next in rank below the Under Secretary. Under a rule published separately in this **Federal Register** setting forth TSA's procedures governing security threat determinations for citizens of the United States, the Under Secretary is the final decision maker for threat assessments for those categories of individuals. This difference between the two rules reflects the greater level of process due to citizens of the United States under law.

Section 1540.117(b) of the final rule sets forth the definitions of certain terms used in the rule, some of which are discussed further below.

Under § 1540.117(c) of the final rule, an individual poses a security threat if the individual is suspected of posing or is known to pose: (1) A threat to transportation or national security; (2) a threat of air piracy or terrorism; (3) a threat to airline or passenger security; or (4) a threat to civil aviation security. This definition is based on 49 U.S.C. 114(f) and (h), which authorize the Under Secretary to identify and counter threats to the transportation system and to communicate information to the FAA regarding individuals who pose a security threat.

While TSA has been granted full discretion to conduct threat assessments and act upon them, the agency recognizes that notifying the FAA that an individual poses a security threat will have significant consequences. Further, the individual may have information that he or she may wish TSA to consider in making a final decision. Accordingly, the procedure in this final rule provides an individual with an opportunity to respond before TSA makes a final decision on the threat assessment.

Section 1540.117(d) of this final rule makes clear that the individual may, if he or she so chooses, be represented by counsel at his or her own expense, in the proceedings described in the final rule.

Section 1540.117(e)(1) provides that if the Assistant Administrator for Intelligence for TSA (Assistant Administrator) determines that an individual poses a security threat, the Assistant Administrator will serve upon that individual an Initial Notification of Threat Assessment and serve it upon the FAA. This Initial Notification will form the basis for the FAA to delay the issuance of or to suspend the individual's certificate, rating, or authorization pending completion of TSA's process.

Section 1540.117(e)(2) provides that not later than 15 calendar days after the date of service of the Initial Notification, the individual may serve a written request for copies of releasable materials upon which the Initial Notification was based.

Under § 1540.117(b)(2), "date of service" has the same meaning as the definition of that term in the Rules of Practice in Transportation Security Administration Civil Penalty Actions and TSA's Investigative and Enforcement Procedures. *See* 49 CFR § 1503.211(d). We note that, while § 1503.211(e) of the Rules of Practice also provides for additional time for a party to act after service by mail, this rule incorporates additional time in the stated time frames and no additional time will be added for that purpose under this rule.

Section 1540.117(e)(3) provides that not later than 30 calendar days, or such longer period as TSA may determine for good cause, after TSA receives the individual's request for copies of the releasable materials, TSA will respond.

Under Section 1540.117(e)(4), not later than 15 calendar days after the date of service of the Initial Notification or the date of service of TSA's response to the individual's request for releasable materials, if such a request was made, the individual may serve TSA a written reply to the Initial Notification. The reply may include any information that the individual believes TSA should consider in making a final decision.

Section 1540.117(e)(5) provides that not later than 30 calendar days after TSA receives the individual's reply, or such longer period as TSA may determine for good cause, TSA serves a final decision in accordance with paragraph (f) of this section.

TSA recognizes that this process provides shorter time periods for the individual and TSA to act than many administrative proceedings. However, recognizing that the individual's certificate, rating, or authorization will be delayed or suspended by the FAA during this period, this procedure is designed to permit the Deputy Administrator to make a final determination quickly, ensuring that the affected individual obtains a prompt review of any issues that are raised.

Under § 1540.117(f), the Deputy Administrator reviews the Initial Notification of Threat Assessment, the materials upon which the Initial Notification was based, the individual's reply, if any, and any other materials or information available to him. The Deputy Administrator will undertake a *de novo* review to determine whether the individual poses a security risk.

If the Deputy Administrator determines that the individual poses a security threat, TSA serves upon the individual a Final Notification of Threat Assessment and serves a copy upon the Administrator. The Final Notification includes a statement that the Deputy Administrator has personally reviewed the Initial Notification, the individual's reply, if any, and any other materials or information available to him, and has determined that the individual poses a security threat. This Final Notification will form the basis of the FAA's revocation of, or denial of, the individual's certificate, rating, or authorization.

If the Deputy Administrator does not determine that the individual poses a security threat, TSA serves upon the individual a Withdrawal of the Initial Notification and serves a copy upon the FAA.

Section 1540.117(g) provides that in connection with this section, TSA does not disclose to the individual classified information, as defined in Executive Order 12968 section 1.1(d), and TSA reserves the right not to disclose any other information or material not warranting disclosure or protected from disclosure under law, such as sensitive security information (SSI), sensitive law enforcement and intelligence information; sources, methods, means, and application of intelligence techniques, and identities of confidential informants, undercover operatives, and material witnesses.

In most cases, the determination that an individual poses a security threat will be based, in large part or exclusively, on classified national security information, unclassified information designated as SSI, or other information that is protected from disclosure by law, such as the Freedom of Information Act (FOIA). *See* 5 U.S.C 552(b)(1), (2), (7).

Classified national security information is information that the President or another authorized Federal official has determined, pursuant to Executive Order (EO) 12958, must be protected against unauthorized disclosure in order to safeguard the security of American citizens, the country's democratic institutions, and America's participation within the community of nations. *See* E.O. 12958 (60 FR 19825, April 20, 1995). E.O. 12968 prohibits Federal employees from disclosing classified information to individuals who have not been cleared to have access to such information under the requirements of that EO *See* E.O. 12968 sec. 3.2(a), 6.2(a)(1) (60 FR 40245, Aug. 7, 1995). If the Assistant Administrator has determined that an individual who is the subject of a threat assessment proceeding poses a threat to transportation security, that individual will not be able to obtain a clearance to have access to classified national security information, and TSA has no authority to release such information to that individual.

The denial of access to classified information under these circumstances is consistent with the treatment of classified information under the FOIA, which specifically exempts such information from the general requirement under FOIA that all government documents are subject to public disclosure. *See* 5 U.S.C. 522(b)(1).

SSI is unclassified information that is subject to disclosure limitations under statute and TSA regulations. *See* 49 U.S.C. 114(s); 49 CFR part 1520. Under 49 U.S.C. 114(s), the Under Secretary may designate categories of information as SSI if release of the information would be detrimental to the security of transportation. The SSI designation allows TSA to limit disclosure of this information to people with a need to know in order to carry out regulatory security duties. *See* 49 CFR 1520.5(b).

Among the categories of information that the Under Secretary has defined as SSI by regulation is information concerning threats against transportation. *See* 49 CFR 1520.7(i). Thus, information that TSA obtains indicating that an individual poses a security threat, including the source of such information and the methods through which the information was obtained, will commonly be SSI or classified information. The purpose of designating such information as SSI is to ensure that those who seek to do harm to the transportation system and their associates and supporters do not obtain access to information that will enable them to evade the government's efforts to detect and prevent their activities. Disclosure of this information, especially to an individual specifically suspected of posing a threat to the aviation system, is precisely the type of harm that Congress sought to avoid by authorizing the Under Secretary to define and protect SSI.

Other types of information also are protected from disclosure by law due to their sensitivity in law enforcement and intelligence. In some instances, the release of information about a particular individual or his supporters or associates could have a substantial adverse impact on security matters. The release of the identities or other information regarding individuals related to a security threat determination by TSA could jeopardize sources and methods of the intelligence community, the identities of confidential sources, and techniques and procedures for law enforcement investigations or prosecution. *See* 5 U.S.C. 552(b)(7)(D), (E). Release of such information also could have a substantial adverse impact on ongoing investigations being conducted by Federal law enforcement agencies, possibly giving a terrorist organization or other group a roadmap of the course and progress of an investigation. In certain instances, release of information could alert a terrorist's coconspirators to the extent of the Federal investigation and the imminence of their own detection, thus provoking flight. Those without access to information about the progress of federal investigations are not in a meaningful position and therefore cannot make judgments about the risk of release of information about that investigation that TSA has relied upon in making a security threat determination.

This intelligence "mosaic" dilemma has been well recognized by the courts in concluding both that they are ill-suited to second guess the Executive Branch's determination and that seemingly innocuous production should not be made. The business of foreign intelligence gathering in this age of computer technology is more akin to the construction of a mosaic than it is to the management of a cloak-and-dagger affair. Thousands of pieces of seemingly innocuous information can be analyzed and fitted into place to reveal with startling clarity how the unseen whole must operate. The Fourth Circuit Court of Appeals has observed:

> "The significance of one item of information may frequently depend upon knowledge of many other items of information. What may seem trivial to the uninformed, may appear of great moment to one who has a broad view of the scene and may put the questioned item of information in its proper context. The courts, of course are ill equipped to become sufficiently steeped in foreign intelligence matters to serve effectively in the review of secrecy classifications in this area."

United States versus *Marchetti*, 466 F. 2d 1309, 1318 (4th Cir.), *cert. denied*, 409 U.S. 1063 (1972). *Halkin* versus *Helms*, 598 F. 2d 1 (D.C. Cir. 1978). *See*

also e.g., Kasza versus *Browner*, 133 F. 3d 1159, 1166 (9th Cir. 1998) (Quoting Halkin); *J. Roderick MacArthur Foundation* versus *Federal Bureau of Investigation*, 102 F. 3d 600, 604 (D.C. Cir. 1996) ("As we have said before, 'Intelligence gathering is akin to the construction of a mosaic' " (citation omitted)).

For the reasons discussed above, TSA will not provide to the individual under these procedures any classified information, and TSA reserves the right not to disclose SSI or other sensitive material not warranting disclosure or protected from disclosure under law.

Good Cause for Immediate Adoption

This action is being taken without providing the opportunity for notice and comment, and it provides for immediate effectiveness upon adoption. The Under Secretary has determined this action is necessary to prevent imminent hazard to aircraft, persons, and property within the United States. TSA, after consultation with the FAA, has determined that this action is necessary to minimize security threats and potential security vulnerabilities to the fullest extent possible. The FAA, TSA, and other federal security organizations have been concerned about the potential use of aircraft to carry out terrorist acts in the United States since September 11. This rule codifies the fundamental and inherently obvious principle that a person who TSA determines poses a security threat should not hold an FAA-issued airman certificate.

The Under Secretary finds that notice and comment are unnecessary, impracticable, and contrary to the public interest, pursuant to section 553 of the Administrative Procedure Act (APA). Section 553(b) of the APA permits an agency to forgo notice and comment rulemaking when "the agency for good cause finds * * * that notice and public procedures thereon are impracticable, unnecessary, or contrary to the public interest." The use of notice and comment prior to issuance of this rule could delay the ability of TSA and the FAA to take effective action to keep persons found by TSA to pose a security threat from holding an airman certificate. Further, the Under Secretary finds that good cause exists under 5 U.S.C. 553(d) for making this final rule effective immediately upon publication. This action is necessary to prevent a possible imminent hazard to aircraft, persons, and property within the United States.

Economic Analyses

Changes to Federal regulations must undergo several economic analyses. First, E.O. 12866 directs each Federal agency to propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Office of Management and Budget directs agencies to assess the effect of regulatory changes on international trade. Fourth, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more annually (adjusted for inflation).

This regulatory evaluation applies to both this rule, which applies to aliens, and to the corresponding rule, which applies to citizens of the United States. While, to date, all individuals whom the Under Secretary has assessed as threats have been aliens, TSA is not able to predict which individuals, who may be subject to TSA threat assessments, may be citizens of the United States or aliens in the future. This regulatory evaluation examines the costs and benefits of TSA notifying the FAA of its assessment that an individual holding or applying for an FAA certificate, rating, or authorization poses a security threat. TSA is taking this action in an ongoing effort to improve national security. The procedure of notification and action taken by the FAA and TSA could prevent aircraft, persons, and property in the United States from imminent peril by the denial or revocation of FAA certificates, ratings, or authorizations of those individuals who pose a security threat.

The Assistant Administrator for Intelligence makes a determination regarding an individual posing a security threat who also holds or is applying for an FAA certificate, rating, or authorization. The Assistant Administrator then issues an Initial Notification to the FAA Administrator and the subject individual. At that time, the individual has the opportunity to act in three ways: (1) Reply and request the materials that the determination is based on; (2) reply without first requesting the materials, or (3) do nothing. The Deputy Administrator makes the final review and issues the Final Notification or a Withdrawal of Initial Notification to the FAA Administrator and the subject individual. It is the FAA Administrator who will take action and deny or revoke the FAA certificate, rating, or authorization if the Deputy Administrator determines that the individual poses a security threat.

TSA has determined that this rule is not, an economic impact, a "significant regulatory action" as defined in E.O. 12866, Regulatory Planning and Review, but due to the potential public interest in this rule it is considered to be a "significant regulatory action" under that Executive Order and under the DOT Regulatory Policies and Procedures. TSA determines this final rule does not have a significant economic impact on a substantial number of small entities. Regarding paperwork reduction, there are no new requirements for the collection of information associated with this rule. In terms of international trade, the rule will neither impose a competitive trade disadvantage to U.S. aircraft operators operating overseas nor foreign aircraft operators deplaning or enplaning passengers within the United States. In terms of the Unfunded Mandates Act, the rule will not contain any Federal intergovernmental mandates or private sector mandates.

Introduction and Background

ATSA (49 U.S.C. 114) makes TSA responsible for security in all modes of transportation regulated by DOT, including civil aviation. Additionally, ATSA transferred the duty of ensuring civil aviation security from the FAA to TSA. To carry out its security mission, TSA must assess intelligence and other information in order to identify individuals who pose a threat to security. In doing so, TSA must coordinate with other federal agencies, including the FAA, to address these threats. 49 U.S.C. 114(f)(13) specifically requires TSA to work with the FAA Administrator to take actions that may affect aviation safety or air carrier operations.

While performing the duty of ensuring civil aviation security, TSA receives information from other agencies and other sources identifying particular individuals who pose security threats. In some cases, these individuals hold airman certificates, ratings, or authorizations, such as pilot or mechanic certificates, ratings, or authorizations that were issued by the FAA in accordance with 49 U.S.C. Chapter 447. These individuals who pose security threats and hold FAA certificates, ratings, or authorizations are in positions to disrupt the civil aviation transportation system and harm the public.

In ATSA, Congress specifically required the Under Secretary to

establish procedures to notify the FAA Administrator, among others, of the identities of individuals who are known to pose or suspected of posing, a threat of air piracy or terrorism or a threat to airline or passenger safety. 49 U.S.C. 114(h)(2). Additionally, in 49 U.S.C. 44703(g), as amended by ATSA section 129, Congress required the FAA Administrator to make modifications to the system used for issuing aviation certificates, ratings, or authorizations in order to make the system more effective in combating acts of terrorism.

The Under Secretary has determined that TSA must notify the FAA when TSA's threat assessment reveals an individual who holds an FAA certificate, rating, or authorization or is an applicant for such certification poses a security threat. This determination is based on the Congressional authorization for the Under Secretary to identify and counter threats to transportation security and Congress's express direction that TSA work with the FAA Administrator in taking actions that may affect aviation security or air carrier operations and to communicate information to the FAA regarding individuals who pose a security threat.

Cost of Compliance

TSA has performed an expected cost-benefit analysis for the final rule. To date, from a pool of approximately 1.35 million holders of airmen certificates issued by the FAA in the last ten years, TSA has identified 11 persons who are security threats. Estimating the number of FAA certificates that will be issued in the next ten years, from 2003 to 2012, TSA has found that an estimated nine persons out of an estimated 1.11 million airmen certificates over the ten years will be flagged or at least one person per year. If, however, the estimates are off by as much as a factor of ten, TSA estimates that approximately 100 persons may be impacted over the ten-year period. This estimates equates to ten persons per year over the ten-year period.

This rule allows an impacted party to respond to the TSA-issued Initial Notification in order to refute the finding of the security threat assessment. To date, seven individuals or 63.64% from the 11 identified are in the process of responding to a threat assessment notice from TSA. Assuming this percentage will remain relatively constant, TSA calculated a minimum and maximum number of impacted persons who will respond ranging from one person to six persons per year. Using the value of passenger time per hour for general aviation from *Economic Values for Valuation of Federal Aviation Administration Investment and Regulatory Programs (Values)* (FAA–APO–98–8) as a proxy for the wage rate of the impacted party, TSA estimated the approximate costs to respond to an Initial Notification without legal counsel to be $31.10 per hour in 2001 dollars. TSA assumed it would take an impacted person five hours to respond to the Initial Notification via a written letter requesting releasable materials upon which the decision was made, review any TSA materials, and write a response based upon these materials. An additional $20 was added to cover any costs of postage, copying, and stationery costs. Therefore, the total estimated cost for an individual to respond to TSA's Initial Notification equals approximately $176 per person in 2001 dollars. If an individual chooses to hire legal counsel, the cost rises to approximately $1000 to $1500 based on five hours legal time at between $200–300 per hour.

TSA projected the costs of this rule for impacted parties over the ten-year period of 2003–2012. The range of one person refuting per year without legal counsel to six persons per year refuting with legal counsel was used for analysis. Costs were discounted over the ten-year period using the standard seven percent discount rate as dictated by the Office of Management and Budget (Circular A–94). The total costs for this rule projected over the next ten years ranges from $1,755 (if one person per year responds on his/her own without legal counsel) to $71,735 (if six persons per year hire legal counsel to respond to findings) in 2001 discounted dollars.

Analysis of Benefits

This rule is intended to enhance aviation security. Congress has mandated that the Under Secretary identify and counter threats to the transportation system and national security, as well as, work with the FAA Administrator to take actions that may affect aviation safety or air carrier operations and to communicate information to the FAA regarding individuals who pose a security threat. The primary benefit of the rule will be increased protection to Americans and others from acts of terrorism. The changes envisioned in this rule are an integral part of the total program needed to prevent a criminal or terrorist incident in the future.

Since the mid-1980s, the major goals of aviation security have been to prevent bombing and sabotage incidents. The individuals covered by this rule hold airman certificates, ratings, or authorizations, such as pilot and mechanic certificates, ratings, or authorizations, issued by the FAA under 49 U.S.C. Chapter 447. These certificates, ratings, or authorizations allow these individuals access to aircraft while in maintenance and repair, to fly aircraft, or to operate aircraft navigational equipment. These individuals are in unique positions to disrupt the civil air transportation system and harm the public through acts of air piracy, sabotage, or misuse of the aircraft. As such, these individuals could represent a definitive threat to security.

Comparison of Costs and Benefits

It is estimated this rule will have insignificant incurred costs when compared to the potential benefits. The potential benefits are huge in the number of lives and amount of property within the United States saved from a catastrophic terrorist act by this rule. As such, the small amount of costs and the large positive value of the cost-benefit analysis support the rule as cost-beneficial.

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (RFA) established "as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the businesses, organizations, and governmental jurisdictions subject to regulation." To achieve that principle, the RFA requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions. The RFA covers a wide-range of small entities, including small businesses, not-for-profit organizations and small governmental jurisdictions.

Agencies must perform a review to determine whether a proposed or final rule will have a significant economic impact on a substantial number of small entities. If the determination is that it will, the agency must prepare a regulatory flexibility analysis as described in the RFA. However, if an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the RFA provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

TSA has determined that this rule will not have a significant economic impact on a substantial number of small entities, pursuant to the RFA, 5 U.S.C.

605(b). This determination is based on the fact that the rule affects only individuals, not entities. Additionally, based on the comparison of costs and benefits set forth above, the costs incurred by individuals will be insignificant compared to potential benefits of the rule. Therefore, pursuant to the RFA, 5 U.S.C. 605(b), TSA certifies that this rule will not have a significant impact on a substantial number of small entities. The FAA has also issued a final rule regarding denial and revocation of FAA-issued certificates, ratings, or authorizations and has determined that such denial or revocation will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) requires that the TSA consider the impact of paperwork and other information collection burdens imposed on the public. We have determined that there are no new requirements for information collection associated with this final rule. An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a current valid Office of Management and Budget (OMB) control number.

International Trade Impact Statement

The Trade Agreement Act of 1979 prohibits Federal agencies from engaging in any standards or related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety and security, are not considered unnecessary obstacles. The statute also requires consideration of international standards, and where appropriate, that they be the basis for U.S. standards. The TSA has assessed the potential effect of this rulemaking and has determined that it will have only a domestic impact and, therefore, no effect on any trade-sensitive activity.

Unfunded Mandates Determination

The Unfunded Mandates Reform Act of 1995 (the Act), enacted as Pub. L. 104–4 on March 22, 1995, is intended, among other things, to curb the practice of imposing unfunded Federal mandates on State, local, and tribal governments.

Title II of the Act requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in a $100 million or more expenditure (adjusted annually for inflation) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a "significant regulatory action."

This final rule does not contain such a mandate. Therefore, the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply.

Executive Order 13132, Federalism

TSA has analyzed this final rule under the principles and criteria of Executive Order 13132, Federalism. We determined that this action will not have a substantial direct effect on the States, or the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government, and therefore does not have federalism implications.

Environmental Analysis

TSA has reviewed this action for purposes of the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4347) and has determined that this action will not have a significant effect on the human environment.

Energy Impact

The energy impact of this final rule has been assessed in accordance with the Energy Policy and Conservation Act (EPCA) Public Law 94–163, as amended (42 U.S.C. 6362). We have determined that this rulemaking is not a major regulatory action under the provisions of the EPCA.

List of Subjects in 49 CFR Part 1540

Air carriers, Aircraft, Airports, Law enforcement officers, Reporting and recordkeeping requirements, Security measures.

The Amendment

In consideration of the foregoing, the Transportation Security Administration amends Chapter XII of Title 49, Code of Federal Regulations, as follows:

PART 1540—CIVIL AVIATION SECURITY: GENERAL RULES

1. The authority citation for part 1540 continues to read as follows:

Authority: 49 U.S.C. 114, 5103, 40119, 44901–44907, 44913–44914, 44916–44918, 44935–44936, 44942, 46105.

2. Amend part 1540 by adding § 1540.117 to read as follows:

§ 1540.117 Threat assessments regarding aliens holding or applying for FAA certificates, ratings, or authorizations.

(a) Applicability. This section applies when TSA has determined that an individual who is not a citizen of the United States and who holds, or is applying for, an airman certificate, rating, or authorization issued by the FAA Administrator, poses a security threat.

(b) *Definitions.* The following terms apply in this section:

Assistant Administrator means the Assistant Administrator for Intelligence for TSA.

Date of service means—

(1) The date of personal delivery in the case of personal service;

(2) The mailing date shown on the certificate of service;

(3) The date shown on the postmark if there is no certificate of service; or

(4) Another mailing date shown by other evidence if there is no certificate of service or postmark.

Deputy Administrator means the officer next in rank below the Under Secretary of Transportation for Security.

FAA Administrator means the Administrator of the Federal Aviation Administration.

Individual means an individual whom TSA determines poses a security threat.

(c) *Security threat.* An individual poses a security threat when the individual is suspected of posing, or is known to pose—

(1) A threat to transportation or national security;

(2) A threat of air piracy or terrorism;

(3) A threat to airline or passenger security; or

(4) A threat to civil aviation security.

(d) *Representation by counsel.* The individual may, if he or she so chooses, be represented by counsel at his or her own expense.

(e) *Initial Notification of Threat Assessment.* (1) *Issuance.* If the Assistant Administrator determines that an individual poses a security threat, the Assistant Administrator serves upon the individual an Initial Notification of Threat Assessment and serves the determination upon the FAA Administrator. The Initial Notification includes—

(i) A statement that the Assistant Administrator personally has reviewed the materials upon which the Initial Notification was based; and

(ii) A statement that the Assistant Administrator has determined that the individual poses a security threat.

(2) *Request for materials.* Not later than 15 calendar days after the date of service of the Initial Notification, the individual may serve a written request for copies of the releasable materials upon which the Initial Notification was based.

(3) *TSA response.* Not later than 30 calendar days, or such longer period as TSA may determine for good cause, after receiving the individual's request

for copies of the releasable materials upon which the Initial Notification was based, TSA serves a response. TSA will not include in its response any classified information or other information described in paragraph (g) of this section.

(4) *Reply.* The individual may serve upon TSA a written reply to the Initial Notification of Threat Assessment not later than 15 calendar days after the date of service of the Initial Notification, or the date of service of TSA's response to the individual's request under paragraph (e)(2) if such a request was served. The reply may include any information that the individual believes TSA should consider in reviewing the basis for the Initial Notification.

(5) *TSA final determination.* Not later than 30 calendar days, or such longer period as TSA may determine for good cause, after TSA receives the individual's reply, TSA serves a final determination in accordance with paragraph (f) of this section.

(f) *Final Notification of Threat Assessment.* (1) *In general.* The Deputy Administrator reviews the Initial Notification, the materials upon which the Initial Notification was based, the individual's reply, if any, and any other materials or information available to him.

(2) *Issuance of Final Notification.* If the Deputy Administrator determines that the individual poses a security threat, the Deputy Administrator serves upon the individual a Final Notification of Threat Assessment and serves the determination upon the FAA Administrator. The Final Notification includes a statement that the Deputy Administrator personally has reviewed the Initial Notification, the individual's reply, if any, and any other materials or information available to him, and has determined that the individual poses a security threat.

(3) *Withdrawal of Initial Notification.* If the Deputy Administrator does not determine that the individual poses a security threat, TSA serves upon the individual a Withdrawal of the Initial Notification and provides a copy of the Withdrawal to the FAA Administrator.

(g) *Nondisclosure of certain information.* In connection with the procedures under this section, TSA does not disclose to the individual classified information, as defined in Executive Order 12968 section 1.1(d), and TSA reserves the right not to disclose any other information or material not warranting disclosure or protected from disclosure under law.

Issued in Washington, DC, on January 21, 2003.

J.M. Loy,

Under Secretary of Transportation for Security.

[FR Doc. 03–1683 Filed 1–22–03; 10:09 am]

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Federal Register

Friday,
January 24, 2003

Part VII

Department of Transportation

14 CFR Parts 61, et al.
Ineligibility for an Airman Certificate Based on Security Grounds; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 61, 63, and 65

[Docket No.: FAA–2003–14293; Amendment Nos. 61–108, 63–32, 65–44]

RIN 2120–AH84

Ineligibility for an Airman Certificate Based on Security Grounds

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: This final rule expressly makes a person ineligible to hold FAA-issued airman certificates if the Transportation Security Administration notifies the FAA in writing that the person poses a security threat. This action is intended to reduce the opportunity for persons to carry out terrorist acts in the aviation environment.

DATES: Effective January 24, 2003. Submit comments by March 25, 2003.

ADDRESSES: Address your comments to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590. You must identify the docket number FAA–2003–14293 at the beginning of your comments, and you should submit two copies of your comments. If you wish to receive confirmation that the FAA received your comments, include a self-addressed, stamped postcard. You may also submit comments through the Internet to *http://dms.dot.gov.*

You may review the public docket containing comments to these regulations in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Dockets Office is on the plaza level of the NASSIF Building at the Department of Transportation at the above address. You may also review public dockets on the Internet at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Peter J. Lynch, Enforcement Division, AGC–300, Office of the Chief Counsel, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; Telephone No. (202) 267–3137.

SUPPLEMENTARY INFORMATION:

Comments Invited

This final rule is being adopted without prior notice and prior public comment. The Regulatory Policies and Procedures of the Department of Transportation (DOT) (44 FR 1134; Feb 26, 1979) provide that, to the maximum extent possible, operating administrations for the DOT should provide an opportunity for public comment on regulations issued without notice. Accordingly, interested persons are invited to participate in the rulemaking by submitting written data, views, or arguments. Comments relating to the environmental, energy, federalism, or economic impact that might result from these amendments also are invited. Comments must include the docket number or amendment number and must be submitted in duplicate to the address above. All comments received, as well as a report summarizing each substantive public contact with FAA personnel concerning this rulemaking, will be filed in the public docket. The docket is available for public inspection before and after the comment closing date.

The FAA will consider all comments received on or before the closing date for comments. Late-filed comments will be considered to the extent practicable. The final rule may be amended in light of the comments received.

Availability of Rulemaking Documents

You can get an electronic copy using the Internet by taking the following steps:

(1) Go to the search function of the Department of Transportation's electronic Docket Management System (DMS) Web page *(http://dms.dot.gov/search).*

(2) On the search page type in the last four digits of the Docket number shown at the beginning of this notice. Click on "search."

(3) On the next page, which contains the Docket summary information for the Docket you selected, click on the document number for the item you wish to view.

You can also get an electronic copy using the Internet through the Office of Rulemaking's Web page at *http://www.faa.gov/avr/armhome.htm* or the Government Printing Office's Web page at *http://www.access.gpo.gov/su_docs/aces/aces140.html.*

You can also get a copy by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267–9680. Make sure to identify the amendment number or docket number of this rulemaking.

Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 requires the FAA to comply with small entity requests for information or advice about compliance with statutes and regulations within its jurisdiction. Therefore, any small entity that has a question regarding this document may contact their local FAA official, or the person listed under **FOR FURTHER INFORMATION CONTACT.** You can find out more about SBREFA on the Internet at our site, *http://www.faa.gov/avr/arm/sbrefa.htm.* For more information on SBREFA, e-mail us *9–AWA–SBREFA@faa.gov.*

Background

In response to the tragic events of September 11, 2001, Congress enacted and the President signed the Aviation and Transportation Security Act (ATSA), Public Law 107–71. This law created the Transportation Security Administration (TSA) under the direction of the Under Secretary of Transportation for Security. The Under Secretary is charged with responsibility for civil aviation security as well as security in other modes of transportation. Among other responsibilities, the Under Secretary is to receive, assess, and distribute intelligence information related to transportation security and to assess threats to transportation. The ATSA also directs the Under Secretary to establish procedures to notify the FAA Administrator of the identity of persons known to pose, or suspected of posing, a risk of air piracy or terrorism or a threat to airline or passenger safety.

The ATSA directs the Administrator to make modifications to the system for issuing airman certification to make the system more effective in serving the needs of officials responsible for enforcing laws related to combating acts of terrorism.

The Under Secretary receives information from intelligence sources that identify specific individuals who pose a security risk. In some cases, these individuals hold airman certificates issued by the FAA. On August 14, 2002, the Under Secretary advised the Administrator of 11 such individuals and asked the Administrator to revoke the airman certificates held by them. On August 20, the FAA took the requested action by issuing emergency orders of revocation. These orders became effective immediately.

By rulemakings published today in the **Federal Register**, the TSA has put in place processes for notifying an

individual that he or she has been determined to pose a security threat and to advise the FAA of its determination. One process applies to citizens of the United States, the other to aliens. Under both procedures, the individual is served with an Initial Notification of Threat Assessment when the TSA's Assistant Administrator for Intelligence has concluded that the individual poses a security threat. The individual may respond in writing to this notification and provide any information the individual believes the TSA should consider. In the case of an alien, if the TSA's Deputy Administrator finds that the person does pose a security threat, he or she issues a Final Notification of Threat Assessment. If the Deputy Administrator does not determine that the individual poses a security threat, he or she issues a Withdrawal of Initial Notification. In the case of a U.S. citizen, the Under Secretary will also review the matter before a Final Notification of Threat Assessment is issued. If the Under Secretary determines that the individual poses a security threat, the Under Secretary issues a Final Notification of Threat Assessment. If the Deputy Administrator or Under Secretary does not find that the person poses a threat, the TSA issues a Withdrawal of Initial Notification. At the time the TSA issues its notifications, the FAA is advised of the TSA's determinations with regard to individuals who hold or are applying for an airman certificate.

Once the TSA has determined that a person poses a security threat, that person should not hold an airman certificate authorizing him or her to be in a position that could be used to take actions that are contrary to civil aviation security and, therefore, safety in air commerce. Airmen are in a position to exercise the privileges of their certificates in support of terrorist activities. For example, pilots could drop chemical or biological agents from an aircraft or, as the events of September 11 demonstrated, crash aircraft into buildings. Mechanics could sabotage aircraft, and flight instructors could teach terrorists how to operate aircraft. While a person might attempt to undertake such actions even if he or she does not hold an airman certificate, taking action to deny, suspend, or revoke airman certification is intended to make it more difficult to do so. In any event, persons determined by the TSA to pose a security threat are simply unqualified to hold airman certificates.

The FAA is adding a section to 14 CFR parts 61, 63, and 65 to expressly make individuals who pose a security threat as determined by the TSA ineligible to hold certificates, ratings, and authorizations issued under those parts. This ineligibility means that the FAA will not issue a certificate, rating, or authorization to any applicant who the TSA advises the FAA poses a security threat. If the TSA issues an Initial Notification of Threat Assessment to an applicant, the FAA will hold in abeyance the application pending the outcome of the TSA's final threat assessment review. If an individual is issued a Final Notification of Threat Assessment, the FAA will deny an application for any airman certificate, rating, or authorization.

With regard to certificates already issued, the FAA will suspend an individual's airman certificates after receiving the Initial Notification of Threat Assessment from the TSA. Suspension is appropriate in this circumstance, because the TSA's initial assessment that an individual poses a security threat is still subject to review by the TSA's Deputy Administrator, and, for U.S. citizens, the Under Secretary, and may be reversed. If a Final Notification of Threat Assessment is issued, the FAA will revoke the certificates; if an Initial Notification is withdrawn, the FAA will withdraw its certificate suspension.

The eligibility standards adopted in this rulemaking rely on the threat assessments made by the TSA. This reliance is based on the broad statutory authority and responsibility that the ATSA placed in the Under Secretary with regard to intelligence information and threat assessments.

The Rule Change

The FAA is adding a new section, § 61.18, Security Disqualification, to 14 CFR part 61. This rule states that a person is not eligible to hold a certificate, rating, or authorization issued under part 61 when the TSA has advised the FAA in writing that the person poses a security threat. The TSA's initial finding that a person poses a security threat is contained in an Initial Notification of Threat Assessment; a final finding is contained in a Final Notification of Threat Assessment. The rule explains the effect of the issuance by the TSA of each document. The FAA will hold in abeyance an application by an individual who has been issued an Initial Notification pending the outcome of the TSA's final threat assessment review. If the TSA withdraws its Initial Notification, the FAA will issue a certificate provided the applicant is otherwise qualified. The FAA will suspend certificates held by any person who is initially found by the TSA to pose a security threat. The FAA will withdraw its certificate suspension if the TSA withdraws its Initial Notification. With regard to issuance of a Final Notification of Threat Assessment, the FAA will deny the application of any person to whom the TSA issues a Final Notification of Threat Assessment, and it will revoke any airman certificates held by such a person. New sections 63.14 and 65.14 are being added to 14 CFR parts 63 and 65; they are identical to section 61.18.

Justification for Immediate Adoption

This action is being taken without providing the opportunity for prior notice and comment, and it provides for immediate effectiveness upon adoption. The Administrator has determined this action is necessary to prevent a possible imminent hazard to aircraft, persons, and property within the United States. The FAA, after consultation with the TSA, has determined that this action is necessary to minimize security threats and potential security vulnerabilities to the fullest extent possible. The FAA, TSA, and other federal security organizations have been concerned about the potential use of aircraft to carry out terrorist acts in the United States since September 11. The FAA now believes it is appropriate to provide expressly by rule that an individual determined by the TSA to be a security threat is ineligible for airman certification. This rule thus codifies the fundamental and inherently obvious principle that a person who poses a security threat should not hold an FAA-issued airman certificate.

The FAA finds that notice and comment are unnecessary, impracticable, and contrary to the public interest, pursuant to section 553 of the Administrative Procedure Act (APA). Section 553(b) of the APA permits an agency to forgo notice and comment rulemaking when "the agency for good cause finds * * * that notice and public procedures thereon are impracticable, unnecessary, or contrary to the public interest." The use of notice and comment prior to issuance of this rule could delay the ability of the FAA to take effective action to keep persons found by the TSA to pose a security threat from holding an airman certificate. Further, the Administrator finds that good cause exists under 5 U.S.C. 553(d) for making this final rule effective immediately upon publication. This action is necessary to prevent a possible imminent hazard to aircraft, persons, and property within the United States.

Paperwork Reduction Act

There are no new requirements for information collection associated with this amendment. An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number.

International Compatibility

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to comply with International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA determined that there are no ICAO Standards and Recommended Practices that correspond to these regulations.

Executive Order 12866 and DOT Regulatory Policies and Procedures

This rulemaking action is taken under an emergency situation within the meaning of Section 6(a)(3)(D) of Executive Order 12866, Regulatory Planning and Review. It also is considered an emergency regulation under Paragraph 11g of the Department of Transportation (DOT) Regulatory Policies and Procedures. The FAA has not separately prepared a regulatory analysis or evaluation of this rule. However, the TSA has prepared a regulatory evaluation for its rulemaking and we do not believe that this action adds any separate costs not already covered by that evaluation. Based on that evaluation, the FAA determines that this rulemaking action is a significant rule within the meaning of the Executive Order and DOT's policies and procedures. Further, the FAA certifies that this final rule does not have a significant economic impact on a substantial number of small entities.

Trade Impact Assessment

The Trade Agreement Act of 1979 prohibits Federal agencies from engaging in any standards or related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and where appropriate, that they be the basis for U.S. standards. The FAA has assessed the potential effect of this rulemaking and has determined that it will impose no cost on international entities and thus has a neutral trade impact.

Unfunded Mandates Assessment

The Unfunded Mandates Reform Act of 1995 (the Act), enacted as Public Law 104–4 on March 22, 1995, is intended, among other things, to curb the practice of imposing unfunded Federal mandates on State, local, and tribal governments. Title II of the Act requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in a $100 million or more expenditure (adjusted annually for inflation) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a "significant regulatory action."

This final rule does not contain such a mandate. Therefore, the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply.

Executive Order 3132, Federalism

The FAA has analyzed this final rule under the principles and criteria of Executive Order 13132, Federalism. We determined that this action will not have a substantial direct effect on the States, or the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, we determined that this final rule does not have federalism implications.

Environmental Analysis

FAA Order 1050.1D defines FAA actions that may be categorically excluded from preparation of a National Environmental Policy Act (NEPA) environmental impact statement. In accordance with FAA Order 1050.1D, appendix 4, paragraph 4(j), this rulemaking action qualifies for a categorical exclusion.

Energy Impact

The energy impact of this action has been assessed in accordance with the Energy Policy and Conservation Act (EPCA) Public Law 94–163, as amended (42 U.S.C. 6362) and FAA Order 1053.1. It has been determined that the final rule is not a major regulatory action under the provisions of the EPCA.

List of Subjects in 14 CFR Parts 61, 63, and 65

Aircraft, Airmen, Aviation safety.

The Amendment

In consideration of the foregoing, the Federal Aviation Administration amends Chapter I of Title 14, Code of Federal Regulations as follows:

PART 61—CERTIFICATION: PILOTS, FLIGHT INSTRUCTORS, AND GROUND INSTRUCTORS

1. The authority citation for part 61 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701–44703, 44707, 44709–44711, 45102–45103, 45301–45302.

2. Add § 61.18 to subpart A to read as follows:

§ 61.18 Security disqualification.

(a) *Eligibility standard.* No person is eligible to hold a certificate, rating, or authorization issued under this part when the Transportation Security Administration (TSA) has notified the FAA in writing that the person poses a security threat.

(b) *Effect of the issuance by the TSA of an Initial Notification of Threat Assessment.* (1) The FAA will hold in abeyance pending the outcome of the TSA's final threat assessment review an application for any certificate, rating, or authorization under this part by any person who has been issued an Initial Notification of Threat Assessment by the TSA.

(2) The FAA will suspend any certificate, rating, or authorization issued under this part after the TSA issues to the holder an Initial Notification of Threat Assessment.

(c) *Effect of the issuance by the TSA of a Final Notification of Threat Assessment.* (1) The FAA will deny an application for any certificate, rating, or authorization under this part to any person who has been issued a Final Notification of Threat Assessment.

(2) The FAA will revoke any certificate, rating, or authorization issued under this part after the TSA has issued to the holder a Final Notification of Threat Assessment.

PART 63—CERTIFICATION: FLIGHT CREWMEMBERS OTHER THAN PILOTS

3. The authority citation for part 63 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701–44703, 44707, 44709–44711, 45102–45103, 45301–45302.

4. Add § 63.14 to subpart A to read as follows:

§ 63.14 Security disqualification.

(a) *Eligibility standard.* No person is eligible to hold a certificate, rating, or authorization issued under this part when the Transportation Security Administration (TSA) has notified the FAA in writing that the person poses a security threat.

(b) *Effect of the issuance by the TSA of an Initial Notification of Threat Assessment.* (1) The FAA will hold in abeyance pending the outcome of the TSA's final threat assessment review an application for any certificate, rating, or authorization under this part by any person who has been issued an Initial Notification of Threat Assessment by the TSA.

(2) The FAA will suspend any certificate, rating, or authorization issued under this part after the TSA issues to the holder an Initial Notification of Threat Assessment.

(c) *Effect of the issuance by the TSA of a Final Notification of Threat Assessment.* (1) The FAA will deny an application for any certificate, rating, or authorization under this part to any person who has been issued a Final Notification of Threat Assessment.

(2) The FAA will revoke any certificate, rating, or authorization issued under this part after the TSA has issued to the holder a Final Notification of Threat Assessment.

PART 65—CERTIFICATION: AIRMEN OTHER THAN FLIGHT CREWMEMBERS

5. The authority citation for part 65 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701–44703, 44707, 44709–44711, 45102–45103, 45301–45302.

6. Add § 65.14 to subpart A to read as follows:

§ 65.14 Security disqualification.

(a) *Eligibility standard.* No person is eligible to hold a certificate, rating, or authorization issued under this part when the Transportation Security Administration (TSA) has notified the FAA in writing that the person poses a security threat.

(b) *Effect of the issuance by the TSA of an Initial Notification of Threat Assessment.* (1) The FAA will hold in abeyance pending the outcome of the TSA's final threat assessment review an application for any certificate, rating, or authorization under this part by any person who has been issued an Initial Notification of Threat Assessment by the TSA.

(2) The FAA will suspend any certificate, rating, or authorization issued under this part after the TSA issues to the holder an Initial Notification of Threat Assessment.

(c) *Effect of the issuance by the TSA of a Final Notification of Threat Assessment.* (1) The FAA will deny an application for any certificate, rating, or authorization under this part to any person who has been issued a Final Notification of Threat Assessment.

(2) The FAA will revoke any certificate, rating, or authorization issued under this part after the TSA has issued to the holder a Final Notification of Threat Assessment.

Issued in Washington, DC on January 21, 2003.

Marion C. Blakey,

Administrator.

[FR Doc. 03–1681 Filed 1–22–03; 10:09 am]

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Federal Register

Friday,
January 24, 2003

Part VIII

Department of Transportation

Federal Aviation Administration

14 CFR Parts 71, et al.

Special Operating Rules for the Conduct of Instrument Flight Rules (IFR) Area Navigation (RNAV) Operations Using Global Positioning Systems (GPS) in Alaska; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 71, 91, 95, 121, 125, 129, and 135

[Docket No. FAA–2003–14305; Special Federal Aviation Regulation No. 97]

RIN 2120–AH93

Special Operating Rules for the Conduct of Instrument Flight Rules (IFR) Area Navigation (RNAV) Operations Using Global Positioning Systems (GPS) in Alaska

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: Under this Special Federal Aviation Regulation, the FAA proposes to allow the use of Global Positioning System/Wide Area Augmentation Systems for the en route portion of flights on routes in Alaska outside the operational service volume of ground based navigation aids. The use of aircraft navigation equipment other than area navigation systems, that only permit navigation to or from ground-based navigation stations, often results in less than optimal routes or instrument procedures and an inefficient use of airspace. This SFAR would optimize routes and instrument procedures and provide for a more efficient use of airspace. Further, it would result in an associated increase in flight safety.

DATES: Send your comments on or before February 24, 2003.

ADDRESSES: Address your comments to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number, FAA–2003–14305, at the beginning of your comments, and you should submit two copies of your comments. If you wish to receive confirmation that the FAA received your comments, include a self-addressed, stamped postcard. You may also submit comments through the Internet to *http://dms.dot.gov*. You may review the public docket containing comments to these proposed regulations in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Dockets Office is on the plaza level of the NASSIF Building at the Department of Transportation at the above address. Also, you may review public dockets on the Internet at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Donald W. Streeter, Flight Technologies and Procedures Division (AFS–400), Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 385–4567; e-mail: *donald.w.streeter@faa.gov*.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. We also invite comments relating to the economic, environmental, energy, or federalism impacts that might result from adopting the proposals in this document. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. We ask that you send us two copies of written comments.

We will file in the docket all comments received, as well as a report summarizing each substantive public contact made with FAA personnel concerning this proposed rulemaking. The docket is available for public inspection before and after the comment closing date. If you wish to review the docket in person, go to the address in the **ADDRESSES** section of this preamble between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also review the docket using the Internet at the web address in the **ADDRESSES** section.

Before acting on this proposal, we will consider all comments received on or before the closing date for comments. We will consider comments filed late if it is possible to do so without incurring expense or delay. We may change this proposal in light of the comments received.

If you want the FAA to acknowledge receipt of your comments on this proposal, include with your comments a pre-addressed, stamped postcard on which the docket number appears. We will stamp the date on the postcard and mail it to you.

Availability of Rulemaking Documents

You can get an electronic copy of rulemaking documents through the Internet by:

(1) Searching the Department of Transportation's electronic Docket Management System (DMS) Web page (*http://dms.dot.gov/search*);

(2) Visiting the Office of Rulemaking's Web page at *http://www.faa.gov/avr/armhome.htm*; or

(3) Accessing the **Federal Register**'s Web page at *http://www.access.gpo.gov/su_docs/aces/aces140.html*.

You also can get a copy by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267–9680. Make sure to identify the docket number or notice number of this rulemaking.

Background

Aviation is critical to Alaska for routine travel and commerce, and for nearly any kind of emergency. Only 10% of Alaska is accessible by road, and waterways are impassable most of each year. Alaska also is very large and crisscrossed by mountains that block radio and radar transmissions so that aviation services and infrastructure that are available in the 48 contiguous states are not available in many areas of Alaska. Aviation is essential to Alaska, but there also is a safety consequence of operating in this environment: The aviation accident rate for rural Alaska is 2.5 times the average for the rest of the United States. While approximately 20 airports in Alaska are serviced by large turbine and jet aircraft, scheduled and unscheduled air carrier service using single or light-twin engine aircraft that are often limited to visual flight rules operations is provided to approximately 1000 other airports and landing areas. Pilots operating these flights often face weather hazards—fog, ice-fog, white-out or flat-light conditions that are localized and change rapidly. Weather information is limited; there are few navigational aids; and radar coverage is largely unavailable below 5,000 feet. Areas of intense icing and short distances between destinations often keep flight operations below 2,000 feet.

The Capstone Program is a joint initiative by the FAA Alaskan Region and the aviation industry to improve safety and efficiency in Alaska by using new technologies. Derived from the National Transportation Safety Board (NTSB) and industry recommendations, Capstone was congressionally funded in October 1998, and under the FAA Acquisition and Management System, operations and maintenance funding will begin in 2004.

Capstone Phase I focuses on southwest Alaska (the Yukon and Kuskokwim River Delta—YK Delta), which is isolated, has limited infrastructure, and has the same high rate of aviation accidents experienced in the rest of the state. Under Capstone, installation of advanced avionics in the YK Delta aircraft began in November 1999 and expansion of ground infrastructure and data collection will continue through December 2004. An interim analysis by the University of

Alaska and The MITRE Corporation Center for Advanced Aviation System Development indicates a 40 percent reduction in aircraft accidents that are instrument flight rules equipped under the Capstone program verses aircraft that are unequipped.

Relying on lessons learned during Phase I, Capstone Phase II is beginning in southeast Alaska. A more robust set of avionics, that include Global Positioning Systems/Wide Area Augmentation Systems (GPS/WAAS), is being deployed that aims at further reduction of controlled flight into terrain and mid-air collision accidents. In addition, instrument flight rules (IFR) area navigation (RNAV) procedures are being introduced that enable participants to conduct IFR operations on published routes, improving overall safety and capacity.

Area navigation (RNAV) systems used in most aircraft operations consist of a navigation computer, a coded database containing preloaded ground-based navigational aids, instrument approach procedures, standard departure procedures, and standard arrival routes to certain terminal areas. The navigation computer can also be manually loaded to input the latitude and longitude of certain fixes defining an area navigation route. RNAV systems also have the capability of processing transmitted signals from various kinds of navigation aids to continuously update the accuracy of the navigation computer in the lateral and vertical modes of operation. Unlike aircraft very high frequency omnidirectional range (VOR) navigation systems, for example, RNAV systems can be programmed to navigate directly to any geographic reference point (latitude and longitude) on the earth without having to navigate to or from ground-based VOR stations over published routes that are defined by ground-based VOR stations.

The current operating rules under the Federal Aviation Regulations in title 14 of the Code of Federal Regulations (14 CFR) do not accommodate the use of GPS/WAAS technology for IFR RNAV outside the operational service volume of ground-based navigation aids. This SFAR would allow the timely approval of approximately 200 aircraft that are being equipped under Capstone Phase II to conduct IFR RNAV operations using GPS/WAAS navigation systems. Additionally, this SFAR would provide the opportunity for air carrier and general aviation operators, other than those participating in the Capstone Program, to voluntarily equip aircraft with advanced GPS/WAAS avionics that are manufactured, certified, and approved for IFR RNAV operations.

Statement of the Problem

A significant number of mid-air collisions, controlled flight into terrain, and weather-related accidents occur in Alaska. These accidents can be significantly reduced by the use of new aircraft navigation technologies such as GPS/WAAS IFR RNAV systems. However, operating rules under the current FAA regulations do not fully accommodate the use of GPS/WAAS technology for IFR RNAV operations. While a review of national operating rules continues in order to fully accommodate RNAV operations for the National Airspace System (NAS), a timely SFAR needs to be issued because initial GPS/WAAS avionics equipage is scheduled in Alaska between December 2002 and April 2003 under the FAA Capstone Phase II Program.

NTSB Recommendation: Recommendation A–95–121 From NTSB Safety Study

In 1995, the NTSB conducted a study (NTSB Safety Study—Aviation Safety in Alaska, NTSB/SS–95/03, November 1995) to examine "Alaska's current aviation environment and air transportation activities, to identify the associated risk factors and safety deficiencies, and to recommend practical measures for managing the risks to safe flight operations given the reality of Alaska's aviation environment and the potential of new technologies." The following is a NTSB recommendation (A–95–121) from this safety study that substantiates the need for this SFAR.

Implement, by December 31, 1997, a model program in the Arctic and southeast regions of Alaska to demonstrate a low altitude instrument flight rules (IFR) system that better fulfills the needs of Alaska's air transportation system. The model should include the following components:

(1) The use of the global positioning system (GPS) as a sole source of navigational information for en route navigation and for nonprecision instrument approaches at a representative number of airports where instrument approaches do not currently exist. (Operators participating in the program will have to be allowed to conduct these operations without the integrity monitoring functions of the wide area augmentation system (WAAS) until WAAS is fully implemented in the demonstration region.)

(2) The use of satellite-based voice communications and satellite-based, Mode S, or VHF data link (for aircraft position and altitude) between aircraft in flight and air traffic controllers.

(3) The operation of commercial, passenger-carrying flight under IFR in turbine-powered single-engine airplanes equipped with redundant sources of electrical power and gyroscopic instrument vacuum/pressure.

(4) The use of currently uncontrolled airspace for IFR departures, en route flight, and instrument approaches in the demonstration program region. (Class II, Priority Action) (A–95–121).

Reference Material: (1) Technical Standard Order (TSO) C145a, Airborne Navigation Sensors Using The Global Positioning System (GPS) Augmented By The Wide Area Augmentation System (WAAS); and (2) TSO C146a, Stand-Alone Airborne Navigation Equipment Using The Global Positioning System (GPS) Augmented By The Wide Area Augmentation System (WAAS). Copies of these TSOs may be obtained from the FAA Internet Web site at *http://www.faa.gov/certification/aircraft/TSOA.htm*.

Related Activity

The FAA is conducting a thorough review of its rules to ensure consistency between the operating rules of 14 CFR and future RNAV operations for the NAS. That rulemaking, when proposed and promulgated, should enable the use of space-based navigation aid sensors for aircraft RNAV systems through all phases of flight (departure, en route, arrival, and approach) to enhance the safety and efficiency of the NAS. The changes anticipated would result in greater flexibility in air traffic routing, instrument approach procedure design, and airspace use than is now possible with a ground-based navigation aid system structure. The improved navigation accuracy and flexibility would enhance both system capacity and overall flight safety, and would promote the "free flight" concept in the NAS by enabling the NAS to move away from reliance on ground-based NAVAIDs. This SFAR supports this activity as an early implementation effort.

Contrary Provisions of the Current Regulations

People who conduct operations in Alaska in accordance with this SFAR would be excepted from certain provisions of the FAA's regulations. For instance:

14 CFR 71.75. Extent of Federal airways. The extent of Federal airways is currently referenced as a center line that extends from one navigational aid or intersection to another navigational aid or intersection specified for that airway. This SFAR allows the Federal airway and other routes published by the FAA to be referenced and defined by one or more fixes that are contained in an RNAV system's electronic database that is derived from GPS satellites and used by the pilot to accurately fly the Federal airway or other published

routes without reference to the ground based navigational aids that defines those routes.

14 CFR 91.181. Course to be flown. Section 91.181 defines courses to be flown along Federal airways that are only referenced to station referenced navigational aids or fixes defining that route. This SFAR would allow courses to be flown on Federal airways and other published routes that are defined by waypoints or fixes contained in a GPS WAAS navigation system that is certified for IFR navigation.

14 CFR 91.205(d)(2). Powered civil aircraft with standard category U.S. airworthiness certificates: Instrument and equipment requirements. Section 91.205(d)(2) states that navigational equipment appropriate to the ground facilities to be used is required for IFR operations and does not include RNAV equipment. Under this SFAR, operations can be conducted using navigation equipment that is not dependent on navigating only to and from ground-based radio navigation stations.

14 CFR 91.711(c)(1)(ii) and 91.711(e). Special rules for foreign civil aircraft. Section 91.711(c)(1)(ii) requires foreign civil aircraft operating within the United States and conducting IFR operations to be equipped with radio navigational equipment appropriate to the navigational signals to be used and does not accommodate the use of RNAV systems for instrument flight rules operations. Section 91.711(e) states that no person may operate a foreign civil aircraft within the 50 states and the District of Columbia at or above flight level (FL) 240 unless the aircraft is equipped with distance measuring equipment (DME) capable of receiving and indicating distance information from the VORTAC facilities to be used. Although an IFR approved RNAV system provides distance information, this section does not allow the use of an RNAV system in lieu of DME.

14 CFR 95.1. Applicability. Part 95 prescribes altitudes governing the operation of aircraft under IFR on Federal airways, jet routes, area navigation low or high routes, or other direct routes for which a minimum enroute altitude (MEA) is designated. In addition, it designates mountainous areas and changeover points. In general, the IFR altitudes prescribed in this section are determined by a route analysis based on the following factors: (1) An obstacle clearance assessment; (2) the lowest altitude at which the aircraft radio navigation receivers are able to receive the ground-based radio navigation fixes defining the airway, segment or route; and (3) the lowest altitude at which two-way voice communication between the aircraft and the air traffic control unit can be maintained. No accommodation is made for IFR altitudes determined by the above route analysis factors over routes that may be defined by fixes other than ground-based navigation aid fixes. Under this SFAR, operators using IFR certified GPS/WAAS RNAV systems would be permitted to conduct operations over routes in Alaska at the lowest minimum en route altitude based only on route obstacle assessments and ATC two-way voice communication capability. This MEA is defined as the "special MEA" for purposes of this SFAR to distinguish it from MEAs established under part 95.

14 CFR 121.349(a). Radio equipment for operations under VFR over routes not navigated by pilotage or for operations under IFR or over-the-top. Section 121.349(a) requires airplanes to be equipped with two independent radio navigation systems that are able to receive radio navigational signals from all primary en route and approach navigational facilities intended to be used. This section does not allow, nor does any other section of part 121, allow the use of RNAV GNSS for IFR navigation on Federal airways and other routes. This SFAR allows the use of IFR-certified RNAV GPS/WASS systems for IFR navigation.

14 CFR 125.203(b) and (c). Radio and navigational equipment. These sections state that no person may operate an airplane over-the-top or under IFR unless it has two independent receivers for navigation that are able to receive radio signals from the ground facilities to be used and which are capable of transmitting to, and receiving from, at any place on the route to be flown, at least one ground facility. These sections do not allow the use of RNAV GNSS for IFR navigation for any airplanes conducting IFR operations under part 125 in the NAS. This SFAR would allow for the use of IFR-certified RNAV GPS/WAAS systems for IFR navigation.

14 CFR 129.17(a) and (b). Radio Equipment. Sections 129.17(a) and (b) state that subject to the applicable laws and regulations governing ownership and operation of radio equipment, each foreign air carrier shall equip its aircraft with such radio equipment as is necessary to properly use the air navigation facilities. This section does not include or allow IFR RNAV GNSS to be used for air navigation on Federal airways or other published routes. This SFAR would allow the use of IFR-certified RNAV GPS/WAAS systems for air navigation on Federal airways or other published routes.

14 CFR 135.165. Radio and navigational equipment: Extended overwater or IFR operations. Section 135.165 excludes turbojet airplanes with 10 or more passenger seats, multiengine airplanes in a commuter operations, as defined under 14 CFR part 119, and other aircraft from conducting IFR or extended overwater operations unless they have a minimum of two independent receivers for navigation appropriate to the facilities to be used that are capable of transmitting to, and receiving from, at any place on the route to be flown, at least one ground facility. Since IFR-certified RNAV GPS/WAAS systems do not receive navigation position information from ground facilities, they would not be acceptable for navigation based on this section. This SFAR would allow the use of IFR-certified RNAV GPS/WAAS systems in lieu of aircraft navigation equipment that is used to navigate to and from ground-based navigation facilities.

Section-by-Section Discussion of the Proposal

SFAR No. 97—Special Operating Rules for the Conduct of Instrument Flight Rules (IFR) Area Navigation (RNAV) Operations Using Global Positioning Systems (GPS) in Alaska

Section 1. *Purpose, use and limitations.* The purpose of Section 1 is to define the specific GNSS equipment that is authorized for IFR RNAV operations on Federal airways and other published routes in the airspace in the state of Alaska. This section also states that the SFAR can be used for U.S. and foreign operations conducted under part 91 over Alaska, as well as operations conducted by part 119 or part 125 certificate holders and part 129 operations specifications holders, commercial, and certificated air carrier operators.

Section 2. *Definitions and abbreviations.* The purpose of Section 2 is to define specific terms that are used in this SFAR. These definitions and abbreviations are specific to this SFAR. Some of these definitions may not be defined or consistent with similar definitions in the current Federal Aviation Regulations.

For the purposes of this SFAR, the definition of "area navigation (RNAV)" is broadened by removing the words "station-referenced navigation signals," which refer to ground-based signals, and adding the words "flight path" to cover operations in both the lateral and vertical planes (*i.e.*, lateral navigation (LNAV) and vertical navigation (VNAV)).

To distinguish MEAs that are established by ground-based navigation aids versus MEAs that are established outside the operational service volume of ground-based navigation aids, the terms "standard MEA" and "special MEA" are included. As discussed earlier under 14 CFR part 95, the lowest altitude that an aircraft under IFR may be operated is determined by, among other things, the lowest altitude at which the aircraft radio navigation receivers are able to receive ground-based radio navigation fixes defining the airway segment or route. For purposes of this SFAR, this MEA is referenced as the "standard MEA." Operators in Alaska using IFR certified GPS/WAAS RNAV systems (as set forth in the definition of "required navigation system"), however, would be permitted to conduct operations over routes in or near Alaska based on route obstacle assessments and ATC two-way voice communication capability. This MEA may be lower than the "standard MEA" for purposes of this SFAR.

Section 3. *Operational requirements.* The purpose of Section 3 is to establish personnel training and qualifications, and GPS/WAAS performance and signal requirements necessary for operational approval to conduct IFR RNAV operations. This section allows operators subject to this SFAR to operate over routes where the MEA for a route or route segment is lower for GPS/WAAS IFR RNAV-equipped aircraft than the MEA for operators equipped only with VOR navigation systems. This flexibility would allow those GPS/WAAS IFR RNAV-equipped operators to conduct operations at the lowest permissible altitude in an attempt to avoid in-flight icing conditions.

Air carrier operators are required to establish training curriculums that must be reviewed, validated, and approved by the FAA prior to being authorized to conduct IFR RNAV operations for the en route portion of flight at MEAs outside the service volume of ground-based navigation aids under this SFAR. Title 14 CFR part 91 operators also are required to receive training prior to conducting IFR RNAV operations under this SFAR. The part 91 operator is responsible to ensure this training is accomplished. Training programs may be provided by the GPS WAAS avionics manufacturer/distributor. Training material also may be obtained from the FAA Capstone Program Office in Anchorage Alaska.

Section 3 also requires all operators to use authorized procedures for normal, abnormal, and emergency situations unique to these operations, including degraded navigation capabilities, and satellite system outages. Detailed guidance material for these procedures will be provided in the IFR regional supplemental (*e.g.*, pre-flight planning consideration of satellite outages, operational procedures for the loss of RNAV during the operation).

Section 4. *Equipment Requirements.* The purpose of Section 4 is to establish the minimum GPS/WAAS equipment requirements for IFR RNAV operations. TSO C145a and TSO C146a GPS WAAS navigation systems are the systems authorized to be used as the only means of navigation on Federal airways and other published routes outside the operational service volume of ground based navaids in Alaska. The MEA's for these routes will be depicted on the published Low Altitude and High Altitude En Route Charts and depicted as a MEA–G. For example, a GPS MEA of 4000 feet MSL would be depicted using a blue color as: *4000G.*

Section 5. *Expiration date.* The purpose of Section 5 is to establish the time period that this SFAR remains in effect. This SFAR would remain in effect until cancelled or revised.

Parts 71, 95, 121, 125, 129, and 135—Amended

A note would be also added to parts 71, 95, 121, 125, 129, and 135 to cross reference SFAR No. 97, the full text of which would appear in part 91.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) requires that the FAA consider the impact of paperwork and other information collection burdens imposed on the public. The FAA has determined that there are no current new information collection requirements associated with this proposed rule.

International Compatibility

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to comply with International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA has determined that there are no ICAO Standards and Recommended Practices that correspond to these proposed regulations.

Economic Evaluation

Proposed changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs each Federal agency to propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (19 U.S.C. 2531–2533) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, the Trade Agreements Act requires agencies to consider international standards, and, where appropriate, that they be the basis for U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more annually (adjusted for inflation).

In conducting these analyses, the FAA determined that this proposed rule: (1) Would generate benefits and not impose any costs, is not a "significant regulatory action" as defined in section 3(f) of Executive Order 12866, and is not "significant" as defined in DOT's Regulatory Policies and Procedures; (2) would not have a significant economic impact on a substantial number of small entities; (3) would not constitute a barrier to international trade, and does not impose an unfunded mandate on state, local, or tribal governments, or on the private sector.

For regulations with an expected minimal impact, the above-specified analyses are not required. The Department of Transportation Order DOT 2100.5 prescribes policies and procedures for simplification, analysis, and review of regulations. If it is determined that the expected impact is so minimal that the proposal does not warrant a full evaluation, a statement to that effect and the basis for it is included in proposed regulation. This proposed rule would allow the use of GSP/WAAS for IFR RNAV procedures by locally based aircraft that are equipped under the Alaska Capstone Phase II test and evaluation program. Because there is no cost to the participants for the equipment or training, the expected outcome is expected to have a minimal impact on the flying public in Alaska. This proposed SFAR would also provide the opportunity for other air carrier and general aviation operators to voluntarily equip and train their personnel at their own expense. The decision to incur these costs would be gauged against the safety and efficiency benefits accruing

from IFR RNAV use of GPS/WAAS technology. The FAA requests comments with supporting justification regarding the FAA determination of minimal impact.

Regarding benefits, the adoption of this proposal would implement the National Transportation Safety Board's recommendation "to demonstrate a low altitude instrument flight rules (IFR) system that better fulfills the needs of Alaska's air transportation system." [1] An interim assessment of the safety impact of Capstone Phase 1 test program found that "while the rates of accidents for specific causes have not changed in a way that is statistically significant yet, the over-all accident counts for the equipped and non-equipped groups were different: 12 accidents for non-equipped versus 7 for equipped even though each had nearly identical operations counts." [2] In addition to the anticipated safety benefits, the proposed rule might result in cost savings. The use of IFR RNAV equipment permits the use of more direct and therefore shorter routes, and aircraft using RNAV equipment may require less fuel and time to reach their destinations. The FAA has established a number of test routes throughout the United States and some airlines have estimated annual cost savings in excess of $30 million dollars due to flying these advanced RNAV routes.[3] The FAA finds that the potential safety benefits and cost savings justify the adoption of this proposed rule. The FAA seeks public comments regarding these benefits and cost savings.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) establishes "as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the business, organizations, and governmental jurisdictions subject to regulation." To achieve that principle, the RFA requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions. The RFA covers a wide-range of small entities, including small businesses, not-for-profit organizations and small governmental jurisdictions.

Agencies must perform a review to determine whether a proposed or final rule would have a significant economic impact on a substantial number of small entities. If the agency determines that it will, the agency must prepare a regulatory flexibility analysis as described in the RFA. However, if an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the RFA provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

This proposed rule would establish the minimum equipment and operational approval requirements that operators would have to comply with to operate at lower MEAs that are outside the service volume of ground-based navigation aids. Because operators are not required to operate at these lower MEAs, those who voluntarily decide to do so under this SFAR will have made their own business decisions that the cost associated with this proposed SFAR's equipment and other requirements are worth it. For example, some operators will have concluded that flying at lower altitudes opens up markets that they could not previously have served because currently they do not have aircraft that can fly at certain altitudes on some routes and maintain reception with ground-based navigation aids. Other operators will conclude that having the ability to operate at lower MEAs will result in fewer flight cancellations or delays due to adverse weather (*e.g.*, icing at higher altitudes). Additionally, other operators will recognize the safety benefit of having RNAV-equipped aircraft and flightcrews trained under this SFAR when such flights encounter adverse weather conditions en route at higher altitudes. Those operators will have the safety benefit of being able to seek clearance to the lower MEAs en route. It is anticipated that most of the participants who volunteer to participate in Capstone Phase II will not incur any costs to equip their aircraft or conduct required training; therefore, the FAA certifies that the rule will not have a significant economic impact on a substantial number of small operators. The FAA seeks public comments regarding this cost finding.

Trade Impact Assessment

The Trade Agreement Act of 1979 prohibits Federal agencies from establishing any standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards. The NPRM proposes to impose requirements on foreign air carriers operating in the SFAR area if they volunteer to participate in the test program. These requirements would mirror the communication and navigation equipment requirements placed on domestic carriers that volunteer to participate in the test program. The FAA assessed the potential effect of this proposed rule and determined that it would have a neutral impact on foreign trade and, therefore, creates no obstacles to the foreign commerce of the United States.

Unfunded Mandates Assessment

The Unfunded Mandates Reform Act of 1995 (the Act) is intended, among other things, to curb the practice of imposing unfunded Federal mandates on State, local, and tribal governments. Title II of the Act requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in an expenditure of $100 million or more (adjusted annually for inflation) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a "significant regulatory action."

This proposed rule does not contain such a mandate. The requirements of title II do not apply.

Executive Order 13132, Federalism

The FAA has analyzed this proposed rule under the principles and criteria of Executive Order 13132, Federalism. We determined that this action would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government, and therefore would not have federalism implications.

Regulations Affecting Interstate Aviation in Alaska

Section 1205 of the FAA Reauthorization Act of 1996 (110 Stat. 3213) requires the Administrator, when modifying regulations under title 14 of the CFR that affect interstate aviation in Alaska, to consider the extent to which Alaska is not served by transportation modes other than aviation, and to establish such regulatory distinctions as he or she considers appropriate. The FAA considers that this rule will be

[1] Aviation Safety In Alaska (NTSB/SS–95/03) November 1995 page 77.

[2] The Safety Impact of Capstone Phase 1 (W. Worth Kirkman, Mitre) August 2002 page 15.

[3] 2001 ACE Plan, Building Capacity.

beneficial to operations in Alaska, but specifically solicits comments on this issue.

Environmental Analysis

FAA Order 1050.1D defines FAA actions that may be categorically excluded from preparation of a National Environmental Policy Act (NEPA) environmental impact statement. In accordance with FAA Order 1050.1D, appendix 4, paragraph 4(j), this proposed rulemaking action qualifies for a categorical exclusion.

Energy Impact

The energy impact of the notice has been assessed in accordance with the Energy Policy and Conservation Act (EPCA) Public Law 94–163, as amended (42 U.S.C. 6362) and FAA Order 1053.1. We have determined that the notice is not a major regulatory action under the provisions of the EPCA.

List of Subjects

14 CFR Part 71

Airspace, Navigation (air).

14 CFR Part 91

Agriculture, Air traffic control, Aircraft, Airmen, Airports, Aviation safety, Canada, Freight, Mexico, Noise control, Political candidates, Reporting and recordkeeping requirements.

14 CFR Part 95

Air traffic control, Airspace, Alaska, Navigation (air), Puerto Rico.

14 CFR Part 121

Air carriers, Aircraft, Airmen, Aviation safety, Charter flights, Drug testing, Reporting and recordkeeping requirements, Safety, Transportation.

14 CFR Part 125

Aircraft, Airmen, Aviation safety, Reporting and recordkeeping requirements.

14 CFR Part 129

Air carriers, Aircraft, Aviation safety, Reporting and recordkeeping requirements, Security, Smoking.

14 CFR Part 135

Air taxis, Aircraft, Airmen, Aviation safety, Reporting and recordkeeping requirements.

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend Chapter I of Title 14, Code of Federal Regulations, as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120, E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

2. Amend part 71 by adding a note to read as follows:

Note: For the text of SFAR No. 97, see part 91 of this chapter.

PART 91—GENERAL OPERATING AND FLIGHT RULES

3. The authority citation for part 91 continues to read as follows:

Authority: 49 U.S.C. 106(g), 1155, 40103, 40113, 40120, 44101, 44111, 44701, 44709, 44711, 44712, 44715, 44716, 44717, 44722, 46306, 46315, 46316, 46504, 46506–46507, 47122, 47508, 47528–47531, articles 12 and 29 of the Convention on International Civil Aviation (61 stat. 1180).

4. Amend part 91 by adding SFAR No. 97 to read as follows:

Special Federal Aviation Regulation No. 97—Special Operating Rules for the Conduct of Instrument Flight Rules (IFR) Area Navigation (RNAV) Operations Using Global Positioning Systems (GPS) in Alaska

Those persons identified in Section 1 may conduct IFR en route RNAV operations in the State of Alaska and its airspace on published air traffic routes using TSO C145a/C146a navigation systems as the only means of IFR navigation. Despite contrary provisions of parts 71, 91, 95, 121, 125, and 135 of this chapter, a person may operate aircraft in accordance with this SFAR if the following requirements are met.

Section 1. Purpose, use, and limitations.

a. This SFAR permits TSO C145a/C146a GPS (RNAV) systems to be used for IFR en route operations in the United States airspace over and near Alaska (as set forth in paragraph c of this section) at Special Minimum En Route Altitudes (MEA) which are outside the operational service volume of ground-based navigation aids, if the aircraft operation also meets the requirements of sections 3 and 4 of this SFAR.

b. Certificate holders and part 91 operators may operate aircraft under this SFAR provided that they comply with the requirements of this SFAR.

c. Operations conducted under this SFAR are limited to United States Airspace within and near the State of Alaska as defined in the following area description:

From 62°00′00.000″N, Long. 141°00′00.00″W.; to Lat. 59°47′54.11″N., Long. 135°28′38.34″W.; to Lat. 56°00′04.11″N., Long. 130°00′07.80″W.; to Lat. 54°43′00.00″N., Long. 130°37′00.00″W.; to Lat. 51°24′00.00″N., Long. 167°49′00.00″W.; to Lat. 50°08′00.00″N., Long. 176°34′00.00″W.; to Lat. 45°42′00.00″N., Long. −162°55′00.00″E.; to Lat. 50°05′00.00″N., Long. −159°00′00.00″E.; to Lat. 54°00′00.00″N., Long. −169°00′00.00″E.; to Lat. 60°00′00.00″N., Long. −180°00′00.00″E; to Lat. 65°00′00.00″N., Long. 168°58′23.00″W.; to Lat. 90°00′00.00″N., Long. 00°00′0.00″W.; to Lat. 62°00′00.000″N, Long. 141°00′00.00″W.

(d) No person may operate an aircraft under IFR during the en route portion of flight below the standard MEA or at the special MEA unless the operation is conducted in accordance with sections 3 and 4 of this SFAR.

Section 2. *Definitions and abbreviations.* For the purposes of this SFAR, the following definitions and abbreviations apply.

Area navigation (RNAV). RNAV is a method of navigation that permits aircraft operations on any desired flight path.

Area navigation (RNAV) route. RNAV route is a published route based on RNAV that can be used by suitably equipped aircraft.

Certificate holder. A certificate holder means a person holding a certificate issued under part 119 or part 125 of this chapter or holding operations specifications issued under part 129 of this chapter.

Global Navigation Satellite System (GNSS). GNSS is a world-wide position and time determination system that uses satellite ranging signals to determine user location. It encompasses all satellite ranging technologies, including GPS and additional satellites. Components of the GNSS include GPS, the Global Orbiting Navigation Satellite System, and WAAS satellites.

Global Positioning System (GPS). GPS is a satellite-based radio navigational, positioning, and time transfer system. The system provides highly accurate position and velocity information and precise time on a continuous global basis to properly equipped users.

Minimum crossing altitude (MCA). The minimum crossing altitude (MCA) applies to the operation of an aircraft proceeding to a higher minimum en route altitude when crossing specified fixes.

Required navigation system. Required navigation system means navigation equipment that meets the performance

requirements of TSO C145a/C146a navigation systems certified for IFR en route operations.

Route segment. Route segment is a portion of a route bounded on each end by a fix or NAVAID.

Special MEA. Special MEA refers to the minimum en route altitudes, using required navigation systems, on published routes outside the operational service volume of ground-based navigation aids and are depicted on the published Low Altitude and High Altitude En Route Charts using the color blue and with the suffix "G." For example, a GPS MEA of 4000 feet MSL would be depicted using the color blue, as 4000G.

Standard MEA. Standard MEA refers to the minimum en route IFR altitude on published routes that uses ground-based navigation aids and are depicted on the published Low Altitude and High Altitude En Route Charts using the color black.

Station referenced. Station referenced refers to radio navigational aids or fixes that are referenced by ground based navigation facilities such as VOR facilities.

Wide Area Augmentation System (WAAS). WAAS is an augmentation to GPS that calculates GPS integrity and correction data on the ground and uses geo-stationary satellites to broadcast GPS integrity and correction data to GPS/WAAS users and to provide ranging signals. It is a safety critical system consisting of a ground network of reference and integrity monitor data processing sites to assess current GPS performance, as well as a space segment that broadcasts that assessment to GNSS users to support en route through precision approach navigation. Users of the system include all aircraft applying the WAAS data and ranging signal.

Section 3. *Operational Requirements.*

To operate an aircraft under this SFAR, the following requirements must be met:

a. Training and qualification for operations and maintenance personnel on required navigation equipment used under this SFAR.

b. Use authorized procedures for normal, abnormal, and emergency situations unique to these operations, including degraded navigation capabilities, and satellite system outages.

c. For certificate holders, training of flight crewmembers and other personnel authorized to exercise operational control on the use of those procedures specified in paragraph b of this section.

d. Part 129 operators must have approval from the State of the operator to conduct operations in accordance with this SFAR.

e. In order to operate under this SFAR, a certificate holder must be authorized in operations specifications.

Section 4. *Equipment Requirements.*

a. The certificate holder must have properly installed, certificated, and functional dual required navigation systems as defined in section 2 of this SFAR for the en route operations covered under this SFAR.

b. When the aircraft is being operated under part 91, the aircraft must be equipped with at least one properly installed, certificated, and functional required navigation system as defined in section 2 of this SFAR for the en route operations covered under this SFAR.

Section 5. *Expiration date.*

This Special Federal Aviation Regulation will remain in effect until rescinded.

PART 95—IFR ALTITUDES

5. The authority citation for part 95 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, and 14 CFR 11.49 (b)(2).

6. Amend part 95 by adding a note to read as follows:

Note: For the text of SFAR No. 97, see part 91 of this chapter.

PART 121—OPERATING REQUIREMENTS: DOMESTIC, FLAG, AND SUPPLEMENTAL OPERATIONS

9. The authority citation for part 121 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 40119, 44101, 44701–44702, 44705, 44709–44711, 44713, 44716–44717, 44722, 44901, 44903–44904, 44912, 46105.

10. Amend part 121 by adding a note to read as follows:

Note: For the text of SFAR No. 97, see part 91 of this chapter.

PART 125—CERTIFICATION AND OPERATIONS: AIRPLANES HAVING A SEATING CAPACITY OF 20 OR MORE PASSENGERS OR A MAXIMUM PAYLOAD CAPACITY OF 6,000 POUNDS OR MORE; AND RULES GOVERNING PERSONS ON BOARD SUCH AIRCRAFT

11. The authority citation for part 125 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701–44702, 44705, 44710–44711, 44713, 44716–44717, 44722.

12. Amend part 125 by adding a note to read as follows:

Note: For the text of SFAR No. 97, see part 91 of this chapter.

PART 129—OPERATIONS: FOREIGN AIR CARRIERS AND FOREIGN OPERATORS OF U.S.-REGISTERED AIRCRAFT ENGAGED IN COMMON CARRIAGE

13. The authority citation for part 129 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40104–40105, 40113, 40119, 41706, 44701–44702, 44712, 44716–44717, 44722, 44901–44904, 44906.

14. Amend part 129 by adding a note to read as follows:

Note: For the text of SFAR No. 97, see part 91 of this chapter.

PART 135—OPERATIING REQUIREMENTS: COMMUTER AND ON DEMAND OPERATIONS AND RULES GOVERNING PERSONS ON BOARD SUCH AIRCRAFT

15. The authority citation for part 135 continues to read as follows:

Authority: 49 U.S.C. 106(g) 41706, 44113, 44701–44702, 44705, 44709, 44711–44713, 44715–44717, 44722.

16. Amend part 135 by adding a note to read as follows:

Note: For the text of SFAR No. 97, see part 91 of this chapter.

Issued in Washington, DC on January 16, 2003.

James J. Ballough,

Director, Flight Standards Service.

[FR Doc. 03–1601 Filed 1–23–03; 8:45 am]

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Federal Register

Friday,
January 24, 2003

Part IX

Department of Commerce

National Oceanic and Atmospheric Administration

50 CFR Part 402

Department of the Interior

Fish and Wildlife Service

50 CFR Part 402

Environmental Protection Agency

40 CFR Chapter I

Endangered Species and Pesticide Regulation; Proposed Rules

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 402

RIN 0648–AQ69

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 402

RIN 1018–AI95

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Chapter I

[OPP–2003–0010; FRL–7287–3]

RIN 2070–AD72

Endangered Species and Pesticide Regulation

AGENCIES: Fish and Wildlife Service, Interior; National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Commerce; and Environmental Protection Agency.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: This Advance Notice of Proposed Rulemaking (ANPR) announces the intention of the Fish and Wildlife Service (FWS), a bureau of the Department of the Interior, and the National Marine Fisheries Service (NMFS), an Agency of the National Oceanic and Atmospheric Administration (NOAA), jointly referred to as "the Services," in cooperation with the U.S. Environmental Protection Agency (EPA), to conduct rulemaking to promulgate "counterpart regulations" under the Endangered Species Act (ESA). Specifically, this ANPR focuses on regulations and policies affecting the process for consultation between EPA and the Services regarding EPA actions in its pesticide regulatory program under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and does not address processes among the Services and any other office within EPA. Throughout this rulemaking process, the Services and EPA will work with the U.S. Department of Agriculture (USDA) to implement the purposes of ESA and to effectuate the intent of the Congress that ESA compliance for EPA's FIFRA program be designed to "minimize the impacts to persons engaged in agricultural food and fiber commodity production and other affected pesticide users and applicators." This ANPR also seeks public comment on possible approaches to changing the current regulations, policies, and practices of EPA and the Services to better integrate the FIFRA and ESA processes and to improve the efficiency and effectiveness of consultations on pesticide actions to enhance protection of species that are Federally listed or proposed as threatened or endangered and their proposed or designated critical habitat. The agencies are specifically requesting comments that focus on developing solutions to the extremely complex issues surrounding these consultations. In addition, this ANPR seeks comment on ways to improve public involvement and understanding of these processes and the decisions that result from them.

DATES: Comments, identified by docket ID number OPP–2003–0010, must be received on or before March 10, 2003.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: *For FWS*: Richard E. Sayers, Jr., Endangered Species Program, U.S. Fish and Wildlife Service, ARL SQ42, 1849 C St., NW., Washington, DC 20240; telephone number: (703) 358–2106; fax number: (703) 358–1735; e-mail address: Rick__Sayers@fws.gov.

For NOAA: Laurie Allen, Office of Protected Resources, National Marine Fisheries Service, National Oceanic and Atmospheric Administration, 1315 East-West Highway, Rm. 13821, Silver Spring, MD; telephone number: (301) 713–2322, fax number: (301) 713–0376; e-mail address: Laurie.Allen@noaa.gov.

For EPA: Arthur-Jean Williams, Field and External Affairs Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–5239; fax number: (703) 308–3259; e-mail address: williams.arty@epa.gov.

SUPPLEMENTARY INFORMATION: This ANPR is organized into four Units. Unit I. contains "General Information" about the applicability of this ANPR, how to obtain additional information, how to submit comments in response to the request for comments, and certain other related matters. Unit II. provides background information on the pesticide regulatory program and the process by which Federal agencies consult or confer with the FWS and NMFS to ensure appropriate protection of Federally listed and proposed, threatened and endangered species ("listed species") and their proposed and designated critical habitat ("critical habitat"). It also explains why EPA and the Services are considering changing the current approach to consultation for EPA's pesticide regulatory program and the goals of any future changes. Unit III. of the ANPR identifies specific aspects of the existing consultation process followed by EPA and the Services and seeks public comment on how these aspects might be modified to improve the consultation process for EPA's pesticide regulatory program. Finally, Unit IV. discusses regulatory assessment requirements.

I. General Information

While this ANPR is being issued jointly by EPA and the Services, because EPA has an electronic docket system that allows distribution of materials more easily to interested persons, EPA has agreed to take responsibility for all of the administrative duties related to publication of this document, including the creation of a public docket, receipt of public comments, and other related matters. EPA will share all comments it receives with the Services, and all three agencies will work together to compile and analyze public comments and on any future steps.

A. Does this Action Apply to Me?

This action is directed to the public in general and may be of particular interest to persons who manufacture, sell or use pesticides or who are part of a State or Tribe engaged in the regulation of pesticide products and to groups interested in environmental regulation. The Agency and the Services have not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult Arthur-Jean Williams at the telephone number/e-mail address listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket*. EPA has established an official public docket for this action under docket identification (ID) number OPP–2003–0010. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is

restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at http://www.epa.gov/fedrgstr/.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at http://www.epa.gov/edocket/ to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and to Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA and the Services are not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically.* If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at http://www.epa.gov/edocket, and follow the online instructions for submitting comments. Once in the system, select "search," and then key in docket ID number OPP–2003–0010. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by e-mail to opp-docket@epa.gov, Attention: Docket ID Number OPP–2003–0010. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail.* Send your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency (7502C), 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID Number OPP–2003–0010.

3. *By hand delivery or courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2; 1921 Jefferson Davis Hwy., Arlington, VA, Attention: Docket ID Number OPP–2003–0010. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.A.1.

D. How Should I Submit CBI to EPA?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that

information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

E. What Should I Consider as I Prepare My Comments?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at your estimate.
5. Provide specific examples to illustrate your concerns.
6. Offer alternatives.
7. Make sure to submit your comments by the comment period deadline identified.
8. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your response. It would also be helpful if you provided the name, date, and **Federal Register** citation related to your comments.

II. Background

A. What Action are the Agencies Taking?

The Fish and Wildlife Service (FWS) of the Department of the Interior and the National Marine Fisheries Service (NMFS) of the National Oceanic and Atmospheric Administration (NOAA), together with the Environmental Protection Agency (EPA), announce their intent to conduct rulemaking to make changes in the way that EPA consults with FWS and NMFS (jointly referred to as "the Services") under the Endangered Species Act (ESA) on regulatory actions involving pesticides, under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). The Services and EPA are issuing this ANPR, in consultation with the U.S. Department of Agriculture (USDA), to solicit public comment on a range of possible changes that are intended to better integrate the consultation process under section 7 of ESA with the process for pesticide regulatory actions taken by EPA under FIFRA, and to improve the efficiency and effectiveness of consultation on pesticide actions. Some of the possible changes would require modification of the Services' existing consultation regulations in 50 CFR part 402; a rule modifying the consultation regulations for a specific Federal agency is called a "counterpart regulation." See 50 CFR 402.04. Other possible changes in the current approach to consultations between EPA and the Services could be accomplished without rulemaking, for example through a Memorandum of Understanding or changes in policies and practices at EPA or the Services.

EPA and the Services are currently engaged in a number of separate, but related activities relative to EPA's responsibilities under ESA, in addition to the publication of this ANPR. First, under ESA section 7(a)(1), EPA and the Services are engaged in an ongoing Proactive Conservation Review. This review of EPA's Endangered Species Protection Program (ESPP) is intended to clarify for the involved Federal agencies EPA's approach to risk assessment, criteria that indicate a listed species may be at risk, and the requirements imposed on EPA by the ESA regulations governing consultation. The review will also identify areas or issues relative to risk assessment, criteria, and consultations that may require modification to enhance the effectiveness and efficiency of consultation among EPA and the Services. While this review is conducted under ESA section 7(a)(1), the outcomes of the review will likely be used to help focus discussions on technical and science policy issues that need to be addressed to carry out responsibilities under ESA section 7(a)(2) more effectively and efficiently. Second, on December 2, 2002, EPA published a Notice in the **Federal Register** (67 FR 71549) (FRL–7283–7) describing and requesting comments on implementation of its ESPP. The goal of the ESPP is to carry out EPA's responsibilities under FIFRA in compliance with ESA, while at the same time not placing unnecessary burden on agriculture and other pesticide users.

Although this ANPR contemplates significant revisions to the Services' ESA regulations as they relate to EPA's pesticide regulatory programs under FIFRA, EPA will continue to address its ESA section 7(a)(2) obligations regarding pesticide actions under existing Service rules until such time as the changes contemplated by this ANPR are finalized. While EPA and the Services believe these revisions can greatly improve the efficiency and effectiveness of the consultation process, all three agencies believe that the work they will be doing under the existing regulations during this interim period will ensure that endangered species are protected as required by law.

EPA and the Services believe it is also important that the public and pesticide registrants and users understand that EPA has significant authority under FIFRA to protect endangered species and their habitats from potentially harmful exposure to pesticides, and that FIFRA provides EPA the exclusive statutory authority for modifying a pesticide registration. Accordingly, when regulatory action is determined to be appropriate to protect listed species or their habitat, EPA will use the authority and procedures set forth in FIFRA to undertake such action.

B. What are the Agencies' Authorities for Taking this Action?

This ANPR is issued under the authority of section 7 of the Endangered Species Act (ESA), as amended, 16 U.S.C. 1531 *et seq.*, and the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. 136 *et seq.* EPA's statutory authority and programs for regulating pesticides are discussed in Unit II.C., while Unit II.D., describes the applicable provisions of ESA and implementing regulations.

C. FIFRA and Pesticide Regulation

FIFRA is the primary statute under which EPA regulates the use of pesticides in the United States. 7 U.S.C. 136 *et seq.* FIFRA defines a "pesticide" as ". . . any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest . . . ." FIFRA sec. 2(u). When a pesticide is sold or distributed, it is generally referred to as a "pesticide product." Pesticides contain both "active ingredients" and "inert ingredients." An "active ingredient" is ". . . an ingredient which will prevent, destroy, repel, or mitigate any pest . . . ." FIFRA sec. 2(a). Ingredients which are not active are referred to as

"inert ingredients" or "other ingredients." Under FIFRA, an "inert ingredient" is defined as "an ingredient which is not active." FIFRA sec. 2(m). EPA uses the term, "formulation," to refer to the particular combination of active and inert ingredients in a pesticide product. A pesticide "use" refers to the particular combination of circumstances under which a pesticide product may be applied, such as the rate, timing, method, and site of application.

1. *The statutory framework for regulation of new pesticide products.* FIFRA generally prohibits the sale or distribution of a pesticide product unless it has first been "registered" by EPA. FIFRA sec. 12(a)(1)(A). EPA issues a license, referred to as a "registration," for each specific pesticide product allowed to be marketed; the registration approves sale of a product with a specific formulation, in a specific type of package, and with specific product labeling for a specific use. Each product is evaluated on a case-by-case basis.

FIFRA requires a person seeking to register a pesticide to demonstrate that the proposed product meets the statutory standard. EPA may approve the unconditional registration of a pesticide product only if the Agency determines, among other things, that use of the pesticide would not cause "unreasonable adverse effects on the environment." FIFRA sec. 3(c)(5). The statute defines "unreasonable adverse effects on the environment" to include "any unreasonable risk to man or the environment, taking into account the economic, social, and environmental costs and benefits of the use of any pesticide. . . ." FIFRA sec. 2(bb).

When EPA registers a pesticide, it approves among other things a specific set of labeling for the product which contains directions for and restrictions on use of the product. Labeling includes any written or graphic material attached to the product container, i.e., the label, as well as other material accompanying the product or referenced on the label. FIFRA sec. 2(p). FIFRA makes it unlawful for any person "to use any registered pesticide in a manner inconsistent with its labeling." FIFRA sec. 12(a)(2)(G). Thus, directions and restrictions appearing on, or referenced in, a pesticide product label become enforceable Federal requirements. Under FIFRA, most States have primary responsibility for enforcement against pesticide misuse. See FIFRA sec. 26.

While most regulatory decisions allowing entry of new pesticide products into the marketplace are made by EPA in its registration program, there are two other programs that can authorize the use of new pesticides. Under section 18 of FIFRA, EPA may allow the use of an unregistered pesticide product by a State or Federal agency when necessary to address an emergency situation. Under EPA's regulations, a petition for an exemption must establish that "emergency conditions" -- defined as "an urgent, non-routine situation that requires the use of a pesticide . . ." -- exist and that no effective, currently registered pesticide or non-pesticidal pest control method is available. 40 CFR 166.4(d). The emergency exemption regulations provide that EPA will not approve a request unless EPA determines, among other things, the use of the pesticide product will not cause unreasonable adverse effects on the environment. 40 CFR 166.25(b). In addition, under certain limited circumstances, States may approve a new use of a currently registered pesticide product to meet a "special local need." FIFRA sec. 24(c). EPA's regulations limit States' exercise of this authority only to the approval of products that contain active ingredients that are present in a currently approved pesticide product and give EPA broad authority to disapprove products intended for uses that are not closely related to existing uses. See 40 CFR 162.152. States must notify EPA when they exercise this authority and a State's registration shall not be effective for more than 90 days if disapproved by EPA within that period. FIFRA sec. 24(c)(2).

2. *The statutory framework for regulation of existing pesticide products.* In addition to a registration program for new pesticide products, EPA conducts a "reregistration" program. Reregistration focuses on currently registered pesticides and involves a systematic reexamination of the scientific data to determine whether the pesticides continue to meet contemporary scientific and regulatory standards. See FIFRA sec. 4. Among other things, EPA assesses whether there are adequate data to determine if the statutory standard is met. FIFRA gives EPA authority to require registrants to provide data if EPA "determines [the] additional data are required to maintain in effect an existing registration of a pesticide." FIFRA sec. 3(c)(2)(B). (Imposition of such additional data requirements is subject to the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 - 3520). In the past, EPA has used this authority to require registrants to conduct studies that would provide additional data needed for the evaluation of potential hazards of and exposures to pesticide products. EPA uses such data to assess pesticide risks and to determine whether changes in the terms and conditions of registration would be appropriate. In many cases, EPA's reregistration review has concluded that additional risk mitigation measures were necessary to reduce potential harm to non-target plants and wildlife populations. Many registrants voluntarily have amended their products' registrations to implement these risk mitigation measures. If, however, registrants do not adopt needed risk mitigation, EPA may impose the requirements through cancellation or suspension proceedings, conducted pursuant to FIFRA sec. 6 and 40 CFR part 164.

EPA may issue a Notice of Intent to Cancel the registration of a pesticide if it appears that the continued use of the pesticide "generally causes unreasonable adverse effects on the environment." FIFRA sec. 6(b). Thus, the standard for approving a pesticide's entry into the marketplace and the standard for retaining a pesticide on the market is based on a determination relative to "no unreasonable adverse effects" Because cancellation proceedings can be lengthy, FIFRA also contains provisions allowing EPA to "suspend" the registration and use of a pesticide, prior to the completion of a cancellation process, if use of the pesticide poses an "imminent hazard." FIFRA sec. 6(c). FIFRA defines an "imminent hazard" as "a situation which exists when the continued use of a pesticide during the time required for [a] cancellation proceeding would be likely to result in unreasonable adverse effects on the environment or will involve unreasonable hazard to the survival of a species declared endangered or threatened under [the Endangered Species Act]." FIFRA sec. 2(l).

3. *Ecological risk assessment.* In deciding whether a pesticide product meets the statutory standards for registration or reregistration, EPA considers, among other things, the potential risks to non-target wildlife and plant species posed by use of the pesticide product. EPA's evaluation of such environmental risks follows the principles contained in its Guidelines for Ecological Risk Assessment. (EPA 1998). In 1986, EPA developed detailed guidance for the review and analysis of potential environmental risks from use of pesticide products. See Standard Evaluation Procedures (SEP) for Ecological Risk Assessment (EPA 1986). Since 1986 EPA has made many additions and refinements to the basic approach outlined in the SEP. All of

EPA's risk assessment methods have included methodology for an assessment of potential risks to listed species. Refer to the ESPP **Federal Register** Notice (67 FR 71549) for a more detailed description of how EPA assesses the risk to listed species.

EPA requires both new and existing pesticides to be supported by extensive information about the potential ecological risks of the pesticide product. Data requirements appear in EPA regulations at 40 CFR part 158. Studies conducted to generate data for EPA are subject to Good Laboratory Practice requirements that are designed to ensure that the results are reliable and of high quality. See 40 CFR part 160. EPA's scientists carefully review all data submissions and independently evaluate the potential risks of each pesticide. In situations raising novel or challenging scientific issues, EPA generally seeks outside peer review of its scientific assessments.

The Agency requires extensive toxicity and environmental fate data and uses this information, together with field reports of adverse effects on wildlife caused by pesticides and other relevant information, to evaluate the potential hazards to non-target species, including threatened and endangered species, for a pesticide intended for outdoor use. To assess potential hazard to non-target species, EPA requires a basic set of laboratory toxicity studies on an active ingredient using multiple surrogate species of birds, fish, aquatic invertebrates, non-target insects, and plants. In situations where additional, scientifically valid, toxicity data related to effects on wildlife and aquatic organisms are available, EPA will consider them in establishing the toxicity endpoint for risk assessment. It is EPA's policy to conduct risk assessments using the toxicity endpoint from the most sensitive species tested. EPA also requires data from a series of laboratory and field studies of the environmental fate of both the active ingredients in a pesticide product and typical-formulations containing the active ingredient. These studies provide data on both the parent active ingredient, as well as its environmental degradates. The Agency combines these data, along with information about how the pesticide product is intended to be used, to develop an estimate of the potential concentrations of residues of the active ingredient and significant environmental degradates in the environment (the Estimated Environmental Concentration or EEC). In order to avoid underestimating risk, EPA makes assumptions designed not to understate potential exposure.

When assessing risks to listed species, EPA evaluates data and risks in a tiered fashion. The Agency compares its toxicity assessment of an active ingredient with the EEC. If the comparison demonstrates that the EEC is well below the amount of active ingredient that would be expected to cause harm to a particular species or critical habitat, EPA would conclude that the use of pesticide products containing that active ingredient would have "no effect" on listed species. Most of EPA's focus is on the potential risks from exposure to the active ingredient and its significant environmental degradates. EPA also has information, both on the other ingredients in pesticide products and on the formulations themselves, with which to assess the potential for increased risk. This ingredient- and formulation-specific information and many years of reviewing pesticide products support a general conclusion that inert ingredients in formulations usually do not make more than a negligible contribution to the overall environmental risks posed by a pesticide product formulation. If the initial comparison and subsequent refined assessments indicate that EPA's best estimate of the EEC for the active ingredient and/or significant environmental degradates could have toxic effects on a listed species, then EPA may require the pesticide sponsor to supply additional laboratory and/or field data in order to refine the risk assessment, require changes in the allowable use of the pesticide product that are sufficient to mitigate any potential risk, or determine it necessary to request initiation of consultation with the Services to obtain a Biological Opinion on actions that might be taken relative to reducing risk. Higher tier toxicity data may include studies on the effects of a pesticide on other wildlife species and plants or studies of longer durations of exposure. The Agency may occasionally require higher tier studies to be conducted in the field under simulated or actual use conditions. EPA may also require additional information to improve its estimate of potential exposure. Possible risk mitigation measures include changes in the manner or timing of pesticide applications, the rate or frequency of applications, or geographical restrictions on use.

D. The Endangered Species Act and Federal Agency Consultations with the Services

Section 7 of the ESA imposes obligations upon all Federal agencies whose actions may adversely impact listed species. Of particular relevance to this ANPR, section 7(a)(2) directs all Federal agencies, in consultation with and with the assistance of the Secretaries of the Interior and Commerce (delegated to the Services), to ensure that any action authorized, funded, or carried out by such agency is not likely to jeopardize the continued existence of any listed species or result in the destruction or adverse modification of habitat of such species that has been designated as critical ("critical habitat"). 16 U.S.C. 1536(a)(2). In meeting this requirement, each agency is required to use the "best scientific and commercial data available." 16 U.S.C. 1536(a)(2).

The Services adopted joint regulations set forth at 50 CFR part 402, which include procedural requirements. These regulatory provisions require action agencies to consult with the Services on all Federal actions that "may affect" a listed species or critical habitat. Consultation may be concluded "informally" if the action agency, with written concurrence from the Services, determines that the Federal action under consideration is "not likely to adversely affect" a listed species or critical habitat. 50 CFR 402.14(b)(1). "Formal" consultation is required on actions that are likely to adversely affect a listed species or critical habitat and when the Services disagree with an action agency's determination that the action is "not likely to adversely affect" the species or its critical habitat. During formal consultation, focus is on whether the proposed Federal action is likely to jeopardize the continued existence of any listed species or result in the destruction or adverse modification of critical habitat. 50 CFR 402.14(h).

By regulation, the consultation process reviews a variety of potential "effects" on listed species and habitat, including direct, indirect, and cumulative effects. "Direct effects" are those effects that will immediately flow from the proposed action. "Indirect effects" are those that will be caused by the proposed action, will occur later in time, but are still reasonably certain to occur. "Cumulative effects" are those effects of future State or private activities, not involving Federal activities, that are reasonably certain to occur within the area affected by the proposed action. 50 CFR 402.02. Additionally, examination includes the effects of "interrelated" and "interdependent" actions. For a detailed explanation of these terms, please refer to the Consultation Handbook jointly published by NMFS and FWS, which further elaborates on the procedures followed by the Services when conducting section 7 consultations.

http://endangered.fws.gov/consultations/s7hndbk/s7hndbk.htm.

During formal consultation, focus is upon whether the proposed Federal action is likely to jeopardize the continued existence of any listed species or result in the destruction or adverse modification of critical habitat. 50 CFR 402.14(h).

At the conclusion of formal consultation, the Services will issue a "biological opinion" that details the effects of the action on the listed species or critical habitat, and whether the action is likely to jeopardize the continued existence of a listed species or result in the destruction or adverse modification of critical habitat. 16 U.S.C. 1536(b)(3)(A). A "jeopardy" biological opinion must include reasonable and prudent alternatives, if any are available. Where jeopardy or adverse modification of critical habitat does not exist, the Services must issue an incidental take statement that specifies reasonable and prudent measures necessary to minimize incidental impact. 16 U.S.C. 1536(b)(4). When the terms and conditions of the incidental take statement are followed, all incidental takings that occur are not subject to liability. 16 U.S.C. 1536(o).

Service regulations implementing section 7 also authorize the promulgation of counterpart regulations, that establish alternate consultation procedures for a particular Federal agency. 50 CFR 402.04. Authority to promulgate counterpart regulations acknowledges that in certain instances, the section 7 consultation process can benefit from procedures that differ from the traditional consultation process established by the Services. This ANPR contemplates such regulations.

E. EPA's and the Services' Goals for this ANPR

The Services and EPA are seeking ways to better integrate FIFRA pesticide registration and ESA section 7 consultation processes thereby making the section 7 consultation on pesticides more effective and efficient. Additionally, EPA and the Services are seeking to improve public involvement in and understanding of the consultation process on FIFRA actions. In order to meet these goals, the Services and EPA, in consultation with USDA, will propose counterpart regulations governing section 7 consultation for EPA's regulatory actions, as well as any changes to the FIFRA policies and practices, which may be necessary. In addition, EPA and the Services are considering other procedural modifications to the consultation process for pesticide regulation.

In 1988, Congress addressed the relationship between ESA and EPA's pesticide labeling program. Public Law 100–478, October 7, 1988, amended ESA and required EPA to conduct a study, and to provide Congress with a report of the results, on ways to implement EPA's endangered species pesticide labeling program in a manner that both complies with ESA and allows people to continue production of agricultural food and fiber commodities. Thus, the clear sense of Congress is that EPA should fulfill its obligation to conserve listed species, while at the same time considering the needs of agriculture and other pesticide users. Accordingly, EPA and the Services are working with USDA in this process.

EPA and the Services share the same overall goal--to improve their capacity to provide needed protection for listed species and their critical habitat in an expedited manner that is not unnecessarily burdensome for pesticide users. The Services and EPA believe that procedures and policies that result in better integration of the ESA consultation process with pesticide regulatory programs--both registration and reregistration--should lead to more efficient production of scientifically sound assessments of risks to listed species and critical habitat. That, in turn, should benefit both the listed species and those affected by EPA's pesticide regulatory programs. Improving the process, including shortening the time frames for ESA review of currently registered pesticide products, would enable EPA to more efficiently implement risk mitigation measures to prevent jeopardy to listed species and to avoid adversely modifying critical habitat. Moreover, many of the applications submitted for registration of pesticide products containing new active ingredients involve pesticide formulations that could have less impacts than the currently registered products with which they would compete. Thus, any improvements in the efficiency and effectiveness of the ESA review process could similarly benefit listed species, as well as more broadly provide benefits for human health and the environment. Finally, given the importance of pesticide use for such essential purposes as production of food and fiber and disease prevention, EPA and the Services believe that improved integration of the FIFRA registration/reregistration and section 7(a)(2) consultation processes, under new counterpart regulations, modification to the FIFRA processes, or through other mechanisms, will be achieved in a way that avoids unnecessary burdens on pesticide users.

In developing a process for conducting future ESA consultations on FIFRA pesticide regulatory actions, the agencies believe it is important to recognize that EPA possesses significant resources and expertise in the field of ecological risk assessment relative to pesticides, while the Services possess the technical and regulatory expertise necessary for consistent administration of ESA. Under FIFRA, EPA makes decisions to allow new or continued use of a pesticide only after carefully examining extensive data on the potential risks that use of a pesticide may pose to non-target wildlife species. In addition, EPA's pesticide regulatory program may require companies to conduct studies needed for a risk assessment. As a result, EPA generally has significant scientific information available with which to evaluate the hazards a pesticide may pose to non-target wildlife. Further, to perform its responsibilities under FIFRA, EPA must maintain a sizeable staff of well-qualified scientists with many years of combined experience in assessing ecological risks. Finally, EPA has performed pioneering work in certain areas of ecological risk assessment, such as the development of exposure models and probabilistic risk assessment techniques.

In addition to its strong scientific data bases and its expertise in the field of ecological risk assessment, EPA's decisions have certain relatively unique characteristics. Pesticide products typically include multiple uses, and can potentially be used in many different parts of the country. Thus, in evaluating a pesticide, EPA considers different locations where the product may be used and whether wildlife or plant species may be affected by such use. This broad scope of review contrasts with actions by Federal agencies that have a narrower geographical scope. In addition, the number of pesticide decisions is also a factor potentially affecting the section 7 consultation process. In a typical year, EPA will make hundreds of decisions regarding pesticide registration, some involving very extensive risk assessments, while others require more limited reviews. For example, in fiscal year 2002, EPA registered 26 new pesticide active ingredients; approved the addition of 720 new uses of previously registered active ingredients on close to 1,500 different crops; and completed more than 4,700 more minor registration actions. EPA also completed reregistration assessments on 36

previously registered active ingredients, and processed over 500 emergency exemption requests in FY 2002. Numbers of actions in most of these categories have risen since FY 2000. The combination of the number and variety of pesticide regulatory decisions EPA makes each year, together with the possible use of pesticide products on multiple sites located in different parts of the country, means that the potential number of consultations about the effects of EPA actions could be far greater than result from any other single Federal regulatory program.

The implementation of a number of the changes discussed in Unit III. would require modification of the existing consultation regulations and FIFRA procedures. We are interested in public comment on all potential changes to the current approach to consultation that could be put into effect through rulemaking or without rulemaking, such as through interagency agreements.

III. Request for Comment

This unit of the ANPR invites public comment on a number of ways in which the current regulations, policies, and practices of the Services and EPA regarding ESA consultations about decisions in the pesticide regulatory program could be modified. Unit III.A. focuses on possible approaches to identifying types of actions that would not require case-by-case consultation between EPA and the Services. Unit III.B. asks for comments on possible changes to the existing framework, while retaining the basic approach of requiring consultation whenever EPA determines that use of a pesticide "may affect" protected species. Unit III.C. invites public comment on certain other aspects of the operational relationship between EPA and the Services. The agencies note that the specific approaches described below do not exhaust all of the possible changes that might improve the effectiveness and efficiency of the consultation process. Thus, the agencies invite the public to include comments on other ways to modify the regulations, policies and practices of EPA, FWS, or NMFS to achieve our mutual goals.

Finally, the agencies emphasize that they have made no decisions with respect to pursuing any specific modification discussed below. The agencies will consider public comments about a particular proposed change in light of the following factors, among others: The consistency of the approach with the requirements of ESA and FIFRA; the scientific soundness of the approach; and the impact of the approach on government resources, pesticide users, and others.

A. The Scope of EPA's Consultations on FIFRA Actions Under ESA

1. *Programmatic consultation.* Under existing Service regulations at 50 CFR part 402, the Services and Federal agencies can engage in consultations that address major national programs. There is potential to use this authority to develop a "programmatic" approach to consultation on the pesticide registration program. In regulating pesticides under FIFRA, EPA does not develop overall pesticide registration and reregistration programs as, for instance, the Forest Service might develop a forest plan; rather, EPA makes decisions about new and existing pesticide uses on a case-by-case basis, subject to the standards of FIFRA described above. While these decisions are made on a case-by-case basis, in many circumstances these individual registration decisions share common elements. For example, EPA receives hundreds of applications per year for so called "me-too" pesticide products that are identical or nearly identical to currently registered pesticides. In addition, some classes of pesticides that are not identical may nonetheless share common exposure or toxicological profiles. Even where pesticides may not share common characteristics, there may be approaches to risk assessment and risk management that are appropriate for identifying and addressing risk concerns to listed species across broad classes of pesticides.

Thus, in circumstances where such commonalities exist, it may be possible for EPA to satisfy some or all of its ESA section 7(a)(2) consultation obligations for individual registration actions by completing what could be described as "programmatic" consultations affecting numerous registration and reregistration actions simultaneously. In addition, even where such programmatic consultations are not sufficient to complete the consultation process for certain individual actions, they may serve to improve the consultation process on such actions through the standardization of risk assessment methodologies and alternatives for species protections.

While the Services' current section 7 regulations provide authority for agencies to consult on a group of related actions in this fashion, there may be benefits to using counterpart regulations to establish criteria that would delineate the circumstances under which EPA would be expected to consult with the Services and the circumstances where consultation would not be necessary. Such regulations could identify those practices that EPA would follow to identify and delineate potential adverse effects on listed species and their habitat, as well as the data standards for such evaluations. Such regulations could lead to more efficient use of resources by both the Services and EPA, while at the same time providing the public with an opportunity to participate more fully in the process of protecting listed species.

EPA and the Services welcome comments on this approach and specifically request that commenters consider the following questions in developing their submissions:

- What are the administrative and programmatic advantages and disadvantages of this approach?
- What elements of EPA's pesticide program are particularly amenable to programmatic consultation?
- To what extent, if any, could or should this approach change the consultation process for specific regulatory actions under FIFRA?
- To what extent would it be appropriate to change any of EPA's data requirements, risk assessment methods, or criteria for evaluating potential risks to listed species in connection with such a "programmatic" consultation?
- What are the advantages or disadvantages to implementing this approach through rulemaking?
- What are the advantages or disadvantages to implementing this approach under the Services' existing consultation regulations?
- What would be the appropriate method for addressing issues associated with incidental take under this approach?

2. *Changes to the informal consultation process.* As described in Unit II.D., ESA requires Federal agencies to consult with the Services in meeting their section 7(a)(2) obligations to ensure that agency actions are not likely to jeopardize listed species or destroy or adversely modify any critical habitat of such species. The current consultation regulations at 50 CFR part 402 provide that in circumstances where a Federal agency determines that its actions "may affect" a listed species or critical habitat it must engage in consultation with the Services. In circumstances where an agency concludes that an action will have "no effect" on listed species or critical habitat, no further consultation is required, and the Federal agency, under such circumstances, has satisfied its section 7(a)(2) obligations regarding such action.

In those circumstances where a Federal agency cannot conclude that its actions will have "no effect" on listed species or critical habitat, but can conclude that its actions are "not likely to adversely affect" listed species or critical habitat, Service regulations provide that if the relevant Service concurs in writing on that determination the agency need not engage in further, (i.e., formal) consultation with the Service. 50 CFR 402.13. The concurrence approach, in these situations, serves as a Service opinion or interpretation that the agency has satisfied its section 7(a)(2) obligations regarding such actions.

Under these circumstances the Services have determined, by regulation, that formal consultation is unnecessary for individual agency actions in order for Federal agencies to satisfy their section 7(a)(2) obligations. While this regulatory regime currently applies to, and is generally appropriate for, a wide variety of Federal agency actions, there may be circumstances where the mission and expertise of a particular agency, or a particular office within an agency, may lend itself to the development of alternative or additional informal processes. EPA's regulation of pesticides may be one such instance. As explained in Unit II.C., one of EPA's core functions in the regulation of pesticides under FIFRA is the development of extensive ecological risk assessments, including an evaluation of the effects that pesticide use may have on various plant and animal taxa. As a result, EPA may possess sufficient information and analytical expertise to make informed determinations as to whether a pesticide is "not likely to adversely affect" a listed species or critical habitat. For this reason, EPA and the Services think it is appropriate to consider whether there is a need for either further consultation or Service concurrence in those situations where EPA determines that use of a pesticide is "not likely to adversely affect" listed species or critical habitat.

This ANPR therefore seeks comment on whether to pursue, through counterpart regulations or other mechanisms, either of the two following potential approaches to conducting consultation on pesticide regulatory actions: (1) If EPA determines that a pesticide is not likely to adversely affect listed species or critical habitat, no further consultation would be required; or (2) where EPA determines that a pesticide is not likely to adversely affect listed species or critical habitat, EPA would continue to consult with the Services but EPA would not need to obtain the written concurrence of the Services to satisfy its section 7(a)(2) obligations.

EPA and the Services welcome comments on these alternate approaches and specifically request that commenters consider the following in developing their submissions:

- The administrative and programmatic advantages and disadvantages of these approaches.
- In connection with such regulations, what, if any, criteria should the Services establish which, if met, would support one or both of the approaches.
- Whether in connection with such regulations it would be appropriate or necessary to change any of EPA's data requirements, risk assessment methods, or criteria for evaluating potential risks to protected species.
- Whether there are additional changes to the informal consultation process that may be warranted.

3. *Focused review by the Services during consultation.* The immediately preceding alternative explores amendments to the circumstances under which informal consultation would be necessary. This alternative considers potential approaches to consultation that would focus review provided by the Services once formal or informal consultation had been initiated. It is predicated on the assumption that in the development of this rulemaking, EPA's practices and policies would be reviewed and, where necessary revised to ensure that the data and analyses EPA obtains and uses provide the best available information on the effects on threatened and endangered species. As discussed earlier, EPA has extensive information available with which to assess and mitigate potential risks to listed species and their critical habitat and EPA has developed considerable expertise in these areas. Based on this expertise, therefore, in the case of pesticide regulatory actions, this alternative proposes that the Services would rely on EPA's assessment of effects. Thus in the case of pesticide regulatory actions, the Services would rely on EPA's assessment.

When consultation is necessary, an approach would be to provide for a more focused review of EPA pesticide submissions by the Services. This approach would provide for a rebuttable presumption regarding the adequacy of the effects analysis in an EPA request to initiate consultation. There are many potential standards that could be applied to determine whether the effects analysis would be deemed adequate (see 50 CFR 402.14(c)). This ANPR identifies three:

- Whether EPA had considered the most current and best available scientific, commercial, and technical information on listed species and their habitat and that the determinations were not arbitrary and capricious.
- Whether there was clear and convincing information warranting a different conclusion as to the effects of the proposed registration.
- Whether there is substantial evidence to support EPA's effects determinations.

EPA and the Services are seeking comments on this approach and specifically request that commenters consider the following questions in developing their submissions:

- What are the administrative and programmatic advantages and disadvantages of this overall approach?
- What are the administrative and programmatic advantages and disadvantages of specific provisions?
- What are other possible appropriate evidentiary or procedural provisions?
- Should the Services establish criteria which, if met, would justify such an approach?
- Would it be appropriate to change any of EPA's data requirements, risk assessment methods, or criteria for evaluating potential risks to protected species?

B. Modifications of the Existing Framework Under FIFRA and the ESA to Increase the Effectiveness, Efficiency, and Flexibility of the Existing Interagency Process

1. *Modification of EPA's approach to assessing potential risk to protected species.* EPA routinely receives and evaluates extensive scientific information on the potential hazards of and exposure to pesticide active ingredients as part of its registration and reregistration processes. Unit II.C. contains an overview of this evaluation process and EPA's ESPP Notice describes the risk assessment process in more detail. Please comment on whether there is a need to modify the current assessment process for evaluating the potential risks to protected species, including whether there should be any changes to EPA's data requirements, assessment algorithms, or criteria for judging whether the use of a pesticide poses a potential risk to listed species.

2. *Scope of a consultation.* EPA's registration and reregistration decisions typically involve one or more pesticide products containing a specific active ingredient. A single pesticide product is generally registered for use on multiple crop and/or non-crop sites and may be

applied on any approved site throughout the United States. Thus, a single registration encompasses multiple separate decisions by EPA. The ESA currently requires a Federal agency to ensure that its "actions" do not jeopardize protected species or adversely modify critical habitat. The Services' regulations state that "[a]ny request for formal consultation may encompass, subject to the approval of the Director, a number of similar individual actions within a given area or a segment of a comprehensive plan." 50 CFR 402.14(c). Thus, EPA and the Services have discretion to determine the scope of the regulatory action subject to both formal and informal consultations. Please comment on the advantages and disadvantages of using counterpart regulations or other mechanisms to give EPA and the Services more flexibility to define the scope of EPA's consultation with respect to a specific regulatory action. For example, please comment on whether it would be appropriate to have the ability to define EPA's proposed action in a way that would limit a consultation on a registration decision to: A particular geographical area, a particular ingredient in a pesticide formulation, or a particular use of a pesticide product.

3. *The contents of a consultation package.* The ESA requires that "each agency shall use the best scientific and commercial data available." ESA sec. 7(a)(2). The Services' consultation regulations specify that a written request to initiate formal consultation shall contain:

(1) A description of the action to be considered;

(2) A description of the specific area that may be affected by the action;

(3) A description of any listed species or critical habitat that may be affected by the action;

(4) A description of the manner in which the action may affect any listed species or critical habitat and an analysis of any cumulative effects;

(5) Relevant reports, including any environmental impact statements, environmental assessments, or biological assessments prepared; and

(6) Any other relevant available information on the action, the affected listed species, or critical habitat. 50 CFR 402.14(c).

The Services' regulations define "cumulative effects" to mean "those effects of future State or private activities, not involving Federal activities, that are reasonably certain to occur within the action area of the Federal action subject to consultation." 50 CFR 402.02. The consultation regulations do not establish any requirements with respect to the content of a request for an informal consultation.

Please comment on:

- The meaning of the statutory phrase, "best scientific and commercial data available," with respect to the type of information EPA should be required to include in a review package.
- The advantages and disadvantages of issuing counterpart regulations to modify the existing requirements in 50 CFR 402.14(c).
- Whether the same requirements apply to review packages submitted for informal consultation as for formal consultation or whether informal consultation packages should be subject to any regulatory requirements since they are informal.
- Given that most EPA actions involve multiple pesticide uses that may range from regional to national in scope, what is the most effective and efficient way to address the concept of "cumulative effects" as defined under the Services regulations at 50 CFR 402.02?

4. *The time frame for completing formal and informal consultation on pesticide regulatory actions.* The ESA sets a goal of 135 days for concluding a formal consultation, but also contains provisions that allow the action agency and the Services to agree, in certain circumstances, to extend the deadline for completing the consultation. See ESA sec. 7(b). Neither ESA nor the Services' consultation regulations establish a time frame for completion of informal consultations.

Please comment on the advantages and disadvantages of:

- Establishing specific time frames for concluding formal consultations on pesticide regulatory decisions, including the possibility of a shorter time frame and what action by EPA should trigger the start of a time period for formal consultation.
- Establishing specific time frames for concluding informal consultations on pesticide regulatory actions and what action by EPA should trigger the start of a time period for informal consultation.
- Defining specific circumstances under which the time frames should be extended and what those circumstances might be.

5. *Identify and establish procedures for dealing with an "emergency" for purposes of emergency consultation and other expedited review.* The Services' consultation regulations contain provisions allowing consultation to be conducted in an expedited manner in "emergency circumstances." 50 CFR 402.05. This provision applies to "situations involving acts of God, disasters, casualties, national defense or security emergencies, etc." The regulations state that expedited consultation may be conducted in any manner consistent with ESA, and that formal consultations "shall be initiated as soon as practicable after the emergency is under control." Under FIFRA, EPA may issue exemptions to States or Federal agencies to allow the use of an unregistered pesticide when "emergency conditions exist which require such exemption." FIFRA sec. 18.

Please comment on whether these and other types of regulatory actions taken by EPA's pesticide programs should be considered "emergencies" that would justify conducting any required ESA consultation in an expedited manner. For example, if consultation with the Services were required, should emergency consultation provisions apply to:

- Petitions for emergency exemptions under FIFRA sec. 18?
- Notifications to EPA of State issuance of "special local needs" registrations under FIFRA sec. 24(c)?
- Other circumstances giving rise to a need for expedited review?

Are there any circumstances where no review by the Services is appropriate, for example, when the action is taken to address a public health emergency as described in 40 CFR part 166, under FIFRA?

6. *Clarify the role of the Services.* As discussed in Unit II.D., ESA and existing consultation regulations describe the role that the Services play in providing advice and opinions on the impact of agency actions on protected species and their critical habitat.

What are the advantages and disadvantages of using counterpart regulations or other mechanisms to establish additional responsibilities for the Services, for example, by specifying that the Services should assist EPA in developing the information base for consultation or by specifying the types of information that the Services should provide to EPA? What other responsibilities, if any, should the Services assume? Should counterpart regulations (or some other mechanism) establish a process that a Service follows to ensure that, when different parts of its organization issue Biological Opinions on the same pesticide and/or species, its Biological Opinions are consistent? If so, how should that process operate?

7. *Clarify the term "applicant" and the participation afforded to applicants.* The current consultation regulations define the term "applicant," as a person "who requires formal approval or authorization from a Federal agency as a prerequisite to conducting the action."

50 CFR 402.02. The regulations provide that during formal consultation, an applicant shall have an opportunity to submit information; the Service will discuss with the Federal Agency and the applicant the Service's review and evaluation of the action as well as the basis for any finding in the Biological Opinion and the availability of reasonable and prudent alternatives (if a jeopardy opinion is to be issued) and the applicant may request a copy of, and comment upon, any draft Biological Opinion requested from the Service by the Federal Agency before it is issued in final form by the Service. 50 CFR 402.14.

Should the role outlined in current regulations for an "applicant" be retained in counterpart regulations. If so, how should it be applied with respect to pesticide regulatory actions and what procedural rights should such an "applicant" have? At what points in the consultation process should the general public have an opportunity to participate?

8. *Clarify and improve the role of States and Tribes and other potential non-Federal representatives.* The current consultation regulations state that a Federal agency may designate a non-Federal representative to prepare biological evaluations and/or to conduct informal consultation with the Services. 50 CFR 402.08. While the regulations do not specify who may (or may not) act as a non-Federal representative, they do indicate that, in some circumstances, an "applicant" may be a non-Federal representative.

Please comment on the circumstances, if any, that pesticide companies could or should be designated as a non-Federal representative. In addition, please comment on whether, in view of the role that States and Tribes play in the enforcement of EPA regulatory decisions under FIFRA, States or Tribes could or should be designated as non-Federal representatives.

Should any special or additional procedures be established to provide greater participation of States and Tribes in the consultation process, either as a non-Federal representative or in another capacity?

9. *Fees.* A substantial increase in the number or complexity of consultations between EPA and the Services will require a corresponding increase in agency resources.

Please comment on whether it would be appropriate to charge fees to offset the added expenditures that would be necessary to conduct such consultations. Who should pay such fees, and how should the amount of any fee be determined?

10. *Process for elevating and resolving disagreements between EPA and the Services.* Neither ESA nor the current consultation regulations prescribe how an action agency and the Services will resolve disagreements arising under ESA. EPA and the Services, however, have addressed this issue with respect to consultations about two of EPA's regulatory programs involving water. See Memorandum of Agreement, 66 FR 11202, February 22, 2001.

Please comment on the advantages and disadvantages to using counterpart regulations or some other mechanism to establish procedures for expedited resolution of disagreements between the Services and EPA.

C. Other Programmatic Aspects of the Consultation Process

EPA's ESPP Notice has invited public comment on the most appropriate approach to structure consultations about the potential impacts of pesticides on listed species. The ESPP Notice identified several possible approaches: Consultation on a pesticide-by-pesticide basis; on a geographically defined site-by-site basis; on a crop-by-crop basis; or a species-by-species basis. See 67 FR 71549, December 2, 2002.

In addition to issues about the structure of consultations, EPA and the Services are interested in issues relating to establishing priorities for such consultations. In view of the scope of the pesticide regulatory program, EPA and the Services think the number of consultations that may be needed in the foreseeable future could involve substantial resources. Moreover, given the number of pesticides and their potentially widespread and overlapping uses, the agencies foresee that there could be a large degree of potentially redundant effort unless the consultation process is carefully managed to achieve the most efficient use of limited resources. The Services and EPA therefore invite comment on any additional approaches that might improve the overall consultation process. In particular, the agencies invite comments on the feasibility and usefulness of developing a comprehensive, priority-based schedule for completing any necessary consultations. If such a schedule would be appropriate, how should the Services and EPA determine which consultations should receive highest priority? What role, if any, should the public have in forming the priorities for consultation? How should any priority scheme for endangered species determinations relate to existing schedules for reregistration under FIFRA?

IV. Regulatory Assessment Requirements

Under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993), it has been determined that this ANPR is a "significant regulatory action" under section 3(f) of the Executive Order, because it raises "novel legal or policy issues arising out of legal mandates." The Agency therefore submitted this ANPR to OMB for the 10–day review period afforded under this Executive Order. Any changes made in response to OMB comments during that review have been documented in the public docket as required by the Executive Order.

Since this ANPR does not impose any requirements, and instead seeks comments and suggestions for the Agency to consider in developing a subsequent notice of proposed rulemaking, the various other review requirements that apply when an agency imposes requirements do not apply to this ANPR.

As a part of your comments on this document, you may include any comments or information that you have regarding these requirements. In particular, any comments or information that would facilitate the Agency's assessment of the potential impact of a procedural rule on small entities pursuant to the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq*). The Agency will consider such comments during the development of the notice of proposed rulemaking as it takes appropriate steps to address any applicable requirements.

List of Subjects in 50 CFR Part 402

Endangered species, Environmental protection, Pesticides.

Dated: January 9, 2003.

William T. Hogarth.

Assistant Administrator, National Marine Fisheries Service, National Oceanic and Atmospheric Administration, U.S. Department of Commerce.

Dated: January 8, 2003.

Craig Manson.

Assistant Secretary for Fish and Wildlife and Parks, U.S. Department of the Interior.

Dated: January 21, 2003.

Christine T. Whitman.

Administrator, U.S. Environmental Protection Agency.

[FR Doc. 03–1661 Filed 1–23–03; 8:45 am]

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January 24, 2003

Part X

Department of Justice

Immigration and Naturalization Service

8 CFR Part 103
Adjustment of Immigration Benefit Application Fees; Interim Rule

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 103

[INS No. 2257–03]

RIN 1115–AG96

Adjustment of Immigration Benefit Application Fees

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Interim rule with request for comments.

SUMMARY: This rule adjusts the immigration benefit application fee schedule by subtracting the applicable amount of surcharges used for asylum and refugee services, fee exemptions and fee waivers to comply with section 457 of the Homeland Security Act of 2002, Public Law 107–296. Fees collected from persons filing immigration benefit applications are deposited into the Immigration Examinations Fee Account (IEFA) and used to recover the full cost of processing immigration benefit applications and associated administrative costs. Federal guidelines require the Immigration and Naturalization Service (Service or INS) to establish and collect fees to recover the full costs of processing immigration benefit applications.

DATES: *Effective date:* This rule is effective January 24, 2003.

Comment date: Written comments must be submitted on or before March 25, 2003.

ADDRESSES: Please submit written comments to the Director, Regulations and Forms Services Division, Immigration and Naturalization Service, 425 I Street NW., Room 4034, Washington, DC 20536. To ensure proper handling, please reference INS Number 2257–03 on your correspondence. You may also submit comments electronically at *insregs@usdoj.gov*. When submitting comments electronically, you must include INS No. 2257–03 in the subject box so that your comments can be properly routed to the appropriate office. Comments are available for public inspection at the above address by calling (202) 514–3291 to arrange for an appointment.

FOR FURTHER INFORMATION CONTACT: Paul Schlesinger, Chief, Immigration Services Branch, Office of Budget, Immigration and Naturalization Service, 425 I Street NW., Room 5307, Washington, DC 20536, telephone (202) 514–3410.

SUPPLEMENTARY INFORMATION:

What Legal Authority Does the Service Have To Charge Fees?

A. Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriation Acts of 1989 and 1991

With reference to the fees for applications and petitions, the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriation Act, 1989, Public Law 100–459, sec. 209, 102 Stat. 2186, 2203 (October 1, 1988), authorized the Service to prescribe and collect fees to recover the cost of providing certain immigration and naturalization benefits. That law also authorized the establishment of the IEFA in the Treasury of the United States. All revenue from fees collected for immigration and naturalization benefits are deposited in the IEFA and remain available to provide immigration and naturalization services. 8 U.S.C. 1356(n).

In subsequent legislation, the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1991, Public Law 101–515, sec. 210(d), 104 Stat. 2101, 2121 (November 5, 1990), Congress further provided that "fees for providing adjudication and naturalization services may be set at a level that will ensure recovery of the full costs of providing all such services, including the costs of similar services provided without charge to asylum applicants or other immigrants. Such fees may also be set at a level that will recover any additional costs associated with the administration of the fees collected." 8 U.S.C. 1356(m).

The House Conference Report to the bill, entitled "Making Appropriations for the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies For the Fiscal Year Ending September 30, 1996, and For Other Purposes," H.R. Conf. Rep. No. 104–378, at 82 (1995), directs the Service to fund the cost of the Cuban-Haitian Entrant Program from the IEFA. The Report states, "(t)he conferees have also agreed that the activities related to the resettlement of Cubans and Haitians should be transferred to the * * * Service and that the costs of these activities should be supported by the [IEFA]." *Id.*

In a final rule effective October 13, 1998, except the Form N–400, which took effect on January 15, 1999, the Service raised the majority of fees to recover the full costs of processing immigration benefit applications, and added a "surcharge" setting the fees at a level sufficient to fund the processing of asylum and refugee applications as well as those immigration benefit applications processed at no charge to applicants/petitioners.

What Is the Impact of Section 457 of the Homeland Security Act on the Current Fee Structure?

In section 457 of the Homeland Security Act of 2002, Congress provided that "Section 286(m) of the Immigration and Nationality Act (8 U.S.C. 1356(m)) is amended by striking "services, including the costs of similar services provided without charge to asylum applicants or other immigrants." and inserting "services.". The deletion of this language has the effect of repealing the statutory basis for surcharges. The Service is, therefore, required to reduce immigration benefit application fees by an average of $50, or 25%, for the surcharges applied to the majority of immigration benefit applications as stated in 63 FR 1775 (proposed rule January 12, 1998). The surcharge amount (as well as the costs of processing immigration benefit applications) was subsequently increased by inflation factors as per 66 FR 65811 (final rule December 21, 2001).

The following table displays the surcharges per application for asylum and refugee services, and for fee exemptions and fee waivers (adjusted for inflation).

TABLE 1.—SURCHARGES PER IMMIGRATION BENEFIT APPLICATION

Form No.	Description	Asylum/ refugee	Fee exemptions/ waivers	Total
I–17	Petition for Approval of School for Attendance by Nonimmigrant Student.	$34.76	$27.85	$62.61
I–90	Application to Replace Permanent Resident Card	19.29	15.46	34.75

TABLE 1.—SURCHARGES PER IMMIGRATION BENEFIT APPLICATION—Continued

Form No.	Description	Asylum/ refugee	Fee exemptions/ waivers	Total
I–102	Application for Replacement/Initial Nonimmigrant Arrival/Departure Record.	15.24	12.21	27.45
I–129	Petition for A Nonimmigrant Worker	18.81	15.08	33.89
I–129F	Petition for Alien Fiancé(e)	16.38	13.12	29.50
I–130	Petition for Alien Relative	19.11	15.32	34.43
I–131	Application for Travel Document	16.50	13.22	29.72
I–140	Immigrant Petition for Alien Worker	19.88	15.92	35.80
I–191	Application for Permission to Return to an Unrelinquished Domicile	29.45	23.59	53.04
I–192	Application for Advance Permission to Enter as a Nonimmigrant	29.45	23.59	53.04
I–193	Application for Waiver of Passport and/or Visa	29.45	23.59	53.04
I–212	Application for Permission to Reapply for Admission into the U.S. After Deportation or Removal.	29.45	23.59	53.04
I–485	Application to Register Permanent Residence or to Adjust Status	38.53	30.88	69.41
I–526	Immigrant Petition by Alien Entrepreneur	60.85	48.75	109.60
I–539	Application to Extend/Change Nonimmigrant Status	20.94	16.77	37.71
I–600/600A	Petition to Classify Orphan as an Immediate Relative/Application for Advance Processing or Orphan Petition.	70.79	56.72	127.51
I–601	Application for Waiver of Grounds of Excludability	29.45	23.59	53.04
I–612	Application for Waiver of the Foreign Residence Requirement	29.45	23.59	53.04
I–751	Petition to Remove the Conditions on Residence	22.01	17.64	39.65
I–765	Application for Employment Authorization	17.92	14.36	32.28
I–817	Application for Family Unity Benefits	20.92	16.76	37.68
I–824	Application for Action on an Approved Application or Petition	20.65	16.54	37.19
I–829	Petition by Entrepreneur to Remove Conditions	60.69	48.63	109.32
N–400	Application for Naturalization	39.77	31.87	71.64
N–565	Application for Replacement Naturalization Citizenship Document	23.55	18.87	42.42
N–600	Application for Certification of Citizenship	28.32	22.69	51.01
N–643	Application for Certificate of Citizenship in Behalf of an Adopted Child.	22.06	17.67	39.73

The following table displays the new immigration benefit application fees, minus the surcharge (rounded to the nearest $1.00).

TABLE 2.—CURRENT VERSUS NEW IMMIGRATION BENEFIT APPLICATION FEES

Form No.	Description	New fee	Current fee	Change
I–17	Petition for Approval of School Attendance by Nonimmigrant Student.	$517	$580	($63)
I–90	Application to Replace Permanent Resident Card	95	130	(35)
I–102	Application for Replacement/Initial Nonimmigrant Arrival/Departure Record.	73	100	(27)
I–129	Petition for A Nonimmigrant Worker	96	130	(34)
I–129F	Petition for Alien Fiancé(e)	81	110	(29)
I–130	Petition for Alien Relative	96	130	(34)
I–131	Application for Travel Document	80	110	(30)
I–140	Immigrant Petition for Alien Worker	99	135	(36)
I–191	Application for Permission to Return to an Unrelinquished Domicile	142	195	(53)
I–192	Application for Advance Permission to Enter as a Nonimmigrant	142	195	(53)
I–193	Application for Waiver of Passport and/or Visa	142	195	(53)
I–212	Application for Permission to Reapply for Admission into the U.S. After Deportation or Removal.	142	195	(53)
I–485	Application to Register Permanent Residence or to Adjust Status	186	255	(69)
I–526	Immigrant Petition by Alien Entrepreneur	290	400	(110)
I–539	Application to Extend/Change Nonimmigrant Status	102	140	(38)
I–600/600A	Petition to Classify Orphan as an Immediate Relative/Application for Advance Processing or Orphan Petition.	332	460	(128)
I–601	Application for Waiver of Grounds of Excludability	142	195	(53)
I–612	Application for Waiver of the Foreign Residence Requirement	142	195	(53)
I–751	Petition to Remove the Conditions on Residence	105	145	(40)
I–765	Application for Employment Authorization	88	120	(32)
I–817	Application for Family Unity Benefits	102	140	(38)
I–824	Application for Action on an Approved Application or Petition	103	140	(37)
I–829	Petition by Entrepreneur to Remove Conditions	286	395	(109)
N–400	Application for Naturalization	188	260	(72)
N–565	Application for Replacement Naturalization Citizenship Document	113	155	(42)
N–600	Application for Certification of Citizenship	134	185	(51)
N–643	Application for Certificate of Citizenship in Behalf of an Adopted Child.	105	145	(40)

What Is the Impact of section 457 of the Homeland Security Act on Current Programs?

The Service recognizes that this statutory amendment has the effect of terminating the existing source of funding for the asylum and refugee programs and, accordingly, will impair the Service's ability to adjudicate applications for these programs. This amendment also terminates the existing source of funding for the adjudication of other applications for which the Service has granted a fee waiver under the relevant standards, thereby eliminating the ability of the Service to grant fee waivers and exemptions. However, the Service has no choice in taking this action to revise the current fee schedule because Congress has mandated that result, effective January 24, 2003.

Good Cause Exception

This interim rule is effective on January 24, 2003, although the Service invites post promulgation comments and will address any such comments in a final rule. The Service finds that good cause exists to adopt this rule without the prior notice and comment period and delayed effective date ordinarily required by 5 U.S.C. 553(b) and (d), since section 457 of the Homeland Security Act of 2002, Public Law 107–296 takes effect on January 24, 2003.

Regulatory Flexibility Act

The Acting Commissioner, Immigration and Naturalization Service, in accordance with 5 U.S.C. 605(b), has reviewed this regulation and by approving it has determined that this rule will not have a significant economic impact on a substantial number of small entities. The majority of applications and petitions are submitted by individuals and not small entities as that term is defined in 5 U.S.C. 601(6).

Although the Service acknowledges that a number of small entities, particularly those filing business-related applications and petitions, such as Form I–140, Immigrant Petition for Alien Worker; Form I–526, Immigrant Petition by Alien Entrepreneur; and Form I–829, Petition by Entrepreneur to Remove Conditions, may be affected by this rule, the rule will have a positive impact since the Service will be reducing the costs of petitions and applications.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by state, local and tribal governments, in the aggregate, or by the private sector of $100 million or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Act of 1996. This rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Executive Order 12866

This rule is considered by the Department of Justice to be a "significant regulatory action" under Executive Order 12866, section 3(f), Regulatory Planning and Review. Accordingly, this rule has been submitted to the Office of Management and Budget (OMB) for review.

The Service has assessed both the costs and benefits of this rule as required by section 1(b)(6) of Executive Order 12866 and has made a determination that the Service has no alternative other than to eliminate the surcharge in order to comply with section 457 of Public Law 107–296.

Executive Order 13132

This rule will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, the Department of Justice has determined that this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

Executive Order 12988: Civil Justice Reform

This rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988.

Paperwork Reduction Act

This rule requires that the fees for application and petition forms identified in this interim rule be reduced to comply with section 457 of Public Law 107–296. Since a reduction of these fees will reduce the cost burden on the public the Service has submitted the required Paperwork Reduction Change Worksheet (OMB–83C) to the Office of Management and Budget (OMB) reflecting the new fees and cost burdens on the public, and OMB has approved the changes.

To ensure that the public is fully aware of these changes the new fees will be highlighted on the Services Web site at: *http://www.ins.usdoj.gov.*

List of Subjects in 8 CFR Part 103

Administrative practice and procedure, Authority delegations (government agencies), Freedom of Information, Privacy, Reporting and recordkeeping requirements, Surety bonds.

Accordingly, part 103 of chapter I of title 8 of the Code of Federal Regulations is amended as follows:

PART 103—POWERS AND DUTIES OF SERVICE OFFICERS; AVAILABILITY OF SERVICE RECORDS

1. The authority citation for part 103 continues to read as follows:

Authority: 5 U.S.C. 552, 552(a); 8 U.S.C. 1101, 1103, 1304, 1356; 31 U.S.C. 9701; E.O. 12356, 47 FR 14874, 15557; 3 CFR, 1982 Comp., p.166; 8 CFR part 2.

2. Section 103.7(b)(1) is amended by revising the entries for the following forms, to read as follows:

§ 103.7 Fees.

* * * * *

(b) * * *

(1) * * *

* * * * *

Form I–17. For filing a petition for school approval or recertification—$517 plus $350 per additional campus listed on Form I–17B.

* * * * *

Form I–90. For filing an application for a Permanent Resident Card (Form I–551) in lieu of an obsolete card or in lieu of one lost, mutilated, or destroyed, or for a change in name—$95.

* * * * *

Form I–102. For filing a petition for an application (Form I–102) for Arrival/Departure Record (Form I–94) or Crewman's Landing (Form I–95), in lieu of one lost, mutilated, or destroyed—$73.

Form I–129. For filing a petition for a nonimmigrant worker, a base fee of $96. For filing an H–1B petition a base fee of $96 plus an additional $1,000 fee in a single remittance of $1,096. The remittance may be in the form of one or two checks (one in the amount of $1,000 and the other in the amount of $96). Payment of this additional $1,000 fee is not waivable under § 103.7(c)(1). Payment of this additional $1,000 fee is not required if an organization is exempt under § 214.2(h)(19)(iii) of this chapter, and this additional $1,000 fee also does not apply to certain filings by any

employer as provided in § 214.2(h)(19)(v) of this chapter.

Form I–129F. For filing a petition to classify nonimmigrant as fiancée or fiancé under section 214(d) of the Act—$81.

Form I–130. For filing a petition to classify status of alien relative for issuance of immigrant visa under section 204(a) of the Act—$96.

Form I–131. For filing an application for travel documents—$80.

Form I–140. For filing a petition to classify preference status of an alien on the basis of profession or occupation under section 204(a) of the Act—$99.

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Form I–191. For filing applications for discretionary relief under section 212(c) of the Act—$142.

Form I–192. For filing an application for discretionary relief under section 212(d)(3) of the Act, except in an emergency case, or where the approval of the application is in the interest of the United States Government—$142.

Form I–193. For filing an application for waiver of passport and/or visa—$142.

* * * * *

Form I–212. For filing an application for permission to reapply for an excluded, deported or removed alien, an alien who has fallen into distress, an alien who has been removed as an alien enemy, or an alien who has been removed at government expense in lieu of deportation—$142.

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Form I–485. For filing an application for permanent resident status or creation of a record of lawful permanent residence—$186 for an applicant 14 years of age or older; $160 for an applicant under the age of 14 years; no fee for an applicant filing as a refugee under section 209(a) of the Act.

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Form I–526. For filing a petition for an alien entrepreneur—$290.

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Form I–539. For filing an application to extend or change nonimmigrant status—$102.

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Form I–600. For filing a petition to classify orphan as an immediate relative for issuance of immigrant visa under section 204(a) of the Act. (When more than one petition is submitted by the same petitioner on behalf of orphans who are brothers or sisters, only one fee will be required.)—$332.

Form I–600A. For filing an application for advance processing of orphan petition. (When more than one petition is submitted by the same petitioner on behalf of orphans who are brothers or sisters, only one fee will be required.)—$332.

Form I–601. For filing an application for waiver of ground of inadmissibility under section 212(h) or (i) of the Act. (Only a single application and fee shall be required when the alien is applying simultaneously for a waiver under both those subsections.)—$142.

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* * * * *

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Dated: January 23, 2003.

Michael J. Garcia,

Acting Commissioner, Immigration and Naturalization Service.

[FR Doc. 03–1853 Filed 1–23–03; 11:21 am]

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The President

Presidential Determination No. 2003–12 of January 17, 2003

Presidential Determination on Extending Waiver of Section 907 of the FREEDOM Support Act with Respect to Assistance to the Government of Azerbaijan

Memorandum for the Secretary of State

Pursuant to the authority contained in Title II of the Kenneth M. Ludden Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2002 (Public Law 107–115), I hereby determine and certify that extending the waiver of section 907 of the FREEDOM Support Act of 1992 (Public Law 102–511):

- is necessary to support United States efforts to counter international terrorism;
- is necessary to support the operational readiness of United States Armed Forces or coalition partners to counter international terrorism;
- is important to Azerbaijan's border security; and
- will not undermine or hamper ongoing efforts to negotiate a peaceful settlement between Armenia and Azerbaijan or be used for offensive purposes against Armenia.

Accordingly, I hereby extend the waiver of section 907 of the FREEDOM Support Act. You are authorized and directed to notify the Congress of this determination and to arrange for its publication in the **Federal Register**.

THE WHITE HOUSE,
Washington, January 17, 2003.

[FR Doc. 03–1894
Filed 1–24–03; 8:45 am]
Billing code 4710–10–P

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Rules and Regulations

Federal Register
Vol. 68, No. 17
Monday, January 27, 2003

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NE–19–AD; Amendment 39–13024; AD 2003–02–07]

RIN 2120–AA64

Airworthiness Directives; General Electric Company CF6–50 and CF6–80C2 Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), that is applicable to General Electric Company CF6–50 and CF6–80C2 turbofan engines. This amendment requires replacement of certain existing CF6–50 and CF6–80C2 low pressure turbine (LPT) shrouds with new design LPT shrouds. This amendment is prompted by 37 LPT uncontained events on the CF6–50, 24 uncontained events on the CF6–80C2 engine models since 1993, and the development and certification of newly designed shrouds that will improve LPT containment capability. The actions specified by this AD are intended to prevent uncontained engine failure and possible airplane damage.

DATES: Effective March 3, 2003.

ADDRESSES: Information regarding this action may be examined, by appointment, at the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: Karen Curtis, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7192; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that is applicable to General Electric Company CF6–50 and CF6–80C2 turbofan engines was published in the **Federal Register** on May 17, 2001 (66 FR 27475). That action proposed to require replacement of certain existing CF6–50 and CF6–80C2 LPT shrouds with new design shrouds.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Request Withdrawal of Proposed Rule

Five commenters request that the proposed rule be withdrawn. The commenters believe that the new LPT shrouds will not prevent or significantly reduce the occurrence or severity of the more severe (SAE Category 2 or higher) uncontained events, and therefore, the economic impact is not justified by this limited improvement in safety. The commenters provided statistics to show that the vast majority (89%) of the uncontained LPT events were SAE Category 1 with no aircraft impact, and were, therefore, no hazard to continued safe flight. Data was also provided that showed that none of the Category 2 events had caused more than minor aircraft damage, and that corrective actions (*i.e.* inspection or replacement programs; some required by existing AD's) were available from the manufacturer to address the majority of the root causes that had led to the Category 2 events.

The FAA partially agrees. The FAA agrees that because the design criteria for the shrouds is based on ballistic containment calculations, it is difficult to quantify a benefit for the improved LPT shrouds for rub-through or push-through events. However, the FAA disagrees that the improved shrouds will not provide some additional benefit for those events where the LPT uncontainment was not exclusively of a ballistic nature. Although the events occurring to-date have not resulted in significant hazards to continued safe flight, the potential exists for future events to be more significant. Therefore, in addition to requiring that the root causes for the upstream failures that have led to uncontained LPT events be addressed, the FAA believes that the improved LPT shrouds must be incorporated to meet the intent of the regulations, which is for the engines to contain failures at the engine case level.

Extend or Eliminate Compliance End Date

Seven commenters request that the compliance end date be extended or eliminated. The commenters noted that all of the CF6–50 models would likely be in compliance by that date based on their estimated shop visit and LPT exposure rates, but that many CF6–80C2 engines would be forced off-wing early solely for this compliance, thereby imposing a significant financial burden that was not included in the economic analysis of the proposal.

The FAA agrees that the intended improvement in safety can be achieved by extending the compliance end date to support the normal shop visit and LPT exposure rates and, therefore, the proposed calendar end date is changed in the final rule.

Request for Exemption of Certain LPT Cases and LPT Shroud Configurations

Four commenters request that engines configured with a certain LPT case configuration and certain LPT shroud configurations be exempt from the proposed AD. The commenters note that the improved LPT case, part number (P/N) 1647M68G15, introduced by GE Aircraft Engines Service Bulletin (GEAE SB) 72–0946 in conjunction with certain LPT shrouds provides equivalent containment to the older design LPT case with the newest shrouds referenced by the proposed rule.

The FAA agrees. The manufacturer has provided data to show that CF6–80C2 engines configured with the later LPT cases and certain LPT shrouds provide equivalent containment capability. Therefore, CF6–80C2 engines configured with the combination of LPT case, P/N 1647M68G15, and LPT stage 2 shroud, P/N 1862M62G01 or 1862M62G03; and LPT stage 3 shroud, P/N 1862M63G01 or 1862M63G03; and LPT stage 4 shroud P/N 1862M64G01 or 1862M64G03 are exempted from this rule. The final rule is revised to reflect this change, and the economic analysis of the final rule is reduced to reflect this change.

Request for Relaxed Compliance Requirements

Three commenters request that relaxed compliance requirements be provided for engines with certain configurations that reduce the probability of an upstream failure that has been known to result in the higher severity uncontained LPT events. The commenters believe that addressing the root causes of the uncontained LPT failures will be more effective than the new shrouds for improving containment and reducing the frequency and severity of the events.

The FAA partially agrees. The FAA agrees that upstream failures that lead to uncontained LPT events must be addressed and has already mandated corrective actions for many of those known failure mechanisms. However, as stated in the proposed rule, not all such possible upstream failure modes can be predicted or anticipated. Therefore, the FAA disagrees that relaxed compliance schedules for engines configured with certain root cause fixes will achieve the necessary safety improvement that will be realized by incorporation of the improved LPT shrouds. No changes will be made to this AD.

Request for Equivalent Replacement Parts

Five commenters request that any FAA-approved Parts Manufacturing Approval (PMA) or repaired configurations of the manufacturer's design be allowed as equivalent replacement parts for the GE service bulletin parts.

The FAA agrees. The final rule is revised to include all of the known FAA-approved equivalent parts for each of the engine models as acceptable configurations.

Service Bulletin Accepted as Compliance to Proposed Rule

One commenter requests that GE CF6–50 SB 72–1170, Revision 1, dated November 30, 1999, be accepted as compliance for the proposed rule. The commenter notes that this revision clarifies the engines that are affected by explicitly listing all of the earlier shroud part numbers that should be replaced with the new shroud part numbers.

The FAA partially agrees. The FAA agrees that the revised SB provides additional clarification on the affected engines. However, as noted in the FAA response to the previous comment on equivalent replacement parts, there are other parts in addition to those referenced in that SB that can be used to comply with this AD. The final rule is changed to eliminate the incorporation by reference of any version of the SB.

Analysis Request To Quantify Containment Improvement

One commenter requests that an analysis be provided to quantify the containment improvement provided by the new shrouds. The commenter believes that the new design shrouds do not improve the containment capability as intended because the minimum thickness of the shear section is not changed.

The FAA disagrees. The FAA feels that the containment capability of the shrouds can not be determined based on shear section thickness alone. No changes will be made to this AD.

Request for Engine Containment Test

One commenter requests that the OEM be required to perform an engine containment test to demonstrate the effectiveness of the new design shrouds. The commenter believes that other OEM's have been required to perform such tests in order to substantiate improved containment. The commenter believes that the high cost of compliance with the proposed rule warrants such a test demonstration.

The FAA does not agree. The regulations for the most part address primary blade containment. Test demonstrations for secondary failure modes, due to multiple upstream failures, as in this case, are not normally required. In addition, the regulations allow the use of analysis in lieu of a test demonstration, and a test is not always required for substantiation. No changes will be made to this AD.

Request To Limit the Number of Times a Shroud Can Be Repaired

One commenter requests that the proposed rule be revised to limit the number of times a shroud can be repaired. The commenter notes, as stated in the proposal, that multiple repairs can lead to reduced backsheet thickness and result in reduced containment system capability.

The FAA partially agrees. The FAA agrees that multiple repairs can possibly result in reduced backsheet thickness. However, the FAA disagrees that the specific number of repairs that will result in this condition can be defined. Instead, the engine manufacturer has made modifications to the engine manual to require a check of the backsheet thickness in order to determine the serviceability of the shroud. Compliance with the revised manual limit will ensure that the minimum backsheet thickness required to achieve the system containment capability is maintained. No changes will be made to this AD.

Request for Revision to Notice of Proposed Rulemaking (NPRM)

One commenter requests that the proposed rule be revised to include improved stage 1 and stage 5 shrouds for the CF6–80C2. The commenter believes that a recent in-service event indicates that improved containment is necessary in stages 1 and 5 as well as stages 2, 3, and 4 that have already been proposed. The commenter recommends that an engineering analysis be performed to verify that these additional shrouds are adequate to prevent the failure mode recently demonstrated in plane 5 of the LPT.

The FAA does not agree. The most recent event referred to by this commenter exhibited an unusual variation of LPT uncontainment in which an extensive rub-through occurred in plane 5. The shrouds mandated for incorporation by this rule were redesigned primarily to address ballistic type containment events at stages where field experience and the manufacturer's analysis had shown deficiencies. In addition, the manufacturer has advised the FAA that although new part numbers for stage 1 and stage 5 LPT shrouds were introduced to the field at the same time as the stage 2 through 4 shrouds, the redesigns of those shrouds were made primarily to improve manufacturing and would have no appreciable affect on ballistic containment capability and no affect on the rub-through type of failure. Potential redesigns to address the case rub-through scenario are under consideration. Further rule making activity to address the rub-through failure scenario will be considered once redesigns are certified. No changes will be made to this AD.

Request for Additional Replacement Criteria

One commenter requests that replacement be allowed on the basis of attrition only and that minimum dimensional requirements be defined or other repairs be developed for the existing shrouds to allow these shrouds to be returned to service in lieu of the new shrouds. The commenter believes that an equivalent level of safety can be achieved with properly repaired or restored versions of the current shroud design while reducing the cost burden of the proposed rule on the operators.

The FAA partially agrees. The FAA agrees that the existing shrouds may be repaired in such a way as to restore the original or achieve the latest design capability. Such repairs that have been

approved by the FAA and are known to the FAA have been included as equivalent parts for compliance with this rule. Also the engine manufacturer has updated their manuals to include minimum dimensional requirements for repairability and serviceability of their parts. The FAA disagrees that replacement by attrition will ensure the intended improvement in safety. No changes will be made to this AD.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes described previously. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Economic Analysis

There are approximately 5,055 GE CF6–50 and CF6–80C2 turbofan engines of the affected design in the worldwide fleet. The FAA estimates that 1,006 engines installed on airplanes of U.S. registry would be affected by this AD. Because this AD calls for the replacement of shrouds at piece part exposure, the FAA does not expect that additional labor costs will be accrued beyond that normally required to remove the existing shroud. New shrouds will cost approximately $63,250 for the CF6–50 engines, and $87,020 for the CF6–80C2 engines. Based on these figures, the total cost to retrofit all installed U.S. registered engines is estimated to be $76,393,990 over an eight year period, or $9,549,248 annually.

Regulatory Analysis

This final rule does not have federalism implications, as defined in Executive Order 13132, because it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the FAA has not consulted with state authorities prior to publication of this final rule.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

2003–02–07 General Electric Company: Amendment 39–13024. Docket No. 2001–NE–19–AD.

Applicability: This airworthiness directive (AD) is applicable to General Electric Company (GE) CF6–50 and CF6–80C2 turbofan engines, except CF6–80C2 engines configured with the combination of low pressure turbine (LPT) case, part number (P/N) 1647M68G15; and LPT stage 2 shroud, P/N 1862M62G01 or 1862M62G03; and LPT stage 3 shroud, P/N 1862M63G01 or 1862M63G03; and LPT stage 4 shroud, P/N 1862M64G01 or 1862M64G03. These engines are installed on, but not limited to, DC–10–15, DC–10–30, MD11, 747, 767, A300 and A310 airplanes.

Note 1: This AD applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Compliance with this AD is required as indicated, unless already done.

To prevent uncontained engine failure and possible airplane damage, do the following:

CF6–80C2 Engines

(a) For CF6–80C2 engines configured with the combination of low pressure turbine (LPT) case, part number (P/N) 1647M68G15; and LPT stage 2 shroud, P/N 1862M62G01 or 1862M62G03; and LPT stage 3 shroud, P/N 1862M63G01 or 1862M63G03; and LPT stage 4 shroud, P/N 1862M64G01 or 1862M64G03, no further action is required.

(b) At the next shroud piece-part exposure, but no later than July 31, 2010, remove existing stage 2, 3, and 4 LPT CF6–80C2 shrouds and replace with new design P/N's listed in the following Table 1:

TABLE 1.—CF6–80C2 ACCEPTABLE NEW SHROUD PART NUMBERS

Stage	Part No.
2	2083M12G01, PCT2083M12G01, KT2083M12G01, or H042 [1]
3	2083M13G01, PCT2083M13G01, KT2083M13G01, or H042 [1]
4	2083M14G01, PCT2083M14G01, KT2083M14G01, or H042 [1]

[1] Parts marked with H042, H036, or H037 are parts that have been repaired by an FAA-approved process specification. In addition to this process specification marking, each part must show its original (*i.e.* before repair) part number and a work order number (*i.e.* WOxxxxx).

CF6–50 Engines

(c) At the next shroud piece-part exposure, but no later than July 31, 2010, remove existing stage 1, 2, 3 and 4 LPT CF6–50 shrouds and replace with new design P/N's as listed in the following Table 2:

TABLE 2.—CF6–50 ACCEPTABLE NEW SHROUD PART NUMBERS

Stage	Part No.
1	1822M35G01, PCT1822M35G01, KT1822M35G01, or H036 [1]
2	1822M36G01, PCT1822M36G01, KT1822M36G01, or H037 [1]
3	1822M36G02, PCT1822M36G02, KT1822M36G02, or H037 [1]
4	1822M37G01, PCT1822M37G01, KT1822M37G01, or H037 [1]

[1] Parts marked with H042, H036, or H037 are parts that have been repaired by an FAA-approved process specification. In addition to this process specification marking, each part must show its original (*i.e.* before repair) part number and a work order number (*i.e.* WOxxxxx).

Alternative Methods of Compliance

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office (ECO). Operators must submit their request through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, ECO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from ECO.

Special Flight Permits

(e) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the aircraft to a location where the requirements of this AD can be done.

Effective Date

(f) This amendment becomes effective on March 3, 2003.

Issued in Burlington, Massachusetts, on January 17, 2003.

Francis A. Favara,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 03–1675 Filed 1–24–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–CE–07–AD; Amendment 39–13012; AD 2003–01–01]

RIN 2120–AA64

Airworthiness Directives; Raytheon Aircraft Company Beech Models 36, A36, A36TC, B36TC, 58, and 58A Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; correction.

SUMMARY: This document makes a correction to Airworthiness Directive (AD) 2003–01–01, which was published in the **Federal Register** on January 8, 2003 (68 FR 997), and applies to certain Raytheon Aircraft Company (Raytheon) Beech Models 36, A36, A36TC, B36TC, 58, and 58A airplanes. We inadvertently omitted certain regulatory text to remove AD 2000–26–16, Amendment 39–12066, from 14 CFR part 39. This action corrects the regulatory text.

EFFECTIVE DATE: The effective date of this AD remains February 27, 2003.

FOR FURTHER INFORMATION CONTACT: T.N. Baktha, Aerospace Engineer, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Wichita, Kansas 67209; telephone: (316) 946–4155; facsimile: (316) 946–4407.

SUPPLEMENTARY INFORMATION:

Discussion

On December 30, 2002, FAA issued AD 2003–01–01, Amendment 39–13012 (68 FR 997, January 8, 2003), which applies to certain Raytheon Beech Models 36, A36, A36TC, B36TC, 58, and 58A airplanes. This AD retains the actions required in AD 2000–26–16 and adds additional airplane models to the applicability section of this AD.

Need for the Correction

The FAA inadvertently omitted certain regulatory text to remove AD 2000–26–16, Amendment 39–12066 (66 FR 1253, January 8, 2001) from 14 CFR part 39. This regulatory text is needed to ensure that the affected airplane owners/operators do not have unnecessary action performed on their airplanes.

Correction of Publication

Accordingly, the publication of January 8, 2003 (68 FR 997), of Amendment 39–13012; AD 2003–01–01, which was the subject of FR Doc. 03–148, is corrected as follows:

§ 39.13 [Corrected]

On page 998, in section 39.13 [Amended], 2., replace the current paragraph with the following text: "FAA amends § 39.13 by removing Airworthiness Directive (AD) 2000–26–16, Amendment 39–12066 (66 FR 1253, January 8, 2001), and by adding a new AD to read as follows:

2003–01–01 Raytheon Aircraft Company: Amendment 39–13012; Docket No. 2002–CE–07–AD; Supersedes AD 2000–26–16, Amendment 39–12066."

Action is taken herein to correct this reference in AD 2003–01–01 and to add this AD correction to section 39.13 of the Federal Aviation Regulations (14 CFR 39.13).

The effective date remains February 27, 2003.

Issued in Kansas City, Missouri, on January 15, 2003.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–1674 Filed 1–24–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 02–ACE–8]

Establishment of Class E2 Airspace and Modification of Existing Class E5 Airspace; Ainsworth, NE; Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: This action corrects a final rule that was published in the **Federal Register** on Friday, January 3, 2003, (68 FR 261). It corrects an error in the effective date and adds the Ainsworth VOR/DME to the definition of Class E2 airspace at Ainsworth, NE. The final rule established Class E2 airspace and modified Class E5 airspace at Ainsworth, NE.

DATES: The final rule published on January 3, 2003 (68 FR 261) is effective 0901 UTC, March 20, 2003. Comments for inclusion in the Rules Docket must be received on or before February 14, 2003.

FOR FURTHER INFORMATION CONTACT: Brenda Mumper, Air Traffic Division, Airspace Branch, ACE–520A, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone (816) 329–2524.

SUPPLEMENTARY INFORMATION:

History

Federal Register Document 03–62 published on Friday, January 3, 2003 (68 FR 261) establish Class E2 airspace and modified Class E5 airspace at Ainsworth, NE. The Class E2 airspace was defined with reference to the Ainsworth VOR/DME but the precise location of the Ainsworth VOR/DME was omitted. The effective date is corrected to coincide with a chart publication date.

Accordingly, pursuant to the authority delegated to me, the Class E2 airspace at Ainsworth, NE, as published in the **Federal Register** Friday, January 3, 2003 (68 FR 261), (FR Doc. 03–62), is corrected as follows:

§ 71.1 [Corrected]

On page 261, Column 3, second paragraph change "EFFECTIVE DATE: 0901 UTC, February 20, 2003" to read "EFFECTIVE DATE: 0901 UTC, March 20, 2003."

On page 262, Column 1, third paragraph from the bottom, correct the definition of Class E2 airspace as follows:

After "(Lat. 42°34′45″ N., long. 99°59′35″ W.)" add "Ainsworth VOR/DME (Lat. 42°34′09″ N., long. 99°59′23″ W."

Issued in Kansas City, MO, on January 8, 2003.

Herman J. Lyons, Jr.,

Manager, Air Traffic Division, Central Region.

[FR Doc. 03–1314 Filed 1–24–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30351; Amdt. No. 3042]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

EFFECTIVE DATES: This rule is effective January 27, 2003. The compliance date for each SIAP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 27, 2003.

ADDRESSES: Availability of matter incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which affected airport is located; or

3. The Flight Inspection Area Office which originated the SIAP.

4. The Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

For Purchase—Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, US Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Donald P. Pate, Flight Procedure Standards Branch (AMCAFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 (Mail Address: P.O. Box 25082, Oklahoma City, OK 73125) telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description on each SIAP is contained in the appropriate FAA Form 8260 and the National Flight Data Center (FDC) /Permanent (P) Notices to Airmen (NOTAM) which are incorporated by reference in the amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation's Regulations (FAR). Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction of charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes SIAPs. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained in the content of the following FDC/P NOTAMs for each SIAP. The SIAP information in some previously designated FDC/Temporary (FDC/T) NOTAMs is of such duration as to permanent. With conversion to FDC/P NOTAMs, the respective FDC/T NOTAMs have been canceled.

The FDC/P NOTAMS for the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these chart changes to SIAPs by FDC/P NOTAMs, the TERPS criteria were applied to only these specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a National Flight Data Center (FDC) / Notice of Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for all these SIAP amendments requires making them effective in less than 30 days.

Further, the SIAPs contained in this amendment are based on the criteria contained in the TERPS. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making these SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Incorporation by reference, and Navigation (air).

Issued in Washington, DC on January 17, 2003.

James J. Ballough,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

2. Part 97 is amended to read as follows:

§ 97.23, § 97.25, § 97.27, § 97.29, § 97.31, § 97.33, and § 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, Identified as follows:

Effective Upon Publication

FDC date	State	City	Airport	FDC No.	Subject
12/23/02	IL	Lawrenceville	Lawrenceville-Vincennes Intl	2/2996	RNAV (GPS) Rwy 27, Orig-B.
12/23/02	IL	Lawrenceville	Lawrenceville-Vincennes Intl	2/2997	RNAV (GPS) Rwy 9, Orig-A.
12/23/02	IL	Lawrenceville	Lawrenceville-Vincennes Intl	2/2998	RNAV (GPS) Rwy 18, Orig-A.
12/23/02	IL	Lawrenceville	Lawrenceville-Vincennes Intl	2/3000	RNAV (GPS) Rwy 36, Orig-A.
01/02/03	MA	Norwood	Norwood Memorial	3/0023	LOC Rwy 35, Amdt 9.
01/02/03	MA	Norwood	Norwood Memorial	3/0024	NDB Rwy 35, Amdt 9.
01/02/03	NM	Albuquerque	Albuquerque Intl Sunport	3/0031	ILS Rwy 8, Amdt 5C.
01/06/03	NY	Elmira	Elmira/Corning Regional	3/0113	ILS Rwy 6, Amdt 4.
01/06/03	NY	Elmira	Elmira/Corning Regional	3/0114	ILS Rwy 24, Amdt 18.
01/06/03	CO	Grand Junction	Walker Field	3/0116	LDA/DME Rwy 29, Orig-A, replaces 2/2548.
01/08/03	CA	San Jose	Reid-Hillview of Santa Clara County.	3/0180	RNAV (GPS) Rwy 31R, Orig.
01/09/03	NY	Montgomery	Orange County	3/0225	ILS Rwy 3, Amdt 1A.
01/09/03	NY	Montgomery	Orange County	3/0226	NDB Rwy 3, Amdt 4.
01/14/03	UT	Salt Lake City	Salt Lake City Intl	3/0326	ILS Rwy 16L, Amdt 1B.

[FR Doc. 03–1665 Filed 1–24–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30350; Amdt. No. 3041]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: This rule is effective January 27, 2003. The compliance date for each SIAP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the **Federal Register** as of January 27, 2003.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;
2. The FAA Regional Office of the region in which the affected airport is located;
3. The Flight Inspection Area Office which originated the SIAP; or,
4. The Office of Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

For Purchase—Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—Copies of all SIAPs, mailed once every 2 weeks are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Donald P. Pate, Flight Procedure Standards Branch (AMCAFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 (Mail Address: P.O. Box 25082 Oklahoma City, OK 73125) telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA Forms 8260–3, 8260–4, and 8260–5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types of effective dates of the SIAPs. This amendment also identifies the

airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (NFDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, were applicable, that good cause exists for making some SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Incorporation by reference, and Navigation (air).

Issued in Washington, DC on January 17, 2003.

James J. Ballough,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, and 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

. . . Effective March 20, 2003

Cortez, CO, Cortez Muni, RNAV (GPS) RWY 3, Orig
Cortez, CO, Cortez Muni, RNAV (GPS) RWY 21, Orig
Cortez, CO, Cortez Muni, GPS RWY 3, Orig (CANCELLED)
Cortez, CO, Cortez Muni, GPS RWY 21, Orig (CANCELLED)
Naples, FL, Naples Muni, RNAV (GPS) RWY 5, Amdt 1
Millen, GA, Millen, NDB RWY 17, Orig
Millen, GA, Millen, RNAV (GPS) RWY 17, Orig
Flora, IL, Flora Muni, RNAV (GPS) RWY 3, Orig
Flora, IL, Flora Muni, RNAV (GPS) RWY 21, Orig
Fayetteville, NC, Fayetteville Regional/ Grannis Field, VOR RWY 4, Amdt 16
Fayetteville, NC, Fayetteville Regional/ Grannis Field, VOR RWY 22, Amdt 6
Fayetteville, NC, Fayetteville Regional/ Grannis Field, VOR RWY 28, Amdt 8
Fayetteville NC, Fayetteville Regional/ Grannis Field, LOC BC RWY 22, Amdt 6
Fayetteville, NC, Fayetteville Regional/ Grannis Field, ILS RWY 4, Amdt 15
Fayetteville, NC, Fayetteville Regional/ Grannis Field, RNAV (GPS) RWY 10, Orig
Fayetteville, NC, Fayetteville Regional/ Grannis Field, RNAV (GPS) RWY 22, Amdt 1
Fayetteville, NC, Fayetteville Regional/ Grannis Field, RNAV (GPS) RWY 28, Orig
Glen Falls, NY, Floyd Bennett Memorial, VOR/DME or GPS RWY 19, AMDT 6B (CANCELLED)
Glen Falls, NY, Floyd Bennett Memorial, RNAV (GPS) RWY 1, ORIG
Glen Falls, NY, Floyd Bennett Memorial, RNAV (GPS) RWY 12, ORIG
Glen Falls, NY, Floyd Bennett Memorial, RNAV (GPS) RWY 19, ORIG
Glen Falls, NY, Floyd Bennett Memorial, RNAV (GPS) RWY 30, ORIG
Montauk, NY, Montauk, RNAV (GPS) RWY 24, Orig
Pauls Valley, OK, Pauls Valley Muni, NDB RWY 35, Amdt 4
Pauls Valley, OK, Pauls Valley Muni, RNAV (GPS) RWY 35, Orig
Pauls Valley, OK, Pauls Valley Muni, GPS RWY 35, Amdt 1A (CANCELLED)
Isla De Vieques, PR, Antonio Rivera Rodriguez, RNAV (GPS) RWY 9, Amdt 1
Milbank, SD, Milbank Muni, RNAV (GPS) RWY 31, Orig
Bowie, TX, Bowie Muni, NDB RWY 17, Amdt 4
Bowie, TX, Bowie Muni, NDB RWY 35, Amdt 4
Bowie, TX, Bowie Muni, RNAV (GPS) RWY 17, Orig
Bowie, TX, Bowie Muni, RNAV (GPS) RWY 35, Orig
Dallas, TX, Addison, NDB RWY 15, Amdt 6
Dallas, TX, Addison, ILS RWY 15, Amdt 10
Dallas, TX, Addison, ILS RWY 33, Amdt 2
Dallas, TX, Addison, RNAV (GPS) RWY 15, Orig
Dallas, TX, Addison, RNAV (GPS) RWY 33, Orig
Dallas, TX, Addison, GPS RWY 33, Orig (CANCELLED)
Greenville, TX, Majors, LOC BC RWY 35, Orig
Norfolk, VA, Chesapeake Regional, ILS RWY 5, Orig
Norfolk, VA, Chesapeake Regional, LOC RWY 5, Orig, CANCELLED
Oak Harbor, WA, Wes Lupien, RADAR 1, Amdt 1, (CANCELLED)
Mosinee, WI, Central Wisconsin, NDB RWY 17, Orig-B (CANCELLED)

[FR Doc. 03–1666 Filed 1–24–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF COMMERCE

Bureau of Economic Analysis

15 CFR Part 806

[Docket No. 020913215–3002–01]

RIN 0691—AA45

Direct Investment Surveys: BE–605, Transactions of U.S. Affiliate, Except a U.S. Banking Affiliate, With Foreign Parent, and BE–605 Bank, Transactions of U.S. Banking Affiliate With Foreign Parent

AGENCY: Bureau of Economic Analysis, Commerce.

ACTION: Final rule.

SUMMARY: This final rule revises regulations for the quarterly survey of foreign direct investment in the United States, which is comprised of two forms—the BE–605, Transactions of U.S. Affiliate, Except a U.S. Banking Affiliate, With Foreign Parent, and BE–605 Bank, Transactions of U.S. Banking Affiliate With Foreign Parent. This final rule amends 15 CFR part 806.15 to set forth revised reporting requirements for the BE–605, Transactions of U.S. Affiliate, Except a U.S. Banking Affiliate, With Foreign Parent, and BE–605 Bank, Transactions of U.S. Banking Affiliate With Foreign Parent. BEA believes that these changes should result in no change in the overall respondent burden. Any increase in burden due to the addition of questions on the BE–605 Bank form will be offset by a reduction in burden for BHC's, because reporting for these entities will be more consistent with the filing of regulatory reports and annual reports to stockholders.

DATES: This final rule will be effective February 26, 2003.

FOR FURTHER INFORMATION CONTACT: R. David Belli, Chief, International Investment Division (BE–50), Bureau of Economic Analysis, U.S. Department of Commerce, Washington, DC 20230; phone (202) 606–9800.

SUPPLEMENTARY INFORMATION: On October 16, 2002 the Bureau of Economic Analysis (BEA), U.S. Department of Commerce, published in the **Federal Register**, (67 FR 63860–63861), a notice of proposed rulemaking setting forth revised reporting requirements for the BE–605, Transactions of U.S. Affiliate, Except a U.S. Banking Affiliate, With Foreign Parent, and BE–605 Bank, Transactions of U.S. Banking Affiliate With Foreign Parent. No comments on the proposed rule were received. Thus, this final rule is the same as the proposed rule.

Description of Revisions

The BE–605 and BE–605 Bank are mandatory surveys and are conducted quarterly by the Bureau of Economic Analysis (BEA), U.S. Department of Commerce, under the International Investment and Trade in Services Survey Act. BEA will send survey forms to potential respondents each quarter; responses will be due within 30 days after the close of each fiscal quarter, except for the final quarter of the fiscal year, when reports will be due within 45 days. These surveys are cut-off sample surveys that cover all U.S. affiliates above a size-exemption level and seek to obtain data on transactions and positions between U.S. affiliates and their affiliated foreign groups.

This final rule directs bank holding companies (BHC's) to file a fully consolidated report, including all banking and nonbanking operations, on the BE–605 Bank form. Previously, the banking and nonbanking operations of a BHC filed separate reports: the nonbank operations of the BHC filed on the BE–605 form, and the BHC itself and its banking operations filed on the BE–605 Bank form. To reduce respondent burden, BHC's are now directed to file a single, fully consolidated, report to include both the banking and nonbanking operations on the BE–605 Bank form. However, separate reports still must be filed in those special instances where a U.S. affiliate's primary line of business is not in banking (or related financial activities), such as a manufacturer or retailer, but the affiliate also has a direct or indirect ownership in a BHC (or other banking activities such as U.S. wholesale or limited purpose banks). In these instances, the BHC, including all of its subsidiaries or units, must file on the BE–605 Bank form and the nonbanking operations not owned by the BHC must file on the BE–605 form. Questions have been added to the BE–605 Bank form to collect data on loans from or to the foreign parent group by nonbanking subsidiaries, included in the consolidated report, with operations in insurance, real estate, and leasing, to maintain consistency of the U.S. international transactions accounts with international statistical standards and avoid gaps in coverage. In addition, questions have been added to the BE–605 Bank form to collect detail on intercompany premiums earned and claims payable for insurance companies included in the consolidated report.

Survey Background

The Bureau of Economic Analysis (BEA), U.S. Department of Commerce, will conduct the survey under the International Investment and Trade in Services Survey Act (22 U.S.C. 3101–3108) hereinafter, "the Act." Section 4(a) of the Act requires that with respect to foreign direct investment in the United States, the President shall, to the extent he deems necessary and feasible, conduct a regular data collection program to secure current information on international capital flows and other information related to international investment and trade in services, including (but not limited to) such information as may be necessary for computing and analyzing the United States balance of payments, the employment and taxes of United States parents and affiliates, and the international investment and trade in services position of the United States.

In Section 3 of Executive Order 11961, the President delegated authority granted under the Act as concerns direct investment to the Secretary of Commerce, who has redelegated it to BEA.

The quarterly survey is a cut-off sample survey that covers all U.S. affiliates above a size-exemption level and obtains data on transactions and positions between U.S. affiliates and their affiliated foreign groups. (The affiliated foreign group is (i) the foreign parent, (ii) any foreign person, proceeding up the foreign parent's ownership chain, which owns more than 50 percent of the person below it up to and including that person which is not more than 50 percent owned by another foreign person, and (iii) any foreign person, proceeding down the ownership chain(s) of each of these members, which is owned more than 50 percent by the person above it.) The. sample data are used to derive universe estimates in nonbenchmark years by extrapolating forward similar data reported in the BE–12, Benchmark Survey of Foreign Direct Investment in the United States, which is taken every five years. The data are used in the preparation of the U.S. international transactions accounts, the input-output accounts, and the national income and product accounts. The data are needed to measure the size and economic significance of foreign direct investment in the United States, measure changes in such investment, and assess its impact on the U.S. economy. The data are disaggregated by industry of U.S. affiliate, by country of foreign parent, and, for selected items, by country of each member of the affiliated foreign group.

Executive Order 13132

This final rule does not contain policies with Federalism implications, as that term is defined in E.O. 13132.

Executive Order 12866

This final rule has been determined to be not significant for purposes of E.O. 12866.

Paperwork Reduction Act

Notwithstanding any other provisions of law, no person is required to respond to, nor shall a person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act (PRA) unless that collection of information displays a currently valid Office of Management

and Budget (OMB) Control Number. This rule covers collections of information subject to the provisions of the PRA. The OMB has approved this collection and assigned to it OMB Control Number 0608–0009. The collection will display this control number.

An estimated 3,950 U.S. affiliates are expected to file responses quarterly, or 15,800 responses annually. The average burden for completing the BE–605 and BE–605 Bank remains unchanged at 1.25 hours per response, per quarter (five hours per year); the total annual respondent burden, from the current OMB inventory, also remains unchanged at 19,750 hours (15,800 responses times 1.25 hours average burden). This estimate covers the amount of time for respondents to review the instructions, search existing data sources, gather and maintain the data needed, and complete and review the collection of information. The burden estimates used in this submission are based upon experience with the same quarterly survey forms for several years and upon the burden estimates developed at the time of the benchmark survey.

Comments regarding the burden estimate or any other aspect of this collection of information should be addressed to: Director, Bureau of Economic Analysis (BE–1), U.S. Department of Commerce, Washington, DC 20230; and to the Office of Management and Budget, O.I.R.A., Paperwork Reduction Project 0608–0009, Washington, DC 20503 (Attention PRA Desk Officer for BEA).

Regulatory Flexibility Act

The Chief Counsel for Regulation, Department of Commerce, certified to the Chief Counsel for Advocacy, Small Business Administration, under the provisions of the Regulatory Flexibility Act (RFA) (5 U.S.C. 605(b)), that this final rule will not have a significant economic impact on a substantial number of small entities. Few, if any, small U.S. businesses are subject to the reporting requirements of this survey. Most small businesses are not foreign owned; those that are and have total assets, sales or gross operating revenues, and net income each equal to or less than $30 million are not required to report on the BE–605 or BE–605 Bank form. Accordingly, this action will relieve reporting burdens on small entities.

List of Subjects in 15 CFR Part 806

International transactions, economic statistics, foreign investment in the United States, penalties, reporting and recordkeeping requirements.

Dated: January 3, 2003.

J. Steven Landefeld,

Director, Bureau of Economic Analysis.

For the reasons set forth in the preamble, BEA amends 15 CFR part 806 as follows:

PART 806—DIRECT INVESTMENT SURVEYS

1. The authority citation for 15 CFR Part 806 continues to read as follows:

Authority: 5 U.S.C. 301; 22 U.S.C. 3101–3108; and E.O. 11961 (3 CFR, 1977 Comp., p. 86), as amended by E.O. 12013 (3 CFR, 1977 Comp., p. 147), E.O. 12318 (3 CFR, 1981 Comp., p. 173), and E.O. 12518 (3 CFR, 1985 Comp., p. 348).

2. Section 806.15(h)(1) and (2) are revised to read as follows:

§ 806.15 Foreign direct investment in the United States.

* * * * *

(h) * * *

(1) BE–605—Transactions of U.S. Affiliate, Except a U.S. Banking Affiliate, With Foreign Parent: One report is required for each U.S. affiliate exceeding an exemption level of $30,000,000, that does not qualify for reporting on form BE–605 Bank.

(2) BE–605 Bank—Transactions of U.S. Banking Affiliate with Foreign Parent: One report is required for each U.S. banking affiliate or U.S. bank holding company affiliate, including all of the subsidiaries and units of the bank holding company, exceeding an exemption level of $30,000,000.

* * * * *

[FR Doc. 03–1770 Filed 1–24–03; 8:45 am]

BILLING CODE 3510–06–P

FEDERAL TRADE COMMISSION

16 CFR Part 303

Rules and Regulations Under the Textile Fiber Products Identification Act

AGENCY: Federal Trade Commission.

ACTION: Final rule.

SUMMARY: The Federal Trade Commission ("Commission") announces amendments to rule 7(m) of the Rules and Regulations Under the Textile Fiber Products Identification Act ("Textile Rules") to establish a new generic fiber subclass name and definition for a subclass of olefin fibers manufactured by the Dow Chemical Company ("Dow"), of Midland, Michigan. The amendments to rule 7(m) establish the subclass name "lastol" as an alternative to the generic name "olefin" for a specific subclass of elastic, cross-linked textile fibers defined in the amendments, and previously referred to by Dow as "CEF."

EFFECTIVE DATE: January 27, 2003.

FOR FURTHER INFORMATION CONTACT: Neil Blickman, Attorney, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Washington, DC 20580; (202) 326–3038.

SUPPLEMENTARY INFORMATION:

I. Background

A. Statutory and Regulatory Framework

Section 4(b)(1) of the Textile Fiber Products Identification Act ("Act") declares that a textile product will be misbranded unless it is labeled to show, among other elements, the percentages, by weight, of the constituent fibers in the product, designated by their generic names and in order of predominance by weight. 15 U.S.C. 70b(b)(1). Section 4(c) of the Act provides that the same information required by section 4(b)(1) (except the percentages) must appear in written advertisements if any disclosure or implication of fiber content is made regarding a covered textile product. 15 U.S.C. 70b(c). Section 7(c) directs the Commission to promulgate such rules, including the establishment of generic names of manufactured fibers, as are necessary to enforce the Act's directives. 15 U.S.C. 70e(c).

Rule 6 of the Textile Rules (16 CFR 303.6) requires manufacturers to use the generic names of the fibers contained in their textile products in making required fiber content disclosures on labels. Rule 7 of the Textile Rules (16 CFR 303.7) sets forth the generic names and definitions that the Commission has established for synthetic fibers. Rule 8 (16 CFR 303.8) describes the procedures for establishing new generic names.

B. Procedural History

Dow applied to the Commission on October 18, 2001, for a new olefin fiber subclass name and definition, and supplemented its application with additional information and test data on December 12, 2001, January 16, 2002, and March 19, 2002.[1] Dow stated that its

[1] Dow's petition and supplements thereto are on the rulemaking record of this proceeding. This material is available for public inspection in accordance with the Freedom of Information Act, 5 U.S.C. 552, and the Commission's rules of practice, 16 CFR 4.11, at the Consumer Response Center, Public Reference Section, Room 130, Federal Trade Commission, 600 Pennsylvania Avenue, NW., Washington, DC. The petition also may be viewed on the Commission's website at *www.ftc.gov*.

new cross-linked elastic fiber, CEF, is a manufactured olefin textile fiber with a cross-linked polymer network structure. Dow stated that CEF meets the broad definition of olefin fiber in the Textile Rules, 16 CFR 303.7(m), but differs from commercially available olefin fibers because of its elasticity and wide temperature tolerance, and thus is a good choice for easy-care stretch apparel applications.

Contending that the unique structure and characteristics of fibers made from CEF are inadequately described under existing generic names listed in the Textile Rules, Dow petitioned the Commission to establish a new generic subclass name and definition. After an initial analysis with the assistance of a textile expert, the Commission determined that Dow's proposed new fiber technically falls within rule 7(m)'s definition of "olefin."[2] The Commission further determined, however, that Dow's application for a new subclass name and definition merited further consideration. Accordingly, on May 17, 2002, the Commission announced that it had issued Dow the designation "DCC 0001" for temporary use in identifying CEF fiber pending a final determination on the merits of its application. The Commission staff further analyzed the application, and on May 24, 2002 (67 FR 36551), the Commission published a notice of proposed rulemaking ("NPR") detailing the technical aspects of Dow's fiber, and requesting public comment on Dow's application. On August 12, 2002, the comment period closed.

II. Description of the Fiber and Solicitation of Comments in the NPR

A. The Commission's Criteria for Granting a New Generic Fiber Subclass Name and Definition, and Related Issues

In the NPR, the Commission solicited comment on whether Dow's application meets the Commission's criteria for granting applications for new generic fiber subclass names. Specifically, does the proposed subclass fiber: (1) Have the same general chemical composition as an established generic fiber category; (2) have distinctive properties of importance to the general public as a result of a new method of manufacture or substantially differentiated physical characteristics, such as fiber structure; and (3) do the distinctive feature(s) make the fiber suitable for uses for which other fibers under the established generic name would not be suited, or would be significantly less well suited?[3]

Within the established 24 generic names for manufactured fibers, there are four cases where such generic name alternatives may be used: (1) Pursuant to rule 7(c), 16 CFR 303.7(c), within the generic category "polyester," the term "elasterell-p" may be used as an alternative generic description for a specifically defined subcategory of polyester fiber; (2) pursuant to rule 7(d), 16 CFR 303.7(d), within the generic category "rayon," the term "lyocell" may be used as an alternative generic description for a specifically defined subcategory of rayon fiber; (3) pursuant to rule 7(e), 16 CFR 303.7(e), within the generic category "acetate," the term "triacetate" may be used as an alternative generic description for a specifically defined subcategory of acetate fiber; and (4) pursuant to rule 7(j), 16 CFR 303.7(j), within the generic category "rubber," the term "lastrile" may be used as an alternative generic description for a specifically defined subcategory of rubber fiber.

Although the Commission's NPR announced that Dow's fiber technically falls within rule 7(m)'s definition of olefin, it noted that Dow's application may meet the Commission's standard for a subclass name. Alternatively, the Commission stated that CEF may fit within the current definition of olefin in rule 7(m), with or without need for clarification. Therefore, the Commission requested public comment on whether to: (1) Broaden rule 7(m)'s definition of olefin to better describe the allegedly unique molecular structure and physical characteristics of CEF and any similar fibers (without creating a new subclass for CEF); (2) amend rule 7(m)'s definition of olefin by creating a separate subclass name and definition for CEF and other similar qualifying fibers within the olefin category; or (3) deny Dow's application because CEF fiber fits within rule 7(m)'s definition of olefin without need for any change.

B. The NPR

1. Fiber Description and Proposed Subclass Name and Definition

The NPR provided a detailed description, taken from Dow's application, of CEF's chemical composition and physical and chemical properties.[4] As a result of CEF's fiber structure, Dow maintained that CEF has the following distinctive properties that would be significant to consumers: (1) Stretch and recovery power that is far superior to that of any olefin fiber; (2) shape retention at temperatures in excess of 170° C, which enables CEF to survive rigorous manufacturing and consumer care processes; and (3) chemical resistance to solvents that typically dissolve conventional olefins. Dow asserted that olefin, widely recognized as a dependable carpet fiber that has no stretch or elastic recovery and poor high temperature stability, is an inappropriate categorization for the elastic olefin fiber, CEF, which is targeted for apparel applications. Dow stated that CEF will offer consumers a wider choice in garments containing stretch fabric, and contended that it would be confusing to consumers if CEF is called simply "olefin."

Dow, therefore, petitioned the Commission to establish the generic name "lastol" as an alternative to, and a subclass of, "olefin." In addition, Dow proposed that the Commission add the following sentence to the current definition of olefin in rule 7(m) to define CEF and similar fibers as a subclass of olefin:

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[2] Rule 7(m) defines "olefin" as "[a] manufactured fiber in which the fiber-forming substance is any long chain synthetic polymer composed of at least 85 percent by weight of ethylene, propylene, or other olefin units, except amorphous (noncrystalline) polyolefins qualifying under paragraph (j)(1) of this section." 16 CFR 303.7(m). Rule 7(j)(1) defines "rubber," in part, as "[a] manufactured fiber in which the fiber-forming substance is comprised of natural or synthetic rubber, including the following categories: (1) [a] manufactured fiber in which the fiber-forming substance is a hydrocarbon such as natural rubber, polyisoprene, polybutadiene, copolymers of dienes and hydrocarbons, or amorphous (noncrystalline) polyolefins." 16 CFR 303.7(j)(1). Dow's petition stated that CEF is not a rubber because CEF fibers have a low but significant level of crystallinity, whereas rubber fibers are not crystalline. In addition, CEF exhibits much higher tensile set (lower elastic recovery) than rubber when extended to greater than 100% elongation.

[3] The criteria for establishing a new generic subcategory are different from the criteria to establish a new generic category. The Commission's criteria for granting applications for new generic names are as follows: (1) The fiber for which a generic name is requested must have a chemical composition radically different from other fibers, and that distinctive chemical composition must result in distinctive physical properties of significance to the general public; (2) the fiber must be in active commercial use or such use must be immediately foreseen; and (3) the granting of the generic name must be of importance to the consuming public at large, rather than to a small group of knowledgeable professionals such as purchasing officers for large Government agencies. The Commission believes it is in the public interest to prevent the proliferation of generic names, and will adhere to a stringent application of these criteria in consideration of any future applications for generic names, and in a systematic review of any generic names previously granted that no longer meet these criteria. The Commission announced these criteria on Dec. 11, 1973, at 38 FR 34112, and later clarified and reaffirmed them on Dec. 6, 1995, 60 FR 62353, on May 23, 1997, 62 FR 28343, on Jan. 6, 1998, 63 FR 447 and 63 FR 449, and on Nov. 17, 2000, 65 FR 69486, on Feb. 15, 2002, 67 FR 7104, and on May 24, 2002, 67 FR 36551.

[4] 67 FR 36551, at 36552–36554 (May 24, 2002). For brevity's sake, the Commission is providing a simplified description of the fiber in this notice, and refers those who wish to see detailed technical information about the fiber to the NPR.

Where the fiber is a manufactured cross-linked elastic fiber in which (a) the fiber-forming substance is a synthetic polymer, with low but significant crystallinity, composed of at least 99 percent by weight of ethylene and at least one other olefin unit, and (b) the fiber exhibits substantial elasticity and heat resistance properties not present in traditional olefin fibers, the term lastol may be used as a generic description of the fiber.

The effect of Dow's proposed amendment would be to allow use of the name "lastol" as an alternative to the generic name "olefin" for the subcategory of olefin fibers meeting the further criteria contained in the sentence added by the proposed amendment.

2. Public Comments

The Commission received no comments on the NPR.

3. Discussion of the Three Criteria for Granting New Generic Subclass Names

a. CEF Fiber's Chemical Composition

The Commission has concluded that the materials Dow submitted show that although CEF has the same general chemical composition as other olefin fibers, it also has a molecular and fiber structure that differs from typical olefins. CEF is founded on metallocene-based polyolefin elastomer chemistry and is manufactured using a melt spinning process. After spinning, the fiber is cross-linked in order to prevent dissolution and impart high-temperature dimensional stability. After the cross-linking process, the polymer chains in the fiber are linked to one another via covalent bonds.

The interpolymer[5] in CEF has been made from ethylene and, typically, octene in excess of 30 weight percent using a constrained geometry catalyst, a member of the metallocene family. The catalyst allows precise control of the molecular architecture of the polymer, which prior to cross-linking has a narrow molecular weight distribution. As a result, the molecules in CEF are very similar in size and composition to each other. In contrast, typical olefin fiber manufactured today results from conventional multi-site catalyst technology (such as Ziegler-Natta catalysts). Consequently, typical olefin fiber has a broad compositional molecular weight distribution, and low or no comonomer content.

As a result of CEF's unique chemical structure, its high comonomer content, CEF has lower crystallinity and density than conventional olefin fibers. Unlike conventional olefin fiber where the polymer crystals are in lamellae form,[6] the crystals in the CEF fiber-forming substance are in fringed micelle form.[7] The fringed micellar crystalline morphology and the low, but significant, level of crystallinity in CEF, which differentiates it from rubber, impart elastic properties not seen in typical olefin fibers. Thus, Dow's application meets the first criterion for granting a new generic fiber subclass name.

b. CEF's Distinctive Properties Are a Result of a New Method of Manufacture or Substantially Differentiated Physical Characteristics, Such as Fiber Structure

1. *Elasticity.* The materials Dow submitted also show that the most notable characteristic (and of greatest importance to consumers) of CEF is its elasticity, which is superior to that of conventional olefin fiber. CEF's favorable stretch (at least five times its original length before breaking) and elasticity (stretching to twice its length and, when released, recovering to within 25 percent of its original length) are a direct result of its low level of crystallinity and its fringed micellar crystal form. As a result, CEF can be successfully used in clothing applications where stretch is desirable.

In contrast, conventional olefin fiber is more stiff and less elastic than CEF. Typical olefin fibers (in their manufactured, "drawn," form) exhibit low elongation before breaking (typically less than 50%) and, therefore, cannot be used as successfully as CEF in apparel markets for stretch clothing.

2. *High Temperature Stability.* CEF's covalent cross-links connect adjacent polymer chains into a contiguous three-dimensional polymer network. Dow's materials show that this cross-linked polymer network structure allows CEF to maintain its shape and mechanical integrity above its crystalline melting temperature.[8] It appears that CEF retains its shape at temperatures up to 220° C, in excess of conventional olefin's melting point, which occurs at or below 170° C.

CEF's ability to withstand high temperatures has advantages for textile manufacturers who can use dye and process methods requiring temperatures in excess of 170° C. CEF also has advantages for consumers because they will be able to repeatedly wash, dry, and iron fabrics containing CEF at typical temperatures (up to 210° C) without destroying CEF's stretch properties. In contrast, since conventional olefin fiber loses its shape and mechanical integrity at temperatures ranging from 105–170° C, it cannot withstand as well as CEF the rigors of high heat and repeated launderings.

c. CEF's Distinctive Features Make the Fiber Suitable for Uses for Which Other Olefin Fibers Would Not Be Suited, or Would Be Significantly Less Well Suited

Based on Dow's submission, the Commission has concluded that conventional olefins are not suitable, or not as suitable, for imparting the significant elasticity to certain apparel fabrics, such as knits and wovens, that consumers may expect or desire, and that CEF is a suitable stretch component. Thus, Dow's application has satisfied the Commission that CEF is suitable for uses for which other olefin fibers are not suited, or not as well suited. Accordingly, the Commission agrees with Dow that the granting of a generic subclass name to describe CEF is of importance to the general public, and not just a few knowledgeable professionals. A new generic subclass name will enable consumers to identify textile fiber products containing CEF (and other elastic olefin fibers) that exhibit significant stretch, elasticity, and heat resistance.

4. Conclusion

Based on its review of the materials submitted by Dow, and in consultation with its expert, the Commission has concluded that CEF: (1) Has the same general chemical composition as an established generic fiber category (olefin); (2) has distinctive properties of importance to the general public as a result of a new method of manufacture or substantially differentiated physical characteristics, such as fiber structure (*e.g.*, elasticity and heat resistance); and (3) that its distinctive feature(s) make the fiber suitable for uses for which other fibers under the established olefin generic name would not be suited, or would be significantly less well suited. Consequently, the Commission has determined that there are sufficient differences between CEF and conventional olefins to merit a new subclass designation. Therefore, the Commission is amending rule 7(m) to adopt and define the generic subclass name "lastol," and to allow use of the name "lastol" as an alternative to the generic name "olefin" for that subclass of fiber. Other companies that

[5] Interpolymer refers to polymers prepared by the polymerization of at least two different types of monomers, typically ethylene and octene.

[6] In lamellae form, the polymer chains are folded in the crystalline or ordered regions.

[7] In fringed micelle form, the polymer chains are extended and parallel to each other in the crystalline regions.

[8] CEF's cross-linked polymer network structure also allows CEF to maintain its integrity in solvents that typically dissolve conventional olefins.

manufacture fibers satisfying the definition also may use the subclass name in making required fiber content disclosures on labels.

The Commission has decided to simplify slightly the definition of "lastol" that Dow proposed and the Commission published for comment. The definition the Commission is adopting, however, is consistent with the definition, as proposed, as well as with the definition of "olefin" in rule 7(m). The new definition of "lastol" defines the fiber generically in terms of its chemical composition, and identifies its physical elasticity and heat resistance characteristics. In addition, the Commission is reducing the minimum percentage by weight of ethylene and other olefin unit constituting the polymer in the final definition of "lastol" from 99 percent, as proposed, to 95 percent to account for a small percentage of inorganic molecules in the fiber that, according to Dow, are not included in the polymer.

Accordingly, for the reasons discussed above, the Commission amends rule 7(m) of the Textile Rules by adding the following sentence at the end:

Where the fiber-forming substance is a cross-linked synthetic polymer, with low but significant crystallinity, composed of at least 95 percent by weight of ethylene and at least one other olefin unit, and the fiber is substantially elastic and heat resistant, the term *lastol* may be used as a generic description of the fiber.

III. Effective Date

The Commission is making the amendments effective today, January 27, 2003, as permitted by 5 U.S.C. 553(d), because the amendments do not create new obligations under the rule; rather, they merely create a fiber name and definition that the public may use to comply with the rule.

IV. Regulatory Flexibility Act

In the NPR, the Commission tentatively concluded that the provisions of the Regulatory Flexibility Act relating to an initial regulatory analysis, 5 U.S.C. 603–604, did not apply to the proposal because the amendments, if promulgated, would not have a significant economic impact on a substantial number of small entities. The Commission believed that the proposed amendments would impose no additional obligations, penalties, or costs. The amendments simply would allow covered companies to use a new generic name as an alternative to an existing generic name for that defined subclass of fiber, and would impose no additional labeling requirements. To ensure, however, that no substantial economic impact was overlooked, the Commission solicited public comment in the NPR on the effects of the proposed amendments on costs, profits, competitiveness of, and employment in small entities. 67 FR 36551, at 36554 (May 24, 2002).

No comments were received on this issue. Accordingly, the Commission hereby certifies, pursuant to the Regulatory Flexibility Act, 5 U.S.C. 605(b), that the amendments promulgated today will not have a significant economic impact on a substantial number of small entities.

V. Paperwork Reduction Act

These amendments do not constitute "collection[s] of information" under the Paperwork Reduction Act of 1995, Pub. L. 104–13, 109 Stat. 163, 44 U.S.C. chapter 35 (as amended), and its implementing regulations, 5 CFR part 1320 *et seq.* Those procedures for establishing generic names that do constitute collections of information, 16 CFR 303.8, have been submitted to OMB, which has approved them and assigned them control number 3084–0101.

List of Subjects in 16 CFR Part 303

Labeling, Textile, Trade practices.

VI. Text of Amendments

For reasons set forth in the preamble, 16 CFR part 303 is amended as follows:

PART 303—RULES AND REGULATIONS UNDER THE TEXTILE FIBER PRODUCTS IDENTIFICATION ACT

1. The authority citation for part 303 continues to read as follows:

Authority: Sec. 7(c) of the Textile Fiber Products Identification Act (15 U.S.C. 70e(c)).

2. In § 303.7, paragraph (m) is amended by adding a sentence at the end, to read as follows:

§ 303.7 Generic names and definitions for manufactured fibers.

* * * * *

(m) * * * Where the fiber-forming substance is a cross-linked synthetic polymer, with low but significant crystallinity, composed of at least 95 percent by weight of ethylene and at least one other olefin unit, and the fiber is substantially elastic and heat resistant, the term *lastol* may be used as a generic description of the fiber.

* * * * *

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 03–1739 Filed 1–24–03; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 520

Oral Dosage Form New Animal Drugs; Lincomycin Hydrochloride Soluble Powder

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of an abbreviated new animal drug application (ANADA) filed by Phoenix Scientific, Inc. The ANADA provides for oral use of lincomycin soluble powder to make medicated drinking water for administration to swine for the treatment of swine dysentery or to broiler chickens for the control of necrotic enteritis.

DATES: This rule is effective January 27, 2003.

FOR FURTHER INFORMATION CONTACT: Lonnie W. Luther, Center for Veterinary Medicine (HFV–104), Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855, 301–827–8549, e-mail: lluther@cvm.fda.gov.

SUPPLEMENTARY INFORMATION: Phoenix Scientific, Inc., 3915 South 48th St. Terrace, St. Joseph, MO 64506–0457, filed ANADA 200–303 for Lincomycin Hyrochloride Soluble Powder. The application provides for oral use of lincomycin soluble powder to make medicated drinking water for administration to swine for the treatment of swine dysentery or to broiler chickens for the control of necrotic enteritis. Phoenix Scientific's Lincomycin Hyrochloride Soluble Powder is approved as a generic copy of Pharmacia & Upjohn's LINCOMIX Soluble Powder, approved under NADA 111–636. ANADA 200–303 is approved as of October 1, 2002, and the regulations are amended in 21 CFR 520.1263c to reflect the approval. The basis of approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of 21 CFR part 20 and 514.11(e)(2)(ii), a summary of safety and effectiveness data and

information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

FDA has determined under 21 CFR 25.33(a)(1) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

This rule does not meet the definition of "rule" in 5 U.S.C. 804(3)(A) because it is a rule of "particular applicability." Therefore, it is not subject to congressional review requirements in 5 U.S.C. 801–808.

List of Subjects in 21 CFR Part 520

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 520 is amended as follows:

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 520 continues to read as follows:

Authority: 21 U.S.C. 360b.

§ 520.1263c [Amended]

2. Section 520.1263c *Lincomycin hydrochloride soluble powder* is amended in paragraph (b) by removing "and 051259" and by adding in its place "051259, and 059130".

Dated: January 7, 2003.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 03–1685 Filed 1–24–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 524

Ophthalmic and Topical Dosage Form New Animal Drugs; Ivermectin Pour-On

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of an abbreviated new animal drug application (ANADA) filed by First Priority, Inc. The ANADA provides for topical use of ivermectin on cattle for treatment and control of various species of external and internal parasites.

DATES: January 27, 2003.

FOR FURTHER INFORMATION CONTACT: Lonnie W. Luther, Center for Veterinary Medicine (HFV–104), Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855, 301–827–8549, e-mail: lluther@cvm.fda.gov.

SUPPLEMENTARY INFORMATION: First Priority, Inc., 1585 Todd Farm Dr., Elgin, IL 60123, filed ANADA 200–340 for PRIVERMECTIN (ivermectin). The application provides for topical use of 0.5 percent ivermectin solution on cattle for the treatment and control of various species of gastrointestinal nematodes, lungworms, grubs, horn flies, lice, and mites. First Priority's PRIVERMECTIN is approved as a generic copy of Merial Ltd.'s IVOMEC Pour-On for Cattle, approved under NADA 140–841. The ANADA is approved as of December 4, 2002, and 21 CFR 524.1193 is amended to reflect the approval. The basis of approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of 21 CFR part 20 and 21 CFR 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.33(a)(1) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

This rule does not meet the definition of "rule" in 5 U.S.C. 804(3)(A) because it is a rule of "particular applicability." Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects in 21 CFR Part 524

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 524 is amended as follows:

PART 524—OPHTHALMIC AND TOPICAL DOSAGE FORM NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 524 continues to read as follows:

Authority: 21 U.S.C. 360b.

§ 524.1193 [Amended]

2. Section 524.1193 *Ivermectin pour-on* is amended in paragraph (b) by adding "058829," after "051311,".

Dated: January 6, 2003.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 03–1686 Filed 1–24–03; 8:45 am]

BILLING CODE 4160–01–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FL–82–200309a; FRL–7443–3]

Approval and Promulgation of Implementation Plans; Florida: Approval of Revisions to the Florida State Implementation Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving revisions to the Florida State Implementation Plan (SIP) submitted on September 7, 1999, by the State of Florida through the Florida Department of Environmental Protection (FDEP). The purpose of the revisions to rule 62–212.400 is to correct discrepancies between State and Federal rule language on exemptions from Prevention of Significant Deterioration and to include additional provisions.

DATES: This direct final rule is effective March 28, 2003 without further notice, unless EPA receives adverse comment by February 26, 2003. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: All comments should be addressed to Heidi LeSane at the EPA, Region 4 Air Planning Branch, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960.

Copies of the state submittal are available at the following addresses for inspection during normal business hours:

Environmental Protection Agency, Atlanta Federal Center, Region 4 Air Planning Branch, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960.

Florida Department of Environmental Protection, Twin Towers Office Building, 2600 Blair Stone Road, Tallahassee, Florida 32399–2400.

FOR FURTHER INFORMATION CONTACT: Heidi LeSane at (404) 562–9035 (E-mail: *lesane.heidi@epa.gov*).

SUPPLEMENTARY INFORMATION:

I. Background

The State of Florida through the FDEP submitted revisions to Rule 62–212.400 of the Florida SIP on September 7, 1999. The purpose of the revisions to rule 62–212.400 is to correct discrepancies between State and Federal rule language on exemptions from Prevention of Significant Deterioration (PSD) and to include additional provisions. A detailed analysis of the revisions is presented below.

II. Analysis of Florida's Submittal

Paragraph 62–212.400(2)(a)2.a, 62–212.400(2)(a)4, and 62–212.400(2)(a)5 are being revised to include a cross-reference to Rule 62–204.800.

Paragraph 62–212.400(2)(a)2.b is being added to exempt from PSD review any collateral emissions increases resulting from pollution control projects at pulp and paper mills being undertaken to comply with the EPA "cluster" rule.

Paragraph 62–212.400(2)(a)2.c is being added to exempt from PSD review any collateral emissions increases resulting from pollution control projects at municipal solid waste landfills being undertaken to comply with EPA landfill gas collection rules.

Paragraph 62–212.400(2)(a)3 (the temporary clean coal technology demonstration project exemption from PSD review) is being added in accordance with 40 CFR part 52, thus correcting a discrepancy between State and Federal rules.

Paragraph 62–212.400(2)(a)4 is being revised to correct a discrepancy between State and Federal rules (changing "unit-by-unit" to "pollutant-by-pollutant").

Final Action

EPA is approving the aforementioned revisions to the Florida SIP because they are consistent with the Clean Air Act (CAA) and EPA requirements. The EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should adverse comments be filed. This rule will be effective March 28, 2003 without further notice unless the Agency receives adverse comments by February 26, 2003.

If the EPA receives such comments, then EPA will publish a document withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period. Parties interested in commenting should do so at this time. If no such comments are received, the public is advised that this rule will be effective on March 28, 2003 and no further action will be taken on the proposed rule.

Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 28, 2003. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: January 8, 2003.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

Part 52 of chapter I, title 40, *Code of Federal Regulations* is amended as follows:

PART 52—[AMENDED]

1. The authority for citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart K—Florida

2. Section 52.520(c) is amended by revising the entry for "62–212.400" to read as follows:

§ 52.520 Identification of plan.

* * * * *

(c) * * *

EPA APPROVED FLORIDA REGULATIONS

State citation	Title/subject	State effective date	EPA approval date	Explanation
	62–212 Stationary Sources Preconstruction Review			
62–212.400	Prevention of Significant Deterioration	08/15/1999	01/27/2003 [Insert page citation of publication].	

* * * * *

[FR Doc. 03–1632 Filed 1–24–03; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 03–17, MM Docket No. 01–19: RM–10048, RM–10027; MM Docket No. 01–27, RM–10056, RM–10118]

Radio Broadcasting Services; Clayton, Ruston, Saint Joseph, and Wisner, LA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document consolidates two rulemaking proceedings and allots Channel 257C3 to Saint Joseph, Louisiana, and Channel 300C3 to Wisner, Louisiana, as first local services. To accommodate the Saint Joseph allotment, the document also substitutes Channel 266A for vacant Channel 257A at Clayton, Louisiana. *See* 66 FR 10267, February 14, 2001, and 66 FR 10659, February 16, 2001. This document also dismisses a counterproposal to upgrade Station KNBB(FM), Ruston, Louisiana, from Channel 257C3 to Channel 257C2, because it was not technically correct upon the date when it was filed. Rather, it was contingent on the dismissal of a counterproposal in an earlier rulemaking. The coordinates for Channel 257C3 at Saint Joseph are 32–51–44 and 91–11–41. The coordinates for Channel 266A at Clayton are 31–44–48 and 91–31–16. The coordinates for Channel 300C3 at Wisner are 32–05–28 and 91–28–57.

DATES: Effective February 24, 2003.

FOR FURTHER INFORMATION CONTACT: Andrew J. Rhodes, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order* in MM Docket Nos. 01–19 and 01–27, adopted January 6, 2003, and released January 8, 2003. The full text of this decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY–A257, 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com*.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Louisiana, is amended by removing Channel 257A and adding Channel 266A at Clayton, by adding Saint Joseph, Channel 257C3, and Wisner, Channel 300C3.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 03–1745 Filed 1–24–03; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No.; 021016235–3005–02; I.D. 092402E]

RIN 0648–AP87

Fisheries Off West Coast States and in the Western Pacific; Coastal Pelagic Species Fishery; Amendment 10

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS issues a regulation to implement Amendment 10 to the Coastal Pelagic Species (CPS) Fishery Management Plan (FMP), which was submitted by the Pacific Fishery Management Council (Council) for

review and approval by the Secretary of Commerce. Amendment 10 addresses the two unrelated subjects of the transferability of limited entry permits and maximum sustainable yield (MSY) for market squid. Only the provisions regarding limited entry permits require regulatory action. The primary purpose of this final rule is to establish the procedures by which limited entry permits can be transferred to other vessels and/or individuals so that the holders of the permits have maximum flexibility in their fishing operations while the goals of the FMP are achieved.

DATES: Effective January 27, 2003, except for § 660.512(h), which is effective February 26, 2003.

ADDRESSES: Copies of Amendment 10, which includes an environmental assessment/regulatory impact review, and determination of the impact on small businesses may be obtained from Donald O. McIssac, Executive Director, Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 200, Portland, OR 97220. Comments regarding the collection-of-information requirements contained in this rule should be sent to Rodney R. McInnis, Acting Regional Administrator, Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213, and to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503 (ATTN: NOAA Desk Officer).

FOR FURTHER INFORMATION CONTACT: James Morgan, Sustainable Fisheries Division, NMFS, at 562–980–4036.

SUPPLEMENTARY INFORMATION: The Council distributed a draft of Amendment 10 for public review on April 22, 2002. At its June 2002 meeting, the Council reviewed written comments, received comments from its advisory bodies, and heard public comments. On October, 3, 2002, a notice of availability of Amendment 10 and the associated documents was published in the **Federal Register** (67 FR 62001). A proposed rule was published in the **Federal Register** on October 30, 2002 (67 FR 66103), requesting public comment. The comment period ended on December 16, 2002. Two letters were received. Amendment 10 was approved by NMFS on December 30, 2002.

Background

On June 10, 1999, Amendment 8 to the Northern Anchovy Fishery Management Plan, which was renamed the Coastal Pelagic Species Fishery Management Plan, was partially approved by the Secretary of Commerce. Two of the provisions of Amendment 8 were disapproved. However, these two provisions addressed matters required by the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) to be included in all fishery management plans. As such, the Council was required to revisit these issues in subsequent actions. First, bycatch provisions of Amendment 8 were disapproved because they did not contain a standardized reporting methodology to assess the amount and type of bycatch in the fishery. Bycatch requirements of the Magnuson-Stevens Act were eventually addressed in Amendment 9, which was approved on March 22, 2001. Second, optimum yield for market squid (*Loligo opalescens*) was disapproved because Amendment 8 did not provide an estimate of MSY. The Council is addressing MSY through submission of Amendment 10.

Market Squid

Various approaches to determine an MSY proxy for market squid have been attempted. With little knowledge of the biology of squid and inadequate data available, other than landings, results from all methods used to determine an or proxy for MSY proved to be ineffective for monitoring the resource. Amendment 10, which contains a description of these methods, examines such things as historical landings, the range of the species, and the manner in which the fishery is conducted.

Additional data on squid became available from research conducted by the California Department of Fish and Game through a program implemented by State legislation establishing permit fees to fund squid research. With new information on growth, maturity, and fecundity, the Council implemented a scientific review, which resulted in the development of a proxy for MSY that came to be known as the egg escapement (EE) method. A discussion of the approach the Council used was published in the proposed rule and will not be repeated here.

The EE method is based on a modeling approach that addresses the life history of the species, with a focus on the mortality and spawning rates of sexually mature females and is based on determining a sustainable level of egg escapement. A sustainable level of egg escapement can be practically interpreted as a level of reproductive (egg) escapement that is believed to be at or near a minimum level necessary to allow the population to maintain its level of abundance into the future, that is, allow for sustainable reproduction year after year.

With the approval of Amendment 10, the FMP now uses the EE method to monitor the market squid fishery. The adoption of the EE method for this purpose does not require implementing rules because it sets a policy for monitoring the fishery and has no direct effect on the conduct of the fishery.

Capacity Goal

Amendment 10 establishes a capacity goal for the fleet and sets conditions for the transfer of permits to maintain the capacity goal. The purpose of the capacity goal is to ensure that fishing capacity in the CPS limited entry fishery is in balance with resource availability. Measuring the actual harvesting capacity of a vessel and monitoring each vessel's capacity can be complicated because the amount of fish a vessel can carry depends on many factors; therefore, Amendment 10 uses an aggregate gross tonnage (GT) of 5,650.9 mt as a proxy for fleet capacity. The aggregate gross tonnage level of 5,650.9 mt results in a fleet that is larger than necessary solely to harvest available CPS; however, the CPS finfish fleet also relies on other fishing opportunities such as fishing for squid and tuna. The current fleet of 65 vessels, which totals 5,650.9 mt GT, meets the necessity of controlling the size of the CPS fleet while taking in consideration the economic needs of the fishery. Estimated normal harvesting capacity for the current fleet, which was determined by reviewing historical average and maximum landings per trip, ranged from 60,000 mt to 111,000 mt per year. The physical harvesting capacity of the current fleet ranged from 361,000 to 539,000 mt per year. Physical capacity is a technological or engineering measure of the maximum potential output per unit of time.

Permit Transfers

As long as aggregate fleet GT is not above 5,933.5 mt (fleet GT plus 5 percent) limited entry permits can be transferred with the following restrictions: (1) Full transferability of permits only to vessels of comparable capacity (vessel GT +.10 (GT) or less), and (2) permits can be combined up to a greater level of capacity in cases where the vessel to which the permits would be transferred to is of greater harvesting capacity than the vessel from which the permit originated.

NMFS will endorse each limited entry permit based on the currently permitted vessel's calculated GT as defined by the formula in 46 CFR 69.209 for ship-shaped hulls. This formula is used by the U.S. Coast Guard (GT = 0.67 x length x breadth x depth/100). Records of length, breadth, and depth used for determining GT will be those recorded

on the vessel's Coast Guard documentation.

The original permits and their respective endorsements will remain in effect for the lifetime of each permit, regardless of the GT of a vessel to which it was transferred. In cases where a permit is transferred to a vessel with a smaller GT, the original GT endorsement will remain, and excess GT cannot be split out from the original permit configuration and sold. In cases where two or more permits are transferred to a larger vessel, the larger vessel will hold the original permits and can fish for CPS finfish as long as the aggregate GT endorsements, including the 10 percent allowance, as defined by the formula for comparable capacity (vessel GT + .10 (GT) or less) adds up to or exceeds the new vessel's calculated GT. In the event that a vessel with multiple permits leaves the CPS limited entry program, the permits can be sold together or separately, but the original permit endorsement cannot be altered.

To ensure manageability of the permit program and stability of the fleet, only one transfer per permit will be allowed during each calendar year. Permits can be used only on the vessel to which they were registered. Catch history will be tied to the vessel and not to the permits.

Maintaining the Capacity Goal

When the upper threshold of aggregate fleet capacity plus 5 percent (5,933.5 mt) is reached, fleet capacity will be restored to the capacity goal (5,650.9 mt) by restricting conditions for permit transfer. The choice of 5 percent is a balance between allowing permit owners flexibility to improve their economic situation by modifying existing vessels or acquiring new vessels without leading to a fleet capacity that will take too long to return to the capacity goal. When the threshold of 5,933.5 mt is reached or exceeded, permits can only be transferred to vessels with equal or smaller GT, and the 10–percent vessel allowance will be removed. Restoring the 10 percent-allowance can be considered when total aggregate fleet capacity reaches the 5,650.9 mt target.

Procedures for Issuing New Limited Entry Permits

Based on changes in CPS finfish resources or market conditions, the Council may recommend to NMFS that new limited entry permits should be issued. If NMFS approves the recommendation, a notice will be published in the **Federal Register** describing the details of the recommendation. If new permits are issued, the qualifying criteria originally established in the FMP will be used for issuance. This will entail continuing down the list of vessels having landings during the 1993–97 window period in order of decreasing window period landings from the original qualifying level of 100 mt. If no vessel meets the qualifying criteria of 100 mt, then the permit will be issued to the vessel with total landings nearest 100 mt during the qualifying period. New permits can be issued on either a temporary or permanent basis, depending on the circumstances surrounding the need for additional fleet capacity.

Comments and Responses

Two letters were received. The comments therein focused primarily on the process used to issue new limited entry permits. Under Amendment 10 and the proposed rule, the Regional Administrator would use the qualifying period of January 1, 1993, through November 5, 1997, and the same qualification of landing at least 100 mt during this period as described in Amendment 8 to the FMP. If no vessel meets the landing requirement, then the permit would be issued to the vessel with landings nearest 100 mt.

Comment 1: The approach is arbitrary because (1) any gear that made the landing would be eligible, which could create a windfall for the qualifying vessel through transfer of the permit from a vessel that did not intend to fish CPS; (2) the procedure does not take into account section 301(a)(8) of the Magnuson-Stevens Act, which requires that proposed actions provide for sustained participation of fishing communities and minimize the impact on fishing communities, in this case, the fishing community of San Diego; and (3) the status of the California market squid fishery and the CPS finfish fishery, which are limited by the geographical range of the limited entry regime and recognized as closely related economically by the FMP, were not taken into account.

The commenter recommended that the inadequacies of Amendment 10 described in the previous paragraph be corrected by the following:

1. Issue permits to round-haul vessels that hold a market squid permit from the State of California. Amendment 10 recognizes the importance of squid to the CPS fishery, and some of these vessels that have participated in the CPS fishery before the qualifying period hold these permits.

2. Include as criteria for a permit, provisions of a California law that requires eligibility for fishermen that can provide evidence showing participation as a commercial fisherman for 20 years and who were participants in the CPS fishery for at least one of those years.

3. Include vessels that have a drift gill net shark and swordfish permit issued by the State of California.

4. Include vessels that have a history of participation in the tropical tuna fishery and the owner of the vessel is a member of the San Diego fishing community.

5. Include vessels that did not land 100 mt during the qualifying period.

The proposed remedy would not contribute to overcapitalilzation because fewer than 10 vessels are likely to qualify. The remedy also would minimize the impact on the fishing community in San Diego. Some vessels have squid permits but do not have CPS limited entry permits. Vessels that lost fishing access to Mexico when the Magnuson-Stevens Act extended jurisdiction to highly migratory species entered the drift gill net fishery. Recognizing the importance of having a squid permit and a CPS limited entry permit, and implementing the California criteria of historical participation makes a more reasonable accommodation to the fishing community in San Diego.

Response: The FMP does not specify the gear used for taking CPS because how the resource is harvested has never been an issue. Implementation of limited entry was expected to be beneficial to the economics of the fishery as a whole and may or may not be beneficial to any specific fisherman, because the value of permits is related to the condition of the resource and the prevailing markets for the harvest, both of which fluctuate over time. Nevertheless, limiting the number of harvesters tends to reduce individual risk. New permits would be issued only if the capacity of the fleet falls below the goal or the condition of the resource is such that new permits are warranted. Those individuals who participated in the fishery in the past but left the fishery and did not make the required landings during the window period, may qualify under the procedures of Amendment 10 if landings lower than 100 mt are considered. The Council decided to retain the current control date, window period, and level of landings required when issuing additional permits. This approach was adopted to be less disruptive in terms of displacing vessels from the fishery and reduces impacts on existing fishing patterns, and, therefore, on fishing communities.

Through Amendment 8 NMFS closely examined the relationship between vessels harvesting CPS finfish and those

harvesting squid with respect to economic dependence. NMFS found that almost all of the originally permitted vessels also had squid permits from the State of California. Thus, NMFS chose not to issue permits to all holders of squid permits because the fleet would have been too large.

Implementation of Amendment 10 will allow permits to be transferable to another individual or to another vessel. Permits will have a cost, but the cost of a permit is expected to reflect the value of the permit. Therefore, those individuals needing to improve their business opportunities through the purchase of a permit will be able to assess the value of making the purchase by considering future potential harvests and the prevailing market for permits.

Comment 2: Amendment 10 does not present information as required under section 303(a)(4)(C) of the Magnuson-Stevens Act to provide data on the extent to which U.S. processors, on an annual basis, will process CPS landed by the CPS fleet.

Response: Harvesting capacity not processing capacity as it relates to overcapitalization is the subject of Amendment 10. Nevertheless, the FMP assumed that landings and processing capacity would increase as the biomass increased. Processing capacity has increased, and it continues to increase.

Comment 3: Amendment 10 does not discuss an option based on grandfathered permits as provided in California law.

Response: California law requires that any California fisherman with 20 years of participating in any fishery and 1 year in the fishery slated for limited entry be given a preference. While experience was considered in Amendment 10, only participation in the CPS fishery was considered in an effort to determine those individuals that depend on CPS and to prevent overcapitalization.

Comment 4: The provision to issue new permits is not fair and equitable. Amendment 10 requires new permits to be issued from the original list of vessels. The list of potentially qualifying vessels was developed under Amendment 8, before a fishery began off Oregon and Washington, which is a bias toward California fishermen. If fisheries off Oregon and Washington had existed when Amendment 8 was implemented, many Oregon and Washington fishermen would have received a permit.

Response: The decision was made by the Council to rely on the existing window period and required landings, which continues the Council's preference for historical participation. Before the FMP was implemented, some fishermen from other states entered the squid fishery, landed CPS, and qualified for a limited entry permit, an option open to anyone, regardless of state residency. New entrants in the fishery who have benefitted from participating in the open access fishery may also enter the limited entry fishery by purchasing a permit under the rules established by Amendment 10.

Classification

The Administrator, Southwest Region, NMFS, determined that the FMP Amendment 10 is necessary for the conservation and management of the coastal pelagic species fishery and that it is consistent with the Magnuson-Stevens Act and other applicable laws.

Because the rule relieves a restriction on the sale to other individuals and/or transfer to other vessels of limited entry permits, it is not necessary to delay the effective date of this final rule for 30 days under 5 U.S.C. 553(d)(1), except for § 660.512(h). This rule will give individuals flexibility in managing their business affairs by allowing them to invest in the fishery through the purchase of a permit or to sell a permit on the open market.

This final rule has been determined to be not significant for the purposes of Executive Order 12866.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that the proposed rule for this action would not have a significant economic impact on a substantial number of small entities. No comments were received regarding this certification. However, several comments addressed the economic impact of the rule. Responses to these comments are presented above. None of these comments resulted in a change to the determination that the rule would not have a significant economic impact. As a result, a regulatory flexibility analysis was not prepared.

This final rule contains a collection-of-information requirement subject to the Paperwork Reduction Act (PRA) and which has been approved by OMB under control number 0648–0204. Public reporting burden for an application for transfer of a limited entry permit is estimated to average 30 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate, or any other aspect of this data collection, including suggestions for reducing the burden, to NMFS (See ADDRESSES) and to OMB at the Office of Information and Regulatory Affairs, OMB, Washington, D.C. 20503 (Attention: NOAA Desk Officer).

Notwithstanding any other provision of the law, no person is required to respond to, nor shall a person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number.

There have been no changes to the regulatory text in the proposed rule.

List of Subjects in 50 CFR Part 660

Administrative practice and procedure, American Samoa, Fisheries, Fishing, Guam, Hawaiian Natives, Indians, Northern Mariana Islands, Reporting and recordkeeping requirements.

Dated: January 21, 2003.

Rebecca Lent,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, NMFS amends 50 CFR part 660 as follows:

PART 660—FISHERIES OFF WEST COAST STATES AND IN THE WESTERN PACIFIC

1. The authority citation for part 660 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 660.502, definitions for "comparable capacity", and "gross tonnage" are added, in alphabetical order, to read as follows:

§ 660.502 Definitions.

* * * * *

Comparable capacity means gross tonnage plus 10 percent of the vessel's calculated gross tonnage.

* * * * *

Gross tonnage (GT) means gross tonnage as determined by the formula in 46 CFR 69.209(a) for a vessel not designed for sailing (.67 x length x breadth x depth/100). A vessel's length, breadth, and depth are those specified on the vessel's certificate of documentation issued by the U.S. Coast Guard or State.

* * * * *

3. In § 660.512, a new paragraph (h) is added to read as follows:

§ 660.512 Limited entry fishery.

* * * * *

(h) *Issuance of new permits.* (1) When the aggregate gross tonnage of all vessels participating in the limited entry fishery

declines below 5,650.9 metric tons (mt), the Council will review the status of the fishery, taking into consideration:

(i) The changes in gross tonnage that have and are likely to occur in the transfer of limited entry permits;

(ii) The actual harvesting capacity as experienced in the current fishery in comparison to the capacity goal;

(iii) Comments of the CPSMT;

(iv) Any other relevant factors related to maintaining the capacity goal.

(2) Following its review, the Council will recommend to NMFS whether additional permit(s) should be issued and if the new permit(s) should be temporary or permanent. The issuance of new permit(s) shall be based on the following:

(i) The qualifying criteria in paragraph (b) of this section, but vessels that were issued a permit before December 31, 2000, are not eligible.

(ii) If no vessel meets the qualifying criteria in paragraph (b), then the permit(s) will be issued to the vessel(s) with total landings nearest 100 mt during the qualifying period of paragraph (b).

(iii) No vessel will be issued a permit under this paragraph (h) that is currently registered for use with a permit.

(3) The Regional Administrator will review the Council's recommendation and determine whether issuing additional permit(s) is consistent with the FMP and with paragraph (h)(2) of this section. If issuing additional permit(s) is appropriate, the Regional Administrator will:

(i) Issue the appropriate number of permits consistent with the Council's recommendation; and

(ii) Publish a document in the **Federal Register** notifying the public that new permits or a new permit has been issued, the conditions attached to any permit, and the reasons for the action.

4. Section 660.514 is revised to read as follows:

§ 660.514 Transferability.

(a) *General.* (1) The SFD will process applications for transferring limited entry permits to a different owner and/or to a different vessel according to this section.

(2) After January 27, 2003, the SFD will issue a limited entry permit to the owner of each vessel permitted to participate in the limited entry fishery for CPS. This permit will replace the existing permit and will include the gross tonnage of the vessel, which will constitute an endorsement for that vessel for the purpose of regulating the transfer of limited entry permits.

(b) *Criteria.* (1) When the aggregate gross tonnage of all vessels participating the limited entry fishery is at or below 5,650.9 mt, a permit may be transferred to a different owner or to a different vessel in the following circumstances only:

(i) A permit may be transferred to a vessel without a permit if the vessel without a permit has a comparable capacity to the capacity on the permit or is less than comparable capacity on the permit.

(ii) When a permit is transferred to a vessel without a permit that has less gross tonnage than that of the permitted vessel, the excess gross tonnage may not be separated from the permit and applied to a second vessel.

(iii) A permit may be transferred to a vessel without a permit that is of greater than comparable capacity only if two or more permits are transferred to the vessel without a permit to equal the gross tonnage of the vessel. The number of permits required will be determined by adding together the comparable capacity of all permits being transferred. Any gross tonnage in excess of that needed for a vessel remains with the permit.

(2) When a vessel with multiple permits leaves the fishery, the permits may be sold separately and applied to other vessels according to the criteria in this section.

(c) *Stipulations.* (1) The gross tonnage endorsement of a permit is integral to the permit for the duration of the permit, regardless of the gross tonnage of any vessel to which the permit is transferred.

(2) Permits may be used only on the vessel for which they are registered by the SFD. All permits that authorize a vessel to operate in the limited entry fishery must be on board the vessel during any fishing trip on which CPS is harvested or is on board.

(3) A permit may be transferred only once during a calendar year.

(d) *Vessel alterations.* (1) A permitted vessel's length, breadth, or depth may be altered to increase the gross tonnage of the vessel only if the aggregate gross tonnage of all vessels participating in the limited entry fishery equals, or is below 5,650.9 mt, and only under the following conditions:

(i) The gross tonnage of the altered vessel, calculated according to the formula in 46 CFR 69.209(a), does not exceed 110 percent of the vessel's original gross tonnage endorsement, and

(ii) A new certificate of documentation is obtained from the U.S. Coast Guard or State. Modifications exceeding 110 percent of the vessel's gross tonnage endorsement will require registration of the vessel under an additional permit or permits or under a permit with a sufficient gross tonnage endorsement.

(2) A copy of the certificate of documentation indicating changes in length, depth, or breadth must be provided to the SFD.

(3) The revised gross tonnage will not be valid as an endorsement until a revised permit is issued by the SFD.

(e) *Applications.* (1) All requests for the transfer of a limited entry permit will be made to the SFD in writing and shall contain the following information:

(i) Name, address, and phone number of the owner of the permitted vessel.

(ii) Name of the permitted vessel and documentation number of the vessel.

(iii) Name, address, and phone number of the owner of the vessel to which the permit is to be transferred.

(iv) Name and documentation number of the vessel to which the permit is to be transferred.

(v) Signature(s) of the owner(s) of the vessels participating in the transfer.

(vi) Any other information that the SFD may request.

(2) No permit transfer is effective until the transfer has been authorized by the SFD.

(f) *Capacity reduction.* (1) When the aggregate gross tonnage of the limited entry fleet reaches 5,933.5 mt, a permit may be transferred to a vessel without a permit only if the vessel without a permit is of the same or less gross tonnage.

(2) When the aggregate gross tonnage of the limited entry fleet reaches 5,933.5 mt, alterations in the length, depth, or breadth of a permitted vessel may not result in an increase in the gross tonnage of the vessel.

[FR Doc. 03–1784 Filed 1–24–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 021212307–2307–01; I.D. 012103F]

Fisheries of the Exclusive Economic Zone Off Alaska; Shortraker/Rougheye and Northern Rockfish in the Bering Sea Subarea of the Bering Sea and Aleutian Islands Management Area

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for Community Development Quota (CDQ) reserve amounts of shortraker/rougheye rockfish and northern rockfish in the Bering Sea subarea of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the 2003 interim CDQ reserve amounts of shortraker/rougheye rockfish and northern rockfish in this area.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), January 22, 2003, until superseded by the notice of Final 2003 Harvest Specifications of Groundfish for the BSAI, which will be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI exclusive economic zone according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.The 2003 interim CDQ reserve amounts of shortraker/rougheye rockfish and northern rockfish in the Bering Sea subarea of the BSAI are 2 metric tons (mt) and .25 mt, respectively, as established by the Interim 2003 Harvest Specifications of Groundfish in the BSAI (67 FR 78739, December 26, 2002).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the 2003 interim CDQ reserve amounts of shortraker/rougheye rockfish and northern rockfish in the Bering Sea subarea of the BSAI will be necessary as incidental catch to support other anticipated groundfish fisheries for the 2003 fishing year. Consequently, the Regional Administrator is establishing directed fishing allowances of zero mt. Therefore, in accordance with § 679.20(d)(1)(iii), NMFS is prohibiting directed fishing for CDQ reserve amounts of shortraker/rougheye rockfish and northern rockfish in the Bering Sea subarea of the BSAI.

Maximum retainable amounts may be found in the regulations at § 679.20(e) and (f).

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is contrary to the public interest. This requirement is contrary to the public interest as it would delay the closure of the fishery, lead to exceeding the interim CDQ reserve amounts, and therefore reduce the public's ability to use and enjoy the fishery resource.

The Assistant Administrator for Fisheries, NOAA, also finds good cause to waive the 30–day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by section 679.20 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: January 21, 2003.

Richard W. Surdi

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 03–1780 Filed 1–22–03; 4:29 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 021212307–2307–01; I.D. 011503C]

Fisheries of the Exclusive Economic Zone Off Alaska; Rock Sole Sideboard Limit in the Bering Sea and Aleutian Islands Management Area

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for rock sole by catcher processors that are listed under the American Fisheries Act (AFA) in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the interim 2003 sideboard limit of rock sole specified for listed AFA catcher processors in the BSAI.

DATES: Effective 1200 hrs, Alaska local time, January 29, 2003, until superseded by the notice of Final 2003 Harvest Specifications of Groundfish for the BSAI, which will be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI exclusive economic zone according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and part 679.

The interim 2003 sideboard limit of rock sole specified for listed AFA catcher processors in the BSAI is 359 metric tons (mt) as established by the interim 2003 harvest specifications for groundfish in the BSAI (67 FR 78739, December 26, 2002).

In accordance with § 679.20(d)(1)(iv), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the interim 2003 sideboard limit of rock sole specified for listed AFA catcher processors will be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of zero mt, and is setting aside the 359 mt of the interim 2003 sideboard limit of rock sole specified for listed AFA catcher processors as bycatch to support other anticipated groundfish fisheries. Therefore, in accordance with § 679.20(d)(1)(iii), NMFS is prohibiting directed fishing for rock sole by listed AFA catcher processors in the BSAI.

Maximum retainable amounts may be found in the regulations at § 679.20(e) and (f).

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is contrary to the public interest. This requirement is contrary to the public interest as it would delay the closure of the fishery, lead to exceeding the interim sideboard limit for listed AFA catcher processors, and therefore reduce the public's ability to use and enjoy the fishery resource.

The Assistant Administrator for Fisheries, NOAA also finds good cause to waive the 30–day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for

waiver of prior notice and opportunity for public comment.

This action is required by section 679.20 and is exempt from review under Executive Order 12866.

Authority: Authority: 16 U.S.C. 1801 *et seq.*

Dated: January 21, 2003.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 03–1785 Filed 1–24–03; 8:45 am]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 68, No. 17
Monday, January 27, 2003

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 71

[Docket No. 99–017–2]

RIN 0579–AB13

Blood and Tissue Collection at Slaughtering Establishments

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule; extension of comment period.

SUMMARY: We are extending the comment period for our proposed rule regarding the collection of blood and tissue samples at slaughtering establishments. In that document, we proposed, among other things, to establish requirements for the collection of blood and tissue samples from livestock (horses, cattle, bison, captive cervids, sheep and goats, swine, and other farm animals) and poultry at slaughtering establishments when it is necessary for disease surveillance. This action will allow interested persons additional time to prepare and submit comments.

DATES: We will consider all comments that we receive on or before March 28, 2003.

ADDRESSES: You may submit comments by postal mail/commercial delivery or by e-mail. If you use postal mail/commercial delivery, please send four copies of your comment (an original and three copies) to: Docket No. 99–017–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 99–017–1. If you use e-mail, address your comment to *regulations@aphis.usda.gov*. Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and "Docket No. 99–017–1" on the subject line.

You may read any comments that we receive on Docket No. 99–017–1 in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at *http://www.aphis.usda.gov/ppd/rad/webrepor.html*.

FOR FURTHER INFORMATION CONTACT: Dr. Adam Grow, National Animal Health Programs, VS, APHIS, 4700 River Road Unit 43, Riverdale, MD 20737–1231; (301) 734–4363.

SUPPLEMENTARY INFORMATION:

Background

On November 27, 2002, we published in the **Federal Register** (67 FR 70864–70875, Docket No. 99–017–1) a proposal to amend the regulations in 9 CFR part 71 to establish requirements for the collection of blood and tissue samples from livestock (horses, cattle, bison, captive cervids, sheep and goats, swine, and other farm animals) and poultry at slaughtering establishments when it is necessary for disease surveillance. We also proposed to require that livestock or poultry moved interstate for slaughter be moved only to a slaughtering establishment that has been listed by the Administrator and provided proposed criteria for the listing of establishments.

Comments on the proposed rule were required to be received on or before January 27, 2003. We are extending the comment period on Docket No. 99–017–1 for an additional 60 days, ending March 28, 2003. This action will allow interested persons additional time to prepare and submit comments.

Authority: 7 U.S.C. 8304–8306, 8308, 8310, 8313, and 8315; 7 CFR 2.22, 2.80, and 371.4.

Done in Washington, DC, this 21st day of January 2003.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 03–1752 Filed 1–24–03; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–CE–44–AD]

RIN 2120–AA64

Airworthiness Directives; The New Piper Aircraft, Inc. Models PA–23, PA–23–160, PA–23–235, PA–23–250, and PA–E23–250 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to certain The New Piper Aircraft, Inc. (Piper) Models PA–23, PA–23–160, PA–23–235, PA–23–250, and PA–E23–250 airplanes that do not incorporate a certain design flap control torque tube or torque tube assembly. This proposed AD would require you to repetitively inspect the flap control torque tube for cracks, corrosion, wear, or elongation of the attachment bolt holes (referred to as damage hereon); and would require you to replace any damaged torque tube with either an improved design flap control torque tube or flap control torque tube assembly. The repetitive inspections would no longer be necessary when the improved design torque tube or torque tube assembly is installed. This proposed AD is the result of several reports of damage found in the flap control torque tube on the affected airplanes. The actions specified by this proposed AD are intended to detect and correct damage to the flap control torque tube, which could result in failure of the flap operating system. If such failure occurred during landing or takeoff, then a split flap condition could occur with potential loss of control of the airplane.

DATES: The Federal Aviation Administration (FAA) must receive any

comments on this proposed rule on or before March 21, 2003.

ADDRESSES: Submit comments to FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2002–CE–44–AD, 901 Locust, Room 506, Kansas City, Missouri 64106. You may view any comments at this location between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays. You may also send comments electronically to the following address: *9–ACE–7–Docket@faa.gov*. Comments sent electronically must contain "Docket No. 2002–CE–44–AD" in the subject line. If you send comments electronically as attached electronic files, the files must be formatted in Microsoft Word 97 for Windows or ASCII text.

You may get service information that applies to this proposed AD from The New Piper Aircraft, Inc., Customer Services, 2926 Piper Drive, Vero Beach, Florida 32960; telephone: (561) 567–4361; facsimile: (772) 978–6573. You may also view this information at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Hassan Amini, Aerospace Engineer, FAA, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, Suite 450, Atlanta, Georgia 30349; telephone: (770) 703–6080; facsimile: (770) 703–6097.

SUPPLEMENTARY INFORMATION:

Comments Invited

How Do I Comment On This Proposed AD?

The FAA invites comments on this proposed rule. You may submit whatever written data, views, or arguments you choose. You need to include the rule's docket number and submit your comments to the address specified under the caption **ADDRESSES.** We will consider all comments received on or before the closing date. We may amend this proposed rule in light of comments received. Factual information that supports your ideas and suggestions is extremely helpful in evaluating the effectiveness of this proposed AD action and determining whether we need to take additional rulemaking action.

Are There Any Specific Portions of This Proposed AD I Should Pay Attention to?

The FAA specifically invites comments on the overall regulatory, economic, environmental, and energy aspects of this proposed rule that might suggest a need to modify the rule. You may view all comments we receive before and after the closing date of the rule in the Rules Docket. We will file a report in the Rules Docket that summarizes each contact we have with the public that concerns the substantive parts of this proposed AD.

How Can I Be Sure FAA Receives My Comment?

If you want FAA to acknowledge the receipt of your mailed comments, you must include a self-addressed, stamped postcard. On the postcard, write "Comments to Docket No. 2002–CE–44–AD." We will date stamp and mail the postcard back to you.

Discussion

What Events Have Caused This Proposed AD?

A review of FAA's service difficulty report (SDR) database shows several incidents of cracks and corrosion in the flap control torque tube on Piper PA–23 series airplanes. One incident of a broken flap control torque tube resulted in a split flap condition during approach.

What Are the Consequences If the Condition Is Not Corrected?

Cracked or corroded flap torque tubes, if not detected and corrected, could result in damage to the flap control torque tube and failure of the flap operating system. If such failure occurred during landing or takeoff, then a split flap condition could occur with potential loss of control of the airplane.

Is There Service Information That Applies to This Subject?

Piper has issued Mandatory Service Bulletin No. 1051B, dated November 5, 2002.

What Are the Provisions of This Service Information?

The service bulletin includes procedures for:

—Inspecting the flap control torque tube for cracks, corrosion, wear, or elongation of the attachment bolt holes; and

—Installing a part number (P/N 17634–002 flap control torque tube; or a P/N 104622–002 or 104622–004 flap control torque tube assembly.

The FAA's Determination and an Explanation of the Provisions of This Proposed AD

What Has FAA Decided?

After examining the circumstances and reviewing all available information related to the incidents described above, we have determined that:

—The unsafe condition referenced in this document exists or could develop on other Models PA–23, PA–23–160, PA–23–235, PA–23–250, and PA–E23–250 airplanes of the same type design that do not incorporate a certain flap control torque tube or torque tube assembly;

—The actions specified in the previously-referenced service information should be accomplished on the affected airplanes; and

—AD action should be taken in order to correct this unsafe condition.

What Would This Proposed AD Require?

This proposed AD would require you to repetitively inspect the flap control torque tube for cracks, corrosion, wear, or elongation of the attachment bolt holes; and would require you to replace any damaged flap control torque tube with either an improved design flap control torque tube or flap control torque tube assembly. The repetitive inspections would no longer be necessary when the improved design flap control torque tube or flap control torque tube assembly is installed.

Cost Impact

How Many Airplanes Would This Proposed AD Impact?

We estimate that this proposed AD affects 3,733 airplanes in the U.S. registry.

What Would Be the Cost Impact of This Proposed AD on Owners/Operators of the Affected Airplanes?

We estimate the following costs to accomplish each proposed inspection:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
8 workhours × $60 per hour = $480	None for inspection	$480	$1,791,840

We estimate the following costs to accomplish any necessary replacement that would be required based on the results of the proposed inspection. We have no way of determining the number of airplanes that may need such repair/replacement:

Labor cost	Parts cost	Total cost per airplane
4 workhours × $60 per hour = $240	$452 per airplane	$692

Regulatory Impact

Would This Proposed AD Impact Various Entities?

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposed rule would not have federalism implications under Executive Order 13132.

Would This Proposed AD Involve a Significant Rule or Regulatory Action?

For the reasons discussed above, I certify that this proposed action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations(14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. FAA amends § 39.13 by adding a new airworthiness directive (AD) to read as follows:

The New Piper Aircraft, Inc.: Docket No. 2002–CE–44–AD.

(a) *What airplanes are affected by this AD?* This AD affects the following airplane models and serial numbers that are certificated in any category and do not incorporate a part number (P/N) 17634–002 flap control torque tube; or a P/N 104622–002 or 104622–004 flap control torque tube assembly:

Model	Serial Nos.
PA–23 and PA–23–160.	23–1 through 23–2046.
PA–23–235	27–505 through 27–622.
PA–23–250	27–1 through 27–504 and 27–2000 through 27–8154030.
PA–E23–250	27–2505 through 27–4916 and 27–7304917 through 27–7554168.

(b) *Who must comply with this AD?* Anyone who wishes to operate any of the airplanes identified in paragraph (a) of this AD must comply with this AD.

(c) *What problem does this AD address?* The actions specified by this AD are intended to detect and correct damage to the flap control torque tube, which could result in failure of the flap operating system. If such failure occurred during landing or takeoff, then a split flap condition could occur with potential loss of control of the airplane.

(d) *What actions must I accomplish to address this problem?* To address this problem, you must accomplish the following:

Actions	Compliance	Procedures
(1) Inspect the flap control torque tube for cracks, corrosion, wear, or elongation of the attachment bolt holes (referred to as damage hereon).	Initially inspect upon accumulating 2,500 hours time-in-service (TIS) on the flap control torque tube or within the next 100 hours TIS after the effective date of this AD, whichever occurs later. Repetitively inspect thereafter at intervals not to exceed 500 hours TIS until one of the parts specified in paragraph (d) of this AD is installed.	In accordance with secitons 3 through 10 of the ACCOMPLISHMENT INSTRUCTIONS section of Piper Mandatory Service Bulletin No. 1051B, dated November 5, 2002.
(2) Replace any damage flap control torque tube and replace any wooden end plugs with new plastic end plugs, P/N 17631–002. Replace the flap control torque tubes with either a P/N 17634–002 flap control torque tube or a P/N 104622–002 or 104622–004 flap control torque tube assembly. (i) The P/N 17631–002 end plugs are part of the P/N 104622–002 and 104622–004 flap control torque tube assemblies, but must be obtained for the P/N 17634–002 installation. (ii) You do not have to inspect the existing wooden end plugs as specified in the service bulletin since this AD requires the installation of plastic and plugs.	Prior to further flight after the inspection where damage is found.	In accordance with sections 3 through 10 of the ACCOMPLISHMENT INSTRUCTIONS section of Piper Mandatory Service Bulletin No. 1051B, dated November 5, 2002.
(3) The repetitive inspections required by this AD may be terminated after installation of a replacement flap control torque tube or flap control torque tube assembly as specified in paragraph (d) of this AD.	You may replace the flap control torque tube assembly at any time, but must replace prior to further flight if damage is found during an inspection.	In accordance with sections 3 through 10 of the ACCOMPLISHMENT INSTRUCTIONS section of Piper Mandatory Service Bulletin No. 1051B, dated November 5, 2002.

Actions	Compliance	Procedures
(4) Only install, on any affected airplane, a flap control torque tube or flap control torque tube assembly and end plugs that incorporate the part numbers specified in paragraph (d) of this AD.	As of the effective date of this AD	In accordance with sections 3 through 10 of the ACCOMPLISHMENT INSTRUCTIONS section of Piper Mandatory Service Bulletin No. 1051B, dated November 5, 2002.

(e) *Can I comply with this AD in any other way?* You may use an alternative method of compliance or adjust compliance time if:

(1) Your alternative method of compliance provides an equivalent level of safety; and

(2) The Manager, Atlanta Aircraft Certification Office, approves your alternative. Submit your request through an FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta Aircraft Certification Office.

Note: This AD applies to each airplane identified in paragraph (a) of this AD, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if you have not eliminated the unsafe condition, specific actions you propose to address it.

(f) *Where can I get information about any already-approved alternative methods of compliance?* Contact Hassan Amini, Aerospace Engineer, FAA, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, Suite 450, Atlanta, Georgia 30349; telephone: (770) 703–6080; facsimile: (770) 703–6097.

(g) *What if I need to fly the airplane to another location to comply with this AD?* The FAA can issue a special flight permit under sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate your airplane to a location where you can accomplish the requirements of this AD.

(h) *How do I get copies of the documents referenced in this AD?* You may get copies of the documents referenced in this AD from The New Piper Aircraft, Inc., Customer Services, 2926 Piper Drive, Vero Beach, Florida 32960; telephone: (561) 567–4361; facsimile: (772) 978–6573. You may view these documents at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on January 15, 2003.

Michael Gallagher,

Manager, Small Airplane Directorate, , Aircraft Certification Service.

[FR Doc. 03–1679 Filed 1–24–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 93–CE–37–AD]

RIN 2120–AA64

Airworthiness Directives; Raytheon Aircraft Company Beech Models C35, D35, E35, F35, G35, H35, J35, K35, M35, N35, P35, S35, V35, V35A, and V35B Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to revise Airworthiness Directive (AD) 94–20–04 R1, which currently requires ruddervator inspections and modifications on certain Raytheon Aircraft Company (Raytheon) Beech Models C35, D35, E35, F35, G35, H35, J35, K35, M35, N35, P35, S35, V35, V35A, and V35B airplanes. This proposed AD is the result of the need to add a repetitive inspection of the fuselage bulkheads and change other inspections from a repetitive to a one-time action. The proposed AD would make these changes to AD 94–20–04 R1. The actions specified by the proposed AD are intended to prevent structural failure of the V-tail, which could result in loss of control of the airplane.

DATES: The Federal Aviation Administration (FAA) must receive any comments on this proposed rule on or before March 3, 2003.

ADDRESSES: Submit comments in triplicate to FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 93–CE–37–AD, 901 Locust, Room 506, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that applies to the proposed AD may be obtained from the Raytheon Aircraft Company, PO Box 85, Wichita, Kansas 67201–0085; telephone: (800) 625–7043 or (316) 676–4556. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Mr. T.N. Baktha, Aerospace Engineer, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas 67209; telephone: (316) 946–4155; facsimile: (316) 946–4407.

SUPPLEMENTARY INFORMATION:

Comments Invited

How Do I Comment on the Proposed AD?

The FAA invites comments on this proposed rule. You may submit whatever written data, views, or arguments you choose. You need to include the rule's docket number and submit your comments in triplicate to the address specified under the caption **ADDRESSES.** The FAA will consider all comments received on or before the closing date. We may amend the proposed rule in light of comments received. Factual information that supports your ideas and suggestions is extremely helpful in evaluating the effectiveness of the proposed AD action and determining whether we need to take additional rulemaking action.

Are There Any Specific Portions of the Proposed AD I Should Pay Attention to?

The FAA specifically invites comments on the overall regulatory, economic, environmental, and energy aspects of the proposed rule that might suggest a need to modify the rule. You may examine all comments we receive before and after the closing date of the rule in the Rules Docket. We will file a report in the Rules Docket that summarizes each FAA contact with the public that concerns the substantive parts of the proposed AD.

How Can I Be Sure FAA Receives My Comment?

If you want us to acknowledge the receipt of your comments, you must include a self-addressed, stamped postcard. On the postcard, write "Comments to Docket No. 93–CE–37–AD." We will date stamp and mail the postcard back to you.

Discussion

Has FAA Taken Any Action to This Point?

On October 15, 2002, FAA issued AD 94–20–04 R1, Amendment 39–12919 (67 FR 64794, October 22, 2002), to require ruddervator inspections and modifications on certain Raytheon Aircraft Company (Raytheon) Beech Models C35, D35, E35, F35, G35, H35, J35, K35, M35, N35, P35, S35, V35, V35A, and V35B airplanes.

The intent of this AD was to maintain the inspection and modification requirements of AD 94–20–04, Amendment 39–9032 (59 FR 49785, September 30, 1994), but condense and clarify the information presented in AD 94–20–04.

What Has Happened Since AD 94–20–04 R1 To Initiate This Action?

Comments from the public since issuance of AD 94–20–04 R1 indicate a need for a revision to that AD. Specifically, the visual inspection of the empennage, aft fuselage, and ruddervator control system with any subsequent repair and the setting of the elevator controls, rudder and tab system controls, cable tensions, and rigging should all be a one time action. Currently, they are to be accomplished repetitively at 100-hour time-in-service (TIS) intervals.

In addition, we inadvertently did not include the 100-hour TIS interval repetitive inspections of the fuselage bulkheads that were required by AD 94–20–04.

The FAA's Determination and Explanation of the Provisions of the Proposed AD

What Has FAA Decided?

After examining the circumstances and reviewing all available information related to the incidents described above, we have determined that:

—The unsafe condition referenced in this document still exists or could develop on other Raytheon Beech Models C35, D35, E35, F35, G35, H35, J35, K35, M35, N35, P35, S35, V35, V35A, and V35B of the same type design;

—The actions of AD 94–20–04 R1 should be maintained except for adding the fuselage bulkhead inspections and making certain repetitive actions a one-time action; and

—AD action should be taken in order to continue to prevent structural failure of the V-tail, which could result in loss of control of the airplane.

What Would the Proposed AD Require?

This proposed AD would revise AD 94–20–04 R1, which applies to Raytheon Beech Models C35, D35, E35, F35, G35, H35, J35, K35, M35, N35, P35, S35, V35, V35A, and V35B. The proposed AD would:

—Maintain the actions of AD 94–20–04 R1, but would make the repetitive visual inspection of the empennage, aft fuselage, and ruddervator control system with any subsequent repair and the setting of the elevator controls, rudder and tab system controls, cable tensions, and rigging a one time action; and

—Would add repetitive inspections of the fuselage bulkheads that were required by AD 94–20–04.

Cost Impact

How Many Airplanes Would the Proposed AD Impact?

We estimate that the proposed AD affects 10,200 airplanes in the U.S. registry.

What Would Be the Cost Impact of the Proposed AD on Owners/Operators of the Affected Airplanes?

We estimate the following costs to accomplish the proposed initial inspections. These cost figures are exactly the same as what is currently required by AD 94–20–04 R1. Although we are adding the inspection of the fuselage bulkheads to the proposed AD, we had already incorporated the costs of this inspection into the Cost Impact of AD 94–20–04 R1. Therefore, this proposed AD presents no new costs upon the public:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
40 workhours at $60 per hour = $2,400	Not applicable	$2,400	$24,480,000

The above figures are based only on the initial inspections and do not take into account the cost of repetitive inspections or adjustments, repairs, or replacements that would be necessary based on the results of the inspections. We have no way of determining the number of repetitive inspections each owner/operator of the affected airplanes would incur or what adjustments, repairs, or replacements may be necessary based on the results of the inspections.

Regulatory Impact

Would This Proposed AD Impact Various Entities?

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposed rule would not have federalism implications under Executive Order 13132.

Would This Proposed AD Involve a Significant Rule or Regulatory Action?

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. FAA amends § 39.13 by removing Airworthiness Directive (AD) 94–20–04

R1, Amendment 39–12919 (67 FR 64794, October 22, 2002), and by adding a new AD to read as follows:

Raytheon Aircraft Company (Beech Aircraft Corporation formerly held Type Certificate (TC) No. A–777 and TC No. 3A15): Docket No. 93–CE–37–AD; Revises AD 94–20–04 R1, Amendment 39–12919, which revised AD 94–20–04, Amendment 39–9032.

(a) *What airplanes are affected by this AD?* This AD affects the following airplanes that are certificated in any category:

(1) Beech Models C35, D35, E35, F35, G35, H35, J35, K35, M35, N35, and P35 airplanes, all serial numbers; and

(2) Beech Models S35, V35, V35A, and V35B airplanes, all serial numbers, that do not have the straight tail conversion modification incorporated in accordance with Supplemental Type Certificate (STC) SA2149CE.

Note 1: Beech Models 35, 35R, A35, B35 airplanes were included in the Applicability of AD 94–20–04. We have removed Beech Models 35, 35R, A35, and B35 airplanes from the Applicability section of this AD and incorporated the actions applicable to these airplanes into another AD action. Part of this other AD action is the incorporation of Raytheon Service Raytheon Service Bulletin 27–3358.

(b) *Who must comply with this AD?* Anyone who wishes to operate any of the airplanes identified in paragraphs (a), (a)(1), and (a)(2) of this AD must comply with this AD.

(c) *What problem does this AD address?* The actions specified by this AD are intended to prevent structural failure of the V-tail, which could result in loss of control of the airplane.

(d) *What actions must I accomplish to address this problem?* To address this problem, you must accomplish the following:

Actions	Compliance	Procedures
(1) Verify that the ruddervator balance is within manufacturer's specified limits as defined in the applicable shop or maintenance manual. If the ruddervator is outside the specified limits, balance the ruddervator control surfaces.	Accomplish the verification within the next 100 hours TIS after November 28, 1994 (the effective date of AD 94–20–04) and thereafter prior to further flight after the ruddervators are repaired or repainted (even if stripes are added or paint is touched up). Accomplish the balancing prior to further flight after the ruddervator is found outside the specified limits.	Verify in accordance with the applicable the shop or maintenance manual. Balance the ruddervator control surfaces in accordance with Section 3 of Beech Shop Manual 35–590096B19, or subsequent revisions.
(2) Visually inspect the empennage, aft fuselage, and ruddervator control system for damage. (i) Repair or replace any damaged parts; and (ii) Set the elevator controls, rudder and tab system controls, cable tensions, and rigging.	Inspect and set the controls, tension, and rigging within the next 100 hours TIS after November 28, 1994 (the effective date of AD 94–20–04). Accomplish any repairs and replacements prioir to further flight after the inspection.	In accordance with the procedures and as specified in the instructions to Beech Kit 35–4017–1 "Kit Information Empennage and Aft Fuselage Inspection", as specified in Beech Service Bulletin No. 2188, dated May, 1987.
(3) Accomplish the following actions: (i) Visually inspect the fuselage bulkheads at Fuselage Station (FS) 256.9 and FS 272 for damage (cracks, distortion, loose rivets, etc.); (ii) Visually inspect the fuselage skin around the bulkhead for damage (wrinkles or cracks); and (iii) Repair or replace any damaged parts.	Initially inspect within the 100 hours time-in-procedures after the effective date of this AD. Repetitively inspect thereafter at intervals not to exceed 100 hours TIS. Repair or replace prior to further flight where damage is found.	In accordance with the procedures in the instructions to Beech Kit 35–4017–1 "Kit Information Empennage & Aft Fuselage Inspection", as specified in Beech SB 2188, dated May 1987.
(4) Remove all external stabilizer reinforcements installed during incorporation of either Supplement Type Certificate (STC) SA845GL, STC SA846GL, STC SA1650CE, STC SA2286NM, or STC SA2287NM, as applicable. (i) Seal or fill any residual holes with appropriate size rivets. (ii) The internal stub spar incorporated through STC SA1649CE and STC SA1650CE may be retained. (iii) The external angles incorporated through STC SA1649CE may also be retained by properly trimming the leading edges section to permit installation of the stabilizer reinforcement referenced in paragraph (d)(5)(i) of this AD. (iv) For the Beech Models S35, V35, V35A, and V35B airplanes, you may retain and use the tail-safe external angles that were installed in accordance with STC SA1649CE instead of the stabilizer reinforcement specified in paragraph (d)(5)(i) of this AD.	Within the next 100 hours TIS after November 28, 1994 (the effective date of AD 94–20–04), unless already accomplished.	In accordance with the applicable maintenance information.
(5) Accomplish the following: (i) Install stablizer reinforcements; (ii) Set the elevator nosedown trim; and (iii) Replace the ruddervator tab control cables with larger diameter cables.	Within the next 100 hours TIS after November 28, 1994 (the effective date of AD 94–20–04), unless already accomplished.	In accordance with RAC Kit No. 35–4016–3, 35–4016–5, 35–4016–7, or 35–4016–9, as applicable and as specified in Beech SB No. 2188, dated May, 1987.

Actions	Compliance	Procedures
(6) Verify the accuracy of the airplane basic weight and balance information and correct any discrepancies.	Accomplish the airplane basic weight and balance accuracy verification within the next 100 hours TIS after November 28, 1994 (the effective date the of AD 94–20–04), unless already accomplished. Correct any discrepancies. prior to further flight after the verification.	Use the procedures contained in the Appendix to this AD.

(e) *Can I comply with this AD in any other way?*

(1) You may use an alternative method of compliance or adjust the compliance time if:

(i) Your alternative method of compliance provides an equivalent level of safety; and

(ii) The Manager, Wichita Aircraft Certification Office (ACO), approves your alternative. Submit your request through an FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Wichita ACO.

(2) Alternative methods of compliance approved in accordance with AD 94–20–04 R1 or AD 94–20–04 are approved as alternative methods of compliance with this AD.

Note 2: This AD applies to each airplane identified in paragraphs (a), (a)(1), and (a)(2) of this AD, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if you have not eliminated the unsafe condition, specific actions you propose to address it.

(f) *Where can I get information about any already-approved alternative methods of compliance?* Contact Mr. T.N. Baktha, Aerospace Engineer, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas 67209; telephone: (316) 946–4155; facsimile: (316) 946–4407.

(g) *What if I need to fly the airplane to another location to comply with this AD?* The FAA can issue a special flight permit under sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate your airplane to a location where you can accomplish the requirements of this AD.

(h) *How do I get copies of the documents referenced in this AD?* You may obtain copies of the documents referenced in this AD from the Raytheon Aircraft Company, PO Box 85, Wichita, Kansas 67201–0085. You may examine these documents at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106.

(i) *Does this AD action affect any existing AD actions?* This amendment revises AD 94–20–04 R1, Amendment 39–12919.

Appendix to Docket No. 93–CE–37–AD

Weight and Balance Accuracy Method No. 1

1. Review existing weight and balance documentation to assure completeness and accuracy of the documentation from the most recent FAA-approved weighing or from factory delivery to date of compliance with this AD.

2. Compare the actual configuration of the airplane to the configuration described in the weight and balance documentation.

3. If equipment additions or deletions are not reflected in the documentation or if modifications affecting the location of the center of gravity (*e.g.*, paint or structural repairs) are not documented, determine the accuracy of the airplane weight and balance data in accordance with Method No. 2.

Weight and Balance Information Accuracy Method No. 2

1. Determine the basic empty weight and center of gravity (CG) of the empty airplane using the Weighing Instructions in the Weight and Balance section of the airplane flight manual/pilot's operating handbook (AFM/POH).

2. Record the results in the airplane records, and use these new values as the basis for computing the weight and CG information as specified in the Weight and Balances section of the AFM/POH.

Issued in Kansas City, Missouri, on January 15, 2003.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–1678 Filed 1–24–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–CE–56–AD]

RIN 2120–AA64

Airworthiness Directives; British Aerospace Model HP.137 Jetstream Mk.1, Jetstream Series 200, Jetstream Series 3101, and Jetstream Model 3201 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to all British Aerospace Model HP.137 Jetstream Mk.1, Jetstream Series 200, Jetstream Series 3101, and Jetstream Model 3201 airplanes. This proposed AD would require you to inspect the steering jack piston rod for cracks and replace if necessary; measure the torque setting of the steering jack piston rod end fitting and stop bolt; and measure the thickness of the tab washers. This proposed AD would also require you to calculate a new safe life limit for the steering jack piston rod based on the results of the proposed inspection and the proposed measurements. This proposed AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for the United Kingdom. The actions specified by this proposed AD are intended to detect, correct, and prevent cracks in the steering jack piston rod, which could result in failure of the steering jack piston rod. Such failure could lead to loss of steering control of the airplane during takeoff, landing, and taxi operations.

DATES: The Federal Aviation Administration (FAA) must receive any comments on this proposed rule on or before February 28, 2003.

ADDRESSES: Submit comments to FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2002–CE–56–AD, 901 Locust, Room

506, Kansas City, Missouri 64106. You may view any comments at this location between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays. You may also send comments electronically to the following address: *9–ACE–7–Docket@faa.gov*. Comments sent electronically must contain "Docket No. 2002–CE–56–AD" in the subject line. If you send comments electronically as attached electronic files, the files must be formatted in Microsoft Word 97 for Windows or ASCII text.

You may get service information that applies to this proposed AD from British Aerospace Regional Aircraft, Prestwick International Airport, Ayrshire, KA9 2RW, Scotland; telephone: (01292) 672345; facsimile: (01292) 671625. You may also view this information at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4059; facsimile: (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Comments Invited

How Do I Comment on This Proposed AD?

The FAA invites comments on this proposed rule. You may submit whatever written data, views, or arguments you choose. You need to include the rule's docket number and submit your comments to the address specified under the caption **ADDRESSES.** We will consider all comments received on or before the closing date. We may amend this proposed rule in light of comments received. Factual information that supports your ideas and suggestions is extremely helpful in evaluating the effectiveness of this proposed AD action and determining whether we need to take additional rulemaking action.

Are There Any Specific Portions of This Proposed AD I Should Pay Attention To?

The FAA specifically invites comments on the overall regulatory, economic, environmental, and energy aspects of this proposed rule that might suggest a need to modify the proposed rule. You may view all comments we receive before and after the closing date of the proposed rule in the Rules Docket. We will file a report in the Rules Docket that summarizes each contact we have with the public that concerns the substantive parts of this proposed AD.

How Can I Be Sure FAA Receives My Comment?

If you want FAA to acknowledge the receipt of your mailed comments, you must include a self-addressed, stamped postcard. On the postcard, write "Comments to Docket No. 2002–CE–56–AD." We will date stamp and mail the postcard back to you.

Discussion

What Events Have Caused This Proposed AD?

The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, recently notified FAA that an unsafe condition may exist on all British Aerospace Model HP.137 Jetstream Mk.1, Jetstream Series 200, Jetstream Series 3101, and Jetstream Model 3201 airplanes. The CAA reports that the steering jack piston rod failed on one of the affected airplanes while in service. The CAA determined that the failure of the piston rod was caused by fatigue cracking on the piston rod end fitting. Fatigue cracking was caused by applying excessive torque to the steering jack piston rod end fitting during assembly.

The safe life limit for the steering jack piston rod is currently 45,000 ground-air-ground (GAG) cycles. Failure of the above-mentioned steering jack piston rod occurred at 2,132 GAG cycles. Because of the possibility that excessive torque had been applied to the steering jack piston rod during assembly, the safe life limit for this part has been reduced.

What Are the Consequences If the Condition Is Not Corrected?

This condition, if not detected and corrected, could result in failure of the steering jack piston rod. Such failure could lead to loss of steering control of the airplane during takeoff, landing, and taxi operations.

Is There Service Information That Applies to This Subject?

British Aerospace has issued Jetstream Mandatory Service Bulletin 32–JA020741, Original issue: November 2, 2002.

What Are the Provisions of This Service Information? This Service Bulletin Specifies:

—Inspecting the steering jack piston rod for cracks and replacing if necessary;
—Measuring the torque setting of the steering jack piston rod end fitting and stop bolt;
—Measuring the thickness of the tab washers; and
—Calculating a new safe life limit for the piston rod.

This service bulletin also references APPH Ltd. Service Bulletin 32–76 (pages 1, 2, and 4 through 7, dated October 2002; and page 3, Erratum 1, dated November 2002), which includes procedures for accomplishing the actions specified in British Aerospace Jetstream Mandatory Service Bulletin 32–JA020741, Original issue: November 2, 2002.

What Action Did the CAA Take?

The CAA classified these service bulletins as mandatory in order to assure the continued airworthiness of these airplanes in the United Kingdom. The CAA classifying a service bulletin as mandatory is the same in the United Kingdom as the FAA issuing an AD in the United States.

Was This in Accordance With the Bilateral Airworthiness Agreement?

These airplane models are manufactured in the United Kingdom and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement.

Pursuant to this bilateral airworthiness agreement, the CAA has kept FAA informed of the situation described above.

The FAA's Determination and an Explanation of the Provisions of This Proposed AD

What Has FAA Decided?

The FAA has examined the findings of the CAA; reviewed all available information, including the service information referenced above; and determined that:

—The unsafe condition referenced in this document exists or could develop on other British Aerospace Model HP.137 Jetstream Mk.1, Jetstream Series 200, Jetstream Series 3101, and Jetstream Model 3201 airplanes of the same type design that are on the U.S. registry;
—The actions specified in the previously-referenced service information should be accomplished on the affected airplanes; and
—AD action should be taken in order to correct this unsafe condition.

What Would This Proposed AD Require?

This proposed AD would require you to inspect the steering jack piston rod for cracks and replace if necessary; measure the torque setting of the steering jack piston rod end fitting and

stop bolt; and measure the thickness of the tab washers. This proposed AD would also require you to calculate a new safe life limit for the steering jack piston rod based on the results of the proposed inspection and the proposed measurements,

Cost Impact

How Many Airplanes Would This Proposed AD Impact?

We estimate that this proposed AD affects 250 airplanes in the U.S. registry.

What Would Be the Cost Impact of This Proposed AD on Owners/Operators of the Affected Airplanes?

We estimate the following costs to accomplish the proposed inspection:

Labor cost	Parts cost	Total cost per airplane	Total Cost on U.S. operators
1 workhour × $60 = $60	No parts required	$60	$60 × 250 = $15,000

We estimate the following costs to accomplish any necessary replacements of the steering jack piston rod that would be required based on the results of the proposed inspection and/or measurements. We have no way of determining the number of airplanes that may need such replacement:

Labor cost	Parts cost	Total cost per airplane
8 workhours X $60 = $240	$5,300	$240 + $5,300 = $5,540

Compliance Time of this Proposed AD

What Would Be the Compliance Time of This Proposed AD?

The compliance time of this proposed AD is "within the next 90 days or 200 ground-air-ground (GAG) cycles after the effective date of this AD, whichever occurs first."

Why Is the Compliance Time Presented in Calendar Time and Operational Time?

Failure of the steering jack piston rod is only unsafe during airplane operation; this condition is not a result of the number of times the airplane is operated. The cause of the unsafe condition is the result of incorrect torque settings used on the steering jack piston rod end fitting during assembly. We have no way of determining when the unsafe condition occurred on the affected airplanes. For this reason, the FAA has determined that a compliance based on calendar time and operational time should be utilized in this proposed AD in order to assure that the unsafe condition is not allowed to go uncorrected over time.

Regulatory Impact

Would This Proposed AD Impact Various Entities?

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposed rule would not have federalism implications under Executive Order 13132.

Would This Proposed AD Involve a Significant Rule or Regulatory Action?

For the reasons discussed above, I certify that this proposed action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. FAA amends § 39.13 by adding a new airworthiness directive (AD) to read as follows:

British Aerospace: Docket No. 2002–CE–56–AD.

(a) *What airplanes are affected by this AD?* This AD affects Model HP.137 Jetstream Mk.1, Jetstream Series 200, Jetstream Series 3101, and Jetstream Model 3201 airplanes, all serial numbers, that are certificated in any category.

(b) *Who must comply with this AD?* Anyone who wishes to operate any of the airplanes identified in paragraph (a) of this AD must comply with this AD.

(c) *What problem does this AD address?* The actions specified by this AD are intended to detect, correct, and prevent cracks in the steering jack piston rod, which could result in failure of the steering jack piston rod. Such failure could lead to loss of steering control of the airplane during takeoff, landing, and taxi operations.

(d) *What actions must I accomplish to address this problem?* To address this problem, you must accomplish the following:

Actions	Compliance	Procedures
(1) Insepct the steering jack piston rod for cracks. (i) If cracks are found, replace the cracked steering jack piston rod. Install the new steering jack piston rod using a torque setting of 175 lbf (pound force) inch or 20 Nm (Newton meters) when tightening the end fitting and stop bolt. (ii) If no cracks are found, determine the torque setting of the steering jack piston rod end fitting and stop bolt.	Inspect within the next 90 days or 200 ground-air-ground (GAG) cycles after the effective date of this AD, whichever occurs first. Replace cracked steering jack piston rods or determine torque settings prior to further flight.	In accordance with the procedures in APPH Ltd. Service Bulletin 32–76 (pages 1, 2, and 4 through 7, dated October 2002; and page 3, Erratum 1, dated November 2002), as referenced in British Aerospace Jetstream Mandatory Service Bulletin 32–JA020741, Original Issue: November 2, 2002.
(2) If the torque setting of the steering jack piston rod end fitting or stop bolt is greater than 175 lbf inch or 20 Nm and is equal to or les than 435 lbf inch or 49 Nm: (i) Calculate the new safe life limit for the steering jack piston rod; and (ii) Incorporate the following into the Aircraft Logbook: "In accordance with AD**—**—**, the steering jack piston rod is life limited to_____."	Prior to further flight after the inspection required in paragraph (d)(1) of this AD.	In accordance with the procedures in APPH Ltd. Service Bulletin 32–76, (pages 1, 2, and 4 through 7, dated October 2002; and page 3, Erratum 1, dated November 2002), as referenced in British Aerospace Jetstream Mandatory Service Bulletin 32–JA020741, Original Issue: November 2, 2002.
(3) If the torque setting of the steering jack piston rod end fitting or stop bolt is greater than 435 lbf inch or 49 Nm, measure the deformation thickness of the tab washers (i) If the tab washer deformation thickness is greater than 0.001 inch and is equal to or less than 0.005 inch, calculate a new safe life limit for the steering jack piston rod, and incorporate the following into the Aircraft Logbook: "In accordance with AD **—**—**—, the steering jack piston rod is life limited to _____." (ii) If the tab washer deformation thickness is greater than 0.005 inch, replace the steering jack piston rod using the torque settings specified in paragraph (d)(1) of this AD.	Prior to further flight after the inspection required in paragraph (d)(1) of this AD.	In accordance with the procedures in APPH Ltd. Service Bulletin 32–76, (pages 1, 2, and 4 through 7, dated October 2002; and page 3, Erratum 1, dated November 2002), as referenced in British Aerospace Jetstream Mandatory Service Bulletin 32–JA020741, Original Issue: November 2, 2002.
(4) Do not install any steering jack piston rod unless it has been inspected, determined to be free of cracks, and the safe life limit has been established.	As of the effective date of this AD	In accordance with the procedures in APPH Ltd. Service Bulletin 32–76, (pages 1, 2, and 4 through 7, dated October 2002; and page 3, Erratum 1, dated November 2002), as referenced in British Aerospace Jetstream Mandatory Service Bulletin 32–JA020741, Original Issue: November 2, 2002.

Note 1: If the owners/operators of the affected airplanes have not kept track of ground-air-ground (GAG) cycles, hours time-in-service (TIS) may be substituted by calculating 1.5 GAG cycles per hour TIS. For example, 3,000 GAG cycles would equal 2,000 hours TIS.

(e) *Can I comply with this AD in any other way?* You may use an alternative method of compliance or adjust the compliance time if:

(1) Your alternative method of compliance provides an equivalent level of safety; and

(2) The Standards Office Manager, Small Airplane Directoráte, approves your alternative. Submit your request through an FAA Principal Maintenance Inspector, who may add comments and then send it to the Standards Office Manager.

Note 2: This AD applies to each airplane identified in paragraph (a) of this AD, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if you have not eliminated the unsafe condition, specific actions you propose to address it.

(f) *Where can I get information about any already-approved alternative methods of compliance?* Contact Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4059; facsimile: (816) 329–4090.

(g) *What if I need to fly the airplane to another location to comply with this AD?* The FAA can issue a special flight permit under sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate your airplane to a location where you can accomplish the requirements of this AD.

(h) *How do I get copies of the documents referenced in this AD?* You may get copies of the documents referenced in this AD from British Aerospace Regional Aircraft, Prestwick International Airport, Ayrshire, KA9 2RW, Scotland; telephone: (01292) 672345; facsimile: (01292) 671625. You may view these documents at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106.

Note 3: The subject of this AD is addressed in British Aerospace Jetstream Mandatory Service Bulletin 32–JA020741, Original Issue: November 2, 2002. This service bulletin is classified as mandatory by the United Kingdom Civil Aviation Authority (CAA).

Issued in Kansas City, Missouri, on January 15, 2003.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–1677 Filed 1–24–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NE–19–AD]

RIN 2120–AA64

Airworthiness Directives; Rolls-Royce plc RB211 Trent 875, 877, 884, 892, 892B, and 895 Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The Federal Aviation Administration (FAA) proposes to adopt a new airworthiness directive (AD) that is applicable to Rolls-Royce plc (RR) RB211 Trent 875, 877, 884, 892, 892B, and 895 series turbofan engines. This proposal would require initial and repetitive visual inspections of the intermediate pressure (IP) compressor rear stubshaft and IP turbine shaft for load-bearing spline flank wear, and replacement of these shafts if necessary. This proposal is prompted by reports of IP compressor rear stubshaft and IP turbine shaft load-bearing spline flank wear, revealed at inspection during overhaul. The actions specified by the proposed AD are intended to prevent the loss of drive between the IP turbine and the IP compressor, which could result in a turbine rotor overspeed condition, possible uncontained engine failure, and damage to the airplane.

DATES: Comments must be received by March 28, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 2002–NE–19–AD, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may be inspected at this location, by appointment, between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. Comments may also be sent via the Internet using the following address: *9-ane-adcomment@faa.gov*. Comments sent via the Internet must contain the docket number in the subject line.

FOR FURTHER INFORMATION CONTACT: James Lawrence, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone: (781) 238–7176, fax: (781) 238–7199.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2002–NE–19–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRM's

Any person may obtain a copy of this NPRM by submitting a request to the FAA, New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 2002–NE–19–AD, 12 New England Executive Park, Burlington, MA 01803–5299.

Discussion

The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom (U.K.), notified the FAA that an unsafe condition may exist on RR RB211 Trent 875, 877, 884, 892, 892B, and 895 series turbofan engines. The CAA advises that twelve reports have been received of overhaul inspections revealing unacceptable levels of flank wear on IP compressor rear stubshaft splines and IP turbine shaft splines. This unacceptable wear is attributed to the current design air/oil mist lubrication method used for the splines. Excessive wear can lead to loss of spline drive between the IP compressor and the IP turbine shaft, resulting in IP turbine rotor overspeed and possible uncontained engine failure.

Pending Optional Terminating Action

RR has informed the FAA that they are planning an optional terminating action for the repetitive inspections specified in paragraph (a) of this proposal. This optional terminating action will incorporate improved modules with new identities. RR is planning to introduce information in the first quarter of 2003 on modifying affected modules to new module identities in RR Major Modification Bulletin No. 72-D495.

Bilateral Agreement Information

This engine model is manufactured in the U.K. and is type certificated for operation in the United States under the provisions of Section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAA has kept the FAA informed of the situation described above. The FAA has examined the findings of the CAA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Proposed Requirements of this AD

Since an unsafe condition has been identified that is likely to exist or develop on other RR RB211 Trent 875, 877, 884, 892, 892B, and 895 series turbofan engines of the same type design, the proposed AD would require initial and repetitive visual inspections of the IP compressor rear stubshaft and IP turbine shaft for load-bearing spline flank wear, and replacement of these shafts if necessary.

Economic Analysis

There are approximately 350 engines of the affected design in the worldwide fleet. The FAA estimates that 102 engines installed on aircraft of U.S. registry would be affected by this proposed AD. The FAA also estimates that it would take approximately 0.5 work hour per engine to accomplish the proposed inspection for parts determined not worn, and an additional 1.5 work hours per engine for parts determined worn that would require further inspection. The average labor rate is $60 per work hour. Based on

these figures, the total cost of the proposed AD to U.S. operators is estimated to be $12,240.00.

Regulatory Analysis

This proposed rule does not have federalism implications, as defined in Executive Order 13132, because it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the FAA has not consulted with state authorities prior to publication of this proposed rule.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Rolls-Royce plc: Docket No. 2002–NE–19–AD.

Applicability: This airworthiness directive (AD) is applicable to Rolls-Royce plc RB211 Trent 875, 877, 884, 892, 892B, and 895 series turbofan engines. These engines are installed on, but not limited to Boeing 777 airplanes.

Note 1: This airworthiness directive (AD) applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Compliance with this AD is required as indicated, unless already done.

To prevent the loss of drive between the intermediate pressure (IP) turbine and the IP compressor, which could result in a turbine rotor overspeed condition, possible uncontained engine failure, and damage to the airplane, do the following:

(a) At or before the accumulation of 4,500 cycles-in-service after the effective date of this AD, remove the 05 module (consisting of the IP turbine and low pressure turbine) and do the following:

(1) Visually inspect the load-bearing splines of the IP turbine shaft for flank wear.

(2) If flank wear is 0.001 inch or less, return the 05 module to service and repetitively inspect the splines within 4,500 cycles-since-last-inspection, as specified in paragraph (a) of this AD.

(3) If flank wear is between 0.001 inch and 0.005 inch, also visually inspect the load-bearing splines of the IP compressor rear stubshaft for flank wear.

(4) Replace any shaft with load-bearing spline wear over 0.005 inch.

(5) If flank wear on load-bearing splines is between 0.001 inch and 0.005 inch, return the 05 module to service and repetitively inspect the splines within 2,000 cycles-since-last-inspection, as specified in paragraph (a) of this AD. Information on inspection of these splines can be found in Rolls-Royce Mandatory Service Bulletin RB.211–72–D339, dated September 14, 2001.

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office (ECO). Operators must submit their request through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, ECO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the ECO.

Special Flight Permits

(c) Special flight permits may be issued in accordance with §§ 21:197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be done.

Note 3: The subject of this AD is addressed in CAA airworthiness directive 003–09–2001, dated September 14, 2001.

Issued in Burlington, Massachusetts, on January 16, 2003.

Francis A. Favara,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 03–1676 Filed 1–24–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2002–13514; Airspace Docket No. 02–AWA–4]

RIN 2120–AA66

Proposed Establishment of Class C Airspace and Revocation of Class D Airspace, Fayetteville (Springdale), Northwest Arkansas Regional Airport; AR

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to establish a Class C airspace area and revoke the existing Class D airspace area at the Northwest Arkansas Regional Airport (XNA), Fayetteville (Springdale), AR. The FAA is proposing this action due to the increase in aircraft operations at XNA and the potential for a midair collision between aircraft arriving and departing XNA and other aircraft operating close to the existing Class D airspace area. The establishment of this Class C airspace area would require pilots to establish and maintain two-way radio communications with air traffic control (ATC) and operate with an altitude encoding transponder while in and above the Class C airspace area. The FAA is taking this action to promote the efficient use of airspace, and reduce the risk of midair collision in the northwest Arkansas terminal area.

DATES: Comments must be received on or before March 13, 2003.

ADDRESSES: Send comments on this proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20591–0001. You must identify the docket numbers FAA–2002–13514/Airspace Docket No. 02–AWA–4, at the beginning of your comments.

You may also submit comments on the Internet at *http://dms.dot.gov*. You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9

a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone number: 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division, Federal Aviation Administration, 2601 Meacham Blvd; Fort Worth, TX 76193–0500.

FOR FURTHER INFORMATION CONTACT: Steve Rohring, Airspace and Rules Division, ATA–400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. FAA–2002–13514/Airspace Docket No. 02–AWA–4." The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will also be filed in the docket.

Availability of NPRM's

An electronic copy of this document may be downloaded through the Internet at *http://dms.dot.gov.* Recently published rulemaking documents can also be accessed through the FAA web page at *http://www.faa.gov* or the Superintendent of Document's web page at *http://www.access.gpo.gov/nara.*

Additionally, any person may obtain a copy of this notice by submitting a request to the Federal Aviation Administration, Office of Air Traffic Airspace Management, ATA–400, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–8783. Communications must identify both docket numbers for this notice. Persons interested in being placed on a mailing list for future NPRM's should call the FAA's Office of Rulemaking, (202) 267–9677, for a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

Background

In November of 1998, XNA commenced operation. The airport is a public-use facility that is serviced by a radar approach control located at Fort Smith, AR, and a non-Federal airport traffic control tower. XNA currently has a Class D airspace area. The number of enplanements for XNA has increased and now exceeds the FAA criteria for Class C airspace area candidacy. A study of aircraft operations in the area has revealed that the proximity of XNA to seven other airports within a 20-nautical-mile radius and the current flight paths of aircraft operating in the Northwest Arkansas terminal area has increased the potential for a midair collision. With the current Class D airspace area, aircraft operating in the Northwest Arkansas terminal area may fly as close as 4.4 nautical miles from XNA without communicating with ATC. Additionally, these aircraft are frequently operating at altitudes that may conflict with aircraft arriving or departing XNA. Establishment of a Class C airspace area would reduce the potential for midair collisions and increase the level of safety in the Northwest Arkansas terminal area by requiring aircraft to establish and maintain 2-way radio communication with ATC when operating in the proposed Class C airspace area, and to operate with an altitude encoding transponder when in and above the proposed area.

Public Input

In January, 2001, the FAA held three informal airspace meetings in the Northwest Arkansas area to solicit public input regarding the planned establishment of a Class C airspace area. Additionally, an *ad hoc* committee was formed and met during May and June, 2001. The information received during the informal airspace meetings and the recommendations made by the ad hoc committee were considered and formed the basis for designing the proposed Class C airspace area.

The Proposal

The FAA is proposing an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish a Class C airspace area and revoke the existing Class D airspace area at XNA. The FAA is proposing this action due to an increase in aircraft operations in the Northwest Arkansas terminal area. The establishment of this proposed Class C airspace area would require pilots to maintain two-way radio communications with ATC when operating in a Class C airspace area and to operate with an altitude encoding transponder while in or above the Class C airspace. Implementation of the proposed Class C airspace area would promote the safe and efficient use of airspace, and reduce the risk of midair collision in the Northwest Arkansas terminal area.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed action: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The coordinates for this airspace docket are based on North American Datum 83. Class C airspace designations are published in paragraph 4000 of FAA Order 7400.9K, dated August 30, 2002, and effective September 16, 2002, which is incorporated by reference in 14 CFR 71.1. The Class C airspace designation listed in this document would be published subsequently in the order.

Regulatory Evaluation Summary

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the

intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic effect of regulatory changes on small entities. Third, the Office of Management and Budget directs agencies to assess the effect of regulatory changes on international trade. In conducting these analyses, the FAA has determined that this proposed rule is not "a significant regulatory action" as defined in the Executive Order and the Department of Transportation Regulatory Policies and Procedures. This proposed rule would not have a significant impact on a substantial number of small entities, would not constitute a barrier to international trade, and does not contain any Federal intergovernmental or private sector mandate. These analyses, available in the docket, are summarized below.

The proposed rule would revoke the Class D airspace area currently surrounding the Northwest Arkansas Regional Airport and establish a Class C airspace area there. The FAA would incur costs of approximately $500 in order to send a "Letter To Airmen" to pilots within a 50-mile radius of the Northwest Arkansas Regional Airport informing them of the airspace change. The FAA would not incur any other costs for air traffic control staffing, training, or equipment. Changes to sectional charts would occur during the chart cycle and would cause no additional costs beyond the normal update of the charts. Any public meeting and safety seminar would not result in costs to the aviation community because they would occur regardless of this final rule. Aircraft owners and operators would incur minimal equipment costs to operate in the Class C airspace area. Most of the air traffic comes from a mix of air taxi and commuter aircraft. These aircraft should already have the necessary equipment to transition Class C airspace area.

The FAA contends that establishing the Class C airspace area surrounding the Northwest Arkansas Regional Airport would increase the level of safety for the operations that occur at the airport. Therefore, the FAA has determined that the proposed rule would be cost-beneficial.

Final Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 establishes "as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the business, organizations, and governmental jurisdictions subject to regulation." To achieve that principal, the Act requires agencies to solicit and consider flexible regulatory proposals and to explain the rational for their actions. The Act covers a wide-range of small entities, including small businesses, not-for-profit organizations and small governmental jurisdictions.

Agencies must perform a review to determine whether a proposed or final rule will have a significant economic impact on a substantial number of small entities. If the determination is that it will, the agency must prepare a regulatory flexibility analysis (RFA) as described in the Act.

However, if an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the 1980 act provides that the head of the agency may so certify and an RFA is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

All commercial and most general aviation (GA) operators who presently use the Northwest Arkansas Airport should be currently equipped to use the Class C airspace area. Though it is currently surrounded by Class D airspace, most of its air traffic comes from air taxi and commuter aircraft. These aircraft already have the necessary equipment to transition Class C airspace area. Those GA operators who currently transit the Northwest Arkansas terminal area without Mode C transponders can circumnavigate the Northwest Arkansas Class C airspace area at negligible cost, without significantly deviating from their regular flight paths. Accordingly, pursuant to the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Federal Aviation Administration has determined that this propose rule would not have a significant economic impact on a substantial number of small entities. The FAA solicits comments from the general aviation community and other interested parties. All commenters are asked to provide documented information in support of their comments.

International Trade Impact Analysis

This proposed rule is a domestic airspace rulemaking and would not constitute a barrier to international trade, including the export of U.S. goods and services to foreign countries or the import of foreign goods and services into the United States.

Unfunded Mandates Assessment

Title II of the Unfunded Mandates Reform Act of 1995 (the Act), enacted as Public Law 104–4 on March 22, 1995, requires each Federal agency, to the extent permitted by law, to prepare a written assessment of the effects of any Federal mandate in a proposed or final agency rule that may result in the expenditure of $100 million or more (when adjusted annually for inflation) in any one year by State, local, and tribal governments in the aggregate, or by the private sector. Section 204(a) of the Act, 2 U.S.C. 1534(a), requires the Federal agency to develop an effective process to permit timely input by elected officers (or their designees) of State, local, and tribal governments on a proposed "significant intergovernmental mandate." A "significant intergovernmental mandate" under the Act is any provision in a Federal agency regulation that would impose an enforceable duty upon State, local, and tribal governments in the aggregate of $100 million (adjusted annually for inflation) in any one year. Section 203 of the Act, 2 U.S.C. 1533, which supplements section 204(a), provides that, before establishing any regulatory requirements that might significantly or uniquely affect small governments, the agency shall have developed a plan, which, among other things, must provide for notice to potentially affected small governments, if any, and for a meaningful and timely opportunity for those small governments to provide input in the development of regulatory proposals.

This proposed rule does not contain any Federal intergovernmental or private sector mandates. Therefore, the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply.

Title II of the Unfunded Mandates Reform Act of 1995 (the Act), enacted as Public Law 0104–4 on March 22, 1995, requires each Federal agency, to the extent permitted by law, to prepare a written assessment of the effects of any Federal mandate in a proposed or final agency rule that may result in the expenditure of $100 million or more (when adjusted annually for inflation) in any one year by State, local, and tribal governments in the aggregate, or by the private sector. Section 204(a) of the Act, 2 U.S.C. 1534(a), requires the Federal agency to develop an effective process to permit timely input by elected officers (or their designees) of State, local, and tribal governments on a proposed "significant intergovernmental mandate." A

"significant intergovernmental mandate" under the Act is any provision in a Federal agency regulation that would impose an enforceable duty upon State, local, and tribal governments in the aggregate of $100 million (adjusted annually for inflation) in any one year. Section 203 of the Act, 2 U.S.C. 1533, which supplements section 204(a), provides that, before establishing any regulatory requirements that might significantly or uniquely affect small governments, the agency shall have developed a plan, which, among other things, must provide for notice to potentially affected small governments, if any, and for a meaningful and timely opportunity for these small governments to provide input in the development of regulatory proposals.

This proposed rule does not contain any Federal intergovernmental or private sector mandates. Therefore, the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.9K, Airspace Designations and Reporting Points, dated August 30, 2002, and effective September 16, 2002, is amended as follows:

Paragraph 4000—Subpart C—Class C Airspace

* * * * *

ASW AR C Northwest Arkansas Regional Airport, AR [New]

Northwest Arkansas Regional Airport, AR
(Lat. 36°16′55″ N., long. 94°18′25″ W.)

That airspace extending upward from the surface to and including 5,300 feet MSL within a 5-mile radius of the Northwest Arkansas Regional Airport, excluding that airspace from lat. 36°21′06″ N., long. 94°15′03″ W.; to lat. 36°15′30″ N., long. 94°12′28″ W.; and that airspace extending upward from 2,500 feet MSL to and including 5,300 feet MSL within a 10-mile radius of the Northwest Arkansas Regional Airport excluding that airspace from lat. 36°26′53″ N., long. 94°17′42″ W.; to lat. 36°09′43″ N., long. 94°09′49″ W.; and that airspace extending upward from 2,900 feet MSL to and including 5,300 feet MSL within a 10-mile radius of the Northwest Arkansas Regional Airport from lat. 36°26′53″ N., long. 94°17′42″ W.; thence clockwise on the 10-mile radius of the airport to lat. 36°09′43″ N., long. 94°09′49″ W. This Class C airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

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Paragraph 5000—Subpart D-Class D Airspace

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ASW AR D Fayettville (Springdale), Northwest Arkansas Regional Airport, AR [Removed]

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Issued in Washington, DC, on January 13, 2003.

Reginald C. Matthews,

Manager, Airspace and Rules Division.

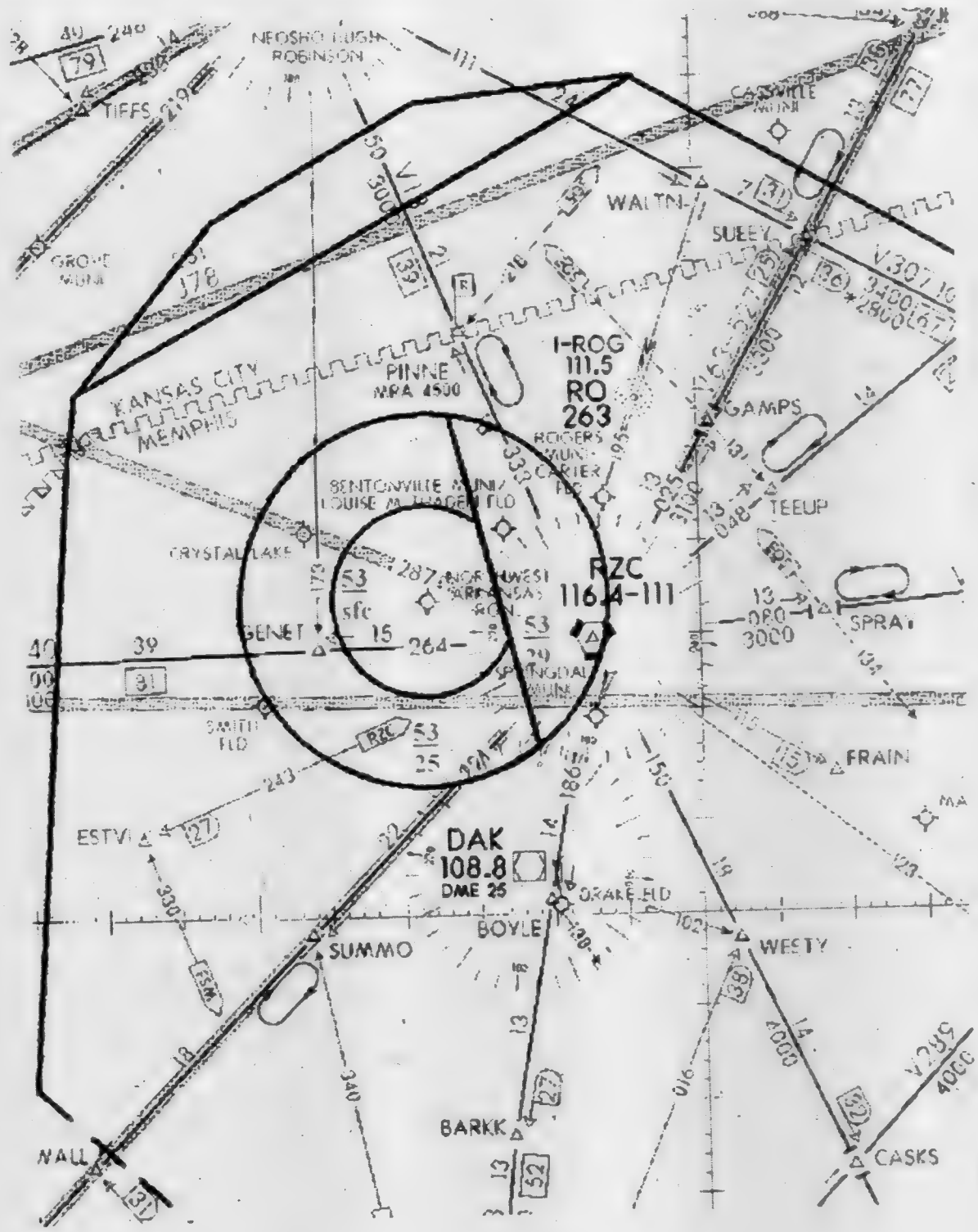

[FR Doc. 03–1313 Filed 1–24–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 35

[Docket No. PL03–1–000]

Proposed Pricing Policy for Efficient Operation and Expansion of Transmission Grid

January 15, 2003.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of proposed policy statement

SUMMARY: The Federal Energy Regulatory Commission (Commission) proposes a new pricing policy for the rates of transmission owners that transfer operational control of their transmission facilities to a Regional Transmission Organization (RTO), form independent transmission companies (ITCs) within RTOs, or pursue additional measures that promote efficient operation and expansion of the transmission grid. The proposed policy would create rate incentives that reward RTO and ITC formation and grid investment, because independent regional grid operation and coordination will improve grid performance, reduce wholesale transmission and transactions costs, improve electric reliability, and make electric wholesale competition more effective in ways that benefit all customers. We invite comments on the proposed policy statement.

DATES: Comments are due March 13, 2003.

ADDRESSES: Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT: Stephen Pointer (Technical Information), Office of Markets, Tariffs and Rates, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–8761.

Andre Goodson (Legal Information), Office of General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–8560.

SUPPLEMENTARY INFORMATION:

I. Introduction

1. The Federal Energy Regulatory Commission proposes a new policy for the rates of transmission owners operating within a Regional Transmission Organization (RTO). Because they are independent of market participants, RTOs and Independent Transmission Companies (ITCs) make competitive wholesale electric markets more efficient, fair, trustworthy, and cost-effective. This new policy will reward transmission owners for joining RTOs and turning their assets over for RTO operation. It will reward transmission owners for forming ITCs or taking other measures which make their transmission facilities operationally independent from the activities of other market participants. It will reward transmission owners for pursuing additional measures to operate and expand the transmission grid efficiently in ways that solve RTO-identified system needs using either classic transmission investments or innovative technologies. However, only transmission owners which participate in RTOs will be able to take advantage of these incentives. This policy will promote competitive wholesale electric markets, reduce wholesale electric costs and improve electric reliability.

II. Summary of Proposed Incentives

2. Under this proposed policy: (1) Any entity that transfers operational control of transmission facilities to a Commission-approved RTO would qualify for an incentive adder of 50 basis points on its return on equity (ROE) for all such facilities transferred; (2) ITCs that participate in RTOs and meet the independent ownership requirement (discussed below) would qualify for an additional incentive equivalent to 150 basis points applied to the book value of facilities at the time of the divestiture; and (3) we also propose a generic ROE-based incentive equal to 100 basis points for investment in new transmission facilities which are found appropriate pursuant to an RTO planning process.

III. Background

A. Order No. 2000

3. We adopted Order No. 2000[1] to encourage voluntary and timely formation of RTOs. Order No. 2000 found that transmission facilities can be operated more reliably and efficiently when coordinated over large geographic areas, and that RTOs would achieve this result by establishing: regional transmission pricing and the elimination of rate pancaking; improved congestion management; more accurate estimates of available transmission capacity (ATC); more effective management of parallel path flows; more efficient planning for transmission and generation investment; and improved grid reliability. It concluded that RTOs would help eliminate the opportunity for unduly discriminatory practices by transmission providers, reduce the need for overly intrusive regulatory oversight, and instill trust among competitors that all are playing by the same rules.

4. Order No. 2000 recognized that realization of "effective and efficient RTOs is dependent in large measure on the feasibility and vitality of the stand-alone transmission business."[2] It also found that transmission pricing reforms may be needed to facilitate both RTO formation and the formation of stand-alone transmission businesses such as ITCs. The order discussed various innovative rate options and identified specific innovative rate mechanisms that we would consider for entities that meet the minimum characteristics of RTOs.[3] In identifying the specific innovative rate mechanisms (including performance-based rates) that we would consider for entities that meet the minimum characteristics of RTOs, Order No. 2000 neither prescribed a specific transmission pricing method nor guaranteed approval of any particular innovative pricing proposal. All innovative pricing proposals should be fully justified:

> The [a]pplicant [for innovative rate treatments] must explain how the proposed rate treatment would help achieve the goals of RTOs, including efficient use of and investment in the transmission system and reliability benefits to consumers; provide a cost-benefit analysis, including rate impacts; and explain why the proposed rate treatment is appropriate for the RTO proposed by the Applicant. This means that filings under section 35.34(e) must be complete and fully explained; must demonstrate that the resulting rates are just, reasonable, and not unduly discriminatory or preferential; must identify how the rate treatment promotes efficiency and what benefits result; and must demonstrate that the rate treatment does not impede the RTO from meeting the minimum characteristics and functions required under Order No. 2000.[4]

B. Experience since Order No. 2000

5. Order No. 2000 called for RTOs to be in operation across the nation by December 2001. While the industry is making significant progress in the development of RTOs and we have preliminarily approved seven RTO proposals, only two of those have become fully approved RTOs—Midwest

[1] Regional Transmission Organizations, Order No. 2000, 65 FR 809 (Jan. 6, 2000), FERC Stats. & Regs. ¶ 31,089 (1999), *order on reh'g*, Order No. 2000-A, 65 FR 12,088 (Mar. 8, 2000), FERC Stats. & Regs. ¶ 30,092 (2000), *aff'd sub nom.* Public Utility District. No. 1 of Snohomish County, Washington v. FERC, 272 F.3d 607 (D.C. Cir. 2001).

[2] Order No. 2000 at 31,170.

[3] *See* § 35.34(e) of our regulations, 18 CFR 35.34(e) (2002) (innovative rate treatments for RTOs).

[4] *Id.* at 31,171.

Independent Transmission System Operator, Inc. (Midwest ISO), which began operating in early 2002, and PJM Interconnection, L.L.C. (PJM).[5] Moreover, while we have found that ITCs would be instrumental in achieving the goals of Order No. 2000, only one ITC—Michigan Electric Transmission Company, LLC (Michigan Transco)—is currently operating.

1. Innovative Rates for Independence

6. To date we have approved incentive rates for RTO participation and additional levels of independence on a case-by-case basis. In *International Transmission Company*,[6] we conditionally approved a transmission rate moratorium based on the transmission component of bundled retail rates, and recovery of an amount necessary to hold the seller harmless from the income tax consequences of the divestiture of transmission assets, subject to the company becoming a fully independent transmission company (with no active or passive ownership by market participants) and fully participating in a Commission-approved RTO by a date certain.[7] We stated:

> We are cognizant of the risks [International Transmission Company] has assumed under this proposal and believe that its willingness to bear the financial risks of failing to meet the conditions [of Commission approval] is an example of the different approach to the transmission business that we can expect from a stand-alone transmission company. We also believe that accelerated development of independent stand-alone transmission businesses will lead to an accelerated transition to competitive, regional bulk power markets and is in the best interest of consumers.[8]

7. In *Trans-Elect, Inc., et al.*,[9] a newly formed ITC, we conditionally approved a rate moratorium based on the transmission component of bundled retail rates, effective upon the transfer of operational control of transmission facilities to an approved RTO.[10] Further, we approved rate recovery of an amount equal to the value of deferred taxes on the seller's books at the time of the sale associated with the difference between tax and book basis of transmission plant, with cost recovery over twenty years beginning January 1, 2006, as long as Michigan Transco joins and remains in a Commission-approved RTO.

8. In *Midwest Independent Transmission System Operator, Inc.*,[11] we permitted an upward adjustment of 50 basis points to the proxy group's ROE midpoint for use by all participating transmission owning utilities, and left open the possibility of additional upward adjustments, based on the Midwest ISO's level of operational independence:

> There are, however, policy reasons to make upward adjustments—particularly with regard to the level of operational independence that the Midwest ISO provides. In this case, we will make an upward adjustment of 50 basis points from the proxy group midpoint for the turning over of operational control of transmission facilities. We will consider providing additional upward adjustments for greater levels of independence.[12]

2. Merchant Transmission

9. We have conditionally approved rates, terms and conditions for service over merchant transmission facilities. The basic features of the rate treatments allowed for merchant transmission facilities include negotiated rates with the project sponsor assuming all market risk associated with the project and all capacity initially allocated through a fair, non-discriminatory and transparent open season process. Additionally, we required that operational control of the facilities be turned over to an RTO adjacent to or containing the geographic area of the proposed facility and that service be provided under the OATT of the RTO.

10. For example, we conditionally approved the rates, terms and conditions proposed by TransEnergie U.S. Ltd. (TransEnergie) for service over three proposed merchant transmission projects.[13] The first project, the Cross-Sound Cable (CSC) Interconnector, uses an undersea high-voltage direct current (HVDC) cable system to connect the New England Power Pool (NEPOOL) regional transmission system in Connecticut to the New York Independent Transmission System Operator (NYISO) transmission system on Long Island. We also authorized TransEnergie to provide service over a merchant transmission facility, the Harbor Cable interconnector project, an underground and undersea HVDC transmission cable system that would connect the PJM and NYISO transmission systems.[14] Finally, we authorized TransEnergie's proposal with Hydro One Delivery Services, Inc., to provide transmission service over the Lake Erie Link, which is planned as an underwater HVDC transmission system connecting the Ontario Independent Electricity Market Operator to either PJM or the Midwest ISO.[15]

11. Similarly, we conditionally approved the rates, terms and conditions proposed by Neptune Regional Transmission System, LLC, (Neptune) for service over its planned merchant transmission facilities.[16] Neptune proposed to build in four stages several thousand miles of undersea high-voltage direct current transmission lines and associated facilities to connect Maine, New Brunswick and Nova Scotia with capacity-constrained markets in Boston, New York City, Long Island, and Connecticut.

12. We also conditionally authorized a proposal by Northeast Utilities Service Company (NUSCO) to construct a merchant transmission project consisting of a 330 MW direct current cable under Long Island Sound, Connecticut-Long Island Cable.[17]

3. Western Orders

13. We issued a series of orders (Western Orders) to remove obstacles to increased energy supply in the West in response to the severe electric energy crisis facing California and the Western United States during 2000–2001.[18] The Western Orders waived prior notice requirements and granted authorization of market-based rates for wholesale

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[5] *See* PJM Interconnection, L.L.C., 101 FERC ¶ 61,345 (2002).

[6] 92 FERC ¶ 61,276 (2000), *reh'g pending (International Transmission)*.

[7] The rates were approved to become effective prior to the date certain, but were subject to refund if RTO participation and independent ownership were not both achieved by that date.

[8] 92 FERC at 61,917.

[9] 98 FERC ¶ 61,142, *order on reh'g*, 98 FERC ¶ 61,368 (2002) *(Trans-Elect)*.

[10] The transaction involved a transfer of Michigan Electric Transmission Company, LLC (Michigan Transco) from Consumers Energy Company to Michigan Transco Holdings, LP, an entity with no active or passive ownership interests in market participants. These facilities would be managed by Trans-Elect Michigan, LLC, managing member of Michigan Transco Holdings, LP and a subsidiary of Trans-Elect, Inc. (Trans-Elect), an independent, for-profit transmission company.

[11] 100 FERC ¶ 61,292 (2002), *reh'g pending (Midwest ISO)*.

[12] 100 FERC at P 31.

[13] TransEnergie U.S., Ltd., 91 FERC ¶ 61,230, *orders on compliance filing*, 91 FERC ¶ 61,347 and 93 FERC ¶ 61,289 (2000). Additionally, the CSC project facilities were integrated into the NEPOOL regional transmission system operated and administered by ISO New England, Inc., through amendments to the NEPOOL Tariff and Restated. NEPOOL Agreement. New England Power Pool, 99 FERC ¶ 61,338 and 100 FERC ¶ 61,259 (2002).

[14] TransEnergie U.S., Ltd., 98 FERC ¶ 61,144 (2002).

[15] TransEnergie U.S., Ltd., 98 FERC ¶ 61,147 (2002).

[16] Neptune Regional Transmission System, LLC, 96 FERC ¶ 61,147, *order on reh'g*, 96 FERC ¶ 61,326 (2001), *order on motion for clarification*, 98 FERC ¶ 61,140 (2002).

[17] Northeast Utilities Service Company, 98 FERC ¶ 61,310 (2002).

[18] *See* Removing Obstacles to Increased Electric Generation and Natural Gas Supply in the Western United States, 94 FERC ¶ 61,277, *further order on removing obstacles to increased energy supply and reduced demand in the Western United States and dismissing petition for rehearing*, 95 FERC ¶ 61,225, *order on reh'g*, 96 FERC ¶ 61,155, *order on reh'g*, 97 FERC ¶ 61,024 (2001).

power sales from generation used primarily for back-up and self-generation, authorized the resale of load reductions at wholesale at market-based rates, waived prior notice requirements for wholesale contract modifications to facilitate demand-side management, permitted demand side management costs to be treated consistently with other types of incremental and out-of-pocket costs, and allowed premiums on equity returns and accelerated depreciation for projects that increase electric transmission capacity and could be in service by November 1, 2002.

4. SMD NOPR

14. On July 31, 2002, we issued a notice of proposed rulemaking that proposed a framework to remedy remaining undue discrimination in the provision of interstate transmission services and in other industry practices.[19] The SMD NOPR also proposed to create "seamless" wholesale power markets that allow sellers to transact easily across transmission grid boundaries, through the implementation of standardized transmission service and spot markets and through the elimination of rate pancaking, among other things. Because of their regional scope and configuration, we believe that RTOs can most quickly and efficiently implement standardized transmission service and spot markets and most effectively eliminate rate pancaking.

15. The SMD NOPR points out other concerns identified by market participants through formal complaints, hotline calls, public conferences, and pleadings. Market participants complain about the difficulties they have experienced in gaining equal access to the transmission grid to compete with vertically integrated utilities. Market participants also complain that companies that own both transmission and generation under-invest in transmission because the resulting competitive entry often decreases the value of their generation assets. Much of this problem is directly attributable to the remaining incentives and ability of vertically integrated utilities to exercise transmission market power to protect their own generation market share. Independent transmission providers and owners, operating under a common set of rules, would solve these problems.

16. The SMD NOPR noted that we have long recognized that the ITC business model can bring significant benefits to the industry:

> Their for-profit nature with a focus on the transmission business is ideally suited to bring about: (1) Improved asset management including increased investment; (2) improved access to capital markets given a more focused business model than that of vertically integrated utilities; (3) development of innovative services; and (4) additional independence from market participants.[20]

It concluded that these characteristics of ITCs can have significant benefits for the implementation of Standard Market Design, particularly in the areas of development of transmission infrastructure and structural independence from market participants.[21]

17. The SMD NOPR also proposes that independent transmission providers institute locational marginal pricing to provide market participants with efficient price signals. We expect such price signals to facilitate efficient operation and expansion of the grid; but these price signals alone will not achieve efficient grid operation and expansion in many cases. ITCs would be more likely to relieve congestion through transmission investment than a company that benefits from the value of generation in constrained areas.

18. This proposed policy statement supports the SMD NOPR and Order No. 2000 goals of RTO formation and participation and a standardized, independent competitive wholesale electricity market by creating incentives for RTO participation, independent transmission operation, efficient transmission system operations and new transmission construction and technology investment.

5. Energy Infrastructure Conferences and Reports

19. Beginning in the fall of 2001, we have held four regional conferences on energy infrastructure issues to explore the near- and long-term needs for additional electric transmission facilities in each area of the country and the challenges to timely identification, permitting and construction of those facilities.[22] Several notable reports have been issued on these topics.[23] It is clear that over the past decade, investment in the nation's transmission infrastructure has not kept pace with load growth or with the increased demands brought about by industry restructuring, including open access transmission service and regional service provided by ISOs and RTOs.[24] The result has been increased transmission congestion, which is evidenced by a dramatic increase in low ATC postings and use of Transmission Loading Relief (TLR) procedures,[25] and in significant energy price differentials between regions.[26]

IV. Discussion

A. A Clear Policy is Needed

20. We are committed to achieving the goals envisioned by Order No. 2000 and the SMD NOPR. Accordingly, we are proposing incentives to promote the efficient operation and expansion of the transmission grid through the development of independent RTOs and ITCs. We also propose incentives for the construction of grid enhancements or employment of innovative operating practices that should yield improved performance of the transmission grid and a more competitive wholesale electricity market. Many of our orders to date on transmission rates have been targeted more toward "hold harmless" provisions to protect a utility from adverse ratemaking consequences due to transfer of its facilities to an RTO or ITC and have not resulted in true incentive

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[19] Remedying Undue Discrimination through Open Access Transmission Service and Standard Electricity Market Design, 67 FR 55,451, FERC Stats. & Regs. ¶ 32,563 (2002) (SMD NOPR).

[20] *See* SMD NOPR at P 132.

[21] *Id.*

[22] *See* transcripts of the Western Conference held on November 2, 2001 (Docket No. AD01–2), the Southeast Conference held on May 9, 2002 (Docket No. AD02–13), the Northeast Conference held on January 31, 2002 (Docket No. AD02–6), and the Midwest Conference held on November 13, 2002 (Docket No. AD02–22). These transcripts, along presentations made at the conferences, are available on our website, *http://www.ferc.gov* /electric/infrastructure.htm.

[23] *See, e.g.*, Transmission Planning for a Restructuring U.S. Electricity Industry, prepared for Edison Electric Institute by Eric Hirst and Brandon Kirby, June 2001 (EEI Report); Conceptual Plans for Electricity Transmission in the West, Report to the Western Governors' Association, August 2001; Financing Electricity Transmission in the West, Report to the Western Governors' Association, February 2002; National Transmission Grid Study, United States Department of Energy (DOE), May 2002 (DOE Grid Study). Cambridge Energy Research Associates is working on a similar study.

[24] *See* EEI Report at 5–8; DOE Grid Study at 7.

[25] In the Southeast, the incidence of TLRs increased 354 percent from the summer of 1999 to the summer of 2000. *See* Staff Report to the Federal Energy Regulatory Commission on the Bulk Power Markets in the United States (Nov. 1, 2000), available at *http://www.ferc.gov* /electric/bulkpower/southeast.pdf, at 3–38. In the Midwest, the incidence increased 472 percent over the same time period. *See* Staff Report to the Federal Energy Regulatory Commission on the Bulk Power Markets in the United States (Nov. 1, 2000), available at *http://www.ferc.gov /electric/bulkpower/midwest.pdf*, at 2–32. *See also* DOE Grid Study at 5–7.

[26] *See* DOE Grid Study at 16–18; Electric Transmission Constraint Study, Staff Report to the Federal Energy Regulatory Commission (December, 2001), available at *http://www.ferc.gov /calendar/commissionmeetings/Discussion_papers/12–19–01/e-1xproject%20cm_121901_presentation%20v3.ppt.*

rate mechanisms.[27] Other rate orders have been narrow and fact-specific, including *Trans-Elect,* where our allowance of a positive monetary incentive was based, in part, on unique circumstances involving stipulations with the affected transmission-dependent utilities and the relevant state commission. Similarly, the incentives we provided in the Western Orders were premised on circumstances unique to California and the Western United States during 2000–2001. Our goal with this proposal is to provide the regulatory certainty the industry needs to move forward.

21. While significant benefits from competition are expected to result from RTOs and ITCs, these benefits will be shared among end-use customers and generators, among others. To assure that transmission owners receive benefits from RTO formation, we believe that it is reasonable to allow an adjustment to be applied to the rates of transmission owners participating in an RTO, or in an ITC within an RTO, as discussed further below.

22. Similarly, significant benefits from increased competition and improved reliability will occur from the construction of needed grid expansions and from other measures that make additional transmission capacity available to market participants. Therefore, it is reasonable to encourage investments in grid capacity expansion by adjusting the rates of transmission owners for investment in certain new transmission facilities that will be under operational control of RTOs and for other actions that result in additional transmission capacity under RTO management being made available to market participants.

23. We believe that this policy could encourage the industry to achieve an independent and regional approach to transmission and to adopt other measures to improve the performance of the transmission grid.

B. Incentive Policy

1. RTO Participation and ITC Formation

24. We propose to provide generic ROE-based incentives to transmission owners that participate in RTOs, and ITCs under RTOs. Under this proposed policy, any entity that transfers operational control of transmission facilities to a Commission-approved RTO would qualify for an incentive adder of 50 basis points on its ROE for all such facilities transferred.

25. ITCs that participate in RTOs *and* meet the independent ownership requirement (discussed below) would qualify for an additional incentive equivalent to 150 basis points applied to the book value of facilities at the time of the divestiture. Such ITCs would be allowed to recover, through transmission rates, a lump sum dollar amount calculated on the basis of a 150 basis point ROE adder. The lump sum dollar amount would be determined at the time of divestiture but would be amortized and recovered over the period during which the incentive is applied. Recovery of the lump sum dollar amount would yield the same amount, after taxes, on a present value basis, as the increase in after-tax returns resulting from application of the ROE adder to current rate base over the period during which the incentive is applied.

26. An ITC will qualify for the incentive based on independent ownership by becoming a participant in a RTO. There must be no active or passive ownership interests in the ITC by market participants and no financial interests by the ITC or its employees in any market participant. For the purpose of applying this independent ownership criterion, "market participant" is defined in 18 CFR 35.34(b)(2) with respect to the RTO in which the ITC participates.[28]

27. The ROE-based lump sum incentive for independent ownership would apply prospectively to ITCs.[29] We have already provided an incentive for creation of an ITC for the Michigan Transco system in *Trans-Elect.* We recognize that parties may be currently negotiating divestiture of transmission assets to form ITCs.[30] To avoid delaying such transactions, we propose to permit the parties to any divestiture to an ITC filed with us within 6 months of adoption of this policy statement to propose either the allowance tied to deferred taxes that was approved in *Trans-Elect* or the ROE-based lump sum payment incentive for independent ownership proposed herein.

28. To encourage timely participation in RTOs and formation of ITCs, we propose a deadline of December 31, 2004, to qualify for these incentives. A public utility would qualify for the RTO incentive adder as soon as it has transferred operational control of its transmission facilities to an approved and operating RTO, and would be authorized to receive the incentive for RTO participation until December 31, 2012, with such recovery contingent upon continued participation in a Commission-approved RTO. A public utility that has divested its transmission facilities to an ITC would qualify for the ITC incentive adder once the ITC has transferred operational control of its transmission facilities to an approved and operating RTO and meets the independent ownership criteria, and would receive the incentive for independent ownership until December 31, 2022, with such recovery contingent upon continued independence from market participants and continued participation in a Commission-approved RTO.

29. We seek comment on any clearly defined levels between these two levels of independence (*i.e.*, RTO participation and ITC formation within an RTO) that could merit incentives above the basic 50 basis point incentive proposed for RTO participation. For example, if the ITC directly employs all of the people who work on the transmission system, it will operate with greater independence than if it were staffed by employees of transmission owners affiliated with market participants. Should such behavior be encouraged?

2. Enhanced Grid Performance

30. We also propose a generic ROE-based incentive equal to 100 basis points for investment in new transmission facilities which are found appropriate pursuant to an RTO planning process.

31. We are especially interested in encouraging investment in new technologies that can be installed relatively quickly (*i.e.*, do not require the long siting process for procurement of new rights-of-way, have designs that accommodate modular and portable

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[27] For instance, this is true of the allowance for amounts necessary to hold a seller of transmission assets harmless from the income tax consequences of the divestiture, as approved in *International Transmission.*

[28] Order No. 2000 requires case-by-case review of passive ownership proposals to determine if they are adequately independent by design, and also requires follow-up compliance audits to ensure that independence is fully realized. Even so, passive ownership arrangements may not give market participants adequate confidence that transmission service is being provided without undue discrimination. Because of the resources required for case-by-case review and compliance audit, and potential for continued perception of undue discrimination, we do not believe that extending additional incentives for independent ownership to passive ownership arrangements is justified.

[29] Our incentive for RTO participation would be available to public utilities that have already turned over operational control of their facilities to a Commission-approved RTO, but have not yet received the incentive of 50 basis points.

[30] Two transactions have recently been filed and are currently pending our review. Illinois Power Company, *et al.*, (Illinois Power) filed in Docket No. EC03–30–000, *et al.*, for, among other things, the sale of all of Illinois Power's right, title, and interest in its jurisdictional transmission facilities and related assets. Additionally, ITC Holdings Corporation *et al.*, filed in Docket No. EC03–40–000, *et al.*, for approval of DTE Energy's sale of International Transmission Company.

application, and may be environmentally benign). Such technologies include: (1) Improved materials that allow significant increases in transfer capacity using existing rights-of-way and structures; (2) equipment that allows greater control of energy flows, enabling greater use of existing facilities; (3) sophisticated monitoring and communication equipment that allows real-time rating of transmission facilities, facilitating greater use of existing transmission facilities; and (4) other measures. Such technologies appear to offer significant promise to expand grid capacity, reduce congestion, improve reliability, and enhance wholesale competition without great cost or delay. We seek comment on what we can do to encourage investment in such technologies, what criteria we should use to determine that a technology investment merits an incentive, and how to structure such incentives. For example, these technology options may not always be considered in RTO expansion plans, so a requirement that new investment be made pursuant to the RTO planning process could foreclose the use of many promising technologies.

32. We realize that the most timely and cost-effective ways to meet demand for additional grid capacity will not always be additional transmission facilities; rather, they may be innovative operating practices, such as operation of facilities beyond traditionally accepted limits, distributed generation, demand response or demand-side management. We invite comments on what actions other than investment in new facilities should receive incentives, what form those incentives should take, and how we can encourage them.

33. We also would like suggestions on how to measure improved performance of the grid. What additional guidance or assurances are needed from us in order to encourage actions that result in improved grid performance?

34. We want to ensure that market solutions prevail where appropriate. Are additional measures needed to facilitate and encourage merchant transmission to relieve the nation's transmission bottlenecks?

35. We seek comments on whether the proposals set forth in this policy statement strike an appropriate balance. Are there additional incentives or incentive levels consistent with pricing for a monopoly service? Should we consider alternatives to ROE-based incentives such as accelerated depreciation for investment in critical transmission facilities? Finally, we seek comments on whether the duration of the proposed incentives is appropriate.

3. Implementation

36. Once the final policy statement has been issued, eligible public utilities would need to make a filing pursuant to section 205 of the Federal Power Act and receive Commission authorization to receive the proposed incentives. Unlike the innovative rate proposals in Order No. 2000, we would not require that public utilities file a cost-benefit analysis to qualify for the incentives associated with RTO participation and divestiture of transmission assets.[31]

37. The ROE-based incentives would be subject to a cap on the overall ROE, including incentive adders, equal to the top of the range of reasonable ROEs for a proxy group consisting of the investor-owned transmission owners participating in the relevant RTO whose shares are publicly traded. We note that the sum of these incentives, totaling 300 basis points,[32] would have resulted in an overall ROE within the zone of reasonableness established for the Midwest ISO Transmission Owners in Docket No. ER02–485–000. We believe that these incentives will encourage RTO participation and independent ownership in a timely fashion and that customers will benefit from an independent and regional approach to the provision of electric transmission service. The additional incentives proposed for new investment in transmission facilities, in combination with RTO system expansion planning, should encourage long-overdue investment in new transmission, increase the number of generators who can compete in the market place, improve efficiency and reliability, and ultimately lower the costs paid by customers for electricity.

38. The incentives proposed here are not the only ones we will consider. Public utilities may continue to submit other innovative rate proposals in accordance with 18 CFR 35.34(e)(1). We will determine the reasonableness of such proposals on a case-by-case basis. However, we clarify that the proposed ROE incentives are intended to encourage RTO and ITC participation and new investment and not to serve in lieu of innovative rate mechanisms that hold utilities harmless from adverse rate effects from the transfer of their facilities to an RTO or ITC within an RTO (*e.g.*, innovative rates based on bundled retail rates or an allowance for amounts necessary to hold a seller of transmission assets harmless from the income tax consequences of the divestiture).

[31] We expect that transmission expansions undertaken via the RTO planning process would not need an additional cost-benefit analysis. However, we seek comments on what analysis, if any, should be required to qualify for the incentives for other measures to promote efficient operation and expansion of the transmission grid.

[32] For new transmission investment constructed pursuant to an RTO planning process and then subject to divestiture to an ITC, the total incentive premium provided by this proposal would be the sum of 50 basis points for RTO participation plus 150 basis points for ITC formation plus 100 basis points for transmission enhancements.

V. Comment Procedures

39. We invite interested persons to submit written comments on the proposals in this notice, including any related matters or alternative proposals. Comments are due 45 days from the date of publication in the **Federal Register**. Comments must refer to Docket No. PL03–1–000, and may be filed either in electronic or paper format. Those filing electronically do not need to make a paper filing.

40. Documents filed electronically via the Internet can be prepared in a variety of formats, including WordPerfect, MS Word, Portable Document Format, Rich Text Format, or ASCII format, as listed on our Web site at *http://www.ferc.gov*, under the e-Filing link. The e-Filing link provides instructions for how to Login and complete an electronic filing. First time users will have to establish a user name and password. We will send an automatic acknowledgment to the sender's E-Mail address upon receipt of comments. User assistance for electronic filing is available at 202–502–8258 or by E-Mail to *efiling@ferc.gov*. Comments should not be submitted to the E-Mail address.

41. For paper filings, the original and 14 copies of such comments should be submitted to the Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

42. All comments will be placed in our public files and will be available for inspection in our Public Reference Room at 888 First Street, NE., Washington, DC 20426, during regular business hours. Additionally, all comments may be viewed, printed, or downloaded remotely via the Internet through the Commission's Homepage using the FERRIS link, as explained below.

VI. Document Availability

43. In addition to publishing the full text of this document in the **Federal Register**, we provide all interested persons an opportunity to view and/or print the contents of this document via the Internet through the Commission's Home Page (*http://www.ferc.gov*) and in FERC's Public Reference Room during normal business hours (8:30 a.m. to 5

p.m. Eastern time) at 888 First Street, NE., Room 2A, Washington, DC 20426.

44. From the Commission's Home Page on the Internet, this information is available in the Federal Energy Regulatory Records Information System (FERRIS). The full text of this document is available on FERRIS in PDF and WordPerfect format for viewing, printing, and/or downloading. To access this document in FERRIS, type the docket number excluding the last three digits of this document in the docket number field.

45. User assistance is available for FERRIS and the Commission's Web site during normal business hours from our Help line at (202) 502–8222 or the Public Reference Room at (202) 502–8371 Press 0, TTY (202) 502–8659. E-Mail the Public Reference Room at *public.referenceroom@ferc.gov*.

By direction of the Commission.

Magalie R. Salas,

Secretary.

[FR Doc. 03–1699 Filed 1–24–03; 8:45 am]

BILLING CODE 6717–01–U

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

28 CFR Part 16

[AAG/A Order No. 004–2003]

Privacy Act of 1974; Implementation

AGENCY: Department of Justice, Drug Enforcement Administration.

ACTION: Proposed rule.

SUMMARY: The Department of Justice is exempting a Privacy Act system of records entitled "Clandestine Laboratory Seizure System (CLSS), Justice/DEA–002," from subsections (c)(3) and (4); (d)(1), (2), (3) and (4); (e)(1), (2) and (3), (e)(5) and (e)(8); and (g) of the Privacy Act of 1974.

DATES: Submit any comments by February 26, 2003.

ADDRESSES: Address all comments to Mary Cahill, Management and Planning Staff, Justice Management Division, Department of Justice, Washington, DC (1400 National Place Building).

FOR FURTHER INFORMATION CONTACT: Mary Cahill, (202) 307–1823.

SUPPLEMENTARY INFORMATION: The exemptions will be applied only to the extent that information in a record is subject to an exemption pursuant to 5 U.S.C. 552a(j) and (k).

This order relates to individuals rather than small business entities. Nevertheless, pursuant to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601–612, this order will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 28 CFR Part 16

Administrative practices and procedures, Courts, Freedom of Information Act and Privacy.

Pursuant to the authority vested in the Attorney General by 5 U.S.C. 552a and delegated to me by Attorney General Order No. 793–78, 28 CFR part 16 is amended as follows:

PART 16—[AMENDED]

Subpart E—Exemption of Records Systems under the Privacy Act

1. The authority for part 16 continues to read as follows:

Authority: 5 U.S.C. 301, 552, 552(a), 552b(g), and 553; 18 U.S.C. 4203(a)(1); 28 U.S.C. 509, 510 and 534; 31 U.S.C. 3717 and 9701.

2. Section 16.98 is amended as follows: (a) By revising paragraph (c)

(b) By revising the first sentence of paragraph (d)

(c) By removing paragraphs (g) and (h)

The revisions read as follows:

§ 16.98 Exemption of the Drug Enforcement Administration (DEA)—limited access.

* * * * *

(c) Systems of records identified in paragraphs (c)(1) through (c)(7) below are exempted pursuant to the provisions of 5 U.S.C. 552a (j)(2) from subsections (c)(3) and (4); (d)(1), (2), (3) and (4); (e)(1), (2) and (3), (e)(5), (e)(8); and (g) of 5 U.S.C. 552a. In addition, systems of records identified in paragraphs (c)(1), (c)(2), (c)(3), (c)(4), (c)(5), and (c)(6) below are also exempted pursuant to the provisions of 552a(k)(1) from subsections (c)(3); (d)(1), (2), (3) and (4); and (e)(1):

(1) Air Intelligence Program (Justice/DEA–001)

(2) Clandestine Laboratory Seizure System (Justice/DEA–002)

(3) Investigative Reporting and Filing System (Justice/DEA–008)

(4) Planning and Inspection Division Records (Justice/DEA–010)

(5) Operation Files (Justice/DEA–011)

(6) Security Files (Justice/DEA–013)

(7) System to Retrieve Information from Drug Evidence (Stride/Ballistics) (Justice/DEA–014)

(d) Exemptions apply to the following systems of records only to the extent that information in the systems is subject to exemption pursuant to 5 U.S.C. 552a(j)(2), (k)(1), and (k)(2): Air Intelligence Program (Justice/DEA–001); Clandestine Laboratory Seizure System (CLSS) (Justice/DEA–002); Planning and Inspection Division Records (Justice/DEA–010); and Security Files (Justice/DEA–013). * * *

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Dated: January 17, 2003.

Paul R. Corts,

Assistant Attorney General for Administration.

[FR Doc. 03–1670 Filed 1–24–03; 8:45 am]

BILLING CODE 4410–09–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FL–69–1–9940b; FRL–7443–2]

Approval and Promulgation of Implementation Plans; Florida: Approval of Revisions to the Florida State Implementation Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing approval of revision to the Florida State Implementation Plan (SIP) submitted on September 7, 1999, by the State of Florida through the Florida Department of Environmental Protection (FDEP). The purpose of the revisions to rule 62–212.400 is to correct discrepancies between State and Federal rule language on exemptions from Prevention of Significant Deterioration and to include additional provisions.

In the Final Rules Section of this **Federal Register**, the EPA is approving Florida's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

DATES: Written comments must be received on or before February 26, 2003.

ADDRESSES: All comments should be addressed to Heidi LeSane at the EPA, Region 4 Air Planning Branch, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960.

Copies of the state submittal are available at the following addresses for inspection during normal business hours:

Environmental Protection Agency, Region 4, Air Planning Branch, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960.

Florida Department of Environmental Protection, Twin Towers Office Building, 2600 Blair Stone Road, Tallahassee, Florida 32399–2400.

FOR FURTHER INFORMATION CONTACT: Heidi LeSane at (404) 562–9035 (E-mail: *lesean.heidi@epa.gov*).

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule which is published in the rules section of this **Federal Register**.

Dated: January 8, 2003.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 03–1633 Filed 1–24–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52, 61 and 62

[SD–001–0013, SD–001–0014, SD–001–0015; FRL–7443–7]

Approval and Promulgation of Air Quality Implementation Plans; South Dakota

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to partially approve and partially disapprove State Implementation Plan (SIP) revisions submitted by the State of South Dakota on May 6, 1999 and June 30, 2000. The revisions modify the State's air quality rules so they are consistent with federal rules and clarify existing provisions. EPA is also proposing to remove from the SIP or not approve into the SIP, certain provisions of the State's air quality rules because they are not related to attainment or maintenance of the National Ambient Air Quality Standards (NAAQS) and are not appropriate for inclusion in the SIP. This action is being taken under section 110 of the Clean Air Act.

DATES: Written comments must be received on or before February 26, 2003.

ADDRESSES: Written comments may be mailed to Richard R. Long, Director, Air and Radiation Program, Mailcode 8P–AR, Environmental Protection Agency (EPA), Region VIII, 999 18th Street, Suite 300, Denver, Colorado 80202. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air and Radiation Program, Environmental Protection Agency, Region VIII, 999 18th Street, Suite 300, Denver, Colorado 80202. Copies of the State documents relevant to this action are available for public inspection at the South Dakota Department of Environmental and Natural Resources, Air Quality Program, Joe Foss Building, 523 East Capitol, Pierre, South Dakota 57501.

FOR FURTHER INFORMATION CONTACT: Laurel Dygowski, EPA, Region VIII, (303) 312–6144.

SUPPLEMENTARY INFORMATION: For the purpose of this document, we are giving meaning to certain words as follows: (a) The words "EPA," "we," "us" or "our" mean or refer to the United States Environmental Protection Agency; (b) The words State or South Dakota mean the State of South Dakota unless the context indicates otherwise.

In this document we are proposing to partially approve and partially disapprove SIP revisions submitted by the State of South Dakota on May 6, 1999 and June 30, 2000. These revisions modify the State's air quality rules so they are consistent with federal rules and clarify existing provisions. We have already acted on several portions of the State's May 6, 1999 submittal. Below is a discussion of the revisions to the State's air quality rules and whether or not they are being proposed for approval into the SIP. We also identify those provisions of the submittal that have already been acted on. The June 30, 2000 submittal also revised the State's New Source Performance Standards (NSPS) in Chapter 74:36:07. We have addressed the majority of the NSPS revisions in Chapter 74:36:07 in a separate document (67 FR 57520).

I. Summary of SIP Revision

A. Chapter 74:36:01, South Dakota Air Pollution Control Program (SDAPCP)

The State's May 6, 1999 submittal made the following revisions to the Chapter 74:36:01—Definitions:

1. Minor changes were made to the definitions of "allowable emissions," "final permit," "permit modification," and "reference method."

2. Two definitions were deleted, "FAA" and "organized disposal system," because earlier rule revisions had deleted the sections that contained these words.

3. Substantive changes were made to the following definitions: (a) "minor source" was revised to indicate that a minor source will be based on its potential emissions of a *criteria pollutant* rather than *any regulated pollutant;* (b) "particulate matter" was revised to read "a broad class of chemically and physically diverse substances that exist as discrete particles, liquid droplets, or solids over a wide range of sizes"; (c) "PM10" was revised to indicate that an *equivalent method,* in addition to the applicable reference method, may be used to measure PM10; and (d) "VOC" was revised to exclude additional compounds of carbon from the definition.

4. A definition for "PM2.5" was added.

5. Minor changes were made in the sections "Administrative permit amendment defined" (section 74:36:01:03), "Applicable requirements of Clean Air Act defined" (74:36:01:05), and "Significant defined" (section 74:36:01:17).

6. Imbedded in the State's prior definition of "major modification defined" (section 74:36:01:07) was a definition for "physical change or change in the method of operation." The State has deleted the definition of "physical change or change in the method of operation" from the definition of "major modification defined" and added a separate definition for "physical change or change in the method of operation" at section 74:36:01:20.

7. The definition of "major source defined" (section 74:36:01:08) was revised to indicate that controls are considered when determining whether a source is major under section 112 of the Clean Air Act.

8. The definition of "modification defined" (section 74:36:01:10) was revised to delete the references to what is not considered a modification and the references to the permitting required upon modification.

We have reviewed all the revisions identified above in (1) through (8). We believe the revisions are acceptable and are proposing to approve them into the SIP, or are deleting provisions from the SIP as appropriate.

The definitions of PM10 and PM2.5 may appear to contain director discretion provisions;[1] both definitions indicate that pollutants will be "measured by an applicable reference or equivalent method." However, because of other provisions in the State's rules and/or our action on those other provisions, we do not believe the

[1] A director discretion provision would allow the State to revise portions of a SIP without completing a formal SIP revision. Because we believe the SIP can only be revised through a formal SIP revision, we usually do not approve SIPs, or parts of SIPs, that contain director discretion provisions.

definition of PM2.5 or PM10 will result in unacceptable director discretion provisions. Specifically, PM10 or PM2.5 will either be measured by ambient monitors or through stack performance testing specified in the federal rules. Section 74:36:02:03, Methods of sampling and analysis, discusses the methods to sample ambient concentrations of the NAAQS. This section reads, "air pollutants of particulate matter, sulfur dioxide, carbon monoxide, ozone, nitrogen dioxide, and lead listed in 40 CFR Part 50 shall be measured by the reference method or methods stated in 40 CFR Part 50, Appendix A to N, inclusive (July 1, 1999) or an *equivalent method* designated in accordance with 40 CFR Part 53" (emphasis added). 40 CFR part 53 indicates that for a method to be an equivalent method, it must be designated under 40 CFR part 53; equivalent methods are approved by EPA, and the State department cannot approve an equivalent ambient monitoring method. Section 74:36:11:01 of the State regulations, Stack performance testing or other testing methods, reads "all stack performance tests or other test methods must be made in accordance with the applicable method specified in 40 CFR 60.17; Part 60, Appendix A; § 63.14; Part 63, Appendix A; and Part 51, Appendix M (all July 1, 1999). To the extent that 40 CFR 60.17; Part 60, Appendix A; § 63.14; Part 63, Appendix A; or Part 51, Appendix M (July 1, 1999), is not applicable, methods shown to be capable of providing valid test results for the source in question may be used with prior department approval. The department may not accept a performance test conducted by unapproved methods." As discussed later, we are proposing to disapprove the second sentence of 74:36:11:01 because it contains a director discretion provision. We are proposing to approve the change in date for the reference to appendix M in the first sentence. Therefore, the approved SIP will not allow the State department to approve alternative stack performance test methods.

B. Chapter 74:36:02 SDAPCP—Ambient Air Quality

The State's May 6, 1999 and June 30, 2000 submittals made the following revisions to Chapter 74:36:02—Ambient Air Quality:

1. With the May 6, 1999 submittal, the State revised its Ambient Air Quality rule to incorporate a more recent version of the Code of Federal Regulations (CFR) and the revisions to the NAAQS promulgated by EPA in 1997. The changes to the NAAQS involve revisions to the 24-hour and annual standard for PM10, revisions to the ozone standard, and the addition of 24-hour and annual standards for PM2.5. The following sections of the State rules were revised: 74:36:02:02—Ambient air quality standards; 74:36:02:03—Method of sampling and analysis; 74:36:02:04—Air quality monitoring network; and 74:36:02:05—Ambient air monitoring requirements.

2. Because of the challenge to EPA's revised NAAQS decision, with the June 30, 2000 submittal the State is revising part of what it submitted on May 6, 1999 and incorporating into the ambient air quality rule in section 74:36:02:02 the following EPA NAAQS: (a) Sulfur oxides referenced in 40 CFR 50.4 and 50.5, as in effect July 1, 1999; (b) PM10 referenced in 40 CFR 50.6, as in effect July 1, 1997; (c) PM2.5 referenced in 40 CFR 50.7(a)(1), (b), and (c), as in effect July 1, 1999; (d) carbon monoxide referenced in 40 CFR 50.8, as in effect July 1, 1999; (e) ozone referenced in 50 CFR 50.10, as in effect July 1, 1999; (f) nitrogen oxides referenced in 40 CFR 50.11, as in effect July 1, 1999; and (g) lead referenced in 40 CFR 50.12, as in effect July 1, 1999.[2]

The overall result is that the State is reincorporating our old PM10 NAAQS (originally promulgated on July 1, 1987 (52 FR 24663) and contained in the July 1, 1997 edition of the CFR) into the SIP, incorporating the new PM2.5 and 8-hour ozone NAAQS (promulgated on July 18, 1997, 62 FR 38711 and 62 FR 38894, respectively) into the SIP, and *not* incorporating the new PM10 NAAQS (promulgated on July 18, 1997, 62 FR 38711) or the prior 1-hour ozone NAAQS (reinstated on July 20, 2000, 65 FR 45200) into the SIP. Even though the State's rule does not include the 1-hour ozone NAAQS, which was reinstated on July 20, 2000 (65 FR 45200), the federal 1-hour ozone NAAQS still applies in South Dakota. In the future, the State should revise its SIP to include the 1-hour ozone NAAQS.

In addition, the State revised its ambient air quality rule to incorporate a more recent version of the CFR. The following sections of the rule were revised: 74:36:02:03—Method of sampling and analysis; 74:36:02:04—Air quality monitoring network; and 74:36:02:05—Ambient air monitoring requirements.

We have reviewed the revisions identified in (1) and (2). We believe the revisions are acceptable and are proposing to approve them into the SIP.

C. Chapter 74:36:04 SDAPCP—Operating Permits for Minor Sources

The State's May 6, 1999 submittal made the following revisions to Chapter 74:36:04—Operating Permits for Minor Sources:

(1) Substantive changes were made to section 74:36:04:03, Operating permit exemptions. This section lists the types of facilities and units that are exempt from the requirement to obtain a minor air quality permit. An additional subsection is included that exempts units with the potential to emit two tons or less per year of any criteria pollutant before the application of control equipment. However, the criteria pollutant emissions from the unit must be included in determining if the source is a minor or major source. The State also revised some subsections of this rule to add the word "unit" in appropriate places. This will help clarify that this section also exempts certain units, not just facilities.

(2) Substantive changes were made to section 74:36:04:09, Permit application—Completeness review. This section identifies relevant deadlines for review of an application to determine if it is complete. This section is being revised to indicate that a facility has 20 working days (or longer if approved by the Department) to submit additional information if the application is determined to be incomplete or if additional information is necessary to evaluate the application.

(3) Substantive changes were made to sections 74:36:04:11 through 74:36:04:14—Permitting process. Sections 74:36:04:11 through 74:36:04:14 outline how the applicant and the public are involved in the permitting process. These revisions allow the applicant or public the choice of either commenting on or contesting the department's draft permit during the 30-day public notice period. If the department receives comments, the

[2] The 1997 revised NAAQS for ozone and PM10 and new NAAQS for PM2.5 were challenged by industry groups and several States. As a result, the United States Court of Appeals for the District of Columbia Circuit vacated the 1997 NAAQS and remanded them to EPA. *See, American Trucking Ass'ns, Inc.* v. *U.S. EPA*, 173 F.3d 1027 (D.C.Cir 1999). EPA petitioned for review in the United States Supreme Court, which reversed significant portions of the decision below, but affirmed on the issue of implementation of the revised NAAQS, holding EPA's implementation policy unlawful and remanding the case to the Court of Appeals for further proceedings. *See, Whitman* v. *American Trucking Ass'ns Inc.*, 531 U.S. 457, 121 S.Ct. 903, 149 L.Ed. 2d 1 (February 27, 2001). The revised ozone and PM–10 NAAQS are not being implemented at present. On May 18, 1999, the United States Court of Appeals for the D.C. Circuit; *American Trucking Association, Inc., et al.* v. *United States Environmental Protection Agency* vacated the 1997 PM10 standard. Because of the Court ruling, we continue to implement the pre-existing PM10 standard.

department will work with the applicant and the person who submitted comments, if other than the applicant, to resolve the concern. If the applicant or the other person who commented is not satisfied with the results of the negotiations, the commentor will be given 30 days from receiving the department's final permit decision to request a contested case hearing on the final permit decision.

(4) Substantive changes were made to section 74:36:04:18, Operating permit revision. This section allows a facility to revise an existing permit. The changes modify this section to clarify what is necessary to revise an existing facility permit.

(5) Substantive changes were made to section 74:36:04:19 and 74:36:04:20. These sections identify permit revisions that are eligible for an administrative permit amendment. The State has revised these sections: to clarify what the facility needs to submit to revise a permit through the administrative permit amendment process; delete repetition in the rules; allow facilities to implement a proposed revision that is considered an administrative permit amendment immediately upon notifying the department; and require the department to determine if an administrative permit amendment is applicable to the proposed revision within 15 days of receiving a request for a permit revision.

(6) Substantive changes were made to section 74:36:04:20.01, Minor permit amendment required. This section identifies permit revisions that are eligible for a minor permit amendment. The State is revising this section to clarify that a source may request a minor permit amendment, through the administrative permit amendment processed discussed above, for a change that does not constitute a modification and is not prohibited under any applicable requirement under Title I of the Clean Air Act.

(7) Substantive changes were made to section 74:36:04:20.04, Department deadline to approve minor permit amendment. This section outlines the time line for reviewing a proposed permit revision to determine if it is a minor permit amendment. This section has been revised to explain that a minor permit amendment is issued by the secretary without the procedural requirements applicable to obtain an operating permit. Additionally, this section has been revised to allow a facility to make the proposed minor change seven days after notifying the Department.

(8) Minor changes were made to section 74:36:04:22, Source status change—New permit required. The State has revised a reference in this section.

We have reviewed the revisions identified in (1) through (8) above. We believe the revisions are acceptable and are proposing to approve them into the SIP.

D. Chapter 74:36:05 SDAPCP—Operating Permits for Part 70 Sources

The State's May 6, 1999 submittal made revisions to Chapter 74:36:05—Operating Permits for Part 70 Sources. We believe we have no legal basis in the Act for approving any provisions of the operating permit program into the SIP. Therefore, we are not taking action to incorporate Chapter 74:36:05—Operating Permits for Part 70 Sources, or the revisions submitted on May 6, 1999, into the SIP. However, we fully approved South Dakota's Title V program on January 29, 1996 (61 FR 2720). We will take appropriate action on the revisions to South Dakota Title V program at a later date.

E. Chapter 74:36:06 SDAPCP—Regulated Air Pollutant Emissions

The State's May 6, 1999 submittal made the following revisions to Chapter 74:36:06—Regulated Air Pollutant Emissions:

1. Minor changes were made to the following sections: Allowable emissions for fuel burning units (section 74:36:06:02) and Allowable emissions for process industry units (section 74:36:06:03).

2. Substantive changes were made to Open burning practices prohibited (section 74:36:06:07). Specifically, the State added a sentence to section 74:36:06:07(1) that reads, "an exception for crude oil is allowed as a remediation alternative for soils contaminated with crude oil if a person submits the information requested in § 74:10:05:11.04 and the secretary approves the alternative remediation process; * * *" We believe that this is not a relaxation of the open burning rules. The State's open burning rules were revised in 1996. Prior to the 1996 revisions, the open burning rules were written broadly and listed what could be burned. In December 1996, the State revised and condensed the open burning rules. The rules were written to indicate what could not be burned. We approved the December 1996 rules on October 19, 1998 (63 FR 55804). The State believes it inadvertently failed to incorporate the exemption for soils contaminated with crude oil when it revised the rules in Dcember 1996. Therefore, adding the exemption for soil contaminated with crude oil should not be considered a relaxation. Additionally, the State has indicated that the burning of spilled crude oil has occurred infrequently. They recall only one time when crude contaminated soil was burned in the oil fields in northwestern South Dakota.

We have reviewed the revisions identified in (1) and (2). We believe the revisions are acceptable and are proposing to approve them into the SIP.

F. Chapter 74:36:07 SDAPCP—New Source Performance Standards

The State's May 6, 1999 and June 30, 2000 submittals made the following revisions to Chapter 74:36:07—New Source Performance Standards:

1. The May 6, 1999 submittal added provisions for hospital/medical/ infectious waste incinerators constructed on or before June 20, 1996 (74:36:07:06.1) and for those on which construction commenced after June 20, 1996 (74:36:07:06.2); modified previously adopted provisions for municipal combustors constructed after September 20, 1994 (74:36:07:07.1); modified previously adopted provisions for existing municipal solid waste landfills (74:36:07:34–42) and for new municipal solid waste landfills (74:36:07:43); and deleted a permitting provision for asphalt plants (section 74:36:07:11). Except for the provisions for hospital/medical/ infectious waste incinerators constructed on or before June 20, 1996 (section 74:36:07:06.01) and municipal solid waste landfills (section 74:36:07:34–42), which we discuss below, we already approved these as SIP revisions on May 22, 2000 (65 FR 32033).

2. The June 30, 2000 submittal requested that new source performance standards (NSPS) regulations currently in the SIP be removed from the SIP and delegated to the State. In addition, the June 30, 2000 submittal references more recent versions of the Code of Federal Regulations (CFR). Except for the revisions to sections 74:36:07:34–42 and 74:36:07:06.1, we already addressed the June 30, 2000 revisions in the **Federal Register** on September 11, 2002 (67 FR 57520). The revisions to sections 74:36:07:34–42 and 74:36:07:06.1 are discussed below.

With respect to the rules added and modified for hospital/medical/ infectious waste incinerators constructed on or before June 20, 1996 (section 74:36:07:06.01), we believe we have no legal basis in the Act for approving these rules into the SIP because these rules are not generally related to attainment or maintenance of the NAAQS. Therefore, we are not taking action to incorporate section

74:36:07:06.01 into the SIP. However, on June 22, 2000 (65 FR 38732), we did approve this section as meeting section 111(d) of the Act. See 40 CFR 62.10360–10362. Also, the June 30, 2000 revision to section 74:36:07:06.1 updates the incorporation by reference to 40 CFR part 60 as of July 1, 1998. We are proposing to approve the update to the incorporation by reference and identify this change in 40 CFR 62.10360.

With respect to the rules added and modified for existing municipal solid waste landfills (sections 74:36:07:39–42), we believe we have no legal basis in the Act for approving these rules into the SIP because these rules are not generally related to attainment or maintenance of the NAAQS. Therefore, we are not taking action to incorporate sections 74:36:07:39–42 into the SIP. However, on June 3, 1999 (64 FR 29796), we did approve these rules as meeting section 111(d) of the Act. See 40 CFR 62.10350–10352. Also, the June 30, 2000 revision to sections 74:36:07:34–42.01 updates the incorporation by reference to 40 CFR 60, as of July 1, 1999. We are proposing to approve the update to the incorporation by reference and identify this change in 40 CFR 62.10350.

G. Chapter 74:36:08 SDAPCP—National Emission Standards for Hazardous Air Pollutants

The State's May 6, 1999 and June 30, 2000 submittals made revisions to Chapter 74:36:08, National Emission Standards for Hazardous Air Pollutants, by adding new standards as well as revising existing provisions. We believe we have no legal basis in the Act for approving these rules into the SIP. In addition, on May 16, 2000, we issued a letter indicating that we were delegating the authority of 40 CFR parts 61 and 63 to the State. Given that the State now has delegation of authority for the NESHAPs in 40 CFR part 61 and for the Maximum Achievable Control Technology (MACT) standards, in 40 CFR part 63, pursuant to 110(k)(6) of the Act, we are proposing to remove Chapter 74:36:08—National Emission Standards for Hazardous Air Pollutants from the SIP and not proposing to approve into the SIP any new or revised provisions adopted by the State to meet 40 CFR parts 61 and 63. We are proposing to update the table in 40 CFR 61.04(c)(8) to indicate that the 40 CFR part 61 NESHAPs are now delegated to the State.

H. Chapter 74:36:11 SDAPCP—Performance Testing

The State's May 6, 1999 and June 30, 2000 submittals made the following revisions to Chapter 74:36:11—Performance Testing:

1. The State's May 6, 1999 SIP revision modified the requirements in section 74:36:11:04, Testing new fuels or raw materials. We already approved the May 6, 1999 revisions to the rule on February 3, 2000 (65 FR 5264).

2. The State's June 30, 2000 submittal incorporates a more recent version of the CFR referenced in section 74:36:11:01, Testing new fuels or raw materials. We believe this revision makes the State's rule consistent with ours and are proposing to approve it into the SIP.

However, section 74:36:11:01 of the State regulations, Stack performance testing or other testing methods, reads "all stack performance tests or other test methods must be made in accordance with the applicable method specified in 40 CFR 60.17; part 60, Appendix A; § 63.14; part 63, appendix A; and part 51, appendix M (all July 1, 1999). To the extent that 40 CFR 60.17; part 60, appendix A; § 63.14; part 63, appendix A; or part 51, appendix M (July 1, 1999), is not applicable, methods shown to be capable of providing valid test results for the source in question may be used with prior department approval. The department may not accept a performance test conducted by unapproved methods."

The above rule is problematic because the second sentence contains a director discretion provision (see footnote 1). Specifically, this rule allows the State to determine acceptable performance tests when Federal guidelines do not apply, without EPA approval and without the opportunity for public notice and comment. Our concern is that the State may determine that a required test method is not applicable when it really should be. Additionally, the State may determine a test method is applicable, when under federal law it would not be applicable. Under section 110(i) of the CAA, we interpret that director discretion provisions are prohibited. Therefore, we are proposing to disapprove the second sentence of section 74:36:11:01. To make the second sentence of section 74:36:11:01 an approvable SIP revision, it should be revised to read "to the extent that 40 CFR 60.17; part 60, appendix A; § 63.14; part 63, appendix A; or part 51, appendix M (July 1, 1999), is not applicable, methods shown to be capable of providing valid test results for the source in question may be used with prior department and EPA approval."

I. Chapter 74:36:12 SDAPCP—Control of Visible Emissions

The State's May 6, 1999 and June 30, 2000 submittals made the following revisions to Chapter 74:36:12—Control of Visible Emissions:

1. Section 74:36:12:01, Restrictions on visible emissions, limits visible emissions from permitted units to less than 20 percent opacity. This section lists an exception to the 20 percent limits as specified in chapter 74:36:15. However, chapter 74:36:15 was previously repealed. Therefore the State is deleting the exception and reference to chapter 74:36:15 with the May 6, 1999 submittal.

2. The June 30, 2000 submittal incorporates a more recent version of the CFR referenced in section 74:36:12:01, Restrictions on visible emissions.

We have reviewed the revisions identified in (1) and (2). We believe the revisions are acceptable and are proposing to approve them into the SIP.

J. Chapter 74:36:13 SDAPCP—Continuous Emission Monitoring Systems

The State's May 6, 1999 and June 30, 2000 submittals made the following revisions to Chapter 74:36:13—Continuous Emission Monitoring Systems:

1. With the May 6, 1999 submittal, the State added section 74:36:13:08, Compliance assurance monitoring. This section requires that the owner or operator of a unit that is subject to 50 CFR 64.2 must comply with 40 CFR 64.1 and 64.3 to 64.10, inclusive, as published in 62 FR 54940–54946 (October 22, 1997).

2. With the June 30, 2000 submittal, the State incorporates a more recent version of the CFR referenced in the following sections: 74:36:13:02, Minimum performance specifications for all continuous emission monitoring; 74:36:13:03, Reporting requirements; 74:36:13:04, Notice to department of exceedance; and 74:36:13:07, credible evidence. In addition, the State has deleted the reference to the **Federal Register** in section 74:36:13:08, Compliance assurance monitoring, and instead references the July 1, 1999 CFR.

We have reviewed the revisions identified in (1) and (2). We believe we have no legal basis in the Act for approving the Compliance Assurance Monitoring rule in section 74:36:13:08 into the SIP. Therefore, we are not proposing to approve the revision identified in (1) above into the SIP. We believe the revisions identified in (2) above are acceptable and are proposing

to approve them into the SIP, except for the revisions to section 74:36:13:08, which we indicated cannot be approved into the SIP.

K. Chapter 74:36:16 SDAPCP—Acid Rain Program

The State's May 6, 1999 and June 30, 2000 submittals revise provisions of the State's acid rain rules. We have not previously included the State's acid rain provisions in the SIP. We believe we have no legal basis in the Act for approving these rules into the SIP. Therefore, we are not proposing to incorporate the May 6, 1999 or June 30, 2000 revisions to the acid rain rules into the SIP.

II. Final Action

We are proposing to partially approve and partially disapprove portions of the revisions to South Dakota's Air Pollution Control Regulations submitted by the Governor's designee on May 6, 1999 and June 30, 2000, except for the following provisions that we are not acting on, or have acted on previously. The sections of the rules that we are proposing to approve will replace the same numbered sections that have been previously approved into the SIP. We are not acting on the following as SIP revisions because they are not appropriate to be included in the SIP: sections 74:36:07:06.01; 74:36:07:34–42.01; and 74:36:13:08; and chapters 74:36:05, 74:36:08, and 74:36:16.

The SIP provisions that we previously acted on: 74:36:07:06.2, 74:36:07:07.01, 74:36:07:11 (repealed), 74:36:07:43, and 74:36:11:04.

Also, the State made revisions to previously approved 111(d) plans. Specifically, section 74:36:07:06.01 was updated to incorporate by reference 40 CFR part 60, as of July 1, 1998 and sections 74:36:07:34–42:01 were updated to incorporate by reference 40 CFR part 60, as of July 1, 1999. We are proposing to approve these revisions to the 111(d) plans.

We are proposing to approve the removal of chapter 74:36:08 from the SIP and updating the table in 40 CFR 61.04(c)(8) to indicate that the 40 CFR part 61 NESHAPS are now delegated to the State.

Section 110(l) of the Clean Air Act states that a SIP revision cannot be approved if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress towards attainment of the NAAQS or any other applicable requirements of the Act. We believe the South Dakota SIP revisions that are the subject of this document will not interfere with any applicable requirement concerning attainment and reasonable further progress towards attainment of the NAAQS or any other applicable requirements of the Act because the State's revisions are as no less stringent than requirements currently contained in their SIP. Additionally, currently there are no nonattainment areas in South Dakota.

III. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This proposed action merely proposes to approve state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule proposes to approve pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4).

This proposed rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely proposes to approve a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This proposed rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This proposed rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

40 CFR Part 61

Environmental protection, Air pollution control, Arsenic, Asbestos, Benzene, Beryllium, Hazardous substances, Mercury, Vinyl chloride.

40 CFR Part 62

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: January 13, 2003.

Robert E. Roberts,

Regional Administrator, Region VIII.

[FR Doc. 03–1775 Filed 1–24–03; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[I.D. 010903D]

Atlantic Highly Migratory Species (HMS); Issues and Options paper for Amendment 1 to the Fishery Management Plan for Atlantic Tunas, Swordfish and Sharks (HMS FMP); Shark Management Measures

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of availability (NOA) of an issues and options paper; notice of public scoping meetings; request for comments.

SUMMARY: NMFS announces the availability of a paper on issues and options for Amendment 1 to the Fishery Management Plan for Atlantic Tunas, Swordfish and Sharks. The issues-and-options paper examines management options to rebuild or prevent overfishing of Atlantic sharks, consistent with the large coastal sharks (LCS) and the small coastal sharks (SCS) stock assessments, the Magnuson-Stevens Fishery Conservation and Management Act(Magnuson-Stevens Act), and other relevant Federal laws. NMFS is requesting comments on a wide range of commercial and recreational management measures including, but not limited to, quotas, minimum sizes, and prohibited species.

DATES: Comments on this action must be received no later than 5 p.m., local time, March 17, 2003.

The public scoping meetings will be held in February and March. For specific dates and times, see **SUPPLEMENTARY INFORMATION**.

ADDRESSES: Written comments on this action should be mailed to Christopher Rogers, Chief, NMFS Highly Migratory Species Management Division, 1315 East-West Highway, Silver Spring, MD 20910; or faxed to (301) 713–1917. Comments will not be accepted if submitted via email or Internet. Copies of the issues and options paper can be obtained from the HMS website at: *http://www.nmfs.noaa.gov/sfa/hmspg.html*, or by contacting Karyl Brewster-Geisz at (301) 713–2347.

The public scoping meetings will be held in Silver Spring, MD; Montauk, NY; Ocean City MD; Manteo, NC; Cocoa Beach, FL; Madeira Beach, FL; and Port Aransas, TX. For specific locations, *see* **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Karyl Brewster-Geisz at (301) 713–2347.

SUPPLEMENTARY INFORMATION: The Atlantic shark fisheries are managed under the authority of the Magnuson-Stevens Act. The Fishery Management Plan for Atlantic Tunas, Swordfish, and Sharks is implemented by regulations at 50 CFR part 635.

Background

On November 15, 2002, NMFS published a notice of intent to prepare an EIS (67 FR 69180). In this notice, NMFS also announced its intent to amend the HMS FMP. Based on the 2002 stock assessments, NMFS believes the implementation of new management measures via an amendment to the HMS FMP is necessary to rebuild or prevent overfishing of Atlantic sharks. NMFS anticipates completing this amendment and any related documents by January 1, 2004.

Large Coastal Sharks

The LCS complex is composed of several species including, but not limited to, sandbar, blacktip, spinner, bull, and tiger sharks. Since the 1993 Shark Fishery Management Plan, LCS have been considered overfished. The latest stock assessment of LCS in the U.S. Atlantic and Gulf of Mexico, available in October 2002 (67 FR 64098), provides an update on the status of LCS stocks and projects their future abundance under a variety of catch levels in waters off the U.S. Atlantic and Gulf of Mexico coasts. The 2002 assessment includes catch estimates, new biological data, and a number of fishery-independent catch rate series, as well as extended fishery-dependent catch rate series.

The results for the LCS complex indicate that overfishing could still be occurring and the resource may be overfished. However, for sandbar sharks, the stock assessment indicates that, while overfishing is occurring, the current biomass is near, or somewhat above, maximum sustainable yield (MSY). Additionally, the stock assessment indicates that no reduction in catch for blacktip sharks is needed to maintain the stock at current levels and that some increase may be sustainable in the long term. Under the term of a court-approved settlement agreement, this stock assessment was independently peer reviewed. The peer review process was completed on December 20, 2003. The peer reviews were generally positive.

Copies of the LCS stock assessment and peer review are available for review (*see* **ADDRESSES**).

Management Options

Small Coastal Sharks

The SCS complex comprises four species including Atlantic sharpnose, blacknose, bonnethead, and finetooth. The 1992 stock assessment classified SCS as being fully utilized. The 2002 stock assessment of SCS in the U.S. and Gulf of Mexico indicates that the current level of removals is sustainable for the SCS aggregate. Aggregate biomass levels for the SCS aggregate are estimated at or above those which could produce MSY, and are not considered to be overfished. However, recent fishing mortality of finetooth sharks exceeds the fishing mortality at MSY, indicating overfishing is occurring for this species.

Copies of the SCS stock assessment and the peer review of the LCS stock assessment are available for review (see **ADDRESSES**).

Management Options

NMFS requests comments on management options for this action.

Specifically, NMFS requests comments on commercial management options including quota levels, regional and seasonal quotas, trip limits, minimum sizes, the application of dead discards and state landings after a Federal closure to the quota, the counting quota of over- and underages, and fishery closure and opening notices. Additionally, NMFS request comments on recreational management options including retention limits, minimum sizes, authorized gear, and landing requirements. NMFS also seeks comment regarding deep water and prohibited shark species, display quotas, time/area closures and the organization of species groupings. Comments received on this action will assist NMFS in determining the options for rulemaking to conserve and manage shark resources and shark fisheries.

Within the comment period established in this action, NMFS will hold seven public scoping meetings to gather public comment on the implementation of new management measures for Atlantic sharks.

Schedule of Public Scoping Meetings

The dates, times, and locations of the meetings are scheduled as follows:

1. Monday, February 10, 2003 - Silver Spring, MD, 1–6 p.m.

Holiday Inn
8777 Georgia Avenue
Silver Spring, MD 20910
Contact: Karyl Brewster-Geisz @ (301) 713–2347

2. Wednesday, February 19, 2003 - Montauk, NY,7–9 p.m.

Montauk Fire House

12 Flamingo Avenue
Montauk, NY 11954
Contact: Heather Stirratt @ (301) 713–2347

3. Tuesday, February 25, 2003 - Coco Beach, FL, 7–9 p.m.
Cocoa Beach Public Library
550 North Brevard Avenue
Cocoa Beach, FL 32931
Contact: Greg Fairclough @ (727) 570–5447

4. Thursday, February 27, 2003 - Madeira Beach, FL,7–9 p.m.
City of Madeira Beach, City of Madeira Beach Auditorium
300 Municipal Drive
Madeira Beach, FL 33708
Contact: Greg Fairclough @ (727) 570–5447

5. Wednesday, March 5, 2003 - Ocean City, MD, 7–9 p.m.
Ocean City Council Chambers
301 Baltimore Avenue
Ocean City, MD 21842
Contact: Karyl Brewster-Geisz @ (301) 713–2347

6. Thursday, March 6, 2003 - Manteo, NC, 7–9 p.m.
North Carolina Aquarium
Roanoke Island
Airport Road
Manteo, NC 27954
Contact: Heather Stirratt @ (301) 713–2347

7. Tuesday, March 11, 2003 - Port Aransas, TX,7–9 p.m.
University of Texas
Marine Science Institute
Visitor's Center (located on Cotter St. near beach)
750 Channel View Drive
Port Aransas, TX 78373
Contact: Heather Stirratt @ (301) 713–2347

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Heather Stirratt, (301) 713–2347.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: January 22, 2003.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 03–1786 Filed 1–24–03; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register
Vol. 68, No. 17
Monday, January 27, 2003

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Doc. # TB–03–04]

National Advisory Committee for Tobacco Inspection Services; Open Meeting

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of advisory committee meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act (5 U.S.C. App. II) announcement is made of a forthcoming meeting of the National Advisory Committee for Tobacco Inspection Services.

DATES: March 11, 2003, 9 a.m.

ADDRESSES: The meeting will be held at the Old Town Alexandria Holiday Inn, 480 King Street, Alexandria, Virginia 22314.

FOR FURTHER INFORMATION CONTACT: John P. Duncan III, Deputy Administrator, Tobacco Programs, AMS, USDA, Telephone number (202) 205–0567 or fax (202) 205–0235.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to elect officers, recommend the level of service to be provided to producers by AMS, review the financial status of the tobacco inspection program, recommend the user fee rate needed to maintain the desired level of service for the 2003–2004 marketing season, and review various regulations issued pursuant to the Tobacco Inspection Act (7 U.S.C. 511 *et seq.*), and the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act for 2002 (Pub. L. 107–76; 7 U.S.C. 511s).

The meeting is open to the public. Persons, other than members, who wish to address the Committee at the meeting should contact John P. Duncan III, Deputy Administrator, Tobacco Programs, AMS, USDA, STOP 0280, 1400 Independence Avenue, SW., Washington, DC 20250–0280, prior to the meeting. Written statements may be submitted to the Committee before, at or after the meeting. If you need any accommodations to participate in the meeting, please contact the Tobacco Programs at (202) 205–0567 by March 5, 2003, and inform us of your needs.

Dated: January 21, 2003.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 03–1753 Filed 1–24–03; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

Public Hearing on New Entrant's 2003 Crop Cane Sugar Marketing Allotment

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Notice of public hearing.

SUMMARY: The Commodity Credit Corporation (CCC) will hold a public hearing to receive comments on providing an allocation to a new entrant processor and allotment to a new entrant State and possible impacts on existing cane processors and producers. CCC will also receive comments on the evidence CCC should require from a new entrant to demonstrate eligibility for a marketing allocation.

DATES: The public hearing will be held January 29, 2003, in the Jefferson Auditorium of the U.S. Department of Agriculture (USDA) South Building, 1400 Independence Ave, SW., Washington, DC. The hearing will start at 10 a.m. eastern standard time (e.s.t.).

ADDRESSES: Barbara Fecso, Dairy and Sweeteners Analysis Group, Economic Policy and Analysis Staff, Farm Service Agency, USDA, 1400 Independence Avenue, SW., STOP 0516, Washington, DC 20250–0516; telephone (202) 720–4146; FAX (202) 690–1480; e-mail: *barbara.fecso@usda.gov*.

FOR FURTHER INFORMATION CONTACT: Barbara Fecso at (202) 720–4146.

SUPPLEMENTARY INFORMATION: USDA will hold a public hearing as requested by sugarcane producers and processors regarding the application of the Arizona Sugar Factory, L.L.C., for a cane sugar marketing allocation for the 2003 crop year. The Arizona Sugar Factory is requesting a 2003-crop year allocation of 10,000 short tons, raw value, and an increase to 50,000 short tons, raw value, for the 2005 crop. The new processor will be located in California and Arizona, States that currently have no allotment (*i.e.*, a new entrant State).

Section 359d(b)(1)(E) of the Agricultural Adjustment Act of 1938, as amended, authorizes CCC to provide a sugarcane processor, who begins processing after May 13, 2002, an allocation that provides a fair, efficient, and equitable distribution of the allocations from the allotment for the State in which the processor is located. To make an allocation to a processor in California or Arizona, the Secretary will have to provide those States with an allotment. CCC considers the adverse effects on existing cane processors and producers when determining whether a new entrant processor allocation and new entrant State allotment are warranted. Also, prior to the promulgation of the 2003-crop marketing allotments, the Arizona Sugar Factory must provide satisfactory evidence that it has a viable processing facility, an adequate sugarcane supply, and a market for the cane sugar product. If approved, the new California or Arizona allotment will be subtracted, on a pro rata basis, from the allotments otherwise provided to each mainland State when the 2003 crop allotments are determined by USDA.

CCC will use this forum to collect comments on (1) any adverse effects that the provisions of an allocation to the Arizona Sugar Factory, L.L.C., and an allotment to California or Arizona may have on existing cane processors and producers, and (2) the evidence CCC should require from a new entrant to demonstrate the ability to process, produce, and market raw cane sugar. Attendance is open to interested parties.

The hearing will be held on January 29, 2003, from 10 a.m. to 2 p.m. e.s.t. in the Jefferson Auditorium of USDA South Building, 1400 Independence Ave., Washington, DC.

Anyone wishing to make an oral statement may do so, time permitting. Comments will be limited to 5 minutes. A signup sheet for oral statements will be available at the entrance of the Jefferson Auditorium one hour before the hearing begins. Oral statements will

be made in the order the request was received. Anyone wishing to make a written statement in lieu of an oral statement should send their statement to Barbara Fecso, Dairy and Sweeteners Analysis Group, Economic Policy and Analysis Staff, Farm Service Agency, USDA, 1400 Independence Avenue, SW., STOP 0516, Washington, DC 20250–0516; Telephone: (202) 720–4146; Fax: (202) 690–1480; e-mail: *barbara.fecso@usda.gov*. Statements must be received by close of business on January 29, 2003.

Persons with disabilities who require special accommodations to attend or participate in the meeting should contact Barbara Fecso.

Signed in Washington, DC on January 22, 2003.

James R. Little,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 03–1821 Filed 1–23–03; 12:43 pm]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Agency Information Collection Activities: Proposed Collection; Comment Request—Information Collection for the Summer Food Service Program

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Food and Nutrition Service announces its intention to request the Office of Management and Budget's (OMB) review of the information collections related to the Summer Food Service Program, OMB number 0584–0280.

DATES: Comments on this notice must be received or postmarked by March 28, 2003.

ADDRESSES: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical or other technological collection techniques or other forms of information technology. Comments and requests for copies of this information collection may be sent to Mr. Terry Hallberg, Chief, Program Analysis and Monitoring Branch, Child Nutrition Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, Room 640, Alexandria, Virginia 22302.

All responses to this Notice will be summarized and included in the request for OMB approval, and will become a matter of public record.

FOR FURTHER INFORMATION: Contact Mr. Terry Hallberg at (703) 305–2600.

SUPPLEMENTARY INFORMATION:

Title: Summer Food Service Program.

OMB Number: 0584–0280.

Expiration Date: 2/28/03.

Type of Request: Extension of a currently approved collection.

Abstract: Section 13 of the National School Lunch Act (NSLA), as amended, authorizes the Summer Food Service Program. The Summer Food Service Program provides assistance to States to initiate and maintain nonprofit food service programs for needy children during the summer months and at other approved times. The food service to be provided under the Summer Food Service Program is intended to serve as a substitute for the National School Lunch Program and the School Breakfast Program during times when school is not in session. Under the program, a sponsor receives reimbursement for serving nutritious, well-balanced meals to eligible children at food service sites. Subsection 13(m) of the NSLA directs that "States and service institutions participating in programs under this section shall keep accounts and records as may be necessary to enable the Secretary to determine whether there has been compliance with this section and the regulations hereunder. Such accounts and records shall be available at any reasonable time for inspection and audit by representatives of the Secretary and shall be preserved for such period of time, not in excess of five years, as the Secretary determines necessary." Pursuant to this provision, the Food and Nutrition Service has issued Part 225 of Title 7 of the Code of Federal Regulations to implement the Summer Food Service Program.

Respondents: State agencies, sponsors, camps and other sites, and households.

Estimated Number of Respondents: 54 State agencies, 3,789 sponsors, 4,436 camps and other sites, and 69,722 households.

Total Number of Respondents: 78,001.

Average Number of Responses per Respondent: The number of responses is estimated to be 4 responses per respondent per year.

Total Annual Responses: 312,004.

Average Time per Response: 1.219 hours.

Estimated Total Annual Burden on Respondents: The recordkeeping burden hours is estimated at *27,268*, and the reporting burden hours is estimated at *353,116*, for an estimated total annual burden of *380,384* hours.

Dated: January 21, 2003.

Roberto Salazar,

Administrator.

[FR Doc. 03–1754 Filed 1–24–03; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Forest Service

Coronado National Forest, Arizona; Alpha Calcit Marble Mine

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Forest Service accepted a Plan of Operations from Alpha Calcit Arizona, Limited, for mining and road construction in the Dragoon Mountain Range of the Coronado National Forest in southern Arizona, as required by the1872 Mining Law, as amended, and its implementing regulations at 36 CFR part 228. The proposed mine expansion is located within an inventoried roadless area.

DATES: Comments concerning the scope of the analysis should be received by April 30, 2003. The draft environmental impact statement is expected by December, 2003. The final environmental impact statement is expected in March, 2004.

ADDRESSES: Send written comments to Jennifer Ruyle, Alpha Calcit Environmental Analysis Team Leader; Coronado National Forest; Federal Building, FB–42; 300 West Congress, Tucson, Arizona, 85701.

Send electronic mail comments to *jruyle@fs.fed.us*, Alpha Calcit Environmental Analysis Team Leader.

FOR FURTHER INFORMATION CONTACT: John McGee, Forest Supervisor, Coronado National Forest, USDA Forest Service or Jennifer Ruyle, Analysis Team Leader, Coronado National Forest, USDA Forest Service at the above address.

SUPPLEMENTARY INFORMATION:

Alpha Calcit Arizona, Limited, is seeking approval for a Plan of Operations to expand an existing marble

mine in the Dragoon Mountain Range of the Coronado National Forest in southern Arizona. The proposed mine expansion is located in an inventoried roadless area as defined in the Forest Service Roadless Area Conservation Final Environmental Impact Statement, November 2000. *See* page 14 of EIS Volume 2—Maps of Inventoried Roadless Areas, Coronado National Forest Inventoried Roadless Areas. This Forest Roadless Area map is also found on the web at *http://roadless.fs.fed.us/states/az/coro.pdf*. The proposal includes the construction of approximately ½ mile of new road in the inventoried roadless area, and reconstruction (widening) of existing access roads thereby making it subject to regulations at 36 CFR 294.12 and Interim Directive Forest Service Manual (FSM) 1925 policy. Paragraph (a) of the regulation prohibits new road construction or reconstruction in inventoried roadless areas while paragraph (b) provides exceptions to the prohibition. This proposal conforms to the requirements of exception (b)(3) in the regulations because the proposed road construction is needed pursuant to outstanding rights provided by statute (1872 Mining Law). This proposal also falls under similar exception language in FSM 1925.04 b (d).

Purpose and Need for Action

The purpose of this proposal is to make locatable mineral material available to Alpha Calcit Arizona, Limited, as provided by statute. The statutes authorizing this use of National Forest System lands and resources include the 1872 Mining Law, as amended, and its implementing regulations at 36 CFR part 228; the Federal Land Policy and Management Act of 1976, and Forest Service Policy as described in the Directives System (Forest Service Manual 2800).

The Forest Service accepted a Final Plan of Operations, as required by law, regulation and policy, from Alpha Calcit Arizona, Limited, for proposed mining of limestone, marble, and related products in the Dragoon Mountains of the Coronado National Forest. This action responds to the goals and objectives outlined in the Land and Resource Management Plan for the Coronado National Forest. It also contributes to meeting the goal of supporting environmentally sound minerals development and reclamation.

Proposed Action

The Proposed Action is to approve the Plan of Operations submitted by Alpha Calcit Arizona, Limited, to mine marble in the Tapia-Bliss claims in the Dragoon Mountain Range of the Coronado National Forest with mitigations for land and resource protection. The Final Plan of Operations accepted from Alpha Calcit Arizona, Limited, consists of:

- Expansion of an existing quarry for the purpose of mining marble, limestone, and related products from the Escabrosa limestone formation in the Dragoon Mountain Range of the Coronado National Forest,
- Mining 100,000 short tons (approximately 2,000 pounds per ton) of marble annually for a period of 20 years,
- Constructing a crushing facility on private land approximately 2,300 feet north of the center of the quarry area, in the NE ¼ of the NW ¼ of Section 33, T.17S., R.23E., (G&SRB&M),
- Employing blasting and the use of heavy equipment to move material from the quarry to the processing plant,
- Accessing the quarry area via County Road to the Forest boundary, and via Forest Road (FR) 689 from the boundary into the quarry area, and
- Constructing a new access road from the southeast end of the quarry to the top of the exposed face and top bench of the quarry in the SW ¼ of the SE ¼ of Section 33, T.17S., R.23E., (G&SRB&M).

This alternative includes modifications to mitigate effects. Mitigations include measures to address waste rock management, avoidance of significant archeological and historical sites, avoidance of impacts to resources and places important to tribes with traditional ties to the area, reclamation and revegetation, utility installation, protection of endangered, threatened, or sensitive flora or fauna, consideration of agave plants, water sources, hazardous material storage, and other best management practices.

Possible Alternatives

Alternative 1—No Action

The No Action Alternative would deny the Plan of Operations submitted by Alpha Calcit Arizona, Limited, to mine marble in the Tapia-Bliss claims in the Dragoon Mountain Range of the Coronado National Forest. Mining operations would not be implemented.

- The agency does not have discretion to deny statutory rights to mine locatable minerals subject to the 1872 Mining Law.
- The agency has discretion to deny the mining of common variety minerals, but it may be impractical to deny mining of common variety marble closely associated with locatable marble in the project area.

Alternative 2—The Proposed Action

Alternative 3

Approve the described Plan of Operations submitted by Alpha Calcit Arizona, Limited, to mine marble, without the mitigation measures listed previously.

Responsible Official

The Responsible Official is Harv Forsgren, Regional Forester. His address is Harv Forsgren, USDA Forest Service, Southwestern Region; 333 Broadway, Southeast; Albuquerque, New Mexico, 87102.

Nature of Decision To Be Made

Based on the results of the environmental analysis, the decision will address the following:

1. Whether or not the mining proposal would proceed as proposed or as modified by mitigation measures .
2. If mining activity is allowed, the mitigation measures and monitoring requirements that would be implemented.
3. Consistency with applicable laws, regulations, policies, and the Forest Plan.

Scoping Process

The Forest Service will be seeking information, comments and assistance from Tribal Governments, Federal, State and local agencies, individuals and organizations that may be interested in, or affected by, the proposed activities. Written comments will be solicited through a scoping report mailed to individuals and entities known to be interested or affected. This report will be mailed in March of 2003. Information about the proposal will also be available at a public open house to be held on March 11, 2003 from 3 PM to 8 PM, at the Benson Public Library, 300 S. Huachuca, Benson, AZ 85602.

Preliminary Issues

Analysis of the proposal, as submitted by the proponent, indicates that the following preliminary issues should be considered in the analysis. A final set of issues will be defined following scoping and consultation.

Heritage Resources

- Mining and support activities (access, construction of crushing facilities) may have adverse effects on archaeological and historical sites.
- The Dragoon Mountains are important in Chiracahua Apache history and culture; some Chiricahua Apaches retain traditional ties to the area. Mining activities may be incompatible with the historical and cultural associations.

Public Safety

- Truck traffic through an adjacent residential area, with mixed residential and truck traffic on Lizard Lane (access road) may pose a safety hazard.
- Mine traffic may conflict with cattle grazing along the access road.

Flora and Fauna

- Mining and associated activities may adversely affect populations or habitat of certain management indicator species.
- Mining and associated activities may adversely affect individuals, populations, or habitat of threatened, endangered, or sensitive species, including the Lesser long-nosed bat or American peregrine falcon.

Water Quantity and Quality

- Waters running in or around the mine and along the access road may adversely affect adjacent landowners and other Forest users.
- Lack of a water storage or filtration plant may adversely affect adjacent landowners and other Forest users.
- Potential dust mitigation (watering) may reduce local water supplies.

Access

- Proposed access may not be wide enough to allow haul vehicles to pass.
- Traffic conflicts may become acute during hunting season.
- Resolution of safety issues may result in restrictions on access by general Forest users.

Visual Quality

- Appearance of the mine face and roads may be incompatible with scenic qualities of the landscape.

Air Quality

- Mining activities (blasting, crushing, or use and maintenance of access roads) may increase dust.

Comment Requested

This notice of intent initiates the scoping process which guides the development of the environmental impact statement.

Early Notice of Importance of Public Participation in Subsequent Environmental Review: A draft environmental impact statement will be prepared for comment. The comment period on the draft environmental impact statement will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage, but that are not raised until after completion of the final environmental impact statement, may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Comments received, including the names and addresses of those who comment, will be considered part of the public record on this proposal and will be available for public inspection.

(Authority: 40 CFR 1501.7 and 1508.22; Forest Service Handbook 1909.15, Section 21)

Dated: January 13, 2003.

Abel M. Camarena,

Deputy Regional Forester.

[FR Doc. 03–1693 Filed 1–24–03; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Opal Creek Scenic Recreation Area (SRA) Advisory Council

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: An Opal Creek Scenic Recreation Area Advisory Council meeting will convene in Stayton, Oregon on Monday, February 10, 2003. The meeting is scheduled to begin at 6 p.m., and will conclude at approximately 8:30 p.m. The meeting will be held in the South Room of the Stayton Community Center located at 400 West Virginia Street in Stayton, Oregon.

The Opal Creek Wilderness and Opal Creek Scenic Recreation Area Act of 196 (Opal Creek Act) (Pub. L. 104–208) directed the Secretary of Agriculture to establish the Opal Creek Scenic Recreation Area Advisory Council. The Advisory Council is comprised of thirteen members representing state, county and city governments, and representatives of various organizations, which include mining industry, environmental organizations, inholders in Opal Creek Scenic Recreation Area, economic development, Indian tribes, adjacent landowners and recreation interests. The council provides advice to the Secretary of Agriculture on preparation of a comprehensive Opal Creek Management Plan for the SRA, and consults on a periodic and regular basis on the management of the area. Tentative agenda items include information sharing on the following topics:

Update on SRA Management Plan appeal;

Process for recruitment and appointment of replacement Council members;

Review of Draft Information Strategy Plan for implementing new use rules.

A direct public comment period is tentatively scheduled to begin at 8 p.m. Time allotted for individual presentations will be limited to 3 minutes. Written comments are encouraged, particularly if the material cannot be presented within the time limits of the comment period. Written comments may be submitted prior to the February 10 meeting by sending them to Designated Federal Official Rodney Stewart at the address given below.

FOR FURTHER INFORMATION CONTACT: For more information regarding this meeting, contact Designated Federal Official Rodney Stewart; Willamette National Forest, Detroit Ranger District, HC 73 Box 320, Mill City, OR 97360; (503) 854–3366.

Dated: January 17, 2003.

Dallas J. Emch,

Forest Supervisor.

[FR Doc. 03–1721 Filed 1–24–03; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Settlement Pursuant to CERCLA; Jordan Road Shooting Range, Coconino County, AZ

AGENCY: Forest Service, USDA.

ACTION: Notice of settlement.

SUMMARY: In accordance with section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (CERCLA), 42 U.S.C. 9622(i), notice is hereby given of an administrative settlement for recovery of past response costs with the City of Sedona (the Settling Party) concerning the Jordan Road Shooting Range, Coconino County, Arizona. The settlement requires the Settling Party to pay $17,000 to the USDA Forest Service, Southwestern Region, pursuant to section 122(h)(1) of CERCLA, 42 U.S.C. 9622(h)(1). The settlement includes a covenant not to sue the Settling Party pursuant to sections 106 and 107(a) of CERCLA, 42 U.S.C. 9606 and 9607(a), with regard to the Site.

For thirty (30) days following the date of publication of this notice, the United States will receive written comments relating to the settlement. The United States will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations which indicate that the settlement is inappropriate, improper, or inadequate. The United States' response to any comments received will be available for public inspection at the Red Rock Ranger District, PO Box 300, 250 Brewer Road, Sedona, AZ 86339–0330, and at the offices of the USDA Forest Service Southwestern Region, 333 Broadway SE, Albuquerque, NM 87102.

DATES: Comments must be submitted on or before February 26, 2003.

ADDRESSES: The proposed settlement is available for public inspection at the Red Rock Ranger District, PO Box 300, 250 Brewer Road, Sedona, AZ 86339–0330 and at the offices of the USDA Forest Service Southwestern Region, 333 Broadway SE, Albuquerque, NM 87102. A copy of the proposed settlement may be obtained from Ken Anderson on the Red Rock Ranger District at 928–203–7501 (direct) or 928–282–4119 (backup), or from Kirk M. Minckler with USDA's Office of the General Counsel, (303) 275–5549. Comments should reference the Jordan Road Shooting Range, Coconino County, Arizona, and should be addressed to Kirk M. Minckler, USDA Office of the General Counsel, PO Box 25005, Denver, CO 80225–0005.

FOR FURTHER INFORMATION CONTACT: For technical information, contact Maria McGaha, USDA Forest Service Southwestern Region, 333 Broadway SE, Albuquerque, NM 87102, phone (505) 842–3837. For legal information, contact Kirk M. Minckler, USDA Office of the General Counsel, PO Box 25005, Denver, CO 80225–0005; phone (303) 275–5549.

Dated: January 17, 2003.

Harv Forsgren,

Regional Forester, USDA Forest Service, Southwestern Region.

[FR Doc. 03–1692 Filed 1–24–03; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration.

Title: Application for Commission in the NOAA Officer Corps.

Form Number(s): NOAA Form 56–42, 56–42A, 56–42C, and 56–42D.

OMB Approval Number: 0648–0047.

Type of Request: Regular submission.

Burden Hours: 184.

Number of Respondents: 600.

Average Hours Per Response: 1 hour for an application; and 10 minutes for a reference.

Needs and Uses: The NOAA Corps is the smallest of the seven uniformed services of the United States and is an integral part of NOAA. The NOAA Corps provides a cadre of professionals trained in engineering, earth sciences, oceanography, meteorology, fisheries science, and other related disciplines who serve in assignments within the five major Line Offices of NOAA. Persons wishing to obtain a NOAA Corps Commission must submit an application package, including an eye test and five references.

Affected Public: Individuals or households.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: David Rostker, (202) 395-3897.Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: January 17, 2003.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 03–1788 Filed 1–24–03; 8:45 am]

BILLING CODE 3510–12–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–821–808]

Suspension of Antidumping Duty Investigation of Certain Cut-to-Length Carbon Steel Plate from the Russian Federation

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce ("the Department") has revised the agreement suspending the antidumping duty investigation involving certain cut-to-length carbon steel plate ("CTL steel plate") from the Russian Federation ("Russia"). The basis for this action is an agreement between the Department and the Russian CTL steel plate producers accounting for substantially all imports of CTL steel plate from Russia, wherein each signatory producer/exporter individually agrees to make any necessary price revisions to eliminate completely any amount by which the normal value (NV) of this merchandise exceeds the U.S. price of its merchandise subject to the Agreement.

EFFECTIVE DATE: January 23, 2003.

FOR FURTHER INFORMATION CONTACT: Jean Kemp, Stephen Bailey or Lilit Astvatsatrian, at (202) 482–4037, (202) 482–1102, and (202) 482–6412, respectively, Antidumping and Countervailing Duty Enforcement Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington. DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On October 24, 1997, the Department and the Ministry of Foreign Economic Relations and Trade of the Russian Federation entered into an agreement (62 FR 61780, November 19, 1997) suspending the antidumping investigation on CTL steel plate from the Russian Federation. Upon request of petitioners, the investigation was continued and the Department made an affirmative final determination of sales at less than fair value.[1] Likewise, the International Trade Commission continued its investigation and made an affirmative determination as to material injury to an industry in the United States.[2] On June 6, 2002, based on the evidence on Russian economic reforms to that date, the Department revoked Russia's status as a non-market economy country under section 771(18)(B) of the Act. On November 21, 2002, representatives from JSC Severstal, JSC Magnitogorsk Iron and Steel Works and JSC NOSTA (OKIW) Integrated Iron-Steel Works (collectively the "Russian CTL steel plate producers") initialed a proposed, revised suspension agreement. We invited comments on the proposed agreement. On December 11, 2002, we received comments from petitioners, Bethlehem Steel Corporation and United States Steel Corporation.

On December 20, 2002, the final suspension agreement was signed by the Russian CTL steel plate producers and the Department, the effective date being January 23, 2003.

Scope of Investigation

For a complete description of the scope of the investigation, *see Agreement Suspending the Antidumping Investigation on Certain Cut-to-Length Carbon Steel Plate from the Russian Federation*, Appendix B, signed December 20, 2002, attached hereto.

Suspension of Investigation

The Department consulted with the parties to the proceeding and has considered the comments submitted with respect to the proposed suspension agreement. Based on our review of these comments, we have made one change to the proposed agreement which was correcting the effective date of the agreement from January 23, 2002 to January 23, 2003. In accordance with section 734(b) of the Act, we have determined that the agreement will eliminate completely sales at less than fair value of imported subject merchandise. Moreover, in accordance with section 734(d) of the Act, we have determined that the agreement is in the public interest, and that the agreement can be monitored effectively. We find, therefore, that the criteria for suspension of an investigation pursuant to sections 734(b) and (d) of the Act have been met. The terms and conditions of this agreement, signed December 20, 2002, are set forth in Appendix I to this notice.

This notice is published pursuant to section 734(f)(1)(A) of the Act.

Dated: January 17, 2003.

Faryar Shirzad,

Assistant Secretary for Import Administration.

Appendix I—Agreement Suspending the Antidumping Investigation of Certain Cut-to-Length Carbon Steel Plate From the Russian Federation (A–821–808)

Pursuant to section 734(b) of the Tariff Act of 1930, as amended (19 U.S.C. 1673(c)(b)) (the "Act"), and 19 CFR 351.208 (the "Regulations"), the U.S. Department of Commerce (the "Department") and the signatory producers/exporters of Certain Cut-to-Length Carbon Steel Plate from the Russian Federation (the "Signatories") enter into this suspension agreement (the "Agreement"). As of the Effective Date, this Agreement supercedes the suspension agreement entered into by the Department and the Ministry of Foreign Economic Relations and Trade of the Russian Federation on October 24, 1997. By agreement of the Parties, the October 24, 1997 suspension agreement shall cease to have force or effect as of the Effective Date of this Agreement. On the basis of this Agreement, the Department shall continue to suspend its antidumping investigation which it completed on November 19, 1997 (62 FR 61787), with respect to certain cut-to-length carbon steel plate from the Russian Federation, subject to the terms and provisions set forth below.

(A) Product Coverage

For purposes of this Agreement, the products covered are certain cut-to-length carbon steel plate, as described in Appendix B.

(B) U.S. Import Coverage

The signatory producers/exporters collectively are the producers and exporters in the Russian Federation that, during the most recently completed calendar year, accounted for substantially all (not less than 85 percent) of the subject merchandise imported into the United States, as provided in the Department's regulations. The Department may at anytime during the period of the Agreement require additional producers/exporters in the Russian Federation to sign the Agreement in order to ensure that not less than substantially all imports into the United States are covered by the Agreement.

In reviewing the operation of the Agreement for the purpose of determining whether this Agreement has been violated or is no longer in the public interest, the Department will consider imports into the United States from all sources of the merchandise described in Section A of the Agreement. For this purpose, the Department will consider factors including, but not limited to, the following: volume of trade, pattern of trade, whether or not the reseller is an original equipment manufacturer, and the reseller's export price (EP).

(C) Basis of the Agreement

On and after the effective date of the Agreement, each signatory producer/exporter individually agrees to make any necessary price revisions to eliminate completely any amount by which the normal value (NV) of this merchandise exceeds the U.S. price of its merchandise subject to the Agreement. For this purpose, the Department will determine the NV in accordance with section 773(e) of the Act and U.S. price in accordance with section 772 of the Act.

(1) For the period from January 23, 2003, the effective date of this agreement, through September 30, 2003 (the interim period), each signatory producer/exporter agrees not to sell its merchandise subject to this Agreement in the United States.

(2) For the first sales period only, October 1, 2003 through December 31, 2003, each signatory producer/exporter agrees not to sell its merchandise subject to this Agreement to any unaffiliated purchaser in the United States at prices that are less than the NV of the merchandise, as determined by the Department on the basis of information submitted to the Department not later than the dates specified in section D of this Agreement and provided to the parties not later than September 20, 2003.

(3) For all sales occurring on and after January 1, 2004, each signatory producer/exporter agrees not to sell its merchandise subject to this Agreement to any unaffiliated purchaser in the

[1] *See* Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from the Russian Federation, 62 FR 61787, 61794, Nov. 19, 1997.

[2] *See* Certain Carbon Steel Plate From China, Russia, South Africa, and Ukraine, 62 FR 66128, Dec. 17, 1997.

United States at prices that are less than the NV of the merchandise, as determined by the Department on the basis of information submitted to the Department not later than the dates specified in section D of this Agreement and provided to the parties not later than December 20 and June 20 of each year.[3] This NV shall apply to sales occurring during the semiannual period beginning on the first day of the month following the date the Department provides the NV, as stated in this paragraph.

(D) Monitoring

Each signatory producer/exporter will supply to the Department all information that the Department decides is necessary to ensure that the producer/exporter is in full compliance with the terms of the Agreement. As explained below, the Department will provide each signatory producer/exporter a detailed request for information and prescribe a required format and method of data compilation, not later than the beginning of each reporting period.

(1) Sales Information

The Department will require each producer/exporter to report, on computer tape in the prescribed format and using the prescribed method of data compilation, each sale of the merchandise subject to the Agreement, either directly or indirectly to unaffiliated purchasers in the United States, including each adjustment applicable to each sale, as specified by the Department.

The first report of sales data shall be submitted to the Department, on computer tape in the prescribed format and using the prescribed method of data compilation, not later than January 31, 2004, and shall contain the specified sales information covering the period October 1, 2003 to December 31, 2003. Subsequent reports of sales data shall be submitted to the Department not later than July 31 and January 31 of each year, and each report shall contain the specified sales information for the semiannual period ending one month prior to the due date, except that if the Department receives information that a possible violation of the Agreement may have occurred, the Department may request sales data on a monthly, rather than a semiannual basis.

(2) Cost Information

Producer/exporters must request NVs for all subject merchandise that will be sold in the United States. For those products which the producer/exporter is requesting NVs, the Department will require each producer/exporter to report: their actual cost of manufacturing; selling, general and administrative (SG&A) expenses; and profit data on a semiannual basis, in the prescribed format and using the prescribed method of data compilation. As indicated in Appendix A, profit will be reported by the producers/exporters on a semiannual basis. Each such producer/exporter also must report anticipated increases in production costs in the semiannual period in which the information is submitted resulting from factors such as anticipated changes in production yield, changes in production process, changes in production quantities or changes in production facilities.

The first report of cost data shall be submitted to the Department not later than May 15, 2003, and shall contain the specified cost data covering the period January 1, 2003 through March 31, 2003. The second report of cost data shall be submitted to the Department not later than August 14, 2003, and shall contain the specified cost data covering the period January 1, 2003 through June 30, 2003. Each subsequent report shall be submitted to the Department not later than February 14 and August 14 of each year, and each report shall contain the specified information for the semiannual period ending 45 days prior to the due date.

(3) Special Adjustment of Normal Value

If the Department determines that the NV it determined for a previous semiannual period was erroneous because the reported costs for that period were inaccurate or incomplete, or for any other reason, the Department may adjust NV in a subsequent period or periods, unless the Department determines that Section F of the Agreement applies.

(4) Verification

Each producer/exporter agrees to permit full verification of all cost and sales information annually, or more frequently, as the Department deems necessary.

(5) Bundling or Other Arrangements

Producers/exporters agree not to circumvent the Agreement. In accordance with the dates set forth in section D(1) of this Agreement, producers/exporters will submit a written statement to the Department certifying that the sales reported herein were not, or are not part of or related to, any bundling arrangement, on-site processing arrangement, discounts/free goods/financing package, swap or other exchange where such arrangement is designed to circumvent the basis of the Agreement.

Where there is reason to believe that such an arrangement does circumvent the basis of the Agreement, the Department will request producers/exporters to provide within 15 days all particulars regarding any such arrangement, including, but not limited to, sales information pertaining to covered and non-covered merchandise that is manufactured or sold by producers/exporters. The Department will accept written comments, not to exceed 30 pages, from all parties no later than 15 days after the date of receipt of such producer/exporter information.

If the Department, after reviewing all submissions, determines that such arrangement circumvents the basis of the Agreement, it may, as it deems most appropriate, utilize one of two options: (1) The amount of the effective price discount resulting from such arrangement shall be reflected in the NV in accordance with section D(3) of this Agreement, or (2) the Department shall determine that the Agreement has been violated and take action according to the provisions under section F of this Agreement.

(6) Rejection of Submissions

The Department may reject any information submitted after the deadlines set forth in this section or any information which it is unable to verify to its satisfaction. If information is not submitted in a complete and timely fashion or is not fully verifiable, the Department may calculate NV, and/or U.S. price based on facts otherwise available, as it determines appropriate, unless the Department determines that section F of this Agreement applies.

[3] For the first sales period only, October 1, 2003 through December 31, 2003, the issuance of the normal value may be delayed in order to resolve issues raised in comments from interested parties or by the Department and for the purpose of allowing sufficient time for signatories to respond to the Department's request for cost data. Some of these issues may arise due to Russia's new status as a market economy with respect to the Department's proceedings. In accordance with section 773(f) of the Act, the Department will examine prices and costs within Russia and, for any sales period, may disregard particular prices or costs when the prices are not in the ordinary course of trade, the costs are not in accordance with the generally accepted accounting principles, the costs do not reasonably reflect the costs associated with the production and sale of the merchandise, or in other situations provided for in the Act or the Department's regulations. Examples of possible areas in which adjustments may be necessary include, but are not limited to, costs related to energy, depreciation, transactions among affiliates, barters, as well as items that are not recognized by the Russian Accounting System.

(E) Disclosure and Comment

(1) The Department may make available to representatives of each domestic party to the proceeding, under appropriately drawn administrative protective orders, business proprietary information submitted to the Department during the reporting period as well as results of its analysis under section 777 of the Act.

(2) For the first sales period, beginning October 1, 2003, the Department will disclose to each producer/exporter the preliminary results and methodology of the Department's calculations of its NV no later than August 20, 2003. At that time, the Department may also make available such information to the domestic parties to the proceeding in accordance with this section.

(3) Not later than November 20 and May 20 of each ensuing sales period, the Department will disclose to each producer/exporter the preliminary results and methodology of the Department's calculations of its NV. At that time, the Department may also make available such information to the domestic parties to the proceeding, in accordance with this section.

(4) Not later than 7 days after the date of disclosure under section E(2) and E(3) of this Agreement, the parties to the proceeding may submit written comments to the Department, not to exceed 15 pages. After reviewing these submissions, the Department will provide to each producer/exporter its NV as provided in section C(2) of this Agreement. In addition, the Department may provide such information to domestic interested parties as specified in this section.

(F) Violations of the Agreement

If the Department determines that the Agreement is being or has been violated or no longer meets the requirements of section 734(b) or (d) of the Act, the Department shall take action it determines appropriate under section 734(i) of the Act and the regulations.

(G) Other Provisions

In entering into the Agreement, the signatory producers/exporters do not admit that any sales of merchandise subject to the Agreement have been made at less than fair value.

(H) Termination or Withdrawal

The Department will not consider requests for termination of this suspended investigation prior to January 2008. Termination of the suspended investigation will be considered in accordance with the five-year review provisions of section 351.222 of the Department's regulations.

Any producer/exporter may withdraw from the Agreement at any time upon notice to the Department. Withdrawal shall be effective 60 days after such notice is given to the Department. Upon withdrawal, the Department shall follow the procedures outlined in section 734(i)(1) of the Act.

(I) Definitions

For purposes of the Agreement, the following definitions apply:

(1) U.S. price means the export price or constructed export price at which merchandise is sold by the producer or exporter to the first unaffiliated person in the United States, including the amount of any discounts, rebates, price protection or ship and debit adjustments, and other adjustments affecting the net amount paid or to be paid by the unaffiliated purchaser, as determined by the Department under section 772 of the Act.

(2) Normal Value means the constructed value (CV) of the merchandise, as determined by the Department under section 773 of the Act and the corresponding sections of the Department's regulations, and as adjusted in accordance with Appendix A to this Agreement.

(3) Producer/Exporter means (1) the foreign manufacturer or producer, (2) the foreign producer or reseller which also exports, and (3) the affiliated person by whom or for whose account the merchandise is imported into the United States, as defined in section 771(28) of the Act.

(4) Date of sale means the date of the invoice as recorded in the exporter or producer's records kept in the ordinary course of business, unless the Department determines that a different date better reflects the date on which the exporter or producer establishes the material terms of sale, as determined by the Department under its regulations.

The effective date of this Agreement is January 23, 2003.

For the Russian Federation Producers/Exporters: Andrey V. Shikhanovich for JSC Severstal; Date: December 20, 2002. Andrey V. Shikhanovich for JSC Magnitogorsk, Iron and Steel Works (MMK); Date: December 20, 2002. Dmitry V. Tarasov for JSC NOSTA (OKIW), Integrated Iron-Steel Works; Date: December 20, 2002.

For U.S. Department of Commerce: Faryar Shirzad, Assistant Secretary for Import Administration; Date: December 20, 2002.

Appendix A—Principles of Cost

General Framework

The cost information reported to the Department that will form the basis of the NV calculations for purposes of the Agreement must be [4]:

- Comprehensive in nature and based on a reliable accounting system (*i.e.*, a system based on well-established standards that can be tied to the audited financial statements);
- Representative of the company's costs incurred for the general class of merchandise;
- Calculated on a semiannual weighted-average basis of the plants or cost centers manufacturing the product;
- Based on fully-absorbed costs of production, including any downtime;
- Valued in accordance with generally accepted accounting principles;
- Reflective of appropriately allocated common costs so that the costs necessary for the manufacturing of the product are not absorbed by other products; and
- Reflective of the actual cost of producing the product.

Additionally, a single figure should be reported for each cost component.

Cost of Manufacturing (COM)

Costs of manufacturing are reported by major cost category and for major stages of production. Weighted-average costs are used for a product that is produced at more than one facility, based on the cost at each facility.

Direct materials is the cost of those materials which are input into the production process and physically become part of the final product.

Direct labor are the costs identified with a specific product. These costs are not allocated among products except when two or more products are produced at the same cost center. Direct labor costs should include salary, bonus and overtime pay, training expenses, and all fringé benefits. Any contracted-labor expense should reflect the actual billed cost or the actual costs incurred by the subcontractor when the corporation has influence over the contractor.

Factory overhead is the overhead costs including indirect materials, indirect labor, depreciation, and other fixed and variable expenses attributable to a production line or factory. Because overhead costs are typically incurred for an entire production line. Acceptable cost allocation can be based on labor hours or machine hours. Overhead costs should reflect any idle or downtime and be fully absorbed by the products.

Cost of Production (COP)

COP is equal to the sum of materials, labor, and overhead (COM) plus SG&A expense in the home market (HM).

SG&A expense are those expenses incurred for the operation of the corporation as a whole and not directly related to the manufacture of a particular product. They include corporate general and administrative expenses, financing expenses, and general research and development expenses. Additionally, direct and indirect selling expenses incurred in the HM for sales of the

[4] *See* footnote 1 in Section C(2) of the Agreement.

product under investigation are included. Such expenses are allocated over cost of goods sold.

Constructed Value

Is equal to the sum of materials, labor and overhead (COM) and SG&A expenses plus profit in the comparison market and the cost of packing for exportation to the United States.

Calculation of Suspension Agreement NVs

NVs (for purposes of the Agreement) are calculated by adjusting the CV and are provided for both EP and CEP transactions. In effect, any expenses uniquely associated with the covered products sold in the HM are subtracted from the CV, and any such expenses which are uniquely associated with the covered products sold in the United States are added to the CV to calculate the NV.

Export Price—Generally, a U.S. sale is classified as an export price sale when the first sale to an unaffiliated person occurs before the goods are imported into the United States. In cases where the foreign manufacturer knows or has reason to believe that the merchandise is ultimately destined for the United States, the manufacturer's sales is the sale subject to review. If, on the other hand, the manufacturer sold the merchandise to a foreign trader without knowledge of the trader's intention to export the merchandise to the United States, then the trader's first sale to an unaffiliated person is the sale subject to review. For EP NVs, the CV is adjusted for movement costs and differences in direct selling expenses such as commissions, credit, warranties, technical expenses such as commissions, credit, warranties, technical services, advertising, and sales promotion.

Constructed Export Price—Generally, a U.S. sale is classified as a constructed export price sale when the first sale to an unaffiliated person occurs after importation. However, if the first sale to an unaffiliated person is made by a person in the United States affiliated with the foreign exporter, constructed export price applies even if the sale occurs prior to importation, unless the U.S. affiliate performs only clerical functions in connection with the sale. For CEP NVs, the CV is adjusted similar to EP sales, with differences for adjustment to U.S. and HM indirect-selling expenses.

Home market direct-selling expenses are expenses that are incurred as a direct result of a sale. These include such expenses as commissions, advertising, discounts and rebates, credit, warranty expenses, freight costs, etc. Certain direct-selling expenses are treated individually. They include:

Commission expenses are payments to unaffiliated parties for sales in the HM.

Credit expenses are expenses incurred for the extension of credit to HM customers.

Movement expenses are freight, brokerage and handling, and insurance expenses.

U.S. direct-selling expenses are the same as HM direct-selling expenses except that they are incurred for sales in the United States.

Movement expenses are additional expenses incidental to importation into the United States. These typically include U.S. inland freight, insurance, brokerage and handling expenses, U.S. Customs duties, and international freight.

U.S. indirect-selling expenses include general fixed expenses incurred by the U.S. sales subsidiary or affiliated exporter for sales to the United States. They may also include a portion of indirect expenses incurred in the HM for export sales.

FOR EP TRANSACTIONS

+	Direct Materials
+	Direct Labor
+	Factory Overhead
=	Cost of Manufacturing (COM)
+	Home Market SG&A
=	Cost of Production (COP)
+	U.S. Packing
+	Profit
=	Constructed Value
+	U.S. Direct-Selling Expense
+	U.S. Commission Expense
+	U.S. Movement Expense
+	U.S. Credit Expense
–	HM Direct-Selling Expense
–	HM Commission Expense [1]
–	HM Credit Expense
=	NV for EP Sales

[1] If the company does not have HM commissions, HM indirect expenses are subtracted only up to the amount of the U.S. Commissions.

FOR CEP TRANSACTIONS

+	Direct Materials
+	Direct Labor
+	Factory Overhead
=	Cost of Manufacturing (COM)
+	Home Market SG&A
=	Cost of Production (COP)
+	U.S. Packing
+	Profit
=	Constructed Value
+	U.S. Direct-Selling Expense
+	U.S. Indirect-selling Expense
+	U.S. Commission Expense
+	U.S. Movement Expense
+	U.S. Credit Expense
+	U.S. Further Manufacturing Expenses (if any)
+	CEP Profit
–	HM Direct-Selling Expense
–	HM Commission Expense [1]
–	HM Credit Expense
=	NV for CEP Sales

[1] If the company does not have HM commissions, HM indirect expenses are subtracted only up to the amount of the U.S. Commissions.

Appendix B

For purposes of this Agreement, the products covered are hot-rolled iron and non-alloy steel universal mill plates (*i.e.*, flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 mm but not exceeding 1250 mm and of a thickness of not less than 4 mm, not in coils and without patterns in relief), of rectangular shape, neither clad, plated nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances; and certain iron and non-alloy steel flat-rolled products not in coils, of rectangular shape, hot-rolled, neither clad, plated, nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances, 4.75 mm or more in thickness and of a width which exceeds 150 mm and measures at least twice the thickness. Included as subject merchandise in this petition are flat-rolled products of nonrectangular cross-section where such cross-section is achieved subsequent to the rolling process (*i.e.*, products which have been "worked after rolling")—for example, products which have been bevelled or rounded at the edges. This merchandise is currently classified in the Harmonized Tariff Schedule of the United States (HTS) under item numbers 7208.40.3030, 7208.40.3060, 7208.51.0030, 7208.51.0045, 7208.51.0060, 7208.52.0000, 7208.53.0000, 7208.90.0000, 7210.70.3000, 7210.90.9000, 7211.13.0000, 7211.14.0030, 7211.14.0045, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7212.50.0000. Excluded from the subject merchandise within the scope of this Agreement is grade X–70 plate. Although the HTS subheadings are provided for convenience and customs purposes, our written description of the scope of this investigation is dispositive.

[FR Doc. 03–1782 Filed 1–24–03; 8:45 am]
BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 012203A]

Proposed Information Collection; Comment Request; Northeast Region Vessel Monitoring and Communications

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before March 28, 2003.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or

copies of the information collection instrument and instructions should be directed to Hannah Goodale at 508–281–9101, or to *Hannah.F.Goodale@noaa.gov*.

SUPPLEMENTARY INFORMATION:

I. Abstract

Owners or operators of vessels that have caught 500 metric tons of herring in the past year, or intend to catch 500 metric tons in the current year, must equip their vessels with an approved Vessel Monitoring System (VMS). The VMS units automatically report the vessel's position at least once per hour when the vessel is underway. Vessel owners must submit proof that the VMS has been installed. Herring carriers may be exempted from this requirement by obtaining a letter of authorization from NOAA.

II. Method of Collection

Position reports are automated and automatic. Proof of installation is mailed to NOAA. A letter of authorization can be requested by phone.

III. Data

OMB Number: 0648–0404.
Form Number: None.
Type of Review: Regular submission.
Affected Public: Business or other for-profit organizations, individuals or households.
Estimated Number of Respondents: 150.
Estimated Time Per Response: 1 hour to install a VMS; 2 minutes for submission of proof of installation; 5 seconds for an automated position report from the VMS or transponder system (10 minutes if an Inmarsat communication unit is used to transmit the data); and 2 minutes for a request for a letter of authorization exemption.
Estimated Total Annual Burden Hours: 816.
Estimated Total Annual Cost to Public: $298,000.

IV. Request for Comments

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: January 17, 2003.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 03–1787 Filed 1–24–03; 8:45 am]
BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 030121015–3015–01; I.D. 120602C]

RIN 0648–AQ66

Mid-Atlantic Fishery Management Council (Council); Request for Research Proposals (RFP)

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of solicitation for applications.

SUMMARY: NMFS announces that, for fishing year 2004, up to 3 percent of the total allowable landings (TAL) will be dedicated to research endeavors under a research set-aside (RSA) program. This notice describes how the application and selection process will operate for research projects funded under the RSA by a set-aside from the TAL of selected species. The RSA provides a mechanism to fund research and compensate vessels through the sale of fish harvested under the research quota. The setting of the actual research set-aside quotas will be the subject of future rulemaking. NMFS is soliciting proposals for research activities concerning the summer flounder, scup, black sea bass, Loligo squid, Illex squid, Atlantic mackerel, butterfish, bluefish, and tilefish fisheries.

DATES: All research proposals to be considered under this solicitation must be received between January 27, 2003, and 5 p.m., EST, on March 28, 2003, in the Northeast Regional Office (see **ADDRESSES**). Postmarks prior to the end of the receipt period will not be sufficient. Facsimile applications will not be accepted. For further information related to the timeframe for review and selection of proposals to be conducted with research quota set-asides, see Section A, Background, under **SUPPLEMENTARY INFORMATION.**

ADDRESSES: Proposals must be submitted to Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, One Blackburn Drive, Gloucester, MA 01930. Mark proposals "Attention—Mid-Atlantic Research Proposals." Copies of the Standard Forms for submission of research proposals may be found on the Internet in a PDF (Portable Document Format) version at *http://www.ofa.noaa.gov/grants*, under the title "Grant Application Forms and Budget Guidelines," or by contacting NMFS (see **FOR FURTHER INFORMATION CONTACT**).

FOR FURTHER INFORMATION CONTACT: Daniel Furlong, Executive Director, Mid-Atlantic Fishery Management Council, (302) 674–2331, fax (302) 674–5399, e-mail *cheaton@mafmc.org*, or Paul Perra, Fishery Policy Analyst, NMFS, (978) 281–9153, fax 978–281–9135, e-mail *paul.perra@noaa.gov*.

SUPPLEMENTARY INFORMATION:

A. Background

The award of a set-aside from the TAL of selected species became possible with the approval of Framework Adjustment 1 (Framework 1) to the Atlantic Mackerel, Squid, and Butterfish; Summer Flounder, Scup, and Black Sea Bass; and Bluefish Fishery Management Plans (FMPs); and the RSA provisions of the Tilefish FMP. Framework 1 was approved by the Secretary of Commerce on August 10, 2001. It established a procedure through which research set-aside amounts would be set annually as part of the Mid-Atlantic Fishery Management Council's (Council) quota-setting process. The set-asides may range between 0 and 3 percent of each species' TAL. The set-aside allocated for a given species is to be utilized primarily for research involving that species. However, to promote research in those cases where it would otherwise be infeasible, individual research projects may involve allocations from the set-asides for several of the species listed in this notice. Therefore, in addition to, or in lieu of, applying for part of the set-aside involving a species directly involved in a research project, applicants may also apply for up to 25 percent of the research set-aside quota for species not directly involved in a particular research project.

To be eligible for consideration, a research proposal for work to be conducted using a research set-aside allocation for the 2004 fishing year must be received during the application period identified in the DATES section

of this document. Applicants must submit one signed original and two signed copies of the completed application (including supporting information). Prior to selection, NOAA will convene a panel to review proposals submitted in response to this RFP.

The Council, in consultation with the Atlantic States Marine Fisheries Commission (Commission), will incorporate the level of research set-aside (amounts or percentages) for each of the set-aside species for the 2004 fishing year into the Council's recommendations for annual quota specifications. NMFS will consider the recommended level of set-aside as part of the associated rulemaking process. It is anticipated that most proposals will request that vessels conducting research be exempt from certain regulations for the relevant fishery. The impacts of such an exemption must be analyzed. To streamline the process for the review and approval of exempted fishing permit (EFP) applications, the Council will prepare, as appropriate, an analysis of the impacts associated with the anticipated exemptions during the annual quota specification process. This process is intended to satisfy the analytical and public notice provisions of the EFP regulations at 50 CFR 600.745. However, certain conditions may require the applicant to provide additional analysis associated with such exemptions (see section N of this notice).

The actual level of research set-aside quota available to applicants for the 2004 fishing year will depend on the TAL level specified by the Council at its quota-setting meetings in June and August 2003, and on the percentage (0 to 3 percent) of the TAL recommended by the Council and approved by NMFS as the level of research set-aside available for 2004. To help researchers develop proposals for the 2004 fishing year, the table below provides some guidance on the general magnitude of research set-asides and estimated values that a researcher might expect to be available for fishing year 2004. The table is based on TAL levels for these fisheries for the 2003 fishing year, and assumes that NMFS would approve the maximum set-aside level of 3 percent of the TAL, if requested. The table is intended only as a guide, to be used when developing research proposals for the 2004 fishing year; it does not necessarily reflect the actual RSA quota that will be allocated for fishing year 2004. Based on Council recommendation, NMFS could choose to adopt less than 3 percent of TAL as a set-aside, or could decide not to adopt any set-aside for a given fishery. The estimated values of the set-aside allocations will vary depending on market considerations prevailing at the time the research trips are conducted. In October 2002, the Council voted to set the research set-aside for tilefish at zero until after a stock assessment is complete. However, tilefish RSA projects could be considered upon completion of a stock assessment and/or through utilizing of RSA quota from other species.

TABLE 1. EXAMPLE OF 3–PERCENT RESEARCH SET-ASIDE, USING 2003 SPECIFICATIONS.

Allocation Species	Pounds (000 lb)	Kilograms (000 kg)	Estimated Value ($000)
Summer Flounder	699	317	1,005,
Scup	480	218	403
Black Sea Bass	204	93	318
Loligo Squid	1,125	510	743
Illex Squid	1,587	720	349
Atlantic Mackerel	11,571	5,249	926
Butterfish	390	177	129
Bluefish	1,191	540	358
Tilefish	0	0	0

B. Authority

Issuing grants is consistent with sections 303(b)(11), 402(e), and 404(c) of the Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. 1853(b)(11), 16 U.S.C. 1881a(e), and 16 U.S.C. 1881c(c), respectively.

C. Catalog of Federal Domestic Assistance (CFDA)

11.454, Unallied Management Projects

D. Funding Instrument and Project Period

In consultation with NMFS, the NOAA Grants Office will award a grant to successful applicants through the NOAA grant award process. The RSA harvest timeframe must fall within January 1 through December 31, 2004. There may be times when compensation (in terms of the timing in harvest of the RSA) is not concurrent with the timing of the research. In general, under such situations, no more than 50 percent of the requested RSA should be harvested prior to the conduct of research activities. Proposals requesting RSA harvest prior to or after that timeframe will not be considered.

E. Funding Availability

No Federal funds are provided for research under this notification. The Federal Government may issue an EFP or Letter of Acknowledgment (LOA), as applicable, which may provide special fishing privileges in response to research proposals selected under this program. The Federal Government shall not be liable for any costs incurred in the conduct of the project. Any funds generated from the landings authorized under a RSA grant shall be used to cover the cost of the research, including vessel costs, and to compensate vessel owners for expenses incurred. Therefore, the owner of each fishing vessel selected to land a species in excess of a trip limit or seasonal quota must use the proceeds of the sale of the excess catch to compensate the researcher for costs associated with the research activities and use of the vessel.

Any additional funds above the cost of the research activities (or excess program income) shall be retained by the vessel owner as compensation for the use of his/her vessel.

F. Scope of Research

Projects funded under a RSA must enhance understanding of the fishery resource or contribute to the body of information on which management decisions are made. Research, as well as additional voyages to obtain fish for compensation, may be conducted, as specified in the EFP or LOA, as applicable, in or outside of a closed area, within the timeframe of a commercial quota closure, and onboard

a fishing or other type of vessel, including recreational and/or commercial vessels.

Funds generated from the RSA landings shall be used to cover the cost of the research activities, including vessel costs, and to compensate boats for expenses incurred during the collection of the set-aside species. For example, the funds could be used to pay for gear modifications, monitoring equipment, additional provisions (e.g., fuel, ice, food for scientists), or the salaries of research personnel. The Federal Government is not liable for any costs incurred by the researcher or vessel owner, should the sale of the excess catch not fully reimburse the researcher or vessel owner for his/her expenses.

G. Eligibility Criteria

All commercial organizations; non-profit organizations; state, local, or tribal governments; institutions of higher education; and individuals are eligible to apply, provided that all proposal requirements are satisfied, and the proposal is received by the date specified in this document.

A person is not eligible to submit an application under this program if he/she is an employee of any Federal agency or a Regional Fishery Management Council. However, Council members who are not Federal employees may submit an application.

H. Proposal Preparation and Requirements

NOAA employees (whether full-time, part-time, or intermittent) are not permitted to assist in the preparation of an application, except that staff may provide information on program goals, funding priorities, application procedures, and completion of application forms. Since this is a competitive program, NMFS and NOAA employees will not provide assistance in conceptualizing, developing, or structuring proposals, or write letters of support for a proposal. However, the Council or NMFS contact person (see **FOR FURTHER INFORMATION CONTACT**) may provide assistance to researchers who are seeking vessels to participate in the collection of set-aside species or directly in research projects. NMFS, in consultation with the Council, may decide to hold a meeting with the public to discuss general topics concerning past RSA program accomplishments and ways to enhance communications on funding priorities and associated potential study methods. Such meetings will be publicized by NMFS through a **Federal Register** notice, and through the public mailing list maintained by the Council office (see **FOR FURTHER CONTACT INFORMATION CONTACT**).

Proposals must identify the research to be conducted and the total amount of the set-aside species requested for the project, including its approximate cash value. If a waiver of Federal regulations is proposed, a list of the specific regulations to be waived and a brief justification for each regulation to be waived must be included with the proposal.

In addition, each proposal must identify the RSA harvesting activities for the participating vessel(s) that would make a trip to collect the set-aside species. The vessel(s) selected by the applicant must be listed in the proposal, if possible, or specifically identified prior to final approval by NOAA. Proposals may request that the quota set-aside be collected separately from the research trips. The separate compensation trips do not necessarily have to be conducted by the same vessel. In general, compensation (in terms of the value of fish landed) should not exceed 2.5 times the cost of the associated research (See Evaluation Criterion 2 in Section J.).

The researcher's proposal must state the amount of funds required to support the research project, including any costs for participation by project scientists or consultants, as well as the amount required to compensate the vessel owner either for the collection of set-aside species, or for participation in the research project, or both. The proposal should also include the agreement between the applicant and participating vessel operators that shows exactly how the research activity is to be paid for, if possible, or such agreement must be provided prior to final approval by NOAA.

I. Project Funding Priorities

The Council and NOAA will give priority to funding research proposals in the following areas identified as research priorities by the Council and Commission for the 2004 fishing year (not listed in order of priority):

1. Bycatch and discard reduction concerning: (a) distinctions between regulatory discards and bycatch attributed to gear, including mesh selectivity and/or overall gear design in the summer flounder fishery; (b) gear modifications in the Loligo squid fishery to reduce scup and other species bycatch; (c) discard studies in the Loligo and scup fisheries; (d) better estimates of recreational discards in the summer flounder, scup, black sea bass, and bluefish fisheries; or (e) ways to decrease discards associated with increases in size limits.

2. Mesh and gear selectivity focusing on: (a) the examination of summer flounder catch composition in small-mesh net fisheries within the summer flounder small-mesh exemption area; (b) summer flounder mesh selectivity studies; (c) scup mesh selectivity; (d) squid mesh selectivity; (e) black sea bass mesh selectivity; (f) the development of threshold triggers based on gear and fishery characteristics; (g) evaluation of various pot vent sizes and shapes for black sea bass and scup; (h) estimation of mortality of black sea bass left in pots during the closed season; and (i) mesh retention studies of 2 1/2–inch (6.35–cm), 2 3/4–inch (6.99–cm), and 3–inch (7.63–cm) mesh for butterfish.

3. Fishing impacts on habitat pertaining to: (a) mobile gear impacts on tilefish burrows; (b) scup spawning areas and scup larval settlement areas in coastal/estuarine waters; (c) benthic habitat of juvenile and adult black sea bass, and scup offshore wintering areas; (d) mapping of spawning areas and egg mop areas for Loligo squid; and (e) further delineation of essential fish habitat (EFH), particularly in nursery areas for summer flounder, scup, and black sea bass, as well as the potential for possible gear impacts to this EFH.

4. Cooperative stock assessment surveys focusing on: (a) the use of alternative industry assessment methods to determine abundance of Atlantic mackerel; (b) the summer flounder fishery; (c) surveys for summer flounder in areas not traditionally sampled by NMFS Northeast Fisheries Science Center (NEFSC) gear; (d) side-by-side comparisons for summer flounder and scup of commercial and NEFSC survey gear; (e) better survey information for bluefish; (f) tagging studies of bluefish movements; and (g) DNA analysis for stock descriptions of Atlantic bluefish and Atlantic mackerel.

5. Improved recreational fishery data focusing on: (a) research to enhance the overall knowledge of the recreational fishery; (b) statistical models to evaluate the effectiveness of recreational management measures and/or data collection process; (c) studies of bluefish, summer flounder, scup, and black sea bass hooking mortality by size of fish and the compliance with the regulations for these species; and (d) tagging studies with break-away hooks for movement of tilefish.

6. Other: (a) an evaluation of redirection of fishing effort with area closures for black sea bass; (b) an evaluation of whether artificial reefs increase the productivity of black sea bass or simply concentrate the resource; (c) an evaluation of the mixing of Illex and Loligo squid in September and

October; (d) increased and more representative sea sampling of the various fisheries in which summer flounder, scup, and black sea bass are caught (needed to adequately characterize the length composition of the discards); (e) better estimates of discard mortality for the recreational and commercial fisheries (by gear type) for each species of Council-managed fish; (f) a study of summer flounder fecundity and why recruitment appears low as the resource is being rebuilt; (g) a study to develop optimum sampling levels to estimate discards of summer flounder, scup, and black sea bass; (h) increased and more representative port sampling of the various fisheries in which summer flounder, scup, and black sea bass are caught; (i) development of fishery independent surveys and expansion of existing surveys to capture all sizes and age classes of summer flounder, scup, and black sea bass in order to develop independent catch-at-age and catch per unit effort data; (j) expansion of age sampling of summer flounder, scup, and black sea bass from commercial and recreational catches, with special emphasis on collection of large specimens; (k) quantification of the percentage of commercial fishery trips that had discards but no landings, and evaluation of how such trips contribute to the total commercial fishery discard estimate; and (l) evaluation of fishery management actions, e.g., do closures have a net positive effect on fishing mortality by postponing such mortality, or do they simply allow for concentration of resources such that when the seasons open the consequent fishing effort offsets the mortality reductions that occurred during the closure?

J. Evaluation Criteria

The review panel convened by NOAA to evaluate proposals submitted in response to this RFP (see section L of this notice), will evaluate proposals by assigning scores up to the maximum indicated for each of the following criteria:

1. A clear definition of the problem, need, issue or hypothesis to be addressed. The proposal should describe its relevance to RSA program priorities. If not directly related to priorities listed in this solicitation, provide justification why the proposed project should be considered. (25 points)

2. Cost-effectiveness of the project. The requested value of the anticipated revenue from the RSA should be commensurate with estimated project costs, and generally should not exceed 2.5 times the cost of the associated research. Economic and budget projections should be quantified, to the extent possible. Where appropriate, use of existing equipment (fishing gear) is preferred versus acquisition of new equipment. (25 points)

3. Special emphasis will be given to proposals that foster and improve cooperative interactions with NMFS. A clear definition of the approach to be used, including description of field work, theoretical studies, and laboratory analysis to support the proposed research, and the ability of the applicant to physically complete RSA harvest during the 2004 calendar year in the area and time proposed is important. The time frame for harvesting the RSA catch and conducting the proposed research should be clearly specified. Activities that take place over a wider versus narrower geographical range, where appropriate, are preferred. (25 points)

4. Demonstration of support, cooperation and/or collaboration with the fishing industry, and qualifications/experience of project participants. Where appropriate, unified versus separate stand-alone proposals on related projects involving multiple principal investigators are preferred. (15 points)

5. Identification of anticipated benefits, potential users, likelihood of success, and methods of disseminating results. Where appropriate, data generated from the research must be formatted in a manner consistent with NMFS' and Atlantic Coastal Cooperative Statistical Program's (ACCSP) databases. A copy of this format is available from NMFS (see **FOR FURTHER INFORMATION CONTACT**). (10 points)

K. Selection Procedures

NOAA will solicit written technical evaluations from the Council members who make up the Research Set-Aside Committee (Committee) and from three or more appropriate private and public sector experts to score proposals using the criteria specified in section J of this notification to determine the technical merit of the proposal. Following completion of the technical evaluation, NOAA will convene a review panel, including the Committee and technical experts, to review and individually critique the scored proposals to enhance NOAA's understanding of the proposals. Initial successful applicants may be required, in consultation with NMFS, to further refine/modify study methodology as a condition of project approval. No consensus recommendations will be made. Based on the results of the technical review's comments and scores, comments provided by the review panel, and the following program policy factors, NOAA will select the successful proposals and inform the Council of its recommendations. The program policy factors are: (1) The time of year the research activities are to be conducted; (2) the ability of the proposal to meet the experimental fishery requirements discussed under section N of this notice; and (3) redundancy of research projects. Therefore, the highest scoring projects may not necessarily be selected for an award. Subsequent approval by the NOAA Grants Officer will allow NMFS, as applicable, to exempt selected vessel(s) from specific regulations implementing the respective FMPs through written notification to the applicant.

For proposals that request exemptions from existing regulations (e.g., possession limits, closed seasons), the impacts of the proposed exemptions must be analyzed. The Council will analyze these impacts as part of the impacts of the proposed specifications for the upcoming fishing year in the annual quota specification packages it submits to NMFS. However, those individuals with proposals that include vessel activities that extend beyond the scope of the analysis provided by the Council may be required to provide additional analysis before issuance of an EFP (see section N). Any applicants who request regulatory exemptions that are beyond the scope of the Council analysis may be required to adhere to the regulations that govern the issuance of an EFP by NMFS (see section N). If necessary, and as appropriate, NMFS will consult with the Council and successful applicants to secure the information required for granting an exemption, if issuance of an EFP is necessary for the research to be conducted. The final decision on the applicant's proposal for research quota will not be made by NOAA until NMFS advises that the applicant's EFP request is approved.

L. Proposal Format

Proposals should be limited to seven pages, excluding item 6 below. The format may vary, but must include:

1. A project summary.

2. A narrative project description to include: (a) project goals and objectives; (b) the relationship of the proposed project to management needs or priorities identified by the Council; (c) a statement of work (project design and management, including who is responsible, expected products, and participants other than applicant); and (d) a summary of the existing state of

knowledge related to the project and contribution and relevance of the proposed work.

3. A description of all funding sources (including revenues derived from the sale of the species harvested under the research quota set-aside) and funding needs. This element of the proposal must include the amount of research quota set-aside, in pounds, requested for each species and the expected funds to be generated by the sale of those species, as well as the expected funds to be allocated to the researcher and any involved fishing vessel.

4. A budget that includes a breakdown of research costs, including, labor, vessel, permit, equipment, supplies, and overhead, as applicable. Applicants must submit a Standard Form 424 (Application for Federal Assistance), including a detailed budget using Standard Form 424A, (Budget Information-- Non-Construction Programs), Standard Form 424B (Assurances - Non-Construction Programs), Commerce Department Form CD–511, (Certifications Regarding Debarment, Suspension and Other Responsibility Matters: Drug-Free Workplace Requirements and Lobbying), and if applicable, Standard Form SF-LLL (Disclosure of Lobbying Activities). Copies of these Standard Forms may be found on the Internet in a PDF version at *http://www.ofa.noaa.gov/grants.*

5. A list of any Federal or state regulations that the applicant needs to have waived and a brief justification for such a waiver. Applicants are urged to discuss with state fisheries agencies any proposed landings in their state(s). Note that requests for waivers of any state regulations will be forwarded to the appropriate state agency(s). NOAA cannot guarantee that state agencies will accede to any particular request.

6. Supporting documents, including resumes, letters of intent for vessels to participate in research activities, and any relevant contracts.

M. Final Reports and Data Submission

NOAA will require project researchers to submit to NOAA, with a copy for the Council, semi-annual progress reports and a final completion report describing their research project results, and other acceptable deliverable(s), in a timeframe that is specific to the type of research conducted. The format of the report may vary, but must contain:

1. A brief summary of the completion report (200–word or less abstract);

2. A description of the issue/problem that was addressed;

3. A detailed description of methods of data collection and analyses;

4. A discussion of results and any relevant conclusions presented in a format that is understandable to a non-technical audience. This should include benefits and/or contributions to management decision-making.

5. A list of entities, firms, or organizations that actually performed the work and a description of how the work was accomplished; and

6. A detailed final accounting of all funds used to conduct research, including generation of project income resulting from sale of research set-aside quota. The financial information must be submitted on Office of Management and Budget (OMB) Standard Form–269 (Financial Status Report). Copies of this Standard Form may be found on the Internet in a PDF version at *http://www.ofa.noaa.gov/grants.* Projects designed to collect new data for inclusion in NMFS or ACCSP databases must submit the data in electronic format with appropriate documentation. Certain databases will have highly specific requirements as to required fields and content. Applicants must agree to provide newly collected data in a format acceptable to the administrators of the receiving databases.

N. Other Requirements

The Council staff will bear the primary responsibility for the evaluations of impacts associated with the proposed research, including analysis of any requested regulatory waivers. However, applicants proposing research and/or compensation fishing that goes beyond the scope of analysis provided by the Council staff in the Council's annual specification packages may be required to submit all information necessary for a Supplemental Environmental Assessment to obtain an EFP from NMFS. Should an applicant be required to submit a request for an EFP to NMFS, such submission should be received by NMFS at least 60 days before the requested start date of the proposed research to allow for additional review and analysis. A final decision on the applicant's grant request for research quota will not be made until NMFS has approved the applicant's EFP request.

If any part of the proposed research activities occur in state waters, successful applicants, as a condition of project approval, will be required to provide NMFS with a copy of written documentation to demonstrate that the applicant has contacted the concerned state fishery management agency or agencies for any required state authorization. Also, successful applicants will be required to provide NMFS with a copy of written documentation to demonstrate that the applicant has contacted the concerned state(s) fishery management agency or agencies with respect to the need for any required state authorization(s) for any planned commercial landings. Information on identity of state fishery management agencies is available from NMFS (see **FOR FURTHER INFORMATION CONTACT**).

O. Other Requirements of Recipients

The Department of Commerce Pre-Award Notification of Requirements for Grants and Cooperative Agreements contained in the **Federal Register** notice of October 1, 2001 (66 FR 49917), as amended by the **Federal Register** notice published on October 30, 2002 (67 FR 66109), is applicable to this solicitation.

P. Disposition of Unsuccessful Applications

If an application is not selected, NOAA will return the proposal and related documents to the applicant.

Q. Other

DOC/NOAA supports cultural and gender diversity in our programs and encourages women and minority individuals and groups to submit applications.

DOC/NOAA encourages applications from members of the fishing community, and applications that involve fishing community cooperation and participation.

Classification

Prior notice and opportunity for public comments are not required by the Administrative Procedure Act or any other law for this notice concerning grants, benefits, and contracts (5 U.S.C. 553(a)(2)).

Because a general notice of proposed rulemaking as specified in 5 U.S.C. 553, or any other law, was not required for this action, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, are not applicable.

Applications under this program are subject to the provisions of Executive Order "Intergovernmental Review of Federal Programs."

This document contains collection-of-information requirements subject to the Paperwork Reduction Act (PRA). The use of Standard Forms 269, 424, 424A, 424B, and SF-LLL have been approved by OMB under the respective control numbers 0348–0039, 0348–0043, 0348–0044, 0348–0040, and 0348–0046.

Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a

collection of information subject to the PRA, unless that collection displays a currently valid OMB control number.

This action has been determined to be not significant for purposes of Executive Order 12866.

Dated: January 21, 2003.

Rebecca Lent,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service

[FR Doc. 03–1781 Filed 1–22–03; 4:29 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF DEFENSE

Office of the Secretary

Committee Meeting of the Defense Department Advisory Committee on Women in the Services (DACOWITS)

AGENCY: Department of Defense, Advisory Committee on Women in the Services.

ACTION: Notice.

SUMMARY: On December 27, 2002, the Department of Defense published a notice concerning the committee meeting of the Defense Department Advisory Committee on Women in the Services (DACOWITS)(67 FR 79063). The Deputy Secretary of Defense will make remarks on January 17, 2002 at 4:15. All other information remains unchanged.

Dated: January 9, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 03–1694 Filed 1–24–03; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Availability for Non-Exclusive, Exclusive, or Partially Exclusive Licensing of U.S. Provisional Patent Application Concerning Battlefield Medical Information System-Telemedicine

AGENCY: Department of the Army, DoD.

ACTION: Notice.

SUMMARY: In accordance with 37 CFR 404.6 and 404.7, announcement is made of the availability for licensing of the invention described in U.S. Provisional Patent Application No. 60/381,058 entitled "Battlefield Medical Information System-Telemedicine (BMIST)," filed May 15, 2002. The United States Government, as represented by the Secretary of the Army, has rights in this invention.

ADDRESSES: Commander, U.S. Army Medical Research and Materiel Command, Attn: Command Judge Advocate, MCMR–JA, 504 Scott Street, Fort Detrick, Frederick, MD 21702–5012.

FOR FURTHER INFORMATION CONTACT: For patent issues, Ms. Elizabeth Arwine, Patent Attorney, (301) 619–7808. For licensing issues, Dr. Paul Mele, Office of Research & Technology Assessment, (301) 619–6664, both at telefax (301) 619–5034.

SUPPLEMENTARY INFORMATION: The BMIST is a point-of-care First Responder Medic digital medical record, diagnostic tool that allows input, storage and provides preliminary assessment and output of medical information at the point of care.

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 03–1763 Filed 1–24–03; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Availability for Non-Exclusive, Exclusive, or Partially Exclusive Licensing of U.S. Provisional Patent Application Concerning Digital Healthcare Documentation System

AGENCY: Department of the Army, DoD.

ACTION: Notice.

SUMMARY: In accordance with 37 CFR 404.6 and 404.7, announcement is made of the availability for licensing of the invention described in U.S. Provisional Patent Application No. 60/378,455 entitled "Digital Healthcare Documentation System," filed May 6, 2002. The United States Government, as represented by the Secretary of the Army, has rights in this invention.

ADDRESSES: Commander, U.S. Army medical Research and Materiel Command, Attn: Command Judge Advocate, MCMR–JA, 504 Scott Street, Forth Detrick, Frederick, MD 21702–5012.

FOR FURTHER INFORMATION CONTACT: For patent issues, Ms. Elizabeth Arwine, Patent Attorney, (301) 619–7808. For licensing issues, Dr. Paul Mele, Office of Research & Technology Assessment, (301) 619–6664, both at telefax (301) 619–5034.

SUPPLEMENTARY INFORMATION: The Digital Healthcare Documentation System (DHDS) is a multi-level computer-based patient record (CPR) that allows for the input, storage and output of healthcare information at various echelons of care. The system can be set up for use by one individual using a single computer or by a large medical treatment facility on a network.

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 03–1762 Filed 1–24–03; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Intent To Grant an Exclusive License of a U.S. Government-Owned Patent

AGENCY: Department of the Army, DoD.

ACTION: Notice.

SUMMARY: In accordance with 35 U.S.C. 209(e) and 37 CFR 404.7(a)(l)(i), announcement is made of the intent to grant an exclusive, royalty-bearing, revocable license to U.S. patent number 6,419,629 issued July 16, 2002 entitled "Method for Predicting Human Cognitive Performance," to Precision Control Design, Inc. with its principal place of business at 135 Eglin Parkway S.E., Fort Walton Beach, FL 32548–5518.

DATES: File written objections by February 11, 2003.

ADDRESSES: Commander, U.S. Army Medical Research and Material Command, ATTN: Command Judge Advocate, MCMR–JA, 504 Scott Street, Fort Detrick, Frederick, MD 21702–5012.

FOR FURTHER INFORMATION CONTACT: For patent issues, Ms. Elizabeth Arwine, Patent Attorney, (301) 619–7808. For licensing issues, Dr. Paul Mele, Office of Research & Technology Assessment, (301) 619–6664, both at telefax (301) 619–5034.

SUPPLEMENTARY INFORMATION: Anyone wishing to object to the grant of this license can file written objections along with supporting evidence, if any, within 15 days from the date of this publication. Written objections are to be filed with the Command Judge Advocate (*see* **ADDRESSES**).

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 03–1761 Filed 1–24–03; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before March 28, 2003.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: January 21, 2003.

John D. Tressler,

Leader, Regulatory Management Group, Office of the Chief Information Officer.

Federal Student Aid

Type of Review: New Collection.
Title: eZ-Audit: Electronic Submission of Financial Statements and Compliance Audits.
Frequency: Annually.
Affected Public:
Not-for-profit institutions (primary); State, Local, or Tribal Gov't, SEAs or LEAs.
Reporting and Recordkeeping Hour Burden:
Responses: 4000; Burden Hours: 4000.
Abstract: EZ-Audit will support the electronic submission of financial statements and compliance audits as required by 34 CFR 668.23 for all institutions participating in the Title IV, FSA programs.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, by selecting the "Browse Pending Collections" link and by clicking on link number 2217. When you access the information collection, click on "Download Attachments" to view. Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address *Vivian.reese@ed.gov*. Requests may also be electronically mailed to the internet address *OCIO_RIMG@ed.gov* or faxed to 202–708–9346. *Please specify the complete title of the information collection when making your request.*

Comments regarding burden and/or the collection activity requirements should be directed to Joseph Schubart at his e-mail address *Joe.Schubart@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 03–1716 Filed 1–24–03; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Northern New Mexico

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Northern New Mexico. The Federal Advisory Committee Act (Pub. L. No. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Wednesday, March 19, 2003, 1 p.m.–8:30 p.m.

ADDRESSES: Office of Los Alamos Site Operations, 528 35th Street, Room 100, Los Alamos, NM.

FOR FURTHER INFORMATION CONTACT: Menice Manzanares, Northern New Mexico Citizens' Advisory Board, 1660 Old Pecos Trail, Suite B, Santa Fe, NM 87505. Phone (505) 995–0393; fax (505) 989–1752 or e-mail: *mmanzanares@doeal.gov*.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

1 p.m. Call to order by Ted Taylor, DDFO; establishment of a quorum; welcome and introductions by Jim Brannon, Board Chair; approval of agenda; approval of Nov. 20th meeting minutes
1:15 p.m. Public comment
1:30 p.m. Board business
A. Recruitment/membership update
B. Report from Chairman Brannon
C. Report from DOE, Ted Taylor, DDFO
D. Report from Executive Director, Menice S. Manzanares
E. New business
2:30 p.m. Break
2:45 p.m. Reports from committees
A. Community Outreach Committee, Debra Walsh
B. Monitoring and Surveillance Committee, Jim Brannon
C. Environmental Restoration Committee, Dr. Fran Berting
D. Waste Management Committee, Richard Gale
1. TRU Waste Workshop Recommendation(s)
E. Ad Hoc Committee on Recommendation Process (Don Jordan, Jim Brannon, and Dr. Berting)
F. Ad Hoc Committee on Demographic Profile of Board (Dr. Ghosh and Debra Welsh)
4:30 p.m. Amendment to bylaws (first reading)
A. Amendment adding to the "Functions" of the Board under section II, paragraph a, on page 1
5 p.m. Dinner break
6:15 p.m. Presentation by Ron Curry, Secretary of New Mexico Environment Department

6:45 p.m. Presentation by Dr. Paul Schumann, "LANL's Public Involvement Plan"

7:30 p.m. Break

7:45 p.m. Public comment

8 p.m. Board comment

8:20 p.m. Recap of meeting

8:30 p.m. Adjourn

This agenda is subject to change at least one day in advance of the meeting.

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Menice Manzanares at the address or telephone number listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer (DDFO) is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of five minutes to present their comments at the beginning of the meeting.

Minutes: Minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585 between 9 a.m. and 4 p.m., Monday–Friday, except Federal holidays. Minutes will also be available at the Public Reading Room located at the Board's office at 1660 Old Pecos Trail, Suite B, Santa Fe, NM. Hours of operation for the Public Reading Room are 9 a.m.–4 p.m. on Monday through Friday. Minutes will also be made available by writing or calling Menice Manzanares at the Board's office address or telephone number listed above. Minutes and other Board documents are on the Internet at: *http:www.nnmcab.org.*

Issued in Washington, DC on January 21, 2003.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 03–1741 Filed 1–24–03; 8:45 am]

BILLING CODE 6405–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC03–20–001]

California Power Exchange Corporation; Notice of Filing

January 21, 2003.

Please take notice that on December 30, 2002, the Federal Energy Regulatory Commission (Commission) served on the California Power Exchange Corporation (CalPX) and the Official Committee of Participant Creditors of CalPX a Deficiency Letter in reference to the "Request by the Official Committee of Participant Creditors of California Power Exchange Corporation for Approval of Funding and Governance as Provided in Confirmed Chapter 11 Plan, and for Expedited Consideration" which is docketed as Docket No. EC03–20–000. On January 16, 2003, the CalPX filed with the Commission a letter by which CalPX seeks to clarify the transition from the current CalPX to the Reorganized CalPX.

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866)208–3676, or for TTY, contact (202)502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings. *Comment Date:* January 31, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–1724 Filed 1–24–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC03–20–001]

California Power Exchange Corporation; Notice of Filing

January 21, 2003.

Please take notice that on December 30, 2002, the Federal Energy Regulatory Commission (Commission) served on the California Power Exchange Corporation (CalPX) and the Official Committee of Participant Creditors of CalPX (the Committee) a Deficiency Letter in reference to "Request by the Official Committee of Participant Creditors of California Power Exchange Corporation for Approval of Funding and Governance as Provided in Confirmed Chapter 11 Plan, and for Expedited Consideration'(the Request) which is docketed as No. EC03–20–000. On January 10, 2003, the Committee filed with the Commission its letter in response to the Deficiency Letter.

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov* , using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866)208–3676, or for TTY, contact (202)502–8659. Protests and interventions may be filed electronically

via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Comment Date: January 31, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–1725 Filed 1–27–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–383–003]

Columbia Gas Transmission Corporation; Notice of Compliance Filing

January 15, 2003.

Take notice that on January 10, 2003, Columbia Gas Transmission Corporation (Columbia), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised tariff sheets, with a proposed effective date of August 1, 2002:

Second Substitute Sixth Revised Sheet No. 283
Substitute Original Sheet No. 283A

Columbia states that it made a filing with the Commission on July 2, 2002 to include a new Section 4.2(i) to Section 4.2 of the General Terms and Conditions (GTC) of its FERC Gas Tariff to permit it, under certain limited circumstances, to reserve capacity that is available for firm service under the provisions of GTC Section 4.2 for future expansion projects. The Commission approved the filing on July 31, 2002 (100 FERC ¶ 61,136 (2002)), subject to modifications. Columbia filed its first compliance filing in this docket on August 15, 2002, which modified tariff language consistent with the July 31 Order. The Commission issued an order on the compliance filing and rehearing on December 26, 2002 (101 FERC ¶ 61,380). In this order, the Commission accepted the August 15 filing, subject to further modification. Columbia asserts that the instant filing incorporates the required modifications.

Columbia states that copies of its filing have been mailed to all firm customers, interruptible customers, and affected state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Protest Date: January 23. 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–1732 Filed 1–24–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–233–000]

Dauphin Island Gathering Partners; Notice of Tariff Filing

January 15, 2003.

Take notice that on January 10, 2003, Dauphin Island Gathering Partners (Dauphin Island) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, First Revised Sheet No. 203, to be effective February 9, 2003.

Dauphin Island states that this filing is submitted to remove the five-year limitation from the Right of First Refusal (ROFR) matching provisions in compliance with the Order on Remand issued October 31, 2002.

Dauphin Island states that copies of the filing are being served on all participants listed on the service list in this proceeding.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: January 23, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–1734 Filed 1–24–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–336–008]

El Paso Natural Gas Company; Notice of Compliance Filing

January 15, 2003.

Take notice that on January 10, 2003, El Paso Natural Gas Company (El Paso) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1A, the tariff sheets listed in Appendices A and B to the filing with an effective date of November 1, 2002.

El Paso states that the tariff sheets are being filed in compliance with the Commission's December 26, 2002 order in this proceeding. Additionally, El Paso is filing pursuant to section 154.206 of the Commission's Regulations under the Natural Gas Act a motion to place into effect on November 1, 2002, the rates and tariff provisions accepted by the Commission's December 26 Order in this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests must be

filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Protest Date: January 23, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–1730 Filed 1–24–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP91–143–053]

Great Lakes Gas Transmission Limited Partnership; Notice of Revenue Sharing Report, November 2001–October 2002

January 15, 2003.

Take notice that on January 10, 2003, Great Lakes Gas Transmission Limited Partnership (Great Lakes) filed its Interruptible/Overrun (I/O) Revenue Sharing Report with the Commission in accordance with the Stipulation and Agreement (Settlement) filed on September 24, 1992, and approved by the Commission's February 3, 1993 order issued in Docket No. RP91–143–000, *et al.*

Great Lakes states that this report reflects application of the revenue sharing mechanism and remittances made to firm shippers for I/O revenue collected for the November 1, 2001, through October 31, 2002, period, in accordance with article IV of the Settlement. Great Lakes states that such remittances, totaling $18,780, were made to Great Lakes' firm shippers as shown in the schedules included in the filing.

Great Lakes further states the amounts remitted are based on implementation of the Commission's orders in Docket Nos. RP91–143, RS92–63 and RP95–422, *et al.*

Great Lakes states that copies of the report were sent to its firm customers, parties to this proceeding and the Public Service Commissions of Minnesota, Wisconsin and Michigan.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's rules and regulations. All such protests must be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment date: January 22, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–1737 Filed 1–24–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–361–005]

Gulfstream Natural Gas System, L.L.C.; Notice of Compliance Filing

January 15, 2003.

Take notice that on January 10, 2003, Gulfstream Natural Gas System, L.L.C. (Gulfstream) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheets, to be effective June 1, 2002.

Third Revised Sheet No. 8
First Revised Sheet No. 8B
Original Sheet No. 26
Sheet Nos. 27–29

Gulfstream states that the purpose of this filing is to comply with the Order on Rehearing and Compliance Filings issued by the Commission on December 26, 2002 in Docket Nos. RP02–361–001, *et al.* (December 26 Order). Gulfstream states that its Second Revised Sheet No. 8 and Original Sheet No. 8B contain a footnote which states that the negotiated rate agreements do not deviate in any material respect from the Form of Service Agreement contained in Gulfstream's Tariff.

Gulfstream also states that the December 26 Order required Gulfstream to identify in the footnotes on these tariff sheets certain of the negotiated rate agreements which are nonconforming service agreements.. Gulfstream states that Third Revised Sheet No. 8 and First Revised Sheet No. 8B filed herewith both incorporate the revisions to the footnotes as required by the December 26 Order. In addition, the December 26 Order required Gulfstream to add a provision to its tariff that would provide for a meeting between Gulfstream and its customers once every two years to discuss operational issues, and Gulfstream states that it has provided for this on Original Sheet No. 26.

Gulfstream states that copies of its filing have been mailed to all affected customers, interested state commissions, and all parties listed on the Official Service List compiled by the Secretary of the Commission in this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Protest Date: January 23, 2003.

Magalie R. Salas,
Secretary.
[FR Doc. 03–1731 Filed 1–24–03; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–231–000]

Iroquois Gas Transmission System, L.P.; Notice of Fuel Calculations

January 15, 2003.

Take notice that on January 7, 2003, Iroquois Gas Transmission System, L.P., (Iroquois) tendered for filing its schedules which reflect calculations supporting the Measurement Variance/ Fuel Use Factors utilized by Iroquois during the period July 1, 2002 through December 31, 2002.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: January 22, 2003.

Magalie R. Salas,
Secretary.
[FR Doc. 03–1733 Filed 1–24–03; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL01–50–005]

KeySpan-Ravenswood, Inc. v. New York Independent System Operator; Notice of Filing

January 21, 2003.

Take notice that on January 17, 2003, Consolidated Edison Company of New York, Inc. (Con Edison) tendered for filing with the Federal Energy Regulatory Commission (Commission) a compliance filing in accordance with the Commission's December 18, 2002 letter order (101 FERC ¶ 61,296) in the above-captioned proceeding.

Con Edison states that the compliance filing would amend Con Edison's Open Access Transmission Tariff, FERC Electric Tariff Original Volume No. 1.

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov* , using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866)208–3676, or for TTY, contact (202)502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings. *Comment Date:* February 7, 2003.

Magalie R. Salas, Secretary.

[FR Doc. 03–1726 Filed 1–24–03; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL03–41–000]

New York State Electric & Gas Corporation, Complainant, v. Niagara Mohawk Power Corporation, Respondent; Notice of Complaint

January 15, 2003.

Take notice that on January 14, 2003, New York State Electric & Gas Corporation (NYSEG) tendered for filing a complaint alleging that the New York Independent System Operator, Inc. (NYISO) has failed to enforce the expiration date in Attachment L of the NYISO Open Access Transmission Tariff (OATT) with respect to grandfathering for a pre-NYISO transmission service agreement (TSA) between Niagara Mohawk Power Corporation (NMPC) and Allegheny Electric Cooperative, Inc. (AEC). NYSEG requests that the Federal Energy Regulatory Commission (Commission) issue an order that, among other things: (1) Requires the NYISO to provide to NYSEG the billing information needed by NYSEG to bill AEC (or its designated agent) for NYSEG's Transmission Service Charge (TSC) under the NYISO OATT commencing as of July 1, 2001; (2) requires AEC (or the party contractually obligated to pay NYISO OATT charges for AEC) to pay NYSEG's TSC under the NYISO OATT (plus interest) commencing as of July 1, 2001; and (3) to avoid double billing, directs NMPC to make all appropriate refunds to AEC (with interest) for transmission charges collected from AEC under the NMPC service agreement after its June 30, 2001 grandfathering expiration date.

NYSEG states that copies of the filing were served upon the NYISO, NMPC, AEC, and the New York Power Authority.

Any person desiring to be heard or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. The answer to the complaint and all comments, interventions or protests must be filed on or before the comment date. This filing is available for review at the Commission in the Public

Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866)208–3676, or for TTY, contact (202)502–8659. The answer to the complaint, comments, protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Comment Date: February 3, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–1818 Filed 1–24–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–235–000]

Northern Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

January 15, 2003.

Take notice that on January 13, 2003, Northern Natural Gas Company (Northern) tendered for filing to become part of Northern's FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheets proposed to be effective on February 13, 2003:

Tenth Revised Sheet No. 2
62 Revised Sheet No. 53
Sixth Revised Sheet No. 101
Third Revised Sheet No. 104
Fourth Revised Sheet No. 105
Third Revised Sheet No. 116
Second Revised Sheet No. 118
Fourth Revised Sheet No. 119
Second Revised Sheet No. 125C
First Revised Sheet No. 127
Sixth Revised Sheet No. 135
Sixth Revised Sheet No. 142
First Revised Sheet No. 161
Fourth Revised Sheet No. 200
Second Revised Sheet No. 442
Original Sheet No. 442A
Fourth Revised Sheet No. 446
Original Sheet No. 446A
Second Revised Sheet No. 447
Sheet No. 448
Sheet No. 461
Sheet No. 462 (deleted)
Second Revised Sheet No. 404
First Revised Sheet No. 405
Sheet No. 406
Sheet No. 412 (deleted)
Sheet No. 413 (deleted
Sheet No. 414 (deleted)
Sheet No. 415 (deleted)
Sheet No. 416 (deleted)
Sheet No. 424 (deleted)
Sheet No. 425 (deleted)
Fourth Revised Sheet No. 431
Original Sheet No. 431A
Fourth Revised Sheet No. 441
Original Sheet No. 441A
Second Revised Sheet No. 233
Fifth Revised Sheet No. 264
Third Revised Sheet No. 400
Original Sheet No. 400A
Fourth Revised Sheet No. 401
Second Revised Sheet No. 402
First Revised Sheet No. 403
Original Sheet No. 403A

Northern states that it is submitting the revised tariff sheets listed above to revise its generally applicable tariff provisions and its forms of service agreements to set forth provisions which could be agreed upon in transportation service agreements.

Northern further states that copies of the filing have been mailed to each of its customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: January 27, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–1736 Filed 1–24–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP02–4–002]

Northwest Pipeline Corporation; Notice of Amendment

January 15, 2003.

Take notice that on January 8, 2003, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah, 84158, filed in Docket No. CP02–4–002, an application, pursuant to Section 7(c) of the Natural Gas Act and part 157 of the Federal Energy Regulatory Commission's regulations to amend the certificate of public convenience and necessity issued June 27, 2002, in Docket Nos. CP02–4–000 and –001, for Northwest's Evergreen Expansion project. This application is on file with the Commission and open to public inspection. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659.

Specifically, Northwest requests the Commission to approve: (1) Revised expansion facilities in the State of Washington at the Mt. Vernon, Willard and Roosevelt Compressor Stations, along with eliminating expansion work at the Chehalis Compressor Station which in aggregate will reduce the originally certificated compressor horsepower additions by 3,390 hp without impacting the originally certificated capacity additions; (2) addition of the Lake Tapps line lowering of approximately 270-foot segments of Northwest's existing mainline and mainline loop in Pierce County, Washington, in conjunction with the installation of the originally certificated Auburn Loop; (3) revised levelized, incremental 15-year and 25-year term transportation rates for the Evergreen Expansion shippers, along with an associated one-time revenue crediting provision; (4) a revised initial

incremental fuel rate for the Evergreen Expansion shippers, and related revised *pro forma* tariff provisions; (5) regulatory asset accounting treatment to allow deferred recovery of the depreciation and pretax return attributable to the completion of certain compression facilities three months prior to commencement of the incremental expansion service the facilities are being built to provide; and (6) an up-front determination that the new Lake Tapps line lowering component of the Evergreen Expansion project will qualify for rolled-in rate treatment. Northwest states that the total estimated project cost, as amended, is approximately $240.9 million, compared to the original estimate of $239.8 million.

Northwest states that due to delays in acquiring all the necessary state and local permits and landowner easements, coupled with the need to limit certain construction activities to allowable environmental windows, its current construction schedules anticipate completion of the facilities necessary to provide the contracted incremental service for the Evergreen Expansion shippers by October 1, 2003 (instead of June 1, 2003, as originally anticipated), with the compression-only portion of such facilities to be completed approximately three months earlier. Northwest requests that the Commission issue the requested amended certificate by April 15, 2003, so the proposed expansion facility modifications can be completed within the new construction schedule.

Any questions regarding this application should be directed to Mr. Gary Kotter, Manager, Certificates and Tariffs, Northwest Pipeline Corporation, P.O. Box 58900, Salt Lake City, Utah 84158–0900 or call (801) 584–7117 or Fax (801) 584–7764.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission may issue a preliminary determination on non-environmental issues prior to the completion of its review of the environmental aspects of the project.

This preliminary determination typically considers such issues as the need for the project and its economic effect on existing customers of the applicant, on other pipelines in the area, and on landowners and communities. For example, the Commission considers the extent to which the applicant may need to exercise eminent domain to obtain rights-of-way for the proposed project and balances that against the non-environmental benefits to be provided by the project. Therefore, if a person has comments on community and landowner impacts from this proposal, it is important either to file comments or to intervene as early in the process as possible.

The Commission strongly encourages electronic filings of comments, protests, and interventions via the internet in lieu of paper. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

If the Commission decides to set the application for a formal hearing before an Administrative Law Judge, the Commission will issue another notice describing that process. At the end of the Commission's review process, a final Commission order approving or denying a certificate will be issued. *Comment Date:* February 5, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–1722 Filed 1–24–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL03–42–000]

Occidental Power Services, Inc., Complainant, v. PJM Interconnection, L.L.C., Respondent; Notice of Complaint

January 15, 2003.

Take notice that on January 14, 2003, pursuant to Sections 206 and 306 of the Federal Power Act, Occidental Power Services, Inc. (OPSI), filed a Complaint Requesting Fast Track Processing against PJM Interconnection, L.L.C. (PJM), requesting that the Commission direct PJM to enforce its Open Access Transmission Tariff by (1) billing OPSI at Locational Marginal Pricing by bus, or until bus pricing is available, nodal pricing, and (2) allowing OPSI to submit its own next day data based on OPSI's actual hourly load.

OPSI states that copies of the filing were served upon PJM, Delmarva Power & Light Company, and the Delaware Public Service Commission. OPSI is not aware of any other parties that may be expected to be affected by the complaint.

Any person desiring to be heard or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party

must file a motion to intervene. The answer to the complaint and all comments, interventions or protests must be filed on or before the comment date. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866)208–3676, or for TTY, contact (202)502–8659. The answer to the complaint, comments, protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Comment Date: February 3, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–1819 Filed 1–24–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. QF03–34–000]

SP Newsprint Co.; Notice of Filing

January 21, 2003.

Take notice that on January 16, 2003, SP Newsprint Co. filed with the Federal Energy Regulatory Commission (Commission) a response to a Commission Staff Inquiry requesting a clarification of question 1C on SP Newsprint Co.'s FERC Form 556.

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211. and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document.

For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Comment Date: January 31, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–1729 Filed 1–24–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–480–004]

Texas Eastern Transmission, LP; Notice of Negotiated Rate Filing

January 15, 2003.

Take notice that on January 10, 2003, Texas Eastern Transmission, LP (Texas Eastern) tendered for filing as part of its FERC Gas Tariff, Seventh Revised Volume No. 1, the following tariff sheets to be effective February 10, 2003.

Original Sheet No. 107
Sheet Nos. 108—125

Texas Eastern states that Original Sheet No. 107 filed herewith lists Duke Energy Hanging Rock, LLC (Duke Energy Hanging Rock) as a party to a negotiated rate agreement.

Texas Eastern also states that the negotiated rate agreement between Duke Energy Hanging Rock and Texas Eastern under Rate Schedule MLS–1 is attached to the filing as Appendix A.

Texas Eastern states that copies of its filing have been mailed to all affected customers of Texas Eastern and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. *Comment Date:* January 23, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–1738 Filed 1–24–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–234–000]

TransColorado Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

January 15, 2003.

Take notice that on January 13, 2003, TransColorado Gas Transmission Company (TransColorado) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheets, to be effective February 12, 2003:

Seventh Revised Sheet No. 200
Third Revised Sheet No. 265

TransColorado states that the purpose of this filing is to add a new section 27 to the General Terms and Conditions (GT&C) of TransColorado's FERC Gas Tariff addressing the use of offsystem capacity acquired by TransColorado and a waiver of the Commission's "shipper must have title" requirement.

TransColorado states that a copy of this filing has been served upon all of its customers and affected state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the

Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. all such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: January 27, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–1735 Filed 1–24–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL03–40–000]

Wisconsin Public Service Corporation, Complainant, v. Midwest Independent Transmission System Operator, Inc., Respondent; Notice of Filing

January 15, 2003.

Take notice that on January 13, 2003, Wisconsin Public Service Corporation (WPS) tendered for filing a complaint against the Midwest Independent Transmission System Operator, Inc. (MISO).

The complaint requests that the Commission order MISO to merge two transmission service requests as a complete path from source to sink and to allow WPS to reassign the receipt point for this transmission path to an alternate receipt point.

WPS states that copies of the filing were served on MISO.

Any person desiring to be heard or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. The answer to the complaint and all comments, interventions or protests must be filed on or before the comment date. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866)208–3676, or for TTY, contact (202)502–8659. The answer to the complaint, comments, protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Comment Date: January 27, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–1817 Filed 1–24–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP02–420–000]

Red Lake Gas Storage, L.P.; Notice of Meeting With the Hualapai Nation Regarding the Proposed Red Lake Gas Storage Project

January 15, 2003.

The staff of the Federal Energy Regulatory Commission (Commission) is issuing this notice to announce the date and location of a meeting with the Hualapai Nation to address certain issues regarding the proposed Red Lake Gas Storage Project. The meeting will be held on January 24, 2003, at 1 pm, at the Hualapai Nation's Tribal Multipurpose Building in Peach Springs, Arizona 86434.

The Commission staff will be preparing an environmental assessment (EA) for Red Lake Gas Storage, L.P."s proposed project in Mohave County, Arizona, in cooperation with the U.S. Department of the Interior, Bureau of Land Management (BLM), Arizona Department of Environmental Quality (ADEQ), and the Arizona Game and Fish Department (AGFD). The planned facilities would consist of two solution-mined underground salt caverns, about 52 miles of various diameter pipeline, a 25,000-horsepower (hp) compressor station, a 9,000-hp compressor station, four water withdrawal wells, four brine disposal wells, and appurtenant facilities. The EA will be used by the Commission in its decision-making process to determine whether the project is in the public convenience and necessity.

In view of the potential for impacts to resources of special concern to the Hualapai Nation resulting from construction of the proposed project, the meeting will not be open to the public. Attendance at the meeting will be limited to the Hualapai Tribal Council, members of the Hualapai Tribe, and representatives of the Commission, BLM, ADEQ, and AGFD.

Magalie R. Salas,

Secretary.

[FR Doc. 03–1723 Filed 1–24–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

New England Power Pool and ISO New England, Inc.: Docket Nos. ER02–2330–001, EL00–62–052, ER02–2330–002, EL00–62–053, ER02–2330–003 and EL00–62–054; ISO New England, Inc.: Docket Nos. ER02–2330–004 and ER02–2330–005; New England Power Pool: Docket Nos. ER03–210–000 and ER03–210–001; Notice of Staff's Participation in ISO New England Transmission Pricing Workshop

January 15, 2003.

ISO New England, Inc. has invited Commission staff to participate in a transmission pricing workshop that will be held on January 17, 2003 from 10 a.m. to 3 p.m. The meeting will be held at the Sheraton Springfield Monarch Place Hotel, Springfield, Massachusetts. Members of the public may attend. Further information about the meeting and a copy of the registration form is available at *www.iso-ne.com/seminars/schedule.html*. Representatives of the

Commission's staff may participate in the meeting.

During the course of the meeting, it is possible that discussions may overlap with issues in the above-captioned dockets. A summary of any such discussion will be placed in each of the listed dockets, if appropriate.

For more information, contact John McPherson, Office of Markets, Tariffs and Rates, Federal Energy Regulatory Commission at 202–520–8232 or *john.mcpherson@ferc.gov*.

Magalie R. Salas,

Secretary.

[FR Doc. 03–1820 Filed 1–24–03; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[OA–2003–0001, FRL–7444–2]

Agency Information Collection Activities: Proposed Collection and Comment Request; National Environmental Performance Track Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit a continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB) to renew the existing Performance Track Program Level One: The Environmental Achievement Track ICR # 1949.01, OMB #2010–0032, scheduled to expire on June 30, 2003.

DATES: Comments must be submitted on or before March 28, 2003.

FOR FURTHER INFORMATION CONTACT: Robert D. Sachs by telephone at 202–566–2884, by facsimile at 202–566–0966, or by e-mail at *sachs.robert@epa.gov*.

SUPPLEMENTARY INFORMATION: EPA has established a public docket for this ICR under Docket ID number OA–2003–0001, which is available for public viewing at the Office of Environmental Information Docket in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Office of Environmental Information Docket is (202) 566–1752. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket*. Use EDOCKET to obtain a copy of the draft ICR, submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA and OMB within 60 days of this notice, and according to the following detailed instructions: (1) Submit your comments to EPA online using EDOCKET (our preferred method), by e-mail to *oei.docket@epa.gov*, or by mail to: EPA Docket Center, Environmental Protection Agency, Mailcode: 2201T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, and (2) Mail your comments to OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, *see* EPA's **Federal Register** notice describing the electronic docket at 67 FR 38102 (May 31, 2002), or go to *http://www.epa.gov./edocket*.

Affected entities: Entities potentially affected by this action are members of the National Environmental Performance Track Program.

Title: The National Environmental Performance Track Program (OMB #2010–0032; EPA ICR No. 1949.02) expiring June 30, 2003.

Abstract: EPA announced the National Environmental Performance Track program on June 26, 2000. The program is designed to recognize and encourage facilities that consistently meet their legal requirements, that have implemented management systems to monitor and improve performance, that have voluntarily achieved environmental improvements beyond compliance, and that publicly commit to specific environmental improvements and report on progress. Applications submitted by facilities are used by EPA and participating regulatory entities to determine whether the applicant qualifies for the program. A total of 277 facilities are current members of this voluntary program. Environmental Performance Track members are also required to submit an annual performance report documenting their environmental performance relative to the commitments they made upon entry into the program. This information is important to determine whether participants are meeting their commitments, as well as to evaluate the effectiveness of the program. The public reporting element of the program also provides information to the local community.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

The EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Burden Statement: EPA estimates that all facilities who voluntarily respond to this information collection by electing to participate in the National Performance Track program have determined that the expected benefits of participation outweigh any burdens associated with preparing the response. EPA estimates that the application will

require approximately 40 hours to complete, and post-acceptance activities such as a demonstration of compliance, Environmental Management System documentation and reporting, a demonstration of continuous improvement, reporting, and public outreach are estimated to require approximately 190 hours per facility. EPA estimates total respondent costs for the 277 current members to be $295,836 for the application phase and $1,497,531 for participation in the program. For an individual facility, EPA estimates the application phase to cost $1068.00 and program participation to cost $5406.25. Preparing and submitting the application is a one-time event and program participation activities occur on an annual basis provided that the facility remains a member of the program.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Dated: January 14, 2003.

Daniel J. Fiorino,

Director, Performance Incentives Division.

[FR Doc. 03–1777 Filed 1–24–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7443–9]

Proposed Administrative Settlement Agreement Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as Amended by the Superfund Amendments and Reauthorization Act—Upper Tenmile Creek Watershed, Lewis and Clark County and Jefferson County, Montana

AGENCY: Environmental Protection Agency.

ACTION: Notice and request for public comment.

SUMMARY: Notice is hereby given of a proposed settlement under the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (CERCLA), concerning the Upper Tenmile Creek Mining Area NPL site and Basin Mining Area NPL site in Lewis and Clark County and Jefferson County, Montana (Sites). The proposed prospective purchaser agreement with the State of Montana, acting by and through the Montana Department of Environmental Quality (MDEQ), would resolve any liability the State might incur when it acquires property which was previously part of the Basin Creek Mine from the Chapter 7 bankruptcy estates of Pegasus Gold Montana Mining, Inc. (PGMMI) and Pangea Explorations, Inc. (PEI). MDEQ would acquire the property through a settlement agreement with the bankruptcy trustee; the agreement is attached to the proposed prospective purchaser agreement.

EPA and the U.S. Department of Agriculture, Forest Service (Forest Service) intend to use a portion of the property, known as the Luttrell Pit mine waste repository, to implement CERCLA remedial actions at the Sites.

Parties to the Agreement include EPA, the Forest Service, MDEQ and the United States Department of Justice.

DATES: The public should submit comments to EPA relating to this proposed settlement on or before February 18, 2003.

ADDRESSES: The proposed settlement is available for public inspection at the EPA's Region VIII Superfund Records Center, 999 18th Street, 5th Floor, North Tower, Denver, Colorado, (303) 312–6473 and at EPA's Montana Superfund Records Center, Federal Office Building, 10 West 15th Street, Suite 3200, Helena, Montana, (406) 457–5046. Comments should be addressed to Carol J. Pokorny, Enforcement Specialist, (8ENF–T), U.S. Environmental Protection Agency, 999 18th Street, Suite 300, Denver, Colorado, 80202–2466, and should reference the Upper Tenmile Creek Mining Area and Basin Mining Area Sites Prospective Purchaser Agreement with the State of Montana.

FOR FURTHER INFORMATION CONTACT: Suzanne Bohan, Enforcement Attorney, at (303) 312–6925.

Dated: January 9, 2003.

Carol Rushin,

Assistant Regional Administrator, Office of Enforcement, Compliance and Environmental Justice.

[FR Doc. 03–1769 Filed 1–24–03; 8:45 am]

BILLING CODE 6460–50–M

FARM CREDIT ADMINISTRATION

Farm Credit Administration Board; Regular Meeting

AGENCY: Farm Credit Administration.

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), that the February 13, 2003, regular meeting of the Farm Credit Administration Board (Board) will not be held. The FCA Board will hold a special meeting at 9 a.m. on Wednesday, February 19, 2003. An agenda for this meeting will be published at a later date.

FOR FURTHER INFORMATION CONTACT: Jeanette C. Brinkley, Secretary to the Farm Credit Administration Board, (703) 883–4009, TTY (703) 883–4056.

ADDRESSES: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

Dated: January 22, 2003.

Jeanette C. Brinkley,

Secretary, Farm Credit Administration Board.

[FR Doc. 03–1857 Filed 1–23–03; 11:18 am]

BILLING CODE 6705–01–P

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket 98–67; DA 03–99]

Notice of Telecommunications Relay Service (TRS) Applications for State Certification Accepted Pleading Cycle Established for Comment on TRS Certification Applications

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: In this document, the Commission notifies the public, state Telecommunications Relay Service (TRS) programs, and TRS providers that TRS applications for certification have been accepted and that the pleading cycle for comments and reply comments regarding these applications has been established.

DATES: Interested parties may file comments in this proceeding no later than February 17, 2003. Reply comments may be filed no later than March 3, 2003.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Erica Myers, (202) 418–2429 (voice), (202) 418–0464 (TTY), or e-mail *emyers@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Public

Notice, CC Docket 98–67, released January 15, 2003. This notice seeks public comment on the above-referenced applications for TRS certification. Copies of applications for certification are available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. The applications for certification are also available on the Commission's Web site at *http://www.fcc.gov/cgb/dro/trs_by_state.html*. They may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 44512th Street, SW., Room CY–B402, Washington, DC 20554, telephone (202) 863–2893, facsimile (202) 863–2898, or via e-mail *qualexint@aol.com*.

Interested parties may file comments in this proceeding no later than February 17, 2003. Reply comments may be filed no later than March 3, 2003. When filing comments, please reference CC Docket No. 98–67 and the relevant state file number of the state application that is being commented upon. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. See Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24121 (1998). Comments filed through the ECFS can be sent as an electronic file via the Internet to *http://www.fcc.gov/e-file/ecfs.html*. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to *ecfs@fcc.gov*, and should include the following words in the body of the message, "get form <your e-mail address>." A sample form and directions will be sent in reply. Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Services mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Vistronix, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE, Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW., Washington, DC 20554. All filings must be addressed to the Commission's Secretary, Marlene H. Dortch, Office of the Secretary, Federal Communications Commission, 445 12th Street, SW., Room TW–A325 Washington, DC 20554.

Parties who choose to file by paper should also submit their comments on diskette or via email in Microsoft Word. These diskettes should be submitted to: Erica Myers, Federal Communications Commission, 445 12th Street, SW., Room 6–A432, Washington DC 20554. The e-mail should be submitted to Erica Myers at *emyers@fcc.gov*. Such a submission should be on a 3.5 inch diskette formatted in an IBM compatible format using Word 97 or compatible software. The diskette should be accompanied by a cover letter and should be submitted in "read only" mode. The diskette should be clearly labeled with the commenter's name, proceeding (including the lead docket number in this case, CC Docket No. 98–67, type of pleading (comment or reply comment), date of submission, and the name of the electronic file on the diskette. The label should also include the following phrase "Disk Copy—Not an Original." Each diskette should contain only one party's pleadings, preferably in a single electronic file. In addition, commenters must send diskette copies to the Commission's copy contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554.

This proceeding shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's ex parte rules. *See* 47 CFR 1.1200 and 1.1206. Persons making oral ex parte presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented is generally required. *See* 47 CFR 1.1206(b). Other rules pertaining to oral and written *ex parte* presentations in permit-but-disclose proceedings are set forth in section 1.1206(b) of the Commission's rules, 47 CFR 1.1206(b).

Alternative formats (computer diskette, large print, audio recording and Braille) are available to persons with disabilities by contacting Brian Millin, of the Consumer & Governmental Affairs Bureau, at (202) 418–7426, TTY (202) 418–7365, or e-mail at *bmillin@fcc.gov*. This *Public Notice* can also be downloaded in Text and ASCII formats at: *http://www.fcc.gov/cgb/dro*.

Synopsis

Notice is hereby given that the states listed below have applied to the Commission for renewal of the certification of their State Telecommunications Relay Service (TRS) program pursuant to Title IV of the Americans with Disabilities Act (ADA), 47 U.S.C. 225 and the Commission's rules, 47 CFR 64.601–605. Current state certifications expire July 25, 2003. Applications for certification, covering the five year period of July 26, 2003 to July 25, 2008, must demonstrate that the state TRS program complies with the ADA and the Commission's rules for the provision of TRS.

File No: TRS–46–02
Alabama Public Service Commission, State of Alabama
File No: TRS–19–02
Alaska Public Utilities Commission, State of Alaska
File No: TRS–49–02
District of Columbia Public Service Commission, District of Columbia
File No: TRS–10–02
Illinois Commerce Commission, State of Illinois
File No: TRS–34–02
Department of Public Utilities, State of Massachusetts
File No: TRS–39–02
Minnesota Department of Public Service, State of Minnesota
File No: TRS–55–02
Mississippi Public Service Commission, State of Mississippi
File No: TRS–16–02
New York State Department of Public Service, State of New York
File No: TRS–12–02
Information Services Division, State of North Dakota
File No: TRS–57–02

Oklahoma Telephone Association, State of Oklahoma
File No: TRS–11–02
South Carolina Budget & Control Board, State of South Carolina
File No: TRS–27–02
Department of Social and Health Services, State of Washington

Federal Communications Commission.

Margaret M. Egler,

Deputy Chief, Consumer & Governmental Affairs Bureau.

[FR Doc. 03–1744 Filed 1–24–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL MEDIATION AND CONCILIATION SERVICE

Labor-Management Cooperation Program; Application Solicitation

AGENCY: Federal Mediation and Conciliation Service.

ACTION: Request for public comment on draft Fiscal Year 2003 program Guidelines/Application Solicitation for Labor-Management Committees.

SUMMARY: The Federal Mediation and Conciliation Service (FMCS) is publishing the draft Fiscal Year 2003 Program Guidelines/Application Solicitation for the Labor-Management Cooperation Program to inform the public. The program is supported by Federal funds authorized by the Labor-Management Cooperation Act of 1978, subject to annual appropriations. This Solicitation contains changes in the allocation of all grant funds returned to FMCS.

DATES: Comments must be submitted before February 26, 2003.

ADDRESSES: Send comments to: Jane A. Lorber, Director, Labor Management Grants Program, FMCS, 2100 K Street, NW., Washington, DC 20427.

FOR FURTHER INFORMATION CONTACT: Jane A. Lorber, 202–606–8181.

Labor-Management Cooperation Program Application Solicitation for Labor-Management Committees FY2003

I. Introduction

The following is the draft solicitation for the Fiscal Year (FY) 2003 cycle of the Labor-Management Cooperation Program as it pertains to the support of labor-management committees. These guidelines represent the continuing efforts of the Federal Mediation and Conciliation Service to implement the provisions of the Labor-Management Cooperation Act of 1978, which was initially implemented in FY81. The Act authorizes FMCS to provide assistance in the establishment and operation of company/plant, area, public sector, and industry-wide labor-management committees which:

A. Have been organized jointly by employers and labor organizations representing employees in that company/plant, area, government agency, or industry; and

B. Are established for the purpose of improving labor-management relationships, job security, and organizational effectiveness; enhancing economic development; or involving workers in decisions affecting their working lives, including improving communication with respect to subjects of mutual interest and concern.

The Program Description and other sections that follow, as well as a separately published FMCS Financial and Administrative Grants Manual, make up the basic guidelines, criteria, and program elements a potential applicant for assistance under this program must know in order to develop an application for funding consideration for either a company/plant, area-wide industry, or public sector labor-management committee. Directions for obtaining an application kit may be found in Section H. A copy of the Labor-Management Cooperation Act of 1978, included in the application kit, should be reviewed in conjunction with this solicitation.

II. Program Description

Objectives

The Labor-Management Cooperation Act of 1978 identifies the following seven general areas for which financial assistance would be appropriate to:

A. Improve communication between representatives of labor and management;

B. Provide workers and employers with opportunities to study and explore new and innovative joint approaches to achieving organizational effectiveness;

C. Assist workers and employers in solving problems of mutual concern not susceptible to resolution within the collective bargaining process;

D. Study and explore ways of eliminating potential problems which reduce the competitiveness and inhibit the economic development of the company/plant, area, or industry;

E. Enhance the involvement of workers in making decisions that affect their working lives;

F. Expand and improve working relationships between workers and managers; and

G. Encourage free collective bargaining by establishing continuing mechanisms for communication between employers and their employees through Federal assistance in the formation and operation of labor-management committees. The primary objective of this program is to encourage and support the establishment and operation of joint labor-management committees to carry out specific objectives that meet the fore mentioned general criteria. The term "labor" refers to employees represented by a labor organization and covered by a formal collective bargaining agreement. These committees may be found at the plant (company), area, industry, or public sector levels.

A plant or company committee is generally characterized as restricted to one or more organizational or productive units operated by a single employer. An area committee is generally composed of multiple employers of diverse industries as well as multiple labor unions operating within and focusing upon a particular city, county, contiguous multi-county, or statewide jurisdiction. An industry committee generally consists of a collection of agencies or enterprises and related labor union(s) producing a common product or service in the private sector on a local, state, regional, or nationwide level. A public sector committee consists of government employees and managers in one or more units of a local or state government, managers and employees of public institutions of higher education, or of employees and managers of public elementary and secondary schools. Those employees must be covered by a formal collective bargaining agreement or other enforceable labor-management agreement. In deciding whether an application is for an area or industry committee, consideration should be given to the above definitions as well as to the focus of the committee.

In FY 2003, competition will be open to company/plant, area, private industry, and public sector committees. Special consideration will be given to committee applications involving innovative or unique efforts. All application budget requests should focus directly on supporting the committee. Applicants should avoid seeking funds for activities that are clearly available under other Federal programs (*e.g.*, job training, mediation of contract disputes, etc.)

Required Program Elements

A. *Problem Statement*—The application should have numbered pages and discuss in detail what specific problem(s) face the company/plant, area, government, or industry and its workforce that will be addressed by the committee. Applicants must

document the problem(s) using as much relevant data as possible and discuss the full range of impacts these problem(s) could have or are having on the company/plant, government, area, or industry. An industrial or economic profile of the area and workforce might prove useful in explaining the problem(s). This section basically discusses *WHY* the effort is needed.

B. *Results or Benefits Expected*—By using specific goals and objectives, the application must discuss in detail *WHAT* the labor-management committee will accomplish during the life of the grant. Applications that promise to provide objectives *after* a grant is awarded will receive little or not credit in this area. While a goal of "improving communication between employers and employees" may suffice as one over-all goal of a project, the objectives must, whenever possible, be expressed in *specific* and *measurable* terms. Applicants should focus on the outcome, impacts or changes that the committee's efforts will have. Existing committees should focus on *expansion* efforts/results expected from FMCS funding. The goals, objectives, and projected impacts will become the foundation for future monitoring and evaluation efforts of the grantee, as well as the FMCS grants program.

C. *Approach* — This section of the application specifies *HOW* the goals and objectives will be accomplished. At a minimum, the following elements must be included in all grant applications.

1. A discussion of the strategy the committee will employ to accomplish its goals and objectives;

2. A listing, by name and title, of all existing or proposed members of the labor-management committee. The application should also offer a rationale for the selection of the committee members (*e.g.*, members represent 70% of the area or company/plant workforce).

3. A discussion of the number, type, and role of all committee staff persons. Include proposed position descriptions for all staff that will have to be hired as well as resumes for staff already on board; noting, that grant funds may not be used to pay for existing employees.

4. In addressing the proposed approach, applicants must also present their justification as to why Federal funds are needed to implement the proposed approach;

5. A statement of how often the committee will meet (we require meetings at least every other month) as well as any plans to form subordinate committees for particular purposes; and

6. For applications from existing committees, a discussion of past efforts and accomplishments and how they would integrate with the proposed expanded effort.

D. *Major Milestones*—This section must include an implementation plan that indicates what major steps, operating activities, and objectives will be accomplished as well as a timetable for *WHEN* they will be finished. A milestone chart must be included that indicates what specific accomplishments (process and impact) will be completed by month over the life of the grant using October 1, 2003, as the start date. The accomplishment of these tasks and objectives, as well as problems and delays therein, will serve as the basis for quarterly progress reports to FMCS.

E. *Evaluation*—Applicants must provide for either an external evaluation or an internal assessment of the project's success in meeting its goals and objectives. An evaluation plan must be developed which briefly discusses what basic questions or issues the assessment will examine and what baseline data the committee staff already has or will gather for the assessment. This section should be written with the application's own goals and objectives clearly in mind and the impacts or changes that the effort is expected to cause.

F. *Letters of Commitment*—Applications must include current letters of commitment from *all* proposed or existing committee participants and chairpersons. These letters should indicate that the participants support the application and will attend scheduled committee meetings. A blanket letter signed by a committee chairperson or other official on behalf of all members is not acceptable. We encourage the use of individual letters submitted on company or union letterhead represented by the individual. The letters should match the names provided under Section C.2 of the Required Program Elements section above.

G. *Other Requirements*—Applicants are also responsible for the following:

1. The submission of data indicating approximately how many employees will be covered or represented through the labor-management committee;

2. From existing committees, a copy of the existing staffing levels, a copy of the by-laws (if any), a breakout of annual operating costs and identification of all sources and levels of current financial support;

3. A detailed budget narrative based on policies and procedures contained in the FMCS Financial and Administrative Grants Manual;

4. An assurance that the labor-management committee will not interfere with any collective bargaining agreements; and

5. An assurance that committee meetings will be held at least every other month and that written minutes of all committee meetings will be prepared and made available to FMCS.

Selection Criteria

The following criteria will be used in the scoring and selection of applications for award:

A. The extent to which the application has clearly identified the problems and justified the needs that the proposed project will address.

B. The degree to which appropriate and *measurable* goals and objectives has been developed to address the problems/needs of the applicant.

C. The feasibility of the approach proposed to attain the goals and objectives of the project and the perceived likelihood of accomplishing the intended project results.

This section will also address the degree of innovativeness or uniqueness of the proposed effort.

D. The appropriateness of committee membership and the degree of commitment of these individuals to the goals of the application as indicated in the letters of support.

E. The feasibility and thoroughness of the implementation plan in specifying major milestones and target dates.

F. The cost effectiveness and fiscal soundness of the application's budget request, as well as the application's feasibility vis-à-vis its goals and approach.

G. The overall feasibility of the proposed project in light of all of the information presented for consideration.

H. The value to the government of the application in light of the overall objectives of the Labor-Management Cooperation Act of 1978. This includes such factors as innovativeness, site location, cost, and other qualities that impact upon an applicant's value in encouraging the labor-management committee concept.

III. Eligibility

Eligible grantees include state and local units of government, labor-management committees (or a labor union, management association, or company on behalf of a committee that will be created through the grant), and certain third-party non-profit entities on behalf of one or more committees to be created through the grant. Federal government agencies and their employees are not eligible.

Third-party private, non-profit entities that can document that a major purpose or function of their

organization is the improvement of labor relations are eligible to apply. However, all funding must be directed to the functioning of the labor-management committee, and all requirements under Part B must be followed. Applications from third-party entities must document particularly strong support and participation from all labor and management parties with whom the applicant will be working. Applications from third parties, which do not directly support the operation of a new or expanded committee, will not be deemed eligible, nor will the applications signed by entities such as law firms or other third parties failing to meet the above criteria.

OMB Circular 110 will bind successful grantees, *i.e.* individuals "that develop or draft specifications, requirements, statements of work, invitations for bids and/or requests for proposals shall be *excluded* (emphasis added) from competing for such procurements."

Applicants who received funding under this program in the past for committee operations are not eligible to re-apply. An exception may be made for grantees that seek funds on behalf of entirely different committee members whose efforts are totally outside of the scope of the original grant.

IV. Allocations

The FY2003 appropriation for this program anticipated to be $1.5 million, of which at least $1,000,000 available competitively for new applicants. Specific funding levels will not be established for each type of committee. The review process will be conducted in such a manner that at least two awards will be made in each category (company/plant, industry, public sector, and area), provided that FMCS determines that at least two outstanding applications exist in each category. After these applications are selected for award, the remaining applications will be considered according to merit without regard to category.

In addition to the competitive process identified in the preceding paragraph, FMCS will set aside a sum not to exceed thirty percent of its non-reserved appropriation to be awarded on a non-competitive basis. These funds will be used only to support applications that have been solicited by the Director of the Service and are not subject to the dollar range noted in Section E. All funds returned to FMCS from a competitive grant award may be awarded on a non-competitive basis in accordance with budgetary requirements.

FMCS reserves the right to retain up to five percent of the FY2003 appropriation to contract for program support purposes (such as evaluation) other than administration.

V. Dollar Range and Length of Grants

Awards to expand existing or establish new labor-management committees will be for a period of up to 18 months. If successful progress is made during this initial budget period and all grant funds are not obligated within the specified period, these grants may be extended for up to six months. Continuation awards may be made.

The dollar range of awards is as follows:

- Up to $65,000 over a period of up to 18 months for company/plant committees or single department public sector applicants;
- Up to $125,000 per 18-month period for area, industry, and multi-department public sector committee applicants.

Applicants are reminded that these figures *represent maximum Federal funds only*. If total costs to accomplish the objectives of the application exceed the maximum allowable Federal funding level and its required grantee match, applicants may supplement these funds through voluntary contributions from other sources. Applicants are also strongly encouraged to consult with their local or regional FMCS field office to determine what kinds of training may be available at no cost before budgeting for such training in their applications. A list of our field leadership team and their phone numbers is included in the application kit.

VI. Cash Match Requirements and Costs

All applicants must provide at least 10 percent of the total allowable project costs in cash. matching funds may come from state or local government sources or private sector contributions, but may generally not include other Federal funds. Funds generated by grant-supported efforts are considered "project income," and may not be used for matching purposes.

It will be the policy of this program to reject all requests for indirect or overhead costs as well as "in-kind" match contributions. In addition, grant funds must not be used to supplant private or local/state government funds currently spent for committee purposes. Funding requests from existing committees should focus entirely on the costs associated with the expansion efforts. Also, under no circumstances may business or labor officials participating on a labor-management committee be compensated out of grant funds for *time* spent at committee meetings or *time* spent in committee training sessions. Applicants generally will not be allowed to claim all or a portion of *existing* full-time staff as an expense or match contribution. For a more complete discussion of costs allowed, applicants are encouraged to consult the FY2003 FMCS Financial and Administrative Grants Manual, which will be included in the application kit.

VII. Application Submission and Review Process

The Application for Federal Assistance (SF–424) form must be signed by *both* a labor and management representative. In lieu of signing the SF–424 form representatives may type their name, title, and organization on plain bond paper with a signature line signed and dated, in accordance with block 18 of the SF–424 form. Applications must be postmarked no later than June 28, 2003. No applications or supplementary materials will be accepted after the deadline. It is the responsibility of the applicant to ensure that the U.S. Postal Service or other carrier correctly postmarks the application. An original application containing numbered pages, plus *three* copies, should be addressed to the Federal Mediation and Conciliation Service, Labor-Management Grants Program, 2100 K Street, NW., Washington, DC 20427. FMCS will not consider videotaped submissions or video attachments to submissions.

After the deadline has passed, all eligible applications will be reviewed and scored preliminarily by one or more Grant Review Boards. The Board(s) will recommend selected applications for rejection or further funding consideration. The Director, Labor-Management Grants Program, will finalize the scoring and selection process. The individual listed as contact person in Item 6 on the application form will generally be the only person with whom FMCS will communicate during the application review process. Please be sure that person is available between June and September of 2003.

All FY2003 grant applicants will be notified of results and all grant awards will be made before October 1, 2003. Director, Labor-Management Grants Program, will administratively reject applications submitted after the June 28 deadline date or those that fail to adhere to eligibility or the other major requirements.

VIII. Contact

Individuals wishing to apply for funding under this program should

contact the Federal Mediation and Conciliation Service as soon as possible to obtain an application kit. Please consult the FMCS Web site (*http://www.fmcs.gov*) to download forms and information.

These kits and additional information or clarification can be obtained free of charge by contacting the Federal Mediation and Conciliation Service, Labor-Management Grants Program, 2100 K Street, NW., Washington, DC 20427; or by calling 202–606–8181.

Dated: January 13, 2003.

John J. Toner,

Chief of Staff, Federal Mediation and Conciliation Service.

[FR Doc. 03–1695 Filed 1–24–03; 8:45 am]

BILLING CODE 6732–01–M

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than February 10, 2003.

A. Federal Reserve Bank of Chicago (Phillip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690-1414:

1. Eldred 2002 Family Trust, Beloit, Wisconsin; and Co–Trustees Helen M. Eldred, Beloit, Wisconsin; Susan E. Boettcher, Wauwatosa, Wisconsin; Steven M. Eldred, Beloit, Wisconsin; and Richard J. Langer, Madison, Wisconsin; to acquire control of Centre 1 Bancorp, Inc., Beloit, Wisconsin;, and thereby indirectly acquire First National Bank and Trust Company of Beloit, Beloit, Wisconsin.

Board of Governors of the Federal Reserve System, January 21, 2003.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 03–1718 Filed 1–24–03; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies; Correction

This notice corrects a notice (FR Doc. 03–670) published on page 1851 of the issue for Tuesday, January 14, 2003.

Under the Federal Reserve Bank of Richmond heading, the entry for Forest Merger Corporation and FBR TRS Holdings, both in Arlington, Virginia, is revised to read as follows:

A. Federal Reserve Bank of Richmond (A. Linwood Gill, III, Vice President) 701 East Byrd Street, Richmond, Virginia 23261-4528:

1. Forest Merger Corporation and FBR TRS Holdings, Inc., both in Arlington, Virginia; to become bank holding companies by merging with Friedman, Billings, Ramsey Group, Inc., and FBR Asset Investment Corporation, both in Arlington, Virginia, and thereby indirectly acquiring FBR Bancorp, Inc., Arlington, Virginia, and FBR National Bank and Trust, Bethesda, Maryland. After the merger, Applicants would be renamed Friedman, Billings, Ramsey Group, Inc.

In addition, Applicants also have applied to acquire more than 5 percent of the voting shares of Hawthorne Financial Corporation, El Segundo, California, and thereby indirectly acquire Hawthorne Savings, F.S.B., El Segundo, California.

Comments on this application must be received by February 18, 2003.

Board of Governors of the Federal Reserve System, January 21, 2003.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 03–1719 Filed 1–24–03; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 20, 2003.

A. Federal Reserve Bank of Atlanta (Sue Costello, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30303:

1. Piedmont Bancshares, Inc., Atlanta, Georgia; to become a bank holding company by acquiring 100 percent of the voting shares of Piedmont Bank of Georgia, Atlanta, Georgia.

B. Federal Reserve Bank of Minneapolis (Richard M. Todd, Vice President and Community Affairs Officer) 90 Hennepin Avenue, Minneapolis, Minnesota 55480-0291:

1. American Eagle Financial Corporation, Albertville, Minnesota; to become a bank holding company by acquiring 100 percent of the voting shares of Riverview Community Bank, Otsego, Minnesota, a *de novo* bank.

Board of Governors of the Federal Reserve System, January 21, 2003.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 03–1720 Filed 1–24–03; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 02N–0532]

Nonclinical Datasets; Notice of Pilot Project

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA), Center for Drug

Evaluation and Research (CDER), is seeking volunteers to participate in a pilot project involving the evaluation of various analysis tools to facilitate the use of electronic datasets for analysis of animal data submitted to FDA by applicants of new drug applications (NDAs). These analysis tools will allow a reviewer to more efficiently display and evaluate nonclinical datasets submitted in electronic format.

DATES: Submit written requests to participate in the pilot project by March 28, 2003. Comments on this pilot project may be submitted at any time.

ADDRESSES: Submit written requests to participate and comments regarding the pilot project to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments.*

FOR FURTHER INFORMATION CONTACT: Randy Levin, Center for Drug Evaluation and Research (HFD–001), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–5411, *levinr@cder.fda.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Under current FDA regulations (21 CFR 314.50), applicants must provide nonclinical data in NDAs. In January 1999, the agency published guidance describing how applicants could provide nonclinical data in the form of electronic datasets. In the guidance for industry entitled "Providing Regulatory Submissions in Electronic Format—NDAs," FDA provided recommendations on how to organize the datasets and how to provide descriptive information on the datasets and the data variables (metadata). The Center for Biologics Evaluation and Research (CBER) has provided similar recommendations for biologics license applications (BLAs) in their guidance entitled "Providing Regulatory Submissions in Electronic Format—BLAs." A joint CBER and CDER guidance for industry entitled "Providing Regulatory Submissions in Electronic Format—General Considerations," which published in January 1999, provided recommendations for the file formats for nonclinical datasets.

Recently, FDA received recommendations for a standard presentation of certain clinical data from the Clinical Data Interchange Standards Consortium, Inc. (CDISC), a nonprofit organization including members from pharmaceutical companies, biotechnology companies, contract research organizations, and software vendors. CDISC is currently facilitating the work on similar standards for nonclinical datasets. Where possible, the standards developed for clinical datasets and metadata should be used in the development of standardized presentations of the datasets for routine toxicology studies (e.g., chronic toxicology and carcinogenicity studies).

In addition, CDER has entered into a cooperative research and development agreement with PharmQuest Corp. for the development of analysis tools by which to evaluate the nonclinical datasets prepared using defined standards. The use of these standardized datasets will reduce the amount of effort required of the reviewer to evaluate nonclinical data.

The purpose of the pilot project is to help in the development of analysis tools designed to facilitate the review and evaluation of electronic nonclinical datasets and to obtain feedback from reviewers and pharmaceutical companies on the creation and use of standardized nonclinical data and metadata.

II. Pilot Project Description

This pilot project is part of an effort to improve the process for submitting nonclinical data. Eventually, FDA expects to recommend detailed data standards for the submission of nonclinical data. Participants in this pilot project will have the opportunity not only to assist the agency in testing the use of various analysis tools and standardized nonclinical data and metadata, but would also be able to familiarize themselves with the process at an early stage of development. Only a few participants are needed for this pilot.

A. Initial Approach

Because a limited group of voluntary participants are needed, the agency will use its discretion in choosing volunteers, based on their having previously submitted nonclinical datasets to FDA and having demonstrated familiarity with our recommendations for creating nonclinical datasets as presented in the guidance for industry entitled "Providing Regulatory Submissions in Electronic Format—NDAs." During the pilot project, specific technical instructions for providing the nonclinical data for testing will be made available to pilot participants. Participants in the pilot project will be asked to provide nonclinical datasets as described in the technical instructions and to provide technical feedback.

B. Scope

Existing requirements for the submission of nonclinical data will not be waived, suspended, or modified for purposes of this pilot project. The pilot project will test the preparation and use of the submitted nonclinical electronic datasets.

C. How to Participate

Written requests to volunteer should be submitted to the Dockets Management Branch (see **ADDRESSES**). Requests are to be identified with the docket number found in brackets in the heading of this document.

III. Comments

Interested persons may submit to the Dockets Management Branch (see **ADDRESSES**) written or electronic comments regarding this pilot project. Submit a single copy of electronic comments to http://www.fda.gov/dockets/ecomments or two hard copies of any written comments, except that individuals may submit one hard copy. Comments are to be identified with the docket number found in brackets in the heading of this document. We will consider all received comments in making a determination on electronic filing and when drafting a guidance document for submitting nonclinical study data as electronic datasets. Received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: January 15, 2003.

Margaret M. Dotzel,

Assistant Commissioner for Policy.

[FR Doc. 03–1743 Filed 1–24–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 02P–0068]

Determination That Chymopapain 10,000 Units/Vial Injection Was Not Withdrawn From Sale for Reasons of Safety or Effectiveness

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its determination that CHYMODIACTIN (chymopapain 10,000 units/vial injection) was not withdrawn from sale for reasons of safety or effectiveness. This determination will allow FDA to

approve abbreviated new drug applications (ANDAs) for chymopapain 10,000 units/vial injection.

FOR FURTHER INFORMATION CONTACT: Brian L. Pendleton, Center for Drug Evaluation and Research (HFD–7), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–2041.

SUPPLEMENTARY INFORMATION: In 1984, Congress enacted the Drug Price Competition and Patent Term Restoration Act of 1984 (Public Law 98–417) (the 1984 amendments), which authorized the approval of duplicate versions of drugs approved under an ANDA procedure. ANDA sponsors must, with certain exceptions, show that the drug for which they are seeking approval contains the same active ingredient in the same strength and dosage form as the "listed drug," which is a version of the drug that was previously approved under a new drug application (NDA). Sponsors of ANDAs do not have to repeat the extensive clinical testing otherwise necessary to gain approval of an NDA. The only clinical data required in an ANDA are data to show that the drug that is the subject of the ANDA is bioequivalent to the listed drug.

The 1984 amendments include what is now section 505(j)(7) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(j)(7)), which requires FDA to publish a list of all approved drugs. FDA publishes this list as part of the "Approved Drug Products With Therapeutic Equivalence Evaluations," which is generally known as the "Orange Book." Under FDA regulations, drugs are withdrawn from the list if the agency withdraws or suspends approval of the drug's NDA or ANDA for reasons of safety or effectiveness, or if FDA determines that the listed drug was withdrawn from sale for reasons of safety or effectiveness (21 CFR 314.162).

Under § 314.161(a)(1) (21 CFR 314.161(a)(1)), the agency must determine whether a listed drug was withdrawn from sale for reasons of safety or effectiveness before an ANDA that refers to that listed drug may be approved. FDA may not approve an ANDA that does not refer to a listed drug.

CHYMODIACTIN (chymopapain 10,000 units/vial injection) is the subject of NDA 18–663. CHYMODIACTIN is indicated for the treatment of patients with documented herniated lumbar intervertebral discs whose symptoms and signs, particularly sciatica, have not responded to an adequate period or periods of conservative therapy. FDA approved the NDA for CHYMODIACTIN on November 10, 1982.

On February 12, 2002, ChymoCorp submitted a citizen petition (Docket No. 02P–0068/CP1) under 21 CFR 10.30 requesting that the agency determine whether chymopapain manufactured by Abbott Laboratories under the brand name CHYMODIACTIN was withdrawn from sale for reasons of safety or effectiveness.

The agency has determined that CHYMODIACTIN (chymopapain 10,000 units/vial injection) was not withdrawn from sale for reasons of safety or effectiveness. Abbott Laboratories informed the agency by telephone that the company no longer markets CHYMODIACTIN. FDA has independently evaluated relevant literature and data for possible postmarketing adverse event reports, but has found no information that would indicate this product was withdrawn for reasons of safety or effectiveness.

After considering the citizen petition and reviewing its records, FDA determines that, for the reasons outlined previously, CHYMODIACTIN (chymopapain 10,000 units/vial injection) was not withdrawn from sale for reasons of safety or effectiveness. Accordingly, the agency will continue to list chymopapain 10,000 units/vial injection in the "Discontinued Drug Product List" section of the Orange Book. The "Discontinued Drug Product List" delineates, among other items, drug products that have been discontinued from marketing for reasons other than safety or effectiveness. ANDAs that refer to CHYMODIACTIN (chymopapain 10,000 units/vial injection) may be approved by the agency.

Dated: January 15, 2003.

Margaret M. Dotzel,

Assistant Commissioner for Policy.

[FR Doc. 03–1742 Filed 1–24–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 02D–0525]

Medical Devices; Chemical Indicators Premarket Notification [510(k)] Submissions; Draft Guidance for Industry and FDA; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of the draft guidance entitled "Chemical Indicators Premarket Notification [510(k)] Submissions; Draft Guidance for Industry and FDA." The document is intended to provide guidance for industry and other interested parties for the submission of chemical indicators such as process indicators, chemical integrators, and air removal indicators used in test packs such as the Bowie Dick Test. This draft guidance is neither final nor is it in effect at this time.

DATES: Submit written or electronic comments on this guidance by April 28, 2003.

ADDRESSES: Submit written requests for single copies on a 3.5″ diskette of the guidance document entitled "Chemical Indicators Premarket Notification [510(k)] Submissions; Draft Guidance for Industry and FDA" to the Division of Small Manufacturers, International, and Consumer Assistance (HFZ–220), Center for Devices and Radiological Health, Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850. Send two self-addressed labels to assist that office in processing your request, or fax your request to 301–443–8818.

Submit written comments concerning this guidance to the Dockets Management Branch (HFA–305), Food and Drug Administration 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to http://www.fda.gov/dockets/ecomments.

See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance.

FOR FURTHER INFORMATION CONTACT: Chiu S. Lin, Center for Devices and Radiological Health (HFZ–480), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–443–8913, extension 143.

SUPPLEMENTARY INFORMATION:

I. Background

This document is intended for applicants who plan to market chemical indicators for health care facilities. It includes guidance on the submission of premarket notification [510(k)] submissions for process indicators, chemical integrators, and air removal indicators used in test packs such as the Bowie Dick Test. Chemical indicators are an integral part of monitoring sterilization processes in health care facilities because they provide the user with information on the effectiveness of a sterilization process. FDA is issuing this draft guidance because the agency recognizes the importance of providing applicants and other interested parties with specific recommendations for the

submission of premarket notifications for chemical indicators.

II. Significance of Guidance

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance represents the agency's current thinking on chemical indicators. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute and regulations.

III. Electronic Access

In order to receive the document "Chemical Indicators Premarket Notification [510(k)] Submissions; Draft Guidance for Industry and FDA" by fax, call the CDRH Facts-On-Demand system at 800–899–0381 or 301–827–0111 from a touch-tone telephone. Press 1 to enter the system. At the second voice prompt press 1 to order a document. Enter the document number (1420) followed by the pound sign (#). Follow the remaining voice prompts to complete your request.

Persons interested in obtaining a copy of the draft guidance may also do so using the Internet. CDRH maintains an entry on the Internet for easy access to information including text, graphics and files that may be downloaded to a personal computer with Internet access. Updated on a regular basis, the CDRH home page includes device safety alerts, **Federal Register** reprints, information on premarket submissions (including lists of approved applications and manufacturers' addresses), small manufacturer's assistance, information on video conferencing, and electronic submissions, Mammography Matters, and other device-oriented information. The CDRH Web site may be accessed at http://www.fda.gov/cdrh. A search capability for all CDRH guidance documents is available at http://www.fda,gov/cdrh/guidance.html. Guidance documents are also available on the Dockets Management Branch Internet site at http://www.fda.gov/ohrms/dockets.

IV. Comments

Interested persons may submit to Dockets Management Branch (see **ADDRESSES**) written or electronic comments regarding this draft guidance. Two copies of any mailed comments are to be submitted, except that individuals may submit one copy. Identify comments with the docket number found in brackets in the heading of this document. The draft guidance document and any comments FDA receives may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: January 9, 2003.

Linda S. Kahan,

Deputy Director, Center for Devices and Radiological Health.

[FR Doc. 03–1684 Filed 1–24–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4818–N–01]

Notice of Proposed Information Collection for Public Comment on the American Housing Survey (AHS)—2003 National Sample

AGENCY: Office of the Assistant Secretary for Policy Development and Research, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* March 28, 2003.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: the Reports Liaison Officer, Office of Policy Development and Research, Department of Housing and Urban Development, 451 7th Street, SW., Room 8226, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Ronald J. Sepanik at (202)–708–1060, Ext. 5887 (this is not a toll-free number) or Jane Kneessi, Bureau of the Census, HHES Division, Washington, DC 20233, (301)–763–3235 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: 2003 American Housing Survey—National Survey.

OMB Control Number: 2528–0017.

Description of the need for the information and proposed use: The 2003 American Housing Survey—National Sample (AHS–N) provides a periodic measure of the size and composition of the housing inventory in our country. Title 12, United States Code, Sections 1701Z–1, 1701Z–2(g), and 1701Z–10a mandate the collection of this information.

The 2003 survey is similar to previous AHS–N surveys and collects data on subjects such as the amount and types of housing in the inventory, the physical condition of the inventory, the characteristics of the occupants, the persons eligible for and beneficiaries of assisted housing by race and ethnicity, and the number and characteristics of vacancies.

Policy analysts, program managers, budget analysts, and Congressional staff use AHS data to advise executive and legislative branches about housing conditions and the suitability of policy initiatives. Academic researchers and private organizations also use AHS data in efforts of specific interest and concern to their respective communities.

The Department of Housing and Urban Development (HUD) needs the AHS data for two important uses.

1. With these data, policy analysts can monitor the interaction among housing needs, demand and supply, as well as changes in housing conditions and costs, to aid in the development of housing policies and the design of housing programs appropriate for different target groups, such as first-time home buyers and the elderly.

2. With these data, HUD can evaluate, monitor, and design HUD programs to improve efficiency and effectiveness.

Agency Form Numbers: Computerized Versions of AHS–21, AHS–22 and AHS–23.

Members of affected public: Households.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response:

Number of respondents: 63,387.

Estimated Responses per Respondent: 1 every two years.

Time per respondent: 33 minutes.

Total hours to respond: 35,169.

Respondent's Obligation: Voluntary.

Status of the proposed information collection: Pending OMB approval.

Authority: Title 13 U.S.C. Section 9(a), and Title 12, U.S.C., Section 1701z–1 *et seq.*

Dated: January 16, 2003.

Christopher D. Lord,

Deputy Assistant, Secretary for Policy Development.

[FR Doc. 03–1691 Filed 1–24–03; 8:45 am]

BILLING CODE 4210–62–M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Glen Canyon Dam Adaptive Management Work Group; Notice of Renewal

This notice is published in accordance with section 9(a)(2) of the Federal Advisory Committee Act (Public Law 92–463). Following consultation with the General Services Administration, notice is hereby given that the Secretary of the Interior (Secretary) is renewing the Glen Canyon Dam Adaptive Management Work Group. The purpose of the Adaptive Management Work Group is to advise and provide recommendations to the Secretary with respect to her responsibility to comply with the Grand Canyon Protection Act of October 30, 1992, embodied in Public Law 102–575.

Further information regarding the advisory council may be obtained from the Bureau of Reclamation, Department of the Interior, 1849 C Street, NW., Washington, DC 20240.

The certification of renewal is published below.

Certification

I hereby certify that renewal of the Glen Canyon Dam Adaptive Management Work Group is in the public interest in connection with the purpose of duties imposed on the Department of the Interior by 30 U.S.C. 1–8.

Dated: January 22, 2003.

Gale A. Norton,

Secretary of the Interior.

[FR Doc. 03–1792 Filed 1–24–03; 8:45 am]

BILLING CODE 4310–MN–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Scoping Meetings and Intent To Prepare an Environmental Assessment for the Proposed Designation of an Experimental Population of Northern Aplomado Falcon

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of intent.

SUMMARY: We, the Fish and Wildlife Service (Service), are providing this notice to advise the public that a draft environmental assessment will be prepared, pursuant to the National Environmental Policy Act (NEPA) of 1969, as amended (42 U.S.C. 432 *et seq.*), in conjunction with a proposed rule to establish, under section 10(j) of the Endangered Species Act of 1973, as amended (Act), an experimental population of northern aplomado falcon (*Falco femoralis septentrionalis*) in New Mexico and Arizona. We will hold five public informational sessions and scoping meetings (*see* **DATES** and **ADDRESSES** sections).

Through this notice and the public scoping meetings, we are seeking comments or suggestions from the public, other concerned governmental agencies, tribes, the scientific community, industry, or any other interested parties concerning the scope of the environmental analysis, including the alternatives that should be analyzed.

DATES: Comments may be submitted directly to the Service (see **ADDRESSES** section) by February 11, 2003, or at any of the five scoping meetings to be held in February 2003. Meetings will include an informational session and a subsequent scoping meeting.

We will hold public informational sessions and scoping meetings at the following dates and times:

1. February 3, 2003

Douglas, AZ
Informational session: 5:30 p.m.
Scoping meeting: 7 p.m.

2. February 4, 2003

Deming, NM
Informational session: 5:30 p.m.
Scoping meeting: 7 p.m.

3. February 5, 2003:

Alamogordo, NM
Informational session: 5:30 p.m.
Scoping meeting: 7 p.m.

4. February 6, 2003

Carlsbad, NM
Informational session: 5:30 p.m.
Scoping meeting: 7:30 p.m.

5. February 11, 2003

Socorro, NM
Informational session: 5:30 p.m.
Scoping meeting: 7 p.m.

ADDRESSES:

Meetings

The public informational sessions and scoping meetings will be held at the following locations:

1. Douglas, AZ: Cochise College-Little Theatre, 4190 West State Highway 80; (520) 417–4143.

2. Deming, NM: Deming High School Auditorium, 1100 S. Nickel; (505) 546–8126.

3. Alamogordo, NM: Alamogordo Civic Center, 800 East 1st Street; (505) 439–4142.

4. Carlsbad, NM: New Mexico State University at Carlsbad-Instructional Building, Room 153, 1500 University Drive; (505) 234–9444.

5. Socorro, NM: New Mexico Tech-Main Auditorium, Macey Center, 801 Leroy Place; (505) 835–5342.

Information, comments, or questions related to preparation of the draft environmental assessment and the NEPA process should be submitted to Joy Nicholopoulos, Field Supervisor, U.S. Fish and Wildlife Service, New Mexico Ecological Services Field Office, 2105 Osuna NE, Albuquerque, New Mexico, 87113. Written comments may also be sent by facsimile to (505) 346–2542 or by e-mail to *R2FWE_AL@fws.gov*. All comments, including names and addresses, will become part of the administrative record and may be released.

FOR FURTHER INFORMATION CONTACT: Questions regarding the scoping process, preparation of the draft environmental assessment, or the development of a proposed rule designating an experimental population may be directed to Carrie Chalcraft at telephone number (505) 346–2525.

SUPPLEMENTARY INFORMATION:

Background

The aplomado falcon (*Falco femoralis*) is a widespread but sparsely distributed species through the Americas. Ranging from near the Mexican border south to Argentina, the aplomado falcon is a fast-flying predator that feeds upon medium-sized birds, insects, rodents, bats, and reptiles; pairs often hunt cooperatively. The northern subspecies (*F.f. septentrionalis*) was widespread throughout southwestern grasslands prior to the 1930s (Hector 1981, 2000). It was regarded as fairly common throughout the humid coastal

savannas of Texas and Tamaulipas and the drier interior grasslands. Numerous egg sets were collected in southern Texas between 1888 and 1915 (Hector 1981).

Populations of the northern aplomado falcon began to decline during the first half of the twentieth century. Prior to reintroduction efforts in Texas, the last known breeding of this species within the United States occurred near Deming, New Mexico, in 1952. Breeding pairs became established in Texas once again in 1995, as a result of reintroduction efforts. There have been no verified sightings of northern aplomado falcons in Arizona since 1940 (Philips *et al.* 1964). Sightings of northern aplomado falcons have continued in New Mexico since the 1950s, but with only a handful of unconfirmed sightings per decade from the 1970s and 1980s despite many searches by ornithologists. The frequency of sightings ranged from 1 to 6 confirmed sightings per year throughout the 1990s. These sightings were followed by an unsuccessful nesting attempt in New Mexico in 2001, and the successful fledging of 3 nestlings from a nest in 2002.

There remains some debate concerning the exact cause of the decline of the northern aplomado falcon. Hypotheses implicating habitat loss, pesticide use, climatic change, egg and skin collecting, disease, and others have been advanced. We may therefore never fully understand the chain of events that led to the virtual extirpation of this species throughout the northernmost portion of its range (Cade *et al.* 1991). Unquestionably, grassland savannas in the southwestern United States underwent a substantial physical change during the decline of the northern aplomado falcon. Naturally occurring range fires maintained the humid grasslands of coastal Texas and Tamaulipas, once known as the "Wild Horse Prairie." By World War II much of that prairie had been tilled into crops, and, with the control of range fires, what prairie remained soon became overgrown with brush species such as Honey Mesquite (*Prospis glandulosa*), Blackbrush Acacia (*Acacia rigidula*), Huisache (*Acacia smallii*), and Live Oak (*Quercus virginiana*) (Bogusch 1952). Brush encroachment may have increased the density of the great-horned owl (*Bubo virginianus*), a principal predator of falcons. Already greatly reduced in number and isolated through habitat loss, the remaining falcons may have been eliminated by the widespread use of organochlorines in agriculture (Kiff *et al.* 1980).

The decline of the northern aplomado falcon in the drier grasslands of west Texas, New Mexico, and Arizona may have resulted from different causes. Grasslands then were substantially altered both by farming and by intense overgrazing that reached its peak during 1870–1890 (Hastings and Turner 1965). The latter is believed to have reduced the diversity of the native short grass prairie. In time, these grasslands likely became less productive for the bird species upon which falcons preyed.

We listed the northern aplomado falcon as an endangered species in 1986 and published a Recovery Plan in 1990. As of September 2002, at least 37 pairs of falcons have become established in Texas as a result of release efforts. Monitoring efforts in northern Mexico indicate a population of 30–35 naturally occurring pairs currently exists in northern Chihuahua.

An active release effort is currently ongoing in both south and west Texas. The Peregrine Fund, a nonprofit, nongovernmental conservation organization, began recovery efforts during 1978–1988 when 25 young falcons were collected from nests in Mexico to establish a captive breeding program. The Peregrine Fund conducted a pilot release project during 1985–1989, and restoration began on a larger scale in 1993 with modified hacking procedures developed from Peregrine Falcon reintroduction. Although captive propagation of this species has been challenging, The Peregrine Fund has released 813 captive-bred falcons into Texas by the "hacking method." As of spring 2002, 37 established pairs have successfully fledged more than 92 young in a region where this species had been absent for over 50 years. Releases are being conducted on private property under a Safe Harbor Agreement enrolling 1.4 million acres in south and west Texas.

Experimental Populations

We are committed to the long-term recovery of the northern aplomado falcon (*Falco femoralis septentrionalis*) in accordance with the recommendations of the 1990 recovery plan for this species. One of the primary goals of the Northern Aplomado Falcon Recovery Plan is to "Reestablish the northern aplomado falcon in the U.S. and Mexico." Use of our authorities under section 10(j) of the Act (described below) may be a useful tool to achieve this recovery goal in Arizona and New Mexico. The purpose of this scoping process is to aid the development of an environmental assessment by collecting comments on this alternative as well as developing other alternatives that are consistent with the species' Recovery Plan.

Congress made significant changes to the Act in 1982 with addition of section 10(j), which provides for the designation of specific reintroduced populations of listed species as "experimental populations." Previously, we had authority to reintroduce populations into unoccupied portions of a listed species' historical range when doing so would foster the conservation and recovery of the species. However, local citizens often opposed these reintroductions because they were concerned about placement of restrictions and prohibitions on Federal and private activities. Under section 10(j), the Secretary of the Department of the Interior can designate reintroduced populations established outside the species' current range, but within its historical range, as "experimental." On the basis of the best available information, we must determine whether an experimental population is "essential" or "nonessential" to the continued existence of the species. Regulatory restrictions are considerably reduced under a Nonessential Experimental Population (NEP) designation.

Under the Act, species listed as endangered or threatened are afforded protection primarily through the prohibitions of section 9 and the requirements of section 7. Section 9 of the Act prohibits the take of endangered wildlife. "Take" is defined by the Act as to harass, harm, pursue, hunt, shoot, wound, trap, capture, or collect, or attempt to engage in any such conduct. Service regulations (50 CFR 17.31) generally extend the prohibition of take to threatened wildlife. Section 7 of the Act outlines the procedures for Federal interagency cooperation to conserve federally listed species and protect designated critical habitats. It mandates all Federal agencies to determine how to use their existing authorities to further the purposes of the Act to aid in recovering listed species. It also states that Federal agencies will, in consultation with the Service, ensure that any action they authorize, fund, or carry out is not likely to jeopardize the continued existence of a listed species or result in the destruction or adverse modification of designated critical habitat. Section 7 of the Act does not affect activities undertaken on private lands unless they are authorized, funded, or carried out by a Federal agency.

For purposes of section 9 of the Act, a population designated as experimental is treated as threatened regardless of the species' designation elsewhere in its range. Through section 4(d) of the Act, threatened designation allows us greater

discretion in devising management programs and special regulations for such a population. Section 4(d) of the Act allows us to adopt whatever regulations are necessary to provide for the conservation of a threatened species. In these situations, the general regulations that extend most section 9 prohibitions to threatened species do not apply to that species, and the special 4(d) rule contains the prohibitions and exemptions necessary and appropriate to conserve that species. Regulations issued under section 4(d) for NEPs are usually more compatible with routine human activities in the reintroduction area.

For the purposes of section 7 of the Act, we treat NEPs as threatened species when the NEP is located within a National Wildlife Refuge or National Park, and section 7(a)(1) and the consultation requirements of section 7(a)(2) of the Act apply. Section 7(a)(1) requires all Federal agencies to use their authorities to conserve listed species. Section 7(a)(2) requires that Federal agencies, in consultation with the Service, ensure any actions they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or adversely modify its critical habitat. When NEPs are located outside a National Wildlife Refuge or National Park, we treat the population as proposed for listing and only two provisions of section 7 would apply—section 7(a)(1) and section 7(a)(4). In these instances, NEPs provide additional flexibility because Federal agencies are not required to consult with us under section 7(a)(2). Section 7(a)(4) requires Federal agencies to confer with the Service on actions that are likely to jeopardize the continued existence of a proposed species. The results of a conference are advisory in nature and do not restrict agencies from carrying out, funding, or authorizing activities.

Individuals used to establish an experimental population may come from a donor population, provided their removal will not create adverse impacts upon the parent population, and provided appropriate permits are issued in accordance with our regulations (50 CFR 17.22) prior to their removal.

In order to establish an experimental population, we must issue a proposed regulation and consider public comments on the proposed rule prior to publishing a final regulation. In addition, we must comply with NEPA. Also, our regulations require that, to the extent practicable, a regulation issued under section 10(j) of the Act represents an agreement between the Service, the affected State and Federal agencies, and persons holding any interest in land that may be affected by the establishment of the experimental population (see 50 CFR § 17.81(d)).

We have not yet identified possible alternatives for accomplishing our recovery goals in Arizona and New Mexico and we do not know what the preferred alternative (the proposed action) or other alternatives might entail. Once identified, the alternatives will be carried forward into detailed analyses pursuant to NEPA.

Any process to release falcons as "experimental" will require that we: (1) Compile and analyze all new biological information on the species; (2) review and update the administrative record; (3) review the overall approach to the conservation and recovery of the falcon in the United States; (4) review available information that pertains to the habitat requirements of this species, including material received during the public comment period from this notice and comments on the listing; (5) review actions identified in the northern aplomado falcon recovery plan (Service 1990); (6) determine what areas, if any, might require special management or areas that should be excluded from the experimental population area; (7) write a draft environmental assessment and present alternatives to the public for review and comment; (8) incorporate public input and use current knowledge of falcon habitat use and availability to precisely map a proposed experimental population area; (9) present this proposal in a proposed rule for publication in the **Federal Register** and solicit comments from the public; and (10) finalize the environmental assessment and the rule designating an experimental population and identifying an experimental population area, and authorizing the release of falcons as experimental in New Mexico and Arizona, or adopt the no action alternative and not permit the release of northern aplomado falcons as experimental in these areas.

We are the lead Federal agency for compliance with NEPA for this action. The draft environmental assessment will incorporate public concerns in the analysis of impacts associated with the proposed action and associated project alternatives. The draft environmental assessment will be sent out for a minimum 30-day public review period, during which time comments will be solicited on the adequacy of the document. The final environmental document (*e.g.*, environmental assessment or environmental impact statement) will address the comments we receive during public review and will be furnished to all who commented on the draft environmental assessment, and made available to anyone who requests a copy. This notice is provided pursuant to regulations for implementing NEPA.

Public Comments Solicited

The Service wishes to ensure that any proposed rulemaking to designate an experimental population for the aplomado falcon we might issue and the draft environmental assessment on the proposed action effectively evaluate all potential issues associated with this action. Therefore, we request comments or recommendations concerning reasons why any particular area should or should not be included in an experimental population designation, information on the distribution and quality of habitat for the northern aplomado falcons, land or water use practices and current or planned activities in areas that may be affected by a designation of an experimental population, and any other pertinent issues of concern. We seek comment from the public, as well as Tribal, local, State, and Federal government agencies, the scientific community, industry, or any other interested party. To promulgate a proposed rule to establish an experimental population for the aplomado falcon and to determine whether to prepare a finding of no significant impact or an environmental impact statement, we will take into consideration all comments and any additional information received.

We will give separate notice of the availability of the draft environmental assessment, when completed, so that interested and affected people may comment on the draft and have input into the final decision. The draft environmental assessment will undergo a minimum 30-day public comment period.

References

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Dated: January 15, 2003.

Craig Manson,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 03–1943 Filed 1–23–03; 4:07 pm]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Notice of Intent To Prepare a Land Use Plan Amendment and Environmental Assessment

AGENCY: Bureau of Land Management, Arizona State Office.

ACTION: Notice of intent to prepare a Land Use Plan Amendment (LUP) and Environmental Assessment (EA).

SUMMARY: This document provides notice that the Bureau of Land Management (BLM), Arizona (AZ) State Office intends to prepare an Arizona Statewide Land Use Plan Amendment to incorporate current fire management policy and to prepare án Environmental Assessment that will amend seven land use plans. These plans are: Arizona Strip District Resource Management Plan (RMP) (1992), Kingman RMP (1995), Lower Gila North Management Framework Plan (MFP) (1983), Lower Gila South RMP (1988), Phoenix RMP (1989), Safford RMP (1992 and 1994) and Yuma RMP (1986 and 1987). The purpose of the Arizona Statewide LUP Amendment is to establish consistent methods of managing Arizona wildland fire across the state and among the various agencies and groups who participate in wildland fire fighting, ecology, and management, while at the same time allowing appropriate and fire-safe enjoyment of BLM-administered lands in Arizona. The amendment will result in a consistent approach to incorporating the National Fire Policy in land use plans.

This planning activity encompasses approximately 12 million surface acres of public land. The action is being conducted under the authority of BLM Planning Regulation 43 CFR, 1610 and will fulfill the needs and obligations set forth by the National Environmental Policy Act (NEPA), the Federal Land Policy and Management Act (FLPMA), and BLM management policies. This collaborative process will take into account local, regional, and national needs and concerns by involving other federal agencies, Native American tribes, conservation groups, recreationists, the public, and other stakeholders throughout the planning process.

This plan amendment will analyze fires and fuels management actions and their impacts on the human environment for the seven BLM field offices in one document in order to ensure consistency and collaboration of the interested publics. An EA-level analysis and Finding of No Significant Impact (FONSI) are anticipated, followed with an approved plan amendment and Decision Record (DR).

DATES: The public comment period commences with the publication of this notice. Public meetings will be held throughout the plan scoping and preparation period and will tentatively be held in February and March of 2003. In order to ensure local community participation and input, BLM will rotate public meetings among towns in the planning area, which include the metro-Phoenix, Kingman, Lake Havasu, Yuma, Tucson, and Safford, Arizona; and St. George, Utah. BLM encourages early participation by all those interested so that they can determine the future management of the public lands. At least 15 days public notice will be given for activities where the public is invited to attend, and meetings and comment deadlines will be announced through the local news media, newsletters, and the BLM Web site (*http://www.az.blm.gov*). The minutes and list of attendees for each meeting will be available to the public and open for 30 days to any participant who wishes to clarify the views they expressed. Written comments will be accepted throughout the planning process. In addition to the ongoing public participation process, formal opportunities for public participation will be provided upon publication of the EA.

ADDRESSES: Written comments should be sent to: AZ LUP Fire, Fuels and Air Quality Amendment Planning, Bureau of Land Management, 222 North Central, Phoenix, AZ 85002–2203. Use the above address to mail or hand-deliver written comments; additionally, comments can be faxed to (928) 692–4414. Comments, including names and street addresses of respondents, will be available for public review at the BLM Arizona State Office at the above address during regular business hours, 7:30 a.m. to 4:30 p.m., Monday through Friday, except holidays, and may be published as part of the EA. Documents relevant to the planning effort may be examined during normal business hours, Monday through Friday, at the BLM Arizona State Office at the above address. Individual respondents may request confidentiality. If you wish to withhold your name or street address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your comment. Such requests will be honored to the extent allowed by law. All submissions from organizations and businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be available for public inspection in their entirety.

FOR FURTHER INFORMATION: For further information and/or to have your name added to our mailing list, contact Sherry Hirst, Kingman Field Office, 2475 Beverly Avenue, Kingman, AZ 86401, telephone (928) 692–4435.

SUPPLEMENTARY INFORMATION: During the planning process, the BLM will consider appropriate management response to wildland fires as well as how prescribed fire can be used to help achieve resource objectives and to reduce dangerous accumulations of hazardous fuels. The amendment will emphasize appropriate response to wildland fires based on a consideration of firefighter and public safety, threats to private property, anticipated suppression costs, resource values at risk, resource benefits, the return of fire as a process to ecosystems, public attitudes and behavior regarding wildland fire hazards, and political and social concerns. Other issues that will be addressed include: hazardous fuels as an issue, and the use of prescribed fire, mechanical treatment, and/or chemical treatment(s) to reduce and/or manage hazardous fuels; hazardous fuels in the Wildland Urban Interface (WUI) and associated issues, and the various tools to approach these issues; appropriate management response, including managing natural fire starts for resource benefit; a statewide programmatic emergency fire rehabilitation plan; and air quality analysis.

Each year, the BLM responds to wildland fires that burn thousands of acres of land for which BLM has fire protection responsibility. The BLM has wildland fire protection responsibility on more than 12 million acres of public land in Arizona. By agreement, the BLM also protects approximately 9 million acres of other federal and state agency lands in Arizona.

Recent fire history statistics demonstrate the connection between past fire management practices and threats to human life and safety, risk of severe wildland fire, and disruption of critical ecological processes. The deaths of 34 firefighters during the 1994 fire season emphasized the danger that fuels accumulation poses to firefighters, and led to the 1995 Federal Wildland Fire Management Policy and Program. The effect of severe wildland fire on resource values is an additional concern to resource-management agencies. In 2002, wildland fires raged across Arizona, with over 600,000 of acres impacted, the largest number of acres to be impacted by wildland fire in the states history. Nationally, more acres burned in 2002 than in any other year in the last half-century.

BLM personnel, other agencies, individuals and user groups have identified preliminary issues and management concerns. Additional issues and modifications to known issues will be identified during public scoping. The major issues identified so far include management of public land resources including natural resource management; cultural resource management and protection; recreation/visitor use and safety; management of grazing, and other uses; as well as integration of public land management with the local community, tribal groups, and other agency needs and plans.

After gathering public comments on what issues the plan should address, BLM will place the suggested issues in one of three categories and provide an explanation for each issue placed into category two or three:

1. Issues to be resolved in the plan;
2. Issues resolved through policy or administrative action; or
3. Issues beyond the scope of this plan.

The public is encouraged to help identify planning issues and concerns during the scoping phase.

An interdisciplinary approach will be used to develop the plan in order to consider the variety of resource issues and concerns identified. Disciplines involved in the planning process will include but not limited to rangeland management, outdoor recreation, fire, archaeology, wildlife, wilderness, hydrology, soils, sociology, and economics.

Frank B. Miller,

Acting Deputy State Director Resources, Arizona BLM State Office.

[FR Doc. 03–1740 Filed 1–24–03; 8:45 am]

BILLING CODE 4310–32–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–160–1220–PG]

Notice of Public Meeting, Central California Resources Advisory Council

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM) Resource Advisory Council (RAC) for Central California will meet as indicated below.

DATES: The meeting will be held Friday and Saturday, January 31, February 1 in the Arletta Douglas Room of the Holbrooke Hotel, 212 West Main Street, Grass Valley, California beginning at 8 a.m. both days. The agenda calls for an orientation session on Friday, and a field trip to the Yuba Goldfields on Saturday with a return to the meeting room for discussion. There will be a public comment period beginning at 3:30 p.m. on Friday.

FOR FURTHER INFORMATION CONTACT: Larry Mercer, Public Affairs Officer, Bureau of Land Management, 3801 Pegasus Drive, Bakersfield, CA 93308, telephone 661–391–6010.

SUPPLEMENTARY INFORMATION: The 12 member Central California Resource Advisory Council advises the Secretary of the Interior, through the Bureau of Land Management, on a variety of public land issues associated with public land management in Central California. At this meeting, topics to be discussed include:

Facilitated orientation and future planning for Council members.

The Yuba Goldfields area on the Yuba River, including issues of public access. All meetings are open to the public. The public may present written comments to the Council, and a time will be allocated for hearing public comments. Depending on the number of persons wishing to comment and the time available, the time for individual oral comments may be limited. Individuals who plan to attend and need special assistance such as sign language interpretation, tour transportation or other reasonable accommodations should contact the BLM as indicated above.

Dated: January 14, 2003.

Larry Mercer,

Public Affairs Officer.

[FR Doc. 03–1696 Filed 1–24–03; 8:45 am]

BILLING CODE 4310–40–M

INTERNATIONAL TRADE COMMISSION

Proposed Agency Information Collection; Comment Request

AGENCY: International Trade Commission.

ACTION: Notice of proposed information collection and request for comment.

EFFECTIVE DATE: January 21, 2003.

SUMMARY: Pursuant to the Paperwork Reduction Act of 1995, the U.S. International Trade Commission intends to seek approval from the Office of Management and Budget for extension of the currently approved DataWeb user registration form (OMB No.: 3117–0190) in connection with the ITC DataWeb Public Access Project. The user registration forms are required to accurately analyze usage and data reports generated by user sectors and to save user product and country lists for user reference during future logins. Comments concerning the proposed information collection are requested in accordance with 5 CFR 1320.8(d).

DATES: To be assured of consideration, written comments must be received not later than 60 days after publication of this notice.

ADDRESSES: Signed comments should be submitted to Marilyn Abbott, Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436.

FOR FURTHER INFORMATION CONTACT: Copies of the proposed forms and draft Supporting Statement to be submitted to the Office of Management and Budget will be posted on the Commission's World Wide Web site at *http://www.usitc.gov* or may be obtained from Peg MacKnight, Office of Operations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436 (telephone no. 202–205–3431). Hearing impaired individuals are advised that information on this matter can be obtained by contacting our TTD terminal, (telephone no. 202–205–1810).

Request for Comments

Comments are solicited as to (1) whether the proposed information collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used; (3) the quality, utility, and clarity of the information to be collected; and (4) minimization of the burden of the proposed information collection on those who are to respond (including through the use of appropriate automated, electronic, mechanical, or other forms of information technology, *e.g.*, permitting electronic submission of responses).

Summary of the Proposed Information Collection

The forms are for use by the Commission in connection with the ITC DataWeb. The ITC DataWeb provides on-line, rapid and customized retrieval of U.S. trade and tariff data and has been an Internet tool primarily for government users. The interagency International Trade Data System (ITDS) board chairman has requested that the ITC DataWeb be made formally available to the public. The user registration forms are required to accurately track usage, data reports generated, and costs by user sectors and to save user product and country lists for user reference during future logins. The forms would appear on the ITC DataWeb internet site (*http://dataweb.usitc.gov)* and would need to be filled out only once.

Summary of Proposal

(1) *Number of forms submitted:* one.

(2) *Title of forms:* ITC Tariff and Trade DataWeb: "Create New User Account Form".

(3) *Type of request:* extension.

(4) *Frequency of use:* single data gathering.

(5) *Description of respondents:* government and private sector users of the on-line ITC DataWeb.

(6) *Estimated number of respondents:* 10,000 annually.

(7) *Estimated total number of minutes to complete the forms:* 2.0 minutes.

(8) Information obtained from the forms that qualify as confidential business information will be so treated by the Commission and not disclosed in a manner that would reveal the individual operations of a firm.

Additional Information or Comment: Copies of the forms and supporting documents may be obtained from Peg MacKnight (E-mail *pmacknight@usitc.gov* or telephone 202–205–3431). Comments about the proposals should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Room 10102 (Docket Library), Washington, DC 20503, Attention: Docket Librarian. All comments should be specific, indicating which part of the forms are objectionable, describing the concern in detail, and including specific suggested revisions or language changes. Copies of any comments should be provided to Robert Rogowsky, Director, Office of Operations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, who is the Commission's designated Senior Official under the Paperwork Reduction Act.

Hearing impaired individuals are advised that information on this matter can be obtained by contacting our TTD terminal (telephone no. 202–205–1810). General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov).*

By order of the Commission.

Issued: January 22, 2003.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 03–1789 Filed 1–24–03; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

[AAG/A Order No. 003–2003]

Privacy Act of 1974; System of Records

Pursuant to the provisions of the Privacy Act of 1974 (5 U.S.C. 552a), the Drug Enforcement Administration (DEA), Department of Justice, proposes to establish a new system of records entitled, "Clandestine Laboratory Seizure System (CLSS) Justice/ DEA–002" which covers the described records maintained by the El Paso Intelligence Center (EPIC).

The Clandestine Laboratory Seizure System (CLSS), JUSTICE/DEA–002, is a new system of records for which no public notice consistent with the provisions of 5 U.S.C. 552a(e)(4) was previously published in the **Federal Register**.

In accordance with 5 U.S.C. 552a(e)(4) and (11), the public is given a 30-day period in which to comment; and the Office of Management and Budget (OMB), which has oversight responsibility under the Act, requires a 40-day period in which to conclude its review of the system. Therefore, please submit any comments by [insert date 30 days after publication in the **Federal Register**]. The public, OMB, and the Congress are invited to submit any comments to Mary E. Cahill, Management and Planning Staff, Justice Management Division, Department of Justice, Washington, DC 20530 (Room 1400 National Place Building).

In accordance with 5 U.S.C. 552a(r), the Department has provided a report to OMB and the Congress.

Dated: January 17, 2003.

Paul R. Corts,

Assistant Attorney General for Administration.

JUSTICE/DEA–002

SYSTEM NAME:

Clandestine Laboratory Seizure System (CLSS).

SYSTEM LOCATION:

Department of Justice, Drug Enforcement Administration, El Paso Intelligence Center, 11339 SSG Sims Street, El Paso, TX 79908–8098

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals identified or referenced in the course of investigations relating to the illicit manufacture, distribution, sale or possession of, or trafficking in controlled substances.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records consist of (1) personal identification and location data which may include name (including aliases and similar sounding names), occupation(s), race, sex, date and place of birth, height, weight, hair color, eye color, citizenship, nationality/ethnicity, alien status, addresses, and other miscellaneous identifying information, including, for example, telephone, passport, drivers license, vehicles registration, and social security numbers; (2) multi-source drug intelligence data; (3) counter-drug enforcement information, including identification, location, arrest, and prosecution of persons involved in the illicit trade or trafficking, and other activities and civil proceedings related to such enforcement activities; (4) information related to organizations involved in the illicit trade in controlled substances either in the United States or internationally; (5) reports of arrests; and (6) other information involving the illicit possession, manufacture, sale, purchase, and transport of controlled substances.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The Comprehensive Drug Abuse Prevention and Control Act of 1970 (83

Stat. 1236), Reorganization Plan No. 2 of 1973, the Omnibus Crime Control and Safe Streets Act, (Pub. L. 90–351, as amended), and the Single Convention on Narcotic Drugs (18 U.S.C. 1407). Additional authority is derived from Treaties, Statutes, Executive Orders, Presidential Proclamations, and Attorney General Directives.

PURPOSE(S):

Records in this system are used to provide clandestine laboratory seizure information for the Drug Enforcement Administration, and other law enforcement agencies, in the discharge of their law enforcement duties and responsibilities.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Pursuant to the Privacy Act, 5 U.S.C. 552a(b)(3), relevant records or any relevant facts derived therefrom may be disclosed :

(a) To federal, state, and local law enforcement agencies to facilitate the investigation and prosecution of illegal drug trafficking activities.

(b) To individuals and organizations in the course of investigations where necessary to elicit information pertinent to counter-drug, weapons, alien, and drug-money investigations.

(c) To contractors, grantees, experts, consultants, students, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for the Federal Government, when necessary to accomplish an agency function related to this system of records.

(d) To a former employee of the Department for purposes of: responding to an official inquiry by a federal, state, or local government entity or professional licensing authority in accordance with applicable regulations; or facilitating communications with a former employee that may be necessary for personnel-related or other official purposes where the Department requires information and/or consultation assistance from the former employee regarding a matter within that person's former area of responsibility.

(e) To the news media and the public pursuant to 28 CFR 50.2 unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy;

(f) In the event that a record in this system, either alone or in conjunction with other information indicates a violation or potential violation of the law—criminal, civil, or regulatory in nature—the relevant records may be referred to the appropriate federal, state, local, or tribal law enforcement authority or other appropriate agency charged with the responsibility for investigating or prosecuting such violation or charged with enforcing or implementing such law.

(g) Information contained in systems of records maintained by the Department of Justice, not otherwise required to be released pursuant to 5 U.S.C. 552, may be made available to a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of and at the request of the individual who is the subject of the record.

(h) A record from a system of records may be disclosed as a routine use to the National Archives and Records Administration (NARA) and the General Services Adminstration (GSA) in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

(i) In an appropriate proceeding before a court or administrative or regulatory body when records are determined by the Department of Justice to be arguably relevant to the proceeding.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Data is stored in electronic media via a configuration of personal computer, client/server, and mainframe systems architecture. Computerized records are maintained on hard disk, floppy diskettes, compact discs, magnetic tape, and/or optical disks. The records are stored on computer at the El Paso Intelligence Center, El Paso, Texas. Paper files are stored as follows: (1) In a secure file room with controlled access; (2) in locked file cabinets; and/or (3) in other appropriate GSA approved security containers.

RETRIEVABILITY:

Records may be retrieved by reference to an individual's name or personal identifier, name of organization, location of laboratory, date of seizure, type of chemical, and DEA investigative file number.

SAFEGUARDS:

Both electronic and paper records are safeguarded in accordance with DOJ rules and policy governing automated systems security and access. These safeguards include the maintenance of technical equipment in restricted areas, and the required use of individual passwords and user identification codes to access the system. The EPIC CLSS database is protected by both physical security methods and dissemination and access controls. Protection of the automated information system is provided by physical, procedural and electronic means.

RETENTION AND DISPOSAL:

Records in the manual portion of the system are destroyed after two years. The automated intelligence information is stored on computer and destroyed five (5) years after the date of last update of the record. The automated investigative information is destroyed twenty-five years after the date of last update, as approved by NARA.

SYSTEM MANAGER(S) AND ADDRESS:

The System Manager is the Director, El Paso Intelligence Center, 11339 SSG Sims Street, El Paso, Texas, 79912–8098.

NOTIFICATION PROCEDURES:

Inquiries should be addressed to Freedom of Information and Records Section, Drug Enforcement Administration, Washington, DC 20537.

RECORD ACCESS PROCEDURES:

A request for access to a record from this system shall be made in writing to the Freedom of Information Act (FOIA)/Privacy Act (PA) Section, Headquarters, Drug Enforcement Administration, Washington, DC 20307 or to the System Manager, with the envelope and letter clearly marked "Privacy Access Request." The request should include a general description of the records sought and must include the requester's full name, current address, and date and place of birth. The request must be signed and either notarized or submitted under penalty of perjury and dated. Some information may be exempt from access to certain provisions as described in the section entitled "Systems Exempted from Certain Provisions of the Act." An individual who is the subject of a record in this system may access those records that are not exempt from disclosure. A determination whether a record may be accessed will be made at the time a request is received.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information maintained in the system should direct their request according to the Record Access Procedures listed above, stating clearly and concisely what information is being contested, the reasons for contesting it, and the proposed amendment to the information sought. Some information is not subject to amendment. Some

information may be exempt from contesting record procedures as described in the section entitled "Systems Exempted from Certain Provisions of the Act." An individual who is the subject of a record in this system may amend those records that are not exempt. A determination whether a record may be amended will be made at the time a request is received.

RECORD SOURCE CATEGORIES:

(1) DEA intelligence and investigative records; (2) reports, investigative and intelligence reports from other participating and associated federal and state member agencies; and (3) records and reports of foreign law enforcement and regulatory agencies.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

The Attorney General has exempted this system from subsections (c)(3) and (4); (d)(1), (2), (3) and (4); (e)(1), (2) and (3), (e)(5) and (e)(8); and (g), of the Privacy Act pursuant to 5 U.S.C. 552a (j) and (k). The exemptions will be applied only to the extent that information in a record is subject to exemption pursuant to 5 U.S.C. 552a(j) and (k). A determination as to exemption shall be made at the time a request for access or amendment is received. Rules have been promulgated in accordance with the requirements of 5 U.S.C. 553(b), (c) and (e) and have been published in the **Federal Register**.

[FR Doc. 03–1671 Filed 1–24–03; 8:45 am]
BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

[INS No. 2229–02; AG Order No. 2651–2003]

RIN 1115—AE26

Termination of Designation of Angola Under the Temporary Protected Status Program

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Notice.

SUMMARY: The Attorney General's most recent designation of Angola under the Temporary Protected Status program (TPS) expires on March 29, 2003. After reviewing country conditions and consulting with the appropriate Government agencies, the Attorney General has determined that conditions in Angola no longer support a TPS designation. Accordingly, the designation of Angola for TPS is terminated effective March 29, 2003. After that date, aliens who are nationals of Angola (and aliens having no nationality who last habitually resided in Angola) who have had TPS under the Angola program will no longer have such status. This notice contains information regarding the termination of the TPS designation for Angola.

DATES: The termination of the TPS designation for Angola is effective March 29, 2003.

FOR FURTHER INFORMATION CONTACT: Naheed A. Qureshi, Office of Adjudications, Residence and Status Branch, Immigration and Naturalization Service, Room 3040, 425 I Street, NW., Washington, DC 20536, telephone (202) 514–4754.

SUPPLEMENTARY INFORMATION:

What Is the Statutory Authority for the Designation and Termination of TPS?

Under section 244 of the Immigration and Nationality Act (INA or "the Act"), 8 U.S.C. 1254a, the Attorney General is authorized to designate a foreign state (or part of a state) for TPS. The Attorney General may then grant TPS to eligible nationals of that foreign state (or aliens having no nationality who last habitually resided in that state). Section 244(b)(3)(A) of the Act requires the Attorney General to review, at least 60 days before the end of the TPS designation, the conditions in a foreign state designated under section 244(b)(1) of the Act. 8 U.S.C. 1254a(b)(3)(A).

Section 244(b)(3) of the Act further requires the Attorney General to determine whether the conditions for such a designation continue to be met, and to terminate the state's designation when the Attorney General determines conditions are no longer met. 8 U.S.C. 1254a(b)(3)(B). The Attorney General must then publish a notice of termination in the **Federal Register**.

Why Did the Attorney General Decide To Terminate TPS for Angola?

On March 29, 2000, the Attorney General published a notice in the **Federal Register** at 65 FR 16634 designating Angola for TPS for a period of one year, based upon conditions in Angola at that time. That TPS designation was extended twice and is scheduled to expire on March 29, 2003. *See* 66 FR 18111 (April 5, 2001 (extension and redesignation); 67 FR 4997 (Feb. 1, 2002) (extension). Based upon a recent review of conditions within Angola by the Departments of Justice and State, the Attorney General finds that conditions in Angola no longer support a TPS designation.

A recent Department of State report indicates that the National Union for the Total Independence of Angola (UNITA) and the Government of Angola were able to recommit to the Lusaka Peace Process following the February 2002 death of rebel leader Jonas Savimbi. Department of State Report (Nov. 13, 2002). The Resource Information Center (RIC) of the Immigration and Naturalization Service (INS/Service) observed that "[t]he peace accords ended the 27-year battle between the UNITA forces and the Angolan ruling party." RIC Report (Nov. 29, 2002). The peace agreement committed the parties to continued discussions regarding future elections and a power sharing approach to governance. Since the peace accord was signed, fighting has ceased and 84,000 UNITA combatants have been disarmed and decommissioned, effectively dismantling UNITA's military capability. Department of State Report. The United Nations estimates that approximately 5,000 of the demobilized soldiers have joined the Angolan government forces, while approximately 80,000 have reunited with their families in reception centers. RIC Report.

A separate insurgency led by the separatist guerrilla forces of the Front for the Liberation of the Enclave of Cabinda/Armed Forces of Cabinda (FLEC/FAC) continues in the northern province of Cabinda, and the Angolan Armed Forces has increased its military campaign against rebels in this area. Given the geographic isolation of Cabinda from the rest of Angola, however, the Department of State concludes that conditions in that province do not impact Angolans elsewhere. Department of State Report.

The Department of State report notes that in addition to the humanitarian needs of 380,000 UNITA members and their families, the Government of Angola faces the challenge of assisting an estimated 4 million displaced Angolan nationals. The RIC Report expresses concern that Angola lacks housing, medical services, water systems, and other basic services destroyed by a 27-year-long war.

There are as many as 8 million landmines planted in Angolan soil. Department of State Report. At least 10 provinces, accounting for 40 percent of Angola's countryside, are heavily mined, rendering large areas of arable land and pasture unfit for use. RIC Report. Nevertheless, the Department of State concludes that the risks associated with existing landmines are not sufficient to potential returnees to warrant an extension of TPS.

Despite these challenging circumstances, the United Nations High Commissioner for Refugees (UNHCR)

estimates that 70,000 refugees and 860,000 internally displaced persons have spontaneously returned to their home areas since February 2002. Department of State Report. In the spring of 2003, UNHCR intends to begin the organized repatriation of 470,000 refugees from Zambia, the Democratic Republic of Congo and Namibia. *Id.* The Government of Angola continues to work with the international community to return 4 million internally displaced persons to their homes in Angola.

Based on these findings, the Attorney General has determined that conditions warranting TPS designation no longer exist, and that the TPS designation for Angola must be terminated. Section 244(b)(3)(B) of the Act provides that the Attorney General "shall" terminate a designation if he determines that Angola "no longer continues to meet the conditions for designation * * *" A statutory condition common to designations under paragraphs (A) and (C) of section 244(b)(1) of the Act is a threat to the personal safety of potential returnees. Whether the precipitating condition is an "ongoing armed conflict," INA § 244(b)(1)(A), or other "extraordinary and temporary conditions," INA § 244(b)(1)(C), this shared condition—threat to returnees' safety—must "continue to be met" or the Attorney General "shall" terminate the designation. INA §§ 244(b)(3)(A), (B). The disarmament, demobilization, and ongoing reintegration of ex-combatants, the formal end to war, and the discussions regarding planned elections are all positive developments and an indication that internal armed conflict no longer threatens returning Angolans. Furthermore, efforts by the United Nations and non-governmental organizations to resettle Angolan citizens signify the improvement of humanitarian and socioeconomic conditions in Angola. For the foregoing reasons, the Attorney General determines that Angolan TPS beneficiaries may return safely to Angola at this time and, therefore, terminates the TPS designation for Angola.

What May I Do if I Believe That My Return to Angola Is Unsafe?

This notice terminates the designation of Angola for TPS. There may be avenues of immigration relief and protection available to aliens who are nationals of Angola (and aliens having no nationality who last habitually resided in Angola) in the United States who believe that their particular circumstances make return to Angola unsafe. Such avenues may include, but are not limited to, asylum, withholding of removal, or protection under Article 3 of the Torture Convention.

How Does the Termination of TPS Affect Former TPS Beneficiaries?

After the designation of Angola for TPS is terminated on March 29, 2003, former TPS beneficiaries will maintain the same immigration status they held prior to TPS (unless that status has since expired or been terminated) or any other status they may have acquired while registered for TPS. Accordingly, if an alien held no lawful immigration status prior to receiving TPS benefits and did not obtain any other status during the TPS period, he or she will maintain that unlawful status upon the termination of the TPS designation.

Former TPS beneficiaries will no longer be eligible for a stay of removal or a work authorization document pursuant to the TPS program. TPS-related work authorization documents expire on March 29, 2003, and will not be renewed.

Termination of the TPS designation for Angola does not necessarily affect pending applications for other forms of immigration relief or protection, though former TPS beneficiaries will begin to accrue unlawful presence as of March 29, 2003, if they have not been granted any other immigration status or protection or if they have no pending application for certain benefits.

Notice of Termination of Designation of Angola Under the TPS Program

By the authority vested in me as Attorney General under section 244(b)(3) of the Act, I have consulted with the appropriate agencies of government concerning conditions in Angola. 8 U.S.C. 1254a(b)(3). Based on these consultations, I have determined that Angola no longer meets the conditions for designation of TPS under section 244(b)(1) of the Act. *See* 8 U.S.C. 1254a(b)(1).

Accordingly, I order as follows:

(1) The designation of Angola for TPS under section 244(b) of the Act is terminated effective March 29, 2003.

(2) I estimate that there are approximately 316 nationals of Angola (and aliens having no nationality who last habitually resided in Angola) who currently receive TPS benefits.

(3) Information concerning the termination of the TPS program for nationals of Angola (and aliens having no nationality who last habitually resided in Angola) will be available at local Service offices upon publication of this notice and through the INS National Customer Service Center at 1–800–375–5283. This information will also be published on the INS web site at *http://www.ins.usdoj.gov.*

Dated: January 23, 2003.

John Ashcroft,

Attorney General.

[FR Doc. 03–1994 Filed 1–24–03; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Petitions for Modification

The following parties have filed petitions to modify the application of existing safety standards under section 101(c) of the Federal Mine Safety and Health Act of 1977.

1. Double M Mining, Inc.

[Docket No. M–2002–123–C]

Double M Mining, Inc., P.O. Box 14, Rt. 624, Amonate, Virginia 24610 has filed a petition to modify the application of 30 CFR 77.214(a) (Refuse piles; general) at its Auger #2 Mine (MSHA I.D. No. 46–08915) located in McDowell County, West Virginia. This standard requires refuse piles constructed on or after July 1, 1971, to be located in areas that are a safe distance from all underground mine airshafts, preparation plants, tipples or other surface installations and such piles shall not be located over abandoned openings or streamlines. The petitioner proposes to cover the coal seam with inert material, backfill and eliminate the highwall with refuse on a 2 to 1 slope and cover with soil in order to reclaim the site. The petitioner states that: (i) The face up and the adjacent areas of the mine have been augered and the areas now needs to be reclaimed; (ii) that there will be no mine drainage from the mine openings in the area because the original mine entries were developed down dip and seals have been built that isolate the active mining from the area to be reclaimed from the active mining of the Vica Coal Company who is mining from a different set of portals. The petitioner further states that the Auger #2 Mine was faced up in the area of an old refuse pile by removing the refuse and then taking a small cut to create the highwall. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

2. Freeman United Coal Company

[Docket No. M–2002–124–C]

Freeman United Coal Company, P.O. Box 4630, Springfield, Illinois 62708

has filed a petition to modify the application of 30 CFR 75.1101–8(a) (Water sprinkler system; arrangement of sprinklers) at its Crown II Mine (MSHA I.D. No. 11–02632) located in Montgomery County, Illinois. The petitioner proposes to provide a fireproof electrical enclosure and fire detection system in lieu of a sprinkler over the electrical control. The petitioner states that the Crown II Mine is a large underground mine employing three operating sections to develop entrees and rooms with remote control continuous miners and the belt system utilizes ten belt drives. The petitioner further states that: (i) The belt drives and electrical controls are ventilated with isolated intake air; (ii) the electrical control boxes do not contain flammable fluids or other flammable products and are fully enclosed with fireproof construction and are located at least two-feet from coal or other combustible material; and (iii) the electrical cables will conform with the requirements of part 18, and a heat sensor or CO monitor will be installed near the electrical control box. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

3. Rustler Coal Company

[Docket No. M–2003–001–C]

Rustler Coal Company, 273 Hill Road, Hegins, Pennsylvania 17938 has filed a petition to modify the application of 30 CFR 75.1002–1 (Location of other electric equipment; requirements for permissibility) at its Orchard Slope Mine (MSHA I.D. No. 36–08346) located in Schuylkill County, Pennsylvania. The petitioner requests a modification of the existing standard to permit the use of non-permissible electric equipment within 150 feet of the pillar line. The petitioner states that the non-permissible equipment would include drags and battery locomotives due in part to the method of mining used in pitching anthracite mines and the alternative evaluation of the mine air quality for methane on an hourly basis during operation. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

4. KenAmerican Resources, Inc.

[Docket No. M–2003–002–C]

KenAmerican Resources, Inc., 7590 State Route 181, Central City, Kentucky 42330 has filed a petition to modify the application of 30 CFR 75.1909(b)(6) (Nonpermissible diesel-powered equipment; design and performance requirements) at its Paradise #9 Mine (MSHA I.D. No. 15–17741) located in Muhlenburg County, Kentucky. The petitioner proposes to equip its diesel grader with a device that will limit the speed of the grader to 10 miles per hour, and provide training to every miner who operates the grader on the proper techniques for lowering the blade to restrict the speed and stop the grader. The petitioner asserts that application of the standard would result in a diminution of safety to the miners and that the proposed alternative method would provide at least the same measure of protection as the existing standard.

5. Anita Mining Company

[Docket No. M–2003–003–C]

Anita Mining Company, One Energy Place, Latrobe, Pennsylvania 15650 has filed a petition to modify the application of 30 CFR 75.1100–2(e)(2) (Quantity and location of firefighting equipment) at its Ondo Extension Mine (MSHA I.D. No. 36–09005) located in Indiana County, Pennsylvania. The petitioner requests a modification of the existing standard to permit an alternative method of compliance for fire fighting equipment required at temporary electrical installations. The petitioner proposes to use two (2) portable fire extinguishers in lieu of using 240 pounds of rock dust at all temporary electrical installations at the Ondo Extension Mine. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

Request for Comments

Persons interested in these petitions are encouraged to submit comments via e-mail to *comments@msha.gov*, or on a computer disk along with an original hard copy to the Office of Standards, Regulations, and Variances, Mine Safety and Health Administration, 1100 Wilson Boulevard, Room 2352, Arlington, Virginia 22209. All comments must be postmarked or received in that office on or before February 26, 2003. Copies of these petitions are available for inspection at that address.

Dated at Arlington, Virginia, this 17th day of January 2003.

Marvin W. Nichols, Jr.,

Director, Office of Standards, Regulations, and Variances.

[FR Doc. 03–1680 Filed 1–24–03; 8:45 am]

BILLING CODE 4510–43–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Meetings of Humanities Panel

AGENCY: The National Endowment for the Humanities.

ACTION: Notice of meetings.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92–463, as amended), notice is hereby given that the following meetings of the Humanities Panel will be held at the Old Post Office, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Daniel Schneider, Advisory Committee Management Officer, National Endowment for the Humanities, Washington, DC 20506; telephone (202) 606–8322. Hearing-impaired individuals are advised that information on this matter may be obtained by contacting the Endowment's TDD terminal on (202) 606–8282.

SUPPLEMENTARY INFORMATION: The proposed meetings are for the purpose of panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by the grant applicants. Because the proposed meetings will consider information that is likely to disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential and/or information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee meetings, dated July 19, 1993, I have determined that these meetings will be closed to the public pursuant to subsections (c) (4), and (6) of section 552b of Title 5, United States Code.

1. *Date:* February 3, 2003.
Time: 8:30 a.m. to 5 p.m.
Room: 415.
Program: This meeting will review applications for Humanities Projects in Media, submitted to the Division of Public Programs at the November 1, 2002 deadline.

2. *Date:* February 10, 2003.
Time: 8:30 a.m. to 5 p.m.
Room: 415.
Program: This meeting will review applications for Humanities Projects in Media, submitted to the Division of Public Programs at the November 1, 2002 deadline.

3. *Date:* February 19, 2003.
Time: 8:30 a.m. to 5 p.m.
Room: 415.
Program: This meeting will review applications for Humanities Projects in Media, submitted to the Division of Public Programs at the November 1, 2002 deadline.

Daniel Schneider,
Advisory Committee Management Officer.
[FR Doc. 03–1717 Filed 1–24–03; 8:45 am]
BILLING CODE 7536–01–P

NATIONAL SCIENCE FOUNDATION

Notice of Permits Issued Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.
ACTION: Notice of permits issued under the Antarctic Conservation Act of 1978, Public Law 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permits issued under the Antarctic Conservation Act of 1978. This is the required notice.

FOR FURTHER INFORMATION CONTACT: Joyce A. Jatko, Acting Permit Officer, Office of Polar Programs, Rm. 755, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

SUPPLEMENTARY INFORMATION: On December 4, 2002, the National Science Foundation published a notice in the **Federal Register** of permit applications received. A permit was issued on January 6, 2003 to: William Gilmore, Permit No. 2003–016.

Joyce A. Jatko,
Acting Permit Officer.
[FR Doc. 03–1759 Filed 1–24–03; 8:45 am]
BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Notice of Permit Applications Received Under the Antarctic Conservation Act of 1978 (Pub. L. 95–541)

AGENCY: National Science Foundation.
ACTION: Notice of permit applications received under the Antarctic Conservation Act of 1978, Pub. L. 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permit applications received to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act at Title 45 Part 670 of the Code of Federal Regulations. This is the required notice of permit applications received.

DATES: Interested parties are invited to submit written data, comments, or views with respect to this permit application by February 26, 2003. This application may be inspected by interested parties at the Permit Office, address below.

ADDRESSES: Comments should be addressed to Permit Office, Room 755, Office of Polar Programs, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230.

FOR FURTHER INFORMATION CONTACT: Joyce A. Jatko at the above address or (703) 292–8030.

SUPPLEMENTARY INFORMATION: The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Pub. L. 95–541), has developed regulations that implement the provisions of the Protocol on Environmental Protection to the Antarctic Treaty with respect to the conservation of Antarctic animals and plants in the Code of Federal Regulations Part 670. The regulations establish a permit system for certain actions which would otherwise be prohibited, including the introduction of non-indigenous species into Antarctica.

The applications received are as follows:

1. Applicant

H. William Detrich, Department of Biology, Northeastern University, 414 Mugar Hall, Boston, MA 02215.

Activity for Which Permit Is Requested

Introduce non-indigenous species into Antarctica. The applicant proposes using frozen fish tissues from species native to Patagonian Chile as bait (mixture of *Macruronis magellanicus* and *Dissostichus eleginoides*) in fishing traps/pots in the Antarctic Peninsula. The specimens collected will be taken to the Palmer Station aquarium facilities and used to study the biochemistry and molecular biology of Antarctic fishes. The applicant proposes to fish a maximum of 20 traps and estimates using a maximum of 20 blocks of frozen fish bait (10–15 kg).

Location

Antarctic Peninsula area in the vicinities of Low, Brabant, and Livingston Islands, as well as Dallman Bay.

Dates

April 5, 2003 to August 30, 2005.

Joyce A. Jatko,
Acting Permit Officer, Office of Polar Programs.
[FR Doc. 03–1760 Filed 1–24–03; 8:45 am]
BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–346]

Firstenergy Nuclear Operating Company; Notice of Withdrawal of Application for Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of FirstEnergy Nuclear Operating Company (the licensee) to withdraw its July 26, 1999, application for proposed amendment to Facility Operating License No. NPF–3 for the Davis-Besse Nuclear Power Station, Unit No. 1, located in Ottawa County, Ohio.

The proposed amendment would have revised the Technical Specifications pertaining to the Safety Features Actuation System Instrumentation trip setpoints.

The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on September 8, 1999 (64 FR 48862). However, by letter dated December 20, 2002, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated July 26, 1999, and the licensee's letter dated December 20, 2002, which withdrew the application for license amendment. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams/html*. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, or 301–415–4737 or by e-mail to *pdr@nrc.gov*.

Dated at Rockville, Maryland, this 21st day of January 2003.

For the Nuclear Regulatory Commission.

Jon Hopkins,

Senior Project Manager, Section 2, Project Directorate III, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 03–1749 Filed 1–24–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–346]

FirstEnergy Nuclear Operating Company; Notice of Withdrawal of Application for Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of FirstEnergy Nuclear Operating Company (the licensee) to withdraw its October 9, 2001, application for proposed amendment to Facility Operating License No. NPF–3 for the Davis-Besse Nuclear Power Station, Unit No. 1, located in Ottawa County, Ohio.

The proposed amendment would have revised the Technical Specifications regarding surveillance testing of the Steam and Feedwater Rupture Control System instrumentation to decrease the frequency of functional testing and to revise setpoint allowable values accordingly.

The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on December 26, 2001 (66 FR 66466). However, by letter dated December 20, 2002, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated October 9, 2001, and the licensee's letter dated December 20, 2002, which withdrew the application for license amendment. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams/html*. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, or 301–415–4737 or by e-mail to *pdr@nrc.gov*.

Dated at Rockville, Maryland, this 21st day of January 2003.

For the Nuclear Regulatory Commission.

Jon Hopkins,

Senior Project Manager, Section 2, Project Directorate III, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 03–1750 Filed 1–24–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–263]

Nuclear Management Company, LLC; Notice of Consideration of Issuance of Amendment to Facility Operating License and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR–22, issued to the Nuclear Management Company, LLC, for operation of the Monticello Nuclear Generating Plant, located in Wright County, Minnesota.

The proposed amendment would revise the operating license to authorize changing the design bases and the Updated Safety Analysis Report (USAR) based upon revised analyses of (1) the long-term containment response to a design-basis loss-of-coolant accident (LOCA) and (2) containment pressure required for adequate net positive suction head (NPSH) for the residual heat removal (RHR) pumps and core spray pumps following a LOCA. The revised analyses incorporate revised inputs, assumptions, alternative scenarios, and different analytical methods and results from those currently described in the USAR and previously approved by the Nuclear Regulatory Commission in Monticello License Amendment Nos. 98 (dated July 25, 1997) and 102 (dated September 16, 1998). These changes include additional contributions to, and allowance for error in, (1) the reactor decay heat input; (2) longer delays in initiating long-term containment cooling for reactor isolation and small-break events; (3) improved credit (K-value of 147 Btu/sec-°F rather than 143.1 Btu/sec-°F) for RHR heat exchanger performance; and (4) a slightly higher design temperature limit (196.7 °F rather than 195 °F) for piping attached to the wetwell based on revised calculations of wetwell pressure and a corresponding increase in allowable service water temperature. The revised results reduce (from 18.26 psia to 17.51 psia) the overpressure credit needed for adequate NPSH (*i.e.*, the revised analysis of long-term wetwell pressure response to a design-basis LOCA with containment spray cooling results in a wetwell pressure below the previous NRC-approved limit curve during the period from 2000 to 4000 seconds).

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

By February 26, 2003, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license, and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714,[1] which is available at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland, or electronically on the Internet at the NRC Web site *http://www.nrc.gov/reading-rm/doc-collections/cfr*. If there are problems in accessing the document, contact the PDR Reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov*. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition must specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be

[1] "The most recent version of Title 10 of the Code of Federal Regulations, published January 1, 2002, inadvertently omitted the last sentence of 10 CFR 2.714(d) and subparagraphs (d)(1) and (2), regarding petitions to intervene and contentions. For the complete, corrected text of 10 CFR 2.714(d), please see 67 FR 20884; April 29, 2002."

made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order that may be entered in the proceeding on the petitioner's interest. The petition must also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene that must include a list of the contentions that the petitioner seeks to have litigated in the hearing. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of each contention and a concise statement of the alleged facts or expert opinion that support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. The petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one that, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement that satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing and petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's PDR, located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland, by the above date. Because of continuing disruptions in delivery of mail to United States Government offices, it is requested that petitions for leave to intervene and requests for hearing be transmitted to the Secretary of the Commission either by means of facsimile transmission to 301–415–1101 or by e-mail to *hearingdocket@nrc.gov*. A copy of the request for hearing and petition for leave to intervene should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555 0001, and because of continuing disruptions in delivery of mail to United States Government offices, it is requested that copies be transmitted either by means of facsimile transmission to 301–415–3725 or by e-mail to *OGCMailCenter@nrc.gov*. A copy of the request for hearing and petition for leave to intervene should also be sent to J. E. Silberg, Shaw, Pittman, Potts and Towbridge, 2300 N. Street, NW., Washington, DC 20037, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for a hearing will not be entertained absent a determination by the Commission, the presiding officer, or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

If a request for a hearing is received, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its proposed finding of no significant hazards consideration in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendment dated December 6, 2002, which is available for public inspection at the Commission's PDR, located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike, Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html*. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov*.

Dated at Rockville, Maryland, this 21st day of January, 2003.

For the Nuclear Regulatory Commission.

Darl S. Hood,

Senior Project Manager, Section 1, Project Directorate III, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 03–1748 Filed 1–24–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Termination of Uranium Milling Licenses in Agreement States; Notice of Availability of Final Revision of NRC Procedure, and Analysis of Public Comments

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of availability.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is announcing the availability of a final revision of the Office of State and Tribal Programs (STP) Procedure SA–900: "Termination of Uranium Milling Licenses in Agreement States," and an analysis of comments: "Responses to Comments on the Draft Revision of STP Procedure SA–900." The procedure describes the NRC review process for making determinations that all applicable standards and requirements have been met prior to Agreement State uranium milling license termination.

ADDRESSES: Electronic copies of the documents are available for public inspection in the NRC Public Document Room or from the Public Available Records (PARS) component of NRC's document system (ADAMS). ADAMS is accessible from the NRC Web site at *http://www.nrc.gov/reading-rm/adams.html* (The Public Electronic Reading Room). The final revised STP Procedure SA–900 and the analysis of comments are under Adams Accession Number ML030170429. The final revised STP Procedure SA–900 is also available on the NRC STP external Web site at: *http://www.hsrd.ornl.gov/nrc/procedures/sa900.pdf*.

FOR FURTHER INFORMATION CONTACT: Kevin Hsueh, Mail Stop: O–3C10, Office of State and Tribal Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Telephone 301–415–2598, or E-mail *KPH@NRC.GOV*.

SUPPLEMENTARY INFORMATION: On March 29, 2001, the NRC published a notice in the **Federal Register** (66 FR 17206) announcing the formation of a Working Group composed of representatives from the NRC and Agreement States. The Working Group was tasked to identify areas that need improvements in the NRC concurrence process for uranium milling license termination in Agreement States, and propose a draft revised procedure that addresses issues identified by the Working Group and stakeholders.

The Working Group, consisting of five representatives from the Agreement States, three NRC representatives and an NRC resource representative, began work in April 2001. The Working Group held four teleconference calls and one public meeting with stakeholders in 2001. A draft revised STP Procedure SA–900, prepared by the Working Group, was published for public comment on August 23, 2001 in the **Federal Register** (66 FR 44389).

Based on the Working Group's evaluation and discussions, comments provided during the teleconference calls and the meeting with stakeholders, and comments received on the draft revised Procedure SA–900, the Working Group prepared and issued a final report in July 2002.

The final report includes a revised STP Procedure SA–900 and an analysis of public comments on the 2001 publication of the draft procedure.

Subsequently, on October 4, 2002, NRC published a notice in the **Federal Register** (67 FR 62274) announcing the availability of, and providing opportunity for comments on the revised STP Procedure SA–900, prepared by the Working Group. The NRC has prepared an analysis of public comments on the draft procedure: "Response to Comments on Draft Revision of STP Procedure SA–900." All comments received have been considered in preparation of the final procedure. The final STP Procedure SA–900 was issued on December 31, 2002.

Dated at Rockville, Maryland this 17th day of January, 2003.

For the Nuclear Regulatory Commission.

Josephine M. Piccone,

Deputy Director, Office of State and Tribal Programs.

[FR Doc. 03–1751 Filed 1–24–03; 8:45 am]

BILLING CODE 7590–01–P

OVERSEAS PRIVATE INVESTMENT CORPORATION

January 23, 2003, Public Hearing

OPIC's Sunshine Act notice of its public hearing was published in the **Federal Register** (volume 68, number 4, page 816) on January 7, 2003. No requests were received to provide testimony or submit written statements for the record; therefore, OPIC's public hearing in conjunction with OPIC's January 30, 2003, Board of Directors meeting scheduled for 1 p.m. on January 23, 2003, has been cancelled.

Contact Person for Information: Information on the hearing cancellation may be obtained from Connie M. Downs at (202) 336–8438, via facsimile at (202) 218–0136, or via email at *cdown@opic.gov.*

Dated: January 22, 2003.

Connie M. Downs,

OPIC Corporate Secretary.

[FR Doc. 03–1888 Filed 1–23–03; 8:45 am]

BILLING CODE 3210–01–M

PENSION BENEFIT GUARANTY CORPORATION

Submission of Information Collection for OMB Review; Comment Request; Locating and Paying Participants

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of request for extension of OMB approval (with modifications).

SUMMARY: The Pension Benefit Guaranty Corporation is requesting that the Office of Management and Budget extend its approval (with modifications) of a collection of information under the Paperwork Reduction Act. The purpose of the information collection is to enable the PBGC to pay benefits to participants and beneficiaries in plans covered by the PBGC insurance program. This notice informs the public of the PBGC's request and solicits public comment on the collection of information.

DATES: Comments should be submitted by February 26, 2003.

ADDRESSES: Comments should be mailed to the Office of Information and Regulatory Affairs of the Office of Management and Budget, Attention: Desk Officer for Pension Benefit Guaranty Corporation, Washington, DC 20503.

Copies of the request for extension (including the collection of information) may be obtained without charge by writing to the PBGC's Communications and Public Affairs Department, suite 240, 1200 K Street, NW., Washington, DC 20005–4026, or by visiting that office or calling 202–326–4040 during normal business hours. (TTY and TDD users may call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4040.)

FOR FURTHER INFORMATION CONTACT: Catherine B. Klion, Attorney, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005–4026, 202–326–4024. (TTY and TDD users may call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4024).

SUPPLEMENTARY INFORMATION: The PBGC is requesting that OMB extend its approval (with modifications) of a collection of information needed to pay participants and beneficiaries who may be entitled to pension benefits under a defined benefit plan that has terminated. The collection consists of information participants and beneficiaries are asked to provide in connection with an application for benefits. In addition, in some instances, as part of a search for participants and beneficiaries who may be entitled to benefits, the PBGC requests individuals to provide identifying information that the individual would provide as part of an initial contact with the PBGC. The collection also includes pages on the PBGC's web site, www.pbgc.gov, that, for certain large plans, provide respondents with specific information about their pension plan and enable them to obtain a rough estimate of their benefit, either by using an online benefit estimate calculator or by completing an online form and submitting it to the PBGC to compute an estimate. All requested information is needed to enable the PBGC to determine benefit entitlements and to make appropriate payments or to provide respondents with specific information about their pension plan and enable them to obtain a rough estimate of their benefit.

The existing collection of information was approved under control number 1212–0055 (expires February 28, 2003).

The PBGC estimates that 134,950 benefit application or information forms will be filed annually by individuals entitled to benefits from the PBGC and that the associated burden is 76,200 hours (an average of about one-half hour per response) and $49,931.50 (an average of $.37 per response). The PBGC further estimates that 5,500 individuals annually will provide the PBGC with identifying information as part of an initial contact and that the associated burden is 1,500 hours (an average of about one-quarter hour per response) and $1,100 (an average of $.20 per

response). Thus, the total estimated annual burden associated with this collection of information is 77,700 hours and $51,041.50.

Issued in Washington, DC, this 22nd day of January, 2003.

Stuart A. Sirkin,

Director, Corporate Policy and Research Department, Pension Benefit Guaranty Corporation.

[FR Doc. 03–1765 Filed 1–24–03; 8:45 am]

BILLING CODE 7708–01–P

PENSION BENEFIT GUARANTY CORPORATION

Submission of Information Collection for OMB Review; Comment Request; Reportable Events

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of request for extension of OMB approval.

SUMMARY: The Pension Benefit Guaranty Corporation (PBGC) is requesting that the Office of Management and Budget (OMB) extend approval, under the Paperwork Reduction Act, of the collection of information under part 4043 of its regulations relating to Reportable Events (OMB control number 1212–0013; expires February 28, 2003). This notice informs the public of the PBGC's request and solicits public comment on the collection of information.

DATES: Comments should be submitted by February 26, 2003.

ADDRESSES: Comments may be mailed to the Office of Information and Regulatory Affairs of the Office of Management and Budget, Attn: Desk Officer for Pension Benefit Guaranty Corporation, Washington, DC 20503.

Copies of the request for extension may be obtained without charge by writing to the PBGC's Communications and Public Affairs Department at the above address or by visiting that office or calling 202–326–4040 during normal business hours. (TTY and TDD users may call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4040.) The reportable events regulations, forms, and instructions may be accessed on the PBGC's Web site at *http://www.pbgc.gov*.

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Assistant General Counsel, or James L. Beller, Attorney, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005–4026, 202–326–4024. (For TTY and TDD, call the Federal relay service toll-free at 1–800–877–8339 and request connection to 202–326–4024.)

SUPPLEMENTARY INFORMATION: Section 4043 of the Employee Retirement Income Security Act of 1974 (ERISA) requires plan administrators and plan sponsors to report certain plan and corporate events to the PBGC. The reporting requirements give the PBGC timely notice of events that indicate plan or employer financial problems. The PBGC uses the information provided in determining what, if any, action it needs to take. For example, the PBGC might need to institute proceedings to terminate the plan (placing it in trusteeship) under section 4042 of ERISA to ensure the continued payment of benefits to plan participants and their beneficiaries or to prevent unreasonable increases in its losses.

The collection of information under the regulation has been approved through February 28, 2003, by OMB under control number 1212–0013. The PBGC is requesting that OMB extend its approval. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

The PBGC estimates that it will receive 537 reportable events notices per year under this collection of information. The PBGC further estimates that the average annual burden of this collection of information is 2,260 hours and $452,000.

Issued in Washington, DC, this 22nd day of January, 2003.

Stuart Sirkin,

Director, Corporate Policy and Research Department, Pension Benefit Guaranty Corporation.

[FR Doc. 03–1766 Filed 1–24–03; 8:45 am]

BILLING CODE 7708–01–P

RAILROAD RETIREMENT BOARD

Proposed Collection; Comment Request

SUMMARY: In accordance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 which provides opportunity for public comment on new or revised data collections, the Railroad Retirement Board (RRB) will publish periodic summaries of proposed data collections.

Comments are invited on: (a) Whether the proposed information collection is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the RRB's estimate of the burden of the collection of the information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden related to the collection of information on responders, including the use of automated collection techniques or other forms of information technology.

Title and purpose of information collection: Railroad Service and Compensation Reports; OMB 3220–0008.

Under section 6 of the Railroad Unemployment Insurance Act (RUIA) and section 9 of the Railroad Retirement Act (RRA), the Railroad Retirement Board (RRB) maintains for each railroad employee a record of compensation paid to that employee by all railroad employees for whom the employee worked after 1936. This record, which is used by the RRB to determine eligibility for, and amount of, benefits due under the laws it administers, is conclusive as to the amount of compensation paid to an employee during such period(s) covered by the report(s) of the compensation by the employee's railroad employer(s), except in cases when an employee files a protest pertaining to his or her reported compensation within the statute of limitations cited in section 6 of the RRA and section 9 of the RRA.

To enable the RRB to establish and maintain the record of compensation, employers are required to file with the RRB, in such manner and form and at such times as the RRB prescribes, reports of compensation of employees. The information reporting requirements are prescribed in 20 CFR 209.6. The RRB utilizes form BA–3a, Annual Report of Compensation and form BA–4, Report of Creditable Compensation Adjustments, to secure the required information from railroad employers. Form BA–3a provides the RRB with information regarding annual creditable service and compensation for each individual who worked in the railroad industry in a given year. Form BA–4 provides for the adjustment of any previously submitted reports and also the opportunity to provide any service and compensation that had been previously omitted.

Employers currently have the option of submitting the reports on the aforementioned forms, or, in like format, on magnetic tape, tape cartridges, PC diskettes, or CD–ROM as outlined in the RRB's Reporting Instructions to Employers. Submission of the reports is mandatory. One response is required of each respondent. Minor editorial changes are proposed to form BA–3a and BA–4.

In addition, in accordance with the Government Paperwork Elimination Act which requires Federal agencies to provide its customers the option to submit or transact business with agencies electronically, when practical, as a substitute for paper by October 21, 2003, the RRB proposes the addition of a new equivalent Internet version of form BA–4, Report of Creditable Compensation Adjustments, to the information collection.

The completion time for form BA–3a is estimated at between 33.3 hours per response for electronic submissions to 85 hours for manual paper responses. The completion time for form BA–4 is estimated at between 45 and 60 minutes per response.

Additional Information or Comments: To request more information or to obtain a copy of the information collection justification, forms, and/or supporting material, please call the RRB Clearance Officer at (312) 751–3363. Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 N. Rush Street, Chicago, Illinois 60611–2092. Written comments should be received within 60 days of this notice.

Chuck Mierzwa,

Clearance Officer.

[FR Doc. 03–1764 Filed 1–24–03; 8:45 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon written request, copies available from: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension: Rule 15c2–8, SEC File No. 270–421, OMB Control No. 3235–0481.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

• *Rule 15c2–8 Delivery of Prospectus*

Rule 15c2–8 requires broker-dealers to deliver preliminary or final prospectuses to specified persons in association with securities offerings. This requirement ensures that information concerning issuers flows to purchasers of the issuers' securities in a timely fashion. There are approximately 8,000 broker-dealers, any of which potentially may participate in an offering subject to rule 15c2–8. The Commission estimates that rule 15c2–8 creates approximately 10,600 burden hours with respect to 120 initial public offerings and 460 other offerings.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Kenneth A. Fogash, Acting Associate Executive Director/CIO, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549.

Dated: January 17, 2003.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–1700 Filed 1–24–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–27640]

Filings Under the Public Utility Holding Company Act of 1935, as Amended ("Act")

January 21, 2003.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated under the Act. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) is/are available for public inspection through the Commission's Branch of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by February 14, 2003, to the Secretary, Securities and Exchange Commission, Washington, DC 20549–0609, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of facts or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After February 14, 2003, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Allegheny Energy Inc. (70–10109)

Notice of Proposed Charter Amendment To Eliminate Preemptive Rights of Stockholders and Order Authorizing Solicitation of Proxies In Connection With the Proposed Amendment

Allegheny Energy Inc. ("Allegheny"), 10435 Downsville Pike, Hagerstown, Maryland 21740, a registered holding company under the Act, has filed a declaration ("Application") under sections 6(a), 7 and 12(e) of the Act and rules 62 and 65 under the Act.

Allegheny seeks authorization to: (i) Amend its charter ("Charter") to eliminate preemptive rights of stockholders and (ii) solicit proxies in connection with the proposed charter amendment.

Allegheny proposes to amend its Charter to eliminate any preemptive right of stockholders to subscribe for newly issued securities of Allegheny. Under Maryland law, a preemptive right is the preferential right of existing stockholders to purchase any issuance of stock or any issuance of a security convertible into an additional issuance of stock. Preemptive rights do not accrue unless expressly granted in a charter. Under the existing provisions of the Charter, stockholders of Allegheny possess preemptive rights to purchase, on a *pro rata* basis, any new issuance by Allegheny in a non-public offering for money, of common stock or securities convertible into common stock of Allegheny. On December 5, 2002, the Board of Directors of Allegheny unanimously approved resolutions proposing to amend and restate article VII of the Charter to provide that preemptive rights shall not exist with respect to Allegheny's securities. It is proposed that the current article VII, section B of the Charter be deleted and a new article VII, section B be inserted

so that article VII, section B of the Charter as amended shall read in full and in its entirety as follows:

B. No holder of Common Stock shall be entitled to preemptive rights and preemptive rights shall not exist with respect to shares or securities of the Corporation.

The affirmative vote of a majority of all the votes entitled to be cast is required for the approval of the proposal.

Allegheny states that elimination of preemptive rights will give the Board of Directors of Allegheny greater flexibility and reduce the cost of financings, such as the sale through private placements of new shares of common stock or senior securities convertible into common stock. The company states that the preemptive rights provision in the Charter serves as a significant impediment to any private sale of equity securities for cash to institutional or strategic investors. These types of issuances of equity can be important in times like these when both Allegheny and the capital markets, at least for energy companies, are under great stress, Allegheny states.

Allegheny would like to submit the proposed amendments to its Charter as described in this Application to stockholders and to solicit proxies from stockholders at a special meeting during the first quarter of 2003. Adoption of the proposed amendments will require the affirmative vote of the holders of a majority of the outstanding shares of Allegheny's common stock entitled to vote at the special meeting.

The cost of the solicitation of proxies will be borne by Allegheny. In addition to the solicitation of proxies by use of the mails, Allegheny, or its subsidiaries, may use the services of its officers, directors and regular employees (none of whom will receive any compensation other than their regular compensation) to solicit proxies, personally or by telephone. Arrangements may also be made with banks, brokerage houses and other custodians, nominees and fiduciaries to forward the proxy materials to the beneficial owners, and Allegheny may reimburse such banks, brokerage houses, custodians, nominees and fiduciaries for reasonable expenses. Allegheny has hired MacKenzie Partners, Inc. to assist in soliciting proxies and has agreed to pay a customary fee for these services, in addition to expenses incurred in connection with the solicitation of proxies.

The following estimated fees and expenses, including expenses of the special meeting of stockholders, are expected to be incurred by Allegheny in connection with the proposed proxy solicitation and special meeting: Proxy Solicitation, $50,000; Printing, $15,000; Mailings, $100 to $150,000; Legal Fees, $100,000. The total estimated fees and expenses are $265,000 to $315,000.

No state or federal commission, other than this Commission, has jurisdiction over the proposed transactions.

Allegheny has requested that an order be issued authorizing the solicitation of proxies from shareholders in connection with the proposed Charter amendment. It appears to the Commission that Allegheny's declarations regarding the proposed solicitation of proxies should be permitted to become effective immediately under rule 62(d).

It is ordered, under rule 62 under the Act, that the declaration regarding the proposed solicitation of proxies from Allegheny shareholders in connection with the proposed Charter amendment become effective immediately, subject to the terms and conditions contained in rule 24 under the Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–1701 Filed 1–24–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 25907; 812–12730]

System Capital Corporation and Golden Funding Corporation; Notice of Application

January 21, 2003.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of application under section 6(c) of the Investment Company Act of 1940 ("Act") for an exemption from all provisions of the Act.

Summary of Application: Applicants request an order that would permit Golden Funding Corporation ("Golden Funding") to sell securities and use the proceeds to finance the business activities of its parent company, System Capital Corporation ("SCC"), and certain companies controlled by SCC ("Controlled Companies").

Applicants: SCC and Golden Funding.

Filing Dates: The application was filed on December 18, 2001, and amended on January 16, 2003.

Hearing or Notification of Hearing: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on February 18, 2003, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested.

Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Applicants, 676 N. Michigan Avenue, Suite 3650, Chicago, Illinois 60611.

FOR FURTHER INFORMATION CONTACT: Karen L. Goldstein, Senior Counsel (202) 942–0646, or Janet M. Grossnickle, Branch Chief (202) 942–0564 (Office of Investment Company Regulation, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549–0102 (tel. 202–942–8090).

Applicants' Representations

1. SCC, a Delaware corporation, is a holding company for subsidiaries that provide financing to the restaurant system operated by McDonald's Corporation ("McDonald's") and its owner/operators and suppliers (the "McDonald's Restaurant System"). SCC currently conducts its activities through three types of wholly-owned subsidiaries: (i) The Controlled Companies which provide financing for specific operations of the McDonald's Restaurant System, (ii) Golden Funding, which provides financing to the Controlled Companies, and (iii) System Capital Credit Corporation ("Credit"), which provides various credit support and financial services to Golden Funding, the Controlled Companies and other lenders to the McDonald's Restaurant System. Applicants state that SCC is not an investment company as defined in section 3(a) of the Act.

2. Golden Funding, a Delaware corporation, is a wholly-owned subsidiary of SCC whose primary purpose is to finance the activities of the Controlled Companies by issuing securities and by obtaining secured and unsecured loans pursuant to various credit and liquidity facilities. The debt

securities issued by Golden Funding include commercial paper, medium-term notes, and may include extendible maturity commercial paper (collectively, the "Securities"). The Securities are offered and sold under an exemption from registration provided by section 4(2) of the Securities Act of 1933 ("Securities Act") and are eligible for resale only to "qualified institutional buyers" under rule 144A of the Securities Act that are also "qualified purchasers" under the Act. Golden Funding also may borrow from banks and issue other debt securities or preferred stock in the United States pursuant to a registration statement or an applicable exemption from registration under the Securities Act. Golden Funding will comply with the applicable requirements in rule 3a–5(a)(1) through (4) and with rule 3a–5(b)(1)(i).

3. Golden Funding uses the proceeds from the Securities and loans to make loans to the Controlled Companies.[1] Each Controlled Company uses the proceeds of the loans to provide financing for a distinct segment of the McDonald's Restaurant System, either by purchasing accounts receivable or originating loans or leases to McDonald's or McDonald's Restaurant System participants. Applicants state that each of the Controlled Companies relies, or upon its formation will rely, on section 3(c)(5) of the Act for exclusion from regulation as an investment company under the Act.

4. Applicants state that in compliance with rule 3a–5(a)(5) under the Act, Golden Funding uses at least 85% of any cash or cash equivalents it raises to make loans to the Controlled Companies as soon as practicable, but in no event later than six months after Golden Funding's receipt of the cash or cash equivalents. In accordance with rule 3a–5(a)(6), all investments by Golden Funding, including temporary investments, will be made in Government securities (as defined in the Act), securities of Controlled Companies or debt securities that are exempted from the provisions of section 3(a)(3) of the Securities Act.

Applicants' Legal Analysis

1. Applicants request an order under section 6(c) of the Act exempting Golden Funding from all provisions of the Act. Rule 3a–5 under the Act provides an exemption from the Act for certain companies organized primarily to finance the business operations of their parent companies or companies controlled by their parent companies.

2. Rule 3a–5(b)(3)(i) under the Act, in relevant part, defines a "company controlled by the parent company" to mean any corporation, partnership, or joint venture that is not considered an investment company under section 3(a) of the Act, or that is excepted or exempted by order from the definition of investment company by section 3(b) or by the rules and regulations under section 3(a) of the Act. Applicants state that the Controlled Companies do not fit within the definition of "company controlled by the parent company" because they derive their non-investment company status from section 3(c)(5) of the Act. Accordingly, Applicants request exemptive relief to permit Golden Funding to issue and sell Securities to finance the operations of SCC and the Controlled Companies. Applicants state that neither SCC, Golden Funding nor the Controlled Companies engage primarily in investment company activities.

3. Section 6(c) of the Act, in pertinent part, provides that the Commission, by order upon application, may conditionally or unconditionally exempt any person, security or transaction, or any class or classes of persons, securities or transactions, from any provision or provisions of the Act to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants submit that its exemptive request meets the standards set out in section 6(c) of the Act.

Applicants' Condition

Applicants agree that the order granting the requested relief will be subject to the following condition:

Golden Funding will comply with all of the provisions of rule 3a–5 under the Act, except Golden Funding will be permitted to make loans to or make or hold investments in Controlled Companies that do not meet the portion of the definition of "company controlled by a parent company" in rule 3a–5(b)(3)(i) under the Act solely because they are excluded from the definition of investment company under section 3(c)(5) of the Act.

[1] Golden Funding also may from time to time make advances to Credit, which is a "company controlled by the parent company," as that term is defined in rule 3a–5(b)(3).

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–1757 Filed 1–24–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

In the Matter of Emission Controls Corporation; Order of Suspension of Trading

January 23, 2003.

It appears to the Securities and Exchange Commission ("Commission") that there is a lack of adequate and accurate information concerning the management, business practices, and results of operations of Emission Controls Corporation ("Emission Controls"). The securities of Emission Controls are quoted on the OTC Pink Sheets under the symbol EMCS. Information has been provided to the Commission raising concerns as to the adequacy and accuracy of Emission Controls' publicly disseminated information concerning, among other things, Emission Controls' products and business prospects.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of Emission Controls.

Therefore, it is ordered, pursuant to section 12(k) of the Securities Exchange Act of 1934, that trading in the securities of Emission Controls is suspended for the period from 9:30 a.m. e.s.t. January 23, 2003, through 11:59 p.m. e.s.t., on February 5, 2003.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–1878 Filed 1–23–03; 12:43 pm]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47200; File No. SR–CBOE–2002–63]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendments Nos. 1 and 2 Thereto by the Chicago Board Options Exchange, Inc. Proposing To Allow Limited Side-by-Side Trading and Integrated Market Making for Certain Securities and Their Related Options

January 15, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act" or "Exchange Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 16, 2002, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed Amendment No. 1 to the proposed rule change on December 27, 2002.[3] The Exchange filed Amendment No. 2 to the proposed rule change on January 2, 2003.[4] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

CBOE proposes to amend Exchange rules and the related Interpretations and Policies to allow for limited "Side-by-Side Trading"[5] and "Integrated Market Making"[6] for certain securities and their related options. The text of the proposed rule change follows. Additions are in *italics*. Deleted text is in [brackets].

* * * * *

Chapter XXX

Part A—Trading in Stocks, Warrants, and Other Securities

General Floor Prohibitions

Rule 30.18. No member of the Exchange, while on the floor, shall:

(a) Dealing When Option Granted or Held. *Except as otherwise provided in Section (d) below,* [I]*i*nitiate the purchase or sale on the Exchange of any security subject to the Rules in this Chapter, for his own account or for any account in which he, his member organization or any person associated with such member or member organization is directly or indirectly interested, including by means of the issuance or acceptance of a commitment or obligation to trade, where (i) such member holds, or has sold or granted, an option or warrant on that security, or (ii) such member has knowledge that his member organization or any person associated with such member or member organization holds, or has sold or granted, any such option or warrant; or

(b) No change.

(c) No change.

(d) Notwithstanding the foregoing:

(i) The DPM or an associated person of the DPM for an IPR, IPS, or TIR that meets the criteria set forth in Interpretation and Policy .03 of this Rule may act as a DPM, market-maker, and/or floor broker in the related options without implementing procedures to restrict the flow of information between them and without any physical separation between the trading in the underlying IPR, IPS, or TIR and the trading in the related options.

(ii) Reserved.

* * *Interpretations and Policies

.01 No change.

.02 No change.

.03 *The criteria to qualify particular IPRs, IPSs and TIRs for side-by-side trading and integrated market making pursuant to Exchange Rule 30.18(d)(i) are as follows:*

a. *Component securities that in the aggregate account for at least 90% of the weight of the portfolio must have a minimum market value of at least $75 million.*

b. *The component securities representing 90% of the weight of the portfolio each have a minimum monthly trading volume during each of the last six months of at least 250,000 shares.*

c. *The most heavily weighted component security cannot exceed 25% of the weight of the portfolio and the five most heavily weighted component securities cannot exceed 65% of the weight of the portfolio.*

d. *The underlying portfolio must include a minimum of 13 securities.*

e. *All securities in the portfolio must be listed on a national securities exchange or the NASDAQ Stock Market.*

Chapter 30

30.18A. An option DPM that is also approved as a DPM in the underlying security in a side-by-side trading environment pursuant to Exchange Rule 30.18(d)(i) is required to disclose on request to all participants in the option or security trading crowds information about aggregate buying and selling interest at different price points represented by limit orders then being represented or otherwise held by the DPM.

* * *Interpretations and Policies

.01. "Side-by-side trading" refers to the trading of options and their underlying securities in the same physical vicinity, though not necessarily by the same DPM or firm.

.02. Notwithstanding the fact that a DPM's option transactions may be in conformity with Rule 30.18 and its Interpretations and Policies, such DPM shall nonetheless be deemed to be in violation of Rule 30.18 if the DPM has engaged in such option transactions for manipulative purposes.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] On December 27, 2002, the Exchange filed a Form 19b–4, which replaced the original filing in its entirety ("Amendment No. 1"). In Amendment No. 1, the Exchange withdrew the portion of the proposed rule change to permit limited integrated market making of securities admitted to dealings on an UTP basis and their related options if information barriers are established, approved and maintained. In addition, the Exchange amended the proposal to designate the proposed rule change as filed under section 19(b)(3), rather than section 19(b)(2), of the Act.

[4] *See* letter from Christopher Hill, Attorney, CBOE, to Nancy Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, dated December 30, 2002 ("Amendment No. 2"). In Amendment No. 2, the Exchange provided reasons for requesting that the Commission waive the 5 day pre-filing requirement and the 30 day delay of the operative date as required under section 19(b)(3) of the Act, and Rule 19b–4(f)(6) thereunder.

[5] The Exchange defines "Side-by-Side Trading" as the trading of options and their underlying stocks in the same vicinity, though not necessarily by the same DPM or firm.

[6] The Exchange defines "Integrated Market Making" as the trading of options and their underlying stocks by the same DPM.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Since at least the 1980s,[7] the Commission has expressed concerns regarding potential information advantages and potential opportunities for manipulation that might occur if specialists and market makers could engage in side-by-side trading and integrated market making.

In October of 1990, the Commission approved CBOE rules governing the trading of stocks, warrants, and other securities at CBOE (which are now set forth in Chapter 30 of the CBOE's Rules).[8] During the process of obtaining this approval, CBOE noted to the Commission that no side-by-side trading of stocks and stock options would occur on the same floor, and agreed to submit a proposed rule change under section 19(b) of the Act[9] to the Commission "prior to any modification to its plan to trade stocks in a separate location from the options trading floor."[10] In addition, Exchange Rule 30.18(a), as proposed by the CBOE and approved by the Commission, was "intended to prevent a member from buying or selling an underlying stock on the CBOE when the member or an affiliate has a position in an option or warrant on that security."[11]

Since that time, the core of the CBOE's business has remained primarily in listed options on equities and stock indexes. In recent years, however, the CBOE, in addition to its existing listed options business, has also come to trade a number of products that derive their value from portfolios of other equity securities. These products include among others, Index Portfolio Receipts ("IPRs")[12] and "Index Portfolio Shares ("IPSs"),[13] which are sometimes collectively referred to as Exchange-Traded Funds ("ETFs"),[14] as well as Trust Issued Receipts ("TIRs").[15]

More recently, the Commission approved the American Stock Exchange LLC ("Amex") filing SR–Amex–2002–21, which authorized the Amex to permit limited integrated market making in its stocks that trade pursuant to unlisted trading privileges ("UTP") and their related options, as well as both integrated market making and side-by-side trading in certain ETF shares and TIRs and their related options.[16]

CBOE expressed concerns about the Amex proposal for side-by-side trading set forth in SR–Amex–2002–21 and the earlier SR–Amex–2001–75.[17] Furthermore, the CBOE belives the Commission's recent approval of SR–AMEX–2002–21, including both the ability to undertake limited side-by-side trading as well as limited integrated market-making, gives substantial competitive advantages to the Amex. Thus, in the interests of promoting a fair and competitive marketplace, the CBOE proposes to undertake integrated market making and side-by-side trading of ETFs and their related options to the same extent that the Commission has approved for the Amex.

Specifically, CBOE proposes to permit side-by-side trading and integrated market making of certain ETFs and TIRs and their related options, if the ETF or TIR meets the criteria set forth in Interpretation and Policy .03 to CBOE Rule 30.18.[18] Specifically, CBOE proposes to permit DPMs and market makers in options on ETF shares and TIRs that meet the criteria set forth in the proposed new Interpretation and Policy .04 to CBOE Rule 30.18 to also act as the DPM and market makers, respectively, in the underlying securities without information barriers or physical barriers. CBOE also proposes new CBOE Rule 30.18A to require a DPM in options on an ETF or TIR that is also the DPM in the underlying security in a side-by-side environment to disclose on request to participants in the ETF, TIR, and option trading crowds information about aggregate buying and selling interest at different price points represented by limit orders on the ETF, TIR or option held by the DPM.

The CBOE notes that it remains concerned about the potential impact of any further expansion of side-by-side trading. While the Commission's approval of SR–Amex–2002–21 compels the CBOE to make this proposed rule change for competitive reasons, CBOE represents that this proposal seeks no more side-by-side trading than what the Commission has approved for the Amex in SR–Amex–2002–21.

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[7] *See* Securities Exchange Act Release No. 26147 (October 3, 1988), 53 FR 39556).

[8] See Securities Exchange Act Release No. 28556 (October 19, 1990), 55 FR 43233 (October 26, 1990) (approving SR–CBOE–90–08).

[9] 15 U.S.C. 78s.

[10] *See id.* at 16 and nn. 30–31 (citing letter from Robert Ackerman, Vice President, CBOE, to Howard Kramer, Assistant Director, Division, Commission, dated October 15, 1990).

[11] *See* Securities Exchange Act Release No. 30068 (December 12, 1991), 56 FR 65764 (December 18, 1991) (approving File No. SR–CBOE–91–45).

[12] As set forth in Interpretation .02 to CBOE Rule 1.1, the term index portfolio receipts or "IPRs" means securities that (a) represent an interest in a unit investment trust ("Trust") which holds the securities that comprise an index on which a series of IPRs is based; (b) are issued by the Trust in a specified aggregate minimum number in return for a "Portfolio Deposit" consisting of specified numbers of shares of stock plus a cash amount; (c) when aggregated in the same specified minimum number, may be redeemed from the Trust which will pay to the redeeming holder the stock and cash then comprising the Portfolio Deposit; and (d) pay holders a periodic cash payment corresponding to the regular cash dividends or distributions declared and paid with respect to the component securities of the stock index on which the IPRs are based, less certain expenses and other charges as set forth in the Trust prospectus. IPRs are "UIT interests" within the meaning of the Rules of the Exchange.

[13] As set forth in Interpretation .03 to CBOE Rule 1.1, the term "Index Portfolio Shares" or IPSs means securities that (a) are issued by an open-end management investment company based on a portfolio of stocks designed to provide investment results that correspond generally to the price and yield performance of a specified foreign or domestic stock index; (b) are issued by such an open-end management investment company in a specified aggregate minimum number in return for a deposit of specified number of shares of stock and/or a cash amount with a value equal to the next determined net asset value; and (c) when aggregated in the same specified minimum number, may be redeemed at a holder's request by such open-end management investment company which will pay to the redeeming holder stock and/or cash with a value equal to the next determined net asset value.

[14] For ease of reference, this rule filing uses the term Exchange-Traded Fund, or ETF, to describe both IPRs and IPSs. Currently, the Exchange trades the following ETFs listed on the CBOE pursuant to CBOE Rule 31.5(L)–(M); the Nasdaq 100® Index Tracking Stock ("QQQ"), the Standard & Poor's® Depository Receipts (SPY–SPDRs®), and the S&P 100 iShares℠ ("OEF"). *See* email from Christopher Hill, Attorney, CBOE, to Christopher Solgan, Attorney, Division, Commission, dated November 12, 2002.

[15] As set forth in Interpretation and Policy .04 to CBOE Rule 1.1, the term "Trust Issued Receipt" means a security (a) that is issued by a trust ("Trust") which holds specific securities deposited with the Trust; (b) that, when aggregated in some specified minimum number, may be surrendered to the Trust by the beneficial owner to receive the securities; and (c) that pays beneficial owners dividends and other distributions on the deposited securities, if any are declared and paid to the trustee by an issuer of the deposited securities. TIRs are listed on the CBOE pursuant to CBOE Rule 30.57.

[16] *See* Securities Exchange Act Release No. 46213 (July 16, 2002), 67 FR 48232 (July 23, 2002) (approving SR–Amex–2002–21).

[17] *See* letter from Edward J. Joyce, President and Chief Operating Officer, CBOE, to Jonathan Katz, Secretary, Commission, dated July 11, 2002.

[18] The criteria for ETFs and TIRs set forth in the proposed Interpretation and Policy .03 to Rule 30.18 to qualify particular ETFs and TIRs for side-by-side trading and integrated market making are as follows:

(a) Component securities that in the aggregate account for at least 90% of the weight of the portfolio must have a minimum market value of at least $75 million.

(b) The component securities representing 90% of the weight of the portfolio each have a minimum monthly trading volume during each of the last six months of at least 250,000 shares.

(c) The most heavily weighted component security cannot exceed 25% of the weight of the portfolio and the five most heavily weighted component securities cannot exceed 65% of the weight of the portfolio.

(d) The underlying portfolio must include a minimum of 13 securities.

All securities in the portfolio must be listed on a national securities exchange or the NASDAQ Stock Market.

2. Statutory Basis

CBOE believes that the proposed rule change is consistent with Section 6(b) of the Act [19] in general and furthers the objectives of Section 6(b)(5)[20] in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, to protect investors and the public interest and is not designed to permit unfair discrimination between customer, issuers, brokers, or dealers.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change, as amended, has become effective pursuant to Section 19(b)(3)(A) of the Act [21] and subparagraph (f)(6) of Rule 19b–4 [22] thereunder because it does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate; and the Exchange has given the Commission written notice of its intention to file the proposed rule change at least five business days prior to filing. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[23]

Under Rule 19b–4(f)(6)(iii) of the Act,[24] the proposal does not become operative for 30 days after the date of its filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest and the Exchange is required to give the Commission written notice of its intention to file the proposed rule change at least five business days prior to filing. The Exchange has requested that the Commission waive the 30-day operative date and the five-day pre-filing notice requirement in order for it to implement the proposed rule change as quickly as possible. The CBOE contends that this proposed rule is substantially similar to comparable rules the Commission approved for the Amex, which was published for public notice and comment.[25] As a result, the Exchange believes that the proposed rule change does not raise any new regulatory issues, significantly affect the protection of investors or the public interest, or impose any significant burden on competition. The Commission, consistent with the protection of investors and the public interest, has determined to waive the 30-day operative period as well as the five-day pre-filing notice requirement,[26] and, therefore, the proposal is effective and operative upon filing with the Commission.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–CBOE–2002–63 and should be submitted by February 18, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[27]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–1706 Filed 1–24–03; 8:45 am]

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[19] 15 U.S.C. 78f(b).

[20] 15 U.S.C. 78f(b)(5).

[21] 15 U.S.C. 78s(b)(3)(A).

[22] 17 CFR 240.19b–4(f)(6).

[23] For purposes of calculating the 60-day abrogation date, the Commission considers the 60-day period to have commenced on January 2, 2003, the date CBOE filed Amendment No. 2.

[24] 17 CFR 240.19b–4(f)(6)(iii).

[25] *See* Securities Exchange Act Release No. 46213 (July 16, 2002), 67 FR 48232 (July 23, 2002) (approving SR–Amex–2002–21).

[26] For purposes only of waiving the five-day pre-filing notice requirement and the 30-day operative period for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[27] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47212; File No. SR–ISE–2002–27]

Self-Regulatory Organizations; Order Granting Approval of Proposed Rule Change by the International Securities Exchange, Inc., Relating to the Repeal of Limitations on Orders

January 17, 2003.

On November 21, 2002, the International Securities Exchange, Inc. ("ISE" or "Exchange"), filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] a proposed rule change relating to the repeal of limitations on orders. Notice of the proposed rule change was published for comment in the **Federal Register** on December 16, 2002.[3] No comments were received on the proposed rule change.

The Exchange proposes to repeal the provision in its Rule 717 that prohibits Electronic Access Members ("EAMs") from sending in more than one order every 15 seconds for the same beneficial owner in options on the same underlying security. The ISE adopted this "speed bump" in 2000 to protect ISE market makers from exposure across multiple series of options if they receive orders in many series at the same time.[4] The Exchange now represents that the rule has been outmoded by the development of sophisticated risk management tools and that eliminating this restriction will provide EAMs and

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 46959 (December 6, 2002), 67 FR 77115.

[4] *See* Securities Exchange Act Release No. 44017 (February 28, 2001), 66 FR 13820 (March 7, 2001).

their customers with enhanced access to the ISE.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[5] Elimination of the "speed bump" will remove an impediment to trading created only to limit the market risk undertaken by ISE market makers. Additionally, the change should permit faster entry and execution of orders on the Exchange, thereby providing investors with improved services. Therefore, the Commission believes that the proposal is consistent with Section 6(b)(5) of the Act,[6] which requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market, and to protect investors and the public interest.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[7] that the proposed rule change (File No. SR–ISE–2002–27) be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–1705 Filed 1–24–03; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47193; File No. SR–NQLX–2002–03]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change by Nasdaq Liffe Markets, LLC Relating to Final Settlement Prices for Cash-Settled Security Futures Products and Trading Restrictions and Suspensions

January 15, 2003.

Pursuant to section 19(b)(7) of the Securities Exchange Act of 1934 ("Act")[1] and rule 19b-7 thereunder,[2] notice is hereby given that on December 17, 2002, Nasdaq Liffe Markets, LLC ("NQLX") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule changes as described in items I, II, and III below, which items have been prepared by NQLX. The Commission is publishing this notice to solicit comments on the proposed rule changes from interested persons. NQLX also has certified the proposed rule changes with the Commodity Futures Trading Commission ("CFTC") under section 5c(c) of the Commodity Exchange Act[3] ("CEA") on October 30, 2002, and December 16, 2002.

I. Self-Regulatory Organization's Description of the Proposed Rule Change

Currently, NQLX does not intend to offer cash-settled security futures products. However, NQLX proposes to adopt rule 904 that would serve as a place holder in case NQLX ever decides to offer cash-settled security futures contracts. In addition, NQLX proposes to adopt rule 426(a) to make clear that NQLX's chief executive officer or president has the power to restrict or suspend trading in any NQLX-listed contract at any time during an emergency if he believes that the restriction or suspension is necessary to maintain a fair and orderly market or is necessary or appropriate in the public interest or for the protection of investors. Below is the text of the proposed rule changes. Text in italics indicates material to be added.

* * * * *

Rule 426 Trading Restrictions and Suspensions

(a) *The Chief Executive Officer or President shall have the power to restrict or suspend trading in any Exchange Contract on NQLX at any time during an Emergency if he believes that the restriction or suspension is necessary to maintain a fair and orderly market or is necessary or appropriate in the public interest or for the protection of investors.*

Rule 904 Contract Specifications-Security Futures Products that Cash-Settle.

Reserved

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II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

NQLX has prepared statements concerning the purpose of, and statutory basis for, the proposed rule change, burdens on competition, and comments received from members, participants, and others. The text of these statements may be examined at the places specified in item IV below. These statements are set forth in sections A, B, and C below.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Currently, NQLX does not intend to offer cash-settled security futures products. However, NQLX is proposing to adopt rule 904 that would serve as a place holder in case NQLX ever decides to offer cash-settled security futures contracts. In addition, NQLX proposes adopting rule 426(a) to make clear that NQLX's chief executive officer or president has the power to restrict or suspend trading in any NQLX-listed contract at any time during an emergency if he believes that the restriction or suspension is necessary to maintain a fair and orderly market or is necessary or appropriate in the public interest or for the protection of investors.

2. Statutory Basis

NQLX files these proposed rules pursuant to section 19(b)(7) of the Act.[4] NQLX believes that its proposed rules comply with the requirements under section 6(h)(3)(H) of the Act[5] and the criteria under section 2(a)(1)(D)(i)(VII) of the CEA.[6] In addition, NQLX believes that its proposed rules are consistent with the provisions of section 6 of the Act[7] in general, and section 6(b)(5) of the Act[8] in particular, which requires, among other things, that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

NQLX does not believe that the proposed rules will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

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[5] In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78(c)(f).

[6] 15 U.S.C. 78f(b)(5).

[7] 15 U.S.C. 78s(b)(2).

[8] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(7).

[2] 17 CFR 240.19b-7.

[3] 7 U.S.C. 7a-2(c).

[4] 15 U.S.C. 78s(b)(7).

[5] 15 U.S.C. 78f(h)(3)(H).

[6] 7 U.S.C. 2(a)(1)(D)(i)(VII).

[7] 15 U.S.C. 78f.

[8] 15 U.S.C. 78f(b)(5).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

NQLX neither solicited nor received written comment on the proposed rules.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Pursuant to section 19(b)(7)(B) of the Act,[9] the proposed rule changes, as filed with the Commission, became effective on December 17, 2002.

Within 60 days of the date of effectiveness of the proposed rules, the Commission, after consultation with the CFTC, may summarily abrogate the proposed rules and require that the proposed rules be refiled in accordance with the provisions of section 19(b)(1) of the Act.[10]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rules conflict with the Act. Persons making written submissions should file nine copies of the submission with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Comments also may be submitted electronically to the following e-mail address: *rule-comments@sec.gov*. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rules that are filed with the Commission, and all written communications relating to the proposed rules between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of these filings will also be available for inspection and copying at the principal office of NQLX. Electronically submitted comments will be posted on the Commission's internet website (*http://www.sec.gov*). All submissions should refer to File No. SR–NQLX–2002–03 and should be submitted by February 18, 2003.

[9] 15 U.S.C. 78s(b)(7)(B).

[10] 15 U.S.C. 78s(b)(1).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–1756 Filed 1–24–03; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47209; File No. SR–NASD–2003–03]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc. To Waive Fees Assessed Under NASD Rule 7010(s) for New Subscribers to Nasdaq PostData

January 17, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and rule 19b–4 thereunder,[2] notice is hereby given that on January 9, 2003, the National Association of Securities Dealers, Inc. ("NASD"), through its subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in items I, II, and III below, which items have been prepared by Nasdaq. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes to waive for two months for each new subscriber to Nasdaq PostData the fees assessed under NASD rule 7010(s). The text of the proposed rule change is below. Proposed additions are in italics; proposed deletions are in brackets.

Rule 7010 System Services

(a)–(r) No changes.

(s) NasdaqTrader.com Volume and Issue Data Package Fee.

The charge to be paid by the subscriber for each entitled user receiving the Nasdaq Volume and Issue Data Package via NasdaqTrader.com shall be $70 per month. The charge to be paid by market data vendors for this information shall be $35 per month for each end user receiving the information through the data vendor. The availability of this service through NasdaqTrader.com shall be limited to NASD members, Qualified Institutional Buyers (as defined in Rule 144A of the Securities Act of 1933) and data vendors. The Volume and Issue Data package includes:

(1) Daily Share Volume reports
(2) Daily Issue Data
(3) Monthly Volume Summaries
(4) Buy Volume Report
(5) Sell Volume Report
(6) Crossed Volume Report
(7) Consolidated Activity Volume Report

All fees assessed under this subsection will be waived for a period of up to two months for all new subscribers and potential new subscribers. This fee waiver period would be applied on a rolling basis, determined by the date on which a new subscriber or potential subscriber contacts Nasdaq to receive access to PostData.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in item IV below. Nasdaq has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On January 11, 2002, the Commission approved, as a 12-month pilot, the creation of Nasdaq PostData, a voluntary trading data distribution facility, accessible to NASD members, buy-side institutions and market data vendors through the NasdaqTrader.com web site.[3] PostData was launched on March 18, 2002. Nasdaq hereby proposes to offer PostData to all new subscribers and potential subscribers without charge for up to two months for the duration of the PostData pilot.

Background. PostData originally consisted of three reports provided in a single package: (1) Daily Share Volume Report, which provides subscribers with T+1 daily share volume in each Nasdaq security, listing the volume by any

[11] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 45270 (January 11, 2002), 67 FR 2712 (January 18, 2002)(SR–NASD–99–12).

NASD member firm that voluntarily permits the dissemination of this information: (2) Daily Issue Data, which contains a summary of the previous day's activity for every Nasdaq issue; and (3) Monthly Summaries, which provide monthly trading volume statistics for the top 50 market participants sorted by industry sector, security, or type of trading (*e.g.*, block or total).

On August 5, 2002, Nasdaq expanded the information made available to PostData subscribers to include four additional reports: Buy Volume Report, Sell Volume Report, Crossed Volume Report, and Consolidated Activity Volume Report.[4] Each report offers information regarding total Nasdaq reported buy (or sell, or cross, or consolidated) volume in the security, as well as rankings of registered market maker based upon various aspects of their activity in Nasdaq. The reports also provide recipients with information about the number and character of each market maker's trades. Finally, the reports provide the information described above with respect to block volume, be it buy, sell, cross or consolidated-interest.

Proposed Fee Waiver. In order to increase the availability of PostData within the securities industry, Nasdaq proposes to waive all fees assessed upon new subscribers to PostData for a period of up to two months. Nasdaq has repeatedly been asked by potential subscribers to offer a free trial period in order to test PostData before committing to subscribe. Based upon these requests, Nasdaq believes that offering a free trial period will make this data more widely available and enable PostData to reach viability sooner.

This fee waiver period would be applied on a rolling basis, determined by the date on which a new subscriber or potential subscriber contacts Nasdaq to receive access to PostData. Additionally, any vendor who provides PostData to its clients would have the opportunity to waive the fee to any new subscriber for a period of up to two months. Nasdaq believes that this waiver is fair and non-discriminatory because it applies to all potential direct and indirect subscribers.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of section 15A(b)(5)[5] and 15A(b)(6)[6] of the Act. Section 15A(b)(5) requires the equitable allocation of reasonable dues, fees and other charges among members and other users of facilities operated or controlled by a national securities association. Section 15A(b)(6) requires rules that foster cooperation and coordination with persons engaged in facilitating transactions in securities and that are not designed to permit unfair discrimination between customers, issuers, brokers or dealers. Nasdaq believes that this program involves a reasonable fee assessed only to users and other persons utilizing the system and will provide useful information to all direct and indirect subscribers on a non-discriminatory basis.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Nasdaq neither solicited nor received written comments with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the NASD consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to file number SR–NASD–2003–03 and should be submitted by February 18, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–1702 Filed 1–24–03; 8:45 am]

BILLING CODE 8010–01–P

[4] *See* Securities Exchange Act Release No. 46316 (August 8, 2002), 67 FR 52505 (August 12, 2002)(SR–NASD–2002–90).

[5] 15 U.S.C. 78o–3(b)(5).

[6] 15 U.S.C. 78o–3(b)(6).

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47210; File No. SR–NASD–2003–02]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. To Extend the Pilot Period for Nasdaq PostData and the Fees Assessed Under NASD Rule 7010(s)

January 17, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and rule 19b–4 thereunder,[2] notice is hereby given that on January 9, 2003, the National Association of Securities Dealers, Inc. ("NASD" or "Association"), through its subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in items I, II and III below, which items have been prepared by Nasdaq. Nasdaq filed the proposal pursuant to section 19(b)(3)(A) of the Act,[3] and rule 19b–4(f)(6) thereunder,[4] which renders the proposal effective upon filing with the Commission.[5] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

[5] The NASD provided the Commission with notice of its intent to file the proposed rule change on December 30, 2002. *See* Rule 19b–4(f)(6)(iii). 17 CFR 240.19b–4(f)(6)(iii). Nasdaq asked the Commission waive the 30-day operative delay.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes to extend through February 28, 2003, the pilot period for Nasdaq PostData and the associated fees assessed under NASD rule 7010(s). In addition, Nasdaq proposes certain enhancements to PostData that will be available to direct and indirect users of PostData at no additional charge on a non-discriminatory basis. The text of the proposed rule change is below. Proposed additions are in italics; proposed deletions are in brackets.

Rule 7010 System Services.

(a)–(r) No changes.

(s) NasdaqTrader.com Volume and Issue Data Package Fee.

The charge to be paid by the subscriber for each entitled user receiving the Nasdaq Volume and Issue Data Package via NasdaqTrader.com shall be $70 per month. The charge to be paid by market data vendors for this information shall be $35 per month for each end user receiving the information through the data vendor. The availability of this service through NasdaqTrader.com shall be limited to NASD members, Qualified Institutional Buyers[*] *(as defined in rule 144A of the Securities Act of 1933)* and data vendors. The Volume and Issue Data package includes:

(1) Daily Share Volume reports.
(2) Daily Issue Data.
(3) Monthly Volume Summaries.
(4) Buy Volume Report.
(5) Sell Volume Report.
(6) Crossed Volume Report.
(7) Consolidated Activity Volume Report.

[* For purposes of this rule, see definition of "Qualified Institutional Buyer" found in Section 144A of the Securities Act of 1933.]

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for its proposal and discussed any comments it received regarding the proposal. The text of these statements may be examined at the places specified in item IV below. Nasdaq has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On January 11, 2002, the Commission approved, as a 12-month pilot, the creation of Nasdaq PostData, a voluntary trading data distribution facility, accessible to NASD members, buy-side institutions and market data vendors through the NasdaqTrader.com Website.[6] PostData was launched on March 18, 2002. Nasdaq hereby proposes to extend the pilot period for PostData through February 28, 2003. Nasdaq also proposes to enhance PostData as described below.

Background. PostData originally consisted of three reports provided in a single package: (1) Daily Share Volume Report, which provides subscribers with T+1 daily share volume in each Nasdaq security, listing the volume by any NASD member firm that voluntarily permits the dissemination of this information; (2) Daily Issue Data, which contains a summary of the previous day's activity for every Nasdaq issue; and (3) Monthly Summaries, which provides monthly trading volume statistics for the top 50 market participants sorted by industry sector, security, or type of trading (*e.g.*, block or total).

On August 5, 2002, Nasdaq expanded the information made available to PostData subscribers to include four additional reports: Buy Volume Report, Sell Volume Report, Crossed Volume Report, and Consolidated Activity Volume Report.[7] Each report offers information regarding total Nasdaq reported buy (or sell, or cross, or consolidated) volume in the security, as well as rankings of registered market maker based upon various aspects of their activity in Nasdaq. The reports also provide recipients with information about the number and character of each market maker's trades. Finally, the reports provide the information described above with respect to block volume, be it buy, sell, cross or consolidated interest.

Extension of the Pilot. Nasdaq proposes to extend the PostData pilot through February 28, 2003, subject only to the enhancements proposed below. The pilot has been effective, but adoption was slower than expected. For a variety of reasons, more time was required than originally anticipated to recruit sell-side firms to sign on to PostData to provide the critical mass of data necessary to have a product to sell to those subscribers (buy-side firms or institutional investors) interested in viewing the data. Nasdaq believes that adoption was slow because:

- Volume is attributed to the firm that has the reporting obligation based on ACT rules. This is also the methodology for the monthly share volume reports offered on Nasdaq Web sites (NasdaqTrader.com and NasdaqOnLine.com). Sell-side firms wanted to get credit for volume regardless of whether they were the reporting party or not in a trade.
- In the time since PostData was initially developed, the industry has moved to more commission-based or agency (riskless principal) trading. Firms that conduct predominantly more riskless principal trading with other sell-side firms are not well represented in PostData because in riskless principal trading only one leg of the transaction (the transaction with sell-side firm or market maker) is reported in ACT and in many cases these firms are not the reporting party.
- PostData's value and benefits were not well understood by firms, especially with firms' attention directed to other Nasdaq initiatives.

Nasdaq addressed the first two issues by enhancing PostData in August 2002 to include volume attributed to both parties of a trade (reporting and the contra-party) and identification of the volume as being buy, sell or cross. These additional data sets addressed the issue of which party gets the volume credit and display some volume for firms that primarily engage in "riskless principal" trading. These enhancements resulted in seven additional sell-side firms participating in PostData by the end of August.

Therefore, at this time, Nasdaq is unable to effectively study the fees assessed for PostData, as initially requested in the order approving PostData.[8] As demonstrated below, growth in the PostData subscriber base was slower than anticipated. It was not until September 2002 that the number of subscribing firms first exceeded 25. Currently, there are 33 subscribing firms paying for PostData, and of those, most are also firms that post their data. This sample is too small to draw any meaningful conclusions about the price of the product. In addition, there is no data with respect to indirect subscribers because to date there are no vendors

[6] *See* Securities Exchange Act Release No. 45270 (January 11, 2002), 67 FR 2712 (January 18, 2002)(SR–NASD–99–12).

[7] *See* Securities Exchange Act Release No. 46316 (August 8, 2002), 67 FR 52504 (August 12, 2002) (SR–NASD–2002–90).

[8] *See* footnote 6, *supra*.

purchasing PostData for redistribution to their subscribers.

POSTDATA SUBSCRIBERS FROM MARCH TO DECEMBER 2002

Month	Number of sell-side firms posting their data	Number of firms subscribing to postdata
March	3	9
April	5	12
May	7	14
June	10	15
July	12	17
August	19	24
September	22	26
October	25	30
November	28	31
December	30	33

Nasdaq was able to start marketing PostData to potential subscribers such as buy-side firms and data vendors this past fall. It is from these marketing efforts that additional feedback was received such as whether more data can be provided. Nasdaq believes that these actions will increase the likelihood of attracting a meaningful number of subscribers sooner rather than later. It is difficult to predict when that will occur, but Nasdaq represents that it will update the staff regularly, and it will provide a full analysis of the fees as quickly as possible.

Proposed Enhancements. Based on feedback provided by potential subscribers, Nasdaq proposes to make the following data elements available to PostData subscribers at no additional charge:

- Daily share volume for all market participants per Nasdaq security on a T+10 basis including the ACT Reported, Buy, Sell, Crossed and Total Activity reports.
- Daily share volume aggregates for all market participants per Nasdaq index on a T+10 basis including the ACT Reported, Buy, Sell, Crossed and Total Activity reports.

Monthly share volume of all market participants on a per security basis has been available to Nasdaq broker-dealers for several years. Initially, the data was provided via computer diskettes sent to the head of Nasdaq trading at firms. Since October 1997, this data has been disseminated on the NasdaqTrader.com web site without charge. The monthly volume reports attribute volume to the reporting party of media-disseminated trades (trades reported to the "tape"). Monthly data is available about 10 business days after the end of the previous month. The web site provides monthly, quarterly and year-to-date volume aggregates for up to 12 calendar months.

Subscribers and potential subscribers to PostData have requested the ability to access share volume information in customized timeframes outside of the daily and monthly information that is made available in PostData and the public part of NasdaqTrader.com. For example, a customer may track their firm's share volume activity in securities that they begin to perform research analysis for, or have raised capital in a public offering. Most often, these events do not begin at the beginning of a month. Therefore, they would like to be able to request data from customized timeframes (*e.g.*, February 15 to March 15). The daily and monthly reports in PostData do not currently meet this customer base needs.

Additionally, some market participants, primarily buy-side firms, have requested to view all market participant data on a T+1 basis and not just those sell-side firms that voluntarily choose to post their data. Other participants, primarily sell-side firms, have expressed concerns that T+1 data would reveal their trading positions. Those firms have not, however, expressed concern about revealing all market participants' volume information on a T+10 basis because the 10-day delay prevents the disclosure of meaningful information about firms' current positions. Therefore, the proposal appropriately balances the needs and concerns of each customer group and the public interest. As more time passes, the sensitivity of a specific day's volume of a market participant decreases. Ten business days is an appropriate timeframe when the daily volume information of all market participants can be made available either on a per security basis or by a Nasdaq index for example.

Nasdaq proposes to make this information available to all PostData subscribers at no additional charge on a non-discriminatory basis. In its original proposal to create PostData, Nasdaq represented that it would make product enhancements available on an equal basis to all users of the proposed products, whether customers of Nasdaq or of a participating data vendor. Specifically, if Nasdaq offers a free product enhancement during the pilot program, it will be free to all direct and indirect users,[9] and that such modifications to PostData during the pilot period would be limited to minor enhancements to the content of the package. Nasdaq believes that this rule proposal meets those requirements. In accordance with the conditions of approval of Nasdaq PostData, Nasdaq represents that the PostData modifications described in this proposed rule change will be made available at no charge to all vendors and direct subscribers of Nasdaq. Nasdaq also represents that it has made modification information available to market data vendors generally, but that no vendors are currently accepting the PostData data or redistributing that data to subscribers.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of section 15A(b)(5)[10] and 15A(b)(6) of the Act.[11] Section 15A(b)(5) requires the equitable allocation of reasonable dues, fees and other charges among members and other users of facilities operated or controlled by a national securities association. Section 15A(b)(6) requires rules that foster cooperation and coordination with persons engaged in facilitating transactions in securities and that are not designed to permit unfair discrimination between customers, issuers, brokers or dealers. Nasdaq believes that this program involves a reasonable fee assessed only to users and other persons utilizing the system, and will provide useful information to all direct and indirect subscribers on a non-discriminatory basis.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Nasdaq neither solicited nor received written comments with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not:

[9] Nasdaq also represented that it would seek Commission approval of any fees to be assessed for such enhancements. Nasdaq notes that this rule filing is properly made immediately effective because Nasdaq is not proposing to assess an additional fee for the enhancements proposed herein.

[10] 15 U.S.C. 78o–3(b)(5).

[11] 15 U.S.C. 78o–3(b)(6).

(i) Significantly affect the protection of investors or the public interest;

(ii) Impose any significant burden on competition; and

(iii) Become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to section 19(b)(3)(A) of the Act[12] and rule 19b–4(f)(6) thereunder.[13] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

Nasdaq has requested that the Commission waive the 30-day operative delay. The Commission believes waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Acceleration of the operative date will allow Nasdaq to operate the PostData pilot program without interruption through February 28, 2003. For these reasons, the Commission designates the proposal to be effective and operative upon filing with the Commission.[14]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to file number SR–NASD–2003–02 and should be submitted by February 18, 2003.

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f)(6).

[14] For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–1703 Filed 1–24–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47214; File No. SR–NASD–2002–124]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the National Association of Securities Dealers, Inc. Relating to Proposed Amendment to Rule 2260 To Expand the Definition of "Designated Investment Adviser" To Include State Registered Investment Advisers for the Purpose of Receiving and Voting Proxy Materials on Behalf of Beneficial Owners

January 17, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and rule 19b–4 thereunder,[2] notice is hereby given that on September 19, 2002, the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in items I, II, and III below, which items have been prepared by NASD. On January 8, 2003, the NASD submitted Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASD is proposing to amend NASD Conduct rule 2260 to expand the definition of "designated investment adviser" to include all state registered investment advisers.

[15] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Kosha K. Dalal, Assistant General Counsel, Regulatory Policy and Oversight, NASD, to Katherine England, Assistant Director, Division of Market Regulation, Commission, dated January 8, 2003 ("Amendment No. 1"). In Amendment No. 1, the NASD proposes to (1) revise the first footnote of proposed NASD rule 2260 to define the term "state" by reference to the Investment Advisers Act of 1940, instead of the Securities Exchange Act of 1934, and (2) underline the text of two proposed footnotes in proposed NASD rule 2260 to indicate that they are proposed new text.

Below is the text of the proposed rule change. Proposed new language is in italics.

Rule 2260. Forwarding Proxy and Other Materials.

(a)–(e) No change.

(f) For purposes of this rule, the term "designated investment adviser" is a person registered under the Investment Advisers Act of 1940 *or registered as an investment adviser under the laws of a state*,[4] who exercises investment discretion pursuant to an advisory contract for the beneficial owner and is designated in writing by the beneficial owner to receive proxy and related materials and vote the proxy, and to receive annual reports and other material sent to security holders.

(1) The written designation must be signed by the beneficial owner; be addressed to the member; and include the name of the designated investment adviser.

(2) Members who receive such a written designation from a beneficial owner must ensure that the designated investment adviser is registered with the Commission pursuant to the Investment Advisers Act of 1940 *or with a state as an investment adviser under the laws of such state*,[5] and that the investment adviser is exercising investment discretion over the customer's account pursuant to an advisory contract to vote proxies and/or to receive proxy soliciting material, annual reports and other material. Members must keep records substantiating this information.

(3) Beneficial owners have an unqualified right at any time to rescind designation of the investment adviser to receive materials and to vote proxies. The rescission must be in writing and submitted to the member.

(g) No change.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in item IV below. NASD has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[4] *The term "state" as used herein shall have the meaning given to such term in section 202(a)(19) of the Investment Advisers Act of 1940, and as such term may be amended from time to time therein.*

[5] *Members may verify registration of an investment adviser through the use of the Investment Adviser Registration Depository ("IARD") system.*

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Rule Modernization

In July 2001, NASD announced in Notice to Members 01–35 its intention to move forward with an initiative designed to ensure that NASD rules are as streamlined as possible and impose the least burden necessary to accomplish their objectives while achieving investor protection. In response to Notice to Members 01–35, some commenters asked NASD to review NASD Conduct rule 2260 to consider expanding the categories of persons to whom a member may forward proxy and other materials.

Based on the research and analysis of NASD Conduct rule 2260 conducted by NASD staff and the Economic Advisory Board ("EAB"), which was formed by NASD to assist with an economic analysis of certain NASD rules, the EAB made a formal recommendation to expand the definition of "designated investment adviser" in NASD Conduct rule 2260 to include all state registered investment advisers.

Proposed Expansion

Currently, NASD Conduct rule 2260 requires members to forward proxy material, annual reports, information statements and other material sent to security holders to the beneficial owner or the beneficial owner's "designated investment adviser." [6] The rule defines a "designated investment adviser" as a person registered under the Investment Advisers Act of 1940 ("Advisers Act") who exercises investment discretion pursuant to an advisory contract for the beneficial owner and is designated in writing by the beneficial owner to receive proxy and related materials and vote the proxy, and to receive annual reports and other material sent to security holders.

NASD Conduct rule 2260 was amended in 1995 to include federally registered investment advisers.[7] However, as a result of the passage in 1996 of the National Securities Markets Improvement Act ("NSMIA"), certain state registered investment advisers need not be registered under the Advisers Act.[8] NASD Conduct rule 2260 was not updated to account for this change. As a result, under the current rule, beneficial owners cannot designate state registered investment advisers to receive proxy and other materials. The proposed rule change would expand the definition of "designated investment adviser" to include persons registered under the Advisers Act and persons registered by a state as an investment adviser.

NASD believes that the current exclusion of state registered investment advisers serves no valid investor protection purpose. NASD Conduct rule 2260 will continue to require that the beneficial owner execute a written designation addressed to the member that includes the name of the designated investment adviser. The beneficial owner will continue to have an unqualified right at anytime to rescind designation of the investment adviser to receive materials and to vote proxies. The recession must be in writing and submitted to the member.

The proposed rule change will continue to require that a member that receives a written designation from a beneficial owner must ensure that the beneficial owner's designated investment adviser is registered under the Advisers Act or, for state registered investment advisers, is registered as an investment adviser under the laws of the state. A member may verify registration of an investment adviser through the use of the Investment Adviser Registration Depository ("IARD") system. Under the proposed rule change, members must continue to ensure that the designated investment adviser is exercising investment discretion pursuant to an advisory contract for the beneficial owner; and is designated in writing by the beneficial owner to receive and vote proxies for stock that is in the possession of the members. Members also must continue to keep records substantiating this information.

The Commission notes that the New York Stock Exchange, Inc. has filed a similar proposed rule change.[9]

2. Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of section 15A(b)(6) of the Act,[10] which requires, among other things, that NASD's rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. NASD believes that the proposed rule change to expand the definition of "designated investment adviser" in NASD Conduct rule 2260 is designed to accomplish these ends by updating NASD Conduct rule 2260 to be consistent with the goals of NSMIA and to address an inconsistency in the treatment of Federally-registered versus State-registered investment advisers that does not serve a valid investor protection purpose.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received for this proposed rule change. In connection with its rule modernization initiative, NASD issued Notice to Members 02–10 (January 2002) that surveyed members on a broad range of topics that included subject matter related to this rule proposal. However, as NASD views the responses received as general survey material, it is not included in this filing.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

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[6] In April 2002, the SEC approved a proposed rule change to NASD Conduct rule 2260 making its provisions applicable to non-municipal debt securities. The rule change became effective on July 9, 2002. *See* Securities Exchange Act Release No. 45736 (April 11, 2002), 67 FR 19291 (April 18, 2002) (SR–NASD–2002–11).

[7] *See* Securities Exchange Act Release No. 35681 (May 5, 1995), 60 FR 25749 (May 15, 1995) (SR–NASD–95–06).

[8] National Securities Markets Improvement Act of 1996, Pub.L. No. 104–290, 110 Stat. 3416 (1996). The Commission notes that title III of NSMIA (a/k/a The Investment Advisers Supervision Coordination Act) provides for Commission regulation of advisers with $25 million or more of assets under management, and state regulation of advisers with less than $25 million of assets under management. The Commission also notes that new section 203A(a) of the Advisers Act provides that an investment adviser that is regulated or required to be regulated as an investment adviser in the state in which it maintains its principal office and place of business is prohibited from registering with the Commission unless the adviser:

(i) Has assets under management of not less than $25 million (or such higher amount as the Commission may, by rule, deem appropriate), or

(ii) Is an advisor to an investment company registered under the Investment Company Act of 1940. 15 U.S.C. 80b–3a.

[9] *See* Exchange Act Release No. 47215 (January 21, 2003).

[10] 15 U.S.C. 78o–3(b)(6).

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of NASD. All submissions should refer to File No. SR–NASD–2002–124 and should be submitted by February 18, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–1755 Filed 1–24–03; 8:45 am]

BILLING CODE 8010–01–P

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47197; File No. SR–NSCC–2002–13]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Adding Services Data Services Only Members are Permitted To Access

January 15, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on December 6, 2002, the National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by NSCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change adds additional services that Data Services Only members of NSCC are permitted to access.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NSCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The proposed rule change adds additional NSCC services that Data Services Only members will be permitted to access.[3] Data Services Only members will be permitted to access all features of NSCC's Insurance Processing Services, provided that Data Services Only members will not be able to settle transactions through NSCC's facilities. NSCC's current fee schedule will be applied to Data Services Only members' use of such services.

The proposed rule change will increase automation of data transmission and reception and permit greater access to such information thus facilitating the prompt and accurate clearance and settlement of securities transactions. NSCC therefore believes that the proposed rule change is consistent with the provisions of the Act and the rules and regulations thereunder.

[2] The Commission has modified parts of these statements.

[3] For additional information about the category of Data Services Only members, see Securities Exchange Act Release Nos. 44960 (October 19, 2001), 66 FR 56383 [File No. SR–NSCC–2001–14] and 45560 (March 14, 2002), 67 FR 13200 [File No. SR–NSCC–2001–18].

(B) Self-Regulatory Organization's Statement on Burden on Competition

NSCC does not believe that the proposed rule change will impact or impose a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments relating to the proposed rule change have been solicited or received. NSCC will notify the Commission of any written comments received by NSCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change effects a change in an existing service of NSCC that (i) does not adversely affect the safe-guarding of securities or funds in the custody or control of the clearing agency or for which it is responsible and (ii) does not significantly affect the respective rights and obligations of the clearing agency or persons using the service, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act[4] and Rule 19b–4(f)(4)[5] promulgated thereunder. At any time within sixty days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549–0609. Comments may also be submitted electronically at the following e-mail address: *rule-comments@sec.gov.* All comment letters should refer to File No. SR–NSCC–2002–13. This file number should be included on the subject line if e-mail is used. To help us process and review comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the

[4] 15 U.S.C. 78s(b)(3)(A)(iii).

[5] 17 CFR 240.19b–4(f)(4).

Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the NSCC. All submissions should refer to the File No. SR–NSCC–2002–13 and should be submitted by February 18, 2003.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–1709 Filed 1–24–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47195; File No. SR–NSCC–2002–14]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing and Immediate Effectiveness of a Proposed Rule Making a Technical Correction to NSCC's Rules

January 15, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on December 11, 2002, the National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in items I, II, and III below, which items have been prepared primarily by NSCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change makes a technical correction to NSCC's rules.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NSCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in item IV below. NSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to make a technical correction to SR–NSCC–2002–06, which the Commission approved on November 25, 2002.[3]

On July 25, 2002, NSCC filed and on August 19, 2002, amended, SR–NSCC–2002–06. This filing clarified NSCC's rules and procedures with regard to the imposition of fines on participants and more specifically identified the actions or inactions of participants that would result in fines being imposed upon them.

Among other things, SR–NSCC–2002–06 modified NSCC rule 48, "Disciplinary Proceedings," sections 1 and 2 by inserting the term "Settling Bank Only Member" at the beginning of each of those sections but did not repeat the term throughout the sections as it should have. In addition, in modifying rule 48 to include the term "Settling Bank Only Member," rule 45, "Notices," section 6 should have been similarly changed. This filing appropriately modifies rules 48 and 45.

As a technical change to NSCC's rules, the proposed rule change is concerned solely with the administration of NSCC; NSCC therefore believes that it is consistent with the provisions of the Act and the rules and regulations thereunder.

(B) Self-Regulatory Organization's Statement on Burden on Competition

NSCC does not believe that the proposed rule change will impact or impose a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments relating to the proposed rule change have been solicited or received. NSCC will notify the Commission of any written comments received by NSCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A)(i) of the Act[4] and rule 19b-4(f)(1)[5] thereunder because it constitutes a stated policy, practice, or interpretation with respect to the meaning, enforcement, or administration of an existing rule. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Comments may also be submitted electronically at the following e-mail address: *rule-comments@sec.gov*. All comment letters should refer to File No. SR–NSCC–2002–14. This file number should be included on the subject line if e-mail is used. To help us process and review comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section. 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the NSCC. All submissions should refer to the File No. SR–NSCC–2002–14 and should be submitted by February 18, 2003.

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[6] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified parts of these statements.

[3] Securities Exchange Act Release No. 46903 (November 25, 2002), 67 FR 72012.

[4] 15 U.S.C. 78s(b)(3)(A)(i).

[5] 17 CFR 240.19b-4(f)(1).

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–1712 Filed 1–24–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47199; File No. SR–OCC–2002–25]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Amending the Definition of Market-Maker in OCC's By-Laws

January 15, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on October 17, 2002, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by OCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change amends the definition of the term market-maker as used in OCC's by-laws and rules. Specifically, OCC proposes to exclude from such definition any person who is required to be treated as a customer under Commission Rule 15c3–3.[2]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. OCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[3]

[4] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.15c3–3.

[3] The Commission has modified parts of these statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The primary purpose of the proposed rule change is to exclude from the definition of market-maker in Article I of OCC's By-Laws any person that is required to be treated as a customer for purposes of Rule 15c3–3 so that OCC may have a lien on all securities in a market-maker's account without causing clearing members to be in violation of Rule 15c3–3. The proposed rule change also: (1) Clarifies that OCC's lien on assets in a customers' account may be enforced to satisfy only those clearing member obligations arising from the account and (2) eliminates outdated references in OCC's rules to specialists and specialists' accounts.

Under Rule 15c3–3, fully paid or excess margin securities of customers must be maintained by broker dealers, including OCC clearing members, in a control location.[4] The Commission staff has informally stated that securities that are held subject to a lien to secure obligations of the carrying broker are not deemed to be in a control location for purposes of Rule 15c3–3.[5] Broker dealers, however, are excluded from the definition of customer in Rule 15c3–3(a)(1).[6]

Under Article VI, "Clearance of Exchange Transactions," Section 3, "Maintenance of Accounts," of OCC's By-Laws, an OCC clearing member grants OCC a lien on all positions in a market-maker's account to secure the obligations of the clearing member with respect to that account (or to secure all obligations of the clearing member, if the market-maker is a proprietary market-maker). Therefore, a clearing member could not permit positions of a Rule 15c3–3 customer to be carried in a market-maker account without risk of violating Rule 15c3–3. In order to avoid inadvertent violations of Rule 15c3–3, OCC is amending the definition of market-maker in its by-laws to exclude any person treated as a customer for purposes of Rule 15c3–3.

This change is advisable because the definition of market-maker as amended in SR–OCC–2001–07 [7] includes persons performing market-maker functions on futures exchanges or security futures markets that are primarily regulated as futures exchanges and only notice-registered as national securities exchanges. Such persons may not be brokers or dealers as defined in Section 3(a)(4) and (5) of the Act and therefore may not automatically be excluded from the Rule 15c3–3 definition of customer. The proposed rule change will allow positions of futures floor traders and other market-makers that are customers under Rule 15c3–3 to be included in a securities customers' account under Article VI, Section 3(e) or if the positions are carried in a futures customer account of the books of the clearing member, in a segregated futures account under Article VI, Section 3(f). Under the futures regulatory scheme, positions of floor traders and other professionals that are not affiliated with the carrying futures commission merchant are ordinarily required to be carried in the segregated funds account.[8]

Article VI, Section 3 of OCC's By-Laws describes the various types of accounts that clearing members may carry at OCC. Each paragraph in Section 3 describes the extent of any lien that OCC may have on the assets in that particular account and with respect to all accounts except the customers' account, describes the scope of the obligations collateralized by those assets. Assets in proprietary accounts generally secure any obligation of the clearing member to OCC whereas assets in certain other account types secure only obligations arising from the particular account in which the assets are held. For example, Article VI, Section 3(f), states that OCC's lien on assets in a segregated futures account acts as security for all obligations of the clearing member with respect to such account.

The proposed rule change brings Section 3(e) in conformity with the other paragraphs in Section 3 by clarifying that OCC's lien on a securities customers' account secures only the

[4] Rule 15c3–3(a) defines fully paid excess margin securities. Rule 15c3–3(c) identifies various means by which broker dealers may hold securities that meet the control requirement.

[5] *See, e.g.*, Michael P. Jamroz, *The Customer Protection Rule*, 57 The Business Lawyer 1069, 1085 (May 2002).

[6] Rule 15c3–3(a)(1) defines customer as any person from whom or on whose behalf a broker or dealer has received or acquired or holds funds or securities for the account of that person. The term shall not include a broker or dealer, a municipal securities dealer, or a government securities broker, or government securities dealer. The term shall, however, include another broker or dealer to the extent that broker or dealer maintains an omnibus account for the account of customers of the broker or dealer in compliance with Regulation T (12 CFR 220.1 through 220.19).

[7] Securities Exchange Act Release No. 44727 (August 20, 2001), 66 FR 45351 (order approving rules for clearance of security futures).

[8] *See* CFTC Reg. 1.3(k) (defining customer as a person other than an owner or holder of a proprietary account); CFTC Reg. 1.3(y) (defining proprietary account in a manner that excludes an account owned or held by an unaffiliated entity); CFTC Reg. 1.20 (requiring that customer funds be separately accounted for and segregated).

obligations of the clearing member to OCC with respect to that account. This does not represent a substantive change because the same effect is achieved under OCC's Rule 1104(a), which requires that any proceeds from assets in the customers' account be returned to the clearing member or its representative to the extent that such proceeds exceed obligations arising from the customers' account.

In SR–OCC–2001–07, OCC simplified its description of market-maker accounts by subsuming "specialist" and "specialist's account" within the definition of market-maker and market-maker's account, respectively, in Article I. OCC at that time also adopted conforming changes to eliminate the terms specialist and specialist's account where they appeared in Article VI, Section 3. The proposed amendments to Chapters IV, VI, and XII and to the definition of JBO Participant in Article I are further conforming changes that eliminate obsolete references to specialist and specialist's account where they appear elsewhere in OCC's rules.

OCC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act, as amended, and the rules and regulations thereunder because it promotes the prompt and accurate clearance and settlement of securities transactions, fosters cooperation and coordination with persons engaged in the clearance and settlement of securities transactions, removes impediments to and perfects the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions, and, in general, protects investors and the public interest.

(B) Self-Regulatory Organization's Statement on Burden on Competition

OCC does not believe that the proposed rule change would impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were not and are not intended to be solicited with respect to the proposed rule change, and none have been received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(i) of the Act [9] and Rule 19b–4(f)(1) [10] thereunder because it constitutes a stated policy, practice or interpretation with respect to the meaning, enforcement or administration of an existing rule. At any time within sixty days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549–0609. Comments may also be submitted electronically at the following e-mail address: *rule-comments@sec.gov*. All comment letters should refer to File No. SR–OCC–2002–25. This file number should be included on the subject line if e-mail is used. To help us process and review comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW, Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of OCC. All submissions should refer to the File No. SR–OCC–2002–25 and should be submitted by February 18, 2003.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–1707 Filed 1–24–03; 8:45 am]

BILLING CODE 8010–01–P

[9] 15 U.S.C. 78s(b)(3)(A)(i).

[10] 17 CFR 240.19b–4(f)(1).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47198; File No. SR–OCC–2002–24]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Clarifying Regulatory Registration Requirements for OCC Membership

January 15, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on October 8, 2002, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by OCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change clarifies and restates OCC's by-laws relating to regulatory registration requirements for OCC membership.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. OCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to restate and clarify applicable regulatory registration requirements in OCC's by-laws. To ensure that OCC clearing members are subject to appropriate regulatory authority standards and financial reporting requirements, OCC requires that each clearing member be either fully registered as a broker dealer under

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified parts of these statements.

section 15(b)(1) or (2) of the Act or fully registered as a futures commission merchant ("FCM") under section 4f(a)(1) of the Commodity Exchange Act ("CEA").[3] A limited exception exists for a "non-U.S. securities firm" as defined in Article I of OCC's by-laws, which requires appropriate supervision by a non-U.S. regulatory body.[4] OCC also requires clearing members to satisfy any additional registration requirements that may be applicable to the clearing member under the Act or the CEA as a result of the particular clearing activity conducted by the clearing member.

As currently drafted, Article V, Section 1, Interpretation and Policy .08 ("Interpretation"), which was adopted as part of OCC's rule filing permitting it to clear commodity futures,[5] states that in order to clear options other than futures options a clearing member must be a fully registered broker dealer. Thus, the Interpretation would appear to require a non-U.S. securities firm that would not otherwise be required to register as a broker dealer to so register in order to clear securities options. This was not intended and is inconsistent with Article V, Section 1, which provides that a non-U.S. securities firm may become a clearing member. The very purpose of permitting non-U.S. securities firms, which by definition are not registered as broker dealers, to become clearing members was to allow them to clear securities options. Applying the Interpretation as written would frustrate that purpose.

As currently drafted, the Interpretation also states that in order to clear commodity futures and futures options, a clearing member must be a fully registered FCM, and in order to clear security futures products, a fully registered broker dealer must also be a fully registered FCM or notice-registered as an FCM under section 4f(a)(2) of the CEA. However, the CEA and the CFTC's regulations do not require a person engaged only in proprietary trading and clearing to register as an FCM, whether clearing conventional securities products or security futures products.[6] OCC did not intend to require FCM registration where such registration is not mandated by the CEA or the CFTC's regulations. The restated Interpretation would eliminate any contrary implication.

Finally, as currently drafted, the Interpretation fails to account for the possibility that a non-U.S. securities firm might lawfully clear securities futures products for its own account without registration under either the Act or the CEA. The restated Interpretation makes clear that a firm qualifying as a non-U.S. securities firm under OCC's rules can clear any product through OCC without registration under U.S. laws so long as it would not be in violation of those laws in regulations in so doing.

OCC believes the proposed rule change is consistent with Section 17A of the Act because by specifically identifying the regulatory restrictions required for clearing members engaged in clearing particular products, it promotes the prompt and accurate clearance and settlement of securities transactions, fosters cooperation and coordination with persons engaged in the clearance and settlement of securities transactions, removes impediments to and perfects the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions, and, in general, protects investors and the public interest.

(B) Self-Regulatory Organization's Statement on Burden on Competition

OCC does not believe that the proposed rule change would impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were not and are not intended to be solicited with respect to the proposed rule change, and none have been received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(i) of the Act[7] and Rule 19b–4(f)(1)[8] thereunder because it constitutes a stated policy, practice or interpretation with respect to the meaning, enforcement or administration of an existing rule. At any time within sixty days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW, Washington, DC 20549–0609. Comments may also be submitted electronically at the following e-mail address: *rule-comments@sec.gov*. All comment letters should refer to File No. SR–OCC–2002–24. This file number should be included on the subject line if e-mail is used. To help us process and review comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW, Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of OCC. All submissions should refer to the File No. SR–OCC–2002–24 and should be submitted by February 18, 2003.

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[3] 7 U.S.C. 1 *et seq.*

[4] Article I, Definitions, of OCC's by-laws defines "non-U.S. securities firms" as a securities firm (1) formed and operating under the laws of a country other than the U.S., (2) with its principal place of business in that country, (3) that is subject to regulation in that country, and (4) that is not registered or required to be registered as a broker dealer. The proposed rule change adds the requirement that the firm not be registered or required to be registered as an FCM.

[5] Securities Exchange Act Release No. 45946 (May 16, 2002), 67 FR 36056 (May 22, 2002) [OCC–2001–16].

[6] Section 4d of the CEA makes it unlawful for any person to act as an FCM in soliciting or accepting orders for the purchase or sale of any commodity for future delivery, or involving any contracts of sale of any commodity for future delivery, on or subject to the rules of any contract market unless such person is registered with the CFTC as an FCM. In order to fall within the definition of an FCM in section 1a(20) of the CEA, a person must, in connection with the soliciting or accepting of orders for the purchase or sale of a futures contract on a contract market or derivatives transaction execution facility, accept money, securities, or property (or extend credit in lieu thereof) to margin, guarantee, or secure any trades or contracts that result or may result. A firm trading exclusively for its own account would not meet that definition. Moreover, CTFC Regulation 3.10(c) provides that a person trading solely for proprietary accounts, as defined in Regulation 1.3(y), is not required to register as an FCM. 17 CFR 3.10(c).

[7] 15 U.S.C. 78s(b)(3)(A)(i).

[8] 17 CFR 240.19b–4(f)(1).

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–1708 Filed 1–24–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47196; File No. SR–OCC–2002–20]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to an Alternative Schedule of Fees for Clearing Transactions in Security Futures

January 15, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on August 28, 2002, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by OCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change would provide for an alternative schedule of fees for clearing transactions in security futures. Markets for which OCC provides clearance and settlement services for security futures are permitted to elect either OCC's standard or alternative schedule of fees.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. OCC has prepared summaries, set forth in sections (A), (B) and (C) below, of the most significant aspects of these statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of this proposed rule change is to amend OCC's schedule of fees to provide for an alternative, discounted fee schedule for clearing transactions in security futures. This proposed alternative fee schedule is based on the fees for clearing services contained in the Security Futures Agreement for Clearing and Settlement Services between OCC and OneChicago, LLC.[3] The alternative fee schedule is as follows:

(1) Trades with contracts of: (i) 1 to 500 contracts: $0.07; (ii) 501 to 1,000 contracts: $0.06; (iii) 1,001 to 2,000 contracts: $0.05; and (iv) $85.00 for transactions larger than 2,000 contracts.

(2) Associate clearinghouse cleared trades with contracts of: (i) 1 to 500 contracts: $0.05; (ii) 501 to 1,000 contracts: $0.0425; and (iii) 1,001 to 2,000 contracts: $0.035; and (iv) $61.00 for transactions larger than 2,000 contracts.

(3) Trades in new security futures product fee schedule:[4] (i) First calendar month traded: $0.00; (ii) second calendar month traded: $0.025, regardless of size; (iii) third calendar month traded: the lesser of the total at $0.05/contract or $85.00; and (iv) fourth calendar month reverts to applicable fee schedule as set forth above.

(4) Associate clearinghouse cleared trades in new security futures product fee schedule: (i) First calendar month traded: $0.00; (ii) second calendar month traded: $0.02, regardless of size; (iii) third calendar month traded: the lesser of the total at $0.035/contract or $61.00; and (iv) fourth calendar month reverts to applicable fee schedule as set forth above.

(5) Minimum monthly fee: $200.

Markets trading security futures products can elect OCC's standard or alternative fee schedule. Fees are charged on a per-side basis. The minimum monthly clearing fee is $200. Because clearing fees are discounted under the alternative schedule, fees collected under it are excluded from any other rebates or discounts offered by OCC and from any year-end refund of clearing fees.

OCC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act[5] and the rules and regulations thereunder applicable to OCC because it establishes a reasonable alternative fee schedule to be charged for clearing transactions in security futures.

(B) Self-Regulatory Organization's Statement on Burden on Competition

OCC does not believe that the proposed rule change would impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were not and are not intended to be solicited with respect to the proposed rule change, and none have been received. OCC will notify the Commission of any written comments received by OCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii)[6] of the Act and Rule 19b–4(f)(2)[7] promulgated thereunder because the proposal establishes or changes a due, fee, or other charge imposed by OCC. At any time within sixty days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Comments may also be submitted electronically at the following e-mail address: *rule-comments@sec.gov*. All comment letters should refer to File No. SR–OCC–2002–20. This file number should be included on the subject line if e-mail is used. To help us process and

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[9] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified the text of the summaries prepared by OCC.

[3] Securities Exchange Act Release No. 46653 (October 11, 2002), 67 FR 64689 (October 21, 2002) [File No. SR–OCC–2002–07].

[4] For purposes of this alternative security futures fee schedule, "new security futures product" does not include security futures products overlying additional underlying interests of the same general description as interests on which security futures products are then traded (e.g., additional stocks or additional narrow-based indexes) unless there are material differences, other than as to variable terms such as expiration months, in the terms of the security futures product itself.

[5] 15 U.S.C. 78q–1.

[6] 15 U.S.C. 78s(b)(3)(A)(ii).

[7] 17 CFR 240.19b–4(f)(2).

review comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of OCC. All submissions should refer to File No. SR–OCC–2002–20 and should be submitted by February 18, 2003.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–1710 Filed 1–24–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47194; File No. SR–OCC–2002–26]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing and Immediate Effectiveness of a Proposed Rule Relating to the Treatment of Multiple Accounts of the Same Type

January 15, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on October 17, 2002, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in items I, II, and III below, which items have been prepared primarily by OCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change amends OCC's by-laws and rules to make explicit OCC's existing interpretations as to the treatment of multiple accounts of the same type whether maintained under one or more clearing numbers in the event of the liquidation of the clearing member's accounts by OCC.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in item IV below. OCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The proposed rule change sets forth certain interpretations as to the treatment of multiple accounts of the same type whether maintained under one or more clearing member numbers in OCC's system in the event of a liquidation of the clearing member's accounts by OCC pursuant to chapter XI of OCC's rules, "Suspension of a Clearing Member." These interpretations merely make more explicit OCC's existing interpretations and practices and do not represent any substantive change. OCC is formalizing them because it has become increasingly common for clearing members to maintain accounts under more than one clearing member number in OCC's clearing system.

OCC ordinarily assigns each clearing member a number which serves to identify the clearing member in OCC's system. Some clearing members have more than one clearing member number as a result of having acquired other clearing members or having requested separate numbers to identify particular divisions or sets of accounts for internal purposes. In other cases, OCC may assign additional clearing member numbers to a clearing member in order to permit the clearing member to maintain additional accounts that cannot be accommodated under the same number within OCC's system. For example, clearing members may be assigned an additional clearing member number in order to establish a JBO Account in addition to an existing combined market-maker account because OCC's current clearing system cannot accommodate both accounts under a single number.

The need for multiple clearing member numbers will be reduced when ENCORE, OCC's new clearing system currently under development, becomes fully operational. Even then, however, there may be reasons for a single clearing member to maintain more than one clearing member number.

OCC believes that this rule change is advisable in order to clarify that OCC's suspension and liquidation rules look only to the clearing member as a legal entity and disregard any separation of the clearing member's business into divisions or separate sets of accounts. (Of course, absent a contrary agreement or a situation where piercing the corporate veil is appropriate under applicable principles of corporate law, affiliated clearing members that are separate legal entities would retain their separate identity in a liquidation.)

OCC is also modifying the wording of the lead-in language of article VI, section 3 of its by-laws, "Maintenance of Accounts," by changing the word "shall" to "may." This change is appropriate to make clear that clearing members are not required to maintain every different type of account that is permitted under section 3. This change in wording also represents a clarification rather than a substantive change. Indeed, many clearing members at present maintain fewer than all of the permitted types of accounts because some account types are not needed for their particular business activities.

OCC believes that the proposed rule change is consistent with the requirements of section 17A of the Act and the rules and regulations thereunder because it promotes the prompt and accurate clearance and settlement of securities transactions by clarifying the application of OCC's liquidation rules to clearing members that maintain multiple clearing member numbers.

(B) Self-Regulatory Organization's Statement on Burden on Competition

OCC does not believe that the proposed rule change would impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were not and are not intended to be solicited with respect to the proposed rule change, and none have been received.

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[8] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified parts of these statements.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A)(i) of the Act [3] and rule 19b–4(f)(1)[4] thereunder because it constitutes a stated policy, practice, or interpretation with respect to the meaning, enforcement, or administration of an existing rule. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Comments may also be submitted electronically at the following e-mail address: *rule-comments@sec.gov*. All comment letters should refer to File No. SR-OCC–2002–26. This file number should be included on the subject line if e-mail is used. To help us process and review comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of OCC. All submissions should refer to the File No. SR-OCC–2002–26 and should be submitted by February 18, 2003.

[3] 15 U.S.C. 78s(b)(3)(A)(i).

[4] 17 CFR 240.19b-4(f)(1).

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–1711 Filed 1–24–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47211; File No. SR–PCX–2002–55]

Self Regulatory Organizations; Pacific Exchange, Inc.; Order Granting Approval to Proposed Rule Change and Amendment No. 1 Thereto Regarding Market Maker Quoting Obligations

January 17, 2003.

On August 7, 2002, the Pacific Exchange, Inc. ("PCX" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to require options market makers to vocalize a legal-width, two-sided market for a minimum of ten contracts whenever a floor broker enters a trading crowd and calls for a market in an option series that is one of the 120 most actively traded equity options ("Top 120 options"). This obligation would apply to: (i) Market makers who have executed a transaction in a Top 120 option, but not those who have been assigned contracts by the Order Book Official on either the day of the floor broker's call for a market or on the previous business day; (ii) non-broker-dealer orders; and (iii) series not designated as LEAPS.[3]

On November 8, 2002, the Exchange submitted Amendment No. 1 to the proposed rule change.[4] The proposed rule change was published for comment in the **Federal Register** on December 13, 2002.[5] The Commission received no comment letters on the proposal. This order approves the proposal, as amended.

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange[6] and, in particular, the requirements of Section 6(b)(5) of the Act.[7]

The Commission believes that the proposal should provide greater depth and liquidity to the marketplace by increasing from one contract to ten contracts most PCX market makers' minimum quoting obligation when a floor broker enters the crowd with a non-broker-dealer order and calls for a market in the Top 120 options. The Commission notes that the increased quote size obligations for the Top 120 options applies to market makers that have executed a trade on the same or previous day that a floor broker requests a market in a particular Top 120 option. The Commission believes it is appropriate that the proposal does not apply to market makers that have executed a trade only as a result of the assignment of contracts by the Order Book Official in an attempt to satisfy an order represented by the floor broker,[8] because market makers should not have their quoting obligations increased when fulfilling their obligation to assist an Order Book Official attempting to satisfy an order represented by a floor broker.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[9] that the proposed rule change (File No. SR–PCX–2002–55) is approved, as amended.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–1704 Filed 1–24–03; 8:45 am]

BILLING CODE 8010–01–P

[5] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* PCX Rule 6.4.

[4] *See* letter from Steven B. Matlin, Senior Counsel, PCX, to Nancy J. Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, dated November 7, 2002.

[5] *See* Securities Exchange Act Release No. 46947 (December 4, 2002), 67 FR 76771.

[6] In approving this proposed rule change, the Commission notes that it has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[7] 15 U.S.C. 78f(b)(5).

[8] *See* PCX Rule 6.37, Commentary .05.

[9] 15 U.S.C. 78s(b)(2).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47207; File No. SR–PCX–2002–79]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Exchange, Inc. To Amend Its Schedule of Fees and Charges To Increase the User Transaction Credit for Certain Transactions in Listed Securities and To Increase the Transaction Fee for Certain Transactions in Listed Securities

January 16, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and rule 19b–4 thereunder,[2] notice is hereby given that on December 31, 2002, the Pacific Exchange, Inc. ("PCX") filed with the Securities and Exchange Commission the proposed rule change as described in items I, II and III below, which the PCX has prepared. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PCX, through its wholly owned subsidiary PCX Equities, Inc. ("PCXE"), proposes to amend its fee schedule to increase the transaction credit for ETP Holders[3] and Sponsored Participants[4] who provide liquidity in listed securities that are traded on the Archipelago Exchange ("ArcaEx"), the equities trading facility of PCXE. The PCX also proposes to raise the transaction fee for orders that take liquidity from the ArcaEx Book.[5] The text of the proposed rule change is available at the PCX and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the PCX included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it had received on the proposed rule change. The text of these statements may be examined at the places specified in item IV below. The PCX has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of the statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend the PCX's fee schedule by increasing the level of the transaction credit paid to ETP Holders and Sponsored Participants (collectively "Users") who provide liquidity in exchange-listed securities that are traded on ArcaEx. Currently, Users earn a credit of $0.001 per share for providing liquidity in listed securities by entering resting limit orders that are subsequently executed against incoming marketable orders in the ArcaEx book. The PCX proposes to increase the level of the transaction credit for listed securities from $0.001 to $0.002 per share. The increased credit of $0.002 is the same amount that is currently applied to orders that provide liquidity in Exchange-Traded Funds ("ETFs") and American Depository Receipts ("ADRs"). The PCX intends for this credit to create additional incentives to Users to provide liquidity in listed securities that are traded on the ArcaEx facility.

In addition, the PCX proposes to raise the transaction fee for orders that take liquidity from the ArcaEx Book. Currently, Users who take liquidity from the ArcaEx Book are charged $0.002 per share. The PCX proposes to increase the level of the transaction fee for listed securities from $0.002 to $0.003 per share, which would bring the fee to the same level as currently applied to orders in ETFs.[6]

2. Basis

The PCX believes that the proposal is consistent with section 6(b) of the Act,[7] particularly section 6(b)(4) of the Act,[8] in that it provides for the equitable allocation of reasonable dues, fees, and other charges among its members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The PCX does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The PCX neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the PCX had designated the foregoing rule change proposal as a fee filing, it has become effective upon filing pursuant to section 19(b)(3)(A) of the Act[9] and rule 19b–4(f) thereunder.[10] At any time within 60 days after the filing of the proposed rule change, the Commission may summarily abrogate the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* PCXE rule 1.1(n).

[4] A "Sponsored Participant" means "a person which has entered into a sponsorship arrangement with a Sponsoring ETP Holder pursuant to [PCXE] rule 7.29." *See* PCXE rule 1.1(tt).

[5] ArcaEx maintains an electronic file of orders, called the ArcaEx Book, through which orders are displayed and matched. The ArcaEx Book is divided into four components, called processes: the Directed Order Process, the Display Order Process, the Working Order Process, and the Tracking Order Process. *See* PCXE rules 7.36 and 7.37 for a detailed description of these order execution processes.

[6] The PCX notes that the following items continue to be excluded from this fee: (1) Directed Orders, regardless of account type, that are matched within the Directed Order Process; (2) Directed Orders for the account of a retail public customer that are executed partially or in their entirety via the Directed Order, Display Order, Working Order, and Tracking Order processes (however, any unfilled or residual portion of a retail customer's order that is routed away and executed by another market center or participant will incur this transaction fee); (3) orders executed in the Opening Auction and the Market Order Auction; (4) Cross Orders; (5) commitments received through ITS; and (6) participants in the Nasdaq UTP Plan that transmit orders via telephone.

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(4).

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f).

the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the principal office of the PCX. All submissions should refer to File No. SR–PCX–2002–79 and should be submitted by February 18, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–1713 Filed 1–24–03; 8:45 am]

BILLING CODE 8010–01–P

DEPARTMENT OF STATE

[Public Notice 4250]

Notice Convening the Accountability Review Board for the Murder of Mr. Laurence Foley, USAID Official in Amman, Jordan

Pursuant to section 301 of the Omnibus Diplomatic Security and Antiterrorism Act of 1986 (22 U.S.C. 4831 *et seq.*), I have determined that the October 28, 2002, murder of Mr. Laurence (Larry) Foley of the U.S. Agency for International Development (AID) in Amman, Jordan, involved loss of life at or related to a U.S. mission abroad. Therefore, I am convening an Accountability Review Board, as required by that statute, to examine the facts and the circumstances of the attack and report to me such findings and recommendations as it deems appropriate, in keeping with the attached mandate.

I have appointed Ambassador Wesley Egan as Chair of the Board. He will be assisted by Frederick Mecke, Timothy Deerr, George Wachtenheim, Charles S. Phalen, Jr., and by Executive Secretary Howard Perlow. All will bring to their deliberations distinguished backgrounds in government service and in the private sector.

I have asked the Board to submit its conclusions and recommendations to me within 60 days of its first meeting, unless the Chair determines a need for additional time. Appropriate action will be taken and reports submitted to Congress on any recommendations made by the Board.

Anyone with information relevant to the Board's examination of this incident should contact the Board promptly at (202) 647–5204 or send a fax to the Board at (202) 647–3282.

[11] 17 CFR 200.30–3(a)(12).

Dated: January 6, 2003.

Colin L. Powell,

Secretary of State, Department of State.

Accountability Review Board—Amman, Jordan; Mandate

A. Review and Report. The Accountability Review Board shall examine the facts and circumstances surrounding the October 28, 2002, murder of Mr. Laurence Foley, an employee of the U.S. Agency for International Development who was assigned to the American Embassy in Amman, Jordan. Mr. Foley was shot in the driveway of his home at approximately 7:15 a.m. while preparing to leave for work. The ARB shall submit a detailed written report to the Secretary of State within 60 days of its first meeting. If the Chair determines that more than 60 days are necessary to complete the Board's review, the Chair shall notify the Secretary of State of that fact and the amount of additional time needed.

B. Findings. In accordance with section 304 (a) of the Omnibus Diplomatic Security and Antiterrorism Act of 1986 ("the Act"), the Board shall make written findings in its report to include at least the following matters:

1. The extent to which the incident (with respect to which the Board was convened) was security-related;

2. Whether in this case the security systems and security procedures were adequate;

3. Whether the security systems and security procedures were properly implemented in this case;

4. The impact of intelligence and information availability in this case;

5. Whether there is reasonable cause to believe that any individual has breached the duty of that individual; and

6. Such other factors and circumstances which may be relevant to the appropriate security management of United States missions abroad.

C. Program Findings and Recommendations. The Board shall submit its findings (which may be classified to the extent deemed necessary by the Board) to the Secretary of State, together with recommendations, as appropriate, to improve the security and efficiency of any program or operations which the Board has reviewed.

D. Personnel Findings and Recommendations. If the Board finds reasonable cause to believe that an employee of the United States Government, or member of the uniformed services, as defined by section 303(a)(1)(B) of the Act, has breached his or her duty, the Board shall:

(1) Notify the individual concerned;

(2) Transmit the finding of reasonable cause, together with all information relevant to such finding, to the head of the appropriate Federal agency or instrumentality; and

(3) Recommend that such agency or instrumentality initiate appropriate investigatory or disciplinary actions.

E. Coordination with Law Enforcement Investigations. I expect that the Board will carry out its activities in a manner that does not interfere with or compromise the work of the Justice Department or any other law enforcement authority conducting an investigation of the incident. Specifically, the Board shall coordinate its activities in accordance with the State-Justice Memorandum of Understanding (MOU) signed in September of 2001.

F. Termination. The Board shall terminate 30 days after submission of its report to the Secretary of State unless the Secretary of State within that time requests that further proceedings be held by the Board and specifies a new termination date.

[FR Doc. 03–1645 Filed 1–24–03; 8:45 am]

BILLING CODE 4710–10–P

DEPARTMENT OF STATE

[Public Notice 4252]

Culturally Significant Objects Imported for Exhibition Determinations: "Renoir and Algeria"

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 [79 Stat. 985; 22 U.S.C. 2459], Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 [112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*], Delegation of Authority No. 234 of October 1, 1999 [64 FR 56014], and Delegation of Authority No. 236 of October 19, 1999 [64 FR 57920], as amended, I hereby determine that the objects to be included in the exhibition, "Renoir and Algeria," imported from abroad for temporary exhibition within the United States, are of cultural significance. These objects are imported pursuant to loan agreements with foreign lenders. I also determine that the exhibition or display of the exhibit objects at the Clark Art Institute, Williamstown, Massachusetts, from on

or about February 16, 2003, to on or about May 11, 2003, the Dallas Museum of Art, Dallas, Texas, from on or about June 8, 2003, to on or about September 7, 2003, and at possible additional venues yet to be determined, is in the national interest. Public Notice of these determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of exhibit objects, contact Paul W. Manning, Attorney-Adviser, Office of the Legal Adviser, 202/619–5997, and the address is United States Department of State, SA-44, Room 700, 301 4th Street, SW, Washington, DC 20547–0001.

Dated: January 15, 2003.

Miller Crouch,

Acting Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 03–1767 Filed 1–24–03; 8:45 am]

BILLING CODE 4710–08–P

TENNESSEE VALLEY AUTHORITY

Pickwick Reservoir Land Management Plan, Lauderdale and Colbert Counties, AL; Tishomingo County, MS; and Hardin County, TN

AGENCY: Tennessee Valley Authority (TVA).

ACTION: Issuance of record of decision.

SUMMARY: This notice is provided in accordance with the Council on Environmental Quality's regulations (40 CFR 1500 to 1508) and TVA's procedures implementing the National Environmental Policy Act. TVA has updated its 1981 land management plan for 19,238 acres of TVA public land on Pickwick Reservoir in Alabama, Mississippi, and Tennessee. TVA will use the plan to guide land use approvals, private water-use facility permitting, and resource management decisions on Pickwick Reservoir. On September 10, 2002, the TVA Board of Directors decided to adopt the preferred alternative (Alternative B) identified in the Final Environmental Impact Statement (EIS) and Land Management Plan, Pickwick Reservoir. A notice of availability of the final EIS was published in the **Federal Register** on August 2, 2002. Under the adopted land plan, TVA has allocated undeveloped lands for public recreation and natural resource conservation, and has also been responsive to local requests for use of TVA lands for water access and community development. Of the 19,238 acres of TVA lands on the reservoir which are available for allocation, 16,291 acres would be allocated to natural resource conservation (Zone 4), sensitive resource management (Zone 3), TVA project operations (Zone 2); 1,327 acres would be allocated for developed recreation (Zone 6) uses such as marinas, campgrounds, parks, and boat ramps; 1,085 acres would be allocated for residential lake access, and 534 acres for industrial or commercial uses (Zone 5). Although reserved for conservation purposes, lands in Zones 3 and 4 also lend themselves to dispersed recreation uses.

FOR FURTHER INFORMATION CONTACT: Harold Draper, Senior NEPA Specialist, Environmental Policy and Planning, Tennessee Valley Authority, 400 West Summit Hill Drive, WT 8C, Knoxville, Tennessee 37902—1499; telephone (865) 632–6996 or e-mail *hmdraper@tva,gov.*

SUPPLEMENTARY INFORMATION: Pickwick Reservoir is a 52.7-mile long reservoir completed in 1938. Although 63,625 acres were acquired for construction of the reservoir, 42,708 are covered by water. Subsequent transfers of land by TVA for economic, industrial, residential, or public recreation development have resulted in a current balance of 19,238 acres of TVA public land above normal summer pool elevation of 414 mean sea level.

TVA first announced its proposal to update its 1981 land management plan in 2001. TVA determined that the development of an EIS would allow a better understanding of the impacts of the alternatives. TVA published in the **Federal Register** a notice of intent to prepare an EIS on March 26, 2001. Meetings were held to inform the public of TVA's proposal to update the land allocation plan and to solicit input on scoping this proposal. The scoping meetings were held on March 29, 2001, in Lula, Mississippi at the Tishomingo County High School; April 3, 2001, in Memphis, Tennessee at the Adam's Mark Hotel; April 6, 2001, in Pickwick Dam, Tennessee at the Pickwick Landing State Park; and April 12, 2001, in Muscle Shoals, Alabama at the TVA Environmental Research Center Auditorium. These meetings were attended by 203 people. In addition, written comments were invited through a news release, newspaper notices, and a web site notice. During the scoping period, commenters expressed a desire for more environmental protection of the lands of Pickwick Reservoir, and discussed how they valued the scenic beauty and setting of the reservoir. TVA made an effort to identify parcels of land with sensitive resources that should be managed in a manner that ensures the protection of these resources. Further, TVA used the comments received during the scoping process to develop alternatives to be assessed in the draft EIS (DEIS). TVA assessed the impacts of the following alternatives: No action (Alternative A); balanced conservation with limited development (Alternative B); and conservation (Alternative C). A notice of availability (NOA) of the DEIS appeared in the **Federal Register** on May 3, 2002.

In addition to written materials, additional information on the proposals and other aspects of the DEIS was available to the public in four public meetings held in May 7, 2002, in Muscle Shoals, Alabama at the TVA Environmental Research Center Auditorium; May 14, 2002, in luka, Mississippi at the Tishomingo County High School; May 16, 2002, in Memphis, Tennessee at the Adam's Mark Hotel; and May 21, 2002, in Pickwick Dam, Tennessee at the Pickwick Landing State Park. Approximately 64 comments were received on the DEIS. These comments primarily related to recommendations for proposed uses of TVA land. In the Final EIS (FEIS), TVA selected Alternative B as the preferred alternative. After considering all comments, the Final EIS was completed and distributed to commenting agencies and the public. A NOA for the Final EIS was published in the **Federal Register** on August 2, 2001.

Alternatives Considered

TVA considered three alternatives, including no action, for allocation of Pickwick Reservoir lands. The action alternatives were characterized as Alternative B, balanced conservation with limited developed recreation and industrial/commercial development, and Alternative C, conservation. Alternative B accommodated use requests and allocation changes for 3 parcels; while Alternative C did not accommodate allocation change requests and instead reserved these three parcels to conservation-oriented uses by allocating the parcels to Zone 4. In response to public comments on the DEIS, TVA selected Alternative B as the preferred alternative for the FEIS.

Under *Alternative A, the no action alternative,* TVA would not revise the 1981 allocation plan. Proposed land use requests received from external applicants or internal TVA interests would be evaluated for consistency with the 1981 plan. Requested land uses that are consistent would be approved or denied based on a review of potential environmental impacts and other administrative considerations. If the

request is not consistent with the designated land use, and TVA staff believe the proposal has merit, then the TVA Board of Directors would be asked to amend the plan and change the allocation.

The 1981 plan used 10 allocation categories to allocate approximately 21,000 acres of TVA public land. Residential shoreline and other shoreline strips were not included in the allocations. Many parcels in the 1981 plan were designated with multiple allocation tags, allowing their consideration for a wide range of uses with a wide range of resulting environmental consequences. TVA estimates that under the existing plan, 31.5 to 55.0 percent of reservoir lands would be used for sensitive resource protection or natural resource management, 2.3 to 13.0 percent would be used for industrial or other developed uses, and 1.9 to 12.8 percent would be used for recreation development. As explained in the FEIS, the above figures are presented as ranges because certain parcels have multiple allocation tags under the 1981 plan.

Under *Alternative B, balanced conservation with limited developed recreation and industrial/commercial development,* 69.8 percent of project lands would be allocated to sensitive resource protection or natural resource management uses, 2.8 percent would be allocated for developed uses or industrial uses, 6.9 percent for recreation development, and 5.6 percent for residential access.

Under *Alternative C, conservation,* 70.5 percent of project lands would be allocated to environmental protection and natural resource management uses, 2.4 percent for developed uses or industrial uses, 6.7 percent for recreation development, and 5.5 percent for residential access.

Alternatives B and C differ with respect to the allocations for Parcels 37, 53, and 156. Under Alternative B, TVA would allocated these tracts for developed uses: Parcel 37 (35 acres) for recreation development; Parcel 156 (89 acres) for industrial development; and Parcel 156 (21 acres) for residential development. Under Alternative C, TVA would allocate all three tracts for natural resource conservation (Zone 4).

The EIS considered the environmental consequences of the alternatives on a wide variety of environmental resources. Under any alternative, sensitive resources such as endangered and threatened federal and state-listed species, cultural resources, and wetlands would be protected. Adoption of Alternative B would balance the competing demands of development and conservation. Proposed development activities would have insignificant environmental impacts.

Because the potential effects on historic properties cannot be fully determined prior to implementation of the land plan, TVA will use a phased identification and evaluation process as allowed under 36 CFR 800.4(b)(2) to fulfill its obligations under section 106 of the National Historic Preservation Act in all three states. A programmatic agreement for reservoir land management plans in Alabama has been executed. ACHP, TVA, the Alabama SHPO, the Eastern Band of Cherokee Indians, and the Chickasaw Nation are signatories in the Programmatic Agreement, and the Alabama Indian Affairs Commission is a concurring party.

Response to Comments

Appendix H of the Final EIS contains summaries of and responses to the comments TVA received during the Draft EIS process. TVA received comments from 64 individuals and organizations on the DEIS. The open public process and discussion on a number of issues substantially enhanced TVA's decision making. TVA also received comments on the FEIS from EPA, Alabama Historical Commission, and Tennessee Historical Commission.

As in response to the FEIS, EPA continues to prefer Alternative C or a modification thereof over TVA Preferred Alternative B. EPA recommends if Alternative B was to be selected by TVA, that there be a careful balance between development and the environment, such that development in Zones 5 and 6 is consistent with state and federal environmental regulations and that the current quality of the environment is maintained in conservation zones 3 and 4. EPA also looks to TVA to be selective in the type of development allowed in order to minimize/mitigate potential environmental impacts on Pickwick Reservoir. Further, EPA encourages TVA to be selective in the type of development allowed in order to minimize/mitigate potential environmental impacts on Pickwick Reservoir. Further, EPA encourages TVA to not only directly manage its reservoir shorelands through its updated land management plans and its Shoreline Management Initiative (SMI) Policy, but also to increase its stakeholder activities within the entire watershed community for the overall management of Pickwick and other reservoirs. It is also recommended by EPA that in future, TVA reservoir management EISs and Records of Decision (RODs), protection activities in the greater watershed be disclosed, including progress toward a stakeholder watershed protection plan for the reservoir being considered.

In cognizance of EPA's comments, TVA will continue to emphasize water quality considerations in its land use and section 26a decision making processes for facilities on Pickwick Reservoir. As to the need to mitigate potential environmental impacts, Alternative B is designed such that seventy percent of the TVA public land is allocated to Zones 3 and 4, whereas only 7.9 percent is allocated to Zones 5 and 6. Further, under Alternative B, the amount of TVA public land allocated to Zones 5 and 6 has been reduced by 3,095 acres as compared to Alternative A, the no action alternative. All land use and 26a applicants are required to obtain the necessary federal and state permits to operate their facilities. Under Alternative B, TVA has attempted to accommodate only three development proposals consisting of 145 acres out of 19,238 acres. These proposals are of limited area and shoreline length. As to Parcel 53, the proposed industrial development will occur on backlying lands, and the request to TVA will be limited to corridors for water access. The site-specific impacts of the proposed industrial development tract would be appropriately mitigated through measures identified in the NEPA reviews associated with tract specific requests.

EPA's comment encouraging TVA to increase its stakeholder activities within the entire watershed community for the overall management of Pickwick and other reservoirs is well taken. Water quality is a major consideration in the management of TVA reservoirs. In addition to its efforts to control pollutants via its shoreline and land use, TVA currently has more than 50 watershed water quality initiatives underway across the Valley. Many of these are directly focused on impacts of nutrients on reservoir water quality. These initiatives are undertaken in large part as a response to monitored conditions such as chlorophyll levels. Efforts are targeted on reservoirs and watersheds where the needs are most critical and where there is a reasonable likelihood of success. Furthermore, efforts are focused on identifying and controlling significant sources of pollutants within the watershed where increased control is likely to produce measurable improvements. Additionally, TVA plays a major role as stakeholder in overall watershed management through its participation in numerous local and regional

organizations focusing on watershed and water quality issues. Our active involvement in stakeholder driven initiatives is a hallmark of TVA's resource stewardship program. TVA has provided data and technical assistance to States for their use in development of reservoir water quality standards. Specifically, we have provided data to ADEM for its consideration of chlorophyll standards for Pickwick Reservoir. While water quality standards development are a State and EPA function, TVA provides the technical support necessary for development of standards to protect water quality. TVA continues to monitor water quality in its reservoirs and steams and systematically uses these data to target its management efforts. The importance and value of water quality monitoring is clearly understood by TVA.

In other agency comments, the Tennessee Historical Commission (THC) concurred that phased compliance is an appropriate strategy, and requested that TVA submit all historic property survey reports to the office for review and comment. In accordance with standard section 106 of the National Historic Preservation Act, TVA will provide this information to the THC for all properties in Tennessee subject to land disturbance activity. The Alabama Historical Commission agreed with Alternative B provided that a phase II archaeological investigation be conducted for every site potentially eligible for National Register of Historic Places that could be affected by land disturbance activities proposed in the future. TVA will conduct archaeological and historic structure surveys to identify historic properties, and will submit phase II proposals to the Alabama Historical Commission for approval prior to testing for projects in Alabama.

Decision

The TVA Board decided on September 10, 2002, to adopt the Pickwick Reservoir Land Management Plan as described in Alternative B. TVA believes that Alternative B not only responds to community development and recreational development needs on Pickwick Reservoir, but also recognizes and preserves the aesthetic and sensitive resources which make the reservoir unique. Alternative B sets aside parcels containing sensitive resources and habitats in the sensitive resource protection and natural resource conservation categories. For lands where TVA proposes to consider development proposals, Alternative B adopt commitments that would further minimize the potential for adverse impacts to the environment. These commitments are listed below, under Environmental Commitments.

Environmentally Preferable Alternative

Out of the 19,238 planned acres considered under Alternatives B and C, less than one percent (145 acres) are considered for development purposes under Alternative B. Potential adverse impacts can be substantially avoided or minimized through mitigation measures. TVA has therefore concluded that between the two action alternatives (Alternatives B and C), there is no clear environmentally preferable alternative for the Pickwick Reservoir Land Management Plan. Both B and C are environmentally preferable as compared to the no action alternative (Alternative A). TVA believes that Alternative B helps to meet the multiple objectives of the Pickwick project, and would result in substantially better environmental protection than previous shoreline development practices.

Environmental Commitments

The land plan envisioned in Alternative B advances TVA's commitment to resource stewardship and habitat protection through strong conservation approaches.
Environmental protection measures are built into the formulation of Alternative B since the approximately 70 percent of the land is allocated to conservation uses (Zones 3 and 4). Further, the retention by TVA of fee ownership of Zones 5 and 7 lands would ensure appropriate buffers between the developed land and the water. In addition, TVA is adopting the following measures to minimize environmental impacts:

- All soil-disturbing activities, such as dredging, shoreline excavations, *etc.*, on Parcels 26, 36, 41, 61, 66, 67, and 68 would be conducted in a manner to avoid impacts to cultural resources.
- The construction of water use facilities and shorelines alterations within the marked limits of the safety landings and harbors would be prohibited.
- Requests for water use facilities on shoreline immediately upstream and downstream of the safety landings and harbors would continue to be reviewed to ensure that barge tows would have sufficient room to maneuver in and out of the safety landings and harbors without the risk of damaging private property.
- Because caves are extremely fragile and biologically significant, TVA has placed and would continue to maintain protective buffer zones around each of the known caves on TVA public land on Pickwick Reservoir.
- Wetlands on Parcel 37 would be mitigated by avoiding wetlands areas, including small upland buffers.
- Corridors for water access across Parcel 53 would be designed to avoid impacts to terrestrial habitat and wetlands.
- Requests for the alteration or further development of this parcel would need to include BMPs and maintenance of a 50-foot SMZ to reduce potential impacts.
- Requests for the alteration or development of Parcel 156 would need to include mitigation measures, such as vegetation management plans, use of architecturally compatible styles/colors, and height restrictions to maintain the scenic attractiveness without adversely impacting the scene integrity.

With the implementation of the above environmental protection measures, TVA has determined that adverse environmental impacts of future development proposals on the reservoir would be significantly reduced. These protective measures represent all of the practicable measures to avoid or minimize environmental harm associated with the alternative adopted by the TVA Board.

As TVA implements the Pickwick Reservoir Land Management Plan, the agency will continue to work with all affected interests to promote environmentally sound stewardship of public lands.

Dated: January 10, 2003.

Kathryn J. Jackson,

Executive Vice President, Rivers System Operations & Environment.

[FR Doc. 03–1697 Filed 1–24–03; 8:45 am]

BILLING CODE 8120–08–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Pueblo, CO

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway project on Interstate 25 in Pueblo, Colorado, from south of Pueblo Boulevard/State Highway 45 (Milepost 94) to north of U.S. Highway 50/State Highway 47 (Milepost 102).

FOR FURTHER INFORMATION CONTACT: Chris Horn, Federal Highway

Administration, 555 Zang Street, Suite 250, Lakewood, Colorado 80228–1010. Telephone (303) 969–6730 x383.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Colorado Department of Transportation (CDOT), will prepare an Environmental Impact Statement (EIS) for a proposal to improve a 7-mile segment of Interstate 25 (I–25) in and near Pueblo, Colorado. Improvements are necessary to address a deteriorating roadway and bridges with inadequate geometrics, safety, and existing and future traffic demand.

Alternative under consideration include taking no action, reconstruction of the interstate on essentially the existing alignment, and reconstruction on existing and new alignment. These alternatives are further described as follows:

—*No Action Alternative*—This alternative provides only for minor improvements, repairs, and other maintenance actions. The existing four-lane highway will otherwise remain unchanged.

—*Existing I–25 Alignment Alternative*—This alternative consists of reconstructing I–25 to six lanes on essentially the same location, reconfiguring and eliminating access points to the interstate to improve safety, and providing other improvements to the local street system to enhance system connectivity and traffic movement near the interstate.

—*Modified I–25 Alignment Alternative*—This alternative consists of rebuilding I–25 to six lanes and providing the other improvements included in the Existing Alignment Alternative, except the alignment would be shifted to accommodate different interchange configurations.

Incorporated into and studied with the build alternatives will be Transportation System Management strategies and design variations of grade and alignment.

The preliminary alternatives have been developed with the cooperation of public and agency work groups, and will be developed further during the preparation of the EIS, in conjunction with the FHWA, CDOT, and other federal and state agencies, the City of the Pueblo, the County of Pueblo, the Pueblo Area Council of Governments, and residents of the community.

The public will be invited to participate in project scoping to ensure that the full range of issues are considered and all significant issues are identified. The location and time of the scoping meeting will be scheduled during the month of February 2003 and will be announced in the local media. Public meetings will occur throughout the development of the EIS and a public hearing will be held. Prior to the hearing the draft EIS will be available for public and agency review and comment. Public notice will be given of the time and place of all public meetings and the hearing.

Comments or questions regarding this proposed action and the EIS should be directed to FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on January 16, 2003.

William C. Jones,

Division Administrator, Lakewood, CO.

[FR Doc. 03–1572 Filed 1–24–03; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Maritime Administration

Reports, Forms and Recordkeeping Requirements; Agency Information Collection Activity Under OMB Review

AGENCY: Maritime Administration, DOT.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and approval. The nature of the information collection is described as well as its expected burden. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on November 5, 2002. No comments were received.

DATES: Comments must be submitted on or before February 26, 2003.

FOR FURTHER INFORMATION CONTACT: Richard Walker, Maritime Administration, MAR–810, 400 Seventh Street, SW., Washington, DC 20590. Telephone: 202–366–5076; FAX: 202–366–6988, or E–MAIL: *richard.walker@marad.dot.gov*.

Copies of this collection can also be obtained from that office.

SUPPLEMENTARY INFORMATION: Maritime Administration (MARAD).

Title: Inventory of American Intermodal Equipment.

OMB Control Number: 2133–0503.

Type of Request: Extension of currently approved collection.

Affected Public: Owners of U.S. steamship and intermodal equipment leasing companies.

Form(s): None.

Abstract: This collection consists of an intermodal equipment inventory that provides data essential to both the government and the transportation industry in planning for the most efficient use of intermodal equipment. Further, this collection is intended to assure that containers and related intermodal equipment are obtainable in the event of a national emergency.

Annual Estimated Burden Hours: 66 hours.

ADDRESSES: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention MARAD Desk Officer.

Comments are Invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

Issued in Washington, DC, on January 21, 2003.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 03–1714 Filed 1–24–03; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Ex Parte No. 333]

Meetings of the Board

Time and Date: 10 a.m., Thursday, January 30, 2003.

Place: The Board's Hearing Room, Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423.

Status: The Board will meet to discuss among themselves the following agenda items. Although the conference is open for public observation, no public participation is permitted.

Matters to be Considered: STB Finance Docket No. 34178, *Dakota,*

Minnesota & Eastern Railroad Corporation and Cedar American Rail Holding, Inc.—Control—Iowa, Chicago & Eastern Railroad Corporation.

STB Finance Docket No. 33697, *National Railroad Passenger Corporation—Petition for Declaratory Order—Weight of Rail.* STB Finance Docket No. 33995, *SF&L Railway, Inc.—Acquisition and Operation Exemption—Toledo, Peoria and Western Railway Corporation Between La Harpe and Peoria, IL.*

STB Finance Docket No. 33996, *Kern W. Schumacher and Morris H. Kulmer—Continuance in Control—SF&L Railway, Inc.*

STB Docket No. AB–448 (Sub-No. 2X), *SF&L Railway, Inc.—Abandonment Exemption—in Hancock, McDonough, Fulton and Peoria Counties, IL.*

STB Docket No. AB–565 (Sub-No. 11X), *New York Central Lines, LLC—Abandonment Exemption—in Lake County, OH.*

STB Docket No. AB–55 (Sub-No. 617X), *CSX Transportation, Inc.—Discontinuance of Service Exemption—in Lake County, OH.*

STB Finance Docket No. 34114, *Yolo Shortline Railroad Company—Lease and Operation Exemption—Port of Sacramento.*

STB Finance Docket No. 34304, *The Burlington Northern and Santa Fe Railway Company—Trackage Rights Exemption—The Portland & Western Railroad, Inc.*

STB Ex Parte No. 282 (Sub-No. 20), *Railroad Consolidation Procedures—Exemption for Temporary Trackage Rights.*

Contact Person for More Information: A. Dennis Watson, Office of Congressional and Public Services, Telephone: (202)565–1596, FIRS:1–800–877–8339.

Dated: January 22, 2003.

Vernon A. Williams,

Secretary.

[FR Doc. 03–1889 Filed 1–23–03; 12:30 pm]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34308]

Central Midland Railway Company—Lease and Operation Exemption—Union Pacific Railroad Company

Central Midland Railway Company (CMRC), a Class III rail carrier, has filed a verified notice of exemption under 49 CFR 1150.41 to lease and operate approximately 8.65 miles of rail line and related industrial tracks currently owned and operated by Union Pacific Railroad Company (UP). The rail line, known as the Lackland Sub-Division, extends from milepost 10.35 at Rock Island Junction, MO, to milepost 19, located west of Vigus, MO. CMRC certifies that the projected annual revenues from the leased line will not result in the creation of a Class I or Class II rail carrier. The effective date of the exemption was January 15, 2003 (7 days after the notice was filed) and the parties expected to consummate the transaction on January 19, 2003.

If this notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34308, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, one copy of each pleading must be served on John Broadley, John H. Broadley & Associates, 1054 31st Street NW., Suite 200, Washington, DC 20007.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov*.

Decided: January 17, 2003.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 03–1612 Filed 1–24–03; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Transportation Security Administration

Port Security Grant Program; Application Notice Describing the Categories of Interest and Establishing the Closing Date for Receipt of Applications Under the Port Security Grant Program—Round 2

AGENCY: Transportation Security Administration, Department of Transportation.

ACTION: Notice inviting applications for the Port Security Grant Program.

SUMMARY: The purpose of the Port Security Grant Program is to support efforts for port security at critical national seaports in the areas of security assessments and mitigation strategies, enhanced facility and operational security.

The Port Security Grant Program will fund projects in two categories: (1) security assessments and mitigation strategies, and (2) enhanced facility and operational security to include proof-of-concept projects. Transportation Security Administration is coordinating with the Maritime Administration and the U.S. Coast Guard in this effort. Applicants may be submitted by critical national seaports/terminals/vessels (commuter or ferry service) as specified in the Broad Agency Announcement. Authority for this program is contained in the Department of Defense Appropriations Act for FY 2002, Pub. L. 107–117, 115 Stat. 2230 and FY 2002 Supplemental Appropriations Act for Further Recovery From and Response to Terrorist Attacks on the United States, Pub. L. 107–206, 116 State. 820.

DATES: The program announcements and applications for the Port Security Grant Program—Round 2 are expected to be available on or about January 14, 2003. Applicants must be received on or before 2 p.m. EST, February 27, 2003.

ADDRESSES: The Broad Agency Announcement, application and instructions for preparing and submitting an application for the Port Security Grant Program will be available through the Internet at *https://www.portsecuritygrants.dottsa.net.*

FOR FURTHER INFORMATION CONTACT: Ms. Mary Heying, Transportation Security Administration, Office of Maritime and Land Security, 400—7th Street, SW., TSA–8, Washington, DC 20590, (202) 772–1118, email: *Mary.Heying@tsa.dot.gov* or, Ms. Tracey Ford, Grants Officer, Maritime Administration, Office of Acquisition, 400—7th Street, SW., Room 7310, Washington, DC 20590; (202) 366–1744, email: *Tracey.Ford@marad.dot.gov.*

SUPPLEMENTARY INFORMATION: Total anticipated funding available for Port Security Grant Program—Round 2 is $104,093,293. This amount does not include funding for Port Incident Training and Exercises, which will be addressed separate from this program and is not covered by this Announcement. Awards under this program are subject to availability of funds.

Port Security Grant Program—Round 2 Categories

Category 1: Security Assessments and Mitigation Strategies—Award based on proposed security assessments that ascertain vulnerabilities of physical or operational security of a port, multiple terminals, terminal, or vessel (commuter or ferry service) and identify mitigation strategies.

Category 2: Enhanced Facility and Operational Security—Including but not limited to facility/terminal/vessel (commuter or ferry service) access control, physical security, cargo security and passenger security. Consideration will also be given to proof-of-concept projects, which can demonstrate how security would be improved/enhanced, by their implementation.

Dated: January 21, 2003.

J.M. Loy, ADM,

Under Secretary of Transportation for Security.

[FR Doc. 03–1783 Filed 1–24–03; 8:45 am]

BILLING CODE 4110–62–M

DEPARTMENT OF THE TREASURY

President's Commission on the United States Postal Service; Issues for Consideration

AGENCY: Department of the Treasury, Departmental Offices.

ACTION: Notice and request for comments.

SUMMARY: The President has clearly outlined the mission of this Commission in Executive Order No. 13278. According to the Executive Order, the Commission must consider the following issues: (1) The role of the Postal Service in the 21st century and beyond; (2) the flexibility that the Postal Service should have to change prices, control costs, and adjust service in response to financial, competitive, or market pressures; (3) the rigidities in cost or service that limit the efficiency of the postal system; (4) the ability of the Postal Service, over the long term, to maintain universal mail delivery at affordable rates and cover its unfunded liabilities with minimum exposure to the American taxpayers; (5) the extent to which postal monopoly restrictions continue to advance the public interest under evolving market conditions and the extent to which the Postal Service competes with private sector services; and (6) the most appropriate governance and oversight structure for the Postal Service.

The Executive Order also charges the Commission with considering "such other issues relating to the Postal Service" that the Commission determines are appropriate subjects for review.

During this process of examination, the Commission is committed to ensuring that every affected and interested party has an opportunity to share its views and concerns with us. Any party that wishes to submit a written statement on any issue or issues that fall within the established scope of the Commission's mission is strongly encouraged to do so. The Commission has established three methods by which statements can be submitted for consideration and review:

1. Transmission by Email to the following address: *pcusps_comments@do.treas.gov.* Statements can be embedded in the Email as ASCII text or sent as a MS Word or ASCII text attachment. Do not include artwork or other graphic elements.

2. Stored on 3½ inch high density computer disk as a MS word or ASCII text document (Windows format only) and mailed or hand-delivered to: President's Commission on the United States Postal Service, 1120 Vermont Avenue, NW., Suite 971, Washington, DC 20005.

3. Typewritten statements may be mailed or hand-delivered to: President's Commission on the United States Postal Service, 1120 Vermont Avenue, NW., Suite 971, Washington, DC 20005.

DATES: Email transmissions must be received by the Commission no later than 5 p.m. on Wednesday, February 12. Mailed submissions must be postmarked no later than 5 p.m. on Wednesday, February 12.

FOR FURTHER INFORMATION CONTACT: Randall Lewis of the Commission staff at (202) 622–6075.

SUPPLEMENTARY INFORMATION: The Commission encourages parties to limit their statements to a maximum length of 25 pages of double-spaced written text. Any statement exceeding 15 pages in length should be accompanied by a one-page "executive summary." Please be aware that the Commission may, at its discretion, post any statements it receives on the Commission's website at *http://www.treas.gov/offices/domestic-finance/usps.*

Dated: January 21, 2003.

Roger Kodat,

Designated Federal Official.

[FR Doc. 03–1689 Filed 1–24–03; 8:45 am]

BILLING CODE 4811–16–P

DEPARTMENT OF THE TREASURY

Fiscal Service

Financial Management Service; Proposed Collection of Information: Pools and Associations—Annual Letter

AGENCY: Financial Management Service, Fiscal Service, Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Financial Management Service, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a continuing information collection. By this notice, the Financial Management Service solicits comments concerning the "Pools and Associations—Annual Letter".

DATES: Written comments should be received on or before March 28, 2003.

ADDRESSES: Direct all written comments to Financial Management Service, 3700 East-West Highway, Records and Information Management Branch, Room 135, Hyattsville, Maryland 20782.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Dorothy Martin, Manager, Surety Bond Branch, Room 608A, 3700 East-West Highway, Hyattsville, Maryland 20872, (202) 874–6850.

SUPPLEMENTARY INFORMATION: Pursuant to the Paperwork Reduction Act of 1995, (44 U.S.C. 3506(C)(2)(A)), the Financial Management Service solicits comments on the collection of information described below.

Title: Pools and Associations—Annual Letter.

OMB Number: 1510–0008.

Form Number: None.

Abstract: The information is collected for the determination of an acceptable percentage for each pool and association to allow Treasury certified companies credit on their Schedule F for authorized ceded reinsurance in determining the companies' underwriting limitations.

Current Actions: Extension of currently approved collection.

Type of Review: Regular.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 100.

Estimated Time Per Respondent: 1 hour 30 minutes.

Estimated Total Annual Burden Hours: 150.

Comments: Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the

collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance and purchase of services to provide information.

Dated: January 16, 2003.

Judith R. Tillman,

Assistant Commissioner, Financial Operations.

[FR Doc. 03–1672 Filed 1–24–03; 8:45 am]

BILLING CODE 4810–35–M

DEPARTMENT OF THE TREASURY

Fiscal Service

Financial Management Service; Proposed Collection of Information: States Where Licensed for Surety

AGENCY: Financial Management Service, Fiscal Service, Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Financial Management Service, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a continuing information collection. By this notice, the Financial Management Service solicits comments concerning the form "States Where Licensed for Surety".

DATES: Written comments should be received on or before March 28, 2003.

ADDRESSES: Direct all written comments to Financial Management Service, 3700 East-West Highway, Records and Information Management Branch, Room 135, Hyattsville, Maryland 20782.

FOR FURTHER INFORMATION CONTACT: Request for additional information or copies of the form(s) and instructions should be directed to Dorothy Martin, Manager, Surety Bond Branch, Room 608A, 3700 East-West Highway, Hyattsville, Maryland 20872, (202) 874–6850.

SUPPLEMENTARY INFORMATION: Pursuant to the Paperwork Reduction Act of 1995, (44 U.S.C. 3506(c)(2)(A)), the Financial Management Service solicits comments on the collection of information described below.

Title: States Where Licensed for Surety.

OMB Number: 1510–0013.

Form Number: FMS 2208.

Abstract: Information is collected from insurance companies in order to provide Federal bond approving officers with this information. The listing of states, by company, appears in Treasury's Circular 570, "Surety Companies Acceptable on Federal Bonds".

Current Actions: Extension of currently approved collection.

Type of Review: Regular.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 318.

Estimated Time Per Respondent: 1 hour.

Estimated Total Annual Burden Hours: 318.

Comments: Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance and purchase of services to provide information.

Dated: January 16, 2003.

Judith R. Tillman,

Assistant Commissioner, Financial Operations.

[FR Doc. 03–1673 Filed 1–24–03; 8:45 am]

BILLING CODE 4810–35–M

Corrections

Federal Register

Vol. 68, No. 17

Monday, January 27, 2003

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2002–14129; Airspace Docket No. 02–ACE–14]

Proposed Establishment of Class E Surface Area Airspace and Modification of Class E Airspace; Jefferson City, MO

Correction

In proposed rule document 03–1133 beginning on page 2462 in the issue of Friday, January 17, 2003 make the following correction:

§71.1 [Corrected]

On page 2463, in the third column, in §71.1, in the first line, "(Lat. 38°38′28″ N.,", should read, "(Lat. 38°35′28″ N.,".

[FR Doc. C3–1133 Filed 1–24–03; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–14221; Airspace Docket No. 03–ACE–2]

Modification of Class E Airspace; Sikeston, MO

Correction

In rule document 03–1132 beginning on page 2424 in the issue of Friday, January 17, 2003 make the following corrections:

1. On page 2425, in the third column, "**List of Subjects in 14 CFR Part 71**" should read as set forth here.

§71.1 [Corrected]

2. On the the same page, in the same column, in §71.1, "**ACE MO E Sikeston, MO** " should read, "**ACE MO E5 Sikeston, MO**".

[FR Doc. C3–1132 Filed 1–24–03; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Monday,
January 27, 2003

Part II

Department of Labor

Mine Safety and Health Administration

30 CFR Part 75

Underground Coal Mine Ventilation—Safety Standards for the Use of a Belt Entry as an Intake Air Course To Ventilate Working Sections and Areas Where Mechanized Mining Equipment Is Being Installed or Removed; Proposed Rule

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Part 75

RIN 1219–AA76

Underground Coal Mine Ventilation—Safety Standards for the Use of a Belt Entry as an Intake Air Course To Ventilate Working Sections and Areas Where Mechanized Mining Equipment Is Being Installed or Removed

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Proposed rule; notice of public hearings; notice of close of record.

SUMMARY: The proposed rule would allow the use of intake air passing through belt air courses (belt air) to ventilate working sections and areas where mechanized mining equipment is being installed or removed in underground coal mines. The use of belt air, under the conditions set forth in the proposed rule, would maintain the level of safety in underground mines while implementing advances in mining technology. This proposed rule would amend the existing safety standards for ventilation of underground coal mines. The proposed rule would also revise other standards.

DATES: Comments must be received on or before March 28, 2003. Submit written comments on the information collection requirements by March 28, 2003.

The public hearing dates and locations are listed in the Public Hearings section below under **SUPPLEMENTARY INFORMATION**. If individuals or organizations wish to make an oral presentation for the record, we ask that you submit your request at least 5 days prior to the hearing dates.

The post-hearing comment period will close 30 days after the last public hearing on June 30, 2003.

ADDRESSES: *Comments:* Comments must be clearly identified as such and transmitted either electronically to *comments@msha.gov*, by facsimile to (202) 693–9441, or by regular mail or hand delivery to MSHA, Office of Standards, Regulations, and Variances, 1100 Wilson Blvd., Room 2313, Arlington, Virginia 22209–3939. You may contact MSHA with any format questions. Comments are posted for public viewing at *http://www.msha.gov/currentcomments.HTM*.

Information Collection Requirements

Send written comments on the information collection requirements to both the Office of Management and Budget (OMB) and MSHA as follows:

(1) *To OMB:* By mail addressed to the Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, 725 17th Street, NW., Washington, DC 20503, Attn: Desk Officer for MSHA; and

(2) *To MSHA:* Comments must be clearly identified as comments on the information collection requirements and transmitted either electronically to *comments@msha.gov*, by facsimile to (202) 693–9441, or by regular mail or hand delivery to MSHA, Office of Standards, Regulations, and Variances, 1100 Wilson Blvd., Room 2313, Arlington, Virginia 22209–3939.

FOR FURTHER INFORMATION CONTACT: Marvin W. Nichols, Director; Office of Standards, Regulations, and Variances, MSHA; phone: (202) 693–9442; facsimile: (202) 693–9441; E-mail: *nichols-marvin@msha.gov*. You can view comments filed on this rulemaking at *http://www.msha.gov/currentcomments.HTM*.

You may obtain copies of the proposed rule and the Preliminary Regulatory Economic Analysis (PREA) in alternative formats by calling this number. The alternative formats available are either a large print version of these documents or electronic files that can be sent to you either on a computer disk or an attachment to an e-mail. The documents also are available on the Internet at *http://www.msha.gov/REGSINFO.HTM*. We intend to place the public comments on these documents on our website shortly after we receive them.

SUPPLEMENTARY INFORMATION:

I. Public Hearings

The public hearings will begin at 9 a.m. and end after the last scheduled speaker speaks (in any event not later than 5 p.m.) on the following dates at the locations indicated:

Date	Location	Phone
April 29, 2003	Holiday Inn-Birmingham Airport, 5000 10th Avenue North, Birmingham, AL 35212	(205) 591–6900
May 1, 2003	Holiday Inn Lexington-North, 1950 Newton Pike, Lexington, KY 40305	(859) 233–0512
May 13, 2003	Country Inn & Suites By Carlson, 105 Alex Lane, Charleston, WV 25304	(304) 925–4300
May 15, 2003	Holiday Inn at the Meadows, 340 Racetrack Road, Washington, PA 15301	(724) 222–6200
May 29, 2003	Holiday Inn Grand Junction, 755 Horizon Drive, Grand Junction, CO 81506	(970) 243–6790

The hearings will begin with an opening statement from MSHA, followed by an opportunity for members of the public to make oral presentations. You do not have to make a written request to speak. Speakers will speak in the order that they sign in. Any unallotted time will be made available for persons making same-day requests. At the discretion of the presiding official, the time allocated to speakers for their presentation may be limited. Speakers and other attendees may also present information to the MSHA panel for inclusion in the rulemaking record.

The hearings will be conducted in an informal manner. The hearing panel may ask questions of speakers. Although formal rules of evidence or cross examination will not apply, the presiding official may exercise discretion to ensure the orderly progress of the hearing and may exclude irrelevant or unduly repetitious material and questions.

A verbatim transcript of the proceedings will be prepared and made a part of the rulemaking record. Copies of the transcript will be available to the public. The transcript will also be available on MSHA's Home Page at *http://www.msha.gov* at *http://www.msha.gov*, under Statutory and Regulatory Information.

MSHA will accept post-hearing written comments and other appropriate data for the record from any interested party, including those not presenting oral statements. Written comments will be included in the rulemaking record.

II. Background

A. Events Leading to Agency Action

We are proposing to amend 30 CFR 75.301, 75.371, 75.372, and 75.380 of our existing safety standards for underground coal mines. The proposed rule also would revise existing §§ 75.350, 75.351, and 75.352. These modifications are proposed in accordance with § 101 of the Federal Mine Safety and Health Act of 1977 (Mine Act), 30 U.S.C. 811 and 957.

MSHA published a proposed rule to revise the safety standards for ventilation of underground coal mines

in the **Federal Register** on January 27, 1988 (53 FR 2382). Included in that proposed rule were provisions to allow air coursed through the belt entry(ies) to ventilate working places. That proposed rule would have required mine operators to install carbon monoxide (CO) sensors in the belt entry.

In response to public comments submitted to the Agency on the January 27, 1988 proposed rule, we held six public hearings in June 1988 with the rulemaking record closing in September 1988. Based on public comments received during this period, MSHA's Assistant Secretary called for a thorough review of safety factors associated with the use of air in the belt entry in the working places in March 1989. MSHA completed this review and announced in an August 25, 1989 Notice in the **Federal Register** (54 FR 35356), the availability of the Belt Entry Ventilation Review (BEVR) Report. The report concludes that" * * * directing belt entry air to the face can be at least as safe as other ventilation methods provided carbon monoxide monitors or smoke detectors are installed in the belt entry."

After the BEVR report was issued, we reopened the ventilation rulemaking record and held a seventh public hearing in April 1990, to receive public comment on issues raised in the report. The reopened ventilation rulemaking record for the 1988 proposed rule closed in May 1990.

Comments received during and after the seventh public hearing expressed widely divergent views on the recommendations of the BEVR Committee. Commenters representing industry and academia stated, for the most part, that the use of air in the belt entry provides positive ventilation and reduces the possibility of a methane build-up in the belt entry. Commenters from labor, on the other hand, maintained that the use of air in the belt entry reduces safety due to increased fire hazards and greater dust levels.

Due to these divergent views, when the ventilation rule for underground coal mines was finalized in 1992, it did not include provisions that would have allowed mine operators to use belt air to provide additional intake air to working sections. MSHA's existing standards do not allow this practice except as approved on a mine-specific basis through the petition for modification process (30 CFR part 44) or when approved by the MSHA district manager for mines opened prior to March 30, 1970. The final ventilation rule retained the requirements of the existing 30 CFR 75.326.

MSHA decided that the use of air in the belt air course (belt air) to ventilate working places should continue as an independent rulemaking effort. As part of this effort, the Secretary of Labor appointed an Advisory Committee in January 1992 and charged it to make recommendations concerning the conditions under which air in the belt entry could be safely used in the face areas of underground coal mines. This committee was designated as the Department of Labor's Advisory Committee on the Use of Air in the Belt Entry to Ventilate the Production (Face) Areas of Underground Coal Mines and Related Provisions (Advisory Committee). The Advisory Committee held six public meetings over a six-month period. After reviewing an extensive amount of material, the Advisory Committee concluded that air in the belt entry could be safely used to ventilate working places in underground coal mines, provided certain precautions were taken.

The Advisory Committee made twelve recommendations to support this conclusion. The Advisory Committee submitted its report to the Secretary of Labor in November 1992. We published a December 2, 1992 Notice (57 FR 57078) in the **Federal Register** announcing the availability of the Advisory Committee's final report and stated that we would review its recommendations.

In the preamble of the rule proposed today, we discuss the recommendations of the BEVR Report and the Advisory Committee. The proposed rule also incorporates MSHA experience with petitions for modification under § 101(c) of the Federal Mine Safety and Health Act of 1977 (Mine Act).

In instances where we have not followed a recommendation made in the BEVR or Advisory Committee Reports, we either have determined existing standards are adequate to address the issue raised in the recommendation or believe that mining technology has advanced making the recommendation moot. In either case, we provide an explanation in this preamble.

B. Agency Experience

Since the early 1970's, mine operators have used Atmospheric Monitoring Systems (AMSs) to monitor certain aspects of the mine atmosphere. These systems typically can measure environmental parameters related to mine ventilation, air quality, and fire detection. An AMS, equipped with the proper sensors, can measure concentrations of combustible and toxic gases, oxygen levels, air velocity, and products of combustion, such as carbon monoxide (CO) or smoke. Existing § 75.351 (Atmospheric monitoring system), § 75.323 (Actions for excessive methane), § 75.340 (Underground electrical installations), and § 75.362 (On-shift examination) incorporated this technology into underground coal mine safety standards. This technology is the basis for granting petitions for modification to § 75.350 (Air courses and belt haulage entries). It allows close monitoring of the mine atmosphere when belt air is coursed to working places.

As AMSs have become more sophisticated, they have employed computer technology to transmit environmental measurements from remote locations to attended mine locations. These systems generate alarms, store and catalog data, and provide reports. Many computer-based monitoring systems have other capabilities besides atmospheric monitoring. Some systems monitor equipment status and, sometimes, provide control signals as well. Such applications improve surveillance of production and haulage, equipment maintenance, and other related management information.

During the last 15 years, MSHA has evaluated, through the petition for modification process, the safe use of belt air as intake air. This process permits a mine operator to petition that the application of 30 CFR § 75.350 be modified at a particular mine.

MSHA has granted approximately 90 petitions for modification to use belt air to ventilate working sections. MSHA grants such a petition when it determines that a mine operator has an alternative method which provides the same measure of safety protection as the existing standard, or when the existing standard would result in diminished safety protection to miners.

Only after a thorough on-site investigation verifying that the use of belt air is at least as safe as the existing safety standard does the Agency grant each petition. In the Agency's evaluation of the use of belt air, MSHA concluded that belt air can be safely used, provided that certain conditions are met. Specifically, the Agency found that the safety concerns associated with belt air use are sufficiently addressed by the proper installation, operation, examination, and maintenance of AMSs as part of a comprehensive safety program that contains other requirements. Petitions for modification of 30 CFR 75.350 (belt air petitions) contain the requirement that a mine operator install an AMS to monitor the mine atmosphere.

Mine operators filing a petition for modification under § 75.350 generally request the use of belt air to ventilate active working places dependent upon the installation of an AMS with CO sensors for early-warning fire detection in the belt entry. AMSs are also currently used for other reasons. Some mine operators petitioned the Agency under Section 101(c) of the Mine Act to install an AMS with CO sensors to comply with the requirements of § 75.1103 (Automatic fire warning devices). Existing regulations have also used an AMS as an optional choice for specific functions, such as monitoring for methane, CO, and smoke.

Mandated petition requirements and existing regulations have placed a greater reliance on AMSs' performance. Typically, an AMS is composed of a central control station that includes a computer with data storage, software, a display, a printer, etc.; a communication network or telemetry system that includes signal conditioning equipment, multiplexers, drivers, repeaters, data line, etc.; and transducers or sensors that measure the value of a given physical parameter.

The Advisory Committee recommended that MSHA should move forward with the development and promulgation of approval schedules for early-warning fire detection systems, such as AMSs. In lieu of adopting this recommendation, we propose to require that components of the system's sensors be listed or certified by a nationally recognized testing laboratory (NRTL) or approved by the Secretary. The standards used by the NRTLs to list or certify the sensors are American National Standards.

As specified in § 75.1103–2(a), MSHA currently requires that components of automatic fire sensors in belt entries be listed or certified by a NRTL or approved by the Secretary. We propose to expand this listing or certification requirement to include methane sensors. We also propose that the components can be approved by the Secretary, allowing MSHA to accept new or unique technology that has not yet been approved by a NRTL. This would help assure that new technology can be introduced into mining without delay. The current program for Evaluation of Mine-Wide Monitoring Systems and Barrier and Sensor Classifications described in MSHA's Program Circular PC–4003–0 would remain in effect. A copy of this program circular can be obtained from the Approval and Certification Center in Triadelphia, West Virginia.

Currently, an AMS must comply with the 1967 National Fire Alarm Code (§ 75.1103–2; Automatic fire sensors approved components; installation requirements). In this proposed rule, MSHA is soliciting comments on whether AMS components and the aforementioned automatic fire sensor systems should comply with appropriate sections of the 1999 National Fire Alarm Code. The National Fire Alarm Code is also an American National Standard.

Reportable Belt Entry Fires

In developing this proposed rule, MSHA reviewed the history of reportable belt entry fires to evaluate the effectiveness of various types of detection methods and the causes of these fires. Section 50.2(h)(6) of 30 CFR requires that mine operators report mine fires that are not extinguished within 30 minutes of their discovery. We are aware that fires of less than 30 minutes in duration occur. Where documentation, such as official reports or memoranda, could be found about these short-duration fires, we also considered them in developing this proposed rule. Often slightly different circumstances in these short duration fires would have resulted in a potentially serious reportable fire.

Since 1970, 75 reportable mine fires have occurred in belt entries. Seventeen of these occurred in mines where belt air ventilated working places (23%). A review of the accident reports for these 17 fires showed that nine occurred in mines that used only an AMS with CO sensors for fire detection; two occurred in mines that used only point-type heat sensors (PTHS) for fire detection; and two occurred in mines using both an AMS with CO sensors and PTHS for fire detection. Reports of the remaining five fires did not state the type of fire detection system in use. However, based on the dates of the fires (1972—1974) and the fact that CO systems were not in use before 1975, four of these mines probably used PTHS for fire detection.

The first reportable belt entry fire in a mine equipped with an AMS occurred in 1983 at the Jim Walters No. 7 Mine. Since then, we have investigated 16 belt entry fires in AMS equipped mines (10 in mines that used air in the belt air course to ventilate working places and 6 in mines that did not). Two of these mines had both AMS and PTHS installed in the belt entry. Of the 16 fires occurring in belt entries equipped with an AMS, the AMS detected all of the fires. Instances occurred when the AMS was not properly utilized or responded to by mine personnel (*e.g.*, alarms were disconnected or were ignored). Sometimes, although the AMS functioned as intended and provided notification of a fire, the fire was detected by sight or smell before detection by the AMS.

The first reportable belt entry fire detected with a PTHS system occurred in 1980 at the Peabody No. 10 Mine. From 1970 to date, 43 fires occurred in belt entries of mines equipped with PTHS. This includes the two mines with both AMS and PTHS. Of the 43 fires occurring in belt entries equipped with PTHS, the PTHS reportedly detected only six fires. Table 1 lists the reportable belt entry fires included in this analysis.

TABLE 1.—REPORTABLE CONVEYOR BELT ENTRY FIRES, 1970–2002

	Mine name	Date	Sensor type	Fire detected by . . .	Alert & alarm (PPM)	Belt air in working place	Belt running
1	Geneva	1/20/70	No Record	Sight and/or Smell		No	Yes
2	Kermit No 1	8/7/70	No Record	Sight and/or Smell		No	No
3	Rainbow No 7	10/25/70	No Record	Sight and/or Smell		No	No
4	Castlegate No 4	12/14/70	No Record	Sight and/or Smell		No	No
5	Jones Fork	12/27/70	No Record	Sight and/or Smell		No	No
6	Kenilworth	7/13/71	No Record	Sight and/or Smell		No	No
7	Pioneer	12/26/72	No Record	Sight and/or Smell		Yes	No
8	Colver	8/22/73	No Record	Sight and/or Smell		Yes	Yes
9	Bethlehem, No 31	10/29/73	No Record	Sight and/or Smell		Yes	No
10	Fedscreek, No 2	11/20/73	PTHS	Sight and/or Smell		No	No
11	Wentz No 11	6/29/74	No Record	Sight and/or Smell		Yes	No
12	Jewell Ridge No 1	4/8/76	PTHS	Sight and/or Smell		Yes	No
13	Alpine	12/9/76	PTHS	Sight and/or Smell		No	No

TABLE 1.—REPORTABLE CONVEYOR BELT ENTRY FIRES, 1970–2002—Continued

	Mine name	Date	Sensor type	Fire detected by . . .	Alert & alarm (PPM)	Belt air in working place	Belt running
14	FMV No 1	12/10/76	PTHS	Sight and/or Smell		No	No Record
15	Kopperston No 1	3/20/77	PTHS	Sight and/or Smell		No	No Record
16	Florence No 1	7/13/77	PTHS	Sight and/or Smell		No	No
17	Island Creek No 9E	9/23/77	PTHS	Sight and/or Smell		No	No
18	Camp No 1	3/14/79	PTHS	Sight and/or Smell		No	No
19	Orient No 4	11/22/79	PTHS	Sight and/or Smell		No	No
20	Peabody No 10	1/12/80	PTHS	PTHS		No	No
21	Raccoon No 3	9/7/80	PTHS	Sight and/or Smell		No	Yes
22	Lancashire, No 24–D	11/1/80	PTHS	PTHS		No	No Record
23	Bull Creek No 4	12/15/80	PTHS	Sight and/or Smell		No	Yes
24	Central Appalachian No 4.	11/7/81	PTHS	Sight and/or Smell		No	No
25	Beatrice	11/25/81	PTHS	Sight and/or Smell		Yes	No Record
26	Star North	12/16/81	No Record	Sight and/or Smell		No	No Record
27	D. O. & W.	2/3/82	PTHS	Sight and/or Smell		No	No
28	Newfield	3/4/82	PTHS	PTHS		No	No
29	Cannelton No B	3/26/82	PTHS	Sight and/or Smell		No	No
30	V. P. No 2	5/21/82	No Record	Sight and/or Smell		No	No
31	JWR No 7	3/15/83	CO Sensor	AMS	10 & 15	Yes	No Record
32	Emerald No 1	12/19/83	PTHS	Sight and/or Smell		No	Yes
33	Beehive	12/29/83	NONE	Sight and/or Smell		No	No
34	Gateway	1/18/84	PTHS	Sight and/or Smell		No	No
35	Camp No 2	1/18/84	No Record	Sight and/or Smell		No	No
36	Duncan No 3	4/16/84	PTHS	Sight and/or Smell		No	No
37	Allied No 2	8/8/84	PTHS	Sight and/or Smell		No	No Record
38	Shawnee	1/30/85	PTHS	Sight and/or Smell		No	No
39	JWR No 7	3/26/85	CO Sensor	AMS	10 & 15	Yes	No Record
40	JWR No 4	5/4/85	CO Sensor	AMS	10 & 15	Yes	No Record
41	Fountain Bay No 1	5/6/85	PTHS	Sight and/or Smell		No	No Record
42	Pyro No 9, Wheatcroft	8/18/85	PTHS	Sight and/or Smell		No	No Record
43	Apache No 2	8/23/85	PTHS	Sight and/or Smell		No	No Record
44	Shoemaker	1/4/86	PTHS	Sight and/or Smell		No	No Record
45	TLC No 1	6/23/86	No Record	Sight and/or Smell		No	No Record
46	Old Ben 21	11/6/86	PTHS	Sight and/or Smell		No	No Record
47	Florence No 1	11/27/86	PTHS	PTHS		No	No
48	Beckley	4/1/87	CO Sensor	Sight and/or Smell & AMS.		Yes	No
49	Florence No 1	10/20/87	PTHS	Sight and/or Smell		No	No
50	Blazing Saddles No 1	12/9/87	PTHS	Sight and/or Smell		No	Yes
51	Marianna No 58	3/7/88	CO Sensor & PTHS	ANS & Sight and/or Smell.	UNK	Yes	Yes
52	Florence No 1	5/9/88	PTHS	Sight and/or Smell		No	No
53	Sinclair Slope UG No 2	5/13/88	PTHS	Sight and/or Smell		No	No Record
54	Kopperston No 2	8/20/88	PTHS	Sight and/or Smell		No	No
55	Brent No 1	11/15/88	PTHS	Sight and/or Smell		No	No Record
56	Eighty Four Complex	7/24/89	CO Sensor	AMS	7 & 10	Yes	No Record
57	Baldwin	2/8/90	PTHS	PTHS		No	No Record
58	Florence No 2	4/11/90	PTHS	Sight and/or Smell		No	No Record
59	Greenwich No 2	6/18/90	PTHS	Sight		UNK	
60	Sunnyhill No 9 South	7/5/90	PTHS	PTHS		No	No
61	McElroy	1/2/92	No Record	Sight and/or Smell		No	Yes
62	Dilworth	1/22/92	CO Sensor & PTHS	AMS	10 & 15	Yes	No
63	Jen No 30	3/9/92	PTHS	Sight and/or Smell		No	No
64	Montcoal No 7	5/9/92	CO Sensor	AMS & Sight and/or Smell.	10 & 15	No	Yes
65	Splashdam	10/11/92	CO Sensor	AMS & Sight and/or Smell.	UNK	Yes	Yes
66	Bullitt	3/9/94	CO Sensor	AMS	4 & 8	Yes	No
67	Eagle Valley	11/28/94	CO Sensor	AMS	10 & 15	No	Yes
68	Ohio No 11	5/5/95	CO Sensor	AMS	10 & 15	No	Yes
69	Old Ben 26	1/1/97	CO Sensor	AMS & Sight and/or Smell.	10 & 15	No	No
70	Roadside North Portal	1/3/98	CO Sensor	AMS	10 & 15	Yes	No
71	Zeigler No 11	3/18/98	PTHS	Sight		No	Yes
72	Shoal Creek	9/3/99	CO Sensor	AMS	5 & 10	Yes	Yes
73	Paramount No 21	3/7/00	PTHS	Sight		No	
74	Darmac No 3	1/30/02	PTHS	Sight		No	
75	Blue Diamond No 77	4/17/02	CO Sensor	AMS	5 & 10	No	No

AMS—Atmospheric Monitoring System.
CO—Carbon Monoxide.
PTHS—Point Type Heat Sensor.

Nonreportable Belt Entry Fires

We have investigated some mine fires of less than 30 minutes duration, even though we do not require reporting of such fires. Since 1987, we have investigated 13 nonreportable belt entry fires in mines that used an AMS. Three of these mines used both a CO-based AMS and PTHS. Of these 13 fires, four were detected by the AMS, two were detected by sight or smell followed by detection by the AMS, one was detected by the AMS followed by a heat sensor, and six were detected by sight or smell alone. Anecdotal information suggests that AMS have also detected other events, such as hot belt rollers and belts running in coal before a fire occurred. Table 2 provides information on nonreportable belt entry fires.

TABLE 2.—INVESTIGATED NONREPORTABLE (<30 MINUTES) BELT ENTRY FIRES WHERE AMS USED

	Mine name	Date	Sensor type	Fire detected by * * *	Alert alarm (PPM)	Belt air in working place
1	Sunnyside No 3	5/13/87	CO Sensor & PTHS	Sight and/or Smell	No Record	
2	McClure No 1	4/14/90	CO Sensor	Sight and/or Smell	No Record	
3	McClure No 1	4/15/90	CO Sensor	Sight and/or Smell	No Record	
4	Bethlehem No 84	6/21/91	CO Sensor	AMS	4, 7 & 10	Yes
5	Cambria Slope 33	11/1/91	CO Sensor	Sight and/or Smell	No Record	
6	JWR No 5	5/25/92	CO Sensor	AMS	10 & 15	Yes
7	Blacksville No 2	3/15/92	CO Sensor &PTHS	AMS Then PTHS	10 & 15	
8	Air Quality	2/22/95	CO Sensor	AMS	10 & 15	
9	Lightfoot	10/95	CO Sensor	Sight and/or Smell	No Record	
10	Bailey	6/19/96	CO Sensor & PTHS	Sight and/or Smell Then AMS	10 & 15	
11	Foidel Creek	10/22/96	CO Sensor	AMS	7 & 11.7	
12	Shoemaker	1/6/00	CO Sensor	Sight	10 & 15	No
13	Wabash	10/15/01	CO Sensor	Sight and/or Smell Then AMS	10 & 15	No

AMS—Atmospheric Monitoring System.
ACO—Carbon Monoxide.
PTHS—Point Type Heat Sensor.

III. Summary and Considerations of the Advisory Committee Report, Recent Belt Air Petitions, and BEVR Report

The following summaries are provided to compare the proposed rule with the recommendations made in the Advisory Committee Report and the BEVR Report, as well as requirements contained in recent belt air petitions.

A. Overview of Advisory Committee Recommendations and Proposed Rule Sections

The following section reviews recommendations made by the Advisory Committee and cites applicable proposed rule language. The proposed rule includes the vast majority of the Advisory Committee recommendations. Where the recommended conditions are not included, we discuss MSHA's reasons for not proposing them as part of this rulemaking. In addition, the recommendations are specifically addressed in the Section-by-Section Analysis.

There are three basic issues addressed by the Committee report, with a number of recommendations under each issue. These issues are:

1. The conditions under which belt haulage entries could be safely used as intake air courses to ventilate working places;

2. Minimum air velocities in belt entries; and

3. Ventilation of escapeways.

B. Advisory Committee Recommendations

Advisory Committee Recommendation 1. Belt haulage entries can be safely used as intake air courses to ventilate working places provided additional safety and health conditions are met.

The Advisory Committee affirmed the recommendation that belt air could be safely used providing carbon monoxide or smoke detectors were installed in the belt entry. The Agency agrees, and is proposing to modify § 75.350 to allow the use of belt air provided certain requirements are met, including the installation of an AMS, equipped with carbon monoxide monitors or smoke detectors.

Advisory Committee Recommendation 2. When belt haulage entries are used to ventilate working places, one of the additional conditions is the presence within the belt haulage entry of an early-warning fire detection system.

Included in this recommendation are 14 items for the Agency to consider in administering the implementation of early-warning fire detection systems.

Item 1. Actions Before Using Belt Air for Face Ventilation

The Advisory Committee recommended:

"Prior to belt haulage entries being used to ventilate working places:

(a) Proposed changes should be outlined in the mine ventilation plan;

(b) Miners shall be trained in the basic principles of the early warning fire detection system and the actions required in the event of a section alarm;

(c) Appropriate personnel responsible for installation, maintenance, operation and inspection of the system should be trained in their duties; and

(d) The early warning fire detection system should be inspected by MSHA."

For mines currently not using belt air to ventilate working sections (*i.e.*, those without granted petitions), the mines would need to receive MSHA approval to make required changes in their ventilation plans prior to using belt air to ventilate working sections. We propose a requirement for training of miners under § 75.350(b)(2). These specific training requirements could be included in the training required under part 48. Specific training requirements for AMS operators are proposed in § 75.351(q).

We did not include in this proposed rule a separate requirement for MSHA to inspect the fire detection system because AMSs used in belt entries would be inspected as part of normal MSHA inspection activities. The proposed rule includes all other conditions of this Advisory Committee item.

Item 2. Capabilities of the AMS

The Advisory Committee recommended:

"The early warning fire detection system should be capable of:

(a) Monitoring electrical continuity and detecting electrical malfunctions of the system;

(b) Identifying any activated or malfunction sensor; and

(c) Giving notice of a fire for a minimum of four hours after the source of power to the belt is removed, except when power is removed during a fan stoppage or the belt is examined as provided in section 75.1103–4(e)(1) or (2)."

Monitoring circuit continuity and electrical malfunctions is required under proposed § 75.351(c), minimum operating requirements. This is also the section of the proposed rule addressing identification of any activated or malfunctioning sensor. Belt stoppages are addressed in proposed § 75.351(a). The proposed rule includes all conditions of this item.

Item 3. Minimum Velocity and Location of Sensors

The Advisory Committee recommended:

"In mines using belt air to ventilate working places, the minimum velocity in the belt haulage entry should be at least 50 fpm. An early warning fire detection system (low level carbon monoxide or equivalent) in belt haulage entries should monitor the atmosphere at the following locations:

(a) Belt entries utilized as intake aircourses, at intervals not to exceed 1,000 feet;

(b) At the section tailpiece or not more than 50 feet inby the tailpiece on the same split of air;

(c) One sensor at the drive unit area (belt drive, belt take-up, belt tailpiece or combination thereof) not less than 50 feet and not more than 100 feet inby on the same split of air; and

(d) When belt and track are in separate entries and are not separated by stoppings on section panels, a CO (or equivalent) sensor should be placed at the inby end of the section track."

The proposed rule requirement varies slightly from the Advisory Committee report, which suggested minimum velocities of 50 feet per minute (fpm). Proposed §§ 75.351(e)(1) and (4) contain the requirements for the section tailpiece sensor and at each drive along the belt.

Proposed § 75.351(e)(3) includes the 50 fpm minimum in locations where 1,000-foot sensor spacing is used. However, we have proposed the use of lower air velocities, providing sensor spacing is reduced to 350 feet. These lower air velocities are based on research conducted by the National Institute of Occupational Safety and Health (NIOSH) after the Advisory Committee report was completed.

The Advisory Committee recommended that a sensor be placed at the end of the track when the track and belt are not separated by stoppings. We believe this requirement does not add a significant level of protection because the sensor at the end of the track would monitor the same air as the sensors in the belt entry. Our in-mine studies indicate that there is air movement between these entries in the air course, making monitors in the belt entry sufficient for early detection of contaminants. Therefore we do not propose placing a sensor at the end of the track. We are proposing the installation of sensors in the intake escapeway, separate from belt.

However, we have included in proposed § 75.351(e)(5) a requirement for other monitoring locations required by the district manager and specified in the mine ventilation plan. This provision would require the placement of a sensor at the end of the track if the district manager determines that it is necessary. The proposed rule includes all other conditions of this item.

MSHA agrees that for mines using sensor spacing of 1,000 feet, the minimum velocity of 50 fpm must be maintained. As the Advisory Committee recognized, the air flow rate is an important variable in fire detection. We have proposed a requirement in § 75.352(e) to address situations where less than 50 fpm is measured in mines with 1,000 foot sensor spacing to assure that the ventilation system is returned to proper operation. In these circumstances, a trained person would patrol and monitor the affected area until the air flow is restored.

Item 4. Section Alarms

The Advisory Committee recommended:

"Section alarms should give a visual and audible warning signal on the affected working section if carbon monoxide (or equivalent) reaches the established levels. The section alarm should be at a location where it can be seen or heard by persons working on the section."

The Advisory Committee stated that section alarms should give a visual and audible signal on the affected working section if CO levels reach 'established levels,' and that section alarms be located where they can be seen or heard. Under proposed § 75.351(c)(4), section alarms would give a visual and audible signal and would need to be located where they can be seen and heard when the CO, smoke, or methane concentration at any sensor reaches the alarm level specified in § 75.351(i).

The proposed rule would not require automatic section alarm activation during alert conditions, but rather only during alarm conditions. MSHA believes the frequency of alert signals could lead to complacency among miners, and it is preferable for other actions, as noted in proposed § 75.352, to occur at alert levels. Proposed § 75.352(b)(1) would require that the sensor activated be identified and an examination begun immediately to determine the cause of the alert signal. The proposed rule meets the recommendation of alarm location included in this item.

Item 5. Responsible Person at Surface

The Advisory Committee recommended:

"At all times when miners are underground a responsible person(s) should:

(a) Be on duty on the surface, so that the alert/alarm signals can be seen or heard;

(b) Maintain a record of each alert and alarm signal and actions taken;

(c) Have 2-way communication with all working sections. When alert and alarm levels are reached, this person should notify personnel at working sections and other personnel who may be endangered;

(d) Be trained in the operation of the early warning fire detection system and emergency communication system.

(e) Be trained in the proper procedures to follow in the event of an emergency or malfunction; and

(f) Take appropriate action upon alarm activation and verification."

This item contains conditions concerning responses to alert and alarm levels by surface personnel. Proposed § 75.301 defines the responsible person as the AMS operator. The proposed section also requires that the AMS operator be on duty at a location where signals can be seen or heard, and that the operator can respond promptly to the signals. Recordkeeping requirements are included in proposed § 75.351(o), as well as two-way communications in proposed § 75.351(b)(1). Proposed § 75.351(q) requires that all AMS operators receive training in the proper operation of the AMS. The proposed rule meets the recommendation of the Advisory Committee for this item.

Item 6—Actions of Personnel Underground Upon Alert/Alarm Activation and Item 7—Actions of Personnel on the Surface Upon Alert/Alarm Activation

The Advisory Committee recommended in Item 6:

"When the early warning fire detection system reaches the alert/alarm mode, an audible and visual alarm signal should activate on the surface at the mine and at the working section(s). When section alert/alarms signals are activated the following actions should be taken:

(a) Alert—When alert levels are reached, the sensor that is activated is identified and section workers inby are notified of an "alert mode" and are withdrawn to a safe location

outby the working places, unless the cause is known beforehand not to be a hazard. An examination is then made to determine the cause of the activation.

(b) Alarm—When alarm levels are reached, the sensor that is activated is identified and all persons in the same split of air are withdrawn to a safe location outby the sensor activating the alarm, unless the cause is known beforehand not to be a hazard. An examination is then made and if a hazard exists, the mine Fire Fighting and Evacuation Plan is implemented.

(c) During the alert/alarm mode the belt may, at the discretion of the mine operator, continue to operate until the area is examined."

And in Item 7 the Advisory Committee stated:

"In the event of an alert, personnel on the surface, except those necessary to investigate the cause of the alert, should not enter the affected area of the mine unless the cause of the alert is known beforehand not to present a hazard. In the event of an alarm, personnel on the surface, except those persons necessary to investigate the cause of the alarm, should not enter any area of the mine unless the cause of the alarm is known beforehand not to present a hazard."

Actions in response to AMS alert and alarm signals for both underground and surface personnel would be covered by proposed § 75.352. In the event of an alert signal, the sensor activated would be identified and an examination would begin immediately to determine the cause of the alert signal. The Advisory Committee recommended that the section personnel be withdrawn to a safe location outby the working places. MSHA believes that this action is not warranted prior to an examination of the affected sensor. If during the examination of the sensor, a fire hazard is discovered before an alarm level is detected, evacuation should be initiated.

MSHA agrees that alarm activations should necessitate withdrawal of personnel to the sensor outby the sensor in alarm state.

The proposed rule does not address the continuing operation of a belt in the event of alarm activation. While MSHA's experience suggests that belts normally should not be stopped, it is the decision of the mine operator to take whatever actions are needed to protect miners and mine property.

There has been anecdotal evidence to show that combustion of the conveyor belt fabric does not usually occur unless the belt is stopped. Moving conveyor belts, while creating frictional heating, do not normally burn with open flame.

In addition, the proposed rule does not address restrictions on persons entering the mine when either alert or alarm signals occur. MSHA believes that mine operators must be given flexibility in how they respond to emergencies in order to better protect the miners. We believe any persons entering the mine in an emergency should be only those needed to respond to the emergency, as indicated in the mine's emergency evacuation and firefighting program of instruction, § 75.1502 (formerly referred to under § 75.1101–23—Program of instruction; location and use of fire fighting equipment; location of escapeways, exits and routes of travel; evacuation procedures; fire drills).

Item 8—Avoidance of Nuisance Alarms

The Advisory Committee stated:

"To avoid nuisance alert signals, the District Manager may approve a plan which requires incorporation of reasonable time delays or other techniques (computer/administrative) into the alert/alarm signal system. The Committee determined that experience gained by the Agency during the petition for modification process could be used as a guideline. When a planned activity which may result in CO above the alarm levels being produced, such as cutting, welding, calibration, blasting, major equipment moves requiring the use of diesel equipment, etc., is scheduled, the person in charge of the activity should notify the responsible person at the surface monitoring station of:

(a) The location and type of activity;

(b) The time the activity begins; and

(c) The time the activity is completed.

Anticipated alerts/alarms require notification to sections inby on the same split of air prior to and after planned activities.

A fire check for hot spots is required after cutting and welding is performed. Should hot spots be found, they should be extinguished immediately."

The Advisory Committee report indicated the use of tools to reduce the frequency of alarms due to non-fire conditions could be effective in maintaining the confidence of miners as well as bolstering the importance of alarms. These tools include time delays and other data analyzing techniques which could prevent the "cry-wolf" syndrome, in which alarms are discounted as "just that diesel scoop" or "must be cutting belt structure again." MSHA agrees that these tools may be of value.

Proposed § 75.351(m) allows the use of these tools when a demonstrated need exists, while proposed § 75.371(11) requires the method to be included in the approved mine ventilation plan. Time delays are limited to a maximum of three minutes. MSHA experience indicates that this is normally sufficient to account for non-fire signals.

There is technology available that distinguishes the products of combustion produced by diesel engines and by open flame. MSHA encourages the use of such technology to reduce or eliminate nuisance alarms and the need for time delays. We also believe operators should explore implementation of future technological advances. As these technologies evolve, MSHA will encourage their implementation through the mine ventilation plan approval process.

Prior to being approved for use, the operator will be expected to demonstrate the need for such a tool, as well as the expected benefit from using the tool. In this case, records indicating the frequency of alert and alarm signals, as well as the duration of the alert and alarm signals will be of value to the operator. The proposed rule meets the recommendation of the Advisory Committee for this item.

Item 9—Fire Fighting and Evacuation Plan Contents; Records and Item 10—AMS Calibration, Testing, Examinations and Records

The Advisory Committee recommended in Item 9:

"Under 30 CFR 75.1101–23(a), the mine Fire Fighting and Evacuation Plan and subsequent revisions should incorporate the operation of the early warning fire detection system and at a minimum, should specify:

(a) The action to be taken to determine the cause of the alert and alarm signals:

(b) The location(s) for withdrawal of miners for alert and alarm signals; and

(c) The procedures to be followed if an alert or alarm signal is activated.

If an alert or alarm is activated, a record should be made of the date, time, location of sensor, concentration at the sensor and the reason for its activation. The records should be reviewed and initialed by management personnel on a monthly basis."

The Advisory Committee recommended in Item 10:

"In order to maintain the early warning fire detection monitoring system in proper operating condition, the following activities should be performed:

(a) The monitoring system and sensors should be visually examined at least once each coal producing shift;

(b) Each sensor should be calibrated with a known concentration of carbon monoxide (or equivalent) and air mixtures, sufficient to activate the alarm, at intervals not exceeding 31 calendar days;

(c) Alert and alarm signals should be tested for operation at intervals not exceeding 7 days; and

(d) Inspection records should be maintained on the surface, recording the date and time of each weekly test of alert and alarm signals, calibration, and maintenance performed on the system. The records should be maintained for one year and made available to management, MSHA and mine personnel."

MSHA agrees with the Advisory Committee report that there are specific activities following the activation of

alert and alarm signals that should be covered under the provisions of the approved program of instruction under § 75.1502 (commonly referred to as the mine emergency evacuation and firefighting program of instruction). We have included in proposed §§ 75.351(b)(1), 75.352(a)(2), and 75.352(b)(2), requirements for including these actions and additional information in the approved program of instruction. It is MSHA's experience that the operator can use the data recorded from alert signals, alarms, malfunctions, calibrations, and maintenance as an effective tool for maintaining an effective fire detection system. MSHA is not proposing to require the operator to review and initial records on a monthly basis because we believe that the proposed requirements of § 75.351(o)—recordkeeping and § 75.351(p)—retention period, fulfill the intent of this recommendation. MSHA expects since the "AMS log" is available for review by the miners and authorized representatives of the Secretary, that the mine operator will also review the AMS log data.

MSHA is including in proposed § 75.351(n) requirements for examinations, testing, and calibration of the AMS sensors. These are the same requirements recommended by the Advisory Committee. MSHA is proposing in § 75.351(o) recordkeeping requirements for alert and alarm signals, malfunctions, tests, calibrations, and maintenance of the AMS. We intend the visual examination to be completed as part of the on-shift examination already required under § 75.362(b).

Item 11—AMS Malfunction

The Advisory Committee recommended:

"If any portion of the early warning fire detection system malfunctions, the affected belt haulage conveyor may continue to operate. The responsible person should notify all sections affected. Once it has been determined that the cause is a malfunction, a qualified person(s) having access to communications with the responsible person on the surface should patrol the affected area and monitor for carbon monoxide or equivalent with a handheld detector(s) as outlined below for the period of time necessary to identify the problem and make necessary repairs:

(a) If one sensor becomes inoperative, a qualified person should monitor at that location;

(b) If two or more adjacent sensors become inoperative, a qualified person should patrol and monitor the area affected; and

(c) If the complete system becomes inoperative, a sufficient number of qualified persons shall patrol and monitor so the affected belt entries are traveled each hour in their entirety. If the failure lasts more than eight (8) hours, then the MSHA District Manager should be notified immediately.

Handheld carbon monoxide detectors (or equivalent) should be maintained in a working condition, and available for use in a timely manner."

This item in the Advisory Committee report describes the actions required if any sensor(s) or portions of the AMS system become inoperable for any reason. Proposed § 75.352(d) would require the actions as suggested by the Advisory Committee to be taken. We believe that operators will have an interest in repairing and restoring monitoring capabilities as soon as possible. There is no need to limit the use of hand monitoring since it is considered a safe alternative. For this reason, we are not including a requirement to report to MSHA any malfunction exceeding 8 hours as recommended by the Advisory Committee.

MSHA is proposing to require the immediate reporting to the surface of any contaminant measurements exceeding the appropriate alert and alarm levels. Even when contaminants do not exceed alert and alarm levels, personnel must report the levels to the AMS operator at intervals not to exceed one hour. The proposed rule achieves the intent of the recommendation.

Item 12—Mine Ventilation Map

The Advisory Committee recommended:

"The mine ventilation map should contain the details of the early warning fire detection system, including the type of sensor (CO or equivalent) and the sensor location and should be posted at the mine."

In proposed § 75.351(b), MSHA would require that a map or schematic be posted. Also, the proposed rule would require the operator to indicate the intended air flow direction at each sensor location on the map. MSHA believes this information will be helpful if evacuation of personnel is necessary. The proposed rule meets the recommendation of the Advisory Committee for this item.

Item 13—Smoke Sensors; Slippage Switches

The Advisory Committee recommended:

"In mines using belt air to ventilate working places, slippage switches should be integrated into the early warning fire detection system. Where it is not feasible to do so, the switches should be visually examined each production shift. Smoke sensors (or equivalent) when commercially available, should be installed no more than 100 feet inby each drive."

MSHA is not adopting this recommendation of the Advisory Committee into its proposed rule. We believe that properly maintained slippage switches do not require monitoring. We would be interested in receiving comments on the merits and drawbacks of this recommendation. Specifically, we solicit comments on:

(1) The benefits of integration of slippage switch monitoring into AMSs for belt air mines;

(2) the cost of such a requirement; and

(3) any difficulty operators may experience in accomplishing thrs action, if required.

Item 14—Backup Communication

The Advisory Committee recommended:

"The communication system in use at the mine should be capable of providing backup communication to the working section(s). This redundancy may be in the form of; two communication lines, the use of one communication line plus another form of communication (*e.g.*, leaky feeder, trolley, wireless, automatic alert/alarms, etc.), or any other equally effective system(s) selected by the operator.

In operations having only one means of verbal communication:

(a) Transmission lines for the automatic section alarms and phone should be carried in separate entries; and

(b) In the event of failure of the phone system, and the section receives an alarm, miners should be evacuated as required in the mine Fire Fighting and Evacuation Plan."

MSHA agrees that the communication line should be maintained in an entry other than that used for the AMS data transmission line. In proposed § 75.351(r), we would require that two separate means of communication be maintained from the surface to the working sections and setup or removal areas.

MSHA believes that the AMS data transmission line provides one form of communication, and that a second two-way system should be installed in a separate entry. If the mine's primary two-way system is installed along with the AMS line, a second method of two-way communication would be required. This method could include a second mine phone line. The proposal meets the recommendation of the Advisory Committee for this item.

C. Advisory Committee's Discussion on Velocity Caps

MSHA agrees with the Advisory Committee discussion on this issue, and has proposed in § 75.351(i)(2) that reduced alert and alarm settings may be required for some CO sensor locations. The locations would be specified in the mine ventilation plan according to the requirements in proposed § 75.371(mm).

MSHA has not included any specific document or guideline for reducing these settings. Rather, we agree with the Advisory Committee discussion that the District Manager should use all available information, including

information provided by research, as guidance for reducing the settings for specific locations. This issue must be addressed on a mine-by-mine basis as conditions warrant.

Advisory Committee Recommendation 3—Miners should be trained in the basic principles of the early-warning fire detection system and the actions required in the event of activation of a system alarm. Appropriate personnel responsible for the installation, maintenance, operation, and inspection of the system should be trained in their duties. In the special case of the AMS operator, who is the person responsible for monitoring the system, and, hence, initiating the fire fighting and evacuation plan, MSHA should assure, by examination of competency, the training and its effectiveness received by that person. At any time there are workers underground in an AMS-equipped mine, there should be a trained operator within sight or sound of the control station.

In this proposed rule, MSHA has included training requirements for AMS operators, AMS installation and maintenance personnel, and all miners to assure responses to the AMS alert and alarm signals are timely and effective. MSHA has not included a requirement for competency testing of the AMS operator because each AMS is unique to a specific mine. The mine operator is required to train the AMS operator to respond to the system. The training requirements for AMS operators are proposed in § 75.351(q) and the requirements for training of maintenance personnel are proposed in § 75.351(k). Training of both the AMS operators and maintenance personnel should be conducted in accordance with manufacturer's instructions, as part of the mine operator's maintenance program. These training programs fall under existing 30 CFR 75.160—Training programs and 75.161—Plans for training programs. General training would be required under proposed § 75.350(b)(2). Training is required for all new miners and in annual refresher training required under part 48.

Advisory Committee Recommendation 4—In mines using an AMS as a condition for using air in the conveyor belt entry to ventilate working places, the minimum velocity in the belt entry should be 50 feet per minute.

As previously discussed, MSHA agrees that for spacing of sensors at intervals of 1000 feet, a minimum velocity of 50 fpm is required. For lower velocities, research has shown that a 350-foot spacing can provide adequate early warning. MSHA has included this sensor spacing requirement in proposed § 75.351(e)(3).

Advisory Committee Recommendation 5—The agency should move forward with the development and promulgation of approval schedules for early-warning fire detection systems (including smoke sensors). Approval schedules should include performance standards as well as safety standards and should be flexible enough to permit advances in technology.

MSHA has decided not to develop approval schedules for AMSs. However, we are proposing in § 75.351(l) that the sensors be listed or certified by a nationally recognized testing laboratory (NRTL). The standards used by the NRTLs to list or certify the sensors will be American National Standards. Systems are required by existing § 75.1103–2(b) (Automatic fire sensors; approved components; installation requirements) to meet the 1967 National Fire Code, 72A. This was an American National Standard.

Requiring the NRTL approval will not discourage new technology, as we have also proposed in § 75.351(l) that the components can be approved by the Secretary, allowing MSHA to accept new technology that has not yet been approved by a NRTL. MSHA is also proposing minimum operating requirements in proposed § 75.351(c); minimum installation requirements in proposed §§ 75.351(d) and (e); and operating parameters in proposed §§ 75.351(i) and (j). We agree that the regulation must provide flexibility to allow advances in technology, and believe this approach provides that flexibility. The Agency will continue to evaluate systems for intrinsic safety.

Advisory Committee Recommendation 6—Velocities, both minimum and maximum, should provide air that is capable of containing methane and dust levels at or below the levels specified in the standards. The concentration of respirable dust in a belt conveyor haulageway used to ventilate the working place should not exceed 1.0 mg/m^3 at a point just outby the section tailpiece. The concentration of respirable dust at all other outby locations in the belt haulageways should not exceed 2.0 mg/m^3. Designated areas should be established at appropriate locations in the belt haulageway for dust measurement and should be identified in the ventilation system and methane and dust control plan.

Proposed § 75.350 (b)(3) would require respirable dust levels as recommended by the Advisory Committee, and would require the establishment of permanent designated areas for sampling near section tailpieces. The 2.0 mg/m^3 standard and establishment of designated areas for outby areas already exists in part 70. Methane action levels are addressed in § 75.323.

Advisory Committee Recommendation 7—The minimum air velocity in belt haulage entries in all mines, whether belt air is used to ventilate working places or not, should be established based on the ability of the air current to reduce the potential for methane layering.

MSHA believes that the air velocity in mines utilizing the belt as an intake under § 75.350 will have sufficient velocity to avoid methane layering. However, we believe that layering is no less dangerous in mines not using belt air. Means to address methane layering are already addressed under §§ 75.321 (Air quality) and 75.323 (Actions for excessive methane). No new provisions are included in this proposed rule.

Advisory Committee Recommendation 8—Lifelines should be installed and maintained in all primary and alternate escapeways. Tracks and belts can be treated as acceptable lifelines, provided that, where track switches and belt transfers exist, provisions are made for clear designation of the escape route.

The Advisory Committee recommended that lifelines be installed and maintained in all escapeways. The Advisory Committee heard testimony from several members of the industry to the effect that lifelines are beneficial. However, they also heard that lifelines placed in active entries were quickly destroyed due to normal mining activities and that repair was not considered a priority. Therefore, we have not included a requirement for lifelines in the proposed rule. We solicit comments on the need for, costs of, and the maintainability of, lifelines in escapeways.

Advisory Committee Recommendation 9—Ventilation of the primary and alternate escapeways should consider the interfaces and interrelationships among all aspects of the mining system (*e.g.*, the haulage system, the ventilation system, the production system, etc.). Ventilation systems should be designed and maintained to protect the integrity of the mine atmosphere in the primary intake escapeway. The alternate escapeway should be designed and maintained to maximize the possibilities of escape. Information submitted in the ventilation plan approval should include substantiating data relative to the integrity of the mine atmosphere in the escapeways under normal and pressurized conditions.

The Advisory Committee recognized the importance of protecting the "integrity of the atmosphere" in the primary escapeway. In addressing this issue, the Advisory Committee report states, "it is desirable, even during normal operation of the mine, to maintain the integrity of the mine atmosphere in the escapeways by providing a positive pressure differential between the escapeways and the adjacent entries." MSHA agrees that separation of the belt air course from the primary escapeway is essential in

providing miners a safe route to the surface. One method to help accomplish this would be to maintain the primary escapeway at a pressure that is higher than the adjacent entries.

However, the Advisory Committee recognized that, sometimes, it may be difficult to maintain the pressure differential in the proper direction. Because of the difficulty of maintaining the primary escapeway at a higher pressure than an adjacent air course, MSHA has decided not to propose this requirement. MSHA believes that the air quantity in the belt air course and the air quantity in the intake air courses along with the pressure differential between these air courses must be addressed on a mine by mine basis through the mine ventilation plan process (§ 75.370(a)). The intent is to control the total air quantity in the belt air course relative to the other intake air courses and also to control the pressure differential between the air courses. It is vital that the belt air course and the intake escapeway ventilation be addressed as part of the entire mine's ventilation system. The proper balance must be maintained regarding total air quantities in the air courses and pressure differentials between the air courses. This can be achieved on a mine-by-mine basis through the mine ventilation plan process.

In lieu of this requirement, proposed § 75.351(f) would require the mine operator to monitor the intake escapeway air current for fire contaminants at the beginning and end of the section panel.

MSHA has included in these proposed requirements to allow for the use of point feeding to provide air to the belt entry from other intake entries. MSHA agrees with the provisions listed by the Advisory Committee, and believes that proposed §§ 75.350(c) and 75.351(f), along with the existing construction requirements for regulators under § 75.333, (Ventilation controls), achieve the objective of the recommendation.

Advisory Committee Recommendation 10—It is the consensus of the Belt Air Advisory Committee that MSHA proceed rapidly to develop regulations for improved fire resistant belting, including new testing and approval schedules. Notwithstanding the scope of the committee charter, the committee recommends that once available, the improved fire resistant belting material should be used in all underground coal mines.

This issue was placed in a separate rulemaking in 1989. Since that time the number and severity of conveyor belt fires has significantly declined. Only two of the ten conveyor belt fires reported between 1993 and 2002 involved injuries to miners. In both of these fires, the injuries were limited to smoke inhalation. We attribute this decrease in conveyor belt fires to improvements in belt monitoring and to technological advances which have occurred during the past 10 years.

The most notable improvement in belt monitoring is the mining industry's increased use of AMSs in conveyor belt passageways. Monitoring systems in general give advance warning to allow a fire in a belt entry to be detected and addressed sooner, thereby limiting fire damage and injuries to miners. An AMS also provides advanced warning of CO and methane concentrations, thereby alerting mine operators to potentially hazardous situations.

Although AMSs have been in use for many years, these systems have rapidly become more sophisticated, evolving from simple monitors into complex devices with integral computer technology capable of transmitting environmental measurements from remote locations to attended mine locations.

In addition, this proposed rule also reduces alert and alarm levels to 5 and 10 ppm, respectively, from levels specified in existing petitions for modification. Also, sensor spacing has been reduced from 2,000 feet to 1,000 feet. These additional safety requirements increase the level of fire safety in mines that choose to use belt air to ventilate working sections. Therefore, we believe that we have achieved the intent of this recommendation (reduction of belt fires) by lowering the alert and alarm levels to provide increased early warning of the presence of fire contaminants, as well as, reducing the spacing of the sensors.

Advisory Committee Recommendation 11—In mines using belt air to ventilate working places, the alert and alarm levels for AMS should not exceed 5 ppm and 10 ppm CO (or equivalent) above ambient, respectively. The MSHA District Manager may establish lower alert and alarm levels for AMS based upon the sensor type and sensitivity, sensor spacing, air flow, cross-sectional area and local mining conditions. Alerts and alarms should be automatically activated on the surface and on the working section(s) when the CO (or equivalent) levels exceed the established levels.

As previously discussed, proposed § 75.351(i) sets out the maximum alert and alarm levels at 5 and 10 ppm CO respectively. The District Manager can require lower alert and alarm levels according to this same section. The proposed rule meets all of the provisions of this recommendation of the Advisory Committee except automatic alert activation on working sections. In the section-by-section analysis of this preamble, we discuss our reasons for not including automatic alerts to be activated on working sections.

Advisory Committee Recommendation 12—In mines using belt air to ventilate working places, increased emphasis should be placed on belt entry cleanup and conveyor belt maintenance.

MSHA agrees with the Advisory Committee and believes cleanup and maintenance in the belt entry poses no less of a hazard in mines not using belt air. Accumulations of coal at drives due to spillage are prohibited according to existing § 75.400. We are not proposing any additional regulation for belt entry cleanup and maintenance.

D. Preamble Summary—Current Petition Requirements

We reviewed the latest 20 proposed decision and orders (PDOs) for petitions for modification of § 75.350 (Air courses and belt haulage entries) to determine common requirements for using belt air. Two-entry petition mines were not included in this analysis because these mines would still need to file petitions to use a two entry mining system as a result of this rule. The following requirements included in petitions are identified as follows.

TABLE 3.—COMPARISON OF REQUIREMENTS IN RECENT PROPOSED DECISIONS AND ORDERS (PDOS) WITH REQUIREMENTS IN THE PROPOSED RULE

Requirement in PDOS	Number of PDOS	Requirement included in proposed rule
Installation of AMS	20 out of 20	Yes
Spacing 1000 feet	20 out of 20	Yes
Monitor Drives 50–100 feet	20 out of 20	Yes
Monitor splits 50–100 feet	20 out of 20	Yes

TABLE 3.—COMPARISON OF REQUIREMENTS IN RECENT PROPOSED DECISIONS AND ORDERS (PDOS) WITH REQUIREMENTS IN THE PROPOSED RULE—Continued

Requirement in PDOS	Number of PDOS	Requirement included in proposed rule
Monitor Electrical Installations 100 feet	20 out of 20	Yes (50 feet)
Identify activated sensor	20 out of 20	Yes
Minimum air velocity 50 fpm	20 out of 20	Yes
Alert Sections, Investigate	20 out of 20	Yes
Alert/Alarm Surface, Withdraw Sections	20 out of 20	Yes
Alarm section within 4000 feet, or section mouth	20 out of 20	No
Two-way communications	20 out of 20	Yes
Alert/Alarm settings from Tables	20 out of 20	No
Maximum air quantity 202,000 cfm	20 out of 20	No
Maximum 50 percent total section intake	20 out of 20	No
Visual Examination each shift	20 out of 20	Yes
Inspection 7 days	20 out of 20	Yes
Calibration 31 days	20 out of 20	Yes
Records of Alert and Alarms, Maintenance, Calibrations	20 out of 20	Yes
Ventilation Plan Requirements	20 out of 20	Yes
Allow time delays 3 minute maximum	20 out of 20	Yes
System Failures—Monitoring and Patrolling	20 out of 20	Yes
Monitor 4 hours after power disconnect	20 out of 20	Yes
Monitor for short-circuit, open circuit	20 out of 20	Yes
Method for determining ambient specified	20 out of 20	No
Respirable Dust 1.0 mg/m^3—DA	20 out of 20	Yes
Study required—multiple entries	20 out of 20	No
Mine design requirement—protect escapeway	20 out of 20	No
Alert—Notify and Investigate	20 out of 20	Yes
Alarm—Withdraw miners	20 out of 20	Yes
Intake escapeway restrictions	20 out of 20	No
Flame-resistant belting	20 out of 20	No
Allow Point-feeding	2 out of 20	Yes
Require monitoring of point-feed	1 out of 20	Yes
Minimum Velocity 400 fpm through point-feed	1 out of 20	Yes (300 fpm)

Most requirements from the § 75.350 proposed decisions and orders allowing the use of belt air are included in this proposed rule. As discussed elsewhere in this preamble, we are not including requirements for improved conveyor belt flame resistance. This rule which was originally proposed in 1992 was recently withdrawn from MSHA's regulatory agenda. (*See* 67 FR 46431). We are not requiring alarms on the section for sensors within 4,000 feet of the section to be automatically activated. Rather, we have proposed that any sensor in alarm would automatically notify affected areas.

MSHA does not include language to require limits on the air quantity carried in the belt entry or air course. The Agency expects that any mine using more than 202,000 cubic feet per minute (cfm) will be an exception, and that modifications will be made by additional sensor installations and reduced alert and alarm levels required by the District Manager. In addition, we do not include any requirement limiting the ratio of belt air quantity to the total intake air quantity coursed to the section. We believe the requirements of the proposed rule are adequate for protecting miners. We have not included tables or nomographs developed from research to be used for determining appropriate alert and alarm levels. These tools would assist MSHA District Managers in reviewing ventilation plans for approval and determining additional requirements on a mine-by-mine basis. We feel that, for typical installations, the 5 and 10 ppm alert and alarm settings are adequate.

We also do not specify a method for determining the ambient CO concentration. Under proposed § 75.351(j) mine operators would be required to provide the Agency with AMS data or an equally effective method in setting ambient levels. The method for determining the ambient CO concentration would need to be approved in the mine ventilation plan.

Unlike the § 75.350 petitions, we are not requiring a provision to require a MSHA study in mines where more than one entry is common with the belt entry. In these mines, the District Manager may require additional sensors and reduced alert and alarm settings and we expect these requirements to be set on a mine-by-mine basis.

MSHA can involve its Technical Support branch to conduct such studies in mines where multiple entries indicate that additional safeguards may be needed. We have not included additional restrictions on the use of equipment in the intake escapeway. The Agency believes existing standards in § 75.380 (Escapeways; bituminous and lignite mines) cover these requirements.

A few belt air petitions included requirements for using belt air that are not listed in Table 3. Typically, these additional requirements were requested following negotiation between mine management and labor during the petition for modification process. Most of these requirements addressed mine-specific conditions, and therefore, are not germane to the safe use of belt air for mines with three or more entries that choose to use it. Some of these requirements are covered, in part, by either existing standards or this proposed rule. Conditions addressed in existing standards include:

*—Ambient CO levels * * * shall not be determined when diesel equipment is idling in an air split.* This petition requirement is addressed in a new diesel standard that prohibits the idling of diesel-powered equipment, 30 CFR 75.1916—Operation of diesel-powered equipment.

—A "Wall of Water" fire suppression system shall be installed just inby the belt take-up/storage unit for each drive unit. Deluge-type water sprays, foam

generators, or equivalent protection are required at all belt-conveyor drives by 30 CFR 75.1101—Deluge-type water sprays, foam generators; main and secondary belt-conveyor drives.

—Stopping construction is specified as to the type of blocks, construction method, and coating of joints. A petition *forbids use of Kennedy stoppings and hollow core block* for stopping construction. These issues are substantially covered by existing provisions in 30 CFR 75.333—Ventilation controls.

—A special belt entry maintenance program is required by a petition, and identifies the manufacturer's recommended maintenance schedule. We believe this issue is covered by existing provisions in 30 CFR 75.360—Preshift examination at fixed intervals; 75.362—On-shift examination; and 75.400—Accumulation of combustible materials.

—Equipment considered potential fire sources in the intake escapeway are required to be equipped with fire suppression systems. These are already covered by existing provisions in 30 CFR 75.1107—Fire suppression devices.

Conditions that, based on Agency experience, are adequately addressed in the proposed rule include:

—A few petitions contain very specific language on the placement of sensors. Sensors are required to be *placed as near to the roof as feasible (efforts toward monitoring within 12 inches of the roof).* We have not included the requirement to monitor within 12 inches of the roof. We consider the requirement of 'as near the roof as feasible' in the proposed rule to be sufficient.

—Patrolling of two adjacent sensors which are inoperative is required each *30 minutes.* A complete system failure requires a one-hour period. MSHA is proposing that a one-hour period for all patrolling is sufficient.

There is one condition in some of these atypical petitions that *a directional lifeline shall be installed for the duration of the return escapeway* when return entries are utilized as alternate escapeways. Even though this issue is not germane to the safe use of belt air, we are soliciting comments on the use of lifelines in this proposed rule because the Advisory Committee recommended their use (in Recommendation Number 8).

E. Preamble Summary—Belt Entry Ventilation Review

In 1989, a committee was formed of MSHA staff to review safety questions surrounding the ventilation of belt conveyors in underground coal mines. The committee was referred to as the Belt Entry Ventilation Review (BEVR) committee. A final report issued by the BEVR committee made ten recommendations. The following discusses the recommendations and subsequent actions taken by MSHA to address the recommendations including proposed provisions included in this rule.

1. Increased emphasis should be placed on belt maintenance, belt entry clean-up, and rock dusting.

Maintenance, cleanup, and rock dusting in the belt entry are important for all mines using belt haulage. However, these items are already covered by existing regulations (§ 75.362(b)—On-shift examination and § 75.400—Accumulation of combustible materials). MSHA issued a Program Information Bulletin (P89–40) in 1989 addressing inspection of belt entries to emphasize proper maintenance and clean-up. We are not proposing any additional regulation for belt entry maintenance, cleanup, or rock dusting.

2. Emphasis should be placed on proper construction and maintenance of stoppings separating intake escapeways from other intake entries.

Again, regulations exist regarding the construction of stoppings, as well as all permanent ventilation controls (§ 75.333—Ventilation controls). MSHA issued a Program Information Bulletin (P89–35) in 1989 addressing inspection of stoppings to emphasize proper stopping construction and maintenance. The Agency believes no additional regulation is needed.

3. Sections should be designed by entry location, number of entries, or pressure differential, to enhance the protection of the intake escapeway from contamination by fires in adjacent separate entries.

The Agency agrees that mine design can provide additional benefits for protecting the intake escapeway. We believe mine operators should explore possible changes to ventilation systems. MSHA and the mine operator should work together in the mine ventilation plan approval process to address these issues. However, there are factors which will limit changes to mine ventilation system design, including methane liberation, geologic considerations, and other mine specific concerns. MSHA believes proposing regulations which dictate mine design are not needed, and thus is not proposing regulations concerning mine design.

4. Intake escapeways should be maintained free of potential fire sources unless such sources are protected by fire suppression or other acceptable devices.

Regulations finalized in 1996 (§ 75.340—Underground electrical installations) require electrical installations located in intake airways to be protected by noncombustible structures, or equipped with fire suppression. Also promulgated in 1996, regulations in § 75.380—Escapeways, prohibit the use of certain equipment in the primary escapeway, and requires the use of fire suppression on most other equipment. Proposed § 75.350(b)(4) would require the monitoring of the intake escapeway by CO sensor(s) as part of the AMS, meeting all of the requirements of proposed § 75.351.

5. Directing air inby through the belt entry and to the return through a restrictive regulator or pipe overcast does not comply with section 75.326 and should be discontinued.

This practice is no longer accepted by MSHA. We released a Program Policy Letter (P89–V–18) in 1989 stating that this practice should not be permitted because it allows belt air to ventilate working places; which was prohibited by former § 75.326.

6. Training should include all drills in communication and evacuation techniques and include precautions to be taken for escape through smoke.

Existing § 75.383—Escapeway maps and drills, requires mine evacuation drills and serves as a training tool for miners. Training issues have been addressed in the proposed regulations for all miners, and is required to be included in Part 48 training programs for new miners, annual retraining, and specific training for AMS operators. Training in smoke has been conducted and is available for many groups by the National Mine Safety and Health Academy in Beaver, West Virginia. MSHA's experience and the feedback from groups participating in this training has been very positive.

While this training is available at the MSHA facility, it is not possible for all companies to train all miners in smoke, as other facilities are not readily available. We are not proposing new regulations in this area. We do expect that training plans will provide mine-specific training applicable to local conditions and concerns.

7. Belt entries used to ventilate working places should be equipped with carbon monoxide monitoring systems or smoke detectors. MSHA and the Bureau of Mines should encourage development and testing of improved smoke detectors. MSHA should initiate the development of performance standards for CO monitors and smoke detectors. MSHA should continue to stress maintenance of CO monitoring systems.

The proposed regulations require the use of an AMS to monitor the belt entry. MSHA participated in a joint program with the former Bureau of Mines and a manufacturer of smoke detectors that tested these instruments in the mine environment. MSHA is encouraging the development of new technology for fire detection and supports further research by NIOSH in this area. Rather than develop approval schedules, we have decided to require sensors to be listed by nationally recognized testing laboratories.

8. MSHA should consider requiring improvements to or replacement of point-type heat sensors.

We would require the use of an AMS as a condition to safely use belt air to ventilate the working section. This is a cornerstone of the proposed rule.

Point-type heat sensors (PTHSs) or equivalent are currently required under existing § 75.1103–4(a)(1) as part of the automatic fire sensor and warning device systems. The proposed rule will allow mine operators to use CO sensors in place of PTHSs as an equivalent method.

9. Where belt air is directed outby from the section, water lines should be relocated from the belt to a separate intake entry to facilitate fire fighting activities.

Because this is not a belt air issue, we have not included any requirement in this proposed rule.

10. Further research should be conducted to evaluate the impact of air velocities on underground fire fighting and to provide information on the growth and spread of mine fires involving materials other than conveyor belts.

Additional research was completed by the former Bureau of Mines and NIOSH in these areas subsequent to the release of the BEVR report. MSHA used much of the published results in developing this proposed rule. Additional research by NIOSH concerning fire detection is ongoing, and the Agency remains in contact with researchers on new and developing technology.

IV. Discussion of the Proposed Rule

A. General Discussion—30 CFR, Part 75, Subpart D—Ventilation

Existing § 75.350 (Air courses and belt haulage entries) requires that entries used as intake and return air courses be separated from belt haulage entries and prohibits air coursed through belt entries from ventilating working places. The proposed rule would continue to allow the existing method of ventilation where belt air is coursed to a return air course or to the surface and not onto either the working sections or equipment setup or removal areas. However, it also would permit, with additional safeguards, the use of belt air to ventilate the working sections and the setup or removal areas.

Past practice has been for a mine operator to file a petition for modification of § 75.350 (or formerly § 75.326) to seek approval to use belt air to ventilate working places in underground coal mines. To date, we have granted approximately 90 such petitions. About nine petitions are being processed as of the date of this notice. Under existing § 75.350 (Air courses and belt haulage entries), mines opened on or before March 30, 1970, may use belt air to ventilate working places when it is determined that this air is needed to provide adequate ventilation. Currently, eight mines developed before 1970 are ventilated in this manner. In each of these cases, we require the mine operator, through the mine ventilation plan, to continue to meet at least the same level of protection provided in petitions that we have granted. Therefore, the mines developed before 1970 will not be exempted from the rule but must meet the new regulations.

Our experience regarding belt air petitions has been that with proper safeguards, allowing belt air to ventilate working places (belt air) can achieve net safety benefits. Belt air usage can result in an increase in the quantity of air in the belt entry and other common entries (belt air course). This provides increased protection to miners against hazards created by elevated levels of methane, other harmful gases, and respirable dust. Significantly, this method of ventilation can help to balance pressures between air courses in the system. Present § 75.350, that is identical to the former § 75.326, requires that the mine operator "limit the velocity of the air coursed through belt haulage entries to the amount necessary to provide an adequate supply of oxygen in such entries and to assure that the air therein shall contain less than 1.0 volume per centum of methane." In the past, mine operators regulated the air flowing through the belt air course such that most of the air flowing toward the working sections flowed in the intake air course. This action commonly caused pressure differentials to occur between the entries. Balancing the air volume in the primary intake air course with the air volume in the belt air course generally provides less pressure differential between the primary escapeway intake air course and the belt air course. Pressure-balanced ventilation systems reduce the likelihood that air will leak from the belt air course into adjoining intake air courses, including the primary escapeway. Should a fire develop in the belt entry or other common entries, the products of combustion would tend to stay in the belt air course for a longer duration. This would enhance escape through the primary escapeway by keeping the parallel primary escapeway free of smoke.

We recognize the problems created when the products of combustion from a fire are transported to the working sections. However, we believe, as did the Advisory Committee, that with proper precautions, belt air can be safely used to ventilate working places.

The Advisory Committee recommended that lifelines be installed and maintained in all escapeways. The Advisory Committee heard testimony from several members of the industry to the effect that lifelines are beneficial. However, they also heard that lifelines placed in active entries were quickly destroyed due to normal mining activities and that repair was not considered a priority. Therefore, we have not included a requirement for life lines in the proposed rule. We specifically solicit comments on the need for and the maintainability of lifelines in escapeways.

The Advisory Committee recognized the importance of protecting the "integrity of the atmosphere" in the primary escapeway. In addressing this issue, the Advisory Committee report states, "The Committee believed that it is desirable, even during normal operation of the mine, to maintain the integrity of the mine atmosphere in the escapeways by providing a positive pressure differential between the escapeways and the adjacent entries." We agree with the concept that separation of the belt air course from the primary escapeway is essential in providing miners a safe route to the surface. One method to help accomplish this would be to maintain the primary escapeway at a pressure that is higher than the adjacent entries. However, the Advisory Committee recognized that, sometimes, it may be difficult to always maintain the pressure differential in the proper direction. Because of the difficulty of maintaining the primary escapeway at a higher pressure than an adjacent air course, the Agency has decided not to propose this requirement. However, we recommend that MSHA and the mine operator should work together during the mine ventilation plan approval process to address this issue on a mine-by-mine basis.

The Advisory Committee recommended that we proceed to

develop regulations for improved fire-resistant belting including new testing and approval schedules. These issues were placed in a separate rulemaking and are not included in this rulemaking package as discussed above.

Existing § 75.351 (Atmospheric monitoring system (AMS) established performance requirements for AMSs used to comply with existing §§ 75.323 (d)(1)(ii)—Return air split alternative, 75.340(a)(1)(ii) and 75.340(a)(2)(ii)—Underground electrical installations, or 75.362(f)—On-shift examination. The proposed rule would revise § 75.351 to include requirements for the installation and operation of an AMS in belt entries. The Advisory Committee concluded that belt air course could be safely used to ventilate working places of underground coal mines, provided additional safety and health conditions are met. One additional condition is the presence within the belt entry of an early-warning fire detection system. This position is consistent with the conclusion of the BEVR Committee that "Directing belt air to the face provides protection equivalent to other ventilation methods which comply with § 75.326 [now § 75.350], provided a carbon monoxide (CO) or other improved monitoring system is used." It is also consistent with our position since 1978 requiring the use of a low-level CO detection system when we grant a petition to use belt air to ventilate working places.

B. Section-by-Section Discussion

Part 75—Mandatory Safety Standards—Underground Coal Mines

Section 75.301 Definitions.

This proposed rule would add six new definitions to the list of definitions contained in the existing standard. As with other definitions in this section, the new definitions would only apply to subpart D—Ventilation.

The proposed rule would define *appropriate personnel* as the person or persons designated by the operator to perform specific tasks in response to AMS signals under § 75.351.

The proposed rule would define an *atmospheric monitoring system (AMS)* as a network consisting of hardware and software capable of measuring atmospheric parameters, such as carbon monoxide and methane concentrations, and smoke optical density; transmitting the measurements to a designated surface location; providing alert and alarm signals to designated locations; processing and cataloging atmospheric data; and providing reports that can be used in the maintenance and calibration of the system by the mine operator. We believe that each of these capabilities is important and that an AMS used to comply with the requirements of the standard provides these functions.

The proposed rule would define the *AMS operator* as the person(s) designated by the mine operator and located on the surface of the mine to monitor the AMS signals and to notify appropriate personnel in response to a malfunction, alert, or alarm signal. The Advisory Committee recommended that this person also be responsible for initiating procedures contained in the mine's fire fighting and evacuation plan. During discussions of the duties of the "responsible person," the Advisory Committee characterized this person as "responsible for monitoring the system and, hence, initiating the Fire Fighting and Evacuation Plan." Some members of the Advisory Committee noted that this individual was responsible for the safety of the miners in the mine. Other members of the Advisory Committee, as well as testimony by some members of the public, argued that the responsibility for the safety of the miners rests elsewhere and not solely with the person monitoring the AMS on the surface. We believe that, although the AMS operator could be the person designated to initiate the actions of the approved program of instruction (*i.e.*, the mine emergency evacuation and firefighting plan), this rule should not require that person to be the person in charge of implementing the approved program of instruction. Instead, the individual responsible for initiating actions specified in the fire fighting and evacuation plan should be identified in the approved program of instruction (§ 75.1502).

MSHA includes a definition for the *belt air course* in the proposed rule. The belt air course would be defined as containing the entry in which a belt is located and any adjacent entry(ies) not separated from the belt entry by permanent ventilation controls, including any entries in series with the belt air course, terminating at a return regulator, a working section, or the surface. The proposed rule deals with the belt air course and not just the belt entry due to the homogeneity of the airstream within the air course.

The proposed rule would define *carbon monoxide ambient level* as the average concentration in ppm of CO detected in an air course containing CO sensors. This average is representative of the composition of the mine atmosphere over a designated period of mining activity during a non-fire condition. We believe that an effective early-warning fire detection system must be based upon reasonable operating parameters, which include the evaluation of ambient CO levels.

The definition of ambient level includes the term 'average concentration.' The ambient CO levels will vary from mine to mine. For this reason, the ambient level and the method used to determine it, are required to be approved in the mine ventilation plan. Documentation must be provided to the district manager that the specified ambient level requested reflects the true conditions of the atmosphere. For many mines, the average concentration will be the same throughout the air course and will be at or near zero ppm. A mine may choose to designate its ambient level as zero ppm though the average concentration might be above zero ppm. There may be more than one ambient level per mine. We recognize that in some mines, CO occurs naturally as a characteristic of the coal seam and that higher average concentrations will exist. Also, diesel-powered equipment produces CO when operating and thus will raise the average concentration of the CO within the air course. Operation of diesel-powered equipment near a CO sensor might cause 'spike' concentrations of CO to occur. In-mine tests have shown that these spikes account for a small part of the sample concentrations. Thus, if the ambient level is determined using a reasonable duration of time, the average will represent the concentration approximating that most often found in the air course.

In order for an AMS with CO sensors to be effective as an early-warning fire detection system, the ambient level must represent conditions over a broad range of mining activities. We recognize that the ambient level may vary from shift to shift depending on the type or amount of work being done. We believe approval of the ambient level and the method used to establish it are most appropriately addressed in the mine ventilation plan due to varying mining conditions and activities. Therefore, MSHA would continue to require that the ambient level and the method for determining the ambient level be specified and approved in the mine ventilation plan, § 75.371(hh).

For clarity, we are proposing a definition for *point feeding*. As defined by the proposed rule, point feeding would be the process of providing additional intake air to the belt air course from another intake air course through a regulator. It is our experience that point feeding from one intake air course to another is an effective tool for controlling the proper pressure differentials between entries. This is a useful tool that limits leakage from one

air course to other air courses. Sometimes providing additional air to the belt air course to increase air velocity in the belt entry is necessary to maintain the needed air velocity to assure that the contaminants reach the sensors. Although we acknowledge that point-feeding may be necessary, we think that the number of point-feed regulators should be kept to a minimum to maintain the integrity of the primary escapeway. Because the point-feed regulator is a permanent ventilation control, the point-feed regulator must be constructed according to the requirements of existing § 75.333(e)(1) (Ventilation controls) which states the method and material requirements for the construction of permanent stoppings and regulators.

Section 75.350—Belt Air Course Ventilation

This proposed rule would revise existing § 75.350 that prohibits air coursed through belt entries from ventilating working places. As used in the existing standard, the term 'belt entries' refers to the belt air course. Under the proposed rule, the belt air course could be used to ventilate working sections, if the mine operator meets specified safety precautions. The term 'working sections,' and not 'working places,' is used in the proposed rule to include the area inby the loading point. Existing § 75.380(g) requires separation of the primary escapeway from the belt entry beginning at the working section to the escape facilities or the surface. Thus, if the mine operator wishes to course belt air inby the end of the separation of the primary escapeway from the belt, the safety precautions of this proposed rule would apply.

The proposed rule also would permit belt air to be used to ventilate equipment setup or removal areas if the mine operator meets the same specified safety precautions. If intake air passes through a belt entry where the belt is not operating, and is coursed onto a setup or removal area, the specified precautions would not apply. For example, during longwall setup, stoppings are removed to access the belt entry at certain locations. If the belt cannot be operated, the specified precautions are not required. However, if any of the air that passes through the belt entry has passed over a belt that is being operated or has been operated within the previous four hours, the specified requirements would apply.

Separation of the belt entry from the primary escapeway entry is required by existing § 75.380(g). Under the current regulations, the belt air course must be separated with permanent ventilation controls from return air courses and from other intake air courses. Section 75.350(a) of the proposed rule would require separation of the belt air course from return air courses and other intake air courses with permanent stoppings. It requires that the belt air course cannot be used as a return air course. It also requires that belt air cannot be used to ventilate the working sections or setup or removal areas except as specified in proposed § 75.350(b). When the mine operator meets the conditions specified in § 75.350(b), separation of the belt air course from intake air courses, other than primary escapeways, would not be required.

Since existing § 75.321 requires that the oxygen level in areas where persons work or travel be no less than 19.5 percent, we have not included a minimum oxygen requirement in this section. Also, existing § 75.323(b) limits the methane in intake air courses, including belt air courses, to 1.0 percent, so we have not included this requirement in proposed § 75.350.

Existing § 75.350 requires that the air velocity in the belt entries be limited to the amount necessary to provide an adequate supply of oxygen in these entries and to assure that the air contains less than 1.0 percent methane. We have not included in the proposed rule the provision in existing § 75.350 that limits the air velocity in the belt entry. The intent of this restriction was to reduce fanning and propagation of flames in the event of a fire. Donald Mitchell, a mine fire expert, commented in written testimony to the Advisory Committee that limiting the velocity in the belt entry actually does not produce the intended results. Research has shown that higher velocities have a cooling effect on developing fires, and higher quantities reduce concentrations of volatile gases. In effect, the restriction of velocity creates additional potential hazards of smoke rollback, methane and hydrogen layering, and development of fuel-rich fires. We agree with Mr. Mitchell's conclusions and have not retained the requirement limiting the velocity in the proposal.

For mines using an AMS with CO sensors for fire detection in the belt entry, proposed § 75.351(e)(3) would require a minimum velocity of 50 feet per minute (fpm) in the belt entry unless the spacing is reduced to 350 feet between CO sensors, in which case, the velocity can be lower. Our experience shows that for an AMS with CO sensors to function properly as an early-warning fire detection system, the products of combustion must be transported to the sensors. This method of transport is the ventilation air current. The Advisory Committee concluded that a minimum air velocity of 50 fpm is necessary to ensure timely transport of combustion products to sensors. However, more recent research conducted by the National Institute of Occupational Safety and Health (NIOSH) indicates lower velocities can be used if sensor spacing is reduced. In zero-flow conditions, NIOSH has found sensor spacing of 105 meters (344 feet) to be effective for early-warning fire detection (Edwards *et al.* 1997). We recognize that mines will have some air flow within the belt entries. Therefore, we are requiring that maximum sensor spacing be reduced to 350 feet in areas where less than 50 fpm is maintained to provide adequate fire protection capabilities.

Proposed paragraph § 75.350(b) addresses the safety requirements that would apply when belt air is used to ventilate a working section or a setup or removal area. Proposed paragraph (b)(1) would require that the mine operator equip the belt entry with an AMS installed, operated, examined, and maintained as specified in proposed § 75.351. The Advisory Committee concluded that if installed, calibrated, and maintained properly, an AMS with CO and/or smoke sensors can perform satisfactorily. This conclusion is consistent with our experience with AMSs.

Proposed paragraph (b)(2) of the proposed rule would require the training of all miners annually in the basic operating principles of the AMS, including the actions required in the event of activation of a system alarm. This training may be conducted as part of a miner's part 48 new miner training (§ 48.5), experienced miner training (§ 48.6), annual refresher training (§ 48.8), or training conducted as part of the approved program of instruction, § 75.1502. The training should include the purpose of the system, the type of information that it provides, and what responses are necessary to specific signals from the AMS. We are aware that the effectiveness of any hazard warning system depends not only on the reliability of the system but also on the trust that the miners have in the system. A system that continually provides alarms when no hazard is present is of little value. The Advisory Committee concluded that if miners do not understand how the AMS works or do not trust the signals produced, the effectiveness of the AMS is reduced. Consequently, the Advisory Committee recommended, and we are proposing, that miners must be trained in how to respond to AMS signals when an AMS

is installed in mines that use belt air to ventilate working sections or setup or removal areas.

Proposed paragraph (b)(3) would require that the concentration of respirable dust in the belt air course must be maintained at or below 1.0 mg/m^3 because it is now considered intake air. A permanent designated area (DA) for dust measurements would be established at a point no greater than 50 feet upwind from the section loading point in the belt entry when the belt air flows over the loading point or no greater than 50 feet upwind from the point where belt air is mixed with air from another intake air course near the loading point. We would require that this DA be specified and approved in the mine ventilation plan. The Advisory Committee recommended the establishment of DAs at appropriate locations. Establishing a DA near the loading point or before the mixing point would address the concerns of Advisory Committee members for protecting the health of persons when belt air is coursed onto the working section or setup or removal areas. The existing regulation, § 70.100(b), specifies that the average concentration of respirable dust in the intake airways within 200 feet of the working faces of each section be continuously maintained at or below 1.0 mg/m^3.

Proposed § 75.350(b)(4) would require monitoring of the primary escapeway per proposed § 75.351(f) for CO or smoke within 500 feet of the working section or set up or removal areas, and within 500 feet of the beginning of the panel. In mines that point-feed from the primary escapeway near the beginning of a panel, the sensor required under § 75.351(f) must be located in the primary escapeway within 500 feet of the working section and within 500 feet of the beginning of the panel. The point-feed sensor required by proposed § 75.350(c)(1) may be used as the sensor at the beginning of the panel if it is located within 500 feet of the beginning of the panel. Alarms activated by these sensors would warn miners of a problem in the primary escapeway upwind of the working section or setup or removal area. These sensors will provide significant additional protection for a minimal cost.

Proposed § 75.350(b)(5) is included to limit the use of belt air to sections developed using at least three entries for development. This will require all existing two-entry petition requirements to remain in effect, and these petitions will not be superceded by this rule since many of the granted petition requirements exceed those in this proposed rule. Future two-entry mines will need to continue to file petitions to use belt air, since proposed § 75.350(a) prohibits placing the conveyor belt in the return. The Agency believes the two-entry mining system provides a unique set of issues and needs to be approved on a mine-by-mine basis.

Proposed paragraph (c) would require that when a mine needs additional air in the belt air course, notwithstanding the provisions of § 75.380(g), point feeding air from any intake air course may be permitted if approved in the mine ventilation plan under § 75.370 and conditions set out in proposed paragraph (c) are met. MSHA believes that a point-feed regulator should only be used when needed and the number of point-feed regulators should be kept to a minimum. Point feeding is not meant to compensate for a poorly designed or inadequately maintained ventilation system. Although the Advisory Committee limited discussion to point feeding from the primary escapeway, we believe that any intake air course could be considered as a source for point feeding. The same requirements should apply to these other intake air courses in order to maintain the integrity of the air courses and to facilitate early-warning fire detection capability.

When point-feed regulators are used and the air in the belt air course is being used to ventilate either a working section or an area where mechanized mining equipment is being installed or removed the following conditions must be met to assure the safety of the miners.

Proposed paragraph (c)(1) would require monitoring of the air current that will pass through the point-feed regulator for CO or smoke at a point within 50 feet upwind of the point-feed regulator. Proposed paragraph (c)(2) would require monitoring of the belt air for CO or smoke at a point within 50 feet upwind of the mixing point with air from the point-feed regulator. If the sensor in the intake air stream gives an alert or alarm signal, the fire in all likelihood will be in the intake air course upwind of the point-feed regulator. If the sensor in the belt entry gives the alert or alarm signal, the source of the contaminants is most likely in the belt entry upwind of the mixing point. With this knowledge, the operator can take whatever action is appropriate to evacuate miners from the affected area safely and begin firefighting efforts.

Proper installation and maintenance of point-feed regulators, when used, are critical since they are a major component of a ventilation system. Since point-feed regulators control the flow of air between two intake air courses, the provisions of § 75.333(e)(1) (Ventilation controls) apply. Proposed paragraph (c)(3) would require that the point-feed regulator be provided with a means for remote closing without requiring persons to enter the air stream passing through the point-feed regulator. This would provide protection for those persons who may be required to close the point-feed regulator in case of an emergency. Remote closure is especially important if a fire starts in the intake air course upwind from the point-feed regulator. When the point-feed regulator is installed in the manner proposed, the person closing the point-feed regulator could approach upwind in the belt air course. This would enable the person to close the regulator without being exposed to the products of combustion coming through the point-feed regulator. By closing the point-feed regulator under these conditions, the amount of contaminants entering the belt air course could be limited, thus permitting miners to escape.

Proposed paragraph (c)(4) would require that a 300-fpm minimum air velocity be maintained through the point-feed regulator to prevent air reversals and reduce the potential for smoke rollback. The Advisory Committee considered the need to provide sufficient air quantity in the belt air course and recognized that sometimes supplying this air from the primary escapeway through a point-feed regulator may be necessary. The Advisory Committee determined that controlled point feeding is superior to ventilation of the belt air course through leakage. When point feeding is necessary, the Advisory Committee determined that point feeding from the primary escapeway into the belt air course be done under controlled conditions. In its discussion of point feeding, the Advisory Committee states, and we agree, that "* * * while point feeding from the primary escapeway may be appropriate, point feeding into the primary escapeway from any other air course is never appropriate." However, we do not intend this position to change the requirement of existing § 75.380(h) which permits ventilation of the primary and alternate escapeways from a common intake air shaft or slope.

Proposed paragraph (c)(5) would require the operator to submit a mine ventilation plan that includes the location of all point-feed regulators. The installation of the point-feed regulator must comply with existing § 75.333 and must meet the performance requirement of remote closure.

In addition, proposed paragraph (c)(5) would require that the locations of

point-feed regulators must be shown on the mine ventilation map required by § 75.372 (Mine ventilation map). An accurate and complete map enables both the operator and MSHA to evaluate the ventilation system. It would also require that the operator show the locations of point-feed regulators on the escapeway map required by existing § 75.383. During escape, it is important that miners be aware of all aspects of the ventilation system that might affect their ability to exit the mine safely. Although a means for closure is required for all point-feed regulators, closing a regulator, as in making any air change during a fire, should be done only when a demonstrated need exists.

Proposed paragraph (c)(6) would require an AMS to be installed, operated, examined, and maintained as specified in proposed § 75.351 when point-feed regulators are used. This requirement would greatly increase protection for miners by increasing the level of atmospheric monitoring of areas where intake air crosses into a belt air course, thereby increasing the ability of the system to detect hazards before they can develop into serious threats.

Section 75.351 Atmospheric Monitoring Systems

This proposed standard sets out the installation, location, examination, maintenance, and operational requirements for AMSs. The Advisory Committee concluded that air in the belt air course could be safely used to ventilate working places if the mine operator meets certain conditions. The primary condition is the use within the belt entry of "* * * a reliable and properly specified, installed, calibrated, and maintained Atmospheric Monitoring System * * *" [Advisory Committee report, Page i]. The proposed standard sets out the requirements implementing that part of the Advisory Committee recommendation concerning the installation, calibration, and maintenance of the AMS to assure its reliability. The proper operation of an AMS is the keystone around which the safe use of belt air, and other provisions in this proposed rule, is based. We believe that current AMS technology is reliable. Since 1975, the year when an AMS was first required as a condition for the granting of a belt air petition, we have included performance criteria for an AMS as part of each petition granted. As AMS technology has evolved, the performance requirements in the granted petitions have also evolved. Performance requirements are included in this proposed standard.

Proposed paragraph (a) would require proper AMS operation. Whenever personnel are underground and an AMS is used to fulfill the requirements of §§ 75.323(d)(1)(ii), 75.340(a)(1)(ii), 75.340(a)(2)(ii), 75.350(b), 75.350(c), or 75.362(f), the AMS must be operating and a designated AMS operator must be on duty at a location on the surface of the mine where signals from the AMS can be seen or heard and the operator can promptly respond to these signals.

Proposed § 75.351(a) would require that an AMS installed in accordance with §§ 75.350(b) or 75.350(c) monitor the mine atmosphere at all times that a belt air course is used to provide intake air to a working section or an area where mechanized mining equipment is being installed or removed and miners are underground. In general, this requirement is independent of belt operation or coal production on affected sections. An exception to §§ 75.350(b) or 75.350(c) would be when the belts are not operated and coal is not produced after a period exceeding 24 hours. Activities included in this exception are a production shut-down to complete non-production work (dead work) for several days or temporary mine closures due to market conditions, vacations, *etc.* However, it is recognized that normally it would be an advantage to the operator to keep the AMS operating at all times.

Our experience is that many fires in belt entries start after the belt is stopped. As discussed previously, a review of the reports of reportable belt entry fires confirms this. The 24-hour period is included in the proposed rule to address these concerns after a belt shut-down and to address extended idle periods when the likelihood of a belt fire diminishes. The four-hour period that is found in most current petitions for modification is being replaced with this more stringent requirement that the belt be monitored for 24 hours after the belt is shut down. This requirement is not intended to superceded the requirements in § 75.1103–4(e). The AMS must be operating and in compliance with §§ 75.350(b) and 75.350(c) one hour prior to restarting the belt.

This approach is consistent with the belt air petitions and the recommendations of the Advisory Committee. The proposed requirement is similar to existing § 75.351(d)(1), which requires a person designated by the operator be at the surface location while anyone is underground. This proposed requirement clarifies when the AMS must be operable and when the AMS operator must be at the designated surface location.

Proposed § 75.351(b) would require the operator to designate a surface location at the mine for receiving signals from the AMS sensors or at another location approved by the district manager, and provide an AMS operator to respond to those signals when the system is used to comply with existing §§ 75.323(d)(1)(ii) (Actions for excessive methane, Return air split alternative), 75.340(a)(1)(ii) or 75.340(a)(2)(ii) (Underground electrical installations), or 75.362(f) (On-shift examination), and proposed §§ 75.350(b) or 75.350(c) (Belt air course ventilation). This would allow the district manager to address situations where there are multiple mines in close proximity in one area to share one designated surface location that would provide the same degree of effective monitoring and early-warning protection.

As with the existing standard, under paragraph 75.351(b)(1) of the proposed rule, the responsible person would have access to two-way voice communication with persons at working sections, at setup or removal areas, and at other areas included in the approved program of instruction, § 75.1502. These areas would be equipped with two-way communication in accordance with existing § 75.310(a)(3). These other areas may include belt drives, belt transfer points, underground dumps, and underground shops. We do not intend it to mean areas where persons are assigned to work on a temporary basis, such as areas where miners are installing auxiliary supports or where they are making repairs to track haulage systems.

Proposed paragraph (b)(2) would require the operator to designate an AMS operator to monitor the AMS output and be at a location on the mine surface where all AMS signals can be responded to promptly. Proposed paragraph (b)(3) would require the posting at the surface location of an up-to-date map or schematic showing air flow directions and the location and type of all AMS sensors. The map or schematic could be displayed or stored in the AMS computer and retrieved when needed. By posting an up-to-date map showing the locations and types of AMS sensors and the intended air flow direction, the responsible person will be better able to identify the affected areas of the mine. The proposed requirement is similar to the requirement in existing § 75.351(d)(1) requiring the posting of a mine map showing the underground monitoring system at a surface location. We would require the AMS operator to notify appropriate personnel in response to a malfunction, alert, or alarm signal. The AMS operator could be the person initiating the approved program of instruction or could notify the responsible official for initiating the

plan. Mine operators are encouraged to send information from the AMS to alternate locations, either on or off mine property, so long as the original signal goes to the designated surface location. The AMS operator, designated by the mine operator, must be on duty while anyone else is underground and the monitoring requirements of existing §§ 75.323(d)(1)(ii) (Actions for excessive methane, Return air split alternative), 75.340(a)(1)(ii), or 75.340(a)(2)(ii) (Underground electrical installations), or 75.362(f) (On-shift examination) apply. This proposed requirement also would apply to proposed §§ 75.350(b) or 75.350(c) (Belt air course ventilation). Proposed § 75.351(b)(3) is also consistent with our long held position as reflected in petitions requiring the use of an AMS.

Proposed § 75.351(b)(4) would require that the names of the designated AMS operators; appropriate personnel, such as section foreman, maintenance foreman, mine manager, and safety director; the responsible person referred to in proposed § 75.352, and the method to contact these persons must be provided at the designated surface location. This will provide a means for any person to promptly contact the appropriate personnel in the event of an emergency.

Proposed paragraph (c) would establish minimum operational requirements for an AMS installed in accordance with existing §§ 75.323(d)(1)(ii) (Actions for excessive methane, Return air split alternative), 75.340(a)(1)(ii), or 75.340(a)(2)(ii) (Underground electrical installations), or 75.362(f) (On-shift examination). Proposed paragraph (c) also would apply to proposed §§ 75.350(b) or 75.350(c) (Belt air course ventilation). As recommended by the Advisory Committee, proposed paragraph (c)(1) would require that the AMS monitor and provide a signal at the designated surface location for any interruption of circuit continuity or any electrical malfunction of the system. Proposed paragraph (c)(1) would require the system to identify, at the designated surface location, the operating status of all sensors. As discussed previously, when an AMS is used, it is an integral part of the overall safety program for the mine. It is important that the AMS operator be aware of the status of the system. Without this knowledge, the AMS operator cannot appropriately respond to alert and alarm signals from the system. As such, it is imperative that it is in proper operating condition or that the operator know when it is not operating properly so that remedial measures can be started. By having a self-monitoring system, this information is more readily available and the operator can notify appropriate personnel.

Proposed paragraph (c)(2) would require that the AMS automatically provide an alert signal at the designated surface location that is distinguishable from an alarm signal, when the CO or methane concentration reaches the established alert level. The proposed rule requires that the AMS operator notify responsible persons. It is essential that this individual is immediately aware of the existence of an alert condition.

MSHA has developed a tiered response approach to address malfunction, alert, and alarm signals in order to require appropriate reaction by the AMS operator and miners. Malfunction and alert signals are addressed in a similar manner in this proposed rule. It is important to determine the cause of either the malfunction or alert signal and to correct it as soon as possible. The AMS operator must be able to tell, by sight or sound, if a signal is the result of a malfunction, alert, or alarm in order to respond correctly to the situation. Signals can be modified by assigning different tones or lights to the different signals so that the AMS operator can easily distinguish them in order to appropriately respond. Alarms on sections must be discernable by sight or sound by the miners so that appropriate actions outlined in the approved program of instruction can be started (§ 75.1502).

MSHA proposes paragraph (c)(3) to require signals that can be seen and heard by the AMS operator at the designated surface location when the CO, smoke, or methane concentration at any sensor reaches the alarm level as activated automatically at the designated surface location. This is consistent with the recommendation of the Advisory Committee. This proposed provision would require giving a visual and audible signal for any alarm condition, including CO, smoke, and methane. It also would trigger initiation of the actions specified in §§ 75.352(a)(2) and 75.352(a)(3).

By requiring notification at the surface location and underground, the proposed rule provides a degree of redundancy that will increase the likelihood of notification and speed up response to the alarm. MSHA has included this requirement in recent approved belt air petitions for modification and it has been successful in increasing the response to alarm signals.

In addition, proposed paragraph (c)(4) would require that the alarms be given at all affected working sections and areas where miners can see and hear the signals. The intent of this requirement is to assure that the AMS provides the required signals notifying miners of hazards. The Advisory Committee heard considerable testimony about problems associated with notifying persons on affected working sections during the Marianna mine fire. Consequently, the Advisory Committee recommended, and this proposed rule would require in paragraph (c)(4), that alarms be given at locations where they can be seen and heard by affected miners.

Proposed paragraph (c)(4) would also require that when methane alerts (1.0 %) and alarms (1.5%) are used that these signals be distinguishable from all other alert and alarm signals. Because elevated levels of methane may pose a significant explosion hazard, it is essential that miners are immediately aware that the alarm being given is the result of an elevated methane concentration.

Proposed paragraph (c)(5) would require that the AMS automatically provide an alarm signal that can be seen and heard by miners in other locations, such as underground shops and track maintenance locations, as specified in the approved program of instruction (§ 75.1502). Proposed paragraph (c)(6) would require that the AMS identify the operational status of all sensors at the designated surface location.

Proposed paragraph (d) would specify the location and installation requirements for AMS sensors. Proposed paragraph (d)(1) would require that AMS sensors be in the airstream they are intended to monitor to assure measurements are representative of the entry atmosphere. This provision ensures the positioning of sensors to detect a hazardous condition should it develop. For example, where an electrical installation is monitored to comply with §§ 75.340(a)(1)(ii) or 75.340(a)(2)(ii), the sensor should be positioned downwind in the airstream used to ventilate that installation. This is to provide the maximum potential for fire detection, since the products of combustion are going to follow the air current.

Proposed § 75.351(d)(2) would require installation of CO or smoke sensors near the center of the entry as near the roof as feasible in a location that would not expose personnel working on the system to unsafe conditions. This requirement is necessary to make certain that sensors are placed away from machinery, such as the conveyor belt itself, that could be a hazard to miners working on the AMS.

Proposed § 75.351(d)(2) specifies that operators not install sensors in abnormally high areas or in other locations where air flow patterns do not permit products of combustion to reach the sensors. This proposed requirement was developed based on work conducted by the former U.S. Bureau of Mines (USBM) and Agency experience with existing belt air petitions. This work has shown that during both smoldering and open combustion fires, the products of combustion stratify. The highest concentrations are found near the mine roof. Accordingly, the former USBM recommended installing sensors near the roof of the entry to take advantage of this stratification. Our experience shows that when operators do not properly position sensors, heatings or fires can go undetected or their detection can be delayed. For example, sensors that are positioned behind posts or equipment will not be exposed to the products of combustion contained in the air stream.

Proposed paragraph (d)(3) requires that methane sensors be installed near the center of the entry at least 12 inches from the roof, ribs, and floor. Existing § 75.351(b)(2) failed to specify the location of the sensor in relation to the roof, ribs, or floor. This proposed paragraph adds this requirement paralleling the requirement of § 75.323(a) for conducting methane tests. Section 75.323(d)(1)(ii) requires the use of an AMS when using the return air split alternative. The proposed rule also requires installation of methane sensors near the center of the entry in a location that would not expose personnel working on the system to unsafe conditions.

Proposed paragraph (e) specifies the locations along the belt entry where the operator must install sensors to monitor for CO or smoke. Paragraph (e)(1) requires a sensor at or near the working section tailpiece. This sensor is to monitor the belt and it is not intended to monitor the section tailpiece or feeder. The tailpiece area is visited frequently and a sensor hung over the loading point would be subject to being damaged. The sensor must be installed in the air stream ventilating the belt entry. In longwall mining systems using belt air to ventilate the working section, proposed paragraph (e)(1) requires that the sensor near the tailpiece be located in the belt entry at a distance of no more than 150 feet upwind from the mixing point where intake air is mixed with belt air at or near the tailpiece. This requirement would monitor the belt up to the point that intake air flows into the belt entry mixing with belt air. It is not intended to monitor the stage loader since the tailpiece is often attended by miners, therefore, miners would be in the area and aware of any sign of a fire.

Proposed paragraph (e)(2) requires that a sensor be located immediately upwind, a distance of no greater than 50 feet from the point where the belt air course is combined with another air course or splits into multiple air courses. This would require placing a CO or smoke sensor in the belt entry (*i.e.*, main belt entry) just before the air stream splits to ventilate another belt entry (*e.g.*, a panel belt). Also, if two belt air splits join, this paragraph would require a sensor in each air split immediately prior to joining. These sensors are required to promptly identify the location of a fire in either air split and would more precisely show the location or air split where the fire originated.

Proposed paragraph (e)(3) would require sensors to be installed at intervals not to exceed 1,000 feet along each belt entry in areas where air velocities are maintained at 50 feet per minute or higher. The 1,000-foot spacing is consistent with the Advisory Committee recommendation, Agency experience under the petition process, and research conducted by NIOSH and the former U.S. Bureau of Mines. Also, in areas where air velocities are maintained at less than 50 fpm, the sensor spacing must not exceed 350 feet. In areas where the air velocity in the belt entry is maintained at less than 50 fpm, the sensor spacing must be reduced to 350 feet.

Proposed paragraph (e)(4) requires a sensor be placed not more than 100 feet downwind of each belt drive unit, each tailpiece transfer point, and each belt take-up. If the belt drive, tailpiece, and/or take-up are installed together in the same air course they may be monitored with one sensor located not more than 100 feet downwind of the last component. This requirement is consistent with current petitions. It is intended to monitor the drive area, a potential fire source because of dust accumulations and electrical equipment.

Proposed paragraph (e)(5) would allow the district manager to require additional sensors as mine conditions warrant. As belt drive configurations often require altering the belt entry, additional sensors may be required in this area. Also, other areas may require additional monitoring due to unusual entry shape or air flow patterns. The location of additional sensors must be specified in the mine ventilation plan. The Advisory Committee recommended the installation of a CO sensor at the inby end of the section track if the belt and track are in separate entries of the same air course. However, we are proposing to allow the district manager flexibility in determining the appropriate location for placement of the sensors. Paragraph (e)(5) would allow the district manager to require additional sensors in any entry that is part of the belt air course.

Paragraph (f) specifies the location of sensors in the primary escapeway. If used to monitor the primary escapeway under § 75.350(b)(4), CO or smoke sensors would be located in the primary escapeway within 500 feet of the working section and within 500 feet inby the beginning of the panel. The point-feed sensor required by § 75.350(c)(1) may be used as the sensor at the beginning of the panel if it is located within 500 feet inby the beginning of the panel. Under this situation, only one sensor would be required to comply with both of the requirements.

Paragraph (g) specifies the location of sensors in return air splits. Proposed §§ 75.351(g)(1) and 75.351(g)(2) retain the requirements in existing §§ 75.351 (b)(1) and 75.351(b)(2) for monitoring return air splits using an AMS. Monitoring in returns where auxiliary fans are used is addressed in proposed § 75.351(g)(2). Proposed paragraph (g)(2) would require an AMS to monitor the mine atmosphere for percentage of methane at two locations. Proposed § 75.351(g)(2)(i) states that in the return air course opposite the section loading point, or, if exhausting auxiliary fan(s) and tubing are used, in the return air course no closer than 300 feet downwind from the fan exhaust and at a point opposite or immediately outby the section loading point. Proposed § 75.351(g)(2)(ii) would require that the mine atmosphere be monitored immediately upwind from the location where the split of air meets another split of air or immediately upwind of the location where the split of air is used to ventilate seals or worked-out areas. Placing methane sensors at these locations monitors the methane concentration near the beginning and the end of the immediate return. The AMS must provide an alarm when either sensor reaches 1.5 percent methane. This is the concentration specified in proposed § 75.351(i)(1) that corresponds to the methane action level specified in the existing § 75.323(d)(2) and provides adequate monitoring of the return.

Proposed § 75.351(h) retains the requirement of existing §§ 75.340(a)(1)(ii) and 75.340(a)(2)(ii). Existing § 75.351(c) addresses AMS monitoring of underground electrical

installations for the products of combustion. Under existing §§ 75.340(a)(1)(ii) and 75.340(a)(2)(ii), mine operators may choose to monitor transformer stations, battery charging stations, substations, rectifiers, and water pumps for CO or smoke instead of coursing the intake air ventilating the structure or area housing these installations into a return air course. Under this alternative, existing §§ 75.340(a)(1)(ii) and 75.340(a)(2)(ii) require at least one CO or smoke sensor to monitor the intake air ventilating the installation. The sensor must be located no greater than 50 feet downwind from the installation.

Paragraph (i) of the proposed rule establishes and standardizes specific alert and alarm settings for any AMS used in accordance with §§ 75.323(d)(1)(ii), 75.340(a)(1)(ii), 75.340(a)(2)(ii), 75.350(b), 75.350(c), or 75.362(f). The alert and alarm levels proposed are consistent with decision and orders issued by the Administration in recent petitions submitted by mine operators requesting a modification of the standard.

Proposed paragraph (i)(1) would require that when an AMS is used to monitor methane concentrations in return air splits to comply with § 75.323(d)(1)(ii), it gives an alarm when the methane reaches 1.5 percent and the actions specified in § 75.323(d)(2) must be taken. An alert level is not specified for methane sensors monitoring immediate return splits for § 75.323(d)(1)(ii). The return air split alternative provisions under § 75.323(d) only require action when the methane concentration is 1.5 percent or higher. Therefore, no alert is specified. The alarm would be given at the working section so personnel can start the actions required by existing § 75.323(d)(2).

Existing § 75.340(a) requires the ventilation of specified electrical installations with intake air and permits options allowing ventilation with intake air coursed into a return air course or to the surface and not used to ventilate working sections, or using intake air where an AMS is in operation. Some options require monitoring the air for CO or smoke. Proposed paragraph (i)(2) would require that when CO sensors are used to comply with existing §§ 75.340(a)(1)(ii) and 75.340(a)(2)(ii), and proposed §§ 75.350(b) and 75.350(c), they provide an alert signal at 5 ppm above the ambient level and alarm at 10 ppm above ambient CO level. The proposed requirement is the same as that currently required in existing § 75.351(a)(3)(i) for alert signals and § 75.351(a)(4) for alarms and is also consistent with recent requirements in granted petitions for modification. MSHA's past experience with petitions for modifications indicates that this requirement is protective of miner safety.

Proposed paragraph (i)(2) would also require that an AMS with smoke sensors alarm at a smoke optical density of 0.022 per meter. This is the same smoke optical density requirement in existing § 75.340(a)(1)(iii)(b) for smoke sensors monitoring noncombustible areas used to house electrical installations. However, the requirement for smoke sensors to provide an alarm at a smoke optical density of 0.022 per meter is a lower alarm threshold than the existing threshold of 0.05 per meter in existing § 75.351(a)(4). We explained this difference in the preamble to the final rule on safety standards for underground coal mine ventilation (61 FR 9764, 9786–87, March 11, 1996). We reprint the text of this explanation here for the convenience of the reader.

> In § 75.340 (a)(1)(iii)(B) of the proposal and the preamble discussion on page 26371 [of Volume 59 of the **Federal Register**, May 19, 1994], MSHA refers to the optical density of smoke of 0.05 per meter to characterize the sensitivity of smoke detectors. As discussed in MSHA's opening statement to the ventilation rulemaking hearings, the value used for the optical density of smoke is based on information provided from the former USBM. MSHA pointed out that based on comments received from the former USBM, this number is incorrect and should be divided by 2.303 to conform to the internationally accepted term of optical density. No commenter took issue with this point. MSHA has made the correction in the final rule. One commenter suggested that optical densities be increased and based on an ambient to account for background dust. In contrast, another commenter suggested that the specified optical density should be reduced by half. MSHA has found insufficient justification to adopt either of these suggestions and believes that the specified 0.05, corrected to 0.022 based on comments from the former USBM, is the appropriate level for optical density used in § 75.340. Existing § 75.351 Atmospheric monitoring system (AMS), uses a level for optical density of smoke of 0.05 per meter. MSHA recognizes that the level in § 75.351 should also be corrected. MSHA intends to correct the level for optical density used in § 75.351 in a future rulemaking. In the meantime, MSHA will use an optical density of 0.022 per meter for purposes of § 75.340. This rulemaking therefore proposes to lower the optical density to the proper level of 0.022 per meter when fire detection relies on smoke sensors.

For proposed § 75.351, we have standardized the alert and alarm levels from those required by some petitions to provide a more practical approach to setting alert and alarm levels. Proposed paragraph (i)(2) would require an alert signal at 5 ppm and alarm at 10 ppm CO above the ambient level based on former BOM research, Agency experience with petitions, and the Advisory Committee recommendation. These proposed levels will provide early-warning capability. The Advisory Committee recommended that alert and alarm levels for mines using belt air to ventilate a working place "should not exceed 5 ppm and 10 ppm above ambient, respectively." When smoke sensors are used, the alarm would be provided at a smoke optical density of 0.022 per meter.

The Advisory Committee also recommended that the "District Manager may establish lower alert and alarm levels for AMS based on the sensor type and sensitivity, sensor spacing, air flow, cross-sectional area, and local mining conditions." Proposed paragraph (i)(2) follows this recommendation by the Advisory Committee providing the flexibility to lower alert and alarm levels for a high air volume in the belt air course. Levels below 5 ppm and 10 ppm may be necessary when large air quantities dilute the CO in the air course. Some fire detection research set alert and alarm levels based upon air velocity, cross-sectional area, and CO generation rates from smoldering and burning fuel sources. This research was presented as nomographs used to set CO sensor settings for different sensor spacings using air velocity and entry area parameters. Tables were derived in an attempt to simplify the application of research data because the nomographs were difficult to use. Because of overlap in the tables, conflicting determinations for alert and alarm settings occurred. Though the tables provided a simpler method for reducing alert and alarm settings based on increased air flow quantities and cross-sectional areas, they have not always been easy to use because of variations in entry configuration and air velocity in an air course. MSHA believes the ventilation plan offers the best tool to handle special circumstances, such as when lower alert and alarm levels are needed due to increased air volume. We solicit comments on this simplified approach.

During the discussion on the Advisory Committee Recommendation Number 11, a suggestion was made that

provisions should be provided for permitting CO alert and alarm levels greater than 5 and 10 ppm. One member of the Advisory Committee suggested that there may be times when the 5 and 10 ppm levels are not "practical," such as in mines using diesel-powered equipment which tend to have higher levels of CO in the air from the combustion of diesel fuel. Diesel-discriminating sensors have proven to be effective in reducing the frequency of false alert and alarm signals which are not the result of fire, but which are due to diesel exhaust. These sensors can allow operators to improve fire detection capabilities by lowering alert and alarm levels. Therefore, MSHA is proposing to limit CO alert and alarm levels to 5 and 10 ppm above ambient, respectively.

The proposed rule, consistent with the Advisory Committee recommendation, does not provide for approving alert and alarm levels for CO sensors installed in accordance with § 75.350(b)(1) greater than 5 and 10 ppm above the ambient level, respectively. This flexibility is not needed because the specified alert and alarm levels are above the ambient level, and because the proposed rule permits the use of time delays or other techniques to reduce non-fire related alert and alarm signals. Although one member of the Advisory Committee believed that higher alert and alarm levels may be more "practical," we do not believe that they provide the protection that is necessary to protect miners by giving them early warning in the case of a fire.

Proposed paragraph (i)(3) would establish alert and alarm levels when an AMS is used to conduct methane tests required by § 75.362(f). It would require the AMS to provide an alert signal at no more than 1.0 percent and an alarm at no more than 1.5 percent methane. This is consistent with the action levels stipulated under existing §§ 75.323(c)(1) and 75.323(c)(2) for methane in the immediate return. Since § 75.323(c) requires specific actions at these concentrations, personnel will receive timely notification with these alert and alarm levels. The proposed rule does not preclude the mine operator from using alert and alarm levels that are lower than those required by the proposed rule.

Proposed § 75.351(j)—Establishing CO ambient levels, would require that CO ambient levels and the means to determine these levels must be approved in the mine ventilation plan (§ 75.371(hh)) for sensors installed in accordance with §§ 75.340(a)(1)(ii), 75.340(a)(2)(ii), 75.350(b), and 75.350(c). In order for an AMS with CO sensors to be effective, the ambient level must represent conditions over a broad range of mining activities. We recognize that the ambient level in the mine may vary because of mining conditions and activities. Since mining activities vary from mine to mine, we believe the mine ventilation plan is the most effective tool to set the ambient level. Therefore, the Agency chooses to continue the requirements contained in the petitions for modifications that the ambient level, and the method for determining the ambient level, be specified and approved in the mine ventilation plan. This provides flexibility by allowing more than one ambient level within the mine, and allowing the operator to reestablish ambient levels for some areas. Any changes in the ambient level(s) must be specified and approved in the mine ventilation plan. This is consistent with the existing rule at § 75.371(hh). Further information concerning the setting of an ambient level can be found in the discussion for the definition of CO ambient level.

Proposed paragraph (k) would require an AMS used to comply with §§ 75.323(d)(1)(ii), 340(a)(1)(ii), 340(a)(2)(ii), 75.350(b), 75.350(c), or 75.362(f) be installed and maintained by properly trained personnel. It also requires that the system be maintained in proper operating condition. The Advisory Committee recognized, and we agree, that proper functioning of an AMS is directly related to the quality of the maintenance provided. The Advisory Committee identified and recommended requiring specific skills training for maintenance personnel, such as system operation, calibration, troubleshooting, and system repairs. In paragraph (k) we have proposed that trained personnel perform the maintenance. Although we are not proposing a requirement for a specific training plan for maintenance personnel, as we explained earlier in this preamble, this training would be conducted under existing training programs.

Proposed § 75.351(l) specifies that sensors must be listed and installed in accordance with the recommendations of nationally recognized testing laboratories (NRTLs) approved by the Secretary or be of a type and installed in a manner approved by the Secretary under the procedures outlined in our Program Policy Manual, Volume V for parts 75.1101–5 through 75.1103–5. This volume of MSHA's Program Policy Manual can be found at *http://www.msha.gov/REGS/COMPLIAN/PPM/PMVOL5J.HTM#123. See Section III.* Background for further discussion on using accuracy and performance requirements instead of proposing an approval schedule. Proposed paragraph (l) provides the requirements for CO, smoke, and methane sensors. This section is based on the existing § 75.1103–2(a) which requires components of automatic fire sensor systems in belt entries to be of a type and installed in a manner approved by the Secretary. Alternatively, the components are required to be of a type listed, and installed in accordance with the recommendations of a nationally recognized testing laboratory approved by the Secretary. This proposed rule merely expands the requirement to include methane sensors. The provision for approval by the Secretary is expected to be used for new technology, as MSHA does not have approval standards for these types of sensors. It is expected that NRTL approval of sensors will be the most prevalent vehicle for acceptance of the sensors. The NRTLs are expected to utilize American National Standards when approving or listing the sensors. A review of the standards shows that ANSI/ISA92.01 covers CO sensors; ANSI/ISA12.13 covers combustible gas detectors, including methane sensors; and ANSI/UL 268 covers smoke sensors. It is anticipated that the sensors will be compared to these standards by the NRTLs.

Paragraph (m) of the proposed rule would permit the use of reasonable time delays for preventing the alert or alarm signals from being triggered when the AMS detects non-fire produced CO. The Advisory Committee pointed out a need for reducing the number of non-fire signals to enhance miner confidence in the AMS. They suggested the use of time delays or other computer techniques to reduce the number of alert and alarm signals. MSHA has approved ventilation plans that have included time delays of up to 3 minutes. This practice is consistent with recent petitions and has effectively reduced the number of non-fire produced alert and alarm signals.

We are proposing that the use and length of the time delay be approved in the mine ventilation plan submitted under existing § 75.370. Before approval in the mine ventilation plan, a demonstrated need for time delays must be documented. The total time delay for any given sensor may not exceed three minutes. Agency experience showed this time to be the maximum delay necessary to eliminate diesel-powered generated alert and alarm signals. Consistent with the Advisory Committee report, the proposed rule also would permit other computer or administrative techniques (such as

wave-cross trending, limiting vehicular traffic, and pre-notification of actions that could produce CO to be conducted underground) for reducing the number of non-fire produced alert or alarm signals provided they are approved in the mine ventilation plan. The use of reasonable time delays and other approaches, such as diesel-discriminating sensors have been successful in reducing the number of alert and alarm signals from CO that are not a result of a fire or heating.

We do not consider the use of time delays or other computer or administrative techniques as a replacement for the proper installation and maintenance of the AMS. For example, alert and alarm signals that are the result of short duration spikes caused by radio frequency interference could be eliminated by using shielded cable. Also, if higher levels of CO result from improperly maintained diesel-powered equipment, we would expect correction of this condition per existing regulations before considering approval of a time delay.

Proposed paragraph (n) deals with the examination, testing, and calibration of sensors used as part of an AMS, and is consistent with the Advisory Committee recommendations.

The Advisory Committee recommended that sensors should be visually examined each coal producing shift. Under paragraph (n)(1) at least once each shift when belts are operated as part of a production shift, mine operators would have to visually examine CO or smoke sensors and alarms installed in accordance with § 75.350(b). We are aware of instances where operators have placed sensors in improper locations following belt moves or sensors have been damaged by roof falls or equipment. Sometimes these conditions have gone undetected. Since § 75.362(b) already requires an examination for hazardous conditions in the belt entry once each shift that the belt operates, the sensor examinations could coincide with the on-shift inspection. Paragraph (n)(1) adds the requirement that the sensors be visually examined. It is anticipated that generally this will not cause any additional time to be spent doing the on-shift belt examination. By requiring that sensors and alarms are examined visually each shift, we believe that inoperable or inappropriately placed sensors can be detected and corrected in a timely manner. Under existing § 75.363 a certified person must make a record of misplaced or damaged sensors. This provision would continue to be in effect.

Proposed paragraph (n)(2) would require testing of alarms for operation at least once every seven (7) days for an AMS installed in accordance with §§ 75.350(b) or 75.350(c). Testing of alarms is critical to assure that they will operate properly when needed. The testing method is dependent upon the type of alarm installed.

Paragraph (n)(3) would require the calibration of sensors that are part of an AMS installed in accordance with §§ 75.340(a)(1)(ii), 75.340(a)(2)(ii), 75.350(b), or 75.350(c) at least every 31 days. Paragraph (n)(3)(i) would require proper calibration of CO sensors with a known concentration of CO in air sufficient to activate the alarm. Paragraph (n)(3)(ii) also would require that smoke sensors be functionally tested according to the manufacturer's specifications. The nature of the functional test would be to subject the sensor to one of the following methods: "(1) Calibrated test method, (2) Manufacturer's calibrated sensitivity test instrument, (3) Listed control equipment arranged for the purpose, (4) Smoke detector/control unit arrangement whereby the detector causes a signal at the control unit where its sensitivity is outside its listed sensitivity range, [and] (5) Other calibrated sensitivity test methods approved by the authority having jurisdiction to assure that the sensor responds properly" (NFPA 72).

It has been our experience, and is consistent with manufacturers' recommendations, that the calibration schedule proposed is sufficient to assure proper operation. However, proposed § 75.351(k) requires that AMSs be maintained in proper operating condition. Therefore, if experience at an individual mine indicates that more frequent calibration is necessary to maintain proper operating condition, the operator must calibrate the sensor at an interval sufficient to assure that the performance required by the proposed rule is maintained. In addition, each methane sensor installed in accordance with §§ 75.323(d)(1)(ii) or 75.362(f) must be calibrated in accordance with the manufacturer's calibration specifications as in paragraph (n)(iii). Calibration must be done with a known concentration of methane in air sufficient to activate the alarm.

Paragraph (n)(4) would require certification of the accuracy of calibration gases as directly traceable to National Institute of Standards and Technology (NIST) standards. Alternatively, paragraph (n)(4) would permit traceability to an analytical standard prepared in a method traceable to NIST. This paragraph is necessary since the accuracy of the calibration gas has a direct bearing on the accuracy and functional performance of the sensor. According to NIST, traceability is "* * *the property of the result of a measurement or the value of a standard whereby it can be related to stated references, usually national or international standards, through an unbroken chain of comparisons all having stated uncertainties." The NIST standard is a physical standard: "Only measurement results and values of standards are traceable. To support a claim (of traceability), the provider of a measurement result or value of a standard must document the measurement process or system used to establish the claim and provide a description of the chain of comparisons that were used to establish a connection to a particular stated reference. All of the information regarding traceability to NIST is available on-line at *http://www.nist.gov/traceability*.

Paragraph (o), consistent with an Advisory Committee recommendation, would require certain records to be maintained when an AMS is used to comply with §§ 75.323(d)(1)(ii), 75.340(a)(1)(ii), 75.340(a)(2)(ii), 75.350(b), 75.350(c), or 75.362(f). Records of the type proposed provide a history of system performance and mine operator response. They are considered essential to the operation of an effective system and can be invaluable in determining sources of recurring alert and alarm signals and system malfunctions.

Proposed § 75.351(o)(1) would require that the responsible person designated by the operator maintain the following records: record of alert and alarm signals, record of malfunctions and corrective actions, record of seven day test of alert and alarm signals, calibrations, and maintenance performed on the AMS. The responsible person would create these records at the end of the shift as these situations occur. Paragraph (o)(1)(i) would require that a record be kept of all alert and alarm signal activations. The required record would include the date, time, location and type of sensor, and the cause of the activation. Proposed paragraph (o)(1)(ii) would require a record to be made of all AMS malfunctions. This record would contain the date, extent, and cause of the malfunction. It would also include the corrective action taken to return the system to proper operation. As specified by this section, the records required by paragraphs (o)(1)(i) and (ii) would be made by the responsible person.

Proposed paragraph (o)(1)(iii) would require that a record also be maintained

of the weekly test of alert and alarm signals, calibrations, and maintenance of the system. Unlike the records required by paragraphs (o)(1)(i) and (ii), the records required by paragraph (o)(1)(iii) would be made by the person(s) doing the test, calibration, or maintenance. These individuals have firsthand knowledge of how the sensors performed during their calibration and testing and any maintenance required.

Proposed paragraph (o)(2) would require the person entering the record to include their name, title, date, and signature. These records are necessary because they will document the test, calibration, and maintenance history of the AMS and will provide the operator with an overall perspective of how the AMS is operating.

Consistent with other requirements of this subpart, proposed paragraph (o)(3) would require that all records required by this section be maintained in a secure book that is not susceptible to alteration or electronically in a computer system that is secure and not susceptible to alteration. This section requires that these records be maintained separately from any other record and be easily identifiable by a title, such as the "AMS log."

Proposed paragraph (p) would require all records to be maintained for one year at a surface location at the mine and made would be made available for inspection by miners and authorized representatives of the Secretary. Proposed paragraphs (o) and (p) are consistent with the Advisory Committee recommendations, existing regulations, and recent petitions. This proposed section is intended to assure that these records are maintained and made available, and that the appropriate level of mine management is made aware of conditions or problems requiring attention. The proposed rule also would help to assure the integrity of records and enable mine management to review the quality of the examinations. Consistent with existing standards in this part, we intend the term "secure and not susceptible to alteration" when applied to electronic storage to mean that the stored record cannot be modified. One example of acceptable electronic storage would be a "write once, read many" file.

Proposed paragraph (q) would require that all AMS operators be trained annually in the proper operation of the AMS. MSHA believes that the training program for an AMS operator should address at least two topics. These include:

1. The hardware and software operation of the system, and

2. Provisions and requirements of the ventilation plan, fire fighting and evacuation plan, and the requirements of this rule.

The hardware training should at least include the following subjects:

1. A complete AMS overview, including orientation with the central computer system and its components, the data highway, outstations, and sensors.

2. Common system problems and diagnostic tools, as well as any special features of the system.

The software operation training should include at least the following subjects:

1. Basic computer operating systems, such as MS–DOS or Windows.

2. CMOS setup, board(s), jumper and address settings, directory and file allocation, program start-up, logging in/out of system, system shutdown and other AMS software functions.

3. Printing, editing sensor points, setting communication parameters, creating reports, and device controls.

4. Special features of the system, such as networking, graphics editing, and database management.

And, finally, AMS operators would need to be trained on the following issues:

1. The provisions and requirements of the ventilation plan, fire fighting and evacuation plan, and

2. The requirements of this rule.

A record of the content of training, the person conducting the training, and the date the training was conducted, would have to be maintained at the mine by the mine operator. This record would have to be maintained for at least one year. This training would assure that the AMS operator maintains proficiency in the operation of the AMS and the understanding of his/her responsibility under this rule.

Proposed paragraph (r) would require that when an AMS is used to comply with § 75.350(b), a two-way voice communication system, as required by § 75.351(b)(1), must be installed in a separate entry than the AMS. The ability to communicate is essential during emergency situations, such as a fire. Therefore, it is critical that at least one line of communication remain intact. In the event of a roof fall, fire, or other event in one entry that could damage either the AMS or the two-way voice communication, it is more likely that one of these systems will remain functional when installed in an alternate entry, thus providing an additional measure of protection.

Section 75.352 Actions in Response to AMS Malfunction, Alert, or Alarm Signals

The designated AMS operator or other designated person referred to in § 75.352(a) must be clearly identified by name or title and the name or title must be posted at the mine. Paragraph (a) of proposed § 75.352 sets out the actions to be followed when any malfunction, alert, or alarm signal is received from a CO, smoke, or an equivalent sensor installed in accordance with §§ 75.340(a)(1)(ii), 75.340(a)(2)(ii), 75.350(b), or 75.350(c). These actions are required unless the cause of the alert or alarm signal is known not to be a hazard to the miners. If the cause of the alert or alarm signal is known not to represent a hazard, such as sensor calibration, or cutting and welding, the proposed rule would not require notification of affected workers. However, we would still require a record of these events under proposed § 75.351(o).

The Advisory Committee recommended the automatic activation of signals on the working section when the CO concentration reaches the alert level. However, we believe that automatic activation of signals on the working section at alert levels could potentially inhibit the system's effectiveness if a "cry wolf" syndrome develops. Therefore, we have not included this requirement in this proposed rule. This is consistent with recent belt air petition requirements. Under this condition, a miner receiving an alert signal from an AMS that later is determined not to represent a hazard may lose confidence in the system and become desensitized to alarms. Such a situation reduces a miner's confidence in the AMS and may reduce the importance of an alarm to the worker. We believe that the procedures outlined in proposed § 75.352(a)(1) would provide the early warning intended under an alert or malfunction condition. Proposed § 75.352(a)(1) would require that when the alert level is reached or a malfunction occurs, the sensor involved is identified, appropriate personnel are notified, and an examination is immediately begun to find the cause of the alert or malfunction signal.

Proposed paragraph (a)(2) would require that when an alarm level is reached, appropriate personnel need to be notified, including miners in affected working sections, in areas where mechanized mining equipment is being installed or removed, and in other locations specified in the approved program of instruction as set forth in

§ 75.1502. MSHA expects the program of instruction (mine emergency and firefighting plan) will be modified to reflect the actions required § 75.352.

Proposed paragraph (b) would require that when contaminant concentration levels for any CO, smoke, or equivalent sensor installed in accordance with §§ 75.340(a)(1)(ii), 75.340(a)(2)(ii), 75.350(b), or 75.350(c) exceeds the specified alert or alarm level, the following procedures would have to be followed unless the cause of the alert or alarm signal is known not to be a hazard to the miners:

Under proposed paragraph (b)(1), when an alert signal is given, the sensor activated would have to be identified and an examination would have to begin immediately to determine the cause of the alert signal.

Under proposed paragraph (b)(2), when an alarm is given, the sensor that is activated would have to be identified, and the mine emergency evacuation and firefighting procedures initiated as required by the approved program of instruction (§ 75.1502). At a minimum, all personnel in the affected area, unless assigned other duties in the approved program of instruction (§ 75.1502), would have to be promptly evacuated outby the next functioning sensor upwind of the alarming sensor.

In developing this proposed rule, we have attempted to assure that the AMS used represents the state-of-the-art in monitoring. However, no matter how effective the monitoring system is, the safety of those miners affected by the event causing the alert or alarm signal is related to their reaction to the alert or alarm signal. We intend proposed paragraphs (b)(1) through (b)(2) to assure that the mine operator acts to protect the affected miners when an AMS activates an alert or alarm signal.

Paragraph (c) of proposed § 75.352 addresses the action required in case of an alarm from a methane sensor. These would include methane sensors installed in accordance with §§ 75.323(d)(1)(ii) and 75.362(f). The specific actions required by the proposed rule would include identification of the sensor that is causing the alarm and an investigation into the cause of the alarm. This action must also be consistent with the requirements of existing §§ 75.323(c) and § 75.323(d).

Proposed § 75.352(d) addresses the actions required if any fire detection component of the AMS malfunctions or is inoperative. The proposed rule would require the operator to take immediate action to return the system to proper operation. It is our intention that the belt would not operate if all or part of an AMS installed in accordance with §§ 75.350(b) or 75.350(c) becomes inoperative unless the actions specified in paragraph (d) are taken. The proposed standard is consistent with the Advisory Committee recommendation and with recent petitions that permit the use of belt air to ventilate working places.

Paragraph (d)(1) would cover those instances when one sensor becomes inoperative. Under this condition, we would require the operator to station a person trained in the use of hand-held devices to continually monitor for CO or smoke near the inoperative sensor.

This action is consistent with current requirements in granted petitions and gives the mine operator needed information on the atmosphere at the location of the inoperative sensor.

Paragraph (d)(2) specifies the monitoring that would be required if two or more adjacent AMS sensors become inoperative. Under the proposed rule, a sufficient number of trained persons would be required to patrol and continuously monitor the area affected so that the area is traveled each hour in its entirety. As an alternative under (d)(2), the operator could station a trained person near each inoperative sensor to continuously monitor CO or smoke.

These actions are consistent with current requirements in granted petitions and give the mine operator needed information on the atmosphere at the locations of the inoperative sensors.

Proposed paragraph (d)(3) would specify actions required if the complete system becomes inoperative. When determining what is complete system failure, we do not mean that every component of the system does not function. It is intended that this paragraph of the proposed rule would apply when part of the system is inoperative to render the system incapable of performing its intended function. For example, if a break in the data transmission line occurs that does not permit sensors to communicate with the central processing unit (CPU) on the surface or if the CPU itself becomes inoperative although all underground components continue to operate, the entire system should be considered inoperative. When the entire system becomes inoperative, paragraph (d)(3) would require the mine operator to take immediate action to have trained persons patrol and continuously monitor for CO or smoke so that the affected belt entry(ies) is traveled each hour in its entirety. This means, as an example, that the affected area is traveled in its entirety between 1 pm and 2 pm and then traveled again in its entirety between 2 pm and 3 pm, and so on.

When monitoring is conducted during times of system or sensor malfunction, the person doing the monitoring must be qualified to make these tests. As specified in (d)(4), the person would have communication available with the designated surface location or communication available at intervals not to exceed 2,000 feet. This could be a mine phone, telephone, trolley phone, or radio location. Easily accessible communication is necessary to ensure quick notification to the designated surface location when an alert or alarm level is reached.

Paragraph (d)(5) would require the trained persons monitoring under this section to report the concentrations detected at the affected AMS sensor(s) at intervals not to exceed an hour. This action gives the mine operator needed information on the atmosphere at the locations of the affected sensors. It also requires that the person monitoring under this part immediately report levels of contaminants reaching the specified alert and alarm levels unless the cause of the contaminant is known not to represent a hazard. In addition, for mines using a time delay, persons monitoring under this section would be expected to report the concentrations immediately following the expiration of the applicable time delay.

Paragraph (d)(6) would require that instruments used to comply with this paragraph have a level of detectability comparable to those required for AMS sensors by proposed § 75.351(l). Hand-held methane and CO detectors are commercially available. Some AMS sensors do not have commercially available hand-held counterparts, so that an alternate instrument would be needed as proposed in (d)(7). For example, smoke sensors which malfunction will require monitoring with an alternate sensor, perhaps a hand-held CO detector, with alert and alarm levels to be specified and approved in the mine ventilation plan.

Paragraph (e) requires that if the 50-fpm minimum air velocity is not maintained in the belt entry as required in proposed § 75.351(e)(3), immediate action must be taken to return the ventilation system to proper operation. It also requires that while the 50-fpm air velocity is not maintained, trained persons must patrol and continuously monitor for CO or smoke as set forth in § 75.352(d) so that the affected belt entry(ies) is traveled each hour in its entirety. As discussed previously, contaminants must reach the sensors in order to be detected. Less than a 50-fpm

velocity with 1,000-foot sensor spacing is considered a system failure because air currents will not carry sufficient amount of contaminants to the sensors for detection. This is considered a system failure since the system is not able to provide adequate warning.

Section 75.371 Mine ventilation plan, contents.

Section 75.371 sets forth the information that the mine operator must include in the mine ventilation plan. The mine ventilation plan is mine specific and is designed to permit safe and healthful operation of the mine by ensuring that ventilation is sufficient to dilute and render harmless hazardous components of mine air such as carbon monoxide and methane, and provide necessary levels of oxygen to the mine working environment.

We are proposing to add six requirements to the mine ventilation plan. These new paragraphs, §§ 75.371(ii) through (nn), would require certain information to be specified and approved. Under the proposed rule, the existing paragraphs (ii) through (nn) would be redesignated as (oo) through (vv).

Existing § 75.371(hh) requires that the mine ventilation plan specify the ambient level in parts per million of CO, and the method for determining the ambient level. The proposed rule, § 75.351(j), does not change this requirement.

Proposed paragraph (ii), in accordance with proposed § 75.350(b)(3), requires the locations (designated areas) where dust measurements would be made in the belt entry when belt air is used to ventilate working sections and setup or removal areas. As discussed under proposed § 75.350(b)(3), the Advisory Committee determined that multiple designated areas should be established for mines using belt air to ventilate working places.

Proposed paragraph (jj), in accordance with § 75.350(c)(5), requires the location of all point-feed regulators be indicated in the mine ventilation plan to control the number and location of point-feed regulators.

Proposed paragraph (kk), in accordance with § 75.351(e)(5), requires the location of any additional CO or smoke sensor required by the district manager. Proposed §§ 75.351(e)(1) through (e)(4) specify the required locations where sensors monitor CO or smoke along belts. We recognize instances may occur when additional sensors are necessary to provide the desired level of protection. In those cases, proposed § 75.351(e)(5) would require that these locations be specified and approved in the mine ventilation plan. We do not intend that every mine ventilation plan would require additional sensors to be specified. Only in those cases when additional sensors are necessary would the mine ventilation plan contain this information.

Proposed paragraph (ll), in accordance with § 75.351(m), requires the length of time delays or other methods (a sophisticated algorithm similar to that employed by the diesel discriminator, human intervention, controlling or limiting diesel equipment operation) used to reduce the number of non-fire related alert and alarm signals from the AMS. Proposed § 75.351(m) requires that the length of the delays be specified and approved in the mine ventilation plan. Proposed § 75.351(m) also requires that computer techniques or administrative controls used to reduce the number of non-fire alert and alarm signals be approved in the mine ventilation plan. As discussed under proposed § 75.351(m) the use of reasonable time delays and other computer techniques have been successful in reducing the number of non-fire alert and alarm signals. However, because these techniques should be used only when necessary (when nuisance alarms are excessive) and should delay the activation of alert and alarm signals for the shortest time possible, they should be specified and approved in the mine ventilation plan.

Proposed paragraph (mm), in accordance with § 75.351(i)(2), requires that when lower alert and alarm settings for CO sensors are required by the district manager they be specified in the mine ventilation plan.

Proposed paragraph (nn), in accordance with § 75.352(d)(7), requires that non-AMS sensors (the alternate detectors) be approved in the ventilation plan if it can be used to monitor the belt entry in the case of an AMS malfunction. This provision would permit the use of a CO detector to monitor a belt entry equipped with smoke sensors. Such a CO detector would be used if it meets the levels of detectability that would be expected if it were used in place of an AMS with CO sensors.

Section 75.372 Mine ventilation map.

Existing § 75.372 (b)(16) requires that the location of all AMS sensors be shown on the ventilation map. Under the proposed rule this requirement would be modified to require that the type of sensor also be shown on the ventilation map. With the anticipated increased usage of sensors other than CO sensors, it is important that persons who may be called upon to respond to alert and alarm signals have information available that tells them both the type and location of these sensors.

Section 75.380(g) Escapeway; bituminous and lignite mines.

Proposed paragraph (g) of § 75.380 would require that the primary escapeway be separated from belt and trolley haulage entries for its entire length, to and including the first connecting crosscut outby each loading point except when a greater or lesser distance for this separation is specified and approved in the mine ventilation plan and does not pose a hazard to miners. This modification to existing § 75.380(g) allows point-feed regulators to be installed and monitored when additional intake air is required in the belt air course according to proposed § 75.350(c). Exceptions to this proposed provision include where separation of belt and trolley haulage entries from designated escapeways did not exist before November 15, 1992, and as provided in § 75.350(c).

V. Paperwork Reduction Act

This proposed rule contains information collection requirements in various provisions. The PREA is located on our website at *http://www.msha.gov/REGSINFO.HTM*. These proposed paperwork requirements are under OMB Control Numbers 1219–0065, 1219–0067, 1219–0073, and 1219–0088 and have been submitted to the Office of Management and Budget (OMB) for review under 44 U.S.C. 3504(h) of the Paperwork Reduction Act of 1995, as amended. Comments on the proposed paperwork provisions should be sent to both the Office of Information and Regulatory Affairs of OMB and to MSHA. Comments sent to OMB should be sent to the Attention of the Desk Officer for the Mine Safety and Health Administration. Comments sent to MSHA should be sent to the Office of Standards, Regulations, and Variances. Addresses for both offices can be found in the **ADDRESSES** section of this preamble.

MSHA estimates that the proposed rule would create 18,609 burden hours for the first year, 19,170 burden hours for the second year, and 19,999 burden hours for the third year, for a total of 57,776 burden hours for Years 1 through 3 combined. This is associated with an annualized value of 19,520 hours per year and related annualized costs of $973,313 per year.

On a per-mine basis, MSHA estimates the same paperwork burdens for both new and existing mines that use belt air.

However, MSHA estimates that as time goes by a greater proportion of new coal mines using three or more entries will choose to use belt air. This means that the number of mines using belt air will increase over time. This greater number of mines using belt air will increase the total burden hours and paperwork cost over time. Hence, second year hours and costs are greater than first year hours and costs, and third year hours and costs are greater than second year hours and costs.

The paperwork burden is summarized by total annualized burden hours by proposed provision (Table 4) and by total annualized burden costs by proposed provision (Table 5).

Numerous provisions would require action to modify the mine ventilation plan. Proposed paragraph 75.351(j) would require modification of the mine ventilation plan to include ambient CO levels and the means used to determine them. Proposed paragraph 75.351(m) would require that the mine ventilation plan be modified to show the use and length of time-delays of any non-fire related CO sensor signals. Proposed paragraphs 75.371(ll), 75.371(mm), and 75.371(nn) would require modification of the mine ventilation plan to show the length of the time delay or any other method used for reducing the number of non-fire related alert and alarm signals from CO sensors, the lower alert and alarm setting for CO sensors, and the alternate instrument and the alert and alarm levels associated with the instrument, respectively. This proposed rule would also have an impact on existing paperwork requirements in 75.371(hh) on the ambient level in parts per million of CO, and the method for determining the ambient level, in all areas where CO sensors are installed.

Proposed paragraph 75.351(n)(1) would require sensors used to detect CO or smoke be visually examined at least once each shift, when belts are operated as part of a production shift. If hazardous conditions are found during the visual exam, then a log of such conditions must be filed under existing § 75.363(b)—Hazardous conditions; posting, correcting and recording. Proposed paragraphs 75.351(n)(2) and 75.351(n)(3) would require that a log be kept of every seven day alarm test and every 31-day CO, smoke, or methane sensor calibration, respectively.

Proposed paragraph 75.351(o)(1)(i) would require that a record be made if the AMS emits an alert or alarm signal. The record would consist of the date, time, location and type of sensor, and the reason for its activation. Proposed paragraph (o)(1)(ii) would require that, if a malfunction in the system occurs, a record be made of the malfunction and the corrective action to return the system to proper operating condition. We (MSHA) believe that such records would be useful to the miner, the mine operator, and the Agency in determining areas of recurring problems. This would aid in ensuring proper operation of AMS.

Proposed paragraph (o)(1)(iii) would require that the persons doing the weekly test of alert and alarm signals, the monthly calibration, or maintenance of the system make a record of these tests, calibrations, or maintenance. Proposed paragraph § 75.351(o)(3) would require that all records concerning the AMS be kept in a book or electronically in a computer system, that would be secure and not susceptible to alteration. Proposed paragraph 75.351(p) would require the mine operator to keep these records for at least one year at a surface location and to make them available for inspection by authorized representatives of the Secretary and representatives of miners.

Proposed paragraph 75.351(q) would require that AMS operators receive training annually and that a record of this training be kept. The record of training would include the content of training, the person conducting the training, and the date the training was conducted. The record would need to be maintained at the mine site by the mine operator for at least one year.

Proposed paragraphs 75.352(a) and 75.352(b) would require the designated AMS operator or other designated responsible person to take actions promptly when malfunction, alert, or alarm signals are received. These proposed requirements are parallel to those of § 75.351(o).

TABLE 4.—TOTAL BURDEN HOURS OF PROPOSED RULE

[Summary of all burden hours, by mine size and by provision]

Provision	Annualized burden hours [1]				
	Mines with 1–19 employees	Mines with 20–99 employees	Mines with 100–500 employees	Mines with over 500 employees	Total annual burden hours
§ 75.350(b), implied impact on existing §§ 44.9, 44.10, and 44.11	(59.51)	(161.07)	(125.20)	(8.58)	(354.35)
§§ 75.351(j)	16.81	43.55	29.71	1.82	91.88
§ 75.351(j), implied impact on existing § 75.371(hh)	0.53	1.36	0.93	0.06	2.87
§§ 75.351(m)	0.75	8.93	15.63	1.45	26.76
§§ 75.351(n)(1), implied impact on existing § 75.363(b)	1.96	5.16	8.72	1.20	17.03
§§ 75.351(n)(2)	190.73	1,005.54	1,700.55	156.00	3,052.82
§§ 75.351(n)(3)	220.07	2,320.48	7,848.70	900.00	11,289.25
§§ 75.351(o)(1)(i) & (ii)	9.74	163.68	876.52	135.15	1,185.09
§§ 75.351(o)(1)(iii)	32.28	273.30	811.03	90.40	1,207.01
§§ 75.351(q)	135.71	512.44	752.17	63.75	1,464.07
§§ 75.352(a) & (b)	61.62	397.99	975.91	100.75	1,536.27
§§ 75.371(ll)	0.02	0.28	0.49	0.05	0.84
§§ 75.371(mm)	0.05	0.14	0.09	0.01	0.29
§§ 75.371(nn)	0.11	0.27	0.19	0.01	0.57
Total	610.86	4,572.03	12,895.44	1,442.07	19,520.40

[1] Source: Chapter VII of the Preliminary Regulatory Economic Analysis.

TABLE 5.—TOTAL BURDEN COSTS OF PROPOSED RULE

[Summary of all burden costs, by mine size and by provision]

Provision	Annualized burden costs [1]				
	Mines with 1–19 employees	Mines with 20–99 employees	Mines with 100–500 employees	Mines with over 500 employees	Total annual burden hours
§ 75.350(b), implied impact on existing §§ 44.9, 44.10, and 44.11	($3,268)	($8,846)	($6,876)	($471)	($19,461)
§§ 75.351(j)	923	2,391	1,632	100	5,046
§ 75.351(j), implied impact on existing §§ 75.371(hh)	29	75	51	3	158
§§ 75.351(m)	41	490	858	80	1,470
§§ 75.351(n)(1), implied impact on existing § 75.363(b)	55	145	245	34	478
§§ 75.351(n)(2)	10,475	55,224	93,394	8,568	167,661
§§ 75.351(n)(3)	12,086	127,441	431,051	49,428	620,005
§§ 75.351(o)(1)(i) & (ii)	273	4,595	24,604	3,794	33,266
§§ 75.351(o)(1)(iii)	1,773	15,010	44,542	4,965	66,289
§§ 75.351(q)	5,877	19,836	27,260	2,212	55,185
§§ 75.352(a) & (b)	1,730	11,171	27,394	2,828	43,123
§§ 75.371(ll)	1	15	27	2	46
§§ 75.371(mm)	3	7	5	0	16
§§ 75.371(nn)	6	15	10	1	32
Total	30,004	227,570	644,196	71,543	973,313

[1] Source: Chapter VII of the Preliminary Regulatory Economic Analysis.

VI. Executive Order 12866 (Regulatory Planning and Review) and Regulatory Flexibility Act

Executive Order (E.O.) 12866 (58 FR 51735) as amended by E.O. 13258 (Amending Executive Order 12866 on Regulatory Planning and Review (67 FR 9385)) requires that regulatory agencies assess both the costs and benefits of regulations. MSHA has determined that this proposed rule would not have an annual effect of $100 million or more on the economy and that, therefore, it is not an economically "significant regulatory action" pursuant to § 3(f) of E.O. 12866. However, we have determined that this proposed rule is significant under § 3(f) of E.O. 12866, which defines a significant regulatory action as one that may "* * * raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order." MSHA completed a Preliminary Regulatory Economic Analysis (PREA) in which the economic impact of the rule is estimated. The PREA is available from MSHA and is summarized as follows.

A. Population-at-Risk

MSHA estimates that this rulemaking would initially affect approximately 11,313 miners at 88 underground coal mines which choose to use belt air at the working places during the first year of the proposed rule. MSHA also estimates that this rulemaking would additionally affect approximately 2,358 miners at 30 underground coal mines which choose to point feed the belt air, but do not use belt air at the working places, during the first year of the proposed rule. Accordingly, MSHA estimates that this rulemaking would affect a total of approximately 13,671 miners at 118 underground coal mines during the first year of the proposed rule.

B. Benefits

MSHA has qualitatively determined that the proposed rule, to permit use of belt air at the working places, yields net health and safety benefits relative to the existing rule, which does not permit use of belt air at the working places. The proposed rule does not create any health or safety hazards relative to current petition practice, which also permits use of belt air at the working places.

The main requirement of the proposed rule is that the mine operator who chooses to use belt air must install an atmospheric monitoring system (AMS) in the belt entry for fire detection. The AMS composed of CO or smoke sensors provides early warning fire detection that is superior to that provided by point-type heat sensors. This added level of protection is beneficial to both workers and the mine owner.

The AMS is beneficial to the mine operator because early warning of a mine fire provides maximal opportunity for extinquishing the fire. An uncontrolled mine fire can damage or destroy a coal mine and can delay or prevent future mining of coal in the affected mine. The AMS is beneficial to workers, because the early warning of fire from an AMS permits more time for miners to escape. Early warning from the AMS also gives the firefighting crew more time to fight or extinguish a fire before it creates a serious mine fire accident or disaster.

The proposed rule utilizes the common interests of both workers and mine owners to avoid mine fires, and particularly to avoid fires that may result in a serious mine fire accident. By reducing regulatory hurdles to the use of belt air at the working places, the proposed rule would provide additional encouragement for mine operators to install an AMS. The installation of AMS in additional mines would reduce the risk of mine fire accidents that may injure or kill miners or severely damage mine property.

In addition, MSHA's experience with belt air petitions indicates that, with proper precautions, allowing belt air to ventilate working places can achieve net health and safety benefits. Belt air usage can result in an increase in the quantity of air in the belt entry and other common entries (belt air course). This provides increased protection to miners against hazards created by elevated levels of methane, other harmful gases, and respirable dust.

Prevention of mine fires can also benefit local communities. In the event a mine fire is uncontrolled, persons living in the area of the mine may need to be evacuated for several days due to the smoke and toxic fumes escaping to the surface from a mine fire. In addition, there can be long-term adverse economic impacts on a community

when a mine fire shuts down a coal mine.

C. Compliance Costs

The proposed rule revises various sections of part 75, which regulates underground coal mines. These revised sections include § 75.301 Definitions, § 75.350 Air courses and belt haulage entries (title revised to Belt air course ventilation), § 75.351 Atmospheric monitoring systems, § 75.352 Return air courses (title revised to Actions in response to AMS alert and alarm signals or malfunctions), § 75.371 Mine ventilation plan, § 75.372 Mine ventilation map, and § 75.380(g) Escapeway; bituminous and lignite mines.

The main substantive changes of the proposed rule are for three-or-more-entry mines that voluntarily choose to use belt air as intake air to ventilate the working places of the coal mine. Three-or-more-entry mines that choose to ventilate the working places with belt air are required to use an atmospheric monitoring system (AMS) to assure worker safety. A secondary substantive change applies to three-or-more entry mines that voluntarily choose to point feed the belt air course.

There are no substantive changes in the proposed rule that apply to any mine that chooses not to use belt air at the working places, and that chooses not to point feed the belt air. Two-entry mines are also not impacted by the proposed rule.

Because all changes impact only mines that voluntarily undertake certain actions, there are only net cost savings from the proposed rule. This is because MSHA presumes that no mine operator would install and use an AMS in order to use belt air unless the mine operator anticipated cost savings as a result.

The primary cost savings from the proposed rule accrue to underground coal mines that choose to use belt air at the working places. Total cost savings from this source are estimated at approximately $650,000 per year. These cost savings for the belt-air mines also include cost savings from point feeding.

Secondary cost savings of the proposed rule accrue to mines that choose to point feed the belt air, but choose not to use belt air at the working sections. For these mines, the cost savings from point feeding are estimated at $31 thousand per year. In total, the cost savings from the proposed rule are approximately $680,000 per year.

D. Economic Impact

The proposed rule will enhance safety in belt air mines while utilizing the common incentive of both workers and mine owners to avoid mine fires, and particularly to avoid fires that may result in a serious mine fire accident.

MSHA believes that the estimated cost savings of this proposed rule are conservative because contested petition costs were not included in the preliminary economic analysis. If a petition is contested, the costs to the petitioner could increase by as much as $100,000.

The proposed rule provides additional encouragement for mine operators to install an AMS by reducing regulatory hurdles to the use of belt air at the working places. The installation of AMSs in additional mines will reduce the risk of mine fire accidents that may injure or kill miners or severely damage mine property. Mine operators are inherently interested in avoiding these catastrophic incidents that could result in the lost of the mine. This proposed rule would mandate the proper installation and maintenance of AMSs that would serve to further protect mine property from these catastrophic incidents.

MSHA has concluded that the proposed rule will have only a small (but favorable) effect on coal output, price, and profitability.

E. Feasibility

MSHA has concluded that the requirements of the proposed rule are both technologically and economically feasible.

This proposed rule is not a technology-forcing standard and does not involve activities on the frontiers of scientific knowledge. The technology to monitor the mine atmosphere and to alert miners of hazards involve available, off-the-shelf technologies that are currently being used in many mines. Also, standard procedures used to safeguard the safety of miners are approved by the Agency through the mine's fire fighting and evacuation plan. Other provisions of the proposed rule will reduce petition requirements.

The proposed rule is clearly economically feasible insofar as it will reduce costs for the mining industry while increasing the use of AMSs to monitor the mine atmosphere. The primary cost savings of $654,000 per year from the proposed rule come from the ability of underground coal mines to use belt air. Approximately 70 percent of these cost savings are generated from reduced shaft-sinking costs for new mines. The other 30 percent of cost savings come from energy cost savings from reductions in ventilation fan power (25%) and elimination of the petition for modification process (legal and administrative costs—5%). The secondary cost savings of $31,000 per year from the proposed rule come from mines that choose not to use belt air to ventilate working sections but that do take advantage of the point-feeding provision that applies to all three-or-more entry mines. In total, the cost savings from the proposed rule are $685,728 per year.

The proposed rule would provide for a safe mining environment and would facilitate the use of technologically advanced fire-detection systems. In addition, there would no longer be a time delay for approval due to the petition process. Mine operators could use belt air to ventilate working sections as soon as they are in compliance with the rule.

F. Regulatory Flexibility Act and Small Business Regulatory Enforcement Fairness Act (SBREFA)

The Regulatory Flexibility Act (RFA), as amended by SBREFA, requires regulatory agencies to consider a rule's impact on small entities. For the purposes of the RFA and this preliminary determination, MSHA has analyzed the impact of the proposed rule and has determined that this proposed rule will not have a significant economic impact on a substantial number of small entities that are affected by this rulemaking.

MSHA will mail a copy of the proposed rule, including the preamble and regulatory flexibility certification statement, to all underground coal mine operators and miners' representatives. The proposed rule will also be placed on MSHA's Internet Homepage at *http://www.msha.gov*, under Statutory and Regulatory Information.

In accordance with RFA and its amendments at 5 U.S.C. 605(b), MSHA has determined that this proposed rule will not have a significant adverse economic impact on a substantial number of small entities. No small governmental jurisdictions or nonprofit organizations will be affected.

The RFA, as amended, at 5 U.S.C. § 605(b) also requires MSHA to include in the proposed rule a factual basis for this preliminary determination. This information must be published in the **Federal Register**.

Factual Basis for Certification

The Agency compared the gross costs of the rule for small mines in each sector to the revenue for that sector for both size categories analyzed (MSHA and Small Business Administration "small entity" definitions). Given that the gross compliance costs for small mines is substantially less than 1 percent of revenue and that net costs are

negative, MSHA concludes that there is no significant cost impact of the rule on small entities. For both definitions of a small mine, the net cost of the proposed rule is negative. Since the proposed rule results in net cost savings, there would not be any burden placed on small mine operators. Accordingly, MSHA preliminarily certifies that there is no significant impact on a substantial number of small coal mining entities that are affected by this rule.

VII. Other Regulatory Analyses

A. Unfunded Mandates Reform Act of 1995 and Executive Order 12875 (Enhancing the Intergovernmental Partnership)

For purposes of the Unfunded Mandates Reform Act of 1995, as well as E.O. 12875 (58 FR 58093), this proposed rule does not include any Federal mandate that may result in increased expenditures by State, local, and tribal governments, or increased expenditures by the private sector of more than $100 million. MSHA is not aware of any State, local, or tribal government that either owns or operates underground coal mines.

B. Executive Order 13132 (Federalism)

MSHA has reviewed this proposed rule in accordance with Executive Order 13132 (64 FR 43255) regarding federalism, and has determined that it does not have "federalism implications." The proposed rule would not "have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." There are no underground coal mines owned or operated by any State governments.

C. Executive Order 13045 (Health and Safety Effect on Children)

In accordance with Executive Order 13045, 62 FR 19885, MSHA has evaluated the environmental health and safety effect of the proposed rule on children. The Agency has determined that the proposed rule will have no effect on children.

D. Executive Order 13175 (Consultation and Coordination With Indian Tribal Governments)

In accordance with Executive Order 13175 (63 FR 27655), MSHA certifies that the proposed rule does not impose substantial direct compliance costs on Indian tribal governments. MSHA is not aware of any Indian tribal governments which either own or operate underground coal mines.

E. Executive Order 12630 (Governmental Actions and Interference With Constitutionally Protected Property Rights)

This proposed rule is not subject to Executive Order 12630, 53 FR 8859, because it does not involve implementation of a policy with takings implications.

F. Executive Order 12988 (Civil Justice Reform)

The Agency has reviewed Executive Order 12988 (61 FR 4729) and determined that this proposed rule would not unduly burden the Federal court system. The proposed rule has been written so as to provide a clear legal standard for affected conduct, and has been reviewed carefully to eliminate drafting errors and ambiguities.

G. Executive Order 13211 (Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use)

In accordance with Executive Order 13211, 66 FR 28355, MSHA has reviewed this proposed rule for its energy impacts. MSHA has determined that this proposed rule would not have any adverse effects on energy supply, distribution, or use.

H. Executive Order 13272 (Proper Consideration of Small Entities in Agency Rulemaking)

In accordance with Executive Order 13272, MSHA has thoroughly reviewed the proposed rule to assess and take appropriate account of its potential impact on small businesses, small governmental jurisdictions, and small organizations. As discussed in Chapter V of the PREA, MSHA has determined that the proposed rule would not have a significant economic impact on a substantial number of small entities.

VIII. Petitions for Modification

On the effective date of the final rule, all existing petitions for modification for belt air used to ventilate working places under § 75.350 in mines with sections developed using three or more entries will be superseded. Mine operators will thereafter be required to comply with the provisions of the final rule. However, all existing two-entry petition requirements will remain in effect and will not be superseded by this rule. Future two-entry mines will need to continue to file petitions to use belt air, since proposed § 75.350(a) prohibits placing the conveyor belt in the return.

List of Subjects in 30 CFR Part 75

Communications equipment, Emergency medical services, Explosives, Fire prevention, Mandatory safety standards, Mine safety and health, Reporting and recordkeeping requirements, Underground coal mines, Ventilation.

Dated: January 13, 2003.

Dave D. Lauriski,

Assistant Secretary of Labor for Mine Safety and Health.

It is proposed to amend, for the reasons set out in the preamble, chapter I of title 30 of the Code of Federal Regulations as follows:

PART 75—MANDATORY SAFETY STANDARDS—UNDERGROUND COAL MINES

1. The authority citation for part 75 continues to read as follows:

Authority: 30 U.S.C. 811.

2. Amend § 75.301 by adding the following definitions:

§ 75.301 Definitions.

* * * * *

AMS operator. The person(s) designated by the mine operator located on the surface of the mine who monitors the malfunction, alert, or alarm signals of the AMS and notifies appropriate personnel to these signals.

* * * * *

Appropriate Personnel. The person or persons designated by the operator to perform specific tasks in response to AMS signals.

* * * * *

Atmospheric Monitoring System (AMS).

(1) A network consisting of hardware and software meeting the requirements of §§ 75.351 and 75.1103–2 and capable of:

(i) Measuring atmospheric parameters;

(ii) Transmitting the measurements to a designated surface location;

(iii) Providing alert and alarm signals;

(iv) Processing and cataloging atmospheric data; and,

(v) Providing reports.

(2) Early-warning fire detection systems using newer technology that provide equal or greater protection, as determined by the Secretary, will be considered an atmospheric monitoring system for the purposes of this subpart.

* * * * *

Belt air course. The entry in which a belt is located and any adjacent entry(ies) not separated from the belt entry by permanent ventilation controls, including any entries in series with the belt entry, terminating at a return regulator, a section loading point, or the surface.

* * * * *

Carbon monoxide ambient level. The average concentration of carbon monoxide detected in an air course containing carbon monoxide sensors. This average is representative of the composition of the mine atmosphere during a non-fire condition.

* * * * *

Point feeding. The process of providing additional intake air to the belt air course from another intake air course through a regulator.

* * * * *

3. Revise § 75.350 to read as follows:

§ 75.350 Belt air course ventilation.

(a) The belt air course must not be used as a return air course; and except as provided in paragraph (b) of this section, the belt air course must not be used to provide air to working sections or to areas where mechanized mining equipment is being installed or removed. The belt air course must be separated with permanent ventilation controls from return air courses and from other intake air courses except as provided in paragraph (c) of this section.

(b) Air from a belt air course may be used to ventilate a working section or an area where mechanized mining equipment is being installed or removed, provided the following requirements are met:

(1) The belt entry must be equipped with an AMS installed, operated, examined, and maintained as specified in § 75.351.

(2) All miners, including newly hired miners must be trained annually in the basic operating principles of the AMS, including the actions required in the event of activation of a system alarm. This training may be conducted as part of a miner's 30 CFR part 48 new miner training (§ 48.5), experienced miner training (§ 48.6), or annual refresher training (§ 48.8).

(3) The average concentration of respirable dust in the belt air course (the intake air course) must be maintained at or below 1.0 mg/m^3. A permanent designated area (DA) for dust measurements must be established at a point no greater than 50 feet upwind from the section loading point in the belt entry when the belt air flows over the loading point or no greater than 50 feet upwind from the point where belt air is mixed with air from another intake air course near the loading point. The DA must be specified and approved in the ventilation plan.

(4) The primary escapeway must be monitored for carbon monoxide or smoke as specified in § 75.351(f).

(5) The section must be developed with three or more entries.

(c) Notwithstanding the provisions of § 75.380(g), additional intake air may be added to the belt air course through a point-feed regulator. The location and use of point feeds must be approved in the mine ventilation plan. If the air through the point feed enters a belt air course which is used to ventilate a working section or an area where mechanized mining equipment is being installed or removed, the following conditions must be met:

(1) The air current that will pass through the point-feed regulator must be monitored for carbon monoxide or smoke at a point within 50 feet upwind of the point-feed regulator;

(2) The air in the belt air course must be monitored for carbon monoxide or smoke upwind of the point-feed regulator. This sensor must be in the belt air course within 50 feet of the mixing point where air flowing through the point-feed regulator mixes with the belt air;

(3) The point-feed regulator must be provided with a means to close the regulator from either air course without requiring a person to enter the air stream passing through the point-feed regulator;

(4) A minimum air velocity of 300 feet per minute must be maintained through the point-feed regulator.

(5) The location of a point-feed regulator(s) must be approved in the mine ventilation plan and the location(s) shown on the mine ventilation map; and

(6) An AMS must be installed, operated, examined, and maintained as specified in § 75.351.

4. Revise § 75.351, to read as follows:

§ 75.351 Atmospheric monitoring systems.

(a) *AMS operation.* Whenever personnel are underground and an AMS is being used to fulfill the requirements of §§ 75.323(d)(1)(ii), 75.340(a)(1)(ii), 75.340(a)(2)(ii), 75.350(b), 75.350(c), or 75.362(f), the AMS must be operating and a designated AMS operator must be on duty at a location on the surface of the mine where signals from the AMS can be seen and heard and the operator can promptly respond to these signals. However, for extended idle periods exceeding 24 hours, when the belt is not operating, the requirements of §§ 75.350(b) and 75.350(c) will not apply after the initial 24 hour idle period. All provisions of this section will become applicable one hour prior to belt start-up following this idle period.

(b) *Designated surface location and AMS operator.* When an AMS is used to comply with §§ 75.323(d)(1)(ii), 75.340(a)(1)(ii), 75.340(a)(2)(ii), 75.350(b), 75.350(c), or 75.362(f), the following requirements apply:

(1) The mine operator must designate a surface location at the mine or at another location approved by the district manager where signals from the AMS will be received and two-way voice communication is maintained with each working section, areas where mechanized equipment is being installed or removed, and other areas designated in the approved program of instruction (§ 75.1502).

(2) The mine operator must designate an AMS operator to monitor the AMS signals and be at a location on the mine surface where the AMS operator can promptly respond to all signals from the AMS.

(3) A map or schematic must be provided at the designated surface location and updated daily that shows the locations and type of AMS sensor at each location and the intended air flow direction at these locations.

(4) The names of the designated AMS operators, appropriate personnel, and responsible persons referred to in § 75.352, and the method to contact these persons must be provided at the designated surface location.

(c) *Minimum operating requirements.* AMSs used to comply with §§ 75.323(d)(1)(ii), 75.340(a)(1)(ii), 75.340(a)(2)(ii), 75.350(b), 75.350(c), or 75.362(f) must:

(1) Automatically provide a signal that can be seen or heard by the AMS operator at the designated surface location for any interruption of circuit continuity and any electrical malfunction of the system.

(2) Automatically provide an alert signal that can be seen or heard by the AMS operator at the designated surface location and is distinguishable from alarm signals, when the carbon monoxide concentration or methane concentration at any sensor reaches the alert level as specified in paragraph (i) of this section.

(3) Automatically provide signals that can be seen and heard by the AMS operator at the designated surface location when the carbon monoxide, smoke, or methane concentration at any sensor reaches the alarm level as specified in paragraph (i) of this section.

(4) Automatically provide visual and audible alarm signals at all affected working sections and at all affected areas where mechanized equipment is being installed or removed when the carbon monoxide, smoke, or methane concentration at any sensor reaches the alarm level as specified in paragraph (i) of this section. The signals must be capable of being seen and heard by miners working at these locations.

Methane alarm signals must be distinguishable from other signals.

(5) Automatically provide an alarm signal that can be seen and heard by miners in other locations as specified in the approved program of instruction (§ 75.1502) when the carbon monoxide, smoke, or methane concentration at any sensor reaches the alarm level as specified in paragraph (i) of this section.

(6) Identify at the designated surface location the operational status of all sensors.

(d) *Location and installation of AMS sensors.* (1) All AMS sensors, as specified in paragraphs (e) through (h) of this section, must be located such that measurements are representative of the atmosphere.

(2) Carbon monoxide or smoke sensors must be installed near the center of the entry, as near the roof as feasible in a location that would not expose personnel working on the system to unsafe conditions. Sensors must not be located in abnormally high areas or in other locations where air flow patterns do not permit products of combustion to be carried to the sensors.

(3) Methane sensors must be installed near the center of the entry, at least 12 inches from the roof, ribs, and floor, in a location that would not expose personnel working on the system to unsafe conditions.

(e) *Location of sensors—belt air course.* In addition to the requirements of paragraph (d) of this section, any AMS used to monitor belt air courses under § 75.350(b) must have sensors to monitor for carbon monoxide or smoke located:

(1) At or near the working section belt tailpiece in the air stream ventilating the belt entry. In longwall mining systems the sensor must be located upwind in the belt entry at a distance no greater than 150 feet from the mixing point where intake air is mixed with the belt air at or near the tailpiece;

(2) Upwind, a distance no greater than 50 feet from the point where the belt air course is combined with another air course or splits into multiple air courses;

(3) At intervals not to exceed 1,000 feet along each belt entry in areas where air velocities are maintained at 50 feet per minute or higher. In areas along each belt entry where air velocities are less than 50 feet per minute, the sensor spacing must not exceed 350 feet;

(4) Not more than 100 feet downwind of each belt drive unit, each tailpiece transfer point, and each belt take-up. If the belt drive, tailpiece, and/or take-up are installed together in the same air course they may be monitored with one sensor located not more than 100 feet downwind of the last component; and

(5) At other locations in any entry that is part of the belt air course as required and specified in the ventilation plan.

(f) *Locations of sensors—the primary escapeway.* If used to monitor the primary escapeway under § 75.350(b)(4), carbon monoxide or smoke sensors must be located in the primary escapeway within 500 feet of the working section and within 500 feet inby the beginning of the panel. The point-feed sensor required by § 75.350(c)(1) may be used as the sensor at the beginning of the panel if it is located within 500 feet inby the beginning of the panel.

(g) *Location of sensors—return air splits.* (1) If used to monitor return air splits under § 75.362(f), a methane sensor must be installed in the return split of air between the last working place, or longwall or shortwall face, ventilated by that split of air and the junction of the return air split with another air split, seal, or worked out area.

(2) If used to monitor a return air split under § 75.323(d)(1)(ii), the methane sensors must be installed at the following locations:

(i) In the return air course opposite the section loading point, or, if exhausting auxiliary fan(s) are used, in the return air course no closer than 300 feet downwind from the fan exhaust and at a point opposite or immediately outby the section loading point; and

(ii) Immediately upwind from the location where the return air split meets another split of air or immediately upwind of the location where a split of air is used to ventilate seals or worked-out areas.

(h) *Location of sensors—electrical installations.* When monitoring the intake air ventilating underground transformer stations, battery charging stations, substations, rectifiers, or water pumps under § 75.340(a)(1)(ii) or § 75.340(a)(2)(ii), at least one sensor must be installed to monitor the mine atmosphere for carbon monoxide or smoke, located downwind and not greater than 50 feet from the electrical installation being monitored.

(i) *Establishing alert and alarm levels.* An AMS installed in accordance with the following sections must initiate alert and alarm signals at the specified levels, as indicated:

(1) For § 75.323(d)(1)(ii) alarm at no more than 1.5% methane.

(2) For §§ 75.340(a)(1)(ii), 75.340(a)(2)(ii), 75.350(b), and 75.350(c), alert at 5 ppm carbon monoxide above the ambient level and alarm at 10 ppm carbon monoxide above the ambient level when carbon monoxide sensors are used; and alarm at a smoke optical density of 0.022 per meter when smoke sensors are used. Reduced alert and alarm settings approved by the district manager may be required for carbon monoxide sensors identified in the mine ventilation plan, § 75.371(mm).

(3) For § 75.362(f), alert at no more than 1.0% methane and alarm at no more than 1.5% methane.

(j) *Establishing carbon monoxide ambient levels.* Carbon monoxide ambient levels and the means to determine these levels must be approved in the mine ventilation plan (§ 75.371(hh)) for monitors installed in accordance with §§ 75.340(a)(1)(ii), 75.340(a)(2)(ii), 75.350(b), and 75.350(c).

(k) *Installation and maintenance.* An AMS installed in accordance with §§ 75.323(d)(1)(ii), 75.340(a)(1)(ii), 75.340(a)(2)(ii), 75.350(b), 75.350(c), or 75.362(f) must be installed and maintained by personnel trained in the installation and maintenance of the system. The system must be maintained in proper operating condition.

(l) *Sensors.* Sensors used to monitor for carbon monoxide, methane, and smoke must be either of a type listed and installed in accordance with the recommendations of a nationally recognized testing laboratory approved by the Secretary; or these sensors must be of a type, and installed in a manner, approved by the Secretary.

(m) *Time delays.* When a demonstrated need exists, time delays may be incorporated into the AMS. These time delays must only be used to account for non-fire related carbon monoxide sensor signals. The use and length of any time delays, or other techniques or methods which eliminate or reduce the need for time delays, must be specified and approved in the mine ventilation plan. These time delays are limited to no more than three minutes.

(n) *Examination, testing, and calibration.* (1) At least once each shift when belts are operated as part of a production shift, sensors used to detect carbon monoxide or smoke in accordance with § 75.350(b) and alarms installed in accordance with § 75.350(b) must be visually examined.

(2) At least once every seven days, alarms for AMS installed in accordance with §§ 75.350(b) and 75.350(c) must be functionally tested for proper operation.

(3) At intervals not to exceed 31 days—

(i) Each carbon monoxide sensor installed in accordance with §§ 75.340(a)(1)(ii), 75.340(a)(2)(ii), 75.350(b), or 75.350(c) must be calibrated in accordance with the manufacturer's calibration specifications. Calibration must be done

with a known concentration of carbon monoxide in air sufficient to activate the alarm;

(ii) Each smoke sensor installed in accordance with §§ 75.340(a)(1)(ii), 75.340(a)(2)(ii), 75.350(b), or 75.350(c) must be functionally tested in accordance with the manufacturer's calibration specifications;

(iii) Each methane sensor installed in accordance with §§ 75.323(d)(1)(ii) or 75.362(f) must be calibrated in accordance with the manufacturer's calibration specifications. Calibration must be done with a known concentration of methane in air sufficient to activate an alarm.

(4) Gases used for the testing and calibration of AMS sensors must be traceable to the National Institute of Standards and Technology reference standard for the specific gas. When these reference standards are not available for a specific gas, calibration gases must be traceable to an analytical standard which is prepared using a method traceable to the National Institute of Standards and Technology. Calibration gases must be within ±2.0 percent of the indicated gas concentration.

(o) *Recordkeeping.* (1) When an AMS is used to comply with §§ 75.323(d)(1)(ii), 75.340(a)(1)(ii), 75.340(a)(2)(ii), 75.350(b), 75.350(c), or 75.362(f), responsible persons designated by the operator must make the following records by the end of the shift in which the following event(s) occur:

(i) If an alert or alarm signal occurs, a record of the date, time, location and type of sensor, and the cause for the activation.

(ii) If an AMS malfunctions, a record of the date, the extent and cause of the malfunction, and the corrective action taken to return the system to proper operation.

(iii) A record of the seven-day test of alert and alarm signals, calibrations, and maintenance performed on the system must be made by the person(s) performing the test, calibration, or maintenance.

(2) The person entering the record must include their name, title, date, and signature in the record.

(3) The records required by this section must be kept in a secure book that is not susceptible to alteration, or must be kept electronically in a computer system that is secure and not susceptible to alteration. These records must be maintained separately from other records and identifiable by a title, such as the "AMS log."

(p) *Retention period.* Records must be retained for at least one year at a surface location at the mine and made available for inspection by miners and authorized representatives of the Secretary.

(q) *Training.* All AMS operators must be trained annually in the proper operation of the AMS. A record of the content of training, the person conducting the training, and the date the training was conducted, must be maintained at the mine for at least one year by the mine operator.

(r) *Communications.* When an AMS is used to comply with § 75.350(b), a two-way voice communication system, as required by paragraph (b)(1) of this section, must be installed in a different entry that is separate from the AMS.

5. Revise § 75.352 to read as follows:

§ 75.352 Actions in response to AMS malfunction, alert, or alarm signals.

(a) The designated AMS operator or other designated responsible person must promptly initiate the following actions:

(1) When a malfunction or alert signal is given, notify appropriate personnel, immediately begin an examination to determine the cause, and take required action to address it, and

(2) When an alarm is given, notify appropriate personnel, including miners in affected working sections, in areas where mechanized mining equipment is being installed or removed, and in other locations specified in the approved program of instruction as set forth in § 75.1502.

(b) If contaminant concentration levels for any carbon monoxide, smoke, or equivalent sensor installed in accordance with §§ 75.340(a)(1)(ii), 75.340(a)(2)(ii), 75.350(b), or 75.350(c) exceed the specified alert or alarm level, the following procedures must be followed unless the cause of the alert or alarm signal is known not to be a hazard to the miners:

(1) When an alert signal is given, the sensor activated must be identified and an examination must begin immediately to determine the cause of the alert signal.

(2) When an alarm is given, the sensor that is activated must be identified, and the fire fighting and evacuation procedures initiated as required by the approved program of instruction (§ 75.1502). At a minimum, all personnel in the affected area, unless assigned other duties in the approved program of instruction (§ 75.1502), must be promptly evacuated outby the next functioning sensor upwind of the alarming sensor.

(c) If an alert or alarm signal from a methane sensor in a return air split is activated, the sensor producing the alert or alarm signal must be identified, an examination must be made to determine the cause of the activation, and the actions required under § 75.323 must be taken.

(d) If any fire detection components of the AMS malfunction or are inoperative, immediate action must be taken to return the system to proper operation. During the time that AMS component repairs are being made, operation of the belt may continue if the following conditions are met:

(1) If one AMS sensor becomes inoperative, a trained person must continuously monitor for carbon monoxide or smoke at the inoperative sensor.

(2) If two or more adjacent AMS sensors become inoperative, a trained person(s) must patrol and continuously monitor for carbon monoxide or smoke in the affected area so that the affected area will be traveled each hour, or a trained person must be stationed to monitor at each inoperative sensor.

(3) If the complete system becomes inoperative, trained persons must patrol and continuously monitor for carbon monoxide or smoke so that the affected belt entries are traveled each hour in their entirety.

(4) The trained person(s) monitoring under this section must, as a minimum, have two-way voice communication capabilities with the AMS operator at intervals not to exceed 2,000 feet.

(5) The trained persons monitoring under this section must report the concentrations detected at the affected AMS sensor(s) at intervals not to exceed one hour. In addition, the trained person must report as soon as possible to the AMS operator any concentration of the contaminant that reaches either the alert or alarm level specified in § 75.351(i), or the alternate alert and alarm level specified in paragraph (d)(7) of this section, unless the source of the contaminant is known not to represent a hazard.

(6) Instruments used to monitor under this section must have a level of detectability equal to that required of the sensors in § 75.351(l).

(7) For those AMSs using sensors other than carbon monoxide sensors, an alternate detector and the alert and alarm levels associated with that detector must be specified and approved in the ventilation plan.

(e) If the 50-foot per minute minimum air velocity is not maintained when required in § 75.351(e)(3), immediate action must be taken to return the ventilation system to proper operation. Trained persons must patrol and continuously monitor for carbon monoxide or smoke as set forth in paragraphs (d)(1) through (7) of this

section, so that all portions of the affected belt entry(ies) are examined once each hour.

6. Redesignate § 75.371 (ii) through (pp) as paragraphs (oo) through (vv), respectively, and add new paragraphs (ii) through (nn) to read as follows:

§ 75.371 Mine ventilation plan; contents.

* * * * *

(ii) The locations (designated areas) where dust measurements would be made in the belt entry when belt air is used to ventilate working sections or areas where mechanized mining equipment is being installed or removed, § 75.350(b)(3).

(jj) The locations of point-feed regulators, § 75.350(c)(5).

(kk) The location of any additional carbon monoxide or smoke sensor installed in the belt air course, § 75.351(e)(5).

(ll) The length of the time delay or any other method used for reducing the number of non-fire related alert and alarm signals from carbon monoxide sensors, § 75.351(m).

(mm) The lower alert and alarm settings for carbon monoxide sensors, § 75.351(i)(2).

(nn) The alternate detector and the alert and alarm levels associated with the detector, § 75.352(d)(7).

* * * * *

7. Amend § 75.372 by revising paragraph (b)(16) to read as follows:

§ 75.372 Mine ventilation map.

* * * * *

(b) * * *

(16) The locations and type of all AMS sensors required by this part.

* * * * *

8. Amend § 75.380, by revising paragraph (g) to read as follows:

§ 75.380 Escapeway; bituminous and lignite mines.

* * * * *

(g) Except where separation of belt and trolley haulage entries from designated escapeways did not exist before November 15, 1992, and except as provided in § 75.350(c), the primary escapeway must be separated from belt and trolley haulage entries for its entire length, to and including the first connecting crosscut outby each loading point except when a greater or lesser distance for this separation is specified and approved in the ventilation plan and does not pose a hazard to miners.

* * * * *

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Federal Register

Monday,
January 27, 2003

Part III

Federal Election Commission

11 CFR Parts 100, et al.
Increased Contribution and Coordinated Party Expenditure Limits for Candidates Opposing Self-Financed Candidates; Interim Final Rule

FEDERAL ELECTION COMMISSION

11 CFR Parts 100, 101, 104, 110, 116, 400, and 9035

[Notice 2003—3]

Increased Contribution and Coordinated Party Expenditure Limits for Candidates Opposing Self-Financed Candidates

AGENCY: Federal Election Commission.

ACTION: Interim final rules.

SUMMARY: The Federal Election Commission ("FEC" or "Commission") is adopting, as interim final rules, new regulations relating to increased contribution limits for individuals when contributing to candidates who are facing self-financed candidates under the Federal Election Campaign Act of 1971 ("FECA" or the "Act"), as amended by the Bipartisan Campaign Reform Act of 2002 ("BCRA"). The so-called "Millionaires' Amendment" in BCRA raises the individual contribution limits for candidates for the Senate and House of Representatives depending on the amount that opposing candidates expend from personal funds in connection with an election. BCRA also removes the limitations on national and State party committee expenditures on behalf of a candidate if the opposing candidate's expenditures from personal funds exceed a threshold amount. These interim final rules implement the various provisions of the Millionaires' Amendment including thresholds, computation formulas, increased contribution limits with overall caps, repayment of personal loans, and reporting requirements.

The Commission is promulgating these rules on an interim final basis. The Commission is soliciting comments on all aspects of the interim final rules and may amend the interim rules as appropriate in response to comments received. Further information is contained in the Supplementary Information that follows.

DATES: The interim final rules are effective on February 26, 2003. Comments must be received on or before March 28, 2003. If the Commission receives sufficient requests to testify, it may hold a hearing on these interim final rules. If the Commission decides to hold a hearing, it will announce the date after the end of the comment period. Persons wishing to testify at a hearing should so indicate in their written or electronic comments.

ADDRESSES: All comments should be addressed to Ms. Mai T. Dinh, Acting Assistant General Counsel, and must be submitted in either electronic or written form. Electronic mail comments should be sent to *millionaire@fec.gov* and must include the full name, electronic mail address, and postal service address of the commenter. Electronic mail comments that do not contain the full name, electronic mail address, and postal service address of the commenter will not be considered. If the electronic mail comments include an attachment, the attachment must be in the Adobe Acrobat (.pdf) or Microsoft Word (.doc) format. Faxed comments should be sent to (202) 219–3923, with printed copy follow-up to ensure legibility. Written comments and printed copies of faxed comments should be sent to the Federal Election Commission, 999 E Street, NW., Washington, DC 20463. Commenters are strongly encouraged to submit comments electronically to ensure timely receipt and consideration.

FOR FURTHER INFORMATION CONTACT: Ms. Mai T. Dinh, Acting Assistant General Counsel, Mr. J. Duane Pugh, Jr., Acting Special Assistant General Counsel, or Mr. Robert M. Knop, Attorney, 999 E Street, NW., Washington, DC 20463, (202) 694–1650 or (800) 424–9530.

SUPPLEMENTARY INFORMATION: In the Bipartisan Campaign Reform Act of 2002 ("BCRA"), Public Law 107–155, 116 Stat. 81 (March 27, 2002), Congress made extensive and detailed amendments to the Federal Election Campaign Act of 1971, as amended ("FECA" or the "Act"), 2 U.S.C. 431 *et seq.* This is one of a series of rulemaking notices the Commission has published over the past several months in order to meet the rulemaking deadlines set out in BCRA. The Commission adopted these interim final rules on December 19, 2002.

These interim final rules address the so-called "Millionaires' Amendment" to BCRA. Section 304 of BCRA adds a new paragraph (i) to 2 U.S.C. 441a, which addresses Senate elections. Section 319 of BCRA adds a new section 441a–1 to the FECA, which addresses elections for the House of Representatives. The Senate provisions also add new notification or reporting requirements in 2 U.S.C. 434. Collectively, these provisions address elections in which a candidate for the Senate or the House of Representatives faces an opponent who is spending significant amounts of his or her personal funds on the race. It is important to note that the increased contribution and coordinated party expenditure limitations available to candidates opposing self-financed candidates under the Millionaires' Amendment apply *only* to candidates running for the Senate or the House of Representatives and do *not* apply to candidates running for President or Vice-President. These interim final rules also address a provision of BCRA limiting how a candidate may repay a loan he or she has made to his or her campaign. 2 U.S.C. 441a(j).

Under the Administrative Procedures Act, 5 U.S.C. 553(d), and the Congressional Review of Agency Rulemaking Act, 5 U.S.C. 801(a)(1), agencies must submit final rules to the Speaker of the House of Representatives and the President of the Senate and publish them in the **Federal Register** at least 30 calendar days before they take effect. The interim final rules on Increased Contribution Limits for Candidates Opposing Self-financed Candidates were transmitted to Congress on January 17, 2003.

Explanation and Justification

As of January 1, 2003, the Act, as amended by BCRA, limits the amount that a person, other than a multicandidate political committee, may contribute to a candidate to $2,000 per election, which is indexed for inflation. 2 U.S.C. 441a(a)(1)(A). Under the Act, an individual may not contribute, in the aggregate, more than $37,500 to candidates and their authorized committees during a 2-year period. 2 U.S.C. 441a(a)(3)(A). The Act also limits the amounts of coordinated expenditures by national and State political party committees (including subordinate committees) made in connection with the general election campaign of a candidate. 2 U.S.C. 441a(d)(3).

The Millionaires' Amendment raises contribution limits on contributions received by a candidate for the Senate or the House of Representatives who is facing a "self-financed" opponent, that is, an opponent who spends significant amounts of his or her personal funds on the race. As the opponent's spending from personal funds reaches certain prescribed levels, the candidate is granted limited relief from certain contribution limits and party spending limits.[1] First, when the spending of personal wealth by the opponent reaches certain thresholds (and other conditions are met), the candidate may accept contributions from individuals under increased contribution limits. Second, national and State political party committees may make unlimited coordinated party expenditures on behalf of the candidate under 2 U.S.C.

[1] "Candidate" is used in this document to mean that candidate who is facing an "opponent," or "opposing candidate," whose expenditures from personal funds are sizeable.

441a(d)(3). These increased contribution and coordinated expenditure limits are in effect only when certain specific conditions are met, and are rescinded if other contingencies occur.

The Millionaires' Amendment establishes a "threshold amount" for each election. For House of Representatives races, the threshold amount is a set amount, $350,000. 2 U.S.C. 441a–1(a)(1). For Senate races, the threshold amount varies, according to a formula driven by the "voting age population" of the State. 2 U.S.C. 441a(i)(1)(B).

The Millionaires' Amendment measures the opponent's expenditure of personal funds relative to the candidate's expenditures from personal funds. BCRA defines two new terms, "personal funds" and "opposition personal funds amount." 2 U.S.C. 431(26); 2 U.S.C. 441a(i)(1)(D) (Senate); 2 U.S.C. 441a–1(a)(2) (House of Representatives). For both Senate elections and House of Representatives elections, the opposition personal funds amount is the difference between the opponent's expenditures from personal funds and the candidate's expenditures from personal funds. 2 U.S.C. 441a(i)(1)(D) (Senate); 2 U.S.C. 441a–1(a)(2) (House of Representatives). This provision precludes the acceptance of contributions under increased limits, as well as the lifting of the coordinated spending limits, in a situation where a candidate's own expenditures from personal funds offset the opponent's expenditures from personal funds.

The calculation of the opposition personal funds amount also takes into account any fundraising advantage the candidate may have which negates the advantage the opponent gains from his or her expenditures from personal funds. This "gross receipts advantage" is another check on the operation of the Millionaires" Amendment, accounting for the situation where a candidate's advantage in "ordinary" fundraising may offset the expenditures from personal funds by the opponent. 2 U.S.C. 441a(i)(1)(E) (Senate); 2 U.S.C. 441a–1(a)(2)(B) (House of Representatives).

In Senate elections, when the opposition personal funds amount reaches certain multiples of the threshold amount, the candidate may accept increased contributions according to a tiered schedule. The first such multiple is twice the threshold amount. When the opposition personal funds amount reaches twice the threshold amount, the contribution limit for individuals is tripled. 2 U.S.C. 441a(i)(1)(C)(i)(I). A contribution accepted under this increased contribution limit does not count against the individual's aggregate contribution limit under 2 U.S.C. 441a(a)(3). 2 U.S.C. 441a(i)(1)(C)(i)(II). The contribution limits also increase at multiples of four times and ten times the threshold amount. When the opposition personal funds amount reaches four times the threshold amount, the contribution limit for individuals is raised six-fold. When the opposition personal funds amount reaches ten times the threshold amount, the contribution limit for individuals is raised six-fold and the Act's limits on coordinated political party expenditures on behalf of the candidate are lifted. 2 U.S.C. 441a(i)(1)(C)(iii)(III).

In House of Representatives elections, if the opposition personal funds amount reaches the threshold amount, the individual contribution limits are tripled, such increased contributions do not count against the section 441a(a)(3) individual aggregate contribution limits, and the coordinated political party expenditures limits in section 441a(d)(3) are lifted. 2 U.S.C. 441a–1(a)(1)(A) through (C). Note that for House of Representatives candidates, unlike Senate candidates, the limits are raised or lifted all at once, and not in increments.

For both Senate and House of Representatives candidates, the operation of the increased contribution limits and the suspension of the limit on coordinated political party expenditures are subject to an on-going check in the form of the so-called "proportionality provision." *See* 147 CR S2538 (daily ed. March 20, 2001) (Sen. DeWine). If the sum of the contributions accepted under the increased limits plus the coordinated party expenditures made by political party committees under the increased limits exceeds 110% of the opposition personal funds amount in a Senate election or 100% of the opposition personal funds amount in a House of Representatives election, then the contribution limits revert to the original amount, and the political party expenditure limits also revert to their original amount. 2 U.S.C. 441a(i)(2)(A)(ii) (Senate); 2 U.S.C. 441a–1(a)(3)(A)(ii) (House of Representatives). Thus, the Millionaires' Amendment does not permit those candidates facing wealthy self-financed opponents to raise individual contributions significantly in excess of the amount of personal funds wealthy opponents actually spend on their own elections.

The increased contribution limits are also terminated if the self-financed opponent withdraws from the race. 2 U.S.C. 441a(i)(2)(B) (Senate); 2 U.S.C. 441a–1(a)(3)(B) (House of Representatives). Additionally, both the Senate and House of Representatives versions of the Millionaires' Amendment prescribe rules for disposing of "excess contributions" received under the increased contribution limits. 2 U.S.C. 441a(i)(3) (Senate); 2 U.S.C. 441a–1(b) (House of Representatives).

Part 100—Definitions

1. 11 CFR 100.19 File, Filed, or Filing (2 U.S.C. 434(a))

The Commission's regulations at 11 CFR 100.19 define "file, filed, and filing." The rule in current paragraph (b) states that a document is considered timely filed if it is: (1) Delivered to the appropriate filing office (either the Commission or the Secretary of the Senate), or (2) sent by registered or certified mail and postmarked by 11:59 p.m. Eastern Standard/Daylight Time of the prescribed filing date—except for pre-election reports. The final rule adds paragraph (g), discussed below, to the list of reports not subject to the rule in paragraph (b). Thus, paragraph (b) notes that this rule does not apply to reports described in 11 CFR 100.19(c) through (g) which are electronic filings, 48-hour and 24-hour reports of independent expenditures, 48-hour notices of last-minute contributions, electioneering communication statements, and notifications of expenditures from personal funds, respectively.

New paragraph (g) states that notifications of self-financed candidates' expenditures from personal funds, required under 11 CFR part 400, are considered timely filed by Senate candidates' principal campaign committees only if they are faxed or e-mailed to the Commission and faxed or e-mailed to each opposing candidate within 24 hours of the time the thresholds set forth in 11 CFR 400.21 and 400.22 are exceeded, thereby triggering the reporting requirement. As discussed in greater detail below (*see* Explanation and Justification for new 11 CFR 400.21, 400.22, and 400.24), Senate candidates' principal campaign committees are required to file their original notifications with the Secretary of the Senate and copies of their notifications with the Commission and each opposing candidate. Notifications by House of Representatives candidates' principal campaign committees are considered timely filed only when they are both electronically filed (if required under 11 CFR 104.18, 400.20, and 400.23) with the Commission and when they are faxed or e-mailed to each opposing candidate within 24 hours of the time the thresholds defined in 11

CFR 400.21 and 400.22 are exceeded, thereby triggering the reporting requirement.

2. 11 CFR 100.33 Definition of "Personal Funds" (2 U.S.C. 431(26))

The definition of "personal funds" in new section 100.33 largely tracks the definition provided in BCRA (2 U.S.C. 431(26)), which, in turn, appears to be based primarily on the definition of "personal funds" in former 11 CFR 110.10(b). Because BCRA placed the new statutory definition of "personal funds" in 2 U.S.C. 431, giving it general applicability in FECA, the Commission has decided to place the corresponding regulatory definition in 11 CFR part 100 to give general applicability to the definition in all of the Commission's regulations relating to Title 2 of the United States Code. Therefore, the version of the definition in 11 CFR 110.10(b) is deleted. The Commission notes that the regulations relating to Title 26 of the United States Code also contain a definition of "personal funds" at 11 CFR 9003.2(c)(3). The definition of "personal funds" in 11 CFR 9003.2(c)(3) is not being changed. Only the definition of "personal funds" in former 11 CFR 110.10(b) is being altered in conformance with the definition of "personal funds" in BCRA.

Although the new statutory definition of "personal funds" seems to be based largely on the previous definition contained in former 11 CFR 110.10(b), it differs from that prior rule in a number of respects. First, although both definitions include salary and income from *bona fide* employment, BCRA considers only salary and earned income received during the current election cycle (as defined in new 11 CFR 400.2, discussed below) to be the candidate's personal funds. Second, while both definitions include income from trusts established before and after certain points in time, the relevant date in BCRA is the beginning of the election cycle (again, as defined in new 11 CFR 400.2) whereas in former 11 CFR 110.10(b) the relevant date is the point at which an individual becomes a candidate for Federal office.

A third difference between the definition of "personal funds" in BCRA and former § 110.10(b) involves the receipt of gifts by the candidate. While both definitions include gifts of a personal nature that had been customarily received by the candidate before a certain point in time, BCRA counts only those that had been customarily received prior to the beginning of the election cycle (*see* Explanation and Justification for new 11 CFR 400.2, below) whereas former 11 CFR 110.10(b) counted those that had been customarily received prior to candidacy.

Part 101—Candidate Status and Designations

11 CFR 101.1 Candidate Designations (2 U.S.C. 432(e)(1))

Currently, § 101.1(a) requires Statements of Candidacy (FEC Form 2) to be filed with the Commission or with the Secretary of the Senate, as appropriate under 11 CFR part 105, within 15 days of the time an individual becomes a candidate. Since this is the same time in which a candidate will be required to file a Declaration of Intent under new section 11 CFR 400.20 (*see* Explanation and Justification for new 11 CFR 400.20, below), the Commission has decided to add the information required in the Declaration of Intent to FEC Form 2.

We note that current sections of 11 CFR 101.1(a) and 105.2 require Senate candidates to file their Statements of Candidacy with the Secretary of the Senate. This requirement will not change under the Commission's interim final rules. However, in the interest of rapid notification to the Commission and to each opposing candidate, new 11 CFR 400.20(b)(1) will require Senate candidates to fax or electronically mail a *copy* of their Statement of Candidacy to the Commission. Further, both Senate and House of Representatives candidates will be required to send a fax or an electronic mail message to each opposing candidate that either attaches their FEC Form 2 or contains the information required by 11 CFR 400.23 (*see* Explanation and Justification for new 11 CFR 400.23, below).

Part 102—Registration, Organization, and Recordkeeping by Political Committees (2 U.S.C. 433)

11 CFR 102.2 Statement of Organization: Forms and Committee Identification Number (2 U.S.C. 433(b), (c))

New 11 CFR 102.2(a)(1)(viii) requires the principal campaign committee of each Senate and House of Representatives candidate to provide either an electronic mail address or a facsimile number, for the purpose of receiving Declarations of Intent and Notifications of Expenditures from Personal Funds from other candidates in the same election as required by subpart B of part 400. This requirement is intended to facilitate the notification of expenditures from personal funds under part 400. Use of facsimile machines or electronic mail will provide candidates' principal campaign committees nearly instantaneous notification. The Commission recognizes that not all principal campaign committees may have a facsimile machine, an electronic mail address, or even a computer system. However, the Commission notes that most public libraries have computers available for free public use and several Web sites provide free access to electronic mail. Thus, the Commission concludes that this requirement will at most create only a minimal burden on some candidates, and to whatever extent it might do so is outweighed by the overall benefits.

Part 104—Reports by Political Committees (2 U.S.C. 434)

11 CFR 104.19 Special Reporting Requirements for Principal Campaign Committees of Candidates for Election to the United States Senate or United States House of Representatives

The definition of "opposition personal funds amount" in new 11 CFR 400.10 includes the computation for "gross receipts advantage," as defined in 2 U.S.C. 441a(i)(1)(E) (Senate) and 441a–1(a)(2)(B) (House of Representatives). *See* below for discussion and explanation and justification of these definitions. To compute the "gross receipt advantage," candidates must know of the gross receipts of each of their opposing candidates during any election cycle that may be expended in connection with the election where they are running against a self-financed candidate. The "gross receipts advantage" also takes into account amounts that candidates contribute to their own campaign by subtracting that amount from the gross receipts their authorized committees received.

Because the former regulations and the reporting forms did not require candidates' authorized committees to report the information necessary to compute "gross receipts advantage" in a concise and comprehensive manner, the Commission is adding a new section, 11 CFR 104.19, to require supplemental reporting by the principal campaign committees of candidates who are seeking election to the U.S. Senate or U.S. House of Representatives. This ensures that the candidates in the same election have sufficient and timely information to do the necessary computations under 11 CFR part 400.

Paragraph (a) limits the scope of this new section to only these candidates. It also provides that the reports required under this section must be filed with the Commission. Paragraph (b) describes when these reports must be filed and the content required. Paragraph (b)(1)

requires principal campaign committees to file by July 15 of the year before the general election of the office sought that discloses the gross receipts available to the candidates and their authorized committees to expend in connection with the primary election and the general election as determined on June 30 of that year. The gross receipts amounts must include the contributions that have been designated, deemed to be designated, or redesignated for both the primary election and the general election. Principal campaign committees must report the amount of contributions from personal funds of their candidates received by any of the candidates' authorized committees by June 30 that have been designated for the primary election and the general election. They must then subtract the contributions from personal funds that have been designated for the primary election from the gross receipts that may be expended in connection with the primary election and disclose that amount. Likewise, they must also compute and disclose the amount for the general election.

Paragraph (b)(2) requires that principal campaign committees file another report on January 31 of the year of the general election of the office sought. This paragraph is similar to paragraph (b)(1) except that the pertinent date is December 31 of the year preceding the relevant general election. Principal campaign committees must disclose the same information under paragraph (b)(2) as in paragraph (b)(1) but instead of reporting the amount determined as of June 30, this amount is determined as of December 31.

While BCRA mandates that the opposition personal funds amount use the amounts determined for June 30 and December 31, the interim final rules set the deadlines for the reports at July 15 and January 31, respectively, to coincide with the filing deadlines of the second quarterly reports and the year-end reports that all authorized committees are required to file. The Commission seeks comment whether these are appropriate deadlines.

Part 110—Contribution and Expenditure Limitations and Prohibitions

1. 11 CFR 110.1 Conforming Amendment to 11 CFR 110.1(b)(3) Regarding Net Debts Outstanding (2 U.S.C. 441a(j))

Current 11 CFR 110.1(b)(3) restricts the ability of candidates and their authorized committees to accept contributions after the election. It states that they can accept contributions up to the amount of their "net debts outstanding." "Net debts outstanding" is defined in current 11 CFR 110.1(b)(3)(ii). In order to conform with the fundraising restrictions in new 11 CFR 116.11 (*see* Explanation and Justification for new 11 CFR 116.11, below), new paragraph (b)(3)(ii)(C) would be added to current 11 CFR 110.1 to exclude the amount of personal loans that exceed $250,000 from the definition of "net debts outstanding."

2. 11 CFR 110.10 Deletion of Former 11 CFR 110.10(b) Definition of "Personal Funds"

As explained in greater detail above (*see* Explanation and Justification for new 11 CFR 100.33), the Commission is implementing BCRA's new definition of "personal funds." The Commission has decided to locate this new definition in new 11 CFR 100.33. Accordingly, the Commission is deleting the former definition of "personal funds" in former 11 CFR 110.10(b).

Part 116—Debts Owed by Candidates and Political Committees

BCRA added a new subsection (j) to 2 U.S.C. 441a, which restricts the ability of candidates and their authorized committees to raise funds after the election to repay loans that the candidates made to their authorized committees. These loans are referred to as "personal loans." Section 441a(j) of FECA states that:

> Any candidate who incurs personal loans after the effective date of the Bipartisan Campaign Reform Act of 2002 in connection with the candidate's campaign for election shall not repay (directly or indirectly), to the extent such loans exceed $250,000, such loans from any contributions made to such candidate or any authorized committee of such candidate after the date of such election.

Although 2 U.S.C. 441a(j) is part of the Millionaires' Amendment, the provision has wider application than the other provisions of the Millionaires' Amendment because it is placed as a separate subsection within 2 U.S.C. 441a. This statutory provision thus applies to all personal loans from candidates to their authorized committees regardless of whether the increased contribution and party spending limits in 2 U.S.C. 441a(i) or 441a–1 apply. BCRA's amendment to 2 U.S.C. 441a regarding candidate loans also applies to presidential candidates, who may be self-financed, or who may be permitted under the public funding regime to make limited expenditures from personal funds for their campaigns. Therefore, the interim final rules add new section 11 CFR 116.11—*Debts Owed by Candidates or Political Committees* rather than include new rules implementing 2 U.S.C. 441a(j) in 11 CFR part 400 with the other Millionaires' Amendment regulations. The interim final rules also include a conforming amendment to 11 CFR 110.1(b)(3) regarding net debts outstanding, *see* above.

1. 11 CFR 116.11 Restriction on an Authorized Committee's Repayment of Personal Loans Exceeding $250,000 Made by the Candidate to the Authorized Committee

A. Interim Final Rule

According to the sponsors of the Millionaires' Amendment, the purpose of 2 U.S.C. 441a(j) is to restrict the amount of money candidates and their authorized committees can raise after the election to repay the candidates for personal loans.[2] Essentially, authorized committees may only use up to $250,000 of contributions made after the election to repay the candidates. New 11 CFR 116.11 sets forth these restrictions.

The interim final rules define "personal loans" in paragraph (a) of 11 CFR 116.11. The definition includes not only loans made by candidates to their authorized committees, but also loans made by other persons to the authorized committees that are endorsed or guaranteed by the candidate or that are secured by the personal funds of the candidate. This definition ensures that loans to authorized committees that are used in connection with the candidate's campaign for election, for which the candidate is personally liable, are subject to the provisions of 11 CFR 116.11. It is important to note that new 11 CFR 116.11 applies to all loans made, endorsed, or guaranteed by candidates regardless of whether the other provisions of the Millionaires' Amendment are triggered, *i.e.*, the increased contribution limits.

The definition of "personal loans" in paragraph (a) specifies that advances made by the candidate to their authorized committees are personal loans subject to the repayment restrictions in 11 CFR 116.11. The Commission seeks comment on whether the interim final rules should specify within this definition of "personal loans" other debts and obligations that

[2] "This (amendment) limits candidates who incur personal loans in connection with their campaign in excess of $250,000. They can do $250,000 and then reimburse themselves with fundraisers. But anything more than that, they cannot repay it by going out and having fundraisers once they are elected with their own money." 147 CR S2451 (daily ed. Mar. 19, 2001) (statement of Sen. Domenici).

the candidate's authorized committee owes to the candidate.

The introductory text in paragraph (b) makes clear that if a candidate makes several personal loans over the course of an election, those loans will not be treated separately for purposes of this section but will, instead, be considered in the aggregate. Paragraphs (b) and (d) treat a primary election as a separate election from a general election. If a candidate makes several personal loans to the authorized committee, all the loans will be added together to determine whether they exceed $250,000 and are, therefore, subject to the provisions of this section.

Under paragraph (b)(1), authorized committees may repay the entire amount of any personal loans from contributions that are made *on the date of the election or before that date.* Repayment of the entire loan amount is permitted under BCRA and FECA even if the total loan amount exceeds $250,000 and as long as these contributions were made on or before the date of the election.

In contrast, paragraphs (b)(2) and (3) both address repayments using contributions made after the election. Paragraph (b)(2) allows authorized committees to use only $250,000 of contributions that are made after the election to repay the candidate's personal loans to his or her campaign committee. Consequently, paragraph (b)(3) prohibits authorized committees from using more than $250,000 of contributions that are made after the election to repay the candidate for personal loans.

It is important to note that 11 CFR 116.11(b)(1), (b)(2), and (b)(3) are not mutually exclusive. Under the interim final rules, authorized committees may use contributions that are made *before* the election to repay candidate loans in any amount, and contributions made *after* the election to repay candidate loans up to $250,000. For example, Candidate A loans $600,000 to her authorized committee. The authorized committee receives $350,000 in contributions by election day and receives an additional $400,000 in contributions after the election. Candidate A's authorized committee may use $250,000 of the $400,000 received after the election and $350,000 received before the election to repay the entire amount of the candidate's personal loan.

Paragraph (c) of new 11 CFR 116.11 outlines certain conditions regarding the repayment of candidates' personal loans after the election. Paragraph (c)(1) establishes a post-election time limit for the use of remaining cash on hand for the repayment of personal loans. If a candidate's authorized committee wishes to use the cash on hand as of the day after the election to repay any portion of the candidate's personal loan(s), it must repay the personal loan(s) within 20 days of the election, which is the close of books for the post-general election report. After the 20-day post-election time period has elapsed, paragraph (c)(2) requires a candidate's authorized committee to treat the remaining balance of the candidate's personal loan that exceeds $250,000 as a contribution from the candidate to the authorized committee, given that this amount could never be repaid, and given that the amount must be accounted for on the authorized committee's next report.

Further, paragraph (c)(3) requires the candidate's authorized committee to report both the amount of cash on hand used to repay the candidate's personal loan(s) (under paragraph (c)(1)) and the treatment of the remaining loan amount as a contribution from the candidate (under paragraph (c)(2)) in the authorized committee's next scheduled report.

Example: Candidate X loans $500,000 to her campaign on October 1 for the general election. As of the day after the general election, Candidate X's authorized committee has cash on hand from the general election in the amount of $100,000. Candidate X's authorized committee decides to use $50,000 of the cash on hand to repay part of the candidate's personal loan, leaving an outstanding balance of $450,000. Candidate X's authorized committee must repay $50,000 of the personal loan and must treat $200,000 as a contribution from the candidate within 20 days of the general election because that is the amount that exceeds $250,000 of the remaining balance. Candidate X's authorized committee must report the repayment of $50,000 of the personal loan and the treatment of $200,000 of the personal loan's outstanding balance as a contribution on the next regularly scheduled report, the post-general election report.

BCRA specifically states that 2 U.S.C. 441a(j) applies only to personal loans that are made after November 6, 2002. Thus, the limitations on repayment of personal loans from contributions made after the respective election do not apply to personal loans made before this date. Consequently, any outstanding loan balances of candidate loans that were made before November 6, 2002, may be repaid with contributions made after this date subject to the provisions concerning net debts outstanding in 11 CFR 110.1(b)(3).

B. Alternative Interpretation of 2 U.S.C. 441a(j)

The definition of "personal loans" in new 11 CFR 116.11(a) is based on a broad interpretation of the opening phrase "[a]ny candidate who incurs personal loans" in 2 U.S.C. 441a(j) to mean loans made by candidates to their authorized committees. This interpretation is based on the legislative history of the Senate debates on this provision.[3]

The Commission, however, seeks comments on its interpretation of "incurs" in 2 U.S.C. 441a(j). "Incur" means "[t]o become liable or subject to * * * and to become through one's own action liable or subject to."[4] In the opening phrase of 2 U.S.C. 441a(j), it is the candidate who is "incurring" the personal loans. Thus, arguably, the use of "incurs" could refer to the candidate's liability and not the authorized committee's liability to the candidate. The interim final rules reject this interpretation of 2 U.S.C. 441a(j) to mean loans that are made *to* candidates rather than loans made *by* candidates for two reasons. First, the legislative history supports a different interpretation. Second, the practical consequence of interpreting 2 U.S.C. 441a(j) to apply to loans made *to* candidates rather than loans made *by* candidates to their authorized committee would be that similarly situated candidates may be treated differently. Under this interpretation, a candidate who takes out a loan from a lending institution and then lends the loan proceeds to his or her authorized committee would be subject to the restrictions of 2 U.S.C. 441a(j) and 11 CFR 116.11. Conversely, a candidate who liquidates an asset and loans the proceeds from the sale to his or her authorized committee would not be subject to these sections and the candidate's authorized committee would be able to raise funds after the election to repay him or her. For these two reasons, the Commission rejects this possible interpretation of 2 U.S.C. 441a(j) at this time.

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[3] "If you incur debt from a personal loan and then you get elected as Senator, and then you go around and say, now I am Senator, I want you to get my money so I can pay back what I used of my own money to run for election. It is clear in this amendment that you cannot do that in the future." 147 CR S2537 (daily ed. Mar. 20, 2001) (statement of Sen. Domenici); "[The] language [of 2 U.S.C. 441a(j)] makes it clear there will not be any effort after the election to raise money to repay those loans; * * *" *Id.* at S2462 (daily ed. Mar. 19, 2001) (statement of Sen. Durbin); *see also* footnote 2, above.

[4] *Black's Law Dictionary* 108 (6th ed. 1990).

2. 11 CFR 116.12 Repayment of Candidate Loans of $250,000 or Less

In a recent BCRA-related rulemaking, the Commission deleted 11 CFR 113.2(d) from the regulations. "Disclaimers, Fraudulent Solicitation, Civil Penalties, and Personal Use of Campaign Funds: Final Rules and Explanation and Justification," 67 FR 76962 (December 13, 2002). That now-deleted paragraph addressed, among other things, the repayment of candidate loans using campaign funds. In the Explanation and Justification, the Commission noted that it would return to the issue of repayment of candidate loans in the Millionaires' Amendment rulemaking, if necessary. 67 FR at 76975. The Commission has decided to address this issue in 11 CFR 116.11 and 116.12 as part of this rulemaking, rather than in part 113, because part 116 specifically implements statutory changes directly affecting the repayment of candidate loans (*i.e.*, 2 U.S.C. 441a(j)).

Whereas 11 CFR 116.11 outlines the requirements regarding the repayment of candidate's personal loans that, in the aggregate, exceed $250,000, new 11 CFR 116.12 contains requirements regarding the repayment of candidate's personal loans that, in the aggregate, are equal to or less than $250,000. Paragraph (a) of 11 CFR 116.12, states that a candidate's authorized committee may repay up to $250,000 of a candidate's personal loans using contributions to the candidate or the candidate's authorized committee made any time before, on, or after the date of the election as long as the personal loans were used in connection with the candidate's campaign for election. BCRA places no temporal limit on the contributions that may be used to repay personal loans of $250,000 or less, so paragraph (a) permits candidate's authorized committees to use contributions received before, during, or after the election for this purpose.

Paragraph (b) of 11 CFR 116.12 states that this section applies separately to each election. This means that, if a candidate were to make a personal loan or loans in connection with more than one election, his or her authorized committee may repay up to $250,000 of the aggregate loan amount for each election. For example, Candidate X makes a $250,000 personal loan to her campaign for the primary election and a $250,000 personal loan to her campaign committee for the general election. As of the date after the general election, Candidate X has $500,000 in aggregate outstanding personal loans made to her authorized committee for the primary and general elections. Candidate X's authorized committee may use contributions received before, during, or after the primary election to repay Candidate X's $500,000 outstanding personal loan balance, $250,000 for the primary election loan and $250,000 for the general election loan.

Paragraph (c) states that nothing in 11 CFR 116.12 shall supercede 11 CFR 9035.2 regarding the limitations on expenditures from personal funds or family funds of a presidential candidate who accepts matching funds. Presidential primary candidates must still comply with the limit on expenditures from personal funds exceeding $50,000 prescribed by 11 CFR 9035.2 and 2 U.S.C. 9035.

Part 400—Increased Limits for Candidates Opposing Self-financed Candidates

Scope and Definitions

1. 11 CFR 400.1 Scope and Effective Date

The Commission is promulgating new rules implementing the Millionaires' Amendment. These rules are in new part 400 of Title 11 of the Code of Federal Regulations.

Paragraph (a) of new 11 CFR 400.1 introduces the scope of the part, which is elections to the office of United States Senator, or Representative in, or Delegate or Resident Commissioner to, the Congress, in which a candidate is permitted an increased contribution limit in response to certain expenditures from personal funds by an opposing candidate. Paragraph (a) also states expressly that part 400 does not apply to presidential and vice-presidential elections. Paragraph (b) of 11 CFR 400.1 specifies the effective date of part 400, February 26, 2003, and makes the important clarification that part 400 will not apply to any runoff elections, recounts, or election contests resulting from elections prior to that date. Pub. L. 107–155, Sec. 402(a)(4).

The Commission seeks comment on whether it should adopt a provision, in 11 CFR 400.1, whereby candidates and national and State committees of political parties would be permitted to affirmatively "opt-out" of the Millionaires" Amendment's benefits and obligations, in cases where all of the following conditions were met: (1) The candidate has no intention of making expenditures from personal funds in excess of the relevant threshold amount in 11 CFR 400.9; (2) the candidate and the candidate's authorized committee have no intention of accepting contributions under the increased limits; and (3) the national and State committees of the candidate's political party have no intention of making coordinated expenditures on behalf of the candidate's election. By "opting-out," the candidate would be prohibited from accepting contributions under the increased limits and the national and State committees of the candidate's political party would be prohibited from making coordinated expenditures on behalf of the candidate's election in excess of the usual coordinated expenditure limits in 11 CFR 109.32(b). In return, the candidate and the national and State committees of the candidate's political party would be exempt from all the notification and reporting obligations under 11 CFR part 400.

In addition, the Commission seeks comment on whether, and under what circumstances, candidates and national and State committees of political parties who had "opted out" should be permitted to opt back in to the Millionaires" Amendment's benefits and obligations.

2. 11 CFR 400.2 Definition of "Election Cycle"

BCRA provides a definition of "election cycle," which is, by its own terms, specific to the Millionaires" Amendment. 2 U.S.C. 431(25). New 11 CFR 400.2 implements this definition, tracking the specific language of the statute. Ordinarily, statutory definitions from 2 U.S.C. 431 are implemented by regulations in part 100, which includes definitions that have application throughout Title 11. However, the regulatory definition of "election cycle" in 2 U.S.C. 431(25) is codified in part 400 because the scope of the definition in 2 U.S.C. 431(25) is limited, by its own terms, to the Millionaires' Amendment.

"Election cycle" is defined in the Millionaires" Amendment in BCRA to be the period from election-to-election, with the primary election and the general election considered to be separate elections. 2 U.S.C. 431(25). Thus, the period from the day after the last general election for a particular office to the day of the next primary election for that same office is one election cycle, and the period from the day after the primary election to the day of the general election is another separate election cycle.

In the case of a run-off election, the Commission has decided to treat it as an extension of the election cycle containing the election that necessitated the run-off under 11 CFR 400.2(c). For example, in the case of a primary election where no candidate receives the necessary percentage of votes to be declared the winner and where, therefore, a run-off election must be

held to determine the winner, the Commission will consider the run-off election to be part of the primary election cycle, for purposes of the Millionaires' Amendment.

3. 11 CFR 400.3 Definition of "Opposing Candidate"

The operative provisions of the Millionaires" Amendment are triggered by expenditures of personal funds by "an opposing candidate." *See* 2 U.S.C. 441a(i)(1)(D) (Senate); 2 U.S.C. 441a–1(a)(2) (House of Representatives). New 11 CFR 400.3 defines "opposing candidate." Paragraph (a) applies to primary elections. It establishes that "opposing candidate" means another candidate seeking the nomination of the same party as the candidate who may benefit from increased contribution limits and the lifting of the coordinated party expenditure limits. The final sentence of this paragraph clarifies that a candidate may have more than one "opposing candidate" in a primary.

The Commission seeks comment as to whether "opposing candidate" should be expanded to include candidates seeking *another* political party's nomination for the same office. Under such an expanded definition, for example, a self-financed candidate seeking the nomination of political party ABC would be an "opposing candidate" where his or her personal funds are intended to influence the primary of political party XYZ by working to defeat whichever candidate of political party XYZ is judged to be the strongest opponent of the self-financed candidate in the general election.

Paragraph (b) of 11 CFR 400.3 applies to general elections, and establishes that "opposing candidate" means another candidate seeking election to the same office as the candidate who may benefit from increased contribution limits. Again, the final sentence states that a candidate may have more than one "opposing candidate" in the general election.

4. 11 CFR 400.4 Definition of "Expenditure From Personal Funds"

The amount of "expenditures from personal funds" by an opposing candidate is an important factor in determining whether the increased contribution limits and unlimited coordinated party expenditures are permitted under the Millionaires' Amendment. 2 U.S.C. 441a(i)(1)(D) (Senate); 2 U.S.C. 441a–1(a)(2) (House of Representatives). This term is defined in both the Senate and the House of Representatives versions of the Millionaires' Amendment as "an expenditure made by a candidate using personal funds," as "a contribution or loan made by a candidate using personal funds," and as "a loan secured using such funds to candidate's authorized committee." 2 U.S.C. 434(a)(6)(B)(i) (Senate); 2 U.S.C. 441a–1(b)(1)(A) (House of Representatives).

New 11 CFR 400.4 implements this statutory definition and includes cross-references to 11 CFR 100.33, which defines "personal funds." The introductory wording of 11 CFR 400.4(a) states that all of the items described in paragraphs (a)(1) through (a)(4) are aggregated to determine expenditures from personal funds.

Paragraph (a)(1) follows the definition of "expenditure" in 11 CFR part 100, subparts D and E. It includes payments made directly by the candidate for purposes of influencing the election in which he or she is a candidate. Paragraph (a)(2) includes in the definition contributions and loans made by the candidate to his or her authorized committee using personal funds. 2 U.S.C. 434(a)(6)(B)(i)(II). Paragraph (a)(3) includes in the definition a loan made by any person to the candidate's authorized committee if that loan is secured or guaranteed by the candidate's personal funds. BCRA requires that obligations to make expenditures from personal funds be included when aggregating such expenditures. 2 U.S.C. 434(a)(6)(B)(ii) (Senate); 2 U.S.C. 441a–1(b)(1)(A)(ii) (House of Representatives). Thus, 11 CFR 400.4(a)(4) states that any obligation to make an expenditure from personal funds that is legally enforceable against the candidate falls within the definition of "expenditure from personal funds."

BCRA does not define when an expenditure from personal funds is considered to be made. The Commission, in 11 CFR 400.4(b), defines when an expenditure from personal funds will be considered made for purposes of 11 CFR part 400. Paragraph (b) states that an expenditure is considered made on the date the funds are deposited into the bank account designated by the candidate's authorized committee as the campaign depository, on the date the instrument transferring the funds is signed, or on the date the contract obligating the personal funds is executed, whichever date is earlier. Accordingly, contributions or loans made by the candidate to his or her authorized committee or loans made by any person but secured or guaranteed with the candidate's personal funds will be considered made on the date the loaned funds are deposited into the authorized committee's bank account or, in the case of a loan from a third party secured by the candidate's personal funds, the date the contract obligating the candidate's personal funds was signed, whichever date is earlier. In the situation where a candidate makes direct expenditures on behalf of his or her authorized committee, the expenditure will be considered to have been made on the date he or she signed the check or other instrument conveying the funds or signed a contract obligating his or her personal funds in connection with the direct expenditure. Evidence of expenditures will be receipts, cancelled checks, and signed contracts and such documents must be maintained under the recordkeeping provisions of 11 CFR 102.9.

5. 11 CFR 400.5 Definition of "Applicable Limit"

The Senate provisions of the Millionaires" Amendment use the term "applicable limit." 2 U.S.C. 441a(i)(1)(A). This means the amount limitation on contributions to candidates by persons other than multicandidate committees in 2 U.S.C. 441a(a)(1)(A) that is modified by the operation of the Millionaires' Amendment. Although the House of Representatives version does not use the term "applicable limit," it also operates to increase the 2 U.S.C. 441a(a)(1)(A) limits for individuals. 2 U.S.C. 441a–1(a)(1)(A). Accordingly, new 11 CFR 400.5 defines "applicable limit" by linking the term to the contribution limitation in 11 CFR 110.1(b)(1), which implements 2 U.S.C. 441a(a)(1)(A). The Commission notes this applicable limit will most likely change every two years due to the indexing of the applicable limit for inflation under 2 U.S.C. 441a(c) and 11 CFR 110.1(b)(1). *See* 11 CFR 110.17(b).

6. 11 CFR 400.6 Definition of "Increased Limit"

The Millionaires" Amendment, under certain circumstances, allows a candidate certain advantages to respond to expenditures from personal funds by an opposing candidate. One of these advantages is an increase in the amount limitation on contributions to the candidate by individuals. The other advantage is a suspension of the usual limits on coordinated expenditures by national and State political party committees in connection with the general election campaign of the candidate (*see* 11 CFR 109.32(b)). 2 U.S.C. 441a(i)(1)(C) (Senate); 2 U.S.C. 441a–1(a)(1) (House of Representatives). This suspension of the coordinated expenditure limits applies to *any*

coordinated spending authority either of these party committees may assign to another party committee, such as a Congressional campaign committee or a district or local party committee, under 11 CFR 109.33.

New 11 CFR 400.6 defines "increased limit" to mean an amount limitation on contributions from individuals that exceed the applicable limit (*see* Explanation and Justification for new 11 CFR 400.5, above) in 11 CFR 110.1(b). It is important to note that under the Millionaires' Amendment the amount limitations for contributions from persons other than individuals (political committees, multicandidate political committees (PACs), partnerships, limited liability corporations, Indian tribes, etc.) to candidates do not increase.

New 11 CFR 400.6 also includes within the definition of "increased limit" the suspension of party expenditure limits, where applicable. The Commission notes that nothing in the Millionaires' Amendment changes the restrictions on coordinated party expenditures in 11 CFR 109.35.

7. 11 CFR 400.7 Definition of "Contribution That Exceeds the Applicable Limit"

The Millionaires' Amendment provides that, in certain circumstances, an individual may contribute more to a candidate than otherwise allowed under 2 U.S.C. 441a(a)(1)(A) and 11 CFR 110.1(b). The limits in 2 U.S.C. 441a(a)(1)(A) and 11 CFR 110.1(b) are defined as the "applicable limit" in new 11 CFR part 400. *See* Explanation and Justification for new 11 CFR 400.5, above. New 11 CFR 400.7 defines "contribution that exceeds the applicable limit" as the difference between the contribution amount and the applicable limit.

Example: A contributor delivered a check for $6,000 to a Senate candidate who had been accepting contributions up to that amount under the increased limits. *See* 2 U.S.C. 441a(i)(1)(C)(i)(I). Because the current applicable limit under 11 CFR 110.1(b)(1) is $2,000, the "amount of the contribution above the applicable limit" is $4,000.

8. 11 CFR 400.8 Definition of "Gross Receipts"

Both the Senate and House of Representatives provisions of the Millionaires' Amendment take into account any overall fundraising advantage that a candidate may have over his or her opposing candidate before allowing the opposing candidate's expenditures from personal funds to trigger increased limits on contributions to the candidate and unlimited coordinated party expenditures on behalf of the candidate. The candidate's fundraising advantage, if any, is called the "gross receipts advantage" in both versions of the Millionaires' Amendment. 2 U.S.C. 441a(i)(1)(E) (Senate); 2 U.S.C. 441a–1(2)(B) (House of Representatives). If the candidate's gross receipts advantage offsets the advantage the opposing candidate derives from the expenditure of his or her personal funds, then the increased contribution limits do not come into play. The Commission's regulations do not define the term "gross receipts advantage." Instead, the Commission has incorporated the calculation of "gross receipts advantage" into the formulas for determining the opposition personal funds amount in 11 CFR 400.10 (*see* Explanation and Justification for new 11 CFR 400.10, below).

"Gross receipts" is not defined in BCRA. New 11 CFR 400.8 defines "gross receipts" by reference to an existing reporting regulation already applicable to authorized committees in other contexts, 11 CFR 104.3(a)(3). Section 104.3(a)(3) enumerates the types of receipts that make up the "total amount of receipts" and that must be reported by a candidate's principal campaign committee on behalf of all the candidate's authorized committees.[5] This approach has the benefit of relying on rules and concepts already familiar to candidates and authorized committees to implement this part of BCRA.

9. 11 CFR 400.9 Definition of "Threshold Amount"

Both the Senate and House of Representatives provisions of the Millionaires' Amendment define a "threshold amount." If the opposing candidate's expenditures from personal funds, adjusted for the candidate's expenditures from personal funds and the candidate' gross receipts advantage (*see* Explanation and Justification for new 11 CFR 400.10, below), exceed this threshold amount, or specified multiples of this threshold amount, and other conditions are met, the candidate receives the advantage of increased contribution limits and the lifting of the coordinated party spending limits.

In the Senate provisions, the threshold amount varies from State to State according to a statutory formula called "State-by-State Competitive and Fair Campaign Formula." 2 U.S.C. 441a(i)(1)(B)(i). The formula is the sum of $150,000 plus the product of the "voting age population" of the State and $0.04. *Id.*

The interim final rules define "threshold amount" in new 11 CFR 400.9. Paragraph (a) applies to Senate elections. It defines threshold amount by restating the "State-by-State Competitive and Fair Campaign Formula" from 2 U.S.C. 441a(i)(1)(B)(i). Paragraph (a) also defines "voting age population" by reference to new 11 CFR 110.18, which is entitled "voting age population." *See also* former 11 CFR 110.9(d). New 11 CFR 110.18 provides that the term means "resident population, 18 years of age or older." That section also provides that the Commission will assure that this data is published annually in the **Federal Register**. The Commission will also post this data on its website.

Paragraph (b) applies to House of Representatives elections. Because the threshold amount in House of Representatives elections is statutorily fixed at $350,000, paragraph (b) simply restates that amount. 2 U.S.C. 441a–1(a)(1).

10. 11 CFR 400.10 Definition of "Opposition Personal Funds Amount"

The purpose of the Millionaires' Amendment is to allow a candidate to respond to very large expenditures of personal funds by an opposing candidate. However, the operative provisions of the Millionaires' Amendment are not triggered directly by the opposing candidate's expenditures from personal funds. Instead, the opposing candidate's expenditure of personal funds is measured relative to the candidate's own expenditures from personal funds. For both Senate and House of Representatives elections, the "opposition personal funds amount" is the difference between the opponents' expenditures from personal funds and the candidate's own expenditures from personal funds. 2 U.S.C. 441a(i)(1)(D) (Senate); 2 U.S.C. 441a–1(a)(2) (House of Representatives). This provision precludes the operation of the Amendment in a situation where a candidate's own expenditures from personal funds offsets the opponent's expenditures from personal funds.

The opposition personal funds amount is subject to one other factor, called the "gross receipts advantage." 2 U.S.C. 441a(i)(1)(E) (Senate); 2 U.S.C.

[5] Note that certain amounts that qualify as "expenditures from personal funds" are reported under 11 CFR 104.3(a)(3), *e.g.*, contributions from candidates under 11 CFR 104.3(a)(3)(ii). However, expenditures from personal funds are expressly excluded from BCRA's definition of "gross receipts advantage." 2 U.S.C. 441a(i)(8)(E) (Senate); 2 U.S.C. 441a–1(a)(2)(B)(ii) (House of Representatives). The Commission has accounted for this in the computation of "opposition personal funds amount" in 11 CFR 400.10, below.

441a–1(a)(2)(B) (House of Representatives). As explained in more detail above, if the candidate's overall fundraising advantage, called the "gross receipts advantage," offsets an opposing candidate's expenditures from personal funds, the increased contribution and coordinated party expenditure limits will not be triggered. Given that gross receipts advantage must be taken into account in determining the opposition personal funds amount, the Commission has decided to imbed the factors necessary for calculating gross receipts advantage into the formulas in the regulations for determining the opposition personal funds amount, as explained below.

Accordingly, 11 CFR 400.10 defines "opposition personal funds amount" by setting out three mutually exclusive formulas. Only one of the formulas will apply at a given time, depending on the date of the computation. The date of computation is important because Congress, in BCRA, specified two benchmark dates for making the determination of gross receipts advantage: June 30 and December 31 of the year preceding the year in which the general election is held. Before June 30 of the year preceding the year in which the general election is held, gross receipts advantage does not seem to be given effect by the statute. 2 U.S.C. 441a(i)(1)(D)(ii) (Senate); 2 U.S.C. 441a–1(a)(2)(B) (House of Representatives). On or after June 30 of the year preceding the year in which the general election is held, however, gross receipts advantage must be taken into account in determining the opposition personal funds amount.

The Commission notes that, although the statute uses the benchmark dates of June 30 and December 31 of the year preceding the year in which the general election is held for determining gross receipts advantage, the formulas in the Commission's rule for calculating opposition personal funds amount (new 11 CFR 400.10), are framed in terms of the later dates of July 16 of the year preceding the year in which the general election is held and February 1 of the year in which the general election is held, respectively. The reason for this discrepancy is that the disclosure reports containing the necessary information for determining gross receipts advantage as of June 30 and December 31 of the year preceding the year in which the general election is held, the Second Quarterly Report, the Year End Report, and the supplement reports required under new 11 CFR 104.19, are not due until July 15 of the year preceding the year in which the general election is held and January 31 of the year in which the general election is held, respectively. Furthermore, it will not actually be possible to make the necessary calculations until the day after each of those reports is due.

Accordingly, the formulas for calculating the opposition personal funds amount revolve around two important dates: July 16 of the year preceding the year in which the general election is held (the day after the Second Quarterly Report is due) and February 1 of the year in which the general election is held (the day after the Year End Report is due).

The formulas and their respective effective dates are set out in paragraph (a) of new 11 CFR 400.10 using variables that are defined in paragraph (b). The first term is the same in each of the formulas: The difference between the expenditures of personal funds by the candidate and the opposing candidates. This is expressed as a formula, "a – b," where "a" is the amount of expenditures from personal funds by the opposing candidate and "b" is the amount of expenditures from personal funds by the candidate seeking to accept contributions under the increased limits. The difference between the three sets of formulas is how gross receipts advantage is computed. In the formula that applies prior to July 16 of the year before the general election year (paragraph (a)(1)), gross receipts advantage is *not* factored into the formula, as explained above. Thus, during this timeframe, the opposition personal funds amount is simply the difference between the expenditures from personal funds by the candidate and each opposing candidate.

The first of the benchmark dates set by Congress for computing gross receipts advantage is June 30 of the year before the general election year. As explained above, the information necessary for calculating gross receipts advantage as of that date will not be available to the public until July 16 of the year before the general election year. Accordingly, July 16, rather than June 30 of the year before the general election year, marks the beginning date for applicability of the second formula (paragraph (a)(2)).

Paragraph (a)(2) sets out two different formulas (using the terminology of the formula, "a – b – ((c – d)÷2)" or "a – b"). Variable "c" is the aggregate amount of the gross receipts of the candidate's authorized committees, minus any contributions by the candidate from personal funds, during any election cycle that may be expended in connection with the election, as determined on June 30 of the year preceding the year in which the general election is held. Variable "d" is the aggregate amount of the gross receipts of the opposing candidate's authorized committee, minus any contributions by that opposing candidate from personal funds, during any election cycle that may be expended in connection with the election, as determined on June 30 of the year preceding the year in which the general election is held.

If the amount for variable "c" is greater than the amount for variable "d," then the first of these formulas must be used to determine the opposition personal funds amount (a – b – ((c – d)÷2)). If the reverse is true, however, then the gross receipts advantage is considered to be equal to $0 because BCRA states that the gross receipts advantage is taken into consideration only if the candidate's authorized committee's gross receipts exceed the opposing candidate's authorized committee's gross receipts. 2 U.S.C. 441a(i)(1)(E)(ii) (Senate); 2 U.S.C. 441a–1(a)(2)(B)(ii) (House of Representatives) ("* * * the term 'gross receipts advantage' means the excess, *if any* * * *") (emphasis added). Thus, the opposition personal funds amount simply equals the difference between the greatest aggregate amount of expenditures from personal funds made by the opposing candidate and the candidate opposing the opposing candidate in the same election (using the terminology of the formulas, "a – b"). The computation of gross receipts advantage then remains constant until the next statutory benchmark date occurs. It is important to note, however, that the opposition personal funds amount is still subject to change during this time period, depending on changes in the amounts of expenditures from personal funds of the candidates in the same election.

The second of the benchmark dates set by Congress for computing gross receipts advantage is December 31 of the year before the general election year. As explained above, the information necessary for calculating gross receipts advantage as of that date will not be available to the public until February 1 of the general election year. Accordingly, February 1 of the general election year, rather than December 31 of the year before the general election year, marks the beginning date for applicability of the third set of formulas (paragraph (a)(3)).

Like paragraph (a)(2), paragraph (a)(3) sets out two formulas (using the terminology of the formula, "a – b – ((e – f)÷2)" or "a – b"). Variable "e" is the aggregate amount of the gross receipts of the candidate's authorized committees, minus any contributions by

the candidate from personal funds, during any election cycle that may be expended in connection with the election, as determined on December 31 of the year preceding the year in which the general election is held. Variable "f" is the aggregate amount of the gross receipts of the opposing candidate's authorized committee, minus any contributions by that opposing candidate from personal funds, during any election cycle that may be expended in connection with the election, as determined on December 31 of the year preceding the year in which the general election is held.

If the amount for variable "e" is greater than the amount for variable "f," then the first of these formulas must be used to determine the opposition personal funds amount (a − b − ((e − f)÷2)). If the reverse is true, however, then the gross receipts advantage is not taken into consideration, for the same reason stated in the Explanation and Justification for paragraph (a)(2), above, and consequently is equal to $0. The opposition personal funds amount simply equals the difference between the greatest aggregate amount of expenditures from personal funds made by the opposing candidate and the candidate opposing the opposing candidate in the same election (using the terminology of the formulas, "a − b"). The computation of gross receipts advantage then remains constant until the day of the general election. Once again, however, it is important to note that the opposition personal funds amount is still subject to change during this time period, depending on changes in the amounts of expenditures from personal funds of the candidates in the same election.

Notification and Reporting Requirements

1. 11 CFR 400.20 Declaration of Intent

Both the Senate and the House of Representatives versions of the Millionaires' Amendment (2 U.S.C. 434(a)(6)(B)(ii) (Senate) and 441a–1(b)(1)(B) (House of Representatives)) require candidates to file a "declaration of intent" within 15 days of becoming a candidate. This declaration must state the amount by which the candidate intends to exceed the threshold amount (*see* Explanation and Justification for new 11 CFR 400.9, above). New 11 CFR 400.20 implements these statutory requirements.

Paragraph (a) sets forth the basic requirements for filing Declarations of Intent, including the 15 day filing deadline. *See* 11 CFR 100.3 for the definition of "candidate." The declaration must be filed with the Commission and with each "opposing candidate" as described in 11 CFR 400.3.

Paragraph (b) sets forth the methods of filing for the Senate in paragraph (b)(1) and for the House of Representatives in paragraph (b)(2). Because Senate candidates are exempt from the FECA's electronic filing requirements at 2 U.S.C. 434(a)(11), under paragraph (b)(1), Senate candidates must send a *copy* of their Statement of Candidacy with the declaration to the Commission, *in addition* to their paper filing with the Secretary of the Senate. Candidates will be required to send the copy of their filing to the Commission using either a facsimile machine or as an attachment to an electronic mail message to ensure that it is received within the statutorily required time frame. Additionally, Senate candidates will be required to fax or electronically mail either their FEC Form 2 as an attachment, or the information required in FEC Form 2 by 11 CFR 101.1(a), including the amount by which the they expect to exceed the threshold amount to each opposing candidate.

Under paragraph (b)(2), candidates for the House of Representatives will also be required to include the Declaration of Intent information on their Statement of Candidacy, FEC Form 2. Currently, political committees that exceed, or that have reason to expect to exceed, $50,000 in contributions or expenditures must file electronically. Paragraph (b)(2) requires candidates for the House of Representatives who state on FEC Form 2 that they intend to exceed the threshold amount, as defined in 11 CFR 400.9, to file electronically. This is because the electronic filing threshold in 11 CFR 104.18 ($50,000) is lower than the $350,000 threshold for part 400. By declaring his or her intention to exceed $350,000 in expenditures from personal funds, a House of Representatives candidate is stating that he or she anticipates spending more than seven times the $50,000 electronic filing threshold. Additionally, House of Representatives candidates are required to fax or electronically mail their FEC Form 2 as an attachment, or the information required therein by 11 CFR 101.1(a), including the amount by which they intend to exceed the threshold amount, to each opposing candidate.

With these required methods of filing, the Commission seeks to facilitate the making and receiving of the Declaration of Intent by all candidates. As explained in the discussion of revised § 101.1 above, due to the availability of computers in public libraries and the availability of free electronic mail on several Web sites, the Commission does not believe that requiring the use of electronic mail will pose an undue burden on candidates, especially when weighed against the fact that electronic mail will provide the most rapid manner of notification possible.

2. 11 CFR 400.21 Initial Notification of Expenditures From Personal Funds

BCRA (2 U.S.C. 434(a)(6)(B)(iii) (Senate) and 441a–1(b)(1)(C) (House of Representatives)) requires the filing of an "initial notification" of expenditures from personal funds within 24 hours of the time certain threshold amounts of expenditures from candidates' personal funds are exceeded. For Senate candidates, that amount is two times the threshold amount defined in 11 CFR 400.9(a). For House of Representatives candidates, that amount is the threshold amount as defined in 11 CFR 400.9(b). New 11 CFR 400.21 largely tracks the wording of the statute at 2 U.S.C. 434(a)(6)(B)(iii) (Senate) and 441a–1(b)(1)(C) (House of Representatives), with two modifications. First, as discussed in greater detail below (*see* Explanation and Justification for new 11 CFR 400.25), while BCRA seems to require candidates themselves to file initial notifications of expenditures from personal funds, the Commission interprets this to mean that the candidates' principal campaign committees are primarily responsible for these notifications, consistent with their other reporting obligations. Second, as explained in more detail below (*see* Explanation and Justification for new 11 CFR 400.24), FECA requires all original documents filed by Senate candidates' principal campaign committees to be filed with the Secretary of the Senate. Accordingly, paragraph (a) of new 11 CFR 400.21 requires Senate candidates' principal campaign committees to file their original notifications with the Secretary of the Senate and to file copies with other required recipients, including the Commission.

New 11 CFR 400.21 addresses the requirements for the principal campaign committees of Senate candidates in paragraph (a). Paragraph (a) states that Senate candidates' principal campaign committees must notify the Secretary of the Senate, the Commission, and each opposing candidate when making expenditures from personal funds in connection with the election exceeding two times the threshold amount, as defined in 11 CFR 400.9. Paragraph (a) makes clear that such notifications must be received by each required recipient

within 24 hours of when the expenditures are made.

Paragraph (b) of 11 CFR 400.21 contains the requirements for the principal campaign committees of House of Representatives candidates. Paragraph (b) states that House of Representatives candidates' principal campaign committees must notify the Commission, each opposing candidate, and the national party of each opposing candidate when making expenditures from personal funds in connection with the election exceeding the $350,000 threshold amount, as defined in 11 CFR 400.9. Paragraph (b) also makes clear that such notifications must be received by each required recipient within 24 hours of when the expenditures are made. The content and method of filing of initial notification of expenditures from personal funds are discussed below in the Explanation and Justification for new 11 CFR 400.23 and 400.24.

3. 11 CFR 400.22 Additional Notification of Expenditures From Personal Funds

After the initial notification discussed above, BCRA (2 U.S.C. 434(a)(6)(B)(iv) and 441a–1(b)(1)(D)) requires the filing of additional notices each time expenditures from the candidate's personal funds exceed $10,000. Like 11 CFR 400.21, new 11 CFR 400.22 largely tracks the language of the statute, with two modifications. First, as discussed in greater detail below (*see* Explanation and Justification for new 11 CFR 400.25), while BCRA seems to require candidates themselves to file additional notifications of expenditures from personal funds, the Commission interprets this to mean that the candidates' principal campaign committees are primarily responsible for these notifications, consistent with their other reporting obligations. Second, as explained in more detail below (*see* Explanation and Justification for new 11 CFR 400.24), FECA requires all original documents filed by Senate candidates' principal campaign committees to be filed with the Secretary of the Senate. Accordingly, paragraph (a) of new 11 CFR 400.22 requires Senate candidates' principal campaign committees to file their original notifications with the Secretary of the Senate and to file copies with other required recipients.

New 11 CFR 400.22 addresses the requirements for the principal campaign committees of Senate candidates in paragraph (a). Paragraph (a) states that Senate candidates' principal campaign committees must notify the Secretary of the Senate, the Commission, and each opposing candidate when making additional expenditures from personal funds in connection with the election exceeding $10,000. Paragraph (a) makes clear that such notifications must be received by each required recipient within 24 hours of when the expenditures are made.

Paragraph (b) of 11 CFR 400.22 contains the requirements for the principal campaign committees of House of Representatives candidates. Paragraph (b) states that House of Representatives candidates' principal campaign committees must notify the Commission, each opposing candidate, and the national party of each opposing candidate when making additional expenditures from personal funds in connection with the election exceeding $10,000. Paragraph (b) also makes clear that such notifications must be received by each required recipient within 24 hours of when the expenditures are made. The content and method of filing of additional notifications of expenditures from personal funds are discussed below in the Explanation and Justification for new 11 CFR 400.23 and 400.24.

4. 11 CFR 400.23 Contents of Notifications of Expenditures From Personal Funds

The Millionaires' Amendment at 2 U.S.C. 434(a)(6)(B)(v) (Senate) and 441a–1(b)(1)(E) (House of Representatives) specifically sets forth the contents of the initial and additional notifications discussed above. BCRA requires that the initial and each additional notification contain the following information: (1) The name and office sought by the candidate making the expenditures from personal funds, (2) the date and amount of each such expenditure, and (3) the total amount of expenditures from personal funds that the candidate has made in connection with the election from the beginning of the election cycle to the date of the expenditure that, when aggregated with all others, exceed the $10,000 threshold, thereby triggering the additional notification requirement. The interim final rule in 11 CFR 400.23 largely tracks the notification requirements of the statute.

While new 11 CFR 400.23(c) requires candidates and their authorized committees to provide information regarding the date and amount of each expenditure from personal funds, the Commission has included language in paragraph (c) to make it clear that the candidate's principal campaign committee is not required to supply such detailed information regarding each expenditure from personal funds more than once.

Example: Candidate X, a candidate for the House of Representatives, spends $200,000 from personal funds in connection with his election campaign on April 1 and another $200,000 on April 10. On April 11, within 24 hours of triggering the $350,000 threshold, Candidate X's principal campaign committee files an initial notification of expenditures from personal funds pursuant to 11 CFR 400.21, on which the committee provides the dates and amounts of all expenditures from personal funds to date, namely the expenditure of $200,000 on April 1 and the subsequent expenditure of $200,000 on April 10. On April 12, Candidate X spends an additional $15,000 from personal funds. On April 13, within 24 hours, Candidate X's principal campaign committee files an additional notification of expenditures from personal funds as required by 11 CFR 400.22. On the April 13 additional notification, Candidate X's principal campaign committee would provide the date and amount of the $15,000 expenditure and would report the total aggregate amount of expenditures from personal funds as $415,000 ($200,000 + $200,000 + $15,000). Candidate X's principal campaign committee would not be required to report the date and amount of the two $200,000 expenditures on the April 13 additional notification because details regarding those expenditures were already provided in the initial notification of expenditures from personal funds that the committee filed on April 11.

5. 11 CFR 400.24 Methods of Filing Notifications

BCRA does not specify methods of filing the initial and additional Notifications of Expenditures from Personal Funds. New 11 CFR 400.24 addresses methods of filing. Paragraph (a) contains the requirements for Senate candidates and paragraph (b) contains the requirements for House of Representatives candidates. As discussed in greater detail below (*see* Explanation and Justification for 11 CFR 400.25), while BCRA could be interpreted to require candidates themselves to file initial and additional notifications of expenditures from personal funds, the Commission concludes that the primary reporting obligation should reside with the candidates' principal campaign committees, although candidates must ensure that their principal campaign committees comply with this obligation.

Although 2 U.S.C. 434(a)(6) does not specifically require Senate candidates to file their initial and additional notifications of expenditures from personal funds with the Secretary of the Senate, 2 U.S.C. 432(g)(1), which was not amended by BCRA, states that all reports required to be filed by Senate candidates under the FECA must be filed with the Secretary of the Senate. Accordingly, paragraph (a) of 11 CFR 400.24 requires Senate candidates'

principal campaign committees to file their initial and additional notifications of expenditures from personal funds with the Secretary of the Senate on FEC Form 10. Paragraph (a) also requires Senate candidates' principal campaign committees to send a copy of FEC Form 10 by either facsimile machine or electronic mail or to send an electronic mail containing the information required by 11 CFR 400.23 to the Commission and to each opposing candidate. Although Senate candidates are exempt from the FECA's electronic filing requirements, the Commission is requiring their principal campaign committees to send this time-sensitive information regarding their expenditures from personal funds by facsimile machine or electronic mail in order to provide the most rapid notification possible.

Paragraph (b) of 11 CFR 400.24 requires certain methods of filing for House of Representatives candidates. As noted above, House of Representatives candidates are subject to the electronic filing requirements of 2 U.S.C. 434(a)(11). Therefore, whereas Senate candidates' principal campaign committees must send their notifications to the Commission by facsimile machine or by electronic mail, House of Representatives candidates' principal campaign committees must electronically file FEC Form 10 as they would any other report using the Commission's electronic filing system. This is because House of Representatives candidates who exceed the threshold amount in 11 CFR 400.10(b) will be well over the $50,000 electronic filing threshold. Additionally, House of Representatives candidates' principal campaign committees will be required to send their FEC Form 10 via facsimile or as an attachment to an electronic mail message, or to send an electronic mail message containing the information required in new 11 CFR 400.23 to each opposing candidate as well as to the national party committees of each opposing candidate.

Although 11 CFR 400.21 and 400.22 require candidates to file the initial notification of expenditures from personal funds and additional notification of expenditures from personal funds with their opposing candidates, they may not be able to do so because they are unable to obtain the phone number of the facsimile machine or the electronic mail address of one or more of their opposing candidates' principal campaign committees. This may be because the opposing candidate's principal campaign committee failed to supply that information in its Statement of Organization. The Commission seeks comment on whether it should waive these notification to opposing candidates requirements where the opposing candidate's authorized committee does not report the phone number for its facsimile machine or its electronic mail address on FEC Form 1, the Statement of Organization.

6. 11 CFR 400.25 Reporting Obligations of Candidates and Candidates' Principal Campaign Committees

The Commission notes that BCRA states that *candidates* are required to file various notifications under the Millionaires' Amendments. For example, BCRA requires candidates to file initial notifications of expenditures from personal funds (2 U.S.C. 434(a)(6)(B)(iii) and 441a-1(b)(1)(C)) and additional notifications of expenditures from personal funds (2 U.S.C. 434(a)(6)(B)(iv) and 441a-1(b)(1)(D)). In the case of notifications of the disposal of excess contributions (2 U.S.C. 441a(i)(3) and 441a-1(a)(4)), either the candidates or their authorized committees must file the notifications. These reporting obligations are similar in nature and extent to other reporting requirements in FECA. Accordingly, the Commission has decided to implement these new reporting requirements in a manner consistent with the way in which other reporting requirements operate under 2 U.S.C. 434 and 11 CFR part 104.

Under FECA, political committees, including candidates' authorized political committees and principal campaign committees, are required to file regularly scheduled reports of receipts and disbursements. *See* 11 CFR 104.3. Although the obligation to file the reports rests with political committees, it is the committees' treasurers who are liable if their committees fail to file the required reports. *See* 11 CFR 104.1(a). Consequently, the Commission is taking a similar approach to the reporting requirements under the Millionaires' Amendment. While the Commission's regulations implementing the new reporting provisions state that candidates' principal campaign committees are required to file the required reports and notifications (*see* 11 CFR 400.21, 400.22, 400.24, and 400.54, below), candidates are responsible for ensuring that their principal campaign committees meet these new disclosure obligations under new 11 CFR 400.25. The Commission seeks comment on whether holding candidates personally liable for violations of the reporting requirements under subpart B of part 400 is consistent with Congressional intent.

Determining When the Increased Limits Apply

The Millionaires' Amendment prescribes rules for calculating the amounts of the increased limits to allow response to expenditures from personal funds by an opposing candidate, and also for determining when these increased limits do and do not apply. New 11 CFR part 400, subpart C implements the Millionaires' Amendment provisions concerning when a candidate may and must not accept contributions from individuals under the increased limits and when a national or State political party political party committee may and must not make coordinated party expenditures exceeding the limits in 2 U.S.C. 441a(d). New subpart D of part 400 covers the procedures for calculating the increased limits.

1. 11 CFR 400.30 Receipt of Notification of Opposing Candidate's Expenditures From Personal Funds

Paragraph (a) of new 11 CFR 400.30 clarifies that the section applies to both Senate races and House of Representatives races.

Paragraph (b) sets the conditions under which a candidate may accept contributions above the applicable limit, while paragraph (c) sets the conditions under which certain political party committees may make unlimited coordinated party expenditures on behalf of the candidate. There are several conditions that must be satisfied before a candidate may accept contributions above the applicable limit (*see* 11 CFR 400.5) pursuant to the increased contribution limits (*see* 11 CFR 400.6), and before a national or State political party committee may make unlimited coordinated party expenditures on behalf of the candidate in the general election. The first of these conditions is that the candidate must receive certain notification from the opposing candidate. 2 U.S.C. 441a(i)(2)(A)(i) (Senate); 2 U.S.C. 441a–1(a)(3)(A)(i) (House of Representatives). This condition is implemented in new 11 CFR 400.30.

There seems to be an inconsistency in the statute between the notification that the opposing candidate must give, and the notification that the candidate must receive. In both the Senate and the House of Representatives versions, the opposing candidate must give notifications in terms of his or her "expenditures from personal funds." 2 U.S.C. 434(a)(6)(B)(ii) through (v) (Senate); 2 U.S.C. 441a–1(b)(1)(B)

through (E) (House of Representatives). The candidate must, however, receive notification of the "opposition personal funds amount." 2 U.S.C. 441a(i)(2)(A)(i) (Senate); 2 U.S.C. 441a–1(a)(3)(A)(i) (House of Representatives). The terms "expenditure from personal funds" and "opposition personal funds amount" mean different things in the Millionaires' Amendment. *See* 11 CFR 400.4 and 400.10, respectively.

New 11 CFR 400.30 reconciles these provisions by interpreting the reference to "opposition personal funds amount" in 2 U.S.C. 441a(i)(2)(A)(i) (Senate) and 2 U.S.C. 441a–1(a)(3)(A)(i) (House of Representatives) to mean "expenditure from personal funds." Thus, paragraph (b) of new 11 CFR 400.30 provides that a candidate must not accept, pursuant to this part, any contribution above the applicable limits (*see* 11 CFR 400.5) until the candidate has received the initial notification of an opposing candidate's expenditures from personal funds, as defined in new 11 CFR 400.4.

Although this regulatory interpretation diverges to some extent from the wording of 2 U.S.C. 441a(i)(2)(A)(i) (Senate) and 441a–1(a)(3)(A)(i) (House of Representatives), this interpretation harmonizes the statutory scheme by reconciling the nature of the notification that the opposing candidate must give with the nature of notification that the candidate must receive. This interpretation also makes sense when one considers that the self-financed candidate is not able to calculate the opposition personal funds amount in order to give notification of this amount to the candidate in the initial notification. To calculate the opposition personal funds amount, one must have data from both candidates (*i.e.*, about expenditures from personal funds by both candidates). *See* 11 CFR 400.10. The purpose of the notification requirements in the statute seems to be to provide the candidate with all the data necessary to calculate the opposition personal funds amount. The regulatory interpretation in paragraph (b) of new 11 CFR 400.30 thus accomplishes the apparent purpose of the statute.

Under the Millionaires' Amendment, one of the advantages that may be granted to a candidate to allow response to expenditures from personal funds by the opposing candidate is unlimited coordinated party expenditures on the candidate's behalf. *See* 2 U.S.C. 441a(i)(1)(C)(iii)(III) (Senate); 2 U.S.C. 441a–1(a)(1)(C) (House of Representatives). Paragraph (c) of new 11 CFR 400.30 applies to national and State committees of a political party (including Congressional campaign committees), and makes it clear that such party committees may not make unlimited coordinated party expenditures on behalf of a candidate until that candidate has received the initial notification.

The Commission is aware that, under some circumstances, candidates, authorized committees, and party committees may not actually receive initial and additional notifications sent by opposing candidates in a timely manner due to technological difficulties, faulty equipment, or other reasons. To enable candidates and authorized committees to accept contributions and party committees to make coordinated expenditures under the increased limits as soon as possible once expenditures from personal funds above the threshold amount have been made, the Commission is adding the concept of "constructive notification" to paragraphs (b) and (c) of 11 CFR 400.30. Under paragraph (d), a candidate, authorized committee, or party committee is considered to have received constructive notice of the filing of an opposing candidate's initial or addition notification of expenditures from personal funds when they obtain a copy of such notification that is received by the Commission.

2. 11 CFR 400.31 Preventing Disproportionate Advantage Resulting From Increased Contribution and Coordinated Party Expenditure Limits

Congress placed several checks on the operation of the Millionaires' Amendment. Among these checks is the so-called "proportionality provision." 147 Cong. Rec. S2538 (daily ed. March 20, 2001) (Sen. DeWine). The proportionality provision ensures that the advantages of the increased contribution and coordinated party spending limits allowed to the candidate facing a self-financed opponent do not tip the scales disproportionately in favor of the candidate enjoying the increased limits. 2 U.S.C. 441a(i)(2)(A)(ii) (Senate); 2 U.S.C. 441a–1(a)(3)(A)(ii) (House of Representatives). New 11 CFR 400.31 implements the statutory proportionality provision.

The proportionality provision requires a candidate and his or her authorized committee that accepts contributions under the increased limits, and a political party committee that makes coordinated party expenditures on behalf of the candidate under the increased limits, to monitor a certain proportion. The numerator of the proportion is the running total of contributions previously accepted and coordinated party expenditures previously made under the increased limits. The denominator of the proportion is the opposition personal funds amount. 2 U.S.C. 441a(i)(2)(A)(ii) (Senate); 2 U.S.C. 441a–1(a)(3)(A)(ii) (House of Representatives).

In the Senate version of the proportionality provision, a candidate and his or her authorized committee must not accept a contribution "to the extent" the contribution causes the proportion to exceed 110 percent. Similarly, a national or State political party committee must not make a coordinated party expenditure on behalf of the candidate "to the extent" that the expenditure causes the proportion to exceed 110 percent. 2 U.S.C. 441a(i)(2)(A)(ii). The House of Representatives version operates in an almost identical manner. The only difference in the House of Representatives version is that the proportion must not exceed 100 percent. 2 U.S.C. 441a–1(a)(3)(A)(ii).

Thus, the effect of the proportionality provision on the increased individual contribution limits is to cause the contribution limits to revert to the applicable limit in 11 CFR 110.1(b)(1) from the increased limits specified by the Millionaires' Amendment once the advantages of the increased limits reach a specified level that is disproportionate to the opposing candidate's expenditures from personal funds. Similarly, the effect of the proportionality provision on the suspension of coordinated party expenditure limits is to reintroduce the limit on national and State coordinated party expenditures in 11 CFR 109.32(b) when the advantages of the increased coordinated spending limits also become disproportionate.

Paragraph (a) of new 11 CFR 400.31 clarifies that the proportionality provision applies to both Senate and House of Representatives elections. Paragraph (b) identifies those who have responsibilities under the proportionality provision: Any candidate and his or her authorized committee that accepts contributions under the increased limits, and any party committee that makes coordinated party expenditures on behalf of such a candidate under the increased limits. The Commission seeks comment on whether holding candidates personally liable for violations of 11 CFR 400.31 is consistent with Congressional intent.

Paragraph (c) sets out the information that must be monitored by the candidates and authorized committees that accept contributions from individuals under the increased coordinated spending limits, and the party committees that make coordinated

party expenditures on behalf of candidates under the increased limits. This information consists of the three elements necessary to compute the proportion required by the statute: (1) The aggregate amount of contributions previously accepted by the candidate under the increased limits (paragraph (c)(1)); (2) the aggregate amount of coordinated party expenditures in connection with the general election campaign of the candidate previously made by any political party committee under the increased limits (paragraph (c)(2)); and (3) the opposition personal funds amount (paragraph (c)(3)).

Paragraph (d) of 11 CFR 400.31 applies to Senate elections. Paragraph (d)(1)(i) provides that a candidate must not accept that part of a contribution that exceeds the applicable limit (*see* 11 CFR 400.7) if the contribution would cause the proportion to exceed 110%. Note that, under this circumstance, the candidate would be able to accept that part of the contribution up to the applicable limit. This would be so because, even if the increased limits do not apply because of the proportionality provision, contributions up to the applicable limit are still permitted under 11 CFR 110.1(b).

Example: A contributor who had made no prior contributions delivered a check for $6,000 to a Senate candidate who had been accepting contributions up to that amount under the increased limits. *See* 2 U.S.C. 441a(i)(1)(C)(i)(I). The candidate determines that accepting the entire amount of the contribution would cause the proportion of the sum of the contributions previously accepted under the increased individual limits, plus coordinated party expenditures previously made under the increased limits, to the opposition personal funds amount to exceed 110%. Therefore, the candidate may accept the first $2,000 of the contribution, but not the amount above that.

Paragraph (d)(1)(ii) states that the candidate or the candidate's authorized committee has an affirmative duty to notify the national and State committees of their political party and the Commission, by facsimile machine or electronic mail, within 24 hours of when the aggregate amounts described in 11 CFR 400.31(c)(1) plus the aggregate amounts described in 11 CFR 400.31(c)(2) equals 110 percent of the opposition personal funds amount. The purpose of this requirement is to ensure that national and State committees of the candidate's political party and the Commission are put on notice that the committees may no longer make coordinated party expenditures in connection with the candidate's general election campaign that exceed the ordinary expenditure limitations in 11 CFR 109.32(b).

Paragraph (d)(2) prohibits national and State committees of political parties from making coordinated party expenditures in excess of the expenditure limits in 11 CFR 109.32(b) in connection with a candidate's general election campaign when the sum of the aggregate amounts described in 11 CFR 400.31(c)(1) and the aggregate amounts described in 11 CFR 400.31(c)(2) reach the proportionality provision threshold. Again, as provided in the statute, the obligation is on the party committee not to make any coordinated party expenditures pursuant to the increased limits if the amount of that expenditure would cause the proportion of the sum of the contributions previously accepted under the increased limits, plus coordinated party expenditures previously made under the increased limits, to the opposition personal funds amount to exceed 110%.

Paragraphs (e)(1) and (e)(2) operate analogously to paragraphs (d)(1) and (d)(2), respectively, in the context of House of Representatives elections. It is important to note that, like their Senate counterparts, candidates for the House of Representatives or their authorized committees have an affirmative duty, under 11 CFR 400.31(e)(2)(B), to notify the national and State committees of their political party and the Commission, by facsimile machine or electronic mail, within 24 hours of when the aggregate amounts described in 11 CFR 400.31(c)(1) plus the aggregate amounts described in 11 CFR 400.31(c)(2) reach the proportionality provision threshold. In House of Representatives elections, however, the proportionality provision threshold is 100 percent of the opposition personal funds amount, not 110 percent, as in Senate elections.

3. 11 CFR 400.32 Effect of the Withdrawal of an Opposing Candidate

One of the checks placed on the operation of the Millionaires' Amendment by Congress comes into play when a candidate, whose expenditures of personal funds has triggered increased limits for another candidate, ceases to be a candidate. 2 U.S.C. 441a(i)(2)(B) (Senate); 2 U.S.C. 441a-1(a)(3)(B) (House of Representatives). 11 CFR 400.32 implements these provisions of the Millionaires' Amendment.

Paragraph (a)(1) clarifies that this new rule applies to both Senate and House of Representatives elections. Paragraph (a)(2) sets out the conditions under which the section operates. It is critical to determine when a candidate "ceases to be a candidate" within the meaning of the statute. To this end, paragraph (a)(2) of new 11 CFR 400.32 follows the approach of existing 11 CFR 110.3(c)(4)(iv), which defines when a candidate ceases to be a candidate for purposes of certain other contribution limits in the Act. This may occur, for example, when a candidate publicly withdraws from the race, or fails to file by the filing date specified in State law, or fails to qualify for a run-off election under State law.

Paragraph (b) of 11 CFR 400.32 applies to candidates and their authorized committees. It provides that candidates must not accept contributions under the increased individual contribution limits after the opposing candidate, whose expenditures from personal funds triggered the increased limits, ceases to be a candidate. Paragraph (c) applies to national and State political party committees. It provides that such committees must not make any coordinated party expenditures under the increased spending limits after the opposing candidate, whose expenditures from personal funds triggered the increased limits, ceases to be a candidate. Given that the events triggering the end of both the increased contribution limits and unrestricted coordinated party expenditures are matters of public knowledge, the opposing candidate need not provide notification of these events to any candidate or political party committee, as all candidates and party committees will be deemed to have constructive knowledge of these events.

4. Additional Reporting Issue

The Commission seeks comment on whether candidates and authorized committees that are entitled to accept contributions under the increased limits pursuant to 11 CFR part 400 should be required, at regular intervals (such as daily or weekly), to notify the Commission, of the opposition personal funds amount, the aggregate amount of contributions received to date under the increased limits, and the aggregate coordinated party expenditures made to date in connection with their campaign for election.

5. Additional Issue Regarding Repayment of Outstanding Debts to Vendors

The Commission seeks comments on the following issue. An authorized committee of a candidate that is opposing a self-financed candidate incurs debts to vendors in anticipation of being able to raise contributions above the applicable limit under 11 CFR

part 400 because the self-financed candidate's expenditures from personal funds allow the authorized committee to accept contributions under the increased limit. After the self-financed candidate ceases to be a candidate, either because the candidate has withdrawn from the campaign or the election has taken place, should the authorized committee be able to continue to raise funds under the increased limits to pay off the outstanding debts?

Calculating the Increased Limits

The rules in new subpart C of part 400 address the determination as to when, if ever, a candidate for the House of Representatives or Senate may accept contributions under the increased limits, and when, if ever, a political party committee may make coordinated party expenditures on behalf of the candidate under the increased limits. The regulations in subpart D go to determining the amounts of the increased limits.

Under 2 U.S.C. 441a(i) (Senate) and 2 U.S.C. 441a–1 (House of Representatives), when the relevant thresholds are triggered the contribution limit in 2 U.S.C. 441a(a)(1)(A) is increased. The Commission notes that 2 U.S.C. 441a(a)(1)(A) applies to *all* persons and is not limited to individuals. The Commission has decided to limit the increased contribution limit to individuals, however, based on the titles given to the Millionaires' Amendment provisions in BCRA and on the legislative history of the Millionaires' Amendment. *See, e.g.,* BCRA Secs. 304 and 319 (entitled "Modification of *individual* contribution limits in response to expenditures from personal funds" and "Modification of *individual* contribution limits for House candidates in response to expenditures from personal funds," respectively) (emphasis added)); 147 CR S2537 (daily ed. Mar. 20, 2001) (statement of Sen. Domenici); 147 CR S2538 (daily ed. Mar. 20, 2001) (statement of Sen. DeWine) (explaining effect of triggering threshold amount on *individual* contribution limits). The Commission seeks public comment, however, on whether, despite provisions' titles in BCRA and the legislative history of the Millionaires' Amendment, the Commission should expand the availability of the increased contribution limit to include all persons and not only individuals.

1. 11 CFR 400.40 Calculating the Increased Limits for Senate Elections

Although the Senate and House of Representatives versions of the Millionaires' Amendment are similar in many respects, they differ in the amounts of the increased limits once those increased limits are triggered. 11 CFR 400.40 implements the increased limits for Senate elections. (11 CFR 400.41, below, implements the increased limits for House of Representatives elections.) Paragraph (a) of 11 CFR 400.40 states that the section applies to Senate elections.

Paragraph (b) states conditions on the operation of the increased limits as calculated under this section. Paragraph (b)(1) cross-references the conditions and restrictions in new subpart C. Paragraph (b)(2) clarifies that the amount limitations on contributions by persons other than multicandidate political committees under the increased limits are indexed for inflation, just as are the underlying applicable limits in 2 U.S.C. 441a(a)(1)(A) on which they are based. *See* 2 U.S.C. 441a(c).

Paragraph (c) outlines the procedure for calculating the increased contribution and coordinated party expenditure limits. Paragraph (c)(1) cross-references 11 CFR 400.10 and instructs the calculator to determine the opposition personal funds amount. Paragraph (c)(2) cross-references 11 CFR 110.18 and directs the calculator to determine the voting age population ("VAP") of the candidate's State. Once those numbers have been determined, paragraph (c)(3) directs the calculator to a table containing formulas for computing the applicable increased contribution and coordinated party expenditure limits.

While the formulas in the table in paragraph (c)(3) may appear to differ from those provided in the statute, the resulting calculations are the same. If the Commission were to simply incorporate the language of the statutory formulas into the table, those seeking to calculate the increased limits would first have to perform a separate calculation to determine the relevant threshold amount before they would be able to make use of the formulas in the table. The Commission has determined that it is preferable to provide a table that synthesizes all of the calculations of the relevant thresholds needed to determine the increased contribution limits in one place.

2. 11 CFR 400.41 Calculating the Increased Limits for House of Representatives Elections

Unlike the increased limits in Senate elections, which vary according to increasing level of expenditures from personal funds by the opposing candidate, the increased limits in House of Representatives elections are fixed. If the opposing candidate's expenditures from personal funds cause the opposition personal funds amount to exceed the threshold amount, $350,000, a single set of increased limits is triggered. 2 U.S.C. 441a–1(a)(1)(A)–(C). 11 CFR 400.41 implements these increased limits.

Paragraph (a) clarifies that the section applies to House of Representatives elections. Paragraph (b) states the increased limits. Paragraph (b)(1) sets the increased contribution limit for individuals at $6,000, *i.e.*, three times the applicable limit in 2 U.S.C. 441a(a)(1)(A). 2 U.S.C. 441a–1(a)(1)(A). Paragraph (b)(2) states that the limit on coordinated party expenditures in 11 CFR 109.32(b) does not apply. 2 U.S.C. 441a–1(a)(1)(B).

3. 11 CFR 400.42 Effect of Increased Limits on the Aggregate Contribution Limits for Individuals

Under the Act, an individual may not contribute, in the aggregate, more than $37,500 to candidates and their authorized committees during the period which runs from January 1 of an odd-numbered year and ends on December 31 of the next even-numbered year. 2 U.S.C. 441a(a)(3)(A). Both the Senate and House of Representatives versions of the Millionaires' Amendment provide, however, that contributions made under the increased limits do not count against the aggregate contribution limit in section 441a(a)(3)(A). 2 U.S.C. 441a(i)(1)(C)(i)(II), 2 U.S.C. 441a(i)(1)(C)(ii)(II) (Senate); 2 U.S.C. 441a–1(a)(1)(B). New 11 CFR 400.42 implements these statutory provisions.

Paragraph (a) clarifies that this section applies to all elections covered by the part, that is, both Senate and House of Representatives elections.

Both the Senate and the House of Representatives provisions of the Millionaires' Amendment provide that the 2 U.S.C. 441a(a)(3) aggregate contribution limit "shall not apply with respect to any contribution made with respect to a candidate" if such contribution is lawfully made under the increased limits. 2 U.S.C. 441a(i)(1)(C)(i)(II), 2 U.S.C. 441a(i)(1)(C)(ii)(II) (Senate); 2 U.S.C. 441a-1(a)(1)(B) (House of

Representatives). The Commission is interpreting these provisions to mean that the amount of the contribution that exceeds the individual contribution limit in 11 CFR 110.1 does not count when aggregating contributions for purposes of 11 CFR 110.5, taking into account previous contributions made during the election cycle. New 11 CFR 400.5 allows an individual to include only the first $2,000 he or she contributes, regardless of whether it was a prior contribution or part of a contribution accepted under the increased limit, in the biannual aggregate contribution limit.

Example: In 2004, the contribution limit under 11 CFR 110.1 is $2,000. Contributor X contributes $1,500 to Candidate Y in April for the general election. Because Candidate Y is opposing a self-financed candidate, she can accept up to $6,000 under the increased limit. After learning this, Contributor X contributes an additional $3,000 to Candidate Y's campaign in May for the general election. Under 11 CFR 400.5, Contributor X should count the initial $1,500 contribution and $500 of the subsequent contribution towards the biannual aggregate limit. The remaining $2,500 of the $3,000 contribution accepted in May should not count towards that limit.

The Commission, however, seeks comment on whether 2 U.S.C. 441a(i)(1)(C) (i)(II) and (ii)(II) (Senate) and 2 U.S.C. 441a–1(a)(1)(B) (House of Representatives) should be interpreted in an alternative manner. Does the plain language of these statutory sections indicate that no part of a contribution accepted under the increased limits counts against the aggregate contribution limit in section 441a(a)(3), regardless of whether the contributor has made prior contributions to the candidate for that election? Under this alternative interpretation, Contributor X in the above example would not include *any* of the $3,000 contribution accepted in May in the biannual aggregate limit.

Paragraph (c) addresses situations where an individual contributor has contributed the maximum permitted under the aggregate biannual contribution limitation for individuals in 11 CFR 110.5, but has not contributed the maximum under the increased limits of 11 CFR part 400. Under this circumstance, a contributor may make contributions that, in the aggregate, do not exceed the applicable increased limit under 11 CFR 400.40(b) or 400.41(b) minus the applicable limit as defined in 11 CFR 400.5.

Example: Between January 1, 2003 and June 30, 2004, Contributor X has already contributed $37,500 to various candidates including $1,000 to Candidate Y. On July 10, 2004, Candidate Y determined that she could accept up to $6,000 under 11 CFR 400.40(b)(3) and solicited Contributor X for a $6,000 contribution. The applicable limit in 2004 is $2,000. Because Contributor X has already reached his aggregate biannual contribution limit, he may contribute up to $4,000 to Candidate Y ($6,000 – $2,000).

Disposal of Excess Contributions

BCRA added two identical provisions to FECA, one for the Senate and one for the House of Representatives, requiring candidates and their authorized committees to refund excess contributions that are not spent in connection with their elections. 2 U.S.C. 441a(i)(3) and 441a–1(a)(4). Subpart E of 11 CFR part 400, implements the requirements of these BCRA provisions.

1. 11 CFR 400.50 Definition of "Excess Contributions"

The first section in subpart E defines the term "excess contributions." BCRA describes the term "excess contributions" as "the aggregate amount of contributions accepted by a candidate or a candidate's authorized committee under the increased limit * * * and not otherwise expended in connection with the election with respect to which such contributions relate * * *." 2 U.S.C. 441a(i)(3) (Senate); 2 U.S.C. 441a-1(a)(4) (House of Representatives). By referencing back to the definition of "increased limit" in 11 CFR 400.6, the regulatory definition of "excess contribution" allows candidates and their authorized committees to exclude the amount of a contribution, when added to previous contributions made by a person, that is less than or equal to the regular contribution limitations of 11 CFR 110.1 from the computation of excess contributions. This allows the candidates and their authorized committees the benefit of contributions that they would have received regardless of whether the increased limit provisions of the Millionaires' Amendment were triggered.

2. 11 CFR 400.51 Relation of Excess Contributions to the Election in Which They Are Made

The purpose of new 11 CFR 400.51 is to make clear that contributions accepted under the increased limit, that are accepted during an election cycle, whether a primary election cycle or a general election cycle, can only be spent for that election. A primary election is treated as an election separate from the general election. Thus, paragraph (a) requires that any excess contributions made during the primary election cycle must be refunded to the original contributor within 50 days of the primary election. Paragraph (b) contains a similar provision for the general election.

Paragraph (c) creates an exception from paragraphs (a) and (b) for run-off elections. Run-off elections will be considered as extensions of the elections that resulted in the run-off elections. Thus, candidates and their authorized committees are able to use contributions made under the increased limit during the applicable election cycle for the run-off election. Refunds of all excess contributions must be made within 50 days of the run-off election.

The Commission seeks comments on whether treating run-off elections as extensions of the elections that resulted in the run-off elections is an appropriate approach. Should the Commission, instead, treat run-off elections as separate elections and require that excess contributions be refunded within 50 days of the applicable primary or general election? Conversely, should the Commission treat the primary, general, and any run-off elections as one election with the refund period being within 50 days of the general election? Under this approach, however, candidates who do not participate in the general election would be required to refund excess contributions within 50 days of the primary election.

3. 11 CFR 400.52 Prohibition Against Redesignation of Excess Contributions

New 11 CFR 400.52 prohibits candidates and their authorized committees from seeking redesignation of contributions made under the increased limits to another election. It also prohibits contributors from redesignating a contribution made under the increased limits once the contribution has been made. The focus of the Millionaires' Amendment is on the fundraising ability of the candidate facing an opposing candidate who is a self-financed. The Commission concludes that nothing in BCRA suggests that once the election is over, the candidate should be able to carry over the benefit of the increased contribution limits into the next election where he or she would be opposing an entirely different candidate. In addition, BCRA (2 U.S.C. 441a(i)(3) and 441a–1(a)(4)) provides for only one method of disposing of excess contributions and that is the refund of the excess contributions to the original contributors, which is incorporated into the interim final rules. Nevertheless, the Commission seeks comments on whether to amend the interim final rules by adding a similar prohibition against reattribution to a joint contributor of a contribution made under the increased limits in accordance with 11 CFR 110.1(k).

4. 11 CFR 400.53 Disposal of Excess Contributions

As stated above, BCRA (2 U.S.C. 441a(i)(3) and 441a–1(a)(4)) requires candidates and their authorized committees to refund excess contributions to the original contributors within 50 days of the election. New 11 CFR 400.53 implements this requirement.

Paragraph (a) states that the candidate's authorized committee must refund the excess contributions to individuals who made contributions to the candidate or the candidate's authorized committee under 11 CFR part 400. This ensures that only those contributors who actually made contributions to the candidate under the increased individual contribution limit provided for by the Millionaires' Amendment may receive refunds. Paragraph (a) also states that the refund to each individual must not exceed that individual's aggregate contributions to the candidate or the candidate's authorized committee for the relevant election cycle. This restriction prohibits authorized committees from refunding more money to an individual than that individual actually contributed.

Paragraph (b) of 11 CFR 400.53 addresses the situation where contributors do not cash, deposit, or otherwise negotiate the refunds checks sent to them under 11 CFR 400.53(a). Authorized committees will be required to disgorge to the United States Treasury an amount equal to the aggregate amount of any refund checks not cashed, deposited, or otherwise negotiated within six months of the date of the refund checks. Authorized committees will be required to disgorge this amount within nine months of the election. This would allow for 50 days after the election to make the refunds and for six months for contributors to cash, deposit, or otherwise negotiate the refund checks with an additional 40 days to determine the disgorgement amount and send the check to the United States Treasury.

5. 11 CFR 400.54 Notification of Disposal of Excess Contributions

BCRA requires that candidates dispose of excess contributions within 50 days of the election. 2 U.S.C. 441a(i)(3) and 441a–1(a)(4) (*See* Explanation and Justification for new 11 CFR 400.50, above.) BCRA also requires that, in the first regular report after the election, the candidate or the authorized committee report the source and amount of each excess contribution and the manner in which the candidate or the authorized committee used such funds. 2 U.S.C. 441a(i)(3) and 441a–1(a)(4). New 11 CFR 400.54 largely tracks the wording of the statute with two modifications. First, rather than requiring that the "source" of excess contributions be reported, the new rule requires the "identification," as defined in 11 CFR 100.12, of the contributor of each excess contribution.

The second modification addresses an inconsistency in the statute. While 2 U.S.C. 441a(i)(3) (Senate) and 2 U.S.C. 441a–1(a)(4) (House of Representatives) require that excess contributions be disposed of within 50 days of the election, 2 U.S.C. 434(a)(6)(C) (Senate) and 2 U.S.C. 441a–1(b)(2) (House of Representatives) require that candidates or their authorized committees report the source of each excess contribution and the manner in which it *was used*. Note that the first regular report after a primary election would be the quarterly report for the quarter in which the primary was held, and the first regular report after the general election would be the post-general election report. In the case of a primary election, the next quarterly report may be due *before* the expiration of the 50 day post-election time period for the election in which the candidate who must dispose of excess contributions has run, depending on the date the primary election is held. In the case of a general election, the next regular report after the election, the post-general election report, would most definitely be due *before* the expiration of the 50 day post-election time period for the election in which the candidate who must dispose of excess contributions has run.

To reconcile these two provisions of BCRA, 11 CFR 400.54 requires principal campaign committees to report the identification of the contributors of excess contributions and the manner in which such funds were refunded in the first regular report due *after* the 50 day time for disposing of such funds has expired. For example, in the case of a primary election, the principal campaign committee would have to report the excess contributions and the manner in which they were refunded in the first report that quarterly filers are required to file after the 50-day post-primary time period has elapsed. For example, for a primary on May 31, the principal campaign committee would report the excess funds and the manner in which they were refunded in its third quarterly report rather than its second quarterly report because the 50-day post-primary time period would elapse on July 20, five days after the second quarterly report was due. Thus, the principal campaign committee would report this information with its third quarterly report, due on October 15. Similarly, for the general election, the principal campaign committee would report the excess funds and the manner in which they were refunded not in the post-general report, but rather in the year-end report.

The Commission requests comments on this inconsistency and the Commission's reconciliation, as well as an alternative interpretation. To avoid reading an inconsistency in BCRA, the requirement that authorized committees report the source and amount of excess campaign funds and the manner in which they were "used", 2 U.S.C. 434(a)(6)(C) (Senate) and 2 U.S.C. 441a–1(b)(2) (House of Representatives), could be read as requiring the reporting of whether and, if so, to what extent funds raised under the increased contribution limits were spent. Consequently, the Commission seeks comment on a reading of the foregoing statutory provisions that would require an authorized committee taking advantage of the increased contribution limits to identify in the first report following each election the identity of each contributor of a contribution in excess of the normal limits, the aggregate amount raised and how much of that was spent in connection with the election. It is plausible that Congress intended to capture in a single report the identity of all "excess" contributors and the extent to which campaign spending was affected by the increased contribution limits. This reading would resolve the conflict between the requirement to dispose of excess contributions within 50 days under 2 U.S.C. 441a(i)(3) (Senate) and 2 U.S.C. 441a–1(a)(4) (House of Representatives) and the reporting of excess contributions, prior to that deadline.

Part 9035—Expenditure Limitations

11 CFR 9035.2 Limitation on Expenditures From Personal or Family Funds

The Commission is changing a cross-reference in 11 CFR 9035.2(c) to the definition of "personal funds." As explained in greater detail above, the Commission is changing the definition of "personal funds" in former 11 CFR 110.10 and moving it to 11 CFR 100.33 (*see* Explanation and Justification for former 11 CFR 110.10, above). The new definition of "personal funds" in 11 CFR 100.33 applies only to the Commission's rules implementing Title 2 of the U.S. Code, however, and not to the Commission's rules implementing Title 26 of the U.S. Code.

Current 11 CFR 9003.2 includes a definition of "personal funds" that is

nearly identical to the definition in former 11 CFR 110.10. Because that definition remains appropriate in the context of the Title 26 regulations, the Commission is adopting the definition of "personal funds" in 11 CFR 9003.2 for purposes of 11 CFR 9035.2. Accordingly, rather than changing the cross-reference in 11 CFR 9035.2(c) from former 11 CFR 110.10 to new 11 CFR 100.33, the Commission is changing the cross-reference to the existing Title 26 definition of "personal funds" in 11 CFR 9003.2.

Millionaires' Amendment Hypothetical

In an effort to provide a better understanding of the manner in which the various provisions of the Millionaires' Amendment would operate in the context of a primary and general election, the Commission presents the following hypothetical example. All candidates in the following example are fictional and any similarities to past or present candidates or elections for Federal office are purely coincidental. The contribution and coordinated party expenditure limits in the example will probably be different in subsequent years due to indexing for inflation.

Statement of Candidacy

For months, local newspapers had been speculating about the possibility that Frank Rogers, an independently wealthy investment banker from New Franklin was planning to enter the race for the Democratic Party's nomination for the U.S. Senate. Some of Rogers's most ardent supporters had already formed a committee, called the "Draft Frank Rogers Committee" and had been soliciting contributions on behalf of his potential candidacy. By February 1, 2003, the Draft Frank Rogers Committee ("Committee") had received contributions aggregating in excess of $5,000. On February 15, 2003, Rogers received a letter from the Federal Election Commission ("FEC" or "Commission") notifying him of the Committee's efforts on his behalf and informing Rogers that, unless he disavowed the Committee's activities within 30 days of receiving the Commission's notification, the Commission would consider Frank Rogers to be a candidate, under 11 CFR 100.3(a).

On March 3, 2003, Frank Rogers filed a Statement of Candidacy on FEC Form 2 and designated a principal campaign committee by filing a Statement of Organization on FEC Form 1, pursuant to 11 CFR 102.12 and 102.2, respectively. Because Rogers was running for the Senate, he was required to file the original FEC Form 2 and FEC Form 1 with the Secretary of the United States Senate, under 11 CFR 105.2. Rogers noticed that he was also required to send a copy of FEC Form 2 (but not FEC Form 1) to the Commission and to each opposing candidate in the same election, under 11 CFR 400.20.

When he began to fill out the forms, Rogers noticed that they had changed since the last time he had seen them, a year earlier, when he considered but decided against a race for Federal office. In addition to the information Form 2 used to require (name, address, party affiliation, office sought, *etc.*), he was now also required to state a dollar figure representing the amount of his personal funds that he intended to spend on behalf of his campaign in excess of a certain "threshold amount," as defined in 11 CFR 400.9. In addition, the new Form 1 required Rogers' principal campaign committee to provide either its electronic mail address or its facsimile number. Rogers completed Form 1 first and then turned his attention to FEC Form 2.

Rogers retrieved his copy of the Code of Federal Regulations and determined that, for Senate candidates like him, the threshold amount was equal to the sum of $150,000 plus the product of the voting age population of his State (as certified under 11 CFR 110.18) multiplied by $0.04. After looking at 11 CFR 110.18, Rogers realized that, in order to determine the voting age population of New Franklin, he needed to search the **Federal Register** for the most recent voting age population estimate published annually by the Department of Commerce. Considering that the voting age population of New Franklin was listed as 24,800,000, he calculated the threshold amount, as follows:

$150,000 + (24,800,000 × $0.04) = $1,142,000.

Rogers's personal fortune was estimated to be at least $500 million. Frank Rogers had determined that his campaign would need an initial infusion of $7.5 million of his personal funds. Rogers sincerely hoped he would not have to spend any more of his personal funds, but he was willing to spend more if necessary. Thus, on FEC Form 2, Rogers stated his intention to exceed the threshold amount by $6,358,000 ($7,500,000 − $1,142,000 threshold amount). In addition to filing the original FEC Form 2 and FEC Form 1 with the Secretary of the Senate, Rogers faxed a copy of FEC Form 2 to the Commission as required by 11 CFR 400.20. Considering that Rogers was the only candidate in the race at that point, he was not required to fax or e-mail a copy of FEC Form 2 to any opposing candidates.

On March 31, 2003, Arlene Miller announced her intention to oppose Frank Rogers for the Democratic Party's nomination for the U.S. Senate. Although Miller was not nearly as wealthy as Frank Rogers, she stated on her FEC Form 2 that she intended to exceed the threshold amount ($1,142,000) by $1,858,000. This meant that Miller intended to make expenditures from personal funds totaling $3,000,000 ($1,858,000 + $1,142,000 threshold amount). Miller also designated a principal campaign committee on FEC Form 1. Miller filed her original FEC Form 2 and FEC Form 1 with the Secretary of the Senate, faxed a copy of FEC Form 2 to the Commission, and sent an electronic copy of FEC Form 2 to opposing candidate Frank Rogers as an attachment to an e-mail message.

On April 3, 2003, Jim Hyer entered the Democratic primary race. Given his position as Chairman of the New Franklin Democratic Party, Hyer had high name recognition among party activists but almost no money. He was counting on his popularity with the state's Democratic Party activists to carry him to victory in the June 1, 2004, primary election. Within 15 days of becoming a candidate, Hyer filed his original FEC Form 2 and FEC Form 1 with the Secretary of the Senate, and faxed copies of FEC Form 2 to the Commission and to the Rogers and Miller campaigns. On FEC Form 2, Hyer indicated that he did not intend to spend any of his personal funds on the race.

On April 15, 2003, James Rockford, a venture capitalist, announced his intention to seek the Republican Party's nomination for the U.S. Senate. Rockford had made a fortune in the technology boom of the late 1990s (he was worth an estimated $20 billion) and was extremely well known throughout the state for his support of a popular statewide referendum, Proposition 895. At the time that Rockford announced his candidacy, he was the only candidate seeking the Republican Party's nomination. Within 15 days of becoming a candidate, Rockford filed his original FEC Form 2 and FEC Form 1 with the Secretary of the Senate. On FEC Form 2, Rockford stated that he intended to exceed the threshold amount ($1,142,000) by $148,858,000. This meant that Rockford intended to spend $150 million of his personal funds on the race ($148,858,000 = $150,000,000 − $1,142,000 threshold amount). The same day, Rockford

deposited $50 million in his authorized committee's account and filed an initial notification of expenditures from personal funds on FEC Form 10 with the Secretary of the Senate. Given that there were no opposing candidates vying for the Republican nomination, Rockford satisfied his remaining reporting obligations by faxing copies of his FEC Form 2 and FEC Form 10 to the Commission.

Initial Notification of Expenditure From Personal Funds

On April 4, 2003, the day after Hyer entered the race, Rogers immediately pumped $7.5 million of his personal funds into his authorized committee's account. Because $7.5 million was more than two times the threshold amount of $1,142,000, within 24 hours of depositing the funds, Rogers filed an initial notification of expenditures from personal funds on FEC Form 10 with the Secretary of the Senate and faxed a copy of the form to the FEC and to the Miller and Hyer campaigns, as required by 11 CFR 400.21, 400.23, and 400.24.

Miller's campaign received Rogers's notification on April 5, 2003. Miller responded by contributing to her authorized committee $3,000,000. Because a contribution from a candidate to the candidate's authorized committee was considered an expenditure of personal funds under 11 CFR 400.4 and because the total contribution amount ($3,000,000) exceeded two times the threshold amount (2 × $1,142,000 = $2,284,000), within 24 hours of making the loan, Miller was required to file a notification of expenditures from personal funds on FEC Form 10. On April 6, 2003, Miller filed her original FEC Form 10 with the Secretary of the Senate and faxed copies of the form to the Commission and to the Rogers and Hyer campaigns.

Miller was aware that once she received Rogers's initial notification, it was possible for her authorized committee to begin receiving contributions from individuals in excess of the usual $2,000 limit. She scrambled to do the necessary calculations to determine the increased limit. According to the procedure outlined in 11 CFR 400.40, Miller first needed to determine the "opposition personal funds amount," the computation of which is explained at 11 CFR 400.10.

Calculating the Opposition Personal Funds Amount for the Miller Campaign

Miller quickly noticed that there were three different formulas for calculating the opposition personal funds amount and that the appropriate formula depended on the date of calculation. Because the date was April 7, 2003, she determined that the first formula was the correct one to use because April 7, 2003, was prior to July 16 of the year preceding the year in which the general election was to be held. (The general election was scheduled to be held on November 8, 2004.) According to the formula, the opposition personal funds amount on April 6, 2003 was equal to the greatest aggregate amount of expenditures from personal funds made by her opposing candidate (Rogers) minus the greatest aggregate amount of expenditures from personal funds made by her. Thus, as of April 7, 2003, the opposition personal funds amount was $7,500,000 minus $3,000,000, or $4,500,000. Miller notified her national and State party committees and the Commission of this calculation, as required by 11 CFR 400.30(b).

Calculating the Increased Contribution and Coordinated Party Expenditure Limits for the Miller Campaign

Miller returned to the table in 11 CFR 400.10 to continue calculating the increased limit. According to the table, if the opposition personal funds amount ($4,500,000) was greater than the sum of the product of $0.08 times the voting age population of New Franklin (24,800,000) plus $300,000 but less than or equal to the sum of the product of $0.16 times the voting age population of New Franklin (24,800,000) plus $600,000, then her authorized committee may accept three times the ordinary contribution limit of $2,000, or $6,000.

Miller made the following calculations:

($0.08 × 24,800,000) + $300,000 = $2,284,000

($0.16 × 24,800,000) + $600,000 = $4,568,000.

Because the opposition personal funds amount ($4,500,000) was between $2,284,000 and $4,568,000, the increased limit for individual contributions to Miller's authorized committee was $6,000 (three times the ordinary limit). According to the table, Miller's national party committee was also able to make coordinated expenditures on behalf of her campaign in connection with the general election. Miller located a copy of the March 2002 FEC Record, which contained a table showing the coordinated party expenditure limits for 2002 Senate nominees. Miller found the amount for New Franklin, $1,781,136, which represented $0.02 times the voting age population of New Franklin (24,800,000), indexed for inflation. Given that her national and State party committees have a policy of not making coordinated expenditures before the primary election when there are multiple candidates vying for the Democratic Party's nomination, Miller knew that she could not count on any assistance from either committee until the general election.

Calculating the Proportionality Provision Amount for the Miller Campaign

Miller was all set to call her closest supporters to begin soliciting $6,000 checks when she suddenly realized that she and her authorized committee were required, under 11 CFR 400.31 to constantly monitor a certain proportion to make sure that the aggregate amount of contributions made under the increased limit never exceeded 110 percent of the opposition personal funds amount ($4,500,000). Miller made the calculation as follows: 1.10 × $4,500,000 = $4,950,000. She immediately started making calls, realizing that she could accept contributions under the increased limits only until the aggregate amount of such contributions to her campaign equaled $4,950,000.

Calculating the Opposition Personal Funds Amount for the Hyer Campaign

Having received Rogers's initial notification of expenditure from personal funds on April 5, 2003, and Miller's initial notification on April 6, 2003, Hyer set out to determine the increased contribution and coordinated party expenditure limits applicable to his campaign. In order to perform the necessary calculations, Hyer first needed to determine the opposition personal funds amount as of April 5, 2003.

Under 11 CFR 400.10, the opposition personal funds amount prior to June 30 of the year preceding the year in which the general election is held is the difference between the greatest aggregate amount of expenditures from personal funds made by the opposing candidate and the candidate himself in the same election. Hyer considered for a minute which of the three announced Senate candidates, Rogers, Miller, or Rockford, was his "opposing candidate," for purposes of the formula. He quickly ruled out Rockford because he realized that in the primary election cycle, he and Rockford were not seeking the nomination of the same political party.

Of the two remaining candidates, Hyer concluded that the contribution and coordinated expenditure limits would be much higher if Rogers were the opposing candidate. As of April 6, 2003, the aggregate amount of Rogers's

expenditures from personal funds was $7.5 million while the aggregate amount of Miller's expenditures from personal funds was $3 million. Unlike Arlene Miller, Hyer had not yet made any expenditures from personal funds, so the aggregate amount of his expenditures was $0.00. Plugging these numbers into the formula, Hyer calculated the possible opposition personal funds amounts as follows:

Opposing candidate Rogers: $7,500,000 − $0.00 = $7,500,000

Opposing candidate Miller: $3,000,000 − $0.00 = $3,000,000

Thus, Hyer concluded that it would be to his advantage to consider Rogers to be his "opposing candidate" for purposes of determining the opposition personal funds amount. According to his calculations, the applicable opposition personal funds amount as of April 6, 2003, was $7.5 million. Hyer notified his national and State party committees and the Commission of this calculation, as required by 11 CFR 400.30(b).

Calculating the Increased Contribution and Coordinated Party Expenditure Limits for the Hyer Campaign

Hyer proceeded to calculate the increased contribution and coordinated party expenditure limits pursuant to the formulas in 11 CFR 400.40. Doing the necessary calculations according to the formulas in the table (illustrated below), Hyer determined that because the opposition personal funds amount ($7,500,000) was between $4,568,000 and $11,420,000, the increased limit for individual contributions to his campaign was $12,000 (six times the applicable limit ($2,000)).

($0.16 × 24,800,000 (VAP of New Franklin)) + $600,000 = $4,568,000

($0.40 × 24,800,000 (VAP of New Franklin)) + $1,500,000 = $11,420,000

Hyer also determined that the increased coordinated party expenditure limit applicable to his campaign was $1,781,136 (the greater of $20,000 or $0.02 times the voting age population of the State of New Franklin (24,800,000), as adjusted for inflation). Like Miller, Hyer was well aware of his party committees' policy of not making coordinated expenditures prior to the date of nomination when there was a contested primary.

Calculating the Proportionality Provision Amount for the Hyer Campaign

Before soliciting $12,000 checks, however, Hyer decided it would be wise to figure out the aggregate amount of contributions his committee could accept under the increased limit before it would become necessary, under 11 CFR 400.31, to refuse that portion of contributions made under the increased limit that exceeded the ordinary limit of $2,000. Given that the opposition personal funds amount as of April 6, 2003, was $7,500,000, Hyer made the following calculation: 1.10 × $7,500,000 = $8,250,000. Hyer began fundraising at once, knowing that he could accept contributions under the increased limits only until the aggregate amount all such contributions received by his campaign equaled $8,250,000.

Additional Notification of Expenditure from Personal Funds

Meanwhile, Frank Rogers was starting to flounder. His campaign had already spent the $7.5 million he had deposited on April 4th plus an additional $1,000,000 in contributions his authorized committee had received to date. He decided that, in order to remain competitive with Miller and Hyer, he had no choice but to commit more of his personal funds to the race. So, on June 30, 2003, Rogers deposited an additional $2,500,000 into his authorized committee's account. Because this expenditure from personal funds exceeded $10,000, within 24 hours of depositing the funds, Rogers was required to file an additional notification of expenditure from personal funds on FEC Form 10, under 11 CFR 400.22. As he did with the initial notification, Rogers filed the original form with the Secretary of the Senate, and faxed copies of the form to the FEC and the Miller and Hyer campaigns. Although this amount was in excess of the amount stated on Roger's FEC Form 2, he was *not* required to amend that form.

Calculating the New Opposition Personal Funds Amount for the Miller and Hyer Campaigns

The Miller and Hyer campaigns received Rogers's additional notification of expenditures from personal funds on July 1, 2003. The Miller and Hyer campaigns endeavored to determine how Rogers's increase in spending from personal funds might affect their increased contribution limits. Before figuring out their new limits, however, each campaign first had to recalculate the opposition personal funds amount.

Turning to the formulas in 11 CFR 400.10, each candidate realized that as soon as July 16 the applicable formula would no longer be the one that applied prior to July 16, 2003. With vacations taking many staffers and potential contributors away, both committees elected to wait until the new formulas were in effect before accepting any contributions. Once it was July 16, 2003, which was between July 16 of the year preceding the year in which the general election would be held and February 1 of the year in which the general election would be held, the formula required that the gross receipts advantage be taken into account.

Opposition Personal Funds Amount—Miller Campaign

To calculate the opposition personal funds amounts for the Miller campaign as of July 16, 2003, the following formula had to be used: a − b − ((c − d) ÷ 2), where:

(a) Represented the greatest amount of expenditures from personal funds made by the opposing candidate (Rogers) in the same election;

(b) Represented the greatest amount of expenditures from personal funds made by Miller in the same election;

(c) Represented the aggregate amount of the gross receipts of Miller's authorized committee, minus any contributions by Miller from personal funds, during any election cycle that may be expended in connection with the primary election, as determined on June 30 of the year (2003) preceding the year in which the general election was to be held (2004); and

(d) Represented the aggregate amount of the gross receipts of Rogers's authorized committee, minus any contributions by Rogers from personal funds, during any election cycle that may be expended in connection with the primary election, as determined on June 30, 2003.

Variable (a)—Miller Campaign

Considering each variable in turn, as of June 30, 2003, Rogers had made aggregate expenditures from personal funds in the amount of $10 million. So, as of that date, variable (a) in the formula for the Miller campaign equaled $10,000,000.

Variable (b)—Miller Campaign

As of June 30, 2003, Miller had made aggregate expenditures from personal funds in the amount of $3,000,000. Thus, as of that date, variable (b) in the formula for Miller's campaign equaled $3,000,000.

Variable (c)—Miller Campaign

As of June 30, 2003, Miller's authorized committee had received contributions in connection with the primary election totaling $4,000,000 and Miller's aggregate contributions from personal funds totaled $3,000,000. Accordingly, as of June 30, 2003, variable (c) in the formula for the Miller

campaign equaled $4,000,000 − $3,000,000, or $1,000,000.

Variable (d)—Miller Campaign

As of June 30, 2003, Rogers's authorized committee had received contributions in connection with the primary election totaling $11,000,000 and Rogers's aggregate contributions from personal funds totaled $10,000,000. Accordingly, as of June 30, 2003, variable (d) in the formula for the Miller campaign equaled $11,000,000 − $10,000,000, or $1,000,000.

Plugging the above numbers into the applicable formula (a − b − ((c − d) ÷ 2)), the opposition personal funds amount for the Miller campaign as of June 30, 2003, was $7,000,000, calculated as follows:

$10,000,000 − $3,000,000 − (($1,000,000 − $1,000,000)/2) = $7,000,000.

Opposition Personal Funds Amount—Hyer Campaign

To calculate the opposition personal funds amounts for the Hyer campaign as of July 16, 2003, the following formula had to be used: a − b − ((c − d) ÷ 2), where:

(a) Represented the greatest amount of expenditures from personal funds made by the opposing candidate (Rogers) in the same election;

(b) Represented the greatest amount of expenditures from personal funds made by Hyer in the same election;

(c) Represented the aggregate amount of the gross receipts of Hyer's authorized committee, minus any contributions by Hyer from personal funds, during any election cycle that may be expended in connection with the primary election, as determined on June 30 of the year (2003) preceding the year in which the general election was to be held (2004); and

(d) Represented the aggregate amount of the gross receipts of Rogers's authorized committee, minus any contributions by Rogers from personal funds, during any election cycle that may be expended in connection with the primary election, as determined on June 30, 2003.

Variable (a)—Hyer Campaign

Considering each variable in turn, as of June 30, 2003, Rogers had made aggregate expenditures from personal funds in the amount of $10 million. So, as of that date, variable (a) in the formula for the Hyer campaign equaled $10,000,000.

Variable (b)—Hyer Campaign

As of June 30, 2003, Hyer had not made any expenditures from personal funds. Accordingly, as of that date, variable (b) in the formula for Hyer's campaign equaled $0.

Variable (c)—Hyer Campaign

As of June 30, 2003, Hyer's authorized committee had received contributions in connection with the primary election totaling $1,000,000 and Hyer's aggregate contributions from personal funds totaled $0. Accordingly, as of June 30, 2003, variable (c) in the formula for the Hyer campaign equaled $1,000,000 − $0, or $1,000,000.

Variable (d)—Hyer Campaign

As of June 30, 2003, Rogers's authorized committee had received contributions in connection with the primary election totaling $11,000,000 and Rogers's aggregate contributions from personal funds totaled $10,000,000. Accordingly, as of June 30, 2002, variable (d) in the formula for the Hyer campaign equaled $11,000,000 − $10,000,000, or $1,000,000.

Plugging the above numbers into the applicable formula (a − b − ((c − d) ÷ 2)), the opposition personal funds amount for the Hyer campaign as of June 30, 2003, was $10,000,000, calculated as follows:

$10,000,000 − $0 − (($1,000,000 − $1,000,000 ÷ 2) = $10,000,000.

Both Miller and Hyer notified their national and state party committees and the Commission of their calculations, as required by 11 CFR 400.30(b).

Calculating the New Contribution Limits for the Miller and Hyer Campaigns

After calculating the new opposition personal funds amount, the Miller and Hyer campaigns recalculated the new individual contribution limits as follows:

Contribution Limit—Miller Campaign

Because the opposition personal funds amount of $7,000,000 was greater than:

$4,568,000 = ($0.16 × 24,800,000 (VAP of New Franklin)) + $600,000

But less than or equal to:

$11,420,000 = ($0.40 × 24,800,000 (VAP of New Franklin)) + $1,500,000

Miller determined that the new increased contribution limit for the Miller campaign was:

$12,000 = 6 × $2,000 (the applicable limit).

Contribution Limit—Hyer Campaign

Because the opposition personal funds amount of $10,000,000 was greater than:

$4,568,000 = ($0.16 × 24,800,000 (VAP of New Franklin)) + $600,000

But less than or equal to:

$11,420,000 = ($0.40 × 24,800,000 (VAP of New Franklin)) + $1,500,000

Hyer determined that the new increased contribution limit for the Hyer campaign was the same as the old increased contribution limit:

$12,000 = 6 × $2,000 (the applicable limit).

Calculating the New Proportionality Provision Amount for the Miller and Hyer Campaigns

Before calling to solicit contributions under the new increased limits, however, both the Miller and Hyer campaigns sought to determine the maximum amount they could accept before being in danger of exceeding 110 percent of the new opposition personal funds amount in violation of the proportionality provision (11 CFR 400.31).

Proportionality Provision Amount—Miller Campaign

Taking into account the new opposition personal funds amount ($7,000,000), the Miller campaign determined that the new proportionality provision amount was $7,700,000, calculated as follows:

1.10 × $7,000,000 = $7,700,000

As of July 16, 2003, the Miller campaign had received $4,500,000 in contributions, $1,500,000 from contributors plus the $3,000,000 contribution from Miller's personal funds. Of the $1,500,000, the Miller Committee received $500,000 under the increased limits. Only this $500,000 of her committee's gross receipts counted towards the proportionality provision limit. Accordingly, the Miller campaign determined that it could receive another $7,200,000 ($7,700,000 limit − $500,000 already received) in contributions under the increased limit without violating the proportionality provision.

Proportionality Provision Amount—Hyer Campaign

As of July 16, 2003, the Hyer campaign had received $1,000,000 in contributions, $400,000 of which was received under the increased limits, well short of the old $5,500,000 maximum proportionality provision amount. Taking into account the new opposition personal funds amount

($10,000,000), the Hyer campaign determined that the new proportionality provision amount was $11,000,000, calculated as follows:

1.10 × $10,000,000 = $11,000,000

Accordingly, the Hyer campaign determined that it could receive another $10,600,000 ($11,000,000 limit − $400,000 already received) in contributions under the increased limit without violating the proportionality provision.

Withdrawal of Opposing Candidate

As summer turned into fall and fall faded into winter, the polls consistently showed Miller with a double-digit lead over Rogers. The Hyer campaign polled in the single digits.

Rogers had already spent $10 million of his personal funds and, although willing to spend more, he did not want to do so unless there was a real chance that he might make some headway against Miller. Rogers figured that he could not gain ground against Miller. So, on December 20, 2003, Rogers held a press conference and announced his decision to quit the race.

Once the initial shock of Rogers's withdrawal from the race wore off, both Miller and Hyer realized that his departure might have a significant impact on their ability to raise funds for the last seven months of the primary campaign. Under 11 CFR 400.32, Rogers ceased to be a candidate on December 20, 2003, the date he publicly announced his withdrawal from the race. From that day forward, Miller was prohibited from accepting that portion of contributions made under the increased limits that exceeded the applicable limit ($2,000 per person) because it was Rogers's expenditures from personal funds that had allowed her to receive contributions above the applicable limit in the first place. While her campaign was permitted to continue accepting contributions up to the applicable limit ($2,000 per individual), it would have to refuse any portion of any contribution above the applicable limit. Any amount above the applicable limit would have to be refunded to the contributor.

Calculating the New Opposition Personal Funds Amount for the Hyer Campaign

Rogers's withdrawal from the race affected the Hyer campaign differently than the Miller campaign. With Rogers out of the race, Hyer must now consider Miller to be his "opposing candidate" for purposes of calculating the opposition personal funds amount and the increased contribution limits. To determine the new opposition personal funds amount as of December 20, 2003, Hyer used the same formula he had used on July 16, 2003 (a − b − ((c − d) + 2)), substituting Miller for Rogers, where:

(a) Represented the greatest amount of expenditures from personal funds made by the opposing candidate (Miller) in the same election;

(b) Represented the greatest amount of expenditures from personal funds made by Hyer in the same election;

(c) Represented the aggregate amount of the gross receipts of Hyer's authorized committee, minus any contributions by Hyer from personal funds, during any election cycle that may be expended in connection with the primary election, as determined on June 30 of the year (2003) preceding the year in which the general election was to be held (2004); and

(d) Represented the aggregate amount of the gross receipts of Miller's authorized committee, minus any contributions by Miller from personal funds, during any election cycle that may be expended in connection with the primary election, as determined on June 30, 2003.

Variable (a)—Hyer Campaign

Considering each variable in turn, as of June 30, 2003, Miller had made aggregate expenditures from personal funds in the amount of $3,000,000. So, as of that date, variable (a) in the formula for the Hyer campaign equaled $3,000,000.

Variable (b)—Hyer Campaign

As of June 30, 2003, Hyer had not made any expenditures from personal funds. Accordingly, as of that date, variable (b) in the formula for Hyer's campaign equaled $0.

Variable (c)—Hyer Campaign

As of June 30, 2003, Hyer's authorized committee had received contributions in connection with the primary election totaling $1,000,000 and Hyer's aggregate contributions from personal funds totaled $0. Accordingly, as of June 30, 2003, variable (c) in the formula for the Hyer campaign equaled $1,000,000 − $0, or $1,000,000.

Variable (d)—Hyer Campaign

As of June 30, 2003, Miller's authorized committee had received contributions in connection with the primary election totaling $4,000,000 and Miller's aggregate contributions from personal funds totaled $3,000,000. Accordingly, as of June 30, 2003, variable (d) in the formula for the Hyer campaign equaled $4,000,000 − $3,000,000, or $1,000,000.

Inserting the above numbers into the applicable formula (a − b − ((c − d) + 2)), the opposition personal funds amount for the Hyer campaign as of December 20, 2003, was $3,000,000, calculated as follows:

$3,000,000 − $0 − (($1,000,000 − $1,000,000) + 2) = $3,000,000

Hyer notified his national and State party committees and the Commission of this calculation, as required by 11 CFR 400.30(b).

Calculating the New Increased Contribution Limit for the Hyer Campaign

Hyer was optimistic that he would still be able to receive contributions above the applicable limit. Hyer performed the following calculations and determined that with the new opposition personal funds amount of $3,000,000, the new contribution limit applicable to his campaign was three times the applicable limit, or $6,000:

Opposition personal funds amount of $3,000,000 was more than * * *

$2,284,000 = ($0.08 × 24,800,000 (VAP of New Franklin)) + $300,000

But less than or equal to * * *

$4,568,000 = ($0.16 × 24,800,000 (VAP of New Franklin)) + $600,000

Calculating the New Proportionality Provision Amount for the Hyer Campaign

Before calling to solicit contributions under the new increased limit, however, the Hyer campaign sought to determine the maximum amount he could accept before being in danger of exceeding 110 percent of the new opposition personal funds amount in violation of the proportionality provision (11 CFR 400.31).

As of December 20, 2003, the Hyer campaign had received $1,200,000 in contributions, $750,000 of which was received under the increased limits. Taking into account the new opposition personal funds amount ($3,000,000), the Hyer campaign determined that the new proportionality provision amount was $3,300,000, calculated as follows:

1.10 × $3,000,000 = $3,300,000

Accordingly, the Hyer campaign determined that it could receive $2,550,000 ($3,300,000 limit − $750,000 already received) in contributions under the increased limit without violating the proportionality provision.

Reporting of Gross Receipts as of December 31, 2003

On January 31, 2004, the principal campaign committees of Arlene Miller, Jim Hyer, and James Rockford filed the reports required under 11 CFR 104.19(b)(2) disclosing gross receipts as of December 31, 2003. Frank Rogers's principal campaign committee did not have to file a report because he had withdrawn from the election.

Arlene Miller's principal campaign committee reported that it had received $6 million in gross receipts in connection with the primary. That $6 million included her $3 million contribution from personal funds. The committee also reported that it had $2 million in gross receipts that could be spent on the general election. This amount came from contributions it had received under the applicable limit that had been designated for the general election. Miller did not make any contribution from personal funds for the general election.

Jim Hyer's principal campaign committee disclosed that it had $1.2 million in gross receipts that could be spent for the primary. He did not make any contribution from personal funds. Additionally, the committee reported that it had no gross receipts for the general election.

James Rockford was a candidate for the Republican nomination for the Senate. His principal campaign committee was also required to file this report. It disclosed that it had received $50.3 million in gross receipts in connection with the primary including a $50 million contribution from Rockford's personal funds. The committee also reported that, as of December 31, 2003, it had $1.1 million in gross receipts for the general election, $1 million of which was a contribution from Rockford's personal funds made on December 15, 2003. The remaining $100,000 of the committee's gross receipts represented contributions from contributors other than Rockford.

The remaining months of the primary campaign were brutal. As the primary election day neared, polls showed Miller and Hyer in a statistical dead heat. On June 1, 2004, Miller received 47% of the vote, Hyer received 43% of the vote, and, despite the fact that he withdrew from the race more than five months before the primary election, 10% of New Franklin's Democratic primary voters wrote in Frank Rogers name. Because neither Miller nor Hyer received 50% or more of the vote, New Franklin law required that a run-off election be held.

The run-off election was scheduled for July 1, 2004. Neither campaign had much money left at this point because both had spent nearly every available dollar on a last-minute advertising blitz. The Miller campaign, however, was in a better position than the Hyer campaign. Whereas Hyer's authorized committee had only $25,000 cash on hand, Miller's authorized committee had $2,075,000 total cash on hand, but only $75,000 was available for the primary run-off. Both candidates wondered whether they were permitted to use any of these funds for the run-off election, though, considering that they were raised in the primary election cycle under the increased contribution limits. They turned to the definition of "election cycle" at 11 CFR 400.2, however, and determined that a run-off election was considered to be an extension of the election cycle containing the election that necessitated the run-off election. Thus, the Miller and Hyer campaigns were permitted to use the funds remaining from the primary election for the July 1, 2004, run-off election because the July 1, 2004, run-off was considered to be part of the June 1, 2004, primary election cycle.

On July 1, 2004, Arlene Miller won the run-off election and prepared to face off against James Rockford in the general election. Rockford ran unopposed in the Republican primary and managed to secure the Republican Party's nomination without spending more than $1 million of his personal funds. After winning the Republican endorsement, Rockford's authorized committee refunded the remaining $49 million to the candidate. (His contribution on December 15th of $1 million was for the general election.) Miller's authorized committee was completely out of primary cash by the time the run-off election ended.

General Election Campaign

The general election cycle got off to a raucous start. On July 2, 2004, Rockford used his own funds to purchase $20 million in air time, locking up key commercial slots in every major media market in the state through Labor Day. As required by 11 CFR 400.21, within 24 hours of executing the air time contract, Rockford filed an initial notification of expenditures from personal funds on FEC Form 10. He filed the original form with the Secretary of the Senate and faxed copies to the Commission and the Miller campaign.

When Miller received Rockford's initial notification on July 3, 2004, she scrambled to determine the opposition personal funds amount, under 11 CFR 400.10, and the increased contribution and party expenditure limits under 11 CFR 400.40.

Calculating the Opposition Personal Funds Amount for the Miller Campaign

Given that the date of computation was on or after December 31 of the year preceding the year in which the general election was to be held, the applicable formula was the one outlined in 11 CFR 400.10(a)(3) (a − b − ((e − f) + (2)), where:

(a) Represented the greatest aggregate amount of expenditures from personal funds made by Rockford in the general election ($21 million);

(b) Represented the greatest amount of expenditures from personal funds made by Miller in the general election ($0);

(e) Represented the aggregate amount of gross receipts of Miller's authorized committee ($2 million), minus any contributions by Miller from personal funds (Note: This amount is $0, because the $3 million Miller contributed to her authorized committee on April 5, 2003 was made in connection with the primary and entirely spent), during any election cycle that may be expended in connection with the general election, as determined on December 31, 2003; and

(f) Represented the aggregate amount of gross receipts of Rockford's authorized committee ($1.1 million), minus any contributions by Rockford from personal funds ($1 million), during any election cycle that may be expended in connection with the general election, as determined on December 31, 2003, so the July 2, 2004, $20 million expenditure is *not* included.

Miller determined the value of each variable as follows:

(a) = $21,000,000
(b) = $0.00
(e) = $2,000,000 ($2,000,000 − $0)
(f) = $100,000 ($1,100,000 − $100,000)

Inserting these above values into the applicable formula (a − b − ((e − f) + (2)), Miller determined that the opposition personal funds amount was $20,050,000, calculated as follows:

$21,000,000 − $0 − (($2,000,000 − $100,000) + (2) = $20,050,000

Miller notified her national and State party committees and the Commission of this calculation, as required by 11 CFR 400.30(b).

Calculating the Increased Contribution and Coordinated Party Expenditure Limits for the Miller campaign

Having determined that the opposition personal funds amount was $20,050,000, Miller determined that, because the opposition personal funds

amount was more than $11,420,000 ($0.40 × 24,800,000 (VAP of New Franklin) + $1,500,000), the following increased contribution and coordinated party expenditure limits applied to her campaign, under 11 CFR 400.40:

Increased contribution limit

$12,000 (6 × $2,000 (applicable limit))

Coordinated party expenditure limit

Unlimited

Calculating the Proportionality Provision Amount for the Miller Campaign

Miller next calculated the aggregate amount of contributions her authorized committee would be able to receive before being in danger of exceeding 110 percent of the opposition personal funds amount ($20,050,000), under 11 CFR 400.31:

1.10 × $20,050,000 = $22,055,000

Miller started raising money in earnest. By the end of July, her campaign had managed to raise $4,500,000, $2,300,000 of which was received under the increased limits. In addition, sometime in the middle of the month, someone from the DSCC called to say they had not made any independent expenditures on her behalf, and wanted to make coordinated party expenditures to help her out. The DSCC official wanted to know what sort of help Miller needed most. Miller told the DSCC official that her campaign desperately needed air time in all of New Franklin's major media markets in order to compete with Rockford. The DSCC immediately purchased as much air time as was available between July 15, 2004, and Labor Day. The DSCC notified Miller that the total cost of the air time that the DSCC purchased on Miller's behalf was $19,753,000 above the coordinated party expenditure limit. Although the New Franklin State Democratic Committee could also spend above the ordinarily-applicable $1,781,136 coordinated party spending limit, Miller was told they planned to make no coordinated party expenditures on her behalf.

On August 1, 2004, Arlene Miller received a telephone call from Rex Duncan, an old college friend. Duncan said that he knew Miller was running against a self-financed candidate and he wanted to send her a contribution but he wasn't sure how much he was allowed to give. Duncan explained that, since Election Day 2002, he had made a number of contributions to other Federal candidates. As of August 1, 2004, the aggregate amount of Duncan's contributions was $35,500, just $2,000 shy of the aggregate 2-year limit of $37,500 for individual contributions to Federal candidate committees under 2 U.S.C. 441a(a)(3)(A). He asked Miller how much he would be allowed to contribute to her campaign. Miller informed Duncan that only the first $2,000 of his contribution to any one Federal candidate counted against his 2-year aggregate limit, pursuant to 11 CFR 400.42. Any amount above the applicable limit given to candidates running against self-financing candidates was excluded from the calculation.

Nevertheless, Miller suspected that Duncan could not send her $12,000, however, because she knew that her campaign was getting close to a crucial limit of its own under the proportionality provision. Miller told Duncan that she would have to call him back after she figured out how much of his money her campaign could legally accept. Miller calculated the aggregate amount of contributions already received and coordinated party expenditures already made under the increased limits, as follows: $2,300,000 (contributions) + $19,753,000 (coordinated expenditures) = $22,053,000.

After performing these calculations, Miller realized that she could only accept $2,000 from Duncan above the applicable limit of $2,000. This meant that her campaign could accept a check from Duncan in the amount of $4,000 because, although the first $2,000 of his contribution *would* count against his 2-year aggregate limit of $37,500, it *would not* count against the Miller campaign's proportionality provision limit of $22,055,000. Miller called Duncan back and asked him to send her a check for $4,000.

Realizing that, under 11 CFR 400.31(d)(1)(ii), Miller or her authorized committee was required to notify the national and State committees of her political party and the Commission within 24 hours of the time her campaign reached the proportionality provision limit, Miller immediately sent electronic mail messages to the DSCC, the New Franklin Democratic Federal Campaign Committee, and the Commission. Both committees were now on notice that they could no longer make coordinated expenditures on behalf of Miller's general election campaign in excess of the coordinated expenditure limitation in 11 CFR 109.32(b).

Miller realized that, unless Rockford spent more of his personal funds on behalf of his campaign, from that point forward, her campaign could only accept contributions up to the applicable limit ($2,000 per individual). In addition, the national party committee would be prohibited from making any more coordinated expenditures on behalf of the Miller campaign, although it could still contribute up to $35,000 directly to her principal campaign committee.

On August 3, 2004, Rockford reluctantly used his personal funds to purchase $30 million worth of air time between Labor Day and Election Day. Disappointed that he was again using personal funds, Rockford deemed $20 million a contribution and $10 million a personal loan. As required, Rockford filed his original FEC Form 10 with the Secretary of the Senate and faxed copies of the form to the Commission and the Miller campaign. Miller scrambled to recalculate the new opposition personal funds amount and increased contribution and coordinated party expenditure limits.

Calculating the New Opposition Personal Funds Amount for the Miller Campaign

Given that the date of computation (August 4, 2004) was on or after February 1 of the year in which the general election was to be held, the applicable formula was the one outlined in 11 CFR 400.10(a)(3) (a − b − ((e − f) + 2)), where:

(a) Represented the greatest aggregate amount of expenditures from personal funds made by Rockford in the general election ($51 million);

(b) Represented the greatest amount of expenditures from personal funds made by Miller in the general election ($0);

(e) Represented the aggregate amount of gross receipts of Miller's authorized committee ($2 million), minus any contributions by Miller from personal funds ($0), during any election cycle that may be expended in connection with the general election, as determined on December 31, 2003; and

(f) Represented the aggregate amount of gross receipts of Rockford's authorized committee ($1.1 million), minus any contributions by Rockford from personal funds ($1 million), during any election cycle that may be expended in connection with the general election, as determined on December 31, 2003.

Miller determined the value of each variable as follows:

(a) = $51,000,000
(b) = $0
(e) = $2,000,000 ($2,000,000 − $0)
(f) = $100,000 ($1,100,000 − $1,000,000)

Plugging these values into the applicable formula, Miller determined that the opposition personal funds amount was $45,750,000, calculated as follows:

$51,000,000 − $0 − (($2,000,000 − $100,000) ÷ 2) = $50,050,000

Miller notified her national and State party committees and the Commission of this calculation, as required by 11 CFR 400.30(b).

Calculating the New Increased Contribution and Coordinated Party Expenditure Limits for the Miller Campaign

Having determined that the opposition personal funds amount was $50,050,000, Miller determined that, because the opposition personal funds amount was more than $11,420,000 ($0.40 × 24,800,000 (VAP of New Franklin) + $1,500,000), the following increased contribution and coordinated party expenditure limits applied to her campaign, under 11 CFR 400.40:

Increased contribution limit—Miller campaign

$12,000 (6 × $2,000 (applicable limit))

Coordinated party expenditure limit—Miller campaign

Unlimited

Calculating the New Proportionality Provision Amount for the Miller Campaign

Miller next calculated the aggregate amount of contributions her authorized committee would be able to receive before being in danger of exceeding 110 percent of the opposition personal funds amount ($45,750,000), under 11 CFR 400.31:

1.10 × $50,050,000 = $55,055,000

As of August 4, 2004, the aggregate amount of contributions received under the increased limits (including Duncan's $2,000) and coordinated party expenditures made under the increased limits equaled $22,055,000. Accordingly, Miller's campaign could now receive an additional $33,000,000 ($55,055,000 − $22,055,000) in contributions and/or coordinated party expenditures. Miller immediately called her old friend Rex Duncan and told him that he could now send her campaign an additional $8,000 if he still wished to support her. Miller then received a call from a multicandidate political committee (PAC) wanting to know how much it could contribute to her campaign. She told the PAC's treasurer that she could accept up to $5,000, as the PAC's contribution limits had not been raised.

Prohibition on Redesignation of Contributions Received Above the Applicable Limit to Another Election Cycle

When the election was over, Miller's authorized committee had $50,000 in contributions accepted under the increased limit left in its campaign account. Looking ahead to the 2010 primary and general elections, Miller wondered whether it would be possible to redesignate the $50,000 to a future race, in the manner prescribed under 11 CFR 110.1(b)(5). Miller quickly determined, however, that redesignation of contributions received under the increased limits was strictly prohibited, under 11 CFR 400.52.

Disposal of Excess Contributions Received Above the Applicable Limit

Miller was puzzled about what her authorized committee was supposed to do with the extra $50,000 in contributions her committee had received during the general election cycle. Under 11 CFR 400.51, Miller's authorized committee was required to refund the excess contributions within 50 days of the general election. Miller's committee refunded the $50,000 in excess contributions to those individuals who had made increased contributions during the general election cycle, being careful to make sure that no individual contributor received a refund that exceeded the aggregate amount of their contributions to the Miller campaign, pursuant to 11 CFR 400.53.

Miller's committee was required to notify the Commission about the disposition of these excess contributions under 11 CFR 400.54. Information about the source and amount of these excess contributions and the manner in which the committee used the funds had to be included in the first report that was due more than 50 days after the general election. According to the regulation, the report had to be submitted with Miller's FEC Form 3. Miller noted that the first report due more than 50 days after the November 8, 2004, general election was not the post-general report, which was due on December 8, 2004, but the year-end report, due on January 31, 2005.

Repayment of Rockford's Personal Loan

Rockford's authorized committee spent every available dollar on the general election campaign and, after the election was over, had no funds remaining to repay Rockford's $10 million personal loan. Rockford wondered whether his authorized committee could use funds raised after the date of the election to repay the loan. He quickly realized, however, that BCRA set a limit on the amount of personal loans that may be repaid with funds raised after the end of an election cycle. The Commission's regulation at 11 CFR 116.11, implementing the new statutory limit, prohibited Rockford from using more than $250,000 in contributions received after the date of the election to pay off his $10 million personal loan. *See* 2 U.S.C. 441a(j). This meant, of course, that Rockford would never be able to recover the remaining $9,750,000 ($10,000,000 personal loan − $250,000 limit) he lent his authorized committee during the general election cycle.

Certification of No Effect Pursuant to 5 U.S.C. 605(b) (Regulatory Flexibility Act)

The attached interim final rules will not have a significant economic impact on a substantial number of small entities. Although the interim final rules add new substantive provisions to the current regulations, those provisions, which are mandated by BCRA, generally represent a relaxation of current limitations on contributions to candidates for Federal office in certain, specified circumstances. Therefore, the attached interim final rules will not have a significant economic impact on a substantial number of small entities.

List of Subjects

11 CFR Part 100

Elections.

11 CFR Part 101

Political candidates, Reporting and recordkeeping requirements.

11 CFR Part 104

Campaign funds, Political committees and parties, Reporting and recordkeeping requirements.

11 CFR Part 110

Campaign funds, Political committees and parties.

11 CFR Part 116

Administrative practice and procedure, Business and industry, Credit, Elections, Political candidates, Political committees and parties.

11 CFR Part 400

Campaign funds, Elections, Political candidates, Political committees and parties, Reporting and recordkeeping requirements.

11 CFR Part 9035

Campaign funds, Reporting and recordkeeping requirements.

For the reasons set out in the Explanation and Justification, the Commission amends Subchapters A, C, and E of Chapter I of Title 11 of the Code of Federal Regulations as follows:

PART 100—SCOPE AND DEFINITIONS (2 U.S.C. 431)

1. The authority citation for part 100 continues to read as follows:

Authority: 2 U.S.C. 431, 434, and 438(a)(8).

2. In § 100.19, paragraph (b) is revised, and paragraph (g) is added to read as follows:

§ 100.19 File, filed, or filing (2 U.S.C. 434(a)).

* * * * *

(b) *Timely filed.* A document, other than those addressed in paragraphs (c) through (g) of this section, is timely filed upon deposit as registered or certified mail in an established U.S. Post Office and postmarked no later than 11:59 p.m. Eastern Standard/Daylight Time on the filing date, except that pre-election reports so mailed must be postmarked no later than 11:59 p.m. Eastern Standard/Daylight Time on the fifteenth day before the date of the election. Documents sent by first class mail must be received by the close of business on the prescribed filing date to be timely filed.

* * * * *

(g) *Candidate notifications of expenditures from personal funds.* A candidate's notification of expenditures from personal funds under 11 CFR 400.21 or 400.22 is timely filed if it is received by facsimile machine or electronic mail by each of appropriate parties as set forth in 11 CFR 400.21 and 400.22 within 24 hours of the time the threshold amount as defined in 11 CFR 400.9 is exceeded and within 24 hours of the time expenditures from personal funds are made under 11 CFR 400.21 and 400.22.

3. Section 100.33 is added to read as follows:

§ 100.33 Personal funds.

Personal funds of a candidate means the sum of all of the following:

(a) *Assets.* Amounts derived from any asset that, under applicable State law, at the time the individual became a candidate, the candidate had legal right of access to or control over, and with respect to which the candidate had—

(1) Legal and rightful title; or

(2) An equitable interest;

(b) *Income.* Income received during the current election cycle, as defined in 11 CFR 400.2, of the candidate, including:

(1) A salary and other earned income that the candidate earns from bona fide employment;

(2) Income from the candidate's stocks or other investments including interest, dividends, or proceeds from the sale or liquidation of such stocks or investments;

(3) Bequests to the candidate;

(4) Income from trusts established before the beginning of the election cycle as defined in 11 CFR 400.2;

(5) Income from trusts established by bequest after the beginning of the election cycle of which the candidate is the beneficiary;

(6) Gifts of a personal nature that had been customarily received by the candidate prior to the beginning of the election cycle, as defined in 11 CFR 400.2; and

(7) Proceeds from lotteries and similar legal games of chance; and

(c) *Jointly owned assets.* Amounts derived from a portion of assets that are owned jointly by the candidate and the candidate's spouse as follows:

(1) The portion of assets that is equal to the candidate's share of the asset under the instrument of conveyance or ownership; provided, however,

(2) If no specific share is indicated by an instrument of conveyance or ownership, the value of one-half of the property.

PART 101—CANDIDATE STATUS AND DESIGNATIONS (2 U.S.C. 432(e))

4. The authority for part 101 continues to read as follows:

Authority: 2 U.S.C. 432(e), 434(a)(11), 438(a)(f).

5. Section 101.1(a) is revised to read as follows:

§ 101.1 Candidate designations (2 U.S.C. 432(e)(1)).

(a) *Principal Campaign Committee.* Within 15 days after becoming a candidate under 11 CFR 100.3, each candidate, other than a nominee for the office of Vice President, shall designate in writing, a principal campaign committee in accordance with 11 CFR 102.12. A candidate shall designate his or her principal campaign committee by filing a Statement of Candidacy on FEC Form 2, or, if the candidate is not required to file electronically under 11 CFR 104.18, by filing a letter containing the same information (that is, the individual's name and address, party affiliation, and office sought, the District and State in which Federal office is sought, and the name and address of his or her principal campaign committee at the place of filing specified at 11 CFR part 105). Candidates for the Senate and the House of Representatives must also state, on their Statements of Candidacy on FEC Form 2 (or, if the candidate is not required to file electronically under 11 CFR 104.18, on his or her letter containing the same information), the amount by which the candidate intends to exceed the threshold amount as defined in 11 CFR 400.9. Each principal campaign committee shall register, designate a depository, and report in accordance with 11 CFR parts 102, 103, and 104.

* * * * *

PART 102—REGISTRATION, ORGANIZATION, AND RECORDKEEPING BY POLITICAL COMMITTEES (2 U.S.C. 433)

6. The authority citation for part 102 continues to read as follows:

Authority: 2 U.S.C. 432, 433, 434(a)(11), 438(a)(8), 441d.

7. In § 102.2, paragraph (a)(1) is amended by:

a. Removing the "and" at the end of paragraph (a)(1)(vi);

b. Removing the "." at the end of paragraph (a)(1)(vii) and replacing it with "; and"; and

c. Adding new paragraph (a)(1)(viii) to read as follows:

§ 102.2 Statement of organization: Forms and committee identification number (2 U.S.C. 433 (b), (c)).

* * * * *

(a) * * * (1) * * *

(viii) If the committee is a principal campaign committee of a candidate for the Senate or the House of Representatives, the principal campaign committee's facsimile number, if available, and electronic mail address.

* * * * *

PART 104—REPORTS BY POLITICAL COMMITTEES (2 U.S.C. 434)

8. The authority citation for part 104 is revised to read as follows:

Authority: 2 U.S.C. 431(1), 431(8), 431(9), 432(i), 434, 438(a)(8) and (b), 439a, and 441a.

9. Section 104.19 is revised to read as follows:

§ 104.19 Special reporting requirements for principal campaign committees of candidates for election to the United States Senate or United States House of Representatives.

(a) *Scope.* The principal campaign committees of candidates for elections to the office of United States Senator, or Representative in, or Delegate or Resident Commissioner to, the Congress must file reports required under this section with the Commission.

(b) *Timing and contents of reports.*

(1) By July 15 of the year preceding the year in which the general election for the office sought is held, each principal campaign committee shall file a report that includes the following information:

(i) The gross receipts, as defined in 11 CFR 400.8, of all of the candidate's authorized committees that may be expended in connection with the primary election as determined as of June 30 of that year including contributions to the candidate or any of the candidate's authorized committees received by June 30 of that year that have been made or designated for the primary election under 11 CFR 110.1(b)(2) or redesignated for the primary election under 11 CFR 110.1(b)(5);

(ii) The gross receipts, as defined in 11 CFR 400.8, of all of the candidate's authorized committees that may be expended in connection with the general election that have been received by June 30 of that year including contributions to the candidate or any of the candidate's authorized committees received by June 30 of that year that have been designated under 11 CFR 110.1(b)(2) for the general election or redesignated for the general election under 11 CFR 110.1(b)(5);

(iii) The aggregate amount of contributions from the personal funds of the candidate to any of the candidate's authorized committees received by June 30 of that year that have been made or designated for the primary election under 11 CFR 110.1(b)(2) or redesignated for the primary election under 11 CFR 110.1(b)(5);

(iv) The aggregate amount of contributions from the personal funds of the candidate to any of the candidate's authorized committees received by June 30 of that year that have been designated for the general election under 11 CFR 110.1(b)(2) or redesignated for the general election under 11 CFR 110.1(b)(5);

(v) The aggregate amount described in paragraph (b)(1)(i) of this section minus the aggregate amount described in paragraph (b)(1)(iii) of this section; and

(vi) The aggregate amount described in paragraph (b)(1)(ii) of this section minus the aggregate amount described in paragraph (b)(1)(iv) of this section.

(2) By January 31 of the year in which the general election for the office sought is held, each principal campaign committee shall file a report that includes the following information:

(i) The gross receipts, as defined in 11 CFR 400.8, of all of the candidate's authorized committees that may be expended in connection with the primary election as determined as of December 31 of the year preceding the year in which that general election is held including contributions to the candidate or any of the candidate's authorized committees received by December 31 of the year preceding the year in which that general election is held that have been made or designated for the primary election under 11 CFR 110.1(b)(2) or redesignated for the primary election under 11 CFR 110.1(b)(5);

(ii) The gross receipts, as defined in 11 CFR 400.8, of all of the candidate's authorized committees that may be expended in connection with the general election as determined as of December 31 of the year preceding the year in which that general election is held including contributions to the candidate or any of the candidate's authorized committees received by December 31 of the year preceding the year in which that general election is held that have been designated under 11 CFR 110.1(b)(2) for the general election or redesignated for the general election under 11 CFR 110.1(b)(5);

(iii) The aggregate amount of contributions from the personal funds of the candidate to any of the candidate's authorized committees received by December 31 of the year preceding the year in which that general election is held that have been made or designated for the primary election under 11 CFR 110.1(b)(2) or redesignated for the primary election under 11 CFR 110.1(b)(5);

(iv) The aggregate amount of contributions from the personal funds of the candidate to any of the candidate's authorized committees received by December 31 of the year preceding the year in which that general election is held that have been designated under 11 CFR 110.1(b)(2) for the general election or redesignated for the general election under 11 CFR 110.1(b)(5);

(v) The aggregate amount described in paragraph (b)(2)(i) of this section minus the aggregate amount described in paragraph (b)(2)(iii) of this section; and

(vi) The aggregate amount described in paragraph (b)(2)(ii) of this section minus the aggregate amount described in paragraph (b)(2)(iv) of this section.

PART 110—CONTRIBUTION AND EXPENDITURE LIMITATIONS AND PROHIBITIONS

10. The authority citation for part 110 continues to read as follows:

Authority: 2 U.S.C. 431(8), 431(9), 432(c)(2), 437d(a)(8), 438(a)(8), 441a, 441b, 441d, 441e, 441f, 441g, 441h, and 441k.

11. In § 110.1, paragraph (b)(3)(ii) is amended by:

a. Removing the "and" at the end of paragraph (b)(3)(ii)(A);

b. Removing the "." at the end of paragraph (b)(3)(ii)(B) and replacing it with "; and"; and

c. Adding new paragraph (b)(3)(ii)(C) to read as follows:

§ 110.1 Contributions by persons other than multicandidate political committees (2 U.S.C. 441a(a)(1)).

* * * * *

(b) * * *

(3) * * *

(ii) * * *

(C) The amount of personal loans, as defined in 11 CFR 116.11(b), that in the aggregate exceed $250,000 per election.

* * * * *

12. Section 110.10 is revised to read as follows:

§ 110.10 Expenditures by candidates.

Except as provided in 11 CFR parts 9001, *et seq.* and 9031, *et seq.*, candidates for Federal office may make unlimited expenditures from personal funds as defined in 11 CFR 100.33.

PART 116—DEBTS OWED BY CANDIDATES AND POLITICAL COMMITTEES

13. The authority citation for part 116 continues to read as follows:

Authority: 2 U.S.C. 433(d), 434(b)(8), 438(a)(8), 441a, 441b, and 451.

14. Part 116 is amended by adding new §§ 116.11 and 116.12 to read as follows:

§ 116.11 Restriction on an authorized committee's repayment of personal loans exceeding $250,000 made by the candidate to the authorized committee.

(a) For purposes of this part, personal loans mean a loan or loans, including advances, made by a candidate, using personal funds, as defined in 11 CFR 100.33, to his or her authorized committee where the proceeds of the loan were used in connection with the candidate's campaign for election. Personal loans also include loans made to a candidate's authorized committee that are endorsed or guaranteed by the candidate or that are secured by the candidate's personal funds.

(b) For personal loans that, in the aggregate, exceed $250,000 in connection with an election, the authorized committee:

(1) May repay the entire amount of the personal loans using contributions to the candidate or the candidate's authorized committee provided that those contributions were made on the day of the election or before;

(2) May repay up to $250,000 of the personal loans from contributions made to the candidate or the candidate's authorized committee after the date of the election; and

(3) Must not repay, directly or indirectly, the aggregate amount of the

personal loans that exceeds $250,000, from contributions to the candidate or the candidate's authorized committee if those contributions were made after the date of the election.

(c) If the aggregate outstanding balance of the personal loans exceeds $250,000 after the election, the authorized political committee must comply with the following conditions:

(1) If the authorized committee uses the amount of cash on hand as of the day after the election to repay all or part of the personal loans, it must do so within 20 days of the election.

(2) Within 20 days of the election date, the authorized committee must treat the portion of the aggregate outstanding balance of the personal loans that exceeds $250,000 minus the amount of cash on hand as of the day after the election used to repay the loan as a contribution by the candidate.

(3) The candidate's principal campaign committee must report the transactions in paragraphs (c)(1) and (c)(2) of this section in the first report scheduled to be filed after the election pursuant to 11 CFR 104.5(a) or (b).

(d) This section applies separately to each election.

§ 116.12 Repayment of candidate loans of $250,000 or less.

(a) A candidate's authorized committee may repay to the candidate a personal loan, as defined in 11 CFR 116.11(a), of up to $250,000 where the proceeds of the loan were used in connection with the candidate's campaign for election. The repayment may be made from contributions to the candidate or the candidate's authorized committee at any time before, on, or after the date of the election.

(b) This section applies separately to each election.

(c) Nothing in this section shall supersede 11 CFR 9035.2 regarding the limitations on expenditures from personal funds or family funds of a presidential candidate who accepts matching funds.

15. Subchapter C is amended by adding part 400 to read as follows:

PART 400—INCREASED LIMITS FOR CANDIDATES OPPOSING SELF-FINANCED CANDIDATES

Subpart A—Scope and Definitions

Sec.

400.1 Scope and effective date.
400.2 Election cycle.
400.3 Opposing candidate.
400.4 Expenditure from personal funds.
400.5 Applicable limit.
400.6 Increased limit.
400.7 Contribution that exceeds the applicable limit.
400.8 Gross receipts.
400.9 Threshold amount.
400.10 Opposition personal funds amount.

Subpart B—Notification and Reporting Requirements

400.20 Declaration of intent.
400.21 Initial notification of expenditures from personal funds.
400.22 Additional notification of expenditures from personal funds.
400.23 Contents of notifications of expenditures from personal funds.
400.24 Methods of filing notifications.
400.25 Reporting obligations of candidates and candidates'-principal campaign committees.

Subpart C—Determining When the Increased Limits Apply

400.30 Receipt of notification of opposing candidate's expenditures from personal funds.
400.31 Preventing disproportionate advantage resulting from increased contribution and coordinated party expenditure limits.
400.32 Effect of the withdrawal of an opposing candidate.

Subpart D—Calculation of Increased Limits for Senate and House of Representatives Candidates

400.40 Calculating the increased limits for Senate elections.
400.41 Calculating the increased limits for House of Representatives elections.
400.42 Effect of increased limits on the aggregate contribution limitations for individuals.

Subpart E—Disposal of Excess Contributions

400.50 Definition of Excess contributions.
400.51 Relation of excess contributions to the election in which they are made.
400.52 Prohibition against redesignation of excess contributions.
400.53 Disposal of excess contributions.
400.54 Notification of disposal of excess contributions.

Authority: 2 U.S.C. 431, 434(a)(6), 438(a)(8), 441a(i), 441a(j), 441a–1.

Subpart A—Scope and Definitions

§ 400.1 Scope and effective date.

(a) *Introduction.* This part applies to elections to the office of United States Senator, or Representative in, or Delegate or Resident Commissioner to, the Congress, in which a candidate is permitted increased limits to allow response to certain expenditures from personal funds by an opposing candidate. This part does not apply to elections to the Office of President or Vice President of United States.

(b) *Effective dates.* Except as otherwise specifically provided in this part, this part shall take effect on February 26, 2003.

§ 400.2 Election cycle.

(a) For purposes of this part, *election cycle* means the period beginning on the day after the date of the most recent election for the specific office or seat that a candidate is seeking and ending on the date of the next election for that office or seat.

(b) For purposes of paragraph (a) of this section, a primary election and a general election are considered to be separate election cycles.

(c) For purposes of this part, a run-off election is considered to be part of the election cycle of the election necessitating the run-off election.

§ 400.3 Opposing candidate.

(a) For purposes of a primary election, *opposing candidate* means another candidate seeking the nomination of the same political party for election to the office of Senator, or Representative in, or Delegate or Resident Commissioner to, the Congress, that the candidate is seeking. A candidate in a primary election may have more than one opposing candidate.

(b) For purposes of a general election, *opposing candidate* means another candidate seeking election to the same office of Senator, or Representative in, or Delegate or Resident Commissioner to, the Congress, that the candidate is seeking. A candidate in a general election may have more than one opposing candidate.

§ 400.4 Expenditure from personal funds.

(a) *Expenditure from personal funds* means the aggregation of all the following:

(1) An expenditure made by a candidate, using the candidate's personal funds, for the purpose of influencing the election in which he or she is a candidate;

(2) A contribution or loan made by a candidate to the candidate's authorized committee, using the candidate's personal funds (*see* 11 CFR 100.33 for definition of *personal funds*);

(3) A loan by any person to the candidate's authorized committee that is secured using the candidate's personal funds. (*see* 11 CFR 100.33 for definition of *personal funds*); and

(4) Any obligation to make an expenditure from personal funds that is legally enforceable against the candidate.

(b) An expenditure from personal funds shall be considered to be made on the date the funds are deposited into the account designated by the candidate's authorized committee as the campaign depository, under 11 CFR 103.1 and 11 CFR 103.2, on the date the instrument transferring the funds is signed, or on

the date the contract obligating the personal funds is executed, whichever is earlier.

§ 400.5 Applicable limit.

Applicable limit means the contribution amount limitation set forth in 11 CFR 110.1(b)(1).

§ 400.6 Increased limit.

Increased limit means a contribution amount limitation that applies to a person other than a multicandidate political committee that, pursuant to this part, exceeds the applicable limit specified in 11 CFR 110.1 in order to allow response to expenditures from an opposing candidate's personal funds. *Increased limit* also means, where applicable, a suspension, pursuant to this part, of the limitations on expenditures by a national or State political party committee in connection with the general election campaign of a candidate for the Senate or the House of Representatives under 11 CFR 109.32(b).

§ 400.7 Contribution that exceeds the applicable limit.

Amount of contribution above the applicable limit means the difference between the amount of a contribution accepted under this part and the applicable limit.

§ 400.8 Gross receipts.

Gross receipts means the sum of all receipts of the candidate's authorized committee described in 11 CFR 104.3(a)(3) (i) through (x).

§ 400.9 Threshold amount.

(a) *Senate.* For an election to the office of United States Senator, *threshold amount* means the sum of $150,000 plus an amount equal to the voting age population of the State multiplied by $0.04. As used in this paragraph, voting age population means the voting age population of the State of the candidate as certified under 11 CFR 110.18.

(b) *House of Representatives.* For an election to the office of Representative in, or Delegate or Resident Commission to, the Congress, *threshold amount* means $350,000.

§ 400.10 Opposition personal funds amount.

(a) To compute the *opposition personal funds amount*, one of the following formulas must be used, depending on the date of the computation. The variables used in the formulas are defined in paragraph (b) of this section.

(1) To compute the opposition personal funds amount prior to July 16 of the year preceding the year in which the general election is held, the following formula must be used:

opposition personal funds amount = a − b.

(2) To compute the opposition personal funds amount from July 16 of the year preceding the year in which the general election is held to January 31 of the year in which the general election is held, one of the following formulas must be used:

(i) If c>d, opposition personal funds amount = a − b − ((c − d) ÷ 2).

(ii) If c≤d, opposition personal funds amount = a − b.

(3) To compute the opposition personal funds amount from February 1 of the year in which the general election is held to the day of the general election, one of the following formulas must be used:

(i) If e>f, opposition personal funds amount = a − b − ((e − f) ÷ 2).

(ii) If e≤f, opposition personal funds amount = a − b.

(b) *Variables.* The variables used in the formulas set out in paragraph (a) of this section are defined as follows:

a = Greatest aggregate amount of expenditures from personal funds made by the opposing candidate in the same election.

b = Greatest aggregate amount of expenditures from personal funds made by the candidate in the same election.

c = Aggregate amount of the gross receipts of the candidate's authorized committee minus any contributions by the candidate from personal funds as reported under 11 CFR 104.19(b)(1)(v) or (vi), during any election cycle that may be expended in connection with the election for the nomination for election, or election, to Federal office sought, as determined on June 30 of the year preceding the year in which the general election is held.

d = Aggregate amount of the gross receipts of the opposing candidate's authorized committee minus any contributions by that opposing candidate from personal funds as reported under 11 CFR 104.19(b)(1)(v) or (vi), during any election cycle that may be expended in connection with the election for the nomination for election, or election, to Federal office sought, as determined on June 30 of the year preceding the year in which the general election is held.

e = Aggregate amount of the gross receipts of the candidate's authorized committee minus any contributions by the candidate from personal funds as reported under 11 CFR 104.19(b)(2)(v) or (vi), during any election cycle that may be expended in connection with the election for the nomination for election, or election, to Federal office sought, as determined on December 31 of the year preceding the year in which the general election is held.

f = Aggregate amount of the gross receipts of the opposing candidate's authorized committee minus any contributions by that opposing candidate from personal funds as reported under 11 CFR 104.19(b)(2)(v) or (vi), during any election cycle that may be expended in connection with the election for the nomination for election, or election, to Federal office sought, as determined on December 31 of the year preceding the year in which the general election is held.

Subpart B—Notification and Reporting Requirements

§ 400.20 Declaration of intent.

(a) *Senate and House of Representatives.*

(1) *When and where filed.* Within 15 days of becoming candidate, the candidate must file a Declaration of Intent with the Commission and with each opposing candidate.

(2) *Contents of declaration.* The Declaration of Intent must state the total amount of expenditures from personal funds that the candidate intends to make with respect to the election that will exceed the threshold amount as defined in 11 CFR 400.9. A candidate who does not intend to make expenditures from personal funds that will exceed the threshold amount as defined in 11 CFR 400.9 may state the amount as $0.

(b) *Methods of filing.*

(1) *Senate.* Declarations of Intent must be noted on the candidate's Statement of Candidacy, FEC Form 2. (*See* 11 CFR 101.1.) The candidate must send a copy of his or her Statement of Candidacy to the Commission using a facsimile machine or electronic mail in addition to filing his or her official copy of the Statement of Candidacy on paper with the Secretary of the Senate. The candidate must send by facsimile machine or electronically mail his or her FEC Form 2 or the information required therein by 11 CFR 101.1, including the amount by which the candidate intends to exceed the threshold amount, to each opposing candidate.

(2) *House of Representatives.* Declarations of Intent must be noted on the candidate's Statement of Candidacy, FEC Form 2. (*See* 11 CFR 101.1.) FEC Form 2 must be filed electronically in accordance with 11 CFR 104.18 if the candidate intends to exceed the threshold amount defined in 11 CFR 400.9(b). Candidates must send by facsimile machine or electronically mail his or her FEC Form 2 or the information required therein by 11 CFR 101.1, including the amount by which he or she intends to exceed the threshold amount, to each opposing candidate.

§ 400.21 Initial notification of expenditures from personal funds.

(a) *Senate.* A candidate's principal campaign committee must notify the Secretary of the Senate, the Commission, and each opposing candidate when the candidate makes an expenditure from personal funds with respect to the election that causes the candidate's aggregate expenditures from personal funds to exceed two times the threshold amount as defined in 11 CFR 400.9. Such notification must be received by the Secretary of the Senate, the Commission, and each opposing candidate within 24 hours of the time such expenditure is made.

(b) *House of Representatives.* A candidate's principal campaign committee must notify the Commission, each opposing candidate, and the national party of each opposing candidate when the candidate makes an expenditure from personal funds with respect to the election that causes the candidate's aggregate expenditures from personal funds to exceed the $350,000 threshold amount (*see* 11 CFR 400.9). Such notification must be received by the Commission, each opposing candidate, and the national party of each opposing candidate within 24 hours of the time such expenditure is made.

§ 400.22 Additional notification of expenditures from personal funds.

(a) *Senate.* After filing the initial notification of expenditures from personal funds under 11 CFR 400.21, a candidate's principal campaign committee must notify the Secretary of the Senate, the Commission, and each opposing candidate when the candidate makes expenditures from personal funds in connection with the election exceeding $10,000. Such notification must be received by the Secretary of the Senate, the Commission, and each opposing candidate within 24 hours of the time such expenditures are made.

(b) *House of Representatives.* After filing the initial notification of expenditures from personal funds under 11 CFR 400.21, a candidate's principal campaign committee must notify the Commission, each opposing candidate, and the national party of each opposing candidate when the candidate makes expenditures from personal funds in connection with the election exceeding $10,000. Such notification must be received by the Commission, each opposing candidate, and the national party of each opposing candidate within 24 hours of the time such expenditures are made.

§ 400.23 Contents of notifications of expenditures from personal funds.

Each notification filed under 11 CFR 400.21 and 400.22 must contain the following information:

(a) The name of the candidate making the expenditures from personal funds.

(b) The office sought by the candidate making the expenditures from personal funds, including the State and, for candidates for the House of Representatives, the District.

(c) The date and amount of each expenditure from personal funds made since the last notification filed pursuant to 11 CFR 400.21 or 400.22.

(d) The total amount of expenditures from personal funds the candidate has made (as defined in 11 CFR 400.4(e)) in connection with the election from the beginning of the election cycle to the date of the expenditure that is the reason for the notification.

§ 400.24 Methods of filing notifications.

(a) *Senate.* Each notification required to be filed by the candidate's principal campaign committee under 11 CFR 400.21(a) and 400.22 must be filed with the Secretary of the Senate on FEC Form 10. The candidate's principal campaign committee must send a copy of its FEC Form 10 by facsimile machine, as an attachment to an electronic mail, or as an electronic mail containing the information required in 11 CFR 400.23 to the Commission and to each opposing candidate.

(b) *House of Representatives.* Each notification required to be filed by the candidate's principal campaign committee under 11 CFR 400.21(b) and 400.22 must be filed with the Commission electronically on FEC Form 10. The candidate's principal campaign committee must send a copy of its FEC Form 10 to each opposing candidate and to the national party committee of each opposing candidate by facsimile machine, as an attachment to an electronic mail, or as an electronic mail containing the information required by 11 CFR 400.23.

§ 400.25 Reporting obligations of candidates and candidates' principal campaign committees.

Candidates must ensure that their principal campaign committees file all reports required under this part in a timely manner.

Subpart C—Determining When the Increased Limits Apply

§ 400.30 Receipt of notification of opposing candidate's expenditures from personal funds.

(a) *Applicable to Senate and to House of Representatives elections.* This section applies to elections to the office of United States Senator, and to the office of Representative in, or Delegate or Resident Commission to, the Congress.

(b) *Candidates and authorized committees.*

(1) The candidate and the candidate's authorized committee must not accept, pursuant to this part, any contribution that exceeds the applicable limit, as defined in 11 CFR 400.7, until the candidate has received actual or constructive notification of an opposing candidate's expenditures from personal funds under subpart B of this part. The candidate and the candidate's authorized committee must calculate the opposition personal funds amount each time they receive an opposing candidate's notification of expenditures from personal funds under 11 CFR 400.21 or 400.22.

(2) Upon calculating the opposition personal funds amount, if the candidate or the candidate's authorized committee determines that such amount exceeds the appropriate threshold under 11 CFR 400.40 or 400.41 that permits national and State committees of political parties to make coordinated party expenditures that exceed the limitations set forth in 11 CFR 109.32, the candidate or the candidate's authorized committee must inform the Commission and the national and State committee of their political party of such opposition personal funds amount by facsimile machine or electronic mail within 24 hours of receipt of an opposing candidate's initial or additional notification of expenditure from personal funds.

(c) *Political party committees.* (1) A national or State committee of a political party (including a national Congressional campaign committee) must not make, pursuant to this part, coordinated party expenditures in connection with the general election campaign of a candidate in excess of the limits set forth in 11 CFR 109.32(b) until

the political party committee has received actual or constructive notification under subpart B of this part and the opposition personal funds amount under paragraph (b) of this section indicating that the opposing candidate's expenditures from personal funds exceeds the applicable threshold amount set forth in 11 CFR 400.40 or 400.41.

(2) If the national or State committee of a political party makes coordinated party expenditures in excess of the limitations set forth in 11 CFR 109.32 pursuant to this part, the national or State committee of a political party must inform the Commission and the candidate on whose behalf such expenditure is made, or the candidate's authorized committee, of the amount of such expenditures by facsimile machine or electronic mail within 24 hours of making such expenditures.

(d) *Constructive notification.* For purposes of this section, *constructive notification* means that the candidate, the candidate's authorized committee, or the national or State committee of the political party obtains a copy of the FEC Form 10 received by the Commission.

§ 400.31 Preventing disproportionate advantage resulting from increased contribution and coordinated party expenditure limits.

(a) *Applicability.* This section applies to elections to the office of United States Senator, and to the office of Representative in, or Delegate or Resident Commission to, the Congress.

(b) *Persons with responsibilities under this section.* A candidate and the candidate's authorized committee that accepts contributions under the increased limits pursuant to this part, and any national or State political party committee (including a national Congressional campaign committee) that makes coordinated party expenditures on behalf of the candidate under the increased expenditure limits pursuant to this part, must comply with this section.

(c) *Information to be monitored.* Any person described in paragraph (b) of this section must monitor all of the following amounts while accepting contributions, or making coordinated party expenditures, respectively, under the increased limits:

(1) The aggregate amount of contributions previously accepted by the candidate and the candidate's authorized committee under the increased limits.

(2) The aggregate amount of coordinated party expenditures in connection with the general election campaign of the candidate previously made by any political party committee under the increased limits.

(3) The opposition personal funds amount related to each opposing candidate.

(d) *Senate elections*— (1) *Responsibilities of candidates and their authorized committees.* (i) A candidate and the candidate's authorized committee must not accept that amount of any contribution above the applicable limit if the sum of that amount of the contribution above the applicable limit plus the aggregate amounts described in paragraphs (c)(1) of this section and the aggregate amounts described in paragraph (c)(2) of this section is greater than 110% of the opposition personal funds amount.

(ii) When the aggregate amounts described in paragraph (c)(1) of this section plus the aggregate amounts described in paragraph (c)(2) of this section exceed 110% of the opposition personal funds amount, the candidate or the candidate's authorized committee must inform the national and State committees of their political party and the Commission, by facsimile or electronic mail, of this information within 24 hours of reaching 110% of the opposition personal funds amount.

(2) *Responsibilities of the national and State committees of the political party.* A national or State political party committee must not make, pursuant to this part, a coordinated party expenditure in connection with a candidate's general election campaign in excess of the expenditure limitations under 11 CFR 109.32(b) if the sum of the amount of that expenditure plus the aggregate amounts described in paragraph (c)(1) of this section and the aggregate amounts described in paragraph (c)(2) of this section with regard to that candidate is greater than 110% of the opposition personal funds amount.

(e) *House of Representatives elections*—(1) *Responsibilities of candidates and their authorized committees.* (i) A candidate and the candidate's authorized committee must not accept that amount of any contribution above the applicable limit if the sum of that amount of the contribution above the applicable limit plus the aggregate amounts described in paragraphs (c)(1) of this section and the aggregate amounts described in paragraph (c)(2) of this section is greater than 100% of the opposition personal funds amount.

(ii) When the aggregate amounts described in paragraph (c)(1) of this section plus the aggregate amounts described in paragraph (c)(2) of this section exceed 100% of the opposition personal funds amount, the candidate or the candidate's authorized committee must inform the national and State committees of their political party and the Commission, by facsimile machine or electronic mail, of this information within 24 hours of reaching 100% of the opposition personal funds amount.

(2) *Responsibilities of the national and State committees of the political party.* A national or State political party committee must not make, pursuant to this part, a coordinated party expenditure in connection with a candidate's general election campaign in excess of the expenditure limitations under 11 CFR 109.32(b) if the sum of the amount of that expenditure plus the aggregate amounts described in paragraph (c)(1) of this section and the aggregate amounts described in paragraph (c)(2) of this section with regard to that candidate is greater than 100% of the opposition personal funds amount.

§ 400.32 Effect of the withdrawal of an opposing candidate.

(a) *Applicability.* (1) This section applies to all elections covered by this part.

(2) This section applies when an opposing candidate, whose expenditures from personal funds allowed another candidate the benefit of increased limits pursuant to this part, ceases to be a candidate. For purposes of this section, an opposing candidate ceases to be a candidate as of the earlier of the following dates:

(i) The date on which the opposing candidate publicly announces that he or she will no longer be a candidate in that election for that office and ceases to conduct campaign activities with respect to that election; or,

(ii) The date on which the opposing candidate is, or becomes, ineligible for nomination or election to that office by operation of law.

(b) *Candidates.* A candidate and a candidate's authorized committee must not accept any contribution under the increased limits, pursuant to this part, to the extent that such increased limit is attributable to the opposing candidate who has ceased to be a candidate.

(c) *Party committees.* The national and State political party committees must not make any coordinated party expenditure in excess of the limits in 11 CFR 109.32(b), pursuant to this part, to the extent that such increased limit is attributable to an opposing candidate who has ceased to be a candidate.

Subpart D—Calculation of Increased Limits for Senate and House of Representatives Candidates

§ 400.40 Calculating the increased limits for Senate elections.

(a) *Applicability.* This section applies to candidates for election to the office of United States Senator.

(b) *Procedure.* To calculate the increased limits:

(1) Determine the opposition personal funds amount, as defined in 11 CFR 400.10.

(2) Determine the voting age population (VAP) of the State of the candidate, as defined in 11 CFR 110.18.

(3) Based on the opposition personal funds amount and the VAP, use the following table to determine the increased limits:

If the opposition personal funds amount is more than—	But less than or equal to—	The increased limit for contributions by individuals is—	The amount limitation on coordinated party committee expenditures is—
(i)($0.08 × VAP) + $300,000	($0.16 × VAP) + $600,000	3 × applicable limit	The limitation set forth in 11 CFR 109.32(b).
(ii)($0.16 × VAP) + $600,000	($0.40 × VAP) + $1,500,000	6 × applicable limit	The limitation set forth in 11 CFR 109.32(b).
(iii)($0.40 × VAP) + $1,500,000		6 × applicable limit	The limitation set forth in 11 CFR 109.32 (b) does not apply subject to the provisions of 11 CFR 400.31(d).

§ 400.41 Calculating the increased limits for House of Representatives elections.

(a) *Applicability.* This section applies to candidates for election to the office of Representative in, or Delegate or Resident Commissioner to, the Congress.

(b) *Increased limits.* Subject to subpart C of this part, if the opposition personal funds amount exceeds the threshold amount, $350,000, the following will apply:

(1) The increased limit for contributions by individuals is three times the applicable limit.

(2) The national and State party committee expenditure limitation under 11 CFR 109.32(b) on behalf of the candidate will not apply subject to the provisions of 11 CFR 400.31(e).

§ 400.42 Effect of increased limits on the aggregate contribution limitations for individuals.

(a) This section shall apply to all elections covered by this part.

(b) The portions of contributions made under the increased limits pursuant to this part that, when aggregated with previous contributions made by the same individual to the candidate or the candidate's authorized committee in the same election cycle, exceed the contribution limits in 11 CFR 110.1 shall not be aggregated with other contributions made by that same individual for purposes of applying the aggregate contribution limitations for individuals under 11 CFR 110.5. This paragraph (b) applies only to such contributions that are accepted during the period in which the candidate may accept contributions under the increased limits.

(c) Individual contributors who have reached their aggregate bi-annual contribution limitations to candidates and authorized committees of candidates under 11 CFR 110.5(b)(1)(i) may make contributions under this part if:

(1) The candidate who accepts the contribution may accept contributions that exceed the applicable limit under this part; and

(2) The amount of the contribution, when aggregated with other contributions made under this paragraph (c), does not exceed the amount that the candidate described in paragraph (c)(1) of this section may accept under this part *minus* the applicable limit.

Subpart E—Disposal of Excess Contributions

§ 400.50 Definition of excess contributions.

For purposes of this subpart, excess contributions mean contributions that are made under the increased limit, as defined in 11 CFR 400.6 in subpart B of this part, but not expended in connection with the election to which they relate.

§ 400.51 Relation of excess contributions to the election in which they are made.

(a) *Primary elections.* If the excess contributions were received during the primary election cycle, the candidate's authorized committee must refund the excess contributions within 50 days of the primary election in accordance with 11 CFR 400.53.

(b) *General elections.* If the excess contributions were received during the general election cycle, the candidate's authorized committee must refund the excess contributions within 50 days of the general election in accordance with 11 CFR 400.53.

(c) *Run-off elections.* For purposes of this section only, when a primary or general election results in a run-off election, the run-off election is considered part of the respective primary or general election. Notwithstanding paragraphs (a) and (b) of this section, the candidate's authorized committee must refund the excess contributions within 50 days of the run-off election in accordance with 11 CFR 400.53.

§ 400.52 Prohibition against redesignation of excess contributions.

(a) The candidate's authorized committee shall not redesignate or seek redesignation of excess contributions under 11 CFR 110.1(b)(5).

(b) Once an individual has made a contribution under the increased limits, the individual must not redesignate the contribution for another election.

§ 400.53 Disposal of excess contributions.

(a) The candidate's authorized committee must refund the excess contributions to individuals who made contributions to the candidate or the candidate's authorized committee under this part. The refund to each individual must not exceed that individual's aggregate contributions to the candidate or the candidate's authorized committee for the relevant election cycle.

(b) The amount of any refund checks, made under paragraph (a) of this section that are not cashed, deposited, or otherwise negotiated within 6 months of the date of the refund check must be disgorged to the United States Treasury. The candidate's authorized committee must disgorge this amount to the United States Treasury within nine months of the election.

§ 400.54 Notification of disposal of excess contributions.

The candidate's principal campaign committee shall submit to the Commission information indicating the source and amount of any excess contributions (*see* 11 CFR 400.50) and the manner in which the candidate, the candidate's principal campaign committee, or the candidate's authorized committee refunded such funds. This information shall be included in the first report that the principal campaign committee is required to file, under 11 CFR 104.5, the date of which falls more than 50 days after the election for which a candidate seeks nomination for election to, or election to, Federal office. Such report must be submitted with the candidate's FEC Form 3.

PART 9035—EXPENDITURE LIMITATIONS

16. The authority citation for part 9035 continues to read as follows:

Authority: 26 U.S.C. 9035 and 9039(b).

17. In section 9035.2, paragraph (c) is revised to read as follows:

§ 9035.2 Limitation on expenditures from personal or family funds.

* * * * *

(c) For purposes of this section, *personal funds* has the same meaning as specified in 11 CFR 9003.2.

Dated: January 17, 2003.

Ellen L. Weintraub,

Chair, Federal Election Commission.

[FR Doc. 03–1546 Filed 1–24–03; 8:45 am]

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Federal Register

Monday,
January 27, 2003

Part IV

Environmental Protection Agency

40 CFR Part 82

Protection of Stratospheric Ozone: Listing of Substitutes for Ozone-Depleting Substances; Final Rule and Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 82

[FRL–7443–4]

Protection of Stratospheric Ozone: Listing of Substitutes for Ozone-Depleting Substances

AGENCY: Environmental Protection Agency.

ACTION: Direct final rule.

SUMMARY: This action lists three substitutes for ozone-depleting substances (ODSs) in the fire suppression and explosion protection sector as acceptable (subject either to narrowed use limits or use conditions) under the U.S. Environmental Protection Agency's (EPA) Significant New Alternatives Policy (SNAP) program. SNAP implements section 612 of the Clean Air Act, as amended in 1990, which requires EPA to evaluate substitutes for ODSs to reduce overall risk to human health and the environment.

In this Direct Final Rulemaking (FRM), EPA is issuing its decision on the acceptability of three halon substitutes in the fire suppression and explosion protection sector. EPA is issuing a companion proposal to this direct final rule elsewhere in today's **Federal Register**. If we receive any adverse comments, EPA will withdraw this direct final action and will consider and respond to any comments prior to taking any new, final action.

DATES: This rule is effective on March 28, 2003, without further notice, unless EPA receives adverse comment or receives a request for a public hearing by February 26, 2003. If we receive adverse comment or a request for a public hearing, we will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

ADDRESSES: Send your comments and data specific to this final rule to Docket A–2002–08, U.S. Environmental Protection Agency, OAR Docket and Information Center, 1200 Pennsylvania Avenue NW., Mailcode 6102T, Washington, DC 20004. The docket is physically located at 1301 Constitution Avenue NW., Room B108, Washington, DC. You may inspect the docket between 8 a.m. and 5:30 p.m. on weekdays. Telephone (202) 566–1742; fax (202) 566–1741. As provided in 40 CFR part 2, a reasonable fee may be charged for photocopying. To expedite review, send a second copy of your comments directly to Bella Maranion at the address listed below under **FOR FURTHER INFORMATION CONTACT**. Information designated as Confidential Business Information (CBI) under 40 CFR part 2, subpart 2, must be sent directly to the contact person for this notice. However, the Agency is requesting that all respondents submit a non-confidential version of their comments to the docket as well.

FOR FURTHER INFORMATION CONTACT: Bella Maranion at (202) 564–9749 or fax (202) 565–2155, U.S. Environmental Protection Agency, Global Programs Division, Mail Code 6205J, Washington, DC 20460. Overnight or courier deliveries should be sent to the office location at 501 Third Street NW., 4th floor, Washington, DC, 20001. Also contact the Stratospheric Protection Hotline at (800) 296–1996 and EPA's Ozone Depletion World Wide Web site at *http://www.epa.gov/ozone/snap/index.html*.

SUPPLEMENTARY INFORMATION: In this direct final rule, EPA adds three fire suppression agents to the list of acceptable substitutes, subject to either narrowed use limits or use conditions. The regulations implementing the SNAP program are codified at 40 CFR part 82, subpart G. The appendices to subpart G list substitutes for ODSs that have had restrictions imposed on their use. The action in this direct final rule will add these halon substitutes to the appendices to subpart G.

EPA is publishing today's revisions to the SNAP lists without prior proposal because the Agency views them as non-controversial and anticipates no adverse comment. We are adding three new agents to the list of acceptable substitutes, subject to narrowed use limits or use conditions. This action does not place any significant burden on the regulated community but lists as acceptable, subject to narrowed use limits or use conditions, new halon substitutes while continuing to protect human health and the environment.

In the "Proposed Rules" section of today's Federal Register publication, EPA is publishing a companion proposed rule that proposes the same actions as in this direct final rule. The direct final rule will be effective on March 28, 2003, without further notice unless we receive adverse comment (or a request for a public hearing) by February 26, 2003. If EPA receives adverse comment, we will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. We will not institute a second public comment period on this action. Any parties interested in commenting must do so at this time.

You may claim that information in your comments is confidential business information, as allowed by 40 CFR part 2. If you submit comments and include information that you claim as confidential business information, we request that you submit them directly to Bella Maranion in two versions: one clearly marked "Public" to be filed in the Public Docket, and the other marked "Confidential" to be reviewed by authorized government personnel only.

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I. Section 612 Program

A. Statutory Requirements

Section 612 of the Clean Air Act (CAA) authorizes EPA to develop a program for evaluating alternatives to ozone-depleting substances. EPA refers to this program as the Significant New Alternatives Policy (SNAP) program. The major provisions of section 612 are:

- *Rulemaking:* Section 612(c) requires EPA to promulgate rules making it unlawful to replace any class I (chlorofluorocarbon, halon, carbon tetrachloride, methyl chloroform, methyl bromide, and hydrobromofluorocarbon) or class II (hydrochlorofluorocarbon) substance with any substitute that the Administrator determines may present adverse effects to human health or the environment where the Administrator has identified an alternative that (1) reduces the overall risk to human health and the environment, and (2) is currently or potentially available.
- *Listing of Unacceptable/Acceptable Substitutes:* Section 612(c) also requires EPA to publish a list of the substitutes unacceptable for specific uses. EPA must publish a corresponding list of acceptable alternatives for specific uses.
- *Petition Process:* Section 612(d) grants the right to any person to petition EPA to add a substitute to or delete a substitute from the lists published in accordance with Section 612(c). The Agency has 90 days to grant or deny a petition. Where the Agency grants the petition, EPA must publish the revised lists within an additional six months.
- *90-day Notification:* Section 612(e) directs EPA to require any person who produces a chemical substitute for a class I substance to notify the Agency not less than 90 days before new or

existing chemicals are introduced into interstate commerce for significant new uses as substitutes for a class I substance. The producer must also provide the Agency with the producer's health and safety studies on such substitutes.

• *Outreach:* Section 612(b)(1) states that the Administrator shall seek to maximize the use of federal research facilities and resources to assist users of class I and II substances in identifying and developing alternatives to the use of such substances in key commercial applications.

• *Clearinghouse:* Section 612(b)(4) requires the Agency to set up a public clearinghouse of alternative chemicals, product substitutes, and alternative manufacturing processes that are available for products and manufacturing processes which use class I and II substances.

B. Regulatory History

On March 18, 1994, EPA issued a rule (69 FR 13044) which described the process for administering the SNAP program and published EPA's first acceptability lists for substitutes in the major industrial use sectors. These sectors include: refrigeration and air-conditioning; foam blowing; solvents cleaning; fire suppression and explosion protection; sterilants; aerosols; adhesives, coatings and inks; and tobacco expansion. These sectors comprise the principal industrial sectors that historically consumed large volumes of ozone-depleting compounds.

The Agency defines a "substitute" as any chemical, product substitute, or alternative manufacturing process, whether existing or new, that could replace a class I or class II substance. Anyone who produces a substitute must provide the Agency with health and safety studies on the substitute at least 90 days before introducing it into interstate commerce for significant new use as an alternative. This requirement applies to chemical manufacturers, but may include importers, formulators, or end-users when they are responsible for introducing a substitute into commerce.

To develop the lists of unacceptable and acceptable substitutes, EPA conducts screens of health and environmental risk posed by various substitutes for ozone-depleting compounds in each use sector. The outcome of these risk screens can be found in the public docket, as described above in the **ADDRESSES** portion of this document.

Under section 612, the Agency has considerable discretion in the risk management decisions it can make in SNAP. The Agency has identified four possible decision categories: acceptable; acceptable subject to use conditions; acceptable subject to narrowed use limits; and unacceptable. Fully acceptable substitutes, i.e., those with no restrictions, can be used for all applications within the relevant sector end-use. Conversely, it is illegal to replace an ODS with a substitute listed by SNAP as unacceptable.

After reviewing a substitute, the Agency may make a determination that a substitute is acceptable only if certain conditions of use are met to minimize risk to human health and the environment. Such substitutes are described as "acceptable subject to use conditions." Use of such substitutes without meeting associated use conditions renders these substitutes unacceptable and subjects the user to enforcement for violation of section 612 of the Clean Air Act.

Even though the Agency can restrict the use of a substitute based on the potential for adverse effects, it may be necessary to permit a narrowed range of use within a sector end-use because of lack of alternatives for specialized applications. Users intending to adopt a substitute acceptable with narrowed use limits must ascertain that other acceptable alternatives are not technically feasible. Companies must document the results of their evaluation, and retain the results on file for purposes of demonstrating compliance. This documentation shall include descriptions of substitutes examined and rejected, processes or products in which the substitute is needed, reason for rejection of other alternatives, *e.g.*, performance, technical or safety standards, and the anticipated date other substitutes will be available and projected time for switching to other available substitutes. Use of such substitutes in applications and end-uses which are not specified as acceptable in the narrowed use limit renders these substitutes unacceptable.

EPA does not believe that notice and comment rulemaking procedures are required to list alternatives as acceptable with no restrictions. Such listings do not impose any sanction, nor do they remove any prior license to use a substitute. Consequently, EPA adds substitutes to the list of acceptable alternatives without first requesting comment on new listings. Updates to the acceptable lists are published as separate Notices of Acceptability in the **Federal Register**.

For more information on the Agency's process for administering the SNAP program or criteria for evaluation of substitutes, refer to the SNAP rule published in the **Federal Register** on March 18, 1994 (59 FR 13044), and see also the Code of Federal Regulations at 40 CFR part 82, subpart G. A complete chronology of SNAP decisions and the appropriate **Federal Register** citations may be found at EPA's Ozone Depletion Web site at *http://www.epa.gov/ozone/snap/chron.html*. For a complete listing of the Agency's decisions on acceptable and unacceptable substitutes, go to *http://www.epa.gov/ozone/snap/lists/index.html*.

II. Listing of Substitutes

In this final rule, EPA is issuing its decision on the acceptability, subject to narrowed use limits or use conditions, of the following substitutes in the fire suppression and explosion protection sector: *HFC227–BC, C6-perfluoroketone, and H Galden hydrofluoropolyethers (HFPEs)*. As described in the March 8, 1994 rule for the SNAP program (59 FR 13044), EPA believes that notice-and-comment rulemaking is required to place any alternative on the list of prohibited substitutes, to list a substitute as acceptable only under certain use conditions or narrowed use limits, or to remove an alternative from either the list of prohibited or acceptable substitutes.

The section below presents a detailed discussion of the fire suppression and explosion protection substitute listing determinations that are finalized in today's Final Rule. Tables summarizing these listing decisions are at the end of this document. The comments contained in the tables provide additional information on substitutes determined to be unacceptable, acceptable subject to narrowed use limits, or acceptable subject to use conditions. The comments contained in the appendix are not a binding part of the regulatory decision and are, therefore, not mandatory for use of a substitute. Nor should such comments be considered comprehensive with respect to other legal obligations pertaining to the use of the substitute. However, EPA encourages users of substitutes to act consistent with all such comments in their use of these substitutes especially if any practices have not already been identified in existing industry standards such as fire and building codes, or occupational exposure guidelines.

A. Listing Decisions: Fire Suppression and Explosion Protection—Total Flooding Agents

1. Acceptable Subject to Use Conditions

a. HFC227–BC

HFC227–BC is acceptable, subject to use conditions, as a halon 1301

substitute for total flooding uses. HFC227–BC, which contains a combination of HFC–227ea and sodium bicarbonate, is designed for total flooding use in military combat vehicle crew and engine compartments and for industrial fire and explosion suppression systems in occupied and unoccupied areas. HFC–227ea, the main ingredient in HFC227–BC, is a halocarbon fire extinguishing agent that has previously been approved as a total flooding and streaming agent under EPA's SNAP program. It has no ozone-depletion potential and has a global warming potential (GWP) of 3800 compared to CO_2 on a 100-year time horizon. HFC–227ea is non-flammable. Its No Observed Adverse Effect Level (NOAEL) is 9.0% and the Lowest Observed Adverse Effect Level (LOAEL) is 10.5%. The calculated design concentration of HFC–227ea is 7.0% which provides a sufficient margin of safety for use in normally occupied areas in accordance with the safety guidelines in the latest edition of the National Fire Protection Association (NFPA) 2001 Standard for Clean Agent Fire Extinguishing Systems (*see* discussion below).

EPA is providing specific use conditions designed to protect military crew members and workplace personnel who may be present in areas where HFC227–BC is discharged. HFC227–BC is approved for use in military combat and vehicle crew and engine compartments and industrial fire or explosion suppression systems for occupied and unoccupied areas. Extinguisher bottles should be clearly labeled with the potential hazards associated with the use of HFC–227ea and sodium bicarbonate, as well as handling procedures to reduce risk resulting from these hazards. Sodium bicarbonate, while low in toxicity, also has the ability to affect blood pH level; therefore, its release in all settings should be targeted so that increased blood pH level would not adversely affect those exposed.

The addition of sodium bicarbonate in the mixture is to minimize the formation of toxic hydrofluoric acid (HF) formed by the decomposition of HFC–227ea during a fire. Sample calculations and assumptions for respirable and released sodium bicarbonate for varied enclosure sizes are included in the risk screen conducted for this substitute and available in public Docket A–2002–08 for this rule.

EPA is also providing additional comments regarding use of HFC227–BC. Use of HFC–227ea, the primary ingredient in HFC227–BC, should be in accordance with the safety guidelines in the latest edition of the NFPA 2001 Standard for Clean Agent Fire Extinguishing Systems. Use of HFC227–BC should conform with relevant Occupational Safety and Health Administration (OSHA) requirements, including 29 CFR part 1910, subpart L, sections 1910.160 and 1910.162. Per OSHA requirements, protective gear (self-contained breathing apparatus) should be available in the event personnel should reenter the area. Discharge testing should be strictly limited to that which is essential to meet safety or performance requirements. The agent should be recovered from the fire protection system in conjunction with testing or servicing, and recycled for later use or destroyed.

On January 29, 2002, EPA published a Direct Final Rule (67 FR 4185) to replace the use conditions imposed under SNAP for halocarbon and inert gas agents used in the fire suppression and explosion protection industry with safety standards that have been established by the National Fire Protection Association (NFPA). NFPA is an independent, voluntary membership, non-profit international organization that is dedicated to reducing the burden of fire on the quality of life by advocating scientifically-based consensus codes and standards, research, and education for fire and related safety issues. NFPA codes and standards are used by the fire protection community throughout the United States and the world.

Based on the above rule, the revised SNAP listings for halocarbon alternatives, such as HFC–227ea, include the following comment, "Use of this agent should be in accordance with the safety guidelines in the latest edition of the NFPA 2001 Standard for Clean Agent Fire Extinguishing Systems." In the edition of NFPA 2001 that was published in March 2000, safety guidelines for halocarbon and inert gas agents are found in section 1.6, entitled "Safety."

EPA's precautionary requirements are consistent with worker safety conditions required by OSHA and the NFPA 2001 Standard, as mentioned above. Individuals must adhere to OSHA regulations in all commercial applications. EPA has no intention of duplicating or displacing OSHA coverage related to the use of personal protective equipment (*e.g.*, respiratory protection), fire protection, hazard communication, worker training or any other occupational safety and health standard. As stated in the preamble to the original SNAP rule at 59 FR 13099, "EPA has no intention to assume responsibility for regulating workplace safety especially with respect to fire protection, nor does the Agency intend SNAP regulations to bar OSHA from regulating under its Pub. L. 91–596 authority."

HFC227–BC reduces risk to the public compared to the ODS it replaces because it has no ODP. HFC227–BC also has a lower global warming impact and produces less toxic, caustic HF than HFC–227ea alone, because less of the halocarbon agent is needed when sodium bicarbonate is also being used. Other substitutes already listed as acceptable for total flooding have a higher global warming impact and comparable toxicity. Thus, we find that HFC227–BC is acceptable, subject to use conditions, because it reduces overall risk to the environment in the end use listed.

B. Listing Decisions: Fire Suppression and Explosion Protection—Streaming Agents

1. Acceptable Subject to Narrowed Use Limits

a. C6-perfluoroketone

C6-perfluoroketone is acceptable, subject to narrowed use limits, as a halon 1211 substitute for streaming agent uses. The narrowed use limits require that C6-perfluoroketone be used only in nonresidential applications. C6-perfluoroketone is comprised of a perfluoroalkyl ketone (1,1,1,2,2,4,5,5,5-nonafluoro-4-(trifluoromethyl)-3-pentanone). C6-perfluoroketone has no ozone-depletion potential, a global warming potential of 6–100 compared to CO_2 on a 100-year time horizon, and an atmospheric lifetime of less than one year. It is marketed under the trade name Novec-1230. The NFPA 2001 standard refers to C6-perfluoroketone as FK–5–1–12myy2. In studies on C6-perfluoroketone, the NOAEL is 10% and the LOAEL is >10%.

EPA has reviewed the potential environmental impacts of this substitute and has concluded that, by comparison to halon 1211, C6-perfluoroketone significantly reduces overall risk to the environment. With no ozone-depletion potential, a global warming potential value of less than 1, and an atmospheric lifetime of less than three days, C6-perfluoroketone provides an improvement over use of hydrochlorofluorocarbons (HCFCs) and hydrofluorocarbons (HFCs) in fire protection. EPA's review of environmental and human health impacts of this blend is contained in the public docket for this rulemaking.

EPA is providing additional comments regarding use of C6-perfluoroketone for streaming agent uses. Appropriate protective measures should be taken and proper training administered for the manufacture, clean-up and disposal of this product. The acceptable exposure limit (AEL) is set at a level believed to protect workers who are regularly exposed, such as in the manufacturing or filling processes, from chronic adverse effects; the estimated AEL for C6-perfluoroketone is 100 ppm as an 8-hour time-weighted average. EPA recommends the following for establishments filling canisters to be used in streaming applications: adequate ventilation should be in place; all spills should be cleaned up immediately in accordance with good industrial hygiene practices; and training for safe handling procedures should be provided to all employees that would be likely to handle the containers of the agent or extinguishing units filled with the agent. We find that C6-perfluoroketone is acceptable subject to narrowed use limits (for use only in non-residential areas) because it reduces overall risk to public health and the environment in the end use and application requested by the submitter and listed above.

b. H Galden Hydrofluoropolyethers

H Galden Hydrofluoropolyethers (HFPEs) is acceptable, subject to narrowed use limits, as a halon 1211 substitute for streaming agent uses. The narrowed use limits require that HFPEs be used only in nonresidential applications. This substance is a mixture of fractions of hydrofluoropolyethers of similar composition. H Galden HFPEs have an ozone depletion potential of zero. They have an atmospheric lifetime from 12 to 25 years. H Galden HFPEs have a global warming potential (GWP) that varies for the particular fraction, ranging from 2790 to 6230 for the fractions having the highest GWP. Despite the relatively high GWP values, use of H Galden HFPEs are anticipated to have a smaller impact on global warming than the use of HFCs. H Galden HFPEs are non-flammable. In studies on H Galden HFPEs, the NOAEL was 3.5% and a LOAEL was not identified. H Galden HFPEs are expected to be blended with other compounds (*e.g.*, HFC–227ea, HFC–125) that have previously been approved under SNAP.

EPA is providing additional comments regarding use of H Galden HFPEs in streaming agent applications. The estimated AEL for H-Galden HFPEs 1163 ppm for workplace exposure, typically during the manufacturing and filling processes. Because the AEL is above 1000 ppm, a level that can be achieved using generally employed good housekeeping and industrial practices, EPA recommends that exposure levels be kept below 1000 ppm on an 8-hour TWA basis. Further, EPA recommends that H Galden HFPEs should not exceed its ceiling concentration of 6000 ppm at any time. EPA recommends the following procedures should be followed to ensure that this level is not exceeded:

—Adequate ventilation should be in place;
—All spills should be cleaned up immediately in accordance with good industrial hygiene practices; and
—Training for safe handling procedures should be provided to all employees that would be likely to handle the containers of H Galden HFPEs or extinguishing units filled with the material.

H-Galden HFPEs have no ODP, relatively low atmospheric lifetimes of from 13–25 years, and comparable impact on global warming with the SNAP-approved HFC. H Galden HFPEs reduce risk overall compared to halon 1211, the ODS they replace. EPA's review of environmental and human health impacts of this blend is contained in the public docket for this rulemaking. Thus, we find that H-Galden HFPEs are acceptable subject to narrowed use limits (for use only in non-residential applications) because they reduce overall risk to public health and the environment in the end use and application requested by the submitter and listed above.

III. Administrative Requirements

A. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether this regulatory action is significant and therefore subject to OMB review and the requirements of the Executive Order. The Order defines significant regulatory action as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more, or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, OMB notified EPA on October 3, 2002, that it considers this a "non-significant regulatory action" within the meaning of the Executive Order and, therefore, did not require EPA to submit this action to OMB for review.

B. Paperwork Reduction Act

EPA has determined that this final rule contains no information requirements subject to the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, that are not already approved by the OMB. OMB has reviewed and approved two Information Collection Requests (ICRs) by EPA which are described in the March 18, 1994 rulemaking (59 FR 13044, at 13121, 13146–13147) and in the October 16, 1996 rulemaking (61 FR 54030, at 54038–54039). These ICRs included five types of respondent reporting and record-keeping activities pursuant to SNAP regulations: submission of a SNAP petition, filing a SNAP/TSCA Addendum, notification for test marketing activity, record-keeping for substitutes acceptable subject to narrowed use limits, and record-keeping for small volume uses. The OMB Control Numbers are 2060–0226 and 2060–0350.

Copies of the ICR document(s) may be obtained from Sandy Farmer, by mail at the Office of Environmental Information, Collection Strategies Division; U.S. Environmental Protection Agency (2822); 1200 Pennsylvania Ave., NW., Washington, DC 20004, by E-mail at *farmer.sandy@epa.gov*, or by calling (202) 566–1676. A copy may also be downloaded off the Internet at *http://www.epa.gov/icr*. Include the ICR and/or OMB number in any correspondence.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of

information; and transmit or otherwise disclose the information.

An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

C. Regulatory Flexibility Act (RFA)

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statutes unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with this final rule. EPA has also determined that this rule will not have a significant economic impact on a substantial number of small entities. For purposes of assessing the impact of today's rule on small entities, small entities are defined as (1) A small business that produces or uses fire suppressants as total flooding and/or streaming agents with 500 or fewer employees or total annual receipts of $5 million or less; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's final rule on small entities, EPA has concluded that this action will not have a significant economic impact on a substantial number of small entities.

Use of halon 1211 as a streaming agent in portable extinguishers has historically been in industrial and commercial applications with limited residential uses. Residential users typically use lower cost alternatives such as dry chemical and carbon dioxide hand-held extinguishers. In industrial and commercial applications, the newer chemical agents compete for specialized segments of the halon 1211 market where lower cost alternatives such as dry powder and carbon dioxide extinguishers may not be an appropriate option and where factors such as cleanliness and efficacy of the agent are important. With respect to EPA's decision on H Galden HFPEs, EPA is finding it acceptable for all uses requested by the manufacturer. Moreover, the manufacturer of the new fire suppressant, H Galden HFPEs, has not yet sold it, so today's action does not affect, in any way, current usage. The manufacturer of the new fire suppressant, C6-perfluoroketone, is selling it in the non-residential market, so today's action does not affect, in any way, current usage. Thus, EPA is providing additional options for any entity, including small entities, to replace halon 1211 in streaming applications.

Use of halon 1301 total flooding systems have historically been in the protection of essential electronics, civil aviation, military mobile weapon systems, oil and gas and other process industries, and merchant shipping with smaller segments of use including libraries, museums, and laboratories. The majority of halon 1301 system owners continue to maintain and refurbish existing systems since halon 1301 supplies continue to be available in the U.S. Owners of new facilities make up the market for the new alternative agent systems and may also consider employing other available fire protection options including new, improved technology for early warning and smoke detection. The primary party intending to use HF227–BC as a total flooding agent is the U.S. Army, which is not a small entity. The Army has not yet used this fire suppressant, so the regulatory restrictions imposed in today's rule will not affect current use. Thus, EPA is providing more options to any entity, including small entities, to use these substitutes.

Although this final rule will not have a significant economic impact on a substantial number of small entities, EPA nonetheless has tried to reduce the impact of this rule on small entities. By introducing new substitutes, today's rule gives additional flexibility to small entities that are concerned with fire suppression. EPA also has worked closely together with the National Fire Protection Association, which conducts regular outreach with, and involves small state, local, and tribal governments in developing and implementing relevant fire protection standards and codes.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector.

Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Section 204 of the UMRA requires the Agency to develop a process to allow elected state, local, and tribal government officials to provide input in the development of any proposal containing a significant Federal intergovernmental mandate.

Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Today's rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, or tribal governments or the private sector. Because this rule imposes no enforceable duty on any State, local or tribal government it is not subject to the requirements of sections 202 and 205 of the UMRA. EPA has also determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments; therefore, EPA is not required to develop a plan with regard to small governments under section 203. Finally, because this rule does not contain a significant intergovernmental mandate, the Agency is not required to develop a process to obtain input from elected state, local, and tribal officials under section 204.

E. Executive Order 13132 (Federalism)

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

This direct final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This direct final rule will provide additional options for fire protection subject to safety guidelines in industry standards. These standards are typically already required by state or local fire codes, and this rule does not require state, local, or tribal governments to change their regulations. Thus, Executive Order 13132 does not apply to this rule.

F. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes."

This direct final rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. This direct final rule will provide additional options for fire protection subject to safety guidelines in industry standards. These standards are typically already required by state or local fire codes, and this rule does not require tribal governments to change their regulations. Thus, Executive Order 13175 does not apply to this rule.

G. Applicability of Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045: "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This final rule is not subject to the Executive Order because it is not economically significant as defined in Executive Order 12866, and because the Agency does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. The acceptability listings in this final rule primarily apply to the workplace, and thus, do not put children at risk disproportionately. This rule is not subject to Executive Order 13045 because it is not economically significant as defined in Executive Order 12866 and because the Agency does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children.

H. Executive Order 13211 (Energy Effects)

This rule is not a "significant energy action" as defined in Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355 (May 22, 2001)) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The rule allows wider use of substitutes, providing greater flexibility for industry. Further, we have concluded that this rule is not likely to have any adverse energy effects.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law 104–113, section 12(d) (15 U.S.C. 272 *note*) directs EPA to use voluntary consensus standards in regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This rulemaking involves technical standards. EPA defers to existing National Fire Protection Association (NFPA) voluntary consensus standards and Occupational Safety and Health Administration (OSHA) regulations that relate to the safe use of halon substitutes reviewed under SNAP. EPA refers users to the NFPA 2001 Standard on Clean Agent Fire Extinguishing Systems, 2000 edition, which provides for exposure and safe use of halocarbon and inert gas agents used to extinguish fires. Copies of this standard may be obtained by calling the NFPA's telephone number for ordering publications at 1–800–344–3555 and requesting order number S3–2003–00. The NFPA 2001 standard meets the objectives of the rule by setting scientifically-based guidelines for exposure to halocarbon and inert gas agents used to extinguish fires. In addition, EPA has worked in consultation with OSHA to encourage development of technical standards to be adopted by voluntary consensus standards bodies.

J. Judicial Review

Under section 307(b)(1) of the Act, EPA finds that these regulations are of national applicability. Accordingly, judicial review of the action is available only by the filing of a petition for review in the United States Court of Appeals for the District of Columbia Circuit within sixty days of publication of the action in the **Federal Register**. Under section 307(b)(2), the requirements of this rule may not be challenged later in the judicial proceedings brought to enforce those requirements.

K. Submittal to Congress and General Accounting Office

The Congressional Review Act (CRA), 5 U.S.C. 801 *et seq.*, as added by the

Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2). This rule will be effective on March 28, 2003.

List of Subjects in 40 CFR Part 82

Environmental protection, Administrative practice and procedure, Air pollution control, Reporting and recordkeeping requirements.

Dated: January 17, 2003.

Christine Todd Whitman,

Administrator.

For the reasons set out in the preamble, 40 CFR part 82 is amended as follows:

PART 82—PROTECTION OF STRATOSPHERIC OZONE

1. The authority citation for part 82 continues to read as follows:

Authority: 42 U.S.C. 7414, 7601, 7671–7671q.

Subpart G—Significant New Alternatives Policy Program

2. Subpart G of part 82 is amended by adding Appendix L to read as follows:

Appendix L to Subpart G of Part 82—Substitutes Listed in the January 27, 2003, Final Rule, Effective March 28, 2003.

FIRE SUPPRESSION AND EXPLOSION PROTECTION SECTOR—TOTAL FLOODING SUBSTITUTES—ACCEPTABLE SUBJECT TO USE CONDITIONS

End-use	Substitute	Decision	Conditions	Comments
Total flooding	HFC227–BC	Acceptable subject to use conditions.	Sodium bicarbonate release in all settings should be targeted so that increased pH level would not adversely affect exposed individuals. Users should provide special training to individuals required to be in environments protected by HFC227–BC extinguishing systems. Each HFC227–BC extinguisher should be clearly labelled with the potential hazards from use and safe handling procedures.	Use of the agent, HFC–227ea, should be in accordance with the safety guidelines in the latest edition of the NFPA 2001 Standard for Clean Agent Fire Extinguishing Systems. *See* additional comments 1, 2, 3, 4, 5.

Additional comments"

1—Should conform with relevant OSHA requirements, including 29 CFR part 1910, subpart L, sections 1910.160 and 1910.162.

2—Per OSHA requirements, protective gear (SCBA) should be available in the event personnel should reenter the area.

3—Discharge testing should be strictly limited to that which is essential to meet safety or performance requirements.

4—The agent should be recovered from the fire protection system in conjunction with testing or servicing, and recycled for later use or destroyed.

5—EPA has no intention of duplicating or displacing OSHA coverage related to the use of personal protective equipment (*e.g.*, respiratory protection), fire protection, hazard communication, worker training or any other occupational safety and health standard with respect to halon substitutes.

FIRE SUPPRESSION AND EXPLOSION PROTECTION SECTOR—STREAMING AGENTS—ACCEPTABLE SUBJECT TO NARROWED USE LIMITS

End-use	Substitute	Decision	Conditions	Comments
Streaming	C6-perfluoroketone (FK-5-1-12MYY2).	Acceptable subject to narrowed use limits.	For use only in non-residential areas.	For operations that fill canisters to be used in streaming applications, EPA recommends the following: —Adequate ventilation should be in place; —All spills should be cleaned up immediately in accordance with good industrial hygiene practices; and —Training for safe handling procedures should be provided to all employees that would be likely to handle containers of the agent or extinguishing units filled with the agent. *See* additional comments 1, 2, 3, 4.

FIRE SUPPRESSION AND EXPLOSION PROTECTION SECTOR—STREAMING AGENTS—ACCEPTABLE SUBJECT TO NARROWED USE LIMITS—Continued

End-use	Substitute	Decision	Conditions	Comments
Streaming	H Galden HFPEs	Acceptable subject to narrowed use limits.	For use only in non-residential areas.	For operations that fill canisters to be used in streaming applications, EPA recommends the following: —Adequate ventialtion should be in place; —All spills should be cleaned up immediately in accordance with good industrial hygiene practices; and —Training for safe handling procedures should be provided to all employees that would be likely to handle containers of the agent or extinguishing units filled with the agent. *See* additional comments 1, 2, 3, 4.

Additional comments.

1—Discharge testing should be strictly limited to that which is essential to meet safety or performance requirements.

2—The agent should be recovered from the fire protection system in conjunction with testing or servicing, and recycled for later use or destroyed.

3—EPA has no intention of duplicating or displacing OSHA coverage related to the use of personal protective equipment (*e.g.*, respiratory protection), fire protection, hazard communication, worker training or any other occupational safety and health standard with respect to halon substitutes.

4—As with other streaming agents, EPA recommends that potential risks of combustion by-products be labelled on the extinguisher (*see* UL 2129)

[FR Doc. 03–1623 Filed 1–24–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 82

[FRL–7443–5]

RIN 2060–AG12

Protection of Stratospheric Ozone: Listing of Substitutes for Ozone-Depleting Substances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to list three substitutes for ozone-depleting substances (ODSs) in the fire suppression and explosion protection sector as acceptable (subject either to narrowed use limits or use conditions) under the U.S. Environmental Protection Agency's (EPA) Significant New Alternatives Policy (SNAP) program. SNAP implements section 612 of the Clean Air Act, as amended in 1990, which requires EPA to evaluate substitutes for ODSs to reduce overall risk to human health and the environment.

Elsewhere in today's **Federal Register**, EPA is taking this action as a direct final rule without prior proposal because EPA views this as a noncontroversial revision and anticipates no adverse comments. A rationale for this action is set forth in the preamble to the direct final rule.

If we receive no adverse comments and no requests for public hearings in response to this action, we will take no further activity in relation to this rule. If EPA receives adverse comments or a request for public hearing, we will withdraw the direct final rule and review any comments in accordance with this proposal. If a public hearing is requested, EPA will provide notice in the **Federal Register** as to the location, date, and time. Any parties interested in commenting on this action should do so at that this time.

DATES: Comments must be received in writing by February 26, 2003.

ADDRESSES: Public comments and data specific to this action should be sent to Docket A–2002–08, U.S. Environmental Protection Agency, OAR Docket and Information Center, 1200 Pennsylvania Avenue NW., Mailcode 6102T, Washington, DC 20460. The docket is physically located at 1301 Constitution Avenue NW., Room B108, Washington, DC. The docket may be inspected between 8 a.m. and 5:30 p.m. on weekdays. Telephone (202) 566–1742; fax (202) 566–1741. As provided in 40 CFR part 2, a reasonable fee may be charged for photocopying. To expedite review, a second copy of the comments should be sent to Bella Maranion at the address listed below under **FOR FURTHER INFORMATION CONTACT.** Information designated as Confidential Business Information (CBI) under 40 CFR part 2, subpart 2, must be sent directly to the contact person for this notice. However, the Agency is requesting that all respondents submit a non-confidential version of their comments to the docket as well.

FOR FURTHER INFORMATION CONTACT: Bella Maranion at (202) 564–9749 or fax (202) 565–2155, U.S. Environmental Protection Agency, Global Programs Division, Mail Code 6205J, Washington, DC 20460. Overnight or courier deliveries should be sent to the office location at 501 3rd Street, NW., 4th floor, Washington, DC 20001. Also contact the Stratospheric Protection Hotline at (800) 296–1996 and EPA's Ozone Depletion World Wide Web site at *http://www.epa.gov/ozone/snap/index.html*.

SUPPLEMENTARY INFORMATION: See additional information, pertaining to this action, provided in the Direct Final action of the same title located in today's **Federal Register**.

I. EPA Proposal

EPA would add three fire suppression agents to the list of acceptable substitutes, subject to narrowed use limits or use conditions, for halons which are ozone-depleting substances widely used in the fire protection sector. The regulations implementing the SNAP program are codified at 40 CFR part 82, subpart G. The appendices to subpart G list substitutes for ODSs that are unacceptable or that have restrictions imposed on their use. Today's action would modify the appendices to subpart G to include these new substitutes.

The direct final rule will be effective on March 28, 2003, without further notice unless we receive adverse comment (or a request for a public hearing) by February 26, 2003. If EPA receives adverse comment, we will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect. EPA will address all public comments in a subsequent final rule based on this proposed rule. We will not institute a second public comment period on this action. Any parties interested in commenting must do so at this time.

You may claim that information in your comments is confidential business information, as allowed by 40 CFR part 2. If you submit comments and include information that you claim as confidential business information, we request that you submit them directly to Bella Maranion in two versions: one clearly marked "Public" to be filed in the public docket, and the other marked "Confidential" to be reviewed by authorized government personnel only.

II. Administrative Requirements

A. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether this regulatory action is significant and therefore subject to OMB review and the requirements of the Executive Order. The Order defines significant regulatory action as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more, or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, OMB notified EPA on October 3, 2002, that it considers this a "non-significant regulatory action" within the meaning of the Executive Order and, therefore, did not require EPA to submit this action to OMB for review.

B. Paperwork Reduction Act

EPA has determined that this proposed rule contains no information requirements subject to the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, that are not already approved by the Office of Management and Budget (OMB). OMB has reviewed and approved two Information Collection Requests (ICRs) by EPA which are described in the March 18, 1994 rulemaking (59 FR 13044, at 13121, 13146–13147) and in the October 16, 1996 rulemaking (61 FR 54030, at 54038–54039). These ICRs included five types of respondent reporting and recordkeeping activities pursuant to SNAP regulations: submission of a SNAP petition, filing a SNAP/TSCA Addendum, notification for test

marketing activity, recordkeeping for substitutes acceptable subject to narrowed use limits, and recordkeeping for small volume uses. The OMB Control Numbers are 2060–0226 and 2060–0350.

Copies of the ICR document(s) may be obtained from Sandy Farmer, by mail at the Office of Environmental Information, Collection Strategies Division; U.S. Environmental Protection Agency (2822); 1200 Pennsylvania Ave., NW., Washington, DC 20460, by e-mail at *farmer.sandy@epa.gov*, or by calling (202) 566–1676. A copy may also be downloaded off the Internet at *http://www.epa.gov/icr*. Include the ICR and/or OMB number in any correspondence.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

C. Regulatory Flexibility Act (RFA)

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with this proposed rule. EPA has also determined that this rule will not have a significant economic impact on a substantial number of small entities. For purposes of assessing the impact of today's rule on small entities, small entities are defined as (1) a small business that produces or uses fire suppressants as total flooding agents with 500 or fewer employees or total annual receipts of $5 million or less; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities.

Use of halon 1211 as a streaming agent in portable extinguishers has historically been in industrial and commercial applications with limited residential uses. Residential users typically use lower cost alternatives such as dry chemical and carbon dioxide hand-held extinguishers. The newer chemical agents compete for specialized segments of this market where lower cost alternatives such as dry chemical and carbon dioxide extinguishers may not be an appropriate option. With respect to EPA's decision on H Galen HOPES, EPA is finding it acceptable as a streaming agent in nonresidential areas as requested by the manufacturer. Moreover, the manufacturer of the new fire suppressant, H Galen HOPES, has not yet sold it, so today's action does not affect, in any way, current usage. The manufacturer of the new fire suppressant streaming agent, C6-perfluoroketone, is selling it in the non-residential market, so today's action does not affect, in any way, current usage. EPA is providing additional options for any entity, including small entities, to replace halon 1211 in streaming applications.

Use of halon 1301 total flooding systems have historically been in the protection of essential electronics, civil aviation, military mobile weapon systems, oil and gas and other process industries, and merchant shipping with smaller segments of use including libraries, museums, and laboratories. The majority of halon 1301 system owners continue to maintain and refurbish existing systems since halon 1301 supplies continue to be available in the US. Owners of new facilities make up the market for the new alternative agent systems that are available and may also consider employing other available fire protection options including new, improved technology for early warning and smoke detection. The primary party intending to use HFC227–BC as a total flooding agent is the U.S. Army, which is not a small entity. The Army is currently testing this fire suppressant in its new armored vehicles, so the regulatory restrictions imposed in today's rule will not affect current use. Thus, EPA is providing more options to any entity, including small entities, to use this substitute as a replacement for halon 1301 in total flooding applications.

Although this proposed rule will not have a significant economic impact on a substantial number of small entities, EPA nonetheless has tried to reduce the impact of this rule on small entities. By introducing new substitutes, today's rule gives additional flexibility to small entities that are concerned with fire suppression. EPA also has worked with the National Fire Protection Association, which conducts regular outreach with, and involves small state, local, and tribal governments in developing and implementing relevant fire protection standards and codes.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector.

Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Section 204 of the UMRA requires the Agency to develop a process to allow elected state, local, and tribal government officials to provide input in the development of any proposal containing a significant Federal intergovernmental mandate.

Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Today's rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, or tribal governments or the private sector. Because this rule imposes no enforceable duty on any State, local or tribal government it is not subject to the requirements of sections 202 and 205 of the UMRA. EPA has also determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments; therefore, EPA is not required to develop a plan with regard to small governments under section 203. Finally, because this rule does not contain a significant intergovernmental mandate, the Agency is not required to develop a process to obtain input from elected state, local, and tribal officials under section 204.

E. Executive Order 13132 (Federalism)

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

This proposed rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This proposed rule will provide addition options for fire protection subject to safety guidelines in industry standards. These standards are typically already required by state or local fire codes, and this rule does not require state, local, or tribal governments to change their regulations. Thus, Executive Order 13132 does not apply to this rule.

F. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes."

This proposed rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. This proposed rule will provide additional options for fire protection subject to safety guidelines in industry standards. These standards are typically already required by state or local fire codes, and this rule does not require tribal governments to change their regulations. Thus, Executive Order 13175 does not apply to this rule.

G. Applicability of Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045: "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This proposed rule is not subject to the Executive Order because it is not economically significant as defined in Executive Order 12866, and because the Agency does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. The acceptability listings in this proposed rule primarily apply to the workplace, and thus, do not put children at risk disproportionately. This rule is not subject to Executive Order 13045 because it is not economically significant as defined in Executive Order 12866 and because the Agency does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children.

H. Executive Order 13211 (Energy Effects)

This proposed rule is not a "significant energy action" as defined in Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355 (May 22, 2001)) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The rule allows wider use of substitutes, providing greater flexibility for industry. Further, we have concluded that this proposed rule is not likely to have any adverse energy effects.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law 104–113, section12(d) (15 U.S.C. 272 *note*) directs EPA to use voluntary consensus standards in regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This rulemaking involves technical standards. EPA defers to existing National Fire Protection Association (NFPA) voluntary consensus standards and Occupational Safety and Health Administration (OSHA) regulations that relate to the safe use of halon substitutes reviewed under SNAP. EPA references the NFPA 2001 Standard on Clean Agent Fire Extinguishing Systems, 2000 edition, which provides for exposure and safe use of halocarbon and inert gas

agents used to extinguish fires. Copies of this standard may be obtained by calling the NFPA's order telephone number at 1–800–344–3555 and requesting order number S3–2003–00. In addition, EPA has worked extensively in consultation with OSHA to encourage development of technical standards to be adopted by voluntary consensus standards bodies.

Authority: 42 U.S.C. 7414, 7601, 7671–7671q.

Dated: January 17, 2003.

Christine Todd Whitman,

Administrator.

[FR Doc. 03–1624 Filed 1–24–03; 8:45 am]

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Federal Register

Monday,
January 27, 2003

Part V

Department of Housing and Urban Development

Department of Health and Human Services

Department of Veterans Affairs

Notice of Funding Availability (NOFA) for the Collaborative Initiative To Help End Chronic Homelessness; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

DEPARTMENT OF HEALTH AND HUMAN SERVICES

DEPARTMENT OF VETERANS AFFAIRS

[Docket No. FR–4805–N–01]

Notice of Funding Availability (NOFA) for the Collaborative Initiative To Help End Chronic Homelessness

AGENCIES: Office of Community Planning and Development, HUD; Substance Abuse and Mental Health Services Administration, and Health Resources and Services Administration, HHS; Substance Abuse, Mental Health and Provider Care Services, VA.

ACTION: Notice of funding availability.

SUMMARY: This notice announces a $35 million initiative to help end chronic homelessness. The initiative, coordinated by the U.S. Interagency Council on the Homeless (ICH), involves the participation of three Council members: The Department of Housing and Urban Development, the Department of Health and Human Services, and the Department of Veterans Affairs. The initiative supports the Administration's goal to end chronic homelessness by seeking to create a collaborative and comprehensive approach to addressing homelessness.

SUPPLEMENTARY INFORMATION:

1. Title of Initiative

Collaborative Initiative to Help End Chronic Homelessness: Notice of Funding Availability

2. Departments

Department of Housing and Urban Development
Department of Health and Human Services
Department of Veterans Affairs

3. Date of Issuance

January 27, 2003.

4. Deadline for Receipt of Applications

April 14, 2003.

5. Authority

Housing and Urban Development, 42 U.S.C. 11303
Veterans Affairs, 38 U.S.C. 1710, 1712 and 1722
Health and Human Services/Substance Abuse and Mental Health Services Administration, Section 509 and 520 of the Public Health Service Act
Health and Human Services/Health Resources and Services Administration, Section 330, 42 U.S.C. 254b

6. Introduction

The U.S. Interagency Council on the Homeless (ICH) is coordinating a $35 million joint initiative with the Departments of Housing and Urban Development (HUD), Health and Human Services (HHS), and Veterans Affairs (VA) to support the Administration's initiative to end chronic homelessness. This initiative seeks to create a collaborative and comprehensive approach to addressing the problems of homelessness of our most vulnerable citizens. This collaboration among the departments offers housing and service funding through a consolidated application. Applicants must show how the funds they are requesting will be part of a comprehensive and integrated community strategy to use funding sources, including mainstream services resources, to assist persons who are chronically homeless and homeless families with a disabled adult member (as defined in this NOFA) to move from the streets and emergency shelters into stable housing and receive the range of services and other support needed to promote and maintain greater self-sufficiency.

Funds will be awarded by HUD, two agencies within HHS, and VA based on one consolidated application. This application requests a description of the comprehensive approach (Section 1) being taken by each applicant, and includes four Agency-Specific application sections (Sections 2–5) tied to the four federal funding streams. Applications must address both the overall approach and specific technical requirements established by the participating agencies. Funding provided by HUD must be used to provide permanent housing; HHS/SAMHSA (Substance Abuse and Mental Heath Services Administration) funds will be directed toward substance abuse treatment, mental health and related supportive services; and HHS/HRSA (Health Resources and Services Administration) funds will be used for primary health care services. Applicants will be able to obtain additional resources from local VA facilities by addressing the specific needs of chronically homeless veterans in their application.

7. Background and Purpose

Research indicates that as many as 150,000 people experience chronic homelessness in this country each year. People experiencing chronic homelessness often have an addiction or suffer from a disabling physical or mental condition and are homeless for extended periods of time or experience multiple episodes of homelessness. For the most part, they get help for a short time but soon fall back to the streets and shelters. Because the needs of these persons are not comprehensively addressed, they cycle through the homeless system and consume a significant portion of available resources. In fact, research indicates that these individuals consume more than half of all homeless services. As such, there are significantly fewer resources available for 90 percent of the homeless—including families—who, with a little assistance, could often exit homelessness relatively quickly. By addressing the housing and service needs of persons who are chronically homeless, we will have more resources available to meet the needs of other homeless people. When persons who are chronically homeless have access to basic assistance like housing and treatment, they have fewer problems and are less likely to need expensive emergency interventions. The research makes it clear that one of our best hopes for ending homelessness of every sort depends on addressing chronic homelessness. We are setting policy and taking action based on that research.

Goals: The purpose of this initiative is to assist states and communities in ending or substantially reducing chronic homelessness. The goals are as follows:

1. Increase the effectiveness of integrated systems of care for persons experiencing chronic homelessness and homeless families with a disabled adult member by providing comprehensive services and treatment and linking them to housing.

2. Create additional permanent housing for persons experiencing chronic homelessness and homeless families with a disabled adult member. A critical element in ending chronic homelessness is the provision of adequate housing resources. As such, HUD's funds may be used only for permanent housing activities. For the purpose of this NOFA, permanent housing is defined as housing that has no limit imposed on the length of a resident's stay in the project and includes the Safe Havens program in addition to other programs described in HUD's Agency-Specific Section (Section 2).

3. Increase the use of mainstream resources (*e.g.* Medicaid, Temporary Assistance for Needy Families, Food Stamps, Substance Abuse Prevention and Treatment Block Grants, Mental Health Block Grants, Social Services Block Grants, State Children's Health Insurance Program, *etc.*) that pay for

services and treatment for this population. Existing mainstream resources are available, but underused in serving chronically homeless persons and homeless families with a disabled adult member.

4. Replicate service, treatment, and housing models that have proven to be effective based on sound evidence.

5. Support the development of infrastructures that sustain the housing, services, treatments, and inter-organizational partnerships beyond this federal initiative.

8. Target Population

This initiative targets persons experiencing chronic homelessness, including veterans. A chronically homeless person is defined as "an unaccompanied homeless individual with a disabling condition who has either been continuously homeless for a year or more OR has had at least four (4) episodes of homelessness in the past three (3) years."

Not more than 10 percent of the funds awarded will be targeted to projects that will serve homeless families with a disabled adult member. For the purpose of this NOFA, a family is defined as two or more adults, one of whom has a disabling condition as defined below.

Two key terms in the above description of the population to be served that need to be defined are "homeless" and "disabling condition." For the purpose of this NOFA, the term "homeless" means "a person sleeping in a place not meant for human habitation (*e.g.*, living on the streets) or in an emergency homeless shelter." For the purpose of this NOFA, disabling condition is defined as "a diagnosable substance use disorder, serious mental illness, developmental disability, or chronic physical illness or disability, including the co-occurrence of two or more of these conditions. A disabling condition limits an individual's ability to work or perform one or more activities of daily living."

One applicant may serve both chronically homeless individuals and homeless families with a disabled adult member, but must complete separate applications for each population. No one project and no one application may serve both populations.

9. Funding

This notice is intended to simplify the application process, bring consistency and uniformity to the application and selection process, and facilitate funding opportunities available from these three departments by awarding grants in a coordinated fashion. By announcing this notice as a joint effort, the participating federal agencies believe applicants will be better able to coordinate and integrate services within communities to avoid duplication, close gaps, and comprehensively serve those persons most in need of housing and services.

Although funds will come from separate federal agencies for specific components of the housing and service plans, awards will be made on the basis of a comprehensive review by all involved agencies. This is to ensure that applicants have addressed and can provide for each of the four core elements—(1) housing, (2) mental health and substance abuse treatment, (3) primary care, and (4) veteran's services. In order to be eligible for funds from any of the participating agencies, applicants must address each of these elements, even if they are not requesting funding for a particular element. Applicants will address these elements in the Agency-Specific sections of the application. Even if not requesting funding from each of the four agencies, the applicant must still complete the appropriate section of each agency's portion of the application form. For example, provision of primary care services is a required core element, but applicants may use other resources instead of applying for HHS/HRSA funds to provide these services. The Agency-Specific sections will specify which questions pertain to applicants not seeking funding from each of the partnering federal agencies.

The term of the grant award will vary depending on the funding sources being used. The overall intent is to make the program available for three to five years, based on availability of appropriations. The entirety of the HUD and VA funds will be awarded at the beginning of the grant term, in FY 2003, for the life of the project. HHS funds will be awarded on an annual basis, subject to the availability of appropriations.

- Approximately $20 million is expected to be awarded by HUD for terms of three to five years to fund permanent housing activities. HUD's funds may be used under specified components of the Supportive Housing Program, which funds acquisition, minor rehabilitation, leasing, and operating costs for permanent housing for up to three (3) years, or specified components of the Shelter Plus Care Program, which provides rental assistance to tenants for five (5) years.
- Approximately $7 million is expected to be available from HHS/SAMHSA in FY 2003 to fund mental health and substance abuse services. Awarding of FY 2003 funds is contingent on passage of a permanent HHS appropriation for FY 2003. Awards in FY 2004 and 2005 will be subject to the availability of appropriations and will be reduced in size in order to increase grantees' reliance on mainstream resources and alternate sources of funding.
- Approximately $3 million is expected to be available from HHS/HRSA in FY 2003 to fund primary health care services. These funds will be awarded as supplemental awards to existing Section 330 Health Centers. The awarding of FY 2003 HHS/HRSA funds is contingent on passage of a permanent HHS appropriation for FY 2003. Subject to availability of appropriations, funds may be available for FY 2004 and FY 2005.
- Subject to availability of appropriations, approximately $5 million of in-kind support is expected to be available from VA to fund services for chronically homeless veterans for grant terms of three years.

Of the $35 million available, no grant award for an individual project will exceed $3.5 million in total grant funds from all federal partners in this initiative. In addition, HUD will not award more than $2 million to any one project or applicant for housing activities. HHS/SAMHSA will not award more than $700,000 to any one project or applicant for mental health and substance abuse services for the first year of funding. Also, HHS/HRSA will not award more than $300,000 per project per year. The awarding of HHS funds in FY 2004 and FY 2005 will be subject to continued availability of funds and progress achieved by the grantee.

In making the funding decisions, if funds from one source are exhausted, but funds from other sources remain available, applicants may still receive available funds if they can demonstrate an ability to provide the services or housing with alternate sources of support. This situation will be handled in the form of a conditional award or deferred decision.

10. Application Submission

The HUD Headquarters building, in which the U.S. Interagency Council on the Homeless is currently located, has implemented security procedures that apply to application submission. Please read the following instructions carefully and completely.

- No hand deliveries will be accepted.
- Applications may only be shipped using DHL, Falcon Carrier, Federal Express (FedEx), United Parcel Service (UPS), or the United States Postal Service (USPS).

• All mailed applications must be postmarked on or before midnight of the due date established by this Notice of Funding Availability (NOFA) and must be received within 30 calendar days of the due date.

• All applicants who mail applications must have a Certificate of Mailing (USPS Form 3817) as their documentary evidence that the application was filed on time.

Addresses: Since four federal partners will be involved in reviewing applications, provide one original and four copies of your application to the U.S. Interagency Council on the Homeless, Room 2204, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. The application deadline submission date is April 14, 2003.

Applications Sent by Overnight/ Express Mail Delivery: If your application is sent by overnight delivery or express mail, your application will be considered timely if it is placed with the delivery service by the application deadline. You may be required to submit documentary evidence that your application was placed in transit with the overnight delivery/express mail service no later than the application due date. Delivery must be made between 8:30 a.m. and 5:30 p.m. Eastern time, Monday through Friday.

11. General Guidance on Application Development

This NOFA provides the application procedures and requirements for funding under this initiative, and is divided into separate sections. Section 1, the Comprehensive Approach, explains the requirements and rating factors applicable to the Comprehensive Approach section of the application. Sections 2–5, the Agency-Specific sections of this NOFA, provide descriptions of the specific programs for which funding is made available and describes any additional procedures and requirements that are applicable to a specific component of the comprehensive program. Please be sure you read both the Comprehensive Approach and the Agency-Specific sections of this NOFA to ensure that you respond to all the requirements for funding.

Applicant Eligibility: One organization is expected is take the lead in submitting the consolidated application. This lead organization is expected to submit the consolidated application, which identifies the consortium arrangements, and is responsible for coordinating this consortium over the term of the grant. The lead organization must be a non-profit or public entity. The entities that partner with the lead organization must meet one or more of the agency-specific eligibility criteria. See the Agency-Specific sections of the NOFA to determine your eligibility to apply for specific funds. Participation by eligible non-profit organizations, including faith-based and other community-based organizations, is encouraged.

Additionally, applicants must commit that any proposed project will exclusively serve those individuals who are chronically homeless or homeless families with a disabled adult member as defined in this notice.

Technical Assistance: Before the application due date, agency staff will be available to provide you with general guidance and technical assistance about this NOFA. However, staff are not permitted to assist in preparing your application. For technical questions on program issues, contact the U.S. Interagency Council on the Homeless at 1–866–450–2273 (this number may also be dialed as 1–866–450-CARE) (these are toll-free telephone numbers). Persons with hearing and/or speech challenges may access the above telephone number by TTY (text telephone) by calling the Federal Relay Service at 1–800–877–8339 (this is a toll-free number). The Council will be able to put applicants in contact with the federal agency best able to answer technical questions.

Satellite Broadcast: HUD, HHS, and VA are planning to hold an information broadcast via satellite for potential applicants to learn more about this initiative and preparation of the applications. For more information about the date and time of the broadcast, consult the web pages listed below.

Application Submission: To apply for funding under this NOFA, the lead applicant must submit a cover letter, as described in the Application Kit, and a signed Memorandum of Agreement between all participating entities. The Agency-Specific sections of the application require an agency-specific SF–424 and set of assurances and certifications, plus additional forms, certifications, and other information required for their specific programs. All of the required forms for each agency can be found in the application kit.

12. Application Kits

You can download the application kit and required forms from the following federal Web sites:

www.ich.gov
http://www.hud.gov/offices/cpd/homeless/apply/index.cfm
http://www.hrsa.gov/grants/homeless.htm
http://www.samhsa.gov
http://www.va.gov/homeless/page.cfm?pg=20

13. Review Process

Applications submitted in response to this NOFA will be reviewed for threshold criteria and technical merit. Threshold criteria are described below, and additional threshold criteria are included in the Agency-Specific sections.

Overall threshold requirements are that:

• All applicants and all participating partners must be non-profit or public entities;

• Each application must address all aspects of housing and service provision, even if the applicant is not requesting funds for one or more of these elements;

• The application is received by the specified receipt date;

• The application is complete; and

• The application conforms to the instructions for format, including page limitations, as described in the Application Kit.

Technical merit has two components—the merit of the Comprehensive Approach and the merit of activities proposed under each Agency-Specific section. An application must pass both reviews in order to receive funding. The maximum total score for any applicant under this NOFA is 200 points. These points are divided between the Agency-Specific sections and the Comprehensive Approach section. The Agency-Specific sections are worth a total of 100 points. Within these 100 points, HUD's portion is worth 30 points, the HHS/SAMHSA section is worth 25 points, the HHS/HRSA portion is worth 25 points, and the VA section is worth 20 points. If an application is deficient in one Agency-Specific section, the entire application will be disqualified. Deficiency is defined as scoring below 40 percent of the allotted points for any agency's section.

The U.S. Interagency Council on the Homeless (ICH) will serve as the central point for the receipt of applications. Upon receipt at ICH, applications will be sent to HUD, HHS, and VA where each agency will review its Agency-Specific section first for threshold criteria and then, for those applications passing the threshold, for technical merit. (See the Agency-Specific sections for each agency's criteria.)

Applications that pass all four agency's reviews will move to the next stage of review. In this stage, an interdisciplinary, interdepartmental team will review and score each

application's Comprehensive Approach using the six rating criteria described in Section 1—Comprehensive Approach. The Comprehensive Approach is scored up to an additional 100 points, broken down among these six rating criteria. Only those applications with a Comprehensive Approach that is acceptable to all federal partners involved will be funded.

Ranking: The score for all ranking factors will be summed to obtain a total score for each project submitted under the collaborative NOFA. The projects will then be ranked from highest to lowest nationally according to the total combined score.

Selection and Adjustments to Funding: (a) *Selection*—Projects will be awarded based on national ranking as described above and according to the provisions for geographical diversity described below. The awarding of funds may be conditional upon receipt of further information, as requested by the federal agencies involved.

When insufficient funds remain to fund all projects requesting funding that receive the same total score, ties will be broken among such projects by comparing scores received by the projects for each of the following scoring factors, in the order shown: Soundness of Approach, Capacity, and Coordination.

(b) *Adjustments to Funding*—In order to ensure maximum geographic diversity in the awards, no individual project applicant and no one unit of general local government will be awarded more than 10 percent of the total amount of available resources under this collaborative NOFA. The federal departments reserve the right to make selections out of rank order to provide for geographic distribution of funds.

Additional selection considerations: In order to be eligible for funding under this notice, applicants must commit that funds will be used exclusively to serve those individuals who are chronically homeless as that term is defined in this notice except that no more than 10 percent of these funds will be awarded to projects committed to serving disabled homeless families as that term is defined in the notice.

14. General Reporting/Evaluation Requirements

Grantees must submit annual progress reports and a final report to the ICH and to the grant-administering agencies. ICH and the federal partners will use this information to determine progress of the grantees toward meeting their goals. Consistent with the main objective of this initiative, grantee performance will be measured by the number of persons experiencing chronic homelessness and homeless families with a disabled adult member moved off the streets and out of shelters and placed into permanent housing. It is expected that local evaluations will include measuring progress toward accomplishing the tasks described in the grant application and providing for collection of quantitative and qualitative data that permits measurement of progress toward achieving the outputs and outcomes envisioned by the goals and objectives contained in the application. Grantees must collect outcome information on clients served to be compared against benchmarks throughout the term of the grant.

The annual progress and final reports shall include, but are not limited to, narrative and empirical information on the following: (1) Type and number of housing units provided; (2) characteristics of the clients and residents served; (3) a description of the services and treatments provided, including funding sources other than from this grant; (4) description of the collaborations and partnerships established over the course of the grant; (5) the extent to which services are financed by mainstream programs and how financing patterns change during the duration of the grant program; (6) any revisions or refinements to the benchmark estimate of persons experiencing chronic homelessness in the target community; and (7) other such information as prescribed by the federal partners.

As a condition of award, grantees funded under this initiative agree to fully cooperate with any organization funded by one or more of the sponsoring federal agencies to conduct an independent evaluation of the full initiative.

15. Post-Award Requirements

The federal partners will each provide post-award support, as appropriate, to grantees through technical assistance on clinical, programmatic, and evaluation issues. The Agency-Specific portions of this NOFA may specify further post-award requirements. Please refer to these sections for this information.

16. General Outline of Application

While the funding for this initiative will come from HUD, HHS, and VA, one overall application will be required, including Agency-Specific sections, each of which may specify program-specific SF–424s, sets of assurances and certifications, and additional forms. A cover letter and memorandum of agreement between all participating entities are required, as described in the application kit. The overview of each Section is as follows:

1. *Comprehensive Approach:* The applicant will be required to submit a description of its approach that is comprehensive in nature and includes: (1) A description of the problem; (2) the target population; (3) a description of the method by which potential clients will be identified and referred to the program; (4) the gaps in housing and supportive services; (5) provision for client-level comprehensive service planning; (6) the coordination of the housing with needed supportive services to assure access to these resources by the target population; (7) a planning process that addresses leveraging of resources and sustainability of services and treatment beyond the availability of these federal funds; (8) capacity of the providers to deliver housing, treatment, and services; (9) an implementation plan with a firm schedule of major action steps; (10) the budget and fiscal controls; and (11) how progress toward reducing chronic homelessness will be monitored and measured.

2. HUD Section-Permanent Housing: The applicant will be required to submit a description of how HUD funds will be used to develop permanent housing, a budget, and a budget narrative. A description of housing activities for which funds are requested from HUD should also be included in this section. Additionally, the applicant must complete several mandatory applicant certifications, which are provided. If not requesting HUD funding, the applicant is required to explain how the permanent housing units needed to house individuals served by the proposed project will be provided.

3. HHS/SAMHSA Section-Substance Abuse Treatment, Mental Health, and Related Supportive Services: The applicant will be required to submit an application (Public Health Service Application Form 5161–1) that describes how HHS/SAMHSA funds will be used to provide substance abuse treatment, mental health services and related supportive services, a budget, and a budget narrative for these components of the comprehensive approach. If not requesting SAMHSA funding, the applicant is required to explain how the substance abuse and mental health services will be provided.

4. HHS/HRSA Section-Primary Health Care Services: The applicant will be required to submit an application (Public Health Service Application Form 5161–1) that describes how HHS/HRSA funds will be used to provide primary health care services and

coordination of care with other providers involved in the collaboration. Applicants are limited to existing Health Center grantees (including Health Care for the Homeless grantees) currently funded under Section 330 of the Public Health Service PHS Act (PHS Act). Applicants are limited to existing Health Centers, since funding for this initiative is coming from the Health Center funding line and consequently the requirements of Section 330 of the PHS Act apply to the recipients of those funds. In addition, existing Health Center grantees receive certain privileges, including coverage under the Federal Tort Claims Act, ability to receive higher Medicare and Medicaid reimbursement rates, and reduced price pharmaceuticals. It would be inappropriate to provide these privileges to a new group of grantees who had not been approved through the extensive, comprehensive application process to achieve Section 330 Health Center status.

Applications should be submitted as a proposed supplemental grant and will be funded as such. Further instructions appear in this section. If not requesting HRSA funding, the applicant is required to explain how the primary health care services will be provided.

5. *VA Section—Substance Abuse, Mental Health and Primary Care Services Targeted to Veterans:* The applicant is required to submit a detailed description of how a collaborative relationship with VA will be created and sustained in an effort to provide services to chronically homeless veterans. The chronically homeless veterans to be served will be those veterans housed in or being provided services through this joint initiative and who meet the definition of homeless as put forth in this NOFA. Although funding will not be awarded directly to the recipient of the grant, funding is available for the VA facility that partners with the applicant. VA facilities can include medical centers or programs under the direction of medical centers including VA outpatient clinics. If not requesting VA services, the applicant is required to explain how the needs of chronically homeless veterans will be addressed.

Statement of Support: The Council and the three agency Council members (HUD, HHS and VA) participating in this initiative look forward to receiving applications that set out a comprehensive and integrated community strategy to use funding sources to assist persons who are experiencing chronic homelessness and homeless families with a disabled adult member.

Dated: December 20, 2002.

Mel Martinez,

Secretary, Department of Housing and Urban Development.

Tommy G. Thompson,

Secretary, Department of Health and Human Services.

Anthony J. Principi,

Secretary, Department of Veterans Affairs.

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SECTION 1

COMPREHENSIVE APPROACH

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Section 1: Comprehensive Approach—100 Points

I. Overview

The purpose of the Comprehensive Approach is to demonstrate that the applicant and the providers of all four core elements—(1) permanent housing, (2) mental health and substance abuse treatment and related supportive services, (3) primary care, and (4) veteran's services—are working in collaboration to integrate housing and services for persons experiencing chronic homelessness and disabled homeless families. This comprehensive strategy will use funding sources, including mainstream services resources, to provide a holistic approach to ending chronic homelessness.

Eligible Applicants

Although the lead applicant must submit the comprehensive approach as a part of the consolidated application, it is expected that the lead applicant and the relevant partner agencies will have collaborated in developing the comprehensive approach. It is up to the partner entities to provide sufficient and appropriate resources to plan and coordinate this collaborative effort throughout the grant period.

Funding Criteria

- Threshold Requirements.
- Technical Merit.
- Availability of Funds.

II. Rating Criteria for the Comprehensive Approach

The Comprehensive Approach will not receive technical review if any one of the Agency-Specific sections score below 40 percent of the allotted points as the result of technical review of each agency's section.

The Comprehensive Approach will be reviewed using the following six criteria:

1. Documentation of Need and Extent of the Problem

This will include the extent to which the applicant demonstrates understanding of the unique characteristics of the target population, in terms of the overall number of homeless persons, disabled homeless families, and chronically homeless persons and their characteristics. The applicant must include a preliminary estimate of the number of persons experiencing chronic homelessness in the target community to establish a benchmark of need, and the method by which this estimate was derived. The narrative will also include a detailed assessment of the community resources currently available to meet the permanent housing and supportive services needs of the target population and the extent to which gaps in available services are identified and documented. *Points:* 10.

2. Soundness of Approach and Adequacy/Appropriateness of Delivery System

The Federal partners will consider the adequacy of the comprehensive approach, including the method by which potential clients will be identified and referred to the program, and the method by which the needs of the target population will be addressed. This includes: The extent to which a comprehensive range of services and treatment is available; the availability of permanent housing units that meet housing quality standards; and, the adequacy of the proposed service delivery model that coordinates treatment, services and supports with housing. The quality of the comprehensive approach will also be judged on the comprehensiveness of the content, feasibility of approach, and provision for linkages and coordination of services. In particular, the comprehensive approach needs to be the foundation for establishing sustainable service programming beyond the life of the Federal grant. Issues such as resource leveraging, establishing entitlements, and enrollment in mainstream service delivery are critical components of a sound comprehensive approach. *Points:* 25.

3. Capacity of the Applicant and Relevant Partner Agencies and Staff

This will include the demonstrated capacity of the lead applicant and other organizations that will be involved in the proposed project to provide appropriate permanent housing, primary care, mental health and substance abuse treatment, and supportive services. It will also include the appropriateness of the management and organizational capability of all organizations involved in this initiative. The Federal partners will take into account: The applicants' past performance in managing funds; the timely use of funds received from Federal, state or local programs; past success in meeting performance targets for completion of activities; and, the number of persons to be served or targeted for assistance. For those persons with service needs not eligible under this NOFA, capacity also includes the ability of the partnering entities to obtain necessary services for these persons. For example, a person with a developmental disability or persons living with AIDS and requiring home health care may have service needs beyond the scope of this NOFA. Partnering entities must explain how these needs will be met. *Points:* 20.

4. Appropriateness of Budget and Fiscal Controls

This will include a review of the following: How the proposed program is a cost-effective approach to meeting the needs of the target population; the resources required to achieve the goals and objectives; the expectations regarding Federal grant support and maximization of non-grant revenue relative to the proposed plan, including a description of leveraging resources; and the total grant dollars per client/unit and total cost per client/unit. *Points:* 15.

5. Collaboration

This will include the extent to which the lead applicant can coordinate the participation of all partner agencies/organizations, sub-contractors, consultants, sub-recipients, and members of consortia that are firmly committed to the project. Memoranda of agreement from the major providers of housing and services will be required to prove the collaboration efforts of the partners. In addition, specific plans on how the project will systematically assist clients in accessing major Federal, State and local programs, such as Medicaid, TANF, SSI, SSDI, and VA Health Care, must be described. *Points:* 20.

6. Adequacy/Appropriateness of Evaluation Plan

The Federal partners will consider the appropriateness and adequacy of the overall plan for evaluating and monitoring the process and outcomes of the project, both for the lead organization and for all the partners, to ensure that the goals of the initiative are being met. This will include plans to comply with all requirements for each agency (*i.e.* Government Performance Results Act, Annual Performance Report) and the proposed approaches for gathering quantitative and qualitative data on the target population. Applicants must demonstrate the existence of a data collection system to track the goals/objectives of the project. *Points:* 10.

III. Reporting and Evaluation Requirements

The lead applicant must submit annual progress reports and a final report to the ICH and to the four Federal agencies. The annual progress and final

reports shall include, but are not limited to, narrative and empirical information on the following: description of the collaborations and partnerships established over the course of the grant; description of a strategic planning process; the extent to which services are financed by mainstream programs and how financing patterns change during the duration of the program; the extent to which barriers in accessing housing and services are reduced; numbers of clients served and permanent housing provided, any revisions or refinements to the benchmark estimate of persons experiencing chronic homelessness in the target community, and other such information as prescribed by the Federal partners.

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SECTION 2

HUD SECTION

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Section 2: HUD Section—30 Points

I. Purpose

The purpose of the housing component of this collaborative NOFA is to provide permanent housing for chronically homeless persons and disabled homeless families when proposed as part of homeless assistance projects in which housing is directly linked to needed supportive services funded through other components of this NOFA or through other sources.

Eligible Applicants

The chart in Appendix 1—HUD of this announcement identifies the eligible applicants for the McKinney-Vento Act programs through which housing funds are available.

II. Amount Allocated

Approximately $20 million in funding is available under the housing component of this collaborative NOFA. Funds for housing will be awarded for new projects under only one of the following two McKinney-Vento Act programs:

A. Supportive Housing Program (Permanent Housing or Safe Havens Components only); or,

B. Shelter Plus Care (Tenant-Based, Sponsor-Based, and Project-Based without Rehabilitation components only)

III. Program Descriptions

A. Supportive Housing Program (SHP)

1. Purpose and Eligible Activities

The SHP program promotes the development of supportive housing and services that help homeless persons transition from homelessness to living as independently as possible. Each project submitted under SHP must be classified under one of the program components described below. Eligible activities under this NOFA are limited to: acquisition, minor rehabilitation (*e.g.* reconfiguring a doorway for handicap accessibility), leasing, operating costs, and limited administrative expenses. Not eligible for funding are new construction, major rehabilitation, or services costs. New construction is not included, as this activity often requires a substantial amount of time to develop the project and the emphasis of this initiative is to provide housing as soon as possible. Supportive services are not an eligible activity because HUD wants to devote the resources it provides through this initiative to the provision of housing; the resources being made available by HHS and VA for this initiative can be used to provide supportive services needs in the project.

2. SHP Components

The following SHP components are eligible for funding under this NOFA:

a. Permanent Housing for Persons with Disabilities. Permanent Housing projects provide long-term housing and supportive services (provided with other funds) that are designed to enable homeless persons with disabilities to live as independently as possible. Permanent housing can be provided at one site or in scattered sites. Further, Permanent Housing may be tenant-based, meaning that the tenant can choose the housing. This is consistent with the philosophy of supported housing. This approach focuses on identification and engagement through assertive outreach to individuals and families, immediate placement in permanent housing, and availability of appropriate supportive services. All Permanent Housing for Persons with Disabilities projects must comply with the program size limitations, as described in Section 424(c) of the McKinney Act.

b. Safe Havens. Safe Havens are projects targeted to hard-to-reach homeless persons who have severe mental illness and are on the streets. The goal of a Safe Haven is to serve as a small, highly supportive environment where an individual can feel at ease, out of danger, and subject to limited service demands. Tenants can move directly into housing with few explicit services required. It is hoped that after a period of stabilization in a Safe Haven, residents will be more willing to participate in services and referrals and will eventually be ready to move to more traditional forms of housing. Safe Havens may serve as an entry point to the service system and provide access to basic services such as food, clothing, bathing facilities, telephones, storage space, and a mailing address. Safe Havens are not appropriate housing for homeless families with disabilities.

The specific criteria that must be exhibited by a Safe Haven are:

- No limit on length of stay.
- Provision of 24-hour residence.
- Provision of private or semiprivate accommodations.
- Overnight occupancy limited to 25 persons.
- May also provide supportive services to eligible persons who are not residents on a drop-in basis.

B. Shelter Plus Care

1. Shelter Plus Care (S+C)—Purpose and Eligible Activities

Shelter Plus Care serves only homeless persons who have disabilities and may be administered on a tenant-, sponsor-, or project-based level. S+C components were designed to give applicants flexibility in devising appropriate housing and supportive services for homeless persons with disabilities. Rental assistance provided through the S+C program must be matched in the aggregate by the recipient on a dollar for dollar basis with supportive services. Federal funds received from the other participating agencies under this NOFA are eligible to be counted as matching funds. Rental assistance is the only eligible activity for this program.

2. S+C Program Components

The following S+C program components are eligible for funding under this NOFA:

a. Tenant-Based S+C—Tenant-Based S+C assisted units may be of any type, and clients may retain the rental assistance even if they move, as long as they stay within a S+C unit. Assisted projects may provide supportive services to clients, either by the applicant or a third party, in a variety of ways, from structured to very low-demand.

b. Sponsor-Based S+C—Sponsor-Based S+C provides rental assistance through contract(s) between the grant recipient and a nonprofit organization(s), called a sponsor. The nonprofit organization may be a private nonprofit organization or a community mental health center established as a public nonprofit organization. The assisted units must be owned or leased by the sponsor. After a grant is awarded should the sponsor lose its capacity to own or lease the assisted units, the grantee must identify an alternate sponsor in order to continue to serve the original number of persons proposed to be served.

c. Project-Based without Rehabilitation S+C—Project-Based without Rehabilitation S+C provides rental assistance through a contract with a building owner(s). An applicant must enter into a contract with the building owner(s) for the full five-year period of assistance. The building owner must agree to accept eligible S+C participants to live in an assisted unit for this time period.

C. Match

Applicants must match Supportive Housing Program funds provided for acquisition and minor rehabilitation (new construction, major rehabilitation, and supportive services are not eligible activities under this collaborative NOFA) with an equal amount of funds from other sources; for operating costs, since by law SHP can pay no more than

75 percent of the total operating budget for supportive housing, applicants must provide at least 25 percent of the total annual operating costs. The cash source may be the applicant, the Federal Government, State and local governments, or private resources. In-kind contributions are not eligible as match under SHP.

Applicants must match rental assistance provided through the Shelter Plus Care Program on a dollar for dollar basis with supportive services.

D. Statutory and Regulatory Requirements

An applicant selected for funding as a result of the competition will be required to coordinate and integrate the homeless project with other mainstream health, social services, and employment programs for which homeless populations may be eligible, including Medicaid, State Children's Health Insurance Program, Temporary Assistance for Needy Families, Food Stamps, and services funding through the Mental Health Block Grant and Substance Abuse Block Grant, Workforce Investment Act, Welfare-to-Work grant program, SSI, SSDI, and Healthcare for Homeless Veterans Program. In addition, as a condition for award, any governmental entity serving as an applicant must agree to develop and implement, to the maximum extent practicable and where appropriate, policies and protocols for the discharge of persons from publicly funded institutions or systems of care (such as health care facilities, foster care or other youth facilities, or correction programs and institutions) in order to prevent such discharge from immediately resulting in homelessness for such persons. This condition for award is intended to emphasize that States and units of general local government are primarily responsible for the care of these individuals, and to forestall attempts to use scarce McKinney-Vento Act funds to assist such persons in lieu of State and local resources.

E. Special Provisions Applicable to This Notice

1. Only new SHP and S+C projects, including expansions of HUD-funded existing projects, will be funded.

2. Any project submitted under this NOFA must be coordinated with the Continuum of Care plan for its region and must submit a certification of consistency with the applicable Continuum of Care plan.

3. Only the following components of the SHP will be funded under this NOFA: Permanent Housing and Safe Havens.

4. Only tenant-, sponsor-, and project-based without rehabilitation components of S+C will be funded.

5. The term of all proposed SHP projects must be three (3) years. The term of all proposed S+C projects must be five (5) years.

6. New construction and substantial rehabilitation activities will not be eligible SHP activities under this notice. Minor rehabilitation activities, such as those required to remove lead-based paint or conform a unit to ADA standards, are eligible. All other activities eligible under the SHP program are eligible for purposes of this NOFA. See Appendix 1—HUD for eligible activities.

7. Applicants are encouraged to use approaches that can rapidly move chronically homeless persons into housing with necessary supportive services.

8. All SHP and S+C statutory and regulatory provisions, other than those specifically amended by this NOFA, apply to the use of those funds.

F. Other Program-Specific Requirements

Where an applicant for Supportive Housing Program funding is a State or unit of general local government that utilizes one or more nonprofit organizations to administer the homeless assistance project(s), administrative funds provided as part of the SHP grant must be passed on to the nonprofit organization(s) in proportion to the administrative burden borne by them for the SHP project(s). States or units of general local government that pass on at least 50 percent of the administrative funds made available under the grant will be considered as having met this requirement. (**Note:** This requirement does not apply to the S+C Program, since paying the costs associated with the administration of these grants is ineligible by regulation. For the S+C program, administrative costs associated with the administration of rental assistance are eligible, but are capped at eight (8) percent of the total grant award).

G. Timeliness Standards

As an applicant, you are expected to initiate your approved projects promptly in accordance with the instructions of this announcement. In addition, if you fail to satisfy the following timeliness standards being established specifically for funding awarded under this collaborative NOFA, the awarded funding may be withdrawn in whole or in part:

1. Supportive Housing Program

- Your award may be deselected if you do not demonstrate site control within three (3) months of the date of your grant award letter.
- Your award may be deselected if the following additional timeliness standards are not met:

—You must complete any minor rehabilitation activities permitted under the terms of your SHP award within nine (9) months of the date of the grant award letter.

—You must begin all activities that may proceed independent of minor rehabilitation activities within six (6) months of the date of the grant award letter.

2. Shelter Plus Care Program Components

Your award may be deselected if you do not meet the following timeliness standard: For Tenant-based Rental Assistance, for Sponsor-based Rental Assistance, and for Project-based without Rehabilitation Rental Assistance, you must begin providing the rental assistance to at least a majority of the awarded units within six (6) months of the date of the grant award letter.

IV. Selection

A. Review, Rating, and Conditional Selection

The same review, rating, and conditional selection process will be used for all proposed SHP/PH, SHP/Safe Havens and S+C projects. The factors described in the General Section of this NOFA together with all agency-specific factors will be used to assign points. To review and rate applications, expert panels may be used. In order to obtain certain expertise and outside points of view, including views from other Federal agencies, these panels may include persons not currently employed by HUD, HHS or VA. Only those projects passing threshold criteria will be rated. Paragraphs (1), (2), and (3) below describe the threshold reviews that will be conducted. Paragraph (4) describes the HUD-specific rating factors that will be applied to those projects requesting housing funds.

1. Applicant eligibility

The identity of each applicant submitting an application in response to this component of the collaborative NOFA will be reviewed to ensure that each such entity meets the eligibility requirements of the program for which it is seeking assistance. If it is determined that these standards are not met, the project will be rejected.

2. Project eligibility

Proposed projects submitted in response to this component of the collaborative NOFA will be reviewed to determine if they meet the following eligibility standards. If it is determined that the following standards are not met by a specific project or activity, the project or activity will be rejected or reduced.

(a) The activities being proposed must meet the eligibility requirements as specified in this notice. Please note that for the SHP/PH, SHP/Safe Havens and S+C programs, these requirements are more restrictive than defined by program statute and regulation. At least one of the activities for which assistance is requested must be determined eligible or the proposed project will be rejected from the competition.

(b) The population to be served must meet the eligibility requirements as specified in this notice. Please note that for SHP/PH, SHP/Safe Havens and the S+C programs, these requirements are more restrictive than defined by program statute and regulation.

(c) The project must be cost-effective and such costs must not deviate substantially from the norm in the locale for the kind of activity being proposed.

3. Compliance With Fair Housing and Civil Rights Laws

(a) All applicants and their subrecipients must comply with all Fair Housing and Civil Rights laws, statutes, regulations, and Executive Orders as enumerated in 24 CFR 5.105(a).

(b) If you, the applicant:

(i) Have been charged with a systemic violation of the Fair Housing Act alleging ongoing discrimination;

(ii) Are a defendant in a Fair Housing Act lawsuit filed by the Department of Justice alleging an on-going pattern or practice of discrimination; or,

(iii) Have received a letter of non-compliance findings, identifying on-going or systemic noncompliance, under Title VI of the Civil Rights Act, Section 504 of the Rehabilitation Act, or section 109 of the Housing and Community Development Act, and if the charge, lawsuit, or letter of findings has not been resolved to HUD's satisfaction before the application deadline stated in this NOFA, you may not apply for assistance under this NOFA. HUD will not rate and rank your application.

HUD's decision regarding whether a charge, lawsuit, or a letter of findings has been satisfactorily resolved will be based upon whether appropriate actions have been taken to address allegations of on-going discrimination in the policies or practices involved in the charge, lawsuit, or letter of findings. Examples of actions that may be taken prior to the application deadline to resolve the charge, lawsuit, or letter of findings, include but are not limited to:

(a) A voluntary compliance agreement signed by all parties in response to the letter of findings;

(b) A HUD-approved conciliation agreement signed by all parties;

(c) A consent order or consent decree; or

(d) A judicial ruling or a HUD Administrative Law Judge's decision that exonerates the respondent of any allegations of discrimination.

4. Rating Factors

The permanent housing section of the application will be scored using the following rating factors (total of 30 points):

a. Applicant Capacity. Up to 10 points will be awarded based on the project applicant's experience specifically in providing housing, especially for the population assisted by this NOFA. The points will also be based on the applicant's performance in administering housing activities, especially in serving the population to be assisted by this NOFA.

b. Timeliness. Up to 10 points will be based on the demonstrated ability of the applicant and project sponsor to execute the program in a timely manner. This includes the applicant and project sponsor's ability to achieve rapid project start-up (*e.g.* environmental review, site control, permitting, minor rehabilitation, and occupancy).

c. Project (Housing) Quality. Up to 10 points will be awarded based on the extent to which an applicant demonstrates how the housing is appropriate to the needs of the persons to be served. The application should demonstrate the following:

- How the type (*e.g.* apartments, group home) and scale (*e.g.* number of units, number of persons per unit) of the proposed housing will fit the needs of the participants.
- That the basic community amenities (*e.g.* medical facilities, grocery store, recreation facilities, schools, etc.) will readily be accessible to your clients.
- That the housing will be accessible to persons with disabilities in accordance with applicable laws.
- That services and treatment will be linked to permanent housing so that the target population will be sustained in that housing.
- That any innovative aspect, if included, of a proposed project is fully described and evidence of the unique nature of the project is demonstrated.
- The extent to which the project integrates program recipients into the community being served.

B. Action on Selected Applications

Selected applicants, including those conditionally selected, will be notified in writing. As necessary, conditionally selected applicants will subsequently be requested to submit additional project information, which may include documentation to show the project is financially feasible; documentation of firm commitments for cash match; documentation showing site control; information necessary for the performance of an environmental review, where applicable; and such other documentation as specified in writing to the applicant, that confirms or clarifies information provided in the application. Conditionally selected applicants will be notified of the deadline for submission of such information. If a conditionally selected applicant is unable to meet any conditions for fund award within the specified timeframe, those funds may be withdrawn and instead used to select the next highest ranked application(s) from the competition for which there are sufficient funds available.

V. Application Submission Requirements

A. Required Materials

The application provides the application materials, including the SF–424 and certifications that must be used in applying for homeless assistance under this notice. In addition to the required narratives, the items that you must submit as part of the application for funding are the following:

1. SF–424
2. Applicant Certification
4. Consolidated Plan Certification(s)
5. Continuum of Care Plan Certification
6. Special Projects Certifications-Discharge Policy and Mainstream Programs
7. Disclosure of Lobbying Activities

B. Certification Requirements

The application also contains certifications that the applicant will comply with fair housing and civil rights requirements and other Federal requirements, and (where applicable) that the proposed activities are consistent with the HUD-approved Consolidated Plan of the applicable State or unit of general local government, including the Analysis of Impediments to Fair Housing Choice and the Action Plan to address these

impediments. Projects funded under this NOFA will also coordinate with the regional Continuum of Care process and will provide a certification of consistency with the applicable Continuum of Care plan, if any. Projects funded under this NOFA shall operate in a fashion that does not deprive any individual of any right protected by the Fair Housing Act (42 U.S.C. 3601–19), section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 *et seq.*), Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d), section 109 of the Housing and Community Development Act of 1974 (42 U.S.C. 5301) or the Age Discrimination Act of 1974 (42 U.S.C. 6101).

VI. Corrections to Deficient Applications

After the application due date, HUD may not, consistent with its regulations in 24 CFR part 4, subpart B, consider any unsolicited information you, the applicant, may want to provide. HUD may contact you to clarify an item in your application or to correct technical deficiencies. HUD may not seek clarification of items or responses that improve the substantive quality of your response to any rating factors. In order not to unreasonably exclude applications from being rated and ranked, HUD may contact applicants to ensure proper completion of the application and will do so on a uniform basis for all applicants. Examples of curable (correctable) technical deficiencies include failure to submit the proper certifications or failure to submit an application that contains an original signature by an authorized official. In each case, HUD will notify you in writing by describing the clarification or technical deficiency. HUD will notify applicants by facsimile or by USPS, return receipt requested. Clarifications or corrections of technical deficiencies in accordance with the information provided by HUD must be submitted within 14 calendar days of the date of receipt of the HUD notification. (If the due date falls on a Saturday, Sunday, or Federal holiday, your correction must be received by HUD on the next day that is not a Saturday, Sunday or Federal holiday.) If the deficiency is not corrected within this time period, HUD will reject the application as incomplete, and it will not be considered for funding.

VII. Environmental, Local Resident Employment, and Relocation Requirements

A. Environmental Requirements

All assistance is subject to the National Environmental Policy Act and applicable related Federal environmental authorities. Section 208 of Pub. L. 106–377 (114 Stat. 1441, approved October 27, 2000) amended section 443 of the Stewart B. McKinney-Vento Homeless Assistance Act to provide that for purposes of environmental review, projects shall be treated as assistance for special projects that are subject to section 305(c) of the Multifamily Housing Property Disposition Reform Act of 1994, and shall be subject to HUD's regulations implementing that section. The effect of this provision is that environmental reviews for project activities are to be completed by responsible entities (States or units of general local government) in accordance with 24 CFR part 58, whether or not the applicant is itself a State or a unit of general local government. Applicants (such as PHAs or nonprofit organizations) that are not States or units of general local government must request the unit of general local government to perform the environmental review. This statutory provision supersedes those portions of 24 CFR 582.230 and 583.230 that provide for automatic HUD environmental review in the case of applications from such entities. With this exception, conditional selection of projects is subject to the environmental review requirements of 24 CFR 582.230 and 583.230 as applicable. Recipients may not commit or expend any assistance or nonfederal funds on project activities (other than those listed in 24 CFR 58.22(c), 58.34 or 58.35(b)) until HUD has approved a Request for Release of Funds and environmental certification from the responsible entity. The expenditure or commitment of assistance or nonfederal funds for such activities prior to this HUD approval may result in the denial of assistance for the project under consideration.

B. Local Resident Employment

To the extent that any housing assistance funded through this collaborative NOFA is used for housing rehabilitation (including reduction and abatement of lead-based paint hazards, but excluding routine maintenance, repair, and replacement), then it is subject to section 3 of the Housing and Urban Development Act of 1968, and the implementing regulations at 24 CFR part 135. Section 3, as amended, requires that economic opportunities generated by certain financial assistance for housing and community development programs shall, to the greatest extent feasible, be given to low- and very low-income persons, particularly those who are recipients of government assistance for housing, and to businesses that provide economic opportunities for these persons.

C. Relocation

The SHP and S+C programs are subject to the requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (URA). These requirements are explained in HUD Handbook 1378, Tenant Assistance, Relocation and Real Property Acquisition. Any person or family that moves, even temporarily, as a direct result of acquisition, rehabilitation or demolition for a project that is assisted through one of these programs (whether or not HUD funded the acquisition, rehabilitation or demolition) is entitled to relocation assistance. Displacement that results from leasing a unit in a structure may also trigger relocation requirements. Relocation assistance can be expensive. To avoid unnecessary costs, it is important to provide occupants with timely information notices, including a general information notice to be sent at the time the application is submitted to HUD. HUD Handbook 1378 contains guideform information notices. The HUD field office can provide a copy of the handbook and copies of appropriate information booklets to be provided to occupants. Accordingly, if the site is occupied, the applicant should contact the HUD field office in the planning stage to obtain advice, including help in estimating the cost of required relocation assistance.

VIII. Authority

The Supportive Housing Program is authorized by Title IV, Subtitle C, of the Stewart B. McKinney-Vento Homeless Assistance Act (McKinney-Vento Act), 42 U.S.C. 11381. Funds made available under this section of the collaborative NOFA for the Supportive Housing Program are subject to the program regulations at 24 CFR part 583. The funds are also subject to the requirements of this NOFA.

The Shelter Plus Care program is authorized by Title IV, Subtitle F, of the McKinney-Vento Act, 42 U.S.C. 11403. Funds made available under this section of the collaborative NOFA for the Shelter Plus Care program are subject to the program regulations at 24 CFR part 582. The funds are also subject to the requirements of this NOFA.

IX. Finding and Certifications

Environmental Impact

A Finding of No Significant Impact with respect to the environment has been made in accordance with the HUD regulations at 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332). The Finding of No Significant Impact is available for public inspection during regular business hours in the Office of the General Counsel, Regulations Division, Room 10276, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–0500.

APPENDIX I–HUD.—ELIGIBLE APPLICANTS AND ACTIVITIES

Elements	Supportive housing	Shelter plus care
Authorizing Legislation	Subtitle C of Title IV of the McKinney-Vento Homeless Assistance Act.	Subtitle F of Title IV of the McKinney-Vento Homeless Assistance Act.
Implementing Regulations	24 CFR part 583	24 CFR part 582.
Eligible Applicant(s)	• States • Units of general local government • Special purpose units of government such as Public housing agencies (PHAs). • Private nonprofit organizations • CMHCs that are public nonprofit organizations.	• States. • Units of general local government. • PHAs.
Eligible Components	• Permanent Housing for Persons with Disabilities. • Safe Havens	• Tenant-based. • Sponsor-based. • Project-based.
Eligible Activities [1] [2]	• Acquisition • Minor Rehabilitation • Leasing • Operating Costs • Administrative Costs (limited to 5% of the grant award).	• Rental assistance. • Costs of administering rental assistance (limited to 8% of the grant award).
Eligible Populations [2]	• Chronidcally Homeless Persons • Disabled Homeless Families	• Chronically Homeless Persons. • Disabled Homeless Families.
Term of Assistance	3 years	5 years.

[1] Homeless prevention activities are statutorily ineligible under these programs.
[2] Persons at risk of homelessness are statutorily ineligible for assistance under these programs.

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SECTION 3

HHS/SAMHSA SECTION

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Section 3: HHS/SAMHSA Section—Substance Abuse Treatment, Mental Health Services and Supportive Services—25 points

I. Overview

A. Purpose

The purpose of the substance abuse and mental health services component of this collaborative NOFA is to ensure that the target population receives, as part of a comprehensive system of services, the mental health and substance abuse treatment they need to achieve the highest level of recovery possible. Specific objectives are to reduce or eliminate symptoms, increase independence and community functioning, and avoid relapse. Recognizing the high prevalence of co-occurring mental health and substance abuse disorders, another objective is to improve the effectiveness of mental illness and substance abuse treatment by ensuring that the appropriate level of service integration is achieved. To achieve these objectives, an overall goal is to increase the reliance on mainstream programs for funding behavioral health services to the maximum extent possible.

Background: People who experience chronic homelessness tend to have disabling mental health and substance abuse problems. Recent estimates suggest that at least 40 percent have substance use disorders and 20 percent have serious mental illnesses. Often individuals have more than one of these conditions. An estimated 50 percent of adults with serious mental illnesses who are homeless also have a co-occurring substance use disorder. Among veterans who are homeless, one-third to nearly one-half have co-occurring mental and addictive disorders. These problems not only contribute to persons' risk for becoming homeless, but also to the difficulty they experience in overcoming it.

People who are chronically homeless require a broad range of services and supports that are coordinated with each other and linked to permanent housing. SAMHSA has identified evidence-based and promising practices that are effective in preventing and ending homelessness among people with serious mental illnesses and substance use disorders. These include: outreach and engagement, housing with appropriate supports, multidisciplinary treatment teams/intensive case management, integrated treatment for co-occurring disorders, motivational interventions, modified therapeutic communities, and self-help programs.

B. Eligibility

Eligible entities are States, political subdivisions of States, Indian tribes and tribal organizations, and public or private non-profit entities, including community-based and faith-based providers of homeless services, health care, housing and other closely linked services for persons experiencing chronic homelessness. The lead applicant need not be a direct provider of substance abuse treatment or mental health services.

In addition to meeting these criteria, SAMHSA requires that any agency that will be using SAMHSA funds to provide substance abuse or mental health services must be licensed and have been providing services for a minimum of two years prior to the date of the application. The reason for this is to ensure that there is minimal start-up time required in providing services to the target population by experienced providers.

For proof of two years experience and licensing, you must include copies of licenses for this period or a copy of your Articles of Incorporation as an appendix in your application. Examples are copies of an organization's prior and current year operator's licenses, *i.e.*, (1) *Issue Date:* 5/1/2001, *Expiration Date:* 4/30/2002, (2) *Issue Date:* 5/1/2002, *Expiration Date:* 4/30/2003.

II. Amount Allocated

Approximately $7 million is available in FY2003 for this component and approximately 10 awards will be made. Subject to the availability of future funds, grantees will receive additional funds in grant years 2 and 3 for substance abuse and mental health services on a declining basis: 100 percent for Grant Year 1; 70 percent for Grant Year 2; and 40 percent for Grant Year 3. To qualify for continuation funds, grantees are required to demonstrate that the difference in grant amounts in Grant Years 2 and 3 is being offset by increasing revenue from mainstream financing resources such as Medicaid, Block Grants, State general funds, local sources, etc. The purpose of this provision is to increase long-term reliance on mainstream programs and to improve program sustainability after termination of discretionary grant funds.

In order to promote successful continuation by attending to mainstream financing opportunities early, applicants must address the types of mainstream funding that will be sought, an assessment of the extent of eligibility among the target population, projections of potential revenues and discussion of the administrative actions that will be taken to capture the target revenue. Special attention should be paid to needed billing and collection mechanisms.

III. Program Description

A. Allowable Activities

Funds must be used to provide substance abuse treatment, mental health services, and supportive services that promote entry to and maintenance in permanent housing. Examples of allowable activities in each of these areas are the following:

- Street outreach and engagement
- Assertive community treatment/ intensive case management
- Supportive housing
- Substance abuse treatment including detox, residential treatment, intensive outpatient, and outpatient treatment
- Mental health services including treatment for trauma and post traumatic stress disorder
- Integrated/coordinated treatment for co-occurring disorders
- Motivational interventions
- Modified therapeutic communities
- Medications management
- Self-help programs
- Psychosocial rehabilitation
- Assistance in accessing income support and entitlement
- Supportive employment
- Discharge planning
- Parental skills training
- Child care and family support
- Transportation

Examples of how these services can be provided include the following:

- Strengthen or expand an existing program to include persons who are chronically homeless by providing street outreach and engagement.
- Provide treatment and services to persons participating in homeless programs.
- Provide treatment and supportive services to maintain persons in stable housing.
- Develop referral linkages with community service providers to create a "no wrong door" approach for accessing treatment and services.
- Enable participation in treatment and/or services by providing transportation or child care.
- Providing for the coordination efforts of partnering entities.
- Managing the implementation of the comprehensive approach.
- Developing a strategic plan for accessing mainstream programs and sustaining the initiative.
- Monitoring the evaluation of the comprehensive approach.
- Build linkages among substance abuse treatment providers and/or

mental health service providers, housing providers, and homeless service providers.

- Provide emergency funds to enable persons to remain housed, including purchase groceries or household supplies, pay utility bills, etc.
- Create sustainability of services by getting clients on Medicaid, Medicare, Supplemental Security Insurance (SSI) and Social Security Disability Insurance (SSDI). Using mainstream Federal, state and local resources (such as Mental Health Block Grant (MHBG), Substance Abuse Prevention and Treatment Block Grant (SAPTBG), Social Services Block Grant, Temporary Assistance for Needy Families (TANF) etc.) to fund services beyond this initiative.
- Train direct care providers and others in the system serving the target population about provision of substance abuse treatment and/or mental health services to persons who are homeless.

B. Funding Restrictions

SAMHSA funds may NOT be used to:

- Pay for housing (other than residential substance abuse treatment).
- Provide services to incarcerated populations (defined as those persons in jail, prison, detention facilities, or in custody where they are not free to move about in the community).
- Carry out syringe exchange programs, such as the purchase and distribution of syringes and/or needles.
- Pay for treatment of diseases other than substance abuse and mental health disorders; *e.g.*, SAMHSA funds may not be used to pay for pharmacologies for HIV antiretroviral therapy, STDs, TB and hepatitis B and C.

IV. Application Selection Process

A. Funding Criteria

Decisions to fund a SAMHSA grant are based on:

1. Threshold requirements.
2. Technical Merit.
3. Availability of funds.
4. Evidence of non-supplantation of funds.
5. Continued funding contingent on ability to fund services in the second and third years of this initiative through other resources such as Medicaid; Mental Health Block Grant (MHBG), Substance Abuse Prevention and Treatment Block Grant (SAPTBG).

B. Threshold Requirements

Applications will not be accepted for review by SAMHSA and will be returned for the following reasons:

1. The applicant organization is ineligible.

2. Proof of at least two years of service provision and licensure by the lead applicant is not attached.

C. Agency-Specific Review Criteria for Technical Merit

The determination of the technical merit of the substance abuse and mental health section of the application will be based on the quality, feasibility and comprehensiveness of the project narrative, described in the SAMHSA Section of the Application Kit. A maximum of 25 points can be earned for specific behavioral health criteria. For example, a perfect score for Section A will result in a rating of 10 points.

D. SAMHSA Review Criteria:

1. Substance Abuse Treatment and Mental Health Services (10 Points)

Points will be awarded based on the extent to which the substance abuse and mental health services array proposed for clients of the grant conforms to identified needs, is accessible, appropriately coordinated or integrated, and is evidence-based.

2. Sustainability (7 Points)

Points will be awarded based on the thoroughness and feasibility of the applicant's plan to obtain mainstream funding for the substance abuse and mental health services offered to clients in years 2 and 3 of the grant program. The assessment of readiness to identify appropriate mainstream sources and to pursue billing and collection activity will form an important predictor of the applicant's ability to obtain continuation grant funding by meeting mainstream financing goals described above.

3. Evaluation/Methodology (3 Points)

Points will be awarded based on the extent to which the proposed local evaluation will ensure objective measurement of progress toward achieving the goals and objectives of the grant. The criteria will also address the extent to which the proposed output and outcome data collection will accommodate CMHS and CSAT GPRA data reporting requirements. Special emphasis will be placed on the applicant's ability to identify and enroll clients in mainstream entitlement programs and collect mainstream reimbursements for substance abuse and mental health treatment services.

4. Project Management: Implementation Plan, Organization, Staff, Equipment/ Facilities, and Other Support (5 Points)

Points will be awarded based on the adequacy of resources dedicated to accomplishing the substance abuse and mental health objectives of the grant program. Resources include quantity and quality of proposed staffing, strength of implementation planning, and ability to leverage other behavioral health resources.

E. Evaluation Requirements

Applicants may allocate no more than 15 percent of grant funds to their local evaluation activities including collection of GPRA measures.

1. Government Performance and Results Act. The Government Performance and Results Act (GPRA) mandates accountability and performance-based management by Federal agencies, focusing on results or outcomes in evaluating effectiveness of Federal activities and on measuring progress toward achieving national goals and objectives. Grantees must comply with GPRA data collection and reporting requirements, including the collection of CSAT and CMHS Core Client Outcomes.

2. Local Evaluation. Grantees will be expected to develop a plan for evaluating their programs. At minimum, the local evaluations should include both process and outcome evaluations using GPRA client outcome measures and other measures as appropriate. Grantees should describe linkages to GPRA measures.

F. Post-Award Requirements

SAMHSA will provide post award support to grantees through technical assistance on mental health and substance abuse services. Grantees will be required to attend (and, thus must budget for) one jointly sponsored SAMHSA/HRSA technical assistance meeting in the first year of the grant, and one meeting in each of the remaining years. Each meeting will be two days. A minimum of three persons must attend, which can include housing, mental health, and substance abuse representatives. Consumers are encouraged to attend. These meetings will be held in the Baltimore/ Washington, DC area.

The applicant must notify the Single State Agency (SSA) within 30 days of receipt of an award. Notify the SSA for mental health for projects providing mental health services; the SSA for substance abuse for projects providing substance abuse treatment services; and the SSA for mental health and substance abuse if serving populations with co-occurring disorders.

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SECTION 4

HHS/HRSA SECTION

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Section 4: HHS/HRSA Section—Health Resources and Services Administration With a Focus on Primary Health—25 Points

I. Overview

A. Purpose

To increase the access of chronically homeless persons and homeless families with a disabled adult member to cost-effective and integrated primary health care services provided by existing programs and providers, as part of an effort to eradicate chronic homelessness and eliminate health disparities for chronically homeless people.

It is the intent of HRSA to continue to support health services to chronically homeless people and disabled homeless families in these areas/locations given the continued need for cost-effective, community-based primary care services. Therefore, the proposed projects must exclusively serve chronically homeless individuals and/or disabled homeless families as defined in this notice.

Funding will be awarded pursuant to section 330 of the Public Health Service Act.

B. Eligible Applicants

Primary Health Care Services: Applicants are limited to existing Health Center Grantees (including Health Care for the Homeless grantees) currently funded under section 330 of the Public Health Service Act. Applications should be submitted as a proposed supplemental grant and will be funded as such.

Applicants are limited to existing Health Centers, since funding for this initiative is coming from the Health Center funding line and consequently the requirements of section 330 of the PHS Act apply to the recipients of those funds. In addition, existing Health Center grantees receive certain privileges, including coverage under the Federal Tort Claims Act, ability to receive higher Medicare and Medicaid reimbursement rates, and reduced price pharmaceuticals. It would be inappropriate to provide these privileges to a new group of grantees who had not been approved through the extensive, comprehensive application process to achieve section 330 Health Center status.

II. Amount Allocated

Approximately $3 million will be available from HHS/HRSA as supplemental awards to existing section 330 health centers in FY 2003 to fund primary health care services. HHS/HRSA will not award more than $300,000 per project per year.

The awarding of FY 2003 HHS funds is contingent on passage of a permanent HHS appropriation for FY 2003. Subject to availability of appropriations, funds may be available for FY 2004 and FY 2005.

III. Program Description

Health Centers (HCs) are designed to provide accessible, affordable personal health care services to low-income individuals and families. HCs provide family-oriented primary and preventive health care services for people living in rural and urban medically underserved communities and for medically underserved populations. Specifically, HCs provide services that include: primary and preventive health care; outreach; dental care; essential ancillary services; mental health and substance abuse services; case management services; and enabling services such as transportation.

HCs exist in areas where economic, geographic, or cultural barriers limit access to primary health care for a substantial portion of the population, and they tailor services to the needs of the community. HCs demonstrate cost effective responsiveness, empower underserved communities and populations, reduce infant mortality rates, lower hospital admission rates and length of hospital stays for patients, lower patients' health costs, and provide care for specific conditions that meets or exceeds protocols for the general population.

IV. Funding Criteria

A. The applicant thoroughly describes the proposed program for the delivery of primary health care and related services to be provided to the target population.

B. The health care program is designed in a manner that is appropriate to meet the unique needs of homeless people in the proposed service area.

C. The applicant presents evidence of arrangements in place for the delivery of each of the required services. Required services include:

—Primary health care;
—Provision of or arrangements for emergency health services;
—Referral for inpatient hospitalization;
—Case management services;
—Outreach services;
—Entitlement eligibility assistance;
—Supplemental/additional services, including oral health services; and,
—Provision of or arrangements for accessing mental health and substance abuse services.

D. The applicant provides, for each service offered, information on:

—The location of services;
—The service setting (*e.g.*, clinic, van, shelter site);
—The arrangements in place to ensure the availability of services (*i.e.*, whether through direct provision by the applicant or provision through subcontract or referral agreement);
—Arrangements to guarantee access to the services; and,
—Continuity of care.

E. Signed letters of commitment or memoranda of understanding are included for all subcontractor and referral arrangements.

V. Application Selection Process

Only those applications that satisfy the threshold criteria will be rated. The threshold criteria are:

A. Applicants for HRSA funds must be a section 330 Health Center program. A copy of the FY 2002 Notice of Grant Award must accompany the request for HRSA funds.

B. Health centers applying for HRSA funds must not be designated as an exceptional/high risk grantee at the time of application. Note that HRSA may exclude from funding any Health Center which is significantly out of compliance with section 330 program expectations.

An application must be given a satisfactory rating in order to receive further consideration. Those applications that are determined to be acceptable will be then reviewed for the comprehensive approach.

If an application does not meet the aforementioned threshold criteria, the entire application will be rejected.

VI. Application Submission

Applicants should submit: (1) A copy of the most recent Notice of Grant Award document from the Health Center program; (2) a completed Public Health Service Application Form 5161–1, including budget pages and a Project Narrative as described below.

A. Project Narrative

The Project Narrative describes your project and your project's relationship to the primary applicant or other providers in this collaboration. It is made up of the following sections:

1. Project Summary (Points: 8)

The project summary is intended to be a brief synopsis of the proposed design of the primary care component of the collaborative initiative.

The applicant should summarize the need for health services in the target population and the organization's proposed response to that need. The following issues should be addressed.

a. Overview of the Population. (1) Provide a brief description of the target

population for this project and the nature of their health care needs.

(2) Describe any major issues or barriers to care faced by the target population.

b. Overview of the Organization. (1) Provide a brief history of the organization proposing to provide primary care and related services, including a discussion of the size and nature of the client population currently being served.

(2) Describe the experience of the organization in meeting the needs of chronically homeless persons.

c. Identify unique characteristics and significant accomplishments of the organization.

2. Project Plan (Points: 15)

a. Relationship of HC to other providers in this collaboration.

b. Identify how many people will be served and the number of projected encounters at full operational capacity at the proposed new collaborative program.

c. Describe any unique characteristics regarding the health care needs of persons to be served under this initiative.

d. Describe the proposed service delivery model and the services to be provided.

e. Describe the proposed staffing for the new collaborative program.

f. Provide evidence of arrangements in place for the delivery of each of the required services. *Required services include:*

—Primary health care;
—Provision of or arrangements for emergency health services;
—Referral for inpatient hospitalization;
—Case management services;
—Outreach services;
—Entitlement eligibility assistance;
—Supplemental/additional services, including oral health services; and,
—Coordination with other providers of services, including providers of mental health and substance abuse services.

g. For each service offered, provide information on:

—The location of services;
—The service setting (*e.g.*, clinic, van, shelter site, patient's residence);
—The arrangements in place to ensure the availability of services (*i.e* whether through direct provision by the applicant or provision through subcontract or referral agreement);
—Arrangements to guarantee access to the services;
—Continuity of care; and,
—Coordination of care with other providers involved in the collaboration.

3. Readiness (Points: 2)

a. Where appropriate, include agreement from site sponsor to allow applicant organization to provide services at specified location(s).

b. Services must be available within 90 days of the award of program funds.

B. Budget Narrative

1. *Describe the annual budget for years 1, 2, and 3 in terms of:*

1. The total resources required to achieve the goals and objectives of the new collaborative program;

2. The expectations regarding Federal grant support and maximization of non-grant revenue relative to the proposed plan. The applicant must demonstrate that the Federal funds will not supplant other funds, and must make maximum use of third party revenues, including Medicaid;

3. The total cost per client;

4. The total grant dollars per client,

5. One-time minor capital needs; and

6. Applicant should itemize the estimated value of in-kind resources, including equipment, rent, personnel, renovations and alterations, pharmaceuticals, *etc.*

VII. Post-Award Requirements

HRSA will provide post-award support to grantees through technical assistance on primary health care services. Grantees will be required to attend (and, thus must budget for) one jointly sponsored SAMHSA/HRSA technical assistance meeting in the first year of the grant, and one meeting in each of the remaining years. Each meeting will be two days. A minimum of two persons must attend. These meetings will be held in the Baltimore/Washington, DC area.

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SECTION 5

VA SECTION

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Section 5: VA Section—20 Points

I. Overview

Although funding will not be awarded directly to the recipient of the grant, funding is available for the VA facility that partners with the applicant. VA facilities can include medical centers or programs under the direction of medical centers including VA outpatient clinics. The applicant will be required to submit a plan that describes in detail how a collaborative relationship with VA will be created and sustained in an effort to provide services to chronically homeless veterans. The chronically homeless veterans to be served will be those veterans housed in or being provided services through the program developed by the collaborative initiative grant recipient and who meet the definition for homeless as put forth in this NOFA.

If it is anticipated that the project will not be serving veterans, the applicant will be asked to demonstrate why veterans will not be participating in the project. If it is anticipated that veterans will be served but it is unlikely a VA facility will be available to engage in partnering, the applicant will be asked to demonstrate other sources of providing substance abuse, mental health and primary care services for those chronically homeless veterans.

II. Amount Allocated

Up to $5.0 million will be made available for up to three years. Funds available for each project will be in an approximate amount equivalent to the proportionate yearly salary of full-time employees (FTE) to provide professional care or care-coordination/case management for chronically homeless veterans participating in the program and for FTE to assist in data collection and evaluation. Funding will be made available to the VA facility that enters into a collaborative relationship with the recipient of this grant.

III. Program Description

It is expected that these FTEs will provide necessary and appropriate care for chronically homeless veterans which can include but is not limited to: case management; direct medical care, mental health or substance abuse treatment; assistance with veterans benefits; vocational development; and housing referrals. The goal is to provide comprehensive, project- and community-linked substance abuse, mental health and primary care services for chronically homeless veterans. FTE assigned data evaluation duties will be responsible for data collection through participant interviews, tracking program participants and record keeping for the purposes of the program study.

IV. Application Selection Process

A. Review and Rating

The factors described in the General Section of this NOFA together with all agency-specific factors will be used to assign points.

To be eligible for the VA section of this NOFA, the application will undergo a VA threshold review prior to rating to ensure:

1. Forms, time and adequacy: application must be filed in the form prescribed by VA in the application process and within the time established in the NOFA;

2. Application eligibility: the applicant must be a non-profit or public entity, as described in the General Section of the NOFA;

3. Eligible population to be served: the population proposed to be served must be chronically homeless veterans. Homeless is defined in this NOFA. A veteran is a person who served in the active military, naval, or air service, and who was discharged or released under conditions other than dishonorable. Such veterans must also be enrolled in VA's health care system.

B. Rating Criteria

The applicant who intends to apply under this VA section of the Joint NOFA must submit a signed Memorandum of Agreement (one original and four copies) between the applicant and its partnering VA facility, and a Program Plan (one original and four copies). Much of the information that will be used to determine the ranking of application and ultimately the likelihood of funding will be from the Comprehensive Section of the application.

Applications will be rated and ranked on the criteria listed below.

1. *Need:* Up to 5 points will be awarded based on the applicant's demonstrated understanding of the needs of the chronically homeless veteran population proposed to be served in the specified area or community. Ratings will be made based on the extent to which applicants demonstrate:

a. Identified gaps in services for chronically homeless veterans and how the program will address, and if appropriate, fill those gaps; and

b. An understanding of the homeless population to be served and its unmet housing, substance abuse, mental health, and primary care needs.

2. *Plan:* Up to 10 points will be awarded based on the extent to which the application presents a clear, well-conceived, and thorough plan for assisting chronically homeless veterans. The plan should include, at a minimum:

a. A detailed discussion of the nature of the collaboration between VA and the other partners;

b. How the collaboration will be sustained for the benefit of chronically homeless veterans; and

c. How the collaboration will be linked on a short-term as well as long-term, strategic level with the total project conceptualization and design.

3. *Ability:* Up to 5 points will be awarded based on the extent to which those who will be involved in carrying out the project have experience in activities similar to those proposed in the application. This includes activities involving housing, the planning and delivery of substance abuse and mental health treatment and primary care as well as activities regarding the accessing and/or delivery of VA benefits, medical and mental health care, and other VA related services.

Any applicant scoring a zero in the Need, Plan, or Ability criteria of the VA section, or any applicant scoring less than 8 points (40%) for a total score on all VA criteria will be eliminated from the competition and will not be eligible for any part of this grant funding.

Projects that will not be serving veterans will not be required to complete these sections of the application. However, the applicant will be asked to demonstrate how it was determined that services for chronically homeless veterans are not needed for the project.

V. Application Submission

A. Required Materials

The application provides the application materials. In addition to the narratives, the applicant will be required to submit a Memorandum of Agreement with its partnering VA facility.

B. Memorandum of Agreement (MOA)

To be eligible for the VA section of this NOFA, the applicant must submit a Memorandum of Agreement in addition to the application materials. The collaborative relationship must be documented in a jointly signed Memorandum of Agreement between a local VA facility and the applicant of this grant specifically stating the terms of the agreement. At a minimum, the terms of the agreement should include:

1. Number of chronically homeless veterans expected to be served by the grant recipient and the extent and level of services that will be provided by the VA facility;

2. Process and outcome measures clearly delineated and linked to service delivery and responsibilities for collection, compilation, and reporting of these measures; and

3. How services provided by the FTE funded under this section will be integrally linked in a comprehensive fashion with the intent of the collaborative initiative grant recipient's project and the strategic plans of the project in an effort to break the cycle of homelessness.

[FR Doc. 03–1801 Filed 1–24–03; 8:45 am]
BILLING CODE 4210–29–P

Federal Register

Monday,
January 27, 2003

Part VI

Department of Defense

General Services Adminstration

National Aeronautics and Space Administration

48 CFR Parts 2, 10, et al.
Federal Acquisition Regulations; Interim and Final Rules

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 2, 10, 12, 13, 19, and 25

[FAC 2001–12; FAR Case 2002–026]

RIN 9000–AJ54

Federal Acquisition Regulation; Procurements for Defense Against or Recovery From Terrorism or Nuclear, Biological, Chemical or Radiological Attack

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Interim rule with request for comments.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on an interim rule amending the Federal Acquisition Regulation (FAR) to implement Sections 852 through 856 and Section 858 of the Homeland Security Act (Pub. L. 107–296). Those sections increase the amount of the micro-purchase threshold and, in certain situations, the simplified acquisition threshold and provide streamlined procedures for procurements of supplies or services by or for an executive agency that are to be used to facilitate defense against or recovery from terrorism or nuclear, biological, chemical, or radiological attack. The Act text covers solicitations issued during the one-year period starting on the date of enactment (November 25, 2002), but the Act does not become effective until 60 days after enactment (January 24, 2003).

DATES: *Effective Date:* January 24, 2003.

Comment Date: Interested parties should submit comments to the FAR Secretariat at the address shown below on or before March 28, 2003, to be considered in the formulation of a final rule.

ADDRESSES: Submit written comments to—General Services Administration, FAR Secretariat (MVA), 1800 F Street, NW., Room 4035, Attn: Ms. Laurie Duarte, Washington, DC 20405.

Submit electronic comments via the Internet to—*farcase.2002–026@gsa.gov.*

Please submit comments only and cite FAC 2001–12, FAR case 2002–026, in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact Ms. Victoria Moss, Procurement Analyst, at (202) 501–4764. Please cite FAC 2001–12, FAR case 2002–026.

SUPPLEMENTARY INFORMATION:

A. Background

This interim rule implements Sections 852 through 856 and Section 858 of the Homeland Security Act (Pub. L. 107–296)). These provisions, which are set forth in Title VIII, Subtitle F of the Act, provide Federal emergency procurement flexibilities.

Section 852 specifies that the authorities granted in the subtitle apply to acquisitions of supplies or services by or for an executive agency that, as determined by the head of the executive agency, are to be used to facilitate defense against or recovery from terrorism or nuclear, biological, chemical, or radiological attack, but only if a solicitation of offers for the procurement is issued before November 25, 2003.

Section 853 increases the simplified acquisition threshold to $200,000 ($300,000 for contracts awarded and performed outside the United States) for acquisitions referred to in section 852 that are carried out in support of a humanitarian or peacekeeping operation or a contingency operation. The definition of simplified acquisition threshold in FAR 2.101 has been revised to reflect this change. As further required by section 853, FAR 19.502–2(a) has been amended to increase the small business reservation to mirror these increased thresholds.

Section 854 increases the micro-purchase threshold to $7,500 for acquisitions referred to in section 852. To implement this change, the rule modifies (1) the definition of micro-purchase threshold at FAR 2.101, (2) guidance on the use of micro-purchase authority at FAR 13.201, and (3) coverage at FAR 19.502–1 addressing the applicability of set-aside requirements.

Section 855 allows agencies to treat acquisitions referred to in section 852 as commercial items and removes the $5,000,000 limitation for the Test Program for Certain Commercial Items for these acquisitions. FAR 12.102(f), addressing the applicability of commercial item policies, and FAR Subpart 13.5 on the use of the commercial items test authority, have been revised accordingly.

Section 856 provides for the use of streamlined acquisition authorities and procedures authorized by law for a procurement referred to in section 852 and waives the dollar limitations on sole source 8(a) acquisitions and HUBZone Sole Source awards for these acquisitions. Changes have been made at FAR 19.805–1 and 19.1306.

Section 858 calls for market research on an ongoing basis to identify effectively the capabilities, including the capabilities of small businesses and new entrants into Federal contracting, that are available in the marketplace for meeting the requirements of the executive agency in furtherance of defense against or recovery from terrorism or nuclear, biological, chemical, or radiological attack. This requirement is reflected in FAR 10.001.

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The changes may have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq*. The Councils prepared an Initial Regulatory Flexibility Analysis (IRFA), and it is summarized as follows:

The increased thresholds are limited to apply to acquisitions of supplies or services by or for an executive agency that are to be used to facilitate defense against or recovery from terrorism or nuclear, biological, chemical, or radiological attack. There are no data available on the number of procurements that will be eligible. We expect the increased thresholds to this limited class of procurements will apply to a very small number of small entities.

This interim rule does not impose any data collection requirements on small business concerns. The rule does not duplicate, overlap, or conflict with other relevant Federal rules. There are no significant alternatives to the interim rule that would accomplish the stated beneficial objective.

The FAR Secretariat has submitted a copy of the IRFA to the Chief Counsel for Advocacy of the Small Business Administration. Interested parties may obtain a copy from the FAR Secretariat. The Councils will consider comments from small entities concerning the affected FAR subparts in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C 601, *et seq.* (FAC 2001–12, FAR Case 2002–026), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the

FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

D. Determination to Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense (DoD), the Administrator of General Services (GSA), and the Administrator of the National Aeronautics and Space Administration (NASA) that urgent and compelling reasons exist to promulgate this interim rule without prior opportunity for public comment. This action is necessary because the FAR coverage implements Sections 852 through 856 and Section 858 of the Homeland Security Act (Pub. L. 107–296), signed on November 25, 2002, which provides for urgently needed authorities to be used in the fight against, and recovery from terrorism.

However, pursuant to Public Law 98–577 and FAR 1.501, the Councils will consider public comments received in response to this interim rule in the formation of the final rule.

List of Subjects in 48 CFR Parts 2, 10, 12, 13, 19, and 25

Government procurement.

Dated: January 16, 2003.

Al Matera,

Director, Acquisition Policy Division.

Federal Acquisition Circular

Federal Acquisition Circular (FAC) 2001–12 is issued under the authority of the Secretary of Defense, the Administrator of General Services, and the Administrator for the National Aeronautics and Space Adminstration.

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 2001–12 are effective January 24, 2003.

Dated: January 16, 2003.

Deidre A. Lee,

Director, Defense Procurement and Acquisition Policy.

Dated: January 16, 2003.

David A. Drabkin,

Deputy Associate Administrator, Office of Acquisition Policy, General Services Administration.

Dated: January 16, 2003.

Tom Luedtke,

Assistant Administrator for Procurement, National Aeronautics and Space Adminstration.

Therefore, DoD, GSA, and NASA amend 48 CFR parts 2, 10, 12, 13, 19, and 25 as set forth below:

1. The authority citation for 48 CFR parts 2, 10, 12, 13, 19, and 25 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 2—DEFINITIONS OF WORDS AND TERMS

2. Amend section 2.101 by adding, in alphabetical order, the definitions "Contingency operation" and "Humanitarian or peacekeeping operation"; and revising the definitions "Micro-purchase threshold" and "Simplified acquisition threshold" to read as follows:

2.101 Definitions.

* * * * *

Contingency operation (10 U.S.C. 101(a)(13)) means a military operation that—

(1) Is designated by the Secretary of Defense as an operation in which members of the armed forces are or may become involved in military actions, operations, or hostilities against an enemy of the United States or against an opposing military force; or

(2) Results in the call or order to, or retention on, active duty of members of the uniformed services under section 688, 12301(a), 12302, 12304, 12305, or 12406 of 10 U.S.C., chapter 15 of 10 U.S.C, or any other provision of law during a war or during a national emergency declared by the President or Congress.

* * * * *

Humanitarian or peacekeeping operation means a military operation in support of the provision of humanitarian or foreign disaster assistance or in support of a peacekeeping operation under chapter VI or VII of the Charter of the United Nations. The term does not include routine training, force rotation, or stationing (10 U.S.C. 2302(8) and 41 U.S.C. 259(d)).

* * * * *

Micro-purchase threshold means $2,500, except it means—

(1) $2,000 for construction subject to the Davis Bacon Act; and

(2) $7,500 for acquisitions of supplies or services that, as determined by the head of the agency, are to be used to facilitate defense against or recovery from terrorism (defined at Public Law 107–296, Sec. 2) or nuclear, biological, chemical, or radiological attack, as described in 13.201(g)(1)(i), except for construction subject to the Davis Bacon Act (Public Law 107–296, Sec. 854). The threshold is $15,000 for acquisitions by or for the Department of Defense as described in 13.201(g)(1)(ii) (Public Law 107–107, Sec. 836(a)(1)(A)).

* * * * *

Simplified acquisition threshold means $100,000, except that—

(1) In the case of any contract to be awarded and performed, or purchase to be made outside the United States in support of a contingency operation or a humanitarian or peacekeeping operation, the term means $200,000; or

(2) For acquisitions of supplies or services that, as determined by the head of the agency are to be used to facilitate defense against or recovery from terrorism (defined at Public Law 107–296, Sec. 2) or nuclear, biological, chemical, or radiological attack—

(i) For any agency, in support of a humanitarian or peacekeeping or a contingency operation if initiated by a solicitation issued from January 24, 2003, to November 24, 2003 (Public Law 107–296, Sec. 853(a)), the term means—

(A) $200,000 for any contract to be awarded and performed, or purchase to be made, inside the United States; and

(B) $300,000 for any contract to be awarded and performed, or purchase to be made, outside the United States.

(ii) By or for the Department of Defense in support of a contingency operation if award is made and funds are obligated on or before September 30, 2003 (Public Law 107–107, Sec. 836(a)(1)(B)), the term means—

(A) $250,000 for any contract to be awarded and performed, or purchase to be made, inside the United States; and

(B) $500,000 for any contract to be awarded and performed, or purchase to be made, outside the United States.

* * * * *

PART 10—MARKET RESEARCH

3. Amend section 10.001 by removing the word "and" at the end of paragraph (a)(2)(iii); and adding paragraph (a)(2)(v) to read as follows:

10.001 Policy.

(a) * * *

(2) * * *

(v) Agencies shall conduct market research on an ongoing basis, and take advantage to the maximum extent practicable of commercially available market research methods, to identify effectively the capabilities, including the capabilities of small businesses and new entrants into Federal contracting, that are available in the marketplace for meeting the requirements of the agency in furtherance of defense against or recovery from terrorism or nuclear, biological, chemical or radiological attack (Public Law 107–296, Sec. 858); and

* * * * *

PART 12—ACQUISITION OF COMMERCIAL ITEMS

4. Amend section 12.102 by revising paragraph (f) to read as follows:

12.102 Applicability.

* * * * *

(f)(1) Contracting officers may treat any acquisition of supplies or services that, as determined by the head of the agency, are to be used to facilitate defense against or recovery from terrorism or nuclear, biological, chemical, or radiological attack, as an acquisition of commercial items. This paragraph applies to solicitations issued by any agency from January 24, 2003, through November 24, 2003 (Public Law 107–296, Sec. 856).

(2) Acquisition of biotechnology supplies or services, for use to facilitate the defense against terrorism or biological attack against the United States, by or for the Department of Defense shall be considered as an acquisition of commercial items when award is made and funds are obligated on or before September 30, 2003 (Public Law 107–107, Sec. 836(a)(2)). The authority of this paragraph is in addition to and does not limit the authority of paragraph (f)(1) of this section. Nothing in this paragraph shall preclude a contracting officer from treating an acquisition described in this paragraph as one for a non-commercial item if a determination is made by the contracting officer that the purchase cannot be made at a fair and reasonable price using the policies of this part.

PART 13—SIMPLIFIED ACQUISITION PROCEDURES

5. Amend section 13.003 by revising paragraph (b)(1) to read as follows:

13.003 Policy.

* * * * *

(b)(1) Each acquisition of supplies or services that has an anticipated dollar value exceeding $2,500 ($7,500 for acquisitions as described in 13.201(g)(1)(i) and $15,000 for acquisitions as described in 13.201(g)(1)(ii)) and not exceeding $100,000 ($200,000 for acquisitions described in paragraph (2)(i) of the Simplified Acquisition Threshold definition at 2.101) is reserved exclusively for small business concerns and shall be set aside (*see* 19.000 and subpart 19.5). *See* 19.502–2 for exceptions.

* * * * *

6. Amend section 13.105 by revising the first sentence of paragraph (b) to read as follows:

13.105 Synopsis and posting requirements.

* * * * *

(b) When acquiring commercial items or supplies or services procured in accordance with 12.102(f)(1) and (f)(2), the contracting officer may use a combined synopsis and solicitation.

* * *

7. Amend section 13.201 by revising paragraph (g) to read as follows:

13.201 General.

* * * * *

(g)(1) For acquisitions of supplies or services that, as determined by the head of the agency, are to be used to facilitate defense against or recovery from terrorism or nuclear, biological, chemical, or radiological attack, the temporary micro-purchase thresholds are

(i) $7,500 for acquisitions by or for any agency if the award is made from January 24, 2003, through November 24, 2003; and

(ii) $15,000 for acquisitions by or for the Department of Defense if award is made and funds are obligated on or before September 30, 2003.

(2) Purchases using this authority must have a clear and direct relationship to defense against or recovery from terrorism or nuclear, biological, chemical, or radiological attack.

8. Amend section 13.500 in paragraph (a) by removing the period from the end of the first sentence and adding 1", except as provided in paragraph (e) of this section." in its place; and adding paragraph (e) to read as follows:

13.500 General.

* * * * *

(e) The $5,000,000 limitation provided in this subpart 13.5 does not apply to acquisitions of supplies or services using the authority provided by 12.102(f)(1). Notwithstanding the expiration of the test program specified in paragraph (d) of this section, authority to use simplified procedures under this paragraph applies to an acquisition when the solicitation is issued by any agency from January 24, 2003, through November 24, 2003.

9. Amend section 13.501 by—

a. Removing from paragraph (a)(1)(i) the phrase "paragraphs (a)(2)(i) and (a)(2)(ii)" and adding "paragraph (a)(2)" in its place;

b. Revising paragraph (a)(1)(ii);

c. In paragraph (a)(2)(ii) by adding "but not exceeding $10,000,000," after "$500,000,"; and

d. Adding paragraphs (a)(2)(iii) and (a)(2)(iv). The revised and added text reads as follows:

13.501 Special documentation requirements.

(a) * * *

(1) * * *

(ii) Prepare sole source justifications using the format at 6.303–2, modified to reflect an acquisition under the authority of the test program for commercial items (section 4202 of the Clinger-Cohen Act of 1996) or the authority of the Homeland Security Act (Public Law 107–296, section 856) as implemented at 12.102(f)(1).

(2) * * *

(iii) For a proposed contract exceeding $10,000,000 but not exceeding $50,000,000, the head of the procuring activity or the official described in 6.304(a)(3) or (a)(4) must approve the justification and approval. This authority is not delegable.

(iv) For a proposed contract exceeding $50,000,000 the official described in 6.304(a)(4) must approve the justification and approval. This authority is not delegable except as provided in 6.304(a)(4).

* * * * *

PART 19—SMALL BUSINESS PROGRAMS

10. Amend section 19.502–1 by revising paragraph (b) to read as follows:

19.502–1 Requirements for setting aside acquisitions.

* * * * *

(b) This requirement does not apply to purchases of $2,500 or less ($7,500 or less for acquisitions as described in 13.201(g)(1)(i) or $15,000 or less for acquisitions as described in 13.201(g)(1)(ii)), or purchases from required sources of supply under Part 8 (*e.g.*, Federal Prison Industries, Committee for Purchase From People Who are Blind or Severely Disabled, and Federal Supply Schedule contracts).

11. Amend section 19.502–2 by revising the first sentence of paragraph (a) to read as follows:

19.502–2 Total small business set-asides.

(a) Except for those acquisitions set aside for very small business concerns (*see* subpart 19.9), each acquisition of supplies or services that has an anticipated dollar value exceeding $2,500 ($7,500 for acquisitions as described in 13.201(g)(1)(i) or $15,000 for acquisitions as described in 13.201(g)(1)(ii)), but not over $100,000 ($200,000 for acquisitions described in paragraph (2)(i) of the Simplified Acquisition Threshold definition at 2.101), is automatically reserved exclusively for small business concerns and shall be set aside for small business unless the contracting officer

determines there is not a reasonable expectation of obtaining offers from two or more responsible small business concerns that are competitive in terms of market prices, quality, and delivery.

* * *

* * * * *

12. Amend section 19.805–1 in paragraph (b)(1) by removing from the end of the sentence "or"; in paragraph (b)(2) by removing the period at the end of the sentence and adding "; or" in its place; and adding paragraph (b)(3) to read as follows:

19.805–1 General.

(b) * * *

(3) The acquisition is conducted under the authority of the Homeland Security Act (Public Law 107–296) and—

(i) The acquisition is for supplies or services that, as determined by the head of the agency, are to be used to facilitate defense against or recovery from terrorism or nuclear, biological, chemical, or radiological attack;

(ii) The solicitation is issued during the period of January 24, 2003, through November 24, 2003; and

(iii) There is either an approved 13.501 justification for sole source acquisition, or an approved 6.303 justification using one of the authorities at 6.302–1, 6.302–2, 6.302–6, or 6.302–7.

* * * * *

13. Amend section 19.903 by removing from the end of paragraph (b)(2) "or"; redesignating paragraph (b)(3) as (b)(4); adding a new paragraph (b)(3); and by removing from newly designated paragraph (b)(4) "13.201(g)" and adding "13.201(g)(1)(ii)" in its place. The added text reads as follows:

19.903 Applicability.

* * * * *

(b) * * *

(3) Acquisitions of $7,500 or less for acquisitions of supplies or services that, as determined by the head of the agency, are to be used to facilitate defense against or recovery from terrorism or nuclear, biological, chemical, or radiological attack as described in 13.201(g)(1)(i); or

* * * * *

14. Amend section 19.1306 by revising the introductory text of paragraph (a)(2); and adding paragraph (c) to read as follows:

19.1306 HUBZone sole source awards.

(a) * * *

(2) Except as provided in paragraph (c) of this section, the anticipated price of the contract, including options, will not exceed—

* * * * *

(c) The contracting officer may award contracts exceeding the limits in paragraph (a)(2) of this section to HUBZone small business concerns on a sole source basis if the acquisition is conducted under the authority of the Homeland Security Act (Public Law 107–296, Sec. 856(b)) and—

(1) The acquisition is for supplies or services that, as determined by the head of the agency, are to be used to facilitate defense against or recovery from terrorism or nuclear, biological, chemical, or radiological attack;

(2) The solicitation is issued, during the period of January 24, 2003, through November 24, 2003; and

(3) There is either an approved 13.501 justification for sole source acquisition, or an approved 6.303 justification using one of the authorities at 6.302–1, 6.302–2, 6.302–6, or 6.302–7.

PART 25—FOREIGN ACQUISITION

15. Amend section 25.1101 by revising the introductory text of paragraph (a)(1) to read as follows:

25.1101 Acquisition of supplies.

* * * * *

(a)(1) Insert the clause at 52.225–1, Buy American Act—Supplies, in solicitations and contracts with a value exceeding $2,500 ($7,500 for acquisitions as described in 13.201(g)(1)(i) or $15,000 for acquisitions as described in 13.201(g)(1)(ii)) but not exceeding $25,000; and in solicitations and contracts with a value exceeding $25,000, if none of the clauses prescribed in paragraphs (b) and (c) of this section apply, except if—

* * * * *

16. Amend section 25.1103 by revising paragraph (a) to read as follows:

25.1103 Other provisions and clauses.

(a) *Restrictions on certain foreign purchases.* Insert the clause at 52.225–13, Restrictions on Certain Foreign Purchases, in solicitations and contracts with a value exceeding $2,500, $7,500 for acquisitions as described in 13.201(g)(1)(i), or $15,000 for acquisitions as described in 13.201(g)(1)(ii), unless an exception applies (*see* 25.701(a)(2)).

* * * * *

[FR Doc. 03–1687 Filed 1–24–03; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

Federal Acquisition Regulation; Small Entity Compliance Guide

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Small Entity Compliance Guide.

SUMMARY: This document is issued under the joint authority of the Secretary of Defense, the Administrator of General Services and the Administrator for the National Aeronautics and Space Administration. This *Small Entity Compliance Guide* has been prepared in accordance with Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121). It consists of a summary of the rule appearing in Federal Acquisition Circular (FAC) 2001–12 which amends the FAR. An asterisk (*) next to a rule indicates that a regulatory flexibility analysis has been prepared in accordance with 5 U.S.C. 604. Interested parties may obtain further information regarding these rules by referring to FAC 2001–12 which precedes this document. These documents are also available via the Internet at *http://www.arnet.gov/far.*

FOR FURTHER INFORMATION CONTACT: Laurie Duarte, FAR Secretariat, (202) 501–4225. For clarification of content, contact Ms. Victoria Moss, Procurement Analyst, General Services Administration, at (202) 501–4764.

Procurements for Defense Against or Recovery From Terrorism or Nuclear, Biological, Chemical or Radiological Attack (FAR Case 2002–026)

This interim rule revises the Federal Acquisition Regulation (FAR) in order to implement Sections 852 through 856 and Section 858 of the Homeland Security Act (Pub. L. 107–296). Those sections increase the amount of the micro-purchase threshold and the simplified acquisition threshold for procurements and provide streamlined procedures for acquisitions of supplies or services by or for an executive agency that, as determined by the head of the executive agency, are to be used to facilitate defense against or recovery from terrorism or nuclear, biological, chemical, or radiological attack. The

special increased thresholds and authorities under the Act apply to acquisitions resulting from solicitations issued before November 25, 2003.

Dated: January 16, 2003.

Al Matera,

Director, Acquisition Policy Division.

[FR Doc. 03–1688 Filed 1–24–03; 8:45 am]

BILLING CODE 6820–EP–P

Federal Register

Monday,
January 27, 2003

Part VII

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Part 31
Federal Acquisition Regulation; Reimbursement of Relocation Costs on a Lump-Sum Basis; Proposed Rule

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 31

Federal Acquisition Regulation; Reimbursement of Relocation Costs on a Lump-Sum Basis

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of public meeting.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) are sponsoring a public meeting to discuss revising FAR 31.205-35, Relocation costs, to permit contractors the option of claiming employee relocation costs based on actual costs or on an appropriate lump-sum basis. A notice requesting public comments on the matter was published in the **Federal Register** at 67 FR 65468, October 24, 2002. After reviewing the public comments that were submitted, the councils would like to explore further the views of interested parties. Copies of the nine public comments can be viewed or printed from *http://www.arnet.gov/far/ProposedRules/*. Should the Councils decide to draft a proposed rule, an additional 60-day public comment period will be provided.

DATES: The public meeting will be held on February 6, 2003, at 9 a.m.

ADDRESSES: The public meeting will be held in the Rachel Carson Room, Department of Interior, 1849 C Street, NW., Washington, DC. The Rachel Carson Room is in the basement, next to the cafeteria. Closest Metro access is from the Farragut West station.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC, 20405, at (202) 501–4755 for information pertaining to the notice. For clarification of content, contact Mr. Jeremy Olson, at (202) 501–3221. Please cite Reimbursement of Relocation Costs on a Lump-Sum Basis (Notice).

Dated: January 21, 2003.

Al Matera,

Director, Acquisition Policy Division.

[FR Doc. 03–1715 Filed 1–24–03; 8:45 am]

BILLING CODE 6820–EP–P

Federal Register

Monday,
January 27, 2003

Part VIII

Department of Homeland Security

6 CFR Chapter I and Part 5
Freedom of Information Act and Privacy Act Procedures; Interim Final Rule

6 CFR Part 5
Production or Disclosure of Official Information in Connection With Legal Proceedings; Interim Final Rule

6 CFR Part 7
Classified National Security Information; Interim Final Rule

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

6 CFR Chapter I and Part 5

Freedom of Information Act and Privacy Act Procedures

AGENCY: Office of the Secretary, Homeland Security.

ACTION: Interim final rule.

SUMMARY: This interim final rule establishes procedures for the public to obtain information from the Office of the Secretary, Department of Homeland Security, under the Freedom of Information Act and the Privacy Act.

DATES: This interim final rule is effective January 27, 2003. Written comments may be submitted by February 26, 2003.

ADDRESSES: Submit written comments (preferably an original and three copies) to Associate General Counsel (General Law), Department of Homeland Security, Washington, DC 20528.

FOR FURTHER INFORMATION CONTACT: D.E. Ogden, (202) 612–1951, not a toll free call.

SUPPLEMENTARY INFORMATION:

I. Background

On November 25, 2002, the President signed into law the Homeland Security Act (Pub. L. 107–296), which created the new Department of Homeland Security (DHS). Pursuant to the provisions of the Act, the new Department came into existence on January 24, 2003.

In order to establish procedures to facilitate public interaction with the DHS Office of the Secretary, DHS is issuing an initial series of proposed and interim final regulations.

II. The Interim Final Rule

This interim final rule establishes procedures for the DHS Office of the Secretary necessary to implement the Freedom of Information Act (5 U.S.C. 552) and the Privacy Act (5 U.S.C. 552a). Except to the extent a Department component has adopted separate guidance under FOIA or the Privacy Act, the provisions of this subpart shall to apply each component of the Department.

The Freedom of Information Act provides for the full disclosure of agency records and information to the public unless that information is exempted under clearly delineated statutory language. The Privacy Act serves to safeguard public interest in informational privacy by delineating the duties and responsibilities of federal agencies that collect, store, and disseminate personal information about individuals. The procedures established here ensure that the Department of Homeland Security fully satisfies its responsibility to the public to disclose departmental information while simultaneously safeguarding individual privacy.

The Privacy Act serves to balance the government's need to maintain information about individuals with the rights of individuals to be protected against unwarranted invasions of their privacy stemming from federal agencies' collection, maintenance, use, and disclosure of personal information about them. Agencies are required to issue regulations outlining the agency's rules and procedures for implementation of the Privacy Act and its provisions in the agency. This includes procedures on how individuals may request access to information about themselves, request amendment or correction of those records, and request an accounting of disclosures of their records by the Department.

III. Procedural Requirements

Because the DHS came into existence on January 24, 2003, it is necessary to promptly establish procedures to facilitate the interaction of the public with the Department. Furthermore, this Interim Final Rule generally parallels the procedures currently used by other agencies to implement the Freedom of Information Act and the Privacy Act. Accordingly the Department has determined that notice and public procedure are impracticable, unnecessary and contrary to the public interest pursuant to 5 U.S.C. 553(b)(B). For the same reasons, the Department has determined that this interim rule should be issued without a delayed effective date pursuant to 5 U.S.C. 553 (d)(3).

Because no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act (5 U.S.C. Chapter 6) do not apply. It has been determined that this rulemaking is not a significant regulatory action for the purposes of Executive Order 12866. Accordingly, a regulatory impact analysis is not required.

List of Subjects in 6 CFR Part 5

Classified information, Freedom of information, Privacy.

Authority and Issuance

For the reasons set forth above, the Department of Homeland Security establishes 6 CFR Chapter I in new Title 6—Homeland Security, consisting at this time of part 5 to read as set forth below.

Dated: January 24, 2003.

Tom Ridge,

Secretary of Homeland Security.

Title 6—Homeland Security

CHAPTER I—DEPARTMENT OF HOMELAND SECURITY, OFFICE OF THE SECRETARY

PART 5—DISCLOSURE OF RECORDS AND INFORMATION

Subpart A—Freedom of Information Act

Sec.

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Appendix A to Part 5—FOIA/Privacy Act Offices of the Department of Homeland Security

Appendix B to Part 5—Public Reading Rooms of the Department of Homeland Security

Authority: Pub. L. 107–296, 116 Stat. 2135; (6 U.S.C. 101 et seq.); 5 U.S.C. 301. Subpart A also issued under 5 U.S.C. 552. Subpart B also issued under 5 U.S.C. 552a.

Subpart A—Freedom of Information Act

§ 5.1 General provisions.

(a)(1) This subpart A contains the rules that the Department of Homeland Security (Department) follows in processing requests for records under the Freedom of Information Act (FOIA) (5 U.S.C. 552). These rules should be read together with the FOIA, which provides additional information about access to records maintained by the Department. Requests made by individuals for records about themselves under the Privacy Act of 1974 (5 U.S.C. 552a), which are processed under subpart B of this part, are processed under this subpart also. Information routinely provided to the public as part of a regular Department activity (for example, press releases issued by the Assistant Secretary for Public Affairs may be provided to the public without following this subpart).

(2) The provisions established by this subpart shall apply to all Department components that are transferred to the Department. Except to the extent a Department component has adopted separate guidance under FOIA, the provisions of this subpart shall apply to each component of the Department. Departmental components may issue their own guidance under this subpart pursuant to approval by the Department.

(b) As used in this subpart, component means each separate bureau, office, board, division, commission, service, or administration of the Department.

§ 5.2 Public reading rooms.

(a) Records that are required to be maintained by the Department in a public reading room will be made available electronically at *www.dhs.gov/foia*. Each Department component will be responsible for determining which of the records it generates are required to be made available and to make those records available either in its own reading room or in the Department's central reading room. Each component shall maintain and make available for public inspection and copying a current subject-matter index of its reading room records. Each index shall be updated regularly, at least quarterly, with respect to newly included records.

(b) The Department components maintain public reading rooms or areas at the locations listed below:

(1) Animal and Plant Health Inspection Service Library, 4700 River Road, Riverdale, MD 20737–1232;

(2) Plum Island Animal Disease Center, the APHIS address above or, USDA–ARS, 5601 Sunnyside Avenue, Building 1, Room 2248, Beltsville, MD 20705–5128;

(3) Critical Infrastructure Assurance Office (A former office of the Bureau of Industry and Security) does not maintain a conventional public reading room. Records that are required to be in the public reading room are available electronically at *http://www.bis.doc.gov/FOIA/Default.htm;*

(4) FIRESTAT (formerly the Integrated Hazard Information System of the National Oceanic and Atmospheric Administration), NOAA Public Reference Facility, 1305 East-West Highway (SSMC4), Room 8627, Silver Spring, MD 20910;

(5) National Communication Service (a former component of the Defense Information Systems Agency) does not maintain a conventional public reading room. Records that are required to be in the public reading room are available electronically at *http://disa.mil/gc/foia/foia.html;*

(6) The address for each component and program listed below is: U.S. Department of Energy; 1000 Independence Avenue, SW., Washington, DC 20585:

(i) Energy Assurance Office;

(ii) Environmental Measurements Laboratory;

(iii) Nuclear Incident Response Team;

(iv) The chemical and biological national security and supporting programs and activities of the non-proliferation and verification research and development program;

(v) The life sciences activities related to microbial pathogens of Biological and Environmental Research Program;

(vi) The nuclear smuggling programs and activities within the proliferation detection program of the non-proliferation and verification research and development program;

(vii) The nuclear assessment program and activities of the assessment, detection, and cooperation program of the international materials protection and cooperation program, and the advanced scientific computing research program and activities at Lawrence Livermore National Laboratory; and

(viii) The National Infrastructure Simulation and Analysis Center;

(7) The address for each component and program listed below is: Freedom of Information Act Officer at: Department of Health and Human Services, Freedom of Information Officer, Room 645–F, Hubert H. Humphrey Building,. Independence Avenue, SW., Washington, DC 20201:

(i) Metropolitan Medical Response System;

(ii) National Disaster Medical System;

(8) Office of Emergency Preparedness please contact the Strategic National Stockpile Centers for Disease Control and Agency for Toxic Substances and Disease Registry, 1600 Clifton Road, NE., Room 4103, Building 1, Atlanta, GA 30333;

(9) Immigration and Naturalization Service, 111 Massachusetts Avenue, NW., 2nd Floor, ULLICO Building, Washington, DC 20536;

(10) For the National Infrastructure Protection Center, the National Domestic Preparedness Office, and the Domestic Emergency Support Team: Federal Bureau of Investigation, 935 Pennsylvania Avenue, NW., Department of Justice, Washington, DC 20535–0001;

(11) Office of Domestic Preparedness, U.S. Department of Justice, Office of Justice Programs, 810 7th Street, NW., Room 5430, Washington, DC 20531;

(12) Visa Office, Department of State, 2201 C Street, NW., Washington, DC 20520;

(13) Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591;

(14) Transportation Security Administration, 400 Seventh Street, SW., Washington, DC 20590;

(15) United States Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593–0001 (for district offices, consult your phone book);

(16) The Federal Law Enforcement Training Center does not maintain a conventional public reading room. Records that are required to be in the public reading room are available electronically at http://www.fletc.gov/irm/foia/readingroom.htm;

(17) U.S. Customs Service, Freedom of Information Request, 1300 Pennsylvania Avenue, NW., Mint Annex, Washington, DC 20229–0001 (for a list of field office reading room locations please consult 19 CFR 103.1);

(18) U.S. Secret Service, Main Treasury, Freedom of Information Request, 950 H Street, NW., Suite 3000, Washington, DC;

(19) Federal Emergency Management Agency, Federal Center Plaza, 500 C Street, SW., Room 840, Washington, DC 20472 (for regional offices, consult your phone book);

(20) For the Federal Computer Incident Response Center and the Federal Protective Service: Central Office, GSA Headquarters, 1800 F Street, NW (CAI), Washington, DC 20405 (for regional offices, consult the phone book);

(c) Components shall also make reading room records created by the Department on or after November 1, 1996, available electronically via the component web-site. This includes each component's index of its reading room

records, which will indicate which records are available electronically.

§ 5.3 Requirements for making requests.

(a) *How made and addressed.* You may make a request for records of the Department by writing directly to the Department component that maintains those records. For additional information about the FOIA, you may refer directly to the statute. If you are making a request for records about yourself, see § 5.21(d) for additional requirements. If you are making a request for records about another individual, either a written authorization signed by that individual permitting disclosure of those records to you or proof that that individual is deceased (for example, a copy of a death certificate or an obituary) must be submitted. Your request should be sent to the component's FOIA office at the address listed in appendix A to part 5. In most cases, your FOIA request should be sent to a component's central FOIA office. (The functions of each component are summarized elsewhere in this title and in the description of the Department and its components in the "United States Government Manual," which is issued annually and is available in most libraries, as well as for sale from the Government Printing Office's Superintendent of Documents. This manual also can be accessed electronically at the Government Printing Office's World Wide Web site (which can be found at *http://www.access.gpo.gov/su_docs*).) If you cannot determine where within the Department to send your request, you may send it to the Departmental Disclosure Officer, Department of Homeland Security, Washington, DC 20528. That office will forward your request to the component(s) it believes most likely to have the records that you want. Your request will be considered received as of the date it is received by the proper component's FOIA office. For the quickest possible handling, you should mark both your request letter and the envelope "Freedom of Information Act Request."

(b) *Description of records sought.* You must describe the records that you seek in enough detail to enable Department personnel to locate them with a reasonable amount of effort. Whenever possible, your request should include specific information about each record sought, such as the date, title or name, author, recipient, and subject matter of the record. If known, you should include any file designations or descriptions for the records that you want. As a general rule, the more specific you are about the records or type of records that you want, the more likely the Department will be able to locate those records in response to your request. If a component determines that your request does not reasonably describe records, it shall tell you either what additional information is needed or why your request is otherwise insufficient. The component also shall give you an opportunity to discuss your request so that you may modify it to meet the requirements of this section. If your request does not reasonably describe the records you seek, the agency's response to your request may be delayed.

(c) *Agreement to pay fees.* If you make a FOIA request, it shall be considered a firm commitment by you to pay all applicable fees charged under § 5.11 up to $ 25.00, unless you seek a waiver of fees. In making your FOIA request, please indicate whether you are willing to pay for the request or desire a waiver. The component responsible for responding to your request ordinarily will confirm this commitment in an acknowledgement letter. When making a request, you may specify a willingness to pay a greater or lesser amount. If you are seeking a waiver of fees you must provide a justification for your fee waiver request in accordance with the requirements of § 5.11(k). If your request for a fee waiver is denied, the component will notify you of that decision and will request an agreement from you to pay fees up to $25, or a greater or lesser amount specified by you. Your request shall not be considered received and further work shall not be done on it until you agree to pay fees. If you do not provide a firm commitment to pay the anticipated fee within the time period specified by the component, the request will be administratively closed.

§ 5.4 Responsibility for responding to requests.

(a) *In general.* Except as stated in paragraphs (c), (d), and (e) of this section, the component that first receives a request for a record and has possession of that record is the component responsible for responding to the request. In determining which records are responsive to a request, a component ordinarily will include only records in its possession as of the date the component begins its search for them. If any other date is used, the component shall inform the requester of that date.

(b) *Authority to grant or deny requests.* The head of a component, or the component head's designee, is authorized to grant or deny any request for a record of that component.

(c) *Consultations and referrals.* When a component receives a request for a record in its possession, it shall determine whether another component, or another agency of the Federal Government, is better able to determine whether the record is exempt from disclosure under the FOIA and, if so, whether it should be disclosed as a matter of administrative discretion. If the receiving component determines that it is best able to process the record in response to the request, then it shall do so. If the receiving component determines that it is not best able to process the record, then it shall either:

(1) Respond to the request regarding that record, after consulting with the component or agency best able to determine whether to disclose it and with any other component or agency that has a substantial interest in it; or

(2) Refer the responsibility for responding to the request regarding that record to the component best able to determine whether to disclose it, or to another agency that originated the record (but only if that agency is subject to the FOIA). Ordinarily, the component or agency that originated a record will be presumed to be best able to determine whether to disclose it.

(d) *Law enforcement information.* Whenever a request is made for a record containing information that relates to an investigation of a possible violation of law and was originated by another component or agency, the receiving component shall either refer the responsibility for responding to the request regarding that information to that other component or agency or consult with that other component or agency.

(e) *Classified information.* Whenever a request is made for a record containing information that has been classified, or may be appropriate for classification, by another component or agency under Executive Order 12958 or any other executive order concerning the classification of records, the receiving component shall refer the responsibility for responding to the request regarding that information to the component or agency that classified the information, or which should consider the information for classification, or which has the primary interest in it, as appropriate. Whenever a record contains information that has been derivatively classified by a component because it contains information classified by another component or agency, the component shall refer the responsibility for responding to the request regarding that information to the component or agency that classified the underlying information.

(f) *Notice of referral.* Whenever a component refers all or any part of the responsibility for responding to a request to another component or agency, it ordinarily shall notify the requester of the referral and inform the requester of the name of each component or agency to which the request has been referred and of the part of the request that has been referred.

(g) *Timing of responses to consultations and referrals.* All consultations and referrals will be handled according to the date the FOIA request initially was received by the first component or agency, not any later date.

(h) *Agreements regarding consultations and referrals.* Components may make agreements with other components or agencies to eliminate the need for consultations or referrals for particular types of records.

§ 5.5 Timing of responses to requests.

(a) *In general.* Components ordinarily shall respond to requests according to their order of receipt.

(b) *Multitrack processing.* (1) A component may use two or more processing tracks by distinguishing between simple and more complex requests based on the amount of work and/or time needed to process the request, including through limits based on the number of pages involved. If a component does so, it shall advise requesters in its slower track(s) of the limits of its faster track(s).

(2) A component using multitrack processing may provide requesters in its slower track(s) with an opportunity to limit the scope of their requests in order to qualify for faster processing within the specified limits of the component's faster track(s). A component doing so will contact the requester either by telephone or by letter, whichever is more efficient in each case.

(c) *Unusual circumstances.* (1) Where the statutory time limits for processing a request cannot be met because of "unusual circumstances," as defined in the FOIA, and the component determines to extend the time limits on that basis, the component shall as soon as practicable notify the requester in writing of the unusual circumstances and of the date by which processing of the request can be expected to be completed. Where the extension is for more than ten working days, the component shall provide the requester with an opportunity either to modify the request so that it may be processed within the time limits or to arrange an alternative time period with the component for processing the request or a modified request.

(2) Where a component reasonably believes that multiple requests submitted by a requester, or by a group of requesters acting in concert, constitute a single request that would otherwise involve unusual circumstances, and the requests involve clearly related matters, they may be aggregated. Multiple requests involving unrelated matters will not be aggregated.

(d) *Expedited processing.* (1) Requests and appeals will be taken out of order and given expedited treatment whenever it is determined that they involve:

(i) Circumstances in which the lack of expedited treatment could reasonably be expected to pose an imminent threat to the life or physical safety of an individual;

(ii) An urgency to inform the public about an actual or alleged federal government activity, if made by a person primarily engaged in disseminating information.

(2) A request for expedited processing may be made at the time of the initial request for records or at any later time. A request for expedited processing must be submitted to the component that maintains the record requested. Requests based on the categories in paragraphs (d)(1)(i), (ii), and (iii) of this section must be submitted to the component that maintains the records requested.

(3) A requester who seeks expedited processing must submit a statement, certified to be true and correct to the best of that person's knowledge and belief, explaining in detail the basis for requesting expedited processing. For example, a requester within the category in paragraph (d)(1)(ii) of this section, if not a full-time member of the news media, must establish that he or she is a person whose main professional activity or occupation is information dissemination, though it need not be his or her sole occupation. A requester within the category in paragraph (d)(1)(ii) of this section also must establish a particular urgency to inform the public about the government activity involved in the request, beyond the public's right to know about government activity generally. The formality of certification may be waived as a matter of administrative discretion.

(4) Within ten calendar days of its receipt of a request for expedited processing, the proper component shall decide whether to grant it and shall notify the requester of the decision. If a request for expedited treatment is granted, the request shall be given priority and shall be processed as soon as practicable. If a request for expedited processing is denied, any appeal of that decision shall be acted on expeditiously.

§ 5.6 Responses to requests.

(a) *Acknowledgements of requests.* On receipt of a request, a component ordinarily shall send an acknowledgement letter to the requester which shall confirm the requester's agreement to pay fees under § 5.3(c) and provide an assigned request number for further reference.

(b) *Grants of requests.* Ordinarily, a component shall have twenty business days from when a request is received to determine whether to grant or deny the request. Once a component makes a determination to grant a request in whole or in part, it shall notify the requester in writing. The component shall inform the requester in the notice of any fee charged under § 5.11 and shall disclose records to the requester promptly on payment of any applicable fee. Records disclosed in part shall be marked or annotated to show the amount of information deleted unless doing so would harm an interest protected by an applicable exemption. The location of the information deleted also shall be indicated on the record, if technically feasible.

(c) *Adverse determinations of requests.* A component making an adverse determination denying a request in any respect shall notify the requester of that determination in writing. Adverse determinations, or denials of requests, consist of: A determination to withhold any requested record in whole or in part; a determination that a requested record does not exist or cannot be located; a determination that a record is not readily reproducible in the form or format sought by the requester; a determination that what has been requested is not a record subject to the FOIA; a determination on any disputed fee matter, including a denial of a request for a fee waiver; and a denial of a request for expedited processing. The denial letter shall be signed by the head of the component, or the component head's designee, and shall include:

(1) The name and title or position of the person responsible for the denial;

(2) A brief statement of the reason(s) for the denial, including any FOIA exemption applied by the component in denying the request;

(3) An estimate of the volume of records or information withheld, in number of pages or in some other reasonable form of estimation. This estimate does not need to be provided if the volume is otherwise indicated through deletions on records disclosed in part, or if providing an estimate

would harm an interest protected by an applicable exemption; and

(4) A statement that the denial may be appealed under § 5.9(a) and a description of the requirements of § 5.9(a).

§ 5.7 Classified information.

In processing a request for information that is classified under Executive Order 12958 (3 CFR, 1996 Comp., p. 333) or any other executive order, the originating component shall review the information to determine whether it should remain classified. Information determined to no longer require classification shall not be withheld on the basis of Exemption 1 of the FOIA. On receipt of any appeal involving classified information, the Associate General Counsel (General Law) shall take appropriate action to ensure compliance with Part 7 of this title.

§ 5.8 Business information.

(a) *In general.* Business information obtained by the Department from a submitter will be disclosed under the FOIA, if otherwise allowable, only under this section.

(b) *Definitions.* For purposes of this section:

(1) Business information means commercial or financial information obtained by the Department from a submitter that may be protected from disclosure under Exemption 4 of the FOIA.

(2) Submitter means any person or entity from whom the Department obtains business information, directly or indirectly. The term includes, but is not limited to, corporations; state, local, and tribal governments; and foreign governments.

(c) *Designation of business information.* A submitter of business information will use good-faith efforts to designate, by appropriate markings, either at the time of submission or at a reasonable time thereafter, any portions of its submission that it considers to be protected from disclosure under Exemption 4. These designations will expire ten years after the date of the submission unless the submitter requests, and provides justification for, a longer designation period.

(d) *Notice to submitters.* A component shall provide a submitter with prompt written notice of a FOIA request or administrative appeal that seeks its business information wherever required under paragraph (e) of this section, except as provided in paragraph (h) of this section, in order to give the submitter an opportunity to object to disclosure of any specified portion of that information under paragraph (f) of this section. The notice shall either describe the business information requested or include copies of the requested records or record portions containing the information. When notification of a voluminous number of submitters is required, notification may be made by posting or publishing the notice in a place reasonably likely to accomplish it.

(e) *Where notice is required.* Notice shall be given to a submitter wherever:

(1) The information has been designated in good faith by the submitter as information considered protected from disclosure under Exemption 4; or

(2) The component has reason to believe that the information may be protected from disclosure under Exemption 4.

(f) *Opportunity to object to disclosure.* A component will allow a submitter a reasonable time to respond to the notice described in paragraph (d) of this section and will specify that time period within the notice. If a submitter has any objection to disclosure, it is required to submit a detailed written statement. The statement must specify all grounds for withholding any portion of the information under any exemption of the FOIA and, in the case of Exemption 4, it must show why the information is a trade secret or commercial or financial information that is privileged or confidential. In the event that a submitter fails to respond to the notice within the time specified in it, the submitter will be considered to have no objection to disclosure of the information. Information provided by the submitter that is not received by the component until after its disclosure decision has been made shall not be considered by the component. Information provided by a submitter under this paragraph may itself be subject to disclosure under the FOIA.

(g) *Notice of intent to disclose.* A component shall consider a submitter's objections and specific grounds for nondisclosure in deciding whether to disclose business information. Whenever a component decides to disclose business information over the objection of a submitter, the component shall give the submitter written notice, which shall include:

(1) A statement of the reason(s) why each of the submitter's disclosure objections was not sustained;

(2) A description of the business information to be disclosed; and

(3) A specified disclosure date, which shall be a reasonable time subsequent to the notice.

(h) *Exceptions to notice requirements.* The notice requirements of paragraphs (d) and (g) of this section shall not apply if:

(1) The component determines that the information should not be disclosed pursuant to exemption four and/or any other exemption of the FOIA;

(2) The information lawfully has been published or has been officially made available to the public;

(3) Disclosure of the information is required by statute (other than the FOIA) or by a regulation issued in accordance with the requirements of Executive Order 12600 (3 CFR, 1988 Comp., p. 235); or

(4) The designation made by the submitter under paragraph (c) of this section appears obviously frivolous, except that in such a case the component shall, within a reasonable time prior to a specified disclosure date, give the submitter written notice of any final decision to disclose the information.

(i) *Notice of FOIA lawsuit.* Whenever a requester files a lawsuit seeking to compel the disclosure of business information, the component shall promptly notify the submitter.

(j) *Corresponding notice to requesters.* Whenever a component provides a submitter with notice and an opportunity to object to disclosure under paragraph (d) of this section, the component shall also notify the requester(s). Whenever a component notifies a submitter of its intent to disclose requested information under paragraph (g) of this section, the component shall also notify the requester(s). Whenever a submitter files a lawsuit seeking to prevent the disclosure of business information, the component shall notify the requester(s).

§ 5.9 Appeals.

(a) *Appeals of adverse determinations.* (1) If you are dissatisfied with a component's response to your request, you may appeal an adverse determination denying your request, in any respect, to the Associate General Counsel (General Law), Department of Homeland Security, Washington, DC 20528. You must make your appeal in writing and it must be received by the Associate General Counsel (General Law) within 60 days of the date of the letter denying your request. Your appeal letter may include as much or as little related information as you wish, as long as it clearly identifies the component determination (including the assigned request number, if known) that you are appealing. For the quickest possible handling, you should mark your appeal

letter and the envelope "Freedom of Information Act Appeal."

(2) An adverse determination by the Associate General Counsel (General Law) will be the final action of the Department; and

(3) An appeal ordinarily will not be acted on if the request becomes a matter of FOIA litigation.

(b) *Responses to appeals.* The decision on your appeal will be made in writing. A decision affirming an adverse determination in whole or in part shall contain a statement of the reason(s) for the affirmance, including any FOIA exemption(s) applied, and will inform you of the FOIA provisions for court review of the decision. If the adverse determination is reversed or modified on appeal, in whole or in part, you will be notified in a written decision and your request will be reprocessed in accordance with that appeal decision.

(c) *When appeal is required.* If you wish to seek review by a court of any adverse determination, you must first appeal it under this section.

§ 5.10 Preservation of records.

Each component shall preserve all correspondence pertaining to the requests that it receives under this subpart, as well as copies of all requested records, until disposition or destruction is authorized by title 44 of the United States Code or the National Archives and Records Administration's General Records Schedule 14. Records will not be disposed of while they are the subject of a pending request, appeal, or lawsuit under the FOIA.

§ 5.11 Fees.

(a) *In general.* Components shall charge for processing requests under the FOIA in accordance with paragraph (c) of this section, except where fees are limited under paragraph (d) of this section or where a waiver or reduction of fees is granted under paragraph (k) of this section. A component ordinarily shall collect all applicable fees before sending copies of requested records to a requester. Requesters must pay fees by check or money order made payable to the Treasury of the United States.

(b) *Definitions.* For purposes of this section:

(1) Commercial use request means a request from or on behalf of a person who seeks information for a use or purpose that furthers his or her commercial, trade, or profit interests, which can include furthering those interests through litigation. Components shall determine, whenever reasonably possible, the use to which a requester will put the requested records. When it appears that the requester will put the records to a commercial use, either because of the nature of the request itself or because a component has reasonable cause to doubt a requester's stated use, the component shall provide the requester a reasonable opportunity to submit further clarification.

(2) Direct costs means those expenses that an agency actually incurs in searching for and duplicating (and, in the case of commercial use requests, reviewing) records to respond to a FOIA request. Direct costs include, for example, the salary of the employee performing the work (the basic rate of pay for the employee, plus 16 percent of that rate to cover benefits) and the cost of operating duplication machinery. Not included in direct costs are overhead expenses such as the costs of space and heating or lighting of the facility in which the records are kept.

(3) Duplication means the making of a copy of a record, or of the information contained in it, necessary to respond to a FOIA request. Copies can take the form of paper, microform, audiovisual materials, or electronic records (for example, magnetic tape or disk), among others. Components shall honor a requester's specified preference of form or format of disclosure if the record is readily reproducible with reasonable efforts in the requested form or format by the office responding to the request.

(4) Educational institution means a preschool, a public or private elementary or secondary school, an institution of undergraduate higher education, an institution of graduate higher education, an institution of professional education, or an institution of vocational education, that operates a program of scholarly research. To be in this category, a requester must show that the request is authorized by and is made under the auspices of a qualifying institution and that the records are not sought for a commercial use but are sought to further scholarly research.

(5) Noncommercial scientific institution means an institution that is not operated on a "commercial" basis, as that term is defined in paragraph (b)(1) of this section, and that is operated solely for the purpose of conducting scientific research the results of which are not intended to promote any particular product or industry. To be in this category, a requester must show that the request is authorized by and is made under the auspices of a qualifying institution and that the records are not sought for a commercial use but are sought to further scientific research.

(6) Representative of the news media, or news media requester, means any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. The term "news" means information that is about current events or that would be of current interest to the public. Examples of news media entities include television or radio stations broadcasting to the public at large and publishers of periodicals (but only in those instances where they can qualify as disseminators of "news") who make their products available for purchase or subscription by the general public. For "freelance" journalists to be regarded as working for a news organization, they must demonstrate a solid basis for expecting publication through that organization. A publication contract would be the clearest proof, but components shall also look to the past publication record of a requester in making this determination. To be in this category, a requester must not be seeking the requested records for a commercial use. However, a request for records supporting the news-dissemination function of the requester shall not be considered to be for a commercial use.

(7) Review means the examination of a record located in response to a request in order to determine whether any portion of it is exempt from disclosure. It also includes processing any record for disclosure (for example, doing all that is necessary to redact it and prepare it for disclosure). Review costs are recoverable even if a record ultimately is not disclosed. Review time includes time spent considering any formal objection to disclosure made by a business submitter under § 5.8, but does not include time spent resolving general legal or policy issues regarding the application of exemptions.

(8) Search means the process of looking for and retrieving records or information responsive to a request. It includes page-by-page or line-by-line identification of information within records and also includes reasonable efforts to locate and retrieve information from records maintained in electronic form or format. Components shall ensure that searches are done in the most efficient and least expensive manner reasonably possible. For example, components shall not search line-by-line where duplicating an entire document would be quicker and less expensive.

(c) *Fees.* In responding to FOIA requests, components shall charge the following fees unless a waiver or reduction of fees has been granted under paragraph (k) of this section:

(1) *Search.* (i) Search fees shall be charged for all requests other than requests made by educational

institutions, noncommercial scientific institutions, or representatives of the news media, subject to the limitations of paragraph (d) of this section. Components may charge for time spent searching even if they do not locate any responsive record or if they withhold the record(s) located as entirely exempt from disclosure.

(ii) Fees for search time are assessed by the hourly wage of the personnel filling the request. These fees are subject to change. Currently, for each quarter hour spent by clerical personnel in searching for and retrieving a requested record, the fee will be $4.00. Where a search and retrieval cannot be performed entirely by clerical personnel (for example, where the identification of records within the scope of a request requires the use of professional personnel) the fee will be $7.00 for each quarter hour of search time spent by professional personnel. Where the time of managerial personnel is required, the fee will be $10.25 for each quarter hour of time spent by those personnel.

(iii) For computer searches of records, requesters will be charged the direct costs of conducting the search, although certain requesters (as provided in paragraph (d)(1) of this section) will be charged no search fee and certain other requesters (as provided in paragraph (d)(3) of this section) will be entitled to the cost equivalent of two hours of manual search time without charge. These direct costs will include the cost of operating a central processing unit for that portion of operating time that is directly attributable to searching for responsive records, as well as the costs of operator/programmer salary apportionable to the search.

(iv) For requests requiring the retrieval of records from any Federal Records Center, certain additional costs may be incurred in accordance with the Transactional Billing Rate Schedule established by the National Archives and Records Administration, effective October 1, 2002.

(2) *Duplication.* Duplication fees will be charged to all requesters, subject to the limitations of paragraph (d) of this section. For a paper photocopy of a record (no more than one copy of which need be supplied), the fee will be ten cents per page. For copies produced by computer, such as tapes or printouts, components will charge the direct costs, including operator time, of producing the copy. For other forms of duplication, components will charge the direct costs of that duplication.

(3) *Review.* Review fees will be charged to requesters who make a commercial use request. Review fees will be charged only for the initial record review (the review done when a component determines whether an exemption applies to a particular record or record portion at the initial request level). No charge will be made for review at the administrative appeal level for an exemption already applied. However, records or record portions withheld under an exemption that is subsequently determined not to apply may be reviewed again to determine whether any other exemption not previously considered applies; the costs of that review are chargeable where it is made necessary by such a change of circumstances. Review fees will be charged at the same rates as those charged for a search under paragraph (c)(1)(ii) of this section.

(d) *Restrictions on charging fees.* (1) No search fee will be charged for requests by educational institutions, noncommercial scientific institutions, or representatives of the news media.

(2) No search fee or review fee will be charged for a quarter-hour period unless more than half of that period is required for search or review.

(3) Except for requesters seeking records for a commercial use, components will provide without charge:

(i) The first 100 pages of duplication (or the cost equivalent); and

(ii) The first two hours of search (or the cost equivalent).

(4) No fee will be charged whenever a total fee calculated under paragraph (c) of this section is less than the agency's cost to process the check. Currently, whenever a total fee calculated under paragraph (c) of this section is $14.00 or less for any request, no fee will be charged.

(5) The provisions of paragraphs (d)(3) and (d)(4) of this section work together. This means that for requesters other than those seeking records for a commercial use, no fee will be charged unless the cost of search in excess of two hours plus the cost of duplication in excess of 100 pages totals more than $14.00.

(e) *Notice of anticipated fees in excess of $25.00.* When a component determines or estimates that the fees to be charged under this section will amount to more than $25.00, the component shall notify the requester of the actual or estimated amount of the fees, unless the requester has indicated a willingness to pay fees as high as those anticipated. If only a portion of the fee can be estimated readily, the component shall advise the requester that the estimated fee may be only a portion of the total fee. In cases in which a requester has been notified that actual or estimated fees amount to more than $25.00, the request shall not be considered received and further work shall not be done on it until the requester makes a firm commitment to pay the anticipated total fee. Any such agreement should be memorialized by the requester in writing and must be received by the component within a time period specified by the component in its notice to the requester. If the requester does not provide a firm commitment to pay the anticipated fee within the time period specified by the component, the request will be administratively closed. A notice under this paragraph will offer the requester an opportunity to discuss the matter with Department personnel in order to reformulate the request to meet the requester's needs at a lower cost.

(f) *Charges for other services.* Apart from the other provisions of this section, when a component chooses as a matter of administrative discretion to provide a special service (such as certifying that records are true copies or sending them by other than ordinary mail) the direct costs of providing the service ordinarily will be charged.

(g) *Charging interest.* Components may charge interest on any unpaid bill starting on the 31st day following the date of billing the requester. Interest charges will be assessed at the rate provided in 31 U.S.C. 3717 and will accrue from the date of the billing until payment is received by the component. Components will follow the provisions of the Debt Collection Act of 1982 (Pub. L. 97–365, 96 Stat. 1749), as amended, and its administrative procedures, including the use of consumer reporting agencies, collection agencies, and offset.

(h) *Aggregating requests.* Where a component reasonably believes that a requester or a group of requesters acting together is attempting to divide a request into a series of requests for the purpose of avoiding fees, the component may aggregate those requests and charge accordingly. Components may presume that multiple requests of this type made within a 30-day period have been made in order to avoid fees. Where requests are separated by a longer period, components will aggregate them only where there exists a solid basis for determining that aggregation is warranted under all the circumstances involved. Multiple requests involving unrelated matters will not be aggregated.

(i) *Advance payments.* (1) For requests other than those described in paragraphs (i)(2) and (3) of this section, a component shall not require the requester to make a advance payment before work is begun or continued on a request. Payment owed for work already completed (such as a prepayment before

copies are sent to a requester) is not an advance payment.

(2) Where a component determines or estimates that a total fee to be charged under this section will be more than $250.00, it may require the requester to make an advance payment of an amount up to the amount of the entire anticipated fee before beginning to process the request, except where it receives a satisfactory assurance of full payment from a requester that has a history of prompt payment.

(3) Where a requester has previously failed to pay a properly charged FOIA fee to any component or agency within 30 days of the date of billing, a component may require the requester to pay the full amount due, plus any applicable interest, and to make an advance payment of the full amount of any anticipated fee, before the component begins to process a new request or continues to process a pending request from that requester.

(4) In cases in which a component requires advance payment, the request shall not be considered received and further work will not be done on it until the required payment is received.

(j) *Other statutes specifically providing for fees.* The fee schedule of this section does not apply to fees charged under any statute that specifically requires an agency to set and collect fees for particular types of records. Where records responsive to requests are maintained for distribution by agencies operating such statutorily based fee schedule programs, components will inform requesters of the steps for obtaining records from those sources so that they may do so most economically.

(k) *Requirements for waiver or reduction of fees.* (1) Records responsive to a request will be furnished without charge or at a charge reduced below that established under paragraph (c) of this section where a component determines, based on all available information, that the requester has demonstrated that:

(i) Disclosure of the requested information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government; and

(ii) Disclosure of the information is not primarily in the commercial interest of the requester.

(2) To determine whether the first fee waiver requirement is met, components will consider the following factors:

(i) The subject of the request: Whether the subject of the requested records concerns "the operations or activities of the government." The subject of the requested records must concern identifiable operations or activities of the federal government, with a connection that is direct and clear, not remote or attenuated.

(ii) The informative value of the information to be disclosed: Whether the disclosure is "likely to contribute" to an understanding of government operations or activities. The disclosable portions of the requested records must be meaningfully informative about government operations or activities in order to be "likely to contribute" to an increased public understanding of those operations or activities. The disclosure of information that already is in the public domain, in either a duplicative or a substantially identical form, would not be as likely to contribute to such understanding where nothing new would be added to the public's understanding.

(iii) The contribution to an understanding of the subject by the public likely to result from disclosure: Whether disclosure of the requested information will contribute to "public understanding." The disclosure must contribute to the understanding of a reasonably broad audience of persons interested in the subject, as opposed to the individual understanding of the requester. A requester's expertise in the subject area and ability and intention to effectively convey information to the public shall be considered. It shall be presumed that a representative of the news media will satisfy this consideration.

(iv) The significance of the contribution to public understanding: Whether the disclosure is likely to contribute "significantly" to public understanding of government operations or activities. The public's understanding of the subject in question, as compared to the level of public understanding existing prior to the disclosure, must be enhanced by the disclosure to a significant extent. Components shall not make value judgments about whether information that would contribute significantly to public understanding of the operations or activities of the government is "important" enough to be made public.

(3) To determine whether the second fee waiver requirement is met, components will consider the following factors:

(i) The existence and magnitude of a commercial interest: Whether the requester has a commercial interest that would be furthered by the requested disclosure. Components shall consider any commercial interest of the requester (with reference to the definition of "commercial use" in paragraph (b)(1) of this section), or of any person on whose behalf the requester may be acting, that would be furthered by the requested disclosure. Requesters shall be given an opportunity in the administrative process to provide explanatory information regarding this consideration.

(ii) The primary interest in disclosure: Whether any identified commercial interest of the requester is sufficiently large, in comparison with the public interest in disclosure, that disclosure is "primarily in the commercial interest of the requester." A fee waiver or reduction is justified where the public interest standard is satisfied and that public interest is greater in magnitude than that of any identified commercial interest in disclosure. Components ordinarily shall presume that where a news media requester has satisfied the public interest standard, the public interest will be the interest primarily served by disclosure to that requester. Disclosure to data brokers or others who merely compile and market government information for direct economic return shall not be presumed to primarily serve the public interest.

(4) Where only some of the records to be released satisfy the requirements for a waiver of fees, a waiver shall be granted for those records.

(5) Requests for the waiver or reduction of fees should address the factors listed in paragraphs (k)(2) and (3) of this section, insofar as they apply to each request. Components will exercise their discretion to consider the cost-effectiveness of their investment of administrative resources in this decisionmaking process, however, in deciding to grant waivers or reductions of fees.

(l) *Payment of outstanding fees.* The Department shall not process a FOIA request from persons with an unpaid fee from any previous FOIA request to any Federal agency until that outstanding fee has been paid in full to the agency.

§ 5.12 Other rights and services.

Nothing in this subpart shall be construed to entitle any person, as of right, to any service or to the disclosure of any record to which such person is not entitled under the FOIA.

Subpart B—Privacy Act

§ 5.20 General provisions.

(a) *Purpose and scope.* (1) This subpart contains the rules that the Department of Homeland Security (Department) follows under the Privacy Act of 1974 (5 U.S.C. 552a). These rules should be read together with the Privacy Act, which provides additional information about records maintained

on individuals. The rules in this subpart apply to all records in systems of records maintained by the Department that are retrieved by an individual's name or personal identifier. They describe the procedures by which individuals may request access to records about themselves, request amendment or correction of those records, and request an accounting of disclosures of those by the Department. In addition, the Department processes all Privacy Act requests for access to records under the Freedom of Information Act (FOIA) (5 U.S.C. 552), following the rules contained in subpart A of this part, which gives requests the benefit of both statutes.

(2) The provisions established by this subpart shall apply to all Department components that are transferred to the Department. Except to the extent a Department component has adopted separate guidance under the Privacy Act, the provisions of this subpart shall apply to each component of the Department. Departmental components may issue their own guidance under this subpart pursuant to approval by the Department.

(b) *Definitions.* As used in this subpart:

(1) Component means each separate bureau, office, board, division, commission, service, or administration of the Department.

(2) Request for access to a record means a request made under Privacy Act subsection (d)(1).

(3) Request for amendment or correction of a record means a request made under Privacy Act subsection (d)(2).

(4) Request for an accounting means a request made under Privacy Act subsection (c)(3).

(5) Requester means an individual who makes a request for access, a request for amendment or correction, or a request for an accounting under the Privacy Act.

(c) *Authority to request records for a law enforcement purpose.* The head of a component or designee thereof is authorized to make written requests under subsection (b)(7) of the Privacy Act for records maintained by other agencies that are necessary to carry out an authorized law enforcement activity.

(d) *Notice on Departmental use of (b)(1) exemption.* As a general matter, when applying the (b)(1) exemption for disclosures within an agency on a need to know basis, the Department will consider itself a single entity, meaning that information may be disclosed between components of the Department under the (b)(1) exemption.

(e) *Interim Retention of Authorities.* As an interim solution, all agencies and components under the Department will retain the necessary authority from their original purpose in order to conduct these necessary activities. This includes the authority to maintain Privacy Act systems of records, disseminate information pursuant to existing or new routine uses, and retention of exemption authorities under sections (j) and (k) of the Privacy Act, where applicable. This retention of an agency or component's authorities and information practices will remain in effect until this regulation is promulgated as a final rule, or the Department revises all systems of records notices. This retention of authority is necessary to allow components to fulfill their mission and purpose during the transition period of the establishment of the Department. During this transition period, the Department shall evaluate with the components the existing authorities and information practices and determine what revisions (if any) are appropriate and should be made to these existing authorities and practices. The Department anticipates that such revisions will be made either through the issuance of a revised system of records notices or through subsequent final regulations.

§ 5.21 Requests for access to records.

(a) *How made and addressed.* You may make a request for access to a Department of Homeland Security record about yourself by appearing in person or by writing directly to the Department component that maintains the record. Your request should be sent or delivered to the component's Privacy Act office at the address listed in appendix A to this part. In most cases, a component's central Privacy Act office is the place to send a Privacy Act request. For records held by a field office of the U.S. Customs Service, U.S. Secret Service, U.S. Coast Guard, or any other Department component with field offices, however, you must write directly to that Customs, Secret Service, Coast Guard, or other field office address, which can be found in most telephone books or by calling the component's central Privacy Act office. (The functions of each component are summarized elsewhere in this title and in the description of the Department and its components in the "United States Government Manual," which is issued annually and is available in most libraries, as well as for sale from the Government Printing Office's Superintendent of Documents. This manual also can be accessed electronically at the Government Printing Office's World Wide Web site (which can be found at *http://www.access.gpo.gov/su_docs*). Some records are maintained under a government-wide systems of records notice, for example, Official Personnel Files are maintained under the authority of the Office of Personnel Management. In order to access records maintained under a government-wide notice, please send your request to the Privacy Act office of the original department or agency from which the component was transferred to the Department. If you cannot determine where within the Department to send your request, you may send it to the Departmental Disclosure Officer, Department of Homeland Security, Washington, DC 20528, and that office will forward it to the component(s) it believes most likely to have the records that you seek. For the quickest possible handling, you should mark both your request letter and the envelope "Privacy Act Request."

(b) *Description of records sought.* You must describe the records that you want in enough detail to enable Department personnel to locate the system of records containing them with a reasonable amount of effort. Whenever possible, your request should describe the records sought, the time periods in which you believe they were compiled, and the name or identifying number of each system of records in which you believe they are kept. The Department publishes notices in the **Federal Register** that describe its components' systems of records. A description of the Department's systems of records also may be found as part of the "Privacy Act Compilation" published by the National Archives and Records Administration's Office of the Federal Register. This compilation is available in most large reference and university libraries. This compilation also can be accessed electronically at the Government Printing Office's World Wide Web site (which can be found at *http://www.access.gpo.gov/su_docs*).

(c) *Agreement to pay fees.* If you make a Privacy Act request for access to records, it shall be considered an agreement by you to pay all applicable fees charged under § 5.29, up to $25.00. The component responsible for responding to your request ordinarily shall confirm this agreement in an acknowledgement letter. When making a request, you may specify a willingness to pay a greater or lesser amount.

(d) *Verification of identity.* When you make a request for access to records about yourself, you must verify your identity. You must state your full name, current address, and date and place of

birth. You must sign your request and your signature must either be notarized or submitted by you under 28 U.S.C. 1746, a law that permits statements to be made under penalty of perjury as a substitute for notarization. While no specific form is required, you may obtain forms for this purpose from the Departmental Disclosure Officer, Department of Homeland Security, Washington, DC 20528. In order to help the identification and location of requested records, you may also, at your option, include your social security number.

(e) *Verification of guardianship.* When making a request as the parent or guardian of a minor or as the guardian of someone determined by a court to be incompetent, for access to records about that individual, you must establish:

(1) The identity of the individual who is the subject of the record, by stating the name, current address, date and place of birth, and, at your option, the social security number of the individual;

(2) Your own identity, as required in paragraph (d) of this section;

(3) That you are the parent or guardian of that individual, which you may prove by providing a copy of the individual's birth certificate showing your parentage or by providing a court order establishing your guardianship; and

(4) That you are acting on behalf of that individual in making the request.

(f) *Verification in the case of third party information requests.* If you are making a request for records concerning an individual on behalf of that individual, you must provide a statement from the individual verifying the identity of the individual as provided in paragraph (d) of this section. You must also provide a statement from the individual certifying the individual's agreement that records concerning the individual may be released to you.

§ 5.22 Responsibility for responding to requests for access to records.

(a) *In general.* Except as stated in paragraphs (c), (d), and (e) of this section, the component that first receives a request for access to a record, and has possession of that record, is the component responsible for responding to the request. In determining which records are responsive to a request, a component ordinarily shall include only those records in its possession as of the date the component begins its search for them. If any other date is used, the component shall inform the requester of that date.

(b) *Authority to grant or deny requests.* The head of a component, or the component head's designee, is authorized to grant or deny any request for access or amendment to a record of that component.

(c) *Consultations and referrals.* When a component receives a request for access to a record in its possession, it shall determine whether another component, or another agency of the Federal Government, is better able to determine whether the record is exempt from access under the Privacy Act. If the receiving component determines that it is best able to process the record in response to the request, then it shall do so. If the receiving component determines that it is not best able to process the record, then it shall either:

(1) Respond to the request regarding that record, after consulting with the component or agency best able to determine whether the record is exempt from access and with any other component or agency that has a substantial interest in it; or

(2) Refer the responsibility for responding to the request regarding that record to the component best able to determine whether it is exempt from access, or to another agency that originated the record (but only if that agency is subject to the Privacy Act). Ordinarily, the component or agency that originated a record will be presumed to be best able to determine whether it is exempt from access.

(d) *Law enforcement information.* Whenever a request is made for access to a record containing information that relates to an investigation of a possible violation of law and that was originated by another component or agency, the receiving component shall either refer the responsibility for responding to the request regarding that information to that other component or agency or shall consult with that other component or agency.

(e) *Classified information.* Whenever a request is made for access to a record containing information that has been classified by or may be appropriate for classification by another component or agency under Executive Order 12958 or any other executive order concerning the classification of records, the receiving component shall refer the responsibility for responding to the request regarding that information to the component or agency that classified the information, should consider the information for classification, or has the primary interest in it, as appropriate. Whenever a record contains information that has been derivatively classified by a component because it contains information classified by another component or agency, the component shall refer the responsibility for responding to the request regarding that information to the component or agency that classified the underlying information.

(f) *Release of Medical Records.* Pursuant to 5 U.S.C. 552a(f)(3), where requests are made for access to medical records, including psychological records, the decision to release directly to the individual, or to withhold direct release, shall be made by a medical practitioner. Where the medical practitioner has ruled that direct release will cause harm to the individual who is requesting access, normal release through the individual's chosen medical practitioner will be recommended. Final review and decision on appeals of disapprovals of direct release will rest with the General Counsel.

(g) *Notice of referral.* Whenever a component refers all or any part of the responsibility for responding to a request to another component or agency, it ordinarily shall notify the requester of the referral and inform the requester of the name of each component or agency to which the request has been referred and of the part of the request that has been referred.

(h) *Timing of responses to consultations and referrals.* All consultations and referrals shall be handled according to the date the Privacy Act access request was initially received by the first component or agency, not any later date.

(i) *Agreements regarding consultations and referrals.* Components may make agreements with other components or agencies to eliminate the need for consultations or referrals for particular types of records.

§ 5.23 Responses to requests for access to records.

(a) *Acknowledgements of requests.* On receipt of a request, a component ordinarily shall send an acknowledgement letter to the requester which shall confirm the requester's agreement to pay fees under § 5.21(c) and provide an assigned request number for further reference.

(b) *Grants of requests for access.* Once a component makes a determination to grant a request for access in whole or in part, it shall notify the requester in writing. The component shall inform the requester in the notice of any fee charged under § 5.29 and shall disclose records to the requester promptly on payment of any applicable fee. If a request is made in person, the component may disclose records to the requester directly, in a manner not unreasonably disruptive of its

operations, on payment of any applicable fee and with a written record made of the grant of the request. If a requester is accompanied by another person, the requester shall be required to authorize in writing any discussion of the records in the presence of the other person.

(c) *Adverse determinations of requests for access.* A component making an adverse determination denying a request for access in any respect shall notify the requester of that determination in writing. Adverse determinations, or denials of requests, consist of: a determination to withhold any requested record in whole or in part; a determination that a requested record does not exist or cannot be located; a determination that what has been requested is not a record subject to the Privacy Act; a determination on any disputed fee matter; and a denial of a request for expedited treatment. The notification letter shall be signed by the head of the component, or the component head's designee, and shall include:

(1) The name and title or position of the person responsible for the denial;

(2) A brief statement of the reason(s) for the denial, including any Privacy Act exemption(s) applied by the component in denying the request; and

(3) A statement that the denial may be appealed under § 5.25(a) and a description of the requirements of § 5.25(a).

§ 5.24 Classified information.

In processing a request for access to a record containing information that is classified under Executive Order 12958 or any other executive order, the originating component shall review the information to determine whether it should remain classified. Information determined to no longer require classification shall not be withheld from a requester on the basis of Exemption (k)(1) of the Privacy Act. On receipt of any appeal involving classified information, the Associate General Counsel (General Law), shall take appropriate action to ensure compliance with Part 7 of this title.

§ 5.25 Appeals.

(a) *Appeals.* If you are dissatisfied with a component's response to your request for access to records, you may appeal an adverse determination denying your request in any respect to the Associate General Counsel (General Law), Department of Homeland Security, Washington, DC 20528. You must make your appeal in writing and it must be received by the Associate General Counsel (General Law) within 60 days of the date of the letter denying your request. Your appeal letter may include as much or as little related information as you wish, as long as it clearly identifies the component determination (including the assigned request number, if known) that you are appealing. For the quickest possible handling, you should mark both your appeal letter and the envelope "Privacy Act Appeal."

(b) *Responses to appeals.* The decision on your appeal will be made in writing. A decision affirming an adverse determination in whole or in part will include a brief statement of the reason(s) for the affirmance, including any Privacy Act exemption applied, and will inform you of the Privacy Act provisions for court review of the decision. If the adverse determination is reversed or modified on appeal in whole or in part, you will be notified in a written decision and your request will be reprocessed in accordance with that appeal decision. An adverse determination by the Associate General Counsel (General Law) will be the final action of the Department.

(c) *When appeal is required.* If you wish to seek review by a court of any adverse determination or denial of a request, you must first appeal it under this section. An appeal will not be acted on if the request becomes a matter of litigation.

§ 5.26 Requests for amendment or correction of records.

(a) *How made and addressed.* Unless the record is not subject to amendment or correction as stated in paragraph (f) of this section, you may make a request for amendment or correction of a record of the Department about you by writing directly to the Department component that maintains the record, following the procedures in § 5.21. Your request should identify each particular record in question, state the amendment or correction that you want, and state why you believe that the record is not accurate, relevant, timely, or complete. You may submit any documentation that you think would be helpful. If you believe that the same record is in more than one system of records, you should state that and address your request to each component that maintains a system of records containing the record.

(b) *Component responses.* Within ten working days of receiving your request for amendment or correction of records, a component shall send you a written acknowledgment of its receipt of your request, and it shall promptly notify you whether your request is granted or denied. If the component grants your request in whole or in part, it shall describe the amendment or correction made and shall advise you of your right to obtain a copy of the corrected or amended record, in disclosable form. If the component denies your request in whole or in part, it shall send you a letter signed by the head of the component, or the component head's designee, that shall state:

(1) The reason(s) for the denial; and

(2) The procedure for appeal of the denial under paragraph (c) of this section, including the name and business address of the official who will act on your appeal.

(c) *Appeals.* You may appeal a denial of a request for amendment or correction to the Associate General Counsel (General Law) in the same manner as a denial of a request for access to records (see § 5.25) and the same procedures shall be followed. If your appeal is denied, you shall be advised of your right to file a Statement of Disagreement as described in paragraph (d) of this section and of your right under the Privacy Act for court review of the decision.

(d) *Statements of Disagreement.* If your appeal under this section is denied in whole or in part, you have the right to file a Statement of Disagreement that states your reason(s) for disagreeing with the Department's denial of your request for amendment or correction. Statements of Disagreement must be concise, must clearly identify each part of any record that is disputed, and should be no longer than one typed page for each fact disputed. Your Statement of Disagreement must be sent to the component involved, which shall place it in the system of records in which the disputed record is maintained and shall mark the disputed record to indicate that a Statement of Disagreement has been filed and where in the system of records it may be found.

(e) *Notification of amendment/correction or disagreement.* Within 30 working days of the amendment or correction of a record, the component that maintains the record shall notify all persons, organizations, or agencies to which it previously disclosed the record, if an accounting of that disclosure was made, that the record has been amended or corrected. If an individual has filed a Statement of Disagreement, the component shall append a copy of it to the disputed record whenever the record is disclosed and may also append a concise statement of its reason(s) for denying the request to amend or correct the record.

(f) *Records not subject to amendment or correction.* The following records are not subject to amendment or correction:

(1) Transcripts of testimony given under oath or written statements made under oath;

(2) Transcripts of grand jury proceedings, judicial proceedings, or quasi-judicial proceedings, which are the official record of those proceedings;

(3) Presentence records that originated with the courts; and

(4) Records in systems of records that have been exempted from amendment and correction under Privacy Act (5 U.S.C. 552a(j) or (k)) by notice published in the **Federal Register**.

§ 5.27 Requests for an accounting of record disclosures.

(a) *How made and addressed.* Except where accountings of disclosures are not required to be kept (as stated in paragraph (b) of this section), you may make a request for an accounting of any disclosure that has been made by the Department to another person, organization, or agency of any record about you. This accounting contains the date, nature, and purpose of each disclosure, as well as the name and address of the person, organization, or agency to which the disclosure was made. Your request for an accounting should identify each particular record in question and should be made by writing directly to the Department component that maintains the record, following the procedures in § 5.21.

(b) *Where accountings are not required.* Components are not required to provide accountings to you where they relate to:

(1) Disclosures for which accountings are not required to be kept, such as disclosures that are made to employees within the agency and disclosures that are made under the FOIA;

(2) Disclosures made to law enforcement agencies for authorized law enforcement activities in response to written requests from those law enforcement agencies specifying the law enforcement activities for which the disclosures are sought; or

(3) Disclosures made from law enforcement systems of records that have been exempted from accounting requirements.

(c) *Appeals.* You may appeal a denial of a request for an accounting to the Associate General Counsel (General Law) in the same manner as a denial of a request for access to records (see § 5.25) and the same procedures will be followed.

§ 5.28 Preservation of records.

Each component will preserve all correspondence pertaining to the requests that it receives under this subpart, as well as copies of all requested records, until disposition or destruction is authorized by title 44 of the United States Code or the National Archives and Records Administration's General Records Schedule 14. Records will not be disposed of while they are the subject of a pending request, appeal, or lawsuit under the Act.

§ 5.29 Fees.

(a) Components shall charge fees for duplication of records under the Privacy Act in the same way in which they charge duplication fees under § 5.11.

(b) The Department shall not process a request under the Privacy Act from persons with an unpaid fee from any previous Privacy Act request to any Federal agency until that outstanding fee has been paid in full to the agency.

§ 5.30 Notice of court-ordered and emergency disclosures.

(a) *Court-ordered disclosures.* When a record pertaining to an individual is required to be disclosed by a court order, the component shall make reasonable efforts to provide notice of this to the individual. Notice shall be given within a reasonable time after the component's receipt of the order, except that in a case in which the order is not a matter of public record, the notice shall be given only after the order becomes public. This notice shall be mailed to the individual's last known address and shall contain a copy of the order and a description of the information disclosed. Notice shall not be given if disclosure is made from a criminal law enforcement system of records that has been exempted from the notice requirement.

(b) *Emergency disclosures.* Upon disclosing a record pertaining to an individual made under compelling circumstances affecting health or safety, the component shall notify that individual of the disclosure. This notice shall be mailed to the individual's last known address and shall state the nature of the information disclosed; the person, organization, or agency to which it was disclosed; the date of disclosure; and the compelling circumstances justifying the disclosure.

§ 5.31 Security of systems of records.

(a) *In general.* Each component shall establish administrative and physical controls to prevent unauthorized access to its systems of records, to prevent unauthorized disclosure of records, and to prevent physical damage to or destruction of records. The stringency of these controls shall correspond to the sensitivity of the records that the controls protect. At a minimum, each component's administrative and physical controls shall ensure that:

(1) Records are protected from public view;

(2) The area in which records are kept is supervised during business hours to prevent unauthorized persons from having access to them;

(3) Records are inaccessible to unauthorized persons outside of business hours; and

(4) Records are not disclosed to unauthorized persons or under unauthorized circumstances in either oral or written form.

(b) *Procedures required.* Each component shall have procedures that restrict access to records to only those individuals within the Department who must have access to those records in order to perform their duties and that prevent inadvertent disclosure of records.

§ 5.32 Contracts for the operation of record systems.

Under 5 U.S.C. 552a(m), any approved contract for the operation of a record system will contain the standard contract requirements issued by the General Services Administration to ensure compliance with the requirements of the Privacy Act for that record system. The contracting component will be responsible for ensuring that the contractor complies with these contract requirements.

§ 5.33 Use and collection of social security numbers.

Each component shall ensure that employees authorized to collect information are aware:

(a) That individuals may not be denied any right, benefit, or privilege as a result of refusing to provide their social security numbers, unless the collection is authorized either by a statute or by a regulation issued prior to 1975; and

(b) That individuals requested to provide their social security numbers must be informed of:

(1) Whether providing social security numbers is mandatory or voluntary;

(2) Any statutory or regulatory authority that authorizes the collection of social security numbers; and

(3) The uses that will be made of the numbers.

§ 5.34 Standards of conduct for administration of the Privacy Act.

Each component will inform its employees of the provisions of the Privacy Act, including the Act's civil liability and criminal penalty provisions. Unless otherwise permitted by law, the Department shall:

(a) Collect from individuals only the information that is relevant and necessary to discharge the responsibilities of the Department;

(b) Collect information about an individual directly from that individual whenever practicable and when the information may result in adverse determinations about an individual's rights, benefits, and privileges under federal programs;

(c) Inform each individual from whom information is collected of:

(1) The legal authority to collect the information and whether providing it is mandatory or voluntary;

(2) The principal purpose for which the Department intends to use the information;

(3) The routine uses the Department may make of the information; and

(4) The effects on the individual, if any, of not providing the information;

(d) Ensure that the component maintains no system of records without public notice and that it notifies appropriate Department officials of the existence or development of any system of records that is not the subject of a current or planned public notice;

(e) Maintain all records that are used by the Department in making any determination about an individual with such accuracy, relevance, timeliness, and completeness as is reasonably necessary to ensure fairness to the individual in the determination;

(f) Except as to disclosures made to an agency or made under the FOIA, make reasonable efforts, prior to disseminating any record about an individual, to ensure that the record is accurate, relevant, timely, and complete;

(g) Maintain no record describing how an individual exercises his or her First Amendment rights, unless it is expressly authorized by statute or by the individual about whom the record is maintained, or is pertinent to and within the scope of an authorized law enforcement activity;

(h) When required by the Privacy Act, maintain an accounting in the specified form of all disclosures of records by the Department to persons, organizations, or agencies;

(i) Maintain and use records with care to prevent the unauthorized or inadvertent disclosure of a record to anyone.

§ 5.35 Sanctions and penalties.

Under the provisions of the Privacy Act, 5 U.S.C. 552a, civil and criminal penalties may be assessed.

§ 5.36 Other rights and services.

Nothing in this subpart shall be construed to entitle any person, as of right, to any service or to the disclosure of any record to which such person is not entitled under the Privacy Act.

Appendix A to Part 5—FOIA /Privacy Act Offices of the Department of Homeland Security

I. For the following Headquarters components of the Department of Homeland Security, FOIA and Privacy Act requests should be sent to the Departmental Disclosure Office, Department of Homeland Security, Washington, DC 20528. The Headquarters components are:

A

Office of the Secretary
Office of the Deputy Secretary
Office of the Under Secretary for Management

B

Office of the General Counsel
Office of the Inspector General
Office of International Affairs
Office of Legislative Affairs
Office of Public Affairs
Office of National Capital Region Coordination
Office of Professional Responsibility
Office for State and Local Government Coordination

C

Directorate of Border and Transportation Security
Directorate of Emergency Preparedness and Response
Directorate of Information Analysis and Infrastructure Protection
Directorate of Science and Technology

II. Requests made to components that have transferred or will transfer into the Department of Homeland Security, should be sent as follows:

A. Former components of the Department of Agriculture:

1. Animal and Plant Health Inspection Service, USDA, APHIS, LPA, FOIA, 4700 River Road, Unit 50, Riverdale, MD 20737–1232
2. Plum Island Animal Disease Center; Submit request to the APHIS address above or, FOIA Coordinator, USDA–REE–ARS-Information Staff, 5601 Sunnyside Avenue, Bldg. 1, Room 2248, Mail Stop 5128, Beltsville, MD 20705–5128

B. Former components of the Department of Commerce:

1. Critical Infrastructure Assurance Office (A former office of the Bureau of Industry and Security); Freedom of Information Coordinator, Bureau of Industry and Security, Room 6883, U.S. Department of Commerce, Washington, DC 20230
2. FIRESTAT (formerly the Integrated Hazard Information System of the National Oceanic and Atmospheric Administration), National Oceanic and Atmospheric Administration, Public Reference Facility (OFAx2), 1315 East-West Highway (SSMC3), Room 10703, Silver Spring, MD 20910

C. Former components of the Department of Defense:

1. National Communications Service (A former component of the Defense Information Systems Agency), Defense Information Systems Agency, ATTN: RGC/FOIA Officer, 701 S. Courthouse Rd., Arlington, VA 22204–2199

D. Former components and programs of the Department of Energy:

The address for each component and program listed below is: U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585

1. Energy Assurance Office
2. Environmental Measurements Laboratory
3. Nuclear Incident Response Team
4. The chemical and biological national security and supporting programs and activities of the non-proliferation and verification research and development program.
5. The life sciences activities related to microbial pathogens of Biological and Environmental Research Program.
6. The nuclear smuggling programs and activities within the proliferation detection program of the non-proliferation and verification research and development program.
7. The nuclear assessment program and activities of the assessment, detection, and cooperation program of the international materials protection and cooperation program, and the advanced scientific computing research program and activities at Lawrence Livermore National Laboratory.
8. National Infrastructure Simulation and Analysis Center

E. Former components of the Department of Health and Human Services:

1. The address for each component and program listed below is: Department of Health and Human Services, Freedom of Information Officer, Room 645–F, Hubert H. Humphrey Building, Independence Avenue, SW., Washington, DC 20201;
   a. Metropolitan Medical Response System,
   b. National Disaster Medical System, and
   c. Office of Emergency Preparedness
   d. Strategic National Stockpile
2. Centers for Disease Control and Agency for Toxic Substances and Disease Registry, Attn: FOI Office, MS–D54, 1600 Clifton Road, NE., Atlanta, GA 30333.

F. Former components of the Department of Justice:

1. Immigration and Naturalization Service, Director, Freedom of Information/Privacy Act Program, Department of Justice, 425 Eye Street, NW., 2nd Floor, ULLICO Building, Washington, DC 20536 (for field offices, consult your phone book).
2. The address for each component and program listed below is: Federal Bureau of Investigation, Chief, FOIPA Section, 935 Pennsylvania Avenue, NW., Department of Justice, Washington, DC 20535–0001;
   a. National Infrastructure Protection Center,
   b. National Domestic Preparedness Office, and
   c. Domestic Emergency Support Team.
3. Office of Domestic Preparedness, U.S. Department of Justice, Office of Justice Programs, Office of the General Counsel,

Attention: FOIA Staff, 810 7th Street, NW., Room 5400, Washington, DC 20531.

G. Former components of the Department of State:

Visa Office, Information and Privacy Coordinator, Office of Information Resources, Management Programs and Services, A/RPS/IPS, SA–2, Department of State, Washington, DC 20522–6001, Re: Freedom of Information Act Request.

H. Former components of the Department of Transportation:

1. Federal Aviation Administration, National Freedom of Information Act Staff, ARC–40, 800 Independence Avenue, SW., Washington, DC 20591 (for regional centers, consult your phone book).
2. Transportation Security Administration, TSA–1, FOIA Division, 400 Seventh Street, SW., Washington, DC 20590
3. United States Coast Guard, HQ USCG Commandant, G–CIM, 2100 Second Street, SW., Washington, DC 20593–0001 (for district offices, consult your phone book).

I. Former components of the Department of Treasury:

1. Federal Law Enforcement Training Center, Freedom of Information Act Officer, Townhouse 389, Glynco, GA 31524
2. U.S. Customs Service, Freedom of Information Act Request, Mint Annex, 1300 Pennsylvania Avenue, NW., Washington, DC 20229 (for field offices, consult your phone book).
3. U.S. Secret Service, Freedom of Information Act Request, 950 H Street, NW., Suite 3000, Washington, DC 20223, e-mail *FOIA@USSS.Treas.gov*. Appeals should be addressed to the Deputy Director, United States Secret Service, Freedom of Information and Privacy Act Appeal Officer, at these same contact points.

J. Federal Emergency Management Agency:

Federal Emergency Management Agency, Office of General Counsel, 500 C Street, SW., Room 840, Washington, DC 20472 (for regional offices, consult your phone book).

K. Former components of the General Services Administration:

1. For the Federal Computer Incident Response Center and the Federal Protective Service: Chief, FOIA Information Management Branch, GSA (CAIM), 1800 F Street, NW., Washington, DC 20405 (for regional offices, consult your phone book).

Appendix B to Part 5—Public Reading Rooms of the Department of Homeland Security

The Headquarters components of the Department of Homeland Security do not maintain a conventional public reading room. Records that are required to be in the public reading room are available electronically at *http://www.dhs.gov/FOIA*.

Entities that will transfer into the Department of Homeland Security maintain public reading rooms as follows:

1. Former components of the Department of Agriculture:

Animal and Plant Health Inspection Service Library, 4700 River Road, Riverdale, MD 20737–1232

Plum Island Animal Disease Center, the APHIS address above or, USDA–ARS, 5601 Sunnyside Avenue, Building 1, Room 2248, Beltsville, MD 20705–5128

2. Former components of the Department of Commerce:

The Critical Infrastructure Assurance Office (A former office of the Bureau of Industry and Security) does not maintain a conventional public reading room. Records that are required to be in the public reading room are available electronically at *http://www.bis.doc.gov/FOIA/Default.htm*

FIRESTAT (formerly the Integrated Hazard Information System of the National Oceanic and Atmospheric Administration), NOAA Public Reference Facility, 1305 East-West Highway (SSMC4), Room 8627, Silver Spring, MD 20910

3. Former components of the Department of Defense:

The National Communication Service (A former component of the Defense Information Systems Agency) does not maintain a conventional public reading room. Records that are required to be in the public reading room are available electronically at *http://disa.mil/gc/foia/foia.html*

4. Former components and programs of the Department of Energy:

The address for each component and program listed below is: U.S. Department of Energy; 1000 Independence Avenue, SW., Washington, DC 20585

Energy Assurance Office
Environmental Measurements Laboratory
Nuclear Incident Response Team

The chemical and biological national security and supporting programs and activities of the non-proliferation and verification research and development program.

The life sciences activities related to microbial pathogens of Biological and Environmental Research Program.

The nuclear smuggling programs and activities within the proliferation detection program of the non-proliferation and verification research and development program.

The nuclear assessment program and activities of the assessment, detection, and cooperation program of the international materials protection and cooperation program, and the advanced scientific computing research program and activities at Lawrence Livermore National Laboratory.

The National Infrastructure Simulation and Analysis Center

5. Former components of the Department of Health and Human Services:

For the Metropolitan Medical Response System, the National Disaster Medical System, and the Office of Emergency Preparedness please contact the Freedom of Information Act Officer at: Department of Health and Human Services, Freedom of Information Officer, Room 645–F, Hubert H. Humphrey Building, Independence Avenue, SW., Washington, DC 20201

Strategic National Stockpile, Centers for Disease Control and Agency for Toxic Substances and Disease Registry, 1600 Clifton Road, NE., Room 4103, Building 1, Atlanta, GA 30333

6. Former components of the Department of Justice:

Immigration and Naturalization Service, 111 Massachusetts Avenue, NW., 2nd Floor, ULLICO Building, Washington, DC 20536

For the National Infrastructure Protection Center, the National Domestic Preparedness Office, and the Domestic Emergency Support Team: Federal Bureau of Investigation, 935 Pennsylvania Avenue, NW., Department of Justice, Washington, DC 20535–0001

Office of Domestic Preparedness, U.S. Department of Justice, Office of Justice Programs, 810 7th Street, NW., Room 5430, Washington, DC 20531

7. Former components of the Department of State:

Visa Office, Department of State, 2201 C Street, NW., Washington, DC 20520

8. Former components of the Department of Transportation:

Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591

Transportation Security Administration, 400 Seventh Street, SW., Washington, DC 20590

United States Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593–0001 (for district offices, consult your phone book).

9. Former components of the Department of Treasury:

The Federal Law Enforcement Training Center does not maintain a conventional public reading room. Records that are required to be in the public reading room are available electronically at *http://www.fletc.gov/irm/foia/readingroom.htm*

U.S. Customs Service, 1300 Pennsylvania Avenue, NW., Washington, DC 20229 (for a list of field office public reading rooms please consult 19 CFR 103.1).

U.S. Secret Service, Main Treasury, 1500 Pennsylvania Avenue, NW., Washington, DC 20220

10. Federal Emergency Management Agency:

Federal Emergency Management Agency, Federal Center Plaza, 500 C Street, SW., Room 840 Washington, DC 20472 (for regional offices, consult your phone book)

11. Former components of the General Services Administration:

For the Federal Computer Incident Response Center and the Federal Protective Service: Central Office, GSA Headquarters, 1800 F Street, NW., (CAI), Washington, DC 20405 (for regional offices, consult your phone book)

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DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

6 CFR Part 5

RIN 1601–AA01

Production or Disclosure of Official Information in Connection With Legal Proceedings

AGENCY: Office of the Secretary, Homeland Security.

ACTION: Interim final rule.

SUMMARY: This interim final rule establishes procedures for the public to obtain the production or disclosure of official information in connection with litigation, including litigation to which the Department of Homeland Security is not a party.

DATES: This interim final rule is effective January 27, 2003. Written comments may be submitted by February 26, 2003.

ADDRESSES: Submit written comments (preferably an original and three copies) to Associate General Counsel (General Law), Department of Homeland Security, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ellen McClain, (202) 612–1952, not a toll free call.

SUPPLEMENTARY INFORMATION:

I. Background

On November 25, 2002, the President signed into law the Homeland Security Act (Pub. L. 107–296), which created the new Department of Homeland Security (DHS). Pursuant to the provisions of the Act, the new Department came into existence on January 24, 2003.

In order to establish procedures to facilitate public interaction with DHS, DHS is issuing an initial series of proposed and interim final regulations.

II. The Interim Final Rule

This interim final rule establishes procedures governing the disclosure of information in connection with litigation and certain other types of proceedings.

III. Procedural Requirements

Because the DHS came into existence on January 24, 2003, it is necessary to promptly establish procedures to facilitate the interaction of the public with the Department. This interim final rule generally parallels the procedures concerning the disclosure of information in litigation currently used by other agencies. Accordingly, the Department has determined that notice and public procedure are impracticable, unnecessary and contrary to the public interest pursuant to 5 U.S.C. 553(b)(B). For the same reasons, the Department has determined that this interim rule should be issued without a delayed effective date pursuant to 5 U.S.C. 553(d)(3).

Because no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply.

It has been determined that this rulemaking is not a significant regulatory action for the purposes of Executive Order 12866. Accordingly, a regulatory impact analysis is not required.

List of Subjects in 6 CFR Part 5

Classified information, Courts, Freedom of information, Government employees, Privacy.

Authority and Issuance

For the reasons set forth above, 6 CFR Part 5 is amended as follows:

PART 5—DISCLOSURE OF RECORDS AND INFORMATION

1. The authority citation for part 5 continues to read as follows:

Authority: Pub. L. 107–296, 116 Stat. 2135 (6 U.S.C. 101 *et seq.*); 5 U.S.C. 301. Subpart A also issued under 5 U.S.C. 552. Subpart B also issued under 5 U.S.C. 552a.

2. Part 5 is amended by adding subpart C (§§ 5.41 through 5.49) to read as follows:

Subpart C—Disclosure of Information in Litigation

Sec.

5.41 Purpose and scope; definitions.
5.42 Service of summonses and complaints.
5.43 Service of subpoenas, court orders, and other demands or requests for official information or action.
5.44 Testimony and production of documents prohibited unless approved by appropriate Department officials.
5.45 Procedure when testimony or production of documents is sought; general.
5.46 Procedure when response to demand is required prior to receiving instructions.
5.47 Procedure in the event of an adverse ruling.
5.48 Considerations in determining whether the Department will comply with a demand or request.
5.49 Prohibition on providing expert or opinion testimony.

§ 5.41 Purpose and scope; definitions.

(a) This subpart C sets forth the procedures to be followed with respect to:

(1) Service of summonses and complaints or other requests or demands directed to the Department of Homeland Security (Department) or to any Department employee or former employee in connection with federal or state litigation arising out of or involving the performance of official activities of the Department; and

(2) The oral or written disclosure, in response to subpoenas, orders, or other requests or demands of federal or state judicial or quasi-judicial or administrative authority as well as state legislative authorities (collectively, "demands"), whether civil or criminal in nature, or in response to requests for depositions, affidavits, admissions, responses to interrogatories, document production, interviews, or other litigation-related matters, including pursuant to the Federal Rules of Civil Procedure, the Federal Rules of Criminal Procedure, or applicable state rules (collectively, "requests"), of any material contained in the files of the Department, any information relating to material contained in the files of the Department, or any information acquired while the subject of the demand or request is or was employed by the Department, or served as Secretary of the Department, as part of the performance of that person's duties or by virtue of that person's official status.

(b) The provisions established by this subpart shall apply to all Department components that are transferred to the Department. Except to the extent a Department component has adopted separate guidance governing the subject matter of a provision of this subpart, the provisions of this subpart shall apply to each component of the Department. Departmental components may issue their own guidance under this subpart subject to the approval of the General Counsel of the Department.

(c) For purposes of this subpart, and except as the Department may otherwise determine in a particular case, the term employee includes all former Secretaries of Homeland Security and all employees of the Department of Homeland Security or other federal agencies who are or were appointed by, or subject to the supervision, jurisdiction, or control of the Secretary of Homeland Security, whether residing or working in the United States or abroad, including United States nationals, foreign nationals, and contractors. The procedures established within this subpart also apply to former employees of the Department where specifically noted.

(d) For purposes of this subpart, the term litigation encompasses all pre-trial,

trial, and post-trial stages of all judicial or administrative actions, hearings, investigations, or similar proceedings before courts, commissions, boards (including the Board of Appellate Review), grand juries, or other judicial or quasi-judicial bodies or tribunals, whether criminal, civil, or administrative in nature. This subpart governs, *inter alia*, responses to discovery requests, depositions, and other pre-trial, trial, or post-trial proceedings, as well as responses to informal requests by attorneys or others in situations involving litigation. However, this subpart shall not apply to any claims against the Department by Department of Homeland Security employees (present or former), or applicants for Department employment, for which jurisdiction resides with the U.S. Equal Employment Opportunity Commission; the U.S. Merit Systems Protection Board; the Office of Special Counsel; the Federal Labor Relations Authority; the Foreign Service Labor Relations Board; the Foreign Service Grievance Board; or a labor arbitrator operating under a collective bargaining agreement between the Department and a labor organization representing Department employees; or their successor agencies or entities.

(e) For purposes of this subpart, official information means all information of any kind, however stored, that is in the custody and control of the Department, relates to information in the custody and control of the Department, or was acquired by Department employees, or former employees, as part of their official duties or because of their official status within the Department while such individuals were employed by or served on behalf of the Department.

(f) Nothing in this subpart affects disclosure of information under the Freedom of Information Act (FOIA), 5 U.S.C. 552, the Privacy Act, 5 U.S.C. 552a, Executive Order 12958 on national security information (3 CFR, 1995 Comp., p. 333), the Government in the Sunshine Act, 5 U.S.C. 552b, the Department's implementing regulations or pursuant to congressional subpoena. Nothing in this subpart permits disclosure of information by the Department, its present and former employees, or the Secretary, that is protected or prohibited by statute or other applicable law.

(g) This subpart is intended only to inform the public about Department procedures concerning the service of process and responses to demands or requests and is not intended to and does not create, and may not be relied upon to create any right or benefit, substantive or procedural, enforceable at law by a party against the Department or the United States.

(h) Nothing in this subpart affects the rules and procedures, under applicable U.S. law and international conventions, governing diplomatic and consular immunity.

(i) Nothing in this subpart affects the disclosure of official information to other federal agencies or Department of Justice attorneys in connection with litigation conducted on behalf or in defense of the United States, its agencies, officers, and employees, or litigation in which the United States has an interest; or to federal, state, local, or foreign prosecuting and law enforcement authorities in conjunction with criminal law enforcement investigations, prosecutions, or other proceedings, *e.g.*, extradition, deportation.

§ 5.42 Service of summonses and complaints.

(a) Only the Office of the General Counsel is authorized to receive and accept on behalf of the Department summonses or complaints sought to be served upon the Department, the Secretary, or Department employees. All such documents should be delivered or addressed to the Office of the General Counsel, United States Department of Homeland Security, Washington, DC, 20258. The authorization for receipt shall in no way affect the requirements of service elsewhere provided in applicable rules and regulations.

(b) In the event any summons or complaint described in § 5.41(a) is delivered to an employee of the Department other than in the manner specified in this part, the recipient thereof shall decline to accept the proffered service and may notify the person attempting to make service of the Departmental regulations set forth herein.

(c) Except as otherwise provided §§ 5.42(d) and 5.43(c), the Department is not an authorized agent for service of process with respect to civil litigation against Department employees purely in their personal, non-official capacity. Copies of summonses or complaints directed to Department employees in connection with legal proceedings arising out of the performance of official duties may, however, be served upon the Office of the General Counsel.

(d) Although the Department is not an agent for the service of process upon its employees with respect to purely personal, non-official litigation, the Department recognizes that its employees should not use their official positions to evade their personal obligations and will, therefore, counsel and encourage Department employees to accept service of process in appropriate cases.

(e) Documents for which the Office of the General Counsel accepts service in official capacity only shall be stamped "Service Accepted in Official Capacity Only". Acceptance of service shall not constitute an admission or waiver with respect to jurisdiction, propriety of service, improper venue, or any other defense in law or equity available under applicable laws or rules.

§ 5.43 Service of subpoenas, court orders, and other demands or requests for official information or action.

(a) Except in cases in which the Department is represented by legal counsel who have entered an appearance or otherwise given notice of their representation, only the Office of the General Counsel is authorized to receive and accept subpoenas, or other demands or requests directed to the Secretary, the Department, or any component thereof, or its employees, whether civil or criminal in nature, for:

(1) Material, including documents, contained in the files of the Department;

(2) Information, including testimony, affidavits, declarations, admissions, responses to interrogatories, or informal statements, relating to material contained in the files of the Department or which any Department employee acquired in the course and scope of the performance of his official duties;

(3) Garnishment or attachment of compensation of current or former employees; or

(4) The performance or non-performance of any official Department duty.

(b) In the event that any subpoena, demand, or request is sought to be delivered to a Department employee other than in the manner prescribed in paragraph (a) of this section, such employee shall, after consultation with the Office of the General Counsel, decline service and direct the server of process to the Departmental regulations. If the subpoena, demand, or other request is nonetheless delivered to the employee, the employee shall immediately forward a copy of that document to the Office of the General Counsel.

(c) Except as otherwise provided in this subpart, the Department is not an agent for service, or otherwise authorized to accept on behalf of its employees, any subpoenas, show-cause orders, or similar compulsory process of federal or state courts, or requests from private individuals or attorneys, which are not related to the employees' official

duties except upon the express, written authorization of the individual Department employee to whom such demand or request is directed.

(d) Acceptance of such documents by the Office of the General Counsel does not constitute a waiver of any defenses that might otherwise exist with respect to service under the Federal Rules of Civil or Criminal Procedure or other applicable rules.

(e) Copies of any subpoenas, show cause orders, or similar compulsory process of federal or state courts, or requests from private individuals or attorneys, directed to former employees of the Department in connection with legal proceedings arising out of the performance of official duties shall also be served upon the Office of the General Counsel. The Department shall not, however, serve as an agent for service for the former employee, nor is the Department otherwise authorized to accept service on behalf of its former employees. If the demand involves their official duties, former employees who receive subpoenas, show cause orders, or similar compulsory process of federal or state courts should also notify in the component of the Department in which they were employed if the service involves their official duties while so employed.

(f) If the subpoena, demand, or other request is nonetheless delivered to the employee, the employee shall immediately forward a copy of that document to the Office of the General Counsel.

§ 5.44 Testimony and production of documents prohibited unless approved by appropriate Department officials.

(a) No employee, or former employee, of the Department shall, in response to a demand or request, including in connection with any litigation, provide oral or written testimony by deposition, declaration, affidavit, or otherwise concerning any information acquired while such person is or was an employee of the Department as part of the performance of that person's official duties or by virtue of that person's official status, unless authorized to do so by the Office of the General Counsel, or as authorized in § 5.44(b).

(b) No employee, or former employee, shall, in response to a demand or request, including in connection with any litigation, produce any document or any material acquired as part of the performance of that employee's duties or by virtue of that employee's official status, unless authorized to do so by the Office of the General Counsel or the delegates thereof, as appropriate.

§ 5.45 Procedure when testimony or production of documents is sought; general.

(a) If official information is sought, through testimony or otherwise, by a request or demand, the party seeking such release or testimony must (except as otherwise required by federal law or authorized by the Office of the General Counsel) set forth in writing, and with as much specificity as possible, the nature and relevance of the official information sought. Where documents or other materials are sought, the party should provide a description using the types of identifying information suggested in § 5.3(b). Subject to § 5.47, Department employees may only produce, disclose, release, comment upon, or testify concerning those matters which were specified in writing and properly approved by the appropriate Department official designated in § 5.44. *See United States ex rel. Touhy* v. *Ragen,* 340 U.S. 462 (1951). The Office of the General Counsel may waive the requirement of this subsection in appropriate circumstances.

(b) To the extent it deems necessary or appropriate, the Department may also require from the party seeking such testimony or documents a plan of all reasonably foreseeable demands, including but not limited to the names of all employees and former employees from whom discovery will be sought, areas of inquiry, expected duration of proceedings requiring oral testimony, and identification of potentially relevant documents.

(c) The appropriate Department official designated in § 5.42 will notify the Department employee and such other persons as circumstances may warrant of its decision regarding compliance with the request or demand.

(d) The Office of the General Counsel will consult with the Department of Justice regarding legal representation for Department employees in appropriate cases.

§ 5.46 Procedure when response to demand is required prior to receiving instructions.

(a) If a response to a demand is required before the appropriate Department official designated in § 5.44 renders a decision, the Department, if necessary, will request that the Department of Justice or the appropriate Department attorney take appropriate steps to stay, postpone, or obtain relief from the demand pending decision. If necessary, the attorney will:

(1) Appear with the employee upon whom the demand has been made;

(2) Furnish the court or other authority with a copy of the regulations contained in this subpart;

(3) Inform the court or other authority that the demand has been, or is being, as the case may be, referred for the prompt consideration of the appropriate Department official; and

(4) Respectfully request the court or authority to stay the demand pending receipt of the requested instructions.

(b) In the event that an immediate demand for production or disclosure is made in circumstances which would preclude the proper designation or appearance of a Department of Justice or appropriate Department attorney on the employee's behalf, the employee, if necessary, shall respectfully request from the demanding court or authority for a reasonable stay of proceedings for the purpose of obtaining instructions from the Department.

§ 5.47 Procedure in the event of an adverse ruling.

If a stay of, or other relief from, the effect of the demand in response to a request made pursuant to § 5.46 is declined or not obtained, or if the court or other judicial or quasi-judicial authority declines to stay the effect of the demand in response to a request made pursuant to § 5.46, or if the court or other authority rules that the demand must be complied with irrespective of the Department's instructions not to produce the material or disclose the information sought, the employee upon whom the demand has been made shall respectfully decline to comply with the demand, citing this subpart and *United States ex rel. Touhy* v. *Ragen,* 340 U.S. 462 (1951).

§ 5.48 Considerations in determining whether the Department will comply with a demand or request

(a) In deciding whether to comply with a demand or request, Department officials and attorneys shall consider, among any other pertinent considerations:

(1) Whether such compliance would be unduly burdensome or otherwise inappropriate under the applicable rules of discovery or the rules of procedure governing the case or matter in which the demand arose;

(2) Whether compliance is appropriate under the relevant substantive law concerning privilege or disclosure of information;

(3) The public interest;

(4) The need to conserve the time of Department employees for the conduct of official business;

(5) The need to avoid spending the time and money of the United States for private purposes;

(6) The need to maintain impartiality between private litigants in cases where a substantial government interest is not implicated;

(7) Whether compliance would have an adverse effect on performance by the Department of its mission and duties; and

(8) The need to avoid involving the Department in controversial issues not related to its mission.

(b) Among those demands and requests in response to which compliance will not ordinarily be authorized are those with respect to which any of the following factors, *inter alia*, exist:

(1) Compliance would violate a statute or a rule of procedure;

(2) Compliance would violate a specific regulation or Executive order;

(3) Compliance would reveal information properly classified in the interest of national security;

(4) Compliance would reveal confidential commercial or financial information or trade secrets without the owner's consent;

(5) Compliance would reveal the internal deliberative processes of the Executive Branch; or

(6) Compliance would potentially impede or prejudice an on-going law enforcement investigation.

§ 5.49 Prohibition on providing expert or opinion testimony.

(a) Except as provided in this section, and subject to 5 CFR 2635.805, Department employees shall not provide opinion or expert testimony based upon information which they acquired in the scope and performance of their official Department duties, except on behalf of the United States or a party represented by the Department of Justice.

(b) Any expert or opinion testimony by a former employee of the Department shall be excepted from 5.49(a) where the testimony involves only general expertise gained while employed at the Department.

(c) Upon a showing by the requestor of exceptional need or unique circumstances and that the anticipated testimony will not be adverse to the interests of the United States, the appropriate Department official designated in § 5.44 may, consistent with 5 CFR 2635.805, in their discretion and with the concurrence of the Office of the General Counsel, grant special, written authorization for Department employees, or former employees, to appear and testify as expert witnesses at no expense to the United States.

(d) If, despite the final determination of the appropriate Department official designated in § 5.44, a court of competent jurisdiction or other appropriate authority orders the appearance and expert or opinion testimony of a current or former Department employee, that person shall immediately inform the Office of the General Counsel of such order. If the Office of the General Counsel determines that no further legal review of or challenge to the court's order will be made, the Department employee, or former employee, shall comply with the order. If so directed by the Office of the General Counsel, however, the employee, or former employee, shall respectfully decline to testify.

Dated: January 24, 2003.

Tom Ridge,

Secretary of Homeland Security.

[FR Doc. 03–1997 Filed 1–24–03; 11:34 am]

BILLING CODE 4410–10–P

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

6 CFR Part 7

RIN 1601–AA02

Classified National Security Information

AGENCY: Office of the Secretary, Homeland Security.

ACTION: Interim final rule.

SUMMARY: This interim final rule implements Executive Order 12958, entitled "Classified National Security Information," as amended, by establishing the initial elements of the Department of Homeland Security's classified national security information regulations.

DATES: This interim final rule is effective January 27, 2003. Written comments may be submitted by February 26, 2003.

ADDRESSES: Submit written comments (preferably an original and three copies) to Associate General Counsel (General Law), Department of Homeland Security, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ellen McClain, (202) 612–1952, not a toll free call.

SUPPLEMENTARY INFORMATION:

I. Background

On November 25, 2002, the President signed into law the Homeland Security Act of 2002 (Pub. L. 107–296), which created the new Department of Homeland Security (DHS). Pursuant to the provisions of the Act, the new Department came into existence on January 24, 2003.

In order to establish procedures to facilitate public interaction with the DHS Office of the Secretary, DHS is issuing an initial series of proposed and interim final regulations.

II. The Interim Final Rule

This interim final rule establishes initial procedures necessary for the DHS to fulfill its obligations under Executive Order 12958, as amended, regarding classified national security information.

Executive Order 12958, as amended, was issued to update and revise the standards and process for classifying, safeguarding and declassifying classified national security information. The rule delegates to the Under Secretary for Information Analysis and Infrastructure Protection responsibility for developing the vast majority of information and internal operating instructions on classified information.

III. Procedural Requirements

Because the DHS came into existence on January 24, 2003, it is necessary to promptly establish initial procedures to facilitate the interaction of the public with the Department. Furthermore, this interim final rule generally parallels the procedures currently used by other agencies to fulfill their obligations under Executive Order 12958, as amended, regarding classified national security information.

Accordingly, the Department has determined that notice and public procedure are impracticable, unnecessary and contrary to the public interest pursuant to 5 U.S.C. 553(b)(B). For the same reasons, the Department has determined that this interim rule should be issued without a delayed effective date pursuant to 5 U.S.C. 553(d)(3).

It has been determined that this rulemaking is not a significant regulatory action for the purposes of Executive Order 12866. Accordingly, a regulatory impact analysis is not required.

Because no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply.

This rule has been reviewed by the Information Security Oversight Office of the National Archives and Records Administration, pursuant to Executive Order 12958.

List of Subjects in 6 CFR Part 7

Classified information, Organization, functions, and authority delegations.

Authority and Issuance

For the reasons set forth above, 6 CFR chapter I is amended by adding part 7 to read as follows:

PART 7—CLASSIFIED NATIONAL SECURITY INFORMATION

Sec.
7.1 Purpose.
7.2 Scope.
7.3 Definitions.
7.11 Authority of the Under Secretary for Information Analysis and Infrastructure Protection.
7.21 Classification and declassification authority.
7.31 Mandatory review for declassification requests.

Authority: 5 U.S.C. 301; 6 U.S.C. 122; E.O. 12958, 60 FR 19825; 3 CFR, 1995 Comp., p. 333; E.O. 13142, 64 FR 66089, 3 CFR, 1999 Comp., p. 236; 32 CFR part 2001.

§7.1 Purpose.

The purpose of this part is to ensure that information within the Department of Homeland Security (Department) relating to the national security is classified, safeguarded, and declassified pursuant to the provisions of Executive Order 12958, as amended, and implementing directives from the Information Security Oversight Office of the National Archives and Records Administration (ISOO).

§7.2 Scope.

(a) All employees granted access to classified information by the Department are governed by this part, and by the standards in Executive Order 12958, as amended, any other applicable Executive Order, and directives promulgated under those Executive Orders. If any portion of this part conflicts with any portion of Executive Order 12958, as amended, or any other applicable Executive Order, the Executive Order shall apply. The provisions established by this subpart shall apply to each component of the Department, including all Department components that are transferred to the Department, except to the extent that a Department component has adopted separate guidance with regard to classified national security information and access.

(b) This part applies to non-contractor personnel, to include state and local officials, and contractor personnel who are entrusted with classified national security information originated within or in the custody of the Department.

(c) This part is independent of and does not affect any classification procedures or requirements of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2011 *et seq.*).

(d) This part does not, and is not intended to, create any right to judicial review, or any other right or benefit or trust responsibility, substantive or procedural, enforceable by a party against the United States, its agencies or instrumentalities, its officers or employees, or any other person.

§7.3 Definitions.

The terms defined or used in Executive Order 12958, as amended, and the implementing directives in 32 CFR part 2001, are applicable to this part.

§7.11 Authority of the Under Secretary for Information Analysis and Infrastructure Protection.

The Under Secretary for Information Analysis and Infrastructure Protection is designated as the senior agency official as required by section 5.6(c) of Executive Order 12958 and, except as specifically provided elsewhere in this part, is authorized to administer the Department's national security information program pursuant to Executive Order 12958, as amended.

§7.21 Classification and declassification authority.

(a) Top Secret original classification authority may only be exercised by the Secretary and by officials to whom such authority is delegated in writing by the Secretary. As a minimum, the Under Secretary for Information Analysis and Infrastructure Protection will be delegated this authority. No official who is delegated Top Secret classification authority pursuant to this paragraph may redelegate such authority.

(b) The Under Secretary for Information Analysis and Infrastructure Protection may delegate original Secret and Confidential classification authority to other officials determined to have frequent need to exercise such authority. No official who is delegated original classification authority pursuant to this paragraph may redelegate such authority.

(c) Officials authorized to classify information at a specified level are also authorized to classify information at a lower level. In the absence of an official authorized to exercise classification authority pursuant to this section, the person designated to act in lieu of such official may exercise the official's classification authority.

§7.31 Mandatory review for declassification requests.

Any person may request classified information be reviewed for declassification pursuant to the mandatory declassification review provisions of section 3.6 of Executive Order 12958. Such requests shall be sent to the Under Secretary for Information Analysis and Infrastructure Protection, Department of Homeland Security, 1800 G Street, NW., Washington, DC.

Dated: January 24, 2003.

Tom Ridge,

Secretary of Homeland Security.

[FR Doc. 03–1995 Filed 1–24–03; 11:34 am]

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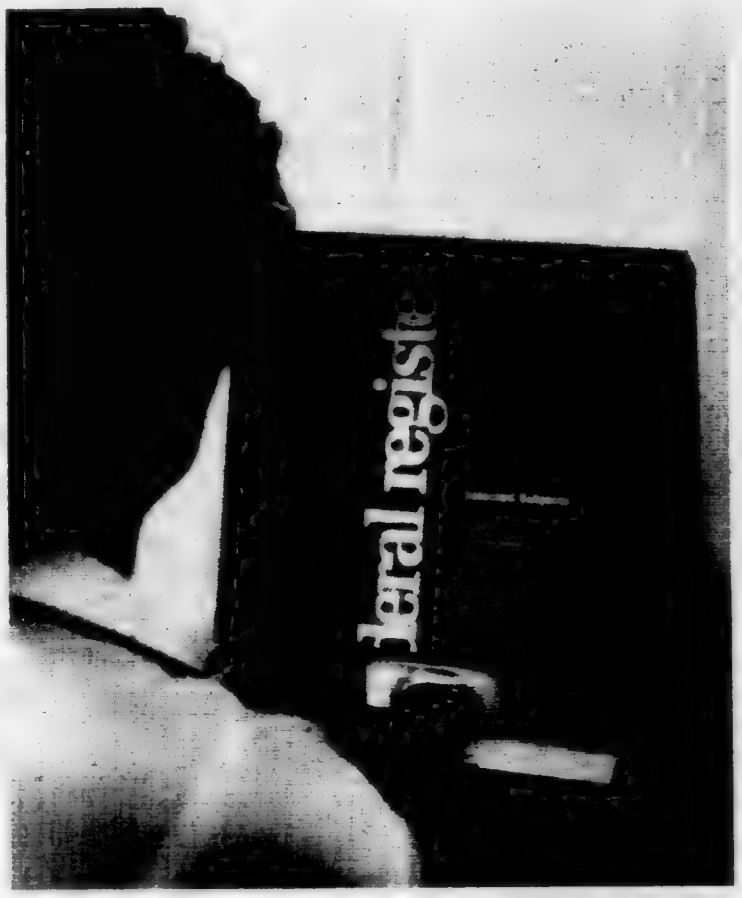

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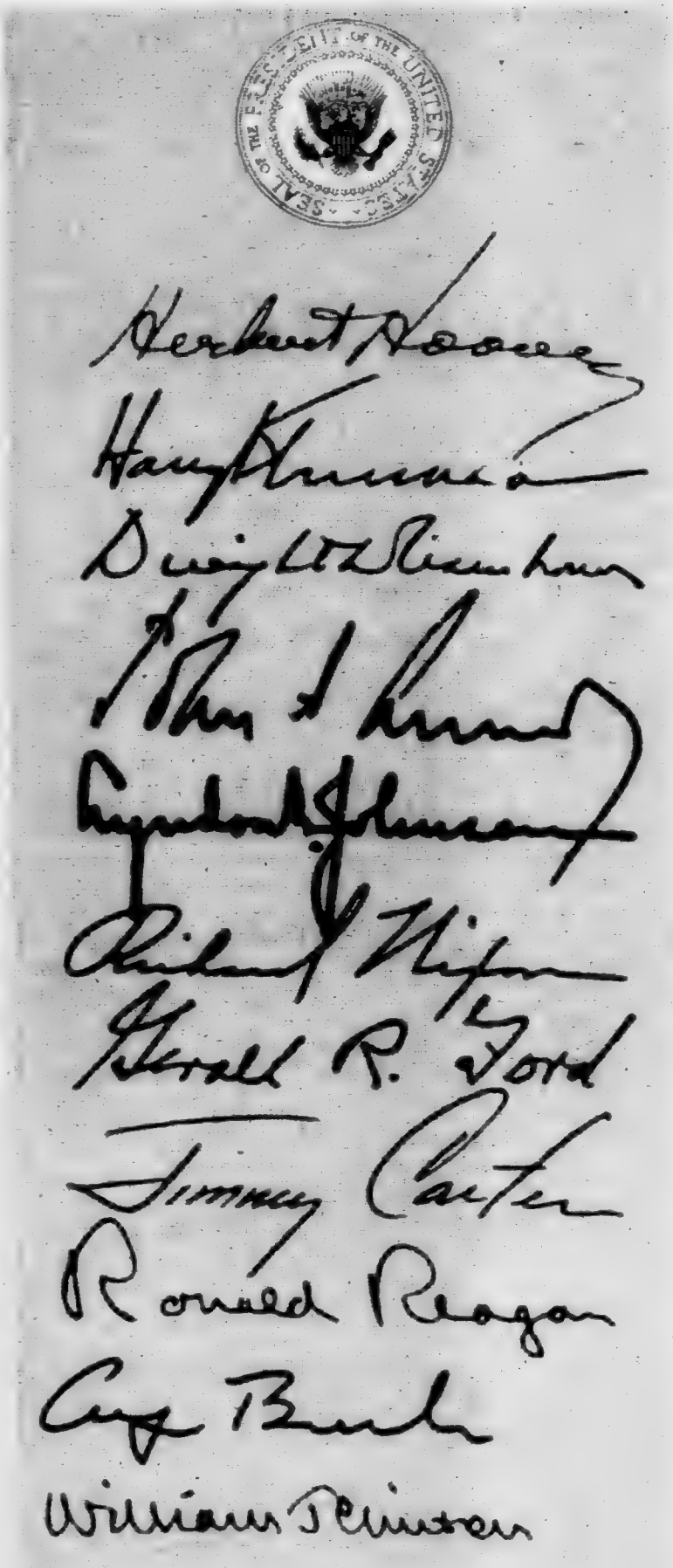

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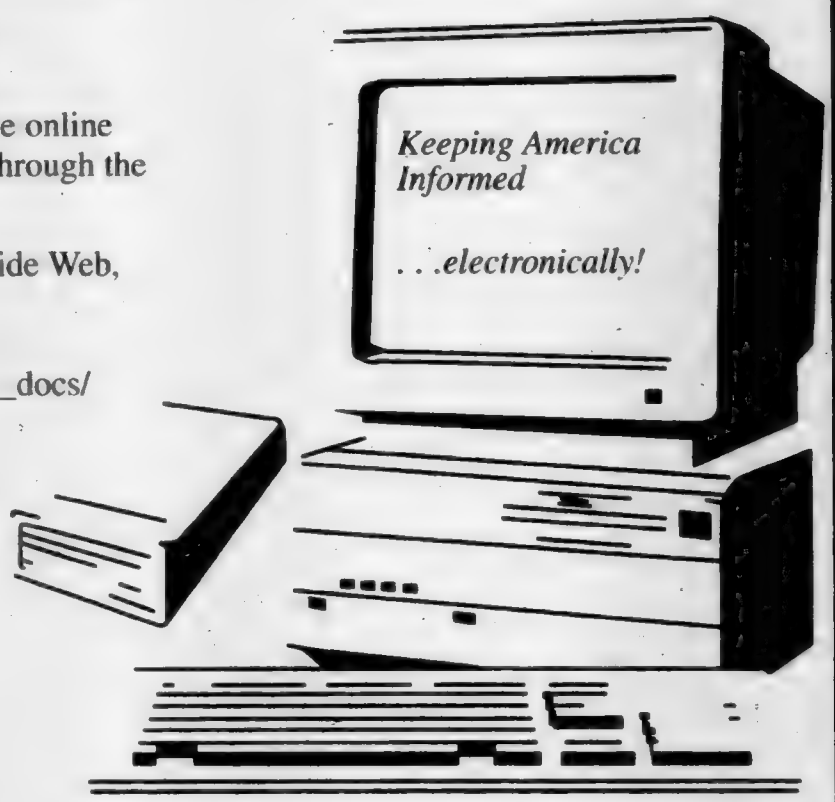

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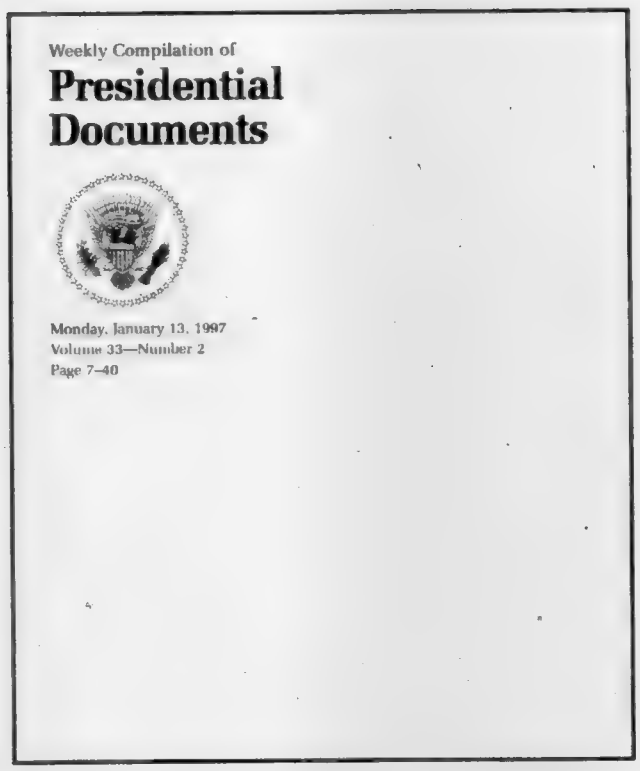

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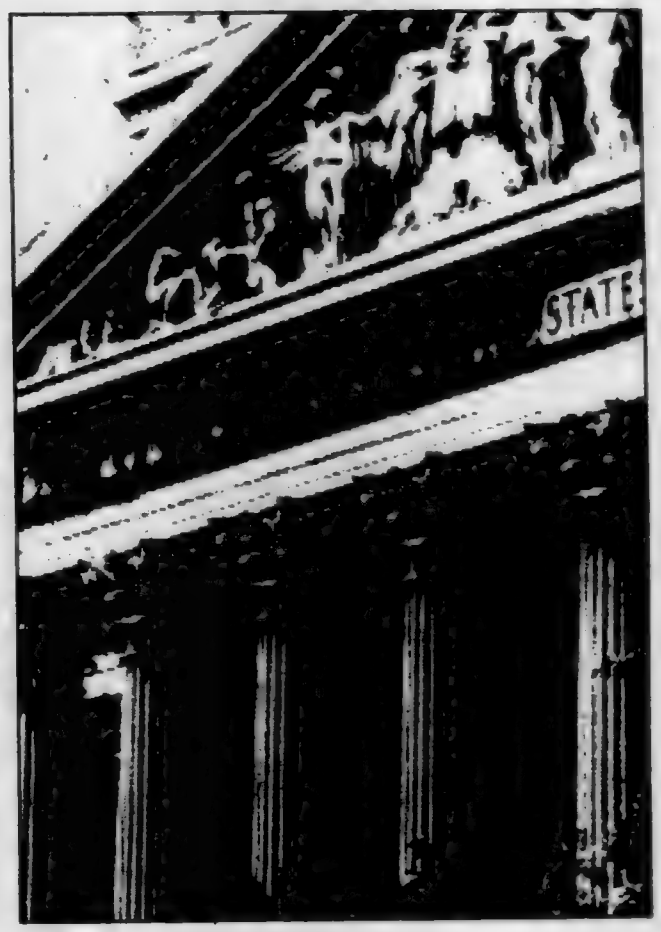

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Presidential Documents

Title 3—

The President

Executive Order 13284 of January 23, 2003

Amendment of Executive Orders, and Other Actions, in Connection With the Establishment of the Department of Homeland Security

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Homeland Security Act of 2002 (Public Law 107–296), and the National Security Act of 1947, as amended (50 U.S.C. 401 *et seq.*), and in order to reflect responsibilities vested in the Secretary of Homeland Security and take other actions in connection with the establishment of the Department of Homeland Security, it is hereby ordered as follows:

Section 1. Executive Order 13234 of November 9, 2001 ("Presidential Task Force on Citizen Preparedness in the War on Terrorism"), is amended by inserting "the Department of Homeland Security," after "the Office of Management and Budget," in section 2(a).

Sec. 2. Executive Order 13231 of October 16, 2001 ("Critical Infrastructure Protection in the Information Age"), is amended by:

(a) inserting "(i) Secretary of Homeland Security;" after "or their designees:" in section 6(a); and

(b) renumbering the subsequent subsections in section 6(a) appropriately.

Sec. 3. Executive Order 13228 of October 8, 2001 ("Establishing the Office of Homeland Security and the Homeland Security Council"), is amended by inserting "the Secretary of Homeland Security," after "the Secretary of Transportation," in section 5(b). Further, during the period from January 24, 2003, until March 1, 2003, the Secretary of Homeland Security shall have the responsibility for coordinating the domestic response efforts otherwise assigned to the Assistant to the President for Homeland Security pursuant to section 3(g) of Executive Order 13228.

Sec. 4. Executive Order 13224 of September 23, 2001 ("Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism"), as amended, is further amended by:

(a) inserting ", the Secretary of Homeland Security," after "the Secretary of the Treasury" in sections 1(b) and 1(d) (the first time it appears); and

(b) inserting ", the Secretary of Homeland Security," after "the Secretary of State" in sections 1(c) and 1(d) (the second time it appears), 5 (wherever it appears), and 7.

Sec. 5. Executive Order 13151 of April 27, 2000 ("Global Disaster Information Network"), is amended by:

(a) inserting "(8) Department of Homeland Security;" after "(7) Department of Energy;" in section 2(a); and

(b) renumbering the subsequent subsections in section 2(a) appropriately.

Sec. 6. Executive Order 13122 of May 25, 1999 ("Interagency Task Force on the Economic Development of the Southwest Border"), is amended by inserting "Secretary of Homeland Security," after "Secretary of the Treasury," in section 1(b).

Sec. 7. Executive Order 13048 of June 10, 1997 ("Improving Administrative Management in the Executive Branch"), is amended by:

(a) inserting "15. Department of Homeland Security;" after "14. Department of Veterans Affairs;" in section 1(a); and

(b) renumbering all subsequent subsections in section 1(a) appropriately.

Sec. 8. Executive Order 12992 of March 15, 1996 ("President's Council on Counter-Narcotics"), as amended, is further amended by:

(a) inserting "(n) Secretary of Homeland Security;" after "(m) Secretary of Veterans Affairs;" in section 2; and

(b) relettering all subsequent subsections in section 2 appropriately.

Sec. 9. Executive Order 12881 of November 23, 1993 ("Establishment of the National Science and Technology Council"), is amended by:

(a) inserting "(i) Secretary of Homeland Security;" after "(h) Secretary of the Interior;" in section 2; and

(b) relettering all subsequent subsections in section 2 appropriately.

Sec. 10. Executive Order 12859 of August 16, 1993 ("Establishment of the Domestic Policy Council"), is amended by:

(a) inserting "(o) Secretary of Homeland Security;" after "(n) Secretary of the Treasury;" in section 2; and

(b) relettering all subsequent subsections in section 2 appropriately.

Sec. 11. Executive Order 12590 of March 26, 1987 ("National Drug Policy Board"), is amended by:

(a) inserting "(13) the Secretary of Homeland Security;" after "(12) the Secretary of Education;" in section 1(b); and

(b) renumbering all subsequent subsections in section 1(b) appropriately.

Sec. 12. Executive Order 12260 of December 31, 1980 ("Agreement on Government Procurement"), as amended, is further amended by:

(a) inserting "14. Department of Homeland Security" after "13. Department of Health and Human Services" in the Annex; and

(b) renumbering all subsequent subsections in the Annex appropriately.

Sec. 13. Executive Order 11958 of January 18, 1977 ("Administration of Arms Export Controls"), as amended, is further amended by:

(a) striking "Secretary of the Treasury" wherever it appears in section 1(l)(2) and inserting "Attorney General" in lieu thereof; and

(b) inserting "the Attorney General," after "the Secretary of the Treasury," in section 2(a).

Sec. 14. Executive Order 11423 of August 16, 1968 ("Providing for the Performance of Certain Functions Heretofore Performed by the President with Respect to Certain Facilities Constructed and Maintained on the Borders of the United States"), as amended, is further amended by inserting "the Secretary of Homeland Security," after "the Secretary of Transportation," in section 1(b).

Sec. 15. Executive Order 10865 of February 20, 1960 ("Safeguarding Classified Information Within Industry"), as amended, is further amended by inserting "the Secretary of Homeland Security," after "the Secretary of Energy," in section 1.

Sec. 16. Executive Order 13011 of July 16, 1996 ("Federal Information Technology"), is amended by:

(a) inserting "15. Department of Homeland Security;" after "14. Department of Veterans Affairs;" in section 3(b); and

(b) renumbering all subsequent subsections in section 3(b) appropriately.

Sec. 17. Those elements of the Department of Homeland Security that are supervised by the Department's Under Secretary for Information Analysis and Infrastructure Protection through the Department's Assistant Secretary for Information Analysis, with the exception of those functions that involve no analysis of foreign intelligence information, are designated as elements of the Intelligence Community under section 201(h) of the Homeland Security Act of 2002 and section 3(4) of the National Security Act of 1947, as amended (50 U.S.C. 401a).

Sec. 18. Executive Order 12333 of December 4, 1981 ("United States Intelligence Activities"), is amended in Part 3.4(f) by:

(a) striking "and" at the end of subpart 3.4(f)(6);

(b) striking the period and inserting "; and" at the end of subpart 3.4(f)(7); and

(c) adding a new subpart 3.4(f)(8) to read as follows: "(8) Those elements of the Department of Homeland Security that are supervised by the Department's Under Secretary for Information Analysis and Infrastructure Protection through the Department's Assistant Secretary for Information Analysis, with the exception of those functions that involve no analysis of foreign intelligence information."

Sec. 19. *Functions of Certain Officials in the Department of Homeland Security.*

The Secretary of Homeland Security, the Deputy Secretary of Homeland Security, the Under Secretary for Information Analysis and Infrastructure Protection, Department of Homeland Security, and the Assistant Secretary for Information Analysis, Department of Homeland Security, each shall be considered a "Senior Official of the Intelligence Community" for purposes of Executive Order 12333, and all other relevant authorities, and shall:

(a) recognize and give effect to all current clearances for access to classified information held by those who become employees of the Department of Homeland Security by operation of law pursuant to the Homeland Security Act of 2002 or by Presidential appointment;

(b) recognize and give effect to all current clearances for access to classified information held by those in the private sector with whom employees of the Department of Homeland Security may seek to interact in the discharge of their homeland security-related responsibilities;

(c) make all clearance and access determinations pursuant to Executive Order 12968 of August 2, 1995, or any successor Executive Order, as to employees of, and applicants for employment in, the Department of Homeland Security who do not then hold a current clearance for access to classified information; and

(d) ensure all clearance and access determinations for those in the private sector with whom employees of the Department of Homeland Security may seek to interact in the discharge of their homeland security-related responsibilities are made in accordance with Executive Order 12829 of January 6, 1993.

Sec. 20. Pursuant to the provisions of section 1.4 of Executive Order 12958 of April 17, 1995 ("Classified National Security Information"), I hereby authorize the Secretary of Homeland Security to classify information originally as "Top Secret." Any delegation of this authority shall be in accordance with section 1.4 of that order or any successor Executive Orders.

Sec. 21. This order shall become effective on January 24, 2003.

Sec. 22. This order does not create any right or benefit, substantive or procedural, enforceable at law or equity, against the United States, its departments, agencies, or other entities, its officers or employees, or any other person.

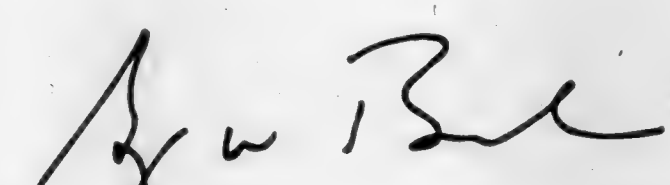

THE WHITE HOUSE,
January 23, 2003.

[FR Doc. 03–2069
Filed 1–27–03; 8:45 am]
Billing code 3195–01–P

Rules and Regulations

Federal Register
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Tuesday, January 28, 2003

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 989

[Docket No. FV03–989–1 IFR]

Raisins Produced From Grapes Grown in California; Modifications to the Raisin Diversion Program

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This rule modifies the requirements of the raisin diversion program (RDP) authorized under the Federal marketing order for California raisins (order). The order regulates the handling of raisins produced from grapes grown in California and is administered locally by the Raisin Administrative Committee (RAC). The changes are intended to provide the RAC with additional flexibility when implementing a RDP, and provide opportunity for all producers to participate in a program. The changes include adding an additional date by which the RAC can increase the tonnage allotted to a RDP; adding authority for the RAC to limit the amount of tonnage allotted to vine removal; modifying the application of the production cap for spur pruners under a RDP; adding authority for the RAC to condition a vine removal program with a producer's agreement not to replant and to compensate the RAC for damages if replanting occurs; revising the requirements for prioritizing and allocating tonnage for spur pruners under a RDP; allowing partial production units to be included in a RDP and adding authority for the RAC to specify provisions to maintain the integrity of the program; and specifying in the regulations the approval of a program's provisions by the Department.

DATES: Effective: January 29, 2003. Comments received by March 31, 2003, will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250–0237; Fax: (202) 720–8938, or e-mail: *moab.docketclerk@usda.gov*. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: *http://www.ams.usda.gov/fv/moab.html*.

FOR FURTHER INFORMATION CONTACT: Maureen T. Pello, Senior Marketing Specialist, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California 93721; telephone: (559) 487–5901, Fax: (559) 487–5906; or Ronald L. Cioffi, Chief, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938, or e-mail: *Jay.Guerber@usda.gov*.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 989 (7 CFR part 989), both as amended, regulating the handling of raisins produced from grapes grown in California, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule modifies the administrative rules and regulations regarding the RDP specified under the order. The changes are designed to provide the RAC with additional flexibility when implementing a RDP, and provide the opportunity for all producers to participate in a program. The changes are as follows: Add an additional date by which the RAC can increase the tonnage allotted to a RDP; add authority for the RAC to limit the amount of tonnage allocated for vine removal; modify application of the production cap for spur pruners under a RDP; adding authority for the RAC to condition a vine removal program with a producer's agreement not to replant and to compensate the RAC for damages if replanting occurs; revise the requirements for prioritizing and allocating tonnage for spur pruners under a RDP; and allow partial production units to be included in a RDP and allow the RAC to specify provisions to maintain the integrity of the program.

These regulatory changes were recommended by the RAC at meetings on October 15, and December 12, 2002, by a near unanimous vote. A member voting no expressed concern with the definition of partial production unit as proposed by the RAC.

Given the above changes, appropriate revisions are made to the text of § 989.156 to include specific references to approval of USDA for a program's provisions.

Volume Regulation Provisions

The order provides authority for volume regulation designed to promote orderly marketing conditions, stabilize prices and supplies, and improve producer returns. When volume regulation is in effect, a certain percentage of the California raisin crop may be sold by handlers to any market (free tonnage) while the remaining percentage must be held by handlers in a reserve pool (reserve) for the account of the RAC. Reserve raisins are disposed of through various programs authorized under the order. For example, reserve raisins may be sold by the RAC to handlers for free use or to replace part of the free tonnage they exported; carried over as a hedge against a short crop the following year; or may be disposed of in other outlets not competitive with those for free tonnage raisins, such as government purchase, distilleries, or animal feed. Net proceeds from sales of reserve raisins are ultimately distributed to reserve pool equity holders.

Raisin Diversion Program

The RDP is another program concerning reserve raisins authorized under the order and may be used, as a means for bringing supplies into closer balance with market needs. Authority for the program is provided in § 989.56 of the order. Paragraph (e) of that section provides authority for the RAC to establish, with the approval of USDA, such rules and regulations as may be necessary for the implementation and operation of a RDP. Accordingly, additional procedures and deadlines are specified in § 989.156.

Pursuant to these sections, the RAC must meet during the crop year to review raisin data, including information on production, supplies, market demand, and inventories. If the RAC determines that the available supply of raisins, including those in the reserve pool, exceeds projected market needs, it can decide to implement a diversion program, and announce the amount of tonnage eligible for diversion during the subsequent crop year. Producers who wish to participate in the RDP must submit an application to the RAC. Under the current regulations, the RAC conducts a lottery if the tonnage applied for exceeds what has been allotted. RAC staff then notifies producers whether they have been accepted into the program.

Approved producers curtail their production by vine removal or some other means established by the RAC. Such producers receive a certificate the following fall from the RAC which represents the quantity of raisins diverted. Producers sell these certificates to handlers who pay producers for the free tonnage applicable to the diversion certificate minus the established harvest cost for the diverted tonnage. Handlers redeem the certificates by presenting them to the RAC, and paying an amount equal to the established harvest cost plus payment for receiving, storing, fumigating, handling, and inspecting the tonnage represented on the certificate. The RAC then gives the handler raisins from the prior year's reserve pool in an amount equal to the tonnage represented on the diversion certificate. The new crop year's volume regulation percentages are applied to the diversion tonnage acquired by the handler, as if the handler had bought raisins directly from a producer.

RAC Recommendation

The California raisin and grape industries continue to be plagued by burdensome supplies and severe economic conditions. Industry members have been reviewing various options to help address some of these concerns. The RAC also has been reviewing options to help the industry address these issues through the marketing order. The RAC proposed some requirements for a 2003 RDP at a meeting on October 15, 2002. Additional revisions were proposed by the RAC's Executive Committee on October 24, and November 4 and 26, 2002. The RAC met on December 12, 2002, to review the Executive Committee's changes and proposed program. The RAC ultimately recommended specific changes to the order's regulations regarding the RDP that could apply to any future RDP. The changes are designed to provide the RAC with additional flexibility when implementing a RDP, and provide opportunity for all producers to participate in a program. The changes are described in the following paragraphs.

Additional Date for Increasing the RDP Tonnage

With the exception of the 2002–03 crop year, § 989.56(a) of the order and § 989.156(a)(1) of the regulations specify that the RAC must announce the quantity of tonnage allotted to a RDP on or before November 30 of each crop year. Section 989.156(a)(1) specifies further, with the exception of the 2002–03 crop year, that the RAC may announce an increase in the tonnage eligible for a RDP on or before January 15 of each crop year. The November 30-deadline in the order was suspended, and the November 30 and January 15 dates in the regulations were extended for the 2002–03 crop year to dates specified by the RAC (67 FR 71072; November 29, 2002) to allow time for review and modification of the RAC's proposed RDP changes.

The RAC recommended that the regulations be modified to allow the RAC an additional opportunity to increase the tonnage eligible for a RDP on or before May 1 of each crop year subsequent to 2002–03. This will allow the RAC the opportunity to allocate additional tonnage to a RDP in years when raisin deliveries may be slow, or when additional reserve raisins may be available later during the crop year. Section 989.156(a)(1) is modified accordingly.

Limit on Tonnage Allocated for Vine Removal

Section 989.156(h)(1) specifies that the RAC may limit a RDP to vine removal only. This requirement will remain unchanged by this rule. However, the RAC proposed having the ability to cap, or limit, the amount of tonnage allocated to a RDP for vine removal. For example, the RAC may allocate 100,000 tons to a RDP, of which 50,000 tons would be allotted for vine removal only. Under this scenario, the remaining 50,000 tons would be available for spur pruners (or producers who opted to reduce their production by methods other than vine removal). As described later in this rule, the RAC recommended revising the regulations to allow for the allocation of tonnage to spur pruners pro rata to all who applied. Imposing a cap on vine removers would ensure that a certain amount of tonnage would be available for a spur prune program. This additional requirement is specified in § 989.156(a)(2).

Additional Agreement for Vine Removers Who Replant

This RAC recommended that authority be added for the RAC to condition a vine removal program with

a producer's agreement not to replant and to compensate the RAC for damages if replanting occurs. Producers who agree to remove vines, but replant within a specified number of years (maximum of 5 crop years), as determined by the RAC, with the approval of USDA, must agree to compensate the RAC for appropriate damages for the tonnage specified in the applicable diversion certificate. The payment of damages would be appropriate because replanting would cause serious damage to a RDP and the raisin industry. The RAC contemplates that a 5-year restriction on replanting would be included as a feature of a 2003 RDP for NS raisins. This would remove acreage from production for at least 8 crop years because it takes about 3 years for a new vineyard to have significant production. Adding this requirement to a RDP is expected to help the industry reduce its burdensome oversupply.

Accordingly, the producer application for a 2003 RDP has been modified to condition a vine removal program with a producer's agreement not to replant. Producers who elect to participate in a RDP and later replant will be required to compensate the RAC for damages at a rate per ton to be determined by the RAC and approved by USDA for the tonnage specified on the diversion certificate. Funds collected by the RAC for such damages will be deposited in the reserve pool applicable to the particular diversion program and be distributed to the equity holders in that pool. If a determination is made by the Committee that a producer violated the agreement not to replant and is subject to damages, the producer may appeal the Committee's decision in accordance with paragraph (m) of § 989.156.

Application of Production Cap

Under a RDP, the reserve tonnage allocated to a program becomes part of the following year's supply. For example, if 100,000 tons of 2002–03 reserve raisins were allocated to a RDP, that tonnage would be issued to RDP producers in the fall of 2003 in the form of certificates from the RAC. The certificates represent actual raisins. The 100,000 tons would then be included in the 2003–04 crop estimate. A higher crop estimate reduces the free tonnage percentage. Since producers are paid by handlers for their free tonnage raisins, a lower free tonnage percentage reduces producer returns. The industry has had concerns with the impact of large diversion programs on the following year's free tonnage percentage.

As a result, the RAC recommended that the concern about large RDP's adversely impacting the following year's free tonnage percentage be addressed through application of the production cap. A production cap is a limit on the yield per acre that is permitted under a RDP. Section 989.56(a) specifies that the RAC must announce the production cap at the same time it announces a RDP for the crop year. The section specifies further that the production cap shall equal 2.75 tons per acre, unless it is lowered by the RAC, with approval of the Secretary.

The RAC proposed that it have the flexibility to limit the production cap to a percentage of the yield per acre for production units on which producers agree to spur prune (or curtail production by methods other than vine removal) to lessen the adverse effects a large RDP would have on the following year's free tonnage percentage. For example, the RAC could specify that the production cap applicable to 2003 spur pruners would equal the lesser of 2.75 tons per acre, or 80 percent of the 2002 yield per acre on that production unit. The following table illustrates this further.

2002 yield per acre (tons	Application of production cap (tons)
5.0	2.75 (2.75 cap)
4.0	2.75 (2.75 cap)
3.5	2.75 (2.75 cap)
3.4375	2.75 (both 80% and 2.75)
3.2	2.56 (80% cap)
3.0	2.4 (80% cap)
2.5	2.0 (80% cap)
2.0	1.6 (80% cap)
1.5	1.2 (80% cap)
1.0	0.8 (80% cap)

Participants who agree to remove vines would not be subject to the percentage limit on the production cap because of the effectiveness of vine removal in reducing production capacity. However, such participants would remain subject to the established production cap. This additional flexibility is specified in § 989.156(a)(2).

Allocation of Tonnage for Spur Pruners (Includes Methods of Diversion Other Than Vine Removal)

Section 989.156(d) currently requires that, if reserve tonnage exists after the allocation of diversion tonnage has been made to all eligible producer applicants who agree to remove vines, a lottery shall be held to allocate remaining tonnage. The RAC recommended that it have the flexibility to allocate such tonnage either pro rata to remaining applicants or by a lottery for complete production units to remaining applicants if a minimal amount of tonnage remains. Allocating tonnage pro rata would provide the opportunity for all producers to participate in a spur prune program. Accordingly, §§ 989.156(a)(2) and 989.156(d) is modified to incorporate this option.

Inclusion of Partial Production Units

As described above, the RAC contemplates future RDP's where the tonnage allotted to applicants who agree to spur prune vines (or divert production using a method other than vine removal) may be done on a pro rata basis. Such producers would remove only a portion of a production unit, or a "partial" unit.

In 1997, the RAC recommended that partial production units no longer be accepted into the RDP, and § 989.156 was modified accordingly (62 FR 60764; November 13, 1997). This action was taken because the RAC had concerns that some producers were removing weak vines in a production unit and getting credit under a RDP for an inflated amount of tonnage.

To implement the RAC's proposal for allocating tonnage on a pro-rata basis to applicants who agree to spur prune their vines, and help maintain integrity of the program, the RAC recommended that a partial production unit must have two permanent, contiguous (natural or man-made) boundaries. This would eliminate the ability for producers to select certain rows of weak vines and artificially inflate the tonnage on their unit. This definition is added to paragraph (o) of § 989.156. Additionally, the words "or portion thereof" are added to paragraphs (h) and (i) of § 989.156 to indicate that partial units may be included in a RDP.

Finally, the RAC recommended that it be given the authority to specify provisions for a partial production unit to maintain the integrity of the program. For example, the RAC indicated that it might want to specify that only a certain corner of each vineyard may be accepted into a spur-prune RDP to further alleviate the problem of a producer choosing the weakest corner of his/her vineyard, and to help maintain the integrity of the RDP. Accordingly, paragraph (a) of § 989.156 is modified to reflect that the RAC may limit a program that is applicable to partial production units by specifying the portion of the production units that can be diverted, or like provisions to maintain the integrity of the program.

Initial Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 20 handlers of California raisins who are subject to regulation under the order and approximately 4,500 raisin producers in the regulated area. Small agricultural firms are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts of less that $5,000,000, and small agricultural producers are defined as those having annual receipts of less than $750,000. Thirteen of the 20 handlers subject to regulation have annual sales estimated to be at least $5,000,000, and the remaining 7 handlers have sales less than $5,000,000. No more than 7 handlers, and a majority of producers, of California raisins may be classified as small entities.

The California Agriculture Statistics Service (CASS) has forecast the 2002 production of raisin variety grapes at 2,550,000 tons (green). This is a relatively high level of production. The record high production occurred in 2000, at 2,921,000 tons (green).

Producers market raisin variety grapes in the fresh market (table), wine or juice market (crush), or dry them into raisins. Typically, 67 percent of the crop is dried for raisins, 20 percent crushed for wine and juice, and the remaining 13 percent of the crop is utilized in fresh and canned sales. These outlets provide a hedge for producers attempting to minimize risk from bad weather (rain) or a depressed market (concentrate, wine, or raisins).

The industry's estimate for all variety raisin production, as of October 4, 2002, is 446,449 dried tons (407,996 tons for NS). This will be the third consecutive year that raisin production has been above 400,000 tons. Combined domestic and export demand (shipments) is estimated at approximately 300,000 tons. These levels of production, combined with stable demand have resulted in a large build-up of free and reserve carryin inventories.

The RAC reports that 48,749 tons of NS raisins are currently being held in the reserve pool from the 2001 crop. In addition, 153,152 free tons are held by handlers in inventories. With current total dried production estimated at 446,449 tons, and combined free and reserve inventories at 201,901 tons, the industry has over 600,000 tons of raisins.

This type of surplus situation leads to serious marketing problems. Handlers compete against each other in an attempt to sell more raisins to reduce inventories and to market their crop. This situation puts downward pressure on producers' prices and incomes.

In addition, it has been reported that the wineries offered $65 a ton for green NS raisins for crushing. In recent years, wineries have typically offered prices ranging from $164 to $200 per ton. The wine price for NS grapes was lowered to $125 per ton in 2000 and fell to $85.70 per ton in 2001. This has resulted in more raisin variety grapes being dried for raisins, which has added to the surplus situation in the raisin market.

Typically, 500,000 tons of raisin variety grapes are delivered to the wineries for crushing. In 2001, this volume decreased to 261,000 tons. The 2002 crop year deliveries for crushing are expected to remain low.

Surplus situations are often the result of increased bearing acres, which are encouraged by high prices. However, bearing acres for raisin variety grapes have fallen from 280,000 acres in 2000 to 273,000 acres in 2002. In addition, 27,000 acres were idle due to the raisin diversion program. The increased raisin production is largely the result of producers deciding to dry more grapes for raisins due to the low crush prices and increased yields. The RAC hopes to utilize the RDP to help alleviate the industry's oversupply. The RAC's recommended changes are designed to add flexibilities to the RDP, and provide the opportunity for all producers to participate in a program. The overall impact of a RDP with the recommended flexibility is expected to impact small and large entities positively by reducing the industry's production capacity, and by bringing supplies in closer balance with market needs.

This rule revises § 989.156 of the order's rules and regulations regarding the RDP. Under a RDP, producers receive certificates from the RAC for curtailing their production to reduce burdensome supplies. The certificates represent diverted tonnage. Producers sell the certificates to handlers who, in turn, redeem the certificates with the RAC for raisins from the prior year's reserve pool. Specifically, this rule revises the requirements of a RDP to: Add an additional date by which the RAC can increase the tonnage allotted to a RDP; add authority for the RAC to limit the amount of tonnage allocated for vine removal; modify application of the production cap for spur pruners under a RDP; adding authority for the RAC to condition a vine removal program with a producer's agreement not to replant and to compensate the RAC for damages if replanting occurs; revise the requirements for prioritizing and allocating tonnage for spur pruners under a RDP; allow partial production units to be included in a RDP and add authority for the RAC to specify provisions to maintain the integrity of the program; and specifying in the regulations the approval of a RDP's provisions by USDA. Authority for these changes is provided in § 989.56(e) of the order.

Regarding the impact of this action on affected entities, these changes are designed to provide the RAC with additional flexibility when implementing a RDP. Adding the May 1 date whereby the RAC may increase the tonnage allotted to a RDP would give more producers an opportunity to participate in the program. The changes regarding the way tonnages are allocated under a program (cap on vine removal that would allow a specified amount of tonnage available for spur pruners, and allocating spur prune tonnage pro rata to all applicants) are intended to provide the opportunity for all producers to participate at some level in a RDP. Thus, all producers could potentially have the opportunity to earn some income for curtailing their production.

With regard to cost, based on past RDP's, the RAC estimates that compliance and verification costs associated with a RDP average about $150 per production unit. Using an estimate of 1.25 production units per RDP producer application, if all 4,500 producers participated in a RDP, there could potentially be about 5,625 production units in a program. Thus, using the $150 per unit figure, compliance and verification costs for the program could average about $843,750. The overall impact of the changes is difficult to quantify. However, if a RDP implemented using the increased flexibility helps bring supplies into balance with market needs over time, the benefits for both small and large entities would be positive. When supplies and market needs are in balance, experience has shown that producers and handlers both benefit, regardless of size.

Regarding alternatives to the RAC's recommendation, the industry has been considering various options and programs to help alleviate the severe economic conditions adversely

impacting both raisin producers and handlers. Industry groups outside of the RAC are seeking financial assistance under section 32 of the Act of August 24, 1935 (7 U.S.C. 612c). The RAC also has a subcommittee that is reviewing long-term solutions to help the industry that would require formal rulemaking changes to the marketing order. RAC members have been seeking short-term solutions available through the existing order, or slight modifications thereto. Thus, the RAC recommended changes are designed to add flexibilities to the RDP and provide the potential for all producers to participate in a program. The RAC hopes to utilize the RDP to help alleviate the industry's oversupply situation.

The RAC and Executive Committee did consider options to some of the features recommended by the RAC. One option concerned an alternative to application of the production cap. That is, specifying that producers who agreed to spur prune their vines would have to spur prune an additional percentage of their acreage that would not be reflected on their diversion certificates. However, the order does not provide authority for the application of a "multiplier" in this fashion to vineyards that were spur pruned. The RAC ultimately proposed that it have the flexibility to limit the production cap to a percentage of the yield per acre for production units on which producers agree to spur prune (or curtail production by methods other than vine removal).

At its meetings, the Executive Committee also considered other dates besides May 1 whereby the RAC could increase the tonnage allotted to a RDP. An April date was contemplated, but not proposed because industry members would rather be past the threat of an April frost before making a decision whether to add tonnage to a RDP. Thus, the May 1 date was deemed appropriate and ultimately proposed by the RAC.

There was some discussion by industry members about partial production units. Some members questioned whether authority for partial units should be added back into the order's regulations, and some questioned whether a partial unit should be required to have two permanent, contiguous boundaries. There was also concern that a producer could spur prune a corner of his/her vineyard, redesign his/her trellacing system to provide for significantly increased yields, and contribute to future oversupplies. After much discussion, the majority of RAC members concurred with allowing partial production units in a RDP, and limiting such a unit to one that has two permanent, contiguous boundaries.

This rule does not add measurably to the current burden on reporting or recordkeeping requirements for either small or large raisin handlers. In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the information collection requirement referred to in this rule (*i.e.*, the RDP application) has been approved by the Office of Management and Budget (OMB) under OMB Control No. 0581–0178. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. Finally, USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

Further, this action was reviewed by the RAC's Administrative Issues Subcommittee October 7 and 15, and December 10 and 12, 2002, by the RAC's Executive Committee on October 24, and November 4 and 26, 2002, and by the RAC on October 7 and 15, and December 12, 2002. All of these meetings where this action was deliberated were public meetings widely publicized throughout the raisin industry. All interested persons were invited to attend the meetings and participate in the industry's deliberations. Finally, all interested persons are invited to submit information on the regulatory and informational impact of this action on small businesses.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/fv/moab.html*. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

A 60-day comment period is provided to allow interested persons to respond to this rule. Any comments received will be considered prior to finalization of this rule.

After consideration of all relevant material presented, including the RAC's recommendation, and other information, it is found that this interim final rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect, and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) This rule provides the RAC with additional flexibility when implementing a RDP; (2) this rule needs to be in place as soon as possible so that these requirements can be in place for a 2003 RDP, and the RAC and all potential participants can plan accordingly. (3) this action was recommended by a near unanimous vote of the RAC and producer participation in a RDP is voluntary; and (4) a 60-day comment period is provided and all comments received will be considered in finalizing this rule.

List of Subjects in 7 CFR Part 989

Grapes, Marketing agreements, Raisins, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 989 is amended as follows:

PART 989—RAISINS PRODUCED FROM GRAPES GROWN IN CALIFORNIA

1. The authority citation for 7 CFR part 989 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. In § 989.156, paragraphs (a), (d), (h)(2) and (3), (i), and (o) are revised to read as follows:

§ 989.156 Raisin diversion program.

(a)(1) *Quantity to be diverted.* On or before November 30 of each crop year, the Committee, with the approval of the Secretary, shall announce the quantity of raisins eligible for a raisin diversion program: *Provided,* That, for the 2003 diversion program, this date may be extended by the Committee to a later date within the 2002–03 crop year. On or before January 15 of each crop year, the Committee, with the approval the Secretary, may announce an increase in the tonnage eligible for a raisin diversion program: *Provided,* That, for the 2002 Natural (sun-dried) Seedless raisin diversion program, the Committee may announce an increase in the quantity of tonnage eligible for the program later than January 15: *And provided further,* That, for the 2003 and subsequent raisin diversion programs, the Committee, with the approval of the Secretary, may announce an increase in the tonnage eligible for a raisin diversion program on or before May 1 of each crop year. The quantity eligible for diversion may be announced for any of the following varietal types of raisins: Natural (sun-dried) Seedless, Muscat (including other raisins with seeds), Sultana, Zante

Currant, Monukka, and Other Seedless raisins. At the same time, the Committee, with the approval of the Secretary, shall determine and announce to producers, handlers, and the cooperative bargaining association(s) the allowable harvest cost to be applicable to such diversion tonnage. The factors to be reviewed by the Committee in determining allowable harvest costs shall include but not be limited to: Costs for picking, turning, rolling, boxing, paper trays, vineyard terracing, hauling to the handler, and crop insurance.

(2) *Additional provisions.*

For any crop year's diversion program, the Committee, with the approval of the Secretary, may:

(i) Limit the entire program to production units on which producers agree to remove vines;

(ii) Limit a portion of the program to production units on which producers agree to remove vines;

(iii) Limit the production cap to a percentage (less than or equal to 100 percent) of the yield per acre of the specific production unit for production units on which producers agree to divert production by methods other than vine removal;

(iv) Limit participation in a vine removal program to producer's who agree not to replant vines for a period not to exceed 5 years and who agree to compensate the Committee for appropriate damages if vines are replanted. Damages collected by the Committee pursuant to this subparagraph shall be deposited in the reserve pool fund of the reserve pool applicable to the particular diversion program and be distributed to the equity holders in that pool. If a determination is made by the Committee that a producer violated the agreement not to replant and is subject to damages, the producer may appeal the Committee's decision in accordance with paragraph (m) of this section;

(v) Specify how tonnage available to producers who agree to divert production by means other than through vine removal will be allotted, either pro-rata to remaining applicants, or by lottery to remaining applicants for complete production units if a minimal amount of tonnage remains; and/or

(vi) Limit a program that is applicable to partial production units by specifying the portion of the production units that can be diverted, or like provisions to maintain the integrity of the program.

Additional provisions provided pursuant to this paragraph shall be announced at the time the tonnage available for that season's diversion program is announced.

* * * * *

(d) *Priority of applications and allocation of tonnage.*

(1) Those producer applications indicating that the vines on the producing units will be removed shall receive first priority over other applications when reserve tonnage under the program is to be allocated.

(2) Pursuant to paragraphs (a)(2)(i) and (a)(2)(ii) of this section, if the entire program, or a portion of the program, is limited to production units on which producers agree to remove vines, and the production volume in such vine removal applications exceeds the amount of diversion tonnage available for vine removal, a lottery will be held to allocate such vine removal tonnage among the respective applicants.

(3) Remaining tonnage available under a diversion program, after that allocated to producer applications indicating that the vines of the producing units will be removed, shall be allocated by the Committee either:

(i) pro-rata to remaining applicants; or

(ii) to remaining applicants by a lottery for complete production units, if a minimal amount of tonnage remains.

In conducting any lottery under this section, the Committee may group producer applications on a handler-by-handler basis, and separate lotteries will be held for each group. The diversion tonnage of raisins available for each such group in each lottery may not exceed the percentage of total handler acquisitions acquired by the group's handler during the previous crop year. If diversion tonnage exists after such group lotteries, such remaining diversion tonnage may be allocated by one lottery of all remaining producer applications.

* * * * *

(h) * * *

(2) *Period of diversion.* An approved applicant must remove the grapes, or vines, indicated on the application within the production unit, or portion thereof, designated within the application not later than June 1 of the crop year in which a diversion program is implemented. Producers who remove the vines on a production unit after August 15 may qualify for a diversion program for that crop year if a diversion program is announced and if diversion on that unit and vine removal after August 15 can be documented and verified.

(3) *Failure to divert.* Any raisin producer who does not take the necessary measures to remove the grapes on an approved production unit, or portion thereof, by June 1, or any raisin producer who has indicated the removal of vines or the intent to remove the vines and who does not remove such vines on an approved production unit by June 1, shall not be issued a diversion certificate, may be subject to liquidated damages and interest charges as provided in paragraph (q) of this section, may be subject to an injunctive action under the Act, and may be denied the opportunity to participate in the next diversion program, when implemented: *Provided:* That any producer who has more than one production unit and fails to divert on an approved production unit or portion thereof may be denied the opportunity to participate on all of that producer's production units, in the next diversion program. For spur-pruned vines, this date may be extended 2 weeks from the date of the inspection of a producer's vineyard if more than 4 bunches on spur-pruned vines are present at the time of inspection.

(i) *Issuance of certificates.* When preliminary percentages are announced, the Committee shall issue diversion certificates to those approved applicants who have removed grapes in accordance with this section. Such certificates shall represent an amount of reserve tonnage raisins equal to the amount of raisins diverted from the production unit(s), or portion(s) thereof, specified in the producer application, or additional quantity granted by the Committee when vines are diverted through vine removal or any other means established by the Committee, with the approval of the Secretary. If, prior to issuance of a certificate, the Committee is notified by an approved applicant that such applicant's interest in the production unit(s), or portion(s) thereof, involved in the program has been transferred to another person, the Committee may substitute the transferee for the applicant provided the transferee agrees to comply with the provisions of this section.

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(o) *Production units.*

(1) For the purpose of the raisin diversion program, a production unit is a clearly defined geographic area with permanent boundaries (either natural or man-made). A producer must be able to document to the Committee the previous year's production data for that specific area by means of sales receipts or other deliveries or transfer documents which indicate the creditable fruit weight delivered to handlers from that specific area. If the information submitted by producers on the application concerning a unit's

production is significantly greater than past production on the unit, production on neighboring units, or the industry norm, or the production is unable to be verified based on submitted documentation, the Committee may request additional documentation such as tray count, payroll records, prior years' production, and insurance records to substantiate the tonnage of raisins produced on all production units that such applicant controls or owns. Producers would not be precluded from submitting other information substantiating production if those producers desired. A new production unit will not be eligible for the raisin diversion program until at least 1 year's production has been grown and is documented. An existing production unit, transferred to a new or expanding producer, is eligible for the raisin diversion program as soon as the previous year's production can be properly documented.

(2) For purposes of the raisin diversion program, a partial production unit must have two permanent, contiguous boundaries (either natural or man-made).

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Dated: January 23, 2003.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 03–1965 Filed 1–23–03; 5:09 pm]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 989

[Docket No. FV02–989–5 FIR]

Raisins Produced From Grapes Grown in California; Additional Opportunity for Participation in 2002 Raisin Diversion Program

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (USDA) is adopting, as a final rule, with change, an interim final rule that allowed producers an additional opportunity to participate in the 2002 raisin diversion program (RDP). The RDP is authorized under the Federal marketing order for California raisins (order). The order regulates the handling of raisins produced from grapes grown in California and is administered locally by the Raisin Administrative Committee (RAC). This action was intended to help reduce the burdensome oversupply affecting the California raisin industry.

EFFECTIVE DATE: January 29, 2003.

FOR FURTHER INFORMATION CONTACT: Maureen T. Pello, Senior Marketing Specialist, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California 93721; telephone: (559) 487–5901, Fax: (559) 487–5906; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938, or e-mail: *Jay.Guerber@usda.gov*.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 989 (7 CFR part 989), both as amended, regulating the handling of raisins produced from grapes grown in California, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

USDA is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

A 2002 RDP for Natural (sun-dried) Seedless (NS) raisins was established in November 2001. A total of 54,086 tons of 2001 crop reserve raisins was allocated to the program. This rule continues in effect a rule that allowed producers an additional opportunity to participate in the 2002 RDP. An additional 25,000 tons of 2001 crop reserve raisins was allocated to the RDP. The additional program applied to producers who agreed to remove vines from production, and was intended to help the industry reduce its burdensome oversupply. The action was recommended by the RAC at a meeting on May 30, 2002, by a vote of 45 in favor, 1 opposed (member opposed because the program did not provide for a moratorium on replanting), and 1 abstained.

Volume Regulation Provisions

The order provides authority for volume regulation designed to promote orderly marketing conditions, stabilize prices and supplies, and improve producer returns. When volume regulation is in effect, a certain percentage of the California raisin crop may be sold by handlers to any market (free tonnage) while the remaining percentage must be held by handlers in a reserve pool (reserve) for the account of the RAC. Reserve raisins are disposed of through various programs authorized under the order. For example, reserve raisins may be sold by the RAC to handlers for free use or to replace part of the free tonnage they exported; carried over as a hedge against a short crop the following year; or may be disposed of in other outlets not competitive with those for free tonnage raisins, such as government purchase, distilleries, or animal feed. Net proceeds from sales of reserve raisins are ultimately distributed to producers.

Raisin Diversion Program

The RDP is another program concerning reserve raisins authorized under the order and may be used as a means for controlling overproduction. Authority for the program is provided in § 989.56 of the order. Paragraph (e) of that section provides authority for the RAC to establish, with the approval of USDA, such rules and regulations as may be necessary for the implementation and operation of a RDP. Accordingly, additional procedures are specified in § 989.156.

Pursuant to these sections, the RAC must meet each crop year to review raisin data, including information on production, supplies, market demand, and inventories. If the RAC determines that the available supply of raisins, including those in the reserve pool, exceeds projected market needs, it can decide to implement a diversion program, and announce the amount of tonnage eligible for diversion during the subsequent crop year. Producers wishing to participate in the RDP must submit an application to the RAC. The RAC conducts a lottery if the tonnage applied for exceeds what has been allotted. RAC staff then notifies producers whether they have been accepted into the program.

Approved producers curtail their production by vine removal or some other means established by the RAC. Such producers receive a certificate the following fall from the RAC which represents the quantity of raisins diverted. Producers sell these certificates to handlers who pay producers for the free tonnage applicable to the diversion certificate minus the established harvest cost for the diverted tonnage. Handlers redeem the certificates by presenting them to the RAC and paying an amount equal to the established harvest cost plus payment for receiving, storing, fumigating, handling, and inspecting the tonnage represented on the certificate. The RAC then gives the handler raisins from the prior year's reserve pool in an amount equal to the tonnage represented on the diversion certificate. The new crop year's volume regulation percentages are applied to the diversion tonnage acquired by the handler (as if the handler had bought raisins directly from a producer).

Initial 2002 NS Diversion Program

On November 28, 2001, the RAC met and reviewed data relating to the quantity of reserve raisins and anticipated market needs. With a 2001–02 NS crop estimated at 359,341 tons, and a computed trade demand (comparable to market needs) of 235,850 tons, the RAC projected a reserve pool of 123,491 tons of NS raisins. With such a large anticipated reserve, the RAC announced that 45,182 tons of NS raisins would be eligible for diversion under the initial 2002 RDP. The RAC increased this amount to 54,086 tons at a meeting on January 11, 2002.

Of the 54,086 tons, 49,086 tons were made available to approved producers who submitted applications to the RAC by December 20, 2001, with producers who planned to remove vines receiving priority over those who planned to curtail (abort) production through spur pruning or other means. Section 989.156(d) requires the RAC to give priority to applicants who agree to remove vines. Another 5,000 tons were made available to approved producers who submitted applications to the RAC from December 21, 2001, through May 1, 2002, and planned to remove vines. Authority for this additional opportunity for vine removal is provided in § 989.156(s).

Harvest costs for the initial RDP were announced by the RAC at $340 per ton, and a production cap of 2.0 tons per acre was established for the program. The production cap limits the yield per acre that a producer can claim. The 2.0-ton per acre production cap was established in an interim final rule that was published in the **Federal Register** on March 15, 2002 (67 FR 11555). A final rule was published on May 14, 2002 (67 FR 34383).

Under the initial RDP, the RAC received applications from producers accounting for 40,788 tons of raisins that would be removed from production by spur pruning vines, and 7,704 tons of raisins that would be removed from production by removing vines. Using the production cap of 2.0 tons per acre, about 3,850 acres should be removed from production through vine removal (7,704 tons divided by 2.0 tons per acre). The following is a summary of the tonnage allocated and participation in the initial 2002 RDP:

INITIAL 2002 RDP

	Allotted tonnage	Applications from producers
Dec. 20 Deadline	49,086 tons (vine removal and spur prune, with priority for vine removal).	40,788 tons (spur prune); 6,896 tons (vine removal)
May 1 Deadline	5,000 tons (vine removal only)	808 tons (vine removal).
Total	54,086 tons	40,788 tons (spur prune); 7,704 tons (vine removal).

RAC Recommendation

The RAC met on May 30, 2002, and recommended adding an additional opportunity for producers to participate in the 2002 NS RDP in view of the oversupply situation affecting the California raisin industry. Specifically, the RAC allocated an additional 25,000 tons of 2001 NS reserve raisins to the program. The additional program applied to producers who agreed to remove vines, and included a bonus for participating producers. Producers received a diversion certificate from the RAC equal to 1.5 times the creditable fruit weight of the raisins produced on the production unit (up to a maximum of 3 tons per acre). For example, if an applicant's verified production was 1.7 tons per acre, the applicant received credit for 2.55 tons per acre (1.7 tons times 1.5). If an applicant's verified production was 2.5 tons per acre, the applicant received credit for 3.0 tons per acre (2.0 tons times 1.5). Authority for the RAC to issue diversion certificates in an amount greater than the creditable fruit weight produced on the production unit is provided in § 989.56(c) of the order. The bonus was intended to encourage participation in the program.

The additional opportunity to participate in the 2002 RDP was available to producers who did not participate in the initial 2002 program ("new participants"), and to approved participants in the initial 2002 RDP who curtailed their production by spur pruning their vines ("early season spur pruners"). Producers wishing to participate in the program had to file an application with the RAC by July 8, 2002. Priority was given to new participants. If the production applied for had exceeded the 25,000 tons added to the program, a lottery would have been held to allocate the tonnage among the applicants, pursuant to applicable procedures specified in § 989.156(d). Under the additional opportunity program, the RAC received applications from producers accounting for an estimated 2,265 acres and 5,920 tons of raisins that would be removed from production by removing vines.

Harvest costs for the additional opportunity program for "early season spur pruners" remained at $340 per ton, while harvest costs for new participants were $100 per ton. Because harvest costs are deducted from the payment producers receive from handlers for their diversion certificates, a reduction

in harvest costs results in a larger payment to producers for the certificates. The reduction in harvest costs for new participants and resulting increased payment was intended to take into account in producing a 2002 crop up to time of removal. the the cultural and some harvest costs incurred by such producers.

Under the additional opportunity program, vines had to either be removed, or chain sawed at the base by July 31, 2002. RAC staff verified that the vines had been removed or adequately chain sawed. RAC staff later re-inspected vines that had been chain sawed to ensure that the remainder of the vine had been removed.

Accordingly, a new paragraph (u) was added to § 989.156 specifying the provisions of the additional opportunity program with applicable time frames. In addition, necessary conforming changes were made to paragraphs (a), (q), and (s) of § 989.156.

The interim final rule stated that, when redeeming certificates for 2001 raisin handlers would pay the RAC the harvest cost plus payment for bins and for receiving, storing, fumigating, and handling the reserve raisins. The Committee believed that RDP certificates should be treated like "raisins", and handlers should pay the same as if they had to buy raisins directly from producers. Bin rental is included in the cost of raisins bought directly from producers and the Committee believed that this cost should be included in the cost of raisins bought through the RDP. The bin payment was set at $20. However, some Committee members believed that this fee contributed to handler delays/reluctance in buying 2001 RDP certificates for 2000–01 reserve pool raisins from producers. To avoid this in purchasing 2002 RDP certificates for 2001–02 reserve pool raisins, the Committee on August 14, 2002, unanimously voted to waive the $20 per ton bin fee.

Final Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 20 handlers of California raisins who are subject to regulation under the order and approximately 4,500 raisin producers in the regulated area.

Small agricultural firms are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts of less that $5,000,000, and small agricultural producers are defined as those having annual receipts of less than $750,000. Thirteen of the 20 handlers subject to regulation have annual sales estimated to be at least $5,000,000, and the remaining 7 handlers have sales less than $5,000,000. No more than 7 handlers, and a majority of producers, of California raisins may be classified as small entities.

This rule continues to revise § 989.156 of the order's rules and regulations regarding the RDP. Under a RDP, producers receive certificates from the RAC for curtailing their production to reduce burdensome supplies. The certificates represent diverted tonnage. Producers sell the certificates to handlers who, in turn, redeem the certificates with the RAC for raisins from the prior year's reserve pool. A 2002 RDP for NS raisins was established in November 2001, and 54,086 tons of 2001 crop reserve raisins were allocated to the program. This rule continues in effect a rule that allowed producers an additional opportunity to participate in the 2002 RDP in view of the oversupply situation affecting the California raisin industry. An additional 25,000 tons of 2001 crop reserve raisins was allocated to the RDP. The additional program applied to producers who agreed to remove vines from production, and was intended to help the industry reduce its burdensome oversupply. Under the program, the RAC received applications from producers accounting for an estimated 2,265 acres, and 5,920 tons of raisins that would be removed from production. Authority for this action is provided in § 989.56(e) of the order.

Regarding the impact of this action on affected entities, the additional opportunity program was intended to help the industry as a whole reduce its burdensome oversupply. The California raisin industry has experienced successive crop years of high production. The 10-year average for deliveries of NS raisins to handlers is 344,303 tons. NS raisin deliveries for the 2000 crop year were 432,616 tons, and deliveries for the 2001 crop year were 377,328 tons. As previously stated, the initial RDP removed about 3,850 acres from production. It is estimated that the additional opportunity program removed another 2,265 acres from production, for a combined total of about 6,115 acres, which helped the industry reduce its oversupply.

Regarding the impact of this action on producers, the program provided producers an additional opportunity to earn some income for removing their vineyards from production. Participating producers received a bonus for removing their vines. They received a diversion certificate from the RAC equal to 1.5 times the creditable fruit weight of the raisins produced on the production unit (up to a maximum of 3 tons per acre). Producers will sell their certificates to handlers and be paid for the free tonnage applicable to the diversion certificate minus the harvest cost for the diverted tonnage. Applicable harvest costs for the additional RDP were announced by the RAC at $100 per ton for "new participants" (producers who did not participate in the initial 2002 RDP), and $340 per ton for "early season spur pruners" (approved participants in the initial 2002 RDP who curtailed production by spur pruning their vines).

Regarding the impact on handlers, handlers will redeem certificates for 2001 crop NS raisins and pay the RAC the applicable harvest cost ($100 per ton for new vine pull participants, and $340 per ton for early season spur pruners) plus and for receiving, storing, fumigating, handling ($46 per ton), and inspecting ($9.00 per ton). The program will return $155 per ton for new participant certificates, and $395 per ton for remaining certificates to the 2001 NS reserve pool. A bin fee, which has been one of the charges has been dropped because of delays in purchases of RDP certificates. Such income to the reserve pool could be used to pay remaining pool expenses or be distributed to 2001 NS reserve pool equity holders (producers). Thus, all such equity holders could potentially benefit from this action.

Several alternatives to the recommended action were considered by the RAC. There was discussion at the meeting regarding whether the program should include a moratorium on replanting. At the time, there was no authority for a moratorium on replanting. Some members expressed concern that producers may remove their vines and replant with new systems that produce higher yields, thereby contributing to more oversupply. At the time, there was no authority for a moratorium on replanting.

There was some discussion at the meeting about the impact of adding an additional 25,000 tons of 2001 crop NS reserve raisins to the 2002 supply. Through the order's mathematical formula for volume regulation, additional 2002 supply will reduce the 2002 free tonnage percentage. This could reduce returns for producers since producers are paid a field price for the free tonnage percentage of their crop. There was some consideration of allowing handlers to redeem a portion of their certificates for 2001 reserve raisins and a portion for 2002 crop reserve raisins. However, the current order only provides authority for handlers to redeem certificates for reserve raisins from the prior crop year.

There was also discussion at the meeting about giving smaller producers some priority in the program. For example, the program could have allowed 2 days for producers with production units of 80 acres to apply, and then the program could have been opened up to other applicants. However, this was not recommended over a program providing the same opportunity to all eligible producers.

This rule does not measurably add to the current burden on reporting or recordkeeping requirements for either small or large raisin handlers. In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the information collection requirement referred to in this rule (*i.e.*, the RDP application) has been approved previously by the Office of Management and Budget (OMB) under OMB Control No. 0581–0178. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. Finally, USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

Further, the RAC's meeting on May 30, 2002, where this action was deliberated was a public meeting widely publicized throughout the raisin industry. All interested persons were invited to attend the meeting and participate in the industry's deliberations.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/fv/moab.html*. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

Additionally, the interim final rule published in the **Federal Register** on June 24, 2002 (67 FR 42471) inadvertently omitted the last three sentences in the regulatory text in paragraph (a)(1) of § 989.156. Those sentences were included in another interim final rule published on November 29, 2002 (67 FR 71072). The November 2002 interim final rule made additional revisions to paragraphs (a) and (s) of § 989.156 as they originally appeared in the June 2002 interim final rule.

Committee staff mailed copies of the interim final rule to all Committee members and alternates, the Raisin Bargaining Association, handlers and dehydrators. In addition, the rule was made available through the Internet by the Office of the Federal Register and USDA. That rule provided for a 15-day comment period that ended on July 9, 2002. Five comments were received.

A raisin producer who had participated in the early season RDP and curtailed production by removing vines wanted to be compensated at the same rate as producers under the late season RDP, and another wanted to receive the 1.5 ton bonus for each ton of creditable fruit weight removed. Under the early season RDP, harvest costs were announced by the RAC at $340 per ton, a production cap of 2.0 tons per acre was established for the program, and producers received a diversion certificate from the RAC equal to the creditable fruit weight removed (up to a maximum of 2 tons per acre). Under the late season RDP, for vine removal only, producers received a diversion certificate from the RAC equal to 1.5 times the creditable fruit weight of the raisins produced on the production unit removed (up to a maximum of 3 tons per acre). This bonus was included as a condition of the late season RDP to encourage more vine removals. This was a reasonable addition given the industry's excess production capacity, and the oversupply situation currently burdening the industry.

In addition, harvest costs for the late season program were $100 per ton where new participants were involved and $340 in the case of "early season spur pruners" who decided to remove vines under the late season program. Because harvest costs are deducted from the payment producers receive from handlers for their diversion certificates, a reduction in harvest costs results in a larger payment to producers for the certificates. As already mentioned, the reduction in harvest costs for new participants and resulting increased payment was intended to take into account the cultural and some harvest costs incurred by such producers in producing a 2002 crop up to the time of removal.

Two letters each signed by two raisin producers, who also handle raisins, were submitted by their attorney. These commenters opposed the late season RDP.

They contend that this program will harm the industry, that it lacks economic merit, and that it conflicts with both the letter and spirit of the raisin marketing order.

They stated that their equity in the 2001 reserve pool (the pool from which handlers purchasing RDP certificates will obtain raisins) will be reduced severely because of USDA's agreement to sell 2001 reserve pool raisins to farmers for $100 per ton at the rate of 3 tons per acre (the conditions of the late season RDP) versus $340 per ton at the rate of 2 tons per acre under the early season RDP. The commenters point out that § 989.67(d)(1) of raisin marketing order requires reserve tonnage raisins to be sold to handlers at prices and in a manner intended to maximize producer returns and achieve maximum disposition of such raisins by the time reserve tonnage raisins from the subsequent crop year are available.

Under the early season RDP, producers curtailing production through vine removal or other approved means received a diversion certificate equal to the quantity of raisins diverted up to a maximum of 2 tons per acre. Handlers purchasing certificates will pay the producer for the free tonnage applicable to the diversion certificate minus a $340 per ton harvest cost for the diverted tonnage. New participants in the late season RDP received a diversion certificate equal to 1.5 times the tonnage diverted (up to a maximum of 3 tons per acre). Authority to issue diversion certificates in an amount greater than the creditable fruit weight produced on the production unit is specified in paragraph (c) of § 989.56. In this case, handlers will pay the producer for the free tonnage applicable to the diversion certificate for the diverted tonnage minus the $100 per ton harvest cost fixed for late season RDP harvest costs. This means that producers selling diversion certificates with the $100 per ton harvest cost will receive more money per ton than those selling certificates with the $340 per ton cost. The reduced harvest costs for late season RDP participants were intended to recognize the cultural and some harvest costs such producers incurred in producing a 2002 crop up to the time of removal. This difference in payments is reasonable for this program.

The amount of money per ton generated for 2001 reserve pool equity

holders from the late season RDP for new participants would be $155 per ton, and $395 per ton for early season RDP participants, and early season spur pruners who decided to remove vines during the late season RDP. Handlers will redeem certificates for 2001 NS raisins and pay RAC the applicable harvest cost ($100 per ton for new participants, and $340 per ton for early season spur pruners and vine removers) plus payment for receiving, storing, fumigating, handling ($46 per ton), and inspecting ($9 per ton).

The difference between the two amounts for 2001 reserve pool equity holders is $240 per ton. This reduction in returns to the 2001 reserve pool equity holders from the new participant late season RDP versus the early season RDP participants and early season spur pruners who decided to remove vines during the late season RDP was considered by RAC and determined to be reasonable under the circumstances. Under the late season RDP, RAC received applications from producers accounting for an estimated 2,265 acres and 5,920 tons of raisins that would be removed from production by removing vines. The RAC had approved 25,000 tons for this program.

Moreover, some in the industry believe that vine removals are needed now, rather than later, to start bringing production more closely in line with market needs. As the two producer/handlers stated, the industry needs to remove permanently 100,000 acres over time to align production with current market needs.

The two producer/handlers also mentioned that the reserve is supposed to fulfill the "orderly marketing" objective of the Act and marketing order by being available in case the new crop is substantially reduced by drought or post-harvest rain. They state that the 2001 crop reserve raisins could be worth much more in the event California were to experience a disastrous heat wave prior to or disastrous rain during harvest. Because of this, these two commenters ask USDA not to allow the RAC to implement a program (under the guise of reducing long-run supply) that risks market chaos and unreasonable fluctuations in supplies and prices. They state that it is improper to use the marketing order tools to protect a massive over-production situation from normal corrective market forces, especially when all of the cost of this waste falls on the existing equity holders in the 2001 reserve pool. However, the late season RDP was intended to assist in bringing supplies into closer balance with demand, and as such, was a proper use of this marketing order tool.

These commenters also allege that the late season RDP is intended to support a handler's plan to finance improved trellis systems and per acre yields, and would encourage marginal producers to stay in the raisin business by helping to finance their transition to upgraded trellis systems that will nearly double existing per-acre yields. They contend that this program will even be more devastating to traditional raisin producers if producers who intended to sell fresh grapes into the winery or as table grapes participate in the late season RDP.

The two producer/handlers further contend that the industry's productive capacity will naturally decline overtime without the RDP program. The RAC's primary goal in recommending the late season vine removal RDP was to speedup and facilitate needed production capacity reductions. Given the industry's poor economic condition, and difficulties many in the industry are experiencing in obtaining operating funds from lending institutions, wholesale replanting on land from which grape vines have been removed under the RDP by current raisin producers, non-traditional raisin producers such as winery and table grape producers, and other investors outside the raisin industry would appear unlikely.

The two producer/handlers also believe that vine removal without at least a 5-year moratorium on replanting grape vines on that acreage will not be successful. The current supply and marketing problems, and financial difficulties facing the industry, may lessen interest in replanting the acreage from which vines have been removed with new grape varieties. Further, there is no authority for a replanting moratorium in the 2002 Raisin Diversion Program.

These commenters also suggested that USDA convene an industry summit to explore the various economic issues facing the California raisin industry. USDA stands ready to assist the industry in improving the marketing order and marketing order operations, and helping the industry overcome its current oversupply and financial problems.

Taking into account the forgoing, USDA continues to be of the view that the late season RDP as reflected in this action is consistent with the provisions of the marketing order and the Act.

A final comment was received from an official of a lending institution that has an extensive portfolio of agricultural loans for various commodities, including raisins, in California. The commenter urged the RAC and USDA to make changes to the RDP vine removal application to adequately protect lenders in any vine removal or diversion program. According to the commenter, the current terms and conditions do not go far enough in ensuring that the producer applicant informs the lender of the producers planned participation. The commenter requested that such changes be made as soon as possible, but recognized that it was too late to implement such changes for the 2002 RDP.

Section 989.156(b) describes the application that producers must complete and submit to the RAC to participate in a RDP. The current application procedures, among other things, indicate that the producer's application must state that all persons with an equity interest in the raisins produced from the grapes grown on the production unit identified on the application must consent to the filing of the application. As mentioned before, the representative of an association of lending institutions believed that the current requirement of obtaining consent from all persons having an equity interest in the raisins produced from grapes grown on the production unit identified did not go far enough in protecting the interests of lending institutions. The commenter mentioned that the lending institution might not have an equity interest in the raisins produced, but might have an equity interest in the vines on the production unit on which the grapes were produced, or the land, as security for the loan.

To address the commenter's concern and further clarify the application process, the certification has been broadened to assure that all such persons are given an opportunity to consent to the producer's participation in the RDP. Section 989.156(b) is modified accordingly.

The modification to the RDP application has no additional impact on producers and handlers. It simply requires producers to certify that all persons with an equity interest in the raisins, vines, or land on which the grapes were produced have been given the opportunity to consent to the producer's participation in the RDP.

After consideration of all relevant material presented, including the information and recommendations submitted by the RAC, the comments received, and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because the 2002 Raisin Diversion Program is well underway and this action should be made effective as soon as possible.

List of Subjects in 7 CFR Part 989

Grapes, Marketing agreements, Raisins, Reporting and recordkeeping requirements.

PART 989—RAISINS PRODUCED FROM GRAPES GROWN IN CALIFORNIA

Accordingly, the interim final rule amending 7 CFR part 989 which was published at 67 FR 42471 on June 24, 2002, is adopted as a final rule with the following change:

1. The authority citation for 7 CFR part 989 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. In § 989.156, paragraph (b)(6) is revised as follows:

989.156 Raisin diversion program.

* * * * *

(b) * * *

(6) A statement that all persons with an equity interest in the grapes in the production unit to be diverted, in the vines, or the land on which the grapes were produced consent to the filing of the application.

* * * * *

Dated: January 23, 2003.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 03–1964 Filed 1–23–03; 5:09 pm]

BILLING CODE 3410–02–P

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 286

[INS No. 2180–01]

RIN 1115–AG47

Establishment of a $3 Immigration User Fee for Certain Commercial Vessel Passengers Previously Exempt

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This rule amends the Immigration and Naturalization Service (Service) regulations, as required by law, to provide for the collection of a $3 fee for commercial vessel passengers previously exempt under section 286(e)(1) of the Immigration and Nationality Act (Act), other than passengers on Great Lakes ferries and other Great Lakes vessels. This rule amends the Service regulations to require certain commercial vessel operators or their ticketing agents to charge and collect a $3 user fee from every commercial vessel passenger whose journey originated in the United States, Canada, Mexico, a territory or possession of the United States, or an adjacent island except those individuals exempted under section 286(e) of the Act.

DATES: This final rule is effective February 27, 2003.

FOR FURTHER INFORMATION CONTACT: Penny Pastiva, Border Management Branch, Office of Budget, Immigration and Naturalization Service, 425 I Street, NW., Room 5236, Washington, DC 20536, telephone (202) 514–6254.

SUPPLEMENTARY INFORMATION:

Authority To Collect an Immigration User Fee

In the 1987 Appropriations Act for the Department of Justice, Public Law 99–591, Congress directed the Service beginning in fiscal year (FY) 1987 to collect an immigration user fee for each passenger arriving in the United States by commercial air or sea conveyance (with limited exceptions). As provided by law, in section 286 of the Act, the user fees that are collected may be used, among other things, to:

- Provide immigration inspection and preinspection services for commercial aircraft and vessels;
- Provide overtime immigration inspection services for commercial aircraft or vessels;
- Administer debt recovery, including the establishment and operation of a national collections office;
- Expand, operate, and maintain information systems for nonimmigrant control and debt collection;
- Detect fraudulent documents used by passengers traveling to the United States, including training of, and technical assistance to, commercial airline and vessel personnel regarding such detection;
- Provide detention and removal services for inadmissible aliens arriving on commercial aircraft and vessels and for any inadmissible alien who has attempted illegal entry into the United States through avoidance of immigration inspection at air or sea ports-of-entry; and,
- Administer removal and asylum screening proceedings at air or sea ports-of-entry for inadmissible aliens arriving on commercial aircraft and vessels, including immigration removal proceedings resulting from the presentation of fraudulent documents and the failure to present documentation and for any inadmissible alien who has attempted illegal entry into the United States by avoiding immigration inspection at air or sea ports-of-entry.

Requirement To Charge a $3 Inspection Fee

In section 109 of the Department of Justice Appropriations Act, 2002, Public Law 107–77, title I, enacted on November 28, 2001, Congress amended section 286(e) of the Act to authorize the Attorney General to charge and collect a user fee from certain previously-exempt commercial vessel passengers. Prior to the enactment of this law, commercial vessel passengers whose journeys originated in Canada, Mexico, a State, territory or possession of the United States, or an adjacent island, were statutorily exempt from paying the Immigration User Fee prescribed by section 286(d) of the Act. While these vessel passengers were exempt from paying the fee, the Service was still required to provide inspection services. This exemption resulted in the Service's inability to invest in necessary staffing and technology resources. The new fee will enhance inspection operations and related inspection activities that support seaport immigration inspection.

Section 202 of chapter 2, title I of the 2002 Supplemental Appropriations Act for Further Recovery From and Response to Terrorist Attacks on the United States, Public Law 107–206, signed August 2, 2002, amended section 286(e)(3) of the Act to remove any discretionary authority not to collect the fee from commercial vessel passengers otherwise covered by the provision (principally, by changing "The Attorney General is authorized to charge and collect" to AThe Attorney General shall charge and collect").

Comments on the Service's Proposed Rule Implementing Section 286(e)(3) of the Act

The Service published a proposed rule in the **Federal Register** on April 3, 2002, at 67 FR 15753, authorizing the collection of a $3 fee for certain commercial vessel passengers previously exempt under section 286(e)(1) of the Act. The proposed rule was published with a 30-day comment period, which closed on May 3, 2002. On May 14, 2002, the Service reopened

the comment period until May 28, 2002 (67 FR 34414).

The Service received a total of 36 comments on the proposed rule. Comments were received from a broad spectrum of individuals and organizations, including 7 ferry and cruise ship companies, 3 transportation advocacy groups, 5 city and county groups, 3 elected officials, 2 port authorities, 1 tourism board, and 15 interested individuals. All the comments were carefully considered before preparing this final rule. The following is a discussion of these comments and the Service's response.

1. Applicability to Ferries

The primary concerns expressed in the comments received all related to international ferry operations in the Pacific Northwest. All comments received on this subject were similar and made three main arguments: (1) There is no justification for imposing this fee on ferries of the Pacific Northwest while excluding the Great Lakes ferries; (2) the $3 fee represents a disproportionately high percentage of the cost of using a ferry in the State of Washington; and (3) the $3 fee will have a negative economic impact on the international ferry operators in the Pacific Northwest and on related businesses in the tourism industry. One commenter, the Airports Council International—North America, strongly supported implementation of the $3 fee for commercial vessel passengers.

The justification for excluding Great Lakes ferries and other Great Lakes vessels in the proposed rule was simple: Congress itself made special provisions for the Great Lakes by specifically exempting Great Lakes vessels from the authorization in section 286(e)(3) of the Act. Furthermore, the recent amendment to section 286(e)(3) of the Act removes whatever discretion the Service might have had to make exceptions for commercial vessel passengers other than the Great Lakes exception, including on the basis of economic impact. Because the amendment in the 2002 Supplemental Appropriations Act provides that the Attorney General "shall" charge this fee, the Service is required to adhere to the terms of the statutory language, which limited exceptions to the Great Lakes vessels and ferries. Therefore, the final rule applies to any commercial vessel (as defined in the Service's existing regulations at 8 CFR 286.1(d) to include "any civilian vessel being used to transport persons or property for compensation or hire") other than the Great Lakes vessels.

One commenter requested the Service make this rule effective for ferries sometime beyond the 30 days after date of publication effective date for other vessels in order to give ferry operators additional time to comply. The Service considered this comment but declined to make a special exception for ferries regarding the effective date of this rule.

2. Collection of the Fee

In addition to the ferry-specific concerns about the impact discussed above, there were other concerns expressed in the comments about the effective date when the $3 fee would be collected, and the amount of the fee collected.

In order to clarify the fee collection requirement, the Service has amended § 286.2(b) to make clear that the $3 fee will be assessed based on bookings or reservations made on or after February 27, 2003. By using the booking date, the cruise line or other commercial vessel operator can accurately communicate to passengers both the cost of the passage and the applicable fees for which they are responsible. This provides clear guidance on when fee collections are due and results in an ease of administration for operators whose passengers will be subject to the $3 fee.

Regarding the amount of the fee, the Service notes that it has been set by law, and the FY 2002 Supplemental Appropriation Act requires the collection of the $3 fee for certain commercial vessel passengers who were previously exempt, except for the Great Lakes exception provided by Congress.

3. Other Changes

Finally, the Service has made minor stylistic corrections to the proposed rule's changes to 8 CFR 286.3(a).

Regulatory Flexibility Act

The Commissioner of the Immigration and Naturalization Service, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and by approving it certifies that this rule will not have a significant economic impact on a substantial number of small entities. Immigration user fees are already being collected by commercial vessel carriers and/or their ticketing agents in connection with voyages originating in areas already covered by the fee. Since the passengers rather than the carriers ultimately pay the immigration inspection user fee, these passengers are not considered small entities as that term is defined in 5 U.S.C. 601(6), and this rule does not have a significant economic impact upon a substantial number of small entities.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by state, local, and tribal governments in the aggregate, or by the private sector, of $100 million or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Act of 1996. This rule will not result in an annual effect on the economy of $100 million or more; a major increase in cost or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Executive Order 12866

This rule is considered by the Department of Justice, Immigration and Naturalization Service, to be a "significant regulatory action" under Executive Order 12866, section 3(f), Regulatory Planning and Review. Accordingly, this regulation has been submitted to the Office of Management and Budget for review.

1. Impact of the $3 fee on cruise ships generally. The Service estimates that approximately 8 million cruise ship passengers per year who were previously statutorily exempt from paying the Immigration User Fee will now be required to pay this fee. The Service therefore estimates that the Immigration User Fund will receive $24 million in additional revenue per year from the fees paid by these passengers. The imposition of the $3 statutory fee is not anticipated to result in an economic burden for the cruise ship industry. When compared to the price of the average cruise, the $3 fee is very small and is not expected to affect cruise booking decisions.

2. Impact of the $3 fee on ferries. The $3 immigration inspection fee imposed by this rule is likely to impose a greater proportionate burden on the service provided by ferry operators (in areas other than the statutorily-exempted Great Lakes areas) because the $3 fee is larger in relation to the cost of a ferry ticket as compared to a cruise ship

ticket. The Service has been informed that the $3 fee could increase the price of an adult ticket for a ferry in Washington State by an average of 20 to 25 percent, with larger percentage increases for lower-priced child and infant tickets. Commenters feared a significant loss of ferry business due to the imposition of this fee, in some cases possibly causing operators to drop seasonal international service.

The Service estimates that one million passengers enter into the United States per year using Pacific Northwest ferries. If passenger volume after the imposition of the $3 fee were to remain constant, the Service's Immigration User Fund could receive as much as $3 million annually from ferry passengers. However, based on comments received, the Service expects that the imposition of the $3 fee will result in a decrease in the number of ferry passengers, as travelers switch to alternative transportation modes. Accordingly, the Service is unable to estimate the amount that will actually be collected.

While the Service is sympathetic to arguments presented by commenters concerned about the likely disproportionate impact of this $3 fee on ferry passengers, it has no discretion under the statute to provide any exemption, waiver, or other accommodation to ferries other than for the Great Lakes ferries, which Congress exempted by law.

3. Benefits of this rule. For years, the Service has been providing the immigration inspection services for commercial vessel operators (including ferries) on voyages originating in the United States, Canada, Mexico, a territory or possession of the United States, or an adjacent island, but has not—until the statutory change being implemented by this rule—been able to charge commercial vessel passengers the immigration user fee for doing so. These services are described further in the Supplementary Information for this rule. The $3 fee is appropriate to offset the costs of seaport inspection services provided, allows for the investment in new resources towards improving the inspection process at seaports, and allows the Service to meet customer service requirements. These services and activities funded by the immigration user fee benefit the national security by screening arriving aliens for possible threats and also benefit the general public by complementing other immigration enforcement activities and speed the processing of legitimate travelers.

Executive Order 13132

This rule will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

Executive Order 12988 Civil Justice Reform

This rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995, Pub. L. 104–13, all Departments are required to submit to the Office of Management and Budget (OMB), for review and approval, any reporting requirements inherent in a final rule. This rule does not impose any new reporting or recordkeeping requirements under the Paperwork Reduction Act.

List of Subjects in 8 CFR Part 286

Air carriers, Immigration, Maritime carriers, Reporting and recordkeeping requirements.

Accordingly, part 286 of chapter I of title 8 of the Code of Federal Regulations is amended as follows:

PART 286—IMMIGRATION USER FEE

1. The authority citation for part 286 continues to read as follows:

Authority: 8 U.S.C. 1103, 1356; 8 CFR part 2,

2. Section 286.2 is amended by redesignating paragraph (b) as paragraph (c), and by adding a new paragraph (b), to read as follows:

§ 286.2 Fee for arrival of passengers aboard commercial aircraft or commercial vessels.

* * * * *

(b) A fee, in the amount prescribed in section 286(e)(3) of the Act, per individual, is charged and collected by the Commissioner for the immigration inspection at a port-of-entry in the United States, or for the preinspection in a place outside the United States of each commercial vessel passenger whose journey originated in the United States, Canada, Mexico, territories or possessions of the United States, or adjacent islands, except as provided in § 286.3. All tickets or documents for transportation on voyages that are booked on or after February 27, 2003, will be subject to this immigration user fee.

* * * * *

3. Section 286.3 is amended by revising the introductory text, and by revising paragraph (a), to read as follows:

§ 286.3 Exceptions.

The fees set forth in § § 286.2(a) and 286.2(b) shall not be charged or collected from passengers who fall within any one of the following categories:

(a) Persons arriving at designated ports-of-entry by the following vessels, when operating on a regular schedule: Great Lakes international ferries or Great Lakes vessels on the Great Lakes and connecting waterways;

* * * * *

Dated: December 26, 2002.

Michael J. Garcia,

Acting Commissioner, Immigration and Naturalization Service.

[FR Doc. 03–1808 Filed 1–27–03; 8:45 am]

BILLING CODE 4410–10–P

FEDERAL RESERVE SYSTEM

12 CFR Part 208

[Regulation H; Docket No. R–1129]

Reporting and Disclosure Requirements for State Member Banks With Securities Registered Under the Securities Exchange Act of 1934

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board has adopted a final rule to reflect the amendments made to section 12(i) of the Securities Exchange Act of 1934 by the Sarbanes-Oxley Act of 2002. These amendments vest the Board with the authority to administer and enforce several of the enhanced reporting, disclosure and corporate governance obligations imposed by the Sarbanes-Oxley Act with respect to state member banks that have a class of securities registered under the Securities Exchange Act of 1934.

DATES: The final rule is effective on April 1, 2003.

FOR FURTHER INFORMATION CONTACT: Kieran J. Fallon, Senior Counsel (202–452–5270), or Walter R. McEwen, Counsel (202–452–3321), Legal Division; Terrill Garrison, Supervisory Financial Analyst (202–452–2712), Division of Banking Supervision and

Regulation. Users of Telecommunication Device for Deaf (TTD) *only*, call (202) 263–4869.

SUPPLEMENTARY INFORMATION:

Background

Section 12(i) of the Securities Exchange Act (15 U.S.C. 78*l*(i)) (Exchange Act) vests the Board with the authority to administer and enforce the disclosure and reporting requirements of sections 12, 13, 14(a), 14(c), 14(d), 14(f) and 16 of the Exchange Act with respect to state member banks that have a class of securities registered under section 12(b) or 12(g) of the Exchange Act (registered banks).[1] Section 208.36 of the Board's Regulation H (12 CFR part 208.36) implements the reporting and disclosure provisions of sections 12, 13, 14(a), 14(c), 14(d), 14(f) and 16 of the Exchange Act for registered banks. As a general matter, Regulation H requires registered banks to comply with the rules, regulations and forms adopted by the Securities and Exchange Commission (SEC) under sections 12, 13, 14(a), 14(c), 14(d), 14(f) and 16 of the Exchange Act, but requires registered banks to file any reports or forms required by such regulations with the Board (rather than the SEC) and substitutes the "Board" for the "SEC" each place that term appears in the SEC's rules and forms.

On July 30, 2002, President Bush signed into law the Sarbanes-Oxley Act of 2002.[2] Titles III and IV of the Sarbanes-Oxley Act include a number of provisions that are designed to improve the corporate governance and financial disclosures of issuers that have a class of securities registered under sections 12(b) or 12(g) of the Exchange Act, or that are required to file periodic reports with the SEC under section 15(d) of the Exchange Act (public companies). The Sarbanes-Oxley Act also amended section 12(i) of the Exchange Act to vest the Board with the authority to administer and enforce sections 302, 303, 304, 306(a), 401(b), 404, 406 and 407 of the Sarbanes-Oxley Act, as well as section 10A(m) of the Exchange Act (as added by section 301 of the Sarbanes-Oxley Act), with respect to registered banks.[3]

Summary of Interim Rule

In September 2002, the Board adopted on an interim basis, and requested public comment on, an amendment to section 208.36 of Regulation H to implement the revisions made by the Sarbanes-Oxley Act to section 12(i) of the Exchange Act.[4] The interim rule provided that the Board will administer and enforce the sections of the Sarbanes-Oxley Act incorporated into section 12(i) of the Exchange Act with respect to registered banks. Consistent with the existing provisions of Regulation H, the interim rule also required registered banks to comply with any rules, regulations and forms issued by the SEC under the sections of the Sarbanes-Oxley Act incorporated into section 12(i) of the Exchange Act.

Explanation of Final Rule

The Board received two comments on the interim rule, both of which were filed by trade associations representing banking organizations. After carefully considering these comments, which are discussed below, the Board has adopted a final rule that is identical to the interim rule.

As required by section 12(i) of the Exchange Act, the final rule provides that the Board will administer and enforce the sections of the Sarbanes-Oxley Act described in Table 1 with respect to registered banks. The final rule also generally requires registered banks to comply with any rules, regulations and forms adopted by the SEC to implement the sections of the Sarbanes-Oxley Act listed in Table 1 ("New SEC Rules"), unless such rules, regulations or forms are modified by the Board. If the New SEC Rules require the filing of any documents with the SEC, registered banks must file such documents with the Board (rather than the SEC) in accordance with section 208.36 of Regulation H.

TABLE 1

Section of Sarbanes-Oxley Act	Description	Implementing SEC rules
Section 301 as (codified section 10A(m) of Exchange Act, 15 U.S.C. 78f(m)).	Establishes certain oversight, independence, funding and other requirements for the audit committees of public companies listed on a the national securities exchange, and requires the SEC to issue prohibit any national securities exchange or national securities association from listing the securities of an issuer that fails to comply with these audit committee requirements.	Proposed rules issued for comment. *See* 68 rules that FR 2638, Jan. 17, 2003. The SEC must adopt final rules by April 26, 2003.
Section 302	Mandates that the SEC adopt rules that require the principal executive officer(s) and principal financial officer(s) of public companies to include certain certifications in the issuer's annual and quarterly reports filed under the Exchange Act.	Final rules became effective August 29, 2002. *See* 67 FR 57275, Sep. 9, 2002.[5]
Section 303	Requires the SEC to issue rules prohibiting the officers and directors of public companies, and persons acting under their direction, from fraudulently influencing, coercing, manipulating, or misleading the issuer's independent auditor for purposes of rendering the issuer's financial statements materially misleading.	Proposed rules issued for comment. *See* 67 FR 65325, Oct. 24, 2002. The SEC must issue final rules by April 26, 2003.
Section 304	Requires the chief executive officer and chief financial officer of public companies to reimburse the issuer for certain compensation and profits received if the issuer is required to restate its financial reports due to material noncompliance, as a result of misconduct, with the Federal securities laws.	Section 304 became effective on July 30, 2002. No implementing rules are required.
Section 306(a)	Prohibits the directors and executive officers of any public company of equity securities from purchasing, selling or transferring any equity security acquired by the director or executive officer during any "blackout period" with respect to the security.	The SEC adopted final rules on January 8, 2003. *See* SEC Press Release 2003–6 Proposed rules were issued for comment in November 2002. *See* 67 FR 69249, Nov. 15, 2002.

[1] As of December 10, 2002, seventeen state member banks had a class of securities registered under section 12(b) or 12(g) of the Exchange Act and, thus, are considered registered banks.

[2] Pub. L. 102–204, 116 Stat. 745 (2002).

[3] *See* Sarbanes-Oxley Act at section 3(b)(4) (amending 15 U.S.C. 78*l*(i)).

[4] *See* 67 FR 57938, Sept. 13, 2002.

TABLE 1—Continued

Section of Sarbanes-Oxley Act	Description	Implementing SEC rules
Section 401(b)	Requires the SEC to issues rules that prohibit issuers from including misleading pro forma financial information in their filings with the SEC or in any public release, and that require issuers to reconcile any pro forma financial information included in such filings or public releases with the issuer's financial statements prepared in accordance with generally accepted accounting principles (GAAP).	The SEC adopted final rules on January 8, 2003. *See* SEC Press Release 2003–6. Proposed rules were issued for public comment in November 2002. *See* 67 FR 68790, Nov. 13, 2002.
Section 404	Mandates that the SEC issue rules that require all annual reports filed under section 13(a) or 15(d) of the Exchange Act to include certain statements and assessments related to the issuer's internal control structures and procedures for financial reporting. [6]	Proposed rules issued for comment. *See* 67 FR 66207, Oct. 30, 2002.
Section 406	Mandates that the SEC adopt rules that require public companies to (1) disclose in their periodic reports filed under the Exchange Act whether the issuer has adopted a code of ethics for its senior financial officers and, if not, the reasons why such a code has not been adopted; and (2) promptly disclose on Form 8–K any change to, or waiver of, the issuer's code of ethics.	The SEC adopted final rules on January 8, 2003. *See* SEC Press Release 2003–6. Proposed rules were issued for comment in October 2002. *See* 67 FR 66207, Oct. 30, 2002.
Section 407	Mandates that the SEC adopt rules that require public companies to disclose in their periodic reports filed under the Exchange Act whether the audit committee of the issuer includes at least one "financial expert" and, if not, the reasons why the audit committee does not include such an expert.	The SEC adopted final rules on January 8, 2003. *See* SEC Press Release 2003–6. Proposed rules were issued for comment in October 2002. *See* 67 FR 66207, Oct. 30, 2002.

[5] The SEC has proposed to modify these certification requirements in certain respects. *See* 67 FR 66207, Oct. 30, 2002.
[6] Section 404 also requires the registered public accounting firm that prepares or issues the audit report for the issuer's annual report to attest to, and report on, the issuer's assessment of its internal control structures and procedures for financial reporting.

Section 12(i) of the Exchange Act permits the Board to modify how the New SEC Rules apply to registered banks if the Board determines that the New SEC Rules are not necessary or appropriate in the public interest or for the protection of investors, and the Board publishes such findings (and the reasons supporting such findings) in the **Federal Register**.[7] The interim rule requested comment on whether it would be appropriate for the Board to modify any of the New SEC Rules at this time.

Commenters did not request that the Board specifically modify any of the New SEC Rules. One commenter, however, requested that the Board, in conjunction with the other Federal banking agencies, solicit public comment after any New SEC Rules are adopted for purposes of determining whether the rule should be modified for registered banks. The Board has reviewed and will continue to review the rules, regulations and forms adopted by the SEC under the Sarbanes-Oxley Act to determine whether it would be appropriate to modify these rules, regulations or forms for registered banks. Members of the public that believe any New SEC Rules issued in the future should be modified for registered banks are encouraged to contact their local Federal Reserve Bank or Board staff. If the Board determines that it would be appropriate to modify any New SEC Rule for registered banks, the Board will publish notice of the modification in the **Federal Register** in accordance with section 12(i) of the Exchange Act.[8]

Both commenters asked the Board to clarify how section 906 of the Sarbanes-Oxley Act applies to registered banks. Section 906 is a criminal provision that requires each "periodic report filed by an issuer with the Securities [and] Exchange Commission pursuant to section 13(a) or 15(d) of the Securities Exchange Act of 1934" to be accompanied by a written statement by the issuer's chief executive officer and chief financial officer (or equivalent) that the report (1) fully complies with the requirements of section 13(a) or 15(d) of the Exchange Act, and (2) fairly presents, in all material respects, the financial condition and results of operations of the issuer.[9] This certification requirement is separate from the certification requirement imposed by section 302 of the Sarbanes-Oxley Act. Because section 906 amends the Federal criminal code, the Department of Justice (DOJ) is the appropriate agency to interpret its scope and application. Nevertheless, pending interpretive guidance from DOJ concerning section 906, the Board has indicated that any periodic reports (*i.e.* 10-K or 10-Q reports) filed with the Board by registered banks after July 29, 2002 (the effective date of section 906), should be accompanied by the certifications required by section 906.[10] This approach is consistent with the current practice of the Federal Deposit Insurance Corporation and Office of the Comptroller of the Currency with respect to state nonmember banks and national banks, respectively, that file reports with such agencies under section 12(i) of the Exchange Act.[11]

Other Sarbanes-Oxley Act Issues Relevant to Registered Banks

Besides the provisions discussed above, the Sarbanes-Oxley Act also

[7] *See* 15 U.S.C. 78l(i)(4).

[8] One commenter expressed concern that the audit committee and internal control report rules issued by the SEC under sections 301, 404 and 407 of the Sarbanes-Oxley Act may conflict with the audit committee and internal control report requirements imposed by section 36 of the Federal Deposit Insurance Act on insured depository institutions. *See* 12 U.S.C. 1831m; 12 CFR part 363. The SEC has indicated that it intends to work with the Federal banking agencies to eliminate, to the extent possible, conflicts between the internal controls reports required by section 404 of the Sarbanes-Oxley Act and the internal controls reports required by section 36 of the FDI Act. *See* 67 FR 66208, 66222, Oct. 30, 2002. Staffs of the Board and SEC also have met to discuss potential conflicts and overlaps between the Sarbanes-Oxley Act and Federal banking laws and regulations.

[9] Sarbanes-Oxley Act at section 906 (codified at 18 U.S.C. 1350).

[10] *See* Letter from Gerald A. Edwards, Jr., Associate Director and Chief Accountant-Supervision of the Board, to Chief Executive Officers and Chief Financial Officers of Banks Reporting to the Board under the Exchange Act, dated Aug. 15, 2002.

[11] *See* Letter from Robert F. Storch, Chief, Accounting and Securities Section of the FDIC, to Chief Executive Officers and Chief Financial Officers of Banks Reporting to the FDIC under the Exchange Act, dated Aug. 13, 2002.

includes a variety of other provisions that will affect all public companies, including state member banks that report to the Board under the Exchange Act. For example, the Act includes important changes relating to the independence of the external auditors of public companies. In addition, the Sarbanes-Oxley Act added several new disclosure requirements to sections 13 and 16 of the Exchange Act that apply to public companies that the Board will be responsible for administering and enforcing with respect to registered banks.[12]

Public banking organizations are encouraged to review the Sarbanes-Oxley Act and any implementing rules issued by the SEC. The Board also recently issued supervisory guidance designed to assist registered banks and other public banking organizations supervised by the Federal Reserve in understanding and complying with the requirements of the Sarbanes-Oxley Act.[13]

Regulatory Flexibility Act

Pursuant to section 4(a) of the Regulatory Flexibility Act (5 U.S.C. 604(a)), the Board must publish a final regulatory flexibility analysis with this rulemaking. The rule implements for registered banks several of the new reporting and disclosure obligations imposed by the Sarbanes-Oxley Act on public companies. Consistent with section 12(i) of the Exchange Act, the final rule requires registered banks to comply with any rules, regulations or forms that the SEC may issue under the relevant provisions of the Sarbanes-Oxley Act. By incorporating the SEC's rules, regulations and forms by reference, the rule seeks to minimize the potential conflict between the rule and the corresponding SEC rules and, thus, reduce the potential burden associated with complying with the Board's rule. Moreover, as noted above, the Board intends to monitor the SEC rules incorporated by reference into the Board's rule to determine whether it would be appropriate to modify these rules for registered banks.

The objectives and legal basis for the rule are discussed in the supplementary information set forth above. As of December 10, 2002, 17 state member banks had a class of securities registered under sections 12(b) or 12(g) of the Exchange Act and, thus, would be subject to the rule. As of September 30, 2002, only six of these institutions have assets of less than $100 million and are considered small entities for purposes of the Regulatory Flexibility Act. *See* 5 U.S.C. 601; 13 CFR 121.201.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506; 5 CFR part 1320 Appendix A), the Board has reviewed the final rule under the authority delegated to the Board by the Office of Management and Budget. Consistent with the requirements of section 12(i) of the Exchange Act, the final rule requires registered banks to abide by any collection of information requirements adopted by the SEC under sections 301, 302, 303, 304, 306(a), 401(b), 404, 406 and 407 of the Sarbanes-Oxley Act of 2002, unless such collections are modified by the Board. As of December 10, 2002, there were 17 registered banks that will be subject to the final rule. Registered banks may request confidential treatment of any information submitted to the Board under the final rule in the manner described in section 208.36(d) of the Board's Regulation H (12 CFR 208.36(d)).

Because the SEC has not yet adopted final rules to implement many of the sections of the Sarbanes-Oxley Act referenced above, the Board is unable at this time to estimate the annual burden registered banks will incur in complying with the final rule. The Board notes that the SEC must consider the paperwork burden imposed by its rules in connection with its rulemaking process, and provide an estimate of the number of hours persons subject to the rule would spend each year in complying with any collections of information imposed by the SEC's rule. Registered banks and other persons interested in the potential paperwork burden imposed by the Board's rule should monitor the SEC's rulemaking process under the Sarbanes-Oxley Act.

The Federal Reserve may not conduct or sponsor, and an organization is not required to respond to, an information collection unless the Board has displayed a currently valid OMB control number. The OMB control number for the information collections required by the final rule is 7100–0091. The Federal Reserve has a continuing interest in the public's opinion of our collections of information. At any time, comments regarding any aspect of the collections of information required by the final rule, including suggestions for reducing burden, may be sent to: Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551; and to the Office of Management and Budget, Paperwork Reduction Project (7100–0091), Washington, DC 20503.

Plain Language

Section 722 of the Gramm-Leach-Bliley Act (12 U.S.C. 4809) requires the Board to use "plain language" in all rules published in the **Federal Register** after January 1, 2000. The Board believes that the final rule is presented in a simple and straightforward manner and is consistent with this "plain language" directive.

Effective Date of Rule

The final rule will become effective on April 1, 2003. Because some of the provisions of the Sarbanes-Oxley Act to be administered and enforced by the Board had previously become effective, the Board made the interim rule effective immediately on publication in the **Federal Register** (*i.e.* September 13, 2002). The Board requested comment on all aspects of the interim rule and has carefully considered those comments in adopting this final rule.

List of Subjects in 12 CFR Part 208

Accounting, Banks, banking, Reporting and recordkeeping requirements, Securities.

Authority and Issuance

For the reasons set forth in the preamble, the Board of Governors of the Federal Reserve System amends part 208 of chapter II of title 12 of the Code of Federal Regulations as follows:

PART 208—MEMBERSHIP OF STATE BANKING INSTITUTIONS IN THE FEDERAL RESERVE SYSTEM (REGULATION H)

1. The authority citation for part 208 continues to read as follows:

Authority: 12 U.S.C. 24, 24a, 36, 92a, 93a, 248(a), 248(c), 321–338a, 371d, 461, 481–486, 601, 611, 1814, 1816, 1818, 1820(d)(9), 1823(j), 1828(o), 1831, 1831o, 1831p–1, 1831r–1, 1831w, 1831x, 1835a, 1843(l), 1882, 2901–2907, 3105, 3310, 3331–3351, and 3906–3909; 15 U.S.C. 78b, 78l(b), 78l(g),

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[12] *See* Sarbanes-Oxley Act, sections 401(a), 402, 403 and 409 (to be codified at 15 U.S.C. 78m(i), (j), (k) and (l), and 78p(a)).

[13] *See* The Sarbanes-Oxley Act of 2002, SR Letter 02–20 (Oct. 29, 2002). One commenter expressed concern that the Board and the other Federal banking agencies may require all banking organizations to comply with some or all of the provisions that the Sarbanes-Oxley Act imposes only on public companies. As the Board previously has stated, the Board, in conjunction with the other Federal banking agencies, is reviewing its existing regulations and supervisory guidance to determine what, if any, changes may be appropriate in light of the Sarbanes-Oxley Act. Such review is outside the scope of this rulemaking. Nevertheless, the Board recognizes that nonpublic banking organizations typically have fewer resources and less complex operations than public banking organizations and that it may be inappropriate to require all nonpublic banking organizations to comply with requirements legislatively mandated only for public companies.

78l(i), 78o–4(c)(5), 78q, 78q–1, and 78w; 31 U.S.C. 5318; 42 U.S.C. 4012a, 4104a, 4104b, 4106, and 4128.

2. Section 208.36(a) is revised to read as follows:

§ 208.36 Reporting requirements for State member banks subject to the Securities Exchange Act of 1934.

(a) *Filing, disclosure and other requirements*—(1) *General.* Except as otherwise provided in this section, a member bank whose securities are subject to registration pursuant to section 12(b) or section 12(g) of the Securities Exchange Act of 1934 (the 1934 Act) (15 U.S.C. 78l(b) and (g)) shall comply with the rules, regulations and forms adopted by the Securities and Exchange Commission (Commission) pursuant to—,

(i) Sections 10A(m), 12, 13, 14(a), 14(c), 14(d), 14(f) and 16 of the 1934 Act (15 U.S.C. 78f(m), 78l, 78m, 78n(a), (c), (d) and (f), and 78p); and

(ii) Sections 302, 303, 304, 306, 401(b), 404, 406 and 407 of the Sarbanes-Oxley Act of 2002 (codified at 15 U.S.C. 7241, 7242, 7243, 7244, 7261, 7262, 7264 and 7265)..

(2) *References to the Commission.* Any references to the "Securities and Exchange Commission" or the "Commission" in the rules, regulations and forms described in paragraph (a)(1) of this section shall with respect to securities issued by member banks be deemed to refer to the Board unless the context otherwise requires.

* * * * *

By order of the Board of Governors of the Federal Reserve System, January 23, 2003.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 03–1922 Filed 1–27–03; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–318–AD; Amendment 39–13027; AD 2003–03–03]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 777 Series Airplanes Equipped With Rolls-Royce Model Trent 800 Series Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain Boeing Model 777 series airplanes. This action requires revising the Airplane Flight Manual to specify that the engine anti–ice must be "on" during all ground and flight operations when icing conditions exist or are anticipated. This action is necessary to prevent ingestion of ice that could cause shutdown of both engines during operation in icing conditions, and result in a forced landing of the airplane.

DATES: Effective February 12, 2003.

Comments for inclusion in the Rules Docket must be received on or before March 31, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–318–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-iarcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2002–NM–318–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The information pertaining to this AD may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Margaret Langsted, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1335; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: The FAA has received a report of an engine surge and automatic shutdown on a Boeing Model 777 series airplane equipped with Rolls-Royce Trent 800 series engines, while in light icing conditions during descent. Investigation revealed that the airplane total air temperature (TAT) and the engine T2 probes were iced over. In addition, both engines were operating at minimum flight idle and the engine anti-ice systems had not activated. Boeing Model 777 series airplanes have a primary in-flight icing detection system (PIIDS) that senses icing conditions and automatically activates the engine and wing anti-ice systems, if the flight deck anti-ice switch is in the AUTO position (normal procedure). Activation of the engine anti-ice system sends hot air to the engine inlet lip to keep it free of ice buildup; raises the minimum allowable engine speed from "minimum flight idle" to "approach idle," which improves the engine operating characteristics; and turns on the engine igniters to facilitate relight if a flameout should occur. The investigation indicated that the PIIDS did not detect icing and activate the engine anti-ice system; the engine surge was the result of ice ingestion; and the engine did not automatically recover from the engine surge. Such ingestion of ice could cause shutdown of both engines during operation in icing conditions, and result in a forced landing of the airplane.

Explanation of the Requirements of the Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design, this AD is being issued to prevent ingestion of ice that could cause shutdown of both engines during operation in icing conditions, and result in a forced landing of the airplane. This AD requires revision of the Limitations Section of the Airplane Flight Manual (AFM) to remove certain procedures and to add certain other procedures that specify that engine anti-ice must be "on" during all ground and flight operations when icing conditions exist or are anticipated, except when the outside air temperature (OAT) is below −40 degrees Centigrade.

Interim Action

This is considered to be interim action until final action is identified, at which time the FAA may consider further rulemaking.

Determination of Rule's Effective Date

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified

under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2002–NM–318–AD." The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2003–03–03 Boeing: Amendment 39–13027. Docket 2002–NM–318–AD.

Applicability: Model 777–200 and –300 series airplanes, equipped with Rolls-Royce Model Trent 800 series engines; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent ingestion of ice that could cause shutdown of both engines during icing conditions, and result in a forced landing of the airplane; accomplish the following:

Airplane Flight Manual (AFM) Revision

(a) Within 14 days after the effective date of this AD, revise the Limitations Section of the AFM per the following actions specified in paragraphs (a)(1) and (a)(2) of this AD (this may be accomplished by inserting a copy of this AD into the AFM):

(1) Remove the following wording from the Limitations Section of the AFM: "Engine anti-ice must be ON during all ground operations, and either ON or in AUTO during flight, when icing conditions exist or are anticipated, except when the temperature is below −40 degrees C OAT. The primary ice detection system (if operative) will automatically turn the engine anti-ice system on and off as required in response to ice detection signals (flight mode only). Do not use anti-ice if OAT or TAT exceeds 10 degrees C (50 degrees F)."

(2) Insert the following wording into the Limitations Section of the AFM: "Engine anti-ice must be ON during all ground and flight operations when icing conditions exist or are anticipated, except when the temperature is below −40 degrees C OAT. Do not use anti-ice if OAT or TAT exceeds 10 degrees C (50 degrees F)."

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

(c) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Effective Date

(d) This amendment becomes effective on February 12, 2003.

Issued in Renton, Washington, on January 21, 2003.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–1816 Filed 1–27–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–14243; Airspace Docket No. 03–ACE–3]

Revocation of Class E Airspace; Brookfield, MO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This revokes Class E airspace at Brookfield, MO. All instrument approach procedures for the Brookfield, General John J. Pershing Memorial Airport, MO are cancelled effective January 23, 2003, in preparation for closure of the airport. Controlled airspace extending upward from 700 feet above ground level (AGL) will no longer be needed to contain aircraft executing instrument procedures. This Action revokes the Class E airspace for Brookfield, General John J. Pershing Memorial Airport, MO.

DATES: This direct final rule is effective on 0901 UTC, April 17, 2003. Comments for inclusion in the Rules Docket must be received on or before February 28, 2003.

ADDRESSES: Send comments on this proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington DC 20590–0001. You must identify the docket number FAA–2003–14243/ Airspace Docket No. 03–ACE–3, at the beginning of your comments. You may also submit comments on the Internet at *http://dms. dot.gov*. You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

FOR FURTHER INFORMATION CONTACT: Brenda Mumper, Air Traffic Division, Airspace Branch, ACE–502A DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2524.

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR 71 revokes Class E airspace area at Brookfield, MO. All instrument approach procedures for the Brookfield, General John J. Pershing Memorial Airport, MO are cancelled effective January 23, 2003, in preparation for closure of the airport. Controlled airspace extending upward from 700 feet above ground level (AGL) will no longer be needed to contain aircraft executing instrument procedures. The area will be removed from appropriate aeronautical charts. Class E airspace extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9K, dated August 30, 2002, and effective September 16, 2002, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be subsequently deleted from the Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and, therefore, is issuing it as a direct final rule. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objections. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment, is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Interested parties are invited to participate in this rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. FAA–2003–14243/Airspace Docket No. 03–ACE–3". The postcard will be date/time stamped and returned to the commenter.

Agency Findings

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

Accordingly, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9K, dated August 30, 2002, and effective September 16, 2002, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ACE MO E5 Brookfield, MO [Removed]

* * * * *

Issued in Kansas City, MO on January 13, 2003.

Paul J. Sheridan,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 03–1876 Filed 1–27–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 147

[CGD08–01–043]

RIN 2115–AG31

Safety Zone; Outer Continental Shelf Facility in the Gulf of Mexico

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing a safety zone around a petroleum and gas production facility in Green Canyon 205A on the Outer Continental Shelf in the Gulf of Mexico. The facility needs to be protected from vessels operating outside the normal shipping channels and fairways, and placing a safety zone around this facility significantly reduces the threat of

allisions, oil spills and releases of natural gas. This regulation prevents all vessels from entering or remaining in the specified area around the facility except for the following: an attending vessel; a vessel under 100 feet in length overall not engaged in towing; or a vessel authorized by the Eighth Coast Guard District Commander.

DATES: This final rule is effective February 27, 2003.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket [CGD08–01–043] and are available for inspection or copying at Commander, Eighth Coast Guard District (m), Hale Boggs Federal Bldg., 501 Magazine Street, New Orleans, LA, between 8 a.m. and 3:30 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant (LT) Karrie Trebbe, Project Manager for Eighth Coast Guard District Commander, Hale Boggs Federal Bldg., 501 Magazine Street, New Orleans, LA 70130, telephone (504) 589–6271.

SUPPLEMENTARY INFORMATION:

Regulatory History

On April 2, 2001, we published a notice of proposed rulemaking (NPRM) entitled "Safety Zone; Outer Continental Shelf Facility in the Gulf of Mexico" in the **Federal Register** (67 FR 15505). We received no comments on the proposed rule. No public hearing was requested, and none was held.

Background and Purpose

The Coast Guard is establishing a safety zone around Chevron Genesis Spar (Genesis), Green Canyon 205A (GC205A), a petroleum producing facility in the Gulf of Mexico. That facility is located at position 27°46′46.365″ N, 90°31′06.553″ W.

The safety zone established by this regulation is in the deepwater area of the Gulf of Mexico. For the purposes of this regulation the deepwater area is considered to include waters of 304.8 meters (1,000 feet) or greater in depth extending to the limits of the Exclusive Economic Zone (EEZ) contiguous to the territorial sea of the United States and up to a distance of 200 nautical miles from the baseline. Vessels navigating in the area of the safety zone consist of large commercial shipping vessels, fishing vessels, cruise ships, tugs with tows and the occasional recreational vessel. An extensive system of navigational fairways is within the deepwater area. Those fairways include the Gulf of Mexico East-West Fairway, the entrance and exit route of the Mississippi River, and the Houston-Galveston Safety Fairway. Significant amounts of vessel traffic occur in or near the various fairways in the deepwater area.

Chevron U.S.A. Production Company (Chevron) requested that the Coast Guard establish a safety zone in the Gulf of Mexico around the moored spar buoy, Genesis. That request was made due to the high level of shipping activity around the facility and the safety concerns for both the personnel on board the facility and the environment. Chevron indicated that the location, production level, and number of personnel on board the facility make it highly likely that any allision with the facility would result in a catastrophic event. The Genesis, which is located in open waters where no fixed structures previously existed and is manned with a crew of approximately 160 people, is a high production oil and gas drilling facility that produces approximately 55,000 barrels of oil per day and 95 million cubic feet of gas per day.

The Coast Guard reviewed Chevron's concerns and agrees that the risk of allision to the facility and potential for loss of life and damage to the environment resulting from such an accident warrants the establishment of this safety zone. The regulation will significantly reduce the threat of allisions, oil spills and natural gas releases and will increase the safety of life, property, and the environment in the Gulf of Mexico. This regulation is issued pursuant to 14 U.S.C. 85 and 43 U.S.C. 1333 as set out in the authority citation for 33 CFR part 147.

Discussion of Comments and Changes

We received no comments on the proposed rule. Therefore, we have made no substantive changes to the provisions of the proposed rule.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (44 FR 11040; February 26, 1979).

The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary. The impacts on routine navigation are expected to be minimal because the safety zone does not encompass any nearby safety fairways.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. Few privately owned fishing vessels and recreational boats/yachts operate in the area of the Genesis because it is located far offshore, and alternate routes are available for those that do. Use of alternate routes may cause a minimal loss of time (estimated loss of four to ten minutes) to their destination depending on how fast the vessel is traveling. The Coast Guard expects the impact of this regulation on small entities to be minimal.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding the rule so they could better evaluate its effects on them and participate in the rulemaking process.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information under the Paperwork

Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. This rule has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have considered the environmental impact of this proposed rule and concluded that under figure 2–1, paragraph 34(g), of Commandant Instruction M16475.1D, this rule is categorically excluded from further environmental documentation because it is not expected to result in any significant environmental impact as described in the National Environmental Policy Act of 1969 (NEPA). A "Categorical Exclusion Determination" is available in the docket for inspection or copying where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 147

Continental shelf, Marine safety, Navigation (water).

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 147 as follows:

PART 147—SAFETY ZONES

1. The authority citation for part 147 continues to read as follows:

Authority: 14 U.S.C. 85; 43 U.S.C. 1333; 49 CFR 1.46.

2. Add § 147.825 to read as follows:

§ 147.825 Chevron Genesis Spar safety zone.

(a) *Description.* The Chevron Genesis Spar, Green Canyon 205A (GC205A), is located at position 27°46′46.365″ N, 90°31′06.553″ W. The area within 500 meters (1640.4 feet) from each point on the structure's outer edge is a safety zone.

(b) *Regulation.* No vessel may enter or remain in this safety zone except the following:

(1) An attending vessel;

(2) A vessel under 100 feet in length overall not engaged in towing; or

(3) A vessel authorized by the Commander, Eighth Coast Guard District.

Dated: January 10, 2003.

Roy J. Casto,

Rear Admiral, U.S. Coast Guard, Commander, Eighth Coast Guard District.

[FR Doc. 03–1872 Filed 1–27–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 147

[CGD08–01–025]

RIN 2115–AG22

Safety Zones for Outer Continental Shelf Facilities in the Gulf of Mexico

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing safety zones around five petroleum and gas production facilities in the Outer Continental Shelf in the Gulf of Mexico. The facilities, which include four platforms and one moored spar buoy, need to be protected from vessels operating outside the normal shipping channels and fairways. Placing safety zones around these facilities will significantly reduce the threat of allisions, oil spills and releases of natural gas. The regulation prevents all vessels from entering or remaining in specified areas around the platforms except for the following: An attending vessel; a vessel under 100 feet in length overall not engaged in towing; or a vessel authorized by the Eighth Coast Guard District Commander.

DATES: This final rule is effective February 27, 2003.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket [CGD08–01–025] and are available for inspection or copying at Commander, Eighth Coast Guard District (m), Hale Boggs Federal Bldg., 501 Magazine Street, New Orleans, Louisiana, between 8 a.m. and 3:30 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant (LT) Karrie Trebbe, Project Manager for Eighth Coast Guard District Commander, Hale Boggs Federal Bldg., 501 Magazine Street, New Orleans, LA 70130, telephone (504) 589–6271.

SUPPLEMENTARY INFORMATION:

Regulatory History

On December 10, 2001, the Coast Guard published a notice of proposed rulemaking (NPRM) entitled "Safety

Zones for Outer Continental Shelf Facilities in the Gulf of Mexico" in the **Federal Register** (66 FR 63642). We received one letter, one fax and one phone call commenting on the proposed rule. No public hearing was requested, and none was held.

Background and Purpose

The Coast Guard is establishing safety zones around the following petroleum producing facilities in the Gulf of Mexico: ExxonMobil Hoover Floating OCS Facility, a moored spar buoy, Alaminos Canyon Block 25A (AC25A), located at position 26°56′33″ N, 94°41′19.55″ W; Sir Douglas Morpeth Tension Leg Platform (Morpeth TLP), Ewing Bank Block 921A (EW 921A), located at position 28°02′05.28″ N, 90°01′22.12″ W; Allegheny Tension Leg Platform (Allegheny TLP), Green Canyon Block 254A (GC 254A), located at position 27°41′29.65″ N, 90°16′31.93″ W; Brutus Tension Leg Platform (Brutus TLP), Green Canyon Block 158 (GC 158), located at position 27°47′42.86″ N, 90°38′51.15″ W; and Enchilada Platform, Garden Banks Block 128A (GB 128A), located at position 27°52′31.31″ N, 91°59′11.09″ W.

These five safety zones are in the deepwater area of the Gulf of Mexico. For the purposes of this regulation, the deepwater area is considered to be waters of 304.8 meters (1,000 feet) or greater depth extending to the limits of the Exclusive Economic Zone (EEZ) contiguous to the territorial sea of the United States and extending to a distance up to 200 nautical miles from the baseline from which the breadth of the sea is measured. Navigation in the area of the safety zones consists of large commercial shipping vessels, fishing vessels, cruise ships, tugs with tows and the occasional recreational vessel. The deepwater area also includes an extensive system of shipping safety fairways that crisscross the deepwater area of the Gulf of Mexico. The shipping safety fairways include the Gulf of Mexico East-West Fairway, the entrance/exit route of the Mississippi River, and the Houston-Galveston Safety Fairway as listed in 33 CFR part 166. Significant amounts of vessel traffic occur in or near the various shipping safety fairways in the deepwater area.

ExxonMobil Production Company, AGIP Petroleum Co., Inc. (formerly known as British Borneo USA, Inc), and Shell Exploration and Production requested that the Coast Guard establish safety zones in the Gulf of Mexico around the following: ExxonMobil Production Company moored spar buoy, the ExxonMobil Hoover Floating OCS Facility; AGIP Petroleum Co., Inc. platforms, the Morpeth TLP and the Allegheny TLP; and Shell platforms, the Brutus TLP and the Enchilada Platform.

The request for the safety zones was made due to the high level of shipping activity around the facilities and the safety concerns for both the personnel on board the facilities and the environment. ExxonMobil Production Company, AGIP Petroleum Co., Inc., and Shell Exploration and Production, indicated that the location, production level, and number of personnel on board the facilities make it highly likely that any allision with the facilities would result in a catastrophic event. The Enchilada Platform is located near the edge of a shipping safety fairway. The ExxonMobil Hoover Floating OCS Facility, Brutus TLP, Morpeth TLP and Allegheny TLP are located in open waters where no fixed structures previously existed. All are high production oil and gas drilling platforms producing from 20,000 to 108,000 barrels of oil per day, and are manned with crews ranging from approximately 18 to 160 people.

The Coast Guard reviewed the concerns raised by ExxonMobil Production Company, AGIP Petroleum Co., Inc., and Shell Exploration and Production and agrees that the risk of allision to the facilities and the potential for loss of life and damage to the environment resulting from such an accident warrant the establishment of these safety zones. This regulation would significantly reduce the threat of allisions, oil and natural gas spills, and increase the safety of life, property, and the environment in the Gulf of Mexico. This regulation is issued pursuant to 14 U.S.C. 85 as set out in the authority citation for all of 33 CFR part 147.

Discussion of Comments and Changes

We received one letter, one fax and one phone call commenting on the proposed rule. One comment received telephonically from AGIP Petroleum Co., Inc., indicated that at the time of their original request they were known as British Borneo USA, Inc., but are now known as AGIP Petroleum Co., Inc. Therefore, the name British Borneo USA, Inc., has been replaced throughout the final rule with AGIP Petroleum Co., Inc.

One comment received via fax supported the proposed rule. The comment received by letter notified the Coast Guard that the safety zones encompassed blocks adjacent to each of the facilities that are leased and if one or more of the impacted blocks became available due to relinquishment of a lease then information regarding the zones would be included in the "Information to Lessees in the Final Notice of Sale to potential bidders." The proposed rule does not have any impact on lessees' vessels and operations in the impacted blocks.

None of the comments received affected the provisions of the proposed rule.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (44 FR 11040; February 26, 1979).

We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary. The impacts on routine navigation are expected to be minimal because the safety zones do not encompass any nearby safety fairways.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. Since the offshore facilities are located far offshore, few privately owned fishing vessels and recreational boats/yachts may be operating in the area and alternate routes are available for these vessels. Deviation of their intended course may cause a minimal loss of time (estimated loss of four to ten minutes) to their destination depending on how fast the vessel is traveling. The Coast Guard expects the impact of this regulation on small entities to be minimal.

If you are a small business entity and are significantly affected by this regulation please contact LT Kalvie Trebbe, Project Manager for Eighth Coast Guard District Commander, Hale Boggs Federal Bldg., 501 Magazine

Street, New Orleans LA 70130, telephone (504) 589–6271.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding the rule so they could better evaluate its effects on them and participate in the rulemaking processes.

Small businesses may send comments on the actions of Federal Employees who enforce, or otherwise determine compliance with Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have considered the environmental impact of this proposed rule and concluded that under figure 2–1, paragraph 34(g), of Commandant Instruction M16475.1D, this rule is categorically excluded from further environmental documentation because this rule is not expected to result in any significant environmental impact as described in the National Environmental Policy Act of 1969 (NEPA). A "Categorical Exclusion Determination" is available in the docket for inspection or copying where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 147

Continental shelf, Marine safety, Navigation (water).

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 147 as follows:

PART 147—SAFETY ZONES

1. The authority citation for part 147 continues to read as follows:

Authority: 14 U.S.C. 85; 43 U.S.C. 1333; 49 CFR 1.46.

2. Add §§ 147.815, 147.817, 147.819, 147.821 and 147.823 to read as follows:

§ 147.815 ExxonMobil Hoover Floating OCS Facility safety zone.

(a) *Description.* The ExxonMobil Hoover Floating OCS Facility, Alaminos Canyon Block 25A (AC25A), is located at position 26°56′33″ N, 94°41′19.55″ W. The area within 500 meters (1640.4 feet) from each point on the structure's outer edge is a safety zone.

(b) *Regulation.* No vessel may enter or remain in this safety zone except the following:

(1) An attending vessel;

(2) A vessel under 100 feet in length overall not engaged in towing; or

(3) A vessel authorized by the Commander, Eighth Coast Guard District

§ 147.817 Sir Douglas Morpeth Tension Leg Platform safety zone.

(a) *Description.* The Sir Douglas Morpeth Tension Leg Platform (Morpeth TLP), Ewing Bank Block 921A (EW 921A), is located at position 28°02′05.28″ N, 90°01′22.12″ W. The area within 500 meters (1640.4 feet) from each point on the structure's outer edge is a safety zone.

(b) *Regulation.* No vessel may enter or remain in this safety zone except the following:

(1) An attending vessel;

(2) A vessel under 100 feet in length overall not engaged in towing; or

(3) A vessel authorized by the Commander, Eighth Coast Guard District.

§ 147.819 Allegheny Tension Leg Platform safety zone.

(a) *Description.* The Allegheny Tension Leg Platform (Allegheny TLP), Green Canyon Block 254A (GC 254A), is located at position 27°41′29.65″ N, 90°16′31.93″ W. The area within 500 meters (1640.4 feet) from each point on the structure's outer edge is a safety zone.

(b) *Regulation.* No vessel may enter or remain in this safety zone except the following:

(1) An attending vessel;

(2) A vessel under 100 feet in length overall not engaged in towing; or

(3) A vessel authorized by the Commander, Eighth Coast Guard District.

§ 147.821 Brutus Tension Leg Platform safety zone.

(a) *Description.* The Brutus Tension Leg Platform (Brutus TLP), Green Canyon Block 158 (GC 158), is located at position 27°47′42.86″ N, 90°38′51.15″ W. The area within 500 meters (1640.4 feet) from each point on the structure's outer edge is a safety zone.

(b) *Regulation.* No vessel may enter or remain in this safety zone except the following:

(1) An attending vessel;

(2) A vessel under 100 feet in length overall not engaged in towing; or

(3) A vessel authorized by the Commander, Eighth Coast Guard District.

§ 147.823 Enchilada Platform safety zone

(a) *Description.* The Enchilada Platform, Garden Banks Block 128A (GB 128A), is located at position 27°52′31.31″ N, 91°59′11.09″ W. The area within 500 meters (1640.4 feet) from each point on the structure's outer edge, not to extend into the adjacent East-West Gulf of Mexico Fairway, is a safety zone.

(b) *Regulation.* No vessel may enter or remain in this safety zone except the following:

(1) An attending vessel;

(2) A vessel under 100 feet in length overall not engaged in towing; or

(3) A vessel authorized by the Commander, Eighth Coast Guard District.

Dated: January 10, 2003.

Roy J. Casto

Rear Admiral, U.S. Coast Guard, Commander, Eighth Coast Guard District.

[FR Doc. 03–1871 Filed 1–27–03; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[AL–058–1–200312a; FRL–7444–9]

Approval and Promulgation of State Plan for Designated Facilities and Pollutants: AL

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving the sections 111(d) /129 plan submitted by the Alabama Department of Environmental Management (ADEM) for the State of Alabama on February 21, 2002, for implementing and enforcing the Emissions Guidelines (EG) applicable to existing Commercial and Industrial Solid Waste Incineration (CISWI) Units that commenced construction on or before November 30, 1999.

DATES: This direct final rule is effective March 31, 2003 without further notice, unless EPA receives adverse comments by February 27, 2003. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: All comments should be addressed to: Joydeb Majumder, EPA Region 4, Air Toxics and Management Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303–8960. Copies of documents relative to this action are available at the following addresses for inspection during normal business hours: Environmental Protection Agency, Region 4, Air Planning Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303–8960 and Alabama Department of Environmental Management, 400 Coliseum Boulevard, Montgomery, Alabama 36110–2059. Anyone interested in examining this document should make an appointment with the office at least 24 hours in advance.

FOR FURTHER INFORMATION CONTACT: Joydeb Majumder at (404) 562–9121 or Sean Lakeman at (404) 562–9043.

SUPPLEMENTARY INFORMATION:

I. Background

On December 1, 2000, pursuant to sections 111 and 129 of the Clean Air Act (Act), EPA promulgated new source performance standards (NSPS) applicable to new CISWIs and EG applicable to existing CISWIs. The NSPS and EG are codified at 40 CFR part 60, subparts CCCC and DDDD, respectively. Subparts CCCC and DDDD regulate the following: Particulate matter, opacity, sulfur dioxide, hydrogen chloride, oxides of nitrogen, carbon monoxide, lead, cadmium, mercury, and dioxins and dibenzofurans.

Section 129(b)(2) of the Act requires States to submit to EPA for approval State Plans that implement and enforce the EG. State Plans must be at least as protective as the EG, and+ become Federally enforceable upon approval by EPA. The procedures for adoption and submittal of State Plans are codified in 40 CFR part 60, subpart B. EPA originally promulgated the subpart B provisions on November 17, 1975. EPA amended subpart B on December 19, 1995, to allow the subparts developed under section 129 to include specifications that supersede the general provisions in subpart B regarding the schedule for submittal of State Plans, the stringency of the emission limitations, and the compliance schedules.

This action approves the State Plan submitted by ADEM for the State of Alabama to implement and enforce subpart DDDD, as it applies to existing CISWI units only.

II. Discussion

ADEM submitted to EPA on February 21, 2002, the following in their 111(d)/129 State Plan for implementing and enforcing the EG for existing CISWIs under their direct jurisdiction in the State of Alabama: Public Participation-Demonstration that the Public Had Adequate Notice and Opportunity to Submit Written Comments and Attend the Public Hearing; Legal Authority; Emission Limits and Standards; Compliance Schedule; Inventory of CISWI Plants / Units; CISWI Emissions Inventory; Source Surveillance, Compliance Assurance and Enforcement Procedures; Submittal of Progress Reports to EPA; and applicable State of Alabama statutes and rules of the ADEM.

The approval of the Alabama State Plan is based on finding that: (1) ADEM provided adequate public notice of public hearings for the EG for CISWIs, and (2) ADEM also demonstrated legal authority to adopt emission standards and compliance schedules; enforceable applicable laws, regulations, standards, and compliance schedules; the ability to seek injunctive relief; obtain information necessary to determine compliance; require record keeping; conduct inspections and tests; require the use of monitors; require emission reports of owners and operators; and make emission data publicly available.

ADEM cites the following references for the legal authority: The Alabama Environmental Management Act, section 22–22A–4(n), Code of Alabama 1975, as amended; The Alabama Air Pollution Control Act, section 22–28–11(13) Code of Alabama 1975, as amended; and The ADEM Administrative Code, Rule 335–3–3–.05. On the basis of these statutes and rules of the State of Alabama, the State Plan is approved as being at least as protective as the Federal requirements for existing CISWI units.

ADEM cites all emission standards and limitations applicable to existing CISWI units in Chapter 335–3–3–.05 of part C. These standards and limitations have been approved as being at least as protective as the Federal requirements contained in subpart DDDD for existing CISWI units.

ADEM submitted the compliance schedule for CISWIs under their

jurisdiction in the State of Alabama. This portion of the Plan has been reviewed and approved as being at least as protective as Federal requirements for existing CISWI units.

In Appendix B of the Plan, ADEM submitted an emissions inventory of all designated pollutants for CISWI units under their jurisdiction in the State of Alabama. This portion of the Plan has been reviewed and approved as meeting the Federal requirements for existing CISWI units.

ADEM includes its legal authority to require owners and operators of designated facilities to maintain records and report to their Agency the nature and amount of emissions and any other information that may be necessary to enable their Agency to judge the compliance status of the facilities in Appendix B of the State Plan. In Appendix C, ADEM also cites its legal authority to provide for periodic inspection and testing and provisions for making reports of CISWI emissions data, correlated with emission standards that apply, available to the general public. Appendix C of the State Plan outlines the authority to meet the requirements of monitoring, record keeping, reporting, and compliance assurance. This portion of the Plan has been reviewed and approved as being at least as protective as Federal requirements for existing CISWI units.

As stated in the Plan, ADEM will provide progress reports of plan implementation updates to the EPA on an annual basis. These progress reports will include the required items pursuant to 40 CFR part 60, subpart B. This portion of the plan has been reviewed and approved as meeting the Federal requirement for State Plan reporting.

III. Final Action

This action approves the State Plan submitted by ADEM for the State of Alabama to implement and enforce subpart DDDD, as it applies to existing CISWI units only. The EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the State Implementation Plan (SIP) revision should adverse comments be filed. This rule will be effective March 31, 2003 without further notice unless the Agency receives adverse comments by February 27, 2003.

If the EPA receives such comments, then EPA will publish a document withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period. Parties interested in commenting should do so at this time. If no such comments are received, the public is advised that this rule will be effective on March 31, 2003 and no further action will be taken on the proposed rule.

IV. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. section 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. section 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 31, 2003. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 62

Environmental protection, Air pollution control, Municipal waste

combustion units, Nitrogen dioxide, Particulate matter, Sulfur oxides.

Dated: January 16, 2003.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

Chapter I, title 40 of the Code of Federal Regulation is amended as follows:

PART 62—[AMENDED]

1. The authority citation for part 62 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart B—Alabama

2. Subpart B is amended by adding an undesignated center heading and § 62.107 to read as follows:

Air Emissions From Commercial and Industrial Solid Waste Incineration (CISWI) Units—Section 111(d)/129 Plan

§ 62.107 Identification of sources.

The Plan applies to existing Commercial and Industrial Solid Waste Incineration Units that commenced construction on or before November 30, 1999.

[FR Doc. 03–1869 Filed 1–27–03; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATION COMMISSION

47 CFR Part 0

[DA 03–44]

Freedom of Information Act

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Federal Communications Commission is modifying a section of the Commission's rules that implements the Freedom of Information Act (FOIA) Fee Schedule. This modification pertains to the charge for recovery of the full, allowable direct costs of searching for and reviewing records requested under the FOIA and the Commission's rules, unless such fees are restricted or waived. The fees are being revised to correspond to modifications in the rate of pay approved by Congress.

DATES: Effective January 28, 2003.

FOR FURTHER INFORMATION CONTACT: Shoko B. Hair, Freedom of Information Act Officer, Office of Performance Evaluation and Records Management, Room 5–C406, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554, (202) 418–1379 or via Internet at *shair@fcc.gov.*

SUPPLEMENTARY INFORMATION: The Federal Communications Commission is modifying § 0.467(a) of the Commission's rules. This rule pertains to the charges for searching and reviewing records requested under the FOIA. The FOIA requires Federal agencies to establish a schedule of fees for the processing of requests for agency records in accordance with fee guidelines issued by the Office of Management and Budget (OMB). In 1987, OMB issued its Uniform Freedom of Information Act Fee Schedule and Guidelines. However, because the FOIA requires that each agency's fees be based upon its direct costs of providing FOIA services, OMB did not provide a unitary, government-wide schedule of fees. The Commission based its FOIA Fee Schedule on the grade level of the employee who processes the request. Thus, the Fee Schedule was computed at a Step 5 of each grade level based on the General Schedule effective January 1987 (including 20 percent for personnel benefits). The Commission's rules provide that the Fee Schedule will be modified periodically to correspond with modifications in the rate of pay approved by Congress. *See* 47 CFR 0.467(a)(1) note.

In an Order adopted on January 15, 2003, and released on January 21, 2003 (DA–03–44), the Managing Director revised the schedule of fees set forth in 47 CFR 0.467 for the recovery of the full, allowable direct costs of searching for and reviewing agency records requested pursuant to the FOIA and the Commission's rules, 47 CFR 0.460, 0.461. The revisions correspond to modifications in the rate of pay, which was approved by Congress.

These modifications to the Fee Schedule do not require notice and comment because they merely update the Fee Schedule to correspond to modifications in rates of pay, as required under the current rules.

Accordingly, pursuant to the authority contained in § 0.231(b) of the Commission's rules, 47 CFR 0.231 (b), *it is hereby ordered,* that, effective on January 28, 2003, the Fee Schedule contained in § 0.467 of the Commission's rules, 47 CFR 0.467, is amended, as described herein.

List of Subjects in 47 CFR Part 0

Freedom of information.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Rule Changes

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 0 as follows:

PART 0—COMMISSION ORGANIZATION

1. The authority citation for part 0 continues to read as follows:

Authority: 47 U.S.C. 155, unless otherwise noted.

2. Section 0.467 is amended by revising the last sentence, the table and the note in paragraph (a)(1), and paragraph (a)(2) to read as follows:

§ 0.467 Search and review fees.

(a)(1) * * * The fee is based on the grade level of the employee(s) who conduct(s) the search or review, as specified in the following schedule:

Grade	Hourly fee
GS–1	11.05
GS–2	12.02
GS–3	13.56
GS–4	15.22
GS–5	17.03
GS–6	18.98
GS–7	21.10
GS–8	23.36
GS–9	25.80
GS–10	28.42
GS–11	31.22
GS–12	37.42
GS–13	44.50
GS–14	52.58
GS–15	61.85

Note: These fees will be modified periodically to correspond with modifications in the rate of pay approved by Congress.

(2) The fees in paragraph (a) (1) of this section were computed at Step 5 of each grade level based on the General Schedule effective January 2003 and include 20 percent for personnel benefits.

* * * * *

[FR Doc. 03–1849 Filed 1–27–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 54

[CC Docket 96–45; FCC 02–339]

The Federal-State Joint Board on Universal Service

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Commission grants relief to parties who have, after September 12, 2001, mailed

to the Commission requests for review of an action of the Universal Service Administrative Company (Administrator) pursuant to section 54 of the Commission rules. We're deeming certain request filed after September 12, 2001 with the Commission as timely and we grant others a 60 day opportunity to resubmit their pleadings. The Commission takes this action to ensure that these parties are not prejudiced by continuing disruptions in the mail service.

DATES: Effective February 27, 2003.

FOR FURTHER INFORMATION CONTACT: Sheryl Todd (202) 418–7400 TTY: (202) 418–0484.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Order in CC Docket No. 96–45 released on January 7, 2003. The full text of this document is available on the Commission's Web site Electronic Comment Filing System and for public inspection during regular business hours in the FCC Reference Center, Room CY–A257, 445 Twelfth Street, SW., Washington, DC 20554.

I. Introduction

1. In this Order, the Commission deems certain requests for review as timely filed with the Commission, and we grant other petitioners a 60-day opportunity to resubmit their pleadings electronically. Specifically, this relief is provided to parties who have, after September 12, 2001, mailed to the Commission requests for review of an action of the Universal Service Administrative Company (Administrator) pursuant to section 54 of our rules, or petitions for reconsideration or applications for review arising from such pleadings (hereinafter collectively referred to as "requests for review"). The Commission takes this action to ensure that these parties are not prejudiced by continuing disruptions in the mail service.

2. On December 24, 2001, we released the *Interim Filing Procedures Order*, 67 FR 3620, January 25, 2002, in response to disruptions in mail service arising from the events of September 11, 2001. In the *Interim Filing Procedures Order*, we established that, in addition to the then-available methods of filing requests for review with the Commission, including mail or electronic submission through the Commission's Electronic Comment Filing System (ECFS), parties could also file by facsimile or electronic mail. We instructed that, if requests for review were filed by electronic mail, pleadings should be filed at the following e-mail address: *CCBSecretary@fcc.gov* and could be submitted in Adobe Portable Document Format (PDF), Word, WordPerfect, or any other widely used word processing format. We further instructed that, if filed by facsimile, pleadings should be faxed to 202–418–0187, and that the fax transmission should include a cover sheet listing contact name, phone number, and, if available, an e-mail address. We made these methods optional. Thus, parties could, if they wished, continue to file requests for review by mail, manual delivery, or overnight delivery.

3. The Commission further provided that, where a party had mailed a request for review to the Commission on or after September 12, 2001, and that request for review was timely as of the date of mailing, the party could resubmit its request for review electronically within 30 days of the effective date of the *Interim Filing Procedures Order*, and have the request for review treated as having been filed with the Commission on the date that it was originally mailed. We provided this refiling option so that parties who had submitted their requests for review prior to the issuance of the *Interim Filing Procedures Order* might take advantage of the new electronic filing methods to ensure that their requests for review were timely received despite delays with the mail.

4. Since the *Interim Filing Procedures Order* was published in the **Federal Register** on January 24, 2002, we have received many requests for review that were submitted via United States mail. These parties did not take advantage of the new electronic filing options or the existing option to file via ECFS.

5. Under Commission rules, documents are considered to be filed with the Commission only upon receipt. Upon receipt, the Office of the Secretary date-stamps the appeals as received. Based on our review of the FCC date-stamp of the appeals, many mailed requests for review arrived at the Commission more than 60 days from the issuance of the decision being appealed. Thus, even under our *Interim Filing Procedures Order*, these appeals would be considered untimely. When comparing the FCC date-stamp to the postmark date or the date of the pleading, however, it is evident that some of these mailed requests for review were substantially delayed in transit due to continuing disruptions in mail service to federal agencies.

6. In our *Interim Filing Procedures Order*, we granted certain relief based on our belief that the mail system would return to normal operation. We have reviewed appeals filed by mail that were received after the release of the *Interim Filing Procedures Order*. From that review, we determined that there continued to be significant delays for appeals filed by mail. Only recently have we found that we are receiving requests for review within a reasonable time of the applicants' postmark. As such, we believe it is appropriate to extend the relief we originally ordered. Therefore, because of the unprecedented mail delays caused by the September 11, 2001 attacks and the subsequent appearance of anthrax in the United States mail system, we now conclude that it is appropriate to grant relief to certain parties that continued to rely on the United States mail to file pleadings with the FCC. The filings made by these petitioners fall into two categories. The first category of filings include petitions that are actually dated and/or have a postmarked date on the envelope that indicates that the petitioners took reasonable steps to ensure that its application would be timely filed. The second category of filings include requests that are not dated and arrived at the FCC secretary's office without proof of postmark.

7. Petitioners in the first category are set forth in Attachment C. Based on the dates of the requests for review and/or the postmarked dates on the envelopes when compared with the FCC-date stamp, we find that these petitioners reasonably complied with the terms of the *Interim Filing Procedures Order*. We find that these petitioners mailed their requests for review in a timely fashion. But for the disruptions in the mail service, their pleadings would have arrived at the Commission within the 60-day appeal period. Accordingly, we deem these requests for review as timely filed pursuant to this Order. Therefore, we direct that these requests for review shall be reviewed on their merits.

8. The Commission has also received several requests for review that either were not dated or did not have a postmark date. During the disruptions in the mail service and the implementation of the ensuing security measures, these pleadings were separated from their envelopes before they arrived in the FCC's Office of the Secretary. Thus, we do not have proof of postmark for these pleadings. We shall afford these petitioners an opportunity to resubmit their requests for review with proof that their original submissions were timely filed. These requests for review may be resubmitted electronically or by facsimile within 60 days of the release date of this Order. All requests for review re-submitted pursuant to this paragraph shall be accompanied by a signed affidavit or a declaration pursuant to Commission rule § 1.16 stating the date on which the

pleading was originally sent for delivery to the Commission and by what means (*i.e.*, by U.S. mail, express courier, or hand delivery). For this purpose only, the new pleading will be considered filed as of the date on which the original pleading was sent for delivery. The provisions of this paragraph are applicable to the petitioners listed in Attachment D of this Order. To the extent that it is determined that other filings not listed herein merit relief, we delegate to the Bureau the authority to grant such relief in keeping with this Order.

9. In addition, although we will continue to allow parties to submit requests for review by mail, express courier, or hand delivery, we note that mail in-take and processing procedures may continue to result in delivery disruption and affect the timeliness of their filings with the Commission. The Commission's filing procedures are designed to receive documents through the ECFS system. We strongly encourage parties to make use of the ECFS filing option to ensure that their requests for review arrive at the Commission in a timely fashion. Our ECFS filing option ensures accurate and more efficient processing. Parties will still be able to file by facsimile at 202–418–0187.

List of Subjects in 47 CFR Part 54

Communications common carriers, Health facilities, Libraries, Reporting and recordkeeping requirement, Schools, Telecommunications and Telephone.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 03–1747 Filed 1–27–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 96–1004; MM Docket No. 94–125; RM–8534, RM–8575]

Radio Broadcasting Services; Castroville, Fredericksburg, and Helotes, TX

AGENCY: Federal Communications Commission.

ACTION: Correcting amendments.

SUMMARY: This document contains corrections to section 73.202(b), FM Table of Allotments under Texas for the communities of Fredericksburg and Helotes, which were published in the **Federal Register** of Monday, July 22, 1996, (61 FR 37840).

DATES: Effective January 28, 2003.

FOR FURTHER INFORMATION CONTACT: Robert Hayne, Media Bureau, (202) 418–2177.

SUPPLEMENTARY INFORMATION:

Background

The Commission's *Memorandum Opinion and Order*, MM Docket No. 94–125, adopted June 28, 1996, and released July 5, 1996, rescinded the *Report and Order* in this proceeding, *see* 60 FR 322298, published June 21, 1995. The *Memorandum Opinion and Order* granted the Petition for Reconsideration filed by October Communications Group, Inc directed to the *Report and Order* in this proceeding, by reallotting Channel 266C from Fredericksburg, Texas, to Helotes, Texas, and modified the license of Station KONO–FM, Channel 266C, Fredericksburg, Texas, to specify Helotes, Texas as the community of license. On October 30, 1998, Station KONO–FM was granted a license (BLH–19980731KB) to specify operation on Channel 266C1 in lieu of Channel 266C at Helotes, Texas.

Need for Correction

As published, the amendatory language was omitted from the summary.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

Accordingly, 47 CFR part 73 is corrected by making the following correcting amendments:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Texas, is amended by removing Fredericksburg, Channel 266C and by adding Helotes, Channel 266C1.

Dated: January 23, 2003.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 03–1836 Filed 1–27–03; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Parts 571 and 590

[Docket No. NHTSA 2000–8572]

RIN 2127–AI33

Federal Motor Vehicle Safety Standards; Tire Pressure Monitoring Systems; Correction

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Correcting amendments.

SUMMARY: On June 5, 2002, the National Highway Traffic Safety Administration (NHTSA) published a final rule amending the standard on controls and displays, adding a new standard on tire pressure monitoring systems, and amending and re-titling a part on tire pressure monitoring system phase-in reporting requirements. The final rule included a phase-in schedule for compliance with the tire pressure monitoring system (TPMS) standard for manufacturers of passenger cars, trucks, multipurpose passenger vehicles, and buses with a gross vehicle weight rating of 10,000 pounds or less, except those vehicles with dual wheels on an axle. This document corrects NHTSA's inadvertent omission of a provision excluding final-stage manufacturers and alterers from compliance with the TPMS requirements of these standards until the end of the phase-in period (*i.e.*, November 1, 2006).

DATES: These amendments to the final rule are effective February 27, 2003.

FOR FURTHER INFORMATION CONTACT: The following persons at the NHTSA, 400 Seventh Street, SW., Washington, DC 20590.

For non-legal issues, you may call Mr. George Soodoo or Mr. Joseph Scott, Office of Crash Avoidance Standards (Telephone: 202–366–2720) (Fax: 202–366–4329).

For legal issues, you may call Mr. Eric Stas, Office of Chief Counsel (Telephone: 202–366–2992) (Fax: 202–366–3820).

SUPPLEMENTARY INFORMATION:

I. Background

Federal Motor Vehicle Safety Standard (FMVSS) No. 138, "Tire Pressure Monitoring Systems," was developed in fulfillment of the congressional mandate contained in the Transportation Recall Enhancement, Accountability, and Documentation (TREAD) Act of 2000. The new standard requires installation of tire pressure

monitoring systems that warn the driver when a tire is significantly under-inflated. On June 5, 2002, NHTSA published the first part of a two-part final rule amending Standard No. 101, "Controls and displays," adding a new Standard No. 138, "Tire Pressure Monitoring Systems," and amending and re-titling Part 590, "Tire Pressure Monitoring System Phase-In Reporting Requirements" (67 FR 38704). That document established two compliance options for the short-term (*i.e.*, for the period between November 1, 2003, and October 31, 2006). The second part of the final rule will be issued by March 1, 2005, and will establish performance requirements for the long-term (*i.e.*, for the period beginning on November 1, 2006).

Both the notice of proposed rulemaking (NPRM) (66 FR 38982, July 26, 2001) and the first part of the final rule discussed a phase-in of compliance with the new TPMS requirements, although the NPRM did not propose any specific phase-in plan for discussion. The final rule requires a manufacturer to certify at least ten percent of its vehicles manufactured between November 1, 2003 and October 31, 2004 (inclusive) as compliant with the new TPMS requirements. The percentage of compliant vehicles is determined based on: (a) The manufacturer's average annual production of vehicles manufactured on or after November 1, 2000, and before November 1, 2003; or (b) the manufacturer's production on or after November 1, 2003, and before November 1, 2004. Based upon a similar calculation, for vehicles manufactured on or after November 1, 2004, and before November 1, 2005, the number of vehicles complying with the standard must not be less than thirty-five percent of production, and for vehicles manufactured on or after November 1, 2005, and before November 1, 2006, the figure must rise to not less than sixty-five percent of production. The phase-in period ends on November 1, 2006, at which time all vehicles covered by the standard must comply with the new requirements.

The final rule contains an exclusion of small volume manufacturers from the requirements of the standard during the phase-in period. We provided this exclusion pursuant to a public comment request by Vehicle Services Consulting, Inc. (VSC), a representative of small volume vehicle manufacturers.

No commenter requested that final-stage manufacturers of vehicles built in two or more stages be excluded from the phase-in. However, NHTSA has historically excluded final-stage manufacturers from the phase-in requirements of its various safety standards. Despite this practice, the agency inadvertently omitted such an exclusion from the TPMS final rule.

Since the publication of the June 2002 final rule, NHTSA has received thirteen petitions for reconsideration from: (1) Ferrari S.P.A.; (2) Delphi Auto Inc.; (3) Japan Automobile Tyre Manufacturers Association, Inc. (JATMA); (4) Johnson Controls, Inc.; (5) Volkswagen of America, Inc.; (6) Bureau de Normalisation de l'Automobile (BNA) ISO/TC22/WG12; (7) Porsche Cars North America, Inc.; (8)Alliance of Automobile Manufacturers (Alliance); (9) Rubber Manufacturers Association (RMA); (10) Aviation Upgrade Technologies; (11) Vehicle Services Consulting, Inc. (VSC); and (12) DENSO International America, Inc. (DENSO); and (13) Maserati S.P.A. NHTSA will respond to those petitions through a subsequent notice to be published in the **Federal Register**. However, it should be noted that none of the petitions stated any opposition to an exclusion from the phase-in for final-stage manufacturers.

Further, on October 2, 2002, the National Truck Equipment Association (NTEA) submitted a request for legal interpretation asking for guidance on whether final-stage manufacturers are required to provide tire pressure monitoring systems during the phase-in period under the new and amended regulations, even when the incomplete vehicle is not so equipped by the incomplete (chassis) manufacturer. If that were indeed the case, NTEA asked that its request be treated as a petition for rulemaking to exclude final-stage manufacturers and alterers from the TPMS phase-in.

II. Summary of the Corrections

Instead of granting NTEA's petition for rulemaking, NHTSA has decided to publish a correcting amendment because it inadvertently omitted from the final rule an exclusion for final-stage manufacturers and alterers from compliance with the TPMS standard until the final year of the phase-in. As discussed below, the phase-in of the TPMS requirements has the potential to create significant problems for many final-stage manufacturers and alterers. Again, while NHTSA did not discuss in the NPRM the specific requirements that would be associated with a phase-in, the agency has addressed that issue in several recent rulemakings that provided a similar exclusion for final-stage manufacturers.

The current situation impacting final-stage manufacturers is similar to the one that the agency encountered during the phase-in that extended the quasi-static side door strength requirements of FMVSS No. 214, "Side Impact Protection," to trucks, buses, and multipurpose passenger vehicles with a gross vehicle weight rating of 10,000 pounds or less (LTVs) (57 FR 30917, July 13, 1992). Like other manufacturers, final-stage manufacturers must certify that their vehicles meet all applicable safety standards. However, final-stage manufacturers complete or modify vehicles supplied by incomplete vehicle manufacturers and often rely on the representations in those manufacturers' incomplete vehicle document (IVD) as a basis for certification. Final-stage manufacturers and alterers have no control over the year of the phase-in in which a particular vehicle model will be certified as complying with the new requirements. Typically, a major manufacturer will elect to meet the phase-in requirements by scheduling its changes so that some of its models are changed in each year of the phase-in, instead of changing all models in a single year. While this practice allows the manufacturers to meet the phase-in requirements with minimal disruption to their manufacturing processes, it may significantly complicate final-stage manufacturers' efforts to secure appropriate compliant vehicles to either complete or modify as part of their standard operations. Put simply, final-stage manufacturers may have difficulty meeting the phase-in schedule because they have no control over when particular incomplete vehicles will be brought into compliance with the performance requirements being phased-in.

The difficulties faced by final-stage manufacturers and alterers in meeting the TPMS phase-in requirements are no less compelling than the difficulties they faced in the context of other phase-ins. Accordingly, NHTSA is correcting the June 2002 final rule to exclude final-stage manufacturers from compliance with the FMVSS No. 138 until the end of the phase-in (*i.e.*, November 1, 2006). This is the same approach for phase-ins that the agency has followed in a number of other recent rulemakings, including: Standard No. 208's automatic crash protection requirements for LTVs (56 FR 12472, 12479–80, March 26, 1991) and its more recently published advanced air bag requirements (65 FR 30680, 30721, May 12, 2000); Standard No. 214's extension of quasi-static door strength requirements to trucks, buses, and multipurpose passenger vehicles (57 FR 30917, 30921, July 13, 1992); Standard No. 201's requirements for protection for when an occupant's head

strikes upper interior components (60 FR 43031, 43049, August 18, 1995); and Standard No. 225's requirements for new child restraint anchorage systems (64 FR 10786, 10811, March 5, 1999).

Given that the agency raised the issue of the phase-in in both the NPRM and the final rule and the general understanding that commenters had concerning how the agency implemented phase-ins in other rulemakings, NHTSA believes that establishment of an exclusion for final-stage manufacturers until the final year of the phase-in along the lines of the above-cited agency precedent is a corrective action within the scope of the final rule. This correcting amendment relieves final-stage manufacturers and alterers from the requirement to assure that a specified percentage of their vehicles comply with the TPMS requirements of Standard No. 101 and Standard No. 138 during the phase-in period. However, once the phase-in is completed, all subject vehicles, including those produced by final-stage manufacturers and alterers, must be equipped with tire pressure monitoring systems.

This correction also amends 49 CFR 590.3 "Applicability" (Tire Pressure Monitoring System Phase-In Reporting Requirements) to exclude final-stage manufacturers and small volume manufacturers from phase-in reporting requirements because they are not subject to the phase-in.

These amendments to the final rule are effective 30 days after the date of publication in the **Federal Register**. These amendments correct the omission of a provision from the final rule that was published on June 5, 2002. Remedying this oversight on the part of the agency will not impose any additional substantive requirements or burdens on manufacturers. Therefore, NHTSA finds for good cause that any notice of proposed rulemaking and opportunity for comment on these amendments are not necessary.

III. Regulatory Analyses and Notices

Executive Order 12866 and DOT Regulatory Policies and Procedures

Executive Order 12866, "Regulatory Planning and Review" (58 FR 51735, October 4, 1993), provides for making determinations whether a regulatory action is "significant" and, therefore, subject to Office of Management and Budget (OMB) review and to the requirements of the Executive Order. The Executive Order defines a "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affects in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

We considered the impact of the June 5, 2002 final rule under Executive Order 12866 and the Department of Transportation's regulatory policies and procedures. That rule was determined to be a significant regulatory action under section 3(f) of the Executive Order because compliance with the rule was expected to have on annual effect on the economy of over $100 million. Consequently, the rule was reviewed by the Office of Management and Budget under Executive Order 12866. The rule was also determined to be significant within the meaning of the Department of Transportation's Regulatory Policies and Procedures (44 FR 11034, February 26, 1979).

Today's notice providing a correcting amendment is not a significant regulatory action within the meaning of Executive Order 12866, because the amendment does not impose any new requirements on manufacturers. It simply clarifies implementation of the phase-in by correcting the inadvertent omission of a provision to exclude final-stage manufacturers and alterers from compliance with the TPMS requirements of Federal Motor Vehicle Safety Standards No. 101 and No. 138 until the end of the phase-in period (*i.e.* November 1, 2006).

Executive Order 13132

Executive Order 13132, "Federalism" (64 FR 43255, August 10, 1999), requires NHTSA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" are defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Under Executive Order 13132, the agency may not issue a regulation with Federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, the agency consults with State and local governments, or the agency consults with State and local officials early in the process of developing the proposed regulation. NHTSA also may not issue a regulation with Federalism implications and that preempts a State law unless the agency consults with State and local officials early in the process of developing the proposed regulation.

The June 5, 2002 final rule was analyzed in accordance with the principles and criteria set forth in Executive Order 13132, and the agency determined that the rule would not have sufficient federalism implications to warrant consultations with State and local officials or the preparation of a federalism summary impact statement. Today's notice will not have any additional economic impact on any of the entities covered under Executive Order 13132.

Executive Order 13045

Executive Order 13045, "Protection of Children from Environmental Health and Safety Risks" (62 FR 19855, April 23, 1997), applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental, health or safety risk that NHTSA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the agency.

The June 5, 2002 final rule establishing requirements for incorporation of tire pressure monitoring systems in new vehicles was economically significant as defined in Executive Order 12866. However, it did not involve decisions based on health and safety risks that disproportionately affect children. Today's amendment does not make any changes to the final rule that would disproportionately affect children.

Executive Order 12988

Pursuant to Executive Order 12988, "Civil Justice Reform" (61 FR 4729,

February 7, 1996), the agency has considered whether this amendment will have any retroactive effect. This correcting amendment does not have any retroactive effect. Under 49 U.S.C. 30103, whenever a Federal motor vehicle safety standard is in effect, a State may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard, except to the extent that the state requirement imposes a higher level of performance and applies only to vehicles procured for the State's use. 49 U.S.C. 30161 sets forth a procedure for judicial review of final rules establishing, amending, or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions). However, no regulatory or flexibility analysis is required if the head of an agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities.

In the June 5, 2002 **Federal Register** final rule, NHTSA certified that that final rule will not have a significant economic impact on a substantial number of small entities. I have considered the effects of today's amendment under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) and certify that this amendment would not have a significant economic impact on a substantial number of small entities. The amendments made in this document would not impose any additional costs on small entities. The Regulatory Flexibility Act does not, therefore, require a regulatory flexibility analysis.

National Environmental Policy Act

NHTSA has analyzed this amendment for the purposes of the National Environmental Policy Act, and the agency has determined that it will not have any significant impact on the quality of the human environment.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995, a person is not required to respond to a collection of information by a Federal agency unless the collection displays a valid OMB control number. This correcting amendment does not establish any new information collection requirements.

National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272) directs the agency to use voluntary consensus standards in its regulatory activities unless doing so would be inconsistent with applicable law or is otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies, such as the Society of Automotive Engineers (SAE). The NTTAA directs us to provide Congress (through OMB) with explanations when the agency decides not to use available and applicable voluntary consensus standards. The NTTAA does not apply to symbols.

Today's amendment to provide an exclusion for final-stage manufacturers from the TPMS rule's requirements until the final year of the phase-in does not involve any issues related to standards, and in fact, there are no voluntary consensus standards related to TPMS that are available at this time.

Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) requires Federal agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of more than $100 million in any one year (adjusted for inflation with base year of 1995). Before promulgating a NHTSA rule for which a written statement is needed, section 205 of the UMRA generally requires the agency to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows the agency to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the agency publishes with the final rule an explanation why that alternative was not adopted.

The June 5, 2002 final rule will result in an expenditure of more that $100 million by vehicle manufacturers and/or their suppliers, and, as discussed in the final rule, the agency chose two compliance options that will provide manufacturers with broad flexibility to minimize their costs of compliance with the TPMS Standard during the phase-in period. Today's correcting amendment does not impose any unfunded mandates under the Unfunded Mandates Reform Act of 1995, because it would not impose any costs or requirements. Thus, this amendment is not subject to the requirements of sections 202 and 205 of the UMRA.

Regulation Identification Number (RIN)

The Department of Transportation assigns a regulation identification number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. You may use the RIN contained in the heading at the beginning of this document to find this action in the Unified Agenda.

List of Subjects in 49 CFR Parts 571 and 590

Imports, Motor vehicle safety, Reporting and recordkeeping requirements, Tires.

Accordingly, 49 CFR Parts 571 and 590 are corrected by making the following correcting amendments:

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

1. The authority citation for Part 571 of Title 49 continues to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.50.

2. Section 571.138 is amended by adding S7.7 to read as follows:

§ 571.138 Standard No. 138; Tire pressure monitoring systems.

* * * * *

S7.7. Final-stage manufacturers and alterers.

Vehicles that are manufactured in two or more stages or that are altered (within the meaning of 49 CFR § 567.7) after having previously been certified in accordance with Part 567 of this chapter are not subject to the requirements of S7.1 through S7.5.

* * * * *

PART 590—TIRE PRESSURE MONITORING SYSTEM PHASE-IN REPORTING REQUIREMENTS

3. The authority citation for Part 590 of Title 49 continues to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.50.

4. Section 590.3 is revised to read as follows:

§ 590.3 Applicability.

(a) Except as provided in paragraph (b) of this section, this part applies to manufacturers of passenger cars, multipurpose passenger vehicles, trucks, and buses with a gross vehicle weight rating of 4,536 kilograms (10,000 pounds) or less, except those vehicles with dual wheels on an axle.

(b) The reporting requirements of this part do not apply to small volume manufacturers, which are excluded from the compliance during the phase-in period under S7.6 of Standard No. 138 (49 CFR 571.138), or to final-stage manufacturers and alterers, which are excluded from compliance during the phase-in period under S7.7 of Standard No. 138 (49 CFR 571.138).

Issued: January 3, 2003.

Noble Bowie,

Director, Office of Planning and Consumer Standards.

[FR Doc. 03–1321 Filed 1–27–03; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 579

[Docket No. NHTSA 2001–10773; Notice 4]

RIN 2127–AJ04

Reporting of Information and Documents About Foreign Safety Recalls and Campaigns Related to Potential Defects

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Final rule.

SUMMARY: This document responds to a petition for reconsideration of the final rule published on October 11, 2002, that implemented the foreign safety recall and safety campaign reporting provisions of the Transportation Recall Enhancement, Accountability, and Documentation (TREAD) Act. In response to the petition, we are correcting two provisions to correspond with statements made in the preamble to the final rule. We are also amending the date on which the first annual list of substantially similar vehicles must be submitted, and specifying how reports may be submitted electronically.

DATES: Effective Date: The effective date of this final rule is February 27, 2003.

FOR FURTHER INFORMATION CONTACT: For non-legal issues, contact Jonathan White, Office of Defects Investigation, NHTSA (phone: 202–366–5226). For legal issues, contact Taylor Vinson, Office of Chief Counsel, NHTSA (phone: 202–366–5263).

SUPPLEMENTARY INFORMATION:

I. Background

On October 11, 2002, NHTSA published a final rule implementing the foreign safety recall and safety campaign reporting provisions of the Transportation Recall Enhancement, Accountability, and Documentation (TREAD) Act, established by 49 U.S.C. 30166(l) (67 FR 63295). *See* 49 CFR part 579, particularly subpart B. The reader is referred to that document, and the prior Notice of Proposed Rulemaking (NPRM) (66 FR 51907, October 11, 2001) for further information.

A timely petition for reconsideration of the rule was filed by the Alliance of Automobile Manufacturers (the "Alliance").

To address foreign defect reporting and other issues, the TREAD Act (Pub. L. 106–414) was enacted on November 1, 2000. Section 3(a) of the TREAD Act amended 49 U.S.C. 30166 to add a new subsection (l), which reads as follows:

> (l) Reporting of Defects in Motor Vehicles and Products in Foreign Countries—
>
> (1) Reporting of Defects, Manufacturer Determination.—Not later than 5 working days after determining to conduct a safety recall or *other safety campaign* in a foreign country on a motor vehicle or motor vehicle equipment that is identical or substantially similar to a motor vehicle or motor vehicle equipment offered for sale in the United States, the manufacturer shall report the determination to the Secretary.
>
> (2) Reporting of Defects, Foreign Government Determination.—Not later than 5 working days after receiving notification that the government of a foreign country has determined that a safety recall or *other safety campaign* must be conducted in the foreign country on a motor vehicle or motor vehicle equipment that is identical or substantially similar to a motor vehicle or motor vehicle equipment offered for sale in the United States, the manufacturer shall report the determination to the Secretary.
>
> (3) Reporting Requirements.—The Secretary shall prescribe the contents of the notification required by this subsection.

(emphasis supplied)

The final rule adopted the following definition of "other safety campaign:'

> Other safety campaign means an action in which a manufacturer communicates with owners and/or dealers in a foreign country with respect to conditions under which motor vehicles or equipment should be operated, repaired, or replaced that relate to safety (excluding promotional and marketing materials, customer satisfaction surveys, and operating instructions or owner's manuals that accompany the vehicle or child restraint system at the time of first sale); or advice or direction to a dealer or distributor to cease the delivery or sale of specified models of vehicles or equipment.

II. The Petition for Reconsideration

The Alliance petitioned for reconsideration of the inclusion of "advice or direction to a dealer or distributor to cease the delivery or sale of specified models of vehicles or equipment" in the definition of "other safety campaign." It cited our comments in the preamble to the final rule (67 FR at 63299) regarding our definition of "customer satisfaction campaign * * *." in the early warning reporting final rule (67 FR 45822), in which we discussed our specific exclusion from that definition of "advice or direction to a dealer or distributor to cease the delivery or sale of specified models of vehicles or equipment." At the end of this discussion, we stated "We are adding the same exclusions to the definition of "other safety campaign." We inadvertently omitted to do so by placing the closing parenthesis after "sale" rather than "equipment." We are revising the definition of "other safety campaign" to expand the exclusion as we had originally intended. Thus, we grant the petition by the Alliance on this issue.

The Alliance also pointed out another instance in which the regulatory text did not reflect a statement made in the preamble of the final rule. There, we stated our intention to exempt from reporting "any safety campaign involving substantially similar motor vehicle equipment that does not perform the same function in vehicles or equipment sold or offered for sale in the United States." 67 FR 63306. However, the regulatory text, at 49 CFR 579.11(d)(2), provides an exemption only if "the component or system that gave rise to the foreign recall or other campaign does not perform the same function in any vehicles or equipment sold or offered for sale in the United

States." The Alliance asks that the phrase "substantially similar" be added before "vehicles" to reflect the preamble statement, and we are so doing.

III. The Initial List of Substantially Similar Vehicles and Equipment for 2003 Must Be Submitted No Later Than 30 Days After Publication of This Rule

Section 579.11(e) requires a manufacturer of motor vehicles to provide an annual list of vehicles that it sells or plans to sell in a foreign country that it believes are identical or substantially similar to motor vehicles it sells or offers for sale, or plans to sell, in the United States in the following year, which identifies each such identical or substantially similar vehicle sold or offered for sale in the United States. The list must be submitted to NHTSA not later than November 1 of each year, as we proposed in the NPRM. 66 FR at 51918.

However, we were unable to complete and publish the foreign defect reporting final rule until October 11, 2002, and it was not effective until 30 days after publication, November 12, 2002. Thus, the first November 1 following publication of the rule was 2002, but the first November 1 following its effective date is 2003. Some vehicle manufacturers phoned during October 2002, after publication of the final rule, to confirm that they would not have a legal reporting obligation as of November 1, 2002, and we confirmed that interpretation. However, the purposes of 49 U.S.C. 30166(l) cannot be fully realized if we defer submission of the initial list of substantially similar vehicles until November 1, 2003. A representative of the Alliance has informed us that most if not all of its member companies have been putting together such a list and could provide it within 30 days of publication of a notice requiring it. Thus, we are revising Section 579.11(e) to add a new sentence at the end, to read as follows:

> Not later than 30 days after January 28, 2003, each manufacturer to which this paragraph applies shall submit an initial annual list of vehicles for calendar year 2003 that meets the requirements of this paragraph.

IV. Reports May Be Submitted Electronically

In a telephone call, Michael Grossman asked on behalf of Automobili Lamborghini whether reports required by Section 579.11, Reporting responsibilities, could be submitted electronically. Section 579.6, Address for submitting reports and other information, contains both a general requirement that reports required by part 579 must be addressed to the Associate Administrator for Enforcement, and a specific requirement with respect to the information, documents, and reports that are to be submitted to NHTSA's early warning data depository under subpart C of part 579. However, it is silent on the manner in which reports are to be filed for purposes of foreign defect reporting.

With one exception, reports of foreign recalls and safety campaigns do not include copies of materials related to the manufacturer's foreign campaign, and are a manufacturer's compilation of the information required by the regulation. There is no reason why such a report may not be filed by ordinary mail, or by facsimile transmission, or e-mail ("electronically"). However, when a foreign government has ordered a manufacturer to conduct a campaign, the manufacturer must file a copy of that order with its report, and a translation as well if the foreign government's order is in a language other than English. We would accept a scanned copy of the order and translation attached to an e-mail report (as well as a hard copy by mail or fax). Accordingly, we are amending Section 579.6 to provide guidance for the electronic submission of foreign defect reports, with appropriate fax and e-mail addresses. These are respectively (202) 366–7882, and *foreign_recalls@nhtsa.dot.gov*. e-mail submissions under Section 579.5 should be sent to *tsb@nhtsa.dot.gov*.

V. Interpretation of "Safety Guideline'

Section 579.4(c) defines "safety recall," in part, as involving a "failure to comply with an applicable safety standard or guideline." The Truck Manufacturers Association (TMA) asked for confirmation of its understanding that "the agency incorporated the term guideline into this definition in order to accommodate any foreign country that may have applicable safety compliance rules that are not specifically identified as standards."

As we noted in the preamble to the final rule, "We proposed to characterize a 'safety recall' abroad as involving a determination * * * that there is a problem * * * that relates to motor vehicle safety (*e.g.*, a defect or noncompliance with a local safety standard or governmental guideline) * * * (p. 63298). There were no comments about the term "guideline" in the comments submitted on the NPRM for foreign defect campaign reporting. "Standard" is a broad term and is used in various ways in the United States. Manufacturers are required to comply with Federal motor vehicle safety standards, but are not required to comply with a Society of Automotive Engineers (SAE) standard (assuming that standard has not been incorporated by reference into the FMVSS). In that sense, the SAE standard is a "guideline." We view TMA as essentially correct in interpreting the term as "applicable safety compliance rules that are not specifically identified as standards." However, we do not find it necessary to define "guideline" because the important issue in this context is whether a campaign is being conducted because there has been a determination by the manufacturer or a foreign government that a safety guideline has not been met. The touchstone is the safety-relatedness of the problem to the standard or the guideline.

VI. Rulemaking Analyses

Executive Order 12866 and DOT Regulatory Policies and Procedures. This document was not reviewed under Executive Order 12866. It has been determined that the rulemaking action is not significant under Department of Transportation regulatory policies and procedures. *See* 67 FR 63309 for discussion of final rule.

Regulatory Flexibility Act. We have also considered the impacts of this rulemaking action in relation to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). I certify that this rulemaking action does not have a significant economic impact upon a substantial number of small entities. *See* 67 FR 63309 for discussion of final rule.

Executive Order 13132 (Federalism). This final rule regulates the manufacturers of motor vehicles and motor vehicle equipment, will not have substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in E.O. 13132.

Civil Justice Reform. This final rule will not have a retroactive or preemptive effect, and judicial review of it may be obtained pursuant to 5 U.S.C. 702. That section does not require that a petition for reconsideration be filed prior to seeking judicial review.

List of Subjects in 49 CFR Part 579

Imports, Motor vehicle safety, Motor vehicles, Reporting and recordkeeping requirements.

For the reasons set out in the preamble, 49 CFR part 579 is amended as follows:

PART 579—REPORTING OF INFORMATION AND COMMUNICATIONS ABOUT POTENTIAL DEFECTS

1. The authority citation for part 579 continues to read as follows:

Authority: Sec. 3, Pub. L. 106–414, 114 Stat. 1800 (49 U.S.C. 30102–103, 30112, 30117–121, 30166–167); delegation of authority at 49 CFR 1.50

2. Section 579.4 is revised by amending the term "other safety campaign" to read as follows:

§ 579.4 Terminology.

* * * * *

(c) Other terms. * * *

* * * * *

Other safety campaign means an action in which a manufacturer communicates with owners and/or dealers in a foreign country with respect to conditions under which motor vehicles or equipment should be operated, repaired, or replaced that relate to safety (excluding promotional and marketing materials, customer satisfaction surveys, and operating instructions or owner's manuals that accompany the vehicle or child restraint system at the time of first sale; or advice or direction to a dealer or distributor to cease the delivery or sale of specified models of vehicles or equipment).

* * * * *

3. Section 579.6 is revised to read as follows:

§ 579.6 Address for submitting reports and other information.

(a) Except as provided by paragraph (b) of this section, information, reports, and documents required to be submitted to NHTSA pursuant to this part may be submitted by mail, by facsimile, or by e-mail. If submitted by mail, they must be addressed to the Associate Administrator for Enforcement, National Highway Traffic Safety Administration (NHTSA), 400 7th Street, SW., Washington, DC 20590. If submitted by facsimile, they must be addressed to the Associate Administrator for Enforcement and transmitted to (202) 366–7882. If submitted by e-mail, submissions under subpart B of this part must be submitted to *foreign_recalls@nhtsa.dot.gov* and submissions under § 579.5 must be submitted to *tsb@nhtsa.dot.gov*.

(b) Information, documents and reports that are submitted to NHTSA's early warning data repository must be submitted in accordance with § 579.29 of this part. Submissions must be made by a means that permits the sender to verify that the report was in fact received by NHTSA and the day it was received by NHTSA.

4. Section 579.11(d)(2) is revised and paragraph (e) is amended by adding a sentence at the end thereof. The revision and amendment read as follows:

§ 579.11 Reporting responsibilities.

* * * * *

(d) Exemptions from reporting. * * *

* * * * *

(2) The component or system that gave rise to the foreign recall or other campaign does not perform the same function in any substantially similar vehicles or equipment sold or offered for sale in the United States; or

* * * * *

(e) Annual list of substantially similar vehicles. * * * Not later than 30 days after January 28, 2003, each manufacturer to which this paragraph applies shall submit an initial annual list of vehicles for calendar year 2003 that meets the requirements of this paragraph.

Issued on: January 16, 2003.

Jeffrey W. Runge,

Administrator.

[FR Doc. 03–1320 Filed 1–27–03; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 020409080–3013–07 ; I.D. 101802B]

RIN 0648–AP78

Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Regulations Governing Northeast Multispecies and Monkfish Days-at-Sea

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS issues this final rule implementing a regulatory amendment to correct minor oversights in the August 1, 2002, interim final rule that implemented additional restrictions to reduce overfishing on species managed under the Northeast (NE) Multispecies Fishery Management Plan (FMP). The intent of this regulatory amendment is to revise monkfish days-at-sea (DAS) regulations in order to provide vessels possessing limited access Category C or D monkfish permits the opportunity to fish their full allocation of up to 40 monkfish DAS, regardless of the amount of NE multispecies DAS available to an individual vessel as of August 1, 2002. This regulatory amendment also revises ambiguous language to clarify that a vessel fishing under a Southern New England (SNE) and Mid-Atlantic (MA) Yellowtail Flounder Possession/Landing Letter of Authorization (LOA) may fish in the Gulf of Maine (GOM) or Georges Bank (GB) Regulated Mesh Areas (RMAs), provided the vessel abides by the more restrictive yellowtail flounder possession limits of the SNE and MA RMAs north of 40°00' N. lat.

DATES: Effective January 28, 2003.

ADDRESSES: Copies of the Regulatory Impact Review (RIR) prepared for this action are available from the Regional Administrator at the following address: National Marine Fisheries Service, 1 Blackburn Drive, Gloucester, MA 01930. This document is also accessible via the Internet at http://www.nero.nmfs.gov.

FOR FURTHER INFORMATION CONTACT: Allison Ferreira, Fishery Policy Analyst, phone: 978–281–9103, fax: 978–281–9135, e-mail: Allison.Ferreira@noaa.gov

SUPPLEMENTARY INFORMATION:

Background

NMFS published an interim final rule on August 1, 2002 (67 FR 50292), implementing the Settlement Agreement Among Certain Parties (Settlement Agreement), which was ordered by the U.S. District Court for the District of Columbia (Court) as a result of *Conservation Law Foundation et al.* v. *Evans et al.* The objective of the interim final rule was to reduce overfishing consistent with and pursuant to section 305(c)(3) of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), while Amendment 13 to the FMP is being developed. However, following the publication of the interim final rule, some minor oversights in the rule became apparent. As a result, NMFS published a proposed rule (67 FR 70570) on November 25, 2002, for a regulatory amendment to correct these minor oversights.

The measures contained in this final rule are unchanged from those published in the proposed rule and are summarized in the following paragraphs. A complete discussion of the revisions being made to the August 1, 2002, interim final rule through this regulatory amendment, and the rationale for these revisions were

presented in the preamble to the proposed rule and are not repeated here.

The intent of the August 1, 2002, interim final rule was to provide vessels possessing limited access Category C or D monkfish permits with the opportunity to use their full annual allocation of 40 monkfish DAS, regardless of the number of NE multispecies DAS allocated under the Settlement Agreement. However, as currently written, the interim final rule specifies that Category C or D monkfish vessels that have been allocated fewer than 40 NE multispecies DAS may fish, as monkfish-only DAS (i.e., monkfish DAS that do not have to be fished concurrently with a NE multispecies DAS), those monkfish DAS equal to the difference between their NE multispecies DAS allocation and their monkfish DAS allocation for the fishing year May 1 through April 30. This does not account for vessels that used NE multispecies DAS prior to August 1, 2002, and, as a result, had fewer unused NE multispecies than unused monkfish DAS as of August 1, 2002. Therefore, NMFS, through this final rule, enables limited access Category C or D monkfish vessels to fish all of their allocated monkfish DAS that were unused as of August 1, 2002, regardless of how many NE multispecies DAS they had remaining as of August 1, 2002. This regulatory amendment modifies the monkfish DAS regulations found at § 648.92(b)(2), and applies to only the 2002 fishing year, which ends April 30, 2003. For the 2002 fishing year, this regulatory amendment authorizes a vessel to fish its monkfish-only DAS equal to the difference between the number of its unused monkfish DAS and its unused NE multispecies DAS as of August 1, 2002, in addition to the unused monkfish DAS associated with the vessel's unused NE multispecies DAS as of August 1, 2002. For the 2003 fishing year, vessels allocated fewer NE multispecies DAS than monkfish DAS would fish the difference in DAS as monkfish-only DAS, as stipulated in the August 1, 2002, interim final rule.

As under the current August 1, 2002, interim final rule, vessels fishing under a monkfish-only DAS will be required to fish under the same provisions as limited access Category A and B monkfish vessels. Limited access monkfish Category A and B vessels are required to fish their monkfish DAS in an existing monkfish exempted fishery, a fishery that has been demonstrated to result in less than a 5–percent bycatch of NE multispecies. The existing monkfish exemption areas are specified under § 648.81. A map of these exemption areas is also available from the Northeast Regional Office of NMFS (see **FOR FURTHER INFORMATION CONTACT**).

This regulatory amendment also revises ambiguous regulatory language pertaining to yellowtail flounder possession restrictions. The intent of the August 1, 2002, interim final rule was to allow vessels possessing a SNE and MA Yellowtail Flounder Possession/Landing LOA to fish any part of a trip in the GOM or GB RMAs, provided that they abide by the more restrictive yellowtail flounder possession limits of the SNE and MA RMAs north of 40o00' N. lat. However, this is not clearly stated in existing regulations pertaining to yellowtail flounder possession restrictions found at § 648.86(h)(2)(ii). Therefore, this action revises the regulatory language to clarify that vessels possessing a SNE and MA Yellowtail Flounder Possession/Landing LOA may fish in the GOM or GB RMAs under the more restrictive yellowtail possession limits of the SNE and MA RMAs.

NMFS will announce any continuation of the August 1, 2002, interim final rule by publishing notification in the **Federal Register**. Because this final rule amends that interim final rule, it will remain in effect for the duration of the August 1, 2002, interim final rule, including any continuation.

Comments and Responses

No public comments were received on the proposed rule.

Classification

The Administrator, Northeast Region, NMFS, determined that this regulatory amendment is necessary for the conservation and management of the NE multispecies and monkfish fisheries and that it is consistent with the Magnuson-Stevens Act and other applicable laws.

This final rule makes minor revisions to the regulations contained in the August 1, 2002, interim final rule in order to reflect NMFS' intent in implementing the Settlement Agreement. The interim final rule restricts a population of limited access Category C and D monkfish vessels' from using their full allocation of 40 monkfish DAS. This final rule relieves that restriction by permitting these vessels to utilize 40 monkfish DAS, regardless of the amount of NE multispecies DAS available as of August 1, 2002. It is imperative that this rule be effective immediately so that affected individuals can maximize the use of their monkfish DAS prior to the end of the fishing season on April 30, 2003. Therefore, because this rule relieves a restriction, the Assistant Administrator for Fisheries, NOAA, finds good cause under the Administrative Procedure Act pursuant to 5 U.S.C. 553 (d)(1) to waive the 30–day delay in effectiveness date for this final rule.

This final rule has been determined to be not significant for purposes of Executive Order 12866.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this rule would not have a significant economic impact on a substantial number of small entities. No comments were received regarding this certification. As a result, a regulatory flexibility analysis was not prepared.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: January 22, 2003

Rebecca Lent,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 648 is amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

1. The authority citation for part 648 continues to read as follows:

Authority: Authority: 16 U.S.C. 1801 *et seq.*

2. In § 648.86, paragraph (h)(2) (ii) is revised to read as follows:

§ 648.86 Multispecies possession restrictions.

* * * * *

(h) * * *

(2) * * *

(ii) The vessel does not fish south of 40°00' N. lat. for a minimum of 30 consecutive days (when fishing under the NE multispecies DAS program, or under the monkfish DAS program if the vessel is fishing under the limited access monkfish Category C or D provisions). Vessels subject to these restrictions may fish any portion of a trip in the GOM and GB Regulated Mesh Areas, provided the vessel complies with the possession restrictions specified under this paragraph (h). Vessels subject to these restrictions may also transit the SNE and MA Regulated Mesh Areas south of 40°00' N. lat., provided the gear is stowed in accordance with one of the provisions of § 648.23(b).

* * * * *

3. In § 648.92, paragraph (b)(2) is revised to read as follows:

§ 648.92 Effort-control program for monkfish limited access vessels.

* * * * *

(b) * * *

(2) *Category C and D limited access monkfish permit holders.* (i) *August 1, 2002 - April 30, 2003.* Each monkfish DAS used by a limited access multispecies or scallop vessel holding a Category C or D limited access monkfish permit shall also be counted as a multispecies or scallop DAS, as applicable, unless otherwise specified in this paragraph (b). A Category C or D vessel that had fewer unused multispecies DAS than unused monkfish DAS as of August 1, 2002, may fish under the limited access monkfish provisions for Category A or B vessels, as applicable, for the number of DAS that equal the difference between its unused monkfish DAS and unused multispecies DAS as of August 1, 2002. For such vessels, when the total allocation of multispecies DAS has been used, a monkfish DAS may be used without concurrent use of a multispecies DAS. (For example, if a monkfish Category D vessel has 10 NE multispecies DAS and 40 monkfish DAS remaining as of August 1, 2002, that vessel may use the remaining 30 monkfish DAS to fish on monkfish, without a NE multispecies DAS being used, once the remaining 10 NE multispecies DAS have been utilized. However, the vessel must fish the remaining 30 monkfish DAS under the regulations pertaining to a Category B vessel, and must not retain any regulated multispecies.)

(ii) *Beginning May 1, 2003.* Each monkfish DAS used by a limited access multispecies or scallop vessel holding a Category C or D limited access monkfish permit shall also be counted as a multispecies or scallop DAS, as applicable, except when a Category C or D vessel that has an allocation of multispecies DAS under § 648.82(l) that is less than the number of monkfish DAS allocated for the fishing year May 1 through April 30, that vessel may fish under the monkfish limited access Category A or B provisions, as applicable, for the number of DAS that equal the difference between the number of its allocated monkfish DAS and the number of its allocated multispecies DAS. For such vessels, when the total allocation of multispecies DAS have been used, a monkfish DAS may be used without concurrent use of a multispecies DAS. (For example, if a monkfish Category D vessel's multispecies DAS allocation is 30, and the vessel fished 30 monkfish DAS, 30 multispecies DAS would also be used. However, after all 30 multispecies DAS are used, the vessel may utilize its remaining 10 monkfish DAS to fish on monkfish, without a multispecies DAS being used, provided that the vessel fishes under the regulations pertaining to a Category B vessel and does not retain any regulated multispecies.)

* * * * *

[FR Doc. 03–1906 Filed 1–27–03; 8:45 am]
BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 021212306–2306–01; I.D. 012303B]

Fisheries of the Exclusive Economic Zone Off Alaska; Pollock in Statistical Area 610 of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for pollock in Statistical Area 610 of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the first seasonal allowance of the pollock interim total allowable catch (TAC) for Statistical Area 610 of the GOA.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), January 23, 2003, until superseded by the notice of Final 2003 Harvest Specifications of Groundfish for the GOA, which will be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The first seasonal allowance of the pollock interim TAC in Statistical Area 610 of the GOA is 2,916 metric tons (mt) as established by the interim 2003 harvest specifications for groundfish of the GOA (67 FR 78733, December 26, 2002).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the first seasonal allowance of the pollock interim TAC in Statistical Area 610 will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 2,716 mt, and is setting aside the remaining 200 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance will soon be reached. Consequently, NMFS is prohibiting directed fishing for pollock in Statistical Area 610 of the GOA.

Maximum retainable amounts may be found in the regulations at § 679.20(e) and (f).

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is contrary to the public interest. This requirement is contrary to the public interest as it would delay the closure of the fishery, lead to exceeding the interim TAC, and therefore reduce the public's ability to use and enjoy the fishery resource.

The Assistant Administrator for Fisheries, NOAA, also finds good cause to waive the 30–day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by section 679.20 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: January 23, 2003.

Dean Swanson,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 03–1905 Filed 1–23–03; 4:05 pm]
BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 68, No. 18
Tuesday, January 28, 2003

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–409–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 767–200, –300, and –300F Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Supplemental notice of proposed rulemaking; reopening of comment period.

SUMMARY: This document revises an earlier proposed airworthiness directive (AD), applicable to certain Boeing Model 767–200, –300, and –300F series airplanes, that would have required a one-time inspection for discrepancies of certain wire bundles in the forward cargo compartment, and corrective actions, if necessary. This new action revises the proposed rule by extending the compliance time and expanding the inspection area. The actions specified by this new proposed AD are intended to prevent damage to wire bundles, particularly those of the fuel quantity indication system (FQIS), which are located in the subject area. Damage of FQIS wires could cause arcing between those wires and power wires in the damaged wire bundle, and may lead to transmission of electrical energy into the fuel tank, which would result in a potential source of ignition in the fuel tank. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by February 24, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–409–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2000–NM–409–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Elias Natsiopoulos, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1279; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2000–NM–409–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–409–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to add an airworthiness directive (AD), applicable to certain Boeing Model 767–200, –300, and –300F series airplanes, was published as a notice of proposed rulemaking (NPRM) in the **Federal Register** on October 26, 2001 (66 FR 54171). That NPRM proposed to require a one-time inspection for discrepancies of certain wire bundles in the forward cargo compartment, and corrective actions, if necessary. That NPRM was prompted by a report indicating that, prior to engine start-up on a Boeing Model 767 series airplane, several circuit breakers tripped and the flight crew observed unusual messages on the engine indication and crew alerting system display. An investigation revealed that numerous wires in certain wire bundles had melted and burned. The affected wire bundles were located on the ceiling of the forward cargo compartment, and had chafed. Wires for the fuel quantity indication system (FQIS), which penetrate the fuel tank, are routed through one of the wire bundles that was damaged in the reported incident. Damage of FQIS wires could cause arcing between those wires and power wires in the damaged wire bundle, and may lead to transmission of electrical energy into the fuel tank, which would result in a potential source of ignition in the fuel tank.

Actions Since Issuance of Previous Proposal

Due consideration has been given to the comments received in response to the original NPRM. Some of the comments have resulted in changes to the original NPRM.

Support for the Original NPRM

One operator supports the original NPRM.

Request for Revised Service Information

One commenter, an operator, has identified three problems in Boeing Service Bulletin 767–24A0128, dated May 11, 2000, which was identified as the appropriate service information for the actions specified in the original NPRM. First, the Panduit strap does not fit into the cable spacer, as described in that service bulletin. Second, the specified 0.5-inch clearance between the wire bundles and the cargo liner is impossible to achieve. Third, the cargo liner panel is mislabeled in Figure 1, Sheet 2, of the service bulletin.

The FAA agrees. Boeing has revised the service bulletin, which the FAA has reviewed and approved. Boeing Service Bulletin 767–24A0128, Revision 2, dated May 23, 2002, addresses all of the commenter's concerns: The new Panduit straps will fit the cable spacers; the space requirements between the wire bundles and the cargo ceiling liner standoff have been revised to 0.25 inch for sleeving and 0.13 inch for sleeving and spacers; and Figure 1, Sheet 2, has been revised to identify the "floor beam" rather than the "ceiling liner." The FAA has revised this supplemental NPRM to cite Revision 2 of the service bulletin as the appropriate service information for the proposed actions. Revision 2 of the service bulletin expands the inspection to include areas that were inadvertently omitted from the original service bulletin and Revision 1. Specifically, this supplemental NPRM would require inspection of wire bundles between right buttock line (RBL) 40 and RBL 70. (The original NPRM proposed to require inspection of bundles between RBL 40 and RBL 54.)

Request To Revise Cost Estimate

One commenter, an operator, recommends revising the Cost Impact section. Rather than 2 work hours to accomplish all the actions specified in the original NPRM, the commenter suggests that this figure be revised to 32 work hours per airplane, broken down as follows: 2 work hours to access the area, 2 work hours to inspect the wire bundles, 26 work hours to protect the wire bundles (the commenter reports finding inadequate clearance on the wire bundles on nearly all its airplanes and is adding protection to the bundles on each airplane), and 2 work hours for restoration.

The FAA partially agrees. Although moderating the clearance requirements (as described previously) would considerably reduce the time necessary to accomplish the corrective actions, only the inspection and clearance measurement of the wire bundles would actually be required by this supplemental NPRM. The economic analysis of an AD is limited to the cost of actions actually required by the rule. It does not consider the cost of conditional actions, which would be required to be accomplished—regardless of AD direction—to correct an unsafe condition identified on an airplane and to ensure operation of that airplane in an airworthy condition, as required by the Federal Aviation Regulations.

Request To Extend the Compliance Time

Two commenters, both operators, request that the compliance time be extended from 15 months to 18 months. One operator states that an 18-month compliance time would correspond to available maintenance opportunities for the fleet, based on the work-hour estimates, without compromising safety. The other operator requests that the compliance time reflect ATA "Spec 111" recommended guidelines for such non-emergency-related safety issues, and suggests that an 18-month compliance time would coincide with regularly scheduled "C" check visits.

The FAA agrees. In light of the revised work-hour estimates provided in Revision 2 of the service bulletin, the FAA finds that the proposed 18-month compliance time is more appropriate for the majority of operators to accomplish the corrective action that would be mandated by this supplemental NPRM and still ensure the safety of the fleet. This supplemental NPRM has been revised accordingly.

Request To Clarify Identity of Airplanes Subject to Inspection Requirement

One commenter, an operator, requests that the proposed AD be revised to clarify that only the inspection is required and operators may choose to rework the wire bundles if "deemed necessary." The commenter requests that the difference between the service bulletin instructions and the AD inspection requirements be clearly defined.

The FAA partially agrees. The rework instructions in Revision 2 of the service bulletin correspond to the proposed requirements in this supplemental NPRM. However, the FAA disagrees with the request to require only the inspection of the wire bundles and to permit operators to determine whether corrective action is needed. The FAA finds that the need to rework the wire bundles is not a discretionary option for operators. If conditions exist that require the rework (as specified in this supplemental NPRM and clarified in Revision 2 of the service bulletin), then operators are required to comply with the rework requirements. The rework conditions proposed in this supplemental NPRM are the same as those recommended in Revision 2 of the service bulletin. No further change to this supplemental NPRM is necessary.

Conclusion

Revision 2 of the service bulletin specifies additional areas to be inspected. Since this change expands the scope of the original NPRM, the FAA has determined that it is necessary to reopen the comment period to provide additional opportunity for public comment.

Difference Between Service Bulletin and Proposed AD

The service bulletin recommends accomplishing the inspection "at the earliest opportunity when manpower and facilities are available." However, the FAA has determined that such a compliance time will not ensure that operators address the unsafe condition in a timely manner. In developing an appropriate compliance time for this supplemental NPRM, we considered not only the manufacturer's recommendation, but the degree of urgency associated with addressing the subject unsafe condition, and the time necessary to accomplish the actions. In light of all of these factors, the FAA finds that an 18-month compliance time represents an appropriate length of time to allow affected airplanes to continue to be operated without compromising safety.

Clarification of Inspection Type

While the service bulletin specifies that operators "inspect" (for chafing or damage of wire bundles), this supplemental NPRM would require a "detailed inspection." The FAA has determined that the procedures as described in the service bulletin should be considered a detailed inspection. Note 2 has been revised in this supplemental NPRM to define this type of inspection.

Cost Impact

There are approximately 774 airplanes of the affected design in the worldwide fleet. The FAA estimates that 303 airplanes of U.S. registry would be affected by this supplemental NPRM, that it would take approximately 2 work hours per airplane to accomplish the proposed inspection, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of this supplemental NPRM on U.S. operators is estimated to be $36,360, or $120 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this supplemental NPRM were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Docket 2000–NM–409–AD.

Applicability: Model 767–200, –300, and –300F series airplanes; certificated in any category; as listed in Boeing Alert Service Bulletin 767–24A0128, Revision 2, dated May 23, 2002.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent damage of wire bundles in the forward cargo compartment, particularly wires of the fuel quantity indication system (FQIS) installed in that area, which could cause arcing between the FQIS wires and power wires in the damaged wire bundle, lead to transmission of electrical energy into the fuel tank, and result in a potential source of ignition in the fuel tank, accomplish the following:

Inspection and Follow-on Actions

(a) Within 18 months after the effective date of this AD, do a one-time detailed inspection to detect discrepancies of all wire bundles routed along the ceiling of the forward cargo compartment from station 368 through 742 at right buttock lines 40 through 70, according to the Accomplishment Instructions of Boeing Alert Service Bulletin 767–24A0128, Revision 2, dated May 23, 2002. Discrepancies include chafing or damage of wire bundles near stand-offs that attach the cargo ceiling liner to the floor beams.

(1) Before further flight, repair any discrepancy, according to the Accomplishment Instructions of the service bulletin.

(2) Before further flight, examine the clearance between the wire bundles in the forward cargo compartment and the cargo liner standoffs, according to the service bulletin.

(i) If the clearance is greater than 0.25 inch: No further action is required by this AD.

(ii) If the clearance is 0.25 inch or less: Before further flight, install sleeving, cable spacers, and straps, as applicable, according to the Accomplishment Instructions of the service bulletin.

Note 2: For the purposes of this AD, a detailed inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

(c) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on January 22, 2003.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–1828 Filed 1–27–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 73

[Docket No. FAA–2002–13414; Airspace Docket No. 02–AGL–7]

RIN 2120–AA66

Proposed Modification of Restricted Areas R–6904A and R–6904B, Volk Field, WI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes to raise the upper limit of Restricted Areas 6904A (R–6904A) and 6904B (R–6904B), Volk Field, WI, from 17,000 feet above

mean sea level (MSL) to Flight Level 230 (FL 230). Expanding the vertical limit would facilitate the transition of participating aircraft between these restricted areas and the overlying Volk West Air Traffic Control Assigned Airspace (ATCAA). The additional airspace is needed to fulfill new U.S. Air Force (USAF) training requirements. No other changes to R–6904A or R–6904B are proposed.

DATES: Comments must be received on or before March 14, 2003.

ADDRESSES: Send comments on this proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket numbers FAA–2002–13414/ Airspace Docket No. 02–AGL–7 at the beginning of your comments.

You may also submit comments through the Internet to *http://dms.dot.gov*. You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Dockets Office (telephone 1–800–647–5527) is on the plaza level of the NASSIF Building at the Department of Transportation at the above address.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, IL 60018.

FOR FURTHER INFORMATION CONTACT: Steve Rohring, Airspace and Rules Division, ATA–400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Nos. FAA–2002–13414/Airspace Docket No. 02–AGL–7." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

An electronic copy of this document may be downloaded through the internet at *http://dms.dot.gov*.

Additionally, any person may obtain a copy of this notice by submitting a request to the Federal Aviation Administration, Office of Air Traffic Airspace Management, ATA–400, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–8783. Communications must identify both docket numbers of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should call the FAA's Office of Rulemaking, (202) 267–9677, for a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

Background

By letter, the USAF requested that the FAA take action to increase the vertical limits of R–6904A and R–6904B from 17,000 feet above MSL to FL 230. Currently, participating aircraft must change their flight profile when crossing the 1,000 feet of airspace located above the restricted areas and below the Volk West ATCAA. This requested action would facilitate the transition of participating aircraft between these restricted areas and the overlying Volk West ATCAA by eliminating the 1,000-foot gap between the restricted areas and the ATCAA. This proposed action would also provide additional airspace needed to fulfill new USAF training requirements. Specifically, new training requirements call for practicing the release of bombs from higher altitudes than are currently available within the existing airspace structure. The current upper limit of 17,000 feet above MSL is not suitable for meeting this new training requirement. Raising the ceiling to FL 230 would allow for the required practice. No other changes to R–6904A or R–6904B are requested.

The Proposal

The FAA is proposing an amendment to 14 CFR part 73 to raise the vertical limits of R–6904A and R–6904B from 17,000 feet above MSL to FL 230. This additional altitude is required to eliminate the 1,000-foot gap between the restricted areas and the overlying Volk West ATCAA, and to meet the Air Force's requirement to practice the release of bombs from higher altitudes than are currently available within the existing restricted area airspace. No other changes to R–6904A or R–6904B are proposed.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

This proposal will be subjected to an environmental analysis in accordance with FAA Order 1050.1D, Procedures for Handling Environmental Impacts, prior to any FAA final regulatory action.

List of Subjects in 14 CFR Part 73

Airspace, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 73 as follows:

PART 73—SPECIAL USE AIRSPACE

1. The authority citation for part 73 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 73.63 [Amended]

2. § 73.63 is amended as follows:

* * * * *

R–6904A Volk Field, WI [Amended]

By removing the current designated altitudes and substituting the following:

Designated altitudes. 150 feet AGL to FL 230.

* * * * *

R–6904B Volk Field, WI [Amended]

By removing the current designated altitudes and substituting the following:

Designated altitudes. Surface to FL 230.

* * * * *

Issued in Washington, DC on January 21, 2003.

Reginald C. Matthews,

Manager, Airspace and Rules Division.

[FR Doc. 03–1874 Filed 1–27–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 157

[Docket Nos. RM03–4–000 and AD02–14–000]

Emergency Reconstruction of Interstate Natural Gas Facilities Under the Natural Gas Act

January 17, 2003.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is proposing to amend its regulations to enable natural gas interstate pipeline companies to replace mainline facilities using a route other than the existing right-of-way, and to commence construction without being subject to the 45-day prior notice proceedings specified in the Commission's regulations and without project cost constraints, when immediate action is required to restore service in an emergency due to a sudden unanticipated loss of natural gas or capacity in order to prevent loss of life, impairment of health, or damage to property. In addition, the Commission is proposing to revise reporting requirements so that a natural gas company, acting under part 157 in responding to an emergency, would submit a description of its activities to the Commission prospectively, in advance of commencing construction, rather than retrospectively, as is currently the case. An important objective of the proposed rule is the reconciliation of the Commission's regulatory responsibilities under its enabling statutes and federal environmental and safety laws with the need to protect persons and property. The Commission requests that comments address the adequacy of the proposed expansion of pipeline companies' authority under their part 157 blanket certificates in situations where immediate action is necessary to reconstruct interstate pipeline facilities that have been destroyed or compromised by a sudden unanticipated natural event or deliberate effort to disrupt the flow of natural gas or whether there is a need for further action by the Commission or Congress.

DATES: Comments are due February 27, 2003.

ADDRESSES: Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT: Robert Christin, Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, (202) 502–6022.

Gordon Wagner, Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, (202) 502–8947.

Berne Mosley, Office of Energy Projects, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, (202) 502–8625.

SUPPLEMENTARY INFORMATION:

1. The Federal Energy Regulatory Commission (Commission) is proposing to amend part 157, subpart F, of its regulations to enable natural gas interstate pipeline companies to replace mainline facilities using a route other than the existing right-of-way, and to commence construction without being subject to the 45-day prior notice proceedings specified in § 157.205 of the Commission's regulations and without project cost constraints, when immediate action is required to restore service in an emergency due to a sudden unanticipated loss of natural gas or capacity in order to prevent loss of life, impairment of health, or damage to property. In addition, the Commission is proposing to revise reporting requirements so that a natural gas company, acting under part 157 in responding to an emergency, would submit a description of its activities to the Commission prospectively, in advance of commencing construction, rather than retrospectively, as is currently the case. An important objective of the proposed rule is the reconciliation of the Commission's regulatory responsibilities under its enabling statutes and federal environmental and safety laws with the need to protect persons and property.

Background

2. On April 22, 2002, staff from the Commission and from the Department of Transportation (DOT) Office of Pipeline Safety (OPS) jointly convened a technical conference to consider whether to, or how to, clarify, expedite, and streamline permitting and approvals for interstate pipeline reconstruction following a sudden unanticipated service disruption.[1] Efforts to ensure the security of the nation's energy infrastructure have generally focused on maintaining the physical integrity of facilities and preparing to respond to accidents, such as excavation that breeches a buried pipe, natural disasters, such as earthquakes and landslides, and foreseeable equipment failure. The conference broadened this focus to consider how best to respond to damage due to a deliberate effort to disrupt the flow of natural gas.

3. At the conference, Commission and OPS staff provided an overview of current regulatory processes and presented examples of recent natural gas emergencies. Conference participants—representing federal, state, and local agencies, energy industry sectors, trade groups, and interested individuals—suggested various means to speed the reconstruction of interstate gas facilities, including: revising existing legislative mandates, revising Commission regulations, and enhancing coordination among federal, state, and local entities. A transcript of the conference and the comments subsequently submitted are contained in the record in Docket No. AD02–14–000.[2]

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[1] On the following day, staff from the Commission and from the Department of Energy (DOE) jointly convened a technical conference to consider whether to or how to clarify, expedite, and streamline the reallocation of gas supplies in the event of a sudden unanticipated service disruption. That proceeding, in Docket No. AD02–15–000, is not addressed here.

[2] The conference comments are available on FERC's Web site at *http://ferc.gov* using the Federal Energy Regulatory Records and Information System (FERRIS) to access filings in Docket No. AD02–14–000. The Interstate Natural Gas Association of America (INGAA) submitted scenarios describing how interstate pipelines might respond to various types of facility-related emergencies. Because of security concerns associated with disclosing this information, these scenarios are not included in the public record in Docket No. AD02–14–000; however, while the particulars of the scenarios are not described in detail in the public record, the results are discussed in general.

4. In general, staff found the Commission's existing authorities and policies sufficient, and sufficiently flexible, to enable pipelines to respond to emergencies in a timely manner. However, following consideration of the April 2002 conference's presentations, discussions, and comments, the Commission has identified circumstances under which its present practices could constrain a pipeline from initiating a timely response. Accordingly, as discussed below, the Commission proposes to amend its regulations concerning blanket certificates.

Discussion

The Commission's Existing Authority

5. In the normal course of events, an interstate gas pipeline seeking to build new facilities, or rebuild existing facilities, will file an application with the Commission pursuant to section 7(c) of the Natural Gas Act (NGA) for authorization for the proposed construction. The Commission reviews the application, considers comments in favor of and opposed to the proposal, and assesses economic and environmental impacts. The time required to ensure that all views receive a full hearing, and all impacts are adequately assessed, varies with the complexity of the project proposed. The time needed to reach a final determination on an application is typically measured in months. Consequently, the standard NGA section 7(c) certification process is not suited to an emergency situation that requires an immediate response to prevent loss of life, impairment of health, or damage to property.

6. In establishing the initial framework for federal regulation of the natural gas industry, the NGA explicitly recognized the need to provide for a rapid response to an emergency. NGA section 7(c)(1)(B) states that "the Commission may issue a temporary certificate in cases of emergency, to assure maintenance of adequate service or to serve particular customers, without notice or hearing, pending the determination of an application of a certificate." The Commission has issued temporary certificates in response to companies' requests for authorization to undertake various activities on an emergency basis, with temporary authorization valid until the Commission acts on an application for permanent authorization. Natural gas companies have received temporary emergency authorization to build new facilities, modify existing facilities, alter operational parameters, and change rates.[3] Section 2.57 of the Commission's regulations states that temporary certificates should be employed for minor enlargements or extensions of existing facilities, and not for construction "of major proportions."[4]

7. In addition to the NGA's statutory emergency provision, the Commission's regulations permit pipelines to undertake limited construction projects without waiting for NGA section 7(c) case specific certificate authorization. For example, section 2.55 of the Commission's regulations permits pipeline companies to replace or refurbish deteriorating facilities and make minor upgrades to facilities without first obtaining an NGA section 7(c) certificate. Thus, if facilities are damaged or become inoperable for any reason, a pipeline could, pursuant to section 2.55, undertake repairs or replacement as necessary to restore service. However, section 2.55 is limited to returning a facility to its original service capacity; it does not apply to efforts that will expand or eliminate existing services. Further, section 2.55 applies only to new facilities located within the same right-of-way or at the same site as the existing facilities. Finally, certain auxiliary facilities, and replacement facilities projected to cost more than $7,500,000, are subject to a 30-day prior notice.[5]

8. If gas facilities are damaged, and a subsequent investigation of the event or contamination of the area restricts access to the damage site, we expect section 2.55 would prove ineffective if rapid reconstruction is required to restore service. In such circumstances, a company would be compelled to reroute around its damaged facilities, which would require construction outside the footprint of the existing facilities' right-of-way. Construction beyond the bounds of the existing right-of-way, and even construction within the existing right-of-way that uses temporary workspace other than that used to construct the original facility, is barred by section 2.55.[6]

9. Section 2.55 of the Commission's regulations serves, in effect, as standing authorization for pipelines to perform periodic maintenance and routine replacement. Given section 2.55's inherent limitations on the type of and location of facilities permitted, and the potential to trigger a 30-day prior notice delay, we believe that section 2.55 cannot always serve to ensure a prompt response to sudden unanticipated service disruptions. In particular, section 2.55 is inapplicable if construction outside of the existing right-of-way is needed.[7] Section 2.55 is best suited to its intended use, that being the replacement of physically deteriorated or obsolete facilities and the installation of auxiliary or appurtenant facilities to enhance operations, such as valves, pigging facilities, or communication equipment.

10. The blanket authority conferred by part 157, subpart F, of the regulations provides another vehicle for reconstruction of facilities in an emergency, but this authority is also limited. Virtually all existing interstate gas pipelines hold blanket certificates allowing them to acquire, operate, abandon, replace, and rearrange certain facilities. Acting under blanket authority, a pipeline may install new facilities on a new right-of-way, which may be acquired through the pipeline's exercise of eminent domain. However, blanket authority is limited to projects costing no more than $21,000,000.[8] Further, blanket authority does not apply to projects that alter or add mainline loop line, or extend a mainline, or increase compression to boost mainline capacity. An important

[3] *See, e.g.*, Texas-Ohio Pipeline, Inc., 58 FERC ¶ 61,025 (1992) (order issuing temporary certificate) and 69 FERC ¶ 61,145 (1994) (order issuing permanent certificate).

[4] In *Pennsylvania Gas and Water Company* v. *FPC*, 427 F.2d 568, 574 (D.C. Cir. 1970), the court reviewed the legislative history of the section 7 temporary certificate provision, and found it "was meant to cover a narrow class of situations, to permit temporary and limited interconnection, or expansion of existing facilities in order to meet such emergencies as breakdowns in the service of operating natural gas companies, or sudden unanticipated demands." *Citing* Algonquin Gas Transmission Company v. FPC, 201 F.2d 334 (1st Cir. 1953). *See also* Mississippi River Transmission Corporation, 40 FPC 190 (1968).

[5] This amount is adjusted annually. *See* 18 CFR 157.208(d) (2002), Table 1, column 1. Advance notice for replacement facilities that exceed the current $7.5 million cost limit of 18 CFR 157.208(d) must include maps and a description of the erosion control, revegetation and maintenance, and stream and wetland crossings procedures. This prior notice would not apply if DOT safety regulations required that the replacement activity be performed immediately.

[6] *See* 18 CFR § 2.55(b) (2002). Appendix A to part 2, Guidance for Determining the Acceptable Construction Area for Replacements, specifies the criteria that must be met in order to proceed under section 2.55(b), and cautions that "[i]f these guidelines cannot be met," and no exemption is applicable, "construction authorization must be obtained pursuant to another regulation under the Natural Gas Act."

[7] The scope of section 2.55 is expanded in section 2.60 to include the installation and modification of "defense-related facilities," such as emergency company headquarters, emergency communications equipment, and fallout shelters at compressor stations. However, as a practical matter, the Commission does not expect this particular provision to ameliorate the other section 2.55 constraints that render these regulations unsuitable as a vehicle to recover from accidental or intentional damage.

[8] This amount is adjusted annually. By way of contrast, section 2.55 has no such project cost cap.

exception to this limitation applies to mainline, lateral, and compressor replacements that do not qualify under 2.55(b) because they will result in an incidental increase in capacity [9] or because they cannot satisfy the location or workspace requirements of section 2.55(b).[10]

11. In other words, part 157, subpart F, permits replacement construction that uses temporary workspace beyond the bounds of the temporary workspace previously used to construct the original facilities as necessary to install replacement facilities. These regulations also permit locating a portion of mainline, lateral, or compressor replacement facilities outside, but presumably adjacent to, an existing right-of-way where, for whatever reason, the new facilities could not be placed entirely within the original facilities' existing right-of-way. These regulations, however, do not appear to contemplate mainline construction over an entirely different route as may be necessary to circumvent the site of a disaster if immediate replacement is necessary before the original site is again available.

12. In addition, part 157 blanket authorization, although granted automatically, is subject to compliance with standard conditions, in particular, the environmental criteria specified in § 157.206(d) and the reporting requirements of § 157.207. Any project undertaken pursuant to blanket authority that will exceed $7,500,000 in costs is subject to a 45-day prior notice requirement.[11] If a protest to a proposal is submitted during this time, and the project sponsor is unable to resolve the objection within another 30 days, then instead of proceeding under blanket authority, the prior notice filing is treated as an application for section 7(c) certificate authorization.

13. While section 2.55 and part 157 of the Commission's regulations are commonly employed for routine business activities, part 284, subpart I, of the regulations applies only in an emergency.[12] Under part 284, a pipeline may extend its facilities, interconnect with other pipelines, sell gas as needed to maintain adequate service or serve particular customers, and increase gas deliveries in order to meet weather-induced demand. However, approval for facilities and services under part 284 is provisional; the regulations only apply to actions that are anticipated to last no longer than 60 days,[13] since it is expected that the pipeline will be able to reconstitute service within this time frame or will seek another source of authorization for its actions.[14] Although part 284 places no explicit limitation on the types of facilities or transactions covered, these regulations have not been viewed as applicable to long-term or large-scale undertakings. In practice, these emergency regulations have typically been used for small-scale efforts, such as installing a tap. Also, the part 284 emergency regulations do not provide the pipeline with the right to acquire easements by means of eminent domain.

Issues Regarding the Commission's Existing Authority

14. The Commission believes that its existing authority is adequate to manage a timely response to most foreseeable types of emergencies caused by damage to gas facilities.[15] Conference participants, however, have identified certain circumstances that could inhibit a timely response. We are persuaded that if facilities sustain sudden, significant, unanticipated damage, and restoring service requires construction of mainline facilities over a new right-of-way, our existing regulations may not always allow for arapid or sufficiently expansive response to such an emergency.

15. INGAA urges the Commission to take the lead in expediting emergency permits and authorizing necessary facilities. INGAA proposes that the Commission, following notification by a pipeline that an emergency exists, authorize the replacement of facilities as necessary to restore service, whether within or outside of an existing right-of-way. INGAA suggests the Commission consider including a certificate or tariff provision to authorize emergency construction outside of an existing right-of-way. INGAA does not propose that this provision be self implementing, but rather suggests that it be subject to the Director of Energy Projects finding that an emergency exists and the Commission finding the actions of the pipeline to be appropriate.

16. A representative of Pennsylvania's Public Utility Commission recommends that the Commission require pipelines to incorporate an emergency response plan as a condition of a certificate, and that as part of a certificate authorization, the Commission grant waivers for certain operations in the event of specific service interruptions, such as authorization to establish a new right-of-way to detour around a damaged facility site when necessary to expedite restoration. Conference participants suggest that the Commission amend its part 284 emergency regulations to allow for actions that last longer than the current 60-day limit.

17. Several participants at the April 2002 conference stress the need to plan for and to coordinate the efforts of local, state, and federal authorities to respond to an emergency, and suggest the Commission take the lead in this effort.[16] In large part, events have effectively overtaken such suggestions. In May 2002, DOE created an Office of Energy Assurance, charged with the mission of working in close collaboration with local and state governments and the private sector to guard against and respond to energy disruptions. The Office of Energy Assurance has formed a team composed of DOE personnel, DOE laboratories and facilities, other federal agencies, local and state officials, and the owners and operators of the energy infrastructure. This team's task is to identify critical components and interdependencies of the energy system, identify threats to the system, recommend actions to correct or mitigate vulnerabilities, plan for response and recovery in the event of disruptions, and provide technical response support during emergencies.

18. The Office of Energy Assurance's statement of mission and goals indicate that it will function as the federal managerial focal point for: Activities involving the location and content of

[9] Incremental increases in mainline capacity that occur incidental to facilities' modifications undertaken for sound engineering purposes are permitted. 18 CFR 157.202(b)(2)(i) (2002).

[10] 18 CFR 157.202(b)(2) (2002).

[11] 18 CFR 157.205 (2002). Further, before initiating construction or easement negotiations, a pipeline company seeking to act under blanket authorization is expected to make a good faith effort to provide 30-day prior notice to all affected landowners. 18 CFR § 157.203(d) (2002).

[12] "Emergency" is defined as an actual or expected shortage of gas supply or capacity that would disrupt existing service; a sudden unanticipated loss of gas supply or capacity; an anticipated loss of gas supply or capacity due to a foreseeable facility outage resulting from a natural disaster beyond the company's control; or a situation in which the company determines that immediate action is needed or will be needed to protect life, health, or property.

[13] A single, additional 60-day extension may be requested. Although the part 284, Subpart I, regulations may exempt a gas company, Hinshaw pipeline, or intrastate pipeline from NGA section 7 jurisdiction in order to respond to an emergency, if emergency conditions persist beyond 120 days (60 days plus a 60-day extension), then an NGA section 7(c) certificate would be required for permanent authority to continue operations.

[14] *See, e.g.*, Northern Natural Gas Company, 64 FERC ¶ 61,187, at 62,562–63 (1993).

[15] The Commission requested comments on whether it would be prudent to prepare for emergencies by directing pipelines to build redundant facilities. No participant endorsed this approach.

[16] For example, several comments propose the formation of an interagency crisis task force, made up of representatives of local, state, and federal agencies, charged with coordinating and expediting emergency response and recovery.

equipment stockpiles; overseeing industry mutual aid pooling and exchange programs; identifying critical facilities, equipment, and personnel; establishing communications protocol; and developing security and contingency plans.[17]

19. On November 13, 2002, the President signed into law the Homeland Security Act of 2002. Among other things, that law establishes that within the Department of Homeland Security the Undersecretary of Emergency Preparedness and Response will be responsible for coordinating federal response resources in the event of a terrorist attack or other disaster. In light of these developments, the Commission concludes that it can best support intra- and inter-governmental and industry coordination by contributing to and participating in the efforts of the Department of Homeland Security and DOE's Office of Energy Assurance.

20. The regulatory amendments proposed herein are limited in that they do not address sudden, yet unanticipated, loss of gas or capacity attributable to safety concerns. Nevertheless, we note that section 16(a)(1) of the Pipeline Safety Improvement Act of 2002 establishes an interagency committee, headed by the Council on Environmental Quality (CEQ), with the Commission among its members, "to develop and ensure implementation of a coordinated environmental review and permitting process in order to enable pipeline operators to commence and complete all activities necessary to carry our pipeline repairs" expeditiously. To the extent further changes to the Commission's rules may be necessary to address safety concerns, we expect the interagency committee called for by this Act will provide a vehicle for identifying the relevant issues.

Proposed Regulations

21. To allow pipelines to expedite recovery following an emergency due to a sudden unanticipated loss of gas or capacity that threatens life, health, or property, the Commission is proposing to expand the scope of construction permitted under the blanket certificate authority of part 157, subpart F, of its regulations. One issue conference participants raised repeatedly was the prospect that if mainline facilities are damaged, and the facility owner's access to the damaged site is temporarily restricted, no regulatory remedy now exists to ensure the rapid restoration of service. The logical alternative to repairing facilities at the point of damage would be to build around that point. The Commission's section 2.55 regulations do not allow replacement and repair activities to take place outside of facilities' original right-of-way, and so preclude any such rerouting. As explained, part 157 is less restrictive, but still does not permit the extensive deviation from an existing right-of-way that would presumably be necessary to circumvent a restricted or quarantined area. Accordingly, we propose expanding part 157 to permit pipeline companies to establish new rights-of-way around an accident site in order to reconnect a severed mainline or to construct other facilities as needed to restore service. Further, to the extent that a pipeline company could compensate for damage to one portion of its system by rearranging gas flows or increasing throughput on an unaffected portion of its system, we propose to place such system modifications within the category of "eligible facilities."

22. As is, part 157 blanket authorization only applies to a limited set of "eligible facilities," and specifically excludes the extension, expansion, or looping of a mainline.[18] As noted above, this restriction was broadened incrementally in 1999 to include mainline replacements undertaken for sound engineering reasons that either created an incidental increase in mainline capacity or did not lie within the original facilities' footprint, and consequently were outside of the section 2.55(b) replacement parameters.[19] However, this modification in the breadth of eligible facilities did not contemplate the more extensive rerouting that would be required to reach around a cordoned accident area.[20] We request comments on amending § 157.202 of our regulations to allow a pipeline to reconstitute disrupted service by routing around, laying loop line along, or boosting compression on a damaged mainline.

23. This proposal is not intended as an open-ended expansion of existing blanket authority. The enlargement of the scope of permissible actions under part 157, subpart F, is restricted to actions necessary to restore service after an interruption due to an emergency event. By way of contrast, if hydrostatic testing discloses a structural weakness in a pipeline, while this weakness has the potential to cause an interruption in service, unless the pipeline has actually ruptured, these circumstances would not qualify as an emergency, as there would be no sudden unanticipated loss of gas or capacity. Accordingly, the pipeline company would be expected to act under other existing authority, such as section 2.55 of our regulations, to rectify the identified structural weakness. Similarly, part 157 would not apply to system modifications that boosted compression or mainline capacity unless the increase was undertaken as part of a program to restore service cut off as a consequence of an event resulting in a sudden unanticipated loss of gas or capacity.

24. We propose to expand the "eligible facility" definition by amending the last line of § 157.202(b)(2)(i) as follows: "Replacements for the primary purpose of creating additional main line capacity are not eligible facilities; however, replacements for the primary purpose of restoring service to prevent loss of life, impairment of health, or damage to property due to sudden unanticipated damage to main line facilities are eligible facilities." In addition, we propose to amend § 157.202(b)(2)(ii)(C), which lists certain exclusions from eligible facilities, to clarify that facilities, including looping and compression, that alter the capacity of a mainline, when necessary to reconstitute service after sudden unanticipated damage to a mainline, will be considered replacement facilities for the primary purpose of restoring service, and be defined as eligible facilities. Specifically, we propose to revise § 157.202(b)(2)(ii)(C) to read as follows: "A facility, including compression and looping, that alters the capacity of a main line, except replacement facilities covered under § 157.202(b)(2)(i)."

25. We believe this expanded blanket authority fills a gap that now confronts a pipeline unable to initiate recovery efforts when (1) section 2.55 of the regulations is inapplicable because of the need to construct outside the footprint of the existing facilities, (2) the

[17] In the event of an emergency, numerous entities will be required to coordinate communications and actions. To facilitate recovery efforts, the Commission will make available via its Web site a list of the entities likely to be involved in these efforts.

[18] 18 CFR 157.202(b)(2)(ii)(B) and (C) (2002).

[19] Order No. 603, FERC Stats. & Regs. ¶ 31,073, at 30,791–94 (1999).

[20] Order No. 603 envisioned replacements such as "a section of deteriorated or obsolete 18-inch pipe located between existing 20-inch sections," where replacing the 18-inch pipe with a larger 20-inch segment would serve the sound engineering purpose of making pigging the combined stretch of pipe possible. Order No. 603 also recognized the need to grant natural gas companies the flexibility to act under blanket certificate authority to replace facilities where construction of new facilities might spill over the original temporary workspace or permanent right-of-way. Nothing in Order No. 603 envisioned replacement of facilities outside the existing right-of-way by the creation of an entirely new route due to the need to circumvent an accident site.

part 284, subpart I, emergency provisions are insufficient because the anticipated duration of the reconstruction effort will be longer than 60 days, or (3) new facilities needed to restore service are not permitted under the existing part 157, subpart F, regulations because the new facilities would expand capacity on, extend, or loop a mainline. Although the proposed revisions enlarge the § 157.202 definition of eligible facilities, other constraints on construction under blanket authority remain.

26. Among these other applicable constraints are regulations governing prior notice requirements, project cost limits, reporting requirements, and the standard conditions of § 157.206, covering environmental compliance. While environmental compliance with certain statutory requirements lies beyond the Commission's jurisdictional purview, and is thus beyond our discretion to affect, we can act on our own to modify compliance with our own regulations. We propose to do so by removing prior notice and project cost limit requirements to permit a company to act under blanket authority to respond to an emergency caused by a sudden unanticipated loss of gas or capacity that threatens life, health, or property.

27. Provided a project meets the relevant part 157 criteria, and will cost no more than $7.5 million,[21] blanket authorization is automatic, and construction can commence at the sponsoring company's discretion. However, projects expected to exceed $7.5 million are subject to a 45-day prior notice provision, pursuant to § 157.205(a). We propose to modify § 157.205(a) to provide an exception to these prior notice proceedings for emergency reconstruction, inserting the phrase "except for activity required to restore service to prevent loss of life, impairment of health, or damage to property in an emergency due to a sudden unanticipated loss of natural gas supply or capacity," as follows: "No activity described in §§ 157.208(b), 157.211(a)(2), 157.214 or 157.216(b), except for activity required to restore service in an emergency due to a sudden unanticipated loss of natural gas supply or capacity, is authorized by a blanket certificate granted under this subpart, unless, prior to undertaking such activity" notice requirements are fulfilled. This proposed qualification presumes that in an emergency, the public interest in rectifying service at the earliest possible date will outweigh the public benefit of providing 45-day advance notice of planned reconstruction.

28. We note that although this proposed amendment will omit the prior 45-day public notice requirement of § 157.205(a) in an emergency, we retain the separate prior landowner notice requirement of § 157.203(d). Section 157.203(d) directs a company to make a good faith effort to notify all affected landowners 30 days prior to commencing construction. We expect a company that seeks to build around an accident site, as part of the process of considering alternative routes, will make a good faith effort to identify and inform affected landowners in advance of any new construction. Given the process involved in acquiring new easements, and given that landowners, to which pipeline companies must give 30-days notice pursuant to the Commission's landowner notification requirements, may agree to waive the remainder of that 30-day notice period, we do not expect this prior landowner notice provision to impede a company's capability to commence emergency reconstruction activities. The Commission recognizes that there may be instances where timely reconstruction of facilities could be delayed by companies' inability to obtain landowners' agreement to waive the remainder of the 30-notice period. In such instances, the Commission will consider requests to waive the remainder of the 30-day notice period.

29. Even with mainline rerouting without prior notice, action under blanket authority would be thwarted if emergency reconstruction expenses were to exceed the part 157 project cost limit. Accordingly, we propose to lift the project cost cap for emergency response efforts. This proposed exemption is not to be interpreted as an invitation to undertake open-ended system expansions; it applies exclusively to emergency response projects, and extends only as far as is necessary to restore service to pre-emergency capacity levels.[22] Therefore, we propose to amend § 157.208(a) to provide for automatic authorization for emergency reconstruction, without any restriction on project cost, by interjecting the phrase "or if the project is required to restore service to prevent loss of life, impairment of health, or damage to property in an emergency due to a sudden unanticipated loss of natural gas supply or capacity" as follows:

> If the project cost does not exceed the cost limitations set forth in column 1 of Table I, under paragraph (d) of this section, or if the project is required to restore service in an emergency due to a sudden unanticipated loss of natural gas supply or capacity, the certificate holder is authorized to make miscellaneous rearrangements of any facility, or acquire, construct, replace, or operate any eligible facility.

30. In an emergency, the Commission expects to make, and expects affected pipelines to make, every reasonable effort to restore essential service as rapidly as possible. We believe these proposed amendments to part 157 offer the best way to authorize emergency reconstruction, particularly in view of the comparatively sparse use of and ambiguities that remain regarding the scope of the part 284 emergency provisions. As noted , this proposed expanded blanket authority will apply only when acting in response to an emergency due to a sudden unanticipated loss of gas supply or capacity that threatens life, health, or property.[23]

31. Under the standard part 157.207 reporting requirements, a company submits an annual report—a compilation describing projects completed pursuant to blanket authority during the year. Since we are proposing to provide self-implementing automatic authorization for emergency reconstruction and to omit prior notice for emergency reconstruction, we find it prudent to require, in addition to an annual report, that companies relying

[21] As previously noted, this amount is adjusted annually, and appears in Table 1, column 1, of 18 CFR 157.208(d) (2002).

[22] In an effort to encourage pipeline companies to quickly add capacity to meet pressing market needs in the Western United States (particularly California), we adopted several temporary measures. Removing Obstacles to Increased Electric Generation and Natural Gas Supply in the Western United States, 94 FERC ¶ 61,272 (2001), *further order and reh'g dismissed*, 95 FERC ¶ 61,225 (2001), *order on requests for clarification and reh'g*, 96 FERC ¶ 61,155 (2001). Inter alia, for the period May 14, 2001, through April 30, 2002, we increased the dollar limitations on blanket certificate projects under both the automatic provisions and the prior notice provisions for construction of facilities to deliver additional gas into the western region, expanded the scope of eligible facilities for such projects, and provided, upon request, for shortening of the 45-day prior notice time frame. We propose an analogous approach here, not to encourage additional construction, but to establish authority to be held in reserve, to be called upon to meet a specific need.

[23] Emergency circumstances are extraordinary circumstances, and but for emergencies, we expect companies to proceed, as they have to date, to manage gas flows, system maintenance, and construction on their systems under the current authorities. Because we do not anticipate any need for the Commission to arbitrate what constitutes an emergency, we decline to adopt INGAA's proposal that the Commission declare that an emergency exists in order to trigger exemptions and actions. We believe pipeline companies will be able to identify emergencies conditions on their systems and invoke the proposed expanded blanket authority, as appropriate, without any preliminary determination from the Commission.

on automatic authorization for emergency activities report to the Commission their preparations and plans before breaking ground for reconstruction. Therefore, we propose to amend § 157.207, which provides for an annual retrospective report, listing all blanket projects completed in the prior year. We propose to modify this to require prospective reporting for activities intended to restore service in response to an emergency, with the pipeline company informing the Commission of its intended activities in advance of reconstruction.

32. We propose to include an emergency reporting requirement in § 157.207 by revising the introductory paragraph of that section to read as follows: "In the case of an emergency due to a sudden unanticipated loss of natural gas supply or capacity, the certificate holder must file, in the manner prescribed in §§ 157.6(a) and 385.2011 of this chapter, a report describing activity to be undertaken to restore service in advance of such activity in accordance with paragraph (i) of this section. In addition, on or before May 1 of each year, the certificate holder must file, in the manner prescribed in §§ 157.6(a) and 385.2011 of this chapter, an annual report of all blanket certificate activities, including all activities undertaken to restore service following a sudden unanticipated loss of natural gas supply or capacity."

33. We recognize that in filing a report of an intended emergency activity, a company will be unable to supply all the information routinely set forth in a standard annual blanket report. For example, although it will not be possible to provide, before the fact, the § 157.208(e)(3) statement of the "actual installed cost of each facility item," a company planning to proceed under blanket emergency authorization should nevertheless be able to provide projected costs. Thus, a proposed new paragraph (i) of §157.207 would require companies' reports of intended emergency activities to provide to the extent practicable the information required by the regulations cross-referenced by §157.207 for the type of facilities involved. We do not expect this reporting requirement will retard efforts to restore interrupted service, since the report can be prepared coincident with a company's compliance with landowner notification and environmental requirements. Note that the advance report to the Commission is not an application awaiting a Commission response or a prior notice type of proceeding with a requisite waiting period. The report serves only to apprise the Commission of pending activity, and the submission of the description of the intended activity and location constitutes satisfaction of this reporting requirement.

34. We do not view the proposed amendments to our regulations as a significant departure from our past practices. We routinely receive requests for exceptions from full regulatory compliance, and we routinely grant such requests when a company demonstrates good cause therefor. Further, implicit in the NGA section 7 temporary certificate, the section 2.55 replacement and repair regulations, and the part 284 emergency provision, is the presumption that certain categories of equipment failure, human error, and natural disaster require immediate action. The Commission stands willing to grant pipeline companies latitude to construct, reconstruct, and rearrange facilities in an emergency due to a sudden unanticipated loss of gas or capacity that threatens life, health, or property. Finally, we do not expect the proposed amended provisions will be put to use with any regularity, since unlike the standard part 157 regulations, which are employed for routine or relatively minor system modifications, the emergency blanket provisions, by their nature, are only applicable in unexpected and atypical events.

35. Although the Commission can determine that in certain circumstances the public convenience and necessity favor construction and transportation without full adherence to each existing certificate condition, the Commission cannot compromise compliance with statutory or regulatory requirements over which it has no jurisdictional authority. For example, regardless of any circumstances or any Commission finding, the environmental provisions of the National Environmental Policy Act (NEPA) and the safety provisions of DOT must be met. Thus, here, as in our 2001 temporary modification of part 157, "[w]e emphasize that projects under the expanded blanket authority will remain subject to our existing environmental regulations and compliance provisions"[24] as set forth in § 157.206(d) of our regulations.

36. In an emergency, in addition to the need to identify and resolve environmental and safety issues promptly, easements for a new right-of-way may be needed promptly. If affected landowners agree, it may be possible to obtain the right-of-way without undue delay. Otherwise, even with the right to exercise eminent domain that is available to a pipeline company acting under part 157 blanket certificate authority, securing land rights may extend the duration of the service interruption.

37. Since the Commission lacks the authority to modify certain environmental, safety, and land acquisition procedures, we will, as noted, compile and maintain a list of agencies that hold relevant permitting authorities. (A state's governor, for example, may have the authority to acquire easements expeditiously in the case of a state-declared emergency.) Promptly alerting entities that will be involved in an emergency response should speed the planning, permissions, and reconstruction process.

38. We expect these proposed amendments to part 157 will provide pipeline companies confronting an emergency outage with the flexibility to act on their own initiative, without the delay inherent in the process of applying for case specific authorizations from the Commission. At the same time, the Commission will retain regulatory oversight through the existing blanket certificate procedures sufficient to safeguard the public interest by ensuring pipelines respect landowner property rights and adhere to environmental and safety requirements. Any waiver of the regulatory requirements to restore service in an emergency will be subject to review by the Commission or its delegated agent.

39. Finally, despite the advance report we are proposing in new subparagraph (i) of § 157.207, we are concerned that emergency projects under expanded blanket authority should not proceed without Commission awareness of the details of the project as it goes forward. Accordingly, we will also propose to require any pipeline company that undertakes to replace facilities under the expanded blanket certificate authority proposed herein to consult with Commission staff during the period that the facilities are under construction and we shall require the Director of the Office of Energy Projects (OEP) to designate a staff member to be available to advise and consult on any such project. A staff member designated by the Director of OEP shall be present on the construction site as necessary or appropriate based on the nature of the project and shall have delegated authority to take whatever steps are necessary to insure the protection of all environmental resources during activities associated with construction of the project. This authority shall allow the design and implementation of any additional measures deemed necessary (including stop work authority) to

[24] *Id.*, 95 FERC ¶ 61,225, at 61,776.

assure continued compliance with the intent of the environmental conditions as well as the avoidance or mitigation of adverse environmental impact resulting from project construction.

Request for Comments

40. The Commission requests that comments on this proposal specifically address whether the proposed expansion of pipeline companies' authority under their part 157 blanket certificates will be sufficient in scope to adequately address situations where immediate action is necessary to restore gas service to prevent loss of life, impairment of health, or damage to property, and to provide for reconstruction of interstate pipeline facilities that have been destroyed or compromised by a sudden, unforeseen natural event or deliberate effort to disrupt the flow of natural gas. Commenters are invited to submit their views and comments on the need for further or broader action by the Commission or Congress.

41. The Commission seeks comment on whether the blanket certificate authorization to construct mainline facilities outside an existing right-of-way should be self-implementing or, rather, subject to a finding by the Commission that an emergency exists and the pipeline's proposed actions are appropriate. Specifically, is INGAA's suggested approach sufficient in scope to address situations where immediate action is necessary to restore gas service lost due to a sudden unanticipated loss of gas or capacity? In the alternative, should there be a short review period in advance of commencing construction to provide the Commission an opportunity to review the actions proposed to be taken by the pipeline? For example, should the regulations provide that unless the Commission does not act to prohibit or modify the pipeline's replacement construction proposal within three days of a pipeline's advance report of intended reconstruction, then the pipeline may commence reconstruction (compare § 284.264(b)(1)(ii) of the regulations)? Lastly, we seek comment on whether the proposed expanded emergency blanket authority should be restricted to include activities undertaken in response to a sudden unanticipated loss of gas or capacity due only to a natural disaster or act of deliberate damage.

Information Collection Statement

42. The Office of Management and Budget (OMB) regulations require that OMB approve certain information collection requirements imposed by agency rule.[25] This proposed rule will not impact information collection. Accordingly, there is no cause to submit this proposed rule to OMB for review under Section 3507(d) of the Paperwork Reduction Act of 1995, 44 U.S.C. 3507(d).

Environmental Analysis

43. The Commission is required to prepare an EA or EIS for any action that may have a significant adverse effect on the human environment.[26] The Commission has categorically excluded certain actions from these requirements as not having a significant effect on the human environment.[27] Section 380.4(a)(21) provides that neither an environmental assessment nor an environmental impact statement will be prepared for the approval of blanket applications pursuant to prior notice filings under §§157.209 through 157.218 of the blanket certificate regulations. The actions proposed herein provide for the emergency reconstruction of previously authorized facilities and thus fall within categorical exclusions in the Commission's regulations for rules that are clarifying, corrective, or procedural, for information gathering, analysis, and dissemination, and for the sale, exchange, and transportation of natural gas that requires no construction of facilities.[28] Therefore, an environmental assessment is unnecessary and has not been prepared in this rulemaking.

Regulatory Flexibility Act Certification

44. The Regulatory Flexibility Act of 1980 (RFA)[29] requires agencies to prepare certain statements, descriptions, and analyses of proposed rules that will have significant economic impact on a substantial number of small entities. Agencies are not required to make such an analysis if a rule would not have such an effect. The Commission does not believe that this proposed rule would have such an effect on small business entities, since the proposed amendments to our regulations would apply only to interstate pipelines, most of which are not small businesses. Accordingly, pursuant to section 605(b) of the RFA, the Commission proposes to certify that the regulations proposed herein will not have a significant adverse impact on a substantial number of small entities.

Comment Procedures

45. The Commission invites interested persons to submit written comments on the matters and issues proposed in this notice to be adopted, including any related matters or alternative proposals that commenters may wish to discuss. An original and 14 copies of comments must be filed with the Commission no later than February 27, 2003 and may be filed either in electronic or paper format. Those filing electronically do not need to make a paper filing.

46. Documents filed electronically via the Internet can be prepared in a variety of formats, including WordPerfect, MS Word, Portable Document Format, Rich Text Format, or ASCII format, as listed on FERC's Web site at *http://ferc.gov*, under the eFiling link. The eFiling link provides instructions for how to log in and complete an electronic filing. First time users will have to establish a user name and password. The Commission will send an automatic acknowledgment to the sender's e-mail address upon receipt of comments. User assistance for electronic filing is available at 202–502–8258 or by e-mail to *efiling@ferc.gov*. Comments should not be submitted to the e-mail address.

47. For paper filings, the original and 14 copies of such comments should be submitted to the Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington DC 20426, and should refer to Docket Nos. RM03–4–000 and AD02–14–000.

48. All comments will be placed in the Commission's public files and will be available for inspection in the Commission's Public Reference Room at 888 First Street, NE., Washington DC 20426, during regular business hours. Additionally, all comments may be viewed, printed, or downloaded remotely via the Internet through FERC's Web site using the Federal Energy Regulatory Records Information System (FERRIS) link.

Document Availability

49. In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through FERC's Web site at *http://www.ferc.gov* and in FERC's Public Reference Room during normal business hours (8:30 a.m. to 5:00 p.m. Eastern time) at 888 First Street, NE., Room 2A, Washington, DC 20426.

50. From FERC's Home Page on the Internet, this information is available in

[25] 5 CFR part 1320 (2002).

[26] Order No. 486, Regulations Implementing the National Environmental Policy Act, 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs. Preambles 1986–1990 ¶ 30,783 (1987).

[27] 18 CFR 380.4 (2002).

[28] *See* 18 CFR 380.4(a)(2)(ii), 380.4(a)(5), 380.4(a)(27) (2002).

[29] 5 U.S.C. 601–612.

FERRIS. The full text of this document is available via FERRIS in Portable Document Format (PDF) and WordPerfect format for viewing, printing, and/or downloading. To access this document in FERRIS, type the docket number excluding the last three digits of this document in the docket number field.

51. User assistance is available for FERRIS and FERC's Web site during normal business hours. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY contact (202) 502–8659.

List of Subjects in 18 CFR part 157

Administrative practice and procedure, Natural gas, Reporting and record keeping requirements.

By direction of the Commission.

Magalie R. Salas,

Secretary.

In consideration of the foregoing, the Commission proposes to amend part 157, Chapter I, Title 18, Code of Federal Regulations, as follows.

PART 157—APPLICATIONS FOR CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY AND FOR ORDERS PERMITTING AND APPROVING ABANDONMENT UNDER SECTION 7 OF THE NATURAL GAS ACT

1. The authority citation for part 157 continues to read as follows:

Authority: 15 U.S.C. 717–717W, 3301–3432; 42 U.S.C. 7101–7352.

2. In § 157.202, the last sentence in paragraph (b)(2)(i) and paragraph (b)(2)(ii)(C) are revised to read as follows:

§ 157.202 Definitions.

* * * * *

(b) *Subpart F definitions.* * * *

(2)(i) * * * Replacements for the primary purpose of creating additional main line capacity are not eligible facilities; however, replacements for the primary purpose of restoring service to prevent loss of life, impairment of health, or damage to property due to sudden unanticipated damage to main line facilities are eligible facilities.

(ii) *Exclusions:* * * *

(C) A facility, including compression and looping, that alters the capacity of a main line, except replacement facilities covered under § 157.202(b)(2)(i);

* * * * *

3. In § 157.205, paragraph (a), introductory text, is revised to read as follows:

§ 157.205 Notice procedure.

(a) *Applicability.* No activity described in §§ 157.208(b), 157.211(a)(2), 157.214 or 157.216(b), except for activity required to restore service to prevent loss of life, impairment of health, or damage to property in an emergency due to a sudden unanticipated loss of natural gas supply or capacity, is authorized by a blanket certificate granted under this subpart, unless, prior to undertaking such activity:

* * * * *

4. In § 157.207, the introductory text is revised and a new paragraph (i) is added to read as follows:

§ 157.207 General reporting requirements.

In the case of an emergency due to a sudden unanticipated loss of natural gas supply or capacity, the certificate holder must file, in the manner prescribed in §§ 157.6(a) and 385.2011 of this chapter, a report describing activity to be undertaken to restore service in advance of such activity in accordance with paragraph (i) of this section. In addition, on or before May 1 of each year, the certificate holder must file, in the manner prescribed in §§ 157.6(a) and 385.2011 of this chapter, an annual report of all blanket certificate activities, including all activities undertaken to restore service following a sudden unanticipated loss of natural gas supply or capacity. The annual report must be signed under oath by a senior official of the company and list for the previous calendar year:

* * * * *

(i) Reports describing emergency activities to be undertaken to restore service following a sudden unanticipated loss of natural gas supply or capacity shall to the extent practicable contain the information for the facilities as required by the pertinent regulatory provisions specified in paragraphs (a) through (h) of this section. The report shall include the estimated costs of each activity and an updated USGS 7½ minute series (scale 1:24000) topographic map (or map of equivalent or greater detail, as appropriate) showing the location of existing and proposed facilities, and indicating the location of any sensitive environmental areas crossed by either the existing or proposed facilities.

5. In § 157.208, paragraph (a) is revised to read as follows:

§ 157.208 Construction, acquisition, operation, replacement, and miscellaneous rearrangement of facilities.

(a) *Automatic authorization.* If the project cost does not exceed the cost limitations set forth in column 1 of Table I, under paragraph (d) of this section, or if the project is required to restore service to prevent loss of life, impairment of health, or damage to property in an emergency due to a sudden unanticipated loss of natural gas supply or capacity, the certificate holder is authorized to make miscellaneous rearrangements of any facility, or acquire, construct, replace, or operate any eligible facility. For projects undertaken pursuant to this section to restore service to prevent loss of life, impairment of health, or damage to property due to a sudden unanticipated loss of natural gas supply or capacity, the Director of the Office of Energy Projects shall designate a staff member to advise and consult with the certificate holder, and the certificate holder shall consult with the designated staff member during the period that the construction is in progress. A staff member designated by the Director of the Office of Energy Projects shall be present on the construction site as necessary or appropriate based on the nature of the project and shall have delegated authority to take whatever steps are necessary to insure the protection of all environmental resources during activities associated with construction of the project. This authority shall allow the design and implementation of any additional measures deemed necessary (including stop work authority) to assure continued compliance with the intent of the environmental conditions as well as the avoidance or mitigation of adverse environmental impact resulting from project construction.

* * * * *

[FR Doc. 03–1698 Filed 1–27–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1308

[DEA–238N]

Schedules of Controlled Substances: Temporary Placement of Alpha-methyltryptamine and 5-methoxy-N,N-diisopropyltryptamine into Schedule I

AGENCY: Drug Enforcement Administration (DEA), Justice.

ACTION: Notice of intent.

SUMMARY: The Deputy Administrator of the Drug Enforcement Administration (DEA) is issuing this notice of intent to temporarily place alpha-methyltryptamine (AMT) and 5-

methoxy-N,N-diisopropyltryptamine (5-MeO-DIPT) into Schedule I of the Controlled Substances Act (CSA) pursuant to the temporary scheduling provisions of the CSA. This intended action is based on a finding by the DEA Deputy Administrator that the placement of AMT and 5-MeO-DIPT into Schedule I of the CSA is necessary to avoid an imminent hazard to the public safety. Finalization of this action will impose the criminal sanctions and regulatory controls of a Schedule I substance on the manufacture, distribution, and possession of AMT and 5-MeO-DIPT.

FOR FURTHER INFORMATION CONTACT: Frank Sapienza, Chief, Drug and Chemical Evaluation Section, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537, Telephone (202) 307–7183.

SUPPLEMENTARY INFORMATION:

Background

The Comprehensive Crime Control Act of 1984 (Pub. L. 98–473) amended section 201 of the CSA (21 U.S.C. 811) to give the Attorney General the authority to temporarily place a substance into Schedule I of the CSA for one year without regard to the requirements of 21 U.S.C. 811(b) if he finds that such action is necessary to avoid an imminent hazard to the public safety. The Attorney General may extend the temporary scheduling up to 6 months. A substance may be temporarily scheduled under the emergency provision of the CSA if that substance is not listed in any other schedule under section 202 of the CSA (21 U.S.C. 812) or if there is no exemption or approval in effect under 21 U.S.C. 355 for the substance. The Attorney General has delegated his authority under 21 U.S.C. 811 to the Deputy Administrator of DEA (28 CFR 0.100).

Section 201(h)(4) of the CSA (21 U.S.C. 811(h)(4)) requires the Deputy Administrator to notify the Assistant Secretary for Health, delegate of the Secretary of Health and Human Services, of his intention to temporarily place a substance into Schedule I of the CSA. Comments submitted by the Assistant Secretary for Health in response to this notification, including whether there is an exemption or approval in effect for the substance in question under the Federal Food, Drug and Cosmetic Act, shall be taken into consideration before a final order is published.

In making a finding that places a substance temporarily into Schedule I of the CSA is necessary to avoid an imminent hazard to the public safety, the Deputy Administrator is required to consider three of the eight factors set forth in section 201(c) of the CSA (21 U.S.C. 811(c)). These factors are as follows: (4) History and current pattern of abuse; (5) The scope, duration and significance of abuse; and (6) What, if any, risk there is to the public health.

Alpha-methyltryptamine and 5-methoxy-N,N-diisopropyltryptamine

Alpha-methyltryptamine (AMT) and 5-methoxy-N,N-diisopropyltryptamine (5-MeO-DIPT) are tryptamine (indoleethylamine) derivatives and share several similarities with the Schedule I tryptamine hallucinogens, alpha-ethyltryptamine (AET) and N,N-dimethyltryptamine (DMT), respectively. Several other tryptamines also produce hallucinogenic/stimulant effects and are controlled as Schedule I substances under the CSA (bufotenine, diethyltryptamine, psilocybin and psilocin). Although tryptamine itself appears to lack consistent hallucinogenic/stimulant effects, substitutions on the indole ring and the ethylamine side-chain of this molecule result in pharmacologically active substances (McKenna and Towers, J. Psychoactive Drugs, 16: 347–358, 1984).

The chemical structures of AMT and 5-MeO-DIPT possess the critical features necessary for hallucinogenic/stimulant activity. Thus, both AMT and 5-MeO-DIPT are likely to have a pharmacological profile substantially similar to other Schedule I tryptamine derivatives such as DMT and AET. In drug discrimination studies, both AMT and 5-MeO-DIPT substitute for 1-(2,5-dimethoxy-4-methylphenyl)-aminopropane (DOM), a phenethylamine-based hallucinogen in Schedule I of the CSA. The potencies of DOM-like discriminative stimulus effects of these and several other similar tryptamine derivatives correlate well with their hallucinogenic potencies in humans (Glennon *et al.*, Eur. J. Pharmacol. 86:453–459, 1983).

AMT shares other pharmacological properties with Schedule I hallucinogens such as AET. AMT increases systolic and diastolic arterial blood pressures. The behavioral effects of orally administered AMT (20 mg) in humans are slow in onset, occurring after 3 to 4 hours and gradually subside after 12 to 24 hours, but may last up to 2 days in some subjects. The majority of the subjects report nervous tension, irritability, restlessness, inability to sleep, blurry vision, mydriasis and equate the effects of a 20 mg dose to those of 50 micrograms of lysergic acid diethylamide (LSD) (Hollister *et al.*, J. Nervous Ment. Dis., 131: 428–434, 1960; Murphree *et al.*, Clin. Pharmacol. Ther., 2: 722–726, 1961). AMT also produces hallucinations and dextroamphetamine-like mood elevating effects.

5-MeO-DIPT also produces pharmacological effects similar to those of other Schedule I hallucinogens such as DMT. The synthesis and preliminary human psychopharmacology study on 5-MeO-DIPT was first published in 1981 (Shulgin and Carter, Comm. Psychopharmacol. 4: 363–369, 1981). 5-MeO-DIPT is an orally active hallucinogen. Following oral administration of 6–10 mg, 5-MeO-DIPT produces subjective effects with an onset at about 20–30 minutes, a peak at about 1–1.5 hours and a duration of about 3–6 hours. Subjects who have been administered 5-MeO-DIPT are talkative and disinhibited. 5-MeO-DIPT causes mydriasis. High doses of 5-MeO-DIPT produce nausea, jaw clenching, muscle tension and overt hallucinations with both auditory and visual distortions.

History and Current Pattern of Abuse

The popularity and use of hallucinogenic/stimulant substances at raves (all-night dance parties) and other social venues have been a major problem in Europe since the 1990s. In the past several years, this activity has spread to the United States. The Schedule I controlled substance 3,4-methylenedioxymethamphetamine (MDMA or Ecstasy) and its analogues are the most frequently abused drugs at these raves. Their abuse has been associated with both acute and long-term public health and safety problems. Raves have also become venues for the trafficking and abuse of new, non-controlled substances distributed as legal substitutes for, or in addition to, MDMA. 5-MeO-DIPT and AMT belong to such a group of substances.

Data gathered from published studies, supplemented by reports on Internet websites indicate that these are often administered orally at doses ranging from 15–40 mg for AMT and 6–20 mg for 5-MeO-DIPT. Other routes of administration include smoking and snorting. Data from law-enforcement officials indicate that 5-MeO-DIPT is often sold as "Foxy" or "Foxy Methoxy", while AMT has been sold as "Spirals" at least in one case. Both substances have been commonly encountered in tablet and capsule forms.

Scope, Duration and Significance of Abuse

According to forensic laboratory data, the first encounter of AMT and 5–MeO–

DIPT occurred in 1999. Since then, law enforcement officials in Arizona, California, Colorado, Delaware, Florida, Idaho, Illinois, Iowa, New Jersey, Oregon, Texas, Virginia, Washington, Wisconsin and the District or Columbia have encountered these substances. According to the Florida Department of Law Enforcement (FDLE), the abuse by teens and young adults of AMT and 5–MeO–DIPT is an emerging problem. There have been reports of abuse of AMT and 5–MeO–DIPT at clubs and raves in Arizona, California, Florida and New York. Many tryptamine-based substances are illicitly available from United States and foreign chemical companies and from individuals through the Internet. A gram of AMT or 5–MeO–DIPT as bulk powder costs less than $150 from illicit sources on the Internet. DEA is not aware of any legitimate medical or scientific use of AMT and 5–MeO–DIPT. There is recent evidence suggesting the attempted clandestine production of AMT and 5–MeO–DIPT in Nevada, Virginia and Washington, DC.

Public Health Risks

AMT and 5–MeO–DIPT share substantial chemical and pharmacological similarities with other Schedule I tryptamine-based hallucinogens in Schedule I of the CSA (AET and DMT). This makes it likely that these drugs cause similar health hazards. Tryptamine, the parent molecule of AMT and 5–MeO–DIPT, is known to produce convulsions and death in animals (Tedeschi *et al.*, J. Pharmacol. Exp. Ther. 126:223–232, 1959). AMT and 5–MeO–DIPT, similar to other tryptaine- or phenethylamine-based hallucinogens, through the alteration of sensory perception and judgment can pose serious health risks to the user and the general public. Further, there have been several self-reports on Internet websites describing the reported abuse of these substances in combination with other controlled drugs, namely MDMA, marijuana, gamma hydroxybutyric acid (GHB) and 2,5-dimethoxy-4-(n)-propylthiophenethylamine (2C–T–7). This practice of drug abuse involving combinations poses additional health risks to the users and the general public. Available information indicates that AMT and 5–MeO–DIPT lack any approved therapeutic use in the United States. The safety of these substances for use in humans has not been studied.

DEA has considered the three criteria for placing a substance into Schedule I of the CSA (21 U.S.C. 812). The data available and reviewed for AMT and 5–MeO–DIPT indicate that these substances each have a high potential for abuse, no currently accepted medical use in treatment in the United States and are not safe for use under medical supervision.

Role of the Assistant Secretary for Health in Temporary Scheduling

Section 201(h)(4) of the CSA (21 U.S.C. 811(h)(4)) requires the Deputy Administrator to notify the Assistant Secretary for Health, delegate of the Secretary of Health and Human Services, of his intention to temporarily place substances into Schedule I of the CSA. Comments submitted by the Assistant Secretary for Health in response to the notification regarding AMT and 5–MeO–DIPT, including whether there is an exemption or approval in effect for the substances in question under the Federal Food, Drug and Cosmetic Act, shall be taken into consideration before a final order is published.

Based on the above data, the continued uncontrolled distribution and abuse of AMT and 5–MeO–DIPT pose an imminent risk to the public safety. DEA is not aware of any recognized therapeutic uses of these substances in the United States.

In accordance with the provisions of section 201(h) of the CSA (21 U.S.C. 811(h)) and 28 CFR 0.100, the Deputy Administrator has considered the available data and the three factors required for a determination to temporarily schedule AMT and 5–MeO–DIPT in Schedule I of the CSA and finds that placement of AMT and 5–MeO–DIPT into Schedule I of the CSA is necessary to avoid an imminent hazard to the public safety.

Because the Deputy Administrator finds that it is necessary to temporarily place AMT and 5–MeO–DIPT into Schedule I to avoid an imminent hazard to the public safety, the final order, if issued, will be effective on the date of publication of the **Federal Register**. AMT and 5–MeO–DIPT will be subject to the regulatory controls and administrative, civil and criminal sanctions applicable to the manufacture, distribution, possession, importing and exporting of a Schedule I controlled substance under the CSA. Further, it is the intention of the Deputy Administrator to issue such a final order as soon as possible after the expiration of thirty days from the date of publication of this notice and the date that notification was transmitted to the Assistant Secretary for Health.

Regulatory Certifications

Regulatory Flexibility Act

The Deputy Administrator hereby certifies that this rulemaking has been drafted in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation, and by approving it certifies that this regulation will not have a significant economic impact on a substantial number of small entities. This action provides a notice of intent to temporarily place AMT and 5-MeO-DIPT into Schedule I of the CSA. DEA is not aware of any legitimate uses of AMT and 5-MeO-DIPT in the United States.

Executive Order 12988

This regulation meets the applicable standards set forth in Sections 3(a) and 3(b)(2) of Executive Order 12988 Civil Justice Reform.

Executive Order 13132 Federalism

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, it is determined that this rule will not has sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Unfunded Mandates Reform Act

This rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

List of Subjects in 21 CFR Part 1308

Administrative practice and procedure, Drug traffic control, Narcotics, Prescription drugs, Reporting and record keeping requirements.

Under the authority vested in the Attorney General by Section 201(h) of the CSA (21 U.S.C. 811(h), and delegated to the Deputy Administrator of the DEA by Department of Justice regulations (28 CFR 0.100), the Deputy Administrator hereby intends to order that 21 CFR part 1308 be amended as follows:

PART 1308—SCHEDULES OF CONTROLLED SUBSTANCES

1. The authority citation for 21 CFR part 1308 continues to read as follows:

Authority: 21 U.S.C. 811, 812, 871b, unless otherwise noted.

2. Section 1308.11 is to be amended by adding paragraph (g)(6) and (7) to read as follows:

§ 1308.11 Schedule I.

* * * * *

(g) * * *

(6) Alpha-methyltryptamine (AMT), its isomers, salts and salts of isomers: 7432.

(7) 5-methoxy-N,N-diisopropyltryptamine (5-MeO-DIPT), its isomers, salts and salts of isomers: 7439.

* * * * *

Dated: January 10, 2003.

John B. Brown, III,

Deputy Administrator.

[FR Doc. 03–1800 Filed 1–27–03; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 110

[CGD08–02–018]

RIN 2115–AA98

Anchorage Regulation; Bolivar Roads, Galveston, TX

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to create a new anchorage area in Bolivar Roads near Galveston, Texas. The establishment of this new anchorage area would enhance navigational safety, support regional maritime security needs, and contribute to the free flow of commerce in the Houston/Galveston area.

DATES: Comments and related material must reach the Coast Guard on or before March 31, 2003.

ADDRESSES: You may mail comments and related material to Commander, Eighth Coast Guard District (m), Hale Boggs Federal Bldg., 501 Magazine Street, New Orleans, LA 70130, or deliver comments and related material to Room 1341 at the same address between 8 a.m. and 3:30 p.m., Monday through Friday, except Federal holidays. Commander, Eighth Coast Guard District (m) maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at Commander, Eighth Coast Guard District (m) between 8 a.m. and 3:30 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant (LT) Karrie Trebbe, Project Manager for Eighth Coast Guard District Commander, telephone (504) 589–6271.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (CCGD8–02–018), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to Commander, Eighth Coast Guard District (m) at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that a public meeting would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

At its February 2002 meeting the Houston/Galveston Navigation Safety Advisory Committee (HOGANSAC) recommended establishment of a third anchorage area in the Galveston Bay area. HOGANSAC, a Congressionally-chartered Federal advisory committee, is responsible for advising, consulting with and making recommendations to the Secretary of Transportation on matters relating to the transit of vessels to and from the ports of Galveston, Houston and Texas City and the safety of maritime navigation in the Galveston Bay area. Participants at the February 2002 HOGANSAC meeting noted that a third anchorage in the Bolivar Roads area was necessary to address port security and navigation safety concerns. After extensive discussion, including the observations of and comments from members of the public in attendance, HOGANSAC recommended that the Coast Guard establish a third anchorage area in Bolivar Roads.

Based on the recommendation of HOGANSAC the Coast Guard proposes a third anchorage area, anchorage area (C), in Bolivar Roads. The proposed anchorage area, located inside the Galveston Bay Entrance Jetties, would provide a sheltered location for vessels to anchor during heavy weather or reduced visibility conditions. The existing anchorages, anchorage area (A) and anchorage area (B), are generally full during these same periods and there is no alternative sheltered anchorage in Bolivar Roads. The proposed location of anchorage area (C), abuts the western edge of anchorage area (B), is in a naturally deep portion of Bolivar Roads, and is outside any heavily traveled section of the waterway.

This third anchorage area is also necessary because port security-related initiatives adopted by various terminals and facilities in the Galveston Bay area have restricted pier side operations critical to the efficient flow of maritime commerce. For example, bunkering, provisions deliveries, and personnel transfer operations are restricted or prohibited by numerous facilities in the ports of Galveston, Houston and Texas City. The nature of those activities requires that they be accomplished in calm water conditions and relatively close to shore. As a result, vessel operators and ship owners rely upon the existing anchorage areas (anchorage areas (A) and (B)) in Galveston Bay to conduct these operations. Increasingly, anchorage space in those areas is in high demand. A third designated anchorage area would relieve congestion and provide anchorage space to accommodate the ever-increasing volumes of traffic in the Galveston Bay area.

Discussion of Proposed Rule

The proposed amendment would create a new anchorage area, to be known as anchorage area (C), bounded by rhumb lines joining points at:

Latitude	Longitude
29°20'39.0" N.	94°46'07.5" W.
29°21'06.1" N.	94°47'00.2" W.
29°21'24.0" N.	94°46'34.0" W.
29°21'14.5" N.	94°45'49.0" W.

The anchorage area would be for the temporary use by vessels of all types. Vessels may occupy the anchorage area during a wide range of conditions and for a broad variety of purposes. For example, vessels would be allowed to anchor temporarily while taking on stores, transferring personnel, or engaging in bunkering or lightering operations. Vessels would also be allowed to use the anchorage area while awaiting weather and other conditions favorable to resuming their voyage. Except when stress of weather makes sailing impractical or hazardous, vessels would not be allowed to anchor in anchorage area (C) for more than 48 hours unless authorized by the Captain of the Port Houston-Galveston. Authorization to remain for more than 48 hours would be obtained via VHF–FM radio through Coast Guard Vessel Traffic Service Houston/Galveston. No vessel with a draft of less than 16 feet would be allowed to occupy anchorage area (C) without prior approval of the Captain of the Port Houston-Galveston. Vessels would not be allowed to anchor so as to obstruct the passage of other vessels proceeding to and from other anchorage spaces. Anchors would not be placed in the channel and no portion of the hull or rigging of any anchored vessel would be allowed to extend outside the limits of the anchorage area. Vessels using spuds for anchors would have to anchor as close to shore as practicable. Fixed moorings, piles or stake and floats, and buoys for marking anchorages or moorings in place would be prohibited. Whenever the maritime or commercial interests of the United States so require, the Captain of the Port Houston-Galveston or his designated representative may direct the movement of any vessel anchored or moored within the anchorage areas.

Regulatory Evaluation

This proposed rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979).

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under paragraph 10 (e) of the regulatory policies and procedures of DOT is unnecessary. The proposed anchorage area would not unnecessarily restrict traffic as it is located outside of the established navigation channel. Vessels would be able to maneuver in, around and through the anchorage. Operators who choose to maneuver their vessels around the limits of the proposed anchorage area would not be significantly impacted because the total route deviation to cross from one side of the anchorage to the other following the perimeter of the anchorage is only 1.4 nautical miles.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. This proposed rule could potentially affect the following entities, some of which might be small entities: the owners or operators of vessels intending to fish or anchor in, or transit through, the proposed anchorage area (C) in Bolivar Roads.

The number of small entities impacted and the extent of the impact, if any, is expected to be minimal. The proposed anchorage would be located in an area of Bolivar Roads that is not a popular or productive fishing location. Further, the proposed location is in an area not routinely transited by vessels heading to, or returning from, known fishing grounds. Finally, the anchorage would be located in an area that is not currently used by small entities, including small vessels, for anchoring due to the depth of water naturally present in the area.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact LT Karrie Trebbe, Project Manager for Eighth Coast Guard District Commander, at (504) 589–6271.

Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this proposed rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This proposed rule would not affect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice

Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

To help the Coast Guard establish regular and meaningful consultation and collaboration with Indian and Alaskan Native tribes, we published a notice in the **Federal Register** (66 FR 36361, July 11, 2001) requesting comments on to best carry out the order. We invite your comments on how this proposed rule might impact tribal governments, even if that impact may not constitute a "tribal implication" under the Order.

Energy Effects

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that Order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have considered the environmental impact of this proposed rule and concluded that, under figure 2–1, paragraph (34)(f), of Commandant Instruction M16475.lD, this rule is categorically excluded from further environmental documentation because it is a regulation establishing an additional anchorage ground. A "Categorical Exclusion Determination" is available in the docket where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 110

Anchorage grounds.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 110 as follows:

PART 110—ANCHORAGE REGULATIONS

1. The authority citation for part 110 continues to read as follows:

Authority: 33 U.S.C. 471, 1221 through 1236, 2030, 2035, 2071; 49 CFR 1.46 and 33 CFR 1.05–1(g).

2. In § 110.197, add a new paragraph (a)(3), and revise paragraph (b) to read as follows:

§ 110.197 Galveston Harbor, Bolivar Roads Channel, Texas.

(a) * * *

(3) Anchorage area (C). The water bounded by a line connecting the following points:

Latitude	Longitude
29°20′39.0″ N	94°46′07.5″ W
29°21′06.1″ N	94°47′00.2″ W
29°21′14.5″ N	94°46′34.0″ W
29°21′24.0″ N	94°45′49.0″ W

and thence to the point of beginning.

(b) *The regulations.* (1) The anchorage area is for the temporary use of vessels of all types, but especially for naval and merchant vessels awaiting weather and other conditions favorable to the resumption of their voyages.

(2) Except when stress of weather makes sailing impractical or hazardous, vessels shall not anchor in anchorage areas (A) or (C) for more than 48 hours unless expressly authorized by the Captain of the Port Houston-Galveston. Permission to anchor for longer periods may be obtained through Coast Guard Vessel Traffic Service Houston/Galveston on VHF–FM channels 12 (156.60 MHz) or 13 (156.65 MHz).

(3) No vessel with a draft of less than 22 feet may occupy anchorage (A) without prior approval of the Captain of the Port.

(4) No vessel with a draft of less than 16 feet may anchor in anchorage (C) without prior approval of the Captain of the Port Houston-Galveston.

(5) Vessels shall not anchor so as to obstruct the passage of other vessels proceeding to or from other anchorage spaces.

(6) Anchors shall not be placed in the channel and no portion of the hull or rigging of any anchored vessel shall extend outside the limits of the anchorage area.

(7) Vessels using spuds for anchors shall anchor as close to shore as practicable, having due regard for the provisions in paragraph (b)(5) of this section.

(8) Fixed moorings, piles or stakes, and floats or buoys for marking anchorages or moorings in place, are prohibited.

(9) Whenever the maritime or commercial interests of the United States so require, the Captain of the Port, or his authorized representative, may direct the movement of any vessel anchored or moored within the anchorage areas.

Dated: January 3, 2003.

Roy J. Casto,

Rear Admiral, U.S. Coast Guard, Commander, Eighth Coast Guard District.

[FR Doc. 03–1873 Filed 1–27–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3

RIN 2900–AL37

Effective Dates of Benefits for Disability or Death Caused by Herbicide Exposure; Disposition of Unpaid Benefits After Death of Beneficiary

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: The Department of Veterans Affairs (VA) proposes to amend its adjudication regulations concerning certain awards of disability compensation and dependency and indemnity compensation (DIC). Under the proposed amendment, certain awards of disability compensation or DIC made pursuant to liberalizing regulations concerning diseases presumptively associated with herbicide exposure may be made effective retroactive to the date of the claim or the date of a previously denied claim, even if such date is earlier than the effective date of the regulation establishing the presumption. The proposed rule also provides that VA may pay to certain individuals any amounts a deceased beneficiary was entitled to receive under the effective-date provisions of this proposed rule, but which were not paid prior to the beneficiary's death. This amendment appears necessary to reflect the requirements of court orders in a class-action case.

DATES: Comments must be received on or before March 31, 2003.

ADDRESSES: Mail or hand deliver written comments to: Director, Office of Regulatory Law (02D), Room 1154, 810 Vermont Ave., NW., Washington, DC 20420; or fax comments to (202) 273–9289; or e-mail comments to *OGCRegulations@mail.va.gov*. Comments should indicate that they are submitted in response to "RIN 2900–AL37." All comments received will be available for public inspection in the Office of Regulatory Law, Room 1158, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays).

FOR FURTHER INFORMATION CONTACT: David Barrans, Staff Attorney (022), Office of General Counsel, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–6332.

SUPPLEMENTARY INFORMATION: A series of court orders in the class-action litigation in *Nehmer* v. *United States Department of Veterans Affairs*, No. CV–86–6160 TEH (N.D. Cal.), requires VA to assign retroactive effective dates for certain awards of disability compensation and DIC in a manner not provided for in any existing statute or regulation. The court orders require that, when VA awards disability compensation or DIC pursuant to a regulatory presumption of service connection under the Agent Orange Act of 1991, Pub. L. 102–4, VA must in certain cases make the award effective retroactive to the date of the claimant's application or the date of a previously-denied application, even if such date is earlier than the effective date of the regulation establishing the presumption. Current regulations, however, prohibit VA from making a benefit award effective any earlier than the effective date of the regulation establishing the presumption. Because the conflict between current statutes and regulations and the *Nehmer* court orders may create confusion, we propose to amend our regulations to reflect the requirements of the *Nehmer* court orders.

In 1991, Congress enacted the Agent Orange Act of 1991, Pub. L. 102–4 (codified at 38 U.S.C. 1116 and in the notes to that section). That Act established presumptions for chloracne, non-Hodgkins lymphoma, and soft-tissue sarcoma. It further provided that VA would obtain reports from the National Academy of Sciences (NAS) every two years for a ten-year period, assessing the available scientific evidence regarding the association between exposure to herbicides and the development of diseases in humans. After receiving each report, VA must determine whether there is a "positive association" between herbicide exposure and any of the diseases discussed in the report. If a positive association exists for any such disease, VA must issue regulations to establish a presumption of service connection for that disease in veterans exposed to herbicides during service. VA has established presumptions of service connection for seven additional diseases or categories of disease, which are listed in 38 CFR 3.309(e).

The Agent Orange Act of 1991 provides that regulations issued pursuant to that act shall take effect on the date they are issued. Under generally applicable effective-date rules in 38 U.S.C. 5110(g) and 38 CFR 3.114, when VA awards benefits pursuant to a liberalizing regulation, the award may not be made effective any earlier than the effective date of the liberalizing regulation. Under those provisions, awards based on presumptions of service connection established under the Agent Orange Act of 1991 can be made effective no earlier than the date VA issued the regulation authorizing the presumption.

However, the district court orders in the *Nehmer* litigation create an exception to the generally applicable rules in 38 U.S.C. 5110(g) and 38 CFR 3.114, and require VA to assign retroactive effective dates for certain awards of disability compensation and DIC that are based on VA's regulations under the Agent Orange Act of 1991, Pub. L. 102–4. This exception applies only to claims by members of the *Nehmer* class. VA is required to comply with the district court's orders, which have been affirmed by the United States Court of Appeals for the Ninth Circuit to the extent they were appealed. Accordingly, we propose to issue a regulation explaining the requirements established by those orders to ensure timely and consistent adjudication under those orders without further need for special instructions.

The *Nehmer* court orders also require that, if an individual was entitled to retroactive benefits as a result of the court orders but died prior to receiving such payment, VA must pay the entire amount of such retroactive payments to the veteran's estate, without regard to statutory limits on payment of benefits following a beneficiary's death. Section 5121(a) of title 38, United States Code, provides that, when VA benefits remain due and unpaid at the time of a beneficiary's death, VA may pay to certain survivors only the portion of such benefits that accrued during the two-year period preceding death. Current VA regulations reflect the requirements of section 5121(a), and contain no exception for cases covered by the *Nehmer* court orders. Because the conflict between current regulations and the *Nehmer* court orders may create confusion, we propose to amend our regulations to reflect the requirements of the *Nehmer* court orders. Accordingly, we propose to issue rules reflecting the limited exception to section 5121(a) established by the *Nehmer* court orders. This exception applies only to certain benefits for members of the *Nehmer* class. As stated above, the intent of this rule is to ensure timely and consistent compliance with the court's orders without the need for further special instructions.

The Nehmer Litigation

The *Nehmer* litigation was initiated in 1986 to challenge a VA regulation, former 38 CFR 3.311a (which has since been rescinded) that stated, among other things, that chloracne was the only disease shown by sound medical and scientific evidence to be associated with herbicide exposure. In 1987, the district court certified the case as a class action on behalf of all Vietnam veterans and their survivors who had been denied VA benefits for a condition allegedly associated with herbicide exposure or who would be eligible to file a claim for such benefits in the future. In an order issued on May 3, 1989, the court invalidated the portion of the regulation providing that no condition other than chloracne was associated with herbicide exposure and voided all VA decisions denying benefit claims under that portion of the regulation. *Nehmer* v. *United States Veterans' Admin.*, 712 F. Supp. 1404 (N.D. Cal. 1989).

After Congress enacted the Agent Orange Act of 1991, Pub. L. 102–4, VA and the plaintiff class in *Nehmer* entered into a stipulation to address remedial issues resulting from the May 1989 order. The stipulation provided that VA would not deny any claims of the *Nehmer* class members until VA had acted on the first NAS report issued under the Agent Orange Act of 1991, Pub. L. 102–4. The stipulation further stated that, once VA issued regulations establishing a presumption of service connection for any disease pursuant to the Act, VA would readjudicate all claims for any such disease in which a prior denial had been voided by the district court's May 3, 1989 order and would adjudicate all similar claims filed after May 3, 1989. The stipulation stated that, if benefits were granted upon readjudication of a claim where a prior denial was voided, the effective date of the benefit award would be the date VA received the claim underlying the

voided decision or the date the disability arose or the death occurred, whichever was later. In claims filed after May 3, 1989, the stipulation stated that the effective date of any benefits awarded would be the date VA received the claim or the date the disability arose or the death occurred, whichever was later. The district court incorporated the stipulation in a final order.

On October 15, 1991, VA issued a regulation establishing a presumption of service connection for soft-tissue sarcomas based on herbicide exposure. On February 6, 1991, the Agent Orange Act of 1991, Pub. L. 102–4, established statutory presumptions of service connection for non-Hodgkin's lymphoma, soft-tissue sarcomas, and chloracne. In June 1993, VA received the first NAS report under the Agent Orange Act of 1991. Thereafter, VA issued regulations establishing presumptions of service connection for four additional diseases (Hodgkin's disease, February 3, 1994; porphyria cutanea tarda, February 3, 1994; respiratory cancers, June 9, 1994; multiple myeloma, June 9, 1994). In 1994, VA began to readjudicate the claims where a prior denial had been voided by the 1989 court order and to adjudicate claims filed subsequent to that order. In cases where VA granted benefits upon such readjudication or adjudication, it assigned effective dates as required by the *Nehmer* stipulation and order, even though the effective dates in many cases were earlier than the effective dates of the statute or liberalizing regulations that authorized the awards.

In 1996, VA received the second NAS report under the Agent Orange Act of 1991. Based on new information contained in that report, VA issued regulations on November 7, 1996 establishing presumptions of service connection for prostate cancer and acute and subacute peripheral neuropathy. In 2001, based on new information in a later NAS report, VA established a presumption of service connection for type 2 diabetes effective July 9, 2001.

In 2000, the parties to the *Nehmer* case disagreed as to whether the retroactive-payment provisions of the *Nehmer* stipulation and order applied to all eight diseases that were associated with herbicide exposure at that time (type 2 diabetes had not yet been recognized) or only to the seven diseases that were presumptively service connected based on the Agent Orange Act of 1991, Pub. L. 102–4, and the first NAS report under that statute. The plaintiffs argued that the stipulation required VA to pay retroactive benefits for all diseases that are service connected at any time under the Agent Orange Act of 1991, Pub. L. 102–4. VA argued that the stipulation required retroactive payment only for disease service connected based on the first NAS report, and that the broader interpretation urged by the plaintiffs was contrary to the Agent Orange Act of 1991, Pub. L. 102–4 and 38 U.S.C. 5110(g).

In a December 12, 2000 order, the district court held that the stipulation and order required VA to give retroactive effect to all regulations issued under the Agent Orange Act of 1991, Pub. L. 102–4. VA appealed that order to the United States Court of Appeals for the Ninth Circuit. On April 1, 2002, the Court of Appeals affirmed the district court's order.

Purpose of This Rule

We propose to issue a new regulation, to be codified at 38 CFR 3.816, to explain the rules VA is required to apply as a result of the court orders in the *Nehmer* case. Those rules are complex and are not reflected in any current statute or regulation. Moreover, the public may have difficulty accessing and understanding the court orders establishing those rules. Accordingly, we believe a regulation explaining the *Nehmer* rules is necessary to provide guidance to VA personnel as well as to VA claimants and their representatives.

To the extent the rules required by the *Nehmer* court orders depart from the generally-applicable rules in 38 U.S.C. 5110(g) and 5121(a), they are judicially-created exceptions to those general rules. VA is required to comply with the *Nehmer* court orders. In order to clarify the basis for this regulation, we propose to state, in § 3.816(a), that these rules are required by the *Nehmer* court orders.

Definitions

The effective-date rules required by the *Nehmer* court orders apply only to members of the plaintiff class certified by the district court in that case. In a 1987 order, the district court ruled that the *Nehmer* class would consist of all veterans and their survivors who have applied for VA benefits for disability or death due to exposure in service to an herbicide containing dioxin or who would become eligible in the future to apply for such benefits. Accordingly, any Vietnam veteran would potentially be a *Nehmer* class member, as would any survivors of such veteran who would be eligible to apply for DIC. The effective-date provisions of this rule would apply only to class members entitled to disability compensation or DIC for disability or death due to a disease associated with herbicide exposure. Accordingly, for purposes of this rule, we propose to define a "*Nehmer* class member" as a Vietnam veteran who has a covered herbicide disease, or a surviving spouse, child, or parent of a deceased Vietnam veteran who died from a covered herbicide disease.

The effective-date rules required by the *Nehmer* court orders apply only to benefits for disability or death caused by a disease for which VA has established a presumption of service connection under the Agent Orange Act of 1991, Public Law 102–4. For purposes of this rule, we propose to use the term "covered herbicide disease" and to define that term to mean a disease for which the Secretary of Veterans Affairs has established a presumption of service connection before October 1, 2002 pursuant to the Agent Orange Act of 1991, Public Law 102–4, excluding chloracne. As explained below in this notice, the effective-date rules of the *Nehmer* stipulation and court orders apply only to diseases for which a presumption of service connection is established under the authority granted by the Agent Orange Act of 1991, Public Law 102–4. Because the authority granted by that Act at the time the stipulation was entered extended only until September 30, 2002, any presumptions established after that date based on other legislative grants of rule-making authority are not within the scope of the *Nehmer* stipulation and court orders.

Although chloracne is a presumptive herbicide disease, we propose to exclude it from the definition of covered herbicide disease for purposes of this rule because claims and awards based on chloracne were not affected by any of the *Nehmer* court orders. VA established a presumption of service connection for chloracne effective September 25, 1985, and that presumption has remained in effect throughout the period relevant to the *Nehmer* litigation. In its May 3, 1989, order, the district court invalidated the portion of VA's regulation providing that conditions other than chloracne were not shown to be associated with herbicide exposure and it voided decisions made under that portion of the regulation. The court left intact the provision establishing a presumption of service connection for chloracne and did not void any decisions involving chloracne. Moreover, the *Nehmer* stipulation and order states that it applies to diseases service connected by VA "in the future" under the Agent Orange Act of 1991, Public Law 102–4. Because chloracne had been presumptively service connected since

1985, it was not affected by the stipulation and order.

Effective Date Rules

The effective-date rules stated in the proposed regulation reflect paragraph 5 of the *Nehmer* stipulation and order. That paragraph states separate rules governing the effective dates of awards granted upon readjudication of a claim where a prior denial was voided by the May 3, 1989 *Nehmer* order and the effective dates of awards granted upon adjudication of a claim filed after May 3, 1989.

With respect to the voided decisions, the stipulation and order provides that the effective date of an award made upon readjudication of the claim will be the later of the date the claim giving rise to the voided decision was filed (provided that the basis of the award is the same basis upon which the original claim was filed) or the date the disability arose or the death occurred. The stipulation and order states that the "basis" of the original claim refers to the disease or condition required, under provisions of a VA procedural manual, to be coded in the VA rating decision on the claim. The stipulation and order further states that the provisions of 38 U.S.C. 5110(b)(1) and (d)(1) will govern when applicable. Section 5110(b)(1) provides for a disability compensation effective date corresponding to the day following the veteran's release from service if the veteran's application is received within one year of that date. Section 5110(d)(1) provides for a DIC effective date corresponding to the first day of the month in which death occurred if the claimant's application is received within one year from the date of death.

With respect to claims filed after May 3, 1989, the stipulation and order provides that the effective date of benefits shall be the later of the date VA received the claim asserting the basis upon which the claim was granted or the date the disability arose or the death occurred.

We propose to provide paragraphs separately explaining the application of these rules to disability compensation awards and DIC awards. In view of the complexity of the *Nehmer* rules, we believe this level of detail will provide greater clarity.

Effective-Date Rules for Disability Compensation

1. Claims by Nehmer Class Members Denied Between September 25, 1985 and May 3, 1989

Section 3.816(c)(1) states that, if a *Nehmer* class member is entitled to disability compensation for a covered herbicide disease, and VA previously denied service connection for the same disease in a decision issued between September 25, 1985, the effective date of the invalidated regulation, and May 3, 1989, the effective date will be the later of the date VA received the claim on which the prior decision was based or the date the disability arose. This rule governs cases where a prior denial was voided by the district court's May 3, 1989 order. In an order dated February 11, 1999, the district court in *Nehmer* held that its 1989 order had voided claims rendered while former 38 CFR 3.311a(d) was in effect, provided that such claims denied compensation for a disease that VA later recognized as being associated with herbicide exposure. The court held that it is irrelevant whether the prior claim alleged that the disease was caused by herbicide exposure or whether the prior decision had referenced former § 3.311a(d). Accordingly, the only requirements for retroactive payment to a class member under proposed § 3.816(c)(1) would be that the decision have been rendered between September 25, 1985 and May 3, 1989—the period when former § 3.311a(d) was in effect—and that the decision have denied service connection for the same covered herbicide disease for which compensation has now been awarded.

Paragraph 5 of the *Nehmer* stipulation and order provides that the basis of the prior claim will be determined by reference to the diseases or conditions coded in the prior rating decision as required by provisions of a VA procedural manual. In accordance with the manual, VA rating decisions on claims for disability compensation ordinarily identify each claimed disease or injury by name and by a diagnostic code found in VA's Schedule for Rating Disabilities, which is located in 38 CFR part 4. There may be variations in both the terminology and diagnostic codes assigned to a particular disease depending on various aspects of the disease or associated conditions. For example, disability due to cancer of the larynx may have been rated as either a malignant neoplasm of the respiratory system (diagnostic code 6844) or residuals of a laryngectomy (diagnostic code 6819). Similarly, soft-tissue sarcomas may be described using different terminology or different diagnostic codes depending upon the body part or system primarily involved. Additionally, some diagnostic codes refer to broad classes of disease that encompass both covered and non-covered diseases. For example, diagnostic code 6819 (Neoplasms, malignant, any specified part of respiratory system exclusive of skin growths) may refer to either a covered disease (*e.g.*, lung cancer) or a non-covered disease (*e.g.*, nasal cancer).

We do not intend that minor, immaterial variations in terminology or diagnostic code would preclude application of the *Nehmer* rules. However, it must be established that the prior decision involved the same disease for which compensation has now been awarded, rather than a distinct condition arguably bearing some relation to the compensable disease because, for example, it involves the same body part or system. Accordingly, we propose to state that a prior decision will be construed as having denied compensation for the same disease if the prior decision denied compensation for a disease that reasonably may be construed as the same covered herbicide disease for which compensation has been awarded. We further propose to state that minor variations in the terminology used in the prior decision will not preclude a finding, based on the record at the time of the prior decision, that the decision denied service connection for the same covered herbicide disease.

2. Claims by Nehmer Class Members Pending on May 3, 1989, or Filed Between May 3, 1989 and the Effective Date of the Authorizing Statute or Regulation

Proposed § 3.816(c)(2) states that, if a class member is entitled to compensation for a covered herbicide disease and the class member's claim for compensation for that same disease was either pending on May 3, 1989 or was received by VA between that date and the effective date of the statute or regulation establishing a presumption of service connection for the disease, the effective date of compensation will be the later of the date VA received such claim or the date the disability arose. The *Nehmer* stipulation and order refers only to claims denied prior to May 3, 1989 and claims filed after that date. It does not expressly provide effective dates for claims that were filed prior to May 3, 1989 but not yet adjudicated by that date. Notwithstanding this apparent oversight, we propose to treat such claims in the same manner as claims filed after May 3, 1989, as no decision on a claim pending on May 3, 1989, could have been voided by the court order.

We propose to state that a claim will be considered a claim for compensation for a particular covered herbicide disease if the claimant's application and

other supporting statements and submissions may reasonably be viewed, under the standards ordinarily governing compensation claims, as indicating an intent to apply for compensation for the covered herbicide disability. This will merely ensure that the generally applicable provisions of statute and regulation governing claims will apply in determining whether and at what date a particular claim was filed for purposes of this rule.

3. Qualifying Claims by Nehmer Class Members Filed Within 1 Year After Separation From Service

We propose to state in § 3.816(c)(3) that, if a claim referenced in paragraph (c)(1) or (c)(2) was received by VA within one year after the date of the veteran's separation from service, the effective date of compensation will be the day following such separation. This would ensure that the principle stated in 38 U.S.C. 5110(b)(1) is applied, as required by the *Nehmer* stipulation and order. We note that the stipulation and order requires VA to apply section 5110(b)(1) to awards made upon readjudication of claims where a prior decision was voided by the court's 1989 order, but not to awards made in claims pending on or filed after May 3, 1989. Nevertheless, we propose to apply section 5110(b)(1) to claims pending on or filed after May 3, 1989, in order to ensure that the generally applicable provisions of that statute are applied in a consistent manner.

4. Other Claims

We propose to state in § 3.816(c)(4) that, if the requirements of paragraph (c)(1) or (c)(2) are not met, the effective date of the award shall be determined in accordance with 38 CFR 3.114 and 3.400, the provisions generally governing the effective dates of disability compensation. The United States Court of Appeals for Veterans Claims has held that the provisions of the *Nehmer* stipulation and order do not apply where a prior claim was denied before September 25, 1985. *See Williams* v. *Principi*, 15 Vet. App. 189 (2001) (en banc).

Similarly, the stipulation and order does not apply in cases where the veteran's initial claim for a covered herbicide disease was filed after the effective date of the regulations establishing a presumption of service connection for that disease. Further, application of the *Nehmer* stipulation to such cases would ordinarily be detrimental to veterans. Under 38 CFR 3.114, when disability compensation is awarded pursuant to a liberalizing regulation, the award may be made effective up to one year prior to the date of the claim, but no earlier than the effective date of the liberalizing regulation. In contrast, the *Nehmer* stipulation and order generally does not permit payment for any period prior to the date of the veteran's claim, except in the limited circumstances described in 38 U.S.C. 5110(b)(1) and (d)(1) involving claims filed within one year of the date of separation from service or the date of death.

Dependency and Indemnity Compensation

1. Claims by Nehmer Class Members Denied Between September 25, 1985 and May 3, 1989

Section 3.816(d)(1) states that, if a *Nehmer* class member is entitled to DIC for death caused by a covered herbicide disease, and VA previously denied DIC for the death in a decision issued between September 25, 1985 and May 3, 1989, the effective date will be the later of the date VA received the claim on which the prior decision was based or the date the death occurred. This rule governs cases where a prior denial was voided by the district court's May 3, 1989 order. Because DIC claims do not require assignment of disability ratings, decisions on DIC claims do not assign a diagnostic code corresponding to VA's rating schedule and may not identify the disease causing death with the same specificity necessary to decisions concerning disability compensation. Moreover, because the cause of death is usually established by the death certificate and medical records existing at death, DIC claims filed at different times ordinarily will not involve different conditions, as often occurs with respect to disability compensation claims. Accordingly, rather than requiring a specific finding that the prior denial of DIC expressly referenced the same covered herbicide disease that provided the basis for the current DIC award, we propose to require only that the prior decision issued between September 25, 1985 and May 3, 1989, have denied DIC for the same death.

2. Claims By Nehmer Class Members Pending on May 3, 1985 or Filed Between May 3, 1989 and the Effective Date of the Authorizing Statute or Regulation

Proposed § 3.816(d)(2) states that, if the class member's claim for DIC for the death was either pending on May 3, 1989 or was received by VA between that date and the effective date of the statute or regulation establishing a presumption of service connection for the disease causing the death, the effective date of DIC will be the later of the date VA received such claim or the date the death occurred. For the reasons stated above with respect to disability compensation, we propose to include claims filed before May 3, 1989, but still pending on that date, even though the *Nehmer* stipulation and order does not expressly provide for such claims.

The provisions of 38 U.S.C. 5101(b)(1) and 38 CFR 3.152(b)(1) state that a claim by a surviving spouse or child for death pension shall be considered a claim for DIC as well. We propose to reference this requirement in the proposed rule. Further, for the same reasons stated above with respect to disability compensation claims, we propose to state that a claim will be considered a claim for DIC if the claimant's application and other supporting statements and submissions may reasonably be viewed, under the standards ordinarily governing DIC claims, as indicating an intent to apply for DIC.

3. Qualifying Claims by Nehmer Class Members Filed Within 1 Year After Date of Death

We propose to state in § 3.816(d)(3) that, if a claim referenced in paragraph (d)(1) or (d)(2) was received by VA within one year after the date of the veteran's death, the effective date of DIC will be the first day of the month of death. This would ensure that the principle stated in 38 U.S.C. 5110(d)(1) is applied, as required by the *Nehmer* stipulation and order. We note that the stipulation and order requires VA to apply section 5110(d)(1) to awards made upon readjudication of claims where a prior decision was voided by the court's 1989 order, but not to awards made in claims pending on or filed after May 3, 1989. Nevertheless, we propose to apply section 5110(d)(1) to claims pending on or filed after May 3, 1989, in order to ensure that the generally applicable provisions of that statute are applied in a consistent manner.

4. Other Claims

For the reasons stated above with respect to disability compensation, we propose to state in § 3.816(d)(4) that, if the requirements of paragraph (d)(1) or (d)(2) are not met, the effective date of DIC will be governed by 38 CFR 3.114 and 3.400.

Effect of Other Provisions

We propose to state in § 3.816(e)(1) that, if the requirements of paragraphs (c)(1) or (c)(2) or (d)(1) or (d)(2) are met, the effective date of benefits will be determined as provided by this rule, without regard to any contrary provision

in 38 U.S.C. 5110(g) or 38 CFR 3.114. As noted above, the effective-date rules required by the *Nehmer* court create a limited exception to that statute and regulation. In order to avoid confusion among VA personnel, claimants, and claimants' representatives regarding the effect of this exception, we believe it is necessary to state clearly that the *Nehmer* rules shall be applied, when they are applicable, without regard to 38 U.S.C. 5110(g) or 38 CFR 3.114.

We also propose to state that the effective-date provisions in this rule will not apply if a statute or regulation other than 38 U.S.C. 5110(g) or 38 CFR 3.114 would bar a retroactive payment that would otherwise be available under the *Nehmer* rules. For example, if a DIC claimant did not qualify as a surviving spouse at the time of the prior DIC claim, VA would lack authority to pay DIC to the claimant for periods relevant to such claim, even if the claimant later attains the status of a surviving spouse, based, for example, upon termination of remarriage. The *Nehmer* court orders require VA to give retroactive effect to its herbicide regulations, but do not purport to eradicate statutory bars to benefits that would preclude payment even if the herbicide regulations apply retroactively.

Proposed paragraph (e)(2) would explain the effect of section 505 of Public Law 104–275, which prohibits VA from making retroactive payments in certain circumstances where a benefit award is based on service in the Republic of Vietnam prior to August 5, 1964. Prior to January 1, 1997, the presumptions of service connection for diseases associated with herbicide exposure applied only to veterans who served in the Republic of Vietnam during the Vietnam era, which was then defined by statute and regulation to encompass the period beginning on August 5, 1964 and ending on May 7, 1975. In 1996, Congress enacted Public Law 104–275, section 505(b) of which extended those presumptions to veterans who served in the Republic of Vietnam during the period between January 9, 1962, and August 4, 1964. Congress specified, in section 505(d) of Public Law 104–275, that the amendment would take effect on January 1, 1997, and that "[n]o benefit may be paid or provided by reason of such amendments for any period before such date." Accordingly, some claims may have been denied prior to January 1, 1997, because the claimants' service did not meet the then-existing statutory requirement of service during the Vietnam era. Although some such claimants may now be entitled to presumptive service connection under the liberalizing 1996 statute, Congress has prohibited VA from paying retroactive benefits based on the amendment made by Public Law 104–275.

We propose to state that the retroactive payment provisions of these proposed rules do not apply if the veteran's Vietnam service ended before August 5, 1964 and the class member's prior claim for benefits was denied by VA before January 1, 1997. In such cases, the denial was required by statute and VA is prohibited from paying retroactive benefits based on the prior claim. We propose to state that the effective date of any subsequent award in such cases will be governed by 38 U.S.C. 5110(g). We further propose to state that, if a veteran's Vietnam service ended before August 5, 1964 and the class member's claim for benefits was pending on or was received by VA after January 1, 1997, the effective date shall be the later of the effective date provided for in the proposed rules or January 1, 1997. This would conform to the requirement in Public Law 104–275 that VA may not pay benefits in such cases for any period before January 1, 1997.

Payment of Benefits to Survivors of Deceased Beneficiaries

1. Requirements of the Nehmer Court Orders

In its December 12, 2000 order, the district court held that, when a *Nehmer* class member entitled to retroactive benefits under the *Nehmer* stipulation and order dies prior to receiving payment of such benefits, VA must pay the full amount of such benefits to the class member's estate. Under 38 U.S.C. 5121 and 38 CFR 3.1000, when any monetary benefits remain due and unpaid at the time of a beneficiary's death, VA may pay to certain individuals only the portion of such benefits that accrued during the two-year period preceding death. Further, VA cannot pay any such accrued benefits unless the appropriate payee files a claim for accrued benefits within one year after the date of death. However, the *Nehmer* court held that these restrictions do not apply to payments of amounts payable pursuant to the *Nehmer* stipulation and order. Rather, the court held that VA must pay the entire amount of such retroactive payment to the class member's estate and must do so without requiring a claim for accrued benefits.

2. Persons Eligible for Payments

In implementing the court's order, VA found that it was impractical in most cases to pay retroactive benefits to a class member's estate. Although VA claims files ordinarily contain information identifying persons who would be eligible for accrued benefits under section 5121 of title 38, United States Code, they generally do not contain information concerning the estates of veterans and other class members. Further, in a substantial number of cases, entitlement to retroactive payments under the *Nehmer* stipulation and order is established several months or even years after the class member's death, at a time when the decedent's estate would have been finally settled. In such cases, there may be no existing estate to receive payment. Even if an estate exists, paying benefits to the estate would arguably contravene the fundamental purpose of the veterans' benefits laws to provide payments for the use of the veteran and his or her family. Section 5121 provides that accrued benefits shall be paid to the decedent's surviving spouse, children, or dependent parents (in that line of succession), but does not permit payment to a decedent's estate. Although this statute limits the amount of accrued benefits payable, it clearly indicates that the accrued benefits are intended for the use of the decedent's family rather than the decedent's estate and creditors. If benefits were paid to a decedent's estate, they would potentially be subject to claims of creditors of the estate, with the possibility that the decedent's family would obtain no benefit from such payments. This would improperly deprive the decedent's family of the benefits expressly authorized by section 5121(a) (to the extent the payment to the estate encompassed benefits due and unpaid for the two-year period preceding death), and would contravene the general purpose of veterans benefits laws to provide benefits for the personal use of the veteran and his or her family.

After consulting with representatives of the *Nehmer* class, VA decided to issue payment directly to the persons who would have been eligible to receive accrued benefits under 38 U.S.C. 5121(a) at the time of the class member's death, rather than withholding all payment. We believe this procedure is consistent with the purpose of the *Nehmer* court orders and is more beneficial to class members, in view of the impracticability of locating and paying estates and the possibility that payments to estates may not inure to the benefit of the class member's survivors. We also believe that this procedure ensures that payments are made in the

manner most consistent with the language and purpose of existing law.

Consistent with this practice, we propose to state in paragraph 3.816(f)(1) that, if a *Nehmer* class member dies prior to receiving payment of retroactive benefits due pursuant to the *Nehmer* stipulation and order, VA will pay the full amount of such unpaid benefits directly to the person or persons who would have been eligible to receive accrued benefits under 38 U.S.C. 5121(a)(2)–(a)(4) at the time of the class member's death (*i.e.*, the class member's spouse, children (in equal shares), or dependent parents (in equal shares), in that order of preference). If no such survivors are in existence, VA would pay as much of the unpaid retroactive benefits as necessary to reimburse the person who bore the expense of the class member's last sickness and burial, in the same manner as provided in 38 U.S.C. 5121(a)(5) for accrued benefits.

Paragraph (f)(1) would further provide that a person's status as the spouse, child, or dependent parent of the class member would be determined as of the date of the class member's death, rather than the date that payment is made under this rule. As noted above, some class members may have died several months or years before payment can be made under these rules. Due to the lapse of time, a person who qualified as the class member's spouse or child on the date of the class member's death may no longer meet the statutory or regulatory definition of spouse or child, due to changes in their age or marital status. For example, a "child" is generally defined in 38 U.S.C. 101(4)(A) to refer to an unmarried child who is (with certain exceptions) under the age of eighteen years. A person who met this definition on the date of a class member's death may have married or attained the age of eighteen years before VA releases payment of unpaid retroactive benefits due to the class member. Because the *Nehmer* court orders were generally intended to correct past errors, we propose to authorize payment to persons who would have been eligible for payment as a spouse, child, or dependent parent on the date of the class member's death, irrespective of subsequent changes in age or marital status that would otherwise affect their entitlement to payment.

In view of language in the *Nehmer* court's order requiring payments to estates, however, we believe it is necessary to seek an order from that court clarifying or modifying its prior order to make clear that VA may release payments in the manner proposed. Accordingly, we intend to request such an order from the district court concurrently with the publication of these proposed rules.

3. Inapplicability of Certain Accrued Benefit Requirements

As stated above, the district court indicated that the statutory two-year limit on payment of accrued benefits and the statutory requirement that a qualified payee or payees file a claim for accrued benefits do not apply to payments of retroactive benefits due and unpaid to a *Nehmer* class member at the time of death. Accordingly, we propose to state, in paragraph (f)(2), that those requirements do not apply. We further propose to state that, if a class member dies before receiving payment of retroactive benefits due to him or her, VA will pay the amount to the known payee(s) without requiring a claim. A veteran's VA claim file will often contain information identifying the surviving spouse, children, or parents of a class member. By clarifying that VA will release payment based on such information without awaiting communication from such survivors, this provision would permit expeditious release of payments.

4. Identifying Payees

We propose to state, in paragraph (f)(3), that VA shall make reasonable efforts to identify appropriate payees based on information contained in the veteran's claims file. We propose to state that, if further information is needed to determine whether an appropriate payee exists, or whether there is any person having precedence equal to or greater than a known survivor, VA will request such information from a known survivor or the class member's authorized representative if the claims file contains sufficient contact information. We also propose to state that, before releasing payment to a known survivor, VA will request information from the survivor concerning the possible existence of other survivors with equal or greater priority for payment, unless the circumstances clearly indicate that such a request is unnecessary. For example, if the claims file contained the name and address of a child of the deceased class member, VA would contact the child to inquire whether there is a surviving spouse or any other children of the class member in existence. In seeking to identify appropriate payees, VA necessarily must rely on information in the claims file. VA does not have the resources to conduct independent investigations of estate issues.

We propose to state that, after making reasonable efforts to identify the appropriate payee(s), if VA releases the full amount of retroactive payments to a payee, VA generally may not thereafter pay any portion of such benefits to any other individual, unless VA is able to recover any payment previously released.

5. Prohibition On Duplicate Payments

We propose to state, in paragraph (f)(4), that, payment of benefits pursuant to this rule shall bar a later claim by any individual for payment of all or any part of such benefits as accrued benefits under 38 U.S.C. 5121 and 38 CFR 3.1000. The district court ordered VA to release all retroactive amounts due a class member at the time of death under the *Nehmer* stipulation and order. This would necessarily include amounts that otherwise would be payable as accrued benefits under 38 U.S.C. 5121. Accordingly, once payment has been made pursuant to the court's order, no retroactive benefits would remain for payment to any person as accrued benefits. Inasmuch as this rule applies only to retroactive benefits payable for a covered herbicide disease pursuant to the 1991 stipulation and order, it would not preclude a survivor's right to seek accrued benefits under section 5121 in the event a deceased class member was entitled at death to benefits for conditions other than a covered herbicide disease.

Awards Not Covered by the Nehmer Rules

We propose to state, in § 3.816(g), that the provisions of this rule do not apply to awards of disability compensation or DIC for disability or death due to a disease for which the Secretary of Veterans Affairs establishes a presumption of service connection after September 30, 2002. The *Nehmer* stipulation and order applies to awards based on diseases for which the Secretary establishes a presumption of service connection pursuant to the Agent Orange Act of 1991, Public Law 102–4. The Act established a sunset date of September 30, 2002, for the Secretary to establish such presumptions. Accordingly, the *Nehmer* stipulation and order applies only to awards based on presumptions established within the time frame specified in the Agent Orange Act of 1991, Public Law 102–4.

The Agent Orange Act of 1991, Public Law 102–4, added section 1116 to title 38, United States Code. Section 1116(b) authorized the Secretary of Veterans Affairs to issue regulatory presumptions of service connection for diseases associated with herbicide exposure. Section 1116(e), as added by the Act, stated that section 1116(b) would cease

to be effective 10 years after the first day of the fiscal year in which the NAS transmitted its first report to VA. The first NAS report was transmitted in June 1993, during the fiscal year that began on October 1, 1992. Accordingly, under the Act, VA's authority to issue regulatory presumptions as specified in section 1116(b) would have expired on September 30, 2002.

In December 2001, Congress enacted the Veterans Education and Benefits Expansion Act of 2001 (Benefits Expansion Act), Public Law 107–103, section 201(d) of which extended VA's authority under section 1116(b) through September 30, 2015. Pursuant to this statute, VA may issue new regulations between October 1, 2002 and September 30, 2015 establishing additional presumptions of service connection for diseases that are found to be associated with herbicide exposure based on evidence contained in future NAS reports. Because presumptions established pursuant to the authority of the Benefits Expansion Act would be beyond the scope of the *Nehmer* stipulation and order, the effective-date provisions of the stipulation and order, as stated in this proposed rule, would not apply to claims based on diseases service-connected pursuant to the Benefits Expansion Act of 2001.

Both the district court and the Court of Appeals for the Ninth Circuit stated that the *Nehmer* stipulation and order applies only to awards based on presumptions issued within the time period established by the Agent Orange Act of 1991, Public Law 102–4. The district court noted that the retroactive payment provisions of the stipulation and order are "expressly tied" to the Agent Orange Act of 1991, Public Law 102–4, and that "the Stip. & Order is not therefore boundless." *Nehmer* v. *United States Department of Veterans Affairs*, No. CV–86–6160 TEH (N.D. Cal. Dec. 12, 2000). In a decision issued April 1, 2002, the Ninth Circuit stated that, "the district court was careful to prescribe temporal limits on the effect of the consent decree, with which we agree." *Nehmer* v. *Veterans'* Administration, 284 F.3d 1158, 1162 n.3. (9th Cir. 2002), *reh'g denied.*

In its December 12, 2000, order, the district court held that the 1991 stipulation and order must be interpreted in accordance with general principles of contract law. It is well established that, unless the parties provide otherwise, a contract is presumed to incorporate the law that existed at the time the contract was made. *See Norfolk & Western Ry. Co.* v. *American Train Dispatchers' Ass'n*, 499 U.S. 117, 129–30 (1991). A subsequent change in the law cannot retrospectively alter the terms of the agreement. *See Florida East Coast Ry. Co.* v. *CSX Transportation*, Inc., 42 F.3d 1125, 1129–30 (7th Cir. 1994). Accordingly, the enactment of the Benefits Expansion Act of 2001 does not alter the scope of the 1991 stipulation and order.

Because the Benefits Expansion Act of 2001, Public Law 107–103, established rights and duties that did not exist under the Agent Orange Act of 1991, Public Law 102–4, any regulations issued pursuant to the authority of the Benefits Expansion Act of 2001 are beyond the express scope of the *Nehmer* stipulation and order. Accordingly, the stipulation and order provides no authority for VA to pay retroactive benefits under such regulations in a manner contrary to the governing statutes and regulations concerning the effective dates of awards. Proposed paragraph 3.406(g) would reflect this fact. This provision would make clear that awards based on regulations issued pursuant to the Benefits Expansion Act of 2001 would be governed by the generally applicable provisions governing the effective dates of benefit awards.

Executive Order 12866

This regulatory amendment has been reviewed by the Office of Management and Budget under the provisions of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993.

Paperwork Reduction Act

This document contains no provisions constituting a collection of information under the Paperwork Reduction Act (44 U.S.C. 3501–3521).

Unfunded Mandates

The Unfunded Mandates Reform Act requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before developing any rule that may result in an expenditure by State, local, or tribal governments, in the aggregate, or by the private sector of $100 million or more in any given year. This rule would have no consequential effect on State, local, or tribal governments.

Regulatory Flexibility Act

The Secretary hereby certifies that this regulatory amendment will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. The reason for this certification is that these amendments would not directly affect any small entities. Only VA beneficiaries and their survivors could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), these amendments are exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance program numbers are 64.109, and 64.110.

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Disability benefits, Herbicides, Veterans, Vietnam.

Approved: November 4, 2002.

Anthony J. Principi,

Secretary of Veterans Affairs.

For the reasons set forth in the preamble, 38 CFR part 3 is proposed to be amended as follows:

PART 3—ADJUDICATION

Subpart A—Pension, Compensation, and Dependency and Indemnity Compensation

1. The authority citation for part 3, subpart A continues to read as follows:

Authority: 38 U.S.C. 501(a), unless otherwise noted.

2. Section 3.816 is added to read as follows:

§ 3.816 Awards under the Nehmer Court Orders for disability or death caused by a condition presumptively associated with herbicide exposure.

(a) *Purpose.* This section states effective-date rules required by orders of a United States district court in the class-action case of *Nehmer* v. *United States Department of Veterans Affairs*, No. CV–86–6160 TEH (N.D. Cal.).

(b) *Definitions.* For purposes of this section'

(1) *Nehmer class member* means:

(i) A Vietnam veteran who has a covered herbicide disease; or

(ii) A surviving spouse, child, or parent of a deceased Vietnam veteran who died from a covered herbicide disease.

(2) *Covered herbicide disease* means a disease for which the Secretary of Veterans Affairs has established a presumption of service connection before October 1, 2002 pursuant to the Agent Orange Act of 1991, Public Law 102–4, other than chloracne. Those diseases are:

(i) Type 2 Diabetes (Also known as type II diabetes mellitus or adult-onset diabetes).

(ii) Hodgkin's disease.

(iii) Multiple myeloma.

(iv) Non-Hodgkin's lymphoma.

(v) Acute and Subacute peripheral neuropathy.

(vi) Porphyria cutanea tarda.

(vii) Prostate cancer.

(viii) Respiratory cancers (cancer of the lung, bronchus, larynx, or trachea).

(ix) Soft-tissue sarcoma (as defined in § 3.309(e)).

(c) *Effective date of disability compensation.* If a *Nehmer* class member is entitled to disability compensation for a covered herbicide disease, the effective date of the award will be as follows:

(1) If VA denied compensation for the same covered herbicide disease in a decision issued between September 25, 1985 and May 3, 1989, the effective date of the award will be the later of the date VA received the claim on which the prior denial was based or the date the disability arose, except as otherwise provided in paragraph (c)(3) of this section. A prior decision will be construed as having denied compensation for the same disease if the prior decision denied compensation for a disease that reasonably may be construed as the same covered herbicide disease for which compensation has been awarded. Minor differences in the terminology used in the prior decision will not preclude a finding, based on the record at the time of the prior decision, that the prior decision denied compensation for the same covered herbicide disease.

(2) If the class member's claim for disability compensation for the covered herbicide disease was either pending before VA on May 3, 1989, or was received by VA between that date and the effective date of the statute or regulation establishing a presumption of service connection for the covered disease, the effective date of the award will be the later of the date such claim was received by VA or the date the disability arose, except as otherwise provided in paragraph (c)(3) of this section. A claim will be considered a claim for compensation for a particular covered herbicide disease if the claimant's application and other supporting statements and submissions may reasonably be viewed, under the standards ordinarily governing compensation claims, as indicating an intent to apply for compensation for the covered herbicide disability.

(3) If the class member's claim referred to in paragraph (c)(1) or (c)(2) of this section was received within one year from the date of the class member's separation from service, the effective date of the award shall be the day following the date of the class member's separation from active service.

(4) If the requirements of paragraph (c)(1) or (c)(2) of this section are not met, the effective date of the award shall be determined in accordance with §§ 3.114 and 3.400.

(d) *Effective date of dependency and indemnity compensation (DIC).* If a Nehmer class member is entitled to DIC for a death due to a covered herbicide disease, the effective date of the award will be as follows:

(1) If VA denied DIC for the death in a decision issued between September 25, 1985 and May 3, 1989, the effective date of the award will be the later of the date VA received the claim on which such prior denial was based or the date the death occurred, except as otherwise provided in paragraph (d)(3) of this section.

(2) If the class member's claim for DIC for the death was either pending before VA on May 3, 1989, or was received by VA between that date and the effective date of the statute or regulation establishing a presumption of service connection for the covered herbicide disease that caused the death, the effective date of the award will be the later of the date such claim was received by VA or the date the death occurred, except as otherwise provided in paragraph (d)(3) of this section. In accordance with § 3.152(b)(1), a claim by a surviving spouse or child for death pension will be considered a claim for DIC. In all other cases, a claim will be considered a claim for DIC if the claimant's application and other supporting statements and submissions may reasonably be viewed, under the standards ordinarily governing DIC claims, as indicating an intent to apply for DIC.

(3) If the class member's claim referred to in paragraph (d)(1) or (d)(2) of this section was received within one year from the date of the veteran's death, the effective date of the award shall be the first day of the month in which the death occurred.

(4) If the requirements of paragraph (d)(1) or (d)(2) of this section are not met, the effective date of the award shall be determined in accordance with §§ 3.114 and 3.400.

(e) *Effect of other provisions affecting retroactive entitlement.*—(1) *General.* If the requirements specified in paragraphs (c)(1) or (c)(2) or (d)(1) or (d)(2) of this section are satisfied, the effective date shall be assigned as specified in those paragraphs, without regard to the provisions in 38 U.S.C. 5110(g) or § 3.114 prohibiting payment for periods prior to the effective date of the statute or regulation establishing a presumption of service connection for a covered herbicide disease. However, the provisions of this section will not apply if payment to a *Nehmer* class member based on a claim described in paragraph (c) or (d) of this section is otherwise prohibited by statute or regulation, as, for example, where a class member did not qualify as a surviving spouse at the time of the prior claim or denial.

(2) *Claims Based on Service in the Republic of Vietnam Prior To August 5, 1964.* If a claim referred to in paragraph (c) or (d) of this section was denied by VA prior to January 1, 1997, and the veteran's service in the Republic of Vietnam ended before August 5, 1964, the effective-date rules of this regulation do not apply. The effective date of benefits in such cases shall be determined in accordance with 38 U.S.C. 5110. If a claim referred to in paragraph (c) or (d) of this section was pending before VA on January 1, 1997, or was received by VA after that date, and the veteran's service in the Republic of Vietnam ended before August 5, 1964, the effective date shall be the later of the date provided by paragraph (c) or (d) of this section or January 1, 1997.

(Authority: Pub. L. 104–275, sec. 505)

(f) *Payment of Benefits to Survivors of Deceased Beneficiaries.*—(1) *General.* If a *Nehmer* class member entitled to retroactive benefits pursuant to paragraphs (c)(1) through (c)(3) or (d)(1) through (d)(3) of this section dies prior to receiving payment of any such benefits, VA shall pay such unpaid retroactive benefits as follows:

(i) VA will pay the full amount of unpaid retroactive benefits to the living person or persons who, at the time of the class member's death, would have been eligible to receive payment of any accrued benefits under 38 U.S.C. 5121(a)(2)–(a)(4). For purposes of this paragraph, a person's status as the spouse, child, or dependent parent of a veteran shall be determined as of the date of the class member's death, irrespective of the person's age or marital status at the time payment is made under this section. The determination shall be based on evidence on file at the date of death. If the person or persons who would have been eligible to receive accrued benefits at the time of the class member's death are now deceased, VA shall pay the full amount of unpaid retroactive benefits to the living person or persons who were next in priority under 38 U.S.C. 5121(a)(2)–(a)(4) at the time of the class member's death.

(ii) If there is no living person eligible for payment under paragraph (f)(1)(i) of this section, VA will pay to the person who bore the expense of the class member's last sickness and burial only

such portion of the unpaid retroactive benefits as is necessary to reimburse the person for such expense.

(2) *Inapplicability of certain accrued benefit requirements.* The provisions of 38 U.S.C. 5121(a) and § 3.1000(a) limiting payment of accrued benefits to amounts due and unpaid for a period not to exceed two years do not apply to payments under this section. The provisions of 38 U.S.C. 5121(c) and § 3.1000(c) requiring survivors to file claims for accrued benefits also do not apply to payments under this section. When a *Nehmer* class member dies prior to receiving retroactive payments under this section, VA will pay the amount to an identified payee in accordance with paragraph (f)(1) of this section without requiring an application from the payee. Prior to releasing such payment, however, VA may ask the payee to provide further information as specified in paragraph (f)(3) of this section.

(3) *Identifying Payees.* VA shall make reasonable efforts to identify the appropriate payee(s) under paragraph (f)(1) of this section based on information in the veteran's claims file. If further information is needed to determine whether any appropriate payee exists or whether there are any persons having equal or higher precedence than a known prospective payee, VA will request such information from a survivor or authorized representative if the claims file provides sufficient contact information. Before releasing payment to an identified payee, VA will ask the payee to state whether there are any other survivors of the class member who may have equal or greater entitlement to payment under this section, unless the circumstances clearly indicate that such a request is unnecessary. If, following such efforts, VA releases the full amount of unpaid benefits to a payee, VA may not thereafter pay any portion of such benefits to any other individual, unless VA is able to recover the payment previously released.

(4) *Bar to accrued benefit claims.* Payment of benefits pursuant to paragraph (f)(1) of this section shall bar a later claim by any individual for payment of all or any part of such benefits as accrued benefits under 38 U.S.C. 5121 and § 3.1000.

(g) *Awards covered by this section.* This section applies only to awards of disability compensation or DIC for disability or death caused by a disease listed in paragraph (b)(2) of this section.

(Authority: 38 U.S.C. 501)

[FR Doc. 03–1834 Filed 1–27–03; 8:45 am]
BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[NV–039–0053; FRL–7444–1]

Approval and Promulgation of State Implementation Plans; State of Nevada; Clark County

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve state implementation plan (SIP) revisions submitted by the State of Nevada to provide for attainment of the carbon monoxide (CO) national ambient air quality standards (NAAQS) in the Clark County Nonattainment Area. EPA is proposing to approve the SIP revisions under provisions of the Clean Air Act (CAA or the Act) regarding EPA action on SIP submittals, SIPs for national primary and secondary ambient air quality standards, and plan requirements for nonattainment areas.

DATES: Written comments on this proposal must be received by February 27, 2003.

ADDRESSES: Comments should be addressed to the EPA contact below. You may inspect and copy the rulemaking docket for this notice at the following location during normal business hours. We may charge you a reasonable fee for copying parts of the docket.

Steven Barhite, Chief, Environmental Protection Agency, Region 9, Air Division, Air Planning Office (AIR–2), 75 Hawthorne Street, San Francisco, CA 94105–3901.

Copies of the SIP materials are also available for inspection at the addresses listed below:

Nevada Dept. of Conservation and Natural Resources, Division of Environmental Protection, 333 West Nye Lane, Room 138, Carson City, NV 89706.

Clark County Department of Air Quality Management, 500 S. Grand Central Parkway, Las Vegas, NV 89155.

FOR FURTHER INFORMATION CONTACT: Karina O'Connor, Air Planning Office (AIR–2), Air Division, U.S. EPA, Region 9, 75 Hawthorne Street, San Francisco, CA 94105–3901. Telephone: (775) 833–1276. E-mail: *oconnor.karina@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, "we," "us" and "our" refer to EPA.

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I. Background

A. Why Is CO an Air Quality Problem?

Carbon monoxide (CO) is a colorless, odorless gas emitted in combustion processes. In Clark County, like most urban areas, CO comes primarily from tailpipe emissions of cars and trucks.[1] Exposure to elevated CO levels is associated with impairment of visual perception, work capacity, manual dexterity, and learning ability, and with illness and death for those who already suffer from cardiovascular disease, particularly angina or peripheral vascular disease.

B. How Are CO Levels Assessed?

Under section 109 of the Act, we have established primary, health-related NAAQS for CO: 9 parts per million (ppm) averaged over an 8-hour period, and 35 ppm averaged over 1 hour. Attainment of the 8-hour CO NAAQS is achieved if not more than one non-overlapping 8-hour average per monitoring site per year exceeds 9 ppm in any consecutive 2-year period (values below 9.5 are rounded down to 9.0 and are not considered exceedances).

[1] In the 1996 base year inventory, on-road vehicles accounted for approximately 86 percent of CO emissions while nonroad sources contributed roughly 11 percent and stationary and area sources contributed roughly 3 percent.

Clark County has never exceeded the 1-hour NAAQS. For this reason, the Clark County CO plan and this action address only the 8-hour NAAQS. The area has been monitoring ambient air for CO levels since the early 1980's. In 1985, the Las Vegas area recorded 41 exceedances of the 8-hour NAAQS; however, the area has recorded less than 5 exceedances each year since the early 1990's. Most of the CO exceedances in Clark County occur during the months of January, February, and December, with peak concentrations typically in the evenings. The last exceedances of the eight-hour CO NAAQS were recorded in 1998 at the Sunrise Avenue site in Las Vegas, and while the ambient monitoring data provides a preliminary basis for EPA to propose an attainment finding for Las Vegas Valley, this notice does not address that issue. EPA will publish an attainment finding for Las Vegas Valley in a separate notice, if appropriate following a detailed review of the monitoring data.

C. What Clean Air Act Statutory, Regulatory and Policy Requirements Must Las Vegas Meet To Improve CO Levels?

Las Vegas Valley was first designated as a CO nonattainment area in 1978. See 43 FR 8962, 9012 (March 3, 1978). The CAA Amendments of 1977 required states to prepare plans to achieve the NAAQS in nonattainment areas. The original attainment deadline was 1982. EPA conditionally approved the initial CO plan for Las Vegas Valley into the Nevada SIP in 1981. See 46 FR 21758 (April 14, 1981). EPA removed the conditions on the CO plan in 1982. See 47 FR 15790 (April 13, 1982.) Updated plans were required for nonattainment areas, like Las Vegas Valley, that did not achieve the original 1982 deadline. EPA approved this updated plan into the Nevada SIP in 1984. See 49 FR 44208 (November 5, 1984) and 40 CFR 52.1470(c)(32).

The Federal CAA was substantially amended in 1990 to establish new planning requirements and attainment deadlines for the NAAQS. Under section 107(d)(1)(C) of the Act, areas designated nonattainment prior to enactment of the 1990 amendments, including Las Vegas Valley, were designated nonattainment by operation of law.[2] Under section 186(a) of the Act, each CO area designated nonattainment under section 107(d) was also classified by operation of law as either moderate or serious, depending on the severity of the area's air quality problem. CO areas with design values between 9.1 and 16.4 parts per million (ppm), such as the Las Vegas Valley area, were classified as moderate. (The design value for Las Vegas Valley for initial classification purposes was 14.4 ppm, which was based on monitoring data from the late 1980's.) These nonattainment designations and classifications were codified into 40 CFR part 81. See 56 FR 56694 (November 6, 1991). Section 172 of the Act contains general requirements applicable to SIP revisions for nonattainment areas, and sections 186 and 187 of the Act set out additional air quality planning requirements for CO nonattainment areas.

The most fundamental of these provisions is the requirement that CO nonattainment areas with design values greater than 12.7 ppm submit a SIP revision demonstrating attainment of the NAAQS as expeditiously as practicable but no later than the deadline applicable to the area's classification: December 31, 1995, for moderate areas. See CAA sections 186(a)(1) and 187(a)(7). Such a demonstration must provide enforceable measures to achieve emission reductions each year leading to emissions at or below the level predicted to result in attainment of the NAAQS throughout the nonattainment area.

Las Vegas Valley failed to reach attainment by December 31, 1995, but, under section 186(a)(4) of the Act, the State of Nevada requested, and EPA granted, a one-year extension of the attainment date to December 31, 1996. See 61 FR 57331 (November 6, 1996). However, in the first quarter of 1996, Clark County recorded three exceedances of the CO standard at the East Charleston monitoring station and thus was unable to show attainment of the standard by the new attainment date and could not qualify for an additional one-year extension under section 186(a)(4) of the Act.

Subsequently, on October 2, 1997, we published a final rule that found that the Las Vegas Valley CO nonattainment area did not attain the CO NAAQS by the applicable attainment date and that reclassified the area from "moderate" to "serious" nonattainment under section 186(b)(2) of the Act.[3] See 62 FR 51604 (October 2, 1997). Areas reclassified as serious are given more time to develop a SIP revision and a new attainment date but are subject to additional requirements beyond those that are required in moderate nonattainment areas. For Las Vegas Valley, the effect of the reclassification to "serious" was to allow Nevada 18 months from the effective date of the reclassification to submit a new SIP demonstrating attainment of the CO NAAQS as expeditiously as practicable but no later than December 31, 2000, the CAA attainment date for serious CO nonattainment areas.

We have issued a "General Preamble" describing the agency's preliminary views on SIP revisions submitted under Title I of the Act. See generally 57 FR 13498 (April 16, 1992) and 57 FR 18070 (April 28, 1992). The reader should refer to the General Preamble for a more detailed discussion of our preliminary interpretations of Title I requirements. In this proposed rulemaking action, we are applying these interpretations to the Las Vegas Valley CO SIP submittals, taking into consideration the specific factual issues presented.

D. Has EPA Acted on Prior and Related Las Vegas Valley CO SIP Revisions?

Under a letter dated November 13, 1992, the Nevada Division of Environmental Protection ("NDEP") submitted the first CO attainment plan for Las Vegas Valley ("1992 CO plan") under the Clean Air Act Amendments of 1990. Because the 1992 CO plan was superceded by the 1995 CO plan, discussed below, we will be taking no action on that plan.

From 1992 through 1994, the State of Nevada submitted various required CO SIP elements to us for Las Vegas Valley, and, in 1995, the State of Nevada submitted a new CO attainment plan for Las Vegas Valley under a letter from NDEP dated November 8, 1995 ("1995 CO plan"). The 1995 CO plan was adopted by the Clark County Board of Commissioners on October 17, 1995. The 1995 CO plan was deemed complete by operation of law on May 13, 1996 under section 110(k)(1)(B) of the Act. The 1995 CO plan included emissions inventories, including motor vehicle emissions estimates referred to as budgets, and several CO control measures, including a specification for Reid Vapor Pressure (RVP) of wintertime gasoline sold in Clark County, a wintertime oxygenated fuels program, contingency measures related to technician training for the vehicle inspection and maintenance ("I/M") program and heavy duty vehicle inspection, and an additional commitment to implement an expanded remote vehicle sensing program.

Until today's notice, the only portion of the 1995 CO plan that was acted upon

[2] The CO nonattainment area is the "Las Vegas Valley Hydrographic Area 212" within Clark County. See 40 CFR 81.329.

[3] Title 40 of the Code of Federal Regulations, part 81, § 81.329 (40 CFR 81.329) was not updated at that time to reflect this final action but was recently updated in a separate action. See 67 FR 12474 (March 19, 2002).

by us was the motor vehicle emission budgets. We were required to make positive or negative adequacy determinations on all emission budgets in response to the March 2, 1999 court decision in *Environmental Defense Fund* v. *EPA*, 167 F.3d 641 (D.C. Cir. 1999). We acted on the motor vehicle emission budgets contained in the 1995 CO plan on May 5, 1999. See 64 FR 31217 (June 10, 1999). We found the conformity emission budget (298.6 tons per day, or tpd) in the 1995 CO plan inadequate since the area failed to meet attainment by the required date for moderate nonattainment areas and was subsequently reclassified to "serious."

In today's action, we are proposing to approve several control measures derived from those cited in the 1995 CO plan, including the State's wintertime RVP regulation for gasoline sold in Clark County, into the Nevada SIP. In addition, we are proposing to approve Nevada's vehicle I/M program, which now includes training and certification requirements for vehicle I/M repair technicians and which now requires annual inspection of heavy-duty gasoline-powered vehicles.

One of the individual SIP elements submitted in the 1992 to 1994 timeframe referred to above was the vehicle I/M program. Under a letter dated July 28, 1994, NDEP submitted a SIP revision related to the State's vehicle I/M program, and we determined that submittal to be complete on January 31, 1995. In the wake of changes to our requirements for such programs, NDEP submitted another SIP revision related to the vehicle I/M program under a letter dated March 20, 1996. This 1996 vehicle I/M submittal superceded the 1994 vehicle I/M submittal and was deemed complete by operation of law on September 20, 1996. Subsequent revisions of the I/M regulations were submitted in August 2000 as part of the 2000 CO plan, described below, and in 2002, the State submitted additional adopted revisions to the I/M regulations, a draft revision to the I/M provisions related to inspection of model year 1996 and newer vehicles, and supplemental materials related to vehicle roadside remote sensing (on-road testing). In today's action, we are proposing to approve the 1996 vehicle I/M program submittal as revised to reflect the changes in that program through 2002.

As noted above, the "serious area" CO SIP revision was due 18 months from the effective date (*i.e.*, November 3, 1997) of reclassification to "serious," or May 3, 1999. By that date, Nevada had not submitted the required SIP revision, and on September 10, 1999, we published a **Federal Register** notice finalizing a finding of failure to submit a "serious area" SIP revision for CO. See 64 FR 49084 (September 10, 1999). This finding, which was effective on August 31, 1999, triggered an 18-month time clock for sanctions and a 2-year time clock for a federal implementation plan (FIP) under the Act.

Subsequently, under a letter dated September 29, 1999, NDEP submitted the "Carbon Monoxide Air Quality Implementation Plan—September 1999." This plan, referred to herein as the 1999 CO plan, was adopted by the Clark County Board of Commissioners on September 21, 1999 and was developed to respond to the CO serious area requirements. On January 12, 2000, we sent a letter to John Schlegel, Director of the Clark County Department of Comprehensive Planning (CCDCP), summarizing problems with the plan and stating the we had made an inadequacy finding on the emission budgets in the plan, and in February of 2000, we published an inadequacy notice on conformity budgets contained in the 1999 CO plan. See 65 FR 4965 (February 2, 2000). The budgets in that CO plan were found inadequate because we determined that the measures contained in the 1999 CO plan would not be sufficient to reach attainment. Since the 1999 CO plan was superceded by the 2000 CO plan discussed below, we will be taking no action on that plan.

Under a letter dated August 9, 2000, NDEP submitted the 2000 CO plan for Las Vegas Valley, adopted by the Clark County Board of Commissioners on August 1, 2000 (referred to herein as the 2000 CO plan). We determined this submittal to be complete on September 12, 2000, with respect to portions of the plan relating to CO SIP requirements.[4] On November 20, 2000, we also found that the motor vehicle emission budgets in the 2000 CO plan were adequate for transportation purposes.

In June 2001, the Governor of Nevada designated the Clark County Board of Commissioners as the regulatory, enforcement and permitting authority for implementing the Federal Clean Air Act within Clark County. This action by the Governor necessitated a transfer of certain pre-existing authorities from the Clark County Board of Health to the County Board of Commissioners. In response to the Governor's designation, the Clark County Board of Commissioners created the Clark County Air Quality Management Board (CCAQMB) as the governing agency for air quality programs and regulations in Clark County. CCAQMB acts through a new County department, referred to as the Clark County Department of Air Quality Management (CCDAQM), which has assumed the responsibilities for air quality enforcement functions that had been performed by the Clark County Health District as well as for air quality planning functions previously performed by CCDCP.

Lastly, under letters dated January 30, 2002 and June 4, 2002, NDEP submitted additional information to supplement the 2000 CO plan, including, among other items, current versions of certain adopted I/M and fuel regulations, a draft version of revised I/M regulations and a request that EPA "parallel process"[5] these draft regulations as part of our proposed action on the 2000 CO plan, and the current statutory authority for the I/M program in Las Vegas Valley. In today's action, we are proposing to approve the plan elements and measures contained in this 2000 CO plan as supplemented by the materials submitted by NDEP in January and June 2002.

E. What Is Included in the 2000 Las Vegas Valley CO Plan?

This 2000 CO plan provides, among other things, a revised CO attainment demonstration based on updated vehicle miles traveled (VMT) projections reflecting new forecasts prepared by the Clark County Regional Transportation Commission (RTC), revised motor vehicle emission modeling, new emissions inventories, amended control measures, and updated areawide Urban Airshed Modeling (UAM) and hotspot (CAL3QHC) air quality modeling analyses using the updated inventories and improvements to other modeling inputs.

II. EPA Action

A. What Is EPA Proposing To Approve?

In this document, we are proposing to approve the 2000 CO plan, with respect to the CAA requirements for notice and adoption, baseline and projected emissions inventory, the reasonable

[4] EPA adopted the completeness criteria on February 16, 1990 (55 FR 5830) and, pursuant to section 110(k)(1)(A) of the Act, revised the criteria on August 26, 1991 (56 FR 42216).

[5] Under the "parallel processing" procedure, EPA proposes rulemaking action concurrently with the state's procedures for approving a SIP submittal and amending its regulations (40 CFR part 51, appendix V, 2.3). If a state's proposed revision is substantially changed in areas other than those identified in this document, EPA will evaluate those changes and may publish another notice of proposed rulemaking. If no substantial changes are made, EPA will publish a final rulemaking on the revisions after responding to any submitted comments. Final rulemaking action by EPA will occur only after the SIP revision has been fully adopted by the state and submitted formally to EPA for incorporation into the SIP.

further progress (RFP) demonstration, the attainment demonstration, and VMT forecasts. In addition, we are proposing to approve Nevada's low enhanced I/M program for Clark County under section 187(a)(6) of the Act, Clark County's wintertime Cleaner Burning Gasoline program under section 211(c)(4)(C) of the Act, and Nevada's wintertime gasoline specification for Clark County related to Reid Vapor Pressure (RVP). These three programs, along with previously-approved oxygenated fuel regulations and natural vehicle turnover (replacement of older higher-emitting vehicles with newer models manufactured to meet increasingly stringent emissions standards), are the main control programs relied upon to reach attainment. We are also proposing to approve an alternative fuel program for government vehicles, voluntary transportation control measures, a determination that stationary sources do not contribute significantly to CO levels for the purposes of section 187(c) of the Act, a contingency measure, commitments for further submittals and control measures, as needed, and CO emissions budgets for conformity purposes.

B. Does the 2000 CO Plan Meet All the Procedural Requirements?

As noted in our earlier completeness finding for the 2000 CO plan (letter dated September 12, 2000 from Amy Zimpfer to Allen Biaggi), the CCDCP has satisfied applicable statutory and regulatory requirements for reasonable public notice and hearing prior to adoption of the plan and each of the plan amendments. The CCDCP conducted numerous public workshops and public hearings prior to the adoption hearing on August 1, 2000, at which the 2000 CO plan was adopted by the Clark County Board of County Commissioners, the lead agency for local air quality planning in the Las Vegas Valley area. The SIP submittal [6] includes a description of public meetings and hearings where the public had the opportunity to comment on the issues addressed in the plan. Public noticing for these meetings occurred through advertisements in the Las Vegas Review Journal and the Las Vegas Sun as well as on the Internet. Also included are the comments received from the public and responses developed by the CCDCP staff. Therefore, we propose to approve the 2000 CO plan as meeting the procedural requirements of section 110(a)(2) of the Act.

C. What Levels of CO Are Estimated for the Base Year and Projected for Future Years and Does the Plan Provide for Reasonable Further Progress?

The revised and updated emissions inventory included in the 2000 CO plan is consistent with our guidance documents.[7] The motor vehicle emissions factors used in the plan were generated by the EPA MOBILE5 model. The base-year (1996) inventory was developed using MOBILE5a (as adjusted to account for off-cycle emissions); MOBILE5b was used for emissions projections for years 2000, 2010, and 2020 (also adjusted to account for off-cycle emissions). The gridded CO inventory for motor vehicles was then produced using the Direct Travel Impact Model version 2.0 (DTIM2), distributed by the California Department of Transportation, which combines motor vehicle emission factors with transportation modeling performed by RTC.

The point source inventory was prepared primarily from a mail survey by the Clark County Health District (CCHD). Survey results were supplemented by information obtained through personal contacts during compliance inspections. VMT data necessary to calculate on-road mobile source emissions was provided by RTC. Table 1 below contains demographic information for Clark County.

TABLE 1.—DEMOGRAPHIC DATA USED IN DEVELOPING EMISSION INVENTORIES AND TO PROJECT ACTIVITY LEVELS FOR NONATTAINMENT AREA [1]

Year	Population	Employment	VMT
1996	1,037,844	493,213	22,469,020
2000	1,269,600	609,400	24,929,485
2010	1,790,700	859,500	38,022,330
2020	2,406,500	1,115,100	57,492,333

[1] Data is based on Clark County Regional Transportation Commission (RTC) 1997 Estimates/Projections.

Base Year Emissions

The results of the Las Vegas Valley 1996 base year CO emissions inventory for stationary point and area sources, on-road mobile sources, and nonroad mobile sources categories are tabulated in this section. The biogenics category has been omitted, as it is not applicable to CO emissions. Table 2 below contains a detailed listing of average daily CO season emissions by source category. Large stationary sources at the periphery of the nonattainment area (State hydrographic area No. 212) have also been included in the inventory.

TABLE 2.—1996 CO EMISSIONS—AVERAGE DAILY CO SEASON

Source categories	Emissions (Tons/day)	Emissions (Percent)
Stationary Point Sources:		
Titanium Metals	2.84	0.60
Kerr McGee-BMI	0.24	0.05
Chemical Lime Co. Apex	0.82	0.17
Bonanza Materials	0.28	0.06

[6] A summary of public participation activities in the development of the plan are included in Appendix D, section 11 of the 2000 CO plan.

[7] *See*, for example, Emission Inventory Requirements for Carbon Monoxide State Implementation Plans, EPA—450/4–91–011; Procedures for the Preparation of Emission Inventories for Carbon Monoxide and Precursors of Ozone, Volume I: General Guidance for Stationary Sources EPA—450/4–91–016; Procedures for Emission Inventory Preparation, Volume IV: Mobile Sources, EPA 450/4–91–026d Revised.

TABLE 2.—1996 CO EMISSIONS—AVERAGE DAILY CO SEASON—Continued

Source categories	Emissions (Tons/day)	Emissions (Percent)
James Hardie Gypsum	0.55	0.12
Southern Nevada Paving	0.55	0.12
Pabco Cogeneration/NCA 2	0.55	0.12
Georgia Pacific@Apex/NCA 1	0.62	0.13
Point Source Total	6.45	1.36
Area Sources:		
Small Stationary	2.70	0.57
Boiler Emissions	1.24	0.26
Fireplaces	2.12	0.45
Structural Fires	0.87	0.18
Vehicular Fires	0.07	0.01
Brush Fires	1.68	0.36
Residential Natural Gas	0.78	0.16
Commercial Natural Gas	0.17	0.04
Industrial Natural Gas	0.36	0.08
Electrical Utility Generation	0.56	0.12
Cigarette Smoking	0.05	0.01
Area Source Total	10.59	2.24
Nonroad Mobile Sources:		
County Airports	36.4	7.69
Nellis AFB	2.86	0.60
Locomotive Emissions	0.23	0.05
Lawn and Garden Equipment	0.86	0.18
Construction Equipment	7.84	1.66
MC & Recreational Equipment	2.93	0.62
Total Nonroad Sources	51.12	10.79
On-road Mobile Sources	405.40	85.61
Total Daily Emissions	473.56	100.0

Total average daily, CO season emissions associated with the Las Vegas Valley nonattainment area for the 1996 base year are 473.56 tons per day. The methodologies used to prepare the base year emissions inventory, as described in chapter 3 and appendix A of the 2000 CO plan, are acceptable. Accordingly, we propose to approve the 2000 CO plan with respect to the base year emissions inventory requirements of sections 172(c)(3) and 187(a)(1) of the Act.

Future Year Emissions

The plan must estimate future year emission levels to determine if Las Vegas Valley can reduce CO levels to acceptable levels. Emission estimates for the year 2000 are projected using growth factors from the Bureau of Economic Analysis (for stationary, area and nonroad sources) and using projected population, employment and VMT data from RTC (for on-road sources). Levels are estimated both with and without the impact of the new control programs included in the 2000 CO plan. A summary of these emission estimates is given in Table 3.

TABLE 3.—CO EMISSIONS BY MAJOR SOURCE CATEGORY—AVERAGE DAILY EMISSIONS, CO SEASON, YEAR 2000

Source Category	Emissions (tons/day)	
	Uncontrolled	Controlled
Stationary Sources	6.45	6.45
Area Sources	12.41	12.41
On-road Vehicles	353.23	310.18
Other Mobile	53.45	53.45
Total	425.44	382.40

The decline in emissions from uncontrolled to controlled shown in Table 3, above, is attributed to the wintertime Cleaner Burning Gasoline regulation, on-road vehicle fleet turnover, the technician training and certification requirements of the State's vehicle I/M program, an alternative fuels program for government fleets and voluntary transportation control measures. Also, as described in the following section, the CO emissions reductions under the 2000 CO plan are sufficient to demonstrate attainment by the applicable date. Thus, the 2000 CO

plan includes a control strategy that has been implemented to produce annual incremental reductions of emissions and that has thereby provided for RFP toward attainment of the standard by the applicable attainment date (December 31, 2000).

In this action, therefore, we propose to approve the projected emissions inventories, under sections 172(c)(3) and 187(a)(1) of the Act, and approve the 2000 CO plan with respect to the RFP requirements in sections 172(c)(2) and 187(a)(7) of the Act.

D. How Does the CO Plan Show Attainment of the CO Standards?

The attainment demonstration includes both an areawide and a hot-spot modeling analysis at heavily-traveled intersections. The areawide analysis was conducted using the Urban Airshed Model (UAM), according to our "Guidance for Application of Urban Areawide Models for CO Attainment Demonstrations" (1992). The UAM analysis uses a December 8–9, 1996 episode. This episode predicted an 8-hour concentration of 11.2 ppm after all adjustments were incorporated. In addition to high 8-hour values on this day, the highest one-hour value (11.8 ppm) was also recorded on this episode day.

Emissions inventory data used in the base year (1996) UAM analysis were derived from the data shown in Table 2, above. The emissions inventory data used for the UAM analysis were disaggregated into 5 kilometer grid cells throughout the modeling domain. On-road emissions were distributed using the 1996 roadway network and emission factors. Model performance for the base year UAM simulation is within our acceptable range of accuracy: +17 percent for the unpaired peak prediction, 0 percent for the paired peak prediction, and 3 hours for the timing error. See 2000 CO plan, page 5–5.

For the attainment year (2000) and for additional future years, on-road emissions were distributed using the Direct Travel Impact Model (DTIM) with latest projected roadway networks including future transportation projects from RTC. Thus, projected changes in Vehicle Miles Traveled (VMT), speed and vehicle occupancy rates were incorporated into the modeling.

TABLE 4.—UAM RESULTS FOR CONTROLLED AND UNCONTROLLED SCENARIOS

Concentrations [ppm]

Year	Uncontrolled Scenario	Controlled Scenario
1996	11.2	11.2
2000	9.1	8.1
2010	8.7	7.2
2020	10.5	8.5

Source: 2000 CO plan, Table 6–3.

The table shows the results of the UAM analysis for the 8-hour average (the corresponding NAAQS is 9 ppm). Concentrations for the 8-hour average are shown for the maximum concentration predicted over the modeling domain. The predicted regional maximum 8-hour average CO concentration is 8.1 ppm in the year 2000, assuming implementation of all new control measures. The UAM analysis thus shows attainment with a margin of safety based on fully adopted regulations. However, an additional model, CAL3QHC must be used to determine the maximum CO levels in the area. CAL3QHC is needed to predict the micro-scale impacts of vehicles operating at congested intersections. Vehicles operating within congested conditions spend more time in idle modes that can contribute to high levels of CO near the roadways.

Microscale modeling was conducted for three intersections within Las Vegas Valley; (1) Charleston Blvd./Eastern Avenue, (2) Charleston Blvd./Fremont Street and (3) Eastern Avenue/Fremont Street. These three intersections comprise the "5 points" area which is near the Sunrise Acres CO monitoring station. For years 2000, 2010, and 2020, traffic data from the roadways were combined with emission factors from MOBILE5b and meteorological data to predict local hotspot concentrations. These hourly results from the microscale model were then combined with hourly concentrations from the background UAM grid cell to compute maximum running 8-hour concentrations. The combined results of the CAL3QHC and UAM results are shown in Table 5 below.

TABLE 5.—INTERSECTION MAXIMUM PREDICTED COMBINED 8-HOUR CO LEVELS (PPM)

Intersection	2000	2010	2020
Charleston/Eastern	8.3	7.3	7.6
Charleston/Fremont	6.7	5.9	6.4
Eastern/Fremont	7.6	6.6	7.4

Source: 2000 CO plan, Table 6–4.

In addition to roadway intersections, high microscale CO levels can occur at airports. To model the impact of airport sources, the Emissions and Dispersion Modeling System (EDMS) model was used. This model was developed for evaluating the specific emission sources typically located at airports. As with CAL3QHC, the hotspot results from EDMS must be combined with the results of the UAM analysis to predict the concentrations at receptors around the airports. The 2000 CO plan presents results of the combined UAM and EDMS models for the base case (uncontrolled). Even without controls, no values above the 9.0 ppm standard are shown for the attainment year (2000). The peak combined concentration at McCarran International Airport for future years is 9.07 ppm for 2020. However, with the addition of just one of the controls included in the plan (specifically, Cleaner Burning Gasoline), the predicted concentration is reduced to 7.67 ppm, well below the 8-hour standard. Therefore, we propose to grant

approval to the 2000 CO plan with respect to the attainment demonstration requirement of section 187(a)(7) of the Act.

E. How Are Motor Vehicle Emissions Reduced in Las Vegas Valley?

Motor vehicle emissions in Las Vegas Valley are reduced primarily by a combination of natural fleet turnover, which effectively replaces older higher-emitting vehicles with models manufactured to meet more stringent exhaust emissions standards established under the federal motor vehicle control program, a vehicle I/M program for in-use vehicles, and wintertime specifications for gasoline. Other measures that contribute to lower CO emissions include an alternative fuel program for government vehicles and voluntary transportation control measures. This section addresses the vehicle I/M program, and following sections address wintertime gasoline specifications and the other control measures.

Summary of the Nevada I/M Program

The State of Nevada has implemented an I/M program for vehicle emissions in Las Vegas Valley since 1978. In 1981, we approved the statutory basis for the vehicle I/M program for Las Vegas Valley. See 46 FR 21758 (April 14, 1981) and 40 CFR 52.1470(14)(iv) and (16)(vi). In 1984, we approved the regulatory basis for that program into the Nevada SIP. See 49 FR 44208 (November 5, 1984) and 40 CFR 52.1470(c)(26)(iii). Because Las Vegas Valley was designated as a moderate CO nonattainment area with a design value greater than 12.7 ppm under the 1990 CAA Amendments, the State of Nevada was required under section 187(a)(6) of the Act, as amended in 1990, to revise the vehicle I/M program within Las Vegas Valley to meet "enhanced" performance standards, referred to as an enhanced vehicle I/M program.

On November 5, 1992, we published rules in the **Federal Register** related to plans for vehicle I/M programs (see 57 FR 52950). The Act was prescriptive regarding the various elements that are required as part of an enhanced I/M performance standard. It also required that we provide states with flexibility in meeting the requirement for enhanced or basic I/M programs. Title 40, part 51, § 51.351(g) Alternate Low Enhanced I/M Performance Standard in the Code of Federal Regulations (40 CFR 51.351(g)) allows states that meet certain specific criteria to select the alternate "low" enhanced I/M performance standard instead of the "high" enhanced performance standards. We established an alternate low enhanced I/M performance standard for those areas that are required to implement enhanced I/M but do not have a major mobile source component to the air quality problem or can obtain adequate emission reductions from other sources to demonstrate RFP and attainment.

The State of Nevada chose to adopt a low enhanced vehicle I/M program and submitted this program to us as a SIP revision on March 20, 1996. The 1996 SIP Submittal for Nevada's vehicle I/M program supercedes and builds upon the "basic" program that we approved in 1984.

The 1996 SIP Submittal contained an overview of the State's I/M program, a checklist/review of the plan relating it to our requirements, legislation, rules, implementation of the program, MOBILE5a analysis (the 2000 CO plan included a revised analysis of the I/M program based on MOBILE5b), motor vehicle fleet characteristics, and numerous other appendices containing material describing the program.

The State Environmental Commission (SEC) and the Department of Motor Vehicles and Public Safety (DMV&PS), which was the predecessor agency to today's DMV and Department of Public Safety, revised the I/M regulations in 1996, 1998, and 2000 to, among other things, increase the cost enabling a registrant to qualify for a waiver (to $450) and exempt "restored vehicles" from certain provisions of the program. The 2000 CO plan included a revised emissions analysis using MOBILE5b (see appendix E, section 7 of the plan) taking into account the changes in the program through 2000, including 100% emissions credit for their technician training and certification program.

In two supplemental SIP submissions dated January 30, 2002 and June 4, 2002, NDEP submitted current versions of the statutory and regulatory authority for the low enhanced I/M program in Clark County, draft revisions to Nevada Administrative Code ("NAC") 445B.580 relating to procedures for inspecting on-board diagnostics (OBD) systems on light-duty MY 1996 or newer vehicles (and a request that we "parallel process" those draft revisions), contractural materials related to emissions inspections analyzer equipment for licensed emission inspection stations, and contractual materials related to on-road testing.

The technical support document (TSD) provides an evaluation of the State's complete low enhanced vehicle I/M program relative to our requirements for such programs, including applicability; low enhanced I/M performance standard, network type and program evaluation; adequate tools and resources; test frequency and convenience; vehicle coverage, test procedures and standards; test equipment; quality control; waivers; motorist compliance enforcement; quality assurance; enforcement against contractors, stations, and inspectors; data collection; data analysis and reporting; inspector training and certification; public information and consumer protection; improving repair effectiveness; compliance with recall notices; and on-road testing.

EPA Review of the Low Enhanced SIP Revisions

EPA's requirements for basic and enhanced I/M programs are contained in 40 CFR part 51, subpart S. The SIP revisions submitted by NDEP must be consistent with these requirements and must meet EPA's requirements for enforceability, as well as, CAA section 110(l) requirements. Although the required elements under Nevada's low enhanced I/M program differ from those described in EPA's I/M requirements for low enhanced programs, a side-by-side comparison demonstrates that, overall, they are not less stringent (see discussion of emissions modeling results in subsection 8, below).

1. Network Type, Test Frequency, Exhaust Emission Test Type and Vehicle Coverage

Basic and enhanced I/M programs can be centralized (i.e., state-run or a single contractor), decentralized (i.e., private small businesses), or a hybrid of the two, but the network type selected by a given state together with the other elements of the state I/M program must achieve the same or better level of emission reduction as the applicable performance standard. The low enhanced I/M performance standard assumes annual testing through a centralized testing network of all model year (MY) 1968 and newer light duty vehicles and light duty trucks, rated up to a gross vehicle weight rating (GVWR) of 8,500 pounds. The low enhanced I/M performance standard assumes that the exhaust emissions of the subject vehicles are subject to the idle test.

The current low enhanced vehicle I/M program for Las Vegas Valley and Boulder City requires two speed idle testing of all light-duty gasoline-powered vehicles MY 1968 through 1995, and for all heavy-duty gasoline-powered vehicles MY 1968 and newer on an annual basis. Until recently, light-duty gasoline-powered vehicles MY 1996 and newer were also subject to two speed idle testing; but recent changes in the State I/M program now require that

such vehicles be tested via on-board diagnostic systems checks instead of the two speed idle test. For the State I/M program, "light-duty vehicles" refers to passenger cars and trucks up to 8,500 pounds GVWR; "heavy-duty vehicles" refers to trucks which have a GVWR of 8,500 pounds or more. The network is decentralized and includes both test-and-repair and test-only stations. All 304 stations are privately owned stations, 96 of which are test-only stations.

2. Exhaust Standards for CO and Hydrocarbons (HC)

Standards for exhaust emission testing are specified in 40 CFR part 85, subpart W. Consistent with those standards, the State I/M program establishes, for those vehicles that are subject to emissions testing, maximum exhaust emissions for MY 1981 and newer vehicles of 1.2% for CO and 220 ppm for HC. For older light-duty vehicles (MY 1968 through 1980), maximum CO (%) and HC (ppm) range from 4.0%–2.0% and 800 ppm–500 ppm, respectively. The standards for heavy-duty gasoline-powered trucks MY 1981 and newer are 3.5% for CO and 1000 ppm for HC; for older heavy-duty vehicles (MY 1968 through 1980), maximum CO (%) and HC (ppm) range from 7.0%–4.0% and 1,400 ppm–1,000 ppm, respectively. As stated previously, all light-duty motor vehicles MY 1996 and newer are subject to on-board diagnostic system checks.

Diesel vehicles are tested under separate requirements, and the requirements that relate to diesel vehicles are not being approved into the SIP.

3. Geographic Coverage

EPA's I/M regulations require that state I/M programs be implemented in the entire urbanized area, based on the 1990 census. See 40 CFR 51.350. The designation for the low enhanced I/M areas are the boundaries of Hydrographic Basin 212, as established by the State Engineer, and the city limits of Boulder City.

4. Vehicle Coverage

The performance standard for low enhanced I/M programs assumes coverage of all MY 1968 and later light-duty vehicles and trucks up to 8,500 pounds GVWR. Other levels of coverage may be approved if the necessary emission reductions are achieved. See 40 CFR 51.356.

As mentioned above, the Nevada low enhanced I/M program applies to light-duty, gasoline-powered vehicles up to 8,500 pounds GVWR, and heavy-duty, gasoline-powered vehicles within the CO nonattainment area of Clark County and Boulder City. While still subject to annual vehicle registration requirements, new vehicles are exempt from emissions inspections under the Nevada I/M program until the third registration cycle. Subsequent annual registration or re-registration will require proof of compliance with emission testing. Vehicles MY 1967 and older, and motorcycles are also exempt from the I/M testing. The two-year exemption of newer model year vehicles from emissions testing results in a relatively small loss in emission benefit since newer vehicles are generally anticipated to be cleaner than older vehicles. Furthermore, recent data suggest that newer vehicles stay cleaner longer due to the slower rate of emission control system deterioration.

The federal regulations also require basic and enhanced I/M programs to include inspection of all 1996 and later motor vehicles equipped with on-board diagnostic (OBD) systems. EPA has required that I/M programs begin OBD checks on January 1, 2002 (OBD mandatory start-up dates were delayed for one year). See 40 CFR 51.373. OBD consists of a computer which performs checks of a number of different vehicle systems for malfunctions or deterioration which could result in the vehicle exceeding its emissions standards and a malfunction indicator light which is required to be illuminated when the system detects a problem.

Some inspection stations in Las Vegas began OBD testing MY 1996 and newer OBD-equipped light-duty vehicles in February 2002 using the NV2000 analyzer (Nevada's previous I/M emissions analyzer, referred to as the "Nevada 94" analyzer, was not programmed to conduct OBD testing). By May 1, 2002, all inspection stations in Las Vegas Valley were conducting OBD tests for MY 1996 and newer OBD-equipped vehicles. Vehicles which receive an OBD inspection do not receive a two speed idle tailpipe test.

5. Emission Control Device Inspections

The low enhanced I/M performance standard assumes visual inspection of the positive crankcase ventilation valve on all 1968 through 1971 MY vehicles, inclusive, and of the exhaust gas recirculation valve on all 1972 and newer MY vehicles. Nevada's program requires visual inspection of the presence of a properly installed gas cap on all gasoline-powered vehicles MY 1968 through 1980, and on heavy-duty gasoline-powered MY 1968 and newer. For light-duty, gasoline-powered vehicles MY 1981 through 1995 vehicles visual inspections include: (1) Determining the presence of an exhaust gas recirculation valve, (2) examining the catalytic converter, air injection system and fuel inlet restricter; and (3) determining whether that equipment appears to be operating in accordance with the specifications of the manufacturer of the vehicle.

6. On-Road Testing

EPA regulations require on-road testing in enhanced I/M programs; on-road testing is optional for basic I/M programs. The on-road testing requirement may be met by measuring on-road emissions through the use of remote sensing devices or through roadside pullovers including tailpipe or evaporative emission testing or a check of the OBD system. The federal regulations require on-road testing to evaluate annually the emission performance of 0.5% of the subject fleet statewide or 20,000 vehicles, whichever is less, per inspection cycle. See 40 CFR 51.371.

Nevada's legal authority for on-road testing was adopted by its Legislature in Senate Bill 570, which was signed into law by the Governor on July 5, 1995. This legislation added a new section to Chapter 445B of the Nevada Revised Statutes (NRS) providing authority to implement a remote sensing program as part of the vehicle I/M program (*i.e.*, NRS 445B.798). In the June 2002 SIP Submittal, Nevada submitted a copy of the executed contract between the State and MD Laser Tech for on-road testing services, effective through June 30, 2003. DMV has contracted with MCI Worldcom to develop and maintain the vehicle information emission database (VID). The MCI Worldcom VID communicates with the DMV registration database. All emission test results are transmitted from the vehicle information emission database to the DMV's registration database. The MCI Worldcom system (VID) also maintains the licensee and administrative programs which are used to identify emission stations and produce program statistical reports. On-road testing is located in the administrative program which can be used to store statistical records for vehicles tested through this process. Letters can also be generated to vehicle owners when regulatory action is determined to be proper. The MD Laser Tech contract calls for the contractor to perform remote sensing of motor vehicle exhaust emissions for a specified time period at specified locations within Clark County. The primary operational objective is to obtain information concerning gross emitting vehicles and use this

information to ensure that these vehicles are brought into compliance with Nevada's motor vehicle regulations. Failure of a test conducted under the on-road testing program may lead to cancellation of vehicle registration under NRS 482.461 unless, within the prescribed period, the registered owner has the vehicle inspected and repaired (if necessary) and provides the DMV with evidence of compliance with the I/M requirements.

7. Waivers

EPA's requirements allow I/M programs to provide a waiver which lets the motorist comply with the program without meeting applicable test standards so long as certain prescribed criteria are met. See 40 CFR 51.360. In basic programs, a minimum of $75 for pre-1981 vehicles and $200 for 1981 and newer vehicles must be spent by the motorist for appropriate repairs in order to qualify for a waiver. See 40 CFR 51.360(a)(6). Beginning January 1, 1998, enhanced programs must require motorists to spend at least $450 for appropriate repairs. See 40 CFR 51.360(a)(7).

Nevada's I/M regulations (NAC 445B.590) require at least $450 in expenditures on emissions-related vehicle repairs to qualify for a waiver in Clark County. Only the DMV may grant a waiver from the standards for emissions. Nevada's rules provide that a waiver from the applicable standards may only be issued after a retest is failed after qualifying repairs. The number of failed vehicles that require waivers is not expected to exceed the current waiver rate of approximately 1 percent. If the waiver rate exceeds 1 percent, Nevada will re-evaluate their procedures. EPA's model waiver rate is a 3 percent waiver rate, as a percentage of failed vehicles. Under the State's program, waivers are denied if the parts have not been installed or the repairs have not been performed as indicated on the receipts. A waiver applies for only the one year vehicle registration period. If a vehicle were to fail the next year, the procedure must be performed again.

8. Low Enhanced I/M Performance Standard

EPA's I/M regulations require that the state perform modeling using the most current version of EPA's mobile source emissions model to determine that the emissions levels achieved by the state I/M program meet the minimum performance standard. See 40 CFR 51.351(g). The minimum performance standard reflects the "model program" elements list in 40 CFR 52.351(g) (*e.g.* centralized annual testing of light-duty vehicles and trucks up to 8,500 GVWR MY 1968 and newer).

For the 2000 CO plan, Clark County updated the emissions analysis of the Nevada I/M program design using MOBILE5b. (The 1996 I/M SIP submittal included emissions analysis based on MOBILE5a.) The Nevada vehicle I/M program design includes: computerized test and repair (50% default values were used to discount emissions reduction benefits of Nevada's largely test-and-repair network relative to a test-only network); 1983 start date; 1999 last model year covered (reflects the first two years exemption on new vehicles and a model run for calendar year 2002); annual frequency; 1968 and newer model year coverage; vehicle types include light duty gasoline-powered autos and trucks (LDGV, LDGT1, and LDGT2) and heavy-duty gasoline-powered vehicles (HDGV); five-element visual inspection and gas cap check on all vehicles MY 1981 and newer; stringency rate for pre-1981 vehicles of 20 percent; waiver rate of 1 percent; a 96 percent compliance rate; and 100 percent emissions credit for the State's technician training and certification program.

The emissions evaluation of the State's I/M program reflects two speed idle testing for all subject vehicles. Given an analysis year of 2002 and the State's two-year exemption for new vehicles, the emissions evaluation reflects two speed idle testing for all subject vehicles MY 1968 through MY 1999. The additional emissions reductions associated with OBD checks were not included in the emissions evaluation of the State's program or in the emissions evaluation of the low enhanced I/M performance standard with which the State's program is compared. (Recent changes in the State program now require OBD checks for subject vehicles MY 1996 and newer instead of the two speed idle test).

Section 7 of appendix E of the 2000 CO plan includes the input and output files from MOBILE5b. As shown in these files, the composite CO emissions factor for January 1, 2002 under the State's program (15.18 grams per mile) is below the corresponding emission level target (15.49 grams per mile) that reflects the EPA model program; and thus, the State's low enhanced I/M program for Las Vegas Valley and Boulder City meets the EPA performance standard for CO.

9. Legal Authority for the Program

The federal I/M rule requires that a state I/M SIP submittal cover the legal authority requiring or allowing implementation of the I/M program and providing either broad or specific authority to perform all required elements of the program as well as implementing regulations, interagency agreements, and memoranda of understanding. See 40 CFR 51.372(a)(5) and (7). Nevada's 1996 I/M SIP submittal included the legal authority and implementing regulations for the low enhanced vehicle I/M program in Las Vegas Valley and Boulder City. The 2000 CO plan, submitted as a SIP revision in 2000, and the two supplemental SIP submittals in 2002 provided updated statutes and regulations for this State program.

The legal authority for the program is vested in the Nevada SEC under Title 40 (Public Health & Safety) of the Nevada Revised Statutes (NRS), section 445B.210 and sections 445B.700 through 445B.845, and in the DMV under Title 43 (Public Safety; Vehicles; Watercraft) of NRS, sections 481.047–481.083, 482.155–482.283, 482.385, 482.461, 482.565, and 484.644–484.6441. The implementing regulations are found at Nevada Administrative Code (NAC) 445B.400 through 445B.735.

The federal I/M rule requires the state I/M program to remain in operation until it is no longer necessary. See 40 CFR 51.372(a)(6). Nevada's I/M program does not undergo a sunset review. We believe that NDEP has demonstrated that the Nevada I/M programs will remain in operation as long as necessary and the requirements of 40 CFR 51.372 have been satisfied.

Conclusion and Proposed Approval of I/M program

We conclude, based on our review of the vehicle I/M program relative to our requirements and within the context of the 2000 CO plan, that the 1996 SIP Submittal for the low enhanced vehicle I/M program, as revised and supplemented through 2002, meets our requirements and contributes to the demonstration of attainment of the CO NAAQS by the applicable date. We, therefore, propose to approve the vehicle I/M program for Las Vegas Valley and Boulder City into the Nevada SIP. Specifically, we propose to approve the statutory and regulatory basis for the revised program in NRS, title 40, section 445B.210 and sections 445B.700 through 445B.845, and title 43, sections 481.047–481.083, 482.155–482.283, 482.385, 482.461, 482.565, and 484.644–484.6441, as amended by Nevada through 2001, and NAC sections 445B.400 through 445B.735 (not including 445B.576, 445B.577, and 445B.578), as adopted through March 8,

2002, by SEC and DMV, and, in the case of draft revisions to NAC 445B.580 Inspection of vehicle: Procedure (NRS 445B.785), as submitted by NDEP by letter dated January 30, 2002. We will consider final action on the vehicle I/M program once we receive the final adopted version of NAC 445B.580. (This section includes final test procedures and equipment used for inspecting certified OBD systems. A new section number will replace NAC 445B.580.) Our approval of the statutory and regulatory basis for the revised vehicle low enhanced I/M program would supercede the existing statutory and regulatory basis for vehicle I/M in the Nevada SIP (as approved by EPA in 1981 and 1984) as it relates to Las Vegas Valley.

F. Are Any Special Fuels Used in Motor Vehicles Operated in Las Vegas Valley?

Wintertime gasoline specifications in Clark County reduce CO emissions in Las Vegas Valley. Specifically, these wintertime specifications relate to oxygen, Reid Vapor Pressure (RVP), sulfur content and aromatic hydrocarbons ("aromatics"). In a separate, prior action, we approved the wintertime oxygenated fuels regulation in Clark County under sections 187(b)(3) and 211(m) of the Act. See 64 FR 29573 (June 2, 1999). The low RVP wintertime gasoline regulation was submitted as part of the 1995 CO plan and the most recent version of that regulation was submitted to EPA on June 4, 2002. EPA is proposing to approve that regulation into the Nevada SIP in this notice, as discussed below. The wintertime sulfur and aromatics specifications are contained in Clark County's Cleaner Burning Gasoline regulation, which has been submitted as an additional control measure in the 2000 CO plan and which is discussed following the low RVP wintertime gasoline discussion.

Low RVP Wintertime Gasoline

RVP is a measure of the stabilized pressure exerted by a volume of liquid at 100° F, and is generally used as a measure of the volatility of gasoline fuel. Fuels with high RVP values volatilize more readily than fuels with low RVP values. The effect of the increased rate of volatilization at any given RVP value is largely dependent on ambient temperature. Lowering the RVP specification of gasoline reduces CO emissions from vehicles equipped with functional evaporative control systems (*e.g.*, on-board carbon-canister). The evaporative control systems adsorb gasoline vapors which are then desorbed into the vehicle's fuel intake system causing enrichment of the fuel mixture and an increase in CO exhaust emissions. A lower volatility gasoline decreases the amount of vapors adsorbed by carbon canisters which in turn lowers subsequent fuel mixture enrichment and CO exhaust emissions. Newer vehicles operate "closed-loop," using oxygen sensors and constantly adjusting the air/fuel ratio. Such vehicles, which represent virtually all 1990 and later cars, are programmed to make adjustments to avoid undue enrichment (and associated emission increases) during canister purge. As a result, the effect of lower RVP on CO emissions on average will be larger for open-loop than for closed-loop cars, but there is considerable variation among manufacturers, models and model years.

The Nevada legislature granted authority to adopt regulations relating to fuel standards to the State Board of Agriculture through NRS chapter 590, section 590.070. Nevada Board of Agriculture's wintertime RVP regulations are found in chapter 590, section 590.065 of the Nevada Administrative Code ("NAC 590.065"). The specific regulation that was submitted as a control measure in the 1995 CO plan was adopted by the Board of Agriculture on September 21, 1995. Since that date, this regulation has been revised several times, *e.g.* to modify the applicable wintertime period, most recently on October 28, 1998. The current regulation, NAC 590.065 paragraphs (3) and (4), limits the RVP of gasoline sold in Clark County during the winter season (October 1 through March 31) to 9.0 pounds per square inch (psi) with no allowance for ethanol blended fuel. NDEP submitted the current adopted regulation to us for incorporation into the SIP under a letter dated June 4, 2002.

The wintertime low RVP requirement is enforced through random sampling and testing conducted by the Nevada Department of Agriculture. Funding for enforcement and monitoring activities associated with the RVP requirement is provided through a portion of the annual vehicle emission testing certificate fee.

To evaluate the effects of RVP on exhaust emissions, state and local air agencies use our MOBILE model. CCDCP used MOBILE5a to evaluate the CO emissions benefits of low RVP under wintertime conditions for the 1995 CO plan. At the time of the 1995 CO plan, the supporting documentation indicated that CCDCP properly modeled RVP controls using appropriate temperatures. However, members of the Western States Petroleum Association (WSPA) objected to the 1995 CO plan's conclusion that gasoline with higher RVP results in higher CO emissions, especially during vehicle startup. They asserted that MOBILE5a overestimated the benefit of reducing RVP and expressed their concern over the related emission reduction predictions contained in the plan.

To address these concerns, CCHD commissioned a study of vehicle emissions to assess the validity of MOBILE5a results. Because of the unusual meteorological conditions in Las Vegas Valley that are associated with historic CO exceedances, and the relative lack of data within the MOBILE5a model for evaluating the RVP effects on CO emissions under colder temperatures, the study called for a shift in the normal series of events specified by the Federal Test Procedure for vehicle certification to simulate the effect of a diurnal temperature profile accompanied by a morning and evening commute.

This study culminated in the publication of the Society of Automotive Engineers' (SAE971726), Effects of RVP Reduction on Vehicle CO Emissions During Las Vegas and Los Angeles Winter Conditions—Petroleum Environmental Research Forum Project Number 95–06 in May 1997. As part of this study, two fleets of vehicles were emissions-tested to determine the effect of gasoline RVP reductions on tailpipe CO emissions in Las Vegas and Los Angeles under conditions typical of winter CO exceedances. The analyses had two locations and two RVP's (9 and 12 psi), including separate sets of temperature ranges, base gasoline types, and oxygenate types and levels. The conclusion was that RVP reduction is a significant control measure for reducing CO emissions under conditions typical of CO exceedances in Las Vegas and Los Angeles. It was estimated that reducing RVP by 3 psi (from 12 psi to 9 psi) would reduce winter CO emissions by 12% in Las Vegas and between 0 and .8% in Los Angeles.

As part of our decision whether to approve the State's low RVP wintertime gasoline regulation into the Nevada SIP, we also must consider whether the fuel specification in that regulation is preempted under the Act. Under section 211(c)(4)(A) of the Act preempts certain state fuel regulations by prohibiting a state from prescribing or attempting to enforce "any control or prohibition respecting any characteristic or component of a fuel or fuel additive" for the purposes of motor vehicle emission control, if EPA has prescribed under section 211(c)(1), "a control or prohibition applicable to such characteristic or component of the fuel or fuel additive," unless the state

prohibition is identical to the prohibition or control prescribed by EPA. The Federal controls on RVP, promulgated under section 211(h) and section 211(c)(1), apply only in the summer months. There is no Federal RVP control applicable to gasoline in the wintertime, and thus no Federal preemption of the State's wintertime low RVP requirement.

Therefore, we are proposing to approve the State's wintertime low RVP requirement into the Nevada SIP as a CO control measure [*i.e.*, NAC 590.065, as adopted on October 28, 1998] because the State has demonstrated that the measure is enforceable, contributes to the attainment demonstration by reducing vehicular CO emissions in the Las Vegas Valley nonattainment area, and is not preempted under section 211(c)(4) of the Act. The TSD provides a copy of the State's low RVP wintertime regulation and additional information on the emissions effects of the regulation.

Cleaner Burning Gasoline

The Clark County Board of Health, which governs the CCHD, adopted a wintertime Cleaner Burning Gasoline (CBG) regulation in 1999 that results in lower CO emissions from motor vehicles. The CBG regulation was included as one of the principal additional control measures included in the 2000 CO plan. The CBG regulation requires that gasoline sold in Clark County comply with limits on the maximum levels of sulfur and aromatics during the period from November 1 to March 31.

As noted previously, the air-quality-related regulatory authority that had been vested in the County Board of Health was transferred to the County Board of Commissioners in 2001. On July 24, 2001, the Clark County Board of Commissioners adopted County ordinance #2627, which, among other items, adopted the Board of Health's air quality regulations then in effect, including the CBG regulation, except for substitutions in the references to the applicable agency (*e.g.*, "Clark County Air Quality Management Board" was substituted for "Clark County District Board of Health"). We have not yet received CCAQMB's wintertime CBG regulation (*i.e.*, CCDAQM regulation, section 54) from NDEP as a SIP submittal, but are proposing approval of the CCAQMB's CBG rule at this time based on the condition that the State submit to EPA the CCAQMB version of the rule prior to our taking final action. In so doing, and as discussed more fully below, we are proposing approval of CCAQMB's CBG rule based on the substance of the Board of Health's CBG regulation and our review of the analysis of that regulation contained in the 2000 CO plan because the two versions of the CBG rule are the same (but for the substitution in agency references as noted above).

The Board of Health's CBG regulation (CCHD regulation, section 54) and the related technical support document are in appendix D, section one, of the 2000 CO plan. The regulation includes sections on: Definitions; applicability of the standards; the standards for sulfur content and aromatics content; sampling, testing and recordkeeping; requirements pertaining to CBG blendstock for oxygenated blending and downstream blending; and enforcement.

The CBG regulation provides two alternative ways to be in compliance for the specifications on sulfur and aromatics: (1) marketers can meet a flat limit on a per gallon basis or (2) marketers can comply via averaging, with each per gallon sample not to exceed a certain cap. (The CBG rule does not change current State and local regulations for wintertime RVP (9 psi) and minimum oxygen content (3.5%).) A summary of the limitations is shown in Table 6.

TABLE 6.—SPECIFICATIONS FOR AROMATICS AND SULFUR IN CLARK COUNTY CBG

	Compliance Method I	Compliance Method II	
	Flat Limit	Average	Cap
Sulfur, ppm	40	30	80
Aromatics, percent	25	22	30

As noted above, the CBG regulation establishes gasoline standards for sulfur and aromatics, and as noted above in connection with low RVP gasoline, under section 211(c)(4) of the Act, states are preempted from prescribing any control or prohibition respecting any characteristic or component of a fuel, where there is a nonidentical Federal control or prohibition applicable to such characteristic or component. See section 5 of the TSD for further discussion of this prohibition and EPA's guidance on approval of a state fuel measure under section 211(c)(4)(C).

Our analysis of preemption of the CBG regulation addresses the specifications for sulfur and aromatics. To determine whether a state fuel requirement is preempted by a federal requirement, we compare the applicable federal fuel requirements in the area with the proposed state fuel requirements. For the purposes of this analysis, the federal fuel requirement in the Las Vegas Valley CO nonattainment area is federal conventional gasoline.

In this proposed rulemaking, EPA does not need to determine whether the federal requirements for conventional gasoline include requirements for sulfur and aromatics which would preempt the CBG regulation under section 211(c)(4)(A). If the sulfur and aromatics requirements are not preempted, there is no bar to our approving them as a SIP revision.[8] If they are preempted, we may approve the CBG regulation as necessary under section 211(c)(4)(C) if we could approve each of these requirements as a SIP revision, *i.e.*, if CCHD's documentation for the regulation shows that each requirement (*i.e.*, the sulfur limit and the aromatics limit) is "necessary" to achieve the CO NAAQS.

Sulfur and aromatics specifications both reduce CO emissions. Emissions modeling data shows that each of these controls, independently, contributes to CO emissions reductions. Thus, each requirement can be determined "necessary" to achieve the CO NAAQS if the remaining requirements of the necessity determination are met.

To make a necessity determination, we must consider whether there are other reasonable and practicable measures available that would produce sufficient emissions reductions to attain the CO NAAQS without implementation of the CBG requirements. Section 211(c)(4) is intended to ensure that a state resorts to a fuel measure only if there are no available practicable and

[8] It is clear, however, that as of December 21, 1999, EPA has prescribed specific limits on maximum sulfur content in conventional gasoline. See, Tier 2 Motor Vehicle Emissions Standards and Gasoline Sulfur Control Requirements, 65 FR 6698, 6765 (February 10, 2000).

reasonable non-fuel measures. In demonstrating that measures other than sulfur and aromatics requirements for wintertime CBG are unreasonable or impracticable, a state need not address the reasonableness or practicability of other state fuel measures.

CCHD conducted an extensive public process to evaluate possible future emissions control options, including revisions to the current I/M program. CCHD considered eight control options other than wintertime CBG requirements for sulfur and aromatics. These options were: (1) Separation of test and repair stations to make its I/M program a "high" enhanced program, (2) creation of one-way streets, (3) adding powerful air propellers to certain developments, (4) adding 600 non-conventional-fueled buses to its municipal fleet, (5) transportation control measures, (6) alternative fuels requirements for municipal fleets, (7) lower smog cutpoints for the I/M program, and (8) episodic woodburning control. The first four options were rejected as unreasonable or impracticable due to unavailability and/or ineffectiveness.

The remaining four control measures were subject to further evaluation, but none of these measures provides significant emissions reductions. CCHD's modeling calculations show that, even with emissions reductions attributed to these four remaining measures, the CO design value would not reach 9.0 ppm by the end of 2000 without adding the reductions due to sulfur and aromatics controls for wintertime CBG.

Estimates prepared for the 2000 CO plan indicate that implementation of the CBG regulation would reduce CO emissions by 31.9 tons per day and 53.96 tons per day in years 2000 and 2020, respectively. These estimates are based on use of the Complex model (with CO added), ("CO Complex model"), in combination with the MOBILE5b model to show the emissions effects that are directly related to the specific fuel specifications in the CBG regulation. (See appendix E, section 1, of the 2000 CO plan.) In March of 1999, EPA reviewed and approved the use of the CO Complex model for CO SIP development purposes, due to the unique fuel program in use in Clark County and the inability of MOBILE5b to fully assess the impact of all of the fuel parameters. At that time, the CO Complex model was the best approach available to assess these fuel parameters.

The CO Complex model was approved for SIP development purposes in a letter dated March 23, 1999 from Roxanne Johnson, EPA Region 9, to Michael Naylor, Director, Air Pollution Control Division, CCHD.

All future transportation conformity determinations for CO in Clark County must be based on the CO Complex model with MOBILE5b until the grace period for MOBILE6 has concluded. Because MOBILE6 is not capable of estimating the benefits of this exact fuels program, EPA will work with Clark County prior to the end of the MOBILE6 conformity grace period to determine how the benefits of this program should be estimated.

Results from the modeling demonstration showed that, by implementing the wintertime CBG regulation, along with the other measures identified in the CO attainment SIP, the Las Vegas Valley should achieve the 8-hour CO NAAQS of 9 ppm by the December 31, 2000 attainment deadline.

Although CCHD did not identify the estimated quantity of CO emissions that must be reduced in order to achieve the CO NAAQS, it did estimate the CO emissions reductions attributable to each of the individual control measures (including the CBG regulation) that were subject to further evaluation. CCHD's modeling calculations showed that, without the emissions reductions attributable to the CBG regulation, Las Vegas Valley would not achieve the CO NAAQS by the end of the year 2000. Therefore, the emission reductions from the CBG regulation are necessary to achieve the CO NAAQS.

In general, to be approved as part of a SIP, regulations must include adequate enforceability provisions, such as clear indications of what constitutes a violation, who is liable, and what defenses are available. Under the CBG regulation, those who fail to comply with the CBG regulation are subject to enforcement action and may be assessed penalties of up to $10,000 per day per section violated. CCDAQM has adopted the requirements developed by CCHD for every entity in the gasoline distribution system to ensure that Las Vegas Valley will receive gasoline that meets the wintertime CBG standards. The requirements, which include registration of gasoline suppliers, testing and sampling, compliance surveys, and record keeping and reporting, apply to any producer, importer, terminal, pipeline operator, trucker, rail carrier, or retailer.

The requirements imposed by the wintertime CBG regulation apply to activity occurring both within and outside of Clark County and the State of Nevada. CCDAQM has been assigned the rights and duties of an agreement between CCHD and the California Air Resources Board (CARB) to have CARB sample and test CBG at the refineries in Southern California.

Clark County also made an agreement with the Nevada Department of Agriculture to check fuel at the final destination (*i.e.*, Clark County). The Department of Agriculture agreed to check sulfur and aromatics content of CBG fuel along with their normal testing. They would notify the CCDAQM in the event that any sample exhibits non-compliant CBG characteristics.

We have evaluated the wintertime CBG regulation and have determined that it is consistent with section 110 of the CAA and EPA regulations. We have also found that the various wintertime CBG requirements are necessary for the Las Vegas Valley nonattainment area to achieve the CO NAAQS, pursuant to section 211(c)(4)(C) of the Act. Therefore, based on the substance of the submitted Board of Health wintertime CBG regulation, and the County ordinance adopting the CBG regulation as in effect in mid-2001 (except for changes to agency references), we are proposing to approve the CCAQMB's wintertime CBG regulation (*i.e.*, CCDAQM regulation, section 54) into the Nevada SIP for the Las Vegas Valley CO nonattainment area based on the condition that the State submit to EPA the CCAQMB version of the rule prior to our taking final action.

G. Are There Any Other Programs That Reduce Overall Motor Vehicle Emissions in Las Vegas?

The 2000 CO plan includes two additional programs to reduce overall emissions of motor vehicles. These programs are a Transportation Control Measure/Transportation Demand Measure ("TCM/TDM") program and an alternative fuel program for government fleets.

TCM/TDM Program

Section 187(b)(2) of the Act requires states with serious CO nonattainment areas to submit a SIP revision that includes transportation control strategies and measures to offset any growth in emissions due to growth in vehicle miles traveled (VMT) or vehicle trips. In developing such strategies, a state must consider measures specified in section 108(f) of the Act and choose from among and implement such measures as necessary to demonstrate attainment with the NAAQS.

Transportation control measures ("TCMs") are designed to reduce mobile pollutant emissions by either improving transportation efficiency or reducing single-occupant vehicle trips. TCMs can

be divided into two general strategies: Transportation System Management (TSM) and Transportation Demand Management (TDM). The former is intended to improve efficiency of existing transportation infrastructure such as optimized use of capacity and improved speeds to reduce travel time delays, and the latter is intended to reduce the number of single-occupant vehicles on roadways by shifting people from single-occupant vehicles to transit and high-occupancy vehicles. In the process of preparing the 2000 CO plan, Clark County commissioned a study to estimate the CO reductions due to various individual TCMs and packages of TCMs and to identify those TCMs that showed the greatest potential for reducing CO emissions in the Valley.

The findings and recommendations of this TCM study led to the development by RTC of the CAT MATCH commuter services program, which is a voluntary TDM program that includes employer-based commuter incentive programs, telecommuting incentives and area-wide ridesharing programs. On June 10, 1999, RTC adopted Resolution No. 177, which establishes guidelines for administering the CAT MATCH commuter services program. Portions of the CAT MATCH program became operational in July 1999. Also, in connection with the CAT MATCH program, RTC adopted Resolution No. 186 (on June 8, 2000), which commits that agency to implement the CAT MATCH program, monitor participation levels, prepare annual reports comparing actual participation levels with projected levels, and remedy any shortfall of CO emission reductions resulting from actual participation levels being lower than predicted levels.

The CAT MATCH program was included as an additional control measure in the 2000 CO plan. The 2000 CO plan estimates that the CAT MATCH program would reduce CO emissions by 0.3 tpd in 2000, 1.8 tpd in 2010, and 2.3 tpd in 2020, and refers to our Voluntary Mobile Source Emission Reduction Program (VMEP) policy, described below, in support of the identification of the CO emissions reductions from that voluntary program as part of the overall CO control strategy.

A memorandum from Richard Wilson dated October 24, 1997 sets forth our policy and interpretation regarding the granting of explicit credit for VMEPs under section 110 of the Act. The VMEP policy was developed since we wanted to encourage areas to consider innovative methods in achieving air quality goals. Under the VMEP policy, emissions credit can be approved under certain circumstances and if the appropriate agency has committed to monitoring and evaluating the effectiveness of the voluntary measure, to reporting on the results of the evaluation, and to remedying any emissions shortfall if the voluntary measure proves to be less effective than projected in the plan.

We have evaluated the CAT MATCH program under our VMEP policy and conclude that the emissions reduction credit in the 2000 CO plan for that voluntary program is appropriate. We also have determined that the CAT MATCH program complies with section 187(b)(2) of the Act. Therefore, we propose to approve the CAT MATCH program under section 187(b)(2) of the Act, and we propose to approve into the Nevada SIP the commitments by RTC to develop, implement, monitor, report, and remedy any emissions shortfalls from this voluntary program under RTC's Resolution No. 177 (adopted June 10, 1999) and Resolution No. 186 (adopted June 8, 2000). Our full review of the TCM/TDM measure is included in the TSD for this proposed action.

Alternative Fuels Program

The Energy Policy Act of 1992 (EPACT) requires federal, state, and fuel provider fleets to acquire alternative fuel vehicles. The State of Nevada has chosen to develop a program that extends alternative fuel requirements to local government agencies in their two most populated counties, Washoe and Clark, and that provides for a more aggressive schedule for implementation than would otherwise be required under EPACT. The State law establishing this program is set forth at NRS chapter 486A. NRS chapter 486A authorizes the State Environmental Commission (SEC) to promulgate implementing regulations, and SEC's regulations are set forth in NAC chapter 486A. Specifically, SEC's regulations require applicable government agencies to acquire and use an increasing proportion of alternative fuel vehicles up to 90% for year 2001 and beyond when acquiring additional or replacement vehicles for its fleet. The program began in 1995, and the 2000 CO plan indicates that nearly all applicable agencies have chosen to comply by acquiring natural gas vehicles and that presently there are over 1,400 alternative fuel vehicles operating in Las Vegas Valley. The regulations also include record keeping and reporting requirements. Under the regulatory scheme, the State Department of Conservation and Natural Resources is responsible for enforcement.

The 2000 CO plan included the alternative fuels program set forth in NAC chapter 486A, as revised through April 2000, as an additional control measure. In estimating emission reductions in Clark County associated with this measure, the 2000 CO plan assumes that most fleets have chosen to purchase CNG vehicles to comply with the alternative fuel regulations and that the number of CNG vehicles is expected to be 2,925 by year 2010, and 3,568 by year 2020. Under these assumptions, implementation of the alternative fuel vehicle programs results in emission reductions of 0.4 tpd in 2000, 1.1 tpd in 2010 and 1.4 tpd in 2020. The State's alternative fuel program contributes to the effort to attain and maintain the CO NAAQS within Las Vegas Valley and meets all CAA requirements (see the TSD for more details). Therefore, we are proposing to approve the alternative fuel program into the Nevada SIP for the Las Vegas Valley CO nonattainment area. Specifically, we propose to approve, into the Nevada SIP, the legal authority vested in SEC under NRS Chapter 486A and the implementing regulations set forth in NAC Chapter 486A, as amended through April 20, 2000 by the State Environmental Commission.

H. Are There Controls on Stationary Sources of CO?

Section 172(c)(5) of the Act requires states with nonattainment areas to revise their SIPs to include a permit program for the construction and operation of new or modified major stationary sources in the nonattainment areas.

Within Clark County, the State of Nevada, rather than the county, has jurisdiction over plants which generate electricity by using steam produced by the burning of fossil fuel. See NRS 445B.500. With respect to such plants, EPA is not requiring the State to submit new source review permit regulations under section 172(c)(5) of the Act because the State has adopted a regulation that prohibits new power plants or major modifications to existing power plants under its jurisdiction within the Las Vegas Valley nonattainment area (*i.e.*, hydrographic area 212). See NAC 445B.22083.

Clark County has jurisdiction over all other stationary sources within the county, and with respect to those sources, we approved the new source review permit program for Clark County in 1999. See 64 FR 25210 (May 11, 1999). This program defines major stationary sources of CO within Las Vegas Valley as those that have the potential to emit 70 tons per year or more, which is more stringent than required under section 302(j) of the Act

and requires such new or modified sources locating within the nonattainment area to obtain offsets in addition to installing control equipment representing the lowest achievable emission rate.

However, on August 29, 2001, the U.S. Court of Appeals for the Ninth Circuit vacated our approval of Clark County's new source review program. See *Hall* v. *EPA*, 273 F.3d 1146 (9th Cir. 2001). The court vacated our approval, not because EPA had acted unreasonably in finding that the program complies with the specific requirements of section 172(c)(5), but rather, because EPA did not have an adequate basis under section 110(l) of the Act to conclude that the new program, even if it met the minimum requirements of section 172(c)(5), would not interfere with attainment of the NAAQS by the applicable deadline.

We intend to re-propose an action on the new source review program in a separate notice in the near future. However, we note here that the emissions inventory and attainment demonstration from the 2000 CO plan that we are proposing to approve in this notice includes stationary sources and the projections of emissions from those sources appear to be generally consistent with the new source review program as submitted to EPA. Specifically, the 2000 CO plan assumes that CO emissions from major CO stationary sources will remain unchanged (which is consistent with the offset requirement in their new source review program) whereas the plan projects growth in CO emissions from non-major stationary sources (which are not subject to federally-enforceable offsets under their program).

Section 187(c) of the Act requires that, in the case of CO nonattainment areas classified as serious and subject to significant stationary source emissions of CO, the term "major stationary source" is to include any stationary source which emits, or has the potential to emit, 50 tons per year or more of CO. The 2000 CO plan concludes that Las Vegas Valley is not subject to significant stationary source emissions of CO and thus not subject to the requirements of section 187(c). Generally, significance in this context is associated with areas with individual stationary sources that generate 5,000 tons of CO per year or more. (See guidance provided in a memorandum from William G. Laxton, Director, Technical Support Division, EPA, dated May 13, 1991.) Since the highest CO-emitting facility shown in the stationary source inventory for the 2000 CO plan emits only 1,100 tons per year of CO, we agree with the conclusion that stationary sources are not significant contributors to ambient CO levels in Las Vegas Valley and that section 187(c) of the Act does not apply within the Las Vegas Valley CO nonattainment area.

I. What Expected Growth of Vehicle Traffic Is Projected for the Area?

Section 187(a)(2)(A) of the Act requires states with CO nonattainment areas with design values greater than 12.7 ppm, such as Las Vegas Valley, to submit a plan revision that contains a forecast of vehicle miles traveled (VMT) in the nonattainment area for each year until attainment of the CO NAAQS. Also, this plan revision must provide for annual updates of the VMT forecasts to be submitted to EPA along with annual reports regarding the extent to which the preceding annual forecasts proved to be accurate. These annual reports must contain estimates of actual VMT in each year for which a VMT forecast was required.

The 2000 CO plan provides VMT forecasts for every year from 1997 through the attainment year of 2000 and then nearly every year between 2001 and 2030. The VMT forecasts were estimated using recent transportation modeling results from RTC that incorporated more recent socioeconomic data than had been used for VMT forecasts contained in the earlier plans. The VMT forecasts are displayed in Table 7–1 of Chapter 7 of the 2000 CO plan. The forecasts are broken down by roadway type. The forecasts predict increases in VMT of roughly 5% each year through 2005 consistent with recent trends, then roughly 4% each thereafter until 2020, and then marginal decreases each year between 2020 and 2030 based on an assumption of highway saturation by that time resulting in a mode shift to mass transit, ride sharing, and other modes.

RTC is the local agency responsible for preparing VMT forecasts. Through Resolution No. 149, as adopted on July 13, 1995, RTC has committed to preparing annual VMT estimates and forecasts and to submitting these reports ("VMT tracking reports") to EPA. Under section 187(a)(3) of the Act, annual VMT tracking reports provide a potential basis for triggering implementation of contingency measures in the event that estimates of actual VMT exceed the forecasts contained in the prior annual VMT tracking report.

We propose to approve the VMT forecasts contained in the 2000 CO plan as meeting the section 187(a)(2)(A) requirements. However, it is noted that section 187(a)(2)(A) does not require forecasts extending as far into the future as those provided in the 2000 CO plan, and, while our approval of the emissions budgets through 2020 discussed in this notice implies approval of the VMT forecasts through 2020, no such implied approval is intended for VMT forecasts beyond 2020. Also, we propose to approve RTC's commitment through Resolution No. 149 to prepare and submit annual VMT tracking reports.

J. Does the Plan Include Contingency Measures?

Section 187(a)(3) of the Act requires states with CO nonattainment areas with design values greater than 12.7 ppm, such as Las Vegas Valley, to submit a plan revision that provides for contingency measures. The Act specifies that such measures are to be implemented if any estimate of VMT submitted in an annual VMT tracking report exceeds the VMT predicted in the most recent prior forecast or if the area fails to attain the NAAQS by the attainment date. As a general rule, contingency measures must be structured to take effect without further action by the state or EPA upon the occurrence of certain triggering events.

EPA believes that, for exceedances of a VMT forecast, one appropriate choice of contingency measures would be to provide for the implementation of sufficient VMT reductions or emissions reductions to counteract the effect of 1 year's growth in VMT while the state revised its SIP (including VMT projections) to provide for attainment by the applicable date. These measures may offset either the excess VMT in the nonattainment area or the additional CO emissions in the area that are attributable to the additional VMT. In the case of Las Vegas Valley, the annualized rate of growth in VMT over the 2000 to 2005 period is approximately 5 percent; therefore, the contingency measures should have the potential to achieve that level of reduction in VMT or a corresponding reduction in CO emissions, which would be approximately 16 tons per day based on the 2000 CO motor vehicle estimate of 310 tons per day.

For a failure to attain the CO NAAQS by the attainment date, EPA believes that contingency measures should have the potential to provide a reduction in CO emissions equivalent to 3 percent of the CO inventory. In this instance, 3 percent of the total CO inventory projection in 2000 (387 tons per day) is approximately 12 tons per day.

The three contingency measures included in the 2000 CO plan include:

—On Board Diagnostics II (OBD II) Testing; [9]
—Lower I/M Program Cutpoints; and
—On Road Remote Sensing.

From 1997 through 2000, when the Las Vegas serious area plan was being developed, the implementation deadline for mandatory OBD testing in I/M programs had not yet passed, and the plan identified OBD II testing as a contingency measure that would be triggered by the occurrence of either unanticipated growth in VMT or a CO exceedance. However, the deadline for mandatory OBD testing is now expired. See 66 FR 18156 (April 5, 2001). Normally, a required measure does not qualify as contingency measure; however, a measure that represents a requirement but that is designed to allow for implementation prior to its implementation deadline may qualify as a short-term contingency measure. In this instance, because the implementation deadline for mandatory OBD testing had not passed at the time of plan development and adoption and the emissions benefits from mandatory OBD testing were not included in the attainment demonstration, and because of Clark County's commitment to provide documentation and additional measures if necessary, as explained below, we propose to approve OBD testing as a contingency measure of the 2000 CO plan for the purposes of section 187(a)(3) of the Act. As noted previously, in today's action, we are proposing to approve (under our parallel processing procedure) revisions to the I/M program to implement OBD II testing based on draft revisions to the implementing regulations (specifically, revision to NAC 445B.580) submitted by NDEP under a letter dated January 30, 2002. Thus, as a practical matter, this contingency measure will not actually be contingent upon occurrence of any particular event but will be implemented fully by the end of 2002.

The 2000 CO plan did not provide emission reduction estimates for implementation of OBD II testing because of the limitations of the vehicle emissions model (MOBILE5b) available at the time of plan preparation. However, in adopting the 2000 CO plan (resolution dated August 1, 2000), Clark County committed to preparing and submitting a plan revision to EPA that quantifies the actual benefits of the contingency measures contained in the plan, within one year of the release date of pending applicable guidance protocols and models. The County also committed to monitoring the emission reductions associated with the plan's control measures and remedying in a timely fashion any shortfall for the purpose of complying with SIP control measure requirements of the Act.

In January 2002, EPA approved and announced the availability of the MOBILE6 motor vehicle emission factor model for official use outside of California. See 67 FR 4254 (January 29, 2002). Unlike MOBILE5b, MOBILE6 has the capability of quantifying the emissions reductions associated with implementation of OBD. Based on Clark County's commitment cited above, we anticipate that the County will develop and, via NDEP, submit emissions estimates by the end of January 2003 showing the emissions reductions associated with OBD testing in Clark County and identifying additional contingency measures, if necessary, to provide needed emissions reductions if VMT growth exceeds projections or if the CO NAAQS is exceeded.

In addition, the Nevada State Environmental Commission adopted a resolution dated April 9, 1999 that directs NDEP, DMV, the Department of Agriculture, and Clark County to work together to identify and propose to the appropriate adopting body the most cost-effective and reasonably available control strategies necessary to achieve and maintain the NAAQS and to ensure conformity between the transportation improvement program and the SIP. Through this resolution, the Nevada State Environmental Commission further committed itself to adopting appropriate emission reduction measures as necessary to ensure that the NAAQS can be achieved and maintained in Las Vegas Valley.

We agree that MOBILE6 is the appropriate tool to use in estimating emissions reductions from OBD testing, and we agree that implementing OBD testing will provide substantial emissions reductions beyond those already accounted for in the 2000 CO plan. We expect that OBD testing will ultimately be shown by Clark County to provide emissions reductions beyond the minimum we believe contingency measures must provide. Taken together with the County's commitments to provide emissions documentation and remedial contingency measures, if necessary, and the Nevada State Environmental Commission's April 9, 1999 resolution, we propose to approve OBD II testing as meeting section 187(a)(3) requirements.

We are proposing to disapprove the other contingency measures in the 2000 CO plan, lower I/M program cutpoints and on-road remote sensing. With respect to lower I/M program cutpoints, we are proposing disapproval because the measure has not been developed to allow for implementation (upon the occurrence of triggering events) without further action by the State. With respect to on-road remote sensing, in proposing disapproval, we note that a minimum level of on-road testing is required for all enhanced I/M programs (see 40 CFR 51.51.351(b), and to the extent that this particular measure provides for that minimum level of testing, it does not qualify as a contingency measure.

An on-road testing program designed to obtain measurable emission reductions over and above those already predicted to be achieved by other aspects of the I/M program can serve as a contingency measure, but the description and documentation of the on-road remote sensing contingency measure as included in the 2000 CO plan does not provide us with the basis to conclude that it would provide emissions reductions beyond those already predicted to be achieved by other aspects of the I/M program. Nonetheless, we have concluded that these two measures are not necessary for plan approval, and we propose to find that OBD II testing and related commitments are sufficient in themselves to comply with section 187(a)(3) of the Act. Therefore, our disapproval of these contingency measures, if finalized, would not trigger sanctions clocks under section 179(a) of the Act.

K. Are the Emissions Budgets Approvable?

Section 176(c)(1) of the Act prohibits federal agencies from permitting, approving, or funding any activity in nonattainment or maintenance areas that does not conform to a SIP once the SIP has been approved by EPA under section 110 of the Act. Section 176(c)(1) also prohibits metropolitan planning organizations (MPOs), such as the Clark County RTC, from approving any project, program, or plan that does not conform to a SIP once the SIP has been approved by EPA under section 110 of the Act. With regards to regional transportation plans and program, MPOs must demonstrate consistency between motor vehicle emissions estimates under those plans and

[9] Some variety of OBD system has been an option on certain vehicle models since the early 1980's, standardized OBD systems (also known as OBD II) were not introduced until MY 1994, and such systems did not appear on all new light-duty vehicles sold in this country until MY 1996. Therefore, for I/M purposes, EPA does not require or recommend that pre-1996 MY vehicles be subject to OBD inspections. Additionally, EPA's MOBILE6 emission factor model will not provide emission reduction on pre-1996 MY vehicles. (Nevada DMV intends to submit final adopted regulations that are consistent with EPA's definition for OBD systems.)

programs and corresponding motor vehicle emissions budgets contained in the applicable SIP. On March 2, 1999, the United States Court of Appeals for the District of Columbia Circuit issued a decision on *Environmental Defense Fund* v. *EPA*, 167 F.3d 641 (DC Cir. 1999), that we must make an affirmative determination that motor vehicle emission budgets in submitted SIPs are adequate before transportation agencies can use those budgets in conformity determinations under the transportation conformity rule set forth in 40 CFR 93, subpart A.

Upon receipt of the 2000 CO plan, we announced receipt of the plan on the Internet and requested public comment by September 29, 2000. The November 20, 2000 letter from Amy Zimpfer to Allen Biaggi and the November 30, 2000 **Federal Register** Notice (65 FR 71313) announced our decision that the motor vehicle budgets in the CO Plan are adequate. The technical support document that was attached to the letter summarizes how the motor vehicle CO emission budgets for the years 2000, 2010 and 2020 meet the adequacy criteria contained in the conformity rule (40 CFR 93.118(e)(4)). These budgets are shown in Table 7.

TABLE 7.—LAS VEGAS VALLEY PEAK SEASON EMISSION BUDGETS

[Emissions (tons/day)]

Source category	2000	2010	2020
On-road Motor Vehicles	310.2	329.5	457.4

Source: 2000 CO Plan, Table 8–3.

The 2000 CO plan predicts that the overall downward CO emissions trend in the nonattainment area will reverse after year 2000 and will, before 2020, exceed valley-wide CO emissions estimated for 1996 (*i.e.*, 473.56 tons per day) when CO NAAQS violations were recorded; however, the results of area-wide and hot-spot modeling provided in the 2000 CO plan indicate that CO NAAQS violations would not be expected in the future despite these increases in overall CO emissions. The explanation lies in the wider geographic distribution of traffic and related CO emissions in 2020 compared to conditions that prevailed in the mid-1990's due to land use development patterns that disperse new development and related traffic congestion into outlying areas. Thus, the CO motor vehicle emission budgets in the 2000 CO plan can be approved despite the increases relative to emissions levels associated with past NAAQS violations.

We re-affirm the evaluation provided in the TSD supporting the adequacy determination and propose to approve the CO motor vehicle emission budgets (shown in Table 7, above) contained in the 2000 CO plan as meeting the purposes of section 176(c)(1) and the transportation conformity rule at 40 CFR part 93, subpart A.

L. Summary of EPA's Proposed Actions

Under section 110(k)(3) of the Act, we propose the following actions on elements of the 1995 CO plan, the vehicle I/M program for Las Vegas Valley, and the 2000 CO plan.

(1) Approval of procedural requirements, under section 110(a)(1) of the Act;

(2) Approval of baseline and projected emission inventories, under sections 172(c)(3) and 187(a)(1) of the Act and approval of reasonable further progress, under sections 172(c)(2) and 187(a)(7) of the Act;

(3) Approval of attainment demonstration, under section 187(a)(7) of the Act;

(4) Approval of revisions to the Nevada vehicle I/M program for Las Vegas Valley and Boulder City under section 187(a)(6) of the Act. Specifically, we propose to approve the statutory and regulatory basis for the revised program in NRS, title 40, section 445B.210 and sections 445B.700 through 445B.845, and title 43, sections 481.047–481.083, 482.155–482.283, 482.385, 482.461, 482.565, and 484.644–484.6441, as amended by Nevada through 2001, and NAC sections 445B.400 through 445B.735 (not including 445B.576, 445B.577, 445B.578), as amended through March 8, 2002 by SEC and DMV, and, in the case of draft revisions to NAC 445B.580, as submitted by NDEP by letter dated January 30, 2002. We will consider final action on the vehicle I/M program once we receive the final adopted version of NAC 445B.580 (and other NAC sections that specify final test procedures and equipment used for OBD checks);

(5) Approval of the State's low RVP wintertime requirement for gasoline sold in Clark County. Specifically, we propose to approve NAC 590.065 as adopted on October 28, 1998 by the State Board of Agriculture;

(6) Approval of the County's wintertime Cleaner Burning Gasoline (CBG) regulation under section 211(c)(4)(C) of the Act. Specifically, we propose to approve CCDAQM section 54 as adopted on July 24, 2001 by CCAQMB based on the condition that the State submit to EPA the CCAQMB version of the rule prior to our taking final action. CCAQMB's adopted version of the CBG rule (CCDAQM section 54) is the same as the Board of Health's CBG regulation that had been submitted to EPA in August 2000 as one of the principal control measures in the 2000 CO plan developed to meet the applicable requirements under part D of title I of the Act for the Las Vegas CO nonattainment area but for changes in the references to the applicable agency;

(7) Approval of RTC's CAT MATCH commuter incentive program under section 187(b)(2) of the Act and our voluntary mobile source emissions reduction program policy. Specifically, we propose to approve CAT MATCH guidelines as set forth in RTC's Resolution No. 177, adopted on June 10, 1999, and the commitments to implement and monitor the program, and prepare annual reports, as set forth in RTC's Resolution No. 186, adopted on June 8, 2000;

(8) Approval of the Alternative Fuels Program for government vehicles in Clark County. Specifically, we propose to approve the regulations set forth in NAC Chapter 486A, as amended through April 20, 2000 by the State Environmental Commission;

(9) Approval of a determination that stationary sources do not contribute significantly to ambient CO levels in the Las Vegas CO nonattainment area for the purposes of section 187(c) of the Act;

(10) Approval of VMT forecasts and the responsible agencies' commitments to revise and replace the VMT projections as needed and monitor actual VMT levels in the future, under section 187(a)(2)(A) of the Act. Specifically, we propose to approve RTC's commitments to prepare VMT estimates, forecasts, and annual VMT tracking reports as set forth in Resolution No. 149, as adopted on July 13, 1995;

(11) Approval of contingency measures under section 187(a)(3) of the Act. Specifically, we propose to approve the revisions to NAC 445B.580 related to implementation of OBD testing based on the draft revisions to that section submitted by NDEP under letter dated January 30, 2002 and the commitments contained in Resolution of the Clark County Board of Commissioners to Adopt the Las Vegas Valley Carbon Monoxide State Implementation Plan, adopted August 1, 2000, to monitor the emission reductions associated with the plan's control measures, to remedy in a timely fashion any shortfall, to prepare and submit a plan revision to EPA that quantifies the actual benefits of the contingency measures contained in the plan, within one year of the release date of pending applicable guidance protocols and models, and to the resolution adopted by the Nevada State Environmental Commission on April 9, 1999;

(12) Disapproval of the other two contingency measures contained in the 2000 CO plan, lower I/M program cutpoints and on-road remote sensing, but our disapproval, if finalized, would not trigger sanctions clocks because we are proposing to find that OBD II testing and related commitments themselves provide the necessary compliance with section 187(a)(3) of the Act; and

(13) Approval of the CO motor vehicle emissions budgets for 2000, 2010, and 2020 as meeting the purposes of section 176(c)(1) and the transportation conformity rule at 40 CFR part 93, subpart A. All future transportation conformity determinations for CO in Clark County must be based on the CO Complex model with MOBILE5b until the grace period for MOBILE6 has concluded.

III. Request for Public Comment

We are soliciting public comment on all aspects of this proposal. These comments will be considered before taking final action. To comment on today's proposal, you should submit comments by mail or in person (in triplicate if possible) to the **ADDRESSES** section listed in the front of this document. Your comments must be received by February 27, 2003 to be considered in the final action taken by EPA.

IV. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866, entitled "Regulatory Planning and Review."

B. Executive Order 13045

Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. This proposed rule is not subject to Executive Order 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

C. Executive Order 13132

Executive Order 13132, entitled Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612, Federalism, and 12875, Enhancing the Intergovernmental Partnership. Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by state and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by state and local governments, or EPA consults with state and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts state law unless the Agency consults with state and local officials early in the process of developing the proposed regulation.

This rule will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it merely proposes to approve a state plan implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

D. Executive Order 13175

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." This proposed rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. This action does not involve or impose any requirements that affect Indian Tribes. Thus, Executive Order 13175 does not apply to this rule.

E. Executive Order 13211

This proposed rule is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

F. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This proposed rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the state is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial

number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.*, v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

G. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to state, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule. EPA has determined that the proposed approval action does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either state, local, or tribal governments in the aggregate, or to the private sector. This Federal action proposes to approve pre-existing requirements under state or local law, and imposes no new requirements. Accordingly, no additional costs to state, local, or tribal governments, or to the private sector, result from this action.

H. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use "voluntary consensus standards" (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical. EPA believes that VCS are inapplicable to this action. Today's action does not require the public to perform activities conducive to the use of VCS.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Intergovernmental regulations, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: January 15, 2003.

Keith Takata,

Acting Regional Administrator, Region 9.

[FR Doc. 03–1774 Filed 1–27–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[AL–058–1–200312b; FRL–7444–8]

Approval and Promulgation of State Plan for Designated Facilities and Pollutants: Alabama

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve the section 111(d)/129 State Plan submitted by the Alabama Department of Environmental Management (ADEM) for the State of Alabama on February 21, 2002, for implementing and enforcing the Emissions Guidelines applicable to existing Commercial and Industrial Solid Waste Incinerators. The Plan was submitted by ADEM to satisfy Federal Clean Air Act requirements. In the Final Rules Section of this **Federal Register**, the EPA is approving the Alabama State Plan revision as a direct final rule without prior proposal because the Agency views this revision as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no significant, material, and adverse comments are received in response to this rule, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this rule. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

DATES: Written comments must be received on or before February 27, 2003.

ADDRESSES: Written comments should be addressed to: Joydeb Majumder, EPA Region 444, Air Toxics and Management Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303–8960. Copies of documents relative to this action are available for inspection during normal business hours at the above listed Region 4 location. Anyone interested in examining this document should make an appointment with the office at least 24 hours in advance.

FOR FURTHER INFORMATION CONTACT: Joydeb Majumder at (404) 562–9121 or Sean Lakeman at (404) 562–9043.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule which is published in the rules section of this **Federal Register**.

Dated: January 16, 2003.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 03–1868 Filed 1–27–03; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 03–185, MB Docket No. 03–20, RM–10634]

Television Broadcast Service; Christiansted, VI

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Virgin Blue, Inc., requesting the substitution of channel 39 for station WCVI–TV's channel 27. TV Channel 39 can be allotted to Christiansted, Virgin Islands with a zero offset consistent with the minimum distance separation requirements of sections 73.610 and 73.698 of the Commission's Rules. The coordinates for channel 39 at Christiansted are 17–44–53 N. and 64–43–40 W.

DATES: Comments must be filed on or before March 24, 2003, and reply comments on or before April 8, 2003.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Room TW–A325, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Victor A. Gold, President, WCVI–TV, PO Box 24027, Christiansted, Virgin Islands 00824 (petitioner).

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's notice of proposed rulemaking, MB Docket No.

03–20, adopted January 22, 2003, and released January 29, 2003. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC, 20554. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC, 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com*.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a notice of proposed rulemaking is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. *See* 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, *see* 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Television broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.606 [Amended]

2. Section 73.606(b), the Table of Television Allotments under Virgin Islands, is amended by removing channel 27 and adding channel 39 at Christiansted.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Division, Media Bureau.

[FR Doc. 03–1837 Filed 1–27–03; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AI25

Endangered and Threatened Wildlife and Plants; Determinations of Prudency for Two Mammal and Four Bird Species in Guam and the Commonwealth of the Northern Mariana Islands and Designations of Critical Habitat for One Mammal and Two Bird Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; reopening of comment period.

SUMMARY: We, the U.S. Fish and Wildlife Service, announce the reopening of the public comment period for the proposed rule to designate critical habitat for the Mariana fruit bat and the Guam Micronesian kingfisher on Guam, and the Mariana crow on Guam and Rota and associated draft economic analysis. The proposed designations of critical habitat were published in the **Federal Register** on October 15, 2002. The extension of the comment period and notice of availability of the draft economic analysis were published in the **Federal Register** on December 5, 2002. On December 8, 2002, Guam and Rota sustained extensive damage from Super Typhoon Pongsona and were federally declared disaster areas. The extended comment period ended on January 6, 2003; therefore, we are reopening the comment period to allow additional time for all interested parties to consider the information and submit written comments on the proposal and associated draft economic analysis. Comments previously submitted need not be resubmitted as they will be incorporated into the public record and will be fully considered in preparation of the final rule.

DATES: We will accept public comments until February 18, 2003.

ADDRESSES: Written comments and information should be submitted to Field Supervisor, U.S. Fish and Wildlife Service, Pacific Islands Office, 300 Ala Moana Blvd., PO Box 50088, Honolulu, HI 96850–0001. Copies of the draft economic analysis are available on the Internet at *http://pacificislands.fws.gov* or by request from the Field Supervisor at the above address and telephone 808/541–3441. Copies of the draft economic analysis also are available on Guam at the Belt Collins Guam Office, GCIC Building, 414 West Soledad Avenue, Hagatna, Guam, phone 671/477–6148, and on Rota at the Northern Marianas College, Tatachog Campus, Rota, telephone 670/532–9477. For further instructions on commenting, refer to Public Comments Solicited section of this notice.

FOR FURTHER INFORMATION CONTACT: Paul Henson, Field Supervisor, Pacific Islands Office, at the above address (telephone: 808/541–3441; facsimile: 808/541–3470).

SUPPLEMENTARY INFORMATION:

Background

On October 15, 2002 (67 FR 63738), we proposed designating approximately 10,053 hectares (ha) (24,840 acres (ac)) in two units on the island of Guam for the Mariana fruit bat (*Pteropus mariannus mariannus*) and the Guam Micronesian kingfisher (*Halcyon cinnamomina cinnamomina*) (67 FR 63738). For the Mariana crow (*Corvus kubaryi*), we proposed designating approximately 9,325 ha (23,042 ac) in two units on the island of Guam and approximately 2,462 ha (6,084 ac) in one unit on the island of Rota in the CNMI. On Guam, the boundaries of the proposed critical habitat units for the Mariana fruit bat and Guam Micronesian kingfisher are identical and the boundaries of the proposed critical habitat for the Mariana crow are contained within these identical boundaries. On Rota, critical habitat is proposed only for the Mariana crow.

Critical habitat receives protection from destruction or adverse modification through required consultation under section 7 of the Act (16 U.S.C. 1531 *et seq.*) with regard to actions carried out, funded, or authorized by a Federal agency. Section 4(b)(2) of the Act requires that the Secretary shall designate or revise critical habitat based upon the best scientific and commercial data available, and after taking into consideration the economic impact of specifying any particular area as critical habitat. A draft economic analysis of the proposed critical habitat designation was prepared and a notice of availability was published in the **Federal Register** on December 5, 2002 (67 FR 72407); with a request for public comment on both the proposed rule and economic analysis by January 6, 2003. The draft economic analysis shows that over a 10-year period, the estimated total direct cost on Guam would be approximately $1.4 million and the estimated total direct cost on Rota would be approximately $149,000. The draft economic analysis is available on the

Internet and from the mailing address in the Public Comments Solicited section below.

Public Comments Solicited

We are now announcing the reopening of the comment period for the proposed designation of critical habitat for the Mariana fruit bat and the Guam Micronesian kingfisher on Guam, and the Mariana crow on Guam and Rota and associated draft economic analysis. On December 8, 2002, Guam and Rota sustained extensive damage from Super Typhoon Pongsona and were declared Federal disaster areas. We are reopening the comment period until the date specified in **DATES**. The reopening of the comment period gives additional time for all interested parties to consider the information and submit written comments on the proposal and the associated draft economic analysis.

We will accept written comments and information during this reopened comment period. If you wish to comment, you may submit your comments and materials concerning this proposal by any of several methods:

(1) You may submit written comments and information to the Field Supervisor, U.S. Fish and Wildlife Service, Pacific Islands Fish and Wildlife Office, 300 Ala Moana Blvd., PO Box 50088, Honolulu, HI 96850–0001.

(2) You may send comments by electronic mail (e-mail) to: *Guam_crithab@r1.fws.gov*. If you submit comments by e-mail, please submit them as an ASCII file and avoid the use of special characters and any form of encryption. Please also include "Attn: RIN 1018–AI25" and your name and return address in your e-mail message.

(3) You may hand-deliver comments to our Honolulu Fish and Wildlife Office at the address given above.

Comments and materials received, as well as supporting documentation used in preparation of the proposal to designate critical habitat, will be available for inspection, by appointment, during normal business hours at the address under (1) above. Copies of the draft economic analysis are available on the Internet at *http://pacificislands.fws.gov* or by request from the Field Supervisor at the address under **ADDRESSES** and phone number under **FOR FURTHER INFORMATION CONTACT** above.

Author(s)

The primary author of this notice is Fred Amidon (see **ADDRESSES**).

Authority

The authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*).

Dated: January 15, 2003.

Paul Hoffman,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 03–1799 Filed 1–27–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AI46

Endangered and Threatened Wildlife and Plants; Proposed Designation of Critical Habitat for the Preble's Meadow Jumping Mouse

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; extension of public comment period and notice of availability of draft economic analysis and draft environmental assessment.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the availability of the draft economic analysis and draft environmental assessment for the proposal to designate critical habitat for the Preble's meadow jumping mouse (*Zapus hudsonius preblei*) under the Endangered Species Act of 1973, as amended. We also are providing notice of the final planned extension of the public comment period for the proposal to designate critical habitat for this species to allow all interested parties to comment on and request changes to the proposed critical habitat designation, as well as the associated draft economic analysis and environmental assessment. Over a 10-year time period, the total section 7-related direct costs associated with the Preble's meadow jumping mouse listing and critical habitat are estimated at $74 million to $172 million. Comments previously submitted need not be resubmitted as they have been incorporated into the public record as part of this extended comment period and will be fully considered in preparation of the final rule.

DATES: We will consider all comments that we receive on or before February 27, 2003. Any comments that we receive after the closing date may not be considered in the final decision on this proposal.

ADDRESSES: You may submit written comments and information to Preble's Meadow Jumping Mouse Comments, Colorado Ecological Services Field Office, U.S. Fish and Wildlife Service, 755 Parfet Street, Suite 361, Lakewood, CO 80215, or by facsimile to 303–275–2371. You may hand deliver written comments to our Colorado Ecological Services Field Office at the address given above. You may send comments by electronic mail (e-mail) to *fw6_pmjm@fws.gov*. See the "Public Comments Solicited" section below for file format and other information on electronic filing.

You may obtain copies of the draft economic analysis and draft environmental assessment, review comments and materials received, and review supporting documentation used in preparation of this proposed rule, by appointment, during normal business hours, at the U.S. Fish and Wildlife Service's Colorado Field Office. The documents also are available on the Internet at *http://mountain-prairie.fws.gov/preble*.

FOR FURTHER INFORMATION CONTACT: LeRoy Carlson, Colorado Field Supervisor, at the above address or telephone 303–275–2370.

SUPPLEMENTARY INFORMATION:

Background

The Preble's meadow jumping mouse (Preble's), a small rodent in the family Zapodidae, is known to occur only in eastern Colorado and southeastern Wyoming. It lives primarily in heavily vegetated riparian habitats and immediately adjacent upland habitats. Habitat loss and degradation caused by agricultural, residential, commercial, and industrial development resulted in the Preble's being listed as a threatened species throughout its range on May 13, 1998 (62 FR 26517).

On July 17, 2002 (67 FR 47153), we proposed to designate critical habitat for the Preble's meadow jumping mouse pursuant to the Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 *et seq.*). The proposed designation includes 19 habitat units totaling approximately 23,248 hectares (57,446 acres) found along 1,058.1 kilometers (657.5 miles) of rivers and streams in the States of Colorado and Wyoming.

Critical habitat identifies specific areas, both occupied and unoccupied, that are essential to the conservation of a listed species and that may require special management considerations or protection. If the proposed rule is made final, section 7 of the Act will prohibit destruction or adverse modification of critical habitat by any activity funded, authorized, or carried out by any Federal agency, and Federal agencies

proposing actions affecting areas designated as critical habitat must consult with us on the effects of their proposed actions, pursuant to section 7(a)(2) of the Act.

Section 4 of the Act requires that we consider economic and other relevant impacts prior to making a final decision on what areas to designate as critical habitat. We have developed a draft economic analysis and environmental assessment for the proposal to designate certain areas as critical habitat for the Preble's meadow jumping mouse. We solicit data and comments from the public on these draft documents, as well as on all aspects of the proposal. We may revise the proposal, or its supporting documents, to incorporate or address new information received during the comment period. In particular, we may exclude an area from critical habitat if we determine that the benefits of excluding the area outweigh the benefits of including the area as critical habitat, provided such exclusion will not result in the extinction of the species.

Public Comments Solicited

We intend any final action resulting from this proposal to be as accurate and as effective as possible. Therefore, we solicit comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule. We do not anticipate extending or reopening the comment period on the proposed rule after the comment period extension provided in this document ends (see **DATES**). We particularly seek comments concerning:

(1) The likely economic and other impacts on farming and ranching in Wyoming and Colorado;

(2) Costs of developing and implementing Habitat Conservation Plans for the Preble's meadow jumping mouse;

(3) Are data available to better model residential growth patterns in Boulder, Douglas, El Paso, Jefferson, Larimer, and Weld Counties, Colorado?

(4) Are data available to better model the characteristics of future developments?

(5) Are data available to better model administrative and project modification costs to developers and private landowners?

(6) Are data available to develop more accurate estimates of the number of future consultations, project modifications, and the costs for the following activities:

(i) Farm Service Agency (FSA) funding for agriculture operational improvements;

(ii) Natural Resource Conservation Service/FSA funding for voluntary conservation programs;

(iii) Grazing leases on Bureau of Land Management lands;

(iv) Utility projects, such as projects requiring a Clean Water Act section 404 permit from the Army Corps of Engineers and Federal Energy Regulatory Commission licensing of natural gas pipelines;

(v) Bank stabilization projects;

(vi) Development and implementation of Habitat Conservation Plans;

(vii) Dam/reservoir projects; and

(viii) Gravel mining projects?

(7) Specific information on additional land use practices, and current or planned activities in proposed critical habitat areas, as well as the anticipated impact of the proposed critical habitat designation on these activities.

We are also continuing to accept comments on the proposed critical habitat designation. If you wish to comment, you may submit your comments and materials concerning this proposal by any one of several methods (see **ADDRESSES**). If you would like to submit comments by electronic format, please submit them in ASCII file format and avoid the use of special characters and encryption. Please include your name and return e-mail address in your e-mail message.

Comments previously submitted need not be resubmitted as they have already been incorporated into the public record and will be fully considered in the final rule. Comments submitted during this comment period also will be incorporated into the public record and will be fully considered in the final rule. In order to comply with the terms of a settlement agreement, we are required to complete the final designation of critical habitat for the Preble's meadow jumping mouse by June 4, 2003 (Civil Action Number 00–D–1180). To meet this date, all comments or proposed revisions to the proposed rule, associated draft economic analysis, and environmental assessment need to be submitted to us during the comment period reopened by this document (see **DATES**).

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address, which we will honor to the extent allowable by law. If you wish us to withhold your name or address, you must state this request prominently at the beginning of your comments. However, we will not consider anonymous comments. To the extent consistent with applicable law, we will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

Comments and materials received, as well as supporting documentation used in preparation of the proposal to designate critical habitat, will be available for public inspection, by appointment, during normal business hours at the Colorado Field Office (see **ADDRESSES**).

Author

The primary author of this notice is the Colorado Field Office staff (see **ADDRESSES**).

Authority

The authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*).

Dated: January 22, 2003.

Craig Manson,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 03–1803 Filed 1–27–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 600

[Docket No. 020424095–2095–01; I.D. 032801B]

RIN 0648–AP25

Fishing Capacity Reduction Program for the Crab Species Covered by the Fishery Management Plan for the Bering Sea/Aleutian Islands King and Tanner Crabs

AGENCY: National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Commerce.

ACTION: Extension of public comment period on proposed rule.

SUMMARY: This document extends for 30 days the public comment period on a proposed rule for establishing a fishing capacity reduction program for the crab species managed under the Bering Sea/Aleutian Islands King and Tanner Crab Fishery Management Plan (FMP), as published on December 12, 2002.

DATES: Comments on the proposed rule will be accepted until February 27, 2003.

ADDRESSES: Mail or fax written comments about this extension or the proposed rule to Michael L. Grable. The mailing address is: Michael L. Grable, Chief, Financial Services Division, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3282. The fax number is (301) 713–1306. NMFS will not accept e-mail or internet comments.

If a comment involves any aspect of the proposed rule's collection of information requirements, send the comment both to Michael L. Grable and to the National Oceanic and Atmospheric Administration Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503. Anyone may obtain, from Michael L. Grable, the Environmental Assessment, Regulatory Impact Review, and Initial Regulatory Flexibility Analysis for this proposed rule.

Anyone wishing to contact the Restricted Access Management Program (which issues crab species fishing licenses) may do so at this address: Restricted Access Management Program, National Marine Fisheries Service, P.O. Box 21668, Juneau AK 99802–1668. The fax number is (907) 586–7354.

FOR FURTHER INFORMATION CONTACT: Michael L. Grable,(301)713–2390

SUPPLEMENTARY INFORMATION:

Background

On December 12, 2002 (67 FR 76329), NMFS published a proposed rule in the **Federal Register** that would implement regulations for a program to reduce excess capacity and promote economic efficiency in the crab fishery under the FMP. NMFS would finance the voluntary program's $100 million cost with a 30–year loan to be repaid by post-reduction fishermen. The proposed rule was corrected in the **Federal Register** on December 30, 2002 (67 FR 79550).

The deadline for comments on the proposed rule was January 27, 2003, and January 29, 2003 on the correction. This extension of the comment period until February 27, 2003 is in response to requests made by the public. Moreover, as the Bering Sea and Aleutian Islands C. opilio fishery was open during part of the original comment period, NMFS notes that an extension of comment period would give these members of the affected public a better chance to comment on the rule.

Authority: 16 U.S.C. 1801 et. seq.

Dated: January 23, 2003.

Rebecca Lent,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. 03–1908 Filed 1–27–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[ID.010303C]

Fisheries Off West Coast States and in the Western Pacific;Pacific Coast Groundfish Fishery; Application for an Exempted Fishing Permit

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of receipt of three exempted fishing permits (EFP) applications; request for comments.

SUMMARY: NMFS announces the receipt of three EFP applications from the Washington State Department of Fish and Wildlife. If awarded, these EFPs would allow vessels with valid Washington State delivery permits to harvest and retain federally managed groundfish in closed rockfish conservation areas and to retain federally managed groundfish species in excess of cumulative trip limits. These activities are otherwise prohibited. Vessels fishing under these EFPs will be required to carry either a State-sponsored sampler or a Federal observer while conducting EFP fishing. Samplers/observers will collect catch and effort data and retain specimens from catch that is generally discarded at sea and is otherwise not available at the shoreside processing facility. These EFP proposals are intended to promote the objectives of the Pacific Coast Groundfish Fishery Management Plan (FMP) by providing much needed data on total catch and incidental catch rates by fishing strategy.

DATES: Comments must be received by February 12, 2003.

ADDRESSES: Copies of the EFP applications are available from Becky Renko Northwest Region, NMFS, 7600 Sand Point Way N.E., Bldg. 1, Seattle, WA 98115–0070.

FOR FURTHER INFORMATION CONTACT: Becky Renko (206)526–6110 or Carrie Nordeen (206) 526–6144.

SUPPLEMENTARY INFORMATION: This action is authorized by the FMP and implementing regulations at 50 CFR 600.745 and 50 CFR 660.350.

On December 12, 2002, NMFS received three completed EFP applications from the Washington State Department of Fish and Wildlife. The primary purpose of the exempted fishing activity is to measure bycatch rates for overfished and other rockfish species associated with the fishing strategies currently used to harvest dogfish shark, walleye pollock, and arrowtooth flounder.

Each EFP requires that the participating vessels carry a State-sponsored sampler or Federal groundfish observer to collect data from which incidental catch rates and total catch of various species and species groups can be estimated. Samplers/observers would also collect and retain specimens, that may not be kept under current regulations. Because the retention of such fish is prohibited by Federal regulations, an EFP is needed to allow State-sponsored samplers to retain these specimens. To the extent possible, data provided by the State-sponsored samplers will be compatible with that collected by the NMFS coastwide observer program. The information gathered through these EFPs may lead to future rulemakings.

At the Pacific Fishery Management Council's (Council) November 2002, meeting in Foster City, CA, the applicants presented the EFP applications. The Council considered the applications and recommended that NMFS issue the EFPs for the proposed activity. All EFP harvests are expected to be within set asides optimum yields (OYs) for 2003 EFP harvests and, therefore, no OY is expected to be exceeded. Copies of the applications are available for review from NMFS (see **ADDRESSES**).

Spiny Dogfish (*Squalus acanthias*)

Spiny dogfish is an abundant and important species in the groundfish fishery off Washington State. Fixed gear is used to directly harvest spiny dogfish. For 2003, fishing with fixed gear in areas where spiny dogfish have historically been harvested will be prohibited because the areas fall within the Non-trawl Rockfish Conservation Area. Rockfish conservation areas are large-scale depth-related areas where low abundance groundfish species are commonly found. Little is known about the bycatch catch rates of other groundfish, including overfished species, by vessels specifically targeting spiny dogfish. However, fishers believe that spiny dogfish can be harvested with much lower bycatch rates than are currently assumed.

If the permit is issued, this EFP will allow approximately 3 vessels, which have historically harvested spiny dogfish, to use fixed gear to directly harvest spiny dogfish and to retain and land groundfish in excess of trip limits taken in a Non-trawl Rockfish Conservation Area. These activities are otherwise prohibited by Federal regulations. Fishing under the proposed EFP would occur between February 1 and May 31, 2003. Vessels would be required to retain all groundfish and the proceeds from the sale of groundfish in excess of current trip limits, other than spiny dogfish, would be forfeited to the State of Washington. All fishing by participating vessels, EFP and non-EFP fishing, during the effective dates of the EFP would be restricted to waters north of 46°16′N. lat.

There will be no monthly limit on the harvest of spiny dogfish, but the harvest of spiny dogfish will be constrained by limits for yelloweye and canary rockfish. If any of the individual limits are reached for an overfished species, the EFP will be terminated. If a permitted vessel harvests 125 lbs (56.7 kg) of canary rockfish or 500 lbs (227 kg) of yelloweye rockfish, the vessels cannot fish in the Non-trawl Rockfish Conservation Area for the rest of that month.

Data collected during this project are expected to have a broad significance to the management of the groundfish fishery by providing much needed information on: (1) total catch by vessels directly harvesting spiny dogfish, (2) catch rates of incidentally caught species, including canary, yelloweye and other rockfish by fishing location, (3) age structure data that is otherwise not available, and (4) the feasibility of a full retention program.

Walleye Pollock (*Theragra chalcogramma*)

In July 2002, three vessels used midwater trawl gear to harvest walleye pollock off the northern coast of Washington State. The walleye pollock stock is primarily found off the west coast of Vancouver island. However, harvestable amounts of walleye pollock move south into Washington waters every 5 to 7 years. Historical harvests of walleye pollock occurred in the area which was designated as the Trawl Rockfish Conservation Area in the 2003 emergency rule (68 FR 544, January 6, 2003). When fishers harvest walleye pollock, which is not a groundfish, they incidentally encounter groundfish such as Pacific whiting, yellowtail rockfish and spiny dogfish.

An EFP is necessary to allow walleye pollock vessels to fish within the Trawl Rockfish Conservation Area with midwater trawl gear and to delay complete sorting of their catch until the point of offloading. An EFP is needed to delay sorting because regulations prohibit the retention of groundfish (except spiny dogfish) taken in a closed area or the retention of groundfish in excess of cumulative trip limits if taken outside the conservation areas.

If the permit is issued, approximately 3 vessels are expected to fish under this EFP. Vessels would be required to retain all groundfish, except spiny dogfish, and the proceeds from the sale of groundfish landed in excess of trip limits would be forfeited to the State of Washington. Fishing under the proposed EFP would occur between February 1 and June 30, 2003. All fishing by participating vessels, EFP and non-EFP fishing, during the effective dates of the EFP would be restricted to waters north of 46°16′ N. lat.

There will be no monthly limit on the harvest of walleye pollock, but the harvest of pollock will be constrained by limits for widow and canary rockfish. If any of the individual limits are reached for an overfished species, the EFP will be terminated.

Data collected during this project are expected to have a broad significance to the management of the groundfish fishery by providing much needed information on: (1) total catch of groundfish in the walleye pollock fishery, (2) catch rates of incidentally caught groundfish species by fishing location, and (3) the feasibility of a full retention program.

Arrowtooth Flounder (*Atheresthes stomias*)

Fishing for arrowtooth flounder, which is an abundant and commercially important groundfish species off Washington, is constrained by efforts to rebuild canary rockfish, an overfished species. Fishers who have historically targeted arrowtooth flounder believe that the fishery can be prosecuted with a much lower rockfish bycatch rate than is currently assumed. Similar EFPs, that yielded valuable data on the arrowtooth flounder fishery, were issued in 2001 and 2002.

If the permit is issued, this EFP would allow approximately 6 vessels, which have historically participated in the arrowtooth flounder fisheries to: fish for arrowtooth flounder within a restricted rockfish conservation area; retain groundfish taken within a rockfish conservation area; and retain and sell arrowtooth flounder and petrale sole in excess of cumulative trip limits. These activities are otherwise prohibited by Federal regulations. Other than the proceeds from the sale of arrowtooth flounder and petrale sole, proceeds from the sale of rockfish in excess of current trip limits would be forfeited to the State of Washington.

There will be no monthly limit on the harvest of arrowtooth flounder, but the harvest of arrowtooth flounder will be constrained by canary rockfish. If any of the individual limits are reached for an overfished species, the EFP will be terminated.

Fishing under the proposed EFP would occur between May 1 and August 31, 2003. All fishing by participating vessels, EFP and non-EFP fishing, during the effective dates of the EFP would be restricted to waters north of 46°16′ N. lat.

Data collected during this project are expected to have a broad significance to the management of the groundfish fishery by providing much needed information on: (1) total catch in the northern flatfish fisheries, (2) catch rates of incidentally caught species, including canary, yelloweye and darkblotched rockfish by fishing location, and (3) age structure data that is otherwise not available.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: January 22, 2003.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service

[FR Doc. 03–1909 Filed 1–27–03; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register
Vol. 68, No. 18
Tuesday, January 28, 2003

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

AGENCY FOR INTERNATIONAL DEVELOPMENT

Notice of Public Information Collection Requirements Submitted to OMB for Review

SUMMARY: U.S. Agency for International Development (USAID) has submitted the following information collection to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding this information collection are best assured of having their full effect if received within 30 days of this notification. Comments should be addressed to: Desk Officer for USAID, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503. Copies of submission may be obtained by calling (202) 712–1365.

SUPPLEMENTARY INFORMATION:

OMB Number: OMB 0412–0014

Form Number: AID 1550–6

Title: Voluntary Agency Quarterly Report of Shipping Activity.

Type of Submission: Renewal of Information Collection.

Purpose: The U.S. Agency for International Development's Ocean Freight program reimburses approved Private and Voluntary Organizations (PVOs) registered with the Agency for their transportation costs incurred when transporting donated goods overseas. To effectively monitor the program, USAID has developed a proposal solicitation package and a monitoring document to collect necessary information from qualified and interested PVOs.

Annual Reporting Burden:

Respondents: 50.

Total annual responses: 200.

Total annual hours requested: 3,200 hours.

Dated: January 22, 2003.

Joanne Paskar,

Chief, Information and Records Division, Office of Administrative Services, Bureau for Management.

[FR Doc. 03–1855 Filed 1–27–03; 8:45 am]

BILLING CODE 6116–01–M

AGENCY FOR INTERNATIONAL DEVELOPMENT

Notice of Meeting

Pursuant to the Federal Advisory Committee Act, notice is hereby given of a meeting of the Advisory Committee on Voluntary Foreign Aid (ACVFA).

Date: February 11, 2003 (8:30 a.m. to 5 p.m.).

Location: National Press Club, 529 14th St., NW., 13th Floor, Washington, DC.

This meeting will feature discussion of public diplomacy and foreign aid in the national interest, including the report "Foreign Aid in the National Interest" just issued by the U.S. Agency for International Development. Participants will have an opportunity to ask questions of the speakers and to discuss the issues in more depth in small groups.

The meeting is free and open to the public. Persons wishing to attend the meeting can fax or e-mail their name to Brenda Jackson, 202–347–9212, *pvcsupport@datexinc.com.*

Dated: January 28, 2003.

Noreen O'Meara,

Executive Director, Advisory Committee on Voluntary Foreign Aid (ACVFA).

[FR Doc. 03–1856 Filed 1–27–03; 8:45 am]

BILLING CODE 6116–01–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 03–003–1]

Availability of an Environmental Assessment for Field Testing West Nile Virus Vaccine

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that the Animal and Plant Health Inspection Service has prepared an environmental assessment concerning authorization to ship for the purpose of field testing, and then to field test, an unlicensed West Nile Virus Vaccine for use in horses. The environmental assessment, which is based on a risk analysis prepared to assess the risks associated with the field testing of this vaccine, examines the potential effects that field testing this veterinary vaccine could have on the quality of the human environment. Based on the risk analysis, we have reached a preliminary determination that field testing this veterinary vaccine will not have a significant impact on the quality of the human environment, and that an environmental impact statement need not be prepared. We intend to authorize shipment of this vaccine for field testing following the close of the comment period for this notice unless new substantial issues bearing on the effects of this action are brought to our attention. We also intend to issue a U.S. Veterinary Biological Product license for this vaccine, provided the field test data support the conclusions of the environmental assessment and the issuance of a finding of no significant impact and the product meets all other requirements for licensure.

DATES: We will consider all comments that we receive on or before February 27, 2003.

ADDRESSES: You may submit comments by postal mail/commercial delivery or by e-mail. If you use postal mail/commercial delivery, please send four copies of your comment (an original and three copies) to: Docket No. 03–003–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 03–003–1. If you use e-mail, address your comment to *regulations@aphis.usda.gov.* Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and "Docket No. 03–003–1" on the subject line.

You may read the environmental assessment, the risk analysis (with confidential business information removed), and any comments that we receive in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room

hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

You may request a copy of the environmental assessment (as well as the risk analysis with confidential business information removed) by writing to Dr. Larry R. Ludemann, USDA, APHIS, VS, CVB–LPD, 510 South 17th Street, Suite 104, Ames, IA 50010, or by calling (515) 232–5785. Please refer to the docket number, date and complete title of this of this notice when requesting copies.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at *http://www.aphis.usda.gov/ppd/rad/webrepor.html*.

FOR FURTHER INFORMATION CONTACT: Dr. Albert P. Morgan, Chief Staff Officer, Operational Support Section, Center for Veterinary Biologics, Licensing and Policy Development, VS, APHIS, USDA, 4700 River Road Unit 148 , Riverdale, MD 20737–1231; phone (301) 734–8245; fax (301) 734–4314. For information regarding the environmental assessment or the risk analysis, contact Dr. Larry R. Ludemann, USDA, APHIS, VS, CVB–LPD, 510 South 17th Street, Suite 104, Ames, IA 50010; (515) 232–5785.

SUPPLEMENTARY INFORMATION: Under the Virus-Serum-Toxin Act (21 U.S.C. 151 *et seq.*), a veterinary biological product must be shown to be pure, safe, potent, and efficacious before a veterinary biological product license may be issued. A field test is generally necessary to satisfy prelicensing requirements for veterinary biological products. Prior to conducting a field test on an unlicenced product, an applicant must obtain approval from the Animal and Plant Health Inspection Service (APHIS), as well as obtain APHIS' authorization to ship the product for field testing.

To determine whether to authorize shipment and grant approval for the field testing of the unlicenced product referenced in this notice, APHIS conducted a risk analysis to assess the potential effects of this product on the safety of animals, public health, and the environment. Based on the risk analysis, APHIS has prepared an environmental assessment (EA) concerning the field testing of the following unlicenced veterinary biological product:

Requester: Fort Dodge Animal Health, Inc.

Product: West Nile Virus Vaccine, DNA Vaccine, Code 1995.D0.

Field Test Locations: California, Kansas, Kentucky, Maryland, Ohio, and Oklahoma.

The above-mentioned product is an *Esherichia coli* plasmid containing the prM and E genes of the West Nile virus. The vaccine is for use in horses as an aid in the prevention of viremia associated with West Nile virus infection.

The EA has been prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provision of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

Unless substantial issues with adverse environmental impacts are raised in response to this notice, APHIS intends to issue a finding of no significant impact (FONSI) based on the EA and authorize shipment of the above product for the initiation of field tests following the close of the comment period for this notice.

Because the issues raised by field testing and by issuance of a license are identical, APHIS has concluded that the EA that is generated for field testing would also be applicable to the proposed licensing action. Provided that the field test data support the conclusions of the original EA and the issuance of a FONSI, APHIS does not intend to issue a separate EA and FONSI to support the issuance of the product license, and would determine that an environmental impact statement need not be prepared. APHIS intends to issue a veterinary biological product license for this vaccine following completion of the field test provided no adverse impacts on the human environment are identified and provided the product meets all other requirements for licensure.

Authority: 21 U.S.C. 151–159.

Done in Washington, DC, this 22nd day of January, 2003.

Bobby R. Acord,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 03–1864 Filed 1–27–03; 8:45 am]

BILLING CODE 3410–34–M

DEPARTMENT OF AGRICULTURE

Forest Service

Record of Decision on the Woodpecker Project Area Final Environmental Impact Statement

AGENCY: Forest Service, USDA.

ACTION: Notice; record of decision.

SUMMARY: The USDA Forest Service, Tongass National Forest, has prepared the record of decision for the Woodpecker Project Area. The project area is located within the Petersburg Ranger District, on Mitkof Island, about 27 miles south of Petersburg, Alaska. Thomas Puchlerz, Forest Supervisor for the Tongass National Forest, has selected a modification of Alternative 6 from the final Environmental Impact Statement (final EIS, August 2001). This decision includes: (a) Harvest of approximately 5.4 million board feet of timber from approximately 400 acres, (b) parking turnouts, (c) improvement of dispersed recreation use areas, (d) closure of approximately ten miles of existing road for watershed improvement, and (e) adjustment of three small old-growth habitat reserves. Approximately 2.5 miles of temporary road will be constructed to access the timber. No new classified road designed for long-term use will be constructed. An existing log transfer facility will be used.

DATES: The legal notice of this decision was published in the *Juneau Empire*, the newspaper of record, published in Juneau, Alaska, on January 23, 2003. This began the 45-day appeal period, which will close on Monday, March 10, 2003. This decision may be implemented no sooner than 5 business days after close of the appeal period, if no appeal is received. If an appeal is received, this decision may be implemented no sooner than 15 days following disposition of the appeal.

ADDRESSES: Requests for copies of the record of decision of final EIS may be directed to: Cynthia Sever, Petersburg Ranger District, P.O. Box 1328, Petersburg, Alaska 99833, Phone (907) 772–3871; fax (907) 772–5995; or e-mail *csever@fs.fed.us*. The Responsible Official is Thomas Puchlerz, Forest Supervisor, Tongass National Forest, 648 Mission Street, Ketchikan, AK 99901. The Regional Forester is the Appeal Deciding Officer. Written notices of appeal must be addressed to: Regional Forester, Alaska Region, USDA, Forest Service, P.O. Box 21628, Juneau, AK 99802–1628.

FOR FURTHER INFORMATION CONTACT: Requests for further information

concerning the final EIS or the record of decision may be directed to Patricia Grantham, District Ranger, or Cynthia Sever, Interdisciplinary Team Leader, Petersburg Ranger District, 907–772–3871. Copies of the record of decision have been mailed directly to those people who requested to be on the project mailing list. Additional copies may be obtained from the Petersburg Ranger District or reviewed at public libraries throughout southeast Alaska. The record of decision is also posted on the Tongass National Forest website at *www.fs.fed.us/r10/tongass.*

SUPPLEMENTARY INFORMATION:

Background: The August 13, 2001 record of decision for the Woodpecker Project Area was reversed on appeal because of some data discrepancies in the final EIS. A supplemental information report was prepared to determine whether these discrepancies influenced the effects analysis. This review concluded that only minor changes to information in the final EIS were necessary, and that the analysis presented in the final EIS was valid. The modifications to Alternative 6 for this record of decision were made to comply with the injunction issued on April 26, 2002, by the U.S. District Court, District of Alaska, in *Sierra Club* v. *Rey* (J00–0009 CV (JKS)). The Selected Alternative includes timber harvest and road construction only within roaded areas, as defined by the court. This decision is subject to administrative review (appeal) pursuant to 36 CFR part 215. The legal notice of this decision was published in the *Juneau Empire,* the newspaper of record, published in Juneau, Alaska, on January 23, 2003. The 45-day appeal filing period will close on Monday, March 10, 2003. A written notice of appeal that includes sufficient evidence of why this decision should be changed and requirements of 36 CFR part 215 must be postmarked by this date and filed with the Appeal Deciding Officer: Regional Forester, Alaska Region, USDA Forest Service, PO Box 21628, Juneau, AK 99802–1628.

Responsible Official: Thomas Puchlerz, Forest Supervisor, Tongass National Forest, Federal Building, Ketchikan, Alaska 99901, is the responsible official.

(Authority: 40 CFR 1505.2 and 1506.6; Forest Service Handbook 1909.15, section 28)

Dated: January 21, 2003.

Thomas Puchlerz,

Forest Supervisor.

[FR Doc. 03–1822 Filed 1–27–03; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Mineral County Resource Advisory Committee Meeting

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committee Act (Pub. L. 92–463) and under the Secure Rural Schools and Community Self-Determination Act of 2000 (Pub. L. 106–393) the Lolo National Forest's Mineral County Resource Advisory Committee will meet on February 4 and March 4 at 6 p.m. until 8 p.m. in Superior, Montana for a business meeting. The meeting is open to the public.

DATES: February 4, 2003, and March 4, 2003.

ADDRESSES: The meeting will be held at the Mineral County Courthouse, 300 River Street, Superior, MT 59872.

FOR FURTHER INFORMATION CONTACT: Robert Harper, Designated Forest Official (DFO), District Ranger, Superior District, Lolo National Forest at (406) 822–4233.

SUPPLEMENTARY INFORMATION: Agenda topics for these meeting include the presentation of new project proposals and selection of proposals. If the meeting location is changed, notice will be posted in local newspaper, including the Mineral Independent and the Missoulian.

Dated: January 21, 2003.

Deborah L. R. Austin,

Designated Federal Official.

[FR Doc. 03–1806 Filed 1–27–03; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Notice of Intent to Write an Environmental Impact Statement (EIS) for Williamson River Delta Restoration Project

AGENCY: Natural Resources Conservation Service, USDA.

ACTION: Notice of intent to write an Environmental Impact Statement (EIS) for the Williamson River Delta Restoration Project and requesting public comment. A public meeting will be held at the Chiloquin High School Library on January 28, 2003, at 7 p.m. (*see* Web site below for more information).

SUMMARY: The NRCS is seeking public comment for the next phase of the stream restoration project on the Williamson River Delta. The full notice of intent can be found at the following website: *http://www.or.nrcs.usda.gov.*

DATES: Comments will be received for a 45-day period beginning January 29, 2003, through March 15, 2003.

ADDRESSES: Address all requests and comments to Kevin Conroy, Basin Team Leader, Natural Resources Conservation Service (NRCS), 2316 South 6th St., Suite C, Klamath Falls, OR 97601, 541–882–9044 (FAX).

FOR FURTHER INFORMATION CONTACT: Kevin Conroy, 541–883–6924.

Dated: January 22, 2003.

Bob Graham,

State Conservationist, Portland, OR.

[FR Doc. 03–1885 Filed 1–27–03; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Notice for Requests for Proposals for Guaranteed Loans Under the Section 538 Guaranteed Rural Rental Housing Program (GRRHP) for Fiscal Year 2003; Correction

AGENCY: Rural Housing Service, USDA.

ACTION: Notice; correction.

SUMMARY: The Rural Housing Service (RHS) is correcting a notice published December 27, 2002 (67 FR 79038–79042). This action is taken to add a priority criteria for the selection of projects requesting interest credit assistance and increase the threshold score for the interest credit award.

Accordingly, the notice published December 27, 2002 (67 FR 79038–79042), is corrected as follows:

On page 79039 in the second column, fifth full paragraph, revise the number "55" to read "65".

On page 79041 in the first column, second paragraph, revise the word "six" to read "seven".

On page 79041 in the third column after the second full paragraph, add the following:

"*Priority 7*—RHS will award points for interest rates charged above the applicable federal rate at the time of loan closing as follows:

Interest rate	Points
More than 250 basis points	–20
200 to 250 basis points, inclusive ..	5
100 to 199 basis points, inclusive ..	10
0 to 99 basis points, inclusive	15

."

Dated: January 16, 2003.

Arthur A. Garcia,

Administrator, Rural Housing Service.

[FR Doc. 03–1833 Filed 1–27–03; 8:45 am]

BILLING CODE 3410–XV–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 2–2003]

Foreign-Trade Zone 14—Little Rock, Arkansas, Application for Subzone, Lion Oil Co., (Oil Refinery), El Dorado, AR

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Arkansas Department of Economic Development, grantee of FTZ 14, requesting special-purpose subzone status for the oil refining facilities of Lion Oil Company (Lion), located in El Dorado, Arkansas. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on January 15, 2003.

The refinery complex (65,000 BPD capacity, 651,000 barrel storage capacity) consists of three sites in Union and Columbia Counties, Arkansas: Site 1 (407 acres)—main refinery complex, and Sand Hill Terminal located at 1000 McHenry Avenue, El Dorado; Site 2 (26 acres)—Amoco Station storage facility, located on American Road in El Dorado; Site 3 (42 acres)—Magnolia Station storage facility, located on Highway 25 in Magnolia. The refinery (412 employees) is used to produce fuels and other petroleum products. Products include gasoline, diesel, distillates, propane, propane/propylene mix, asphalts and sulfur. Some 60 percent of the crude oil (96 percent of inputs) is sourced abroad.

Zone procedures would exempt the refinery from Customs duty payments on the foreign products used in its exports. On domestic sales, the company would be able to choose the Customs duty rates that apply to certain petroleum products and refinery by-products (duty-free) by admitting incoming foreign crude in non-privileged foreign status. The duty rates on inputs range from 5.25 cents/barrel to 10.5 cents/barrel. The application indicates that the savings from zone procedures would help improve the plant's international competitiveness.

In accordance with the Board's regulations, a member of the FTZ staff has been appointed examiner to investigate the application and report to the Board. Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at one of the following addresses:

1. Submissions Via Express/Package Delivery Services: Foreign-Trade-Zones Board, U.S. Department of Commerce, Franklin Court Building—Suite 4100W, 1099 14th St. NW., Washington, DC 20005; or

2. Submissions Via the U.S. Postal Service: Foreign-Trade-Zones Board, U.S. Department of Commerce, FCB—Suite 4100W, 1401 Constitution Ave. NW., Washington, DC 20230.

The closing period for their receipt is March 31, 2003. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to April 14, 2003).

A copy of the application and accompanying exhibits will be available for public inspection at the Office of the Foreign-Trade Zones Board's Executive Secretary at the first address listed above, and at the U.S. Department of Commerce Export Assistance Center, 425 West Capital Avenue, Suite 700, Little Rock, AR 72201.

Dated: January 16, 2003.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 03–1904 Filed 1–27–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1264]

Grant of Authority for Subzone Status, Deepsea Flexibles, Inc., Galveston, Texas; Correction

The **Federal Register** notice (68 FR 2313, 1/16/03) describing Foreign-Trade Zones Board Order 1264, authorizing special-purpose subzone status for the Deepsea Flexibles, Inc. facility in Galveston, Texas (Subzone 36A), is corrected as follows:

Paragraph 8 should read "Signed at Washington, DC, this 8th day of January, 2003."

Dated: January 16, 2003.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 03–1903 Filed 1–27–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

National Infrastructure Advisory Council; Notice of Open Meeting

The National Infrastructure Advisory Council (NIAC) will meet on Friday, February 7, 2003, at 12 p.m.–1:30 p.m. The meeting will be open to public access via conference call. Members of the public interested in attending by telephone should call (toll free) 1–888–899–7785 or (toll) 1–913–312–4169 and, when prompted, enter pass code 1468517.

The Council advises the President of the United States on the security of information systems for critical infrastructure supporting other sectors of the economy, including banking and finance, transportation, energy, manufacturing, and emergency government services.

Agenda

I. Introduction of NIAC Members.

II. Welcoming remarks—Richard Clarke, Special Advisor to the President for Cyberspace Security; Executive Director, NIAC.

III. Welcoming remarks—Richard Davidson, Chairman, NIAC.

IV. Discussion of future topics for study:

a. Internet Protocol Version 6.0.

b. Responsible disclosure of cyber attacks/incidents.

V. Comments.

VI. Adjournment.

Written comments may be submitted at any time before or after the meeting. However, to facilitate distribution of public presentation materials to Council members, the Council suggests that presenters forward the public presentation materials, ten days prior to the meeting date, to the following address: Ms. Wanda Rose, Critical Infrastructure Assurance Office, Bureau of Industry and Security, U.S. Department of Commerce, Room 6095, 14th Street & Constitution Avenue, NW., Washington, DC. 20230.

For more information contact Wanda Rose at (202) 482–7481.

Dated: January 21, 2003.

Janice L. Pesgna,

Acting Council Liaison Officer.

[FR Doc. 03–1779 Filed 1–24–03; 9:43 am]

BILLING CODE 3510–JT–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A-570–873]

Notice of Amended Final Antidumping Duty Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Ferrovanadium From the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Amended Final Antidumping Duty Determination of Sales at Less Than Fair Value and Antidumping Duty Order.

SUMMARY: We are amending our final determination (*See Notice of Final Determination of Sales at Less Than Fair Value: Ferrovanadium from the People's Republic of China*, 67 FR 71137 (November 29, 2002) (*Final Determination*)) to reflect the correction of certain ministerial errors. This correction is in accordance with section 735(e) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.224. The period of investigation (POI) covered by this amended final determination is April 1, 2001, through September 30, 2001. This notice also constitutes the antidumping duty order with respect to ferrovanadium from the People's Republic of China (the PRC).

EFFECTIVE DATE: January 28, 2003.

FOR FURTHER INFORMATION CONTACT: Karine Gziryan or Howard Smith; AD/CVD Enforcement, Office 4, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–4081 and (202) 482–5193, respectively.

SUPPLEMENTARY INFORMATION:

Scope of the Order

The scope of this order covers all ferrovanadium regardless of grade, chemistry, form, shape, or size. Ferrovanadium is an alloy of iron and vanadium that is used chiefly as an additive in the manufacture of steel. The merchandise is commercially and scientifically identified as vanadium. The scope specifically excludes vanadium additives other than ferrovanadium, such as nitrided vanadium, vanadium-aluminum master alloys, vanadium chemicals, vanadium oxides, vanadium waste and scrap, and vanadium-bearing raw materials such as slag, boiler residues and fly ash. Merchandise under the following Harmonized Tariff Schedule of the United States (HTSUS) item numbers 2850.00.2000, 8112.40.3000, and 8112.40.6000 are specifically excluded. Ferrovanadium is classified under HTSUS item number 7202.92.00. Although the HTSUS item number is provided for convenience and Customs purposes, the Department's written description of the scope of this order remains dispositive.

Amended Final Determination

On November 29, 2002, in accordance with sections 735(d) and 777(i)(1) of the Act, the Department published its affirmative final determination in this proceeding. *See Final Determination*, 67 FR 71137. Pursuant to 19 CFR 351.224(c), on December 5, 2002, the Department received timely filed allegations of ministerial errors in the *Final Determination* from the petitioners[1] and the respondent, Pangang Group International Economic & Trading Corp. (Pangang). The petitioners alleged that the Department inadvertently failed to (1) exclude aberrational data from the calculation of the surrogate value for sulfuric acid, (2) remove all subsidized imports from the import statistics used to calculate the surrogate value for wooden boxes, and (3) accurately convert the unit of measure for Pangang's consumption of nitrogen. Pangang alleged that the Department failed to (1) accurately calculate the surrogate value for barium peroxide and (2) calculate normal value using the correct consumption quantities for the auxiliary materials used to produce FeV_{80}. On December 10, 2002, Pangang filed rebuttal comments in response to the petitioners' allegation of ministerial errors.

We have reviewed the calculations used in the *Final Determination* and find that there are two errors that constitute ministerial errors within the meaning of 19 CFR 351.224(f). For a detailed analysis of the ministerial error allegations and the Department's position on each, *see* Memorandum to Faryar Shirzad, Assistant Secretary for Import Administration, from Bernard T. Carreau, Deputy Assistant Secretary for Import Administration, "Allegation of Ministerial Errors in the Final Determination," dated concurrently with this notice. Pursuant to section 735(e) of the Act, we have amended the *Final Determination* and corrected the following errors: (1) the calculation of the surrogate value for barium peroxide and (2) the auxiliary material consumption quantities for FeV_{80}. Correcting these errors changes Pangang's final antidumping duty margin from 13.03 percent to the margin listed below. We found the petitioners' allegations to involve methodological issues, rather than ministerial errors, and therefore have not adjusted Pangang's final antidumping duty margin based on the petitioners' allegations.

[1] The petitioners in this proceeding are the Ferroalloys Association Vanadium Committee (TFA Vanadium Committee) and its members: Bear Metallurgical Company, Shieldalloy Metallurgical Corporation, Gulf Chemical & Metallurgical Corporation, U.S. Vanadium Corporation, and CS Metals of Louisiana LLC.

Antidumping Duty Order

On January 13, 2003, in accordance with section 735(d) of the Act, the International Trade Commission (the Commission) notified the Department of its final determination that an industry in the United States is materially injured by reason of less-than-fair-value imports of subject merchandise from the PRC, pursuant to section 735(b)(1)(A) of the Act. Therefore, in accordance with section 736(a)(1) of the Act, the Department will direct the U.S. Customs Service to assess, upon further advice by the Department, antidumping duties equal to the amount by which the normal value of the merchandise exceeds the export price of the merchandise for all relevant entries of ferrovanadium from the PRC. For all producers and exporters, antidumping duties will be assessed on all unliquidated entries of subject merchandise that are entered, or withdrawn from warehouse, for consumption on or after July 8, 2002, the date on which the Department published its notice of affirmative preliminary determination in the **Federal Register**. *See Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Ferrovanadium from the People's Republic of China*, 67 FR 45088 (July 8, 2002).

On or after the date of publication of this notice in the **Federal Register**, the U.S. Customs Service must require, at the same time as importers would normally deposit estimated duties, cash deposits for the subject merchandise equal to the estimated weighted-average dumping margins listed below. The "PRC-Wide" rate applies to all exporters of subject merchandise not specifically listed below.

Manufacturer/exporter	Margin (%)
Pangang Group International Economic & Trading Corporation	12.97
PRC-Wide Rate	66.71

This notice constitutes the antidumping duty order with respect to ferrovanadium from the PRC. Interested parties may contact the Department's Central Records Unit, Room B-099 of the main Commerce building, for copies of an updated list of antidumping duty orders currently in effect.

This order is issued and published in accordance with section 736(a) of the Act and 19 CFR 351.211.

Dated: January 21, 2003.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 03–1900 Filed 1–27–03; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A-791–815]

Notice of Antidumping Duty Order: Ferrovanadium from the Republic of South Africa

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Antidumping Duty Order: Ferrovanadium from the Republic of South Africa.

EFFECTIVE DATE: January 28, 2003.

FOR FURTHER INFORMATION CONTACT: Mark Manning or Crystal Scherr Crittenden; AD/CVD Enforcement, Office 4, Group II, Import Administration, International Trade Administration; U.S. Department of Commerce, 14th Street and Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–5253 or (202) 482–0989, respectively.

SUPPLEMENTARY INFORMATION:

Scope of the Order

The scope of this order covers all ferrovanadium regardless of grade, chemistry, form, shape, or size. Ferrovanadium is an alloy of iron and vanadium that is used chiefly as an additive in the manufacture of steel. The merchandise is commercially and scientifically identified as vanadium. It specifically excludes vanadium additives other than ferrovanadium, such as nitrided vanadium, vanadium-aluminum master alloys, vanadium chemicals, vanadium oxides, vanadium waste and scrap, and vanadium-bearing raw materials such as slag, boiler residues and fly ash. Merchandise under the following Harmonized Tariff Schedule of the United States (HTSUS) item numbers 2850.00.2000, 8112.40.3000, and 8112.40.6000 are specifically excluded. Ferrovanadium is classified under HTSUS item number 7202.92.00. Although the HTSUS item number is provided for convenience and Customs purposes, the Department's written description of the scope of this order remains dispositive.

Antidumping Duty Order

On January 13, 2003, in accordance with section 735(d) of Tariff Act of 1930, as amended (the Act), the International Trade Commission (the Commission) notified the Department of Commerce (the Department) of its final determination that an industry in the United States is materially injured by reason of less-than-fair-value imports of subject merchandise from South Africa, pursuant to section 735(b)(1)(A) of the Act. Therefore, in accordance with section 736(a)(1) of the Act, the Department will direct the U.S. Customs Service to assess, upon further advice by the Department, antidumping duties equal to the amount by which the normal value of the merchandise exceeds the U.S. price of the merchandise for all relevant entries of ferrovanadium from South Africa. For all producers and exporters, antidumping duties will be assessed on all unliquidated entries of subject merchandise that are entered, or withdrawn from warehouse, for consumption on or after July 8, 2002, the date on which the Department published its notice of affirmative preliminary determination in the **Federal Register**. *See Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Ferrovanadium from the Republic of South Africa*, 67 FR 45083 (July 8, 2002).

On or after the date of publication of this notice in the **Federal Register**, the U.S. Customs Service must require, at the same time as importers would normally deposit estimated duties, cash deposits for the subject merchandise equal to the estimated weighted-average dumping margins listed below. The "All Others" rate applies to all exporters of subject merchandise not specifically listed below.

Manufacturer/exporter	Margin (percent)
Highveld Steel and Vanadium Corporation, Ltd.	116.00
Xstrata South Africa (Proprietary) Limited.	116.00
All Others	116.00

This notice constitutes the antidumping duty order with respect to ferrovanadium from the Republic of South Africa. Interested parties may contact the Department's Central Records Unit, Room B-099 of the main Commerce building, for copies of an updated list of antidumping duty orders currently in effect.

This order is issued and published in accordance with section 736(a) of the Act and 19 CFR 351.211.

Dated: January 21, 2003.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 03–1901 Filed 1–27–03; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A-588–862]

Notice of Initiation of Antidumping Duty Investigation: High and Ultra-High Voltage Ceramic Station Post Insulators from Japan

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Initiation of Antidumping Duty Investigation.

EFFECTIVE DATE: January 28, 2003.

FOR FURTHER INFORMATION CONTACT: Timothy Finn or Michele Mire at (202) 482–0065 or (202) 482–4711, respectively; Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

Initiation of Investigation

The Petition

On December 31, 2002, the Department of Commerce (the Department) received a petition filed in proper form by Lapp Insulator Company LLC (Lapp), Newell Porcelain Co., Inc. (Newell), Victor Insulators, Inc. (Victor), and the IUE Industrial Division of the Communications Workers of America, the union representing employees of Lapp (collectively, petitioners). The Department received information supplementing the petition on January 14, 2003.

In accordance with section 732(b) of the Tariff Act of 1930, as amended (the Act), the petitioners allege that imports of high and ultra-high voltage ceramic station post insulators from Japan (hereinafter referred to as subject merchandise or station post insulators) are being, or are likely to be, sold in the United States at less than fair value

within the meaning of section 731 of the Act, and that such imports are materially injuring, or are threatening to materially injure, an industry in the United States.

The Department finds that the petitioners filed this petition on behalf of the domestic industry because they are interested parties as defined in sections 771(9)(C) and 771(9)(D) of the Act and have demonstrated sufficient industry support with respect to the antidumping duty investigation that they are requesting the Department initiate (*see* the "Determination of Industry Support for the Petition" section below).

Scope of Investigation

The scope of this investigation covers station post insulators manufactured of porcelain, of standard strength,[1] high strength, or extra-high strength, solid core or cavity core, single unit or stacked unit, assembled or unassembled, and with or without hardware attached, rated at 115 kilovolts (kV) voltage class and above (550 kilovolt Basic Impulse Insulation Level (BIL) and above), including, but not limited to, those manufactured to meet the following American National Standards Institute, Inc. (ANSI) standard class specifications: T.R.-286, T.R.-287, T.R.-288, T.R.-289, T.R.-291, T.R.-295, T.R.-304, T.R.-308, T.R.-312, T.R.-316, T.R.-362 and T.R.-391. Subject merchandise is classifiable under subheading 8546.20.0060 of the Harmonized Tariff Schedule of the United States (HTSUS) Annotated. While the HTSUS subheading is provided for convenience and U.S. Customs purposes, the written description above remains dispositive as to the scope of the investigation.[2]

During our review of the petition, we sought additional information from the petitioners concerning the scope of the investigation. As a result of this supplemental information, we modified the scope language proposed by the petitioners with regard to the voltage class of subject merchandise covered. The petitioners proposed that the scope cover subject merchandise rated at greater than 69 kV voltage class and above (350 kV BIL and above). However, the petitioners noted that they do not manufacture station post insulators with service class ratings between 69 kV and 115 kV. Thus, for purposes of this proceeding, we changed the voltage class of covered merchandise to 115 kV and above.

As discussed in the preamble to the Department's regulations (62 FR 27323), we are setting aside a period for parties to raise issues regarding product coverage. The Department encourages all parties to submit such comments by February 10, 2003. Comments should be addressed to the Import Administration's Central Records Unit, Room 1870, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230. The period of scope consultations is intended to provide the Department with ample opportunity to consider all comments and consult with parties prior to the issuance of the preliminary determination. See the *Import Administration AD Investigation Checklist*, dated January 21, 2003 (*Initiation Checklist*) (public version on file in the Central Records Unit of the Department of Commerce, Room B-099).

Determination of Industry Support for the Petition

Section 771(4)(A) of the Act defines the "industry" as the producers of a domestic like product. Thus, to determine whether the petition has the requisite industry support, the statute directs the Department to look to producers and workers who produce the domestic like product. The United States International Trade Commission (ITC), which is responsible for determining whether "the domestic industry" has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both the Department and the ITC must apply the same statutory definition regarding domestic like product (see section 771(10) of the Act), they do so for different purposes and pursuant to their separate and distinct authority. In addition, the Department's determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to the law.[2]

Section 771(10) of the Act defines the domestic like product as "a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title." Thus, the reference point from which the domestic like product analysis begins is "the article subject to an investigation," *i.e.*, the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition.

In this petition, the petitioners do not offer a definition of domestic like product distinct from the scope of this investigation. Thus, based on our analysis of the information presented to the Department by the petitioners, we have determined that there is a single domestic like product, which is defined in the "Scope of Investigation" section above, and have analyzed industry support in terms of this domestic like product.

Section 732(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 732(c)(4)(A) of the Act provides that a petition meets this requirement if the domestic producers or workers who support the petition account for: (1) at least 25 percent of the total production of the domestic like product; and, (2) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Information contained in the petition demonstrates that the domestic producers or workers who support the petition account for over 50 percent of the total production of the domestic like product. Therefore, the requirements of section 732(c)(4)(A)(i) are met. See *Initiation Checklist*. Furthermore, because the Department received no opposition to the petition, and because the domestic producers or workers who support the petition account for more than 50 percent of the domestic industry, they also account for more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. See *Initiation Checklist*. Thus, the requirements of section 732(c)(4)(A)(ii) are met.

Accordingly, the Department determines that the petition was filed on behalf of the domestic industry within the meaning of section 732(b)(1) of the Act. See *Initiation Checklist*.

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[1] Station post insulators are manufactured in various styles and sizes, and are classified primarily according to the voltage they are designed to withstand. Under the governing industry standard issued by the Institute of Electrical and Electronic Engineers (IEEE), the voltage spectrum is divided into three broad classes: "medium" voltage (*i.e.*, less than or equal to 69 kilovolts), "high" voltage (*i.e.*, from 115 to 230 kilovolts), and "extra-high" or "ultra-high" voltage (*i.e.*, greater than 230 kilovolts).

[2] HTSUS subheading 8546.20.00 includes ceramic electrical insulators in general. Station post insulators are classified under HTSUS number 8546.20.0060 which also includes non-subject merchandise.

[3] *See Algoma Steel Corp. Ltd., v. United States*, 688 F. Supp. 639, 642-44 (CIT 1988); *High Information Content Flat Panel Displays and Display Glass Therefore from Japan: Final Determination; Rescission of Investigation and Partial Dismissal of Petition*, 56 FR 32376, 32380-81 (July 16, 1991).

Period of Investigation

The anticipated period of investigation (POI) is October 1, 2001 through September 30, 2002.

Constructed Export Price and Normal Value

The following is a description of the allegation of sales at less than fair value upon which the Department has based its decision to initiate this investigation.

Constructed Export Price

The petitioners identified NGK Insulators, Ltd. (NGK) and its wholly-owned U.S. subsidiary, Locke Insulators, Inc. (Locke), as the primary producer/exporter and importer of subject merchandise.[4] The petitioners believe that Locke acts as a purchaser and reseller of subject merchandise produced by NGK; therefore, the petitioners calculated a constructed export price (CEP). The starting price for CEP is a simple average of two price quotes for NGK merchandise during the POI. These price quotes, which are for a particular model of subject merchandise, are identified in affidavits filed by representatives of two of the petitioning companies (Lapp and Victor) and were obtained from a customer and sales agent.

The petitioners calculated net U.S. price by deducting from the starting price U.S. sales commissions, inventory carrying costs, U.S. warehousing expenses, U.S. imputed credit expenses, foreign inland freight, ocean freight, U.S. customs duty and fees, U.S. inland freight, U.S. indirect selling expenses, and an amount for CEP profit. See *Initiation Checklist*.

Normal Value

The starting price for normal value (NV) is a weighted-average of four home market price quotes that were obtained through foreign market research. These price quotes, which were made during the POI, are for subject merchandise of the same grade as that of the merchandise for which U.S. price quotes were obtained. The petitioners made circumstance of sale adjustments to NV for imputed credit expenses, as well as adjustments for packaging costs and inland freight expenses.

Based upon a comparison of CEP to NV, the petitioners calculated an estimated dumping margin of 105.8 percent.

[4] The petitioners also identified Daito Co., Ltd., and Koransha Co., Ltd. as Japanese producers of station post insulators but stated that they were not aware of any exports of such merchandise by these companies to the United States.

Fair Value Comparisons

Based on the data provided by the petitioners, there is reason to believe that imports of subject merchandise from Japan are being, or are likely to be, sold in the United States at less than fair value.

Allegations and Evidence of Material Injury and Causation

The petitioners allege that the U.S. industry producing the domestic like product is being materially injured, or is threatened with material injury, by reason of the imports of the subject merchandise sold at less than NV. The volume of imports from Japan, using the latest available data, exceeded the statutory threshold of three percent for a negligibility exclusion. *See* section 771(24)(A)(i) of the Act. The petitioners contend that the industry's injured condition is evidenced in the declining trends in operating profits, decreased U.S. market share, and price suppression and depression. The allegations of injury and causation are supported by relevant evidence including U.S. Customs import data, domestic consumption, and pricing information. We have assessed the allegations and supporting evidence regarding material injury and causation, and have determined that these allegations are properly supported by accurate and adequate evidence and meet the statutory requirements for initiation. See *Initiation Checklist*.

Initiation of Antidumping Investigation

Based on our examination of the petition on station post insulators from Japan, and the petitioners' response to our supplemental questionnaire clarifying the petition, we find that the petition meets the requirements of section 732 of the Act. See *Initiation Checklist*. Therefore, we are initiating an antidumping duty investigation to determine whether imports of station post insulators from Japan are being, or are likely to be, sold in the United States at less than fair value. Unless this deadline is extended, we will make our preliminary determination no later than 140 days after the date of this initiation.

Distribution of Copies of the Petition

In accordance with section 732(b)(3)(A) of the Act, a copy of the public version of the petition has been provided to the representatives of the government of Japan. We will attempt to provide a copy of the public version of the petition to each exporter named in the petition, as appropriate.

International Trade Commission Notification

We have notified the ITC of our initiation, as required by section 732(d) of the Act.

Preliminary Determination by the ITC

The ITC will determine, no later than February 14, 2003, whether there is a reasonable indication that imports of subject merchandise from Japan are causing material injury, or threatening to cause material injury, to a U.S. industry. A negative ITC determination will result in the investigation being terminated; otherwise, this investigation will proceed according to statutory and regulatory time limits.

This notice is issued and published pursuant to section 777(i) of the Act.

Dated: January 21, 2003.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 03–1899 Filed 1–27–03; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–427–814]

Notice of Amended Final Results of Antidumping Duty Administrative Review: Stainless Steel Sheet and Strip in Coils from France

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Amended Final Results of Antidumping Duty Administrative Review of Stainless Steel Sheet and Strip in Coils from France.

EFFECTIVE DATE: January 28, 2003.

FOR FURTHER INFORMATION CONTACT: Alex Villanueva, AD/CVD Enforcement Group III, Office IX, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–3208.

SUPPLEMENTARY INFORMATION:

Scope of the Review

For purposes of this administrative review, the products covered are certain stainless steel sheet and strip in coils. Stainless steel is an alloy steel containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. The subject sheet and strip is a flat-rolled product in coils that is

greater than 9.5 mm in width and less than 4.75 mm in thickness, and that is annealed or otherwise heat treated and pickled or otherwise descaled. The subject sheet and strip may also be further processed (*e.g.*, cold-rolled, polished, aluminized, coated, *etc.*) provided that it maintains the specific dimensions of sheet and strip following such processing.

The merchandise subject to this review is classified in the *Harmonized Tariff Schedule of the United States* (HTS) at subheadings: 7219.13.0031, 7219.13.0051, 7219.13.0071, 7219.1300.81[1], 7219.14.0030, 7219.14.0065, 7219.14.0090, 7219.32.0005, 7219.32.0020, 7219.32.0025, 7219.32.0035, 7219.32.0036, 7219.32.0038, 7219.32.0042, 7219.32.0044, 7219.33.0005, 7219.33.0020, 7219.33.0025, 7219.33.0035, 7219.33.0036, 7219.33.0038, 7219.33.0042, 7219.33.0044, 7219.34.0005, 7219.34.0020, 7219.34.0025, 7219.34.0030, 7219.34.0035, 7219.35.0005, 7219.35.0015, 7219.35.0030, 7219.35.0035, 7219.90.0010, 7219.90.0020, 7219.90.0025, 7219.90.0060, 7219.90.0080, 7220.12.1000, 7220.12.5000, 7220.20.1010, 7220.20.1015, 7220.20.1060, 7220.20.1080, 7220.20.6005, 7220.20.6010, 7220.20.6015, 7220.20.6060, 7220.20.6080, 7220.20.7005, 7220.20.7010, 7220.20.7015, 7220.20.7060, 7220.20.7080, 7220.20.8000, 7220.20.9030, 7220.20.9060, 7220.90.0010, 7220.90.0015, 7220.90.0060, and 7220.90.0080. Although the HTS subheadings are provided for convenience and Customs purposes, the Department's written description of the merchandise under review is dispositive.

Excluded from the scope of this review are the following: (1) sheet and strip that is not annealed or otherwise heat treated and pickled or otherwise descaled, (2) sheet and strip that is cut to length, (3) plate (*i.e.*, flat-rolled stainless steel products of a thickness of 4.75 mm or more), (4) flat wire (*i.e.*, cold-rolled sections, with a prepared edge, rectangular in shape, of a width of not more than 9.5 mm), and (5) razor blade steel. Razor blade steel is a flat-rolled product of stainless steel, not further worked than cold-rolled (cold-reduced), in coils, of a width of not more than 23 mm and a thickness of 0.266 mm or less, containing, by weight, 12.5 to 14.5 percent chromium, and certified at the time of entry to be used in the manufacture of razor blades. *See* Chapter 72 of the HTS, "Additional U.S. Note" 1(d).

In response to comments by interested parties, the Department has determined that certain specialty stainless steel products are also excluded from the scope of this review. These excluded products are described below.

Flapper valve steel is defined as stainless steel strip in coils containing, by weight, between 0.37 and 0.43 percent carbon, between 1.15 and 1.35 percent molybdenum, and between 0.20 and 0.80 percent manganese. This steel also contains, by weight, phosphorus of 0.025 percent or less, silicon of between 0.20 and 0.50 percent, and sulfur of 0.020 percent or less. The product is manufactured by means of vacuum arc remelting, with inclusion controls for sulphide of no more than 0.04 percent and for oxide of no more than 0.05 percent. Flapper valve steel has a tensile strength of between 210 and 300 ksi, yield strength of between 170 and 270 ksi, plus or minus 8 ksi, and a hardness (Hv) of between 460 and 590. Flapper valve steel is most commonly used to produce specialty flapper valves in compressors.

Also excluded is a product referred to as suspension foil, a specialty steel product used in the manufacture of suspension assemblies for computer disk drives. Suspension foil is described as 302/304 grade or 202 grade stainless steel of a thickness between 14 and 127 microns, with a thickness tolerance of plus-or-minus 2.01 microns, and surface glossiness of 200 to 700 percent Gs. Suspension foil must be supplied in coil widths of not more than 407 mm, and with a mass of 225 kg or less. Roll marks may only be visible on one side, with no scratches of measurable depth. The material must exhibit residual stresses of 2 mm maximum deflection, and flatness of 1.6 mm over 685 mm length.

Certain stainless steel foil for automotive catalytic converters is also excluded from the scope of this review. This stainless steel strip in coils is a specialty foil with a thickness of between 20 and 110 microns used to produce a metallic substrate with a honeycomb structure for use in automotive catalytic converters. The steel contains, by weight, carbon of no more than 0.030 percent, silicon of no more than 1.0 percent, manganese of no more than 1.0 percent, chromium of between 19 and 22 percent, aluminum of no less than 5.0 percent, phosphorus of no more than 0.045 percent, sulfur of no more than 0.03 percent, lanthanum of less than 0.002 or greater than 0.05 percent, and total rare earth elements of more than 0.06 percent, with the balance iron.

Permanent magnet iron-chromium-cobalt alloy stainless strip is also excluded from the scope of this review. This ductile stainless steel strip contains, by weight, 26 to 30 percent chromium, and 7 to 10 percent cobalt, with the remainder of iron, in widths 228.6 mm or less, and a thickness between 0.127 and 1.270 mm. It exhibits magnetic remanence between 9,000 and 12,000 gauss, and a coercivity of between 50 and 300 oersteds. This product is most commonly used in electronic sensors and is currently available under proprietary trade names such as "Arnokrome III."[2]

Certain electrical resistance alloy steel is also excluded from the scope of this review. This product is defined as a non-magnetic stainless steel manufactured to American Society of Testing and Materials ("ASTM") specification B344 and containing, by weight, 36 percent nickel, 18 percent chromium, and 46 percent iron, and is most notable for its resistance to high temperature corrosion. It has a melting point of 1390 degrees Celsius and displays a creep rupture limit of 4 kilograms per square millimeter at 1000 degrees Celsius. This steel is most commonly used in the production of heating ribbons for circuit breakers and industrial furnaces, and in rheostats for railway locomotives. The product is currently available under proprietary trade names such as "Gilphy 36."[3]

Certain martensitic precipitation-hardenable stainless steel is also excluded from the scope of this review. This high-strength, ductile stainless steel product is designated under the Unified Numbering System ("UNS") as S45500-grade steel, and contains, by weight, 11 to 13 percent chromium, and 7 to 10 percent nickel. Carbon, manganese, silicon and molybdenum each comprise, by weight, 0.05 percent or less, with phosphorus and sulfur each comprising, by weight, 0.03 percent or less. This steel has copper, niobium, and titanium added to achieve aging, and will exhibit yield strengths as high as 1700 Mpa and ultimate tensile strengths as high as 1750 Mpa after aging, with elongation percentages of 3 percent or less in 50 mm. It is generally provided in thicknesses between 0.635 and 0.787 mm, and in widths of 25.4 mm. This product is most commonly

[1] Due to changes to the HTS numbers in 2001, 7219.13.0030, 7219.13.0050, 7219.13.0070, and 7219.13.0080 are now 7219.13.0031, 7219.13.0051, 7219.13.0071, and 7219.13.0081, respectively.

[2] "Arnokrome III" is a trademark of the Arnold Engineering Company.

[3] "Gilphy 36" is a trademark of Imphy, S.A.

used in the manufacture of television tubes and is currently available under proprietary trade names such as "Durphynox 17."[4]

Finally, three specialty stainless steels typically used in certain industrial blades and surgical and medical instruments are also excluded from the scope of this review. These include stainless steel strip in coils used in the production of textile cutting tools (*e.g.*, carpet knives).[5] This steel is similar to AISI grade 420 but containing, by weight, 0.5 to 0.7 percent of molybdenum. The steel also contains, by weight, carbon of between 1.0 and 1.1 percent, sulfur of 0.020 percent or less, and includes between 0.20 and 0.30 percent copper and between 0.20 and 0.50 percent cobalt. This steel is sold under proprietary names such as "GIN4 Mo." The second excluded stainless steel strip in coils is similar to AISI 420-J2 and contains, by weight, carbon of between 0.62 and 0.70 percent, silicon of between 0.20 and 0.50 percent, manganese of between 0.45 and 0.80 percent, phosphorus of no more than 0.025 percent and sulfur of no more than 0.020 percent. This steel has a carbide density on average of 100 carbide particles per 100 square microns. An example of this product is "GIN5" steel. The third specialty steel has a chemical composition similar to AISI 420 F, with carbon of between 0.37 and 0.43 percent, molybdenum of between 1.15 and 1.35 percent, but lower manganese of between 0.20 and 0.80 percent, phosphorus of no more than 0.025 percent, silicon of between 0.20 and 0.50 percent, and sulfur of no more than 0.020 percent. This product is supplied with a hardness of more than Hv 500 guaranteed after customer processing, and is supplied as, for example, "GIN6".[6]

Amendment of Final Results

On December 26, 2002, the Department of Commerce ("the Department") published its final results for stainless steel sheet and strip in coils from France for the July 1, 2000, through June 30, 2001, period of review. *See Notice of Final Results of Antidumping Duty Administrative Review: Stainless Steel Sheet and Strip in Coils From France: Stainless Steel Sheet and Strip From France* ("*Final Results*"), 67 FR 78773 (December 26, 2002).

In accordance with 19 C.F.R. §351.224(c), on December 19, 2002, Ugine, S.A. ("Ugine"), a respondent in this administrative review, requested that the Department extend the deadline to file ministerial errors regarding the *Final Results* from December 24, 2002 to January 10, 2002. On December 20, 2002, the Department extended the deadline to file any ministerial allegations on the *Final Results* from December 24, 2002 to December 31, 2002. *See* Letter from the Department to Ugine, dated December 20, 2002. Consequently, on December 31, 2002, Ugine and the Petitioners[7] timely filed an allegation that the Department made ministerial errors in the *Final Results*, pursuant to 19 C.F.R. §351.224(c). Ugine submitted rebuttal comments on January 6, 2003 in reply to the Petitioners' ministerial error allegations.

Arm's Length Test Program

The Petitioners contend that in its *Final Results*, the Department, in calculating the net price, inadvertently failed to consider both home market interest revenue (INTREVH) and home market commissions (COMMH). Thus, according to the Petitioners, the Department should revise its *Final Results* to add home market interest revenue and deduct home market commissions in calculating the net price in the arm's length test, consistent with its standard practice.

Model Match Program

The Petitioners note that the Department's model match program used for the *Final Results*, contained two errors. According to the Petitioners, in the model match program, the Department erred in calculating the home market net price because it did not add home market interest revenue (INTREVH) in the calculation. Therefore, the Petitioners assert, the Department should revise its home market net price calculation to add home market interest revenue in the model match program in accordance with its standard practice.

The Petitioners also argue that in its *Final Results*, the Department inadvertently failed to update the date of payment for unpaid sales (where PAYDTU/H equals " "). According to the Petitioners, the Department's standard policy in final administrative results is to update the date of payment for unpaid sales to the last day of each market's respective verifications and to recalculate credit expenses (CREDITU/H), as appropriate. *See Notice of Final Determination of Sales at Less Than Fair Value: Structural Steal Beams from Italy and accompanying Issues and Decision Memorandum*, dated May 20, 2002, at Comment 9. Therefore, the Petitioners argue that for home market sales this date of payment was June 21, 2002, and for U.S. market sales it was May 24, 2002. *See Memorandum to the File from Alex Villanueva, Import Compliance Specialist, through James C. Doyle, Program Manager, Verification Report of the 2nd Administrative Review of Stainless Steel Sheet and Strip in Coils from France Home Market Sales and Cost Verification Report of Ugine, S.A.* ("*Home Market Verification Report*"), dated July 31, 2002, at 1, and *Memorandum to the File from Alex Villanueva and Jonathan Herzog, Import Compliance Specialists, through James C. Doyle, Program Manager, Verification Report of the 2nd Administrative Review of Stainless Steel Sheet and Strip in Coils from France U.S. Sales and Cost Verification Report of Ugine, S.A.* ("*U.S. Market Verification Report*"), dated July 31, 2002 at 1. Thus, the Petitioners argue, the Department should revise its *Final Results* to update the date of payment for unpaid home market and U.S. market sales to the last day of verification in the model match program.

Margin Calculation Program

The Petitioners argue that in calculating the values that would be used to determine the Constructed Export Price ("CEP") profit in the *Final Results*, the Department inadvertently mixed U.S. dollar-based variables with Euro-based variables without performing the proper conversion. The Petitioners note that this occurred when the Department calculated the cost of goods sold for U.S. sales when the Department combined the U.S. dollar-based further manufacturing, general and administrative expenses, interest expenses and packing expenses. Furthermore, the Petitioners note, the mixed-currency costs of good sold for U.S. sales was then added to the Euro-based home market costs of goods sold. Similarly, the Petitioners claim, the U.S. dollar-based revenue for U.S. sales was added to Euro-based revenue for home market sales. Finally, the Petitioners argue that the same error was performed with regard to selling expenses and movement expenses. The Petitioners argue that in order to correct for this error, the Department should convert all U.S. dollar-denominated variables (FURMANU, REVENU, SELLEXPU,

[4] "Durphynox 17" is a trademark of Imphy, S.A.

[5] This list of uses is illustrative and provided for descriptive purposes only.

[6] "GIN4 Mo," "GIN5" and "GIN6" are the proprietary grades of Hitachi Metals America, Ltd.

[7] The Petitioners in this case are Allegheny Ludlum Corporation, AK Steel, Inc., North American Stainless, United Steelworkers of America, AFL-CIO/CLC, Butler Armco Independent Union and Zanesville Armco Independent Organization.

MOVEXPU) to Euros in the margin calculation program.

In addition, the Petitioners argue that the Department failed to update the day of payment for unpaid sales (where PAYDTU/H equals " ") in the margin calculation program. According to the Petitioners, the Department's normal practice is to update the date of payment for unpaid sales to the last date of each verification and to recalculate credit expenses (CREDITU/H) appropriately. As noted above, the Petitioners argue, the last date of verification for home market sales was June 21, 2002, and for U.S. market sales was May 24, 2002. Thus, the Petitioners request that the Department revise its Final Results to update the date of payment for unpaid home market and U.S. market sales to the last day of verification for each respective market in the margin calculation program.

Ugine argues that in the *Final Results*, the Department attempted to take interest revenue into account when calculating the net U.S. price in the margin calculation program, but inserted the programming code incorrectly before the "End" statement. Therefore, to correct this error, Ugine requests that the Department revise its programming code to properly take into account the interest revenue when calculating the net U.S. price in the margin calculation program.

In their rebuttal comments, Ugine argues that the Petitioners' claim that the Department "inadvertently" used the same method for calculating credit expenses in both the preliminary and final results. According to Ugine, the Petitioners suggest that the Department intended to "update" the methodology by inserting an assumed payment date for sales for which payment had not been received and recalculating the reported credit expenses based on this assumed payment date in both the model match and the margin programs. Ugine notes, that the Department, however, gave no indication in its preliminary results or *Final Results* that it was contemplating the methodological change the Petitioners are now suggesting. Furthermore, Ugine argues, nor did the Petitioners raise this issue in their case brief or rebuttal brief. Consequently, Ugine notes, it is now too late for the Petitioners to advance this methodological change to the calculation after the Department has completed its *Final Results*.

In addition, Ugine argues that under the credit expense methodology used by the Department in its preliminary and *Final Results*, there is no basis for the Petitioners' suggested "update" to the calculations. According to Ugine, in the Department's preliminary results, credit expenses for those sales for which payment had not been received were calculated using an estimated credit period. Ugine asserts that the estimated credit period for these sales was based on the weighted-average credit period for sales during the reporting period for which payment dates were available. Ugine argues that the Petitioners' comments have not shown this methodology to be inaccurate or erroneous, and therefore, provide no basis for the Department to jettison this calculation methodology, even if these arguments were timely.

Finally, Ugine notes, that for U.S. sales made by Hague, the Petitioners' suggested "update" is simply inapplicable. According to Ugine, the credit period for all sales by Hague was determined based on an accounts-receivable turnover analysis because Hague was not able to identify the payment date for individual transactions. Therefore, Ugine argues, the fact that no payment date was reported for these sales does not mean that payment had not been received, but that is simply a function of the reporting methodology used by Hague. Ugine states that this methodology was verified by the Department without discrepancy and has been accepted by the Department in all prior reviews of this case. Accordingly, Ugine claims, even if the Department were to accept the Petitioners' comment, the credit expenses calculated for Hague's sales should not be affected.

Department's Position

We agree with Ugine and the Petitioners.

With regard to the Petitioners' argument regarding the treatment of interest revenue and commissions paid for home market sales in the arm's length test, we agree. In our *Final Results*, we inadvertently failed to consider both home market interest revenue (INTREVH) and home market commissions (COMMH) in calculating the net price. Thus, to correct for this error, we have revised our *Final Results* and added home market interest revenue and deducted home market commissions in calculating the net price in the arm's length test.

With regard to the Petitioners' argument that the Department erred in calculating the home market net price because we did not add home market interest revenue (INTREVH) to the calculation in the model match program, we agree. Therefore, for these amended final results, we correctly revised our home market net price calculation and added home market interest revenue in the model match program.

With regard to the Petitioners' argument that in calculating the values that would be used to determine the CEP profit in the *Final Results*, we mistakenly mixed U.S. dollar-based variables with Euro-based variables without performing the proper conversion in the margin calculation program, we agree. To correct for this error, we properly converted all U.S. dollar-denominated variables (FURMANU, REVENU, SELLEXPU, MOVEXPU) to Euros in the margin calculation program.

With regard to Ugine's argument that Department incorrectly applied the programming code to account for interest revenue when calculating the net U.S. price, we agree. We note that although the programming code is correct, it was inadvertently placed in the incorrect order, preventing the program from taking interest revenue into account when calculating the net U.S. price. For these amended final results, we have correctly applied the programming code to take interest revenue into account when calculating the net U.S. price in the margin calculation program.

With regard to the Petitioners' argument that we failed to update the date of payment for unpaid sales (where PAYDTU/H equals " ") in the margin and model match calculation programs, we disagree. It is the Department's standard practice to replace the date of payment with the last day of verification of that particular market (*i.e.*, the last day of the home market verification should be used as the date of payment for unpaid home market sales and the last day of the U.S. market verification should be used as the date of payment for unpaid U.S. market sales). However, in the instant case, the home market sales have a date of payment. Ugine reported, as it has reported in the investigation and the first administrative review, an average payment date for its home market sales where payment had not yet been received. Additionally, credit expenses for those sales for which payment had not been received were calculated using a weighted-average credit period. Therefore, the Petitioners assertion that certain home market sales had no payment date is wrong. In addition, in our *Final Results* we did not intend to replace Ugine's average payment date methodology with the last day of the home market sales verification. Consequently, we are affirming our use of Ugine's average payment date for sales for which payment had not been

received in the home market and are not changing our *Final Results*.

With regard to the Petitioners similar argument regarding sales where there was no date of payment (PAYDTU) in the U.S. market, we disagree. We agree with Ugine that the date of payment reported was based on an accounts-receivable turnover methodology because Hague was not able to identify the date of payment on a sales-specific basis. Furthermore, the credit period for sales made by Hague was determined based on this same methodology. At the U.S. market verification, we verified this methodology and found no discrepancies. *See U.S. Market Verification Report* at 18. This fact was not disputed by the Petitioners. Therefore, for the *Final Results*, we have not changed the date of payment used by Hague.

Therefore, we are amending the *Final Results* to reflect the correction of the above-cited ministerial errors. All changes made to the arm's length test, model match and margin program can be found in the analysis memorandum. *See Memorandum to the File from Alex Villanueva, Senior Case Analyst to James C. Doyle, Program Manager, Final Analysis for Ugine S.A. for the Amended Final Results of the 2nd Administrative Review Stainless Steel Sheet and Strip in Coils from France for the period July 1, 2000 through June 30, 2001*, dated January 20, 2003.

The weighted-average dumping margin is as follows:

Producer/Manufacturer Exporter	Final Weighted-Average Margin (percent)	Amended Final Weighted Average Margin (percent)
Ugine, S.A.	1.47	1.44

Consequently, we are issuing and publishing these amended final results and notice in accordance with sections 751(a)(1) of the Act.

Dated: January 17, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 03–1902 Filed 1–27–03; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[C-122–815]

Alloy Magnesium from Canada: Preliminary Results of Countervailing Duty New Shipper Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Preliminary Results of Countervailing Duty New Shipper Review.

SUMMARY: In response to a request from Magnola Metallurgy, Inc., the Department of Commerce is conducting a new shipper review of the countervailing duty order on alloy magnesium from Canada for the period January 1, 2001 through December 31, 2001. In these preliminary results, we find that Magnola Metallurgy, Inc. received countervailable subsidies during the period of review. *The ad valorem* rate is shown in the "Preliminary Results of Review" section of this notice. If these preliminary results are adopted in our final results, we will instruct the Customs Service to assess countervailing duties.

Interested parties are invited to comment on these preliminary results (see the Public Comment section of this notice).

EFFECTIVE DATE: January 28, 2003.

FOR FURTHER INFORMATION CONTACT: Melanie Brown, Office 1, Group 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington DC 20230; telephone (202) 482–4987.

SUPPLEMENTARY INFORMATION:

Background

On August 31, 1992, the Department of Commerce ("Department") published in the **Federal Register** the countervailing duty orders on pure magnesium and alloy magnesium from Canada. *See Final Affirmative Countervailing Duty Determinations: Pure Magnesium and Alloy Magnesium from Canada*, 57 FR 39392 (July 13, 1992) ("*Investigation Final*"). On February 28, 2002, the Department received a timely request for a new shipper review from Magnola Metallurgy, Inc. ("Magnola") pursuant to 19 CFR 351.214(d). On March 27, 2002, the Department initiated the new shipper review for the period January 1, 2001 through December 31, 2001. *See Pure and Alloy Magnesium From Canada: Notice of Initiation of New Shipper Countervailing Review*, 67 FR 15794 (April 3, 2002). On May 8, 2002, U.S. Magnesium,[1] ("the petitioner") submitted allegations of countervailable subsidies received by Magnola. Magnola commented on these allegations on May 15, 2002.

On July 10, 2002, the Department issued its initial countervailing questionnaires to Magnola, the Government of Québec ("GOQ"), and the Government of Canada ("GOC"). We received questionnaire responses form the GOQ and the GOC on August 15, 2002, and from Magnola on August 16, 2002. Subsequent to the receipt of the initial questionnaire responses, we issued supplemental questionnaires, received comments from the petitioners, and received supplemental questionnaire responses from the GOQ, the GOC, and Magnola.

On September 13, 2002, the Department found that because of the complexity of the issues involved in this case it was not practicable to complete the review in the time allotted. Therefore, we published an extension of the time limit for the completion of the preliminary results of this review to no later than January 21, 2003, in accordance with section 751(a)(2)(B) of the Act and 19 CFR 351.214(h)(2). We also rescinded the review with respect to pure magnesium because Magnola's request for the new shipper review was for Magnola's sales of alloy magnesium from Canada only. *See Alloy Magnesium from Canada: Extension of Time Limit for the Preliminary Results of the Countervailing Duty New Shipper Review and Pure Magnesium from Canada; Rescission of Countervailing Duty New Shipper Review*, 67 FR 50819 (September 13, 2002).

New Subsidy Allegation

On August 9, 2002, the petitioner submitted a new subsidy allegation and documentation supporting the allegation. On August 19 and September 3, 2002, Magnola submitted comments objecting to the consideration of new subsidies. We considered the information on the record and initiated an investigation on one additional program allegedly operated by the GOQ: Emploi-Québec Manpower Training Mandate ("MTM"). For more information, see the memorandum to Richard Moreland, Deputy Assistant Secretary entitled, "New Subsidy

[1] The original petition was filed by Magnesium Corporation of America, ("Magcorp"). On July 31, 2002, the petitioner informed the Department that Magcorp had been sold to U.S Magnesium.

Allegation - Canadian Magnesium New Shipper Review," dated September 6, 2002, which is on file in the Commerce Department's Central Records Unit in Room B-099 of the main Commerce Department Building ("CRU").

Scope of the Review

The products covered by this review are shipments of alloy magnesium from Canada. Magnesium alloys contain less than 99.8 percent magnesium by weight with magnesium being the largest metallic element in the alloy by weight, and are sold in various ingot and billet forms and sizes. The alloy magnesium subject to review is currently classifiable under item 8104.19.0000 of the *Harmonized Tariff Schedule of the United States* ("HTSUS"). Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the merchandise subject to the order is dispositive.

Secondary and granular magnesium are not included in the scope of this order. Our reasons for excluding granular magnesium are summarized in *Preliminary Determination of Sales at Less Than Fair Value: Pure and Alloy Magnesium From Canada*, 57 FR 6094 (February 20, 1992).

Subsidies Valuation Information

Allocation Period

Pursuant to 19 CFR 351.524(b), non-recurring subsidies are allocated over a period corresponding to the average useful life ("AUL") of the renewable physical assets used to produce the subject merchandise. Section 351.524(d)(2) of the regulations creates a rebuttable presumption that the AUL will be taken from the U.S. Internal Revenue Service's 1977 Class Life Asset Depreciation Range System ("the IRS Tables"). For magnesium, the IRS Tables prescribe an AUL of 14 years.

In order to rebut the presumption in favor of the IRS Tables, the challenging party must show that the IRS Tables do not reasonably reflect the company-specific AUL or the country-wide AUL for the industry in question, and that the difference between the company-specific or country-wide AUL and the IRS tables is significant. (*See* 19 CFR 351.524(d)(2)(i).) For this difference tobe considered significant, it must be one year or greater. (*See* 19 CFR 351.524(d)(2)(ii).)

Late in these proceedings, Magnola claimed a 28-year company-specific AUL. The company was unable to provide historical or actual depreciation costs because it was still in its start-up phase and not yet operating at commercial levels. Instead, Magnola provided an AUL calculation based on a prediction of future depreciation expenses and asset values (based on pre-production costs) over a 40-year horizon. Therefore, we preliminarily find that Magnola has not satisfied the requirements of section 351.524(d)(2)(iii) of our regulations and has not demonstrated that its proposed company-specific AUL reflects actual depreciation expenses and asset values for magnesium. We therefore have allocated Magnola's non-recurring benefits over 14 years as prescribed in the IRS Tables.

For non-recurring subsidies, we applied the "0.5 percent expense test" described in section 351.524(b)(2) of our regulations. In this test, we compare the amount of subsidies approved under a given program in a particular year to sales (total or export, as appropriate) in that year. If the amount of subsidies is less that 0.5 percent of sales, the benefits are expensed in their entirety in the year of receipt rather than allocated over the AUL period.

Discount Rates

In accordance with section 351.524(d)(3) of the regulations, it is the Department's preference to use a company's long-term fixed-rate cost of borrowing in the same year a grant was approved as the discount rate. However, where a company does not have a loan that could be used as a discount rate, the Department's next preference is to use the average cost of long-term fixed-rate loans in the country in question.

Magnola did not have long-term, fixed-rate, Canadian dollar loans or other debt obligations during 1998 or 2000, the years in which the MTM grants were approved. Therefore, we used the Canadian average rate of return on long-term commercial bonds as discount rates for the years 1998 and 2000.

Analysis of Programs

I. Program Preliminarily Found to Confer Countervailable

• Subsidies Emploi-Québec Manpower Training Mandate ("MTM")

Emploi-Québec ("E-Q") is a labor-focused government unit created under the laws of Québec that administers the manpower and employment policies on behalf of Québec's Ministry of Employment and Solidarity (*Ministère de L'Emploi et de la Solidarité sociale*). The goal of the E-Q is to improve and develop the labor market in the region of Québec. To accomplish this goal, in 1998 the MTM program was established to provide financial support, in the form of grants, to companies with approved training programs. Up to 50 percent of a company's training expenses, normally over a period of 24-months, are reimbursed under the MTM program with funding from the Labor Market Development Fund (*Fonds de développement du marché du travail*) ("LMDF"), a central fund established by the Government of Québec to finance the labor objectives of the E-Q. With the exception of government-affiliated agencies, companies in all industries are eligible for these benefits.

Under the MTM program, there are two funding levels under which companies may receive reimbursement of labor training expenses: small-scale economic projects and major economic projects. Projects at both funding levels must satisfy the E-Q's five policy objectives of job preparation, job integration, job management, job stabilization, and job creation, before becoming eligible for reimbursement. Once the five objectives are met, companies are eligible to receive reimbursement of 50 percent of their labor training expenses. Small-scale project recipients are eligible to receive a maximum reimbursement of $100,000.

The $100,000 reimbursement limit does not apply to major economic projects. However, major economic projects are required to: 1) create either 50 jobs or 100 jobs in 24 months, depending on whether the company is a new company or a company that has been in operation; 2) have the approval of the Ministry's *Commission des partenaires du marche du travail* ("CPMT"); and 3) agree to close monitoring by the E-Q. The LMDF sets aside $40 million annually to finance major economic projects and while all industries are eligible to receive funding, priority is given to manufacturing sectors where exporting is a priority and to projects from the service, commerce and accommodation sectors, if they have the potential to attract an international clientele or foreign business to Québec.

In 1998, Magnola submitted a human resource development plan to the E-Q that described its new magnesium plant, the new technology it would be using and the training programs that Magnola needed to develop a sufficiently skilled workforce. Magnola met the criteria for eligibility as a major economic project. In 1998 and 2000, the E-Q approved grants to reimburse 50 percent of Magnola's training expenses.

Because there are two funding levels in the MTM program, we are conducting an analysis to determine if the two levels are integrally linked and should be treated as one program. According to § 351.502(c) of the Department's

regulations, the Secretary may find two or more programs integrally linked if: 1) the subsidy programs have the same purpose, 2) the subsidy programs bestow the same type of benefit, 3) the subsidy programs confer similar levels of benefits on similarly situated firms, and 4) the subsidy programs were linked at inception.

In the instant review we find that both the small-scale economic projects and the major economic projects were established under the MTM program to improve the labor conditions in Québec and hence, have the same purpose. Second, the benefit bestowed at both funding levels is the same because at both funding levels recipients are reimbursed for 50 percent of training expenses in the form of grants. Moreover, at both funding levels, the projects confer similar levels of benefits on similarly situated firms because firms with similar levels of training expenses are treated equally. Finally, with respect to the fourth criteria, the two funding levels were linked at the inception of the MTM program. Based on the above, we find that the two funding levels of the MTM program meet the integral linkage requirements. Consequently, for purposes of this review, we find that the MTM program for small-scale economic projects and major economic projects are integrally linked and consider them to be a single program.

We find that the MTM grants Magnola received in 1998 and 2000 constitute countervailable subsidies within the meaning of section 771(5) of the Act. We find a financial contribution under section 771(5)(D)(i) because the grants are a direct transfer of funds from the GOQ that confer a financial benefit to Magnola in the amount of the grants. In order to determine whether the MTM program is *de facto* specific, we conducted a "disproportionate benefit" analysis on an industry-specific and on a company-specific basis according to section 771(5A)(D)(iii)(III) of the Act. We reviewed the information available on the industry of recipients in the MTM program and compared the benefit amount received by the metals industry to the amounts received by all other recipient industries. We found that from 1998 through 2001, the metals industry received a disproportionately large amount of MTM benefits compared to other industries.

We then conducted a company-specific analysis by comparing the benefits received by Magnola to those received by other major economic project recipients, the only recipients for which we had company-specific data. We found that from 1998 through 2001, Magnola received a disproportionately large amount of benefits compared to other major economic project recipients. While the company-specific analysis was based on major economic project recipients only, we note that based on the amount of funding received by small-scale project recipients, the inclusion of small scale projects would not have had a significant impact on our analysis. Taken together, these facts support a finding under section 771(5A)(D)(iii)(III) of the Act, that the MTM program assistance received by Magnola was disproportionate on an industry-specific and company-specific basis.

Concerning whether this program is an export subsidy, section 771(5A) of the Act states that an export subsidy "is a subsidy that is, in law or in fact, contingent upon export performance, alone or as one of two or more conditions." In this review, the petitioner alleged the MTM program is export specific, citing to language in the MTM regulations that state that funding for projects "from the manufacturing sector, where production is mainly destined to export is given priority...."

We reviewed this information with respect to section 771(5A)(B) of the Act and found that the MTM regulations do not meet the requirements of an export subsidy because MTM assistance was not contingent upon exportation. In this instance, we find that the term "export" used in the MTM regulations refers to exports outside the province of Québec and not to exports outside Canada. Moreover, there is no evidence on the record to support the finding that eligibility for MTM assistance was contingent upon exportation, whether provincially or outside Canada. The fact that a subsidy is awarded to a company that exports does not, by itself, make the subsidy an export subsidy within the meaning of the Act. *See Preliminary Negative Countervailing Duty Determination: Certain Laminated Hardwood Trailer Flooring from Canada*, 61 FR 59079 (November 20, 1996). Therefore, we preliminarily find that the MTM program is neither *de facto* nor *de jure* export specific.

In accordance with 19 CFR 351.524(c)(1) and (2), we have treated these grants as non-recurring subsidies because separate, project specific government approval was required to receive benefits, and funding for all projects under the MTM program was generally limited to 24 months. To calculate the benefit, we performed the expense test, as explained in the AUL section above, and found that the benefits approved in each year were more than 0.5 percent of Magnola's total sales. Therefore, we allocated the benefits over time. We used the grant methodology described in section 351.524(d) of the regulations to calculate the amount of benefit allocable to the POR. We then divided the benefit in the POR by Magnola's sales in the POR.

On this basis, we preliminarily find the net subsidy rate from the MTM program to be 7.00 percent *ad valorem* for Magnola.

II. Programs under which no benefit was received during the POR

• Federal Funding for a Feasibility Study under the Canada-Quebec Subsidiary Agreement on Industrial Development

The Department examined this program in the original investigations of pure and alloy magnesium and found that the GOC-provided assistance conferred a countervailable benefit. (*See Investigation Final*). Magnola received repayable contributions in 1996 and 1997, which were repaid to the GOC in 1998, with interest. Therefore, since Magnola repaid the benefits received prior to the POR, and no new funds were received during the POR, we find there is no benefit from this program during the POR.

III. Programs Preliminarily Found To Be Not Used

We examined the following programs and preliminarily find that Magnola did not apply for or receive benefits under these programs during the POR:

• St. Lawrence River Environment Technology Development Program
• Program for Export Market Development
• The Export Development Corporation
• Canada-Québec Subsidiary Agreement on the Economic Development of the Regions of Québec
• Opportunities to Stimulate Technology Programs
• Development Assistance Program
• Industrial Feasibility Study Assistance Program
• Export Promotion Assistance Program
• Creation of Scientific Jobs in Industries
• Business Investment Assistance Program
• Business Financing Program
• Research and Innovation Activities Program
• Export Assistance Program
• Energy Technologies Development Program
• Financial Assistance Program for Research Formation and for the Improvement of the Recycling Industry
• Transportation Research and Development Assistance Program

Preliminary Results of Review

In accordance with 19 CFR 351.221(b)(4)(i), we calculated a subsidy rate for Magnola, the sole producer/exporter subject to this new shipper review. For the period January 1, 2001, through December 31, 2001, we preliminarily find the net subsidy rate for Magnola to be 7.00 percent *ad valorem*. We will disclose our calculations to the interested parties pursuant to section 351.224(b) of the regulations.

Upon completion of this new shipper review, the Department will determine, and the Customs Service shall assess, countervailing duties on all appropriate entries. In accordance with 19 CFR 351.212(b)(2), we have calculated a company-specific assessment rate for merchandise subject to this review. The Department will issue appropriate assessment instructions directly to the Customs Service within 15 days of publication of the final results of review. If these preliminary results are adopted in the final results of review, we will direct the Customs Service to assess the resulting assessment rates against the entered customs values for the subject merchandise on each of the company's entries during the review period. The Department also intends to instruct Customs to collect cash deposits of estimated countervailing duties at the rate of 7.00 percent on the f.o.b. value of all shipments of the subject merchandise from Magnola entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this new shipper review.

Public Comment

Interested parties may request a hearing within 30 days of the date of publication of this notice. Any hearing, if requested, will be held two days after the scheduled date for submission of rebuttal briefs (*see* below). Interested parties may submit written arguments in case briefs within 30 days of the date of publication of this notice. Rebuttal briefs, limited to issues raised in case briefs, may be filed no later than five days after the date of filing the case briefs. Parties who submit briefs in these proceedings should provide a summary of the arguments not to exceed five pages and a table of statutes, regulations, and cases cited. Copies of case briefs and rebuttal briefs must be served on interested parties in accordance with 19 CFR 351.303(f).

Representatives of parties to the proceeding may request disclosure of proprietary information under administrative protective order no later than 10 days after the representative's client or employer becomes a party to the proceeding, but in no event later than the date the case briefs, under 19 CFR 351.309(c)(1)(ii), are due.

The Department will publish a notice of the final results of this new shipper review within 90 days of the publication of these preliminary results.

This new shipper review and notice is in accordance with sections 751(a)(2)(B)(iv)and 777(i) of the Act.

Dated: January 21, 2003.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 03–1898 Filed 1–27–03; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 011503A]

Marine Mammals and Endangered Species; File No 369–1440–01 and 1409

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Receipt of application for amendment and receipt of application for permit.

SUMMARY: Notice is hereby given that:

Dr. Bruce R. Mate, Oregon State University, has requested an amendment to scientific research Permit No. 369–1440–01; and

Karen G. Holloway-Adkins, Executive Director of East Coast Biologists, Inc., Indialantic, FL 32903, has applied for a scientific research permit.

DATES: Written or telefaxed comments must be received on or before February 27, 2003.

ADDRESSES: The amendment request, application and related documents are available for review upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)713–0376; .

(Permit 369–1440) - Assistant Regional Administrator for Protected Resources, Northeast Region, NMFS, One Blackburn Drive, Gloucester, MA 01930–2298; phone (978)281–9346; fax (978)281–9371; and

(Permit 369–1440 and File No. 1409) - Assistant Regional Administrator for Protected Resources, Southeast Region, NMFS, 9721 Executive Center Drive North, St. Petersburg, FL 33702–2432; phone (727)570–5312; fax (727)570–5517.

Written comments or requests for a public hearing on this request should be submitted to the Chief, Permits, Conservation and Education Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular amendment request would be appropriate.

Comments may also be submitted by facsimile at (301)713–0376, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period. Please note that comments will not be accepted by e-mail or other electronic media.

FOR FURTHER INFORMATION CONTACT: Ruth Johnson, Carrie Hubard or Amy Sloan (301)713–2289.

SUPPLEMENTARY INFORMATION: The subject amendment to Permit No. 369–1440–01, issued on September 18, 1998 (63 FR 52686) is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR 222–226).

Permit No. 369–1440–01 (Dr. Mate) authorizes the permit holder to: (1) approach to tag/biopsy sample, photograph and evaluate tag attachment on seven species of large whales; (2) opportunistically photograph an unlimited number of cetaceans and pinnipeds; (3) conduct research in the North Pacific, North Atlantic and International waters thereof; and (4) import/export samples for genetic analysis. The permit holder now requests authorization to conduct tagging/biopsy sampling on up to 24 fin whales (*Baleanoptera physalus*) in the Mediterranean Sea.

Ms. Holloway-Adkins (File No. 1409) requests a permit to take 100 green sea turtles (*Chelonia mydas*) and 10 loggerhead sea turtles (*Caretta caretta*) annually for scientific research. Turtles will be captured, handled, measured, weighed, flipper and PIT tagged, and lavaged. The research will characterize the turtle aggregations using the nearshore reefs in central Brevard County as developmental habitat, their

size class and foraging habitats and movements.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of the amendment request to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated:January 21, 2003.

Stephen L. Leathery,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 03–1907 Filed 1–27–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

Docket No. 010222048–3014–08

The Utility Service Cancellation Notices Exception to the Electronic Signatures in Global and National Commerce Act

AGENCY: National Telecommunications and Information Administration (NTIA), U.S. Department of Commerce

ACTION: Notice, Request For Comments

SUMMARY: Section 101 of the Electronic Signatures in Global and National Commerce Act, Pub. L. No. 106–229, *codified at* 15 U.S.C. 7001 *et seq.* ("ESIGN" or "the Act"), preserves the legal effect, validity, and enforceability of signatures and contracts relating to electronic transactions and electronic signatures used in the formation of electronic contracts. 15 U.S.C. 7001(a). Section 103 (a) and (b) of the Act, however, provides that the provisions of section 101 do not apply to contracts and records governed by statutes and regulations regarding court documents; probate and domestic law matters; state commercial law; consumer law covering utility services, residential property foreclosures and defaults, and insurance benefits; product recall notices; and hazardous materials documents. Section 103 of the Act also requires the Secretary of Commerce, through the Assistant Secretary for Communications, to review the operation of these exceptions to evaluate whether they continue to be necessary for consumer protection, and to make recommendations to Congress based on this evaluation. 15 U.S.C. 7003(c)(1). This Notice is intended to solicit comments from interested parties for purposes of this evaluation, specifically on the utility cancellation notices exception to the ESIGN Act. *See* 15 U.S.C. 7003(a)(3). NTIA has published separate notices requesting comment on the other exceptions listed in section 103 of the ESIGN Act.[1]

DATES: Written comments and papers are requested to be submitted on or before March 31, 2003.

ADDRESSES: Written comments should be submitted to Josephine Scarlett, National Telecommunications and Information Administration, 14th Street and Constitution Ave., N.W., Washington, DC 20230. Paper submissions should include a three and one-half inch computer diskette in HTML, ASCII, Word, or WordPerfect format (please specify version). Diskettes should be labeled with the name and organizational affiliation of the filer, and the name of the word processing program used to create the document. In the alternative, comments may be submitted electronically to the following electronic mail address: *esignstudy_utilnot@ntia.doc.gov.* Comments submitted via electronic mail also should be submitted in one or more of the formats specified above.

FOR FURTHER INFORMATION CONTACT: For questions about this request for comment, contact: Josephine Scarlett, Attorney, Office of the Chief Counsel, NTIA, 14th Street and Constitution Ave., NW., Washington, DC 20230, telephone (202) 482–1816 or electronic mail: *jscarlett@ntia.doc.gov.* Media inquiries should be directed to the Office of Public Affairs, National Telecommunications and Information Administration, at (202) 482–7002.

SUPPLEMENTARY INFORMATION:

Background: Electronic Signatures in Global and National Commerce Act

Congress enacted the Electronic Signatures in Global and National Commerce Act, Pub. L. No. 106–229, 114 Stat. 464 (2000), to facilitate the use of electronic records and signatures in interstate and foreign commerce and to remove uncertainty about the validity of contracts entered into electronically. Section 101 requires, among other things, that electronic signatures, contracts, and records be given legal effect, validity, and enforceability. Sections 103(a) and (b) of the Act provides that the requirements of section 101 shall not apply to contracts and records governed by statutes and regulations regarding: court documents; probate and domestic law matters; state commercial law; consumer law covering utility services, residential default and foreclosure notices, and insurance benefits cancellation notices; product recall notices; and hazardous materials documents.

The statutory language providing for an exception to section 101 of ESIGN for utility cancellation or disconnection notices is found in section 103(b) of the Act:

Sec. 103. [15 U.S.C. 7003] Specific Exceptions.

* * * *

(b) Additional Exceptions.—The provisions of section 101 shall not apply to—

(2) any notice of—

(A) the cancellation or termination of utility services (including water, heat, and power);

* * * *

The statutory language requiring the Assistant Secretary for Communications and Information to submit a report to Congress on the results of the evaluation of the section 103 exceptions to the ESIGN Act is found in section 103(c)(1) of the Act as set forth below.

(c) Review of Exceptions.—

(1) Evaluation required.— The Secretary of Commerce, acting through the Assistant Secretary for Communications and Information, shall review the operation of the exceptions in subsections (a) and (b) to evaluate, over a period of 3 years, whether such exceptions continue to be necessary for the protection of consumers. Within 3 years after the date of enactment of this Act, the Assistant Secretary shall submit a report to Congress on the results of such evaluation.

Utility Service Cancellation Notices

The rates, terms and conditions of service provided by electric, gas, telephone, water and sewer companies are governed by federal and state laws and regulations. These federal, state, and municipal regulations prescribe methods and procedures that govern how utility companies make voluntary and involuntary terminations of service to customers, and how notices of

[1] Comments submitted in response to the **Federal Register** notices requesting comment on the other exceptions to ESIGN will be considered as part of the same section 103 evaluation and not as part of a separate review of the Act. Notices have been published on the following exceptions to ESIGN: court, family law, and hazardous materials documents; wills; product recall, housing default, and insurance cancellation notices; and contracts governed by state uniform commercial law. *See* 67 Fed.Reg. 56277, 56279, 59828, 61599, 63379, 69201, 75849, and 78421.

pending terminations are provided to customers. On the federal level, there are regulations that instruct utility companies on the procedure for notifying utility customers of pending cancellations of service. The Federal Communications Commission's (FCC) regulations, for example, contain several provisions that direct long distance telephone service providers to give their customers written notice upon discontinuance of service. The FCC's rules require that all domestic carriers apply to the FCC for authority to discontinue service, and, as part of that application, to notify all affected customers of a planned discontinuance of service and submit a copy of the application to the public utility commission and to the government of the state in which the discontinuance is proposed, as well as to the Secretary of Defense. 47 CFR 63.71(a). Non-dominant international carriers are also required to provide written notice to customers at least 60 days prior to discontinuance of service. *See* 47 CFR 63.19. Although the FCC's rules require written notice, they do not specifically prohibit the use of electronic methods to transmit the notice to customers.

The FCC's rules allow some transactions and communications to be made by electronic means, including electronic posting of the terms and conditions of service that describe the procedure for termination of service. The FCC allows telephone companies to use electronic methods and signatures for letters of agency, and authorizations or verification of a subscriber's request to change his or her preferred carrier selection. *See* 47 CFR 64.1130. These rules require that letters of agency submitted with an electronic signature include the consumer disclosures required by section 101(c) of ESIGN. 47 CFR 64.1130(i). In the *Domestic Detariffing Order*[2] and the *International Detariffing Order*[3], the FCC also allowed long distance carriers to provide information regarding rates and conditions of service on Internet web sites rather than through traditional tariff filings. *See* 47 CFR § 42.10, 61.72. As part of the congressional energy conservation policies adopted in the early and mid 1990s, Congress enacted special rules and standard procedures for utility companies to follow during terminations of gas and electric service. *See* 15 U.S.C. 3204; 16 U.S.C. 2625(g). These rules refer to procedures that are to be prescribed by state utility and regulatory commissions directing utility service providers to provide reasonable prior notice to consumers of pending termination or discontinuance of service and to allow consumers an opportunity to dispute the reasons for the termination. *Id.* In general, states and municipal governments have adopted regulations to govern disconnection notice procedures for utility companies.

In some cases, these regulations also apply to municipal utilities as well as privately-owned companies. For example, Nebraska's regulations provide that: "[n]o municipal utility owned and operated by a village furnishing water, natural gas or electricity at retail . . . shall discontinue service to any domestic subscriber for nonpayment of any past due account unless such utility first gives written notice by mail to any subscriber at least seven days prior to termination." Neb.Rev.Stat.Ann. § 70–1603 (2002). Under this regulation, notice must be given to the consumer by first-class mail or in person and service must continue for at least seven days after notice has been given. *Id.* at § 70–1605. The amount of time for each notice varies among the states; however, most states require written notice of utility service disconnection to be given in advance by mail or in person.[4]

The ESIGN exception for utility cancellation notices means utility companies are not allowed to provide notices of cancellation of gas, water, telephone, or electric service through electronic means or using an electronic signature. Approximately 40 states have adopted Uniform Electronic Transactions Act (UETA) laws, which allows the states to be removed from the operation of ESIGN by adopting their own electronic transactions law in accordance with section 102(a)(1) of ESIGN. *See* National Conference of Commissioners on Uniform State Laws at *http://www.nccusl.org/nccusl/LegislativeByState.pdf*. The utility cancellation notice exception has not been incorporated into all state uniform electronic transactions laws, and therefore, electronic notice of utility cancellation may be allowed by some states. The absence of an exception in a state UETA law for utility cancellation notices does not automatically make these documents subject to that law. In some cases, the state or municipal utility laws and regulations control the format and procedure for providing notice to consumers of cancellation of utility services and may authorize formats other than paper writings.

The ESIGN section 103 evaluation of the utility cancellation notices exception is intended to evaluate the current status of the law and procedure regarding this issue in preparation for a report to Congress on whether this exception remains necessary to protect consumers. This evaluation is not a review or analysis of laws relating to these documents for the purpose of recommending that Congress draft legislation or propose changes to those laws, but to advise Congress of the current state of law, practice, and procedure regarding this issue since the passage of the ESIGN Act in 2000. Comments filed in response to this Notice should not be considered to have a connection with or impact on specific, ongoing federal and state court proceedings or administrative rulemaking proceedings concerning utility cancellation notices.

Invitation to Comment

NTIA requests that interested parties, including members of the bar, courts and consumer representatives, submit written comments on any issue of fact, law, or policy that may assist in the evaluation required by section 103(c). We invite comments from all parties that may be affected by the removal of the utility cancellation notices exception from the ESIGN Act including, but not limited to, state agencies and organizations, national and state bar associations, consumer advocates, and utilities and administrative law practitioners. The comments will assist NTIA in evaluating the potential impact of the removal of this exception from ESIGN on consumers, utility companies, legal professionals, and state electronic transactions laws. The following questions are intended to provide guidance as to the specific subject areas to be examined as a part of the evaluation. Commenters are invited to discuss any relevant issue, regardless of whether it is identified below.

1. What methods, if any, are available to protect utility service customers if the utility cancellation notices exception is removed from the ESIGN Act?

2. Discuss state and municipal utility regulation and consumer protection

[2] Second Report and Order, 11 FCC Rcd 20,730 (1996) (*Domestic Detariffing Order*); *stay granted, MCI Telecommunications Corp. v. FCC*, No. 96-1459 (D.C. Cir. Feb. 13, 1997); Order on Reconsideration, 12 FCC Rcd 15,014 (1997)(Domestic Detariffing Order on Reconsideration); Second Order on Reconsideration and Erratum, 14 FCC Rcd 6004 (1999)(*Domestic Detariffing Second Order on Reconsideration*); *stay lifted and aff'd, MCI WorldCom, Inc., et al. v. FCC*, 209 F.3d 760 (D.C. Cir. April 28, 2000), Memorandum Report and Order, DA 00-2586 (CCB, rel. Nov. 17, 2000)(*Domestic Transition Order*).

[3] In the Matter of 2000 Biennial Regulatory Review, Policy Concerning the International, Interexchange Marketplace, Report and Order, 16 FCC Rcd 10,647 (2001)(International Detariffing Order).

[4] Compare New Hampshire, N.H.Rev. Stat.Ann. § 363.B:1(2002) (10days) and New York, N.Y.[Pub.Serv.] § 34.1(2002) (15days).

laws that require written notice to consumers for cancellation of telephone, water, gas, or electric utility services.

3. Discuss state and municipal utility regulations, laws, or ordinances that allow utilities to send electronic notices to consumers for cancellation or termination of telephone, water, gas or electric utility services.

4. How would the removal of the utility cancellation notices exception to ESIGN affect consumers? How would the removal of the exception affect the provision of notice by utility companies to their customers? Please discuss.

5. What effect would the removal of the exception have on the current municipal, state, and federal policies concerning notice of utility service cancellations?

6. If the ESIGN Act is amended to eliminate the utility cancellation notice exception, what other changes, if any, are required to maintain consumer protection laws? What changes would be necessary, if any, to maintain current state and Federal policies concerning the content and timing of utility cancellation notices?

7. What are the benefits for utility customers, and utility companies that may result from electronic notice of cancellation of utility services? For example, would electronic notice provide customers with additional time to correct conditions or circumstances that led to the cancellation?

8. List any unique issues surrounding the delivery, timing, authentication, privacy, of utility cancellation notices that can and should be resolved prior to removal of the exception from the Act.

9. State whether municipalities, states, or utility companies have developed electronic notification procedures for the transmission of utility service information.

10. Discuss current electronic methods that are used to provide information to consumers regarding utility services (e.g., conditions of service or rate information). In these instances, discuss the consumer protection mechanisms that are employed by utility companies to transmit service or rate information to customers. Also discuss the following:

a. receipt verification procedures;

b. updated regulations that reflect electronic signature technologies; and

c. regulations that require the retention of paper copies of the notice.

Please provide copies of studies, reports, opinions, research or other empirical data referenced in the responses.

Dated: January 23, 2003.

Kathy D. Smith,

Chief Counsel, National Telecommunications and Information Administration.

[FR Doc. 03–1921 Filed 1–27–03; 8:45 am]

BILLING CODE 3510–60–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Establishment of Import Limits for Certain Wool and Man-Made Fiber Textile Products Produced or Manufactured in Belarus

January 21, 2003.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the commissioner of customs establishing limits.

EFFECTIVE DATE: January 28, 2003.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927-5850, or refer to the U.S. Customs Web site at http://www.customs.gov. For information on embargoes and quota re-penings, refer to the Office of Textiles and Apparel website at http://otexa.ita.doc.gov.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The Bilateral Textile Memorandum of Understanding dated January 10, 2003 between the Governments of the United States and Belarus establishes limits for the period January 1, 2003 through December 31, 2003. This notice cancels and supercedes the notice published on December 30, 2002 (67 FR 79571).

These limits may be revised if Belarus becomes a member of the World Trade Organization (WTO) and the United States applies the WTO agreement to Belarus.

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish the limits.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see Federal Register notice 68 FR 1599, published on January 13, 2003).

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

January 21, 2003.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; this directive cancels and supercedes the directive issued to you on December 23, 2002. You are directed to prohibit, effective on January 28, 2003, entry into the United States for consumption and withdrawal from warehouse for consumption of textiles and textile products in the following categories, produced or manufactured in Belarus and exported during the twelve-month period beginning on January 1, 2003 and extending through December 31, 2003:

Category	Twelve-month restraint limit
622	9,100,000 square meters of which not more than 1,500,000 square meters shall be in Category 622-L [1].
435	66,000 dozen.
448	34,000 dozen.

[1] Category 622-L: only HTS numbers 7019.51.9010, 7019.52.4010, 7019.52.9010, 7019.59.4010, and 7019.59.9010.

Products in Categories 622 and 622-L exported during 2002 shall be charged to the applicable category limit and sublimit for that year (see directive dated October 19, 2001) to the extent of any unfilled balance. In the event the limit and sublimit established for that period have been exhausted by previous entries, such products shall be charged to the limit and sublimit set forth in this directive.

The limits set forth above are subject to adjustment pursuant to the current bilateral agreement between the Governments of the United States and Belarus.

This limits may be revised if Belarus becomes a member of the World Trade Organization (WTO) and the United States applies the WTO agreement to Belarus.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,
James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.03–1865 Filed 1–27–03; 8:45 am]

BILLING CODE 3510–DR–S

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

eGrants Orientation Conference Calls for Organizations Interested in Applying for an AmeriCorps*National Program Grant

AGENCY: Corporation for National and Community Service.

ACTION: Notice of eGrants Orientation Conference Calls for AmeriCorps*National new applicants.

SUMMARY: The Corporation is offering eGrants Orientation Conference Calls for organizations interested in applying for an AmeriCorps*National program grant. These training telcons will provide an orientation on the basic functions and operations of the eGrants system. We will familiarize organizations with the technical steps of preparing and submitting an application using the eGrants system. For more information on the eGrants system, *see: http://www.nationalservice.org/egrants/index.html.*

Audience: Nonprofit organizations applying for an AmeriCorps*National program grant using the eGrants system.

Dates and Times of Calls: The calls will take place on:

February 3rd, 1 pm–3 pm est;
February 7th, 1:30 pm–3:30 pm est;
February 19th, 1 pm–3 pm est;
February 20th, 2 pm–4 pm est.

All calls will cover the same content. Please note that there is a limit of 8 participant slots per call. Each organization may sign-up for one slot.

Process and Deadline for Registering for a call: Select one of the call dates specified above, then contact Sueko Kumagai via e-mail *(skumagai@cns.gov)* or phone (202–606–5000 ext. 418) with your selected date. You must respond no later than five days prior to your selected call to reserve a slot on one of the calls.

FOR FURTHER INFORMATION CONTACT: For further information, contact one of the following: Sueko Kumagai at 202–606–5000 ext. 418; or Lois Nembhard at 202–606–5000 ext. 299.

Dated: January 22, 2003.

John Foster-Bey,

*Director, AmeriCorps*State/National.*

[FR Doc. 03–1805 Filed 1–27–03; 8:45 am]

BILLING CODE 6050–$$–P

DEPARTMENT OF DEFENSE

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Department of the Air Force

Notice of Intent to Prepare a Joint Environmental Impact Statement and Environmental Impact Report

AGENCIES: Department of the Air Force, Department of Housing and Urban Development, City of Hawthorne, and the City of El Segundo.

ACTION: Notice of intent to prepare a joint Environmental Impact Statement and Environmental Impact Report for the proposed Los Angeles Air Force Base land conveyance, construction and development.

SUMMARY: The U.S. Department of the Air Force, lead agency under the National Environmental Policy Act (NEPA) and the City of El Segundo, California, lead agency under the California Environmental Quality Act (CEQA), announce their intent to prepare a joint draft Environmental Impact Statement (EIS)/Environmental Impact Report (EIR) for the proposed land conveyance, construction, development and consolidation of the Los Angeles Air Force Base (LAAFB).

The Air Force will have primary responsibility to ensure that the joint EIS/EIR complies with NEPA (42 U.S.C. 4321 *et. seq.*); the Council on Environmental Quality (CEQ) regulations that implement the procedural provisions of NEPA (40 CFR parts 1500–1508); and the Air Force procedures for implementing NEPA, Air Force Instruction (AFI) 32–7061, Environmental Impact Analysis Process (EIAP), as promulgated at 32 Code of Federal Regulations part 989.

The City of Hawthorne, California will be a cooperating agency for the joint EIS/EIR, having responsibility for any applications concerning Federal-funding programs administered by HUD, assume responsibility for environmental review, decision-making and actions that would otherwise apply to HUD under NEPA in accordance with 24 CFR part 58. The City of El Segundo shall serve as the agency point of contact for receipt of all comments pertaining to the EIS/EIR and will have primary responsibility for EIS/EIR compliance with CEQA, in accordance with the California Public Resources Code (PRC 21000 *et seq.*) and the California Code of Regulations (14 CCR 15000 *et seq.*).

FOR FURTHER INFORMATION CONTACT: *Air Force:* Mr. Jason Taylor, Environmental Specialist, 61 ABG/CEZV, 2420 Vela Way, Suite 1467, Los Angeles Air Force Base, El Segundo, CA, 90245–4659; fax (310) 363–1595.

City of El Segundo: Mr. Paul Garry, Senior Planner, City of El Segundo, Department of Community, Economic, and Development Services, 350 Main Street., El Segundo, California, 90245 (310) 524–2342.

SUPPLEMENTARY INFORMATION: Section 2861 of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001, as amended by section 2841 of the Bob Stump National Defense Authorization Act for Fiscal Year 2003, authorizes the conveyance of parcels of real property at Los Angeles Air Force Base in exchange for the design and construction of facilities meeting seismic and safety design standards for Los Angeles, California, to consolidate mission and support functions at the base. A draft Environmental Assessment (EA) was prepared in September 2002 in accordance with the NEPA and the CEQ regulations implementing NEPA to analyze the potential environmental consequences of the land conveyance and seismic upgrade. As a result of public comments in received on the EA in October 2002, the Air Force has entered into an agreement with the Cities of El Segundo and Hawthorne, California to revise the proposed action and to prepare a joint EIS/EIR on the project.

The proposed action would include, among other components, the construction of 560,000 square feet of administrative and special use facilities for the Air Force on Area B (located within the City of El Segundo); non-Air Force development of 975 condominium residential units on Area A (City of El Segundo annex to City of Hawthorne pending), and non-Air Force development of 333 condominium residential units on the Lawndale Annex (City of Hawthorne). No changes would occur to the Sun Valley property located in the City of Los Angeles.

Alternatives include a reduced density alternative at the conveyed, redeveloped properties; a retail-commercial alternative at the conveyed, redeveloped properties; a renovation alternative, using traditional Military Construction (MILCON) funding to implement the land conveyance and development project; and the no-action alternative, under which the Air Force will continue to operate current facilities with limited MILCON and facility alteration/repair projects.

A scoping meeting will be held to identify significant issues to be addressed in the EIS/EIR. To ensure that

a full range of issues related to this proposed action are identified and addressed, scoping comments are invited from all interested parties. A public scoping meeting is scheduled to be held, as follows:

Date: Thursday, January 30, 2003.

Time: 8 a.m.

Place: City Council Chambers, 350 Main Street, El Segundo, California.

Written comments pertaining to the proposed action will be accepted throughout the EIS/EIR planning process. However, to ensure proper consideration in preparation of the draft EIR/EIS, scoping comments should be received within 15 days of the publication of this notice. The draft EIS/EIR is planned for publication and distribution in February 2003. Copies may be obtained, upon request, from the Air Force point of contact.

Pamela D. Fitzgerald,

Air Force Federal Register Liaison Officer.

[FR Doc. 03–1797 Filed 1–27–03; 8:45 am]

BILLING CODE 5001–05–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before February 27, 2003.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Lauren Wittenberg, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address *Lauren.Wittenberg@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: January 23, 2003.

John D. Tressler,

Leader, Regulatory Management Group, Office of the Chief Information Officer.

Federal Student Aid

Type of Review: New Collection.

Title: Teacher Cancellation Low Income Directory (JS).

Frequency: Annually.

Affected Public: Individuals or household, State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 1.

Burden Hours: 6983.

Abstract: There are 57 State Agencies that contribute to the development of a directory of elementary and secondary schools which qualify for the teacher cancellation benefit. The directory allows post-secondary institutions to determine whether or not a teacher who received a Federal Perkins Loan, Direct loan, or Federal Family Education Loan at their school is eligible to receive a loan cancellation as provided under Title I of the Elementary and Secondary Education Act of 1965.

Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or directed to her e-mail address *Vivian.Reese@ed.gov.* Requests may also be faxed to (202) 708–9346.

Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Joseph Schubart at his e-mail address *Joe.Schubart@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 03–1897 Filed 1–27–03; 8:45 am]

BILLING CODE 4000–01–U

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC03–539–000, FERC–539]

Commission Information Collection Activities, Proposed Collection; Comment Request; Extension

January 22, 2003.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice.

SUMMARY: In compliance with the requirements of Section 3506(c)(2)(a) of the Paperwork Reduction Act of 1995, 44 U.S.C. 3506(c)(2)(A), the Federal Energy Regulatory Commission (Commission) is soliciting public comment on the specific aspects of the information collection described below.

DATES: Comments on the collection of information are due by March 24, 2003.

ADDRESSES: Copies of the proposed collection of information can be obtained from Michael Miller, Office of the Chief Information Officer, CI–1, 888 First Street NE., Washington, DC 20426. Comments may be filed either in paper format or electronically. Those parties filing electronically do not need to make a paper filing.

For paper filings, the original and 14 copies of such comments should be submitted to the Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426 and refer to Docket No. IC03–539–000.

Documents filed electronically via the Internet must be prepared in WordPerfect, MS Word, Portable Document Format, or ASCII format. To file the document, access the Commission's Web site at *http://www.ferc.gov* and click on "Make an E-filing," and then follow the instructions for each screen. First time users will have to establish a user name and password. The Commission will send an automatic acknowledgment to the sender's e-mail address upon receipt of comments. User assistance for electronic filings is available at 202–502–8258 or by e-mail to *efiling@ferc.gov* Comments should not be submitted to the e-mail address.

All comments may be viewed, printed or downloaded remotely via the Internet through FERC's homepage using the

FERRIS link. For user assistance, contact *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676 or for TTY, contact (202)502–8659.

FOR FURTHER INFORMATION CONTACT: Michael Miller may be reached by telephone at (202)502–8415, by fax at (202)208–2425, and by e-mail at *michael.miller@ferc.gov*.

SUPPLEMENTARY INFORMATION: The information collected under the requirements of FERC–539 "Gas Pipeline Certificates: Import/Export" (OMB No. 1902–0062) is used by the Commission to implement the statutory provisions of Section 3 of the Natural Gas Act (NGA), 15 U.S.C. 717–717w. Section 3 requires prior authorization before reporting or importing natural gas from or to the United States. Section 3 authorizes the Commission to grant an application, in whole or in part, with modifications and upon terms and conditions as the Commission may find necessary or appropriate. The 1992 amendments to Section 3 of the NGA concern the importation or exportation from/to a nation which has a free trade agreement with the United States. With the passage of both the North American Free Trade Agreement and the Canadian Free Trade Agreement, the construction, operation and siting of import or export facilities are also the subject of the Commission's regulatory focus.

In Order No. 608, the Commission created voluntary procedures whereby prospective applicants could use a collaborative process to resolve significant issues prior to filing an application. This collaborative process allows applicants and interested parties to come together and come to mutual agreements that may help to defuse some of the controversial issues which may otherwise arise once an application has been filed with the Commission. The pre-filing consultation process combines efforts to address NGA issues with the National Environmental Policy Act (NEPA) review process into a single pre-filing collaborative process that also includes the administrative processes associated with the Clean Water Act, the National Historic Preservation Act, the Endangered Species Act and other relevant statutes. Combining the pre-filing consultation and environmental review into a single pre-filing process simplifies and expedites the authorization of gas facilities and services.

The Commission uses the information to determine the appropriateness of the proposed facilities and their location. The determination involves among other things, an examination of adequacy of design, cost, reliability, redundancy and environmental acceptability. This information is necessary for the Commission to make a determination that the facilities and location are consistent with the public interest. The Commission implements these filing requirements in the Code of Federal Regulations (CFR) under 18 CFR part 153.

Action: The Commission is requesting a three-year extension of the current expiration date, with no changes to the existing collection of data.

Burden Statement: Public reporting burden for this collection is estimated as:

Number of respondents annually	Number of responses per respondent	Average burden hours per response	Total Annual burden hours
(1)	(2)	(3)	(1)×(2)×(3)
12	1	241	2,886

Estimated cost burden to respondents: 2,886 hours / 2,080 hours per year × $117,041 per year = $162,394. The cost per respondent is equal to $ 13,533.

The reporting burden includes the total time, effort, or financial resources expended to generate, maintain, retain, disclose, or provide the information including: (1) Reviewing instructions; (2) developing, acquiring, installing, and utilizing technology and systems for the purposes of collecting, validating, verifying, processing, maintaining, disclosing and providing information; (3) adjusting the existing ways to comply with any previously applicable instructions and requirements; (4) training personnel to respond to a collection of information; (5) searching data sources; (6) completing and reviewing the collection of information; and (7) transmitting, or otherwise disclosing the information.

The estimate of cost for respondents is based upon salaries for professional and clerical support, as well as direct and indirect overhead costs. Direct costs include all costs directly attributable to providing this information, such as administrative costs and the cost for information technology. Indirect or overhead costs are costs incurred by an organization in support of its mission. These costs apply to activities which benefit the whole organization rather than any one particular function or activity.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology *e.g.*, permitting electronic submission of responses.

Magalie R. Salas,

Secretary.

[FR Doc. 03–1927 Filed 1–27–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–39–005]

Columbia Gulf Transmission Company; Notice of Filing of Report

January 22, 2003.

Take notice that, on January 14, 2003, Columbia Gulf Transmission Company (Columbia Gulf) tendered for filing its report after one year's experience of parking and lending service under Rate Schedule PAL. Columbia Gulf's states that its report indicates that there were no PAL transactions involving multiple points during the first year of service.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available

for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment date: January 29, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–1940 Filed 1–27–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–188–001]

East Tennessee Natural Gas Company; Notice of Compliance Filing

January 22, 2003.

Take notice that on January 15, 2003, East Tennessee Natural Gas Company (East Tennessee) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, Sub Twenty-Fifth Revised Sheet No. 4, to be effective January 6, 2003.

East Tennessee states that the purpose of this filing is to comply with the directives of the Commission's Order dated January 3, 2003, in Docket No. RP03–188–000. The January 3 Order directed East Tennessee to file, within twenty days, a revised Twenty-Fifth Revised Sheet No. 4 to reflect the maximum daily volumetric firm rate separately for each of the three expansion projects (Rocky Top, Gateway and Murray) and the non-expansion FT–A rate. In this compliance filing, East Tennessee hereby submits the revised tariff sheet required by the January 3 Order.

East Tennessee states that copies of its filing have been mailed to all affected customers of East Tennessee and interested state commissions, and all parties on the Commission's official service list in this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Protest Date: January 27, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–1941 Filed 1–27–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–341–004]

Egan Hub Partners, L.P.; Notice of Compliance Filing

January 22, 2003.

Take notice that on January 15, 2003, Egan Hub Partners, L.P. (Egan Hub) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, certain revised tariff sheets identified in Appendix A to the filing proposed to be effective on December 24, 2002.

Egan Hub states that the purpose of this filing is to conform the pagination, supersession and/or content of the referenced tariff sheets to reflect the Commission's acceptance of tariff revisions in Docket Nos. RP00–341–002, RP02–264–000, RP02–264–001 and RP02–491–000. Egan Hub states that the tariff sheets filed herein contain only those changes approved by the orders issued in the referenced dockets.

Egan Hub states that copies of its filing have been mailed to all affected customers and interested state commissions and to all parties on the official service list.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings, This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Protest Date: January 27, 2003.

Magalie R. Salas,]

Secretary.

[FR Doc. 03–1939 Filed 1–27–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission El Dorado Irrigation District California; Notice of Public Meetings

January 22, 2002.

The Federal Energy Regulatory Commission (Commission) is reviewing the application for a new license for the El Dorado Project (FERC No. 184), filed on February 22, 2000. The El Dorado Project, licensed to the El Dorado Irrigation District (EID), is located on the South Fork American River, in El Dorado, Alpine, and Amador counties, California. The project occupies lands of the Eldorado National Forest.

The EID, several State and Federal agencies, and several non-governmental agencies are working collaboratively with a facilitator to resolve certain issues relevant to this proceeding. These meetings are a part of that collaborative process. Meetings will be held as follows:

February 10 Plenary Meeting—9 am–4 pm; February 11 Plenary Meeting—9 am–4 pm; and February 12 Plenary Meeting—9 am–4 pm.

We invite the participation of all interested governmental agencies, non-

governmental organizations, and the general public in these meetings.

All meetings will be held in the El Dorado Board of Directors Meeting Room, located at EID Headquarters, 2890 Mosquito Road, Placerville, California.

For further information, please contact Elizabeth Molloy at (202) 502–8771 or John Mudre at (202) 502–8902.

Magalie R. Salas,

Secretary.

[FR Doc. 03–1937 Filed 1–27–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–176–077]

Natural Gas Pipeline Company of America; Notice of Negotiated Rates

January 22, 2003.

Take notice that on January 15, 2003, Natural Gas Pipeline Company of America (Natural) tendered for filing to become part of its FERC Gas Tariff, Sixth Revised Volume No. 1, First Revised Sheet No. 26W.09 to be effective January 15, 2003.

Natural states that the purpose of this filing is to terminate, effective January 15, 2003, an existing negotiated rate transaction between Natural and Aquila Merchant Services, Inc., formerly known as Aquila Energy Marketing Corp., under Natural's Rate Schedule ITS approved in Docket No. RP99–176–060 and implemented pursuant to Section 49 of the General Terms and Conditions of Natural's Tariff.

Natural states that copies of the filing are being mailed to all parties set out on the Commission's official service list in Docket No. RP99–176.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.314 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment date: January 27, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–1942 Filed 1–27–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC03–46–000, et al.]

El Paso Corporation, et al.; Electric Rate and Corporate Filings

January 17, 2003.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. El Paso Corporation, Limestone Electron Trust, El Paso Tennessee Pipeline Co., El Paso Chaparral Holding Company, El Paso Chaparral Investor, L.L.C., El Paso Chaparral Holding II Company, Chaparral Investors, L.L.C., Mesquite Investors, L.L.C.

[Docket No. EC03–46–000]

Take notice that on January 13, 2003, El Paso Corporation (El Paso), Limestone Electron Trust (Limestone) El Paso Tennessee Pipeline Co. (El Paso Tennessee), El Paso Chaparral Holding Company (Chaparral Holding), El Paso Chaparral Investor, L.L.C. (El Paso Chaparral), El Paso Chaparral Holding II Company (Chaparral Holding II), Chaparral Investors, L.L.C. (Chaparral) and Mesquite Investors, L.L.C. (Mesquite) (jointly, Applicants) filed with the Federal Energy Regulatory Commission an application pursuant to Section 203 of the Federal Power Act seeking authorization to transfer indirect control over the jurisdictional facilities of Chaparral's indirect subsidiaries. Applicants also request expedited consideration of this Application.

Comment Date: February 3, 2003.

2. Dynegy Inc.

[Docket No. EC03–47–000 and ES03–20–000]

Take notice that on January13, 2003, Dynegy Inc. (Dynegy), on behalf of certain of its public utility subsidiaries (Applicants), filed with the Federal Energy Regulatory Commission an application pursuant to Section 203 of the Federal Power Act (FPA) for authorization of a disposition of jurisdictional facilities pursuant to an intra-corporate reorganization. Specifically, Dynegy seeks authorization to create one or more new intermediate holding companies between Dynegy Holdings Inc., and its indirect public utility subsidiaries. Dynegy also requests that the Commission grant Dynegy Power Marketing, Inc., blanket authority pursuant to FPA Section 204 to issue securities and assume obligations or liabilities as guarantor, indorser, surety, or otherwise in respect of any security of another person.

Comment Date: February 3, 2003.

3. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER02–1420–005]

Take notice that on January 10, 2003, American Electric Power on behalf of Southwestern Electric Power Company (SWEPCO) and Public Service Company of Oklahoma (PSO), operating companies of the American Electric Power System (collectively AEP) submitted an updated status of their participation in the Midwest ISO.

Comment Date: January 31, 2003.

4. Duke Energy New Albany, LLC

[Docket No. ER02–171–001]

Take notice that on January 14, 2003, Duke Energy New Albany, LLC (Duke New Albany) tendered for filing its triennial market power analysis in compliance with the Commission Order granting it market-based rate authority in Docket No. ER99–1942–000 on April 15, 1999.

Duke New Albany states that copies of this filing were served upon those parties on the official service list.

Comment Date: February 4, 2003.

5. Entergy Services, Inc.

[Docket No. ER02–2014–006]

Take notice that on January 15, 2003, Entergy Services, Inc., on behalf of the Entergy Operating Companies, Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc. (collectively Entergy), filed a revised Attachment Q to its Open Access Transmission Tariff. Attachment Q addresses local transmission constraints on the Entergy transmission

system and provides a process for generators to participate in short-term bulk power markets without the necessity of a system impact study. Entergy requests an effective date thirty days after the date of any final Commission order approving Entergy's revised Attachment Q.

Comment Date: February 5, 2003.

6. NorthWestern Energy, L.L.C.

[Docket No. ER02–2569–001]

Take notice that on January 14, 2003, The Clark Fork and Blackfoot, L.L.C. (TCFB) (formerly named NorthWestern Energy, L.L.C.) tendered for filing an application for an order accepting its FERC Electric Tariff Original Volume No. 1, granting certain blanket approvals, including the authority to sell electricity, capacity, and ancillary services at market-base rates, and waiving certain regulations of the Commission.

TCFB also filed its FERC Electric Tariff Original Volume No. 1, seeking an effective date of February 13, 2003.

Comment Date: February 4, 2003.

7. Entergy Services, Inc.

[Docket No. ER03–59–002]

Take notice that on January 15, 2003, Entergy Services, Inc., on behalf of Entergy New Orleans, Inc., tendered for filing with the Federal Energy Regulatory Commission (Commission), a compliance Interconnection and Operating Agreement with Duke Energy Orleans, LLC, in response to the Commission's December 16, 2002, order in Entergy Services, Inc., 101 FERC ¶ 61,289.

Comment Date: February 5, 2003.

8. Southern California Edison Company

[Docket No. ER03–142–001]

Take notice that on January 15, 2003, Southern California Edison Company (SCE) tendered for filing revised rate sheets for its Transmission Owner Tariff (TO Tariff), FERC Electric Tariff, Substitute First Revised Original Volume No. 6, and for certain of its Existing Transmission Contracts with the Arizona Electric Power Cooperative Inc., the city of Colton, California, and the California Department of Water Resources. The purpose of this filing is to comply with the Federal Energy Regulatory Commission's Order Accepting for Filing and Suspending Proposed Tariff and Contract Amendments and Establishing Hearing and Settlement Judge Procedures dated December 31, 2002 (Southern California Edison Company, 101 FERC ¶ 61,404).

SCE states that copies of this filing were served upon the Service List compiled by the Secretary in this docket.

Comment Date: February 5, 2003.

9. PJM Interconnection, L.L.C.

[Docket No. ER03–406–000]

Take notice that on January 10, 2003, PJM Interconnection, L.L.C. (PJM) submitted for filing amendments to the PJM Open Access Transmission Tariff and the Amended and Restated Operating Agreement of PJM Interconnection, L.L.C., to establish a new annual auction process for Financial Transmission Rights (formerly Fixed Transmission Rights) and an allocation mechanism for the auction revenues. On January 13, 2003, PJM amended its January 10th filing and make conforming changes to Attachment K of the PJM Tariff consistent with the amendments to the Appendix to Attachment K of the PJM Tariff filed on January 10, 2003.

PJM requests an effective date of March 12, 2003 for the amendments. PJM also states that copies of this filing were served upon all PJM members and each state electric utility regulatory commission in the PJM region.

Comment Date: January 31, 2003.

10. American Transmission Company LLC

[Docket No. ER03–413–000]

Take notice that on January 14, 2003, American Transmission Company LLC (ATCLLC) tendered for filing a Generation-Transmission Interconnection Agreement between ATCLLC and Wisconsin Public Service Corporation. ATCLLC requests an effective date of December 15, 2002.

Comment Date: February 4, 2003.

11. Klondike Wind Power LLC

[Docket No. ER03–416–000]

Take notice that on January 15, 2003, Klondike Wind Power LLC filed with the Federal Energy Regulatory Commission (Commission) a Notice of Succession informing the Commission that on December 19, 2002, the name of West Valley Generation LLC had been changed to Klondike Wind Power LLC in accordance with 18 CFR 35.16.

Comment Date: February 5, 2003.

Standard Paragraph

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov* , using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number filed to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866)208–3676, or for TTY, contact (202)502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. 03–1924 Filed 1–27–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG03–37–000, et al.]

FPL Energy North Dakota Wind, LLC, et al.; Electric Rate and Corporate Filings

January 22, 2003.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. FPL Energy North Dakota Wind, LLC

[Docket No. EG03–37–000]

Take notice that on January 17, 2003, FPL Energy North Dakota Wind, LLC (the Applicant), with its principal office at 700 Universe Blvd., Juno Beach, Florida 33408, filed with the Federal Energy Regulatory Commission (the Commission) an application for determination of exempt wholesale generator status pursuant to part 365 of the Commission's regulations.

Applicant states that it is a Delaware limited liability company engaged directly and exclusively in the business of owning and operating an approximately 40 MW wind-powered

generation facility located in LaMoure County, North Dakota. Electric energy produced by the facility will be sold at wholesale.

Comment Date: February 12, 2003.

2. FPL Energy South Dakota Wind, LLC

[Docket No. EG03–38–000]

Take notice that on January 17, 2003, FPL Energy South Dakota Wind, LLC (the Applicant), with its principal office at 700 Universe Blvd., Juno Beach, Florida 33408, filed with the Federal Energy Regulatory Commission (Commission) an application for determination of exempt wholesale generator status pursuant to part 365 of the Commission's regulations.

Applicant states that it is a Delaware limited liability company engaged directly and exclusively in the business of owning and operating an approximately 40 MW wind-powered generation facility located in Hyde County, South Dakota. Electric energy produced by the facility will be sold at wholesale.

Comment Date: February 12, 2003.

3. Arizona Public Service Company

[Docket No. EL03–43–000]

Take notice that on January 16, 2003, Arizona Public Service Corporation (APS) filed with the Federal Energy Regulatory Commission (Commission) a petition for declaratory order requesting the Commission's confirmation that the executed Interconnection and Operating Agreement between APS and Reliant Energy Desert Basin, LLC (Reliant), filed as part of the Settlement Agreement approved in Docket No. ER01–1519–000, provides that Reliant will negotiate the terms and conditions of the transfer to APS of the Desert Basin Switchyard constructed by Reliant to enable the interconnection of its Desert Basin generation facility to APS's transmission system, and thereafter consummate such transfer.

Comment Date: February 14, 2003.

4. California Independent System Operator Corporation, Avista Corporation, Bonneville Power Administration, Idaho Power Company, Montana Power Company, Nevada Power Company, PacifiCorp, Portland General Electric Company, Puget Sound Energy, Inc., Sierra Pacific Power Company, Arizona Public Service Company, El Paso Electric Company, Public Service Company of New Mexico, Tucson Electric Power Company

[Docket Nos. ER02–1656–000, RT01–35–000, RT02–1–000 and EL02–9–000]

Take notice that on January 8, 2003, the California Independent System Operator Corporation (California ISO), the RTO West Filing Utilities (Avista Corporation, Bonneville Power Administration, Idaho Power Company, NorthWestern Energy (formerly Montana Power Company), Nevada Power Company, PacifiCorp, Portland General Electric Company, Puget Sound Energy, Inc. and Sierra Pacific Power Company) and the WestConnect Applicants (Arizona Public Service Company, El Paso Electric Company, Public Service Company of New Mexico and Tucson Electric Power Company) jointly filed a report concerning activities of the Seams Steering Group—Western Interconnection.

The parties prepared a joint filing for administrative convenience only. California ISO is submitting this filing solely in Docket No. ER02–1656–000, RTO West Filing Utilities are submitting this filing solely in Docket No. RT01–35–000, and WestConnect Applicants are submitting this filing solely in Docket Nos. RT02–1–000 and EL02–9–000.

5. Duke Energy Glynn, LLC Georgia Power Company

[Docket No. ER03–390–000]

Take notice that on January 16, 2003, Duke Energy Glynn, LLC (Duke) and Southern Company Services, Inc., as agent for Georgia Power Company (collectively SCS) submitted on January 9, 2003, a Notice of Cancellation. A letter terminating the Interconnection Agreement was omitted. There are no other changes to the filing and the requested effective date remains June 1, 2002.

Comment Date: February 6, 2003.

6. Progress Energy Service Company, on behalf of Progress Energy Carolinas, Inc.

[Docket No. ER03–414–000]

Take notice that on January 15, 2003, Progress Energy Service Company on behalf of Progress Energy Carolinas, Inc., (Progress Carolinas) tendered for filing an executed Facility Interconnection and Operating Agreement (Interconnection Agreement) between Progress Carolinas and Cogentrix of North Carolina, Inc., (Cogentrix). The Interconnection Agreement provides for the interconnection of Cogentrix's generating facility near Roxboro, NC with Progress Carolinas' transmission system.

Progress Carolinas is requesting an effective date of December 16, 2002 for this Interconnection Agreement. Progress Carolinas also states that a copy of the filing was served upon the North Carolina Utilities Commission and the South Carolina Public Service Commission.

Comment Date: February 5, 2003.

6. Progress Energy Service Company on behalf of Progress Energy Carolinas, Inc.

[Docket No. ER03–415–000]

Take notice that on January 15, 2003, Progress Energy Service Company on behalf of Progress Energy Carolinas, Inc., (Progress Carolinas) tendered for filing an executed Facility Interconnection and Operating Agreement (Interconnection Agreement) between Progress Carolinas and Cogentrix of North Carolina, Inc.(Cogentrix). The Interconnection Agreement provides for the interconnection of Cogentrix's generating facility near Southport, NC with Progress Carolinas' transmission system.

Progress Carolinas is requesting an effective date of December 16, 2002 for this Interconnection Agreement. Progress Carolinas also states that a copy of the filing was served upon the North Carolina Utilities Commission and the South Carolina Public Service Commission.

Comment Date: February 5, 2003.

7. Commonwealth Edison Company

[Docket No. ER03–417–000]

Take notice that on January 15, 2003, Commonwealth Edison Company (ComEd) tendered a Notice of Cancellation of Original Service Agreement Nos. 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, and 632 under ComEd's FERC Electric Tariff, Second Revised Volume No. 5. The service agreements were between ComEd and NRG Power Marketing Inc. (NRG) for transmission service related to the Bourbonnais Energy Center.

ComEd requested waiver to permit an cancellation effective date of January 16, 2003 for all the service agreements.

Comment Date: February 5, 2003.

8. Wisconsin Electric Power Company

[Docket No. ER03–420–000]

Take notice that on January 16, 2002, Wisconsin Electric Power Company (Wisconsin Electric) tendered for filing the inputs to the formula rates in Exhibit No.4 of two Generation-Transmission Must Run Agreements with American Transmission Company, LLC (ATLLLC). The inputs are reflected in an updated Exhibit No. 4.4 for Wisconsin Electric's Oak Creek Power Plant and the Presque Isle and Upper Peninsula of Michigan Hydroelectric Plants. By the terms of the Must Run

Agreements, the inputs to the formula rate tendered for filing took effect on January 1, 2003. As such, Wisconsin Electric requests that the updates to Exhibit Nos. 4.4 of the Must Run Agreements be made effective on January 1, 2003. An update of Exhibit 2 for Presque Isle Power Plant to provide missing information is also included.

Wisconsin Electric states that copies of this filing have been provided to ATCLLC.

Comment Date: February 6, 2003.

9. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER03–422–000]

Take notice that on January 16, 2003, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) tendered for filing proposed revisions in order to clarify certain language in Section B Subsection 2 of Schedule 10 of the Midwest ISO Open Access Transmission Tariff, FERC Electric Tariff, Second Revised Volume No. 1. Applicant requests an effective date of January 17, 2003.

The Midwest ISO has requested waiver of the requirements set forth in 18 CFR 385.2010. The Midwest ISO has electronically served a copy of this filing, with attachments, upon all Midwest ISO Members, Member representatives of Transmission Owners and Non-Transmission Owners, the Midwest ISO Advisory Committee participants, Policy Subcommittee participants, as well as all state commissions within the region. In addition, the filing has been electronically posted on the Midwest ISO's Web site at www.midwestiso.org under the heading "Filings to FERC" for other interested parties in this matter.

Comment Date: February 6, 2003.

10. Southern California Edison Company

[Docket No. ER03–424–000]

Take notice that on January 17, 2003, Southern California Edison Company (SCE), tendered for filing a Notice of Cancellation of FERC Electric Tariff, Original Volume No. 5 Service Agreement No. 15. SCE requests that the Notice of Cancellation become effective January 1, 2003.

SCE states that notice of the proposed cancellation has been served upon the Public Utilities Commission of the State of California and Mountainview Power Company.

Comment Date: February 7, 2003.

11. Progress Energy Service Company on behalf of Progress Energy Florida

[Docket No. ER03–425–000]

Take notice that on January 17, 2003,Progress Energy Service Company on behalf of Progress Energy Florida (Progress Florida) tendered for filing an executed Shady Hills Facility Parallel Operation Agreement between Progress Florida and Florida Power & Light Company. Progress Florida is requesting an effective date of December 18, 2002 for this Rate Schedule.

Progress Florida states that a copy of the filing was served upon the Florida Public Service Commission and the North Carolina Utilities Commission.

Comment Date: February 7, 2003.

12. Mesquite Power, LLC

[Docket No. ER03–427–000]

Take notice that on January 17, 2003, Mesquite Power, LLC (Mesquite) tendered for filing pursuant to Rule 205, 18 CFR 385.205, a petition for waivers and blanket approvals under various regulations of the Commission and for an order accepting its FERC Electric Tariff No. 1.

Mesquite intends to sell electric power and ancillary services at wholesale rates, terms, and conditions to be mutually agreed to with the purchasing party. The Mesquite tariff provides for the sale of electric energy, capacity and ancillary services at agreed prices.

Comment Date: February 7, 2003.

13. ConocoPhillips Company

[Docket No. ER03–428–000]

Take notice that on January 17, 2003, ConocoPhillips Company (ConocoPhillips) tendered for filing a Notice of Succession pursuant to Section 35.16 of the Commission's Regulations. As a result of a name change, ConocoPhillips is succeeding by merger to the tariffs and related service agreements of Conoco Inc., effective December 31, 2002.

Comment Date: February 7, 2003.

14. Sierra Pacific Power Company

[Docket No. ER03–429–000]

Take notice that on January 17, 2003, Sierra Pacific Power Company (Sierra Pacific), submitted for filing a Power Purchase Agreement (PPA) between Sierra Pacific and Nevada Power Company, pursuant to Section 205" of the Federal Power Act, 16 U.S.C. 824d" and Section 35.12 of the Commission's rules and regulations, 18 CFR 35.12. Sierra Pacific Power requests an effective date of March 1, 2003 for the PPA.

Comment Date: February 7, 2003.

15. Nevada Power Company

[Docket No. ER03–430–000]

Take notice that on January 17, 2003, Nevada Power Company (Nevada Power), submitted for filing five Power Purchase Agreements (PPAs) between Nevada Power and Sierra Pacific Power Company, pursuant to Section 205" of the Federal Power Act, 16 U.S.C.824d", and Section 35.12 the Commission's rules and regulations, 18 CFR 35.12. Nevada Power requests an effective date of March 1, 2003 for the PPAs.

Comment Date: February 7, 2003.

16. Dynegy, Inc.

[Docket No. ES03–20–000]

Take notice that on January 13, 2003, Dynegy, Inc. submitted an application requesting a blanket authorization under section 204 of the Federal Power Act and part 34 of the Commission's regulations.

Comment Date: February 3, 2003.

Standard Paragraph

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov* , using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number filed to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866)208–3676, or for TTY, contact (202)502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The

Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. 03–1925 Filed 1–27–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–1523–072, et al.]

New York Independent System Operator, Inc., et al.; Electric Rate and Corporate Filings

January 21, 2003.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. New York Independent System Operator, Inc.

[Docket Nos. ER97–1523–072, OA97–470–067, and ER97–4234–065]

Take notice that on January 16, 2003, the New York Independent System Operator, Inc. (NYISO), tendered for filing a refund report, in connection with the Commission's November 1, 2002, Order in the above-referenced dockets.

The NYISO has served a copy of this filing to all parties listed on the official service list maintained by the Secretary of the Commission in docket numbers ER97–1523–063, OA97–470–058 and ER97–4234–056.

Comment Date: February 6, 2003.

2. Southern California Edison Company

[Docket No. ER02–925–003]

Take notice that on January 17, 2003, Southern California Edison Company (SCE) tendered for filing revised rate sheets for its Transmission Owner Tariff (TO Tariff), FERC Electric Tariff, First Revised Volume No. 6. The purpose of this filing is to comply with the Federal Energy Regulatory Commission's letter order rendered in Docket No. ER02–925 on December 24, 2002.

SCE states that copies of this filing were served upon the Service List compiled by the Secretary in this docket.

Comment Date: February 7, 2003.

3. Boston Edison Company

[Docket No. ER03–161–001]

Take notice that on January 17, 2003, Boston Edison Company (Boston Edison) tendered for filing an executed Related Facilities Agreement between Boston Edison and Lake Road Generating Company, L.P., in compliance with the directives of the Commission as stated in its December 19, 2002 letter order in Docket No. ER03–161–000.

Boston Edison requests an effective date of the Agreement of January 5, 2003.

Comment Date: February 7, 2003.

4. San Diego Gas & Electric Company

[Docket Nos. ER03–418–000 and ER99–3426–003]

Take notice that on January 15, 2003, San Diego Gas & Electric Company (SDG&E) tendered for filing with the Federal Energy Regulatory Commission (Commission) revised tariff sheets and a request for continued authorization by the Commission for SDG&E to make wholesale power sales at market-based rates. SDG&E requests that the Commission grant certain waivers and accept for filing a proposed tariff governing sales of electric capacity, energy and certain ancillary services at market-based rates in the Western Interconnection pursuant to Section 205 of the Federal Power Act.

Comment Date: February 5, 2003.

5. Wayne-White Counties Electric Cooperative

[Docket No. ER03–419–000]

Take notice that on January 15, 2003, Wayne-White Counties Electric Cooperative (Wayne-White or Cooperative), tendered for filing an executed Service Agreement for Firm Point-to-Point Transmission Service with Illinois Power Company. Under the Service Agreement, Wayne-White will provide firm point-to-point transmission service to Illinois Power Company under the Cooperative's Open Access Transmission Tariff. Wayne-White requests an effective date of January 1, 2003, the date service was first provided.

Wayne-White states that a copy of the filing was served upon Illinois Power Company.

Comment Date: February 5, 2003.

6. PPL Wallingford Energy LLC and PPL EnergyPlus, LLC

[Docket No. ER03–421–000

Take notice that on January 16, 2003, PPL Wallingford Energy LLC (PPL Wallingford) and PPL EnergyPlus, LLC (PPL EnergyPlus) filed a Cost of Service Agreement among PPL Wallingford, PPL EnergyPlus and ISO New England Inc. (ISO-NE) in the above-captioned proceeding. PPL Wallingford and PPL EnergyPlus request an effective date of February 1, 2003 and request waivers of all applicable Commission regulations to permit such effective date.

PPL Wallingford and PPL EnergyPlus have provided a copy of this filing to ISO-NE on the date of filing and have also provided courtesy copies to the utility regulatory agencies in Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island and Vermont and to Counsel to the NEPOOL Participants Committee.

Comment Date: February 6, 2003.

7. Safe Harbor Water Power Corporation

[Docket No. ER03–423–000]

Take notice that on January 16, 2003, Safe Harbor Water Power Corporation (Safe Harbor) tendered for filing, under section 205 of the Federal Power Act, a rate schedule for reactive power and voltage control from generation sources service provided to the transmission facilities controlled by the PJM Interconnection LLC (PJM). Safe Harbor respectfully requests that the Commission accept the proposed rate schedule for filing on or before February 28, 2003 in order to permit the rate schedule to become effective on March 1, 2003, thereby alleviating the need for any retroactive billing by PJM.

Safe Harbor states that they mailed a copy of this filing to PJM.

Comment Date: February 6, 2003.

8. Virginia Electric and Power Company

[Docket No. ER03–426–000]

Take notice that on January 17, 2003, Virginia Electric and Power Company (Dominion Virginia Power or the Company) tendered for filing a Service Agreement for Network Integration Transmission Service and Network Operating Agreement by Dominion Virginia Power to the Town of Enfield, NC, designated as Service Agreement Number 372, under the Company's Open Access Transmission Tariff, FERC Electric Tariff, Second Revised Volume No. 5, to Eligible Purchasers dated June 7, 2000.

Dominion Virginia Power requests an effective date of January 1, 2003, the date service was first provided to the customer. *Comment Date:* February 7, 2003.

Standard Paragraph

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make

protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number filed to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866)208–3676, or for TTY, contact (202)502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. 03–1926 Filed 1–27–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application for Amendment of License and Soliciting Comments, Motions To Intervene, and Protests

January 22, 2003.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type*: Amendment of License.

b. *Project No.*: 1005–010.

c. *Date Filed:* August 1, 2002, October 28, 2002, and October 29, 2002.

d. *Applicant:* City of Boulder, Colorado.

e. *Name of Project:* Boulder Canyon.

f. *Location:* The project is located on the Middle Boulder Creek in Boulder County, Colorado.

g. *Filed Pursuant to*: Federal Power Act, 18 CFR 4.38(a)(v).

h. *Applicant Contact:* Carol D. Ellinghouse, P.E., City of Boulder, Public Works Department-Utilities Division, 1739 Broadway, Boulder, CO 80306.

i. *FERC Contact:* Any questions on this notice should be addressed to Mr. Eric Gross at (202) 502–6213, or e-mail address: *eric.gross@ferv.gov*.

j. *Deadline for filing comments and or motions*: February 18, 2003.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington DC 20426. Please include the project number (P–1005–010) on any comments or motions filed.

k. *Description of Request:* The City of Boulder proposes the construction of new outlet works at the Barker Dam. The City states that the new outlet works would not affect project operation or capacity.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link.

Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov*. For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

q. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the "e-Filing" link.

Magalie R. Salas,

Secretary.

[FR Doc. 03–1928 Filed 1–27–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application for Amendment of License and Soliciting Comments, Motions To Intervene, and Protests

January 22, 2003.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type*: Amendment of License to Change Project Design and Project Boundary Due to Proposed Relocation of Powerhouse.

b. *Project No.*: 11175–016.

c. *Date Filed:* April 4, 2002.

d. *Applicant:* Crown Hydro, LLC.

e. *Name of Project:* Crown Mill.

f. *Location:* The project is located on the Mississippi River, in Hennepin County, Minnesota.

g. *Filed Pursuant to*: Federal Power Act, 16 U.S.C. 791 (a) 825(r) and 799 and 801.

h. *Applicant Contact:* Tom Griffin, Crown Hydro LLC, 5436 Columbus Avenue South, Minneapolis, MN 55427, (612) 825–1043.

i. *FERC Contact:* Any questions on this notice should be addressed to Mrs. Anumzziatta Purchiaroni at (202) 502–6191, or e-mail address: *anumzziatta.purchiaroni@ferc.gov*.

j. *Deadline for filing comments and or motions:* February 18, 2003.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington DC 20426. Please include the project number (P–

11175–016) on any comments or motions filed.

k. *Description of Request:* Crown Hydro LLC (Crown) is proposing a change in project boundary to relocate the project's powerhouse, and to make additional modifications to the project. The project as originally licensed in 1999 included a powerhouse containing two vertical Kaplan generating units with a total capacity of 3,400 kW to be located in the basement of the historic Crown Roller Building on the west side of West River Parkway. Crown is now proposing to construct a powerhouse containing two vertical Kaplan generating units with a total capacity of 3,150 kW, on the east side of the West River Parkway, within the footprint of the remains of the Holly and Cataract Mill Foundation. The relocated powerhouse would be designed as an at-grade structure with two stairwells that would have above ground fencing, located within the Minneapolis Park and Recreation Board's property, at the Mill Ruins Park. Resources affected by this proposed amendment include cultural and aquatics.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call 1–866–208–3676 with or e-mail *FERCOnlineSupport@ferc.gov*. For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

q. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the "e-Filing" link.

Magalie R. Salas,

Secretary.

[FR Doc. 03–1929 Filed 1–27–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 12301–000]

Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests, and Comments

January 22, 2003.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 12301–000.

c. *Date filed:* July 5, 2001.

d. *Applicant:* Point Marion Hydro, LLC.

e. *Name of Project:* Point Marion Lock Dam Project.

f. *Location:* On the Monongahela River, in Fayette County, Pennsylvania. Utilizing the U.S. Army Corps of Engineers' existing Point Marion Lock and Dam.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)—825(r).

h. *Applicant Contact:* Mr. Brent L. Smith, President, Northwest Power Services, Inc., P.O. Box 535, Rigby, ID 83442, (208)745–0834.

i. *FERC Contact:* Robert Bell, (202) 219–2806.

j. *Deadline for filing motions to intervene, protests and comments:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings. Please include the project number (P–12301–000) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Competing Application Project No.:* 12269–000, *Date Filed:* June 25, 2002, *Date Notice Closed:* October 22, 2002.

1. *Description of Project:* The proposed project using the U.S. Army Corps of Engineer's Point Marion Lock and Dam and impoundment would consist of: (1) A proposed 50-foot-long, 168-inch diameter concrete penstock, (2) a proposed powerhouse containing one generating unit having an installed capacity of 3.2 MW, (3) a proposed 1-mile-long, 25 kV transmission, and (4) appurtenant facilities.

The project would have an annual generation of 18 GWh that would be sold to a local utility. m. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail ferconlinesupport@ferc.gov. For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at Point Marion Hydro, LLC, 975 South State Highway, Logan, UT 84321, (435) 752–2580.

n. Competing Applications—Public notice of the filing of the initial

preliminary permit application, which has already been given, established the due date for filing competing preliminary permit applications or notices of intent. Any competing preliminary permit or development application or notice of intent to file a competing preliminary permit or development application must be filed in response to and in compliance with the public notice of the initial preliminary permit application. No competing applications or notices of intent to file competing applications may be filed in response to this notice. A competing license application must conform with 18 CFR 4.30 (b) and 4.36.

o. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

p. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

q. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application..

r. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. 03–1930 Filed 1–27–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 12306–000]

Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests, and Comments

January 22, 2003.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 12306–000.

c. *Date filed:* July 15, 2002.

d. *Applicant:* Universal Electric Power.

e. *Name of Project:* Mahoning Creek Dam Project.

f. *Location:* On Mahoning Creek, in Armstrong County, Pennsylvania, utilizing the U.S. Army Corps of Engineers Mahoning Creek Dam.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)—825(r).

h. *Applicant Contact:* Mr. Raymond Helter, Universal Electric Power Corp., 1145 Highbrook Street, Akron, OH 44301, (330) 535–7115.

i. *FERC Contact:* Robert Bell, (202) 502–6062.

j. *Deadline for filing comments, protests, and motions to intervene:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings. Please include the project number (P–12306–000) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project:* The proposed project would utilize the Corps' existing Mahoning Creek Dam and consist of: (1) two proposed 35-foot-long, 58-inch diameter steel penstocks, (2) a proposed powerhouse containing two generating units having a total installed capacity of 1.4 MW, (3) a proposed 1500-foot-long, 14.7 kV transmission line, and (4) appurtenant facilities.

Applicant estimates that the average annual generation would be 9 GWh and would be sold to a local utility.

l. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail ferconlinesupport@ferc.gov. For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

m. Competing Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (*see* 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

n. Competing Development Application—Any qualified development applicant desiring to file a

competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

o. Notice of Intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

p. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

q. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

r. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

s. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. 03–1931 Filed 1–27–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 12310–000]

Notice of Application Accepted for Filing and Soliciting Motions to Intervene, Protests, and Comments

January 22, 2003.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 12310–000.

c. *Date filed:* July 17, 2002.

d. *Applicant:* Universal Electric Power Corp.

e. *Name of Project:* Sutton Dam Project.

f. *Location:* On the Elk River and Sutton Lake, in Braxton County, West Virginia, utilizing the U.S. Army Corps of Engineers Sutton Dam.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)—825(r).

h. *Applicant Contact:* Mr. Raymond Helter, Universal Electric Power Corp., 1145 Highbrook Street, Akron, OH 44301, (330) 535–7115.

i. *FERC Contact:* Robert Bell, (202) 502–6062.

j. *Deadline for filing comments, protests, and motions to intervene:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings. Please include the project number (P–12310–000) on any comments or motions filed. The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project:* The proposed project would utilize the Corps' existing Sutton Dam and consist of: (1) five proposed 50-foot-long, 54-inch diameter steel penstocks, (2) a proposed powerhouse containing five generating units having a total installed capacity of 3.7 MW, (3) a proposed 1200-foot-long, 14.7 kV transmission line, and (4) appurtenant facilities.

Applicant estimates that the average annual generation would be 24 GWh and would be sold to a local utility.

l. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *ferconlinesupport@ferc.gov*. For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

m. Competing Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (*see* 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after

the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

n. Competing Development Application—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

o. Notice of Intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

p. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

q. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

r. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

s. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. 03–1932 Filed 1–27–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 12381–000]

Notice of Application Accepted for Filing and Soliciting Motions to Intervene, Protests, and Comments

January 22, 2003.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 12381–000.

c. *Date filed:* October 1, 2002.

d. *Applicant:* Nelson Hydroelectric LLC.

e. *Name of Project:* Red River Lock and Dam #1 Project.

f. *Location:* On the Red River, in Rapides County, Louisiana, utilizing the U.S. Army Corps of Engineers Red River Lock and Dam #1.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)—825(r).

h. *Applicant Contact:* Nelson Hydroelectric LLC: Mr. Robert Larson, Gray, Plant, Mooty, Mooty, & Bennett, 33 South Sixth Street, Minneapolis, MN 55402, (612) 343–2913.

i. *FERC Contact:* Robert Bell, (202) 502–6062.

j. *Deadline for filing comments, protests, and motions to intervene:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings. Please include the project number (P–12381–000) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project:* The proposed project would utilize the Corp's existing Red River Lock and Dam #1 and consist of: (1) eight proposed 80-foot-long, 114-inch diameter steel penstock, (2) a proposed powerhouse containing eight generating units having an installed capacity of 16.2 MW, (3) a proposed 500-foot-long, 14.7 kV transmission line, and (4) appurtenant facilities.

Applicant estimates that the average annual generation would be 9.9 GWh and would be sold to a local utility.

l. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *ferconlinesupport@ferc.gov*. For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

m. Competing Preliminary Permit—Anyone desiring to file a competing

application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (*see* 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

n. Competing Development Application—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

o. Notice of Intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

p. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

q. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

r. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

s. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. 03–1933 Filed 1–27–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 12402–000]

Notice of Application Accepted for Filing and Soliciting Motions to Intervene, Protests, and Comments

January 22, 2003.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 12402–000.

c. *Date filed*: October 30, 2002.

d. *Applicant:* Universal Electric Power Corp.

e. *Name of Project:* Mississippi Lock and Dam #10 Project.

f. *Location:* On the Mississippi River, in Clayton County, Iowa, utilizing the U.S. Army Corps of Engineers Mississippi Lock and Dam #10.

g. *Filed Pursuant to*: Federal Power Act, 16 U.S.C. 791(a)—825(r).

h. *Applicant Contact:* Mr. Raymond Helter, Universal Electric Power Corp., 1145 Highbrook Street, Akron, OH 44301, (330) 535–7115.

i. *FERC Contact:* Robert Bell, (202) 502–6062.

j. *Deadline for filing comments, protests, and motions to intervene*: 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings. Please include the project number (P–12402–000) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project*: The proposed project would utilize the Corps' existing Mississippi Lock and Dam #10 and consist of: (1) five proposed 80-foot-long, 114-inch-diameter steel penstocks, (2) a proposed powerhouse containing five generating units having an installed capacity of 100 MW, (3) a proposed 200-foot-long, 14.7 kV transmission line, and (4) appurtenant facilities.

Applicant estimates that the average annual generation would be 61 GWh and would be sold to a local utility.

l. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number

field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail ferconlinesupport@ferc.gov. For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

m. Competing Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (*see* 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

n. Competing Development Application—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

o. Notice of Intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

p. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

q. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

r. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

s. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. 03–1934 Filed 1–27–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions to Intervene and Protests

January 22, 2003.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Minor original license.

b. *Project No.:* 12423–000.

c. *Date filed:* November 25, 2002.

d. *Applicant:* American Falls Reservoir District No. 2 and Big Wood Canal Company.

e. *Name of Project:* 993 Hydroelectric Project.

f. *Location:* Juncture of the 993 Lateral and North Gooding Main Canal, Boise Meridian, 20 miles northwest of the Town of Shoshone, Lincoln County, Idaho. The initial diversion is the Milner Dam on the Snake River. The North Gooding Main Canal is part of a U.S. Bureau of Reclamation (Bureau) project. The project would occupy about 10–15 acres of Federal land managed by the Bureau.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791 (a)—825").

h. *Applicant Contact:* Lynn Harmon, General Manager, American Falls Reservoir District No. 2 and Big Wood Canal Company, Box C, Shoshone, Idaho, 83352; (208) 886–2331.

i. *FERC Contact:* Allison Arnold, (202) 502–6346 or *allison.arnold@ferc.gov.*

j. *Deadline for filing motions to intervene and protests:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Motions to intervene and protests may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings.*See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://*

www.ferc.gov) under the "e-Filing" link.

k. This application has been accepted for filing, but is not ready for environmental analysis at this time.

l. The 993 Hydroelectric Power Project would consist of: (1) a new concrete diversion structure located across the North Gooding Main Canal with a maximum height of 10 feet; (2) a new 7,000-foot-long canal with a bottom width of 25 feet that is to be excavated from rock, with some earth embankment, having a hydraulic capacity of 350 cfs; (3) a 10-foot-high gated concrete diversion structure that would divert up to 350 cfs to a concrete intake structure; (4) a 2,900-foot-long steel pipe (or HDPE) penstock (72 inch diameter); (5) a 30 by 50-foot concrete with masonry or metal walled powerhouse containing two 750-kilowatt (kW) turbines with a total installed capacity of 1,500 kW; (6) an enlarged 100-foot-long tailrace channel with a bottom width of 40 feet that would discharge into the North Gooding Main Canal; (7) a 2.4-mile-long transmission line, and (8) appurtenant facilities. The annual generation would be approximately 5.8 gigawatt-hours.

m. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

n. Any qualified applicant desiring to file a competing application must submit to the Commission, on or before the specified deadline date for the particular application, a competing development application, or a notice of intent to file such an application.

Submission of a timely notice of intent allows an interested person to file the competing development application no later than 120 days after the specified deadline date for the particular application. Applications for preliminary permits will not be accepted in response to this notice.

A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

Anyone may submit a protest or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any protests or motions to intervene must be received on or before the specified deadline date for the particular application.

When the application is ready for environmental analysis, the Commission will issue a public notice requesting comments, recommendations, terms and conditions, or prescriptions.

All filings must (1) bear in all capital letters the title "PROTEST" or "MOTION TO INTERVENE," "NOTICE OF INTENT TO FILE COMPETING APPLICATION," or "COMPETING APPLICATION;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application.

Magalie R. Salas,

Secretary.

[FR Doc. 03–1935 Filed 1–27–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions to Intervene and Protest

January 22, 2003.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New Minor License.

b. *Project No.:* 1273–009.

c. *Date Filed:* November 15, 2002.

d. *Applicant:* Parowan City.

e. *Name of Project:* Center Creek Hydroelectric Project.

f. *Location:* At the confluence of Center Creek (aka Parowan Creek) and Bowery Creek (a tributary to Parowan Creek) near the City of Parowan, in Iron County, Utah. The project occupies 21.43 acres of land managed by the U.S. Department of the Interior, Bureau of Land Management.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791 (a)–825(r).

h. *Applicant Contact:* Alden C. Robinson, P.E., Sunrise Engineering, Inc., 25 East 500 North, Fillmore, Utah 84631, (435) 743–6151 and/or Clark Gates II, City Manager, Parowan City, P.O. Box 576, Parowan, Utah 84761, (435) 477–3331.

i. *FERC Contact:* Gaylord Hoisington, (202) 502–8163, *gaylord.hoisington@FERC.gov.*

j. *Cooperating agencies:* We are asking Federal, state, local, and tribal agencies with jurisdiction and/or special expertise with respect to environmental issues to cooperate with us in the preparation of the environmental document. Agencies who would like to request cooperating status should follow the instructions for filing comments described in item k below.

k. *Deadline for filing motions to intervene and protests and requests for cooperating agency status:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Motions to intervene and protests and requests for cooperating agency status may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the "e-Filing" link.

l. This application has been accepted, but is not ready for environmental analysis at this time.

m. The existing Center Creek Hydroelectric Project consists of: (1) a 15-foot-high, 54-foot-long concrete overflow type diversion dam; (2) a

radial gate; (3) trash racks; (4) a 19.9 acre-foot de-silting pond; (5) an 18 to 26-inch-diameter, 18,825-foot-long steel penstock; (5) a 600-kilowatt powerhouse; and (6) appurtenant facilities.

n. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676 or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

o. Anyone may submit a protest or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any protests or motions to intervene must be received on or before the specified deadline date for the particular application.

All filings must (1) bear in all capital letters the title "PROTEST" or "MOTION TO INTERVENE;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application.

Magalie R. Salas,

Secretary.

[FR Doc. 03–1936 Filed 1–27–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Intent to Prepare Environmental Assessment, Availability of Scoping Document, and Soliciting Scoping Comments

January 22, 2003.

Take notice that the following hydroelectric application has been filed with Commission and are available for public inspection:

a. *Type of Application:* New Minor License.

b. *Project No.:* 7725–005.

c. *Date filed:* September 27, 2002.

d. *Applicant:* Barton Village Inc.

e. *Name of Project:* Barton Village Hydroelectric Project.

f. *Location:* On the Clyde River in the Town of Charleston, Vermont. No federal lands are affected.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)—825(r).

h. *Applicant Contact:* Denis H. Poirier, Village Supervisor, Barton Village, Inc. 17 Village Square, P.O. Box 519, Barton, Vermont 05822. (802)525–4747.

i. *FERC Contact:* Frank Winchell at (202)502–6104 or *frank.winchell@ferc.gov.*

j. *Deadline for filing scoping comments:* 30 days from the date of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Scoping comments may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the "FERRIS" link.

k. This application is not ready for environmental analysis at this time.

l. The existing Barton Village Hydroelectric Project consists of: (1) a 77-foot-long, 24-foot-high masonry and concrete gravity dam; (2) 1.5-foot-high flashboards extending 57 feet across a concrete spillway; (3) a 187-acre impoundment at elevation 1,140.9 feet mean sea level (msl); (4) a 665-foot-long, 7-foot-diameter steel penstock; (5) two 105-foot-long, 5.8-foot-diameter steel penstocks leading to: (6) a powerhouse with two units having a total installed capacity of 1.4 MW; (7) two tailraces; and (8) other appurtenant facilities.

m. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item g above.

n. Scoping Process Pursuant to the National Environmental Policy Act and procedures of the Federal Energy Regulatory Commission (Commission or FERC), the Commission staff intends to prepare an Environmental Assessment (EA) that evaluates the environmental impacts of issuing a new license for the continued operation of the Barton Village Hydroelectric Project, located on the Clyde River in Orleans County, Vermont. The project does not affect Federal lands.

The EA will consider both site-specific and cumulative environmental effects, if any, of the proposed action and reasonable alternatives, and will include an economic, financial, and engineering analysis. Preparation of staff's EA will be supported by a scoping process to ensure identification and analysis of all pertinent issues.

We prepared the enclosed Scoping Document (SD) to provide you with information on:

- the Barton Village Hydroelectric Project;
- the environmental analysis process we will follow to prepare the EA; and
- our preliminary identification of issues that we will address in the EA.

We invite the participation of governmental agencies, non-governmental organizations, and the general public in the scoping process, and have prepared this SD to provide information on the proposed project and to solicit written comments and

suggestions on our preliminary list of issues and alternatives to be addressed in the EA. The SD has been distributed to parties on the Service List for this proceeding and is available from our Public Reference Room at (202)502–8371. It can also be accessed online at *http://www.ferc.gov* under the "FERRIS" link.

Given the fact that no comments have been filed related to the relicensing and that Barton Village, Inc. has not proposed any new construction, we do not anticipate at this time that there is adequate justification: (1) to arrange for Commission staff and interested members of the public to visit the project site; or (2) to hold a public meeting near the project site.

Please review this document and, if you wish to provide written input, follow the instructions contained in section 2.2. Please direct any questions about the scoping process to Frank Winchell at (202) 502–6104.

Magalie R. Salas,

Secretary.

[FR Doc. 03–1938 Filed 1–27–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Meeting, Notice of Vote, Explanation of Action Closing Meeting and List of Persons to Attend; Sunshine Act

January 22, 2003.

The following notice of meeting is published pursuant to Section 3(a) of the Government in the Sunshine Act (Pub. L. 94–409), 5 U.S.C. 552b:

AGENCY HOLDING MEETING: Federal Energy Regulatory Commission, DOE.

DATE AND TIME: January 29, 2003, (Within a relatively short time before or after the regular Commission Meeting).

PLACE: Hearing Room 6, 888 First Street, NE., Washington, DC 20426.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Non-public investigations and inquiries and enforcement related matters.

CONTACT PERSON FOR MORE INFORMATION: Magalie R. Salas, Secretary, Telephone, (202) 502–8400.

Chairman Wood and Commissioners Massey and Brownell voted to hold a closed meeting on January 29, 2003. The certification of the General Counsel explaining the action closing the meeting is available for public inspection in the Commission's Public Reference Room at 888 First Street, NE., Washington, DC 20426.

The Chairman and the Commissioners, their assistants, the Commission's Secretary and her assistant, the General Counsel and members of her staff, and a stenographer are expected to attend the meeting. Other staff members from the Commission's program offices who will advise the Commissioners in the matters discussed will also be present.

Magalie R. Salas,

Secretary.

[FR Doc. 03–2009 Filed 1–24–03; 11:15 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Sunshine Act Notice

January 22, 2003.

The following notice of meeting is published pursuant to section 3(a) of the Government in the Sunshine Act (Pub. L. 94–409), 5 U.S.C 552B:

AGENCY HOLDING MEETING: Federal Energy Regulatory Commission.

DATE AND TIME: January 29, 2003, 10 a.m.

PLACE: Room 2C, 888 First Street, NE,, Washington, DC 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

Note: items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: Magalie R. Salas, Secretary, Telephone, (202) 502–8400. For a recording listing items stricken from or added to the meeting, call (202) 502–8627.

This is a list of matters to be considered by the commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the reference and information center.

817th—Meeting January 29, 2003, Regular Meeting, 10 a.m.

Administrative Agenda

A–1.
Docket# AD02–1, 000, Agency Administrative Matters

A–2.
Docket# AD02–7, 000, Customer Matters, Reliability, Security and Market Operations

A–3.
Presentation on Winter Market Assessment

A–4.
Seams Resolution Presentation—RTO West, West Connect, California ISO

Markets, Tariffs and Rates—Electric

E–1.
Docket# EL03–38, 000, Cargill Power Markets, LLC v. Midwest Independent Transmission System Operator, Inc.

E–2.
Docket# EL03–30, 000, Tenaska Power Services Co. v. Midwest Independent Transmission System Operator, Inc.

E–3.
Docket# EL02–101, 001, Cleco Power LLC, Dalton Utilities, Entergy Services, Inc., Georgia Transmission Corporation, JEA, MEAG Power, Sam Rayburn G & T Electric Cooperative, Inc., SouthCarolina Public Service Authority, Southern Company Services, Inc., and the City of Tallahassee, Florida

E–4.
Docket# ER03–265, 000, Midwest Independent Transmission System Operator, Inc.

E–5.
Docket# ER02–1330, 002, Pacific Gas & Electric Company
Other#s EL02–88, 000, Wrightsville Power Facility, L.L.C. v. Entergy Arkansas, Inc.
ER02–1069, 001, Entergy Services, Inc.
ER02–1151, 001, Entergy Services, Inc.
ER02–1472, 001, Entergy Gulf States, Inc.
ER02–2243, 002, Entergy Services, Inc.
EL03–3, 000, Entergy Services, Inc.
EL03–4, 000, Entergy Gulf States, Inc.
EL03–5, 000, Entergy Services, Inc.
EL03–12, 000, Kinder Morgan Michigan, LLC v. Michigan Electric Transmission Company, LLC
EL03–13, 000, Entergy Services Inc.

E–6.
Docket# ER02–199, 000, Mississippi Power Company
Other#s EL02–50, 000, Southern Company Services, Inc.
ER02–218, 000, Southern Company Services, Inc.
ER02–219, 000, Southern Company Services, Inc.
ER02–220, 000, Southern Company Services, Inc.
ER02–221, 000, Southern Company Services, Inc.
ER02–222, 000, Southern Company Services, Inc.
ER02–223, 000, Southern Company Services, Inc.
ER02–224, 000, Southern Company Services, Inc.
ER02–225, 000, Southern Company Services, Inc.
ER02–226, 000, Southern Company Services, Inc.
ER02–227, 000, Georgia Power Company
ER02–228, 000, Georgia Power Company
ER02–229, 000, Alabama Power Company
ER02–230, 000, Alabama Power Company
ER02–498, 000, Gulf Power Company
ER02–788, 000, Gulf Power Company

E–7.
Docket# ER03–210, 000, New England Power Pool

E–8.
Docket# ER03–117, 000, Duke Energy South Bay, LLC

E–9.
Docket# ER03–116, 000, Duke Energy Oakland, LLC

E–10.
Docket# ER03–94, 000, Pacific Gas and Electric Company
E–11.
Docket# ER03–238, 000, New York Independent System Operator, Inc.
E–12.
Omitted
E–13.
Docket# ER03–171, 000, Entergy Services, Inc
Other#s ER03–171, 001, Entergy Services, Inc.
E–14.
Docket# ER03–291, 000, New England Power Company
E–15.
Docket# ER03–304, 000, Consolidated Edison Energy, Inc., and Rockland Electric Company
E–16.
Docket# ER03–106, 000, Virginia Electric and Power Company
Other#s ER03–106, 001, Virginia Electric and Power Company
ER03–106, 002, Virginia Electric and Power Company
E–17.
Omitted
E–18.
Omitted
E–19.
Docket# ER02–64, 000, Mirant Delta, LLC and Mirant Potrero, LLC
Other#s ER02–198, 000, Mirant Delta, LLC and Mirant Potrero, LLC
ER02–198, 001, Mirant Delta, LLC and Mirant Potrero, LLC
ER02–198, 002, Mirant Delta, LLC and Mirant Potrero, LLC
ER02–198, 003, Mirant Delta, LLC and Mirant Potrero, LLC
E–20.
Docket# ER01–2201, 000, Entergy Services, Inc.
Other#s EL02–46, 000, Generator Coalition v. Entergy Services, Inc.
E–21.
Docket# ER03–119, 000, Southern Operating Services, Company
ER03–120, 000, Alabama Power Company
ER03–121, 000, Alabama Power Company
ER03–122, 000, Mississippi Power Company
ER03–123, 000, Southern Operating Services, Company
ER03–124, 000, Southern Operating Services, Company
ER03–125, 000, Southern Operating Services, Company
ER03–126, 000, Southern Operating Services, Company
ER03–127, 000, Southern Operating Services, Company
ER03–128, 000, Southern Operating Services, Company
ER03–129, 000, Southern Operating Services, Company
ER03–130, 000, Georgia Power Company
ER03–131, 000, Georgia Power Company
ER03–135, 000, Gulf Power Company
ER03–136, 000, Gulf Power Company
E–22.
Omitted
E–23.
Docket# ER02–1784, 001, NorthWestern Energy, L.L.C.
Other#s SC00–1, 004, NorthWestern Energy, L.L.C.
E–24.
Docket# EL02–103, 000, City of Vernon, California
Other#s EL02–103, 001, City of Vernon, California
E–25.
Docket# ER97–2358, 000, Pacific Gas and Electric Company
Other#s ER98–2351, 000, Pacific Gas and Electric Company
E–26.
Docket# ER02–1974, 000, Midwest Independent Transmission System Operator, Inc.
Other#s ER02–1975, 000, Midwest Independent Transmission System Operator, Inc.
E–27.
Omitted
E–28.
Docket# ER02–1705, 002, Southwest Power Pool, Inc.
E–29.
Docket# EL02–89 001, Tenaska Power Services Company v. Southwest Power Pool, Inc.
E–30.
Docket# EL02–95, 001, Constellation Power Source, Inc. v. American Electric Power Service Corporation and Southwest Power Pool, Inc.
Other#s ER02–2028, 001, American Electric Power Service Corporation
E–31.
Docket# ER02–2321, 002, California Independent System Operator Corporation
E–32.
Omitted
E–33.
Docket# ER02–485, 002, Midwest Independent Transmission System Operator, Inc.
E–34.
Omitted
E–35.
Docket# EL02–121, 001, Occidental Chemical Corporation v. PJM Interconnection, L.L.C., and Delmarva Power and Light Company
Other#s EL02–121, 002, Occidental Chemical Corporation v. PJM Interconnection, L.L.C., v. PJM Interconnection, L.L.C., and Delmarva Power and Light Company
E–36.
Docket# ER02–1021, 002, Ontario Energy Trading International Corp.
E–37.
Omitted
E–38.
Docket# ER03–15, 001, Consumers Energy Company
E–39.
Docket# EL02–128, 000, Sithe New England, LLC v. ISO New England, Inc.
E–40.
Docket# EL03–25, 000, NSTAR Electric and Gas Corporation, Central Vermont Public Service Corporation, PPL Energy Plus, LLC, United Illuminating Company, Unitil Power Corp., and Fitchburg Gas and Electric Light Company v. New England Power Pool
E–41.
Docket# EL03–29, 000, PG&E Energy Trading-Power, L.P. v. California Power Exchange Corporation
E–42.
Docket# EC02–113, 000, Cinergy Services, Inc. on behalf of PSI Energy, Inc., CinCap Madison, LLC and CinCap VII, LLC
E–43.
Docket# EL02–117, 000, City of Burbank, California v. Calpine Energy Services,L.P., Duke Energy Trading and Marketing, L.L.C. and El Paso Merchant Energy, L.P.
Other#s EL02–119, 000, The Kroger Co., v. Dynegy Power Marketing, Inc.

Miscellaneous Agenda

M–1.
Docket# RM03–5, 000, Amendment to Delegations of Authority to the Chief Administrative Law Judge
G–1.
Docket# GT02–38, 002, Northern Natural Gas Company
Other#s
GT02–38, 001, Northern Natural Gas Company
GT02–38, 003, Northern Natural Gas Company
G–2.
Docket# GT02–35, 000, Tennessee Gas Pipeline Company
Other#s GT02–35, 001, Tennessee Gas Pipeline Company
G–3.
Docket# RP02–363, 003, North Baja Pipeline LLC
G–4.
Omitted
G–5.
Docket# OR02–13, 000, SFPP, L.P.
G–6.
Docket# OR92–8, 017, SFPP, L.P.
Other#s OR92–8, 018, SFPP, L.P.
OR92–8, 019, SFPP, L.P.
OR93–5, 014, SFPP, L.P.
OR93–5, 015, SFPP, L.P.
OR93–5, 016, SFPP, L.P.
OR94–3, 013, SFPP, L.P.
OR94–3, 014, SFPP, L.P.
OR94–3, 015, SFPP, L.P.
OR94–4, 015, SFPP, L.P.
OR94–4, 016, SFPP, L.P.
OR94–4, 017, SFPP, L.P.
OR95–5, 012, Mobil Oil Corporation v. SFPP, L.P.
OR95–5, 013, Mobil Oil Corporation v. SFPP, L.P.
OR95–5, 014, Mobil Oil Corporation v. SFPP, L.P.
OR95–34, 011, Tosco Corporation v. SFPP, L.P.
OR95–34, 012, Tosco Corporation v. SFPP, L.P.
OR95–34, 013, Tosco Corporation v. SFPP, L.P.
IS99–144, 009, SFPP, L.P.
IS99–144, 010, SFPP, L.P.
IS99–144, 011, SFPP, L.P.
IS00–379, 009, SFPP, L.P.
IS00–379, 010, SFPP, L.P.
IS00–379, 011, SFPP, L.P.
IS02–46, 002, SFPP, L.P.
IS02–46, 003, SFPP, L.P.
IS02–46, 004, SFPP, L.P.
IS02–82, 002, SFPP, L.P.

IS02–82, 003, SFPP, L.P.
IS02–82, 004, SFPP, L.P.
G–7.
Docket# RP02–492, 002, Algonquin Gas Transmission Company
Other#s RP02–492, 001, Algonquin Gas Transmission Company
G–8.
Docket# RP02–494, 002, Texas Eastern Transmission, L.P.
Other#s RP02–494, 001, Texas Eastern Transmission, L.P.
G–9.
Docket# RP02–489, 002, Maritimes & Northeast Pipeline, L.L.C.
Other#s RP02–489, 001, Maritimes & Northeast Pipeline, L.L.C.
G–10.
Docket# RP02–493, 002, East Tennessee Natural Gas Company
Other#s RP02–493, 001, East Tennessee Natural Gas Company
G–11.
Docket# RP02–425, 002, Texas Gas Transmission Corporation
Other#s RP02–425, 001, Texas Gas Transmission Corporation
G–12.
Docket# RP02–427, 001, Williams Gas Pipelines Central, Inc.
Other#s RP02–427, 002, Williams Gas Pipelines Central, Inc.
G–13.
Docket# RP02–318, 000, Questar Southern Trails Pipeline Company
Other#s RP02–318, 001, Questar Southern Trails Pipeline Company
G–14.
Docket# RP96–200, 092, CenterPoint Energy Gas Transmission Company (formerly Reliant Energy Gas Transmission Company)
G–15.
Docket# RP99–176, 075, Natural Gas Pipeline Company of America
G–16.
Omitted
G–17.
Docket# RP03–218, 000, Colorado Interstate Gas Company
G–18.
Docket# RP03–195, 000, Dominion Transmission, Inc.
G–19.
Docket# RP03–189, 000, Great Lakes Gas Transmission Limited Partnership
G–20.
Docket# RP03–228, 000, Alliance Pipeline L.P.
G–21.
Docket# RP03–210, 000, Guardian Pipeline, L.L.C.
G–22.
Docket# RP03–221, 000, High Island Offshore System, L.L.C.
G–23.
Docket# RP03–217, 000, Wyoming Interstate Company, Ltd.
G–24.
Docket# RP03–222, 000, Columbia Gas Transmission Corporation
G–25.
Docket# RP00–488, 001, Portland Natural Gas Transmission System
Other#s RP01–50, 002, Portland Natural Gas Transmission System
RP03–179, 000, Portland Natural Gas Transmission System
G–26.
Docket# RP03–17, 000, Missouri Interstate Gas, L.L.C.
G–27.
Docket# RP02–99, 005, Shell Offshore Inc., v. Transcontinental Gas Pipeline Corp., Williams Gas Processing-Gulf Coast Co., L.P., Williams Field Services Co., and Williams Gulf Coast Gathering Co., L.L.C.
G–28.
Docket# RP03–16, 001, Pan-Alberta Gas (US) Inc., and Mirant Americas Energy Marketing, L.P. v. Northern Border Pipeline Company
G–29.
Docket# RP00–411, 003, Iroquois Gas Transmission System, L.P.
Other#s RP01–44, 005, Iroquois Gas Transmission System, L.P.
G–30.
Docket# RP01–35, 001, Norteño Pipeline Company
Other#s RP01–92, 001, Norteño Pipeline Company
G–31.
Docket# RP02–561, 002, CenterPoint Energy Gas Transmission (formerly Reliant Energy Gas Transmission Company)
G–32.
Docket# RP02–123, 000, Williams Gas Pipelines Central, Inc.
Other#s RP03–116, 000, Williams Gas Pipelines Central, Inc.
G–33.
Docket# GP99–16, 000, Northern Natural Gas Company
Other#s GP99–17, 000, Northern Natural Gas Company
G–34.
Docket# RP99–518, 032, PG&E Gas Transmisson, Northwest Corporation
G–35.
Docket# RP00–325, 002, Colorado Interstate Gas Company
Other#s RP01–38, 002, Colorado Interstate Gas Company
G–36.
Omitted
G–37.
Docket# RP02–179, 003, Williams Gas Pipelines Central, Inc.
G–38.
Docket# RP02–216, 003, Reliant Energy Gas Transmission Company
G–39.
Omitted
G–40.
Docket# RP00–632, 011, Dominion Transmission, Inc.
G–41.
Docket# RP01–620, 000, Transwestern Pipeline Company v. Southern California Gas Company
G–42.
Docket# RP97–288, 009, Transwestern Pipeline Company
Other#s RP97–288, 010, Transwestern Pipeline Company
RP97–288, 011, Transwestern Pipeline Company
RP97–288, 012, Transwestern Pipeline Company
RP97–288, 013, Transwestern Pipeline Company
RP97–288, 014, Transwestern Pipeline Company
RP97–288, 015, Transwestern Pipeline Company
RP97–288, 016, Transwestern Pipeline Company
RP97–288, 017, Transwestern Pipeline Company
RP97–288, 018, Transwestern Pipeline Company
RP97–288, 019, Transwestern Pipeline Company
RP97–288, 020, Transwestern Pipeline Company
RP97–288, 022, Transwestern Pipeline Company
RP97–288, 024, Transwestern Pipeline Company
RP97–288, 025, Transwestern Pipeline Company
RP97–288, 026, Transwestern Pipeline Company
RP97–288, 027, Transwestern Pipeline Company
RP01–507, 000, Transwestern Pipeline Company
RP01–507, 001, Transwestern Pipeline Company
RP01–507, 002, Transwestern Pipeline Company
G–43. Docket# RP98–54 035 Colorado Interstate Gas Company
Other#s SA98–96, 000, IMC Global Operations Inc.
G–44.
Docket# OR02–6, 000, Sinclair Oil Corporation v. Rocky Mountain Pipeline System LLC and BP Pipelines (North America), Inc.
G–45.
Docket# OR03–1, 000, Phillips Petroleum Company v. Platte Pipe Line Company
Other#s OR02–5, 002, Big West Oil, LLC
OR02–8, 002, Express Pipeline LLC
IS02–384, 000, Platte Pipe Line Company

Energy Projects—Hydro

H–1.
Docket# P–2318, 017, Erie Boulevard Hydropower, L.P.
Other#s P–2047, 017, Erie Boulevard Hydropower, L.P.
P–2482, 038, Erie Boulevard Hydropower, L.P.
P–2554, 020, Erie Boulevard Hydropower, L.P.
P–12252, 001, Hudson River-Black River Regulating District
H–2.
Docket# P–4718, 026, Cocheco Falls Associates
H–3.
Docket# P–10855, 003, Upper Peninsula Power Company
H–4.
Docket# P–2589, 027, Marquette Board of Light and Power
H–5.
Docket# P–2661, 018, Pacific Gas and Electric Company
H–6.
Docket# P–2616, 025, Erie Boulevard Hydropower, L.P.
H–7.

Docket# P–4632, 027, Clifton Power Corporation

H–8.

Docket# P–5, 072, PPL Montana, LLC and Confederated Salish and Kootenai Tribes of the Flathead Nation

H–9.

Docket# P–2738 049 New York State Electric & Gas Corporation

Energy Projects—Certificates

C–1.

Omitted

C–2.

Docket# CP02–420, 000, Red Lake Gas Storage, L.P.

Other#s CP02–421, 000, Red Lake Gas Storage, L.P.

CP02–422, 000, Red Lake Gas Storage, L.P.

C–3.

Docket# CP02–430, 000, Saltville Gas Storage Company, LLC

C–4.

Docket# CP02–1, 002, Southern Natural Gas Company

C–5.

Docket# CP02–99, 001, Transcontinental Gas Pipe Line Corporation

C–6.

Docket# CP02–31, 001, Iroquois Gas Transmission System, L.P.

C–7.

Docket# CP02–141, 000, Transcontinental Gas Pipe Line Corporation

Magalie R. Salas,

Secretary.

[FR Doc. 03–2010 Filed 1–24–03; 11:15 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7442–3]

Notice of Proposed Purchaser Agreement Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as Amended by the Superfund Amendments and Reauthorization Act

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; request for public comment.

SUMMARY: In accordance with the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 ("CERCLA"), 42 U.S.C. 9601–9675, notice is hereby given that a proposed purchaser agreement ("Purchaser Agreement") associated with the Commodore Semiconductor Group Superfund Site ("Site") located in Norristown, Pennsylvania, was executed by the Environmental Protection Agency and the Department of Justice and is now subject to public comment, after which the United States may modify or withdraw its consent if comments received disclose facts or considerations which indicate that the Purchaser Agreement is inappropriate, improper, or inadequate. The Purchaser Agreement will resolve certain potential EPA claims under sections 106 and 107 of CERCLA, 42 U.S.C. 9606 and 9607, against 950 Rittenhouse, Inc., and 950 Rittenhouse Associates, L.P. ("Purchaser"). The property subject to the Purchaser Agreement is the Site which encompasses approximately 14 acres at 950 Rittenhouse Road, in the Valley Forge Corporate Center in Lower Providence Township, Norristown, Pennsylvania. A portion of the Site had been operated as a semiconductor chip manufacturing facility. At the time the building was constructed, a 250-gallon underground concrete storage tank was installed adjacent to the southeast side of the building. The concrete tank was used to store a waste solution known to contain trichloroethene ("TCE") and other solvents. According to information obtained by EPA from Commodore Business Machines, Inc., the former operator of the Facility, contents from the underground concrete storage tank leaked in 1974.

In February 1984, EPA performed a Site Inspection ("SI") at the Site. A Preliminary Assessment ("PA") and another SI were subsequently completed by EPA on December 5 and 12, 1986, respectively. Sampling results revealed the presence of trichloroethene ("TCE") in nearby residential wells. EPA also found the presence of volatile organic compounds ("VOCs") which include trichloroethene ("TCE"), trichloroethane ("TCA"), 1,2 dichloroethene, 1,1 dichloroethene, and 1,1 dichloroethane and vinyl chloride in groundwater, surface water, and soil samples taken from the Site.

For thirty (30) days following the date of publication of this notice, the Agency will accept written comments relating to the proposed Purchaser Agreement. The Agency's response to any comments received will be available for public inspection at the U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, PA 19103.

DATES: Comments must be submitted on or before February 27, 2003.

AVAILABILITY: The proposed Purchaser Agreement and additional background information relating to the proposed Purchaser Agreement are available for public inspection at the U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, PA 19103. A copy of the proposed Purchaser Agreement may be obtained from Suzanne Canning, U.S. Environmental Protection Agency, Legal Program Coordinator (3RC00), 1650 Arch Street, Philadelphia, PA 19103. Comments should reference the "Commodore Semiconductor Group Superfund Site Prospective Purchaser Agreement" and "EPA Docket No. CERCLA–03–2002–0071," and should be forwarded to Suzanne Canning at the above address.

FOR FURTHER INFORMATION CONTACT: Yvette Hamilton-Taylor (3RC43), Senior Assistant Regional Counsel, U.S. Environmental Protection Agency, 1650 Arch Street, Philadelphia, PA 19103, Phone: (215) 814–2636.

Dated: December 30, 2002.

Thomas Voltaggio,

Acting Regional Administrator, Region III.

[FR Doc. 03–1866 Filed 1–27–03; 8:45 am]

BILLING CODE 6560–50–P

EXPORT-IMPORT BANK OF THE UNITED STATES

Economic Impact Policy

This notice is to inform the public that the Export-Import Bank of the United States has received an application to finance the export of $25 million of U.S. goods and services to a buyer in Russia. According to the foreign buyer, the U.S. exports will enable the Russian company to produce an additional 1.2 million metric tons metallurgical coal, the entirety of which will be consumed domestically in Russia. Interested parties may submit comments on this transaction by e-mail to *economic.impact@exim.gov* or by mail to 811 Vermont Avenue, NW., Room 1238, Washington, DC 20571, within 14 days of the date this notice appears in the Federal Register.

Helene S. Walsh,

Director, Policy Oversight and Review.

[FR Doc. 03–1854 Filed 1–27–03; 8:45 am]

BILLING CODE 6690–01–M

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority, Comments Requested

January 16, 2003.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden

invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Persons wishing to comment on this information collection should submit comments March 28, 2003. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Judy Boley Herman, Federal Communications Commission, 445 12th Street, SW., Room 1–C804, Washington, DC 20554 or via the internet to *jboley@fcc.gov*.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Judy Boley Herman at 202–418–0214 or via the internet at *jboley@fcc.gov*.

SUPPLEMENTARY INFORMATION: *OMB Control No.:* 3060–0732.

Title: Consumer Education Concerning Wireless E911.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for profit.

Number of Respondents: 2,500.

Estimated Time Per Response: 2 hours.

Frequency of Response: On occasion reporting requirement.

Total Annual Burden: 1,563 hours.

Annual Reporting and Recordkeeping Cost Burden: $375,000.

Needs and Uses: Commission rules proposes a consumer education program to address a concern that consumers may not have a sufficient understanding of technological limitations that can impede the transmission of wireless 911 calls and the delivery of emergency assistance. The Commission believes that wireless carriers have an obligation to inform customers regarding the scope of their services, including any technical limitations that can impede transmission of wireless services in providing access to 911. The information will be used by consumers to determine rationally and accurately the scope of their options in accessing 911 services from mobile handsets.

OMB Control No.: 3060–0755.

Title: Infrastructure Sharing—47 CFR 59.1—59.4.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 75 respondents; 1,425 responses.

Estimated Time Per Response: 2 hours.

Frequency of Response: On occasion reporting requirement, third party disclosure requirement.

Total Annual Burden: 2,325 hours.

Annual Reporting and Recordkeeping Cost Burden: N/A.

Needs and Uses: The Commission implemented the infrastructure sharing provisions of the Communications Act of 1934, as amended by the Telecommunication Act of 1996. Section 259 requires incumbent local exchange carriers (LECs) to file any arrangements showing the conditions under which they share infrastructure per section 259. Section 259 also requires incumbent LECs to provide information on deployment of new services and equipment to qualifying carriers. The Commission also requires incumbent LECs to provide 60 day notices prior to terminating section 259 agreements.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 03–1838 Filed 1–27–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission

January 16, 2003.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before February 27, 2003. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Judith Boley Herman, Federal Communications Commission, Room 1–C804, 445 12th Street, SW., DC 20554 or via the Internet to *jboley@fcc.gov*.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judith Boley Herman at 202–418–0214 or via the Internet at *jboley@fcc.gov*.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0106.

Title: Section 43.61—Reports of Overseas Telecommunications Traffic.

Form No: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 704.

Estimated Time Per Response: 26 hours.

Frequency of Response: On occasion, quarterly, and annual reporting requirements.

Total Annual Burden: 18,520 hours.

Total Annual Cost: $626,000.

Needs and Uses: The telecommunications traffic data report is an annual reporting requirement imposed on common carriers engaged in

the provision of overseas telecommunications services. The reported data is useful for international planning, facility authorization, monitoring emerging developments in communications services, analyzing market structures, tracking the balance of payments in international communications services, ad market analysis purposes. The reported data enables the Commission to fulfill it's regulatory responsibilities.

OMB Control No.: 3060–0848.

Title: Deployment of Wireline Services Offering Advanced Telecommunications Capability, CC Docket No. 989–147.

Form No: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 1,750.

Estimated Time Per Response: .50–44 hours.

Frequency of Response: On occasion and annual reporting requirements, recordkeeping requirement, third party disclosure requirement.

Total Annual Burden: 165,600 hours.

Total Annual Cost: N/A.

Needs and Uses: The requirements implemented section 251 of the Communications Act of 1934, as amended, to promote deployment of advanced services without significantly degrading the performance of other services. All the requirements will be used by the Commission and competitive local exchange carriers (CLECs) to facilitate the deployment of advanced data services and implement section 251 of the Act. This information collection was revised to because it clarified in an Order on Reconsideration that incumbent LECs must file tariffs for cross-connects provided pursuant to section 201.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 03–1839 Filed 1–27–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission

January 15, 2003.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before February 27, 2003. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Judith Boley Herman, Federal Communications Commission, Room 1–C804, 445 12th Street, SW., DC 20554 or via the Internet to *jboley@fcc.gov*.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judith Boley Herman at 202–418–0214 or via the Internet at *jboley@fcc.gov*.

SUPPLEMENTARY INFORMATION: *OMB Control No::* 3060–0972.

Title: Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers.

Form No: FCC Forms 507, 508, and 509.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit, not-for-profit institutions.

Number of Respondents: 1,300 respondents; 5,555 responses.

Estimated Time Per Response: 1–93 hours.

Frequency of Response: On occasion, annual, quarterly, and one-time reporting requirements, third party disclosure requirement.

Total Annual Burden: 31,725 hours.

Total Annual Cost: $45,000.

Needs and Uses: The Commission revised the filing requirements associated with the Interstate Common Line Support (ICLS) mechanism for rate-of-return carriers. This revision created new FCC forms 508 and 509 to this information collection to ease the burden on the carriers, adds projected and actual revenue data to the existing collection of projected and actual cost data and provides for the collection of certain data for validation purposes. The information is used by the Commission to determine whether and to what extent non-price cap or rate-of-return carriers providing data are eligible to receive universal service support. The Commission will use the tariff data to make sure that rates are just and reasonable, as required by section 201(b) of the Act.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 03–1840 Filed 1–27–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission

January 8, 2003.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13. An agency may not conduct or sponsor a collection of information unless it displays a current valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before March 31, 2003.

If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commission, Room 1–A804, 445 12th Street, SW., Washington, DC 20554, or via the Internet to *lesmith@fcc.gov*

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s) contact Les Smith at (202) 418–0217 or via the Internet at *lesmith@fcc.gov*.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0017.

Title: Application for a Low Power TV, Translator, or TV Booster Station License.

Form Number: FCC Form 347.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities; individuals or households; State, local or Tribal Government.

Number of Respondents: 1,000.

Estimated Time per Response: 1.5 hours.

Frequency of Response: On occasion reporting requirements.

Total Annual Burden: 1,500 hours.

Total Annual Costs: $110,000.

Needs and Uses: Permittees of low power television, TV translator, or TV booster stations use FCC Form 347 to apply for a station license. The FCC staff use the data to confirm that the station was built to terms specified in the outstanding construction permit and to process the applicant's license to operate the station.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 03–1841 Filed 1–27–03; 8:45 am]

BILLING CODE 6712–10–P

FEDERAL COMMUNICATIONS COMMISION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission

December 12, 2002.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13. An agency may not conduct or sponsor a collection of information unless it displays a current valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before March 31, 2003. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commission, Room 1–A804, 445 12th Street, SW., Washington, DC 20554, or via the Internet to *lesmith@fcc.gov*

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s) contact Les Smith at (202) 418–0217 or via the Internet at *lesmith@fcc.gov*.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0161.

Title: Section 73.61, AM Directional Antenna Field Strength Measurements.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business and other for-profit entities.

Number of Respondents: 1,890.

Estimated Time per Response: 4 hours.

Frequency of Response: Recordkeeping.

Total Annual Burden: 36,020 hours.

Total Annual Costs: None.

Needs and Uses: 47 CFR 73.61 requires each AM station using directional antennas to make field strength measurement as often as necessary to ensure proper directional antenna system operation. Stations not having approved sampling systems make field strength measurements every three months. Stations with approved sampling systems must take field strength measurements as often as necessary. Also, all AM station using directional signals must take partial proofs of performance as often as necessary. The FCC staff used the data in field inspections/investigations; AM licensees with directional antennas use the data to ensure that adequate interference protection is maintained between stations and to ensure proper operation of antennas.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 03–1842 Filed 1–27–03; 8:45 am]

BILLING CODE 6712–10–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority; Comments Requested

December 13, 2002.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Pub.L 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Persons wishing to comment on this information collection should submit comments on or before March 31, 2003.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commission, Room 1–A804, 445 12th Street, SW., Washington, DC 20554, or via the Internet to *lesmith@fcc.gov*.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via the Internet at *lesmith@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0178.

Title: Section 73.1560, Operating Power and Mode Tolerances.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business and other for-profit entities.

Number of Respondents: 280.

Estimated Time per Response: 1 hour.

Frequency of Response: On occasion reporting requirements.

Total Annual Burden: 280 hours.

Total Annual Costs: None.

Needs and Uses: 47 CFR 73.1560 requires licensees of AM, FM or TV broadcast stations to file a notification with the FCC when operating at reduced power for ten consecutive days and upon restoration of normal operations, A licensee must also file an informal written request for additional time when operation cannot be restored within 30 days due to circumstances beyond the licensee's control. The FCC staff use these data to maintain complete and accurate data about station operations.

OMB Control Number: 3060–0181.

Title: Section 73.1615, Operation During Modification of Facilities.

Form Number: N/A.

Type of Review: Extension of currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 110.

Estimated Time per Response: 20–60 mins.

Frequency of Response: On occasion reporting requirements.

Total annual burden: 27 hours.

Total Annual Costs: $6,000.

Needs and Uses: 47 CFR 73.1615(c) requires the licensee of an AM, FM, or TV station to notify to the FCC when it is in the process of modifying existing facilities as authorized by a construction permit, and it becomes necessary either to discontinue operation or to operate with temporary facilities. If the licensee needs to discontinue operations or to operate with temporary facilities for more than 30 days, then an informal letter request must be sent to the FCC prior to the 30th day. Section 73.1615(d) requires the licensee of an AM station holding a construction permit, which authorizes both a change in frequency and directional facilities, to obtain authority from the FCC prior to using any new installation authorized by the permit, or using temporary facilities. This request is to be made by letter 10 days prior to the date on which the temporary operation is to commence. This letter shall describe the operating modes and facilities to be used. The FCC staff use the data to maintain complete technical records and to ensure that interference will not be caused by other licensed broadcast facilities.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 03–1843 Filed 1–27–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission

December 24, 2002.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13. An agency may not conduct or sponsor a collection of information unless it displays a current valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before March 31, 2003. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commission, Room 1–A804, 445 12th Street, SW., Washington, DC 20554, or via the Internet to *lesmith@fcc.gov*

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s) contact Les Smith at 202–418–0217 or via the Internet at *lesmith@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0506.

Title: Application for FM Broadcast Station License, Form 302–FM.

Form Number: FCC 302–FM.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities; Not-for-profit institutions.

Number of Respondents: 925.

Estimated Time per Response: 2–4 hours.

Frequency of Response: On occasion reporting requirements.

Total Annual Burden: 1,840 hours.

Total Annual Costs: $665,500.

Needs and Uses: On October 2, 1998, the FCC adopted a Report and Order (R&O) in MM Docket Nos. 98–43 and 94–149. Among other things, the R&O substantially revised the FCC Form 302–FM to facilitate electronic filing by using certifications and an engineering technical box; simplifying questions; and providing instructions for processing standards and rule interpretations. These changes reduced the applicant's filing burdens when preparing and submitting supporting exhibits and streamlined the Commission's application processing. The Commission has also begun to audit pre- and post-application grants at random to preserve the application process' integrity. The FCC uses the data to confirm that each station has been built as specified in the construction permit; to update FCC station files; and for inclusion in future station operating licenses.

OMB Control Number: 3060–0627.

Title: Application for AM Broadcast Station License, FCC Form 302–AM.

Form Number: FCC 302–AM.

Type of Review: Extension of currently approved collection.

Respondents: Business or other for-profit entities; Not-for-profit institutions.

Number of Respondents: 380.

Estimated Time Per Response: 4–480 hours.

Frequency of Response: On occasion reporting requirements.

Total Annual Burden: 2,800 hours.

Total Annual Costs: $10,070.

Needs and Uses: On October 22, 1998, the Commission adopted a Report and Order (R&O) in MM Docket Nos. 98–43 and 94–149. Among other things, this

R&O revised the FCC Form 302–AM to facilitate electronic filing by using of certifications and an engineering technical box; revising questions; and adding detailed instructions for processing standards and rule interpretations. These changes reduced the applicant's filing burden when preparing and submitting supporting exhibits and allowed the Commmission to streamline its application processing. The Commission has also begun to audit pre- and post-application grants at random to preserve the application process' integrity. The FCC uses these data to confirm that each station has been built as specified in the construction permit; to update FCC station files; and for inclusion in future station operating licenses.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 03–1844 Filed 1–27–03; 8:45 am]

BILLING CODE 6712–10–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested

January 15, 2003.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before March 31, 2003. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Judith Boley Herman, Federal Communications Commission, Room 1–C804 or Room 1–A804, 445 12th Street, SW., Washington, DC 20554 or via the Internet to *jboley@fcc.gov*.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judith Boley Herman at 202–418–0214 or via the Internet at *jboley@fcc.gov*.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0850.

Title: Quick-Form Application for Authorization in the Ship, Aircraft, Amateur, Restricted and Commercial Operator, and General Mobile Radio Services.

Form No.: FCC Form 605.

Type of Review: Revision of a currently approved collection.

Respondents: Individual or households, business or other for-profit, not-for-profit institutions, and state, local or tribal government.

Number of Respondents: 175,000.

Estimated Time Per Response: .44 hours.

Frequency of Response: On occasion reporting requirement, third party disclosure requirement.

Total Annual Burden: 77,000 hours.

Total Annual Cost: $2,537,500.

Needs and Uses: FCC Form 605 is a consolidated application for Ship, Aircraft, Amateur, Restricted and Commercial Radio Operators, and General Mobile Radio Services and is used to collect licensing date for the Universal Service Licensing System (ULS).

The form is being revised to incorporate additional data fields in accordance with the recommendation in International Maritime Organization (IMO) Assembly Resolution A.887 (21) submitted by the National GMDSS Implementation Task Force (charted by the United States Coast Guard); to change certain certification statements into questions giving applicants an option to clarify if a license is required; and to clarify existing instructions for the general public. The data collected on this form includes the date of birth for Commercial Operator licensees, however, this information will be redacted from public view.

There is no change to the estimated average burden or the number of respondents of the additional data elements proposed by the IMO. The Task Force argues that search and rescue operations could be significantly improved if the Commission's database contained this additional information.

OMB Control No.: 3060–0910.

Title: Third Report and Order in CC Docket No. 94–102, Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit, not-for-profit institutions.

Number of Respondents: 4,000.

Estimated Time Per Response: 2 hours.

Frequency of Response: On occasion and one-time reporting requirements.

Total Annual Burden: 8,000 hours.

Total Annual Cost: N/A.

Needs and Uses: Commission rules allows wireless carriers to permit the use of handset-based solutions, or hybrid solutions that require changes both to handsets and wireless networks, in providing caller location information as part of enhanced 911 services. The information will provide public service answering points (PSAPs), providers of location technology, investors, manufacturers, local exchange carriers, and the Commission with valuable information necessary for preparing for full Phase II E911 implementation. These advanced reports will provide helpful, if not essential, information for coordinating carrier plans with those manufacturers and PSAPs. It will also assist the Commission's efforts to monitor Phase II developments and to take necessary actions to maintain the Phase II implementation schedule.

OMB Control No.: 3060–0804.

Title: Universal Service—Health Care Providers Universal Service Program.

Form Nos.: FCC Forms 465, 466, 466–A, 467, and 468.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit, not-for-profit institutions.

Number of Respondents: 5,255.

Estimated Time Per Response: 1.5–2.5 hours.

Frequency of Response: On occasion reporting requirement, third party disclosure requirement.

Total Annual Burden: 9,755 hours.

Total Annual Cost: N/A.

Needs and Uses: The Commission adopted rules providing support for all telecommunications services, Internet access, and internal connections for all eligible health care providers. Health

care providers who want to participate in the universal service program must file several form including FCC Forms 466, 467, and 468. The Commission is revising FCC Forms 466, 467 and 468.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 03–1846 Filed 1–27–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested

January 17, 2003.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before March 31, 2003. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Judith Boley Herman, Federal Communications Commission, Room 1–C804 or Room 1–A804, 445 12th Street, SW., Washington, DC 20554 or via the Internet to *jboley@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judith Boley Herman at 202–418–0214 or via the Internet at *jboley@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–1031.

Title: Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems: Petition of City of Richardson, TX; Order on Reconsideration.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit, not-for-profit institutions, and state, local or tribal government.

Number of Respondents: 1,358.

Estimated Time Per Response: 2–40 hours.

Frequency of Response: On occasion reporting requirement, third party disclosure requirement.

Total Annual Burden: 13,960 hours.

Total Annual Cost: N/A.

Needs and Uses: The Order on Reconsideration responds to two petitions for reconsideration of a previous Order which responded to a petition from the city of Richardson, TX. The current Order on Reconsideration contains three new information collection requirements. First, it allows wireless carriers to toll the six-month E911 implementation period if the carrier certifies that the requesting Public Safety Answering Point (PSAP) is not E911 capable. Second, PSAPs may file a response to the carrier's certification. Third, the Order on Reconsideration clarifies that wireless carriers and PSAPs may mutually agree on an E911 implementation date other than that prescribed in the Commission's rules.

The Commission sought and obtained emergency OMB approval for this information collection on 1/16/03. The Commission is now seeking extension of this collection to obtain the full three year OMB approval.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 03–1848 Filed 1–27–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Submitted to OMB for Review and Approval

December 23, 2002.

SUMMARY: The Federal Communications Commissions, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before February 27, 2003. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commission, Room 1–A804, 445 12th Street, SW., Washington, DC 20554 or via the Internet to *lesmith@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via the Internet at *lesmith@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0010.

Title: Local Franchising Authority.

Form Number: FCC 323.

Type of Review: Revision of a currently approved collection.

Respondents: State, local, or tribal Governments.

Number of Respondents: 2,000.

Estimated Time per Response: 0.5 to 1.5 hours.

Frequency of Response: On occasion, biennial, and/or upon renewal reporting requirements.

Total Annual Burden: 2,750 hours.

Total Annual Cost: $2,163,000.

Needs and Uses: Each permittee of a commercial AM, FM, TV, and international broadcast station must file FCC Form 323, Ownership Report,

within 30 days of the FCC granting their application for an original construction permit, the consummation, pursuant to FCC consent, of a transfer of control or an assignment of license, and/or when they file their station's license renewal applications and every two years thereafter. A permittee/licensee must also file a report or to certify the accuracy of the current report on file, in lieu of filing a new report, when the permitted applies for a station license, or whenever there is a current and unamended FCC Form 323 on file at the FCC. Data on FCC Form 323 help to determine whether the licensee/permittee meets the FCC's multiple ownership requirements and complies with the Communications Act. The form's race/ethnicity/gender question indicates current minority and female ownership of broadcast facilities and the efficacy of FCC Rules to promote opportunities for small businesses and minority and female-owned businesses in the broadcasting industry.

OMB Control Number: 3060–0550.
Title: Local Franchising Authority.
Form Number: FCC 328.
Type of Review: Revision of a currently approved collection.
Respondents: State, local, or tribal Governments.
Number of Respondents: 20.
Estimated Time per Response: 0.5 hours.
Frequency of Response: One time reporting requirement; Third party disclosure.
Total Annual Burden: 20 hours.
Total Annual Cost: None.
Needs and Uses: The FCC developed FCC Form 328 to provide a standardized, simple form for Local Franchise Authorities (LFAs) to use when requesting certification. The Commission uses the data derived from the Form 328 filing to ensure that the LFA has met the criteria specified in section 3(a) of the Cable Television Consumer Protection Act of 1992 for regulating basic cable service rates. The Commission has made several modifications to Form 328 to update it.

OMB Control Number: 3060–1015.
Title: Ultra Wideband Transmission Systems Operating Under part 15.
Form Number: N/A.
Type of Review: Extension of a currently approved collection.
Respondents: Business or other for-profit entities.
Number of Respondents: 500.
Estimated Time per Response: 2 hours.
Frequency of Response: On occasion reporting requirement; Third party disclosure.
Total Annual Burden: 1,000 hours.
Total Annual Cost: None.
Needs and Uses: 47 CFR 15.2525 requires operators of Ultra Wideband (UWB) transmission systems to coordinate their operations to avoid interference with sensitive U.S. government radio systems. Initial operation in a particular area may not commence until authorized by the FCC. The UWB operators must provide the name, address, and other pertinent contact information of the user, the desired geographical area of operation, the FCC ID number, time period during which operations will take place, and other nomenclature of the UWB device. The FCC collects this information and forwards it to the National Telecommunications and Information Administration (NTIA under the U.S. Department of Commerce). This information collection is essential to control potential interference to Federal radio communications. (Please note that on June 12, 2002, OMB approved this collection under the "emergency processing" provisions of the Paperwork Reduction Act of 1995, 44 U.S.C. 3507.)

Federal Communications Commission.
Marlene H. Dortch,
Secretary.
[FR Doc. 03–1845 Filed 1–27–03; 8:45 am]
BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Submitted to OMB for Review and Approval

January 15, 2003.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before February 27, 2003. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commissions, Room 1–A804, 445 12th Street, SW., Washington, DC 20554 or via the Internet to *lesmith@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via the Internet at *lesmith@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0636.
Title: Equipment Authorization—Declaration of Compliance, Parts 2 and 15.
Form Number: N/A.
Type of Review: Reinstatement without change of a previously approved collection for which approval has expired.
Respondents: Business or other for-profit entities.
Number of Respondents: 4,000.
Estimated Time per Response: 19 hours (avg.).
Frequency of Response: Recordkeeping; One-time reporting requirement; Third party disclosure.
Total Annual Burden: 76,000 hours.
Total Estimated Cost: $12,000,000.
Needs and Uses: The equipment authorization procedure requires the manufacturer or equipment supplier to test the product to ensure compliance with technical standards for limiting radio frequency emissions and to include a declaration of compliance (DoC) with the standards in the literature furnished with the equipment. Testing and compliance documentation aid in controlling potential interference to radio communications. The test data may be used to investigate complaints of harmful interference; to determine that the equipment marketed complies with the applicable FCC; and to insure that the operation of the equipment is consistent with the documented test results. FCC rules require the responsible party to make the statement of compliance and supporting technical data available to the Commission upon request. The FCC rules also authorize

personal computers based on tests and approval of their individual components, without further testing of the completed assembly.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 03–1847 Filed 1–27–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Information Collection Activities: Submission For OMB Review; Comment Request

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice of information collection to be submitted to OMB for review and approval under the Paperwork Reduction Act of 1995.

SUMMARY: In accordance with requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the FDIC hereby gives notice that it plans to submit to the Office of Management and Budget (OMB) a request for OMB review and approval of the following information collection systems described below.

1. *Type of Review:* Renewal of a currently approved collection.

Title: Interagency Notice of Change in Control.

OMB Number: 3064–0019.

Form Number: 6822/01.

Annual Burden

Estimated annual number of respondents: 40.

Estimated time per response: 30 hours.

Total annual burden hours: 1,200 hours.

Expiration Date of OMB Clearance: January 31, 2003.

SUPPLEMENTARY INFORMATION: The interagency notice of change in control is submitted regarding any person proposing to acquire ownership control of an insured state nonmember bank . The information is used by the FDIC to determine whether the competence, experience, or integrity of any acquiring person, indicates that it would not be in the interest of the depositors of the bank or in the interest of the public, to permit such persons to control the bank.

2. *Type of Review:* Renewal of a currently approved collection.

Title: Asset Purchaser Eligibility.

OMB Number: 3064–0135.

Annual Burden:

Estimated number of respondents: 2,500.

Estimated time per response: 30 minutes.

Total annual burden hours: 1,250 hours.

Expiration Date of OMB Clearance: January 31, 2003.

SUPPLEMENTARY INFORMATION: The Purchaser Eligibility Certification implements the statutory requirement that assets held by the FDIC in the course of liquidating any Federally insured institution not be sold to persons who contributed to the demise of an insured institution in specified ways.

OMB Reviewer: Joseph F. Lackey, Jr. (202) 395–4741, Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503.

FDIC Contact: Tamara R. Manly, (202) 898–7453, Legal Division, Room MB–3109, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

Comments: Comments on these collections of information are welcome and should be submitted on or before February 27, 2003, to both the OMB reviewer and the FDIC contact listed above.

ADDRESSES: Information about this submission, including copies of the proposed collections of information, may be obtained by calling or writing the FDIC contact listed above.

Dated: January 23, 2003.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 03–1893 Filed 1–27–03; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting; Sunshine Act

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 2 p.m. on Friday, January 31, 2003, to consider the following matters:

SUMMARY AGENDA: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Disposition of minutes of previous Board of Directors' meetings.

Summary reports, status reports, and reports of actions taken pursuant to authority delegated by the Board of Directors.

DISCUSSION AGENDA:

Memorandum and resolution re: Final Part 303 Amendment—Insurance of State Banks Chartered as Limited Liability Companies.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550 17th Street, NW., Washington, DC.

The FDIC will provide attendees with auxiliary aids (*e.g.*, sign language interpretation) required for this meeting. Those attendees needing such assistance should call (202) 416–2089 (Voice); (202) 416–2007 (TTY), to make necessary arrangements.

Requests for further information concerning the matter may be directed to Mr. Robert E. Feldman, Executive Secretary of the Corporation, at (202) 898–3742.

Dated: January 24, 2003.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 03–2099 Filed 1–24–03; 3:08 pm]

BILLING CODE 6714–01–M

FEDERAL HOUSING FINANCE BOARD

Sunshine Act Notice

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: 68 FR 3530, January 24, 2003.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 3 p.m., Wednesday, January 29, 2003.

CHANGE OF MEETING TIME: Notice is hereby given that the Board of Directors meeting scheduled for 3 p.m. on Wednesday, January 29, 2003 has been changed to 10 a.m. on Wednesday, January 29, 2003.

CONTACT PERSON FOR MORE INFORMATION: Elaine L. Baker, Secretary to the Board, (202) 408–2837.

Arnold Intrater,

General Counsel.

[FR Doc. 03–2110 Filed 1–24–03; 3:33 pm]

BILLING CODE 6725–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Declaration Regarding Administration of Smallpox Countermeasures

AGENCY: Office of the Secretary (OS), HHS.

ACTION: Notice.

SUMMARY: The Secretary of the Department of Health and Human Services is issuing this notice pursuant to section 224(p)(2)(A) of the Public Health Service Act to make a declaration regarding administration of smallpox countermeasures. The Secretary provides policy determinations regarding administration of countermeasures, and declares that a potential bioterrorist incident makes it advisable to administer, on a voluntary basis, covered countermeasures specified in the declaration for prevention or treatment of smallpox or control or treatment of adverse events related to smallpox vaccination to categories of individuals named in the declaration who may be involved in a wide range of activities associated with the administration of countermeasures against smallpox. Effective dates of the declaration, and relevant definitions are also provided.

DATES: This Notice and the attached declaration are effective as of January 24, 2003.

FOR FURTHER INFORMATION CONTACT: Jerome S. Hauer, Acting Assistant Secretary for Public Health Emergency Preparedness, (202) 205–2882.

SUPPLEMENTARY INFORMATION: The Secretary issues the following declaration pursuant to section 224(p)(2)(A) of the Public Health Service Act, 42 U.S.C. 233(p)(2)(A):

I. Policy Derterminations

(1) The attacks of September and October 2001 have heightened concern that terrorists may have access to the smallpox virus and attempt to use it against the American public and U.S. Government facilities abroad.

(2) In light of these concerns, and in order to advance the public health and national security, the President announced the smallpox vaccination program on December 13, 2002.

(3) Given the potential for a bioterrorist incident, administration of smallpox countermeasures is advisable within the terms of this declaration.

(4) Smallpox vaccine is currently recommended domestically only for smallpox response teams, health care workers, and emergency response workers.

(5) The U.S. Government is making smallpox countermeasures available to personnel associated with certain U.S. facilities abroad and administration of these countermeasures to such personnel is advisable within the terms of this declaration.

(6) Liability protections for manufacturers and distributors of smallpox countermeasures and the hospitals, health care facilities, and health care workers who will receive them and treat potentially infected smallpox cases are integral to ensuring maximum participation in the vaccination program.

(7) Section 304 of the Homeland Security Act (Pub. L. 107–296) is intended to alleviate liability concerns and therefore ensure that vaccine is available if necessary to protect the public health.

(8) Administration of a countermeasure such as smallpox vaccine is necessarily more involved than the act of placing a drop of vaccine on a two-pronged needle and inoculating a person's arm. Determining who is contraindicated; monitoring, management, and care of the countermeasure site; evaluation of countermeasure "takes;" and contact transmission of vaccinia, among other things, all arise out of and are directly related to and part of the administration of the countermeasure. All such acts also potentially give rise to legal liability that, without sufficient protections, may significantly discourage participation in the smallpox vaccination program.

(9) Under current domestic planning, many health care entities will designate individuals to receive countermeasures at a hospital or vaccination clinic determined by the state. To achieve a successful vaccination program and because it is impractical to have countermeasures administered at every health care entity involved in the program, it is critical that health care entities participate in this manner and that their personnel be protected while acting within their scope of employment.

(10) It is important to the successful implementation of the vaccination program that those workers employed by health care entities under whose auspices a countermeasure is administered be protected by section 304 while acting within the scope of their employment.

(11) Health care entities use numerous staffing arrangements to carry out daily functions. Individuals designated to receive covered countermeasures and subsequently treat potential smallpox cases may fall into any of these arrangements. Liability protection for these individuals, to the extent described below, is necessary to encourage participation in the smallpox vaccination program.

(12) Based upon scientific data from animal model studies examining Cidofivir's effectiveness in treating lethal pox virus infections that are similar to smallpox, Cidofivir may be useful in treating smallpox in humans.

II. Declaration

I, Tommy G. Thompson, Secretary of the Department of Health and Human Services, have concluded, in accordance with authority vested in me under section 224(p)(2)(A) of the Public Health Service Act, that a potential bioterrorist incident makes it advisable to administer, on a voluntary basis, covered countermeasures specified in this declaration for prevention or treatment of smallpox or control or treatment of adverse events related to smallpox vaccination, to categories of individuals named in this declaration. The countermeasures set forth below shall be considered to be administered pursuant to this declaration when used for prevention or treatment of smallpox, or to control or treat the adverse effects of smallpox vaccination.

This declaration may be amended as circumstances require.

III. Covered Countermeasures

Countermeasures to be administered pursuant to this declaration are:

(1) Vaccinia (Smallpox) Vaccines, including the Dryvax vaccine;

(2) Cidofivir and derivatives thereof;

(3) Vaccinia Immune Globulin (VIG).

IV. Individuals Covered by this Declaration

Individuals to whom it is advisable to administer the covered countermeasures specified above are:

(1) Health care workers who may be called upon to monitor or treat any persons who are either (a) covered by this declaration or (b) are deemed to be individuals to whom a covered countermeasure was administered by a qualified person, whether domestically or abroad, pursuant to section 224(p)(2)(C) of the Public Health Service Act;

(2) Any person who is a member of a smallpox response team or teams identified by state[s] or local government entities or the United States Department of Health and Human Services;

(3) Public safety personnel, including, but not limited to, law enforcement

officers, firefighters, security, and emergency medical personnel who may be called upon to assist smallpox response teams specified in paragraph IV(2) above; and

(4) Personnel associated with certain U.S. Government facilities abroad.

V. Effective Dates

The declaration is effective January 24, 2003 until and including January 23, 2004. The effective period may be extended or shortened by subsequent amendment to this declaration.

VI. Definitions

For the purposes of this declaration, including any claim brought against the United States pursuant to section 224 of the Public Health Service Act ("PHS"), as amended by section 304 of the Homeland Security Act, the following definitions will be used:

(1) "Administration of a covered countermeasure" as used in section 224(p)(1) of the PHS Act includes, but is not limited to, the physical administration of a covered countermeasure; education and screening of covered countermeasure recipients; monitoring, management, and care of the covered countermeasure site; evaluation of covered countermeasure "takes;" and contact transmission of vaccinia.

(2) "Health care entity under whose auspices such countermeasure was administered" as used in section 224(p)(7)(B)(ii) of the PHS Act, includes but is not limited to, hospitals, clinics, state and local health departments, health care entities, and contractors of any of those entities that (a) Administer covered countermeasures; (b) designate officials, agents, or employees to receive or administer covered countermeasures; or (c) are identified by state or local government entities or the United States Department of Health and Human Services to participate in the vaccination program, whether that participation is in the United States or abroad.

(3) "Official, agent, or employee" as used in section 224(p)(7)(B)(iv) of the PHS Act and with respect to health care entities under whose auspices covered countermeasures are administered, includes health care workers who share any employment or other staffing relationship with the health care entity.

Dated: January 24, 2003.

Tommy G. Thompson,

Secretary.

[FR Doc. 03–2012 Filed 1–24–03; 12:00 am]

BILLING CODE 4150–24–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Findings of Scientific Misconduct

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Office of Research Integrity (ORI) and the Assistant Secretary for Health have taken final action in the following case:

George E. Eagan, University of Albany, State of New York: Based on the report of an investigation conducted by the University of Albany, State of New York (UA–SUNY) and additional analysis conducted by ORI in its oversight review, the U.S. Public Health Service (PHS) found that Mr. Eagan, former laboratory technician at UA–SUNY, engaged in scientific misconduct by falsification and fabrication of data supported by a subcontract to UA–SUNY on National Institute of General Medical Sciences (NIGMS), National Institutes of Health (NIH), grant R01 GM46312–11, "Structural Biochemistry of DNA Base Excision Repair."

Specifically, PHS found that Mr. Eagan engaged in scientific misconduct by falsifying and fabricating the data for two experiments, conducted on February 12 and 13, 2002, designed to test the survival of strains of bacteria exposed to different base analog mutagens. Mr. Eagan's experiments were significant because they would have contributed to the overall objective of the grant to understand the structural and biochemical interaction of enzymes involved in base-excision repair with various substrates, including the base analogs studied by Mr. Eagan.

Mr. Eagan has entered into a Voluntary Exclusion Agreement in which he has voluntarily agreed for a period of five (5) years, beginning on January 13, 2003:

(1) To exclude himself from any contracting or subcontracting with any agency of the United States Government and from eligibility for, or involvement in, nonprocurement transactions (*e.g.*, grants and cooperative agreements) of the United States Government referred to as "covered transactions" as defined in 45 CFR part 76 (Debarment Regulations); and

(2) To exclude himself from serving in any advisory capacity to PHS including but not limited to service on any PHS advisory committee, board, and/or peer review committee, or as a consultant.

Mr. Eagan had admitted to falsification of data in an earlier case.

FOR FURTHER INFORMATION CONTACT: Director, Division of Investigative Oversight, Office of Research Integrity, 5515 Security Lane, Suite 700, Rockville, MD 20852, (301) 443–5330.

Chris B. Pascal,

Director, Office of Research Integrity.

[FR Doc. 03–1920 Filed 1–27–03; 8:45 am]

BILLING CODE 4150–31–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Nominations of Topics for Evidence-based Practice Centers (EPCs)

AGENCY: The Agency for Healthcare Research and Quality (AHRQ).

ACTION: Nominations of topics for evidence reports and technology assessments.

SUMMARY: AHRQ invites nominations of topics for evidence reports and technology assessments relating to the prevention, diagnosis, treatment and management of common diseases and clinical conditions, as well as topics relating to organization and financing of health care. AHRQ's previous requests for topic nominations were published in the **Federal Register** on December 23, 1996, November 28, 1997, May 4, 1999, November 13, 2000, and February 14, 2002.

DATES: Topic nominations should be submitted by March 31, 2003 in order to be considered for the next group of evidence reports and technology assessments to be funded in Fiscal Year 2003. In addition to timely responses to this request for nominations, AHRQ also accepts topic nominations on an ongoing basis. AHRQ is not able to reply to individual responses, but will consider all nominations during the selection process. Topics selected will be announced from time to time in the **Federal Register** and through AHRQ press releases.

ADDRESSES: Topic nominations should be submitted to Jacqueline Besteman, J.D., M.A., Director, Evidence-based Practice Centers (EPC) Program, Center for Practice and Technology Assessment, AHRQ, 6010 Executive Boulevard, Suite 300, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Jacqueline Besteman, J.D., M.A., Center for Practice and Technology Assessment, AHRQ, 6010 Executive Blvd., Suite 300, Rockville, MD 20852; Phone: (301) 594–4017; Fax: (301) 594–

4017; Fax: (301) 594–4027; E-mail: *jbestema@ahrq.gov*.

Arrangement for Public Inspection: All nominations will be available for public inspection at the Center for Practice and Technology Assessment, telephone (301) 594–4015, weekdays between 8:30 a.m. and 5 p.m. (Eastern time).

SUPPLEMENTARY INFORMATION:

1. Background

Under Title IX of the Public Health Service Act (42 U.S.C. 299a–299c) as amended by Pub. L. 106–129 (1999), AHRQ is charged with enhancing the quality, appropriateness, and effectiveness of health care services and access to such services. AHRQ accomplishes these goals through scientific research and through promotion of improvements in clinical practice and health systems practices including the prevention of diseases and other health conditions.

2. Purpose

The purpose of **Federal Register** notice is to encourage participation and collaboration of professional societies, health systems, payors, and providers, with AHRQ as it carries out its mission to promote the practice of evidence-based health care. AHRQ serves as the science partner with private-sector and public organizations in their efforts to improve the quality, effectiveness, and appropriateness of health care delivery in the United States, and to expedite the translation of evidence-based research findings into improved health care services. AHRQ awards task order contracts to its Evidence-based Practice Centers (EPCs) to undertake scientific analyses and evidence syntheses on high-priority topics. The EPCs produce science syntheses—evidence reports and technology assessments—that provide to public and private organizations the foundation for developing and implementing their own practice guidelines, performance measures, educational programs, and other strategies to improve the quality of health care and decision-making related to the effectiveness and appropriateness of specific health care technologies and services. The evidence reports and technology assessments also may be used to inform coverage and reimbursement policies.

In addition to clinical and behavioral research, as the body of scientific studies related to the organization and financing of health care expands, systematic review and analyses of these studies can provide health system organizations with a scientific foundation for developing system-wide policies and practices. These reports may address and evaluate topics such as risk adjustment methodologies, market performance measures, provider payment mechanisms, and insurance purchasing tools, as well as provider integration of new scientific findings regarding health care and delivery innovations. To review topics that have been assigned to the EPCs between FY 1997 and FY 2002, visit AHRQ's Web site at *http://www.ahrq.gov/clinic/epc#centers*.

3. Evidence-based Practice Centers (EPCs)

The EPCs prepare evidence reports and technology assessments on topics for which there is significant demand for information by health care providers, insurers, purchasers, health-related societies, and patient advocacy organizations. Such topics may include the prevention, diagnosis and/or treatment of particular clinical and behavioral conditions, use of alternative or complementary therapies, and appropriate use of commonly provided services, procedures, or technologies. Topics also may include issues related to the organization and financing of care. AHRQ widely disseminates the EPC evidence reports and technology assessments, both electronically and in print. The EPC evidence reports and technology assessments do not include clinical recommendations or recommendations on reimbursement and coverage policies.

4. Role/Responsibilities of Partners

Nominators of topics selected for development of an EPC evidence report or technology assessment assume the role of Partners to AHRQ and the EPCs, with defined roles and responsibilities. AHRQ places high value on these relationships, and plans to review Partners' past performance of these responsibilities at such time in subsequent years when AHRQ is considering whether to accept additional topics nominated by an organization. Specifically, Partners are expected to serve as resources to EPCs as they develop the evidence reports and technology assessments related to their nominated topic; serve as members of external peer reviewers of relevant draft evidence report and assessment; and commit to (a) timely translation of the EPC reports and assessments into their own quality improvement tools (*e.g.*, clinical practice guidelines, performance measures), educational programs, and reimbursement policies; and (b) dissemination of these derivative products to their membership. AHRQ also is interested in members' use of these derivative products and the products' impact on enhanced healthcare. AHRQ will look to the Partners to provide these use and impact data on products that are based on EPC evidence reports and technology assessments.

The AHRQ will review topic nominations and supporting information and determine final topics, seeking additional information as appropriate. AHRQ is very interested in receiving topic nominations from professional societies and organizations comprised of members of minority populations, as well as nomination of topics that have significant impact on the health status of women, children, ethnic and racial populations.

5. Topic Nomination and Selection Process

The processes that AHRQ employs to select topics nominated for analyses by the EPCs is described below. Section A addresses AHRQ's nomination process and selection criteria for clinical and behavioral topics. Section B addresses AHRQ's nomination process and selection criteria for organization and financing topics.

Section A: Clinical and Behavioral Topics

(a) Nomination Process for Clinical and Behavioral Topics

Nominations of clinical and behavioral topics for AHRQ evidence reports and technology assessments should focus on specific aspects of prevention, diagnosis, treatment and/or management of a particular condition, or on an individual procedure, treatment, or technoloy. Potential topics should be carefully defined and circumscribed so that the relevant published literature and other databases can be searched, evidence systematically reviewed, supplemental analyses performed, draft reports and assessments circulated for external peer review, and final evidence reports or technology assessments produced. Some reports and assessments can be completed within six months, if there is a small volume of literature to be systematically reviewed and analyzed. Other evidence reports and technolgy assessments may require up to 12 months for completion due to complexity of the topic, the volume of literature to be searched, abstracted, and analyzed, and completion of the external peer review process. Topics selected will not duplicate current and widely available research syntheses, unless new evidence is available that

suggests the need for revisions or updates.

For each topic, the nominating organization must provide the following information: (a) Rationale and supporting evidence on the clinical relevance and importance of the topic; and (b) plans for rapid translation of the evidence reports and technology assessments into clinical guidelines, performance measures, educational programs, or other strategies for strengthening the quality of health care services, or plans to inform development of reimbursement or coverage policies; (c) plans for dissemination of these derivative products to their membership; (d) process by which the nominating organization will measure the use of these products by their members, and impact of such use; and (e) process by which the organization will measure the impact of such use.

Specifically, nomination information should include:

- Defined condition and target population.
- Three to five very focused questions to be answered.
- Incidence or prevalence, and indication of the disease burden (*e.g.*, mortality, morbidity, functional impairment) in the U.S. general population or in subpopulations (*e.g.*, Medicare and Medicaid populations). For prevalence, the number of cases in the U.S. and the number of affected persons per 1,000 persons in the general U.S. population should be provided. For incidence, the number of new cases per 100,000 a year should be provided.
- Costs associated with the clinical or behavioral condition, including average reimbursed amounts for diagnostic and therapeutic interventions (*e.g.*, average U.S. costs and number of persons who receive care for diagnosis or treatment in a year, citing ICD9–CM and CPT codes, if possible).
- Impact potential of the evidence report or technology assessment to decrease health care costs or to improve health status or clinical outcomes.
- Availability of scientific data and bibliographies of studies on the topic.
- References to significant differences in practice patterns and/or results; alternative therapies and controversies.
- Plans of the nominating organization to incorporate the report into its managerial or policy decision making (*i.e.*, rapid translation of the report or assessment into derivative products such as clinical practice guidelines or other quality improvement tools, or to inform reimbursement or coverage policies about a particular technology or service).
- Plans of the nominating organization for dissemination of these derivative products to its membership.
- Process by which the nominating organization will measure members' use of the derivative products.
- Process by which the nominating organization will measure the impact of such use on clinical practice.

(b) Selection Criteria for Clinical and Behavioral Topics

Factors that will be considered in the selection of clinical and behavioral topics for AHRQ evidence report and technology assessment topics include: (1) High incidence or prevalence in the general population and in special populations, including women, racial and ethnic minorities, pediatric and elderly populations, and those of low socioeconomic status; (2) significance for the needs of the Medicare, Medicaid and other Federal health programs; (3) high costs associated with a condition, procedure, treatment, or technology, whether due to the number of people needing care, high unit cost of care, or high indirect costs; (4) controversy or uncertainty about the effectiveness or relative effectiveness of available clinical strategies or technologies; (5) impact potential for informing and improving patient or provider decision making; (6) impact potential for reducing clinically significant variations in the prevention, diagnosis, treatment, or management of a disease or condition, or in the use of a procedure or technology, or in the health outcomes achieved; (7) availability of scientific data to support the systematic review and analysis of the topic; (8) submission of nominating organization's plan to incorporate the report into its managerial or policy decision making, as defined above; (9) submission of nominating organization's plan to disseminate derivative products to its members; and (10) submission of nominating organization's plan to measure members' use of these products, and the resultant impact of these products on clinical practice.

Section B: Organization and Financing Topics

(a) Nomination Process for Organization and Financing Topics

Nominations of organization and financing topics for AHRQ evidence reports should focus on specific aspects of health care organization and finance. Topics should be carefully defined and circumscribed so that relevant databases may be searched, the evidence systematically reviewed, supplemental analyses performed, draft reports circulated for external peer review, and final evidence reports produced. Reports can be completed within six months if there is a small volume of literature for systematic review and analysis. Some evidence reports may require up to 12 months for completion due to the complexity of the topic and the volume of literature to be searched, abstracted, and analyzed. Topics selected will not duplicate current and widely available research syntheses, unless new evidence is available that suggests the need for revisions or updates.

For each topics, nominators should provide a rationale and supporting evidence on the importance and relevance of the topic. Nominators must also state their plans for use of the evidence report and indicate how the report could be used by public and private decision makers. Nomination information should include:

- Defined organizational/financial arrangement or structure impacting quality, outcomes, cost, access or use.
- Three to five focused questions to be answered.
- If appropriate, description of how the organizational/financial arrangement or structure is particularly relevant to delivery of care for specific vulnerable populations (*e.g.*, children, persons with chronic disease) or certain communities (*e.g.*, rural markets)
- Costs potentially affected by the organizational/financial arrangement, to the extent they can be quantified.
- Impact potential of the evidence report to decrease health care costs or to improve health status or outcomes.
- Availability of scientific and/or administrative data and bibliographies of studies on the topic.
- References to significant variation in delivery and financing patterns and/or results, and related controversies.
- Nominator's plan for use of an evidence report on this topic.
- Nominator's plan for measuring the impact of the report on organizational, financial, or delivery practices.

(b) Selection Criteria for Organization and Financing Topics

Factors that will be considered in the selection of topics related to the organization and financing of care include the following: (1) uncertainty about the impact of the subject organizational or financing strategy; (2) potential for the subject organizational or financing strategy or the proposed research synthesis to significantly impact aggregate health care costs; (3) policy-relevant to Medicare, Medicaid, and/or other Federal and State health programs; (4) relevant to vulnerable

populations, including racial and ethnic minorities, and particular communities, such as rural markets; (5) available scientific data to support systematic review and analysis of the topic; (6) plans of the nominating organization to incorporate the report into its managerial or policy decision-making; and (7) plans by the nominating organization to measure the impact of the report on practice.

Dated: January 15, 2003.

Carolyn M. Clancy,

Acting Director.

[FR Doc. 03–1913 Filed 1–27–03; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Study Section Meetings—Change of Location

With this notice, the Agency for Healthcare Research and Quality informs the public of the change of location for two meetings. The original notice of these meetings was published in the **Federal Register** on January 7, 2003, Volume 68, Number 4, Page 785.

Below are the change of location of two meetings highlighted in bold.

- *Name of Subcommittee:* Health Systems Research.

Date: February 24–25, 2003, (Open from 6 p.m. to 6:15 p.m. on February 24 and closed for remainder of the meeting).

Place: AT–Doubletree Hotel (for both days), 1750 Rockville Pike, Conference Room TBD, Rockville, Maryland 20852.

- *Name of Subcommittee:* Health Care Quality and Effectiveness Research.

Date: February 26–27, 2003, (Open from 7 p.m. to 7:15 p.m. on February 26 and closed for remainder of the meeting).

Place: AT–Doubletree Hotel (for both days), 1750 Rockville Pike, Conference Room TBD, Rockville, Maryland 20852.

Agenda items for these meetings are subject to change as priorities dictate.

Dated: January 17, 2003.

Carolyn M. Clancy,

Acting Director.

[FR Doc. 03–1912 Filed 1–27–03; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement: 03039]

Cooperative Agreement Training, Education, and Materials Development Regarding Terrorism Acts; Notice of Availability of Funds

A. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under section 301(a) and 317(a) of the Public Health Service Act, 42 U.S.C. sections 241(a) and 247b(a), as amended. The Catalog of Federal Domestic Assistance number is 93.283.

B. Purpose

The Department of Health and Human Services, Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2003 funds for a cooperative agreement for development, implementation, and dissemination of effective terrorism preparedness and emergency response training and education programs. This program addresses the "Healthy People 2010" focus areas Immunization and Infectious Disease, Environmental Health, and Public Health Infrastructure.

The purpose of the program is to enhance the national security of the United States by improving the flow of timely and accurate information to the American general public. This will be accomplished by creating and maintaining a national training program for local community based organizations (CBOs) to develop their capacity to deliver effective terrorism preparedness education.

Measurable outcomes of the program will be in alignment with one or more of the following performance goals: help the American public to prepare for the unexpected; and reduce stress and make the public feel at ease should another emergency arise.

C. Eligible Applicants

Applications may be submitted by national non-profit and faith-based organizations with experience providing training services nationwide.

Note: Title 2 of the United States Code section 1611 states that an organization described in section 501(c)(4) of the Internal Revenue Code that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant or loan.

D. Funding

Availability of Funds

Approximately $1,000,000 is available in FY 2003, to fund one award. It is expected that the award will begin on or about March 30, 2003 and will be made for a 12-month budget period within a project period of up to five years. Funding estimates may change.

Continuation awards within an approved project period will be made on the basis of satisfactory progress as evidenced by required reports and the availability of funds.

Use of Funds

Funds may not be used to provide for direct patient medical care (*e.g.*, ongoing medical management, medications, *etc.*)

Recipient Financial Participation

Matching funds are not required for this program.

E. Program Requirements

In a cooperative agreement, CDC and the recipient of Federal funds share roles and responsibilities. In conducting activities to achieve the purpose of this program, the recipient will be responsible for the activities listed in 1. Recipient Activities, and CDC will be responsible for the activities listed in 2. CDC Activities.

1. Recipient Activities

a. Terrorism Preparedness Training and Education: Develop specific, measurable, and time-phased objectives for the execution of terrorism preparedness and emergency response training and education programs.

b. Develop Terrorism Preparedness Training and Education Programs: Collaborate with CDC to develop terrorism preparedness and emergency response training programs and material based on up-to-date information that is scientifically relevant and substantiated by valid behavioral science theory or empirical research.

c. Implement Terrorism Preparedness and Emergency Response Training and Education Programs: Provide training and technical assistance to local CBOs on conducting effective terrorism preparedness and emergency response education interventions.

d. Support collaboration with CBOs and other local providers to implement effective terrorism preparedness and emergency response education interventions. Terrorism preparedness and emergency response activities should be appropriate to the experience and resources of the affiliate and consistent with the unmet needs and priorities outlined in the state and local

health department's comprehensive terrorism preparedness and emergency response community planning process.

e. Develop collaborative relationships and linkages with behavioral and social scientists, national and local non-governmental organizations, state and local health departments, and other individuals and organizations that can assist in the accomplishment of the purpose of this cooperative agreement.

f. Evaluate Terrorism Preparedness and Emergency Response Training and Education Programs: Develop and implement an evaluation plan that describes how the accomplishment of the program objective at the national and local levels will be measured. The plan must include (a) a description of methods for monitoring program delivery; and (b) methods to measure outcome objectives for program improvement.

g. Conduct formative and summative evaluation as part of the instructional development process when designing program materials.

h. Design and implement systems to ensure training and education program quality.

i. Conduct process evaluation annually on program implementation and outcome evaluation on selected training and education programs periodically.

2. CDC Activities

a. Office of Terrorism Preparedness and Response (OPTR) shall provide consultation and technical assistance in the planning, development, implementation, and evaluation of program activities (*i.e.* training materials, identification and community-based organizations).

b. Depending on requirements, CDC Centers, Institutes, and Offices (CIOs), in close collaboration with OTPR, will provide up-to-date scientific information on the risk factors for terrorism preparedness, prevention measures, scientific research on behavioral intervention, and program strategies for terrorism preparedness. The CIOs include: The Agency for Toxic Substances and Disease Registry (ATSDR), the National Center for Environmental Health (NCEH), The National Center for Infectious Diseases (NCID), the National Immunization Program (NIP), The Public Health Practice Program Office (PHPPO), and The Epidemiology Program Office (EPO).

c. OTPR Senior Management will assist the grantee in collaborating with behavioral and social scientists, national and local non-governmental organizations, State and local health departments, community planning groups, other federally supported terrorism preparedness programs, and organizations that can assist the grantee in the accomplishment of the purpose of this cooperative agreement.

d. OTPR Senior Staff will facilitate the adoption and adaptation of effective education interventions and program models through meetings, workshops, conferences, newsletters, and communication with the project officer.

e. OTPR Senior Staff will provide program descriptions from research synthesis, scientific review, program feasibility activities, and CDC Scientific panels to be used in the development of terrorism preparedness and emergency response training and education programs.

f. OTPR Senior Staff will assist in the development of terrorism preparedness and emergency response training programs and materials based on empirical data on intervention effectiveness.

g. OTPR Senior Staff will assist the grantee in the dissemination of new programs by providing access to CDC partners in terrorism preparedness and emergency response.

F. Content

Letter of Intent (LOI)

A LOI is not required for this program.

Application

The program announcement title and number must appear in the application. Use the information in the Program Requirements, Other Requirements, and Evaluation Criteria sections to develop the application content. Your application will be evaluated on the criteria listed, so it is important to follow them in laying out your program plan. The narrative should be no more than 25 pages, double-spaced, printed on one side, with one-inch margins, and unreduced 12-point font.

The narrative should consist of, at a minimum, a Plan, Objectives, Methods, Evaluation and Budget.

G. Submission and Deadline

Application Forms

Submit the signed original and two copies of PHS form 5161. Forms are available at the following Internet address: *www.cdc.gov/od/pgo/forminfo.htm*

If you do not have access to the Internet, or if you have difficulty accessing the forms on-line, you may contact the CDC Procurement and Grants Office Technical Information Management Section (PGO–TIM) at: 770–488–2700. Application forms can be mailed to you.

Submission Date, Time, and Address

The application must be received by 4 p.m. Eastern Time March 14, 2003. Submit the application to: Technical Information Management–PA03039, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341–4146.

Applications may not be submitted electronically.

CDC Acknowledgement of Application Receipt

A postcard will be mailed by PGO–TIM, notifying you that CDC has received your application.

Deadline

Applications will be considered as meeting the deadline if they are received before 4 p.m. Eastern Time on the deadline date. Any applicant who sends their application by the United States Postal Service or commercial delivery services must ensure that the carrier will be able to guarantee delivery of the application by the closing date and time. If an application is received after closing due to (1) carrier error, when the carrier accepted the package with a guarantee for delivery by the closing date and time, or (2) significant weather delays or natural disasters, CDC will upon receipt of proper documentation, consider the application as having been received by the deadline.

Any application that does not meet the above criteria will not be eligible for competition, and will be discarded. The applicant will be notified of their failure to meet the submission requirements.

H. Evaluation Criteria

Applicants are required to provide measures of effectiveness that will demonstrate the accomplishment of the various identified objectives of the cooperative agreement. Measures of effectiveness must relate to the performance goals stated in the purpose section of this announcement. Measures must be objective and quantitative and must measure the intended outcome. These measures of effectiveness must be submitted with the application and will be an element of evaluation.

An independent review group appointed by CDC will evaluate each application against the following criteria:

1. Technical Approach (30 Points)

The extent to which the application addresses:

a. An overall design strategy, including measurable time lines.

b. The relationship between activities and objectives.

c. Description of the management and analysis of data collected for meeting objectives.

2. Ability to Carry Out the Project (30 Points)

The extent to which the applicant provides evidence of their ability to carry out the proposed activity or project and the extent to which the applicant documents the demonstrated capability to achieve the purpose of this project.

3. Understanding of the Need or Problem (20 Points)

The extent to which the applicant demonstrates a clear, concise understanding of the need or problem to be addressed.

a. Extent to which the applicant specifically includes a description of the public health importance of the planned activities to be undertaken.

b. Extent to which the applicant provides a realistic presentation of the proposed project.

4. Personnel (10 Points)

The extent to which professional personnel involved in this activity or project are qualified, including evidence of prior experience similar to this activity or project. (Complete C.V. should be provided for professional and senior administrative staff; relevant training and experience should be highlighted). If a position is vacant, a position description and complete description of required qualifications for that position are to be included in the application along with a specific plan (including time line) for hiring.

5. Management Plan (10 Points)

The extent to which the applicant provides a description of the systems and the procedures that will be used to manage the progress, budget and operations of the activity or project.

6. Budget (Not Scored)

Extent to which the budget is reasonable, clearly justified, and consistent with the intended use of cooperative agreement funds.

I. Other Requirements

Technical Reporting Requirements

Provide CDC with the original plus two copies of:

1. Interim progress report, no less than 90 days before the end of the budget period. The progress report will serve as your non-competing continuation application, and must contain the following elements:

a. Current Budget Period Activities Objectives. Describe quantified progress in achieving objectives, as well as relevant evaluation findings, changes or adjustments in objectives resulting from evaluation findings, and reasons for not attaining an objective.

b. Current Budget Period Financial Progress.

c. New Budget Period Program Proposed Activity Objectives.

d. Detailed Line-Item Budget and Justification.

e. Additional Requested Information.

2. Financial status report, no more than 90 days after the end of the budget period.

3. Final financial and performance reports, no more than 90 days after the end of the project period. Send all reports to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

Additional Requirements

The following additional requirements are applicable to this program. For a complete description of each, see Attachment I of the program announcement as posted on the CDC Web site.

AR–1 Human Subjects Requirements
AR–7 Executive Order 12372 Review
AR–8 Public Health System Reporting Requirements
AR–9 Paperwork Reduction Act Requirements
AR–10 Smoke-Free Workplace Requirements
AR–11 Healthy People 2010
AR–12 Lobbying Restrictions
AR–13 Prohibition on Use of CDC Funds for Certain Gun Control Activities
AR–14 Accounting System Requirements
AR–15 Proof of Non-Profit Status

J. Where To Obtain Additional Information

This and other CDC announcements, the necessary applications, and associated forms can be found on the CDC Web site, Internet address: *http://www.cdc.gov*. Click on "Funding" then "Grants and Cooperative Agreements".

For general questions about this announcement, contact: Technical Information Management, CDC Procurement and Grants Office, 2920 Brandywine Rd, Room 3000, Atlanta, GA 30341–4146, Telephone: 770–488–2700.

For business management and budget assistance, contact: Sharon Robertson, Grants Management Specialist, Procurement and Grants Office, Centers for Disease Control and Prevention, 2920 Brandywine Road, Room 3000, Atlanta, GA 30341–4146, Telephone: 770–488–2748, E-mail: *sqr2@cdc.gov*.

For program technical assistance, contact: Amy Loy, Office of Terrorism Preparedness and Response, Centers for Disease Control and Prevention, 1600 Clifton Road, Atlanta, GA 30333, Telephone: 404–639–7855, E-mail: *anl6@cdc.gov*.

Dated: January 22, 2003.

Sandra R. Manning,

CGFM Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 03–1824 Filed 1–27–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Healthcare Infection Control Practices Advisory Committee (HICPAC): Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting.

Name: Healthcare Infection Control Practices Advisory Committee.

Times and Dates: 8:30 a.m.–5 p.m., February 24, 2003; 8:30 a.m.–4 p.m., February 25, 2003.

Place: Swissotel, 3391 Peachtree Road, NE, Atlanta, Georgia 30333.

Status: Open to the public, limited only by the space available.

Purpose: The Committee is charged with providing advice and guidance to the Secretary, HHS, the Director, CDC, the Director, National Center for Infectious Diseases (NCID), and the Director, Division of Healthcare Quality Promotion; NCID, regarding (1) the practice of hospital infection strategies for surveillance, prevention, and control of healthcare-associated infections (*e.g.*, nosocomial infections), antimicrobial resistance, and related events in settings where healthcare is provided; and (2) periodic updating of guidelines and other policy statements regarding prevention of healthcare-associated infections and healthcare-related conditions.

Matters To Be Discussed: Agenda items will include a review of the Draft Guideline for Preventing Transmission of Infectious Agents in Healthcare Settings (formerly Guideline for Isolation Precautions in Hospitals); the Draft Guideline for Disinfection and Sterilization in Healthcare Settings; the Draft Guideline for Prevention of Healthcare-associated Pneumonia; infection control issues related to smallpox and vaccinia; injection safety in ambulatory healthcare settings; and updates on CDC activities of interest to the committee.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Michele L. Pearson, M.D., Executive Secretary, HICPAC, Division of Healthcare Quality Promotion, NCID, CDC, 1600 Clifton Road, NE, M/S A–07, Atlanta, Georgia 30333, telephone 404/498–1182.

The Director, Management Analysis and Services Office, has been delegated the authority to sign Federal Register notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: January 22, 2003.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 03–1825 Filed 1–27–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Interagency Committee on Smoking and Health: Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following committee meeting:

Name: Interagency Committee on Smoking and Health (ICSH).

Date and Time: February 11, 2003, 1 p.m.—4 p.m.

Place: Department of Health and Human Services, Hubert H. Humphrey Building, Auditorium, Room 800, 200 Independence Avenue, SW, Washington, DC 20201.

Status: Open to the public, limited only by the space available. Those who wish to attend are encouraged to register with the contact person listed below. If you will require a sign language interpretator, or have other special needs, please notify the contact person by 4:30 E.S.T. on February 5, 2003.

Purpose: The Interagency Committee on Smoking and Health advises the Secretary, Health and Human Services, and the Assistant Secretary for Health in the (a) coordination of all research and education programs and other activities within the Department and with other federal, state, local and private agencies and (b) establishment and maintenance of liaison with appropriate private entities, federal agencies, and state and local public health agencies with respect to smoking and health activities.

Matters to be Discussed: The agenda will focus on the National Action Plan for Tobacco Cessation drafted by the Cessation Subcommittee. During the meeting, the action plan will be presented, debated and voted on by the ICSH. At a future date the Plan will be presented to the Secretary of Health and Human Services.

Contact Person for More Information: Substantive program information as well as summaries of the meeting and roster of committee members may be obtained from the Internet at *http://www.cdc.gov/tobacco* in mid-March or from Ms. Monica L. Swann, Program Specialist, Office on Smoking and Health, 200 Independence Avenue, SW, Suite 317B, Washington, DC 20201, (202) 205–8500.

The Director, Management Analysis and Services Office, has been delegated the authority to sign Federal Register notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: January 22, 2003.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 03–1823 Filed 1–27–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 02D–0526]

Draft Guidance for Industry on Drug Product: Chemistry, Manufacturing, and Controls Information; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance for industry entitled "Drug Product: Chemistry, Manufacturing, and Controls Information." This draft guidance provides recommendations on the chemistry, manufacturing, and controls (CMC) information for drug products that should be submitted in original new drug applications (NDAs) and abbreviated new drug applications (ANDAs). The draft guidance is structured to facilitate the preparation of applications submitted in Common Technical Document (CTD) format.

DATES: Submit written or electronic comments on the draft guidance by June 27, 2003. General comments on agency guidance documents are welcome at any time.

ADDRESSES: Submit written requests for single copies of the draft guidance to the Division of Drug Information (HFD–240), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Send one self-addressed adhesive label to assist that office in processing your requests. Submit written comments on the draft guidance to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments.* See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT: Upinder Atwal, Center for Drug Evaluation and Research (HFD–623), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20852, 301–827–5848, or Christopher Joneckis, Center for Biologics Evaluation and Research (HFM–1), Food and Drug Administration, 8800 Rockville Pike, Bethesda, MD 20892, 301–435–5681.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance for industry entitled "Drug Product: Chemistry, Manufacturing, and Controls Information." This draft guidance addresses the information to be submitted in NDAs and ANDAs for drug products to ensure continued product quality (i.e., identity, strength, quality, purity, and potency). Recommendations are provided on the information that should be included for: (1) Description and composition of the drug product, (2) manufacture, (3) control of excipients, (4) control of drug products, (5) reference standards or materials, (6) container closure systems, and (7) stability. Information is also provided on the type of pharmaceutical development information that should be included in an NDA or ANDA. The draft guidance is structured to facilitate the preparation of applications submitted in CTD format. The draft guidance, when finalized, will replace the guidance entitled "Submitting Documentation for the Manufacture and Controls for Drug Products" (February 1987).

This guidance contains information collection provisions that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collection of information in this guidance was approved under OMB control number 0910–0001.

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the agency's current thinking on CMC information for drug products.

It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

II. Comments

Interested persons may submit to the Dockets Management Branch (see **ADDRESSES**) written or electronic comments regarding this document. Submit a single copy of electronic comments to *http://www.fda.gov/dockets/ecomments* or two hard copies of any written comments, except that individuals may submit one hard copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

Persons with access to the Internet may obtain the document at *http://www.fda.gov/cder/guidance/index.htm*, *http://www.fda.gov/cber/guidelines.htm*, or *http://www.fda.gov/ohrms/dockets/default.htm*.

Dated: January 27, 2003.

Margaret M. Dotzel,

Assistant Commissioner for Policy.

[FR Doc. 03–1919 Filed 1–27–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Privacy Act of 1974: As Amended; Revision to an Existing System of Records

AGENCY: Office of the Secretary, Department of the Interior.

ACTION: Proposed revisions to an existing system of records.

SUMMARY: Under the Privacy Act of 1974, as amended (5 U.S.C. 552a), the Department of the Interior is issuing public notice of its intent to modify an existing Privacy Act system of records notice managed by the Office of the Secretary entitled the "Electronic Email Archive System (EEAS)", Interior—OS–10 (67 FR 46202–46203, dated July 12, 2002). The revisions will update the "Categories of individuals covered by the system" section.

EFFECTIVE DATE: These actions will be effective January 28, 2003.

FOR FURTHER INFORMATION CONTACT: For more information on the EEAS system and its requirements, please contact Regina Lawrence, Office of the Chief Information Officer, Department of the Interior at 202–208–5413, or mail at MS–5312–MIB, 1849 C St. NW., Washington, DC 20240.

SUPPLEMENTARY INFORMATION: In this notice, the Department of the Interior is proposing to add additional Departmental bureaus/offices that will be participating in the EEAS to the "Categories of individuals covered by the system" section. These additional bureaus/offices are the Office of Surface Mining, the Bureau of Reclamation, and the National Business Center. These bureaus/offices are being added because they may also send or receive email with information related to Indian Trust programs. The EEAS was developed as a way to respond to information requests from the Court in the *Cobell et al.* v. *Norton, et al.*, Federal District Court Case No. 1:96CV01285 litigation.

Thus, the Department of the Interior proposes to amend EEAS, Interior—OS–10 to read as follows:

Dated: January 23, 2003.

Marilyn A. Legnini,

Departmental Privacy Act Officer.

INTERIOR/OS–10

SYSTEM NAME:

Electronic Email Archive System (EEAS).

SECURITY CLASSIFICATION:

Sensitive, but unclassified.

SYSTEM LOCATION:

The records of this system are located at a digital safe site at a location managed by the contractor for the Department of the Interior. Only information maintained at this site by the contractor is considered a Privacy Act system of records covered by this notice.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The system contains information on individuals who send and receive electronic messages using Internet email and interoffice email from and to those Departmental bureaus/offices involved with Indian Trust programs, and those individuals who are referred to in the electronic messages. These bureaus/offices are as follows: Office of the Solicitor; Bureau of Indian Affairs; Office of the Special Trustee for American Indians; Office of the Assistant Secretary—Indian Affairs; Bureau of Land Management; Office of the Assistant Secretary—Policy, Management, and Budget; Office of Hearings and Appeals; Office of Historical Trust Accounting; Office of the Secretary; the Minerals Management Service; the United States Geological Survey; the National Park Service; and the U.S. Fish and Wildlife Service. The following bureau/offices are being added to the EEAS because the Court is concerned that they may send or receive email containing individual Indian Trust related information: the Office of Surface Mining; the Bureau of Reclamation; and the National Business Center.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records include information from Internet email and interoffice email, including address of sender and receiver(s), subject, date sent or received, text of the message, name of attachment, attachment text, and certification status. The name and email address of the sender and receiver are captured along with the bcc, cc, subject line, and text of the message.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, 43 CFR part 1455, and 40 CFR part 1441.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The system's main purpose is to respond to requests from the federal district court in *Cobell* v. *Norton* regarding information about individual Indian Trust programs that is embodied in email communication.

Disclosures outside the Department of the Interior can be made to:

(a) Contractors who service and maintain the system for the Department, ensuring that all provisions of the Privacy Act, and all other applicable laws, regulations, and policies relating to contracting and record security are met.

(b) Another Federal agency to enable that agency to respond to an inquiry by the individual to whom the record pertains.

(c)(1) To any of the following entities or individuals.

(A) The Department of Justice (DOJ), or

(B) To a court, adjudicative or other administrative body, or

(C) To a party in litigation before a court or adjudicative or administrative body, or

(D) The Department or any component of the Department, or

(E) Any Department employee acting in his or her official capacity, or

(F) Any Departmental employee acting in his or her individual capacity if the Department or the DOJ has agreed to represent that employee or pay for private representation of the employee,

(2) When:

(A) One of the following is a party to the proceeding or has an interest in the proceeding:

(i) The Department or any component of the Department;

(ii) Any Department employee acting in his or her official capacity;

(iii) Any Departmental employee acting in his or her individual capacity if the Department or the DOJ has agreed to represent that employee or pay for private representation of the employee;

(iv) The United States, when the DOJ determines that the Department is likely to be affected by the proceeding; and

(B) The Department deems the disclosure to be:

(i) Relevant and necessary to the proceeding; and

(ii) Compatible with the purposes for which the records were compiled.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Information in this system of records is maintained in electronic format on a system hard drive.

RETRIEVABILITY:

This specific system has the capability of performing searches through email archive information identified in the "Category of records" section above using any word or number criteria. This capability makes it unique from other email archive systems that are maintained by Interior bureaus/offices, and therefore, this system becomes subject to Privacy Act requirements.

SAFEGUARDS:

The contractor maintaining this system must follow the requirements under 5 U.S.C. 552a(e)(10) and 43 CFR 2.51 for security standards. A security plan was developed to prevent unauthorized access to the system. The plan addresses application security, administration/user security, and application agreements. Access to the system is limited to authorized personnel whose official duties require such access. The EEAS system will be maintained at the Government contractor's facility at a secured data center.

RETENTION AND DISPOSAL:

Records in this system will be retained indefinitely pending completion of *Cobell et al.* v. *Norton, et al.*, U.S.D.C. D.C., No. 1:96CV01285 or until the Court orders the Department to retain/dispose of these records differently.

SYSTEM MANAGER(S) AND ADDRESS:

The Technology Services Division, Administrative Operations Directorate, National Business Center, Department of the Interior, MS–1540–MIB, 1849 C St. NW., Washington, DC 20240.

NOTIFICATION PROCEDURES:

To determine whether your records are in this Privacy Act system of records, contact the Privacy Act Officer at the bureau/office from which your email message was sent or where it was received (see list of participating bureau/offices identified in the "Categories of individuals" section above). Interior bureaus/offices are listed at the Department of the Interior Web site at *http://www.doi.gov*. The request must meet the requirements of 43 CFR 2.60. Provide the following information with your request:

(a) Proof of your identity;

(b) List of all the names by which you have been known, such as maiden name or alias;

(c) Your Social Security Number;

(d) Your mailing address;

(e) Time period(s) that records pertaining to you may have been created or maintained, to the extent known by you (*See* 43 CFR 2.60(b)(3)); and

(f) Specific description or identification of the records you are requesting (including whether you are asking for a copy of all of your records or only a specific part of them), and the maximum amount of money that you are willing to pay for their copying (*See* 43 CFR 2.63(b)(4)).

RECORD ACCESS PROCEDURES:

To request access to records, follow procedures in the "Notification procedure" section above. The request must meet the requirements of 43 CFR 2.63. Provide with your request the same information identified in the "Notification procedures" sections.

CONTESTING RECORD PROCEDURES:

To request an amendment of a record, send requests in writing to the contacts identified in the "Notification procedure" section above. The request must meet the requirements of 43 CFR 2.71.

RECORDS SOURCE CATEGORIES:

Some information maintained in the system is collected from mag-tapes provided by Interior bureau/office email backup systems from those installations identified in the "Categories of individuals" section above. This information is downloaded onto a hard drive managed by the contractor and stored digitally. Information from Interior bureau/office e-mail servers will be captured in real time, transmitted electronically through secured networks, and captured and stored electronically into the EEAS.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 03–1891 Filed 1–27–03; 8:45 am]

BILLING CODE 4310–02–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered and Threatened Wildlife and Plants; 90-Day Finding for a Petition to List the Tri-State Area Flock of Trumpeter Swans as Threatened

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 90-day petition finding.

SUMMARY: We, the Fish and Wildlife Service (Service), announce a 90-day finding for a petition to list the Tri-State Area flock of trumpeter swans (*Cygnus buccinator*) as an endangered or threatened species under the Endangered Species Act of 1973. We find that the petition does not provide substantial information indicating that this flock is a Distinct Population Segment (DPS) that may warrant listing. We will not be initiating a further status review in response to the petition. However, we ask the public to submit to us any new information that becomes available concerning the status of or threats to this flock of trumpeter swans. This information will help us monitor and manage this species.

DATES: The finding announced in this document was made on January 15, 2003. You may submit new information concerning this species for our consideration at any time.

ADDRESSES: Submit information, data, or comments concerning this petition to the Assistant Regional Director, Ecological Services, U.S. Fish and Wildlife Service, P.O. Box 25486, DFC, Denver, CO 80225–0486. The petition, finding, and supporting data are available for public inspection, by appointment, during normal business hours, at the above address, and on our website at: *http://www.r6.fws.gov/birds/trumpeterswan/*.

FOR FURTHER INFORMATION CONTACT: Chuck Davis, Endangered Species Listing Coordinator, at the above address, or by telephone at 303–236–7400, extension 235, or by email at *chuck_davis@fws.gov*.

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(A) of the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*), requires that we make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information to demonstrate that the petitioned action may be warranted. This finding is to be based on all information available to us at the time we make the finding. To the maximum extent practicable, this finding is to be made within 90 days of our receipt of the petition, and the notice of the finding is to be published promptly in the **Federal Register**. Our standard for substantial information within the Code of Federal Regulations (CFR) with regard to a 90-day petition finding is "that amount of information that would lead a reasonable person to believe that the measure proposed in the petition may be warranted" (50 CFR 424.14(b)(1)). If we find that substantial information was presented, we are required to promptly commence a review of the status of the involved species, if one has not already been initiated under our internal candidate assessment process.

In 1989, we were petitioned to list a portion of the trumpeter swans in North America (Rocky Mountain Population (RMP), see below) as threatened. However, the petition presented information that we deemed insufficient to warrant proceeding with a status review (55 FR 17646–17648; April 16, 1990).

On August 25, 2000, we received a petition to list the Greater Yellowstone (Tri-State) breeding population of the trumpeter swan as threatened or endangered. The petitioners, the Biodiversity Legal Foundation and Fund for Animals, assert that the Tri-State Area flock meets the definition of a DPS, as defined in our policy published February 7, 1996 (61 FR 4722), and, therefore, warrants listing because of its low population numbers and other threats, including the allowed take of trumpeter swans during the hunting seasons in Utah and Nevada.

On September 22, 2000, we notified the petitioners that our Listing Priority Guidance, published in the **Federal Register** (64 FR 57114) on October 22, 1999, designated the processing of new listing petitions as a Priority 4 activity (*i.e.*, of lower priority than processing emergency listings, processing determinations on proposed species, and resolving the status of candidate species). We further informed the petitioners that we consider the Tri-State Area trumpeter swan flock as a portion of the RMP, which has had an increasing number of swans since the 1960s. Therefore, we did not find a compelling reason to consider the petition under emergency listing criteria, and no funds were available to proceed with an administrative finding at that time.

On October 25, 2000, the petitioners and the Utah Environmental Congress, Margaret Pettis, and Mack P. Bray, filed a formal complaint in Federal District Court for the District of Columbia (*Fund for Animals* v. *Clark*, 00–CV–02558) alleging that we violated the Act by failing to publish a 90-day finding for their petition. Plaintiffs also allege that the Service violated provisions of the MBTA, the National Environmental Policy Act (NEPA), and the Administrative Procedures Act by allowing implementation of a limited trumpeter swan hunting season in 2000. The case was settled on March 23, 2001, when we agreed to reevaluate our compliance with the MBTA and NEPA for the 2002 hunting season regulations.

On February 5, 2001, we received a 60-day notice of intent from Meyer and Glitzenstein, legal representatives for the petitioners, alleging that we had violated the Act by failing to make a finding as to whether the petition to list the Tri-State Area trumpeter swan flock presented substantial information indicating that listing may be warranted. We responded on April 4, 2001, reiterating that we would not be able to begin an evaluation of the petition until the work on the higher-priority activities was completed. On September 6, 2001, Meyer and Glitzenstein filed another 60-day notice alleging that we violated the Act by failing to make a 12-month finding within 1 year of the receipt of the trumpeter swan petition.

On October 3, 2001, plaintiffs were joined by the Humane Society of the United States in a new complaint alleging that our reevaluation of the swan hunting regulations was not adequate, and that we had violated the Act by failing to prepare a 90-day finding on the swan petition (*Fund for Animals et al.* v. *Norton*, 01–CV–2078 (RMU)).

On March 5, 2002, plaintiffs filed an amended complaint to include the allegation that we had violated the Act by failing to complete a 12-month finding on the swan petition. The case has been briefed and a decision is pending from the court.

Petitioners' Assertions

Petitioners assert that the Tri-State "population segment" of trumpeter swans, a group of largely non-migratory swans that breed and winter in the Greater Yellowstone area in and around Yellowstone National Park in Wyoming, Montana, and Idaho, qualifies as a listable entity under the Act in accordance with our DPS policy cited above. The petition asserts that the Tri-State segment is geographically and biologically distinct from other trumpeter swan groups in North America and the United States. The petitioners propose that the segment is discrete because it is separated by physical, physiological, ecological, behavioral, "or other factors," and is separated by approximately 400 miles from any other significant breeding groups of this species. Petitioners also assert that the Tri-State Area flock is distinct from other swan flocks in Canada by reason of the international boundary and alleged differences in exploitation and management of this species between Canada and the United States.

Petitioners allege that the Tri-State Area flock has lost "more than 30 percent of its adults in the past decades, and is in an imperiled situation." The petition recommends that we consider emergency listing of the petitioned DPS.

Distinct Population Segment Analysis

Under the Act, we must consider for listing any species, subspecies, or, for vertebrates, any DPS of these taxa, if sufficient information is present to indicate that such action may be warranted.

To implement the measures prescribed by the Act and its Congressional guidance, we developed policy that addresses the recognition of DPSs for potential listing actions (61 FR 4722; February 17, 1996). The policy allows for more refined application of the Act that reflects the biological needs of the taxon being considered and avoids the inclusion of entities that do not require its protective measures.

The Act's legislative history (Senate Report 96–151, 1st Session) indicates that Congress expects the Services (Fish and Wildlife Service and National Marine Fisheries Service) to use the DPS designation "*sparingly and only when the biological evidence indicates that such action is warranted*" (emphasis added).

The background information included with the publication of our final DPS policy indicates that any interpretation adopted for DPS determination should be consistent with the purposes of the Act (*i.e.*, "*to provide a means whereby the ecosystems upon which endangered species and threatened species depend may be conserved, to provide a program for conservation of such endangered species and threatened species, and to*

take such steps as may be appropriate to achieve the purposes of the treaties and conventions set forth in subsection (a) of this section" (emphasis added).

Under our DPS policy, we use two elements to assess whether a population segment under consideration for listing may be recognized as a DPS. The elements are: (1) The population segment's discreteness from the remainder of the taxon; and (2) the population segment's significance to the taxon to which it belongs. Both elements must be present for a segment to qualify as a DPS. When responding to a listing petition, we are required to use all information available to us at the time we make the finding. If we determine that a population segment being considered for listing represents a DPS, then the level of threat to the population segment is evaluated based on the five listing factors established by the Act to determine if listing it as either threatened or endangered is warranted. Those listing factors are: (1) The present or threatened destruction, modification, or curtailment of habitat or range; (2) overutilization for commercial, recreational, scientific, or educational purposes; (3) disease or predation; (4) the inadequacy of existing regulatory mechanisms; and, (5) other natural and manmade factors affecting its continued existence. Listing is warranted if one or more of those threats could lead to the extinction of the species throughout all or a significant portion of the range of the species in the foreseeable future.

Discreteness—A population segment of a vertebrate species may be considered discrete if it satisfies either one of the following two conditions: (1) It is markedly separated from other populations of the same taxon as a consequence of physical, physiological, ecological, or behavioral factors. Quantitative measures of genetic or morphological discontinuity may provide evidence of this separation, (2) It is delimited by international governmental boundaries within which differences in control of exploitation, management of habitat, conservation status, or regulatory mechanisms exist that are significant with regard to conservation of the taxon.

The petition asserts that the Tri-State segment of trumpeter swans is geographically and biologically distinct from other trumpeter swans in North America and the United States. The petitioners propose that the segment is discrete because it is separated by physical, physiological, ecological, behavioral, "or other factors," and is separated by approximately 400 miles from any other significant breeding groups of this species. Petitioners also assert that the Tri-State Area flock is distinct from other swan flocks in Canada because of the presence of the international boundary and because of alleged differences in exploitation and management of this species between Canada and the United States. Below we discuss in detail the conditions for which we will consider a population to be discrete under the DPS policy as applied to the Tri-State Area flock.

(1) Is the Tri-State Area Flock Markedly Separated From Other Populations of the Same Taxon as a Consequence of Physical, Physiological, Ecological, or Behavioral Factors?

Historic range maps indicate that the trumpeter swan had a more contiguous distribution than exists today. As the species' range was restricted due to overexploitation and habitat loss, remnant groups of birds inhabited disjunct breeding areas. Although the exact time at which the present degree of separation occurred is unknown, we believe that it occurred during the peak of trade in swan skins in the mid- to late 1800s. Trumpeter swans have relatively long life spans; birds more than 24 years old have been recaptured in the wild (Kennard 1975). Hence, relatively few (perhaps 6 or 7) generations of trumpeter swans have elapsed since that time. Suzuki *et al.* (1981) state that only one immigrating individual per generation is necessary to maintain genetic continuity between spatially segregated groups of individuals within a species. Mills and Allendorf (1996) suggest a minimum range of 1 to 10 individuals per generation is needed to maintain gene flow between groups of animals. Limited monitoring studies have documented several individuals in non-natal nesting areas (Gale *et al.* 1987, Dubovsky and Cornely 2002) and one mixed-group (*i.e.*, Canadian/Tri-State) pairing (Shea and Drewien 1999). Further, the Interior Canada and Tri-State birds are spatially segregated only during the nesting season; they are sympatric (overlapping in range) during winter, when pairing usually occurs (Johnsgard 1978, Gale *et al.* 1987). For these reasons, we conclude it is unlikely that the Tri-State Area flock has become genetically distinct from the Interior Canada birds. Even if little or no movement of birds between flocks has occurred, there is no evidence that a sufficient amount of time has passed since the mid-1800s for morphology, behavior, and genetics of Tri-State birds to become distinctly different from those of other flocks.

Recently, the Service, in consultation with the Flyway Councils, divided trumpeter swans into three administrative populations on the basis of areas in which they nest. These populations are defined primarily for management purposes and not in recognition of reproductive isolation or genetic differentiation (Trost *et al.* 2000). In fact, one of the populations is derived exclusively from birds and eggs translocated from the other two populations.

The Pacific Coast Population (PCP) is comprised primarily of birds that nest in Alaska and winter along the west coast of Canada and the United States as far south as Oregon (Figure 1). Observations of a very limited number of marked birds from this group suggest that birds nesting in Alaska do not often migrate or winter east of British Columbia or the Pacific Coast States (Dubovsky and Cornely 2002).

The RMP is comprised of birds that nest east of the range of the PCP to areas just east of the western border of Saskatchewan and points south. Most birds in the RMP winter at the confluence of the borders of Montana, Idaho, and Wyoming (hereafter termed the "Tri-State" Area) (Subcommittee on Rocky Mountain Trumpeter Swans 1998).

The Interior Population (IP) is comprised of birds that nest east of the range of the RMP. The IP is the result of extensive restoration efforts, and is composed almost exclusively of PCP and RMP birds and eggs that were translocated to these eastern areas. Birds from the IP tend to winter primarily in areas near to or south of their nesting grounds (Dubovsky and Cornely 2002).

Of all the populations, the status of the RMP has been subject to the largest amount of debate over the years. The RMP is comprised primarily of two groups of birds: one that nests in Canada and the other that nests in the Tri-State Area. The latter group contained only about 70 birds in the early 1930s. These were erroneously thought to be the only free-ranging trumpeter swans in the world (Banko 1960). The birds nested primarily in Yellowstone National Park and the Centennial Valley area of Montana, and wintered in those areas and adjacent areas in Idaho (Banko 1960).

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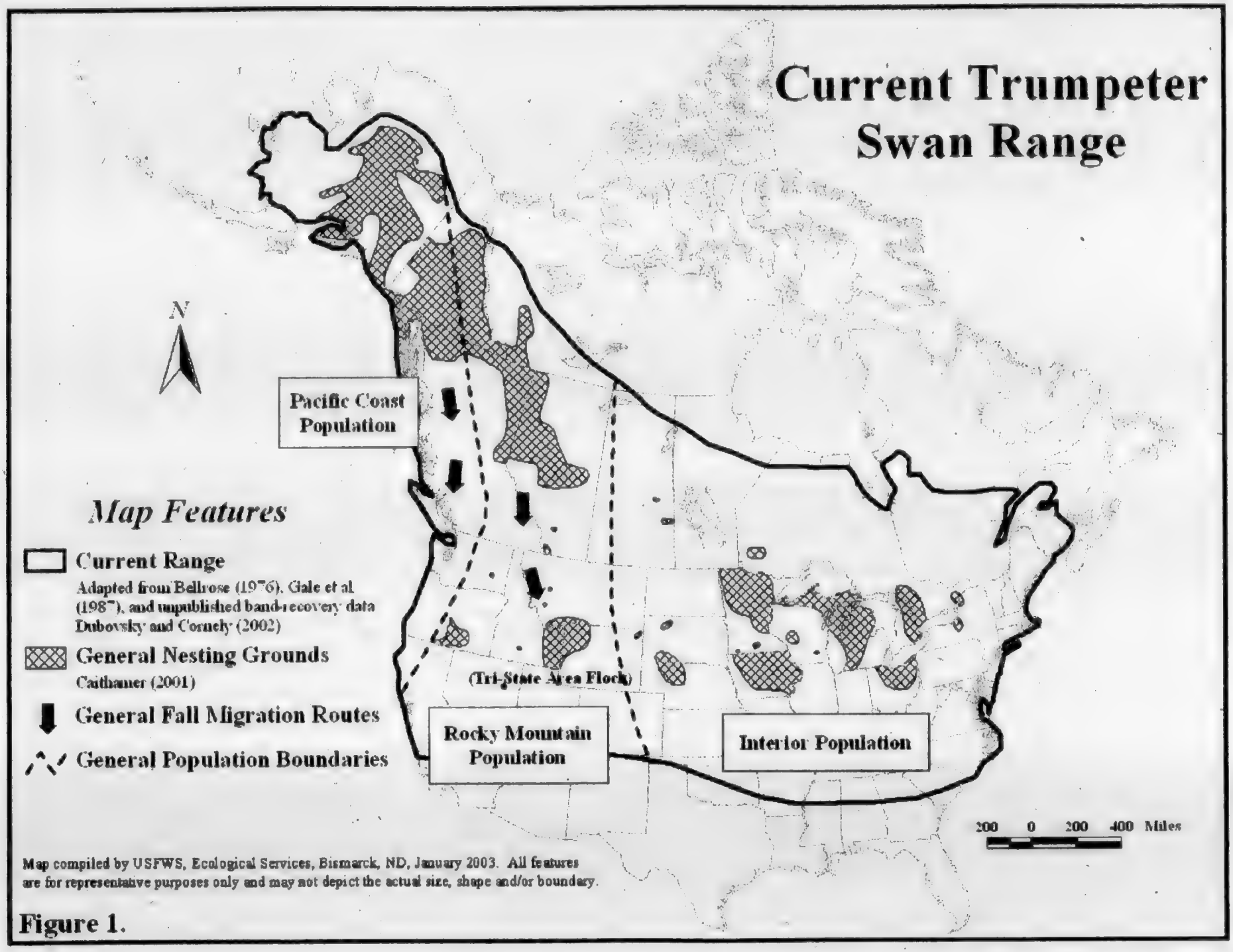

Figure 1.

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Our analysis of the trumpeter swan Tri-State segment indicates that these birds are derived from a remnant flock that survived the market hunting overexploitation of the species that occurred in North America prior to the protections of the MBTA in 1918. Some swans found refuge in the isolated and protected environs of Yellowstone National Park, high-elevation areas that have harsh winters and a short nesting season compared to lower elevations. Some people speculate that Tri-State swans are specially adapted to this marginal habitat. However, we have found no scientific evidence to support such a conclusion. No evidence indicates that the birds in this flock were isolated for periods of time sufficient for such adaptions to occur. Some have speculated that the swans that nested in the Tri-State Area once migrated elsewhere for the winter, but we know of no data to verify whether they were migratory or not prior to European settlement of the Tri-State Area (Gale *et al.* 1987, Dubovsky and Cornely 2002). Implementation of an artificial feeding program beginning in 1935 may have modified the swans' natural migratory behavior, but that also is conjecture (Dubovsky and Cornely 2002).

The petition alleges that the Tri-State Area flock is discrete from other portions of the North American trumpeter swan population in part because the Tri-State birds are separated from other breeding populations by approximately 400 miles. The petitioners assert that breeding pairs are not formed between the Tri-State birds and other swan populations.

There are no known physical, physiological, or behavioral differences between any of the trumpeter swan flocks in North America (Gale *et al.* 1987). Even if most of the Tri-State swans do not migrate to nesting grounds in Canada (which available data suggest) (Dubovsky and Cornely 2002), this behavior is not evolutionarily significant within the meaning of our DPS policy. Numerous flocks of geese and swans (including trumpeters) in the United States exhibit nonmigratory behavior because sufficient life requisites exist in the flocks' habitat throughout the year. Therefore, the fact that the birds in the Tri-State Area flock are not known to migrate long distances is not a unique behavioral trait within the meaning of the DPS policy.

The petitioners allege, based on neck-collar observations, that the Canadian- and United States-nesting birds are reproductively isolated because birds have not been seen nesting on their non-natal nesting grounds. However, although many swans have been marked over the years, observations of marked swans are of a limited value in establishing the reproductive isolation of the Tri-State Area flock. Many observations of marked swans were of those that had been trapped and translocated. It is not appropriate to use observations of these birds to make inferences about natural movements and pairing behavior of free-flying wild trumpeter swans. Further, many swans are marked but never seen again, or are seen only during the first few years after marking (*e.g.*, Gale *et al.* 1987:286, Shea and Drewien 1999). Given that swans are long-lived, much of the neck-collar data may reflect only a small fraction of these birds' reproductive lifetime and thus is not indicative of all of an individual bird's movement patterns. Trumpeter swans also inhabit many remote areas that are not amenable to direct observations of the birds. Therefore, it is plausible that some marked birds may nest in remote areas that are not their natal nesting grounds. Lastly, one observation of a mixed-group (Canadian/Tri-State) pairing has been documented (Shea and Drewien 1999); mark-recovery information indicates two Tri-State Area nesting birds were sighted in Alberta (Dubovsky and Cornely 2002), and two birds marked in Grande Prairie summered in the Tri-State Area (Gale *et al.* 1987). These instances suggest that some reproductive intermingling of the two flocks may be occurring, that gene flow is possible between the groups, and that sampling procedures may simply have been inadequate to detect much interchange to date. Therefore, we conclude that current information does not support the petitioner's allegations that the Tri-State Area flock is reproductively isolated.

Our DPS policy provides that quantitative measures of genetic or morphological discontinuity may provide evidence of discreteness. As discussed in detail below based on current trumpeter swan genetic information, we conclude that available information does not provide evidence of genetic discontinuity that would support the contention that the Tri-State Area flock is discrete.

(2) Is the Tri-State Area Flock Delimited by International Governmental Boundaries Within Which Differences in Control of Exploitation, Management of Habitat, Conservation Status, or Regulatory Mechanisms Exist That Are Significant With Regard to Conservation of the Taxon?

Under the DPS policy, we specifically look for differences in regulatory mechanisms between nations that are significant in light of section 4(a)(1)(D) of the Act (*e.g.*, whether inadequate regulatory mechanisms in one nation as compared to another may contribute to species endangerment), such that it would be consistent with the purposes of the Act to delineate a population based on a non-biological element. Simply stated, we look for regulatory differences between nations that are relevant to a listing decision and that would warrant separating populations of a taxon using international boundaries.

The petitioners allege that the Tri-State Area flock should be considered distinct from other trumpeter swan flocks in North America because of a difference in management and exploitation of the species in Canada. However, migratory waterfowl are managed under the auspices of international treaties, including the Migratory Bird Treaty with Canada which the MBTA implements, and highly structured international entities, such as the Flyway Councils. The goals of the Pacific Flyway Council concerning trumpeter swan management are international in scope (*i.e.*, the Council contains representatives from both Canada and the United States) and include encouraging growth of the Canadian flocks while rebuilding United States breeding flocks of trumpeter swans (Subcommittee on Rocky Mountain Trumpeter Swans 1998). Public education goals and research needs include the same tasks in both countries. The Province of Alberta has supported management actions in the United States, including implementation of a general swan season (U.S. Department of the Interior 2001).

With regard to habitat management, the United States and Canada protect breeding areas, conduct swan transplants, band or otherwise mark birds, and monitor population status. Establishment of annual sport-hunting regulations in both countries is completed in accordance with the Convention Between the United States and Great Britain (for Canada) for the Protection of Migratory Birds (1916 Treaty). Both countries also publish draft regulations that are subject to public review and comment. Neither country has a sport-hunting season specifically for trumpeter swans. Swans in both countries are protected by similar regulatory processes. Canada and the United States (Alaska) allow subsistence take of swans during the spring and summer. As discussed earlier in this document, the United States has established a limited quota for allowable take of trumpeter swans as part of the package of trumpeter swan conservation measures. All waterfowl hunting

regulations in both countries are subject to annual review and revision. Therefore, we find no significant differences in trumpeter swan management between Canada and the United States within the meaning of our DPS policy.

In Canada, the trumpeter swan was listed as a vulnerable species in 1978 (Mackay 1978), but the species was moved to the not-at-risk category after re-examination in 1996 (Committee on the Status of Endangered Wildlife in Canada 2002). The species is listed as a vulnerable species in Alberta (Government of Alberta 2002), which means that without management and protection, the species could become threatened or endangered *within the province* (emphasis added). However, management actions to enhance trumpeter swan abundance and distribution in Alberta are the same as those in the rest of Canada and the Pacific flyway, as discussed above.

Trumpeter swans and tundra swans are both large white birds with black bills; the two are extremely difficult to distinguish from each other at a distance. Both species can occur in the same area during some parts of the year. Since the 1960s we have sanctioned hunting of tundra swans (*Cygnus columbianus*) under the provisions of the Migratory Bird Treaty Act (MBTA). Prior to 1995, season lengths for tundra swans were quite long (approximately 100 days); the amount of area open to hunting was large (essentially the entire State of Utah and areas of high swan use in Nevada and Montana). Illegal harvest of trumpeter swans during tundra swan hunting seasons occurred, probably by accident resulting from misidentification. The degree of take was unknown because no monitoring of species-specific swan harvests was conducted.

The RMP has been increasing at an average annual rate of 4.6 percent since 1968. The low rate of expansion of trumpeter swans into new wintering areas is believed by managers to limit further improvement of the status of the species (Subcommittee on Rocky Mountain Trumpeter Swans 1998). The Pacific Flyway's subcommittee on Rocky Mountain Trumpeter Swans determined that translocation of trumpeter swans to new wintering locations was a possible means of expanding the wintering range of the swans. Some of the Subcommittee members from States with potentially suitable wintering areas for translocated birds would not agree to relocations unless tundra swan hunters who mistakenly shot a trumpeter swan during the general swan season were relieved of liability under the MBTA (U.S. Department of the Interior 2001).

Therefore, to enhance the potential for trumpeter swan range expansion and limit the likely but unknown amount of harvest of trumpeter swans, several modifications to swan seasons were implemented in 1995. First, the area open to swan hunting was greatly reduced, and in Utah (where most swans were harvested) the area was restricted to only portions of six counties in the northwest corner of the State. The season ending date was changed from late January to early December, thus reducing the season length by 40 percent, in order to reduce the likelihood of sport-hunting mortality for trumpeter swans that may migrate into the hunt areas when more-northerly wetlands in the Tri-State Area freeze. We included provisions for a limited take (quotas) of trumpeter swans in Utah (15 individuals) and Nevada (5 individuals) to protect hunters from criminal liability if they accidentally shoot a trumpeter swan, because it often is not possible for hunters to distinguish the two species from each other in the field. If the quota was reached in a particular state, all swan hunting would be closed in that State for the remainder of the season. Finally, monitoring of swan harvest was intensified to enhance detection of trumpeter swans taken during hunts. In 2000, the area open to swan hunting in Utah was reduced even further, and the quota was reduced to 10 individuals (U.S. Department of the Interior 2001). There is no indication that the harvest serves as a threat to the continued health of either the Rocky Mountain trumpeter swan population or the Tri-State Area flock (*see* Table 1) and, therefore, the take is not significant to the conservation of the taxon within the meaning of section 4(a)(1)(D) of the Act.

Although the available evidence does not demonstrate that the Tri-State flock is discrete under the DPS policy, this flock could potentially be considered to be physically separated to some degree from the rest of the RMP during the breeding season. Further, our DPS policy does not require absolute reproductive isolation as a prerequisite to recognizing a DPS. Therefore, we have taken the further step of considering the biological and ecological significance of the Tri-State Area flock in light of Congressional guidance that the authority to list DPSs be used "sparingly" while encouraging the conservation of genetic diversity. In carrying out this examination, we consider available scientific evidence of the discrete population segment's importance to the taxon to which it belongs.

Significance—Our DPS policy provides several examples of the types of information that may demonstrate the significance of a population segment to the remainder of its taxon, including: (1) Persistence of the discrete population segment in an ecological setting unusual or unique for the taxon; (2) evidence that the discrete population segment differs markedly from other population segments in its genetic characteristics; (3) evidence that the discrete population segment represents the only surviving natural occurrence of a taxon that may be more abundant elsewhere as an introduced population outside its historic range; and (4) evidence that loss of the discrete population segment would result in a significant gap in the range of the taxon. While significance is not necessarily limited to these examples, we began by considering each example with respect to the Tri-State Area flock.

(1) *Ecological setting*—The petitioners allege that the Tri-State Area flock is an important remnant population of trumpeter swans in the lower 48 States and, therefore, meets the significance criterion of the DPS policy. Tri-state swans utilize wetland habitats in the region that provide requisite feeding, resting, nesting and brood rearing habitats. Trumpeters breed in relatively small, shallow wetlands at a wide range of elevations from just above sea-level to montane areas in North America. The fact that trumpeter swans breed in suitable wetlands in a variety of geographically diverse settings does not suggest that the Tri-State Area flock is likely to represent a significant resource in terms of the overall welfare of the species. The higher elevation, montane wetlands appear to provide more marginal breeding habitat for swans because of the shorter nesting and brooding season compared to wetlands at lower elevations.

(2) *Genetic characteristics*—No evidence exists to indicate that the Tri-State swans differ markedly from other trumpeter swans genetically.

The Tri-State birds exhibit no morphological differences from other trumpeter swans in North America (Gale *et al.* 1987). Several studies have been conducted to investigate genetic similarities among different groups of trumpeter swans nesting in North America (Barrett and Vyse 1982, Marsolais and White 1997, Pelizza, unpub. ms.). However, to date only one of those studies has been accepted for publication in a peer-reviewed professional journal. Barrett and Vyse (1982) compared blood proteins among

swans from Alaska (PCP), Red Rock Lakes NWR (birds of the Tri-State Area flock of the RMP), and Grande Prairie, Alberta (Canada-nesting RMP). All three groups of swans shared a common allele for all loci surveyed, and the mean heterozygosity of the three groups was not different. However, the Alaskan birds possessed alternate alleles at several loci, suggesting that the Alaskan group may differ somewhat from the Grande Prairie and Red Rock Lakes NWR birds. The genetic distance among the three groups was identical, indicating a close genetic relationship among the groups, and led the authors to conclude that the groups sampled were "virtually identical based on the index of genetic distance."

Marsolais and White (1997) studied Band-Sharing Coefficients (BSCs) of birds sampled from the PCP, RMP (both Tri-State- and Grande Prairie-nesting birds), and the IP (Ontario flock, comprised of translocated birds from mixed PP/RMP lineages). They found that the IP and RMP birds had much higher BSCs than those of PCP birds, suggesting less genetic diversity in the former two groups. They hypothesized that the low genetic diversity could have been the result of these groups experiencing population "bottlenecks." That is, as the range of the trumpeter swan decreased in the 1800s, the few spatially disjunct groups that remained established at that time were composed of birds with similar genetic traits.

However, as the petitioners (Biodiversity Legal Foundation *et al.* 2000, quoting Marsolais 1994) stipulate, "the fact that the tristate and interior Canadian populations did not have significantly different mean BSCs, suggests that the tristate population is not less genetically variable than the interior Canadian population." Marsolais (1994) goes on to state that genetic differences may exist and could be detected using other techniques. However, subsequent studies to address this latter contention have not been conducted.

Pelizza (unpub. ms.) studied allele frequencies among birds sampled from the PCP, Tri-State-nesting birds, and the High Plains flock of the IP. His results indicated that some differences existed between the PCP birds and those from the latter two groups, but that birds from the Tri-State Area and the High Plains flock were essentially identical. He did not collect samples from the Interior Canada flock.

Thus, although several studies have been conducted, only one has examined directly the genetic relationship between the Canadian- and United States-nesting segments of the RMP. Although that study suggested no differences between the groups, the methods used (starch gel electrophoresis) are dated compared to contemporary techniques using mitochondrial DNA and microsatellites. Thus, Oyler-McCance and Quinn (2001) have initiated a study to better assess potential differences among the two groups of birds. This current study should document the extent of interchange between the Canadian and Tri-State Area flocks of the RMP. The proposed techniques recently have been used to distinguish among sage grouse populations (Oyler-McCance *et al.* 1999).

On the basis of the foregoing discussion of current trumpeter swan genetic information, we conclude that available information does not provide evidence of genetic discontinuity within the meaning of our DPS policy.

(3) *Only surviving natural occurrence*—A population segment may be significant under the DPS policy if it is the only surviving natural occurrence of a taxon that may be more abundant elsewhere as an introduced population outside its historic range. This is not the case with the Tri-State Area trumpeter swan flock.

(4) *Gap in range*—If the Tri-State Area flock were lost, there would not be a significant gap in the range of this species because extant breeding and wintering trumpeter swans are dispersed across North America. The creation of a gap in a species' range can have bearing on gene flow and the demographic stability of a species as a whole. Further, peripheral populations may have genetic characteristics essential to the overall long-term conservation of the species (*i.e.*, they may be genetically different than more central populations) (Lesica and Allendorf 1995). Thus, the consideration of the species' range and the potential for creating a gap in that range can be significant to the conservation of a taxon. However, in this case the potential loss of the Tri-State Area flock is unlikely to have any such effects. Managers have repeatedly established or re-established breeding flocks of trumpeter swans in various areas of the United States and Canada. Restoration flocks derived from exclusively Tri-State Area-nesting swans have been established at several locations, and the loss of a nesting flock in one area would not affect the conservation of the taxon within the meaning of our DPS policy. In addition, several restoration flocks were established with swans from both the Tri-State Area flock and the Pacific Population. Further, RMP swans from Canada winter in the Tri-State Area; thus, trumpeter swans would occur in the area for at least a portion of every year, and may attempt to pioneer vacant areas (note previously mentioned observations of the Interior Canada flock birds in the Tri-State Area during the summer).

Our DPS policy identifies these factors as examples of the types of information that may demonstrate the significance of a population. There may be other considerations we have not explicitly addressed here. However, we do not find another basis to support a conclusion that the Tri-State Area flock is significant to trumpeter swans in North America such that it warrants listing under the Act. In particular, these facts indicate the opposite: (1) The Tri-State Area flock represents only 1 to 3 percent of all trumpeter swans in North America, (2) it has been highly manipulated to the extent that it is probably the least "natural" of all trumpeter swan flocks, and (3) a high percentage of restoration flocks outside the Tri-State Area include descendants of Tri-State Area birds that are likely to be genetically similar to those in the Tri-State Area. As previously mentioned, Congressional guidance states that the authority to list DPSs is to be used "sparingly" while encouraging the conservation of genetic diversity. We considered the available scientific evidence regarding the Tri-State Area flock's importance to the taxon to which it belongs and conclude that it is not significant.

TABLE 1.—INCIDENCE OF TRUMPETER SWAN HARVEST DURING SWAN SEASON IN THE PACIFIC FLYWAY

Year	Utah		Montana (PF) [1]		Montana (CF) [1]		Nevada	
	Swans examined	Trumpeters detected	Swans examined	Trumpeters detected	Swans examined	Trumpeters detected	Swans examined	Trumpeters detected
1994	474	0	219	1 (juvenile)	31	0	78	0

TABLE 1.—INCIDENCE OF TRUMPETER SWAN HARVEST DURING SWAN SEASON IN THE PACIFIC FLYWAY—Continued

Year	Utah		Montana (PF) [1]		Montana (CF) [1]		Nevada	
	Swans examined	Trumpeters detected	Swans examined	Trumpeters detected	Swans examined	Trumpeters detected	Swans examined	Trumpeters detected
1995	244	3 (1 adult, 2 juveniles)	110	3 (juveniles)	22	0	66	0
1996	701	7 (4 adults, 3 juveniles) [2]	181	3 (adults)	32	0	110	1 (juvenile)
1997	497	3 (2 adults, 1 juvenile)	217	1 (adult)	55	2 (1 adult, 1 juvenile)	116	0
1998	879	1 (juvenile)	168	3 (2 adults, 1 juvenile)	47	2 (adults)	156	0
1999	647	0	153	7 (4 adults, 3 juveniles)	50	2 (adults)	186	0
2000	454	1 (adult)	203	3 (2 adults, 1 juvenile)	57	0	65	0
2001	229	0	244	0	64	2 (1 adult, 1 juvenile)	51	0

[1] Most if not all of these swans likely are from the Interior Canada flock.
[2] In 1996, six of the seven trumpeters detected in Utah's harvest were swans marked and translocated from Idaho and released in Utah as part of a research proposal. The other swan was a marked swan that was translocated from Idaho to Oregon 2 years earlier.

Petition Finding

On the basis of the data in our files, we find that the Tri-State Area flock of trumpeter swans does not constitute a DPS in the meaning of the Act and, therefore, is not a listable entity. The available information does not demonstrate that the flock is discrete, because the proposed DPS is not markedly separated from other segments of trumpeter swans in North America and is not significant under the DPS policy. The petitioners assert that the largely nonmigratory behavior exhibited by this group of birds indicates that the segment is distinct from other flocks because it is physically separated by several hundred miles from other breeding populations. However, current banding and marking information, although limited in extent, indicates that there is some dispersal of swans from the Yellowstone Ecosystem to other parts of the RMP area and vice versa, and that pairings between Tri-State birds and Canadian birds can be expected to occur. All trumpeter swans in the RMP are sympatric during several months (approximate November to March) of the year. Pairing of trumpeter swans generally occurs during the fall and winter months (Johnsgard 1978, Gale *et al.* 1987). Thus, this mixing of birds in winter provides the opportunity for such pairings to occur. One interflock pairing has been documented (Gale *et al.* 1987). Current data do not provide evidence that the Tri-State Area flock is genetically different than other trumpeter swan flocks, and no data suggest physical, physiological, ecological, or significant behavioral differences between the birds in the Yellowstone Ecosystem and the rest of North America.

The petitioners allege that the trumpeter swans in the lower 48 States are managed differently than the Canadian birds, but we find that essentially no differences in management exist, because both countries are party to the Migratory Bird Treaty, coordinate on planning and implementation of swan management goals, conduct similar management activities, and promote population growth of flocks. Both trumpeter and tundra swans are cooperatively managed by Canadian and United States Federal agencies, States, and Provinces through management plans developed specifically for these species.

In North America the species has increased from less than 4,000 birds in 1968 to nearly 24,000 birds in 2000, which represents an average annual population growth of 5.9 percent (Dubovsky and Cornely 2002). The RMP increased from approximately 800 birds in 1968 to more than 3,600 birds in 2000 (Caithamer 2001). This RMP average population growth rate was 4.8 percent per year. Therefore, we conclude that the trumpeter swan is not in need of additional protection beyond the current provisions of the MBTA.

References Cited

A complete list of References Cited is available from the Regional Office or our website (*see* **ADDRESSES**).

Author

The primary author of this document is Chuck Davis, Region 6 Endangered Species Listing Coordinator (*see* **ADDRESSES**).

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: January 15, 2003.

Marshall P. Jones, Jr.,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 03–1804 Filed 1–27–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability of a Draft Recovery Plan for the Rough Popcorn Flower (*Plagiobothrys hirtus*) for Review and Comment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability.

SUMMARY: We, the U.S. Fish and Wildlife Service, announce the availability for public review of a draft

recovery plan for the rough popcorn flower (*Plagiobothrys hirtus*). The draft recovery plan includes specific recovery criteria and measures to be taken in order to delist the rough popcorn flower. We solicit review and comment from local, State, and Federal agencies, and the public on this draft recovery plan.

DATES: Comments on the draft recovery plan must be received on or before March 31, 2003 to receive our consideration.

ADDRESSES: Copies of the draft recovery plan are available for inspection, by appointment, during normal business hours at the following location: Roseburg Field Office, 2900 NW. Stewart Parkway, Roseburg, Oregon 97470 (phone: 541–957–3474). Requests for copies of the draft recovery plan, and written comments and materials regarding this plan should be addressed to Craig Tuss, Field Supervisor, at the above address.

FOR FURTHER INFORMATION CONTACT: Craig Tuss, Field Supervisor, at the above address.

SUPPLEMENTARY INFORMATION:

Background

Recovery of endangered or threatened animals and plants is a primary goal of our endangered species program and the Endangered Species Act (Act) (16 U.S.C. 1531 *et seq.*). A species is considered recovered when the species' ecosystem is restored and/or threats to the species are removed so that self-sustaining and self-regulating populations of the species can be supported as persistent members of native biotic communities. Recovery plans describe actions considered necessary for conservation of the species, establish recovery criteria for downlisting or delisting species, and estimate time and cost for implementing the measures needed for recovery.

The Act, requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act requires that public notice and an opportunity for public review and comment be provided during recovery plan development. We will consider all information presented during a public comment period prior to approval of this recovery plan. Substantive technical comments may result in changes to the plan. Substantive comments regarding recovery plan implementation will be forwarded to appropriate Federal or other entities for consideration during the implementation of recovery actions.

The rough popcorn flower was listed as endangered on January 25, 2000 and is found only in the Umpqua River drainage in Douglas County, Oregon, at sites ranging from 102 to 232 meters (m) (330 to 750 feet) in elevation. Extant, naturally occurring populations of this species occur along the Sutherlin Creek drainage from Sutherlin to Wilbur, adjacent to Calapooya Creek west of Sutherlin, and in roadside ditches near Yoncalla Creek just north of Rice Hill. The northern site is near Yoncalla, and the southern at Wilbur. All known sites were east of Interstate Highway 5 (I–5), until 1998 when a site was discovered at the junction of Stearns Lane and Highway 138, 0.8.kilometers 0.5 miles west of I–5. The eastern site is east of Plat K Road outside of Sutherlin. Historic collections have been made farther east near Nonpareil, but recent surveys (1998 to 1999) did not locate any populations in that area.

The rough popcorn flower is a perennial herbaceous plant, but can be annual depending on environmental conditions. The species occurs in seasonal wetlands. The majority of sites occur on the Conser-type soil series which is characterized as poorly drained flood plain soils. Urban and agriculture development, invasion of non-native species, habitat fragmentation and degradation, and other human-caused disturbances have resulted in substantial losses of seasonal wetland habitat throughout the species' historic range. Conservation measures include establishing a network of protected populations in natural habitat distributed throughout its native range.

The draft recovery plan identifies three recovery zones. The recovery zones are geographically bounded areas containing extant rough popcorn flower populations that are the focus of recovery actions or tasks. The recovery zones include lands both essential and non-essential to the long-term conservation of the rough popcorn flower.

The overall objective of this draft recovery plan is to reduce the threats to the rough popcorn flower to the point it can be reclassified to threatened, with the ultimate goal of being removed from protection entirely. Under the draft recovery plan downlisting of the rough popcorn flower would be contingent upon the following criteria: (1) At least 9 reserves, containing a minimum of 5,000 plants each, are protected and managed to assure their long term survival; (2) a minimum of 1,000 m^2 are occupied by the rough popcorn flower within each reserve, with at least 100 m^2 having a density of 100 plants/m^2 or greater; (3) a minimum of 9 reserves are distributed among the 3 recovery zones (Calapooya Creek, Sutherlin Creek, and Yoncalla Creek), with at least 3 reserves present in each zone; (4) patches within each reserve are within 1 kilometers (2½ miles) of each other to allow pollinator movement and gene flow among them; (5) averages of 5 years of demographic data that indicates populations in at least 7 of the 9 reserves within the 3 recovery zones have average population numbers that are stable or increasing, without decreasing trends lasting more than 2 years; (6) 75 percent or more of the plants are reproductive each year, with evidence of seed maturation and dispersal in all populations; (7) seed germination and seedling recruitment are occurring in all populations; and (8) each existing or reintroduced population is secure from the threats identified in the Reasons for Listing section.

Authority: The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: November 5, 2002.

Rowan W. Gould,

Regional Director, Region 1, U.S. Fish and Wildlife Service.

[FR Doc. 03–1826 Filed 1–27–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–070–03–1020–PG]

Notice of Public Meeting, Western Montana Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM), Western Montana Resource Advisory Council will meet as indicated below.

DATES: A meeting will be held March 13, 2003, at the BLM Missoula Field Office, 3255 Fort Missoula Road, Missoula, Montana beginning at 9 a.m. The public comment period will begin at 11:30 a.m. and the meeting will adjourn at approximately 3 p.m. A working meeting is planned for April 16 in Dillon, Montana to review the public input gathered during a series of workshops related to the Dillon RMP. The meeting will start at 9 a.m. and will be held at the Dillon Field Office, 1005 Selway Drive.

SUPPLEMENTARY INFORMATION: The 15-member Council advises the Secretary of the Interior, through the Bureau of Land Management, on a variety of planning and management issues associated with public land management in western Montana. At the March 13 meeting, topics we plan to discuss include: Updates on the Dillon and Butte Resource Management Plans, fuels reduction and how it relates to the President's Forest Initiative, the Limestone Hills sub-group, sage grouse planning, and an update on the Dillon standards and guidelines implementation.

All meetings are open to the public. The public may present written comments to the Council. Each formal Council meeting will also have time allocated for hearing public comments. Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited. Individuals who plan to attend and need special assistance, such as sign language interpretation, or other reasonable accommodations, should contact the BLM as provided below.

FOR FURTHER INFORMATION CONTACT: Marilyn Krause, Resource Advisory Council Coordinator, at the Butte Field Office, 106 North Parkmont, Butte, Montana 59701, telephone 406–533–7617 or Nancy Anderson, Field Manager, Missoula Field Office, telephone 406–329–3914.

Dated: January 15, 2003.

Nancy Anderson,

Field Manager.

[FR Doc. 03–1807 Filed 1–27–03; 8:45 am]

BILLING CODE 4310–$$–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Royalty Policy Committee of the Minerals Management Advisory Board; Notice and Agenda for Meeting

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of meeting.

SUMMARY: The Royalty Policy Committee of the Minerals Management Advisory Board will meet at the New Orleans Hyatt Regency Hotel, New Orleans, Louisiana.

DATES: Wednesday, March 19, 2003, from 1 p.m. to 5 p.m. and Thursday, March 20, 2003, from 8:30 a.m. to 11:30 a.m.

ADDRESSES: The Hyatt Regency New Orleans, 500 Poydras Plaza, New Orleans, Louisiana 70140, telephone (504) 561–1234, fax (504) 523–0488.

FOR FURTHER INFORMATION CONTACT: Mr. Gary Fields, Royalty Policy Committee Coordinator, Minerals Revenue Management, Minerals Management Service, P.O. Box 25165, MS 300B3, Denver, CO 80225–0165, telephone (303) 231–3102, fax (303) 231–3781, e-mail *gary.fields@mms.gov.*

SUPPLEMENTARY INFORMATION: The Secretary of the Interior established a Royalty Policy Committee of the Minerals Management Advisory Board to provide advice on the Department's management of Federal and Indian minerals leases, revenues, and other minerals-related policies. Committee membership includes representatives from States, Indian tribes and allottee organizations, minerals industry associations, the general public, and Federal departments.

At this 16th meeting, the committee will elect a Parliamentarian, receive a subcommittee report on coal and review recommendations from the sodium/potassium subcommittee. The MMS will present reports on financial management, compliance, the Strategic Petroleum Reserve and royalty-in-kind initiatives. The MMS will also discuss the current appeals process, a Federal Energy Regulatory Commission issue and provide a legislative update.

The location and dates of future meetings will be published in the **Federal Register**. The meetings are open to the public without advance registration on a space available basis. The public may make statements during the meetings, to the extent time permits, and file written statements with the committee for its consideration. Written statements should be submitted to Mr. Fields at the mailing address listed in the **FOR FURTHER INFORMATION CONTACT** section. Transcripts of committee meetings will be available 2 weeks after each meeting for public inspection and copying at MMS's Minerals Revenue Management, Building 85, Denver Federal Center, Denver, Colorado.

Authority: Federal Advisory Committee Act, Public Law 92–463, 5 U.S.C. Appendix 1, and Office of Management and Budget Circular No. A–63, revised.

Dated: January 23, 2003.

Lucy Querques Denett,

Associate Director for Minerals Revenue Management.

[FR Doc. 03–1886 Filed 1–27–03; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Intent to Solicit Public Comments on the Adoption of an Interim 602(a) Storage Guideline for Management of the Colorado River and to Initiate a National Environmental Policy Act (NEPA) Process

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice to solicit public comments and initiation of the NEPA process.

SUMMARY: The Secretary of the Department of the Interior (Secretary), acting through the Bureau of Reclamation (Reclamation), is considering the adoption of a specific interim guideline that will assist the Secretary in making a determination of the quantity of water considered necessary as of September 30 of each year, as required by article II (1) of the Criteria for Coordinated Long-Range Operation of Colorado River Reservoirs Pursuant to the Colorado River Basin Project Act of September 30, 1968 (Long-Range Operating Criteria).

DATES: To be most useful, we must receive all comments at the address given below on or before March 14, 2003.

ADDRESSES: You may submit comments to Tom Ryan, Bureau of Reclamation, Upper Colorado Regional Office, 125 South State Street, Salt Lake City, Utah 84138; faxogram (801) 524–5499; e-mail: *tryan@uc.usbr.gov.*

SUPPLEMENTARY INFORMATION: Each year, the Secretary establishes an Annual Operating Plan (AOP) for the Colorado River reservoirs. The AOP describes how Reclamation will manage the reservoirs over a 12-month period, consistent with the Long-Range Operating Criteria. Pursuant to applicable Federal law, Reclamation consults annually with the Colorado River Basin States, Indian tribes, and others interested parties in the development of the AOP. Further, as part of the AOP, the Secretary makes an annual determination under the Long-Range Operating Criteria regarding the quantity of water considered necessary as of September 30 of each year to be in storage as required by section 602(a)(3) of the Colorado River Basin Project Act (602(a) Storage). This determination is important because when projected storage in the Upper Basin reservoirs is greater than 602(a) Storage, releases from Lake Powell are made according to article II (3) of the Long-Range Operating Criteria and section 602(a)(3).

These releases are commonly made to maintain, as nearly as practicable, active storage in Lake Mead equal to the active storage in Lake Powell. These releases are commonly referred to as "equalization" releases. When projected storage is less than 602(a) Storage, such equalization releases from Lake Powell are not made.

In July 2000, Reclamation issued a draft environmental impact statement (DEIS) on the proposed adoption of specific criteria under which surplus water conditions may be determined in the Lower Colorado River Basin for 15 years. During the public comment period on the DEIS, the seven Colorado River Basin States submitted information to the Department of the Interior that contained a proposal on interim surplus criteria and a number of other related issues. This information was published in the **Federal Register** on August 8, 2000 (65 FR 48531–38). One component of the Colorado River Basin States' proposal is section V, "Determination of 602(a) Storage in Lake Powell During the Interim Period," and reads as follows:

> During the Interim Period, 602(a) storage requirements determined in accordance with article II (1) of the Criteria [Long-Range Operating Criteria] shall utilize a value of not less than 14.85 maf (elevation 3,630 feet) for Lake Powell (65 FR 48537).

In December 2000, Reclamation issued a final environmental impact statement (FEIS) on the proposed adoption of specific criteria under which surplus water conditions would be determined in the Lower Colorado River Basin through the year 2016. The preferred alternative in the FEIS was based in large part on the Colorado River Basin States' proposal, but as noted in the FEIS, the preferred alternative did not contain all of the specific elements of the Basin States' proposal.

On January 16, 2001, the Secretary signed the record of decision (ROD) for the Colorado River Interim Surplus Guidelines. The FEIS and the ROD did not consider or implement section V of the Colorado River Basin States' proposal (Basin States' proposed 602(a) Storage). Representatives of the Colorado River Basin States have expressed an interest in having the Basin States' proposed 602(a) Storage adopted by the Secretary, through the year 2016, in order to protect Upper Basin storage against the potential drawdown of Lake Mead storage that could occur due to dry hydrology and continued surplus deliveries from Lake Mead to the Lower Division States. The Colorado River Basin is now in its fourth consecutive year of drought.

Under these circumstances, the Secretary believes that it may be prudent to adopt the Basin States' proposed 602(a) Storage, or a reasonable alternative to it, as a guideline for making 602(a) Storage determinations during the period through 2016. As part of the process initiated by this notice, Reclamation will analyze the effects of the Basin States' proposed 602(a) Storage on the Colorado River system.

Reclamation will utilize a public process pursuant to NEPA during the analysis of the Basin States' proposed 602(a) Storage guideline. By this notice, Reclamation invites all interested parties, including the Colorado River Basin States, Indian tribes, water users, members of the general public, organizations, and agencies to present written comments concerning the Basin States' proposed 602(a) Storage and the issues and alternatives that they believe should be analyzed.

Our practice is to make comments, including names and home address of respondents, available for public review. Individual respondents may request that we withhold their home address from public disclosure, which we will honor to the extent allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public disclosure in their entirety.

Dated: November 22, 2002.

Rick L. Gold,

Regional Director—Upper Colorado Region.

[FR Doc. 03–1887 Filed 1–27–03; 8:45 am]

BILLING CODE 4310–MN–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Clean Water Act, Clean Air Act, and Resource Conservation and Recovery Act

Notice is hereby given that on January 15, 2003, a proposed Consent Decree in *United States* v. *Koppers Industries, Inc.*, Civil Action No. CV–03–C–0097S, was lodged with the United States District Court for the Northern District of Alabama.

In this action the United States sought civil penalties and injunctive relief for numerous violations of the Clean Water Act at Koppers facilities throughout the United States. The United States also sought civil penalties for violations of the Clean Air Act and the Resource Conservation and Recovery Act occurring at a Koppers' facility in Woodward, Alabama. The alleged violations include Koppers' failure to submit reports and comply with discharge limits required by Clean Water Act permits; Koppers' failure to operate a gas blanketing system at storage tanks in the Woodward facility; and Koppers' use of a crushed tank to store used oil at the Woodward facility. This Woodward facility closed in 1998. In settlement of these allegations, Koppers agrees to pay a $2.9 million civil penalty (plus interest) over three years, and to implement an environmental management system and auditing program at facilities throughout the United States.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *Koppers Industries, Inc.*, D.J. Ref. 90–5–2–1–06126.

The Consent Decree may be examined at the Office of the United States Attorney, 200 Robert S. Vance Federal Building, 1800 5th Avenue North, Room 200, Birmingham, Alabama, and at U.S. EPA Region 4, Atlanta Federal Center, 61 Forsyth Street, Atlanta, Georgia. A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611. In requesting a copy, please enclose a check in the amount of $29.25 (25 cents per page reproduction cost) payable to the U.S. Treasury.

Ellen Mahan,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 03–1814 Filed 1–27–03; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of the Consent Decree Between the United States of America and Olympic Pipe Line Company Pursuant to the Clean Water Act

Pursuant to 28 CFR 50.7, notice is hereby given that on January 17, 2003, a proposed Consent Decree Between the United States of America and Olympic

Pipe Line Company (Olympic Consent Decree), Civil Action No. CV02–1178R was lodged with the United States District Court for the Western District of Washington.

In this case, the United States sought injunctive relief and civil penalties for the discharge of gasoline into Hanna and Whatcom Creeks in Bellingham, Washington, navigable waters of the United States, and their adjoining shorelines, beginning on June 10, 1999, in violation of sections 301(a) and 311(b)(3) of the Clean Water Act, 33 U.S.C. 1311(a) and 1321(b)(3). The Olympic Consent Decree includes a civil penalty of $2.5 million and comprehensive injunctive relief designed to address all of the known causes of the gasoline spill beginning on June 10, 1999 and covering the entire 400-mile Olympic pipeline system from which the spill occurred. The spill prevention and mitigation program requires Olympic to pay an independent contractor approved by the United States Environmental Protection Agency (EPA) to monitor Olympic's implementation of the program, and to report to EPA. The program, which will last a minimum of five years, includes the following requirements:

- Internal inspections of pipeline using "Smart PIG" technology (devices that travel through pipeline to scan for defects);
- Preventive maintenance and repair of pipeline and valve defects;
- Monitoring of construction activities near the pipelines;
- Frequent pipeline surveys;
- Operator training; and
- A Management of Change Program requiring Olympic to analyze changes in its pipeline system for the effect of the changes on the operations and safety of the entire pipeline system.

The Department of Justice will receive for a period of 30 days from the date of this publication comments relating to the Olympic Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *Shell Pipeline Co.* LP fka Equilon Pipeline Co. LLC and Olympic Pipeline Co., No. CV02–1178R (W.D. Wash.) and D.J. Reference No. 90–5–1–1–06967.

The Olympic Consent Decree may be examined at the Office of the United States Attorney, Western District of Washington, 601 Union Street, 50100 Two Union Square, Seattle, Washington 98101–3903, and at U.S. EPA Region X, 1200 6th Avenue, Seattle, Washington 98101. During the public comment period, the Olympic Consent Decree, may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/open.html*. A copy of the Olympic Consent Decree also may be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood *(tonia.fleetwood@usdoj.gov)*, fax no. (202) 514–0097, phone confirmation number (202) 514–1547. When requesting a copy from the Consent Decree Library, please enclose a check in the amount of $57.25 (25 cents per page reproduction cost) payable to the U.S. Treasury.

Alternatively, you may request a copy of the Olympic Consent Decree without the attached exhibits by enclosing a check in the amount of $12.75 (25 cents per page reproduction cost) payable to the U.S. Treasury.

Robert E. Maher, Jr.,

Assistant Chief, Environmental Enforcement Service, Environment and Natural Resources Division.

[FR Doc. 03–1812 Filed 1–27–03; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of the Consent Decree Between the United States of America and Shell Pipeline Company LP fka Equilon Pipeline Company LLC Pursuant to the Clean Water Act

Pursuant to 28 CFR 50.7, notice is hereby given that on January 17, 2003, a proposed Consent Decree Between the United States of America and Shell Pipeline Company LP (Shell) fka Equilon Pipeline Company LLC (Shell Consent Decree), Civil Action No. CV02–1178R was lodged with the United States District Court for the Western District of Washington.

In this case, the United States sought civil penalties for the discharge of gasoline into Hanna and Whatcom Creeks in Bellingham, Washington, navigable waters of the United States, and their adjoining shorelines, beginning on June 10, 1999, in violation of sections 301(a) and 311(b)(3) of the Clean Water Act, 33 U.S.C. 1311(a) and 1321(b)(3). The Shell Consent Decree includes a civil penalty of $5 million and other relief consisting of a comprehensive pipeline spill prevention program covering 2139 miles of pipeline in seven states. The pipeline systems covered by the spill prevention program are Shell's East, North, Chase, and Orion Systems in the states of Colorado, Kansas, Illinois, Indiana, Ohio, Oklahoma, and Texas. The spill prevention program requires Shell to pay an independent contractor approved by the United States Environmental Protection Agency (EPA) to monitor Shell's implementation of the spill prevention program, and to report to EPA. The spill prevention program, which will last a minimum of five years, includes the following requirements:

- Internal inspections of pipeline using "Smart PIG" technology (devices that travel through pipeline to scan for defects);
- Installation, maintenance, and testing of corrosion control equipment;
- Testing and repair of leak detection systems;
- Installation of block valves and check valves to divert the flow of gasoline in an emergency;
- Protective measures for exposed pipe;
- Protective measures for insufficiently buried pipe near commercially navigable waterways;
- Monitoring of construction activities near the pipelines;
- Frequent pipeline surveys;
- Operator training; and
- A Management of Change Program requiring Shell to analyze changes in its pipeline systems for the effect of the changes on the operations and safety of the affected pipeline system.

The Department of Justice will receive for a period of 30 days from the date of this publication comments relating to the Shell Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *Shell Pipeline Co. LP fka Equilon Pipeline Co. LLC and Olympic Pipeline Co.*, No. CV02–1178R (W.D. Wash.) and D.J. Reference No. 90–5–1–1–06967.

The Shell Consent Decree may be examined at the Office of the United States Attorney, Western District of Washington, 601 Union Street, 50100 Two Union Square, Seattle, Washington 98101–3903, and at U.S. EPA Region X, 1200 6th Avenue, Seattle, Washington 98101. During the public comment period, the Shell Consent Decree, may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/open.html*. A copy of the Shell Consent Decree also may be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood *(tonia.fleetwood@usdoj.gov)*, fax no.

(202) 514–0097, phone confirmation number (202) 514–1547. When requesting a copy from the Consent Decree Library, please enclose a check in the amount of $100 (25 cents per page reproduction cost) payable to the U.S. Treasury.

Alternatively, you may request a copy of the Shell Consent Decree without the attached exhibits by enclosing a check in the amount of $18.50 (25 cents per page reproduction cost) payable to the U.S. Treasury.

Robert E. Maher, Jr.,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 03–1813 Filed 1–27–03; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances Notice of Application

Pursuant to § 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on June 21, 2002, Bristol-Myers Squibb Pharma Company, 1000 Stewart Avenue, Garden City, New York 11530, made application by renewal to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Oxycodone (9143)	II
Hydrocodone (9193)	II
Oxymorphone (9652)	II

The firm plans to manufacture the listed controlled substances to make finished products.

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the proposed registration.

Any such comments or objections may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representatives (CCR), and must be filed no later than (60 days from publication).

Dated: January 6, 2003.

Laura M. Nagel,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 03–1914 Filed 1–27–03; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated June 24, 2002, and published in the **Federal Register** on July 10, 2002, (67 FR 45764), Cayman Chemical Company, 1180 East Ellsworth Road, Ann Arbor, Michigan 48108, made application to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of tetrahydrocannabinols (7370), a basic class of controlled substance listed in Schedule I.

The firm plans to manufacture tetrahydrocannabinols for sale to their customers.

No comments or objections have been received. DEA has considered the factors in Title 21, U.S.C. 823(a) and determined that the registration of Cayman Chemical Company to manufacture the listed controlled substance is consistent with the public interest at this time. DEA has investigated Cayman Chemical Company on a regular basis to ensure that the company's continued registration is consistent with the public interest. These investigations have included inspection and testing of the company's physical security system, audits of the company's records, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823 and 28 CFR 0.100 and 0.104, the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic class of controlled substance listed above is granted.

Dated: January 6, 2003.

Laura M. Nagel,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 03–1916 Filed 1–27–03; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

MDI Pharmaceuticals Revocation of Registration

On September 24, 2001, the Administrator of the Drug Enforcement Administration (DEA), issued an Order to Show Cause and Immediate Suspension of Registration to MDI Pharmaceuticals (MDI) located in Dillon, Montana. MDI was notified of a preliminary finding that pursuant to evidence set forth therein, it was responsible for, inter alia, the diversion of large quantities of list I chemicals into other than legitimate channels. Based on his preliminary findings, and pursuant to 21 U.S.C. 824(d) and 21 CFR 1309.44(a), as well as the authority granted under 21 CFR 0.100, the Administrator ordered the immediate suspension of MDI's DEA Certificate of Registration, 004629IEY, as a distributor of list I chemicals, effective immediately. The suspension was to remain in effect until a final determination was reached in these proceedings.

The Order to Show Cause and Immediate Suspension further informed MDI of an opportunity to request a hearing to show cause as to why DEA should not revoke its DEA Certificate of Registration, and deny any pending applications for renewal or modification of that registration for reason that such registration is inconsistent with the public interest, as determined by 21 U.S.C. 823(h). MDI was also notified that should no request for hearing be filed within 30 days, its right to a hearing would be deemed waived.

On September 26, 2001, a copy of the Order to Show Cause and Immediate Suspension was served upon MDI's owners by DEA Diversion Investigators. DEA has not received a request for hearing or any other reply from MDI or anyone purporting to represent the firm in this matter. Therefore, the Deputy Administrator, finding that (1) 30 days have passed since the receipt of the Order to Show Cause, and (2) no request for a hearing having been received, concludes that MDI is deemed to have waived its hearing right. After considering material from the investigative file in this matter, the Deputy Administrator now enters his final order without a hearing pursuant to 21 CFR 1301.43(d) and (e) and 1301.46.

The Deputy Administrator finds as follows: list I chemicals are those that may be used in the manufacture of a controlled substance in violation of the

Controlled Substances Act. 21 U.S.C. 801(34); 21 CFR 1310.02(a). Pseudoephedrine and ephedrine are list I chemicals that are commonly used to illegally manufacture methamphetamine, a Schedule II controlled substance. Methamphetamine is an extremely potent central nervous system stimulant, and its abuse is a growing problem in the United States.

A "regulated person" is one who manufactures, distributes, imports, or exports inter alia a listed chemical. 21 U.S.C. 802(38). A "regulated transaction" is inter alia, a distribution, receipt, sale, importation, or exportation of a threshold amount of a listed chemical. 21 U.S.C. 802(39). The Deputy Administrator finds all parties mentioned herein to be regulated persons, and all transactions mentioned herein to regulated transactions, unless otherwise noted.

The Deputy Administrator finds that on June 23, 1999, Isabelle DeLuce (Ms. DeLuce) submitted an application on behalf of MDI for registration with DEA as a distributor of list I chemicals. At the time of the submission of its application, MDI was a distributor of various non-chemical products such as vitamins, herbal products and novelty items. MDI was and is operated by Ms. DeLuce and her husband Michael Uzan (Mr. Uzan).

On October 27, 1999, DEA Diversion Investigators conducted an on-site pre-registration interview of Ms. DeLuce and Mr. Uzan at MDI's proposed registered location. During the interview, investigators warned MDI's owners about the diversion of ephedrine and pseudoephedrine to the illicit production of methamphetamine. The investigators also discussed DEA regulations pertaining to list I chemicals. Ms. DeLuce and Mr. Uzan informed the investigators that they understood the regulations and would comply with all laws pertaining to listed chemicals. Ms. DeLuce also informed investigators that she anticipated that listed chemicals would comprise only 20% of MDI's sales and that these products would be sold to convenience stores and gas stations located only in the State of Montana. Shortly thereafter, MDI was issued a DEA registration as a list I chemical distributor for ephedrine, phenylpropanolamine and pseudoephedrine.

The Deputy Administrator finds that MDI has purchased listed chemicals from a DEA registrant that was the subject of a criminal investigation involving the mishandling of these products. A review of the investigative file reveals that on August 3, 2000, a Federal search warrant was executed at Wholesale Outlet at its location in Beaumont, Texas. At the time the warrant was executed, Wholesale Outlet was a DEA-registered distributor of list I chemicals. The issuance of the search warrant arose from an ongoing DEA investigation into Wholesale Outlet's listed chemical handling practices. Mediplas Innovations; Suspension of Shipments, 67 FR 41256, 41259 (2002). During the execution of the search warrant, law enforcement officers recovered, among other things, numerous invoices reflecting MDI's purchases of various products from Wholesale Outlet. Of note was MDI's purchase of $15,840 worth of single entity "Twin Pseudo" brand pseudoephedrine, 60 mg. in 120-count bottles.

Effective May 30, 2002, the Deputy Administrator sustained DEA's suspension of listed chemical shipments imported by a DEA registered importer and destined for sale to Wholesale Outlet. Mediplas at 41256, 41264. Among the reasons cited for sustaining the suspensions was the pending criminal investigation involving Wholesale Outlet, including allegations of is suspected misconduct in the handling of list I chemicals, as well as a DEA audit which revealed Wholesale Outlet's failure to account for listed chemicals that it purchased, in violation of 21 U.S.C. 830(a) and 842(a)(10) and 21 CFR 1310.03 and 1310.06. Mediplas at 41263–64. Moreover, the Deputy Administrator found in sustaining the suspensions that pseduoephedrine products distributed by Wholesale Outlet (the same products purchased by MDI from the firm) were found at various clandestine locations throughout the United States and used in the illicit manufacture of methamphetamine.

On August 17, 2000, a DEA Diversion Investigator requested that Ms. DeLuce provide a current customer/supplier list for listed chemicals. Ms. DeLuce informed the investigator that all but two of MDI's 72 customers were located in Nevada, with the majority conducting business in the greater Las Vegas. After providing the requested list of suppliers, Ms. DeLuce stated that MDI purchased 50 to 70 cases of pseudoéphedrine, 60 mg., in 120-count bottles, and twenty-two cases of pseudoephedrine, 60 mg. in 60-count bottles on a monthly basis.

The Deputy Administrator's review of the investigative file further reveals that on or about November 30, 2000, Ms. DeLuce and Mr. Uzan were stopped in their automobile by the Las Vegas Police Department and issued a traffic citation. At the time of the traffic stop, the police officer noticed several cases of pseudoephedrine in the back seat of the vehicle. Ms. DeLuce and Mr. Uzan volunteered that they were distributing or selling pseudoephedrine to local businesses. On a subsequent occasion, Ms. DeLuce was again stopped in her vehicle by law enforcement officers while transporting quantities of pseudoephedrine. During this traffic stop, Ms. DeLuce provided a copy of her DEA registration and informed law enforcement officers that she was aware that pseudoephedrine could be diverted to the illicit manufacture of methamphetamine. During this traffic stop, Ms. DeLuce told the officers that she limited her sales to just one case per customer and that she sold pseudoephedrine to 50 clients about once a month in the greater Las Vegas area because she could not find enough customers in Montana.

Pursuant to 21 CFR 1310.05(a)(1) DEA registrants are required to notify DEA in the event of any regulated transactions involving an extraordinary quantity, an uncommon method of payment or delivery, or any other circumstance that indicates that the listed chemical may be used unlawfully. The Deputy Administrator finds that the manner in which Ms. DeLuce and Mr. Uzan transported listed chemicals products in their automobile created a climate for diversion. Therefore, its failure to notify DEA of the uncommon means of transporting a listed chemical results in a finding that MDI, through the actions of its owners, was in violation of section 1310.05.

On April 15, 2001, pursuant to an administrative subpoena, MDI produced its records for the purchase of pseudoephedrine between March 2000 and October 2000. These records revealed that MDI purchased 106,563 bottles of pseudoephedrine valued at $342,758.00 from four (4) different suppliers over that time period.

MDI also produced its customer list for DEA inspection. A majority of the customers were located in Las Vegas, Nevada, and consisted primarily of gas stations, smoke shops, mini marts and other types of convenience stores. Included among MDI's list of customers was Mike's Smoke Shop, located at 2923 North Avenue in Grand Junction, Colorado. This establishment was owned by Mike Yako (Mr. Yako). During a follow-up investigation on February 13, 2001, DEA special agents discovered that Mike's Smoke Shop had moved to its business location around July 2000 but was evicted from that location in either August or September 2000 for non-payment of rent. Further investigation revealed that during the

time this establishment conducted business, it maintained very little inventory.

A subsequent review of MDI's sales records revealed that from July 31 to November 16, 2000, the firm sold to Mike's Smoke Shop (2923 North Avenue location) approximately 65,650 tablets of pseudoephedrine. During a period of just under three months, MDI distributed an average of over 21,800 tablets per month to this small retailer of tobacco products. Many of the customer receipt documents for these transactions were signed by "M. Yako" or "S. Issa." MDI continued its sale of pseudoephedrine products to Mike's Smoke Shop even after that establishment had closed. Many of these transactions took place within a week of one another. Given the nature of this purported business, the distribution of pseudoephedrine to this establishment was apparently in excess of legitimate demand. The Deputy Administrator finds that MDI failed to report to DEA the sale of an extraordinary quantity of listed chemicals and to verify the existence and validity of a business entity ordering listed chemicals, as required by 21 CFR 1310.05(a) and 1310.07. Furthermore, MDI distributed a listed chemical to this establishment knowing or having reasonable cause to believe that the listed chemical would be used to manufacture illicit methamphetamine in violation of 21 U.S.C. 841(c)(2) (2001).

On February 13, 2001, DEA special agents went to a second establishment under the name of Mike's Smoke Shop, located at 1010 ½ N. 5th St., Grand Junction, Colorado, also owned by Mr. Yako. While signs posted outside the establishment listed hours of operation, it appeared that the business had not been open for some time, DEA agents observed mail lying on the floor inside the door covered by dirt.

Nevertheless, a subsequent review of sales records revealed that between August 9, 2000, and April 18, 2001, MDI sold 3312 bottles of 120-count 60 mg. (397,400 tablets) pseudoephedrine to Mike's Smoke Shop at its 1010 ½ North 5th Street location. During this eight-month period, MDI sold an average of 414 bottles or 49,680 tablets per month this small, retail smoke shop. As with the previous Mike's Smoke Shop location, many of the customer receipt documents for these transactions were signed by "M. Yako" or "S. Issa." Given the nature of this purported business, the distribution of pseudoephedrine to this establishment was apparently in excess of legitimate demand. MDI again failed to report to DEA the sale of an extraordinary quantity of listed chemicals and to verify the existence and validity of a business entity ordering listed chemicals, as required by 21 CFR 1310.05(a) and 1310.07. MDI also distributed a listed chemical to this establishment knowing or having reasonable cause to believe that the listed chemical would be used to manufacture illicit methamphetamine in violation of 21 U.S.C. 841(c)(2) (2001).

MDI also listed as a customer Paradise Smoker, also located in Grand Junction Colorado, and purportedly owned by an individual by the name of Samer Issa. When DEA special agents sought to verify the existence of the business, they were unable to locate it. Nevertheless, a review of MDI's shipment records revealed that between August 10, 2000 and November 16, 2001, the firm sold approximately 190,080 pseudoephedrine tablets to this small retailer of tobacco products. As with the Mike's Smoke Shop locations, many of the customer receipts were signed on behalf of Paradise Smoker by "M. Yako" or "S. Issa." Given the nature of this purported business, the distribution of pseudoephedrine to this establishment was far in excess of legitimate demand. Therefore, with respect to regulated transactions involving Paradise Smoker, the Deputy Administrator finds that MDI failed to report to DEA the sale of an extraordinary quantity of listed chemicals and to verify the existence and validity of a business entity ordering listed chemicals, as required by 21 CFR 1310.05(a) and 1310.07. MDI also distributed a listed chemical knowing or having reasonable cause to believe that the listed chemical would be used to manufacture illicit methamphetamine in violation of 21 U.S.C. 841(c)(2) (2001).

On February 13, 2001, DEA Special Agents interviewed an employee of one of MDI's retail customers, Special Smoke Shop of Delta, Colorado. This small retailer of tobacco products was purportedly owned by Suhail Issa. The employee informed investigators that tobacco products were the only products sold in the store that its owner ordered boxes of goods, which were paid for by money orders. The employee also revealed that the inventory of these boxes was never sold from the store; rather, the owner removed these boxes as soon as they were delivered to the store.

DEA's review of sales records revealed that MDI sold approximately 3,600 bottles of 120-count 60 mg. (432,000 tablets) pseudoephedrine to Special Smoke Shop between August 10, 2000 and April 18, 2001. During this eight-month period, MDI sold an average of 450 bottles (or 54,000 tablets) per month to this establishment. Again, several of the customer receipt documents showed that they were signed on behalf of this customer by "M. Yako" and "S. Issa." Given the nature of this purported business, MDI's distribution of pseudoephedrine to this establishment was far in excess of legitimate demand. Therefore, with respect to regulated transactions involving Special Smoke Shop, the Deputy Administrator finds that MDI failed to report to DEA the sale of an extraordinary quantity of listed chemicals and to verify the existence and validity of a business entity ordering listed chemicals, as required by 21 CFR 1310.05(a) and 1310.07. MDI also distributed a listed chemical to this establishment knowing or having reasonable cause to believe that the listed chemical would be used to manufacture illicit methamphetamine in violation of 21 U.S.C. 841(c)(2)(2001).

Shortly thereafter, a DEA Special Agent visited another MDI retail customer, Special Smoke (an apparent name variation of "Special Smoke Shop"), located in Fruita, Colorado. Special Smoke was also a retailer of tobacco products and purportedly owned by Suhail Issa. The Special Agent, posing as a customer, noticed that two bottles of pseudoephedrine were displayed in the store along with a sign that read, "Limit three (3) per purchase." A subsequent review of MDI sales records revealed that between January 4, 2000 and April 13, 2001, the company sold 3312 bottles of 120-count 60 mg. (397,440 tablets) pseudoephedrine to Special Smoke. Some of these transactions took place within two to five days of one another.

In addition, several of the customer receipt documents showed that they were signed by "M. Yako" and "S. Issa" as well as by other persons associated with the Mike's Smoke Shop locations, Paradise Smoke and Special Smoke Shop. Given the nature of this purported business, the distribution of pseudoephedrine to this establishment was far in excess of legitimate demand. Therefore, with respect to regulated transactions involving Special Smoke Shop, the Deputy Administrator finds that MDI failed to report to DEA the sale of an extraordinary quantity of listed chemicals and to verify the existence and validity of a business entity ordering listed chemicals, as required by 21 CFR 1310.05(a) and 1310.07. MDI also distributed a sited chemical knowing or having reasonable cause to believe that the listed chemical would be used to manufacture illicit methamphetamine in violation of 21 U.S.C. 841(c)(2) (2001).

The Deputy Administrator's review of the investigative file reveals that pseudoephedrine products distributed by MDI have been uncovered at numerous clandestine methamphetamine settings throughout the United States and/or discovered in the possession of individuals apparently involved in the illicit manufacture of methamphetamine. On February 20, 2001, the Las Vegas Metropolitan Police Department (LVMPD) arrested three individuals in an apartment complex in response to a small fire in their unit. At the time of the arrest, LVMPD officers discovered a methamphetamine laboratory inside the apartment. Numerous items associated with the illicit manufacture of methamphetamine were also recovered from the apartment, including three empty 120-count bottles of MDI brand 60mg. pseudoephedrine tablets.

On April 4, 2001, two individuals were arrested by the LVMPD when a search of a residence revealed items associated with the illicit manufacture of methamphetamine, including twenty 120-count bottles of MDI brand 60mg. pseudoephedrine tablets. The investigative file further reveals that from April 16 to August 8, 2001, there were approximately thirteen additional seizures of MDI brand pseudoephedrine products at various clandestine laboratory settings. These seizures occurred primarily in the Las Vegas area, as well as at locations in Colorado and California.

The Deputy Administrator finds that on February 22, 2001, the Federal Express office in St. George, Utah received six cases of pseudoepedrine which were shipped by MDI purportedly to six different business locations; however, all six cases were picked up by one person in a vehicle registered to Samar Issa. Business records for the city of St. George had no current information for three of the business entities. Business licenses for the other three businesses were issued to Marogy Marogy (later determined to be Samer Issa's brother-in-law), Mike Yako and a "Suhel Aesa."

On March 14, 2001, a DEA Task Force Officer (TFO) acting in an undercover capacity met with Mike Yako at a location in Las Vegas, Nevada to arrange the purchase of a half case of pseudoephedrine. After agreeing to a price for half a case of pseudoephedrine, Mr. Yako was observed by law enforcement officers going into a storage unit, where he later emerged carrying a brown box which he placed in the trunk of his car. Mr. Yako then removed from the car trunk a bottle of MDI brand pseudoephedrine, which he handed to the TFO. Yako then stated to the TFO that MDI brand "is doing so well" his store put their own labels on the bottles. Mr. Yako then accepted from the undercover TFO $2,000 cash for 72 bottles of MDI pseudoephedrine tablets. During an April 3, 2001 undercover operation, the TFO stated his intentions to purchase five cases of pseudoephedrine from Mr. Yako in the near future, to which Mr. Yako replied, "no problem."

On March 18, 2001, a Colorado State Trooper made a traffic stop of a vehicle driven by Suhail Issa, who was accompanied by Mike Yako. Mr. Yako informed the trooper that he was visiting Colorado to oversee "smoke shop" stores that he owned in the state. He further stated that the two were on their way to Las Vegas, and had planned a temporary stop in Fruita, Colorado, to purchase gasoline for the vehicle they were driving. After obtaining permission to search the vehicle, the trooper found three boxes of pseudoephedrine. Contained within the three boxes were Federal Express shipping labels dated April 16, 2001, and invoices from MDI to Special Smoke locations in Fruita, Grand Junction, and Delta, Colorado. Mike Yako explained that the three boxes were "stuff for my business." The trooper seized the three boxes, but did not arrest the two passengers.

On May 24, 2001, Diversion Investigators visited Ms. DeLuce and Mr. Uzan at their residence in Dillon, Montana. DEA personnel discussed with Ms. DeLuce and Mr. Uzan information regarding MDI pseudoephedrine products that were found at various clandestine methamphetamine settings. In response, Ms. DeLuce explained that she limits her customers to only two cases per month and that she sells pseudoephedrine in bottles rather than in blister packs because her customers prefer bottles. She also stated that she had 137 customers, most of who were located in Las Vegas.

DEA also discussed with Ms. DeLuce the above referenced traffic stop of Suhail Issa and Mile Yako by the Colorado State Police. Ms. DeLuce acknowledged that these individuals were customers of MDI, and that she had been informed of the traffic stop. Ms. DeLuce also stated that she thought the two customers fabricated the story about the seizure in order to obtain more pseudoephedrine from MDI. Ms. DeLuce further added that despite her suspicions regarding the circumstances of traffic stop and the fact that the two customers were transporting pseudoephedrine products in the trunk of an automobile, she failed to report these matters to DEA as a suspicious transactions. Ms. DeLuce explained that she did not report the incident because she believed DEA was already aware of the seizure.

Despite her representations to DEA personnel, the Deputy Administrator finds that information previously communicated to Ms. DeLuce regarding the traffic stop of her customers, and their being found in possession of caseload quantities of pseudoephedrine which were later seized, should have raised red flags that these products were being diverted to illicit uses. Ms. DeLuce admitted that the circumstances surrounding the traffic stop were suspicious. As a registrant entrusted with securing a product that is frequently diverted to illicit uses, MDI was required to notify DEA of the suspicious circumstances surrounding the traffic stop of its customers pursuant to 21 CFR 1310.05(a).

The investigative file further reveals that Ms. DeLuce and Mr. Uzan informed DEA personnel that because of the traffic stop involving Mister Issa and Yako, MDI suspended all sales of its products to any establishment in which these customers were affiliated. They further indicated that the "smoke shop" stores operated by Issa and Yako in Colorado had closed. However, DEA subsequently obtained Federal Express records which showed that on at least thirty-nine separate occasions following the traffic stop by the Colorado State Police, MDI continued its shipment of caseload quantities of pseudoephedrine to business establishments operate by Suhail Issa and/or Mike Yako. Included among these transactions were numerous shipments of listed chemicals to "smoke shops" in Colorado. At least three of the transactions occurred after Ms. DeLuce assured DEA personnel that MDI no longer sold listed chemicals to these customers.

A further review of the investigative file reveals that MDI shipped pseudoephedrine products to a customer in St. George, Utah. Ms. DeLuce informed DEA personnel that MDI later determined that the customer was operating from a fictitious address. However, Ms. DeLuce admitted that MDI failed to report this suspicious transaction, as required by 21 CFR 1310.05(a)(1)

The Administrator of DEA made a preliminary finding that MDI has been responsible for the diversion of large quantities of pseudoephedrine into other than legitimate channels, in violation of 21 U.S.C. 830(b)(3) and 841(c0(2). The Administrator also found that despite MDI's awareness of

problems associated with pseudoepherdrine diversion, and laws pertaining to listed chemicals, the firm had continually and consistently violated DEA laws pertaining listed chemicals, thus resulting in large quantities of pseudoepherdrine being diverted to the illicit production of methamphetamine. Therefore, pursuant to 21 U.S.C. 824(d), the Administrator of DEA issued an immediate suspension of MDI's DEA Certificate of Registration.

As noted above, on September 26, 2001, DEA Diversion Investigators served the Order to Show Cause and Immediate Suspension on Ms. DeLuce at her residence in Dillon, Montana. On that same date, Ms. DeLuce and Mr. Uzan were arrested by DEA Special Agents and charged with offenses related to the unlawful distribution and possession of listed chemicals. At the time of her arrest, Ms. DeLuce agreed to answer questions regarding her sale of listed chemicals and customers who purchased these products from MDI.

Ms. DeLuce informed DEA agents that she knew her products were being sold "on the street." She further admitted that she knew Samer and Suhail Issa, as well as Fehmi Awad (Mr. Awad) were probably abusing pseudoephedrine (*i.e.*, "selling too much"). Ms. DeLuce further stated that she knew Mr. Awad was picking up pseudoephedrine products at four different stores, and Samer Issa was selling the products to illicit methamphetamine manufacturers for about a year. She further admitted knowing that certain customer accounts in Utah and Colorado where MDI shipped pseudoephedrine products were fronts for Samer Issa. Samer Issa reportedly set these stores up in the name of his brother as well as in the names of others.

Ms. DeLuce further informed to DEA agents that she knew pseudoephedrine was a "hot item" in Las Vegas because of the methamphetamine problem, and that 97% of MDI's customers were in that area. She estimated that her company made a profit from the sale of pseudoephedrine of between $700,000 to $800,000 a year at approximately $1,000 per case. Ms. DeLuce also disclosed that Samer Issa informed her that a case of pseudoephedrine sold for approximately $4000.00 on the street. Despite suspicions that her customers were selling MDI pseudoephedrine products to illicit methamphetamine cooks, Ms. DeLuce said that she essentially closed her eyes and ignored the actions of her customers. She further admitted that it was hard to stop selling a product that sold for $1,000 a case.

The Deputy Administrator's review of the investigative file reveals that on October 10, 2001, a Federal Grand Jury in the District of Nevada issued a twenty-nine count indictment against Ms. DeLuce, Mr. Uzan, as well as Samer and Suhail Issa, Fehmi Awad, Mike Yako, and two additional individuals. Among the charged offenses were conspiracy to distribute a listed chemical with knowledge or reasonable cause to believe it would be used to manufacture a controlled substance in violation of 21 U.S.C. 846 and 841(c)(2); possession of a listed chemical in violation of 21 U.S.C. 841(c)(2) and 18 U.S.C. 2; and unlawful use of a communication facility, namely telephones and telephone wires, in causing and facilitating the commission of a conspiracy, in violation of 21 U.S.C. 843(b). These matters are currently pending resolution.

The Deputy Administrator finds that the above-cited evidence provides ample grounds for an immediate suspension pursuant to 21 U.S.C. 824(d). These grounds also provide the basis for the revocation of MDI's DEA Certificate of Registration.

Pursuant to 21 U.S.C. 824(a), the Deputy Administrator may revoke a registration to distribute list I chemicals upon a finding that the registrant has committed such acts as would render his registration under section 823 inconsistent with the public interest as determined under that section. Pursuant to 21 U.S.C. 823(h), the following factors are considered in determining the public interest:

(1) Maintenance of effective controls against diversion of listed chemicals into other than legitimate channels;

(2) Compliance with applicable Federal, State, and local law;

(3) Any prior conviction record under Federal or State laws relating to controlled substances or to chemicals controlled under Federal or State law;

(4) Any past experience in the manufacture and distribution of chemicals; and

(5) Such other factors as are relevant to and consistent with the public health and safety.

As with the public interest analysis for practitioners and pharmacies pursuant to subsection (f) of section 823, these factors are to be considered in the disjunctive; the Deputy Administrator may rely on any one or combination of factors of factors, and may give each factor the weight he deems appropriate in determining whether a registration should be revoked or an application for registration denied. *See, e.g.* Energy Outlet, 64 FR 14269 (1999). *See* also Henry J. Schwartz, Jr., M.D. 54 FR 16422 (1989).

With respect to factor one, maintenance of effective controls against diversion, the Deputy Administrator finds substantial evidence in the investigative file that MDI, through its owners Isabelle DeLuce and Michael Uzan, participated in the unlawful diversion of pseudoephedrine having reasonable cause to believe that it would be used to manufacture illicit methamphetamien. Ms. DeLuce and Mr. Uzan transported bottles of pseudoephedrine in the trunk of their automobile and distributed these products to gas stations, smoke shops, mini marts and other convenience stores in the vicinity of Las Vegas, Nevada, an area known for large numbers of seizures involving clandestine methamphetamine laboratories. DEA previously denied the application of a retail establishment that sought registration as a distributor of list I chemicals when it was found through "past DEA investigations and experience" that the primary source for diversion of listed chemicals in areas where the applicant sought to distribute, specifically in Las Vegas, Nevada, were mini marts and other types of convenience stores. Sinbad Distributing, 67 FR 10232, 10233 (2002). *See e.g.* K.V.M. Enterprises, 67 FR 70968 (2002) (denial of application based in part upon information developed by DEA that the applicant proposed to sell listed chemicals to gas stations, and the fact that these establishments in turn have sold listed chemical products to individuals engaged in the illicit manufacture of methamphetamine).

Factor one is also relevant to MDI's distribution of large quantities of pseudoephedrine products to numerous establishments associated with Mike Yako and Saher Issa, despite knowledge on the part of Ms. DeLuce and Mr. Uzan that these establishments were fronts for obtaining listed chemicals for use in the illicit manufacture of methamphetamine. On numerous occasions, MDI failed to report to DEA the sale of an extraordinary quantity of listed chemicals or verify the existence and validity of a business entity ordering listed chemicals, as required by 21 CFR 1310.05(a) and 1310.07. MDI failed to notify DEA that its customer was stopped by law enforcement authorities, and had cases of pseudoephedrine taken from the trunk of an automobile which was seized. In addition, MDI failed to notify DEA that it had shipped pseudoephedrine products to a customer with a fictitious address.

Regarding factor two, the investigative file reveals that MDI failed to comply with applicable Federal laws by not

reporting the sale of extraordinary quantities of listed chemicals or uncommon method of delviery; verify the existence and validity of business entities; and distributed listed chemicals with knowledge that they were being diverted, as set forth in factor one above. MDI also failed to make required reports of suspicious listed chemical transactions pursuant to 21 U.S.C. 830(b)(1)(A), in that the firm distributed large quantities of pseudoephedrine tablets to smoke shops and other convenience stores in quantities that apparently exceeded legitimate demand for these products.

In addition, MDI's owners were notified by DEA Diversion Investigators of dangers surrounding the diversion of list I chemicals. Ms. DeLuce demonstrated her knowledge of this fact on several occasions, as evidenced by her statement to a law enforcement officer during a traffic stop that she was aware of the illicit uses of pseudoephedrine. Therefore, MDI's distribution of large quantities of pseudoephedrine to smoke shops and convenience stores were in violation of 21 U.S.C. 841(d)(2) (2001), since its owners, by their own admission, knew that these products were being diverted to the illicit manufacture of methamphetamine. *See, e.g.* Ace Wholesale & Trading Co., 67 FR 12574, 12576 (2002).

The Deputy Administrator also finds factor two applicable to MDI's failure to notify DEA of the circumstances surrounding the traffic stop of its customers in the State of Colorado, and the seizure of MDI pseudoephedrine products that were being transported in the customer's automobile. Factor two is also applicable to the criminal indictment by a Federal Grand Jury of Ms. DeLuce, Mr. Uzan, as well as several individuals who purchased pseudoephedrine products from MDI. These charges stem from allegations regarding the unlawful distribution and possession of listed chemicals, and are pending resolution.

Notwithstanding the pending criminal charges facing its owners, with respect to factor three, there is no evidence in the investigative file that MDI, Ms. DeLuce or Mr. Uzan have any prior conviction record under Federal or State laws relating to controlled substances or chemicals.

With respect to factor four, past experience in the manufacture and distribution of chemicals, the Deputy Administrator finds substantial evidence in the investigative file that Ms. DeLuce and Mr. Uzan failed to maintain adequate controls in distributing pseudoephedrine products, and actively participated in the unlawful trafficking of this listed chemical knowing that it was being diverted to the manufacture of methamphetamine, as set forth above under factors one and two.

With respect to factor five, such other factors relevant to and consistent with the public safety, the Deputy Administrator finds substantial evidence in the investigative file that the owners of MDI cannot be entrusted with the responsibilities inherent in a DEA registration. Ms. DeLuce and Mr. Uzan distributed large quantities of pseudoephedrine to locations not typically associated with large-scale transactions involving these over-the-counter products (*i.e.*, small retailers of tobacco products). DEA's has obtained information that MDI pseudoephedrine products have been found at numerous clandestine settings.

In light of these events, the Deputy Administrator finds it particularly disturbing that MDI's owners were aware that their pseudoephedrine products were being diverted to illicit uses, but chose to ignore this fact, apparently in the interest of financial gain. Ms. DeLuce and Mr. Uzan were so cavalier and reckless in their quest for profit that they shipped caseloads quantities of pseudoephedrine tablets to non-existent business locations. Such conduct on the part of a DEA registrant is unacceptable, and lends further support to the revocation of a DEA Certificate of Registration.

Ms. DeLuce also demonstrated a lack of candor in her dealings with DEA personnel. On May 24, 2001, Ms. DeLuce informed DEA Diversion Investigators that MDI limited its sale of pseudoephedrine to its customers to one case (or 144 bottles containing 120 tablets) per month. However, Ms. DeLuce's statements are not corroborated by DEA's investigative findings:

The investigative file reveals that in October 2000, MDI sold caseload quantities of pseudoephedrine to Mike's Smoke Shop (2923 North Avenue location) on three occasions; in 2000, during the months of September, November and December, MDI sold caseload quantities to Mike's Smoke Shop (1010½ North 5th Street location) on three separate occasions. In March 2001, MDI shipped caseload quantities of pseudoephedrine to that same location on four occasions; in October 2000, MDI sold caseload quantities of pseudoephedrine to Paradise Smoke, Special Smoke Shop and Special Smoke Shop on four separate occasions for each store. MDI also sold caseload quantities of pseudoephedrine to Special Smoke Shop on four occasions in March 2001, including two caseloads that were sent within two days of one another.

Ms. DeLuce further informed DEA Diversion Investigators that MDI suspended all sales of pseudoephedrine products to any retail establishment affiliated with Suhail Issa and Mike Yako as a result of the aforementioned traffic stop in Colorado. She further represented that the smoke shop establishments operated by Suhail Issa and Mr. Yako in the State of Colorado had closed. Despite Ms. DeLuce's representations, DEA obtained information that MDI continued its sale of pseudoephedrine products to establishments operated by Suhail Issa and Mr. Yako in the State of Colorado following the March 18, 2001, traffic stop. At least three of the transactions took place after Ms. DeLuce provided assurances to DEA personnel that she had discontinued the sale of listed chemicals to Suhail Issa and Mr. Yako.

The Deputy Administrator finds this lack of candor, taken together with the registrant's disregard of laws and regulations pertaining to a DEA registration to distribute listed chemicals, makes questionable MDI and its owners's commitment to the DEA statutory and regulatory requirements designed to protect the public from the diversion of listed chemicals. Seaside Pharmaceutical Co., 67 FR 12580 (2002); Aseel, Incorporated, Wholesale Division, 66 FR 35459 (2001); Terrence E. Murphy, M.D., 61 FR 2841 (1996).

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that DEA Certificate of Registration, 0046291EY, previously issued to MDI Pharmaceuticals, be, and it hereby is, revoked. The Deputy Administrator further orders that any pending applications for renewal or modification of said registration be, and they hereby are, denied. This order is effective February 27, 2003.

Dated: January 2, 2003.

John B. Brown, III,

Deputy Administrator.

[FR Doc. 03–1915 Filed 1–27–03; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacture of Controlled Substances Notice of Registration

By Notice dated June 18, 2002, and published in the **Federal Register** on

July 10, 2002, (67 FR 45765), Roche Diagnostics Corporation, ATTN: Regulatory Compliance, 9115 Hague Road, Indianapolis, Indiana 46250, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Lysergic acid diethylamide (7315).	I
Tetrahydrocannabinols (7370).	I
Alphamethadol (9605) ..	I
Phencyclidine (7471)	II
Benzoylecgonine (9180)	II
Methadone (9250)	II
Morphine (9300)	II

Roche Diagnostics Corporation plans to manufacture small quantities of the above listed controlled substances for incorporation in drug of abuse detection kits.

No comments or objections have been received. DEA has considered the factors in Title 21, U.S.C., § 823(a) and determined that the registration of Roche Diagnostics Corporation is consistent with the public interest at this time. DEA has investigated Roche Diagnostics Corporation on a regular basis to ensure that the company's continued registration is consistent with the public interest. These investigations have included inspection and testing of the company's physical security systems, audits of the company's records, verification of the company's compliance with state and local laws, and a review of the company's background and history., Therefore, pursuant to 21 U.S.C. 823 and 28 CFR 0.100 and 0.104, the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Dated: January 6, 2003.

Laura M. Nagel,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 03–1917 Filed 1–27–03; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

January 17, 2003.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of this ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation contact Darrin King on 202–693–4129 or E-Mail: *King-Darrin@dol.gov.*

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for OSHA, Office of Management and Budget, Room 10235, Washington, DC 20503 (202–395–7316), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Agency: Occupational Safety and Health Administration (OSHA).

Type of Review: Extension of a currently approved collection.

Title: Temporary Labor Camps.

OMB Number: 1218–0096.

Affected Public: Business or other for-profit; farms, Federal Government; and State, Local, or Tribal Government.

Frequency: On occasion.

Type of Responses: Reporting.

Number of Respondents: 863.

Annual Responses: 863.

Average Response Time: 5 minutes.

Annual Burden Hours: 69.

Total Annualized Capital/Startup Costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $0.

Description: 29 CFR 1910.142(1) requires temporary labor camp superintendents to report immediately to the local health officer the name and address of any individual in the camp known to have or suspected of having a communicable disease or suspected food poisoning, or an unusual prevalence of any illness in which fever, diarrhea, sore throat, vomiting or jaundice is a prominent symptom. The information is used to limit the incidence of communicable disease among temporary labor camp residence.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 03–1850 Filed 1–27–03; 8:45 am]

BILLING CODE 4510–13–M

DEPARTMENT OF LABOR

Office of the Secretary

Bureau of International Labor Affairs; Request for Information Concerning Labor Rights in Singapore and Its Laws Governing Exploitative Child Labor

AGENCIES: Office of the Secretary, Labor; Office of the United States Trade Representative and Department of State.

ACTION: Request for public comments.

SUMMARY: This notice is a request for public comments to assist the Secretary of Labor, the United States Trade Representative and the Secretary of State in preparing reports regarding labor rights in Singapore and describing the extent to which Singapore has in effect laws governing exploitative child labor. The Trade Act of 2002 requires reports on these issues and others when the President intends to use trade promotion authority procedures in connection with legislation approving and implementing a trade agreement. Negotiators for the United States and Singapore announced that they approved the elements of such an agreement on November 19, 2002. The President assigned the functions of preparing reports regarding labor rights and the existence of laws governing exploitative child labor to the Secretary of Labor, in consultation with the Secretary of State and the United States Trade Representative. The Secretary of Labor further assigned these functions to the Secretary of State and United States Trade Representative.

DATES: Public comments should be received no later than 5 p.m. February 27, 2003.

ADDRESSES: Persons submitting comments are strongly advised to make such submissions by electronic mail to the following address: *FRFTASINGAPORE@dol.gov*. Submissions by facsimile may be sent to: Betsy White at the Office of International Economic Affairs, Bureau of International Labor Affairs (202) 693–4851.

FOR FURTHER INFORMATION CONTACT: For procedural questions regarding the submissions please contact Betsy White, Bureau of International Labor Affairs, Office of International Economic Affairs, at (202) 693–4919, facsimile (202) 693–4851. This is not a toll-free number. Substantive questions concerning the labor rights report and/or the report on Singapore's laws governing exploitative child labor should be addressed to Jorge Perez-Lopez, Office of International Economic Affairs, Bureau of International Labor Affairs, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, telephone (202) 693–4883.

SUPPLEMENTARY INFORMATION:

I. Background

The Trade Act of 2002 (Pub. L. 107–210) ("the Trade Act") sets forth special procedures (Trade Promotion Authority) for approval and implementation of Agreements subject to meeting conditions and requirements in the Act. Division B of the Trade Act, entitled the Bipartisan Trade Promotion Authority Act of 2002, includes negotiating objectives and a listing of priorities for the President to promote in order to "address and maintain United States competitiveness in the global economy" in pursuing future trade agreements. 19 U.S.C. 3802(a)–(c). The President delegated several of the functions in section 3802(c) to the Secretary of Labor. (E.O. 13277). These include the functions set forth in section 2102(c)(8), which requires that the President "in connection with any trade negotiations entered into under this Act, submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate a meaningful labor rights report of the country, or countries, with respect to which the President is negotiating * * *" and the function in section 2102(c)(9), which requires that the President "with respect to any trade agreement which the President seeks to implement under trade authorities procedures, submit to the Congress a report describing the extent to which the country or countries that are parties to the agreement have in effect laws governing exploitative child labor."

II. Information Sought

Interested parties are invited to submit written information as specified below to be taken into account in drafting the required reports. Materials submitted should be confined to the specific topics of the reports. In particular, agencies are seeking written submissions on the following topics:

1. Singapore's labor laws, including laws governing exploitative child labor, and Singapore's implementation and enforcement of such laws and regulations;
2. The situation in Singapore with respect to core labor standards;
3. Steps taken by Singapore to comply with International Labor Organization Convention 182 on the worst forms of child labor; and
4. The nature and extent, if any, of exploitative child labor in Singapore.

Section 2113(6) of the Trade Act defines "core labor standards" as:

(A) The right of association;
(B) The right to organize and bargain collectively;
(C) A prohibition on the use of any form of forced or compulsory labor;
(D) A minimum age for the employment of children; and
(E) Acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health.

III. Requirements for Submissions

To ensure prompt and full consideration of submissions, we strongly recommend that interested persons submit comments by electronic mail to the following e-mail address: *FRFTASINGAPORE@dol.gov*. Persons making submissions by e-mail should use the following subject line: "Singapore: Labor Rights and Child Labor Reports." Documents should be submitted in WordPerfect, MSWord, or text (.TXT) format. Supporting documentation submitted as spreadsheets is acceptable in Quattro Pro or Excel format. Persons who make submissions by e-mail should not provide separate cover letters; information that might appear in a cover letter should be included in the submission itself. Similarly, to the extent possible, any attachments to the submission should be included in the same file as the submission itself, and not as separate files. Written comments will be placed in a file open to public inspection at the Department of Labor, Room S–5317, 200 Constitution Avenue, NW., Washington DC and in the USTR Reading Room in Room 3 of the annex of the Office of the USTR, 1724 F Street, NW., Washington, DC 20508. An appointment to review the file at the Department of Labor may be made by contacting Betsy White at (202) 693–4919. An appointment to review the file at USTR may be made by calling (202) 395–6186. The USTR Reading Room is generally open to the public from 10 a.m.–12 noon and 1–4 p.m. Monday through Friday. Appointments must be scheduled at least 48 hours in advance.

Signed at Washington, DC this 22nd day of January, 2003.

Michael A. Magan,

Associate Deputy Under Secretary for International Affairs.

[FR Doc. 03–1851 Filed 1–27–03; 8:45 am]

BILLING CODE 4510–28–P

DEPARTMENT OF LABOR

Occupational Safety And Health Administration

Advisory Committee on Construction Safety and Health; Notice of Open Meeting

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice of a meeting of the Advisory Committee on Construction Safety and Health (ACCSH).

SUMMARY: ACCSH will meet February 13, 2003, in Rosemont, Illinois. This meeting is open to the public.

TIME AND DATE: ACCSH will meet from 8:30 a.m. to 5 p.m., Thursday, February 13.

PLACE: ACCSH will meet at the Hyatt Regency O'Hare, 9300 West Bryn Mawr Avenue, Rosemont, Illinois.

FOR FURTHER INFORMATION CONTACT: For general information about ACCSH and ACCSH meetings: Jim Boom, OSHA, Directorate of Construction, Room N–3476, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone 202–693–1839. For information about submission of comments, requests to speak, and the need for accommodations for the meeting: Veneta Chatmon, OSHA, Office of Public Affairs, Room N–3647, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone 292–693–1999.

Electonic copies of this Federal Register notice, as well as information about ACCSH workgroups and other relevant documents, are available at OSHA's Web page on the Internet at *http://www.osha.gov*.

SUPPLEMENTARY INFORMATION: ACCSH will meet February 13, 2003, in

Rosemont, Illinois. This meeting is open to the public. The agenda for this meeting includes:

- Update Region V—Mike Connors, Regional Administrator
- Remarks by the Assistant Secretary for the Occupational Safety and Health Administration, John L. Henshaw
- Directorate of Construction report
- Highway Work Zone Safety
- Subpart V—Power Transmission and Distribution
- Silica
- Hearing Conservation In Construction
- Assigned Protection Factors for Respirators
- Update—OSHA Training Institute
- Workgroup Reports
- Public Comment (During this period, any member of the public is welcome to address ACCSH about construction-related safety and health issues. See information below to request time to speak at the meeting.)

All ACCSH meetings are open to the public. An official record of the meeting will be available for public inspection at the OSHA Docket Office, Room N–2625, at the address above, telephone (202)–693–2350. Individuals needing special accommodations should contact Ms. Chatmon no later than February 3, 2003, at the address above.

Interested parties may submit written data, views or comments, preferably with 20 copies, to Ms. Chatmon, at the address above. OSHA will provide submissions received prior to the meeting to ACCSH members and will include each submission in the record of the meeting. Attendees may also request to make an oral presentation by notifying Veneta Chatmon before the meeting at the address above. The request must state the amount of time desired, the interest represented by the presenter (*e.g.*, the names of the business, trade association, government Agency), if any, and a brief outline of the presentation. The Chair of ACCSH may grant the request at his discretion and as time permits.

Authority: John L. Henshaw, Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice under the authority granted by section 7 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 656) section 107 of the Contract Work Hours and Safety Standards Act (Construction Safety Act) (40 U.S.C. 333), and Secretary of Labor's Order No. 5–2002 (67 FR 65008).

Signed at Washington, DC, this 21st day of January, 2003.

John L. Henshaw,

Assistant Secretary of Labor.

[FR Doc. 03–1852 Filed 1–27–03; 8:45 am]

BILLING CODE 4510–26–M

LEGAL SERVICES CORPORATION

Sunshine Act Meeting of the Board of Directors Committee on Provision for the Delivery of Legal Services

TIME AND DATE: The Committee on Provision for the Delivery of Legal Services of the Legal Services Corporation Board of Directors will meet on January 31, 2003. The meeting will begin at 9:00 a.m. and continue until the Committee concludes its agenda.

LOCATION: The Washington Court Hotel, 525 New Jersey Avenue, NW., Washington, DC.

STATUS OF MEETING: Open.

MATTERS TO BE CONSIDERED:

1. Approval of agenda.
2. Approval of the minutes of the Committee's meeting of November 8, 2002.
3. *Strategic Directions 2002–2005:* Submission of the 2002 Progress Report for Programs by Randi Youells, Vice President for Programs.
4. Perspectives on GIS Mapping:

(a) Office of the Inspector General's report on the Mapping Evaluation—Legal Services in Georgia, by Leonard Koczur, David Maddox, and Ed Jurkevics.

(b) Report by Michael Genz and Glenn Rawdon of the Office of Program Performance (OPP) on LSC Technology Grants Designed to Enable Grantees to Use GIS Mapping in a Cost-Effective Manner.

5. *The State Planning Evaluation Instrument:* Design and Implementation Panel of Design Team Members with Bob Gross (OPP Senior Counsel), Bob Clyde (Executive Director, Ohio Legal Aid Foundation), Judge Juanita Bing Newton (Deputy Chief Administrative Judge for Justice Initiatives State of New York Unified Court System), and Neal Dudovitz (Executive Director, Neighborhood Legal Services of Los Angeles County).
6. The LSC Diversity Training Module/Next Steps Panel with Pat Hanrahan (Special Counsel to the Vice President for Programs), Wilhelm Joseph (Executive Director, Legal Aid Bureau, Inc.), and Gurdon H. Buck (Board Chair, Statewide Legal Services of Connecticut, Inc.).
7. Consider and act on other business.
8. Public comment.

CONTACT PERSON FOR INFORMATION: Victor M. Fortuno, Vice President for Legal Affairs, General Counsel & Corporate Secretary, at (202) 336–8800.

SPECIAL NEEDS: Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments. Individuals who have a disability and need an accommodation to attend the meeting may notify Elizabeth S. Cushing, at (202) 336–8800.

Dated: January 23, 2003.

Victor M. Fortuno,

Vice President for Legal Affairs, General Counsel and Corporate Secretary.

[FR Doc. 03–1989 Filed 1–24–03; 8:45 am]

BILLING CODE 7050–01–P

LEGAL SERVICES CORPORATION

Sunshine Act Meeting of the Board of Directors Operations and Regulations Committee

TIME AND DATE: The Operations and Regulations Committee of the Legal Services Corporation Board of Directors will meet on January 31, 2003. The meeting will begin at 1:00 p.m. and continue until the Committee concludes its agenda.

LOCATION: The Washington Court Hotel, 525 New Jersey Avenue, NW., Washington, DC.

STATUS OF MEETING: Open.

MATTERS TO BE CONSIDERED:

1. Approval of agenda.
2. Approval of the minutes of the Committee's meeting of November 8, 2002.
3. Consider and act on a draft Final Rule on 45 CFR Part 1611 (Financial Eligibility).
4. Consider and act on a draft Final Rule on 45 CFR Part 1602 (Procedure for Disclosure of Information under the Freedom of Information Act).
5. Consider and act on a draft Final Rule on 45 CFR Part 1604 (Outside Practice of Law).
6. Consider and act on issues relating to open rulemaking on 45 CFR Part 1626 (Restrictions on Legal Assistance to Aliens).
7. Staff report on Limited English Proficiency guidance notice and request for comments.
8. Consider and act on other business.
9. Public comment.

CONTACT PERSON FOR INFORMATION: Victor M. Fortuno, Vice President for Legal Affairs, General Counsel & Corporate Secretary, at (202) 336–8800.

SPECIAL NEEDS: Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments. Individuals who have a disability and need an accommodation to attend the meeting may notify Elizabeth S. Cushing, at (202) 336–8800.

Dated: January 23, 2003.

Victor M. Fortuno,

Vice President for Legal Affairs, General Counsel and Corporate Secretary.

[FR Doc. 03–1990 Filed 1–24–03; 8:45 am]

BILLING CODE 7050–01–P

LEGAL SERVICES CORPORATION

Sunshine Act Meeting of the Board of Directors Finance Committee

TIME AND DATE: The Finance Committee of the Legal Services Corporation Board of Directors will meet on January 31, 2003. The meeting will begin at 3:15 p.m. and continue until the Committee concludes its agenda.

LOCATION: The Washington Court Hotel, 525 New Jersey Avenue, NW, Washington, DC.

STATUS OF MEETING: Open.

MATTERS TO BE CONSIDERED:

1. Approval of agenda.
2. Approval of the minutes of the Committee's meeting of November 8, 2002.
3. Report on LSC's Temporary Operating Budget, Expenses and Other Funds Available through December 31, 2002.
4. Consider and act on amendments to the 403(b) Thrift Plan for Employees of LSC.
5. Consider and act on amendments to LSC's Flexible Spending Account.
6. Consider and act on other business.
7. Public comment.

CONTACT PERSON FOR INFORMATION: Victor M. Fortuno, Vice President for Legal Affairs, General Counsel & Corporate Secretary, at (202) 336–8800.

SPECIAL NEEDS: Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments. Individuals who have a disability and need an accommodation to attend the meeting may notify Elizabeth S. Cushing, at (202) 336–8800.

Dated: January 23, 2003.

Victor M. Fortuno,

Vice President for Legal Affairs, General Counsel & Corporate Secretary.

[FR Doc. 03–1991 Filed 1–24–03; 8:45 am]

BILLING CODE 7050–01–P

LEGAL SERVICES CORPORATION

Sunshine Act Meeting of the Board of Directors

TIME AND DATE: The Board of Directors of the Legal Services Corporation will meet on February 1, 2003. The meeting will begin at 9 a.m. and continue until conclusion of the Board's agenda.

LOCATION: The Washington Court Hotel, 525 New Jersey Avenue, NW, Washington, DC.

STATUS OF MEETING: Open, except that a portion of the meeting may be closed pursuant to a vote of the Board of Directors to hold an executive session. At the closed session, the Corporation's General Counsel will report to the Board on litigation to which the Corporation is or may become a party, and the Board may act on the matters reported. The closing is authorized by the relevant provisions of the Government in the Sunshine Act [5 U.S.C. 552b(c) (10)] and the corresponding provisions of the Legal Services Corporation's implementing regulation [45 CFR 1622.5(h)]. A copy of the General Counsel's Certification that the closing is authorized by law will be available upon request.

MATTERS TO BE CONSIDERED:

Open Session

1. Approval of agenda.
2. Approval of the minutes of the Board's meeting of November 9, 2002.
3. Approval of the minutes of the Executive Session of the Board's meeting of November 9, 2002.
4. Approval of the Board's Special Session on Strategic Directions meeting of November 8, 2002.
5. Approval of the Board's telephonic meeting of November 25, 2002.
6. Chairman's Report.
7. Members' Report.
8. Acting Inspector General's Report.
9. President's Report.
10. Consider and act on the report of the Board's Committee on Provision for the Delivery of Legal Services.
11. Consider and act on the report of the Board's Operations and Regulations Committee.
12. Consider and act on the report of the Board's Finance Committee.
13. Consider and act on the Board's 2002 Annual Performance Reviews Committee's report on the annual evaluation of the Corporation's President and Acting Inspector General.
14. Consider and act on possible dissolution of the Board's 2002 Annual Performance Reviews Committee.
15. Consider and act on contract renewals for LSC Vice Presidents Randi Youells, Mauricio Vivero, and Victor Fortuno.
16. Consider and act on the Board's 2003 meeting schedule.

Closed Session

17. Briefing [1] by the Inspector General on the activities of the Office of Inspector General.
18. Consider and act on the Office of Legal Affairs' report on potential and pending litigation involving LSC.

Open Session

19. Consider and act on other business.
20. Public Comment.

CONTACT PERSON FOR INFORMATION: Victor M. Fortuno, Vice President for Legal Affairs, General Counsel & Secretary of the Corporation, at (202) 336–8800.

SPECIAL NEEDS: Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments. Individuals who have a disability and need an accommodation to attend the meeting may notify Elizabeth S. Cushing, at (202) 336–8800.

Dated: January 23, 2003.

Victor M. Fortuno,

Vice President for Legal Affairs, General Counsel & Corporate Secretary.

[FR Doc. 03–1992 Filed 1–24–03; 8:45 am]

BILLING CODE 7050–01–P

LEGAL SERVICES CORPORATION

Sunshine Act Meeting of the Board of Directors Ad Hoc Committee on Performance Reviews of the President and Inspector General

TIME AND DATE: The Ad Hoc Committee on Performance Reviews of the President and Acting Inspector General of the Legal Services Corporation's Board of Directors will meet on January 31, 2003. The meeting will begin at 4:30 p.m. and continue until conclusion of the committee's agenda.

LOCATION: The Washington Court Hotel, 525 New Jersey Avenue, NW, Washington, DC.

STATUS OF MEETING: Except for approval of the committee's agenda and any miscellaneous business that may come before the committee, the meeting will be closed to the public. The closing is authorized by the relevant provisions of the Government in the Sunshine Act [5 U.S.C. 552b(c)(2) & (6)] and the corresponding provisions of the Legal Services Corporation's implementing regulation [45 CFR 1622.5(a) & (e)]. A copy of the General Counsel's Certification that the closing is authorized by law will be available upon request.

MATTERS TO BE CONSIDERED:

[1] Any portion of the closed session consisting solely of staff briefings does not fall within the Sunshine Act's definition of the term "meeting" and, therefore, the requirements of the Sunshine Act do not apply to any such portion of the closed session. 5 U.S.C. 552(b)(a)(2) and (b). See also 45 CFR § 1622.2 & 1622.3

Open Session

1. Approval of agenda.
2. Approval of the minutes of the Committee's meeting of November 9, 2002.

Closed Session

3. Consider and act on recommendations to the Board of Directors on the annual evaluation of the President for FY 2002.
4. Consider and act on recommendations to the Board of Directors on the annual evaluation of the Acting Inspector General for FY 2002.

Open Session

5. Consider and act on other business.
6. Public comment.

CONTACT PERSON FOR INFORMATION: Victor M. Fortuno, Vice President for Legal Affairs, General Counsel and Corporate Secretary, at (202) 336–8800.

SPECIAL NEEDS: Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments. Individuals who have a disability and need an accommodation to attend the meeting may notify Elizabeth S. Cushing at (202) 336–8800.

Dated: January 23, 2003.

Victor M. Fortuno,

Vice President for Legal Affairs, General Counsel, and Corporate Secretary.

[FR Doc. 03–1993 Filed 1–24–03; 8:45 am]

BILLING CODE 7050–01–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Meetings of Humanities Panel

AGENCY: The National Endowment for the Humanities.

ACTION: Additional notice of meetings.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, as amended), notice is hereby given that the following meetings of the Humanities Panel will be held at the Old Post Office, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Daniel Schneider, Advisory Committee Management Officer, National Endowment for the Humanities, Washington, DC 20506; telephone (202) 606–8322. Hearing-impaired individuals are advised that information on this matter may be obtained by contacting the Endowment's TDD terminal on (202) 606–8282.

SUPPLEMENTARY INFORMATION: The proposed meetings are for the purpose of panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by the grant applicants. Because the proposed meetings will consider information that is likely to disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential and/or information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee meetings, dated July 19, 1993, I have determined that these meetings will be closed to the public pursuant to subsections (c) (4), and (6) of section 552b of title 5, United States Code.

1. *Date:* February 6, 2003.

Time: 8:30 a.m. to 5 p.m.

Room: 415.

Program: This meeting will review applications for Humanities Projects in Media, submitted to the Division of Public Programs at the November 1, 2002, deadline.

Daniel Schneider,

Advisory Committee, Management Officer.

[FR Doc. 03–1892 Filed 1–27–03; 8:45 am]

BILLING CODE 7536–01–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Meeting of the National Museum Services Board

AGENCY: Institute of Museum and Library Services.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the agenda of a forthcoming meeting of the National Museum Services Board. This notice also describes the function of the board. Notice of this meeting is required under the Sunshine in Government Act and regulations of the Institute of Museum and Library Services, 45 CFR 1180.84.

Time/Date: 9 a.m.–12 p.m. on Thursday, January 30, 2003.

Status: Open.

ADDRESSES: The JW Marriott Hotel, Salon J and K, 1331 Pennsylvania Avenue, NW., Washington, DC, (202) 393–2000.

FOR FURTHER INFORMATION CONTACT: Elizabeth Lyons, Special Assistant to the Director, Institute of Museum and Library Services, 1100 Pennsylvania Avenue, NW., Room 510, Washington, DC 20506, (202) 606–4649.

SUPPLEMENTARY INFORMATION: The National Museum Services Board is established under the Museum Services Act, Title II of the Arts, Humanities, and Cultural Affairs Act of 1976, Public Law 94–462. The Board has responsibility for the general policies with respect to the powers, duties, and authorities vested in the Institute under the Museum Services Act.

The meeting on Thursday, January 30, 2003 will be open to the public. If you need special accommodations due to a disability, please contact: Institute of Museum and Library Services, 1100 Pennsylvania Avenue, NW., Washington, DC 20506–(202) 606–8536–TDD (202) 606–8636 at least seven (7) days prior to the meeting date.

Agenda

86th Meeting of the National Museum Services Board in Salon J and K of The JW Marriott Hotel, 1331 Pennsylvania Avenue, NW., Washington, DC, on Thursday, January 30, 2003.

9 am–12 pm

I. Chairperson's Welcome
II. Approval of Minutes from the 85th NMSB Meeting
III. Director's Welcome and Remarks
IV. Overview of the President's Committee on the Arts and Humanities, *Henry Moran, Executive Director*
V. Staff Updates
VI. 21st Century Learner Dialogue
  (a) Presentation, *Beverly Sheppard, President of Oil Sturbridge Village*
  (b) Service Organization Response, *Ed Able, President and CEO, American Association of Museums Janet Rice Elman, Executive Director, Association of Children's Museums*
VII. Status of Museum/School Partnership
VIII. Board Discussion
IX. Closing Remarks

Dated: January 23, 2003.

Teresa LaHaie,

Administration Officer, National Foundation on the Arts and Humanities, Institute of Museum and Library Services.

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NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–335 and 389]

Saint Lucie Nuclear Plant; Notice of Consideration of Issuance of Amendments to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. DPR–67 and NPF–16, issued to Florida Power & Light (FPL) for operation of the Saint Lucie Units 1 and 2 located in Saint Lucie County, Florida. The proposed amendments would revise the Technical Specifications (TS) section 5.6, "Design Features—Fuel Storage," to include the design of a new cask pit spent fuel storage rack for each unit to increase the allowable spent fuel wet storage capacity at both units and include the description of Boral™ as the neutron absorbing material used in the new cask pit storage racks. The proposal also revises the spent fuel pool (SFP) thermal-hydraulic analyses for core offload times of 120 hours after reactor shutdown and for a partial core offload as the normal offload condition. In addition the proposal includes a change in FPL's commitments regarding the Unit 2 spent fuel cooling system design basis described in the Updated Final Safety Analysis Report (UFSAR). A current UFSAR commitment regarding the Unit 2 peak SFP temperature limit during full core offloads with minimum SFP cooling will be replaced with a new design basis.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in title 10 of the Code of Federal Regulations (10 CFR), section 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Would operation of the facility in accordance with the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

No. The proposed change to increase the spent fuel storage capacity with cask area racks was evaluated for impact on the following previously evaluated events:

a. A fuel handling accident (FHA)
b. A heavy load drop into the cask area
c. A loss of SFP cooling
d. A stored fuel criticality event
e. A seismic event

The probability of a fuel handling accident is not significantly increased by the proposed change, because the same equipment (*e.g.*, the spent fuel handling machine) and procedures will be used to handle fuel assemblies and the frequency of fuel movement will be essentially the same, with or without cask area racks. The FHA radiological consequences are not significantly increased because the source term of a single fuel assembly will remain unchanged, and the cask area racks will be installed at the same water depth as the existing SFP racks, with the same iodine decontamination factors assumed in the FHA analysis. The structural consequences of dropping a fuel assembly on a cask area rack were also found to be no more severe than those in the current FHA analysis.

The probability and consequences of a heavy load drop of the cask area rack are bounded by the existing cask drop analyses. The consequences are not adversely affected because a fuel transfer cask is much heavier than the empty rack. The probability of such an event is not adversely affected because adding a cask area rack will postpone the need for cask handling operations by extending the spent fuel storage. The cask area rack will be removed prior to any cask handling operations, such that a cask drop scenario onto a cask area rack loaded with fuel is not credible. Therefore, the probability and the consequences of a heavy load drop in the cask area are not significantly increased.

The probability of a loss of SFP cooling is unaffected and its consequences are not significantly increased with cask area racks installed. The addition of a cask area rack has an insignificant impact on the total SFP decay heat load. With the cask area rack installed, loss of forced cooling results in a sufficient time-to-boil for the operator to recognize the condition and establish SFP makeup to compensate for water lost due to pool bulk boiling, and thereby maintain a sufficient water blanket over the stored spent fuel.

The probability and consequences of a stored fuel criticality event are not increased by the addition of a cask area rack. The reactivity analysis for the new racks demonstrates the storage configuration remains subcritical for the worst-case fuel mispositioning event, with credit for soluble boron.

The probability of a seismic event is unaffected and its consequences are not significantly increased with cask area racks installed, because the structural analysis of the new racks demonstrates that the fuel storage function of the rack is unimpaired by loading combinations including seismic motion, and there is no adverse seismic-induced interaction between the rack and adjacent structures.

Based on the above, it is concluded that the proposed amendments do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Would operation of the facility in accordance with the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

No. The proposed change to add a cask area rack to each unit does not alter the equipment credited in the mitigation of design basis accidents, nor does the proposed change affect any of the important parameters required to ensure the safe storage of spent fuel. A new rack material (Boral™) is introduced into the pool under this change, but based on its operating history in SFPs, there are no mechanisms that create a new or different kind of accident.

The potential for dropping the new rack during installation or removal is bounded by the existing analysis for dropping a spent fuel transfer cask into the cask area. The same equipment (*e.g.*, the spent fuel handling crane) and procedures will be used to handle fuel assemblies for the new cask area racks as are used for existing spent fuel storage. The fuel storage configuration in the new racks will be similar to the configuration in the existing SFP storage racks, and a fuel drop or mispositioning event in the new racks does not represent a new or different kind of accident from fuel handling and mispositioning events previously evaluated. Therefore, the proposed amendments will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Would operation of the facility in accordance with the proposed amendment involve a significant reduction in a margin of safety?

No. The effect of the proposed change on current margins of safety was evaluated for spent fuel storage functionality and criticality, spent fuel and SFP cooling, and structural integrity of the spent fuel pool. The design of the new racks uses proven technology which preserves the proper safety margins for spent fuel storage to provide a coolable and subcritical geometry under both normal and abnormal/accident conditions. The design complies with current regulatory guidelines and the ANSI [American National Standards Institute] standards, including 10 CFR 50 Appendix A General Design Criterion (GDC) 62, NUREG–0800 section 9.1.2, the OT Position for Review and Acceptance of Spent Fuel Storage and Handling Applications, Regulatory Guide 1.13, and ANSI/ANS [American Nuclear Society] 8.17. Handling the racks in accordance with the defense-in-depth approach of NUREG–0612 with temporary lift items designed to ANSI N14.6 preserves the proper margin of safety to preclude a heavy load drop in the cask area.

The cask area rack criticality analysis demonstrates that the neutron multiplication factor is maintained below 1.0, without credit for soluble boron, and less than or equal to 0.95 when credit is taken for the 650 ppm [parts per million] of soluble boron required

for the existing SFP storage racks. The structural analyses for the new racks and adjacent structures show that the rack and surrounding structures are unimpaired by loading combinations during seismic motion, and there is no adverse seismic-induced interaction between the rack and adjacent racks or structures. Based on these evaluations, operating the facility with the proposed amendments do not involve a significant reduction in any margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendments until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendments before the expiration of the 30-day notice period, provided that its final determination is that the amendments involve no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, Public Fire Area O1–F21, 11555 Rockville Pike (first floor), Rockville, Maryland.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By February 27, 2003, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714,[1] which is available at the Commission's PDR, located at One White Flint North, Public File Area 01–F21, 11555 Rockville Pike, Rockville, Maryland, or electronically on the Internet at the NRC Web site *http://www.nrc.gov/reading-rm/doc-collections/cfr/*. If there are problems in accessing the document, contact the PDR Reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov*. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene.

[1] The most recent version of title 10 of the Code of Federal Regulations, published January 1, 2002, inadvertently omitted the last sentence of 10 CFR 2.714(d) and subparagraphs (d)(1) and (2), regarding petitions to intervene and contentions. For the complete, corrected text of 10 CFR 2.714(d), please *see* 67 FR 20884 (April 29, 2002).

Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's PDR, located at One White Flint North, Public File Area O1–F21, 11555 Rockville Pike, Rockville, Maryland, by the above date. Because of the continuing disruptions in delivery of mail to United States Government offices, it is requested that petitions for leave to intervene and requests for hearing be transmitted to the Secretary of the Commission either by means of facsimile transmission to 301–415–1101 or by e-mail to *hearingdocket@nrc.gov*. A copy of the petition for leave to intervene and request for hearing should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and because of continuing disruptions in delivery of mail to United States Government offices, it is requested that copies be transmitted either by means of facsimile transmission to 301–415–3725 or by e-mail to *OGCMailCenter@nrc.gov*. A copy of the request for hearing and petition for leave to intervene should also be sent to M.S. Ross, Attorney, Florida Power & Light, P.O. Box 14000, Juno Beach, Florida 33408–0420, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

The Commission hereby provides notice that this is a proceeding on an application for a license amendment falling within the scope of section 134 of the Nuclear Waste Policy Act of 1982 (NWPA), 42 U.S.C. 10154. Under section 134 of the NWPA, the Commission, at the request of any party to the proceeding, must use hybrid hearing procedures with respect to "any matter which the Commission determines to be in controversy among the parties."

The hybrid procedures in section 134 provide for oral argument on matters in controversy, preceded by discovery under the Commission's rules and the designation, following argument of only those factual issues that involve a genuine and substantial dispute, together with any remaining questions of law, to be resolved in an adjudicatory hearing. Actual adjudicatory hearings are to be held on only those issues found to meet the criteria of section 134 and set for hearing after oral argument.

The Commission's rules implementing section 134 of the NWPA are found in 10 CFR part 2, subpart K, "Hybrid Hearing Procedures for Expansion of Spent Fuel Storage Capacity at Civilian Nuclear Power Reactors" (published at 50 FR 41662 dated October 15, 1985). Under those rules, any party to the proceeding may invoke the hybrid hearing procedures by filing with the presiding officer a written request for oral argument under 10 CFR 2.1109. To be timely, the request must be filed within 10 days of an order granting a request for hearing or petition to intervene. The presiding officer must grant a timely request for oral argument. The presiding officer may grant an untimely request for oral argument only upon a showing of good cause by the requesting party for the failure to file on time and after providing the other parties an opportunity to respond to the untimely request. If the presiding officer grants a request for oral argument, any hearing held on the application must be conducted in accordance with the hybrid hearing procedures. In essence, those procedures limit the time available for discovery and require that an oral argument be held to determine whether any contentions must be resolved in an adjudicatory hearing. If no party to the proceeding timely requests oral argument, and if all untimely requests for oral argument are denied, then the usual procedures in 10 CFR part 2, subpart G apply.

For further details with respect to this action, see the application for amendment dated October 23, 2002, which is available for public inspection at the Commission's PDR, located at One White Flint North, Public File Area O1–F21, 11555 Rockville Pike, Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html*. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov*.

Dated in Rockville, Maryland, this 22nd day of January, 2003.

For the Nuclear Regulatory Commission.

Brendan T. Moroney,

Project Manager, Section 2, Project Directorate II, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

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NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–250 and 251]

Turkey Point Plant; Notice of Consideration of Issuance of Amendments to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. DPR–31 and DPR–41, issued to Florida Power & Light, for operation of the Turkey Point Plant, Units 3 and 4 located in Miami-Dade County, Florida.

The proposed amendments would increase the total spent fuel wet storage capacity for each unit, by adding a spent fuel storage rack in the cask area in each unit's spent fuel pool (SFP). Each rack will increase the respective unit's storage capacity by 131 fuel assemblies. The proposed license amendments also revise the location called out in the Design Features sections 5.6.1.1a and b of the Technical Specifications referring to Updated Final Safety Analysis Report Appendix 14D rather than referring to Westinghouse Report WCAP–14416–P.

Before issuance of the proposed license amendments, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in title 10 of the Code of Federal Regulations (10 CFR), § 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant

hazards consideration, which is presented below:

1. Would operation of the facility in accordance with the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

No. The proposed change to increase the spent fuel storage capacity with cask area racks was evaluated for impact on the following previously evaluated events:

a. A fuel handling accident (FHA)
b. A heavy load drop into the cask area
c. A loss of SFP cooling
d. A stored fuel criticality event
e. A seismic event

The probability of a fuel handling accident is not significantly increased by the proposed change, because the same equipment (*e.g.*, the spent fuel handling machine) and procedures will be used to handle fuel assemblies and the frequency of fuel movement will be essentially the same, with or without cask area racks. The FHA radiological consequences are not significantly increased because the source term of a single fuel assembly will remain unchanged, and the cask area racks will be installed at the same water depth as the existing SFP racks, with the same iodine decontamination factors assumed in the FHA analysis. The structural consequences of dropping a fuel assembly on a cask area rack were also found to be no more severe than those in the current FHA analysis.

The probability and consequences of a heavy load drop of the cask area rack are bounded by the existing cask drop analyses. The consequences are not adversely affected because a fuel transfer cask is much heavier than the empty rack. The probability of such an event is not adversely affected because adding a cask area rack will postpone the need for cask handling operations by extending the spent fuel storage. The cask area rack will be removed prior to any cask handling operations, such that a cask drop scenario onto a cask area rack loaded with fuel is not credible. Therefore, the probability and the consequences of a heavy load drop in the cask area are not significantly increased.

The probability of a loss of SFP cooling is unaffected and its consequences are not significantly increased with cask area racks installed. The addition of a cask area rack has an insignificant impact on the total SFP decay heat load. With the cask area rack installed, loss of forced cooling results in a sufficient time-to-boil for the operator to recognize the condition and establish SFP makeup to compensate for water lost due to pool bulk boiling, and thereby maintain a sufficient water blanket over the stored spent fuel.

The probability and consequences of a stored fuel criticality event are not increased by the addition of a cask area rack. The reactivity analysis for the new racks demonstrates the storage configuration remains subcritical for the worst-case fuel mispositioning event, with credit for soluble boron.

The probability of a seismic event is unaffected and its consequences are not significantly increased with cask area racks installed, because the structural analysis of the new racks demonstrates that the fuel storage function of the rack is unimpaired by loading combinations including seismic motion, and there is no adverse seismic-induced interaction between the rack and adjacent structures.

Based on the above, it is concluded that the proposed amendments do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Would operation of the facility in accordance with the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

No. The proposed change to add a cask area rack to each unit does not alter the equipment credited in the mitigation of design basis accidents, nor does the proposed change affect any of the important parameters required to ensure the safe storage of spent fuel. A new rack material (Boral™) is introduced into the pool under this change, but based on its operating history in SFPs, there are no mechanisms that create a new or different kind of accident.

The potential for dropping the new rack during installation or removal is bounded by the existing analysis for dropping a spent fuel transfer cask into the cask area. The same equipment (*e.g.*, the spent fuel handling crane) and procedures will be used to handle fuel assemblies for the new cask area racks as are used for existing spent fuel storage. The fuel storage configuration in the new racks will be similar to the configuration in the existing SFP storage racks, and a fuel drop or mispositioning event in the new racks does not represent a new or different kind of accident from fuel handling and mispositioning events previously evaluated. Therefore, the proposed amendments will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Would operation of the facility in accordance with the proposed amendment involve a significant reduction in a margin of safety?

No. The effect of the proposed change on current margins of safety was evaluated for spent fuel storage functionality and criticality, spent fuel and SFP cooling, and structural integrity of the spent fuel pool. The design of the new racks uses proven technology which preserves the proper safety margins for spent fuel storage to provide a coolable and subcritical geometry under both normal and abnormal/accident conditions. The design complies with current regulatory guidelines and the ANSI [American National Standards Institute] standards, including 10 CFR 50 Appendix A General Design Criterion (GDC) 62, NUREG–0800 section 9.1.2, the OT Position for Review and Acceptance of Spent Fuel Storage and Handling Applications, Regulatory Guide 1.13, and ANSI/ANS [American Nuclear Society] 8.17. Handling the racks in accordance with the defense-in-depth approach of NUREG–0612 with temporary lift items designed to [American National Standards Institute] ANSI N14.6 preserves the proper margin of safety to preclude a heavy load drop in the cask area.

The cask area rack criticality analysis demonstrates that the neutron multiplication factor is maintained below 1.0, without credit for soluble boron, and less than or equal to 0.95 when credit is taken for the 650 ppm [parts per million] of soluble boron required for the existing SFP storage racks. The structural analyses for the new racks and adjacent structures show that the rack and surrounding structures are unimpaired by loading combinations during seismic motion, and there is no adverse seismic-induced interaction between the rack and adjacent racks or structures. Based on these evaluations, operating the facility with the proposed amendments do not involve a significant reduction in any margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendments until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendments before the expiration of the 30-day notice period, provided that its final determination is that the amendments involve no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Documents may be examined, and/or copied for a fee, at the NRC's Public

Document Room (PDR), located at One White Flint North, Public File Area O1–F21, 11555 Rockville Pike, Rockville, Maryland.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By February 27, 2003, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714,[1] which is available at the Commission's PDR, located at One White Flint North, Public File Area O1–F21, 11555 Rockville Pike, Rockville, Maryland, or electronically on the Internet at the NRC Web site *http://www.nrc.gov/reading-rm/doc-collections/cfr/*. If there are problems in accessing the document, contact the Public Document Room Reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov*. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's PDR, located at One White Flint North, Public File Area O1–F21, 11555 Rockville Pike, Rockville, Maryland, by the above date. Because of the continuing disruptions in delivery of mail to United States Government offices, it is requested that petitions for leave to intervene and requests for hearing be transmitted to the Secretary of the Commission either by means of facsimile transmission to 301–415–1101 or by e-mail to *hearingdocket@nrc.gov*. A copy of the petition for leave to intervene and request for hearing should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and because of continuing disruptions in delivery of mail to United States Government offices, it is requested that copies be transmitted either by means of facsimile transmission to 301–415–3725 or by e-mail to *OGCMailCenter@nrc.gov*. A copy of the request for hearing and petition for leave to intervene should also be sent to M.S. Ross, Attorney, Florida Power & Light, P.O. Box 14000, Juno Beach, Florida 33408–0420, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

The Commission hereby provides notice that this is a proceeding on an application for a license amendment falling within the scope of section 134 of the Nuclear Waste Policy Act of 1982 (NWPA), 42 U.S.C. 10154. Under section 134 of the NWPA, the Commission, at the request of any party to the proceeding, must use hybrid hearing procedures with respect to "any matter which the Commission determines to be in controversy among the parties."

[1] The most recent version of title 10 of the Code of Federal Regulations, published January 1, 2002, inadvertently omitted the last sentence of 10 CFR 2.714(d) and subparagraphs (d)(1) and (2), regarding petitions to intervene and contentions. For the complete, corrected text of 10 CFR 2.714(d), please see 67 FR 20884 (April 29, 2002).

The hybrid procedures in section 134 provide for oral argument on matters in controversy, preceded by discovery under the Commission's rules and the designation, following argument of only those factual issues that involve a genuine and substantial dispute, together with any remaining questions of law, to be resolved in an adjudicatory hearing. Actual adjudicatory hearings are to be held on only those issues found to meet the criteria of section 134 and set for hearing after oral argument.

The Commission's rules implementing section 134 of the NWPA are found in 10 CFR part 2, subpart K, "Hybrid Hearing Procedures for Expansion of Spent Fuel Storage Capacity at Civilian Nuclear Power Reactors' (published at 50 FR 41662 dated October 15, 1985). Under those rules, any party to the proceeding may invoke the hybrid hearing procedures by filing with the presiding officer a written request for oral argument under 10 CFR 2.1109. To be timely, the request must be filed within 10 days of an order granting a request for hearing or petition to intervene. The presiding officer must grant a timely request for oral argument. The presiding officer may grant an untimely request for oral argument only upon a showing of good cause by the requesting party for the failure to file on time and after providing the other parties an opportunity to respond to the untimely request. If the presiding officer grants a request for oral argument, any hearing held on the application must be conducted in accordance with the hybrid hearing procedures. In essence, those procedures limit the time available for discovery and require that an oral argument be held to determine whether any contentions must be resolved in an adjudicatory hearing. If no party to the proceeding timely requests oral argument, and if all untimely requests for oral argument are denied, then the usual procedures in 10 CFR part 2, subpart G apply.

For further details with respect to this action, *see* the application for amendment dated November 26, 2002, which is available for public inspection at the Commission's PDR, located at One White Flint North, Public File Area O1–F21, 11555 Rockville Pike, Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html*. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov*.

Dated in Rockville, Maryland, this 21st day of January, 2003.

For the Nuclear Regulatory Commission.

Eva A. Brown,

Project Manager, Section 2, Project Directorate II, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 03–1861 Filed 1–27–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–277 and 50–278]

Exelon Generating Company, LLC; Peach Bottom Atomic Power Station, Units 2 and 3; Notice of Availability of the Final Supplement 10 to the Generic Environmental Impact Statement Regarding License Renewal for the Peach Bottom Atomic Power Station, Units 2 and 3

Notice is hereby given that the U.S. Nuclear Regulatory Commission (NRC) has published a final plant-specific Supplement 10 to the Generic Environmental Impact Statement (GEIS), NUREG–1437, regarding the renewal of operating licenses DPR–44 and DPR–56 for the Peach Bottom Atomic Power Station, Units 2 and 3, for an additional 20 years of operation. The Peach Bottom Atomic Power Station units are operated by Exelon Generating Company, LLC and PSEG Nuclear, LLC (Exelon). Peach Bottom Atomic Power Station is located primarily in Peach Bottom Township, York County, Pennsylvania. Possible alternatives to the proposed action (license renewal) include no action and reasonable alternative methods of power generation.

It is stated in section 9.3 of the report:

> Based on (1) the analysis and findings in the Generic Environmental Impact Statement for License Renewal of Nuclear Plants, NUREG–1437; (2) the Environmental Report submitted by Exelon; (3) consultation with Federal, State, and local agencies; (4) the staff's own independent review; and (5) the staff's consideration of public comments, the staff recommends that the Commission determine that the adverse environmental impacts of license renewal for Peach Bottom Units 2 and 3 are not so great that preserving the option of license renewal for energy planning decision makers would be unreasonable.

The final Supplement 10 to the GEIS is available electronically for public inspection in the NRC Public Document Room (PDR) located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, or from the Publicly Available Records (PARS) component of NRC's Agencywide Documents Access and Management System (ADAMS). ADAMS is accessible from the NRC Web site at *http://www.nrc.gov* (the Public Electronic Reading Room). Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the PDR reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov*.

FOR FURTHER INFORMATION CONTACT: Mr. Louis L. Wheeler, License Renewal and Environmental Impacts Program, Division of Regulatory Improvement Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Mr. Wheeler may be contacted at 301–415–1444 or by writing to: Louis L. Wheeler, U.S. Nuclear Regulatory Commission, MS O–12D3, Washington, DC 20555.

Dated in Rockville, Maryland, this 22nd day of January, 2003.

For the Nuclear Regulatory Commission.

Pao-Tsin Kuo,

Program Director, License Renewal and Environmental Impacts Program, Division of Regulatory Improvement Programs, Office of Nuclear Reactor Regulation.

[FR Doc. 03–1859 Filed 1–27–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 030–33507]

Research Medical Center Environmental Assessment and Finding of No Significant Impact; Exemption

The U.S. Nuclear Regulatory Commission is authorizing Research Medical Center, License No. 24–17998–02, an exemption to 10 CFR 35.615(f)(3), to permit the licensee to have a neurosurgeon physically present in place of an authorized user during the use of its gamma stereotactic radiosurgery unit.

Environmental Assessment

Identification of the Proposed Action

Research Medical Center has a United States Nuclear Regulatory Commission (NRC) license (License No. 24–17998–02) that authorizes the use of a gamma stereotactic radiosurgery (GSR) unit. The licensee has requested, in a letter dated September 20, 2002, that the NRC grant an exemption to 10 CFR 35.615(f)(3), which requires an authorized user and authorized medical

physicist to be physically present throughout all patient treatments with the GSR unit. This requirement became effective on October 24, 2002.

Research Medical Center has requested the exemption to allow a neurosurgeon to replace an authorized user if the following criteria is met: the neurosurgeon has received at least one full week of training at a formal training course for GSRs, including operation and emergency response; the neurosurgeon is working under the authorized user's supervision, and the neurosurgeon will be physically present in place of the authorized user once the treatment has been initiated. During patient treatment with the GSR unit, the authorized user will be immediately available and the substitution will not average more than 50% of the time. The authorized medical physicist will be present throughout all patient treatments.

Need for the Proposed Action

The exemption is needed so that Research Medical Center can continue to provide optimum medical treatment to its patients. The licensee indicates that without the exemption to 10 CFR 35.516(f)(3), GSR procedures would have to be periodically interrupted whenever it would be necessary to call the authorized user to attend to other responsibilities in the Radiation Oncology Department, which would not be conducive to timely completion of the procedure. The licensee states further that neurosurgeons are in large part responsible for the care of patients undergoing GSR, have completed the same course in GSR as the authorized users and are fully capable of handling any medical emergency, and are present during at least part of the treatment, and that the Radiation Oncology Department is separated from the GSR by a short enough distance such that an authorized user could respond quickly if necessary.

Environmental Impacts of the Proposed Action

The GSR sources are sealed sources and no material will be released into the environment. All the sources are contained within the unit, as verified by periodic spot checks performed by the licensee. The proposed action does not increase public radiation exposure. There will be no impact on the environment as a result of the proposed action.

Alternatives to the Proposed Action

As required by section 102(2)(E) of NEPA (42 U.S.C. 4322(2)(E)), possible alternatives to the final action have been considered. The alternatives are: (1) To deny the exemption request or (2) to require the licensee to provide another alternative method as a basis for granting the exemption. The alternative options would not produce a gain in protecting the human environment, and would negatively impact the licensee implementation of medical care to patients.

Alternative Use of Resources

No alternative use of resources was considered due to the reasons stated above.

Agencies and Persons Consulted

This proposed action was discussed with the State of Missouri.

Identification of Source Used

Letter from Research Medical Center, to U.S. Nuclear Regulatory Commission, Region III, dated September 20, 2002.

Finding of No Significant Impact

Based on the above environmental assessment, the Commission has concluded that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined that a finding of no significant impact is appropriate and preparation of an environmental impact statement is not warranted.

The licensee's letter is available for inspection, and/or copying for a fee, in the Region III Public Document Room, 801 Warrensville Road, Lisle, IL 60532. The document is available electronically for public inspection from the Publically Available Records (PARS) component of NRC's Documents Access and Management System (ADAMS), accession number ML030220477. ADAMS is accessible from the NRC Web site at *http://www.nrc.gov/reading-rm/adams.html*.

Dated in Rockville, Maryland, this 22nd day of January, 2003.

For the Nuclear Regulatory Commission.

Frederick Brown,

Section Chief, Material Safety and Inspection Branch, Division of Industrial and Medical Nuclear Safety, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 03–1860 Filed 1–27–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meeting

AGENCY: Nuclear Regulatory Commission.

DATE: Weeks of January 27, February 3, 10, 17, 24, March 3, 2003.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and closed.

MATTERS TO BE CONSIDERED:

Week of January 27, 2003

There are no meetings scheduled for the Week of January 27, 2003.

Week of February 3, 2003—Tentative

Tuesday, February 4, 2003

2 p.m.—Briefing on Lessons Learned: Davis-Besse Reactor Vessel Head (RVH) Degradation (Public Meeting) (Contact: Stacey Rosenberg, 301–415–1733)

This meeting will be webcast live at the Web address—*www.nrc.gov*

Wednesday, February 5, 2003

1 p.m.—Discussion of Governmental Issues (Closed—Ex. 1 & 9)

Week of February 10, 2003—Tentative

Monday, February 20, 2003

10 a.m.—Briefing on Status of Office of Nuclear Reactor Regulation (NRR) Programs, Performance, and Plans (Public Meeting) (Contact: Michael Case, 301–415–1275)

The meeting will be webcast live at the Web address—*www.nrc.gov*

Tuesday, February 11, 2003

10 a.m.—Briefing on Status of Office of the Chief Financial Officer (OCFO) Programs, Performance, and Plans (Public meeting) (Contact: Patrice Williams-Johnson, 301–415–5732)

This meeting will be webcast live at the Web address—*www.nrc.gov*.

Week of February 17, 2003—Tentative

There are no meetings scheduled for the Week of February 17, 2003.

Week of February 24, 2003—Tentative

Monday, February 24, 2003

2 p.m.—Meeting with National Association of Regulatory Utility Commissioners (NARUC) (Public Meeting)

This meeting will be webcast live at the Web address—*www.nrc.gov*

Week of March 3, 2003

Monday, March 3, 2003

10 a.m.—Briefing on Status of Office of Nuclear Material Safety and Safeguards (NMSS) Programs—Waste Safety (Public Meeting) (Contact: Claudia Seelig, 301–415–7243)

This meeting will be webcast live at the Web address—*www.nrc.gov*

*The schedule for Commission meetings is subject to change on short

notice. To verify the status of meetings call (recording)—(301) 415–1292. Contact person for more information: David Louis Gamberoni (301) 415–1651.

Additional Information

"Briefing on Status of Office of the Chief Information Officer (OCIO) Programs, Performance, and Plans," originally scheduled for February 4, 2003, has been canceled.

By a vote of 5–0 on January 22, the Commission determined pursuant to U.S.C. 552b(e) and § 9.107(a) of the Commission's rules that "Affirmation of Pacific Gas & Electric Co. (Diablo Canyon Power Plant Independent Spent Fuel Storage Installation); Licensing Board's referral in LBP–02–23 of its denial to admit terrorism contentions/ issues" be held on January 23, and on less than one week's notice to the public.

The NRC Commission Meeting Schedule can be found on the Internet at: *www.nrc.gov/what-we-do/policy-making/schedule.html*

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to *dkw@nrc.gov*.

Dated: January 23, 2003.

David Louis Gamberoni,

Technical Coordinator, Office of the Secretary.

[FR Doc. 03–2040 Filed 1–24–03; 2:00 pm]

BILLING CODE 7590–01–M

POSTAL SERVICE BOARD OF GOVERNORS

Sunshine Act Meeting

Times and Dates: 12:30 p.m., Monday, February 3, 2003; 8:30 a.m., Tuesday, February 4, 2003.

Place: Las Vegas, Nevada, at the Four Seasons Hotel, 3960 Las Vegas Boulevard South, in the Four Seasons Ballroom 4.

Status: February 3—12:30 p.m. (Closed); February 4—8:30 a.m. (Open).

Matters To Be Considered:

Monday, February 3—12:30 p.m. (Closed)

1. Financial Performance.
2. Rate Case Planning.
3. Strategic Planning.
4. Personnel Matters and Compensation Issues.

Tuesday, February 4—8:30 a.m. (Open)

1. Minutes of the Previous Meeting, January 6–7, 2003.
2. Remarks of the Postmaster General and CEO.
3. Appointment of Members to Board Committees.
4. Corporate Flats Strategy.
5. Capital Investment.
   a. Labor Scheduler—Phase 1.
6. Pacific Area and Nevada-Sierra District Report.
7. Tentative Agenda for the March 3–4, 2003, meeting in Washington, DC.

FOR FURTHER INFORMATION CONTACT: William T. Johnstone, Secretary of the Board, U.S. Postal Service, 475 L'Enfant Plaza, SW., Washington, DC 20260–1000. Telephone (202) 268–4800.

William T. Johnstone,

Secretary.

[FR Doc. 03–2050 Filed 1–24–03; 2:14 pm]

BILLING CODE 7710–12–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–25908; File No. 812–12837]

The Travelers Insurance Company, et al.

January 21, 2003.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of application for an order pursuant to section 11(a) of the Investment Company Act of 1940 ("1940 Act" or "Act") approving the terms of an offer of exchange.

Applicants: The Travelers Insurance Company ("Travelers Insurance"), The Travelers Life and Annuity Company ("Travelers Life"), The Travelers Fund U for Variable Annuities ("Fund U"), The Travelers Separate Account Five for Variable Annuities ("Account Five"), The Travelers Separate Account Six for Variable Annuities ("Account Six"), Travelers Growth and Income Stock Account ("Account GIS"), Travelers Money Market Account ("Account MM"), Travelers Quality Bond Account ("Account QB"), Travelers Timed Aggressive Stock Account ("Account TAS"), Travelers Timed Growth and Income Stock Account ("Account TGIS"), Travelers Timed Short-Term Bond Account ("Account TSB"), and Travelers Distribution LLC ("Travelers Distribution") (Fund U, Account GIS, Account MM, Account QB, Account TAS, Account TGIS, and Account TSB, collectively, "UA Accounts") (Account Five and Account Six, collectively ("TRA Accounts") (Travelers Insurance, Travelers Life, UA Accounts, TRA Accounts, and Travelers Distribution, collectively, the "Applicants").

SUMMARY: Applicants seek an order pursuant to section 11(a) of the Act approving the terms of a proposed offer of exchange. Under the terms of the proposed exchange, certain contract owners of Universal Annuity contracts offered by Travelers Insurance (the "UA contracts") through the UA Accounts would be offered the opportunity to exchange their variable annuity contracts for the Travelers Retirement Account annuity contracts (the "TRA contracts") offered by Travelers Insurance and Travelers Life through the TRA Accounts.

DATES: The application was filed on June 17, 2002, and amended and restated on December 4, 2002.

Hearing or Notification of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Secretary of the Commission and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on February 14, 2003, and should be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Secretary of the Commission.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Applicants, Kathleen A. McGah, Esq., The Travelers Insurance Company, One Tower Square, Hartford, CT 06183.

FOR FURTHER INFORMATION CONTACT: Leland B. Erickson, Staff Attorney, or Zandra Y. Bailes, Branch Chief, Office of Insurance Products, Division of Investment Management, at (202) 942–0670.

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a fee from the Commission's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549–0102 (telephone (202) 942–8090).

Applicants' Representations

1. Travelers Insurance is a stock insurance company. It is licensed to conduct life insurance business in all fifty states, the District of Columbia, Puerto Rico, Guam, the U.S. Virgin

Islands, the British Virgin Islands, and the Bahamas. Travelers Insurance is an indirect wholly owned subsidiary of Citigroup Inc.

2. Travelers Life is a stock insurance company. It is licensed to conduct life insurance business in a majority of the states of the United States, the District of Columbia, and Puerto Rico, and intends to seek licensure in the remaining states, except New York. Travelers Life is an indirect wholly owned subsidiary of Citigroup Inc.

3. Travelers Insurance established Fund U as a separate account on May 16, 1983. Fund U is divided into subaccounts, 35 of which are offered in the UA contracts. Fund U is registered with the Commission as a unit investment trust under the 1940 Act.[1]

4. Travelers Insurance established Accounts GIS, QB, MM, TGIS, TSB and TAS as managed separate accounts on the following dates: Account GIS—September 22, 1967; Account QB—July 29, 1974; Account MM—December 29, 1981, Accounts TGIS and TSB—October 30, 1986; and Account TAS—January 2, 1987. Each managed separate account is registered with the Commission as a diversified open-end management investment company under the 1940 Act.[2]

5. Travelers Insurance established Account Five as a separate account on June 6, 1998. Account Five is divided into subaccounts, 61 of which are offered in the TRA contracts. Account Five is registered with the Commission as a unit investment trust under the 1940 Act.[3]

6. Travelers Life established Account Six on June 6, 1998. Account Six is divided into subaccounts, 61 of which are offered in the TRA contracts. Account Six is registered with the Commission as a unit investment trust under the 1940 Act.[4]

7. Under Connecticut law, the assets of each respective separate account ("Account") attributable to the Contracts are owned either by Travelers Insurance or Travelers Life, but are held separately from the other assets of Travelers Insurance or Travelers Life for the benefit of the owners of, and the persons entitled to payment under those contracts. Income, gains and losses, whether or not realized, from the assets of each Account are credited to or charged against that Account without regard to the other income, gains, or losses of Travelers Insurance or Travelers Life. In addition, the assets of any such Account equal to the reserves and other contract liabilities with respect to that Account are not chargeable with liabilities arising out of any other business Travelers Insurance or Travelers Life may conduct.

8. Travelers Distribution is registered as a broker-dealer under the Securities Exchange Act of 1934 ("1934 Act") and is a member of the NASD. Travelers Distribution serves as the principal underwriter for the UA and TRA contracts, and is affiliated with Travelers Insurance and Travelers Life.

9. Each contract is a flexible premium variable annuity contract. Travelers Insurance registered the UA contracts under the Securities Act of 1933 on Form N–4 (File No. 2–79529); Travelers Insurance and Travelers Life registered the TRA contracts under the Securities Act of 1933 on Form N–4 (File Nos. 333–58783 (Account Five) and 333–58809 (Account Six)).[5] Each contract may be used in connection with certain types of retirement plans that receive favorable treatment under the Internal Revenue Code of 1986, as amended, (the "Code") ("Qualified Contracts"), and the UA contract may be issued to an owner who is not purchasing the contract for use in such tax-favorable retirement plans ("Non-Qualified Contracts"). Each contract provides for the accumulation of values on a variable basis, fixed basis, or both, during the accumulation period, and provides for settlement or annuity payment options on a variable or fixed basis.

Universal Annuity Contract

10. Travelers Insurance issues the UA contract to individuals or groups.[6] An owner may purchase a UA contract for a minimum initial payment of $1,000 for a Non-Qualified Contract or an IRA contract ($20 for a Qualified Contract), and submit additional payments of $100 ($20 for a Qualified Contract) thereafter.

11. An owner may allocate his or her payments to and transfer cash value among the variable funding options and the Fixed Account (where the current interest rate is 3.5%). The variable funding options include six managed separate accounts (Account GIS, Account MM, Account QB, Account TAS, Account TGIS, and Account TSB) and one UIT/separate account, Fund U. Fund U has 34 subaccounts that are available for investment by UA owners. Each subaccount of Fund U invests in shares of a fund or portfolio of a mutual fund.

12. An owner may transfer all or a portion of his or her investment between and among the UA Accounts and the Fixed Account and may make transfers between the Fixed Account and the VA Accounts. Certain limitations, however, may apply. Travelers Insurance currently does not charge for such transfers, but reserves the right to assess such a charge in the future.

13. An owner may elect to enter into a separate advisory agreement with CitiStreet Financial Services LLC ("CitiStreet"), an affiliate of Travelers Insurance and Travelers Life and an investment adviser registered under the Investment Company Act of 1940. For a fee, CitiStreet provides asset allocation advice under either its CHART Program® or its Tactical Asset Allocation Program. Under the CHART Program®, CitiStreet will allocate all of an owner's purchase payments among the CitiStreet Funds available in the UA Contract. Under the Tactical Asset Allocation Program, CitiStreet will transfer an owner's contract value among TGIS, TSB and TAS (the "Market Timed Accounts"). An owner also may invest in the Market Timed Accounts through an asset allocation program of an adviser not affiliated with Travelers Insurance, subject to the approval of Traveler's Insurance; and an owner may invest in those Accounts without the assistance of an investment adviser. Howevér, if an owner invests in the Market Timed Accounts without a tactical asset allocation agreement, he or she may bear a higher proportion of the expenses associated with separate account portfolio turnover.

14. A UA owner may surrender his or her UA contract or make a withdrawal of that contract's cash surrender value at any time before the contract's maturity date. In addition, an owner may take withdrawals using a systematic withdrawal program. An owner may instruct Travelers Insurance to calculate and make the minimum distributions that may be required by the Internal Revenue Service upon the owner's reaching age 70½.

15. There are various charges and deductions made under the UA contract. Travelers Insurance assesses a mortality and expense risk charge against the assets of the managed separate accounts and Fund U in an amount, computed daily, at an annual

[1] File No. 811–3575.

[2] File No. 811–1539 (Account GIS); File No. 811–2571 (Account QB); File No. 811–3409 (Account MM); File No. 811–5090 (Account TGIS); File No. 811–5089 (Account TSB); and File No. 811–5091 (Account TAS).

[3] File No. 811–08867.

[4] File No. 811–08869.

[5] There is a market value adjustment feature under the TRA contract. Each Company registered this feature with the Commission on Form S–2 under the Securities Act of 1933 (File Nos. 333–69793 (Travelers Insurance) and 333–69753 (Travelers Life).

[6] For the purposes of this notice, the term "contract" includes a certificate under a group contract, and the term "owner" includes participant under a group contract.

rate of 1.25% of the daily net asset value of those Accounts. Travelers Insurance also assesses a semiannual contract administrative charge of $15.

16. Travelers Insurance assesses charges for certain transactions an owner may make under the UA contract. If an owner surrenders his contract or takes a withdrawal, Travelers Insurance may assess a contingent deferred sales charge of 5% of the payment surrendered or withdrawn if the owner surrenders or withdraws the payment within five years of the payment's date. However, beginning in the second contract year, the owner may withdraw up to 10% of the cash value of his or her contract annually without Travelers Insurance assessing the contingent deferred sales charge. Travelers Insurance also reserves the right to assess a transfer charge on transfers an owner may make among the investments options available in the UA contract.

17. Each underlying fund and managed separate account has its own fees and expenses. Total annual operating expenses for the variable funding options range from .26% to 2.11% (based on the average daily net assets of the funding option, after expense reimbursement, as of December 31, 2001). Some of the underlying funds charge a 12b–1 fee against their assets. The total annual operating expenses for the Market Timed Accounts include market timing fees equal on an annual basis to 1.25% of the current value of the assets participating in the Tactical Asset Allocation program with CitiStreet. Travelers Insurance deducts this fee daily from the assets of the Market Timed Accounts. CitiStreet also charges a $30 Tactical Asset Allocation application fee.

18. Travelers Insurance will deduct charges for any premium tax or other tax levied by any governmental entity from payments or cash value at death, surrender or annuitization, but no earlier than the time the contract incurs the tax.

19. If the owner or annuitant dies before an UA contract's maturity date, Travelers Insurance will pay the beneficiary a death benefit. The amount paid on the death of the annuitant depends on the age of the annuitant at death. If the annuitant dies on or after age 75, Travelers Insurance will pay the beneficiary the cash value of the contract. If the Annuitant dies before age 75, and before the maturity date, Travelers Insurance will pay the beneficiary the greater of: (a) Cash value; (b) total purchase payments made; or (c) the cash value on the most recent 5th multiple contract year anniversary less any withdrawals made since that anniversary before Travelers Insurance receives proof of death. If an owner who is not the annuitant dies before the maturity date, Travelers Insurance will pay the beneficiary the cash value of the contract. If any owner or annuitant dies on or after the maturity date, Travelers Insurance will pay the beneficiary any benefit remaining under the annuity or income option then in effect.

20. If the annuitant is living on the maturity date, Travelers Insurance will pay the owner or his or her designated payee annuity or income payments beginning on that date. These payments may be in a single lump-sum payment, under five annuity options (*i.e.*, payments made based on the life of the annuitant), under three income options (*i.e.*, payments made for a fixed time not based on the life of the annuitant), or under any other mutually agreed upon annuity option. The owner may choose whether he or she would like all or part of his or her annuity payments to be made on a fixed or variable basis.

TRA Contract

21. Travelers Insurance and Travelers Life (depending on the state where the owner purchases the contract) issue the TRA contract to individuals or groups. An owner may purchase a TRA contract for a minimum initial payment of $20,000 and submit additional payments of $5,000 thereafter. Travelers Insurance/Travelers Life will add a purchase payment credit to each purchase payment that an owner makes if that owner elects the optional death benefit. Each company funds the purchase payment credits from the assets of its general account. The companies assess a higher mortality and expense risk charge for the optional death benefit, but will not require the owner to repay the amount of purchase payment credit to the relevant company should the owner surrender after the "right to return" period or take a withdrawal from his or her contract. Specifically, during the "right to return" period, a TRA owner who surrenders and who elects the optional death benefit will receive either purchase payments or contract value, depending on applicable state law; the owner will not bear any contract fees associated with the purchase payment credits. Should the owner exercise his or her "right to return" rights, the owner will be in the same position as if he or she had exercised the "right to return" right in a variable annuity contract that did not have purchase payment credits. The owner would, however, receive any gains, and the relevant company would bear any losses attributable to the purchase payment credits.

22. An owner may allocate his or her payments to and transfer cash value among the variable funding options and the Fixed Account (where the current interest rate is 4% annually). Account Five and Account Six offer the same underlying fund options; each separate account has 61 subaccounts that are available for investment by TRA contract owners. These subaccounts invest in shares of a fund or portfolio of a mutual fund.

23. Subject to certain restrictions, an owner may transfer all or a portion of his or her investment between and among the subaccounts and the Fixed Account and between the Fixed Account and the subaccounts. Travelers Insurance and Travelers Life currently do not charge for transfers, but reserve the right to assess a transfer charge of up to $10 on transfers exceeding 12 per year.

24. An owner may elect to enter into a separate advisory agreement with CitiStreet. For a fee, CitiStreet provides asset allocation advice under its CHART Program®.

25. A TRA owner may surrender his or her TRA contract or make a withdrawal of that contract's cash value at any time before the contract's maturity date. In addition, an owner may take withdrawals using a systematic withdrawal program. An owner also may choose to participate in the Managed Distribution Program, under which the owner may instruct Travelers Insurance/Travelers Life to calculate and make the minimum distributions that may be required by the Internal Revenue Service upon the owner's reaching age 70½.

26. There are various charges and deductions made under the TRA contract. Travelers Insurance/Travelers Life assesses a mortality and expense risk charge against the assets of Account Five/Account Six in an amount, computed daily, at an annual rate of .80% of the daily net asset value if the owner elects the standard death benefit, or 1.25%, if the owner elects the optional death benefit.

27. Travelers Insurance/Travelers Life will assess charges for certain transactions an owner may make under the TRA contract. If an owner surrenders his contract or makes a withdrawal, Travelers Insurance/Travelers Life may assess a withdrawal charge if the owner surrenders or withdraws the payment within five years of when the owner made that payment.

The charge is a percentage of the purchase payment and any applicable

purchase payment credits withdrawn as follows:

Years since purchase payment made	Withdrawal charge (in percent)
0–1	5
2	4
3	3
4	2
5	1
6 or more	0

However, subject to the provisions of the Code, an owner may withdraw up to 20% of the contract value of his or her contract annually without Travelers Insurance/Travelers Life assessing the withdrawal charge.

28. In addition, should a group contract owner surrender its TRA contract (other than because of plan termination due to the dissolution or liquidation of the employer under U.S. Code Title 11 procedures), or should Travelers Insurance/Travelers Life discontinue the TRA contract, Travelers Insurance/Travelers Life will assess a market value adjustment on any contract value held in the Fixed Account. The market value adjustment will reflect the relationship between the interest rate credited to amounts in the Fixed Account at the time of termination and the interest rate credited on new deposits in the Fixed Account at the time of termination.

29. Each underlying fund has its own fees and expenses. Total annual operating expenses for the variable funding options range from .40% to 1.72% (based on the average daily net assets of the funding option, after expense reimbursement, as of December 31, 2001). Some of the underlying funds charge a 12b–1 fee against their assets.

30. Should an owner elect to participate in the CHART® program, the owner will be charged for the investment advisory services CitiStreet provides. This charge is equal to a maximum of .80% of the assets subject to the CHART® Program, and will be paid by quarterly withdrawals from the contract value allocated to the asset allocation funds.

31. As discussed below, Travelers Insurance/Travelers Life offers a Variable Annuitization Floor Benefit. If the owner elects this option during the annuitization period, Travelers Insurance/Travelers Life will deduct a charge upon election; the charge will vary based on market conditions, but will never increase an owner's annual separate account charge by more than 3%. An owner also may elect a liquidity benefit on certain options during the annuitization period (as discussed below). If the owner elects the liquidity benefit and takes a withdrawal, Travelers Insurance/Travelers Life will charge a surrender charge of 5% on the amounts withdrawn.

32. If the owner or annuitant dies before a TRA contract's maturity date, Travelers Insurance/Travelers Life will pay the beneficiary a death benefit. The amount paid on death of the annuitant depends on the age of the annuitant on the contract date and the death benefit option selected. Under the standard death benefit, if the annuitant's age on the contract date was less than age 80, Travelers Insurance/Travelers Life will pay the beneficiary the greater of contract value or the total purchase payments made less any withdrawals (and related charges). If the annuitant's age on the contract date equaled or was greater than age 80, Travelers Insurance/Travelers Life will pay the beneficiary contract value.

33. Under the optional death benefit, if the annuitant's age on the contract date was less than age 70, Travelers Insurance/Travelers Life will pay the beneficiary the greater of contract value, total purchase payments less any withdrawals (and related charges), or maximum step-up value (described below) associated with contract date anniversaries beginning with the 5th and ending with the last before the annuitant's 76th birthday. If the annuitant's age on the contract date was between 70 to 75, Travelers Insurance/Travelers Life will pay the beneficiary the greater of contract value, total purchase payments less any withdrawals (and related charges), or the step-up death benefit value associated with the 5th contract date anniversary. If the annuitant's age on the contract date was between ages 76 to 80, Travelers Insurance/Travelers Life will pay the beneficiary the greater of contract value or total purchase payments less any withdrawals (and related charges). If the beneficiary was over age 80 on the contract date, Travelers Insurance/Travelers Life will pay the beneficiary contract value. Travelers Insurance/Travelers Life will establish a separate step-up death benefit value on the fifth contract date anniversary and on each subsequent contract date anniversary on or before the date the death is reported to the company. The step-up death benefit value initially equals the contract value on that anniversary. After a step-up death benefit value has been established, Travelers Insurance/Travelers Life will recalculate it each time a purchase payment is made or a withdrawal is taken.

34. If the annuitant is living on the maturity date, Travelers Insurance will pay the owner or his or her designated payee annuity payments beginning on that date. These payments may be in a single lump-sum payment, under any combination of five annuity/income options, or under any other option mutually agreed upon. Should the owner elect to apply his or her contract value to purchase an annuity, Travelers Insurance/Travelers Life, where permitted by law, will add an annuitization credit to the amount applied to purchase the annuity. The credit equals .5% of contract value if the owner annuitizes during contract years 2–5, 1% during contract years 6–10, and 2% after contract year 10.

35. Travelers Insurance/Travelers Life offers four annuity/income options on a fixed or variable basis; the fifth option is offered only on a fixed payment basis. For fixed annuities, an owner may elect to receive a level payment or a payment that will increase by a certain percentage chosen by the owner.

36. Travelers Insurance/Travelers Life will offer two optional annuity benefits. Under the variable annuitization floor benefit, Travelers Insurance/Travelers Life guarantees that, regardless of the performance of the funding options the owner selects, the owner's annuity payments will never be less than a certain percentage of the owner's first variable annuity payment. This percentage will vary depending on market conditions, but will never be less than 50%. As previously discussed, there is a charge for this benefit.

37. Under the liquidity benefit, if an owner selects any annuity option which guarantees payments for a minimum period of time (either a life annuity with a number of payments assured or a fixed annuity), the owner may take a lump sum payment any time after the first contract year. There is a surrender charge of 5% of the amount withdrawn under this option.

Comparison of the UA and TRA Contract Features

38. Applicants submit that the features and benefits of the TRA contract, in almost every respect, are more favorable than under the UA contract.

39. Applicants note that there is a higher threshold for purchase payments under the TRA contract than under the UA contract and that there are fewer funding options available under the UA contract than under the TRA contract. Asset allocation, systematic withdrawal programs, and a Managed Distribution Program are available in both the UA contract and the TRA contract. There is,

however, an additional asset allocation program available under the UA contract, the Tactical Asset Allocation program, that is not offered in the TRA contract.

40. An owner may invest in the Fixed Account under each of the contracts. However, under certain situations, a group contract owner may be assessed a market value adjustment for amounts withdrawn from the Fixed Account under the TRA contract.

41. The UA and TRA contracts provide for similar annuity payment options, but differ greatly on the benefits available during the annuitization period. The UA contract provides for five annuity options and the TRA contract provides for a choice of five annuity options. The UA contract offers three income options; the TRA contract offers one income option. It is the optional features that set the contracts apart and make the point that the focus of the TRA contract is retirement income. The TRA contract provides for several benefits during the annuitization period, including a liquidity option, an annuitization credit, a variable annuitization floor benefit, and an increasing benefit option for fixed annuities. These benefits are not available under the UA contract.

42. The death benefit under the UA contract is, under certain circumstances, potentially not as generous as the standard death benefit under the TRA contract. There is an optional death benefit available for a fee under the TRA contract that provides owners with purchase payment credits and a potentially more generous benefit.

43. Each contract allows the owner to take a withdrawal at any time before the maturity date. However, the free withdrawal amount available under the UA contract is less than what is available under the TRA contract. A systematic withdrawal option and a Managed Distribution Program are offered in both the UA and TRA contracts.

44. Applicants represent that the fees and charges of the basic TRA contract will be no higher than those of the UA contract.

45. Asset-based charges are higher under the UA contract than they are under the TRA contract. Under the UA contract, Travelers Insurance imposes a mortality and expense risk charge as a percentage of average daily net assets of UA Accounts of 1.25% annually. Under the TRA contract, Travelers Insurance/Travelers Life imposes a mortality and expense risk charge as a percentage of average daily net assets of Account Five or Account Six, as relevant, of .80% for the standard death benefit and 1.25% for the enhanced death benefit.

46. Under the UA contract, the owner is assessed a semiannual administrative charge of $15. This charge is not assessed under the TRA contract.

47. Currently, under both the UA contract and TRA contract, no transfer charge is assessed. However, under each contract, the company reserves the right to assess the charge in the future.

48. The contingent deferred sales charge is higher under the UA contract than it is under the TRA contract. Under the UA contract, a contingent deferred sales charge of 5.00% is assessed if a purchase payment is withdrawn within 5 years after that purchase payment is made. The charge does not decline. Similarly, under the TRA contract a withdrawal charge is assessed if a purchase payment (including applicable credits) is withdrawn within 5 years after that payment is made. However, unlike with the UA contract, under the TRA contract the withdrawal charge declines each year so that the amount of the charge is 0% if the purchase payment is withdrawn 5 or more years after the purchase payment is made.

Proposed Exchange

49. Applicants propose to offer eligible owners of UA contracts the opportunity to exchange their UA contracts for TRA contracts. To be eligible to participate in the exchange offer:

- The UA owner must have purchased his or her contract in connection with a retirement plan that met the requirements under section 403(b) or 457 under the Code;
- The plan under which the UA owner purchased his or her contract no longer uses The Travelers Insurance Company as its primary insurance carrier for the employer's section 403(b) or 457 plan or the UA owner no longer actively contributes to his or her contract;
- The UA owner meets the minimum eligibility requirements to purchase the TRA contract (*i.e.*, the owner must be at least 40 years of age and make an initial purchase payment of at least $20,000); and
- The UA owner's contract must be at least 5 years old.

Applicants submit that the program will be beneficial to owners who, because of the terms of their employer's 403(b) or 457 plan, may no longer be able to contribute to their UA contract because it provides such owners the opportunity to invest in the lower cost TRA contract that offers them innovative death benefits options and more annuitization options (including liquidity and guaranteed floor provisions).

50. After an initial notification of the exchange offer in quarterly reports or other communications to eligible UA contract owners and contacts made by Travelers Distribution's registered representatives, the exchange offer will be made by providing eligible owners of the UA contracts who express an interest in learning the details of the offer a prospectus for the TRA contract, accompanied by a letter explaining the offer, a piece of sales literature that compares the UA contract to the TRA contract, and an internal exchange form. The offering letter will advise owners of a UA contract that the exchange offer is specifically designed for those owners who intend to continue to hold their contracts as long-term investment vehicles. The letter will state that the offer is not intended for all owners, and that it is not appropriate for any owner who anticipates surrendering all or a significant part (*i.e.*, more than 20% on an annual basis) of his or her contract before the end of five years. Further, the letter will encourage owners to carefully evaluate their personal financial situations when deciding whether to accept or reject the exchange offer.

51. Applicants represent that the offering letter also will explain how an owner of a UA contract contemplating an exchange may avoid the applicable withdrawal charge on the TRA contract if no more than the "free withdrawal amount" is surrendered and any subsequent deposits are held until the expiration of the withdrawal period. In this regard, the offering letter will state in plain English that if the TRA contract is surrendered during the withdrawal charge period:

- Any purchase payment credit that the owner may receive if he or she elects the optional death benefit, may be more than offset by the withdrawal charge; and
- An owner may be worse off than if he or she had rejected the exchange offer.

52. An internal exchange application form, which will accompany the offering letter, will include an owner acknowledgement section with check-off boxes setting forth specific questions designed, among other things, to determine a contract owner's suitability for the exchange offer. In particular, the form will seek affirmative confirmation that an owner does not anticipate a need to withdraw more than 20% per year (plus earnings) from the TRA contract during the withdrawal period. Other questions on the form will seek owner acknowledgment that the exchange offer is suitable only for an owner if he or she

expects to hold the TRA contract through annuitization, and that the owner may be better off rejecting the exchange offer if he or she plans to surrender the TRA contract during the withdrawal period. All boxes on the form must be checked off with affirmative responses before Travelers Insurance/Travelers Life will process the exchange. After making a suitability determination, each broker-dealer will be required to forward completed forms to Travelers Insurance/Travelers Life for processing. In the event either company receives an incomplete form (*i.e.*, a form with one or more acknowledgment boxes not checked off), Travelers Insurance/Travelers Life will not process the exchange, treating the transaction as "not in good order." Travelers Insurance/Travelers Life intends to contact any broker-dealer who submits a form not in good order, however, in no event will Travelers Insurance/Travelers Life process exchange transactions based on incomplete forms.

53. Travelers Insurance/Travelers Life will apply the cash value of the UA contract, together with any applicable purchase payment credit, and any additional purchase payments submitted with an internal exchange application form for the TRA contract to the TRA contract on the exchange date. Travelers Insurance will not deduct a contingent deferred sales charge upon the surrender of a UA contract in connection with the exchange offer.

54. After expiration of the TRA contract's right to return period, surrenders and withdrawals will be governed by the terms of the TRA contract for purposes of calculating any withdrawal charge. This means, in part, that Travelers Insurance/Travelers Life will not recapture any purchase payment credit applied to the contract value of the TRA contract, unless the owner were to cancel the contract during the right to return period.

55. The exchange date will be the issue date of the TRA contract for purposes of determining contract years and anniversaries after the exchange date.

56. To accept the exchange offer, a UA contract owner must complete an internal exchange application form. Contract values under the TRA contract will be allocated according to owner instructions. Travelers Insurance/Travelers Life will assume purchase payments submitted with the internal exchange application form to be payments under the TRA contract as of the date of issue of the TRA contract.

57. UA owners who accept the exchange offer will not be subject to any adverse tax consequences. The exchanges will constitute tax-free exchanges under section 1035 of the Code.

58. Travelers Insurance/Travelers Life will compensate broker-dealers in connection with the proposed exchange offer. These broker-dealers will receive the same compensation they would have received had there been a new sale of a TRA contract without the exchange program.

Applicants' Legal Analysis

1. Section 11 of the 1940 Act makes it unlawful for any registered open-end company or any principal underwriter for such a company to make or cause to be made an offer to the holder of a security of such company or of any other open-end investment company to exchange his or her security for a security in the same or another such company on any basis other than the relative net asset values of the respective securities to be exchanged, unless the terms of the offer have first been submitted to and approved by the Commission or are in accordance with Commission rules and regulations adopted under section 11. Section 11(c) of the 1940 Act, in pertinent part, makes section 11(a) applicable to an offer of exchange of the securities of a registered unit investment trust for the securities of any other investment company, irrespective of the basis of the exchange. Accounts GIS, MM, QB, TAS, TGIS, and TSB are registered with the SEC as open-end diversified management investment companies, and Fund U and Accounts Five and Six are registered with the SEC as unit investment trusts. Accordingly, the proposed exchange offer is subject to section 11(a) under the 1940 Act and can only be made after the Commission has approved the terms of the offer under section 11(a). Applicants submit that the terms of the proposed exchange offer do not present the abuses section 11 was designed to prevent, and are consistent with public policy and Commission precedent.

2. As noted by the Commission when proposing rule 11a–3 under the 1940 Act, the purpose of section 11 of the Act is to prevent "switching." "Switching" is the practice of inducing security holders of one investment company to exchange their securities for those of a different investment company solely for the purpose of exacting additional selling charges. This practice was found by Congress to be widespread in the 1930's before the adoption of the 1940 Act.

3. Section 11(c) of the 1940 Act requires Commission approval (by order or rule) of any exchange, regardless of its basis, involving securities issued by a unit investment trust, because investors in unit investment trusts were found by Congress to be particularly vulnerable to switching operations. Applicants note that the legislative history of section 11 makes clear that the potential for harm to investors perceived in switching was its use to extract additional sales charges from investors.

4. Applicants represent that the terms of the proposed exchange offer do not present the abuses (*i.e.*, the additional sales charges that result from abusive switching practices) against which section 11 was designed to prevent. Applicants submit that the purpose of their exchange offer is not to earn additional sales commissions; rather, the purpose of the offer is to give investors, many of whom because of the terms of their employer's 403(b) and 457 plans may no longer be able to contribute towards their retirement, an opportunity to invest in a lower cost contract that has innovative death benefit and annuitization features. In stark contrast with the 9–10% front-end commission deducted in the "switching" exchanges that led to adoption of section 11, each UA owner accepting the exchange offer may be able to receive a 2% purchase payment credit added to each purchase payment should the owner elect the optional death benefit. The effect of the credit is to add to cash value at the time of the exchange. This credit provides a significant benefit to the owner because neither Travelers Insurance nor Travelers Life will recapture the amount of that credit should the owner make a withdrawal from or surrender his or her contract after the expiration of the TRA contract's right to return period. Further, the TRA contract offers the owner the opportunity to receive additional economic benefits upon annuitization. At that time, each company will add an annuitization credit to the value of an owner's contract. In addition, no sales charges will be imposed on amounts surrendered from a UA contract and applied to a TRA contract, and no sales charges ever will be paid on amounts rolled over in the exchange unless the TRA contract is surrendered before the expiration of the TRA contract's initial withdrawal charge period.

5. Rule 11a–2 permits an offer to exchange one variable annuity contract which has a contingent deferred sales load for another variable annuity contract which also has a contingent deferred sales load of the same or of an affiliated insurer without obtaining Commission approval, as long as (i) no

surrender charge is deducted at the time of the exchange, and (ii) in computing the surrender charge for the new contract, the insurer gives credit for the period during which the contract owner held the old contract (the "tacking requirement"). Amounts exchanged from a UA contract and deposited into the TRA contract are precluded from relying on rule 11a–2 because, in computing the withdrawal charge on amounts surrendered or withdrawn from a UA contract and deposited into the TRA contract, Travelers Insurance/Travelers Life will not give credit for the period during which the owner held the amount in the UA contract.[7] Applicants state that it is not economically feasible for Travelers Insurance/Travelers Life to "tack" for purposes of assessing the withdrawal charge under the TRA contract.

6. Applicants submit that tacking is not a requirement of section 11. Instead, it is a creation of rule 11a–2 designed to approve the terms of exchange offers "sight unseen." Congress adopted section 11 well before the first contingent deferred sales load.

7. Applicants state that tacking focuses on the closest thing to multiple deductions of sales charges that is possible in the contingent deferred sales charges context—*i.e.*, whether there are multiple sales loads upon surrender and redemption. Applicants note that if that safeguard, as well as other safeguards provided by rule 11a–2 are present, the Commission has determined that there is no need for it or its staff to evaluate the offer. Applicants submit that tacking should be viewed as a useful way to avoid the need to scrutinize the terms of an offer of exchange to make sure that there is no abuse; tacking should not be relevant in situations where the SEC will fully scrutinize the terms of an exchange offer. The absence of tacking does not mean that the proposed exchange offer is without clear benefits to investors. Applicants believe that the proposed exchange offer presents less potential for the type of abuses that led to the adoption of section 11 than in connection with exchanges that would be permitted under rule 11a–2.

8. Applicants submit that they are offering a beneficial investment opportunity to certain UA owners. The proposed exchange offer is offered to those owners many of whom, because of the terms of their employer's 403(b) or 457 plans, may no longer be able to contribute to their current UA contracts, or to those UA owners who no longer actively contribute to his or her contract. Applicants represent that the proposed exchange offers such individuals the opportunity to once again contribute towards their retirement under the lower cost TRA contract. Far from being a way to extract additional charges from investors, as contemplated by the prohibitions of section 11, Applicants submit that the proposed exchange offer would assure, in most instances, an immediate and enduring economic benefit to investors. The 2% purchase payment credit would be applied immediately should the owner elect the optional death benefit, and the fact that asset-based and other charges would remain the same or be decreased by the exchange (asset-based charges only would be decreased if an owner were to elect the standard death benefit) would ensure that the benefit would endure. Further, Applicants note that the TRA contract offers several features which are not available under the UA contract which the UA contract owner may enjoy. These include: the optional death benefit with purchase payment credits, a greater free withdrawal amount (20% of contract value) without the imposition of the withdrawal charge, a declining withdrawal charge, an annuitization credit, a liquidity option during the annuitization period, and the ability to receive variable annuity payments in at least a certain minimum amount. Applicants believe that, in almost every respect, the proposed exchange would be beneficial to the offerees. Applicants represent that the only significant downside that may occur as a result of the exchange is if the owner, instead of holding his or her investment for the long-term, as variable annuity contracts are designed to be, surrenders or withdraws certain amounts from his or her TRA contract before the end of the withdrawal period.

9. Applicants state that the exchange offer will be available to all owners who meet the applicable eligibility and suitability standards on a voluntary basis. The decision to participate in the exchange offer will be made by each owner, after he or she has been given the opportunity to evaluate the proposed exchange offer. Applicants note that the offering letter from Travelers Insurance will give a UA contract owner a full explanation of both the advantages and disadvantages of the exchange.

10. Applicants submit that the proposed exchange offer is consistent with the purposes of the National Securities Improvement Act of 1996 ("NSMIA"). The purpose of NSIMA was to promote competition and capital formation as well as to "eliminate[ ] burdens and enhance[ ] innovation and efficiency for investment companies."[8] These concepts are codified in section 2 of the 1940 Act. Applicants submit that the proposed exchange offer will promote competition because it will allow Travelers Insurance to retain business it otherwise might have lost because it is no longer the primary insurance carrier for certain 403(b) and 457 plans.

11. Applicants submit that there is ample precedent to support the various features of their exchange offer, including precedent relating to the compensation of salesmen, the granting of an order where the exchange might be disadvantageous to certain owners, and relief from rule 11a–2's tacking requirement.

Conditions

If the requested order is granted, Applicants consent to the following conditions which are intended to support the understanding that the exchange offers are being made to owners who expect to persist:

1. The offering letter will contain concise plain English statements that: (a) The exchange offer is suitable only for UA owners who expect to hold their contracts as long-term investments; and (b) if the TRA contract is surrendered during the withdrawal charge period:

- Any purchase payment credit that the owner may receive if he or she elects the optional death benefit, may be more than offset by the withdrawal charge; and
- An owner may be worse off than if he or she had rejected the exchange offer.

2. Travelers Insurance/Travelers Life will provide a means of confirming that an owner choosing to participate in the exchange offer was told of the statements required in the offering letter (stated in condition no. 1). Travelers Insurance will send the offering letter directly to eligible UA owners. An owner choosing to participate in the program will then complete and sign an internal exchange form, which will prominently restate in concise, plain English the statements required in condition no. 1 and return it to Travelers Insurance. If the internal exchange form is more than two pages in length, Travelers Insurance will use a separate document to obtain owner acknowledgment of the statements required by condition no. 1.

[7] Applicants not that the proposed exchange may not be considered to be at relative net asset value because of the addition of the purchase payment credit to amounts exchanged into a TRA contract should the owner elect the optional death benefit.

[8] H.R. Conf. Rep. No. 104–864, at 40 (Sept. 28, 1996).

3. Travelers Insurance and Travelers Life, as appropriate, will maintain the following separately identifiable records in an easily accessible place, for the time periods specified below in this condition no. 3, for review by the Commission upon request: (a) Records showing the level of exchange activity and how it relates to total number of owners eligible for the exchange offer (quarterly as a percentage of the number eligible); (b) copies of any form of offering letter and other written materials and scripts for presentations by representatives regarding the exchange offer (if Travelers Insurance prepared or approved the materials), including the dates(s) used; (c) records showing information about each exchange transaction that occurs, including the name of the owner; the UA contract and TRA contract number(s); contingent deferred sales charge waived at surrender of the UA contract; purchase payment credit applied, if any; registered representative's name, CRD number, firm affiliation, branch office address and telephone number, and the name of the registered representative's broker-dealer; commission paid; internal exchange form (and separate document, if any, used to obtain owner acknowledgment of the statements required in condition no. 1) showing the name, date of birth, address and telephone number of the owner, and date the internal exchange form (or separate document) was signed; amount of cash value exchanged; and persistency information relating to the TRA contract (date surrendered and withdrawal charge paid); and (d) logs showing any owner complaints about the exchange offer, state insurance department inquiries about the exchange offer, or litigation, arbitration or other proceedings regarding any exchange. The following information will be included on the logs: date of complaint or commencement of the proceeding; nature of the complaint or proceeding; and persons named or involved in the complaint or proceeding.

4. Records specified in condition no. 3(a) and (d) will be retained for six years from creation of record. Records specified in condition no. 3(b) will be retained for six years after the date of last use, and records specified in condition no. 3(c) will be retained for two years from the end of the initial withdrawal period of the TRA contract.

5. The offering letter will disclose in concise plain English each aspect of the TRA contract that is less favorable than the UA contract.

Conclusion

For the reasons stated above, Applicants believe that the requested exemption in accordance with the standards of section 11(a), are appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47231; File No. SR–OPRA–2002–01]

Options Price Reporting Authority; Order Granting Permanent Approval to an Amendment To Establish a Best Bid and Offer Market Data Service

January 22, 2003.

On February 26, 2002, the Options Price Reporting Authority ("OPRA") submitted to the Securities and Exchange Commission ("Commission"), pursuant to section 11A of the Securities Exchange Act of 1934 ("Act")[1] and rule 11Aa3–2 thereunder,[2] an amendment to the Plan for Reporting of Consolidated Options Last Sale Reports and Quotation Information ("OPRA Plan" or "Plan").[3] The proposed amendment would add to the Plan terms governing the provision by OPRA of a best bid and offer ("BBO") for each of the options series included in OPRA's market data service, and governing the use of the BBO by vendors.

Notice of the proposal was published in the **Federal Register** on March 15, 2002.[4] The Commission received two comment letters on the proposed OPRA Plan amendment.[5] On May 30, 2002, OPRA submitted Amendment No. 1 to the proposal.[6] On June 13, 2002, OPRA submitted a letter in response to the comments.[7] On October 4, 2002, OPRA submitted Amendment No. 2 to the proposal.[8] On December 13, 2002, the Commission approved the proposal as modified by Amendment Nos. 1 and 2 on a temporary basis for 120 days, and solicited comment on Amendment Nos. 1 and 2.[9] The Commission received no comments on Amendment Nos. 1 and 2. This order approves the OPRA Plan amendment, as modified by Amendment Nos. 1 and 2, on a permanent basis.

Under the proposed Plan amendment, OPRA proposes to add a consolidated BBO service that would disseminate the best bid and offer for each options series, and OPRA would prioritize the BBO on the basis of price, size, and time. In addition, OPRA's BBO service could reflect an approximation of the quotation size associated with the best bid or offer actually available.

Under the proposal, OPRA vendors would have the option to disseminate to customers the consolidated BBO together with last sale reports for any series of options in place of OPRA's full market data service. In addition to the BBO service, OPRA would be obligated to continue to offer to vendors its full market data service, which includes the disseminated best bid and offer from each of OPRA's participant exchanges. The proposed amendment also would permit OPRA to contract with vendors separately for: (i) The last sale reports and the BBO; or (ii) for the last sale reports, the BBO, and quotation information from each market. OPRA also could contract separately with vendors for the full market data service that it currently offers.

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[1] 15 U.S.C. 78k–1.

[2] 17 CFR 240.11Aa3–2.

[3] OPRA is a National Market System Plan approved by the Commission pursuant to section 11A of the Act and rule 11Aa3–2 thereunder. *See* Securities Exchange Act Release No. 17638 (March 18, 1981).

The OPRA Plan provides for the collection and dissemination of last sale and quotation information on options that are traded on the participant exchanges. The five participants to the OPRA Plan that operate an options market are the American Stock Exchange LLC, the Chicago Board Options Exchange, Inc. ("CBOE"), the International Securities Exchange, Inc., the Pacific Exchange, Inc., and the Philadelphia Stock Exchange, Inc. The New York Stock Exchange, Inc. is a signatory to the OPRA Plan, but sold its options business to the CBOE in 1997. *See* Securities Exchange Act Release No. 38542 (April 23, 1997).

[4] *See* Securities Exchange Act Release No. 45532 (March 11, 2002), 67 FR 11727.

[5] *See* letters from Devin Wenig, President, Investment Banking and Brokerage, Reuters America Inc., dated April 19, 2002, and George W. Mann, Jr., Executive Vice President and General Counsel, Boston Stock Exchange Inc., dated May 1, 2002, to Jonathan G. Katz, Secretary, Commission.

[6] *See* letter from Joseph P. Corrigan, Executive Director, OPRA, to John Roeser, Special Counsel, Division of Market Regulation ("Division"), Commission, dated May 29, 2002 ("Amendment No. 1").

[7] *See* letter from Joseph P. Corrigan, Executive Director, OPRA, to John Roeser, Special Counsel, Division, Commission, dated June 12, 2002.

[8] *See* letter from Joseph P. Corrigan, Executive Director, OPRA, to John Roeser, Special Counsel, Division, Commission, dated October 2, 2002 ("Amendment No. 2").

[9] *See* Securities Exchange Act Release No. 46992 (December 13, 2002), 67 FR 78031 (December 20, 2002).

After careful review, the Commission finds that the proposed OPRA Plan amendment, as amended by Amendment Nos. 1 and 2, is consistent with the requirements of the Act and the rules and regulations thereunder.[10] Specifically, the Commission believes that the proposed OPRA Plan amendment, as amended, which would permit OPRA to provide a best bid and offer market data service to vendors, is consistent with section 11A of the Act[11] and rule 11Aa3–2 thereunder[12] in that it is appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanisms of, a national market system or otherwise in furtherance of the purposes of the Act.

Specifically, the Commission believes that OPRA's proposal to permit vendors to disseminate last sale information and a BBO is consistent with section 11A of the Act[13] because the combination of the consolidated BBO and the last sale reports would include the minimum essential pricing information market participants need to make informed investment decisions. Furthermore, the Commission notes that all markets would have an equal opportunity to be represented in the BBO. OPRA's proposed BBO service should make it easier for vendors to disseminate this minimum essential market information as an alternative to the full quotation information or in addition to such information.

Finally, the Commission notes that it is simultaneously approving OPRA's proposal to change its vendor agreement, which will affect the manner in which vendors may disseminate information to end users.[14] Specifically, under OPRA's vendor agreement proposal, vendors could choose to disseminate only the BBO and last sale information and exclude from the BBO the quotation size, or the market identifier associated with a BBO, or both, so long as in excluding this information the vendor did not discriminate on the basis of the market in which quotations are entered.

It is therefore ordered, pursuant to section 11A of the Act,[15] and rule 11Aa3–2 thereunder,[16] that the proposed OPRA Plan amendment, as modified by Amendment Nos. 1 and 2 (SR–OPRA–2002–01) be, and it hereby is, approved on a permanent basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[17]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–1883 Filed 1–27–03; 8:45 am]

BILLING CODE 8010–01–U

[10] In approving this proposed OPRA Plan amendment, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[11] 15 U.S.C. 78k–1.

[12] 17 CFR 240.11Aa3–2.

[13] 15 U.S.C. 78k–1.

[14] See Securities Exchange Act Release No. 47230 (January 22, 2003) (order approving File No. SR–OPRA–2002–03).

[15] 15 U.S.C. 78k–1.

[16] 17 CFR 240.11Aa3–2.

[17] 17 CFR 200.30–3(a)(29).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47230; File No. SR–OPRA–2002–03]

Options Price Reporting Authority; Order Approving an Amendment to the Options Price Reporting Authority Plan To Revise the Required Form of Vendor Agreement

January 22, 2003.

I. Introduction

On July 12, 2002, the Options Price Reporting Authority ("OPRA") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to section 11A of the Securities Exchange Act of 1934 ("Act")[1] and rule 11Aa3–2 thereunder,[2] an amendment to the Plan for Reporting of Consolidated Options Last Sale Reports and Quotation Information ("OPRA Plan" or "Plan").[3] The amendment would revise the form of Vendor Agreement that is required to be entered into between OPRA and vendors of options information under section VII(b) of the OPRA Plan. Notice of the proposal was published in the **Federal Register** on November 21, 2002.[4] The Commission received no comment letters on the proposed OPRA Plan amendment. This order approves the proposal.

OPRA's Vendor Agreement governs the terms and conditions under which vendors redistribute options market data to subscribers and other end users of the information. The proposed revisions would update the Vendor Agreement and consolidate a series of riders to the Vendor Agreement. In addition, the revised Vendor Agreement would consolidate several different forms of agreements between vendors and their customers into a single standard form "Subscriber Agreement," without making any significant substantive changes to the current forms.

The revised Vendor Agreement would also include new provisions to govern the redistribution by vendors of OPRA's new BBO (best bid and offer) Service.[5] In this regard, the revised Vendor Agreement would permit a vendor to satisfy its obligation to include consolidated options market data in its market information service if, at a minimum, the service would include options last sale information and the consolidated BBO provided by OPRA. This would permit a vendor to include additional unconsolidated information in its service so long as this required minimum consolidated information is included. Further, the revised Vendor Agreement would permit a vendor to exclude from its BBO service either the quote size or the market identifier associated with a BBO or both, so long as in excluding information the vendor would not discriminate on the basis of the market in which quotations are entered. In addition, if a vendor were to exclude the market identifier associated with the BBO from a dynamically updated service, it would be required to make that information available to recipients of the dynamically updated service through an inquiry-only service provided without additional cost. Finally, because OPRA's BBO Service provides for the inclusion of an approximation of the size associated with the BBO rather than the actual size, the revised Vendor Agreement would require any vendor that includes size in its BBO service to disclose to its customers that the included size is an approximation of the actual size, and that the actual size is available on OPRA's full quotation service.

After careful review, the Commission finds that the proposed OPRA Plan

[1] 15 U.S.C. 78k–1.

[2] 17 CFR 240.11Aa3–2.

[3] OPRA is a National Market System Plan approved by the Commission pursuant to section 11A of the Act and rule 11Aa3–2 thereunder. *See* Securities Exchange Act Release No. 17638 (March 18, 1981).

The OPRA Plan provides for the collection and dissemination of last sale and quotation information on options that are traded on the participant exchanges. The five participants to the OPRA Plan that operate an options market are the American Stock Exchange LLC, the Chicago Board Options Exchange, Inc. ("CBOE"), the International Securities Exchange, Inc., the Pacific Exchange, Inc., and the Philadelphia Stock Exchange, Inc. The New York Stock Exchange, Inc. is a signatory to the OPRA Plan, but sold its options business to the CBOE in 1997. *See* Securities Exchange Act Release No. 38542 (April 23, 1997), 62 FR 23521 (April 30, 1997).

[4] *See* Securities Exchange Act Release No. 46839 (November 14, 2002), 67 FR 70269.

[5] *See* Securities Exchange Act Release No. 47231 (January 22, 2003) (File No. SR–OPRA–2002–01) (order granting permanent approval). *See also* Securities Exchange Act Release No. 46992 (December 13, 2002), 67 FR 78031 (December 20, 2002).

amendment is consistent with the requirements of the Act and the rules and regulations thereunder.[6] The Commission believes that the proposed OPRA Plan amendment is consistent with section 11A of the Act[7] and rule 11Aa3–2 thereunder[8] in that it is appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanisms of, a national market system.

Specifically, the Commission notes that the Vendor Agreement governs the terms and conditions under which vendors are permitted to redistribute options market data to subscribers and other end users of the information, and includes new provisions to implement various aspects of OPRA's best bid and offer ("BBO") Service, which the Commission recently approved.[9] In particular, the revised Vendor Agreement would allow a vendor, subject to certain limitations, to exclude information regarding quotation size and market identification from its redistribution of OPRA's BBO Service. The Commission notes that if a vendor excludes either the quotation size or market identifier from its service, or both, it must not discriminate on the basis of the market in which quotations were entered. In addition, if a vendor excludes the market identifier associated with the BBO from a dynamically updated service, it would be required to make that information available to recipients of the dynamically updated service through an inquiry-only service provided without additional cost. The Commission believes that this provision of the proposal is consistent with the purposes of section 11A of the Act because vendors would be required to make available to their subscribers the information investors need to make informed investment decisions.

It is therefore ordered, pursuant to section 11A of the Act,[10] and rule 11Aa3–2 thereunder,[11] that the proposed OPRA Plan amendment, (SR–OPRA–2002–03) is approved.

[6] In approving this proposed OPRA Plan amendment, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[7] 15 U.S.C. 78k–1.

[8] 17 CFR 240.11Aa3–2.

[9] *See supra* note .

[10] 15 U.S.C. 78k–1.

[11] 17 CFR 240.11Aa3–2.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–1880 Filed 1–27–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47220; File No. SR–ISE–2002–24]

Self-Regulatory Organizations; International Securities Exchange, Inc.; Order Approving Proposed Rule Change Relating to Quotation Size and Notice of Filing and Order Granting Accelerated Approval of an Amendment to the Proposal

January 21, 2003.

On October 11, 2002, the International Securities Exchange, Inc. ("ISE") filed with the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and rule 19b–4 thereunder,[2] a proposed rule change that would require ISE quotations to be firm for their published sizes for all orders entered by ISE members, regardless of whether such orders are for the accounts of customers or broker-dealers. The proposal would allow ISE to eliminate its current distinction between the sizes of quotations for all orders, except for trades involving the interaction of ISE market maker quotations. On November 1, 2002, the Exchange's rule proposal was published for comment in the **Federal Register**.[3] No comments letters were received on the proposal. On November 21, 2002, the ISE submitted a letter to withdraw proposed paragraph (c) of ISE rule 805, which would have limited market makers from sending more than one order every fifteen seconds in an option on the same underlying security.[4] This order approves the proposed rule change, as amended by the ISE letter, publishes notice of the ISE letter, and grants accelerated approval to ISE's withdrawal of proposed ISE rule 805(c).

The proposal would require that all ISE quotations be firm for all incoming orders for their full disseminated size, except for matching quotations of ISE market makers. Specifically, each ISE Primary Market Maker and Competitive Market Maker would enter a quotation with a single size, available in full for all incoming orders, whether from customers, broker-dealers, ISE market makers or market makers on other exchanges, except for ISE market maker quotations. In the case of ISE market maker quotations, the ISE proposes to establish by rule that ISE market makers must be firm for at least one contract for quotations of other ISE market makers. To implement this proposal, the ISE would require a limited exemption from rule 11Ac1–1 (the "Quote rule")[5] to permit the Exchange to establish by rule a quotation size for which a responsible broker or dealer is obligated to trade with matching ISE market maker quotations, provided that such responsible broker or dealer is firm to all other customer and broker-dealer orders for the amount of its quotation size communicated to the ISE.[6]

Finally, the ISE proposes two technical changes to update its rules. First, the Exchange proposes to delete language from ISE rule 804 regarding the "enhanced size pilot" that expired on October 31, 2002. Second, the Exchange proposes to delete language from ISE rule 805 regarding limited exemptive authority that expired a year after the Exchange commenced trading.

Interested persons are invited to submit written data, views and arguments concerning the ISE Letter, including whether it is consistent with the Act. Persons making written submissions should file six copies

[12] 17 CFR 200.30–3(29).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 46723 (October 25, 2002), 67 FR 66693.

[4] *See* letter from Michael Simon, Senior Vice President and General Counsel, ISE, to Nancy Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, dated November 20, 2002 ("ISE letter").

[5] 17 CFR 240.11Ac1–1

[6] In connection with this proposal, the ISE submitted a separate letter requesting an exemption from certain requirements of the Quote rule. *See* letter from Michael Simon, Senior Vice President and General Counsel, ISE, to Annette Nazareth, Director, Division, Commission, dated October 10, 2002. Concurrent with approval of this proposal, the Commission granted ISE's request for a limited exemption from the Quote rule. Specifically, the Commission determined to grant responsible brokers or dealers on the ISE an exemption from their obligations under rule 11Ac1–1(c)(1) to communicate to the ISE their quotation sizes applicable to the quotations of ISE market makers, provided that: (1) Such responsible brokers or dealers promptly communicate to the ISE the quotation sizes for which they are obligated to execute at their published quotation any order, other than a quotation by an ISE market maker; (ii) such responsible brokers or dealers comply with their obligations under paragraph (c)(2) of rule 11Ac1–1 by trading with quotations by other ISE market makers, in an amount up to the size established by the ISE; and (iii) the ISE and its responsible broker or dealers do not rely on paragraphs (d)1) and (2) of the Quote rule. *See* letter from Robert Colby, Deputy Director, Division, Commission, to Michael Simon, Senior Vice President and General Counsel, ISE, dated January 21, 2003.

thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the ISE. All submissions should refer to the ISE letter of File No. SR–ISE–2002–24 and should be submitted by February 18, 2003.

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange[7] and, in particular, the requirements of section 6 of the Act.[8] Specifically, the Commission finds that the proposal to require ISE market makers to be firm for up to their disseminated amount to all orders, other than matching ISE market maker quotations, is consistent with section 6(b)(5) of the Act,[9] in that by ensuring that a larger number of orders may be executed at a better price, the proposed rule change has been designed to remove impediments to and to perfect the mechanism of a free and open market and a national market system, while also protecting investors and the public interest.

The original rule proposal, including the proposal to add ISE rule 805(c), which the ISE subsequently withdrew by letter, was noticed for public comment on November 1, 2002. No comments were received on any aspect of the proposal. Because the ISE letter merely withdraws one provision of the proposal, which was previously published for comment, and because by withdrawing the one provision to add ISE rule 805(c), no other aspect of the proposal is affected, the Commission believes that approving this change to the proposal on an accelerated basis is appropriate. Accordingly, pursuant to section 19(b)(2) of the Act,[10] the Commission finds good cause to approve the change to the proposal set forth in the ISE Letter prior to the thirtieth day after notice of the ISE letter is published in the **Federal Register**.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[11] that the proposed rule change (File No. SR–ISE–2002–24) is hereby approved, as amended by the ISE letter, which is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–1882 Filed 1–27–03; 8:45 am]

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[7] The Commission has considered the proposed rules' impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[8] 15 U.S.C. 78f.

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78s(b)(2).

[11] 15 U.S.C. 78s(b)(2).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47221; File No. SR–NYSE–2002–11]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the New York Stock Exchange, Inc. To Establish a Six-Month Pilot Program Permitting a Floor Broker To Use an Exchange Authorized and Issued Portable Telephone on the Exchange Floor

January 21, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and rule 19b–4 thereunder,[2] notice is hereby given that on February 28, 2002, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in items I, II and III below, which items have been prepared by the Exchange. On December 30, 2002, the Exchange filed an amendment to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Darla C. Stuckey, Corporate Secretary, NYSE, to Nancy J. Sanow, Assistant Director, Division of Market Regulation, Commission, dated December 30, 2002 ("Amendment No. 1"). Amendment No. 1 replaces the filing in its entirety and provides, in the proposed rule text and the purpose section of the filing, clarification and further details on the use of Exchange authorized and issued portable telephones on the Exchance floor.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend NYSE rule 36 (Communication Between Exchange and Members' Offices) to allow a Floor broker's use of an Exchange authorized and provided portable telephone on the Exchange Floor upon approval by the Exchange, by deleting the current prohibition against such use. Below is the text of the proposed rule change, as amended. Proposed new language is *italicized;* proposed deletions are in brackets.

Rule 36 Communications Between Exchange and Members' Offices

No member or member organization shall establish or maintain any telephonic or electronic communication between the Floor and any other location without the approval of the Exchange. The Exchange may to the extent not inconsistent with the Securities Exchange Act of 1934, as amended, deny, limit or revoke such approval whenever it determines, in accordance with the procedures set forth in Rule 475, that such communication is inconsistent with the public interest, the protection of investors or just and equitable principles of trade.

Supplementary Material

.10 Installation of telephone lines to Exchange.—The Telephone Company will not recognize any order for the installation or disconnection of a telephone line between the Floor and any other location, except such orders as are issued by the Exchange directly to the Telephone Company.

Requests for telephone lines should be sent to Market Operations Division. Members or member organizations who desire such installations or disconnections should present their requests sufficiently in advance of the desired effective date to avoid any inconvenience resulting from insufficient notice to the Telephone Company.

.20 With the approval of the Exchange, a member or member organization *other than a specialist or specialist member organization* may maintain a telephone line *or use an Exchange authorized and provided portable telephone* which permits a non-member off the Floor to communicate with a member or member organization on the Floor. *However, use of an Exchange authorized and provided portable telephone is not permitted for orders in Investment Company Units (as defined in Section*

703.16 of the Listed Company Manual). In addition, any Floor broker receiving orders from the public over portable phones must be properly qualified under Exchange rules to conduct such business (See, for e.g., Rules 342 and 345.) The use of a portable telephone on the Floor other than one authorized and issued by the Exchange is prohibited.

In the case of members or member organizations acting solely in connection with transactions in "baskets" (as Rule 800 (Basket Trading: Applicability and Definitions) defines that term), the Exchange may approve the maintenance of such telephone lines at the basket trading location. In all other instances, the Exchange will approve the maintenance of such telephone lines only at the booth location of a member or member organization. [The Exchange will not approve the use of a portable telephone on the Floor].

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change, as amended, and discussed any comments it received on the proposed rule change, as amended. The text of these statements may be examined at the places specified in item IV below and is set forth in sections A, B, and C below.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

NYSE rule 36 governs the establishment of telephone or electronic communications between the Exchange's Trading Floor and any other location. Rule 36.20 prohibits the use of portable telephone communications between the Trading Floor and any off-Floor location. The only way that voice communication can be conducted today by Floor brokers between the Trading Floor and an off-Floor location is by means of a telephone located at a broker's booth. Communications often involve a customer calling a broker at the booth for "market look" information. A broker may not use a portable phone currently in a trading Crowd at the point of sale to speak with a person located off the Floor.

The Exchange is proposing to amend NYSE rule 36 to permit a Floor broker to use an Exchange authorized and issued portable telephone on the Floor. Currently, the Exchange does not permit the use of portable telephones on its Floor. Thus, with the approval of the Exchange, a Floor broker would be permitted to engage in direct voice communication from the point of sale to an off-Floor location, such as a member firm's trading desk or the office of one of the broker's customers. Such communications would permit the broker to accept orders consistent with Exchange rules, provide status and oral execution reports as to orders previously received, as well as "market look" observations as are routinely transmitted from a broker's booth location today. Use of a portable telephone on the Exchange Floor other than one authorized and issued by the Exchange would continue to be prohibited.

Both incoming and outgoing calls would be allowed, provided the requirements of all other Exchange rules have been met. A broker would not be permitted to represent and execute any order received as a result of such voice communication unless the order was first properly recorded by the member and entered into the Exchange's Front End Systemic Capture (FESC) electronic database.[4] In addition, Exchange rules require that any Floor broker receiving orders from the public over portable phones must be properly qualified to do direct access business under Exchange rules 342 and 345, among others.[5]

The Exchange would not permit portable communications at the point of sale for orders in Investment Company Units (as defined in Section 703.16 of the Listed Company Manual), also known as Exchange-Traded Funds (ETFs), since orders in ETFs can first be executed and then entered into FESC.[6] Technical restraints would be developed to implement this policy, thus preventing the use of portable phones where ETFs currently trade.

This proposal would be implemented as a six-month pilot from the date of Commission approval with a commitment by the Exchange to complete within three months of Commission approval a study of communications on the Exchange Floor, pursuant to a recommendation of an Independent Consultant retained by the Exchange.[7]

Under the current policy, an off-Floor customer can communicate with a broker in a trading crowd only in an indirect, second-hand fashion by calling a broker's booth and using the booth clerk as an intermediary. The Exchange believes that eliminating the current restriction against the use of portable telephones would enable the Exchange to provide more direct, efficient access to its trading crowds and customers, increase the speed of transmittal of orders and the execution of trades, and provide an enhanced level of service to customers in an increasingly competitive environment.[8] By enabling customers to speak directly to a Floor broker in a trading crowd on an Exchange authorized and issued portable telephone, the proposed rule change would, in the Exchange's view, expedite and make more direct the free flow of information which today has to be transmitted somewhat more circuitously via the broker's booth.

Specialists are subject to separate restrictions in NYSE rule 36 on their ability to engage in voice communications from the specialist post to an off-Floor location.[9] The Exchange's proposed amendment to NYSE rule 36 would not apply to specialists, who would continue to be prohibited from speaking from the post to upstairs trading desks or customers.

2. Statutory Basis

The Exchange represents that the statutory basis for this proposed rule change is the requirement under section 6(b)(5) of the Act[10] that an exchange have rules that are designed to promote just and equitable principles of trade, to

[4] *See* Securities Exchange Act Release No. 43689 (December 7, 2000), 65 FR 79145 (December 18, 2000) (SR–NYSE–98–25). *See also* Securities Exchange Act Release No. 44943 (October 16, 2001), 66 FR 53820 (October 24, 2001) (SR–NYSE–2001–39) (discussing certain exceptions to FESC, such as orders to offset an error, or a bona fide arbitrage, which may be entered within 60 seconds after a trade is executed).

[5] For more information regarding Exchange requirements for conducting a public business on the Exchange Floor, *see* Information Memo 01–41 (November 21, 2001), Information Memo 01–18 (July 11, 2001) (available on *www.nyse.com/regulation/regulation.html*), and Information Memo 91–25 (July 8, 1991).

[6] *See* Securities Exchange Act Release No. 45246 (January 7, 2002), 67 FR 1527 (January 11, 2002) (SR–NYSE–2001–52) (discussing an exception to FESC that allows ETFs to be entered within 90 seconds of execution). *See also* Securities Exchange Act Release No. 46713 (October 23, 2002), 67 FR 66033 (October 29, 2002) (SR–NYSE–2002–48) (extending the exception until January 5, 2004).

[7] *See In the Matter of New York Stock Exchange*, 70 S.E.C. Docket 106, Release No. 41574, 1999 WL 430863 (June 29, 1999).

[8] *See* Securities Exchange Act Release No. 43836 (January 11, 2001), 66 FR 6727 (January 22, 2001) (SR–PCX–00–33) (discussing and approving the Pacific Exchange, Inc.'s proposal to remove the current prohibition against Floor brokers' use of cellular or cordless phones to make calls to persons located off the trading floor).

[9] *See* Securities Exchange Act Release No. 46560 (September 26, 2002), 67 FR 62088 (October 3, 2002) (SR–NYSE–00–31) (discussing restrictions on specialists' communications from the post).

[10] 15 U.S.C. 78f(b)(5).

remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Exchange believes that the amended proposed change to NYSE rule 36 supports the mechanism of free and open markets by providing for increased means by which communications to and from the Floor of the Exchange may take place.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change, as amended, will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All should refer to File No. SR–NYSE–2002–11 and should be submitted by February 18, 2003.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–1879 Filed 1–27–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47215; File No. SR–NYSE–2002–50]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the New York Stock Exchange, Inc. To Adopt Amendments to Exchange Rules 450 ("Restrictions on Giving of Proxies"), 451 ("Transmission of Proxy Material"), 452 ("Giving Proxies by Member Organizations"), and 465 ("Transmission of Interim Reports and Other Material")

January 17, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and rule 19b–4 thereunder,[2] notice is hereby given that on October 16, 2002, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in items I, II, and III below, which items have been prepared by the NYSE. On December 19, 2002, the NYSE submitted Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NYSE is proposing to amend NYSE rule 450 ("Restriction on Giving of Proxies"), NYSE rule 451 ("Transmission of Proxy Material"), NYSE rule 452 ("Giving Proxies by Member Organizations"), and NYSE rule 465 ("Transmission of Interim Reports and Other Material") to allow authorized state-registered investment advisers to receive and vote proxy materials on behalf of beneficial owners. The text of the proposed rule change is below. Proposed new language is in italics; deleted language is in brackets.

Restriction on Giving of Proxies

Rule 450. No member organization shall give or authorize the giving of a proxy to vote stock registered in its name, or in the name of its nominee, except as required or permitted under the provisions of rule 452, unless such member organization is the beneficial owner of such stock. Notwithstanding the foregoing,

(1) Any member organization, designated by a named fiduciary as the investment manager of stock held as assets of an ERISA Plan that expressly grants discretion to the investment manager to manage, acquire, or dispose of any plan asset and which has not expressly reserved the proxy voting right for the named fiduciary, may vote the proxies in accordance with its ERISA Plan fiduciary responsibilities; and

(2) Any person registered as an investment adviser, *either* under the Investment Advisers Act of 1940 *or under the laws of a state*,[4] who exercises investment discretion pursuant to an advisory contract for the beneficial owner and has been designated in writing by the beneficial owner to vote the proxies for stock which is in the possession or control of the member organization, may vote such proxies.

Transmission of Proxy Material

Rule 451. (a) Whenever a person soliciting proxies shall furnish a member organization:

(1) [C]copies of all soliciting material which such person is sending to registered holders, and

(2) satisfactory assurance that [he] *the person* will reimburse such member organization for all out-of-pocket expenses, including reasonable clerical expenses, incurred by such member organization in connection with such solicitation,

such member organization shall transmit to each beneficial owner of stock which is in its possession or

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[11] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Darla Stuckey, Corpoate Secretary, NYSE, to Nancy Sanow, Assistant Director, Division of Market Regulation, Commission, dated December 19, 2002 ("Amendment No. 1"). In Amendment No. 1, the NYSE revised the first footnote of proposed NYSE rule 451 to define the term "state" by reference to the Investment Advisers Act of 1940, instead of the Securities Exchange Act of 1934

[4] *The term "state" as used herein shall have the meaning given to such term in Section 3(a)(16) of the Investment Advisers Act of 1940, and as such term may be amended from time to time therein.*

control or to an investment advisor, registered *either* under the Investment Advisers Act of 1940 *or under the laws of a state,* who exercises discretion pursuant to an advisory contract for the beneficial owner and has been designated in writing by the beneficial owner of such stock (hereinafter "designated investment adviser") to receive soliciting material in lieu of the beneficial owner, the furnished material; and

(b) No Change.

* * * * *

Giving Proxies by Member Organizations

Rule 452. A member organization shall give or authorize the giving of a proxy for stock registered in its name, or in the name of its nominee, at the direction of the beneficial owner. If the stock is not in the control or possession of the member organization, satisfactory proof of the beneficial ownership as of the record date may be required.

Voting Member Organization Holdings as Executor, etc.

A member organization may give or authorize the giving of a proxy to vote any stock registered in its name, or in the name of its nominee, if such member organization holds such stock as executor, administrator, guardian, trustee, or in a similar representative or fiduciary capacity with authority to vote.

Voting Procedure Without Instructions

A member organization which has transmitted proxy soliciting material to the beneficial owner of stock or to an investment adviser, registered *either* under the Investment Advisers Act of 1940 *or under the laws of a state,* who exercises investment discretion pursuant to an advisory contract for the beneficial owner and has been designated in writing by the beneficial owner of such stock (hereinafter "designated investment adviser") to receive soliciting material in lieu of the beneficial owner and solicited voting instructions in accordance with the provisions of rule 451, and which has not received instructions from the beneficial owner or from the beneficial owner's designated investment adviser by the date specified in the statement accompanying such material, may give or authorize the giving of a proxy to voted such stock, provided the person in the member organization giving or authorizing the giving of the proxy has no knowledge of any contest as to the action to be taken at the meeting and provided such action is adequately disclosed to stockholders and does not include authorization for a merger, consolidation or any other matter which may affect substantially the rights or privileges of such stock.

* * * * *

Transmission of Interim Reports and Other Material

Rule 465. A member organization, when so requested by a company, and upon being furnished with:

(1) Copies of interim reports of earnings or other material being sent to stockholders, and

(2) Satisfactory assurance that it will be reimbursed by such company for all out-of-pocket expenses, including reasonable clerical expenses, shall transmit such reports or material to each beneficial owner of stock of such company held by such member organization and registered in a name other than the name of the beneficial owner unless the beneficial owner has instructed the member organization in writing to transmit such reports or material to a designated investment adviser, registered *either* under the Investment Advisers Act of 1940 *or under the laws of a state,* who exercises investment discretion pursuant to an advisory contract for such beneficial owner.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

I. Purpose

Background and Prior Amendments

On August 25, 1994, the Commission approved amendments to Exchange rules related to voting of proxies and transmission of proxy and related issuer material.[5] The affected rules were NYSE rule 450 ("Restrictions on Giving of Proxies"), NYSE rule 451 ("Transmission of Proxy Material"), NYSE rule 452 ("Giving Proxies by Member Organizations"), and NYSE rule 465 ("Transmission of Interim Reports and Other Material").

The 1994 amendments gave beneficial owners the ability to authorize investment advisers registered under the Investment Advisers Act of 1940 ("Advisers Act")[6] who exercise investment discretion pursuant to an advisory contract and who have been designated to the member organization in writing by the beneficial owner, to receive proxy soliciting materials, annual reports and other related issuer material and to vote proxies for the beneficial owners of securities. In other words, the amendments permitted member organizations to comply with such duly authorized customer requests, provided the designated adviser was registered under the Advisers Act.

Prior to these amendments, Exchange rules required transmission of proxy and related materials by the member organization to each beneficial owner of stock held in the member organization's possession and control. In fact, pre-amendment NYSE rule 451 explicitly required that proxy materials be sent to a beneficial owner even if such owner had instructed the member organization not to do so.

The National Securities Market Improvement Act Amendments

Effective July 1997, the Commission adopted new rules and rule amendments under the Advisers Act to implement provisions under title III of the National Securities Markets Improvement Act of 1996 that reallocate regulatory responsibilities for investment advisers between the Commission and the states.[7] Generally, title III (a/k/a The Investment Advisers Supervision Coordination Act or the "Coordination Act") provides for Commission regulation of advisers with $25 million or more of assets under management, and state regulation of advisers with less than $25 million of assets under management.

Specifically, new section 203A(a) of the Advisers Act[8] provides that an investment adviser that is regulated or required to be regulated as an investment adviser in the state in which it maintains its principal office and place of business is prohibited from

[5] *See* Exchange Act Release No. 34596, 59 FR 45050 (August 31, 1994) and NYSE Information Memo Number 94–41 (September 7, 1994).

[6] 15 U.S.C. 80b.

[7] 62 FR 28112 (May 22, 1997); Release No. IA–1633, File No. S7–31–96.

[8] 15 U.S.C. 80b–3a.

registering with the Commission unless the adviser:

(i) Has assets under management of not less than $25 million (or such higher amount as the Commission may, by rule, deem appropriate), or

(ii) Is an adviser to an investment company registered under the Investment Company Act of 1940.

The Proposed Amendments

The provisions of the Coordination Act have been estimated to reduce by two-thirds the number of advisers eligible to register with the Commission.

Consequently, a large number of investment advisers (those with less than $25 million under management) who exercise investment discretion pursuant to an advisory contract, and have been designated to the member organization in writing by the beneficial owner to receive and vote proxy materials, are no longer authorized to do so under NYSE Rules. NYSE believes that amending NYSE rules 450, 451, 452, and 465 to allow such authorization to be extended to advisers registered under state law would allow for the reasonable customer expectation that duly designated advisers, subject to regulation, be permitted to receive and vote proxy materials on their behalf.

The Exchange represents that the proposed amendments are consistent with a proposed rule change recently filed by the National Association of Securities Dealers, Inc. with the Commission.[9]

2. Statutory Basis

NYSE believes that the basis under the Exchange Act for this proposed rule change is the requirement under section 6(b)(5) of the Act [10] that an Exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to and to perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposal does not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to the file number in the caption above and should be submitted by February 18, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–1881 Filed 1–27–03; 8:45 am]

BILLING CODE 8010–01–P

[9] See Exchange Act Release No. 47214 (January 17, 2003).

[10] 15 U.S.C. 78f(b)(5).

[11] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3459]

State of Texas (Amendment #7)

In accordance with a notice received from the Federal Emergency Management Agency, dated January 16, 2003, the above numbered declaration is hereby amended to extend the deadline for filing applications for physical damages as a result of this disaster to January 31, 2003.

All other information remains the same, *i.e.*, the deadline for filing applications for economic injury is August 5, 2003.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: January 17, 2003.

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 03–1923 Filed 1–27–03; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 4223]

Secretary of State's Advisory Committee on Private International Law: Study Group on Reciprocal Enforcement of Child Support Obligations; Notice of Meetings

There will be a public meeting of a Study Group on International Child Support of the Secretary of State's Advisory Committee on Private International Law, on Wednesday, February 5, 2003, from 1 p.m. to 4 p.m. at the Hyatt Regency Capitol Hill, 400 New Jersey Avenue, NW., Washington, DC (Columbia Room, Ballroom level).

The purpose of this meeting is to assist the Department of State and the Office of Child Support Enforcement of the Department of Health and Human Services in preparing for the upcoming negotiation, under the auspices of the Hague Conference on Private International Law, of a new international convention on the international recovery of child support and other forms of family maintenance. The first session of this negotiation is scheduled for May 2003 in The Hague. Documents relevant to this project can be found on the web site of the Hague Conference (*www.hcch.net*).

The Study Group meetings are open to the public up to the capacity of the meeting rooms. Interested persons are invited to attend and to express their views. Persons who wish to have their views considered are encouraged, but not required, to submit written

comments in advance of the meeting. Written comments should be submitted by e-mail to Mary Helen Carlson at *carlsonmh@ms.state.gov*. All comments will be made available to the public by request to Ms. Carlson via e-mail or by phone (202–776–8420).

Mary Helen Carlson,
Office of the Legal Adviser for Private International Law, Department of State.

[FR Doc. 03–1890 Filed 1–27–03; 8:45 am]
BILLING CODE 4710–08–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Honoring Tickets of National Airlines Pursuant to the Requirements of the Section 145 of the Aviation and Transportation Security Act

On November 14, 2002, the Department of Transportation issued a notice providing guidance for airlines and the traveling public regarding the obligation of airlines under section 145 of the Aviation and Transportation Security Act, Pub. L. 107–71, 115 Stat. 645 (November 19, 2001) ("Act"), to transport passengers of airlines that have ceased operations due to insolvency or bankruptcy. That notice, issued after National Airlines' November 6, 2002, cessation of operations, followed a similar notice issued August 8, 2002, after Vanguard Airlines' July 2002 cessation of service. Both notices were intended to provide immediate guidance in response to numerous complaints from ticketed passengers and inquiries from airlines. In addition, the November 14 notice also requested comments from airlines and the traveling public about the cost to carriers of transporting passengers of carriers that had ceased operations. The purpose of this notice is to respond to those comments.

Section 145 requires, in essence, that airlines operating on the same route as an insolvent carrier that has ceased operations transport the ticketed passengers of the insolvent carrier "to the extent practicable." Our earlier notices mentioned several factors that we would look to in determining whether airlines were complying with section 145.[1] We stated, among other things, our preliminary view that, at a minimum, section 145 requires that passengers holding valid confirmed tickets, whether paper or electronic, on an insolvent or bankrupt carrier be transported by other carriers who operate on the route for which the passenger is ticketed on a space-available basis, without significant additional charges.[2] We made clear in our guidance, however, that we did not believe that Congress intended to prohibit carriers from recovering from accommodated passengers the amounts associated with the actual cost of providing such transportation. We stated that we did not foresee that such costs would exceed $25.00, an amount that we made clear was an estimate of the magnitude of the additional direct costs carriers might incur in transporting affected passengers on a standby basis.[3]

In our November 14 notice, in response to informal concerns raised by several carriers that our $25.00 cost estimate is too low, we formally requested that any airline or person who believes that the Department's estimate of $25.00 is either insufficient, or is more than necessary to cover the direct costs of accommodating ticketed passengers on a space-available basis, contact the Department and provide written comments and cost evidence in support of that position. Our formal request for written comments was made after complaining carriers had failed to respond to our earlier, informal requests for such information, and after reports that consumers had been, at least initially, charged far in excess of $25.00 for transportation.[4]

Delta Airlines ("Delta"), American Airlines ("American"), America West Airlines ("America West"), and United Airlines ("United") filed comments in response to our request. Unfortunately, none of those carriers provided information responsive to our request or otherwise demonstrating costs in excess of $25.00 each way for space-available transportation. Instead, Delta and American chose to argue that the Department has no ratemaking authority, and the Department's suggestion that, for purposes of section 145, $25.00 each way is a reasonable estimate of the cost to a carrier of providing alternate, space-available transportation constitutes ratemaking.[5] They both further argue that, even if the Department had authority under section 145 to review the reasonableness of fees charged to accommodate another airline's passengers, the marketplace should dictate the amount of that charge. American argues that in a deregulated environment passengers should assume the risk in booking with a financially weak carrier and, according to American and Delta, an airline's "standard reticketing fee," which is charged to fare-paying passengers who, under terms of their contract of carriage with the airline, voluntarily change their travel plans, is what the marketplace dictates. The carriers further argue that charging passengers of another airline that has ceased operations under section 145 an amount less than that "standard reticketing fee" is unfair to their fare-paying passengers. American also asserts in its comments that we have not adequately addressed its concerns over establishing the validity of tickets, especially electronic tickets, of passengers seeking reaccommodation under section 145.

America West and United both assert that their respective costs for providing alternate transportation on a space-available basis exceed $25.00 each way. Neither airline, however, provided information in support of that assertion, as requested by the Department. According to America West, the costs associated with transporting passengers of an airline that has ceased operations involve consideration of delays, security and baggage screening, and fraud, and could vary by market, time of service, and season. Accordingly, the carrier states, it did not have sufficient time to document all such costs. It states that instead, it elected to assess such passengers the same fare it would charge employees for friends and family members, under its "buddy pass" system, which permits those persons to

[1] Failure by an airline to comply with section 145 may constitute an unfair and deceptive practice violation of 49 U.S.C. 41712.

[2] We further pointed out that, under section 145, passengers whose transportation has been interrupted have 60 days after the date of the service interruption to make alternative arrangements with an airline for that transportation.

[3] We pointed out that examples of such costs include the cost of rewriting tickets, providing additional onboard meals, and the incremental fuel costs attributable to transporting an additional passenger.

[4] Long before formal comments were requested, Department staff had informally advised carriers that expressed concerns about this guidance that, to the extent they experienced and could document reasonable direct costs in excess of $25.00, they should be entitled to recover such costs under the statute. At that time, Department staff specifically requested each airline that had expressed concern to provide evidence demonstrating that its reasonable direct costs exceeded the estimated $25.00 amount. No airline provided any documentation in response to that informal request. A few airlines also expressed separate concerns about difficulties in verifying confirmed reservations of passengers holding electronic tickets, in which case a hard-copy ticket would not be available. Department staff suggested it would be appropriate to require such passengers to provide proof of payment and confirmation, such as receipts and printed itineraries.

[5] Both carriers have challenged the Department's efforts to provide guidance regarding section 145 in the U.S. Court of Appeals for the District of Columbia. *See Delta Air Lines, Inc. and American Airlines, Inc.* v. *U.S. Department of Transportation*, Case No. 02–1309 (D.C. Cir. filed October 8, 2002).

travel on a space-available basis.[6] United states that its "preliminary" review persuades it that its costs exceed $25.00 each way but, due a lack of time in the immediate aftermath of the Vanguard and National shutdowns for detailed cost analyses and in view of the small number of passengers involved, it elected as a matter of policy to charge affected passengers $25.00 each way. United states that, because it has chosen to abide by the suggested $25.00 amount, it does not wish to burden itself with providing cost information at this time. United points out, however, that a variety of factors may affect its costs in any future instance where section 145 comes into play, such as fuel costs, the number of passengers affected, and the itineraries involved, such as domestic versus international travel. United states that it may, in some instances, impose a charge higher than $25.00 each way but adds that it will advise the Department before doing so.

We see no reason, based on the comments submitted, to change our guidance with respect to the implementation by carriers of the requirements of section 145. We find particularly unpersuasive Delta's and American's argument that we lack the authority to provide any guidance with respect to section 145, and that our actions are unlawful ratemaking. Equally unpersuasive is the carriers' argument that the so-called "marketplace" rate, *i.e.* whatever rate those carriers elect to charge, is what Congress intended in requiring carriers to accommodate displaced passengers "to the extent practicable."[7]

We are not, as suggested by Delta and American, setting rates. As we stated in our earlier notices, in requiring carriers to accommodate passengers of a failed carrier "to the extent practicable," it is reasonable to assume that Congress did not intend to prohibit carriers from recovering minimal amounts associated with the actual cost of providing alternate transportation.[8] Adoption of Delta's and American's "marketplace" charge argument would render section 145 meaningless. Prior to enactment of section 145, airlines were free to transport passengers of a carrier that had ceased operations on a standby or confirmed basis at whatever charge they deemed appropriate. If, as Delta and American suggest, Congress intended to permit carriers to continue to charge passengers of carriers that had ceased operations a so-called "marketplace" rate, *i.e.*, whatever rate the carriers deem appropriate, then Congress need not have enacted section 145 in the first place.[9]

Furthermore, the carriers' argument that it is unfair to charge a section 145 passenger less than they charge their own passengers to be reticketed is inapposite. Some of American's and Delta's domestic passengers are assessed a "standard reticketing fee" under terms of their contract of carriage with the respective airline for the fare under which they were ticketed, but only after they have voluntarily changed their travel plans as provided in the contract of carriage. Such change fees are in large measure assessed not simply to recoup reticketing costs, but in order to differentiate one fare product from another, *i.e.*, as a "penalty" to affect passengers" purchasing behavior. Indeed, some fare-paying passengers of American and Delta may change their travel plans at will and are not required to pay any "reticketing" fee at all.

We believe that the airlines" normal pricing practices provide powerful evidence that the carriers' domestic "standard reticketing fee" of $100 far exceeds any costs of providing that service.[10] Each day, tens of thousands of Delta and American passengers are charged less than $100 each way, including taxes, by those carriers for their air transportation. Indeed, statistics filed with the Department by Delta show that in the second quarter of 2002, more than 3 million of Delta's fare-paying passengers, about 36 percent, paid less than $100 each way to travel on the carrier.[11] Similarly, statistics filed with the Department by American show that, for the same period, more than 2.3 million passengers, about 28 percent, paid less than $100 each way to travel on the carrier. Thus, it appears that unless those two carriers are offering a large percentage of their seat inventory at prices below their cost, there is no relation between the "standard reticketing fee" and Delta's or American's cost to carry a passenger.[12]

American also asserts that we have not adequately addressed its concerns over establishing the validity of tickets, especially electronic tickets, of passengers seeking to be reaccommodated under section 145. We disagree. We continue to believe that, in the case of electronic tickets, it is reasonable for airlines to take steps to satisfy themselves of the *bona fides* of the ticketholder requesting alternate transportation. Our suggestion that it would be appropriate to require passengers to provide proof of payment and confirmation, such as receipts and printed itineraries, was not intended to be exclusive, but only an example of the types of steps that might be taken by a carrier to satisfy itself of the validity of a passenger's claim to transportation under section 145. We recognize that there may be instances in which, absent verification of the passenger's status by the failed carrier, an airline cannot confirm the validity of the passenger's claim to transportation under section 145. However, that fact does not require the conclusion that the only way in which to validate a passenger's status is through a paper ticket or access to the failed carrier's reservation system.

As we have made clear in our prior notices, we are sympathetic to carriers' concerns that they not suffer uncompensated additional expenses in transporting passengers pursuant to section 145. We are disappointed, however, that no carrier, particularly those raising the strongest objections about our prior notices, chose to provide

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[6] We have reason to believe that such a system would result in charges far in excess of $25.00 each way. Soon after National ceased operations, America West orally advised a Department staff member posing as a National passenger that its charge for transportation from Las Vegas to Chicago and return would be $168.50. At that time, the walk-up fare for any passenger was $276. Upon further inquiry by the Department, America West stated that this system was no longer being used in connection with section 145 and that it was assessing National passengers a $25 charge each way for standby travel.

[7] Section 145 cannot be viewed in a vacuum. Congress enacted section 145 in an effort, at least in part, to ensure some measure of relief to aviation consumers who might be adversely affected by the serious economic consequences on airlines resulting from the terrorist attacks on September 11, 2001. At the same time it imposed these new duties on airlines, it also provided them with compensation totaling billions of dollars.

[8] However, since section 145 is silent on the issue of whether any fees may be assessed for transporting passengers of a carrier that has ceased service on a route, another possible interpretation might be that Congress intended that carriers not charge passengers at all for carriage under section 145.

[9] For this same reason, American's argument that Congress intended that passengers should assume the risk in booking with a financially weak carrier would, if adopted, necessarily render section 145 meaningless.

[10] We note that both American and Delta assess a "standard reticketing fee" of $150 for international travel.

[11] 11 This information is based on Passenger Origin-Destination Survey data filed with the Department. Most passengers purchase tickets on a round trip basis.

[12] In addition, the position asserted in the comments filed by Delta and American is inconsistent with information provided to us by those airlines during our reviews of competition issues. In those cases, and in court proceedings under the antitrust laws, airlines routinely contend that their incremental cost of carrying an additional passenger is minimal, being made up largely of Computer Reservations System or other booking fees, credit card fees, commissions, marketing fees, and minor costs for fuel and food. In fact, we have recently been advised by a Delta official that the variable cost of accepting an additional passenger is $25 or less.

us with any information on their direct costs of carrying passengers on a space-available basis pursuant to section 145.

Notwithstanding our public invitation to all affected parties, there is no evidence in any of the comments submitted to us indicating that our suggested charge of $25.00 each way to accommodate passengers under section 145 is unreasonable. As we informally made clear to every carrier that inquired at the outset, and as is plain from our November 14 notice requesting comments on the cost issue, we understand that costs may vary by carrier. We also agree with the commenters who suggested that the cost to a particular carrier of complying with section 145 may be affected by a variety of factors, including the number of passengers, the current fuel costs to carriers, and the markets and itineraries involved. We note that, consistent with our statutory responsibilities, including those under 49 U.S.C. 41712, it is important in implementing section 145 to avoid uncertainty and unnecessary harm to the industry and the public. We therefore intend to continue to monitor this situation and work with all carriers informally to ensure that the Congressional intent of section 145 is effectuated in any given situation.

Questions regarding this notice may be addressed in writing to Dayton Lehman, Deputy Assistant General Counsel, Office of Aviation Enforcement and Proceedings, 400 7th St., SW., Washington, DC 20590, or he may be contacted by telephone at (202) 366–9342.

An electronic version of this document is available on the World Wide Web at *http://dms.dot.gov/reports.*

Dated: January 23, 2003.

Read C. Van de Water,

Assistant Secretary for Aviation and International Affairs.

[FR Doc. 03–2007 Filed 1–24–03; 11:13 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings, Agreements Filed the Week Ending January 17, 2003

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 412 and 414. Answers may be filed within 21 days after the filing of the application.

Docket Number: OST–2003–14260.
Date Filed: January 14, 2003.
Parties: Members of the International Air Transport Association.
Subject: CTC COMP 0438 dated 14 January 2003. Mail Vote 262—Resolution 035. Unethical Disclosure of Information (New). Intended effective date: 1 April 2003.

Docket Number: OST–2003–14298.
Date Filed: January 16, 2003.
Parties: Members of the International Air Transport Association.
Subject:
PTC COMP 1000 dated 17 January 2003.
Mail Vote 263—Resolution 011a (Amending).
Mileage Manual Non-TC Member/ Non-IATA Carrier Sectors.
Intended effective date: 1 February 2003 for implementation, 1 April 2003.

Dorothy Y. Beard,

Chief, Docket Operations and Media Management, Federal Register Liaison.

[FR Doc. 03–1870 Filed 1–27–03; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG–2003–14326]

Towing Safety Advisory Committee

AGENCY: Coast Guard, DOT.

ACTION: Notice of meeting.

SUMMARY: The Towing Safety Advisory Committee's (TSAC) Working Group on Regulation Review will meet to discuss various issues relating to current U.S. Coast Guard regulations as they pertain to towing vessels. The meeting will be open to the public.

DATES: The TSAC Working Group will meet on Tuesday, February 18, 2003, from 1 p.m. to 4 p.m. and on the following day, Wednesday, February 19, 2003, from 8 a.m. to 12 noon. The meeting may close early if all business is finished. Written material and requests to make oral presentations should reach the Coast Guard on or before February 12, 2003. Requests to have a copy of your material distributed to each member of the Working Group should reach the Coast Guard on or before February 7, 2003.

ADDRESSES: The Working Group will meet in room 6319, U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC. Send written material and requests to make oral presentations to Mr. Gerald P. Miante, Commandant (G–MSO–1), Room 1210, U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001. This notice is available on the Internet at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Mr. Gerald P. Miante, Assistant Executive Director of TSAC, telephone 202–267–0214, or fax 202–267–4570, or e-mail at: *gmiante@comdt.uscg.mil.*

SUPPLEMENTARY INFORMATION: Notice of the meeting is given under the Federal Advisory Committee Act, 5 U.S.C. App. 2.

Agenda of Meeting

The agenda tentatively includes the following:

1. Review current U.S. Coast Guard regulatory requirements pertaining to uninspected towing vessels;

2. Assess the adequacy of these existing regulations;

3. Identify any gaps in these regulations and research where else those gaps may be addressed—such as in voluntary or non-regulatory programs; and

4. Ascertain the best method to address any gaps not addressed in regulatory or non-regulatory products.

Procedural

The meeting is open to the public. Please note that the meeting may close early if all business is finished. At the Chair's discretion, members of the public may make oral presentations during the meeting. If you would like to make an oral presentation at the meeting, please notify the Assistant Executive Director no later than February 12, 2003. Written material for distribution at the meeting should reach the Coast Guard no later than February 7, 2003. If you would like a copy of your material distributed to each member of the Working Group in advance of the meeting, please submit 15 copies to Mr. Miante at the address in **ADDRESSES,** or an electronic version to the e-mail address in **FOR FURTHER INFORMATION CONTACT,** no later than February 7, 2003.

Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact the Assistant Executive Director as soon as possible.

Dated: January 22, 2003.

Joseph J. Angelo,

Director of Standards, Marine Safety, Security & Environmental Protection.

[FR Doc. 03–1911 Filed 1–27–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application 03–09–C–00–CMX To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Houghton County Memorial Airport, Hancock, Michigan

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Houghton County Memorial Airport under the provisions of the 48 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before February 27, 2003.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Detroit Airports District Office, Willow Run Airport, East, 8820 Beck Road, Belleville, Michigan 48111. The application may be reviewed in person at this location.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Ms. Sandra D. LaMothe, Airport Manager, Houghton County Memorial Airport at the following address: Houghton County Memorial Airport, 23810 Airpark Boulevard, Suite 113, Hancock, Michigan 49913.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the County of Houghton under § 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Ms. Arlene B. Draper, Program Manager, Federal Aviation Administration, Detroit Airports District Office, Willow Run Airport, East, 8820 Beck Road, Belleville, Michigan 48111 (734–487–7282). The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Houghton County Memorial Airport under the provisions of 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On January 6, 2003, the FAA determined that the application to impose and use the revenue from a PFC submitted by the County of Houghton was substantially complete within the requirements of § 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, not later than May 2, 2003.

The following is a brief overview of the application.

Level of the proposed PFC: $3.00.

Proposed charge effective date: September 1, 2005.

Proposed charge expiration date: May 1, 2007.

Total estimated PFC revenue: $104,266.

Brief description of proposed projects: Acquire snow removal equipment, access road lighting, directional and entrance road signage, new electrical service to Aircraft Rescue and Fire Fighting (ARFF) building, rehabilitate public address system in passenger terminal, terminal landside rehabilitation, terminal apron pavement crack sealing, terminal airside entrance rehabilitation, thermal imaging cameras for ARFF vehicles, Unicom radio procurement, electrical transformer screen wall, runway 13 protection zone hazard removal, terminal bathroom rehabilitation, PFC application reimbursement, security fencing with perimeter road.

Class or classes of air carriers, which the public agency has requested to be required to collect PFCs: The County of Houghton has not requested approval to exclude a class or classes of carriers from the PFC collection requirements.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT**.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the County of Houghton.

Issued in Des Plaines, Illinois on January 15, 2003.

Mark McClardy,

Manager, Planning and Programming, Airports Division, Great Lakes Region.

[FR Doc. 03–1877 Filed 1–27–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Passenger Facility Charge (PFC) Approvals and Disapprovals

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Monthly Notice of PFC approvals and disapprovals. In December 2002, there were seven applications approved. This notice also includes information on one application, approved in October 2002, inadvertently left off the October 2002 notice. Additionally, four approved amendments to previously approved applications are listed.

SUMMARY: The FAA publishes a monthly notice, as appropriate, of PFC approvals and disapprovals under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR part 158). This notice is published pursuant to paragraph (d) of § 158.29.

PFC Application Approved

Public Agency: City of Worland, Wyoming.

Application Number: 02–01–C–00–WRL.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in This Decision: $70,500.

Earliest Charge Effective Date: January 1, 2003.

Estimated Charge Expiration Date: March 1, 2008.

Class of Air Carriers not Required To Collect PFC's: None.

Brief Description of Projects Approved for Collection and Use: Preliminary design engineering for runway extension, road, and canal relocation.

Acquire land for runway extension and land use protection.

Relocate obstructions—Highland Hanover Canal and county road.

Brief Description of Disapproved Project; Rehabilitate and shift runway 16/34.

Determination: As proposed, the project does not meet the requirement that it will be implemented within 2 years of approval. In addition, the proposed financial plan required Airport Improvement Program discretionary funds that the FAA did not support, thus raising questions about the financial viability of the project.

Decision Date: October 10, 2002.

FOR FURTHER INFORMATION CONTACT: Christopher Schaffer, Denver Airports District Office, (303) 342–1258.

Public Agency: Niagara Frontier Transportation Authority, Buffalo, New York.

Application Number: 02–04–C–00–BUF.

Application Type: Impose and use a PFC.

PFC Level: $3.00

Total PFC Revenue Approved in This Decision: $23,290,853.

Earliest Charge Effective Date: October 1, 2005.

Estimated Charge Expiration Date: January 1, 2010.

Class of Air Carriers not Required To Collect PFC's: Air taxi/commercial operators filing FAA Form 1800–31.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at Buffalo Niagara International Airport (BUF).

Brief Description of Projects Approved for Collection and Use at BUF: Relocation of security checkpoints.

Runway 14/32 safety improvement and relocation remote fuel dispensing facility.

Purchase safety equipment—aircraft rescue and firefighting/emergency response vehicles.

Passenger movement equipment.

Procurement of security equipment—vehicles.

Upgrade security badging system.

PFC planning and program administration.

Series 1999 debt service—east concourse.

Brief Description of Project Approved for Collection at BUF and Use at Niagara Falls International Airport: Purchase snow removal equipment.

Decision Date: December 11, 2002.

FOR FURTHER INFORMATION CONTACT: Eleanor Schifflin, Eastern Region Airports Division, (718) 553–3354.

Public Agency: City of Santa Barbara, California.

Application Number: 02–03–C–00–SBA.

Application Type: Impose and use a PFC.

PFC Level: $3.00

Total PFC Revenue Approved in This Decision: $2,001,560.

Earliest Charge Effective Date: May 1, 2005.

Estimated Charge Expiration Date: August 1, 2006.

Class of Air Carriers Not Required To Collect PFC's: Unscheduled Part 135 air taxi operators.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at Santa Barbara Municipal Airport.

Brief Description of Projects Approved For Collection and Use: Taxi B relocation. Taxiway M runway incursion project. New taxiway Q.

Brief Description of Projects Approved for Use: Extend runway safety areas. Extend taxiway A and safety areas.

Decision Date: December 12, 2002.

FOR FURTHER INFORMATION CONTACT: Kevin Flynn, Western Pacific Region Airports Division, (310) 725–3632.

Public Agency: Miami Dade Aviation Department, Miami, Florida.

Application Number: 02–04–C–00–MIA.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in This Decision: $2,420,400,341.

Earliest Charge Effective Date: March 1, 2003.

Estimated Charge Expiration Date: October 1, 2037.

Class of Air Carriers Not Required To Collect PFC's: Air taxi/commercial operators filing FAA Form 1800–31.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at Miami International Airport.

Brief Description of Projects Approved for Collection and Use: North terminal development. South terminal development.

Decision Date: December 12, 2002.

FOR FURTHER INFORMATION CONTACT: Miguel A. Martinez, Orlando Airports District Office, (407) 812–6331.

Public Agency: County of Jefferson, Beaumont, Texas.

Application Number: 02–04–C–00–BPT.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in This Decision: $149,300.

Earliest Charge Effective Date: March 1, 2005.

Estimated Charge Expiration Date: April 1, 2007.

Class of Air Carriers Not Required To Collect PFC's: None.

Brief Description of Projects Approved for Collection and Use: Conduct master plan update. Airport safety improvements. Acquire forward looking infrared system. PFC application and administration fees.

Brief Description of Withdrawn Project: Runway extension benefit cost analysis.

Determination: This project was withdrawn by the public agency on October 24, 2002.

Decision Date: December 17, 2002.

FOR FURTHER INFORMATION CONTACT: G. Thomas Wade, Southwest Region Airports Division, (817) 222–5613.

Public Agency: Duluth Airport Authority, Duluth, Minnesota.

Application Number: 02–06–C–00–DLH.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in This Decision: $901,280.

Earliest Charge Effective Date: April 1, 2003.

Estimated Charge Expiration Date: June 1, 2005.

Class of Air Carriers Not Required To Collect PFC'S: Non-scheduled Part 135 air taxi/commercial operators.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at Duluth International Airport.

Brief Description of Projects Approved for Collection and Use: Preparation of PFC application. Purchase replacement snow removal equipment. Construct snow removal equipment material storage and maintenance facility.

Decision Date: December 20, 2002.

FOR FURTHER INFORMATION CONTACT: Gordon Nelson, Minneapolis Airports District Office, (612) 712-4358.

Public Agency: South Jersey Transportation Authority, Egg Harbor Township, New Jersey.

Application Number: 03–02–C–00–ACY.

Application Type: Impose and use a PFC.

PFC Level: $3.00.

Total PFC Revenue Approved in This Decision: $1,573,274.

Earliest Charge Effective Date: September 1, 2005.

Estimated Charge Expiration Date: June 1, 2006.

Class of Air Carries Not Required To Collect PFC'S: Non-scheduled/on demand air carriers with less than 1,200 annual enplaned passengers filing FAA Form 1800–31.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at Atlantic City International Airport.

Brief Description of Projects Approved for Collection and Use: Rehabilitate taxiway B—phases I and II. Acquire snow removal equipment. Improve terminal building. Improvements to airport security systems—phase II. Terminal area study.

Brief Description of Projects Approved for Use: Construct snow

removal equipment building. ASR–9 relocation.

Brief Description of Projects Approved for Collection: Construct deicing containment facility. Environmental mitigation—design only.

Decision Date: December 20, 2002.

FOR FURTHER INFORMATION CONTACT: Dan Vornea, New York Airports District Office, (516) 227–3812.

Public Agency: Brown County, Green Bay, Wisconsin.

Application Number: 02–05–C–00–GRB.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in This Decision: $23,319,000.

Earliest Charge Effective Date: April 1, 2003.

Estimated Charge Expiration Date: January 1, 2016.

Class of Air Carriers Not Required To Collect PFC'S: Air taxi/commercial operators.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at Austin Straubel International Airport.

Brief Description of Project Approved for Collection and Use: Air carrier terminal expansion.

Decision Date: December 20, 2002.

FOR FURTHER INFORMATION CONTACT: Daniel J. Millenacker, Minneapolis Airports District Office, (612) 713–4359.

AMENDMENTS TO PFC APPROVALS

Amendment No. city, state	Amendment approved date	Original approved net PFC revenue	Amended approved net PFC revenue	Original estimated charge exp. date	Amended estimated charge exp. date
99–03–C–01–JAN Jackson, MS	12/04/02	$5,577,870	$11,925,562	04/01/03	02/01/07
98–03–C–01–BUR Burbank, CA.	12/20/02	84,481,000	0	06/01/10	10/01/01
*98–02–C–02–CRP Corpus Christi, TX	12/23/02	41,083,878	43,362,585	04/01/23	01/01/27
*99–03–C–01–TYR Tyler, TX	12/24/02	1,123,700	1,123,700	10/01/09	04/01/08

NOTE: The amendments denoted by an aterisk (*) include a change to the PFC level charged from $3.00 per enplaned passenger to $4.50 per enplaned passenger. For Corpus Christi, TX, this change is effective on March 1, 2003. For Tyler, TX, this change is effective on February 1, 2004.

Issued in Washington, DC on January 22, 2003.

Barry Molar,

Manager, Airports Financial Assistance Division.

[FR Doc. 03–1875 Filed 1–27–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–6 (Sub–No. 397X)]

The Burlington Northern and Santa Fe Railway Company—Abandonment Exemption—In Pierce County, WA

The Burlington Northern and Santa Fe Railway Company (BNSF) has filed a notice of exemption under 49 CFR part 1152 subpart F—*Exempt Abandonments* to abandon a 0.24-mile line of railroad between milepost 28.10 and milepost 28.34 near McMillan, in Pierce County, WA. The line traverses United States Postal Service Zip Code 98374.

BNSF has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic to be rerouted; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed. Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on February 27, 2003, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by February 7, 2003.[3] Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by February 18, 2003, with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001.

A copy of any petition filed with the Board should be sent to BNSF's representative: Michael Smith, Freeborn & Peters, 311 S. Wacker Dr., Suite 3000, Chicago, IL 60606–6677.

If the verified notice contains false or misleading information, the exemption is void *ab initio*.

BNSF has filed a separate environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. SEA will issue an environmental assessment (EA) by January 31, 2003. Interested persons may obtain a copy of the EA by writing to SEA (Room 500, Surface Transportation Board, Washington, DC 20423–0001) or by calling SEA, at (202) 565–1552. (Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.) Comments on environmental and historic preservation matters must be filed within 15 days

[1] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis (SEA) in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[2] Each OFA must be accompanied by the filing fee, which currently is set at $1,100. *See* 49 CFR 1002.2(f)(25).

[3] The Pierce County Parks and Recreation Department (Pierce County) filed a request for issuance of a notice of interim trail use for the entire line pursuant to section 8(d) of the National Trails System Act, 16 U.S.C. 1247(d). The Board will address Pierce County's trail use request, and any others that may be filed, in a subsequent decision.

after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), BNSF shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by BNSF's filing of a notice of consummation by January 28, 2004, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our website at "*www.stb.dot.gov.*"

Decided: January 15, 2003.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 03–1611 Filed 1–27–03; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 5498–ESA

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 5498–ESA, Coverdell ESA Contribution Information.

DATES: Written comments should be received on or before March 31, 2003 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Carol Savage, (202) 622–3945, or through the Internet (*CAROL.A.SAVAGE@irs.gov.*), Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Coverdell ESA Contribution Informaiton.

OMB Number: 1545–1815.

Form Number: 5498–ESA.

Abstract: Form 5498–ESA is used by trustees or issuers of Coverdell Education Savings accounts to report contributions and rollovers to these accounts to beneficiaries.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organization.

Estimated Number of Responses: 150,000.

Estimated Time Per Response: 7 minutes.

Estimated Total Annual Burden Hours: 18,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: January 21, 2003.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 03–1793 Filed 1–27–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Revenue Procedure 2003–11

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Revenue Procedure 2003–11, Offshore Voluntary Compliance Initiative.

DATES: Written comments should be received on or before March 31, 2003 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the revenue procedure should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5242, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Offshore Voluntary Compliance Initiative.

OMB Number: 1545–1822.

Revenue Procedure Number: Revenue Procedure 2003–11.

Abstract: Revenue Procedure 2003–11 describes the Offshore Voluntary Compliance Initiative, which is directed at taxpayers that have under-reported their tax liability through financial arrangements outside the United States that rely on the use of credit, debit, or charge cards (offshore credit cards) or foreign banks, financial institutions, corporations, partnerships, trusts, or other entities (offshore financial arrangements). Taxpayers that participate in the initiative and provide the information and material that their

participation requires can avoid certain penalties.

Current Actions: There are no changes being made to the revenue procedure at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, individuals, and not-for-profits institutions.

Estimated Number of Respondents: 2,000.

Estimated Average Time Per Respondent: 50 hours.

Estimated Total Annual Burden Hours: 100,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: January 21, 2003.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 03–1794 Filed 1–27–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8881

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8881, Credit for Small Employer Pension Plan Startup Costs.

DATES: Written comments should be received on or before March 31, 2003 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Carol Savage, (202) 622–3945, or through the Internet (*CAROL.A.SAVAGE@irs.gov.*), Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Credit for Small Employer Pension Plan Startup Costs.

OMB Number: 1545–1810.

Form Number: 8881.

Abstract: Qualified small employers use Form 8881 to request a credit for start up costs related to eligible retirement plans. Form 8881 implements section 45E, which provides a credit based on costs incurred by an employer in establishing or administering an eligible employer plan or for the retirement-related education of employees with respect to the plan. The credit is 50% of the qualified costs for the tax year, up to a maximum credit of $500 for the first tax year and each of the two subsequent tax years.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 100,000.

Estimated Time Per Respondent: 9 hours, 36 minutes.

Estimated Total Annual Burden Hours: 960,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: January 21, 2003.

Glenn P, Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 03–1795 Filed 1–27–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8882

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and

other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8882, Credit for Employer-Provided Child Care Facilities and Services.

DATES: Written comments should be received on or before March 31, 2003 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Carol Savage, (202) 622–3945, or through the Internet (*CAROL.A.SAVAGE@irs.gov.*), Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Credit for Employer-Provided Child Care Facilities and Services.

OMB Number: 1545–1809.

Form Number: 8882.

Abstract: Qualified employers use Form 8882 to request a credit for employer-provided child care facilities and services. Section 45F provides credit based on costs incurred by an employer in providing childcare facilities and resource and referral services. The credit is 25% of the qualified childcare expenditures plus 10% of the qualified childcare resource and referral expenditures for the tax year, up to a maximum credit of $150,000 per tax year.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, and individuals.

Estimated Number of Respondents: 1,000,000.

Estimated Time Per Respondent: 9 hours, 41 minutes.

Estimated Total Annual Burden Hours: 9,680,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: January 21, 2003.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 03–1796 Filed 1–27–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

President's Task Force To Improve Health Care Delivery for Our Nation's Veterans; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 that a meeting of the President's Task Force to Improve Health Care Delivery for Our Nation's Veterans is scheduled for Wednesday, February 12, 2003, beginning at 9 a.m. and adjourning at 5 p.m. The meeting will be held in the Horizon Ballroom of the Ronald Reagan Building International Trade Center, 1300 Pennsylvania Avenue, NW., Washington, DC, and is open to the public.

The purpose of the President's Task Force to Improve Health Care Delivery for Our Nation's Veterans is to:

(a) Identify ways to improve benefits and services for Department of Veterans Affairs (VA) beneficiaries and Department of Defense (DOD) military retirees who are also eligible for benefits from VA, through better coordination of the activities of the two departments;

(b) Identify opportunities to remove barriers that impede VA and DOD coordination, including budgeting processes, timely billing, cost accounting, information technology, and reimbursement; and

(c) Identify opportunities through partnership between VA and DOD, to maximize the use of resources and infrastructure, including buildings, information technology and data sharing systems, procurement of supplies, equipment, and services.

The morning and afternoon sessions will be a discussion of format and issues for the Final Report to the President.

Interested parties can provide written comments to Mr. Dan Amon, Communications Director, President's Task Force to Improve Health Care Delivery for Our Nation's Veterans, 1401 Wilson Boulevard, 4th Floor, Arlington, Virginia, 22209.

Dated: January 21, 2003.

By Direction of the Secretary.

Nora E. Egan,

Committee Management Officer.

[FR Doc. 03–1835 Filed 1–27–03; 8:45 am]

BILLING CODE 8320–01–M

Corrections

Federal Register
Vol. 68, No. 18
Tuesday, January 28, 2003

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

FEDERAL ELECTION COMMISSION

Sunshine Act Notice

Correction

In notice document 03–1669 beginning on page 3253 in the issue of Thursday, January 23, 2003 make the following correction:

On page 3253, in the third column, in the second **STATUS** heading, "closed", should read, "open".

[FR Doc. C3–1669 Filed 1–27–03; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent to Rule on Application 03–05–C–00–RIC to, Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Richmond International Airport, Richmond, VA

Correction

In notice document 02–32418 appearing on page 78562 in the issue of Tuesday, December 24, 2002 make the following correction:

On page 78562, in the second column, after the first full paragraph, under the section *Proposed charge expiration date:*, in the second line, "2005", should read, "2025".

[FR Doc. C2–32418 Filed 1–27–03; 8:45 am]

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Federal Register

Tuesday,
January 28, 2003

Part II

Department of Transportation

Research and Special Programs Administration

49 CFR Part 192

Pipeline Safety: Pipeline Integrity Management in High Consequence Areas (Gas Transmission Pipelines); Proposed Rule

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 192

[Docket No. RSPA–00–7666; Notice 4]

RIN 2137–AD54

Pipeline Safety: Pipeline Integrity Management in High Consequence Areas (Gas Transmission Pipelines)

AGENCY: Office of Pipeline Safety (OPS), Research and Special Programs Administration (RSPA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes to establish a rule to require operators to develop integrity management programs for gas transmission pipelines that, in the event of a failure, could impact high consequence areas (HCAs). These integrity management programs would focus on requiring operators to comprehensively evaluate their pipelines, and take measures to protect pipeline segments located in high consequence areas. RSPA/OPS recently finalized the definition of high consequence areas by a separate rulemaking. This proposed rule proposes to expand the definition of HCAs by adding consideration of people living at distances greater than 660 feet from large diameter high pressure pipelines. The current HCA definition only requires consideration of people living at distances up to 660 feet from pipelines.

DATES: Interested persons are invited to submit written comments by March 31, 2003. Late-filed comments will be considered to the extent practicable.

ADDRESSES:

Filing Information

You may submit written comments by mail or delivery to the Dockets Facility, U.S. Department of Transportation, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001. It is open from 10 a.m. to 5 p.m., Monday through Friday, except Federal holidays. All written comments should identify the docket and notice numbers stated in the heading of this notice. Anyone desiring confirmation of mailed comments must include a self-addressed stamped postcard.

Electronic Access

You may also submit written comments to the docket electronically. To submit comments electronically, access the following Internet Web address: *http://dms.dot.gov*. Click on "Help & Information" for instructions on how to file a document electronically.

Privacy Act Information

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, *etc.*). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov*.

General Information

You may contact the Dockets Facility by phone at (202) 366–9329, for copies of this proposed rule or other material in the docket. All materials in this docket may be accessed electronically at *http://dms.dot.gov/search*. Once you access this address, type in the last four digits of the docket number shown at the beginning of this notice (in this case 7666), and click on search. You will then be connected to all relevant information.

FOR FURTHER INFORMATION CONTACT: Mike Israni by phone at (202) 366–4571, by fax at (202) 366–4566, or by e-mail at *mike.israni@rspa.dot.gov*, regarding the subject matter of this proposed rule. General information about the RSPA/OPS programs may be obtained by accessing RSPA's Internet page at *http://RSPA.dot.gov*.

SUPPLEMENTARY INFORMATION: RSPA/OPS believes it can best assure pipeline integrity by requiring each operator to: (a) Implement a comprehensive integrity management program; (b) conduct a baseline assessment and periodic reassessments focused on identifying and characterizing applicable threats; (c) mitigate significant defects discovered in this process; and (d) monitor the effectiveness of their programs so appropriate modifications can be recognized and implemented. This approach also recognizes that improving integrity requires operators to gather and evaluate data on the performance trends resulting from their programs, and to make improvements and corrections based on this evaluation. This proposed rule does not apply to gas gathering or to gas distribution lines. This proposed rule will satisfy Congressional mandates for RSPA/OPS to prescribe standards that establish criteria for identifying each gas pipeline facility located in a high-density population area and to prescribe standards requiring the periodic inspection of pipelines located in these areas, including the circumstances under which an inspection can be conducted using an instrumented internal inspection device (smart pig) or an equally effective alternative inspection method. The proposed rule also incorporates the required elements for gas integrity management programs recently mandated in the Pipeline Safety Improvement Act of 2002, which was signed into law on December 17, 2002.

Background

RSPA/OPS is in the midst of promulgating a series of rules intended to require pipeline operators to develop integrity management programs for their entire systems, and to conduct baseline and periodic assessments of pipeline segments the failure of which could imperil the health and safety of nearby residents and cause significant damage to their property. These integrity management programs, written differently for the liquid and natural gas pipeline systems, are designed with the goal of identifying the best method(s) for maintaining the structural soundness (*i.e.*, integrity) of transmission pipelines operating across the United States. RSPA/OPS began this series of integrity management rulemakings by issuing requirements pertaining to hazardous liquid operators. A final rule applying to hazardous liquid operators with 500 or more miles of pipeline was published on December 1, 2000 (65 FR 75378). The hazardous liquid rule applies to pipeline segments that can affect high consequence areas (HCAs), which under the liquid rule criteria include populated areas defined by the Census Bureau as urbanized areas or places, unusually sensitive environmental areas, and commercially navigable waterways. RSPA/OPS issued a similar rule for hazardous liquid operators with less than 500 miles of pipeline (66 FR 2136; January 16, 2001).

Earlier this year, RSPA/OPS explained in the **Federal Register** that we were beginning the integrity management rulemakings for gas transmission lines by first proposing a definition of HCAs (67 FR 1108; January 9, 2002). We also described our plan to propose integrity management program requirements for gas transmission pipelines affecting those areas. In that proposed rule on HCAs (January 9, 2002), we also said we had decided first to propose the definition of HCAs and then to propose the gas integrity management rule. We chose to propose the regulation in two separate steps for a number of reasons. For example, operators already have good information

(through the Class Location Requirements) on where the potential consequences of a gas pipeline accident may be most significant. In addition, since we were still collecting information and verifying the validity of assessment methods other than internal inspection and pressure testing, presenting the gas pipeline integrity management requirements as a single rule would delay review of the HCA definition. RSPA/OPS recently finalized the definition of HCAs (67 FR 50824; August 6, 2002).

In the current definition of HCAs (August 6, 2002), we noted four significant characteristics of gas pipelines ruptures and explosions that are relevant in defining HCAs. These same characteristics are useful here in the context of developing integrity management regulations. Those characteristics are: (1) The effects of a gas pipeline rupture and subsequent explosion are highly localized. The physical properties of natural gas dictate that it rises upward from a rupture as the gas expands into the air; (2) The zone of damage or heat affected zone following a rupture is related to the line's diameter and the pressure at which the pipeline is operated; (3) The size of the heat affected zone from pipeline ruptures where pipe diameter was less than 36 inches and operating pressures were at or below 1000 psig, was limited to a diameter of 660 feet; and (4) The heat affected zone for pipelines of 36 inches or greater, operating at pressures in excess of 1000 psig, can extend 1000 feet. Based on these findings, the HCA definition included language that would require operators of large diameter pipelines operating at high pressures to include areas within a 1000 foot radius from the pipeline. This proposed rule, referred to as the gas integrity management program (IMP) rule, will expand the current definition of HCAs (August 6, 2002), by adding consideration of people living at distances greater than 660 feet from large diameter high pressure pipelines. This expansion is based on the need to provide the same level of added protection to population groups, as the current HCAs provide to facilities that house people who are difficult to evacuate, people with impaired mobility, people who are confined, and areas where people congregate. This population group living at distances greater than 660 feet was inadvertently omitted from the definition when we proposed and later finalized the HCA definition.

The HCA definition for gas transmission lines was based on broad corridors that could potentially be impacted from a pipeline rupture and explosion. However, additional calculations have to be used to determine the likely actual area that would be impacted. This proposed gas integrity management rule provides a method to analyze how a pipeline segment will impact an HCA if the segment fails. The definitions of a potential impact circle and potential impact zone that we are proposing, that are based on a mathematical equation, will essentially determine the likely actual area within an HCA that would be impacted. Whereas the HCA definition is based on broad corridors (*i.e.*, lateral distances perpendicular to pipeline) but not longitudinal distances (*i.e.*, axially along the pipeline), the potential impact circle and potential impact zones that we are proposing will provide longitudinal distances to define the actual area of impact in an HCA, and narrow the area to which the proposed assessment and repair requirements will apply.

This proposed rule also defines a Moderate Risk Area as an area located within a Class 3 or Class 4 location, but not within the potential impact zone. Whether a building located in a rural area, such as a rural church, which is currently included in the High Consequence Area definition, should be designated as a Moderate Risk Area requiring less frequent assessment or requiring enhanced preventive and mitigative measures is an issue for public comment that we discuss later in this document.

The process of identifying pipeline segments that are located in high consequence areas and moderate risk areas is described below under *Covered Segments.*

Pipeline Safety Improvement Act of 2002

On November 15, 2002, Congress passed H.R. 3609, the Pipeline Safety Improvement Act of 2002. The President signed the bill on December 17, 2002. Section 14 of H.R. 3609 contains requirements for integrity management programs for gas pipelines located in high consequence areas. The proposed rule which RSPA has been working on for some time is substantially in alinement with section 14 of H.R. 3609. However, there are differences. We have incorporated the requirements of section 14 into this proposed rule. These areas include the intervals for conducting baseline and reassessment testing, consideration of testing done prior to the final rule, the incorporation of issues raised by State and local authorities, the conduct of testing in an environmentally appropriate manner, a requirement that the operator notify RSPA of changes to its program, and a means to make copies of operator records available to State interstate agents.

Rule Synopsis

The elements of an integrity management program are to consist of: (i) An identification of covered pipeline segments and the potential impact zone for each segment; (ii) a baseline assessment plan; (iii) an identification of threats to each covered pipeline segment, including risk assessments of each covered segment; (iv) a direct assessment plan, if direct assessment is to be used; (v) provisions for remediating conditions found; (vi) a process for continual evaluation and assessment; (vii) preventive and mitigative measures; (viii) a performance plan as outlined in ASME/ANSI B31.8S, Section 9; (ix) recordkeeping requirements; (x) a management of change process as outlined in ASME/ANSI B31.8S, Section 11; (xi) a quality assurance process as outlined in ASME/ANSI B31.8S, Section 12; (xiii) a communication plan based on ASME/ANSI B31.8S, Section 10, to include a process for addressing safety concerns raised by OPS, including safety concerns OPS raises on behalf of a State authority with which OPS has an interstate agent agreement and of local authorities; (xiv) a process for providing, by electronic or other means, a copy of the operator's integrity management program to a State authority with which OPS has an interstate agent agreement; and (xv) a process for ensuring that each integrity assessment is being conducted in a manner that minimizes environmental and safety risks.

Covered Segments

Operators must identify covered segments prior to performing assessments. A covered segment is any transmission pipeline segment. The approach involves six steps that rely on the definitions contained in section 192.761. Those six steps are: (1) Identify all high consequence areas for the pipeline using the HCA definition as expanded by this proposed rule; (2) calculate the Potential Impact Radius (PIR) for each covered segment in the pipeline; (3) determine the Threshold Radius associated with the PIR for each segment; (4) identify Potential Impact Circles for the pipeline; (5) identify the Potential Impact Zones (PIZ) for the pipeline, and based on that zone for covered segments located in Class 3 and Class 4 locations, identify the moderate

risk areas; and (6) determine the priority of each covered pipeline segment (*i.e.*, segments subject to the proposed rule that are within a potential impact zone are considered higher impact zones; those segments outside a PIZ are considered lower impact zones). Additional detail on identifying covered segments is provided elsewhere in this preamble and in the Definitions located at section 192.761 of the proposed rule.

Assessment Methods

There are four acceptable assessment methods defined by this rule. They are: (a) Internal inspection (also know as in-line inspection, ILI and pig testing); (b) pressure testing; (c) direct assessment, (a process that includes data gathering, indirect examination and/or analysis, direct examination, and post assessment evaluation); and (d) any other method that can provide an equivalent understanding of the condition of line pipe. In addition, the rule proposes a method known as confirmatory direct assessment that an operator could use as an interim reassessment method.

The Pipeline Safety Improvement Act of 2002 provides for assessment by "an alternative method that the Secretary determines would provide an equal or greater level of safety." Because the primary function of internal inspection tools or pressure testing is to determine the condition the pipe is in, we have determined that equivalent or greater safety can be provided by "other technology that an operator demonstrates can provide an equivalent understanding of the condition of the line pipe." We used this language in the liquid integrity management program rules and are proposing to include it under the list of allowable assessment methods for the baseline assessment and reassessments.

The rule proposes to allow direct assessment as a supplemental assessment method on any covered pipeline segment and as a primary assessment method on a covered pipeline where in-line inspection and pressure testing are not possible or economically feasible or where the pipeline operates at a low stress. None of the permitted assessment methods listed above is fully capable of characterizing all potential threats to pipeline integrity. Currently, direct assessment is only an acceptable inspection method for assessing external corrosion, internal corrosion and stress corrosion cracking. In addition, if no other assessment method is feasible, direct assessment may be used to evaluate third party damage. Operators choosing direct assessment technologies must undertake extra excavations and direct examinations during the period while direct assessment is being validated.

Some additional details regarding direct assessment are highlighted here for the purpose of acquainting readers of this proposed rule with some of the basic principles associated with the use of direct assessment. First, for purposes of this rulemaking, above-ground inspection techniques (such as close interval surveys, direct current voltage gradient, and pipeline current mapper) are considered indirect examinations. Second, visual inspection, ultrasonic testing and x-ray examinations are considered direct examinations. Third, all three threats considered under direct assessment (external corrosion, internal corrosion, and stress corrosion cracking) are direct examination of pipe. Fourth, operators who assert that their pipelines cannot be internally inspected or pressure tested are required to include written justification in their plans explaining why their pipeline(s) cannot be tested using these methods. Fifth, operators who assert that internal inspection or pressure testing is not economically feasible will likewise be required to include written justification in their plans indicating why these methods are not economically feasible.

Another concept in the proposed rule is the use of Confirmatory Direct Assessment to evaluate a segment for the presence of corrosion and third party damage. This is a more streamlined assessment method that uses the steps involved in direct assessment to identify these significant threats to a pipeline's integrity. As discussed later in this document, RSPA/OPS is proposing that an operator use this method as an initial reassessment method within the required seven-year reassessment interval, if the operator has, within the proposed limits, established a longer reassessment interval for a particular segment. The follow up reassessment by pressure test, internal inspection or direct assessment would then be conducted at the established interval.

Additional information about direct assessment and confirmatory direct assessment is provided elsewhere in this preamble and at section 192.763(h) of the proposed rule.

Baseline Assessment Periods

Under this proposal, operators are required to complete a one-time baseline assessment on each covered segment. After a baseline assessment is completed on a segment, an operator will be required to reassess the covered pipeline segment at the specified interval. Operators using pressure testing or internal inspection as an assessment method are required to complete the baseline assessment of a segment located in an HCA within 10 years of December 17, 2002 (the date the Pipeline Safety Improvement Act was signed into law). 50% of the covered segments would have to be assessed within five years. Operators using pressure testing or internal inspection as an assessment method are permitted 13 years to assess pipeline segments located in Class 3 and 4 locations where the area being assessed is not within the potential impact zone *i.e.*, the areas we are proposing to define as moderate risk areas. (Additional detail on potential impact zones is provided in the Definitions section (§ 192.761) of this proposed rule and in the guidance that follows the proposed rule text.) If direct assessment is used as an assessment method, the proposal is for the operator to complete the baseline assessment within seven years for segments located in HCAs, with 50% of the segments having to be assessed within four years. Ten years would be allowed for a pipeline segment located in a Class 3 or 4 location where the segment being assessed is not within the potential impact zone *i.e*, is within a moderate risk area. Additional detail on baseline assessments is provided elsewhere in this preamble and at section 192.763(g) of the proposed rule. The timing of baseline assessments is covered in more detail at section 192.763(g)(4).

The Pipeline Safety Improvement Act of 2002 provides that a baseline assessment is to be completed "not later than 10 years after the date of enactment * * *" The Act further provides that at least 50% of covered facilities are to be assessed "not later than 5 years after such date * * *" Our proposal for baseline assessment using internal inspection, pressure test or equivalent technology is consistent with that requirement. We propose a shorter time frame for baseline assessment by direct assessment. The primary reason for proposing a shorter time frame is that direct assessment technologies are still under development and additional information needs to be gathered on their effectiveness. However, RSPA/OPS has been sponsoring research on direct assessment that should help expedite its validity as a method for assessment. Based on the results from this research OPS may be able to lengthen the time frame from five years to up to ten years.

Reassessment Intervals

The Pipeline Safety Improvement Act requires a minimum seven-year reassessment period. Thus, under the proposed rule we set a reassessment

interval of seven years for operators using pressure test, internal inspection or equivalent technology, and a five year interval for an operator using direct assessment that directly examines and remediates defects by sampling. However, an operator using pressure test, internal inspection or equivalent technology could establish a longer interval, within established limits if the operator by the seventh year conducts a reassessment using confirmatory direct assessment and then conducts the follow up reassessment by the chosen method in the year the operator has set for the interval. The interval for reassessment begins to run on a segment after the operator has completed the previous assessment for that segment.

Under the proposed rule, an operator establishes the reassessment interval for covered segments based on the type of assessment method the operator plans on using. The type of method used establishes the maximum interval. For operators using pressure testing, internal inspection, or alternative technology as an assessment method, the operator is to base the intervals on the identified threats for the segment or on the stress level of the pipeline and then refer to ASME/ANSI B31.8S, Section 8 to establish the interval. Under either option, the proposed maximum interval is ten years and 15 years for a pipeline operating at below 50% SMYS. However, because a reassessment must be conducted by the seventh year, under the proposal, if an operator establishes an interval of ten years for a segment, the operator would have to complete a confirmatory direct assessment by the seventh year, and then in the tenth year do a follow up reassessment using pressure test, internal inspection tool, direct assessment or alternative equivalent technology.

OPS has predicated the proposed 15-year maximum reassessment interval for pipelines operating below 50% SMYS on several factors.

- *Greater safety margin the current regulations provide.* Current pipeline safety requirements provide a greater safety margin against corrosion for gas pipelines located in populated areas. For example, the regulations require pipelines that are located in Class 3 and 4 locations (high population areas) to be of greater wall thickness than pipelines located in Classes 1 and 2 locations. And operators must replace the existing pipe with thicker, stronger pipe when population density increases (*i.e.*, the class location changes). Thus, pipelines located in populated areas are less susceptible to corrosion-induced rupture, because it takes much longer for corrosion to penetrate the pipe to a depth where the corrosion causes any concern.
- *The actual reassessment interval is based on risk factors.* The reassessment interval will depend on numerous risk factors, such as the baseline assessment results, the remediation of defects found during the baseline and the integration of data concerning other risk factors. Thus, higher risk pipe will be reassessed sooner.
- *Gas supply interruptions.* Gas transmission pipelines typically feed directly into customer distribution lines without an intermediate storage location. A pipeline's operating pressure is generally lower (*i.e.*, pipeline is at a lower stress level) when it is at the transition phase into a distribution line. This close coupling between the transmission and distribution systems increases the likelihood of a supply interruption if a single line is shutdown for assessment or repair. The 15-year maximum is intended to minimize these supply interruptions.
- *Industry consensus standards.* ASME B31.8S specifies a reassessment interval of 15 years for pipelines operating below 50% SMYS, and 20 years for pipelines operating between 20% and 30% SMYS. These reassessment intervals are based on a mathematical model Kiefner and Associates developed.

These factors led us to conclude that the proposed 15-year maximum reassessment interval for pipelines operating below 50% was reasonable for operators yet would ensure safety. Again, as discussed previously, an operator would have to complete a confirmatory direct assessment by the seventh year.

RSPA/OPS is inviting public comment on whether we should allow a maximum 20-year reassessment interval (with a confirmatory direct assessment in the seventh and 14th years) on pipelines operating at less than 30% SMYS, and reassessment by the confirmatory direct assessment method only every seven years for pipelines operating below 20% SMYS. The proposed confirmatory direct assessment method could be further streamlined for pipelines operating below 20% SMYS. OPS is considering a maximum interval of 20 years for pipelines operating between 20% to 30% SMYS (with a confirmatory direct assessment by the 7th and 14th years) because numerous studies and analyses have demonstrated that these low stress pipelines tend to leak, rather than to rupture. Current gas pipeline safety regulations recognize the reduced risk that low stress levels pose, and structure the requirements accordingly. Examples of different requirements for pipelines operating at lower stress are in § 192.65 (Transportation of pipe), § 192.227 (Qualification of welders), § 192.241 (Inspection and test of welds), § 192.309 (Repair of steel pipe), § 192.315 (Wrinkle bend in steel pipe), § 192.319 (installation of pipe in a ditch, § 192.505 (Strength requirements for steel pipeline to operate at a hoop stress of 30% or more of SMYS), § 192.711 (General requirements for repair procedures), and § 192.717 (Permanent field repair of leaks).

The maximum reassessment interval for operators using direct assessment as an assessment method is five years under this proposal, provided an operator directly examines and remediates defects by sampling. The reassessment interval under direct assessment would be expanded to ten years if an operator conducts a direct examination of all indications and remediates the anomalies. If an operator establishes an interval of more than seven years on a segment, the operator would have to conduct a confirmatory direct assessment by the seventh year. Additional detail on reassessment intervals is provided elsewhere in this preamble and at section 192.763(k) of the proposed rule.

RSPA/OPS is inviting public comment on whether we should allow an operator using direct assessment a maximum ten-year reassessment interval on a pipeline operating at less than 30% SMYS regardless of whether the operator excavates and remediates all anomalies on that line, or at least remediates the highest-risk anomalies. Again, the operator would have to conduct a confirmatory direct assessment by the seventh year of the interval.

The number of excavations (Dig Criteria) proposed for the direct assessment method follow those being developed by the National Association of Corrosion Engineers (NACE) Recommended Practices on Direct Assessment, with the following deviations:

(1) In each External Corrosion Direct Assessment (ECDA) region where all indications categorized as "immediate" are present, we propose that the operator reduce operating pressure by at least 20% until such indications have been excavated and mitigated.

(2) In each ECDA region where indications categorized as "scheduled" are present, we propose the operator continue the excavations until at least two indications are excavated having corrosion of depth no greater than 20% of wall thickness.

(3) In each ECDA region, we propose to require one excavation; however, the excavation must be made at a location the operator considers most suspect, not at any random place.

RSPA/OPS is inviting public comment on whether the benefits of these proposed requirements that are more extensive than the NACE Recommended Practices currently being developed are worth the cost.

External Corrosion Direct Assessment and Internal Corrosion Direct Assessment

Work jointly funded by the gas pipeline industry and RSPA/OPS is ongoing to develop, validate and standardize the application of the direct assessment process to external corrosion (ECDA) and internal corrosion (ICDA). Future work is planned to develop, validate and standardize a direct assessment process for application to the stress corrosion cracking (SCCDA) threat. Furthermore, significant anecdotal evidence exists that the ECDA process may be capable of identifying coating damage associated with third party impacts on pipelines, but formal validation of this capability has not occurred.

ICDA is an assessment process that first identifies areas along the pipeline where water or other electrolytes introduced by an upset condition may reside, then focuses direct examination on the locations in each area where internal corrosion is most likely to exist. If no evidence of internal corrosion exists in these most likely locations, then the entire section can be considered to be free of internal corrosion. An operator using direct assessment as a method to address internal corrosion in a pipeline segment must follow the requirements in ASME/ANSI B31.8S, Appendix SP–B2, and in this section. Additional detail on ICDA is provided elsewhere in this preamble and at section 192.763(h)(3) of the proposed rule.

ECDA is an assessment process that combines assembly and analysis of risk factor data, indirect examination using above ground detection instruments, direct examination of suspected areas on the pipeline and post-assessment evaluation. The current approach being incorporated in the consensus standard under development for ECDA is to locate areas suspected of having external corrosion by identifying defects in the pipe coating, then excavating those defects in areas where corrosion activity is suspected. While all indications discovered by ECDA that are not adequately protected by the cathodic protection system at the time of the assessment will be excavated and directly examined, only a fraction of the ECDA indications that are protected by cathodic protection systems at the time of the assessment will be excavated. Additional detail is provided elsewhere in this preamble and at section 192.763(h)(4) of the proposed rule.

The Role of Consensus Standards

The underpinning analysis for this rulemaking was a consensus standard development effort. Completing this effort required nearly two years. This effort required assembling the best integrity assurance practices currently used by gas pipeline operators, and incorporating these practices into consensus standards. In addition the direct assessment process, which was conceived as a way to assess the integrity of gas pipelines for which in-line-inspection and pressure testing are not possible or economically feasible, needed to be developed, documented, and standardized. Some consensus standards on gas pipeline integrity management that we are considering incorporating by reference have been published. Others are still under development.

A major effort has been underway for several years to develop consensus standards supporting integrity management practices for gas pipelines. These standards are a necessary component in assuring the quality of implementation of any new assessment requirement. ASME/ANSI B31.8, Supplement, issued early this year, structures industry knowledge and best practices into requirements for an integrity management program and a set of prescriptive requirements for assessing pipeline integrity. In addition this standard describes the requirements an operator must follow to implement a performance-based program. The ASME/ANSI standard represents a significant advance in the documentation of demonstrated integrity management practices.

Although many of the tools employed in the direct assessment process have been in use for sometime, the use of these tools in the integrity assessment process is new. The National Association of Corrosion Engineers (NACE) undertook development of a Recommended Practices to support direct assessment and to expand the standardized application of In-Line Inspection (ILI).

RSPA/OPS is relying heavily on the technical content of these standards. RSPA/OPS has been directly involved in the development of these standards, both to ensure that the standards reflect the knowledge and perspective of RSPA/OPS, and to provide the basis for expanding requirements as needed within the Integrity Management Program (IMP) Rule. RSPA/OPS involvement included participation in the teams that developed the ASME/ANSI B31.8S standard, and ongoing participation in the development of the NACE Recommended Practice on Direct Assessment. In addition, RSPA/OPS supported participation by pipeline safety representatives from several States in the standards development and review process.

This proposed rulemaking is the culmination of experience gained from inspections, accident investigations and risk management and system integrity initiatives. This experience is the foundation for proposing a rulemaking that addresses, in a comprehensive manner, the National Transportation Safety Board's (NTSB) recommendations, Congressional mandates, including the mandates in the Pipeline Safety Improvement Act of 2002, and pipeline safety and environmental issues raised over the years. These issues and considerations include:

- Several NTSB recommendations concerning pipeline safety, including those which:

(1) Require periodic testing and inspection to identify corrosion and other time-dependent damage.

(2) Require the establishment of criteria to determine appropriate intervals for inspections and tests, including safe service intervals between pressure testing.

(3) Determine hazards to public safety from electric resistance welded (ERW) pipe and take appropriate regulatory action.

(4) Expedite requirements for installing automatic or remote-operated mainline valves on high-pressure lines to provide for rapid shutdown of failed pipeline segments.

- Our analyses of several pipeline ruptures in Bellingham, Washington; Simpsonville, South Carolina; Reston, Virginia; and Edison, New Jersey, brought to light the need for operators to address the potential interrelationship among factors affecting failure causes and to implement coordinated risk control actions to supplement the protection provided by compliance with current regulations.
- Our analysis of the rupture in Carlsbad, New Mexico, highlighting the need for methods to assess internal corrosion in pipelines that are not piggable.
- Several Congressional mandates identify areas where the risk of a

pipeline failure could have significant impact. These specify that RSPA/OPS:

(1) Prescribe standards establishing criteria for identifying gas pipeline facilities located in high-density population areas (49 U.S.C. 60109(a)(2)).

(2) Prescribe, if necessary, additional standards requiring the periodic inspection of pipelines in high-density population areas, to include any circumstances when an instrumented internal inspection device, or similarly effective inspection method, should be used to inspect the pipeline (49 U.S.C. 60102(f)(2)).

(3) Survey and assess the effectiveness of Remote Control Valves (RCVs) to shut off the flow of natural gas in the event of a rupture of an interstate natural gas pipeline facility and make determination about whether the use of these valves is technically and economically feasible and would reduce risks associated with a rupture of an interstate natural gas pipeline facility. If the use of these valves determined to be technically and economically feasible and would reduce risks associated with a rupture of an interstate natural gas pipeline facility, then prescribe standards on the circumstances where an operator of a gas transmission pipeline facility must use an RCV (49 U.S.C. 60102(j)).

Risk Management and Systems Integrity Inspection Initiatives

This proposed rulemaking is also based on what we learned about integrity management programs from our risk management and pipeline inspection activities, particularly the Risk Management Demonstration Program, the Systems Integrity Inspection (SII) Pilot Program and the new high impact approach to inspections. These precursor activities began in 1997.

In the Risk Management Demonstration and Systems Integrity Inspection Pilot Programs, we studied and evaluated comprehensive and integrated approaches to safety and environmental protection. These approaches incorporated operator- and pipeline-specific information and data to identify, assess, and address pipeline risks, in conjunction with compliance with existing pipeline safety regulations. From these programs, we also expanded our knowledge of the extent and variety of internal inspection and other diagnostic tools that hazardous liquid pipeline operators use in their integrity management programs. We also learned of the wide variability in the extent and effectiveness of programs in use by operators to support management of pipeline integrity.

Additionally, based on risk management principles, RSPA/OPS implemented a systems approach through a new high impact inspection format that evaluates pipeline systems as a whole, rather than in small segments. The focus of the high impact inspection is on understanding how operators are addressing the issues that have been recognized as important through past inspections and incident history. High impact inspections are carried out periodically for each operator and the results are documented using heavier reliance on narrative description rather than on acceptability check marks. We found that a system-wide approach rooted in evaluation of operator response to incidents and recognized performance issues is a more effective and, in most cases, more efficient means of evaluating pipeline integrity. As part of this approach, we evaluate how pipeline operators integrate information about their pipelines to identify sources of risk and to determine the best means of addressing risk. This experience is helping us develop detailed inspection guidelines to evaluate compliance with the requirements of this rule.

RSPA/OPS continues to meet with representatives of the gas pipeline industry, research institutions, State pipeline safety agencies and public interest groups, to gather the information needed to propose an integrity management program (IMP) rulemaking pertaining to gas operators. Since January 2000, RSPA/OPS has attended several meetings with representatives of the Interstate Natural Gas Association of America (INGAA), the American Gas Association (AGA), Battelle Memorial Institute, the Gas Technology Institute (GTI), Hartford Steam Boiler Inspection and Insurance Company, several gas pipeline operators and several representatives of State pipeline safety agencies. (*See* DOT Docket No. 7666 for summaries of the meetings.) We also have met separately with Western States Land Commissioners, National Governors Association, National League of Cities, National Council of State Legislators, Environmental Defense Fund, Public Interest Reform Group, and Working Group on Communities Right-To-Know.

On February 12–14, 2001, RSPA/OPS held a public meeting in Arlington, VA, on integrity management in high consequence areas for natural gas pipelines. At this meeting, reports on the status of industry and government activities on how to improve the integrity of gas pipelines were featured and meeting attendees participated in in-depth discussions on the integrity of gas pipelines. The reports can be found in the DOT docket (#7666) and the RSPA/OPS Web site under Initiatives/ Pipeline Integrity Management Program/ Gas Transmission Operators Rule.

At the public meeting, industry and State representatives presented their perspectives on a number of issues relating to integrity management.

Gas Advisory Committee Consideration

The Technical Pipeline Safety Standards Committee (TPSSC) is the Federal advisory committee charged with responsibility for advising on the technical feasibility, reasonableness, cost-effectiveness, and practicability of gas pipeline safety standards. The 15 member committee is comprised of individuals from industry, government, and the general public.

On February 7, 2001, RSPA/OPS briefed TPSSC members on gas integrity management program development. After canceling the September 13, 2001 meeting with TPSSC members, we sent all presentation materials and progress reports to committee members by mail for their comments or concerns. In May, 2002, we sent a document highlighting major issues in the gas integrity management rule to the TPSSC members. On July 18, 2002 the TPSSC met to review the Gas Transmission Pipeline HCA Rule and the cost-benefit analysis for the Gas Pipeline Integrity Management Program Rule. The committee voted unanimously to accept the cost benefit analysis as the basis for proceeding with the integrity management rule provided RSPA/OPS gives consideration to several issues. These issues and the related RSPA/OPS positions are summarized below.

The committee noted that the pipeline covered by the IMP Rule would include class 3 and 4 locations. RSPA's initial estimates of the total mileage in Class 3 and 4 locations turned out to be low because it was based on earlier data. Natural gas transmission pipeline operators were required to include in their 2001 annual reports the breakdown of their onshore pipeline mileage by class location, but this information was not available at the time the preliminary draft analysis discussed with the TPSSC was prepared.

RSPA/OPS has modified the cost benefit analysis to use the industry-reported mileage in classes 3 and 4. Because the industry regularly determines the classification of its lines, industry is in a better position than RSPA/OPS to estimate the amount of this mileage. RSPA/OPS is aware that there may be some discrepancy both between RSPA/OPS and operators and among operators as to how to calculate Class 3 locations. The variation in the manner in which class 3 locations are calculated involves the concept of clustering of buildings intended for

human occupancy in identifying pipe segments subject to the requirements associated with class 3 locations. The presence of individual isolated buildings within a sliding mile segment will count to raise the classification of the segment to Class 3. The question is whether the immediate area around the isolated building should be routinely classified as a Class 3 cluster. RSPA/OPS does not believe that these isolated buildings are commonly included as Class 3 clusters and does not intend this proposed rule to result in a change of existing practice in this regard.

The committee questioned whether RSPA/OPS intends to use the HCA definition as the starting point for identifying segments requiring additional integrity assurance measures, and to allow use of the potential impact zone to reduce the length of pipe subject to the IMP Rule. Committee members expressed concern both as to the appearance of leaving out some portions of HCAs and at the costs of including protections for areas which do not pose the same risks to population as other HCAs. With respect to the first point, the proposed rule includes all pipe segments within HCAs in the requirements for integrity management. However, if the segment is within a class 3 or class 4 location, but not within the potential impact zone, that is, the segment is in a moderate risk area, the proposed time for completing the baseline assessment will be extended to 13 years. RSPA/OPS expects that during the next seven to ten years, many companies will choose to make many segments in Class 3 locations piggable in their entirety and new technology will be available to minimize the cost associated with assessing these segments. However, an option RSPA/OPS is considering is to not require any assessment of segments located within a Moderate Risk Area, but, rather, to require enhanced preventive and mitigative measures on these segments. Our premise is that if houses are mostly clustered in one area of a Class 3 rectangle, a pipeline failure in an area beyond the cluster (*i.e.*, in the moderate risk area) may have little, if any, impact on the area with the cluster of homes. RSPA/OPS desires information on this option, and underlying assumptions, along with any cost information related to the proposed rule.

Committee members representing distribution companies expressed concern that they currently treat all their lines as Class 3 or 4 to avoid costly excavation and replacement of pipes when population densities increase. They are concerned that this decision will require them to perform segment identification for their lines. This would be an unnecessary cost if the distribution company intends to assess all transmission lines they operate. RSPA/OPS intends that operators choosing to classify their entire system as Class 3 or 4 without regard to population density will be allowed to do so without having to do segment identification according the provisions of the rule. However, these operators will not be relieved of requirements to evaluate the risk-based priority of segments in developing assessment schedules.

The committee expressed some concern that the approach being taken in the rule will lead to doubling protections on pipeline segments near population groups, since existing regulations already require lowering pipe stress levels in Class 3 and 4 locations. RSPA/OPS acknowledges this point, but notes that a significant consideration in our decision to allow a longer reassessment interval than that for liquid pipelines is that the thicker/stronger pipe in areas subject to the integrity management rule lengthens the time for time-dependent deterioration mechanisms to cause significant pipe deterioration.

Notice on Integrity Management Concepts and Hypotheses (Gas Transmission Pipelines)

On June 27, 2001, RSPA/OPS issued a notice of request for comments (66 FR 34318) that stated the objective in developing a rule on gas pipeline integrity management and described the scope and the elements of an eventual gas integrity management rule. We described seven elements that should be included in any integrity rule to fulfill our objectives. We used similar elements to those employed in structuring the liquid integrity management rules. Those seven elements were then elaborated upon through a set of hypotheses that we discussed in detail in the notice. The notice invited comment about these elements and hypotheses.

In addition, the notice summarized the areas where RSPA/OPS was seeking further information to support development of the proposed integrity management program rule for gas operators. The information needs were organized under the seven elements that we saw as essential to any integrity management program rule, and under two other categories where additional information was needed to evaluate the effect of an integrity management rulemaking on costs and gas supply, both seasonally and regionally.

Electronic Discussion Forum

RSPA/OPS also used an electronic discussion forum from June 27 through August 13, 2001, titled "More Information Needed on Gas Integrity Management Program" to help promote discussion of these issues. The electronic forum listed all the areas where we had asked for comment so that commenters could easily focus on those areas of interest to them. A transcript of the electronic discussion forum is included in the docket.

Comments to Notice on Integrity Management Concepts and Hypotheses (Gas Transmission Pipelines)

Comments to the docket were provided by one state, five industry associations (including one association of industrial gas consumers), sixteen companies or groups of companies that operate gas pipelines, one company that operates hazardous liquid pipelines, and one company that builds pipeline bridges.

Comments on all elements envisioned for the gas pipeline integrity management concept, except the element defining high consequence areas, are summarized below. Comments on the HCA element are discussed in a separate proposed rule published in the **Federal Register** on January 9, 2002 (67 FR 1108). RSPA/OPS recently finalized the definition of HCAs (67 FR 50824; August 6, 2002).

Scope

In the notice we indicated that we are considering applying the gas integrity management concept to all gas transmission lines and support equipment, including lines transporting petroleum gas, hydrogen, and other gas products covered under part 192.

The American Gas Association (AGA) and American Public Gas Association (APGA) commented that the integrity rule should apply to gas transmission pipelines operating at or above a hoop stress level of 20% SMYS. These commenters said the rule should also not include pipelines in commercially navigable waterways or environmentally sensitive areas because Congress did not direct this coverage. They also said RSPA/OPS should give special consideration to pipelines operating at a hoop stress between 20% and 30% SMYS. Because these lines fail by leak rather than by rupture, different assurance methods should be considered.

This proposed rule covers gas transmission pipelines, including pipelines transporting petroleum gas, hydrogen, and other gas products

covered under Part 192 in the high consequence areas. The definition for a transmission line is found in section § 192.3. This proposed rule does not apply to gas gathering lines or to gas distribution lines.

Performance-Based Option

Numerous companies argued that we should allow a performance-based option because a purely prescriptive rule would not allow companies to effectively and cost beneficially address the unique features of their systems.

We are proposing a minimum set of criteria for an operator to qualify for a performance-based option. Operators who satisfy this minimum set of criteria will be eligible to deviate from certain requirements—the time frame for remediating anomalies identified during the assessment, the conditions for using direct assessment as a primary assessment method and the reassessment interval (for example, the reassessment interval for on a segment assessed by the DA method could be extended to ten years). However, even if an extended interval were allowed, the operator would still have to conduct a confirmatory direct assessment in the seventh year of the interval. We are incorporating these performance-based considerations because RSPA/OPS recognizes that improving pipeline integrity can only be accomplished through operators improving their understanding of the condition of their piping and taking appropriate action based on this understanding. Operators who excel in these aspects of integrity management should have limited flexibility in making key integrity management decisions.

The proposed conditions an operator would have to satisfy before being allowed to deviate from some of the program's requirements include—

1. The operator must have completed a baseline assessment of all covered segments and at least one other assessment. Problems identified in the second assessment must be remediated. Also the results and insights from the second assessment must be incorporated into the operator's risk model.

2. An operator must also demonstrate that it has an exceptional integrity management program. To demonstrate this an operator must show that its program meets the performance-based requirements of ASME/ANSI B31.8S, has a history of measurable performance improvement, and includes, at minimum:

(1) A documented state-of-the-art risk analysis process;

(2) Complete documentation of all risk factor data used to support the program;

(3) A state-of-the-art data integration process;

(4) A process that explicitly develops lessons learned from assessment of covered pipe segments and applies these lessons to pipe segments not covered by the Rule;

(5) A process for evaluating all incidents, including their causes, within the operator's sector of the pipeline industry for implications both to the integrity of the operator's pipelines and to its integrity management program;

(6) A documented performance history that confirms the continuing performance improvement realized under the performance-based program; and

(7) The extensive set of performance measures documented in the operator's performance plan (ASME B31.8S, Section 9) are accessible to state and federal regulators. These measures would be updated by the operator on a frequency consistent with its performance plan.

Define the Areas of Potentially High Consequence

In the FR notice of June 27, 2001, we said the first element of the integrity management concept involves defining the areas where the potential consequences of a gas pipeline accident may be significant or may do considerable harm to people and their property. In a rule issued on August 6, 2002, we defined these high consequence areas. (67 FR 50824). The definition of high consequence areas (HCAs) includes: (a) Current Class 3 and 4 Locations; (b) pipe segments in the area that would be impacted by a potential pipeline rupture where there is a facility housing people who are confined, have impaired mobility or are difficult to evacuate (*e.g.*, hospital, church, school, prison, day care facility, retirement facility; and (c) pipe segments near areas where a specified number of people congregate on a specified number of days per year (*e.g.*, camping grounds, outdoor recreational facility). The defined areas were those that would be impacted by a potential pipeline rupture, 300, 660 or 1000 feet from the pipeline depending on the diameter and operating pressure of the pipeline.

RSPA/OPS Decision on Using Potential Impact Radius in the HCAs

This proposed rule presents requirements to improve the integrity of pipelines located in areas of potentially high consequences. As discussed earlier, this proposed rule expands the current HCA definition, by presenting requirements to improve the integrity of pipelines located near people living at distances greater than 660 feet from large high pressure pipelines. This proposed expansion is based on the need to provide the same level of added protection to population groups, as the HCA definition provides to facilities that house people who are confined, difficult to evacuate, or of impaired mobility, and to areas where people congregate. The number of buildings intended for human occupancy within the potential impact circle is discussed under the proposed rule section of this preamble. The basis for identifying the physical area where concentrations of people are located so additional protective measures can be applied is discussed below.

The Size of the Zone That Could Be Impacted by a Gas Pipeline Rupture and Explosion

Since existing regulations provide a basic level of protection, the primary focus of the integrity management rulemaking is on reducing the likelihood of a gas release in areas where the potential consequences are greatest. The HCA definition includes areas where a pipeline lies within 660 feet of a building housing people who would be difficult to evacuate (*e.g.*, hospital, school, retirement facility) or where 20 or more people congregate at least 50 days in any 12-month period. The area is expanded to 1000 feet if the pipeline is greater than 30 inches in diameter and operates at pressures greater than 1000 psig. In addition, in this proposed rule we are expanding the HCA definition by proposing to include a new component of high concentration of buildings (as discussed above) intended for human occupancy beyond 660 feet. The 1000-foot limit was based on a mathematical model (developed by C–FER under INGAA funding) that describes a heat affected zone following a pipeline rupture. This heat affected zone is bounded by a "potential impact radius." This model includes numerous assumptions on the size and orientation of the pipe rupture, the physical behavior of the jet issuing from a ruptured pipeline (the pipeline is assumed to fail by a double-ended rupture), the time of ignition of the gas jet, the rate of decay in the flow of gas issuing from the pipeline, the dominant heat transfer mode, and the criterion for determining the radius within which physical damage results from the heat from a burning gas jet. Given the complexity of this analysis and the scope of assumptions needed, the only

way to validate the adequacy of the resulting mathematical relationship was to compare its predictions of potential impact radius with actual observed burn zone following historic gas pipeline ruptures. This comparison was carried out using the C–FER model which successfully predicted the radius of the burn zone surrounding ruptured gas pipelines.

Incorporating Mathematical Formulation Describing the Heat Affected Zone Into the Rule

We are proposing to require operators to calculate the potential impact radius within the HCA. This potential impact radius would be used to identify the areas within HCAs where the consequences of a rupture would be greatest. An operator would first focus any additional integrity measures on concentrations of people or hard to evacuate buildings or areas where people congregate within the impact radius, then on the rest of the HCA. Using more realistic criteria to define areas where an operator would focus additional integrity assurance measures will allow an operator to better allocate its resources toward areas that need the greatest protection. This approach will particularly benefit operators of small-diameter, low pressure pipelines, where the range of impact following a potential rupture would be small. This approach would also benefit the public because operators of very large diameter, very high pressure pipelines would have an increased impact radius to consider for evaluating where additional integrity assurance measures are required.

Identify and Evaluate the Threats to Pipeline Integrity in Each Area of Potentially High Consequences

The second element of integrity management discussed in the FR notice of June 27, 2001, involves identification of potential threats to the pipeline. In the notice we mentioned one approach suggested by industry in our past discussions was to divide potential threats to pipeline integrity into three categories: Time dependent (including internal corrosion, external corrosion, and stress corrosion cracking); static or resident (including defects introduced during fabrication of the pipe or construction of the pipeline); and time-independent (including third party damage and outside force damage; this threat category was called "random" in the FR notice). These three categories are adopted here primarily to focus resource allocation decisions on useful strategies to improve integrity (*e.g.*, integrity management for the "time-independent" category clearly must incorporate significant preventive measures), but do not eliminate the need for operators to consider all major threats to pipeline integrity. In addition, we said that human error can influence any or all of these threats and therefore must be considered as a potential contributing factor to each threat.

For the gas pipeline IMP proposed rule, we decided to propose that the operator make a threat-by-threat analysis of the entire pipeline. Such an analysis will require identification and evaluation of the significance of threats to pipeline integrity, which must necessarily involve the integration of numerous risk factors. Such risk factors include, but are not limited to, pipe characteristics (*e.g.*, wall thickness, coating material and coating condition; pipe toughness; pipe strength; pipe fabrication technique; pipe elevation profile); internal and external environmental factors (*e.g.*, soil moisture content and acidity, gas operating temperature and moisture content); operating and leak history (*e.g.*, pipe failure history, past upset conditions that have introduced moisture into the gas); land use (*e.g.*, active farming, commercial construction, residential construction); protection history (*e.g.*, corrosion protection data, history of third party hits and near misses, effectiveness of local One Call systems); and the degree of certainty about the current condition of the pipeline (*e.g.*, age of the pipe, completeness of integrity-related records, available inspection data).

The RSPA/OPS data on causes of gas transmission pipeline accidents (*i.e.*, threats to the pipeline) show that between 1990 and1999, there were total 777 reported accidents. The causes of these accidents are broken down as follows:

—319 (41%) were due to outside force damage (30% third party, 11% earth quakes/floods, and other outside forces);
—173 (22%) were due to corrosion (105 (14%) internal, 67 (9%) external);
—119 (15%) were due to construction and material defects; and
—166 (21%) were due to other causes.

The data indicates that the two greatest threats to a pipeline are from outside force damage (41%), and corrosion (22%). Our data also shows there are more failures from internal corrosion than from external corrosion. The internal corrosion is caused by moisture and acidity present in the gas transmission lines at low or near low points. The rupture of the gas transmission pipeline in Carlsbad, New Mexico resulted from internal corrosion. Because corrosion can occur either internally or externally, it essential that gas pipeline operators consider both threats.

We believe this threat-by-threat analysis is necessary not only because it will require the operator to assemble and use a comprehensive set of risk factor data to identify the presence of potential threats, but also because it will support determination of the assessment approach or approaches needed to characterize the significance of these threats.

Our concept of integrity management also includes the following hypotheses: (1) Pipeline segments having threats that represent higher risks should generally be assessed sooner than those with threats that represent lower risk and (2) Pipelines that operate at a stress level less than 30% SMYS fail differently (*i.e.*, leak rather than rupture) from those operating at higher stress, therefore, different integrity assurance techniques may be appropriate. We have discussed this issue elsewhere in this document and have requested comment.

Comments on RSPA/OPS Hypotheses

INGAA provided many comments on this hypothesis. The primary source of information referenced by INGAA was the technical reports prepared by their contractors during the eighteen month interaction among INGAA, RSPA/OPS and the states on technical issues, and the consensus standards currently in preparation. These reports are available in the Docket. Comments from INGAA included the following:

INGAA offered the opinion that laws should be enacted to support strong One-Call Programs. It also pointed out that seam cracking in pre-1970 ERW piping has been observed only in piping from certain manufacturers. Not all pre-1970 pipe has that problem.

INGAA also expressed the opinion that soil erosion is not a significant direct threat to pipeline integrity, however it may lead to increased importance of third-party damage when it results in shallow cover. In addition, it noted that some materials and construction techniques are more susceptible to damage from massive soil movement than others, and that this issue is treated more completely in ASME B31.8 S which was under development at the time of the comment, but has subsequently been issued.

On the subject of operator error, INGAA noted that performance measures are needed to evaluate the importance of this threat to pipeline integrity. Lessons learned from observed operator errors should then be

translated into improvements in operating procedures and communicated among operators. Effective management of change and quality control/assurance programs will also reduce the likelihood of operator error contributing to pipeline failure. Consensus standards were under development at the time of the INGAA response on qualification and certification of individuals involved in analyzing in-line inspection (ILI) results. INGAA expressed concern about the increased demand for ILI services potentially leading to lengthened time requirements by ILI vendors to produce assessment reports, with related implications to the ability of the industry to meet repair and mitigation requirements.

On the subject of gas storage field pipeline systems, INGAA stated that those in high consequence areas should be treated in the same way as natural gas transmission pipelines.

AGA/APGA also noted that the process for managing pipeline integrity should not be affected by the operating stress level. Lower stress pipeline operators should be required to develop and follow integrity management programs having the same elements as operators of higher stress pipelines. Only the tools and techniques used to assess the pipeline and the reassessment intervals should require customization.

NYGAS indicated that it is important to ensure that staff conducting and analyzing results from assessment of pipeline integrity be qualified. In the cases where the operator qualification rule does not apply, operators must ensure proper qualification of these people, and monitor performance measures designed to reveal potential problems with personnel qualification. NJSource commented that there needs to be a clear means of identifying a threat as "significant."

In aggregate these comments are consistent with the RSPA/OPS decisions to require threat-by-threat analysis of the pipelines and to acknowledge the differences in failure mode for pipe operating at stress levels below 30% SMYS by imposing somewhat different requirements for these lines.

Select Appropriate Assessment Technologies

The third element of integrity management discussed in the June 27, 2001 FR notice, involves identification of potential threats to the pipeline in areas of concern. In the notice we used the following hypotheses to support selection of the assessment technologies best suited to effectively determine the susceptibility to failure of each pipe segment that could affect an area of potentially high consequences:

- An integrity baseline needs to be established for all pipe segments that could affect an area of potentially high consequences. An operator will need to evaluate the entire range of threats to each pipeline segment's integrity by analyzing all available information about the pipeline segment and consequences of a failure on a high consequence area. Based on the type of threat or threats facing a pipeline segment, an operator will choose an appropriate assessment method or methods to assess (*i.e.*, inspect or test) each segment to determine potential problems.
- Time dependent threats will require periodic inspection to characterize changes in their significance.
- Acceptable technologies for assessing integrity include in-line inspection, pressure testing and direct assessment. None of these technologies, individually, is fully capable of characterizing all potential threats to pipeline integrity. (**Note:** RSPA/OPS is co-sponsoring with industry an evaluation of direct assessment technology to determine the conditions under which direct assessment is effective in assessing external corrosion. The effectiveness of direct assessment in assessing other threats (*e.g.*, internal corrosion, stress corrosion cracking) is also under evaluation for validation.
- Unless the operator demonstrates by evaluation that they are not a threat to the integrity of a pipe segment, static threats will require pressure testing at some time during the life of the pipeline. If significant cyclic stress, such as that caused by large pressure fluctuations, is present, then pressure testing, or an equivalent technology, will be required periodically throughout the life of the pipeline. If operating conditions for a pipeline with potential seam problems from manufacture are to be changed significantly, then the pipeline must by pressure tested prior to the change of operation.
- Time-independent threats will require the use of two parallel integrity management approaches. The vast majority (over 90%) of ruptures caused by time-independent threats occur at the time that the activity takes place (*e.g.*, when the excavator hits the pipeline), and not at some later time. Therefore, the use of risk management practices (or technologies) to prevent damage or to immediately identify the potential for damage would be more effective than looking for evidence of past damage. Secondly, since some time-independent threats do not result in immediate pipeline rupture, technologies that look for evidence of past damage after the threat has occurred should be focused in areas where delayed failure is most likely.
- Threats related to human error will be addressed largely, but not completely, through the new Operator Qualification Rule. The integrity management rule will require operators to evaluate the impact of operator error on the primary threats to pipeline integrity.

Comments

INGAA summarized the capability of pipeline in Classes 3 and 4 for using internal inspection tools as follows: 24.4% is easily piggable, 25.3% can be easily made piggable, 45.9% would be very costly to make piggable, and 4.4% cannot be pigged.

INGAA provided a set of examples of situations and conditions which may adversely impact the accuracy of results from the indirect processes used in external corrosion direct assessment. These include:

- Rocky backfill with little or no soil around the pipe.
- Very dry, cracked soil where little soil contact is made with the pipe.
- High-dielectric coatings (such as polyethylene tape) that have the propensity to shield the pipe from the flow of cathodic protection current, where no orifices to the soil/water interface are present.
- Resolution and sensitivity of survey equipment.
- Correct selection of the proper diagnostic tool matched to the suspected integrity threat.
- Bare or unprotected pipelines.

INGAA stated that data from the ongoing external corrosion direct assessment process development effort will need to be combined with data from application of the process over time to allow statistical analysis describing reasonable confidence bands.

A preliminary model was presented by INGAA that describes the use of the four step direct assessment process in assessing a pipeline for SCC. This description relies heavily on the assembly and integration of risk factor data that could indicate the possible presence of SCC. These risk factor data are presented in the appendix of ASME B31.8S.

AGA/APGA commented that not all pipelines should be required to be pressure tested for manufacturing or construction defects at sometime during their lifetime. For example, a pipeline should not require pressure testing if it has not experienced leaks during its lifetime. This argument assumes that

operation of the line is not subjected to pressure cycling of sufficient magnitude and frequency to produce growth of existing cracks. AGA/APGA does support existing requirements to pressure test all new pipelines before operation.

AGA/APGA commented that pipelines operating at hoop stress levels between 20% and 30% SMYS, where the failure mode is leakage not rupture, should be allowed to use assurance technologies, including mitigation measures, other than pigging, pressure testing and direct assessment. An AGA paper, dated April 26, 2001, on "Integrity Management for Low Stress Pipelines" (copy filed in the Docket) further expands on these alternate technologies and mitigation measures.

AGA/APGA indicated that direct assessment is: (a) Currently being validated and imbedded in a NACE consensus standard; (b) being evaluated for application to bare pipelines; and (c) should not be defined in an overly prescriptive manner.

AGA/APGA summarized the strengths and limitations of pressure testing and in-line inspection. They noted that all forms of integrity testing will have some impact on gas supply reliability, and that severe constraints or cut-off will be required with pressure testing.

The following table was developed by AGA/APGA on miles of member companies with various assessment capability.

Company membership	Miles in classes 3&4	Currently piggable (in percent)	Temp conversion for pigging (in percent)	Extensive retrofit for pigging [1] (in percent)	Cannot be pigged [2] (in percent)
AGA	13,500	12	10	43	35
APGA	3,000	13	.....	41	46

[1] Retrofit costs range from $5,000 to $250,000 per mile.
[2] Costs range estimated to be from $1M to $8M per mile to replace pipe (in urban areas).

The Florida Public Service Commission recommended that both magnetic flux leakage (MFL) pigging and pressure testing be carried out at intervals of five to seven years, not to exceed ten years. They also indicated that Florida gas pipes are typically less than twelve inches in diameter and therefore should be inspected at ten year intervals.

Pacific Gas & Electric Company (PG&E) also indicated that increased leak patrol frequency should be used to minimize the threat of leakage from pipe segments operating at low hoop stress (e.g., less than 30% SMYS).

PG&E commented that pipe segments operating at low stress levels should not be required to conduct a pressure test once in the pipeline life, but rather operating history should be used to validate material strength. They also noted they found direct assessment to be a good tool to identify residual third party damage.

PG&E noted that they do consider erosion to be one of the Outside Forces that needs to be considered, and they conduct annual erosion surveys to support mitigative action where erosion is identified.

PG&E summarized the reasons why some of its pipe is not piggable because of the presence of one or more of the following: telescopic construction, random diameter construction, sharp radius bends, and less than full opening valves.

NYGAS commented that local distribution company (LDC) transmission lines are typically sole source lines and are closely coupled to the distribution system. These facts will greatly increase the cost and impact on customer supply of pigging and pressure testing.

NYGAS further commented, with supporting analysis from Kiefner and Associates, that under typical cyclic loading conditions, the fatigue life of a gas pipeline operating at stresses of 72% SMYS is 100 to 400 times longer than hazardous liquid pipelines, and that lowering the operating stress level to below 30% SMYS will increase this factor to between 900 and 3600. Therefore, pressure testing at some time during the life of a low stress pipe should not be required. NYGAS also noted that experience has demonstrated ILI technologies do not perform satisfactorily at pressures below 400 psi.

NISource commented that it does not believe an integrity baseline needs to be established for all pipe segments. In particular, low stress pipelines have a "baseline" established through application of the exiting regulations and monitoring for evidence of leaks. Current practices identify the physical conditions which increase the potential for gas accumulation resulting from a leak, and the presence of these conditions leads to increased monitoring.

The Association of Texas Intrastate Natural Gas Pipelines commented that it would be useful if the rule spelled out the process by which new assessment technologies would be approved by RSPA/OPS.

Several operators expressed concern about their ability to de-water a pipe segment that is not piggable following a pressure test. Inability to de-water would lead to increased likelihood of internal corrosion. This fact supports the advisability of allowing direct assessment as an alternative assessment technology.

Comments from the public and the pipeline industry generally supported RSPA/OPS's approach in developing this proposed rule. The commenters generally agreed that the proposed rule should include: (1) A threat-by-threat analysis of each pipeline segment; (2) at least one pressure test during the life of a pipeline to characterize its susceptibility to material and construction defects, unless the operator can justify why a pressure test is not necessary; (3) periodic assessment of each pipeline segment for third party damage (denting), unless the operator can justify why such assessment is not necessary. A decision to forgo periodic assessment must address loading conditions (*e.g.*, cyclic loading), pipe susceptibility to delayed failure (*e.g.*, at Edison, NJ), and pipe exposure to potential third party damage; and (4) a description of how to apply direct assessment, including the conditions under which it is not appropriate, and conservative criteria for pipe excavation for direct examination.

Baseline Assessment and Remediation

The fourth element of integrity management discussed in the June 27, 2001 FR notice, related to the baseline assessment and remediation time frame. To determine time frames to conduct a baseline integrity assessment and to complete remediation following an assessment using an approach that prioritizes pipeline segments based on risk, we used the following hypotheses:

- The time frame for conducting the baseline assessment should be based on a graded or tiered approach where pipeline segments are prioritized for

assessment according to the level of risk they pose. Thus, highest risk segments would be scheduled for assessment first, lowest risk last. A schedule for taking remedial action on the pipeline segment after the assessment would also be based on risk factors.

• The time frame for conducting the baseline assessment should, among other factors, consider the impact on gas supply to residents. This could also be a factor in determining if a variance from the required time frame is warranted.

• The sequence in which the segments are prioritized for assessment should be determined by considering information such as, how much pipe is in areas of potentially high consequences, which of these pipe segments represent the highest risk, which threats for these segments represent significant risks, how much time will be needed to develop the infrastructure to perform the required assessments (*e.g.*, validate the required assessment technologies, develop consensus standards for the application of these technologies, expand the industry capability to deploy and effectively use these technologies to assess pipeline integrity). If the assessment finds potential problems, the schedule for making the repairs would also be based on risk factors.

Comments on Baseline Assessment and Remediation

INGAA commented that several practical factors will influence the time frame for completing a baseline assessment. These include time for: (a) Program development (suggested, 18 months); (b) assembly and analysis of risk factor data (suggested, 18 months); (c) limitations on the availability of assessment tools from vendors; and (d) potential detrimental impacts on supply to critical customers. Given these factors, INGAA estimated that the shortest time for completing baseline assessments would be about ten (10) years after promulgation of the rule. Even if ten years were allowed, INGAA estimated in an early analysis that the economic cost to customers over the ten year baseline assessment period would range from $3.9 to $6.1 billion.

INGAA reported that repair time frames should consider the results of a recently completed analysis by Kiefner and Associates in which the allowable repair time is related to the calculated (or pressure tested) safe operating pressure. Three categories were defined: (a) Segments with a safe operating pressure of 110% of MAOP or less should be repaired immediately, (b) those with a safe operating pressure of less than 139% of MAOP but above 110% of MAOP should be repaired on a defined schedule, and (c) those with a with a safe operating pressure of greater than 139% of MAOP require interval monitoring. Interval monitoring implies reassessment on a ten year interval to assure that sub-critical anomalies will not fail during that time.

AGA/APGA commented that factors considered in determining the time frame for the baseline assessment should include scope of the rule (*i.e.*, only above 20% SMYS), availability of pigging equipment, availability of properly qualified people, and the impact on the gas supply. Considering these factors, they believe that a minimum of ten (10) years should be allowed to complete the baseline assessment, with half of the pipeline completed within five years and variances available for those unable to meet the schedule.

AGA/APGA agree that repairs should be scheduled to reflect the seriousness of the defect. However, engineering distinctions among the gas pipeline systems dictate that the highly prescriptive approach to repair requirements in the Large Liquid Pipeline Operator Rule is inappropriate. RSPA/OPS should consider the guidance on repair and mitigation being developed by the ASME/ANSI B31.8S.

The Association of Texas Intrastate Natural Gas Pipelines commented that it would be useful if RSPA/OPS included a special provision for assessment interval for new pipe segments or replaced pipe segments.

PG&E supported a ten year baseline assessment period. PG&E commented that practical considerations (*e.g.*, long-lead materials, construction difficulties, and economies of scale) should be considered in developing assessment schedules to ensure that economic efficiencies can be realized while satisfying the intent of any rule that the highest risk segments be assessed first.

Enron commented that a ten year baseline assessment interval seems appropriate, and that reassessment in class 1 and 2 locations should be on the same interval, but that reassessment in Class 3 and 4 locations should be on a fifteen year interval. Enron also strongly urged RSPA/OPS to allow operators to carry out repairs consistently with existing procedures rather than imposing a prescriptive repair time frame.

Baseline assessment factors: The recent pipeline safety law (Pipeline Safety Improvement Act of 2002) requires that an operator conduct a baseline assessment not later than ten years from the date the law is enacted. This time frame is consistent with the baseline time frame we were considering based on our study of the relevant influencing factors. The law further requires that at least 50% of facilities in high consequence areas must be assessed no later than 5 years from enactment. This requirement is also consistent with what we were considering. Our proposal incorporates these requirements.

The factors we considered relevant to establishing the time frame for an operator to conduct the baseline assessment include:

• The desire to establish an integrity baseline for all affected pipe segments as quickly as possible.

• The ability of the gas pipeline service industry to expand both its assessment equipment, and, of equal importance, its qualified technical staff.

• The ability of the pipeline industry to gather and integrate risk factor data necessary to characterize the significance of threats to pipe integrity.

• The time required for the pipeline industry to modify its lines to accommodate in-line inspection equipment.

• The impact on critical gas supply and the associated impact on the price of natural gas. INGAA recently funded a study to evaluate the supply and consumer cost impacts associated with various baseline assessment intervals. The study did not include the actual cost of modifying the pipeline to accommodate ILI equipment, and the study assumed operators would perfectly coordinate their assessment activities to minimize the impact on customers. The study included supply impacts resulting from modifying a pipeline to accept ILI equipment and from the assessment activity itself. Supply impacts associated with remediation or repair of defects discovered during the assessment were not included. The study included differences in the supply impacts associated with different assessment technologies.

The INGAA analysis found that consumer cost impact was more significant with short baseline assessment periods than with longer times. The cost impacts in the current analysis were estimated to be $7.2B for a 14-year baseline period, $13.1B for a 10-year baseline period, and $20.1B for a 5-year baseline period. Although not quantifiable in the model, the potential for critical supply interruptions, resulting from the need to perform assessments during high demand periods and the increased difficulty of coordinating assessments on lines

feeding the same customers, increases as the baseline period decreases.

• *Class location requirements.* The gas pipeline safety regulations have class location requirements that the liquid regulations do not. As population increases near a pipeline, the class location requirements require establishment of an additional margin of safety. To comply with class location requirements, gas transmission pipeline operators maintain data on the number of residences and other buildings located near their pipelines. Based on threshold levels of near-by dwellings and buildings, operators are required to constrain the maximum stress level in the pipeline to successively lower levels as the number of dwellings increases. When a class location changes to a higher class, an operator must reduce the stress level on the line either by reducing pressure, or in some cases, by replacing the pipe. If an operator replaces the pipe, an operator may use thicker walled or higher strength pipe to ensure that the capacity of the pipeline is not reduced.

The result is that, while gas pipelines in locations of potentially high consequence typically operate at stress levels of 40% SMYS (Class 4) or 50% SMYS (Class 3), corresponding liquid pipelines typically operate at 72% SMYS. A higher stress is typically associated with thinner walled piping or a smaller margin to failure for a given defect size. Therefore, time dependent threats such as external corrosion, which occur at a rate dependent on factors such as soil chemistry, coating integrity and cathodic protection effectiveness, have less wall thickness to penetrate before a critical defect depth is reached and the pipeline ruptures. The lower stress levels and thicker walls of gas pipelines imply that, other factors being equal, corrosion would take longer to penetrate to a critical depth.

These factors support a baseline assessment interval of ten years for operators using in-line-assessment or pressure testing, with at least 50% of the covered segments (the higher risk segments) being assessed within five years. However, for operators using direct assessment as the primary assessment technology, we are proposing a baseline assessment interval of seven years to account for the early state of development of these processes and to allow time to develop data on their validity. The highest risk half of the segments being assessed by direct assessment will, however, be assessed during the first four of these seven years. This proposal is consistent with The Pipeline Safety Improvement Act of 2002 (HR 3609, signed into law Dec. 17, 2002) which provides for a baseline assessment "not later than 10 years" after the law's enactment, with 50 % having to be assessed "not later than 5 years" after enactment. As noted earlier, RSPA/OPS is proposing to require operators choosing direct assessment technologies to undertake extra excavations and direct examinations during the period while validation is continuing.

Our proposal on the baseline assessment also allows for an assessment conducted five years before the law's enactment or date the final rule is effective, whichever is earlier, as a baseline assessment if it satisfies the specified assessment criteria. If an operator chooses this option, under our proposal, the operator would then have to begin complying with the requirements for reassessment of the segment.

Identify and Implement Additional Preventive and Mitigative Measures

The fifth element of integrity management discussed in the June 27, 2001, FR notice, related to identification and implementation of additional preventive and mitigative measures. We used the following hypotheses in the notice:

• Assuring a pipeline's integrity requires more than simple periodic inspection of the pipe. Most threats, including passive threats such as third party damage, require active management to prevent challenges to integrity. Therefore, active integrity management practices are necessary. Some operators already go beyond the current pipeline safety regulations by implementing integrity management practices such as ground displacement surveys, soil corrosivity analysis, gas sampling and sampling and analysis of liquid removed from pipelines at low points.

• Preventive and mitigative measures include conducting a risk analysis of the pipeline segment to identify additional actions to enhance public safety. Such actions may include, damage prevention practices, better monitoring of cathodic protection, establishing shorter inspection intervals, and installing Remote Control Valves (RCVs) or Automatic Shut-Off Valves (ASVs) on pipeline segments. Some operators, particularly hydrogen pipeline operators, have voluntarily installed ASVs on their pipelines closer together than required as a mitigative measure.

Comments

INGAA described a general process used by operators to make decisions on adding risk control or mitigation features beyond those required by regulation. The process involves establishment of a budget for additional safety enhancements and allocating that budget based on some structured form of risk assessment process, including feedback on potential risks from people in the field.

The conclusions of two INGAA-sponsored reports on the value of RCVs and ASVs include:

1. Neither RCVs nor ASVs will reduce fatalities or injuries to the public.
2. Neither control valve system will significantly reduce property damage.
3. RCVs and ASVs increase the likelihood of service disruption (RCVs in particular).
4. RCVs and ASVs can reduce the amount of product lost.
5. Costs for RCVs or ASVs outweigh measurable benefits.

According to INGAA, the only substantive benefit of RCVs and ASVs is that they result in faster valve closure following an incident.

Air Products and chemicals, an operator of 700 miles of pipeline for transporting industrial gas such as hydrogen, currently uses twenty-five excess flow valves along the 150 miles of pipe it operates in what it considers to be high consequence areas. These valves were added as a result of its risk analysis process.

GPTC noted that it expects ANSI to publish a technical report describing industry practices and ideas for managing integrity this Fall and requests that RSPA/OPS consider information in this document as part of its Rulemaking effort.

Remote Control Valves (RCVs)

In response to a Congressional mandate following the March 1994 gas transmission pipeline failure at Edison, NJ (Accountable Pipeline Safety and Partnership Act of 1996; codified at 49 U.S.C. 60102(j)), RSPA/OPS surveyed and assessed the effectiveness of remotely controlled valves (RCVs) on interstate natural gas pipelines. We examined the technical and economic feasibility of RCVs to rapidly shut down a gas transmission pipeline after a rupture.

RSPA/OPS conducted a public meeting in October 1997 to gather data on the technical and economic feasibility of installing RCVs. There was general agreement by the meeting participants, and in written comments following the meeting (contained in Docket No. RSPA–97–2879), that RCVs are technically feasible, but are not economically justifiable from a cost-benefit standpoint. This result is because most casualties and property

damage occur within ten minutes after a pipeline rupture. Although an RCV can be closed within two or three minutes to isolate a pipeline section, a safe condition is not achieved until the gas between valves has either escaped or burned off, which is almost always a longer time period than ten minutes.

These findings from the public meeting were reinforced by the results of a Gas Research Institute (GRI) study of 80 gas transmission pipeline failures over a twelve year period which showed that quick closure of valves could have prevented only one injury out of a total of 28 fatalities and 116 injuries.

We closely monitored a one year field evaluation of 90 RCVs installed by Texas Eastern Transmission Company, mostly in New Jersey and Pennsylvania. The RCVs' reliability was demonstrated by the fact that there were no unplanned closures of the valves during the year and, of the 200 plus valve cycles executed remotely, the valves closed 100 percent of the time on the first attempt.

RSPA/OPS completed a study in September 1999 titled "Remotely Controlled Valves on Interstate Natural Gas Pipelines," available in Docket RSPA–97–2879. The study shows that installing and using RCVs can effectively limit the time required to isolate ruptured pipe sections when manual valve operation is not feasible, thereby minimizing the consequences of certain gas pipeline ruptures. The study supports RCVs' effectiveness, technical feasibility, and potential for reducing risk. The study indicates that the quantifiable costs of RCV installations would almost always exceed the benefits.

However, we believe that significant risk exists at some locations as long as gas is being supplied to a rupture site, and operators currently lack the ability to quickly close existing manual valves. Any fire would be of greater intensity, and would have greater potential for damaging surrounding infrastructure, if the fire were replenished with gas over a protracted period of time. Therefore, we held another public meeting in November 1999 to consider the need for a rulemaking to establish time limits for isolating ruptured sections of gas transmission pipelines. No new data were presented at the hearing to establish critical locations where RCVs should be installed.

Consistent with the hypotheses prepared earlier, RSPA/OPS decided to incorporate a provision in the rule requiring operators to evaluate the potential value of a spectrum of preventive and mitigative measures, and to act on the results of this evaluation. So that RSPA/OPS may understand the basis on which operator decisions are made, we will require operators to document their decision processes and decision criteria for RSPA/OPS review during inspections. Measures to be considered by operators will include those practices set forth in ASME B31.8S, as well as use of RCVs and ASVs. While these two types of valves have been analyzed generically for gas pipelines, RSPA/OPS believes that each operator should consider the merits of installing these mitigative measures at critical locations on their pipelines and make installation decisions based on pipeline-specific and site-specific evaluations.

A Process for Continual Evaluation and Assessment To Maintain a Pipeline's Integrity

The sixth element of integrity management discussed in the June 27, 2001 FR notice, related to the process for continual evaluation and assessment of pipelines to maintain their integrity. We used the following hypothesis in the notice:

Operators should continually evaluate and reassess at the specified interval each pipeline segment that could affect an area of potentially high consequence using a risk-based approach. The evaluation considers the information the operator has about the entire pipeline to determine what might be relevant to the pipeline segment.

- Managing a pipeline's integrity requires periodic reassessment of the pipeline. The time frame appropriate for this reassessment depends on numerous factors. In the current class location change regulation, gas pipeline operators are required to replace pipe segments with thicker-walled or stronger pipe (or to decrease pressure) as the near-by population increases above threshold levels. This requirement for thicker-walled or stronger pipe in areas of higher population might indicate that a longer reassessment interval would be appropriate where corrosion is the dominant threat.
- If critical risk factor data are not available to support evaluation of risks, then the reassessment interval should be appropriately shortened to reflect that absence of knowledge.
- If an operator has developed a comprehensive picture of past and anticipated threats, including detailed information on risk factors and records of multiple assessments carried out over several years, the operator might be able to justify a longer reassessment interval (see the discussion above on performance-based requirements).
- The periodic evaluation is based on an information analysis of the entire pipeline.

Comments

INGAA's comments included a discussion of the results of a Battelle analysis on assessment intervals. The analysis indicated that while the recommended reassessment interval in their report was developed based on the assumption that operators would use thicker pipe to address the Class Location requirements, the recommended interval would not be affected if operators chose to use higher strength pipe (rather than thicker pipe) to comply with changes in class location.

In addition, INGAA offered the opinion that the series of new integrity management regulations will lead to a situation in which the demand for assessment equipment and people qualified in its use and in interpretation of results will outpace the supply. This factor should be considered in determining the baseline and reassessment interval requirements.

INGAA recommended that RSPA/OPS solicit information from direct assessment service providers to evaluate the ability of the service providers to respond to the requirements for increased assessment included in the new IMP Rules.

AGA/APGA urged RSPA/OPS not to require reassessment on a prescribed interval. Intervals should be dictated by analysis using accepted risk principles along with results from the baseline assessment. If a prescriptive requirement on reassessment interval is needed, then RSPA/OPS should allow operators to deviate from that interval if it can justify such a deviation.

NYGAS commented that local distribution companies (LDCs) need greater flexibility in managing repairs and mitigative action than is implicit in the repair provisions of the liquid operator rule for operators with 500 or more miles of pipeline. The absence of such flexibility will lead to gas supply interruptions to customers.

RSPA believes that once the baseline assessment has been completed, the availability of qualified vendors and assessment equipment are no longer factors, since it is quite likely that the pipeline service industry will expand to meet the new higher level of demand. In addition, the major line modifications required to accommodate in-line inspection (ILI) equipment should be completed. Some of the factors influencing reassessment intervals are discussed above under baseline intervals. Other factors that influence

the periodic reassessment interval include:

- The stress level at which the pipeline operates;
- The growth rate of corrosion defects; and
- The repair criteria used in remediating defects discovered in previous assessments.

Figure 7–1 and Table 8–1 in ANSI/ASME B31.8S sumarize the relevant factors for determining a reassessment interval. The corrosion rates reflected in these charts represent the high end of historically observed corrosion, but are not the highest rates that might be experienced under special conditions, such as the presence of microbiologically influenced corrosion (MIC). Table 8–1 relates the recommended reassessment interval in years to the stress level of the pipe (% SMYS), the type of assessment carried out, and the significance of defects left in the pipeline following mitigation or repair. For a typical pipe segment in a Class 3 Location, the stress level would be 50% SMYS. At this stress, if a pressure test were carried out at 1.39 times the maximum allowable operating pressure (MAOP), then the recommended reassessment interval would be 10 years. This same recommended reassessment interval would result if ILI were used and all defects were repaired that had a predicted failure pressure below 1.39 times the MAOP. The recommendations for reassessment intervals following use of direct assessment are closely related to the details of the excavation criteria used in examining indications. The intervals shown in (Table 8–1 in ASME B31.8S) are based on technical analysis of time-dependent failure mechanisms (*e.g.*, external corrosion).

The recently-enacted pipeline safety law (HR 3609 signed into law Dec. 17, 2002) requires that reassessment be done at minimum intervals of seven-years. Thus, in our proposed rule, we have established a seven-year interval, but we also allow the operator to establish the intervals depending on the assessment method. Depending on the assessment method, the maximum interval an operator is allowed to establish could be longer than seven years. However, if the period is longer than seven years, the operator would have to conduct an interim reassessment by confirmatory direct assessment by the seventh year and then conduct the follow up reassessment in the year the operator has established. Thus, in the seven-year period an operator must either reassess a covered segment using the assessment method the operator has chosen, or if the operator has established a longer interval, conduct a confirmatory direct assessment by the seventh year with a follow up reassessment in the year the operator sets. Our proposal takes into account the factors we have discussed above.

Monitor the Effectiveness of Pipeline Integrity Management Efforts

The seventh element of integrity management discussed in the June 27, 2001 FR notice, related to monitoring the effectiveness of pipeline integrity management activities. We used the following hypothesis in the notice:

- Measures can be developed to track actual integrity performance as well as to determine the value of assessment and repair activities.
- Application of integrity management technologies that exceed current regulations is cost effective because many companies made the decision to implement such programs.

Comments

INGAA suggested that RSPA/OPS should consider including the following performance measures:

- Number of miles of pipeline inspected under IMP.
- *Repairs:*

1. Number of immediate repairs completed as a result of the IMP inspection program; and
2. Number of scheduled repairs completed as a result of the IMP inspection program.

- Number of leaks, failures and incidents (classified by cause).

AGA/APGA suggested that RSPA/OPS should work with stakeholders to develop performance measures immediately after promulgation of the integrity management rule. Additionally, in using these measures, RSPA/OPS must avoid inappropriate comparisons of performance among operators with vastly different systems.

NYGAS stated that performance measures should be properly used to monitor the effectiveness of integrity management efforts within individual companies, not to compare the performance among operators.

The Association of Texas Intrastate Natural Gas Pipelines commented that it would be useful for RSPA/OPS to establish performance measures that relate to each operator's integrity management plan, rather than requiring one-size-fits-all reporting requirements.

Enron commented that if RSPA/OPS were to increase the time for required submission of written pipeline incident reports by an additional sixty days, then there would be an opportunity to include better information on the evaluated cause of each incident.

The recently published standard ASME B31.8S discusses operator performance plans in Chapter 9. This discussion describes four measures that are required to be monitored by all operators using the standard. These measures are:

- Number of miles of pipeline inspected (assessed) versus program requirements;
- Number of immediate repairs completed as a result of the integrity management inspection program;
- Number of scheduled repairs completed as a result of the integrity management inspection program; and
- Number of leaks, failures and incidents (classified by cause).

RSPA/OPS is proposing to require operators to track and record these four overall performance measures, and make them electronically accessible (in real time) to RSPA/OPS for review. In addition, RSPA/OPS proposes to require operators to develop performance plans consistent with ASME B31.8S, and to define the extended set of measures that it will track. OPS will be able to review these measures during periodic field inspections. Appendix SP–A of ASME B31.8S tabulates suggested measures for each threat to which a pipeline might be subject.

Consideration of Impact on Gas Supply

The eighth consideration of integrity management discussed in the June 27, 2001 FR notice, related to the impact of the rule on gas supply. Performing an assessment test on gas transmission pipelines has the effect of restricting gas flow. Unless adequate time is allowed and the assessment process is carefully managed, this flow restriction can significantly impact gas supply and cost to customers.

Different assessment technologies have different restrictions on gas supply. In-line-inspection merely restricts flow for the relatively short time when the instrumented internal inspection device (pig) is in the pipe. However, preparing the pipe to make it able to be internally inspected (piggable), requires termination of the gas flow in the segment being tested while modifications are made. At present over 75% of gas transmission lines are not piggable or can be made piggable only with extensive modifications. Pressure testing requires termination of gas flow in the section being tested each time it is carried out. Direct assessment requires flow restriction (associated with lowering the pressure as a safety measure) while selected locations along the pipe are being excavated and directly examined.

We indicated above that assessing pipelines using any of the technologies under consideration may result in a restricted gas supply because of the need to take pipelines out of service or by reduction in throughput. In addition, some types of repairs will also require lines to be taken out of service. If an upstream segment of this gas transmission pipeline were put out of service temporarily for test or repair, many communities located at the end of branch lines, could be negatively impacted by the restricted gas supply. This effect would be caused by the fact that the lines are often sole source feed, (*i.e.*, have no other tie-in's from an alternative source.) Because of this factor, the proposed rule allows a waiver of a reassessment interval greater than seven years, if the operator demonstrates that it cannot maintain local product supply, and OPS determines that a waiver would not be inconsistent with pipeline safety. This proposal is consistent with the provision in the Pipeline Safety Improvement Act of 2002. Because a waiver requires public notice and comment, we are proposing 180-day advance notification.

INGAA Report

INGAA commissioned an extensive analysis of the economic impact of a gas IMP rule. The analysis, performed by Energy & Environment Analysis, Inc., evaluated this impact using various assumptions on the fraction of the affected pipe that is currently not piggable that will be assessed by pigging, pressure testing, or direct assessment. The time frame during which the baseline assessment must be performed was also a parameter in the analysis, varying from five to fifteen years. While (at the time of the INGAA comment—August 14, 2001) sufficient detail was not available to evaluate the credibility of the analysis and its underlying assumptions, the estimated economic impact on gas consumers for the ten year baseline period is large, ranging from $3.9 billion to $6.1 billion. (Note, this analysis and a peer review of report performed by the Volpe National Transportation Systems Center (Volpe Center) and the Department of Energy (DOE) have recently been completed and are discussed below).

AGA/APGA commented that some forms of assessment (*e.g.*, pressure testing) would require outages from 3 to 9 days. Customers would in some cases be without gas during that time, and restoration of gas supply would require extensive work, for example, re-lighting pilot lights of each affected customer.

Discussions on the INGAA Report on "Consumer Effects of the Anticipated Integrity Rule for High Consequence Areas" (February 2, 2002)

On April 3, 2002, RSPA/OPS held a meeting with INGAA, Energy and Environment Associates (EEA), the Volpe Center, and DOE to discuss the INGAA report on "Consumer Effects of the Anticipated Integrity Rule for High Consequence Areas" (February 2, 2002). The meeting was designed to allow RSPA/OPS, and several reviewers retained by RSPA/OPS, to explore the reasonableness of the results in the INGAA-sponsored report. The focus of discussion was on the assumptions made in the analysis. The report was produced in response to the initial need to understand the supply and economic implications of allowing or disallowing direct assessment as a primary assessment technology, and later was expanded to evaluate the supply and economic implications of various baseline assessment intervals ranging from 5 to 15 years.

The report focuses on interstate transmission pipelines. INGAA indicated the industry expects that most HCA mileage will lie in Class 3 and 4 Locations, and that approximately 5% of pipeline is in class 3 and 4 locations, but that the HCA definition will include some pipe segments in other locations as well. INGAA said that Class 3 and 4 Locations are scattered throughout the pipeline system so they appear in about 60% of valve stations and 80% of the discharges from compressor locations.

INGAA further stated that a periodic inspection program was useful only to identify the presence of dynamic failure mechanisms or threats (*i.e.*, corrosion). They questioned the value of periodic assessment of pipelines for static threats (*i.e.*, material and construction) or random threats (*e.g.*, third-party damage).

The reviewers at the meeting requested clarification of the study assumption regarding the fraction of lines that are assumed to be in-line-inspected. Scenarios 1, 2 and 3 in the report assume segments described as "currently piggable" and "relatively easy to make piggable" are treated as "easy to pig" (*i.e.*, about 50%). The other scenarios, 3A, 3B and 3C in the report assume that only "currently piggable" segments are treated as "easy to pig" (*i.e.*, about 25%). This difference in assumptions complicates comparison between Scenarios 1, 2 & 3 and Scenarios 3A, 3B & 3C. EEA stated that market evaluations do show that there are capacity choke points and that spot market prices respond to capacity restrictions. Examples include recent price spikes in the States of California and New York. These capacity restriction effects were the focus of the study. No account was taken of the cost incurred by operators making lines piggable, although the capacity impacts associated with these maintenance activities were considered.

Other key assumptions in the analysis include: (1) 80% of mainline pipe and 50% of laterals/connections will be inspected (these numbers are supported by consideration of the distribution of segments that can affect HCAs throughout the pipeline systems and by the fact that even operators using direct assessment as their primary assessment approach will be required to reduce pressure in long segments of their lines during the direct examination step of the process). (2) Effects on consumers with limited options and flexibility in gas providers will be much more severe (*e.g.*, Florida has one transmission line, with a second to come in service this summer. Load factor on the line is greater than 80% and any interruptions would have significant downstream effect, and therefore cost impacts). It was noted by INGAA at the meeting that gas supply interruptions are not as routinely buffered by storage capacity as liquid petroleum products, which are normally stored in tanks. (3) The industrial sector is more elastic than the residential sector. Demand there was adjusted significantly when gas prices were high over the last couple years. (4) The analysis assumes that the impact of supply restrictions occurs at the time the restriction occurs rather than at a later time, as would occur because of long-term supply contracts. (5) Both pipeline capacity and demand are assumed to increase, as described in the base case of "The Pipeline and Storage Infrastructure for a 30 Trillion Cubic Feet (TCF) Market" better known as the "30 TCF study."

The TCF study uses the EEA Gas Market Data and Forecasting System. This model was developed in 1995 requiring over ten person years of effort. The model is rigorously calibrated to actual historical behavior. Price differences are calculated as a function of load factor. The calibration is updated annually.

The model is a fairly coarse one in which multiple supply lines between market centers are modeled as a single line. However, the model appropriately considers the effects of capacity restrictions in one line in a corridor, and does not assume that a single line out of service terminates supply through the corridor in which it resides. This effect is treated separately from the model and

provided as an input to the model. The inputs to the model are developed assuming perfect communication among operators with lines in a single corridor, or supplying a single market center such that operators do not take multiple lines out of service that would compound the impact on capacity restriction at that market center. Taking multiple lines out of service in a single corridor might be necessary, if the baseline assessment interval were sufficiently short to require such action.

As the market becomes thinner (*i.e.*, supply is restricted relative to demand at a market center) consumers bid against each other causing spot market prices to rise. Costs developed in the model may be overstated over a 10-year period, because all consumers do not pay spot prices. As pipelines are re-contracted, however, those costs will be reflected in the new contracts.

In response to questions about why pipe assessments carried out prior to the rule currently being considered have not strongly affected gas prices, INGAA indicated that people who currently administer active pigging programs represent only about 25% of the total pipeline mileage and implemented their programs over about a 20 year period. INGAA said that in response to the anticipated rule, operators would have to assess a significant fraction of their systems (the segments covered by a rule) over ten years. The associated supply impacts and consumer costs will therefore be much larger.

The reviewers at the meeting suggested it would be very useful if INGAA would summarize all major assumptions and discuss the direction and approximate magnitude (*e.g.*, small medium, large) of the effect of each assumption on the resultant cost impact. INGAA agreed to consider how best to respond to comments raised during the meeting and in the review documents that had been prepared in advance by Volpe and DOE reviewers. For detailed discussion on this subject see minutes of this meeting in the docket.

Other Issues Including Those Related to Cost/Benefit

The ninth consideration of integrity management discussed in the June 27, 2001 FR notice, related to other issues including those related to the cost/benefit analysis.

Comments

INGAA commented that RSPA/OPS should perform its cost-benefit analysis starting with current industry practices (as described in recent INGAA reports) as the baseline. They also provided some data on the number of incidents and property damage over the past fifteen years, but did not provide any information on the impact of incidents and leaks on the cost of gas to customers.

INGAA provided preliminary information on the estimated costs of inspection of all transmission pipelines for three different scenarios on inspection of hard-to-pig (HTP) pipelines. These preliminary costs include estimates to convert HTP segments to make them piggable. The inspections were assumed to be carried out over a ten year period.

Scenario description	Consumer cost for 10 years period (millions)
½ HTP portion pigged, ½ HTP portion DA	$3,892
½ HTP portion pigged, ½ HTP portion Hydro	6,095
⅓ HTP portion pigged, ⅓ HTP portion DA, ⅓ HTP portion DA	4,048

The numbers in this table were updated through the completed INGAA/EEA analysis discussed above.

On the question of small business impacts, INGAA noted that no more than 50,000 miles of approximately 274,000 miles of natural gas transmission pipelines (and probably much less) could be owned by small businesses. Also, many of the contractors likely to be involved in inspections are small businesses. Finally, the potential exists that increased gas costs will impact small business customers.

AGA/APGA strongly suggested that RSPA/OPS develop the integrity rule for gas transmission pipelines around a performance-based approach.

The Florida Public Service Commission noted that performance type regulations can only work if operators are willing to share information on both performance and potential problems with the regulators. They believe that the risk management demonstration program has shown the operators are unwilling to openly share needed information.

The New York Gas Group strongly supports the development of a performance-based rule that will allow companies the flexibility needed to manage the risks associated with their pipelines, as effectively as possible. They asserted that this position is supported by the NY State Public Service Commission staff.

The Process Gas Consumers Group (PGC) commented that RSPA/OPS should give strong consideration to any potential economic impact of interruptions in gas supply to industrial concerns that rely on gas in the conduct of their business.

Conclusions From the Consumer Cost Impact Evaluation

Consumer cost and supply availability are major factors in establishing the period for operators to complete the baseline assessment. There are numerous assumptions made in the INGAA study. In general they are designed to underestimate the predicted cost impact. For example, the study does try to optimize time of testing, and assume infinite availability of pig vendors and equipment. However, there are also assumptions in the study that would lead to prediction of higher cost impact than might realistically be expected. For example, the study does not assume learning on the part of the operators, and the analysis reflects marginal costs rather than contracted costs.

The EEA analysis found that consumer cost impact was more significant with short baseline assessment periods than with longer times. The cost impacts were estimated to be $7.2 billion for a 14-year baseline period, $13.1 billion for a 10-year baseline period, and $20.1 billion for a 5-year baseline period. Although not quantifiable in the model, the potential for critical supply interruptions, resulting from the need to perform assessments during high demand periods and the increased difficulty of coordinating assessments on lines feeding the same customers, increases as the baseline period decreases.

RSPA's Conclusions About the INGAA Study

From its review of the INGAA study RSPA concluded that—

Study Performers. The organization that performed the study for INGAA is recognized as an expert in the type of analysis performed. This conclusion is supported by the fact that EEA has been called to testify on significant supply issues before Congress, and that the gas pipeline industry is using the results of the study on which the present impact analysis is based as a major factor in expansion decisions.

Study Conservatism. The peer review identified several assumptions used in the analysis in which it would lead to over-prediction of the gas supply and cost impacts, as well as some areas where the model would be expected to result in under-estimation of these impacts. In balance, the model together with its major assumptions seems to produce a reasonable, possibly an

underestimate, of the anticipated supply and cost impacts.

Baseline Assessment Time Frame. The decision on a baseline assessment interval must reflect the need to expedite pipeline assessment without dramatically impacting gas availability and price. The INGAA/EEA analysis supports the conclusion that a ten-year baseline assessment requirement is consistent with managing supply and cost impacts resulting from the new assessment requirements. The predicted impact on consumer energy cost associated with this baseline time frame is $13.1 billion. While this is a very large cost, it represents a small percentage impact on total gas costs over the time period of the analysis. RSPA has concluded that a ten-year baseline assessment period, with 50% of covered segments being assessed within five years, will allow the impact on gas supply and cost to be adequately managed by the operators.

Mapping

We stated in the proposed rule on high consequence areas (67 FR 1108; January 9, 2002), that RSPA/OPS is creating the National Pipeline Mapping System (NPMS), a database that contains the locations and selected attributes of natural gas transmission lines and hazardous liquid trunk lines and liquified natural gas facilities operating in the United States.

RSPA/OPS will require operators to provide their pipeline data by a separate rulemaking on mapping. Submission of this information has been voluntary in the past. At present, RSPA/OPS has received data on pipe locations for 90% of liquid pipelines but only 52% of gas pipelines. Currently, RSPA/OPS has no data on areas of higher population density (Class 3 and 4 locations) associated with gas pipelines. Present gas pipeline regulations are structured to provide increasing levels of protections, consistent with predetermined thresholds. Accordingly, gas pipeline operators are required to monitor data on the number of dwellings within 660 feet of their pipelines to either lower operating pressure or to replace the pipe with one having greater wall thickness or strength as the number of dwellings increases above predefined threshold. RSPA/OPS therefore believes that operators have excellent data on population and places where people congregate near their pipelines.

Maps incorporating these data would be useful not only to pipeline operators, but also to federal and state inspectors and for local officials and community needs. RSPA/OPS intends to use operator-supplied information to map the high consequence areas that it defines in a gas integrity management rule, similar to how it is mapping these areas for the liquid operators. A separate rulemaking on mapping will address this issue.

Treatment of Storage Fields

Storage fields have provided a source of pipeline integrity problems for decades. RSPA/OPS asked for information to help identify the cause of and prevent piping-related failures associated with storage fields that could affect high consequence areas. INGAA stated that those in high consequence areas should be treated in the same way as natural gas transmission pipelines.

The proposed rule requirements will include pipelines within the storage fields because under § 192.3(c) such pipelines are defined as transmission lines.

The Proposed Rule

RSPA/OPS is proposing a modification to section 192.761 and addition of a new section 192.763 to subpart M: High Consequences Area Definitions and Integrity Management Programs. The § 192.761 titled "Definitions" defined "high consequence areas" in a recently issued final rule (67 FR 50824; August 6, 2002); and proposed a new section 192.763 "Pipeline Integrity Management in High Consequence Areas" is described in this rule.

High Consequence Area Definitions—§ 192.761

The definition of high consequence areas recently published in the **Federal Register** (67 FR 50824; August 6, 2002) includes: (a) Current Class 3 locations; (b) current Class 4 locations; (c) an area that extends 300 feet from the centerline of the pipeline to the identified site for a pipeline not more than 12 inches in diameter and having a maximum operating pressure lower than 1200 psig; (d) an area of 1000 feet from the centerline of the pipeline to the identified site for a pipeline greater than 30 inches in diameter operating at a pressure greater than 1000 psig; (e) an area that extends 660 feet from the centerline of the pipeline to the identified site for all other pipelines. The areas of 300, 660 and 1000 feet are corridors that have been determined based on generalized estimates of potential rupture consequences. An identified site is defined as a building or outside area that can be identified by one of several means and that houses people who are difficult to evacuate or have impaired mobility (*e.g.*, hospital, church, school, prisons, day care facility); or where there is evidence that 20 or more people congregate at least 50 days in a year (*e.g.* beach, camping ground, religious facility). The full text of the HCA definition can be reviewed in the **Federal Register** document referenced above.

An identified site can be identified by one of several means listed in the rule: it is visibly marked, it is licensed or registered, it is on a list or map maintained by or available from a Federal, State or local agency or a publicly or commercially available database or it is know by public officials. RSPA/OPS is inviting comment on whether we should use the term public safety officials (*e.g.* Police, Fire department) and/or emergency response officials instead of public officials. Currently, pipeline operators are required to conduct liaison activities with public safety officials or emergency safety officials. We would like comment on whether the term "public safety officials or emergency response official" will cover the persons having the relevant information about these identified sites.

On September 5, 2002, the American Gas Association (AGA), the American Public Gas Association (APGA), the Interstate Natural Gas Association of America (INGAA), and the New York Gas Group (NYGAS) filed a petition for the reconsideration of the final rule on the definition of HCAs for gas transmission pipelines (67 FR 50835; August 8, 2002). This petition is in the docket. The petition raised the following issues.

(1) The splitting of the gas integrity rule into two rulemakings—the definition and the integrity requirements—causes confusion, particularly, since the Potential Impact Zone concept was not included in the definition.

(2) The HCA definition should clarify that it applies to those gas transmission pipelines that have the potential to impact high population density areas and does not apply to distribution pipelines.

(3) The identified site component (buildings and outside areas) is overly broad. The definition should instead use the language in 192.5.

RSPA/OPS believes issuance of this proposed rule will alleviate most of the concerns raised in the petition. As previously discussed, the HCA rule only defines general areas of high consequence. It includes corridors (lateral distances of 300, 660, and 1000 feet), but not axial distances along the pipeline. The axial distances can only be determined by analysis of potential

impact zones which are covered in this proposed rule. We have put the proposed potential impact zones definition under the same section 192.761, where HCAs are defined.

The petitioners argued it would be difficult to identify a building or outside area that is frequented by 20 or more persons on at least 50 days in any 12-month period, and would include isolated and infrequently occupied buildings. RSPA/OPS does not know how many rural buildings would be covered by the HCA definition or how many miles of pipeline segments would have to be added to the assessment plans to include these buildings which are populated for a short time relative to the other populated areas. We are trying to focus on high risk areas for assessment. Instead of including rural buildings, such as rural churches as High Consequence Areas, we could designate them as Moderate Risk Areas requiring less frequent assessment or requiring enhanced preventive and mitigative measures only. We would like public comment on this issue. We are proposing to define a Moderate Risk Area as an area located within a Class 3 or Class 4 location, but not within the potential impact zone.

This proposed rule presents requirements to improve the integrity of pipelines located in areas of potentially high consequences that go beyond those HCAs. The proposed IMP rule proposes to expand the definition of HCA by adding consideration of people living at distances greater than 660 feet from large diameter high pressure pipelines. Populated areas at distances less than 660 feet are already accounted for under Class 3 and 4 locations, however, populated areas beyond 660 feet were left out of the HCA final rule of August 6, 2002 (67 FR 50824). In this proposed rule, we are adding a new proposed HCA component of populated areas in paragraph 192.761 (g). We are proposing to require that an operator consider 20 or more buildings intended for human occupancy within an potential impact circle of radius 1000 feet or larger. We calculated that 20 buildings within a circular area of a 1000-foot radius represent a resident density equivalent to 46 buildings within a rectangular area one mile long and 1320 feet wide (current Class 3 location definition). Therefore, by using 20 or more buildings within circular area of radius 1000 feet we are, including areas having the same density of population as Class 3 locations.

To understand the provisions of this proposed rule, it is necessary to understand both the pipe segments covered by the proposal and the ranking of integrity improvement requirements for those pipe segments. The approach involves the six steps that rely on the definitions below: (1) Identify all HCAs for the pipeline using the HCA definitions as expanded by this proposed rule; (2) calculate the Potential Impact Radius (PIR) for each segment in the pipeline; (3) determine the Threshold Radius associated with the PIR for each segment; (4) identify Potential Impact Circles for the pipeline; (5) identify Potential Impact Zones (PIZ) for the pipeline and in Class 3 and Class 4 locations, identify the moderate risk areas; and (6) determine the priority of each segment covered by this proposed rule—covered segments located within a potential impact zone are considered higher priority, whereas those located outside a PIZ are considered lower priority.

The following proposed definitions help to understand these six steps:

Potential Impact Circle (PIC)—PIC is a circle of radius equal to the threshold radius used to establish higher priority areas within HCAs. A potential impact circle contains any of the following (for greater clarity see the diagram in Appendix E):

- 20 or more buildings intended for human occupancy within a circle of radius 1000 feet, or larger if the threshold radius is greater than 1000 feet;
- A facility that houses people who are difficult to evacuate as defined in § 192.761; or
- A place where people congregate as defined in § 192.761.

Potential Impact Radius (PIR)—PIR means the radius of a circle within which the potential failure of a pipeline could have significant impact on people or property. PIR is determined by the formula $r = 0.69 * (\text{square root of } (p*d^2))$, where "r" is the radius of a circular area surrounding the point of failure (ft), "p" is the maximum allowable operating pressure (MAOP) in the pipeline segment (psi), and "d" is the diameter of the pipeline (inches). (**Note:** 0.69 is the factor for natural gas. This number will vary for other gases depending upon their heat of combustion. An operator transporting gas other than natural gas must use Section 3.2 of ASME/ANSI B31.8S to calculate the impact radius formula).

Potential Impact Zone (PIZ)—PIZ is a rectangular area along the pipeline derived from the potential impact circle. The potential impact zone extends axially along the length of the pipeline from the center of the first potential impact circle to the center of the last contiguous potential impact circle, and extends perpendicular to the pipe out to the threshold radius on either side of the centerline of the pipe. For greater clarity see the diagram in Appendix E.

Threshold Radius—Threshold Radius is a bounding radius intended to provide an additional margin of safety beyond the distance calculated to be the potential impact radius. If the calculated potential impacted radius is less than 300 feet, the operator must use a threshold of 300 feet. If the calculated potential impacted radius exceeds 300 feet but is less than 660 feet, the threshold is 660 feet. If the calculated potential impacted radius exceeds 660 feet, but is less than 1000 feet, the threshold is 1000 feet. And, if the calculated potential impact radius exceeds 1000 feet, the threshold is 15% greater than the actual calculated impacted radius.

Pipeline Integrity Management in High Consequence Areas—Proposed Section 192.763

The proposed new § 192.763 titled "Pipeline integrity management in high consequence areas" imposes integrity management program requirements on all gas transmission pipelines covered under Part 192 that impact high consequence areas.

The proposed rule requires an operator of a transmission line to develop and follow an integrity management program that provides for continually assessing the integrity of all pipeline segments in the high consequence areas using internal inspection, pressure testing, direct assessment or other equally effective assessment means. The proposed rule further requires that the program provide for evaluating the entire range of threats to the integrity of each pipeline segment through comprehensive information analysis. Further, for each covered pipeline segment, the operator must provide additional protection to a pipeline segment's integrity though remedial actions and enhanced preventive and mitigative measures.

(a) Which Operators Must Comply? Proposed § 192.763(a)

The rule proposes that any operator of a gas transmission pipeline must comply with the integrity management program requirements.

(b) Which Pipeline Segments are Covered? Proposed § 192.763(b)

Any gas transmission pipeline located in a high consequence area, including transmission pipelines transporting petroleum gas, hydrogen, and other gas products covered under Part 192. Gas transmission is defined in § 192.3, and

includes pipelines within storage fields as transmission lines. Thus, this proposed rule covers pipelines within storage fields. Pipeline, by definition, means all parts of those physical facilities through which gas moves in transportation, including pipe, valves and other appurtenances attached to pipe, compressor units, metering stations, regulator stations, delivery stations, holders, and fabricated assemblies. The proposed rule does not apply to gas gathering or to gas distribution lines.

(c) What Must an Operator Do? Proposed § 192.763(c)

The rule proposes that no later than one year after the effective date of the final rule, each operator is required to establish a written integrity management program that addresses the threats on each pipeline segment that could impact a high consequence area. The operator would then implement and follow the program it has developed. Initially, the program would consist of a framework. Within one year after the final rule becomes effective, we would expect an operator's integrity management program to consist of:

- Identification of all pipeline segments that are in a high consequence area as defined in § 192.761 (and expanded by this proposed rule). It would also include categorization of whether these segments fall into a potential impact zone. All segments identified will be required to have enhanced integrity protection. The identification of potential impact zones is required to determine the length of baseline assessment intervals for these segments. Because identification of the pipeline segments is the trigger for all other integrity management requirements, the identification must be done within one year from the final rule's effective date. When evaluating the consequences of a failure within the potential impact zone the operator refer to Section 3.3 of ASME/ANSI B31.8S for a minimum set of consequence factors to consider.
- A program framework that addresses each of the required program elements, including continual integrity assessment and evaluation. The framework is required to document how decisions will initially be made to implement each element. To be effective, an integrity management program must constantly change. RSPA/OPS expects that the initial program will consist of a framework that specifies the criteria for making decisions to implement each of the required elements. The program evolves from the framework and must continue to change to reflect operating experience, conclusions drawn from results of the integrity assessments, and other maintenance and surveillance data, and evaluation of consequences of a failure on the high consequence area. In addition, the program must evolve to reflect the best practices used in the pipeline industry to assure pipeline integrity. An operator will have to document any change it makes to its program before implementing the change. In addition, if a change is significant enough that it affects the program's implementation or significantly modifies the program, the operator must notify OPS within 30 days of adopting the change into its program. An initial decision on the type of assessment method an operator is going to use is not considered a significant change.
- A plan for baseline assessment of the pipeline. The plan must identify segments to be assessed, applicable threats for each segment, method(s) selected to assess each pipeline segment (including internal inspection tool or tools, pressure test, direct assessment, or other technology that the operator demonstrates can provide an equivalent understanding of the condition of the line pipe), the basis on which each assessment method was selected, and a schedule for completing the baseline integrity assessment. An operator would also have to show that it is conducting the assessment in a manner that minimizes environmental and safety risks. See also the preamble discussion under section 192.763(e).
- A direct assessment plan for operators intending to use one of the direct assessment processes, describing how these processes will be used, including identification of External Corrosion Direct Assessment Regions.

To carry out the requirements of the proposed rule, an operator would, where specified, follow the prescriptive requirements of ASME/ANSI B31.8S, and its appendices, unless the proposed rule provides otherwise, or the operator demonstrates that an alternative practice is supported by a reliable engineering evaluation and provides an equivalent level of safety for the public and their property.

Performance-Based Option: ASME/ANSI B31.8S provides the essential features of both a performance-based and a prescriptive integrity management program. The proposed rule allows an operator to use a performance-based approach if the operator satisfies certain exceptional performance requirements. If the operator satisfies these requirements, the proposal would allow an operator to deviate from certain integrity management performance requirements—the time frame for reassessment, as long as a confirmatory direct assessment were done every seven years, using direct assessment as a primary method without having to satisfy the pre-conditions and the time frames for remediating anomalies found during the assessment.

- *Exceptional Performance.* To show exceptional performance the rule proposes that an operator have completed a baseline assessment of all covered pipeline segments, and at least one other assessment; remediate all anomalies identified in the second assessment according to specified requirements; and incorporate the results and lessons learned from the second assessment into the operator's risk model. An operator would also have to demonstrate that it has an exceptional integrity management program that meets the performance-based requirements of ASME/ANSI B31.8S, has a history of measurable performance improvement, and includes, at minimum:

(A) A state-of-the-art process for risk analysis;

(B) all risk factor data used to support the program;

(C) a state-of-the-art data integration process;

(D) a process that applies lessons learned from assessment of covered pipe segments to pipe segments not covered by this section;

(E) a process for evaluating all incidents, including their causes, within the operator's sector of the pipeline industry for implications both to the operator's pipeline system and to the operator's integrity management program;

(F) a performance matrix that confirms the continuing performance improvement realized under the performance-based program;

(G) a set of performance measures beyond those that are required that are part of the operator's performance plan and are made accessible in real time to OPS and state pipeline safety enforcement officials; and

(H) an analysis that supports the desired integrity reassessment interval and the remediation methods to be used for all pipe segments.

(d) What Are the Elements of an Integrity Management Program? Proposed § 192.763(d)

The proposed rule requires an operator to include certain minimum elements in its integrity management program that are either specified in the proposed rule or in the ASME/ANSI B31.8S standard. Initially, an operator

must develop a framework describing these elements. The framework describes how each element of the program will be carried out initially and documents expected near-term improvements to be implemented to these processes. Over time, this framework evolves into a program description as the operator learns from its experience and that of other operators, and incorporates that knowledge into an ever-improving process description. The proposed required program elements include:

- A process for identifying all potential threats to pipeline integrity in each high consequence area. Section 2.2 of ANSI/ASME B31.8S standard describes how all significant threats to the pipeline can be grouped into 9 categories. It further regroups these 9 categories of threats into three types: time dependent threats (*e.g.*, external corrosion, internal corrosion, stress corrosion cracking); stable or static threats (*e.g.*, manufacturing related defects (defective pipe seam, defective pipe), welding/fabrication related (defective girth or fabrication weld, wrinkle bend , etc.), equipment failure (gasket, control/relief valve, pump seal, etc.); and time independent threats (*e.g.*, third party damage).
- A baseline assessment plan (discussed in § 192.763(e).
- Criteria for remedial actions to address integrity issues raised by the assessment methods and information analysis, (criteria for repair are discussed in B31.8S, Section 7). These criteria recognize that the nature and timing of action related to a defect depend on the severity of the defect. Some require immediate action, some require mitigation over a prescribed period, and some must be monitored to ensure they do not represent a future threat to the integrity of the pipeline. ASME B31.8S, Section 7, also recognizes that the repair threshold an operator chooses for taking action on a recognized defect is related to the time acceptable before a follow-up reassessment is performed. If only very small defects are not mitigated in the pipe, then a longer time is acceptable before reassessment is needed. Repair criteria in Section 7 of ASME B31.8S reflect the current reality that developing assessment techniques, such as direct assessment, are not yet as mature as in-line-inspection and pressure testing. Therefore, operators choosing direct assessment must either excavate all indications, or they must reassess their pipe at shorter time intervals.
- A risk analysis that considers all available information about the integrity of the entire pipeline, evaluates its relevance to each segment within an HCA, and estimates the likelihood and consequences of a failure. Requirements and guidance on the gathering, review and integration of risk factor data is provided in ASME B31.8S, Section 4. Acceptable approaches to analyzing the risks associated with each segment are presented in ASME B31.8S, Section 5. The purpose of this analysis is to utilize the best available information, including operating experience on the entire pipeline, to determine the susceptibility to failure of each segment to each potential threat, then to estimate the relative magnitude of the threat so assessment actions can be prioritized.
- A continual process of assessment and evaluation to maintain a pipeline's integrity: Reassessment intervals for different assessment techniques, pipe stress levels and characteristics of residual defects (*e.g.*, predicted failure pressure, hydro-test pressure, or DA repair scope) are discussed in ASME B31.8S, Section 8, and summarized in Table 8–1.
- Identification of preventive and mitigative measures to protect the high consequence area: ASME B31.8S presents an extensive listing of preventive measures in Section 7. RSPA/OPS expects each operator to evaluate the value of instituting these practices in the light of information on threats posed to each segment and to implement applicable and cost-beneficial measures.
- A performance plan, including methods to measure the effectiveness of the program: Performance measurement is treated in the discussion of performance planning in Section 9 of ASME B31.8S, and candidate measures for each threat are presented in Appendix SP–A.
- A process for review of integrity assessment results and information analysis by a person qualified to evaluate the results and information. An operator must use qualified persons with the necessary technical expertise to evaluate and analyze the results and data from the integrity assessments, the periodic evaluation, the information analyses, etc. Qualifications for these people must be documented and records made available to verify qualifications.
- A management of change process, as outlined in ASME/ANSI B31.8S, Section 11.
- A quality assurance process, as outlined in ASME/ANSI B31.8S, Section 12.
- A communication plan that includes the elements of ASME/ANSI B31.8S, Section 10, and that includes a process for addressing safety concerns raised by OPS, including safety concerns OPS raises on behalf of a State or local authority with which OPS has an interstate agent agreement.
- A process for providing, by electronic or other means, a copy of the operator's integrity management program to a State authority with which OPS has an interstate agent agreement.
- A process for ensuring that each integrity assessment is being conducted in a manner that minimizes environmental and safety risks.

One of the most important elements of an integrity management program is operator qualification. This proposed rule requires an operator to verify that supervisors possess and maintain a thorough knowledge of the integrity management program and its elements for which they are responsible. Individuals who qualify as supervisors for any aspect of integrity management programs must have appropriate training or experience in that area. This proposed rule requires the operator to document requirements for these supervisory individuals and others, who are responsible for gathering and interpreting the results of integrity assessments.

(e) What Must Be in the Baseline Assessment Plan? Proposed § 192.763(e)

The proposed rule requires that an operator must include in its written baseline assessment plan each of the following elements:

- Potential threats to the integrity of each pipeline segment. Candidate threats are discussed in this section under § 192.763(f).
- The method or methods selected to assess the integrity of the line pipe in the high consequence area. The integrity assessment method(s) used must be based on threats to which the segment is susceptible. More than one method and/or tool may be required to address all the threats in the pipeline segment. An operator must assess the integrity of the line pipe by: internal inspection tool or tools capable of detecting corrosion, and any other threats to which the pipe segment is susceptible; pressure test conducted in accordance with subpart J; direct assessment in accordance with the proposed requirements; or other technology that the operator demonstrates can provide an equivalent understanding of the condition of the line pipe. An operator choosing to use the other technology option must notify RSPA/OPS 180 days before conducting the assessment. RSPA/OPS expects an operator to make the best use of current and innovative technology in assessing the integrity of the line pipe.

• A schedule for completing the integrity assessment.

• An explanation of the assessment methods the operator selected and an evaluation of risk factors the operator considered in establishing the assessment schedule for the pipeline segments.

• For an operator using direct assessment, a plan that takes into consideration the definition of ECDA and ICDA Regions and the complementary tools to be used for each ECDA regions.

• A process describing how the operator is ensuring that the baseline assessment is being conducted in a manner that minimizes environmental and safety risks (*e.g.*, where would launchers and receivers be placed; how the operator plans to dispose of hydrostatic test water; how low point drains would be tested; what extra attention would be given during excavations.). This proposed requirement applies to any assessment method the operator uses and to the reassessments, not just the baseline assessment.

Direction on the analysis of threats, including the data requirements, and on the selection of assessment techniques is provided in ASME B31.8S, Appendix SP–A.

Internal inspection is one of the most useful tools in an integrity management program. Depending on the threats present, RSPA/OPS expects an operator, with pipelines that are piggable or that can easily be made piggable, to consider using geometry tools (for detecting changes in circumference) and metal loss tools (for determining wall anomalies, or wall loss due to corrosion). Both high resolution and low resolution metal loss tools can be beneficial in integrity assessment. For details of each internal inspection tool, including their selection, capabilities, effectiveness, and use, operators should refer to Section 6 of the ANSI/ASME B31.8S. This standard discusses corrosion/metal loss tools for internal and external corrosion threat, crack detection tools corrosion cracking threat, metal loss or geometry tool for third party and mechanical damage threat.

This proposed rule will allow "other technology" as one of the four methods to assess the condition of pipeline segments that could impact high consequence areas. RSPA/OPS expects that as these tools are developed they may become useful assessment tools or as complements to direct assessment tools. We expect these tools could be used where internal inspection tools cannot be used, where pressure testing is not feasible, and where only one type of currently proven direct assessment tool could be used or where pipeline is not easily accessible for direct assessment. Some examples of such applications are, cased piping (*i.e.*, under either a river or road crossing), pipe in frozen ground or where bare pipe needs to be examined. Two examples of emerging technologies currently being reviewed and evaluated by RSPA/OPS are: (1) Long-range ultrasonic testing or guided wave ultrasonic testing for in-service monitoring of corrosion and other metal loss defects; and (2) "No-Pig" technology, a tool that can determine internal and external corrosion of the pipeline from above ground.

(f) How Does an Operator Identify Potential Threats to Pipeline Integrity? Proposed § 192.763(f)

The proposed rule requires each operator to identify and evaluate all potential threats to pipeline integrity in each area of potential high consequence. Threats that an operator must consider include, but are not limited to:

• Time dependent threats such as internal corrosion, external corrosion, and stress corrosion cracking;

• Static or resident threats such as fabrication or construction defects;

• Time independent threats such as third party damage and outside force damage; and

• The effect of human error.

The nine threat categories that comprise the first three general types of threat are discussed in ASME B31.8S, Appendix SP–A. In this Appendix human error is treated as a contributing factor to many of the major threats rather than as a separate threat. For example, it may be the dominant cause of rupture for third party damage incidents in which the equipment operator attempted to locate the pipeline before beginning excavation, but was given erroneous information about the location of the pipeline. In that Appendix, soil erosion is not treated as a separate threat, but viewed as a contributor to making the pipe more vulnerable to third party damage or outside force damage. Appendix SP–A presents detailed prescriptive requirements for managing the integrity of each of the nine threat categories. These requirements include the minimum data set needed to evaluate the presence of a threat, integrity assessment options, responses and mitigation approaches, assessment intervals and candidate performance measures.

The proposed rule also requires each operator to: (1) Collect data needed to evaluate each threat; (2) integrate numerous risk factors; (3) evaluate the susceptibility of each affected segment to each threat; and (4) prioritize affected segments in accordance with the ASME/ANSI B31.8S. The minimum sets of data needed to evaluate each of the nine threat categories are presented in Appendix SP–A of that standard.

Data integration requirements in the proposed rule should be satisfied by addressing the requirements in ASME/ANSI B31.8S, Section 4. Data integration must go beyond risk modeling to include consideration of specific locations where combination of these risk factors may lead to increased risk significance. Examples of data integration are presented in Section 4 of the referenced standard.

Human error analysis required by the proposed rule should follow the proposed training requirements.

If piping with certain material coating and environmental characteristics is in an HCA and the assessment shows it to be severely corroded, then other similar piping outside the high consequence area must also be evaluated, and mitigated as appropriate. This provision is critical in ensuring that the knowledge accumulated in implementing the integrity management requirements on pipe segments within HCAs is effectively utilized to improve integrity throughout the system.

The following additional requirements and guidance applies to the assessment process:

• Pipelines exposed to threats that represent higher risks should generally be assessed sooner than those with threats that represent lower risk. Thus, for the baseline assessment, 50% of covered segments (the higher risk segments) will have to be assessed within five years if pressure test, internal inspection or alternative equivalent technology is used, and within four years if direct assessment is used. The determination of which segments are at higher risk should be made using methods discussed in ASME B31.8S, Section 5. Here several alternative risk assessment approaches are described for use in ranking segments for integrity assessment.

• Pipelines that operate at a stress level less than 30% SMYS fail differently (*i.e.*, leak rather than rupture) from those operating at higher stress. Therefore, different integrity assurance techniques may be appropriate. These low stress pipes have been shown both by fracture mechanics analysis and by evaluation of failure experience data to fail by leaking, not by rupture. Therefore, the techniques most effective in assuring the integrity of these

pipelines could reasonably involve a combination of integrity assessment techniques and enhanced leak detection.

• The proposed rule applies to transmission pipelines, as that term is defined in § 192.5. There may be some transmission pipelines operating at less than 20% SMYS that are covered by the proposed rule. Pipelines operating at that low stress level are unlikely to rupture and therefore, pose little risk. We have requested comment on establishing longer reassessment intervals for these low stress lines.

• As a part of its regular surveillance program operators would have to determine whether new construction activity or newly identified recreational activity may add pipe segments to those that can affect an HCA. When such conditions are identified, but no less than annually, the operator must reevaluate which pipeline segments can affect HCAs.

(g) How Is the Baseline Assessment To Be Conducted? Proposed § 192.763(g)

The proposed rule requires that an operator must select the assessment technologies best suited to effectively determine the susceptibility to failure of each pipe segment that could impact an area of potentially high consequences. Assessment tool selection should be based first on the threats to which a segment is susceptible, and second on which assessment techniques can reasonably be applied. More than one method and/or tool may be required to address all the threats to which a pipeline segment is susceptible. The order in which assessment is carried out must take into account priorities determined by a risk assessment. In addition, the proposed rule stipulates that an operator must assess the integrity of the line pipe by applying one or more of the techniques below depending on the threats to which the segment is susceptible:

• Internal inspection tool or tools for detecting corrosion and deformation anomalies as appropriate. For guidance on selecting appropriate internal inspection tools an operator must refer to ASME/ANSI B31.8S standard.

• Pressure test conducted in accordance with subpart J of part 192.

• Direct assessment method for external corrosion threats, internal corrosion threats, stress corrosion cracking, and third party damage (if other assessment methods are not feasible). This method must be carried out in accordance with the ASME/ANSI B31.8S standard and the specified proposed requirements.

• Other technology that the operator demonstrates can provide an equivalent understanding of the condition of the line pipe. An operator choosing this option must notify RSPA/OPS 180 days before conducting the assessment.

The proposed rule requires operators to evaluate and assess for third party damage. For gas transmission pipe segments in Class 3 and 4 locations, the major cause of failure is third party damage. This probably results from a higher level of excavation activity in higher populated areas, combined with the fact that thicker and stronger pipe in classes 3 and 4 are less susceptible to corrosion failure. The vast majority of third party damage failures (approximately 90%) occur at the time the third party contact occurs. However, a small fraction of these failures are delayed after the initial contact (*e.g.*, the rupture at Edison, New Jersey). Therefore, some consideration needs to be given to delayed failures. The primary cause of delayed failure from third party damage is believed to be cyclic fatigue from pressure cycling. Gas pipelines are not typically subject to this type of pressure fluctuation.

Given the considerations above, it is clear that lowering the risk associated with third party damage requires that the third party damage threat must be addressed through comprehensive preventive measures. In addition, each operator must evaluate whether cyclic fatigue of sufficient magnitude or other loading condition (including ground movement, suspension bridge condition) necessitate a periodic assessment for dents and gouges. These evaluations must assume the presence of deep dents, and determine whether known and anticipated loading conditions would lead to failure of such hypothesized dents. The results of these evaluations together with the criteria used to evaluate the significance of this threat must be documented in the operators integrity management plan. Operators must assess segments which are vulnerable to delayed failure following third party damage using ILI tools such as deformation or geometry tools. Direct assessment may be used as primary assessment method for third party damage, if no other approach is feasible. Direct assessment has been successfully used to screen piping for the presence of significant residual third party damage, thereby supporting evaluation of the need for additional assessment and focusing on the segments where the use of internal inspection tools is most necessary. Under such conditions, it may be used in combination with data collection and integration to evaluate segment susceptibility to third party damage. In addition, operators unable or who believe it unnecessary to use a geometry tool must excavate and directly examine indications from ILI runs or from direct assessment that are suspected of resulting from third party damage. The comprehensive preventive measures employed must be documented in the operators integrity management program, and measures of their effectiveness established and monitored.

To address manufacturing and construction defects (including seam defects), the rule proposes that an operator must a pressure test at least once in the life of the segment unless the operator can document in its assessment plan why pressure testing is not required. At anytime the historic operating pressure or other stress conditions is anticipated to change, then the operator must assess the pipeline using appropriate assessment technology prior to making the change in operating condition. The methods an operator selects to assess low frequency electric resistance welded (ERW) pipe or lap welded pipe susceptible to seam failures must be capable of assessing seam integrity and of detecting corrosion anomalies.

The present understanding of the conditions leading to failure from materials and construction defects has improved significantly as a result of analyzing failure experience. For example, while some pre-1970 ERW piping has experienced failures resulting from seams defects, only certain manufacturers'' pipe has demonstrated susceptibility to this type of failure. In addition, a once-in-a-life pressure test has proven to significantly lower the likelihood of failure in these susceptible pipe segments. Further, piping that has not been hydro-tested has shown susceptibility only when operating parameters are changed significantly. Therefore, careful analysis of industry operating experience and comparison of the root causes of historic failures with the operators pipe will allow operators to determine the risk of failure from these mechanisms. Incident root cause analysis also indicates that any anticipated increase in operational pressure will require the operator to perform a hydro-test prior to changing operational characteristics. This requirement applies even if an operator plans to increase operating pressure from the historic level, but not to exceed the MAOP.

Time period. Each operator must prepare a baseline assessment plan that documents the order in which each pipeline segment will be assessed according to level of risk the segment

poses. Operators must complete the baseline assessment within the specified time frame regardless of the stress level at which the pipeline is operating. The plan for conducting the baseline assessment must, among other considerations, minimize the impact on gas supply to residents.

- An operator using pressure test or internal inspection tool assessment method on a segment located in an HCA and in the potential impact zone must complete the baseline assessment within ten years from December 17, 2002 (the date of enactment of the Pipeline Safety Improvement Act of 2002). An operator must assess at least 50% of the line pipe, beginning with the highest risk pipe, by 5 years from December 17, 2002.
- An operator using pressure test or internal inspection tool assessment method within an HCA but outside of the potential impact zone (also known as a moderate risk area) must complete the baseline assessment within 13 years from December 17, 2002 (the date of enactment of the Pipeline Safety Improvement Act of 2002).
- An operator using direct assessment has seven years to complete the baseline assessment and has to assess at least 50% of the line pipe beginning with the highest risk pipe within four years.
- An operator using direct assessment as an assessment method on a pipeline segment located within a moderate risk area (area in a Class 3 or Class 4 location, but not within the potential impact zone), must complete the baseline assessment of the line pipe within 10 years.

The proposed rule specifies the conditions under which direct assessment can be used as a primary assessment tool. The primary reason that the shorter time frame for completing the assessment using the direct assessment process is that the processes are still developmental, and additional information must be gathered on the method's effectiveness so that any needed adjustments can be made. These adjustments will then be reflected in the second assessment process. The seven-year period is based on RSPA/OPS's assessment of the minimum time needed to collect and analyze risk factor data, to develop internal practices and expertise in application of the processes, and to allow the service industry to develop and qualify people needed to responsibly apply the processes. The time frame selected is compatible with that required for completion of baseline assessments in the hazardous liquid pipeline rule. In addition, the riskiest half of the covered segments have to be assessed during the first four years of the seven-year period.

Prior assessment. The proposed rule allows an operator to use an integrity assessment conducted five years previously from December 17, 2002 (the date of enactment of the Pipeline Safety Improvement Act of 2002) as the baseline assessment if the previous integrity assessment method meets the proposed requirements. However, if an operator uses this prior assessment as its baseline assessment, the operator must reassess the line pipe according to the proposed reassessment requirements.

Newly-identified areas. When information is available from the information analysis that the population density around a pipeline segment has changed so as to fall within the definition in § 192.761 of a high consequence area, the operator must incorporate the area into its baseline assessment plan as a high consequence area within one year from the date the area is identified. An operator must complete the baseline assessment of any line pipe that could affect the newly-identified high consequence area within 10 years (or 7 years if direct assessment is being used) from the date the area is identified.

Background on Direct Assessment. Significant development work was carried out during the past two years to expand the use of indirect assessment tools (*e.g.*, Close Interval Surveys, Direct Current Voltage Gradient, Pipeline Current Mapper, electromagnetic tools) into an integrated integrity assessment process capable of identifying pipeline defects based on a combination of data analysis and integration, above ground assessment, and direct examination. These efforts are resulting in the production of an industry consensus standard on External Corrosion Direct Assessment, and towards the production of standards on direct assessment as applied to internal corrosion and stress corrosion cracking.

RSPA/OPS, along with representatives from several States, participated in the standard development process. This participation led to the identification of several areas where we believe that additional requirements are needed. These additional requirements would help ensure the application of the standards is carried out by competent practitioners, and that innovations developed by more experienced practitioners will be available for use by less experienced operators. Additional requirements could also strengthen those areas where we believe too much discretion is allowed the operator in establishing basic decision criteria needed to apply the Standards. As additional experience is gained in the use of direct assessment processes, RSPA/OPS can consider relaxing these requirements.

(h) When Can Direct Assessment Be Used and Under What Conditions? Proposed § 192.763(h)

Direct assessment is an integrity assessment method that utilizes a process to evaluate certain threats (*i.e.*, external corrosion, internal corrosion and stress corrosion cracking) to pipeline integrity. The process includes assembly and integration of risk factor data, indirect examination or analysis to identify areas of suspected corrosion, direct examination of the pipeline in these areas, and post assessment evaluation. The process typically makes use of data on the pipeline, its environment and its operating history to determine the significance of potential threats to integrity and to identify indirect assessment techniques (either analytical or above-ground examination) that an operator can use to determine where a threat possibly damaged the pipeline. Once suspect locations are identified and ranked, then direct physical examination determines the extent of damage and the need for mitigative action. Each threat to which direct assessment is applicable uses a somewhat different process to evaluate the presence of the threat.

While the direct assessment process itself is new, operators have used the analytical techniques, above-ground measurement tools, and direct examination technologies that the process employs, for many years. Examples of above-ground techniques with long prior use include close interval surveys (CIS), direct current voltage gradient (DCVG), and pipeline current mapper (PCM). Examples of direct examination techniques with long prior use include direct physical examination, ultrasonic testing, and x-ray examination.

Why consider allowing the use of direct assessment? Although in-line inspection (pigging) technologies and pressure testing have been used for years, there are several reasons for allowing direct assessment as an assessment method.

INGAA reports that, at present, 24.4% of its members' transmission pipelines are already piggable. According to INGAA, another 25.3% can easily be made piggable, 45.9% (~82,620 miles) would be very costly to pig and 4.4% (~7,920 miles) cannot be pigged. AGA indicates that 35% of its members' pipelines (~4,725 miles) are not piggable. They could only be made

piggable with extensive modifications, at a cost of between $1M and $8M per mile. APGA indicates that the comparable percentage of mileage for its members is 46% (~1,380 miles). Based on these industry-provided numbers, the cost of making the "very costly" lines piggable, excluding the increased cost of gas supply due to capacity restrictions, can be estimated to be between $88B and $710B. While these numbers are exceedingly large and rely on the AGA costs, developed for making difficult to pig lines piggable in urban areas, they do indicate that much work on existing lines would be needed to make all gas transmission lines piggable using today's ILI technology. INGAA also argues that pressure testing much of the currently non-piggable pipeline could be costly or impractical because of service interruptions needed to complete the hydro-test, and because the process introduces electrolytes into the system that will be difficult to completely remove, thereby increasing the likelihood for future internal corrosion.

In addition to the feasibility of ILI and the costs associated with making lines piggable, the cost to consumers and the potential of critical supply interruptions are other factors in the RSPA/OPS decision to allow direct assessment. The INGAA study, as mentioned previously, evaluated the cost to consumers associated with capacity restrictions resulting from gas pipe integrity assessment. This study evaluated capacity restrictions and related consumer cost impacts for integrity assessment scenarios involving different mixes of ILI, hydro-test and direct assessment technologies. For a baseline assessment time frame of ten years, the study determined that the difference in cost to the consumer (excluding the cost of making lines piggable) between conducting direct assessment on twenty-five percent and zero percent of piping would be over two billion dollars. Some supply interruptions could also result if direct assessment were not allowed as an alternative assessment technology.

What threats are direct assessment capable of characterizing? Work jointly funded by the gas pipeline industry and RSPA/OPS is ongoing to develop, validate and standardize the application of the direct assessment process to the assessment of external corrosion (ECDA) and internal corrosion (ICDA). Future work is planned to develop, validate and standardize a direct assessment process for application to the stress corrosion cracking (SCCDA) threat. Furthermore, significant anecdotal evidence exists that the ECDA process may be capable of identifying coating damage associated with third party impacts on the pipeline, but formal validation of this capability has not yet been performed.

The current strategy, being incorporated in the developing consensus standard for external corrosion direct assessment for use with the ECDA process, is to locate areas suspected of having external corrosion by identifying defects in the pipe coating, then excavating those defects in areas where corrosion activity is suspected. While all indications discovered by ECDA that are not adequately protected by the cathodic protection system at the time of the assessment will be excavated and directly examined, only a fraction of the ECDA indications that are protected by cathodic protection systems at the time of the assessment will be excavated. This excavation strategy is incorporated in the draft NACE consensus standard on ECDA. The draft standard describes the process by which operators make decisions on the need for continued excavation of features in an ECDA region, based on the severity of defects revealed in previous excavations. If excavation of the indications that are expected to be most severe reveal no significant pipe damage, then further excavations in that region are not necessary. If excavation continues to reveal significant pipe damage, then a larger fraction of protected indications would be excavated.

An approach is under development by the Gas Technology Institute (GTI) for ultimate incorporation in a NACE consensus standard to locate internal corrosion (ICDA). The process, using direct assessment, is focused exclusively on pipe transporting nominally clean dry gas, in which moisture (electrolyte) has been introduced by abnormal operation. Further, it assumes that internal corrosion will only occur if moisture is present at the location in question. The Southwest Research Institute, under GTI funding, developed a mathematical model to predict locations where moisture would accumulate along the line, if it were introduced during an upset condition. These models, together with a common sense approach to identifying other pockets where moisture might accumulate, are to be used to identify areas where excavations and direct examination is required. While not yet validated, this approach is drawn from industry experience and is based on reasonable assumptions about the most likely location of internal corrosion.

There is a need for alternative assessment technologies capable of finding and characterizing pipe defects. RSPA/OPS decided to allow selective use of direct assessment for application in characterizing certain integrity-threatening defects in pipe that cannot (for economic or operational configuration) be pigged or hydro-tested. The conditions for use of direct assessment are based on draft NACE consensus standards with additional requirements that reflect the developmental nature of the processes.

Under What Conditions Can Direct Assessment Be Used?

The proposed rule proposes to allow an operator to use direct assessment as a supplement to the other allowable assessment methods, and to use direct assessment as a primary assessment method for external corrosion, internal corrosion, or stress corrosion cracking only when the operator can demonstrate that a specified condition exists. These conditions are when the other assessment methods cannot be applied to the pipeline segment for economic or technological reasons; the other assessment methods would result in a substantial impact on gas customers; excavation and direct examination will be done on the entire covered pipeline segment; or the covered pipeline segment operates at a maximum allowable operating pressure below 30% SMYS. To use direct assessment as a primary method for external corrosion, internal corrosion or stress corrosion cracking, the operator has to follow ASME/ANSI B31.8S and additional requirements set forth in the proposed rule.

In addition, to use direct assessment as the primary assessment method for third party damage, an operator has to show that no other assessment method is feasible, and that the operator will combine the method with data collection and integration to evaluate the segment's susceptibility to third party damage.

An operator choosing the external corrosion direct assessment (ECDA) method as its primary assessment technology must prepare a detailed plan in which the following information is documented:

- Data requirements for using ECDA; these must include as a minimum the data requirements specified in Appendix SP–A1 for external corrosion in ASME B31.8S.
- Criteria for evaluating ECDA feasibility.
- Criteria for defining ECDA Regions.

Further discussion is presented later in this section.

- The basis on which two complementary tools are selected for assessing each ECDA Region. Further information is in Appendix E.
- Criteria for identifying and documenting indications that must later be characterized for severity and considered for direct examination. These criteria must consider, as a minimum, the known sensitivities of assessment tools, the procedures for the use of each tool, and the approach to be used for decreasing the physical spacing at which indirect assessment tool readings are to be taken when presence of a defect is suspected.
- Criteria for characterizing indications identified in the ECDA process. These criteria must define how an indication will be characterized as severe, moderate or minor.
- Criteria for defining the urgency of excavation and direct examination of each indication. These criteria must define the urgency of excavating the indication as immediate, scheduled or monitored.
- Criteria for scheduling excavation of each urgency level of indication. These criteria are discussed at greater length below.
- Criteria for data gathering associated with each excavation.
- Criteria for the qualification of people who carry out and interpret the results from the direct assessment process.
- Criteria and measures for long-term process effectiveness evaluation.

Completion of the Following Four Steps

Step 1: Pre-Assessment—As part of the Pre-Assessment step, the pipeline operator must analyze and integrate the risk factor data to determine whether conditions exist that would preclude the effective use of ECDA. The following conditions may rule out ECDA application or make it difficult to apply. Should any of these conditions exist, the operator must document in the ECDA Plan why ECDA is considered to be valid and the special provisions it will implement to ensure ECDA effectiveness.

- The presence of coatings that cause electrical shielding;
- Backfill around the pipe with significant rock content or the presence of rock ledges;
- Situations impeding timely above-ground data gathering;
- Locations with adjacent buried metallic structures; and
- Inaccessible areas.

As part of the Pre-Assessment step, the operator must select at least two different indirect examination methods for each location where ECDA is to be applied along the pipeline. These methods must be selected based on their ability to detect external corrosion activity and deficiencies in the pipe coating under the conditions expected to be encountered. The tools selected must be complementary, such that the strengths of one tool overlap the limitations of the other. Appendix E presents information to support selection of the two complementary tools. A few examples of indirect examination tools are Close Interval Surveys (CIS), Direct (or Alternate) Current Voltage Gradient (DCVG or ACVG), and electromagnetic techniques (*e.g.*, Pipeline Current Mapper (PCM) and C-Scan).

Direct assessment with only one inspection tool will be permitted to assess for external corrosion only if the operator develops and documents a plan specifying and justifying the special tool or tools being used. The conditions where this deviation is permitted are as follows:

- Pipe in frozen ground;
- Pipe under paved roadways; and
- Pipe in cased crossings (either road or river).

ECDA Region: As part of the Pre-Assessment step, the operator must define ECDA regions. An "ECDA Region" is a portion of a pipeline, not necessarily contiguous, that has similar physical characteristics, operating and corrosion history, expected future corrosion conditions, and in which the same indirect assessment tools are used. Due to their similarity, these regions will be used in each of the remaining three steps in the ECDA process. In these subsequent steps, ECDA regions are used to support aggregation and evaluation of indirect and direct examination data. Additionally, ECDA regions may be redefined, or the ECDA process may be determined to be inapplicable for an entire region.

Step 2: Indirect Examination—The operator must carry out the indirect examination step using the tools selected for each ECDA Region. In defining the boundaries for use of each pair of ECDA tools, the operator must ensure completeness of coverage by providing for some overlap between adjacent regions. The following additional provisions must be incorporated when the ECDA process is applied to a segment of pipe:

- Repeat indirect inspections on a sample basis to ensure consistent data are obtained.
- Select intervals for capturing tool readings that are closely spaced enough to ensure consistent data are obtained. Data sampling intervals (locations of test points) for indirect examination tools should typically be no greater than the local depth of coverage of the pipeline.
- Indirect inspections using the two complementary tools in an ECDA Region should be carried out as close together in time as practical.
- Above ground measurements should be geo-referenced and documented so inspection results can be compared and excavation locations accurately identified.

After indirect examination measurements are completed for an ECDA Region, the operator must align the measures taken with the complementary tools and evaluate the consistency of the observations using the following guidance:

- If the results from the two complementary tools are not consistent and cannot be explained by differences in the capabilities of the tools, then either direct examination or additional indirect inspections must be used to evaluate the reasons for the differences.
- If additional indirect inspections or direct examinations are not carried out or if they do not resolve the inconsistencies, then the feasibility of ECDA must be reevaluated.
- Indications must be identified and located following indirect inspection, and the severity of each indication must be classified as severe, moderate or minor using the criteria in the ECDA Plan.
- These classifications should be conservatively developed the first time the process is applied. Results from the Pre-Assessment step (Step 1) must next be compared with prior history for each ECDA Region.
- If assessment results are not consistent with operating history, then the operator must reassess the feasibility of ECDA.

Step 3: Direct Examination (Excavation and Data Gathering)—The operator must next use the results from the indirect examination step to develop and carry out a direct examination plan. The activities to be included in this step are listed below:

- The order and timing of excavations in the direct examination step must be determined from results of the indirect examination step. Both order and timing are derived from a classification of the indications. Criteria developed in the ECDA Plan must be used to determine whether each indication is classified as requiring immediate action, scheduled action or monitoring.
- All indications that are categorized as "immediate action" require direct examination (excavation). Should any of these indications be associated with defects that require immediate mitigation, the operator must reduce

operating pressure by at least 20% in the associated ECDA Region and not exceed this pressure until 100% of such indications are excavated, evaluated and mitigated as necessary.

• All excavations of "immediate action" indications must be carried out promptly after indirect examination step is complete. An operator must take prompt action to address all anomalous conditions found.

• A minimum of one direct examination (excavation) is required for each ECDA Region. This examination must be made at the most severe indication, based on risk evaluation of the indications. If no indications are shown in the ECDA Region, then the excavation must be made at a location that the operator considers to be the most suspect.

• At least two indications found in each ECDA Region categorized as "scheduled action," require direct examination. Excavation of "scheduled action" indications must continue, in priority order, until at least two indications are excavated having corrosion of depth no greater than 20% of the wall thickness.

• The operator must collect all data specified in its ECDA Plan for each excavation completed. These data are to be used in determining the nature and timing of remediation as well as in the fourth step of the ECDA process, the Post Assessment step.

• Except for conditions specified in the body of the rule Section (h)(4), the operator must carry out remediation on a time frame and in a manner specified by ASME B31.8S. Remedial action must be consistent with a determination of remaining strength using ASME B31G, RSTRENG, or equivalent.

• If any exposed segment has significant coating degradation or corrosion, then the operator must increase the size of that excavation until coating and pipe are determined to be adequate.

• The operator must identify the root cause of all significant corrosion activity revealed by excavation.

• When ECDA identifies any defect in an ECDA Region that requires immediate mitigation, or when the root cause of any defect is a condition that ECDA is ineffective at assessing (*e.g.*, MIC or shielded corrosion), then an alternate assessment technology must be used for that ECDA Region.

Step 4: Post-Assessment—The operator must carry out a Post Assessment step to determine the reassessment interval and to evaluate the overall effectiveness of the ECDA process. In carrying out this step, the following requirements apply:

• The reassessment interval must be determined based on the largest defect remaining in the pipe segment and on the corrosion rate appropriate for the pipe, soil and protection conditions. The largest remaining defect must be taken to be the size of the largest defect discovered in the ECDA segment. The corrosion growth rate must be conservatively estimated based on data taken during the direct examination. The reassessment interval must be estimated as half the time required for the largest defect to grow to a critical size.

• An operator that directly examines and appropriately remediates defects consistent with the sampling provisions presented in this rule must reassess each segment at an interval not to exceed every five years.

• An operator that examines all anomalies by excavation and remediates these anomalies may be allowed to extend the reassessment interval from 5 years, as specified in the main body of the rule, paragraph (g)(4)of the proposed rule, to as much as 10 years.

• The operator must define and monitor measures to determine the effectiveness of the ECDA process. Measures should be developed to track: (a) The effectiveness of the overall process (*e.g.*, the change in the calculated reassessment interval); (b) the extent and severity of corrosion found; (c) the number of indications in each classification located on successive applications of ECDA; and (d) the time from discovery of an indication categorized as immediate action or scheduled action to its excavation.

Additional Documentation Requirements: In addition to the ECDA Plan, the operator must document all data on Pre-Assessment, Indirect Examination, verification of indirect examination by excavation, Direct Examination and Post-Assessment, and performance measures. The operator must also have procedures documenting communications requirements among various organizations conducting each step of the direct assessment process.

Internal Corrosion Direct Assessment

Internal corrosion direct assessment (ICDA) is a process that identifies areas along the pipeline where water or other electrolyte introduced by an upset condition may reside, then focuses direct examination on the locations in each area where internal corrosion is most likely to exist. If no evidence of internal corrosion exists in these most likely locations, then the entire section can be considered to be free of internal corrosion. An operator using direct assessment as a method to address internal corrosion in a pipeline segment must follow the requirements in ASME/ANSI B31.8S, Appendix SP–B2, and in this section.

For internal corrosion direct assessment, in addition to requirements in ASME/ANSI B31.8S, Appendix SP–B2, an operator must carry out the process described below. This process consists of four steps: pre-assessment, identification of ICDA regions and excavation locations, direct examination, and post assessment and continuing evaluation. The process is designed to evaluate potential for internal corrosion caused by water, CO2, O2, chlorides, hydrogen sulfide and other contaminants present in the gas, as well as MIC.

Step 1: Pre-assessment—The first step in the ICDA process is pre-assessment. In this step the operator gathers information needed to support identification of areas where internal corrosion is most likely to exist. This step requires the operator to:

• Gather all data elements listed in Appendix SP–A2 of ASME/ANSI B31.8S.

• Assemble information needed to determine where internal corrosion is most likely to occur including: (a) Location of all gas input and withdrawal points on the line; (b) location of all low points on the line such as sags, drips, inclines, valves, manifolds, dead-legs, and traps; (c) the elevation profile of the pipeline in sufficient detail that angles of inclination can be calculated for all pipe segments; (d) the diameter of the pipeline, and the range of expected gas velocities in the pipeline.

• Assemble and evaluate operating experience data that would provide an indication of historic upsets in gas conditions, locations where these upsets have occurred, and any indications of damage resulting from these upset conditions.

Step 2: Identification of ICDA Regions and Excavation Locations—The principal innovation of the gas pipeline industry in its development of the ICDA Process is the capability to evaluate the critical slope of a pipeline beyond which moisture in the gas is unlikely to be carried over. The primary assumptions in this analysis include: (a) For internal corrosion to occur an electrolyte such as water must be present in the pipeline; (b) the gas being transported is nominally clean and dry but may potentially be subject to upset conditions; (c) any entrained moisture carried in the gas stream will either evaporate or accumulate in a film along the wall of the pipe and be carried downstream by the shear force of the gas movement; (d) there is a critical pipe

angle above which gas that is swept along the wall will not progress downstream because the gravitational force will exceed the shear force of the gas on the liquid film.

The purpose of this step is to define ICDA Regions, and to use these regions to identify areas where excavation and direct physical examination of the pipeline is needed to look for internal corrosion. ICDA Regions are regions along the pipeline where internal corrosion may occur and further evaluation is needed. An ICDA Region is bounded by a location where a new gas stream enters the pipe and the nearest location downstream of that point where a the pipe slope exceeds the critical angle, given local gas velocity. The operator identifies these ICDA Regions by applying the results of the mathematical flow model as represented in Graph E.III.1 in Appendix E of this document. Flow modeling must include explicit consideration of changes in pipe diameter as well as locations where gas enters a line (providing potential to introduce moisture) and locations down stream of gas draw-offs (where gas velocity is reduced).

Once the ICDA Regions are identified, the most likely locations for internal corrosion in each region can be identified. A minimum of two locations must be identified for excavation in each ICDA Region. One location is the low point (*e.g.*, sags, drips, valves, manifolds, dead-legs, traps) nearest to the beginning of the ICDA Region. The second location is at the upstream end of the pipe incline nearest the end of the ICDA Region. The first point represents the most likely locations for accumulation of electrolyte in the ICDA Region, and the second point represents the location furthest from the beginning of the ICDA Region where internal corrosion may occur..

Step 3: Direct Examination—At a minimum the operator must excavate the two locations described above, in each ICDA Region where the potential for moisture accumulation exists, and must perform direct examination for internal corrosion by inspecting both locations. Acceptable direct examination technologies are described in ASME/ANSI B31.8S, Appendix SP–B2, and include ultrasonic examination and x-ray.

If no internal corrosion exists at either of these locations, then the remainder of the ICDA Region is likely to be corrosion free. However, if corrosion exists at either of these locations, then either much more extensive excavation is required or an alternative assessment technology (*e.g.*, in-line-inspection) will be required to characterize the pipe for internal corrosion. At any location where indications of metal loss exist, mitigation must be undertaken.

Step 4: Post Assessment and Continuing Evaluation—After completing excavation and needed mitigation of the two suspect locations in each ICDA Region, the operator must document and implement a program of continuing monitoring for segments where internal corrosion has been identified. This program may include use of coupons located in suspected areas, but must include periodic reassessment at the prescribed interval. In addition, fluids drawn off of the pipeline at low points must be retained and chemically analyzed for the presence of corrosion products. Evidence of corrosion products must be interpreted as requiring further excavations of locations down stream where moisture might accumulate, or use of an alternative assessment technology such as in-line-inspection.

Stress Corrosion Cracking (SCC)

As described in ASME/ANSI B31.8S, Appendix SP–B3, direct assessment techniques represent the single most significant historic approach to evaluate for the presence of stress corrosion cracking (SCC). Only recently ILI tools have become available to reliably identify SCC in pipelines, and the use of these tools must be guided by a pre-assessment review that identifies where to look for the possibility of SCC.

For SCC direct assessment, in addition to text in ASME B31.8S standard, an operator must consider the following condition:

- Systematic SCC data collection, evaluation and accumulation process must be instituted for all segments that satisfy the criteria in the ASME B31.8S standard. This process must include gathering and evaluating data related to SCC at all excavation sites where the criteria indicate the potential for SCC.
- If any evidence of SCC is discovered, then the operator must select and implement a suitable assessment approach.

Confirmatory Direct Assessment is a more focused application of the principles and techniques of direct assessment. It utilizes process steps similar to direct assessment to evaluate for the presence of suspected corrosion and third party damage, but it is not as involved as direct assessment. The rule proposes that an operator use confirmatory direct assessment to reassess a pipeline segment within the required seven-year interval if the operator has established a longer reassessment interval for that segment.

For example, in the proposed rule, if an operator is using pressure testing or internal inspection, it could establish a ten-year reassessment interval for a covered segment. By the seventh year, the operator would have to conduct a confirmatory direct assessment on that segment to identify corrosion or third party damage. The operator would then have to conduct the follow up reassessment in the tenth year. If the operator has established a seven-year or shorter interval for the segment, the operator would not have to conduct the confirmatory direct assessment.

The rule proposes that the confirmatory direct assessment method be used to identify internal and external corrosion and third party damage. For external corrosion, an operator's plan to use this method would have to include steps for pre-assessment, indirect examination, direct examination, and remediation.

- The pre-assessment would be the same as that proposed for direct assessment;
- The indirect examination would be the same as that proposed for direct assessment except the examination can be conducted using only one indirect examination tool most suitable for the application.
- The direct examination would follow that for the direct assessment, except that all immediate action indications must be excavated n each ECDA region, and at least one high risk indication that meets the criteria of scheduled action must be excavated in each ECDA region. No excavation is required for indications categorized as monitored indications.
- The remediation requirements follow those proposed for direct assessment.

For internal corrosion, an operator's plan to use this method would have to include steps for pre-assessment, identification of ICDA Regions, identification of excavation locations, direct examination and remediation.

- The pre-assessment would follow that proposed for direct assessment.
- The identification of ICDA Regions would follow that proposed for direct assessment.
- The identification of excavation locations and excavation would follow that proposed for direct assessment, except that the operator must identify for excavation at least one high risk location in each ICDA Region.
- The direct examination (excavation) and remediation would follow that for direct assessment, except one high risk location in each ICDA Region is to be chosen for excavation.

For identifying third party damage, the operator's confirmatory direct assessment plan would include identification of pipeline segments where construction or other groundbreaking activity was reported near the pipeline right-of-way since the previous assessment.

(i) What Actions Must Be Taken To Address Integrity Issues? Proposed § 192.763(i)

The proposed rule requires that an operator must take prompt action to address all anomalous conditions that the operator discovers through the integrity assessment or information analysis. In addressing all conditions, an operator must evaluate all anomalous conditions and remediate those that could reduce a pipeline's integrity. An operator must be able to demonstrate that the remediation of the condition will ensure that the condition is unlikely to pose a threat to the long-term integrity of the pipeline. If an operator is unable to respond within the time limits for certain conditions specified below, operating pressure of the pipeline must be temporary reduced. An operator must determine the temporary reduction in operating pressure for dents and gouges using section 851.42 of ASME/ANSI B31.8; and for corrosion using ASME/ANSI B31G, RSTRENG, or equivalent, or by reducing the operating pressure to a level not exceeding 80% of the level at the time the integrity assessment results were received. A reduction in operating pressure cannot exceed 365 days without an operator taking further remedial action on anomalies that could reduce a pipeline's integrity. An operator must comply with Section 7 of ASME/ANSI B31.8S when defining the time frame for making a repair. Section 7 of this standard defines conditions for which the required response is "immediate" or can be "scheduled," and other conditions for which the indications can be "monitored." "Immediate response," means that upon discovery of the condition the operator will immediately either shut the line down or reduce pressure to 80% of its previous level or less, if necessary to achieve a safe condition, and maintain that lower pressure until the defect is mitigated. Under no circumstances shall this temporary pressure reduction be extended beyond 365 days after the condition is discovered. Immediate response conditions are defined for threats including corrosion, stress corrosion cracking and third party damage. In addition, conditions for which the ratio of the predicted failure pressure to the MAOP is determined to be less than or equal to 1.1, require immediate response. "Scheduled response," means that the indications must be reviewed within six months of discovery and response plans developed consistent with the severity of the defect. Figure 7–1 of ASME/ANSI B31.8S presents criteria for remediation time as a function of the stress level of the pipe and the severity of the defect (*i.e.*, the ratio of the predicted failure pressure to the MAOP). "Monitored defects," are those for which the response time for mitigation is greater than the reassessment interval, and, therefore, the indications will be reexamined as part of the reassessment process.

The proposed rule also defines "discovery of condition." Discovery of a condition occurs when an operator has adequate information about the condition to determine that the condition presents a potential threat to the integrity of the pipeline. An operator must promptly, but no later than 180 days after an integrity assessment, obtain sufficient information about a condition to make that determination If the operator cannot make the necessary determination within the 180 day period, them it must notify RSPA/OPS of the reasons for the delay and the expected time for completing the assessment.

Except for special requirements for scheduling remediation of certain conditions specified in paragraph (h)(4) of the proposed rule, an operator is required by the proposed rule to follow a threat by threat schedule specified in the ASME/ANSI B31.8S Standard. An operator must complete remediation of a condition according to a schedule that prioritizes the conditions for evaluation and remediation. If an operator cannot meet the schedule for any condition, the operator must justify the reasons why it cannot meet the schedule and that the changed schedule will not jeopardize public safety. An operator must notify RSPA/OPS if it cannot meet the schedule and cannot provide safety through a temporary reduction in operating pressure. An operator must send the notice to the address specified in paragraph (n) of the proposed rule.

The proposed rule also tabulates special conditions for scheduled remediation as follows:

Immediate repair conditions. An operator's evaluation and remediation schedule must provide for immediate repair conditions. To maintain safety, an operator must temporarily reduce operating pressure or shut down the pipeline until the operator completes the repair of these conditions. Consistent with ASME B31.8S, Chapter 7, an operator must treat the following conditions as immediate repair conditions:

- A calculation of the remaining strength of the pipe shows a predicted failure pressure less than 1.1 times the established maximum operating pressure at the location of the anomaly. Suitable remaining strength calculation methods include, but are not limited to, ASME/ANSI B31G ("Manual for Determining the Remaining Strength of Corroded Pipelines" (1991) or AGA Pipeline Research Committee Project PR–3–805 ("A Modified Criterion for Evaluating the Remaining Strength of Corroded Pipe" (December 1989)). These documents are available at the addresses listed in Appendix A to Part 192.
- A dent that has any indication of metal loss, cracking or a stress riser.
- An anomaly that in the judgment of the person designated by the operator to evaluate the assessment results requires immediate action. Such an evaluation is required by all operators using direct assessment.

180-day evaluation. Except for conditions listed in "immediate repair" conditions of this section, an operator must complete evaluation and schedule remediation of the following within 180 days of discovery of the condition:

- Calculation of the remaining strength of the pipe shows a predicted failure pressure between 1.1 times the established maximum operating pressure at the location of the anomaly, and the ratio of the predicted failure pressure to the MAOP shown in Figure 7–1 of ASME B31.8S to be appropriate for the stress level of the pipe and the reassessment interval. For example, if the pipe is operating at 50% SMYS and the reassessment interval is ten (10) years, then the predicted failure pressure ratio for scheduling examination and remediation during that ten year period would be 1.39.

180 day remediation. The following conditions must be remediated within 180 days of discovery of the condition:

- A dent with a depth greater than 6% of the pipeline diameter (greater than 0.50 inches in depth for a pipeline diameter less than Nominal Pipe Size (NPS) 12).
- A dent with a depth greater than 2% of the pipeline's diameter (0.250 inches in depth for a pipeline diameter less than NPS 12) that affects pipe curvature at a girth weld or a longitudinal seam weld.
- A potential crack indication that when excavated is determined to be a crack.
- Corrosion of or along a longitudinal seam weld.

• A gouge or groove greater than 12.5% of nominal wall.

Scheduled Remediation. The ASME/ANSI B31.8S Standard includes provisions for scheduled repairs over a period exceeding 180 days. For all indications that are not excavated and remediated within 180 days, the following requirements apply:

• For segments assessed using ILI techniques, the failure pressure must be determined and remediation carried out on a time frame consistent with Figure 7–1 in ASME/ANSI B31.8S.

• For segments assessed using direct assessment, at least one direct examination, beyond those required in Paragraph (g)(4) of the proposed rule, of a scheduled indication must be carried out in each ECDA Region between assessments. The results of this direct examination must be compared with those from earlier direct examination results for consistency. Should the defect be larger than any of those identified in previous excavations in that region, then further excavation must be carried out until the requirements in Paragraph (g)(4) of the proposed rule are satisfied.

(j) What Additional Preventive and Mitigative Measures Must an Operator Take To Protect the High Consequence Area? Proposed § 192.763(j)

The proposed rule includes the following general requirement: An operator must take measures to prevent and mitigate the consequences of a pipeline failure that could affect a high consequence area in accordance with the standard ASME/ANSI B31.8S. Table 7–1 in the ASME standard describes some preventive and mitigative measures appropriate for each threat. In addition, operators must conduct risk analysis of their pipeline segments to identify additional actions to enhance public safety. Such actions include, but are not limited to, installing Automatic Shut-off valves or Remote Control Valves, computerized monitoring and leak detection systems, extensive inspection and maintenance programs, and heavier wall thickness.

Automatic Shut-off valve (ASV) or Remote Control Valves (RCV). If an operator determines that an ASV or RCV is needed on a pipeline segment to protect high consequence areas in the event of gas release, an operator must install the ASV or RCV. In making that determination an operator must at least consider magnitude of leak detection and pipe shutdown capabilities, the type of gas, pressure, the rate of potential release, the potential for ignition, location of nearest response personnel, and benefits expected by reducing the volume of gas release. The operator must document the criteria used in evaluating the need for ASVs and RCVs, and document the decisions resulting from application of these criteria.

(k) What Is a Continual Process of Evaluation and Assessment To Maintain a Pipeline's Integrity? Proposed § 192.763(k)

The integrity assessment requirements proposed in this rule do not stop with the baseline integrity assessment. An operator must, on a continual basis, assess the integrity of the line pipe and evaluate the integrity of each pipeline segment that could affect a high consequence area. The proposed rule requires an operator to conduct a periodic evaluation of each pipeline segment, as frequently as needed, to assure the pipeline's integrity. An operator would determine frequency based on threats specific to the pipeline segment, plus threats specified in proposed § 192.763(e) and in Section 2 of the ANSI/ASME B31.8S Standard.

The evaluation is based in part, on the information analysis the operator conducts of the entire pipeline to determine what history and operations elsewhere could be relevant to the segment. The evaluation must also consider the past and present integrity assessment results, and decisions about repair, and preventive and mitigative actions. The evaluation must be carried out by a person qualified to evaluate the results and other related data.

As with the baseline assessment, the continual integrity assessment method must be by internal inspection, pressure test, direct assessment, or other technology that provides an equivalent understanding of the condition of the line pipe. As with the baseline assessment, if an operator chooses other technology as a reassessment method, the operator must give 90-days advance notice (by mail or facsimile) to RSPA/OPS. As with the baseline assessment, an operator must have a process for ensuring that the assessment is being done in a manner to minimize environmental and safety risks.

Each covered pipeline segment must be reassessed at seven-year intervals, or five years if direct assessment is used and the operator directly examines and remediates defects by sampling. The period for reassessment begins with the completion of the prior assessment on that segment. The proposed rule allows an operator to base the reassessment interval on the risk the pipe poses to the high consequence area to determine the priority for assessing the pipeline segments. If the operator establishes a reassessment interval for the covered segment that is greater than seven years, the operator must within the seven-year period, conduct a reassessment by confirmatory direct assessment on the covered segment; and then conduct the follow-up reassessment at the established interval. The length of the interval will depend on the method of assessment.

If an operator uses pressure testing or internal inspection as an assessment method, the operator must establish the reassessment interval for covered pipeline segments by either basing the intervals on the identified threats for the segment (as identified in the proposed rule and in ASME/ANSI B31.8S, Table 8–2, section 8) and on the analysis of the results from the last integrity assessment and from the required data integration or by using the intervals for different stress levels of pipeline specified in ASME/ANSI B31.8S, Table 8–1, section 8. However, under either option, the maximum reassessment interval must not exceed ten (10) years for a pipeline operating at or above 50% SMYS, and 15 years for a pipeline operating below 50% SMYS. These maximum assessment intervals will be acceptable, only if the operator demonstrates it has enhanced preventive and mitigative programs in place and the operator conducts a confirmatory direct assessment within the seven-year interval.

An operator that establishes the maximum period allowed for reassessment must conduct a confirmatory direct assessment within the seven-year interval and demonstrate that it has implemented enhanced preventive and mitigative measures for the segment.

If an operator uses direct assessment, it must determine the reassessment interval according to a calculation. The reassessment interval cannot exceed five years, if an operator directly examines and remediates defects by sampling, or ten years, if an operator conducts a direct examination of all anomalies and remediates these anomalies. A ten-year interval would necessitate an interim reassessment by confirmatory direct assessment in the seventh year.

The proposed rule requires each operator to evaluate the cause of threats for which mitigative action was undertaken, and determine whether there is reason to reassess the pipe at shorter intervals based on the nature of significant threats. For example, if the dominant cause of pipe deterioration in a particular segment was MIC, then the operator is required to reassess its similar pipe segments on a shorter

interval, consistent with the growth rate of MIC corrosion.

OPS can only allow a waiver of a maximum reassessment interval greater than seven years in two instances—for lack of internal inspection tools or to maintain local product supply- and if OPS determines that such a waiver would not be inconsistent with pipeline safety. Because public notice and comment is required for a waiver, we are proposing an operator provide 180 days advance notification.

The proposed rule requires the operator to assess the integrity of the line pipe by one or more of the following techniques:

- Internal inspection tool or tools; for details on selecting appropriate internal inspection tools an operator must refer to ASME/ANSI B31.8S section 6.2.
- Pressure test conducted in accordance with Subpart J of Part 192.
- Direct assessment method for external corrosion threats, internal corrosion threats, and other threats must be carried out in accordance with the ASME/ANSI B31.8S standard Section 6.3 and paragraph (h) of the proposed rule.
- Other technology that the operator demonstrates can provide an equivalent understanding of the condition of the line pipe. An operator choosing this option must notify RSPA/OPS 180 days before conducting the assessment, by sending a notice to the address or to the facsimile number specified in paragraph (n) of the proposed rule.

(l) What Methods To Measure Program Effectiveness Must Be Used? Proposed § 192.763(l)

The proposed rule requires an operator to include in its integrity management program methods to measure the program's effectiveness in assessing and evaluating the integrity of each pipeline segment and in protecting the high consequence areas. The proposed rule requires that an operator use four overall performance measures specified in Section 9.4 of ASME/ANSI B31.8S and specific measures for each identified threat specified in ASME/ANSI B31.8S, Appendix SP–A.

The performance measures help an operator determine whether all integrity management program objectives were accomplished and whether pipeline integrity and safety are effectively improved through the integrity management program. Proper selection and evaluation of performance measures are an essential activity in determining integrity management program effectiveness. According to ASME/ANSI B31.8S Standard, evaluations must be performed at least annually to provide a continuing measure of integrity management program effectiveness over time. This standard lists four overall program measurements that must be determined and documented. Those measurements are: (1) Number of miles of pipeline inspected versus program requirements; (2) number of immediate repairs completed as a result of integrity management inspection program; (3) number of scheduled repairs completed as result of the integrity management inspection program; (4) number of leaks, failures and incidents.

The proposed rule requires that an operator periodically make available for inspection the four primary performance measures enumerated above from Section 9.4 in ASME/ANSI B31.8S.

(m) What Records Must be Kept? Proposed § 192.763(m)

The proposed rule requires that an operator maintain certain records for inspection, including its written integrity management program, and, if applicable, its plan for using direct assessment. This requirement is not different from the procedural manual an operator is required to maintain for operations, maintenance and emergencies. An operator would also be required to maintain for review during inspection, any documents that support the decisions and analyses made, and actions taken to implement and evaluate each element of the integrity management program. This would include records documenting any modifications, justifications, variances, deviations and determinations made. All records required under direct assessment must also be maintained and available for RSPA/OPS review during inspections. Again, this requirement is no different from the myriad of documents an operator now maintains to comply with the other provisions of the pipeline safety regulations.

(n) Where Does an Operator Send a Notification? Proposed § 192.763(n)

This section of the proposed rule clarifies that any required notification must be sent to the Information Resources Manager, Office of Pipeline Safety, Research and Special Programs Administration, U.S. Department of Transportation, Room 7128, 400 Seventh Street SW., Washington, DC 20590, or to the facsimile number (202) 366–7128. Notification is required when an operator: (a) Uses alternative technology for an integrity assessment; (b) cannot meet its schedules for identification of segments and identification of ECDA regions if applicable; (c) cannot meet schedules for evaluating and remediating anomalous conditions; (d) adopts certain changes into its program; and (f) seeks a waiver from a reassessment interval greater than seven years.

Appendix E to Part 192

We are adding a new Appendix E to Part 192. This Appendix gives guidance on determining a potential impact zone within a high consequence area and shows diagram of a potential impact zone under figure E.I.1. This Appendix describes the steps an operator needs to perform in order to determine segments covered under potential impact zones. This Appendix also provides recommendations on how to select external corrosion direct assessment (ECDA) Tools and how to identify ECDA Regions. In addition, this Appendix provides a spreadsheet under Graph E.III.1 for calculating critical angle for liquid hold-up for internal corrosion direct assessment (ICDA).

An operator is required to follow the recommendations on ECDA Tool selection and ECDA Regions, unless the operator notes in its plan the reasons why compliance with all or certain provisions is not necessary to maintain integrity of their specific pipeline system. The Appendix contains recommendations on:

- *Selection of indirect inspection tools for direct assessment:* how selection of indirect inspection tools may vary along a segment; minimum number of tools needed for all ECDA locations and items that should be considered when selecting indirect inspection tools; and conditions under which some indirect inspection tools may not be practical or reliable.
- *Identification of ECDA Regions:* how to (a) Collect appropriate risk factor data; (b) define criteria to identify ECDA regions; and (c) identify locations having similar physical characteristics, soil conditions, corrosion protection maintenance. In addition, guidance on establishing ECDA Regions is presented by illustrating an example of the ECDA regions for a hypothetical pipeline.
- *Internal Corrosion Direct Assessment:* how to calculate critical angle for liquid hold-up using a graph from GRI report GRI–02/0057. The approach helps determine if internal corrosion is likely to or unlikely to exist in a chosen length of pipe.

Regulatory Analyses and Notices

Executive Order 12866 and DOT Regulatory Policies and Procedures

The Department of Transportation (DOT) considers this action to be a significant regulatory action under

section 3(f) of Executive Order 12866 (58 FR 51735; October 4, 1993). Therefore, it was forwarded to the Office of Management and Budget. This proposed rule is significant under DOT's regulatory policies and procedures (44 FR 11034: February 26, 1979) because of its significant public and government interest. A regulatory evaluation of this proposed rule on Integrity Management for gas transmission pipelines has been prepared and placed in the docket.

Cost-Benefit Analysis

A copy of the draft regulatory evaluation has been placed in the docket for this proposed rule. The following section summarizes the draft regulatory evaluation's findings.

Natural and other gas pipeline ruptures can adversely affect human health and property. However, the magnitude of this impact differs from area to area. There are some areas in which the impact of an accident will be more significant than it would be in others due to concentrations of people who could be affected. Because of the potential for dire consequences of pipeline failures in certain areas, these areas merit a higher level of protection. RSPA/OPS is proposing this regulation to afford the necessary additional protection to these high consequence areas.

Numerous investigations by RSPA/OPS and the National Transportation Safety Board (NTSB) have highlighted the importance of protecting the public and environmentally sensitive areas from pipeline failures. NTSB has made several recommendations to ensure the integrity of pipelines near populated and environmentally sensitive areas. These recommendations included requiring periodic testing and inspection to identify corrosion and other damage, establishing criteria to determine appropriate intervals for inspections and tests, determining hazards to public safety from electric resistance welded pipe and requiring installation of automatic or remotely-operated mainline valves on high-pressure lines to provide for rapid shutdown of failed pipelines.

Congress also directed RSPA/OPS to undertake additional safety measures in areas that are densely populated. These statutory requirements included having RSPA/OPS prescribe standards for identifying pipelines in high density population area and issue standards requiring periodic inspections using internal inspection devices on pipelines in densely-populated and environmentally sensitive areas, and to require reassessment of these areas at least every seven years.

This proposed rulemaking addresses the target problem described above, and is a comprehensive approach to certain NTSB recommendations and Congressional mandates, as well as pipeline safety and environmental issues raised over the years.

This proposed rule focuses on a systematic approach to integrity management to reduce the potential for natural and other gas transmission pipeline failures that could affect populated areas. This proposed rulemaking requires pipeline operators to develop and follow an integrity management program that continually assesses, through internal inspection, pressure testing, direct assessment or equivalent alternative technology, the integrity of those pipeline segments that could affect areas we have defined as high consequence areas *i.e.*, areas with specified population densities, buildings containing populations of limited mobility, and areas where people gather that occur along the route of the pipeline. The program must also evaluate the segments through comprehensive information analysis, remediate integrity problems and provide additional protection through preventive and mitigative measures.

This proposed rule (the third in a series of integrity management program regulations) covers operators of transmission pipelines for natural and other gases. RSPA/OPS chose to start the series with hazardous liquid pipeline operators because the pipelines they operate have the greatest potential to adversely affect the environment. This proposed rule completes the application of integrity management to all interstate (and many intrastate) pipelines.

We have estimated the cost for operators to identify pipeline segments that can affect high consequence areas at approximately $23.34 million, the cost to develop the necessary programs at approximately $90.9 million (with an additional one-time cost of $367,400 to provide RSPA/OPS and state inspectors with real-time access to performance measures) and an annual cost for program upkeep and reporting of $13.36 million. An operator's program begins with a baseline assessment plan and a framework that addresses each required program element. The framework indicates how decisions will be made to implement each element. As decisions are made and operators evaluate the effectiveness of the program in protecting high consequence areas, the program will be updated and improved, as needed.

The proposed rule requires a baseline assessment of covered pipeline segments through internal inspection, pressure test, direct assessment or use of other technology capable of equivalent performance. Unless an operator uses direct assessment, the baseline assessment must be completed within ten years after December 17, 2002 (the date the Pipeline Safety Improvement Act of 2002 was signed into law), with at least 50% of covered segments being assessed within five years. With direct assessment the baseline assessment must be completed in seven years, with 50% of the covered segments completed within four and 1/2 years. Until we see the results from operators' assessments we cannot determine whether direct assessment by itself is adequate to assess pipeline integrity or whether pigging might also be needed. The period for a baseline assessment may extend to 13 years, or ten years for direct assessment, for segments in moderate risk areas, that is, areas within a class 3 or 4 location that are not in the impact zone from a potential rupture.

After this baseline assessment, the rule further proposes that an operator periodically reassess and evaluate the pipeline segment to ensure its integrity within a ten-year interval for pipelines operating at greater than 50 percent of specified minimum yield strength (SMYS) and a fifteen-year interval for pipelines operating below 50 percent SMYS. However, to meet the requirements of the Pipeline Safety Improvement Act of 2002, if an operator establishes an interval greater than seven years, the operator will need to conduct an interim reassessment by the seventh year using a more-focused direct assessment (Confirmatory Direct Assessment) method. If an operator elects to perform a reassessment, using one of the other methods, every seven years, the operator need not use the confirmatory direct assessment. The proposed reassessment interval for pipelines assessed with direct assessment is five years unless all anomalies are excavated, in which case it is ten years.

Confirmatory direct assessment is a more-focused application of the principles and techniques of direct assessment, that is concentrated on identifying critical segments of suspected corrosion and third party damage. RSPA/OPS has structured the proposed requirements for confirmatory direct assessment in a manner intended to allow maximum flexibility for operators. Indirect examinations may be performed using only one, rather than two, tools. Corrosion regions may be larger than for regular direct

assessments. The number of excavations required per region is less. These changes will allow operators to plan and conduct confirmatory direct assessments in a manner that is most cost-effective, *i.e.*, identifies areas of concern at lowest cost.

There is no data available at present regarding the cost to implement confirmatory direct assessment. The flexibility included in these proposed requirements means that costs may vary depending on assumptions the operator makes in planning and conducting these assessments. For purposes of this evaluation, the RSPA/OPS assumes that the cost will be less than, but more than half, that of direct assessment, or $3,000 per mile. Actual costs for many operators may be lower, and the total cost estimates in this analysis are thus expected to be conservatively high.

It is estimated that the cost of periodic reassessment will generally not occur until the sixth year (when reassessment costs will begin for a pipeline baseline assessed using direct assessment) unless the baseline assessment indicates significant defects that would require earlier reassessment.

RSPA/OPS believes that the higher the operating pressure of a pipeline, the greater the potential risk the pipeline poses to the general public. That is because a failure of a pipeline operating at a higher pressure will result in a larger impact area and potentially more significant consequences. It is under this assumption that RSPA/OPS is proposing the shortest assessments intervals for pipelines that operate at or above pressures of 50 percent of SMYS. By basing the assessment interval according to pipeline pressure, operators will have to focus their safety resources on lines that pose the greatest danger. RSPA/OPS believes that varying the assessment interval according to the risk provides the greatest reward per dollar of safety operators will expend.

Integrating information related to the pipeline's integrity is a key element of the integrity management program. Costs will be incurred in realigning existing data systems to permit integration and in analysis of the integrated data by knowledgeable pipeline safety professionals. The total costs for the information integration requirements in this proposed rule are $31.5 million in the first year and $15.75 million annually thereafter.

The proposed rule requires operators to evaluate the risk of pipeline segments that can affect high consequence areas to determine if additional preventive or mitigative measures that would enhance public safety should be implemented. One of the many additional preventive or mitigative actions that the notice proposes an operator take is to install automatic shutoff valves or remotely controlled valves. RSPA/OPS could not estimate the total cost of installing such valves because there are too many factors that would have to be analyzed in order to produce a valid estimate of how many operators will install them. However, based on the results of a generic feasibility study on remotely controlled valves that RSPA/OPS completed in 1999, we concluded that conversion of existing sectional block valves to remote operation was not economically feasible. Operator- and location-specific factors could change this conclusion for individual valves but RSPA/OPS could not analyze these specific factors for individual block valves and therefore, did not estimate the total cost for installing remote valves. RSPA/OPS presumes that operators will analyze valve-specific factors and will not replace valves unless that action is cost-beneficial. RSPA/OPS estimates that the cost to operators to perform the required risk analyses will be approximately $24.1 million.

Affected operators will be required to assess more line pipe in segments that could affect high consequence areas as a result of this proposed rule than they would have been expected to assess if the proposed rule had not been issued. Integrity assessment consists of a baseline assessment, and subsequent reassessment. The period in which baseline assessments must be completed depends upon the assessment method chosen and the grade of the high consequence areas. The baseline period for most pipe is ten years for pipeline to be assessed with in-line inspection or hydrostatic testing and five years for pipeline to be assessed using direct assessment. These periods are extended to 13 and 7 years, respectively, for pipeline that can affect lower grade high consequence areas, containing relatively lower population densities. Reassessments must be conducted at no less than ten year intervals for pipeline operating above 50 percent SMYS and 15 years for pipeline operating at less than 50 percent SMYS. The proposed reassessment interval for pipe assessed with direct assessment is five years unless all anomalies are excavated, in which case the interval may be extended to ten years. Confirmatory direct assessments would be required to be performed at least every seven years, if an operator established a reassessment interval longer than seven years.

RSPA/OPS analyzed two scenarios, varying the amount of pipeline that operators are expected to modify to accommodate in-line inspection. This approach was taken, because of industry comments that significant amounts of pipeline would likely be modified and the costs for that work. Some pipe already can accommodate in-line inspection tools. Some can be modified to accommodate the in-line inspection tools with relatively simple modifications. Others require much more extensive retrofits. Until we see results of operators assessments we can not judge whether direct assessment is sufficient or pigging is needed. One of the analyzed scenarios assumed that only the piping that can easily be modified would be changed. The other scenario was based on the assumption that a portion of the pipe requiring more extensive changes would also be modified. As a result of this work, RSPA/OPS has estimated the annual cost of additional baseline assessment that will be required by this proposed rule as between approximately $59 million and $298 million annually. The cost for additional re-assessment is estimated at approximately $32 million per year.

Although there are a variety of benefits associated with this proposed rule, the principal benefits are difficult, if not impossible, to quantify. The proposed integrity management program requirements will ensure that all gas transmission operators perform at least to an established baseline safety level and will raise the overall level of safety performance nationwide. The proposed rule will lead to greater uniformity in how risk is evaluated and addressed and will provide a better and clearer basis for government, industry and the public to discuss safety concerns and how they can be resolved. Public awareness of the integrity program will lead citizens to be more informed about pipeline safety and provide information to operators about activities on the pipeline right-of-way that will help to improve safety. The integrated integrity management programs that operators will be required to implement in response to this proposed rule will result in a higher level of safety, which should in turn result in improved public confidence in the safety of natural gas transmission pipelines. Operators have begun integrity programs on their own because they have recognized the importance of knowing the condition of their pipelines and having the public assured that the lines are safe. After a major pipeline accident, and the accompanying national spotlight from the media the public becomes alarmed with the potential threat that pipelines pose. Pipelines that are presently unpiggable

have most likely not been inspected. The public becomes very concerned when it becomes aware that "aging" pipelines underground in their community have never been internally inspected. The only method to reassure the public of the safety of pipelines is that there are requirements that these pipelines be internally inspected and evaluated on a periodic basis. This improved confidence is consistent with the objectives of the Administration's National Energy Plan. The importance of integrity management is also reflected in its inclusion in the requirements of the Pipeline Safety Improvement Act of 2002.

RSPA/OPS, as well as the pipeline industry has gained valuable knowledge from accidents and near misses in the 90's. RSPA/OPS has found that operators have gathered valuable information but that they have not used that information effectively or used it to maximum effect. Analysis of recent major accidents indicates that better use of existing information through data integration and evaluation has the potential to prevent major accidents. Data integration requirements should lead operators to make better and more informed decisions about what preventive and mitigative actions to take and how to set priorities. RSPA/OPS believes that it is possible for operators to gather and integrate the necessary data and implement the needed changes with little additional investment.

The benefits that can be quantified are expected reductions in deaths, serious injuries, and property damage costs resulting from accidents on gas transmission pipelines. RSPA/OPS has developed a level-of-magnitude estimate of these benefits. That estimate is based on the accident data reported to RSPA/OPS over a sixteen year period (1986 to 2001). RSPA/OPS estimates that the benefit of completely eliminating the fatalities, serious injuries, and property damage caused by those accidents would be equivalent to approximately $53.25 million per year. RSPA/OPS does not expect that this rule will eliminate all accidents on natural gas transmission pipelines that would result in deaths, serious injuries, or property damage. RSPA/OPS does expect that the proposed rule will significantly reduce the frequency and consequences of such accidents. The magnitude of the expected reduction cannot now be estimated with certainty. RSPA/OPS concludes, however, that the reduction will be significant.

RSPA/OPS notes that the consequences of future accidents, in the absence of any new actions to improve pipeline safety, would likely be higher than would be indicated by historical precedents. The reason for this is continued increase in the population living near, and utilizing land near, pipelines. Accidents that occur in rural settings typically have resulted in fewer deaths, serious injuries, and property damage than accidents that occur in developed areas. As the amount of development near pipelines increases, relatively more accidents would be expected to occur in developed areas and the consequences of those accidents would be expected to increase.

As a result of these factors, RSPA/OPS concludes that the quantifiable benefits of the proposed rule are on the order of $40 million per year. This is less than, but on the same order of magnitude as, the continuing costs. Initial costs, for program development and modification of pipelines to facilitate testing, are significantly higher. The quantifiable benefits alone cannot justify those costs. They need not, however. Recently, gas transmission pipeline operators have indicated that, of the choices of testing available, they frequently are going to choose internal inspection as the best long term investment and while the costs are higher for the modifications needed to operate this method, the operators clearly think the investment is worthwhile.

The principal benefit to be derived from the proposed rule is one that cannot easily be quantified. That is improved public confidence in pipeline safety. That confidence has been shaken by accidents in recent years. It is necessary that actions be taken to restore that confidence. Improved public confidence in pipeline safety will, in turn, produce additional benefit. It will result in improved ability to site and construct the additional pipelines that will be needed to serve growing demand for natural gas in the United States, as indicated in the National Energy Plan. This growth results not only from increasing population, but from increased use of natural gas, as an environmentally desirable fuel, for generating electricity and other industrial uses. Inability to meet these increased demands will challenge our nation's ability to realized desired environmental goals.

RSPA/OPS discussed the draft regulatory analysis with the Technical Pipeline Safety Standards Committee (TPSSC) at a public meeting on July 18, 2002. The TPSSC, composed equally of representatives of industry, government, and groups representative of public involvement in pipeline safety issues, provided numerous comments on the draft analysis. Industry members of the TPSSC indicated that, to a much greater degree than RSPA/OPS had estimated, the industry would choose to modify existing pipeline to make it possible to inspect using in-line inspection tools. The TPSSC also commented that costs had been greatly underestimated, primarily because the additional mileage they will need to internally inspect in order to inspect segments that can affect high and lower risk areas will be much larger than the amount estimated in the draft regulatory analysis. The much larger total amount of mileage that will require inspection could lead to supply disruptions while testing and repair is underway. Nevertheless, the committee unanimously concluded that the expected benefit in terms of improved public confidence in pipeline safety is substantial and justifies the expected costs and that with edits, the RSPA/OPS draft regulatory analysis provided a basis for proposing this rule. RSPA/OPS has revised the draft regulatory analysis in response to the TPSSC comments.

With the increased understanding of the condition of the pipeline that will result from the added assessments and repairs required in the proposed rule, there is the potential for pressures to be maintained that would otherwise have to be reduced to allow adequate safety margins. Additional demand for supply may potentially be better met by not having to impose restrictions to the flow of natural gas through existing transmission pipelines in areas where population is increasing and pipe replacement or pressure reductions would be required. Current requirements provide that natural gas transmission pipelines in areas that would be defined as high consequence areas operate at pressures that limit stresses in the pipe walls to levels significantly below those allowed in more rural areas. The reduced stresses are intended to provide additional margin against accidents that might result from unknown damage or degradation mechanisms. The proposed requirements would result in operators inspecting for, identifying, and remediating such damage. RSPA/OPS has experience, through the Risk Management Demonstration Program, that indicates that the improved confidence in pipeline integrity afforded by the type of integrated integrity management program required by this rule can lead RSPA/OPS to allow operation at higher pressures in these areas. Down the road with the program, applying that experience may make it possible for RSPA/OPS to approve operation of pipelines in some areas at higher pressures, allowing additional

natural gas to be supplied by the existing infrastructure. (The particular circumstances of each area would have to be taken into account in deciding whether operation at increased pressure is acceptable).

The quantitative estimates of benefits also considers only direct effects, *i.e.*, damages caused by the explosion and fire resulting from a natural gas transmission pipeline rupture. There are other consequences of such accidents that can be avoided or prevented. Unplanned business interruption can have a severe economic impact on the area in which an accident occurs. Temporary cessations in operation, longer term pressure restrictions, and repair efforts often require interruption of natural gas supply to some customers. In some areas, this can include entire communities that may be served by sole source laterals receiving gas from transmission lines in the vicinity of the accident. Interruption of natural gas service has both economic and safety consequences. Service must be restored in a controlled manner to avoid subsequent explosions from natural gas escaping into businesses and residences from open pilot valves. Gas distribution company employees must enter each customer's premises, isolate pilot valves, purge piping of air that may have become entrained, and relight pilot lights. This is a labor intensive effort that can take several days for a moderately-sized community. An integrity management program will allow an operator to identify and repair defects that could lead to accidents before they occur. Since these tests and repairs can be planned, their performance can be done at the optimum time to minimize detrimental effects on businesses, homes and supply generally.

Consistent with RSPA/OPS practice, much of the proposed rule is written in performance-based language. This approach stimulates the development and use of new technologies for assessing pipeline integrity which may allow more accurate detection of problems that can now be found or detection of problems that have heretofore been difficult to find.

The performance approach also results in supporting operators' development of more formal, structured risk evaluation programs and RSPA/OPS's evaluation of the programs. Most important, the performance approach encourages a balanced program, addressing the range of prevention and mitigation needs and avoiding reliance on any single tool or overemphasis on any single cause of failure. This will lead to addressing the most significant risks in the most effective manner. This integrity-based approach provides a good opportunity to improve industry performance and assure that these high consequence areas get the protection they need.

A particularly significant benefit is the quality of information that will be gathered as a result of this proposal to aid operators' decisions about providing additional protections. Two essential elements of the integrity management program are that an operator continually assesses and evaluates the pipeline's integrity, and performs an analysis that integrates all available information about the pipeline's integrity. The process of planning, assessment and evaluation will provide operators with better data on which to judge a pipeline's condition and the location of potential problems that must be addressed.

Integrating this data with the safety concerns associated with high consequence areas will help prompt operators and the Federal and state governments to focus time and resources on potential risks and consequences that require greater scrutiny and the need for more intensive preventive and mitigation measures. If baseline and periodic assessment data is not evaluated in the proper context, it is of little or no value. It is imperative that the information an operator gathers is assessed in a systematic way as part of the operator's ongoing examination of all threats to the pipeline integrity. The proposed rule is intended to accomplish that.

The proposed rule has also stimulated the pipeline industry to develop supplemental consensus standards to support risk-based approaches to integrity management. These standards will lead to better quality control on a national basis, particularly important in the area of using new assessment technologies where correct application is critical to achieving the desired safety outcome. Without such standards, there have been instances of incorrect application of assessment technology leading to incidents. These and future incidents of this type can be avoided.

The proposed rule provides for a verification process, which gives the regulator a better opportunity to influence the methods of assessment and the interpretation of results. RSPA/OPS will provide a beneficial challenge to the adequacy of an operator's decision process. Requiring operators to use the integrity management process, and having regulators validate the adequacy and implementation of this process, should expedite the operators' rates of remedial action, thereby strengthening the pipeline system and reducing the public's exposure to risk.

RSPA/OPS does not believe that requiring this comprehensive process, including the re-assessment of pipelines in high consequence areas at the proposed intervals, will be-an undue burden on natural and other gas transmission pipeline operators covered by this proposal. RSPA/OPS believes the added security this assessment will provide and the generally expedited rate of strengthening the pipeline system in populated areas is benefit enough to promulgate these requirements.

Regulatory Flexibility Act

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.* RSPA/OPS must consider whether this rulemaking would have a significant impact on a substantial number of small entities. RSPA/OPS estimates that there are 668 gas transmission operators that could potentially be impacted by this proposed rulemaking. This data comes from RSPA/OPS user fee data base. A pipeline company would be impacted if its pipeline could effect a high consequence area (HCA). HCA's are located primarily urban areas but include rural areas where more than 20 people congregate.

The Small Business Administration (SBA) defines small entities in the gas transmission industry as those with revenues of less than $6 million annually. RSPA/OPS does not collect information on operator revenues. The Census Bureau however does collect data on natural gas transmission pipeline companies. Natural gas transmission companies are listed under North American Industry Classification System (NAICS) 486210 Pipeline Transmission of Natural Gas. The 1977 Census lists 1,450 establishments. Establishments in the case of gas transmission companies means unique pipelines. Seven hundred and fifty two of these establishments have revenues under $5 million annually. These establishments are aggregated into firms. NAICS 486210 has 155 firms. Seventy-one of these firms have revenues of less than $5 million annually and could be considered small entities under the SBA.

It is evident from the discussion above that several of the 668 transmission operators reporting to RSPA/OPS are in fact establishments and not firms. RSPA/OPS does not have information on how many unique firms there are among the establishments that report.

RSPA/OPS does not have detailed information on the number of small entities in the gas transmission industry.

Some of the companies in the Census Bureau's figures are gas distribution companies that have transmission lines that serves their gas distribution business. Many of these transmission lines that serve gas distribution companies may be in HCA's. Other limited mileage transmission lines serve the fuel needs of one industrial plant. Many of these industrial transmission lines may be in rural areas and outside the scope of this proposed rule.

RSPA/OPS has never received comments from small gas transmission operators concerning the burdens of its regulations. While RSPA/OPS believes that the costs of this proposal will be proportionate to the amount of mileage the pipeline company operates RSPA/OPS, seeks public input on any potential undue impact that this proposal would have on any small entities.

INGAA estimates that its members account for 80% of the gas pipeline transmission mileage in the United States. INGAA has only 24 members however, 3 of these members are not U.S. gas transmission operators. Therefore, approximately 21 companies account for 80% of the U.S. gas transmission pipeline mileage. The remainder of the pipeline companies in this industry share only 20% of the total pipeline mileage.

Because the remaining companies have relatively small mileage compared to the top 20, many may fall entirely outside of HCA's, and will therefore not be impacted by this proposed rule. However, if they are impacted by this proposal, their costs of compliance will be significantly lower than those with thousands of miles of pipeline as the costs of inspection and planning should be considerably lower. Nevertheless, RSPA/OPS stands ready to provide special help to any small operators to assist them in complying with this proposed rule. Based on the above discussion I certify that this proposed rule will not have a significant impact on a substantial number of small entities.

Paperwork Reduction Act

This proposed rule contains information collection requirements. As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the Department of Transportation has submitted a copy of the Paperwork Reduction Act analysis to the Office of Management and Budget for its review. The name of the information collection is "Pipeline Integrity Management in High Consequence Areas Gas Transmission Pipeline Operators." The purpose of this information collection is designed to require operators of gas transmission pipelines to develop a program to provide direct integrity testing and evaluation of gas transmission pipelines in high consequence areas.

The following is a summary of the highlights of the paperwork reduction act analysis. The complete analysis can be found in the public docket.

There are 668 gas transmission operators that could potentially be subject to this proposed rule. It is estimated that 296 of these gas transmission operators have 40 or more miles of pipeline. The remaining 372 operators have less than 40 miles of pipeline. It is estimated that the operators with more than 40 miles of pipeline will have considerably more time and expense to develop integrity management programs. However, before operators can develop integrity management programs they must determine how much of their pipeline is located in high consequence areas (HCA's). It is estimated that it will take the operators with 40 or more miles of pipeline 1,000 hours to estimated the amount of pipeline impacted. Operators with less than 40 miles of pipeline will take only 250 hours.

It is estimated that operators with 40 or more miles of pipeline will need 3,968 hours to develop an integrity management plan framework. For operators with less than 40 miles of pipeline it is estimated this task will take 2,400 hours. However, it is estimated that 25% of the companies with more 40 miles or more of pipeline already have integrity management program frameworks.

Additionally, all the operators will be required to integrate the new data they collect into their current management systems. The time to integrate the data the first year will be 2,040 hours for the companies with 40 or more miles of pipeline and 510 hours for companies with less than 40 miles of pipeline. It is estimated that 25% of all operators with 40 or more miles of pipeline already have a system for integrate their data.

It will take operators initially, approximately 16 hours of a computer programmer's time to provide OPS and state pipeline safety offices "real time" access to their performance measures via the operator's web site or a dial-up modem.

The integrity management plans need to be modified on a yearly basis. RSPA/OPS estimates that it will take all operators regardless of size 313 hours per year to update their plans annually. RSPA/OPS further estimates it will take an additional 160 hours per operator to perform the necessary record keeping annually. Finally RSPA/OPS estimates it will take operators with 40 or more miles of pipeline 1020 hours to annually integrate the necessary data. It will take operators with less than 40 miles of pipeline approximately 255 hours to annually integrate the necessary data.

Comments concerning this information collection should include the docket number of this proposal. They should be sent to Docket Facility, U.S. Department of Transportation, Plaza 401, 400 Seventh Street, SW, Washington, DC 20590–0001. Comments are specifically requested concerning:

Whether the collection is necessary for the proper performance of the functions of the Department, including whether the information would have a practical use;

The accuracy of the Department's estimate of the burden of collection of information including the validity of assumptions used;

The quality, usefulness and clarity of the information to be collected; and minimizing the burden of collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology *e.g.*, permitting electronic submission of responses.

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless a valid OMB control number is displayed. The valid OMB control number for this information collection will be published in the **Federal Register** after it is approved by the OMB. For details see, the complete Paperwork Reduction analysis available for copying and review in the public docket.

Executive Order 13084

This proposed rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13084 ("Consultation and Coordination with Indian Tribal Governments"). Because this proposed rule does not significantly or uniquely affect the communities of the Indian tribal governments and does not impose substantial direct compliance costs, the funding and consultation requirements of Executive Order 13084 do not apply.

Executive Order 13132

This proposed rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 ("Federalism"). This proposed rule does not propose any regulation that:

(1) Has substantial direct effects on the States, the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government;

(2) Imposes substantial direct compliance costs on States and local governments; or

(3) Preempts state law.

Therefore, the consultation and funding requirements of Executive Order 13132 (64 FR 43255; August 10, 1999) do not apply. Nevertheless, in November 18–19, 1999, and in February 12–14, 2001 public meetings, RSPA/OPS invited National Association of Pipeline Safety Representatives (NAPSR), which includes State pipeline safety regulators, to participate in a general discussion on pipeline integrity. Since then, RSPA/OPS has held conference calls with NAPSR, to receive their input before proposing an HCA definition and integrity management rule.

Executive Order 13211

This rulemaking is not a "significant energy action" within the meaning of Executive Order 13211 ("Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use"). It is a significant regulatory action under Executive Order 12866 because of its significant public and government interest. As concluded from our Energy Impact Statement below it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Further, this rulemaking has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action.

Summary of the Energy Impact Statement

(For a detailed Energy Impact Statement, please refer to Docket RSPA–00–7666)

RSPA/OPS is currently proposing regulations to assess, evaluate, remediate, and validate the integrity of natural gas transmission pipelines through comprehensive analysis and inspection of pipeline systems. The proposed rule applies to all gas transmission lines, including lines transporting petroleum gas, hydrogen, and other gas products covered under 49 CFR Part 192.

In compliance with the Executive Order 13211 (66 FR 28355), RSPA/OPS has evaluated the effects of proposed rule on energy supply, distribution, or use. RSPA/OPS has determined that this proposed regulatory action will not have significant adverse effects on energy supply, distribution, or use.

The proposed rule will not have any significant impact on the wellhead production capacity or prices. The proposed rule affects natural gas transmission lines in high consequence areas (HCAs) and has no effect on the wellhead production capacity or prices. The proposed rule does not impact gathering lines and offshore transmission lines, and has limited effect on the onshore transmission lines that are not located in the HCAs. Therefore, the proposed rule will have no significant impact on natural gas production or wellhead prices. RSPA/OPS estimates that the proposed rule will directly affect 42,268 miles of transmission lines in a network of 300,000 miles of transmission lines, as well as 900,000 miles of distribution lines. Therefore, a relatively small proportion of pipelines will be affected by the proposed rule.

The proposed rule may affect the movement of natural gas in certain areas during integrity inspection. Inspection requirements may temporarily affect transportation capacity in some pipelines. Built-in redundancies, such as, loop lines, multiple lines, storage facilities, are part of natural gas transportation infrastructures. The intricate interconnections between pipelines, the availability of storage at the market centers, and a well-developed capacity release market all contribute towards meeting natural gas demand with efficient movement of supply. Most inspections can be conducted without any significant disruption of throughput especially during off-peak seasons.

The proposed rule may not have any significant price effects on end-use consumers. In general, inter-fuel competition and gas-storage availability play significant roles in short-term price determination in U.S. because of extensive fuel switching capability in industry and power generation and the existence of a sizable storage capacity. Weather is the other significant player determining the spot market prices. Transportation cost only accounts for a small proportion of the cost paid by the end-users. The pipeline capacity reduction due to the proposed integrity rule may to a large extent be pre-planned and the market would have time to adjust for the reduction, minimizing shortages and avoiding short-term price increases.

However, because the percentage of assessments that the industry maintains will be done by internal inspection, much more than 42,268 miles of pipeline cited earlier may in fact be assessed. The reason for this is because internal inspection devices are inserted and removed from the pipeline segment near compressor stations which are up to 50 miles apart. The HCAs may be only a few miles of this entire 50 mile section. The industry maintains that 50% of all lines or approximately 150,000 miles of all gas pipelines will be internally inspected. If this is correct then, temporary impact on local gas supplies may be realized. While RSPA/OPS did not estimate the size of such temporary impacts it could lead to small changes in natural gas prices for certain areas on the spot market. Not withstanding possible temporary price fluctuations in the spot market, RSPA/OPS believes the proposed regulation will not significantly impact the overall energy supply, distribution, and use.

Unfunded Mandates

This proposed rule does impose unfunded mandates under the Unfunded Mandates Reform Act of 1995, because it may result in the expenditure by the private sector of 100 million or more in any one year. The cost-benefit analysis estimating yearly cost for operators to meet the proposed rule requirements has been placed in the docket. State regulators have participated in our meetings with the industry and research institutions on various integrity management issue discussions and have provided recommendations during our meetings and conference calls. We believe it is the least burdensome alternative that achieves the objective of the rule, because it gives options to industry on how to implement the rule.

National Environmental Policy Act

We have evaluated the proposed rule for purposes of the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) and have preliminarily concluded that this action would not significantly affect the quality of the human environment. The Environmental Assessment determined that the combined impacts of the baseline assessment (pressure testing, internal inspection, or direct assessment), the periodic reassessments, and the additional preventive and mitigative measures that may be implemented for gas pipeline segments that could affect high consequence areas will result in positive environmental impacts. The number of incidents and the environmental damage from failures near high consequence areas is likely to be reduced. However, from a national perspective, the impact is not expected to be significant.

Although the effects of the proposed rule will likely lead to fewer incidents, gas pipeline leaks that lead to adverse environmental impacts are rare under current conditions. Although the damage from failures could be reduced, the environmental damage resulting from gas pipeline failures is usually minor under current conditions. The effects are typically negligible, but can consist of localized, temporary damage to the environment in the immediate vicinity of the failure location on the pipeline.

Some operators covered by the proposed rule already have integrity assessment programs. These operators typically consider the pipeline's proximity to populated areas when making decisions about where and when to inspect and test pipelines. As a result, some pipeline segments that could impact high consequence areas have already been recently assessed, and others would be assessed in the next several years without the provisions of the proposed rule. The primary effect of the proposed rule—accelerating integrity assessment in some high consequence areas—shifts increased integrity assurance forward for a few years for some segments that could affect high consequence areas. Because pipeline failure rates are low, shifting the time at which these segments are assessed forward by a few years has only a small effect on the likelihood of pipeline failure in these locations.

The proposed rule does require operators to conduct an integrated assessment of the potential threats to pipeline integrity, and to consider additional preventive and mitigative risk control measures to provide enhanced protection. If there is a vulnerability to a particular failure cause, these assessments should result in additional risk controls to address these threats. However, without knowing the specific high consequence area locations, the specific risks present at these locations, and the existing operator risk controls (including those that surpass the current minimum regulatory requirements), it is difficult to determine the impact of this requirement.

Some gas pipeline operators already perform integrity evaluations or risk assessments that consider the environmental and population impacts. These evaluations have already led to additional risk controls beyond existing requirements to improve protection for these locations. For many segments, it is probable that operators will determine that the existing preventive and mitigative activities provide adequate protection to high consequence areas, and that the small additional risk reduction benefits of additional risk controls are not justified.

The primary benefit of the proposed rule will be to establish requirements for conducting integrity assessments and periodic evaluations of integrity of segments that could impact high consequence areas. This will codify the integrity management programs and assessments operators are currently implementing. It will also require other operators, who have little, or no, integrity assessment and evaluation programs to raise their level of performance. Thus, the proposed rule is expected to ensure a more consistent, and overall higher level of protection for high consequence areas across the industry.

The Environmental Assessment of this proposed rule is available for review in the docket.

List of Subjects in 49 CFR Part 192

High consequence areas, potential impact areas, pipeline safety, and record-keeping requirements.

In consideration of the foregoing, RSPA/OPS proposes to amend part 192 of title 49 of the Code of Federal Regulations as follows:

PART 192—[AMENDED]

1. The authority citation for part 192 continues to read as follows:

Authority: 49 U.S.C. 5103, 60102, 60104, 60108, 60109, 60110, 60113, and 60118; and 49 CFR 1.53.

2. In subpart M, under the undesignated centerheading "High Consequence Areas," in § 192.761, in the definition beginning "A high consequence area," the word "A" is removed, paragraphs (a) and (b) are revised, paragraph (g) is added, and new definitions of Confirmatory direct assessment, Direct assessment, Moderate risk area, Potential impact circle, Potential impact radius, Potential impact zone, and Threshold radius are added alphabetically to read as follows:

§ 192.761 Definitions.

The following definitions apply to this section and § 192.763:

Confirmatory direct assessment is a streamlined integrity assessment method that utilizes process steps similar to direct assessment to evaluate for the presence of corrosion and third party damage.

Direct assessment is an integrity assessment method that utilizes a process to evaluate certain threats (*i.e.*, external corrosion, internal corrosion and stress corrosion cracking) to a pipeline's integrity. The process includes the gathering and integration of risk factor data, indirect examination or analysis to identify areas of suspected corrosion, direct examination of the pipeline in these areas, and post assessment evaluation.

High consequence area means any of the following areas:

(a) An area defined as a Class 3 location under § 192.5, except for an area within the class 3 location defined as a moderate risk area.

(b) An area defined as a Class 4 location under § 192.5, except for an area with the class 4 area-defined as a moderate risk area.

(c) * * *

(d) * * *

(e) * * *

(f) * * *

(g) An area of a circle of threshold radius 1000 feet or larger that has a cluster of 20 or more buildings intended for human occupancy. The threshold radius is measured from the centerline of the pipeline to the nearest building in the cluster.

Moderate risk area means an area located within a Class 3 or Class 4 location, but not within the potential impact zone.

Potential impact circle is a circle of radius equal to the threshold radius and is used to establish the higher priority area within a Class 3 or 4 area of a high consequence area. A potential impact circle contains any of the following within its radius (refer to the diagram in Appendix E):

(1) Twenty or more buildings intended for human occupancy within a 1000-foot or larger circle of radius;

(2) A facility that is occupied by persons who are hard to evacuate as defined in § 192.761 no matter the size of the circle of radius; or

(3) A place where people congregate as defined in § 192.761, no matter the size of the circle of radius.

Potential impact radius (PIR) means the radius of a circle within which the potential failure of a pipeline could have significant impact on people or property. PIR is determined by the formula r = 0.69 * (square root of (p*d2)), where "r" is the radius of a circular area surrounding the point of failure (ft), "p" is the maximum allowable operating pressure (MAOP) in the pipeline segment (psi) and "d" is the diameter of the pipeline (inches). **Note:** 0.69 is the factor for natural gas. This number will vary for other gases depending upon their heat of combustion. An operator transporting gas other than natural gas must use Section 3.2 of ASME/ANSI B31.8S to calculate the impact radius formula.

(See Appendix A to this part 192 for incorporation by reference and availability information.)

Potential impact zone is a rectangular area along the pipeline derived from the potential impact circle. The potential impact zone extends axially along the length of the pipeline from the center of the first potential impact circle to the center of the last contiguous potential impact circle, and extends perpendicular to the pipe out to the threshold radius on either side of the centerline of the pipe. (Refer to the diagram in Appendix E).

Threshold radius is an additional area of safety beyond the distance calculated as the potential impact radius. If the calculated potential impact radius is less than 300 feet, the operator must use a threshold radius of 300 feet. If the calculated potential impact radius exceeds 300 feet but is less than 660 feet, the threshold radius is 660 feet. If the calculated potential impact radius exceeds 660 feet, but is less than 1000 feet, the threshold radius is 1000 feet. And, if the calculated potential impact radius exceeds 1000 feet, the threshold radius is 15% greater than the actual calculated impact radius.

3. A new § 192.763 is added under a new undesignated centerheading of "Pipeline Integrity Management", in subpart M to read as follows:

Pipeline Integrity Management

§ 192.763 Pipeline integrity management in high consequence areas.

(a) *Which operators must comply?*

This section applies to each operator who owns or operates a transmission line that transports gas, including, petroleum gas, hydrogen, or other gas product covered under this part.

(b) *Which pipeline segments are covered?*

Transmission pipeline segments as defined in § 192.3 that are in a high consequence area, as defined in § 192.761.

(c) *What must an operator do?*

(1) *General requirements.* No later than [one year from the effective date of the final rule], an operator must develop and follow a written integrity management program that addresses the risks on each pipeline segment covered by this section. An operator must—

(i) Identify all high consequence areas as defined in § 192.761, and identify the potential impact zone within each high consequence area. Based on the identification of the potential impact zone within Class 3 and Class 4 locations, identify all moderate risk areas. The identification must include the calculation used in determining the threshold radius for each covered pipeline segment, and any process and factors used in determining the potential impact zone.

(ii) Develop a framework addressing each element required to be in an integrity management program, that includes a plan for baseline assessment of the line pipe (see paragraphs (e) and (g) of this section), and a plan for continual integrity assessment and evaluation (see paragraphs (d) and (k) of this section). The framework must document how decisions will initially be made to implement each program element, and planned near-term improvements to program elements and decision processes.

(iii) Develop a plan that describes how the operator will use direct assessment as part of its integrity assessment (see paragraph (h) of this section), to include identification of External Corrosion Direct Assessment Regions and Internal Corrosion Direct Assessment Regions. This requirement only applies to an operator that plans to use direct assessment.

(iv) Develop a process for continual improvement of the framework into an ongoing integrity management program.

(2) *Time period.* An operator must complete the requirements of paragraph (c)(1) no later than [12 months from the effective date of the final rule].

(3) *Implementation.* An operator must implement and follow the program it develops. In carrying out this section, an operator must follow the requirements of this section and of ASME/ANSI B31.8S, and its appendices, where specified. (*See* Appendix A to this part 192 for incorporation by reference and availability information.) An operator may follow an equivalent standard or practice only when the operator demonstrates the alternative standard or practice provides an equivalent level of safety to the public and property. In the event of a conflict between this section and ASME/ANSI B31.8S, the requirements in this section control.

(4) *Program changes.* An operator must document, prior to implementing any change to its program, any change to the program and reasons for the change. In addition, an operator must notify OPS in accordance with paragraph (n) of this section of any change to the program that substantially affect the program's implementation or significantly modifies the program or schedule for carrying out the program elements. An operator must provide the notification within 30 days after adopting this type of change into its program.

(5) *Performance-based option.* ASME/ANSI B31.8S provides the essential features of both a performance-based and a prescriptive integrity management program. An operator that uses a performance-based approach that satisfies the requirements in paragraph (c)(5)(i) may deviate from certain requirements in this section, as provided in paragraph (c)(5)(ii).

(i) *Exceptional performance.* To deviate from any of the requirements set forth in paragraph (c)(5)(ii), an operator must have completed a baseline assessment of all pipeline segments covered by this section, in accordance with paragraph (g) of this section, and at least one other assessment. An operator must remediate all anomalies identified in the second assessment according to the requirements in paragraph (i), and incorporate the results and lessons learned from the second assessment into the operator's risk model. An operator must also demonstrate that it has an exceptional integrity management program that meets the performance-based requirements of ASME/ANSI B31.8S, has a history of measurable performance improvement, and includes, at minimum—

(A) A state-of-the-art process for risk analysis;

(B) All risk factor data used to support the program;

(C) A state-of-the-art data integration process;

(D) A process that applies lessons learned from assessment of covered pipe segments to pipe segments not covered by this section;

(E) A process for evaluating all incidents, including their causes, within the operator's sector of the pipeline industry for implications both to the operator's pipeline system and to the operator's integrity management program;

(F) A performance matrix that confirms the continuing performance improvement realized under the performance-based program;

(G) A set of performance measures beyond those required in paragraph (l) of this section that are part of the operator's performance plan (see paragraph (d)(1)(viii)) and are made accessible in real time to OPS and state pipeline safety enforcement officials;

(H) An analysis that supports the desired integrity reassessment interval and the remediation methods to be used for all pipe segments.

(ii) *Deviation.* Once an operator has demonstrated that it has satisfied the requirements of paragraph (c)(5)(i), the operator may deviate from the prescriptive requirements of ASME/ANSI B31.8S and of this section only in the following instances.

(A) The time frame for reassessment as provided in paragraph (k), except that reassessment by some method (*e.g.*, confirmatory direct assessment) must be carried out at intervals no longer than seven years;

(B) Direct assessment as a primary assessment method without having to meet the conditions specified in paragraph (h)(1); and

(C) The time frame for remediation as provided in paragraph (i).

(d) *What are the elements of an integrity management program?*

(1) *General.* An operator's initial integrity management program framework and subsequent integrity management program must, at minimum, contain the following elements. (When indicated, refer to ASME/ANSI B31.8S for more detailed information on the listed element.)

(i) An identification of covered pipeline segments and the potential impact zone for each segment. An identification includes a calculation of the potential impact radius and threshold radius for each segment.

(ii) A baseline assessment plan meeting the requirements of paragraphs (e) and (g) of this section.

(iii) An identification of threats to each covered pipeline segment, which includes a risk assessment to evaluate the failure likelihood of each covered segment. An operator will use the threat identification and risk assessment to prioritize segments for assessment (paragraphs (g) and (k)) and evaluate the merits of additional preventive and mitigative measures (paragraph (j)). The identification and risk assessment process must comply with the requirements in paragraph (f) of this section.

(iv) A direct assessment plan, if applicable, meeting the requirements of paragraph (h) of this section.

(v) Provisions meeting the requirements of paragraph (i) of this section for remediating conditions found during an integrity assessment.

(vi) A process for continual evaluation and assessment meeting the requirements of paragraphs (h)(6) and (k) of this section. If applicable, the process must include a plan for confirmatory direct assessment meeting the requirements of paragraph (h)(6).

(vii) Preventive and mitigative measures meeting the requirements of paragraph (j) of this section.

(viii) A performance plan as outlined in ASME/ANSI B31.8S, Section 9 that includes performance measures meeting the requirements of paragraph (l) of this section.

(ix) Record keeping requirements meeting the requirements of paragraph (m) of this section.

(x) A management of change process as outlined in ASME/ANSI B31.8S, Section 11.

(xi) A quality assurance process as outlined in ASME/ANSI B31.8S, Section 12.

(xii) A communication plan that includes the elements of ASME/ANSI B31.8S, Section 10, and that includes a process for addressing safety concerns raised by OPS, including safety concerns OPS raises on behalf of a State or local authority with which OPS has an interstate agent agreement.

(xiii) A process for providing, by electronic or other means, a copy of the operator's integrity management program to a State authority with which OPS has an interstate agent agreement.

(xiv) A process for ensuring that each integrity assessment is being conducted in a manner that minimizes environmental and safety risks.

(2) *Training.* (i) *Supervisory personnel.* An operator's integrity management program must provide that each supervisor possesses and maintains a thorough knowledge of the operator's integrity management program and the elements for which the supervisor is responsible. The program must provide that any person who qualifies as a supervisor for the integrity management program has appropriate training or experience in the area for which the person is responsible.

(ii) *Persons who evaluate.* An operator's integrity management program must provide criteria for the qualification of persons who review and analyze results from integrity assessments and evaluations. These criteria include criteria for persons who carry out and interpret the results from the direct assessment process.

(3) *Newly-identified areas.* The program must provide for identification and assessment of newly-identified high consequence areas. When an operator has information that the area around a pipeline segment satisfies any of the definitions for high consequence areas in § 192.761, the operator must incorporate the area into its integrity management program within one year from the date the area is identified.

(e) *What must be in the baseline assessment plan?* An operator must include each of the following elements in its written baseline assessment plan:

(1) Identification of the potential threats to each of the covered pipeline segments. (See paragraph (f) of this section);

(2) The methods selected to assess the integrity of the line pipe, including an explanation of why the assessment method was selected to address the identified threats to each covered segment. The integrity assessment method an operator uses must be based on the threats identified to the segment (see paragraph (f) of this section). More than one method may be required to address all the threats to the pipeline segment;

(3) A schedule for completing the integrity assessment of all covered line segments, including, risk factors considered in establishing the assessment schedule;

(4) If applicable, a direct assessment plan that meets the requirements of paragraph (h) of this section.

(5) A process describing how the operator is ensuring that the baseline assessment is being conducted in a manner that minimizes environmental and safety risks.

(f) *How does an operator identify potential threats to pipeline integrity?*

(1) *Threat identification.* An operator must identify and evaluate all potential threats to each covered pipeline segment. Potential threats that an operator must consider include, but are not limited to, the threats listed in ASME/ANSI B31.8S , section 2 and the following:

(i) Time dependent threats such as internal corrosion, external corrosion, and stress corrosion cracking;

(ii) Static or resident threats, such as fabrication or construction defects;

(iii) Time independent threats such as third party damage and outside force damage; and

(iv) Human error.

(2) *Data gathering and integration.* To identify and evaluate the potential threats to a covered pipeline segment, an operator must gather and integrate data and information on the entire pipeline that could be relevant to the covered segment. In performing this data gathering and integration, an operator must follow the requirements in ASME/ANSI B31.8S, section 4. At a minimum, an operator must gather and evaluate the set of data specified in Appendix SP–A to ASME/ANSI B31.8S, and consider both on the covered segment and similar segments, past incident history, corrosion control records, continuing surveillance records, patrolling records, maintenance history, and all other conditions specific to each pipeline.

(3) *Risk assessment.* An operator is to conduct a risk assessment on each covered segment that follows ASME/ANSI B31.8S, section 5, and uses the threats identified for each segment. An operator will use the risk assessment to prioritize the segments for the baseline

and continual re-assessments (paragraphs (e), (g) and (k) of this section), and in determining what additional preventive and mitigative measures are needed (paragraph (j) of this section).

(g) *How is the baseline assessment to be conducted?*

(1) *Assessment methods.* An operator must assess the integrity of the line pipe in each covered segment by applying one or more of the following methods depending on the threats to which the segment is susceptible. An operator must select the method or methods best suited to address the threats identified to the segment (*See* paragraph (f) of this section).

(i) Internal inspection tool or tools capable of detecting corrosion, and any other threats to which the pipe segment is susceptible. An operator must follow ASME/ANSI B31.8S in selecting the appropriate internal inspection tools.

(ii) Pressure test conducted in accordance with subpart J of this part;

(iii) Direct assessment to address threats of external corrosion, internal corrosion, and stress corrosion cracking. An operator must conduct the direct assessment in accordance with ASME/ANSI B31.8S and paragraph (h) of this section;

(iv) Other technology that an operator demonstrates can provide an equivalent understanding of the condition of the line pipe. An operator choosing this option must notify the Office of Pipeline Safety (OPS) 180 days before conducting the assessment, in accordance with paragraph (n) of this section.

(2) *Prioritizing segments.* An operator must prioritize the covered pipeline segments for the baseline assessment according to a risk analysis that considers the potential threats to each segment. The risk analysis must comply with the requirements in paragraph (f) of this section.

(3) *Assessment for particular threats.* In choosing an assessment method for the baseline assessment, an operator must take the following actions to address particular threats that it has identified. (*See* paragraph (f) of this section).

(i) *Third party damage.* An operator must address the third party damage threat through the following:

(A) *Preventive measures.* An operator must implement comprehensive additional preventive measures (*see* paragraph (j)) to address the threat, and monitor the effectiveness of the preventive measures.

(B) *Assessment tools.* An operator must assess covered segments that are vulnerable to delayed failure following third party damage using internal inspection tools, such as deformation or geometry tools. An operator may use direct assessment as the primary assessment method for third party damage only if no other approach is feasible, and it is combined with data collection and integration to evaluate segment susceptibility to third party damage. An operator that does not use a geometry tool for the internal inspection or uses direct assessment must excavate and directly examine all indications that could be the result of third party damage.

(ii) *Cyclic fatigue.* An operator must evaluate whether cyclic fatigue or other loading condition (including ground movement, suspension bridge condition) necessitates a periodic assessment for dents and gouges. An evaluation must assume the presence of deep dents, and determine whether loading conditions would lead to failure of such hypothesized dents. An operator must use the results from an evaluation together with the criteria used to evaluate the significance of this threat.

(iii) *Manufacturing and construction defects.* To address manufacturing and construction defects (including seam defects), an operator must perform a pressure test at least once in the life of the segment unless the operator demonstrates why pressure testing is not necessary to address this threat. If an operator does not perform a pressure test, and at anytime the historic operating pressure or other stress condition changes, including any condition that affects cyclic fatigue, the operator must, prior to changing the stress condition, assess the pipeline using an assessment method allowed by this section.

(iv) *ERW pipe.* The methods an operator selects to assess low frequency electric resistance welded pipe or lap welded pipe susceptible to seam failures must be capable of assessing seam integrity and of detecting seam corrosion anomalies.

(v) *Corrosion.* If an operator finds corrosion on a covered pipeline segment that could adversely affect the integrity of the line (conditions specified in paragraph (i)), the operator must conduct an integrity assessment and remediate all pipeline segments with similar material coating and environmental characteristics. An operator must establish a schedule for evaluating and remediating the similar segments that is consistent with the operator's established operating and maintenance procedures under Part 192 for testing and repair.

(4) *Time period.* An operator must comply with the following requirements in conducting the baseline assessment of the covered segments.

(i) *Internal inspection or pressure test.* An operator that uses an internal inspection tool or pressure test as an integrity assessment method must comply with the following time periods for conducting the assessment.

(A) Unless the exception in paragraph (g)(4)(i)(B) of this section applies, an operator using a pressure test or internal inspection tool as an assessment method must complete the baseline assessment by December 17, 2012. An operator must assess at least 50% of the line pipe being assessed by either of these methods beginning with the highest risk pipe, by December 17, 2007. An operator must prioritize segments for assessment in accordance with paragraphs (f)(3) and (g)(2) of this section, giving highest priority to those segments located in the potential impact zone (refer to Appendix E for guidance).

(B) An operator using a pressure test or internal inspection tool as an assessment method on a pipeline segment located in a moderate risk area (an area within a Class 3 or Class 4 location, but not within the potential impact zone), must complete the baseline assessment by December 17, 2015.

(ii) *Direct assessment.* An operator that uses direct assessment as an integrity assessment method must comply with the following time periods for conducting the assessment.

(A) Unless the exception in paragraph (g)(4)(ii)(B) applies, an operator using direct assessment as an assessment method must complete the baseline assessment by December 17, 2009. An operator must assess at least 50% of the line pipe being assessed by this method, beginning with the highest risk pipe, by December 17, 2006. Direct assessment must be carried out in accordance with paragraph (h) of this section. An operator must prioritize segments for assessment in accordance with paragraphs (f)(3) and (g)(2) of this section, giving highest priority to those segments located in the potential impact zone (refer to Appendix E for guidance).

(B) An operator using direct assessment as an assessment method on a pipeline segment located within a moderate risk area (area in a Class 3 or Class 4 location, but not within the potential impact zone), must complete the baseline assessment of the line pipe being assessed by this method by December 17, 2012.

(5) *Prior assessment.* An operator may use an integrity assessment conducted after December 17, 2007 as a baseline assessment, if the integrity assessment method meets the requirements of this

section. However, if an operator uses this prior assessment as its baseline assessment, the operator must reassess the line pipe according to the requirements of paragraph (k) of this section.

(6) *Newly identified areas.* When the operator has information that the area around a pipeline segment satisfies any of the definitions in § 192.761, the operator must incorporate the area into its baseline assessment plan as a high consequence area within one year from the date the area is identified. An operator must complete the baseline assessment of any line pipe in the newly identified high consequence area within 10 years (7 years if direct assessment is being used) from the date the area is identified.

(h) *When can direct assessment be used and under what conditions?*

(1) *General.* (i) An operator may use direct assessment as a supplement to the other assessment methods allowed under this section. However, an operator may use direct assessment as a primary assessment method for external corrosion, internal corrosion, or stress corrosion cracking only when the operator can demonstrate one of the following conditions applies—

(A) The operator demonstrates that other assessment methods allowed under this section can not be applied to the pipeline segment for economic or technological reasons;

(B) The operator demonstrates that other assessment methods allowed under this section would result in a substantial impact on gas customers, as for example, when only one pipeline delivers gas to homes or local businesses, and service would be completely shut down during the assessment;

(C) The operator will excavate and conduct a direct examination of the entire covered pipeline segment in accordance with the requirements of this paragraph; or

(D) The covered pipeline segment operates at a maximum allowable operating pressure below 30% SMYS.

(ii) An operator using direct assessment as a supplemental assessment method must have a plan that follows the requirements for confirmatory direct assessment in paragraph (h)(6) of this section. An operator using direct assessment as a primary assessment method must have a plan that complies with the requirements for use of direct assessment in ASME/ANSI B31.8S, section 6.4 and in this section.

(2) *Specific threats.* An operator may only use direct assessment as a primary assessment method for external corrosion, internal corrosion, and stress corrosion cracking. An operator may use direct assessment as the primary assessment method for third party damage only if no other assessment method is feasible, and the operator uses it in combination with data collection and integration to evaluate the segment's susceptibility to third party damage.

(3) *External corrosion direct assessment (ECDA).* An operator that uses direct assessment as the primary method to assess external corrosion must follow the requirements in this section and in ASME/ANSI B31.8S, Section 6 and Appendix SP–B.

(i) *ECDA plan.* An operator using External Corrosion Direct Assessment (ECDA) must prepare a plan that includes—

(A) A process that provides, according to the requirements of this paragraph, for Pre-Assessment, Indirect Examination, Direct Examination, and Post-Assessment.

(B) Data requirements for using ECDA. These must, at a minimum, include the data requirements for external corrosion specified in Appendix SP–A1 to ASME/ANSI B31.8S.

(C) Criteria for evaluating ECDA feasibility, in accordance with paragraph (h)(3)(ii)(A) of this section.

(D) Criteria for defining ECDA Regions, in accordance with paragraph (h)(3)(ii)(B) of this section.

(E) The basis on which an operator selects two complementary assessment tools to assess each ECDA Region. Guidance on selecting tools is found in Appendix E of this part.

(F) Criteria for identifying and documenting those indications that must be considered for direct examination. Minimum criteria include the known sensitivities of assessment tools, the procedures for using each tool, and the approach to be used for decreasing the physical spacing of indirect assessment tool readings when the presence of a defect is suspected.

(G) Criteria for characterizing indications identified in the ECDA process. These criteria must define how an operator will characterize an indication as severe, moderate or minor (*See* paragraph (h)(3)(iv) of this section).

(H) Criteria for defining the urgency of excavation and direct examination of each indication. These criteria must specify how an operator will define the urgency of excavating the indication as immediate, scheduled or monitored. Monitored indications are defects that are not serious and may or may not require direct examination.

(I) Criteria for scheduling excavation of each urgency level of indication, in accordance with paragraph (h)(3)(v) of this section.

(J) Criteria for data gathering associated with each excavation.

(K) Criteria for the qualification of persons who carry out and interpret the results from the direct assessment process (*See* paragraph (d)(2)(ii) of this section).

(L) Criteria and measures for evaluating the long-term effectiveness of the ECDA process (*See* paragraph (h)(3)(vii) of this section).

(ii) *Pre-assessment.* An operator using ECDA must conduct a pre-assessment, in which the operator analyzes and integrates the data and information required in paragraph (f) of this section to carry out the following—

(A) *Feasibility.* An operator will use the data to determine whether any of the following conditions exists that is likely to preclude the effective use of ECDA. If any of the listed conditions is present, the operator must demonstrate why the use of ECDA would be a more effective method to assess external corrosion than the other assessment methods allowed under this section and specify the provisions the operator will implement to ensure ECDA effectiveness.

(*1*) The presence of a coating that causes electrical shielding;

(*2*) Backfill around the pipe with significant rock content or the presence of rock ledges;

(*3*) Situations impeding timely above-ground data gathering;

(*4*) Locations with adjacent buried metallic structures;

(*5*) Inaccessible areas.

(B) *ECDA Region.* An operator must use the data gathered to define all ECDA regions within the covered pipeline segment. ECDA regions are those portions within a pipeline segment, not necessarily contiguous, that have similar physical characteristics, operating and corrosion history, expected future corrosion conditions, and which are suitable for the same indirect assessment methods. An operator may redefine ECDA regions at any time the information the operator develops in conducting justifies a redefinition. If a condition, such as those specified in paragraph (h)(3)(vi)(C) of this section, exists for which ECDA is ineffective at assessing, an operator must select an alternate assessment technology allowed under this section.

(iii) *Indirect examination.* An operator's ECDA plan must provide for indirect examination of the ECDA regions. In carrying out the indirect examination, an operator must follow ASME/ANSI B31.8S, Appendix SP–B2 and the requirements of this section.

(A) Unless the exception in paragraph (h)(3)(iii)(B) of this section applies, an operator must select at least two different, but complementary, indirect examination methods, for each location where ECDA is to be applied along the pipeline segment. An operator must select the methods that can best detect external corrosion activity and holidays in the pipe coating under the conditions the operator expects to find on the pipeline. (Appendix E gives guidance on selecting two complementary methods). Indirect examination methods include, but are not limited to, Close Interval Surveys (CIS), Direct (or Alternate) Current Voltage Gradient (DCVG or ACVG), and electromagnetic techniques, such as Pipeline Current Mapper (PCM), and C-Scan). An operator must perform the indirect examination using the complementary methods selected for each ECDA Region. An operator must define the boundaries for use of each pair of ECDA tools, and ensure complete coverage through overlap between adjacent ECDA regions.

(B) If one of the following conditions applies, an operator must use one indirect examination tool and one alternative (*e.g.* ultrasonic) tool to assess for external corrosion, unless the operator demonstrates that one method will be adequate to assure the integrity of the segment being assessed for external corrosion.

(*1*) Pipe in frozen ground;

(*2*) Pipe under paved roadways;

(*3*) Pipe in cased crossings (either road or river).

(C) An operator must also provide for the following in its indirect examination.

(*1*) Repeating indirect examination methods on a sample basis to ensure consistent data are obtained;

(*2*) Selecting intervals for capturing tool readings that are closely spaced enough to ensure consistent data are obtained. Data sampling intervals (locations of test points) for indirect examination methods should typically be no greater than the local depth of coverage of the pipeline;.

(*3*) Carrying out indirect examination in an ECDA Region using the two complementary tools as close together in time as practical;

(*4*) Geo-referencing above ground measurements to compare examination results and accurately identify excavation locations.

(iv) *Post-indirect examination.* After an operator completes its indirect examination measurements for an ECDA Region, the operator must align the measures with the complementary tools and evaluate the consistency of the observations.

(A) If the results from the two complementary tools are not consistent and cannot be explained by differences in the tools' capabilities, the operator must either conduct a direct examination or additional indirect examinations to evaluate the reasons for the differences.

(B) If additional indirect inspections or direct examinations are not carried out or if they do not resolve the inconsistencies, the operator must re-evaluate the feasibility of ECDA.

(C) An operator must identify and locate indications following the indirect inspection, and classify the severity of each indication as severe, moderate or minor using the criteria in the ECDA Plan. (See paragraph (h)(3)(i) of this section). These classifications must be conservatively developed the first time the process is applied.

(D) An operator must compare the results from the pre-assessment step with the prior history for each ECDA Region. If assessment results are not consistent with operating history, the operator must reassess the feasibility of ECDA.

(v) *Direct examination.* An operator's ECDA plan must include a process for using the results from the indirect examination to develop and carry out a direct examination plan. A direct examination includes an excavation to confirm the ability of the indirect examination to locate external corrosion. To carry out the direct examination an operator must—

(A) Determine the order and timing of excavations from results of the indirect examination integrated with the risk factor data. An operator must base both order and timing on a classification of the indications as immediate action, scheduled action or monitored action. (See paragraph (h)(3)(i) of this section).

(B) Make a direct examination (excavation) of all indications that meet the criteria for immediate action. An operator must excavate all immediate action indications promptly, but no later than six months after completing the indirect examination. If an operator finds any evidence of severe corrosion in an ECDA region, the operator must evaluate the entire covered segment and all other covered and non-covered segments in the operator's pipeline system with similar characteristics, for corrosion, and take appropriate action for that segment, which could include an integrity assessment, remediation, or additional preventive or mitigative measures.

(C) Make a direct examination of at least two of the highest risk indications in each ECDA Region that meet the criteria of scheduled action. An operator must excavate each scheduled action indication in order of priority, until the operator excavates at least two indications that have a corrosion of depth no greater than 20% of the wall thickness.

(D) Make a direct examination of at least one of the highest risk indications in an ECDA region that contains only monitored indications.

(E) Make a minimum of one direct examination in each ECDA Region. This examination must be made at the indication of highest risk. If no indications are shown in the ECDA Region, then the excavation must be made at a location that the operator considers to be the most suspect.

(vi) *Remediation.* Except for conditions specified in paragraph (i)(4) of this section, an operator must remediate indications found during the direct assessment according to the requirements in ASME/ANSI B31.8S, section 7. Remediation must be consistent with a determination of remaining strength using ASME B31G or RSTRENG. (*See* Appendix A to this part 192 for incorporation by reference and availability information). If an operator finds an indication is associated with a defect that requires immediate remediation, the operator must reduce operating pressure by at least 20% in the associated ECDA Region and not increase this pressure until the operator has excavated, evaluated and remediated, as necessary, 100% of such indications within the region. In remediating a condition, an operator must also comply with the following—

(A) If any exposed segment has significant coating degradation or corrosion, the operator must increase the size of that excavation until coating and pipe are determined to be adequate.

(B) The operator must identify the root cause of all significant corrosion activity revealed by excavation.

(C) When an operator identifies any defect in an ECDA Region that requires immediate mitigation, or determines that the root cause of any defect is a condition that ECDA is ineffective at assessing (*e.g.*, MIC or shielded corrosion), the operator must for the current assessment cycle reassess the entire ECDA Region, using an alternative assessment method allowed by this section.

(vii) *Post-Assessment.* An operator must determine the reassessment interval for the pipeline segment and evaluate the overall effectiveness of the ECDA process.

(A) *Reassessment.* An operator must determine the reassessment interval according to the requirements in paragraph (k)(3) of this section.

(B) *Performance measures.* An operator must define and monitor measures to determine the effectiveness of the ECDA process. At minimum, these measures must track—

(*1*) The effectiveness of the overall process (*e.g.*, the change in the calculated reassessment interval);

(*2*) The extent and severity of corrosion found;

(*3*) The number of indications in each classification located on successive applications of ECDA; and

(*4*) The time from discovery of an indication categorized as immediate action or scheduled action to its excavation.

(4) *Internal corrosion direct assessment (ICDA).* ICDA is a process that identifies areas along the pipeline where water or other electrolyte introduced by an upset condition may reside, then focuses direct examination on the locations in each area where internal corrosion is most likely to exist. An operator using direct assessment as an assessment method to address internal corrosion in a pipeline segment must follow the requirements in ASME/ANSI B31.8S, Appendix SP–B2, and in this section.

(i) *ICDA plan.* An operator that uses direct assessment to assess internal corrosion must prepare a plan that, at minimum, provides for the following—

(A) A process for data gathering to evaluate the potential for internal corrosion, and to support pre-assessment in accordance with paragraph (h)(4) (ii) (A) of this section;

(B) Identification of ICDA Regions, in accordance with paragraph (h)(4)(ii)(B) of this section;

(C) Identification of excavation locations and direct examination of the locations in accordance with paragraphs (h)(4)(ii)(C) and (h)(4)(ii)(D) of this section;

(D) Post assessment and continuing evaluation in accordance with paragraph (h)(4)(ii)(E).

(ii) *Corrosion identification.* An operator must have a process to evaluate the potential for internal corrosion caused by water, CO_2, O_2, chlorides, hydrogen sulfide and other contaminants present in the gas, and for MIC. This process must, in accordance with the requirements of this paragraph, provide for pre-assessment, identification of ICDA regions and excavation locations, direct examination and post assessment.

(A) *Pre-assessment.* An operator must gather information needed to identify areas along the covered pipeline segment where internal corrosion is most likely to exist. An operator will use this information to identify the locations where water may accumulate, to identify ICDA regions, and to support the flow model. This information includes, but is not limited to—

(*1*) All data elements listed in Appendix SP–A2 of ASME/ANSI B31.8S.

(*2*) Information needed to support a flow model that an operator uses to determine areas along the pipeline where internal corrosion is most likely to occur. This information, includes, but is not limited to, location of all gas input and withdrawal points on the line; location of all low points on the line such as sags, drips, inclines, valves, manifolds, dead-legs, and traps; the elevation profile of the pipeline in sufficient detail that angles of inclination can be calculated for all pipe segments; and the diameter of the pipeline, and the range of expected gas velocities in the pipeline.

(*3*) Operating experience data that would provide an indication of historic upsets in gas conditions, locations where these upsets have occurred, and any indications of damage resulting from these upset conditions.

(B) *Identification of ICDA regions.* An operator must define all ICDA Regions within each covered pipeline segment. An ICDA region extends from the location where water may first enter the pipeline and encompasses the entire area along the pipeline where internal corrosion may occur and further evaluation is needed. To identify ICDA regions, an operator must apply the results of a mathematical flow model that defines the critical pipe incline above which water film cannot be transported by the gas. This flow model must consider changes in pipe diameter, locations where gas enters a line (potential to introduce moisture) and locations downstream of gas draw-offs (gas velocity is reduced). Graph E.III.A in Appendix E of this Part provides the flow model.

(C) *Identification of excavation locations.* After identifying the ICDA regions, an operator must then identify for excavation the most likely locations for internal corrosion in each region. An operator must identify a minimum of two locations for excavation in each ICDA Region. One location must be the low point (*e.g.*, sags, drips, valves, manifolds, dead-legs, traps) nearest to the beginning of the ICDA Region. The second location must be at the upstream end of the pipe incline nearest the end of the ICDA Region.

(D) *Direct examination.* An operator must, at a minimum, excavate in each ICDA Region the two locations identified for excavation in paragraph (h)(4)(ii)(C), and must perform a direct examination for internal corrosion at each location, using ultrasonic thickness measurements. If corrosion exists at either location, the operator must—

(*1*) Remediate the conditions it finds in accordance with paragraph (i) of this section;

(*2*) As part of the operator's current integrity assessment either perform additional excavations in the ICDA region or use an alternative assessment method allowed by this section to assess the pipe for internal corrosion; and

(*3*) Evaluate all pipeline segments (both covered and non-covered) in the operator's pipeline system with similar characteristics to those in which the corrosion was found, and remediate the conditions it finds in accordance with paragraph (i) of this section.

(E) *Post Assessment and Continuing Evaluation.* An operator must continually monitor each covered segment where internal corrosion has been identified using techniques such as coupons or electronic probes. An operator must also periodically draw off fluids at low points and chemically analyze the fluids for the presence of corrosion products. The frequency of the monitoring and fluid analysis must be based on results from past and present integrity assessment results and risk factors specific to that pipeline. If an operator finds any evidence of corrosion products the operator must, either—

(*1*) *conduct excavations at locations downstream where moisture might accumulate;* or

(*2*) assess the segment using another integrity assessment method allowed by this section, and remediate the conditions it finds in accordance with paragraph (i) of this section. The interval for re-assessing the segment with another assessment method must not exceed the time frames specified in paragraph (k)(3)(ii) of this section.

(5) *Stress Corrosion Cracking (SCC).* An operator using direct assessment as an integrity assessment method to address stress corrosion cracking must develop and follow a plan that provides for—

(i) Development and implementation of a systematic SCC data collection and evaluation process for all segments to identify if the conditions for SCC are present and to prioritize the segments for assessment. An operator may refer to ASME/ANSI B31.8S, Appendix SP–A3 for identifying the threat of SCC. This process must include gathering and evaluating data related to SCC at all excavation sites where the criteria indicate the potential for SCC. This data includes at minimum, the data specified

in ASME/ANSI B31.8S, Appendix SP–A3.

(ii) Selection and implementation of an integrity assessment method and remediation of the threat, if conditions for SCC are identified. An operator must use the bell hole examination and evaluation technique to assess SCC, as specified in ASME/ANSI B31.8S, Appendix SP–A3.

(6) *Confirmatory direct assessment.* An operator using the confirmatory direct assessment method as allowed in paragraph (k)(3) of this section must have a plan that meets the following requirements:

(i) *Threats.* For any covered segment on which confirmatory direct assessment is used, the focus must be on identifying damage resulting from external corrosion, internal corrosion and third party damage.

(ii) *External corrosion plan.* An operator's plan for confirmatory direct assessment for identifying external corrosion must includes processes for pre-assessment, indirect examination, direct examination and remediation.

(A) The pre-assessment must follow the requirements in paragraph (h)(3)(ii) of this section, and include identification of External Corrosion Direct Assessment (ECDA) regions.

(B) The indirect examination must follow the requirements in paragraph (h)(3)(iii) of this section, except that the examination may be conducted using only one indirect examination tool suitable for the application.

(C) The direct examination must follow the requirements in paragraph (h)(3)(v) of this section with the following exceptions—

(*1*) Excavation of all immediate action indications is required in each ECDA region;

(*2*) Excavation of at least one high risk indication that meets the criteria of scheduled action is required in each ECDA region; and

(*3*) No excavation is required for indications categorized as monitored indications.

(D) The remediation must follow the requirements in paragraph (h)(3)(vi) of this section.

(iii) *Internal Corrosion plan.* An operator's plan for confirmatory direct assessment for identifying internal corrosion must include processes for pre-assessment, identification of Internal Corrosion Direct Assessment (ICDA) Regions, identification of excavation locations, direct examination and remediation.

(A) The pre-assessment must follow the requirements in paragraph (h)(4)(ii)(A) of this section.

(B) The identification of ICDA Regions must follow the requirements in paragraph (h)(4)(ii)(B) of this section.

(C) The identification of excavation locations and excavation must follow the requirements in paragraph (h)(4)(ii)(C) of this section, except that the operator must identify for excavation at least one high risk location in each ICDA Region.

(D) The direct examination (excavation) and remediation must follow the requirements in paragraph (h)(4)(ii)(D) of this section, except that the operator is to choose one high risk location in each ICDA Region for excavation.

(iv) *Third party damage.* An operator's plan for confirmatory direct assessment for identifying third party damage must include identification of pipeline segments where construction or other groundbreaking activity was reported near the pipeline right-of-way since the previous assessment. The confirmatory direct assessment for third part damage must follow the requirements in paragraph (g)(3)(i) of this section.

(i) *What actions must be taken to address integrity issues?*

(1) *General requirements.* An operator must take prompt action to address all anomalous conditions that the operator discovers through the integrity assessment. In addressing all conditions, an operator must evaluate all anomalous conditions and remediate those that could reduce a pipeline's integrity. An operator must be able to demonstrate that the remediation of the condition will ensure that the condition is unlikely to pose a threat to the long-term integrity of the pipeline. If an operator is unable to respond within the time limits for certain conditions specified below, the operator must temporarily reduce the operating pressure of the pipeline. An operator must determine the temporary reduction in operating pressure using section 851.42 of ASME/ANSI B31.8 for dents and gouges, ASME/ANSI B31G or RSTRENG for corrosion, or reducing the operating pressure to a level not exceeding 80% of the level at the time the condition was discovered. (See Appendix A to this part 192 for incorporation by reference and availability information). A reduction in operating pressure cannot exceed 365 days without an operator taking further remedial action to ensure the safety of the pipeline.

(2) *Discovery of condition.* Discovery of a condition occurs when an operator has adequate information about the condition to determine that the condition presents a potential threat to the integrity of the pipeline. An operator must promptly, but no later than 180 days after conducting an integrity assessment, obtain sufficient information about a condition to make that determination, unless the operator demonstrates that the 180-day period is impracticable. If the operator cannot make the necessary determination within the 180-day period, an operator must notify OPS of the reasons for the delay and the expected time for obtaining the information.

(3) *Schedule for evaluation and remediation.* An operator must complete remediation of a condition according to a schedule that prioritizes the conditions for evaluation and remediation. Unless a special requirement for remediating certain conditions applies, as provided in paragraph (h)(3)(vii) or paragraph (i)(4) of this section, an operator must follow the schedule in ASME/ANSI B31.8S. If an operator cannot meet the schedule for any condition, the operator must justify the reasons why it cannot meet the schedule and that the changed schedule will not jeopardize public safety. An operator must notify OPS in accordance with paragraph (n) of this section if it cannot meet the schedule and cannot provide safety through a temporary reduction in operating pressure.

(4) *Special requirements for scheduling remediation.*

(i) *Immediate repair conditions.* An operator's evaluation and remediation schedule must follow ASME/ANSI B31.8S, Section 7 in providing for immediate repair conditions. To maintain safety, an operator must temporarily reduce operating pressure or shut down the pipeline until the operator completes the repair of these conditions. An operator must treat the following conditions as immediate repair conditions:

(A) A calculation of the remaining strength of the pipe shows a predicted failure pressure less than 1.1 times the established maximum operating pressure at the location of the anomaly. Suitable remaining strength calculation methods include, ASME/ANSI B31G "Manual for Determining the Remaining Strength of Corroded Pipelines" (1991); AGA Pipeline Research Committee Project PR–3–805 ("A Modified Criterion for Evaluating the Remaining Strength of Corroded Pipe" (December 1989)); or an alternative equivalent method of remaining strength calculation. These documents are incorporated by reference and available at the addresses listed in Appendix A to Part 192.

(B) A dent that has any indication of metal loss, cracking or a stress riser.

(C) An anomaly that in the judgment of the person designated by the operator to evaluate the assessment results requires immediate action.

(ii) *180-day remediation.* Except for conditions listed in paragraph (i)(4)(i) of this section, an operator must remediate any of the following within 180 days of discovery of the condition:

(A) A dent with a depth greater than 6% of the pipeline diameter (greater than 0.50 inches in depth for a pipeline diameter less than Nominal Pipe Size (NPS) 12).

(B) A dent with a depth greater than 2% of the pipeline's diameter (0.250 inches in depth for a pipeline diameter less than NPS 12) that affects pipe curvature at a girth weld or a longitudinal seam weld.

(iii) *Remediation longer than 180 days.* An operator may take more than 180 days following discovery of the condition to remediate any of the following conditions unless the anomaly grows to critical stage. If the anomaly grows to critical stage, the operator must follow the immediate repair requirements in paragraph (i)(4)(i) of this section.

(A) In a segment assessed by internal inspection, a calculation of the remaining strength of the pipe shows a predicted failure pressure greater than 1.1 times the established maximum operating pressure at the location of the anomaly. An operator must remediate the condition in accordance with ASME/ANSI B31.8S, Section 7, Figure 7–1.

(B) In a segment assessed by any integrity assessment method, an anomalous condition other than those listed in paragraphs (i)(4)(i) or (ii) of this section.

(j) *What additional preventive and mitigative measures must an operator take to protect the high consequence area?*

(1) *General Requirements.* An operator must take measures to prevent a pipeline failure and to mitigate the consequences of a pipeline failure in a high consequence area. An operator's measures will be based on the threats it has identified to each pipeline segment (see paragraph (f)). These measures include an operator conducting, in accordance with one of the risk assessment approaches in ASME/ANSI B31.8S, Section 5, a risk analysis of the covered pipeline segments to identify additional actions to enhance public safety. Such actions include, but are not limited to, installing Automatic Shut-off valves or Remote Control Valves, installing computerized monitoring and leak detection systems, replacing pipe segments with pipe of heavier wall thickness, providing additional training to personnel on response procedures, conducting drills with local emergency responders and implementing additional extensive inspection and maintenance programs.

(2) *Third Party Damage and Outside Force Damage.* An operator must take additional measures to prevent and minimize the consequence of a release from third party damage or outside force damage. These measures must be in addition to any already required under this Part. An operator may follow ASME/ANSI B31.8S, Table 7–1 of Section 7 in identifying these measures. To minimize the consequences from third party damage, including vandalism, measures include, but are not limited to, increasing the frequency of aerial and foot patrols, participating in one-call systems, conducting extensive public education campaigns, increasing marker frequency, increasing cover depth, and adding leakage control measures. To minimize the consequences from outside force damage (*e.g.* earth movement, floods, unstable suspension bridge) these measures include, but are not limited to, increasing the frequency of aerial and foot patrols, adding external protection, reducing external stress, and relocating the line.

(3) *Automatic Shut-off valve (ASV) or Remote Control Valves (RCV).* If an operator determines that an ASV or RCV is needed on a pipeline segment to protect a high consequence area in the event of a gas release, an operator must install the ASV or RCV. In making that determination, an operator must, at least, consider the following factors—swiftness of leak detection and pipe shutdown capabilities, the type of gas being transported, operating pressure, the rate of potential release, pipeline profile, the potential for ignition, and location of nearest response personnel.

(k) *What is a continual process of evaluation and assessment to maintain a pipeline's integrity?*

(1) *General.* After completing the baseline integrity assessment of a covered segment, an operator must continue to assess the line pipe of that segment at the intervals specified in paragraph (k)(3) and periodically evaluate the integrity of each covered pipeline segment as provided in paragraph (k)(2). The reassessment period for a segment begins upon completion of the prior assessment.

(2) *Evaluation.* An operator must conduct a periodic evaluation as frequently as needed to assure pipeline integrity. The periodic evaluation must be based on a data integration of the entire pipeline as specified in paragraph (f) of this section to identify the threats specific to a pipeline segment. The evaluation must consider the past and present integrity assessment results, data integration information (paragraph (f) of this section), and decisions about remediation and preventive and mitigative actions (paragraphs (i) and (j) of this section).

(3) *Re-Assessment intervals.* An operator must establish a re-assessment interval for each covered pipeline segment. An operator must comply with the following requirements in establishing the interval for the operator's covered pipeline segments.

(i) *General.* Unless a period of less than seven years is specified, each covered pipeline segment must be re-assessed at a seven-year interval. If the operator establishes a reassessment interval for the covered segment that is greater than seven years, the operator must within the seven-year period, conduct a confirmatory direct assessment on the covered segment, and then conduct the follow-up reassessment. The reassessment done by confirmatory direct assessment must be done in accordance with paragraph (h)(6) of this section.

(ii) *Pressure test or internal inspection, or other equivalent technology.*

(A) An operator that uses pressure testing or internal inspection as an assessment method must establish the reassessment interval for covered pipeline segments by—

(*1*) Basing the intervals on the identified threats for the segment as listed in paragraph (f) of this section and in ASME/ANSI B31.8S, Table 8–2, section 8, and on the analysis of the results from the last integrity assessment and from the data integration required by paragraph (f) of this section; or

(*2*) Using the intervals for different stress levels of pipeline specified in ASME/ANSI B31.8S, Table 8–1, section 8.

(B) However, under either option, the maximum reassessment interval must not exceed ten (10) years for a pipeline operating at or above 50% SMYS, and 15 years for a pipeline operating below 50% SMYS. An operator choosing the maximum period allowed for reassessment must demonstrate that it has implemented enhanced preventive and mitigative measures for the segment.

(iii) *Direct assessment.*

(A) An operator that uses direct assessment must determine the reassessment interval according to the following calculation.

(*1*) Determine the largest defect most likely to remain in the segment and the corrosion rate appropriate for the pipe, soil and protection conditions.

(*2*) Take the largest remaining defect as the size of the largest defect discovered in the ECDA or ICDA segment.

(*3*) *Estimate the reassessment interval as half the time required for the largest defect to grow to a critical size.*

(B) However, the reassessment interval cannot exceed five (5) years, if an operator directly examines and remediates defects by sampling, or ten (10) years, if an operator conducts a direct examination of all anomalies and remediates these anomalies.

(4) *Waiver from interval greater than 7 years in limited situations.* In the following limited instances, OPS may allow a waiver from a reassessment interval greater than seven years but within the maximum allowable interval if OPS finds a waiver would not be inconsistent with pipeline safety.

(i) *Lack of internal inspection tools.* An operator may be able to justify a longer assessment period for a covered segment if internal inspection tools are not available to assess the line pipe. An operator must demonstrate that the internal inspection tools cannot be obtained within the required assessment period and must also demonstrate the actions it is taking to evaluate the integrity of the pipeline segment in the interim. An operator must, in accordance with paragraph (n) of this section, notify OPS 180 days before the end of the required reassessment interval that the operator may require a longer assessment interval, and provide an estimate of when the assessment can be completed.

(ii) *Maintain local product supply.* An operator may be able to justify a longer assessment period for a covered segment if the operator demonstrates that the reassessment will shut off the local product supply, and that alternative supply is not available. An operator must, in accordance with paragraph (n) of this section, notify OPS 180 days before the end of the required reassessment interval that the operator may require a longer assessment interval, and provide an estimate of when the assessment can be completed.

(5) *Assessment methods.* In conducting the integrity reassessment, an operator must assess the integrity of the line pipe by any of the following methods.

(i) Internal inspection tool or tools capable of detecting corrosion, and any other threats to which the pipe segment is susceptible. An operator must follow ASME/ANSI B31.8S, section 6.2, in selecting the appropriate internal inspection tools;

(ii) Pressure test conducted in accordance with subpart J of this Part;

(iii) Direct assessment to address threats of external corrosion threats, internal corrosion, and stress corrosion cracking that is conducted in accordance with ASME/ANSI B31.8S section 6.3, and paragraph (h) of this section;

(iv) Other technology that an operator demonstrates can provide an equivalent understanding of the condition of the line pipe. An operator choosing this option must notify the Office of Pipeline Safety (OPS) 180 days before conducting the assessment, in accordance with paragraph (n) of this section.

(v) Confirmatory direct assessment when used on a covered segment that is scheduled for reassessment at a period longer than seven years. An operator using this reassessment method must comply with paragraph (h)(6) of this section.

(l) *What methods must be used to measure program effectiveness?* (1) *General.* An operator must include in its integrity management program methods to measure whether the program is effective in assessing and evaluating the integrity of each pipeline segment and in protecting the high consequence areas. These measures must include the four overall performance measures specified in ASME/ANSI B31.8S, Section 9.4, and the specific measures for each identified threat specified in ASME/ANSI B31.8S, Appendix SP–A. An operator must make the four overall performance measures accessible in real time to OPS and state pipeline safety enforcement officials.

(2) *Direct assessment.* In addition to the general requirements for performance measures, an operator using direct assessment to assess the external corrosion threat must define and monitor measures to determine the effectiveness of the ECDA process. These measures must meet the requirements of paragraph (h)(3)(vii) of this section.

(m) *What records must be kept?* An operator must maintain for review during an inspection—

(1) A written baseline assessment plan in accordance with paragraphs (e) and (g) of this section;

(2) A written integrity management program in accordance with the requirements of this section.

(3) Documents to support the decisions, analyses and processes developed and used to implement and evaluate each element of the baseline assessment plan and integrity management program. Documents include those developed and used in support of any identification, calculation, amendment, modification, justification, deviation and determination made, and any action taken to implement and evaluate any of the program elements.

(4) Documents that demonstrate personnel have the required training, including a description of the training program, in accordance with paragraph (d)(2) of this section.

(5) Documents to carry out the requirements in paragraph (h) of this section for a direct assessment plan.

(6) Documents demonstrating the integrity management program has been provided to the interstate agent, and that any safety concerns raised by OPS on behalf of an interstate agent have been addressed.

(n) *How does an operator notify OPS?* An operator must provide notification required by this section by—

(1) Sending the notification to the Information Resources Manager, Office of Pipeline Safety, Research and Special Programs Administration, U.S. Department of Transportation, Room 7128, 400 Seventh Street SW., Washington DC 20590;

(2) Sending the notification by facsimile to (202) 366–7128; or

(3) Entering the information directly on the Integrity Management Database (IMDB) Web site at *http://primis.rspa.dot.gov/imdb/.*

3. Appendix A to Part 192, section II.D would be amended by adding paragraph (9) to read as follows:

Appendix A to Part 192—Incorporated by Reference

* * * * *

II. * * *

D. * * *

(9) ASME/ANSI B31.8S 2001 Supplement to B31.8 on Managing System Integrity of Gas Pipelines, January 31, 2002.

4. A new Appendix E to Part 192 would be added to part 192 to read as follows:

Appendix E to Part 192

I. Guidance on Determining a Potential Impact Zone Within a High Consequence Area

Within each high consequence area, an operator is to calculate the potential impact zone. (Refer to figure E.I.1 for the diagram of a potential impact zone) High consequence areas and potential impact zone are defined in § 192.761. The potential impact zone will help an operator determine the area where segments must be given priority for assessment.

The Potential Impact Zone definition (§ 192.761) expands the area protected and provides the basis for prioritizing the pipeline segments for assessment and remediation. The priority an operator is to give each covered segment depends on the population density within the potential impact radius. An operator will need to perform the following—

(1) Identify all high consequence areas;

(2) Calculate the Potential Impact Radius (PIR) for each pipeline segment;

(3) Determine the Threshold Radius associated with the PIR for each segment;

(4) Identify the Potential Impact Circle for each segment;

(5) Identify the Potential Impact Zone for each segment;

(6) Determine the priority of each segment giving higher priority to any segment within a potential impact zone.

II. Guidance on ECDA Tool Selection and Definition of External Corrosion Direct Assessment (ECDA) Regions

This section gives guidance to help an operator implement the requirements for a direct assessment plan in § 192.763 (h). An operator that chooses to use direct assessment to assess the threat of external corrosion on the operator's covered pipeline segments may refer to this guidance for selecting inspection tools to carry out the indirect inspection requirements and for defining external corrosion regions.

A. Selection of Indirect Inspection Tools

The rule (§ 192.763(h)(3)(iii)), requires an operator to select a minimum of two indirect inspection tools for all ECDA locations along the pipeline segment.

- The pipeline operator must select indirect inspection tools based on their ability to reliably detect corrosion activity under the specific pipeline conditions to be encountered.
- The "indirect inspection tool selection" column in Table E.II.1 includes items that should be considered when selecting indirect inspection tools.
- Table E.II.2 provides guidance on selecting indirect inspection tools and specifically addresses conditions under which some indirect inspection tools may not be practical or reliable.
- The pipeline operator does not have to use the same indirect inspection tools at all locations along the pipeline segment. Figure E.II.1 demonstrates how the selection of indirect inspection tools may vary along a segment.

B. Identification of ECDA Regions

The rule (§ 192.763(h)(3)(ii)) requires an operator to analyze data it has collected to identify ECDA regions.

- The definition of ECDA regions will evolve through the *Indirect Inspection Step* and the *Direct Examination Step*. An operator is expected to establish a preliminary definition and fine tune it later in the ECDA process.
- The pipeline operator should define criteria for identifying ECDA regions.
- An ECDA region should include locations that have similar physical characteristics, corrosion histories, expected future corrosion conditions, and use the same indirect inspection tools.
- The pipeline operator should consider physical characteristics, soil conditions, and corrosion protection mechanisms that the pipeline operator considers significant in affecting external corrosion when defining criteria for identifying ECDA regions. Table E.1 may be used as guidance in establishing ECDA regions.
- A single ECDA region does not need to be contiguous. That is, an ECDA region may be broken along the pipeline, for example, if similar conditions are encountered on either side of a river crossing.
- An operator should include the entire pipeline segment in an ECDA region.
- Figure E.II.2 gives an example definition of ECDA regions for a given pipeline.
- A pipeline operator should define five distinct areas based on soil characteristics and previous history.
- Based on the choice of indirect inspection tools, the soil characteristics, and the previous history, the pipeline operator should define seven ECDA regions.

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Potential Impact Zone
(Within dashed lines)

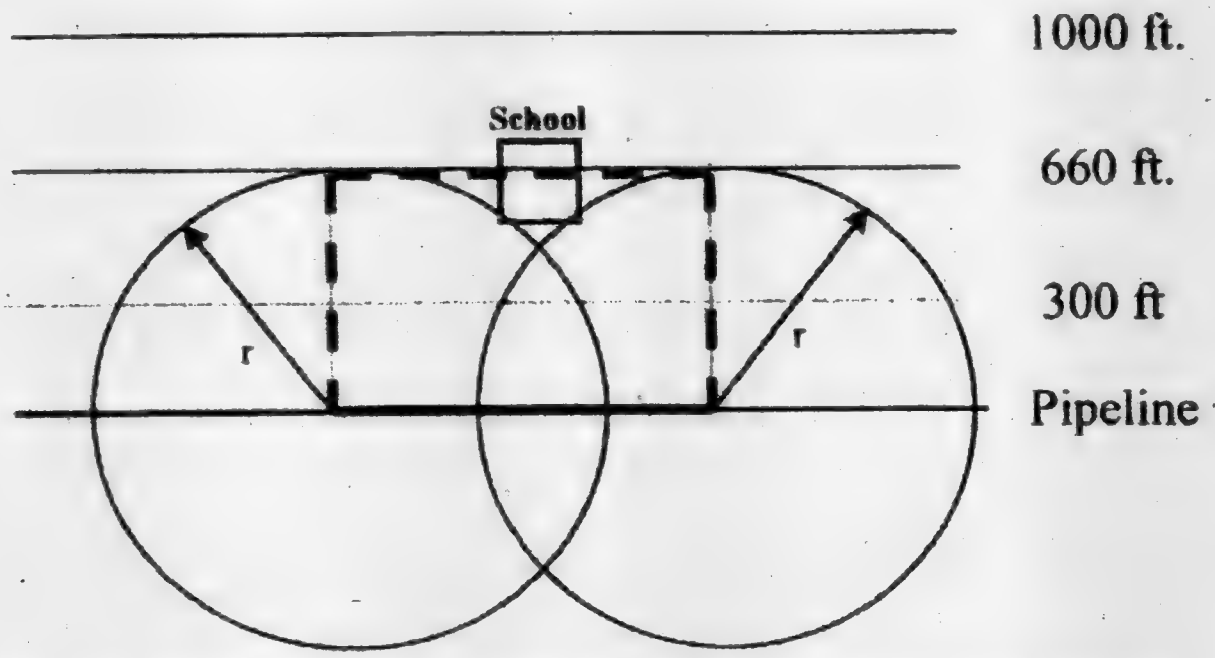

Note: This diagram represents the results for a 30" pipe with an MAOP of 1,000 psig.

Figure E.I.1 Potential Impact Zone (PIZ)

Figure E.II.1 Selection of Indirect Inspection Tools

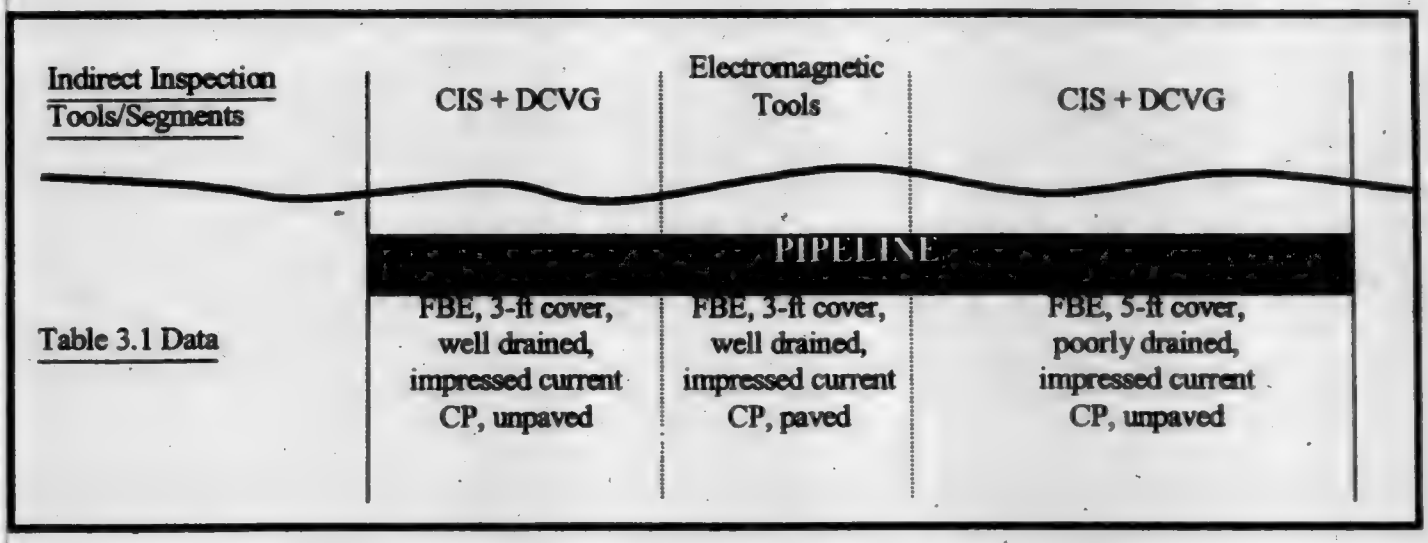

Figure E.II.2 Illustration of ECDA Region Definitions

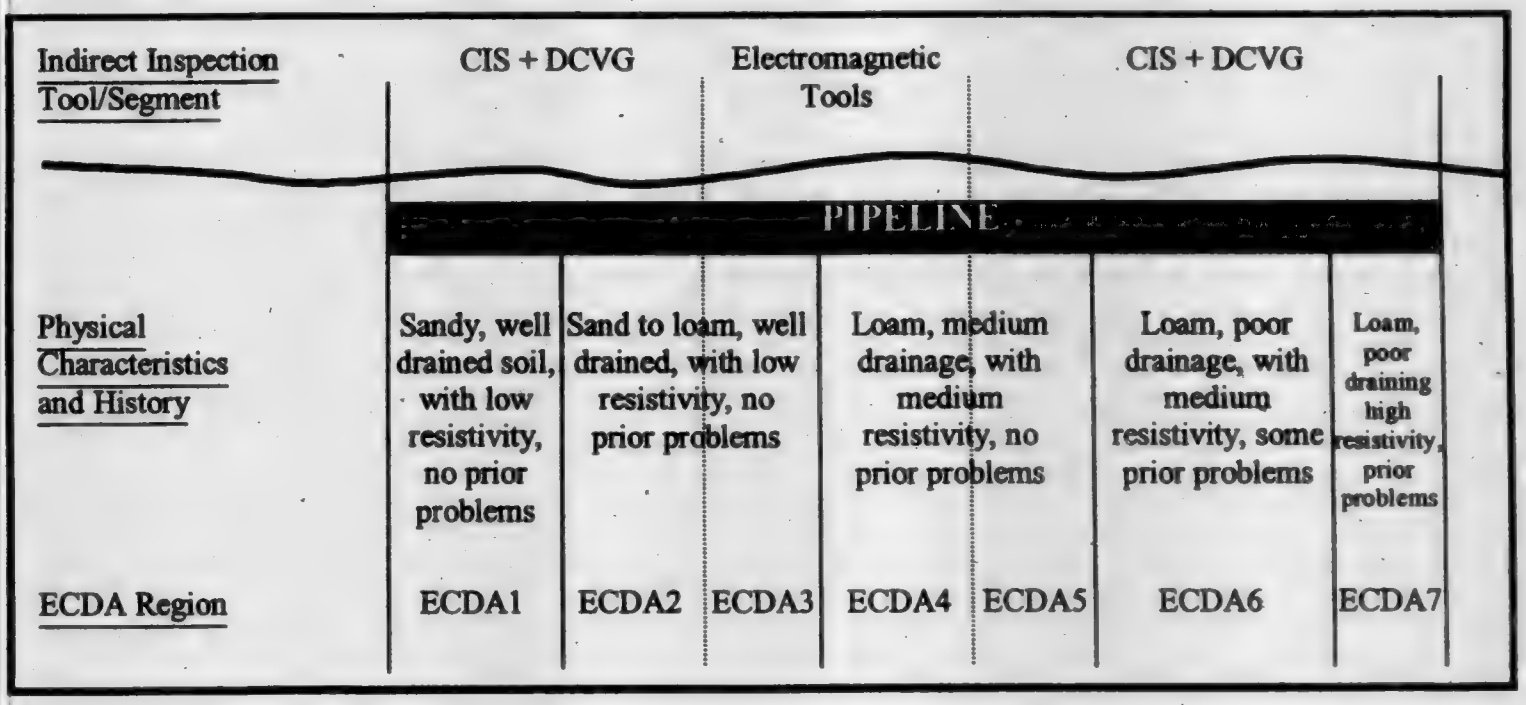

Table E.II.1: ECDA Data Elements

Data Elements	*Indirect Inspection Tool Selection*	*ECDA Region Definition*	*Use and Interpretation of Results*
PIPE RELATED			
Material (steel, cast iron etc) and grade	*ECDA not appropriate for nonferrous materials*	*Special considerations should be given to locations where dissimilar metals are joined*	*Can create local corrosion cells when exposed to the environment.*
Diameter	*May reduce detection capability of indirect inspection tools*		*Influences CP current flow and interpretation of results*
Wall thickness			*Impacts critical defect size and remaining life predictions*
Year Manufactured			*Older pipe materials typically have lower toughness levels, which reduces critical defect size and remaining life predictions.*
Seam Type		*Locations with pre-1970 low-frequency ERW pipe with increased selective seam corrosion susceptibility may require separate region*	*Older pipe typically has lower weld seam toughness that reduces critical defect size. Pre-1970 ERW pipe seams may be subject to higher corrosion rates than the base metal.*
Bare pipe	*Limits ECDA application. Less available tools*	Segments with bare pipe in coated pipelines should be in separate regions	Specific ECDA methods provided
CONSTRUCTION RELATED			
Year installed			Impacts time over which coating degradation may occur, defect population estimates, and corrosion rate estimates
Route changes/modifications		Changes may require separate regions. Year installed	

Route maps/aerial photos.		Provides general applicability info and region selection guidance.	Typically contain pipeline data that facilitate ECDA
Construction practices		Construction practice differences may require separate regions.	May indicate locations where construction problems may have occurred; e.g., backfill practices influence probability of coating damage during construction
Locations of valves, clamps, supports, taps, mechanical couplings, expansion joints, cast iron components, tie-ins, insulating joints		Significant drains or changes in CP current should be considered separately; special considerations should be given to locations where dissimilar metals are connected	May impact local current flow and interpretation of results; dissimilar metals may create local corrosion cells at points of contact; coating degradation rates may be different from adjacent regions
Locations of and construction methods used at casings	May preclude use of some indirect inspection tools.	Requires separate ECDA regions	May require operator to extrapolate nearby results to inaccessible regions. Additional tools and other assessment activities may be required.
Locations of bends, including miter bends and wrinkle bends		Presence of miters and wrinkle bends may influence region selection.	Coating degradation rates may be different from adjacent regions; corrosion on miter and wrinkle bends can be localized, which affects local current flow and interpretation of results
Depth of cover	Restricts the use of some indirect inspection techniques	May require different ECDA regions for different ranges of depths of cover	May impact current flow and interpretation of results
Underwater sections; river crossings	Significantly restricts the use of many indirect inspection techniques	Requires separate ECDA regions	Changes current flow and interpretation of results
Locations of river weight and anchors		May require separate ECDA regions and reduces available indirect inspection tools	Influences current flow and interpretation of results; corrosion near weights and anchors can be localized, which affects local current flow and interpretation of results

Proximity to other pipelines, structures, HV electric transmission lines, and rail crossings	May preclude use of some indirect inspection methods	Regions where the CP currents are significantly affected by external sources should be treated as separate ECDA regions	Influences local current flow and interpretation of results
SOILS/ ENVIRONMENTAL			
Soil characteristics/types Refer to Appendix B	Some soil characteristics reduce the accuracy of various indirect inspection techniques	Influences where corrosion is most likely; significant differences generally require separate ECDA regions	Can be useful in interpreting results. Influences corrosion rates and remaining life assessment.
Drainage		Influences where corrosion is most likely; significant differences may require separate ECDA regions	Can be useful in interpreting results. Influences corrosion rates and remaining life assessment.
Topography	Conditions such as rocky areas can make indirect inspections difficult or impossible		
Land Use (Current/past)	Paved roads etc will influence indirect inspection tool selection.	Can influence ECDA application and region selection	
Frozen ground	May impact applicability and effectiveness of some ECDA methods	Pipeline with some frozen areas should be considered in separate regions.	Influences current flow and interpretation of results
CORROSION CONTROL			
CP system type (anodes , rectifiers and locations)	May affect ECDA tool selection		Localized use of sacrificial anodes within impressed current systems may influence indirect inspection. Influences current flow and interpretation of results
Stray current sources/locations			Influences current flow and interpretation of results
Test point locations (or pipe access points		May provide input when defining ECDA regions	
CP evaluation criteria			Used in Post-assessment analysis
CP maintenance history		Coating condition indicator	Can be useful in interpreting results

Years without CP applied		May make ECDA more difficult to apply	Negatively affects ability to estimate corrosion rates and make remaining life predictions
Coating Type - Pipe	ECDA may not be appropriate for coatings that cause shielding		Coating type may influence time at which corrosion begins and estimates of corrosion rate based on measured wall loss.
Coating Type – Joints	ECDA not appropriate for coatings that cause shielding		Shielding due to certain joint coatings may lead to requirements for other assessment activities.
Coating condition	ECDA may be difficult to apply with severely degraded coatings		
Current Demand			Increasing current demand can indicate areas where coating degradation is leading to more exposed pipe surface area.
CP survey data/ history			Can be useful in interpreting results

OPERATIONAL DATA

Pipe operating temperature		Significant differences generally require separate ECDA regions	Can locally influence coating degradation rates.
Operating stress levels			Impacts critical flaw size and remaining life predictions
Monitoring programs- (Coupons, patrol, leak surveys etc.)		May provide input when defining ECDA regions	May impact repair, remediation, replacement schedules
Pipe inspection reports – excavation		May provide input when defining ECDA regions	
Repair history/ records – such as steel/composite repair sleeves, repair locations etc	May affect ECDA tool selection	Prior repair methods, such as anode additions) can create a local difference that may influence region selection	Provide useful data for post-assessment analyses such as interpreting data near repairs
Leak/rupture history(EC)		Can indicate condition of existing pipe	
Evidence of external MIC			MIC may accelerate external corrosion rates.

Type/ freq.– third party damage			High third party damage areas may have increased indirect inspection coating fault detects.
Data from previous over-the ground surveys			Essential for pre-assessment and region selection
Pressure test dates/pressures			Influences inspection intervals
Other prior integrity related activities –CIS, LI runs etc.	May impact ECDA tool selection – isolated vs. larger corroded areas		Useful post-assessment data

Table E.II.2: ECDA Tool Selection Matrix

CONDITIONS	CIS	DCVG	ACVG	Pearson	Electro-magnetic
Coating holidays	2	1,2	1,2	2	2
Third party damage	2	1,2	1,2	2	2
Anodic zones on bare pipe	2	NA	NA	NA	NA
Near river or water crossing	2	NA	NA	NA	2
Under frozen ground	NA	NA	NA	NA	2
Stray currents	2	1, 2	1, 2	2	2
Shielded corrosion activity (See Notes)	NA	NA	NA	NA	NA
Adjacent metallic structures	2	1, 2	1, 2	NA	2
Near parallel pipelines	2	1, 2	1, 2	NA	2
Under HVAC overhead elect transmission lines	2	1, 2	1, 2	2	NA
Shorted casing	2	1, 2	1, 2	2	2
Under paved roads	NA	NA	NA	NA	2
Uncased crossing	2	1, 2	1, 2	2	2
Cased crossing	NA	NA	NA	NA	2
At deep burial locations (See Notes)	2	1, 2	1, 2	2	2
Wetlands (Limited)	2	1, 2	1, 2	2	2
Rocky terrain/ rock ledges/rock backfill	NA	NA	NA	NA	2

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Notes

1 = Applicable: Small coating holidays (isolated & typically < 1sq. in.) and conditions that do not cause fluctuations in CP potentials under normal operating conditions.

2 = Applicable: Large coating holidays (isolated or continuous) or conditions that cause fluctuations in CP potentials under normal operating conditions.

NA: Not Applicable to this tool without additional considerations.

Shielding by Disbonded Coating: None of these survey tools is capable in the detection of this type coating condition that exhibits no physical orifice to the soil. If there is a pathway to the soil through a small holiday or orifice, then tools such as DCVG or electromagnetic methods may detect these defect areas. This definition pertains to only one type of shielding from disbonded coatings. We also find current shielding from other metallic structures and from geological conditions.

Pipe Depths: All of the survey tools are sensitive in the detection of coating holidays where pipe burials exceed normal depths. Field conditions and terrain may affect depth ranges and detection sensitivity.

Limitations & Detection Capabilities: All survey methods are limited in sensitivity to the type and make up of the soil, presence of rock and rock ledges, type coating such as high dielectric tapes, construction practices, interference currents, other structures, etc. At least two or more survey methods may be required in order to get desired results and confidence levels required.

III. Internal Corrosion Direct Assessment of Gas Transmission Lines

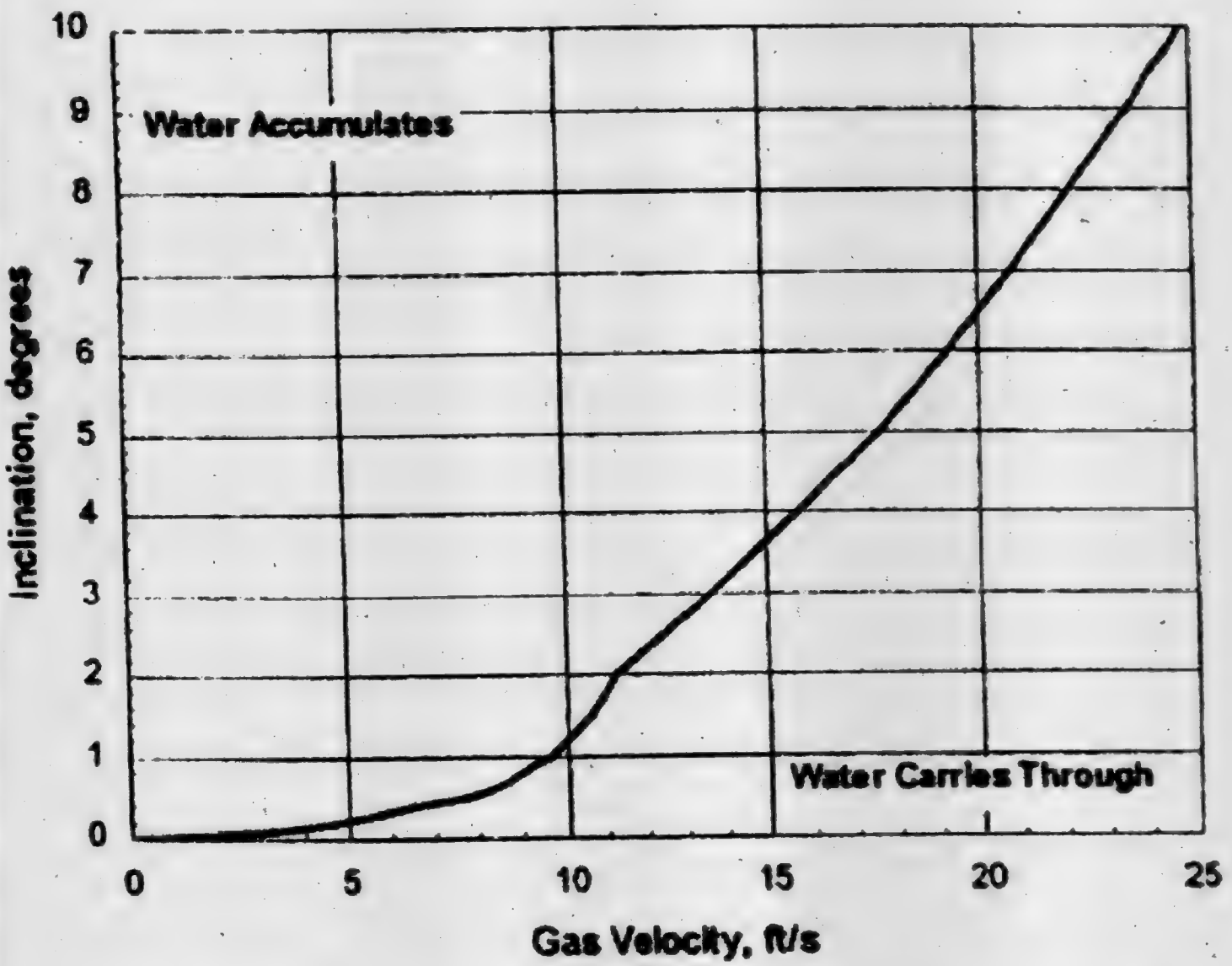

Simple spreadsheet to calculate critical angle for liquid hold-up. Line diameter, pressure, and temperature are data inputs.

Graph E. III.1 Critical Angle for Liquid Hold-up

Issued in Washington, DC on January 22, 2003.

Stacey L. Gerard,

Associate Administrator for Pipeline Safety.

[FR Doc. 03–603 Filed 1–27–03; 8:45 am]

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Federal Register

Tuesday,
January 28, 2003

Part III

Securities and Exchange Commission

17 CFR Parts 240, 245, and 249
Insider Trades During Pension Fund Blackout Periods; Final Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 240, 245 and 249

[Release No. 34–47225; IC–25909; File No. S7–44–02]

RIN 3235–AI71

Insider Trades During Pension Fund Blackout Periods

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: We are adopting rules that clarify the application and prevent evasion of Section 306(a) of the Sarbanes-Oxley Act of 2002. Section 306(a) prohibits any director or executive officer of an issuer of any equity security from, directly or indirectly, purchasing, selling or otherwise acquiring or transferring any equity security of the issuer during a pension plan blackout period that temporarily prevents plan participants or beneficiaries from engaging in equity securities transactions through their plan accounts, if the director or executive officer acquired the equity security in connection with his or her service or employment as a director or executive officer. In addition, the rules specify the content and timing of the notice that issuers must provide to their directors and executive officers and to the Commission about a blackout period. The rules are designed to facilitate compliance with the will of Congress as reflected in Section 306(a), and to eliminate the inequities that may result when pension plan participants and beneficiaries are temporarily prevented from engaging in equity securities transactions through their plan accounts.

DATES: *Effective Date:* January 26, 2003. *Compliance Date:* Issuers must comply with § 245.104(b)(3)(i) and (iii) of Regulation BTR beginning March 31, 2003.

FOR FURTHER INFORMATION CONTACT: Mark A. Borges, Special Counsel, Office of Rulemaking, at (202) 942–2910, or Anne Krauskopf, Special Counsel, Office of Chief Counsel, at (202) 942–2900, at the Division of Corporation Finance, United States Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0312.

SUPPLEMENTARY INFORMATION: We are adopting new Regulation BTR [1] under the Securities Exchange Act of 1934 (the "Exchange Act")[2] and amendments to Exchange Act Rules 13a–11[3] and 15d–11[4] and to Forms 20–F,[5] 40–F[6] and 8–K[7] under the Exchange Act.

I. Introduction

On July 30, 2002, the Sarbanes-Oxley Act of 2002 (the "Act") was enacted.[8] Section 306(a) of the Act,[9] entitled "Prohibition of Insider Trading During Pension Fund Blackout Periods," makes it unlawful for any director or executive officer of an issuer of any equity security, directly or indirectly, to purchase, sell or otherwise acquire or transfer any equity security of the issuer during any pension plan blackout period with respect to such equity security, if the director or executive officer acquired the equity security in connection with his or her service or employment as a director or executive officer.[10] Section 306(a) also requires an issuer to timely notify its directors and executive officers and the Commission of a blackout period that could affect them.[11] Section 306(a) takes effect January 26, 2003, 180 days after the date of enactment of the Act.[12]

Section 306(a) equalizes the treatment of corporate executives and rank-and-file employees with respect to their ability to engage in transactions involving issuer equity securities during a pension plan blackout period if the securities have been acquired in connection with their service to, or employment with, the issuer. When a director or executive officer engages in a transaction involving issuer equity securities at a time when participants or beneficiaries in the issuer's pension plans cannot engage in similar transactions through their plan accounts, the director or executive officer obtains an unfair advantage that the statute seeks to ameliorate. Section 306(a) restricts the ability of directors and executive officers to trade in such securities until a pension plan blackout period has ended and the ability to trade through the pension plan has been restored to plan participants and beneficiaries. This should align the interests of directors and executive officers more closely with those of the rank-and-file employees who engage in transactions involving issuer equity securities through an issuer's pension plans.

After consulting with the Secretary of Labor, we proposed new Regulation Blackout Trading Restriction ("BTR") on November 6, 2002 to clarify the scope and operation of Section 306(a) and to prevent evasion of the statutory trading prohibition.[13] We received 18 letters commenting on the Proposing Release.[14] Many commenters suggested changes to the proposed rules to better achieve the purposes of section 306(a). Today, we are adopting Regulation BTR, which has been revised as discussed below, to incorporate a number of the changes recommended by commenters.

II. Regulation BTR

A. Statutory Trading Prohibition

As adopted, Regulation BTR addresses the operation of section 306(a) of the Act and its prohibition against trading in issuer equity securities by an issuer's directors and executive officers during a pension plan blackout period as follows:

- New Rule 100 [15] defines terms used in Section 306(a) and Regulation BTR.
- New Rule 101 [16] clarifies the operation of the Section 306(a) trading prohibition and establishes several exemptions from the prohibition.
- New Rule 102 [17] describes the exceptions to the definition of "blackout period" set forth in Section 306(a)(4)(A) of the Act.[18]
- New Rule 103 [19] clarifies the operation of the private remedy for a violation of the Section 306(a) trading prohibition, including a method for calculation of recoverable profits.
- New Rule 104 [20] sets forth the content and delivery requirements for the notice that an issuer must provide in connection with a blackout period.

As proposed and adopted, in order to give effect to section 306(a) in a manner consistent with Congressional intent, we are incorporating a number of concepts developed under Section 16 of the

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[1] 17 CFR 245.100–104.

[2] 15 U.S.C. 78a *et seq.*

[3] 17 CFR 240.13a–11.

[4] 17 CFR 240.15d–11.

[5] 17 CFR 249.220f.

[6] 17 CFR 249.240f.

[7] 17 CFR 249.308.

[8] Pub. L. 107–204, 116 Stat. 745 (2002).

[9] 15 U.S.C. 7244(a).

[10] Section 306(a)(1) of the Act [15 U.S.C. 7244(a)(1)].

[11] Section 306(a)(6) of the Act [15 U.S.C. 7244(a)(6)].

[12] Section 306(c) of the Act [15 U.S.C. 7244(c)].

[13] Release No. 34–46778 (Nov. 2, 2002) [67 FR 69430] (the "Proposing Release").

[14] The commenters included six members of the legal and accounting communities, eight professional associations, three issuers and one individual investor. These comment letters and a summary of comments are available for public inspection and copying in our Public Reference Room, 450 Fifth Street, NW, Washington, DC 20549, in File No. S7–44–02. Public comments submitted electronically and the summary of comments is available on our Web site *http://www.sec.gov.*

[15] 17 CFR 245.100.

[16] 17 CFR 245.101.

[17] 17 CFR 245.102.

[18] 15 U.S.C. § 7244(a)(4)(A).

[19] 17 CFR 245.103.

[20] 17 CFR 245.104.

Exchange Act [21] into Regulation BTR. By doing so, we are able to take advantage of a well-established body of rules and interpretations concerning the trading activities of corporate insiders and, as to directors and executive officers of domestic issuers, facilitate enforcement of the Section 306(a) trading prohibition through monitoring of the reports publicly filed by directors and executive officers pursuant to Section 16(a) of the Exchange Act.[22]

B. Discussion

1. Issuers Subject to Trading Prohibition

Section 306(a) of the Act applies to directors and executive officers of issuers as defined in Section 2(a)(7) of the Act.[23] Consistent with this definition, new Rule 100(k) of Regulation BTR [24] provides that the term "issuer" means an issuer (as defined in Section 3(a)(8) of the Exchange Act [25]):

- The securities of which are registered under Section 12 of the Exchange Act; [26]
- That is required to file reports under Section 15(d) of the Exchange Act; [27] or
- That files, or has filed, a registration statement that has not yet become effective under the Securities Act of 1933 (the "Securities Act") [28] and that the issuer has not withdrawn.

Accordingly, Section 306(a) and Regulation BTR apply to the directors and executive officers of domestic issuers, foreign private issuers, small business issuers and, in rare instances, registered investment companies.[29]

While some commenters questioned the application of Section 306(a) to foreign private issuers,[30] the statute, by its terms, applies to these issuers.[31] However, Regulation BTR limits Section 306(a)'s application to the directors and executive officers of a foreign private issuer to situations where 50% or more of the participants or beneficiaries located in the United States in individual account plans maintained by the issuer are subject to a temporary trading suspension in issuer equity securities, and the affected participants and beneficiaries represent an appreciable portion of the issuer's worldwide employees.[32]

Similarly, Section 306(a) does not distinguish between large and small issuers. Accordingly, the statute applies to any entity that satisfies the definition of "issuer" under Section 2(a)(7) of the Act without regard to the entity's size, including a "small business issuer." [33] One commenter indicated that the compliance burden for small business issuers would not be disproportionate to the benefits to be obtained from compliance with Section 306(a) since concerns related to trading by corporate insiders are not unique to large issuers.[34]

2. Persons Subject to Trading Prohibition

Section 306(a) of the Act applies to directors and executive officers of issuers subject to the Act. While one commenter expressly supported the proposed definitions for these terms,[35] some commenters suggested that we use the existing definition in Exchange Act Rule 3b–7 [36] to define the term "executive officer." [37] We continue to believe that the broader definition in Exchange Act Rule 16a–1(f) [38] is more suitable for purposes of Section 306(a) and Regulation BTR because of its focus on the policy-making functions of the individual in question.[39] In addition, as some commenters noted, this definition will make it easier for domestic issuers to coordinate their trading policies for their corporate insiders who are subject to Section 16 of the Exchange Act and monitor compliance with both Section 16 and Section 306(a). Accordingly, new Rule 100(c)(1) of Regulation BTR [40] provides that, except in the case of a foreign private issuer, the term "director" has the meaning set forth in Section 3(a)(7) of the Exchange Act [41]

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[21] 15 U.S.C. 78p. Because the purposes of Section 306(a) of the Act and Section 16 of the Exchange Act are not identical, however, we note that Section 306(a) and Regulation BTR will not always be interpreted the same as Section 16 if these purposes diverge or the interests of investors require a different interpretation.

[22] 15 U.S.C. 78p(a).

[23] 15 U.S.C. 7201(7).

[24] 17 CFR 245.100(k).

[25] 15 U.S.C. 78c(a)(8). Section 3(a)(8) of the Exchange Act defines the term "issuer" to mean "any person who issues or proposes to issue any security; except that with respect to certificates of deposit for securities, voting-trust certificates, or collateral-trust certificates, or with respect to certificates of interest or shares in an unincorporated investment trust not having a board of directors or of the fixed, restricted management, or unit type, the term "issuer" means the person or persons performing the acts and assuming the duties of depositor or manager pursuant to the provisions of the trust or other agreement or instrument under which such securities are issued; and except that with respect to equipment-trust certificates or like securities, the term "issuer" means the person by whom the equipment or property is, or is to be, used."

[26] 15 U.S.C. 78*l*.

[27] 15 U.S.C. 78o(d).

[28] 15 U.S.C. 77a *et seq*.

[29] For a discussion of the application of Regulation BTR to registered investment companies, see the Proposing Release at Section II.B.1.d.

[30] *See* the Letter dated December 24, 2002 of the American Bar Association (the "ABA Letter") and the Letter dated November 27, 2002 of the Organization for International Investment.

[31] Exchange Act Rule 3b–4(c) [17 CFR 240.3b–4(c)] defines the term "foreign private issuer" to mean "any foreign issuer other than a foreign government except an issuer meeting the following conditions: (1) more than 50% of the issuer's outstanding voting securities are directly or indirectly held of record by residents of the United States; and (2) any of the following: (i) The majority of the executive officers or directors are United States citizens or residents; (ii) more than 50% of the assets of the issuer are located in the United States; or (iii) the business of the issuer is administered principally in the United States."

[32] *See* Section II.B.5.d below.

[33] Item 10(a)(1) of Regulation S–B [17 CFR 228.10(a)(1)] defines the term "small business issuer" to mean "a company that meets all of the following criteria: (i) Has revenues of less than $25,000,000; (ii) is a U.S. or Canadian issuer; (iii) is not an investment company; and (iv) if a majority-owned subsidiary, the parent corporation is also a small business issuer. *Provided however*, that an entity is not a small business issuer if it has a public float (the aggregate market value of the issuer's outstanding securities held by non-affiliates) of $25,000,000 or more."

[34] *See* the Letter dated December 16, 2002 of PricewaterhouseCoopers LLP (the "PWC Letter").

[35] *See* the PWC Letter.

[36] 17 CFR 240.3b–7. This definition differs from the definition in Exchange Act Rule 16a–1(f) [17 CFR 240.16a–1(f)] in that it does not expressly include an issuer's principal financial officer or principal accounting officer (or controller). It also does not expressly cover officers of a parent corporation or explain how to identify an issuer's executive officers when the issuer is a limited partnership or trust.

[37] *See* the Letter dated December 16, 2002 of America's Community Bankers (the "ACB Letter") and the Letter dated December 16, 2002 of the Profit Sharing/401k Council of America (the "PSCA Letter").

[38] Exchange Act Rule 16a–1(f) defines the term "officer" to mean "an issuer's president, principal financial officer, principal accounting officer (or, if there is no such accounting officer, the controller), any vice-president of the issuer in charge of a principal business unit, division or function (such as sales, administration or finance), any other officer who performs a policy-making function, or any other person who performs similar policy-making functions for the issuer. Officers of the issuer's parent(s) or subsidiaries shall be deemed officers of the issuer if they perform such policy-making functions for the issuer. In addition, when the issuer is a limited partnership, officers or employees of the general partner(s) who perform policy-making functions for the limited partnership are deemed officers of the limited partnership. When the issuer is a trust, officers or employees of the trustee(s) who perform policy-making functions for the trust are deemed officers of the trust."

[39] Thus, the standard for determining whether an individual is an "executive officer" for purposes of Section 306(a) of the Act and Regulation BTR is the same as the standard applicable under Exchange Act Rule 16a–1(f). For example, the term "policy-making functions" does not include policy-making functions that are not significant. Similarly, if pursuant to Item 401(b) of Regulation S–K [17 CFR 229.401(b)], an issuer identifies an individual as an "executive officer," it will be presumed that the board of directors of the issuer made that judgment and that the individuals so identified are executive officers of the issuer for purposes of Section 306(a) and Regulation BTR, as are such other persons enumerated in Exchange Act Rule 16a–1(f) but not in Item 401(b). See the note to Exchange Act Rule 16a–1(f).

[40] 17 CFR 245.100(c)(1).

[41] 15 U.S.C. 78c(a)(7). As we have previously noted, this definition reflects a functional and

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and new Rule 100(h)(1)[42] provides that, except in the case of a foreign private issuer, the term "executive officer" has the same meaning as the term "officer" in Exchange Act Rule 16a–1(f).

In the case of a foreign private issuer, the commenters supported our proposal to specifically identify the directors and executive officers that are subject to the Section 306(a) trading prohibition.[43] Thus, new Rule 100(c)(2) of Regulation BTR[44] provides that the term "director" means a director who is a management employee of the issuer and new Rule 100(h)(2)[45] provides that the term "executive officer" means the principal executive officer or officers, the principal financial officer or officers and the principal accounting officer or officers of the issuer.

3. Securities Subject to Trading Prohibition

Section 306(a) of the Act applies to any equity security of an issuer other than an exempt security.[46] We did not receive any comments regarding the proposed definitions for the terms "equity security," "equity security of the issuer" and "derivative security." Accordingly, new Rule 100(e) of Regulation BTR[47] provides that the term "equity security" has the meaning set forth in Section 3(a)(11) of the Exchange Act[48] and Exchange Act Rule 3a11–1,[49] new Rule 100(f)[50] provides that the term "equity security of the issuer" includes any equity security or derivative security relating to an issuer, whether or not issued by that issuer, and new Rule 100(d)[51] provides that the term "derivative security" has the same meaning as in Exchange Act Rule 16a–1(c).[52]

In the case of a derivative security, the definition in new Rule 100(d) is to be interpreted in a manner consistent with the rules and interpretations under Section 16 of the Exchange Act. For example, an interest that may be settled only in cash, but the value of which is denominated or based on an equity security, such as phantom stock, will be considered a derivative security for purposes of Section 306(a) and Regulation BTR. Consequently, an acquisition of a "cash-only" derivative security or the exercise, sale or other transfer of the security during a blackout period will be subject to the Section 306(a) trading prohibition unless the transaction qualifies as an exempt transaction under Regulation BTR.

4. Transactions Subject to Trading Prohibition

Section 306(a) of the Act makes it unlawful for a director or executive officer of an issuer of any equity security, directly or indirectly,[53] to purchase, sell or otherwise acquire or transfer any equity security of the issuer during a pension plan blackout period with respect to the equity security, if the director or executive officer "acquires such equity security in connection with his or her service or employment as a director or executive officer." While Section 306(a) uses the word "acquires" to describe the equity securities that are subject to the statutory trading prohibition, we believe that Congress intended to cover both equity securities that a director or executive officer "acquired" before, or "acquires" during, a pension plan blackout period.[54] Thus, we read the Section 306(a) trading prohibition to cover:

- An acquisition of issuer equity securities by a director or executive officer during a blackout period if the acquisition is in connection with his or her service or employment as a director or executive officer; and
- A disposition of issuer equity securities by a director or executive officer during a blackout period if the disposition involves issuer equity securities acquired in connection with his or her service or employment as a director or executive officer.[55]

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flexible approach to determining whether a person is a director of an entity. *See* Release No. 34–46685 (Oct. 18, 2002) [67 FR 65325] at n. 7. Thus, for purposes of Section 306(a) of the Act and Regulation BTR, an individual's title is not dispositive as to whether he or she is a director. As under Section 16 of the Exchange Act, attention must be given to the individual's underlying responsibilities or privileges with respect to the issuer and whether he or she has a significant policy-making role with the issuer. *See* Release No. 34–28869 (Feb. 21, 1991) [56 FR 7242], at Section II.A.1. An individual may hold the title "director" and yet, because he or she is not acting as such, not be deemed a director. Release No. 34–26333 (Dec. 2, 1988) [53 FR 49997], at Section III.A.2.

[42] 17 CFR 245.100(h)(1).

[43] *See* the ABA Letter and the Letter dated December 16, 2002 of Cleary, Gottlieb, Steen & Hamilton (the "Cleary Letter").

[44] 17 CFR 245.100(c)(2).

[45] 17 CFR 245.100(h)(2).

[46] New Rule 100(i) of Regulation BTR [17 CFR 245.100(i)] defines the term "exempt security" by reference to the definition in Section 3(a)(12) of the Exchange Act [15 U.S.C. 78c(a)(12)].

[47] 17 CFR 245.100(e).

[48] 15 U.S.C. 78c(a)(11). Section 3(a)(11) of the Exchange Act defines the term "equity security" to mean "any stock or similar security; or any security future on any such security; or any security convertible, with or without consideration, into such a security, or carrying any warrant or right to subscribe to or purchase such a security; or any such warrant or right; or any other security which the Commission shall deem to be of similar nature and consider necessary or appropriate, by such rules and regulations as it may prescribe in the public interest or for the protection of investors, to treat as an equity security."

[49] 17 CFR 240.3a11–1. Exchange Act Rule 3a11–1 defines the term "equity security" to mean "any stock or similar security, certificate of interest or participation in any profit sharing agreement, preorganization certificate or subscription, transferable share, voting trust certificate or certificate of deposit for an equity security, limited partnership interest, interest in a joint venture, or certificate of interest in a business trust; any security future on any such security; or any security convertible, with or without consideration into such a security, or carrying any warrant or right to subscribe to or purchase such a security; or any such warrant or right; or any put, call, straddle, or other option or privilege of buying such a security from or selling such a security to another without being bound to do so."

[50] 17 CFR 245.100(f).

[51] 17 CFR 245.100(d).

[52] 17 CFR 240.16a–1(c). Exchange Act Rule 16a–1(c) defines the term "derivative securities" to mean "any option, warrant, convertible security, stock appreciation right, or similar right with an exercise or conversion privilege at a price related to an equity security, or similar securities with a value derived from the value of an equity security, but shall not include: (1) Rights of a pledgee of securities to sell the pledged securities; (2) rights of all holders of a class of securities of an issuer to receive securities pro rata, or obligations to dispose of securities, as a result of a merger, exchange offer, or consolidation involving the issuer of the securities; (3) rights or obligations to surrender a security, or have a security withheld, upon the receipt or exercise of a derivative security or the receipt or vesting of equity securities, in order to satisfy the exercise price or the tax withholding consequences of receipt, exercise or vesting; (4) interests in broad-based index options, broad-based index futures, and broad-based publicly traded market baskets of stocks approved for trading by the appropriate federal governmental authority; (5) interests or rights to participate in employee benefit plans of the issuer; or (6) rights with an exercise or conversion privilege at a price that is not fixed; or (7) options granted to an underwriter in a registered public offering for the purpose of satisfying over-allotments in such offering."

[53] Under Regulation BTR, a purchase, sale or other acquisition or transfer of an equity security will be attributed to a director or executive officer if he or she has a pecuniary interest in the transaction. To promote consistency and to simplify compliance, new Rule 100(*l*) of Regulation BTR [17 CFR 100(*l*)] defines the terms "pecuniary interest" and "indirect pecuniary interest" by reference to the definitions in Exchange Act Rule 16a–1(a)(2) [17 CFR 240.16a–1(a)(2)]. The definition in new Rule 100(*l*) also encompasses the portfolio exclusion of Exchange Act Rule 16a–1(a)(2)(iii) [17 CFR 240.16a–1(a)(2)(iii)].

[54] This interpretation of the statute is reflected in new Rule 101(a) of Regulation BTR [17 CFR 245.101(a)].

[55] Accordingly, a transaction involving equity securities that are not acquired in connection with service or employment as a director or executive officer is not subject to the Section 306(a) trading prohibition.

(a) "*Acquired in Connection with Service or Employment as a Director or Executive Officer*".

As adopted, new Rule 100(a) of Regulation BTR[56] defines the term "acquired such equity security in connection with service or employment as a director or executive officer" to include equity securities acquired by a director or executive officer:

- At a time when he or she was a director or executive officer under a compensatory plan, contract, authorization or arrangement,[57] including, but not limited to, plans relating to options, warrants or rights, pension, retirement or deferred compensation or bonus, incentive or profit-sharing (whether or not set forth in any formal plan document), including a compensatory plan, contract, authorization or arrangement with a parent, subsidiary or affiliate;
- At a time when he or she was a director or executive officer as a result of any transaction or business relationship described in paragraph (a) or (b) of Item 404 of Regulation S–K[58] or, in the case of a foreign private issuer, Item 7.B of Form 20–F (but without application of the disclosure thresholds of such provisions), to the extent that he or she has a pecuniary interest[59] in the equity securities;
- At a time when he or she was a director or executive officer, as "director's qualifying shares" or other securities that he or she must hold to satisfy minimum ownership requirements or guidelines for directors or executive officers;
- Prior to becoming, or while, a director or executive officer where the equity security was acquired as a direct or indirect inducement to service or employment as a director or executive officer; or
- Prior to becoming, or while, a director or executive officer where the equity security was received as a result of a business combination in respect of an equity security of an entity involved in the business combination that he or she had acquired in connection with service or employment as a director or executive officer of that entity.

[56] 17 CFR 245.100(a).

[57] The scope of the phrase "compensatory plan, contract, authorization or arrangement" includes a "plan" as defined in Item 402(a)(7)(ii) of Regulation S–K [17 CFR 229.402(a)(7)(ii)], as well as an "employee benefit plan" as defined in Securities Act Rule 405 [17 CFR 230.405].

[58] 17 CFR 229.404(a) or (b). The descriptions in Item 404(a) and (b) of Regulation S–K are to be used without regard to whether the issuer is a "small business issuer" subject to the disclosure requirements of Regulation S–B [17 CFR 228.10 *et seq.*].

[59] *See* n. 53 above.

Several commenters expressed concern that, as proposed, the definition was overly broad.[60] One commenter objected to treating equity securities acquired in an arms-length, commercial transaction that is subject to disclosure under Item 404(a) or (b) of Regulation S–K as "acquired in connection with service or employment as a director or executive officer."[61] While this aspect of the definition may reach equity securities that were, in fact, acquired in arms-length, commercial transactions, we believe that it is necessary to prevent evasion of the trading prohibition of Section 306(a) of the Act.

Some commenters opposed treating equity securities acquired to satisfy minimum ownership requirements or guidelines as subject to the Section 306(a) trading prohibition, arguing that securities purchased in the open market are not "acquired in connection with service or employment as a director or executive officer," regardless of the extrinsic motivation, and that the proposed definition was contrary to the statutory language and the intent of Section 306(a).[62] They also asserted that requiring a director or executive officer subject to minimum ownership requirements or guidelines to identify and track equity securities purchased in the open market to satisfy such requirements or guidelines would impose an unjustified administrative burden.

We agree that equity securities purchased in the open market before an individual becomes a director or executive officer (and, thus, before the minimum ownership requirements or guidelines apply) should not be subject to the Section 306(a) trading prohibition even if they are used to satisfy the ownership requirements or guidelines after the individual becomes a director or executive officer. We, therefore, revised this aspect of the definition to indicate that equity securities used as directors' qualifying shares or to satisfy an issuer's minimum security ownership requirements or guidelines will be considered "acquired in connection with service or employment as a director or executive officer" only where an individual acquires the equity securities at a time when he or she is a director or executive officer of the issuer. Since these equity securities are clearly "acquired in connection with service or employment as a director or executive officer," we do not believe that it is overly burdensome to require directors and executive officers to identify and track these securities for purposes of Section 306(a).

Some commenters objected to treating equity securities acquired by an individual before becoming a director or executive officer as "acquired in connection with service or employment as a director or executive officer" if the equity securities were awarded to induce the individual to become an employee or non-executive officer of the issuer.[63] These commenters argued that subjecting these equity securities to the statutory trading prohibition at the time an employee or non-executive officer is promoted to director or executive officer status was contrary to the statutory language and did not serve the goals of Section 306(a). They suggested that inducement awards be treated as "acquired in connection with service or employment as a director or executive officer" only if they are directly related to an individual becoming a director or executive officer. Because, in some situations, an equity securities award to an individual joining an issuer as an employee or non-executive officer may be an inducement related to subsequent service or employment as a director or executive officer, we chose not to exclude inducement awards related to becoming an employee or non-executive officer from the definition. Instead, to ensure that this type of inducement award is not used to evade the statutory trading prohibition, we revised the definition to make it clear that an award acquired as a direct or indirect inducement to service or employment as a director or executive officer will be considered "acquired in connection with service or employment as a director or executive officer." Awards that are an inducement to becoming an employee or non-executive officer, but are not a direct or indirect inducement to service or employment as a director or executive officer, will not be considered "acquired in connection with service or employment as a director or executive officer."

Finally, commenters requested clarification on one other aspect of the definition. New Rule 100(a)(5) of Regulation BTR[64] makes clear that, in the case of equity securities acquired in connection with a merger, consolidation or other business combination by an individual who was a director or executive officer of the target entity and is to become a director or executive officer of the acquiring entity at the time

[60] *See* the ABA Letter, the ACB Letter, the PSCA Letter, the PWC Letter and the Letter dated December 16, 2002 of Sullivan & Cromwell (the "S&C Letter").

[61] *See* the ACB Letter.

[62] *See* the ABA Letter, the PSCA Letter and the S&C Letter.

[63] *See* the ACB Letter and the S&C Letter.

[64] 17 CFR 245.100(a)(5).

of, or following the completion of, the transaction, the securities will be considered "acquired in connection with service or employment as a director or executive officer" to the extent that they are received in respect of equity securities of the target entity that were "acquired in connection with service or employment as a director or executive officer" of the target entity.[65] For example, where an executive officer of a target entity becomes an executive officer of the acquiring entity in connection with a business combination and, in the transaction, receives equity securities of the acquiring entity in respect of equity securities of the target entity that he or she owned, the equity securities received will be considered "acquired in connection with service or employment as a director or executive officer" only to the extent that they are received in respect of securities that were previously "acquired in connection with service or employment as a director or executive officer" of the target entity.

(b) *Service or Employment Presumption.*

To simplify identification of equity securities involved in a disposition subject to the trading prohibition of Section 306(a)(1) of the Act and to prevent evasion of the trading prohibition, we proposed an irrebuttable presumption that any equity securities sold or otherwise transferred during a blackout period were "acquired in connection with service or employment as a director or executive officer" to the extent that a director or executive officer owned such securities at the time of the transaction, without regard to the actual source of the securities. One commenter supported the proposed presumption, citing the difficulty in tracing the actual source of the securities disposed.[66] However, most commenters opposed the presumption, asserting that because it would treat all equity securities held as fungible, it would act as an absolute bar on sales or other dispositions during a blackout period, regardless of how the securities actually were acquired. [67] Some commenters indicated that, because a violation of Section 306(a)(1) is not limited to a private action for profit recovery, an irrebuttable presumption would potentially expose directors and executive officers to civil and criminal penalties.[68] They argued that the proposed presumption would effectively erase the "acquired in connection with service or employment as a director or executive officer" requirement from Section 306(a) of the Act.

These commenters encouraged us to permit directors and executive officers to specifically identify, or "trace," the source of equity securities sold or otherwise transferred during a blackout period to establish that the transaction did not involve securities "acquired in connection with service or employment as a director or executive officer." They pointed out that because "tracing" is permitted under both the Internal Revenue Code[69] and some federal securities laws,[70] it would not impose an undue burden on directors and executive officers.

We are persuaded by these comments that an irrebuttable presumption is unnecessary. Accordingly, new Rule 101(b) of Regulation BTR[71] provides that any equity securities sold or otherwise transferred during a blackout period by a director or executive officer of an issuer will be considered to have been "acquired in connection with service or employment as a director or executive officer" to the extent that the director or executive officer owned such securities at the time of the transaction, unless he or she establishes that the equity securities were not "acquired in connection with service or employment as a director or executive officer." To establish this defense, a director or executive officer must specifically identify the origin of the equity securities in question (which must not be "acquired in connection with service or employment as a director or executive officer" as defined in new Rule 100(a)), and demonstrate that this identification of the equity securities is consistent for all purposes related to the transaction (such as tax reporting and any applicable disclosure and reporting requirements).[72]

For example, if an executive officer owned 1,000 shares of an issuer's common stock, 250 shares of which were acquired as the result of the exercise of an employee stock option, a sale of 250 shares of common stock during a blackout period will be treated as a sale of the option shares and, therefore, subject to the Section 306(a) trading prohibition, unless the executive officer establishes a different source of the shares sold and this identification is consistent for all purposes related to the transaction (such as tax reporting and any applicable disclosure and reporting requirements).

(c) *Transitional Situations.*

Except as provided in new Rule 100(a), equity securities acquired by an individual before he or she becomes a director or executive officer are not "acquired in connection with service or employment as a director or executive officer" for purposes of Section 306(a) of the Act. Thus, equity securities acquired under a compensatory plan, contract, authorization or arrangement while an individual is an employee, but not a director or executive officer, will not be subject to the Section 306(a) trading prohibition. However, equity securities acquired by an employee before becoming a director or executive officer will be considered "acquired in connection with service or employment as a director or executive officer" if the equity securities are part of an inducement award.[73]

In contrast, equity securities acquired by an individual in connection with service or employment as a director or executive officer before an entity becomes an "issuer" (as defined in Section 2(a)(7) of the Act and new Rule 100(k)) are considered "acquired in connection with service or employment as a director or executive officer" for purposes of Section 306(a) and Regulation BTR and are subject to the statutory trading prohibition. Similarly, equity securities acquired by a director or executive officer in connection with his or her service or employment as a director or executive officer of an "issuer" (as defined in Section 2(a)(7) of the Act and new Rule 100(k)) before the effective date of Section 306(a) are subject to that section and Regulation BTR.

(d) *Exempt Transactions.*

Because some transactions by a director or executive officer involving issuer equity securities do not present the concerns that Section 306(a) of the Act is intended to remedy, we are adopting new Rule 101(c) of Regulation BTR,[74] which exempts from the statutory trading prohibition:

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[65] In addition, equity securities acquired in connection with a merger, consolidation or other business combination by an individual (whether or not a director or executive officer of the target entity) as an inducement to becoming a director or executive officer of the acquiring entity will be considered "acquired in connection with service or employment as a director or executive officer." See new Rule 100(a)(4) of Regulation BTR [17 CFR 245.100(a)(4)].

[66] *See* the PWC Letter.

[67] *See*, for example, the ABA Letter, the Letter dated December 16, 2002 of Intel Corporation (the "Intel Letter") and the PSCA Letter.

[68] *See* the ABA Letter and the S&C Letter.

[69] *See* Treas. Reg. 1.1012–1(c).

[70] *See*, for example, Securities Act Rule 144(d) [17 CFR 230.144(d)].

[71] 17 CFR 245.101(b).

[72] While not required, a director or executive officer may want to add a note describing the date and nature of the transaction in which the securities were acquired in the "Explanation of Responses" section of the Form 4 [17 CFR 249.104] reporting the transaction.

[73] *See* the discussion in Section II.B.4.a above.

[74] 17 CFR 245.101(c).

• Acquisitions of equity securities under dividend or interest reinvestment plans;

• Purchases or sales of equity securities pursuant to a trading arrangement that satisfies the affirmative defense conditions of Exchange Act Rule 10b5–1(c);[75]

• Purchases or sales of equity securities, other than discretionary transactions,[76] pursuant to certain "tax-conditioned" plans;[77] and

• Increases or decreases in the number of equity securities held as a result of a stock split or stock dividend applying equally to all equity securities of that class.

While commenters generally supported the proposed exemptions, some requested clarification as to the intent of the statement in the Proposing Release that "[a]wareness of an impending blackout period would be considered awareness of material, non-public information that could render the [proposed exemption for a trading arrangement that satisfies the affirmative defense conditions of Exchange Act Rule 10b5–1(c)] unavailable." In particular, commenters expressed concern that the statement could have implications beyond Section 306(a). One commenter noted that a broad reading of this statement could preclude a director or executive officer from establishing an Exchange Act Rule 10b5–1(c) trading arrangement indefinitely if he or she was aware that a pension plan blackout period was planned, even if the dates of the blackout period had not been established.[78] The same commenter asserted that the statement would not permit a director or executive officer to evaluate the materiality of his or her knowledge about an impending blackout period on the basis of applicable facts and circumstances. Another commenter noted that the statement created uncertainty as to whether "awareness" of an impending blackout period was material non-public information that would preclude trading in an issuer's securities by any person with such awareness until the blackout period was publicly disclosed.[79] A third commenter suggested that we clarify the statement to provide that "awareness" of an impending blackout period would require awareness of the actual or approximate beginning and ending dates of a specific blackout period (whether or not notice of the blackout period as required by Section 306(a)(6) of the Act had been received).[80]

We did not intend for this statement to be read so broadly. The statement simply was intended to clarify that a director or executive officer who is aware of a scheduled blackout period could not subsequently enter into or modify an Exchange Act Rule 10b5–1(c) trading arrangement to circumvent the Section 306(a) trading prohibition. The "awareness" of an impending blackout period described in the statement would require awareness of the actual or approximate beginning or ending dates of a specific blackout period (whether or not notice of the blackout period as required by Section 306(a)(6) had been received), and not merely awareness of the potential for a blackout period. Accordingly, we have modified new Rule 101(c)(2) of Regulation BTR[81] to provide that transactions pursuant to a trading arrangement that satisfies the affirmative defense conditions of Exchange Act Rule 10b5–1(c) will be exempt from the Section 306(a) trading prohibition, as long as the arrangement is not entered into or modified during the blackout period in question or at a time when the director or executive officer is aware of the actual or approximate beginning or ending dates of the blackout period, whether or not the director or executive officer has received notice of the blackout period as required by Section 306(a)(6). This information may or may not be material non-public information for other purposes, depending on the applicable facts, including whether the information has not been disclosed or otherwise made public and whether the information is material under customary legal analysis.[82] We do not intend that our treatment of this information under Regulation BTR affect that customary legal analysis of materiality.

The exemption for purchases or sales of equity securities pursuant to certain "tax-conditioned" plans in new Rule 101(c)(3) of Regulation BTR[83] has been expanded to include purchases or sales pursuant to an employee benefit plan of a foreign private issuer that either has been approved by the taxing authority of a foreign jurisdiction, or is eligible for preferential treatment under the tax laws of a foreign jurisdiction because the plan provides for broad-based employee participation. This change is intended to equalize the treatment of directors and executive officers of domestic and foreign private issuers where a foreign issuer has an employee benefit plan maintained outside the United States that is substantially similar to a "tax-conditioned" employee benefit plan.[84]

As adopted, the exemption in new Rule 101(c)(3) does not extend to "discretionary transactions," such as an intra-plan transfer involving an issuer equity securities fund or a cash distribution funded by a volitional disposition of an issuer equity security, that occur during a blackout period. However, it would cover acquisitions or dispositions of equity securities made in connection with death, disability, retirement or termination of employment or transactions involving a diversification or distribution required by the Internal Revenue Code to be made available to plan participants because these transactions are not "discretionary transactions."[85]

We have expanded new Rule 101(c) to include the following additional exemptions from the statutory trading prohibition that were suggested by commenters:

• Compensatory grants and awards of equity securities (including options and stock appreciation rights) pursuant to a plan that, by its terms, permits directors or executive officers to receive grants or awards, provides for grants or awards to occur automatically and specifies the terms and conditions of the grants or awards;

• Exercises, conversions or terminations of derivative securities that were not written or acquired by a director or executive officer during the blackout period in question or while aware of the actual or approximate beginning or ending dates of the blackout period, and where (i) the derivative security, by its terms, may be exercised, converted or terminated only on a fixed date, with no discretionary provision for earlier exercise, conversion or termination,[86] or (ii) the derivative security is exercised, converted or terminated by a counterparty and the director or

[75] 17 CFR 240.10b5–1(c).

[76] As defined in Exchange Act Rule 16b–3(b)(1) [17 CFR 240.16b–3(b)(1)].

[77] These plans include Qualified Plans (as defined in Exchange Act Rule 16b–3(b)(4) [17 CFR 240.16b–3(b)(4)]), Excess Benefit Plans (as defined in Exchange Act Rule 16b–3(b)(2) [17 CFR 240.16b–3(b)(2)]) and Stock Purchase Plans (as defined in Exchange Act Rule 16b–3(b)(5) [17 CFR 240.16b–3(b)(5)]) and, with respect to foreign private issuers, specified similar plans. See n. 83 below and the accompanying text. Some commenters requested exemptions for specific transactions under these "tax-conditioned" plans. As discussed in this section, we do not believe that these exemptions are necessary. See n. 85 below and the accompanying text.

[78] See the PSCA Letter.

[79] See the Intel Letter.

[80] See the ABA Letter.

[81] 17 CFR 245.101(c)(2).

[82] See *TSC Industries, Inc.* v. *Northway, Inc.*, 426 U.S. 438 (1976); *Basic, Inc.* v. *Levinson*, 485 U.S. 224 (1988).

[83] 17 CFR 245.101(c)(3).

[84] See n. 77 above.

[85] See n. 76 above.

[86] For example, European-style options.

executive officer does not exercise any influence on the counterparty with respect to whether or when to exercise, convert or terminate the derivative security;

- Acquisitions or dispositions of equity securities involving a *bona fide* gift or a transfer by will or the laws of descent and distribution;
- Acquisitions or dispositions of equity securities pursuant to a domestic relations order;
- Sales or other dispositions of equity securities compelled by the laws or other requirements of an applicable jurisdiction; and
- Acquisitions or dispositions of equity securities in connection with a merger, acquisition, divestiture or similar transaction occurring by operation of law.[87]

Section 306(a)(3) of the Act[88] permits us to provide appropriate exemptions from the statutory trading prohibition, citing examples of transactions eligible for exemption such as purchases pursuant to an automatic dividend reinvestment program or purchases or sales made pursuant to an advance election. These examples reflect transactions that occur automatically, are made pursuant to an advance election or are otherwise outside the control of the director or executive officer. The exemptions that we originally proposed and are adopting embody one or both of these characteristics. The additional exemptions that we are adopting also reflect these characteristics.

Compensatory grants and awards of equity securities during a blackout period pursuant to a plan that, by its terms, provides for grants and awards to be made to directors and executive officers automatically and specifies the terms and conditions of the grants or awards are outside the control of the directors and executive officers and do not present the concerns that Section 306(a) is intended to remedy. Similarly, an exercise, conversion or termination of a derivative security written or acquired by a director or executive officer before the blackout period in question and while not aware of the actual or approximate beginning or ending dates of the blackout period is a transaction that is outside the control of the director or executive officer where the derivative security either, by its terms, may be exercised, converted or terminated only on a fixed date, or is exercised, converted or terminated by a counterparty where the director or executive officer does not exercise any influence on the counterparty with respect to whether or when to exercise, convert or terminate the derivative security.

The exemption for *bona fide* gifts and acquisitions or dispositions of equity securities by will or the laws of descent and distribution is modeled on a similar exemption under Section 16 of the Exchange Act.[89] The exemption for acquisitions or dispositions pursuant to a domestic relations order is modeled on the exemption in Exchange Act Rule 16a–12.[90]

The exemption for sales or other dispositions of equity securities compelled by the laws or other requirements of an applicable jurisdiction addresses a category of involuntary transactions that do not provide the opportunity for improper self-dealing or present the unfairness Section 306(a) was designed to address. Finally, the exemption for acquisitions or dispositions of equity securities in connection with a merger, acquisition, divestiture or similar transaction occurring by operation of law is intended to cover an exchange of equity securities affecting substantially all of an entity's equity security holders that occurs upon a statutory merger, acquisition, divestiture or similar transaction that closes during a blackout period.

5. Blackout Period

Section 306(a)(4)(A) of the Act defines the term "blackout period" to mean any period of more than three consecutive business days during which the ability of not fewer than 50% of the participants or beneficiaries under all individual account plans maintained by an issuer to purchase, sell or otherwise acquire or transfer an interest in any equity security of the issuer held in such an individual account plan is temporarily suspended by the issuer or by a fiduciary[91] of the plan. In the Proposing Release, we solicited comment on whether a trading suspension of three business days or less should be considered a "blackout period" for purposes of the statute.

Several commenters opposed expanding the definition of the term "blackout period" to encompass periods of three business days or less. One commenter noted that the specific statutory language providing this standard had resulted from extensive discussions among policymakers and representatives of the voluntary employer-provided retirement system, and that blackout periods of three business days or less do not significantly impact the rights of plan participants and beneficiaries.[92] Two commenters requested that Regulation BTR be consistent with the rules under Section 306(b) of the Act adopted by the Department of Labor (the "DOL Rules"), so that issuers are not subject to different blackout period rules.[93] Two commenters noted that because there may be unforeseen technical problems or other emergencies that could result in unscheduled temporary trading suspensions lasting one or two business days which would not be subject to the advance notice requirement of the DOL Rules, it would be impracticable to comply with Section 306(a) of the Act in these circumstances.[94]

Although Regulation BTR retains the "more than three consecutive business days" language in its definition of the term "blackout period," we remain concerned that the problems Section 306(a) is intended to address may not be limited to blackout periods that last longer than three consecutive business days. A sharp decline in the value of an issuer's equity securities can take place in a single day, and, if that decline coincides with a temporary trading suspension in the issuer's pension plans, it is still unfair that directors and executive officers may be able to dispose of the equity securities that they acquired in connection with service or employment as a director or executive officer while rank-and-file employees are precluded from selling issuer equity securities in their individual plan accounts. While most of these temporary trading suspensions are likely the result of unforeseeable technical problems or other emergencies, we are mindful that, given the requirements of the statute, issuers and plan administrators may be motivated to structure blackout periods to last three business days or less. We would view any such efforts to

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[87] *See* new Rules 101(c)(4)–(9) of Regulation BTR [17 CFR 245.101(c)(4)–(9)].

[88] 15 U.S.C. 7244(a)(3).

[89] *See* Exchange Act Rule 16b–5 [17 CFR 240.16b–5].

[90] 17 CFR 240.16a–12.

[91] For purposes of the Act and Regulation BTR, a plan administrator will be considered a "fiduciary" of the plan even if it has invoked the rules under Section 404(c) of the Employment Retirement Income Security Act of 1974 ("ERISA") [29 U.S.C. 1104(c)] to avoid liability for losses in participant or beneficiary accounts where participants and beneficiaries are provided an opportunity to exercise control over the assets in their individual accounts and are given an opportunity to choose from a broad range of investments.

[92] *See* the PSCA Letter.

[93] *See* the ACB Letter and the PWC Letter.

[94] *See* the ACB Letter and the Letter dated December 16, 2002 of The ERISA Industry Committee (the "ERIC Letter").

circumvent Section 306(a) as potential violations of Regulation BTR. We will continue to consider these issues, to attempt to ascertain whether blackout periods of three business days or less are or may become a concern and to talk to the Department of Labor about possible solutions.

(a) *Individual Account Plan.*

New Rule 100(j) of Regulation BTR [95] sets forth the definition of the term "individual account plan" for purposes of Section 306(a) of the Act. As specified in Section 306(a)(5) of the Act,[96] this definition is based on Section 3(34) of ERISA.[97] This definition encompasses a variety of pension plans, including Section 401(k) plans, profit-sharing and savings plans, stock bonus plans and money purchase pension plans.

As specified in the statute, the definition excludes a one-participant retirement plan.[98] In addition, we have modified the definition to exclude pension plans, including deferred compensation plans, in which participation is limited to directors of the issuer. In the case of a temporary trading suspension in issuer equity securities in such a plan, the unfairness of directors and executive officers being able to trade their equity securities while an issuer's employees may not does not exist.[99]

(b) *Blackout Period.*

New Rule 100(b) of Regulation BTR [100] contains the definition of the term "blackout period" as clarified to achieve the purposes of Section 306(a) of the Act. The new rule makes clear that, in determining whether a temporary trading suspension in issuer equity securities constitutes a "blackout period," the individual account plans to be considered are individual account plans maintained by an issuer that permit participants or beneficiaries located in the United States to acquire or hold equity securities of the issuer. This includes individual account plans that:

- Permit participants or beneficiaries to invest their plan contributions in issuer equity securities;
- Include an "open brokerage window" that permits participants or beneficiaries to invest in the equity securities of any publicly-traded company, including the issuer;
- Match employee contributions with issuer equity securities; or
- Reallocate forfeitures that include issuer equity securities to the remaining plan participants.

This would include such an individual account plan, whether or not the plan actually contains equity securities of the issuer at the time of the temporary trading suspension and related determination.[101] In addition, new Rule 100(b)(3)(i) of Regulation BTR [102] provides that, for purposes of determining the individual account plans maintained by the issuer, the rules under Section 414(b), (c), (m) and (o) of the Internal Revenue Code [103] with respect to entities treated as a single employer are to be applied.

Two commenters questioned whether all individual account plans maintained by an issuer that permit participants or beneficiaries located in the United States to acquire or hold equity securities of the issuer should be included in the percentage test for determining whether a temporary trading suspension constitutes a "blackout period." [104] These commenters noted that, as proposed, the 50% test would take into account any individual account plan (wherever located) maintained by an issuer that permits any participants or beneficiaries located in the United States to acquire or hold issuer equity securities. Thus, even though an individual account plan may be maintained outside the United States, if even a single participant or beneficiary was located in the United States, all of the participants or beneficiaries in the plan would have to be taken into account under the 50% test. One commenter asserted that although foreign issuers may have a small number of U.S. employees participating in their pension plans maintained outside the United States, because these issuers may not keep records of such participation (because the plans are not subject to ERISA), to avoid confusion and inaccurate calculations the 50% test should not apply to these plans.[105]

We believe that a clarification is warranted. Accordingly, new Rule 100(b)(3)(ii) of Regulation BTR [106] excludes an individual account plan maintained outside of the United States primarily for the benefit of nonresident aliens from the determination of whether a temporary trading suspension constitutes a "blackout period." [107] This should focus the determination of whether a blackout period will occur on those individual account plans that are primarily for the benefit of participants and beneficiaries located in the United States. Because ERISA applies to any "individual account plan" that is primarily for the benefit of U.S. participants or beneficiaries and Section 404(b) of ERISA [108] provides that the indicia of ownership of the assets of plans subject to ERISA may not be maintained outside the jurisdiction of the United States, we do not believe that this modification is inconsistent with the objectives of Section 306(a).

(c) *Determining Participants and Beneficiaries.*

Once an issuer has identified the relevant individual account plans, it must determine whether the temporary suspension of trading in its equity securities affects 50% or more of the participants or beneficiaries under these plans. This is accomplished by comparing the number of participants or beneficiaries located in the United

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[95] 17 CFR 245.100(j).

[96] 15 U.S.C 7244(a)(5). Consequently, a temporary trading suspension in issuer equity securities in an individual account plan that is a pension plan as defined in ERISA may trigger the Section 306(a) trading prohibition, whether or not the plan is actually subject to ERISA.

[97] 29 U.S.C. 1002(34). Section 3(2)(A) of ERISA [29 U.S.C. 1002(2)(A)] defines the term "pension plan" to mean "any plan, fund, or program . . . established or maintained by an employer or an employee organization, or by both, to the extent that by its express terms or as a result of surrounding circumstances such plan, fund, or program (i) provides retirement income to employees, or (ii) results in a deferral of income by employees for periods extending to the termination of covered employment or beyond, regardless of the method of calculating the contributions made to the plan, the method of calculating the benefits under the plan or the method of distributing benefits from the plan."

[98] *See* Section 306(a)(5) of the Act.

[99] This change was made in response to a comment in the Letter dated December 13, 2002 of the Investment Company Institute (the "ICI Letter"). We have made this exclusion applicable to all issuers, not just investment companies, because we believe that it is unnecessary to include director-only plans within the scope of the rule, whether or not the issuer is an investment company.

[100] 17 CFR 245.100(b).

[101] Thus, a temporary trading suspension applicable to such an individual account plan in which no issuer equity securities are actually held by plan participants or beneficiaries will trigger a determination of whether a "blackout period" will occur in that plan. Similarly, an individual account plan maintained by an issuer that permits participants or beneficiaries to acquire or hold equity securities of the issuer, whether or not the plan actually contains equity securities of the issuer at the time of the determination, will be taken into account in determining whether a temporary trading suspension in a different plan constitutes a "blackout period."

[102] 17 CFR 245.100(b)(3)(i).

[103] 26 U.S.C. 414(b), (c), (m) and (o). Section 414(b) provides that, for purposes of various provisions of the Internal Revenue Code, all employees of all corporations that are members of a "controlled group" of corporations are to be treated as employed by a single employer. Section 414(c) provides "single-employer" treatment for certain groups of partnerships and proprietorships under common control, while Section 414(m) provides "single-employer" treatment for organizations that provide services for one another.

[104] *See* the ERIC Letter and the S&C Letter.

[105] *See* the S&C Letter.

[106] 17 CFR 245.100(b)(3)(ii).

[107] This type of employee benefit plan is excluded from the coverage provisions of ERISA. *See* Section 4(b)(4) of ERISA [29 U.S.C. 1003(b)(4)].

[108] 29 U.S.C. 1104(b).

States who are subject to the temporary trading suspension in issuer equity securities to the number of participants or beneficiaries located in the United States under all individual account plans maintained by the issuer.[109] In the case of a domestic issuer, where this percentage is 50% or more the temporary trading suspension constitutes a "blackout period," so that the Section 306(a) trading prohibition applies to the issuer's directors and executive officers.

We recognize that it may be difficult to determine the number of participants and beneficiaries in an individual account plan because participants and beneficiaries continuously enter and leave such plans. For example, newly eligible employees regularly enter plans, terminating and retiring employees regularly leave plans, beneficiaries of deceased employees frequently acquire benefit rights under plans and employees commonly enter and leave plans as a result of acquisitions and divestitures.[110] On any day, it may be difficult for an issuer to know precisely how many participants and beneficiaries are then covered by all of its individual account plans. As a result, issuers will need to apply the 50% test on the basis of estimates.

For purposes of determining the number of participants and beneficiaries in an individual account plan, commenters suggested a variety of ways to establish a reasonably accurate estimate.[111] One commenter suggested that the determination be made using data as of any convenient date within the 12-month period preceding the start of the temporary trading suspension.[112] We believe that this approach strikes the proper balance between ensuring that reasonably accurate data is used to make the required calculation and minimizing the burden on issuers. New Rule 100(b)(4)(i) of Regulation BTR[113] provides that an issuer may use plan census data as of any date within the 12-month period preceding the beginning date of the temporary trading suspension in question (such as the last day of the most recently completed fiscal year) to determine the number of participants or beneficiaries in its individual account plans. However, where there has been a significant change in participation in an individual account plan since the date selected (for example, because of a merger or divestiture), an issuer is required to use plan census data as of the most recent practicable date that reflects such change (for example, the most recently completed fiscal quarter or month for that plan). This should provide adequate flexibility to issuers to determine the number of participants or beneficiaries in their individual account plans using reasonably accurate and available data.

In addition, new Rule 100(b)(4)(ii) of Regulation BTR[114] provides that, in making the calculation, issuers may aggregate participants or beneficiaries under their individual account plans without regard to overlapping plan participation. This should alleviate the burden that might otherwise arise where individual employees participate in more than one individual account plan maintained by an issuer. Under this provision, an issuer is permitted to calculate the aggregate number of participants and beneficiaries under each of its individual account plans, even if an individual who participates in multiple plans is counted with respect to each plan in which he or she participates.

(d) *Foreign Private Issuers.*

In the case of a foreign private issuer, we proposed a concurrent second calculation to be applied to determine if a temporary trading suspension in issuer equity securities in the individual account plans maintained by the issuer constitutes a "blackout period" for purposes of Section 306(a) of the Act. This calculation would have compared the number of participants or beneficiaries located in the United States who are subject to the temporary trading suspension in issuer equity securities to the number of participants or beneficiaries under all individual account plans maintained by the issuer worldwide.[115] Where this percentage exceeded 15% and the concurrent 50% test also was met, the Section 306(a) trading prohibition would have applied to the foreign private issuer's directors and executive officers.

However, commenters expressed concern that, as proposed, the 15% test would not operate as intended.[116] These commenters noted that many foreign private issuers do not maintain pension plans that meet the ERISA definition of an "individual account plan," other than the plans they maintain for their U.S. employees. In particular, they noted that outside the United States employees customarily participate in defined benefit pension plans, rather than individual account plans. Because the proposed 15% test was based on the percentage of an issuer's employees who participate in individual account plans, an issuer maintaining individual account plans only in the United States that were subject to a temporary trading suspension in issuer equity securities almost always would meet the test, even where the number of participants or beneficiaries in those plans was insignificant. In addition, one commenter indicated that many foreign issuers do not maintain centralized information on the types of plans they maintain or the numbers of participants or beneficiaries under the plans subject to the laws of jurisdictions other than the United States.[117]

These commenters suggested that the appropriate balance between protecting U.S. participants and beneficiaries and accommodating the interests of foreign private issuers with a limited U.S. presence could be achieved by comparing the number of participants and beneficiaries located in the United States who are subject to the temporary trading suspension in issuer equity securities to the number of employees of the issuer worldwide. While we agree with this suggestion, we are mindful that, in some situations, such a test may frustrate the purposes of Section 306(a) where a significant number of U.S. employees are affected by a temporary trading suspension in issuer equity securities, even though that number may not represent at least 15% of a foreign private issuer's total number of employees. Accordingly, we are modifying the separate calculation for foreign private issuers in new Rule 100(b)(2) of Regulation BTR[118] to provide that if the number of participants or beneficiaries located in the United States in individual account plans maintained by a foreign private issuer who are affected by a temporary trading suspension in issuer equity securities either exceeds 15% of the total number of employees of the issuer and its consolidated subsidiaries or 50,000 affected participants and beneficiaries[119] and the concurrent 50% test is satisfied, the Section 306(a) trading prohibition will apply to the issuer's directors and executive officers.

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[109] *See* new Rule 100(b)(1) of Regulation BTR.

[110] *See* the ERIC Letter.

[111] *See*, for example, the Letter dated December 16, 2002 of Computer Sciences Corporation, the PSCA Letter and the PWC Letter.

[112] *See* the ABA Letter.

[113] 17 CFR 245.100(b)(4)(i).

[114] 17 CFR 245.100(b)(4)(ii).

[115] *See* proposed Exchange Act Rule 100(b)(2).

[116] *See* the ABA Letter; the Cleary Letter; the S&C Letter and the Letter dated December 16, 2002 of Shearman & Sterling.

[117] *See* the S&C Letter.

[118] 17 CFR 245.100(b)(2).

[119] We arrived at this number after examining the number of employees (including the number of employees based in the United States) of several foreign private issuers, applying the 15% calculation to these issuers and balancing the objectives of Section 306(a) of the Act with the interests of foreign private issuers.

Under new Exchange Act Rule 100(b)(2):

- If the number of participants and beneficiaries located in the United States in individual account plans maintained by a foreign private issuer who are subject to a temporary trading suspension in issuer equity securities exceeds 15% of the number of employees of the issuer worldwide (and the concurrent 50% test is satisfied), the issuer will be considered to have a sufficient presence in the United States for purposes of applying the Section 306(a) trading prohibition to the issuer's directors and executive officers.
- If the number of participants and beneficiaries located in the United States in individual account plans maintained by a foreign private issuer who are subject to a temporary trading suspension in issuer equity securities does not exceed 15% of the number of employees of the issuer worldwide but exceeds 50,000 participants and beneficiaries (and the concurrent 50% test is satisfied), the issuer will be considered to have a sufficient presence in the United States for purposes of applying the Section 306(a) trading prohibition to the issuer's directors and executive officers.
- If the number of participants and beneficiaries located in the United States in individual account plans maintained by a foreign private issuer who are subject to a temporary trading suspension in issuer equity securities does not exceed 15% of the issuer's employees worldwide and is 50,000 or less participants and beneficiaries (even if the concurrent 50% test is satisfied), the issuer's presence in the United States will be considered sufficiently small so that its directors and executive officers will not be subject to the Section 306(a) trading prohibition.

The application of these principles is illustrated by the following examples:

- *Example 1.* Company X is a foreign private issuer with 100,000 employees worldwide. 30,000 employees located in the United States participate in the company's two U.S. pension plans, which are individual account plans. A fiduciary of one of the U.S. pension plans temporarily suspends the ability of all plan participants to trade in issuer equity securities through their plan accounts. This temporary trading suspension affects 16,000 participants in the U.S. plans. Since the number of participants located in the United States in individual account plans maintained by the issuer who are subject to the temporary trading suspension comprises 50% or more of the total number of participants located in the United States in individual account plans maintained by the issuer (16,000/30,000), and since the number of participants located in the United States in individual account plans maintained by the issuer who are subject to the temporary trading suspension represents more than 15% of the issuer's employees worldwide (16,000/100,000), the temporary trading suspension is a "blackout period" for purposes of Section 306(a) of the Act and the statutory trading prohibition applies to the issuer's directors and executive officers.
- *Example 2.* Company X is a foreign private issuer with 1,000,000 employees worldwide. 100,000 employees located in the United States participate in the company's two U.S. pension plans, which are individual account plans. A fiduciary of one of the U.S. pension plans temporarily suspends the ability of all plan participants to trade in issuer equity securities through their plan accounts. This temporary trading suspension affects 60,000 participants in the U.S. plans. Since the number of participants located in the United States in individual account plans maintained by the issuer who are subject to the temporary trading suspension comprises 50% or more of the total number of participants located in the United States in individual account plans maintained by the issuer (60,000/100,000), and since the number of participants located in the United States in individual account plans maintained by the issuer who are subject to the temporary trading suspension exceeds 50,000, the temporary trading suspension is a "blackout period" for purposes of Section 306(a) of the Act even though the 60,000 participants located in the United States in individual account plans maintained by the issuer who are subject to the temporary trading suspension represent less than 15% of the issuer's employees worldwide (150,000/1,000,000). Consequently, the statutory trading prohibition applies to the issuer's directors and executive officers.
- *Example 3.* Company X is a foreign private issuer with 100,000 employees worldwide. 6,000 employees located in the United States participate in the company's two U.S. pension plans, which are individual account plans. A fiduciary of one of the U.S. pension plans temporarily suspends the ability of all plan participants to trade in issuer equity securities through their plan accounts. This temporary trading suspension affects 4,000 participants in the U.S. plans. Although the number of participants located in the United States in individual account plans maintained by the issuer who are subject to the temporary trading suspension is 50% or more of the total number of participants located in the United States in individual account plans maintained by the issuer (4,000/6,000), because this number represents 15% or less of the issuer's employees worldwide (4,000/100,000) and is less than 50,000 participants, the temporary trading suspension is not a "blackout period" for purposes of Section 306(a) of the Act. Consequently, the statutory trading prohibition does not apply to the issuer's directors and executive officers.

(e) *Exceptions to Definition of Blackout Period.*

Section 306(a)(4)(B) of the Act [120] expressly excludes two types of temporary trading suspensions from the definition of the term "blackout period." These exceptions are for:

- a regularly scheduled period in which the participants and beneficiaries may not purchase, sell or otherwise acquire or transfer an interest in any equity security of an issuer, if such period is:
  - —Incorporated into the individual account plan; and
  - —Timely disclosed to employees before they become participants under the individual account plan or as a subsequent amendment to the plan;[121] and
- any temporary trading suspension that would otherwise be a "blackout period" that is imposed solely in connection with persons becoming participants or beneficiaries, or ceasing to be participants or beneficiaries, in an individual account plan by reason of a corporate merger, acquisition, divestiture or similar transaction involving the plan or plan sponsor.[122]

New Rule 102 of Regulation BTR [123] addresses the application of these exceptions.[124] New Rule 102(a) of Regulation BTR [125] clarifies the exception for regularly scheduled trading suspensions. It provides that the requirement that the regularly scheduled period be incorporated into the individual account plan may be satisfied by including a description of the regularly scheduled trading suspension in issuer equity securities, including the suspension's frequency and duration and the plan transactions to be suspended or otherwise affected, in either the official plan documents or other documents or instruments that govern plan operations. In the latter case, these documents or instruments may include an ERISA Section 404(c) notice or an advance notice included in either the plan's summary plan description or any other official plan communication.

The new rule also provides that disclosure of the regularly scheduled trading suspension will be considered timely if the employee is notified of the trading suspension at any time prior to, or within 30 calendar days after, the employee's formal enrollment in the

[120] 15 U.S.C. 7244(a)(4)(B).

[121] *See* Section 306(a)(4)(B)(i) of the Act [15 U.S.C. 7244(a)(4)(B)(i)].

[122] *See* Section 306(a)(4)(B)(ii) of the Act [15 U.S.C. 7244(a)(4)(B)(ii)].

[123] 17 CFR 245.102.

[124] These clarifications are necessary to resolve ambiguities that might otherwise require literal compliance with the conditions of the exceptions in order to avoid having the described temporary trading suspensions be "blackout periods" for purposes of Section 306(a) of the Act.

[125] 17 CFR 245.102(a).

plan, or, in the case of a subsequent amendment to the plan, within 30 calendar days after adoption of the amendment. The new rule provides that the notice may be in any graphic form that is reasonably accessible to the intended recipient.[126]

Some commenters indicated that the 30-day notice requirement would present a problem for existing plans with a regularly scheduled trading suspension.[127] These commenters noted that ERISA typically requires delivery of information to a new plan participant within 90 days after enrollment in the plan, and that an issuer that previously provided notice of a regularly scheduled trading suspension in a summary plan description within this 90-day period would not qualify for the exception. To avoid this problem, they suggested that we establish a transition period during which issuers could cure any past failures to satisfy the 30-day notice requirement. Because we believe that the adoption of Regulation BTR should not penalize an issuer retroactively, we will consider an issuer to have satisfied the advance notice requirement of new Rule 102(a)(2) with respect to an individual account plan that includes a regularly scheduled trading suspension that is maintained by an issuer on January 26, 2003, the effective date of Section 306(a) of the Act, if the issuer previously provided the information described in the rule in the documents or instruments required by ERISA to be provided to plan participants within the time period authorized by ERISA.[128]

In the case of a temporary trading suspension in issuer equity securities imposed in connection with a merger, acquisition, divestiture or similar transaction, new Rule 102(b) of Regulation BTR[129] provides that the temporary suspension will not constitute a "blackout period" for purposes of Section 306(a) if its principal purpose is to enable individuals to become participants or beneficiaries in an individual account plan by reason of the transaction, or to terminate participation in the plan, even though the suspension also is used to effect other administrative actions that are incidental to the admission or withdrawal of plan participants or beneficiaries. In addition, the new rule clarifies that the exception is available solely if the persons becoming participants or beneficiaries are not permitted to participate in the same class of equity securities after the merger, acquisition, divestiture or similar transaction as before the transaction. This will limit the scope of the exception to temporary trading suspensions affecting persons employed by or affiliated with the acquired or divested entity.

6. Remedies

As we discussed in the Proposing Release, Section 306(a) of the Act contains two distinct sets of remedies. A violation of the statutory trading prohibition in Section 306(a)(1) of the Act is treated as a violation of the Exchange Act and subject to all resulting sanctions, including Commission enforcement action.[130] In addition, where a director or executive officer realizes a profit from a prohibited transaction during a blackout period, Section 306(a)(2) of the Act[131] permits an issuer, or a security holder of the issuer on its behalf, to bring an action to recover that profit.[132]

Under the latter provision, an issuer, or a security holder on its behalf, may initiate an action only if a director or executive officer realized a profit as a result of a prohibited purchase, sale or other acquisition or transfer of an equity security during a blackout period. As under Section 16(b) of the Exchange Act, this concept of "realized profits" means that the director or executive officer received a direct or indirect pecuniary benefit from the transaction.[133] Although we did not propose a specific method for calculating the amount recoverable by an issuer under Section 306(a)(2) in the Proposing Release, we suggested several possible ways to calculate recoverable profits and solicited comment on these alternatives, as well as any other method consistent with the purposes of the statute.

Some commenters, acknowledging the potential complexity of the calculation, encouraged us not to provide a comprehensive rule.[134] One commenter suggested that the calculation be left to the courts to determine on a case-by-case basis or, alternatively, that we establish a specific formula or guidelines for use in enforcement and private civil actions.[135]

In the Proposing Release, one of the potential methods to calculate profits on which we solicited comment was based on the difference between the actual amount paid or received by a director or executive officer as a result of the purchase, sale or other acquisition or transfer of an equity security during a blackout period and the market value of the issuer's equity securities on the first date after the end of the blackout period.[136] One commenter endorsed this approach as the appropriate measure of the profit recoverable in a private action for a violation of the Section 306(a) trading prohibition.[137] We believe that this approach has merit, both in terms of its simplicity and its adherence to the statute's purposes. Section 306(a)(2) seeks to equalize the treatment of corporate executives and rank-and-file employees with respect to their opportunity, during a pension plan blackout period, to engage in transactions in issuer equity securities that were acquired in connection with their service to, or employment with, the issuer. Since a plan participant or beneficiary may not engage in a transaction in issuer equity securities through his or her plan account until the blackout period has ended, the statute similarly restricts directors and executive officers. This profit recovery measure focuses on the difference between the amount that a director or executive officer actually paid or received in the transaction and the amount he or she would have paid or received had the transaction been conducted after the end of the blackout period.

To provide guidance to the courts in Section 306(a)(2) private actions against directors and executive officers who have violated the statutory trading prohibition, new Rule 103(c) of Regulation BTR[138] provides that:

- Where a transaction involves a purchase, sale or other acquisition or transfer (other than a grant, exercise, conversion or termination of a derivative security) of an equity security of the issuer that is registered pursuant to Section 12(b) or 12(g) of the Exchange Act[139] and listed on a national securities exchange or listed in an automated inter-dealer quotation system of a national securities association, profit is to be measured by comparing the difference between the amount paid or received for the equity security on the date of the transaction during the blackout period and the average market

[126] *See* new Rule 102(a)(2) of Regulation BTR [17 CFR 245.102(a)(2)].

[127] *See* the ABA Letter, the ERIC Letter and the S&C Letter.

[128] *See* Section 104(b) of ERISA [29 U.S.C. 1024(b)].

[129] 17 CFR 245.102(b).

[130] *See* Sections 3(b)(1) and 306(a)(1) of the Act [15 U.S.C. 7202(b)(1) and 7244(a)(1)]. *See* also the Proposing Release at Section II.B.6.a.

[131] 15 U.S.C. 7244(a)(2).

[132] 15 U.S.C. 7244(a)(2).

[133] *See* Exchange Act Rule 16a–1(a)(2)(i) [17 CFR 240.16a–1(a)(2)(i)]. *See* also *Feder* v. *Frost*, 220 F.3d 29, 34 (2d Cir. 2000).

[134] *See* the ACB Letter and the Cleary Letter.

[135] *See* the ACB Letter.

[136] *See* the Proposing Release, at Section II.B.6.c.

[137] *See* the ABA Letter.

[138] 17 CFR 245.103(c).

[139] 15 U.S.C. 78l(b) or (g).

price of the equity security calculated over the first three trading days after the ending date of the blackout period.

• Where a transaction is not otherwise described in the preceding paragraph, profit is to be measured in a manner that is consistent with the objective of identifying the amount of any gain realized or loss avoided as a result of the transaction taking place during the blackout period rather than taking place outside of the blackout period.

To mitigate the effect of large fluctuations in the market price of an issuer's equity securities after a blackout period and deter attempts to manipulate this market price, new Rule 103(c)(1) of Regulation BTR [140] uses a three-day average trading price to determine the amount that a director or executive officer would have paid or received if the transaction had occurred after the end of the blackout period. New Rule 103(c)(2) of Regulation BTR [141] addresses transactions that do not lend themselves to a simple calculation (such as derivative securities transactions, transactions involving an issuer that is required to file reports under Section 15(d) of the Exchange Act and transactions involving an issuer that has filed a registration statement for an initial public offering that has not yet become effective). This rule reflects a pragmatic approach that should permit consideration of equitable factors in determining the amount recoverable in a private action consistent with the purposes of the Section 306(a) trading prohibition. New Rule 103(c)(3) of Regulation BTR [142] provides that the calculation methods with respect to a private action under Section 306(a)(2) do not limit in any respect the authority of the Commission to seek or determine remedies as the result of a transaction taking place in violation of Section 306(a)(1) of the Act.

This operation of the new rule is illustrated by the following examples:

• *Example 1:* The XYZ Company Section 401(k) plan imposes a temporary trading suspension on plan participants and beneficiaries from December 1st through the following January 3rd that is a "blackout period" for purposes of Section 306(a). Director A acquires 1,000 shares of XYZ Company common stock in connection with his or her service as a director on December 15th for $10.00. Between January 6th and 8th, the first three trading days after the end of the blackout period, XYZ Company common stock trades at an average price of $12.00 per share. Director A has "realized" a profit of $2000 that is recoverable under Section 306(a)(2).

• *Example 2:* The XYZ Company Section 401(k) plan imposes a temporary trading suspension on plan participants and beneficiaries from December 1st through the following January 3rd that is a "blackout period" for purposes of Section 306(a). Director A acquires 1,000 shares of XYZ Company common stock in connection with his or her service as a director on December 15th for $10.00. Between January 6th and 8th, the first three trading days after the end of the blackout period, XYZ Company common stock trades at an average price of $8.00 per share. There is no recoverable profit under Section 306(a)(2), as Director A received no price advantage over plan participants from purchasing the share of XYZ Company common stock during the blackout period.

• *Example 3:* The XYZ Company Section 401(k) plan imposes a temporary trading suspension on plan participants and beneficiaries from December 1st through the following January 3rd that is a "blackout period" for purposes of Section 306(a). Director A disposes of 1,000 shares of XYZ Company common stock previously acquired in connection with his or her service as a director on December 15th for $20.00. Between January 6th and 8th, the first three trading days after the end of the blackout period, XYZ Company common stock trades at an average price of $12.00 per share. Director A has "realized" a profit of $8000 that is recoverable under Section 306(a)(2).

• *Example 4:* The XYZ Company Section 401(k) plan imposes a temporary trading suspension on plan participants and beneficiaries from December 1st through the following January 3rd that is a "blackout period" for purposes of Section 306(a). Director A disposes of 1,000 shares of XYZ Company common stock previously acquired in connection with his or her service as a director on December 15th for $20.00. Between January 6th and 8th, the first three trading days after the end of the blackout period, XYZ Company common stock trades at an average price of $25.00 per share. There is no recoverable profit, as Director A received no price advantage over plan participants from selling the share of XYZ Company common stock during the blackout period.

Without regard to whether any amount is recoverable under Section 306(a)(2), in each example Director A has violated Section 306(a)(1) and, as a result, is subject to sanctions, including Commission enforcement action.

7. Notice

Section 306(a)(6) of the Act [143] requires an issuer to provide timely notice to its directors and executive officers and to the Commission of the imposition of a blackout period that triggers the trading prohibition of Section 306(a) of the Act. New Rule 104 of Regulation BTR [144] specifies how issuers must satisfy this notice requirement. As discussed in the Proposing Release, an issuer's failure to provide notice will not preclude a Commission enforcement action for a violation of Section 306(a)(1) of the Act or a private action to recover profits under Section 306(a)(2) of the Act. In addition, an issuer's failure to provide notice, whether or not a director or executive officer subsequently violates the Section 306(a) trading prohibition, may result in a Commission enforcement action against the issuer for violating the Exchange Act.[145]

(a) *Content of Notice.*

New Rule 104(b)(1) of Regulation BTR [146] sets forth the content requirements for the notice required by Section 306(a)(6) of the Act. With one exception, these content requirements track the requirements described in the Proposing Release. New Rule 104(b)(1)(iv) of Regulation BTR [147] requires that the notice specify the length of the blackout period. As proposed, this requirement contemplated that the notice specify the actual or expected beginning and ending dates of the blackout period. One commenter indicated that many issuers would find it difficult to project in advance the beginning and ending dates of a blackout period, noting that a wide range of events (such as problems with plan records or recordkeeper, extensive document reviews and data reconciliation, required modifications to systems and software and the like) could affect these dates.[148] As a result, the dates included in the notice could be missed and issuers would have to incur additional costs to furnish updated notices. To avoid this potential problem, this commenter speculated that issuers would be likely to establish longer blackout periods, thereby unnecessarily prolonging the inability of plan participants and beneficiaries, as well as directors and executive officers, to engage in transactions involving issuer equity securities. To address this concern, the commenter suggested that issuers be permitted to identify in the notice a range of possible dates during which the blackout period might begin or end.

We recognize the difficulty of predicting specific beginning and ending dates for a blackout period well in advance of when the blackout will occur. We also note that the DOL Rules have been modified to permit a more flexible approach in describing the

[140] 17 CFR 245.103(c)(1).
[141] 17 CFR 245.103(c)(2).
[142] 17 CFR 245.103(c)(3).
[143] 15 U.S.C. 7244(a)(6).
[144] 17 CFR 245.104.
[145] See Section 3(b)(1) of the Act.
[146] 17 CFR 245.104(b)(1).
[147] 17 CFR 245.104(b)(1)(iv).
[148] See the ICI Letter.

length of an impending pension plan blackout period.[149] We are persuaded that the rules should afford issuers some flexibility in disclosing the beginning and ending dates of a blackout period in the required notice. As adopted, new Rule 104(b)(1)(iv) permits the length of a blackout period to be specified using either the actual or expected beginning date and ending date of the blackout period, or the calendar week or weeks during which the blackout period is expected to begin and end, provided that during such week or weeks information as to whether the blackout period has begun or ended is readily available, without charge, to affected directors and executive officers (such as via a toll-free telephone number or access to a specified web site) and the notice describes how to access the information.[150] New Rule 104(b)(1)(iv) further permits the length of the blackout period to be described in the notice to the Commission using the calendar week or weeks during which the blackout period is expected to begin and end, provided that the notice also describes how a security holder or other interested person may obtain, without charge, the actual beginning and ending dates of the blackout period. Under the rule, it is permissible to use a "week of _____" beginning date and a "week of _____" ending date. It also is permissible to use a specific beginning date and a "week of _____" ending date, or the converse. For purposes of the rule, a calendar week is defined to mean a seven-day period beginning on Sunday and ending on Saturday.[151]

As discussed in the Proposing Release, if an issuer elects to provide the actual or expected beginning and ending dates of a blackout period in the required notice, and either or both of those dates change, the issuer is required to provide directors and executive officers and the Commission with an updated notice identifying the changed date or dates, explaining the reasons for the change in the date or dates and identifying all material changes in the information contained in the prior notice.[152] The updated notice is required to be provided as soon as reasonably practicable.

(b) *Timing of Notice to Directors and Executive Officers.*

As proposed, the required notice to directors and executive officers would have been due at least 15 calendar days in advance of beginning date of a blackout period. However, one commenter noted that while the content requirements of the notice required under Section 306(a) of the Act and the DOL Rules are essentially the same, the proposed timing requirements were very different and would have placed significantly increased reporting and compliance burdens on issuers.[153] This commenter suggested that there be a single triggering event that would harmonize the different notice requirements.

We believe that, to the extent practicable, the notice requirement of Section 306(a)(6) of the Act should be coordinated with the required notice to pension plan participants and beneficiaries and the issuer under the DOL Rules.[154] Consequently, new Rule 104(b)(2) of Regulation BTR[155] provides that the notice to directors and executive officers will be considered timely if an issuer provides it no later than five business days after the issuer receives the notice from the pension plan administrator required by the DOL Rules.[156] If the issuer does not receive such notice, the issuer must provide its notice to directors and executive officers at least 15 calendar days before the actual or expected beginning date of the blackout period. This requirement will ensure that an issuer typically will not be required to provide the notice required by Section 306(a)(6) to its directors and executive officers until it has received notice of an impending blackout period from the pension plan administrator. Notwithstanding this general requirement, new Rule 104(b)(2)(ii) of Regulation BTR[157] provides that advance notice is not required in any case where an unforeseeable event or circumstances beyond the issuer's reasonable control prevent the issuer from providing advance notice to its directors and executive officers.

(c) *Notice to the Commission on Form 8–K.*

To ensure widespread dissemination of information about an impending blackout period, we proposed that issuers file the notice to the Commission required by Section 306(a)(6) of the Act on Form 8–K. The proposed content of this Form 8–K report was the same as the content of the required notice to directors and executive officers. While one commenter supported the use of Form 8–K to provide the required notice to the Commission,[158] some commenters opposed the requirement, arguing that the disclosure would be of limited interest to investors.[159]

One commenter noted that even if a director or executive officer engaged in a transaction in issuer equity securities during a blackout period, an investor who knew of the Form 8–K report would not know whether the securities in question were subject to the Section 306(a) trading prohibition, only that the transaction had taken place during a blackout period.[160] Another commenter suggested that if public disclosure was necessary, an issuer should be permitted to file a copy of the notice given to participants and beneficiaries by the pension plan administrator under the DOL Rules as an exhibit to its periodic report for the fiscal period during which the blackout period began.[161]

We continue to believe that Congress intended for the notice to the Commission to be publicly available to security holders and other interested persons. Consequently, we believe that Form 8–K is an appropriate vehicle for ensuring timely notice to the Commission of a blackout period that triggers the Section 306(a) trading prohibition.

Some commenters expressed concern about the proposed two business days filing requirement for the Form 8–K.[162] One commenter suggested that since the notice will contain the same information that is required in the notice to the issuer under the DOL Rules, a Form 8–K should be required

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[149] Comments about the difficulty in projecting in advance the beginning and ending dates of a blackout period were raised with the Department of Labor in response to the interim final rules adopted by the Department of Labor last year under Section 306(b) of the Act. *See* 67 FR 64766. As a result, the Department of Labor modified its rules to permit use of a limited range of dates for purposes of disclosing the beginning and ending dates of a blackout period.

[150] This rule is similar to the DOL Rules.

[151] *See* new Rule 104(b)(1)(iv)(C) of Regulation BTR [17 CFR 245.104(b)(1)(iv)(C)].

[152] *See* new Rules 104(b)(2)(iii) and 104(b)(3)(iii) of Regulation BTR [17 CFR 245.104(b)(2)(iii) and 104(b)(3)(iii)].

[153] *See* the Letter dated December 12, 2002 of Compass Bancshares, Inc.

[154] As enacted under Section 306(b) of the Act, Section 101(i)(2)(B) of ERISA [29 U.S.C. 1021(i)(2)(B)] requires that, at least 30 days in advance of a blackout period, a plan administrator notify affected plan participants and beneficiaries of the impending blackout period. In addition, Section 101(i)(2)(E) of ERISA [29 U.S.C. 1021(i)(2)(E)] requires a plan administrator to timely notify the issuer of the plan securities of the impending blackout period.

[155] 17 CFR 245.104(b)(2).

[156] For purposes of the rule, notice will be considered provided as of the date of mailing, if mailed by first class mail, or as of the date of electronic transmission, if transmitted electronically.

[157] 17 CFR 245.104(b)(2)(ii).

[158] *See* the PWC Letter.

[159] *See* the ABA Letter, the ACB Letter and the Intel Letter.

[160] *See* the ACB Letter.

[161] *See* the ABA Letter.

[162] *See* the ACB Letter and the Intel Letter.

only upon an issuer's receipt of notice from the pension plan administrator.[163] Otherwise, an issuer might learn of an impending blackout period, but not have the necessary information to satisfy the notice requirement. In addition, this commenter noted that requiring a Form 8–K to be filed before an issuer is prepared to communicate with plan participants and beneficiaries about an impending blackout period could result in significant confusion for the participants and beneficiaries and recommended that the issuer be permitted to give notice to the Commission only after it is prepared to give meaningful notice to plan participants and beneficiaries.

As previously discussed, we believe that, to the extent practicable, the required notice under Section 306(a)(6) should be coordinated with the required notice to plan participants and beneficiaries and the issuer under the DOL Rules. Consequently, the instructions to Form 8–K have been revised to provide that the notice to the Commission on Form 8–K must be filed on the same day notice is transmitted to directors and executive officers.[164] This requirement will ensure that, in most situations, an issuer will provide notice of an impending blackout period to its directors and executive officers and to the Commission within five days following receipt of notice of the blackout from the pension plan administrator required by the DOL Rules.

New Rule 104(b)(3)(ii) of Regulation BTR[165] provides that a foreign private issuer subject to Section 306(a) must file as an exhibit to its annual report on Form 20–F or 40–F a copy of each notice provided to directors and executive officers pursuant to Section 306(a)(6) and new Exchange Act Rule 104 during the most recently completed fiscal year, unless the notice previously was provided to the Commission in a report on Form 6–K.[166] A foreign private issuer may make the required disclosure sooner under cover of Form 6–K, and we encourage foreign private issuers to do so.

We proposed to subject registered investment companies to Form 8–K requirements for the sole purpose of meeting their filing obligations under Regulation BTR. Two commenters objected to that proposal, suggesting instead alternative means of providing disclosure about blackout periods.[167] However, because we believe that registered investment companies should be subject to the same filing obligations as other issuers in the infrequent instances where the Form 8–K filing requirement would be triggered,[168] we do not believe it is appropriate to create a filing requirement for registered investment companies that is different from that applicable to other issuers under Regulation BTR. Accordingly, we are adopting the Form 8–K requirement for registered investment companies as proposed.[169]

(d) *Transition Period.*

Section 306(a) of the Act takes effect on January 26, 2003. Consequently, for purposes of Regulation BTR, the notice requirement of Section 306(a)(6) of the Act applies to blackout periods commencing on or after January 26, 2003.

For blackout periods commencing between January 26, 2003 and February 25, 2003 (the date 30 days after the effective date of Section 306(a)), issuers should furnish notice to directors and executive officers as soon as reasonably practicable. This approach is intended to ensure that the statutorily-required notice is provided with respect to blackout periods that commence before February 26, 2003. In no event, however, is notice required for a blackout period that commenced before January 26, 2003 and remains in effect on that date.

In the case of notice to the Commission, new Rules 104(b)(3)(i) and (iii) of Regulation BTR are effective 60 days after publication in the **Federal Register** to allow time for the addition of new Form 8–K Item 11 to the Electronic Data Gathering, Analysis and Retrieval ("EDGAR") system. In the interim, an issuer may provide the required notice to the Commission by disclosing the information described in Item 11 under Item 5 of Form 10–Q[170] or 10–QSB,[171] "Other Information," in the first quarterly report filed by the issuer after commencement of the blackout period.

III. Paperwork Reduction Act

The new rules and rule and form amendments contain new and affect existing "collection of information" requirements within the meaning of the Paperwork Reduction Act of 1995 ("PRA").[172] The title for the new collection of information is "Regulation BTR." The titles for the collections of information affected by the amendments are "Form 20–F" (OMB Control No. 3235–0288), "Form 40-F" (OMB Control Number 3235–0381) and "Form 8–K" (OMB Control No. 3235–0060). We estimated that preparation and distribution of the notice to directors and executive officers under the new rules would require approximately 2,357 hours and cost approximately $253,075 annually. We also estimated that preparation of current reports on Form 8–K to provide the required notice to the Commission would require approximately 2,490 hours and cost approximately $336,000 annually. The inclusion of the required information in annual reports on Form 20–F was estimated to require approximately 249 hours and cost approximately $33,625 annually, and the inclusion of the required information in annual reports on Form 40–F was estimated to require approximately 28 hours and cost approximately $3,735 annually.

We published a notice requesting comments on the collection of information requirements and submitted requests to the Office of Management and Budget ("OMB") for approval of the new collection and changes to the existing collections in accordance with the PRA.[173] These requests are pending before the OMB. We did not receive any comments on the PRA analysis contained in the proposing release. An agency may not conduct or sponsor, and a person is not required to respond to, an information collection unless it displays a currently valid OMB control number.

New Regulation BTR clarifies the application and prevents evasion of Section 306(a) of the Sarbanes-Oxley Act. Section 306(a) prohibits the directors and executive officers of an issuer from, directly or indirectly, purchasing, selling or otherwise acquiring or transferring any equity security of the issuer during a pension plan blackout period that prevents plan participants or beneficiaries from engaging in equity securities transactions, if the equity security was acquired in connection with the director's or executive officer's service or employment as a director or executive officer. Section 306(a) also requires an issuer to provide timely notice to its directors and executive officers and to the Commission of the commencement of a blackout period. Regulation BTR specifies the content

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[163] *See* the ACB Letter.

[164] *See* revised Instruction B.1 to Form 8–K.

[165] 17 CFR 245.104(b)(3)(ii).

[166] 17 CFR 249.306.

[167] *See* the ICI Letter and the PWC Letter.

[168] For a discussion of the application of Regulation BTR to registered investment companies, see the Proposing Release at Section II.B.1.d.

[169] *See* amended Exchange Act Rules 13a-11(b) and 15d-11(b) [17 CFR 240.13a-11(b) and 240.15d-11(b)].

[170] 17 CFR 249.308a.

[171] 17 CFR 249.308b.

[172] 44 U.S.C. 3501 *et seq.*

[173] 44 U.S.C. 3507(d) and 5 CFR 1320.11.

and timing of this notice. Compliance with the new rules will be mandatory. The information required by the new rules will not be kept confidential.

IV. Cost-Benefit Analysis

Section 306(a) of the Act prohibits directors and executive officers of an issuer from purchasing, selling or otherwise acquiring or transferring any equity security of the issuer during a pension plan blackout period that prevents plan participants or beneficiaries from engaging in equity security transactions, if the equity security was acquired by the director or executive officer in connection with his or her service or employment as a director or executive officer. In addition, Section 306(a) requires an issuer to provide timely notice to its directors and executive officers, and to the Commission, of the imposition of a pension plan blackout period. The statute is intended to restrict the ability of corporate insiders to trade in the equity securities of an issuer at a time when a substantial portion of the issuer's employees are unable to engage in transactions involving equity securities of the issuer through their individual pension plan accounts.

The new rules clarify the application of Section 306(a) and prevent evasion of its statutory trading prohibition. We recognize that any implementation of the Sarbanes-Oxley Act likely will result in costs as well as benefits and have an effect on the economy. We are sensitive to the costs and benefits of the new rules that specify the content and timing of the notice that issuers are required to provide to their directors and executive officers and that mandate the required notice to the Commission to be provided on a Form 8–K or, in the case of foreign private issuers, in their annual reports on Form 20–F or 40-F. We discuss these costs and benefits below.

A. Benefits

Section 306(a) and the new rules have several important benefits. By restricting the ability of directors and executive officers to trade in an issuer's equity securities when plan participants are unable to do so, the new rules mitigate the differential opportunities between plan participants and beneficiaries and the directors and executive officers of the issuer with respect to such securities.

The content requirements for the notice contemplated by Section 306(a) will help ensure that directors and executive officers of an issuer have all relevant information about an impending blackout period. This will facilitate their compliance with the statutory trading prohibition. In addition, requiring that notice to the Commission be provided on Form 8–K or, in the case of a foreign private issuer, on Form 20–F or 40–F, will help ensure that an issuer's security holders have notice of an impending blackout period. In turn, this will enable security holders to monitor compliance with the statutory trading prohibition of Section 306(a). These benefits are difficult to quantify.

B. Costs

The costs associated with the new rules are attributable primarily to the statutory requirement to prepare and distribute advance notice of the imposition of a blackout period to directors and executive officers and to the Commission. For purposes of the Paperwork Reduction Act, we estimated the aggregate costs for issuers required to provide this notice to be approximately $625,000 per year and the related burden to be approximately 5,125 hours.[174]

While compliance with Section 306(a)'s trading prohibition is the personal obligation of an issuer's directors and executive officers, it is likely that issuers will incur costs in assisting these individuals in observing the statutory trading prohibition. Accordingly, issuers may incur costs associated with assisting their directors and executive officers in determining whether transactions in equity securities of the issuer are exempt from the statutory trading prohibition and in identifying and tracking the equity securities that are subject to the trading prohibition. These costs are difficult to quantify, but are all imposed by the statute.

We believe that many U.S. issuers already maintain internal procedures for assisting their directors' and officers' compliance with the provisions of Section 16 of the Exchange Act and preventing violations of Section 10(b) of the Exchange Act and Exchange Act Rule 10b–5. It is likely that these issuers will enhance these internal procedures to address the trading prohibition of Section 306(a) and new Regulation BTR. Some issuers may need to institute appropriate internal procedures. Other issuers may need to modify existing procedures. Because the scope and sophistication of these internal procedures are likely to vary among issuers, it is difficult to provide an accurate estimate of the incremental cost of enhancing existing systems. Because we did not have data to quantify the cost of implementing, or upgrading and strengthening existing, internal insider trading procedures, we sought comments and supporting data on these costs. We did not receive any comments in response to our request.

Section 306(a) also imposes costs on directors and executive officers that are subject to Section 306(a)'s trading prohibition. Restrictions on trading activities increase the financial exposure to directors and executive officers during blackout periods and reduce their financial flexibility. This may result in losses in their portfolios or reduced profits. To some extent, these restrictions may tend to discourage some individuals from serving as directors or executive officers. They also could discourage some directors and executive officers from investing in the equity securities of the companies they serve or discourage some issuers from requiring minimum equity security ownership requirements (which could, in turn, disconnect the interests of directors and executive officers from those of security holders).

In addition, because many directors and executive officers of issuers that are subject to the reporting requirements of the Exchange Act are already subject to restrictions on their trading activities, such as the "short-swing" profits recovery provision of Section 16(b) of the Exchange Act, the introduction of an additional trading restriction to this existing framework may, in some instances, limit the ability of a director or executive officer to trade for significant periods. This also may result in losses in their portfolios or reduced profits. These costs are difficult to quantify, but may be mitigated somewhat by the timely notice required by Section 306(a).

V. Final Regulatory Flexibility Analysis

This Final Regulatory Flexibility Analysis, or FRFA, has been prepared in accordance with the Regulatory Flexibility Act.[175] The FRFA pertains to new rules that we are adopting to clarify the application of Section 306(a) of the Act and to prevent evasion of its statutory trading prohibition. The new rules also specify the content and timing of notice that issuers are required to

[174] We estimate that these burden hours will result in an aggregate cost of approximately $692,000 per year. This estimate is based on an estimated hourly rate of $100.00 to determine the estimated cost to issuers of having their employees handle the notice and filing requirements imposed by Section 306(a) of the Act and Regulation BTR. We arrived at this hourly rate estimate after consulting with several issuers and persons who assist issuers in filing reports with the Commission. We then multiplied this hourly rate by a factor of 1.35 to reflect appropriate overhead charges. 5,125 hours x $135.00 per hour = $691,875.

[175] 5 U.S.C. 603.

provide to their directors and executive officers and the Commission about the imposition of a pension plan blackout period.

A. Reasons for, and Objectives of, New Rules

Section 306(a) of the Act prohibits directors and executive officers of an issuer from purchasing, selling or otherwise acquiring or transferring any equity security of the issuer during a pension plan blackout period that prevents plan participants or beneficiaries from engaging in equity security transactions, if the equity security was acquired in connection with the director or executive officer's service or employment as a director or executive officer. In addition, Section 306(a) requires issuers to provide timely notice to their directors and executive officers and the Commission of the imposition of a blackout period. The new rules, which clarify the application of Section 306(a) and prevent evasion of its statutory trading prohibition, are intended to further the statute's purpose of mitigating the differential opportunities between an issuer's directors and executive officers and its employees who participate in pension plans maintained by the issuer at a time when a substantial number of those participants are unable to engage in transactions involving issuer equity securities through their individual pension plan accounts.

B. Significant Issues Raised by Public Comment

One commenter indicated that the compliance burden for small business issuers would not be disproportionate to the benefits to be obtained from compliance with Section 306(a) since concerns related to trading by corporate insiders are not unique to large issuers.[176]

C. Small Entities Subject to the New Rules

Section 306(a) of the Act affects, and the new rules affect, small entities the securities of which are registered under Section 12 of the Exchange Act, that are required to file reports under Section 15(d) of the Exchange Act or that file, or have filed, a registration statement that has not yet become effective under the Securities Act and that has not been withdrawn. For purposes of the Regulatory Flexibility Act, the Exchange Act[177] defines the term "small business," other than an investment company, to be an issuer that, on the last day of its most recent fiscal year, has total assets of $5 million or less.[178] Section 306(a) and the new rules apply only to issuers with pension plans as defined in Section 3(34) of ERISA; we do not have data to indicate the number of small issuers that maintain such pension plans, but according to DOL data, only 30% of all issuers maintain such plans. Furthermore, our data indicates that temporary trading suspensions that will be subject to Section 306(a) occur to a plan approximately once every five years. If these percentages are accurate regardless of an issuer's size, the new rules should only affect approximately 150 small entities per year. We estimate that there are approximately 2,500 issuers that are subject to the Act that are not investment companies and that have assets of $5 million or less.[179] There are approximately 225 registered investment companies that may be considered small entities. However, as noted in the Proposing Release, we anticipate that the burden imposed on investment companies by Section 306(a) and the new rules will be negligible.

D. Reporting, Record Keeping and Other Compliance Requirements

Section 306(a) of the Act requires issuers, including "small businesses," to provide timely notice to directors and executive officers and the Commission of a blackout period. The new rules specify the content and timing of this notice. The statute's basic prohibition against trading during blackout periods is largely self-executing and does not afford us with substantial discretion to exercise regulatory flexibility with respect to small businesses.

While a cost will be incurred in complying with the notice requirement, we believe that these costs will be minimal for small businesses. A required notice is likely to be prepared once for each blackout period and distributed to affected directors and executive officers. In addition, a current report on Form 8–K will be prepared and filed with the Commission. The cost of preparing and distributing the required notice to directors and executive officers is estimated to be approximately $590 annually per issuer for both large and small businesses.[180] The notice requirement involves a design standard in that the content of the notice to directors and executive officers and the form and content of the notice to the Commission is dictated by the new rules and will be comparable for all issuers, including small, as well as large, entities. We do not believe that excepting small businesses from making the notice is in the interests of their directors and executive officers, or consistent with Section 306(a).

While the new rules specify the content of the required notice to directors and executive officers, they do not dictate the specific form of the notice. In addition, the required notice to the Commission will be provided electronically through the filing of a current report on Form 8–K in the case of domestic issuers, or in an annual report on Form 20–F or 40–F in the case of foreign private issuers. We did not receive any information with respect to any special issues facing small businesses with respect to blackout period notices, or any alternatives consistent with the objectives of Section 306(a) of the Act that may serve to facilitate compliance by small businesses.

E. Duplicative, Overlapping or Conflicting Rules

We believe that there are no rules that duplicate, overlap or conflict with the new rules. We have intended the rules to coordinate with the rules adopted by the Department of Labor pursuant to Section 306(b) of the Sarbanes-Oxley Act of 2002. We also have coordinated the rules with the requirements under Section 16 of the Exchange Act for directors and officers to report transactions in their company's equity securities.

F. Agency Action To Minimize Effect on Small Entities

The Regulatory Flexibility Act directs us to consider significant alternatives that would accomplish the stated objectives, while minimizing any significant adverse impact on small entities. In that regard, we considered the following alternatives: (a) Establishing different compliance or reporting requirements that take into account the resources of small entities, (b) clarifying, consolidating or simplifying compliance and reporting requirements under the rules for small entities and (c) exempting small entities from all or part of the proposed rules. The new rules generally are intended to ensure that corporate insiders do not trade in an issuer's equity securities during periods when the ability of participants or beneficiaries in the issuer's pension plans to purchase, sell or otherwise acquire or transfer equity securities of the issuer has been

[176] *See* the Letter dated December 16, 2002 of PricewaterhouseCoopers LLP.

[177] 17 CFR 240.0–10(a).

[178] A similar definition is provided under Securities Act Rule 157 [17 CFR 230.157].

[179] This estimate is based on filings with the Commission.

[180] ($253,073 + (2,357 × $200 per hour))/1,230 blackouts = $589. *See* also Section IV.B above.

temporarily suspended. We do not currently believe that an exemption is necessary (since the cost of compliance is low) or appropriate (since Congress did not indicate that there should be different treatment for small businesses). While we solicited comment as to whether small business issuers should be excluded from the proposed rules, we did not receive any comments in response to our request. We also sought comment on the scope of the proposed disclosure, the cost of preparing it and whether the obligation can be simplified or clarified. We did not receive any comments in response to our request.

VI. Consideration of Burden on Competition

Section 23(a)(2) of the Exchange Act [181] requires us to consider the impact that any rule that we adopt will have on competition. In addition, Section 23(a)(2) prohibits us from adopting any rule that will impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.

The new rules clarify the application and prevent evasion of Section 306(a) of the Act. Section 306(a) prohibits the directors and executive officers of an issuer from purchasing, selling or otherwise acquiring or transferring any equity security of the issuer during a pension plan blackout period that prevents plan participants or beneficiaries from engaging in issuer equity security transactions, if the equity security was acquired by the director or executive officer in connection with his or her service or employment as a director or executive officer. In addition, under Section 306(a) an issuer is required to provide timely notice to its directors and executive officers and the Commission of the imposition of a pension plan blackout period.

The new rules further the Section 306(a)'s purpose of mitigating the differential opportunities between an issuer's directors and executive officers and its employees who participate in pension plans maintained by the issuer at a time when a substantial number of these participants are unable to engage in transactions involving issuer equity securities through their individual pension plan accounts. The statute may have a slight impact on competition by placing restrictions on the ability of directors and executive officers of some issuers with pension plans to trade that are not placed on other issuers, although we believe it to be necessary and appropriate in furtherance of the purposes of the Act. Issuers will incur some costs in complying with the new rules. These costs will include preparing the required notice with the information specified in the new rules and providing notice to the Commission on a current report on Form 8–K or, in the case of a foreign private issuer, on Form 20–F or 40–F. We requested comment on whether the proposed rules, if adopted, would impose a burden on competition. We did not receive any comments in response to our request.

VII. Promotion of Efficiency, Competition and Capital Formation

Section 3(f) of the Exchange Act [182] requires us, when engaging in rulemaking where we are required to consider or determine whether an action is necessary or appropriate in the public interest, to consider, in addition to the protection of investors, whether the action will promote efficiency, competition and capital formation. The new rules clarify the application and prevent evasion of Section 306(a) of the Act. Section 306(a) prohibits directors and executive officers of an issuer from purchasing, selling or otherwise acquiring or transferring any equity security of the issuer during a pension plan blackout period that prevents plan participants or beneficiaries from engaging in issuer equity security transactions, if the equity security was acquired in connection with the director or executive officer's service or employment as a director or executive officer. In addition, Section 306(a) requires issuers to provide timely notice to their directors and executive officers and the Commission of the imposition of a pension plan blackout period.

The new rules further Section 306(a)'s purpose of mitigating the differential opportunities between an issuer's directors and executive officers and its employees who participate in pension plans maintained by the issuer at a time when a substantial number of these participants are unable to engage in transactions involving issuer equity securities through their individual pension plan accounts. The statute may have a slight impact on competition, including some burden on the efficiency of the market on an issuer's equity securities during a pension plan blackout period, although we believe it to be necessary and appropriate in furtherance of the purposes of the Act. The statute imposes this burden. We are not aware of any impact on capital formation that will result from the new rules. Issuers will incur some costs in complying with the new rules. These costs will include preparing the required notice to include the information specified in the new rules and providing notice to the Commission on a current report on Form 8–K or, in the case of a foreign private issuer, on Form 20–F or 40–F. We requested comment on whether the proposed rules, if adopted, would impose a burden on competition. We did not receive any comments in response to our request.

VIII. Effective Date

The new rules are effective on January 26, 2003. The Administrative Procedure Act, or APA, generally requires that an agency publish an adopted rule in the **Federal Register** 30 days before it becomes effective.[183] This requirement, however, does not apply if the agency finds good cause for making the rule effective sooner.[184] The Commission believes that it is appropriate to waive advance publication of new Regulation BTR and the related rule and form amendments. Section 306(a) of the Act becomes effective on January 26, 2003. Congress has directed the Commission to clarify the operation of Section 306(a) by rule.[185] Our rules were coordinated with, and are dependent upon rules issued by the Department of Labor before January 26, 2003. It is impracticable to satisfy the advance publication requirement of the APA within the statutory deadline. It would be unnecessary and against the public interest to delay effectiveness of the new rules to satisfy this administrative requirement. Accordingly, the Commission finds good cause to make the new Regulation BTR, and the amendments to related rules and forms, effective on January 26, 2003.

IX. Statutory Authority

The rules contained in this release are being adopted under the authority set forth in Sections 3, 13, 23(a) and 36 of the Exchange Act, Sections 30 and 38 of the Investment Company Act and Sections 3(a) and 306(a) of the Sarbanes-Oxley Act of 2002.

List of Subjects in 17 CFR Parts 240, 245 and 249

Reporting and recordkeeping requirements, Securities.

Text of Final Rules and Forms

In accordance with the foregoing, Title 17, Chapter II, of the Code of

[181] 15 U.S.C. 78w(a)(2).

[182] 15 U.S.C. 78c(f).

[183] *See* 5 U.S.C. 553(d).

[184] *Id.*

[185] *See* Section 306(a)(3) of the Act.

Federal Regulations is amended as follows:

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

1. The authority citation for Part 240 is amended by adding the following citations in numerical order to read as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77z–3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78e, 78f, 78g, 78i, 78j, 78j–1, 78k, 78k–1, 78*l*, 78m, 78n, 78o, 78p, 78q, 78s, 78u–5, 78w, 78x, 78*ll*, 78mm, 79q, 79t, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4 and 80b–11, unless otherwise noted.

* * * * *

Section 240.13a–11 is also issued under secs. 3(a) and 306(a), Pub. L. 107–204, 116 Stat. 745.

* * * * *

Section 240.15d–11 is also issued under secs. 3(a) and 306(a), Pub. L. 107–204, 116 Stat. 745.

* * * * *

2. Section § 240.13a–11 is amended by:

a. Removing the sectional authority following § 240.13a–11; and

b. Revising paragraph (b).

The revision reads as follows:

§ 240.13a–11 Current reports on Form 8–K (§ 249.308 of this chapter).

* * * * *

(b) This section shall not apply to foreign governments, foreign private issuers required to make reports on Form 6–K (17 CFR 249.306) pursuant to § 240.13a–16, issuers of American Depositary Receipts for securities of any foreign issuer, or investment companies required to file reports pursuant to § 270.30b1–1 of this chapter under the Investment Company Act of 1940, except where such investment companies are required to file notice of a blackout period pursuant to § 245.104 of this chapter.

3. Section § 240.15d–11 is amended by:

a. Removing the sectional authority following § 240.15d–11; and

b. Revising paragraph (b).

The revision reads as follows:

§ 240.15d–11 Current reports on Form 8–K (§ 249.308 of this chapter).

* * * * *

(b) This section shall not apply to foreign governments, foreign private issuers required to make reports on Form 6–K (17 CFR 249.306) pursuant to § 240.15d–16, issuers of American Depositary Receipts for securities of any foreign issuer, or investment companies required to file periodic reports pursuant to § 270.30b1–1 of this chapter under the Investment Company Act of 1940, except where such investment companies are required to file notice of a blackout period pursuant to § 245.104 of this chapter.

4. Part 245 is added to read as follows:

PART 245—REGULATION BLACKOUT TRADING RESTRICTION

[Regulation BTR—Blackout Trading Restriction]

Sec.

245.100 Definitions.
245.101 Prohibition of insider trading during pension fund blackout periods.
245.102 Exceptions to definition of blackout period.
245.103 Issuer right of recovery; right of action by equity security owner.
245.104 Notice.

Authority: 15 U.S.C. 78w(a), unless otherwise noted.

Sections 245.100–245.104 are also issued under secs. 3(a) and 306(a), Pub. L. 107–204, 116 Stat. 745.

§ 245.100 Definitions.

As used in Regulation BTR (§§ 245.100 through 245.104), unless the context otherwise requires:

(a) The term *acquired in connection with service or employment as a director or executive officer*, when applied to a director or executive officer, means that he or she acquired, directly or indirectly, an equity security:

(1) At a time when he or she was a director or executive officer, under a compensatory plan, contract, authorization or arrangement, including, but not limited to, an option, warrants or rights plan, a pension, retirement or deferred compensation plan or a bonus, incentive or profit-sharing plan (whether or not set forth in any formal plan document), including a compensatory plan, contract, authorization or arrangement with a parent, subsidiary or affiliate;

(2) At a time when he or she was a director or executive officer, as a result of any transaction or business relationship described in paragraph (a) or (b) of Item 404 of Regulation S–K (§ 229.404 of this chapter) or, in the case of a foreign private issuer, Item 7.B of Form 20–F (§ 249.220f of this chapter) (but without application of the disclosure thresholds of such provisions), to the extent that he or she has a pecuniary interest (as defined in paragraph (*l*) of this section) in the equity securities;

(3) At a time when he or she was a director or executive officer, as directors' qualifying shares or other securities that he or she must hold to satisfy minimum ownership requirements or guidelines for directors or executive officers;

(4) Prior to becoming, or while, a director or executive officer where the equity security was acquired as a direct or indirect inducement to service or employment as a director or executive officer; or

(5) Prior to becoming, or while, a director or executive officer where the equity security was received as a result of a business combination in respect of an equity security of an entity involved in the business combination that he or she had acquired in connection with service or employment as a director or executive officer of such entity.

(b) Except as provided in § 245.102, the term *blackout period*:

(1) With respect to the equity securities of any issuer (other than a foreign private issuer), means any period of more than three consecutive business days during which the ability to purchase, sell or otherwise acquire or transfer an interest in any equity security of such issuer held in an individual account plan is temporarily suspended by the issuer or by a fiduciary of the plan with respect to not fewer than 50% of the participants or beneficiaries located in the United States and its territories and possessions under all individual account plans (as defined in paragraph (j) of this section) maintained by the issuer that permit participants or beneficiaries to acquire or hold equity securities of the issuer;

(2) With respect to the equity securities of any foreign private issuer (as defined in § 240.3b–4(c) of this chapter), means any period of more than three consecutive business days during which both:

(i) The conditions of paragraph (b)(1) of this section are met; and

(ii)(A) The number of participants and beneficiaries located in the United States and its territories and possessions subject to the temporary suspension exceeds 15% of the total number of employees of the issuer and its consolidated subsidiaries; or

(B) More than 50,000 participants and beneficiaries located in the United States and its territories and possessions are subject to the temporary suspension.

(3) In determining the individual account plans (as defined in paragraph (j) of this section) maintained by an issuer for purposes of this paragraph (b):

(i) The rules under section 414(b), (c), (m) and (o) of the Internal Revenue Code (26 U.S.C. 414(b), (c), (m) and (o)) are to be applied; and

(ii) An individual account plan that is maintained outside of the United States primarily for the benefit of persons substantially all of whom are

nonresident aliens (within the meaning of section 104(b)(4) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1003(b)(4))) is not to be considered.

(4) In determining the number of participants and beneficiaries in an individual account plan (as defined in paragraph (j) of this section) maintained by an issuer:

(i) The determination may be made as of any date within the 12-month period preceding the beginning date of the temporary suspension in question; provided that if there has been a significant change in the number of participants or beneficiaries in an individual account plan since the date selected, the determination for such plan must be made as of the most recent practicable date that reflects such change; and

(ii) The determination may be made without regard to overlapping plan participation.

(c)(1) The term *director* has, except as provided in paragraph (c)(2) of this section, the meaning set forth in section 3(a)(7) of the Exchange Act (15 U.S.C. 78c(a)(7)).

(2) In the case of a foreign private issuer (as defined in § 240.3b–4(c) of this chapter), the term *director* means an individual within the definition set forth in section 3(a)(7) of the Exchange Act who is a management employee of the issuer.

(d) The term *derivative security* has the meaning set forth in § 240.16a–1(c) of this chapter.

(e) The term *equity security* has the meaning set forth in section 3(a)(11) of the Exchange Act (15 U.S.C. 78c(a)(11)) and § 240.3a11–1 of this chapter.

(f) The term *equity security of the issuer* means any equity security or derivative security relating to an issuer, whether or not issued by that issuer.

(g) The term *Exchange Act* means the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*).

(h)(1) The term *executive officer* has, except as provided in paragraph (h)(2) of this section, the meaning set forth in § 240.16a–1(f) of this chapter.

(2) In the case of a foreign private issuer (as defined in § 240.3b–4(c) of this chapter), the term *executive officer* means the principal executive officer or officers, the principal financial officer or officers and the principal accounting officer or officers of the issuer.

(i) The term *exempt security* has the meaning set forth in section 3(a)(12) of the Exchange Act (15 U.S.C. 78c(a)(12)).

(j) The term *individual account plan* means a pension plan which provides for an individual account for each participant and for benefits based solely upon the amount contributed to the participant's account, and any income, expenses, gains and losses, and any forfeitures of accounts of other participants which may be allocated to such participant's account, except that such term does not include a one-participant retirement plan (within the meaning of section 101(i)(8)(B) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1021(i)(8)(B))), nor does it include a pension plan in which participation is limited to directors of the issuer.

(k) The term *issuer* means an issuer (as defined in section 3(a)(8) of the Exchange Act (15 U.S.C. 78c(a)(8))), the securities of which are registered under section 12 of the Exchange Act (15 U.S.C. 78*l*) or that is required to file reports under section 15(d) of the Exchange Act (15 U.S.C. 78o(d)) or that files or has filed a registration statement that has not yet become effective under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*) and that it has not withdrawn.

(l) The term *pecuniary interest* has the meaning set forth in § 240.16a–1(a)(2)(i) of this chapter and the term *indirect pecuniary interest* has the meaning set forth in § 240.16a–1(a)(2)(ii) of this chapter. Section 240.16a–1(a)(2)(iii) of this chapter also shall apply to determine pecuniary interest for purposes of this regulation.

§ 245.101 Prohibition of insider trading during pension fund blackout periods.

(a) Except to the extent otherwise provided in paragraph (c) of this section, it is unlawful under section 306(a)(1) of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7244(a)(1)) for any director or executive officer of an issuer of any equity security (other than an exempt security), directly or indirectly, to purchase, sell or otherwise acquire or transfer any equity security of the issuer (other than an exempt security) during any blackout period with respect to such equity security, if such director or executive officer acquires or previously acquired such equity security in connection with his or her service or employment as a director or executive officer.

(b) For purposes of section 306(a)(1) of the Sarbanes-Oxley Act of 2002, any sale or other transfer of an equity security of the issuer during a blackout period will be treated as a transaction involving an equity security "acquired in connection with service or employment as a director or executive officer" (as defined in § 245.100(a)) to the extent that the director or executive officer has a pecuniary interest (as defined in § 245.100(l)) in such equity security, unless the director or executive officer establishes by specific identification of securities that the transaction did not involve an equity security "acquired in connection with service or employment as a director or executive officer." To establish that the equity security was not so acquired, a director or executive officer must identify the source of the equity securities and demonstrate that he or she has utilized the same specific identification for any purpose related to the transaction (such as tax reporting and any applicable disclosure and reporting requirements).

(c) The following transactions are exempt from section 306(a)(1) of the Sarbanes-Oxley Act of 2002:

(1) Any acquisition of equity securities resulting from the reinvestment of dividends in, or interest on, equity securities of the same issuer if the acquisition is made pursuant to a plan providing for the regular reinvestment of dividends or interest and the plan provides for broad-based participation, does not discriminate in favor of employees of the issuer and operates on substantially the same terms for all plan participants;

(2) Any purchase or sale of equity securities of the issuer pursuant to a contract, instruction or written plan entered into by the director or executive officer that satisfies the affirmative defense conditions of § 240.10b5–1(c) of this chapter; provided that the director or executive officer did not enter into or modify the contract, instruction or written plan during the blackout period (as defined in § 245.100(b)) in question, or while aware of the actual or approximate beginning or ending dates of that blackout period (whether or not the director or executive officer received notice of the blackout period as required by Section 306(a)(6) of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7244(a)(6))).

(3) Any purchase or sale of equity securities, other than a Discretionary Transaction (as defined in § 240.16b–3(b)(1) of this chapter), pursuant to a Qualified Plan (as defined in § 240.16b–3(b)(4) of this chapter), an Excess Benefit Plan (as defined in § 240.16b–3(b)(2) of this chapter) or a Stock Purchase Plan (as defined in § 240.16b–3(b)(5) of this chapter) (or, in the case of a foreign private issuer, pursuant to an employee benefit plan that either (i) has been approved by the taxing authority of a foreign jurisdiction, or (ii) is eligible for preferential treatment under the tax laws of a foreign jurisdiction because the plan provides for broad-based employee participation); provided that a Discretionary Transaction that meets the conditions of

paragraph (c)(2) of this section also shall be exempt;

(4) Any grant or award of an option, stock appreciation right or other equity compensation pursuant to a plan that, by its terms:

(i) Permits directors or executive officers to receive grants or awards; and

(ii) Either:

(A) States the amount and price of securities to be awarded to designated directors and executive officers or categories of directors and executive officers (though not necessarily to others who may participate in the plan) and specifies the timing of awards to directors and executive officers; or

(B) Sets forth a formula that determines the amount, price and timing, using objective criteria (such as earnings of the issuer, value of the securities, years of service, job classification, and compensation levels);

(5) Any exercise, conversion or termination of a derivative security that the director or executive officer did not write or acquire during the blackout period (as defined in § 245.100(b)) in question, or while aware of the actual or approximate beginning or ending dates of that blackout period (whether or not the director or executive officer received notice of the blackout period as required by Section 306(a)(6) of the Sarbanes-Oxley Act of 2002); and either:

(i) The derivative security, by its terms, may be exercised, converted or terminated only on a fixed date, with no discretionary provision for earlier exercise, conversion or termination; or

(ii) The derivative security is exercised, converted or terminated by a counterparty and the director or executive officer does not exercise any influence on the counterparty with respect to whether or when to exercise, convert or terminate the derivative security;

(6) Any acquisition or disposition of equity securities involving a bona fide gift or a transfer by will or the laws of descent and distribution;

(7) Any acquisition or disposition of equity securities pursuant to a domestic relations order, as defined in the Internal Revenue Code or Title I of the Employment Retirement Income Security Act of 1974, or the rules thereunder;

(8) Any sale or other disposition of equity securities compelled by the laws or other requirements of an applicable jurisdiction;

(9) Any acquisition or disposition of equity securities in connection with a merger, acquisition, divestiture or similar transaction occurring by operation of law; and

(10) The increase or decrease in the number of equity securities held as a result of a stock split or stock dividend applying equally to all securities of that class, including a stock dividend in which equity securities of a different issuer are distributed; and the acquisition of rights, such as shareholder or pre-emptive rights, pursuant to a pro rata grant to all holders of the same class of equity securities.

§ 245.102 Exceptions to definition of blackout period.

The term "blackout period," as defined in § 245.100(b), does not include:

(a) A regularly scheduled period in which participants and beneficiaries may not purchase, sell or otherwise acquire or transfer an interest in any equity security of an issuer, if a description of such period, including its frequency and duration and the plan transactions to be suspended or otherwise affected, is:

(1) Incorporated into the individual account plan or included in the documents or instruments under which the plan operates; and

(2) Disclosed to an employee before he or she formally enrolls, or within 30 days following formal enrollment, as a participant under the individual account plan or within 30 days after the adoption of an amendment to the plan. For purposes of this paragraph (a)(2), the disclosure may be provided in any graphic form that is reasonably accessible to the employee; or

(b) Any trading suspension described in § 245.100(b) that is imposed in connection with a corporate merger, acquisition, divestiture or similar transaction involving the plan or plan sponsor, the principal purpose of which is to permit persons affiliated with the acquired or divested entity to become participants or beneficiaries, or to cease to be participants or beneficiaries, in an individual account plan; provided that the persons who become participants or beneficiaries in an individual account plan are not able to participate in the same class of equity securities after the merger, acquisition, divestiture or similar transaction as before the transaction.

§ 245.103 Issuer right of recovery; right of action by equity security owner.

(a) *Recovery of profits.* Section 306(a)(2) of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7244(a)(2)) provides that any profit realized by a director or executive officer from any purchase, sale or other acquisition or transfer of any equity security of an issuer in violation of section 306(a)(1) of that Act (15 U.S.C. 7244(a)(1)) will inure to and be recoverable by the issuer, regardless of any intention on the part of the director or executive officer in entering into the transaction.

(b) *Actions to recover profit.* Section 306(a)(2) of the Sarbanes-Oxley Act of 2002 provides that an action to recover profit may be instituted at law or in equity in any court of competent jurisdiction by the issuer, or by the owner of any equity security of the issuer in the name and on behalf of the issuer if the issuer fails or refuses to bring such action within 60 days after the date of request, or fails diligently to prosecute the action thereafter, except that no such suit may be brought more than two years after the date on which such profit was realized.

(c) *Measurement of profit.*

(1) In determining the profit recoverable in an action undertaken pursuant to section 306(a)(2) of the Sarbanes-Oxley Act of 2002 from a transaction that involves a purchase, sale or other acquisition or transfer (other than a grant, exercise, conversion or termination of a derivative security) in violation of section 306(a)(1) of that Act of an equity security of an issuer that is registered pursuant to section 12(b) or 12(g) of the Exchange Act (15 U.S.C. 78*l*(b) or (g)) and listed on a national securities exchange or listed in an automated inter-dealer quotation system of a national securities association, profit (including any loss avoided) may be measured by comparing the difference between the amount paid or received for the equity security on the date of the transaction during the blackout period and the average market price of the equity security calculated over the first three trading days after the ending date of the blackout period.

(2) In determining the profit recoverable in an action undertaken pursuant to section 306(a)(2) of the Sarbanes-Oxley Act of 2002 from a transaction that is not described in paragraph (c)(1) of this section, profit (including any loss avoided) may be measured in a manner that is consistent with the objective of identifying the amount of any gain realized or loss avoided by a director or executive officer as a result of a transaction taking place in violation of section 306(a)(1) of that Act during the blackout period as opposed to taking place outside of such blackout period.

(3) The terms of this section do not limit in any respect the authority of the Commission to seek or determine remedies as the result of a transaction

taking place in violation of section 306(a)(1) of the Sarbanes-Oxley Act.

§ 245.104 Notice.

(a) In any case in which a director or executive officer is subject to section 306(a)(1) of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7244(a)(1)) in connection with a blackout period (as defined in § 245.100(b)) with respect to any equity security, the issuer of the equity security must timely notify each director or officer and the Commission of the blackout period.

(b) For purposes of this section:

(1)The notice must include:

(i) The reason or reasons for the blackout period;

(ii) A description of the plan transactions to be suspended during, or otherwise affected by, the blackout period;

(iii) A description of the class of equity securities subject to the blackout period;

(iv) The length of the blackout period by reference to:

(A) The actual or expected beginning date and ending date of the blackout period; or

(B) The calendar week during which the blackout period is expected to begin and the calendar week during which the blackout period is expected to end, provided that the notice to directors and executive officers describes how, during such week or weeks, a director or executive officer may obtain, without charge, information as to whether the blackout period has begun or ended; and provided further that the notice to the Commission describes how, during the blackout period and for a period of two years after the ending date of the blackout period, a security holder or other interested person may obtain, without charge, the actual beginning and ending dates of the blackout period.

(C) For purposes of this paragraph (b)(1)(iv), a *calendar week* means a seven-day period beginning on Sunday and ending on Saturday; and

(v) The name, address and telephone number of the person designated by the issuer to respond to inquiries about the blackout period, or, in the absence of such a designation, the issuer's human resources director or person performing equivalent functions.

(2) (i) Notice to an affected director or executive officer will be considered timely if the notice described in paragraph (b)(1) of this section is provided (in graphic form that is reasonably accessible to the recipient):

(A) No later than five business days after the issuer receives the notice required by section 101(i)(2)(E) of the Employment Retirement Income Security Act of 1974 (29 U.S.C. 1021(i)(2)(E)); or

(B) If no such notice is received by the issuer, a date that is at least 15 calendar days before the actual or expected beginning date of the blackout period.

(ii) Notwithstanding paragraph (b)(2)(i) of this section, the requirement to give advance notice will not apply in any case in which the inability to provide advance notice of the blackout period is due to events that were unforeseeable to, or circumstances that were beyond the reasonable control of, the issuer, and the issuer reasonably so determines in writing. Determinations described in the preceding sentence must be dated and signed by an authorized representative of the issuer. In any case in which this exception to the advance notice requirement applies, the issuer must provide the notice described in paragraph (b)(1) of this section, as well as a copy of the written determination, to all affected directors and executive officers as soon as reasonably practicable.

(iii) If there is a subsequent change in the beginning or ending dates of the blackout period as provided in the notice to directors and executive officers under paragraph (b)(2)(i) of this section, an issuer must provide directors and executive officers with an updated notice explaining the reasons for the change in the date or dates and identifying all material changes in the information contained in the prior notice. The updated notice is required to be provided as soon as reasonably practicable, unless such notice in advance of the termination of a blackout period is impracticable.

(3) Notice to the Commission will be considered timely if:

(i) The issuer, except as provided in paragraph (b)(3)(ii) of this section, files a current report on Form 8–K (§ 249.308 of this chapter) within the time prescribed for filing the report under the instructions for the form; or

(ii) In the case of a foreign private issuer (as defined in § 240.3b–4(c) of this chapter), the issuer includes the information set forth in paragraph (b)(1) of this section in the first annual report on Form 20–F (§ 249.220f of this chapter) or 40–F (§ 249.240f of this chapter) required to be filed after the receipt of the notice of a blackout period required by 29 CFR 2520.101–3(c) within the time prescribed for filing the report under the instructions for the form or in an earlier filed report on Form 6–K (§ 249.306).

(iii) If there is a subsequent change in the beginning or ending dates of the blackout period as provided in the notice to the Commission under paragraph (b)(3)(i) of this section, an issuer must file a current report on Form 8–K containing the updated beginning or ending dates of the blackout period, explaining the reasons for the change in the date or dates and identifying all material changes in the information contained in the prior report. The updated notice is required to be provided as soon as reasonably practicable.

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

5. The authority citation for Part 249 is amended by revising the sectional authority for § 249.308 to read as follows:

Authority: 15 U.S.C. 78a, *et seq.*, unless otherwise noted.

* * * * *

Section 249.308 is also issued under 15 U.S.C. 80a–29, 80a–37 and secs. 3(a), 302 and 306(a), Pub. L. 107–204, 116 Stat. 745.

* * * * *

6. Form 20–F (referenced in § 249.220f) is amended by:

a. Redesignating paragraph (10) as paragraph (11) under "Instructions as to Exhibits'; and

b. Adding paragraph (10) under "Instructions as to Exhibits."

The addition reads as follows:

Note: The text of Form 20–F does not, and this amendment will not, appear in the Code of Federal Regulations.

Form 20–F

* * * * *

Instructions As To Exhibits

* * * * *

10. Any notice required by Rule 104 of Regulation BTR (17 CFR 245.104 of this chapter) that you sent during the past fiscal year to directors and executive officers (as defined in 17 CFR 245.100(d) and (h) of this chapter) concerning any equity security subject to a blackout period (as defined in 17 CFR 245.100(c) of this chapter) under Rule 101 of Regulation BTR (17 CFR 245.101 of this chapter). Each notice must have included the information specified in 17 CFR 245.104(b) of this chapter.

Note: The exhibit requirement in paragraph (10) applies only to an annual report, and not to a registration statement, on Form 20–F. The Commission will consider the attachment of any Rule 104 notice as an exhibit to a timely filed Form 20–F annual report to satisfy an issuer's duty to notify the Commission of a blackout period in a timely manner. Although an issuer need not submit a Rule 104 notice under cover of a Form 6–K, if an issuer has already submitted this notice under cover of Form 6–K, it need not

attach the notice as an exhibit to a Form 20–F annual report.

* * * * *

7. Form 40–F (referenced in § 249.240f) is amended by adding new paragraph (7) to General Instruction B to read as follows:

Note: The text of Form 40–F does not, and this amendment will not, appear in the Code of Federal Regulations.

Form 40–F

* * * * *

General Instructions

* * * * *

B. Information To Be Filed on This Form

* * * * *

(7) An issuer must attach as an exhibit to an annual report filed on Form 40–F a copy of any notice required by Rule 104 of Regulation BTR (17 CFR 245.104 of this chapter) that it sent during the past fiscal year to directors and executive officers (as defined in 17 CFR 245.100(d) and (h) of this chapter) concerning any equity security subject to a blackout period (as defined in 17 CFR 245.100(c) of this chapter) under Rule 101 of Regulation BTR (17 CFR 245.101 of this chapter). Each notice must have included the information specified in 17 CFR 245.104(b) of this chapter.

Note: The Commission will consider the attachment of any Rule 104 notice as an exhibit to a timely filed Form 40–F annual report to satisfy an issuer's duty to notify the Commission of a blackout period in a timely manner. Although an issuer need not submit a Rule 104 notice under cover of a Form 6–K, if an issuer has already submitted this notice under cover of Form 6–K, it need not attach the notice as an exhibit to a Form 40–F annual report.

* * * * *

8. Form 8–K (referenced in § 249.308) is amended by:

a. Revising General Instruction 1; and

b. Adding Item 11 under "Information to be Included in the Report."

The revision and addition read as follows:

Note: The text of Form 8–K does not, and this amendment will not, appear in the Code of Federal Regulations.

Form 8–K

* * * * *

General Instructions

* * * * *

B. Events To Be Reported and Time for Filing of Reports

1. * * * A report on this form pursuant to Item 11 is required to be filed not later than the date prescribed for transmission of the notice to directors and executive officers required by Rule 104(b)(2) of Regulation BTR (§ 245.104(b)(2) of this chapter).

* * * * *

Information to be Included in the Report

* * * * *

Item 11. Temporary Suspension of Trading Under Registrant's Employee Benefit Plans

Not later than the date prescribed for transmission of the notice required by Rule 104(b)(2) of Regulation BTR (§ 245.104(b)(2) of this chapter), provide the information specified in § 245.104(b) of this chapter and the date the registrant received the notice required by section 101(i)(2)(E) of the Employment Retirement Income Security Act of 1974 (29 U.S.C. 1021(i)(2)(E)).

* * * * *

Dated: January 22, 2003.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–1884 Filed 1–27–03; 8:45 am]

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H.R. 11/P.L. 108–3

National Flood Insurance Program Reauthorization Act of 2003 (Jan. 13, 2003; 117 Stat. 7)

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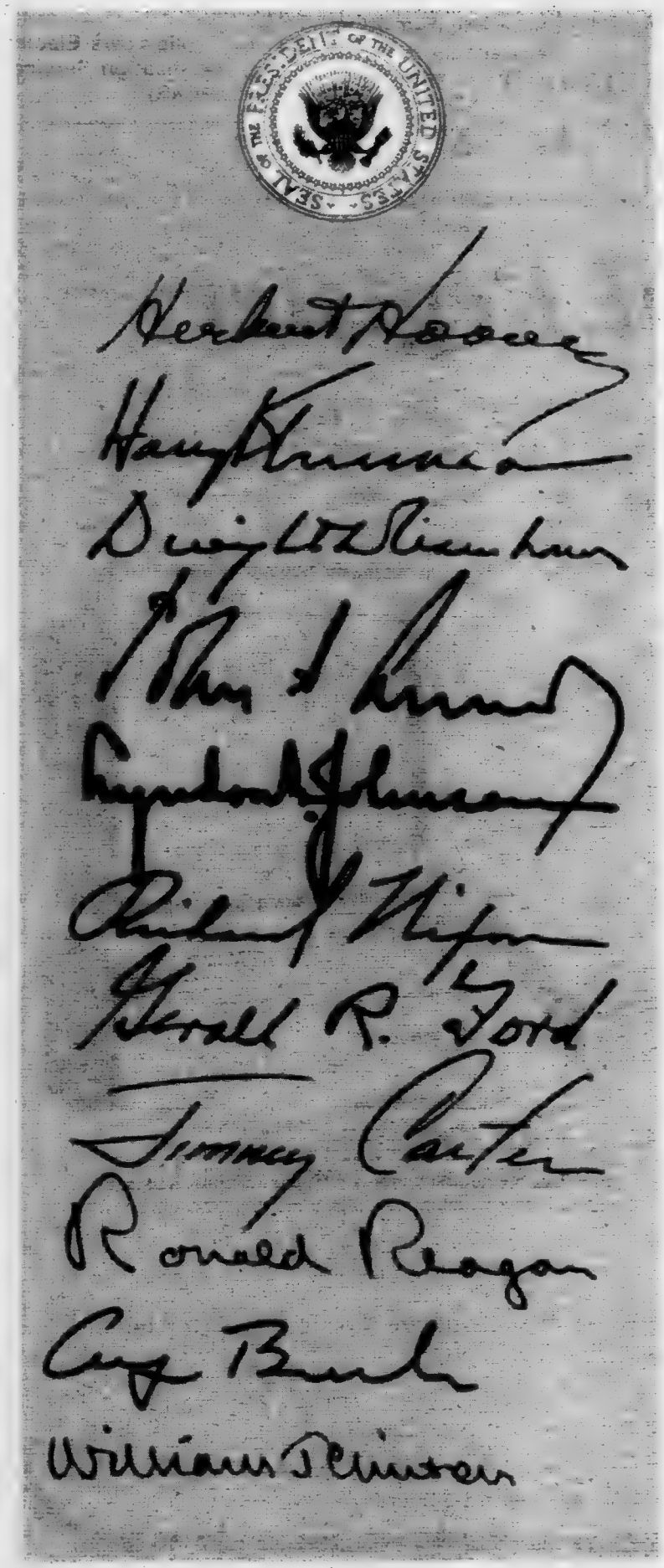

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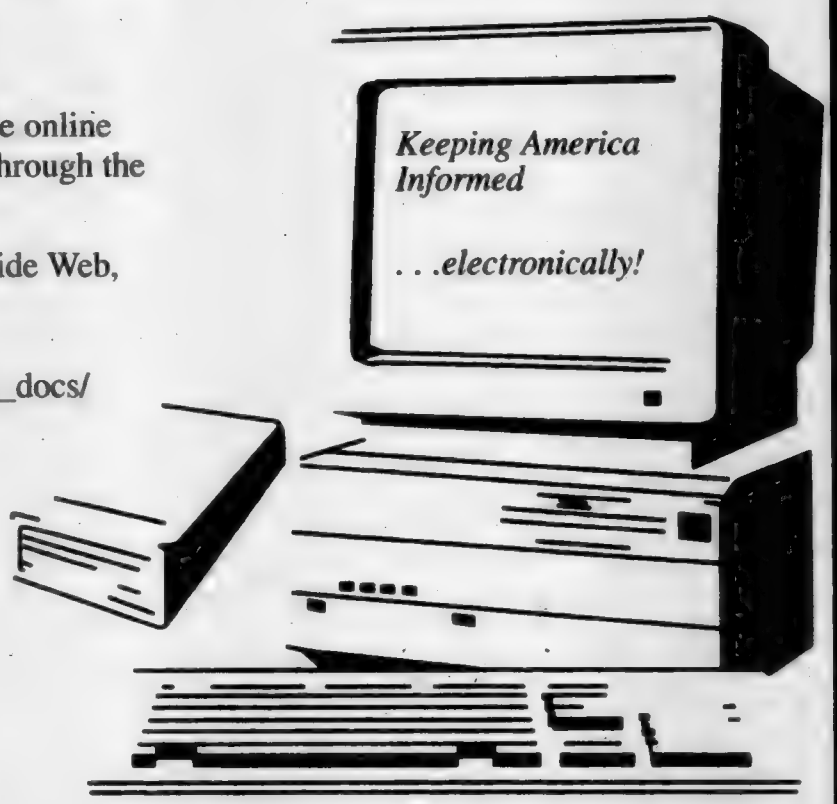

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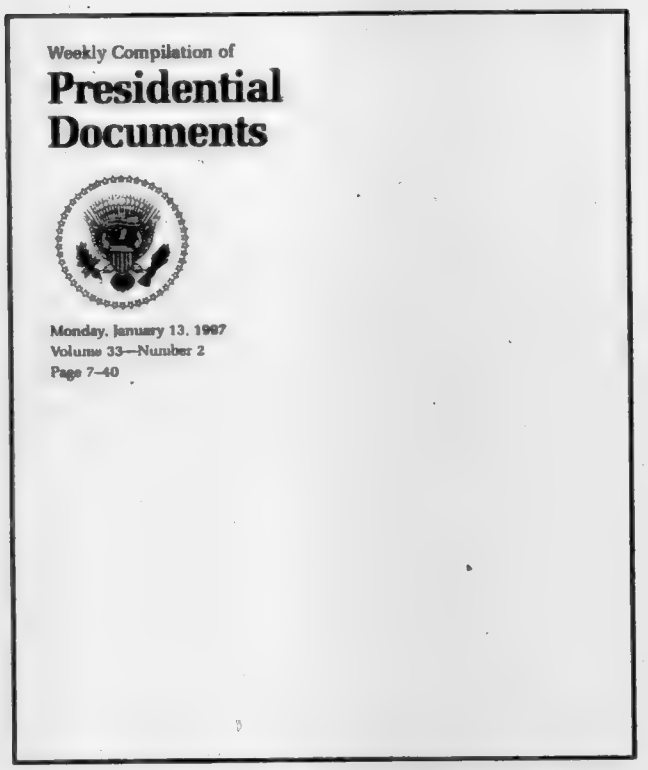

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Rules and Regulations

Federal Register
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Wednesday, January 29, 2003

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 905

[Docket No. FV02–905–4 FIR]

Oranges, Grapefruit, Tangerines, and Tangelos Grown in Florida; Exemption for Shipments of Tree Run Citrus

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (USDA) is adopting, as a final rule, without change, an interim final rule that changed the rules and regulations prescribed under the Florida citrus marketing order (order). The order regulates the handling of oranges, grapefruit, tangerines, and tangelos grown in Florida and is administered locally by the Citrus Administrative Committee (committee). This rule continues to exempt shipments of small quantities of tree run citrus from the grade, size, and assessment requirements of the order. Producers can ship 150 1–3/5 bushel boxes per variety, per shipment, of their own citrus free from order regulations, not to exceed 1,500 boxes per variety for the season. This change is effective for the 2002–03 season only. The committee believes this action may be a way to increase fresh market shipments, develop new markets, and improve grower returns.

EFFECTIVE DATE: February 28, 2003.

FOR FURTHER INFORMATION CONTACT: Doris Jamieson, Southeast Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 799 Overlook Drive, Suite A, Winter Haven, Florida 33884–1671; telephone: (863) 324–3375, Fax: (863) 325–8793; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202)720–8938, or E-mail: *Jay.Guerber@usda.gov.*

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 84 and Marketing Order No. 905, both as amended (7 CFR part 905), regulating the handling of oranges, grapefruit, tangerines, and tangelos grown in Florida, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

USDA is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule continues in effect changes to the rules and regulations under the order to exempt shipments of small quantities of tree run citrus from grade, size, and assessment requirements. Tree run citrus is wholesome citrus picked and boxed in the field and taken directly to market without being graded or sized. With this change, producers are allowed to ship 150 1–3/5 bushel boxes per variety, per shipment, of their own citrus free from marketing order regulations. Total shipments cannot exceed 1,500 boxes per variety for the season. This action was unanimously recommended by the committee at its meeting held on May 22, 2002.

Section 905.80 of the marketing order provides authority for the committee to exempt certain types of shipments from regulation. Exemptions can be implemented for types of shipments of any variety in such minimum quantities, or for such purposes as the committee with the approval of USDA may specify. No assessment is levied on fruit so shipped. The committee shall, with the approval of USDA, prescribe such rules, regulations, or safeguards as it deems necessary to prevent varieties handled under the provisions of this section from entering channels of trade for other than the purposes authorized by this section.

Section 905.149 is continued in effect. This section defines grower tree run citrus and outlines the procedures to be used for growers to apply to the committee to ship their own tree run citrus fruit exempt from grade, size, and assessment requirements under the order. Under this section, once the exemption has been approved, the grower must report to the committee the volume of fruit shipped, the date of the shipment, and type of transportation used.

According to Florida Department of Citrus (FDOC) regulation 20–35.006, "Tree run grade is that grade of naturally occurring sound and wholesome citrus fruit which has not been separated either as to grade or size after severance from the tree." Also, FDOC regulation 20–62.002 defines wholesomeness as fruit free from rot, decay, sponginess, unsoundness, leakage, staleness, or other conditions showing physical defects of the fruit. By definition, this fruit is handled by the grower and bypasses normal handler operations. Prior to this change, all tree run citrus had to meet all requirements of the marketing order, as well as State

of Florida Statutes and Florida Department of Citrus regulations. Even with this change, tree run citrus must continue to meet applicable State of Florida Statutes and Florida Department of Citrus regulations, including inspection. Growers are able to pick, box, and ship directly to buyers, and avoid the costs incurred when citrus is handled by packinghouses.

Over the past few years, small producers of Florida citrus have expressed concerns regarding problems incurred when selling their citrus. These concerns include costs, returns, and available markets. These problems, along with market conditions, have driven a fair number of citrus growers and handlers out of the citrus industry. These concerns have been discussed at committee meetings, as well as meetings of other industry groups.

Some small growers have stated they have had difficulty getting packinghouses to pack their fruit. There is limited demand for certain varieties of citrus produced. In some cases, supply exceeds demand in the standard markets. According to committee data, over the past five years, fresh grapefruit sales have dropped 25 percent and fresh orange shipments are down 11 percent. In some cases, varieties may be out of favor with handlers and consumers, or there may be a glut on the market of a particular variety of fruit. As a result, packinghouses do not wish to become over stocked with fruit which is difficult to market and, therefore, will not pack less popular minor varieties of fruit or fruit that is in oversupply. Packinghouses do not want to pack what they cannot sell. These factors have caused wholesome fruit to be shipped to processing plants or left on the tree.

The costs of growing for the fresh market have been increasing, while in many cases, the returns to the grower have been decreasing. The cost of picking, packing, and hauling, and associated handling costs for fruit going to the fresh market, is sometimes greater than the grower's return on the fruit. The costs associated with growing for the fresh market are greater than the costs for growing for the processed market.

When citrus cannot be sold into the fresh market, it can be sold to the processing plants. However, the prices received are considerably lower. For example, during the last five years, only the 1999–2000 season produced on-tree returns for processed red seedless grapefruit that exceeded one dollar per box. Over the period from 1977 through 2000, the differential between fresh prices and processed prices has averaged $3.55 per box. The average on-tree price for processed Florida oranges during the 2000–02 season was $2.72 compared to $4.25 for fresh oranges.

In some cases, where the cost of harvesting citrus exceeds the returns to the grower or the grower cannot find a buyer for the fruit, economic abandonment can occur. According to information from the National Agricultural Statistics Service, the seasons of 1995–96, 1996–97, 1997–98, and 2000–01 had an average economic abandonment of two million boxes or more of red seedless grapefruit alone.

Consequently, growers are looking for other outlets to move their fruit in an effort to increase returns. Several growers at the meeting stated that regulations previously imposed on the citrus industry made it difficult for them to ship homegrown fruit into interstate markets. Some growers believe secondary markets exist (which previously could not be supplied) that will provide them additional outlets to sell their citrus. They think niche markets exist that could be profitable. They believe they can ship quality fruit directly to out-of-state markets and that it would be well received.

Growers want the opportunity to continue pursuing those niche markets. These growers contend tree run citrus does not need a minimum grade and size to be marketable, and that they can supply quality fruit to secondary markets not served by packed fruit. However, they believe to do it profitably, they need to bypass the normal handler operations and the associated costs.

The committee listened to the concerns of these small growers and the problems they have encountered. In an effort to allow these growers to pursue these niche markets, the committee, which consists of growers and handlers, unanimously voted to allow a minimum quantity of citrus to be shipped exempt from the grade, size, and assessment regulations. The committee recommended growers be allowed to ship up to 150 1-3/5 bushel boxes of each variety, per shipment, from their own groves, with total shipments for the season not to exceed 1,500 boxes per variety.

Throughout industry discussions, many different combinations of varieties and shipment totals were discussed. In making this recommendation, the committee determined that 150 boxes of each variety per shipment allows the grower to ship a sufficient amount of fruit to make the exemption cost effective and yet not allow too much fruit to enter market channels exempt from marketing order requirements. The committee believes this level of volume will help keep this fruit in non-competitive outlets.

The committee believes this tree run fruit will be sold primarily to non-competitive, niche markets, such as farmers' markets, flea markets, roadside stands, and similar outlets and will not compete with non-exempt fruit shipped under the order. Fruit is sold in similar markets within the state, and such markets have been successful. This change allows growers to sell directly to similar markets outside of the State. The committee believes this action allows the industry to service more non-traditional markets and that this may be a way to increase fresh market shipments and develop new markets. Granting this exemption allows growers to supply markets that might not otherwise be supplied. Some members expect that this tree run or grove fresh fruit may create greater consumer interest in fresh citrus fruit.

Under this provision, the grower is required to apply to the committee, on a "Grower Tree Run Certificate Application" form provided by the committee, for an exemption to ship tree run citrus fruit to interstate markets. On this form, the grower must provide the committee with their name; address; phone number; legal description of the grove; variety of citrus to be shipped; and the approximate number of boxes produced on the specified grove. The grower must also certify that the fruit to be handled comes from the grove owned by the grower applicant. The grower will also report to the committee the actual number of boxes per variety shipped under the exemption.

The Grower Tree Run Certificate Application form is submitted to the committee manager. The manager reviews the application for completeness and accuracy. The manager also verifies the information provided. After the application has been reviewed, the manager notifies the grower applicant in writing whether the application is approved or denied.

Once the grower has received approval for their application for exemption and begins shipping fruit, a "Report of Shipments Under Grower Tree Run Certificate" form, also provided by the committee, must be completed for each shipment. On this form, the grower provides the location of the grove, the amount of fruit shipped, the shipping date, and the type of transportation used to ship the fruit, along with the vehicle license number. The grower must supply the Road Guard Station with a copy of the grower certificate report for each shipment, and provide a copy of the report to the

committee. This report enables the committee to maintain compliance and gather data, which will be used to determine the effectiveness of the exemption. Failure to comply with these requirements may result in the cancellation of a grower's certificate.

The FDOC defines tree run grade and wholesomeness of citrus fruit. This fruit is handled by the grower and bypasses normal handler operations. Even with the change to the provisions under the order, tree run citrus must still meet the requirements of the State of Florida Statutes and FDOC regulations, including inspection. Consequently, growers will need to continue to have the fruit inspected to meet current State requirements.

This exemption is effective for the current season beginning October 8, 2002, and ending July 1, 2003, only. The committee determined that offering the exemption for one season will provide sufficient information on how the fruit shipped under the exemption was received on the market. It will also indicate whether or not other markets exist that packed fruit is not currently supplying, where these markets are located, and approximately how much fruit can be sold in such markets. It will also indicate the number of growers interested in utilizing the exemption and the volume of citrus shipped under the exemption. In addition, it will provide the committee with information regarding any potential impact on competitive outlets. The committee will also have information available regarding any compliance issues not previously discussed. At the end of the season, the committee will review all available information and decide whether the exemption should be continued.

This rule does not affect the provision that handlers may ship up to 15 standard packed cartons (12 bushels) of fruit per day exempt from regulatory requirements. Fruit shipped in gift packages that are individually addressed and not for resale, and fruit shipped for animal feed are also exempt from handling requirements under specific conditions. Also, fruit shipped to commercial processors for conversion into canned or frozen products or into a beverage base are not subject to the handling requirements under the order.

Section 8e of the Act requires that whenever grade, size, quality, or maturity requirements are in effect for certain commodities under a domestic marketing order, including citrus, imports of that commodity must meet the same or comparable requirements. This rule does not change the minimum grade and size requirements under the order. Therefore, no change is necessary in the citrus import regulations as a result of this action.

Final Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 11,000 producers of Florida citrus in the production area and approximately 80 handlers subject to regulation under the marketing order. Small agricultural producers are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts less than $750,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000.

Based on industry and committee data, and average annual f.o.b. price for fresh Florida citrus during the 2001–02 season was approximately $8.10 per 4/5-bushel carton for all shipments, and the total fresh shipments for the 2001–02 season were around 55 million 4/5-bushel cartons of Florida citrus. Approximately 50 percent of the handlers handled 94 percent of Florida citrus shipments. Using information provided by the committee, about 54 percent of citrus handlers could be considered small businesses under the SBA definition. Although specific data is unavailable, USDA believes that the majority of Florida citrus producers may be classified as small entities.

This rule continues in effect the addition of § 905.149 to the rules and regulations under the order exempting shipments of small quantities of tree run citrus from the grade, size, and assessment requirements of the order. This action allows growers to ship 150 1-3/5 bushel boxes per variety, per shipment, of their own tree run citrus free from marketing order regulations into interstate markets. Total shipments cannot exceed 1,500 boxes per variety for the season per individual grower. This change is effective for the 2002–03 season only. The committee believes this action may be a way to increase fresh market shipments, develop new markets, and improve grower returns. Authority for this action is provided in § 905.80(e).

According to a recent study by the University of Florida—Institute of Food and Agricultural Sciences, production costs for the 2001–02 season ranged from $1.71 per box for processed oranges to $2.41 per box for grapefruit grown for the fresh market. The average packing charge for oranges is approximately $6.50 per box, for grapefruit the charge is approximately $5.75 per box, and for tangerines the charge can be as high as $9 per box. In a time when grower returns are weak, sending fruit to a packinghouse can be cost prohibitive, especially for the small grower. This rule may provide an additional outlet for fruit that might otherwise be forced into the processing market or left on the tree altogether.

This rule will not impose any additional costs on the grower. This rule has the opposite effect. It reduces the costs associated with having fruit handled by a packinghouse. This rule enables growers to ship their tree run citrus free from grade, size, and assessment requirements under the order. This action allows growers to ship minimum quantities of their citrus directly into interstate commerce exempt from some order requirements and their related costs. With this action, growers can reduce handling costs and use those savings toward developing additional markets. This benefits all growers regardless of size but it is expected to have a particular benefit for the small grower.

The committee considered several alternatives to this action, including making no change to the current regulations. The committee believed that some change was necessary to help Florida citrus growers. The committee considered allowing growers to ship unlimited quantities of any grower's citrus. This option was rejected because it would have caused market disruption and compliance problems, because growers could become shippers for other growers. It would have also made it more difficult to keep this fruit in noncompetitive outlets. Other alternatives considered were increasing the number of boxes available to be shipped per load, and increasing the number of boxes available to be shipped per season. These options were also rejected amid concerns that too much fruit could be shipped and find its way into the competitive markets.

This action requires two additional forms. In accordance with the Paperwork Reduction Act of 1995 (44

U.S.C. chapter 35), AMS obtained emergency approval for a new information collection request under OMB No. 0581–NEW for Oranges, Grapefruit, Tangerines, and Tangelos Grown in Florida, Marketing Order No. 905. The emergency request was necessary because insufficient time was available to follow normal clearance procedures. This information collection will be merged with the forms currently approved for use under OMB No. 0581–0189 "Generic OMB Fruit Crops."

USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this rule. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

Further, the committee's meeting was widely publicized throughout the citrus industry and all interested persons were invited to attend the meeting and participate in committee deliberations. Like all committee meetings, the May 22, 2002, meeting was a public meeting and all entities, both large and small, were able to express their views on this issue.

Also, the committee has a number of appointed subcommittees to review certain issues and make recommendations to the committee. A subcommittee met May 21, 2002, and discussed the tree run issue in detail. That meeting was also a public meeting and both large and small entities were able to participate and express their views.

An interim final rule concerning this action was published in the **Federal Register** on October 7, 2002. Copies of the rule were mailed by the committee's staff to all committee members and citrus handlers. In addition, the rule was made available through the Internet by the Office of the **Federal Register** and USDA. That rule provided for a 60-day comment period which ended December 6, 2002. No comments were received.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/fv/moab.html*. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant material presented, including the committee's recommendation, and other information, it is found that finalizing the interim final rule, without change, as published in the **Federal Register** (67 FR 62313, October 7, 2002) will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 905

Oranges, Grapefruit, Tangerines, Tangelos, Marketing agreements, Reporting and recordkeeping requirements.

PART 905—ORANGES, GRAPEFRUIT, TANGERINES, AND TANGELOS GROWN IN FLORIDA

Accordingly, the interim final rule amending 7 CFR part 905 which was published at 67 FR 62313 on October 7, 2002, is adopted as a final rule without change.

Dated: January 23, 2003.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 03–2014 Filed 1–28–03; 8:45 am]

BILLING CODE 3410–01–P

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Parts 236 and 241

[INS No. 2203–02]

RIN 1115–AG67

Release of Information Regarding Immigration and Naturalization Service Detainees in Non-Federal Facilities

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This final rule governs the public disclosure by any state or local government entity or by any privately operated facility of the name and other information relating to any immigration detainee being housed or otherwise maintained or provided service on behalf of the Immigration and Naturalization Service (INS or Service). This rule establishes a uniform policy on the public release of information on Service detainees and ensures the Service's ability to support the law enforcement and national security needs of the United States.

DATES: This rule is effective on January 29, 2003.

FOR FURTHER INFORMATION CONTACT: Dea Carpenter, Deputy General Counsel, Office of the General Counsel, Immigration and Naturalization Service, 425 I Street NW., Room 6100, Washington, DC 20536, telephone (202) 514–2895.

SUPPLEMENTARY INFORMATION: The Commissioner of the Immigration and Naturalization Service ("Service") published this rule as an interim rule with request for comments on April 22, 2002. 67 FR 19508. In the 60-day comment period, the Service received only four comments.

The comments received may be described as follows: One commenter contended that the rule violates non-citizens' constitutional rights, the public's right to know under the First Amendment, the States' rights under the Tenth Amendment and the Guarantee Clause of Article IV of the Constitution. This comment also argued that the manner of promulgation of the interim rule violated the Administrative Procedure Act (APA), and that consent to the rule by a non-federal institution could not validate the rule. A second commenter asserted that the rule violates the First Amendment and the Due Process Clause of the Fifth Amendment to the Constitution; that the rule derogates treaty obligations of the United States under international law; that, in enacting the interim rule, the Service failed to comply with the notice and comment provisions of the APA; that the rule violates the Tenth Amendment; and that the rule exceeds the scope of delegated authority under the Immigration and Nationality Act ("Act"). The third comment also took the position that the rule exceeds the authority delegated under the Act. The fourth comment urged that the rule is impractical and affects the ability of third persons to communicate with detainees. All of the commenters were of the view that the rule reflects undesirable public policy.

Rather than respond to each comment individually, the Service believes that it is more functional to respond to the concerns raised, organized by subject matter. The Service has considered the comments and responds as follows:

1. The commenters' suggestion that the rule exceeds the Attorney General's authority under federal law is without merit. Federal control over matters regarding aliens and immigration is plenary and exclusive. "Control over immigration and naturalization is entrusted exclusively to the Federal Government, and a State has no power to interfere." *Nyquist* v. *Mauclet*, 432 U.S. 1, 10 (1977); *see* also, *e.g.*, *Mathews* v. *Diaz*, 426 U.S. 67, 81 (1976) ("[T]he responsibility for regulating the relationship between the United States and our alien visitors has been committed to the political branches of the Federal Government."). Under federal law, the Attorney General is explicitly charged with the administration and enforcement of the Nation's immigration laws. 8 U.S.C. 1103(a)(1) ("[t]he Attorney General shall be charged with the administration and

enforcement of this chapter and all other laws relating to the immigration and naturalization of aliens"); *see INS* v. *Aguirre-Aguirre*, 526 U.S. 415, 424 (1999). Pursuant to those responsibilities, the Attorney General possesses broad and express authority to promulgate appropriate immigration regulations. *See* 8 U.S.C. 1103(a)(3) (the Attorney General "shall establish such regulations; * * * issue such instructions; and perform such other acts as he deems necessary for carrying out his authority under the provisions of this chapter."). In addition, the Attorney General has explicit statutory authority to detain aliens in connection with removal proceedings, 8 U.S.C. 1226(a), 1231, and to enter into agreements with State and local governments for the housing of aliens detained under provisions of the immigration laws. 8 U.S.C. 1103(a)(9)(A). The Attorney General has delegated substantial immigration responsibilities to the Commissioner of the INS. *See* 8 U.S.C. 1103(c); 8 CFR 2.1.

These provisions plainly authorize the Attorney General or the Commissioner to set the terms of alien detention contracts and to provide by regulation that persons housing INS detainees on behalf of the federal government shall not publicly disclose the names and other information regarding those detainees, particularly where such disclosure would threaten harm to vital national interests. The regulation is further supported by the plenary federal authority with respect to matters of national security. *See, e.g.*, *Haig* v. *Agee*, 453 U.S. 280, 307 (1981) ("It is obvious and unarguable that no governmental interest is more compelling than the security of the nation") (citation omitted); *Murphy* v. *Waterfront Comm'n of N.Y. Harbor*, 378 U.S. 52, 76 n.16 (1964) (noting "the paramount federal authority in safeguarding national security") (citation and internal quotation marks omitted). The rule is necessary because, as the New Jersey appellate court, in reviewing the legality and effect of interim rule, pointed out, "The counties are not privy to the character and extent of federal investigations in progress nor, apparently, do they possess any independently acquired information regarding the role of the INS detainees in those investigations." *ACLU* v. *County of Hudson*, 799 A.2d 629, 643 (N.J. Super. App. Div.), certification denied, 803 A.2d 1162 (N.J. 2002).

Moreover, to the extent that the rule implicates contracts between the federal government and state, local or private entities, to house federal detainees, those contracts are governed by federal law. The "rights of the United States under its contracts are governed exclusively by federal law," *Boyle* v. *United Technologies Corp.*, 487 U.S. 500, 504 (1988). With respect to contracts to house INS detainees, the regulation confirms what should always have been evident: that federal contractors with the INS may not use the information obtained in housing federal detainees to impair the federal government's enforcement of the immigration and criminal laws.

Further, the issue is not whether a non-federal entity consents to the regulation. Any non-federal entity providing housing for federal detainees may take steps to terminate its relationship with the Service if it so chooses. The rule simply relieves the non-federal entity of responsibility for releasing or withholding information regarding the detainees, and places that responsibility with the federal government subject to standards established by federal law.

The validity of the interim rule has recently been confirmed by the Superior Court of New Jersey, Appellate Division, in *ACLU* v. *County of Hudson*, 799 A.2d 629, 643 (N.J. Super. App. Div.), certification denied, 803 A.2d 1162 (N.J. 2002). In that decision, the court relied on the interim rule to reverse the judgment of a lower court requiring disclosure of information by county officials. The New Jersey court confirmed that "the regulation falls within the authority delegated to the Commissioner by Congress through the Attorney General." *Id.*, at 649; *see* also, at 650. The court found that it need "not assess the strength of the government's argument that national security interests create a generalized authority within the government to promulgate 8 CFR 236.6 or any other measures limiting the rights of individuals, for we view the government's argument based upon the delegation of authority under the INA to provide a sufficiently authoritative independent basis of support for the Commissioner's action." *Id.*, at 650.

2. Some of the commenters asserted that the interim rule was improperly promulgated under the Administrative Procedure Act (APA). As the Service explained in promulgating the interim rule, implementation of the rule as an interim rule, with provisions for post-promulgation public comments, was properly based on the APA's "good cause" exceptions found at 5 U.S.C. 553(b)(B) and (d)(3). 67 FR at 19510.

The statement accompanying the promulgation of the interim rule easily satisfied the requirements of 5 U.S.C. 553(b)(B) and (d)(3). The "good cause" exceptions may be used in "emergency situations," *Util. Solid Waste Activities Group* v. *EPA*, 236 F.3d 749, 754 (D.C. Cir. 2001), and the circumstances surrounding promulgation of the interim rule easily met that criterion. Public disclosure of the information at issue would have endangered national security and undermined crucial federal law enforcement interests. Immediate promulgation of a rule to clarify federal law and ensure the protection of those national interests was vital. In those circumstances, the government was not required to await completion of a notice-and-comment period to take immediate action.

With the adoption of this final rule, it is the final rule, and not the interim rule, that is operative. Even if a court were to find that the interim rule was improperly adopted, the court would look to this final rule in determining the rule's legal efficacy.

3. The commenters' constitutional challenges lack force. First, the Tenth Amendment is not implicated. The rule against commandeering applies only when the federal government requires state legislatures to enact regulatory schemes, *New York* v. *United States*, 505 U.S. 144, 168–69, 173 (1992), or "conscripts" state officials to execute a federal program, *Printz* v. *United States*, 521 U.S. 898, 935 (1997). The rule has no application where the federal government requires a state *not* to release information pursuant to a framework, such as this rule, that applies equally to both state and private actors. Thus, in *Reno* v. *Condon*, 528 U.S. 141 (2000), the Supreme Court unanimously rejected a Tenth Amendment challenge to a federal law that prohibited states from disclosing a driver's personal information, such as a person's name and address.

The Supreme Court has also made clear that the "anti-commandeering" principle places no constraint on the federal government's ability to impose conditions on the receipt of federal funds. *See* New York, 505 U.S. at 168–69, 173. Pursuant to explicit congressional authority, the federal government has expended and is expending substantial funds in connection with the housing of immigration detainees by non-federal entities. The conditions attached to the receipt of those funds—funds which recipients are free to accept or reject as they please—do not implicate the Tenth Amendment. *See id.*

Second, the commenters' invocation of the Guarantee Clause of Article IV of the Constitution also fails. The Guarantee Clause provides that "[t]he United States shall guarantee to every State in this Union a Republican Form

of Government." U.S. Const., Art. IV, § 4. That constitutional provision is not implicated here.

Third, the commenters' Due Process concerns are unfounded. Under federal law, INS detainees in removal proceedings are entitled to invoke a panoply of applicable administrative and judicial procedures. *See, e.g.*, 8 U.S.C. 1226–31; 8 CFR 240.10. The rule in no way abrogates any of those rights. Moreover, administrative removal proceedings are "intended to provide a streamlined determination of eligibility to remain in this country, nothing more." *INS* v. *Lopez-Mendoza*, 468 U.S. 1032, 1039 (1984). Thus, due process requirements in this context are reduced, and hearings need not comply with "the forms of judicial procedure." *Yamataya* v. *Fisher*, 189 U.S. 86, 97 (1903); *see* also, *e.g.*, *United States* v. *Verdugo-Urquidez*, 494 U.S. 259, 271–273 (1990) (due process "accord[s] differing protection to aliens than to citizens"); *Fiallo* v. *Bell*, 430 U.S. 787, 792 (1977) (political branches may adopt rules for aliens " 'that would be unacceptable if applied to citizens' " (citation omitted)); *Landon* v. *Plasencia*, 459 U.S. 21, 34 (1982) ("it must weigh heavily in the [due process] balance that control over matters of immigration is a sovereign prerogative, largely within the control of the executive and the legislature"). The disclosure rule here invades no due process rights.

Fourth, the rule does not infringe upon any public First Amendment rights. Rather, the rule ensures that any disclosure of information pertaining to federal detainees will be governed by the federal Freedom of Information Act (FOIA), 5 U.S.C. 552. The FOIA provides generally for disclosure of records by federal agencies, but contains exceptions that Congress believed crucial to the effective functioning of the national government. *See, e.g.*, 5 U.S.C. 552(b)(1), (7)(A), (C), (E), (F). The rule here ensures that federal interests will be protected by channeling information requests through the FOIA. In addition, the rule guarantees that information regarding federal detainees will be released under a uniform federal scheme rather than the varying laws of fifty states. It is this Act of Congress and this implementing rule that are controlling, not the Constitutional bar to impairment of freedom of speech. "The Constitution itself is neither a Freedom of Information Act nor an Official Secrets Act." *Houchins* v. *KQED, Inc.*, 438 U.S. 1, 12 (1978) (quoting Stewart, "Or of the Press," 26 Hastings L.J. 631, 636 (1975)). By channeling requests for information through the FOIA, which contains a privacy exception, the rule also protects detainees' privacy. Just as the government has a substantial interest in protecting legitimate national security, intelligence and law enforcement functions under the FOIA, detainees may have a substantial privacy interest in their names and the personal information connected with their status as detainees. 5 U.S.C. 552(b)(1), (6), (7)(A), (C), (E). For example, individuals who were originally detained because of their possible connection to terrorism, have an overwhelming interest in not being connected with such activity. And particularly with respect to those individuals cooperating with the government's law enforcement investigations, there are powerful reasons why such persons would wish to conceal their identities and whereabouts. Indeed, other INS regulations expressly shield from disclosure information pertaining to or contained in an asylum application. *See* 8 CFR 208.6(a). Contrary to some of the commenters' suggestions, the fact that certain detainees may wish to publicly identify themselves, which they are free to do, in no way undermines this assessment.

4. The contention that the rule violates international law is similarly without basis. Federal law explicitly addresses the issue of access to consular officials. The Vienna Convention requires that a detained individual be advised of his or her right to contact his or her country's consul, and consular notification upon request of the detainee. *See* Vienna Convention on Consular Relations, 21 U.S.T. 77, T.I.A.S. No. 6820, Art. 36(1)(b). However, an alien detainee may not wish to have his nation's representatives advised of his detention and may wish to apply for refugee status or asylum. Consular notification is mandatory only if the bilateral consular convention specifically requires notifying consular officials of all arrests or detentions. *See* 8 CFR 236.1(e) (listing countries covered by such bilateral conventions).

5. Finally, all of the comments argue that the rule reflects unwarranted public policy choices. The Service disagrees. In this post-September 11, 2001, era of heightened national security concerns, it is necessary that information regarding aliens detained in the United States be released with great care. As explained in connection with promulgation of the interim rule, the inappropriate release of information concerning detained aliens can provide hostile interests with intelligence harmful to the national security and law enforcement interests of the United States. In upholding the regulation, the Appellate Division of the New Jersey Superior Court expressly accept[ed] the government's characterization of the interests affected as important, *i.e.*, facilitation of law enforcement operations, the protection of detainees, and promotion of national security." *ACLU* v. *County of Hudson, supra*, 799 A.2d at 652; *see* also *id.*, at 649 ("With regard to the government's national security argument, there can be no question that the government of the United States has a compelling interest in securing the safety of the nation's citizens against terrorist attack"). The Service continues to believe that the rule is fully warranted and adopts the analysis and legal authority in the supplementary information to the interim rule as support for the adoption of this final rule. 67 FR at 19501–19510.

The commenters' contention that the rule is impractical has not proven to be true. The FOIA has a long history of success in providing for proper public access to information while also protecting appropriate public safety, national security, and individual privacy interests. The Service is fully capable of carrying out this mandate in the context of federal immigration detainees housed in non-federal facilities, and the commenters have supplied no evidence to the contrary.

Accordingly, the Service is adopting the interim rule as a final rule without amendment.

Regulatory Flexibility Act

The Commissioner of the Immigration and Naturalization Service, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and, by approving it, certifies that this rule will not have a significant economic impact on a substantial number of small entities. This rule applies only to release of information about Service detainees being housed or maintained in a state or local government entity or a privately operated detention facility. It does not have any adverse on small entities as that term is defined in 5 U.S.C. 601(6).

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Act of 1996. This rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Executive Order 12866

This rule is considered by the Department of Justice, Immigration and Naturalization Service, to be a "significant regulatory action" under Executive Order 12866, section 3(f), Regulatory Planning and Review. Accordingly, this rule has been submitted to the Office of Management and Budget for review.

Executive Order 13132

This rule will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. This rule merely pertains to the public disclosure of information concerning Service detainees housed, maintained or otherwise served in state or local government or privately operated detention facilities under any contract or other agreement with the Service. In effect, the rule will relieve state or local government entities of responsibility for the public release of information relating to any immigration detainee being housed or otherwise maintained or provided service on behalf of the Service. Instead, the rule reserves that responsibility to the Service with regard to all Service detainees. Therefore, in accordance with section 6 of Executive Order 13132, it is determined that this rule does not have sufficient Federalism implications to warrant the preparation of a federalism summary impact statement.

Executive Order 12988, Civil Justice Reform

This rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988.

Paperwork Reduction Act

This rule does not impose any new reporting or recordkeeping requirements under the Paperwork Reduction Act.

List of Subjects

8 CFR Part 236

Administrative practice and procedure, Aliens, Immigration.

8 CFR Part 241

Administrative practice and procedure, Aliens, Immigration.

Accordingly, the interim rule amending 8 CFR parts 236 and 241 which was published at 67 FR 19508 on April 22, 2002, is adopted as a final rule without change.

Dated: January 23, 2003.

Michael J. Garcia,

Acting Commissioner, Immigration and Naturalization Service.

[FR Doc. 03–1958 Filed 1–28–03; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–307–AD; Amendment 39–13025; AD 2003–03–01]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737–600, –700, –700C, –800, and –900 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to all Boeing Model 737–600, –700, –700C, –800, and –900 series airplanes. This action requires reviewing the airplane maintenance records to determine whether an engine has been removed from the airplane since the airplane was manufactured. For airplanes on which an engine has been removed, this action requires an inspection of the aft engine mount to determine if the center link assembly is correctly installed, and follow-on actions if necessary. This action also prohibits installation of an engine unless the aft engine mount is inspected and the center link assembly is found to be installed correctly. This action is necessary to prevent increased structural loads on the aft engine mount, which could result in failure of the aft engine mount and consequent separation of the engine from the airplane. This action is intended to address the identified unsafe condition.

DATES: Effective February 13, 2003.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of February 13, 2003.

Comments for inclusion in the Rules Docket must be received on or before March 31, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–307–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9–anm–iarcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2002–NM–307–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Sue Lucier, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2186; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: The FAA has received reports indicating that operators found that the center link assembly for the aft engine mount was reversed on several Model 737–700 series airplanes and one Model 737–800 series airplane. Investigation revealed that the center link assembly had been reversed during re-assembly after overhaul of the airplane engine. Because of the nearly symmetrical design of this assembly, it is susceptible to being reversed during installation. Reversal of the center link assembly increases the structural load on the aft engine mount. This condition, if not corrected, could result in failure of the aft engine mount and consequent separation of the engine from the airplane.

The design of the center link assembly for the aft engine mount is common to

all Model 737–600, –700, –700C, –800, and –900 series airplanes. Therefore, Model 737–600, –700C, and –900 series airplanes may be subject to the same unsafe condition revealed on the Model 737–700 and –800 series airplanes.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Alert Service Bulletin 737–71A1462, Revision 1, dated November 7, 2002. That service bulletin describes procedures for a one-time general visual inspection to determine if the center link assembly of the aft engine mount is correctly installed, and follow-on actions if necessary. If the center link assembly is incorrectly installed, follow-on actions include:

- Removing the assembly and installing it correctly;
- Performing a detailed inspection of the engine mounting lugs and engine turbine rear frame for cracking, yielding, buckling, or wear damage; and
- Performing a detailed inspection of the hardware for the aft engine mount (including the center link assembly, right link assembly, aft mount hanger assembly, and link pins) for cracking, yielding, buckling, or wear damage.

Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

Explanation of the Requirements of the Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design, this AD is being issued to prevent increased structural loads on the aft engine mount, which could result in failure of the aft engine mount and consequent separation of the engine from the airplane. This AD requires a one-time review of the airplane maintenance records to determine if an engine has been removed since the airplane's date of manufacture. For any engine that has been removed since the airplane's date of manufacture, this AD requires accomplishment of the actions specified in the service bulletin described previously, except as discussed under the heading, "Differences Between This AD and the Service Bulletin." This AD also prohibits installation of an engine unless the aft engine mount is inspected and the center link assembly is found to be installed correctly.

Differences Between This AD and the Service Bulletin

Operators should note that, while the service bulletin's effectivity is limited to certain airplane line numbers, this AD is applicable to all Boeing Model 737–600, –700, –700C, –800, and –900 series airplanes. The design of the center link assembly of the aft engine mount on all of these airplanes is the same. Therefore, all of these airplanes may be subject to the same unsafe condition. This issue has been coordinated with Boeing, and Boeing concurs with making this AD applicable to all Boeing Model 737–600, –700, –700C, –800, and –900 series airplanes.

Operators should note that the service bulletin specifies that the engine manufacturer may be contacted for instructions for repair of any cracking, yielding, buckling, or wear damage that is found. However, this AD requires the repair of those conditions to be accomplished per a method approved by the FAA, or per data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative who has been authorized by the FAA to make such findings. Alternatively, this AD allows replacement of the subject parts with new parts per the airplane maintenance manual.

Operators also should note that, although the Accomplishment Instructions of the referenced service bulletin describe procedures for reporting certain findings to the airplane manufacturer, this AD does not include such a requirement.

Determination of Rule's Effective Date

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2002-NM–307-AD." The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2003–03–01 Boeing: Amendment 39–13025. Docket 2002–NM–307–AD.

Applicability: All Model 737–600, –700, –700C, –800, and –900 series airplanes; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (g) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent increased structural loads on the aft engine mount, which could result in failure of the aft engine mount and consequent separation of the engine from the airplane, accomplish the following:

Review of Maintenance Records

(a) Within 90 days after the effective date of this AD, review the airplane maintenance records to determine whether either engine has been removed since the airplane's date of manufacture. If neither engine has been removed since the airplane's date of manufacture, no further action is required by this paragraph.

Inspection To Determine if Center Link Assembly is Installed Correctly

(b) For any installed engine that is found to have been removed from the airplane since the airplane's date of manufacture: Within 90 days after the effective date of this AD, do a one-time general visual inspection to determine if the center link assembly of the aft engine mount is installed correctly, per the Accomplishment Instructions of Boeing Alert Service Bulletin 737–71A1462, Revision 1, dated November 7, 2002. If the center link assembly is installed correctly, as specified in the service bulletin, no further action is required by paragraphs (b), (c), or (d) of this AD for that engine. However, paragraph (f) of this AD continues to apply.

Note 2: For the purposes of this AD, a general visual inspection is defined as: "A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made from within touching distance unless otherwise specified. A mirror may be necessary to enhance visual access to all exposed surfaces in the inspection area. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked."

Follow-on and Corrective Actions

(c) For any center link assembly that is found installed incorrectly during the inspection required by paragraph (b) of this AD: Before further flight, do the actions in paragraphs (c)(1), (c)(2), and (c)(3) of this AD, per the Accomplishment Instructions of Boeing Alert Service Bulletin 737–71A1462, Revision 1, dated November 7, 2002, except that it is not necessary to submit a report of findings to the airplane manufacturer.

(1) Remove the center link assembly and install it correctly.

(2) Perform a detailed inspection of the engine mounting lugs and engine turbine rear frame for cracking, yielding, buckling, or wear damage.

(3) Perform a detailed inspection of the hardware for the aft engine mount; including the center link assembly, right link assembly, aft mount hanger assembly, and link pins; for cracking, yielding, buckling, or wear damage.

Note 3: For the purposes of this AD, a detailed inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

Repair

(d) If any cracking, yielding, buckling, or wear damage is found during the inspections required by paragraphs (c)(2) and (c)(3) of this AD: Before further flight, replace the discrepant part with a new or serviceable part per the applicable section of the airplane maintenance manual, or repair per a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA; or per data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative who has been authorized by the Manager, Seattle ACO, to make such findings. For a repair method to be approved, the approval must specifically reference this AD.

Credit for Actions Accomplished Previously

(e) Inspections and correction of the installation of the center link assembly accomplished before the effective date of this AD per the Accomplishment Instructions of Boeing Alert Service Bulletin 737–71A1462, dated August 29, 2002, are acceptable for compliance with the requirements of paragraphs (b) and (c) of this AD.

Parts Installation

(f) As of the effective date of this AD, no person may install an engine on any airplane unless the inspection specified by paragraph (b) of this AD is accomplished and the center link assembly of the aft engine mount is found to be installed correctly.

Alternative Methods of Compliance

(g) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

(h) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(i) Unless otherwise specified in this AD, the actions shall be done in accordance with Boeing Alert Service Bulletin 737–71A1462, Revision 1, dated November 7, 2002. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(j) This amendment becomes effective on February 13, 2003.

Issued in Renton, Washington, on January 21, 2003.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–1815 Filed 1–28–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–83–AD; Amendment 39–13031; AD 2003–03–07]

RIN 2120–AA64

Airworthiness Directives; Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model EMB–145 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain EMBRAER Model EMB–145 series airplanes, that requires the installation of reinforcements in the lower portion of wing rib 15 on the left-hand and right-hand sides of the airplane. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to prevent reduced structural integrity of the wing flap support structure.

DATES: Effective March 5, 2003.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 5, 2003.

ADDRESSES: The service information referenced in this AD may be obtained from Empresa Brasileira de Aeronautica S.A. (EMBRAER), P.O. Box 343—CEP 12.225, Sao Jose dos Campos—SP, Brazil. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Robert D. Breneman, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1263; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain EMBRAER Model EMB–145 series airplanes was published in the **Federal Register** on February 2, 2000 (65 FR 4902). That action proposed to require the installation of reinforcements in the lower portion of wing rib 15 on the left-hand and right-hand sides of the airplane.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

Request To Add Revised Service Information

The commenter asks that EMBRAER Service Bulletin 145–57–0008, Change No. 02, dated April 7, 1999, and Change No. 03, dated May 14, 1999, be added to paragraph (a) and Note 2 of the proposed AD as another source of service information for accomplishment of the specified actions. EMBRAER Service Bulletin 145–57–0008, Change No. 01, dated February 12, 1999, was referenced in the proposed AD as the appropriate source of service information for accomplishment of the actions.

The FAA agrees with the commenter. We have reviewed and approved EMBRAER Service Bulletin 145–57–0008, Change No. 02, dated April 7, 1999, and Change No. 03, dated May 14, 1999. We find that the revisions incorporated in these changes are not substantive, meaning that airplanes modified per Change No. 01 of the service bulletin are not subject to any additional work under Change No. 02 or 03 of the service bulletin. Therefore, we have revised paragraph (a) of this final rule to specify that Changes No. 02 and 03 of the service bulletin are considered to be acceptable methods of compliance with this AD.

Explanation of Change to Final Rule

Because the language in Note 2 of the proposed AD is regulatory in nature, that note has been redesignated as paragraph (b) of this final rule. Subsequent paragraphs have been reordered accordingly.

Conclusion

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes described previously. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

The FAA estimates that 33 airplanes of U.S. registry will be affected by this AD, that it will take approximately 20 work hours per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Required parts will cost approximately $3,124 per airplane. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $142,692, or $4,324 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the

Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2003–03–07 Embraer: Amendment 39–13031. Docket 99–NM–83–AD.

Applicability: Model EMB–145 series airplanes, serial numbers 145004 through 145058 inclusive, and 145060; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent reduced structural integrity of the wing flap support structure, accomplish the following:

Reinforcement Installation

(a) Prior to the accumulation of 8,000 total flight cycles, or within 45 days after the effective date of this AD, whichever occurs later, install reinforcements in the lower portion of rib 15 on the left-hand and right-hand sides of the airplane in accordance with EMBRAER Service Bulletin 145–57–0008, Change No. 01, dated February 12, 1999; Change No. 02, dated April 7, 1999; or Change No. 03, dated May 14, 1999.

(b) Installation in accordance with EMBRAER Service Bulletin 145–57–0008, dated October 21, 1998, accomplished prior to the effective date of this AD, is also acceptable for compliance with the requirements of paragraph (a) of this AD.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(e) Unless otherwise specified by this AD, the installation shall be done in accordance with EMBRAER Service Bulletin 145–57–0008, Change No. 01, dated February 12, 1999; EMBRAER Service Bulletin 145–57–0008, Change No. 02, dated April 7, 1999; or EMBRAER Service Bulletin 145–57–0008, Change No. 03, dated May 14, 1999. EMBRAER Service Bulletin 145–57–0008, Change No. 01, dated February 12, 1999, contains the following effective pages:

Page number	Change no. shown on page	Date shown on page
1, 2	01	February 12, 1999.
3–10	Original	October 21, 1998.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Empresa Brasileira de Aeronautica S.A. (EMBRAER), P.O. Box 343—CEP 12.225, Sao Jose dos Campos—SP, Brazil. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in Brazilian airworthiness directive 1999–01–02R1, dated March 15, 1999.

Effective Date

(f) This amendment becomes effective on March 5, 2003.

Issued in Renton, Washington, on January 22, 2003.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–1830 Filed 1–28–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–274–AD; Amendment 39–13029; AD 2003–03–05]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737–300, –400, and –500 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain Boeing Model 737–300, –400, and –500 series airplanes, that currently requires replacement, with new parts, of the existing actuators or the rod ends on the existing actuators at wing leading edge slat positions 1, 2, 5, and 6. This amendment adds a one-time inspection of all the rod ends on the actuators of the wing leading edge slats to determine if vibro-engraving was used to identify the parts, and corrective action, if necessary. This amendment is prompted by reports indicating that vibro-engraving was found on new rod ends during installation; such part markings create stress risers that reduce the fatigue life of the rod ends. The actions specified by this AD are intended to prevent fatigue cracking, which could result in failure of the rod ends, uncommanded deployment of the wing leading edge slat, and consequent reduced controllability of the airplane. This action is intended to address the identified unsafe condition.

DATES: Effective March 5, 2003.

The incorporation by reference of Boeing Alert Service Bulletin 737–27A1243, dated July 26, 2001, excluding Evaluation Form; and Boeing Alert Service Bulletin 737–27A1211, Revision 2, dated December 21, 2000, including Information Notice 737–27A1211 IN 03, dated July 26, 2001, excluding Evaluation Form; as listed in the regulations, is approved by the Director of the Federal Register as of March 5, 2003.

The incorporation by reference of Boeing Alert Service Bulletin 737–27A1211, dated November 19, 1998; and Revision 1, dated December 9, 1999; as listed in the regulations, was approved

previously by the Director of the Federal Register as of February 29, 2000 (65 FR 3801, January 25, 2000).

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Douglas Tsuji, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (425) 227–1506; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 2000–02–03, amendment 39–11521 (65 FR 3801, January 25, 2000), which is applicable to certain Boeing Model 737–300, –400 and –500 series airplanes, was published in the **Federal Register** on June 18, 2002 (67 FR 41355). The action proposed to continue to require replacement, with new parts, of the existing actuators or the rod ends on the existing actuators at wing leading edge slat positions 1, 2, 5, and 6. The new action proposed to add a one-time inspection of all the rod ends on the actuators of the wing leading edge slats to determine if vibro-engraving was used to identify the parts, and corrective action, if necessary.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received. One commenter has no comments.

Request To Change Summary Section

One commenter asks that the summary section of the proposed AD be changed to include the part number(s) of the rod ends that are affected by vibro-engraving. The commenter's understanding is that only the new rod end having part number (P/N) 69–73485–9, and the rod end and switch assembly having P/N 65–44760–28, are affected by the vibro-engraving. The same commenter states that the summary section should specify only slat actuators that have been modified by Boeing Alert Service Bulletin 737–27A1211 (referenced in the proposed AD as the appropriate source of service information for accomplishment of certain actions) and have the rod end P/Ns specified above.

The FAA does not agree to change the summary section in the final rule. The summary section in the AD already states that, "This proposal is prompted by reports indicating that vibro-engraving was found on new rod ends. * * *"

Request To Change Paragraphs (a) and (c)

One commenter states that the paragraph (a) of the proposed AD be changed to specify line numbers (L/N) 1001 through 3063 inclusive. The commenter adds that L/Ns 3064 through 3132 inclusive should be removed from paragraph (a) of the proposed AD because airplanes having L/Ns 3075, 3109, and 3116 have actuators with the new rod end that were installed during production.

Another commenter asks that paragraph (c) of the proposed AD be changed to specify that the general visual inspection only be done on slat actuators that have been modified by Service Bulletin 737–27A1211, and that have rod ends with P/N 69–73485–9.

We do not agree that paragraph (a) should be changed to specify the line numbers suggested by the commenter, nor do we agree that the general visual inspection specified in paragraph (c) need only be done on slat actuators that have been modified by Boeing Alert Service Bulletin 737–27A1211 and have P/N 69–73485–9. Some of the vibro-engraved rod ends were shipped as spares and could now be installed on production airplanes having L/Ns 3064 through 3132 inclusive, which were not listed in the effectivity specified in Service Bulletin 737–27A1211. We find that no change to the final rule is necessary in this regard.

We do agree to add the part numbers of the rod ends that are affected by vibro-engraving to paragraph (c) of this final rule for clarification, as they were not specified in the proposed AD.

Credit for Previous Accomplishment of Certain Actions

One commenter asks that paragraph (c) of the proposed AD be changed to give credit for doing the actions required by that paragraph per the two notes listed before the inspection procedures specified in the Work Instructions of Boeing Alert Service Bulletin 737–27A1243. Another commenter asks that operator record verification be added to the proposed AD as an alternative method of compliance (AMOC).

We partially agree with the commenters. We agree to add a new paragraph (d) to this final rule to give credit for accomplishment of the actions done per the notes. We do not agree that an AMOC is necessary, because credit for the applicable actions has been added in paragraph (d) of this final rule.

Change to Final Rule

We have changed the compliance time specified in paragraph (c)(1) of this final rule to add a grace period for airplanes on which the rod ends were replaced per Boeing Service Bulletin 737–27A1211, dated November 19, 1998; or Boeing Alert Service Bulletin 737–27A1211, Revision 2, dated December 21, 2000. The grace period was inadvertently omitted in the proposed AD.

Explanation of Editorial Change

We have changed the service bulletin citations throughout this final rule to exclude the Evaluation Form. (The form is intended to be completed by operators and submitted to the manufacturer to provide input on the quality of the service bulletins; however, this AD does not include such a requirement.)

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

There are approximately 1,963 airplanes of the affected design in the worldwide fleet. The FAA estimates that 799 airplanes of U.S. registry will be affected by this AD.

Replacement of the leading edge slat actuator with an actuator that has a new rod end is one option for compliance with the actions currently required by AD 2000–02–03. Replacement of the actuators on slat positions 1, 2, 5, and 6 takes approximately 3 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts cost approximately $32,252 per airplane. Based on these figures, the cost impact of the installation of actuators with new rod ends, as provided by AD 2000–02–03 as one option, is estimated to be $32,432 per airplane.

In lieu of installation of an actuator with a new rod end, AD 2000–02–03

provides an option for replacement of the rod ends on the existing actuators. This action takes approximately 4 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts cost between approximately $5,928 and $21,544 per airplane. Based on these figures, the cost impact of the replacement of the rod ends, as provided by AD 2000–02–03 as a second option, is estimated to be between $6,168 and $21,784 per airplane.

The new inspection that is required in this AD action will take approximately 2 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the inspection required by this AD on U.S. operators is estimated to be $95,880, or $120 per airplane.

Should an operator be required to accomplish the replacement of the rod end, it would take approximately 1 work hour per rod end to accomplish the replacement, at an average labor rate of $60 per work hour. Required parts would cost between $2,917 and $5,527 per rod end. Based on these figures, the cost impact of any replacement action is estimated to be between $2,977 and $5,587 per rod end.

Should an operator be required to accomplish the rework of the rod end, it would take approximately 2 work hours per rod end to accomplish the rework, at an average labor rate of $60 per hour. Based on these figures, the cost impact of the rework is estimated to be $120 per rod end.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–11521 (65 FR 3801, January 25, 2000), and by adding a new airworthiness directive (AD), amendment 39–13029, to read as follows:

2003–03–05 Boeing: Amendment 39–13029. Docket 2001–NM–274–AD. Supersedes AD 2000–02–03, Amendment 39–11521.

Applicability: Model 737–300, –400, and –500 series airplanes; line numbers 1001 through 3132 inclusive; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (g)(1) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent fatigue cracking of the rod ends of the actuators of the leading edge slats, which could result in failure of the rod ends, uncommanded deployment of the wing leading edge slat, and consequent reduced controllability of the airplane, accomplish the following:

Restatement of Requirements of AD 2000–02–03

Replacement

(a) Within 24 months after February 29, 2000 (the effective date of AD 2000–02–03, amendment 39–11521): Replace the leading edge slat actuator with an actuator that has a new rod end, or replace the rod end on the existing slat actuator with a new rod end, at slat positions 1, 2, 5, and 6; in accordance with the Accomplishment Instructions in Boeing Alert Service Bulletin 737–27A1211, dated November 19, 1998; Revision 1, dated December 9, 1999; or Revision 2, dated December 21, 2000, including Information Notice 737–27A1211 IN 03, dated July 26, 2001, excluding Evaluation Form. As of the effective date of this AD, only Revision 2 of the service bulletin shall be used.

Part Installation

(b) As of February 29, 2000, no person shall install any part having a part number identified in the "Existing Part Number" column of Section 2.E. of Boeing Alert Service Bulletin 737–27A1211, dated November 19, 1998, on any airplane.

New Requirements of This AD

One-Time Inspection

(c) For airplanes on which the actions specified in Boeing Alert Service Bulletin 737–27A1211, Revision 2, dated December 21, 2000, including Information Notice 737–27A1211 IN 03, dated July 26, 2001, excluding Evaluation Form; have not been done: Do a one-time general visual inspection of the rod ends on the actuators of the wing leading edge slats, part numbers (P/N) 65–44760–28 and 69–73485–9, to determine if vibro-engraving was used to identify the rod ends, at the time specified in paragraph (c)(1) or (c)(2) of this AD; as applicable, per the Work Instructions of Boeing Alert Service Bulletin 737–27A1243, dated July 26, 2001, excluding Evaluation Form. If no vibro-engraving is found, no further action is required by this paragraph.

Note 2: For the purposes of this AD, a general visual inspection is defined as: "A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made from within touching distance unless otherwise specified: A mirror may be necessary to enhance visual access to all exposed surfaces in the inspection area. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked."

(1) For airplanes on which the rod ends were replaced as required by paragraph (a) of this AD, do the inspection at the later of the

times specified in paragraphs (c)(1)(i) and (c)(1)(ii) of this AD.

(i) Within 12,000 flight cycles or 42 months after doing the replacement per paragraph (a) of this AD, whichever is first.

(ii) Within 12 months after the effective date of this AD.

(2) For all other airplanes: Within 12,000 flight cycles or 42 months after the effective date of this AD, whichever is first.

(d) For airplanes having actuators with rod end assemblies P/Ns 65–44760–28 and 69–73485–9: If maintenance records show that the assemblies on the airplane were never changed, or were exchanged with a rod end assembly directly acquired from Boeing or Parker Hannifin, and were not part-marked by vibro-engraving or other part markings that penetrate the surface, this is considered acceptable for compliance with the actions specified in paragraph (c) of this AD.

Corrective Action

(e) If vibro-engraving is found during the inspection required by paragraph (c) of this AD: Before further flight, rework or replace the affected rod end with a new rod end, as applicable, per the Work Instructions of Boeing Alert Service Bulletin 737–27A1243, dated July 26, 2001, excluding Evaluation Form.

Part Installation

(f) After the effective date of this AD, no person shall install on any airplane a rod end having vibro-engraving, or other part markings that penetrate the surface, unless that part has been reworked as required by this AD.

Alternative Methods of Compliance

(g)(1) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

(2) Alternative methods of compliance, approved previously in accordance with AD 2000–02–03, amendment 39–11521, are approved as alternative methods of compliance with paragraph (a) of this AD.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

(h) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(i) Unless otherwise specified in this AD, the actions shall be done in accordance with Boeing Alert Service Bulletin 737–27A1211, dated November 19, 1998, Boeing Alert Service Bulletin 737–27A1211, Revision 1, dated December 9, 1999, or Boeing Alert Service Bulletin 737–27A1211, Revision 2, dated December 21, 2000, including Information Notice 737–27A1211 IN 03, dated July 26, 2001, excluding Evaluation Form; and Boeing Alert Service Bulletin 737–27A1243, dated July 26, 2001, excluding Evaluation Form; as applicable.

(1) The incorporation by reference of Boeing Alert Service Bulletin 737–27A1243, dated July 26, 2001, excluding Evaluation Form; and Boeing Alert Service Bulletin 737–27A1211, Revision 2, dated December 21, 2000, including Information Notice 737–27A1211 IN 03, dated July 26, 2001, excluding Evaluation Form; is approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

(2) The incorporation by reference of Boeing Alert Service Bulletin 737–27A1211, dated November 19, 1998; and Boeing Alert Service Bulletin 737–27A1211, Revision 1, dated December 9, 1999; was approved previously by the Director of the Federal Register as of February 29, 2000 (65 FR 3801, January 25, 2000).

(3) Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

Effective Date

(j) This amendment becomes effective on March 5, 2003.

Issued in Renton, Washington, on January 22, 2003.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–1832 Filed 1–28–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–308–AD; Amendment 39–13026; AD 2003–03–02]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 767 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to all Boeing Model 767 series airplanes, that currently requires repetitive detailed and eddy current inspections to detect cracks of certain midspar fuse pins, and replacement of any cracked midspar fuse pin with a new fuse pin. This amendment reduces certain compliance times for certain inspections, expands the detailed and eddy current inspections, and limits the applicability in the existing AD. This amendment also provides for optional terminating action, which ends the repetitive inspections. The actions specified in this AD are intended to prevent loss of the strut and engine due to corrosion damage and cracking of both fuse pins on the same strut. This action is intended to address the identified unsafe condition.

DATES: Effective February 13, 2003.

The incorporation by reference of a certain publication, as listed in the regulations, is approved by the Director of the Federal Register as of February 13, 2003.

The incorporation by reference of Boeing Alert Service Bulletin 767–54A0062, dated April 14, 1994, as listed in the regulations, was approved previously by the Director of the Federal Register as of June 10, 1994 (59 FR 27229, May 26, 1994).

Comments for inclusion in the Rules Docket must be received on or before March 31, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–308–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-iarcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2002–NM–308–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, PO Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Suzanne Masterson, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2772; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: On May 18, 1994, the FAA issued AD 94–11–02, amendment 39–8918 (59 FR 27229, June 10, 1994), applicable to all Boeing Model 767 series airplanes, to require repetitive detailed visual and eddy current inspections to detect cracks of certain midspar fuse pins, and replacement of any cracked midspar fuse pin with a new fuse pin. That action was prompted by reports of longitudinal fatigue cracks on certain midspar fuse pins installed on Boeing Model 767 series airplanes. The actions required by that AD are intended to prevent loss of the strut and engine due to cracking of both fuse pins on the same strut.

Actions Since Issuance of Previous Rule

Since the issuance of AD 94–11–02, an operator has reported a fractured outboard midspar fuse pin (part number (P/N) 311T3102–1) of the left engine pylon, which was found during a scheduled maintenance visit. The fuse pin also had corrosion on the pin and within the bore. The airplane had accumulated 9,456 total flight cycles, and 38,911 total flight hours. The initial inspection for airplanes with midspar fuse pins having P/N 311T3102–1, as required by AD 94–11–02, begins prior to the accumulation of 15,000 total landings on the fuse pin, or within 90 days after the effective date of the existing AD, whichever occurs later. In light of this information, the FAA finds it necessary to reduce the compliance time for the initial inspection for airplanes with midspar fuse pins. This AD also includes inspecting for corrosion of the midspar fuse pins, in addition to cracks, and limits the applicability in the existing AD.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Alert Service Bulletin 767–54A0062, Revision 5, dated November 11, 2002 (Boeing Alert Service Bulletin 767–54A0062, dated April 14, 1994, was referenced in the existing AD for accomplishment of the actions specified). Revision 5 of the service bulletin reduces certain compliance times, references certain actions specified in related service bulletins that would eliminate the need for the repetitive inspections, and clarifies certain procedures. Revision 5 describes procedures for repetitive detailed and eddy current inspections for cracks and corrosion of certain midspar fuse pins, and replacement of any cracked midspar fuse pin with a new fuse pin. The service bulletin also describes procedures for a magnetic particle inspection to verify cracks if the fuse pins are removed from the strut. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

Related ADs

This AD provides an optional terminating action for the repetitive inspections by accomplishment of the modification of the nacelle strut and wing structure required by the following ADs:

AD 2000–19–09, amendment 39–11910 (65 FR 58641, October 17, 2000), which is applicable to certain Boeing Model 767 series airplanes powered by Rolls-Royce RB211 series engines;

AD 2001–02–07, amendment 39–12091 (66 FR 8085, March 5, 2001), which is applicable to certain Boeing Model 767 series airplanes powered by Pratt & Whitney engines; and

AD 2001–06–12, amendment 39–12159 (66 FR 17492, May 7, 2001), which is applicable to certain Boeing Model 767 series airplanes powered by General Electric engines.

All the previous ADs require prior or concurrent accomplishment of the following service bulletins, which are specified in Service Bulletin 767–54A0062, Revision 5, as the appropriate sources of service information for accomplishment of the rework of the side load fitting and tension fasteners, as applicable, and replacement of midspar fuse pins or modification of the nacelle strut and wing structure. Doing either of these actions would eliminate the need for the repetitive inspections specified in Service Bulletin 767–54A0062, Revision 5.

- Boeing Service Bulletin 767–54–0069, Revision 1, dated January 29, 1998, describes procedures for rework of the side load fitting and tension fasteners, as applicable, and replacement of midspar fuse pins with new, higher-strength midspar fuse pins. The rework involves increasing the size of the tension bolts of the inboard and outboard side load fittings. The replacement also involves installing new, higher-strength bolts and radius fillers in the side load fittings and backup support structure, and installing higher-strength fasteners common to the front spar and rib number 8 rib post.
- Boeing Service Bulletin 767–54–0080, dated October 7, 1999, describes procedures for modification of the nacelle strut and wing structure. The modification consists of replacing many of the significant load-bearing components of the strut (*e.g.*, the side link fittings assemblies, the midspar fittings, the side load fittings, certain fuse bolt assemblies) with improved components.
- Boeing Service Bulletin 767–54–0081, dated July 29, 1999, describes procedures for modification of the nacelle strut and wing structure. The modification consists of replacing many of the significant load-bearing components of the strut and wing (*e.g.*, the side link fittings, the midspar fittings, the side load fittings, certain fuse pin assemblies) with improved components.
- Boeing Service Bulletin 767–54–0082, dated October 28, 1999, describes procedures for modification of the nacelle strut and wing structure. The modification consists of replacing many of the significant load-bearing components of the strut-to-wing attachment (*e.g.*, midspar fuse pins, side links, side link fuse pins, diagonal brace, and diagonal brace fuse pins) with improved components.

Explanation of Requirements of Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of this same type design, this AD supersedes AD 94–11–02 to continue to require repetitive detailed and eddy current inspections to detect cracks of certain midspar fuse pins, and replacement of any cracked midspar fuse pin with a new fuse pin. This AD reduces certain compliance times for certain inspections, expands certain detailed and eddy current inspections, and limits the applicability in the existing AD.

Difference Between This AD and Service Bulletin

Boeing Alert Service Bulletin 767–54A0062, Revision 5, specifies that all actions for which the Boeing 767 Airplane Maintenance Manual (AMM) is specified as the appropriate source of service information for work instructions may instead be done according to an "operator's equivalent procedure." However, this AD requires that engine removal and support, when any fuse pin is removed from a strut, must be accomplished per the procedures specified the applicable section of the AMM. An "operator's equivalent procedure" may be used only if approved as an alternative method of compliance per paragraph (o)(1) of this AD.

Explanation of Change Made to Existing Requirements

The FAA has changed all references to a "detailed visual inspection" in the existing AD to "detailed inspection" in this AD. Additionally, a note has been

added to this AD to define that inspection.

Determination of Rule's Effective Date

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2002–NM–308–AD." The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–8918 (59 FR 27229, June 10, 1994), and by adding a new airworthiness directive (AD), amendment 39–13026, to read as follows:

2003–03–02 Boeing: Amendment 39–13026. Docket 2002–NM–308–AD. Supersedes AD 94–11–02, Amendment 39–8918.

Applicability: Model 767–200, –300, and –300F series airplanes, as listed in Boeing Alert Service Bulletin 767–54A0062, Revision 5, dated November 11, 2002; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (o)(1) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent loss of the strut and engine due to corrosion damage and cracking of both fuse pins on the same strut, accomplish the following:

Restatement of Requirements of AD 94–11–02

Repetitive Inspections

(a) For airplanes having midspar fuse pins, part number (P/N) 311T3102–1: Perform a detailed inspection and an eddy current inspection to detect cracks of the midspar fuse pins, in accordance with Boeing Alert Service Bulletin 767–54A0062, dated April 14, 1994; or Boeing Alert Service Bulletin 767–54A0062, Revision 5, dated November 11, 2002; at the time specified in paragraph (a)(1), (a)(2), (a)(3), or (a)(4) of this AD, as applicable. Repeat these inspections thereafter at intervals not to exceed 3,000 landings until accomplishment of the initial inspections specified in paragraph (h) of this AD.

Note 2: For the purposes of this AD, a detailed inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

(1) For airplanes having midspar fuse pins that have accumulated 18,000 or more total landings as of June 10, 1994 (the effective date of AD 94–11–02, amendment 39–8918), accomplish the inspections within 60 days after June 10, 1994.

(2) For airplanes having midspar fuse pins that have accumulated 15,000 or more total landings, but less than 18,000 total landings, as of June 10, 1994, accomplish the inspections within 90 days after June 10, 1994.

(3) For airplanes having midspar fuse pins that have accumulated 10,000 or more total landings, but less than 15,000 total landings, as of June 10, 1994, accomplish the inspections within 120 days after June 10, 1994.

(4) For airplanes having midspar fuse pins that have accumulated less than 10,000 total landings as of June 10, 1994, accomplish the inspections prior to the accumulation of 10,000 total landings on the fuse pin, or within 120 days after June 10, 1994, whichever occurs later.

(b) For airplanes having a midspar fuse pin, P/N 311T3102–2 or 311T2102–1: Prior to the accumulation of 15,000 total landings on the fuse pin, or within 90 days after June 10, 1994, whichever occurs later, perform a detailed inspection and an eddy current inspection to detect cracks on the midspar fuse pins, in accordance with Boeing Alert Service Bulletin 767–54A0062, dated April 14, 1994; or Boeing Alert Service Bulletin 767–54A0062, Revision 5, dated November 11, 2002. Repeat these inspections thereafter at intervals not to exceed 3,000 landings until accomplishment of paragraph (h) of this AD.

Replacement/Repetitive Inspections

(c) If any crack is found during an inspection required by paragraph (a) or (b) of this AD, prior to further flight, replace the cracked midspar fuse pin with a new fuse pin, in accordance with Boeing Alert Service Bulletin 767–54A0062, dated April 14, 1994; or Boeing Alert Service Bulletin 767–54A0062, Revision 5, dated November 11, 2002. Thereafter, perform the detailed and eddy current inspections specified in paragraph (a) or (b) of this AD, as applicable, on the new fuse pin at the time specified in paragraph (c)(1) or (c)(2) of this AD.

(1) For airplanes having midspar fuse pins, P/N 311T3102–1: Perform the initial inspection of the new fuse pin prior to the accumulation of 10,000 total landings on the new fuse pin. Repeat the inspection thereafter at intervals not to exceed 3,000 landings until accomplishment of paragraph (j) of this AD.

(2) For airplanes having midspar fuse pins, P/Ns 311T3102–2 and 311T2102–1: Perform the initial inspection of the new fuse pin prior to the accumulation of 15,000 total landings on the new fuse pin. Repeat the inspection thereafter at intervals not to exceed 3,000 landings until accomplishment of paragraph (j) of this AD.

Fuse Pin Removal

(d) When any fuse pin is removed from a strut equipped with a General Electric engine, the engine must be removed in accordance with procedures described in the Boeing 767 Maintenance Manual, subject 71–00–02; or supported in accordance with a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

(e) When any fuse pin is removed from a strut equipped with a Pratt & Whitney engine, the engine must be removed in accordance with procedures described in the Boeing 767 Maintenance Manual, subject 71–00–02; or supported in accordance with procedures described in the Boeing 767 Maintenance Manual, subject 54–51–02, Temporary Revisions (TR), dated April 22, 1994; or supported in accordance with a method approved by the Manager, Seattle ACO.

(f) When any fuse pin is removed from a strut equipped with a Rolls-Royce engine, the engine must be removed in accordance with procedures described in the Boeing 767 Maintenance Manual, subject 71–00–02; or supported in accordance with procedures described in the Boeing 767 Maintenance Manual, subject 54–51–02; or supported in accordance with a method approved by the Manager, Seattle ACO.

(g) Any midspar fuse pin, P/N 311T3102–1, 311T3102–2, or 311T2102–1, that has been removed from the strut and inspected for cracks using the 100 percent magnetic particle inspection technique described in Boeing Alert Service Bulletin 767–54A0062, dated April 14, 1994; or Boeing Alert Service Bulletin 767–54A0062, Revision 5, dated November 11, 2002; may be reinstalled on the strut provided that the fuse pin is found to be crack-free during the magnetic particle inspection. Prior to the accumulation of 3,000 total landings after reinstallation of the fuse pin, the fuse pin must be inspected in accordance with the requirements of paragraph (a), (b), or (h) of this AD, as applicable.

New Requirements of this AD

Initial and Repetitive Inspections

(h) For airplanes having midspar fuse pins, P/Ns 311T3102–1, 311T3102–2, 311T3102–3, 311T3102–4, 311T2102–1 or 311T2102–2: Do a detailed inspection and an eddy current inspection for cracks and corrosion per Boeing Alert Service Bulletin 767–54A0062, Revision 5, dated November 11, 2002. Do the inspections at the later of the times specified in paragraphs (h)(1) and (h)(2) of this AD. Repeat the inspections at least every 3,000 landings or 5 years, whichever is first. Accomplishment of the initial inspections in this paragraph ends the repetitive inspections required by paragraphs (a) and (b) of this AD.

(1) Before the accumulation of 5,000 total landings on the fuse pin or within 5 years after fuse pin installation, whichever is first.

(2) Within 30 days after the effective date of this AD.

Corrective Action

(i) If any crack or corrosion is found during any inspection required by paragraph (h) of this AD, before further flight, do the actions required by paragraph (i)(1) or (i)(2) of this AD, as applicable, per Boeing Alert Service Bulletin 767–54A0062, Revision 5, dated November 11, 2002.

(1) If any crack is found, replace the midspar fuse pin with a new fuse pin.

(2) If any corrosion is found, repair the midspar fuse pin or replace with a new fuse pin.

Repetitive Inspections

(j) For airplanes identified in paragraph (h) of this AD: After the installation of a new midspar fuse pin, inspect the new fuse pin per paragraph (h) of this AD before the accumulation of 5,000 total landings on the fuse pin or within 5 years, whichever is first. Repeat the inspections at least every 3,000 landings or 5 years, whichever is first Accomplishment of this paragraph ends the repetitive inspections required by paragraph (c) of this AD.

Optional Terminating Action

(k) For all airplanes: Accomplishment of the rework of the side load fitting and tension fasteners, as applicable, and replacement of midspar fuse pins per Boeing Service Bulletin 767–54–0069, dated October 9, 1997; Revision 1, dated January 29, 1998; or Revision 2, dated August 31, 2000; ends the repetitive inspections required by this AD.

(l) Modification of the nacelle strut and wing structure as required by AD 2000–19–09, amendment 39–11910 (applicable to certain Boeing Model 767 series airplanes powered by Rolls-Royce RB211 series engines); AD 2001–02–07, amendment 39–12091 (applicable to certain Boeing Model 767 series airplanes powered by Pratt & Whitney engines); or AD 2001–06–12, amendment 39–12159 (applicable to certain Boeing Model 767 series airplanes powered by General Electric engines); as applicable; ends the repetitive inspections required by this AD.

"Operator's Equivalent Procedure"

(m) Though Boeing Alert Service Bulletin 767–54A0062, Revision 5, dated November 11, 2002, specifies that an "operator's equivalent procedure" may be used for all actions for which the Boeing 767 Airplane Maintenance Manual (AMM) is specified as the appropriate source of service information: Engine removal and support, when any fuse pin is removed from a strut, must be done according to the applicable section of the Boeing 767 Airplane Maintenance Manual, as specified in the service bulletin.

Actions Done per Previously Issued Service Information

(n) Inspections and replacements done before the effective date of this AD per Boeing Alert Service Bulletin 767–54A0062, Revision 1, dated May 11, 1994; Revision 2, dated December 21, 1994; Revision 3, dated June 15, 1995; or Revision 4, dated May 7, 1998; are acceptable for compliance with the applicable actions specified in this AD.

Alternative Methods of Compliance

(o)(1) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

(2) Alternative methods of compliance, approved previously in accordance with AD 94–11–02, amendment 39–8918, are approved as alternative methods of compliance with the applicable actions specified in this AD.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

(p) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(q) Unless otherwise provided in this AD, the actions shall be done in accordance with Boeing Alert Service Bulletin 767–54A0062, dated April 14, 1994; and Boeing Alert Service Bulletin 767–54A0062, Revision 5, dated November 11, 2002.

(1) The incorporation by reference of Boeing Alert Service Bulletin 767–54A0062, Revision 5, dated November 11, 2002, is approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

(2) The incorporation by reference of Boeing Alert Service Bulletin 767–54A0062, dated April 14, 1994, was approved previously by the Director of the Federal Register as of June 10, 1994 (59 FR 27229, May 26, 1994).

(3) Copies may be obtained from Boeing Commercial Airplane Group, PO Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(r) This amendment becomes effective on February 13, 2003.

Issued in Renton, Washington, on January 22, 2003.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–1827 Filed 1–28–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–340–AD; Amendment 39–13030; AD 2003–03–06]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A330 and A340 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain Airbus Model A330 and A340 series airplanes, that currently requires a one-time inspection of the rail release pins and parachute pins of the escape slide/raft pack assembly for correct installation, and corrective actions, if necessary. This amendment adds a requirement to modify the escape slides/slide rafts on the passenger, crew, and emergency exit doors. The actions specified by this AD are intended to prevent improper deployment of the escape slide/raft and blockage of the door in the event of an emergency evacuation. This action is intended to address the identified unsafe condition.

DATES: Effective March 5, 2003.

The incorporation by reference of Airbus Service Bulletin A330–25–3126, dated August 7, 2001; and Airbus Service Bulletin A340–25–4152, dated August 7, 2001; as listed in the regulations, is approved by the Director of the Federal Register as of March 5, 2003.

The incorporation by reference of Airbus Industrie Service Bulletin A330–25–3086, including Appendix 01, Revision 01, dated June 11, 1999; and Airbus Industrie Service Bulletin A340–25–4115, including Appendix 01, Revision 01, dated June 11, 1999; as listed in the regulations, was approved previously by the Director of the Federal Register as of November 26, 1999 (64 FR 56963, October 22, 1999).

ADDRESSES: The service information referenced in this AD may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2125; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 99–22–07, amendment 39–11385 (64 FR 56963, October 22, 1999), which is applicable to certain Airbus Model A330 and A340 series airplanes, was published in the **Federal Register** on September 13, 2002 (67 FR 57982). The action proposed to continue to require a one-time inspection of the rail release pins and parachute pins of the escape slide/raft pack assembly for correct installation, and corrective actions, if necessary. The action also proposed to require modification of the escape slides/slide rafts on the passenger, crew, and emergency exit doors.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Request To Allow Part Installations

Two commenters request that the notice of proposed rulemaking (NPRM) be revised to allow installation of an unmodified slide on Model A330 series airplanes, until the compliance deadline. These commenters state that if the AD does not allow unmodified slides to be installed after the effective date of the AD, all unmodified spares would become unserviceable at that time. This would require the personnel at the slide shops to complete spares modification at an accelerated rate, which would increase the cost of this modification.

The FAA does not agree. This AD does not contain any provisions that prohibit operators from installing an unmodified slide on an airplane before they accomplish the modification required by paragraph (b) of this AD. However, once the compliance threshold (*i.e.*, 36 months after the effective date of this AD) has been reached for modification, operators are prohibited from replacing an improved part with an old part under 14 Code of Federal Regulations (CFR) 39.3. No change to the final rule is necessary.

Conclusion

After careful review of the available data, including the comments noted above, we have determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

There are approximately nine airplanes of U.S. registry that will be affected by this AD.

The inspection currently required by AD 99–22–07 takes approximately 7 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the currently required actions on U.S. operators is estimated to be $3,780, or $420 per airplane.

The modification required in this AD action will take approximately 11 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts will cost approximately $3,136 per airplane. Based on these figures, the cost impact of the requirements of this AD on U.S. operators is estimated to be $34,164, or $3,796 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–11385 (64 FR 56963, October 22, 1999), and by adding a new airworthiness directive (AD), amendment 39–13030, to read as follows:

2003–03–06 Airbus: Amendment 39–13030. Docket 2001–NM–340–AD. Supersedes AD 99–22–07, Amendment 39–11385.

Applicability: Model A330 and A340 series airplanes, certificated in any category; excluding those modified in production by Airbus Modification 48840, 48841, 48842, or 48843.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent improper deployment of the escape slide/raft and blockage of the door in the event of an emergency evacuation, accomplish the following:

Restatement of Requirements of AD 99–22–07

Inspection

(a) Within 2,000 flight hours or 6 months after November 26, 1999 (the effective date of AD 99–22–07, amendment 39–11385), whichever occurs later, except as provided by paragraph (b) of this AD: Perform a one-time detailed inspection of the rail release pins and parachute pins of the escape slide/raft pack assembly installed on all passenger/crew doors (type A) and emergency exit doors (type A or type 1) for correct installation, in accordance with Airbus Industrie Service Bulletin A330–25–3086 (for Model A330 series airplanes) or A340–25–4115 (for Model A340 series airplanes), both Revision 01, both dated June 11, 1999.

(1) During the inspection performed in accordance with paragraph (a) of this AD, if a rail release pin of the escape slide/raft pack assembly is found to be missing or incorrectly installed: Prior to further flight, re-install the rail release pin into the release rail or, if re-installation is not possible, remove the discrepant escape slide/raft pack assembly and replace with a new pack assembly of the same part number; in accordance with the applicable service bulletin.

(2) During the inspection performed in accordance with paragraph (a) of this AD, if a parachute pin of the escape slide/raft pack assembly is found to be missing or incorrectly installed: Prior to further flight, remove the discrepant escape slide/raft pack assembly and replace with a new pack assembly of the same part number; in accordance with the applicable service bulletin.

New Requirements of this AD

Note 2: For the purposes of this AD, a detailed inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or

assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

Modification

(b) Within 36 months after the effective date of this AD: Modify the escape slides/slide rafts on the passenger, crew, and emergency exit doors. The modification includes replacing—with new or modified parts—the alignment bushing in the release rails, the existing rail release pin lanyards from the girt or girt attachment, and the rail adapters from the packboard. Do the modification in accordance with Airbus Service Bulletin A330–25–3126 (for Model A330 series airplanes) or A340–25–4152 (for Model A340 series airplanes), both dated August 7, 2001. If the modification is done within the compliance time for the inspection specified in paragraph (a) of this AD, the inspection is not required.

Note 3: Airbus Service Bulletins A330–25–3126 and A340–25–4152 refer to BF Goodrich Service Bulletin 25–306, dated July 30, 2001, as an additional source of service information for the modification.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(e) Unless otherwise specified in this AD, the actions shall be done in accordance with Airbus Service Bulletin A330–25–3126, dated August 7, 2001; Airbus Service Bulletin A340–25–4152, dated August 7, 2001; Airbus Industrie Service Bulletin A330–25–3086, including Appendix 01, Revision 01, dated June 11, 1999; and Airbus Industrie Service Bulletin A340–25–4115, including Appendix 01, Revision 01, dated June 11, 1999; as applicable.

(1) This incorporation by reference of Airbus Service Bulletin A330–25–3126, dated August 7, 2001; and Airbus Service Bulletin A340–25–4152, dated August 7, 2001; is approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

(2) The incorporation by reference of Airbus Industrie Service Bulletin A330–25–3086, including Appendix 01, Revision 01, dated June 11, 1999; and Airbus Industrie Service Bulletin A340–25–4115, including Appendix 01, Revision 01, dated June 11, 1999; was approved previously by the Director of the Federal Register as of November 26, 1999 (64 FR 56963, October 22, 1999).

(3) Copies may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 5: The subject of this AD is addressed in French airworthiness directives 2001–465(B) R1 and 2001–464(B) R1, both dated October 17, 2001.

Effective Date

(f) This amendment becomes effective on March 5, 2003.

Issued in Renton, Washington, on January 22, 2003.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–1829 Filed 1–28–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

Office of the Secretary

15 CFR Part 6

[Docket No.: 030108003–3003–01]

RIN 0680–AA33

Civil Monetary Penalties; Adjustments

AGENCY: Office of the Secretary, Commerce.

ACTION: Final rule.

SUMMARY: This final rule is being issued to adjust civil monetary penalties provided by law within the jurisdiction of the Department of Commerce (the Department). As required by the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996, the Secretary of Commerce adjusted the Department's civil monetary penalties for inflation on October 24, 1996, and subsequently on November 1, 2000. On September 30, 2002, the United States General Accounting Office (GAO) sent the Secretary of Commerce a letter indicating that the Department's November 1, 2000, adjustment was inconsistent with the requirements of the statute, and recommending corrective action. The purpose of this rule is to bring the Department into compliance with GAO's interpretation of the statute.

DATES: This rule is effective January 29, 2003.

ADDRESSES: Office of Financial Management, Department of Commerce, 14th and Constitution Avenue, MS 6827, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Lisa Casias, 202–482–0766.

SUPPLEMENTARY INFORMATION: The Federal Civil Penalties Inflation Adjustment Act of 1990 (Pub. L. 101–410), provided for the regular evaluation of civil monetary penalties to ensure that they continued to maintain their deterrent value and that penalty amounts due to the Federal Government were properly accounted for and collected. On April 26, 1996, the Federal Civil Penalties Inflation Adjustment Act of 1990 was amended by the Debt Collection Improvement Act of 1996 (Pub. L. 104–134) to require each agency to issue regulations to adjust its civil monetary penalties (CMP) for inflation at least every four years. The amendment further provides that any resulting increases in a CMP due to the inflation adjustment should apply only to the violations that occur subsequent to the date of the publication in the **Federal Register** of the increased amount of the CMP. The first inflation adjustment of any penalty shall not exceed ten percent of such penalty.

The amount of CMP adjustments is based on changes to the Consumer Price Index from June of the calendar year in which penalties were last set or adjusted through June of the year prior to the adjustment. The stated purpose for such adjustments is to keep civil penalties in pace with inflation.

A civil monetary penalty is defined as any penalty, fine, or other sanction that:

1. Is for a specific monetary amount as provided by Federal law; and
2. Is assessed or enforced pursuant to Federal law; and
3. Is assessed or enforced pursuant to an administrative proceeding or a civil action in the Federal courts.

On October 24, 1996, the Department published in the **Federal Register** a schedule of CMPs adjusted for inflation as required by law. In one instance, the initial CMP inflation adjustment was zero, and was published accordingly. In two cases, the adjustment was nine percent. All other CMPs adjusted at that time were increased by the ten percent maximum amount. In the October 24,

1996, publication, however, ten then-existing CMPs were not included.

On November 1, 2000, the Department again adjusted CMPs for inflation as prescribed by law. In the case of the CMPs that were not previously adjusted, the 2002 CMPs were increased by ten percent, the initial inflation adjustment limitation. For various reasons, other CMPs were adjusted by lesser amounts, kept at the same levels, or deleted.

In early 2002, GAO conducted a government wide review of the implementation of the Federal Civil Penalties Inflation Adjustment Act of 1990. During that review, GAO determined that the Department had adjusted its civil penalties in a manner inconsistent with the requirements of the statute, and on September 30, 2002, sent a report explaining that determination to the Secretary of Commerce. Specifically, GAO asserted that the Department's method of rounding is inconsistent with the requirements of the statute.

In adjusting its CMPs, the Department noted that the statute requires the raw inflation amounts to be rounded, and also that the categories of rounding were determined by the size of the penalty increase. GAO disagreed, asserting that the "plain language" of the statute requires that the appropriate category of rounding be determined by the size of the penalty, not the size of the increase. GAO did, however, recognize that there exist certain advantages to rounding on the basis of the size of the increase rather than the size of the penalty.

Although the Department believes that the GAO reading of the Federal Civil Penalties Inflation Adjustment Act of 1990 produces a result which is inconsistent with the stated purpose of the statute (*i.e.*, to keep civil penalties in pace with inflation), the Department will nevertheless comply with the recommendation contained in the September 30, 2002, letter. Accordingly, this rule adjusts the civil penalties that are established by law and assessed or enforced by the Department in the manner suggested by GAO. The actual penalty assessed for a particular violation will continue to be dependent upon a variety of factors.

Rulemaking Requirements

It has been determined that this rule is not significant for purposes of Executive Order 12866.

The Department for good cause finds that notice and an opportunity for comments required by 5 U.S.C. 553(b)(B) of the Administrative Procedure Act are unnecessary for this rulemaking because the Debt Collection Improvement Act of 1996 (the Act) requires the head of each agency to adjust its civil monetary penalties for inflation by regulation at least every four years, and the Federal Civil Monetary Penalty Inflation Adjustment Act of 1990, as amended by the Act, states how to calculate the inflation adjustment. This rule merely adjusts the Department's CMPs according to the statutory requirements, as interpreted by GAO. Because the Department adjusted the CMPs in 2000 in a manner that was not in compliance with GAO's reading of the law, the Department is adjusting the CMPs sooner than four years. The Department does not have any discretion in making the adjustments. For the same reason, and because the published amounts of some penalties have been in error for approximately two years, there also exists good cause to waive the thirty day delay in effectiveness, pursuant to 5 U.S.C. 553(d)(3).

Because notice and opportunity for comment are not required by 5 U.S.C. 553, or any other law, a Regulatory Flexibility Analysis is not required and was not prepared for the purposes of the Regulatory Flexibility Act.

This rule does not contain information collection requirements for purposes of the Paperwork Reduction Act.

List of Subjects in 15 CFR Part 6

Law enforcement, Penalties.

James L. Taylor,

Deputy Chief Financial Officer and Director for Financial Management.

For the reasons set forth in the preamble, subtitle A of title 15 of the Code of Federal Regulations is amended as follows:

PART 6—CIVIL MONETARY PENALTY INFLATION ADJUSTMENTS

1. The authority citation for part 6 continues to read as follows:

Authority: Sec. 4, as amended, and sec. 5, Pub. L. 101–410, 104 Stat. 890 (28 U.S.C. 2461 note); Pub. L. 104–134, 110 Stat. 1321, 28 U.S.C. 2461 note.

2. Section 6.4 is revised to read as follows:

§ 6.4 Adjustments to penalties.

(a) Bureau of Industry and Security.

(1) 15 U.S.C. 5408(b)(1), Fastener Quality Act, violation, from $100,000 to $110,000.

(2) 22 U.S.C. 7661(a)(1)(A), Chemical Weapons Implementation Acts—Inspection Violation, from $25,000 to $25,000.

(3) 22 U.S.C. 7661(a)(1)(B), Chemical Weapons Implementation Acts—Record Keeping Violation, from $5,000 to $5,000.

(4) 50 U.S.C. 1705(a), International Emergency Power Act—Import Violations, from $10,000 to $11,000.

(5) 50 U.S.C. App. 2410(c), Export Administration Act, Non-National Security Violation, from $11,000 to $11,000.

(6) 50 U.S.C. App. 2410(c), Export Administration Act and Section 3 Arms Export Control Act, National Security Violation, from $110,000 to $120,000

(7) 50 U.S.C. App. 1705(b), International Emergency Powers Act, Export Violations, from $10,000 to $11,000.

(b) Economic Development Administration.

(1) 19 U.S.C. 2349, Trade Act of 1974, False Statements or Submissions with Applications for Assistance, from $5,500 to $5,500.

(c) Economics and Statistics Administration.

(1) 13 U.S.C. 304, Delinquency on Delayed Filing of Export Documentation, from $110 per day (up to $1,100) to $110 per day (up to $1,100).

(2) 13 U.S.C. 305, Collection of Foreign Trade Statistics/Violations, from $1,100 to $1,100.

(3) 22 U.S.C. 3105(a), International Investment and Trade in Services Act, Failure to Furnish Information, from $27,500 to $27,500.

(d) Import Administration.

(1) 19 U.S.C. 81s, Foreign Trade Zone Violation, from $1,100 to $1,100.

(2) 19 U.S.C. 1677(f)(4), U.S.-Canada FTA Protective Order Violation, from $110,000 to $120,000.

(e) National Oceanic and Atmospheric Administration.

(1) 15 U.S.C. 4243(a)(3), Land Remote-Sensing Commercialization Act, Violations, from $10,000 to $11,000.

(2) 15 U.S.C. 5623(a)(3), Land Remote Sensing Policy Act of 1992, Violations, from $11,000 to $11,000.

(3) 15 U.S.C. 5658(c), Land Remote Sensing Policy Act of 1992, Violations, from $11,000 to $11,000.

(4) 16 U.S.C. 773f(3), Northern Pacific Halibut Act of 1982, violations, from $27,500 to $27,500.

(5) 16 U.S.C. 783, Sponge Act Violations, Catching or Taking Within Specified Areas, from $550 to $550.

(6) 16 U.S.C. 957, Tuna Convention Act of 1950:

(i) Violation/subsection a: from $27,500 to $27,500.

(ii) Subsequent violation/subsection a: from $55,000 to $60,000.

(iii) Violation/subsection b: from $1,100 to $1,100.

(iv) Subsequent violation/subsection b: from $5,500 to $5,500.

(v) Violation/subsection c: from $110,000 to $120,000.

(7) 16 U.S.C. 971e(e)(1), Atlantic Tuna Convention Act of 1975:

(i) Violation/subsection a: from $25,000 to $27,500.

(ii) Subsequent violation/subsection a: from $50,000 to $55,000.

(iii) Violation/subsection b or c: from $1,000 to $1,100.

(iv) Subsequent violation/subsection b or c: from $5,000 to $5,500.

(v) Violation/subsection d: from $110,000 to $120,000.

(8) 16 U.S.C. 972f(b), Eastern Pacific Tuna Licensing Act:

(i) Violations/subsections (a)(1)–(3): from $27,500 to $27,500.

(ii) Subsequent violations/subsections (a)(1)–(3): from $55,000 to $60,000.

(iii) Violations, subsections (a)(4)–(5): from $5,500 to $5,500.

(iv) Subsequent violations/subsections (a)(4)–(5): from $5,500 to $5,500.

(v) Violations, subsection (a)(6): from $110,000 to $120,000.

(9) 16 U.S.C. 973f(a), South Pacific Tuna Fishing, violations, from $275,000 to $300,000.

(10) 16 U.S.C. 1030(a)(1) North Pacific Fisheries Act of 1954, from $25,000 to $27,500.

(11) 16 U.S.C. 1174(b), Fur Seal Act Amendment of 1983, from $10,000 to $11,000.

(12) 16 U.S.C. 1375(a)(1), Marine Mammal Protection Act of 1972:

(i) Violations, from $11,000 to $11,000.

(ii) Knowing Violations, from $22,000 to $22,000.

(13) 16 U.S.C. 1385(e), Dolphin Protection Consumer Information Act, from $100,000 to $110,000.

(14) 16 U.S.C. 1437(c)(1), Marine Protection, Research and Sanctuaries Act, from $110,000 to $120,000.

(15) 16 U.S.C. 1462(a), Deep Sea-Bed Hard Mineral Resources Act, from $25,000 to $27,500.

(16) 16 U.S.C. 1540(a)(1), Endangered Species Act of 1973:

(i) Knowing violations, from $27,500 to $27,500.

(ii) Other knowing or business-related violations, from $13,200 to $13,200.

(iii) Otherwise violations, from $550 to $550.

(17) 16 U.S.C. 1858(a), Magnuson-Stevens Fishery Conservation and Management Act, from $110,000 to $120,000.

(18) 16 U.S.C. 2437(a)(1), Antarctic Marine Living Resources Convention Act:

(i) Knowing violation, from $11,000 to $11,000.

(ii) Violation, from $5,500 to $5,500.

(19) 16 U.S.C. 2465(a), Antarctic Protection Act of 1990:

(i) Knowing violation, from $10,000 to $11,000.

(ii) Violation, from $5,000 to $5,500.

(20) 16 U.S.C. 3373(a), Lacey Act:

(i) Purchase and sale violation, from $11,000 to $11,000.

(ii) Marking violations of fish, plants and wildlife, from $275 to $275.

(iii) False labeling violation, from $11,000 to $11,000.

(iv) Other than marking violation, from $10,000 to $11,000.

(21) 16 U.S.C. 3606(b), Atlantic Salmon Convention Act of 1982, from $110,000 to $120,000.

(22) 16 U.S.C. 3637(b), Pacific Salmon Treaty Act of 1985, from $110,000 to $120,000.

(23) 16 U.S.C. 4016(b)(1)(B), Fish and Seafood Promotion Act of 1986, from $5,000 to $5,500.

(24) 16 U.S.C. 5010(a), North Pacific Anadromous Stocks Act of 1992, from $100,000 to $110,000.

(25) 16 U.S.C. 5103(b)(2), Atlantic Coastal Fisheries Cooperative Management Act, from $100,000 to $110,000.

(26) 16 U.S.C. 5507(a), High Seas Fishing Compliance Act of 1995, from $100,000 to $110,000.

(27) 16 U.S.C. 5606(b), Northwest Atlantic Fisheries Convention Act of 1995, from $100,000 to $110,000.

(28) 22 U.S.C. 1978(e), Fishermen's Protective Act of 1967:

(i) Violation, from $10,000 to $11,000.

(ii) Subsequent violation, from $25,000 to $27,500.

(29) 30 U.S.C. 1462(a), Deep Seabed Hard Mineral Resources Act, from $27,500 to $27,500.

(30) 42 U.S.C. 9152(c)(1), Ocean Thermal Energy Conversion Act of 1980, from $27,500 to $27,500.

3. Section 6.5 is revised to read as follows:

§ 6.5 Effective date of adjustments.

The adjustments made by § 6.4 of this part, of the penalties there specified, are effective on January 29, 2003, and said penalties, as thus adjusted by the adjustments made by § 6.4 of this part, shall apply only to violations occurring after January 29, 2003, and before the effective date of any future inflation adjustment thereto made subsequent to January 29, 2003, as provided in § 6.6 of this part.

[FR Doc. 03–1895 Filed 1–28–03; 8:45 am]

BILLING CODE 3510–17–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD08–02–042]

RIN 2115–AE47

Drawbridge Operation Regulation; Mississippi River, Dubuque, IA

AGENCY: Coast Guard, DOT.

ACTION: Final rule; correction.

SUMMARY: The Coast Guard published a final rule on December 27, 2002, temporarily changing the regulation governing the Illinois Central Railroad Drawbridge, Mile 579.9, Upper Mississippi River. The section number for the temporary change was incorrect. This document corrects the section number for the temporary change.

DATES: This correction is effective January 29, 2003.

FOR FURTHER INFORMATION CONTACT: Mr. Roger K. Wiebusch, Eighth Coast Guard District Bridge Branch, Bridge Administrator, (314) 539–3900, extension 2378.

SUPPLEMENTARY INFORMATION:

Background and Purpose

The Coast Guard published a temporary rule in the **Federal Register** on December 27, 2002 (67 FR 78975), adding section 117.T408.

Need for Correction

As published, the section number used in the regulatory text was incorrect.

Correction of Publication

In rule FR Doc. 02–32724 published on December 27, 2002 (67 FR 78975), make the following correction. On page 78977, in the first column, in lines 17 and 18, change "117.T408" to read "117.T410"

Dated: January 21, 2003.

J. R. Whitehead,

Captain, U.S. Coast Guard, Commander, Eighth Coast Guard District, Acting.

[FR Doc. 03–2060 Filed 1–28–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD14–02–002]

RIN 2115–AA97

Regulated Navigation Areas and Security Zones; Escorted Vessels—Philippine Sea, Guam, Apra Harbor, Guam and Tanapag Harbor, Saipan, Commonwealth of the Northern Mariana Islands

AGENCY: Coast Guard DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing regulated navigation areas (RNAs) and security zones for vessels determined to be in need of a Coast Guard escort by the Captain of the Port (COTP) Guam. The security zones for these escorted vessels will close all waters of Philippine Sea, Guam, Apra Harbor, Guam (including Cabras Island Channel), and Tanapag Harbor, Saipan, Commonwealth of the Northern Mariana Islands, within a 100-yard radius around an escorted vessel while in the RNA. This action is necessary to protect personnel, vessels, and facilities from sabotage or other subversive acts, accidents, or other events of a similar nature. The RNAs will require vessels within 500 yards of an escorted vessel to travel at minimum safe speed and the security zones will prohibit unauthorized entry within a 100-yard radius of an escorted vessel in these RNAs. This rule is not intended to replace or modify the existing RNAs and zones found in 33 CFR 165.1401, 33 CFR 165.1402, and 33 CFR 165.1404.

DATES: This rule is effective January 29, 2003.

ADDRESSES: Commanding Officer, Coast Guard Marine Safety Office Guam, PSC 455 Box 176, FPO AP 96540–1057. Marine Safety Office Guam maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of this docket and are available for inspection or copying at this location between 7 a.m. and 3:30 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Fred Meadows, Coast Guard Marine Safety Office Guam at (671) 339–2001.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On September 26, 2002, we published a notice of proposed rulemaking (NPRM) entitled "Regulated Navigation Areas and Security Zones; Escorted Vessels-Philippine Sea, Guam, Apra Harbor, Guam and Tanapag Harbor, Saipan, Commonwealth Northern Mariana Islands" in the **Federal Register** (67 FR 60630). We received two letters commenting on the proposed rule. No public hearing was requested and none was held. Under 5 U.S.C. 553(d)(3), the Coast Guard finds good cause for making this rule effective less than 30 days after publication in the **Federal Register**. Any delay in the effective date of this regulation would be contrary to the public interest since prompt action is needed to ensure the security of vessels, ports, facilities, and the maritime communities of this region. Prompt implementation would provide adequate security measures needed to protect vulnerable vessels and maritime infrastructure from potential threats.

Background and Purpose

Terrorist incidents within the United States on September 11, 2001 have called for the implementation of measures to protect U.S. seaports and transportation infrastructure. In addition, national security and intelligence officials warn that future terrorist attacks against civilian targets are anticipated and that U.S. seaports are particularly vulnerable. These rules are intended to provide for the safety and security of the public, maritime commerce, and transportation by protecting persons, vessels, and seaport facilities in the waters of Philippine Sea, Guam, Apra Harbor, Guam, and Tanapag Harbor, Saipan, Commonwealth of the Northern Mariana Islands (CNMI). These rules are intended to enable the COTP Guam to provide effective port security, while minimizing the publics' confusion and ease the administrative burden of implementing separate temporary security zones for each escorted vessel.

Discussion of Comments and Changes

The Coast Guard received two letters following the publication of the notice of proposed rulemaking (67 FR 60630). Both letters fully supported the proposed rules. However, one letter raised two issues concerning the impact of the rules on harbor traffic.

One issue is that shipyards may find it difficult for their vessels to transit and moor near Navy vessels needing repair. The other issue raised the concern that recreational water activities (banana boats, jet skis, sea walker, and divers) near Hotel Wharf might be temporarily relocated to alternative sites during periods when the security zones are in effect. The Coast Guard considers these issues to be minimal given the small size and the short duration of the security zones in any given area. In addition, persons or vessels that must enter a security zone may request and receive permission from the COTP via telephone or VHF channel 16 on a case-by-case basis. The Coast Guard has considered these issues and has determined no change to the proposed rule is required.

Regulatory Evaluation

The rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979). The U.S. Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary. This expectation is based on the limited duration of the zones. Vessels will also be able to transit the RNAs freely outside of any security zones. In addition, the COTP may allow vessels in the security zones on a case-by-case basis.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. No small business impacts are anticipated due to the small size of the zones and the short duration of the security zones in any one area.

Assistance for Small Entities

Under section 231(a) of the Small Business Regulatory Enforcement Fairness Act of 1968 (Pub. L. 104–121),

we want to assist small entities in understanding this rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Lieutenant Fred Meadows, Coast Guard Marine Safety Office Guam, at (671) 339–2001.

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local government and would either preempt State law or impose a substantial direct cost of compliance on them. The Coast Guard has analyzed this rule under that Order and has determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $ 100,000,000 or more in any one year. Though this rule will not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not affect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that Order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have considered the environmental impact of this rule and concluded that, under figure 2–1, paragraph (34)(g) of Commandant Instruction M16475.1D, this rule is categorically excluded from further environmental documentation. A "Categorical Exclusion Determination" is available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons set out in the preamble, the Coast Guard amends 33 CFR part 165 as follows;

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; 49 CFR 1.46.

2. Add § 165.1405 to read as follows:

§ 165.1405 Regulated Navigation Areas and Security Zones; Designated Escorted Vessels-Philippine Sea and Apra Harbor, Guam (including Cabras Island Channel), and Tanapag Harbor, Saipan, Commonwealth of the Northern Mariana Islands (CNMI).

(a) *Regulated navigation area.* The following areas, designated by coordinates referencing World Geodetic Datum (1984), are regulated navigation areas (RNAs).

(1) *Philippine Sea, Guam*—All waters from the surface to the bottom of the Philippine Sea, Guam, encompassed by lines connecting the following points, beginning at 13°27′10″ N, 144°35′05″ E, thence easterly to 13°27′17″ N, 144°37′27″ E, thence south westerly to 13°26′52″ N, 144°37′05″ E, thence westerly to 13°26′37″ N, 144°35′05″ E, thence due north back to point of origin.

(2) *Apra Harbor, Guam*—All waters from surface to bottom of Apra Harbor, Guam, shoreward of the COLREGS Demarcation as described in 33 CFR part 80.

(3) *Tanapag Harbor, Saipan*—The waters from surface to bottom of Tanapag Harbor, Saipan (CNMI), encompassed by lines connecting the following points, beginning at 15°12′10″ N, 145°40′28″ E, thence north easterly to 15°14′08″ N, 145°42′00″ E, thence due east to 15°14′08″ N, 145°44′02″ E, thence south easterly to 15°13′54″ N, 144°44′20″ E, thence south westerly along the shoreline to 15°13′11″ N, 145°43′01″ E, thence south westerly to 15°12′10″ N, 145°40′28″ E.

(4) *Cabras Island Channel, Guam*—All waters from surface to bottom of Cabras Island Channel, Guam, beginning at point 13°27′34″ N, 144°39′39″ E and extending south easterly to position 13°27′24″ N, 144°39′59″ E then heading easterly along the shoreline to position 13°27′31″ N, 144°40′22″ E then heading north to position 13°27′37″ N, 144°40′22″ E following the shoreline in a westerly direction back to point of origin.

(b) *Security zones.* A 100-yard radius security zone is established around, and is centered on, each escorted vessel within the regulated navigation areas in paragraph (a) of this section. A security zone is activated when an escorted vessel enters an RNA and remains active until the escorted vessel leaves the RNA. This is a moving security zone when the escorted vessel is in transit and becomes a fixed zone when the escorted vessel is anchored or moored. A security zone will not extend beyond the boundary of the RNA in this section.

(c) *Definitions.* As used in this section:

(1) *Designated representative* means any Coast Guard commissioned, warrant, or petty officer that has been authorized to act on behalf of the COTP.

(2) *Escorted Vessel* means any vessel operating in the RNA deemed by the COTP to be in need of escort protection for security reasons or under other circumstances. A designated representative aboard a Coast Guard cutter or patrol boat will accompany vessels deemed in need of escort protection into the RNA.

(3) *Navigation rules* mean international and inland navigation rules in 33 CFR chapter I, subchapters D and E.

(4) *Vessel* means every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water, except U.S. Coast Guard or U.S. naval vessels.

(d) *Regulations.* (1) No person or vessel may enter into the security zones under this section unless authorized by the COTP Guam or a designated representative.

(2) A vessel in the RNA established under paragraph (a) of this section operating within 500 yards of an escorted vessel must proceed at a minimum speed necessary to maintain a safe course, unless required to maintain speed by the navigation rules.

(3) When an escorted vessel in the RNA approaches within 100 yards of a vessel that is moored, or anchored in a designated anchorage area, the stationary vessel must stay moored or anchored while it remains within the escorted vessel's security zone unless it is either ordered by, or given permission from the COTP Guam or a designated representative to do otherwise.

(4) The COTP will inform the public of the existence or status of the security zones around escorted vessels in the RNA periodically by Broadcast Notice to Mariners.

(5) Persons or vessels that must enter a security zone or exceed speed limits established in this section may contact the COTP at command center telephone number (671) 339–6100 or on VHF channel 16 (156.8 Mhz) to request permission.

(6) All persons and vessels within 500 yards of an escorted vessel in the RNA must comply with the orders of the COTP Guam or his designated representatives.

(e) *Authority.* In addition to 33 U.S.C. 1231 and 50 U.S.C. 191, the authority for this section includes 33 U.S.C. 1226.

Dated: January 17, 2003.

G.A. Wiltshire,

Captain, Coast Guard, Commander, Fourteenth Coast Guard District (Acting).

[FR Doc. 03–2061 Filed 1–28–03; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 82

Protection of Stratospheric Ozone

CFR Correction

In Title 40 of the Code of Federal Regulations, Parts 81 to 85, revised as of July 1, 2002, on page 346, part 82 is corrected by removing the second § 82.7.

[FR Doc. 03–55502 Filed 1–28–03; 8:45 am]

BILLING CODE 1505–01–D

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 112

Oil Pollution Prevention

CFR Correction

In Title 40 of the Code of Federal Regulations, Parts 100 to 135, revised as of July 1, 2002, Appendix F to part 112 is corrected as follows:

1. In section 1.0 paragraph B, by adding the words "required by" before 40 CFR 112.3;

2. In section 1.8.3 by revising " 267–4085–4065" to read "(202) 267–4085"; and

3. In Attachment F–1, add footnote 1 to read:

Attachment F–1–Response Plan Cover Sheet

* * * * *

Dun & Bradstreet number: [1]

* * * * *

[1]These numbers may be obtained from public library resources.

[FR Doc. 03–55500 Filed 1–28–03; 8:45 am]

BILLING CODE 1505–01–D

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2002–0245; FRL–7199–4]

4-(Dichloroacetyl)-1-Oxa-4-Azaspiro[4.5]Decane; Pesticide Import Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes import tolerances for residues of 4-(dichloroacetyl)-1-oxa-4-azaspiro[4.5]decane (CAS No. 71526–07–3) in or on corn commodities. Monsanto Company requested this tolerance under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act (FQPA) of 1996.

DATES: This regulation is effective January 29, 2003. Objections and requests for hearings, identified by docket ID number OPP–2002–0245, must be received on or before March 31, 2003.

ADDRESSES: Written objections and hearing requests may be submitted electronically by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit VI. of the **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: By mail: Bipin Gandhi, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW.,Washington, DC 20460–0001; telephone number: (703) 308–8380; e-mail address: gandhi.bipin@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

• Industry, (NAICS 111, 112, 311, 32532), Crop production, Animal production, Food manufacturing, Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPPT–2002–0245. The official public docket consists of the documents

specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the EPA Docket Center, Rm. B102-Reading Room, EPA West, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The EPA Docket Center Reading Room telephone number is (202) 566–1744 and the telephone number for the OPPT Docket, which is located in EPA Docket Center, is (202) 566–0280.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at http://www.epa.gov/fedrgstr/. A frequently updated electronic version of 40 CFR part 180 is available at http://www.access.gpo.gov/nara/cfr/cfrhtml_00/Title_40/40cfr180_00.html, a beta site currently under development. To access the OPPTS Harmonized Guidelines referenced in this document, go directly to the guidelines at http://www.epa.gov/opptsfrs/home/guidelin.htm.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at http://www.epa.gov/edocket/ to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select "search," then key in the appropriate docket ID number.

II. Background and Statutory Findings

In the **Federal Register** of January 28, 1998 (63 FR 4252) (FRL–5763–6), EPA issued a notice pursuant to section 408 of the FFDCA, 21 U.S.C. 346a, as amended by the FQPA (Public Law 104–170), announcing the filing of a pesticide petition (PP 5E4503) by Monsanto Company, 800 North Lindbergh Blvd., St. Louis, MO 63167. This notice included a summary of the petition prepared by Monsanto Company, the petitioner. There were no comments received in response to the notice of filing.

Previously, time-limited tolerances had been established (40 CFR 180.465) for the residues of 4-(dichloroacetyl)-1-oxa-4-azaspiro[4.5]decane, in or on corn commodities (April 14, 1993) (58 FR 19387). These tolerances expired on January 31, 1998.

In the above mentioned pesticide petition (5E4503) Monsanto Corporation requested permanent tolerances for 4-(dichloroacetyl)-1-oxa-4-azaspiro[4.5]decane in or on corn commodities at 0.005 ppm.

The petitioner asked in a letter dated January 15, 2002, that 40 CFR 180.465 be amended by establishing an import tolerance for residues of the herbicide safener 4-(dichloroacetyl)-1-oxa-4-azaspiro[4.5]decane, in or on corn commodities at 0.005 parts per million (ppm) with no U.S. registrations.

In the United States a tolerance is the maximum residue level of a pesticide permitted in or on food or feed grown in the United States and food or feed imported into the United States from other countries. Typically, EPA would establish tolerance(s) or exemption(s) from the requirement of a tolerance at the same time that it registered the use of a pesticide for that commodity in the United States. Where no U.S. registration exists, interested persons may submit a petition requesting that EPA establish an import tolerance for a pesticide residue that would allow treated food to be legally imported into the United States. The term "import tolerance" is used as a convenience to refer to a tolerance that exists where there is no accompanying registration under the Federal Insecticide, Fungicide, Rhodenticide Act (FIFRA). There is no statutory or regulatory distinction between an "import tolerance" and any other tolerance issued by EPA. The same food safety standards apply to both domestically produced and imported food.

Section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) of the FFDCA defines "safe" to mean that" there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of the FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensurethat there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue...."

EPA performs a number of analyses to determine the risks from aggregate exposure topesticide residues. For further discussion of the regulatory requirements of section 408 of the FFDCA and a complete description of the risk assessment process, see the final rule on Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997) (FRL–5754–7).

III. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D) of the FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure, consistent with section 408(b)(2) of the FFDCA, for a tolerance for residues of 4-(dichloroacetyl)-1-oxa-4-azaspiro[4.5]decane on corn commodities at 0.005 ppm. EPA's assessment of exposures and risks associated with establishing the tolerance follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by 4-(dichloroacetyl)-1-oxa-4-azaspiro[4.5]decane are discussed in the following Table 1 as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies reviewed.

TABLE 1.—SUBCHRONIC, CHRONIC, AND OTHER TOXICITY

Guideline No.	Study Type	Results
870.3100	90–Day oral toxicity rodents	NOAEL = 48 mg/kg/day LOAEL = 192 mg/kg/day based on decreased mean body weights, increased platelets , changes in clinical parameters and histopathological findings.
870.3150	90–Day oral toxicity in nonrodents	NOAEL = would be equal to or greater than 30 mg/kg/day LOAEL = not determined; but would be greater than 30 mg/kg/day.
870.3700	Prenatal developmental in rodents-rats (1989 study)	Maternal NOAEL = 10 mg/kg/day mg/kg/day based on decreased body weight gain, decreased food consumption, increased preimplantation loss. Developmental NOAEL = 75 mg/kg/day LOAEL = 150 mg/kg/day based on increased incidences of skeletal malfunctions and variations.
	Prenatal developmental in rodents-rat (1985 study)	Maternal NOAEL = 80 mg/kg/day LOAEL = 200 mg/kg/day based on clinical signs (alopecia, wet fur with urinary staining, piloerection. Developmental NOAEL = 80 mg/kg/day LOAEL = 200 mg/kg/day based on increased fetal malfunctions.
870.3700	Prenatal developmental in rabbits-nonrodents	Maternal NOAEL = 10 mg/kg/day LOAEL = 30 mg/kg/day based on decreased body weight gain. Developmental NOAEL = would be equal to or greater than 30 mg/kg/day LOAEL = would be greater than 30 mg/kg/day .
870.3800	Reproduction and fertility effects	Parental/Systemic NOAEL = 6.34/7.32 male/female mg/kg/day LOAEL = 61.48/72.30 male/female mg/kg/day based on reduced body weight and body weight gain in P & F1a. Reproductive NOAEL = 6.34/7.32 male/female mg/kg/day LOAEL = 61.48/72.30 male/female mg/kg/day based on decreased pup body weights.
870.4200	Carcinogenicity mice	NOAEL = 10.71/16.82 male/female mg/kg/day LOAEL = 107.50/166.57 male/female mg/kg/day based on increased absolute and relative liver weights as well as histopathological lesions in the liver, and stomach mucosa.
870.4300	Chronic/Carcinogenicity rats	NOAEL = 2.21/2.78 male/female mg/kg/day LOAEL = 22.09/29.18 male/female mg/kg/day based upon histopathological changes in the liver and stomach including cystic liver degeneration, periportal hepatocellular vacuolation, and pyloric intestinal metaplasia of the stomach.
870.5300	Gene Mutation	*In vitro* gene mutation in CHO cells. Negative for mutagenicity.
870.5300	Cytogenetics	*In vitro* bone marrow assay did not induce a clastogenic response.
870.5550	Gene Mutation	*In vitro* UDS assay did not induce a genotoxic effect.
870.5100	Gene Mutation	*S.typhimurium*/mammalian microsome assay did not induce a genotoxic effect.
870.7600	Dermal penetration	There were no dermal absorption studies and no appropriate toxicity studies available to allow an estimation of the dermal absorption by a route-to-route comparison of toxicity. However, two structurally related chemicals, acetochlor and alachlor, have experimentally derived dermal data indicating that absorption is 20 to 25 percent, respectively. Therefore, the estimated dermal absorption is 25%

B. Toxicological Endpoints

The dose at which the NOAEL from the toxicology study identified as appropriate for use in risk assessment is used to estimate the toxicological level of concern (LOC). However, the LOAEL is sometimes used for risk assessment if no NOAEL was achieved in the toxicology study selected. An uncertainty factor (UF) is applied to reflect uncertainties inherent in the extrapolation from laboratory animal data to humans and in the variations in sensitivity among members of the human population as well as other unknowns. An UF of 100 is routinely used, 10X to account for interspecies differences and 10X for intra species differences. An additional 3x uncertainty factor was applied due to the data gap for a chronic toxicity study in dogs.

For dietary risk assessment (other than cancer) the Agency uses the UF to calculate an acute or chronic reference dose (acute RfD or chronic RfD) where the RfD is equal to the NOAEL divided by the appropriate UF (RfD = NOAEL/UF). Where an additional safety factor is retained due to concerns unique to the FQPA, this additional factor is applied to the RfD by dividing the RfD by such additional factor. The acute or chronic Population Adjusted Dose (aPAD or cPAD) is a modification of the RfD to accommodate this type of FQPA Safety Factor.

For non-dietary risk assessments (other than cancer) the UF is used to determine the LOC. For example, when 100 is the appropriate UF (10X to

account for interspecies differences and 10X for intraspecies differences) the LOC is 100. To estimate risk, a ratio of the NOAEL to exposures (margin of exposure (MOE) = NOAEL/exposure) is calculated and compared to the LOC.

The linear default risk methodology (Q*) is the primary method currently used by the Agency to quantify carcinogenic risk. The Q* approach assumes that any amount of exposure will lead to some degree of cancer risk. A Q* is calculated and used to estimate risk which represents a probability of occurrence of additional cancer cases (e.g., risk is expressed as 1 x 10^{-6} or one in a million). Under certain specific circumstances, MOE calculations will be used for the carcinogenic risk assessment. In this non-linear approach, a "point of departure" is identified below which carcinogenic effects are not expected. The point of departure is typically a NOAEL based on an endpoint related to cancer effects though it may be a different value derived from the dose response curve. To estimate risk, a ratio of the point of departure to exposure (MOE_{cancer}= point of departure/exposures) is calculated. A summary of the toxicological endpoints for 4-(dichloroacetyl)-1-oxa-4-azaspiro[4.5]decane used for human risk assessment is shown in the following Table 2:

TABLE 2.—SUMMARY OF TOXICOLOGICAL DOSE AND ENDPOINTS FOR 4-(DICHLOROACETYL)-1-OXA-4-AZASPIRO[4.5]DECANE FOR USE IN HUMAN RISK ASSESSMENT

Exposure Scenario	Dose Used in Risk Assessment, UF	FQPA SF* and Level of Concern for Risk Assessment	Study and Toxicological Effects
Acute Dietary (Females 13–50 years of age)	NOAEL = 10 mg/kg/day UF = 100 Acute RfD = 0.1 mg/kg/day	FQPA SF = 3 aPAD = acute RfD/FQPA SF = 0.033 mg/kg/day	Development toxicity in rabbits LOAEL = 75 mg/kg/day based on decreased body weight gain on day 3 of dosing.
Acute Dietary (General population, including infants and children)	NOAEL = 10 mg/kg/day UF = 100 Acute RfD = 0.1 mg/kg/day	FQPA SF = 1 aPAD = acute RfD/FQPA SF = 0.1 mg/kg/day	Development toxicity in rabbits Material LOAEL = 75 mg/kg/day based on decreased body weight gain on day 3 of dosing.
Chronic Dietary (All populations)	NOAEL = 2.21 mg/kg/day UF = 300 Chronic RfD = 0.007 mg/kg/day	FQPA SF = 1 cPAD = chronic RfD/FQPA SF = 0.007 mg/kg/day	Chronic/Carcinogenicity in rats LOAEL = 22.09 mg/kg/day based on histopathological changes in liver and stomach including cystic liver degeneration, periportal hepatocellular vacuolation, and pyloric intestinal metaplasia of the stomach
Short-, intermediate Term Dermal	Dermal (or oral) study NOAEL = 10 mg/kg/day (dermal absorption rate = 25 %)	LOC for MOE = 100 (Residential)	Development toxicity in rabbit LOAEL = 75 mg/kg/day based on decreased body weight gain on day 3 of dosing.
Long-Term Dermal	Oral study NOAEL= 2.21 mg/kg/day (dermal absorption rate = 25 %when appropriate)	LOC for MOE = 100 (Residential)	Chronic/Carcinogenicity in rats LOAEL = 22.09 mg/kg/day was used for deriving the chronic RfD.
Inhalation any time period	Oral study NOAEL = 10 mg/kg/day (inhalation absorption rate = 100%)	LOC for MOE = 100 (Residential)	Development toxicity in rabbit LOAEL = 75 mg/kg/day based on decreased body weight gain on day 3 of dosing
Cancer (Oral, dermal, inhalation)	Q_1^* =4.85x10^{-2} (mg/kg/day)$^{-1}$		Likely to be carcinogenic to humans (combined hepatocellular adenoma and /or carcinoma in male mice).

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* The tolerances to be established are import tolerances. Thus, the only dietary exposure would be residues of 4-(dichloroacetyl)-1-oxa-4-azaspiro[4.5]decane, in imported corn commodities. Therefore, risk assessments were conducted by EPA to assess dietary exposures from 4-(dichloroacetyl)-1-oxa-4-azaspiro[4.5]decane in food as follows:

i. *Acute exposure.* Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a one day or single exposure. The Dietary Exposure Evaluation Model (DEEM™) analysis evaluated the individual food consumption as reported by respondents in the USDA 1989–1992 nationwide Continuing Surveys of Food Intake by Individuals (CSFII) and accumulated exposure to the chemical for each commodity. The following assumptions were made for the acute exposure assessments:

The acute dietary (food only) assessment is based on Tier 1 assumptions (tolerance level residues, 100% crop treated). For all population subgroups the estimated dietary (food only) risks are less than 1% of the acute population-adjusted dose (PAD). This is well below the Agency's level of concern for the dietary exposure (100% of the PAD).

ii. *Chronic exposure.* In conducting this chronic dietary risk assessment the Dietary Exposure Evaluation Model (DEEM™) analysis evaluated the individual food consumption as reported by respondents in the USDA 1989–1992 nationwide Continuing

Surveys of Food Intake by Individuals (CSFII) and accumulated exposure to the chemical for each commodity. The following assumptions were made for the chronic exposure assessments:

The chronic dietary (food only) assessment is based on Tier 2 assumptions (tolerance-level residues and 25% crop treated estimates). For all population subgroups, the estimated dietary (food only) risks are less than 1% of the chronic PAD.

iii. *Cancer.* The cancer dietary (food only) assessment is based on Tier 2 assumptions (tolerance-level residues and 25% crop treated estimates). Based on these assumptions, the estimated dietary exposure for the U.S. Population is 0.000013 mg/kg/day. Applying a Q^{1*} of $4.85x10^{-2}$ $(mg/kg/day)^{-1}$ results in a cancer risk estimate of $6.5x10^{-7}$. Generally the Agency is not concerned with cancer risk less than the range of $1x10^{-6}$.

iv. *Anticipated residue and percent crop treated (PCT) information.* Section 408(b)(2)(F) of the FFDCA states that the Agency may use data on the actual percent of food reated for assessing chronic dietary risk only if the Agency can make the following findings: Condition 1, that the data used are reliable and provide a valid basis to show what percentage of the food derived from such crop is likely to contain such pesticide residue; Condition 2, that the exposure estimate does not underestimate exposure for any significant subpopulation group; and Condition 3, if data are available on pesticide use and food consumption in a particular area, the exposure estimate does not understate exposure for the population in such area. In addition, the Agency must provide for periodic evaluation of any estimates used. To provide for the periodic evaluation of the estimate of PCT as required by section 408(b)(2)(F) of the FFDCA, EPA may require registrants to submit data on PCT.

The Agency used PCT information as follows:

For the acute dietary risk assessment, the Agency assumed 100% crop treated i.e., that the entire crop was treated. For chronic (non-cancer and cancer) dietary analyses it was assumed that 25% of the corn was treated.

For assessing chronic dietary risk, the Agency believes that the three conditions listed above have been met. With respect to condition 1, it was assumed that 25% of the corn was treated. The information was based on the percent crop treated data for acetochlor since 4-(dichloroacetyl)-1-oxa-4-azaspiro[4.5]decane can be used as a safener with acetochlor to treat corn. This 25% crop treated estimate is likely to significantly overestimate the percentage of corn treated with 4-(dichloroacetyl)-1-oxa-4-azaspiro[4.5]decane. According to information supplied by the USDA, Economic Research Service, the total production of corn in the United States. was 239.55 and 251.85 million metric tons for the growing seasons of 1999–2000 and 2000–2001 respectively. United States corn imports were 328.393 and 195.603 metric tons for the years 1999 and 2000 respectively. Thus, treated amount of imported corn is less than 1% of domestic U.S. corn production.

As to conditions 2 and 3, regional consumption information and the consumption information for significant subgroups is taken into account through EPA's computer-based model for evaluating the exposure of significant subpopulations including several regional groups. Use of this consumption information in EPA's risk assessment procedure ensures that EPA's exposure estimate does not understate exposure for any significant subpopulation group and allows the Agency to be reasonably certain that no regional population is exposed to residue evels higher than those estimated by the agency. Other than the data available through national food consumption surveys, EPA does not have available information on the regional consumption of food.

2. *Dietary exposure from drinking water.* Residues in drinking water (either ground water or surface water) are not expected to result as a consequence of establishing an import tolerance for 4-(dichloroacetyl)-1-oxa-4-azaspiro[4.5]decane residues in or on corn commodities. There are currently no registered products containing 4-(dichloroacetyl)-1-oxa-4-azaspiro[4.5]decane being distributed or sold in the United States. The one registered product containing 4-(dichloroacetyl)-1-oxa-4-azaspiro[4.5]decane is pending request for cancellation (October 16, 2002, 67 FR 63909; FRL–7276–6). Therefore, exposure through drinking water is unlikely.

3. *From non-dietary exposure.* The term "residential exposure" is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets). 4-(dichloroacetyl)-1-oxa-4-azaspiro[4.5]decane is not registered in the United States and the petition is for import tolerances only, therefore, there would be no residential exposure.

4. *Cumulative exposure to substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) of the FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider "available information" concerning cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity."

EPA does not have, at this time, available data to determine whether 4-(dichloroacetyl)-1-oxa-4-azaspiro[4.5]decane has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, 4-(dichloroacetyl)-1-oxa-4-azaspiro[4.5]decane does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that 4-(dichloroacetyl)-1-oxa-4-azaspiro[4.5]decane has a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the final rule for Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997).

D. Safety Factor for Infants and Children

1. *In general.* Section 408 of the FFDCA provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base on toxicity and exposure unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a MOE analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans.

2. *Prenatal and postnatal sensitivity.* There are two developmental toxicity studies in the rat. In a 1995 study, fetal malfunctions were observed at 200 mg/kg/day in the presence of minimal maternal toxicity (clinical signs), Both maternal and developmental OAEL's are 80 mg/kg/day. In a 1989 study, resorption and malfunctions were observed in the presence of a maternal clinical signs including decreased body

weight gain and food consumption at 150 mg/kg/day. Maternal toxicity at 75 my/kg/day is a conservative call based on decreased food consumption. The susceptibility assumption is based on effects at the high dose.

In a development toxicity study with rabbits there is no evidence of increased susceptibility since there was no evidence of developmental toxicity at the highest dose tested in the presence of maternal toxicity. In the two generation reproductive toxicity study in rats, there is no evidence of increased susceptibility of offspring.

3. *Conclusion.* The Agency determined that the FQPA safety factor of 10x for protection of infants and children be reduced to 3x since:

i. The toxicity data base is complete for an FQPA assessment;

ii. No increase in susceptibility was seen in the rabbit developmental study or in the 2–generation reproduction in rats;

iii. A developmental neurotoxicity study is not required for 4-(dichloroacetyl)-1-oxa-4-azaspiro[4.5]decane; and

iv. The exposure data are understood and the food exposure assessment will not underestimate the residues resulting from the use of 4-(dichloroacetyl)-1-oxa-4-azaspiro[4.5]decane.

E. Aggregate Risks and Determination of Safety

1. *Aggregate risks.* The Agency has concluded that exposure to 4-(dichloroacetyl)-1-oxa-4-azaspiro[4.5]decane from food imported corn commodities will utilize less than 1% of the aPAD and cPAD for all population groups.

The cancer risk estimates from aggregate exposure to 4-(dichloroacetyl)-1-oxa-4-azaspiro[4.5]decane in food has also been assessed. For the U.S. population, the cancer dietary risk from food is 6.5×10^{-7} which is below the Agency's concern for excess lifetime cancer risk.

There are no uses for 4-(dichloroacetyl)-1-oxa-4-azaspiro[4.5]decane that will result in drinking water or residential exposure.

2. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, and to infants and children from aggregate exposure to 4-(dichloroacetyl)-1-oxa-4-azaspiro[4.5]decane residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

An adequate enforcement method (gas chromatography method using electron capture detection) is available to enforce the tolerance expression. The method may be requested from: Calvin Furlow, PRRIB, IRSD (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington DC 20460–0001; telephone number; (703) 305–5229; e-mail address: furlow.calvin@epa.gov.

B. International Residue Limits

There are no CODEX, Canadian or Mexican limits for residues of 4-(dichloroacetyl)-1-oxa-4-azaspiro[4.5] decane in corn.

V. Conclusion

Therefore, import tolerances are established for residues of 4-(dichloroacetyl)-1-oxa-4-azaspiro[4.5]decane, in or on corn commodities at 0.005 ppm.

VI. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to the FFDCA by the FQPA, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) of the FFDCA provides essentially the same process for persons to "object" to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d) of the FFDCA, as was provided in the old sections 408 and 409 of the FFDCA. However, the period for filing objections is now 60 days, rather than 30 days.

A. What Do I Need to Do to File an Objection or Request a Hearing?

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number OPP–2002–0245 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before March 31, 2003.

1. *Filing the request.* Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900C), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. You may also deliver your request to the Office of the Hearing Clerk in Rm. 104, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (703) 603–0061.

2. *Tolerance fee payment.* If you file an objection or request a hearing, you must also pay the fee prescribed by 40 CFR 180.33(i) or request a waiver of that fee pursuant to 40 CFR 180.33(m). You must mail the fee to: EPA Headquarters Accounting Operations Branch, Office of Pesticide Programs, P.O. Box 360277M, Pittsburgh, PA 15251. Please identify the fee submission by labeling it "Tolerance Petition Fees."

EPA is authorized to waive any fee requirement "when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection." For additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305–5697, by e-mail at tompkins.jim@epa.gov, or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

3. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in

Unit VI.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.2. Mail your copies, identified by docket ID number OPP–2002–0245, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.2. You may also send an electronic copy of your request via e-mail to: opp-docket@epa.gov. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

B. When Will the Agency Grant a Request for a Hearing?

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

VII. Statutory and Executive Order Reviews

This final rule establishes a tolerance under section 408(d) of the FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a petition under section 408(d) of the FFDCA, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of the FFDCA. For these same reasons, the Agency has determined that this rule does not have any "tribal implications" as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes." This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

VIII. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: January 10, 2003.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346(a) and 371.

2. Section 180.465 is revised to read as follows:

§ 180.465 4-(Dichloroacetyl)-1-oxa-4-azaspiro[4.5]decane.

(a) *General.* Tolerances are established for the residues of 4-(dichloroacetyl)-1-oxa-4-azaspiro[4.5]decane, (CAS No. 71526–07–3) when used as an inert ingredient (safener) in or on the following raw agricultural commodities:

Commodity[1]	Parts per million
Corn, field, forage	0.005
Corn, field, grain	0.005
Corn, field, stover	0.005
Corn, pop, grain	0.005
Corn, pop, stover	0.005

[1]There are no U.S. registered products containing 4-(dichloroacetyl)-1-oxa-4-azaspiro[4.5]decane as of June 17, 2002.

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

[FR Doc. 03–1768 Filed 1–28–03; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 268

Land Disposal Restrictions

CFR Correction

In Title 40 of the Code of Federal Regulations, Parts 266 to 299, revised as of July 1, 2002, § 268.44 is corrected in the table by adding footnote 8 to read as follows:

§ 268.44 Variance from a treatment standard.

Table–Wastes Excluded From the Treatment Standards Under § 268.40

* * * * *[8]

[8]Dupont Environmental Treatment–Chambers Works must dispose of this waste in their on–site Subtitle C hazardous waste landfill.

[FR Doc. 03–55501 Filed 1–28–03; 8:45 am]

BILLING CODE 1505–01–D

CHEMICAL SAFETY AND HAZARD INVESTIGATION BOARD

40 CFR Part 1610

Transcripts of Witness Testimony in Investigations

AGENCY: Chemical Safety and Hazard Investigation Board.

ACTION: Final rule.

SUMMARY: The Chemical Safety and Hazard Investigation Board ("CSB" or "Board") implements a new rule concerning transcripts of the testimony of witnesses appearing at Board depositions. The rule provides that witnesses have the right to petition to procure a copy of a transcript of their testimony, except that due to the nonpublic nature of Board depositions, witnesses (and their counsel) may for good cause be limited to inspection of the official transcript of their testimony.

DATES: Effective February 28, 2003.

FOR FURTHER INFORMATION CONTACT: Raymond C. Porfiri, 202–261–7600.

SUPPLEMENTARY INFORMATION: The Chemical Safety and Hazard Investigation Board is mandated by law to "investigate (or cause to be investigated), determine and report to the public in writing the facts, conditions, and circumstances and the cause or probable cause of any accidental release [within its jurisdiction] resulting in a fatality, serious injury or substantial property damages." 42 U.S.C. 7412(r)(6)(C)(i). The Board has developed practices and procedures for conducting investigations under this provision in 40 CFR 1610 and has spelled out the rights of witnesses to be represented in such proceedings (section 1610.1) and rules concerning attorney misconduct, (section 1610.2) and sequestration of witnesses and exclusion of counsel (section 1610.3). The Board has determined that it would be useful to add a provision concerning the taking, handling, and inspection of transcripts of Board depositions.

In the **Federal Register** of December 9, 2002 (67 FR 72890), the CSB published a proposed rule setting forth new practices and procedures for the taking, handling, and inspection of transcripts of Board depositions. The proposed rule provided for a 30-day comment period. No comments were received in response to the proposed rule and invitation for comments. This final rule is unchanged from the proposed rule.

In promulgating this regulation, the Board is following section 555(c) of the Administrative Procedure Act, which provides:

> A person compelled to submit data or evidence is entitled to retain or, on payment of lawfully prescribed costs, procure a copy or transcript thereof, except that in a nonpublic investigatory proceeding the witness may for good cause be limited to inspection of the official transcript of his testimony.

On its face, section 555(c) recognizes that it is sometimes necessary to balance a compelled witness' right to have access to his or her testimony, and an agency's need to limit the dissemination of sensitive matters revealed in such testimony.

Board depositions are nonpublic investigatory proceedings. Attendance at depositions is limited to the minimum number of necessary CSB staff, the witness, and one attorney representing the witness. Depositions are not open to multiple attorneys representing the witness, non-attorney representative of the witness, or representatives of other parties (40 CFR part 1610). The Board's regulations on Freedom of Information Act requests (40 CFR part 1601) and on Production of Records in Legal Proceedings (40 CFR part 1612) further demonstrate that the Board recognizes that some of the information obtained in its investigation may not be appropriate for public dissemination.

Several considerations have led the Board to conclude that it is necessary to establish a mechanism to ensure appropriate control over the dissemination of deposition transcripts while also respecting witness' rights under the Administrative Procedure Act. Because of the nature of Board investigations, deposition testimony may contain sensitive information. For example, testimony may reveal trade secrets and confidential business information, which are protected by the Trade Secrets Act, 18 U.S.C. 1905.

Protection of the integrity of Board investigations also necessitates control over the dissemination of deposition transcripts. First-hand witness accounts are an invaluable source of information about the events leading to, and causes of, chemical incidents. Witnesses can be reluctant to cooperate, though, out of fear of whistleblower retaliation. The CSB would likely have greater difficulty obtaining vital testimony if witnesses believed that their testimony could easily become known to their employers and to other witnesses. Reasonable limits, such as those included in this regulation, on the dissemination of transcripts also helps to prevent the coaching of future witnesses based on testimony already given. Such preparation is undesirable in health and safety investigations, where it is important to gather unvarnished facts and untainted recollections.

Ultimately, the Board's duty is to obtain the facts about chemical incidents and to report objectively based on those facts. The Administrative Procedure Act provision limiting the release of transcripts in non-public proceedings is intended to facilitate missions such as the Board's. It protects

against harms that would be caused by premature circulation of such transcripts, while protecting the witness' rights by allowing him or her to inspect the official transcript. This approach, embodied in this regulation, is also consistent with the principles of Attorney General Ashcroft's October 12, 2001, "Memorandum for Heads of All Federal Departments and Agencies," on the Freedom of Information Act, in which he said, "Any discretionary decision by your agency to disclose information protected under the FOIA should be made only after full and deliberate consideration of the institutional, commercial, and personal privacy interests that could be implicated by disclosure of the information."

This proposal is modeled on the rules of the Securities and Exchange Commission (17 CFR 203.6) and those of other agencies which also follow the APA and permit the agency to limit witnesses to inspection of transcripts in non-public investigatory proceedings for good cause. The Board has followed the APA process by allowing witnesses, after their testimony, to ask the General Counsel for the opportunity to procure a copy of the transcript, provided, of course, that for good cause, the General Counsel may deny the petition and limit the witness (and his or her counsel) to an inspection of the witness' testimony. This regulation also makes it clear that this right to inspect the transcript is a right guaranteed by the APA and that witnesses who seek copies of the transcript are informed by the General Counsel of their right to inspect it.

As the court stated in *SEC* v. *Sprecher*, 594 F.2d 317, 319 (2nd Cir 1979), "[I]t is obviously impractical for the Commission to determine prior to the testimony of a witness whether there will be 'good cause' to withhold a copy of the testimony from that witness, and we do not read the APA as requiring such an advance determination."

Moreover, the courts have made it clear that the APA "does not require [the agency] to spell out the 'good cause' which was the basis for the refusal to sell copies of the transcript." *Commercial Capital Corp.* v. *SEC*, 360 F. 2d 856, 858 (7th Cir. 1966).

In summary, this regulation largely tracks the language of the APA. The courts have recognized that such regulations are properly designed to "permit the [agency] to enjoy confidentiality, where it is necessary, in order effectively to complete its investigation." *Zients* v. *La Morte*, 319 F. Supp 956, 958 (S.D.N.Y 1970) (discussing purpose of the SEC regulation), accord *Lamorte* v. *Mansfield*, 438 F.2d 448 (2d Cir 1971), (Friendly, J.) ("to the extent that a privilege exists, it is the agency's not the witness'").

Regulatory Flexibility Act

The Board, in accordance with the Regulatory Flexibility Act, 5 U.S.C. 605(b), has reviewed this regulation and certifies that it will not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995, Public Law 104–4, 109 Stat. 48.

Federalism (E.O. 13132)

The CSB has determined this regulation conforms to the federalism principals of Executive Order 13132. It also certifies that to the extent a regulatory preemption occurs, it is because the exercise of State and tribal authority conflicts with the exercise of Federal authority under the U.S. Constitution's supremacy clause and Federal statute.

Paperwork Reduction Act

This regulation contains no reporting or record keeping requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3510 *et seq.*

List of Subjects in 40 CFR Part 1610

Administrative practice and procedure, Investigations.

For the reasons set forth in the preamble, the Chemical Safety and Hazard Investigation Board amends 40 CFR part 1610 as follows:

PART 1610—ADMINISTRATIVE INVESTIGATIONS

1. The authority citation for part 1610 is revised to read as follows:

Authority: 42 U.S.C. 7412(r)(6)(C)(i), 7412(r)(6)(L), 7412(r)(6)(N).

Section 1610.4 also issued under 5 U.S.C. 555.

2. Add § 1610.4 to read as follows:

§ 1610.4 Deposition Transcripts.

(a) Transcripts of depositions of witnesses compelled by subpoena to appear during a Board investigation, shall be recorded solely by an official reporter designated by the person conducting the deposition.

(b) Such a witness, after completing the compelled testimony, may file a petition with the Board's General Counsel to procure a copy of the official transcript of such testimony. The General Counsel shall rule on the petition, and may deny it for good cause. Whether or not such a petition is filed, the witness (and his or her attorney), upon proper identification, shall have the right to inspect the official transcript of the witness' own testimony. If such a petition is denied by the General Counsel, he shall inform the petitioner of the right to inspect the transcript.

(c) Good cause for denying a witness' petition to procure a transcript of his or her testimony may include, but shall not be limited to, the protection of: trade secrets and confidential business information contained in the testimony, security-sensitive operational and vulnerability information, and the integrity of Board investigations.

Dated: January 23, 2003.

Christopher W. Warner,

General Counsel.

[FR Doc. 03–2001 Filed 1–28–03; 8:45 am]

BILLING CODE 6350–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 03–159, MB Docket No. 02–91, RM–10411]

Digital Television Broadcast Service; Cheboygan, MI

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of WPBN/WTOM License Subsidiary, Inc., substitutes DTV channel 35 for DTV channel 14 at Cheboygan, Michigan. *See* 67 FR 31170, May 9, 2002. DTV channel 35 can be allotted to Cheboygan, Michigan, in compliance with the principle community coverage requirements of Section 73.625(a) at reference coordinates 45–39–01 N. and 84–20–37 W. with a power of 80, HAAT of 168 meters and with a DTV service population of 68 thousand. Since the community of Cheboygan is located within 400 kilometers of the U.S.-Canadian border, concurrence from the Canadian government has been obtained for this allotment. With this action, this proceeding is terminated.

DATES: Effective March 10, 2003.

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MB Docket No. 02–91, adopted January 16, 2003, and released January 23, 2003. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., CY–B402, Washington, DC, 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com*.

List of Subjects in 47 CFR Part 73

Digital television broadcasting, Television.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.622 [Amended]

2. Section 73.622(b), the Table of Digital Television Allotments under Michigan, is amended by removing DTV channel 14 and adding DTV channel 35 at Cheboygan.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Division, Media Bureau.

[FR Doc. 03–1966 Filed 1–28–03; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Part 383

[Docket Nos. FMCSA–2001–9709 and FMCSA–00–7382]

RINs 2126–AA60 and 2126–AA55

Commercial Driver's License Standards, Requirements, and Penalties; Commercial Driver's License Program Improvements and Noncommercial Motor Vehicle Violations

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Final rule.

SUMMARY: The FMCSA amends its Commercial Driver's License (CDL) rules concerning disqualification of drivers to make a technical correction in response to a petition for reconsideration filed by the International Brotherhood of Teamsters, the Transport Workers Union of America, the Transportation Trades Department of the AFL–CIO, and the Amalgamated Transit Union (collectively, "the Petitioners"). The technical correction provides that disqualifications for offenses committed by a CDL holder while operating a non-commercial motor vehicle (non-CMV) would be applicable only if the conviction for such offenses results in the revocation, cancellation, or suspension of the CDL holder's license or non-CMV driving privileges. The agency denies the Petitioners' request to: shorten the disqualification periods driving a non-CMV while under the influence of controlled substances or alcohol; and establish a means to disqualify foreign drivers for offenses committed in a non-CMV in the country of domicile. The FMCSA believes these issues were adequately explained in the July 31, 2002, final rule concerning the CDL program, and that the petitioners have not presented any new information that would warrant reconsideration of the agency's decisions.

DATES: The effective date of this final rule is January 29, 2003.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Redmond, Office of Safety Programs, (202) 366–9579, Federal Motor Carrier Safety Administration, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 8:30 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

Section 201(b) of the Motor Carrier Safety Improvement Act of 1999 (MCSIA) (Pub. L. 106–159, 113 Stat. 1759) requires that the FMCSA issue regulations providing for the disqualification of CDL holders who are convicted of a serious offense involving a non-CMV that results in the revocation, cancellation, or suspension of the person's driver's license, or a drug or alcohol related offense involving a non-CMV. The MCSIA also requires FMCSA to establish minimum disqualification periods for non-CMV offenses based on the seriousness of the offense. However, the disqualification periods for non-CMV offenses must not exceed the disqualification periods for offenses involving a CMV.

On July 31, 2002, the FMCSA published a final rule (67 FR 49742) implementing several MCSIA provisions concerning the CDL program, including the requirements of section 201(b).

Petition for Reconsideration

On August 30, 2002, the Petitioners requested that the agency reconsider three issues covered in the final rule. A copy of the petition is in both of the dockets identified at the beginning of this notice. The following is a summary of the three issues raised by the petitioners, followed by the FMCSA's response.

Issue 1: Disqualification Periods for Driving Under the Influence (DUI).

The Petitioners believe the disqualification periods for driving under the influence of controlled substances or alcohol are excessive and can result in unfair sanctions against CDL holders by potentially disqualifying them from working in the motor carrier industry for life. The Petitioners argue that the disqualification periods are significantly longer than State penalties and that the States generally do not impose lifetime disqualification for second offenses.

FMCSA Response: The FMCSA denies the Petitioners' request to shorten the disqualification periods established by the July 31, 2002, final rule. Section 201(b) of the MCSIA clearly provides FMCSA with the statutory authority to establish disqualification periods for DUI offenses committed by CDL holders while operating non-CMVs, that are identical to the disqualification periods for DUI offenses committed while operating a CMV. Although the FMCSA could have proposed and adopted less stringent penalties, the agency chose to impose the maximum penalties provided by the statute to ensure the highest level of safety. To achieve our safety objectives, we must disqualify CDL holders who represent an unacceptable safety risk to the motoring public by failing to refrain from the use of controlled substances, and consuming alcoholic beverages prior to driving a motor vehicle. There is no readily apparent reason why the agency should consider DUI committed by a professional CMV driver to be less severe when committed in a non-CMV during off-duty hours, than in a CMV while on duty. The conviction for such a serious offense in the non-CMV suggests that the CDL holder is more likely to commit the same offense in a CMV, than a CDL holder who has never committed such an offense. The FMCSA

must take action to reduce to the greatest extent practicable, the likelihood of unsafe drivers being allowed to operate CMVs on public roads.

With the publication of the July 31, 2002, final rule, all CDL holders should now be aware that a conviction for DUI while operating a non-CMV could have a significant adverse impact on their driving careers. These drivers have a choice between sharing the road responsibly with other motorists at all times, regardless of the type of vehicle being operated, or engaging in unsafe driving practices with the potential of being subjected to enforcement actions and ultimately disqualification. The agency's decision represents an appropriate use of its statutory authority, and will help to ensure national uniformity and consistency in the administration of the CDL program.

Issue 2: Less Stringent Penalties for Foreign-Domiciled Drivers

The Petitioners argued that the penalties discriminate against U.S. drivers because foreign drivers' CDLs are not subject to suspension, cancellation or revocation for the same offenses in non-CMVs. They believe that convictions for non-CMV offenses must be enforced in a non-discriminatory manner against all drivers operating on U.S. highways.

FMCSA Response: The FMCSA denies the Petitioners' request because all CDL holders, including foreign domiciled drivers, operating in the U.S. are held to the same standard for offenses committed in the U.S. The agency recognizes that the July 31, 2002, final rule leaves unresolved differences between the consequences for a U.S. driver convicted of a disqualifying offense in a non-CMV, and a foreign domiciled driver who commits similar offenses in his/her country of domicile. However, this is an issue that cannot be resolved through the rulemaking process because it involves offenses in countries that have not adopted laws to disqualify commercial drivers for offenses committed in private vehicles. As indicated in the preamble of the July 31, 2002, final rule, the FMCSA will initiate discussions with Mexico and Canada to modify existing CDL reciprocity agreements to include non-CMV convictions for offenses committed in the drivers' country of domicile.

The FMCSA urges all States to implement the disqualification standards adopted on July 31, 2002, and corrected by today's final rule, because doing so is necessary to safeguard the motoring public. Implementation of the disqualification standards should not be delayed because of concerns about the status of reciprocity negotiations between the U.S., Canada and Mexico. The governments of Canada and Mexico share our commitment to ensuring the safety of cross-border motor carrier operations, and we expect to complete appropriate reciprocity agreements.

Issue 3: Inconsistency Between the Regulatory Language and MCSIA

The Petitioners stated that MCSIA provides for disqualification based on a serious offense involving a motor vehicle (other than a commercial motor vehicle) that has resulted in the revocation, cancellation, or suspension of the individual's license. However, the rule adopted by the FMCSA does not include the limiting language concerning the revocation, cancellation, or suspension of the license by the State. The Petitioners argue that rule must be amended to make it consistent with MCSIA.

FMCSA Response: The FMCSA agrees with the Petitioners that a CDL driver may only be disqualified for offenses committed while operating a non-CMV if the conviction for the offense results in the revocation, cancellation, or suspension of the driver's license. The preamble to the 2002 final rule includes a discussion that explicitly acknowledges that offenses are not disqualifying unless the State also finds that the circumstances of the offense warrant revocation, cancellation, or suspension. However, Table 2 to § 383.51 does not include the required reference to revocation, cancellation, or suspension. Therefore, the agency is revising Table 2 to include the required reference to revocation, cancellation, or suspension.

Rulemaking Analyses and Notices

Under the Administrative Procedure Act (APA)(5 U.S.C. 553(b)) an agency may waive the normal notice and comment requirements if it finds, for good cause, that they are impracticable, unnecessary, or contrary to the public interest. In this case, additional notice and comment are unnecessary. This final rule makes a technical correction to the FMCSA's July 31, 2002, final rule concerning disqualifying offenses committed by CDL holders while operating non-CMVs. This correction is necessary to make the regulatory language in Table 2 of § 383.51 consistent with section 201(b) of MCSIA. The agency requested public comment in response to its May 4, 2001, notice of proposed rulemaking, and intended to adopt the necessary regulatory language on July 31, 2002. However, certain regulatory text was omitted, and the agency must now correct that error. Therefore, the FMCSA finds good cause to adopt this final rule without prior notice or opportunity for public comment [5 U.S.C. 553(b)].

For the same reasons, the FMCSA finds, pursuant to 5 U.S.C. 553(d)(3) that there is good cause for making the rule effective upon publication. The final rule is a technical correction to Table 2 of § 383.51 to make the regulations consistent with MCSIA. Therefore, good cause exists under 5 U.S.C. 553(d) to dispense with the 30-day delay in the effective date requirement and the FMCSA is making the rule effective upon publication in the **Federal Register**. The final rule does not change the susbstance of the requirements.

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

The FMCSA has determined that this action is not a significant regulatory action within the meaning of Executive Order 12866 or significant within the meaning of Department of Transportation regulatory policies and procedures. Since this rulemaking action makes only technical corrections to the current regulations, it is anticipated that the economic impact of this rulemaking will be minimal; therefore, a full regulatory evaluation is not required. Although the July 2002 final rule establishing the current requirements was a significant regulatory action under section 3(f) of Executive Order 12866, the Office of Management and Budget does not consider this amendment of the final rule to be a significant action.

Regulatory Flexibility Act

This action will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The original rule did not have a significant effect on a substantial number of small entities, and this rule simply amends Table 2 to § 383.51 to reflect the statutory language in the MCSIA.

Unfunded Mandates Reform Act of 1995

This rule does not impose an unfunded Federal mandate, as defined by the Unfunded Mandates Reform Actof 1995 (2 U.S.C. 1532 *et seq.*) that will result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. This rule does not impose a Federal mandate resulting in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of

$100 million or more in any one year. (2 U.S.C. 1531 *et seq.*).

Executive Order 12988 (Civil Justice Reform)

This action meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Executive Order 13045 (Protection of Children)

We have analyzed this action under Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks." This rule is not economically significant and does involve an environmental risk to health or safety that would disproportionately affect children.

Executive Order 12630 (Taking of Private Property)

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Executive Order 13132 (Federalism)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132, dated August 4, 1999, and it has been determined this action does not have substantial direct Federalism implications that would limit the policymaking discretion of the States. This action will not have a significant effect on the States' ability to execute traditional State governmental functions, and any additional administrative cost borne by the States should be negligible. Nothing in this document directly preempts any State law or regulation.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.217, Motor Carrier Safety. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this program.

Paperwork Reduction Act

This action does not contain information collection requirements for purposes of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3520. Although the July 31, 2002, final rule affected the information collection burden associated with OMB Control No. 2126–0011, titled "Commercial Driver Licensing and Test Standards," this rulemaking does not result in any additional changes to the approved information collection.

National Environmental Policy Act

The agency has analyzed this action for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and has determined that this action would not have any effect on the quality of the environment.

Executive Order 13211 (Energy Supply, Distribution, or Use)

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use. This action is not a significant energy action within the meaning of section 4(b) of the Executive Order because it is not economically significant and not likely to have a significant adverse effect on the supply, distribution, or use of energy. Additionally, the Administrator of the Office of Information and Regulatory Affairs has not designated this rule as a significant energy action. For these reasons, a Statement of Energy Effects under Executive Order 13211 is not required

List of Subjects in 49 CFR Part 383

Administrative practice and procedure, Alcohol abuse, Commercial driver's license, Commercial motor vehicles, Drug abuse, Highway safety, Motor carriers, Motor vehicle safety.

In consideration of the foregoing, the FMCSA amends title 49, Code of Federal Regulations, Chapter III, part 383 as set forth below:

1. The authority citation for part 383 continues to read as follows:

Authority: 49 U.S.C. 521, 31136, 31301 *et seq.*, 31502; sec. 214 of Pub.L. 106–159, 113 Stat. 1766; and 49 CFR 1.73.

§ 383.51 [Amended]

2. Revise Table 2 to § 383.51 to read as follows:

* * * * *

TABLE 2 TO § 383.51

If the driver operates a motor vehicle and is convicted of:	For a second conviction of any combination of offenses in this Table in a separate incident within a 3-year period while operating a CMV, a person required to have a CDL and a CDL holder must be disqualified from operating a CMV for . . .	For a second conviction of any combination of offenses in this Table in a separate incident within a 3-year period while operating a non-CMV, a CDL holder must be disqualified from operating a CMV, if the conviction results in the revocation, cancellation, or suspension of the CDL holder's license or non-CMV driving privileges, for . . .	For a third or subsequent conviction of any combination of offenses in this Table in a separate incident within a 3-year period while operating a CMV, a person required to have a CDL and a CDL holder must be disqualified from operating a CMV for . . .	For a third or subsequent conviction of any combination of offenses in this Table in a separate incident within a 3-year period while operating a non-CMV, a CDL holder must be disqualified from operating a CMV, if the conviction results in the revocation, cancellation, or suspension of the CDL holder's license or non-CMV driving privileges, for . . .
(1) Speeding excessively, involving any speed of 24.1 kmph (15 mph) or more above the posted speed limit.	60 days	60 days	120 days	120 days.

TABLE 2 TO § 383.51—Continued

If the driver operates a motor vehicle and is convicted of:	For a second conviction of any combination of offenses in this Table in a separate incident within a 3-year period while operating a CMV, a person required to have a CDL and a CDL holder must be disqualified from operating a CMV for . . .	For a second conviction of any combination of offenses in this Table in a separate incident within a 3-year period while operating a non-CMV, a CDL holder must be disqualified from operating a CMV, if the conviction results in the revocation, cancellation, or suspension of the CDL holder's license or non-CMV driving privileges, for . . .	For a third or subsequent conviction of any combination of offenses in this Table in a separate incident within a 3-year period while operating a CMV, a person required to have a CDL and a CDL holder must be disqualified from operating a CMV for . . .	For a third or subsequent conviction of any combination of offenses in this Table in a separate incident within a 3-year period while operating a non-CMV, a CDL holder must be disqualified from operating a CMV, if the conviction results in the revocation, cancellation, or suspension of the CDL holder's license or non-CMV driving privileges, for . . .
(2) driving recklessly, as defined by State or local law or regulation, including but, not limited to, offenses of driving a motor vehicle in willful or wanton disregard for the safety of persons or property.	60 days	60 days	120 days	120 days.
(3) making improper or erratic traffic lane changes.	60 days	60 days	120 days	120 days.
(4) following the vehicle ahead too closely.	60 days	60 days	120 days	120 days.
(5) Violating State or local law relating to motor vehicle traffic control (other than a parking violation) arising in connection with a fatal accident.	60 days	60 days	120 days	120 days.
(6) driving a CMV without obtaining a CDL.	60 days	Not applicable	120 days	Not applicable.
(7) driving a CMV without a CDL in the driver's possession[1].	60 days	Not applicable	120 days	Not applicable.
(8) driving a CMV without the proper class of CDL and/or endorsements for the specific vehicle group being operated or for the passengers or type of cargo being transported.	60 days	Not applicable	120 days	Not applicable.

[1] *Any individual who provides proof to the enforcement authority that issued the citation, by the date the individual must appear in court or pay any fine for such a violation, that the individual held a valid CDL on the date the citation was issued, shall not be guilty of this offense.*

* * * * *

Issued on: January 22, 2003.

Annette M. Sandberg,

Acting Administrator.

[FR Doc. 03–2053 Filed 1–28–03; 8:45 am]

BILLING CODE 4910–EX–P

Proposed Rules

Federal Register
Vol. 68, No. 19
Wednesday, January 29, 2003

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–232–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747 Series Airplanes Equipped with General Electric CF6–45 or CF6–50 Series Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to Boeing Model 747 series airplanes equipped with General Electric CF6–45 and CF6–50 series engines. This proposal would require an inspection to detect chafing of the fuel line or incorrect clearance between the fuel line and pneumatic duct insulation blanket; a fuel leak check and strut drain test; corrective action if necessary; replacement of the outboard strut fuel line coupling O-rings and retaining rings with new parts; replacement of the pneumatic duct boot with a new part; and, for certain airplanes, installation of a flame arrestor and drain line entry screens. This action is necessary to prevent leaking fuel line couplings, chafed fuel lines, restricted or clogged strut drain lines, migrating fluids or vapors toward ignition sources, and flashback of external flame into the strut; these conditions could result in an uncontained engine strut fire. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by March 17, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket 2001–NM–232–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2001–NM–232–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Dan Kinney, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2666; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket 2001–NM–232–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket 2001–NM–232–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received reports of fires inside and outside the outboard struts of Boeing Model 747 series airplanes equipped with General Electric CF6–45 and CF6–50 series engines. The fires were caused by leaking strut fuel line couplings, improperly installed fuel lines that chafed against a pneumatic duct insulation blanket, and clogged or restricted strut drain lines. Fuel leakage into the hot engine compartment and/or onto the hot engine case can ignite and result in a fire. In certain cases, external flame flashback through the strut drain holes has ignited fuel that had leaked and accumulated in the strut. These fires have occurred outside a designated "fire zone" where there is no means to detect, contain, or extinguish a fire. All known cases of engine strut fires have occurred on the ground during taxi-in after landing; such fires could result in airplane damage and an emergency evacuation. Leaking fuel line couplings, chafed fuel lines, restricted or clogged strut drain lines, fluids or vapors migrating to ignition sources, and flashback of external flame into the strut, if not corrected, could result in an uncontained engine strut fire.

Explanation of Relevant Service Information

The FAA has reviewed and approved the service information listed in the following table:

Service information	Procedures described
Boeing Service Bulletin 747–36–2111, dated February 20, 1992.	Inspection to detect chafing of the fuel line and measure the clearance between the fuel line and the pneumatic duct insulation blanket; and follow-on and corrective actions (including rework of the fuel line by blending nicks and scratches, determining the maximum thickness of the damaged area, and performing a penetrant inspection to detect cracking of the damaged area; remeasuring the clearance between the fuel line and the insulation blanket; adjusting the duct and fuel line positions; and performing repetitive inspections for chafing).
Boeing Service Bulletin 747–28–2162, dated July 30, 1992.	Replacement of the number 4 strut fuel tube with a new part if sufficient clearance between the fuel line and the insulation blanket cannot be achieved by incorporation of Service Bulletin 747–36–2111.
Boeing Service Bulletin 747–28–2230, dated September 30, 1999.	Fuel pressure leak check of the fuel line in the strut area, a strut drain test for the aft strut drain tubes to detect blockage, and corrective action for any discrepancy.
Boeing Service Letter 747–SL–28–052–B, dated August 30, 1998.	Repetitive replacement of the outboard strut fuel line coupling O-rings and retaining rings with new parts.
Boeing Service Bulletin 747–36–2118, dated January 28, 1993.	Replacement of the pneumatic duct boot with a new part.
Boeing Service Bulletin 747–54–2137, dated February 6, 1992.	Installation of a flame arrestor in each aft condensate drain hole of the engine struts.
Boeing Service Bulletin 747–54–2122, Revision 4, dated August 29, 1991.	Installation of a drain line entry screen at each drain tube entry.

The FAA has reviewed Notice of Status Change 747–54–2122 NSC 2, dated May 14, 1992, which revises Boeing Service Bulletin 747–54–2122, Revision 4, and was issued to notify certain operators of part number changes. The FAA has also reviewed Information Notice 747–54–2122 IN 03, dated August 19, 1999, which was issued to notify operators of errors in certain Figures in Boeing Service Bulletin 747–54–2122, Revision 4.

Accomplishment of the actions specified in the service information is intended to adequately address the identified unsafe condition.

Boeing Service Bulletins 747–28–2230 and 747–36–2122 recommend accomplishment of certain actions specified by other service bulletins; however, those additional actions are not included in this proposed AD because they are required by existing ADs or are not necessary to address the identified unsafe condition of this proposed AD. Those other service bulletins are described in the following table:

The actions specified in Boeing Service Bulletin—	Are included in—	Which applies to Model 747 series airplanes equipped with—	To require—	Within—
747–28–2155, Revision 3, dated September 28, 1984.	Telegraphic (emergency) AD 86–01–51 R1, amendment 39–5269 (51 FR 10820, March 31, 1986).	GE CF6 engines	Clearing of the engine strut drains.	72 hours after the effective date of April 18, 1986.
747–28–2160, dated July 23, 1992, or Revision 1, dated December 16, 1993.	AD 95–02–07, amendment 39–9126 (60 FR 8292, February 14, 1995).	Certain GE or Pratt & Whitney T9D series engines.	Installation of a seal on the wing front spar at each engine strut.	18 months after the effective date of March 16, 1995.
747–54A2117, Revision 1, dated November 8, 1985.	AD 86–08–03, amendment 39–5289 (51 FR 12836, April 16, 1986).	Certain General Electric and Pratt & Whitney engines.	An inspection for cracking in the brace and application of sealant in the strut lower aft bulkhead.	200/400 landings after the effective date of May 27, 1986.

In addition, Boeing Service Bulletin 747–54–2122 recommends the prior or concurrent accomplishment of the actions specified in Boeing Service Bulletin 747–54–2083, which addresses hydraulic fluid leak problems; however, those actions would not be required by this proposed AD because there has been no evidence of a recent hydraulic fluid leak problem.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the service information described previously, except as discussed below.

Differences Between Proposed AD and Relevant Service Information

Although Boeing Service Bulletin 747–28–2230 recommends

accomplishing the leak check and drain inspection within 18 months (after the release of the service bulletin), we have determined that an interval of 18 months would not address the identified unsafe condition in a timely manner. In developing an appropriate compliance time for this proposed AD, we considered not only the manufacturer's recommendation, but the degree of urgency associated with addressing the subject unsafe condition, the average utilization of the affected fleet, and the time necessary to perform the actions. In light of all of these factors, we find a 12-month compliance time for completing the proposed actions to be warranted, in that it represents an appropriate interval of time allowable for affected airplanes to continue to operate without compromising safety.

Boeing Service Bulletin 747–36–2111 specifies that, if the ultimate corrected clearance achieved between the fuel line and the pneumatic duct insulation blanket (for any strut position) is 0.50 inch or less, operators may repetitively inspect the area every 1,000 flight hours. However, this proposed AD would require replacement of the fuel tube on the number 4 engine strut position, as specified in Boeing Service Bulletin 747–28–2162, if clearance of at least 0.40 inch cannot be achieved during accomplishment of the actions specified in Boeing Service Bulletin 747–36–2111.

Boeing Service Bulletin 747–54–2122 specifies that accomplishment of some of the actions that are specified in this proposed AD are to be done in accordance with either the Boeing 747 Airplane Maintenance Manual (AMM) or an "operator's equivalent procedure." However, this proposed AD would require that the actions be accomplished in accordance with the procedures specified in the applicable subject of the Boeing 747 AMM. An "operator's equivalent procedure" may be used only if approved as an alternative method of compliance in accordance with paragraph (i) of this AD.

In addition, Boeing Service Bulletin 747–36–2111 recommends that operators "tell Boeing" if the fuel line is chafed. Operators may report these findings to Boeing, but this proposed AD would not require a report.

The applicability of this proposed AD is different from the effectivity of some of the cited service bulletins. The unsafe condition identified by this proposed AD is limited to the outboard struts on Model 747 series airplanes equipped with General Electric CF6–45 and CF6–50 series engines. However, the effectivity in Service Bulletins 747–54–2122, 747–36–2118, and 747–28–2162, and Service Letter 747–SL–28–052–B is broader to encompass additional features common to other engine model structures not addressed by this proposed AD.

Cost Impact

The following table provides the cost estimates to accomplish the proposed actions:

Boeing service information for proposed actions	Work hours per airplane	Labor rate per hour	Parts cost per airplane	Per-airplane cost	Number of U.S. airplanes affected	U.S. fleet cost
Service Bulletin 747–36–2111	10	$60	$0	$600	32	$19,200
Service Bulletin 747–28–2230	4	60	0	240	32	7,680
Service Letter 747-SL–28–052B	4	60	0	240	32	7,680
Service Bulletin 747–36–2118	10	60	1,269	1,869	32	59,808
Service Bulletin 747–54–2137	48	60	3,047	5,927	30	177,810
Service Bulletin 747–54–2122	56	60	2,590	5,950	30	178,500

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this proposed AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Docket 2001–NM–232–AD.

Applicability: Model 747 series airplanes equipped with General Electric CF6–45 or CF6–50 series engines, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (i) of this AD. The

request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent leaking fuel line couplings, chafed fuel lines, restricted or clogged strut drain lines, fluids or vapors migrating to ignition sources, and flashback of external flame into the strut, which could result in uncontained engine strut fire, accomplish the following:

Inspection for Chafing and Clearance

Note 2: Paragraph (a) of this AD refers to certain portions of Boeing Service Bulletin 747–36–2111, dated February 20, 1992, for information regarding inspection and measurement actions. Further, paragraph (a) of this AD requires replacement of the fuel tube as corrective action for certain repair conditions; that action is not included in the service bulletin. Where this AD and Service Bulletin 747–36–2111 differ, the AD prevails.

(a) Within 1,000 flight hours after the effective date of this AD, perform a detailed inspection to detect chafing of the fuel line and measure the clearance between the fuel line and the insulation blanket on the pneumatic duct; in accordance with the Accomplishment Instructions of Boeing Service Bulletin 747–36–2111, dated February 20, 1992. Before further flight, accomplish all applicable corrective actions (including reworking the fuel line, remeasuring the clearance between the fuel line and the insulation blanket, adjusting the pneumatic duct and fuel line positions, adjusting the insulation blanket installation, and inspecting and cleaning the strut and strut drain ports/screens); and, if applicable, repeat the fuel line inspection at the applicable time in the Accomplishment Instructions of the service bulletin. Do the corrective and follow-on actions in accordance with Service Bulletin 747–36–2111. If, after corrective actions have been performed, a clearance of at least 0.40 inch on the number 4 strut cannot be achieved: Before further flight, replace the fuel tube with a new part in accordance with Boeing Service Bulletin 747–28–2162, dated July 30, 1992.

Note 3: For the purposes of this AD, a detailed inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

Fuel Leak Check and Strut Drain Inspection

(b) Within 12 months after the effective date of this AD, perform a fuel pressure leak check of the fuel line in the strut area, and perform a strut drain test for the aft strut drain tubes to detect blockage; in accordance with the Accomplishment Instructions of Boeing Service Bulletin 747–28–2230, dated September 30, 1999. If any discrepancy is found, before further flight, perform applicable corrective actions (including performing the fuel pressure check procedure, clearing the strut drain tubes, and repairing seal leaks) in accordance with the service bulletin.

Replacement of O-Rings and Retaining Rings

(c) At the earliest of the times specified by paragraphs (c)(1), (c)(2), and (c)(3) of this AD, replace the fuel line coupling O-rings and retaining rings in the outboard strut positions with new Nitrile O-rings, part number MS29513–330, in accordance with Boeing Service Letter 747–SL–28–052–B, dated August 30, 1998. Replace the rings thereafter at the time specified by paragraph (d) of this AD.

(1) Within 21,000 flight hours after the effective date of this AD.

(2) Within 5 years after the effective date of this AD.

(3) Before further flight after a coupling has been disassembled for any reason.

Repetitive Ring Replacement

(d) Replace the rings as required by paragraph (c) of this AD at intervals not to exceed the earliest of the times specified by paragraphs (d)(1), (d)(2), and (d)(3) of this AD.

(1) Every 21,000 flight hours.

(2) Every 5 years.

(3) Before further flight after a coupling has been disassembled for any reason.

Replacement of Pneumatic Duct Boot

(e) At the earlier of the times specified in paragraphs (e)(1) and (e)(2) of this AD: Replace the pneumatic duct boot with a new part, in accordance with Boeing Service Bulletin 747–36–2118, dated January 28, 1993.

(1) Within 12 months after the effective date of this AD; or

(2) Before further flight following detection of any torn boot; or within 5 days following detection of any torn boot, provided there are no leaks, liquid fuel, or vapors in the affected strut compartment.

Installation of Flame Arrestor

(f) For airplanes identified in Boeing Service Bulletin 747–54–2137, dated February 6, 1992: Within 24 months after the effective date of this AD, install a flame arrestor in each aft condensate drain hole of the engine struts, in accordance with the Accomplishment Instructions of the service bulletin.

Installation of Drain Screen

(g) For Group 2 and Group 4 airplanes listed in Boeing Service Bulletin 747–54–2122, Revision 4, dated August 29, 1991; as revised by Notice of Status Change 747–54–2122 NSC 2, dated May 14, 1992; and Information Notice 747–54–2122 IN 03, dated August 19, 1999: Within 24 months after the effective date of this AD, install a drain line entry screen at each drain tube entry at the outboard strut positions, in accordance with the Accomplishment Instructions of the service bulletin. Where the service bulletin specifies that certain actions may be accomplished in accordance with an operator's "equivalent procedure": Those actions must be accomplished in accordance with the applicable Boeing 747 Airplane Maintenance Manual subject specified in the service bulletin.

(h) Installation of drain screens before the effective date of this AD is also acceptable for compliance with the requirements of paragraph (g) of this AD if accomplished in accordance with Boeing Service Bulletin 747–54–2122, Revision 1, dated December 14, 1989; Revision 2, dated May 3, 1990; or Revision 3, dated October 4, 1990.

Alternative Methods of Compliance

(i) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 5: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

(j) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on January 22, 2003.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–1957 Filed 1–28–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 35

[Docket No. RM01–12–000]

Remedying Undue Discrimination Through Open Access Transmission Service and Standard Electricity Market Design

January 22, 2003.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of technical conference.

SUMMARY: Commission staff will convene a technical conference on February 4, 2003 to discuss issues relating to the proposed rules for cyber-security of entities interacting on the nation's electric grid. The conference will build upon the concepts found in

the original and revised cyber-security standards, with particular focus on issues pertaining to implementation and timing of, and compliance with, the standards. There will be an opportunity for interested persons to make very brief public statements at the conference.

DATES: The conference will take place on February 4, 2003.

ADDRESSES: The conference will take place at: Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT: Sarah McKinley, Office of External Affairs, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–8004.

SUPPLEMENTARY INFORMATION:

Notice of Technical Conference

1. Take notice that a technical conference will be held on February 4, 2003, from approximately 9:30 a.m. to 3 p.m. in Hearing Room 1 on the second floor of the offices of the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC. The goal of the conference is to discuss issues relating to the proposed rules for cyber-security of entities interacting on the nation's electric grid.

2. The Commission's proposed cyber-security standard was described in section M and appendix G of the Notice of Proposed Rulemaking (NOPR) published in this docket on July 31, 2002. That proposal was developed by the Critical Infrastructure Protection Advisory Group (CIPAG) of the North American Electric Reliability Council (NERC), which has since proposed a set of revisions to the standard that have been approved by the NERC Board.

3. Copies of the NOPR security proposal may be obtained from: *http://www.ferc.gov/Electric/RTO/Mrkt-Strct-comments/discussion_paper.htm*. Copies of the NERC security proposal are available in Attachment A at: *ftp://www.nerc.com/pub/sys/all_updl/docs/ferc/RM01-12-000-SMD.pdf*.

4. This conference will build upon the concepts found in the original and revised cyber-security standards. The discussions will focus on the following questions pertaining to implementation and timing of, and compliance with, the standards:

- When should compliance with the standard become mandatory? The original NOPR would require compliance in January 2004, but recent discussions have suggested that this standard be advisory in 2004 and mandatory in 2005.
- What is the best way to establish a verification and compliance process for the standards? What is the current and expected process that NERC uses to determine compliance with the NERC standards, and would it be appropriate for the cyber-security standards as well? Should regular audits be used as part of the compliance and verification effort? Should there be a role for third-party testing or investigation of complaints about the compliance of wholesale market participants?
- What are the appropriate penalties and remedies for non-compliance or inadequate compliance with the cyber-security standards, once they are in effect?
- Should new technical issues that were neither technologically nor commercially ripe for resolution in the proposed standard be identified and recognized now so the wholesale industry and the information technology industry can anticipate the issues and requirements ahead? What issues and cyber-security challenges were not addressed in the proposed standard but should be ready for inclusion in the next standard, if the next standard is adopted in two to three years?

5. Other than with respect to the last bullet above, this workshop will not discuss the substance of the NERC-approved cyber-security standard.

6. The bulk of this workshop will be discussion between attendees. Commission staff has asked selected individuals to speak at this conference, and is not entertaining requests to make presentations. However, interested persons will be permitted to make very brief public statements that are not repetitive of materials already filed in the public record of this docket.

7. All interested persons may attend the technical conference, and registration is not required. However, in-person attendees are asked to notify the Commission of their intent to attend by sending an e-mail message to *conferences@ferc.gov*.

8. Transcripts of the conference will be immediately available from Ace Reporting Company (202–347–3700 or 1–800–336–6646), for a fee. They will be available for the public on the Commission's FERRIS system two weeks after the conference. Additionally, Capitol Connection offers the opportunity for remote listening of the conference for a fee. Persons interested in this service should contact David Reininger or

9. Julia Morelli at the Capitol Connection (703–993–3100) as soon as possible or visit the Capitol Connection Web site at *http://www.capitolconnection.gmu.edu* and click on "FERC."

10. For more information about the conference, please contact Sarah McKinley at (202) 502–8004 or *sarah.mckinley@ferc.gov*.

Magalie R. Salas,

Secretary.

[FR Doc. 03–1972 Filed 1–28–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 55

[Notice No. 969]

RIN 1512–AC80

Explosive Pest Control Devices (2002R–285P)

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Department of the Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: Based, in part, on a petition we have received, the Bureau of Alcohol, Tobacco and Firearms (ATF) is proposing to amend the regulations to provide a limited exemption from the requirements of part 55 for individuals having a legitimate need to use explosive pest control devices for wildlife management purposes. The proposed regulations are intended to facilitate the acquisition of these devices by those individuals who have a legitimate pest control need.

DATES: ATF must receive all comments on or before February 28, 2003.

ADDRESSES: Send written comments to: James P. Ficaretta, Program Manager; Room 5150; Bureau of Alcohol, Tobacco and Firearms; PO Box 50221; Washington, DC 20091–0221; *ATTN: Notice No. 969*. Written comments must be signed and may be of any length.

E-mail comments may be of any length and should be submitted to: *nprm@atf.gov*. E-mail comments must contain your name, mailing address, and e-mail address. They must also reference this notice number and be legible when printed on paper that is 8½″ × 11″ in size. We will treat e-mail as originals and we will not acknowledge receipt of e-mail. See the Public Participation section at the end of this notice for requirements for submitting written comments by facsimile.

FOR FURTHER INFORMATION CONTACT: James P. Ficaretta, Firearms, Explosives, and Arson, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts

Avenue, NW., Washington, DC 20226; telephone (202) 927–8210.

SUPPLEMENTARY INFORMATION:

Background

The Bureau of Alcohol, Tobacco and Firearms (ATF) is responsible for implementing Title XI, Regulation of Explosives (18 United States Code (U.S.C.) chapter 40), of the Organized Crime Control Act of 1970. One of the stated purposes of the Act is to reduce the hazards to persons and property arising from misuse of explosive materials. Under section 847 of title 18, U.S.C., the Secretary of the Treasury "may prescribe such rules and regulations as he deems reasonably necessary to carry out the provisions of this chapter." Regulations that implement the provisions of chapter 40 are contained in title 27, Code of Federal Regulations (CFR), part 55 ("Commerce in Explosives").

The term "explosive materials," as defined in section 55.11, means explosives, blasting agents, water gels, and detonators. The term includes, but is not limited to, all items in the "List of Explosive Materials" provided for in section 55.23. Section 55.202 provides that there are three classes of explosive materials: (1) High explosives (*e.g.*, dynamite, flash powders, and bulk salutes); (2) low explosives (*e.g.*, black powder, safety fuses, igniters, igniter cords, fuse lighters, and display fireworks (except bulk salutes)); and (3) blasting agents (*e.g.*, ammonium nitrate-fuel oil and certain water gels).

Under the law and its implementing regulations (section 55.41), persons engaging in the business of manufacturing, importing, or dealing in explosive materials are required to be licensed. In general, persons acquiring or receiving explosive materials in interstate commerce for their own use are required to obtain a permit.

Licensees and permittees must comply with the provisions of part 55, including those relating to storage and other safety requirements, as well as recordkeeping and theft reporting requirements. However, certain items and activities have been given exempt status under the law (18 U.S.C. 845) and its implementing regulations (section 55.141). For example, the provisions of part 55 do not apply to the transportation, shipment, receipt, or importation of explosive materials for delivery to any agency of the United States or to any State or its political subdivision.

Explosive Pest Control Devices

Explosive pest control devices contain black powder, flash powder, and/or a similar pyrotechnic composition. Many of these devices contain flash powder, a high explosive, as the component that produces the audible report. These devices are used for wildlife management purposes as an effective deterrent and are necessary for pest control efforts within the agricultural, aquacultural (commercial fishing operations), horticultural, and aviation industries. Commonly known as "bird bombs," "shell crackers," "seal bombs," etc., explosive pest control devices are used to deter wildlife pests without harming them.

Generally, the current regulations in part 55 require that persons acquiring or receiving explosive materials in interstate commerce must possess a license or permit. Thus, prior to acquiring any explosive pest control devices in interstate commerce, persons must submit an application for a license or permit to ATF along with the appropriate fee. The issuance of a license or permit can be a lengthy process. Consequently, the threat and damage to crops, aircraft, etc., may have long passed before a person with a legitimate need for the devices has obtained the necessary license or permit. In addition, the requirement to obtain a license or permit can be cost prohibitive, particularly in instances where persons have only an intermittent need for using explosive pest control devices.

Reed-Joseph Petition

ATF received a petition, dated April 30, 2001, filed by Reed-Joseph International Company (Reed-Joseph), requesting an amendment of the explosives regulations. Specifically, Reed-Joseph requested an amendment of section 55.141(a) to provide that the requirements of part 55 not apply to the importation and distribution of certain 15 mm and 18.2 mm pyrotechnic devices used for wildlife damage control purposes. As suggested by Reed-Joseph, a new exception would specify that the provisions of part 55 would not apply to:

The importation and distribution of 15 MM and 18.2 MM pyrotechnic devices for animal damage control purposes with U.S. Department of Transportation "Classification of Explosives" as follows:

U.N. Proper Shipping Name and Number: Articles, Explosive, n.o.s., UN 0471. *U.N. Classification Code:* 1.4E. *Reference Number:* EX–9810074. *Product Designation/Part Number:* (F105 AZ F 0626 073 Ind A). CAPA Cartridge (18.2 MM). and

U.N. Proper Shipping Name and Number: Articles, Explosive, n.o.s., UN 0349. *U.N. Classification Code:* 1.4 S. *Reference Number:* EX–9806011. *Product Designation/Part Number:* Screamer Siren Scare Cartridge 15 MM. and

U.N. Proper Shipping Name and Number: Articles, Explosive, n.o.s. (Bird scaring devices), UN 0471. *U.N. Classification Code:* 1.4 E. *Reference Number:* EX–9704086. *Product Designation/Part Number:* Report Cartridge—Bird Banger 15 MM. and

U.N. Proper Shipping Name and Number: Articles, Explosive, n.o.s. (Bird scaring devices), UN 0471. *U.N. Classification Code:* 1.4 E. *Reference Number:* EX–8602015. *Product Designation/Part Number:* Pest Control Cartridge (15 MM). and

U.N. Proper Shipping Name and Number: Articles, Explosive, n.o.s. (Bird scaring devices), UN 0349. *U.N. Classification Code:* 1.4 S. *Reference Number:* EX–8304001. *Product Designation/Part Number:* Bird Whistler (15 MM).

In its petition, Reed-Joseph states that to its knowledge, no 15 mm or 18.2 mm wildlife damage control pyrotechnic devices are manufactured in the United States and that there are only two companies that import and distribute 15 mm or 18.2 mm pyrotechnics used for wildlife damage control, Reed-Joseph and Sutton Ag Enterprises of Salinas, California. As such, the petitioner contends that by limiting exemptions to 15 mm and 18.2 mm wildlife damage control pyrotechnics imported by reputable and licensed firms, ATF will be able to separate firms meeting legitimate wildlife control damage control needs from those that will sell these devices to the general public. The petitioner also states that these pyrotechnics "may only be fired from hand-held launchers that use .22 caliber blank cartridges as ignition source or Very-type flare launchers."

Discussion/Proposed Amendments

ATF recognizes that the use of explosive pest control devices can be an important part of an effective wildlife management program within the agricultural, aquacultural, horticultural, and aviation industries. We also recognize that the current regulations in part 55 impose a significant hardship on these affected industries, particularly with respect to licensing and permit requirements and requirements concerning the storage of explosives. As indicated, farmers, ranchers, etc. often have an immediate need for these pest control devices and any delay in

acquiring them can result in serious and significant consequences.

Accordingly, we are proposing to amend the regulations to provide a limited exemption from the requirements of part 55 for persons having a legitimate need to use explosive pest control devices. As proposed, the term "explosive pest control device" will be defined as any explosive device that is designed and intended solely for use in controlling wildlife pests and that has a container that is a cardboard/pasteboard-type tube not exceeding 4 inches in length and 3/4 inch in diameter or a shotgun shell type container. Explosive pest control devices may contain only pyrotechnic compositions, *e.g.*, black powder, flash powder, or smokeless powder. The component that produces the audible report may not contain more than 40 grains (2.592 grams) of explosive composition. These devices must have been tested, classified, and approved by the U.S. Department of Transportation.

The proposed definition of the term "explosive pest control device" is not limited to 15 mm and 18.2 mm wildlife damage control pyrotechnic devices (that can only be fired from hand-held launchers) as requested by Reed-Joseph in its petition. Based on information we have obtained, it is clear that there are many types of explosive pest control devices available to those persons who have legitimate pest control needs. For example, according to the U.S. Department of Agriculture, problems associated with large concentrations of birds, *e.g.*, depredation of agricultural crops, creation of health hazards, etc., can be reduced through the use of 12-gauge exploding shells (also known as "shell crackers") fired from a shotgun, or 15 mm or 17 mm pyrotechnics fired from a pistol. The Department of Agriculture states that rope firecrackers (also known as "rope salutes") are also useful in frightening birds. With this particular device, the fuses of large firecrackers are inserted through cotton rope. As the rope burns, the fuses are ignited.

To ensure that explosive pest control devices will not be obtained for illicit purposes, the proposed regulations require that persons acquiring such devices must complete an ATF form certifying, under penalty of perjury, that their use of the devices will be solely for legitimate wildlife pest control purposes and that they are not prohibited by law from possessing explosive materials. The form will be retained by the licensee or permittee as part of his permanent records.

In considering the appropriate storage of explosive pest control devices, we have noted that these devices often contain flash powder as the audible charge used to frighten wildlife pests. Therefore, they are considered high explosives and would ordinarily be required to be stored in a type-1 or type-2 storage magazine. ATF believes that persons acquiring explosive pest control devices will, for the most part, be storing these devices at intermittent times for specific uses and will only be storing small quantities. In addition, we believe that acquiring type-1 and type-2 explosives storage magazines will be cost prohibitive for most end-users due to the infrequent need and use of these devices. Accordingly, we are proposing that explosive pest control devices that are maintained in their original shipping packages may be stored in a type-4 magazine or other similar storage container that is approved by the Director in accordance with the provisions of § 55.22 and that provides an equivalent level of safety and security. We believe that this will ensure a sufficient level of security from theft and, if the explosive pest control devices are maintained in their original shipping packages, will provide a sufficient safeguard against accidental mass explosion.

Except as provided, the proposed regulations do not apply to persons operating businesses that provide on-site wildlife pest control services using explosive pest control devices. Such persons will be required to obtain, at a minimum, a Federal explosives permit and must comply with all applicable provisions of 18 U.S.C. chapter 40 and the regulations in part 55. Unlike farmers and others whose crops, etc., might be endangered if they were made to await issuance of an explosives permit, businesses providing pest control services using explosive pest control devices do not operate under the same time constraints. Moreover, these businesses are likely to maintain large quantities of explosive pest control devices. Similarly, those engaged in the business of dealing, importing, and/or manufacturing explosive pest control devices must obtain Federal explosives licenses and must comply with the applicable provisions of 18 U.S.C. chapter 40 and the regulations in part 55.

How This Document Complies With the Federal Administrative Requirements for Rulemaking

A. Executive Order 12866

We have determined that this proposed regulation is not a significant regulatory action as defined by Executive Order 12866. Therefore, a Regulatory Assessment is not required.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.*, requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. We hereby certify that this proposed regulation, if adopted, will not have a significant economic impact on a substantial number of small entities. Indeed, the proposed regulations will reduce the burden placed on small businesses.

C. Paperwork Reduction Act

The collections of information contained in this notice of proposed rulemaking have been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collections of information should be sent to the Office of Management and Budget, Attention: Desk Officer for the Bureau of Alcohol, Tobacco and Firearms, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Chief, Document Services Branch, Room 3110, Bureau of Alcohol, Tobacco and Firearms, at the address previously specified. Comments are specifically requested concerning:

- Whether the proposed collections of information are necessary for the proper performance of the functions of the Bureau of Alcohol, Tobacco and Firearms, including whether the information will have practical utility;
- The accuracy of the estimated burden associated with the proposed collections of information (*see* below);
- How the quality, utility, and clarity of the information to be collected may be enhanced; and
- How the burden of complying with the proposed collections of information may be minimized, including through the application of automated collection techniques or other forms of information technology.

The collections of information in this proposed regulation are in 27 CFR 55.141(c). This information is required to ensure that persons acquiring explosive pest control devices will be using such devices for legitimate wildlife pest control purposes. The collections of information are

mandatory. The likely respondents are individuals and businesses.

• Estimated total annual reporting and/or recordkeeping burden: 3,000 hours.

• Estimated average burden hours per respondent and/or recordkeeper: 0.33 hours (20 minutes).

• Estimated number of respondents and/or recordkeepers: 4,500.

• Estimated annual frequency of responses: 2.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget. This collection is associated with the forthcoming certification form, ATF F 5430.1. The estimated burden for this regulation revision is 1 hour.

Public Participation

We are requesting comments on the proposed regulations from all interested persons. In addition, we are specifically requesting comments on the clarity of this proposed rule and how it may be made easier to understand.

Comments received on or before the closing date will be carefully considered. Comments received after that date will be given the same consideration if it is practical to do so, but assurance of consideration cannot be given except as to comments received on or before the closing date.

ATF will not recognize any material in comments as confidential. Comments may be disclosed to the public. Any material that the commenter considers to be confidential or inappropriate for disclosure to the public should not be included in the comment. The name of the person submitting a comment is not exempt from disclosure.

A. Submitting Comments by Fax

You may submit written comments by facsimile transmission to (202) 927–8525. Facsimile comments must:

• Be legible;

• Reference this notice number;

• Be 8½″ × 11″ in size;

• Contain a legible written signature; and

• Be not more than five pages long.

We will not acknowledge receipt of facsimile transmissions. We will treat facsimile transmissions as originals.

B. Request for Hearing

Any interested person who desires an opportunity to comment orally at a public hearing should submit his or her request, in writing, to the Director within the 30-day comment period. The Director, however, reserves the right to determine, in light of all circumstances, whether a public hearing is necessary.

C. Disclosure

Copies of this notice and the comments received will be available for public inspection by appointment during normal business hours at: ATF Reference Library, Room 6480, 650 Massachusetts Avenue, NW., Washington, DC; telephone (202) 927–7890.

D. Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in the **Federal Register** in April and October of each year. The RIN contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

E. Drafting Information

The author of this document is James P. Ficaretta, Firearms, Explosives, and Arson, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects in 27 CFR Part 55

Administrative practice and procedure, Authority delegations, Customs duties and inspection, Explosives, Hazardous materials, Imports, Penalties, Reporting and recordkeeping requirements, Safety, Security measures, Seizures and forfeitures, Transportation, and Warehouses.

Authority and Issuance

For the reasons discussed in the preamble, the Bureau of Alcohol, Tobacco and Firearms proposes to amend 27 CFR Part 55 as follows:

PART 55—COMMERCE IN EXPLOSIVES

Paragraph 1. The authority citation for 27 CFR Part 55 continues to read as follows:

Authority: 18 U.S.C. 847.

Par. 2. Section 55.141 is amended by adding new paragraph (c) to read as follows:

§ 55.141 Exemptions.

* * * * *

(c) *Explosive pest control devices.* (1) For purposes of this paragraph (c), "explosive pest control device" means any explosive device that is designed and intended solely for use in controlling wildlife pests and that has a container that is a cardboard/pasteboard-type tube not exceeding 4 inches in length and ¾ inch in diameter or a shotgun shell type container. Explosive pest control devices may contain only pyrotechnic compositions, *e.g.*, black powder, flash powder, or smokeless powder. The component that produces the audible report may not contain more than 40 grains (2.592 grams) of explosive composition. Explosive pest control devices must have been tested, classified, and approved by the U.S. Department of Transportation.

(2)(i) Except for the provisions applicable to persons required under subpart D to obtain licenses or permits, this part does not apply to the receipt, possession, transportation, or shipment of explosive pest control devices when acquired by persons who have a legitimate wildlife pest control use for the devices and who have completed ATF Form 5400.XX certifying, under penalty of perjury, that their use of the devices will be for legitimate wildlife pest control purposes. Form 5400.XX will be retained by the licensee or permittee as part of his permanent records in accordance with § 55.121. This exemption does not apply to persons operating businesses that provide on-site wildlife pest control services using explosive pest control devices.

(ii) Explosive pest control devices are subject to the storage requirements prescribed in subpart K; however, explosive pest control devices that will be used for legitimate wildlife pest control purposes may be stored in a type-4 magazine or other similar storage container that is approved by the Director in accordance with the provisions of § 55.22 and that provides an equivalent level of safety and security if such devices remain in packaging designed to prevent mass detonation (*e.g.*, the type of packaging in which explosive pest control devices are generally shipped).

Signed: December 18, 2002.

Bradley A. Buckles,

Director.

Approved: January 14, 2003.

Timothy E. Skud,

Deputy Assistant Secretary, (Regulatory, Tariff and Trade Enforcement).

[FR Doc. 03–1945 Filed 1–28–03; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 55

[Notice No. 968]

RIN 1512–AB48

Commerce in Explosives (2000R–9P)

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Department of the Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Bureau of Alcohol, Tobacco and Firearms (ATF) is issuing this notice of proposed rulemaking, in part, pursuant to the Regulatory Flexibility Act (RFA) which requires an agency to review within ten years of publication, rules for which an agency prepared a final regulatory flexibility analysis addressing the impact of the rule on small businesses or other small entities. Based on comments we have received in response to the RFA analysis, this document proposes amendments to the explosives regulations relating to fireworks. In addition, this document proposes to incorporate into the regulations the provisions of an ATF Ruling 76–18, concerning alternate construction standards for storage facilities for explosive materials. This document also proposes amendments to the regulations that have been initiated by ATF, as well as amendments that have been proposed by members of the explosives industry.

DATES: Comments must be received on or before April 29, 2003.

ADDRESSES: Send written comments to: James P. Ficaretta, Program Manager; Room 5150; Bureau of Alcohol, Tobacco and Firearms; P.O. Box 50221; Washington, DC 20091–0221; *ATTN: Notice No. 968.* Written comments must be signed and may be of any length.

E-mail comments may be submitted to: *nprm@atf.gov.* E-mail comments must contain your name, mailing address, and e-mail address. They must also reference this notice number and be legible when printed on paper that is 8½″ x 11″ in size. We will treat e-mail as originals and we will not acknowledge receipt of e-mail. See the Public Participation section at the end of this notice for requirements for submitting written comments by facsimile.

FOR FURTHER INFORMATION CONTACT: James P. Ficaretta, Firearms, Explosives, and Arson, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW., Washington, DC 20226, telephone (202) 927–8210.

SUPPLEMENTARY INFORMATION:

I. Background

A. T.D. ATF–293

On February 5, 1990, ATF published a final rule in the **Federal Register** amending certain regulations contained in 27 CFR part 55 (T.D. ATF–293, 55 FR 3717). The final rule, which became effective on March 7, 1990, implemented storage and recordkeeping requirements for industry members engaged in manufacturing, importing, dealing in, or using fireworks and implemented the provisions of Public Law 99–308, 100 Stat. 449 (1986) relating to black powder. Some of the major provisions of the amendments were:

1. Extending the definition of high explosives to cover, for storage purposes, flash powder and bulk salutes, since these materials can be made to detonate by means of a blasting cap when unconfined (ATF has subsequently held that flash powder and bulk salutes are high explosives for all purposes of part 55);

2. Limiting to no more than 10 pounds the amount of flash powder used in special (display) fireworks that can be kept outside an approved magazine and in any one processing building during a day's assembling operations;

3. Limiting to no more than 500 pounds the amount of other explosive materials that can be kept outside an approved magazine and in any processing building or area during a day's assembling operations;

4. Requiring that, under certain conditions, processing buildings or areas holding no more than 10 pounds of flash powder or 500 pounds of other explosive materials used in special fireworks be located in accordance with the table of distances in section 55.218;

5. Establishing new minimum separation of distance tables applicable to fireworks plants, fireworks process buildings, and fireworks plant magazines;

6. Amending the recordkeeping requirements to include information regarding quantity and description of special fireworks; and

7. Eliminating the recordkeeping requirements for licensees and permittees selling or disposing of exempt quantities of black powder for sporting, recreational, or cultural purposes in antique firearms or antique devices.

B. Regulatory Flexibility Act—Periodic Review of Rules

Section 610 of the Regulatory Flexibility Act (RFA), 5 U.S.C. 610, requires an agency to review within 10 years of publication rules for which the agency prepared a final regulatory flexibility analysis addressing the impact of the rule on small businesses or other small entities. In that regard, ATF prepared a final regulatory flexibility analysis with respect to T.D. ATF–293. (*See* 55 FR 3719.)

The periodic review of regulations under section 610(b) of RFA requires agencies to consider the following factors: (1) The continued need for the rule; (2) the nature of complaints or comments received concerning the rule from the public; (3) the complexity of the rule; (4) the extent to which the rule overlaps, duplicates, or conflicts with other Federal rules and, to the extent feasible, with State and local governmental rules; and (5) the length of time since the rule has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the rule.

C. Notice No. 845

To comply with section 610 of RFA, on January 10, 1997, we published a General Notice in the **Federal Register** (Notice No. 845, 62 FR 1386) initiating the review of T.D. ATF–293. In the notice we requested comments from members of the explosives industry and other interested persons as to the effectiveness of the regulations issued in that final rule. We also reviewed the regulations issued in T.D. ATF–293 addressing the factors specified in section 610(b) of RFA, which include the continued need for the rule, the nature of the complaints received, the complexity of the rule, the extent to which the rule overlaps, duplicates, or conflicts with other Federal rules, and changes in the area affected by the rule.

The comment period for Notice No. 845 closed on April 10, 1997.

II. Notice No. 845—Analysis of Comments

We received six comments in response to Notice No. 845. Two commenters recommended amendments to the marking requirements for fireworks as set forth in section 55.109.

One commenter suggested that this section require only a part number and size of shell. We are not proposing this suggestion since it would negatively affect the traceability of fireworks. Generally, licensees and permittees must record the manufacturer's marks of

identification on all explosives they receive. These requirements help ensure that explosive materials can be effectively traced for criminal enforcement purposes, *i.e.*, the explosives can be tracked through the records kept by licensees and permittees. This process often provides valuable information in explosion and bombing investigations and is useful for inspection purposes in verifying inventory and proper conduct of business practices.

The other commenter suggested that this section be amended to require the size and type of shell and a date of production, omitting the shift code. ATF believes that the additional burden of requiring each shell to be marked with the size and type of shell is not warranted because it would provide no additional information useful to ATF in tracing the origin of explosives used in crime. Therefore, we are not proposing this portion of the suggestion. However, we agree that amending the date code to omit the shift of manufacture would not significantly affect traceability in instances where fireworks manufacturers are operating only a single shift. This issue is being addressed in a separate rulemaking proceeding. Accordingly, we are not now proposing this suggestion.

Two comments addressed the recordkeeping requirements for display fireworks aerial shells under sections 55.123 and 55.124. The commenters stated that the current requirement that all manufacturer's marks of identification be recorded for acquisitions and dispositions is burdensome to proprietors due to large numbers of shells manufactured, acquired, and disposed of in most fireworks businesses. The commenters suggested that recordkeeping requirements for manufacture, acquisition, and distribution of aerial fireworks shells be amended to require that the number and size of shells be recorded in lieu of the current requirement that all manufacturer's marks be recorded. We believe that adoption of this suggestion would have a significant negative effect on our ability to trace fireworks. To trace fireworks, ATF must have access to markings reflecting the name of the manufacturer, as well as the location and date of manufacture. Without these markings, tracing is impossible. In consideration of ATF's mission to reduce violent crime and protect public safety, we are not proposing this suggestion.

We received four comments regarding the classification of flash powder as a high explosive. As specified in section 55.202(a), "high explosives" are explosive materials that can be caused to detonate by means of a blasting cap when unconfined (*e.g.*, dynamite, flash powders, and bulk salutes).

Two commenters contended that this classification was not appropriate and they questioned the validity of past tests on flash powder. ATF may rely upon several sources for information and expertise regarding explosive materials, including ATF and industry experts, associations (*e.g.*, the National Fire Protection Association (NFPA)), publications, and scientific tests. According to ATF's explosives experts and others, flash powders can detonate when unconfined. Further, ATF's classification of flash powder as a high explosive is consistent with the NFPA 1124 ("Code for the Manufacture, Transportation, and Storage of Fireworks and Pyrotechnic Articles") recommendation that bulk flash powders be stored in accordance with the regulations governing storage for high explosives (section 55.218). In the interest of public safety, we are not proposing to change the classification of flash powder.

Another commenter suggested that ATF provide a better description of flash powder based on its chemical makeup. Due to the variety of combinations of fuels and oxidizers that can be used to make flash powder, we believe that basing a definition solely on the chemical makeup would prove cumbersome and may restrict ATF's discretion to accurately determine whether new explosive materials are flash powders. Furthermore, the definition that is being proposed in this notice is sufficient to enable ATF to accurately classify the various types of flash powders. Therefore, we are not proposing this suggestion.

The fourth commenter suggested that the regulations be revised to state that in addition to flash powder, "any specific quantity of pyrotechnic composition capable of detonation by means of a blasting cap when unconfined" is a high explosive. We believe that this is unnecessary because the definition of high explosives found at section 55.202(a) prescribes that all explosive compositions that can be caused to detonate when unconfined are to be classified as high explosives. Accordingly, we are not proposing this suggestion.

ATF received four comments regarding operations in fireworks process buildings as follows:

1. Current regulations at sections 55.221 and 55.222 mandate that no more than 10 pounds of flash powder be present in any fireworks process building. Three commenters contended that the 10-pound limit is overly restrictive. They suggested increasing the maximum allowable quantity of flash powder in a fireworks process building to 50 pounds. Due to the volatile nature of flash powder, we believe that allowing more than 10 pounds of flash powder in a fireworks process building would pose an excessive and unnecessary risk of injury to employees in the fireworks plant and to the general public.

2. All of the commenters argued that the 500-pound limitation on pyrotechnic compositions used in a process building or area is too restrictive. One commenter suggested that in-process compositions and materials not be considered explosives for tables of distances purposes. ATF believes that, due to the possibility for accidental explosions of pyrotechnic compositions, it is in the interest of public safety to require that pyrotechnic compositions in assembly processes be subject to table of distances requirements. Therefore, we are not proposing to exempt in-process materials from the regulations.

3. Two commenters suggested that partially completed display fireworks be allowed to remain in process buildings overnight. They argued that the movement of explosives to and from magazines over the course of a business day may have an adverse effect on safety. They suggested that the buildings could be "securely locked" when unoccupied. ATF has adopted minimum security standards for the storage of explosives, including construction and locking requirements. Permanent magazines used for overnight storage of explosives must meet the prescribed minimum standards. Further, we believe that the employment of proper safety practices when handling or moving explosive materials used in the assembly of fireworks will minimize safety risks. The threat to public safety posed by leaving display fireworks components overnight in process buildings outweighs any risks associated with the movement of the materials to and from storage magazines. Therefore, we are not proposing this suggestion.

4. Two commenters suggested that ATF adopt by reference NFPA 1124 standards to establish limits for pyrotechnic materials in process buildings. That is, the commenters suggested that ATF's regulations be amended to require persons to comply with NFPA 1124 standards. ATF relies upon groups such as the American Pyrotechnics Association (APA) and the NFPA for guidance on certain

explosives issues. ATF often incorporates sections of NFPA guidelines into its regulations. However, adopting an outside organization's guidelines by reference may limit ATF's control over its own regulations because regulatory requirements could be changed based upon decisions made by NFPA to revise its code. Therefore, we are not proposing to adopt the NFPA standards by reference.

5. Finally, two commenters suggested that the 500-pound limitation (on the amount of pyrotechnic compositions allowed in fireworks process buildings) not apply to drying operations that are part of the manufacturing process and that these operations be subject to the table of distances in section 55.219. The tables at sections 55.222 and 55.223 currently require that process operations, including drying, be located specific distances from, among other things, fireworks process and nonprocess buildings, fireworks plant buildings, and fireworks shipping buildings. The table at section 55.219 applies to the storage of low explosives other than display fireworks. Although some drying operations may present less of a mass explosion hazard than others, we believe that the application of the low explosives table to display fireworks, which sometimes contain high explosives, would not be in the interest of public safety. Therefore, we are not proposing this suggestion.

ATF received four comments on the application of the table of distances in section 55.224. Those comments are discussed as follows:

1. Two commenters suggested modifying the table such that it would provide distance requirements specifically for display fireworks up to 200,000 pounds. Under the current table, persons are required to refer to section 55.218 for the storage of display fireworks in excess of 10,000 pounds to calculate separation distances of magazines from inhabited buildings, public highways, passenger railways, and other magazines. The problem presented is that the distance requirements change drastically when going from section 55.224 (for weights up to 10,000 pounds) to section 55.218 (for weights over 10,000 pounds). In comparing the two tables, there are also discrepancies in separation requirements for distances between magazines. The proposed table provides for more proportionate increases in distances for weights of materials above 10,000 pounds, and it provides for a smooth transition to the table at section 55.218 for weights above 200,000 pounds. ATF agrees that the adoption of this table will not jeopardize public safety. Accordingly, we are proposing this suggestion. (*See* section IV ("Proposed Amendments to Part 55"), amendment of section 55.224.)

2. One commenter suggested that the table in section 55.219, rather than the table in section 55.218 (as currently required), be used for weights over 10,000 pounds. The transition from the distance requirements in the table in section 55.224 to those in the table in section 55.219 would not be consistent. In fact, the requirements for slightly over 10,000 pounds in the table in section 55.219 are less than those for up to 10,000 pounds in the table in section 55.224. We have determined that this does not further public safety. Therefore, we are not proposing this suggestion. However, as stated above, we are proposing a revision to the table in section 55.224 that remedies this problem by providing for more proportionate increases in distances for weights of materials above 10,000 pounds, and by providing for a smooth transition to the table at section 55.218 for weights above 200,000 pounds.

3. Finally, one commenter stated that the table in section 55.224 is unnecessarily restrictive for hobbyists storing less than 1,000 pounds of fireworks. The commenter suggested that the table be further broken down to account for smaller weight categories, with corresponding shorter distances than those currently required for up to 1,000 pounds. The commenter submitted a specific table of distances for consideration. We have determined through consultation with the APA that the suggested table would apply to certain shell sizes only. We believe that implementation of such a provision would result in confusion as to the applicability of the table in situations in which a variety of sizes and types of fireworks shells are stored together. Accordingly, in the interest of clarity and administration, we are not proposing this suggestion.

Two commenters proposed that ATF implement regulations relaxing the requirements for explosives storage at a display site. The commenters suggested that the language formerly contained on ATF Form 5400.21, "Application for Permit User Limited Display Fireworks," be incorporated into the regulations. The language formerly used in the instructions on Form 5400.21 has been changed specifically because it tended to cause a misconception that fireworks could be stored in a manner not in compliance with the regulations in part 55. ATF believes that adoption of this language would not be consistent with our mission to protect the public from unsafe storage of explosives. Therefore, we are not proposing this suggestion.

ATF received three comments regarding shipping operations. Two commenters stated that ATF regulations should address "shipping buildings," in which articles commonly used to pack and prepare fireworks for shipping, such as empty cardboard boxes, chairs, telephones, and computers, could be used and kept. The commenters suggested that the regulations be amended to allow such items, as well as certain operations, such as unpacking and handling of fireworks, in separate shipping buildings. ATF regulations currently define the term "fireworks shipping building." The regulations do not prohibit the use or presence of the noted articles or the unpacking or handling of fireworks in a fireworks shipping building. Therefore, we are not proposing this suggestion.

One commenter suggested that ATF allow packing items, such as tape and empty containers to be stored in magazines. The housekeeping requirements in section 55.215 generally prohibit the presence of empty containers and certain other items in magazines, in the interest of reducing fire and explosion hazards in magazines. We believe that implementing provisions allowing for the storage of these items in magazines would be contrary to the regulations and ATF's goal of protecting the public. Therefore, we are not proposing this suggestion.

III. IME Correspondence

In addition to the comments regarding Notice No. 845, ATF received correspondence from the explosives industry concerning additional amendments to part 55. In a letter to ATF dated October 31, 2000, the Institute of Makers of Explosives (IME) submitted suggestions for amending the Federal explosives regulations in part 55. IME stated in its letter that it is the safety association of the commercial explosives industry and that its mission is to promote safety and the protection of employees, users, the public, and the environment, and to encourage the adoption of uniform rules and regulations in the manufacture, transportation, storage, handling, use, and disposal of explosive materials used in blasting and other essential operations. In the following paragraphs, we will summarize IME's suggested amendments to the regulations, along with our evaluation of each proposal.

1. ATF regulations currently require that licensees and permittees maintain all required records in permanent form (*i.e.*, commercial invoices, record

books). The regulations do not currently provide for computer recordkeeping, although ATF has allowed computer recordkeeping on a case-by-case basis by variance. IME has suggested that ATF standardize the requirements for computer recordkeeping in order to eliminate the necessity for variances for such recordkeeping systems. In this notice, for reasons similar to those noted by IME, ATF is proposing guidelines for computer recordkeeping systems. (*See* section IV ("Proposed Amendments to Part 55"), amendment of section 55.121.)

2. IME has proposed that ATF eliminate the provisions requiring the use of non-sparking materials in the construction of magazines where spark-insensitive materials are stored. It stated that modern high explosives and blasting agents are not sensitive to frictional sparks. However, IME further proposed that the requirement should be retained for spark-sensitive materials such as powders and fireworks. ATF's magazine construction requirements are based upon the type of magazine (*e.g.*, type 1, type 2, etc.) in question, not the spark-sensitivity of the explosives to be stored. This is because magazines used for the storage of spark-insensitive explosives may also be used for the storage of spark-sensitive explosives such as black powder and flash powder. We believe that basing construction standards on the spark-sensitivity of the explosives stored, rather than on the type of magazine and class of explosives, may lead to confusion and ambiguity. Furthermore, there would be a burden on proprietors to determine whether the materials being stored are sensitive to sparks. Due to the potential for creating a public safety hazard, we are not proposing this suggestion.

3. IME has suggested that ATF accept Department of Defense (DOD) specifications for DOD magazines that are used to store explosives as an alternative to compliance with ATF requirements. IME has stated that companies sometimes lease DOD magazines for storage of commercial explosives and that companies storing commercial explosives in compliance with DOD requirements are sometimes not in compliance with ATF standards. Explosive materials manufactured under DOD contracts and subject to DOD requirements, however, often differ significantly from materials manufactured for commercial use and distribution and subject to ATF requirements. Additionally, DOD generally requires that a level of physical security be maintained (*e.g.*, armed guards) to reduce the threat of bullet penetration and thefts. Conversely, ATF's magazine construction requirements contemplate a lack of physical security, which is common practice in commercial operations. Therefore, we believe that it is appropriate to ensure that any storage of commercial explosive materials be in compliance with these ATF regulations developed specifically for commercial explosive materials and operations. Accordingly, we are not proposing IME's suggestion.

4. IME has suggested that ATF convert to United Nations terminology for hazard classifications in determining the appropriate storage for explosive materials. It stated that ATF should accept for purposes of explosives storage, the hazard classifications assigned by the U.S. Department of Transportation (DOT), which uses United Nations terminology in classifying hazardous materials for transportation purposes. DOT assigns United Nations hazard classifications for transportation of explosives based, in part, upon the performance of the packaging of the explosives. For example, where packaging that will reduce the likelihood of mass detonation is used, DOT will assign a "lower" hazard classification (triggering less stringent transportation requirements) than would be assigned if the explosive materials were not packaged in such a manner. ATF often encounters instances in which explosives are removed from DOT-mandated packaging when placed in magazines, potentially changing the mass detonation/deflagration qualities of the explosives. Adoption of the UN hazard classification standards for storage of explosive materials could result in unpackaged high explosives being stored in magazines intended for storage of low explosives. Therefore, we are not proposing IME's suggestion.

5. IME has suggested that ATF adopt its standards for bullet-resistant magazine construction. IME states that the requirements in the regulations (sections 55.207 and 55.208) and the standards found in ATF Ruling 76–18 (1976–ATF C.B. 106) are inconsistent with respect to bullet-resistance standards. It suggested that ATF adopt the bullet-resistance standards found in IME's Safety Library Publication No. 1. These standards were derived from research and testing sponsored by IME and ATF. IME stated that most magazines used in the commercial industry already meet the ¼-inch steel and 3-inch hardwood standard, so this amendment should not prove particularly burdensome to the industry. ATF agrees that bullet-resistance standards should be consistent throughout part 55. Therefore, we are adopting IME's suggestion and we are proposing amendments to the regulations to reflect IME's standards. (*See* section IV ("Proposed Amendments to Part 55"), amendment of sections 55.207 and 55.208.) We are also proposing that the requirement be effective one year from the date of publication of the final rule. In addition, the provisions of ATF Ruling 76–18 are being incorporated into the proposed regulations. (*See* section IV ("Proposed Amendments to Part 55"), amendment of sections 55.207 and 55.208.) This ruling will become obsolete upon the effective date of the final rule.

6. IME has stated that outdoor type 2 magazines are often located on terrain that precludes a bullet from being fired through the roof. It proposed that ATF amend the regulations (section 55.208) to require bullet-resistant roofs on outdoor type 2 magazines only when it is possible for a bullet to be fired directly through the roof and at such an angle that the bullet would strike the explosives within. This is similar to language used for type 1 magazines in section 55.207. Type 2 magazines are mobile or portable magazines. As such, they are commonly relocated to suit the needs of companies engaged in construction and similar activities. Implementing this amendment could cause proprietors to unwittingly create a bullet-penetration risk by placing a magazine whose roof does not meet bullet-resistance standards in a location where bullet penetration is a potential problem. By requiring bullet-resistant roofs, ATF helps protect against this risk, regardless of how often type 2 magazines are relocated. Therefore, we are not proposing IME's suggestion.

7. Section 55.63 requires that proprietors notify ATF of newly acquired magazines and of certain changes to explosives magazines, with the exception of mobile or portable type 5 magazines. IME suggested that ATF amend the regulation to expand and clarify the exception to include all portable magazines. Type 4 portable magazines are occasionally relocated or added to maximize the amount of material that can be safely stored at fireworks premises. We believe that it is important for ATF to be notified of such changes in order to help the proprietor maintain compliance with the tables of distances. Furthermore, we believe that the public safety benefits of requiring this notification far outweigh the minimal burden to these proprietors. However, we recognize that type 3 and type 5 magazines are commonly used for transportation by construction, quarrying, and mining companies on a

daily basis. The requirement to notify ATF in advance of additions and relocations would create a substantially greater burden on proprietors in these cases. Therefore, we are adopting IME's suggestion, in part, and we are proposing to except type 3 and type 5 mobile and portable magazines from the notification requirements of section 55.63. We would note that all magazines used to store explosives must meet all applicable construction and table of distance requirements, regardless of how long they are in a particular location.

8. IME has stated that the industry has taken measures to promote usage of the term "detonator" in place of "blasting cap." It has encouraged ATF to uniformly adopt this term throughout the regulations in part 55. The term "detonator" is commonly referred to as "blasting cap" and ATF believes that there are many users of detonators who actually use that term. In addition, although IME is trying to promote usage of the term "detonator," many of the makers and users of explosives are not members of IME. These persons routinely use the term "blasting cap" and might be confused were IME's suggestion to be adopted. ATF is also concerned that if only the term "detonator" is used, certain explosives information may not be reported to us because of the limited terminology. Accordingly, we are not proposing IME's suggestion.

9. IME has suggested that ATF require any person storing explosives to post a warning sign advising against fighting fires in explosives storage magazines. It has stated that one of its most important policies is to never fight a fire that involves explosive materials. IME also stated that it is aware of instances where fires were fought that involved explosives and those materials detonated, killing and injuring firefighters. As such, IME proposes a requirement that all normal access routes to explosive material storage facilities be posted with a sign warning against fighting explosive fires and advising of a specific emergency phone number.

On August 24, 1998, ATF published in the **Federal Register** a final rule amending the regulations in section 55.201 to require persons storing explosive materials to notify the local fire authority of the type, magazine capacity, and location of each site where such explosive materials are stored (T.D. ATF–400, 63 FR 44999). We believe that this requirement ensures that local fire authorities are apprised of explosive materials storage and the possibility that these materials may be involved in a fire at explosives premises. We also believe that it would be inappropriate to require those proprietors storing explosives in a non-industrial setting to place outside their homes or businesses a warning sign such as that suggested by IME. In addition to placing an undue burden on proprietors, such a requirement would create a security risk by drawing attention to the fact that explosives are stored on the premises. Accordingly, ATF is not proposing IME's suggestion. However, ATF will not require the removal of warning signs that have been posted.

10. IME has suggested that ATF revise the prohibition on storing explosive materials against interior walls of magazines. It has stated that this restriction is not necessary for modern solid explosive products, such as cutters and perforators. Section 55.214 requires that explosive materials not be placed directly against interior walls and that they must be stored so as not to interfere with ventilation. The ventilation afforded by storage in this manner benefits certain explosive materials (*e.g.*, dynamite, boosters, fireworks) and also helps maintain the integrity of the packaging of the explosives, regardless of the configuration or type of explosive materials. Accordingly, ATF is not proposing IME's suggestion.

11. IME has suggested that ATF amend the permit requirement for interstate transportation of explosives in section 55.141, noting in this regard that DOT regulates both interstate and intrastate transportation of explosives and that, therefore, the exemption at section 55.141(a)(1) makes the requirement for a permit for interstate transportation under section 55.41 superfluous. It has suggested that ATF remove the requirement that a person who intends to transport explosive materials interstate acquire a permit. Title XI of the Organized Crime Control Act of 1970 (18 U.S.C. 842(a)(3)) prohibits persons without a license or permit from transporting or shipping explosive materials interstate (except in cases where the individual's State specifically allows the interstate purchase, transport, and shipment from a contiguous State). Accordingly, legislative action would be necessary to relax this requirement.

12. IME has proposed an amendment to the requirement in section 55.104 that a license or permit furnished for the purpose of purchasing explosives contain an original signature. It has suggested that this section be amended to require that the licensee or permittee retain an original signed copy at his or her premises and furnish a photocopy thereof for verification purposes when purchasing explosives. Under the current regulations, licensees and permittees are required to furnish a copy of their license or permit prior to receiving explosive materials. This copy must contain an original signature certifying that the license or permit is a true copy of a valid license or permit. In the past, ATF has considered similar suggestions to relax the requirement for an original signature. However, we are concerned about the possibility of persons unlawfully acquiring explosives on a stolen copy of a license with a photocopied signature. We believe that this concern is still valid. Accordingly; we are not proposing IME's suggestion.

IV. Proposed Amendments to Part 55

This section contains a compilation of all the proposed amendments to part 55, including those initiated by ATF, those based on comments received in response to Notice No. 845, and those suggested by IME.

A. Subpart B—Definitions (Section 55.11)

Currently, "bulk salutes" are defined in section 55.11 as salute components prior to final assembly into aerial shells, and finished salute shells held separately prior to being packed with other types of display fireworks. This definition allows packages containing a majority of salute shells and a minimal number of display fireworks to be stored as display fireworks, rather than as high explosives. This is a problem because storage requirements for display fireworks are less stringent than requirements for the storage of bulk salutes, which are high explosives. Therefore, we are amending the definition of "bulk salutes" to specify that the term includes a collection of salute shells packaged with other types of aerial shells in quantities such that the salute shells comprise more than 50 percent of the total number of shells in the package. This will ensure that packages containing mostly salute shells will be stored properly, as high explosives. This change is consistent with NFPA guidelines.

The term "business premises," as currently defined in the regulations, includes the property where the records of a manufacturer, importer, or dealer are kept if different than the premises where explosive materials are manufactured, imported, stored, or distributed. ATF has encountered situations in which an inspection could not be conducted properly or in a timely manner due to the fact that the records were not at the actual location listed on the license. Therefore, we are amending the definition of "business premises" to

specify that the term, when used with respect to a manufacturer, importer, or dealer, means the property on which explosive materials are manufactured, imported, stored, or distributed. Similarly, when used with respect to an explosives permittee, the term will mean the property on which the explosive materials are received or stored.

The definitions for the terms "articles pyrotechnic," "consumer fireworks," and "display fireworks" are being amended for clarification purposes. In addition, technical non-substantive changes are being made to the definition of the term "fireworks process building."

A definition for the term "fireworks process area" is being added in order to ensure that open-air processing operations are conducted in compliance with the tables of distances in sections 55.222 and 55.223. This is being done in the interest of public safety.

The definition of the term "fireworks shipping building" is being amended to clarify that such a building may be used for the packing of assorted display fireworks into shipping cartons for individual displays or for the loading of packaged displays for shipment to purchasers.

The definition of the term "flash powder" is being amended in order to be more descriptive of the possible ingredients of this explosive.

The definition of the term "hardwood" is being amended to be consistent with the well-recognized industry standards of the NFPA.

As defined in the regulations, the term "highway" means any public street, public alley, or public road, including a privately financed, constructed, or maintained road that is regularly and openly traveled by the general public. It has come to our attention that there is confusion as to the meaning of the term "general public." We believe that even small segments of the general public traveling on roads near explosives magazines are entitled to protections similar to those afforded to large numbers of persons traveling on similar roadways. Moreover, we believe that individuals employed by, or otherwise associated with, one explosives facility should be deemed to be members of the "general public" with respect to any other explosives facility. We are amending the definition of the term "highway" to clarify that any road regularly and openly traveled by any member of the general public would be subject to the table of distance requirements.

The definition of "inhabited building" is being amended to clarify specific conditions where a building would be considered to be occupied in connection with the manufacture, storage, transportation, and use of explosive materials and, therefore, not be considered an inhabited building. For example, where there are two explosives businesses (Business A and Business B), a building occupied solely by Business A will be considered an "inhabited building" with respect to the explosives storage magazines that are maintained by Business B. However, this same building would fall within the exception for "buildings occupied in connection with the manufacture, transportation, storage, or use of explosive materials" with respect to explosives storage magazines maintained by Business A. This clarification ensures that personnel employed by or otherwise associated with one explosives facility will not "assume the risk" associated with another explosives facility's operations.

The definition of the term "manufacturer" is being amended to include persons who assemble explosive materials from other explosive materials and/or non-explosive materials, such as fireworks and pyrotechnics. By adding "assemblers" to the definition, the marking requirements of section 55.109 will apply to persons assembling explosive materials.

The definition of the term "softwood" is being amended to be consistent with the well-recognized industry standards of the NFPA.

B. Subpart C—Administrative and Miscellaneous Provisions

Section 55.22 is being amended to clarify that copies of approved variances (rather than the applications) are to be kept by the permittee or licensee to whom they are issued so that they can be reviewed by ATF officers. This section is also being amended to provide that the Director may require the resubmission of all variances for the purpose of re-evaluation. For example, the Director may require the resubmission of all variances when there is a change of ownership, control, or personnel; at the time of renewal; or upon disclosure of a person's possible inability or unwillingness to comply with the terms of a variance.

Section 55.46 is being amended to provide that the Chief, Firearms and Explosives Licensing Center (now known as the "Chief, National Licensing Center") may, in writing, require the applicant for license or permit renewal to file an original application for license or permit as required by section 55.45. This would be in addition to filing an application for license renewal on ATF F 5400.14 (part III), or application for permit renewal on ATF F 5400.15 (part III). This ensures compliance with existing requirements in part 55 and is consistent with the firearms regulations in part 178 of this chapter with respect to the renewal of Federal firearms licenses.

Several amendments are being made to section 55.63, relating to changes in explosives magazines:

1. Paragraph (a)(1) is being amended to clarify that magazines used for storage of explosives are subject to the table of distances and magazine construction requirements prescribed in sections 55.206 through 55.211.

2. Paragraphs (a)(2) and (a)(3) are being removed. The provisions of these paragraphs are considered unnecessary because they duplicate the standards specified in sections 55.206 through 55.211.

3. Paragraph (a)(4) is being revised for clarification purposes and is being redesignated as paragraph (e).

4. Paragraph (b), which exempts mobile or portable type 5 magazines from the requirements of section 55.63, is being amended by redesignating the paragraph as paragraph (f) and by providing that type 3 magazines are also exempt from the requirements of this section. We are not proposing to exempt type 4 magazines from the notification provisions of this section, as such magazines are often used and relocated at the premises of fireworks companies. Due, in part, to the seasonal nature of their business, such companies often relocate type 4 magazines during periods of high volume. In the interest of public safety, we will still require that such businesses notify ATF of relocations of type 4 magazines.

5. Paragraphs (c) and (d) provide that the regional director (compliance) (now known as the "Director of Industry Operations") must be notified prior to repairing, reconstructing, or acquiring new magazines. These paragraphs further require that the regional director (compliance) be notified prior to commencing storage in a new or repaired magazine. We believe that the additional burden of this second notification to ATF after acquisition or repair and prior to storing is not justified. Accordingly, we are amending these paragraphs by redesignating them as paragraphs (b) and (c), respectively, and by removing the requirement that the regional director (compliance) be notified after the acquisition of a new magazine or the repair or reconstruction of an existing magazine.

6. Finally, we are amending section 55.63 by adding a new paragraph (d) to

require licensees and permittees to notify ATF prior to the relocation of magazines. ATF has encountered recurring instances where industry members have relocated their explosives storage magazines to new locations. This has caused difficulty in administration of the regulations and has disclosed unsafe storage conditions in some instances where magazine relocations have been discovered. In the interest of public safety and the effective administration of the regulations, we believe that the notification provisions of this section should apply to the relocation of magazines.

Sections 55.105(g), 55.106(d), and 55.108(h) are being removed as they are redundant. The exemption provisions contained in section 55.141(b) make it clear that, except for the provisions pertaining to licensees, the requirements of part 55 do not apply to certain distributions of black powder under certain conditions. The sections noted above simply reiterate the applicable portions of section 55.141(b). With the removal of paragraph (b) in section 55.108, paragraphs (c) and (d) of that section are being redesignated as paragraphs (b) and (c), respectively.

C. Subpart G—Records and Reports

Section 55.121(a)(1) states that licensees and permittees must keep records pertaining to explosive materials in permanent form, *i.e.*, in commercial invoices or record books. This section is being amended to specify that records may be kept in computer format, provided certain conditions are met. Computer recordkeeping has become a common industry practice and we have approved numerous variances allowing this practice. Paragraph (b) of section 55.121 is being amended by adding the word "business" before "premises" in the first sentence to clarify that this subsection refers to "business premises" as defined in section 55.11.

Section 55.122(a), introductory text, is being amended to provide that the physical inventory required to be taken by licensed importers must consist of all the information specified in paragraph (b) of section 55.122, such as the manufacturer's marks of identification. This will facilitate the tracing of explosives that may be intended for criminal use. Paragraph (a)(4) is being amended to provide that all discrepancies disclosed between the physical inventory of explosive materials and the records required by part 55 must be reconciled in the importer's records by the close of the next business day. This will ensure that thefts and losses of explosives are more quickly detected. Paragraph (c) of section 55.122 is being amended to add the term "use" to the recordkeeping requirements for licensed importers. This will require importers using explosive materials they import to keep records of such use. This is consistent with requirements that are being proposed for licensed manufacturers and dealers.

Section 55.123, which relates to records maintained by licensed manufacturers, is being amended by revising the introductory text of paragraph (a) to provide that the physical inventory required to be taken by licensed manufacturers consists of all the information specified in paragraph (b) of this section, such as the manufacturer's marks of identification. This will facilitate the tracing of explosives that may be intended for criminal use. Paragraph (a)(4) is being amended to provide that all discrepancies disclosed between the physical inventory of explosive materials and the records required by part 55 must be reconciled in the manufacturer's records by the close of the next business day. This will ensure that thefts and losses of explosives are more quickly detected. Paragraphs (b)(2) through (b)(4) are being redesignated as paragraphs (b)(3) through (b)(5), respectively. New paragraph (b)(2) provides that records of acquisition kept by manufacturers of explosive materials must contain the importer's or manufacturer's name or brand name when explosives are acquired other than by their own manufacture. This is consistent with the requirements for manufacturer's disposition records and with the required records of acquisition for importers, dealers, and permittees. Paragraph (c) is being amended to require manufacturers to record their use of explosive materials, regardless of the source. This will require manufacturers using explosive materials they manufacture to keep records of such use. Since paragraph (d) is no longer necessary, it is being removed and paragraphs (e) and (f) are being redesignated as paragraphs (d) and (e), respectively.

Section 55.124, regarding records maintained by licensed dealers, is being amended by providing in the introductory text of paragraph (a) that the physical inventory required to be taken by licensed dealers consists of all the information specified in paragraph (b) of this section, such as the manufacturer's marks of identification. This will facilitate the tracing of explosives that may be intended for criminal use. Paragraph (a)(4) is being amended to provide that all discrepancies disclosed between the physical inventory of explosive materials and the records required by part 55 must be reconciled in the dealer's records by the close of the next business day. This will ensure that thefts and losses of explosives are more quickly detected. Paragraph (c)(1) is being amended to require licensed dealers to record their use of explosive materials. This will require dealers using explosive materials that they are not distributing to other persons to keep records of such use.

Section 55.125(a), introductory text, is being amended to provide that the physical inventory required to be taken by permittees consists of all the information specified in paragraph (b) of section 55.125, such as the manufacturer's marks of identification. This will facilitate the tracing of explosives that may be intended for criminal use. Paragraph (a)(4) is being amended to provide that all discrepancies disclosed between the physical inventory of explosive materials and the records required by part 55 must be reconciled in the permittee's records by the close of the next business day. This will ensure that thefts and losses of explosives are more quickly detected.

Section 55.126(b) is being amended to require licensees and permittees to verify the identity of nonlicensees and nonpermittees purchasing explosive materials. Under the current regulations, ATF Form 5400.4 must be executed by the buyer for purchases of explosive materials. A Federal explosives licensee or permittee who purchases explosive materials is not required to complete Form 5400.4. Before explosive materials are distributed to nonlicensees or nonpermittees, Form 5400.4 provides that the licensee or permittee must verify the identity of the buyer (distributee), either by acknowledging on the form that the buyer is known to the licensee or permittee or by obtaining from the buyer proof of identification (*e.g.*, a driver's license). ATF believes that the phrase "is known to me," as it currently appears on Form 5400.4, is ambiguous and lends itself to confusion and misinterpretation. We believe that it is in the best interests of public safety and our enforcement efforts to require that all nonlicensed/nonpermitted purchasers provide proof of identification prior to the distribution of explosive materials. Accordingly, we are amending section 55.126(b) to require that licensees and permittees obtain proof of identification from all nonlicensees or nonpermittees purchasing explosive materials. This requirement is consistent with respect

to purchases of firearms by nonlicensed individuals.

Section 55.129 is being amended to require that where commercial explosives (except for defense articles subject to the Arms Export Control Act) are exported, exportation is to be in compliance with the Export Administration Act. We are also amending this section to require licensees to maintain proof of exportation of explosive materials to the actual end user. This is intended to prevent diversion activities.

D. Subpart H—Exemptions

Section 55.141 is being amended by revising paragraph (a)(7) to clarify the items exempt from the requirements of part 55. Paragraph (a)(9) is being amended to remove the DOT's regulation cite (49 CFR parts 100 to 177) in order to eliminate possible confusion in the event these regulations are subsequently revised or removed.

E. Subpart K—Storage

Section 55.206(a) currently states that magazines in which high explosives are stored must be a minimum distance from other high explosive magazines. This section is being amended to clarify that, except where magazines are "combined" as provided in footnote 2 of section 55.218, magazines in which high explosives are stored must be located no closer to magazines in which any explosive materials are stored, than the minimum distances specified in the table of distances for storage of explosive materials in section 55.218. This will ensure that all types of explosive materials will be stored appropriately when located in proximity to magazines containing high explosives. To be consistent with the proposed amended definition of "highway," the word "public" is being removed in paragraph (b) of section 55.206. Paragraph (c)(1) of section 55.206 is being amended to require that minimum separation distances be placed between outdoor magazines containing any amount of blasting agents and inhabited buildings, highways, and passenger railways, per the table in section 55.218. This was previously unclear in the notes to the tables of distances in sections 55.218 and 55.220, and the fact that section 55.206 only specifies minimum separation distances for amounts over 50 pounds.

Several amendments are being proposed with respect to section 55.207:

1. IME has suggested that ATF make all references to bullet resistance within part 55 consistent with its standard of ¼-inch steel lined with 3 inches of hardwood. In its letter, IME referred to section 55.207(a)(7)(ii) that describes the bullet-resistance standard for roof construction for type 1 magazines. Accordingly, this section is being amended to reflect the suggested standard of ¼-inch steel and 3 inches of hardwood. However, 3/16-inch steel lined with 4 inches of hardwood, which is currently prescribed in section 55.207(a)(7)(ii), will still be considered bullet-resistant construction as referenced in ATF Ruling 76–18. We are also removing the parenthetical text in section 55.207(a)(7)(ii) to ensure that the exteriors of magazines are constructed with a sufficient amount of fire-resistant materials. In addition, this section is being amended to remove the word "plate" in the phrase "plate steel." This provides consistency with the standards prescribed for other high explosives storage magazines.

Paragraph (a)(8) of section 55.207 is being amended to increase the thickness of hardwood required for magazine door linings from 2 inches to 3 inches. Previously, ATF believed that a wall or door constructed of ¼-inch steel lined with 2 inches of hardwood would resist the penetration of a bullet, based on the standard test. The standard test involves firing a 150 grain M2 ball ammunition having a nominal muzzle velocity of 2700 feet per second from a .30 caliber rifle from a distance of 100 feet perpendicular to the wall or door (*see* ATF Rul. 76–18). Examination of bullet-resistance tests conducted by IME indicates that the previous standard is not sufficient. Paragraph (a)(8) is being amended to reflect the standard recommended by IME. Accordingly, effective 1 year from the date of publication of the final rule in the **Federal Register**, all type 1 magazines must have ¼-inch steel doors lined with 3 inches of hardwood. This is consistent with the provisions of ATF Rul. 76–18. For the same reason explained above, this paragraph is also being amended to remove the word "plate" in the phrase "plate steel."

2. Paragraph (a)(9)(v) of section 55.207 provides that, with respect to type 1 magazines, padlocks must have at least five tumblers and a case-hardened shackle of at least ⅜-inch diameter. We believe that a ⅜-inch diameter requirement is insufficient to prevent cutting the shackle. Accordingly, we are proposing that case-hardened shackles be at least ½-inch diameter.

3. Finally, section 55.207 is being amended by adding a new paragraph (c) that incorporates the provisions of ATF Ruling 76–18.

Sections 55.208, 55.210, and 55.211 require that magazines be equipped with 2 hooded locks with at least ⅜-inch shackles and five tumblers. In past years, ATF issued a number of variances allowing mobile outdoor type 2 and type 4 magazines to have only one lock, with no hood requirement. This variance was subsequently extended to the entire explosives industry. A review of explosives theft data indicates that in a significant number of explosives thefts access was gained to the explosives by cutting or prying the padlocks. Based on these findings, ATF has determined that the reduction in explosives magazine security allowed by these variances is inappropriate. Therefore, we are proposing to amend the regulations to require that all types 1, 2, 4, and 5 outdoor magazines (except for type 5 bins used to load bulk trucks), including vehicular/mobile magazines, be secured with 2 hooded locks with ½-inch (rather than ⅜-inch) shackles and five tumblers. We are proposing the same requirement for types 2, 4, and 5 indoor magazines. Upon the effective date of the final rule, the above-mentioned variances will no longer be valid. ATF is soliciting comments from the industry on the economic burden these actions will impose. Commenters should address such issues as whether it is physically and economically viable to lock all magazines as stated in the proposed regulations in sections 55.207 through 55.211 and whether such actions will afford increased security. In addition, commenters should address the costs associated with increasing the lock size requirements as stated above. Comments should contain specific estimates of the monetary cost of this action.

Several other amendments are being proposed with respect to section 55.208:

1. The word "exterior" in the heading of paragraphs (a)(2) and (b)(2) is being removed for clarification purposes.

2. Paragraph (a)(2) is being amended to impose a bullet-resistance standard of ¼-inch steel and 3 inches of hardwood for the construction of type 2 magazines. We are proposing that the effective date of this particular amendment be one year from the date of publication of the final rule in the **Federal Register**.

3. Paragraphs (a)(2) and (b)(2) are being amended to add the exposed metal restriction specified in section 55.207(a)(11) in order to ensure that construction of type 2 magazines is such that there will exist a reduced chance of a sparking hazard.

4. Paragraph (b)(1) is being amended to increase the poundage allowable for indoor storage of explosives from 50 pounds to 60 pounds. This is consistent with the standards for indoor storage set forth by IME. It also reflects the fact that

commercial explosives are now shipped in 55 and 60 pound cases. ATF believes that adoption of this proposal would not compromise safety.

5. Paragraph (c) is being amended to clarify that a detonator box is a specific type of indoor magazine and that, therefore, detonator boxes must be stored indoors. There has been some confusion as to the requirements for the location of detonator boxes, and this amendment is intended to eliminate the confusion.

6. Paragraph (c) is also being amended to ensure that construction of detonator boxes is such that there will exist a reduced chance of a sparking hazard. This will afford greater public safety.

7. Finally, new paragraph (d) is being added to incorporate the provisions of ATF Ruling 76–18.

Section 55.209 provides that for type 3 magazines one steel padlock (which need not be protected by a steel hood) having at least five tumblers and a case-hardened shackle of at least 3/8-inch diameter is sufficient for locking purposes. We are amending this section to replace the 3/8-inch diameter requirement with 1/2-inch for purposes of added security. We are also amending this section to ensure that construction of type 3 magazines is such that there will exist a reduced chance of a sparking hazard. We are not proposing to incorporate the provisions of ATF Ruling 76–18 because bullet-resistance standards with respect to type 3 magazines were removed pursuant to T.D. ATF–87 (46 FR 40382, Aug. 7, 1981).

Section 55.210 is being amended to provide in paragraph (a)(1) an additional method (*i.e.*, use of a steering wheel locking device) by which vehicular magazines may be immobilized. Storage in this additional manner must be attended at all times. This is consistent with the requirements that have been imposed by ATF in issuing variances for temporary storage. The primary purpose of this amendment is to allow the temporary storage of low explosives on vehicles prior to use or shipment. ATF has processed numerous variance requests from the fireworks industry to temporarily store display fireworks (except for bulk salutes) on trucks prior to the delivery or set up of fireworks shows. ATF is aware that this practice promotes safety in that trucks are not hastily packed. Since other low explosives are subject to substantially the same security and safety-related requirements as display fireworks (except bulk salutes), we are also providing for temporary storage of these other low explosives. These provisions do not remove the construction requirements specified in section 55.210. It should also be noted that we are not proposing to amend the regulations to allow for similar temporary storage of high explosives (including bulk salutes) on trucks. This is due to the fact that most trucks used for transportation do not meet the bullet resistance requirements for storage of high explosives. Therefore, temporary storage of high explosives on trucks could pose a public safety hazard. However, ATF will consider variances for the temporary storage of high explosives on vehicles in cases in which the construction of the vehicle ensures that a bullet will not penetrate the vehicle. Paragraphs (a)(2) and (b)(2) are being amended to ensure that construction of type 4 magazines is such that there will exist a reduced chance of a sparking hazard. Paragraph (b)(1) is being amended to increase the indoor storage of low explosives from 50 to 60 pounds. This is consistent with industry shipment standards and IME recommendations.

Several amendments are being proposed with respect to section 55.211:

1. Paragraph (a)(1) is being amended to provide that vehicular magazines must be immobilized by one of the following methods: (a) Have the wheels removed; (b) be equipped with a kingpin locking device; or (c) be equipped with a steering wheel locking device and, if unattended, secured by a fence and locked gate. Any person storing explosives in a magazine immobilized by use of a steering wheel locking device must inspect such magazine at least every 72 hours. This amendment allows the temporary storage of blasting agents on vehicles. ATF has processed numerous requests from the blasting industry to temporarily store blasting agents on trucks. We are aware that this practice promotes safety in that explosive materials are handled less frequently. This proposed amendment sets forth conditions for the temporary storage of blasting agents.

2. Paragraph (a)(4) provides that, in general, padlocks for type 5 magazines must have at least five tumblers and a case-hardened shackle of at least 3/8-inch diameter. This paragraph also provides that trailers, semitrailers, and similar vehicular magazines may, for each door, be locked with one steel padlock (which need not be protected by a steel hood) having at least five tumblers and a case-hardened shackle of at least 3/8-inch diameter, if the door hinges and lock hasp are securely fastened to the magazine and to the door frame. As mentioned, a review of explosives theft data indicates that in a significant number of explosives thefts access was gained to the explosives by cutting the padlock. We believe a general requirement that type 5 magazines be secured with two hooded locks with 1/2-inch (rather than 3/8-inch) diameter shackles is necessary. However, in the case of bins, we believe that the two hooded locks requirement is unwarranted due to the difficulty in accessing the bins. Accordingly, we are proposing to amend paragraph (a)(4) to provide that type 5 magazines must be secured with two hooded locks with 1/2-inch diameter shackles and that bins used to load bulk trucks may be locked with one steel padlock (which need not be protected by a steel hood) having at least five tumblers and a case-hardened shackle of at least 1/2-inch diameter.

3. Paragraph (b)(1) is being amended to increase the indoor storage of blasting agents from 50 to 60 pounds. This is consistent with industry shipment standards and IME recommendations.

Section 55.213(b)(1) is being amended to allow shock tube to be stored with detonators that will not mass detonate with electric squibs, safety fuse, igniters, and igniter cord in a type 4 storage magazine because these materials when stored together do not pose a mass detonation hazard.

Section 55.217(b) is being amended to reference the correct NFPA publication and to clarify that all electrical outlets, switches, and devices containing electrical switches must be located outside magazines.

Section 55.218 is being amended to remove the word "public" with respect to highways wherever it appears in the table headings, since under the proposed regulations the term "highway" can mean a private road. In addition, while not a specific regulatory proposal, we are considering amending the table of distances in this section to eliminate the column titled "Public highways with traffic volume 3000 or fewer vehicles/day." ATF believes that this table reference allows a diminished level of protection to travelers on smaller highways than is afforded to travelers on highways with greater traffic volume. Moreover, because roads may become more heavily traveled due to population growth, magazines that may have initially been placed to comply with the low-volume traffic column of the table can become noncompliant. We are also considering amending the table of distances in this section by changing the heading from "Passenger railways—public highways with traffic volume of more than 3,000 vehicles/day" to "Highways and passenger railways." We believe that this change would provide for the

consistent application of this table where highways are concerned and further facilitate consistent application of the proposed definition of "highway." ATF is soliciting comments on these issues.

To be consistent with the proposed amended definition of "highway," the word "public" is being removed from footnote six at the end of the table in section 55.220.

Section 55.222 is being amended to include fireworks process areas in the table heading. The footnotes at the end of the table are being amended to indicate that this table applies to outdoor areas in which fireworks are processed.

Section 55.223 is being amended to clarify that the placement of explosive materials in a fireworks process area must comply with the requirements of the table of distances contained in this section at all times. We are also amending this section by removing the word "public" with respect to highways in the title heading of the table, since under the proposed amended definition of the term a "highway" can be a private road.

Section 55.224 is being amended to incorporate a table for the storage of display fireworks developed by the APA. The current table requires the storer to refer to section 55.218 for the storage of display fireworks in excess of 10,000 pounds to calculate distances separating magazines from inhabited buildings, public highways, passenger railways, and other magazines. The problem presented is that the distance requirements change drastically when going from section 55.224 (for weights up to 10,000 pounds) to section 55.218 (for weights over 10,000 pounds). In comparing the two tables, there are also discrepancies in separation requirements for distances between magazines. APA proposed revising the table at section 55.224 to increase maximum allowable storage under section 55.224 to 200,000 pounds. The revised table provides for more proportionate increases in distances for weights of materials above 10,000 pounds, and it provides for a smooth transition to the table at section 55.218 for weights above 200,000 pounds. ATF has reviewed the table and agrees that the adoption of APA's table will not jeopardize public safety. Bulk salutes remain subject to the table specified in section 55.218.

In addition to the above, a technical nonsubstantive amendment is being made to section 55.224 by removing the parenthetical text in footnote 3 at the end of the table and adding in its place "March 7, 1990." This was the date that the provisions of section 55.224 became effective, pursuant to T.D. ATF–293.

V. How This Document Complies With the Federal Administrative Requirements for Rulemaking

A. Executive Order 12866

We have determined that this proposed rule is not a significant regulatory action as defined in E.O. 12866. Therefore, a Regulatory Assessment is not required.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. The proposed amendments clarify the existing regulations and will have a minimal economic impact on the explosives industry. Furthermore, we certify that the revised rule will no longer have a significant economic impact on a substantial number of small entities. We base this certification on the lack of response we received to the RFA analysis set forth in T.D. ATF–293 and comments received on Notice No. 845.

Accordingly, we certify that this proposed rule will not have a significant economic impact on a substantial number of small entities.

C. Paperwork Reduction Act

The collections of information contained in this notice of proposed rulemaking have been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collections of information should be sent to the Office of Management and Budget, Attention: Desk Officer for the Bureau of Alcohol, Tobacco and Firearms, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Chief, Document Services Branch, Room 3110, Bureau of Alcohol, Tobacco and Firearms, at the address previously specified. Comments are specifically requested concerning:

- Whether the proposed collections of information are necessary for the proper performance of the functions of the Bureau of Alcohol, Tobacco and Firearms, including whether the information will have practical utility;
- The accuracy of the estimated burden associated with the proposed collections of information (*see* below);
- How the quality, utility, and clarity of the information to be collected may be enhanced; and
- How the burden of complying with the proposed collections of information may be minimized, including through the application of automated collection techniques or other forms of information technology.

The collections of information in this proposed regulation are in 27 CFR 55.22(c), 55.63, and 55.129(b) and (c):

This information is required to ensure that public safety is maintained with respect to explosives storage and accountability. The collections of information are mandatory. The likely respondents are businesses.

With respect to 27 CFR 55.22(c):

- Estimated total annual reporting and/or recordkeeping burden: 12.5 hours.
- Estimated average burden hours per respondent and/or recordkeeper: 0.5 hours (30 minutes).
- Estimated number of respondents and/or recordkeepers: 25.
- Estimated annual frequency of responses: 25.

With respect to 27 CFR 55.63:

- Estimated total annual reporting and/or recordkeeping burden: 128 hours.
- Estimated average burden hours per respondent and/or recordkeeper: 0.1 hours (6 minutes).
- Estimated number of respondents and/or recordkeepers: 1,281.
- Estimated annual frequency of responses: 1,281.

With respect to 27 CFR 55.129(b) and (c):

- Estimated total annual reporting and/or recordkeeping burden: 33.3 hours.
- Estimated average burden hours per respondent and/or recordkeeper: 0.03 hours (2 minutes).
- Estimated number of respondents and/or recordkeepers: 1,000.
- Estimated annual frequency of responses: 1,000.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

VI. Public Participation

We are requesting comments on the proposed regulations from all interested persons. In addition, we are specifically requesting comments on the clarity of this proposed rule and how it may be made easier to understand.

Comments received on or before the closing date will be carefully considered. Comments received after that date will be given the same consideration if it is practical to do so, but assurance of consideration cannot be given except as to comments received on or before the closing date.

ATF will not recognize any material in comments as confidential. Comments may be disclosed to the public. Any material that the commenter considers to be confidential or inappropriate for disclosure to the public should not be included in the comment. The name of the person submitting a comment is not exempt from disclosure.

A. Submitting Comments by Fax

You may submit written comments by facsimile transmission to (202) 927–8525. Facsimile comments must:

- Be legible;
- Reference this notice number;
- Be 8½″ x 11″ in size;
- Contain a legible written signature; and
- Be not more than five pages long.

We will not acknowledge receipt of facsimile transmissions. We will treat facsimile transmissions as originals.

B. Request for Hearing

Any interested person who desires an opportunity to comment orally at a public hearing should submit his or her request, in writing, to the Director within the 90-day comment period. The Director, however, reserves the right to determine, in light of all circumstances, whether a public hearing is necessary.

C. Disclosure

Copies of this notice and the comments received will be available for public inspection by appointment during normal business hours at: ATF Reference Library, Room 6480, 650 Massachusetts Avenue, NW., Washington, DC; telephone (202) 927–7890.

D. Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in the **Federal Register** in April and October of each year. The RIN contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

E. Drafting Information

The authors of this document are James P. Ficaretta, Firearms, Explosives, and Arson, and Chad Yoder, Public Safety Branch, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects in 27 CFR Part 55

Administrative practice and procedure, Authority delegations, Customs duties and inspection, Explosives, Hazardous materials, Imports, Penalties, Reporting and recordkeeping requirements, Safety, Security measures, Seizures and forfeitures, Transportation, and Warehouses.

Authority and Issuance

For the reasons discussed in the preamble, the Bureau of Alcohol, Tobacco and Firearms proposes to amend 27 CFR part 55 as follows:

PART 55—COMMERCE IN EXPLOSIVES

Paragraph 1. The authority citation for 27 CFR part 55 continues to read as follows:

Authority: 18 U.S.C. 847.

Par. 2. Section 55.11 is amended by removing the second and last sentences in the definition for "Business premises;" by removing the words "is" and "finished and" in the definition for "Fireworks process building" and adding in their place the words "are" and "finishing or," respectively; by removing the word "and" in the definition for "Fireworks shipping building" and adding in its place the word "or;" by revising the definitions for "Articles pyrotechnic," "Bulk salutes," "Consumer fireworks," "Display fireworks," "Flash powder," "Hardwood," "Highway," "Inhabited building," "Manufacturer," and "Softwood;" and by adding a definition for "Fireworks process area" to read as follows:

§ 55.11 Meaning of terms.

* * * * *

Articles pyrotechnic. Pyrotechnic devices similar to consumer fireworks in chemical composition and construction but intended for professional rather than consumer use. Articles pyrotechnic must meet the weight limits for consumer fireworks and must be classified by the U.S. Department of Transportation as UN0431 or UN0432.

* * * * *

Bulk salutes. A collection of salute shells or salute components. The term includes a collection of salute shells packaged with other types of aerial shells in quantities such that the salute shells comprise more than 50 percent of the total number of shells in the package.

* * * * *

Consumer fireworks. Small firework devices designed to produce visible or audible effects by combustion and that are intended for use by consumers. The term includes devices designed to produce audible effects, such as whistling devices, ground devices containing 50 mg or less of explosive materials, and aerial devices containing 130 mg or less of explosive materials. In addition, to be considered a "consumer firework," a device must meet all applicable construction, chemical composition, and labeling requirements of the Consumer Product Safety Commission (CPSC), and it must be a device that the CPSC deems permissible for consumer use. Consumer fireworks must also be devices that are classified under the U.S. Department of Transportation hazardous material classification system as UN0336 or UN0337. The term also includes fused setpieces containing components that together do not exceed 50 mg of salute powder.

* * * * *

Display fireworks. Large fireworks designed to produce visible or audible effects by combustion, deflagration, or detonation. The term includes, but is not limited to, salutes containing more than 130 mg of explosive materials, aerial shells containing more than 40 grams of pyrotechnic compositions, and other fireworks that do not fall within the definition of "consumer fireworks." In addition, to be considered a "display firework" an item must be classified as UN0334 or UN0335 under the U.S. Department of Transportation hazardous material classification system. The term also includes fused setpieces containing components that together exceed 50 mg of salute powder.

* * * * *

Fireworks process area. Any area, not in a fireworks process building, where pyrotechnic compositions or explosive materials are mixed, pressed, processed or otherwise prepared for finishing or assembly; or any finishing or assembly area not in a fireworks process building.

* * * * *

Flash powder. An explosive composition intended to produce a report or flash of light, typically containing, but not limited to, potassium perchlorate, or antimony sulfide, and aluminum metal or similar metals. (Also commonly known as "salute powder" or "photo flash powder.")

* * * * *

Hardwood. Any close-grained wood such as oak, maple, ash, or hickory that is free from loose knots, spaces, wind shakes, or similar defects.

Highway. Any street, alley, or road, including a privately financed, constructed, or maintained road, that is regularly and openly traveled by any member of the general public. For purposes of this definition, the term "general public" includes any and all individuals whose travel on a highway is not directly in connection with activities being undertaken at a particular facility at which explosives are manufactured, assembled, or stored. Individuals employed by or otherwise associated with one explosives facility will generally constitute members of the "general public" with respect to any other explosives facility.

* * * * *

Inhabited building. Any building regularly occupied in whole or in part as a habitation for human beings, or any house of worship, schoolhouse, railroad station, store, or other structure where people are accustomed to assemble or to be present for any purpose, except any building occupied in connection with the manufacture, transportation, storage, or use of explosive materials. For purposes of this definition, a building occupied by a person will be considered to be "occupied in connection with the manufacture, transportation, storage, or use of explosive materials" only with respect to the explosives operations conducted by the same person.

* * * * *

Manufacturer. (a) Any person engaged in the business of manufacturing explosive materials for purposes of sale or distribution or for his own use; or

(b) Any person engaged in the business of assembling explosive materials from explosive and/or non-explosive materials for purposes of sale or distribution or for his own use.

* * * * *

Softwood. Any coarse-grained wood such as fir, hemlock, pine, or spruce that is free from loose knots, spaces, wind shakes, or similar defects.

* * * * *

Par. 3. Section 55.22(c) is revised to read as follows:

§ 55.22 Alternate methods or procedures; emergency variations from requirements.

* * * * *

(c) *Retention of approved variations.* The licensee or permittee will retain, as part of his records available for examination by ATF officers, any variance approved by the Director under this section. Upon request by the Director, previously approved variance requests must be resubmitted for a new determination.

Par. 4. Section 55.46(a) is amended by adding a new sentence after the first sentence to read as follows:

§ 55.46 Renewal of license or permit.

(a) * * * The Chief, Firearms and Explosives Licensing Center, by written notification may require the applicant for license or permit renewal to also file completed form ATF F 5400.13/5400.16 or ATF F 5400.21 in the manner required by § 55.45. * * *

* * * * *

Par. 5. Section 55.63 is revised to read as follows:

§ 55.63 Notification of magazine changes.

(a) *General.* Except as provided in paragraph (f) of this section, the requirements of this section are applicable to all magazines used for storage of explosives. Magazines used for temporary storage of explosives are subject to the table of distances and magazine construction requirements prescribed in §§ 55.206—55.211.

(b) *Changes in magazine construction.* A licensee or permittee who intends to make changes in construction of an existing magazine will notify the regional director (compliance) in accordance with paragraph (e) of this section, describing the proposed changes prior to making any changes. Unless otherwise advised by the regional director (compliance), changes in construction may commence.

(c) *Magazines acquired or constructed after permit or license is issued.* A licensee or permittee who intends to construct or acquire additional magazines will notify the regional director (compliance) in accordance with paragraph (e) of this section describing the additional magazines, the proposed location of the magazines, and the class and quantity of explosives to be stored in the magazine. Unless otherwise advised by the regional director (compliance), additional magazines may be constructed, or acquired magazines may be used for the storage of explosives.

(d) *Relocation of magazines.* A licensee or permittee who intends to change the location of an existing magazine will notify the regional director (compliance) in accordance with paragraph (e) of this section describing the proposed changes in location prior to making any changes. Unless otherwise advised by the regional director (compliance), magazines may be relocated after explosives are removed from the magazine. (See also subpart K of this part for storage requirements.)

(e) *Notification of regional director (compliance).* For the purposes of this section, notification of the regional director (compliance) may be by telephone or in writing. However, if notification of the regional director (compliance) is in writing it must be received at least three business days in advance of making changes in construction to an existing magazine or constructing a new magazine, and at least five business days in advance of using any reconstructed magazine or added magazine for the storage of explosives.

(f) *Exception.* Type 3 magazines and mobile or portable type 5 magazines are exempt from the requirements of paragraphs (b), (c), and (d) of this section.

§ 55.105(g) [Removed]

Par. 6. Section 55.105(g) is removed.

§ 55.106(d) [Removed]

Par. 7. Section 55.106(d) is removed.

§ 55.108 [Amended]

Par. 8. Section 55.108 is amended by removing paragraph (b) and by redesignating paragraphs (c) and (d) as paragraphs (b) and (c).

Par. 9. Section 55.121 is amended by revising paragraph (a)(1) and by adding the word "business" before "premises" in the first sentence of paragraph (b) to read as follows:

§ 55.121 General.

(a)(1) Licensees and permittees will keep records pertaining to explosive materials in permanent form (*i.e.*, commercial invoices, record books) and in the manner required in this subpart. Computer recordkeeping systems may be used to keep records pertaining to explosive materials, provided the following conditions are met:

(i) The system contains all the information required in this subpart;

(ii) The system can be queried by date code or date shift code and/or lot number;

(iii) The system has a daily memory backup capability acceptable to ATF, such as disk or tape;

(iv) The system is capable of providing a printout of all records for purposes of inspection by ATF, when the system memory is purged, or if business is discontinued;

(v) The computer printout contains a record of explosives in inventory, as well as all that were sold during the period covered, sequentially, by date of acquisition;

(vi) The system accounts for and records all explosive materials returned;

(vii) The system records both the manufacturer and the importer of foreign-made explosives;

(viii) The system records the names and addresses of the distributee (buyer), and in the case of a corporation or other business entity, its authorized representative or agent. An ATF Form 5400.4 transaction number may be used to reference additional information, such as date of birth, place of birth, identification used, etc.;

(ix) The system cannot rely on invoices or other paper/manual systems to provide any of the required information. It must be self contained; and

(x) If the business is discontinued, all records, including a final printout, must be forwarded to the ATF Out-of-Business Records Center, or any ATF office in the region in which the business was located.

* * * * *

Par. 10. Section 55.122 is amended by adding a sentence after the first sentence in the introductory text of paragraph (a); by adding a sentence after the fourth sentence in paragraph (a)(4), before the parenthetical text "(*See also* § 55.127.)"; by revising the introductory text of paragraph (c); and by revising paragraph (c)(1) to read as follows:

§ 55.122 Records maintained by licensed importers.

(a) * * * Such inventory will consist of all the information required in paragraph (b) of this section. * * *

(4) * * * All discrepancies disclosed between the physical inventory of explosive materials and the records required by this part must be reconciled in the records by the close of the next business day. * * *

* * * * *

(c) Each licensed importer must, not later than the close of the next business day following the date of use or date of distribution of any explosive materials to another licensee or a permittee, enter in a separate record the following information:

(1) Date of use or date of disposition.

* * * * *

Par. 11. Section 55.123 is amended by adding a sentence after the first sentence in the introductory text of paragraph (a); by adding a sentence after the fourth sentence in paragraph (a)(4), before the parenthetical text "(*See* also § 55.127.)"; by redesignating paragraphs (b)(2) through (b)(4) as paragraphs (b)(3) through (b)(5); by adding a new paragraph (b)(2); by revising paragraph (c); by removing paragraph (d); and by redesignating paragraphs (e) and (f) as paragraphs (d) and (e) to read as follows:

§ 55.123 Records maintained by licensed manufacturers.

(a) * * * Such inventory will consist of all the information required in paragraph (b) of this section. * * *

(4) * * * All discrepancies disclosed between the physical inventory of explosive materials and the records required by this part must be reconciled in the records by the close of the next business day. * * *

(b) * * *

(2) Name or brand name of manufacturer or name of importer, as applicable, if acquired other than by his own manufacture.

* * * * *

(c)(1) Each licensed manufacturer must, not later than the close of the next business day following the date of use or distribution of any explosive materials to another licensee or a permittee, enter in a separate record the following information:

(i) Date of use or date of disposition.

(ii) Name or brand name of manufacturer or name of importer, as applicable, if acquired other than by his own manufacture.

(iii) Manufacturer's marks of identification.

(iv) Quantity (applicable quantity units, such as pounds of explosives, number of detonators, number of display fireworks, etc.).

(v) Description (dynamite (dyn), blasting agents (ba), detonators (det), display fireworks (df), etc.) and size (length and diameter or diameter only of display fireworks).

(vi) License or permit number of licensee or permittee to whom the explosive materials are distributed.

(2) *Exception.* A licensed manufacturer is exempt from the recordkeeping requirements of paragraph (c)(1) of this section if the explosive materials are manufactured for his own use and used within a 24-hour period at the same site.

* * * * *

Par. 12. Section 55.124 is amended by adding a sentence after the first sentence in the introductory text of paragraph (a), by adding a sentence after the fourth sentence in paragraph (a)(4), before the parenthetical text "(*See* also § 55.127.)", and by revising paragraph (c)(1) to read as follows:

§ 55.124 Records maintained by licensed dealers.

(a) * * * Such inventory will consist of all the information required in paragraph (b) of this section. * * *

(4) * * * All discrepancies disclosed between the physical inventory of explosive materials and the records required by this part must be reconciled in the records by the close of the next business day. * * *

* * * * *

(c)(1) Date of use or date of disposition.

* * * * *

Par. 13. Section 55.125 is amended by adding a sentence after the first sentence in the introductory text of paragraph (a) and by adding a sentence after the fourth sentence in paragraph (a)(4), before the parenthetical text "(*See* also § 55.127)", to read as follows:

§ 55.125 Records maintained by permittees.

(a) * * * Such inventory will consist of all the information required in paragraph (b) of this section. * * *

(4) * * * All discrepancies disclosed between the physical inventory of explosive materials and the records required by this part must be reconciled in the records by the close of the next business day. * * *

* * * * *

Par. 14. Section 55.126(b) is revised to read as follows:

§ 55.126 Explosives transaction record.

* * * * *

(b) Before the distribution of explosive materials to a nonlicensee or nonpermittee who is a resident of the State in which the licensee or permittee maintains his business premises, or to a nonlicensee or nonpermittee who is not a resident of the State in which the licensee or permittee maintains his business premises and is acquiring explosive materials under § 55.105(c), the licensee or permittee distributing the explosive materials will:

(1) Obtain an executed ATF F 5400.4 from the distributee that contains all of the information required on the form and by the regulations in this part; and

(2) Cause the distributee to be identified in any manner customarily used in commercial transactions (*e.g.*, a driver's license) and will note on the Form 5400.4 the type of identification used and the identification number.

* * * * *

Par. 15. Section 55.129 is amended by designating the existing paragraph as paragraph (a), by revising the first sentence in newly designated paragraph (a), and by adding new paragraphs (b) and (c) to read as follows:

§ 55.129 Exportation.

(a) Exportation of explosive materials is to be in accordance with the applicable provisions of section 38 of the Arms Export Control Act (22 U.S.C. 2778), the Export Administration Act (50 U.S.C. APP. 2401 *et seq.*), and the

Export Administration Regulations, 15 CFR, chapter VII, subchapter C. * * *

(b) The licensee or permittee will retain as part of his records available for examination by ATF officers a copy of the export license and the following information:

(1) A certificate of lading executed by a Customs officer of the foreign country to which the explosive materials are exported; or

(2) A sworn statement of the foreign consignee covering the receipt of the explosive materials; or

(3) The return receipt, or a reproduced copy thereof, signed by the addressee or his agent, where the shipment of explosive materials was made by insured or registered parcel post.

(c) Proof of exportation will be retained by the licensee as part of his permanent records and made available for inspection by any ATF officer.

Par. 16. Section 55.141 is amended by revising paragraphs (a)(7), and by removing ",49 CFR Parts 100 to 177," in paragraph (a)(9) to read as follows:

§ 55.141 Exemptions.

(a) * * *

(7) The importation and distribution of—

(i) Consumer fireworks and articles pyrotechnic, as defined under § 55.11;

(ii) Explosive auto alarms, that are tubular devices containing a small amount of explosive composition and igniting compound, which are ignited by an electric spark. These devices must be so designed that they will neither burst, nor cause external flame on functioning;

(iii) Toy propellant devices and toy smoke devices consisting of small paper or composition tubes or containers containing a small charge of slow burning propellant powder or smoke producing powder. These devices must be so designed that they will neither burst, nor cause external flame on functioning and ignition elements, if attached, must be of a design approved by the Department of Transportation Associate Administrator for Hazardous Materials Safety (or other official who is designated under Department of Transportation regulations);

(iv) Cigarette loads, trick matches, and trick noise makers, explosive, of a type approved by the Department of Transportation Associate Administrator for Hazardous Materials Safety (or other official who is designated under Department of Transportation regulations) and described as follows:

(A) Cigarette loads consisting of wooden pegs to which are affixed a small amount of explosive composition;

(B) Trick matches consisting of book matches, strike anywhere matches, or strike-on-box matches that have small amounts of explosive or pyrotechnic composition affixed to the match stem just below the match head;

(C) Trick noise makers, explosive, consisting of spheres containing a small amount of explosive composition; and

(v) Model rocket motors consisting of ammonium perchlorate composite propellant, black powder, or other similar low explosives; containing no more than 62.5 grams of total propellant weight and designed as single use motors or as reload kits capable of reloading no more than 62.5 grams of propellant into a reusable motor casing.

* * * * *

Par. 17. Section 55.206 is amended by revising paragraph (a), by removing the word "public" in paragraph (b), and by revising paragraph (c)(1) to read as follows:

§ 55.206 Location of magazines.

(a) Outdoor magazines in which any high explosives are stored must be located no closer to inhabited buildings, passenger railways, highways, or other magazines in which explosive materials are stored, than the minimum distances specified in the table of distances for storage of explosive materials in § 55.218.

* * * * *

(c)(1) Outdoor magazines in which blasting agents are stored must be located no closer to inhabited buildings, passenger railways, or highways than the minimum distances specified in the table of distances for storage of explosive materials in § 55.218.

* * * * *

Par. 18. Section 55.207 is amended by revising paragraph (a)(7)(ii); by adding a new paragraph (a)(7)(iii); by revising the first sentence in paragraph (a)(8); by removing "⅜ inch" in paragraph (a)(9)(v) and adding in its place "½ inch"; and by adding new paragraph (c) to read as follows:

§ 55.207 Construction of type 1 magazines.

* * * * *

(a) * * *

(7) * * *

(ii) A fabricated metal roof constructed of ¼-inch steel lined with three inches of hardwood.

(iii) Any of the bullet-resistant construction criteria specified in paragraph (c) of this section.

(8) *Doors.* All doors are to be constructed of not less than ¼-inch steel and, effective [Date 1 year after the date of publication of the final rule in the **Federal Register**], lined with at least three inches of hardwood, or otherwise be constructed in accordance with the bullet-resistant construction criteria specified in paragraph (c) of this section. * * *

* * * * *

(c) *Alternate construction standards for storage facilities with respect to bullet resistance.* Storage facilities (magazines) that are constructed according to any of the following minimum specifications are bullet resistant. (All steel and wood dimensions indicated are actual thicknesses. To meet the concrete block and brick dimensions indicated, the manufacturer's represented thicknesses may be used.)

(1) Exterior of ⅝-inch steel, lined with an interior of any type of non-sparking material;

(2) Exterior of ½-inch steel, lined with an interior of not less than ⅜-inch plywood;

(3) Exterior of ⅜-inch steel, lined with an interior of two inches of hardwood;

(4) Exterior of ⅜-inch steel, lined with an interior of three inches of softwood or 2¼ inches of plywood;

(5) Exterior of ¼-inch steel, lined with an interior of five inches of softwood or 5¼ inches of plywood;

(6) Exterior of ¼-inch steel, lined with an intermediate layer of two inches of hardwood and an interior lining of 1½ inches of plywood;

(7) Exterior of 3/16-inch steel, lined with an interior of four inches of hardwood;

(8) Exterior of 3/16-inch steel, lined with an interior of seven inches of softwood or 6-inches plywood;

(9) Exterior of 3/16-inch steel, lined with an intermediate layer of three inches of hardwood and an interior lining of ¾-inch plywood;

(10) Exterior of ⅛-inch steel, lined with an interior of five inches of hardwood;

(11) Exterior of ⅛-inch steel, lined with an interior of nine inches of softwood;

(12) Exterior of ⅛-inch steel, lined with an intermediate layer of four inches of hardwood and an interior lining of ¾-inch plywood;

(13) Exterior of any type of fire-resistant material that is structurally sound, lined with an intermediate layer of four inches solid concrete block or four inches solid brick or four inches of solid concrete, and an interior lining of ½-inch plywood placed securely against the masonry lining;

(14) Standard eight-inch concrete block with voids filled with well-tamped sand/cement mixture;

(15) Standard eight-inch solid brick;

(16) Exterior of any type of fire-resistant material that is structurally

sound, lined with an intermediate six-inch space filled with well-tamped dry sand or well-tamped sand/cement mixture.

(17) Exterior of ⅛-inch steel, lined with a first intermediate layer of ¾-inch plywood, a second intermediate layer of 3 ⅝ inches well-tamped dry sand or sand/cement mixture and an interior lining of ¾-inch plywood;

(18) Exterior of any type of fire-resistant material, lined with a first intermediate layer of ¾-inch plywood, a second intermediate layer of 3 ⅝ inches well-tamped dry sand or sand/cement mixture, a third intermediate layer of ¾-inch plywood, and a fourth intermediate layer of two inches of hardwood or 14-gauge steel and an interior lining of ¾-inch plywood; or

(19) Eight-inch thick solid concrete.

Par. 19. Section 55.208 is amended by revising paragraph (a)(2); by removing "⅜-inch" in paragraph (a)(4)(v) and adding in its place "½-inch"; by removing the number "50" wherever it appears in paragraph (b)(1) and adding in its place the number "60;" by removing the word "Exterior" in the title heading of paragraph (b)(2); by adding a new paragraph (b)(2)(iii); by removing "⅜-inch" wherever it appears in paragraph (b)(4)(v) and adding in its place "½-inch"; by revising paragraph (c); and by adding new paragraph (d) to read as follows:

§ 55.208 Construction of type 2 magazines.

* * * * *

(a) * * *

(2) *Construction.* (i) Outdoor magazines, including doors, are to be constructed of not less than ¼-inch steel and, effective January 29, 2004, lined with at least three inches of hardwood, or otherwise be constructed in accordance with the bullet-resistant construction criteria specified in § 55.207(c). Magazines with top openings will have lids with water-resistant seals or that overlap the sides by at least one inch when in a closed position.

(ii) No sparking material is to be exposed to contact with the stored explosive materials. All ferrous metal nails in the floor and sidewalls that might be exposed to contact with explosive materials must be blind nailed, counter-sunk, or covered with a nonsparking lattice work or other nonsparking material.

* * * * *

(b) * * *

(2) * * *

(iii) No sparking material is to be exposed to contact with the stored explosive materials. All ferrous metal nails in the floor and sidewalls that might be exposed to contact with explosive materials must be blind nailed, counter-sunk, or covered with a nonsparking lattice work or other nonsparking material.

* * * * *

(c) *Detonator boxes.* Magazines for detonators in quantities of 100 or less must be stored indoors and are to have sides, bottoms, and doors constructed of not less than number 12-gauge (.1046 inches) metal and lined with a nonsparking material. No sparking material is to be exposed to contact with the stored explosive materials. All ferrous metal nails in the floor and side walls that might be exposed to contact with explosive materials must be blind nailed, counter-sunk, or covered with a nonsparking lattice work or other nonsparking material. Hinges and hasps must be attached so they cannot be removed from the outside. One steel padlock (which need not be protected by a steel hood) having at least five tumblers and a case-hardened shackle of at least ½-inch diameter is sufficient for locking purposes.

(d) *Alternate construction standards for storage facilities with respect to bullet resistance.* Storage facilities (magazines) that are constructed according to any of the following minimum specifications are bullet resistant. (All steel and wood dimensions indicated are actual thicknesses. To meet the concrete block and brick dimensions indicated, the manufacturer's represented thicknesses may be used.)

(1) Exterior of ⅝-inch steel, lined with an interior of any type of non-sparking material;

(2) Exterior of ½-inch steel, lined with an interior of not less than ⅜-inch plywood;

(3) Exterior of ⅜-inch steel, lined with an interior of two inches of hardwood;

(4) Exterior of ⅜-inch steel, lined with an interior of three inches of softwood or 2¼ inches of plywood;

(5) Exterior of ¼-inch steel, lined with an interior of five inches of softwood or 5¼ inches of plywood;

(6) Exterior of ¼-inch steel, lined with an intermediate layer of two inches of hardwood and an interior lining of 1½ inches of plywood;

(7) Exterior of 3/16-inch steel, lined with an interior of four inches of hardwood;

(8) Exterior of 3/16-inch steel, lined with an interior of seven inches of softwood or 6¾ inches plywood;

(9) Exterior of 3/16-inch steel, lined with an intermediate layer of three inches of hardwood and an interior lining of ¾-inch plywood;

(10) Exterior of ⅛-inch steel, lined with an interior of five inches of hardwood;

(11) Exterior of ⅛-inch steel, lined with an interior of nine inches of softwood;

(12) Exterior of ⅛-inch steel, lined with an intermediate layer of four inches of hardwood and an interior lining of ¾-inch plywood;

(13) Exterior of any type of fire-resistant material that is structurally sound, lined with an intermediate layer of four inches solid concrete block or four inches solid brick or four inches of solid concrete, and an interior lining of ½-inch plywood placed securely against the masonry lining;

(14) Standard eight-inch concrete block with voids filled with well-tamped sand/cement mixture;

(15) Standard eight-inch solid brick;

(16) Exterior of any type of fire-resistant material that is structurally sound, lined with an intermediate six-inch space filled with well-tamped dry sand or well-tamped sand/cement mixture.

(17) Exterior of ⅛-inch steel, lined with a first intermediate layer of ¾-inch plywood, a second intermediate layer of 3 ⅝ inches well-tamped dry sand or sand/cement mixture and an interior lining of ¾-inch plywood;

(18) Exterior of any type of fire-resistant material, lined with a first intermediate layer of ¾-inch plywood, a second intermediate layer of 3 ⅝ inches well-tamped dry sand or sand/cement mixture, a third intermediate layer of "-inch plywood, and a fourth intermediate layer of two inches of hardwood or 14-gauge steel and an interior lining of ¾-inch plywood; or

(19) Eight-inch thick solid concrete.

Par. 20. Section 55.209 is amended by adding two new sentences after the third sentence and by removing "⅜-inch" and adding in its place "½-inch" to read as follows:

§ 55.209 Construction of type 3 magazines.

* * * No sparking material is to be exposed to contact with the stored explosive materials. All ferrous metal nails in the floor and sidewalls that might be exposed to contact with explosive materials must be blind nailed, counter-sunk, or covered with a nonsparking lattice work or other nonsparking material. * * *

Par. 21. Section 55.210 is amended by revising paragraph (a)(1); by adding two new sentences after the first sentence in paragraph (a)(2); by removing "⅜ inch" in paragraph (a)(4)(v) and adding in its

place "½-inch"; by removing the number "50" wherever it appears in paragraph (b)(1) and adding in its place the number "60;" by adding two new sentences after the first sentence in paragraph (b)(2); and by removing "⅜ inch" wherever it appears in paragraph (b)(4)(v) and adding in its place "½-inch" to read as follows:

§ 55.210 Construction of type 4 magazines.

* * * * *

(a) * * * (1) *General.* Outdoor magazines are to be fire-resistant, weather-resistant, and theft-resistant. The ground around outdoor magazines must slope away for drainage or other adequate drainage must be provided. Vehicular magazines must be immobilized by one of the following methods:

(i) Have wheels removed;

(ii) Be equipped with a kingpin locking device; or

(iii) Be equipped with a steering wheel locking device. Storage in this manner must be attended at all times.

(2) * * * No sparking material is to be exposed to contact with the stored explosive materials. All ferrous metal nails in the floor and sidewalls that might be exposed to contact with explosive materials must be blind nailed, counter-sunk, or covered with a nonsparking lattice work or other nonsparking material.

* * * * *

(b) * * *

(2) * * * No sparking material is to be exposed to contact with the stored explosive materials. All ferrous metal nails in the floor and sidewalls that might be exposed to contact with explosive materials must be blind nailed, counter-sunk, or covered with a nonsparking lattice work or other nonsparking material. * * *

* * * * *

Par. 22. Section 55.211 is amended by revising paragraph (a)(1); by revising the second and fourth sentences in paragraph (a)(4); by revising paragraph (b)(1); and by removing "⅜ inch" wherever it appears in paragraph (b)(4)(v) and adding in its place "½-inch" to read as follows:

§ 55.211 Construction of type 5 magazines.

* * * * *

(a) * * * (1) *General.* Outdoor magazines are to be weather-resistant and theft-resistant. The ground around magazines must slope away for drainage or other adequate drainage must be provided. Vehicular magazines must be immobilized by one of the following methods:

(i) Have wheels removed;

(ii) Be equipped with a kingpin locking device; or

(iii) Be equipped with a steering wheel locking device and, if the magazine is unattended, secured by a fence and locked gate. Any person storing explosives materials in this manner must inspect such magazine at least once every 72 hours.

* * * * *

(4) * * * Padlocks must have at least five tumblers and a case-hardened shackle of at least ½-inch diameter. * * * Bins used to load bulk trucks may be locked with one steel padlock (which need not be protected by a steel hood) having at least five tumblers and a case-hardened shackle of at least ½-inch diameter. * * *

* * * * *

(b) * * * (1) *General.* Indoor magazines are to be theft-resistant. They need not be weather-resistant if the buildings in which they are stored provide protection from the weather. No indoor magazine is to be located in a residence or dwelling. The indoor storage of blasting agents must not exceed a quantity of 60 pounds. More than one indoor magazine may be located in the same building if the total quantity of explosive materials stored does not exceed 60 pounds.

* * * * *

§55.213 [Amended]

Par. 23. Section 55.213 is amended by adding "shock tube," after "safety fuse," in paragraph (b)(1).

Par. 24. Section 55.217 is amended by revising the section heading and paragraph (b) to read as follows:

§ 55.217 Lighting and electrical switches.

* * * * *

(b) Electric lighting used in any explosives storage magazine must meet the standards prescribed by the "National Electrical Code" and the National Fire Protection Association, NFPA 495, for the conditions present in the magazine at any time. All electrical outlets, switches, and devices containing electrical switches are to be located outside of the magazine and also meet the standards prescribed by the National Electrical Code.

* * * * *

§55.218 [Amended]

Par. 25. Section 55.218 is amended by removing the word "public" wherever it appears in the table headings.

§ 55.220 [Amended]

Par. 26. Section 55.220 is amended by removing the word "public" in footnote 6 at the end of the table.

Par. 27. Section 55.222 is amended by revising the section heading and footnotes 3, 4, and 5 at the end of the table, and by adding new footnotes 6 and 7 to read as follows:

§ 55.222 Table of distances between fireworks process buildings, fireworks process areas, and fireworks nonprocess buildings.[6,7]

* * * * *

[3] While consumer fireworks or articles pyrotechnic in a finished state are not subject to regulation, explosive materials used to manufacture or assemble such fireworks or articles are subject to regulation. Thus, fireworks process buildings and fireworks process areas where consumer fireworks or articles pyrotechnic are being processed must meet these requirements.

[4] A maximum of 500 pounds of in-process pyrotechnic compositions, either loose or in partially assembled fireworks, is permitted in any fireworks process building or fireworks process area. Finished display fireworks may not be stored in a fireworks process building or fireworks process area.

[5] A maximum of 10 pounds of flash powder, either in loose form or in assembled units, is permitted in any fireworks process building or fireworks process area. Quantities in excess of 10 pounds must be kept in an approved magazine.

[6] The placement of explosive materials in a fireworks process area must comply with the requirements of this table of distances at all times.

[7] This table specifies minimum required separation distances from fireworks process buildings and fireworks process areas to other fireworks process buildings and fireworks process areas; and from fireworks process buildings and fireworks process areas to fireworks nonprocess buildings.

Par. 28. Section 55.223 is amended by revising the section heading, by removing the table heading, and by adding a new footnote 6 at the end of the table to read as follows:

§ 55.223 Table of distances from fireworks process buildings and fireworks process areas to passenger railways, highways, and fireworks plant buildings.[3, 4, 5, 6]

* * * * *

[6] The placement of explosive materials in a fireworks process area must comply with the requirements of this table of distances at all times.

Par. 29. Section 55.224 is amended by revising the table and by removing the parenthetical text in footnote 3 at the end of the table and adding in its place "March 7, 1990" to read as follows:

§ 55.224 Table of distances for the storage of display fireworks (except bulk salutes).

Net weight of fireworks [1] (pounds)	Distance between magazine and inhabited building, passenger railway, or highway [2 3 4] (feet)	Distance between magazines [2 3 4] (feet)
0–1000	150	100
1001–5000	230	150
5001–10000	300	200
10001–15000	360	200
15001–20000	420	200
20001–30000	480	225
30001–40000	625	250
40001–50000	675	275
50001–60000	910	300
60001–75000	1500	325
75001–100000	1750	375
100001–200000	2000	500
Above 200000	Use table § 55.218	.....

* * * * *

Signed: August 12, 2002.

Bradley A. Buckles,

Director.

Approved: January 7, 2003.

Timothy E. Skud,

Deputy Assistant Secretary, (Regulatory, Tariff and Trade Enforcement).

[FR Doc. 03–1946 Filed 1–28–03; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Parts 501 and 515

Reporting and Procedures Regulations; Cuban Assets Control Regulations: Publication of Economic Sanctions Enforcement Guidelines

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Proposed rule with request for comments.

SUMMARY: The Office of Foreign Assets Control ("OFAC") of the U.S. Department of the Treasury is publishing for public comment an updated version of its internal Economic Sanctions Enforcement Guidelines. These Guidelines are being published as separate appendices to two parts of the Code of Federal Regulations: general provisions are being published as an appendix to the Reporting and Procedures Regulations, 31 CFR part 501, and specific provisions focusing on Cuba are being published as an appendix to the Cuban Assets Control Regulations, 31 CFR part 515.

DATES: Written comments must be received on or before March 31, 2003.

ADDRESSES: Comments may be submitted by mail, by facsimile, or through OFAC's Web site.

Mailing address: Chief of Records, ATTN Request for Comments, Office of Foreign Assets Control, Department of the Treasury, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Facsimile number: 202/622–1657.

OFAC's Web site: http://www.treas.gov/offices/enforcement/ofac/comment.html.

FOR FURTHER INFORMATION CONTACT: Chief of Records, tel.: 202/622–2500, or Chief Counsel, tel.: 202/622–2410.

SUPPLEMENTARY INFORMATION:

Electronic Availability

This document and additional information concerning OFAC are available from OFAC's Web site *http://www.treas.gov/offices/enforcement/ofac/index.html* or via facsimile through a 24-hour fax-on-demand service, tel: 202/622–0077. Comments on these Guidelines may be submitted electronically through OFAC's Web site *http://www.treas.gov/offices/enforcement/ofac/comment.html.*

Procedural Requirements; Request for Comment

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, it is hereby certified that this rule would not have a significant economic impact on a substantial number of small entities. OFAC's Guidelines impose no regulatory burdens on the public. The Guidelines simply explain OFAC's enforcement practices based on existing substantive and procedural rules. Accordingly, no regulatory flexibility analysis is required. A regulatory assessment is not required because this rule is not a "significant regulatory action" as defined in Executive Order 12866.

Comments must be submitted in writing. The addresses and deadline for submitting comments appear near the beginning of this notice. OFAC will not accept comments accompanied by a request that all or part of the submission be treated confidentially because of its business proprietary nature or for any other reason. All comments received by the deadline will be a matter of public record and will be made available on OFAC's Web site *http://www.treas.gov/offices/enforcement/ofac/index.html.*

Paperwork Reduction Act

The collections of information related to the Reporting and Procedures Regulations and the Cuban Assets Control Regulations have been previously approved by the Office of Management and Budget ("OMB") under control number 1505–0164. A small adjustment to that collection has been submitted to OMB in order to take into account the voluntary disclosure rule proposed in this notice. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB.

The new collection of information is contained in subpart B of part III of the new Appendix to part 501—Economic Sanctions Enforcement Guidelines. This subpart explains that when apparent violations are voluntarily disclosed by the actor to OFAC, the proposed penalty will generally be mitigated by at least 50%. This voluntary disclosure rule provides an incentive for persons who have violated economic sanctions laws to come forward and provide OFAC information that it can use to better enforce its economic sanctions programs.

The likely submitters who will avail themselves of the voluntary disclosure rule are financial institutions, business organizations, other entities, and individuals who find that they have violated a sanctions prohibition and wish to disclose their violation.

The estimated total annual reporting and/or recordkeeping burden: 50 hours. *The estimated annual burden per respondent/record keeper:* 1 hour.

Estimated number of respondents and/or record keepers: 50. *Estimated annual frequency of responses:* once or less, given that OFAC expects that persons who voluntarily disclose their violations will take better care to avoid future violations.

Comments are invited on: (a) Whether this new collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Comments concerning the above information, the accuracy of estimated average annual burden, and suggestions for reducing this burden should be directed to OMB, Paperwork Reduction Project, control number 1505–0164, Washington, DC, 20503, with a copy to the Office of Foreign Assets Control, Department of the Treasury, 1500 Pennsylvania Ave., NW.,—Annex, Washington, DC 20220. Any such comments should be submitted not later than March 31, 2003. Comments on aspects of this proposed rule other than those involving collections of information subject to the PRA should not be sent to OMB.

Background

OFAC hereby publishes as appendices to 31 CFR parts 501 and 515 its Guidelines for the enforcement of the various economic sanctions programs it administers. These Guidelines review OFAC's procedures for determining whether an economic sanctions violation has occurred and outline the range of enforcement options available, including the imposition of a civil monetary penalty. A schedule of proposed penalties for certain violations of the Cuban Assets Control Regulations, 31 CFR part 515, is published as a separate appendix to those particular regulations. These Guidelines serve as a general framework for OFAC's enforcement activities, but OFAC may depart from them in particular cases.

The primary mission of OFAC is to administer and enforce economic sanctions against targeted foreign countries, terrorists and terrorist organizations, and narcotic traffickers in furtherance of U.S. foreign policy and national security objectives. OFAC acts under general Presidential wartime and national emergency powers, as well as specific legislation, to prohibit transactions and freeze (or "block") assets subject to U.S. jurisdiction. Economic sanctions are designed to deprive the target of the use of its assets and deny the target access to the U.S. financial system and the benefits of trade, transactions, and services involving U.S. markets, businesses, and individuals. These same authorities have also been used to protect assets subject to U.S. jurisdiction of countries subject to foreign occupation and to further important U.S. nonproliferation goals.

OFAC currently administers and enforces 24 economic sanctions programs pursuant to Presidential and Congressional mandates. Active enforcement of these programs is a crucial element in preserving and advancing the foreign policy and national security objectives that underlie these initiatives, usually taken in conjunction with diplomatic and occasionally military action. Penalties, both civil and criminal, serve as a deterrent to conduct that undermines or prevents these sanctions from achieving their foreign policy and national security goals. When violations occur, penalties serve a punitive purpose.

The Economic Sanctions Enforcement Guidelines (the "Guidelines") published today are intended to provide OFAC with a procedural framework of general applicability to promote consistency while allowing for the appropriate exercise of agency discretion. They are also intended to promote the transparency of OFAC's procedures and better inform the regulated community. OFAC has always sought to maximize voluntary compliance by the public with U.S. sanction laws and regulations. To further its commitment to maximize voluntary compliance, OFAC is publishing these Guidelines in the **Federal Register** for comment. These Guidelines supersede and replace internal Guidelines previously used by OFAC.

Historical Overview of Statutory Authorities and Regulatory Framework

The United States Department of the Treasury has a long history of dealing with economic sanctions. Prior to the War of 1812, Secretary of the Treasury Gallatin administered sanctions against Great Britain, in the form of the Embargo Act and the Non-Intercourse Act, for British harassment of American sailors. In 1861, during the Civil War, Congress passed the "Trading With the Enemy Act," which prohibited transactions with the Confederacy, called for the forfeiture of goods involved in such transactions, and provided a licensing system under rules and regulations administered by the Treasury Department. This Civil War legislation was updated as the Trading With the Enemy Act of 1917, 50 U.S.C. App. 1–44, for purposes of responding to World War I.

OFAC and The Trading with the Enemy Act of 1917. OFAC is the successor to the Office of Foreign Funds Control (the "FFC"), which was established at the advent of World War II following the German invasion of Norway in 1940. The FFC's initial purpose, in exercising authorities under Section 5(b) of the Trading With the Enemy Act of 1917 ("TWEA"), was to prevent Nazi use of the occupied countries' holdings of foreign exchange and securities and to prevent forced repatriation of funds belonging to nationals of those countries. These controls were later extended to protect assets of other invaded countries.

After the United States formally entered World War II, the FFC played a leading role in economic warfare against the Axis powers by blocking enemy assets and prohibiting foreign trade and financial transactions. These assets also would serve as a future source of war reparations. The FFC program was administered by the Secretary of the Treasury throughout the war. After the cessation of hostilities, most foreign property subject to protective blocking was gradually released by licenses under the Foreign Funds Control Regulations (the "FFCR"). Most enemy property was vested by the U.S. Government during and immediately after the war. Responsibility for administering the FFCR was transferred to the Attorney General (Office of Alien Property), effective October 1, 1948.

OFAC was formally created in December 1950, following the entry of China into the Korean War, when President Truman declared a national emergency under TWEA in response to the threat of international communism and blocked all Chinese and North Korean assets subject to U.S. jurisdiction. Economic sanctions against these countries, later expanded to include Vietnam and Cambodia, were promulgated at 31 CFR part 500. Part 505 was added in 1953 to restrict offshore trade with the Soviet Bloc in items of the kind controlled for export from the United States for national security reasons.

In 1963, pursuant to TWEA, President Kennedy imposed a trade embargo and ordered the blocking of assets of Cuba

and Cuban nationals in response to hostile acts against the United States by the Castro regime. Regulations implementing these sanctions are set forth at 31 CFR part 515. In 1966, the Justice Department returned responsibility for administering the FFCR to the Treasury Department, and these regulations were set forth at 31 CFR part 520.

Section 16 of TWEA provides for corporate criminal penalties of up to $1,000,000, and individual criminal penalties not to exceed $100,000 or ten years' imprisonment, or both, per count. Fines for criminal violations may be increased pursuant to 18 U.S.C. 3571. TWEA also provides for forfeiture of property that is the subject of a violation. TWEA authorizes civil penalties of up to $50,000 per count, adjusted for inflation to $55,000. It also allows the respondent to request an agency hearing, with the right to prehearing discovery, and, if the respondent elects this option, the civil penalty may be imposed only after such a hearing.

The International Emergency Economic Powers Act. In 1977, the Congress passed the International Emergency Economic Powers Act ("IEEPA"), 50 U.S.C. 1701–06, replacing TWEA as the statutory authority for a Presidential declaration of a national emergency in peacetime for the purpose of imposing economic sanctions. Pre-existing programs continue to be administered under TWEA, but new programs under TWEA may be established only during wartime. At this time, sanctions remain in place under TWEA solely with respect to (1) comprehensive sanctions against Cuba, (2) a residual blocking of North Korean assets previously blocked and an ongoing prohibition against the importation of certain goods from North Korea without an OFAC license, and (3) certain offshore trade in strategic goods with the former Soviet Bloc.

A significant distinction between the two statutes is that, until recently, IEEPA contained no Presidential vesting authority. With the passage of the USA PATRIOT Act of 2001, Pub. L. No. 107–56, IEEPA was amended to permit the vesting of assets under defined circumstances. While IEEPA does not authorize forfeiture absent an exercise of vesting authority, it does provide civil and criminal penalty authority, but in amounts less than those provided in TWEA. OFAC relies upon the U.S. Customs Service, operating under separate statutory authority, for the forfeiture of seized property.

IEEPA provides for civil penalties not to exceed $10,000, adjusted for inflation to $11,000. Criminal penalties range up to $50,000, or, if a natural person, up to ten years imprisonment, or both. Fines for criminal violations may be increased pursuant to 18 U.S.C. 3571.

National Emergencies under IEEPA. The first use of IEEPA occurred in 1979, in response to the Iranian hostage crisis. President Carter blocked over twelve billion dollars in Iranian assets subject to U.S. jurisdiction, enabling those assets to be used as leverage in negotiating the release of the U.S. hostages. Although most of the prohibitions contained in these sanctions were lifted prospectively by general license in 1981 in accordance with the Algiers Accords, transactions involving Iranian property within the United States or in the possession or control of U.S. persons remain regulated pursuant to 31 CFR part 535, that is, permitted only by general license. Import sanctions were imposed against Iran by President Reagan in 1987, under the authority of the International Security and Development Cooperation Act of 1985 ("ISDCA"), 22 U.S.C. 2349aa–9. Since this statute does not provide for criminal or civil penalty authority, OFAC relied upon the U.S. Customs Service, operating under separate statutory authority, for the imposition of criminal and civil penalties (including forfeiture of merchandise). President Clinton invoked IEEPA in 1995 to prohibit all trade with and investment in Iran, imposing the most comprehensive economic sanctions currently in place short of an assets freeze. Regulations implementing these sanctions are set forth at 31 CFR part 560.

President Reagan invoked IEEPA in 1985 to impose a trade embargo against the Sandinista regime in Nicaragua, and then again in 1986 to impose comprehensive economic sanctions, including an assets freeze, against the Government of Libya. The Libyan Sanctions Regulations remain in place at this time and are set forth at 31 CFR part 550. In 1986, Congress passed the Comprehensive Anti-Apartheid Act, prohibiting trade in certain goods and new investment in South Africa by codifying and expanding Executive Branch sanctions against that country imposed under IEEPA in 1985.

President Bush invoked IEEPA in 1988 to impose comprehensive economic sanctions against the Noriega regime in Panama, which sanctions were lifted after the U.S. invasion of that country in 1989. Assets of the Government of Panama remained blocked until the new government settled claims against it by U.S. persons. President Bush invoked IEEPA again in 1990 in response to the Iraqi invasion of Kuwait. Kuwaiti assets subject to U.S. jurisdiction were protected under an assets freeze until the Government of Kuwait was restored. Although OFAC did not conduct a formal census of these assets, the total Kuwaiti assets blocked under this program were estimated to exceed sixty billion dollars. Punitive sanctions against Iraq, including a comprehensive assets freeze, also were imposed in 1990 and remain in effect as set forth at 31 CFR part 575.

Since 1990, other countries have been subject to economic sanctions imposed under IEEPA, calibrated to respond to the given situation and U.S. foreign policy and national security objectives. Many "country-based" sanctions programs have a nexus to the U.S. government's response over time to the threat to U.S. national security and foreign policy posed by international terrorism. The Secretary of State has designated seven countries—Cuba, North Korea, Libya, Iran, Iraq, Sudan and Syria—as supporting international terrorism. Most of these countries are subject to comprehensive economic sanctions.

In 1995, President Clinton used IEEPA to deal with the threat to U.S. foreign policy and national security posed by terrorists who threaten to disrupt the Middle East Peace Process. This marked an expansion in the use of economic sanctions as a tool of U.S. foreign policy to target groups and individuals, as well as foreign governments. The Terrorism Sanctions Regulations are set forth at 31 CFR part 595. The trend of targeting groups and individuals continued later in 1995 when President Clinton invoked IEEPA to block assets and prohibit transactions with significant narcotics traffickers centered in Colombia. Regulations implementing these sanctions are set forth at 31 CFR part 536.

IEEPA has also been invoked to promote the national security and foreign policy objectives of the United States with respect to nonproliferation. In 1998, certain foreign entities were designated by the Secretary of State as promoting the proliferation of weapons of mass destruction. As set forth in 31 CFR part 539, OFAC regulations prohibit the importation of goods, technology, or services produced or provided by these entities. In 2000, President Clinton also invoked IEEPA to protect assets of the Russian Federation relating to the implementation of the agreement between the United States and Russia on the disposition of highly enriched uranium. Transfers of these assets in support of the agreements are licensed by OFAC. These protective

blocking regulations are set forth at 31 CFR part 540.

Most recently, in Executive Order 13224 of September 23, 2001, President George W. Bush declared a national emergency under IEEPA in response to the unusual and extraordinary threat to the national security, foreign policy, and economy of the United States posed by the grave acts of terrorism and threats of terrorism committed by foreign terrorists, including the terrorist attacks committed in New York and Pennsylvania and at the Pentagon on September 11, 2001. The President also relied on the United Nations Participation Act (discussed below) as authority for the imposition of economic sanctions, citing United Nations Security Council Resolution ("UNSCR") 1214 of December 8, 1998, UNSCR 1267 of October 15, 1999, UNSCR 1333 of December 19, 2000, and the multilateral sanctions contained therein.

The Iraq Sanctions Act. An additional statute containing penalty authority with respect to Iraq is the Iraq Sanctions Act of 1990 ("ISA"), Pub. L. 101–513, 104 Stat. 1079, 2047–55. The ISA dramatically increased the amount of civil and criminal penalties that may be assessed against U.S. persons violating these sanctions. ISA provides for civil penalties of up to $250,000, adjusted for inflation to $275,000, and criminal penalties of up to $1,000,000 and 12 years imprisonment.

The United Nations Participation Act. The Iraqi sanctions are also multilateral and administered under the authority not only of IEEPA but also the United Nations Participation Act (the "UNPA"). The UNPA permits the President to incorporate United Nations-mandated economic sanctions into domestic law. The UNPA provides for criminal penalties of up to $10,000 in fines and up to ten years' imprisonment. Fines for criminal violations may be increased pursuant to 18 U.S.C. 3571. The UNPA also provides for forfeiture authority. United Nations-sponsored multilateral economic sanctions against the Federal Republic of Yugoslavia (Serbia & Montenegro) were imposed in 1992 in response to the disintegration of the former Yugoslavia and the civil strife fomented and genocide committed by the Milosevic regime in Bosnia and Herzegovina.

The Antiterrorism and Effective Death Penalty Act. Title III of the Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA"), Pub. L. 104–132, 110 Stat. 1214, makes it a criminal offense to (1) engage in a financial transaction with the government of a country designated as supporting international terrorism, or (2) provide material support or resources to a designated foreign terrorist organization. Violators may be fined or imprisoned for not more than ten years, or both. AEDPA also provides that any financial institution that knowingly fails to retain possession of or control over blocked funds or to report the existence of such funds shall be subject to a civil penalty in an amount that is the greater of $50,000 per violation, or twice the amount of the funds at issue. Regulations implementing these sanctions are set forth at 31 CFR parts 596 and 597.

The Foreign Narcotics Kingpin Designation Act. In 1999, new legislation expanded the scope of the 1995 sanctions against narcotics traffickers centered in Colombia. The Foreign Narcotics Kingpin Designation Act (the "FNKDA"), 21 U.S.C. 1901–08, provides for criminal penalties of up to ten years imprisonment, fines in the amounts provided in title 18 of the U.S. Code, or both, or, in the case of an entity, fines of not more than $10,000,000 per violation. Criminal penalties for any officer, director, or agent range up to $5,000,000 or 30 years imprisonment, or both. Civil penalties not to exceed $1,000,000 per violation also may be imposed. Regulations implementing these sanctions are set forth at 31 CFR part 598.

List of Subjects

31 CFR Part 501

Administrative practice and procedure, Reporting and recordkeeping requirements.

31 CFR Part 515

Administrative practice and procedure, Banks, Banking, Cuba, Currency, Foreign investments in United States, Foreign trade, Penalties, Reporting and recordkeeping requirements, Securities, Travel restrictions.

For the reasons set forth in the preamble, 31 CFR parts 501 and 515 are amended as follows:

PART 501—REPORTING AND PROCEDURES REGULATIONS

1. Part 501 is amended by adding the following appendix to read as follows:

Appendix to Part 501—Economic Sanctions Enforcement Guidelines

Note: These guidelines provide a procedural framework for the enforcement of all economic sanctions programs administered by the Office of Foreign Assets Control ("OFAC"). Attention is directed to the appendix to the Cuban Assets Control Regulations, 31 CFR part 515, for additional guidelines specifically dealing with particular violations of those regulations.

I. Enforcement of Economic Sanctions; Determination of Violation

A. OFAC Civil Investigation and Enforcement Action. Civil investigation and enforcement with respect to economic sanctions violations rest primarily with OFAC, with certain investigations conducted by the U.S. Customs Service. OFAC investigations may lead to one or more of the following: a cautionary letter, a warning letter, a requirement to furnish information, an order to cease and desist, or a civil penalty proceeding. In addition to or instead of such actions, if the party involved is currently acting pursuant to an OFAC license, that license may be suspended or revoked.

B. OFAC's Evaluation of Violative Conduct. The type of enforcement action undertaken by OFAC depends on the nature of the apparent violation and the foreign policy goals of the particular sanctions program involved. In evaluating whether to initiate a civil penalty action, OFAC determines whether there is reasonable cause to believe that a violation of the regulations, pertinent statute, or Executive Order has occurred. Parts II and III of these Guidelines set forth the criteria used by OFAC to determine the appropriate response to an apparent violation.

C. Criminal Investigations and Prosecutions. If the evidence suggests willful violations of substantive prohibitions or requirements, OFAC may refer those cases to other federal law enforcement agencies for criminal investigation. Cases that are referred to the Department of Justice for criminal prosecution also may be processed by OFAC as civil penalty matters. This is generally done after the Justice Department's declination of criminal prosecution or the termination of criminal proceedings or as part of a global settlement of criminal and civil violations by the Justice Department.

II. License Suspension and Revocation; Cautionary and Warning Letters

A. License Suspension and Revocation. In addition to or instead of other administrative actions, OFAC authorization to engage in transactions pursuant to a general or specific license may be suspended or revoked for reasons including, but not limited to, the following:

1. The party has willfully made or caused to be made in any license application, or in any report required pursuant to a license, any statement that was, at the time and in light of the

circumstances under which it was made, false or misleading with respect to any material fact or has omitted to state in any application or report any material fact that was required;

2. The party has failed to file timely reports or comply with the recordkeeping requirements of a general or specific license;

3. The party has violated any provision of law enforced by the Office of Foreign Assets Control or the rules or regulations issued under any such provision;

4. The party has counseled, commanded, induced, procured, or knowingly aided or abetted the violation by any other person of any provision of any law or regulations referred to above; or

5. The party has committed any other act or omission that demonstrates unfitness to conduct the transactions authorized by the general or specific license.

B. Cautionary Letters. OFAC issues "cautionary letters" where an OFAC audit or civil investigation results in insufficient evidence to conclude that a violation appears to have occurred, but which may indicate activity that could lead to a violation in other circumstances or cause problems for future transactions. From time to time, when financial institutions appear not to be exercising due diligence in assuring compliance with OFAC's regulations, but no violation has occurred, a cautionary letter may be sent outlining the requirements of the regulations and urging greater diligence.

C. Warning Letters. Warning letters represent OFAC's conclusion that an apparent violation of the regulations occurred. In the exercise of its discretion, OFAC may determine in certain instances that a warning letter, citing the specific facts and relevant law, may achieve the same result as a monetary penalty insofar as future compliance with OFAC regulations is concerned. A warning letter will fully explain the apparent violation and urge future compliance. A warning letter does not constitute a final agency determination that a violation has occurred.

1. *Financial Transfers.* OFAC recognizes the high volume and level of automation of international funds transfers processed within the United States banking system on a daily basis. With respect to financial transfers, OFAC often issues warning letters in lieu of civil penalties in cases that appear to involve violations based on technicalities, where good faith efforts to comply with the law and no aggravating factors are evident. Some examples of cases where a warning letter might be issued in lieu of a proposed civil penalty include the following:

(a) Transactions in which there are significant variations in name and/or location specified in a funds transfer from those on OFAC's list of blocked persons and vessels, specially designated nationals, terrorists, narcotics traffickers and foreign terrorist organizations (the "SDN list") or list of sanctioned countries;

(b) Transactions where the name of the blocked party is spelled differently from the entry on OFAC's SDN list, thus bypassing an electronic filter (in these instances, the bank is expected to add the spelling variation to its filter);

(c) Transactions where funds are not intended to be sent to or through a blocked or specially designated bank (an "SDN bank") but a bank employee accidentally enters a code for an SDN bank;

(d) Transactions where a clerk accidentally hits a "release" key instead of a "block" or "reject" key and immediately takes action to try to recall the funds;

(e) Transactions that take place shortly after a new designation where the bank has not had time to update its systems and procedures or to review its account base;

(f) Transactions that are of a low value where the cost of pursuing a penalty action would likely exceed the enforcement benefit;

(g) Transactions involving an activity for which a policy determination has been made to authorize the activity by specific license; and

(h) Other transactions where the fact pattern and underlying transaction would appear to warrant a warning letter as opposed to a civil penalty action.

2. *Exports and Imports.* Warning letters may be issued in response to apparent violations solely involving the importation and exportation of goods and/or services valued at $500 or less, unless aggravating factors are present. Unauthorized importations in conjunction with travel involving Cuba are addressed in the appendix to the Cuban Assets Control Regulations, 31 CFR Part 515.

III. Civil Penalties

Prohibitions against engaging in various types of transactions in the context of economic sanctions programs are set forth in applicable statutes, Executive Orders, and regulations administered by OFAC. The criteria for initiating civil penalty enforcement action may differ depending upon the substantive nature of the apparent violation at issue and existing foreign policy and national security objectives. For purposes of the discussion below, "proposed penalty" is the amount set forth in the prepenalty notice, as distinct from the final amount imposed in the penalty notice.

A. Most Frequent Categories of Violations Resulting in Civil Penalty Action, and the Penalties Proposed by OFAC

1. *Prohibited Dealing in Blocked Property or Fund Transfers (including Rejected Transfers).* If the apparent violative transaction at issue is a prohibited dealing in blocked property by a person subject to the jurisdiction of the United States, the proposed penalty generally will be the lesser of either the statutory maximum or the dollar value of the transaction involved. For example, the dollar value may be the value of the property dealt in or the amount of the funds transfer that a financial institution failed to block or reject.

2. *Imports and Exports.* In import cases, the dollar value used in proposing a penalty generally will be the transaction value for imports of goods, technology, or services into the United States, as demonstrated by commercial invoices, bills of lading, signed Customs declarations, or similar documents. In U.S. Customs Service seizures where no transaction value can be demonstrated by credible evidence, the dollar value generally will be the foreign value as determined by U.S. Customs Service. Where neither the transactional nor U.S. Customs Service-determined foreign value is established in the administrative record, a default value of $10 per item imported generally will be assigned. For importations of Cuban-origin goods in conjunction with travel-related transactions involving Cuba, please refer to the appendix to the Cuban Assets Control Regulations, 31 CFR part 515. For exports, the dollar value used in proposing a civil penalty generally will be the U.S. domestic value of the goods, technology, or services.

3. *Performance of a Contract; New Investment.* The proposed penalty for the performance of a contract or new investment generally will be the lesser of the statutory maximum or the value of the contract or investment.

4. *Travel-Related Violations.* Proposed penalties for travel-related transactions involving Cuba are set forth in the appendix to the Cuban Assets Control Regulations, 31 CFR part 515. Please note that other sanctions programs, including the Iraqi Sanctions

Regulations (31 CFR part 575) and the Libyan Sanctions Regulations (31 CFR part 550), may include restrictions on travel-related transactions, violations of which will be dealt with on a case-by-case basis.

5. *Travel, Carrier, and Remittance-forwarding Service Provider Violations (Cuba).* The criteria for imposition of civil penalties for violations relating to the provision of travel, carrier, and remittance-forwarding service providers are contained in (1) the appendix to 31 CFR part 515 with respect to service providers not authorized by OFAC to provide such services and (2) the annual Service Provider Program Circular issued by OFAC with respect to service providers holding OFAC authorization.

6. *Requirement to Furnish Information; Reporting and Recordkeeping.* The following criteria shall apply for purposes of proposing a penalty, except in the instance of authorized service providers under the Cuban Assets Control Regulations, which criteria appear in the annual Service Provider Program Circular issued by OFAC:

(a) Each failure to respond to a requirement to furnish information, issued pursuant to 31 CFR 501.602, generally will result in a proposed penalty in the amount of $10,000, irrespective of whether any other violation is alleged;

(b) Late filing of a required report generally will result in a proposed penalty in the amount of $2,000, if filed within the first month after it is due. Each failure to comply with a reporting requirement, whether set forth in regulations or in a specific license, generally will result in a proposed penalty in the amount of $5,000 if the report is beyond one month late. If the report concerns blocked assets, however, the proposed penalty generally will include an additional $1,000 for every month beyond the second month that the report is not submitted, up to five years or the statutory maximum, whichever is lower.

(c) The first failure to maintain records in conformance with the requirements of OFAC's regulations or of a specific license generally will result in a proposed penalty in the amount of $2,000. Each additional offense in this regard generally will result in a proposed penalty in the amount of $10,000.

B. Evaluation of Mitigating and Aggravating Factors

In determining a settlement amount or penalty assessment at the penalty notice stage, OFAC generally will balance the mitigating and aggravating factors present in the administrative record, as well as weigh any administrative considerations that the agency may deem appropriate.

1. *Mitigation and mitigating factors.* The degree to which a proposed penalty is mitigated is determined by the blend of mitigating factors and aggravating factors present. The history of mitigation with respect to cases having substantially identical fact patterns generally will govern the degree of mitigation to be applied in subsequent cases. However, departures from these Guidelines or from prior history will be considered where appropriate. OFAC may attach more importance to a particular factor, and administrative considerations may also be taken into account. The individual circumstances of a violation, including the balance of factors present, will also influence the outcome. OFAC encourages evidentiary submissions indicating the presence or absence of a mitigating or aggravating factor. In the case of funds transfer violations by banks or other financial institutions, depending on the balance of mitigating and aggravating factors present, penalties generally will be mitigated 25–50% from the amount proposed in the prepenalty notice. In all other instances, penalties for violations generally will be mitigated 10% to 75% from the amount proposed in the prepenalty notice depending upon the balance of mitigating and aggravating factors present. Typical mitigating factors include, but are not limited to, the following:

(a) Voluntary disclosure;

(b) First offense (but see the appendix to 31 CFR part 515 for certain Cuba travel-related violations);

(c) Compliance program in place at time of violation;

(d) If no compliance program, implementation of one upon the respondent's discovery of or OFAC notification of the violation;

(e) Other remedial measures taken;

(f) Provision of a written response to a prepenalty notice;

(g) Useful enforcement information provided during an OFAC audit, investigation, or penalty proceeding;

(h) Part of comprehensive settlement with U.S. Customs Service;

(i) Other U.S. government enforcement action already completed;

(j) Lack of relevant commercial experience;

(k) Clerical error, inadvertence, or mistake of fact;

(l) Evidence in the administrative record that a transaction(s) could have been licensed by OFAC under an existing licensing policy had an application been submitted;

(m) Apparent language barrier or other impediment to understanding of regulations (individuals only);

(n) Humanitarian nature of transaction;

(o) Such other matters as justice may require.

2. *Aggravating Factors.* Typical aggravating factors include, but are not limited to, the following:

(a) Willfulness;

(b) Second or subsequent offense (but see the appendix to 31 CFR part 515 for certain Cuba travel-related violations);

(c) Apparent disregard of prior notice from U.S. government concerning transactions at issue;

(d) No remedial measure taken after notice or discovery;

(e) Deliberate effort to hide or conceal the violation;

(f) Extraordinary adverse economic sanctions impact;

(g) Lack of compliance program at the time of the violation;

(h) Familiarity with economic sanctions programs.

3. *Voluntary Disclosure.* When apparent violations are voluntarily disclosed by the actor to OFAC, the proposed penalty generally will be mitigated at least 50% from the amount that would otherwise be proposed under these Guidelines. A disclosure to OFAC is considered to be a voluntary disclosure where OFAC is notified of possible sanctions violations. Notification to OFAC may not be considered to be a voluntary disclosure if OFAC previously received information concerning the transactions from another source, including but not limited to another regulatory or law enforcement agency or another person's blocking or funds-transfer rejection report. Responding to an administrative subpoena or other inquiry from OFAC does not constitute a voluntary disclosure. Similarly, the submission of a license application does not constitute a voluntary disclosure unless it is also accompanied by a separate disclosure.

4. *First Offense.* Proposed penalties for apparent violations that constitute a first offense generally will be mitigated at least 25% in the penalty notice, unless aggravating factors are also present. Significant exceptions to this rule include apparent violations involving willful misconduct or gross negligence and those involving certain travel-related transactions described in the appendix to 31 CFR part 515 (where the proposed penalties already distinguish between first and subsequent offenses). In determining whether an apparent violation constitutes a first or subsequent offense, a distinction generally will be made

between prior OFAC penalty cases ending in an assessed civil monetary penalty and those settled prior to a finding of violation. Another factor considered is whether the OFAC regulations previously violated were similar to those of the new case under review. For example, all apparent reporting violations will be considered to be similar, as will those involving a failure to block financial transfers or failure to respond to a request for information. An apparent violation generally will be considered a first offense if no similar violation has been found within the past five years.

C. Settlement Generally

Settlements of penalty cases may be proposed at any stage of a civil penalty proceeding prior to the issuance of a final agency determination of violation. A settlement does not constitute a final agency determination that a violation has occurred.

D. Settlement Prior to Issuance of Prepenalty Notice

1. *Initiating settlement.* OFAC may settle a matter without initiating a formal action through the issuance of a prepenalty notice. A party may request an informal settlement with OFAC prior to OFAC's issuance of a prepenalty notice. To do so, the party may request in writing that OFAC withhold issuance of a prepenalty notice for a period of up to 60 days for the exclusive purpose of reaching settlement. If the applicable statute of limitations is close to expiring, OFAC may condition the entry into or continuation of informal settlement negotiations on an agreement to execute a waiver with respect to the statute of limitations. If such a waiver is not executed, OFAC may decide that there should be no informal settlement period and issue a prepenalty notice.

2. *Settlement process.* In informal settlement negotiations prior to the issuance of a prepenalty notice, OFAC will inform the party of the apparent violations OFAC intends to cite in the prepenalty notice, as well as the penalty amount to be proposed therein. Whenever possible, settlements will be negotiated in accordance with the mitigation provisions set forth above; however, each settlement will be viewed on its own merits, as factors present in one case may not appear in another.

3. *Settlements of multiple violations.* A settlement initiated for one apparent violation may also involve a comprehensive or global settlement of multiple apparent violations covered by other prepenalty notices, apparent violations for which a prepenalty has yet to be issued by OFAC, or previously unknown violations reported to OFAC during the penalty proceeding.

E. Settlement Following Issuance of Prepenalty Notice

1. *Initiating settlement.* After a prepenalty notice is issued and served, OFAC may settle the matter through informal negotiations at OFAC's initiation, at the request of the respondent or its authorized representative, or through the respondent's payment of the proposed penalty in full.

2. *Settlement process.* Settlements generally will be negotiated in accordance with the mitigation provisions set forth above. If a matter is settled at the prepenalty stage, that is, before a final penalty notice is issued, the claim proposed in the prepenalty notice will be withdrawn, the respondent will not be required to take a written position on the allegations contained in the prepenalty notice, and OFAC will not make a final determination as to whether a violation occurred. In the event no settlement is reached, the period specified for written response remains in effect unless additional time is granted by OFAC.

3. *Settlements of multiple violations.* As in the case of settlements prior to the issuance of a prepenalty notice, settlements following the issuance of a prepenalty notice may be comprehensive (global) settlements of multiple apparent violations covered by other prepenalty notices or for which a prepenalty notice has yet to be issued.

F. Cancellation of Proceedings

In the absence of a settlement, OFAC generally will not cancel a penalty proposed in a prepenalty notice absent evidence substantiating that the party named in the prepenalty notice did not commit or is not responsible for the violation charged, or unless such cancellation is otherwise appropriate for policy or legal reasons.

G. Assessment and Imposition of Final Penalty

1. *Consideration of response to prepenalty notice.* Prior to OFAC's issuance of a penalty notice, the cited party may respond to the allegations in OFAC's prepenalty notice. If a response is submitted, OFAC will carefully and fully consider all explanations contained in the response and weigh all information presented in making a final determination whether a violation has occurred, whether a penalty notice should be issued and, if so, in what amount the penalty should be assessed. If the response discloses new apparent economic sanctions violations, a revised prepenalty notice may be issued citing the newly-disclosed apparent violations. When possible criminal conduct is revealed in the response, the case may be referred for further investigation.

2. *Issuance of penalty notice.* Absent a settlement of allegations, OFAC generally will issue a penalty notice in accordance with the procedures set forth in the applicable regulations. OFAC will consider all information in the administrative record before assessing the final penalty amount. The penalty generally will be assessed in an amount that reflects the mitigating and aggravating factors present in the record, determined in accordance with the mitigation provisions set forth above.

3. *Penalty assessment in absence of response to prepenalty notice.* Where OFAC receives no response to a prepenalty notice within the time prescribed in the applicable regulations, a penalty notice generally will be issued, taking into account the mitigating and/or aggravating factors present in the record. If there are no mitigating factors present in the record, or the record contains a preponderance of aggravating factors, the proposed prepenalty amount generally will be assessed as the final penalty.

4. *Referral to Financial Management Division.* The imposition of a penalty pursuant to a penalty notice creates a debt due the U.S. Government. OFAC advises Treasury's Financial Management Division ("FMD") upon the imposition of a penalty. FMD will take follow-up action to collect the penalty assessed if it is not paid within the prescribed time period set forth in the penalty notice.

5. *Final agency action and judicial review.* The imposition of a penalty pursuant to a penalty notice constitutes final agency action, which is subject to judicial review.

H. Disposition of Funds and Merchandise

1. *Seizure, forfeiture, and release generally.* Where import or export violations of economic sanctions occur, the U.S. Customs Service may have seized the goods involved pursuant to separate statutory authorities. OFAC usually coordinates with the U.S. Customs Service regarding the disposition of seized goods for purposes of resolving the penalty action. Where OFAC lacks civil forfeiture authority, OFAC may provide a recommendation to the U.S. Customs Service regarding disposition of seized goods. The forfeiture of the goods may be considered in addition to or in lieu of monetary penalties in determining the

most equitable and appropriate penalty. OFAC may authorize or recommend to the U.S. Customs Service the release of any funds or merchandise involved in the violative transaction upon the payment of the penalty assessed or settlement negotiated by OFAC. In settlements involving seized goods, the disposition of the goods generally will be an element of OFAC's agreement. When there has been no payment of an assessed monetary penalty, OFAC generally will recommend the forfeiture of the seized goods or funds to the U.S. Customs Service.

2. *Seizure of blocked property.* Where the funds or merchandise seized by the U.S. Customs Service constitute property blocked pursuant to the controlling Executive Order, statute, or regulations, such property generally remains blocked. Those who might claim an interest in the blocked property should refer to provisions in the Reporting and Procedures Regulations, 31 CFR part 501, and in the regulations or other legal authorities governing the relevant economic sanctions program for additional information.

PART 515—CUBAN ASSETS CONTROL REGULATIONS

1. Part 515 is amended by adding the following appendix to read as follows:

Appendix to Part 515—Cuba Travel-Related and Certain Other Violations of 31 CFR Part 515

Note to Appendix to Part 515: This appendix provides a schedule of proposed civil monetary penalties for certain violations of the Cuban Assets Control Regulations, 31 CFR part 515. The civil penalty process is described in detail in subpart G of 31 CFR part 515 and in the appendix to the Reporting and Procedures Regulations, 31 CFR part 501.

A. Traveler Violations/Amounts for Prepenalty Notices

1. Tourist travel-related transactions:
First trip: $7,500
Each additional trip: $10,000

2. Business travel-related transactions:
First trip: $15,000
Each additional trip: $25,000

3. Travel-related transactions involving unlicensed visits to close relatives:
First trip: warning letter
Each additional trip—
Prior to agency notice*: $1,000
Subsequent to agency notice*: $4,000

4. Travel-related transactions where no specific license was issued under 31 CFR 515.560(a)(3)–(12) but where there is evidence that the purpose of the travel fits within one of the categories of licensable activities:
Each trip prior to agency notice*: $3,000
Each trip subsequent to agency notice*: $10,000

5. Exports (or attempted exports) of unauthorized funds in which Cuba or a Cuban national has an interest: Value of unauthorized funds

Note to A.5.: Additional remittance forwarding penalties may be considered.

6. Unauthorized use of a credit card in Cuba:
First trip: $1,000
Each additional trip: $2,000

7. Importations of Cuban-origin goods in conjunction with travel-related violations:
Where aggregate value of goods is $500 or less: $250
Where aggregate value of goods exceeds $500: $250 plus excess value above $500

Note to A.7.: Value generally will be determined by the transactional value, if evidenced by a receipt, signed Customs declaration, or similar document or, if none, the foreign value as determined by the U.S. Customs Service. In the absence of either, a default value of $10 per item generally will be assigned to the goods, except in the case of boxes of cigars, which generally will be valued at $250.

B. Provision of Travel, Carrier and Remittance Forwarding Services by Persons Not Authorized as Service Providers

1. Provision of remittance forwarding services:
Prior to agency notice*: $2,000
Subsequent to agency notice*: $15,000

2. Provision of travel services:
Prior to agency notice*: $2,000, plus $500 per person assisted
Subsequent to agency notice*: $15,000, plus $500 per person assisted

3. Provision of carrier services:
Prior to agency notice*: $5,000, plus $500 per person assisted
Subsequent to agency notice*: $25,000, plus $500 per person assisted

Note to B.: Other violations that arise in the context of the Cuba program are addressed in the main text of these Guidelines as published in the appendix to 31 CFR part 501. Violations by persons authorized as Service Providers are addressed in the annual Service Provider Program Circular issued by OFAC.

* For purposes of determining prepenalty amounts as set forth in this appendix, the term "agency notice" means any evidence in the administrative record of written or oral communication between OFAC and the party alleged to have committed a violation concerning the same or a substantially similar violation. This evidence may include, but is not limited to, a warning letter, a cease and desist order, a prepenalty notice, or a notation of a telephonic conversation or letter from OFAC advising the party that the conduct is in violation of applicable regulations. A party may dispute the adequacy of agency notice in its response to the prepenalty notice.

Dated: January 13, 2003.

R. Richard Newcomb,

Director, Office of Foreign Assets Control.

Approved: January 13, 2003.

Kenneth E. Lawson,

Assistant Secretary (Enforcement), Department of the Treasury.

[FR Doc. 03–1809 Filed 1–24–03; 12:16 pm]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–7443–6]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of intent for partial deletion of the Cecil Field Naval Air Station (site) from the National Priorities List (NPL).

SUMMARY: The Environmental Protection Agency, Region 4, announces its intent to delete portions of the Cecil Field Naval Air Station Superfund Site (the "Site") (EPA ID# FL 5170022474) from the National Priorities List (NPL) and requests public comment on this action. The NPL is codified as appendix B to the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), 40 CFR part 300, which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended, 42 U.S.C. 9605. The EPA has determined, with the concurrence of the State of Florida through its Department of Environmental Protection, that the parcels proposed for deletion under this action do not pose a significant threat to public health or the environment, as defined by CERCLA, and therefore, further remedial measures pursuant to CERCLA are not appropriate for these parcels. EPA proposes deletion of these parcels in accordance with 40 CFR 300.425(e) and the Notice of Policy Change: Partial Deletion of Sites on the

National Priorities List published in the **Federal Register** on November 1, 1995.

The remaining parcels comprising the Cecil Field Naval Air Station Superfund Site will remain on the NPL. Response actions are either underway at these parcels or the parcels do not require any further response action other than operation and maintenance activities and enforcement.

DATES: EPA will accept comments concerning this proposal to delete specified parcels from the Site until March 31, 2003.

ADDRESSES: Comments may be submitted to Deborah A. Vaughn-Wright, Remedial Project Manager, Federal Facilities Branch, Waste Management Division, U.S. Environmental Protection Agency, 61 Forsyth Street, Atlanta, Georgia 30303, (404) 562–8539, fax (404) 562–8518, e-mail *vaughn-wright.debbie@epa.gov.*

Comprehensive information and deletion docket for this site is available through the public docket which is available for viewing at the Site Information repositories at the following locations:

(1) U.S. EPA Region 4, Library, 61 Forsyth Street, Atlanta, GA 30303, (404) 562–8190. Hours: Monday thru Friday, 8 a.m. to 4 p.m.; and

(2) Building 907, 13357 Lake Newman Street, Cecil Commerce Center, Jacksonville, Florida 32252, Phone: (904) 573–0336.

FOR FURTHER INFORMATION CONTACT: Deborah A. Vaughn-Wright, Remedial Project Manager, U.S. Environmental Protection Agency, 61 Forsyth Street, Atlanta, Georgia 30303, (404) 562–8539, Fax (404) 562–8518, e-mail *vaughn-wright.debbie@epa.gov.*

SUPPLEMENTARY INFORMATION:

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I. Introduction
II. NPL Deletion Criteria
III. Deletion Procedures
IV. Basis of Intended Partial Site Deletion
V. Deletion Action

I. Introduction

The U.S. Environmental Protection Agency (EPA) Region 4 announces its intent to delete approximately 16,496.14 acres of land from the Cecil Field Naval Air Station Superfund Site, Jacksonville, Duval and Clay Counties, Florida from the National Priorities List (NPL). The NPL constitutes appendix B to the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), 40 CFR part 300, which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended, 42 U.S.C. 9605.

The NPL is a list of facilities which EPA determined may pose a significant threat to public health, welfare, or the environment. 40 CFR 300.425(e) authorizes deletion of facilities, or portions of facilities, from the NPL provided that facility meets certain criteria. Deletion from the NPL does not necessarily preclude further remedial action. If a significant release occurs at a facility deleted from the NPL, that facility is restored to the NPL without application of the Hazard Ranking System. Non-federal facilities deleted from the NPL are eligible for Fund-financed remedial actions should future conditions warrant such action. While federal facilities are not eligible for Fund-financed remedial action, all federal facilities, whether listed on the NPL or not, have a continuing statutory duty to conduct further remediation, if required, even after the federal property is transferred to non-federal owners. Where a release attributable to federal facility's historical activities is discovered after a property transfer, CERCLA section 120(h)(3)(A)(i) requires the federal entity to conduct further remediation if needed for protection of human health and the environment.

An environmental assessment was conducted at the facility on the parcels proposed for transfer. All media were sampled. Results of this sampling were compiled in Remedial Investigations reports which were used to conduct a Risk Assessments. Feasibility Studies were generated which evaluated potential remedies required to address the contamination. The remedies were summarized in a public notice soliciting comments on the remedies. All public comments received during the public comment period were considered by the Navy and EPA before a final remedy was selected. Several parcels did not require a remedial action to be protective of human health and the environment.

The parcels proposed for deletion are described in more detail later in this document. EPA proposes deleting these parcels from the NPL because no further CERCLA response is appropriate. The remaining portions of property comprising the Cecil Field Naval Air Station Superfund Site will remain on the NPL. This notice will be published in the **Federal Register** to solicit public comment on the proposed partial deletion. The public comment period is thirty (30) days beginning on the date of publication.

Section II of this action explains the criteria for the partial deletion of sites from the NPL. Section III discusses the procedures that EPA is using for this action. Section IV discusses the history of the Cecil Field Naval Air Station Site and explains how the portions of the Site proposed for deletion meet deletion criteria. Section V states EPA's action to delete the portions of the site from the NPL unless dissenting comments are received during the comment period.

II. NPL Deletion Criteria

Section 300.425(e) of the NCP provides that sites may be deleted from, or recategorized on, the NPL where no further response is appropriate. In making a determination to delete a release from the NPL, EPA shall consider, in consultation with the state, whether any of the following criteria have been met:

(i) Responsible parties or other persons have implemented all appropriate response actions required; or

(ii) All appropriate Fund-financed response under CERCLA has been implemented, and no further response action by responsible parties is appropriate; or

(iii) The Remedial Investigation has shown that the release poses no significant threat to public health or the environment and, therefore, taking of remedial measures is not appropriate.

As explained below, portions of the Site meet the NCP's deletion criteria listed above. Therefore, a partial deletion is being proposed.

III. Deletion Procedures

The following procedures were used for the intended partial deletion of portions from the Site:

(1) All appropriate responses under CERCLA have been implemented and no further action by EPA is appropriate for the identified areas; (2) The State of Florida concurred with the proposed deletion decision via letter dated July 3, 2002; (3) Simultaneous with this notice, a similar notice of Intent for Partial Deletion was published in a major local newspaper with general circulation in and around the Site and distributed to appropriate federal, state, and local officials and other interested parties announcing a thirty (30) day comment period starting on the date of publication in the **Federal Register** and a major local newspaper; and (4) All relevant documents have been made available for public review in the local Site information repositories.

The public is asked to comment on the proposed partial deletion within thirty (30) days of the date of this document. EPA will evaluate all comments received during this period before issuing a final decision. If

appropriate, EPA will prepare a Responsiveness Summary, responding to each significant comment submitted during the public comment period. The Responsiveness Summary will be available for public viewing at the information repositories listed above. If EPA determines that the proposed partial deletion is appropriate, EPA will publish a Final Notice of Partial Deletion in the **Federal Register**. Actual deletion of the proposed parcels does not occur until the Final Notice of Partial Deletion is published in the **Federal Register**. As stated in 40 CFR 300.425, a site, or portions of a site, deleted from the NPL remain eligible for future response actions if conditions warrant.

IV. Basis for Intended Partial Site Deletion

The following site summary provides the Agency's rational for the proposed partial deletion. It also includes information demonstrating satisfaction of the deletion criteria specified under 40 CFR 300.425(e).

Site Background and History:

Cecil Field Naval Air Station is located 14-miles west of Jacksonville, Florida in Duval and Clay Counties. The entire Site encompasses approximately 17,200 acres. The Site operated as Naval Air Station Cecil Field from 1941 until 1999 when the base was closed as a result of the Defense Base Realignment and Closure (BRAC) Act of 1990. During that period the base provided facilities, services, and material support for the operation and maintenance of naval weapons, aircraft and other units of the operation forces as designated by the Chief of Naval Operations. Some of the tasks required to accomplish this mission include operation of fuel storage facilities and performance of aircraft maintenance. Maintenance activities at NAS Cecil Field over the years generated a variety of waste materials including municipal solid waste, municipal wastewater treatment plant sludge, industrial wastes including waste oils, solvents, paints and spilled fuels, and waste pesticides. Contaminants of concern include pesticides, chlorinated solvents, waste fuels and metals.

Cecil Field Naval Air Station was listed on the NPL in 1989. At that time the entire base was included in the listing, fence line to fence line. The Department of the Navy, State of Florida and the U.S. Environmental Protection Agency approved a Federal Facilities Agreement in October 1990, which outlined procedures for identifying and addressing contamination at the Site. The entirety of Cecil Field Naval Air Station was included on the NPL listing. Upon listing, the facility began identifying sites where activities involving hazardous substances may have occurred. The sites requiring further investigation were grouped into Operable Units (OU). Twelve operable units (OU) have been identified at Cecil Field many with subunits denoted as "sites." The numbering of sites within an OU is not necessarily consecutive because the sites were identified prior to the OU grouping. Operable Units identified at Cecil Field are: OU 1, Site 1—Old Landfill and Site 2—Recent Landfill; OU 2, Site 5—Oil Disposal Area Northwest and Site 17—Oil and Sludge Disposal Pit Southwest; OU 3, Site 7—Old Firefighter Training Area and Site 8—Boresite Range/Hazardous Waste Storage/Firefighting Area; OU 4, Site 10—Rubble Disposal Area; OU 5, Site 14—Blue 5 Ordnance Disposal Area, Site 15—Blue 10 Ordnance Disposal Area, Site 49—Recent Skeet Range; OU 6, Site 11—Golf Course Pesticide Disposal Area; OU 7, Site 16—AIMD Seepage Pit/NDI Holding Tank; OU 8, Site 3—Oil and Sludge Disposal Pit; OU 9, Site 36—Control Tower TCE Plume, Site 37—Hangars 13 and 14 DCE Plume, Site 57—Building 824A/Day Tank 1 Area, and Site 58—Building 312 Area; OU 10, Site 21—Golf Course Maintenance Area and Site 25—Former Transformer Storage Area; OU 11, Site 45—Former Steam Generating Plant; OU 12, Site 32—Former DRMO Area, Site 42—Former Boiler House/Steam Plant, Site 44—DRMO/Lake Fretwell Drainage Ditch; and the Old Golf Course.

This document proposes deletion of some OUs in their entirety or only certain sites within an OU. Remedial Investigations are complete for operable units (OU) 1 (sites 1 and 2), 2 (sites 5 and 17), 3 (sites 7 and 8), 4 (site 10), 5 (site 14), 6 (site 11), 7 (site 16), 8 (site 3), and 9 (sites 36/37). Records of Decisions (ROD) have been finalized for all of these operable units as well. Remedial Investigations/Feasibility Studies are still under way for OU 5 (site 15 and 49), 9 (sites 56 and 57), 10 (sites 21 and 25), and 11 (site 45). An Engineering Evaluation and Cost Analysis has been completed for OU 5 (site 49) and OU 12 (site 32). Removal actions have been completed for OU 12 (sites 42, 44, and the old golf course) which resulted in no further action decisions.

As a result of the BRAC designation in July 1993, an Environmental Baseline Survey (EBS), which identifies parcels of land for sale, lease or needing further investigation, was completed in November 1994. The 1994 EBS also provided descriptions of the environmental condition of property for buildings and open areas on the base. Environmental conditions of property can be divided into seven types: BRAC 1 or White—areas which do not require further investigation because no release or disposal of hazardous substances or petroleum products have occurred (including migration of these substances from an adjacent area); BRAC 2 or Blue—areas where only a release or disposal of petroleum products have occurred; BRAC 3 or light green—areas where a release, disposal and/or migration of hazardous substances have occurred, but at concentrations that do not require a removal or remedial action; BRAC 4 or dark green—areas where release, disposal, and/or migration of hazardous substances have occurred, and all remedial actions necessary to protect human health and the environment have taken place; BRAC 5 or yellow—areas where release, disposal, and/or migration of hazardous substances have occurred, and removal or remedial actions are underway, but all required actions have not yet been taken; BRAC 6 or red—areas where release, disposal, and/or migration of hazardous substances have occurred, but required actions have not been implemented; or BRAC 7 or gray areas that are not evaluated or require additional evaluation. The EPA concurred on 270 buildings/parcels receiving the uncontaminated designation per CERCLA section 120(h)(4)(A) in a letter dated June 20, 1995. Between 1995 and 2001, EPA has concurred on another 125 buildings/parcels as being uncontaminated following further evaluation. EPA has also evaluated another 250 buildings/parcels for BRAC and has approved their designation as BRAC 2, BRAC 3, or BRAC 4. These areas were evaluated in accordance to section 120(h) of CERCLA as amended by the Community Environmental Response Facilitation Act (CERFA) as well as the NCP. Remedial activity for areas where there has been a release or disposal of petroleum products has been deferred to the State of Florida's Petroleum Program. To date approximately 95% of the property has been transferred to the Jacksonville Port Authority and the City of Jacksonville for redevelopment and includes the property being proposed for partial deletion.

The portions of Cecil Field to be deleted from the NPL include OU 4 (site 10), OU 5 (site 14), OU 12 (sites 44, 42 and the Old Golf Course) and an additional 16,527 acres which are not associated with an operable unit that

have been evaluated as not posing a risk to human health and the environment (BRAC environmental condition of property 1, 2, 3 and 4).

The boundaries of the base are within the following coordinates: 30.3012 North Latitude, 81.9306 West Longitude; 30.3012 North Latitude, 81.9244 West Longitude; 30.3063 North Latitude, 81.8781 West Longitude; 30.2468 North Latitude, 81.8445 West Longitude; 30.1784 North Latitude, 81.8676 West Longitude; 30.1783 North Latitude, 81.8847 West Longitude. Within these coordinates are several areas which are not part of this partial deletion. The areas not included are Building 635, Building 605, Potential Source of Contamination (PSC) 51 (Current Golf Course), Operable Unit (OU) 1 (Sites 1—Old Landfill and Site 2—recent landfill), OU 2 (Site 5—Oil Disposal Area Northwest and Site 17—Oil and Sludge Disposal Pit Southwest), OU 3 (Site 7—Old Firefighter Training Area and Site 8—Boresite Range/Hazardous Waste Storage/Firefighting Area), OU 5 (Site 15—Blue 10 Ordnance Disposal Area, Site 49—Recent Skeet Range), OU 6 (Site 11—Golf Course Pesticide Disposal Area), OU 7, (Site 16—AIMD Seepage Pit/NDI Holding Tank), OU 8 (Site 3—Oil and Sludge Disposal Pit), OU 9 (Site 36—Control Tower TCE Plume, Site 37—Hangars 13 and 14 DCE Plume, Site 57—Building 824A/Day Tank 1 Area, and Site 58—Building 312 Area), OU 10 (Site 21—Golf Course Maintenance Area and Site 25—Former Transformer Storage Area), OU 11 (Site 45—Former Steam Generating Plant), and OU 12 (Site 32—Former DRMO Area). Maps identifying all areas are available for review in the partial deletion docket.

Operable Unit 4

Operable Unit 4 (site 10) occupies approximately 6.5 acres and operated as a rubble disposal area in the 1950's and 1960's. The Remedial Investigation was conducted in 1996, and did not identify any contamination which would pose a risk to human health or the environment. At OU 4 the primary source of contamination would be from demolition and rubble debris resulting from infrastructure demolition including runway and taxiway pavement. Historical records and physical debris did not indicate the presence of solvents, petroleum products, or other hazardous materials. In July 1997, a Record of Decision was signed for no further action. In June 1999, an Explanation of Significant Differences was approved which would address surface soil contamination with arsenic levels above the State of Florida's residential cleanup target levels. In October 1999, 335 tons of arsenic contaminated soil were removed from this site and taken to an approved landfill, confirmation samples were collected and the area was backfilled with clean fill. No further action is required at this site.

Operable Unit 5

Operable Unit 5 (site 14) was known as the Blue 5 Ordnance Disposal Area and consisted of 19 acres located in the Yellow Water Weapons Area. The site was used for ordnance disposal from 1967 through 1977. Disposal operations at this site consisted of detonation of excess ordnance such as fuses, 100-pound bombs, large munitions and explosive materials that normally do not burn. Typical explosives detonated included trinitrotoluene (TNT), trinitrophenylmethylnitramine and cyclotrimethylenetrinitramine. Ordnance detonation generates residual metals, primarily aluminum and lead oxides with minor amounts of unreacted or partially reacted organics. The Remedial Investigation (RI) was completed in October 1997. As part of the RI 102 soil samples were collected. Results showed that TNT is sporadically distributed at low concentrations that pose no explosive or biological hazards over the area of investigation. It was determined that the site did not pose a threat to human health or the environment. In July 1998, a Record of Decision (ROD) was signed for no further action.

Operable Unit 12

Operable Unit 12 consists of four sites, site 32, 42, 44 and the old golf course. Removal actions have been completed at all four sites, however, because contamination remains at site 32 above residential levels it is not part of this partial deletion proposal. Site 42 was known as the former boiler house/steam plant and general storehouse. The steam plant and storehouse were demolished about 40-years ago. Currently, only the foundations remain and the area is heavily vegetated. Surface and subsurface soil samples identified polycyclic aromatic hydrocarbons (PAHs), total recoverable petroleum hydrocarbons and metals (chromium, arsenic, and barium). An Action memorandum was prepared and approved in September 2000. Areas of soil where BaPEqs, TRPH, antimony, arsenic, barium and chromium concentrations were greater than the leachability soil concentration target level or three times that residential soil target cleanup level were excavated in March 2001. A total of 2,420.36 tons of soil was excavated, transported and disposed off-site. The site was backfilled with certified clean fill, graded and seeded.

Site 44 is referred to as the ditch from the Defense Reutilization and Marketing Organization (DRMO) to the active federally owned wastewater treatment building. The ditch received storm water runoff from the western edge of the east-west runways, the DRMO area and from the UNF 6 wash rack. Sampling identified lead, Polychlorinated biphenyls (PCBs), pesticides, PAHs, and inorganics (aluminum, cadmium, chromium, lead, mercury, and zinc) in excess of ecological screening criteria in the ditch as well as PCB's above residential risk levels in and around the ditch. No groundwater issues were identified. An action memorandum was prepared and approved in June 2000. Soil with PCB concentrations in excess of 1,500 µg/kg were excavated and disposed at a permitted solid waste disposal facility in September 2000. This resulted in a UCL concentration of PCBs before the Florida residential soil target level of 500 µg/kg. A total of 292 tons of soil was excavated. The site was then backfilled with certified clean fill, graded and seeded.

The old golf course operated from the early 1940's until 1946 when the current golf course was constructed. The area is now heavily wooded with a portion occupied by the former bachelor officer's quarters (BOQ). Surface and Subsurface soil sampling identified arsenic above Florida soil target cleanup levels. An action memorandum was prepared and approved in June 2000. Areas of soil where arsenic concentrations were greater than the residential cleanup levels established by statistical analyses have been excavated. During August 2000, 483-tons of contaminated soil was removed, transported and disposed off site. The site was backfilled with certified clean fill, graded and seeded.

Five-Year Review

The initial Five-Year Review for Naval Air Station Cecil Field was concurred upon by EPA in October 2000. The review focused on interim remedial actions that had been conducted at Operable Unit (OU) 2 (Sites 5 and 17), OU 7 (Site 16), OU 6 (Site 11). Discussions and recommendations were included for the long-term groundwater actions at these three operable units as well as operable units 1, 3, 4, 5, and 8 where the remedies had been in place for less than five years. The next five-year review is scheduled for October 2005.

Other Areas

Approximately 17,200 acres of Cecil Field have been evaluated for potential property transfer under the BRAC program. As was stated above, using the BRAC environmental condition of property classifications 16,496.14 acres have been determined to either be uncontaminated or BRAC category 1, areas where only a release or disposal of petroleum products have occurred or BRAC category 2; or areas where a release, disposal and/or migration of hazardous substances have occurred, but at concentrations that do not require a removal or remedial action or BRAC category 3; or areas where release, disposal, and/or migration of hazardous substances have occurred, and all remedial actions necessary to protect human health and the environment have taken place or BRAC category 4. No further action under CERCLA is required in these areas. Documentation for BRAC activities are available for public viewing at Building 907, 13357 Lake Newman Street, Cecil Commerce Center, Jacksonville, Florida 32252, Phone: 904–573–0336., which also houses the NPL Site Administrative Record.

V. Deletion Action

EPA, with the State of Florida concurrence, has determined that no responses are necessary at the 16,527 acres which comprised a major portion of the Cecil Field Naval Air Station, and no further CERCLA response is appropriate or necessary in order to provide protection of human health and the environment other than the ongoing inspection, maintenance and monitoring activities. Therefore, EPA is deleting these portions of the Site.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous substances, Hazardous waste, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Dated: January 10, 2003.

James I. Palmer, Jr.,

Regional Administrator, Region 4.

Title 40, Chapter 1 of the Code of Federal Regulations is proposed to be amended as follows:

PART 300—[AMENDED]

1. The authority citation for part 300 continues to read as follows:

Authority: 42 U.S.C. 9601–9657; 33 U.S.C. 1321(c)(2); E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp.; p.351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp.; p.193.

Appendix B—[AMENDED]

2. Table 2 of appendix B to part 300 is amended by revising the entry for Cecil Field Naval Air Station to read as follows:

Appendix B to Part 300—National Priorities List

* * * * *

TABLE 2.—FEDERAL FACILITIES SECTION

St	Site name	City/County	Notes (a)
*	*	*	*
FL	Cecil Field Naval Air Station	Jacksonville	P
*	*	*	*

(a) * * *

* * * * *

P = Sites within partial deletion(s).

[FR Doc. 03–1776 Filed 1–28–03; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 223 and 224

[I.D. 122302B]

Endangered and Threatened Wildlife and Plants; 12-Month Finding on a Petition to List North American Green Sturgeon as a Threatened or Endangered Species

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of petition finding and availability of a status review document.

SUMMARY: NMFS has completed an Endangered Species Act (ESA) status review for the North American green sturgeon (*Acipenser medirostris*). After reviewing the available scientific and commercial information, NMFS has determined that the petitioned species is comprised of two distinct population segments (DPSs) that qualify as species under the ESA, but that neither DPS warrants listing as a threatened or endangered species at this time. Because of remaining uncertainties about their population structure and status, NMFS is adding both DPSs to the agency's list of candidate species and will re-evaluate their status in 5 years provided sufficient new information becomes available indicating that a status review update is warranted.

DATES: The finding announced on this document was made on January 23, 2003.

ADDRESSES: The North American green sturgeon status review and list of references are available by submitting a request to the Assistant Regional Administrator, Protected Resources Division, Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802-4213, or the Assistant Regional Administrator, Protected Resources Division, Northwest Region, NMFS, 525 NE Oregon Street, Suite 500, Portland, OR 97232. The status review and other reference materials regarding this determination can also be obtained via the Internet at: *http://www.nmfs.noaa.gov*.

FOR FURTHER INFORMATION CONTACT: Craig Wingert, NMFS, Southwest Region (562) 980–4021, Scott Rumsey, NMFS, Northwest Region (503) 872–2791, or David O'Brien, NMFS, Office of Protected Resources (301) 713–1401.

SUPPLEMENTARY INFORMATION:

Petition Background

On June 12, 2001, NMFS received a petition from the Environmental Protection Information Center, Center for Biological Diversity, and WaterKeepers Northern California requesting that NMFS list the North American green sturgeon (*Acipenser medirostris*) as either an endangered or threatened species under the ESA, and that critical habitat be designated for the species concurrently with any listing determination.

The petition noted that the green sturgeon is a recognized species, but also indicated that until recently, geographic variation in the species had received little attention. Although Russian and Asian forms of the green sturgeon are morphologically similar to the North American form, the petitioners cited genetic evidence that demonstrates differences between the Asian and North American forms and suggesting they are two distinct species. In this petition, therefore, the use of A. medirostris referred to the North American population of the green sturgeon. The petitioners also noted that the stock structure of this species is poorly known as well, and that there may prove to be DPSs within this biological species as new data are gathered and analyzed.

The petitioners indicated that the only remaining spawning populations of the North American green sturgeon are in the Sacramento and Klamath River basins in California and possibly the Rogue River, Oregon. The petitioners also suggest that the spawning population in the Klamath River basin is larger than the population in the Sacramento River basin. Running-ripe adults and young of the year have been observed in the Rogue River, but exact spawning locations have not been confirmed. The petitioners also stated that green sturgeon apparently no longer spawn in the Eel River, the South Fork Trinity River, and the San Joaquin River in California. The petitioners also cited recent declines in green sturgeon in the Umpqua River in Oregon and the Fraser River in Canada. The petitioners cite Musick et al. (2000) as indicating that each of the known or suspected spawning populations of green sturgeon presently contain a few hundred mature females at most.

The petitioners concluded that the North American green sturgeon is at a high risk of extinction because of the reduced number and size of spawning populations, ongoing threats to the species from the loss and/or degradation of habitat particularly in those river systems where they are known or thought to spawn, and continuing impacts to the species from harvest in sport fisheries or as bycatch in other fisheries (e.g. commercial white sturgeon fishery). Specific concerns regarding habitat loss and degradation cited by the petitioners include the construction of dams and operation of large scale water projects in the Sacramento, Klamath River and other coastal systems, and logging, agriculture, mining, road construction and urban development in coastal watersheds. With respect to fisheries impacts on green sturgeon, the petitioners cited fisheries that occur in coastal Washington and the Columbia River which focus on white sturgeon or salmon but take green sturgeon as a bycatch. Of particular concern is the potential bycatch of pre-reproductive individuals in these fisheries, particularly if this harvest is supported by the spawning populations that exist in the Klamath and Sacramento River basins.

NMFS evaluated the information provided or cited in the petition and also reviewed other information readily available to agency scientists on issues related to the distribution, abundance, and threats to the petitioned species. On December 14, 2001, NMFS published a 90-day finding (66 FR 64793) that the petition presented substantial information that listing North American green sturgeon under the ESA may be warranted, and announced the initiation of a review of the biological status of the species.

To ensure that the status review was complete and based on the best available scientific and commercial data, the 90–day finding also requested information and comments from the public concerning the status of North American green sturgeon (66 FR 64793). In addition, NMFS specifically requested information and comments on green sturgeon from State and Tribal co-managers in California, Oregon, and Washington. NMFS requested information on: (1) biological or other relevant data that may help identify DPSs of this species (e.g., age structure, genetics, migratory patterns, morphology, etc.); (2) the range, distribution, and abundance of this species, including information on the spawning populations of the species; (3) current or planned activities and their possible impact on this species (e.g., harvest impacts, habitat changes or alterations, etc.); and (4) efforts being made to protect this species in California, Oregon, Washington and Canada. NMFS also requested quantitative evaluations describing the quality and extent of freshwater, estuarine and marine habitats for this species, as well as information on areas that may qualify as critical habitat in California, Oregon, and Washington. For areas potentially qualifying as critical habitat, NMFS requested information describing (1) the activities that affect the area or could be affected by the designation, and (2) the economic costs and benefits of additional requirements of management measures likely to result from the designation.

NMFS assembled a Biological Review Team (BRT) comprised of staff from the agency's Southwest Fisheries Science Center, Northwest Fisheries Science Center, and the U.S. Geological Survey. The BRT has reviewed the best available scientific and commercial information pertaining to green sturgeon from California through the Pacific Northwest and prepared a status review for the species (NMFS, 2002). This document summarizes the principal results of the green sturgeon status review. Copies of the BRT status review report and other documents relevant to this review are available online. Paper copies are available upon request (see **ADDRESSES**).

Biology and Life History of Green Sturgeon

The green sturgeon (*A. medirostris*) is the most widely distributed member of the sturgeon family Acipenseridae. Like all sturgeon species it is anadromous, but it is also the most marine oriented of the sturgeon species. The only recently-documented green sturgeon spawning locations are in the Klamath, Sacramento, and Rogue rivers along the west coast of North America. However, green sturgeon are known to range in nearshore marine waters from Mexico to the Bering Sea and are commonly observed in bays and estuaries along the coast with particularly large concentrations entering the Columbia River estuary, Willapa Bay, and Grays Harbor during the late summer (Moyle *et al.*, 1992). The reasons for these concentrations are unclear, but do not appear to be related to spawning or feeding.

Sturgeons in general have a life history that is susceptible to overharvesting and a number of species have some kind of protection or special status. The green sturgeon has a status designation of Special Concern in Canada (Houston 1988) because it has characteristics that make it particularly sensitive to human activities or natural events. Sakhalin sturgeon (*A. mikadoi*), a species that was at one time synonymized with green sturgeon, is extirpated throughout Japan, Korea, and China. In Russia the species is reduced in range to the Tumnin River where there is a hatchery. In the United States, there are five sturgeon species listed as threatened or endangered under the ESA: Shortnose sturgeon (*A. brevirostrum*); pallid sturgeon (*Scaphirhynchus albus*); Gulf sturgeon (*A. oxyrinchus*); white sturgeon, Kootenai River population (*A. transmontanus*); and Alabama sturgeon (*S. suttkusi*). More detailed information on the geographic distribution, spawning, early life history, ocean residence, age and growth, and feeding

habits of green sturgeon are presented below.

Distribution. San Francisco Bay and its associated river systems contain the southern-most spawning population of green sturgeon. White sturgeon supports a large fishery in this area, particularly in San Pablo Bay, which has been extensively studied by California Department of Fish and Game (CDFG) since the 1940's. While green sturgeon are not common, they are collected incidentally in a white sturgeon trammel net monitoring program during most years in numbers ranging from 5 to 110 fish. Green sturgeon juveniles are found throughout the Delta and San Francisco Bay.

Green sturgeon adults and juveniles occur throughout the upper Sacramento River. Green sturgeon are reported to spawn in the Feather River, but this has not been substantiated. Green sturgeon spawning occurs predominately in the upper Sacramento River. Juvenile sturgeon have been taken annually in trapping operations at the RBDD (1995–2001) and at the Glenn-Colusa Irrigation District pumping facility as part of a monitoring program (1986–2001). All larval and juvenile sturgeon caught at these locations are assumed to be green sturgeon because juveniles collected at these sites and grown to identifiable size were green sturgeon. There is no documentation of green sturgeon spawning in the San Joaquin River at present, but there may have been spawning there before construction of large-scale hydropower and irrigation development. Young green sturgeon have been taken occasionally in the Santa Clara Shoal area in the San Joaquin delta but these fish likely originated from elsewhere, most likely the Sacramento River (CDFG 2002).

Green sturgeon also occur in the coastal waters of the Pacific Ocean off California and in coastal rivers. Small numbers have been taken in both Tomales Bay and Bodega Bay and a single fish has been taken from the Noyo River. They are regularly taken in small numbers in Humboldt Bay, and have been caught in coastal waters and in estuaries from Arcata Bay to the Oregon border. Small numbers of both adult and juvenile green sturgeon have been observed in the Eel River.

The largest spawning population of green sturgeon is thought to occur in the Klamath River on the north coast of California, but there are no direct estimates of green sturgeon abundance. Adults are captured in the salmon gill net fisheries conducted by the Yurok and Hoopa Indian tribes and adults occur upstream in the Klamath to a natural migration barrier at Ishi Pishi Falls (rkm 107). Juvenile green sturgeon are captured each year on the Klamath River and have also been found in the lower portion of the Salmon River which is a tributary to the Klamath River. Adults occur in the Trinity River, a major tributary to the Klamath River, to Gray's Falls (rkm 69), but spawning can only be confirmed up to the Willow Creek trap (rkm 40). Moyle et al. (1992) reported no evidence of spawning in the South Fork of the Trinity River.

The Rogue River in Oregon was recently confirmed as a third spawning area for green sturgeon (Erickson *et al.*, 2001, Rien *et al.*, 2001). Based on tracking of radio-tagged adults captured in the estuary, extended holding sites were identified that have been associated with spawning in other species of sturgeon. Juvenile fish are taken in beach seining efforts in the estuary (Rien *et al.*, 2001). Green sturgeon adults are taken in almost all of the Oregon coastal estuaries from the Chetco River to Nehalem Bay (EPIC *et al.*, 2001). During white sturgeon tagging projects in Coos Bay (Coos River), Winchester Bay (Umpqua River), Yaquina Bay (Yaquina River), and Tillamook Bay (Tillamook River) green sturgeon have been captured and tagged; however, no recoveries have been reported (ODFW 2002).

The Columbia River has supported a large white sturgeon fishery for many years in which green sturgeon are taken as bycatch. In the mid 1930's before Bonneville dam, green sturgeon were found up to the Cascade Rapids. Green sturgeon are presently found up river to the Bonneville Dam (rkm 235), but are predominately found in the lower 60 rkm. Tagging studies indicate a substantial exchange of fish between the Columbia River and Willapa Bay (WDFW 2002a). Willapa Bay, along with the Columbia River and Grays Harbor, is one of the estuaries where green sturgeon concentrate in summer. Generally, green sturgeon are more abundant than white sturgeon in Willapa Bay (Emmett *et al.*, 1991).

Grays Harbor in Washington is the northernmost estuary with green sturgeon summer concentrations and there are both tribal and commercial fisheries that take green sturgeon. There are no records of juveniles from Grays Harbor. Green sturgeon occur sporadically in small numbers throughout coastal Washington (WDFW 2002a) and are routinely encountered in the coastal Washington trawl fishery as minor incidental catch (WDFW 2002b). Occasionally, green sturgeon are caught in small coastal bays and estuaries during tribal salmon fisheries. A few green sturgeon are recovered in Puget Sound as incidental harvest (mostly trawl fisheries).

Green sturgeon occur in small numbers along the western coast of Vancouver Island (Houston 1988) and the Skeena River. Historically, green sturgeon were not uncommon in the Fraser River (EPIC et al., 2001). Since the collapse of the Fraser River white sturgeon fishery, however, green sturgeon are only taken there occasionally.

Spawning. Green sturgeon are thought to spawn every 3 to 5 years (Tracy 1990). Their spawning period is March to July, with a peak in mid-April to mid-June (Moyle *et al.*, 1992). Mature males range from 139–199 cm in fork length (FL) and 15 to 30 years of age (VanEenennaam 2002). Mature females range from 157–223 cm FL and 17 to 40 years of age. Most of the spawning males are 160–170 cm FL and 17–18 years old, while most of the spawning females are 182–192 cm FL and 27–28 years old.

Green sturgeon spawning occurs in deep pools or "holes" in large, turbulent river mainstems (Moyle *et al.*, 1992). Specific spawning habitat preferences are likely large cobble substrates, but may range from clean sand to bedrock substrates as well. Eggs are likely broadcast over the large cobble substrates where they settle into the space between the cobble. Green sturgeon females produce 60,000–140,000 eggs (Moyle *et al.*, 1992) and they are the largest eggs (diameter 4.34 mm) of any sturgeon species (Cech *et al.*, 2000). Temperatures above 20 C are lethal to green sturgeon embryos (Cech *et al.*, 2000).

Green sturgeon spawning has only been documented in the Klamath, Sacramento (Moyle *et al.*, 1992, CDFG 2002) and Rogue (Erickson *et al.*, 2001, Rien *et al.*, 2001) rivers in recent times. The Klamath Basin is thought to support the largest green sturgeon spawning population (Moyle *et al.*, 1992). In the Klamath River, breaching and other suspected sturgeon courtship behaviors have been observed in "The Sturgeon Hole" upstream of Orleans (rkm 96). Larvae and juveniles are caught in the Big Bar trap (rkm 80) on the Klamath and in the Willow Creek trap (rkm 40) on the Trinity. Numbers at both traps have a peak in July (Healey 1973).

In the Sacramento River, green sturgeon spawn in late spring and early summer above Hamilton City and perhaps as far upstream as Keswick Dam (CDFG 2002). The opening of the Red Bluff Diversion Dam (RBDD) gates to improve winter-run chinook upstream and downstream passage is believed to have provided a substantial

increase in spawning habitat for green sturgeon in the upper Sacramento River. The gates were first opened in 1986 and the current pattern of operation began in 1992–93. Juvenile green sturgeon are taken in traps at the RBDD and the Glenn Colusa Irrigation District's (GCID) facility in Hamilton City, primarily in the months of May through August. Peak counts occur in the months of June and July.

Green sturgeon spawning has been recently documented in the Rogue River (Erickson *et al.*, 2001, Rien *et al.*, 2001). Adult fish were radio-tagged in the estuary during May–June 2000. After release, tagged ripe fish moved up the Rogue River to spawn, while non-reproductive fish remained close to the tagging site. Spawning fish spent more than 6 months in freshwater and traveled as far as rkm 39. All tagged individuals emigrated from freshwater during fall and winter when water temperatures fell below 10 C. Juvenile green sturgeon have been taken in beach seines in the Rogue River estuary from April until the end of November (Rien *et al.*, 2001).

Apparently, green sturgeon no longer spawn in some river systems where they once did (CDFG 2002). Juvenile green sturgeon were captured in the Eel River in traps at Rio Dell (rkm 20) and Dos Rios (rkm 191) during the period from 1967 to 1970 (Puckett 1976). Single or small numbers of adult green sturgeon are also observed periodically in the Eel River. Similarly, green sturgeon are reported to have spawned in the South Fork Trinity River, but apparently no longer do so due to extensive sedimentation from the 1964 flood (Moyle *et al.*, 1992). The validity of reports of green sturgeon spawning in the Umpqua River is unclear (Lauman *et al.*, 1972) and the possibility of current spawning activity is being investigated (ODFW 2002).

Early Life History. Green sturgeon larvae first feed at 10 days post hatch, and metamorphosis to the juvenile stage is complete at 45 days. Larvae grow fast, reaching a length of 66 mm and a weight of 1.8 g in 3 weeks of exogenous feeding. Juveniles averaged 29 mm at the peak of occurrence in June-July at the RBDD fish trap and 36 mm at their peak abundance in July at the GCID trap. These growth rates are consistent with rapid juvenile growth to 300 mm in 1 year and to over 600 mm within 2–3 years for the Klamath River (Nakamoto *et al.*, 1995). Juveniles appear to spend 1 to 3 years in freshwater before they enter the ocean (Nakamoto *et al.*, 1995).

Ocean Residence. Green sturgeon disperse widely in the ocean after their out-migration from freshwater (Moyle *et al.*, 1992). Tagged green sturgeon from the Sacramento and Columbia Rivers are primarily captured to the north in coastal and estuarine waters, with some fish tagged in the Columbia being recaptured as far north as British Columbia (WDFW 2002a). While there is some bias associated with recovery of tagged fish through commercial fishing, the pattern of a northern migration is supported by the large concentration of green sturgeon in the Columbia River estuary, Willapa Bay, and Grays Harbor which peaks in August. These fish tend to be immature; however, mature fish and at least one ripe fish have been found in the lower Columbia River (WDFW 2002a). Genetic evidence suggests that Columbia River green sturgeon are a mixture of fish from at least the Sacramento, Klamath, and Rogue Rivers (Israel *et al.*, 2002). The reasons for the concentration of green sturgeon in Oregon and Washington estuaries during the summer are unknown as there is no known spawning in these rivers and all stomachs examined to date have been empty (Beamesderfer 2000).

Age and Growth. Green sturgeon is a long-lived, slow-growing species as are all sturgeon species (Nakamoto *et al.*, 1995, Farr *et al.*, 2002). Size-at-age is consistently smaller for fish from the Klamath River (Nakamoto *et al.*, 1995) in comparison to fish from Oregon until around age 25, but thereafter the pattern is reversed. This could be the result of actual differences in growth or in ageing techniques. The asymptotic length for Klamath fish of 218 cm is close to the maximum observed size of 230 cm reported by Moyle *et al.* (1992), but substantially larger than for fish in Oregon (females 182 cm, males 168 cm).

Feeding. Little is known about green sturgeon feeding. Adults in the Sacramento-San Joaquin delta feed on benthic invertebrates including shrimp, mollusks, amphipods, and even small fish (Moyle *et al.*, 1992). Juveniles in the Sacramento-San Joaquin Delta feed on opossum shrimp and amphipods (Radtke 1966). One hundred and twenty-one green sturgeon stomach samples from the Columbia River gill-net fishery were empty with the exception of one fish, while all white sturgeon stomachs contained digested material (ODFW 2002).

Consideration as a "Species" Under the ESA

To qualify for listing as a threatened or endangered species the petitioned North American green sturgeon must be considered a species under the ESA. Section 3(16) of the ESA (16 U.S.C. 1532(16)) expands the definition of a "species" under the ESA to include any subspecies or any "distinct population segment (DPS) of any species of vertebrate fish or wildlife which interbreeds when mature." On February 7, 1996, the U.S. Fish and Wildlife Service and NMFS adopted a policy to clarify their interpretation of the phrase "distinct population segment of any species of vertebrate fish or wildlife" for purposes of listing, delisting, and reclassifying species under the ESA (61 FR 4722). This joint policy identifies two elements that must be considered when making DPS determinations: (1) The discreteness of the population segment in relation to the remainder of the species (or subspecies) to which it belongs; and (2) the significance of the population segment to the species or subspecies to which it belongs.

According to the joint policy, a population segment may be considered discrete if it satisfies either one of the following conditions: (1) It is markedly separated from other populations of the same taxon as a consequence of physical, physiological, ecological, or behavioral factors; or (2) it is delimited by international governmental boundaries across which there is a significant difference in exploitation control, habitat management, or conservation status. Quantitative measures of genetic or morphological discontinuity may provide evidence of this separation.

The joint policy states that the following are some of the considerations that may be used when determining the significance of a population segment to the taxon to which it belongs: (1) persistence of the discrete population in an unusual or unique ecological setting for the taxon; (2) evidence that the loss of the discrete population segment would cause a significant gap in the taxon's range; (3) evidence that the discrete population segment represents the only surviving natural occurrence of a taxon that may be more abundant elsewhere; or (4) evidence that the discrete population segment has marked genetic differences from other populations of the species.

Species Status and DPS Structure

Species Status. Green sturgeon that occur within U.S. and Canadian waters are a geographically isolated and genetically distinct species. The North American form was initially considered conspecific with the previously described Asian species, Sakhalin sturgeon (*A. mikadoi*), and the two forms were synonymized (Berg, 1948). More recent molecular data on three mitochondrial genes, however, show great differences between the North

American and Asian forms of green sturgeon (Birstein and DeSalle, 1998), and consequently, these two forms are now considered separate species.

The petitioned action requested that North American green sturgeon be listed as a threatened or endangered species, but the petitioners also recognized that this species could be comprised of multiple DPSs. For this reason and because other sturgeon species have been divided into multiple DPSs, NMFS' BRT assessed the best available scientific information concerning the population structure of green sturgeon in North America in an effort to determine whether or not the biological species was comprised of one or more DPSs. Based on a review of the best available scientific information, NMFS has determined that North American green sturgeon are comprised of two populations that are both discrete and significant as defined in the DPS policy and are therefore DPSs. One is a northern DPS consisting of coastal populations ranging from the Eel River northward. The second is a southern DPS that includes any coastal or central valley populations south of the Eel River, with the only known population being in the Sacramento River. These DPSs and the information used to characterize them are summarized below, and discussed in greater detail in the green sturgeon status review (NMFS 2002).

Discreteness: Genetic data were analyzed from 66 green sturgeon sampled from the Klamath River in 1998, 46 fish sampled from San Pablo Bay in 2001, 15 sampled from the Rogue River in 2000, and 29 sampled from the Columbia River estuary in 1995. The analysis on this genetic data, while preliminary, suggest that green sturgeon from the Klamath River are genetically distinct from fish in San Pablo Bay, and that green sturgeon from the Klamath and Rogue River are similar to each other (Israel *et al.*, 2002). Green sturgeon from the Columbia River appear to be a mixture of fish from the San Pablo Bay, Klamath, and Rogue populations. Israel *et al.* (2002) suggest that the genetic data indicate that spawning could be occurring in some other unknown locations; however, this preliminary conclusion could change if larger samples were analyzed or if samples were collected from multiple years. While preliminary, the best available genetic data indicates that there are substantial genetic differences at least between the geographically separated Klamath River and San Pablo Bay populations of green sturgeon.

Sturgeon species exhibit fidelity to their spawning sites so they have a general pattern of multiple DPSs. Sturgeon are known to have strong homing capabilities which leads to high spawning site fidelity (Bemis and Kynard, 1997). Because preliminary genetic data indicate that the Sacramento River population is different from the Klamath and Rogue River populations, and because sturgeon tend to exhibit high spawning site fidelity, NMFS has determined that the two green sturgeon populations are "discrete" as defined in the DPS policy.

Significance: The genetic information described above indicates that the northen and southern populations are "significant" as defined in the DPS policy. In addition to the genetic information, there is other information indicating that these DPSs are significant. First, each DPS occupies unusual or unique ecological settings for the species as a whole. This is evidenced by the fact that spawning populations of each DPS are found in separate and distinct Environmental Protection Agency ecoregions that have been identified based on soil content, topography, climate, potential vegetation, and land use (Omernik 1987). The geographic range of the northern DPS occurs largely within the Coastal Range ecoregion which extends from the Olympic Peninsula southward through the Coast Range and Klamath Mountains to the San Francisco Bay area. In contrast, the southern DPS occurs largely within the Central California Valley ecoregion which includes the Sacramento and San Joaquin Rivers. Second, the loss of either of these DPSs would result in a significant gap in the range of the species given the known distribution of spawning populations.

The identification of two DPSs and the geographic separation of the two DPSs at the Eel River should be considered provisional and subject to revision as more genetic and life history information is gathered on green sturgeon. Although NMFS believes that the green sturgeon is comprised of at least these two DPSs, additional DPSs may be delineated when more genetic and life history information is collected and analyzed. Similarly, the Eel River boundary between these two DPSs is based largely on geography and may be modified based on new information.

Status of Green Sturgeon DPSs

In assessing the status of the northern and southern DPSs, NMFS evaluated the available literature, information obtained in response to the 90-day finding request for information, and both qualitative and quantitative information provided by state and Tribal co-managers from California, Oregon, and Washington. The quantitative information was primarily time series of harvest (catch and catch-per-unit-effort (CPUE)) data from fishery agencies in Oregon and Washington, and from Tribal fishery managers in the Klamath River basin.

Northern Green Sturgeon DPS

Information relevant to assessing the abundance and/or population trends of green sturgeon in this DPS is limited. The status review for green sturgeon examined fisheries harvest data from the Yurok tribal fishery in the Klamath River and the commercial sturgeon fishery in the Columbia River in an effort to assess trends in abundance over time and population status (NMFS 2002). The time series of catch and CPUE data for the Yurok tribal fishery was considered the most representative available population measure for green sturgeon in general and this DPS in particular because the data are based on a spawning population in the DPS rather than a summer concentration of non-spawning fish from a mixture of spawning populations such as is the case in the Columbia River. Both data series are fishery-dependent and suffer from problems associated with changing regulations and effort levels.

Catch and CPUE data are available for the Yurok tribal fishery for the period 1984–2001, and it is the data set least impacted by regulatory changes. A qualitative examination of the data suggests that catch has increased slightly over time and that CPUE is stable or has slightly decreased over time. However, these trends are not statistically significant. The length-frequency data of harvested green sturgeon was also examined to determine if there was any evidence that harvest was affecting the size structure of the population. Although the sample sizes were small, there was no evidence of any trend in the available data suggesting that larger fish were being removed from the population or that the size structure of the population has been altered by this or other fisheries.

The Columbia River commercial harvest data represents the longest available green sturgeon time series, but it is difficult to interpret since the harvest occurs on a summer concentration of non-spawning fish that are thought to originate from multiple spawning populations. Regulations were significantly modified in 1993, so the analysis of trends was only conducted on catch data from 1960–1992. Catch over this time period may have been affected not only by changes in regulations and effort but also by

unknown factors controlling the summer concentration of green sturgeon in the Columbia River. The catch data were analyzed to determine if there were any trends in data and if they were significant. Length frequency of the catch data was also examined over the period of 1985–2001 to see if the fishery was affecting the size structure of fish that concentrate in the Columbia River. Analysis of the data suggests that catch in the Columbia River has increased slightly over time; however, the trend was not statistically significant. In contrast, Rein (2002b) analyzed CPUE data for green sturgeon in the lower Columbia River commercial fishery over the same period of time (1981–1993) and found there was a statistically significant increasing trend. There was little evidence of a trend in the length-frequency distributions of catch over time. However, there does appear to have been an increase in the average length of green sturgeon taken in the fishery over the past few years, possibly suggesting that a strong year class is moving through the fishery.

The status review identified potential risk factors for the northern green sturgeon DPS including harvest bycatch in several fisheries, the concentration of spawning in the Klamath River, the loss of historical spawning habitat, and the lack of adequate abundance and population trend data (NMFS, 2002). While there is some information relevant to harvest bycatch, limited information is available about the distribution of historical and current spawning activity, and the loss of spawning habitat. The lack of adequate abundance and population trend data is of concern because it is difficult to assess the status of the population without such data. As a result, there is considerable uncertainty regarding the extent to which these factors affect the overall level of risk faced by this DPS.

The Klamath River is thought to support most of the total spawning population in this DPS and there is concern that this could increase the vulnerability of the DPS to catastrophic events. However, the extent to which spawning is concentrated in the Klamath River is not well documented and there is limited information on the extent and magnitude of spawning elsewhere in the DPS. Recent information, for example, has documented spawning in the Rogue River (Rein *et al.*, 2001) and the possibility of spawning in the Umpqua River is also being investigated (ODFW 2002). Further research and monitoring in these and other coastal watersheds may provide new information about the magnitude and geographical extent of current spawning within this DPS and the importance of the spawning population in the Klamath River. Historical accounts, and what little data are available, suggest there has been a loss of spawning habitat in the Eel River and South Fork Trinity Rivers due to anthropogenic changes and natural events that increased sedimentation (CDFG, 2002). At the same time, it is uncertain to what extent the loss or reduction of spawning in the Eel and South Fork Trinity Rivers has affected this DPS or the extent to which it places the DPS at greater risk since there is virtually no information documenting the magnitude and extent of spawning that historically occurred in either system. Although spawning apparently no longer occurs in the South Fork Trinity, there is recent evidence of limited green sturgeon spawning in the Eel River based on the collection of both adult and juvenile fish in the mid 1990s (CDFG, 2002).

The status review examined the available harvest bycatch data in an effort to assess the effects of harvest on green sturgeon in this DPS and in general, but concluded it was not possible to directly assess harvest impacts because of two factors. First, most of the harvest occurs on summer concentrations of fish in the Columbia River and coastal Washington estuaries that are comprised of fish from a mixture of spawning populations and both DPSs. Second, there is no estimate of the size for any of the known spawning populations that occur in either DPS. Although direct assessment of harvest impacts on this DPS may not be possible with the available data, a qualitative assessment of green sturgeon bycatch data for various fisheries since the mid 1980s suggests that the impacts to green sturgeon from harvest bycatch have been greatly reduced in recent years.

Harvest of green sturgeon occurs almost entirely as bycatch in commercial fisheries for white sturgeon in Oregon and Washington, as well as a variety of smaller tribal fisheries (*e.g.* Klamath River tribal fisheries). Green sturgeon harvest data for these fisheries were summarized in the status review for the years 1985–2001, and over this period the vast majority of the total harvest was taken in the Columbia River sport and commercial fisheries (51 percent) and the various Washington coastal fisheries (28 percent). The remainder of the total harvest occurred in the coastal Oregon fisheries and the Klamath River tribal fisheries. Since the mid 1980s, the total annual harvest of green sturgeon in all of these fisheries has declined nearly six fold from approximately 6,870 fish/year in 1985–1989 to approximately 1,190 fish/year in 1991–2001 (Table 1 in NMFS 2002). In 2001, the total harvest in all fisheries declined to less than 800 fish, with approximately equal numbers of fish taken in the Columbia River, coastal Washington, and Klamath River fisheries. This overall decline in green sturgeon harvest has been driven principally by a major reduction in the harvest from the Columbia River and Washington coastal fisheries since the mid 1990s.

The average length of green sturgeon caught in the Columbia River commercial fishery has been increasing since 1990, with the largest average size of fish occurring in the last five years. This trend may indicate a larger average size of fish due to reduced exploitation, a strong year-class moving through the fishery, or a reduction of small fish due to reduced or failed recruitment.

Much of the harvest reduction in recent years is due to increasingly restrictive regulations in the Columbia River fisheries (Appendix 1, Tables 1 and 2 in NMFS 2002). The Columbia River fishery is currently managed through a joint Washington and Oregon accord to manage white sturgeon. Probably the most important regulation for protecting sturgeon was the introduction of slot limits starting in 1950 for both the sport and commercial fisheries. Beginning in 1950 and continuing through 1997–98 when the slot limits were last changed, they have become increasingly restrictive and protective of both green and white sturgeon. The Columbia River sturgeon fishery is currently operating under a March 2000 agreement covering a three-year period through 2002. The green sturgeon regulations under this agreement include: a recreational size limit of 42–60 inches (107–152 cm) with one fish per day and 10 fish per year bag limits, with barbless hooks required; a commercial size limit of 48–66 inches (122–168 cm); and no green sturgeon-only commercial seasons (green sturgeon are only taken as bycatch during white sturgeon seasons, provided the green sturgeon catch does not exceed recent harvest levels). Commercial bycatch of green sturgeon occurs predominantly during the early fall (August) salmon and white sturgeon fisheries, when the green sturgeon have migrated into the estuary and lower mainstem of the Columbia River.

In 2001, sturgeon retention was prohibited during the early-fall target chinook commercial season after the preseason catch expectation for white sturgeon was exceeded in early August. Sturgeon retention was prohibited in

mainstem commercial fisheries through the remainder of the fall fishing period. White sturgeon population estimates for 2002 did not increase as expected, and in December of 2001 the Compact adopted reduced catch guidelines for 2002 as a management buffer and to compensate for catch overages that occurred in 2001. In 2002, the Compact prohibited retention of green sturgeon during August fisheries and allowed retention during September and October fisheries. This management action provided flexibility for shaping September and October salmon fisheries and allowed the commercial fishery access to their allocation of white sturgeon without any target sturgeon seasons, further minimizing green sturgeon bycatch. The Compact will meet in January 2003 to review its sturgeon fishery management agreement and it is expected that continued efforts will be taken to minimize green sturgeon bycatch.

Ocean and coastal estuarine fisheries in Washington and Oregon accounted for approximately 28 percent and 8 percent, respectively, of the total green sturgeon harvest bycatch in the period between 1985–2001. Since the mid to late 1990's, however, the overall catch of green sturgeon in these fisheries has also declined substantially, most likely due to changes in fishing regulations. White and green sturgeon fisheries in Oregon coastal areas are managed under size and bag limit regulations consistent with the lower Columbia River regulations.

Non-tribal harvest impacts on green sturgeon in coastal rivers of California are considered to be minimal (CDFG, 2002). Commercial fishing for green sturgeon (and white sturgeon) has been prohibited throughout the state since the early 1900s. Recreational fishing for green sturgeon has been prohibited since the early 1990s in virtually all coastal watersheds where green sturgeon are known to occur from the Eel River northward to the Oregon border, including the Klamath-Trinity basin. The Klamath River tribal (Yurok and Hoopa Tribes) fisheries accounted for about 8 percent of the total green sturgeon harvest that occurred between 1985–2001, with an average catch of approximately 260 fish per year. These Tribal fisheries do impact a spawning population in the Klamath River, but the available data for the Yurok Tribal fishery show that both catch and CPUE have been very stable since 1985, with no evidence of a decline. There is no evidence from the available length-frequency data for harvested green sturgeon that larger fish have been removed from the population or that the size structure of the population has been altered by this or other fisheries.

Conclusion: The available population information for green sturgeon in the northern DPS does not provide any evidence that the abundance of green sturgeon in this DPS is declining. In particular, the fishery-dependent harvest data from the Yurok tribal fishery show no evidence that catch or CPUE are declining, or that large fish are being removed from that spawning population. Despite this information, NMFS' BRT was uncertain about the status of green sturgeon in this DPS because no direct fisheries-independent population estimates were available. For this reason, the BRT believes it is essential that immediate efforts be undertaken to implement direct monitoring of green sturgeon in this DPS. There are some risk factors of potential concern for this DPS, most notably bycatch harvest in various fisheries; however, there is uncertainty about the overall level of risk facing this DPS. In the case of harvest bycatch for which there is the most information, it is not possible to directly assess the impact of harvest on green sturgeon in this DPS. Nevertheless, the available data shows that overall green sturgeon harvest has declined substantially since the mid 1980s due to increasingly restrictive harvest management measures, suggesting that risk from harvest has been also reduced. Although the risk to green sturgeon from harvest bycatch may be declining, NMFS believes it may be prudent for fisheries managers to continue recent conservative management measures as well as consider additional harvest protections until population monitoring information can be obtained to assess the status of this DPS with greater certainty. Based on a review of the best available information, NMFS concludes that the northern green sturgeon DPS is not presently in danger of extinction nor is it likely to become so in the foreseeable future.

Southern Green Sturgeon DPS

The only data relevant to assessing the abundance and/or population trends of green sturgeon in this DPS are estimates of green sturgeon abundance made by the California Department of Fish and Game in San Pablo Bay incidental to monitoring of white sturgeon (CDFG, 2002). Tagging experiments have been conducted irregularly since 1954, but since 1990 tagging has been conducted for two years consecutively and then the next two are skipped. Over this period, a total of 536 green sturgeon were captured and 233 fish were tagged. The green sturgeon estimate is obtained by multiplying the ratio of legal-size (earlier minimum slot limits of 102 cm) green sturgeon to legal-size white sturgeon caught in the tagging program by the legal-size white sturgeon population estimate. Although this is a fishery-independent estimate of green sturgeon abundance, there are a number of problems associated with these estimates; the most important being the assumption that both species are equally vulnerable to the sampling gear. Since green sturgeon concentrate in estuaries only during the summer and white sturgeon remain in estuaries year round, the temporal and spatial vulnerabilities of the two species are likely different. In addition, the estimate is based on a summer concentration of fish rather than a spawning population, and varying levels of tag recovery effort.

The status review examined the available time series of these population estimates qualitatively and also looked for statistically significant trends in the data. A qualitative examination of the time series suggests abundance has been stable, except for a substantial increase in the 2001 abundance estimate. The 2001 abundance estimate was 8,421 fish which is approximately four times higher than any previous estimate. Estimates for the years prior to 2001 range from several hundred to approximately 2,000 fish (*see* Figure 11 and Table 2 in NMFS 2002). The data suggest an increasing trend in green sturgeon abundance, but the increase was not statistically significant even with the large increase in the 2001 estimate. Although the sample sizes are small, the average size of green sturgeon tagged as part of this population estimation program in San Pablo was generally stable and showed no apparent trend over time.

NMFS' BRT identified several potential threats or risk factors for the southern green sturgeon DPS (NMFS, 2002). These include: harvest bycatch concerns; the concentration of spawning in the Sacramento River and the apparent small population size; loss of spawning habitat, lack of adequate population abundance data; potentially lethal water temperatures for larval green sturgeon; entrainment by water projects in the central valley; and the adverse effects of toxic materials and exotic species. Although the BRT expressed concerns about these potential risk factors, there is considerable uncertainty regarding their significance or effects on the southern green sturgeon DPS.

Spawning in this DPS does appear to be concentrated in the upper Sacramento River at present. Since the

early 1990s it appears that green sturgeon have expanded into additional spawning habitat in the upper Sacramento above Hamilton City due to the re-operation of the RBDD (CDFG, 2002). There is uncertainty about the abundance of green sturgeon and the size of the spawning population in the Sacramento River. The CDFG population estimates for San Pablo Bay, which presumably include Sacramento River spawners, are in the range of hundreds to thousands of fish, but there are several problems with the estimates that make them difficult to interpret or rely upon. Similarly, there are no historical estimates of spawning population abundance available to make an assessment of the extent to which spawning populations have declined. The lack of population monitoring data is clearly problematic, but it is not a risk factor directly affecting the status of the DPS.

According to the CDFG, there is no evidence that green sturgeon historically spawned in the San Joaquin River and juveniles that have been found in the lower San Joaquin River are most likely from the spawning population in the Sacramento River (CDFG, 2002). It is uncertain whether green sturgeon ever spawned in the upper Sacramento River above Shasta Dam, but CDFG has speculated that they may have based on the apparent expansion of spawning above Hamilton City in the early 1990s when RBDD was re-operated (CDFG, 2002). The most likely loss of historical spawning habitat for green sturgeon in the central valley may be in the Feather River as a result dam construction and warm water releases (CDFG, 2002), but anecdotal evidence suggests that adult green sturgeon still occur there in high flow years, presumably for spawning. Based on this information, it is uncertain how much green sturgeon spawning habitat historically occurred in the central valley or how much has been lost, and whether or not lost spawning habitat is a significant risk factor for this DPS.

The state and Federal pumping facilities in the Sacramento-San Joaquin Delta export water from the Delta and in the process entrain many fish species including juvenile green sturgeon which are salvaged and returned to the Delta. Expanded estimates of salvage are made annually by CDFG and these data have been collected and compiled since 1968 at the state facility and since 1981 at the Federal facility. The status review qualitatively reviewed the expanded salvage data for the available time series to determine whether there were any trends. The data series indicates that salvage (an indicator of entrainment) has varied substantially over time, but was much higher prior to the mid-1980s. From the mid-1980s to present, salvage declined substantially at both facilities and has remained very low thereafter. Limited length-frequency data indicates that only juvenile green sturgeon were salvaged at the two facilities. Interpretation of these data is difficult since there have been problems with species identification (distinguishing white and green sturgeon) and the expanded salvage estimates are based on actual counts from brief sampling periods (CDFG 2002). Given the low level of entrainment and salvage that has occurred since the mid-1980s and the problems with interpreting the available data, it is uncertain to what extent water exports and the associated entrainment of green sturgeon is a risk factor for this DPS. In the case of white sturgeon, however, year class strength is related to freshwater flows in late winter and spring rather than Delta exports (CDFG 2002). If this is the case for green sturgeon, which is more marine oriented than white sturgeon, then Delta exports are not likely to be an important risk factor.

The introduction of exotic species in the San Francisco Bay estuary is an ongoing problem, but the most likely effect on green sturgeon is through changes in trophic interactions (CDFG, 2002). For example, the overbite clam, which first was observed in the Bay in 1988, is now the most common food item of white sturgeon and has been found in the diet of green sturgeon (CDFG, 2002). This species may be replacing other clam species in the diet of white and possibly green sturgeon, but it is not possible to assess the impacts of such changes at present. Assessing the impacts of such trophic changes and the extent to which they increase risks to green sturgeon in this DPS will require additional information on the comparative trophic benefits of these new prey and information on the extent to which they bioaccumulate contaminants.

There is no specific information available regarding contaminant loads or impacts on green sturgeon, although there is information on contaminant loads for white sturgeon (CDFG 2002). For example, there is evidence that white sturgeon may have contained high Polychlorinated Biphenyl (PCB) levels in the past (Kohlhorst, 1980), though more recent data show lower levels of contamination suggesting that earlier data may have been incorrect (CDFG, 2002). There is also evidence that white sturgeon in the estuary accumulate selenium, but tissue concentrations have varied over time without a trend and do not seem to be size related (White et al., 1989). Given the available information, it is uncertain to what extent green sturgeon are impacted by contaminants in this DPS. Based on the fact that white sturgeon spend more time in the estuary and green sturgeon are more marine oriented, CDFG suggests that green sturgeon are probably less vulnerable than white sturgeon to the effects of contaminant bioaccumulation in the San Francisco Bay estuary (CDFG, 2002).

Concerns were raised in the status review that summer temperatures in the Sacramento River were near the lethal limits for larval green sturgeon; however, there is no direct evidence that elevated temperatures are adversely affecting spawning and larval development. In the Sacramento River, green sturgeon are thought to spawn in the spring and summer primarily from Hamilton City to as far upstream as perhaps Keswick Dam (NMFS, 2002; CDFG, 2002). Re-operation of RBDD in the early 1990s to improve upstream passage for winter-run chinook is also thought to have provided a substantial increase in green sturgeon spawning habitat above the facility (CDFG, 2002). Spawning of green sturgeon in the upper Sacramento River above the RBDD is supported by the annual collection of juvenile green sturgeon in fish trapping operations at the RBDD (1995–2001) and the Glenn-Colusa Irrigation District (1986–2001) between the months of May and August (see Figures 13 and 14 in NMFS 2002). Since the early 1990s, significant efforts and measures have been implemented by the Bureau of Reclamation and NMFS to control water temperatures in the upper Sacramento River between the RBDD and Keswick dam in the late spring and early summer so that winter-run chinook salmon can successfully reproduce there. Under the current protocols, water temperatures upstream from RBDD are generally controlled by releases from Shasta and Keswick Dams so that they do not exceed 56 degrees Farenheit (or 13.3 degrees Centigrade) from mid April through the end of September. This period of temperature control appears to coincide with green sturgeon spawning, egg incubation, and larval development in the upper river, and therefore, the temperature control efforts for winter-run chinook are likely to benefit and protect green sturgeon as well. Temperatures cannot be controlled downstream of RBDD or in the Sacramento-San Joaquin Delta, so elevated temperatures could potentially

affect green sturgeon larval development in those areas.

Harvest impacts on green sturgeon in this DPS, at least from fisheries in California, are thought to be minimal. Commercial fishing for green sturgeon (and white sturgeon) has been prohibited in California since the early 1900s. Direct recreational harvest does occur, primarily in San Pablo Bay, but the total harvest is thought to be very small (CDFG 2002). In addition, green sturgeon are protected by slot limits, very restrictive take limits, and a seasonal closure in central San Francisco Bay during the herring spawning season (January through March). Based on tagging studies conducted by CDFG, green sturgeon tagged in San Pablo Bay undertake extensive ocean migrations and are recaptured in commercial and recreational fisheries in both Oregon and Washington (CDFG, 2002; NMFS, 2002). Although there are harvest bycatch data for green sturgeon in these fisheries, it is not possible with the available information to directly assess the impact on green sturgeon in the southern DPS. In order to assess direct harvest impacts on this DPS, information is needed on the actual number of fish taken in these fisheries that originate from the Sacramento River spawning population as well as good estimates of the size of the Sacramento River population. These data are not currently available. Although direct harvest impacts on this DPS from the fisheries in Oregon and Washington cannot be determined at this time, the available harvest information for these fisheries suggests that overall harvest and, therefore, harvest impacts to green sturgeon have declined steadily since the mid 1980s.

Conclusion: There is no evidence from the available San Pablo Bay population information that green sturgeon abundance in the southern DPS is declining. Nevertheless, NMFS' BRT was uncertain about the status of green sturgeon in this DPS because the method of deriving population estimates involves numerous assumptions and there are no direct measures of population abundance. For these reasons, the BRT believes it is essential that immediate efforts be undertaken to implement population monitoring for this DPS using methods that directly assess population status. There is a great deal of uncertainty regarding the effects of potential risk factors on green sturgeon in this DPS. While there is some information on harvest bycatch impacts, it appears most of the identified risk factors are not well documented or are only suspected to be risk factors. Examples of the latter include entrainment at the Delta water export facilities, impacts from exotic species introductions, impacts from contaminants, and lethal water temperatures. In the case of harvest bycatch for which there is the most information and perhaps the greatest concern, it is not possible to directly assess the impact of harvest on green sturgeon in this DPS. Nevertheless, direct harvest appears to be limited in California and harvest from fisheries in Oregon and Washington has declined substantially since the mid 1980s and even more so since the mid 1990s due to increasingly restrictive harvest management measures. These harvest reductions and associated restrictive management measures suggest that risk to green sturgeon from harvest bycatch has been reduced. Although the risk to green sturgeon from bycatch harvest may be declining, NMFS believes it may be prudent to consider additional harvest protections until population monitoring information can be obtained to assess the status of this DPS with greater certainty. Based on a review of the best available information, NMFS concludes that the southern green sturgeon DPS is not presently in danger of extinction nor is it likely to become so in the foreseeable future.

Determination

The ESA defines an endangered species as any species in danger of extinction throughout all or a significant portion of its range, and a threatened species as any species likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range. Section 4(b)(1) of the ESA requires that the listing determination be based solely on the best scientific and commercial data available, after conducting a review of the status of the species and after taking into account those efforts, if any, that are being made to protect such species.

After reviewing the best available scientific and commercial information for green sturgeon, NMFS concludes that the species is comprised of two DPSs that qualify as species under the ESA: (1) a northern coastal DPS consisting of populations in coastal watersheds northward of, and including, the Eel River, and (2) a southern DPS consisting of coastal or central valley populations south of the Eel River, with the only known population in the Sacramento River. Additional green sturgeon DPSs may be identified with further genetic analysis and the boundaries of these two DPS may also be modified. After assessing the risk of extinction faced by each DPS, NMFS further determines that neither the northern or southern green sturgeon DPSs warrant listing as threatened or endangered species at this time.

Because of uncertainties in the structure and status of the DPSs, NMFS will add both DPSs to the agency's list of candidate species. Additional information is expected to be collected over the next several years and NMFS intends to reevaluate the status of green sturgeon in five years provided sufficient new information becomes available indicating that a status review update is warranted.

References

A list of references is available upon request (see **ADDRESSES**).

Authority

The authority for this section is the ESA, as amended (16 U.S.C. *et seq.*).

Dated: January 23, 2003.

Rebecca Lent,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[I.D. 011303A]

Western Pacific Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meetings/ public hearings.

SUMMARY: The Western Pacific Fishery Management Council will meet in February (see **SUPPLEMENTARY INFORMATION** for specific times, dates, and agenda items).

ADDRESSES: The Council meeting will be held at the Governor Pedro P. Tenorio Multipurpose Center, Office of the Governor, Susupe, P.O. Box 10007, Saipan, MP 96950; telephone: 670–664–1014.

FOR FURTHER INFORMATION CONTACT: Kitty M. Simonds, Executive Director; telephone: 808–522–8220.

SUPPLEMENTARY INFORMATION:

Dates and Times

Committee Meetings

The following Standing Committees of the Council will meet on February 11, 2003. Enforcement/Vessel Monitoring System (VMS) from 7:30 a.m. to 9 a.m.; Fishery Rights of Indigenous People from 9 a.m. to 10 a.m.; International Fisheries/Pelagics from 9 a.m. to 12 noon; Bottomfish from 1:30 p.m. to 2:30 p.m.; Ecosystem and Habitat from 2:30 p.m. to 4:30 p.m.; and Executive/Budget and Program from 4:30 p.m. to 5:30 p.m.

In addition, the Council will hear recommendations from its Scientific and Statistical committee (SSC), and other ad hoc groups. Public comment periods will be provided throughout the agenda. The order in which agenda items are addressed may change. The Council will meet as late as necessary to complete scheduled business.

Public Hearings

Public hearings will be held at 4:30 p.m on Wednesday, February 12, 2003, on the issuance of Community Development Program (CDP) Mau Zone bottomfish permits; at 11 a.m. on Thursday, February 13, 2003, on line clippers/bolt cutters, turtle mitigation, southern area closure, seabird mitigation, and longline setting chute; and at 2 p.m. on Thursday, February 13, 2002, on managing Guam's offshore bottomfish fishery. The order in which agenda items are addressed may change. The Council will meet as late as necessary to complete scheduled business.

The agenda during the full Council meeting will include the items listed here:

Wednesday, February 12, 2003

1. Introductions
2. Approval of Agenda
3. Approval of 115th and 116th meeting minutes
4. Island reports
   A. American Samoa
   B. Guam
   C. Hawaii
   D. Commonwealth of the Northern Mariana Islands (CNMI)
5. Federal fishery agency and organization reports
   A. Department of Commerce
   (1) NMFS
   (a) Southwest Region, Pacific Island Area Office (PIAO)
   (b) Southwest Fisheries Science Center, La Jolla and Honolulu Laboratories
   (2) NOAA General Counsel, Southwest Region
   (3) National Ocean Service (NOS), National Marine Sanctuaries
   (4) NOS, Pacific Services Center
   B. Department of the Interior, U.S. Fish and Wildlife Service (USFWS)
   C. U.S. State Department
6. Enforcement and VMS
   A. U.S. Coast Guard activities
   B. NMFS activities
   C. Enforcement activities of local agencies
   D. Status of violations
   E. Report on safety workshop
7. Observer and monitoring programs
   A. NMFS, PIAO
   (1) American Samoa longline fishery
   (2) Northwestern Hawaiian Islands (NWHI) bottomfish fishery
   (3) Hawaii longline fishery
   B. Native Observer Program
8. Crustaceans fisheries
   A. Report on CNMI crustacean fisheries
9. Ecosystems and Habitats
   A. CNMI reef fish commercial catch data
   B. Report on U.S. Coral Reef Task Force
   C. Marianas coral reef survey
   D. Report on marine protected areas working group
10. Fishery rights of indigenous people
   A. Review Hawaii marine conservation plan
   B. Report on Community demonstration projects program
   (1) Report on first solicitation
   (2) Report on second solicitation
   C. CDP, Mau Zone bottomfish permits
   D. Public hearing on issuance process for Mau Zone bottomfish permits

The Council will consider alternatives to take initial action on a process for issuing NWHI Mau Zone bottomfish CDP permits. Three alternatives to be considered for selecting participants for the program include a random selection process (lottery), a weighted point system, and evaluation criteria. Each alternative will be used in concert with the Western Pacific Community eligibility criteria as published in the **Federal Register** on April 16, 2002 (67 FR 18512). The Council's preferred alternative adopted by the Council will be incorporated into the existing draft framework amendment "Measure to Establish Eligibility Criteria for New Entry into the Northwestern Hawaiian Islands Mau Zone Limited Access System". A revised framework regulatory amendment, incorporating a CDP permit issuance process, will be presented to the Council for final action at a subsequent Council meeting in 2003.

Thursday, February 13, 2002

11. Pelagic Fisheries
   A. Quarterly 2002 Hawaii and American Samoa longline reports
   B. American Samoa limited entry program
   C. Recreational fisheries
   (1) CNMI recreational fisheries
   (2) RECFISH 2003
   D. Bycatch conservation and management
   (1) Honolulu lab mitigation turtle research
   (2) Southern longline closure

On June 12, 2002, a final rule was published that implemented the reasonable and prudent alternative (RPA) of a Biological Opinion issued by NMFS on March 29, 2001. The Biological Opinion concluded that the actions of the Hawaii-based longline fleet were likely to jeopardize the continued existence of Pacific populations of green, loggerhead and leatherback turtles. One of the measures included in the reasonable and prudent alternatives for the fishery to operate without jeopardy was a closure of southern fishing grounds below 15° N. lat. during the months of April and May. The April and May closure denied access to the Hawaii-based longline fleet to grounds at a time when tuna were seasonally abundant. While some form of seasonal area closure may need to remain in effect, there may be options for a more limited closure that would have the same turtle conservation effects as the current large-scale closure, but be less onerous for the Hawaii-based longline fleet. The Council will consider alternatives for modifying the seasonal area closure and may take preliminary action at this meeting. Public comment will be solicited from the public prior to the Council's decision.

(3) Line clippers/bolt cutters

On November 15, 2002, NMFS issued a new Biological Opinion for the operation of pelagic fisheries in the Western Pacific Region and interactions with turtle and marine mammal species protected under the Endangered Species Act. The 2002 Biological Opinion does not contain any new requirements for pelagic fishing vessels, however it does appear to remove requirements for non-longline vessels to carry line clippers and bolt cutters, as well as adjusting handling requirements for longline vessel operators that encounter sea turtles. A range of options are available to the Council in response to the change in requirements that has resulted from the issuance of this new Biological Opinion. These include maintaining the current non-longline vessel requirements for line clippers, bolt cutters, and sea turtle handling procedures for longline vessels; or adjusting the non-longline requirements for line clippers and bolt cutters, and the sea turtle handling procedures for longline boats. At the 116th Council meeting, the Council took preliminary

action on a preferred alternative to remove requirements for line clippers and bolt cutters, and to clarify the sea turtle handling procedures for longline boats. The Council may take final action on this preferred alternative, and comments from the public will be solicited prior to the Council's decision.

(4) Report on CNMI turtles

(5) Longline setting chute

On June 12, 2001, a final rule was published implementing the terms and conditions of a Biological Opinion issued by the USFWS on November 28, 2000. These measures apply to all Hawaii-based longline vessels and consist of the following requirements: When fishing above 23° N. lat., vessel operators must: completely thaw and dye all bait blue before using it; discharge spent bait and fish parts to distract seabirds while setting or hauling the gear (strategic offal discard); use a line shooter or line setting machine with weighted branch lines to set the gear; follow handling guidelines for seabirds hooked or entangled in fishing gear. On November 18, 2002, the USFWS issued a new Biological Opinion. This new Biological Opinion does not add or delete any measures. However, it does include a conservation recommendation stating that the FWS will consider the use of underwater setting chute as a seabird mitigation measure after the device is used voluntarily and successfully on Hawaii-based longline vessels. The new Biological Opinion also states that the blue dyed bait requirement will be reconsidered if it is shown that it does not provide additional protection to seabirds. Results of recent trials with an underwater setting chute on an Hawaiian longline vessel in 2002 showed that the device is virtually 100 percent effective in eliminating interactions between seabirds and the Hawaii-based longline fishery when used with a line shooter and weighted branch lines. Given the success of this new technology, a range of options is available to the Council to re-address the issue of seabird interactions with this fishery. These include: maintaining all current requirements; adding an option to use underwater setting chutes when fishing north of 23° N. lat. (keeping requirements for blue dyed bait, strategic offal discards and handling guidelines); or adding an option to use underwater setting chutes when fishing north of 23° N. lat. instead of blue dyed bait, and strategic offal discards when setting (keeping handling guidelines and requirements to use strategic offal discards when hauling). The Council may take preliminary action and select a preferred alternative at this Council meeting. Comments will be solicited from the public prior to the Council's decision.

(6) Litigation

E. International Fishers Forum

F. Public hearing on regulatory changes for line clippers and bolt cutters

12. Bottomfish

A. Report on CNMI fisheries

B. Guam offshore bottomfish management

C. Public hearing on Guam offshore bottomfish management

The Council will consider alternatives and intends to take initial action to manage Guam's offshore bottomfish fishery. The Council considered preliminary considered management options at its 115th Council meeting in October 2002, and will be presented revised options including an alternative to prohibit harvest of bottomfish management unit species (BMUS) on vessels longer than 42 ft (12.8 m) that fish in Federal waters within 50 miles from shore. The Council also intends to consider requiring Federal permits and reports for vessels over 42 ft (12.8 m) in length that harvest bottomfish management unit species (BMUS).

Recent entry of larger vessels into the Guam bottomfish fishery has raised concerns regarding data collection gaps and resource status. These vessels harvest deep-slope species on offshore seamounts (or "banks") in Federal waters, land the bottomfish at Guam's commercial port, and export the bottomfish to Japan. Neither the level of fishing effort nor the amount of bottomfish harvested, which is believed to have started in 2001, is known. Guam's creel survey does not cover fish landed at the commercial port and the exported fish are not sold through any establishments that participate in the voluntary sales ticket monitoring program. Onaga (*Etelis coruscans*) appears to be the primary species that is targeted.

The southern banks have been fished for many years by Guam-based bottomfish fishermen using smaller vessels that engage in a mix of subsistence, recreational, and small-scale commercial fishing, particularly in the summer months, when weather conditions tend to be calmer. Most of the vessels fishing on the southern banks target the shallow-water bottomfish complex, but some target the deep-water complex.

It is unknown at this time whether the new component of the fishery is having significant impacts on marine resources. Initial discussions with fishery managers and Guam's fishing community (through a public scoping meeting held in Guam August 8, 2002) indicate that the catch of fish by this new component may lead to localized overfishing of the bank area.

The Council will also consider additional options to expand the action to include targeting pelagic management unit species (PMUS). Larger vessels targeting PMUS in the EEZ surrounding Guam must also land fish in the commercial port due to the smaller harbors' inability to accommodate such large vessels. The same issues regarding harbors' collecting data from large bottomfish vessels apply to large vessels targeting and landing other species, such as pelagics.

12. Program planning

A. Legislation

B. NOAA Pacific Island Region

C. Cooperative research

D. Council program

E. Social science research planning

F. Indigenous working group

13. Administrative matters

A. Financial reports

B. Administrative reports

C. Upcoming meetings and workshops

D. Advisory Panel, SSC, Plan Team, NWHI Reserve and Sea Turtle Working Group Appointments

14. Other Business

Although non-emergency issues not contained in this agenda may come before the Council for discussion, those issues may not be the subject of formal Council action during this meeting. Council action will be restricted to those issues specifically listed in this document and any issue arising after publication of this document that requires emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kitty M. Simonds, 808–522–8220 (voice) or 808–522–8226 (fax), at least 5 days prior to the meeting date.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: January 23, 2003.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 03–1976 Filed 1–28–03; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register
Vol. 68, No. 19
Wednesday, January 29, 2003

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Foreign Agricultural Service

Advisory Committee on Emerging Markets: Nominations

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Advisory Committee on Emerging Markets: Nominations.

SUMMARY: Notice is hereby given that nominations are being sought for five (5) qualified persons to serve on the Advisory Committee on Emerging Markets (the Committee). The role of the Committee is to provide information and advice, based upon knowledge and expertise of the members, useful to the Department of Agriculture (USDA) in implementing the Emerging Markets Program. The Committee also advises USDA on ways to increase the involvement of the U.S. private sector in cooperative work with emerging markets in food and rural business systems and reviews proposals submitted to the Program for funding technical assistance activities.

DATES: Written nominations must be received by the Foreign Agricultural Service (FAS) by 5 p.m. on February 28, 2003.

ADDRESSES: All nominating materials should be sent to Mr. Douglas Freeman, Foreign Agricultural Service, Room 4932—Stop 1042, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Washington, DC 20250–1042. Forms may also be submitted by fax to (202) 720–9361.

FOR FURTHER INFORMATION CONTACT: Persons interested in serving on the Advisory Committee, or in nominating individuals to serve, should contact Mr. Douglas Freeman, Foreign Agricultural Service, by telephone (202) 720–4327, by fax (202) 720–9361, or by electronic mail to *emo@fas.usda.gov* and request Form AD–755 and Form SF–181. Form AD–755 is required and is available at the FAS home page: *http://www.fas.usda.gov/admin/ad755.pdf*. Form SF–181 is requested, but optional, and is available at *http://www.fas.usda/admin/sf181.pdf*. Persons with disabilities who require an alternative means for communication of information (Braille, large print, audiotape, etc.) should contact USDA's Target Center at (202) 720–2600 (voice and TDD).

SUPPLEMENTARY INFORMATION: The Committee is authorized by section 1542 of the Food, Agriculture, Conservation and Trade Act of 1990, as amended. The overall purpose of the Committee is to provide USDA with information that may be useful in carrying out the provisions of the Emerging Markets Program. The Committee is composed of representatives of the various sectors of the food and rural business systems of the United States. More information about the purpose and function of the Committee and about the Emerging Markets Program may be found at the FAS/Emerging Markets Program Web site: *http://www.fas.usda.gov/mos/em-markets/acem.html*. The members of the Committee are appointed by the Secretary of Agriculture and serve at the discretion of the Secretary. Committee members serve without compensation, but can receive reimbursement for travel expenses to attend committee meetings, if requested, in accordance with USDA Travel regulations.

The Committee has a balanced membership of up to 20 members, representing a broad cross-section of the U.S. agricultural and agribusiness industry. All appointments will expire two years from the date of appointment. The Secretary may renew an appointment for one or more additional terms.

Most meetings will be held in Washington, DC, though other locations may be selected on an occasional basis. Committee meetings will be open to the public, unless the Secretary of Agriculture determines that the Committee will be discussing issues, the disclosure of which justify closing all or a portion of a meeting, in accordance with 5 U.S.C. 552b(c).

Nominations are open to all individuals without regard to race, color, religion, sex, national origin, age, physical handicap, marital status, or sexual orientation. To ensure that the work of the Committee takes into account the needs of the diverse groups served by USDA, membership shall include, to the extent practicable, individuals with demonstrated ability to represent the interest of minorities, women and persons with disabilities.

Members are selected primarily for their experience, expertise and knowledge of international agriculture and of trade and development issues as they affect emerging markets. No person, company, producer, farm organization, trade association or other entity has a right to representation on the Committee. In making selections, every effort will be made to maintain balanced representation of the various broad industries within the United States as well as geographic diversity.

Signed at Washington, DC, on January 23, 2003.

A. Ellen Terpstra,

Administrator, Foreign Agricultural Service.

[FR Doc. 03–2013 Filed 1–28–03; 8:45 am]

BILLING CODE 3410–10–M

DEPARTMENT OF AGRICULTURE

Forest Service

Wrangell-Petersburg Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Wrangell-Petersburg Resource Advisory Committee (RAC) will meet from 12:30 p.m. until 5 p.m. on Friday, February 21, and from 8 a.m. until 2 p.m., Saturday, February 22, 2003, in Petersburg, Alaska. The purpose of this meeting is to review, discuss and potentially recommend for funding proposals received pursuant to Title II, Public Law 106–393, H.R. 2389, the Secure Rural schools and community Self-Determination Act of 2000, also called the "Payments to States" Act. Public testimony regarding the proposals will also be taken.

DATES: The meeting will be held commencing at 1 p.m., Friday, February 21 through 2 p.m., Saturday, February 22, 2003.

ADDRESSES: The meeting will be held at the Holy Cross House, Petersburg Lutheran Church, 401 Fram Street, Petersburg, Alaska.

FOR FURTHER INFORMATION CONTACT: Chip Weber, Wrangell District Ranger, PO Box 51, Wrangell, AK 99929, phone (907) 874–2323, e-mail *cweber@fs.fed.us*, or Patty Grantham, Petersburg, District Ranger, PO Box 1328, Petersburg, AK 99833, phone (907) 772–3871, e-mail *pagrantham@fs.fed.us*. For further information on RAC history, operations, and the application process, a website is available at *http://www.fs.fed.us/r10/payments*.

SUPPLEMENTARY INFORMATION: This will be the third meeting of the committee, and will focus on the review and discussion of proposals received by the RAC for funding under Title II of the Payments to States legislation (Pub. L. 106–393). Deadline for proposals during this round of funding consideration is February 10, 2003. No proposals will be recommended for funding at their initial reading, however, proposals that were submitted and reviewed at the January meeting may be recommended for funding at this meeting. The meeting is open to the public. Public input opportunity will be provided and individuals will have the opportunity to address the committee at that time.

Dated: January 22, 2003.

Thomas Puchlerz,

Forest Supervisor.

[FR Doc. 03–2002 Filed 1–28–03; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

[03–a–a]

Cancellation of Mississippi's Designation, and the Opportunity for Designation in the Mississippi Area

AGENCY: Grain Inspection, Packers and Stockyards Administration, USDA.

ACTION: Notice.

SUMMARY: The United States Grain Standards Act, as amended (Act), provides that official agency designations will end not later than triennially and may be renewed. The Mississippi Department of Agriculture and Commerce (Mississippi) is designated to provide official inspection services until September 30, 2003, according to the Act. Mississippi advised Grain Inspection, Packers and Stockyards Administration (GIPSA) that they will cease providing official inspection effective June 30, 2003. Accordingly, GIPSA is announcing that Mississippi's designation will be canceled effective June 30, 2003. GIPSA is asking for applicants for service in the Mississippi area.

DATES: Applications and comments must be postmarked or electronically dated on or before February 28, 2003.

ADDRESSES: Submit applications to USDA, GIPSA, Janet M. Hart, Chief, Review Branch, Compliance Division, STOP 3604, room 1647–S, 1400 Independence Ave. SW., Washington, DC 20250–3604; Fax (202) 690–2755; e-mail *Janet.M.Hart@usda.gov*.

FOR FURTHER INFORMATION CONTACT: Janet M. Hart at (202) 720–8525, e-mail *Janet.M.Hart@usda.gov*.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12866 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

Section 7(f)(1) of the Act authorizes GIPSA's Administrator to designate a qualified applicant to provide official services in a specified area after determining that the applicant is better able than any other applicant to provide such official services. GIPSA designated Mississippi, main office in Jackson, Mississippi, to provide official inspection services under the Act on October 1, 2000.

Section 7(g)(1) of the Act provides that designations of official agencies will end not later than triennially and may be renewed according to the criteria and procedures prescribed in section 7(f) of the Act. The designation of Mississippi ends on September 30, 2003, according to the Act. However, Mississippi asked GIPSA for a voluntary cancellation of their designation coinciding with end of their fiscal year, June 30, 2003. Accordingly, Mississippi's designation will cease effective June 30, 2003, and GIPSA is asking for applicants to provide official service.

Pursuant to section 7(f)(2) of the Act, the following geographic area, the entire State of Mississippi, except those export port locations within the State, is assigned to this official agency. Interested persons are hereby given the opportunity to apply for designation to provide official services in the geographic areas specified above under provisions of section 7(f) of the Act and section 800.196(d) of the regulations issued thereunder. Persons wishing to apply for designation should contact the Compliance Division at the address listed above for forms and information, or obtain applications at the GIPSA Web site, *http://www.usda.gov/gipsa/oversight/parovreg.htm*.

Authority: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*).

Dated: January 22, 2003.

Donna Reifschneider,

Administrator, Grain Inspection, Packers and Stockyards Administration.

[FR Doc. 03–1862 Filed 1–28–03; 8:45 am]

BILLING CODE 3410–EN–P

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

[02–b–c]

Opportunity To Comment on the Applicant for the Oregon Area

AGENCY: Grain Inspection, Packers and Stockyards Administration, USDA.

ACTION: Notice.

SUMMARY: GIPSA requests comments on the applicant for designation to provide official services in the Oregon geographic area.

DATES: Comments must be postmarked or electronically dated on or before February 28, 2003.

ADDRESSES: Comments must be submitted in writing to USDA, GIPSA, Janet M. Hart, Chief, Review Branch, Compliance Division, STOP 3604, room 1647–S, 1400 Independence Ave. SW., Washington, DC 20250–3604; FAX 202–690–2755; e-mail *Janet.M.Hart@usda.gov*. All comments received will be made available for public inspection at the above address located at 1400 Independence Avenue, SW., during regular business hours.

FOR FURTHER INFORMATION CONTACT: Janet M. Hart at (202) 720–8525, e-mail *Janet.M.Hart@usda.gov*.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12866 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

In the November 22, 2002, **Federal Register**, (67 FR 70397), GIPSA announced that Oregon was ceasing their official inspection operations effective November 27, 2002, and asked persons interested in providing official services in the Oregon area to submit an application for designation by December 23, 2002. There was one applicant. Lewiston Grain Inspection Service, Inc. (Lewiston), main office located in Lewiston, Idaho, applied for the entire

area specified in the November 22, 2002, **Federal Register**.

GIPSA is publishing this notice to provide interested persons the opportunity to present comments concerning the applicant. Commenters are encouraged to submit reasons and pertinent data for support or objection to the designation of the applicant. All comments must be submitted to the Compliance Division at the above addresses. Comments and other available information will be considered in making a final decision. GIPSA will publish notice of the final decision in the **Federal Register**, and GIPSA will send the applicant written notification of the decision.

Authority: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*).

Dated: January 16, 2003.

Donna Reifschneider,

Administrator, Grain Inspection, Packers and Stockyards Administration.

[FR Doc. 03–1863 Filed 1–28–03; 8:45 am]

BILLING CODE 3410–EN–P

CIVIL RIGHTS COMMISSION

Sunshine Act Meeting

AGENCY: U.S. Commission on Civil Rights.

DATE AND TIME: Friday, February 7, 2003, 9 a.m.

PLACE: Omni Charlotte Hotel, 132 E. Trade Street, Charlotte, NC 28202.

STATUS:

Agenda

I. Approval of Agenda

II. Approval of Minutes of January 10, 2003 Meeting

III. Announcements

IV. Staff Director's Report

V. Program Planning

VI. Presentations from Southern Regional State Advisory Committee members

VII. Future Agenda Items

8:30 a.m.—Briefing on Education Accountability and High-Stakes Testing in the Carolinas (Thursday, February 6, 2003)

FOR FURTHER INFORMATION CONTACT: Les Jin, Press and Communications, (202) 376–7700.

Debra A. Carr,

Deputy General Counsel.

[FR Doc. 03–2230 Filed 1–27–03; 4:01 pm]

BILLING CODE 6335–01–M

DEPARTMENT OF COMMERCE

[I.D. 012403A]

Submission for OMB Review; Comment Request

SUPPLEMENTARY INFORMATION: The Department of Commerce has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration.

Title: NOAA Community-based Restoration Program Progress Reports.

Form Number(s): None.

OMB Approval Number: None.

Type of Request: Regular submission.

Burden Hours: 1,125.

Number of Respondents: 150.

Average Hours Per Response: 15 hours.

Needs and Uses: The NOAA Community-based Restoration Program (CRP) involves communities in local marine and estuarine habitat restoration. Each fiscal year, NOAA publishes in the Federal Register two notices of availability of financial assistance inviting applications from persons who are interested in obtaining grants to carry out community-based habitat restoration activities through individual projects or restoration partnerships. It is critical to track the status and success of funded projects to provide accountability for the CRP and NOAA on the expenditure of federal restoration funds as well as to respond quickly to inquiries from NOAA management, congressional members, and constituents. Successful applicants are now required to submit periodic performance reports and a final report for each award. NOAA proposes to require that specific information be provided in these reports.

Affected Public: Not-for-profit institutions; business or other for-profit organizations; and State, Local, or Tribal Government.

Frequency: On occasion, semi-annually.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: David Rostker, (202) 395-3897.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482-0266, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: January 23, 2003.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 03–2032 Filed 1–28–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

[I.D. 012403B]

Submission for OMB Review; Comment Request

SUPPLEMENTARY INFORMATION: The Department of Commerce has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Coastal and Estuarine Land Conservation, Planning, Protection, and Restoration.

Form Number(s): None.

OMB Approval Number: 0648–0459.

Type of Request: Regular submission.

Burden Hours: 1,520.

Number of Respondents: 50.

Average Hours Per Response: 30 hours for development of a plan; and 10 hours for a project application and checklist.

Needs and Uses: The FY 2002 Commerce, Justice, State Appropriations Act directed the Secretary of Commerce to establish a Coastal and Estuarine Land Conservation Program (CELCP) to protect important areas that have significant conservation, recreation, ecological, historical, or aesthetic values, or that are threatened by conversion, and to issue guidelines for this program delineating the criteria for grant awards (16 U.S.C. 1456d.). The guidelines establish procedures for eligible applicants, who choose to participate in the program, to use when developing state conservation plans, proposing or soliciting projects under this program, applying for funds, and carrying out projects under this program in a manner that is consistent with the purposes of the program. NOAA also has, or is given, authority under the Coastal Zone Management Act, annual appropriations or other authorities, to issue funds to coastal states and localities for planning, conservation,

acquisition, protection, restoration, or construction projects. This information collection will enable NOAA to implement the CELCP, under its current or future authorization, and facilitate the review of similar projects under different, but related, authorities.

Affected Public: State, Local, or Tribal Government; and not-for-profit institutions.

Frequency: One-time.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: January 23, 2003.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 03–2033 Filed 1–28–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 011403A]

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Fisheries for Dolphin and Wahoo

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of agency action.

SUMMARY: NMFS, under authority granted to the Secretary of Commerce (Secretary) under section 304(f) of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), has re-designated the South Atlantic Fishery Management Council (SAFMC) as the lead council to develop a dolphin (*Coryphaena hippurus* and *C. equiselis*), and wahoo (*Acanthocybium solanderi*), fishery management plan (FMP) in the exclusive economic zone (EEZ) for the U.S. Atlantic coast.

FOR FURTHER INFORMATION CONTACT: Dr. Steve Branstetter, NMFS, 727–570–5305.

SUPPLEMENTARY INFORMATION: Currently, dolphin in the EEZ of the South Atlantic and Gulf of Mexico is managed under the FMP for the Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic (Coastal Pelagics FMP). Wahoo in the EEZ is currently not managed under any Federal FMP. The Gulf of Mexico Fishery Management Council (GMFMC) and SAFMC have joint responsibility for developing and amending the Coastal Pelagics FMP (managed species include king mackerel, Spanish mackerel, cero, cobia, dolphin, little tunny, and bluefish in the Gulf of Mexico). The Coastal Pelagics FMP is implemented under authority of the Magnuson-Stevens Act by regulations at 50 CFR part 622. Presently, those regulations specify authorized fishing gears for dolphin.

Given the increasing fishing pressure on dolphin and wahoo, and the sparse information available on stock structure and status, the SAFMC perceived a need to provide management for dolphin and wahoo resources throughout their ranges. The SAFMC believed that present fishery conditions required timely action to prevent localized reductions in fish abundance due to heavy fishing pressure and serious user group conflicts before they occurred off the southern Atlantic states or elsewhere in the Atlantic EEZ. Consequently, on September 15, 1997, the SAFMC requested authorization under the Magnuson-Stevens Act to develop an FMP that would provide comprehensive management and protection of dolphin and wahoo in the EEZ of the Atlantic, Gulf of Mexico, and Caribbean Sea.

On March 9, 1998 (63 FR 11422), and May 5, 1998 (63 FR 24774), NMFS published documents in the **Federal Register** requesting public comment on the SAFMC proposal. After considering the SAFMC request, and the public comment received, NMFS, acting on behalf of the Secretary under the procedures of the Magnuson-Stevens Act, designated the SAFMC, GMFMC, and Caribbean Fishery Management Council (CFMC) as joint preparers of a new FMP for the fisheries for dolphin and wahoo throughout their range in the EEZ of the Atlantic, Gulf of Mexico, and Caribbean Sea, with the Mid-Atlantic Fishery Management Council (MAFMC) and New England Fishery Management Council (NEFMC) serving in an advisory capacity to the other Councils. Authority to designate a Council or Councils to prepare an FMP for fisheries that extend beyond one Council's geographical area of authority is granted to the Secretary under section 304(f) of the Magnuson-Stevens Act.

Subsequently, on July 16, 2002, the SAFMC requested that the Secretary allow the SAFMC to withdraw from further action to prepare a joint FMP. The SAFMC further requested that the Secretary re-designate the SAFMC as true lead for an FMP encompassing only the U.S. Atlantic coast, and excluding the Gulf of Mexico and U.S. Caribbean regions. The SAFMC submitted this request because of continued logistic delays in finalizing and implementing the jointly developed FMP. The SAFMC was concerned that these delays could exacerbate identified user conflicts specific to the fishery along the Atlantic coast.

NMFS, on behalf of the Secretary, responded to the Council in a letter dated October 9, 2002, indicating that the agency found merit with the SAFMC's proposal. NMFS still believes that a jointly developed FMP would best meet Magnuson-Stevens Act requirements to manage stocks throughout their ranges. Nevertheless, NMFS also recognizes that the National Standard Guidelines (NSG), at 50 CFR 600.320, suggest that more restrictive alternative management units may be justified if complementary management is planned for other geographic areas or if the unmanaged portions of the stocks are immaterial to proper management within the area under consideration for the alternate management unit, especially if designated alternate management units are specifically relevant to the FMP's objectives.

In the case of the dolphin and wahoo FMP, social and economic issues are identified as the SAFMC's primary objectives in the FMP. The SAFMC is not attempting to rectify a biological problem with the stocks; neither stock is overfished nor approaching an overfished condition because of overfishing. The SAFMC has specific objectives to: (1) minimize the potential for localized reductions in fish abundance, which can have economic and social impacts; (2) minimize market disruptions from intense landings by all sectors; (3) minimize conflicts and competition between recreational and commercial user groups; and (4) optimize social and economic benefits by recognizing and maintaining the historical importance of the recreational fishery.

No similar economic and social issues requiring management have been identified by the GMFMC or CFMC for their respective areas of jurisdiction. In the Gulf of Mexico, about 90 percent of

the combined dolphin and wahoo commercial and recreational landings are from the west coast of Florida. Of the two species, dolphin dominate the landings, and Florida has regulations in place that restrict the commercial harvest of dolphin to hook-and-line fishing in state waters (where most of the harvest occurs), thus limiting the potential for user group conflicts. Similarly, catches and landings for both dolphin and wahoo in the Caribbean are minimal compared to the catches in the other areas, and in many instances, the catches are incidental to the catch of targeted species such as billfishes.

Therefore, NMFS sought comment on the SAFMC proposal from the affected Councils and the general public. In letters to the GMFMC, CFMC, MAFMC, and NEFMC, dated October 22, 2002, NMFS presented the SAFMC proposal and NMFS' reasons, outlined above, for supporting the proposal. Three of the four Councils responded in support the SAFMC proposal; the fourth Council did not respond. Additionally, NMFS published a **Federal Register** notice (67 FR 70214, November 21, 2002) seeking public comment on the SAFMC proposal. Eleven letters of comment were received from the public (see Comments and Responses below).

Based on responses from the other affected Councils and public comment, NMFS, on behalf of the Secretary, under the procedures of the Magnuson-Stevens Act, has designated the SAFMC as the lead Council to develop an FMP for the fisheries for dolphin and wahoo in the U.S. Atlantic EEZ. Under this designation the MAFMC and NEFMC would continue to serve in an advisory capacity to the SAFMC. Once completed, the dolphin/wahoo FMP or subsequent amendments would be submitted for Secretarial review, approval, and implementation.

Additionally, it will be necessary to remove the U.S. Atlantic Ocean component of the dolphin stock from management in the Coastal Migratory Pelagics (CMP) FMP. The CMP FMP is implemented under authority of the Magnuson-Stevens Act by regulations at 50 CFR part 622. The CMP FMP is a joint plan involving both the GMFMC and SAFMC, and species in the fishery include king mackerel, Spanish mackerel, cero, cobia, dolphin, little tunny, and bluefish in the Gulf of Mexico. Presently, the only regulations in the CMP FMP that pertain to dolphin are those that specify authorized fishing gears in the Atlantic and Gulf of Mexico EEZ. Removal of the U.S. Atlantic component of the dolphin stock from the CMP FMP would require a plan amendment and would have to be approved by a majority of the voting members, present and voting, of both the SAFMC and GMFMC.

Comments and Responses

In addition to three letters in support of the SAFMC proposal from Councils, eleven letters of comment were received from the public. Four letters commented only on specific management actions that have been proposed by SAFMC and three letters based their comments on the proposed re-designation by questioning the appropriateness of the SAFMC's proposed management actions. NMFS appreciates the input of these informed fishery participants regarding proposed management actions for the dolphin and wahoo fisheries. Nevertheless, comments on the proposed management measures are beyond the scope of this request for comments, and are not addressed here. When the SAFMC submits the FMP for the dolphin and wahoo fisheries for review by the Secretary, NMFS will provide the public with the opportunity to comment on the proposed management actions.

Comment 1: One comment supported the designation of the U.S. Atlantic coast as a justified alternate management unit. Given that the proposed FMP for the dolphin and wahoo fisheries is not designed to control fishing mortality but to maintain status quo in a healthy fishery, fishing on the unmanaged portion of the stock in the Gulf of Mexico and Caribbean regions will not materially effect the SAFMC goals.

Response: NMFS still believes that a jointly developed FMP would best meet Magnuson-Stevens Act requirements to manage stocks throughout their ranges. Nevertheless, NMFS recognizes that the NSGs allow for alternative management units, encompassing a portion of the range of the stocks, if complementary management is planned for other geographic areas or if the unmanaged portions of the stocks are immaterial to proper management within the area under consideration for the alternate management unit, especially if designated alternate management units are specifically relevant to the FMP's objectives. In the case of the dolphin and wahoo FMP, social and economic issues are identified as the SAFMC's primary objectives in the FMP. No similar economic and social issues requiring management have been identified by the GMFMC or CFMC for their respective areas of jurisdiction. Therefore, NMFS, on behalf of the Secretary, is approving the SAFMC request.

Comment 2: One commenter opposed the SAFMC request to manage beyond their specific area of jurisdiction (North Carolina to the Florida Keys) to include the entire U.S. Atlantic coast.

Response: Under the existing designation by the Secretary (64 FR 33468, June 23, 1999) to develop a joint FMP, the SAFMC already has the authority to manage these stocks in the U.S. Atlantic region. The MAFMC and NEFMC agreed not to manage the stocks directly, but to serve in an advisory capacity to the SAFMC. Thus, designating the SAFMC to develop an FMP for dolphin and wahoo fisheries along the U.S. Atlantic coast does not alter the existing range of the SAFMC jurisdiction for these fisheries, nor the ability to establish management measures for that specific region.

Comment 3: Six comments were received suggesting that the SAFMC's membership gives preference to the recreational sector, and without representation of the commercial pelagic longline fishery, the SAFMC would not manage the dolphin and wahoo stocks fairly and equitably among all fishing sectors. To best address management of these species that have distributions extending beyond any one Council's geographical area of authority, dolphin and wahoo should be managed as highly migratory species (HMS) by NMFS in conjunction with the International Commission for the Conservation of Atlantic Tunas and all the affected Councils. If NMFS does not assume authority to manage these species as HMS, the current five-council process should be maintained to ensure fair and equitable management throughout the range of the stocks.

Response: NMFS disagrees with the comments alleging bias in the composition and position of the South Atlantic Council membership. In approving candidates for Council membership, the Secretary and his designees endeavor to balance equitably the representation of diverse user groups and resource managers.

As for ensuring fair and equitable management, it is NMFS' responsibility to ensure that any management measures developed under an FMP and its amendments comply fully with the national standards, other provisions of the Magnuson-Stevens Act, and other applicable law before these measures would be approved and implemented.

Additionally, some of these commenters appeared to misunderstand the existing June 23, 1999, designation by the Secretary (64 FR 33468) to develop a joint FMP. It is true that the FMP would have needed approval by a majority of the voting members, present

and voting, of the SAFMC, GMFMC, and CFMC. However, each Council would thereafter have the authority to establish independently the regulations pertaining to the fisheries in its respective area of jurisdiction. Therefore, except for initially approving the FMP as a whole, the Councils would not be at liberty to oppose a management action that did not affect their respective region. For example, in the most recent draft of the joint FMP, the SAFMC proposed a size limit for dolphin along the U.S. Atlantic coast, but the GMFMC and CFMC did not establish a size limit in their respective areas, nor could the GMFMC or CFMC oppose that proposed SAFMC action. The decision to approve or disapprove a management action lies solely with the Secretary. As with the 1999 designation, under the new designation, the MAFMC and NEFMC would remain as advisors to the SAFMC for management actions that affected their respective areas of jurisdiction.

In regards to the establishment of a broader, international-based management strategy, NMFS outlined its position regarding the designation of a restricted alternative management unit that includes only the U.S. Atlantic waters in the response to Comment 1. The dolphin and wahoo stocks are not overfished, nor are they undergoing overfishing, and management as proposed by the SAFMC for its area of authority for these stocks (the U.S. Atlantic coast) is intended to address issues of concern within this area. NMFS and the SAFMC will continue to monitor the status of these stocks, and should the need arise to manage these stocks on a broader scale, an alternative management strategy can be devised.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: January 23, 2003.

Rebecca Lent,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. 03–2030 Filed 1–28–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 011303E]

Taking and Importing of Marine Mammals

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice.

SUMMARY: This notice announces that on January 21, 2003, the United States District Court for the Northern District of California issued an order that stayed the implementation of the final finding made on December 31, 2002, by the Assistant Administrator for Fisheries, NMFS, (Assistant Administrator). The stay of the labeling standard for "dolphin-safe" tuna became effective on January 23, 2003, and shall remain in effect for 90 days from the effective date or until a ruling is issued on a motion for a preliminary injunction, to be published in the **Federal Register**.

DATES: Effective on January 23, 2003.

FOR FURTHER INFORMATION CONTACT: Nicole R. Le Boeuf, Office of Protected Resources, NMFS, 301–713–2322.

SUPPLEMENTARY INFORMATION: The Dolphin Protection Consumer Information Act (DPCIA) (16 U.S.C. 1385), as amended by the International Dolphin Conservation Program Act, requires the Secretary of Commerce (Secretary) to make a finding, based on the results of specified scientific research, information obtained under the International Dolphin Conservation Program, and any other relevant information, as to whether the intentional deployment on or encirclement of dolphins with purse seine nets is having a "significant adverse impact" on any depleted dolphin stock in the eastern tropical Pacific Ocean (ETP). On December 31, 2002, the Assistant Administrator, on behalf of the Secretary, issued a final finding required under subsection (g)(2) of the DPCIA published a notification in the **Federal Register** on January 15, 2003 (68 FR 2010).

In the final finding, the Assistant Administrator determined that the chase and intentional deployment on or encirclement of dolphins with purse seine nets is not having a significant adverse impact on depleted dolphin stocks in the ETP. The final finding changed the definition of dolphin-safe for tuna products containing tuna harvested in the ETP by purse seine vessels with carrying capacity greater than 400 short tons and exported from, sold in, the United States. Based upon the final finding, the definition of dolphin-safe for such tuna will be governed by the provisions of subsection (h)(1) of the DPCIA (16 U.S.C. 1385). Under this definition, dolphin-safe means that dolphins can be encircled or chased during the trip in which the tuna was harvested, but that no dolphins can be killed or seriously injured in the set in which the tuna was harvested.

On December 31, 2002, Earth Island Institute, eight organizations, and one individual person filed a complaint in the United States District Court for the Northern District of California. This complaint challenges the final finding of the Assistant Administrator and seeks to enjoin any change to the dolphin-safe labeling standard for tuna harvested with purse seine nets.

On January 21, 2003, the Court, at the request of all parties, issued an order that stayed the implementation the final finding. Under the terms of this order, the labeling standard for dolphin-safe tuna shall be governed by the provisions of subsection (h)(2) of the DPCIA. Under that provision, tuna harvested by purse seine vessels with 400 short tons or greater carrying capacity in the ETP is deemed dolphin-safe if, "no tuna were caught on the trip in which such tuna were harvested using a purse seine net intentionally deployed on or to encircle dolphins, and no dolphins were killed or seriously injured during the sets in which the tuna were caught." The terms of the order further provide that this labeling standard shall remain in effect for 90 days from the date of the order or until a ruling is issued on a motion for a preliminary injunction, which will be published in the **Federal Register**.

Dated: January 23, 2003.

Rebecca J. Lent,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. 03–1973 Filed 1–24–03; 12:28 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Meeting of the Chairs of the National Marine Sanctuary Program's Sanctuary Advisory Councils

AGENCY: National Marine Sanctuary Program (NMSP), National Ocean Service (NOS), National Oceanic and Atmospheric Administration, Department of Commerce (DOC).

ACTION: Notice.

SUMMARY: The National Marine Sanctuary Program (NMSP) is holding a meeting of the Chairs of its eleven site-specific Sanctuary Advisory Councils (Councils). The purpose of the meeting is to obtain recommendations from the Chairs on the prioritization of a list of policy topics that should be addressed on a programmatic basis and, if time

permits, to obtain advice on what actions could be taken to address the most important policy topics. The meeting will be open to the public. Opportunities for public comment will be provided at 9 and 4 on a first-come, first-serve basis. Members of the public wishing to provide comments will be asked to sign up upon arrival and will likely be limited in how much time they will be allotted for comments (depending upon how many people have signed up). A maximum of fifteen minutes will be allotted at 9 and again at 4 for public comments.

DATES: The meeting will be held on Thursday, February 20, 2003, from 8:30 to 4:15. Opportunities for public comment will be provided at 9 and 4.

ADDRESSES: The meeting will be held at Chase Palm Park Center, 236 East Cabrillo Boulevard, Santa Barbara, California.

FOR FURTHER INFORMATION CONTACT: Elizabeth Moore at (301) 713–3125 ext. 170 (*elizabeth.moore@noaa.gov*) or Karen Brubeck at (206) 842–9074 (*karen.brubeck@noaa.gov*).

SUPPLEMENTARY INFORMATION: The National Marine Sanctuaries Act (NMSA) authorizes the Secretary of Commerce to establish one or more Advisory Councils to provide advice to the Secretary regarding the designation and management of National Marine Sanctuaries. Eleven Councils exist, for the Channel Islands, Cordell Bank, Florida Keys, Gray's Reef, Gulf of the Farallones, Hawaiian Islands Humpback Whale, Monterey Bay, Olympic Coast, Stellwagen Bank, and Thunder Bay Sanctuaries and the Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve and proposed Sanctuary. Councils represent a wide variety of community interests and are active in various projects and issues affecting the management of their local Sanctuaries; Councils generally meet on a monthly or bimonthly basis.

Each year, the NMSP hosts a meeting for all the Council Chairs and Coordinators to discuss projects and topics of mutual interest (2003's meeting will be the third such meeting). This year, for the first time, the Chairs are being asked to provide advice to the national program leadership on policy topics important on a programmatic rather than a site-specific level. The Chairs will provide this advice only during the meeting announced by this notice, and will not become a permanent national advisory body.

Authority: 16 U.S.C. section 1431 *et seq.*

(Federal Domestic Assistance Catalog Number 11.429 Marine Sanctuary Program)

Dated: January 21, 2003.

Jamison S. Hawkins,

Acting Assistant Administrator for Ocean Services and Coastal Zone Management.

[FR Doc. 03–2022 Filed 1–28–03; 8:45 am]

BILLING CODE 3510–08–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 011403F]

Marine Mammals; File No. 9981678

AGENCY: National Marine Fisheries Sevice (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Issuance of permit.

SUMMARY: Notice is hereby given that Gregory D. Bossart, V.M.D., Ph.D., Harbor Branch Oceanographic Institution, Inc., 5600 US 1 North, Ft. Pierce, Florida 34946 (Principal Investigator: Dr. Gregory D. Bossart) has been issued a permit (Permit No. 998–1678–00) to take Atlantic bottlenose dolphins (*Tursiops truncatus*) for purposes of scientific research.

ADDRESSES: The permit and related documents are available for review upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301) 713–2289; fax (301) 713–0376; and

Southeast Region, NMFS, Protected Resources Division, 9721 Executive Center Drive North, St. Petersburg, FL 33702-2432; phone (813) 570–5312; fax (813) 570–5517.

FOR FURTHER INFORMATION CONTACT: Trevor Spradlin or Lynne Barre, (301) 713–2289.

SUPPLEMENTARY INFORMATION: On July 25, 2002, notice was published in the **Federal Register** (67 FR 48614) that a request for a scientific research permit to take bottlenose dolphins had been submitted by the above-named individual. The requested permit has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

The permit authorizes a maximum of 400 individual dolphins to be captured, examined, sampled, marked, and released for health assessment studies in the Indian River Lagoon, Florida and the waters near Charleston, South Carolina (200 at each field site) over the 5–year period of the permit. Dolphins of all age and sex classes may be captured except female-calf pairs containing calves presumed to be less than one year of age. Some individual dolphins may be harassed more than once per day but not more than three times per day. In addition, some individual dolphins may be captured more than once during the 5–year period, but not more than three times in any given year.

Dated: January 17, 2003.

Eugene T. Nitta,

Acting Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 03–2029 Filed 1–28–03; 8:45 am]

BILLING CODE 3510–22–S

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meetings

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of public meeting.

SUMMARY: Notice is hereby given that the Commodity Futures Trading Commission ("Commission") will hold a joint technical conference with the Federal Energy Regulatory Commission at which all interested parties are invited to hear panel discussions on the feasibility of utilizing clearing to address the credit issues that exist in today's energy markets. The conference is open to the public and there is no registration fee.

DATES: Wednesday, February 5, 2003, from 9 a.m. to 4:30 p.m.

PLACE: Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC, Commission Meeting Room.

STATUS: Open.

FOR FURTHER INFORMATION CONTACT: Jean A. Webb, 202–418–5100.

Issued in Washington, DC this 24th day of January, 2003.

By the Commodity Futures Trading Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 03–2161 Filed 1–27–03; 8:45 am]

BILLING CODE 6351–01–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Proposed Collection; Comment Request

AGENCY: Office of the Assistant Secretary of Defense Health Affairs, DoD.

ACTION: Notice.

In accordance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Assistant Secretary of Defense for Health Affairs announces the proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by March 31, 2003.

ADDRESSES: Written comments and recommendations on the information collection should be sent to TRICARE Management Activity, Medical Benefits and Reimbursement Systems, 16401 East Centretch Parkway, ATTN: David Bennett, Aurora, CO 80011–9043.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection, please write to the above address or call TRICARE Management Activity, Medical Benefits and Reimbursement Systems, at (303) 676–3494.

Title; Associated Form; and OMB Number: Application for TRICARE-Provider Status: Corporate Services Provider.

Needs and Uses: The information collection will allow eligible providers to apply for Corporate Services Provider status under the TRICARE program.

Affected Public: Businesses or other for-profit; not-for-profit institutions.

Annual Burden Hours: 333.

Number of Respondents: 1,000.

Responses for Respondent: 1.

Average Burden Per Response: 20 minutes.

Frequency: On occasion.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

On March 10, 1999, TRICARE Management Activity (TMA), formerly known as OCHAMPUS, published a finale rule in the **Federal Register** (64 FR 11765), creating a fourth class of TRICARE providers consisting of freestanding corporations and foundations that render principally professional ambulatory or in-home care and technical diagnostic procedures. The intent of the rule was not to create additional benefits that ordinarily would not be covered under TRICARE if provided by a more traditional health care delivery system, but rather to allow those services which would otherwise be allowed except for an individual provider's affiliation with a freestanding corporate facility. The addition of the corporate class will recognize the current range of providers within today's health care delivery structure, and give beneficiaries access to another segment of the health care delivery industry. Corporate services providers must be approved for Medicare payment, or when Medicare approval status is not required, be accredited by a qualified accreditation organization to gain provider authorization status under TRICARE. Corporate services providers must also enter into a participation agreement which will be sent out as part of the initial authorization process. The participation agreement will ensure that TRICARE determined allowable payments, combined with the cost-share/copayment, deductible, and other health insurance amounts, will be accepted by the provider as payment in full.

The Application for TRICARE-Provider Status: Corporate Services Provider, will collect the necessary information to ensure that the conditions are met for authorization as a TRICARE corporate services provider: *i.e.*, the provider (1) is a corporation or a foundation, but not a professional corporation or professional association; (2) provides services and related supplies of a type rendered by TRICARE individual professional providers or diagnostic technical services; (3) is approved for Medicare payment or when Medicare approval status is not required, is accredited by a qualified accreditation organization; and (4) has entered into a participation agreement approved by the Executive Director, TMA or a designee.

The collected information will be used by TRICARE contractors to process claims and verify authorized provider status. Verification involves collecting and reviewing copies of the provider's licenses, certificates, accreditation documents, etc. If the criteria are met, the provider is granted TRICARE-authorization status. The documentation and information are collected when: (1) A provider requests permission to become a TRICARE-authorized provider; (2) a claim is filed for care received from a provider who is not listed on the contractors' computer listing of authorized providers; or (3) when a former TRICARE-authorized provider requests reinstatement.

The contractors develop the forms used to gather information based on TRICARE conditions for participation listed above. Without the collection of this information, contractors cannot determine if the provider meets TRICARE authorization requirements for corporate services providers. If the contractor is unable to verify that a provider meets these authorization requirements, the contractor may not reimburse either the provider or the beneficiary for the provider's health care services.

To reduce the reporting burden to a minimum, TRICARE has carefully selected the information requested from respondents. Only that information which has been deemed absolutely essential is being requested. If necessary, contractors may verify credentials with Medicare, JCAHO and other national organizations by telephone. TRICARE is also participating with Medicare in the development of a National Provider System which will eliminate duplication of provider certification data collection among Federal government agencies.

TRICARE contractors are required to maintain a computer listing of all providers that have submitted the appropriate authorization information and documentation. To avoid duplicate inquiries, the contractors must search the computer provider listing before requesting documentation from providers.. Since the providers affected by this information collection generally have not previously been eligible to be authorized providers, TRICARE contractors will have no information on file. The providers will have to submit the information requested on the data collection form (Application for TRICARE-Providers Status: Corporate Services Provider) in order to obtain provider authorization status under TRICARE.

The information will usually be collected from each respondent only once. It is estimated that there will be approximately 3,000 applicants over an initial 3 year collection period or 1,000 respondents per year. After the initial three years of collection, it is estimated

that annual number of respondents will decline to less than 100. TRICARE will request the provider authorization documentation and information when the provider asks to become TRICARE-authorized or when a claim is filed for a new provider's services. If after a provider has been authorized by a contractor, no claims are filed during a two-year period of time, the provider's information will be placed in the inactive file. To reactivate a file, the provider must verify that the information is still correct, or supply new or changed information. The total first year reporting burden is estimated to be 333⅓ hours.

Dated: January 21, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 03–1947 Filed 1–28–03; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Meeting of the Defense Policy Board Advisory Committee.

AGENCY: Department of Defense, Defense Policy Board Advisory Committee.

ACTION: Notice.

SUMMARY: The Defense Policy Board Advisory Committee will meet in closed session at the Pentagon on February 27–28, 2003 from 0900 to 1800.

The purpose of the meeting is to provide the Secretary of Defense, Deputy Secretary of Defense and Under Secretary of Defense for Policy with independent, informed advice on major matters of defense policy. The Board will hold classifed discussions on national security matters.

In accordance with section 10(d) of the Federal Advisory Committee Act, Public Law 92–463, as amended [5 U.S.C. App II (1982)], it has been determined that this meeting concerns matters listed in 5 U.S.C. § 552B(c)(1)(1982), and that accordingly this metting will be closed to the public.

Dated: January 21, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 03–1948 Filed 1–28–03; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF EDUCATION

[CFDA No. 84.120A]

Office of Postsecondary Education; Minority Science and Engineering Improvement Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2003

Purpose of Program: The Minority Science and Engineering Improvement Program (MSEIP) is designed to effect long-range improvement in science and engineering education at predominantly minority institutions and to increase the flow of underrepresented ethnic minorities, particularly minority women, into scientific and technological careers.

Eligibility for Grants: Under section 361 of Title III of the Higher Education Act of 1965, as amended (HEA), the following entities are eligible to receive a grant under MSEIP:

(1) Public and private nonprofit institutions of higher education that:

(A) Award baccalaureate degrees; and

(B) Are minority institutions;

(2) Public or private nonprofit institutions of higher education that:

(A) Award associate degrees; and

(B) Are minority institutions that:

(i) Have a curriculum that includes science or engineering subjects; and

(ii) Enter into a partnership with public or private nonprofit institutions of higher education that award baccalaureate degrees in science and engineering;

(3) Nonprofit science-oriented organizations, professional scientific societies, and institutions of higher education that award baccalaureate degrees, that:

(A) Provide a needed service to a group of minority institutions; or

(B) Provide in-service training for project directors, scientists, and engineers from minority institutions; or

(4) Consortia of organizations that provide needed services to one or more minority institutions, the membership of which may include:

(A) Institutions of higher education that have a curriculum in science or engineering;

(B) Institutions of higher education that have a graduate or professional program in science or engineering;

(C) Research laboratories of, or under contract with, the Department of Energy;

(D) Private organizations that have science or engineering facilities; or

(E) Quasi-governmental entities that have a significant scientific or engineering mission.

Eligible Applicants: (a) For institutional, design, and special projects described in 34 CFR 637.12, 637.13 and 637.14, public and private nonprofit minority institutions of higher education as defined in sections 361(1) and (2) of the HEA.

(b) For special projects described in 34 CFR 637.14(b) and (c), nonprofit science-oriented organizations, professional scientific societies, institutions of higher education, and consortia of organizations as defined in sections 361(3) and (4) of the HEA.

(c) For cooperative projects described in 34 CFR 637.15, groups of nonprofit accredited colleges and universities whose primary fiscal agent is an eligible minority institution as defined in 34 CFR 637.4(b).

Note: A minority institution is defined in 34 CFR 637.4(b) as an accredited college or university whose enrollment of a single minority group or combination of minority groups exceeds 50 percent of the total enrollment.

Applications Available: January 31, 2003.

Deadline for Transmittal of Applications: March 17, 2003.

Deadline for Intergovernmental Review: May 19, 2003.

Estimated Available Funds: The Administration has requested $8,500,000 for this program for FY 2003. The actual level of funding, if any, depends on final congressional action. However, we are inviting applications to allow enough time to complete the grant process if Congress appropriates funds for this program.

Estimated Range of Awards: $19,000–$500,000.

Estimated Average Size of Awards

Institutional Projects

Estimated Range of Awards: $100,000–$300,000.

Estimated Average Size of Awards: $125,851.

Estimated Number of Awards: 24.

Design Projects

Estimated Range of Awards: $19,000–$20,000.

Estimated Average Size of Awards: $19,500.

Estimated Number of Awards: 2.

Special Projects

Estimated Range of Awards: $20,000–$150,000.

Estimated Average Size of Awards: $34,622.

Estimated Number of Awards: 12.

Cooperative Projects

Estimated Range of Awards: $100,00–$500,000.

Estimated Average Size of Awards: $251,000.

Estimated Number of Awards: 3.
Estimated Total Number of Awards: 41.

Note: The Department is not bound by any estimates in this notice. Applicants should periodically check MSEIP's Web site for further information on this program. The address is: *http://www.ed.gov/offices/OPE/HEP/idues/msi.html*

Project Period: Up to 36 months.
Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 82, 85, 86, 97, 98, and 99; and
(b) the regulations for this program in 34 CFR part 637.

Note 1: The regulations in 34 CFR part 86 apply to institutions of higher education only.

Note 2: The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian tribes.

Applicability of Executive Order 13202: Applicants that apply for construction funds under these programs must comply with Executive Order 13202, signed by President Bush on February 17, 2001 and amended on April 6, 2001. This Executive Order provides that recipients of Federal construction funds may not "require or prohibit bidders, offerors, contractors, or subcontractors to enter into or adhere to agreements with one or more labor organizations, on the same or other construction project(s)" or "otherwise discriminate against bidders, offerors, contractors, or subcontractors for becoming or refusing to become or remain signatories or otherwise adhere to agreements with one or more labor organizations, on the same or other construction project(s)." However, the Executive Order does not prohibit contractors or subcontractors from voluntarily entering into these agreements.

Projects funded under this program that include construction activity will be provided a copy of this Executive Order and will be asked to certify that they will adhere to it.

Application Procedures

Note: Some of the procedures in these instructions for transmitting applications differ from those in the Education Department General Administrative Regulations (EDGAR) (34 CFR 75.102). Under the Administrative Procedure Act (5 U.S.C. 553) the Department generally offers interested parties the opportunity to comment on proposed regulations. However, these amendments make procedural changes only and do not establish new substantive policy. Therefore, under 5 U.S.C. 553(b)(A), the Secretary has determined that proposed rulemaking is not required.

Pilot Project for Electronic Submission of Applications

In FY 2003, the U.S. Department of Education is continuing to expand its pilot project for electronic submission of applications to include additional formula grant programs and additional discretionary grant competitions. The MSEIP, CFDA 84.120A is one of the programs included in the pilot project. If you are an applicant under the MSEIP, you may submit your application to us in either electronic or paper format.

The pilot project involves the use of the Electronic Grant Application System (e-Application) portion of the Grant Administration and Payment System (GAPS). Users of e-Application will be entering data on-line while completing their applications. You may not e-mail a copy of a grant application to us. If you participate in this voluntary pilot project by submitting an application electronically, the data you enter on-line will be saved into a database. We request your participation in e-Application. We shall continue to evaluate its success and solicit suggestions for improvement.

If you participate in e-Application, please note the following:

- Your participation is voluntary.
- You will not receive any additional point value because you submit a grant application in electronic format, nor will we penalize you if you submit an application in paper format. When you enter the e-Application system, you will find information about its hours of operation.
- You may submit all documents electronically, including the Application for Federal Assistance under MSEIP (OMB No. 1840–0109), Project Summary page, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.
- After you electronically submit your application, you will receive an automatic acknowledgement, which will include a PR/Award number (an identifying number unique to your application).
- Within three working days of submitting your electronic application, fax a signed copy of the Application for Federal Assistance under MSEIP (OMB No. 1840–0109) to the Application Control Center after following these steps:

(1) Print the Application for Federal Assistance under MSEIP (OMB No. 1840–0109) from the e-Application system.

(2) The institution's Authorizing Representative must sign this form.

(3) Place the PR/Award number in the upper right hand corner of the hard copy signature page of the Application for Federal Assistance under MSEIP (OMB No. 1840–0109).

(4) Fax the Application for Federal Assistance under MSEIP (OMB No. 1840–0109) to the Application Control Center at (202) 260–1349.

- We may request that you give us original signatures on all other forms at a later date.
- Closing Date Extension in Case of System Unavailability: If you elect to participate in the e-Application pilot for the MSEIP and you are prevented from submitting your application on the closing date because the e-Application system is unavailable, we will grant you an extension of one business day in order to transmit your application electronically, by mail, or by hand delivery. For us to grant this extension—

(1) You must be a registered user of e-Application, and have initiated an e-Application for this competition; and

(2)(a) The e-Application system must be unavailable for 60 minutes or more between the hours of 8:30 a.m. and 3:30 p.m., Washington, DC time, on the deadline date; or

(b) The e-Application system must be unavailable for any period of time during the last hour of operation (that is, for any period of time between 3:30 and 4:30 p.m., Washington, DC time) on the deadline date. The Department must acknowledge and confirm these periods of unavailability before granting you an extension. To request this extension you must contact either (1) the person listed elsewhere in this notice under **FOR FURTHER INFORMATION CONTACT** or (2) the e-GRANTS help desk at 1–888–336–8930.

You may access the electronic grant application for MSEIP at *http://e-grants.ed.gov.*

For Applications and Further Information Contact: Kenneth Waters, Deborah Newkirk or Sophia McArdle, Institutional Development and Undergraduate Education Service, U.S. Department of Education, 1990 K Street, NW., 6th Floor, Washington, DC 20006–8517. *Telephone:* Mr. Waters (202) 502–7586, Ms. Newkirk (202) 502–7591, Dr. McArdle (202) 219–7078. *FAX:* (202) 502–7861, or via Internet: *ken.waters@ed.gov, deborah.newkirk@ed.gov, sophia.mcArdle@ed.gov.*

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative

format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the program contact persons listed under *For Applications and Further Information Contact.*

Individuals with disabilities may obtain a copy of the application package in an alternative format by contacting those persons. However, the Department is not able to reproduce in an alternative format the standard forms included in the application package.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/legislation/FedRegister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the Federal Register and the Code of Federal Regulations is available on GPO Access at: *http://www.access.gpo.gov/nara/index.html*

Program Authority: 20 U.S.C. 1067–1067k.

Dated: January 23, 2003.

Sally L. Stroup,

Assistant Secretary, Office of Postsecondary Education.

[FR Doc. 03–2003 Filed 1–28–03; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[CFDA No. 84.031S]

Office of Postsecondary Education; Developing Hispanic-Serving Institutions (HSI) Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2003

Purpose of Program: Assists eligible Hispanic-Serving Institutions (HSIs) of higher education to expand their capacity to serve Hispanic and low-income students by enabling them to improve their academic quality, institutional management, and fiscal stability and to increase their self-sufficiency. Five-year individual development grants and cooperative arrangement grants will be awarded in FY 2003. Planning grants will not be awarded in FY 2003. For FY 2003, the competition for new awards focuses on projects designed to meet the priorities we describe in the *Priorities* section of this application notice.

Eligible Applicants: Institutions of higher education (IHEs) that have been designated as eligible under Part A or B of Title III or under Title V of the Higher Education Act of 1965, as amended (HEA), are eligible to apply for individual development grants and cooperative arrangement grants. In addition, at the time of application, the IHE must provide assurances if applying for a grant in Title V that it has an enrollment of undergraduate full-time equivalent (FTE) students that is at least 25 percent Hispanic students, and that not less than 50 percent of the enrolled Hispanic students are low-income individuals.

Notes: 1. A grantee under the HSI Program, authorized under Title V of the HEA, may not receive a grant under any Title III, Part A Program. Further, an HSI Program grantee may not give up that grant in order to receive a grant under any Title III, Part A Program. Therefore, a current HSI Program grantee may not apply for a grant under any Title III, Part A Program in FY 2003.

2. An IHE that does not fall within the limitation described in Note 1 may apply for a FY 2003 grant under all Title III, Part A Programs for which it is eligible, as well as under the HSI Program. An applicant may receive only one grant.

Applications Available: January 29, 2003.

Deadline for Transmittal of Applications: March 3, 2003.

Deadline for Intergovernmental Review: April 30, 2003.

Estimated Available Funds: The Administration has requested $89.1 million for this program for FY 2003. The actual level of funding, if any, depends on final congressional action. However, we are inviting applications to allow enough time to complete the grant process if Congress appropriates funds for this program.

Estimated Range of Awards: $400,000–$600,000.

Estimated Average Size of Awards: Individual Development Grant: $425,000 per year. Cooperative Arrangement Development Grant: $600,000 per year.

Estimated Number of Awards: Individual Development Awards: 18. Cooperative Arrangement Development Awards: 6.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

Page Limit: We have established mandatory page limits for both the individual development grant and the cooperative arrangement development grant applications. You must limit the application to the equivalent of no more than 100 pages for the individual development grant and 140 pages for the cooperative arrangement development grant, using the following standards:

- A "page" is 8.5″ × 11″, on one side only, with 1″ margins top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles and headings. You may single space footnotes, quotations, references, captions, charts, tables, figures, and graphs.
- Use a font that is either 12-point or larger or no smaller than 10 pitch (characters per inch).

The page limit does not apply to the application cover sheet (ED 424), the one-page abstract, the Certification Regarding Collaborative Arrangement (ED 851S–8), the Hispanic-Serving Institutions Assurance Form (ED 851S–7), and the Cooperative Arrangement Form (ED 851S–1). The page limit does, however, apply to all remaining parts of the application.

We will reject your application if—

- You apply these standards and exceed the page limit; or
- You apply other standards and exceed the equivalent of the page limit.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 81, 82, 85, 86, 97, 98, and 99; and (b) The regulations for this program in 34 CFR part 606.

Applicability of Executive Order 13202: Applicants that apply for construction funds under these programs must comply with the Executive Order 13202 signed by President Bush on February 17, 2001 and amended on April 6, 2001. This Executive order provides that recipients of Federal construction funds may not "require or prohibit bidders, offerors, contractors, or subcontractors to enter into or adhere to agreements with one or more labor organizations, on the same or other construction project(s)" or "otherwise discriminate against bidders, offerors, contractors, or subcontractors for becoming or refusing to become or remain signatories or otherwise adhere to agreements with one or more labor organizations, on the same or other construction project(s)." However, the Executive order does not prohibit contractors or subcontractors from voluntarily entering into these agreements.

Projects funded under this program that include construction activity will be provided a copy of this Executive Order and will be asked to certify that they will adhere to it.

Priorities: This competition focuses on projects designed to meet the priority in section 511(d) of the HEA (29 U.S.C. 1103) (see 34 CFR 75.105(b)(2)(iv)).

The Secretary gives priority to a development grant application that contains satisfactory evidence that the HSI has entered into, or will enter into, a collaborative arrangement with at least one local educational agency or community-based organization to provide that agency or organization with assistance (from funds other than funds provided under Title V of the HEA) in reducing dropout rates for Hispanic students, improving rates of academic achievement for Hispanic students, and increasing the rates at which Hispanic secondary school graduates enroll in higher education.

Under 34 CFR 75.105(c)(3), we consider only applications that meet this priority.

This competition also focuses on projects designed to meet the priority in section 514(b) of the HEA (20 U.S.C. 1103c) (see 34 CFR 75.105(b)(2)(iv)).

The Secretary gives priority to grant applications for cooperative arrangements that are geographically and economically sound or will benefit the applicant HSI.

Invitational Priorities: Within the absolute priorities specified in this competition, we are particularly interested in applications that meet one or more of the following invitational priorities.

Invitational Priority 1

Cooperative arrangements between two-year and four-year IHEs aiming to increase transfer and retention of Hispanic students.

Invitational Priority 2

Cooperative arrangements between IHEs that develop and share technological resources in order to enhance each institution's ability to serve the needs of low-income communities or minority populations.

Invitational Priority 3

Cooperative arrangements between IHEs, where at least one does not currently have funding under the HSI Program.

Invitational Priority 4

Cooperative arrangements that involve institutional partners from more than one university or college system.

Under 34 CFR 75.105(c)(1), we do not give an application that meets one or more of the invitational priorities a competitive or absolute preference over other applications.

Special Funding Consideration: In tie-breaking situations described in 34 CFR 606.23, the HSI Program regulations require that we award one additional point to an application from an IHE that has an endowment fund for which the 1999–2000 market value per full-time equivalent (FTE) student was less than the comparable average per FTE student at a similar type IHE. We also award one additional point to an application from an IHE that had expenditures for library materials in 1999–2000 per FTE student that were less than the comparable average per FTE student at a similar type IHE.

For the purpose of these funding considerations, an applicant must be able to demonstrate that the market value of its endowment fund per FTE student and library expenditures per FTE student were less than the average expenditure per FTE student when calculated using the data submitted by applicants for the year 1999–2000.

If a tie still remains after applying the additional point(s), we will determine the ranking of applicants based on the lowest combined library expenditures per FTE student and endowment values per FTE student.

Application Procedures

Note: Some of the procedures in these instructions for transmitting applications differ from those in the Education Department General Administrative Regulations (EDGAR) (34 CFR 75.102). Under the Administrative Procedure Act (5 U.S.C. 553) the Department generally offers interested parties the opportunity to comment on proposed regulations. However, these amendments make procedural changes only and do not establish new substantive policy. Therefore, under 5 U.S.C. 553(b)(A), the Secretary has determined that proposed rulemaking is not required.

Pilot Project for Electronic Submission of Applications

In FY 2003, the U.S. Department of Education is continuing to expand its pilot project for electronic submission of applications to include additional formula grant programs and additional discretionary grant competitions. The HSI Program—84.031S is one of the programs included in the pilot project. If you are an applicant under the HSI Program, you may submit your application to us in electronic or paper format.

The pilot project involves the use of the Electronic Grant Application System (e-Application) portion of the Grant Administration and Payment System (GAPS). Users of e-Application will be entering data on-line while completing their applications. You may not e-mail a soft copy of a grant application to us. If you participate in this voluntary pilot project by submitting an application electronically, the data you enter on-line will be saved into a database. We request your participation in e-Application. We shall continue to evaluate its success and solicit suggestions for improvement.

If you participate in e-Application, please note the following:

- Your participation is strictly voluntary.
- You will not receive any additional point value because you submit a grant application in electronic format, nor will we penalize you if you submit an application in paper format. When you enter the e-Application system, you will find information about its hours of operation.
- You may submit all documents electronically including the Application for Federal Assistance (ED 424), Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.
- After you electronically submit your application, you will receive an automatic acknowledgement, which will include a PR/Award number (an identifying number unique to your application).
- Within three working days after submitting your electronic application, fax a signed copy of the Application for Federal Assistance (ED 424) to the Application Control Center after following these steps:

(1) Print ED 424 form from the e-Application system.

(2) The institution's Authorizing Representative must sign this form.

(3) Place the PR/Award number in the upper right hand corner of the hard copy signature page of the ED 424.

(4) Fax the signed ED 424 to the Application Control Center at (202) 260–1349.

- We may request that you give us original signatures on all other forms at a later date.
- *Closing Date Extension in Case of System Unavailability:* If you elect to participate in the e-Application pilot for the HSI Program and you are prevented from submitting your application on the closing date because the e-Application system is unavailable, we will grant you an extension of one business day in order to transmit your application electronically, by mail, or by hand delivery. For us to grant this extension—

(1) You must be a registered user of e-Application, and have initiated an e-Application for this competition; and

(2)(a) The e-Application system must be unavailable for 60 minutes or more between the hours of 8:30 a.m. and 3:30

p.m., Washington, DC time, on the deadline date; or

(b) The e-Application system must be unavailable for any period of time during the last hour of operation (that is, for any period of time between 3:30 and 4:30 p.m., Washington, DC time) on the deadline date.

The Department must acknowledge and confirm these periods of unavailability before granting you an extension. To request this extension you must contact either (1) the person listed elsewhere in this notice under *For Applications and Further Information Contact* or (2) the e-GRANTS help desk at 1–888–336–8930.

You may access the electronic grant application for the Title V, HSI Program at: *http://e-grants.ed.gov.*

We have included additional information about the e-Application pilot project (see Parity Guidelines between Paper and Electronic Applications) in the application package.

For Applications and Further Information Contact: Louis Venuto, U.S. Department of Education, Title V, Developing Hispanic-Serving Institutions Program, 1990 K Street NW., 6th floor, Washington, DC 20006–8513. Telephone: (202) 502–7763 or via Internet: *title.five@ed.gov.*

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

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Individuals with disabilities may obtain a copy of the application package in an alternative format by contacting that person. However, the Department is not able to reproduce in an alternative format the standard forms included in the application package.

Electronic Access to This Document

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Note: The official version of a document is the document published in the **Federal Register.** Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.access.gpo.gov/nara/index.html.*

Program Authority: 20 U.S.C. 1101–1101d, 1103–1103g.

Dated: Janaury 23, 2003.

Sally L. Stroup,

Assistant Secretary, Office of Postsecondary Education.

[FR Doc. 03–2004 Filed 1–28–03; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–236–000]

ANR Storage Company; Notice of Tariff Filing

January 23, 2003.

Take notice that on January 17, 2003, ANR Storage Company (ANR Storage), tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, Second Revised First Revised Sheet No. 155, with an effective date of February 17, 2003.

ANR Storage states that this filing is being made to add flexibility to transfers of gas in storage.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.314 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: January 29, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–2139 Filed 1–28–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP91–161–029]

Columbia Gas Transmission Corporation; Notice of Refund

January 23, 2003.

Take notice that on January 21, 2003, Columbia Gas Transmission Corporation (Columbia Gas) filed to report on the flow-back to customers of funds received from insurance carriers for environmental costs attributable to Columbia Gas' Docket No. RP91–161 settlement period.

Columbia Gas states that it allocated such recoveries among customers based on their fixed cost responsibility for services on the Columbia Gas system during the period December 1, 1991 through January 31, 1996, the period of the Docket No. RP91–161 settlement.

Columbia Gas states further that it provided a copy of the report to all customers who received a share of the environmental insurance recoveries and all state commissions whose jurisdiction includes the location of any such recipient.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact

(202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: January 30, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–2143 Filed 1–28–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP95–408–050]

Columbia Gas Transmission Corporation; Notice of Refund

January 23, 2003.

Take notice that on January 21, 2003, Columbia Gas Transmission Corporation (Columbia Gas) filed to report on the flow-back to customers of funds received from insurance carriers for environmental costs attributable to Columbia Gas' Docket No. RP95–408 settlement period.

Columbia Gas states that it allocated such recoveries among customers based on terms of the Docket No. RP95–408 Phase II Settlement which states that customer allocations shall be based on customers' actual contributions to Remediation Program collections for the most recent February 1–January 31 period.

Columbia Gas states further that it provided a copy of the report to all customers who received a share of the environmental insurance recoveries and all state commissions whose jurisdiction includes the location of any such recipient.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: January 30, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–2144 Filed 1–28–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP91–160–029]

Columbia Gulf Transmission Company; Notice of Refund

January 23, 2003.

Take notice that on January 21, 2003, Columbia Gulf Transmission Company (Columbia Gulf) filed to report on the flow-back to customers of funds received from insurance carriers for environmental costs pursuant to Article I(A)(2)(d) of its Docket No. RP91–160 settlement.

Columbia Gulf states that it allocated such recoveries among customers based on their fixed cost responsibility for services rendered on the Columbia Gulf system during the period December 1, 1991 through October 31, 1994, the period of the Docket No. RP91–160 settlement.

Columbia Gulf states further that it provided a copy of the report to all customers who received a share of the environmental insurance recoveries and all state commissions whose jurisdiction includes the location of any such recipient.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: January 30, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–2142 Filed 1–28–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG03–36–000]

Conectiv Mid-Merit, Inc; Notice of Filing

January 21, 2003.

Take notice that on January 15, 2003, Conectiv Mid-Merit, Inc. (CMM) filed with the Federal Energy Regulatory Commission (Commission) an Application for Determination of Exempt Wholesale Generator Status (Application) pursuant to Section 32(a)(1) of the Public Utility Holding Company Act of 1935 (PUHCA), all as more fully explained in the Application.

CMM states that it is in the process of permitting and developing several sites in the Commonwealth of Pennsylvania, one or more of which it intends to use for the location and construction of one or more 500 MW combined cycle generating modules (each 500 MW module is an Eligible Facility for the purposes of PUHCA and the Commission's EWG regulations). CMM anticipates that each Eligible Facility will be interconnected to the transmission system operated by the PJM Interconnection, LLC via transmission voltage facilities. CMM states that it has served this filing on the Maryland Public Service Commission, Delaware Public Service Commission, New Jersey Board of Public Utilities, Virginia State Corporation Commission, District of Columbia Public Service Commission and the Securities and Exchange Commission (SEC).

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of

Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Comment Date: February 11, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–2131 Filed 1–28–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–238–000]

Dominion Transmission, Inc.; Notice of Proposed Changes in FERC Gas Tariff

January 23, 2003.

Take notice that on January 21, 2003, Dominion Transmission, Inc. (DTI) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following revised tariff sheets, with a March 1, 2003 effective date:

Third Revised Sheet No. 210
Third Revised Sheet No. 211
Fourth Revised Sheet No. 1006
Third Revised Sheet No. 1007
Second Revised Sheet No. 1031
Third Revised Sheet No. 1052
Fifth Revised Sheet No. 1143
Third Revised Sheet No. 1143A
Fourth Revised Sheet No. 1155
Sheet No. 1160
Fourth Revised Sheet No. 1185

DTI states that it is filing the above-referenced tariff sheets to make various formatting changes, to correct typographical errors and to eliminate the reference to Eastern Clock Time.

DTI states that copies of its letter of transmittal and enclosures have been served upon DTI's customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.314 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: February 3, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–2141 Filed 1–28–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER02–2475–001]

Pacific Gas and Electric Company; Notice of Filing

January 23, 2003.

Take notice that on December 6, 2002, Pacific Gas and Electric Company (PG&E) tendered for filing with the Federal Energy Regulatory Commission (Commission) a correction to the designation of a transmission rate adjustment in Second Revised PG&E Rate Schedule FERC No. 136, the PG&E-Sacramento Municipal Utility District (SMUD) Interconnection Agreement, accepted by the Commission in FERC Docket No. ER02–2475–000 on October 16, 2002.

PG&E has requested a waiver of the Commission's notice requirements to allow the effective date previously requested and accepted by the Commission for the corrected rate schedule sheet.

PG&E states that copies of this filing were served upon SMUD, the California Independent System Operator Corporation, the California Public Utilities Commission, and the official service list for FERC Docket No. ER02–2475–000.

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov* , using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Comment Date: January 30, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–2132 Filed 1–28–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–237–000]

Transwestern Pipeline Company; Notice of Tariff Filing

January 23, 2003.

Take notice that on January 21, 2003, Transwestern Pipeline Company (Transwestern) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheet to become effective February 21, 2003:

Twentieth Revised Sheet No. 5B.05
First Revised Sheet No. 5B.13
Fourth Revised Sheet No. 5C
Fourth Revised Sheet Nos. 5D—5E(viii)

Transwestern states that the purpose of this filing, is to submit for Commission review and acceptance two non-conforming service agreements and a negotiated rate agreement, and the tariff revisions required by these agreements.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.314 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: February 3, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–2140 Filed 1–28–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 12311–000]

Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests, and Comments

January 23, 2003.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 12311–000.

c. *Date filed:* July 23, 2002.

d. *Applicant:* Universal Electric Power Corp.

e. *Name of Project:* John T. Myers L&D Project.

f. *Location:* On the Ohio River, in Union County, Kentucky, utilizing the U.S. Army Corps of Engineers' John T. Myers Lock and Dam.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Raymond Helter, Universal Electric Power Corp., 1145 Highbrook Street, Akron, OH 44301, (330) 535–7115.

i. *FERC Contact:* Robert Bell, (202) 502–6062.

j. *Deadline for filing comments, protests, and motions to intervene:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings. Please include the project number (P–12311–000) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project:* The proposed project would utilize the Corps' existing John T. Myers Lock and Dam and consist of: (1) 11 proposed 50-foot-long, 120-inch diameter steel penstocks, (2) a proposed powerhouse containing 11 generating units having a total installed capacity of 22.5 MW, (3) a proposed 500-foot-long, 14.7 kV transmission line, and (4) appurtenant facilities.

Applicant estimates that the average annual generation would be 138 GWh and would be sold to a local utility.

l. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *ferconlinesupport@ferc.gov*. For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

m. Competing Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (*see* 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

n. Competing Development Application—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

o. Notice of Intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development

application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

p. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

q. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

r. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

s. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. 03–2133 Filed 1–28–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Applications Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

January 23, 2003.

Take notice that the following hydroelectric applications have been filed with the Commission and are available for public inspection:

a. *Type of Applications*: Preliminary Permit (Competing).

b. *Project Nos.*: 12371–000 and 12397–000.

c. *Dates filed*: September 20, 2002, and October 16, 2002.

d. *Applicants*: Nelson Hydroelectric LLC and Universal Electric Power Corporation.

e. *Name and Location of Projects*: Both Red River L&D#3 Hydroelectric Projects are proposed to be located on the Red River in Bossier County, Louisiana, and to utilize the U.S. Army Corps of Engineers' existing Red River Lock and Dam #3.

f. *Filed Pursuant to*: Federal Power Act, 16 U.S.C. 791(a)–825(r).

g. *Applicant Contacts*: For Nelson Hydroelectric LLC: Mr. Robert Larson, Gray, Plant, Mooty, Mooty & Bennett, 33 South Sixth Street, Minneapolis, MN 55402, (612) 343–2913. For Universal: Mr. Raymond Helter, Universal Electric Power Corporation, 1145 Highbrook Street, Akron, OH 44301, (330) 535–7115.

h. *FERC Contact:* Robert Bell, (202) 502–6062.

i. *Deadline for filing motions to intervene, protests and comments*: 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings. Please include the project number (12371–000 and 12397–000) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

j. *Description of Projects*: Each project proposes to use the existing U.S. Army Corps of Engineers' Red River Lock and Dam #3 and would consist of: (1) Six proposed 126-inch-diameter, 100-foot-long steel penstocks, (2) a proposed powerhouse containing six generating units with a total installed capacity of 49 megawatts, (3) a 500-foot-long, 47 kV transmission line, and (4) appurtenant facilities. Each project would have an average annual generation of 300 gigawatthours.

k. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *ferconlinesupport@ferc.gov*. For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item g above.

l. Competing Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (*see* 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

m. Competing Development application—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely

notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

n. Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

o. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

p. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

q. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

r. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. 03–2134 Filed 1–28–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Applications Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

January 23, 2003.

Take notice that the following hydroelectric applications have been filed with the Commission and are available for public inspection:

a. *Type of Applications*: Preliminary Permit (Competing).

b. *Project Nos.*: 12372–000 and 12398–000.

c. *Dates filed*: September 20, 2002, and October 16, 2002.

d. *Applicants*: Nelson Hydroelectric LLC and Universal Electric Power Corporation.

e. *Name and Location of Projects*: Both Red River L&D#4 Hydroelectric Projects are proposed to be located on the Red River in Bossier County, Louisiana, and to utilize the U.S. Army Corps of Engineers' existing Red River Lock and Dam #4.

f. *Filed Pursuant to*: Federal Power Act, 16 U.S.C. 791(a)–825(r).

g. *Applicant Contacts*: For Nelson Hydroelectric LLC: Mr. Robert Larson,Gray, Plant, Mooty, Mooty & Bennett, 33 South Sixth Street, Minneapolis, MN 55402, (612) 343–2913. For Universal: Mr. Raymond Helter, Universal Electric Power Corporation, 1145 Highbrook Street, Akron, OH 44301, (330) 535–7115.

h. *FERC Contact:* Robert Bell, (202) 502–6062.

i. *Deadline for filing motions to intervene, protests and comments*: 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings. Please include the project number (12372–000 and 12398–000) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

j. *Description of Projects*: Each project proposes to use the existing U.S. Army Corps of Engineers' River Lock and Dam #4 and would consist of: (1) Five proposed 126-inch-diameter, 100-foot-long steel penstocks, (2) a proposed powerhouse containing five generating units with a total installed capacity of 27 megawatts, (3) a 500-foot-long, kV transmission line, and (4) appurtenant facilities. Each project would have an average annual generation of 166 gigawatthours.

k. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *ferconlinesupport@ferc.gov*. For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item g above.

l. Competing Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (*see* 18 CFR 4.36). Submission of a timely notice of intent

allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

m. Competing Development application—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

n. Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

o. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

p. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

q. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

r. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. 03–2135 Filed 1–28–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Applications Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

January 23, 2003.

Take notice that the following hydroelectric applications have been filed with the Commission and are available for public inspection:

a. *Type of Applications*: Preliminary Permit (Competing).

b. *Project Nos.*: 12378–000 and 12396–000.

c. *Dates filed*: September 23, 2002, and October 16, 2002.

d. *Applicants*: Nelson Hydroelectric LLC and Universal Electric Power Corporation.

e. *Name and Location of Projects*: Both Red River L&D#5 Hydroelectric Projects are proposed to be located on the Red River in Bossier County, Louisiana, and to utilize the U.S. Army Corps of Engineers' existing Red River Lock and Dam #5.

f. *Filed Pursuant to*: Federal Power Act, 16 U.S.C. 791(a)—825(r).

g. *Applicant Contacts*: For Nelson Hydroelectric LLC: Mr. Robert Larson, Gray, Plant, Mooty, Mooty & Bennett, 33 South Sixth Street, Minneapolis, MN 55402, (612) 343–2913. For Universal: Mr. Raymond Helter, Universal Electric Power Corporation, 1145 Highbrook Street, Akron, OH 44301, (330) 535–7115.

h. *FERC Contact:* Robert Bell, (202) 502–6062.

i. *Deadline for filing motions to intervene, protests and comments:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings. Please include the project number (12378–000 and 12396–000) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

j. *Description of Projects*: Each project proposes to use the existing U.S. Army Corps of Engineers' River Lock and Dam # 5 and would consist of: (1) Five proposed 114-inch-diameter, 90-foot-long steel penstocks, (2) a proposed powerhouse containing five generating units with a total installed capacity of 19.8 megawatts, (3) a 300-foot-long, 14.7-kilovolt transmission line, and (4) appurtenant facilities. Each project would have an average annual generation of 121 gigawatthours.

k. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For

assistance, call toll-free 1–866–208–3676 or e-mail *ferconlinesupport@ferc.gov*. For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item g above.

l. Competing Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (*see* 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

m. Competing Development application—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

n. Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

o. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

p. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

q. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

r. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. 03–2136 Filed 1–28–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 12395–000]

Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests, and Comments

January 23, 2003.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 12395–000.

c. *Date filed*: October 16, 2002.

d. *Applicant:* Universal Electric Power Corp.

e. *Name of Project:* Arkansas Lock and Dam #5 Project.

f. *Location:* On the Arkansas River, in Jefferson County, Arkansas, utilizing the U.S. Army Corps of Engineers' Kentucky Lock and Dam #5.

g. *Filed Pursuant to*: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Raymond Helter, Universal Electric Power Corp., 1145 Highbrook Street, Akron, OH 44301, (330) 535–7115.

i. *FERC Contact:* Robert Bell, (202) 502–6062.

j. *Deadline for filing comments, protests, and motions to intervene*: 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings. Please include the project number (P–12395–000) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project*: The proposed project would utilize the Corps' existing Kentucky Lock and Dam

#5 and consist of: (1) 16 proposed 40-foot-long, 114-inch-diameter steel penstocks, (2) a proposed powerhouse containing 16 generating units having an installed capacity of 30.6 MW, (3) a proposed 600-foot-long, 14.7 kV transmission line, and (4) appurtenant facilities.

Applicant estimates that the average annual generation would be 187 GWh and would be sold to a local utility.

l. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *ferconlinesupport@ferc.gov*. For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

m. Competing Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (*see* 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

n. Competing Development Application—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

o. Notice of Intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

p. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

q. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

r. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

s. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. 03–2137 Filed 1–28–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 12408–000]

Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests, and Comments

January 23, 2003.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 12408–000.

c. *Date filed:* October 31, 2002.

d. *Applicant:* Universal Electric Power Corp.

e. *Name of Project:* Kentucky lock and Dam #12 Project.

f. *Location:* On the Kentucky River, in Estill County, Kentucky, utilizing the U.S. Army Corps of Engineers' Kentucky lock and Dam #12.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)—825(r).

h. *Applicant Contact:* Mr. Raymond Helter, Universal Electric Power Corp., 1145 Highbrook Street, Akron, OH 44301, (330) 535–7115.

i. *FERC Contact:* Robert Bell, (202) 502–6062.

j. *Deadline for filing comments, protests, and motions to intervene:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings. Please include the project number (P–12408–000) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list

for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project*: The proposed project would Utilize the Corps' existing Kentucky Lock and Dam #12 and consist of: (1) four proposed 50-foot-long, 96-inch-diameter steel penstocks, (2) a proposed powerhouse containing four generating units having an installed capacity of 5.5 MW, (3) a proposed 400-foot-long, 14.7 kV transmission line, and (4) appurtenant facilities.

Applicant estimates that the average annual generation would be 33 GWh and would be sold to a local utility.

l. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *ferconlinesupport@ferc.gov*. For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

m. Competing Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (*see* 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

n. Competing Development Application—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

o. Notice of Intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

p. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

q. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

r. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

s. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. 03–2138 Filed 1–28–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AD03–4–000]

Credit Issues in Energy Markets-Clearing and Other Solutions; Notice of Technical Conference

January 23, 2003.

The Federal Energy Regulatory Commission (FERC) and the Commodity Futures Trading Commission (CFTC) are holding a joint technical conference on credit issues & potential solutions in energy markets. The conference is scheduled for Wednesday, February 5, 2003, at FERC headquarters, 888 First Street, NE., Washington, DC, in the Commission Meeting Room (Room 2C).

The vision of FERC is dependable, affordable energy through competitive markets. Current conditions in energy markets are causing concern due to the credit-worthiness of market participants and market uncertainty. In holding this conference, FERC and CFTC are looking forward to an informed discussion on credit issues, potential solutions to problems and their implementation.

This conference plans to provide education on potential credit solutions, particularly clearing. It will cover clearing fundamentals, clearing regulation, clearing alternatives, industry initiatives and implementation. Speakers will include representatives of clearing providers, energy industry participants, and other experts who are expected to discuss the issues in depth, as well as FERC and CFTC staff.

This one-day conference will begin at 9:00 a.m. and will conclude at about 4:30 p.m. All interested parties are invited to attend. There is no registration fee.

Capitol Connection will cover this meeting live over the Internet, as well as

via telephone and satellite. For a fee, you can receive these meetings in your office, at home, or anywhere in the world. To find out more about Capitol Connection's live Internet, phone bridge, or satellite coverage, contact David Reininger or Julia Morelli at (703) 993–3100, or visit *http://www.capitolconnection.gmu.edu*.

The conference will be transcribed. Those interested in obtaining transcripts of the conference need to contact Ace Federal Reporters at (202) 347–3700 or (800) 336–6646. Transcripts will be available to view electronically under this docket number seven days after the conference. Anyone interested in purchasing videotapes of the meeting should call VISCOM at (703) 715–7999.

The Agenda and the list of participants will be announced in the near future. For additional information, please contact Saida Shaalan of FERC's Office of Market Oversight & Investigations at 202–502–8278 or by e-mail, *Saida.Shaalan@ferc.gov*.

Magalie R. Salas,

Secretary.

[FR Doc. 03–2130 Filed 1–28–03; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[OW–2002–0058, FRL–7445–1]

Agency Information Collection Activities; Submission of EPA ICR No. 2092.01 to OMB for Review and Approval; Comment Request

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*); this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: Tribal Operator Certification Program Information Collection Request (EPA ICR No. 2092.01). The ICR, which is abstracted below, describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before February 28, 2003.

ADDRESSES: Follow the detailed instructions in **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Lisa Christ, Drinking Water Protection Division, Office of Ground Water and Drinking Water, 4606M, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 202–564–8354; fax number: 202–564–3755; e-mail address: *christ.lisa@epa.gov*.

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On September 17, 2002 (67 FR58603), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments.

EPA has established a public docket for this ICR under Docket ID No. OW–2002–0058, which is available for public viewing at the Water Docket in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1742, and the telephone number for the Water Docket is (202) 566–2426. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket*. Use EDOCKET to submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA and OMB within 30 days of this notice, and according to the following detailed instructions: (1) Submit your comments to EPA online using EDOCKET (our preferred method), by e-mail to *OW–DOCKET@epa.gov*, or by mail to: EPA Docket Center, Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460; and (2) Mail your comments to OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, see EPA's **Federal Register** notice describing the electronic docket at 67 FR 38102 (May 31, 2002), or go to *http://www.epa.gov/edocket*.

Title: Information Collection Request for the Tribal Operator Certification Program (EPA ICR Number 2092.01). This is a request for a new collection. Under the OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB.

Abstract: The Tribal Operator Certification Program was developed to increase public health protection by increasing training and certification of personnel operating community and nontransient noncommunity drinking water systems in Indian Country. This voluntary program is intended to provide tribes with further training and certification opportunities in addition to existing training or certification programs offered by States, various federal agencies, and private organizations. The Information Collection Request will estimate the burden and cost to tribal drinking water system operators who seek certifications from EPA approved providers. In addition, the burden and cost to Tribal Certification Providers will be estimated. The information collected will be used to measure EPA's goal for 80% of tribal community and nontransient noncommunity water systems to have a certified operator by 2005. Establishing a tribal operator certification program will help achieve this goal while bringing greater public health protection to tribal communities. The information collected will include: number and level of new certifications, number and level of renewal certifications, information regarding revoked and suspended certifications, and training status for tribal drinking water system operators. Responses to the collection of information are voluntary.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15,

and are identified on the form and/or instrument, if applicable.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average about 18 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Tribal water systems and tribal certification providers.

Estimated Number of Respondents: 271.

Frequency of Response: Annually.

Estimated Total Annual Hour Burden: 2,597.

Estimated Total Annual Cost: $71,526, includes $82 annualized capital or O&M costs.

Dated: January 16, 2003.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 03–2036 Filed 1–28–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OECA–2002–0013; FRL–7445–2]

Agency Information Collection Activities; Submission of EPA ICR No. 1901.02 (OMB No. 2060–0424) to OMB for Review and Approval; Comment Request

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: Title: Emission Guidelines Reporting and Recordkeeping Requirements for Existing Small Municipal Waste Combustion Units, (40 CFR Part 60, Subpart BBBB), OMB Control No. 2060–0424 and EPA ICR No. 1901.02, expiration date February 28, 2003. The ICR, which is abstracted below, describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before February 28, 2003.

ADDRESSES: Follow the detailed instructions in the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Joyce Chandler, Compliance Assistance and Sector Program, Office of Enforcement & Compliance Assurance, Mailcode 2224A, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 202–564–707; fax number: 202–564–0009; e-mail address: *chandler.joyce@epa.gov*.

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On June 20, 2002 (67 FR 41981), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments.

EPA has established a public docket for this ICR under Docket ID No. OECA–2002–0013, which is available for public viewing at the Enforcement & Compliance Docket Information Center (ECDIC) in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the ECDIC is (202) 566–1514. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket*. Use EDOCKET to submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA and OMB within 30 days of this notice, and according to the following detailed instructions: (1) Submit your comments to EPA online using EDOCKET (our preferred method), by e-mail to *docket.oeca@epa.gov*, or by mail to: EPA Docket Center, Environmental Protection Agency, Mailcode: 2201T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, and (2) Mail your comments to OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *Attention:* Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, see EPA's **Federal Register** notice describing the electronic docket at 67 FR 38102 (May 31, 2002), or go to *http://www.epa.gov/edocket*.

Title: Emission Guidelines Reporting and Recordkeeping Requirements for Existing Small Municipal Waste Combustion Units (MWC), (40 CFR Part 60, Subpart BBBB) (OMB Control No. 2060–0424, EPA ICR Number 1901.02). This is a request to renew an existing approved collection that is scheduled to expire on February 28, 2003. Under the OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB.

Abstract: This addresses information collection activities that would be imposed by the "Emission Guidelines Reporting and Recordkeeping Requirements for Existing Small Municipal Waste Combustion Units MWC," 40 CFR part 60, subpart BBBB. This information collection is required as a result of the implementation of the emission guidelines that are being developed under the authority of sections 111 and 129 of the Clean Air Act (CAA). Reporting and recordkeeping requirements would apply to existing MWC units that have the capacity to combust greater than 35 tons per day (tpd) but less than 250 tpd of municipal solid waste.

This ICR will enable EPA to monitor compliance with emission standards for regulated pollutants. Owners and

operators of small MWCs are required to measure, record, and report emission rates and operating parameters, follow good combustion practices. The responses to this Emission Guideline is mandatory.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15, and are identified on the form and/or instrument, if applicable.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 404 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Small Municipal Waste Combustors.

Estimated Number of Respondents: 39.

Frequency of Response: Initial, Quarterly, Semi-annual, Annual.

Estimated Total Annual Hour Burden: 186,374 hours.

Estimated Total Annual Cost: $17,351,247, includes $3,337,600 annualized capital and O&M costs.

Changes in the Estimates: There is an increase of 185,077 hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens. This increase is due to the conducting of initial performance tests, annual performance tests, and the installation of continuous emission monitoring systems and their operation and maintenance.

Dated: January 15, 2003.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 03–2037 Filed 1–28–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2002–0049; FRL–7280–6

Rodenticides; Availability of Preliminary Comparative Ecological Assessment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the availability of the preliminary comparative ecological assessment for nine rodenticides, which included those addressed in the Reregistration Eligibility Decisions (REDs) for the the rodenticide cluster (brodifacoum, bromadiolone, bromethalin, chlorophacinone, diphacinone,) and zinc phosphide, as well as three other rodenticides, warfarin, difethialone, and cholecalciferol. This notice also starts a 60–day public comment period for the preliminary comparative ecological risk assessment. Comments are to be limited to issues directly associated with the nine rodenticides that are included in the risk assessment which has been placed in the docket and should be limited to issues raised in the document. By allowing access and opportunity for comment on the preliminary ecological assessment, EPA is seeking to strengthen stakeholder involvement and help ensure our decisions are transparent and based on the best available information. The Agency cautions that this assessment is a preliminary assessment only and that further refinements of the assessment may be appropriate for the nine rodenticides. This document reflects only the work and analysis conducted as of the time it was produced and it is appropriate that, as new information becomes available and/or additional analyses are performed, the conclusions it contains may change.

DATES: Comments, identified by the docket ID number OPP–2002–0049, must be received on or before March 31, 2003.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: John W. Pates, Jr., Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8195; e-mail address: *pates.john@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. This action may, however, be of interest to those persons who are or may be required to conduct testing of chemical substances under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPP–2002–0049. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/.* In addition, copies of the preliminary comparative ecological assessment for the nine rodenticides may also be accessed at *http://www.epa.gov/pesticides/rodenticidecluster.*

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically.

Once in the system, select "search," then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA' s electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and To Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically.* If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket*, and follow the online instructions for submitting comments. Once in the system, select "search," and then key in docket ID number OPP–2002–0049. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *e-mail.* Comments may be sent by e-mail to *opp-docket@epa.gov*, Attention: Docket ID Number OPP–2002–0049. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail.* Send your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency (7502C), 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID Number OPP–2002–0049.

3. *By hand delivery or courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA., Attention: Docket ID Number OPP–2002–0049. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.D.

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI,

please consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

D. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Offer alternative ways to improve the notice.
7. Make sure to submit your comments by the deadline in this document.
8. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Background

A. What Action is the Agency Taking?

EPA is making available the preliminary comparative ecological assessment for nine rodenticides, which included those addressed in the Reregistration Eligibility Decisions (REDs) for the the rodenticide cluster (brodifacoum, bromadiolone, bromethalin, chlorophacinone, diphacinone,) and zinc phosphide, as well as three other rodenticides, warfarin, difethialone, and cholecalciferol. This notice starts a 60–day public comment period for the preliminary comparative ecological assessment. The Agency's preliminary assessment titled: "Potential Risks of Nine Rodenticides to Birds and Nontarget Mammals: A Comparative Approach," is available in the docket.

As additional comments, reviews, and risk assessment modifications become available, these will also be docketed for the nine rodenticides listed in this notice. The Agency cautions that these assessments are preliminary assessments only and that further refinements will be appropriate for some, if not all, of these nine rodenticides. This document reflects only the work and analysis conducted as of the time it was produced and it is appropriate that, as new information becomes available and/or additional analyses are performed, the conclusions contained, therein, may change.

The Agency is providing an opportunity, through this notice, for interested parties to provide written comments and input to the Agency on the preliminary ecological assessment for the chemicals specified in this notice. Such comments and input could address, for example, the availability of additional data to further refine the assessment or address the Agency's risk assessment methodologies and assumptions as applied to these specific chemicals. Comments should be limited to issues raised within the preliminary assessment. Failure to comment on any such issues as part of this opportunity will in no way prejudice or limit a commenter's opportunity to participate fully in later notice and comment processes. All comments should be submitted by February 28, 2003 using the methods in Unit I. Comments will become part of the Agency record for each rodenticide to which it pertains.

List of Subjects

Environmental protection, Chemicals, Pesticides and pests.

Dated: January 18, 2003.

Lois A. Rossi,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 03–2021 Filed 1–28–03; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2002–0318; FRL–7281–3]

S-metolachlor; Notice of Filing a Pesticide Petition to Establish a Tolerance for a Certain Pesticide Chemical in or on Food

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of a pesticide petition proposing the establishment of regulations for residues of a certain pesticide chemical in or on various food commodities.

DATES: Comments, identified by docket ID number OPP–2002–0318, must be received on or before February 28, 2003.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Joanne I. Miller, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: 703–305–6224; e-mail address: *miller.joanne@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- (NAICS 111), e.g., Crop Production
- (NAICS 112), e.g., Animal Production
- (NAICS 311), e.g., Food Manufacturing
- (NAICS 32532), e.g., Pesticide Manufacturing
- (NAICS 32561),e.g., Antimicrobial Pesticide

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The NAICS codes have been provided to assist you and others in determining whether this action might apply to certain entities. To determine whether you or your business may be affected by this action, you should carefully examine the applicability provisions in this Notice of Filing a Pesticide Petition to Establish a Tolerance for a Certain Pesticide Chemical in or on Food regarding the applicability of this action to a particular entity , consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPP–2002–0138. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m.,

Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select "search," then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and To Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically.* If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket*, and follow the online instructions for submitting comments. Once in the system, select "search," and then key in docket ID number OPP–2002–0318. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by e-mail to *opp-docket@epa.gov*, Attention: Docket ID Number OPP–2002–0318. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail.* Send your comments to: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID Number OPP–2002–0318.

3. *By hand delivery or courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, Attention: Docket ID Number OPP–2002–0318. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

D. How Should I Submit CBI To the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is

CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Make sure to submit your comments by the deadline in this notice.

7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

EPA has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of a certain pesticide chemical in or on various food commodities under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set forth in FFDCA section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: January 16, 2003.

Debra Edwards,

Acting Director, Registration Division, Office of Pesticide Programs.

Summaries of Petitions

The petitioner summaries of the pesticide petitions are printed below as required by FFDCA section 408(d)(3). The summaries of the petitions was prepared by the petitioners and represent the views of the petitioners. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

6E4638, 8E5011, 6F6751, and 7F4897

EPA has received pesticide petitions (PP 6E4638, 8E5011, 6F6751, and 7F4897) from the Interregional Research Project No. 4 (IR-4), and Syngenta Crop Protection, New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903 and 410 Swing Road, Greensboro, NC 27419, proposing pursuant to section 408(d) of the FFDCA, 21 U.S.C. 346a(d), to amend 40 CFR part 180 to establish tolerances for residues of S-metolachlor on grasses grown for seed (6E4638), spinach (8E5011), sugar beets and sunflowers (7F4897), and tomato (6F6751). Grasses grown for seed and tomato petitions have been the subject of previous **Federal Register** notices on March 4, 1998, and April 14, 1997, these petitions have been amended to request the establishment of tolerances for S-metolachlor, by establishing a tolerance for residues of S-metolachlor [acetamide, 2-chloro-*N*-(2-ethyl-6-methylphenyl)-*N*-(2-methoxy-1-methylethyl)-, (S)] (CAS Number 873921–9) and its metabolites, determined as the derivatives, 2-[(2-ethyl-6-methylphenyl)amino]-1-propanol and 4-(2-ethyl-6-methylphenyl)-2-hydroxy-5-methyl-3-morpholinone, each expressed as the parent compound in or on the raw agricultural commodity (RAC) grass forage, grass hay, spinach, sugar beet, sugar beet dried pulp, sugar beet molasses, sugar beet tops, sunflower, sunflower meal, and tomato at 12, 0.2, 0.5, 0.5, 1.0, 3.0, 15.0, 0.5, 1.0, and 0.1 (respectively) parts per million (ppm). EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Residue Chemistry

1. *Plant metabolism.* The qualitative nature of S-metolachlor residues in plants is adequately understood based upon available EPA approved corn, potato, and soybean metabolism studies. The metabolism of S-metolachlor involves conjugation with glutathione, breakage of this bond to form the mercaptan, conjugation of the mercaptan with glucuronic acid, hydrolysis of the methyl ether, and conjugation of the resultant alcohol with a neutral sugar. EPA has determined that residues of concern in plants include parent and metabolites, determined as the derivatives CGA–37913 and CGA–49751.

2. *Analytical method.* The Pesticide Analytical Manual (PAM) Vol. II, Pesticide Regulation (§ 180.368) lists a gas chromatography nitrogen phosphorous detector (GC/NPD) method (Method 1) for determining residues in or on plants and a gas chromatography mass spectrometry detector (GC/MSD) method for determining residues in livestock commodities. These methods determine residues of S-metolachlor and its metabolites as either CGA–37913 or CGA–49751 following acid hydrolysis. The limit of quantitation (LOQ) for the method is 0.03 ppm for CGA–37913 and 0.05 ppm for CGA–49751.

3. *Magnitude of residues–Grasses grown for seed.* This petition is supported by six field residue tests conducted on grasses grown for seed. Quantitative measurements of the metolachlor hydrolysates, CGA–37913 and CGA–49751, were made for all samples and reported as parent equivalents. In all residue tests, the active ingredient (a.i.) was applied post-emergence at a maximum of 2.0 lbs. a.i./acre at the early regrowth stage prior to weed emergence. The maximum residue in forage was 27 ppm (60–day PHI). Residues in forage declined with increasing PHI. Maximum residues in straw, screenings, and seed were 0.11 ppm, 0.04 ppm, and < 0.08 ppm, respectively.

i. *Spinach.* Magnitude of residue data on the spinach were collected from 12 field trials. In 1994, four field trials were conducted to collect magnitude of residue data in or on spinach. The treated plots each received one post-seeding, pre-emergence, broadcast

application of a.i., targeting a rate of 1.0 lb a.i./acre. The spinach was harvested 45 to 56 days after the application. No residues of CGA–49751 were detected above the LOQ, 0.05 ppm, in spinach samples from two of the three remaining sites. CGA–49751 was detected at 0.1 ppm in one treated sample from Arkansas. Residues of CGA–37913 were detected above the LOQ in samples from all three field sites. The CGA–37913 residues ranged from < 0.10 ppm to 0.33 ppm. The resulting maximum total combined residues of CGA–49751 + CGA–37913 in samples treated at the 1.0 lb a.i./acre rate is < 0.38 ppm.

In 1995, eight field trials were conducted in Maryland, Michigan, New Jersey, Texas, and California. Each of the eight trials consisted of at least an untreated control and one treated plot, where the treated plot received one post-seeding, pre-emergence, broadcast application of a.i., targeting a rate of 1.0 lb a.i./acre. The California and Texas trials also included a second treated plot, which received post-seeding, pre-emergence, broadcast application of a.i., targeting a rate of 2.0 lbs a.i./acre. The spinach was harvested 34 to 69 days after the application. The residues found in 1995 spinach samples, treated targeting the 1.0 lb a.i./acre rate, ranged from less than the LOQ, 0.05 ppm, to 0.85 ppm of CGA–49751, and ranged from less than the LOQ, 0.03 ppm, to 0.107 ppm for CGA–37913 for a maximum combined residue of 0.174 ppm. In the spinach samples treated targeting the 2.0 lbs a.i./acre rate, CGA–49751 residues ranged from < 0.05 ppm to 0.188 ppm and CGA–37913 residues ranged from 0.032 ppm to 0.075 ppm. The maximum combined residues for a.i. at the 2.0 lbs a.i./acre application rate is 0.263. The maximum residues found in or on spinach treated with the proposed labeled rate of 1.0 lbs a.i./acre, was < 0.38 ppm for the combined residues of CGA–37913 and CGA–49741. Residues in spinach treated at the 2.0 lbs a.i./acre application rate did not exceed this combined residues, with a maximum combined residue of 0.263 ppm. IR–4 is conducting additional research to support the 2.0 lbs a.i./acre application rate.

ii. *Sugarbeets.* Eleven sugar beet trials were conducted using six different treatment scenarios. The maximum 1X use rate was 4.0 lbs. a.i./acre applied preplant surface or preplant incorporated (1.33 lbs. a.i./acre) plus a post foliar spray (2.66 lbs. a.i./acre). 3X and 5X treatments were also conducted. Maximum residues at the 1X rate were 14 ppm in sugar beet tops and 0.32 ppm in sugar beet roots. In the processing study, it was determined that tolerances would be required in dried pulp and molasses, but not in refined sugar.

iii. *Sunflower.* A total of 15 residue trials were conducted in major sunflower growing areas of the United States. Applications were made at 1X and 2X the maximum labeled rate of 3.0 lbs. a.i./acre. Processing was also conducted with seeds processed into meal, hulls, crude oil, refined oil and soapstock. Based on these studies, tolerances are proposed in sunflower seed at 0.5 ppm and in sunflower meal at 1.0 ppm.

iv. *Tomato.* Thirteen field trials were conducted in major tomato production areas across the United States. Both tomato and its processed fractions were analyzed for residues of parent, measured as CGA–37913 and CGA–49751. One application at 3.0 lbs. a.i./acre (1X) was made post-foliar to tomato transplants. Exaggerated rate applications (2X, 3X and 5X) were also made. Two of the 13 trials were used for processing into tomato commodity products. No residues LOQ of 0.08 ppm) were found at the 1X rate in the RAC tomatoes. In processed commodities at the 1X rate of 3.0 lbs a.i./acre, residues of parent were found below the method LOQ in tomato puree (0.4 ppm) and above the method LOQ in dry pomace and tomato paste (0.16 and 0.13 ppm, respectively). Because residues in tomato puree and paste (commodities listed in Table 1 of OPPTS 860.1000 as processed commodities of tomatoes) are less than 2X the LOQ of 0.08 ppm, tolerances are not required according to OPPTS 860.1520 (f)(3).

B. Toxicological Profile

1. *Acute toxicity.* The database for acute toxicity for S-metolachlor is complete. S-metolachlor is moderately acutely toxic (Toxicity Category III) by the oral and dermal route and relatively non-toxic (Toxicity category IV) by the inhalation route. It causes slight eye irritation (Toxicity Category III) and is non-irritating dermally (Toxicity Category IV); the a.i. was found to be positive in a dermal sensitization test but this effect is mitigated in end-use product formulations.

2. *Genotoxicty.* The database for S-metolachlor has been deemed to be adequate by EPA. Gene mutation studies (Guideline 870.5100), micronucleus (Guideline 870.5395), and unscheduled DNA synthesis (Guideline 870.5550) studies have recently been reviewed and approved by EPA. There is no evidence of a mutagenic or cytogentic effect *in vivo* or *in vitro* with S-metolachlor.

3. *Reproductive and developmental toxicity.* The database for developmental and reproductive toxicity for S-metolachlor are considered complete. according to EPA reviews. The prenatal developmental studies in the rat and rabbit with S-metolachlor revealed no evidence of a qualitative or quantitative susceptibility in fetal animals. No significant developmental toxicity was observed in most studies even at the highest does tested (HDT). In a 2–generation reproduction study, there was no evidence of parental or reproductive toxicity at the HDT (80 millograms/kilogram/day (mg/kg/day)). The results indicate that S-metolachlor is not embryotoxic or teratogenic in either species at maternally toxic doses.

4. *Subchronic toxicity.* In a 90–day dietary study in rats with S-metolachlor, no effects were observed in male or females at 208 and 236 mg/kg/day, respectively. In another 90–day dietary study in rats, decreased body weight, reduced food consumption and food efficiency in both sexes and increased kidney weight in males at 150 mg/kg/day; the no observe adversed effect level (NOAEL) was 15 mg/kg/day. A 90–day dog study with S-metolachlor in dogs has been accepted by EPA; no effects were observed in males and females at 62 mg/kg/day and 74 mg/kg/day, respectively, the HDT.

5. *Chronic toxicity.* The database that supports S-metolachlor is considered adequate by EPA. A combined chronic toxicity/ carcinogenic study in the rat satisfies the requirements for both the chronic toxicity and carcinogenicity studies. No significant chronic toxicity was found in either rats or dogs. In the rat, a decrease in body weight was observed at the HDT. In the chronic dog study that supports S-metolachlor, the only adverse effect was decreased body weight gain in females at 33 mg/kg/day; the NOAEL was 10 mg/kg/day.

6. *Animal metabolism.* The database for S-metolachlor is considered to be complete. In animals, S-metolachlor is extensively absorbed, rapidly metabolized and almost totally eliminated in the excreta of rats, goats, and poultry. Metabolism in animals proceeds through common Phase 1 intermediates and glutathione conjugation.

7. *Metabolite toxicology.* The metabolism of S-metolachlor has been well characterized in standard FIFRA metabolism studies. The metabolites found are considered to be toxicologically similar to parent. S-metolachlor does not readily undergo dealkylation to form an aniline or quinone imine as has been reported for other members of the chloroacetanilide class of chemicals. Therefore, as EPA has agreed, it is not appropriate to include S-metolachlor with the group of

chloroacetanilides that readily undergo dealkylation, producing a common toxic metabolite (quinone imine).

8. *Endocrine disruption.* S-Metolachlor does not belong to a class of chemicals known or suspected of having adverse effects on the endocrine system. There is no evidence that S-metolachlor has any effect on endocrine function in developmental or reproduction studies. Furthermore, histological investigation of endocrine organs in the chronic dog, rat and mouse studies did not indicate that the endocrine system is targeted by S-metolachlor, even at maximally tolerated doses administered for a lifetime. There is no evidence that S-metolachlor bioaccumulates in the environment.

C. Aggregate Exposure

1. *Dietary exposure.* A Tier III/IV chronic dietary exposure analysis was conducted on S-metolachlor using field trial and market basket (MB) residues. Field trial residues were adjusted for PCT whereas MB residues were not, since this information is inherent in the data. The PCT was assumed to be 100% for all commodities for which no PCT information was available. The chronic assessment was conducted for S-metolachlor using the Dietary Exposure Evaluation Model (DEEM™), version 7.76) by exponent and food consumption information from Department of Agriculture (USDA's) 1994–96 Continuing Survey of Food Intake by Individuals (CSFII) and the Supplemental CSFII children's survey (1998). For this chronic assessment, the field trial values were averaged and entered into the DEEM™ software.

Syngenta Market Basket Survey (SMBS) S-metolachlor data were available for the following commodities: Milk, potatoes, and tomatoes. The SMBS was conducted from September 1999 through September 2000. Following the Agency tier ranking system, these chronic dietary assessments are considered as Tier III (utilizing field trial data) and Tier IV (utilizing SMBS and PDP data) assessments.

The chronic reference dose (RfD) for S-metolachlor is 0.10 mg/kg body weight/day and is based on a 1–year dog study with a NOAEL of 9.7 mg/kg body weight/day and a safety factor of 100X. No additional FQPA safety factor is required, nor was applied in this assessment. S-metolachlor is not considered acutely toxic and therefore, acute dietary exposure was not determined. For the purpose of aggregate assessment, the exposure values were expressed in terms of margin of exposure (MOE) which was calculated by dividing the NOAEL by the exposure for each population subgroup. The benchmark MOE for this assessment is 100.

i. *Food.* The risk from chronic dietary exposure to S-metolachlor is considered to be very low. Based on worst-case assumptions, the chronic exposure assessment did not result in any MOE less than 55,428 for even the most impacted population subgroup (children 1-6 years). Syngenta believes that the MOE for chronic exposure would be well above 100 for any population group. A MOE of 100 or more is considered satisfactory. The percent of the chronic RfD ranged from 0.05% for seniors to 0.2% for children 1–6 and Non-nursing infants, theoretically the most exposure population subgroups.

ii. *Drinking water.* Other potential sources of exposure of the general population to residues of S-metolachlor are residues in drinking water and exposure from non-occupational sources. The degradation of S-metolachlor is microbially mediated with an aerobic soil metabolism primary half-life of less than 30 days and subsequently soil binding predominates. S-metolachlor Koc's vary from 110–369. S-metolachlor is stable to hydrolysis and while aqueous and soil photolysis occur, they are not expected to be prominent pathways in the environment.

The predominant crop for S-metolachlor is corn and accordingly an Index Reservoir PRZM/EXAMS was run using EPA's standard corn scenario. The model simulated two applications to the same plot: Pre-emergence (2.67 kg a.i./hectare (ha) post-emergence (1.50 kg a.i./ha). The mean annual average EEC was 11.77 part per billion (ppb). It should be noted that extensive monitoring data suggests that this estimated environmental concentration (EEC) is a conservative estimate. For the vast majority of locations sampled, the peak measured concentration does not approach 12 ppb, and the annual average would be expected to be much lower.

The Chronic drinking water levels of concern (DWLOC) was calculated based on a chronic reference dose (cRfD) of 0.097 mg/kg/day. Non-nursing infants are the most sensitive subpopulation and their DWLOC is estimated to be 544 ppb which corresponds to a %cRfD value of 2.2% with an MOE value of 4,621. Thus, the DWLOC is considerably higher than the EEC of 11.77 ppb and the MOE is well above the benchmark value of 100.

2. *Non-dietary exposure.* S-metolachlor is labeled for use on warm-season turf and landscape ornamentals. Although it is primarily used on sod farms and commercial landscape ornamentals, it can be used by licensed pest control operators or lawn care operators on residential turf. Since S-metolachlor can only be applied to warm-season turf varieties (bermudagrass, Zoysiagrass, St. Augustinegrass, and Centipedegrass), its use on turf is limited to the southern states.

Non-dietary residential exposure may occur to homeowners or children as a result of exposure during re-entry activities. Using surrogate dislodgeable foliar residue data, and conservative standard EPA exposure scenarios, exposure through the dermal route was calculated. Based on the use pattern, which restricts to number of application to one per year, only short-term risks need to be considered. The relevant toxicological endpoint for short-term dermal risks is the NOAEL of 100 mg/kg/day from a 21–day dermal toxicity study in rabbits. No acute oral hazard has been identified following an acute exposure to S-metolachlor and, therefore, no nondietary assessment is needed.

The short-term dermal post-application risks for adults and children are acceptable, ranging from 520 to 870. These risk estimates exceed the EPA's level of concern for S-metolachlor (all MOEs are greater than 100).

3. *Aggregate exposure (drinking water and dietary exposure).* Using the total MOE equation for the determination of aggregate chronic exposure (food and drinking water only) resulted in an aggregate MOE_T of 4,630 for the most sensitive subpopulation, non-nursing infants. For this particular subpopulation, there are no non-dietary exposure contributions to the MOE_T aggregate value.

D. Cumulative Effects

EPA has examined the common mechanism potential for S-metolachlor and has concluded that S-metolachlor should not be included with some pesticides that comprise the class of chloroacetanilides included in a "Common Mechanism Group". Therefore, a cumulative assessment is not necessary for S-metolachlor.

E. Safety Determination

1. *U.S. population.* Based on the aggregate assessment described above and the completeness and reliability of the toxicity data, it is concluded that aggregate exposure to S-metolachlor (including the proposed uses) in food will utilize less than 0.1% of the cRfD for the U.S. population. EPA generally has no concern for exposures below

100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. Despite the potential for exposure to S-metolachlor in drinking water and from non-dietary, non-occupational exposures, the assessment presented above demonstrates that the high levels of safety exist for current and proposed uses of S-metolachlor; it is not expected that aggregate exposure from all sources will exceed 100% of the RfD. Therefore, one can conclude there is a reasonable certainty that no harm will result from aggregate exposure to S-metolachlor.

2. *Infants and children.* FFDCA section 408 provides that EPA may apply an additional safety factor for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database. Based on the current toxicological data requirements, the database relative to prenatal and postnatal effects for children is complete. A full consideration of the available reproductive toxicity data supporting S-metolachlor demonstrates no increased sensitivity to infants and children. Therefore, it is concluded that an additional uncertainty factor is not warranted to protect the health of infants and children and that the cRfD at 0.1 mg/kg/day is appropriate for assessing aggregate risk to infants and children from use of S-metolachlor.

Based on the aggregate assessment described above, the percent of the cRfD that will be utilized by aggregate exposure to residues of S-metolachlor is less than 0.2% for non-nursing infants and children 1 to 6 years old, and 0.1% for children 7 to 12 years old. EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. Despite the potential for exposure to S-metolachlor in drinking water and from non-dietary, non-occuptional exposure, the assessment described above demonstrates that it is not expected that aggregate exposure from all sources provides for a large margin of safety and will exceed 100% of the RfD. Therefore, based on the completeness and reliability of the toxicity data and the exposure assessment, it is concluded there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to S-metolachlor residues.

F. International Tolerances

There are no Codex Alimentarius Commission maximum residue levels (MRL's) established for residues of S-metolachlor in or on raw agricultural commodities.

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ENVIRONMENTAL PROTECTION AGENCY

[OPP–2003–0001; FRL–7287–6]

Lactofen; Notice of Filing Pesticide Petitions to Establish Tolerances for Certain Pesticide Chemicals in or on Food

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of pesticide petitions proposing the establishment of regulations for residues of certain pesticide chemicals in or on various food commodities.

DATES: Comments, identified by docket ID number OPP–2003–0001, must be received on or before February 28, 2003.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Joanne I. Miller, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–6224; e-mail address: *miller.joanne@epamail.epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

- Crop production (NAICS 111)
- Animal production (NAICS 112)
- Food manufacturing (NAICS 311)
- Pesticide manufacturing (NAICS 32532)

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPP–2003–0001. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/.*

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select "search," then key in the appropriate docket ID number.

Certain types of information will not be placed in EPA's Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper

form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and To Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically.* If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket*, and follow the online instructions for submitting comments. Once in the system, select "search," and then key in docket ID number OPP–2003–0001. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by e-mail to *opp-docket@epa.gov*, Attention: Docket ID Number OPP–2003–0001. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail.* Send your comments to: Public Information and Records Integrity Branch (PIRIB) 7502C, Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID Number OPP–2003–0001.

3. *By hand delivery or courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, Attention: Docket ID Number OPP–2003–0001. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

D. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Make sure to submit your comments by the deadline in this notice.

7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

EPA has received pesticide petitions as follows proposing the establishment and/or amendment of regulations for residues of certain pesticide chemicals in or on various food commodities under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that these petitions contain data or information regarding the elements set forth in FFDCA section 408d)2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petitions. Additional data may be needed before EPA rules on the petitions.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: January 17, 2003.

Debra Edwards,

Acting Director, Registration Division, Office of Pesticide Programs.

Summaries of Petitions

The petitioner's summaries of the pesticide petitions are printed below as required by FFDCA section 408(d)(3). The summaries of the petitions were prepared by the petitioner and represent the views of the petitioner. The petitions summaries announce the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemicals residues or an explanation of why no such method is needed.

Valent U.S.A. Corporation

PP 8F3591 and PP 9F3798

EPA has received pesticide petitions (8F3591 and 9F3798) from Valent U.S.A. Corporation, 1333 North California Boulevard, Suite 600, Walnut Creek, California 94596–8025 proposing, pursuant to section 408(d) of the FFDCA, 21 U.S.C. 346a(d), to amend 40 CFR 180.432 by establishing tolerances for residues of the herbicide lactofen, 1-(carboethoxy)ethyl 5-[2-chloro-4-(trifluoromethyl)phenoxy]-2-nitrobenzoate, in or on the raw agricultural commodities (RACs) cottonseed at 0.01 part per million (ppm), cotton gin byproducts at 0.02 ppm, and peanut nutmeats at 0.01 ppm. EPA has determined that the petitions contain data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petitions. Additional data may be needed before EPA rules on the petitions.

A. Residue Chemistry

1. *Plant metabolism.* The nature of the residue in plants is adequately understood based on plant metabolism studies on cotton, peanut, soybean, and tomato. The Health Effects Division (HED) Metabolism Assessment Review Committee (MARC) met on April 4, 2000, considered all of the metabolism studies submitted to date and concluded that only the parent compound needs to be regulated for plant commodities, provided that pre-harvest intervals exceed 45 days.

2. *Analytical method.* Adequate analytical methodology is available for detecting and measuring levels of lactofen in or on RACs with a limit of detection (LOD) that allows monitoring of food with residues at or above the level of the proposed tolerances. The method, RM–28D, has been successfully radio validated in conjunction with a tomato metabolism study and has undergone a successful independent laboratory validation trial. This method was also successfully validated by EPA's Analytical Chemistry Laboratory using peanut nutmeats and cottonseed. In general, the analytical method has a LOD of 0.005 ppm and limit of quantitation (LOQ) of 0.01 ppm in crops.

3. *Magnitude of residues.* Adequate lactofen residue data are available for cotton and peanuts. An adequate number of field trials distributed throughout cotton and peanut growing areas of the United States have been conducted on these crops to determine lactofen residues resulting from the application of lactofen at the maximum labeled or proposed use rate.

i. *Cotton.* Residues of lactofen were each <0.01 ppm, in/on cottonseed (n=14) harvested 59–127 days following a single postemergence soil-directed application of lactofen at 0.4 lb active ingredient per acre (lb active ingredient/acre) (2x the single application rate) and in/on cottonseed (n=10) harvested 23–108 days following the last of two postemergence directed applications at 0.4 lb active ingredient/acre application (2x the maximum seasonal rate). With one exception, residues of lactofen were also each <0.01 ppm, in/on cotton gin byproducts (gin trash) (n=11) derived from cotton harvested 69–108 days following two applications at 0.2 lb active ingredient/acre. One gin trash sample bore residues of lactofen at 0.03 ppm, but confirmatory analyses of this sample detected lactofen at <0.01–0.02 ppm, and residues of lactofen were <0.01 ppm, in the duplicate treated sample from the same trial.

In a single processing study, residues of lactofen were <0.01 ppm, in/on cottonseed harvested 76 days following the last of two directed applications of lactofen at 0.6 lb active ingredient/acre application (1.2 lb active ingredient/acre/season, 3x rate). Residues of lactofen were <0.01 ppm in samples of meal, hulls, oil, (crude and refined) and soapstock.

All these data support proposed tolerance for lactofen in/on cottonseed at 0.01 ppm, and in/on cotton, gin byproducts at 0.02 ppm. No separate tolerances are needed for cotton processed commodities.

ii. *Peanuts.* In 8 field trials, residues of lactofen were each <0.01 ppm, in/on 16 samples of peanut nutmeats and hulls harvested 65–71 days following the last of 2 broadcast applications of lactofen totaling 0.45 lb active ingredient/acre (1x the maximum proposed rate). Residues of lactofen were also <0.01 ppm, in/on peanut nutmeats and hulls from 2 trials conducted at 2x and 5x the maximum seasonal rate.

In a processing study, residues of lactofen were <0.01 ppm in meal, oil, crude and refined, and soapstock processed from nutmeats treated at 3x and 5x the maximum proposed use rates.

All these data support proposed tolerance for lactofen in/on peanut nutmeats at 0.01 ppm. No separate tolerances are needed for peanut processed commodities.

B. Toxicological Profile

1. *Acute toxicity.* Lactofen has very low acute toxicity. The acute oral LD_{50} is 5.96 gram/kilogram/body weight (g/kg/bwt) toxicity category IV, the acute dermal LD_{50} is >2.0 g/kg/bwt toxicity category III and the acute inhalation LD_{50} is >6.3 milligrams/liter (mg/L) toxicity category IV. Lactofen is not a

skin sensitizer but is a very slight dermal irritant.

2. *Genotoxicity.* Lactofen has very little mutagenic or genotoxic activity. While a positive mutagenic response was reported in one trial of a *Salmonella typhimurium*/mammalian microsome mutagenicity assay, this response was not repeated in the second assay conducted. In addition, lactofen did not appear to induce chromosomal aberrations, unscheduled deoxyribonucleic acid (DNA) synthesis or inhibit DNA repair.

3. *Reproductive and developmental toxicity.* Reproduction and teratology studies indicate that adverse effects, including embryotoxicity, occur only at doses that are also maternally toxic. Since lactofen causes effects only at levels which also produce systemic toxicity, the compound is not a reproductive hazard.

In a 2–generation reproduction study in rats, decreased pup weight and decreased absolute and relative weights of the spleen were first reported at approximately 26.2 milligrams/kilogram/day (mg/kg/day) (based on dose administered to the parental group). The same dose level elicited mortality and decreased male fertility in the parental groups. The no observed adversed effect level (NOAEL) for both systemic and reproductive toxicity in this study was 2.6 mg/kg/day.

In the developmental toxicity study in rats, effects were observed at the 150 mg/kg/day dose level consisting of decreases in fetal weight as well as skeletal abnormalities. This dose level also elicited signs of toxicity in the parental group. The NOAEL for this study was 50 mg/kg/day. Based on this NOAEL and an uncertainty factor (UF) of 100, the acute reference dose (RfD) for lactofen has been set at 0.50 mg/kg/day.

Two developmental toxicity studies were conducted in rabbits. In the first study, pregnant rabbits were administered oral doses of 0, 5, 15, or 50 mg/kg bwt/day lactofen technical on days 6–18 of gestation. Maternal toxicity (clinical signs and reduced weight gain) and developmental effects (increased embryonic death, decreased litter size and increased post-implantation loss) were reported at 15 and 50 mg/kg. The Agency concluded that the data were insufficient to establish a clear NOAEL. In the second rabbit developmental toxicity study, pregnant rabbits were exposed to 0, 1, 4, or 20 mg/kg bwt/day oral doses on days 6–18 of gestation. Maternal toxicity (reduced food consumption) was observed at 20 mg/kg bwt/day, but no developmental effects were observed at any dose. Therefore, the maternal NOAEL was 4 mg/kg bwt/day and the developmental NOAEL was greater than 20 mg/kg bwt/day.

4. *Subchronic toxicity*—i. *Rats 4–week.* Male and female rats were fed diets containing lactofen technical at concentrations of 0, 200, 1,000, 5,000, and 10,000 ppm, for 4 weeks. A slight increase in spleen weight was the basis for a lowest observed adversed effect level (LOAEL) of 200 ppm, lowest dose tested (LDT). At doses of 1,000 ppm, or higher, the following findings were reported: clinical signs of toxicity; decreased red blood cell (RBC), hemoglobin, hematocrit, and increased white blood cell (WBC); increased relative liver and spleen weights; and necrosis and pigmentation of hepatocytes. At 10,000 ppm, severe toxic signs were observed by day 7 and all animals were dead or killed *in extremis* by day 11. Hypocellularity of the spleen, thymus, and bone marrow was also observed in animals exposed to 10,000 ppm.

ii. *Rats 3–month.* Lactofen technical was fed to male and female rats at dietary concentrations of 0, 40, 200, and 1,000 ppm, for 13 weeks. Histopathological changes in the liver and significant changes in clinical chemistry associated with the liver were observed in rats exposed to 1,000 ppm, dosage. Decreased RBC, hemoglobin and hematocrit values were also observed at 1,000 ppm. The NOAEL in this study was 200 ppm, 14.1 mg/kg/day.

iii. *Dogs 4–week.* In a range finding study lactofen technical was fed in the diet of dogs at 0, 1,000, 3,000, and 10,000 ppm, for 4 weeks. Toxic effects noted in dogs fed 10,000 ppm, included decreased RBC count and hemocrit, and increased blood urea nitrogen (BUN) and serum glutamic-pyruvic transaminase (SGPT). Food palatability problems led to greatly decreased feed consumption at higher dosages. The NOAEL appeared to be 1,000 ppm.

iv. *Mice 3–month.* Groups of male and female mice were fed diets containing lactofen technical at concentrations of 0, 40, 200, 1,000, 5,000, and 10,000 for 13 weeks. At week 5, the dosage of the 40 ppm, groups was increased to 2,000 ppm. Treatment related mortality occurred at dosages above 1,000 ppm. The LOAEL was 200 ppm, 28.6 mg/kg/day based on:

- Increased WBC; decreased hematocrit, hemoglobin and RBC.
- Increased alkaline phosphatase, serum glutamic-oxloacetic transaminase (SGOT), SGPT, cholesterol and total serum protein levels.
- Increased weights or enlargement of the spleen, liver, adrenals, heart, and kidney; histopathological changes of the liver, kidney, thymus, spleen, ovaries, and testes.

In general, effects were slight in the 200 ppm groups, and moderate to severe in the 1,000 ppm groups.

v. *Peroxisome proliferation.* Butler *et al* (1988) studied the effects of lactofen on peroxisome proliferation in mice exposed for 7 weeks to dietary concentrations of 2, 10, 50, and 250 ppm. Liver-weight to body-weight ratio, liver catalase, liver acyl-CoA oxidase, liver cell cytoplasmic eosinophilia, nuclear, and cellular size, and peroxisomal staining were increased by the tumorigenic dose of lactofen, i.e. 250 ppm. Lower doses of lactofen had little to no effect on these parameters. This study indicates that lactofen induces peroxisome proliferation and further, that 50 ppm, 7 mg/kg/day, a dose which is not tumorigenic, would be considered a threshold dose in mice for peroxisome proliferation produced by lactofen. A subchronic study conducted in chimpanzees (Couch and Erickson 1986), indicated no effect on clinical chemistry or histological endpoints that would suggest liver toxicity or peroxisome proliferation at doses up to 75 mg/kg bwt/day administered for 93 days. Therefore, Valent believes that 75 mg/kg bwt/day is a clear NOAEL for peroxisome proliferation observed in a species closely related to man. On January 17, 2001, the Mechanism of Toxicity Assessment Review Committee (MTARC) reviewed the merits of the toxicological data supporting peroxisome proliferation as the proposed mode of action for lactofen. Based on the weight-of-evidence from guideline, as well as mechanistic studies, the MTARC concluded that there are sufficient data to classify lactofen as a non-genotoxic hepatocarcinogen in rodents with peroxisome proliferation being a plausible mode of action.

5. *Chronic toxicity.* Lactofen causes adverse health effects when administered to animals for extended periods of time. These effects include proliferative changes in the liver, spleen, and kidney; hematological changes; and blood biochemistry changes.

i. *Mouse 18–month.* In a dietary 18–month oncogenicity study in mice at dosages of 10, 50, and 250 ppm, lactofen technical, an increase in liver adenomas and carcinomas, cataracts, and liver pigmentation was observed at 250 ppm, a dose that clearly exceeded the maximum tolerance dose (MTD). The lowest dose, 10 ppm, 1.4 mg/kg/day, was the LOAEL based on increased liver weight and hepatocytomegaly.

ii. *Rat 24–month.* In a 2–year chronic feeding/oncogenicity study of lactofen technical in rats at dosages of 0, 500, 1,000 ppm; and 2,000 ppm, in the diet, an increase in liver neoplastic nodules and foci of cellular alteration was observed in both sexes at 2,000 ppm. The NOAEL for systemic toxicity is 500 ppm, 2 mg/kg/day based on kidney and liver pigmentation.

iii. *Dog 12–month.* In a 1–year study in dogs exposed to 40, 200, and 1,000 ppm; week 1–17 or 3,000 ppm; week 18–52 lactofen technical in their diet, the NOAEL was determined to be 200 ppm, (0.79 mg/kg/day) based on renal dysfunction and decreased RBC, hemoglobin hematocrit and cholesterol observed at 1,000/3,000 ppm. Based on this NOAEL and an uncertainty factor (UF) of 100, the chronic RfD for lactofen has been set at 0.008 mg/kg/day.

iv. *Carcinogenicity.* As a member of the diphenyl ether chemical family, lactofen is structurally related to four other chemicals that are oncogenic in rodents:

- Sodium acifluorfen (acifluorfen is a lactofen metabolite), nitrofen, oxyfluorfen, and fomesafen.
- Sodium acifluorfen produces hepatocellular adenomas and carcinomas in mice but is negative in rats.
- Nitrofen produces hepatocellular carcinomas in mice and pancreatic carcinomas in rats.
- Oxyfluorfen produces marginally positive liver tumors in mice but is negative in rats.
- Fomesafen produces hepatocellular adenomas and carcinomas in mice.

The Cancer Peer Review Committee (CPRC) evaluated the relevant data on the carcinogenic potential of lactofen in 1987 and classified lactofen as a B2 carcinogen Probable Human Carcinogen and assigned a Cancer Potency Factor (Q_1^*) of 1.7×10^{-1} mg/kg/day^{-1}, based on a interspecies scaling factor of 0.67. This Q_1^* has since been reduced to 1.19×10^{-1} mg/kg/day^{-1} based on recent EPA guidance indicating that 0.75 is a more appropriate interspecies scaling factor. The B2 classification is based on an increase in the combined incidence of liver adenomas and carcinomas in mice and increases in liver neoplastic nodules and foci of cellular alteration (possible precursor of tumors) in rats. In 1996, and 1999, EPA proposed new cancer risk assessment guidelines which state that nonmutagenic carcinogens known to cause cancer via a threshold mechanism, such as peroxisome proliferation, could be assessed using a nonlinear margin of exposure (MOE) approach rather than the Q_1^* method. EPA has recently determined that lactofen acts via a peroxisome proliferation mechanism and is currently reevaluating its approach to the quantification of the cancer risk for lactofen.

6. *Animal metabolism.* In a rat metabolism study, lactofen was shown to metabolize to acifluorfen, 5-[2-chloro-4-(trifluoromethyl)phenoxy]-2-nitrobenzoate, which was eliminated via both urine and feces. While lactofen was the primary compound found in the feces, acifluorfen accounted for >90% of the radioactivity in the urine. Negligible amounts of the administered radioactivity were found in any tissue with less than 0.8% of the administered radioactivity being found in the liver one of the main target organs.

7. *Metabolite toxicology.* Acifluorfen is also a hydrolytic metabolite of lactofen. The sodium salt of this benzoic acid is the registered herbicide, sodium acifluorfen. This product has a complete data base supporting registration with a RfD of 0.013 mg/kg/day and a Q_1^* of 5.30×10^{-2} mg/kg/day^{-1}. Because lactofen and its metabolites are not retained in the body, the potential for acute toxicity from *in situ* formed metabolites is low. The potential for chronic toxicity of lactofen metabolites has been adequately addressed by an extensive battery of lactofen chronic toxicity testing.

8. *Endocrine disruption.* No special studies to investigate the potential for estrogenic or other endocrine effects of lactofen have been performed. However, a large and detailed toxicology data base exists for the compound including studies acceptable to the Agency in all required categories. These studies include evaluations of reproduction and reproductive toxicity and detailed pathology and histology of endocrine organs following repeated or long-term exposure. These studies are considered capable of revealing endocrine effects and no such effects were observed.

C. Aggregate Exposure

1. *Dietary exposure.* A full battery of toxicology testing, including studies of acute, chronic, oncogenicity, developmental, mutagenicity, and reproductive effects is available for lactofen. For the following risk assessments, the NOAEL from the chronic oral toxicity study in dogs, 0.79 mg/kg/day, was selected as the chronic oral toxicity endpoint. Based on this NOAEL, and an UF of 100, the chronic RfD and the chronic population adjusted dose (cPAD) for lactofen has been set at 0.008 mg/kg/day. The NOAEL from the rat developmental study, 50 mg/kg/day, was selected as the acute oral toxicity endpoint. Based on this NOAEL and an UF of 100, the acute RfD for lactofen has been set at 0.50 mg/kg/day. An acute adjusted dose (aPAD) of 0.17 mg/kg/day was calculated using this endpoint and an additional Food Quality Protection Act (FQPA) safety factor of 3. This aPAD will only be used to assess acute exposures to the females 13 to 50 year old population subgroup since it is derived from a developmental toxicity endpoint. No other acute endpoints were identified to assess acute exposures to other populations.

i. *Food.* Dietary risk was considered for the currently registered uses of lactofen on soybeans, snap beans, and cotton and for the pending use on peanuts. Dietary risk assessments were done using the Dietary Exposure Evaluation Model (DEEM™), which incorporates consumption data generated in U. S. Department of Agriculture (USDA) Continuing Surveys of Food Intakes by Individuals (CSFII), 1989–1992. For chronic dietary risk assessments, the 3–day average of consumption for each subpopulation is combined with residues in commodities to determine average exposure in mg/kg/day. For refined acute dietary risk assessments, the entire distribution of consumption events for individuals is multiplied by a distribution of residues to obtain a distribution of exposures in mg/kg/day. This is a probabilistic analysis, referred to as "Monte Carlo," and the risk is reported at the 99.^{9th} percentile of exposure. Food monitoring data are not available from Food and Drug Administration (FDA) or USDA for residues of lactofen. Therefore, only field trial data were used. A value of one-half the LOQ, 0.005 ppm, was used to represent the residues in all treated commodities. Percent crop treated (PCT) were incorporated for soybeans and snap beans, as reliable usage information was available for these commodities. The estimated risk from food is presented in the following table:

TABLE 1.—DIETARY EXPOSURE AND RISK TO LACTOFEN FROM FOOD SOURCES

Population	Acute Endpoint		Chronic Endpoint		Cancer Endpoint[2]	
	Exposure mg/kg/day	%aPAD	Exposure mg/kg/day	%aPAD	Exposure mg/kg/day	Risk
U.S. population	NA[1]	NA	1×10^{-6}	<0.1	1×10^{-6}	8×10^{-8}
Females 13 to 50	2×10^{-6}	<0.1	$<1 \times 10^{-6}$	<0.1	NA	NA
Children 1 to 6	NA[1]	NA	2×10^{-6}	<0.1	NA	NA

[1]Acute endpoint applies only to females of childbearing age.
[2]Cancer risk is generally reported for the U.S. population.

ii. *Drinking water.* Environmental fate properties indicate that lactofen is not very persistent or mobile. Hydrolysis half-lives are 10.7, 4.6, and <1.0 days at pH 5, 7, and 9 at 40° C, respectively. This temperature most likely exceeds temperatures that lactofen would be expected to be exposed to under normal conditions, thus the hydrolysis rates are probably slower. Aerobic soil metabolism half-lives range from 1 to 3 days. Lactofen has a low probability to contaminate drinking water because it has a short half-life (3 days or less) and high binding potential(K_{oc}>1,000). Limited data suggest that lactofen conversion to acifluorfen in water is approximately 52%. The HED MARC has concluded that the residues of concern in drinking water are acifluorfen and amino acifluorfen. Insufficient information is available to estimate the amino acifluorfen concentration in water, but it is likely to be less than that of acifluorfen. Laboratory studies have shown that acifluorfen reaches its maximum concentration of 53.3% of applied lactofen at 7 days following application and it is most likely to form under the soil surface. Thus, the formed acifluorfen is not subject to drift, erosion, or runoff forces that contribute to surface water contamination. Surface water, however, could be contaminated with acifluorfen from lactofen applications via spray drift. The registrant also has conducted two prospective ground water studies which showed that neither lactofen nor acifluorfen from lactofen applications contaminate ground water. Therefore, in the following discussion, the potential exposure to lactofen from drinking water will address only potential surface water contamination with lactofen and acifluorfen.

The Tier II estimated environmental concentration (EEC) assessment in surface water uses a single site, or multiple single sites, which represents a high-end exposure scenario from pesticide use on a particular crop or non-crop use site. The EEC's for lactofen were generated for the standard Mississippi cotton scenario. The Agency has implemented the concept of index reservoirs (IR) and the PCT area to better estimate potential residue level in drinking water sources. The scenarios used with EPA pesticide root zone model (PRZM) and exposure analysis modeling systems (EXAMS) to estimate lactofen in the "standard pond" were rerun with the IR for the cotton and soybean scenarios. The Agency has estimated that the PCT area for the Mississippi cotton scenario is 0.20 (20%).

The Office of Pesticide Programs (OPP) has calculated drinking water levels of comparison (DWLOCs) for acute and chronic exposure to lactofen and acifluorfen from applications of lactofen in surface water. To calculate the DWLOC for acute exposure, the acute dietary food exposure from the DEEM™ analysis was subtracted from the aPAD. To calculate the DWLOC for chronic (non-cancer) exposure, the chronic dietary food exposure from the DEEM™ analysis was subtracted from the cPAD to obtain the acceptable chronic non-cancer exposure to lactofen and acifluorfen in drinking water. A DWLOC cancer was calculated in a similar manner, assuming a negligible risk of 1×10^{-6}. Assumptions used in calculating the DWLOCs include 70 kg bwt for the U.S. population, 60 kg bwt for adult females, 10 kg bwt for children, 2 liters of water consumption per day for adults, and 1 liter consumption for children.

TABLE 2.—DIETARY EXPOSURE AND RISK TO LACTOFEN FROM DRINKING WATER

Population	Acute Endpoint		Chronic Endpoint		Cancer Endpoint[2]	
	Exposure µg/L	DWLOC µg/L	Exposure µg/L	DWLOC µg/L	Exposure µg/L	DWLOC µg/L
U.S. population	NA[1]	NA	0.022	280	0.012	0.3
Females 13 to 50	0.62	5,100	0.022	240	-	-
Children 1 to 6	NA[1]	NA	0.022	80	-	-

[1] Acute endpoint applies only to females of childbearing age.
[2] Cancer risk is generally reported for the U.S. population.

TABLE 3.—DIETARY EXPOSURE AND RISK TO ACIFLUORFEN[1] FROM DRINKING WATER

Population	Acute Endpoint		Chronic Endpoint		Cancer Endpoint[3]	
	Exposure µg/L	DWLOC µg/L	Exposure µg/L	DWLOC µg/L	Exposure µg/L	DWLOC µg/L
U.S. population	NA[2]	NA	0.99	140	0.34	0.7
Females 13 to 50	4.9	600	0.99	120	-	-

TABLE 3.—DIETARY EXPOSURE AND RISK TO ACIFLUORFEN[1] FROM DRINKING WATER—Continued

Population	Acute Endpoint		Chronic Endpoint		Cancer Endpoint[3]	
	Exposure µg/L	DWLOC µg/L	Exposure µg/L	DWLOC µg/L	Exposure µg/L	DWLOC µg/L
Children 1 to 5	NA[2]	NA	0.99	40	-	-

[1] Acifluorfen derived from applications of lactofen.
[2] Acute endpoint applies only to females of childbearing age.
[3] Cancer risk is generally reported for the U.S. population.

HED has a concern if the DWLOC for any scenario is below the estimated environmental concentration from the models. All of the DWLOCs shown in the tables above exceed the estimated EECs.

2. *Non-dietary exposure.* Lactofen is proposed only for agricultural uses and no home owner or turf uses. Thus, no non-dietary risk assessment is needed.

D. Cumulative Effects

Section 408(b)(2)(D)(v) requires that the Agency must consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity." Available information in this context include not only toxicity, chemistry, and exposure data, but also scientific policies and methodologies for understanding common mechanisms of toxicity and conducting cumulative risk assessments. For most pesticides, although the Agency has some information in its files that may turn out to be helpful in eventually determining whether a pesticide shares a common mechanism of toxicity with any other substances, EPA does not at this time have the methodologies to resolve the complex scientific issues concerning common mechanism of toxicity in a meaningful way.

There are other pesticidal compounds that are structurally related to lactofen and have similar effects on animals. In consideration of potential cumulative effects of lactofen and other substances that may have a common mechanism of toxicity, there are currently no available data or other reliable information indicating that any toxic effects produced by lactofen would be cumulative with those of other chemical compounds. Thus, only the potential risks of lactofen have been considered in this assessment of aggregate exposure and effects.

Valent will submit information for EPA to consider concerning potential cumulative effects of lactofen consistent with the schedule established by EPA in the **Federal Register** of August 4, 1997 (62 FR 42020) (FRL-5734–6), and other subsequent EPA publications pursuant to FQPA.

E. Safety Determination

1. *U.S. population.* Water is not expected to be a significant source of exposure for lactofen, as it degrades quickly in the environment to numerous degradates, including acifluorfen. EECs for lactofen and acifluorfen are well below the DWLOC for chronic, acute, and cancer risk. Therefore, the only significant source of human exposure to lactofen is in food. Residues of lactofen are generally non-detectable at a LOQ of 0.005 ppm, in all food forms. The exposure is <0.1% of the acute and chronic PAD for all population subgroups. Exposure is generally not of concern if it is less than 100% of the PAD. The estimated cancer risk for the U.S. population is 8×10^{-8}, which is more than an order of magnitude less than the risk that is generally considered negligible 1×10^{-6}.

2. *Infants and children.* As stated above, dietary exposure assessments, including drinking water, utilize less than 0.1% of the acute and chronic PADs for all population subgroups, including infants and children. Reproduction and developmental effects have been found in toxicology studies for lactofen but only at levels that were also maternally toxic. This indicates that developing animals are not more sensitive than adults. FQPA requires an additional safety factor of up to 10 for chemicals which present special risks to infants or children. Lactofen does not meet the criterion for application of an additional safety factor for infants and children. The FQPA Safety Factor Committee met on March 13, 2000 to evaluate the hazard and exposure data for lactofen and recommended that FQPA, safety factor for protection of infants and children should be reduced to 3x for lactofen. This safety factor was reduced to 3x by The FQPA, Safety Factor Committee because available data provide no indication of quantitative or qualitative increased susceptibility from *in utero* and/or postnatal exposure to lactofen in rats. Information on the reproduction and developmental effects caused by the other diphenyl ether herbicides is not available to Valent. Additional time is needed for the Agency to evaluate the need for an additional safety factor related to these other chemicals. However, even if an additional safety factor were deemed necessary, the dietary exposures are still expected to be well below the established reference doses.

F. International tolerances.

There are no Codex maximum residue limits established for lactofen on cotton or peanut commodities, so there is no conflict between this proposed action and international residue limits.

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ENVIRONMENTAL PROTECTION AGENCY

[FRL–7445–4; RCRA–2002–0029]

Land Disposal Restrictions: Treatment Standards for Mercury-Bearing Hazardous Waste; Notice of Data Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of data availability.

SUMMARY: This notice of data availability (NODA) makes available to the public two studies conducted on the treatment of mercury wastes. The studies were initiated to help evaluate whether EPA could propose treatment and disposal alternatives to the current land disposal restriction (LDR) treatment standard of mercury retorting. The studies were performed to assess conditions that affect the stability of waste residues resulting from the treatment of high mercury (greater than 260 mg/kg total mercury) wastes. This NODA also makes available the results of the peer review of these studies. As a result of our investigation, we have concluded that changes to our national regulations are impractical at this time. Additionally, this notice also provides information on how to use the existing treatability variance procedures to make site-specific choices on alternatives to mercury recovery. The treatability studies and the results of the peer review are presented here only to provide information—we are not

requesting comments on the mercury-related issues in this NODA.

ADDRESSES: You may view the supporting materials for this NODA in the EPA Docket Center (EPA/DC), B102, EPA West, 1301 Constitution Ave. NW., Washington, DC 20460–0002. The docket number is RCRA–202–0029. To review file materials, we recommend that you make an appointment by calling (202) 566–0270. The EPA/DC is open from 9 am to 4 pm, Monday through Friday, excluding Federal holidays. You may copy up to 100 pages from any regulatory document at no charge. Additional copies cost $ 0.15 per page. For information on accessing an electronic copy of the treatability study and peer review documents, see the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: For general information, call the RCRA Call Center at 1–800–424–9346 or TDD 1–800–553–7672 (hearing impaired). Callers within the Washington Metropolitan Area must dial 703–412–9810 or TDD 703–412–3323 (hearing impaired). The RCRA Call Center is open Monday–Friday, 9 a.m. to 4 p.m., Eastern Standard Time. For more information on specific aspects of this NODA, contact Mary Cunningham at 703–308–8453, *cunningham.mary@epa.gov*, or write her at the Office of Solid Waste, 5302W, U.S. EPA, Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

SUPPLEMENTARY INFORMATION:

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I. How Can I Get Copies of This Document and Other Related Information?

A. Docket

EPA has established an official public docket for this action under Docket Number: RCRA–2002–0029. The official public docket consists of the documents specifically referenced in this action and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the EPA Docket Center (EPA/DC), B102, EPA West, 1301 Constitution Ave. NW., Washington, DC 20460–0002. To review file materials, we recommend that you make an appointment by calling (202) 566–0270. The EPA/DC is open from 9 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays.

B. Electronic Access

You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the EPA/DC facility identified above. Once in the system, select "search," then key in the appropriate docket identification number.

II. What Are the Treatability Studies and Peer Review Results?

A. Why Is Mercury a Concern?

Mercury is an elemental metal, occurs in certain minerals and is a naturally-occurring contaminant of some other natural resources, such as certain types of coal. Once released into the environment, inorganic forms of mercury may be converted to methylmercury, which is the main form of organic mercury found in the environment. Methylmercury may accumulate in fish tissue to levels that are unhealthful to humans and which harm wildlife. Methylmercury has also been shown to be a developmental toxicant, causing subtle to severe neurological effects at very low levels of exposure, especially to fetuses and young children.[1] The developing fetus is exposed to mercury if the mother eats mercury-contaminated fish during pregnancy. Recent data,[2 3] indicate that 8% of women of childbearing age in the U.S. currently have blood mercury levels higher than EPA considers to be a "safe" level of exposure.[4] Children and adults can be exposed to mercury if they routinely eat large quantities of contaminated fish.

The problem of mercury-contaminated fish is wide-spread in the U.S. As of December 2001, 44 states have issued fish advisories for mercury. Twenty-four states have issued statewide advisories.[5] These advisories inform the public that concentrations of mercury have been found in local fish at levels of public health concern. State advisories recommend either limiting or avoiding consumption of certain fish from specific water bodies or, in some cases, from specific water body types (*e.g.*, all freshwater lakes or rivers).

B. What Is The Purpose of This NODA?

Today's notice presents the results of two recent treatability studies conducted to assess the feasibility of the treatment of high mercury wastes (*i.e.*, wastes containing greater than 260 mg/kg total mercury) and elemental mercury destined for disposal. This notice also presents the results of the independent peer review of these two treatability studies.

The existing land disposal restrictions (LDR) treatment standards require recovery by retorting of high mercury wastes. Based on the results of the treatability studies published in today's NODA, we have decided not to propose revisions to the existing treatment standards. We are concerned that treatment (such as the treatment technologies evaluated in our treatability studies) may not result in a waste that is stable under some landfill conditions that are within the range of normal operations.

Having said this, we believe there may be site-specific situations where treatment and disposal of high mercury wastes or excess elemental mercury may be warranted. In these instances, we could grant a petition for a site-specific

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[1] *http://www.epa.gov/waterscience/fish/.*

[2] *http://www.cdc.gov/mmwr/preview/mmwrhtml/mm5008a2.htm.*

[3] *http://www.cdc.gov/nceh/dls/report/results/Mercury.htm.*

[4] *http://www.epa.gov/triinter/tridata/tri00/qa.pdf.*

[5] *http://www.epa.gov/waterscience/fish/.*

variance from the applicable treatment standards under current regulations. For a site-specific petition to be granted, it should demonstrate that treatment of the waste significantly limits mobility of mercury from the treated waste and that the treatment residues are stable in the intended disposal environment.

C. What Prompted The Treatability Studies?

On May 28, 1999, EPA published an advance notice of proposed rulemaking (ANPRM) requesting comment to help gain a better understanding of the environmental impact of our waste treatment standards for mercury-bearing hazardous wastes. In the ANPRM, we requested data to support potential alternatives to current LDR requirements to reclaim elemental mercury from high mercury subcategory wastes (*i.e.*, those wastes that contain greater than or equal to 260 mg/kg total mercury). However, we did not receive enough information to propose changes to any of the mercury treatment standards. Therefore, we initiated two research studies to identify the "currently available" treatment processes and to gather information that could be used to potentially change the current mercury treatment standards to assure more effective treatment.

D. What Are the Current Treatment Practices for Mercury Wastes?

In this section, we describe the current regulatory categorization for mercury wastes as low mercury subcategory wastes, high mercury subcategory wastes, or elemental mercury wastes.

1. What Are the Current Treatment Practices for Low Mercury Subcategory Wastes?

Low mercury wastes are those hazardous wastes containing less than 260 mg/kg of total mercury. Current regulations require that these wastes be treated to achieve a certain numerical level, 0.20 mg/L, measured using the Toxicity Characteristic Leaching Procedure (TCLP) for mercury residues from retorting, and 0.025 mg/L TCLP for all other low mercury wastes. These concentrations are generally met by stabilization/solidification treatment. This subcategory of mercury wastes was not included in any of the treatability studies described in this notice.

2. What Are the Current Treatment Practices for High Mercury Subcategory Wastes?

High mercury wastes are those hazardous wastes that contain greater than 260 mg/kg total mercury. Because of this high concentration of mercury, they are generally required to undergo roasting or retorting (see "RMERC," at 40 CFR 268.42, Table 1). RMERC is defined, in part, as: "Retorting or roasting in a thermal processing unit capable of volatilizing mercury and subsequently condensing the volatilized mercury for recovery." The residuals from the roasting or retorting process are then subject to a numerical treatment standard as discussed above (if the residues meet the definition of "low mercury subcategory").

There may be cases where it is not desirable or practical to retort high mercury subcategory wastes. One example of this would be mixed radioactive high mercury wastes. See the discussion in Section II.K for information on this category of mercury waste.

3. What Are the Current Treatment Practices for Elemental Mercury?

There are three elemental mercury waste streams that contain most of the waste regulated under the LDR program:

(1) Discarded commercial elemental mercury, off-specification elemental mercury, and container and spill residues (RCRA hazardous waste code U151) that contain greater than or equal to 260 mg/kg total mercury. These waste streams must be treated by roasting or retorting (see "RMERC" at 40 CFR 268.42, Table 1).

Additionally, because the uses for elemental mercury in products is declining, stockpiles of excess commodity (bulk) mercury currently exist; if these stockpiles are deemed to be wastes, then they would become subject to the "RMERC" standard.

(2) Elemental mercury contaminated with radioactive materials. These waste streams are required to be treated by amalgamation (see "AMLGM" at 40 CFR 268.42 Table 1). AMLGM is defined as: "Amalgamation of liquid, elemental mercury contaminated with radioactive materials utilizing inorganic agents such as copper, zinc, nickel, gold, and sulfur that results in a nonliquid, semi-solid amalgam and thereby reducing potential emissions of elemental mercury vapors to the air."

(3) Characteristically hazardous elemental mercury wastes (RCRA hazardous waste code D009) that also are required to be roasted or retorted, if they contain greater than or equal to 260 mg/kg total mercury.

E. What Earlier Studies Have Been Performed on Radioactive Mercury Waste?

The Department of Energy's (DOE) Transuranic and Mixed Waste Focus Area-Mercury Working Group, in conjunction with EPA, has initiated studies of the treatability and disposal of mercury wastes resulting from nuclear weapons production. These treatability studies have evaluated current commercialized state-of-the-art technologies and several emerging technologies. To date, DOE and EPA have conducted several studies of the treatability of contaminated soils, surrogate wastes, and bulk elemental mercury by commercial vendors. The goal of the studies has been to identify the range of conditions suitable for the disposal of these waste residuals, should direct treatment rather than separation be performed. Sepradyne Corporation's vacuum retort extraction, Nuclear Fuel Services, Inc. (NFS) DeHg® stabilization process, Brookhaven National Laboratory's sulfur polymer solidification/stabilization, and ADA Technologies, Inc. (ADA) and Allied Technology Group (ATG) sulfur-based solidification/stabilization processes have been evaluated.

A 1999 DOE study[6] examined the release of mercury from mercury amalgams prepared by processes operated by ADA Technologies, Inc. (ADA) and Nuclear Fuel Services, Inc. (NFS) as a function of temperature and pH. Leachate exposure experiments indicate that amalgams prepared with zinc released mercury at high rates into the leachate at acidic (low pH) conditions and at lesser rates at neutral pH. These metal-based amalgams tended to perform better in alkaline (high pH) solutions. Sulfur-based treatment samples showed increased release of mercury after two and three months at pH 12.5.[7] Other studies of mercuric sulfide solubility have detected increased solubility of mercury sulfide complexes above pH 6 with excess sulfide present.[8] Mercuric sulfide is the product formed from treating elemental mercury with sulfur or sulfide salts. The reports for these prior studies are available on the internet.[9]

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[6] C.H. Mattus, "Measurements of Mercury Released from Amalgams and Sulfide Compounds", Oak Ridge National Laboratory, ORNL/TM–13728, April 1999.

[7] Ibid. Table 6, page 17.

[8] Jenny Ayla Jay, Francois M. M. Morel, and Harold F. Hemond, Mercury Speciation in the Presence of Polysulfides, Environmental Science and Technology, 2000, Vol. 34, No. 11, pages 2196–2200.

[9] See C.H. Mattus, "Measurements of Mercury Released from Solidified/Stabilized Waste Forms", Oak Ridge National Laboratory, ORNL/TM–2001/17, April 2001, available at *http://osti.gov/bridge*; and F. Sanchez, D.S. Kosson, C.H. Mattus, and M.I Morris, "Use of a New Leaching Test Framework for Evaluating Alternative Treatment Processes For Mercury Contaminated Mixed Waste (Hazardous

Continued

F. What Treatability Studies Are the Subject of Today's NODA?

The studies we just described did not focus on two types of mercury waste that we thought were important to address: (1) High mercury (containing greater than 260 mg/kg total mercury) waste sludges that contain multiple forms of mercury; and (2) bulk elemental mercury.

We collaborated with DOE to evaluate the ability of commercially available treatment processes to reduce the solubility of mercury in these two types of waste and to identify stable disposal conditions as a potential alternative to current regulations which require the reclamation of mercury via roasting or retorting before treatment and disposal of the residuals. Because this potential alternative (of treatment/disposal as opposed to roasting/retorting) would result in much higher concentrations of mercury potentially being land disposed, and because of the toxic nature of mercury (see section II.A of this notice) and the difficulty of treatment, we decided to evaluate treated waste forms using the Toxicity Characteristic Leaching Procedure (TCLP),[10] as well as a constant pH leaching procedure that addresses the range of pH conditions that could be expected in hazardous waste landfill disposal environments. Because the TCLP only evaluates one pH condition that results from the interaction of the waste and the fixed acid content of the TCLP leaching solution, we thought it was important to supplement the TCLP with the constant pH leaching procedure to access the performance of the treatment residuals over the range of normal landfill operating conditions. Using this procedure, we examined waste solubility over a pH range from 2 to 12. Even though more extreme conditions have been observed in landfills,[11] a recent compilation of landfill data finds that approximately 95 percent of all hazardous waste landfills are in the 2 to 12 pH range, and more than 90 percent are less than pH 10.[12] By maintaining the pH constant at each level, the test simulates the potential for metals to be extracted or mobilized from the treated waste form by a large volume of landfill leachate passing through and around the waste at the set pH level. This also allows treatment performance to be compared at the set conditions. An exposure period of 14 days, rather than the 18 hours of the TCLP, was chosen to allow all samples time to reach near-equilibrium before measurement of the release potential of mercury from the treatment residuals. Other factors, such as leachate to solids ratio, oxidation/reduction potential (eH), particle size, exposure period, and the major ions present all affect metal solubility. However, the studies presented here primarily focused on the effects of varying pH conditions because the solubilities of metals and metal complexes are highly pH dependent and the pH conditions of hazardous waste landfills are known to vary widely.

The results of these two studies are provided in two reports: "Technical Background Document: Mercury Wastes—Evaluation of Treatment of Mercury Surrogate Waste" and "Technical Background Document: Mercury Wastes—Evaluation of Treatment of Bulk Elemental Mercury," available in the docket for today's notice. In this section, we provide an overview of these studies.

The first study evaluated the effectiveness of four technologies to stabilize a "difficult-to-treat" mercury waste, representing the wide range of high mercury wastes that could require treatment. A surrogate waste was designed for the study, which included an organic form of mercury, elemental mercury, and several mercury salts in an inorganic matrix. The surrogate waste was treated by each technology vendor. The treated waste was then evaluated for mercury leachability, using both the TCLP and an automated, constant-pH leaching protocol. Prior to leach testing, waste form particles were reduced in size to 9.5 mm or less. The waste forms were exposed to the leaching medium at a 20:1 liquid to solids ratio, and the pH was monitored and adjusted as necessary by computer-controlled addition of acid or base. Constant pH leaching was conducted at pH 2, 4, 6, 8, 10, and 12 for 14 days at each pH. This leaching procedure and the waste surrogate are described in detail in the Technical Background Documents, available in the docket for today's notice.

The second study evaluated the ability of three technologies to convert elemental mercury into a stable waste form. The study was designed to assist in evaluation of options for disposition of the inventory of mercury in the Defense Logistics Agency (DLA) stockpile. Bulk elemental mercury was treated by each technology vendor, and the treated waste residuals were evaluated for mercury leachability, using the same protocols and conditions as those used in the first study.

In both studies, the total concentration of mercury was measured in samples of the untreated starting material (either surrogate waste or bulk elemental mercury), in the treated waste form, and in leachates (both TCLP and constant pH leaching). In addition, samples of the untreated and treated material were characterized, including measurements of bulk density, moisture content, percent organic matter, cation exchange capacity and particle size distribution.

Each of the technologies evaluated in these studies relies on chemical reactions to minimize volatilization and solubility, rather than on recovery or separation technologies which generate a near mercury-free residual in addition to concentrated or purified mercury. These treatment processes are summarized below.

G. What Were the Treatment Technologies Included in Our Treatability Studies?

Four commercial treatment vendors participated in studies of the treatability of the surrogate waste. Because the actual commercial amalgamation processes are proprietary, we refer to the aforementioned treatment technologies as "vendors" to mask their identity. Each of the four vendors' processes utilized reagents to bind the mercury forms present as various sulfides. The following table presents a comparison of these technologies.

and Radioactive)" *http://www.cee.vanderbilt/cee/research_projects.html.*

[10] See 55 FR 11798, March 29, 1990 for more information on the TCLP. The TCLP was originally developed to assess the plausible, worst case mismanagement scenario for evaluating industrial waste codisposed in a municipal solid waste landfill.

[11] 65 FR 37945, June 19, 2000.

[12] Characterization and Evaluation of Landfill Leachate (Draft), SAIC, September 2000, page 3–33.

TABLE 1.—TECHNOLOGIES USED FOR SURROGATE SLUDGE TREATMENT

Comparison factor	Vendor			
	A	B	C	D
Process Overview	Sulfur amalgamation followed by thermoplastic encapsulation.	Formation of mercuric sulfide followed by micro- and macroencapsulation with proprietary binders and coating agents.	Sulfur amalgamation followed by addition of proprietary precipitation reagent.	Formation of mercuric sulfide followed by solidification with a proprietary cement-containing stabilization agent.
Reagents	Sulfur polymer, organic modifier, and proprietary additives.	Sulfide and proprietary binders and coating agents.	Sulfur and proprietary precipitation reagent.	Sulfide and proprietary cement-containing stabilization agent.
Waste Loading** (on dry basis).	30 wt%	72 wt%	44.9–47 wt%	25.4 wt%.
Final Form	Uniform solid mass	Uniform solid mass	Granular	Uniform solid mass.

**Waste loading is the percentage of waste in the treated residue.

Three of the vendors also participated in the treatment of elemental mercury. Vendor D did not participate in this study. Vendors A and B used the same general process for elemental mercury. However, Vendor C used a process that differed from what was used in the surrogate sludge treatment. The following table presents a comparison of the technologies used in the treatment of elemental mercury.

TABLE 2.—TECHNOLOGIES USED FOR ELEMENTAL MERCURY TREATMENT

Comparison factor	Vendor		
	A	B	C
Process Overview	Sulfur amalgamation followed by thermoplastic encapsulation.	Formation of mercuric sulfide followed by micro- and macroencapsulation with proprietary binders and coating agents.	Amalgamation followed by addition of proprietary precipitation reagent.
Reagents	Sulfur polymer, organic modifier, and proprietary additives.	Sulfide and proprietary binders and coating agents.	Amalgamation agent and proprietary stabilization reagent.
Waste Loading** (on dry basis)	33 wt%	44 wt%	20.1 wt%.
Final Form	Uniform solid mass	Uniform solid mass	Uniform solid mass.

**Waste loading is the percentage of waste in the treated residue.

H. What Were the Study Results?

1. What Were the Study Results for the Surrogate Mercury Waste?

Presented in Table 3 and discussed below are the constant pH leaching results for the surrogate mercury waste. Additional testing results (raw data, tables, and graphs) are presented in the report "Technical Background Document: Mercury Wastes—Evaluation of Treatment of Surrogate Mercury Wastes," available in the docket for today's notice.

TABLE 3.—SURROGATE MERCURY WASTE TREATMENT STUDY—CONSTANT LEACHING RESULTS (MG/L MERCURY)

pH	Vendor A**		Vendor B	Vendor C		Vendor D	
	Pellets	Crushed		Batch 1	Batch 2	Batch 1	Batch 2
2*	0.00251/ 0.00856	0.00682/ 0.00294	1.92/ 0.617	0.356/ 13.9	4.39/ 1.11	0.127/ 0.0775	0.257/ 0.130
4	0.00483	0.00555	0.137	0.0816	0.0340	2.63	4.35
6	0.00425	0.0140	0.102	0.0441	0.118	0.240	0.289
8*	0.0127/ 0.00424	0.00180/ 0.00139	0.0873/ 0.0753	0.0391/ 0.0206	0.0106/ 0.00797	0.0603/ 0.0594	0.0724/ 0.0658
10	0.00734	0.00378	0.0577	0.0108	0.00337	2.17	0.0204
12*	0.111/ 0.157	0.781/ 0.136	0.00885/ 0.00609	0.0353/ 0.0336	0.00239/ 0.00264	0.0156/ 0.0109	0.0250/ 0.0193

*Duplicate analyses were performed at pH levels 2, 8 and 12.
**Vendor A provided cast <9mm pellets and a larger material that was crushed to yield a <9 mm form for analysis.

Each vendor's treatment of surrogate waste achieved a significant reduction in mercury release in comparison to the untreated waste form. However, there are significant differences in the effectiveness of the various technologies. Vendor A's stabilized waste leached less than 0.025 mg/L [13]

[13] The current treatment standard for low-level mercury wastes that have not undergone roasting or

Continued

the range of pH 2 to 10. However, when exposed to very alkaline conditions of pH 12, the waste leached 0.111 to 0.157 mg/L in the pellet form and 0.136 to 0.781 mg/L in the crushed form. Vendor B's and Vendor C's stabilized wastes leached increasingly higher levels of mercury at the acidic conditions of pH 4 and lower. Vendor B's stabilized waste achieved 0.025 mg/L only at pH greater than 10. Vendor C's stabilized waste achieved 0.025 mg/L only at pH greater than 6 in one of the two batches. Vendor D's stabilized waste achieved 0.025 mg/L only at pH greater than 10.

2. What Were the Study Results for Elemental Mercury?

Presented in Table 4 and discussed below are the constant pH leaching results for the bulk elemental mercury study. Additional testing results (raw data, tables and graphs) are presented in the report "Technical Background Document: Mercury Wastes—Evaluation of Treatment of Bulk Elemental Mercury," available in the docket for today's notice.

TABLE 4.—BULK ELEMENTAL MERCURY TREATMENT STUDY—CONSTANT LEACHING RESULTS (mg/L MERCURY)

pH	Vendor A		Vendor B	Vendor C
	Pellets	Crushed		
2*	0.00542/ 0.0137	0.00658/ 0.0132	0.00105/ 0.00156	29.7/ 27.9
4	0.984	0.0621	0.00186	0.315
6	0.0835	16.7	0.00484	0.0323
8*	44.9/ 24.3	30.8/ 53.5	0.011/ 0.00832	0.0494/ 0.368
9	13.7	NA	NA	NA
10	0.0742	0.0839	0.0118	0.139
11	0.00951/ 0.0177	NA	NA	NA
12*	127/ 155	74.6/ 23.5	0.143/ 0.0672	0.0251/ 0.0249

*Duplicate analyses were performed at pH levels 2, 8 and 12.
NA—Not Analyzed.

Significant differences were observed between vendors in the treatment of elemental mercury. Vendor A's stabilized elemental mercury exhibited highly variable leaching as a function of pH. The variability observed prompted additional testing at pH 9 and pH 11 to verify and better characterize the significant swings in leachate mercury concentration. Leaching increased from less than 0.01 mg/L at pH 2 to over 24 mg/L at pH 8, reached a minimum of 0.009 mg/L at pH 11, then increased significantly as it approached pH 12 (to greater than 127 mg/L). Vendor B's stabilized elemental mercury shows a gradual increase in mercury leaching (from levels of 0.001mg/L to 0.15 mg/L) with the increasing pH of the leachate fluid. Vendor C's stabilized elemental mercury showed a pattern of decreased leaching with increasing pH, approaching the level of 0.025 mg/L only at a pH of 12. These results clearly show that there are significant differences in the effectiveness of the various treatment technologies. More importantly, the results show that leaching of mercury from the stabilized elemental mercury is pH dependent.

One treatment vendor in Europe, Bjästa Återvinning, has developed a mercury treatment process that results in the formation of mercuric selenide. This vendor was one of the treatment vendors that submitted proposals to the Department of Defense's Defense Logistic Agency (DLA), expressing interest in treating their stockpile of elemental mercury. Mercuric selenide is indicated by solubility calculations to be one of the more insoluble mercury salts. Even though our study was underway, when we learned of Bjästa Återvinning's proposal to treat the DLA stockpile, we were very interested in including their treated waste form in our study. Due to logistical difficulties, we were unable to obtain a treated waste form from this vendor. We were, however, able to obtain laboratory-grade mercuric selenide and conduct limited leachate studies at pH 7 and 10 which bracket the conditions found at many landfills.[14] We also assessed the effects of the addition of 500 ppm of chloride at pH 7 and 10. Unlike the other treated waste forms formed from treatment using a variety of reagents, the final waste form in this case was a known compound: Mercury selenide. Thus, there was readily available information on mercuric selenide solubility and the potential significant effects of chloride on that solubility. Geochemical solubility calculations for the mercuric selenide compound indicated that chloride ions would promote the solubility of mercury. Chloride ions tend to form strong soluble complexes with mercury, greatly increasing mercury's mobility. While mean groundwater chloride concentrations are approximately 160 mg/L, landfill leachates range from 59 to 6,560 mg/L in industrial landfills and 96 to 31,100 mg/L in hazardous waste landfills.[15] In our study, more than a three-fold increase in solubility was observed at both pH conditions with the addition of 500 ppm of chloride. At pH 7, the leachate concentration of mercury increased with the addition of chloride from 0.006 mg/L to 0.021 mg/L; at a pH of 10, the concentration of mercury increased from 0.028 mg/L to 0.11 mg/L. This indicates that major ions present in a given disposal environment may significantly impact the release of mercury from the treated waste form.

I. What Were the Peer Review Results?

The complete results of the Peer Review are provided in the docket to today's notice (Docket Number: RCRA–2002–0029), along with EPA's responses to the Peer Review comments.

retorting is 0.025 mg/L mercury, as measured by the TCLP. Treatment results are presented relative to this numerical benchmark for comparison purposes.

[14] Characterization and Evaluation of Landfill Leachate (Draft), SAIC, September 2000.

[15] Ibid.

1. What Questions Were Asked of the Peer Reviewers?

In order to provide a more complete analysis, and in accordance with EPA policy, we presented the two new studies for formal, independent peer review. The three peer reviewers selected for this process are national experts with significant technical expertise in hazardous waste leaching, have no prior association with these studies, and have no perceived or actual conflict with any impact of the study results. The members of the peer review panel were tasked with evaluating the adequacy of the experimental design, conduct, and conclusions of the two studies. The peer review panel also provided information on how the studies can be used to provide a framework to determine whether additional protective measures are required to prevent loss of mercury to the environment from the treatment and co-disposal of mercury-bearing wastes in landfills.

Additionally, the members of the peer review panel were asked if additional studies were warranted for other factors that impact solubility (*e.g.*, liquid/solid ratio, redox conditions, leachate composition) or affect ability to leach (such as use of macroencapsulation).

2. What Did the Peer Reviewers Say About the Study of the Treatment of Mercury Surrogate Wastes?

Two of the peer reviewers stated that the experimental design was appropriate for the study. One reviewer, however, said the design did not follow the Data Quality Objectives (DQOs) process, and argued that there is little relationship between the objectives and the design. We disagree with this reviewer, however. EPA has developed the DQOs process as the Agency's recommended planning process when environmental data are used to select between two opposing conditions, such as achieving or not achieving a numerical standard.[16] The DQOs process is used to develop qualitative and quantitative statements of the overall level of uncertainty that a decision-maker is willing to accept in results or decisions derived from environmental data, *i.e.*, Data Quality Objectives. The DQOs process entails a seven step systematic procedure for defining the criteria that a data collection design should satisfy, including when to collect samples, where to collect samples, the tolerable level of decision error for the study, and how many samples to collect, balancing risk and cost in an acceptable manner. When this process is not directly applicable (*i.e.*, the experimental objective is estimation, research, or any other objective that does not select between two distinct conditions), the Agency recommends the use of a systematic planning method for defining performance criteria.[17] For this research project, a systematic planning method was used. The project planning process used and the planning documents development were guided and overseen by EPA/ORD staff, and the Quality Assurance Project Plan (QAPP) was reviewed and approved by an EPA/ORD quality assurance expert. EPA believes that the project objectives and criteria were logical, given the intended end-use of the data, well-defined, and achievable.

The three reviewers all stated that the study was conducted properly. The three reviewers also stated that the studies met the objectives of: (1) Evaluating the ability of alternative treatment technologies to achieve a goal of 0.025 mg/L or less for the stabilization of mercury over a range of pH levels from 2 to 12; and, (2) to compare constant pH leaching protocol results to standard TCLP results. Two of the reviewers evaluated the ability of each treatment technology to meet the treatment goal, and concluded that the ability of each technology to meet the treatment goal in the constant pH leaching was pH-dependent.

The reviewers suggested additional studies to fill in specific data gaps. One reviewer noted that additional extractions up to at least pH 12.5 are needed to supplement the report. While we agree evaluation of a broader range could be helpful, we do not believe that additional studies are cost effective, because only a small fraction of hazardous waste landfills have been observed to have leachates above pH 12. In cases where disposal is proposed at or above pH 12.5, additional data for such conditions may be necessary to establish that treatment is effective for the expected disposal conditions. (See section II.F of today's notice for a discussion of pH levels in hazardous waste landfills.)

Another reviewer suggested that two or more actual wastes (rather than surrogates) containing over 260 mg/kg of mercury be subjected to stabilization and leaching by the TCLP as well as by the constant pH protocols. EPA agrees that using actual wastes, rather than surrogates, for treatability tests can be desirable. However, in many cases during the history of establishing treatment standards in the BDAT program, EPA has used surrogates in lieu of actual wastes, whenever representative "hard-to treat" wastes were not readily obtainable. Specifically, in the case of characteristic wastes, which can be extremely variable, using a surrogate allows us to evaluate a "hard-to-treat" waste. Using a "hard-to-treat" waste is useful if the ultimate treatment results will be used for other forms of that waste, which in the case of a characteristic waste like D009, is likely the case. In the studies discussed in this notice, where we were trying to determine how these forms of mercury would respond to treatment and determine how the treated waste forms would react to various pH environments, we are comfortable that using surrogate wastes did not diminish the value of the studies.

3. What Did the Peer Reviewers Say About the Elemental Mercury Study?

One of the peer reviewers agreed that the experimental design was appropriate for the study. Another reviewer said that a statement of acceptable errors should have been included (*e.g.*, a treatment technology must be effective on 90% of wastes with a 90% confidence). Without such a statement, he said, it is difficult to decide when a technology provides adequate treatment. EPA believes that a statement of acceptable errors as constructed by the reviewer was not appropriate. The objective of the study was to determine how these forms of mercury would respond to treatment and to determine how the treated waste forms would behave in various pH environments.

Another reviewer also said the experimental design was generally appropriate; however, it failed to confirm that concentrations of elemental mercury in the treated wastes were at the values reported by the vendors. He added that the recoveries (*i.e.*, measure of total mercury present) for treated elemental mercury wastes submitted by Vendors A and C are so low that they cast doubt on the results of the leach tests. We disagree. The analysis of mercury content of the treatment residuals and that of the leachates are two distinct analyses. The low recoveries for the treated elemental mercury wastes were a result of the difficulty in digesting the solid waste form to dissolve the mercury and make it available for analysis; as a result, waste loadings reported by the vendors could not be verified. Regarding the leach tests, all spike recovery measurements of the leachates achieved

[16] See EPA/600/R–96/055; Guidance for the Data Quality Objectives Process. *http://www.epa.gov/quality/qs-docs/g4-final.pdf*

[17] Ibid.

quantitative recoveries between 84% and 109%. Thus, there is no evidence of a problem with the analysis of mercury in the leachates. We believe this is because the mercury was in solution, and therefore, available for analysis.

All reviewers said that the study was conducted properly. Reviewers were then asked whether the stated objectives were adequately met. All reviewers agreed that the studies met the objectives of: (1) Evaluating the ability of alternative treatment technologies to achieve a goal of 0.025 mg/L or less for the stabilization of mercury over a range of pH levels from 2 to 12; and, (2) to compare constant pH leaching protocol results to standard TCLP results.

The reviewers all agreed that the results of the bulk elemental mercury study supported the conclusion that the presence of chloride ions in a given disposal environment may significantly impact the release from a treated waste form (mercury selenide).

4. What Additional Studies Are Recommended?

When asked if further studies were recommended for other factors that impact solubility, one reviewer recommended additional extractions up to at least pH 12.5. Again, as described above, we do not agree that additional studies are warranted for this pH range, as few landfills have been shown to maintain pH conditions in excess of pH 12. This reviewer also recommended that mercuric selenide waste should be evaluated over the range of pH 2 to 12.5, with varied chloride content in the leachate. We agree that if additional studies were planned, it would be useful to further investigate mercuric selenide or elemental mercury treated to a mercuric selenide composition across a wider range of pH values than the 2 pH conditions in our study. We also believe that varying chloride content and other potentially significant variables across the pH range for all waste forms would be a useful study, and would provide additional information on the potential effects of chloride content in landfill leachate.

5. Must Site-Specific Disposal Conditions Be Considered Along With Appropriate Treatment Technology as Decisions Are Made About Disposal of Mercury Wastes?

Peer reviewer opinions were mixed as to whether the studies supported the assertion that site-specific disposal conditions must be considered along with appropriate treatment technology as decisions are made about disposal of mercury wastes. One reviewer stated that the studies provide useful data on pH and chlorides, but do not provide adequate support for an absolute requirement. The reviewer also stated that, "For any disposal of hazardous wastes, treated or untreated, it is scientifically preferable to use site-specific information." This reviewer maintained, however, that requiring the factoring of site-specific conditions into decision making is not always feasible. Another reviewer's comments countered that these research results do support the assertion, because they demonstrate that leaching fluids, which vary greatly in pH under different disposal conditions, can have an important impact on the amount of mercury leached from the treated wastes. The third reviewer suggested that if several actual wastes have been tested and are shown to be stable at all pH values, then selection of stabilization technology would not require any site-specific considerations. We do not agree with this reviewer's comment, because we believe that there are other factors (redox conditions, presence of chlorides, *etc.*) besides pH, which would likely impact the solubility of the treated waste form.

The complete results of the peer review are provided in Docket Number: RCRA–2002–0029, along with EPA's responses to the peer review comments.

J. What Conclusions Do We Reach From the Treatability Studies?

For wastes containing a wide range of mercury compounds, treatment can result in a residual of reduced solubility under certain pH conditions. Our treatability studies showed that the leaching of mercury out of the stabilized waste form varied with pH. We saw that some of the vendor's treatment of surrogate waste performed better in certain pH ranges. For example, Vendor A performed best (*i.e.*, achieved levels less than 0.025 mg/L) except in very alkaline conditions (*i.e.*, when the pH was greater than 10), whereas Vendor B's treatment performed best only under very alkaline conditions. Because the pH in a hazardous waste landfill can vary anywhere from near pH 2 to over pH 12, it appears that none of the treatment processes tested in the studies presented here are effective for the entire range of pH levels that could exist.

We find that the evaluated processes are effective to a degree for the treatment of elemental mercury wastes. Several have been demonstrated to achieve 0.025 mg/L or better under certain pH conditions. However, vapor pressure measurements [18] and observation of small droplets of mercury in some samples of the treated wastes lead us to believe that some treatment processes did not result in complete treatment of all the elemental mercury in every test sample. We also believe that the testing conditions cannot be considered to be worst-case, because the additional presence of sulfide and chloride ions in leachates can promote formation of soluble mercury complexes.

The physical properties of elemental mercury present significant challenges to its long-term management. Mercury cannot be destroyed. Elemental mercury is easily vaporized due to its vapor pressure at ambient temperatures. Also, elemental mercury is not significantly soluble [19] and therefore not readily detected by short term leachate tests, such as the TCLP. Disposal of large amounts of elemental mercury require control of both volatilization losses and any subsequent solubilization in leachates. Thus, for protective long-term management in a disposal environment, elemental mercury first has to be treated to convert it to a form with reduced volatility and solubility, and then measures must be put into place to prevent these treatments from being degraded once the properties of the treatment residual have been determined.

The physical properties of mercury also present treatment challenges. At ambient conditions, mercury is an extremely dense liquid with high surface tension. It does not appreciably dissolve into, or adhere to, wastes or environmental media, and because of its density and surface tension, it is extremely difficult to distribute homogeneously through the treatment reagents. Consequently, large volumes of treatment reagents are needed to contact and react with the elemental mercury, resulting in low waste loadings and large volume increases.

The current treatment standard for high mercury and elemental mercury wastes is recovery of mercury followed by land disposal of any treatment residuals that pass a leaching standard.[20] The results of the treatability studies outlined in this notice lead us to conclude that, at this time, we cannot

[18] C.H. Mattus, "Measurements of Mercury Released from Solidified/Stabilized Waste Forms," Oak Ridge National Laboratory, ORNL/TM–2001/17, April 2001. Available at *http://osti.gov/bridge.*

[19] The solubility of elemental mercury is 0.056 mg/L at 25°C (MERCK Index).

[20] Residuals that do not pass the leaching standard would require additional treatment to meet the standard for the applicable subcategory of mercury waste.

establish a new national treatment standard allowing for disposal of high mercury and elemental mercury wastes. We continue to believe that the current recovery standard is the most appropriate standard for most high mercury waste. No technology demonstrated adequate stability across the plausible range of pH conditions found in landfills. We recognize that other factors, including leachate salinity, can have a significant effect on the solubility of treated mercury wastes. These other factors may be the reason that we have not been able to find a single technology that is effective in all or many situations.

K. Why Are Treatability Variances an Option for High Mercury Wastes?

While these circumstances do not allow us to modify or provide an alternative national treatment standard for high-mercury hazardous wastes to allow for disposal, we are deferring to our variance process for stakeholders who believe it would be appropriate to use an alternative treatment technology for their wastes and expected disposal conditions. Under 40 CFR 268.44(h), we allow facilities to apply for a site-specific variance for wastes generated under conditions specific to only one site. In such cases, the generator or treatment facility may apply to the Administrator, or EPA's delegated representative, for a site-specific variance from a treatment standard.

In cases where roasting and retorting for a certain waste is inappropriate, a generator can consider petitioning for a site-specific variance from that treatment standard. At a minimum, the generator would want to look for the treatment technology that would be most effective in the expected pH range for the chosen disposal site. In general, for a site-specific petition to be granted, it should demonstrate that treatment has occurred and that the treatment residues are stable in the intended disposal environment.

For example, a variance may be appropriate for a high mercury subcategory waste that also is radioactive (*i.e.*, a mixed waste). The current regulations require high mercury-organic subcategory mixed wastes be treated by retorting (RMERC) or incineration (IMERC) and high mercury-inorganic subcategory mixed wastes be treated by RMERC. At the time of promulgation, the assumed approach for compliance with these regulations was separation of the mercury from the wastes and recycling of the pure elemental mercury back into commerce. However, this assumed compliance scenario is invalid for mixed wastes containing mercury because there is no use for recovered mercury that is radioactively contaminated.

To manage this type of waste, it would appear reasonable to use, on a site-specific basis, the "inappropriate" variance approach (§ 268.44(h)(2)(i)). A petitioner using this approach would necessarily have to describe the specifics and likely effectiveness of the stabilization treatment that will be used. As demonstrated by the studies described in today's notice, the stability of treated waste forms can be highly dependent on pH conditions. In determining whether the proposed technology is protective, EPA would expect the petitioner to demonstrate the technology's effectiveness under the planned disposal conditions.

LDR variance petitions should be submitted in accordance with the procedures in 40 CFR 260.20. Petitions should include, among other things, a description of the process that generates the waste, the rationale for the variance request, and data on the proposed waste treatment process.[21] Site-specific circumstances often dictate the types and amount of information that we will need to evaluate a petition, so stakeholders who are considering petitioning for a treatment variance should engage EPA early in the process to ensure all of the necessary information is, or will be, available.

L. What Other Implications Arise From the Treatability Studies?

Because these treated waste forms may be chemically altered by environmental conditions, macroencapsulation prior to land disposal could be used to provide a barrier against leachate intrusion and attack on the treated mercury waste. Macroencapsulation would also provide a barrier to reduce emissions of elemental mercury vapors. In order to meet the performance requirements of 40 CFR 268.45, Table 1, the macroencapsulation treatment must completely encapsulate the waste and be resistant to degradation by the waste, its contaminants, and materials into which it may come into contact after placement. We promulgated such a requirement for wastewater treatment sludge from the production of vinyl chloride monomer using mercuric chloride catalyst in an acetylene-based process; hazardous waste K175 (65 FR 67068, November 8, 2000). For K175 wastes, we estimated that macroencapsulation and placement in a hazardous waste landfill utilizing high density polypropylene vaults adds an additional $150 to $200 per ton of waste disposed to the treatment costs.[22] For a review of the current state of encapsulation technologies and materials being used to immobilize elemental mercury, mercury-contaminated wastes, soils, or sludges, see the technical report "Advances in Encapsulation Technologies for the Management of Mercury-Contaminated Hazardous Wastes," Battelle, August 30, 2002, available in the docket for this notice.

Having concluded that treatment residues of elemental mercury are potentially subject to attack by leachates and that the technologies may not have fully reacted with the mercury, we are evaluating whether to propose modifying the treatment standards for the radioactive elemental mercury waste subcategories of U151 and D009. The current treatment standard for these wastes is amalgamation (AMLGM). We could propose, for example, to replace this standard with the more restrictive requirement of amalgamation followed by macroencapsulation. We could also require post-treatment testing to ensure effective treatment. If we decide to amend the treatment standards, we would publish a proposed rule for public comment.

Dated: January 22, 2003.

Robert Springer,

Director, Office of Solid Waste.

[FR Doc. 03–2035 Filed 1–28–03; 8:45 am]

BILLING CODE 6560–50–U

[21] Note that when submitting data, petitioners should also include evidence that appropriate quality assurance/quality control procedures were followed in generating the data. For guidance, see Final Best Demonstrated Available Technology (BDAT) Background Document for Quality Assurance/Quality Control Procedures and Methodology; USEPA, October 23, 1991.

[22] Economics Background Document—USEPA Final Rule Listing Wastewater Sludges Generated By Chlorinated Aliphatic Chemical Manufacturing Facilities, as RCRA Hazardous Waste Codes K174 and K175: Industry Profile and Estimation of Regulator Costs; page 74. *http://www.epa.gov/epaoswer/hazwaste/id/chlorali/ca_ebd.pdf*

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7444–6]

Connecticut Marine Sanitation Device Standard; Receipt of Petition

Notice is hereby given that a petition has been received from the State of Connecticut requesting a determination of the Regional Administrator, U.S. Environmental Protection Agency, pursuant to section 312(f)(3) of Pub. L. 92–500 as amended by Pub. L. 95–217

and Pub. L. 100–4, that adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are reasonably available for the area encompassing the Connecticut portions of the Pawcatuck River, Little Narragansett Bay, portions of Fisher Island Sound and all of Stonington Harbor in the town of Stonington, State of Connecticut, to qualify as a "No Discharge Area" (NDA). The areas covered under this petition extends from Wamphassuc Point (41° 19′ 40.63″ N by 71° 55′ 15.75″ W) due south past Noyes Shoal to the boundary between Connecticut and New York (41° 18′ 28.99″ N by 71° 55′ 15.75″ W), easterly following the boundary between Connecticut and New York to the intersection of the Connecticut, New York and Rhode Island State lines (41° 18′ 16.69″ N by 71° 54′ 27.23″ W) and following the boundary between Connecticut and Rhode Island to U.S. Route 1 over the Pawcatuck River and including all Connecticut waters seaward of U.S. Route 1.

The State of Connecticut has certified that there will be three pumpout facilities located within the proposed area to service vessels in the Stonington Harbor and Little Narragansett Bay area. The first is a shoreside facility located at the Dodson Boatyard. This pumpout facility is connected directly to the Stonington Borough Sewer system as permitted by the Stonington Water Pollution Control Authority. It has a depth of 6 feet at mean low water. The Dodson Boatyard facility is open daily from April, May and October, 8 a.m. to 5 p.m., and June through September 8 a.m. to 10 p.m. The facility staff monitors VHF CH 78 and may also be contacted at (860) 535–1507. The second shoreside facility is located at Norwest Marina. The pumpout unit is located 25 feet landward of the water and has a hose that extends to the adjacent floating service dock. The depth at the service dock is 6 feet at mean low water. This pumpout facility discharges directly into the Pawcatuck Sewer system. This facility is opened daily from April to November, 8 a.m. to 4:30 p.m. The facility staff monitors VHF Channel 68 and may also be contacted at (860) 535–1507. The third is a pumpout boat berthed at the Westerly Yacht Club that serves the Pawcatuck River, Watch Hill Harbor, Fishers Island Sound, Stonington Harbor and Little Narragansett Bay in Connecticut and Rhode Island. The boat has a holding capacity of 300 gallons. The pumpout boat is available during the boating season (April—October), Thursday and Friday from 10 a.m. to 4 p.m., and Saturday from 8 a.m. to 6 p.m. The schedule is expanded during July and August to provide service 7 days a week. The pumpout boat staff monitors VHF Channel 9 and may also be contacted by calling (401) 348–2538. For all three facilities it has been suggested to call ahead for service.

There are 13 marinas within the proposed No Discharge Area and the majority of marinas provide public restrooms for boaters and their clientele. During races the Wadawanuck Club also operates a floating public restroom at the month of the Stonington Harbor, which consists of a floating dock with portable toilets that are serviced and emptied onshore by the portable toilet vendor. In addition there are seven additional pumpout facilities in the surrounding area of the proposed No Discharge Area.

The State of Connecticut states that the total vessel population is 1600 vessels, 1548 are identified as recreational, and 52 are identified as commercial. The transient vessel population is estimated to be 300, which is included in the total figure. It is estimated that over 70% of the total vessel population is under 26 feet, and therefore do not have any type of Marine Sanitation Device (MSD).

The resources of the Stonington Harbor, Little Narragansett Bay, Pawcatuck River, and Fishers Island Sound are recreational and commercial. There are four public beaches, two boat ramps, the Barn Island Wildlife Management Area, and Sandy Point (owned by Avalonia Land Trust) are located within the proposed No Discharge Area. The area is used by both recreational and commercial shell fishermen for the harvest of hard clams, small populations of bay scallops, soft shell clams and blue mussels. In addition fishing is commonplace and the species found in the area are smelt, small cod, flounder, scup, menhaden, and white perch. The proposed area has a variety of rich natural habitats, and supports a wide diversity of species.

Comments and reviews regarding this request for action may be filed on or before March 17, 2003. Such communications, or requests for information or a copy of the applicant's petition, should be addressed to Ann Rodney, U.S. Environmental Protection Agency—New England Region, 1 Congress Street, Suite 1100, CWQ, Boston, MA 02114–2023. Telephone: (617) 918–1538.

Dated: January 21, 2003.

Robert Varney,

Regional Administrator, Region 1.

[FR Doc. 03–1867 Filed 1–28–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7445–3]

Clean Water Act Section 303(d): Notice Final Agency Action Withdrawing of 1 Total Maximum Daily Load (TMDL)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of withdrawal of 1 TMDL.

Subject: This notice announces EPA final action withdrawing of the TMDL for atrazine in the water column that EPA established pursuant to the Clean Water Act ("CWA") section 303(d), for Louisiana subsegment 080903, Big Creek from the confluence with the Boeuf River to the headwaters (including Big Colewa Bayou). EPA is withdrawing this TMDL because the draft criteria value for atrazine used in screening the waterbody to determine whether it meets Louisiana water quality standards and for calculation of allowable load allocations was draft only and had not been through the complete public notice process and had not been finalized. In place of the draft atrazine criteria number of 12 µg/l, EPA is establishing a screening value of 36 µg/l as calculated by one possible procedure found in Louisiana water quality standards (LAC 33:IX,1113.C.6). Based on this new screening value of 36 µg/l, Big Creek is not, and was not at the time EPA established this TMDL, impaired by atrazine and should not be listed on Louisiana's current CWA section 303(d) list for atrazine. Thus, EPA is withdrawing this TMDL.

Background: EPA established this atrazine TMDL under CWA section 303(d) on February 28, 2001, to satisfy a consent decree obligation in the lawsuit styled *Sierra Club* v. *Clifford,* Civ. No. 96–0527 (E.D. La.). The Waterbody subsegment 080903, Big Creek from the confluence with the Boeuf River to the headwaters (including Big Colewa Bayou) was listed on the Louisiana section 303(d) list of impaired waters as impaired due to pesticides, under the "no toxics in toxic amounts" narrative Louisiana water quality standard (LAC 33:IX,1113.B.5).

Since the State of Louisiana does not have a numeric water quality criterion for the protection of aquatic life for atrazine, EPA derived a numeric

interpretation of the State of Louisiana's narrative water quality criterion for toxic substances using EPA's Draft Criteria Document for atrazine (Ambient Aquatic Life Water Quality Criteria for Atrazine—Draft, EPA 822-D–010002, August 2001) and used that interpretation as the basis for establishing the Big Creek TMDL for atrazine.

During the comment period for this TMDL, commenters submitted information stating that under Louisiana water quality standard provisions (LAC 33:IX,1113.C.6) it was not appropriate to use a draft criterion document value and that the Louisiana procedures should be used. EPA has evaluated these comments and has concluded that using the calculation procedure found in the Louisiana water quality standards provisions is more appropriate for establishing a screening value for atrazine in this particular case. Based on its modification of the screening value used for interpretation of Louisiana's narrative water quality criterion of "no toxics in toxic amounts," EPA concluded that the applicable water quality standard for the Big Creek is not, and was not at the time EPA established this TMDL, exceeded for atrazine in the water column.

Therefore, in the exercise of its discretion, EPA is withdrawing the Big Creek TMDL established in February 2001 for atrazine. Because Big Creek is not listed for atrazine on the Louisiana 303(d) list, LDEQ has no present obligation under the CWA to submit to EPA a TMDL for atrazine for Big Creek, nor does the CWA require EPA to maintain this TMDL. Three other TMDLs for Big Creek, DDT, carbofuran, and methyl parathion are not affected by this determination.

FOR FURTHER INFORMATION CONTACT: Ellen Caldwell at (214) 665–7513.

Dated: December 20, 2002.

Jayne Fontenot,

Acting Director, Water Quality Protection Division, Region 6.

[FR Doc. 03–2038 Filed 1–28–03; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Privacy Act; System of Records

AGENCY: Federal Communications Commission (FCC or Commission).

ACTION: Notice; correction.

SUMMARY: The Federal Communications Commission published a document in the **Federal Register** of January 15, 2003, concerning a Privacy Act System of Records Notice; altered Privacy Act system of records; revision of one routine use; addition of one new routine use; and cancellation of one system of records. The document contained an incorrect System Manager(s) and Address.

FOR FURTHER INFORMATION CONTACT: Les Smith, Federal Communications Commission, at (202) 418–0217 or via the Internet at *lesmith@fcc.gov.*

SUPPLEMENTARY INFORMATION: In the **Federal Register** issue of January 15, 2003 in FR Doc. 03–884, a notice was published which provided an incorrect System Manager(s) and Address. This correction changes that System Manager(s) and Address.

Correction

On page 2052, in the second column, lines 19–24, should be corrected to read:

SYSTEM MANAGER(S) AND ADDRESS:

Security Office, Associate Managing Director—Administrative Operations (AMD–AO), Security Operations Center, Federal Communications Commission (FCC), 445 12th Street, S.W., Room 1–B458, Washington, DC 20554.

Dated: January 16, 2003.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 03–2023 Filed 1–28–03; 8:45 am]

BILLING CODE 5712–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984. Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, NW., Room 940. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register**.

Agreement No.: 011075–062.

Title: Central America Discussion Agreement.

Parties: King Ocean Services Limited, Crowley Liner Services, Inc., Seaboard Marine, Ltd., A. P. Moller-Maersk Sealand, APL Co. PTE Ltd., Dole Ocean Cargo Express.

Synopsis: The modification adds Dole Ocean Cargo Express as a party to the agreement.

Agreement No.: 011823–001.

Title: Contship/P&O Nedlloyd Vessel Sharing Agreement.

Parties: Contship Containerlines, P&O Nedlloyd Limited, P&O Nedlloyd BV.

Synopsis: The proposed modification clarifies that the agreement will remain effective until at least December 31, 2009.

By Order of the Federal Maritime Commission.

Dated: January 24, 2003.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 03–2051 Filed 1–28–03; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License; Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission an application for license as a Non-Vessel Operating Common Carrier and Ocean Freight Forwarder—Ocean Transportation Intermediary pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. app. 1718 and 46 CFR part 515).

Persons knowing of any reason why the following applicants should not receive a license are requested to contact the Office of Transportation Intermediaries, Federal Maritime Commission, Washington, DC 20573.

Non-Vessel Operating Common Carrier Ocean Transportation Intermediary Applicants

Sun Ocean Logistics Corp., 520 S. Mateo Street, Los Angeles, CA 90013, Officers: Simon P. Um, Chief Executive Officer, (Qualifying Individual), Wan Kyu Choi, Secretary.

Air-City (China) Co., Ltd., Floor C7, Wanshun Bldg., No. 89 Huangpu South Rd., Hexi Dist., Tianuin 300201, P.R. of China, Officer: Ronnie Chum, President (Qualifying Individual).

R.B.I. Shipping and Trading, Inc., 25 Milwood Street, Dorchester, MA 02124, Officer: Ralph Beckles, President (Qualifying Individual).

Non-Vessel Operating Common Carrier and Ocean Freight Forwarder Transportation Intermediary Applicants

NISCO Pacific, Inc., 500 West Victoria Street, Compton, CA 90220, Officers: Koichi Nakanishi, President (Qualifying Individual), Misako Nakanishi, Director.

AAA Intercontinental Cargo, 6100 Richmond Street, Suite A113,

Houston, TX 77057, Meheddin Meirkhan, Sole Proprietor.

Global Fritz Logistics Service Co. Ltd., 970 West 190th Street, Suite 200, Torrance, CA 90502, Officer: Tayung Soong, President (Qualifying Individual).

Decheng Shipping Group, Ltd., 2248 East 49th Street, Vernon, CA 90058, Officers: Gordon Lee, Vice President (Qualifying Individual), Raymond C. Camero, Director.

EZ Forwarding LLC, 3901 North 29th Avenue, Hollywood, FL 33020, Officers: Sandra Villa, Vice President (Qualifying Individual), Yves Surprenant, President.

Dated: January 24, 2003.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 03–2052 Filed 1–28–03; 8:45 am]

BILLING CODE 6730–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60 Day–03–38]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 498–1210.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Send comments to Anne O'Connor, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Project: Reporting Requirements for Assessment of the Well-Integrated Screening and Evaluation for Women Across the Nation (WISEWOMAN)—New—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC).

Background

The WISEWOMAN program, which focuses on reducing cardiovascular disease risk factors among at-risk women, was in response to the Secretary of Health and Human Services' Continuous Improvement Initiative, asking for the development of programs that examine ways in which service delivery can be improved for select populations. Title XV of the Public Health Service Act, Section 1509 originally authorized the secretary of the Department of Health and Human Services to establish up to three demonstration projects. Through appropriations language, the CDC WISEWOMAN program is now allowed to fund up to 15 projects. Currently, WISEWOMAN funds 12 demonstration projects, which at full implementation are expected to screen approximately 30,000 women annually for cardiovascular disease risk factors. The program targets women already participating in the National Breast and Cervical Cancer Early Detection Program (NBCCEDP) and provides screening for select cardiovascular disease risk factors (including elevated cholesterol, hypertension, and abnormal blood glucose levels), lifestyle interventions, and medical referrals as required in an effort to improve cardiovascular health among participants.

The CDC proposes to collect and analyze baseline and follow-up data (12 months post enrollment) for all participants. These data, called the minimum data elements (MDE's), includes demographic and risk factor information about women served in each program and information concerning the number and type of intervention sessions attended. The MDE data allows for an assessment of how effective WISEWOMAN is at reducing the burden of cardiovascular disease risk factors among participants. The CDC also proposes to collect programmatic data for all WISEWOMAN programs. Programmatic data includes information related to grantee management, public education and outreach, professional education, service delivery, cost, and an assessment of how well each program is meeting their stated objectives.

All required data will be submitted electronically to RTI International, the contractor hired by CDC to conduct the WISEWOMAN evaluation. MDE and cost data will be submitted to RTI twice a year, October 15 and April 15. October 15 reporting will cover all MDE's and costs for activities that took place between January 1 and June 30, and the April 15 submission will cover MDE's and costs for activities occurring between July 1 and December 31. Quarterly reports containing programmatic data will be due to RTI on January 31 (reflecting October 1–December 31 program activities), April 30 (reflecting January 1–March 31), July 31 (reflecting April 1–June 30), and October 31 (reflecting July 1–September 30). All reports will be due in a pre-determined format provided by CDC and the contractor. The contractor will provide training as requested to WISEWOMAN personnel at each location concerning data collection and submission.

All information collected as part of the WISEWOMAN evaluation will be used to assess the costs, effectiveness, and cost-effectiveness of WISEWOMAN in reducing cardiovascular disease risk factors, for obtaining more complete health data among vulnerable populations, promoting public education of disease incidence and risk-factors, improving the availability of screening and diagnostic services for under-served women, ensuring the quality of services provided to women, and developing strategies for improved interventions. Because certain demographic data are already collected as part of NBCCEDP, the additional burden on grantees will be modest. Once the infrastructure is established to capture the additional WISEWOMAN data, the response burden is expected to be reduced even further. There are no costs to respondents.

Form	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden (in hours)
Screening MDE Report	12	2	16	384
Intervention MDE Report	12	2	8	192
Cost Report	12	2	16	384
Quarterly Report	12	4	16	768
Total				1728

Dated: January 21, 2003.

Thomas Bartenfeld,

Acting Associate Director for Policy, Planning and Evaluation Centers for Disease Control and Prevention.

[FR Doc. 03–1974 Filed 1–28–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60 Day–03–39]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 498–1210.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Send comments to Anne O'Connor, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Project: The National Tobacco Control Program (NTCP) Chronicle Progress Reporting System—New—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC).

Background

Implementation of National Tobacco Control Program (NTCP) Chronicle: Progress Reporting System National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC). Tobacco use is the single most preventable cause of death and disease in the United States. Most people begin using tobacco in early adolescence. Tobacco use causes more than 430,000 deaths annually in the nation and costs approximately $50–70 billion in medical expenses alone. The Centers for Disease Control and Prevention's (CDC) Office on Smoking and Health (OSH) provides funding to health departments of states and territories to develop, implement and evaluate comprehensive Tobacco Control Programs (TCPs) based on CDC guidelines provided in Best Practices for Comprehensive Tobacco Control Programs-August 1999 (Atlanta, GA, HHS). TCPs are population-based, public health programs that design, implement and evaluate public health prevention and control strategies to reduce disease, disability and death related to tobacco use and to reach those communities most impacted by the burden of tobacco use (e.g., racial/ethnic populations, rural dwellers, and the economically disadvantaged). Support for these programs is a cornerstone of the OSH's strategy for reducing the burden of tobacco use throughout the nation. CDC, Office on Smoking and Health is authorized under sections 301 and 317(k) of the Public Health Service Act [42 U.S.C. section 241 and 247b(k)].

As outlined in 45 CFR Subtitle A, section 92.40, funding recipients are required to submit twice yearly progress reports to CDC. These reports are used by both the Procurement and Grants Office (PGO) to monitor program compliance, and by OSH managers and Project Officers (POs) to identify training and technical assistance needs; monitor compliance with cooperative agreement requirements; evaluate the progress made in achieving national and program-specific goals; and respond to inquiries regarding program activities and effectiveness. Funding recipients currently have a wide latitude in the content of the information they report with some recipients providing extensive and detailed programmatic information and others providing minimal detail regarding TCP operations. Historically, information has been collected and transmitted via hard-copy paper document. The manual reporting system significantly impacts the OSH's staff ability to accomplish its responsibilities resulting from providing TCP funds, particularly with respect to compiling, summarizing and reporting aggregate TCP program information.

In responding to the federal government's E-Government initiative, the proposed change in progress report collection methodology is driven by OSH's development of an electronic progress reporting system to collect state TCP information. The proposed reporting system will utilize a more formal, systematic method of collecting information that has historically been requested from individual TCPs and will standardize the content of this information. This will facilitate OSH staff's ability to fulfill its obligations under the cooperative agreements; to monitor, evaluate and compare individual programs; and to assess and report aggregate information regarding the overall effectiveness of OSH's National Tobacco Control Program (NTCP). It will also support OSH's broader mission of reducing the burden of tobacco use by enabling OSH staff to more effectively identify the strengths and weaknesses of individual TCPs; to identify the strength of national movement toward reaching the goals specified in Healthy People 2010; and to disseminate information related to successful public health interventions implemented by these organizations to prevent and control the burden of tobacco use. The OSH anticipates that the state burden of providing hard-copy reports will be reduced with the

introduction of the web-based progress reporting system. It is assumed that states will experience a learning curve in using this application, and the reported burden will be reduced once they have familiarized themselves with this system. The only cost to respondents is the time required to complete the web-based progress reports.

Respondents	Number of respondents	Number of responses per respondent	Average burden per respondent (in hours)	Total burden (in hours)
States and DC	51	2	6	612
Totals				612

Dated: January 21, 2003.

Thomas Bartenfeld,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention.

[FR Doc. 03–1975 Filed 1–28–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Healthcare Infection Control Practices Advisory Committee (HICPAC): Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting.

Name: Healthcare Infection Control Practices Advisory Committee.

Time and Date: 10 a.m.–6 p.m., February 3, 2003.

Place: Crowne Plaza Atlanta Airport, 1325 Virginia Avenue, Atlanta, GA 30344.

Status: Open to the public, limited only by the space available.

Purpose: The Committee is charged with providing advice and guidance to the Secretary, the Assistant Secretary for Health, the Director, CDC, and the Director, National Center for Infectious Diseases (NCID), regarding (1) the practice of hospital infection control; (2) strategies for surveillance, prevention, and control of infections (*e.g.*, nosocomial infections), antimicrobial resistance, and related events in settings where healthcare is provided; and (3) periodic updating of guidelines and other policy statements regarding prevention of healthcare associated infections and healthcare-related conditions.

Matters To Be Discussed: Agenda items will include infection control precautions for patients with vaccinia-related adverse events and respiratory protection options for healthcare workers potentially exposed to patients with pneumonic plague and smallpox.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Michele L. Pearson, M.D., Executive Secretary, HICPAC, Division of Healthcare Quality Promotion, NCID, CDC, 1600 Clifton Road, NE, M/S A–07, Atlanta, Georgia 30333, telephone 404–498–1182.

Due to programmatic issues that had to be resolved, the Federal notice is being published less than fifteen days before the date of meeting.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: January 23, 2003.

Joseph E. Salter,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 03–1999 Filed 1–28–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects

Title: 45 CFR 1303—Appeal Procedures for Head Start Grantees and Current or Prospective Delegate Agencies.

OMB No.: 0980–00242.

Description: Section 646 of the Head Start Act requires the Secretary to prescribe a timeline for conducting administrative hearings when adverse actions are taken or proposed against Head Start or Early Head Start grantees or delegate agencies. The Head Start Bureau is proposing to renew this rule, which implements these requirements that prescribe when a grantee must submit information and what that information should include to support a contention that adverse action should not be taken.

Respondents: Head Start and Early Head Start grantees and delegate agencies against which the Head Start Bureau has taken or proposes to take adverse actions.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Report	10	1	26	260
Estimated Total Annual Burden Hours:				260

In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the

information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: January 21, 2003.

Bob Sargis,

Reports Clearance Officer.

[FR Doc. 03–1967 Filed 1–28–03; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects

Title: Head Start Program Grant Application and Budget Instrument.

OMB No.: 0970–0207.

Description: The Head Start program is proposing to renew the Head Start Program Grant Application and Budget Instrument, which standardizes the grant application information that is requested from all Head Start grantees applying for continuation grants. The application and budget forms are available on a data diskette and can be transmitted electronically to Regional and Central Offices. The Administration for Children, Youth and Families believes that, in promulgating this application document, the process of applying for Head Start program grants is made more efficient for applicants.

Respondents: Head Start Program grants recipients.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	total burden hours
Head Start Grant Application and Budget Instrument	1600	1	33	52,800
Estimated Total Annual Burden Hours:				52,800

In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: January 21, 2003.

Bob Sargis,

Reports Clearance Officer.

[FR Doc. 03–1968 Filed 1–28–03; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects

Title: Examining Services and Best Practices of Intermediary Organizations.

OMB No.: New Collection.

Description: Currently, DHHS/ACF is conducting the project "Examining Services and Best Practices of Intermediary Organizations and the Faith- and Community-Based Organizations They Serve." The purpose of the project will be to examine (1) The role of intermediary organizations in assisting faith- and community-based organizations in building their capacity to serve needy individuals and families; (2) innovative and best practices among intermediary organizations; (3) promising practices among faith- and community-based organizations; (4) methods to evaluate the services of both types of organizations; and (5) methods to assess and benchmark performance among faith- and community-based groups. Priority will be given to programs that focus on the following areas: homelessness, hunger, at-risk children, transition from welfare to work, and intensive rehabilitation.

Respondents:

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Intermediary Staff Interview Guide	40	2	1	80
Frontline Staff Interview Guide	50	2	1	100
Estimated Total Annual Burden Hours:				180

In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: January 21, 2003.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 03–1970 Filed 1–28–03; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Child Care Case-Level Report.

OMB No.: 0970–0167.

Description: Section 658K of the Child Care and Development Block Grant Act of 1990 (Pub. L. 101–508, 42 U.S.C. 9858) requires that States and Territories submit monthly case-level data on the children and families receiving direct services under the Child Care and Development Fund. The implementing regulations for the statutorily required reporting are at 45 CFR 98.70. Case-level reports, submitted quarterly or monthly (at grantee option) include monthly sample or full population case-level data. The data elements to be included in these reports are represented in the ACF–801. Disaggregate data is used to determine program and participant characteristics, as well as costs and levels of child care services provided. This provides ACF with the information necessary to make reports to Congress, address national child care needs, offer technical assistance to grantees, meet performance measures, and conduct research. Consistent with the statute and regulations, ACF requests extension of the ACF–801.

Respondents: States, the District of Columbia, and Territories including Puerto Rico, Guam, the Virgin Islands, American Samoa, and the Northern Marianna Islands.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
ACF–801	56	4	20	4,480
Estimated Total Annual Burden Hours:				4,480

Additional Information: Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer.

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, 725 17th Street, NW., Washington, DC 20503, Attn: Desk Officer for ACF.

Dated: January 21, 2003.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 03–1969 Filed 1–28–03; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Access and Visitation Grants to States' Program Survey.

OMB No.: 0970–0204.

Description: States are required, on an annual basis, to provide OCSE with program data on projects that have been funded through the Grants to States for Access and Visitation Program. These program reporting requirements

include, but are not limited to, the collection of data on the number of participants served, referral sources, kinds of services delivered, project goals, and other relevant data.

Respondents: State Access and Visitation Program Coordinators and administrators of state and/or local service providers.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Grants to States: Access and Visitation Program Survey (1 additional year.—to collect FY 2001 program data in FY 2003).	324	1	15	4,860
State Child Access Program Survey (FY 2003, 2004, 2005).	324	1	15	4,860
Estimated Total Annual Burden Hours:.				Average 6,480 over 3 yrs. (9,720 in FY 2003; 4,860 in FY 2004; 4,860 in FY 2005.

Additional Information: Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer.

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, 725 17th Street, NW., Washington, DC 20503, Attn: Desk Officer for ACF.

Dated: January 21, 2003.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 03–1971 Filed 1–28–03; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by agencies of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7057; fax: 301/402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

Minimally Immunogenic Variant of Humanized COL–1 Antibody Against Carcinoembryonic Antigen (CEA)

Syed V.S. Kashmiri (NCI), Jeffrey Schlom (NCI), Eduardo A. Padlan (NIDDK)

DHHS Reference No. E–239–2002/0–US–01 filed 05 Sep 2002

Licensing Contact: Jonathan Dixon; 301/435–5559; *dixonj@od.nih.gov*

Monoclonal antibodies (mAbs) show promise for the diagnosis and treatment of human cancers. COL–1 has a high affinity for carcinoembryonic antigen (CEA), and it reacts specifically to CEA. The present invention discloses humanized COL–1 (HuCOL–1) mAbs that are potentially minimally immunogenic and retain CEA binding affinity. Humanization of the antibody by "abbreviated" CDR grafting has reduced the risk of human anti-murine antibody response associated with the clinical use of murine mAbs for diagnosis and treatment of CEA expressing tumors. This invention also provides further methods of detecting and treating CEA expressing tumors.

Novel Broadly Cross-Reactive HIV Neutralizing Human Monoclonal Antibodies Selected From Fab Phage Display Libraries Using a Novel Strategy Based on Alternative Antigen Panning

Dimiter S. Dimitrov (NCI) and Mei-Yun Zhang (SAIC)

DHHS Reference No. E–144–2002/0–US–01 filed 05 May 2002 and

Novel Broadly Cross-Reactive HIV–1 Neutralizing Human Single-Chain Antibodies Derived From X5 by DNA Shuffling and Alternating Antigen Panning

Dimiter S. Dimitrov (NCI) and Mei-Yun Zhang (SAIC)

DHHS Reference No. E–144–2002/1–US–01 filed 05 May 2002

Licensing Contact: Sally Hu; 301/435–5606; *hus@od.nih.gov*

This invention (E–144–2002/0–US–01) identifies four antibodies, designed m12, m14, m16, and m18. These four antibodies were isolated from a human Fab phage display library using alternating antigen panning (AAP). All four antibodies bind to recombinant HIV envelope glycoproteins (Env) $gp12089.6$, $gp120JR\text{-}FL$ and $gp120IIIB$ with high affinity. Moreover, m12 binding to gp 120 or gp 140 is significantly enhanced in the presence of the receptor CD4. The second invention (E–144–2002/1–US–01) describes two scFv clones, designated M6 and M9 that were selected form phage-displayed X5 scFv mutants library by panning the library against $gp12089.6/IIIB$–CD4 complex using

the same strategy, alternating antigen panning strategy (AAP). M6 and M9 are more stable than previously reported HIV–1 antibody named X5 and have significant improved binding activities to $gp_{120IIIB}$. Both scFvs inhibit more efficiently membrane fusion mediated by envelope glycoproteins of primary HIV isolates with a broader spectrum compared to X5, indicating that scFv format may be a more proper format compared to Fab for HIV–1 neutralizing antibodies to inhibit virus infection and transmission. Furthermore, scFv is a single molecule with almost half size of Fab, which makes scFv more suitable for constructing bivalent and multivalent antibodies and antibody fusion proteins. Thus, since all six antibodies from the above two inventions cross-react with different HIV–1 isolates, these antibodies could be directly used for therapy of HIV–1 infected individuals. In addition, these antibodies can be also used for screening of peptide phage display libraries, libraries of Envs, and in general as tools for development of HIV vaccines.

A Mouse Model for Human Osteoarthritis

Laurent G. Ameye (NIDCR), Marian F. Young (NIDCR), Ake Oldberg (EM), Tianshun Xu (NIDCR)

DHHS Reference No. E–081–2002/0

Licensing Contact: Susan Carson; 301/435–5020; *carsons@od.nih.gov*

Osteoarthritis (OA) is the most common form of arthritis and affects more than 20 million Americans, costing billions of dollars in health care annually. Osteoarthritis is caused by the breakdown of joint cartilage, leading to a loss of the cartilage "cushion" between the bones of the joints. Risk factors associated with OA include age, obesity, traumatic injury and overuse due to sports or occupational stresses. There is no cure for OA and current treatments are directed at the symptomatic relief of pain, and at improving and maintaining joint function. There remains, however, a critical need both to develop OA treatments that focus on slowing down the degenerative process of the disease and for validated animal models to test these new treatments. NIH scientists at the NIDCR have generated a mouse model for osteoarthritis (FASEB J. (2002) 16, 673–680) that fills one part of this important gap.

The mouse model is a double knockout mouse that lacks biglycan and fibromodulin, two members of the small leucine-rich proteoglycan family, and that spontaneously develops OA. All the hallmarks of human osteoarthritis are present, including: progressive degeneration of the articular cartilage from early fibrillation to complete erosion, subchondral sclerosis, an absence of inflammation and development of osteophytes and cysts. Advantages over the existing models for osteoarthritis include: high phenotypic penetrance, early onset (at 1–2 months) and a rapid disease progression (between 3–6 months) which can be accelerated by moderate levels of exercise, such as treadmill running. These properties, combined with a normal life span, make the biglycan/fibromodulin-deficient mouse an ideal animal model for evaluating new drugs and treatments for osteoarthritis.

Ligands for FPR Class Receptors That Induce a Host Immune Response to a Pathogen or Inhibit HIV Infection

Ji Ming Wang *et al.* (NCI)

DHHS Reference Nos. E–267–1999/0–PCT–04 filed 04 Feb 2000 (PCT/US00/02842) and E–267–1999/0–US–05 filed 17 Jul 2002

Licensing Contact: Marlene Shinn-Astor; 301/435–4426; *shinnm@od.nih.gov*

The NIH announces a technology that relates a synthetic amino acid peptide that has been discovered to have chemotactic activity and the ability to activate both the FPR and FPRL1 receptors. This peptide has been found by NIH investigators to be a potent inhibitor of cellular response to chemokines including those chemokines that use the CCR5 receptor. It has been found that the activation of the FPRL1 by the peptide will in fact inhibit HIV–1 fusion to a cell and its infection through the CCR5 receptor. The peptide can potentially be used as a topical drug in the anal-vaginal tract to prevent or reduce the mucosal transmission of HIV–1. It also has the potential to be used as a vaccine adjuvant to prime a host response from a patient to a microbial infection. In addition, because of its interaction with the FPR and FPRL1 receptor it could be used to design drugs which interfere with responses due to the presence of excess quantities of chemokines. The peptide is short and contains a D-amino acid so that it is economical and easy to synthesize. Also, it may be more resistant to proteolytic degradation in vivo, which will prolong its half-life and therefore make it more effective as a treatment. It is available for immediate licensing and research collaborations via a Cooperative Research and Development Agreement (CRADA).

Dated: January 10, 2003.

Jack Spiegel,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 03–1988 Filed 1–28–03; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel.

Date: February 20–21, 2003.

Time: 7 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Double Tree Rockville, 1750 Rockville Pike, Rockville, MD 20852.

Contact: Robert B. Moore, PhD, Review Branch, Room 7178, Division of Extramural Affairs, National Heart, Lung, and Blood Institute, National Institutes of Health, Bethesda, MD 20892, 301–435–0725.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular diseases Research, 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: January 16, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–1983 Filed 1–28–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel; A National Resource for Postmortem Brain Research.

Date: February 10, 2003.

Time: 2 pm to 3:30 pm.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Peter J. Sheridan, PHD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6142, MSC 9606, Bethesda, MD 20892–9606, 301–443–1513, *psherida@mail.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Mental Health Special Emphasis Panel IP–RISPS.

Date: February 11, 2003.

Time: 4 pm to 8 pm.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852.

Contact Person: Martha Ann Carey, PHD, RN, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6151, MSC 9608, Bethesda, MD 20892–9608, 301–443–1606, *mcarey@mail.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Mental Health Special Emphasis Panel; Late-Life Intervention

Date: February 21, 2003.

Time: 2 pm to 4 pm.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: David I. Sommers, PHD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6144, MSC 9606, Bethesda, MD 20892–9606, 301–443–7861, *dsommers@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: January 17, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–1980 Filed 1–28–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel; ZAA1 BB (12) R21 Application Review Meeting.

Date: February 18, 2003.

Time: 2 pm. to 3 pm.

Agenda: To review and evaluate grant applications.

Place: Willco Building, 6000 Executive Blvd., 409, Bethesda, MD 20892–7003, (Telephone Conference Call).

Contact Person: Elsie D. Taylor, Scientific Review Administrator, Extramural Project Review Branch, National Institute on Alcohol Abuse and Alcoholism, National Institutes of Health, Suite 409, 6000 Executive Blvd., Bethesda, MD 20892–7003, 301–443–9787, *etaylor@niaaa.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants, National Institutes of Health, HHS)

Dated: January 17, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–1981 Filed 1–28–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Deafness and Other Communication Disorders; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Deafness and Other Communications Disorders Special Emphasis Panel; Auditory Perception Review.

Date: March 6, 2003.

Time: 1 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, National Institutes of Health, 6120 Executive Blvd., Rockville, MD 20852.

Contact Person: Stanley C. Oaks, PhD, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research, Executive Plaza South, Room 400C, 6120 Executive Blvd., Bethesda, MD 20892–7180, 301–496–8683.

Name of Committee: National Institute on Deafness and Other Communications Disorders Special Emphasis Panel, Review of NIDCD Small Grants (R03) Applications.

Date: March 12, 2003.

Time: 8 a.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Stanley C. Oaks, PhD, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research, Executive Plaza South, Room 400C, 6120 Executive Blvd., Bethesda, MD 20892–7180, 301–496–8683.

(Catalogue of Federal Domestic Assistance Program Nos. 93.173, Biological Research Related to Deafness and Communicative Disorders, National Institutes of Health, HHS)

Dated: January 17, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–1982 Filed 1–28–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel Centers Review.

Date: February 10, 2003.

Time: 8 am to 6 pm.

Agenda: To review and evaluate grant applications.

Place: Ritz-Carlton Hotel at Pentagon City, 1250 South Hayes Street, Arlington, VA 22202.

Contact Person: Rita Liu, PHD, Health Scientist Administrator, Office of Extramural Affairs, National Institute on Drug Abuse, National Institutes of Health, DHHS, 6001 Executive Boulevard, Room 3158, MSC 9547, Bethesda, MD 20892–9547, (301) 435–1388, *rliu@nida.nih.gov.*

Name of Committee: National Institute on Drug Abuse Initial Review Group. National Medication Development Research Subcommittee.

Date: February 24, 2003.

Time: 8 am to 6 pm.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Khursheed Asghar, PHD, Chief, Basic Sciences Review Branch, Office of Extramural Affairs, National Institute on Drug Abuse, National Institutes of Health, 6001 Executive Boulevard, Room 3158, MSC 9547, Bethesda, MD 20892–9547, (301) 443–2755.

Name of Committee: National Institute on Drug Abuse and Initial Review Group. Health Services Research Subcommittee.

Date: February 25–26, 2003.

Time: 9 am to 5 pm.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Georgetown, 2101 Wisconsin Avenue, NW., Washington, DC 20007.

Contact Person: Marina L. Volkov, PHD, Health Scientist Administrator, Office of Extramural Affairs, National Institute on Drug Abuse, National Institutes of Health, DHHS, 6001 Executive Boulevard, Room 3158, MSC 9547, Bethesda, MD 20892–9547, (301) 435–1433.

Name of Committee: National Institute on Drug Abuse Initial Review Group. Treatment Research Subcommittee.

Date: February 25–26, 2003.

Time: 9 am to 5 pm.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Georgetown, 2101 Wisconsin Avenue, NW., Washington, DC 20007.

Contact Person: Kesinee Nimit, MD, Health Scientist Administrator, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, DHHS, Neuroscience Center, Rm. 3158, MSC 9547, 6001 Executive Boulevard, Bethesda, MD 20892–9547, (301) 435–1432.

Name of Committee: National Institute on Drug Abuse Initial Review Group. Training and Career Development Subcommittee.

Date: March 11–13, 2003.

Time: 9 am to 6 pm.

Agenda: To review and evaluate grant applications.

Place: Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Mark Swieter, PHD, Health Scientist Administrator, Office of Extramural Affairs, National Institute on Drug Abuse, National Institutes of Health, DHHS, 6001 Executive Boulevard, Room 3158, MSC 9547, Bethesda, MD 20892–9547, (301) 435–1389.

(Catalogue of Federal Domestic Assistance Program Nos. 93.277, Drug Abuse Scientist Development Award for Clinicians, Scientist Development Awards, and Research Scientist Awards; 93.278, Drug Abuse National Research Service Awards for Research Training; 93.279, Drug Abuse Research Programs, National Institutes of Health, HHS).

Dated: January 16, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–1984 Filed 1–28–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel. "Worksite Based Health Promotion for Youth" (Topic 046).

Date: January 29, 2003.

Time: 9:30 AM to 11:30 PM.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Lyle Furr, Contract Review Specialist, Office of Extramural Affairs, National Institute on Drug Abuse, National Institutes of Health, DHHS, 6001 Executive Boulevard, Room 3158, MSC 9547, Bethesda, MD 20892–9547, (301) 435–1439.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel. "Design, Synthesis, Preclinical, Testing and Scale-Up of Novel Treatment Agents for Stimulant Abuse" (Topic 041).

Date: February 12, 2003.

Time: 9:30 AM to 11:30 AM.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contract Person: Lyle Furr, Contract Review Specialist, Office of Extramural Affairs, National Institute on Drug Abuse, National Institutes of Health, DHHS, 6001 Executive Boulevard, Room 3158, MSC 9547, Bethesda, MD 20892–9547, (301) 435–1439.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel. "Develop New Technologies for Drug Abuse Prevention Delivery" (Topic 034).

Date: February 26, 2003.

Time: 9 AM to 4 PM.

Agenda: To review and evaluate contract proposals.

Place: Double Tree Rockville, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Lyle Furr, Contract Review Specialist, Office of Extramural Affairs, National Institute on Drug Abuse, National Institutes of Health, DHHS, 6001 Executive Boulevard, Room 3158, MSC 9547, Bethesda, MD 20892–9547, (301) 435–1439.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel. "Measurement Modules for Psychiatric Comorbidity Evaluation" (Topic 045).

Date: March 6, 2003.

Time: 9 AM to 4 PM.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852.

Contact Person: Lyle Furr, Contract Review Specialist, Office of Extramural Affairs, National Institute on Drug Abuse, National Institutes of Health, DHHS, 6001 Executive Boulevard, Room 3158, MSC 9547, Bethesda, MD 20892–9547, (301) 435–1439.

(Catalogue of Federal Domestic Assistance Program Nos. 93.277, Drug Abuse Scientist Development Award for Clinicians, Scientist Development Awards, and Research Scientist Awards; 93.278, Drug Abuse National Research Service Awards for Research Training; 93.279, Drug Abuse Research Programs, National Institutes of Health, HHS)

Dated: January 16, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–1985 Filed 1–28–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets of commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal property.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel, "Worksite Based Health Promotion for Youth" (Topic 046).

Date: January 29, 2003.

Time: 9:30 a.m. to 11:30 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Lyle Furr, Contract Review Specialist, Office of Extramural Affairs, National Institute on Drug Abuse, National Institutes of Health, DHHS, 6001 Executive Boulevard, Room 3158, MSC 9547, Bethesda, MD 20892–9547, (301) 435–1439.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel, "Design, Synthesis, Preclinical, Testing and Scale-Up of Novel Treatment Agents for Stimulant Abuse" (Topic 041).

Date: February 11, 2003.

Time: 9:30 a.m. to 11:30 a.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852. (Telephone Conference Call).

Contact Person: Lyle Furr, Contract Review Specialist, Office of Extramural Affairs, National Institute on Drug Abuse, National Institutes of Health, DHHS, 6001 Executive Boulevard, Room 3158, MSC 9547, Bethesda, MD 20892–9547, (301) 435–1439.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel, "Develop New Technologies for Drug Abuse Prevention Delivery" (Topic 034).

Date: February 26, 2003.

Time: 9 a.m. to 4 p.m.

Agenda: To review and evaluate contract proposals.

Place: Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Lyle Furr, Contract Review Specialist, Office of Extramural Affairs, National Institute on Drug Abuse, National Institutes of Health, DHHS, 6001 Executive Boulevard, Room 3158, MSC 9547, Bethesda, MD 20892–9547, (301) 435–1439.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel, "Measurement Modules for Psychiatric Comorbidity Evaluation" (Topic 045).

Date: March 6, 2003.

Time: 9 a.m. to 4 p.m.

Agenda: To review and evaluate contract proposals.

Place: Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Lyle Furr, Contract Review Specialist, Office of Extramural Affairs, National Institute on Drug Abuse, National Institutes of Health, DHHS, 6001 Executive Boulevard, Room 3158, MSC 9547, Bethesda, MD 20892–9547, (301) 435–1439.

(Catalogue of Federal Domestic Assistance Program Nos. 93.277, Drug Abuse Scientist Development Award for Clinicians, Scientist Development Awards, and Research Scientist Awards; 93.278, Drug Abuse National Research Service Awards for Research Training: 93.279, Drug Abuse Research Programs, National Institutes of Health, HHS)

Dated: January 22, 2003.

LaVerne Y. Stringfield.

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–1986 Filed 1–28–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Oncological Sciences Integrated Review Group; Cancer Molecular Pathobiology Study Section.

Date: February 2–4, 2003.

Time: 6 pm to 5 pm.

Agenda: To review and evaluate grant applications.

Place: Latham Hotel, 3000 M Street, NW., Washington, DC 20007.

Contact Person: Elaine Sierra-Rivera, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6184, MSC 7804, Bethesda, MD 20892, (301) 435–1779, *riverase@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 SSS–X 41P: Program Project Site Visit.

Date: February 2–4, 2003.

Time: 7 pm to 4 pm.

Agenda: To review and evaluate grant applications.

Place: Best Western Boston, The Inn at Longwood Medical, 342 Longwood Avenue, Boston, MA 02115.

Contact Person: Lee Rosen, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5116, MSC 7854, Bethesda, MD 20892, (301) 435–1171.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Brain Disorders and Clinical Neuroscience Integrated Review Group, Brain Disorders and Clinical Neuroscience 1.

Date: February 3–4, 2003.

Time: 8 am to 5 pm.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: David M. Armstrong, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5188, MSC 7846, Bethesda, MD 20892, 301–435–1253.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Cardiovascular Sciences Integrated Review Group, Pathology A Study Section.

Date: February 3–4, 2003.

Time: 8:30 am to 4 pm.

Agenda: To review and evaluate grant applications.

Place: El Encanto Hotel and Garden Villas, 1900 Lausen Rd., Santa Barbara, CA 93103.

Contact Person: Larry Pinkus, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4132, MSC 7802, Bethesda, MD 20892, 301–435–1214.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Cell Development and Function Integrated Review Group, Cell Development and Function 4.

Date: February 6–7, 2003.

Time: 8:30 am to 5 pm.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Georgetown, 2101 Wisconsin Avenue, NW., Washington, DC 20007.

Contact Person: Alexandra Ainsztein, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5144, MSC 7840, Bethesda, MD 20892, 301–451–3848, *ainsztea@csr.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Cell Development and Function Integrated Review Group, Cell Development and Function 2.

Date: February 6–7, 2003.

Time: 8:30 am to 4 pm.

Agenda: To review and evaluate grant applications.

Place: Melrose Hotel, 2430 Pennsylvania Ave., NW., Washington, DC 20037.

Contact Person: Ramesh K. Nayak, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5146, MSC 7840, Bethesda, MD 20892, 301–435–1026, *nayakr@csr.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Integrative, Functional and Cognitive Neuroscience Integrated Review Group, Integrative, Functional and Cognitive Neuroscience 8.

Date: February 6–7, 2003.

Time: 8:30 a.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave., Bethesda, MD 20814.

Contact Person: Bernard F. Driscoll, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5158, MSC 7844, Bethesda, MD 20892, (301) 435–1242.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Synaptic Biochemistry, Neurosecretion, Neuronal Cell Biology, Cytoskeleton, and Protein and Membrane Trafficking.

Date: February 6–7, 2003.

Time: 9:30 a.m. to 4:00 p.m..

Agenda: To review and evaluate grant applications.

Place: Raddison Barcello, 2121 P Street, NW, Washington, DC 20037.

Contact Person: Carl D. Banner, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5212, MSC 7850, Bethesda, MD 20892, (301) 435–1251, *bannerc@drg.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 SRB 09R: Bioengineering Partnerships: Bioengineering.

Date: February 9, 2003.

Time: 4:00 p.m. to 5:00 p.m..

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Eileen W. Bradley, DSC, Chief and Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5120, MSC 7854, Bethesda, MD 20892, (301) 435–1179, *bradleye@csr.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1–SB (50) Bioengineering Research Partnerships.

Date: February 9, 2003.

Time: 5:00 p.m. to 8:00 p.m..

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Teresa Nesbitt, DVM, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5110, MSC 7854, Bethesda, MD 20892, (301) 435–1172.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel; ZRG1 SB 51M Bioengineering Partnerships: Bioengineering.

Date: February 9, 2003.

Time: 8:00 p.m. to 9:00 p.m..

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Teresa Nesbitt, DVM, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5110, MSC 7854, Bethesda, MD 20892, (301) 435–1172.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Endocrinology and Reproductive Sciences Integrated Review Group, Reproductive Endocrinology Study Section.

Date: February 10–11, 2003.

Time: 8:00 a.m. to 3:00 p.m..

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Abubakar A. Shaikh, DVM, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6168, MSC 7892, Bethesda, MD 20892, (301) 435–1042.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel; SBIR/R01 Grant Application.

Date: February 10, 2003.

Time: 8:00 a.m. to 4:00 p.m..

Agenda: To review and evaluate grant applications.

Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road, NW., Washington, DC 20015.

Contact Person: Marcia Steinberg, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5140, MSC 7840, Bethesda, MD 20892, (301) 435–1023, *steinberm@csr.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Surgery, Radiology and Bioengineering Integrated Review Group, Surgery and Bioengineering Study Section.

Date: February 10–11, 2003.

Time: 8 a.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Teresa Nesbitt, DVM, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5118, MSC 7854, Bethesda, MD 20892, (301) 435–1172, *nesbitt@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Musculoskeletal and Dental Sciences Integrated Review Group, General Medicine B Study Section.

Date: February 10–11, 2003.

Time: 8 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: Holiday Inn Georgetown, 2101 Wisconsin Avenue, NW., Washington, DC 20007.

Contact Person: Shirley Hilden, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4218, MSC 7814, Bethesda, MD 20892, (301) 435–1198.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Nutritional and Metabolic Sciences Integrated Review Group; Nutrition Study Section

Date: February 10–11, 2003.

Time: 8:30 a.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Sooja K. Kim, PhD, RD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6182, MSC 7804, Bethesda, MD 20892, (301) 435–1780.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Biobehavioral and Behavioral Process Initial Review Group; Biobehavioral and Behavioral Processes 7, Motor Function, Speech and Rehabilitation.

Date: February 10, 2003.

Time: 9 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Melrose Hotel, 2430 Pennsylvania Ave., NW., Washington, DC 20037.

Contact Person: Weijia Ni, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3190, MSC 7848, Bethesda, MD 20892, (301) 435–1507, *niw@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Biobehavioral and Behavioral Process Initial Review Group, Biobehavioral and Behavioral Processes 1, Biobehavioral Regulation, Learning and Ethology.

Date: February 10–11, 2003.

Time: 9 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Melrose Hotel, 2430 Pennsylvania Ave., NW., Washington, DC 20037.

Contact Person: Luci Roberts, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3188, MSC, Bethesda, MD 20892, (301)0 435–0692.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Malarial Drug Resistance.

Date: February 10, 2003.

Time: 1:30 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Building 16, 16 Center Drive, Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: Marian Wachtel, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3208, MSC 7858, Bethesda, MD 20892, 301–435–1148, *wachtelm@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, BRP SEP.

Date: February 10, 2003.

Time: 4 p.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road, NW., Washington, DC 20015.

Contact Person: Marcia Steinberg, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5140, MSC 7840, Bethesda, MD 20892, (301) 435–1023, *steinberm@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business Innovation Research.

Date: February 11–12, 2003.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Gopal C. Sharma, DVM, MS, PhD, Diplomate American Board of Toxicology, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2184, MSC 7818, Bethesda, MD 20892, (301) 435–1783, *sharmag@csr.nih.gov.*

Name of Committee: Musculoskeletal and Dental Sciences Integrated Review Group; Oral Biology and Medical Subcommittee 1.

Date: February 11–12, 2003.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The River Inn, 924 25th Street NW., Washington, DC 20037.

Contact Person: J. Terrell Hoffeld, DDS, PhD, Dental Officer, USPHS, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4116, MSC 7816, Bethesda, MD 20892, 301/435–1781, *th88q@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Helicobacter Immunity.

Date: February 11, 2003.

Time: 2 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6120 Executive Blvd., Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Marian Wachtel, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3208, MSC 7858, Bethesda, MD 20892, 301–435–1148, *wachtelm@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: January 21, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–1979 Filed 1–28–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Research Resources 2004 Strategic Plan

AGENCY: National Center for Research Resources, NIH, HHS.

ACTION: Notice.

SUMMARY: The National Center for Research Resources (NCRR), National Institutes of Health (NIH), is updating its 1998–2003 strategic plan entitled NCRR: *A Catalyst for Discovery.* Its purpose is to anticipate, meet, and set priorities for the biomedical research community's needs for critical research resources and technologies. The NCRR requests input from biomedical scientists to identify barriers to future research progress and to define future

needs for shared research resources and technologies that facilitate NIH-supported biomedical research. The NCRR's existing 1998–2003 strategic plan may be accessed over the World Wide Web: *http://www.ncrr.nih.gov/about_ncrr/plan98.asp*.

DATES: Submit responses to the Office of Science Policy and Public Liaison, NCRR (*see* below), on or before May 15, 2003.

FOR FURTHER INFORMATION CONTACT: The Office of Science Policy and Public Liaison, NCRR/NIH/DHHS, One Rockledge Centre, 6705 Rockledge Drive MSC 7965, Suite 5046, Bethesda, MD 20892–7965, telephone 301–435–0866, FAX 301–480–3654, e-mail *PLANEVAL@MAIL.NIH.GOV*, Internet *http://www.ncrr.nih.gov*.

SUPPLEMENTARY INFORMATION: The National Center for Research Resources (NCRR) serves as a "catalyst for discovery" by creating and providing critical research technologies and shared resources. This infrastructure underpins biomedical research and enables advances that improve the health of our Nation's citizens.

The NCRR serves a unique purpose at the NIH: to develop critical research technologies and to provide cost-effective, shared, multidisciplinary resources to biomedical investigators across the spectrum of research activities supported by the NIH. The NCRR's mission is to:

(1) Create resources and develop technologies and research models that are cost-effective, accessible, and responsive to the research needs of the biomedical research community. To meet these needs the NCRR must anticipate evolving trends in basic and clinical research to ensure that resources will be available to facilitate that research.

(2) Provide shared clinical, primate, and biomedical technology resources and instrumentation for use by investigators supported by NIH. These resources, primarily centers, serve more than 10,000 researchers, who are supported through more than $1 billion of competitive awards from NIH's categorical Institutes.

(3) Develop quick, flexible approaches to new and emerging biomedical research needs and opportunities. These innovations often involve high-risk research.

(4) Strengthen the Nation's biomedical research infrastructure by supporting institutional development programs that develop and enhance the capacity of institutions, including underrepresented groups, to participate in biomedical research; increasing the exposure of K–12 students, their teachers, and the public to the life sciences; and constructing or renovating biomedical research facilities.

Biomedical research investigators supported by the NIH require a broad array of technologies, tools, and materials for their research. The NCRR plays a key role in addressing trans-NIH research issues, such as access to state-of-the-art instrumentation and technologies; containment of the escalating costs of highly sophisticated research; development of appropriate, specialized research models; efforts to remedy the shortage of clinical and minority investigators; and efforts to improve the research infrastructure.

To ensure the continued relevance of its Strategic Plan, the NCRR seeks input to the following questions in terms of the issues described above:

(A) What are the most important research trend(s) that will drive biomedical research?

(B) What research resources and technologies will be critical in addressing these trend(s) and meeting biomedical investigators' needs?

(C) What strategies will eliminate barriers to progress and enhance access to research resources and technologies?

(D) Who would you recommend to serve as a panel member for NCRR's strategic planning process? Please list the name, degree, position title, department, institution name and address, phone and fax numbers, e-mail address, and specific area of expertise for each person recommended.

For your convenience we have provided a user-friendly response form at the NCRR's Strategic Planning Web site: *http://www.ncrr.nih.gov/sprecommend.asp*. If you do not have access, please send your responses to the above address.

Dated: January 22, 2003.

Elias A. Zerhouni,

Director, NIH.

[FR Doc. 03–1987 Filed 1–28–03; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 concerning opportunity for public comment on proposed collections of information, the Substance Abuse and Mental Health Services Administration will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the information collection plans, call the SAMHSA Reports Clearance Officer on (301) 443–7978.

Comments are invited on: (a) Whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: The Family Treatment Drug Court Evaluation—New—The Substance Abuse and Mental Health Administration's (SAMHSA) Center for Substance Abuse Treatment (CSAT) will conduct an evaluation of Family Treatment Drug Courts. The Family Treatment Drug Court Evaluation will examine the effectiveness of family treatment drug courts in four settings: Suffolk County, New York; Washoe County, Nevada; San Diego County, California; and Santa Clara County, California. The study will employ a multi-method, quasi-experimental research design to investigate several key child welfare outcomes for family treatment drug courts as compared to traditional case processing, including whether the time to permanency for children is different in a family treatment drug court program than in traditional case processing.

In addition, the study will investigate rates of reunification and termination of parental rights; types, frequency, and length of out-of-home placements; and child welfare recidivism. The study will investigate the key mediators of program success, including the effect of family treatment drug courts on treatment access, treatment completion, parent motivation, and family well-being, among other key mediators.

The project consists of an outcome evaluation that includes administrative data collection and client interviews with a sample of treatment and comparison participants. The target population for the family treatment drug court consists of substance abusing parents who have a current child abuse or neglect case. The outcome evaluation will document whether family treatment

drug courts are more effective than traditional court settings in decreasing the time needed to reach permanent placements for children; increasing the frequency of successful parent-child reunifications and decreasing the frequency of terminations of parental rights; decreasing the time children spend in foster care; and reducing child welfare recidivism.

An intent-to-treat sampling model will be used for the treatment groups at each site during a 2.5-year recruitment window. The expected number of treatment group subjects varies by site based on program capacity, as illustrated in the table below. Comparison groups will be recruited in three of the four sites, with equal numbers of comparison group participants at each site; no comparison group will be used in San Diego because that county has implemented a system-wide reform. Interview data will be sought from all persons included in the administrative datasets.

Interview participants will take part in a baseline interview within one month of their dispositional hearing and three follow-up interviews. Follow-up One will take place six months later, Follow-Up Two will take place 12 months after baseline, and Follow-Up Three will take place 24 months after baseline. The interview tool will assess participants' perceptions of the services they are receiving and their interactions with the court, treatment, and child welfare systems; their understanding of what they need to do in order to be reunified with their children; and their feelings of empowerment and control over the process. Each interview will last approximately one hour. Administrative data, including child welfare and treatment data, will be collected annually to ascertain the type, frequency, and timeliness of services received and to capture the crucial child welfare outcomes of interest, including the timing and type of permanency plans for children, the length of time children spend in foster care, and subsequent involvement in the child welfare system.

The project is scheduled over a four-year time period. Therefore, the estimates in the table below are annualized based on planned activities for the entire four years.

	No. of respondents	Responses/respondent	Hours/response	Total burden hrs.
Client Interviews	1,295	4	1.0	5,180
Tracking telephone calls	1,295	3	0.17	220
Total	1,295			5,400
4-yr. Annual Average	1,295			1,350

Send comments to Nancy Pearce, SAMHSA Reports Clearance Officer, Room 16–105, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: January 23, 2003.

Richard Kopanda,

Executive Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 03–1998 Filed 1–28–03; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Vacancies for Committee Members on the Transportation Equity Act for the 21st Century (TEA–21) Negotiated Rulemaking Committee

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: There are several vacancies on the committee that the Department has convened to negotiate regulations to implement the Transportation Equity Act for the 21st Century. We propose filling these vacancies by naming current committee alternates and other qualified individuals. Tribes, tribal organizations, and individual tribal members who believe that their interests will not be adequately represented by the persons identified in this notice may submit comments on the proposed selection, apply for membership on the committee, or submit other nominations.

DATES: Comments on this notice and nominations for committee members must be received no later than February 13, 2003.

ADDRESSES: Send nominations and comments to Mr. LeRoy Gishi, Chief, Division of Transportation, Bureau of Indian Affairs, U.S. Department of the Interior, MS–4058–MIB, 1849 C Street NW., Washington, DC 20240; or fax to (202) 208–4696. Nominations and comments received by BIA will be available for inspection at the address listed above from 9 a.m. to 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Mr. LeRoy Gishi, (202) 208–4359.

SUPPLEMENTARY INFORMATION: On February 11, 1999, in a **Federal Register** notice (64 FR 6825), the Secretary of the Interior (Secretary) announced selection of members of the TEA–21 Negotiated Rulemaking Committee to develop proposed regulations for the Indian Reservation Roads program under the Negotiated Rulemaking Act and Section 1115 of TEA–21. The Secretary selected two primary tribal Committee representatives and two tribal alternates from nominees from tribes in each of the twelve Bureau of Indian Affairs (BIA) Regions. In addition, the Secretary selected five additional primary tribal Committee members from various regions to balance interests on the Committee and selected eleven Federal representatives. The Committee began negotiations on the proposed regulations in March 1999 and the Secretary published proposed regulations in August 2002.

The Committee must reconvene in early 2003 to consider public comments and make recommendations for final regulations. During the tenure of the Committee, some primary tribal Committee members have become unable to continue to serve on the Committee. In order to continue to fulfill the requirements of TEA–21 for tribal Committee membership, the Secretary must appoint representatives to fill tribal member vacancies on the Committee. Tribes, tribal organizations, and individual tribal members who believe that their interests will not be adequately represented by the persons identified in this notice may submit comments on the proposed selection, apply for membership on the committee, or submit other nominations by the date in the "DATES" section.

The Secretary is required to use a negotiated rulemaking process to issue regulations governing the Indian Reservation Roads program and establish a formula for allocating all contractible funds among Indian tribes for fiscal year 2000 and subsequent years (23 U.S.C. Section 202, as amended by TEA–21 (Pub. L. 105–178, 112 Stat. 154.)) The Secretary is also required to:

(1) Apply the procedures of negotiated rulemaking under subchapter III of chapter 5 of Title 5 (the Negotiated Rulemaking Act) in a manner that reflects the unique government-to-government relationship between the Indian tribes and the United States; and

(2) Ensure that the membership of the committee includes only representatives of the Federal Government and of geographically diverse small, medium, and large Indian tribes. For more information on the TEA–21 Negotiated Rulemaking Committee see 67 FR 51328, dated August 7, 2002.

Based upon recommendations for proposed regulations and a funding formula the TEA–21 Negotiated Rulemaking Committee provided to the Secretary, the Secretary published a Notice of Proposed Rulemaking (NPRM) on August 7, 2002 (67 FR 51328). The public comment period for the NPRM ended on November 7, 2002. The Committee must now reconvene to consider the public comments and make recommendations to the Secretary for final regulations and a funding formula. The Secretary must fill the primary tribal member vacancies on the Committee to ensure that tribal interests on the Committee, required by TEA–21, are balanced to include:

(1) Members of geographically diverse small, medium, and large Indian tribes;

(2) Members of tribes identified as Direct Services, Self-Determination, and Self-Governance tribes; and

(3) Members of tribes with various levels and types of experience in the diverse concerns of transportation development and management (*e.g.*, jurisdictional issues, complexity of transportation systems, climatic concerns, environmental issues, geographic isolation, etc.).

The Secretary proposes to fill primary tribal Committee membership vacancies by naming current tribal Committee alternates where alternates have participated in the Committee negotiations and, where those alternates are not available, naming other qualified individuals to fill vacancies of primary tribal Committee members. Current primary tribal Committee members who were originally selected to serve on the Committee are designated with an asterisk (*). The Secretary proposes that the TEA–21 Negotiated Rulemaking Committee be comprised of the following primary and alternate tribal Committee members when it reconvenes:

Representatives of Tribes, Tribal Organizations, and Individual Indians

Great Plains Region

*Pete Red Tomahawk, Transportation Planner, Standing Rock Sioux Tribe, Fort Yates, ND
Sherman Wright, Transportation Planner, Rosebud Sioux Tribe, Rosebud, SD
Alternate: Gilbert Red Dog, Northern Plains Transportation Advisory Council Member, Cheyenne River Sioux Tribe, Eagle Butte, South Dakota

Southwest Region

Edmond Gonzalez, Civil Engineer, Pueblo of San Ildefonso, Albuquerque, NM
Shannon McKenna, Lieutenant Governor, Pueblo of Nambe, Albuquerque, NM
*Edward Little, Mescalero Apache Tribe, Mescalero, NM

Southern Plains Region

*Chuck Tsoodle, Tribal Roads & Transit Director, Kiowa Tribe of Oklahoma, Carnegie, OK
*Tim Ramirez, Tribal Roads Director, Prairie Band of Potawatami Nation, Mayetta, KS
Alternates: Bill Tall Bear, Program Coordinator-Transportation Planner, Cheyenne-Arapaho Tribes of Oklahoma, Concho, OK
Ray Ball, Transportation Planner, Kaw Nation, Kaw City, Oklahoma

Rocky Mountain Region

*John Smith, Transportation Planner, Shoshone & Arapaho Tribes, Fort Washakie, WY
Caleb Shields, Chief of Staff, Ft. Peck Tribe, Poplar, MT
Alternates: John Healy, Transportation Planner, Fort Belknap Tribes, Harlem, MT
Cordell Ringel, Engineer, Montana-Wyoming Tribal Leaders Council, Billings, MT

Eastern Region

*Eddie Tullis, Chairman, Poarch Band of Creek Indians, Atmore, AL
*Jody Clark, Transportation Manager, Seneca Nation of Indians, Salamanca, NY

Alaska Region

*Loretta Bullard, President, Kawarek, Inc., Nome, AK
*Al Ketzler Sr., Fairbanks, AK
*Gideon James, Tribal Operations Director, Native Village of Venetie Tribal Government, Venetie, AK
Alternates: Dugan Nielsen, Director, Land & Resources, Bristol Bay Native Association, Dillingham, AK
Dan Moreno, Transportation Planner, Sitka Tribe, Juneau, AK

Midwest Region

*Jim Garrigan, Director of Tribal Roads, Red Lake Band of Chippewa Indians, Red Lake, MN
*Mike Christensen, Tribal Roads Committee, Lac Du Flambeau Chippewa, Lac du Flambeau, WI
Alternate: Bruce Danforth, Public Works Area Manager, Oneida Nation, Oneida, WI

Eastern Oklahoma Region

*Robert Endicott, Transportation Planner, Cherokee Nation, Tahlequah, OK
William McKee Eastern Shawnee of Oklahoma, Miami, OK
Alternate: Braven Dyer, Transportation Director, Chickasaw Nation, Ada, Oklahoma

Navajo Region

*Sampson Begay, Tribal Council, Navajo Nation, Window Rock, AZ
Lawrence Morgan, Tribal Council, Navajo Nation, Window Rock, AZ

Western Region

*Robyn Burdette, Chairperson, Summit Lake Paiute Tribe, Winnemucca, NV
Rita Martinez, Councilwoman, Tohono O'odham Nation, Sells, AZ
*Alex Cabillo Hualapai Tribe, Peach Springs, AZ

Northwest Region

*Michael Marchand, Colville Business Council, Confederated Tribes of Colville Indians, Nespelem, WA
*Dave Whitener, Squaxin Island Tribe, Shelton, WA
*Della Cree, Community Development Planner, Nez Perce Tribe, Lapwai, ID
Alternates: Andy Kampkoff, Construction Manager, Lummi Indian Business Council, Bellingham, WA
Mike Clement, Economic Development Manager, Confederated Tribes of Warm Springs, Warm Springs, OR

Pacific Region

*Vlayn McCovey, Yurok Tribe, Eureka, CA
*Mervin Hess, Vice Chairman, Bishop Indian Tribe, Bishop, CA
Alternate: Randolph Feliz, Tribal Vice Chair Hopland Band of Pomo Indians, Hopland, CA

In addition, the Secretary announces the following Federal Committee representatives:

Robert Baracker, Designated Federal Official, BIA Southwest Regional Office

LeRoy Gishi, Chief, BIA Division of Transportation

Justin P. Patterson, Consultant, Department of the Interior (Retired)

Mike Black, Regional Road Engineer, Rocky Mountain Region
Robert Martin, Regional Road Engineer, BIA Alaska Region
Harold Riley, Road Engineer, BIA Navajo Region
Todd Kennedy, Regional Road Engineer, BIA Midwest Region
Mike Smith, Director, BIA Office of Tribal Services
Paul Los, Program Coordinator, Federal Highway Administration, Department of Transportation
Vivian Philbin, Attorney, Federal Highway Administration, Department of Transportation
Robert Sparrow, Federal Lands Highway Program Engineer, Federal Highway Administration, Department of Transportation

If you believe that tribal interests will not be adequately represented by any tribal person identified in the updated tribal committee membership, you may apply or nominate another person for membership on the committee. Each application or nomination must be received by the date above and must include:

(1) The name of the nominee, business address, and telephone and fax numbers.

(2) The tribal interest(s) to be represented by the nominee (based on the requirements of TEA–21 listed above);

(3) Evidence that the applicant or nominee is authorized to represent parties related to the interest(s) the person proposed to represent;

(4) The reasons that the proposed members of the committee identified in this notice do not represent the interests of the person submitting the application or nomination; and

(5) Your name, address, telephone number, and the name of the tribe or tribal organization with which you are affiliated.

Dated: January 17, 2003.

Aurene M. Martin,

Acting Assistant Secretary—Indian Affairs.

[FR Doc. 03–2043 Filed 1–28–03; 8:45 am]

BILLING CODE 4310–LY–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Proposed Finding Against Federal Acknowledgment of the Golden Hill Paugussett Tribe

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of proposed finding.

SUMMARY: Pursuant to 25 CFR 83.10(h), notice is hereby given that the Assistant Secretary—Indian Affairs (AS–IA) proposes to decline to acknowledge that the Golden Hill Paugussett Tribe (GHP), c/o Mr. Aurelius H. Piper, Jr., Suite 236, 1440 Whalley Avenue, New Haven, Connecticut, 06515, is an Indian tribe within the meaning of Federal law. This notice is based on a determination that the petitioner does not satisfy all seven of the criteria set forth in 25 CFR Part 83.7, specifically criteria (b), (c), and (e), and therefore does not meet the requirements for a government-to-government relationship with the United States.

DATES: Publication of the AS–IA's notice of the proposed finding in the **Federal Register** initiates a 180-day comment period during which the petitioner, interested parties, informed parties, and the public may submit arguments and evidence to support or rebut the evidence relied upon in the proposed finding. Interested or informed parties must provide a copy of their comments to the petitioner. The regulations, 25 CFR 83.10(k), provide petitioners a minimum of 60 days to respond to any submissions on the proposed findings received from interested and informed parties during the comment period.

ADDRESSES: Comments on the proposed finding or requests for a copy of the report which summarizes the evidence, reasoning, and analyses that are the basis for this proposed finding, or a list of parties in the litigation, should be addressed to the Bureau of Indian Affairs, Branch of Acknowledgment and Research, 1849 C Street, NW., Mailstop 4660–MIB, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: R. Lee Fleming, Chief, Branch of Acknowledgment and Research, (202) 208–3592.

SUPPLEMENTARY INFORMATION: This notice is published in accordance with authority delegated by the Secretary of the Interior (Secretary) to the AS–IA by 209 DM 8.

The GHP group's petition #81 is being considered under a court-approved negotiated agreement in pending litigation. This agreement, entered December 14, 2001, established time lines for the submission of materials to the Department of the Interior (Department) and deadlines for submitting comments, and issuing a proposed finding. The agreement neither modifies the regulatory time periods following the issuance of the proposed finding, nor modifies the criteria or the standards required to demonstrate that the criteria are met.

The GHP group submitted a letter of intent to the Department on April 13, 1982, to petition for Federal acknowledgment as an Indian tribe, a documented petition on April 12, 1993, and the Bureau of Indian Affairs (BIA) placed them on the "Ready, Waiting for Active Consideration" list on November 21, 1994. The BIA processed the GHP petition under 25 CFR 83.10(e), which permits an evaluation on only one criterion if the petition and response to the technical assistance review indicates that there is little or no evidence to demonstrate that a group can meet the criteria in 83.7(e), (f), or (g).

The Department published a notice of the proposed finding on June 8, 1995, in the **Federal Register** that declined to acknowledge that the GHP existed as an Indian tribe (60 FR 30430). The Department found the evidence clearly established that the GHP group did not meet the mandatory criterion 83.7(e), descent from a historical Indian tribe. Following an evaluation of the evidence submitted during the comment periods, the AS–IA issued a final determination on September 16, 1996 (61 FR 50501). The AS–IA concluded that the evidence did not establish a reasonable likelihood of the validity of the facts (see 25 CFR 83.6(d)) that the petitioner descended from a historic tribe, or that William Sherman, the ancestor through whom the GHP claimed tribal descent, had ancestry either from the historical Golden Hill tribe or from any other identified historical Indian tribe.

The GHP petitioner filed a request for reconsideration of the final determination with the Interior Board of Indian Appeals (IBIA) on December 26, 1996, pursuant to 25 CFR 83.11(b)(2). Another group, the Golden Hill Paugeesukg Tribal Nation, also requested reconsideration, claiming to be the actual governing body of the petitioning group. On September 8, 1998, the IBIA affirmed the decision not to acknowledge the GHP group as an Indian tribe, but referred five allegations of error to the Secretary (33 IBIA 4, 1998).

On December 22, 1998, the Secretary, without evaluating the merits, requested the AS–IA to address the five issues and provide a reconsidered determination in accordance with the applicable regulations. The AS–IA recused himself of this decision, and, on May 24, 1999, the Deputy AS–IA issued a reconsidered decision and an order that the GHP petition be considered under all seven mandatory criteria of the acknowledgment regulations. The Deputy AS–IA also ordered active consideration of the petition be suspended until the GHP petitioner made additional submissions, which it did, whereupon the BIA resumed active consideration.

On April 3, 2001, the GHP petitioner filed a complaint pursuant to the Administrative Procedure Act requesting the court to compel the Department to establish a date by which it would issue the new proposed finding under all seven mandatory criteria. The parties reached an agreement in December 2001, whereby the Department agreed to issue a proposed finding on or before January 21, 2003, after which consideration of the petition would be governed by the regulations. The Department began consideration of the evidence for the proposed finding on July 22, 2002.

The GHP petitioner meets criterion 83.7(a), which requires that the petitioner has been identified as an American Indian entity on a substantially continuous basis since 1900. The available identifications apply to a historical, state-recognized, Golden Hill entity, from which a portion of the petitioner's current membership claims descent. The available identifications do not pertain to the portion of the group, added in 1999, which claims descent from a historical Turkey Hill entity, and which the petitioner now contends was always a part of the historical Golden Hill entity. For criteria 83.7(b) and 83.7(c), the record provided does not demonstrate that a Golden Hill group and a Turkey Hill group ever combined and functioned as a single autonomous political entity. For the purposes of criterion 83.7(a), none of the available evidence shows that any outside observers at any time since 1900 identified such a combined group of Golden Hill and Turkey Hill Indians as a single Indian entity. Also, the available evidence does not identify the existence of a separate Turkey Hill group as an American Indian entity on a substantially continuous basis since 1900.

From 1900 onwards, the Golden Hill antecedents of the GHP petitioner have been identified on a substantially continuous basis as an American Indian entity in Federal and State documents, by academics, and newspaper articles. Identifications included two reports compiled in the 1940's by a Library of Congress researcher, William H. Gilbert, and published by the Government Printing Office. There was an identification from 1971 in a BIA publication. The State of Connecticut (State) generated documents that included legislative acts, official correspondence, minutes, and correspondence of State and local agencies, and the assignment of a seat on the Connecticut Indian Affairs Council to the Golden Hill in 1974. Identifications by academics during the 20th century included Theodore Taylor (1972), Neal Salisbury (1982), Alvin Josephy (1982), and Franz Laurens Wojciechowski (1992). Multiple newspaper articles appeared in every decade from the 1930's to the present.

The GHP does not meet criterion 83.7(b), which requires that a predominant portion of the petitioning group comprises a distinct community and has existed as a community from historical times until the present. The petitioner claims that a portion of its membership descends from the historical Golden Hill Indians, which evolved from a portion of the historical Pequannock tribe. During first sustained contact with non-Indians in the 1630's, the Pequannock tribe lived along the Pequonnock River in modern-day Bridgeport, Connecticut. The Colony of Connecticut set aside a reservation for the historical Golden Hill as early as 1639, on which the group resided until 1802, when the last portions of the reservation were sold by a State-appointed overseer with the approval of the historical Golden Hill and the Connecticut General Assembly.

In 1999, the petitioner's membership more than doubled. The new members, 68 percent of the named individuals on the 1999 membership list, claim descent from two individuals whom they believe to descend from the historical Turkey Hill Indians, a group which evolved from the historical Paugussett, one of the Indian tribes that resided in southwestern Connecticut in the Housatonic River valley at the time of first sustained contact with non-Indians.

The families at the Turkey Hill reservation, established by the Colony of Connecticut in 1680, evolved from the historical Paugussett, while those living at the Golden Hill reservation were originally part of the historical Pequannock, a separate tribe. The colonial (and later State) authorities consistently viewed and identified the historical Turkey Hill group as separate from the historical Golden Hill group. Both groups had separate colonial (later State) appointed guardians and were treated in the colonial and later state records as distinct and separate groups of people. The available record does not demonstrate that any continuous government-to-government relationship between the State and a Turkey Hill Indian entity existed after 1871, when the overseer sold the last of the Turkey Hill State reservation.

The evidence in the record does not demonstrate consistent interactions or significant social relationships between the historical Turkey Hill and historical Golden Hill groups after the establishment of their reservations. In order to demonstrate the existence of historical community, the petitioner would need to submit evidence that demonstrates such interactions and relationships existed. Nor does the documentary record demonstrate the historical Golden Hill exercised any political influence or authority over the historical Turkey Hill group, or vice versa. The available evidence does not demonstrate that the two groups functioned as a single autonomous political entity. In order to demonstrate an assertion of descent from two historical tribes that amalgamated and functioned as a single entity, the petitioner would need to submit evidence of political amalgamation.

In addition, the portion of the petitioning group presently claiming descent from the historical Turkey Hill has not demonstrated ancestry from that entity. The available record also does not demonstrate that this portion of the GHP ever functioned as a group, or had any significant interaction with a Golden Hill entity. Because a separate historical social community among the Turkey Hill Indians is not linked to the historical Golden Hill, it does not demonstrate criterion 83.7(b) for the GHP petitioner or its antecedents. Accordingly, this proposed finding focuses on the historical Golden Hill for evidence of community under criterion 83.7(b).

For the period from 1637 to the 1730's, there is sufficient evidence that the historical Golden Hill comprised a distinct community. The petitioner provided evidence, including population statistics, of the occupation of a distinct area, of land disputes with colonial settlers, and of some religious ceremonies and missionary activities. When evaluating tribes in the early years of contact with non-Indians, before substantial cultural and political changes occurred, this combined evidence is sufficient to demonstrate criterion 83.7(b) from 1637 to the 1730's for the historical Golden Hill.

For the period from the 1730's to 1802, there is also sufficient evidence that the historical Golden Hill comprised a distinct community. Population statistics demonstrate a rapidly declining but generally distinct community. The petitioner submitted evidence that demonstrates the historical Golden Hill resisted land infringements by non-Indians, particularly for the period from 1763 to 1802. These documents included petitions to the General Court (later General Assembly) and Colonial and State reports. The petitioner also provided a set of overseer records from

1763 to 1780 that present good evidence of continued community for a very small group of people. Such combined evidence is sufficient to demonstrate criterion 83.7(b) from the 1730's to 1802 for the historical Golden Hill.

There is sufficient evidence that the historical Golden Hill comprised a distinct community until approximately 1823. Overseers' reports after the sale of the historical Golden Hill's Bridgeport reservation in 1802 gave good insight into the composition of the group at the time, including interaction among Golden Hill members and their relatives living in Woodbridge, Connecticut. In 1823, the overseer also took a census, which named six adults and the unnamed daughters of three of the women. Some individuals on this census appeared in subsequent reports until 1826, when detailed overseers' reports ceased. Taken together, the evidence is sufficient to demonstrate criterion 83.7(b) for the portion of the group claiming descent from the historical Golden Hill group up to 1823.

After the 1823 census, the historical Golden Hill community ceased to appear as a group in the documented record. Several members died, left the area, or otherwise disappeared from the historical record for this period. The overseers paid more attention to the Golden Hill fund than to any group that may have continued, and their sporadic reports after 1826 contained little detail of who constituted the survivors. Smallpox was reported to have killed several members of related Indians in the 1830's in (what was then the town of) Derby, and there is no evidence presented of further interaction among the named Golden Hill fund claimants.

By 1841, the documented claimants to the benefits of the fund were two women, Ruby Mansfield and Nancy Sharpe and their unnamed children, for whom the State purchased land using money from the Golden Hill fund. Petitions filed with the State by these two women in 1841 and 1846 do not demonstrate sufficient communal activity or provide acceptable evidence of the continuation of a group. An overseer's reference in 1846 to the existence of other possible claimants neither named them nor described a community. After 1849, these two women do not appear in the record. The historical group fragmented by 1849, and by that time appears to have ceased to exist. Therefore, the petitioner does not meet criterion 83.7(b) from the period 1824 to 1849.

For 1849 to 1887, the evidence submitted is not sufficient to demonstrate that the historical Golden Hill group maintained a distinct community. Most of the available evidence for this period concerned William Sherman, an individual who resided in Trumbull, Connecticut, after 1857, who the petitioner claims provided leadership for a Golden Hill group at this time. William Sherman was not identified as an Indian in any records before 1870. There is nothing in the available record to indicate that William Sherman was part of an identifiable Golden Hill entity, nor is there evidence that he provided leadership or had followers.

The petitioner maintains that Sherman's leadership efforts during this period included establishing an "Indian" portion of a cemetery in Trumbull and arranging for land he purchased to be held in trust by the State for the benefit of a Golden Hill group after his death. The available evidence does not support these claims. Many non-Indians were buried in the "Indian" portion of the cemetery, and a number of William Sherman's own children, who died before he did, were not buried there. William Sherman, in 1875, purchased ¼ of an acre in Trumbull and built a house on the property using the land as collateral on an $800 mortgage received from the Golden Hill fund. Sherman's activities were similar to other non-Indians who also received mortgages from the Golden Hill fund. He was not identified as a beneficiary of the Golden Hill fund or as a member of any Golden Hill group on any of these transactions or any other official records. There is no evidence that this property functioned during his lifetime as land belonging to any identifiable group, or on which group activities occurred. Further, the activities in which Sherman engaged during his lifetime do not demonstrate any type of group activity. Therefore, the evidence presented for this period does not demonstrate the existence of community.

There is insufficient evidence presented to meet criterion 83.7(b) for 1887 to 1933. Most of the evidence submitted during this time period dealt with just two members of the Sherman family, George Sherman and his daughter, Ethel Sherman. Much of the evidence concerned an ongoing conflict over claims by Ethel Sherman to the ¼ acre property in Trumbull, Connecticut. However, there is insufficient evidence to indicate that these claims were made at the behest or for the benefit of anyone but Ethel Sherman. There are no available documents or letters signed by or attested to by a group to demonstrate that this property was of importance to a wider group of members. The property, declared a State reservation in 1933, would continue to be a point of contention for years to come, but until the 1970's, it does not appear that its fate concerned anyone except the direct descendants of George (and later Ethel) Sherman.

In summary, for the 47-year period from the death of William Sherman in 1886 and the establishment of the Trumbull property as a reservation in 1933, the petitioner has not demonstrated significant social interaction among members of an antecedent group. This lack of evidence for interaction is compounded by the unclear definition of who constituted the group during this period. Some Sherman family members continued to reside on the Trumbull property, but this fact is not evidence of a "group" interacting during these years. There is no submitted documentary evidence demonstrating the composition of a group that extended beyond some Sherman family members. Therefore, the materials submitted for 1897 to 1933 are not sufficient evidence of community for the portion of the petitioner claiming descent from the historical Golden Hill Indians.

The petitioner does not meet criterion 83.7(b) for the period 1933 to 1973. The petitioner has not submitted documentation that demonstrates any interaction occurring between the Sherman family siblings and any other larger group. The petitioner argues that knowledge was communicated orally among group members at regular gatherings, yet failed to provide specific evidence that such gatherings occurred. Abstracts from some interviews with members of the group contend that visiting among the various individuals and families occurred. However, the petitioner did not provide any specific evidence identifying the location, frequency, or content of such visiting. Therefore, the evidence presented by the petitioner is insufficient to demonstrate the existence of a distinct community for the period 1933 to 1973.

The petitioning group appears as an identifiable entity around 1973 under the leadership of Aurelius Piper, Sr, when it is now possible to see the participation of members in an identifiable organization. However, the organization appears to have been made up mostly of individuals who were closely related to Aurelius Piper, Sr. (*i.e.*, his children, siblings, or nieces and nephews). There are no records of a group of GHP members interacting through attendance at social gatherings or at significant events. Although Aurelius Piper, Sr. and some of his children were active in trying to establish the social life of the GHP, they

do not seem to have met with much success. Aurelius Piper, Sr. even voiced numerous complaints in the 1970's and 1980's about the inability of the group's members to act together in any significant fashion.

Since the mid-1990's, none of the documentation demonstrates that the petitioner has maintained a distinct community. The evidence presented by the petitioner, therefore, is insufficient to meet criterion 83.7(b) for the period 1972 to the present. In summary, the evidence shows that the historical Golden Hill dwindled from a viable community last identified in a 1823 overseer's census to two women who had petitioned the State in 1841 and 1846. The evidence for William Sherman and subsequent generations of GHP descendants does not demonstrate that this small family was part of a distinct community. Therefore, the GHP does not meet criterion 83.7(b) for any time since 1823.

The petitioner does not meet criterion 83.7(c), which requires a petitioner and its antecedents to have maintained political influence over its members as an autonomous entity from historical times to the present. The historical Golden Hill Indians and the historical Turkey Hill Indians were separate tribes that shared a similar culture and language. Land purchase documents for the 17th and 18th centuries show two separate entities. The Colony and later the State treated the historical Golden Hill and historical Turkey Hill as distinct political and legal entities evidence by separate reservations and overseers during this period. Therefore, evidence of political authority for the historical Turkey Hill Indians does not demonstrate the same for the historical Golden Hill Indians, and vice versa. The available evidence does not show that the two groups ever formed a single autonomous political entity. If the petitioner asserts that a historical amalgamation of the two groups occurred, it needs to submit specific evidence to demonstrate this amalgamation. Accordingly, the following summary focuses on the political influence of the historical Golden Hill and its predecessors.

For the period from the 1630's to 1761, there is sufficient evidence to demonstrate that the historical Golden Hill maintained political influence over their members as an autonomous entity. Deeds from the 17th century suggest the Pequannock sachems exercised political influence through consensus and consultation with other tribal members. Land transactions between the tribe and colonial authorities listed leaders and provided some information, from an external point of view, concerning the aboriginal political structure.

In 1761, the historical Golden Hill still had a sachem whom the Colony recognized as a leader. Since the Colony dealt with a group that had recognized leaders and the evidence documents the group acting in concert to exercise political influence, the petitioner meets 83.7(c) from 1637 to 1761 for the historical Golden Hill.

For the period from 1761 to 1802, the petitioner presented sufficient evidence that the historical Golden Hill Indians maintained political influence over the group's members as an autonomous entity. The last sachem, John Shoran, died in 1761. There is sufficient evidence in the form of protests against encroachments on the Golden Hill reservation by non-Indians to demonstrate that a very small group of Indians continued to display some measure of political influence or authority. The evidence consists mainly of petitions to the General Court (later General Assembly) and official government reports from 1763 to 1765, 1774 to 1780, and 1797 to 1802. The set of petitions from 1797 to 1802 documented the historical Golden Hill's approval of the sale of the last portions of the historical Golden Hill reservation, located in modern-day Bridgeport. Similar petitions have been accepted in previous acknowledgment decisions as sufficient evidence regarding political influence. Therefore, this evidence is sufficient to meet 83.7(c) from 1761 to 1802 for the historical Golden Hill.

The evidence does not demonstrate that there was an identifiable Golden Hill entity that maintained political influence among its members from 1802 to 1933. After the sale of the Bridgeport reservation in 1802, there were no further actions taken by a group as a political entity. There is no person identified in any official State reports as a sachem or leader after the death of John Shoran in 1761. After 1802, there were no further group petitions. The two petitions filed by Ruby Mansfield and Nancy Sharp alias Pease do not demonstrate influence or authority over a group because the two women petitioned as individuals and as "sole surviving heirs" of the Golden Hill Indians, not as representatives of a group or tribe. The petitioner maintains that William Sherman functioned as a leader during his lifetime (1825–1886). The evidence, however, does not demonstrate that he actually functioned as a leader of an identifiable Golden Hill group. The petitioner also claims that William Sherman's son, George Sherman, functioned as a leader in the late 19th and early 20th centuries. While George Sherman was referred to in some newspaper articles as a "chief," there is no documentation available to show that any identifiable group acknowledged his authority or that he acted on any group's behalf. Therefore, the petitioner has not demonstrated political influence and authority for 1802 to 1933.

The material submitted to demonstrate political influence or authority from 1933 until 1972 does not meet the requirements of criterion 83.7(c). In 1933, George Sherman's daughter, Ethel Sherman, began referring to herself as a "Chieftess." However, there is no available evidence to support the claim as anything more than self-identification. There is no evidence to indicate that Ethel Sherman was able to gather a number of people together or access any money or resources from them for group purposes. There is also no evidence submitted to demonstrate that her position came about as part of any group consensus. An analysis of the early and mid-20th century documents indicates that the individuals whom the petitioner now credits as political leaders were acting to guarantee individual interests, not those of any wider group. In order to overcome this deficiency, the petitioner must produce evidence of leaders acting in the interests of an identifiable group that extends beyond an individual or one branch of one family.

For the period 1972 to the present, the petitioner submitted a considerable amount of evidence relating to the activities of Aurelius Piper, Sr. The record indicates that he was the first person since 1761 acknowledged by the State as exercising political leadership within a group of individuals claiming to be Golden Hill group members.

The petitioner submitted notices of group meetings for the late 1970's and early 1980's, informing members of upcoming events and requesting their participation. The minutes of these meetings indicate there were low levels of participation by the group's members. The available evidence does not demonstrate that the issues important to Aurelius Piper, Sr. concerned or involved a predominant portion of the group. Much of the evidence for political influence for the late 1980's and early 1990's focused mostly on leadership disputes between Aurelius Piper, Sr. and his two sons, with occasional references to the involvement of two of his half-nephews. Even during the 1970's and 1980's when the GHP was most active, the actions taken were by a small number of individuals without broad representation across any family lines. It

is not demonstrated that the actions of the leaders, who were either self-appointed or appointed by close family members, reflected the concerns of a significant number of the group's members. To demonstrate political influence or authority, the petitioner must demonstrate more than a minimal level of involvement from most members of the group. Therefore, the petitioner has not provided sufficient evidence to demonstrate political influence or authority for the period from 1972 to the present. Accordingly, the petitioner has not met the requirements of criterion 83.7(c) from 1637 to the present.

The State has recognized a Golden Hill entity from colonial times to the present. Within the general parameters of Connecticut's laws regarding State-recognized tribes, the specifics of its tribal dealings differed from group to group. The historical Golden Hill had a State reservation from colonial times to 1802. The State established the group's present 1/4 acre reservation, located in Trumbull, not the original reservation land area of Bridgeport, in 1933. From the early 1800's to the 1970's, however, the State did not identify or deal with specific leaders of the group.

While State recognition and the existence of a State reservation can provide additional evidence to be weighed in combination with other specific evidence, State recognition in itself is not sufficient evidence to meet criteria 83.7(b) and (c). The particular relationship of the State to the GHP group, in combination with existing direct evidence for community and political process is so limited, that is not sufficient evidence to demonstrate that these two criteria are met.

The petitioner meets the requirements of criterion 83.7(d) because it has submitted a governing document, including a description of its membership criteria.

The petitioner does not meet criterion 83.7(e)(1) because the petitioner has not submitted evidence acceptable to the Secretary that its membership consists of individuals who descend from a historical Indian tribe or tribes that combined. There is no evidence in the record that the petitioner's claimed ancestors, William Sherman, Levi Allen and Delia Merrick, descended from a historical Indian tribe or tribes that amalgamated and functioned as a single entity. The evidence does not show that William Sherman descended from any person identified on the 1823 Census of the historical Golden Hill, or from either Ruby Mansfield or from Nancy Sharpe *alias* Pease, who were identified in historical State records in 1841, 1846, and 1849 as Golden Hill Indians and whom the petitioner claims were the ancestors of William Sherman.

There is no documentation in the record to verify that William Sherman or any of his children married Golden Hill, Pequannock, Paugussett, Turkey Hill, or other Indians; therefore, that portion of the membership claiming descent from William Sherman does not demonstrate Indian ancestry through any other possible Indian ancestors. Neither is there documentation in the record to verify that names recently added to the GHP membership list, who claim descent from Levi Allen and Delia Merrick, have Indian ancestry linked to any of these tribes.

The petitioner does not meet criterion 83.7(e)(2). The October 1, 1999, membership list of 214 names was used for this report. However, it was not separately certified by the governing body, and did not include each member's full name (and maiden name), date of birth, and residential address, as required by the regulations. Although the GHP group submitted several membership lists, none are sufficient to meet the criterion. The petitioner may correct this deficiency by resubmitting a properly completed membership list that is certified by the entire governing body of the group. None of the persons listed on petitioner's most recent membership list (October 1, 1999) have demonstrated descent from members of the historical tribe(s) listed in petitioner's membership criteria.

The petitioner meets criterion 83.7(f) because its members are not enrolled in other Federally recognized tribes, and criterion 83.7(g) because the group or its members have not been the subject of congressional legislation that has expressly terminated or forbidden the Federal relationship.

The evidence available for this proposed finding demonstrates that the GHP group does not meet all seven criteria required for Federal acknowledgment. In accordance with the regulations, failure to meet any one of the seven criteria requires a determination that the group does not exist as an Indian tribe within the meaning of Federal law (83.6(c), 83.10(m)).

A copy of this proposed finding, which summarizes the evidence, reasoning, and analyses that are the basis for decision, is available upon written request (83.10(h)).

During the 180-day comment period (83.10(i)), the AS–IA shall provide technical advice concerning the proposed finding and shall make available to the petitioner in a timely fashion any records used for the proposed finding not already held by the petitioner, to the extent allowable by Federal law (83.10(j)(1)). In addition, the AS–IA shall, if requested by the petitioner or any interested party, hold a formal meeting for the purpose of inquiring into the reasoning, analyses, and factual bases for the proposed finding. The proceedings of this meeting shall be on the record. The meeting record shall be available to any participating party and become part of the record considered by the AS–IA in reaching a final determination (83.10(j)(2)).

If third party comments are received during the comment period, the petitioner shall have a minimum of 60 days to respond to these comments. This period may be extended at the AS–IA's discretion if warranted by the extent and nature of the comments (83.10(k)).

At the end of the comment and response periods, the AS–IA shall consult with the petitioner and interested parties to determine an equitable time frame for consideration of written arguments and evidence submitted during the comment and response periods, and notify the petitioner and interested parties of the date such consideration begins (83.10(l)). The AS–IA has the discretion to request additional information from the petitioner or commenting parties, and to conduct additional research (83.10(l)(1)). After consideration of the written arguments and evidence submitted during the comment period and the petitioner's response to the comments, the AS–IA shall make a final determination regarding the petitioner's status. A summary of the final determination will be published in the **Federal Register** (83.10(l)(2)).

Dated: January 21, 2003.

Aurene M. Martin,

Acting Assistant Secretary—Indian Affairs.

[FR Doc. 03–2044 Filed 1–28–03; 8:45 am]

BILLING CODE 4310–4J–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Ho-Chunk Nation Alcohol Beverage Control Ordinance

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice publishes the Ho-Chunk Nation Alcohol Beverage Control Ordinance. The Ordinance regulates the control, possession, and sale of liquor on the Ho-Chunk Nation trust lands, to

be in conformity with the laws of the State of Wisconsin, where applicable and necessary. Although the Ordinance was adopted on August 6, 2002, it does not become effective until published in the **Federal Register** because the failure to comply with the ordinance may result in criminal charges.

EFFECTIVE DATE: This Ordinance is effective on January 29, 2003.

FOR FURTHER INFORMATION CONTACT: Iris Drew, Office of Tribal Services, 1951 Constitution Avenue NW., MS 320–SIB, Washington, DC 20245; Telephone (202) 513–7628.

SUPPLEMENTARY INFORMATION: Pursuant to the Act of August 15, 1953, Public Law 83–277, 67 Stat. 586, 18 U.S.C. 1161, as interpreted by the Supreme Court in *Rice* v. *Rehner*, 463 U.S. 713 (1983), the Secretary of the Interior shall certify and publish in the **Federal Register** notice of the adopted liquor ordinances for the purpose of regulating liquor transaction in Indian country. The Ho-Chunk Nation Alcohol Beverage Control Ordinance, Resolution No. 8–6–02 F, was duly adopted by the Ho-Chunk Nation Legislature on August 6, 2002. The Ho-Chunk Nation, in furtherance of its economic and social goals, has taken positive steps to regulate retail sales of alcohol and use revenues to combat alcohol abuse and its debilitating effect among individuals and family members within the Ho-Chunk Nation.

This notice is published in accordance with the authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 Departmental Manual 8.1.

I certify that by Resolution No. 8–6–02 F, the Ho-Chunk Nation Alcohol Beverage Control Ordinance was duly adopted by the Ho-Chunk Nation Legislature on August 6, 2002.

Dated: January 17, 2003.

Aurene M. Martin,

Assistant Secretary—Indian Affairs.

The Ho-Chunk Nation Alcohol Beverage Control Ordinance, Resolution No. 8–6–02 F, reads as follows:

Ho-Chunk Nation Code (HCC)

Title 5—Business and Finance Code

Section 4—Alcohol Beverage Control Ordinance Enacted by Legislature: August 6, 2002

This Ordinance supersedes the Liquor Control Ordinance enacted by the Wisconsin Winnebago Business Committee Resolution 6/25/93D.

1. *Authority.*

a. Article V, Section 2(a) of the Constitution grants the Legislature the power to make laws, including codes, ordinances, resolutions, and statutes.

b. Article V, Section 2(h) of the Constitution grants the Legislature the power to enact all laws prohibiting and regulating conduct and imposing penalties upon all persons within the jurisdiction of the Nation.

c. Article V, Section 2(s) of the Constitution grants the Legislature the power to promote public health, education, charity, and such other services as may contribute to the social advancement of the members of the Ho-Chunk Nation.

d. Article V, Section 2(t) of the Constitution grants the Legislature the power to enact laws governing law enforcement on lands within the jurisdiction of the Nation.

2. *Purpose.* This Ordinance provides for the uniform regulation of the sale of intoxicating liquor, wine, and beer within the Ho-Chunk Nation on lands under the jurisdiction of the Nation.

3. *Policy.*

a. The sale, possession, and consumption of alcohol beverages on the Nation's lands will be strictly regulated in accordance with the provisions of this Ordinance and applicable sections of Chapter 125, *Wisconsin Statutes.*

b. No person under the age of 21 years shall purchase or have in his or her possession alcoholic beverages on Ho-Chunk land.

4. *Definitions.* Terms used in this Ordinance have the following meaning:

a. *Beer.* A fermented malt beverage made by alcohol fermentation of barley malt and hops containing 0.5% or more of alcohol by volume.

b. *Department.* The Ho-Chunk Nation Department of Business.

c. *Intoxicating Beverage.* Any intoxicating liquor, wine, or beer.

d. *Intoxicating Liquor.* All ardent, spirituous, distilled or vinous liquors, which are beverages and contain 0.5% or more of alcohol by volume.

e. *Wine.* Products and beverages obtained from the normal fermentation of the juice or must of grapes, other fruits, or other agricultural products, if such product or beverage contains 0.5% or more of alcohol by volume.

3. *Application for License.*

a. An application for a license to sell intoxicating beverages shall be submitted to the Nation's Department of Business. The application shall contain the following information:

(1) The name(s) of the individual and organization applying for the license;

(2) the address and telephone numbers of the applicant(s);

(3) the location, to include building and/or address, where the applicant will sell the intoxication beverages; and

(4) a copy of the local municipality (town, village, or city) license to sell intoxicating beverages.

b. The Department may reject any application for a license under this Ordinance if applicant has previously committed acts that would be in violation of this Ordinance or if an applicant has had a license revoked.

c. *Application Fee.* A non-refundable initial application fee will be established by the Department of Business and must be submitted with the initial application for license.

4. *Issuance of License.*

a. The Department of Business shall issue a license for the sale of intoxicating beverages if, on the basis of the information provided in the application or on additional information relevant by the Department, such issuance is in the interest of the Nation.

b. Licenses shall contain the following requirements.

(1) Each license shall require its holder to conform to the laws of the State of Wisconsin that relate to the sale or possession of intoxicating beverages.

(2) *License Fee.*

(a) The initial license fee shall be established and charged by the Department of Business.

(b) The annual license renewal fee shall be established and charged by the Department of Business.

(3) No license shall be effective for a term of more than one (1) year from the date of issuance. Each annual renewal shall be subject to the same requirements that apply to the initial issuance of a license.

(4) Each license shall explicitly state that its continued validity is dependent upon the compliance of its holder with all the provisions of this Ordinance and of the laws of the State of Wisconsin that relate to the sale and/or possession of intoxicating beverages.

5. *Suspension or Revocation of License.* The Department shall have the authority to suspend or revoke any license issued under this Ordinance.

a. Upon finding or receiving information that a holder of a license has violated the terms of the license or applicable law, the Department shall provide the license holder written notice that the Department intends to suspend or revoke the holder's license. The notice shall specify the grounds for the proposed suspension or revocation. Such notice shall be sent by certified mail, return receipt requested.

b. *Hearing.* A license holder upon receipt of the notice to suspend or revoke may, within seven (7) calendar days of receipt, submit a written request for a hearing to the Executive Director of the Department of Business.

(1) The President shall convene a Commission consisting of the Executive Director of Business and two (2) other non-interested Executive Directors to hear the license holder's case for not suspending or revoking his or her license. Such hearing will be held within thirty (30) days of receipt by the Department of Business of the request for a hearing.

(2) The license holder shall be permitted to present evidence to the Commission with respect to her or his compliance with this Ordinance and other applicable law.

(3) The Commission shall make a decision considering such evidence it deems relevant. The decision to suspend/revoke the license or dismiss the complaint shall be issued within three (3) days following the hearing.

(4) A decision to either suspend or revoke the holder's license shall take effect immediately at the close of the business day of the decision.

(5) The decision by the Commission shall be final.

6. *Approval.* This Ordinance shall be effective upon certification by the Assistant Secretary—Indian Affairs, Department of the Interior, and publication in the **Federal Register**.

[FR Doc. 03–2083 Filed 1–28–03; 8:45 am]
BILLING CODE 4310–4J–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–100–03–1310–DB]

Notice of Intent to Conduct Scoping and Prepare an Environmental Impact Statement for the South Piney Natural Gas Development Project, Sublette County, Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent (NOI) to conduct public scoping and prepare an Environmental Impact Statement (EIS) for the South Piney Natural Gas Development Project, Sublette County, Wyoming.

SUMMARY: Infinity Oil and Gas of Wyoming, Inc. (Infinity) and Williams Production RMT Company (Williams, and hereinafter referred to collectively as "the Companies") have submitted to the Bureau of Land Management (BLM) a proposal to develop Federal natural gas resources. The South Piney Natural Gas Development Project is located in the area known as South Piney, which is located in Sublette County, Wyoming. Under the provisions of section 102(2)(C) of the National Environmental Policy Act (NEPA) and pertinent Federal regulations, the BLM announces its intentions to prepare an EIS, and solicit public comments regarding issues and resource information pertaining to this proposed project.

DATES: This notice initiates the public scoping process. The BLM can best use public input if comments and resource information are submitted within 60 days of the publication of this notice. In addition, a scoping notice will be distributed by mail on, or about, the date that this notice is published in the **Federal Register**. Additional information, and a copy of the scoping notice may be obtained by writing, or visiting, the BLM Field Office listed below.

The BLM will be soliciting representatives from affected interests and stakeholders to participate in the environmental analysis process. In addition, the BLM will host a public meeting within 60 days of the publication of this notice. All comments received at the public meeting or submitted in writing by mail will aid the BLM in identifying issues, developing a range of alternatives, and analyzing environmental impacts. The BLM will announce public meetings and comment periods through local news media and/or the Pinedale Field Office Web site (*http://www.wy.blm.gov/pfo/info.htm*), at least 15 days prior to the event. The BLM will also provide additional opportunities for public participation throughout the preparation of the EIS.

ADDRESSES: Comments should be submitted in writing to: Field Manager, Bureau of Land Management, Pinedale Field Office, 432 East Mill Street, PO Box 768, Pinedale, Wyoming 82941.

FOR FURTHER INFORMATION CONTACT: Bill Lanning, Project Manager, BLM, Pinedale Field Office, PO Box 768, Pinedale, Wyoming 82941, telephone 307–367–5300.

SUPPLEMENTARY INFORMATION: In July 2002, the Companies submitted to the BLM a proposal to develop natural gas resources in the South Piney area. The total project area includes approximately 31,230 acres, of which approximately 15,440 acres are comprised of Federal surface and mineral estate managed by BLM; 1,760 acres of State of Wyoming surface and minerals; and 14,030 acres of private surface ownership. Of the 14,030 acres of private surface ownership, 11,413 acres are "split estate" (private surface/Federal minerals) lands, with the remaining 2,617 acres of mineral estate in private ownership.

The South Piney Natural Gas Development Project area is located in the southwest corner of Sublette County, approximately 12 miles west of Big Piney-Marbleton, 18 miles northwest of LaBarge, and approximately 28 miles southwest of Daniel, Wyoming. Drilling is proposed in Townships 29 and 30 North, Range 114 West, 6th Principal Meridian. Access to the project area is from U.S. Highway 189, Wyoming Highway 350, Sublette County Road No. 23–142, and existing roads and two-track trails in the overall project area.

The Companies propose to drill a minimum of 100 to a maximum of 210 natural gas wells within the overall project area. Infinity intends to drill wells to a maximum depth of approximately 5,000 feet to recover coalbed methane from the Upper Cretaceous Mesaverde Formation. Williams plans to drill wells to a maximum depth of 10,000 feet to recover natural gas from the Frontier Formation. The project area currently has five wells producing from coal seams in the Mesaverde Formation, one well currently producing from the Frontier Formation, one water disposal well, and four shut-in/temporarily abandoned deep Madison Formation gas wells. Williams drilled two additional Frontier Formation wells in Fall 2002.

The Companies' proposal includes a drilling program based on a 160-acre spacing pattern (four wells per section) for both the Mesaverde and Frontier Formations. The Companies have a joint interest in approximately 9,680 acres, and development in this area may result in the drilling of up to eight wells per section (four wells to the Mesaverde Formation and four wells to the Frontier Formation on a common or shared 160 acre spacing pattern). The remainder of the overall project area would see either Mesaverde or Frontier Formation development at a density of four wells per section.

The proposed gas field development would include the following associated structures and facilities:

1. Each well location would have a separator, dehydrator, and produced water storage tanks. Infinity's Mesaverde Formation well locations would require a surface-pumping unit for dewatering the Mesaverde coals. Infinity anticipates the need to install up to 20 central production facilities (production pods) within the overall project area. These production facilities would collect and compress methane produced from wells in the well field, as well as collect and dispose of produced water.

2. An access road and buried gas and produced water lines would be constructed to each well location. Infinity's Mesaverde Formation wells would require a water disposal line for transmission of produced water to a central disposal facility. The produced water line would be placed in a common trench with the gas line.

3. Up to four natural gas transmission pipelines would be constructed and would tie-in with an existing 4-inch diameter gas pipeline located east of the project area in Section 1, T29N, R114W. During the projected life of the project the existing 4-inch gas transmission line may need to be looped, or replaced, with a larger diameter line to accommodate the volume of gas produced from the area.

4. Infinity anticipates the installation of small reciprocating compressors at each of the individual Mesaverde Formation production pods within the well field for compression of methane produced from individual wells within the well field. Williams anticipates the need for one centralized compressor station for the compression of natural gas from the Frontier Formation.

5. A water disposal and injection well would be drilled at each of Infinity's centralized production pods for the subsurface disposal of water produced from the Mesaverde Formation. The produced water would be reinjected into a deep aquifer below the Mesaverde Formation.

The Companies propose to drill an average of approximately 30 wells/year over a 7-year period. After consultation with U.S. Fish and Wildlife Service regarding threatened and endangered species, BLM may authorize additional delineation wells while the EIS is being prepared. Results from additional delineation wells would assist the Companies in determining the actual level of development to achieve Federal regulatory mandates of ultimate maximum recovery of Federal mineral resources. Approval would be granted provided that, (1) the additional delineation wells would not result in potential significant impacts, and (2) that BLM's final decision would not be compromised.

The purpose of the natural gas development is to extract and recover natural gas from the South Piney Project area by allowing the Companies to provide more natural gas for distribution to consumers. The project would make additional supplies of clean-burning natural gas available to consumers. In addition, this project would meet the goals and objectives of the President's National Energy Plan, which includes diversifying domestic energy supplies, improving and accelerating environmental protection and strengthening America's energy security.

BLM personnel, other agencies, and individuals have identified the preliminary issues and management concerns listed below. They represent the BLM's knowledge to date on the existing conditions and potential issues in the proposed project area.

- Air quality and potential impacts to downwind Wilderness Areas and other Class I air sheds;
- Potential impacts to federally listed Threatened, Endangered, Candidate and Sensitive species and their habitats;
- Potential impacts to native Colorado River cutthroat trout habitat;
- Potential impacts to the Finnegan elk winter feed ground protected by No Surface Occupancy stipulations;
- Potential impacts to surface and groundwater resources;
- Short-term revegetation and restoration of disturbed areas and their long-term stabilization, including control of noxious weeds;
- Potential impacts on prehistoric and historic cultural resources including the Lander Cutoff Historic Immigrant Trail;
- Potential social and economic effects to the local communities from projected increased Federal, State, and local revenues;
- Potential impacts to wildlife habitat and fisheries;
- Potential impacts to nesting raptors;
- Potential impacts on wetlands and riparian areas;
- Use of potentially hazardous substances associated with drilling and well completion;
- Potential impacts to the visual resources and landscape; and,
- Potential impacts to recreation activities and opportunities such as hunting and fishing.

The BLM has identified the following opportunities that may be derived from the natural gas development: increased royalties and tax revenues to local, State and Federal governments; additional opportunities for employment and economic benefits for communities near the project area; increases in Wyoming's share of new and existing natural gas markets; and development of natural gas resources to assist in attainment of clean air in conformance with Presidential and Congressional directives. The proposed natural gas development is in conformance with the Pinedale Resource Management Plan (RMP) (1988).

Dated: November 25, 2002.

Alan L. Kesterke,

Acting State Director.

[FR Doc. 03–2046 Filed 1–28–03; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–933–1410–ET; AA–50617]

Public Land Order No. 7554; Revocation of Three Executive Orders; Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order revokes, in their entirety, three Executive Orders as they affect 2.538 acres of public lands withdrawn for administrative purposes for use by the Department of the Treasury at Wrangell, Alaska. The lands are no longer needed for the purpose for which they were withdrawn.

EFFECTIVE DATE: January 29, 2003.

FOR FURTHER INFORMATION CONTACT: Robbie J. Havens, Bureau of Land Management, Alaska State Office, 222 W. 7th Avenue, No. 13, Anchorage, Alaska 99513–7599, 907–271–5477.

SUPPLEMENTARY INFORMATION: A portion of the lands have been eroded by the ocean and are now submerged and a portion of the lands have been placed under the jurisdiction of the U.S. Postal Service. The remaining lands will continue to be subject to the terms and conditions of Public Land Order No. 5180, as amended, and any other withdrawal or segregation of record.

Order

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1994), and by section 17(d)(1) of the Alaska Native Claims Settlement Act, 43 U.S.C. 1616(d)(1) (1994), it is ordered as follows:

1. Executive Order dated June 21, 1890, Executive Order No. 3077, dated April 16, 1919, and Executive Order No. 8054, dated February 23, 1939, which withdrew public lands for administrative purposes, are hereby revoked in their entirety as they affect the following described lands:

Copper River Meridian

Located within T. 62 S., R. 83 E., described as:

(a) U.S. Survey No. 125.

The area described contains 2.476 acres.

(b) U.S. Survey No. 1119, lots 12 and 13,

Block 9.
The area described contains .062 acre.
The areas described in (a) and (b) above aggregate 2.538 acres.

2. The lands described in paragraph 1(a) above have been placed under the jurisdiction of the U.S. Postal Service pursuant to section 2002(C) of the Postal Reorganization Act, 39 U.S.C. 101 (1994). The lands described in paragraph 1(b) will continue to be subject to the terms and conditions of Public Land Order No. 5180, as amended, and any other withdrawal or segregation of record.

Dated: January 9, 2003.

Rebecca W. Watson,

Assistant Secretary—Land and Minerals Management.

[FR Doc. 03–2045 Filed 1–28–03; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–958–1430–ET; HAG 03–0013 WAOR–22193A, WAOR–22197]

Public Land Order No. 7551; Partial Revocation of Executive Orders Dated July 15, 1875, and June 6, 1891; Washington

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order partially revokes two Executive Orders insofar as they affect approximately 209 acres of public lands reserved for use by the United States Coast Guard for Patos Light Station. The reservation is no longer needed.

EFFECTIVE DATE: January 29, 2003.

FOR FURTHER INFORMATION CONTACT: Charles R. Roy, BLM Oregon/Washington State Office, P.O. Box 2965, Portland, Oregon 97208–2965, 503–952–6189.

SUPPLEMENTARY INFORMATION: The reservation includes Patos and Little Patos Islands. The lands will remain closed to surface entry and mining due to an overlapping withdrawal. The lands have been and will remain open to mineral leasing.

Order

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1994), it is ordered as follows:

The Executive Orders dated July 15, 1875, and June 6, 1891, which reserved public lands for lighthouse purposes, are hereby revoked insofar as they affect the following described lands:

Willamette Meridian

T. 38 N., R. 2 W., unsurveyed,
Secs. 15, 16, and 17.

The areas described contain approximately 209 acres in San Juan County.

Dated: January 9, 2003.

Rebecca W. Watson,

Assistant Secretary—Land and Minerals Management.

[FR Doc. 03–2047 Filed 1–28–03; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–957–02–9820–BJ–WY01]

Notice of Filing of Plats of Survey, Nebraska

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of filing of plats of survey, Nebraska.

SUMMARY: The Bureau of Land Management (BLM) has filed the plats of survey of the lands described below in the BLM Wyoming State Office, Cheyenne, Wyoming, on December 31, 2002.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, 5353 Yellowstone Road, P.O. Box 1828, Cheyenne, Wyoming 82003.

SUPPLEMENTARY INFORMATION: These surveys were executed at the request of the U.S. Forest Service, and are necessary for the management of resources. The lands surveyed are:

The plat representing the dependent resurvey of portions of the east and south boundaries, and a portion of the subdivisional lines, Township 34 North, Range 54 West, Sixth Principal Meridian, Nebraska, was accepted December 31, 2002.

Copies of the preceding described plats are available to the public.

Dated: January 22, 2003.

John P. Lee,

Chief Cadastral Surveyor, Division of Support Services.

[FR Doc. 03–1951 Filed 1–28–03; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–957–02–1420–BJ]

Notice of Filing of Plats of Survey, Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of filing of plats of survey, Wyoming.

SUMMARY: The Bureau of Land Management (BLM) has filed the plats of survey of the lands described below in the BLM Wyoming State Office, Cheyenne, Wyoming, on December 31, 2002.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, 5353 Yellowstone Road, P.O. Box 1828, Cheyenne, Wyoming 82003.

SUPPLEMENTARY INFORMATION: These surveys were executed at the request of the Bureau of Land Management, and are necessary for the management of resources. The lands surveyed are:

The plat representing the dependent resurvey of a portion of the south and east boundaries, and portions of the subdivisional lines, Township 56 North, Range 73 West, Sixth Principal Meridian, Wyoming, was accepted December 31, 2002.

The plat representing the dependent resurvey of portions of the west and north boundaries, and a portion of the subdivisional lines, and the subdivision of certain sections, Township 29 North, Range 85 West, Sixth Principal Meridian, Wyoming, was accepted December 31, 2002.

The plat representing the corrective dependent resurvey of the metes and bounds survey of Tract 39, correcting the numbering sequence from 84 to 89, Township 50 North, Range 99 West, Sixth Principal Meridian, Wyoming, was accepted December 31, 2002.

Copies of the preceding described plats are available to the public.

Dated: January 22, 2003.

John P. Lee,

Chief Cadastral Surveyor, Division of Support Services.

[FR Doc. 03–1950 Filed 1–28–03; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–921–1990–ET; WYW 152450]

Notice of Meeting on Proposed Withdrawal; Beck Lake Area; Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meeting.

SUMMARY: This notice sets forth the schedule and agenda for a forthcoming meeting for the proposed BLM withdrawal application for the protection of important scenic, open space, and recreational resource values in and around the Beck Lake area near Cody, WY. This meeting will provide the opportunity for public involvement in this proposed action as required by regulation. All comments will be considered when a final determination is made on whether this land should be withdrawn.

DATES: Meeting will be held on Tuesday, March 4, 2003, from 7 p.m. until approximately 8:30 p.m. All comments or requests to be heard should be received by close of business on Friday, February 21, 2003, at the BLM Wyoming State Office, PO Box 1828, 5353 Yellowstone Road, Cheyenne, WY 82003, or at the BLM Cody Field Office, PO Box 518, 1002 Blackburn, Cody, WY 82414.

ADDRESSES: The meeting will be held in the Cody Club Room of the Cody Auditorium, 1240 Beck Avenue, Cody, WY.

FOR FURTHER INFORMATION CONTACT: Janet Booth in Cheyenne at 307–775–6124 or Duane Feick in Cody at 307–578–5917.

SUPPLEMENTARY INFORMATION: The Notice of Proposed Withdrawal for the Beck Lake area which was published in the **Federal Register** on May 14, 2002 (67 FR 34469), is hereby modified to schedule a public meeting as provided by 43 U.S.C. 1714 and 43 CFR part 2310.

This meeting will be open to all interested persons; those who desire to be heard in person and those who desire to submit written comments on this subject. Please indicate if you want to speak so time can be scheduled. All comments and requests to be heard should be submitted by February 21, 2003, to the BLM Wyoming State Director, Bureau of Land Management, PO Box 1828, 5353 Yellowstone Road, Cheyenne, WY 82003, or to the BLM Cody Field Office Manager, PO Box 518, 1002 Blackburn, Cody, WY 82414.

Dated: January 23, 2003.

Melvin Schlagel,

Realty Officer.

[FR Doc. 03–2000 Filed 1–28–03; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Environmental Documents Prepared for Proposed Oil and Gas Operations on the Gulf of Mexico Outer Continental Shelf (OCS)

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the availability of environmental documents prepared for OCS mineral proposals on the Gulf of Mexico OCS.

SUMMARY: Minerals Management Service (MMS), in accordance with Federal Regulations that implement the National Environmental Policy Act (NEPA), announces the availability of NEPA-related Site-Specific Environmental Assessments (SEA) and Findings of No Significant Impact (FONSI), prepared by MMS for the following oil and gas activities proposed on the Gulf of Mexico OCS.

FOR FURTHER INFORMATION CONTACT: Public Information Unit, Information Services Section at the number below. Minerals Management Service, Gulf of Mexico OCS Region, Attention: Public Information Office (MS 5034), 1201Elmwood Park Boulevard, Room 114, New Orleans, Louisiana 70123–2394, or by calling 1–800–200–GULF.

SUPPLEMENTARY INFORMATION: MMS prepares SEAs and FONSIs for proposals that relate to exploration for and the development/production of oil and gas resources on the Gulf of Mexico OCS. These SEAs examine the potential environmental effects of activities described in the proposals and present MMS conclusions regarding the significance of those effects. Environmental Assessments are used as a basis for determining whether or not approval of the proposals constitutes major Federal actions that significantly affect the quality of the human environment in the sense of NEPA Section 102(2)(C). A FONSI is prepared in those instances where MMS finds that approval will not result in significant effects on the quality of the human environment. The FONSI briefly presents the basis for that finding and includes a summary or copy of the SEA.

This notice constitutes the public notice of availability of environmental documents required under the NEPA Regulations.

This listing includes all proposals for which the Gulf of Mexico OCS Region prepared a FONSI in the period subsequent to publication of the preceding notice dated August 13, 2002.

Activity/Operator	Location	Date
Murphy Exploration and Production Co., Initial Development Operations Coordination Plan, SEA No. N–7269 and S–5886.	Mississippi Canyon Area, Blocks 538 and 582, Leases OCS–G 16614 and 16623, located 36.8 miles from the nearest Louisiana shoreline.	07/18/02
Marathon Oil Company, Initial Exploration Plan, SEA Nos. N–7483 and N–7484.	Desoto Canyon Area; Blocks 445, 489, 490, 491 and 535; Leases OCS–G 23511, 23514, 23515, 23516 and 23520; located between 90 and 106 miles southeast of nearest coastline.	09/12/02
Anadarko Petroleum Corporation, Initial Exploration Plan, SEA No. N–7497.	Lloyd Ridge Area; Blocks 315, 316, 359 and 360; Leases OCS–G 23474, 23475, 23478 and 23479; located 130 miles from Louisiana coastline, 183 miles from Mississippi coastline, 179 miles from Alabama coastline, and 183 miles from Florida coastline.	09/11/02
W & T Offshore, Inc., Initial Development Operations Coordination Plan, SEA No. N–7328.	Garden Banks Area, Block 139, Lease OCS–G 17295, located 124 miles from the nearest Texas shoreline.	10/07/02
TotalFinaElf Exploration and Production U.S.A., Inc., Initial Development Operations Coordination Plan, SEA No. N–7249.	Mississippi Canyon Area, Block 243, Lease OCS–G 11080, located 25 miles from the nearest Louisiana shoreline.	03/07/02
Anadarko Petroleum Company, Initial Exploration Plan, SEA No. N–7533.	Lloyd Ridge Area, Blocks 5, 6, 49 and 50, Lease OCS–G 23450, 23451, 23457 and 23458 respectively, located 113 miles from the nearest Louisiana coastline, 161 miles from Mississippi, 158 miles from Alabama, 163 miles from Florida.	11/01/02

Activity/Operator	Location	Date
BP Exploration & Production, Inc., Initial Development Operations Coordination Plan, SEA No. N–7415.	Green Canyon Area, Block 826, Unit Agreement 754398016, Block 782, OCS–G 15610, Block 825, OCS–G 09981, Block 826, OCS–G 09982, located 128 miles from the nearest Louisiana coastline.	12/03/02
Freeport-McMoRan Sulphur, LLC, Revised Development Operations Coordination Plan, SEA No. R–3816.	Main Pass Area, Block 299, located 16 miles from shore, east of the Mississippi River Delta and Plaquemines Parish, Louisiana.	12/10/02
Energy Resource Technology, Inc., Structure Removal Activity, SEA Nos. ES/SR 02–089 and 02–090.	Eugene Island Area and Vermilion Area, Blocks 128A and 201, Leases OCS–G 00442 and 02075, located 30 miles southwest of Terrebonne Parish, Louisiana, and 60 miles south-southwest of Morgan City, Louisiana, located 55 miles south-southwest of Vermilion Parish, Louisiana, and 125 miles southwest of Morgan City, Louisiana, all respectively.	08/28/02
The Louisiana Land and Exploration Company, Structure Removal Activity, SEA Nos. ES/SR RA–2002–03 and RA–2002–04.	Eugene Island (South Addition) Area, Block 384, Lease OCS–G 03159, located 79 miles south-southwest of Terrebonne Parish, Louisiana, and 110 miles southwest of Fourchon, Louisiana.	10/15/02
Magnum Hunter Production, Inc., Structure Removal Activity, SEA No. ES/SR 02–114.	South Timbalier (South Addition) Area, Block 266, Lease OCS–G 15338, located 50 miles south of Lafourche Parish, Louisiana, and 58 miles south-southwest of Fourchon, Louisiana.	10/08/02
Spinnaker Exploration Company, Structure Removal Activity, SEA No. ES/SR 02–115.	High Island Area, Block 162, Lease OCS–G 21343, located 29 miles southeast of Jefferson County, Texas, and 44 miles east of Galveston, Texas.	10/16/02
J. M. Huber Corporation, Structure Removal Activity, SEA No. ES/SR 02–116.	Grand Isle Area, Block 55, Lease OCS–G 09676, located 23 miles southeast of Lafourche Parish, Louisiana, and 26 miles southeast of Fourchon, Louisiana.	10/30/02
Burlington Resources Offshore, Inc., Structure Removal Activity, SEA Nos. ES/SR RA–2002–06 and RA–2002–07.	Eugene Island Area, Block 159, OCS–G 04449, located 38 miles southwest of Terrebonne Parish, Louisiana, and 92 miles west of Fourchon, Louisiana.	11/14/02
ATP Oil & Gas Corporation, Structure Removal Activity, SEA Nos. 02–117 and 02–118.	West Cameron Area, Blocks 92 and 201, OCS–G 13829 and 13833 respectively, located 15 miles south of Cameron Parish, Louisiana, and 25 to 30 miles southwest of Cameron Parish, Louisiana, and 37 miles south-southeast of Cameron, Louisiana.	11/15/02
Walter Oil & Gas Corporation, Structure Removal Activity, SEA No. 02–119.	Grand Isle Area, Block 65, OCS–G 08730, located 23 miles southeast of LaFourche Parish, Louisiana, and 24 miles southeast of Fourchon, Louisiana.	11/05/02
ATP Oil & Gas Corporation, Structure Removal Activity, SEA No. 02–120.	West Cameron Area, Block 263, OCS–G 15072, located 50 miles south of Cameron Parish, Louisiana, and 60 miles south of Cameron, Louisiana.	12/11/02

Persons interested in reviewing environmental documents for the proposals listed above or obtaining information about SEAs and FONSIs prepared for activities on the Gulf of Mexico OCS are encouraged to contact MMS at the address or telephone listed in the **FOR FURTHER INFORMATION CONTACT** section.

Dated: December 23, 2002.

Chris C. Oynes,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 03–2042 Filed 1–28–03; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importation of Controlled Substances; Notice of Application

Pursuant to Section 1008 of the Controlled Substances Import and Export Act (21 U.S.C. 958(i)), the Attorney General shall, prior to issuing a registration under this Section to a bulk manufacturer of a controlled substance in Schedule I or II and prior to issuing a regulation under Section 1002(a) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with Section 1301.34 of Title 21, Cod of Federal Regulations (CFR), notice is hereby given that on July 31, 2002, Cerilliant Corporation, 811 Paloma Drive, Suite A, Round Rock, Texas 78664, made application by renewal to the Drug Enforcement Administration to be registered as an importer of the basic classes of controlled substances listed below:

Drug	Schedule
Cathinone (1235)	I
Methcathinone (1237)	I
N-Ethylamphetamine (1475)	I
Gamma hydroxybutyric acid (2010).	I
Ibogaine (7260)	I
Tetrahydrocannabinols (7370)	I
Mescaline (7381)	I
4-Bromo-2,5-dimethoxyamphetamine (7391).	I
4-Bromo-2,5-dimethoxyphenethylamine (7392).	I
4-Methyl-2,5-dimethoxyamphetamine (7395).	I
2,5-Dimethoxyamphetamine (7396).	I
3,4-Methylenedioxyamphetamine (7400).	I
3,4-Methylenedioxy-N-ethylamphetamine (7404).	I
3,4-Methylenedioxymethamphetamine (7405).	I
4-Methoxyamphetamine (7411)	I
Psilocybin (7437)	I
Psilocyn (7438)	I
Etorphine (9056)	I
Heroin (9200)	I
Pholcodine (9314)	I
Cocaine (9041)	II
Codeine (9050)	II
Amphetamine (1100)	II
Methamphetamine (1105)	II
Amobarbital (2125)	II
Pentobarbital (2270)	II
Dihydrocodeine (9120)	II
Oxycodone (9143)	II
Hydromorphone (9150)	II
Benzoylecgonine (9180)	II
Ethylmorphine (9190)	II
Meperidine (9230)	II
Methadone (9250)	II
Dextropropoxyphene, bulk (non-dosage forms) (9273).	II

Drug	Schedule
Morphine (9300)	II
Thebaine (9333)	II
Levo-alphacetylmethadol (9648)	II
Oxymorphone (9652)	II

The firm plans to import small quantities of the listed controlled substances for the manufacture of analytical reference standards.

Any manufacturer holding, or applying for, registration as a bulk manufacturer of these basic classes of controlled substances may file written comments on or objections to the application described above and may, at the same time, file a written request for a hearing on such application in accordance with 21 CFR 1301.43 in such form as prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than February 28, 2003.

This procedure is to be conducted simultaneously with and independent of the procedures described in 21 CFR 1301.34(b), (c), (d), (e), and (f). As noted in a previous notice at 40 FR 43745–46 (September 23, 1975), all applicants for registration to import the basic classes of any controlled substances in Schedule I or II are and will continue to be required to demonstrate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 823(a), and 21 CFR 1301.34(a), (b), (c), (d), (e), and (f) are satisfied.

Dated: January 7, 2002.

Laura M. Nagel,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 03–1944 Filed 1–28–03; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Federal Bureau of Investigation

Agency Information Collection Activities: Reinstatement, With Change; Comments Requested

ACTION: 30 day notice of information collection Under Review: reinstatement, with change, of a previously approved collection for which approval has expired; postgraduate evaluation of the FBI National Academy and FBI National Academy training needs assessment for agency executives.

The Department of Justice, Federal Bureau of Investigation, has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** (Volume 67, Number 226, pages 70459–70460 on November 22, 2002 allowing for a 60-day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until February 28, 2003. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained this notice, especially the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Reinstatement, with change, of a previously approved collection for which approval has expired.

(2) *Title of the Form/Collection:* Postgraduate Evaluation of the FBI National Academy and FBI National Academy Training Needs Assessment For Agency Executives.

(3) *Agency form Number, of any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: None. Federal Bureau of Investigation, FBI Academy.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: State and Local Law Enforcement Officers.Other: None. Abstract: This survey will consist of two instruments: Post Graduate Evaluation of the FBI National Academy; and FBI National Academy Training Needs Assessment For Agency Executives. These are surveys to collect training related information and there are no sensitive or personal questions, therefore confidentiality is not guaranteed or necessary.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 3,700 responses who will each require an average of 15 minutes to respond.

(6) *An estimate of the total public burden (in hours) associated with the collection:*

The total annual public burden hours for this information collection is estimated to be 925 hours.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, 601 D Street NW., Washington DC 20004.

Dated: January 24, 2003.

Robert B. Briggs,

Departmental Clearance Officer, United States Department of Justice.

[FR Doc. 03–2049 Filed 1–28–03; 8:45 am]

BILLING CODE 4410–02–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

[INS No. 2149–01]

Implementation of Class Action Judgment in Proyecto San Pablo v. INS

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Notice.

SUMMARY: This notice implements the class action judgment in *Proyecto San Pablo* v. *INS*, No. Civ 89–456–TUC–WDB (D.Ariz.) by notifying aliens who

applied for legalization under section 245A of the Immigration and Nationality Act (Act), 8 U.S.C. 1255a, of their rights under the judgment. This notice is necessary because neither the class counsel nor the Immigration and Naturalization Service (Service or INS) has reliable information concerning the names and addresses of class members.

DATES: This notice is effective January 29, 2003.

FOR FURTHER INFORMATION CONTACT: Robert Raymond, Office of the General Counsel, Immigration and Naturalization Service, 425 I Street NW., Room 6109, Washington DC 20536, telephone (202) 514–2895.

SUPPLEMENTARY INFORMATION:

1. Why Is the Service Publishing This Notice?

The Service is publishing this notice to comply with the judgment entered on March 27, 2001, as amended, in the class action entitled *Proyecto San Pablo* v. *INS* No. Civ 89–456–TUC–WDB (D.Ariz.) (*Proyecto* case). Service regulations do not permit aliens to file motions to reopen in legalization cases under section 245A of the Act, 8 U.S.C. 1255a. The Court's judgment, however, requires the Service to reopen certain legalization cases and make new decisions in those cases. This notice explains how to obtain a new decision in your case.

2. To Whom Do the Personal Pronouns "I," "Me," "My," "You" and "Your" Refer?

In this Notice, the personal pronouns "I," "me," "my," "you" and "your" refer to any alien who filed a timely application for legalization and who believes that he or she may be a class member in the *Proyecto* case.

3. Does This Notice Apply to My Case?

This notice applies to your case if you meet each of the following requirements:

(a) You filed an application for legalization under section 245A of the Act during the period that began May 5, 1987, and ended May 4, 1988;

(b) You filed this application with a legalization office in the former Northern or Western region of the Service (that is, in: Alaska, Arizona, California, Colorado, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Montana, Nebraska, Nevada, North Dakota, Ohio, Oregon, South Dakota, Utah, Washington (State), Wisconsin, or Wyoming);

(c) The Service denied your application for legalization or terminated your temporary residence under section 245A(g)(2)(B)(i) of the Act because, at some time during the period beginning before January 1, 1982, and ending on the date you filed your legalization application, you were "outside the United States as a result of a departure under an order of deportation."

4. What Does the Court's Order Permit Me To Do?

If this Notice applies to your case, then you may obtain a new Service decision on your legalization application. You may also obtain employment authorization, in 1-year increments, until the Service makes a new decision in your case. The Service may not deport you until it makes a new decision in your case. In addition, you will be given an opportunity to obtain a copy of your prior deportation or exclusion records under the Freedom of Information Act (FOIA). You will also be able to submit and have adjudicated, Form I–690, Application for Waiver of Grounds of Excludability Under sections 245A or 210 of the Immigration and Nationality Act, or any other waiver you deem appropriate, although the parties continue to dispute the legal effect of such a waiver.

5. How Do I Obtain Employment Authorization?

The *Proyecto* judgment requires the Service to extend your employment authorization until the Service reopens your case and makes a new decision. If your current employment authorization document has expired, or is about to expire, you should apply for a new employment authorization document by completing Form I–765, Application for Employment Authorization, and filing it, without fee. Follow the instructions listed on the Form I–765. To make it clear that you are claiming to be a *Proyecto* class member, you must write the word "Proyecto" in box 16 on the Form I–765. The Employment Authorization Application must be adjudicated within 90 days of the date of its receipt. You must file your Form I–765 with the Nebraska Service Center. The address is: Immigration and Naturalization Service, Nebraska Service Center, *Attn:* Proyecto Unit, PO Box 87687, Lincoln, NE 68501–7687.

6. Will the Service Give Me a New Employment Authorization Card, if My Card Expires Before My Case Is Decided?

Yes, any employment authorization card will be valid for 1 year, and so long as you have filed a motion to reopen as described below in paragraph 10, you may apply for renewal until the Service makes a final decision in your case. You will not be eligible for an extension of employment authorization, however, if you fail to file a motion to reopen within 1 year from the date you receive this notice. So long as you file a timely motion to reopen, the Service may not deport you until it issues a new decision in your legalization application.

7. How Do I Obtain a New Decision in My Case?

Because the legalization application period ended more than 13 years ago, it is not likely that the Service will have a current address for you. For this reason, the Service will not act to reopen your case until you notify the Service that you want the Service to do so. If you want to exercise your rights under the *Proyecto* decision, you must file with the Service a motion to reopen, without fee. As described below, your motion to reopen may include all information and/or waiver applications you wish the Service to consider. As such, you should first attempt to obtain any information you may need through the FOIA process as described below in question 8. In addition, you should prepare any waiver applications you wish to be considered and submit all of the information along with your motion to reopen. If you have not received a response to your FOIA request at the time you must file your motion to reopen, then you must still file your motion to reopen, but you may wait to submit the supporting documents until after you receive the response to any FOIA requests that you have made.

To avoid delays, please make sure that your motion to reopen clearly states that you are seeking the reopening of your case under the judgment in the *Proyecto* case.

8. Where Do I File My FOIA Requests?

The Service's FOIA requests are filed according to the instructions on Form G–639, Freedom of Information/Privacy Act Request (available on the Service's Web site at *http://www.ins.usdoj.gov*). To make a FOIA request, you may use Form G–639, or a letter specifically indicating which records are being requested. The form approved by the Court for requesting your Service records is attached.

A. Service Records

In order to obtain a copy of your prior Service file you must file a FOIA request with the Service. File your FOIA request with the Nebraska Service Center. The address is: Immigration and Naturalization Service, Nebraska

Service Center, *Attn:* FOIA/PA Unit, PO Box 82521, Lincoln, NE 68501–2521.

B. Immigration Court Records

In order to obtain a copy of your prior deportation or exclusion records from the Immigration Court, you must file a FOIA request with the Executive Office of Immigration Review (EOIR). Since EOIR is not part of the Service, you must send your EOIR FOIA request directly to EOIR at the following address: Office of the General Counsel, Executive Office for Immigration Review, FOIA/PA Requests, 5107 Leesburg Pike, Suite 2400, Falls Church, VA 22041.

The EOIR does not have its own special FOIA request form. However, EOIR will accept either the Form G–639, or a letter specifically indicating which records are being requested. The form approved by the Court for requesting your EOIR records is included as an appendix to this notice.

9. Where Must I File the Motion to Reopen?

You must file your motion to reopen with the Nebraska Service Center. The address is: Immigration and Naturalization Service, Nebraska Service Center, Attn: Proyecto Unit, PO Box 87687, Lincoln, NE 68501–7687.

10. When Must I File the Motion to Reopen?

You must file your motion to reopen no later than 1 year from the date you are personally served with this Notice by the Service, as described below.

The Service will personally serve you with a copy of this notice in one of three ways. First, on or about the time of the publication of this Notice in the **Federal Register**, if you are known to meet the *Proyecto* class definition, the Service will mail this Notice, by certified mail return receipt requested, to your last known address contained in your file. Second, after publication of this Notice in the **Federal Register**, when you file an application for employment authorization (Form I–765), the Service will check your alien file to see if there is written confirmation that you previously received this notice. If there is no such confirmation, the Service will mail a copy of this Notice, by certified mail return receipt requested to you at the address listed on the application for employment authorization, or to your attorney or representative as required by 8 CFR 292.5, if a Form G–28, Notice of Entry of Appearance as Attorney or Representative has been filed since the publication of this notice in the **Federal Register**. Third, the Service may personally deliver a copy of this Notice to you at any time the Service encounters you.

The 1-year time period for filing your motion to reopen begins on the date that personal service in one of the three ways described above is confirmed to have occurred. The Service cannot deny your legalization application, or deny work authorization pursuant to this Notice, unless the Service can confirm that this Notice has been served on you in one of the three ways described above.

If you need to file FOIA requests before you can file your motion to reopen, then you must still file your motion to reopen within the 1-year time period described above. If you have not yet received the results from your FOIA requests, then your motion to reopen must include a statement that you are awaiting your FOIA results.

11. What Must I Include With My Motion To Reopen?

You should include in your motion to reopen:

(1) A copy of any documents that you received from the Service and EOIR in response to your FOIA requests that you want to have included in your legalization record of proceeding,

(2) A waiver application (Form I–690) with the fee established in 8 CFR 103.7(b) (currently $35) (available on the Service's Web site at *http://www.ins.usdoj.gov*) if you wish the Service to adjudicate a waiver,

(3) Any brief, any other waiver that you wish to have adjudicated, and any other evidence you wish to submit in support of your motion; and

(4) Either a statement that you are ready to have a new decision entered in your case, or a statement that you are still awaiting the results of your FOIA requests.

12. What if I Have Not Yet Received the Results of My FOIA Request?

If you are still awaiting FOIA results you must still file the motion to reopen no later than the period described in paragraph 10, above. You may include with your motion a copy of any waiver application you wish to file, a copy of your FOIA requests, any evidence you want to submit other than evidence from your FOIA requests, and a statement indicating that you are awaiting the results of the FOIA requests. You must then submit, no later than 6 months after you receive the results of your FOIA requests, any brief you wish to file and a complete copy of any documents that you want to have included in your legalization record of proceeding.

13. When Will the Service Decide My Case?

Because your motion to reopen should include any and all evidence that you want included in your legalization record of proceeding, any brief you wish to file, and any waiver application that you wish to have considered, the Service may decide your motion to reopen at any time after you file it, unless you indicate in your motion that you are still awaiting the results of your FOIA requests. If you are still awaiting the results of your FOIA requests, the Service will not rule on your motion until you have had an opportunity to obtain and review the FOIA documents. You must submit a brief and any documents you want the Service to consider no later than 6 months after you have received a response to both of your FOIA requests.

14. What if I Do Not File a Motion To Reopen?

The Service will not make a new decision in your case unless you file a motion to reopen, which you must do within the 1-year period described in this notice under the heading "When Must I File The Motion to Reopen?" (Paragraph 10). If you have received employment authorization pursuant to these instructions and do not file a motion to reopen, your employment authorization will not be renewed.

15. What if I Do Not Get This Notice With These Instructions Within a Year?

You will be permitted to file a motion to reopen and take the other steps outlined here if you come to the attention of the Service more than a year after these instructions are published, unless the Service can confirm that this Notice has been personally served on you in the manner described in this notice under the heading "When Must I File The Motion to Reopen?" (Question 10).

16. Does the Proyecto Judgment Entitle Me to a Stay of Deportation?

The March 27, 2001, Judgment of the Court requires the Service to stay your deportation and to release you from custody without bond, so long as you are a class member. Filing either the application for a new employment authorization document or the motion to reopen will help notify the Service that you are entitled to this stay and release without bond. The stay will remain in effect until the Service makes a final decision in your case.

17. Does the Proyecto Judgment Make Me Eligible for Legalization?

Not necessarily. According to the order of the District Court, the Service is required to reopen and readjudicate your legalization application. This does not necessarily mean that the Service will approve your application.

18. Do the Legalization Confidentiality Rules Apply to My Case?

The legalization confidentiality rules apply to your case in the same way that they apply to any other legalization case. Your applications and file requests cannot be used for any other reason than to make a determination on your eligibility for legalization. They cannot be used in removal, deportation or exclusion proceedings.

19. Do I Have the Right to Have an Attorney or Other Person Represent Me?

By statute and regulation, you have the right to be represented before the Service by any attorney or other person authorized to represent people before the Service.

Please note that Robert Gibbs, Esq., Gloria A. Goldman, Esq., and Robert Pauw, Esq., have represented the class in this case. You may retain Mr. Gibbs, Ms. Goldman, or Mr. Pauw to represent you, but you also have the right to retain any other attorney or other person authorized to represent people before the Service. If you want Mr. Gibbs or Mr. Pauw to represent you, or want further information about this case, you may contact them at: Gibbs Houston Pauw, 1000 Second Avenue, Suite 1600, Seattle, Washington 98104; telephone (206) 682–1080; Web site: *www.ghp-law.net*. You may also contact Ms. Goldman at 1575 West Ina Road, Tucson, Arizona 85704–1926, telephone (520) 797–9229.

If you already have your own attorney or representative, he or she may also contact Mr. Gibbs, Ms. Goldman, or Mr. Pauw for information about this case.

20. What if My Address Changes?

It is very important that you inform the Service of any change of address while your case is pending. You should promptly notify the Service in writing of a change of address by sending the change of address to any office where you filed a FOIA request, and to the Nebraska Service Center as shown below: Immigration and Naturalization Service, Nebraska Service Center, Attn: Proyecto Unit, PO Box 87687, Lincoln, NE 68501–7687.

Paperwork Reduction Act

The documentary requirements included when filing a motion to reopen your case, including the form approved by the Court for requesting your records is not considered an information collection under 5 CFR 1320.4(a)(2).

Dated: January 23, 2003.

Michael J. Garcia,

Acting Commissioner, Immigration and , Naturalization Service.

Note: The appendix to this notice contains the FOIA request form provided for in the Proyecto judgment.

BILLING CODE 4410–10–P

APPENDIX

THE FOLLOWING IS THE FOIA REQUEST FORM PROVIDED FOR IN THE PROYECTO JUDGMENT

PROYECTO SAN PABLO V. INS, 89-456 WDB (D. AZ.)
FREEDOM OF INFORMATION ACT FILE REQUEST FORM

(1) For a copy of your SERVICE A-File, send this form to:

Immigration and Naturalization Service
Nebraska Service Center
ATTN: FOIA/PA Unit
PO Box 82521
Lincoln NE 68501-2521

(2) For a copy of your immigration court records, send this form to:

Office of General Counsel
Executive Office of Immigration Review
FOIA/PA Requests
5107 Leesburg Pike, Suite 2400
Falls Church, VA 22041

Dear Sir or Madam:

Pursuant to the Court order in Proyecto San Pablo v. INS, Civ. No. 89-456 WDB (D. Az.), I request that you send me a complete copy of any and all documents contained in immigration files relating to me. Please include copies of all prior A-files under any A-number assigned to me, any prior deportation or exclusion files, and any immigration court files. Please provide me with a copy of the tape and/or transcript of any deportation or exclusion hearings.

Sincerely,

Name _____
Address _____
_____
A-Number (if known) _____
(List all A-numbers) _____

Instruction to applicant: Send one of these requests to the INS Nebraska Service Center for INS records and another to the Executive Office of Immigration Review for records of a prior deportation or exclusion hearing. You should send these letters by certified mail, return receipt requested, and keep copies for your own records.

[FR Doc. 03–1959 Filed 1–28–03; 8:45 am]
BILLING CODE 4410–10–C

DEPARTMENT OF LABOR

Employment Standards Administration

Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment Standards Administration is soliciting comments concerning the proposed collection: Employment Under Special Certificates of Apprentices, Messengers and Learners (including Student Learners) (WH–205, WH–209). A copy of the proposed information collection request can be obtained by contacting the office listed below in the addresses section of this Notice.

DATES: Written comments must be submitted to the office listed in the addresses section below on or before March 31, 2003.

ADDRESSES: Ms. Patricia A. Forkel, U.S. Department of Labor, 200 Constitution Ave., NW,. Room S–3201, Washington, DC 20210, telephone (202) 693–0339, fax (202) 693–1451, E-mail *pforkel@fenix2.dol-esa.gov*. Please use only one method of transmission for comments (mail, fax, or E-mail).

SUPPLEMENTARY INFORMATION:

I. Background

Under section 14(a) of the Fair Labor Standards Act (FLSA), the Secretary of Labor is required, to the extent necessary to prevent curtailment of employment opportunities, to provide for employment under special certificates of categories of workers who may be paid less than the statutory minimum wage. This section also authorizes the Secretary to set limitations on such employment as to time, number, proportion and length of service. These workers include apprentices, messengers and learners. Form WH–209 is an Application for a Certificate to Employ Learners/ Messengers at Subminimum Wages. The WH–205 is an Application to Employ Student Learners at Subminimum wages. In addition, an employer may obtain authority from the Department to employ apprentices at subminimum wages. There is no application form associated with the application for apprentices; the employer must submit a copy of the registered apprenticeship program or agreement. These requirements are found at 29 CFR part 520. This information collection is currently approved for use through July 31, 2003.

II. Review Focus

The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

III. Current Actions

The Department of Labor seeks the extension of approval to collect this information in order to determine whether statutory and regulatory requirements for the employment of messengers/apprentices/learners have been met. There is no change in the substance or method of collection since the last OMB approval.

Type of Review: Extension.

Agency: Employment Standards Administration.

Title: Employment Under Special Certificates of Apprentices, Messengers and Learners (including Student Learners).

OMB Number: 1215–0192.

Agency Number: WH–205, WH–209.

Affected Public: Business or other for-profit, Individuals or households, Not-for-profit institutions, State, Local or Tribal Government.

Form/requirement	Respondents/ responses	Time per response	Burden hours
WH–209	0	NA	0
WH–205	400	30 min.	200
Apprentice Application	0	NA	0

Total Respondents/Responses: 400.

Frequency: Annually.

Estimated Total Burden Hours: 400.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/ maintenance): $2,866.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: January 23, 2003.

Bruce Bohanon,

Chief, Branch of Management Review and Internal Control, Division of Financiol Management, Office of Management, Administration and Planning, Employment Standards Administration.

[FR Doc. 03–2015 Filed 1–28–03; 8:45 am]

BILLING CODE 4510–27–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts

Federal Advisory Committee on International Exhibitions—Notice of Change

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that the teleconference meeting of the Federal Advisory Committee on

International Exhibitions (FACIE), originally scheduled for Wednesday, January 29, 2003, has been rescheduled for January 31, 2003, from 2–4 p.m. in room 709 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC, 20506.

Further information with reference to this meeting can be obtained from Ms. Kathy Plowitz-Worden, Panel Coordinator, National Endowment for the Arts, Washington, DC, 20506, or call 202/682–5691.

Dated: January 23, 2003.

Kathy Plowitz-Worden,

Panel Coordinator, Panel Operations, National Endowment for the Arts.

[FR Doc. 03–2085 Filed 1–28–03; 8:45 am]

BILLING CODE 7537–01–P

NATIONAL WOMEN'S BUSINESS COUNCIL

Notice of Public Meeting

In accordance with the Women's Business Ownership Act, Public Law 106–554 as amended, the National Women's Business Council (NWBC) would like to announce a forthcoming Council meeting. The meeting will introduce the National Women's Business Council's agenda and action items for fiscal year 2003 included but not limited to procurement, access to capital, access to training and technical assistance, access to markets and affordable health care. The meeting will be held Tuesday, February 11, 2003 at the U.S. Small Business Administration located at 409 Third Street, SW, Washington, DC. The meeting will be conducted in the Eisenhower Conference Room B, 2nd Floor at 1 pm to 4 pm. This meeting is opened to the public. (Attendance by RSVP only). Anyone wishing to attend or make an oral presentation at the meeting must contact Gilda Presley, no later than Monday, February 3, 2003 at 202/205–6695.

Candace Stoltz,

Director of Advisory Councils.

[FR Doc. 03–2206 Filed 1–27–03; 2:42 pm]

BILLING CODE 8025–01–M

NUCLEAR REGULATORY COMMISSION

Draft Regulatory Guide; Issuance, Availability

The Nuclear Regulatory Commission (NRC) has issued for public comment a proposed revision of a guide in its Regulatory Guide Series and Draft Standard Review Plan Chapter 15.0.2. Regulatory Guides are developed to describe and make available to the public such information as methods acceptable to the NRC staff for implementing specific parts of the NRC's regulations, techniques used by the staff in evaluating specific problems or postulated accidents, and data needed by the staff in its review of applications for permits and licenses.

The draft guide is temporarily identified by its task number, DG–1120, which should be mentioned in all correspondence concerning this draft guide. Draft Regulatory Guide DG–1120, "Transient and Accident Analysis Methods" is being developed to describe a process that is acceptable to the NRC staff for the development and assessment of evaluation models that may be used to analyze transient and accident behavior that are within the design-basis of the plant.

This draft guide has not received complete staff approval and does not represent an official NRC staff position.

Comments may be accompanied by relevant information or supporting data. Written comments may be submitted by mail to the Rules and Directives Branch, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555; or they may be hand-delivered to the Rules and Directives Branch, ADM, at 11555 Rockville Pike, Rockville, MD. Copies of comments received may be examined at the NRC Public Document Room, 11555 Rockville Pike, Rockville, MD. Comments will be most helpful if received by March 24, 2003.

You may also provide comments via the NRC's interactive rulemaking Web site through the NRC home page (*http://www.nrc.gov*). This site provides the ability to upload comments as files (any format) if your Web browser supports that function. For information about the interactive rulemaking Web site, contact Ms. Carol Gallagher, (301) 415–5905; e-mail *CAG@NRC.GOV*. For information about Draft Regulatory Guide DG–1120, contact Mr. Joseph Staudenmeier at (301) 415–7002, e-mail *JLS4@NRC.GOV*.

Although a deadline is given for comments on these draft guides, comments and suggestions in connection with items for inclusion in guides currently being developed or improvements in all published guides are encouraged at any time.

Regulatory guides are available for inspection at the NRC's Public Document Room, 11555 Rockville Pike, Rockville, MD; the PDR's mailing address is USNRC PDR, Washington, DC 20555; telephone (301) 415–4737 or (800) 397–42056; fax (301) 415–3548; e-mail *PDR@NRC.GOV*. Requests for single copies of draft or final regulatory guides (which may be reproduced) or for placement on an automatic distribution list for single copies of future draft guides in specific divisions should be made in writing to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Reproduction and Distribution Services Section, or by fax to (301) 415–2289; e-mail *DISTRIBUTION@NRC.GOV*. Telephone requests cannot be accommodated. Regulatory guides are not copyrighted, and NRC approval is not required to reproduce them.

(5 U.S.C. 552(a))

Dated at Rockville, Maryland, this 21st day of January 2003.

For the Nuclear Regulatory Commission

Farouk Eltawila,

Director, Division of Systems Analysis and Regulatory Effectiveness, Office of Nuclear Reactor Regulation.

[FR Doc. 03–2039 Filed 1–28–03; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47236; File No. SR–NASD–2003–06]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. to Delay the Implementation of Fee Changes for the Nasdaq Testing Facility

January 23, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and rule 19b–4 thereunder,[2] notice is hereby given that on January 17, 2003, the National Association of Securities Dealers, Inc. ("NASD"), through its subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in items I, II, and III below, which items have been prepared by Nasdaq. Nasdaq filed the proposal pursuant to section 19(b)(3)(A)(i) of the Act,[3] and rule 19b–4(f)(1)[4] thereunder, as one constituting a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule, which renders the proposal effective upon filing with the Commission. The

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(i).

[4] 17 CFR 240.19b–4(f)(1).

Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq has delayed until January 1, 2003, the implementation of certain fee changes for the Nasdaq Testing Facility ("NTF") established by SR–NASD–2002–72 [5] and SR–NASD–2002–73.[6] There is no proposed rule language.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for its proposal and discussed any comments it received regarding the proposal. The text of these statements may be examined at the places specified in item IV below. Nasdaq has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to notify the Commission and other interested parties of the delay until January 1, 2003, of the implementation of certain fee changes for the NTF. The fee changes were established by SR–NASD–2002–72 and SR–NASD–2002–73. In those filings, Nasdaq, among other things, amended rule 7050(d)(1) to apply the hourly testing fees for use of the NTF to testing of Nasdaq Workstation II ("NWII") application programming interface ("API") and market data vendor feeds. The hourly testing fees had formerly applied only to testing of computer-to-computer interfaces ("CTCI").[7] Under the filings, the fee change was effective and to be implemented upon filing for members and upon Commission approval for non-members. However, Nasdaq delayed implementation of the testing fees for NWII API because of delays in the availability of a system that could accurately record the time spent by a particular NTF user in testing NWII API. This delay has now been addressed, and Nasdaq implemented the fee for NWII API testing as of January 1, 2003. Prior to that time, Nasdaq has made the NTF available for testing of NWII API without charge, and Nasdaq has notified users of the NTF as to the implementation of the testing fees. All other aspects of SR–NASD–2002–72 and SR–NASD–2002–73 were implemented as of the effective dates of those filings.

Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of section 15A of the Act,[8] in general, and with section 15A(b)(5) of the Act,[9] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers, and other persons using any facility or system which the NASD operates or controls.

B. Self-Regulatory Organization's Statement of Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposal has become effective pursuant to section 19(b)(3)(A)(i) of the Act,[10] and rule 19b–4(f)(1) [11] thereunder, in that it constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to file number SR–NASD–2003–06 and should be submitted by February 19, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–2016 Filed 1–28–03; 8:45 am]

BILLING CODE 8010–01–P

[5] Securities Exchange Act Release No. 46065 (June 12, 2002), 67 FR 41556 (June 18, 2002)(SR–NASD–2002–72)(immediately effective fees for members).

[6] Securities Exchange Act Release No. 46234 (July 19, 2002), 67 FR 48693 (July 25, 2002)(SR–NASD–2002–73)(approval of fees for non-members).

[7] Prior to the amendments, the rule had also made reference to testing of "digital interface (DIS/CHPS)," a technology that is not currently in use by Nasdaq. These references were deleted.

[8] 15 U.S.C. 78o–3.

[9] 15 U.S.C. 78o–3(b)(5).

[10] 15 U.S.C. 78s(b)(3)(A)(i).

[11] 17 CFR 240.19b–4(f)(1).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47233; File No. SR–NASD–2002–127]

Self Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Granting Approval to Proposed Rule Change and Amendment No. 1 Thereto Amending Rule 11890 Concerning Clearly Erroneous Transactions

January 22, 2003.

I. Introduction

On September 24, 2002, the National Association of Securities Dealers, Inc., through its subsidiary, the Nasdaq Stock Market, Inc. ("Nasdaq") filed with the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and rule 19b–4 thereunder,[2] a proposed rule change to amend NASD rule 11890, which provides Nasdaq with authority to nullify or modify transactions. On November 1, 2002, Nasdaq filed Amendment No. 1 that entirely replaced

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

the original rule filing.[3] The proposed rule change, as amended, was published for comment in the **Federal Register** on December 9, 2002.[4] The Commission received no comments on the proposal. This order approves the proposed rule change, as amended.

II. Description of the Proposal

Nasdaq proposes to amend NASD rule 11890, which provides Nasdaq with the authority to nullify or modify transactions.

a. Review of Transactions Pursuant to Complaint of Market Participant

Under NASD rule 11890, Nasdaq has the authority to receive petitions from market participants requesting that designated officers of Nasdaq review the terms of a transaction and nullify or modify it if the transaction is found to be clearly erroneous. Among other things, NASD rule 11890, as amended by this proposal, will explicitly limit Nasdaq's purview to transactions arising out of the use or operation of Nasdaq execution or communication systems and explicitly require that the parties to a reviewable transaction be readily identifiable by Nasdaq through its systems. Amended NASD rule 11980 will also clarify, in part, that it covers transactions entered into by a member of a UTP exchange through a Nasdaq execution system. Thus, the rule will cover transactions executed between a Nasdaq member and a member of a UTP exchange that had agreed to accept automatic executions through SuperSOES or SuperMontage, but will not cover transactions where the UTP exchange merely posted a quote and was accessible only via telephone. The amended rule would also clarify that information submitted by parties to Nasdaq must be received by Nasdaq within the time frames specified in the rule.

b. Review of Transactions on Nasdaq's Own Motion

Nasdaq proposes to amend NASD rule 11890 to state that Nasdaq's authority to review transactions based upon its own motion may be exercised in the event of extraordinary market conditions or other circumstances in which the nullification or modification of transactions may be necessary for the maintenance of a fair and orderly market or the protection of investors and the public interest. Amended NASD rule 11890 will also clarify that Nasdaq's authority to review transactions based upon its own motion may be applied to any transaction arising out of or reported through a Nasdaq quotation, execution, communication, or trade reporting system, including transactions entered into by a member of a UTP exchange through a Nasdaq execution system (but excluding transactions entered into through, or reported to, a UTP exchange).

Additionally, the proposed rule change will amend the time frame for action to require that the Nasdaq officer, either the Nasdaq President or Executive Vice President designated by the President, on Nasdaq's own motion, act, except in extraordinary circumstances, no later than 3 p.m. on the next trading day. Finally, Nasdaq is adding interpretative material after the rule to provide that it shall be considered conduct inconsistent with just and equitable principles of trade for a member to refuse to take action that is necessary to effectuate a final decision of a Nasdaq officer or the Market Operations Review Committee ("MORC").

c. Review by the Market Operations Review Committee

NASD rule 11890 governs review by the MORC, a standing committee composed of representatives of member firms as well as "non-industry" representatives. Persons seeking to appeal a determination by Nasdaq must submit their appeal within the time parameters specified by the rule. Both parties are then given the opportunity to submit supporting arguments in writing, and the matter is submitted to the MORC for a determination. Nasdaq proposes, however, that an officer empowered to review transactions on Nasdaq's own motion (*i.e.*, the President or an Executive Vice President) may determine that the number of transactions affected by a decision to break or modify trades on Nasdaq's own motion is such that the decision must be accorded immediate finality in order to maintain a fair and orderly market and to protect investors and the public interest.

d. Communications Between Nasdaq and Market Participants

Amended NASD rule 11890 will describe in greater detail the parameters for communications between Nasdaq and market participants. Specifically, the proposal will provide that materials submitted to Nasdaq or the MORC must be submitted via facsimile machine and must be received within the time parameters specified by the rule. However, if requested, Nasdaq staff may authorize submission of materials via electronic mail on a case-by-case basis.[5] Materials shall be deemed received at the time indicated by a facsimile machine or computer that receives the materials. Nasdaq reserves the right to reject or accept material that is not received within the time parameters specified by the rule.

Nasdaq will provide notice of determinations under the rule via facsimile machine, electronic mail, or telephone (including voicemail). However, in cases where an officer nullifies or modifies a large number of transactions pursuant to Nasdaq's authority to act on its own motion, individual notice may not be practicable. In that case, Nasdaq may provide notice to market participants via the Nasdaq Workstation II Service, a press release, or any other method reasonably expected to provide rapid notice to many market participants.

III. Discussion

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association,[6] and in particular, the requirements of section 15A(b)(6) of the Act,[7] which, among other things, requires that the association's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Specifically, the Commission believes that Nasdaq's proposal may clarify the scope of Nasdaq's authority to review erroneous transactions and the procedural aspects of reviewing such transactions.

Nasdaq proposes to delineate, in part, the conditions under which Nasdaq will consider petitions by market participants to review transactions. Proposed NASD rule 11890 explicitly

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[3] *See* letter from Mary M. Dunbar, Vice President and Deputy General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division of Market Regulation, Commission, dated November 1, 2002.

[4] *See* Securities Exchange Act Release No. 46939 (December 3, 2002), 67 FR 72994 (December 9, 2002) (SR–NASD–2002–127).

[5] For example, if a party wishes to submit, pursuant to subparagraph (a)(2)(A) of the amended rule, a large document containing supporting information, it may be preferable to submit the document via electronic mail. Electronic mail may be used only when specifically authorized by Nasdaq staff, however, because it is impossible to control the delivery time of electronic mail.

[6] In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[7] 15 U.S.C. 78o–3(b)(6).

limits its purview to transactions arising out of the use or operation of Nasdaq execution or communication systems and explicitly requires that the parties to a reviewable transaction be readily identifiable by Nasdaq through its systems. The Commission believes that the amended rule better reflects Nasdaq's interpretation of the scope of its rule. Nasdaq has represented that in the past it has declined to adjudicate petitions on the grounds that the transaction would be more appropriately reviewed by the market center on which it was executed. Therefore, the Commission believes that the proposed rule change clarifies the application and operation of the rule for market participants.

Nasdaq also proposes to amend NASD rule 11890 to state that Nasdaq's authority to review transactions based upon its own motion may be exercised in the event of extraordinary market conditions or other circumstances in which the nullification or modification of transactions may be necessary for the maintenance of a fair and orderly market or the protection of investors and the public interest. The Commission believes that the proposal clarifies Nasdaq's authority to nullify or modify transactions on its own motion and provides Nasdaq with the flexibility to address a variety of extraordinary market conditions expeditiously. The Commission notes that Nasdaq expects to assert its authority primarily in circumstances where the disruption or malfunction of a system resulted in the execution of trades with obvious errors, such as a price substantially unrelated to the inside market. Nasdaq has also represented that it will not attempt to break or modify trades entered into through, or reported to, a UTP exchange. Nasdaq will endeavor to coordinate its actions with other market centers to achieve consistent treatment of trades outside Nasdaq's jurisdiction.

Regarding the review of Nasdaq determinations by the MORC, Nasdaq proposes that an officer empowered to review transactions on Nasdaq's own motion (*i.e.*, the President or an Executive Vice President) may determine that the number of transactions affected by a decision to break or modify trades on Nasdaq's own motion is such that the decision must be accorded immediate finality in order to maintain a fair and orderly market and to protect investors and the public interest. The Commission believes that Nasdaq's proposal is reasonable and that the market may be well served by the finality it provides. Furthermore, Nasdaq has represented, and the Commission expects, that Nasdaq would use this authority only on rare occasions. For example, Nasdaq believes that there may be circumstances in which review by the MORC of a large number of trades would be impractical and could expose market participants to unacceptable levels of risk.[8]

Finally, Nasdaq proposes to describe in greater detail the parameters for communications between Nasdaq and market participants. The Commission believes that the proposal may clarify procedural aspects of the process of reviewing transactions and therefore promote the fair and efficient resolution of disputes.

IV. Conclusion

For the reasons discussed above, the Commission finds that the proposal, as amended, is consistent with the Act and the rules and regulations thereunder. It is therefore ordered, pursuant to section 19(b)(2) of the Act,[9] that the proposed rule change (SR–NASD–2002–127), as amended, be and hereby is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–2017 Filed 1–28–03; 8:45 am]

BILLING CODE 8010–01–P

[8] For example, Nasdaq believes that if an erroneously priced order or quote causes a large number of transactions to occur at prices far in excess of a security's true value and if a decision is made to break all of the affected trades, some sellers may appeal the decision to break the trades. If a market participant is a party to trades on both sides of the market, and some remain broken while others are appealed and reinstated, it will suffer losses that arise solely from the inconsistent treatment of its trades.

[9] 15 U.S.C. 78s(b)(2).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47223; File No. SR–PCX–2002–75]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Pacific Exchange, Inc., Through Its Subsidiary PCX Equities, Inc., Relating to New Order Types and To Amend PCXE Rule 7.37

January 21, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and rule 19b–4 thereunder,[2] notice is hereby given that on December 9, 2002, the Pacific Exchange, Inc. ("PCX" or "Exchange"), through its subsidiary, PCX Equities, Inc. ("PCXE"), filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in items I, II, and III below, which items have been prepared by the PCX. On January 15, 2003, the Exchange filed Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, the Exchange submitted a new form 19b–4, which replaced the original filing in its entirety.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PCX, through its wholly owned subsidiary, PCXE, proposes to amend its rules governing the Archipelago Exchange, the equities trading facility of PCXE, by: (1) Adopting several new order types to accommodate the trading of securities listed on the Nasdaq Stock Market, Inc., on an unlisted trading privileges ("UTP") basis; (2) amending PCXE rule 7.37 to provide for a limited exemption from the trade-through restrictions for some of these new order types; (3) amending certain provisions of the Working Order Process to reflect the unique operational requirements of two proposed order types; and (4) making several minor technical rule changes to conform to the Nasdaq UTP Plan, which extends UTP to Nasdaq SmallCap securities. The text of the proposed rule change follows:

Additions are *italicized*; deletions are in [brackets].

PCX Equities, Inc.

Rule 1 Definitions

Rule 1.1(a)–(z)—No change.

Nasdaq[/NM] Security

(aa) The term "Nasdaq[/NM] Security" shall mean any security (i) designated as *an eligible* [national market system] security pursuant to the *"Nasdaq Unlisted Trading Privileges Plan", as amended,* [NASD's "National Market System Securities Designation Plan with respect to Nasdaq Securities,"] filed with and approved by the Commission pursuant to SEC rule 11Aa2–1 under the Exchange Act and (ii) that is either listed on the Corporation pursuant to rule 5 or as to which unlisted trading privileges have been granted pursuant to section 12(f) of the Exchange Act.

Rule 1.1 (bb)–(hh)—No change.

OTC/UTP Plan

(ii) The term "OTC/UTP Plan" shall mean the Nasdaq *Unlisted Trading*

Privileges [National Market/Unlisted Trading System/Unlisted Trading Privileges] Plan, as from time to time amended according to its provisions.

OTC/UTP *Listing* [Primary] Market

(jj) The term "OTC/UTP *Listing* [Primary] Market" for a Nasdaq[/NM] Security means *the OTC/UTP Participant's Market on which the Nasdaq Security is listed. If the Nasdaq Security is dually listed, OTC/UTP Listing Market shall mean the OTC/UTP Participant's Market on which the Nasdaq Security is listed that also has the highest number of the average of the reported transactions and reported share volume for the preceding 12-month period. The OTC/UTP Listing Market for dually-listed Nasdaq Securities shall be determined at the beginning of each calendar quarter.* [Nasdaq; provided, however, that if for any 12-month period the number of reported transactions and the reported share volume in a Nasdaq/NM Security in any other OTC/UTP Participant's market exceeds 50% of the aggregate reported transactions and reported share volume of all OTC/UTP Participants in such security, then that OTC/UTP Participant's market shall be the OTC/UTP Primary Market.]

OTC/UTP Regulatory Halt

(kk) The term "OTC/UTP Regulatory Halt" means a trade suspension or halt called by the OTC/UTP *Listing* [Primary] Market for the purpose of dissemination of material news.

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Rule 7 Equities Trading

Trading in Nasdaq[/NM] Securities

Rule 7.18(a) Access.

(1) The Corporation shall permit each Nasdaq Market Maker, acting in its capacity as a market maker, telephone access, or such other access as may be established between the Corporation and the Nasdaq System (collectively, "approved access"), to the Corporation for each Nasdaq[/NM] Security in which such market maker is registered as a market maker. Such approved access shall include appropriate procedures to assure the timely response to communications received through telephone or other approved access.

(2) Nasdaq Market Makers may use such approved access to transmit orders for execution on the Corporation. Market Makers, via the facilities of the Corporation, may send orders via approved access to any Nasdaq Market Maker in each Nasdaq[/NM] security in which it displays quotations.

(3)—No change.

(4) No Market Maker shall permit the imposition of any access or execution fee, or any other fee or charge, with respect to transactions in Nasdaq[/NM] Securities effected with Nasdaq Market Makers that are communicated to the Corporation through telephone access.

(b)—No change.

(c) OTC/UTP Regulatory Halts. Whenever, in the exercise of its regulatory function, the OTC/UTP *Listing* [Primary] Market for a Nasdaq[/NM] Security determines that an OTC/UTP Regulatory Halt is appropriate, the Corporation shall halt or suspend trading in that security until the notification by the OTC/UTP *Listing* [Primary] Market that the halt or suspension is no longer in effect. The Corporation will assume that adequate publication or dissemination has occurred upon the expiration of one hour after initial publication in a national news dissemination service of the information that gave rise to an OTC/UTP Regulatory Halt and may, at its discretion, reopen trading at that time, notwithstanding notification from the OTC/UTP *Listing* [Primary] Market that the halt or suspension is no longer in effect.

(d) Applicability. The following rules of the Corporation will not be applicable to transactions on the Corporation in Nasdaq[/NM] Securities: rules 7.16, 7.55–7.57.

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Orders and Modifiers

Rule 7.31(a)—(c)—No change.

(d) Inside Limit Order. A Limit Order, which, if routed away pursuant to rule 7.37(d), will be routed to the market participant with the best displayed price. Any unfilled portion of the order will not be routed to the next best price level until all quotes at the current best bid or offer are exhausted. If the order is no longer marketable it will be ranked in the Arca Book pursuant to rule 7.36. [Reserved.]

(e) Immediate-or-Cancel Order. A market or limit order that is to be executed in whole or in part as soon as such order is received, and the portion not so executed is to be treated as canceled. An immediate-or-cancel order for Trade-Through Exempt Securities (as defined in rule 7.37) will be permitted to trade at a price no more than three cents ($0.03) away from the NBBO displayed in the Consolidated Quote. *The NBBO price protection provision set forth in rule 7.37 will not apply to immediate-or-cancel orders in Nasdaq securities.*

(f)—(g)—No change.

(h) Working Order. Any order with a conditional or undisplayed price and/or size designated as a "Working Order" by the Corporation, including, without limitation:

(1)—No change.

(2) Discretionary Order. An order to buy or sell a stated amount of a security at a specified, undisplayed price (the "discretionary price"), in addition to at a specified, displayed price ("displayed price.")

(A) Passive Discretionary Order. A Discretionary Order may be designated as a Passive Discretionary Order and such order will be routed pursuant to rule 7.37(d) only if the displayed price is marketable against an away market participant.

(i) For Passive Discretionary Orders in exchange-listed securities, if the discretionary price is marketable, such order will only interact with trading interest in the Arca Book pursuant to rule 7.37(b)(2) and will not be routed away. A Passive Discretionary Order for ITS Trade-Through Exempt Securities will be permitted to trade at a price no more than three cents ($0.03) away from the NBBO displayed in the Consolidated Quote.

(ii) For Passive Discretionary Orders in Nasdaq securities, if the discretionary price can be matched against orders in the Arca Book, such order will intereact with trading interest in the Arca Book pursuant to 7.37(b)(2). The NBBO price protection provision set forth in rule 7.37 will not apply to Passive Discretionary Orders in Nasdaq securities.

(B) Discretion Limit Order. A Discretionary Order may be designated as a Discretion Limit Order for Nasdaq securities only. If the discretionary price of a Discretion Limit Order can be matched against trading interest in the Arca Book, then such order will be executed at the discretionary price or better. If the discretionary price of a Discretion Limit Order can be matched against an away market participant, then such order will be routed pursuant to rule 7.37(d) but only if the displayed share size of the Discretion Limit Order is equal to or less than the displayed share size of the away market participant. The NBBO price protection provision set forth in rule 7.37 will not apply to Discretion Limit Orders in Nasdaq securities.

(3) Reserve Order. A limit order with a portion of the size displayed and with a reserve portion of the size ("reserve size") that is not displayed on the Corporation.

(A) Sweep Reserve Order. A Reserve Order may be designated as a Sweep Reserve Order. Based upon a User's instruction, if the displayed price of a Sweep Reserve Order is marketable

against an away market participant(s), then such order will be routed (i) serially as component orders, such that each component corresponds to the displayed price, or (ii) only once in its entirety, including both the displayed and reserve portions.

(B) Random Reserve Order. A Reserve Order designated as a Random Reserve Order will have a random reserve value which, as a range of round lots, will vary the displayed size of the Reserve Order. A random reserve value set to zero will permit the displayed size of the Reserve Order to vary to within 20% of the original specified displayed size.

(i)—(u)—No change.

(v) NOW Order. A Limited Price Order that is to be executed in whole or in part on the Corporation, and the portion not so executed shall be routed pursuant to rule 7.37(d) only to one or more NOW Recipients for immediate execution as soon as the order is received by the NOW Recipient. Any portion not immediately executed by the NOW Recipient shall be cancelled. If a NOW Order is not marketable when it is submitted to the Corporation, it shall be cancelled. NOW Orders may not be Directed Orders. NOW Orders for *ITS* Trade-Through Exempt Securities (as defined in rule 7.37) may be routed and executed at a price that is no more than three cents ($0.03) away from the NBBO displayed in the Consolidated Quote. *The NBBO price protection provision set forth in rule 7.37 will not apply to NOW Orders in Nasdaq securities.*

(w) PNP Order (Post No Preference). A limit order to buy or sell that is to be executed in whole or in part on the Corporation, and the portion not so executed is to be ranked in the Arca Book, without routing any portion of the order to another market center; provided, however, the Corporation shall cancel a PNP Order that would lock or cross the NBBO. PNP Orders for Trade-Through Exempt Securities (as defined in rule 7.37) will not be canceled at the time of order entry if such orders would lock or cross the NBBO. PNP Orders in *ITS* Trade-Through Exempt Securities may be executed at a price no more than three cents ($0.03) away from the NBBO displayed in the Consolidated Quote. *The NBBO price protection provision set forth in Rule 7.37 will not apply to PNP Orders in Nasdaq securities.*

(x)—(z)—No change.

(aa)—(bb)—Reserved.

(cc) Pegged Order. A limit order to buy or sell a stated amount of a security at a display price set to track the current bid or ask of the NBBO in an amount specified by the User. The associated price of each Pegged Order that is updated will be assigned a new entry time with priority in accordance with rule 7.36(a). A Pegged Order may be designated as a Reserve Order or Discretionary Order.

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Order Execution

Rule 7.37. Subject to the restrictions on short sales under rule 10a–1 under the Exchange Act, like-priced orders, bids and offers shall be matched for execution by following Steps 1 through 5 in this rule; provided, however, for an execution to occur in any Order Process, the price must be equal to or better than the NBBO, unless the Archipelago Exchange has routed orders to away markets at the NBBO, where applicable (however, a User may submit a NOW Order or Primary Only Order that may be routed to an away market without consideration of the NBBO). This rule will not apply to *designated order types including IOC, NOW, PNP, Passive Discretionary, Discretion Limit (except for exchange-listed securities), IOC Cross and PNP Cross orders in Nasdaq securities or* securities that are subject to an exemption from the Commission under SEC rule 11Aa3–2(f) to the trade-through provisions of the *ITS* Plan ("*ITS* Trade-Through Exempt Securities"). Orders in *ITS* Trade-Through Exempt Securities [designated as IOC, NOW and PNP orders] will be effected at a price no more than three cents ($0.03) away from the best bid and offer quoted in CQS.

(a)—No change.

(b)(1)—No change.

(2) Step 3: Working Order Process.

(A) An incoming marketable order shall be matched for execution against orders in the Working Order Process in the following manner:

(i)—(iii)—No change.

(iv) *Determination of a Passive Discretionary Order's Execution Price.*

(a) For Nasdaq Securities, if the BBO is outside the NBBO and a Passive Discretionary Order(s) within the Working Order Process has a discretionary price worse than the NBBO, then the incoming order will execute against such Passive Discretionary Order(s) at the price of the incoming order or the displayed price of the Discretionary Order(s), whichever is better.

(b) For Nasdaq Securities, if the BBO is outside the NBBO and a Passive Discretionary Order(s) within the Working Order Process has a discretionary price equal to or better than the NBBO, then the incoming order will execute against such Passive Discretionary Order(s) pursuant to subsection (2)(A)(ii) above.

(c) For ITS Trade-Through Exempt Securities (as defined in Rule 7.37), if the BBO is outside the NBBO and a Passive Discretionary Order(s) within the Working Order Process has a discretionary price worse than the NBBO by three cents ($0.03) or less, the incoming order will execute against such Passive Discretionary Order(s) at the price of the incoming order or the displayed price of the Discretionary Orders(s), whichever is better.

(v)—No change.

(B) An incoming order that is not marketable shall be matched for execution against orders in the Working Order Process in the following manner:

(i)—(ii)—No change.

(C) *With the exception of Passive Discretionary Orders and Discretion Limit Orders,* [I]if any change in the NBBO or other available away trading interest would cause a potential match between the away order and an order in the Working Order Process, a commitment to trade shall be sent to that market center or market participant pursuant to Step 5 below after having proceeded through Step 4.

(i) Passive Discretionary Orders will be routed away only if the displayed price is marketable against an away market participant.

(ii) Discretion Limit Orders will be routed away only if the displayed share size of the Discretion Limit Order is equal to or less than the displayed share size of the away market participant.

(c)—(e)—No change.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in item IV below. PCX has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Purpose

1. *Proposed New Order Types*

As part of its ongoing preparation for the trading of Nasdaq securities on the Archipelago Exchange ("ArcaEx")

facility pursuant to UTP,[4] PCX proposes to adopt several new order types, which are currently in use on the Archipelago electronic communication network ("ECN").[5] These proposed order types will apply to both Nasdaq and listed securities traded on ArcaEx.[6] The Exchange believes that these order types will provide ETP Holders[7] and Sponsored Participants[8] (collectively "Users") greater flexibility in determining how their orders will be executed. The proposed order types are discussed below.

a. *Inside Limit Order*

An Inside Limit Order is a limit order that is to be executed in whole or in part on ArcaEx, and the portion not so executed would be routed pursuant to rule 7.37(d) to the market participant[9] with the best displayed price. Any unfilled portion of the order would not be routed to the next best price level until all quotes at the current best bid or offer are exhausted. For example, after having proceeded through the four order execution processes of the ArcaEx Book,[10] there remains an unexecuted portion of an Inside Limit Order to buy at a price of 12.50. ArcaEx would route the order to the away market participant with the best displayed offer. Suppose the best displayed offer by other market participants is Market A at 12.45, Market B at 12.46, Market C at 12.47, and Market D at 12.50. The Inside Limit Order would be routed first to Market A at 12.45. The balance of the Inside Limit Order would not be routed to the next price level (*i.e.*, Market B at 12.46) until the current offer is exhausted. Each successive number of shares remaining (if any) would be routed at the next price level in the same manner. If the Inside Limit Order is no longer marketable it would be ranked in the Arca Book pursuant to rule 7.36.

b. *Discretionary Orders*

Currently, a User can submit a Discretionary Order, which is an order to buy or sell a stated amount of a security at a specified, undisplayed price (the "discretionary price"), as well as at a specified, displayed price. The undisplayed prices of a Discretionary Order are represented in the Working Order Process[11] and can be matched with orders on the other side of the market under prescribed conditions. Since the Discretionary Order type allows a User to represent a single order at multiple price points, investors are able to express their trading interest more accurately than is possible with traditional order types. The Exchange is proposing to adopt two new variations of the Discretionary Order called a "Passive Discretionary Order" and a "Discretion Limit Order," which would provide Users with more flexibility when such orders are routed to away market participants. A summary of these proposed order types is discussed below.

i. *Passive Discretionary*

The Exchange proposes to add PCXE rule 7.31(h)(2)(A) to define a Passive Discretionary Order. A Discretionary Order may be designated as a Passive Discretionary Order and such order would be routed pursuant to rule 7.37(d) only if the displayed price is marketable against an away market participant. If the discretionary price of a Passive Discretionary Order were marketable, such order would only interact with trading interest in the ArcaEx Book pursuant to rule 7.37(b)(2) and would not be routed away. Under the proposal, the Passive Discretionary order type will be available for exchange-listed and Nasdaq securities. For Passive Discretionary Orders in exchange-listed securities, if the discretionary price is marketable, such order will only interact with trading interest in the ArcaEx Book pursuant to rule 7.37(b)(2) and will not be routed away. A Passive Discretionary Order for ITS Trade-Through Exempt Securities (as defined in rule 7.37) will be permitted to trade at a price no more than three cents ($0.03) away from the NBBO displayed in the Consolidated Quote. For Passive Discretionary Orders in Nasdaq securities, if the discretionary price can be matched against orders in the ArcaEx Book, then such order will interact with trading interest in the ArcaEx Book pursuant to 7.37(b)(2). The NBBO price protection provision set forth in rule 7.37 will not apply to Passive Discretionary Orders in Nasdaq securities.

To illustrate how this order type is processed by the ArcaEx trading system, suppose that a User submits a Passive Discretionary Order to buy 1000 shares at 12.48 (discretion to 12.50). After first attempting to match the order with available trading interest in the ArcaEx Book (up to a price of 12.50), ArcaEx would route the order to an away market participant, but only if the offer published by the market participant is equal to or less than the displayed price of 12.48. In the event that a Passive Discretionary Order routed from ArcaEx to another market participant is not executed in its entirety at the other market participant's quote, ArcaEx would attempt to match the residual against trading interest in the ArcaEx Book pursuant to rule 7.37. Finally, if the Passive Discretionary Order is no longer marketable it would be ranked in the ArcaEx Book pursuant to rule 7.36.

ii. *Discretion Limit*

The Exchange also proposes to add PCXE rule 7.31(h)(2)(B) to define a Discretion Limit Order. A Discretionary Order may be designated as a Discretion Limit Order for Nasdaq securities only. If the discretionary price of a Discretion Limit Order could be matched against trading interest in the ArcaEx Book, then such order would be executed at the discretionary price or better against the displayed share size of available trading interest in the ArcaEx Book, regardless of size. If the discretionary price of a Discretion Limit Order could be matched against an away market participant, then such order would be routed pursuant to rule 7.37(d) but only if the displayed share size of the Discretion Limit Order is equal to or less than the displayed share size of the away market participant. As discussed in more detail in section 2 below, the Exchange is proposing that the NBBO price protection provision set forth in rule 7.37 will not apply to Discretion Limit Orders.

c. *Reserve Orders*

Under current PCXE rule 7.31(h)(3), a Reserve Order is a limit order with a portion of the size displayed and with a reserve portion of the size ("reserve size") that is not displayed on the

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[4] The Nasdaq UTP Plan was initially approved in 1990. *See* Securities Exchange Act Release No. 28146 (June 26, 1990), 55 FR 27919 (July 6, 1990) (S7–24–89). It has subsequently been amended on several occasions to, among other things, admit new Participants. *See also* Securities Exchange Act Release No. 46381 (August 19, 2002), 67 FR 54687 (August 23, 2002) (S7–24–89) (Order approving most recent amendments to Nasdaq UTP Plan, the 13th Amendment).

[5] The broker-dealer commonly referred to as the Archipelago ECN is Archipelago Securities, a wholly owned subsidiary of Archipelago Holdings LLC and a member of the NASD. The ECN function will cease to operate as such once all the Nasdaq securities have been transferred to ArcaEx.

[6] The proposed Discretion Limit order type will apply to Nasdaq securities only. *See* proposed PCXE rule 7.31(h)(2)(B).

[7] *See* PCXE rule 1.1(n).

[8] A "Sponsored Participant" means "a person which has entered into a sponsorship arrangement with a Sponsoring ETP Holder pursuant to [PCXE] rule 7.29." *See* PCXE rule 1.1(tt).

[9] *See* PCXE rule 1.1(w) (definition of "market participant").

[10] ArcaEx maintains an electronic file of orders, called the ArcaEx Book, through which orders are displayed and matched. The ArcaEx Book is divided into four components, called processes—the Directed Order Process, the Display Order Process, the Working Order Process, and the Tracking Order Process. *See* PCXE rule 7.37 for a detailed description of these order execution processes.

[11] The Working Order Process is the third step in the ArcaEx execution algorithm. Working Orders are defined to include any order with a conditional or undisplayed price and/or size, including All-or-None, Discretionary, and Reserve Orders. *See* PCXE rule 7.37(b)(2) (description of "Working Order Process").

ArcaEx Book. For example, a User could submit a Reserve Order to buy 5000 shares of XYZ security at 20 with a request that 1000 shares are displayed and 4000 shares, as the reserve size, are not displayed. With this filing, the Exchange is proposing to adopt two new variations of the Reserve Order called a "Sweep Reserve Order" and a "Random Reserve Order." These proposed order types would be ranked and maintained in the Display Order Process [12] and/or Working Order Process of the ArcaEx Book according to price-time priority and would be processed for internal matches in a manner no different than a standard Reserve Order pursuant to PCXE rule 7.37(b)(2). The proposed rule change regarding Sweep Reserve Orders merely provides a clarification as to the manner in which such orders would be treated through ArcaEx's trading system when the routing of these orders to other market participants is required. In the case of a Random Reserve Order, the proposed rule change would allow a User to define the original display quantity and a random reserve value that would be used to determine the displayed quantity within a defined range each time it is replenished. These proposed order types are discussed separately below.

i. *Sweep Reserve Order*

Under proposed PCXE rule 7.31(h)(3)(A), a Reserve Order may be designated as a Sweep Reserve Order. Based upon a User's instruction, if the displayed price of a Sweep Reserve Order is marketable against an away market participant(s), then such order will be routed (i) serially as component orders, such that each component corresponds to the displayed price, or (ii) only once in its entirety, including both the displayed and reserve portions. The Exchange believes that this rule change codifies current order routing methodology, and that the proposed Sweep Reserve Order type is clearly implied in current PCXE rule 7.37(d)(2)(A)(ii).

ii. *Random Reserve Order*

The Exchange proposes to add PCXE rule 7.31(h)(3)(B) to define a Random Reserve Order. Under the rule proposal, a User could define not only a display and reserve quantity, but also a random reserve delta that could be used to determine the displayed quantity within a defined range each time it is replenished in a random amount (rounded to the nearest round lot). Users are required to display at least 100 shares for all Reserve Orders including Random Reserve Orders. The following examples illustrate the use of the Random Reserve Order.

Suppose a User entered a Random Reserve Order for 10,000 shares with a display quantity of 2000 shares and a random reserve delta of 200 shares. This order would randomly display orders at 1800 (200 shares less than the original display quantity), 1900 (100 shares less than the original display quantity), 2000, 2100 (100 shares more than the original display quantity) or 2200 shares (200 shares more than the original display quantity) each time the displayed portion of the order is replenished. If the User does not specify the random reserve delta or the random reserve delta is set to zero, the ArcaEx system would assign the displayed size of the Reserve Order to vary to within 20% of the original specified displayed size. In the example above, the displayed amount would fall within a 400-share range (*i.e.*, 20% of 2000 shares is 400 shares).

Should a User enter a Random Reserve Order with a display amount of 500 shares or less and a random reserve delta that is unspecified or set to zero, the order would be handled as a regular Reserve Order. Suppose a User entered a Random Reserve Order with a display amount of 100 shares, a reserve amount of 1,000 shares, and a random reserve of zero. The ArcaEx system would treat this order as a regular Reserve Order and the display quantity will be refreshed at the original displayed size (100 shares), *i.e.*, the ArcaEx system would not vary the display quantity for this order.

d. *Pegged Orders*

The Exchange is proposing to modify the ArcaEx trading system to accept Pegged Orders. A Pegged Order is a limit order to buy or sell a stated amount of a security at a display price set to track the current bid or ask of the NBBO in an amount specified by the User.[13] The tracking of the relevant Consolidated Quote information for Pegged Orders would occur on a real-time basis in a dynamic fashion. The associated price of each Pegged Order that is updated would be assigned a new entry time with priority in accordance with rule 7.36(a). A Pegged Order may be designated as a Reserve Order or Discretionary Order and would be subject to the applicable order execution rules. Finally, Pegged Orders are only eligible during the Core Session.

2. *Amendment to PCXE Rule 7.37*

The Exchange's current rules governing the order execution processes for orders in the ArcaEx Book are set forth in PCXE rule 7.37. Presently, rule 7.37 provides, in part, that for an execution to occur in any Order Process, the price must be equal to or better than the NBBO. The requirements of this rule do not apply to orders designated as Immediate-or-Cancel ("IOC"), NOW and Post No Preference ("PNP") in certain exchange-traded funds ("ETFs") that are subject to the Commission's order granting a *de minimis* exemption from the trade-through restrictions of the Intermarket Trading System ("ITS") Plan; provided, however, that any resulting executions will be at a price no more than three cents ($0.03) away from the NBBO displayed in the Consolidated Quote.[14] The current proposal would also broaden this exception to include Passive Discretionary, IOC Cross and PNP Cross order types.[15] The definition for a Passive Discretionary Order includes a provision clarifying the application of the Commission's *de minimis* exemption order. The Exchange is also proposing that the aforementioned NBBO price protection restriction would not apply to certain existing order types (IOC, NOW and PNP orders) and proposed new order types (Passive Discretionary, Discretion Limit, IOC Cross and PNP Cross) [16] in Nasdaq securities. The definition for IOC, NOW, PNP, Passive Discretionary and Discretion Limit order types [17] includes a provision clarifying that the NBBO price protection requirement set forth in rule 7.37 will not apply to these order types in Nasdaq securities. Unlike the market for listed securities, there is no linkage between participants in the Nasdaq UTP Plan and, therefore, no rules that prohibit a participant from trading through another participant's quote.[18] Consequently, the Exchange believes that it would not be praticable to attempt to provide such orders with intermarket price protection. The

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[12] The Display Order Process is the second step in the ArcaEx execution algorithm. In this process, the ArcaEx system matches an incoming marketable order against orders in the Display Order Process at the display price of the resident order for the total size available at the that price or for the size of the incoming order. *See* PCXE rule 7.37(b) (description of "Display Order Process").

[13] *See* proposed PCXE rule 7.31(cc) (definition of "Pegged Order").

[14] *See* Securities Exchange Act Release No. 46428 (August 28, 2002), 67 FR 56607 (September 4, 2002) (Order Pursuant to Section 11A of the Act and Rule 11Aa3–2(f) thereunder Granting a De Minimus Exemption for Transactions in Certain ETFs from the ITS Trade-Through Provisions. *See also* Securities Exchange Act Release No. 46684 (October 17, 2002), 67 FR 65618 (October 25, 2002) (SR-PCX–2002–69).

[15] The Exchange notes that it has filed a separate proposed rule change relating to IOC Cross and PNP Cross Orders. *See* Securities Exchange Act Release No. 47010 (December 16, 2002), 67 FR 78554 (December 24, 2002) (SR–PCX–2002–74).

[16] *Id.*

[17] *See generally* PCXE rule 7.31.

[18] *See* note 1, *supra*.

Exchange also believes that these proposed orders are sophisticated types of orders, and persons using these orders will understand the benefits and limitations of their use. Moreover, such orders are still subject to a broker's duty of best execution for its customer.

3. *Working Order Process*

The Exchange proposes the following conforming changes to certain provisions of the Working Order Process set forth in PCXE rule 7.37(b)(2):

a. *Current PCXE Rule 7.37(b)(2)(C)*—This section has been modified to clarify the conditions in which a Passive Discretionary Order and Discretion Limit Order would be routed to an away market participant's quote. Passive Discretionary Orders would be routed away only if the displayed price is marketable against an away market participant. Discretion Limit Orders would be routed away only if the displayed share size of such order is equal to or less than the displayed share size of the away market participant.

b. *Proposed PCXE Rule 7.37(b)(2)(A)(iv)*—Several pricing scenarios have been added to the Working Order Process regarding incoming marketable orders that could be matched against a Passive Discretionary Order. First, for Nasdaq securities, if the BBO is outside the NBBO and a Passive Discretionary Order(s) within the Working Order Process has a discretionary price worse than the NBBO, then the incoming order would execute against such Passive Discretionary Order(s) at the price of the incoming order or the displayed price of the Discretionary Order(s), whichever is better. Second, for Nasdaq securities, if the BBO is outside the NBBO and a Passive Discretionary Order(s) within the Working Order Process has a discretionary price equal to or better than the NBBO, then the incoming order would execute against such Passive Discretionary Order(s) pursuant to current rule 7.37(b)(2)(A)(ii). Finally, for ITS Trade-Through Exempt Securities (as defined in rule 7.37), if the BBO is outside the NBBO and a Passive Discretionary Order(s) within the Working Order Process has a discretionary price worse than the NBBO by three cents ($0.03) or less, the incoming order would execute against such Passive Discretionary Order(s) at the price of the incoming order or the displayed price of the Discretionary Orders(s), whichever is better.

4. *Technical Changes*

Minor technical changes have been made throughout PCXE rules 1.1 and 7.18 to conform to the Nasdaq UTP Plan, which extends UTP to Nasdaq SmallCap securities. Accordingly, the Exchange is proposing to delete references to the term "Nasdaq/NM Security" and replacing it with "Nasdaq Security." In addition, several definitions contained in rule 1.1 are being amended to reflect the change in name of the Nasdaq UTP Plan. Finally, current PCXE rule 1.1(jj), which defines the term "OTC/UTP Primary Market," is being amended to reflect that the Listing Market, rather than the Primary Market, would have the authority to call a Regulatory Halt pursuant to PCXE rule 7.18(c). A definition of "OTC/UTP Listing Market" is being adopted from the Nasdaq UTP Plan.[19]

The Exchange believes that the implementation of the aforementioned order types will facilitate enhanced order interaction and foster price competition. The proposal also promotes a more efficient and effective market operation, and provides market participants with greater flexibility in determining how their orders would be executed.

Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act, [20] in general, and further the objectives of section 6(b)(5),[21] in particular, because it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments and perfect the mechanisms of a free and open market and to protect investors and the public interest. In addition, the Exchange believes that the proposed rule change is consistent with provisions of section 11A(a)(1)(B) of the Act,[22] which states that new data processing and communications techniques create the opportunity for more efficient and effective market operations.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

[19] *Id.*

[20] 15 U.S.C. 78f(b).

[21] 15 U.S.C. 78f(b)(5).

[22] 15 U.S.C. 78k–1(a)(1)(B).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the PCX consents, the Commission will:

(A) By order approve such proposed rule change; or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filings will also be available for inspection and copying at the principal office of the PCX. All submissions should refer to File No. SR–PCX–2002–75 and should be submitted by February 19, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[23]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–1978 Filed 1–28–03; 8:45 am]

BILLING CODE 8010–01–P

[23] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 4253]

Culturally Significant Objects Imported for Exhibition Determinations: "The Glory of the Silk Road: Art from Ancient China"

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236 of October 19, 1999, as amended, I hereby determine that the objects to be included in the exhibition "The Glory of the Silk Road: Art from Ancient China," imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners. I also determine that the exhibition or display of the exhibit objects at the Dayton Art Institute, Dayton, OH, from on or about February 8, 2003 to on or about May 11, 2003, at the Memphis Brooks Museum of Art from on or about June 7, 2003 to on or about August 3, 2003, and at possible additional venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Office of the Legal Adviser, U.S. Department of State, (telephone: 202/619–6982). The address is U.S. Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: January 22, 2003.

Patricia S. Harrison,

Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 03–2024 Filed 1–28–03; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice Before Waiver With Respect to Land at Twin County Airport, Galax, VA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent of waiver with respect to land.

SUMMARY: The FAA is publishing notice of proposed release of 5.664 acres of land at the Twin County Airport, Galax, Virginia to the Twin County Airport Commission of which 1 acre will be sold for the construction of a local fire department substation. There are no adverse impacts to the Airport and the land is not needed for airport development as shown on the Airport Layout Plan. Fair Market Value of the land will be deposited into a sponsor owned interest bearing account, and used for airport purposes.

DATES: Comments must be received on or before February 28, 2003.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Terry J. Page, Manager, FAA Washington Airports District Office, 23723 Air Freight Lane, Suite 210, Dulles, VA 20166.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Michael Coomes, Chairman of Twin County Airport Commission, at the following address: Michael Coomes, Chairman, Twin County Airport Commission, PO Box 1100, Galax, VA 24333.

FOR FURTHER INFORMATION CONTACT: Mr. Terry Page, Manager, Washington Airports District Office, 23723 Air Freight Lane, Suite 210, Dulles, VA 20166; telephone (703) 661–1354, fax (703) 661–1370, e-mail: *Terry.Page@faa.gov.*

SUPPLEMENTARY INFORMATION: On April 5, 2000, new authorizing legislation became effective. That bill, the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century, Public Law 10–181 (Apr. 5, 2000; 114 Stat. 61) (AIR 21) requires that a 30 day public notice must be provided before the Secretary may waive any condition imposed on an interest in surplus property.

Issued in Chantilly, Virginia on January 16, 2003.

Terry J. Page,

Manager, Washington Airports District Office, Eastern Region.

[FR Doc. 03–2055 Filed 1–28–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Approval of Noise Compatibility Program Brownsville/South Padre Island International Airport Brownsville, TX

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its findings on the noise compatibility program submitted by city of Brownsville for Brownsville/South Padre Island International Airport under the provisions of Title 49, USC, Chapter 475 and CFR part 150. These findings are made in recognition of the description of Federal and non-Federal responsibilities in Senate Report No. 96–52 (1980). On June 25, 2002, the FAA determined that the noise exposure maps submitted by the city of Brownsville for Brownsville/South Padre Island International Airport under Part 150 were in compliance with applicable requirements. On December 22, 2002, the Administrator approved the noise compatibility program. Most of the recommendations of the program were approved.

EFFECTIVE DATE: The effective date of the FAA's approval of the noise compatibility program for Brownsville/South Padre Island International Airport is December 22, 2002.

FOR FURTHER INFORMATION CONTACT: Ms. Nan L. Terry, Department of Transportation, Federal Aviation Administration, 2601 Meacham Boulevard, Fort Worth, Texas, 76137, (817) 222–5607. Documents reflecting this FAA action may be reviewed at this same location.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA has given its overall approval to the noise compatibility program for Brownsville/South Padre Island International Airport, effective December 22, 2002.

Under Title 49 USC, Section 47504 (hereinafter referred to as "Title 49"), an airport operator who has previously submitted a noise exposure map may submit to the FAA a noise compatibility program which sets forth the measures taken or proposed by the airport operator for the reduction of existing non-compatible land uses within the area covered by the noise exposure maps. Title 49 requires such programs to be developed in consultation with interested and affected parties including local communities, government

agencies, airport users, and FAA personnel..

Each airport noise compatibility program developed in accordance with Federal Aviation Regulations (FAR) Part 150 is a local program, not a Federal program. The FAA does not substitute its judgment for that of the airport proprietor with respect to which measures should be recommended for action. The FAA's approval or disapproval of FAR Part 150 program recommendations is measured according to the standards expressed in Part 150 and Title 49 and is limited to the following determinations:

a. The noise compatibility program was developed in accordance with the provisions and procedures of FAR Part 150,

b. Program measures are reasonably consistent with achieving the goals of reducing existing non-compatible land uses around the airport and preventing the introduction of additional non-compatible land uses,

c. Program measures would not create an undue burden on interstate or foreign commerce, unjustly discriminate against types or classes of aeronautical uses, violate the terms of airport grant agreements, or intrude into areas preempted by the Federal government, and

d. Program measures relating to the use of flight procedures can be implemented within the period covered by the program without derogating safety, adversely affecting the efficient use and management of the navigable airspace and air traffic control systems, or adversely affecting other powers and responsibilities of the Administrator prescribed by law.

Specific limitations with respect to the FAA's approval of an airport noise compatibility program are delineated in FAR part 150, § 150.5. Approval is not a determination concerning the acceptability of land uses under Federal, state, or local law. Approval does not by itself constitute a FAA implementing action. A request for Federal action or approval to implement specific noise compatibility measures may be required, and a FAA decision on the request may require an environmental assessment of the proposed action. Approval does not constitute a commitment by the FAA to financially assist in the implementation of the program nor a determination that all measures covered by the program are eligible for grant-in-aid funding from the FAA. Where Federal funding is sought, requests for project grants must be submitted to the FAA Airports Division Office in Forth Worth, Texas.

The city of Brownsville submitted to the FAA the noise exposure maps, descriptions, and other documentation produced during the noise compatibility planning study. The Brownsville/South Padre Island International Airport noise exposure maps were determined by the FAA to be in compliance with applicable requirements on June 25, 2002. Notice of this determination was published in the **Federal Register** on June 25, 2002.

The Brownsville/South Padre Island International Airport study contains a proposed noise compatibility program comprised of actions designed for phased implementation by airport management and adjacent jurisdictions from the date of study completion to the year 2005. It was requested that the FAA re-evaluate and approve this material as a noise compatibility program as described in Title 49. The FAA began its review of the program and was required by a provision of the Act to approve or disapprove the program within 180 days (other than the use of new flight procedures for noise control). Failure to approve or disapprove such program within the 180-day period shall be deemed to be an approval of such program.

The submitted program contained thirteen proposed actions for noise mitigation on and off the airport. The FAA completed its review and determined that the procedural and substantive requirements of Title 49 and FAR Part 150 have been satisfied. The overall program, therefore, was approved by the Administrator effective December 22, 2002.

Approval in part was granted for 12 of the 13 proposed action elements in the noise compatibility program proposed action elements in the noise compatibility program. The specific FAA action for each noise compatibility program element is set forth in the enclosed Record of Approval. The Administrator disapproved one of the thirteen proposed action elements in the noise compatibility program, pending submission of additional analysis. All of the approval and disapproval actions are more fully explained in the enclosed Record of Approval.

These determinations are set forth-in detail in a Record of Approval endorsed by the Administrator on December 22, 2002. The Record of Approval, as well as other evaluation materials and the documents comprising the submittal, are available at the FAA office listed above and at the administrative offices of the Department of Aviation, City of Brownsville, 700 S. Minnesota Avenue, Brownsville/South Padre Island International Airport, Brownsville, Texas 78521.

Issued in Forth Worth, Texas, January 22, 2003.

Naomi L. Saunders,

Manager, Airports Division.

[FR Doc. 03–2058 Filed 1–28–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA Special Committee 181/ EUROCAE Working Group 13: Standards of Navigation Performance

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of RTCA Special Committee 181/EUROCAE Working Group 13 meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of RTCA Special Committee 181/ EUROCAE Working Group 13: Standards of Navigation Performance.

DATES: The meeting will be held February 10–14, 2003 starting at 9 am.

ADDRESSES: The meeting will be held at the RTCA Inc., Suite 805, 1828 L Street, NW., Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: (1) RTCA Secretariat, 1828 L Street, NW., Suite 805, Washington, DC, 20036; telephone (202) 833–9339; fax (202) 833–9434; web site *http://www.rtca.org.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for a Special Committee 181/EUROCAE Working Group 13 meeting.

Note: Working Groups 1 & 4 will meet separately February 10–13.

The Plenary agenda will include:

- September 20
- Opening Plenary Session (Chairman Remarks, Review/Approval of Previous Meeting Minutes)
- Review Working Group (WG) Progress
  - WG–1 Report
  - WG–4 Report
- Review/Approval—Final Draft of Revised DO–257, Minimum Operational Performance Standards for the Depiction of Navigation Information on Electronic Maps, RTCA Paper No. 003–03/SC181–196
- Review/Approval—Proposed Change 1 to DO–283, Minimum Operational Performance Standards for Required Navigation Performance for Area

Navigation, RTCA Paper No. 005–03/SC181–198
- Other business
  - Aircraft Owner & Pilots Association Input to WG–4
  - FAA Position Paper
  - Terminal Area Operation Aviation Rulemaking Committee Related Activities
- Future of SC–181
- Closing Plenary Session (New Business, Review of Action Items, Future Meeting Schedule, Adjourn)

Attendance is open to the interested public but limited to space availability. With the approval of the chairmen, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Dated: Issued in Washington, DC, on January 14, 2003.

Janice L. Peters,

FAA Special Assistant, RTCA Advisory Committee.

[FR Doc. 03–2057 Filed 1–28–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Four Corners Regional Airport, Farmington, NM

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Four Corners Regional Airport under the provisions of the Aviation Safety and Capacity Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before February 28, 2003.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate copies to the FAA at the following address: Mr. G. Thomas Wade, Federal Aviation Administration, Southwest Region, Airports Division, Planning and Programming Branch, ASW–611, Fort Worth, Texas 76193–0610.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Richard Stein, Airport Manager of Four Corners Regional Airport at the following address: Four Corners Regional Airport, 800 Municipal Drive, Farmington, New Mexico 87401–2663.

Air carriers and foreign air carriers may submit copies of the written comments previously provided to the Airport under § 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Mr. G. Thomas Wade, Federal Aviation Administration, Southwest Region, Airports Division, Planning and Programming Branch, ASW–611, Fort Worth, Texas 76193–0610, (817) 222–5613.

The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Four Corners Regional Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On January 21, 2003, the FAA determined that the application to impose and use the revenue from a PFC submitted by the Airport was substantially complete within the requirements of § 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than May 15, 2003.

The following is a brief overview of the application.

Level of the proposed PFC: $3.00.

Proposed charge effective date: July 1, 2003.

Proposed charge expiration date: June 1, 2011.

Total estimated PFC revenue: $661.102.

PFC application number: 03–01–C–FMN.

Brief description of proposed project(s):

Projects To Impose and Use PFC's

A. Runway Improvements
B. Taxiway Improvements
C. Apron Improvements
D. Drainage Improvements
E. Airfield Signage Improvements
F. Airfield Electrical Improvements
G. Security Improvements
H. Terminal Improvements
I. Non-Revenue Parking Improvements
J. Acquire Safety Equipment
K. Conduct Planning Studies
L. Service Road Improvements
M. PFC Administrative Costs

Proposed class or classes of air carriers to be exempted from collecting PFC's: Air Taxi/Commercial Operators under Part 135 filing FAA Form 1800–31.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA regional Airports office located at: Federal Aviation Administration, Southwest Region, Airports Division, Planning and Programming Branch, ASW–610, 2601 Meacham Blvd., Fort Worth, Texas 76137–4298.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at Four Corners Regional Airport.

Issued in Fort Worth, Texas on January 22, 2003.

Naomi L. Saunders,

Manager, Airports Division.

[FR Doc. 03–2059 Filed 1–28–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application To Improve and Use the Revenue From a Passenger Facility Charge (PFC) at Monterey Peninsula Airport, Monterey, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Monterey Peninsula Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before February 28, 2003.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Airports Division, 15000 Aviation Blvd., Lawndale, CA 90261, or San Francisco Airports District Office, 831 Mitten Road, Room 210, Burlingame, CA 94010–1303. In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Tom Greer, Assistant

Manager, Monterey Peninsula Airport District, at the following address: 200 Fred Kane Drive, Suite 200, Monterey, CA 93940. Air carriers and foreign air carriers may submit copies of written comments previously provided to the Monterey Peninsula Airport District under § 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Marlys Vandervelde, Airports Program Analyst, San Francisco Airports District Office, 831 Mitten Road, Room 210, Burlingame, CA 94010–1303, Telephone: (650) 876–2806. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Monterey Peninsula Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On January 15, 2003, the FAA determined that the application to impose and use the revenue from a PFC submitted by the Monterey Peninsula Airport District was substantially complete within the requirements of § 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than April 15, 2003. The following is a brief overview of the use application No. 03–09–C–00–MRY:

Level of proposed PFC: $4.50.

Proposed charge effective date: May 1, 2003.

Proposed charge expiration date: April 1, 2004.

Total estimated PFC revenue: $688,938.

Brief description of the proposed projects: Access Security Control, Extension of Fire Alarm System to Safety Building, Acquisition of Property at 2825 Salinas/Monterey Highway, Passback Security System, Terminal Improvements and Modifications, Terminal Fire Door Replacement, Phase 2, Generator Power to Security Gate, Environmental Impact Report (EIR) for Airport Roadway Circulation Projects (Terminal Road, North Access Road, and 28L Service Road), and Terminal Expansion—Second Level.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Unscheduled Part 135 Air Taxi Operators.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA Regional Airports Division located at: Federal Aviation Administration, Airports Division, 15000 Aviation Blvd., Lawndale, CA 90261. In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Monterey Peninsula Airport District.

Issued in Lawndale, California, on January 15, 2003.

Mia Paredes Ratcliff,

Acting Manager, Airports Division Western-Pacific Region.

[FR Doc. 03–2056 Filed 1–28–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with Title 49 Code of Federal Regulations (CFR), parts 211.9 and 211.41 notice is hereby given that the Federal Railroad Administration (FRA) has received a request for waiver of compliance from certain requirements of Federal railroad safety regulations. The individual petition is described below, including the parties seeking relief, the regulatory provisions involved, the nature of the relief being requested and the petitioner's arguments in favor of relief.

Burlington Northern and Santa Fe Railway Company

Docket Number FRA–2003–14216

The Burlington Northern and Santa Fe Railway Company (BNSF) seeks a waiver of compliance from certain sections of 49 CFR parts 216, Special Notice and Emergency Order Procedures: Railroad Track, Locomotive and Equipment; 217, Railroad Operating Rules; 218, Railroad Operating Practices; 229, Railroad Locomotive Safety Standards; 233, Signal Systems Reporting Requirements; 235, Instructions Governing Applications for Approval of a Discontinuance or Material Modification of a Signal System or Relief from the Requirements of Part 236; 236, Rules, Standards, and Instructions Governing the Installation, Inspection, Maintenance, and Repair of Signal and Train Control Systems, Devices, and Appliances; and 240, Qualification and Certification Of Locomotive Engineers, under § 211.51, Tests, to allow them to develop, implement, and test technology designed to prevent train authority violations, overspeed violations and accidents caused by passing restricted signals and open switches. The program would enable BNSF to demonstrate and validate the technology, referred to as Train Sentinel, before it is implemented on a larger scale.

Petitioner's Justification

The petitioner provided the following justification for relief:

Train Sentinel is a non-vital safety overlay that works in conjunction with existing methods of operation and signal and control systems to protect against the consequences of human error. This approach provides a "safety net" for train operations while retaining the existing systems as a primary means of control. Because these systems continue in operation, a failure or deactivation of the Train Sentinel System has the effect only of suspending the safety enhancements associated with the Train Sentinel System, without compromising the underlying safety provisions of existing systems and operating rules.

The Train Sentinel System safety enhancements are achieved through a communication-based system that enforces movement authority and speed restrictions for Train Sentinel equipped trains. Four segments work together to provide the enforcement: The location segment, the locomotive segment, the dispatcher system segment and the communications segment. The dispatcher segment delivers the enforceable authority and temporary speed limits for each train under Train Sentinel control. This information is delivered through the communications segment to the locomotive segment. Procedures are implemented to ensure the data received is complete and correct. Failsafe design dictates that an undelivered message will stop the train at the end of its active authority. The locomotive segment confirms the locomotive's location and enforces a train's movement and speed limits by monitoring the train's location and speed and applying the brakes to stop the train if necessary to prevent a violation.

The Train Sentinel System will be tested and demonstrated on the BNSF's Wichita Falls subdivision in the State of Texas between Fort Worth, milepost 0 and Valley Junction, milepost 118.4. In addition, the system will be tested and demonstrated on the Brookfield subdivision in the State of Illinois between Galesburg, milepost 168 and West Bushnell, milepost 192.4. Finally, the system will be tested and demonstrated on the Beardstown subdivision in the State of Illinois and the Commonwealth of Kentucky between Bushnell, Illinois, milepost 159.6 and Paducah, Kentucky, milepost 239.0. The combined distance of the test territory is 439.3 miles. The present

method of operation on the BNSF is by Track Warrant Control and Centralized Traffic Control. These methods of operation will not be affected during the Train Sentinel test period.

Train Sentinel testing may require temporary changes of a benign nature in operating practices, but only on Train Sentinel equipped trains and only when a test is in progress. Such changes in operating practices will include Train Sentinel initialization procedures, digital transmission and on-board display of text authorities and restrictions, on-board display of signal aspect, on-board display of monitored switches, enforcement limits of authority and speed limits/restrictions through automatic brake applications, and procedures for recovery following an enforcement action.

The waiver is requested for a testing period commencing March 1, 2003, and extending to the conclusion of the test phase. The testing period is not expected to exceed one year and will terminate March 1, 2004 unless BNSF notifies FRA of an earlier termination date.

The following are the specific waiver requests and their justifications. References are to Chapter II, Subtitle B, Title 49 of the Code of Federal Regulations.

Section 216.13 Special Notice for Repairs—Locomotive

Waiver is requested for Train Sentinel locomotives to the extent that non-operation of Train Sentinel equipment installed on board, whether through malfunction or deactivation shall not be construed as an unsafe condition requiring special notice for repairs. Waiver is sought for non-equipped-Train Sentinel-equipped locomotives operating in the Train Sentinel pilot territory to the extent that the absence of Train Sentinel equipment on-board shall not be construed as an unsafe condition requiring special notice for repairs.

Justification: With or without Train Sentinel equipment operating on board the controlling locomotive, a train remains subject to existing signal and control systems and to railroad operating rules. (Train Sentinel is an overlaid system, enhancing current safety without affecting the operation of existing systems.) Train Sentinel tests require flexibility in installing, removing, turning on, and turning off the on-board equipment. The Train Sentinel tests will involve only a small subset of locomotives operating in the pilot territory.

Section 217.9 Program of Operational Tests and Inspections; Recordkeeping

Waiver is requested exempting operation of Train Sentinel equipment and procedures from the requirements for operational tests, inspections, and associated recordkeeping.

Justification: The Train Sentinel pilot is a test program during which procedures for using Train Sentinel equipment and functions will be refined and modified. Until such procedures are defined, they cannot be addressed in the code of operating rules, timetables, and timetable special instructions to which this section applies.

Section 217.11 Program of Instruction on Operating Rules; Recordkeeping; and Electronic Recordkeeping

Waiver is requested exempting operation of Train Sentinel equipment and procedures from the requirements for instruction and associated record keeping.

Justification: The Train Sentinel pilot is a test program during which procedures for using Train Sentinel equipment and functions will be refined and modified. Until such procedures are defined, they cannot be addressed in the code of operating rules.

Part 218 Subpart D: Prohibition Against Tampering With Safety Devices

Waiver is requested exempting on-board Train Sentinel equipment from the requirements of §§ 218.51, 218.53, 218.55, 218.57, 218.59, and 218.61 to the extent that Train Sentinel equipment on board a locomotive shall not be considered a "safety device" subject to the provisions of this subpart at any time during the pilot program.

Justification: The Train Sentinel pilot is a test program. Train Sentinel tests require flexibility in installing, removing, turning on, and turning off the on-board equipment. BNSF requires the flexibility to permanently disable or remove Train Sentinel equipment in the event that a production system is not implemented.

Section 229.135 Event Recorders

Waiver is requested to the extent that Train Sentinel equipment on-board a locomotive shall not be considered an "event recorder" subject to the provisions of this section.

Justification: Train Sentinel equipment by design will operate intermittently during the pilot program. Train Sentinel tests require flexibility in installing, removing, turning on, and turning off the on-board equipment. BNSF requires the flexibility to temporarily or permanently disable on-board Train Sentinel equipment.

Section 233.9 Reports

Waiver is requested exempting Train Sentinel operations in the pilot program from the reporting requirements of this section.

Justification: While a Train Sentinel production system may belong to the category of "other similar appliances, methods, and systems" specified in 233.1, this requirement would impose an unnecessary paperwork burden for a test program.

Section 235.5 Changes Requiring Filing of Application

Waiver is requested exempting the Train Sentinel pilot program from the filing requirements of this section.

Justification: The Train Sentinel pilot is a test program. Train Sentinel tests require flexibility in installing, removing, turning on, and turning off the on-board equipment. BNSF requires the flexibility to permanently disable or remove on-board Train Sentinel equipment in the event the Train Sentinel system is not implemented.

Section 236.4 Interference With Normal Functioning of Device

Waiver is requested to the extent that Train Sentinel equipment shall be excluded from this requirement during the pilot program.

Justification: The Train Sentinel pilot is a test program through which the normal functioning of Train Sentinel will be defined and redefined. Train Sentinel tests require flexibility in installing, removing, turning on, and turning off the on-board equipment. With or without Train Sentinel; equipment on-board the controlling locomotive, the train remains subject to the provisions of the existing signal and control systems and to the BNSF operating rules.

Section 236.5 Design of Control Circuits on Closed Circuit Principle

Waiver is requested exempting Train Sentinel equipment from the closed circuit design requirement.

Justification: Train Sentinel is composed of solid-state components that are software driven. Neither the hardware nor software can be designed technically to meet the provisions of this section.

Section 236.11 Adjustment, Repair, or Replacement of Component

Waiver is requested exempting Train Sentinel components on-board a locomotive from the requirements of this section.

Justification: Train Sentinel tests require flexibility in installing, removing, modifying, turning on and

turning off equipment. Failure of a component during the test phase will not jeopardize the safety of train operations. With or without Train Sentinel equipment operating on-board the controlling locomotive, the train remains subject to the provisions of the rules governing the existing method of operation.

Section 236.15 Timetable Instructions

Waiver is requested exempting the Train Sentinel pilot territory from the timetable designation requirement of this section.

Justification: Since the pilot program will consist of tests and demonstrations, identifying the test territory in the timetable as "Train Sentinel" (or some similar label) would be both premature and an unnecessary paperwork burden.

Section 236.23 Aspects and Indications

Waiver is requested to the extent that the Train Sentinel display on-board an equipped locomotive shall not be construed to represent or correspond to signal aspects or indications subject to the requirements of this section.

Justification: The Train Sentinel design excludes any visual display of signal aspects or indications. Train Sentinel enforceable authorities which may or may not derive from signal indications are on-board. Text authorities such as name of signal or track bulletins are displayed to the train crew. Information on the Train Sentinel display will correspond with authority conveyed through wayside signals.

Section 236.76 Tagging of Wires and Interference of Wires or Tags With Signal Apparatus

Waiver is requested exempting Train Sentinel equipment from the wire-tagging requirement.

Justification: Train Sentinel hardware consists of computers, computer peripherals, and communication devices. While the inapplicability of this section to circuit boards, connectors, and cables would appear obvious, waiver is sought for clarification.

Section 236.101 Purpose of Inspection and Tests; Removal From Service of Relay or Device Failing To Meet Test Requirements

Waiver is requested exempting Train Sentinel equipment from the requirement for removal of failed equipment from service.

Justification: Train Sentinel requires flexibility in installing, removing, turning on, and turning off the equipment. With or without Train Sentinel equipment operating on-board, a train remains subject to the provisions of the rules governing the existing methods of operation.

Section 236.107 Ground Tests

Waiver is requested exempting Train Sentinel equipment from the requirement for ground testing during the test phase.

Justification: Train Sentinel hardware consists of computers, computer peripherals, and communication devices. Ground tests would serve no purpose in ensuring safety and could be damaging to the equipment.

Section 236.109 Time Releases, Timing Relays and Timing Devices

Waiver is requested exempting Train Sentinel equipment from the testing requirement of this section during the test phase.

Justification: The timing devices in Train Sentinel equipment are software-driven, have no moving parts, and are far more reliable than the devices for which this regulation was promulgated to address.

Section 236.110 Results of Tests

Waiver is requested exempting Train Sentinel tests from the record keeping requirements of this section.

Justification: The Train Sentinel pilot is a test program during which the types of tests needed to ensure appropriate levels of maintenance will be defined.

Section 236.501 Forestalling Device and Speed Control

Waiver is requested exempting Train Sentinel from the requirement for medium-speed restriction.

Justification: Train Sentinel will not be connected to a signal system, but will receive input from the signal system and operate to perform its intended function in the event of failure of the engineer to obey a restrictive condition displayed in the cab. Train Sentinel will enforce speed restrictions reflected in the track database or issued through the dispatcher system.

Section 236.504 Operation Interconnected With Automatic Block-Signal System

Waiver is requested exempting Train Sentinel from the requirement of interconnection with an automatic block-signal system.

Justification: The Train Sentinel system will have no connection to the signal system; however Train Sentinel will receive input from the signal system and operate to perform its intended function in the event of failure of the engineer to obey a restrictive condition displayed in the cab.

Section 236.511 Cab Signals Controlled in Accordance With Block Conditions Stopping Distance in Advance

Waiver is requested exempting the Train Sentinel onboard display from the cab-signal requirements in this section.

Justification: Train Sentinel is not an automatic cab signal system and will have no connection to a signal system but will receive input from the signal system and display the signal name that forms the basis for limits of authority that will be depicted on the display.

Section 236.514 Interconnection of Cab Signal System With Roadway Signal System

Waiver is requested exempting Train Sentinel from the requirement of interconnection with a roadway signal system.

Justification: The Train Sentinel system is not a cab signal system and will have no connection with the signal system. However, Train Sentinel will receive input from the signal system and display the signal name that forms the basis for limits of authority.

Section 236.515 Visibility of Cab Signals

Waiver is requested exempting the Train Sentinel display from the visibility requirement of this section during the test phase.

Justification: Train Sentinel is not a cab signal system. However, Train Sentinel receives input from the signal system and displays the signal name governing the movement. The visibility requirements of this rule will be met in the Train Sentinel production system.

Section 236.534 Entrance to Equipped Territory; Requirements

Waiver is requested exempting Train Sentinel from the requirements of this section during the test phase.

Justification: Train Sentinel tests require flexibility in installing, removing, turning on, and turning off Train Sentinel equipment.

Section 236.552 Insulation Resistance; Requirement

Waiver is requested exempting Train Sentinel equipment from the insulation resistance requirement of this section.

Justification: Train Sentinel equipment consists of computers, computer peripherals, and communications equipment. Insulation resistance tests could be damaging to such components.

Section 236.553 Seal, Where Required

Waiver is requested exempting Train Sentinel from the seal requirement of this section.

Justification: Train Sentinel tests require flexibility in installing, removing, turning on, and turning off Train Sentinel equipment.

Section 236.566 Locomotive of Each Train Operating in Train Stop, Train Control or Cab Signal Territory; Equipped

Waiver is requested to the extent that the equipment requirements in this section shall not apply to Train Sentinel during the test phase.

Justification: A small subset of locomotives operating in the test territory will be Train Sentinel equipped; the majority of trains will not be equipped. Train Sentinel tests require flexibility in installing, removing, turning on and turning off the on-board equipment. In any case, all Train Sentinel tests will be conducted under the provisions of the rules governing the existing methods of operation.

Section 236.567 Restrictions Imposed When Device Fails and/or Is Cut Out Enroute

Waiver is requested exempting Train Sentinel tests from the restrictions associated with device failure or cutout.

Justification: Train Sentinel tests require flexibility in installing, removing, turning on and turning off the onboard equipment. All Train Sentinel tests will be conducted under the provisions of the rules governing the existing methods of operation. A failure or deactivation of Train Sentinel equipment will not jeopardize safety of train operations.

Section 236.586 Daily or After Trip Test

Waiver is requested exempting the Train Sentinel from the requirements of this section during the test phase.

Justification: During the Train Sentinel test phase, the requirements for a daily or after trip test, if necessary, will be defined. An objective is to perform this test without human intervention.

Section 236.587 Departure Test

Waiver is requested exempting the Train Sentinel from the requirements of this section during the test phase.

Justification: During the Train Sentinel test phase, the requirements for a departure test will be defined. An objective is to perform this test without human intervention.

Section 236.588 Periodic Test

Waiver is requested exempting Train Sentinel from the requirements of this section during the test phase.

Justification: During the Train Sentinel test phase, the requirements for a departure test will be defined.

Section 236.703 Aspect

Clarification is requested exempting the Train Sentinel display from this definition.

Justification: Train Sentinel is not an automatic cab signal system.

Section 236.805 Signal, Cab

Clarification is requested exempting the Train Sentinel display from this definition.

Justification: Train Sentinel is not an automatic cab signal system.

Section 240.127 Criteria for Examining Skill Performance

Waiver is requested exempting Train Sentinel from the testing requirements of this section during the test phase.

Justification: Criteria and procedures for Train Sentinel performance evaluation do not yet exist; they will be identified and defined during the Train Sentinel test phase.

Section 240.129 Criteria for Monitoring Operational Performance of Certified Engineers

Waiver is requested exempting Train Sentinel from the performance monitoring procedures during the Train Sentinel test phase.

Justification: Criteria and procedures for Train Sentinel performance evaluation do not yet exist; they will be identified and defined during the Train Sentinel test phase.

It is acknowledged for clarification that Train Sentinel, when fully operative during the test phase, will comply with the following regulations:

Section 236.8 Operating Characteristics of Electromagnetic, Electronic, or Electrical Apparatus

Train Sentinel computing equipment will comply with this regulation.

Section 236.501 Forestalling Device and Speed Control

Train Sentinel is designed to enforce maximum authorized speeds, speed restrictions, slow speed and absolute stop. Train Sentinel will comply with § 236.501 except for paragraph (b)(2).

Section 236.502 Automatic Brake Application, Initiation by Restrictive Block Conditions Stopping Distance in Advance

Train Sentinel is designed to initiate an automatic brake application stopping distance in advance of the end of limits of authority, or the beginning of each speed restriction in the route.

Section 236.503 Automatic Brake Application; Initiation When Predetermined Rate of Speed Exceeded

Train Sentinel will comply with this regulation.

Section 236.505 Proper Operative Relation Between Parts Along Roadway and Parts on Locomotive

Train Sentinel will function as intended under all conditions of speed, weather, oscillation and shock. Train Sentinel will comply with this regulation.

Section 236.506 Release of Brakes After Automatic Application

After a Train Sentinel initiated brake application, brakes cannot be released until the train is stopped.

Section 236.507 Brake Application; Full Service

Train Sentinel will comply with this regulation.

Section 236.508 Interference With Application of Brakes by Means of Brake Valve

Train Sentinel equipment will not interfere with or impair the efficiency of the automatic or independent brake valves.

Section 236.509 Two or More Locomotives Coupled

Train Sentinel will be made operative only on the controlling locomotive; however, Train Sentinel tests that do not affect train operations may occur on the trailing locomotives.

Section 236.513 Audible Indicator

The audible indicator for Train Sentinel will have a distinctive sound and be clearly audible under all operating conditions.

Section 236.516 Power Supply

Train Sentinel equipment will have its own isolated power supply.

Section 236.565 Provision Made for Preventing Operation of Pneumatic Brake-Applying Apparatus by Double-Heading Cock; Requirement

Operation of the double-heading cock (cutoff pilot valve) will not cut out Train Sentinel before the automatic brake is cut out.

Section 236.590 Pneumatic Apparatus

Pneumatic apparatus will be inspected and cleaned as required.

Part 236 Subpart G Definitions

Train Sentinel will comply with the definitions as applicable, except §§ 236.703 and 236.805.

Proceedings

Interested parties are invited to participate in these proceedings by submitting written views, data or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. Any interested party who desires an opportunity for oral comment should notify FRA in writing before the end of the comment period, specifying the basis for the request.

All communications concerning these proceedings should identify the appropriate docket number (*e.g.*, Waiver Petition Docket Number FRA–2002–12113) and must be submitted to the Docket Clerk, DOT Central Docket Management Facility, Room PL–401 (Plaza Level), 400 Seventh Street, SW.,Washington, DC 20590–0001. Communications received within 30 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the internet at the docket facility's Web site at *http://dms.dot.gov*.

Issued in Washington, D.C. on January 23, 2003.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 03–2054 Filed 1–28–03; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

Office of Hazardous Materials Safety; Notice of Applications for Exemptions

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of applicants for exemptions.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR part 107, subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the applications described herein. Each mode of transportation for which a particular exemption is requested is indicated by a number in the "Nature of Application" portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo aircraft only, 5—Passenger-carrying aircraft.

DATES: Comments must be received on or before February 28, 2003.

ADDRESS COMMENTS TO: Records Center, Research and Special Programs, Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the exemption application number.

FOR FURTHER INFORMATION CONTACT: Copies of the applications (*see* Docket Number) are available for inspection at the New Docket Management Facility, PL–401, at the U.S. Department of Transportation, Nassif Building, 400 7th Street, SW., Washington, DC 20590 or at *http://dms.dot.gov*.

This notice of receipt of applications for new exemptions is published in accordance with Part 107 of the Federal hazardous material transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, on January 23, 2003.

R. Ryan Posten,

Exemptions Program Officer, Office of Hazardous Materials, Exemptions and Approvals.

NEW EXEMPTIONS

Application No.	Docket No.	Applicant	Regulation(s) affected	Nature of exemption thereof
13188–N	RSPA–03–14314.	General Dynamics, Lincoln, NE.	49 CFR 173.301(f), 173.302(a), 173.34(d).	To authorize the transportation in commerce of certain flammable and nonflammable compressed gases in non–DOT specification filament-wound reinforced plastic lined cylinders, having a maximum service pressure of 7,000 psig, comparable to CGA C–19–2002 FRP–3. (Modes 1, 2, 3.)
13190–N	RSPA–03–14316.	Air Products & Chemicals, Allentown, PA.	49 CFR 177.834(i)(3)	To authorize cargo tanks to be unloaded without meeting the attendance requirements. (Mode 1.)
13192–N	RSPA–03–14315.	Onyx Environmental Services, L.L.C., Flanders, NJ.	49 CFR 173.12(b)	To authorize the transportation in commerce of certain labpack quantities of hazardous materials with shrink-wrap as an overpack without required markings and labels. (Modes 1, 3, 4.)
13194–N		Cryogenic Manufacturing and Repair, Inc., Eagle Lake, TX.	49 CFR 173.318, 173.76(g)(1), 178.338–10, 178.338–13(b), (c).	To authorize the manufacture, mark, sale and use of non-DOT specification insulated portable tanks for use in transporting Division 2.2 hazardous materials. (Mode 3.)

[FR Doc. 03–2005 Filed 1–28–03; 8:45 am]
BILLING CODE 4910–60–M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

Office of Hazardous Materials Safety; Notice of Applications for Modification of Exemption

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of applications for modification of exemptions.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR part 107, subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the applications described herein. This notice is abbreviated to expedite docketing and public notice. Because the sections affected, modes of transportation, and the nature of application have been shown in earlier **Federal Register** publications, they are not repeated here. Requests for modifications of exemptions (*e.g.* to provide for additional hazardous materials, packaging design changes, additional mode of transportation, *etc.*) are described in footnotes to the application number. Application numbers with the suffix "M" denote a modification request. These applications have been separated from the new applications for exemptions to facilitate processing.

DATES: Comments must be received on or before February 13, 2003.

ADDRESS COMMENTS TO: Records Center, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the exemption number.

FOR FURTHER INFORMATION CONTACT: Copies of the applications are available for inspection in the Records Center, Nassif Building, 400 7th Street, SW., Washington, DC or at *http://dms.dot.gov.*

This notice of receipt of applications for modification of exemptions is published in accordance with part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, on January 23, 2003.

R. Ryan Posten,

Exemptions Program Officer, Office of Hazardous Materials, Exemptions and Approvals.

Application No.	Docket No.	Applicant	Modification of exemption
9419–M		FIBA Technologies, Inc., Westboro, MA. (*See* Footnote 1.)	9419
9421–M		Taylor-Wharton (Gas & Fluid Control Group), Harrisburg, PA. (*See* Footnote 2.).	9421
9706–M		Taylor-Wharton (Gas & Fluid Control Group), Harrisburg, PA. (*See* Footnote 3.).	9706
10047–M		Taylor-Wharton (Gas & Fluid Control Group), Harrisburg, PA. (*See* Footnote 4.).	10047
10049–M		Martin Transport, Inc., Kilgore, TX. (*See* Footnote 5.)	10049
10143–M		Eurocom, Inc., Irving, TX. (*See* Footnote 6.)	10143
11194–M		Carleton Technologies, Inc., Glen Burnie, MD. (*See* Footnote 7.).	11194
11580–M		Columbiana Boiler Co., Columbiana, OH. (*See* Footnote 8.)	11580
12022–M	RSPA–98–3308	Taylor-Wharton (Gas & Fluid Control Group), Harrisburg, PA. (*See* Footnote 9.).	12022
12698–M	RSPA–01–9652	Integrated Environmental Services, Inc., Atlanta, GA. (*See* Footnote 10.).	12698
12838–M	RSPA–01–10859.	City Machine & Welding, Inc., Amarillo, TX. (*See* Footnote 11.)	12838
13104–M	RSPA–02–13279.	Consumers Energy (Big Rock Point Restoration Proj), Charlevoix, MI. (*See* Footnote 12.).	13104
13144–M	RSPA–02–13718.	Baker Petrolite, Sugar Land, TX. (*See* Footnote 13.)	13144
13163–M	RSPA–02–13801.	Pacific Bio-Material Management, Inc., Fresno, CA. (*See* Footnote 14.).	13163

(1) To modify the exemption to authorize the use of DOT Specification 3AX cylinders that are retested by means other than the hydrostatic retest for the transportation of certain gases.

(2) To modify the exemption to authorize an alternative immersion UE test system for non-DOT specification steel cylinders transporting certain Division 2.1, 2.2 and 2.3 materials.

(3) To modify the exemption to authorize an alternative immersion UE test system for non-DOT specification steel cylinders transporting certain Division 2.1, 2.2 and 2.3 materials and eliminating the Fracture Toughness Test requirement

(4) To modify the exemption to authorize an alternative immersion UE test system for non-DOT specification steel cylinders transporting certain Division 2.1, 2.2 and 2.3 materials and eliminating the Fracture Toughness Test requirement.

(5) To modify the exemption to authorize the transportation of additional Division 2.1 materials and the use of additional polyurethane insulated non-DOT specification cargo tanks.

(6) To modify the exemption to authorize the transportation of additional Division 2.2 materials in a non-refillable non-DOT specification inside metal container.

(7) To modify the exemption to authorize the transportation of additional Division 2.2 materials in a non-DOT specification fully wrapped carbon-fiber reinforced aluminum lined cylinder.

(8) To modify the exemption to authorize changes to the hydrostatic and physical test requirements for qualification of the non-DOT specification stainless steel cylinders.

(9) To modify the exemption to authorize the use of DOT Specification 3A cylinders for the transportation of certain Division 2.1, 2.2 and 2.3 materials and the use of an alternative immersion UE test system.

(10) To modify the exemption to authorize design changes to the non-DOT specification full open head, steel/stainless steel salvage cylinders for the transportation of various Classes/Divisions of hazardous materials.

(11) To modify the exemption to authorize the use of DOT Specification 3A cylinders, with revised diameter/wall thickness requirements, for the transportation of certain Division 2.1, 2.2 and 2.3 materials.

(12) To modify the exemption to authorize the use of an alternative closure material for the steam drum nozzle as part of non-DOT specification packaging for the transportation of Class 7 material.

(13) To reissue the exemption originally issued on an emergency basis and to authorize continued use of the DOT Specification 4BW240 welded steel cylinders equipped with locking ball valves and a pressure relief device for the transportation of a Division 6.1 material.

(14) To reissue the exemption originally issued on an emergency basis for the transportation of certain Division 6.2 materials in specially designed packaging.

[FR Doc. 03–2006 Filed 1–28–03; 8:45 am]

BILLING CODE 4910–60–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Ex Parte No. 333]

Sunshine Act Meeting

TIME AND DATE: 10 a.m., Friday, January 31, 2003.[1]

PLACE: The Board's Hearing Room, Surface Transportation Board, 1925 K Street, NW, Washington, DC 20423

STATUS: The Board will meet to discuss among themselves the following agenda items. Although the conference is open for public observation, no public participation is permitted.

MATTERS TO BE DISCUSSED: STB Finance Docket No. 34178, *Dakota, Minnesota & Eastern Railroad Corporation and Cedar American Rail Holding, Inc.—Control—Iowa, Chicago & Eastern Railroad Corporation.*

STB Finance Docket No. 33697, *National Railroad Passenger Corporation—Petition for Declaratory Order—Weight of Rail.*

STB Finance Docket No. 33995, *SF&L Railway, Inc.—Acquisition and Operation Exemption—Toledo, Peoria and Western Railway Corporation Between La Harpe and Peoria, IL.*

STB Finance Docket No. 33996, *Kern W. Schumacher and Morris H. Kulmer—Continuance in Control—SF&L Railway, Inc.*

STB Docket No. AB–448 (Sub-No. 2X), *SF&L Railway, Inc.—Abandonment Exemption—in Hancock, McDonough, Fulton and Peoria Counties, IL.*

STB Docket No. AB–565 (Sub-No. 11X), *New York Central Lines, LLC—Abandonment-Exemption—in Lake County, OH.*

STB Docket No. AB–55 (Sub-No. 617X), *CSX Transportation, Inc.—Discontinuance of Service Exemption—in Lake County, OH.*

STB Finance Docket No. 34114, *Yolo Shortline Railroad Company—Lease and Operation Exemption—Port of Sacramento.*

STB Finance Docket No. 34304, *The Burlington Northern and Santa Fe Railway Company—Trackage Rights Exemption—The Portland & Western Railroad, Inc.*

STB Ex Parte No. 282 (Sub-No. 20), *Railroad Consolidation Procedures: Class Exemption for Temporary Trackage Rights Transactions.*

FOR FURTHER INFORMATION CONTACT: A. Dennis Watson, Office of Congressional and Public Services, Telephone: (202) 565–1596, FIRS: 1–800–877–8339.

Dated: January 27, 2003.

Vernon A. Williams,

Secretary.

[FR Doc. 03–2229 Filed 1–27–03; 4:01 pm]

BILLING CODE 4915–00–P

[1] The Voting Conference originally scheduled for Thursday, January 30, 2003, has been rescheduled for January 31, 2003.

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–364 (Sub–No. 7X)]

The Texas Northeastern Division, Mid-Michigan Railroad, Inc.—Discontinuance of Service Exemption—In Grayson County, TX

The Texas Northeastern Division, Mid-Michigan Railroad, Inc. (TNER), has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments and Discontinuances of Service* to discontinue service over 10.51 miles of railroad between milepost 662.54 in Denison and milepost 673.05 in Sherman, in Grayson County, TX (the line).[1] The line traverses United States Postal Service Zip Codes 75020, 75021, 75090, 75091, and 75092.

TNER has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line can be rerouted over other lines; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the discontinuance shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on February 28, 2003, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues [2] and formal expressions of intent to file an OFA for continued rail service under 49 CFR 1152.27(c)(2),[3] must be filed by February 10, 2003.[4] Petitions to reopen must be filed by February 18, 2003, with: Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423.

[1] According to TNER's Environmental Report, the Missouri-Kansas-Texas Railroad Company (MKT) operated the line until MKT merged into the Missouri Pacific Railroad Company (MP). At the time of the merger, MKT was authorized to abandon the line. *See Union Pacific Corp. et al.*—Cont.–MO–KS–TX Co. *et al.*, 4 I.C.C.2d 409, 488–89 (1988) (UP/MKT). Although TNER contends that MKT consummated the abandonment before the line was leased to TNER, it appears that this was not the case, as an exemption was obtained for lease of the line from MP, now Union Pacific Railroad Company (UP), in *Mid Michigan Railroad Company, Inc.—Lease and Operation Exemption—Missouri Pacific Railroad Company*, Finance Docket No. 31646 (ICC served Aug. 28, 1990). In addition, it does not appear that the abandonment could have been consummated because there is an historic preservation condition under section 106 of the National Historic Preservation Act, 16 U.S.C. 470(f), imposed in *UP/MKT* at 577, that remains outstanding. Accordingly, although TNER is the last carrier operating over this line, UP, as the owner of the line and successor-in-interest to MP, retains a common carrier obligation.

[2] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis (SEA) in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[3] Each OFA must be accompanied by the filing fee, which is currently set at $1,100. *See* 49 CFR 1002.2(f)(25).

[4] Because this is a discontinuance proceeding and not an abandonment, trail use/rail banking and public use conditions are not appropriate.

A copy of any petition filed with the Board should be sent to TNER's representative: Louis E. Gitomer, Ball Janik LLP, 1455 F St., NW., Suite 225, Washington, DC 20005.

If the verified notice contains false or misleading information, the exemption is void *ab initio.*

TNER has filed a separate environmental report which addresses the discontinuance's effects, if any, on the environment and historic resources. SEA will issue an environmental assessment (EA) by February 3, 2003. Interested persons may obtain a copy of the EA by writing to SEA (Room 500, Surface Transportation Board, Washington, DC 20423–0001) or by calling SEA, at (202) 565–1552. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.] Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental or historic preservation conditions will be imposed, where appropriate, in a subsequent decision.

Board decisions and notices are available on our Web site at "*http://www.stb.dot.gov.*"

Decided: January 24, 2003.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 03–2041 Filed 1–28–03; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

January 17, 2003.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Pub. L. 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before February 28, 2003 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–1146.

Regulation Project Number: PS–54–89 Final.

Type of Review: Extension.

Title: Applicable Conventions Under the Accelerated Cost Recovery System.

Description: The regulations describe the time and manner of making the notation required to be made on Form 4562 under certain circumstances when the taxpayer transfers property in certain non-recognition transactions. The information is necessary to monitor compliance with the section 168 rules.

Respondents: Business or other for-profit, Farms.

Estimated Number of Respondents: 700.

Estimated Burden Hours Per Respondent: 6 minutes.

Frequency of Response; On occasion, Annually.

Estimated Total Reporting Burden: 700 hours.

OMB Number: 1545–1290.

Regulation Project Number: FI–81–86 Final.

Type of Review: Extension.

Title: Bad Debt Reserves of Banks.

Description: Section 585© of the Internal Revenue Code requires large banks to change from the reserve method of accounting to the specific charge off method of accounting for bad debts. The information required by section 1.585–8 of the regulations identifies any election made or revoked by the taxpayer in accordance with section 585(c).

Respondents: Business or other for-profit.

Estimated Number of Respondents: 2,500.

Estimated Burden Hours Per Respondent: 15 minutes.

Frequency of Response: Annually.

Estimated Total Reporting Burden: 625 hours.

Clearance Officer: Glenn Kirkland, (202) 622–3428, Internal Revenue Service, Room 6411–03, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Joseph F. Lackey, Jr., (202) 395–7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Mary A. Able,

Departmental Reports Management Officer.

[FR Doc. 03–2025 Filed 1–28–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

January 22, 2003.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Pub. L. 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before February 28, 2003 to be assured of consideration.

Financial Management Service (FMS)

OMB Number: 1510–0048.

Form Number: FMS Form 3144.

Type of Review: Extension.

Title: Minority Bank Deposit Program (MBDP) Certification for Admission.

Description: A financial institution who wants to participate in the MBDP must complete this form. The approved application certifies the institution as minority and is admitted into the program. Once in the program, the institution may receive assistance and guidance from Federal agencies, State and local governments and private sector organizations.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 150.

Estimated Burden Hours Per Respondent: 30 minutes.

Frequency of Response: Annually.

Estimated Total Reporting Burden: 75 hours.

Clearance Officer: Juanita Holder, Financial Management Service, 3700 East West Highway, Room 135, PGP II, Hyattsville, MD 20782.

OMB Reviewer: Joseph F. Lackey, Jr., (202) 395–7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Mary A. Able,

Departmental Reports Management Officer.

[FR Doc. 03–2026 Filed 1–28–03; 8:45 am]

BILLING CODE 4810–35–P

DEPARTMENT OF THE TREASURY

Departmental Offices

Interim Guidance Concerning Certain Conditions for Federal Payment, Non-U.S. Insurers, and Scope of Insurance Coverage in the Terrorism Risk Insurance Act of 2002

AGENCY: Departmental Offices, Treasury.

ACTION: Notice.

SUMMARY: This notice provides additional interim guidance concerning certain conditions for Federal payment in title I of the Terrorism Risk Insurance Act of 2002 as implemented in Department of Treasury's Terrorism Risk Insurance Program.

DATES: This notice is effective immediately and will remain in effect until superceded by regulations or by subsequent notice.

FOR FURTHER INFORMATION CONTACT: Mario Ugoletti, Deputy Director, Office of Financial Institutions and GSE Policy 202–622–2730; Martha Ellett, Attorney-Advisor, Office of the Assistant General Counsel (Banking and Finance) 202–622–0480.

SUPPLEMENTARY INFORMATION: This notice provides additional interim guidance to assist insurers in ascertaining how they may comply with certain immediately applicable provisions of title I of the Terrorism Risk Insurance Act of 2002 (Pub. L. 107–297) (the Act) prior to the issuance of regulations by the Department of the Treasury (Treasury). This notice provides interim guidance concerning the timing and certification of disclosures that Treasury expects to require from an insurer that is making a claim for federal payment under the Terrorism Risk Insurance Program. In addition, this interim guidance addresses the "separate line item" disclosure requirement in section 103(b)(2)(C), non-U.S. insurer participation in the Program, and the scope of "insured loss." The interim guidance contained in this notice, along with interim guidance issued previously by Treasury, may be relied upon by insurers in complying with these statutory requirements prior to the issuance of regulations on these issues. This interim guidance remains in effect until superceded by regulations or subsequent notice.

I. Background

On November 26, 2002, the President signed into law the Terrorism Risk Insurance Act of 2002. The Act became effective immediately. It establishes a temporary Federal program of shared public and private compensation for insured commercial property and casualty losses resulting from an "act of terrorism," as defined in the Act. The Terrorism Risk Insurance Program is administered and implemented by Treasury and will sunset on December 31, 2005.

II. Interim Guidance

Treasury will be issuing regulations to administer and implement certain elements of the Terrorism Risk Insurance Program (Program). To assist insurers in complying with certain statutory requirements prior to the issuance of regulations, Treasury has previously issued interim guidance, located at 67 FR 76206 (December 11, 2002) and at 67 FR 78864 (December 26, 2002) (also located on Treasury's Terrorism Risk Insurance Program Web site at *http://www.treasury.gov/trip*). This notice contains additional interim guidance concerning disclosures as conditions for Federal payment in section 103(b)(2) of the Act, non-U.S. insurer participation in the Program, and the scope of "insured loss."

How May an Insurer Comply With the Section 103(b)(2) Requirements for Disclosure "at the Time of Offer, Purchase and Renewal of the Policy?"

As conditions for Federal payment under the Program, section 103(b)(2) requires that an insurer provide clear and conspicuous disclosure to the policyholder, for existing policies and for new policies, of the premium charged for insured losses covered by the Program and the Federal share of compensation for insured losses under the Program. For policies issued after the date of enactment (November 26, 2002), sections 103(b)(2)(B) and (C) require these disclosures to be made to the policyholder "at the time of offer, purchase and renewal of the policy." For purposes of interim guidance, Treasury deems an insurer to be in compliance with these disclosure requirements "at the time of offer, purchase and renewal" if the insurer makes the required clear and conspicuous disclosures to the policyholder or applicant no later than at the time that the insurer first formally offers to provide insurance coverage or renew a policy for a current policyholder, and makes clear and conspicuous reference back to that disclosure as well as the final terms of terrorism insurance coverage at the time the transaction is completed. The required disclosures can be communicated by the use of channels, methods and forms of communication normally used to communicate similar policyholder information. This interim guidance is provided as a safe harbor to assist insurers in complying with conditions for Federal payment prior to the issuance of regulations. It is not the exclusive means by which an insurer may comply with the section 103(b)(2)(B) and (C) requirements.

How May an Insurer Comply With the "Separate Line Item" Requirement for Policies Issued More Than 90 days After Date of Enactment?

Section 103(b)(2)(C) requires that an insurer make the required clear and conspicuous disclosures on a "separate line item" in the policy for any policy issued more than 90 days after the date of enactment of the Act (November 26, 2002). In previous interim guidance, published at 67 FR 76206 (December 11, 2002), Treasury indicated that additional interim guidance, as appropriate, as well as regulations would be issued on the "separate line item" requirement. For purposes of interim guidance, Treasury deems an insurer to be in compliance with the separate line item requirement of section 103(b)(2)(C) if it makes the required "clear and conspicuous" disclosure: (i) On the declarations page of the policy; (ii) elsewhere within the policy itself; or (iii) in any rider or endorsement that is made a part of the policy, as long as the disclosure is clear and conspicuous and otherwise meets the requirements of section 103(b)(2) and previous interim guidance. This interim guidance is provided as a safe harbor to assist insurers in complying with conditions for Federal payment prior to the issuance of regulations; however, it is not the exclusive means by which an insurer may comply with the section 103(b)(2)(C) "separate line item" requirement.

How May an Insurer Certify Its Compliance With Required Disclosures as a Condition for Payment in Section 103(b) of the Act?

Section 103(b) of the Act sets forth conditions for Federal payments for an insured loss that is covered by an insurer, including provision of clear and conspicuous disclosure to the policyholder of the premium charged for insured losses covered by the Program and the Federal share of compensation for insured losses under the Program. The Act also requires as a condition for payment that an insurer process a claim for an insured loss and submit a claim to Treasury for payment of the Federal share of compensation for the insured loss, along with certain written certifications, including certification of the insurer's compliance

with the provisions of section 103(b) of the Act. In previous interim guidance, Treasury has addressed the statutory terms "insurer" and "insured losses" under the Program, 67 FR 78864 (December 26, 2002), and Treasury intends to issue regulations establishing claims procedures for Federal payments under the Program. With regard to an insurer's certification of its compliance with the disclosure requirements in section 103(b)(2), Treasury expects to propose regulations that will require an insurer to certify that it complied with the required disclosure(s) to the policyholder on the underlying claim or claims submitted by the insurer for Federal payment under the Program.

How Do the Nullification Requirement of Section 105 and Other Provisions of the Act Apply to Non-U.S. Insurers?

For the purposes of this interim guidance, Treasury views the nullification requirement of section 105 and other provisions of the Act as they apply to non-U.S. insurers in the context of such insurers' required participation under the Act. The provisions of the Act apply to entities that meet the definition of "insurer" under section 102(6) of the Act and with the respect to an "insured loss" covered by the Program. Included among the other requirements of the Act are: The "make available" requirements of section 103(c); the disclosure requirements as a condition for Federal payment contained in section 103(b)(2); and the policy surcharge (recoupment) provisions of section 103(e)(8). For non-U.S. insurers that are required to participate in the Program, participation requirements for existing policies that provide coverage for "insured losses" include the "make available" and other requirements in the Act, such as those listed above, even in the absence of nullification under section 105. The disclosure standards referenced in this and other interim guidance also would apply.

For the Purpose of Determining the Scope of "Insured Loss," How Is Section 102(5)(B) Interpreted as It Relates to U.S. Air Carriers and U.S. Flag Vessels?

Section 102(5)(B) defines an "insured loss" to include losses that occur "to an air carrier (as defined in section 40102 of title 49, United States Code), to a United States flag vessel (or vessel based principally in the United States, on which United States income tax is paid and whose insurance coverage is subject to regulation in the United States) regardless of where the loss occurs." Section 40102 defines an "air carrier" generally as a United States citizen (individual, partnership, or corporation) that provides foreign or interstate "air transportation."

For the purposes of interim guidance, Treasury is providing further clarification that insured losses under section 102(5)(B) are only those losses that are incurred by the air carrier or the United States flag vessel. Insured losses under section 102(5)(B) would not include losses incurred by third parties that are associated with losses incurred by a United States air carrier or a United States flag vessel, unless the cause of the loss originated within the United States.

Dated: January 22, 2003.

Wayne A. Abernathy,

Assistant Secretary of the Treasury.

[FR Doc. 03–2116 Filed 1–28–03; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Agency Information Collection Activities: Proposed Extension of Information Collection; Comment Request

AGENCY: Office of the Comptroller of the Currency (OCC), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The OCC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a continuing information collection, as required by the Paperwork Reduction Act of 1995. An agency may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless it displays a currently valid OMB control number. The OCC is soliciting comment concerning its information collection titled, "Bank Activities and Operations—12 CFR 7."

DATES: You should submit written comments by March 31, 2003.

ADDRESSES: You should direct comments to the Communications Division, Office of the Comptroller of the Currency, Public Information Room, Mailstop 1–5, Attention: 1557–0204, 250 E Street, SW., Washington, DC 20219. Due to delays in paper mail in the Washington area, commenters are encouraged to submit comments by fax or e-mail. Comments may be sent by fax to (202) 874–4448, or by e-mail to *regs.comments@occ.treas.gov*. You can inspect and photocopy the comments at the OCC's Public Information Room, 250 E Street, SW., Washington, DC 20219. You can make an appointment to inspect the comments by calling (202) 874–5043.

A copy of the comments should also be sent to the OMB Desk Officer for the OCC: Joseph F. Lackey, Jr., Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503, or by e-mail to *jlackeyj@omb.eop.gov*.

FOR FURTHER INFORMATION CONTACT: You can request additional information from Jessie Dunaway, OCC Clearance Officer, or Camille Dixon, (202) 874–5090, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

SUPPLEMENTARY INFORMATION: The OCC is proposing to extend OMB approval of the following information collection: *Title*: Bank Activities and Operations " 12 CFR 7. *OMB Number*: 1557–0204. *Description*: This submission covers an existing regulation and involves no change to the regulation or to the information collection requirements. The OCC requests only that OMB extend its approval of the information collection.

The information collection requirements ensure that national banks conduct their operations in a safe and sound manner and in accordance with applicable Federal banking statutes and regulations. The information is necessary for regulatory and examination purposes.

The information collection requirements in part 7 are as follows:

12 CFR 7.1000(d)(1) (National bank ownership of property—Lease financing of public facilities): National bank lease agreements must provide that the lessee will become the owner of the building or facility upon the expiration of the lease.

12 CFR 7.1014 (Sale of money orders at nonbanking outlets): A national bank may designate bonded agents to sell the bank's money orders at nonbanking outlets. The responsibility of both the bank and its agent should be defined in a written agreement setting forth the duties of both parties and providing for remuneration of the agent.

12 CFR 7.2000(b) (Corporate governance procedures " Other sources of guidance): A national bank shall designate in its bylaws the body of law selected for its corporate governance procedures.

12 CFR 7.2004 (Honorary directors or advisory boards): Any listing of a national bank's honorary or advisory directors must distinguish between them and the bank's board of directors or indicate their advisory status.

12 CFR 7.2014(b) (Indemnification of institution-affiliated parties " Administrative proceeding or civil actions not initiated by a Federal agency): A national bank shall designate in its bylaws the body of law selected for making indemnification payments. *Type of Review*: Extension of a currently approved collection. *Affected Public*: Businesses or other for-profit. *Estimated Number of Respondents*: 1,600. *Estimated Total Annual Responses*: 1,600. *Frequency of Response*: On occasion. *Estimated Total Annual Burden*: 480 hours.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility;

(b) The accuracy of the agency's estimate of the burden of the collection of information;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or startup costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: January 23, 2003.

Mark J. Tenhundfeld,

Assistant Director, Legislative and Regulatory Activities Division Division.

[FR Doc. 03–2028 Filed 1–28–03; 8:45 am]

BILLING CODE 4810–33–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Office of the Comptroller of the Currency (OCC), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The OCC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a continuing information collection, as required by the Paperwork Reduction Act of 1995. An agency may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless the information collection displays a currently valid OMB control number. The OCC is soliciting comment concerning its information collection titled, "Recordkeeping Requirements for Securities Transactions—12 CFR 12." The OCC also gives notice that it has sent the information collection to OMB for review and approval.

DATES: You should submit your comments to the OCC and the OMB Desk Officer by February 28, 2003.

ADDRESSES: You should direct comments to:

Communications Division, Office of the Comptroller of the Currency, Public Information Room, Mailstop 1–5, Attention: 1557–0142, 250 E Street, SW., Washington, DC 20219. Due to delays in paper mail in the Washington area, commenters are encouraged to submit comments by fax or e-mail. Comments may be sent by fax to (202) 874–4448, or by e-mail to *regs.comments@occ.treas.gov*. You can inspect and photocopy the comments at the OCC's Public Information Room, 250 E Street, SW., Washington, DC 20219. You can make an appointment to inspect the comments by calling (202) 874–5043.

Joseph F. Lackey, Jr., OMB Desk Officer for the OCC, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: You can request additional information or a copy of the collection from Jessie Dunaway, OCC Clearance Officer, or Camille Dixon, (202) 874–5090, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

SUPPLEMENTARY INFORMATION: The OCC is proposing to extend OMB approval of the following information collection:

Title: Recordkeeping Requirements for Securities Transactions—12 CFR 12.

OMB Number: 1557–0142.

Description: This submission covers an existing regulation and involves no change to the regulation or to the information collection requirements. The OCC requests only that OMB extend its approval of the information collection.

The information collection requirements in 12 CFR part 12 are required to ensure national bank compliance with securities laws and to improve the protection afforded persons who purchase and sell securities through banks. The transaction confirmation information provides customers with a record regarding the transaction and provides banks and the OCC with records to ensure compliance with banking and securities laws and regulations. The OCC uses the required information in its examinations to, among other things, evaluate a bank's compliance with the antifraud provisions of the Federal securities laws.

The information collection requirements contained in 12 CFR part 12 are as follows:

Section 12.3 requires a national bank effecting securities transactions for customers to maintain records for at least three years. The records required by this section must clearly and accurately reflect the information required and provide an adequate basis for the audit of the information.

Section 12.4 requires a national bank to give or send to the customer a written notification of transaction or a copy of the registered broker/dealer confirmation relating to the securities transaction.

Sections 12.5(a), (b), (c), and (e) require a national bank, as an alternative to complying with § 12.4, to provide notification to customers of trust transactions, agency transactions, and periodic plan transactions.

Sections 12.7(a)(1) through (a)(3) require a national bank to develop and maintain written securities trading policies and procedures.

Section 12.7(a)(4) requires bank officers and employees to report to the bank all personal transactions in securities made by them or on their behalf in which they have a beneficial interest.

Section 12.8 requires a national bank to file a written request with the OCC for a waiver of one or more of the requirements set forth in §§ 12.2 through 12.7.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profit.

Estimated Number of Respondents: 685.

Estimated Total Annual Responses: 685.

Frequency of Response: On occasion.

Estimated Total Annual Burden: 3,713 hours.

Dated: January 21, 2003.

Mark J. Tenhundfeld,

Assistant Director, Legislative and Regulatory Activities Division.

[FR Doc. 03–2027 Filed 1–28–03; 8:45 am]

BILLING CODE 4810–33–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[EE–28–78]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13(44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, EE–28–78 (TD 7845). Inspection of Applications for Tax Exemption and Applications for Determination Letters for Pension and Other Plans (§§ 301.6104(a)–1, 301.6104(a)–5, 301.6104(a)–6, 301.6104(b)–1, and 301.6104(c)–1.

DATES: Written comments should be received on or before March 31, 2003, to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulation should be directed to Larnice Mack (202) 622–3179, or *Larnice.Mack@irs.gov*, or Internal Revenue Service, room 6407, 1111 Constitution Avenue, NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Inspection of Applications for Tax Exemption and Applications for Determination Letters for Pension and Other Plans.

OMB Number: 1545–0817.

Regulation Project Number: EE–28–78.

Abstract: Internal Revenue Code section 6104 requires applications for tax exempt status, annual reports of private foundations, and certain portions of returns to be open for public inspection. Some information may be withheld from disclosure. The Internal Revenue Service needs the required information to comply with requests for public inspection.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, business or other for-profit organizations, not-for-profit institutions, Federal Government, and state, local or tribal government.

Estimated Number of Respondents: 42,370.

Estimated Time Per Respondent: 12 min.

Estimated Total Annual Burden Hours: 8,538 hours.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: January 14, 2003.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 03–2064 Filed 1–28–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[IA–17–90]

Proposed Collection; Comment Request For Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, IA–17–90 (TD 8571), Reporting Requirements for Recipients of Points Paid on Residential Mortgages (§§ 1.6050H–1 and 1.6050H–2).

DATES: Written comments should be received on or before March 31, 2003, to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of this regulation should be directed to Allan Hopkins, at (202) 622–6665, or through the Internet (*Allan.M.Hopkins@irs.gov*), Internal Revenue Service, room 6407, 1111 Constitution Avenue, NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Reporting Requirements for Recipients of Points Paid on Residential Mortgages.

OMB Number: 1545–1380.

Regulation Project Number: IA–17–90.

Abstract: These regulations require the reporting of certain information relating to payments of mortgage interest. Taxpayers must separately state on form 1098 the amount of points and the amount of interest (other than points) received during the taxable year on a single mortgage and must provide to the payer of the points a separate statement setting forth the information being reported to the IRS.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 37,644.

Estimated Time Per Respondent: 7 hrs.; 31 minutes.

Estimated Total Annual Burden Hours: 283,056.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: January 21, 2003.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 03–2065 Filed 1–28–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[IA–14–91]

Proposed Collection; Comment Request For Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, IA–14–91 (TD 8454), Adjusted Current Earnings (§ 1.56(g)–1).

DATES: Written comments should be received on or before March 31, 2003, to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of this regulation should be directed to Allan Hopkins, at (202) 622–6665, or through the Internet (*Allan.M.Hopkins@irs.gov*), Internal Revenue Service, room 6407, 1111 Constitution Avenue, NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Adjusted Current Earnings.

OMB Number: 1545–1233.

Regulation Project Number: IA–14–91 (Final).

Abstract: Section 1.56(g)–1(r) of the regulation sets forth rules pursuant to section 56(g) of the Internal Revenue Code that permit taxpayers to elect a simplified method of computing their inventory amounts in order to compute their alternative minimum tax.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 1,000.

Estimated Time Per Respondent: 1 hour.

Estimated Total Annual Burden Hours: 1,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: January 21, 2003.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 03–2066 Filed 1–28–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[IA–74–93]

Proposed Collection; Comment Request For Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, IA–74–93, (TD 8623), Substantiation Requirement for Certain Contributions (§ 1.170A–13).

DATES: Written comments should be received on or before March 31, 2003, to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of this regulation should be directed to Allan Hopkins, (202) 622–6665, or through the Internet (*Allan.M.Hopkins@irs.gov*), Internal Revenue Service, room 6407, 1111 Constitution Avenue, NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Substantiation Requirement for Certain Contributions.

OMB Number: 1545–1431.

Regulation Project Number: IA–74–93 (Final).

Abstract: These regulations provide that, for purposes of substantiation for certain charitable contributions, consideration does not include *de minimis* goods or services. It also provides guidance on how taxpayers may satisfy the substantiation requirement for contributions of $250 or more.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, business or other for-profit organizations, and non-profit institutions.

Estimated Number of Respondents: 16,000.

Estimated Time Per Respondent: 3 hours, 13 minutes.

Estimated Total Annual Burden Hours: 51,500.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: January 21, 2003.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 03–2067 Filed 1–28–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Quarterly Publication of Individuals, Who Have Chosen to Expatriate, as Required by Section 6039G

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: This notice is provided in accordance with IRC section 6039G, as amended, by the Health Insurance Portability and Accountability Act (HIPPA) of 1996. This listing contains the name of each individual losing United States citizenship (within the meaning of section 877(a)) with respect to whom the Secretary received information during the quarter ending December 31, 2002.

LNAME	FNAME	MNAME
Andersen	Inger	Marie
Aslet	Peter	M
Baca	Susan	Berry
Blank	Chip	
Bodmer	Philip	Daniel
Brands	Marcus	A
Brecelnick	Natalie	Ann
Bromberg	Ruth	
Budd	Sandra	Alice
Buschina	Magdalena	
Cabatuando	Antonio	Miranda
Chiarizia	Anita	Ulack
Chung	Edwin	
Doroski	Mark	Joseph
Doroski	Cheryl	Marie
Ernst	Joan	Claudia
Fisher	Jonathan	Asher
Fisher	Mina	
Fok	Helen	Hsi Lin
Fontaine(aka Rene Joseph Sylvio Fontain)	Joseph	Rene Sylvio
Foo	Robert	Sung Ting
Fraser	Anthony	A
Freeman	Gunhild	B.
Fung	Amy	Pik-Mei
Gaib	Connie	Sue
Gill	Gwendolyn	Jeanne
Gilman	Andrew	Curtis
Goodwin Jr	Gilbert	Lenell
Grabo	Anders	P
Greene Jr	Charles	Sheldon
Hallyday	David	
Hart	Linda	Joan
Hoffmann	Eric	Christian
Husar	Lubomyr	
Ito	Mark	Kenichiro
Jastrow	Lee	
Jeffrey	Lisa	Claire

LNAME	FNAME	MNAME
Kabe	Noriko	
Keneally	Kristina	Kerscher
Kent	Yasuko	N
Kubo	Katsuyuki	
Kusharsky	Alexander	
Kwon	Lana	
Lee	Ericka	Jong
Lee	Choohye	
Lehnert	Colleen	Dione
Lengyel	Alice	Wolf
Lin	Heng-yeh	
Lubsesn	Sigismundus	
MacDougall	Lorna	Grace
Machon	Stephen	Charles
Matsuhashi	Shuko	
Matthews	Janet	Elizabeth
McNicol	Sharon-Ann	Arlene
Oskanian	Vartan	
Ozols	Ivars	Juris
Paegle	Vaira	
Paleg	Leslie	Godell
Pecherek	Craig	Matthew
Piantedosi	Domenica	
Pilch	Jozef	
Poulsen	Poul	
Robertson	James	Vincent
Rosenberg	Michael	M.
Rothemund	Virginia	
Sasson	Diane	Claude
Scheid	Katrin	Anja
Sen (aka Amita Mukherjee & Amita Ray)	Amita	
Shimakawa	Hiroyuki	
Sim	Richard	G
Simon	Robert	Samuel
Sinclair Jr.	Merle	Elwood
Sirois	Claudia	Nancy
Skierka	Alice	May
Smith	Scott	Leon
Smith	Gregg	Alan
Speck	Paul	Theodore
Speck	Barbara	Jean
Speck	Matthew	Ernest
Speck	Daniel	Anthony
Steinbock	Rachel	
Strassler	Ronald	Philip
Strecher	Sabine	
Tesluk	Timothy	Michael
Thompson	Kirsten	Deborah
Trezise	John	Adrian
Turdo	Rino	Bennie
Usleber	Gudrun	
Vahey	Grainne	Cuffe
Warne	Robert	Denis
Weston	Jennie	Fairbanks
Wong	Yuk	W.
Xu	Yanping	
Yue Gee Fung	Daniel	Kenneth
Yun	Theresa	Heeyul
Zisserson	Warren	
Zisserson	Marilynn	
Zyner	Leanne	Frances
Zyner	Grzegorz	Bogulsaw

Dated: January 13, 2003.

Samuel Brown,

Team Manager—Examination Operation, Philadelphia Compliance Services.

[FR Doc. 03–2068 Filed 1–28–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel, E-Filing Issue Committee

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel, E-Filing Issue Committee will be conducted (via teleconference).

DATES: The meeting will be held Thursday, March 13, 2003.

FOR FURTHER INFORMATION CONTACT: Mary Ann Delzer at 1–888–912–1227, or (414) 297–1604.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel, E-Filing Issue Committee will be held Thursday, March 13, 2003, from 2 p.m. central time to 3 p.m. central standard time via a telephone conference call. The Taxpayer Advocacy Panel is soliciting public comment, ideas, and suggestions on improving customer service at the Internal Revenue Service. You can submit written comments to the panel by faxing to (414) 297–1623, or by mail to Taxpayer Advocacy Panel, Stop1006MIL, 310 West Wisconsin Avenue, Milwaukee, WI 53203–2221. Public comments will also be welcome during the meeting. Please contact Mary Ann Delzer at 1–888–912–1227 or (414) 297–1604 for dial-in information.

The agenda will include the following: Various IRS issues.

Note: Last minute changes to the agenda are possible and could prevent effective advance notice.

Dated: January 23, 2003.

Deryle Temple,

Director, Taxpayer Advocacy Panel.

[FR Doc. 03–2070 Filed 1–28–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 5 Taxpayer Advocacy Panel (Including the States of Iowa, Kansas, Minnesota, Missouri, Nebraska, North Dakota, Oklahoma, South Dakota, and Texas)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Area 5 Taxpayer Advocacy Panel will be conducted (via teleconference).

DATES: The meeting will be held Monday, March 10, 2003.

FOR FURTHER INFORMATION CONTACT: Mary Ann Delzer at 1–888–912–1227, or (414) 297–1604.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Area 5 Taxpayer Advocacy Panel will be held Monday, March 10, 2003, from 2:30 to 3:30 p.m. Central standard time via a telephone conference call. The Taxpayer Advocacy Panel is soliciting public comment, ideas, and suggestions on improving customer service at the Internal Revenue Service. You can submit written comments to the panel by faxing to (414) 297–1623, or by mail to Taxpayer Advocacy Panel, Stop1006MIL, 310 West Wisconsin Avenue, Milwaukee, WI 53203–2221. Public comments will also be welcome during the meeting. Please contact Mary Ann Delzer at 1–888–912–1227 or (414) 297–1604 for more information.

The agenda will include the following: Various IRS issues.

Note: Last minute changes to the agenda are possible and could prevent effective advance notice.

Dated: January 23, 2003.

Deryle Temple,

Director, Taxpayer Advocacy Panel.

[FR Doc. 03–2071 Filed 1–28–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 4 Taxpayer Advocacy Panel (Including the States of Illinois, Indiana, Kentucky, Michigan, Ohio, West Virginia, and Wisconsin)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Area 4 Taxpayer Advocacy Panel will be conducted (via teleconference).

DATES: The meeting will be held Wednesday, March 5, 2003.

FOR FURTHER INFORMATION CONTACT: Mary Ann Delzer at 1–888–912–1227, or (414) 297–1604.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Area 4 Taxpayer Advocacy Panel will be held Wednesday, March 5, 2003, from 11 a.m. central time to noon central standard time via a telephone conference call. The Taxpayer Advocacy Panel is soliciting public comment, ideas, and suggestions on improving customer service at the Internal Revenue Service. You can submit written comments to the panel by faxing to (414) 297–1623, or by mail to Taxpayer Advocacy Panel, Stop1006MIL, 310 West Wisconsin Avenue, Milwaukee, WI 53203–2221. Public comments will also be welcome during the meeting. Please contact Mary Ann Delzer at 1–888–912–1227 or (414) 297–1604 for dial-in information.

The agenda will include the following: various IRS issues.

Note: Last minute changes to the agenda are possible and could prevent effective advance notice.

Dated: January 23, 2003.

Deryle Temple,

Director, Taxpayer Advocacy Panel.

[FR Doc. 03–2072 Filed 1–28–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Joint Committee of the Taxpayer Advocacy Panel

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Joint Committee of the Taxpayer Advocacy Panel will be conducted via teleconference.

DATES: The meeting will be held Tuesday, February 18, 2003.

FOR FURTHER INFORMATION CONTACT: Barbara Toy at 1–888–912–1227, or 414–297–1611.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988)

that an open meeting of the Joint Committee of the Taxpayer Advocacy Panel (TAP) will be held Tuesday, February 18, 2003, from 1:30 to 3 p.m. e.s.t. via a telephone conference call. Public comments will be welcome during the meeting. If you would like to have the Joint Committee of TAP consider a written statement, please call 1–888–912–1227 or 414–297–1611, or write Barbara Toy, TAP Office, MS–1006-MIL, 310 West Wisconsin Avenue, Milwaukee, WI 53203–2221, or FAX to 414–297–1623. Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Barbara Toy. Ms. Toy can be reached at 1–888–912–1227 or 414–297–1611, or FAX 414–297–1623.

The agenda will include the following: monthly committee summary report, discussion of issues brought to the joint committee, office report and discussion of next meeting.

Note: Last minute changes to the agenda are possible and could prevent effective advance notice.

Dated: January 23, 2003.

Deryle Temple,

Director, Taxpayer Advocacy Panel.

[FR Doc. 03–2073 Filed 1–28–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Small Business/ Self Employed—Payroll Tax Committee of the Taxpayer Advocacy Panel

ACTION: Notice.

SUMMARY: An open meeting of the Small Business/Self Employed—Payroll Tax Committee of the Taxpayer Advocacy Panel will be conducted (via teleconference).

DATES: The meeting will be held Thursday, February 6, 2003.

FOR FURTHER INFORMATION CONTACT: Mary O'Brien at 1–888–912–1227, or 206 220–6096.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Small Business/Self Employed—Payroll Tax Committee of the Taxpayer Advocacy Panel will be held Thursday, February 6, 2003, from 3 p.m. e.s.t. to 4 p.m. e.s.t. via a telephone conference call. The public is invited to make oral comments. Individual comments will be limited to 5 minutes. If you would like to have the TAP consider a written statement, please call 1–888–912–1227 or 206–220–6096, or write to Mary O'Brien, TAP Office, 915 2nd Avenue, MS W–406, Seattle, WA 98174. Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Mary O'Brien. Ms O'Brien can be reached at 1–888–912–1227 or 206–220–6096.

The agenda will include the following: various IRS issues.

Note: Last minute changes to the agenda are possible and could prevent effective advance notice.

Dated: January 21, 2003.

Deryle J. Temple,

Director, Taxpayer Advocacy Panel.

[FR Doc. 03–2074 Filed 1–28–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Small Business/ Self Employed—Schedule C Non-Filers Committee of the Taxpayer Advocacy Panel

ACTION: Notice.

SUMMARY: An open meeting of the Small Business/ Self Employed Schedule C Non-Filers Committee of the Taxpayer Advocacy Panel will be conducted (via teleconference).

DATES: The meeting will be held Tuesday, February 11, 2003.

FOR FURTHER INFORMATION CONTACT: Mary O'Brien at 1–888–912–1227, or 206–220–6096.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Small Business/Self Employed—Schedule C Non-Filers Committee of the Taxpayer Advocacy Panel will be held Tuesday, February 11, 2003, from 2 p.m. e.s.t. to 3 p.m. e.s.t. via a telephone conference call. The public is invited to make oral comments. Individual comments will be limited to 5 minutes. If you would like to have the TAP consider a written statement, please call 1–888–912–1227 or 206–220–6096, or write to Mary O'Brien, TAP Office, 915 2nd Avenue, MS W–406, Seattle, WA 98174. Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Mary O'Brien. Ms. O'Brien can be reached at 1–888–912–1227 or 206–220–6096.

The agenda will include the following: various IRS issues.

Note: Last minute changes to the agenda are possible and could prevent effective advance notice.

Dated: January 21, 2003.

Deryle J. Temple,

Director, Taxpayer Advocacy Panel.

[FR Doc. 03–2075 Filed 1–28–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 6 Taxpayer Advocacy Panel (Including the States of Alaska, Arizona, Colorado, Hawaii, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, and Wyoming)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Area 6 Committee of the Taxpayer Advocacy Panel will be conducted (via teleconference).

DATES: The meeting will be held Monday, February 24, 2003.

FOR FURTHER INFORMATION CONTACT: Anne Gruber at 1–888–912–1227, or 206–220–6096.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Area 6 Committee of the Taxpayer Advocacy Panel will be held Monday, February 24, 2003 from 2 pm PST to 4 pm PST via a telephone conference call. The public is invited to make oral comments. Individual comments will be limited to 5 minutes. If you would like to have the TAP consider an oral or written statement, please call 1–888–912–1227 or 206–220–6096, or write Anne Gruber, TAP Office, 915 2nd Ave, M/S W406, Seattle, WA 98174. Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Anne Gruber. Ms. Gruber can be reached at 1–888–912–1227 or 206–220–6096.

The agenda will include the following: Various IRS issues.

Note: Last minute changes to the agenda are possible and could prevent effective advance notice.

Dated: January 21, 2003.

Deryle J. Temple,

Director, Taxpayer Advocacy Panel.

[FR Doc. 03–2076 Filed 1–28–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Small Business/ Self Employed—Payroll Tax Committee of the Taxpayer Advocacy Panel

ACTION: Notice.

SUMMARY: An open meeting of the Small Business/Self Employed—Payroll Tax Committee of the Taxpayer Advocacy Panel will be conducted (via teleconference).

DATES: The meeting will be held Thursday, March 6, 2003.

FOR FURTHER INFORMATION CONTACT: Mary O'Brien at 1–888–912–1227, or 206 220–6096.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Small Business/Self Employed—Payroll Tax Committee of the Taxpayer Advocacy Panel will be held Thursday, March 6, 2003 from 3 pm EST to 4 pm EST via a telephone conference call. The public is invited to make oral comments. Individual comments will be limited to 5 minutes. If you would like to have the TAP consider a written statement, please call 1–888–912–1227 or 206–220–6096, or write to Mary O'Brien, TAP Office, 915 2nd Avenue, MS W–406, Seattle, WA 98174. Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Mary O'Brien. Ms O'Brien can be reached at 1–888–912–1227 or 206–220–6096.

The agenda will include the following: various IRS issues.

Note: Last minute changes to the agenda are possible and could prevent effective advance notice.

Dated: January 21, 2003.

Deryle J. Temple,

Director, Taxpayer Advocacy Panel.

[FR Doc. 03–2077 Filed 1–28–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Small Business/ Self Employed—Schedule C Non-Filers Committee of the Taxpayer Advocacy Panel

ACTION: Notice.

SUMMARY: An open meeting of the Small Business/Self Employed Schedule C Non-Filers Committee of the Taxpayer Advocacy Panel will be conducted (via teleconference).

DATES: The meeting will be held Tuesday, March 11, 2003.

FOR FURTHER INFORMATION CONTACT: Mary O'Brien at 1–888–912–1227, or 206–220–6096.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Small Business/Self Employed—Schedule C Non-Filers Committee of the Taxpayer Advocacy Panel will be held Tuesday, March 11, 2003 from 2 pm EST to 3 pm EST via a telephone conference call. The public is invited to make oral comments. Individual comments will be limited to 5 minutes. If you would like to have the TAP consider a written statement, please call 1–888–912–1227 or 206–220–6096, or write to Mary O'Brien, TAP Office, 915 2nd Avenue, MS W–406, Seattle, WA 98174. Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Mary O'Brien. Ms O'Brien can be reached at 1–888–912–1227 or 206–220–6096.

The agenda will include the following: various IRS issues.

Note: Last minute changes to the agenda are possible and could prevent effective advance notice.

Dated: January 21, 2003.

Deryle J. Temple,

Director, Taxpayer Advocacy Panel.

[FR Doc. 03–2078 Filed 1–28–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Wage & Investment Reducing Taxpayer Burden (Notices) Issue Committee of the Taxpayer Advocacy Panel

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Wage & Investment Reducing Taxpayer Burden (Notices) Issue Committee of the Taxpayer Advocacy Panel will be conducted.

DATES: The meeting will be held Friday, February 21, 2003.

FOR FURTHER INFORMATION CONTACT: Sallie Chavez at 1–888–912–1227, or 954–423–7979.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Wage & Investment Reducing Taxpayer Burden (Notices) Issue Committee of the Taxpayer Advocacy Panel will be held Friday, February 21, 2003, from 1 pm CST to 4 pm CST and 6 pm CST to 7 pm CST at the Homewood Suites, 4143 Governor's Row, Austin, Texas. The Taxpayer Advocacy Panel is soliciting public comments, ideas and suggestions on improving customer service at the Internal Revenue Service. Individual comments will be limited to 5 minutes. If you would like to have the TAP consider a written statement, please call 1–888–912–1227 or 954–423–7979, or write Sallie Chavez, TAP Office, 1000 South Pine Island Rd., Suite 340, Plantation, FL 33324. Due to limited space, notification of intent to participate in the meeting must be made with Sallie Chavez. Ms. Chavez can be reached at 1–888–912–1227 or 954–423–7979.

The agenda will include the following: IRS Notices.

Note: Last minute changes to the agenda are possible and could prevent effective advance notice.

Dated: January 22, 2003.

Deryle J. Temple,

Director, Taxpayer Advocacy Panel.

[FR Doc. 03–2079 Filed 1–28–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 2 Taxpayer Advocacy Panel (Including the states of Delaware, North Carolina, South Carolina, New Jersey, Maryland, Pennsylvania, Virginia and the District of Columbia)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Area 2 Taxpayer Advocacy Panel will be conducted.

DATES: The meeting will be held Friday, February 28, 2003, and Saturday, March 1, 2003.

FOR FURTHER INFORMATION CONTACT: Inez E. De Jesus at 1–888–912–1227, or 954–423–7977.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Area 2 Taxpayer Advocacy Panel will be held Friday, February 28, 2003 from 8 am EST to 5 pm EST; and on Saturday, March 1, 2003, from 8 am EST to Noontime EST, at One Washington Circle Hotel, One Washington Circle, NW., Washington, DC. The Taxpayer Advocacy Panel is soliciting public comments, ideas and suggestions on improving customer service at the Internal Revenue Service. Individual comments will be limited to 5 minutes. If you would like to have the TAP consider a written statement, please call 1–888–912–1227 or 954–423–7977, or write Inez E. De Jesus, TAP Office, 1000 South Pine Island Rd., Suite 340, Plantation, FL 33324. Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Inez E. De Jesus. Ms. De Jesus can be reached at 1–888–912–1227 or 954–423–7977.

The agenda will include the following: Various IRS issues.

Note: Last minute changes to the agenda are possible and could prevent effective advance notice.

Dated: January 22, 2003.

Deryle J. Temple,

Director, Taxpayer Advocacy Panel.

[FR Doc. 03–2080 Filed 1–28–03; 8:45 am]

BILLING CODE 4830–01–P

Corrections

Federal Register

Vol. 68, No. 19

Wednesday, January 29, 2003

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2002–14047; Airspace Docket No. 02–AGL–20]

Proposed Establishment of Class E Airspace; Berrien Springs, MI

Correction

In proposed rule document 03–1130 beginning on page 2461 in the issue of Friday, January 17, 2003, make the following correction:

§71.1 [Corrected]

On page 2462, in the first column, in §71.1, in the sixth line from the bottom, the heading **AGL MI E5 Berien Springs, MI [New]** should read, **AGL MI E5 Berrien Springs, MI [New]**.

[FR Doc. C3–1130 Filed 1–28–03; 8:45 am]

BILLING CODE 1505–01–D

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Federal Register

Wednesday,
January 29, 2003

Part II

Department of Housing and Urban Development

Notice of Regulatory Waiver Requests Granted for the Third Quarter of Calendar Year 2002; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4767–N–03]

Notice of Regulatory Waiver Requests Granted for the Third Quarter of Calendar Year 2002

AGENCY: Office of the Secretary, HUD.

ACTION: Public notice of the granting of regulatory waivers from July 1, 2002, through September 30, 2002.

SUMMARY: Section 106 of the Department of Housing and Urban Development Reform Act of 1989 (the HUD Reform Act) requires HUD to publish quarterly **Federal Register** notices of all regulatory waivers that HUD has approved. Each notice must cover the quarterly period since the most recent **Federal Register** notice. The purpose of this notice is to comply with the requirements of section 106 of the HUD Reform Act. This notice contains a list of regulatory waivers granted by HUD during the quarter beginning on July 1, 2002, and ending on September 30, 2002.

FOR FURTHER INFORMATION CONTACT: For general information about this notice, contact Aaron Santa Anna, Assistant General Counsel for Regulations, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–0500; telephone (202) 708–3055 (this is not a toll-free number). Hearing- or speech-impaired persons may access this number via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8391.

For information concerning a particular waiver action for which public notice is provided in this document, contact the person whose name and address follow the description of the waiver granted in the accompanying list of waiver-grant actions.

SUPPLEMENTARY INFORMATION: As part of the HUD Reform Act, the Congress adopted, at HUD's request, legislation to limit and control the granting of regulatory waivers by HUD. Section 106 of the HUD Reform Act added a new section 7(q) to the Department of Housing and Urban Development Act (2 U.S.C. 3535(q)), which provides that:

1. Any waiver of a regulation must be in writing and must specify the grounds for approving the waiver;

2. Authority to approve a waiver of a regulation may be delegated by the Secretary only to an individual of Assistant Secretary or equivalent rank, and the person to whom authority to waive is delegated must also have authority to issue the particular regulation to be waived;

3. Not less than quarterly, the Secretary must notify the public of all waivers of regulations that HUD has approved, by publishing a notice in the **Federal Register**. These notices (each covering the period since the most recent previous notification) shall:

a. Identify the project, activity, or undertaking involved;

b. Describe the nature of the provision waived, and the designation of the provision;

c. Indicate the name and title of the person who granted the waiver request;

d. Describe briefly the grounds for approval of the request; and

e. State how additional information about a particular waiver-grant action may be obtained.

Section 106 of the HUD Reform Act also contains requirements applicable to waivers of HUD handbook provisions that are not relevant to the purpose of this notice.

This notice follows procedures provided in HUD's Statement of Policy on Waiver of Regulations and Directives issued on April 22, 1991 (56 FR 16337). This notice covers HUD's waiver-grant activity from July 1, 2002, through September 30, 2002. For ease of reference, the waivers granted by HUD are listed by HUD program office (for example, the Office of Community Planning and Development, the Office of Housing, the Office of Public and Indian Housing, etc.). Within each program office grouping, the waivers are listed sequentially by the section of title 24 being waived. For example, a waiver-grant action involving the waiver of a provision in 24 CFR part 58 would come before a waiver of a provision in 24 CFR part 570.

Where more than one regulatory provision is involved in the grant of a particular waiver request, the action is listed under the section number of the first regulatory requirement that appears in title 24 of the Code of Federal Regulations and that is being waived as part of the waiver-grant action. For example, a waiver of both § 58.73 and § 58.74 would appear sequentially in the listing under § 58.73.

Waiver-grant actions involving the same initial regulatory citation are in time sequence beginning with the earliest-dated waiver-grant action.

Should HUD receive additional reports of waiver actions taken during the period covered by this report before the next report is published, the next updated report will include these earlier actions, as well as those that occurred during October 1, 2002, through December 31, 2002.

Accordingly, information about approved waiver requests pertaining to HUD regulations is provided in the Appendix that follows this notice.

Dated: January 16, 2003.

Alphonso Jackson,

Deputy Secretary.

Appendix

Listing of Waivers of Regulatory Requirements Granted by Offices of the Department of Housing and Urban Development July 1, 2002, through September 30, 2002

Note to Reader: More information about the granting of these waivers, including a copy of the waiver request and approval, may be obtained by contacting the person whose name is listed as the contact person directly after each set of waivers granted.

The regulatory waivers granted appear in the following order:

I. Regulatory waivers granted by the Office of Community Planning and Development.

II. Regulatory waivers granted by the Office of Housing.

III. Regulatory waivers granted by the Office of Public and Indian Housing.

I. Regulatory Waivers Granted by the Office of Community Planning and Development

For further information about the following waiver actions, please see the name of the contact person who immediately follows the description of the waiver granted.

• *Regulation:* 24 CFR 91.225(b)(4)(ii).

Project/Activity: The city of Abilene, Texas, requested a waiver of the regulations to change its selected period of certification to comply with the requirement that a least 70 percent of its Community Development Block Grant (CDBG) funds expended during that period are for activities that benefit low- and moderate-income persons.

Nature of Requirement: Section 91.225(b)(4)(ii) provides that each CDBG grantee must certify that it will achieve the primary objective of benefiting low- and moderate-income persons over a period of one, two, or three consecutive program years selected by the grantee.

Granted by: Roy A. Bernardi, Assistant Secretary for Community Planning and Development.

Date Granted: September 27, 2002.

Reasons Waived: The city of Abilene requested the waiver in order to undertake a major downtown revitalization program in 2002, the renovation of the Wooten Hotel. The developer was unable to attract investors and secure loans for redevelopment of the Wooten as a hotel

that would have met the low- and moderate-income national objective through job creation; however, the project will be able to meet a national objective on the basis of elimination of slum or blight. Because the amount of Section 108 funding needed for this project is almost equivalent to the city's annual entitlement amount, the city is unable to undertake this needed project and meet the overall benefit test in the currently identified certification period (2000–2002). By shortening the existing certification period to two years, the city will be able to meet the primary benefit test for two years and then have three years to comply with this test for 2002–2005. The Department has determined that this waiver is appropriate because the city has consistently exceeded the overall benefit requirement and failure to grant the waiver would prohibit the city from undertaking this worthwhile development project. Further, the city will be able to meet the overall benefit test in both the shortened period and the longer period.

Contact: Cornelia Robertson-Terry, Office of Community Planning and Development, Room 7152, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–2565, extension 4556.

- *Regulation:* 24 CFR 91.520(a).

Project/Activity: The city of Trenton, New Jersey, requested a waiver of the submission deadline for the city's 2001 program year Consolidated Annual Performance and Evaluation Report (CAPER).

Nature of Requirement: Section 91.520(a) requires each grantee to submit a performance report to HUD within 90 days after the close of the grantee's program year.

Granted by: Roy A. Bernardi, Assistant Secretary for Community Planning and Development.

Date Granted: August 28, 2002.

Reasons Waived: The city requested a two-month extension because the city experienced the departure of key staff and these departures resulted in a delay in the processing time. While HUD desires timely reports, the Department is interested in ensuring that the reports prepared by grantees are complete and accurate. The performance reports provide local residents with information on the city's accomplishments during the year, and the report data goes into HUD's national database that is used for various reporting purposes, including the annual report to Congress.

Contact: Cornelia Robertson-Terry, Office of Community Planning and Development, Room 7152, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–2565, extension 4556.

- *Regulation:* 24 CFR 91.520(a).

Project/Activity: The city of Pittsburg, California, requested a waiver of the submission deadline for the city's 2001 program year CAPER.

Nature of Requirement: 24 CFR 91.520(a) requires each grantee to submit a performance report to HUD within 90 days after the close of the grantee's program year.

Granted by: Roy A. Bernardi, Assistant Secretary for Community Planning and Development.

Date Granted: September 25, 2002.

Reasons Waived: The city requested a 45-day extension because the city's community development department recently relocated to a new building and is currently not able to access HUD's Integrated Disbursement and Information System, which contains the data used to prepare the CAPER. As a result of the office relocation and recent staff changes, the city was unable to submit the report before the deadline. While HUD desires timely reports, the Department is interested in ensuring that the reports prepared by grantees are complete and accurate. The performance reports provide local residents with information on the city's accomplishments during the year, and the report data goes into HUD's national database that is used for various reporting purposes, including the annual report to Congress.

Contact: Cornelia Robertson-Terry, Office of Community Planning and Development, Room 7152, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–2565, extension 4556.

- *Regulation:* 24 CFR 91.520(a).

Project/Activity: The state of Virginia requested a waiver of the submission date for its 2001 CAPER program year.

Nature of Requirement: Section 91.520(a) requires each grantee to submit a performance report to HUD within 90 days after the close of the grantee's program year. The CAPER for the state of Virginia is due to HUD by September 28, 2002.

Granted by: Roy A. Bernardi, Assistant Secretary for Community Planning and Development.

Date Granted: September 25, 2002.

Reasons Waived: The state requested an extension of its submission deadline due to reevaluations of the state's programs to meet the Governor's new fiscal priorities. Failure to grant the request would prevent the state from submitting a comprehensive report of its 2001 program. While HUD desires timely reports, the Department is also interested in ensuring that the performance reports prepared by grantees are complete and accurate.

Contact: Cornelia Robertson-Terry, Office of Community Planning and Development, Room 7152, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–2565, extension 4556.

- *Regulation:* 24 CFR 91.520(a).

Project/Activity: The city and county of Honolulu, the state of Hawaii, the county of Kauai, the county of Hawaii, and the county of Maui requested a waiver of the submission date for submitting their 2001 program year CAPERs. All of these CAPERs are due September 30, 2002.

Nature of Requirement: Section 91.520(a) requires each grantee to submit a performance report to HUD within 90 days after the close of the grantee's program year.

Granted by: Roy A. Bernardi, Assistant Secretary for Community Planning and Development.

Date Granted: September 26, 2002.

Reasons Waived: The grantees are requesting extensions in order to allow the working group time to improve the format of the CAPER submission to make it more understandable for citizens and HUD. The grantees will be unable to submit comprehensive reports of their 2001 program year if the extensions are not granted. While HUD desires timely reports, the Department is also interested in ensuring that the performance reports prepared by grantees are complete and accurate. The grantees received an extension to December 15, 2002, for submission CAPERs.

Contact: Cornelia Robertson-Terry, Office of Community Planning and Development, Room 7152, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–2565, extension 4556.

- *Regulation:* 24 CFR 91.520(a).

Project/Activity: The city of Baltimore, Maryland, requested a waiver of the submission deadline for the city's 2001 program year CAPER.

Nature of Requirement: Section 91.520(a) requires each grantee to submit a performance report to HUD within 90 days after the close of the grantee's program year.

Granted by: Roy A. Bernardi, Assistant Secretary for Community Planning and Development.

Date Granted: September 26, 2002.

Reasons Waived: The city of Baltimore requested an extension of the CAPER submission to allow additional time to properly report its Section 108 program beneficiary information. While HUD desires timely reports, the Department is interested in ensuring that the reports prepared by grantees are complete and accurate. The performance reports provide local residents with information on the city's accomplishments during the year, and the report data goes into HUD's national database that is used for various reporting purposes, including the annual report to Congress.

Contact: Cornelia Robertson-Terry, Office of Community Planning and Development, Room 7152, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–2565, extension 4556.

• *Regulation:* 24 CFR 91.520(a).

Project/Activity: The city of Hopewell, Virginia, requested a waiver of the submission deadline for the city's 2001 program year CAPER.

Nature of Requirement: Section 91.520(a) requires each grantee to submit a performance report to HUD within 90 days after the close of the grantee's program year.

Granted by: Roy A. Bernardi, Assistant Secretary for Community Planning and Development.

Date Granted: September 26, 2002.

Reasons Waived: The city of Hopewell requested an extension to allow sufficient time for citizens to comment and for the city to consider any comments received and respond, if appropriate. While HUD desires timely reports, the Department is interested in ensuring that the reports prepared by grantees are complete and accurate and involves citizen comments. The performance reports provide local residents with information on the city's accomplishments during the year, and the report data goes into HUD's national database that is used for various reporting purposes, including the annual report to Congress.

Contact: Cornelia Robertson-Terry, Office of Community Planning and Development, Room 7152, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–2565, extension 4556.

• *Regulation:* 24 CFR 91.520(a).

Project/Activity: Chesterfield County, Virginia, requested a waiver of the submission deadline for the county's 2001 program year CAPER.

Nature of Requirement: Section 91.520(a) requires each grantee to submit a performance report to HUD within 90 days after the close of the grantee's program year.

Granted by: Roy A. Bernardi, Assistant Secretary for Community Planning and Development.

Date Granted: September 26, 2002

Reasons Waived: The county requested an extension because the staff member normally responsible for compiling the report had to report for military duty on September 16, 2002. Although the staff member is expected to return on September 30, 2002, her absence will delay the report and will not allow the county to submit the report before the deadline. While HUD desires timely reports, the Department is interested in ensuring that the reports prepared by grantees are complete and accurate. The performance reports provide local residents with information on the county's accomplishments during the year, and the report data goes into HUD's national database that is used for various reporting purposes, including the annual report to Congress.

Contact: Cornelia Robertson-Terry, Office of Community Planning and Development, Room 7152, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–2565, extension 4556.

• *Regulation:* 24 CFR 91.520(a).

Project/Activity: The city of Erie, Pennsylvania, requested a waiver of the submission deadline for the city's 2001 program year CAPER.

Nature of Requirement: Section 91.520(a) requires each grantee to submit a performance report to HUD within 90 days after the close of the grantee's program year.

Granted by: Roy A. Bernardi, Assistant Secretary for Community Planning and Development.

Date Granted: September 27, 2002.

Reasons Waived: The city requested a 15-day extension to revise the data regarding its efforts to affirmatively further fair housing. In addition to this information, the extension will allow the city to collect housing performance data from one of its primary recipients. While HUD desires timely reports, the Department is interested in ensuring that the reports prepared by grantees are complete and accurate. The performance reports provide local residents with information on the city's accomplishments during the year, and the report data goes into HUD's national database that is used for various reporting purposes, including the annual report to Congress.

Contact: Cornelia Robertson-Terry, Office of Community Planning and Development, Room 7152, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–2565, extension 4556.

• *Regulation:* 24 CFR 91.520(a).

Project/Activity: The Dakota County Consortium, of the state of Minnesota, requested a waiver of the submission deadline for the county's 2001 program year CAPER. The extension is needed to allow Ramsey County, one of the consortium members, time to prepare its portion of the CAPER.

Nature of Requirement: Section 91.520(a) requires each grantee to submit a performance report to HUD within 90 days after the close of the grantee's program year.

Granted by: Roy A. Bernardi, Assistant Secretary for Community Planning and Development.

Date Granted: September 27, 2002.

Reasons Waived: The county requested a one-month extension because the staff person responsible for preparing Ramsey County's portion of the CAPER experienced a death in the family and left the state to attend to family matters. While HUD desires timely reports, the Department is interested in ensuring that the reports prepared by grantees are complete and accurate. The performance reports provide local residents with information on the county's accomplishments during the year, and the report data goes into HUD's national database that is used for various reporting purposes, including the annual report to Congress.

Contact: Cornelia Robertson-Terry, Office of Community Planning and Development, Room 7152, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–2565, extension 4556.

• *Regulation:* 24 CFR 92.500(d)(1)(C).

Project/Activity: The Municipality of Carolina, Puerto Rico, requested a waiver of its Fiscal Year 1996 HOME Investment Partnerships (HOME) expenditure deadline.

Nature of Requirement: Section 92.500(d)(1)(C) requires HUD to deobligate any funds in the United States Treasury account which are not expended within 5 years of the last day HUD notifies the participating jurisdiction of HUD's execution of the HOME Investment Partnership Agreement.

Granted by: Roy A. Bernardi, Assistant Secretary for Community Planning and Development.

Date Granted: July 30, 2002.

Reasons Waived: HUD found good cause for granting the waiver. The

Municipality has made substantial progress in addressing the administrative and programmatic problems that have negatively affected the effective and timely use of its HOME funds. The 1996 expenditure was fully expended less than one month from the regulatory deadline.

Contact: Cornelia Robertson-Terry, Office of Community Planning and Development, Room 7152, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–2565, extension 4556.

• *Regulation:* 24 CFR 570.208(a)(3).

Project/Activity: Clark County, Washington, requested a waiver of the Community Development Block Grant (CDBG) regulations at 24 CFR 570.208(a)(3), which describe the criteria for assistance used to provide or improve housing to meet the national objective of benefit to low- and moderate-income households.

Nature of Requirement: Section 570.208(a)(3) establishes the criteria that housing activities must meet in order to meet the national objectives of benefit to low- and moderate-income households.

Granted by: Roy A. Bernardi, Assistant Secretary for Community Planning and Development.

Date Granted: July 3, 2002.

Reasons Waived: The methodology identified in the regulations for determining compliance is not required by statute. The Department determined that the county demonstrated good cause for requesting the waiver. This project significantly promotes the purposes of the Housing and Community Development Act and provides an income mix and economic opportunities in a redeveloping area. This project is a mixed-use building, including 160 housing units. Low- and moderate-income households will occupy one hundred and thirty-nine housing units. This represents 86 percent of the units and CDBG funds will constitute 14 percent of the total cost of the acquisition and 1.3 percent of the total development cost.

Contact: Cornelia Robertson-Terry, Office of Community Planning and Development, Room 7152, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–2565, extension 4556.

• *Regulation:* 24 CFR 570.208(a)(3).

Project/Activity: Dakota County, Minnesota, requested a waiver of the CDBG regulations, which describe the criteria for assistance used to provide or improve housing to meet the national objective of benefit to low- and moderate-income households.

Nature of Requirement: Section 570.208(a)(3) establishes the criteria that housing activities must meet in order to meet the national objectives of benefit to low- and moderate-income households.

Granted by: Roy A. Bernardi, Assistant Secretary for Community Planning and Development.

Date Granted: July 25, 2002.

Reasons Waived: Although Dakota County requested a waiver of 24 CFR 570.208(a)(4), the correct citation should have been 24 CFR 570.208(3). The methodology identified in the regulations for determining compliance is not required by statute. The Department determined that the county has demonstrated good cause for requesting the waiver. This project significantly promotes the purposes of the Housing and Community Development Act and provides for an income mix and economic opportunities in a redeveloping area. This mixed-use development will include 51 senior housing units and three commercial spaces. The waiver is granted with the understanding that low- and moderate-income households will occupy all of the housing units and CDBG funds constitute 22.1 percent of the total cost of the acquisition and 3.8 percent of the total development cost.

Contact: Cornelia Robertson-Terry, Office of Community Planning and Development, Room 7152, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–2565, extension 4556.

• *Regulation:* 24 CFR 882.805(d)(1)(ii)(B).

Project/Activity: The San Francisco, California Housing Authority requested a waiver of the subject section 8 Moderate Rehabilitation Single Room Occupancy (SRO) requirements.

Nature of Requirement: The applicable regulations for the SRO Moderate Rehabilitation program state that the cost of rehabilitation that may be included for the purpose of calculating the initial contract rent must not exceed the current per unit cost limitation that was established in the **Federal Register**, in this case $18,200, minus the cost of fire and safety improvements. Section 882.805(d)(1)(ii)(B) states that this amount may be multiplied by 2.4 in areas where the housing authority has demonstrated to HUD's satisfaction that the increase is reasonable to accommodate special local conditions, including high construction costs. In the case of San Francisco, this would allow a maximum rehabilitation cost of $43,680.

Granted by: Roy A. Bernardi, Assistant Secretary for Community Planning and Development.

Date Granted: September 25, 2002.

Reasons Waived: The final per unit rehabilitation cost for this project is projected to be $60,494, well above the maximum approvable cost. A waiver of the per unit cost limitation for this project was determined appropriate as the current Fair Market Rents (FMRs) are sufficient to support the debt service for the project and this housing will address a critical need in the city's Continuum of Care by housing homeless individuals. HUD determined that there was good cause for this waiver in view of the extremely high cost of construction in San Francisco and the difficulty in finding and acquiring suitable properties for the SRO program.

Contact: Cornelia Robertson-Terry, Office of Community Planning and Development, Room 7152, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–2565, extension 4556.

II. Regulatory Waivers Granted by the Office of Housing

For further information about the following waivers actions, please see the name of the contact person who immediately follows the description of the waiver granted.

• *Regulation:* 24 CFR 200.54(a).

Project/Activity: Sycamore Place Apartments, Ashland, TN; Project Number: 086–35276.

Nature of Requirement: Section 200.54(a) establishes the procedures for a pro-rata disbursement of the mortgagor's front money escrow funds and Federal Housing Administration (FHA) insured mortgage proceeds for the subject property.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: August 15, 2002.

Reason Waived: The regulation was waived since the front money escrow is so large, the insured proceeds would not be disbursed for several months, resulting in payment of extension fees to the investors who purchased the Government National Mortgage Association (GNMA) mortgage-backed securities. Providing a waiver of 24 CFR 200.54(a) permitted the Nashville Multifamily Program Center Hub to approve a pro-rata disbursement of front money and mortgage proceeds, thereby allowing the mortgagee not to pay GNMA extension fees.

Contact: Michael McCullough, Director, Office of Multifamily Development, Department of Housing

and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–7000; telephone: (202) 708–1142.

• *Regulation:* 24 CFR 200.54(a).
Project/Activity: Eagle Ridge Apartments, San Antonio, TX; Project Number: 115–35398.
Nature of Requirement: Section 200.54(a) establishes the procedures for a pro-rata disbursement of the mortgagor's front money escrow funds and Federal Housing Administration (FHA) insured mortgage proceeds for the subject property.
Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.
Date Granted: August 20, 2002.
Reason Waived: The regulation was waived because the front money escrow is so large, the insured proceeds would not be disbursed for several months, resulting in payment of extension fees to the investors who purchased the GNMA mortgage-backed securities. Providing a waiver of 24 CFR 200.54(a) permitted the San Antonio Multifamily Program Center Hub to approve a pro-rata disbursement of front money and mortgage proceeds, thereby allowing the mortgagee not to pay GNMA extension fees.
Contact: Michael McCullough, Director, Office of Multifamily Development, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–7000; telephone: (202) 708–1142.

• *Regulation:* 24 CFR 200.54(a).
Project/Activity: Lauderdale Court Apartments, Memphis, TN, Project Number: 081–35225.
Nature of Requirement: Section 200.54(a) establishes the procedures for a pro-rata disbursement of the mortgagor's front money escrow funds and Federal Housing Administration (FHA) insured mortgage proceeds for the subject property.
Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.
Date Granted: August 26, 2002.
Reason Waived: The regulation was waived because the front money escrow is so large, the insured proceeds would not be disbursed for several months, resulting in payment of extension fees to the investors who purchased the GNMA mortgage-backed securities. Providing a waiver of 24 CFR 200.54(a) permitted the Nashville Multifamily Program Center Hub to approve a pro-rata disbursement of front money and mortgage proceeds, thereby allowing the mortgagee not to pay GNMA extension fees.
Contact: Michael McCullough, Director, Office of Multifamily Development, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–7000; telephone: (202) 708–1142.

• *Regulation:* 24 CFR 200.54(a).
Project/Activity: Majestic Stove Lofts, St. Louis, MO; Project Number: 085–35454.
Nature of Requirement: Section 200.54(a) establishes the procedures for a pro-rata disbursement of the mortgagor's front money escrow funds and Federal Housing Administration (FHA) insured mortgage proceeds for the subject property.
Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.
Date Granted: August 27, 2002.
Reason Waived: The regulation was waived because the front money escrow is so large, the insured proceeds would not be disbursed for several months, resulting in payment of extension fees to the investors who purchased the GNMA mortgage-backed securities. Providing a waiver of 24 CFR 200.54(a) permitted the Kansas City Multifamily Hub to approve a pro-rata disbursement of front money and mortgage proceeds, thereby allowing the mortgagee not to pay GNMA extension fees.
Contact: Michael McCullough, Director, Office of Multifamily Development, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–7000; telephone: (202) 708–1142.

• *Regulation:* 24 CFR 200.54(a).
Project/Activity: Park Avenue West Residences, Denver, CO; Project Number: 101–35557.
Nature of Requirement: Section 200.54(a) establishes the procedures for a pro-rata disbursement of the mortgagor's front money escrow funds and Federal Housing Administration (FHA) insured mortgage proceeds for the subject property.
Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.
Date Granted: August 27, 2002.
Reason Waived: The regulation was waived because the front money escrow is so large, the insured proceeds would not be disbursed for several months, resulting in payment of extension fees to the investors who purchased the GNMA mortgage-backed securities. Providing a waiver of 24 CFR 200.54(a) permitted the Denver Multifamily Hub to approve a pro-rata disbursement of front money and mortgage proceeds, thereby allowing the mortgagee not to pay GNMA extension fees.
Contact: Michael McCullough, Director, Office of Multifamily Development, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–7000; telephone: (202) 708–1142.

• *Regulation:* 24 CFR 200.54(a).
Project/Activity: The Premiere Mill, Morganton, NC; Project Number: 053–32002.
Nature of Requirement: Section 200.54(a) establishes the procedures for a pro-rata disbursement of the mortgagor's front money escrow funds and Federal Housing Administration (FHA) insured mortgage proceeds for the subject property.
Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.
Date Granted: August 27, 2002.
Reason Waived: The regulation was waived because the front money escrow is so large, the insured proceeds would not be disbursed for several months, resulting in payment of extension fees to the investors who purchased the GNMA mortgage-backed securities. Providing a waiver of 24 CFR 200.54(a) permitted the Greensboro Multifamily Hub to approve a pro-rata disbursement of front money and mortgage proceeds, thereby allowing the mortgagee not to pay GNMA extension fees.
Contact: Michael McCullough, Director, Office of Multifamily Development, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–7000; telephone: (202) 708–1142.

• *Regulation:* 24 CFR 200.54(a).
Project/Activity: Livingston Park Apartments, Cleveland, OH; Project Number: 042–35485.
Nature of Requirement: Section 200.54(a) establishes the procedures for a pro-rata disbursement of the mortgagor's front money escrow funds and Federal Housing Administration (FHA) insured mortgage proceeds for the subject property.
Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.
Date Granted: September 16, 2002.
Reason Waived: The regulation was waived because the front money escrow is so large, the insured proceeds would not be disbursed for several months, resulting in payment of extension fees to the investors who purchased the GNMA mortgage-backed securities. Providing a waiver of 24 CFR 200.54(a) permitted the Cleveland Multifamily Program Center Hub to approve a pro-rata disbursement of front money and mortgage proceeds, thereby reducing the amount of negative arbitrage representing the difference between the investment rate on un-disbursed

mortgage proceeds and the rate on the tax exempt bonds

Contact: Michael McCullough, Director, Office of Multifamily Development, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–7000; telephone: (202) 708–1142.

• *Regulation:* 24 CFR 200.54(a).

Project/Activity: Paul Brown Building, St. Louis, MO; Project Number: 085–32017.

Nature of Requirement: Section 200.54(a) establishes the procedures for a pro-rata disbursement of the mortgagor's front money escrow funds and Federal Housing Administration (FHA) insured mortgage proceeds for the subject property.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: September 16, 2002.

Reason Waived: The regulation was waived because the front money escrow is so large, the insured proceeds would not be disbursed for several months, resulting in the payment of extension fees to the investors who purchased the GNMA mortgage-backed securities. Providing a waiver of 24 CFR 200.54(a) permitted the Kansas City Multifamily Hub to approve a pro-rata disbursement of front money and mortgage proceeds, thereby allowing the mortgagee not to pay GNMA extension fees.

Contact: Michael McCullough, Director, Office of Multifamily Development, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–7000; telephone: (202) 708–1142.

• *Regulation:* 24 CFR 200.54(a).

Project/Activity: Laurel House Apartments, Nashville, TN; Project Number: 086–32005.

Nature of Requirement: Section 200.54(a) establishes the procedures for a pro-rata disbursement of the mortgagor's front money escrow funds and Federal Housing Administration (FHA) insured mortgage proceeds for the subject property.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: September 27, 2002.

Reason Waived: The regulation was waived because the front money escrow is so large, the insured proceeds would not be disbursed for several months after initial endorsement, resulting in payment of extension fees to the investors who purchased the GNMA mortgage-backed securities. Providing a waiver of 24 CFR 200.54(a) permitted the Nashville Multifamily Program Center to approve a pro-rata disbursement of front money and mortgage proceeds, thereby allowing the mortgagee not to pay GNMA extension fees.

Contact: Michael McCullough, Director, Office of Multifamily Development, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–7000; telephone: (202) 708–1142.

• *Regulation:* 24 CFR 202.3(c)(2)(iii).

Project/Activity: Credit Watch Termination Threshold; Washington, DC.

Nature of Requirement: Section 202.3(c)(2)(iii) establishes the threshold for placing a HUD/FHA approved lender on Credit Watch status when its default and claim rate exceeds the field office default and claim rate.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: August 8, 2002.

Reason Waived: Waiver of the regulation permits HUD/FHA to initially focus on those lenders originating the worst performing loans. The waiver allows for adjustment of the Credit Watch Termination threshold from a range of 150 percent to 200.9 percent of the HUD field office default and claim rate to a range of 201 percent to 300.9 percent of that rate. This waiver gradually reduces the threshold to the regulated 200 percent; the reduction occurs in quarterly increments through Fiscal Year 2003.

Contact: Joy L. Hadley, Director, Quality Assurance Division, U. S. Department of Housing and Urban Development, 451 Seventh Street, SW., Room B133–P3214, Washington, DC 20410–7000; telephone (202) 708–2830.

• *Regulation:* 24 CFR 236.725.

Project/Activity: Brookside Terrace, Newton, NJ; Project Number: 031–059NI.

Nature of Requirement: Section 236.725 requires that a rental assistance contract shall be limited to the term of the mortgage or 40 years from the date of the first payment made under the contract, whichever is the lesser.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: July 30, 2002.

Reason Waived: The non-insured Section 236 mortgage has exceeded its 20th year; therefore, the mortgagor could unilaterally prepay the mortgage and turn the project into a higher income, market rate property. The project will be maintained as an affordable housing resource to the maturity date of the non-insured Section 236 mortgage plus an additional 5 years, through the execution and recording of a "Decoupling Use Agreement." This permits the rental assistance payments subsidy to continue until the maturity date of the original non-insured Section 236 mortgage.

Contact: Beverly J. Miller, Director, Office of Asset Management, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6160, Washington, DC 20410–7000; telephone (202) 708–3730.

• *Regulation:* 24 CFR 266.626.

Project/Activity: Legacy at Lowery, Denver, CO; Project Number: 101–98041.

Nature of Requirement: Section 266.626 specifies the procedures for notice of default (when a mortgagor fails to make any payment due under the mortgage) and filing an insurance claim.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: September 4, 2002.

Reason Waived: The Colorado Housing and Finance Authority (CHFA) requested a waiver for the subject project because the current occupancy level will not support the project. The project experienced substantial delays in lease up and the borrower was unable to commence amortization of the permanent loan. The borrower requested the CHFA to restructure the loan to provide a 2-year deferral of payments on the mortgage to provide the borrower time to reach a sufficient occupancy level. The CHFA believed it could accomplish that goal by filing a partial payment of claim (PPC). HUD encouraged the lender to accept a PPC in lieu of a full claim, which caused a delay in the lender's filing of the application within the required period. The time frame for filing an application for initial claim was extended.

Contact: Beverly J. Miller, Director, Office of Asset Management, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6160, Washington, DC 20410–7000; telephone (202) 708–3730.

• *Regulations:* 24 CFR 401.600.

Project/Activity: The following projects requested waivers to the 12-month limit at above-market rents (24 CFR 401.600):

FHA No.	Project Name	State
04535170	Baughman Towers.	WV
04635548	Belle Vista Estates.	OH
05235335	Bishop's Garth Apartments.	MD
01335105	Brandegee Gardens.	NY

FHA No.	Project Name	State
04335257	Calumet/Horizon ..	OH
07435170	Castlewood Apartments.	IA
05235292	Center Place	MD
09335088	Chair III	MT
06535318	Cooks Avenue Apts.	MS
10235134	Eastwood Apartments.	KS
06535271	Elmwood Apartments.	MS
04635522	Glendale Apartments.	OH
03435160	Lansford Townhouses.	PA
08735119	McGhee Square ..	TN
10135276	Newland Square ..	CO
07335352	Princeton Creek Apartments.	IN
06535323	Rose Garden Apartments.	MS
02435050	Rumford Island Complex.	ME
11535197	Sandy Oaks Apartments.	TX
10235153	Silverwood Apartments.	KS
06435226	The Meadows Apartments.	LA
04235324	Warner House	OH
08735114	Westgate Towers	TN
08235196	White River Apartments.	AR
13335044	Winwood of Plainview.	TX

Nature of Requirement: Section 401.600 requires that projects be marked down to market rents within 12 months of their first expiration date after January 1, 1998. The intent of this provision is to ensure timely processing of requests for restructuring, and that the properties will not default on their FHA insured mortgages during the restructuring process.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: August 12, 2002.

Reasons Waived: The projects listed above were not assigned to the participating administrative entities (PAEs) in a timely manner or for which the restructuring analysis was unavoidably delayed due to no fault of the owner.

Contact: Alberta Zinno, Office of Multifamily Housing Assistance Restructuring, Department of Housing and Urban Development, Portals Building, Suite 400, 1280 Maryland Avenue, SW., Washington, DC 20410; telephone (202) 708–0001.

• *Regulations:* 24 CFR 401.600.

Project/Activity: The following projects requested waivers to the 12-month limit at above-market rents (24 CFR 401.600):

FHA No.	Project Name	State
04335244	Belle Village Apartments.	OH
01257045	Carbrook Apartments.	NY
10935046	Cheyenne Station Apartments.	WY
06535316	Church Garden Apartments.	MS
01257146	Concourse Flatiron Apartments.	NY
01257373	Concourse Green	NY
06635173	Cypress Courts Apartments.	FL
10235154	Eastview Gardens	KS
04235327	Fostoria Townhouses.	OH
04235316	Glenville Apartments.	OH
04235357	Greenview Gardens.	OH
06535315	Herdy Micou Homes.	MS
04235333	Hilltop Village	OH
01335102	James F. Lettis Apartments.	NY
10235159	Knightsbridge Manor.	KS
01335100	Mechanicville Hsg. for the Elderly.	NY
01257123	Miramar Court	NY
08735124	Norris Gardens	TN
04235295	Oakwood Gardens	OH
11435346	Royal Palms Apts	TX
08635139	Shelby Hills Apartments.	TN
07135422	South of the Yards.	IL
00035341	Southern Hills Apartments.	DC
10135265	Southgate Commons Apartments.	CO
07335420	The Meadows Apartments.	IN
10135259	University Plaza ...	CO
08335342	Valley View Apartments.	KY

Nature of Requirement: Section 401.600 requires that projects be marked down to market rents within 12 months of their first expiration date after January 1, 1998. The intent of this provision is to ensure timely processing of requests for restructuring, and that the properties will not default on their FHA insured mortgages during the restructuring process.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: September 6, 2002.

Reasons Waived: The list of projects above were not assigned to the PAEs in a timely manner or for which the restructuring analysis was unavoidably delayed due to no fault of the owner.

Contact: Alberta Zinno, Office of Multifamily Housing Assistance Restructuring, Department of Housing and Urban Development, Portals Building, Suite 400, 1280 Maryland Avenue, SW., Washington, DC 20410; telephone (202) 708–0001.

• *Regulation:* 24 CFR 883.606(b).

Project/Activity: Minnesota Housing Finance Agency (the HFA) proposed refunding of its Series 1991 refunding bonds, which refinanced 27 Section 8 assisted projects. The financing terms proposed by the HFA and approved by HUD include an override above the bond yield, *i.e.*, the project note rate is higher than the bond interest rate, as permitted by the Internal Revenue Code within a 150 basis points limitation. The HFA also collects the administrative fee in the projects included in this bond refunding.

Nature of Requirement: Section 883.606(b) prohibits the collection of an override and a Housing Assistance Payments Contract (HAPC) administration fee in connection with the same project.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: July 26, 2002.

Reason Waived: The Minnesota HFA allocates the override revenue to its affordable housing programs, including very low-income housing and activities in support of its Section 8 assisted inventory, including these 27 projects. Both override and HAPC administration fees are pledged to secure the bond issue until the bonds are paid off. HUD finds that the uses of the revenues are consistent with the objectives of the McKinney Act bond refunding program. HUD also finds it impractical to upset the security arrangements which are relied upon by rating agencies, bond underwriters, and investors in the marketing of the bonds and which assure favorable bond interest rates.

Contact: James B. Mitchell, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone (202) 708–3944, extension 2612.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: Floyd County Apartments, Minnie, KY; Project Number: 083–EE070/KY36–S001–003.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: July 10, 2002.

Reason Waived: The project is located in a floodplain that requires extensive engineered fills at the building pad and parking lot locations. The sponsor

exhausted all efforts to obtain additional funding. The project is economically designed and is comparable in cost to similar projects developed in the area.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).
Project/Activity: The Lambs Farm of Green Oaks, Green Oaks, IL; Project Number: 071–HD115/Il06–Q991–005.
Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing.
Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.
Date Granted: July 10, 2002.
Reason Waived: The sponsor exhausted all efforts to obtain additional funding. The project is economically designed and is comparable in cost to similar projects developed in the area.
Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).
Project/Activity: St. Timothy Manor, Cleveland, OH; Project Number: 042–EE111/OH12–S991–004.
Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing.
Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.
Date Granted: July 12, 2002.
Reason Waived: The project is economically designed, is comparable to other similar projects in the area, and the sponsor exhausted all efforts to obtain additional funding from other sources.
Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).
Project/Activity: Pensdale Apartments, Philadelphia, PA; Project Number: 034–EE100/PA26–S991–009.
Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing.
Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.
Date Granted: July 18, 2002.
Reason Waived: The project is economically designed, is comparable to other similar projects developed in the area, and the sponsor has exhausted all efforts to obtain additional funding from other sources.
Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).
Project/Activity: St. George Cathedral Manor, Philadelphia, PA; Project Number: 034–EE097/PA26–S991–006.
Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing.
Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.
Date Granted: July 19, 2002.
Reason Waived: The project is economically designed, is comparable to other similar projects developed in the area, and the sponsor exhausted all efforts to obtain additional funding from other sources.
Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).
Project/Activity: Greater Allen Cathedral Senior Residence, Jamaica, Queens, NY; Project Number: 012–EE291/NY36–S001–006.
Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing.
Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.
Date Granted: July 19, 2002.
Reason Waived: The project is economically designed, is comparable to other similar projects developed in the jurisdiction, the sponsor exhausted all efforts to obtain additional funding from other sources. In addition a determination that the costs are reasonable is based on an extensive design review of the project.
Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).
Project/Activity: Options Supported Housing Project VII, Central Islip, NY; Project Number: 012–HD096/NY36–Q001–001.
Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing.
Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.
Date Granted: July 19, 2002.
Reason Waived: The project is economically designed, the project is comparable in cost to similar projects, and the sponsor cannot contribute any additional funds.
Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).
Project/Activity: Westminster Senior Housing, Los Angeles, CA; Project Number: 122–EE143/CA16–S981–012.
Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing.
Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.
Date Granted: July 19, 2002.
Reason Waived: The project is economically designed and comparable to other similar projects in the area. The sponsor has exhausted all efforts to obtain additional funding from other sources, and the requested increase is due to the high cost of materials and labor in southern California.
Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).
Project/Activity: Hale Mahaolu Eono 5, Lahaina, HI; Project Number: 140–EE021/HI10–S0001–001.
Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing.
Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.
Date Granted: July 19, 2002.
Reason Waived: The project is economically designed, and is comparable to other similar projects developed in the area. The sponsor exhausted all efforts to obtain additional funding from other sources.
Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing

and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).
Project/Activity: Ottawa River Estates, Toledo, OH; Project Number: 042–HD072/OH12–Q971–004.
Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing.
Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.
Date Granted: July 19, 2002.
Reason Waived: The project is economically designed and is comparable to other similar projects developed in the area. The sponsor exhausted all efforts to obtain additional funding from other sources.
Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).
Project/Activity: Villa Seton, Port St. Lucie, FL; Project Number: 067–EE107/FL29–S001–005.
Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing.
Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.
Date Granted: July 24, 2002.
Reason Waived: The project is economically designed and is comparable to other similar projects developed in the area. The sponsor exhausted all efforts to obtain additional funding from other sources.
Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).
Project/Activity: White Sands Manor II, Fort Walton Beach, FL; Project Number: 063–EE022/FL29–S991–009.
Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing.
Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.
Date Granted: August 5, 2002.
Reason Waived: The project is economically designed, and is comparable to other similar projects developed in the area. The sponsor has exhausted all efforts to obtain additional funding from other sources.
Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).
Project/Activity: Owings Mills Town Center Apartments, Owings Mills, MD; Project Number: 052–EE038/MD06–S011–001.
Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing.
Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.
Date Granted: August 6, 2002.
Reason Waived: The project is economically designed and is comparable to other similar projects developed in the area. The sponsor has exhausted all efforts to obtain additional funding from other sources.
Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).
Project/Activity: West Street Needham, MA; Project Number: 023–HD138/MA06–Q981–001.
Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing.
Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.
Date Granted: August 12, 2002.
Reason Waived: The project is economically designed. The sponsor received $198,353 in secondary financing from the Facilities Consolidation Fund (FCF). Construction costs in the area are greater than in other parts of the country.
Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).
Project/Activity: Simpson Mid-Town Apartments, Philadelphia, PA; Project Number: 034–EE107–WAH/PA26–S001–007.
Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing.
Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.
Date Granted: August 23, 2002.
Reason Waived: The owner has incurred construction costs due to a change in its building configuration from three to four stories as a result of a loss of one of the parcels through a tax sale. The sponsor exhausted all efforts to obtain additional funding. The project is economically designed and is comparable to other similar projects developed in the area.
Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).
Project/Activity: Howard Street Senior Apartments, San Francisco, CA; Project Number: 121–EE121/CA39–S981–014.
Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing.
Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.
Date Granted: August 27, 2002.
Reason Waived: The project is economically designed, is comparable to other similar projects developed in the area, and the sponsor exhausted all efforts to obtain additional funding.
Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).
Project/Activity: Passumpsic View, St. Johnsbury, VT; Project Number: 024–EE057/VT36–S001–001.
Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing.
Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.
Date Granted: August 27, 2002.
Reason Waived: The project is economically designed, is comparable to other similar projects developed in the area, and the sponsor has exhausted all efforts to obtain additional funding.
Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).
Project/Activity: Meadow Park, Sarasota, FL; Project Number: 067–EE106/FL29–S001–001.
Nature of Requirement: Section 891.100(d) prohibits amendment of the

amount of approved capital advance funds prior to initial closing.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: August 27, 2002.

Reason Waived: The project is economically designed, is comparable to other similar projects developed in the area, and the sponsor has exhausted all efforts to obtain additional funding.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: A. Kornegay Senior Housing, New York, NY; Project Number: 012–EE303/NY36–S001–018.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: August 30, 2002.

Reason Waived: The project is economically designed, is comparable to other similar projects developed in the area, and the city of New York will provide funds for site preparation.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: Talbot Bernard Senior Housing, Dorchester, MA; Project Number: 023–EE120/MA06–S001–005.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: August 30, 2002.

Reason Waived: The project is economically designed, is comparable to other similar projects developed in the area, and the sponsor obtained additional funding from other sources in the amount of $2,000,000.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: Waycross VOA Housing, Waycross, GA; Project Number: 061–HD076/GA06–Q001–002.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: August 30, 2002.

Reason Waived: The project is economically designed and is comparable to other similar projects developed in the area. In addition, the sponsor exhausted all efforts to obtain additional funding.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: Reidsville VOA Housing, Reidsville, GA; Project Number: 061–HD077/GA06–Q001–003.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: August 30, 2002.

Reason Waived: The project is economically designed, is comparable to other similar projects developed in the area, and the sponsor has exhausted all efforts to obtain additional funding.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: Bergen Street Apartments, Providence, RI; Project Number: 016–HD029/RI43–Q991–005.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: August 30, 2002.

Reason Waived: The project is economically designed, is comparable to other similar projects developed in the area, and the sponsor has exhausted all efforts to obtain additional funding.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: Palmer Park Senior Housing, Palmer Park, MD; Project Number: 000-EE056/MD39–S011–001.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: August 30, 2002.

Reason Waived: The project is economically designed, is comparable to other similar projects developed in the area, and the sponsor obtained a grant from the state of Maryland's Affordable Housing Trust in the amount of $75,000.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: CNR Senior Housing, Brooklyn, NY; Project Number: 012–EE298/NY36–S001–013.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: August 30, 2002.

Reason Waived: The project is economically designed, is comparable to other similar projects developed in the area, and the sponsor exhausted all efforts to obtain additional funding.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: Discovering Horizons, Northridge, CA; Project Number: 122–HD135/CA16–Q001–006.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: August 30, 2002.

Reason Waived: The project is economically designed, is comparable to other similar projects developed in the area, and the sponsor exhausted all efforts to obtain additional funding.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).
Project/Activity: Fuller Gardens, San Leandro, CA; Project Number: 121–HD073/CA39–Q001–002.
Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing.
Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.
Date Granted: August 30, 2002.
Reason Waived: The project is economically designed, is comparable to other similar projects developed in the area, and the sponsor exhausted all efforts to obtain additional funding from other sources.
Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).
Project/Activity: Ghost Creek Housing, River Falls, WI; Project Number: 075–HD067/WI39–Q001–004.
Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing.
Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.
Date Granted: August 30, 2002.
Reason Waived: The project is economically designed, is comparable to other similar projects developed in the area, and the sponsor exhausted all efforts to obtain additional funding from other sources.
Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).
Project/Activity: Hale O Mana'o Lana Hou II, Wailuku, Maui, HI; Project Number: 140–HD015/HI10–Q961–001.
Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing.
Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.
Date Granted: August 30, 2002.
Reason Waived: The project is economically designed, is comparable to other similar projects developed in the area, and the sponsor could not contribute any additional funds.
Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).
Project/Activity: Share VIII, Selden, NY; Project Number: 012–HD099/NY36–Q001–004.
Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing.
Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.
Date Granted: August 30, 2002.
Reason Waived: The project is economically designed, is comparable to other similar projects developed in the area, and the sponsor exhausted all efforts to obtain additional funding from other sources.
Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).
Project/Activity: The Owen House, Fair Haven, VT; Project Number: 024–HD032/VT36–Q001–001.
Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing.
Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.
Date Granted: August 30, 2002.
Reason Waived: The project is economically designed, is comparable to other similar projects developed in the area, and the sponsor exhausted all efforts to obtain additional funding from other sources.
Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).
Project/Activity: The Harvey House, Castleton, VT; Project Number: 024–HD033/VT36–Q001–002.
Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing.
Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.
Date Granted: August 30, 2002.
Reason Waived: The project is economically designed, is comparable to other similar projects developed in the area, and the sponsor exhausted all efforts to obtain additional funding from other sources.
Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).
Project/Activity: Fiesta House, Reseda, CA; Project Number: 122–EE166/CA16–S001–003.
Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing.
Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.
Date Granted: August 30, 2002.
Reason Waived: The project is economically designed, is comparable to other similar projects developed in the area, and the sponsor exhausted all efforts to obtain additional funding from other sources.
Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).
Project/Activity: NAF/Imperial Senior Housing, Imperial, NE; Project Number: 103–EE024/NE26–S001–003.
Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing.
Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.
Date Granted: September 6, 2002.
Reason Waived: The project is economically designed, is comparable in cost to similar projects, and the sponsor could not contribute any additional funds.
Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).
Project/Activity: Margaret Wagner Apartments, Cleveland Heights, OH, Project Number: 042–EE118/OH12–S001–002.
Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing.
Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.
Date Granted: September 12, 2002.
Reason Waived: The project is economically designed, is comparable to

other similar projects developed in the area, and the sponsor has exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: Trinity Terrace, Fort Washington, MD, Project Number: 000–EE054/MD39–S001–001.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: September 12, 2002.

Reason Waived: The project is economically designed, is comparable to other similar projects developed in the area, and the sponsor exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: Walter S. Brooks Elderly Homes at Ormont Court, New Haven, CT, Project Number: 017–EE059/CT26–S001–002.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: September 16, 2002.

Reason Waived: The project is economically designed, is comparable to other similar projects developed in the area, and the sponsor exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: Reseda Horizons, Northridge, CA; Project Number: 122–HD136/CA16–Q001–007.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: September 16, 2002.

Reason Waived: The project is economically designed, is comparable to other similar projects developed in the area, and the sponsor exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d) and 24 CFR 891.165.

Project/Activity: Holy Rosary Senior Residence, Union City, NJ, Project Number: 031–EE049/NJ39–S981–006.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing. Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: July 22, 2002.

Reason Waived: The project is economically designed, is comparable to other similar projects developed in the area, and the sponsor secured additional secondary financing for a portion of the shortfall. Additional time was needed for the firm commitment to be reprocessed due to an increase in construction costs.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d) and 24 CFR 891.165.

Project/Activity: Independent Living Horizons VII, Thomson, GA; Project Number: 061–HD062/GA06–Q981–001.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing. Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: August 5, 2002.

Reason Waived: The project is economically designed and comparable to other similar projects developed in the area. The sponsor exhausted all efforts to obtain additional funding from other sources. The sponsor incurred delays in identifying a site due to circumstances beyond their control.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d) and 24 CFR 891.165.

Project/Activity: The Orange County Two-Site Project, Town of Hamptonburgh, NY; Project Number: 012–HD091/NY36–Q991–002.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing. Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: August 30, 2002.

Reason Waived: The project is economically designed and is comparable to other similar projects developed in the area. One of the original sites had to be replaced and the Sponsor encountered delays due to a major difficulty in securing an affordable site because of the escalation of land costs.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d) and 24 CFR 891.165.

Project/Activity: George and Lois Brown Estates, Henderson, NV; Project Number: 125–HD067/NV25–Q991–001.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing. Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: August 30, 2002.

Reason Waived: The project is economically designed, is comparable to other similar projects developed in the area, and the sponsor exhausted all efforts to obtain additional funding from other sources. In addition, the sponsor incurred delays when the original architect had to withdraw from the project and the city of Henderson raised issues concerning the classification of the project, which had to be resolved.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d) and 24 CFR 891.165.

Project/Activity: Jawonio Residential Opportunities II, Hillcrest NY; Project Number: 012–HD094/NY36–Q991–005.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing. Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: September 23, 2002.

Reason Waived: The project is economically designed and is comparable to other similar projects developed in the area. The New York State Office of Mental Retardation and Developmental Disabilities will provide $393,271 in secondary funding. The project encountered delays in its effort to secure zoning and environmental approvals, and took time to reconcile design reviews and feasibility with related constructions costs.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d) and 24 CFR 891.165.

Project/Activity: Main and Arnold Senior Housing, Half Moon Bay, San Mateo County, CA; Project Number: 121–EE126/CA39–S991–005.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing. Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: September 23, 2002.

Reason Waived: The project is economically designed and comparable to other projects developed in the area. The sponsor exhausted all efforts to find additional funding to cover the development cost shortfall. The project incurred significant delays associated with the local approval process required to ensure that the project will be designed in compliance with the California Environmental Quality Act.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Vermont Seniors, Los Angeles, CA; Project Number: 122–EE148/CA16–S981–017.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: July 11, 2002.

Reason Waived: The project incurred delays primarily due to demolition of commercial and residential structures, the relocation process, and the time taken to receive additional funding for land acquisition and development costs.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Main Street New Hope Courtyard Apartments, Los Angeles, CA; Project Number: 122–HD127/CA16–Q991–011.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: July 12, 2002.

Reason Waived: Additional time is needed to resolve the use of the new California State Multifamily Housing Program funds, and to obtain the bridge financing that will meet program requirements during construction.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Cedar Street Senior Apartments, Garberville, CA; Project Number: 121–EE118/CA39–S981–011.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: July 15, 2002.

Reason Waived: The project was delayed while the owner resolved site formation and market issues.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Rhinelander Elderly Housing, Rhinelander, WI; Project Number: 075–EE090/WI39–S991–010.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: July 17, 2002.

Reason Waived: The project was delayed while the owner resolved a series of site problems.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Community Hope II Consumer Home, Roxbury, NJ; Project Number: 031–HD104/NJ39–Q991–010.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: July 18, 2002.

Reason Waived: A new contractor was hired for the project forcing the completion of new documents and changed drawings.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Somerset Consumer Home, North Plainfield, NJ; Project Number: 031–HD103/NJ39–Q991–009.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: July 18, 2002.

Reason Waived: The owner experienced delays due to the difficulty in obtaining building permits.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: St. Mary's Home for the Elderly, Trujillo Alto, PR, Project Number: 056–EE039/RQ46–S991–003.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: July 19, 2002.

Reason Waived: Delays were incurred due to the sponsor's inability to obtain the needed endorsements and permits from the regulatory agencies in a timely manner.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Loretto Heritage Apartments, Syracuse, NY; Project Number: 014–HD084/NY06–Q991–001.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: July 19, 2002.

Reason Waived: Additional time was needed for the sponsor to secure financing in order to cover the installation cost of a new water line.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Harborside II ILC, Paterson, NJ; Project Number: 031–HD102/NJ39–S991–007.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: July 19, 2002.

Reason Waived: Title corrections were needed on all of the condominium units in the building.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Ray Rawson Villas, Las Vegas, NV; Project Number: 125–HD064/NV25–Q971–001.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: July 19, 2002.

Reason Waived: The sponsor needed to raise significant local funds for additional construction costs. There were delays in obtaining acceptable bids from contractors. The project architect withdrew due to ill health.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Inglis Gardens at Evesham, Newark, NJ; Project Number: 035–HD040/NJ39–Q981–001.

Nature Of Requirement: Section 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: July 26, 2002.

Reason Waived: Additional time was needed for the issuance of a soil conservation permit from the county and for the HUD field office to resolve an issue regarding the engineering documents for the project.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Lowell Residence, Lowell, MA; Project Number: 023–HD146/MA06–Q981–009.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: July 26, 2002.

Reason Waived: There were architectural design and construction bidding issues due to the market conditions of the area, environmental issues which required further testing, and subsequent amendments to the plans and specifications for asbestos removal. There were also changes to the sponsor's Board of Directors.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Homes Anew I, Southold, NY; Project Number: 012–HD095/NY36–Q991–006.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation for the capital

advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: August 6, 2002.

Reason Waived: The sponsor was unable to achieve closing due to difficulties imposed by the two localities in issuing building permits.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Community Hope I Consumer Home, Parsippany, NJ; Project Number: 031–HD100/NJ39–Q991–005.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: August 6, 2002.

Reason Waived: Additional time was needed for the owner to revise the drawings to include a chair lift/inclinator instead of a ramp in order to meet the requirements of the Americans with Disabilities Act, and for the township to review the revised drawings.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Three Bridges, Readington Township, NJ; Project Number: 031–EE042/NJ39–S961–008.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: August 7, 2002.

Reason Waived: Additional time was needed for the owner to secure an alternate site because the project could not proceed at the original site due to the fact that the sewer allocation for the township had been exceeded.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Carrie P. Meek Manor, Miami, FL; Project Number: 066–EE071/FL29–S991–016.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: August 27, 2002.

Reason Waived: Additional time was needed for the owner to complete the firm commitment application and for the closing.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Henderson Supportive Housing, Henderson, Clark County, NV; Project Number: 125–HD067/NV25–Q991–001.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: September 23, 2002.

Reason Waived: The sponsor needed additional time to identify funding sources to cover shortfalls.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Pine Street Inn Housing II, Dorchester, MA; Project Number: 023–EE098/MA06–S981–003.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: September 23, 2002.

Reason Waived: Additional time was needed for the owner to correct the deficiencies in the firm commitment application.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Employment Options, Marlboro, MA; Project Number: 023–HD131/MA06–Q971–012.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: September 25, 2002.

Reason Waived: The project was delayed while the owner sought secondary financing and resolved a site problem with subsurface ledge.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–3000

• *Regulation:* 24 CFR 891.165.

Project/Activity: Waltham Residence, Waltham, MA; Project Number: 023–HD145/MA06–Q981–008.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: September 30, 2002.

Reason Waived: The project experienced delays while the sponsor secured secondary financing and changed housing consultants.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Three Gems, Lowell, MA; Project Number: 023–HD161/MA06–Q991–009.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: September 30, 2002.

Reason Waived: The sponsor had to secure secondary financing for the project and the concurrence of the Massachusetts Historical Commission since the project is of historical significance, and asbestos abatement also had to be performed.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Bolton Senior Housing, Bolton, MA; Project Number: 023–EE080/MA06–S961–016.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: September 30, 2002.

Reason Waived: It took over nine months for the town of Bolton to approve Massachusetts Housing Partnership documents concerning the site. Additional delays were incurred to resolve project design issues raised by local community residents. The project is now proceeding in an expeditious manner; and the owner's appeal for an additional extension of the fund reservation was granted. There is a stipulation that no further reservation will be granted. The extension expires March 31, 2003.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.205.

Project/Activity: Sullivan House Phase II, Virginia Beach, VA; Project Number: 051–EE086/VA36–S011–009.

Nature of Requirement: Section 891.205 requires that Section 202 project owners be single-purpose corporations.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: August 23, 2002.

Reason Waived: The sponsor, Catholic Diocese of Richmond, wants to add 65 units to its existing Section 202 project. The sponsor requested authorization to place a second mortgage on this second Phase II project.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.205.

Project/Activity: Greater Allen Cathedral of New York Senior Residence, Jamaica, Queens, NY; Project Number: 012–EE291/NY36–S001–006.

Nature of Requirement: Section 891.205 requires that Section 202 project owners to have timely IRS tax-exempt status rulings.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: September 23, 2002.

Reason Waived: The required tax-exemption ruling for the owner from the Internal Revenue Service was not expected to be issued in time for the scheduled initial closing of the project.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.205.

Project/Activity: William F. (Bill) Brown Manor, Belzoni, MS; Project Number: 065–EE036/MS26–S011–005.

Nature of Requirement: Section 891.205 requires that Section 202 project owners have timely IRS tax-exempt status rulings.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: September 30, 2002.

Reason Waived: The required tax-exemption ruling for the owner from the Internal Revenue Service was not expected to be issued in time for the scheduled initial closing of the project.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.310(b)(1) and (b)(2).

Project/Activity: Options Supported Housing Project VII, Central Islip, NY; Project Number: 012–HD096/NY36–Q001–001.

Nature of Requirement: Sections 891.310(b)(1) and (b)(2) require that all entrances, common areas, units to be occupied by resident staff, and amenities must be readily accessible to, and usable by, persons with disabilities.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: August 27, 2002.

Reason Waived: Eleven percent of the bedrooms of the project were determined to meet all accessibility requirements and the majority of the potential residents did not require accessibility features.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.310(b)(1) and (b)(2).

Project/Activity: Project Share VIII, Selden, NY; Project Number: 012–HD099/NY36–Q001–004.

Nature of Requirement: Sections 891.310(b)(1) and (b)(2) require that all entrances, common areas, units to be occupied by resident staff, and amenities must be readily accessible to, and usable by, persons with disabilities.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: August 30, 2002.

Reason Waived: Ten percent of the project's bedrooms were determined to meet all accessibility requirements and the majority of the potential residents did not require accessibility features.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.410(c).

Project/Activity: Greenridge Place Apartments, Meeker, OK; Project Number: 117–EE023.

Nature of Requirement: Section 891.410 relates to admission of families to projects for elderly or handicapped families that received reservations under section 202 of the Housing Act of 1959 and housing assistance under section 8 of the U.S. Housing Act of 1937. Section 891.410(c) limits occupancy to very low-income elderly persons; that is, households of one or more persons at least one of whom is 62 years of age at the time of initial occupancy.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: July 17, 2002.

Reason Waived: The Kansas City Multifamily Hub requested an age waiver for the subject project because the current occupancy level of eligible persons and families does not support successful operation of the projects. This waiver allows the project owner/management agent to rent units to persons between the ages of 55 and 62 years of age with or without disabilities, thus, allowing the owner flexibility in renting up these vacant units. This waiver is in effect for one year from date of approval.

Contact: Beverly J. Miller, Director, Office of Asset Management, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6160, Washington, DC 20410–7000; telephone: (202) 708–3730.

• *Regulation:* 24 CFR 891.410(c).

Project/Activity: Piney Grove Apartments, Jasper, AL, Project Number: 062–EE034.

Nature of Requirement: Section 891.410 relates to admission of families to projects for elderly or handicapped families that received reservations under section 202 of the Housing Act of 1959 and housing assistance under section 8 of the U.S. Housing Act of 1937. Section 891.410(c) limits occupancy to very low-income elderly persons; that is, households of one or more persons at least one of whom is 62 years of age at the time of initial occupancy.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: July 24, 2002.

Reason Waived: The Jacksonville Multifamily Hub requested permission to waive the age requirements of the subject project to alleviate the occupancy and financial problems at property. The owner/management agent pointed to the income limits in the area as a "root cause" of their problem, stating that many of the elderly applicants fall within the "low-income" limits but do not fall within the "very low-income" bracket. Providing for a waiver of the elderly, handicapped, and very low-income requirements allows the owner to rent to persons 55 years and older and low-income applicants. If the waiver had not been granted, the owner would not have had the flexibility to offer units to persons 55 years and older or low-income applicants, and therefore, would not be able to maintain full occupancy and the project would fail. This waiver is in effect for one year from date of approval.

Contact: Beverly J. Miller, Director, Office of Asset Management, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6160, Washington, DC 20410–7000; telephone: (202) 708–3730.

• *Regulation:* 24 CFR 891.410(c).

Project/Activity: Main Creek Villa, Conrath, WI; Project Number: 075–EE071.

Nature of Requirement: Section 891.410 relates to admission of families to projects for elderly or handicapped families that received reservations under section 202 of the Housing Act of 1959 and housing assistance under section 8 of the U.S. Housing Act of 1937. Section 891.410(c) limits occupancy to very low-income elderly persons; that is, households of one or more persons at least one of whom is 62 years of age at the time of initial occupancy.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: September 16, 2002.

Reason Waived: The Minneapolis-St. Paul Multifamily Hub requested waiver of the age and income requirements for the subject property. The owner/management agent of the subject project requested permission to waive the elderly and low-income requirements to alleviate the current occupancy and financial problems at the property. The property will be allowed to rent to the non-elderly between the ages of 55 and 62 years and allow the applicants to meet the low-income eligibility requirements. Providing for a waiver to the elderly and low-income restrictions allows the owner additional flexibility to rent vacant units. The owner will have the flexibility to offer units to the non-elderly, low-income applicants, and therefore, will be able to achieve full occupancy and the project will not fail. This waiver is effective for one year from date of approval.

Contact: Beverly J. Miller, Director, Office of Asset Management, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6160, Washington, DC 20410–7000; telephone: (202) 708–3730.

• *Regulation:* 24 CFR 891.410(c).

Project/Activity: Lincoln Unity Apartments, West Hamlin, WV; Project Number: 045–EH098.

Nature of Requirement: Section 891.410 relates to admission of families to projects for elderly or handicapped families that received reservations under section 202 of the Housing Act of 1959 and housing assistance under section 8 of the U.S. Housing Act of 1937. Section 891.410(c) limits occupancy to very low-income elderly persons; that is, households of one or more persons at least one of whom is 62 years of age at the time of initial occupancy.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: September 20, 2002.

Reason Waived: The Charleston Multifamily Program Center requested indefinite waiver of the elderly and very low-income requirements for the subject property until it reaches 97 percent occupancy. The owner/management agent of the subject project requested permission to waive the elderly and low-income requirements to alleviate the current occupancy problem at the property. The property is located in West Hamlin, West Virginia, and currently has 79 percent occupancy. The market is "soft" in this area and the potential market for persons between the ages of 55 and 62 is good. The property will be allowed to rent to the non-elderly between the ages of 55 and 62 years with or without disabilities, and allow the applicants or families to meet the low-income eligibility requirements. Providing for a waiver to the elderly and low-income restrictions allows the owner additional flexibility to rent vacant units. The owner will have the flexibility to offer units to the non-elderly, low-income, disabled, and handicapped applicants, and therefore, will be able to achieve full occupancy and the project will not fail. This waiver is effective for one year from date of approval.

Contact: Beverly J. Miller, Director, Office of Asset Management, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6160, Washington, DC 20410–7000; telephone: (202) 708–3730.

• *Regulation:* 24 CFR 891.410(c).

Project/Activity: Wild Goose Landing Apartments, Oakfield, WI; Project Number: 075–EE051/NP/WAH/L8.

Nature of Requirement: Section 891.410 relates to admission of families to projects for elderly or handicapped families that received reservations under section 202 of the Housing Act of 1959 and housing assistance under section 8 of the U.S. Housing Act of 1937. Section 891.410(c) limits occupancy to very low-income elderly persons; that is, households of one or more persons at least one of whom is 62 years of age at the time of initial occupancy.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: September 30, 2002.

Reason Waived: The Minneapolis-St. Paul Multifamily Hub requested a

waiver of the income restrictions for the subject project because the current occupancy level of eligible persons and families does not support successful operation of the project. This waiver allows the project owner/management agent to rent units to persons between the ages of 55 years and 62 years, and allows the applicants to meet the low-income eligibility requirement. The owner will have the flexibility to offer units to the non-elderly, low-income applicants, and therefore, will be able to achieve full occupancy and the project will not fail. This waiver is in effect for one year from date of approval.

Contact: Beverly J. Miller, Director, Office of Asset Management, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6160, Washington, DC 20410–7000; telephone: (202) 708–3730.

III. Regulatory Waivers Granted by the Office of Public and Indian Housing

For further information about the following waivers actions, please see the name of the contact person who immediately follows the description of the waiver granted.

• *Regulation:* 24 CFR 902.33(a).

Project/Activity: Coolidge Housing Authority, Coolidge, TX; TX228.

Nature of Requirement: Section 902.33(a) establishes the financial reporting requirements for public housing agencies.

Granted by: Michael Liu, Assistant Secretary for Public and Indian Housing.

Date Granted: August 2, 2002.

Reason Waived: The housing authority experienced auditor, accountant, transmission problems, and therefore, requested an extension of the report due date. The request was granted to allow the housing authority to address these problems.

Contact: Judy Wojciechowski, Director, Office of Troubled Agency Recovery, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC, 20410; telephone: (202) 708–4932, extension 3464.

• *Regulation:* 24 CFR 902.33(a).

Project/Activity: Housing Authority City of Canyon, Canyon, TX; TX045.

Nature of Requirement: Section 902.33(a) establishes the financial reporting requirements for public housing agencies.

Granted by: Paula O. Blunt, for Michael Liu, Assistant Secretary for Public and Indian Housing.

Date Granted: September 9, 2002.

Reason Waived: The housing authority requested an extension of the reporting deadline due to internal delays as a result of a change in administration at the housing authority. The extension was granted.

Contact: Judy Wojciechowski, Director, Office of Troubled Agency Recovery, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–4932, extension 3464.

• *Regulation:* 24 CFR 902.33(a).

Project/Activity: Housing Authority of the City of Andrews, Andrews, TX; TX315.

Nature of Requirement: Section 902.33(a) establishes the financial reporting requirements for public housing agencies.

Granted by: Michael Liu, Assistant Secretary for Public and Indian Housing.

Date Granted: September 19 2002.

Reason Waived: The housing authority requested an extension of the report due date because of difficulty in obtaining an accountant, and also computer upgrading problems. The extension was granted.

Contact: Judy Wojciechowski, Director, Office of Troubled Agency Recovery, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC, 20410; telephone: (202) 708–4932, extension 3464.

• *Regulation:* 24 CFR 902.63(a).

Project/Activity: Princeville Housing Authority, Princeville, NC: NC169

Nature of Requirement: Section 902.63(a) requires submissions by the public housing agency followed by scoring under the four Public Housing Assessment System (PHAS) indicators.

Granted by: Michael Liu, Assistant Secretary for Public and Indian Housing.

Date Granted: July 2, 2002.

Reason Waived: The housing authority requested a waiver of three of the four indicators due to hurricane damage to its facility. The request was granted requiring an audit submission only.

Contact: Judy Wojciechowski, Director, Office of Troubled Agency Recovery, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–4932, extension 3464.

• *Regulation:* 24 CFR 902.63(a).

Project/Activity: Habitat Property Management, Chicago, IL: IL802

Nature of Requirement: Section 902.63(a) requires submissions by the public housing agency followed by scoring under the four PHAS indicators.

Granted by: Michael Liu, Assistant Secretary for Public and Indian Housing.

Date Granted: July 18, 2002.

Reason Waived: PHAS scoring requires public housing agencies to be scored in all four indicators to determine an overall score. However, the Habitat Property Management is not a traditional housing authority. This company is an agency that builds units and transfers title to the Chicago Housing Authority. The request was granted to waive three of the four indicators requiring submission of audits.

Contact: Judy Wojciechowski, Director, Office of Troubled Agency Recovery, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–4932, extension 3464.

• *Regulation:* 24 CFR 982.505(d).

Project/Activity: Housing Authority of the city of Los Angeles, Los Angeles, CA; Housing Choice Voucher Program.

Nature of Requirement: Section 982.505(d) allows a public housing agency (PHA) to approve a higher payment standard within the basic range for a family that includes a person with disabilities as a reasonable accommodation.

Granted by: Michael Liu, Assistant Secretary for Public and Indian Housing.

Date Granted: July 26, 2002.

Reason Waived: Approval of the waiver was granted to allow a housing choice voucher participant with a debilitating disease to remain in his current unit, which rents for an amount that exceeds 120 percent of the fair market rent. Due to the participant's health, it would be an undue hardship for the program participant to seek a unit to lease within the established payment standard amount and relocate.

Contact: Gerald Benoit, Director, Housing Voucher Management and Operations Division, Office of Public Housing Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4210, Washington, DC 20410; telephone: (202) 708–0477.

• *Regulation:* 24 CFR 982.532 (a)(4).

Project/Activity: Housing and Community Development Corporation of Hawaii (HCDCH), Honolulu, Hawaii; Housing Choice Voucher Program. HCDCH requested a waiver to allow a program participant, who is a person with disabilities, to rent housing from the University of Hawaii as a reasonable accommodation.

Nature of Requirement: Section 982.532(a)(4) defines college dormitories or other school dormitories as types of housing that are ineligible for tenant-based assistance.

Granted by: Michael Liu, Assistant Secretary for Public and Indian Housing.

Date Granted: August 16, 2002.

Reason Waived: Approval of the waiver was granted because the voucher participant needed to live in housing on the college campus for easier access to classes. The voucher participant is dependent on an electric wheelchair for mobility and there is no other affordable housing on or near the University.

Contact: Gerald Benoit, Director, Housing Voucher Management and Operations Division, Office of Housing Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4210, Washington, DC 20410; telephone: (202) 708–0477.

- *Regulation:* 24 CFR 983.51.

Project/Activity: The Housing Authority of the County of Chester (HACC), Chester, Pennsylvania; Project-based Assistance Program. The HACC requested a waiver of the aforementioned program regulation to allow for the selection of units for project-based assistance that were competitively selected for tax credits, and competitively awarded HOPE VI grant funds without requiring HUD review and approval of a written selection policy, and without advertising for a competitive selection of units under the project-based program. The HACC is the general partner of the entity that owns the development.

Nature of Requirement: Section 983.51 requires HUD review and approval of a written selection policy and advertisement for the competitive selection of units to receive project-based assistance.

Granted by: Michael Liu, Assistant Secretary for Public and Indian Housing.

Date Granted: September 27, 2002.

Reason Waived: The waiver was granted on the basis that the units had already undergone a total of two competitive processes and on the HACC's desire to induce capital contributions from its limited partners to assist in the restructuring of the financing on the project.

Contact: Gerald Benoit, Director, Housing Voucher Management and Operations Division, Office of Housing Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4210, Washington, DC 20410; telephone: (202) 708–0477.

- *Regulation:* 24 CFR 983.51(a), (b), and 983.56(a) and (c).

Project/Activity: Housing Authority of New Orleans (HANO), New Orleans, Louisiana; Project-based Assistance Program. The HANO requested a waiver of competition requirements under the project-based assistance program and the requirement of HUD field office review of new construction applications. The project is a previous public housing site owned by the HANO. The HANO plans to transform the site into a stable, mixed-income community.

Nature of Requirement: Section 983.51 requires HUD review and approval of a written selection policy and advertisement for the competitive selection of units to receive project-based assistance. Section 983.56 deals with HUD field office review of new construction applications.

Granted by: Michael Liu, Assistant Secretary for Public and Indian Housing.

Date Granted: August 30, 2002.

Reason Waived: The waiver was granted on the basis that the HANO has a substantial interest in the property and the waiver would allow the units to be used as replacement housing in conjunction with HOPE VI program activities to further local revitalization objectives.

Contact: Gerald Benoit, Director, Housing Voucher Management and Operations Division, Office of Housing Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4210, Washington, DC 20410; telephone: (202) 708–0477.

- *Regulation:* 24 CFR 983.51.

Project/Activity: The High Point Housing Authority (HPHA), High Point, North Carolina; Project-based Assistance Program. The HPHA requested a waiver of competitive selection of owner proposals.

Nature of Requirement: Section 983.51 requires competitive selection of owner proposals in accordance with a housing authority's HUD-approved advertisement and unit selection policy.

Granted by: Michael Liu, Assistant Secretary for Public and Indian Housing.

Date Granted: July 26, 2002.

Reason Waived: Competitive selection was waived since the Springfield Community Development Partners (SCDP) had already gone through two rounds of competitive selection. The HPHA competitively selected the SCDP as its HOPE VI partner to revitalize the former Springfield Townhomes public housing project. In addition, the SCDP was also awarded low-income housing tax credits for the same project through a competitive process conducted by the North Carolina Housing Finance Agency.

Contact: Gerald Benoit, Director, Housing Voucher Management and Operations Division, Office of Housing Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4210, Washington, DC 20410; telephone: (202) 708–0477.

- *Regulation:* 24 CFR 1000.214.

Project/Activity: The submission of the Indian Housing Plan (IHP) by the Native Village of Tanana (Tanana, AK) for Fiscal Year (FY) 2002 funding made available under the Native American Housing Assistance and Self-Determination Act of 1996 (NAHASDA).

Nature of Requirement: Section 1000.214 establishes a July 1st deadline for the submission of an IHP.

Reason Waived: The Native Village of Tanana stated that the Executive Director was told that the IHP had been prepared and submitted to the Office of Native American Programs (ONAP) by the required deadline. When discovered that the Executive Director had not submitted the IHP, the Executive Director completed and electronically submitted the plan. Had subsistence needs not precluded the Executive Director's presence in the office June 28, 2002, through July 8, 2002, the misrepresentation would have been discovered and corrected.

Granted by: Michael Liu, Assistant Secretary for Public and Indian Housing.

Date Granted: September 27, 2002.

Contact: Deborah Lalancette, Director, Grants Management, Denver Program ONAP, Department of Housing and Urban Development, 1999 Broadway, Suite 3390, Denver, CO 80202; telephone: (303) 675–1625.

- *Regulation:* 24 CFR 1000.214.

Project/Activity: The submission of the IHP by the Native Village of Tanacross (Tanacross, AK) for FY 2002 funding made available under NAHASDA.

Nature of Requirement: Section 1000.214 establishes a July 1st deadline for the submission of an IHP.

Reason Waived: The Native Village of Tanacross stated, and ONAP believes, that the IHP was mailed prior to the regulatory deadline and the submission was lost in the mail.

Granted by: Michael Liu, Assistant Secretary for Public and Indian Housing.

Date Granted: September 27, 2002.

Contact: Deborah Lalancette, Director, Grants Management, DPONAP, Department of Housing and Urban Development, 1999 Broadway, Suite 3390, Denver, CO 80202; telephone: (303) 675–1625.

• *Regulation:* Section II subpart E and subpart F of the January 16, 2001, **Federal Register** Notice, Revisions to PHA Project-Based Assistance (PBA) Program; Initial Guidance.

Project/Activity: The Minneapolis Public Housing Authority (MPHA), Minneapolis, Minnesota; Project-based Assistance Program. The MPHA requested an exception to the initial guidance to permit it to attach PBA to the Phillips Park Initiative that is in a census tract with a poverty rate that exceeds 20 percent. The MPHA also requested an exception to waive the requirement that no more than 25 percent of the dwelling units in any building may be assisted under a housing assistance payments (HAP) contract for PBA except for dwelling units that are specifically made available for elderly families, disabled families and families receiving supportive services for this project.

Nature of Requirement: Section II subpart E of the initial guidance requires that in order to meet the Department's goal of deconcentration and expanding housing and economic opportunities, the projects must be in census tracts with poverty rates of less than 20 percent. Section II subpart F requires that no more than 25 percent of the dwelling units in any building may be assisted under a housing assistance payments (HAP) contract for PBA except for dwelling units that are specifically made available for elderly families, disabled families, and families receiving supportive services.

Granted by: Michael Liu, Assistant Secretary For Public And Indian Housing.

Date Granted: July 26, 2002.

Reason Waived: Approval of the exception for deconcentration was granted since the Phillips Park Initiative is in the Minneapolis Empowerment Zone the goals of which are to open new businesses, create jobs, housing, and new educational and healthcare opportunities. These goals are consistent with the goal of deconcentration and expanding housing and economic opportunities. Approval of the exception for the number of units in a building that may be project-based was granted because the families living in the building will receive supportive services including tenant education, budgeting, parenting skills and will be able to access the Train to Work program that will prepare them for entry-level jobs in the community. These supportive services are consistent with the statute.

Contact: Gerald Benoit, Director, Housing Voucher Management and Operations Division, Office of Housing Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4210, Washington, DC 20410; telephone: (202) 708–0477.

• *Regulation:* Section II subpart E of the January 16, 2001, **Federal Register** Notice, Revisions to PHA Project-Based Assistance (PBA) Program; Initial Guidance.

Project/Activity: San Francisco Housing Authority, San Francisco, California; Project-based Assistance Program. The San Francisco Housing Authority requested an exception to the initial guidance to permit it to attach PBA to six projects that are in census tracts with poverty rates that exceed 20 percent.

Nature of Requirement: Section II subpart E of the initial guidance requires that in order to meet the Department's goal of deconcentration and expanding housing and economic opportunities, the projects must be in census tracts with poverty rates of less than 20 percent.

Granted by: Michael Liu, Assistant Secretary for Public and Indian Housing.

Date Granted: July 16, 2002.

Reason Waived: Approval of the exception was granted since one of the projects, the Dudley Hotel was within the boundaries of Rochester's HUD-designated Enterprise Community whose goals of creating jobs, housing, and new educational and healthcare opportunities are consistent with the goal of deconcentration and expanding housing and economic opportunities, and the other five projects (999 Geary Street, 145 Taylor Street, the West Hotel, the Dalt Hotel, and 421 Turk Street) are located within the Tenderloin Neighborhood Revitalization Area designated as such in the City of San Francisco's Consolidated Plan whose goals are also consistent with the statute.

Contact: Gerald Benoit, Director, Housing Voucher Management and Operations Division, Office of Housing Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4210, Washington, DC 20410; telephone: (202) 708–0477.

• *Regulation:* Section II subpart F of the January 16, 2001, **Federal Register** Notice, Revisions to PHA Project-Based Assistance (PBA) Program; Initial Guidance and 24 CFR 983.51.

Project/Activity: Fort Wayne Housing Authority (FWHA), Fort Wayne, Indiana; Project-based Assistance Program. FWHA requested an exception to the initial guidance to permit it to attach PBA to units at McMillan Park that exceed the 25 percent cap on the number of units in a building to which PBA can be attached for families receiving supportive services. The FWHA also requested a waiver of competitive selection of owner proposals.

Nature of Requirement: Section II subpart F of the initial guidance requires that unless waived, no more than 25 percent of the dwelling units in any building may be assisted under a housing assistance payments contract for PBA except for dwelling units that are specifically made available for elderly families, disabled families, and families receiving supportive services. Section 983.51 requires competitive selection of owner proposals in accordance with a housing authority's HUD-approved advertisement and unit selection policy.

Granted by: Michael Liu, Assistant Secretary for Public and Indian Housing.

Date Granted: July 5, 2002.

Reason Waived: Approval of the exception was granted because the families living in McMillan Park will participate in the FWHA's Family Self-Sufficiency program and will have access to a Neighborhood Networks Center, after-school tutoring programs for children and adult educational classes. These supportive services are consistent with the statute. Competitive selection was conditionally waived since the FWHA will acquire a 50 percent interest in the general partner and will maintain the project as a housing resource for low-income families. The waiver was conditional based on sale of the property to the FWHA within six months of the approval date.

Contact: Gerald Benoit, Director, Housing Voucher Management and Operations Division, Office of Housing Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4210, Washington, DC 20410; telephone: (202) 708–0477.

• *Regulation:* Section II subpart F of the January 16, 2001, **Federal Register** Notice, Revisions to PHA Project-Based Assistance (PBA) Program; Initial Guidance.

Project/Activity: Laurinburg Housing Authority (LHA); Laurinburg, North

Carolina; Project-based Assistance Program. Laurinburg Housing Authority requested an exception to the initial guidance to permit it to attach PBA to units in Scottish Glen Apartments that exceed the 25 percent cap on the number of units in a building to which PBA can be attached for families receiving supportive services.

Nature of Requirement: Section II subpart F of the initial guidance requires that unless waived, no more than 25 percent of the dwelling units in any building may be assisted under a HAP contract for PBA except for dwelling units that are specifically made available for elderly families, disabled families, and families receiving supportive services.

Granted by: Michael Liu, Assistant Secretary for Public and Indian Housing.

Date Granted: July 16, 2002.

Reason Waived: Approval of the exception was granted because the families living in Scottish Glen Apartments will receive supportive services through participation in the LHA's Family Self-Sufficiency Program. Services will include: access and resources for health care; case management to coordinate and deliver services; educational opportunities through a variety of local colleges; financial management and homebuyer education; and an array of other programs and services provided by local community organizations.

Contact: Gerald Benoit, Director, Housing Voucher Management and Operations Division, Office of Housing Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4210, Washington, DC 20410; telephone: (202) 708–0477.

• *Regulation:* Section II subpart F of the January 16, 2001, **Federal Register** Notice, Revisions to PHA Project-Based Assistance (PBA) Program; Initial Guidance.

Project/Activity: Rochester Housing Authority (RHA), Rochester, New York; Project-Based Assistance Program. RHA requested an exception to the requirement that no more than 25 percent of the dwelling units in any building may be assisted under a HAP contract for PBA except for dwelling units that are specifically made available for elderly families, disabled families, and families receiving supportive services for two buildings owned by the YWCA.

Nature of Requirement: Section II subpart F of the initial guidance requires that no more than 25 percent of the dwelling units in any building may be assisted under a housing assistance payments (HAP) contract for PBA except for dwelling units that are specifically made available for elderly families, disabled families, and families receiving supportive services.

Granted by: Michael Liu, Assistant Secretary for Public and Indian Housing.

Date Granted: September 18, 2002.

Reason Waived: Approval of the exception for the number of units in a building that may be project-based was granted because the families living in the units owned by the YWCA will receive the following services: case management; alcohol and drug evaluation and treatment; mental health services; and linkages to YWCA employment services, financial empowerment workshops; and a nutrition outreach program and child care. These supportive services are consistent with the statute.

Contact: Gerald Benoit, Director, Housing Voucher Management and Operations Division, Office of Housing Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4210, Washington, DC 20410; telephone: (202) 708–0477.

• *Regulation:* Section II subpart E of the January 16, 2001, **Federal Register** Notice, Revisions to PHA Project-Based Assistance (PBA) Program; Initial Guidance.

Project/Activity: San Diego Housing Commission, San Diego, California; Project-based Assistance Program. The San Diego Housing Commission requested an exception to the initial guidance to permit it to attach PBA to Bandaar Salaam Apartments that is in a census tract with a poverty rate of 27 percent.

Nature of Requirement: Section II subpart E of the initial guidance requires that in order to meet the Department's goal of deconcentration and expanding housing and economic opportunities, the projects must be in census tracts with poverty rates of less than 20 percent.

Granted by: Michael Liu, Assistant Secretary for Public and Indian Housing.

Date Granted: August 5, 2002.

Reason Waived: Approval of the exception was granted since the project was within the boundaries of one of San Diego's HUD-designated Enterprise Communities whose goals of creating jobs, housing, and new educational and healthcare opportunities are consistent with the goal of deconcentration and expanding housing and economic opportunities.

Contact: Gerald Benoit, Director, Housing Voucher Management and Operations Division, Office of Housing Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4210, Washington, DC 20410; telephone: (202) 708–0477.

• *Regulation:* Section II subpart E of the January 16, 2001, **Federal Register** Notice, Revisions to PHA Project-Based Assistance (PBA) Program; Initial Guidance.

Project/Activity: Rental Assistance Corporation, Buffalo, New York; Project-based Assistance Program. The Rental Assistance Corporation requested an exception to the initial guidance to permit it to attach PBA to Frederick Douglass Towers Phase II that is located in a census tract with a poverty rate of 49 percent.

Nature of Requirement: Section II subpart E of the initial guidance requires that in order to meet the Department's goal of deconcentration and expanding housing and economic opportunities, the projects must be in census tracts with poverty rates of less than 20 percent.

Granted by: Michael Liu, Assistant Secretary for Public and Indian Housing.

Date Granted: August 5, 2002.

Reason Waived: Approval of the exception was granted since the project was within the boundaries of a HUD-designated Enterprise Zone whose goals of creating jobs, housing, and new educational and healthcare opportunities are consistent with the goal of deconcentration and expanding housing and economic opportunities.

Contact: Gerald Benoit, Director, Housing Voucher Management and Operations Division, Office of Housing Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4210, Washington, DC 20410; telephone: (202) 708–0477.

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January 29, 2003

Part III

Federal Trade Commission

16 CFR Part 310
Telemarketing Sales Rule; Final Rule

FEDERAL TRADE COMMISSION

16 CFR Part 310

Telemarketing Sales Rule

AGENCY: Federal Trade Commission.

ACTION: Final Amended Rule.

SUMMARY: In this document, the Federal Trade Commission ("FTC" or "Commission") issues its Statement of Basis and Purpose ("SBP") and final amended Telemarketing Sales Rule ("amended Rule"). The amended Rule sets forth the FTC's amendments to the Telemarketing Sales Rule ("original Rule" or "TSR"). The amended Rule is issued pursuant to the Commission's Rule Review, the Telemarketing and Consumer Fraud and Abuse Prevention Act ("Telemarketing Act" or "Act") and the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act ("USA PATRIOT Act").

EFFECTIVE DATES: The amended Rule will become effective March 31, 2003. Full compliance with § 310.4(a)(7), the caller identification transmission provision, is required by January 29, 2004. The Commission will announce at a future time the date by which full compliance with § 310.4(b)(1)(iii)(B), the "do-not-call" registry provision, will be required. The Commission anticipates that full compliance with the "do-not-call" provision will be required approximately seven months from the date a contract is awarded to create the national registry.

ADDRESSES: Requests for copies of the amended Rule and this SBP should be sent to: Public Reference Branch, Room 130, Federal Trade Commission, 600 Pennsylvania Avenue, N.W., Washington, DC 20580. The complete record of this proceeding is also available at that address. Relevant portions of the proceeding, including the amended Rule and SBP, are available at http://www.ftc.gov.

FOR FURTHER INFORMATION CONTACT: Catherine Harrington-McBride, (202) 326–2452, Karen Leonard, (202) 326–3597, Michael Goodman, (202) 326–3071, or Carole Danielson, (202) 326–3115, Division of Marketing Practices, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue, N.W., Washington, DC 20580.

SUPPLEMENTARY INFORMATION: The amended Rule: (1) retains most of the original Rule's requirements concerning deceptive and abusive telemarketing acts or practices without major substantive changes; (2) establishes a national "do-not-call" registry maintained by the Commission; (3) defines "upselling" to clarify the amended Rule's application to these transactions, requires specific disclosures for upsell transactions, and expressly excludes upselling transactions from certain exemptions in the amended Rule; (4) requires that sellers and telemarketers accepting payment by methods other than credit and debit cards subject to certain protections obtain express verifiable authorization from their customers; (5) retains the exemptions for pay-per-call, franchise, and face-to-face transactions, but makes these transactions subject to the national "do-not-call" registry and certain other provisions in the abusive practices section of the Rule; (6) specifies requirements for the use of predictive dialers; (7) requires disclosures and prohibits misrepresentations in connection with the sale of credit card loss protection plans; (8) requires an additional disclosure in connection with prize promotions; (9) requires disclosures and prohibits misrepresentations in connection with offers that include a negative option feature; (10) eliminates the general media and direct mail exemptions for the telemarketing of credit card loss protection plans and business opportunities other than business arrangements covered by the Franchise Rule[1]; (11) requires telemarketers to transmit caller identification information; (12) eliminates the use of post-transaction written confirmation as a means of obtaining a customer's express verifiable authorization when the goods or services are offered on a "free-to-pay conversion" basis; (13) prohibits the disclosure or receipt of the customer's or donor's unencrypted billing information for consideration, except in limited circumstances; and (14) requires that the seller or telemarketer obtain the customer's express informed consent to all transactions, with specific requirements for transactions involving "free-to-pay conversions" and preacquired account information.

Statement of Basis and Purpose

I. Background

A. Telemarketing and Consumer Fraud and Abuse Prevention Act.

The early 1990s saw heightened Congressional attention to burgeoning problems with telemarketing fraud.[2] The culmination of Congressional efforts to protect consumers against telemarketing fraud occurred in 1994 with the passage of the Telemarketing Act, which was signed into law on August 16, 1994.[3] The purpose of the Act was to combat telemarketing fraud by providing law enforcement agencies with new tools and to give consumers new protections.

The Telemarketing Act directed the Commission to issue a rule prohibiting deceptive and abusive telemarketing acts or practices, and specified, among other things, certain acts or practices the FTC's rule must address. The Act also required the Commission to include provisions relating to three specific "abusive telemarketing acts or practices:"[4] (1) a requirement that telemarketers may not undertake a pattern of unsolicited telephone calls which the consumer would consider coercive or abusive of his or her right to privacy; (2) restrictions on the time of day telemarketers may make unsolicited calls to consumers; and (3) a requirement that telemarketers promptly and clearly disclose in all sales calls to consumers that the purpose of the call is to sell goods or services, and make other disclosures deemed appropriate by the Commission, including the nature and price of the goods or services sold.[4] Section 6102(a) of the Act not only required the Commission to define and prohibit deceptive telemarketing acts or practices, but also authorized the FTC to define and prohibit acts or practices that "assist or facilitate" deceptive telemarketing.[5] The Act further directed the Commission to consider including recordkeeping requirements in the rule.[6] Finally, the Act authorized state Attorneys General, other appropriate state officials, and private persons to bring civil actions in federal district court to enforce compliance with the FTC's rule.[7]

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[1] Disclosure Requirements and Prohibitions Concerning Franchising and Business Opportunity Ventures ("Franchise Rule"), 16 CFR Part 436.

[2] Statutes enacted by Congress to address telemarketing fraud during the early 1990s include the Telephone Consumer Protection Act of 1991 ("TCPA"), 47 U.S.C. 227 *et seq.*, which restricts the use of automatic dialers, bans the sending of unsolicited commercial facsimile transmissions, and directs the Federal Communications Commission ("FCC") to explore ways to protect residential telephone subscribers' privacy rights; and the Senior Citizens Against Marketing Scams Act of 1994, 18 U.S.C. 2325 *et seq.*, which provides for enhanced prison sentences for certain telemarketing-related crimes.

[3] 15 U.S.C. 6101–6108.

[4] 15 U.S.C. 6102(a)(3)(A)-(C).

[5] Examples of practices that would "assist or facilitate" deceptive telemarketing under the Rule include credit card laundering and providing contact lists or promotional materials to fraudulent sellers or telemarketers. *See* 60 FR 43842, 43853 (Aug. 23, 1995).

[6] 15 U.S.C. 6102(a)(3).

[7] 15 U.S.C. 6103, 6104.

B. Original Rule.

The FTC adopted the original Rule on August 16, 1995.[8] The Rule, which became effective on December 31, 1995,. requires that telemarketers promptly tell each consumer they call several key pieces of information: (1) the identity of the seller; (2) the fact that the purpose of the call is to sell goods or services; (3) the nature of the goods or services being offered; and (4) in the case of prize promotions, that no purchase or payment is necessary to win.[9] Telemarketers must, in any telephone sales call, also disclose cost and other material information before consumers pay.[10] In addition, the original Rule requires that telemarketers have consumers' express verifiable authorization before using a demand draft (or "phone check") to debit consumers' bank accounts.[11] The original Rule prohibits telemarketers from calling before 8:00 a.m. or after 9:00 p.m. (in the time zone where the consumer is located), and from calling consumers who have said they do not want to be called by or on behalf of a particular seller.[12] The original Rule also prohibits misrepresentations about the cost, quantity, and other material aspects of the offered goods or services, and the terms and conditions of the offer.[13] Finally, the original Rule bans telemarketers who offer to arrange loans, provide credit repair services, or recover money lost by a consumer in a prior telemarketing scam from seeking payment before rendering the promised services,[14] and prohibits credit card laundering and other forms of assisting and facilitating fraudulent telemarketers.[15]

The Rule expressly exempts from its coverage several types of calls, including calls where the transaction is completed after a face-to-face sales presentation, calls subject to regulation under other FTC rules (*e.g.*, the Pay-Per-Call Rule,[16] or the Franchise Rule),[17] calls initiated by consumers that are not in response to any solicitation, calls initiated by consumers in response to direct mail, provided certain disclosures are made, and calls initiated by consumers in response to advertisements in general media, such as newspapers or television.[18] Lastly, catalog sales are exempt, as are most business-to-business calls, except those involving the sale of non-durable office or cleaning supplies.[19]

C. Rule Review and Request for Comment.

The Telemarketing Act required that the Commission initiate a Rule Review proceeding to evaluate the Rule's operation no later than five years after its effective date of December 31, 1995, and report the results of the review to Congress.[20] Accordingly, on November 24, 1999, the Commission commenced the mandatory review with publication of a **Federal Register** notice announcing that Commission staff would conduct a forum on January 11, 2000, limited to examination of issues related to the "do-not-call" provision of the Rule, and soliciting applications to participate in the forum.[21]

On February 28, 2000, the Commission published a second notice in the **Federal Register**, broadening the scope of the inquiry to encompass the effectiveness of all the Rule's provisions. This notice invited comments on the Rule as a whole and announced a second public forum to discuss the provisions of the Rule other than the "do-not-call" provision.[22] In response to this notice, the Commission received 92 comments from representatives of industry, law enforcement, and consumer groups, as well as from individual consumers.[23]

The commenters generally praised the effectiveness of the TSR in combating the fraudulent practices that had plagued the telemarketing industry before the Rule was promulgated. They also strongly supported the Rule's continuing role as the centerpiece of federal and state efforts to protect consumers from interstate telemarketing fraud. Commenters consistently stressed that it is important to retain the Rule. However, commenters were less sanguine about the effectiveness of the Rule's provjsions dealing with consumers' right to privacy, such as the "do-not-call" provision and the provision restricting calling times. They also identified a number of areas of continuing or developing fraud and abuse, as well as the emergence of new technologies that affect telemarketing for industry members and consumers alike. Commenters identified several changes in the marketplace that had occurred in the five years since the Rule was promulgated and that threatened the Rule's effectiveness. Those changes included increased consumer concern about personal privacy,[24] the development of novel payment methods,[25] and the increased use of

[8] 60 FR at 43842 (codified at 16 CFR 310 (1995)).

[9] 16 CFR 310.4(d).

[10] 16 CFR 310.3(a)(1).

[11] 16 CFR 310.3(a)(3).

[12] 16 CFR 310.4(c), and 310.4(b)(1)(ii).

[13] 16 CFR 310.3(a)(2).

[14] 16 CFR 310.4(a)(2)-(4).

[15] 16 CFR 310.3(b) and (c).

[16] Trade Regulation Rule Pursuant to the Telephone Disclosure and Dispute Resolution Act of 1992 ("Pay-Per-Call Rule"), 16 CFR Part 308.

[17] 16 CFR 310.6(a)-(c).

[18] 16 CFR 310.6(d)-(f).

[19] 16 CFR 310.2(u) (pursuant to 15 U.S.C. 6106(4) (catalog sales)); 16 CFR 310.6(g) (business-to-business sales). In addition to these exemptions, certain entities including banks, credit unions, savings and loans, common carriers engaged in common carrier activity, non-profit organizations, and companies engaged in the business of insurance regulated by state law are not covered by the Rule because they are specifically exempt from coverage under the FTC Act. 15 U.S.C. 45(a)(2); *but see* discussion below concerning the USA PATRIOT Act amendments to the Telemarketing Act. Finally, a number of entities, and individuals associated with them, that sell investments and are subject to the jurisdiction of the Securities and Exchange Commission or the Commodity Futures Trading Commission are exempt from the Rule. 15 U.S.C. 6102(d)(2)(A); 6102(e)(1).

[20] 15 U.S.C. 6108.

[21] 64 FR 66124 (Nov. 24, 1999). Comments regarding the Rule's "do-not-call" provision, § 310.4(b)(1)(ii), as well as the other provisions of the Rule, were solicited in a later **Federal Register** notice on February 28, 2000. *See* 65 FR 10428 (Feb. 28, 2000). Seventeen associations, individual businesses, consumer groups, and law enforcement agencies were selected to engage in the forum's roundtable discussion ("Do-Not-Call" Forum), which was held on January 11, 2000, at the FTC offices in Washington, D.C. References to the "Do-Not-Call" Forum transcript are cited as "DNC Tr." followed by the appropriate page designation.

[22] 65 FR 10428 (Feb. 28, 2000) (the "February 28 Notice"). The Commission extended the comment period from April 27, 2000, to May 30, 2000. 65 FR 26161 (May 5, 2000).

[23] A list of the commenters and the acronyms used to identify each commenter who submitted a comment in response to the February 28 Notice is attached hereto as Appendix A. Appendix B is a list of the commenters and the acronyms used to identify each commenter who submitted a comment in response to the Notice of Proposed Rulemaking ("NPRM"), discussed below, including supplemental comments and comments submitted on the user fee proposal. References to comments are cited by the commenter's acronym followed by the appropriate page designation. "RR" after the commenter's acronym indicates that the comment was received in response to the Rule Review. "NPRM" after the commenter's acronym indicates that the comment was received in response to the NPRM. "Supp." after the commenter's acronym indicates that the comment was received as a Supplemental Comment. "User Fee" after the commenter's acronym indicates the comment was submitted in response to the request for comments on the Commission's user fee proposal.

[24] The past several years have seen a greater public and governmental focus on the "do-not-call" issue. Related to the "do-not-call" issue is the proliferation of technologies, such as caller identification service, that assist consumers in managing incoming calls to their homes. Similarly, privacy advocates have raised concerns about technologies used by telemarketers (such as predictive dialers and deliberate blocking of caller identification information) that hinder consumers' attempts to screen calls or make requests to be placed on a "do-not-call" list.

[25] The growth of electronic commerce and payment systems technology has led, and likely will continue to lead, to new forms of payment and further changes in the way consumers pay for goods and services they purchase through telemarketing. In addition, billing and collection systems of telephone companies, utilities, and mortgage lenders are becoming increasingly available to a

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preacquired account telemarketing[26] and upselling.[27]

Following the receipt of public comments, the Commission held a second forum on July 27 and 28, 2000 ("Rule Review Forum"), to discuss provisions of the Rule other than the "do-not-call" provision and to discuss the Rule's effectiveness.[28] Both the "Do-Not-Call" Forum and the Rule Review Forum were open to the public, and time was reserved to receive oral comments from members of the public in attendance. Both proceedings were transcribed and, along with the comments received, placed on the public record.[29]

Based on the record developed during the Rule Review, as well as the Commission's law enforcement experience, the Commission determined to retain the Rule but proposed to amend it to better address recurring abuses and to reach emerging problem areas.

D. The USA PATRIOT Act of 2001.

On October 25, 2001, the USA PATRIOT Act[30] became effective. This legislation contains provisions that have significant impact on the TSR. Specifically, § 1011 of that Act amends the Telemarketing Act to extend the coverage of the TSR to reach not just telemarketing to induce the purchase of goods or services, but also charitable fundraising conducted by for-profit telemarketers on behalf of charitable organizations. Because enactment of the USA PATRIOT Act took place after the comment period for the Rule Review closed, the Commission did not raise issues relating to charitable fundraising by telemarketers in the Rule Review.

Section 1011(b)(3) of the USA PATRIOT Act amends the definition of "telemarketing" that appears in the Telemarketing Act, 15 U.S.C. § 6106(4), expanding it to cover any "plan, program, or campaign which is conducted to induce . . . a charitable contribution, donation, or gift of money or any other thing of value, by use of one or more telephones and which involves more than one interstate telephone call . . . ."

In addition, § 1011(b)(2), among other things, adds a new section to the Telemarketing Act directing the Commission to include new requirements in the "abusive telemarketing acts or practices" provisions of the TSR.[31] Finally, § 1011(b)(1) amends the "deceptive telemarketing acts or practices" provision of the Telemarketing Act, 15 U.S.C. § 6102(a)(2), by specifying that "fraudulent charitable solicitation" is to be included as a deceptive practice under the TSR.

E. Notice of Proposed Rulemaking.

On January 30, 2002, the Commission published its NPRM, proposing revisions to the TSR ("proposed Rule") in order to ensure that consumers receive the protections that the Telemarketing Act mandated, and to effectuate § 1011 of the USA PATRIOT Act.[32] The Commission proposed a number of changes, including creating a national "do-not-call" registry maintained by the FTC, a ban on receiving from or disclosing to a third party a consumer's billing information, a prohibition against blocking caller identification information, and a requirement that sellers or telemarketers accepting payment via novel payment methods obtain the customer's express verifiable authorization. During the course of this NPRM proceeding, the Commission received about 64,000 electronic and paper comments from representatives of industry, law enforcement, consumer and privacy groups, and from individual consumers.[33] On June 5, 6 and 7, 2002, the Commission held a forum ("June 2002 Forum") to discuss the issues raised by commenters regarding the FTC's proposed revisions.[34] The forum was open to the public, and time was reserved to receive oral comments from members of the public in attendance. During the forum, the Commission announced that it would accept supplemental comments until June 28, 2002.[35] The forum proceeding was transcribed and placed on the public record. The public record, including many comments and all forum transcripts, has been placed on the Commission's website on the Internet.[36]

Individual consumers generally favored the Commission's proposals, particularly with regard to a national "do-not-call" registry. Consumer groups and state law enforcement representatives also generally supported the proposed amendments, although they expressed concern about the effect of the proposal on state "do-not-call"

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wide variety of vendors of all types of goods and services. These newly available payment methods in many instances are relatively untested, and may not provide protections for consumers from unauthorized charges.

[26] The practice of preacquired account telemarketing—where a telemarketer acquires the customer's billing information prior to initiating a telemarketing call or transaction—has increasingly resulted in complaints from consumers about unauthorized charges. Billing information can be preacquired in a variety of ways, including from a consumer's utility company, from the consumer in a previous transaction, or from another source. In many instances, the consumer is not involved in the transfer of the billing information and is unaware that the seller possesses it during the telemarketing call.

[27] The practice of "upselling" has also become more prevalent in telemarketing. Through this technique, customers are offered additional items for purchase after the completion of an initial sale. In the majority of upselling scenarios, the seller or telemarketer already has received the consumer's billing information, either from the consumer or from another source.

[28] References to the Rule Review Forum transcript are cited as "RR Tr." followed by the appropriate page designation.

[29] Relevant portions of the entire record of the Rule Review proceeding, including all transcripts and comments, can be viewed on the FTC's website at http://www.ftc.gov/bcp/rulemaking/tsr/tsr-review.htm. In addition, the full paper record is available in Room 130 at the FTC, 600 Pennsylvania Avenue, N.W., Washington, DC 20580, telephone number: 1–202–326–2222.

[30] Pub. L. 107–56, 115 Stat. 272 (Oct. 26, 2001).

[31] Specifically, § 1011(b)(2)(d) mandates that the TSR include in its regulation of abusive telemarketing acts and practices "a requirement that any person engaged in telemarketing for the solicitation of charitable contributions, donations, or gifts of money or any other thing of value, shall promptly and clearly disclose to the person receiving the call that the purpose of the call is to solicit charitable contributions, donations, or gifts, and make such other disclosures as the Commission considers appropriate, including the name and mailing address of the charitable organization on behalf of which the solicitation is made." Pub. L. 107–56 (Oct. 26, 2001).

[32] 67 FR 4492 (Jan. 30, 2002).

[33] Of these, more than forty-five were supplemental comments from organizations and individuals, and about 15,000 supplemental comments were from Gottschalks' customers submitted by Gottschalks. Simultaneous with, but separate from, the NPRM proceeding, the Commission has been exploring possible methods for implementing the proposed national "do-not-call" registry. On February 28, 2002, the Commission published a Request for Information ("RFI") that solicited information from potential contractors on various aspects of implementing the proposed registry. The RFI comment period closed on March 29, 2002. On August 2, 2002, the Commission issued a Request for Quotes to selected vendors. Final proposals were submitted on September 20, 2002, and are being evaluated by Commission staff. On May 29, 2002, the Commission published a Notice of Proposed Rulemaking, soliciting comments on a proposed amendment to the TSR that would establish the methods by which fees for use of the registry would be set. 67 FR 37362 (May 29, 2002). The comment period ended June 28, 2002. The proposed amendment received about forty comments (cited as "[Name of Commenter]-User Fee at [page number]"), virtually all of which argued that the Commission does not have the authority to issue a user fee, or that it was premature to propose a user fee because the Commission did not have sufficient information upon which to base the proposal. The user fee proposal remains under review as the Commission continues to evaluate the issues raised in the comments.

[34] References to the June 2002 Forum transcript are cited as "June 2002 Tr." followed by the appropriate day (I, II, or III, referring to June 5, 6, or 7, respectively) and page designation.

[35] June 2002 Tr. II at 254. References to the supplemental comments received are cited as "[Name of Commenter]-Supp. at [page number]."

[36] Much of the record in this proceeding can be viewed on the FTC's website at http://www.ftc.gov/bcp/rulemaking/tsr/tsr-review.htm. In addition, the full paper record is available in Room 130 at the FTC, 600 Pennsylvania Avenue, N.W., Washington, DC 20580, telephone number: 1–202–326–2222.

and other laws. Business and industry commenters generally opposed the proposal, but suggested changes that they believed would make the proposed amendments less burdensome on legitimate business while still achieving the desired consumer protections. Comments from charitable organizations focused primarily on the FTC proposal which would require for-profit telemarketers who solicit on behalf of charitable organizations to comply with the proposed "do-not-call" registry. Charitable organizations consistently opposed such a requirement. The comments and the basis for the Commission's decision on the various recommendations are analyzed in detail in Section II below.

F. The Amended Rule.

The Commission has carefully reviewed the entire record developed in its rulemaking proceeding. The record, as well as the Commission's law enforcement experience, leave little doubt that important changes have occurred in the marketplace, and that modifications to the original Rule are necessary if consumers are to receive the protections that Congress intended to provide when it enacted the Telemarketing Act. Based on that record and on the Commission's law enforcement experience, the Commission has modified the proposed Rule published in the NPRM and now promulgates this amended Rule, as described in this SBP.

The Commission's decision to retain certain provisions of the original Rule while supplementing or amending others is made pursuant to the Rule Review requirements of the Telemarketing Act,[37] and pursuant to the rulemaking authority granted to the Commission by that Act to protect consumers from deceptive and abusive practices,[38] including practices that may be coercive or abusive of the consumer's interest in protecting his or her privacy.[39] The Commission's decision to amend the original Rule also is made pursuant to the authority granted to the Commission by § 1011 of the USA PATRIOT Act.

As discussed in detail herein, the Commission believes that it is necessary to amend the original Rule to ensure that the Telemarketing Act's goals are met—that is, encouraging the growth of the legitimate telemarketing industry, while curtailing those practices that are abusive or deceptive. The record in this rulemaking proceeding demonstrates that many of the changes in the marketplace that have occurred since the original Rule was promulgated have led to the growth of deceptive and abusive practices in areas not adequately addressed by the original Rule. The amended Rule addresses these practices by responding to the changes in the marketplace in a manner consistent with the intent of Congress in enacting the Telemarketing Act and § 1011 of the USA PATRIOT Act. The Commission believes that the amended Rule strikes a balance, maximizing consumer protections without imposing unnecessary burdens on the telemarketing industry. Each of the amendments is discussed in detail in this SBP. A summary of the major changes from the original Rule is set forth below. The amended Rule:

- Supplements the current company-specific "do-not-call" provision with a provision that will empower a consumer to stop calls from all companies within the FTC's jurisdiction by placing his or her telephone number on a central "do-not-call" registry maintained by the FTC, except when the consumer has an "established business relationship" with the seller on whose behalf the call is made;
- Permits consumers who have put their numbers on the national "do-not-call" registry to provide permission to call to any specific seller by an express written agreement;
- Explicitly exempts solicitations to induce charitable contributions via outbound telephone calls from coverage under the national "do-not-call" registry provision;
- Modifies § 310.3(a)(3) to require express verifiable authorization for all transactions except when the method of payment used is a credit card subject to protections of the Truth in Lending Act and Regulation Z, or a debit card subject to the protections of the Electronic Fund Transfer Act and Regulation E;
- Modifies § 310.3(a)(3)(iii), the provision allowing a telemarketer to obtain express verifiable authorization by sending written confirmation of the transaction to the consumer prior to submitting the consumer's billing information for payment;
- Mandates disclosures in the sale of credit card loss protection, and prohibits misrepresenting that a consumer needs offered goods or services in order to receive protections he or she already has under 15 U.S.C. § 1643 (limiting a cardholder's liability for unauthorized charges on a credit card account);
- Explicitly mandates that all required disclosures in § 310.3(a)(1) and § 310.4(d) be made truthfully;
- Expands upon the current prize promotion disclosures to include a statement that any purchase or payment will not increase a consumer's chances of winning;
- Prohibits disclosing or receiving, for consideration, unencrypted consumer account numbers for use in telemarketing, except when the disclosure or receipt is to process a payment for goods or services or a charitable contribution pursuant to a transaction;
- Prohibits causing billing information to be submitted for payment, directly or indirectly, without the express informed consent of the customer or donor;
- Sets out guidelines for what evidences express informed consent in transactions involving preacquired account information and "free-to-pay conversion" features;
- Requires telemarketers to transmit the telephone number, and name, when available, of the telemarketer to any caller identification service;
- Prohibits telemarketers from abandoning any outbound telephone call, and provides, in a safe harbor provision, that to avoid liability under this provision, a telemarketer must: abandon no more than three percent of all calls answered by a person; allow the telephone to ring for fifteen seconds or four rings; whenever a sales representative is unavailable within two seconds of a person's answering the call, play a recorded message stating the name and telephone number of the seller on whose behalf the call was placed; and maintain records documenting compliance;
- Extends the applicability of most provisions of the Rule to "upselling" transactions;
- Prohibits denying or interfering in any way with a consumer's right to be placed on a "do-not-call" list;
- Requires maintenance of records of express informed consent and express agreement;
- Narrows certain exemptions of the Rule;
- Clarifies that facsimile transmissions, electronic mail, and other similar methods of delivery are direct mail for purposes of the direct mail exemption; and
- Modifies various provisions throughout the Rule to effectuate expansion of the Rule's coverage to include charitable solicitations, pursuant to Section 1011 of the USA PATRIOT Act, and adds new mandatory disclosures and prohibited misrepresentations in charitable solicitations.

[37] 15 U.S.C. 6108.
[38] 15 U.S.C. 6102(a)(1) and (a)(3).
[39] 15 U.S.C. 6102(a)(3)(A).

G. Proposed Rule Adopted with Some Modifications.

Based on the entire record in this proceeding, the amended Rule adopted by the Commission is substantially similar to the proposed Rule. However, the amended Rule contains some important differences from the proposed Rule. These further modifications to the original Rule were based on the recommendations of commenters and on the Commission's more comprehensive law enforcement experience in certain areas over the months since publishing the NPRM.

The major differences between the proposed Rule and the amended Rule adopted here are as follows:

- The definition of "charitable contribution" no longer contains exceptions for religious and political groups;
- Sellers who have an "established business relationship" with the consumer are exempted from the national "do-not-call" registry;
- For-profit telemarketers who solicit charitable contributions are exempted from the national "do-not-call" registry, but remain subject to the entity-specific "do-not-call" provision;
- The original Rule's definition of "outbound call" has been reinstated, and the proposed Rule modified to require specific disclosures in an upsell transaction;
- Disclosures regarding negative option features are required;
- Express verifiable authorization is required for all payments, except those made by a credit or debit card subject to certain statutorily-mandated consumer protections;
- For express oral authorization to be deemed verifiable, a seller must ensure the customer's or donor's receipt of the date the charge will be submitted for payment (rather than the date of the payment) and identify the account to be charged with sufficient specificity such that the customer or donor understands what account is being used to collect payment (rather than provide the account name and number);
- The use of written post-sale confirmations is permitted, subject to the requirement that such confirmations be clearly and conspicuously labeled as such; however, this method is not permitted in transactions involving a "free-to-pay conversion" feature and preacquired account information;
- In charitable solicitations, the prohibited misrepresentation regarding the percentage or amount of any charitable contribution that will go to a charitable organization or program is no longer delimited by the phrase "after any administrative or fundraising expenses are deducted;"
- The Rule now specifies that billing charges to a consumer's account without the consumer's authorization is an abusive practice and a Rule violation; and the Rule now requires that a customer's express informed consent be provided in every transaction;
- The ban on the transfer of consumers' billing information has been replaced with a ban on transferring unencrypted consumer account numbers;
- The failure to transmit caller identification information is prohibited, rather than the affirmative blocking of such information;
- Abandoned calls are prohibited, subject to a "safe harbor" that requires a telemarketer to: abandon no more than three percent of all calls answered by a person; allow the telephone to ring for fifteen seconds or four rings; whenever a sales representative is unavailable within two seconds of a person's answering the call, play a recorded message stating the name and telephone number of the seller on whose behalf the call was placed; and maintain records documenting compliance;
- Records of express informed consent or express agreement must be maintained;
- The exemptions for certain kinds of calls are explicitly unavailable to upselling transactions;
- The exemption for business-to-business telemarketing is once again available to telemarketing of Web services and Internet services, as well as the solicitation of charitable contributions.

II. Discussion of the Amended Rule

The amendments to the Rule do not alter § 310.7 (Actions by States and Private Persons), or § 310.8 (Severability), although § 310.8 (Severability) has been renumbered as § 310.9 in the amended Rule. Section 310.8 of the amended Rule is now reserved.

A. Section 310.1 — Scope of Regulations.

Section 310.1 of the amended Rule states that "this part [of the CFR] implements the [Telemarketing Act], *as amended*," reflecting the amendment of the Telemarketing Act by § 1011 of the USA PATRIOT Act.[40] This section discusses comments received regarding the implementation of the USA PATRIOT Act amendments as well as other issues relating to the scope of coverage of the TSR.

Effect of the USA PATRIOT Act.

As noted in the NPRM, § 1011(b)(3) of the USA PATRIOT Act amends the definition of "telemarketing" that appears in the Telemarketing Act, 15 U.S.C. § 6306(4), by inserting the underscored language:

> The term 'telemarketing' means a plan, program, or campaign which is conducted to induce purchases of goods or services *or a charitable contribution, donation, or gift of money or any other thing of value*, by use of one or more telephones and which involves more than one interstate telephone call. . . .

In addition, § 1011(b)(2) adds a new section to the Telemarketing Act requiring the Commission to include in the "abusive telemarketing acts or practices" provisions of the TSR:

> a requirement that any person engaged in telemarketing for the solicitation of charitable contributions, donations, or gifts of money or any other thing of value, shall promptly and clearly disclose to the person receiving the call that the purpose of the call is to solicit charitable contributions, donations, or gifts, and make such other disclosures as the Commission considers appropriate, including the name and mailing address of the charitable organization on behalf of which the solicitation is made.

Finally, § 1011(b)(1) amends the "deceptive telemarketing acts or practices" provision of the Telemarketing Act, 15 U.S.C. § 6102(a)(2), by inserting the underscored language:

> The Commission shall include in such rules respecting deceptive telemarketing acts or practices a definition of deceptive telemarketing acts or practices *which shall include fraudulent charitable solicitations* and which may include acts or practices of entities or individuals that assist or facilitate deceptive telemarketing, including credit card laundering.

Notwithstanding the amendment of these provisions of the Telemarketing Act, neither the text of § 1011 nor its legislative history suggests that it amends § 6105(a) of the Telemarketing Act—the provision which incorporates the jurisdictional limitations of the FTC Act into the Telemarketing Act and, accordingly, the TSR. Section 6105(a) of the Act states:

> Except as otherwise provided in sections 6102(d) [with respect to the Securities and Exchange Commission], 6102(e) [Commodity Futures Trading Commission], 6103 [state Attorney General actions], and 6104 [private consumer actions] of this title, this chapter shall be enforced by the Commission under the Federal Trade Commission Act (15 U.S.C. § 41 *et seq.*). *Consequently, no activity which is outside of the jurisdiction of that Act shall*

[40] 15 U.S.C. 6101-6108. The Telemarketing Act was amended by the USA PATRIOT Act on October 25, 2001. Pub. L. 107-56 (Oct. 26, 2001).

be affected by this chapter. (emphasis added).[41]

One type of "activity which is outside the jurisdiction" of the FTC Act, as interpreted by the Commission and federal court decisions, is that conducted by non-profit entities. Sections 4 and 5 of the FTC Act, by their terms, provide the Commission with jurisdiction only over persons, partnerships, or "corporations organized to carry on business for their own profit or that of their members."[42]

Reading the amendments to the Telemarketing Act effectuated by § 1011 of the USA PATRIOT Act together with the unchanged sections of the Telemarketing Act compels the conclusion that for-profit entities that solicit charitable donations now must comply with the TSR, although the Rule's applicability to charitable organizations themselves is unaffected.[43] The USA PATRIOT Act brings the Telemarketing Act's jurisdiction over charitable solicitations in line with the jurisdiction of the Commission under the FTC Act by expanding the Rule's coverage to include not only the sale of goods or services, but also charitable solicitations by for-profit entities on behalf of nonprofit organizations.

The Commission received numerous comments regarding the change in scope to the TSR required by the USA PATRIOT Act amendments of the Telemarketing Act. Some comments supported the Commission's interpretation of the USA PATRIOT Act amendments, and the coverage of for-profit telemarketers who solicit on behalf of exempt charitable organizations.[44] However, the majority of commenters who addressed this issue believed the Commission had misinterpreted the mandate of the USA PATRIOT Act amendments. Law enforcement agencies and consumer groups, including NAAG and NASCO, generally expressed the view that the Commission had underestimated the jurisdictional powers conferred on it by the USA PATRIOT Act amendments, and urged that the Rule apply not only to for-profit solicitors who call on behalf of charities, but also to the charities themselves.[45] These commenters argued that the language of the USA PATRIOT Act and its legislative history do not support limiting the applicability of the TSR to telemarketers who call on behalf of non-profits, rather than extending it to cover charitable organizations as well.[46]

On the other hand, most non-profit organizations that commented argued that the Commission's interpretation of the USA PATRIOT Act amendments was too expansive. Several of these commenters argued that in adopting § 1011 of the USA PATRIOT Act, "Congress meant only to apply certain disclosure requirements—and not the other aspects of the Rule—to professional fundraisers for charities and to for-profit entities soliciting charitable contributions for their own philanthropic purposes."[47] Others suggested that "Congress intended only to address bogus charitable solicitation where the non-profit or charitable cause or organizational scheme itself is of a criminal or fraudulent nature."[48] These commenters cite statements made by the legislation's chief sponsor to the effect that concerns about fraudulent charities prompted him to introduce the legislation.[49]

The Commission believes that concerns about bogus charitable fundraising in the wake of the events of September 11, 2001, in large measure propelled passage of § 1011 of the USA PATRIOT Act.[50] But the fact remains that Congress did more than impose upon the solicitation of charitable contributions by for-profit telemarketers prohibitions against misrepresentation and basic disclosure obligations. Indeed, the USA PATRIOT Act amendments alter the scope of the entire TSR by altering the key definition of the statute—"telemarketing"—to encompass charitable solicitation. Moreover, the text of § 1011 expressly directs the Commission to address both deceptive and abusive acts or practices.[51] Thus, there is no textual support for the notion that § 1011 excludes from its grant of authority over charitable solicitations the power to prohibit deceptive or abusive practices.[52]

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[41] Section 6105(b) reinforces the point made in § 6105(a), as follows:

"The Commission shall prevent any person from violating a rule of the Commission under section 6102 of this title in the same manner, by the same means, and *with the same jurisdiction*, powers, and duties as though all applicable terms and provisions of the Federal Trade Commission Act (15 U.S.C. § 41 *et seq.*) were incorporated into and made a part of this chapter. Any person who violates such rule shall be subject to the penalties and entitled to the same privileges and immunities provided in the Federal Trade Commission Act in the same manner, by the same means, and *with the same jurisdiction*, power, and duties as though all applicable terms and provisions of the Federal Trade Commission Act were incorporated into and made a part of this chapter." (emphasis added).

[42] Section 5(a)(2) of the FTC Act states: "The Commission is hereby empowered and directed to prevent persons, partnerships, or corporations . . . from using unfair or deceptive acts or practices in or affecting commerce." 15 U.S.C. 45(a)(2). Section 4 of the Act defines "corporation" to include: "any company, trust, so-called Massachusetts trust, or association, incorporated or unincorporated, *which is organized to carry on business for its own profit or that of its members* . . . ." 15 U.S.C. 44 (emphasis added).

[43] A fundamental tenet of statutory construction is that "a statute should be read as a whole, . . . [and that] provisions introduced by the amendatory act should be read together with the provisions of the original section that were . . . left unchanged . . . as if they had been originally enacted as one section." 1A NORMAN J. SINGER, SUTHERLAND STATUTES & STAT. CONSTR. § 22:34 (6th ed. 2002), *citing, inter alia, Brothers v. First Leasing*, 724 F.2d 789 (9th Cir. 1984); *Republic Steel Corp. v. Costle*, 581 F.2d 1228 (6th Cir. 1978); *Am. Airlines, Inc. v. Remis Indus., Inc.*, 494 F.2d 196 (2d Cir. 1974); *Kirchner v. Kansas Tpk. Auth.*, 336 F.2d 222 (10th Cir. 1964); *Nat'l Ctr. for Preservation Law v. Landrieu*, 496 F. Supp. 716 (D.S.C. 1980); *Conoco, Inc. v. Hodel*, 626 F. Supp. 287 (D. Del. 1986); *Palardy v. Horner*, 711 F. Supp. 667 (D. Mass. 1989). Thus, in construing a statute and its amendments, "[e]ffect is to be given to each part, and they are to be int erpreted so that they do not conflict." *Id.*

[44] *See, e.g.*, AARP-NPRM at 4; AFP-NPRM at 3 (arguing that the USA PATRIOT Act gives the FTC jurisdiction over for-profit telemarketers soliciting on behalf of non-profits, agreeing that the disclosures required by amended Rule § 310.4(e) are necessary, and noting that the disclosures mirror the disclosures required by AFP's code of ethics); ASTA-NPRM at 1; Make-a-Wish-NPRM, *passim*; MBNA-NPRM at 6 (the Rule amendments to effectuate the USA PATRIOT Act's provisions "reflect Congress' intent and are limited in scope, and impact while providing important consumer benefits.").

[45] *See, e.g.*, NAAG-NPRM at 50-51; NASCO-NPRM at 3-4.

[46] *See* NAAG-NPRM at 50-51; NASCO-NPRM at 3-4 (the USA PATRIOT Act refers to "fraudulent charitable solicitations," and requires disclosures by "any person" engaged in telemarketing; also noting that the USA PATRIOT Act was passed in the wake of September 11, 2001, and in response to misrepresentations by non-profits as well as their for-profit telemarketers.).

[47] DMA-NonProfit-NPRM at 4. *See also* ACE-NPRM at 1-2; ERA-NPRM at 45; IUPA-NPRM at 21-22.

[48] Not-For-Profit Coalition-NPRM at 26. *See also* Community Safety-NPRM at 2.

[49] *See* Not-For-Profit Coalition-NPRM at 27-28; DMA-NonProfit-NPRM at 5.

[50] *See* letter dated June 14, 2002, from Senator Mitch McConnell to FTC Chairman Timothy Muris, commenting on the NPRM and stating:

"In an effort to protect generous citizens and the charitable institutions they support, I was proud to introduce the Crimes Against Charitable Americans Act and secure its inclusion in the USA PATRIOT Act. This legislation strengthens federal laws regulating charitable phone solicitations. The bill also takes important steps to combat deceptive charitable solicitations by requiring telemarketers to make common sense disclosures such as the charity's identity and address at the beginning of the phone call. . . . When Congress enacted this legislation, it did not envision, nor did it call for, the FTC to propose a federal "do-not-call" list, and certainly not a list that applied to charitable organizations or their authorized agents."

[51] Pub. L. 107-56 (Oct. 26, 2001).

[52] It is a tenet of statutory construction that "an amendatory act is not to be construed to change the original act . . . further than expressly declared or necessarily implied." SUTHERLAND STAT. CONSTR., note 43 above, at § 22:30 (citations omitted). The Commission believes the necessary implication of modifying the definition of "telemarketing" in the USA PATRIOT Act is to have all provisions of the Rule apply to charitable solicitations.

Some non-profit commenters also argued that the Commission's interpretation of the USA PATRIOT Act produced, in effect, a double standard, regulating charities who outsource their telemarketing, but not those who conduct their own telemarketing campaigns.[53] Others opined that this bifurcated regulatory scheme was not intended by Congress when it passed the USA PATRIOT Act amendments to the Telemarketing Act.[54] These commenters argued that this distinction penalizes charities (by subjecting them to regulation) merely because they choose to outsource an administrative function. Some argued further that the increased costs of regulatory compliance will not be borne by the for-profit telemarketers, but rather by charities themselves, negatively impacting their ability to carry out their primary mission.[55]

Again, the Commission notes that despite its broad mandate to regulate charitable solicitations made via telemarketing, the USA PATRIOT Act amendments did not expand the Commission's jurisdiction under the TSR to make direct regulation of non-profit organizations possible. Nevertheless, reading the amendatory act together with the original language, as it must, the Commission has sought to give full effect to the directive of Congress set forth in the USA PATRIOT Act amendments.

Another argument raised by large numbers of non-profit commenters is that regulating for-profit telemarketers who solicit on behalf of non-profits, and in particular subjecting them to the requirements of the "do-not-call" registry provision, is unfair given the other limitations on the Commission's jurisdiction.[56] These commenters suggested that the result of this scheme would be to allow commercial calls that consumers find intrusive, while banning calls from charities, even those with whom a donor has a past relationship.[57] As explained in greater detail in the discussion of the applicability of the "do-not-call" provisions to charitable solicitation telemarketing, careful consideration of this argument has led the Commission to exempt solicitations to induce charitable contributions via outbound telephone calls from the "do-not-call" registry provision. Only the less restrictive entity-specific "do-not-call" provision included in the original Rule will apply to charitable solicitation telemarketing. However, both the entity-specific "do-not-call" provisions *and* the "do-not-call" registry provisions apply to commercial telemarketing to induce purchases of goods or services. This approach fulfills the Commission's intention that the TSR be consistent with First Amendment principles, whereby a higher degree of protection is extended to charitable solicitation than to commercial solicitation. Moreover, as a practical matter, the Commission believes that this approach will enable charities to continue soliciting support and pursuing their missions.

Commenters' Proposals.

Noting the Commission's jurisdictional limitations with respect to banks, MBNA requested that the Rule explicitly state that it is "inapplicable to entities exempt from coverage under § 5(a)(2) of the [FTC Act]."[58] MBNA also recommended that the Rule extend this exemption to "entities acting on behalf of banks . . . because such entities are regulated by the Bank Service Company Act, 15 U.S.C. § 45(a)(2), concerning services they provide for banks."[59] MasterCard challenged the Commission's statement that it can regulate third-party telemarketers who call on behalf of a bank, and urged that the Commission explicitly exempt "any bank subsidiary or affiliate performing services on behalf of a bank.[60] ABA recommended that the amended Rule clarify that "non-bank operating subsidiaries of banks as defined by the banking agencies" are exempt.[61]

The Commission notes that, from the inception of the Rule, the Commission has asserted that parties acting on behalf of exempt organizations are not thereby exempt from the FTC Act, and thus, for example, "a nonbank company that contracts with a bank to provide telemarketing services on behalf of the bank is covered" by this Rule.[62] This reading is consistent with the Commission's long-standing interpretation of the scope of its authority under the FTC Act, as well as with judicial precedent.[63] Furthermore, the Commission's authority was clarified in § 133 of the Gramm-Leach-Bliley Act ("GLBA"), which states that "[a]ny person that . . . is controlled directly or indirectly . . . by . . . any bank . . . ([as] defined in section 3 of the Federal Deposit Insurance Act) and *is not itself a bank . . . shall not be deemed to be a bank . . . for purposes of any provisions applied by*" the FTC under the FTC Act.[64] Most recently, a federal district court held that, under this language, the Rule applies to telemarketing by a mortgage subsidiary of a national bank. As the court stated, "the definition of 'bank' identified by Congress simply does not include the subsidiaries of banks."[65]

The Commission believes it is unnecessary to state in the Rule what is already plain in the Telemarketing Act, *i.e.*, that its jurisdiction for purposes of the TSR is conterminous with its jurisdiction under the FTC Act, and therefore declines to include an express statement of this fact in the Rule. Further, the Commission declines to adopt the interpretation of some commenters that the FTC Act itself exempts non-bank entities based on their affiliation with or provision of services to exempt banks, and the recommendations of those commenters who sought an exemption from the Rule for bank subsidiaries or agents. To do so would be contrary to the Commission's interpretation of its jurisdictional boundaries, and would unnecessarily limit the reach of the Rule.[66]

In a similar argument, SBC asserted that, contrary to the Commission's stated position, the Commission's lack of jurisdiction over common carriers engaged in common carriage activity extends to their affiliates and their agents engaged in telemarketing on their behalf.[67] SBC cites no authority for this proposition, and the Commission is

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[53] *See, e.g.*, March of Dimes-NPRM at 2.

[54] *See* IUPA-NPRM at 1.

[55] *See* Reese-NPRM at 2.

[56] *See, e.g.*, FOP-NPRM at 2; HRC-NPRM at 1; Italian American Police-NPRM at 1; Lautman-NPRM at 2; Leukemia Society-NPRM at 1-2; NCLF-NPRM at 1; Angel Food-NPRM at 1; North Carolina FFA-NPRM at 1; SO-CT-NPRM at 1; SO-NJ-NPRM at 1; SO-WA-NPRM at 1; Reese-NPRM at 2; SHARE-NPRM at 3; Stage Door-NPRM at 1.

[57] *See, e.g.*, PAF-NPRM at 1; AOP-Supp. at 1; Chesapeake-Supp. at 1.

[58] MBNA-NPRM at 2. *Accord* Fleet-NPRM at 2 (arguing that the Office of the Comptroller of the Currency already provides significant guidance to banks on managing risks that may arise from their business relationships with third parties); AFSA-NPRM at 3.

[59] MBNA-NPRM at 2. *See also* AFSA-NPRM at 3.

[60] MasterCard-NPRM at 13-14. *Accord* Citigroup-NPRM at 11.

[61] ABA-NPRM at 3.

[62] 60 FR at 43843, *citing, inter alia, Official Airline Guides v. FTC*, 630 F.2d 920 (2d Cir. 1980) (holding that the air carrier exemption from the FTC Act did not apply to a firm publishing schedules and fares for air carriers, which was not itself an air carrier); FTC/Direct Mktg. Ass'n., *Complying with the Telemarketing Sales Rule* (Apr. 1996) ("TSR Compliance Guide") at 7.

[63] *See, e.g., Official Airline Guides*, note 62 above; *FTC v. Saja*, 1997-2 CCH (Trade Cas.) P 71,952 (D. Ariz. 1997); *FTC v. Am. Standard Credit Sys., Inc.*, 874 F. Supp. 1080 (1994).

[64] GLBA, Pub. L. 106-102, 113 Stat. 1383, Title I, § 133(a), 15 U.S.C. 6801-6810 (2001).

[65] *Minnesota v. Fleet Mortgage Corp.*, 181 F. Supp. 2d 995 (D. Minn. 2001) (noting that the applicable definition under the Federal Deposit Insurance Act ("FDIA") is "any national bank, State bank, District Bank, and any Federal branch and insured branch" *citing* FDIA, 12 U.S.C. 1813(a)(1)(A)).

[66] This approach is consistent with that laid out in the SBP of the original Rule. *See* 60 FR at 43483.

[67] SBC-NPRM at 2, 4–5.

aware of none. SBC claims that the cases cited by the Commission in the NPRM[68] in support of its authority provide no support for Commission jurisdiction over a common carrier's agent assisting in selling common carrier services.[69] In fact, in one of those cases, the publisher of what the court described as "the primary market tool of . . . virtually every (air) carrier . . . in the United States" was held not to be exempt under the exemption for air carriers.[70] Accordingly, the Commission declines to revise its position.

Citigroup requested that the amended Rule clarify that certain financial services providers, such as insurance underwriters and registered broker-dealers, are exempt from the Rule.[71] NAIFA requested similar clarification regarding insurance companies, as well as an explicit statement of exemption in the Rule.[72] The Commission believes that the explicit statement of the Commission's jurisdictional limitation over broker-dealers is abundantly clear in the Telemarketing Act itself;[73] thus, it is unnecessary to exempt them in the Rule. Similarly, the Commission believes its jurisdictional limitations regarding the business of insurance are clear, and thus no express exemption for these entities is necessary.[74]

In contrast to these requests to circumscribe or restate the Commission's jurisdiction under the Rule, a number of commenters urged the expansion of the Rule's scope beyond its current boundaries. As NCL put it, "[b]ecause the Commission's general jurisdiction does not include significant segments of the telemarketing industry, such as common carriers and financial institutions, the Rule does not provide comprehensive protection for consumers or a level playing field for marketers."[75] Others argued that the Commission should assert jurisdiction over intrastate calls as well as interstate calls.[76]

As the Commission stated in the NPRM, "the jurisdictional reach of the Rule is set by statute, and the Commission has no authority to expand the Rule beyond those statutory limits."[77] Thus, absent amendments to the FTC Act or the Telemarketing Act, the Commission is limited with regard to its ability to regulate under the Rule those entities explicitly exempt from the FTC Act. Despite this limitation, the Commission can reach telemarketing activity conducted by non-exempt entities on behalf of exempt entities.[78] Therefore, when an exempt financial institution, telephone company, or non-profit entity conducts its telemarketing campaign using a third-party telemarketer not exempt from the Rule, then that campaign is subject to the provisions of the TSR.[79]

Regarding the suggestion that the Commission regulate intrastate telemarketing calls, the Commission notes that, pursuant to the definition of "telemarketing" included in the Telemarketing Act, 15 U.S.C. § 6106(4), the Commission only has authority to regulate "a plan, program, or campaign which is conducted . . . by use of one or more telephones and which involves *more than one interstate call.*" (emphasis added).

Finally, one commenter suggested that the Commission expressly state its jurisdiction over prerecorded telephone solicitations and facsimile advertisements.[80] The Commission believes that sales calls using pre-recorded messages may fall within the Rule's definition of "telemarketing," provided the call is not exempt and provided the call meets the other criteria of "telemarketing." Thus, a sales call using a prerecorded message may be "telemarketing" if it is part of a plan, program, or campaign for the purpose of inducing the purchase of goods or services or inducing a donation to a charitable organization, is conducted by use of one or more telephones, and involves more than one interstate call. However, the fact that prerecorded sales calls may be "telemarketing" does not affect the fact that such calls are already prohibited, except with the consumer's prior express consent, under regulations promulgated by the FCC pursuant to the TCPA.[81] Similarly, FCC regulations already prohibit unsolicited facsimile advertisements,[82] although facsimiles also are a form of direct mail subject to the TSR. The Commission notes in the discussion of § 310.6(b)(6) below that it considers facsimiles to be a form of direct mail solicitation. Thus, under § 310.6(b)(6), a seller using a facsimile advertisement to induce calls from consumers may not claim the direct mail exemption unless the facsimile truthfully discloses the material information listed in § 310.3(a)(1) (or contains no material misrepresentation regarding any item contained in § 310.3(d) if the solicitation is for a charitable contribution).

B. Section 310.2 — Definitions.

The amended Rule retains the following definitions from the original Rule unchanged, apart from renumbering: "acquirer," "Attorney General," "cardholder," "Commission," "credit," "credit card," "credit card sales draft," "credit card system," "customer,"[83] "investment opportunity,"[84] "merchant," "merchant agreement," "person," "prize," "prize promotion," "seller," and "State."

Based on the record developed in this matter, the Commission has determined to retain the following definitions from

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[68] 67 FR at 4407 (*citing* 60 FR at 43843, *citing FTC v. Miller*, 549 F.2d 452 (7th Cir. 1977) and *Official Airline Guides*), *see* note 62 above.

[69] SBC-NPRM at 4-5.

[70] *Official Airline Guides*, *see* note 62 above. *See also* cases cited above in note 63, rejecting exemption claims of telemarketers for exempt organizations.

[71] *See* Citigroup-NPRM at 10.

[72] *See* NAIFA-NPRM at 1-2.

[73] 15 U.S.C. 6102(d)(2).

[74] *See* Section 2 of the McCarran-Ferguson Act, 15 U.S.C. 1012(b) (the business of insurance, to the extent that it is regulated by state law, is exempt from the Commission's jurisdiction pursuant to the FTC Act).

[75] NCL-NPRM at 2. *See also* Horick-NPRM at 1; PRC-NPRM at 3-4; Myrick-NPRM at 1.

[76] FCA-NPRM at 2.

[77] 67 FR at 4497.

[78] *Id.*

[79] As the Commission stated when it promulgated the Rule, "[t]he Final Rule does not include special provisions regarding exemptions of parties acting on behalf of exempt organizations; where such a company would be subject to the FTC Act, it would be subject to the Final Rule as well." 60 FR at 43843. Although some commenters, such as SBC (SBC-NPRM at 5-8) and Wells Fargo (Wells Fargo-NPRM at 2), took issue with this proposition, the fact remains that the Telemarketing Act states merely that "no activity which is outside the jurisdiction of that Act shall be affected by this chapter." 15 U.S.C. 6105(a). Thus, when an entity not exempt from the FTC Act engages in telemarketing, that conduct falls within the Commission's jurisdiction under the TSR. *Id.*; TSR Compliance Guide at 12.

[80] *See* Worsham-NPRM at 6.

[81] 47 CFR 64.1200(a)(2).

[82] 47 CFR 64.1200(a)(3).

[83] VISA stated that the definition of "customer" is too broad, encompassing not only "the person who is party to the telemarketing call and who would be liable for the amount of a purchase as the contracting party, but also would include any person who is liable under the terms of the payment device." VISA-NPRM at 7. Although the term "customer," defined to mean "any person who is or may be required to pay for goods or services offered through telemarketing," is broad in scope, the Commission believes this breadth is necessary to effect the purposes of the Rule. Further, the Commission believes that the term "customer," taken in context of the various Rule sections in which it is used, is not confusing. Therefore, the Commission makes no change in the amended Rule to the definition of "customer."

[84] One commenter recommended that the Commission clarify that an investment vehicle whose main attribute is that it provides tax benefits would be considered an "investment opportunity" under the Rule. Thayer-NPRM at 6. The Commission believes that such a tax-advantaged investment would come under the present definition, which is predicated on representations about "past, present, or future income, profit, or appreciation." The Commission believes that any such investment opportunity would only result in a tax advantage because of its ability to produce income or appreciation, regardless of whether that income is positive (and tax-deferred or tax-exempt) or negative (resulting in deductible losses). Thus, the Commission has retained the original definition of "investment opportunity" in the amended Rule.

the proposed Rule unchanged, apart from renumbering: "caller identification service," "donor," "telemarketer,"[85] and "telemarketing." The amended Rule modifies the definitions put forth in the NPRM for the terms "billing information," "charitable contribution," "material," and "outbound telephone call." Finally, the amended Rule adds five definitions that were not included in the NPRM proposal. They are: "established business relationship," "free-to-pay conversion," "negative option feature," "preacquired account information," and "upselling." The Commission discusses each of these definitions below, along with the comments received regarding them, and the Commission's reasoning in making a final determination regarding each of these definitions.[86]

§ 310.2(c) — Billing information

The proposed Rule included a definition of the term "billing information," which was used in proposed § 310.3(a)(3), the express verifiable authorization provision, and proposed § 310.4(a)(5), the section that addressed preacquired account telemarketing. Under the definition proposed in the NPRM, the term "billing information" encompassed "any data that provides access to a consumer's or donor's account, such as a credit card, checking, savings, or similar account, utility bill, mortgage loan account, or debit card."[87]

The Commission received numerous comments regarding this definition as it pertained to the express verifiable authorization and preacquired account provisions of the proposed Rule. The use of the term in the express verifiable authorization provision drew less comment, perhaps because that provision merely required that the customer or donor receive such billing information if express verifiable authorization of payment is to be deemed verifiable.[88] Comments from consumer groups generally favored the "billing information" definition, noting that the breadth of the term would prove beneficial to consumers.[89] AARP, for example, stated that the definition, as employed in the proposed preacquired account telemarketing provision, "is broad enough so as not to leave any doubt in the mind of the telemarketer regarding what can and cannot be shared."[90] Law enforcement representatives and some consumer groups expressed their concern that, as broad as the definition might seem, it should be further expanded to encompass encrypted data, and other kinds of information that can allow access to a consumer's account.[91] Industry commenters, on the other hand, argued precisely the opposite, requesting that the definition be narrowed and that it specifically exclude encrypted data,[92] or other specified items unique to that commenter's business practices.[93] Instead, industry commenters recommended, "billing information" should be limited to account information that "in and of itself, is sufficient to effect a transaction" against a consumer's account.[94] Virtually all of these comments were made in the context of the proposed Rule provision regarding preacquired account telemarketing, which would have prohibited the disclosure or receipt of "billing information" except when provided by the customer or donor to process payment.

As noted below in the discussions of amended Rule §§ 310.4(a)(5) and (6), the Commission has tailored its approach to preacquired account telemarketing, thereby addressing many of the concerns raised by commenters on both sides regarding the proposed definition of "billing information." The amended Rule's approach to preacquired account telemarketing—which no longer focuses on the sharing of "billing information" in anticipation of telemarketing, but instead prohibits "[c]ausing billing information to be submitted for payment, directly or indirectly, without the express informed consent of the customer or donor"—obviates the concerns about the breadth of the term, and whether it includes or excludes encrypted account numbers.[95] However,

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[85] One commenter expressed concern that "a company that sells telemarketing services to sellers, but does not maintain any calling facilities itself, instead subcontracting the actual telephoning to individuals" might not fall within the definition of "telemarketer." Patrick-NPRM at 2. The Commission disagrees, and believes that regardless of whether an entity maintains a physical call center, it would be a "telemarketer" for purposes of the Rule if "in connection with telemarketing, [it] initiates or receives telephone calls to or from a customer or donor." Amended Rule § 310.2(bb).

[86] The definitions proposed in the NPRM for "express verifiable authorization," "Internet services," and "Web services" have been deleted from the amended Rule because they are no longer necessary in light of certain substantive modifications in the amended Rule.

[87] *See* proposed Rule § 310.2(c), and discussion, 67 FR at 4498-99.

[88] As discussed below, in the section explaining the express verifiable authorization provision (*i.e.*, § 310.3(a)(3)), commenters' concerns regarding billing information in the express verifiable authorization provision focused on the dangers of disclosure of consumers' account numbers.

[89] *See* NCLC-NPRM at 13; LSAP-NPRM at 5 (approved of definition, but also suggested changing "such as" to "including but not limited to").

[90] AARP-NPRM at 7.

[91] Specifically, NAAG noted: "[T]he Gramm Leach Bliley Act ("GLBA") has resulted in the common use of reference numbers and encrypted numbers to identify consumer accounts in preacquired account telemarketing. These types of account access devices definitely should be included in the list of examples. Failure to include encrypted numbers within the scope of the Rule's definition of 'billing information' would render the Rule useless as a device to combat the ills of preacquired account telemarketing." NAAG-NPRM at 38. *See also* NACAA-NPRM at 5-6 ("consider providing a non-exclusive list of such information, based upon technologies in place today. Thus, name, account number, telephone number, married and maiden names of parents, social security number, passwords to accounts and PINs, and encrypted versions of this information, with or without the encryption [key], should all be prohibited from use in any trasaction but the immediate one in which the co nsumer is engaged."); NCLC-NPRM at 13.

[92] Citigroup-NPRM at 7-8; Household Auto-NPRM at 2 ("Although the specific language of the proposed definition does appear to be consistent with the Commission's GLBA interpretation, the explanation of the term in the [NPRM] is broader and creates a conflict with the GLBA interpretation . . . . To avoid such a conflict, we suggest that the Commission clarify that the term . . . includes only account numbers and specifically excludes encrypted account numbers."). *Accord* ABIA-NPRM at 2; Roundtable-NPRM at 8 ("The Roundtable is concerned that this definition is so broad that it could be construed to restrict the sharing of publicly available identifying information, such as a consumer's name, phone number and address."). *See also* AFSA-NPRM at 11-12; Advanta-NPRM at 3; ARDA-NPRM at 3; Assurant-NPRM at 3; Capital One-NPRM at 8-9; Cendant-NPRM at 7; Citigroup-NPRM at 7; E-Commerce Coalition-NPRM at 2; ERA-NPRM at 24; IBM-NPRM at 10; MPA-NPRM at 23, n.23; MasterCard-NPRM at 8; Metris-NPRM at 7; VISA-NPRM at 6.

[93] *See, e.g.*, Green Mountain-NPRM at 31 ("If the Commission intends to adopt its proposal to amend the TSR to add a new Section 310.4(a)(5) to ban the use of preacquired billing information obtained from third parties, it should exempt names, addresses, electricity meter identifiers, and electricity usage patterns from its definition of 'billing information.'")

[94] IBM-NPRM at 10. ARDA argued that information that would fall within the definition of "billing information" —such as a customer's or donor's date of birth— may be collected during a call for purposes other than to effect a charge. ARDA cited examples including "eligibility to enter a contest or drawing" or "demographic purposes." ARDA-NPRM at 3. ARDA then asserted that, while this information may not be gathered during a call in which a billing occurs, or used for billing purposes in the first instance, it could be passed along to other parties for marketing or other purposes. *Id.* While the Commission recognizes that information like date of birth has marketing uses beyond access to consumer accounts for billing purposes, the Commission finds it improbable at best that collection or confirmation of date of birth, or similar piece of information, as a proxy for consent to be charged for a purchase or donation would satisfy the "express informed consent" requirements of amended Rule § 310.4(a)(6), discussed below.

[95] During the Rule Review, industry argued the term was so broad it might mean that sellers and telemarketers could not share customer names and telephone numbers for use in telemarketing. *See, e.g.*, Advanta-NPRM at 3; Roundtable-NPRM at 8. Industry also argued that encrypted data should not be included in the definition of "billing information," because such data by itself does not allow a charge to be placed on a consumer's

the amended Rule includes a definition of "preacquired account information," which encompasses both encrypted and unencrypted account information, to address specifically the practice of preacquired account telemarketing.[96]

Consequently, after consideration of the record in this proceeding, and in light of the more focused approach to the provisions in which the term is used, the Commission has decided to retain the proposed definition of "billing information," with a minor modification. The definition now encompasses "any data that *enables any person to obtain access* to a customer's or donor's account, such as a credit card, checking, savings, share or similar account, utility bill, mortgage loan account, or debit card." (emphasis added). The Commission believes that this syntactical modification, substituting the phrase "that enables any person to obtain access" for the phrase "that provides access," makes the definition more precise and somewhat easier to understand. The definition retains the broad scope of its predecessor in order to capture the myriad ways a charge may be placed against a consumer's account,[97] yet has more limited effect in the context of the approach adopted in the amended Rule to address preacquired account telemarketing and express verifiable authorization.

§ 310.2(d) — Caller identification service

The definition of "caller identification service" comes into play in § 310.4(a)(7) of the amended Rule, discussed below. In the NPRM, the Commission proposed to define "caller identification service" to mean "a service that allows a telephone subscriber to have the telephone number, and, where available, name of the calling party transmitted contemporaneously with the telephone call, and displayed on a device in or connected to the subscriber's telephone." As the Commission explained in the NPRM, the Commission intends the definition of "caller identification service" to be sufficiently broad to encompass any existing or emerging technology that provides for the transmission of calling party information during the course of a telephone call.[98] Those few commenters who addressed the definition supported the Commission's proposal.[99] Therefore, the amended Rule adopts § 310.2(d), the definition of "caller identification service," unchanged from the proposal.

§ 310.2(e) — Charitable contribution

The original Rule did not include a definition of "charitable contribution" because originally the term "telemarketing" in the Telemarketing Act, which determined the scope of the TSR, was defined to reach telephone solicitations only for the purpose of inducing sales of goods or services.[100] The proposed Rule added a definition of the term "charitable contribution" because § 1011 of the USA PATRIOT Act amended the Telemarketing Act to specify that "telemarketing" now includes not only calls to induce purchases of goods or services but also calls to induce "*a charitable contribution, donation, or gift of money or any other thing of value.*"[101] The Commission has determined that the term "charitable contribution," defined for the purposes of the Rule to mean "any donation or gift of money or any other thing of value" succinctly captures the meaning intended by Congress. Therefore, the Commission has retained this definition from the proposed Rule. It has, however, determined to modify the proposed definition to eliminate the exemptions included in the proposed Rule.

The proposed definition in the NPRM expressly excluded donations or gifts of money or any other thing of value solicited by or on behalf of "political clubs, committees, or parties, or constituted religious organizations or groups affiliated with and forming an integral part of the organization where no part of the net income inures to the direct benefit of any individual, and which has received a declaration of current tax exempt status from the United States government."[102] This proposed exemption drew strong comment and criticism. NASCO recommended that a definition of "constituted religious organizations" be included in the Rule to set clear boundaries for what kinds of groups were intended to be included.[103] Hudson Bay stated that "establishing governmentally preferred groups, such as religious organizations or political parties, and providing them with superior access to the public, is in our opinion unquestionably a violation of the Fourteenth Amendment's guarantee of equal protection and of the First Amendment."[104] Similarly, DMA-Nonprofit stated "the Commission has no authority to single out agents of religious organizations for exemption . . . . [T]here is no language in the [USA PATRIOT Act] that allows the Commission to make this distinction."[105]

Based on careful consideration of the record, the Commission is persuaded that no exemptions based upon the type of organization engaged in telemarketing are warranted, and that all telemarketing (as defined in the Telemarketing Act as amended by the USA PATRIOT Act) conducted by any entity within its jurisdiction should be covered by the TSR. This does *not* mean that the Commission believes political fundraising is within the scope of the Rule.[106] It means only that the TSR applies to all calls that are part of any "plan, program, or campaign" that is conducted by any entity within the FTC's jurisdiction, involving more than one interstate telephone call for the purpose of inducing a purchase of goods or services *or* a charitable contribution, donation, or gift of money or any other thing of value. Thus, for example, if a for-profit telemarketer on behalf of a

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account, and because sharing it is permitted by the GLBA. *See, e.g.*, Cendant-NPRM at 7; E-Commerce Coalition-NPRM at 2; MPA at 23, n.23. These arguments have been addressed by the Commission's revised approach to preacquired account telemarketing, which focuses not on the sharing of account information—except in the very limited area of sale of unencrypted account numbers—but on the harm that results from certain practices in preacquired account telemarketing, *i.e.*, unauthorized charges. Moreover, in those instances where there has been the strongest history of abuse, sellers and telemarketers are required to obtain part or all of the customer's account number directly from the customer.

[96] *See* amended Rule § 310.2(w), and related discussion below.

[97] The record shows that a telemarketer or seller may provide anything from complete account number to mother's maiden name to initiate a charge for a telemarketing transaction, depending on its relationship with another seller, financial institution, or billing entity. *See, e.g.*, Assurant-NPRM at 4.

[98] 67 FR at 4499.

[99] *See, e.g.*, EPIC-NPRM at 11; ARDA-NPRM at 4. ARDA suggested that the definition be expanded to allow transmission of the name and number of "any party whom the telephone subscriber may contact" regarding being placed on the company's "do-not-call" list. As noted in the subsequent discussion of this provision, § 310.4(a)(7) of the amended Rule permits telemarketers to substitute a customer service number on the caller identification transmission.

[100] 15 U.S.C. 6106(4).

[101] 15 U.S.C. 6106(4) (amended by § 1011(b)(3) of the USA PATRIOT Act, Pub. L. 107-56 (Oct. 26, 2001)).

[102] Proposed Rule § 310.2(f).

[103] NASCO-NPRM at 6.

[104] Hudson Bay-NPRM at 12.

[105] DMA-NonProfit-NPRM at 5-6. *See also* Not-for-Profit Coalition-NPRM at 41.

[106] The USA PATRIOT Act is consistent with a basic common law distinction between charities and political organizations. "Gifts or trusts for political purposes or the attainment of political objectives generally have been regarded as not charitable in nature. Also . . . a trust to promote the success of a political party is not charitable in nature." 15 Am. Jur. 2d *Charities* § 60 (2002). In this regard, it is noteworthy that Congress elsewhere has established a regulatory scheme applicable to political fundraising. 2 U.S.C. §§ 431-455.

(presumably non-profit) political club or constituted religious organization were to engage in a "plan, program, or campaign" involving more than one interstate telephone call to induce a purchase of goods or services *or* a charitable contribution, that activity would be within the scope of the TSR. But if such a for-profit telemarketer on behalf of the same client made calls that were not for the purpose of inducing a purchase of goods or services or a charitable contribution, those calls would not be within the scope of the TSR.

Commenters also addressed the scope of the term "or any thing of value" in the definition of "charitable contribution" in the proposed Rule, suggesting exemptions to limit this definition. Red Cross urged the Commission to exempt blood from the definition of "charitable contribution" because, it argued, "blood donations are not 'a thing of value' in a fiduciary sense."[107] Blood Centers agreed with this position, arguing that while "the donor's blood is of great value to the recipient of the blood donation . . . the donor is not being asked to part with anything other than his or her *time*."[108] Blood Centers also argued that donations of blood are of grave importance to save lives, and so are distinguishable from typical commercial and even charitable telemarketing calls.[109] Another argument raised by Blood Centers in support of its position that a blood donation should be excluded from the definition of "charitable contribution" is that blood donation programs are highly regulated by the Food and Drug Administration ("FDA").[110] March of Dimes also requested that volunteers' time not be considered a "thing of value" under the Rule, noting that their organization often uses the telephone to contact volunteers who then solicit contributions from their friends and neighbors.[111]

The Commission believes that the text of the USA PATRIOT Act provision expanding the definition of telemarketing to include calls to induce "a charitable contribution, donation, or gift of money or any other thing of value" is broad in scope and plain in meaning. The USA PATRIOT Act specifically uses the term "or any other thing of value" in addition to the terms "charitable contribution, donation, or gift of money," ensuring that it will encompass non-money contributions. The Commission believes that, while blood donors are asked for blood and not money, the blood they donate is clearly a "thing of value."[112] Similarly, although volunteers are asked to give time rather than money, the Commission believes that a donation of time is a "thing of value."[113] Therefore, the Commission cannot exempt from the definition of "charitable contribution" either blood or time volunteered. The Commission believes, however, that legitimate concern about inclusion of blood in the definition should be alleviated by the exemption of charitable solicitation telemarketing from the "do-not-call" registry provisions. The remaining provisions that will apply to telemarketing to solicit blood donations are neither burdensome nor likely to impede the mission of the non-profit organizations that seek such donations.

NAAG and NASCO suggested that the Commission "state that the word 'charitable' does not limit the character of the recipient of the contribution."[114] According to these commenters, it is important to ensure that donations solicited by or on behalf of public safety organizations are considered "charitable contributions" for regulatory purposes, and that those contributions solicited by sham charities are still "charitable contributions" under the amended Rule.[115] The Commission believes that the current definition, which closely tracks the USA PATRIOT Act definition, is clear as to what is covered.[116] Its focus is on the donation, rather than the solicitor, and it is sufficiently broad in scope to encompass donations solicited on behalf of any organization.

NAAG and NASCO also requested that the Commission explicitly address the situation where a call involves "'percent of purchase' situations, where contributions are sought in the form of the purchase of goods or services, [and] where a portion of the price will, according to the solicitor, be dedicated to a charitable cause."[117] These commenters urged the Commission to ensure that such hybrid transactions are covered, either as sales of goods or services or as charitable contributions, or both, under the Rule.[118] The Commission believes that when the transaction predominantly is an inducement to make a charitable contribution, such as when an incentive of nominal value is offered in return for a donation, the telemarketer should proceed as if the call were exclusively to induce a charitable contribution. Similarly, if the call is predominantly to induce the purchase of goods or services, but, for example, some portion of the proceeds from this sale will benefit a charitable organization, the telemarketer should adhere to the portions of the Rule relevant to sellers of goods or services. The Commission believes that further elaboration on the differences between these scenarios is unnecessary because, in either case, the requirements are similar, consisting primarily of avoiding misrepresentations, and promptly disclosing information that would likely be disclosed in the ordinary course of a telemarketing call.

§ 310.2(m) — Donor

The proposed Rule contained a definition of "donor" in order to effectuate the goals of the USA PATRIOT Act amendments. Under that definition, a "donor" is "any person solicited to make a charitable contribution."[119] Throughout the proposed Rule, wherever the word "customer" was used, the Commission added the word "or donor" where appropriate, to indicate that the provision was also applicable to the solicitation of charitable contributions. The Commission received very few comments on this definition. The March of Dimes expressed the concern that "[t]he definition of a 'donor' does not accurately reflect the nomenclature used by the industry."[120] Rather, the March of Dimes suggested, the term "donor," as used in philanthropic circles, "connotes an established relationship with the non-profit charitable organization."[121] The March of Dimes recommended replacing the terms "customer" and "donor" in the Rule with the term "consumer."

The Commission believes that the term "consumer" is too broad and non-specific to substitute for the terms

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[107] Red Cross-NPRM at 3.

[108] Blood Centers-NPRM at 2.

[109] *Id.*

[110] *Id.* at 2-3.

[111] March of Dimes-NPRM at 2. *See also* AFP-NPRM at 5.

[112] *See* Maryland Health Care, Fall 2000 at 4, http://www.mdhospitals.org/MarylandPubs/MDHlthCr_1100.pdf (noting the blood shortages had driven up the price of blood from $145.24 per unit to $174.10 per unit in a single year).

[113] Presumably, organizations that rely on volunteers would, absent their donations of time, be forced to pay labor costs associated with the work done by volunteers. Therefore, the time donated is a "thing of value," equivalent to the labor cost saved.

[114] NAAG-NPRM at 52; NASCO-NPRM at 5-6.

[115] *Id.*

[116] 15 Am. Jur. 2d *Charities* § 60 (2002).

[117] NAAG-NPRM at 52. *See also* NASCO-NPRM at 5-6.

[118] *Id.*

[119] Proposed Rule § 310.2(m), 67 FR at 4540.

[120] March of Dimes-NPRM at 3.

[121] *Id.* (noting that the term "prospect" is used to mean a potential donor).

"customer" and "donor."[122] The Rule uses these more targeted terms to capture the varied nature of transactions between sellers or telemarketers and individuals who are, or may be, required to pay for something as the result of a telemarketing solicitation. Thus, it is the intent of the Commission that the term "donor" as used in the Rule encompass not only those who have agreed to make a charitable contribution, but also any person who is solicited to do so, to be consistent with its use of the term "customer." Therefore, the Commission has determined that the term "donor" is necessary and appropriate, and has retained the definition of "donor" in the amended Rule without modification.

§ 310.2(n) — Established business relationship

The Commission has determined to add to the Rule a definition of "established business relationship." This new definition comes into play in § 310.4(b)(1)(iii), which now exempts from the national "do-not-call" registry calls from sellers with whom the consumer has an "established business relationship" (unless that consumer has asked to be placed on that seller's company-specific "do-not-call" list). This definition limits the exemption to relationships formed by the consumer's purchase, rental, or lease of goods or services from, or financial transaction with, the seller within eighteen months of the telephone call (or, in the case of inquiries or applications, within three months of the call).

Industry comments were nearly unanimous in emphasizing that it is essential that sellers be able to call their existing customers.[123] Although the initial comments from consumer groups opposed an exemption for "established business relationships,"[124] their statements during the June 2002 Forum and in their supplemental comments expressed the view that such an exemption would be acceptable, as long as it was narrowly-tailored and limited to current, ongoing relationships.[125] Moreover, state law enforcement representatives' comments on their experience with state "do-not-call" laws that have an exemption for "established business relationships" suggest that this type of exemption is consistent with consumer expectations.[126] While the Commission is persuaded that an "established business relationship" exemption is necessary and appropriate, it believes that the exemption must be narrowly crafted and clearly defined to avoid a potential loophole that could defeat the purpose of the national "do-not-call" registry.

In adopting the "do-not-call" provisions of the original Rule, the Commission considered, among other things, the approach taken by Congress and the FCC in the TCPA and its implementing regulations.[127] In crafting an "established business relationship" definition, it is useful again to consider the TCPA, which specifically exempts calls "to any person with whom the caller has an established business relationship."[128] The House Report on the TCPA's "established business relationship" exemption confirms that Congress intended for the reasonable expectation of the consumer to be the touchstone of the exemption:

> In the Committee's view, an "established business relationship" also could be based upon any prior transaction, negotiation, or inquiry between the called party and the business entity that has occurred during a reasonable period of time. . . . By requiring this type of relationship, the Committee expects that otherwise objecting consumers would be less annoyed and surprised by this type of unsolicited call since the consumer would have a recently established interest in the specific products or services. . . . In sum, the Committee believes the test to be applied must be grounded in the consumer's expectation of receiving the call.[129]

When it promulgated its rules pursuant to the TCPA, the FCC included the following definition of "established business relationship" with regard to its company-specific "do-not-call" requirements:

> The term *established business relationship* means a prior or existing relationship formed by a voluntary two-way communication between a person or entity and a residential subscriber with or without an exchange of consideration, on the basis of an inquiry, application, purchase or transaction by the residential subscriber regarding products or services offered by such person or entity, which relationship has not been previously terminated by either party.[130]

Consideration of state approaches to the "established business relationship"

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[122] The term "consumer" is defined generally as "one that utilizes economic goods." Merriam-Webster's Collegiate Dictionary, at: http://www.merriamwebster.com/cgi-bin/dictionary#. This broader term is used in the Rule in the definition of "established business relationship," § 310.2(n), and in the provision banning the transfer of unencrypted account numbers, § 310.4(a)(5). In each of these instances, the Commission has consciously used the broader term "consumer" to effect broader Rule coverage.

[123] *See, e.g.*, AFSA-NPRM at 13-14; AmEx-NPRM at 3; ANA-NPRM at 5; ARDA-NPRM at 17; ATA-NPRM at 29; BofA-NPRM at 4; Best Buy-NPRM at 1; DialAmerica-NPRM at 12; DMA-NPRM at 33-34; DSA-NPRM at 7-8; ERA-NPRM at 36-37; Gottschalks-NPRM at 1; NCTA-NPRM at 6; NRF-NPRM at 13; PMA-NPRM at 28; Roundtable-NPRM at 5; SIIA-NPRM at 2-3; Time-NPRM at 6-7; VISA-NPRM at 3. *See also, e.g.*, ARDA-Supp. at 1; ICTA-Supp. at 2.

[124] *See, e.g.*, EPIC-NPRM at 20-21; NCL-NPRM at 10. Among other things, consumer advocates opposed such an exemption because of the difficulty in defining a "pre-existing business relationship" without creating significant loopholes in the protections provided by the national "do-not-call" registry (described in the discussion of amended Rule § 310.4(b)(1)(iii) below). *See* NCL-NPRM at 10. Furthermore, they did not agree with industry's argument that consumers want to hear from companies with whom they have an existing relationship. NCL stated that the fact that a consumer may have had a relationship with a company does not necessarily mean that he or she wishes to receive calls, or to continue to receive calls, from that company. NCL-NPRM at 10. Consumer advocates believed the FTC had taken the right approach: the burden should lie with the seller to show specific consent to receive calls. NCL-NPRM at 10; EPIC-NPRM at 20-21; PRC-NPRM at 2.

[125] June 2002 Tr. I at 110 (NCL) ("This would have to be . . . really narrowly defined in order to protect consumers so that if somebody had something that was ongoing . . . that would be in a different category."). *See also* AARP-Supp. at 3 ("AARP recognizes that there may be an expectation by consumers that they will be in contact with businesses with whom they have current, ongoing, voluntary relationship; calls from such businesses are not necessarily unwanted or unsolicited. Calls made from a business with which consumers had a prior relationship are a different matter altogether. In situations where the consumer has chosen not to continue a business relationship, it cannot be presumed they wish to be solicited by that business again. Therefore, AARP believes that any exemption for an existing business relationship must be limited to those situations where the relationship is current, ongoing, voluntary, involves an exchange of consideration, and has not been terminated by either party.").

[126] June 2002 Tr. I at 110-19. *See also* June 2002 Tr. I at 119-22, in which participants discussed an AARP survey conducted in conjunction with the Missouri Attorney General's Office, which showed that three-fourths of consumers did not feel an established business relationship was justified. However, representatives from the Missouri Attorney General's Office explained that the results were less a measure of consumer condemnation of such an exemption, than an indication that consumers were receiving calls from businesses with whom they did not perceive that they had such a relationship. According to the Missouri representatives, businesses took a broader view of the relationship than did consumers. As noted in more detail below, consumers appear to be comfortable with an exemption for "established business relationships" once its parameters are explained to them.

[127] 60 FR at 43855.

[128] 47 U.S.C. 227(a)(3)(B). The legislative history of the TCPA shows that Congress exempted "established business relationship" calls "so as not to foreclose the capacity of businesses to place calls that build upon, follow-up, or renew, within a reasonable period of time, what had once been an existing customer relationship." H.R. REP. NO. 102-317 at 13 (1991). Throughout the House Report discussing the exemption for "established business relationship," the point is stressed that the exemption is intended to reach only those relationships that are *current or recent*. The Report consistently refers to an "established business relationship" in terms of "the existence of the relationship *at the time of the solicitation, or within a reasonable time prior to it*." *Id.* at 13-15. (emphasis added).

[129] *Id.* at 14, 15.

[130] 47 CFR 64.1200(f)(4).

exemption is also instructive. Most state "do-not-call" laws have some form of exemption for "established business relationships," and several of these are modeled on the language of the FCC's exemption.[131] However, there is an important difference between the FCC approach and that of many of the states, in that many state law exemptions circumscribe the scope of an "established business relationship" by specifying the amount of time after a particular event (like a purchase) during which such a relationship may be deemed to exist.[132] The Commission believes that this approach is more in keeping with consumer expectations than an open-ended exemption. As discussed in more detail below, many consumers favor an exemption for companies with whom they have an established relationship. Consumers also might reasonably expect sellers with whom they have recently dealt to call them, and they may be willing to accept these calls. A purchase from a seller ten years ago, however, would not likely be a basis for the consumer to expect or welcome solicitation calls from that seller.

In addition, specific time limits for an "established business relationship" are particularly appropriate for a general "do-not-call" registry such as the one to be maintained by the Commission, as opposed to the company-specific "do-not-call" lists for which the FCC definition was crafted. The Commission believes that an "established business relationship" exemption in a national list applying to many sellers and telemarketers should be carefully and narrowly crafted to ensure that appropriate companies are covered while excluding those from whom consumers would not expect to receive calls. A specific time limit balances the privacy needs of consumers and the need of businesses to contact their current customers.

Comments received in response to the NPRM stress the importance of extending such an exemption to current, existing relationships and prior relationships that occurred within a reasonable period of time.[133] Throughout the comments from industry stressing the need for an "established business relationship" exemption, a consistent theme is that *such an exemption is necessary for "existing customers" or someone with whom sellers "currently do business,"* and there seems to be a common understanding regarding what constitutes an "existing" relationship.[134] There is less consensus when it comes to the issue of how long a business relationship lasts *following* a transaction between a seller and consumer. Many states have attempted to provide some clarity regarding how long after dealings between a consumer and seller have ceased that a residual "established business relationship" could be deemed still to exist.

Twelve of the states that have an "established business relationship" exemption limit it to a specific time period after a transaction has occurred, ranging from six months to 36 months.[135] Industry commenters suggested various time periods to limit the exemption. Several suggested 24 to 36 months, while others stated that a shorter period (12 months) would be more appropriate.[136] The Commission believes, based on the record evidence and statements from Congress regarding the TCPA's "established business relationship," that a company should be able to claim the exemption only if there has been a relatively recent transaction between the customer and the seller sufficient to support the existence of an "established business relationship."

Based on the comments, the Commission finds little support for a 36-month time period. Most of the commenters who suggested that time period did so as part of a joint comment filed by five associations.[137] In the comments the individual associations filed separately, however, they suggested a time period of 24 months.[138] NAA initially suggested 24 months, but expanded that to 36 months in its supplemental comment. Industry commenters who advocate 24 months provide little support for their assertion that it is the appropriate length of time by which to measure "reasonableness;" nor did they submit data that would show that a shorter time period would not serve their purposes. Other industry members (such as Bank of America, Consumer Mortgage Coalition, and Federated Department Stores) suggested shorter time periods. The Commission does not believe that a relationship which terminated or lapsed two years ago would constitute a relationship that had recently terminated or lapsed. The Commission believes that if consumers received a call from a company with whom the most recent purchase, rental, lease or financial transaction occurred or lapsed two years ago or longer, consumers would likely be surprised by that call and find it to be unexpected.

The Commission believes that 18 months is an appropriate time frame because it strikes a balance between industry's needs and consumers' privacy rights and reasonable expectations about who may call them and when. By extending beyond a single annual sales cycle, the 18-month period allows sufficient time for businesses to renew contact with prospects who may only purchase once a year. Moreover,

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[131] Fourteen state "do-not-call" statutes are open-ended and do not contain a time limit for tolling the established business relationship: Alabama, California, Connecticut, Florida, Georgia, Idaho, Kentucky, Maine, Minnesota, Oregon, Texas, Vermont, Wisconsin, and Wyoming. Three of these "open-ended" state statutes incorporate the FCC definition either in whole or in part: California, Texas, and Wyoming. In addition, four other states incorporate the FCC definition in whole or in part, but limit the time period during which a business may claim an "established business relationship" once the relationship has lapsed: Colorado, Kansas, Oklahoma, and Pennsylvania. See note 592 below for citations to all state "do-not-call" statutes.

[132] *See* discussion and note 135 below.

[133] The comments received on "established business relationship" came primarily from the business community. On the other hand, there was little comment from consumer advocates and state regulators on how such an exemption would be formulated because the proposed Rule did not include an "established business relationship" exemption. However, the NPRM did ask about the effect on companies and charitable organizations with whom consumers had a pre-existing business or philanthropic relationship of the proposal to allow companies to call consumers on the "do-not-call" registry if they had given their express verifiable authorization to call (67 FR at 4539, question 9). As discussed in more detail above in note 124, those few consumer advocates who did mention such an exemption were opposed to it.

[134] *See, e.g.*, ABA-NPRM at 10; Community Bankers-NPRM at 2; AmEx-NPRM at 3; ANA-NPRM at 5; Associations-NPRM at 2; ARDA-NPRM at 17; Bank One-NPRM at 4; BofA-NPRM at 4; Best Buy-NPRM at 1; Cendant-NPRM at 5-6; Citigroup-NPRM at 4; Comcast-NPRM at 3; CMC-NPRM at 6; Cox-NPRM at 2, 4; DMA-NPRM at 33, 34; Eagle Bank-NPRM at 2; Roundtable-NPRM at 5; Gottschalks-NPRM at 1; NCTA-NPRM at 4; NRF-NPRM at 13; SIIA-NPRM at 2-3; Time-NPRM at 6; VISA-NPRM at 3.

[135] Six months (Louisiana, Missouri); 12 months (Pennsylvania, Tennessee); 18 months (Colorado, Illinois); 24 months (Alaska, Massachusetts, Oklahoma); 36 months (Arkansas, Kansas). In addition, New York apparently has adopted an 18-month time period: the New York statute does not contain a time limit; however, at the June 2002 Forum, NYSCPB stated that New York applies an 18-month time limit. June 2002 Tr. I at 115 ("We have two separate exemptions. . . . The second thing is a prior business relationship, which we define as an exchange of goods and services for consideration within the preceding 18 months. . . ."). Indiana's statute does not have an exemption for "established business relationships."

[136] Industry commenters generally supported a 24-month time period, but did not submit data that would tend to show that a shorter time period would not serve their purposes. The breakdown of suggested time periods is as follows: "recently terminated or lapsed" (New Orleans-NPRM at 14-15); 12 months (BofA-NPRM at 4; CMC-NPRM at 6-7); 24 months (ATA-Supp. at 8; ERA-NPRM at 38; ERA-Supp. at 19; MPA-Supp. at 11; NAA-NPRM at 11; June 2002 Tr. I at 109 (PMA)); 36 months (ARDA-NPRM at 20; Associations-Supp. at 3-4). In a supplement to their comment, FDS supported limiting telemarketing sales calls to customers who have made a purchase in the past 12 months, while allowing strictly informational calls to persons who have had a transaction within the past 36 months. Federated-Supp. at 1-2.

[137] *See* Associations-NPRM at 3-4.

[138] *See* note 136 above.

limiting the "established business relationship" to 18 months from the date of the last purchase or transaction would be at least as restrictive as the majority of states that have such an exemption, thus achieving greater consistency for both industry and consumers. The experience of states that have an "established business relationship" exemption in their "do-not-call" laws indicates that a relatively limited "established business relationship" exemption does not conflict with consumers' expectations. At the June 2002 Forum, the representatives from New York and Missouri spoke about consumer expectations in connection with their states' "do-not-call" lists.[139] Both noted that consumers appeared to be comfortable with such an exemption because they had received few complaints from consumers regarding companies with whom they had an established relationship.[140] The states' experience is not contradicted by the comments of individual consumers in response to a specific question included on the Commission's website inviting email comments from the public. Although 60 percent of consumers who responded to this question stated that they opposed an exemption for "established business relationship," 40 percent favored such an exemption.[141]

Furthermore, a study conducted in 2002 by the Information Policy Institute found that consumers preferred a "nuanced approach" to the "do-not-call" issue, wanting to limit some calls to their household, but not all calls.[142] According to the study, 50 percent of consumers surveyed supported regulations that would allow local or community-based organizations to call during specific hours of the day.[143] Furthermore, slightly less than half of the respondents supported legislation that would allow calls, but only from local or community-based organizations with whom they have an existing relationship.[144] The survey showed that consumers were less likely to welcome calls from national companies, although 40 percent indicated that they would allow calls from national organizations with whom they had an existing relationship.[145]

In sum, consumers are split over whether they favor an "established business relationship" exemption. Given the difference of opinion among consumers, and industry's convincing arguments regarding the detrimental effects the lack of an exemption would cause, the Commission is persuaded to provide an exemption for "established business relationships."

The definition of "established business relationship" in the amended Rule would limit the exemption in the case of inquiries and applications to three months after the date of the application or inquiry (except with the consumer's express consent or permission to continue the relationship). The Commission believes that a consumer's reasonable expectations are different in the case of inquiries and applications as compared to purchase, rental, and lease transactions. A simple inquiry or application would reasonably lead to an expectation of a prompt follow-up telephone contact close in time to the initial inquiry or application, not one after an extended period of time. Comments from NYSCPB at the June 2002 Forum also warned of possible abuse in the creation of an "established business relationship" based on inquiries from consumers.[146] The Commission believes three months should be a sufficient time frame in which to respond to a consumer's inquiry or application.

The amended Rule allows for an 18-month time limit where there has been a purchase, rental or lease, or other financial transaction between the customer and seller. The 18-month time limit for an "established business relationship" based on a purchase, lease, rental, or financial transaction runs from the date of the last payment or transaction, not from the first payment. In instances where consumers pay in advance for future services (*e.g.*, purchase a two-year magazine subscription or health club membership), the seller may claim the exemption for 18 months from the last payment or shipment of the product. For such ongoing relationships, it makes little difference to likely consumer expectations whether the purchase was financed over time or paid for up front. Sellers who provide products or services where the consumer is required to pay in advance can also get the consumer's express agreement to call, as provided in § 310.4(b)(1)(iii)(B)(*i*).

Several financial services industry commenters urged that any "established business relationship" exemption should encompass all affiliates of a seller.[147] These commenters noted that regulatory requirements often dictate the corporate structure of financial institutions, which must market products and services across holding company affiliates and subsidiaries.[148] For that reason, they suggested that any exemption for an "established business relationship" should extend to all members of a corporate family, including affiliates and subsidiaries, so long as the individual has an "established business relationship" with any member of that corporate family.[149] They also suggested that agents of the seller be included within the exemption if the consumer reasonably would expect the agent to be included under the exception.[150]

The Commission believes that such a broad definition of "established business relationship" is inappropriate in the context of a "do-not-call" registry which is intended to protect consumers' privacy. As stated earlier, the Commission believes that such an exemption must be narrowly crafted to avoid defeating the purpose of the "do-not-call" registry. In determining whether affiliates or subsidiaries should

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[139] *See* June 2002 Tr. I at 110-21.

[140] *Id.* at 118-19 (New York: "Well, [consumers are not unhappy], and a lot of times they complain, and you could say they're [sic] prima facie evidence they're unhappy. We call them back and say, gee, did you have a transaction with these folks? They claim you did on X, Y and Z, and they furnished us this paperwork. And then they say, oh, yeah. They don't seem to be mad.") (Missouri: "Most people when you call them back are delighted that 70 to 80 percent of their phone calls have been caused to not come in, so when we explain to them that you had a relationship or you explain to them that some of these calls are exempt, they understand when you explain that to them, and they're delighted, because our anecdotal information shows that 70 to 80 percent of the calls people had been receiving, they're not receiving now.").

[141] Analysis of consumer email comments in the Commission's TSR comment database indicates that about 860 favored an exemption for calls from firms with whom they already have an established relationship, while about 1,080 opposed such an exemption. Furthermore, over 13,000 of the 14,971 comments submitted by Gottschalks' customers supported allowing Gottschalks to call them even if they signed up on a "do-not-call" registry to block other calls.

[142] Michael A. Turner, "Consumers, Citizens, Charity and Content: Attitudes Toward Teleservices" (Information Policy Institute, June 2002) at 4, 8 (hereinafter "Turner study").

[143] *Id.*

[144] *Id.*

[145] *Id.*

[146] [146]: June 2002 Tr. I at 116 (NYSCPB) ("[D]oes a mere inquiry constitute a business relationship? And our answer to that is no, because we have had some what I would say are really sleazy operators. They will call up and leave a message on your phone. They won't even identify who they are. They will simply say 'Call us back, it's very important.' You call back out of curiosity or whatever, okay, and then all of a sudden they feel free to bombard you for the next few years with calls."). The Commission intends that such a practice would not entitle a seller or telemarketer to make calls to consumers by claiming to have an "established business relationship."

[147] *See, e.g.*, BofA-NPRM at 4; Bank One-NPRM at 4; Eagle Bank-NPRM at 2; Roundtable-NPRM at 5; Fleet-NPRM at 4; VISA-NPRM at 3-4.

[148] *See* Bank One-NPRM at 4; Fleet-NPRM at 4.

[149] *See* Eagle Bank-NPRM at 2; HSBC-NPRM at 2; Roundtable-NPRM at 5.

[150] *See* Roundtable-NPRM at 5.

be encompassed within an "established business relationship," the Commission looks to consumer expectations: If consumers received a call from a company that is an affiliate or subsidiary of a company with whom they have a relationship, would consumers likely be surprised by that call and find it inconsistent with having placed their telephone number on the national "do-not-call" registry?

The Commission used similar reasoning in resolving this issue in connection with the definition of "seller" in the original Rule. In the discussion on the definition of "seller," the Commission stated that there were several factors that it would consider in determining how it would view the Rule's application to diversified companies or divisions within one parent organization. Among those factors was "whether the nature and type of goods or services offered by the division are substantially different from those offered by other divisions of the corporation or the corporate organization as a whole."[151] This distinction looks to consumer expectations and whether a consumer would perceive the division to be the same as or different from other divisions or from the corporate organization as a whole. For example, a consumer who had purchased aluminum siding from Company A's aluminum and vinyl siding subsidiary would likely not be surprised to receive a call from kitchen remodeling service also owned by, and operating under the name of, Company A.

Thus, under the amended Rule, some but not all affiliates will be able to take advantage of the "established business relationship" exemption to the national "do-not-call" registry. The Commission intends that the affiliates that fall within the exemption will only be those that the consumer would reasonably expect to be included given the nature and type of goods or services offered and the identity of the affiliate. The consumer's expectations of receiving the call are the measure against which the breadth of the exemption must be judged.

§ 310.2(o) — Free-to-pay conversion

Section 310.2(o) of the amended Rule sets out a new definition:—"free-to-pay conversion." In connection with an offer or agreement to sell or provide goods or services, a "free-to-pay conversion" is "a provision under which a customer receives a product or service for free for an initial period and will incur an obligation to pay for the product or service if he or she does not take affirmative action to cancel before the end of that period." The term "free-to-pay conversion" is the terminology commonly used in the telemarketing industry to describe what was referred to throughout the Rule Review proceeding as a "free trial offer."[152]

A "free-to-pay conversion" is a form of "negative option feature"—a term that is also newly defined in the amended Rule and is discussed below. The term "free-to-pay conversion" comes into play in the amended Rule in three provisions. First, as a form of negative option feature, any "free-to-pay conversion" is subject to the newly-added disclosure requirements in § 310.3(a)(1)(vii). Second, where a telemarketing offer involves a "free-to-pay conversion," and is accepted by a consumer using a payment method subject to the express verifiable authorization requirements of § 310.3(a)(3), the seller or telemarketer may not use the written confirmation form of authorization generally available under § 310.3(a)(3)(iii). Third, under the new unauthorized billing provision at § 310.4(a)(6), the amended Rule sets forth specific requirements to obtain express informed consent in any transaction involving preacquired account information and a "free-to-pay conversion." Each of these provisions is discussed in detail below.

§ 310.2(q)—Material

The amended Rule retains unchanged the definition of "material" from the original Rule, except for extending it to charitable contributions pursuant to the mandate of the USA PATRIOT Act. The Commission received no comments on this definition in response to the NPRM. The amended Rule has deleted the designations for subsections (a) and (b) that had been proposed in the NPRM. This is merely a formatting change and does not alter the substantive content of the definition. The amended Rule's definition of "material," therefore, reads: "likely to affect a person's choice of, or conduct regarding, goods or services or a charitable contribution."

§ 310.2(t)—Negative option feature

The amended Rule includes new requirements in § 310.3(a)(1)(vii) for specific material disclosures necessary to avoid misleading consumers with respect to offers that entail incurring an obligation to pay a seller due to the consumers' non-action. To describe the circumstances when these disclosures must be made, the amended Rule employs the term "negative option feature" and, accordingly, provides a definition of that term in § 310.2(t). A "negative option feature" is any provision under which the consumer's silence or failure to take an affirmative action to reject goods or services or to cancel the agreement is interpreted by the seller as acceptance of the offer. This provision includes, but is not limited to, "free-to-pay conversions," (which are discussed above), as well as negative option plans[153] and continuity plans.[154] Section 310.3(a)(1)(vii) below provides a detailed discussion of the definition of "negative option feature" and the disclosures necessary when such a provision is a part of an offer to sell goods or services.

§ 310.2(u)—Outbound telephone call

Based on a review of the record, the Commission has decided to retain the definition of "outbound telephone call" that was in the original Rule, and not to expand the definition to include "upsell" transactions, as proposed in the NPRM. Many commenters noted that, by including upselling in the proposed Rule's definition of "outbound telephone call," the proposal brought upselling transactions within all of the provisions relating to outbound calls,

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[151] 60 FR at 43844.

[152] *See, e.g.*, Electronic Retailing Association, GUIDELINES FOR ADVANCE CONSENT MARKETING, http://www.retailing.org/regulatory/publicpolicy_consent.html; Magazine Publishers of America, Resources - Research: "Advance Consent Subscription Plans," http://www.magazine.org/resources/advance_consent.html.

[153] Under a "negative option plan," the customer agrees to purchase a specific number of items in a specified period of time. The customer receives periodic announcements of the selections; each announcement describes the selection, which will be sent automatically and billed to the customer unless the customer tells the company not to send it. *See* the Commission's Rule governing "Use of Negative Option Plans by Sellers in Commerce," 16 CFR 425.

[154] A "continuity plan" consists of a subscription to a collection or series of goods. Customers are offered an introductory selection and agree to receive additional selections on a regular basis until they cancel their subscription. Unlike negative option plans, customers do not agree to buy a specified number of additional items in a specified time period, but may cancel their subscriptions at any time. Continuity plans resemble negative option plans in that customers are sent announcements of selections and those selections are shipped automatically to the customer unless the customer advises the company not to send them. Unlike negative option plans, however, customers are not billed for the selection when it is shipped, but only if they do not return the selection within the time specified for the free examination period. *See, e.g.*, FTC Facts for Consumers, "Continuity Plans: Coming to You Like Clockwork," (June 2002), http://www.ftc.gov/bcp/online/pubs/products/continue.htm. *See also* FTC, "Pre-Notification Negative Option Plans" (May 2001) (distinguishing these plans from continuity plans), http://www.ftc.gov/bcp/online/pubs/products/negative.htm); and FTC, "Facts for Business: Complying with the Telemarketing Sales Rule," http://www.ftc.gov/bcp/online/pubs/buspubs/tsr.htm.

which led to unintended and undesirable consequences, such as subjecting upsells to the calling time restrictions and national "do-not-call" registry provisions.[155] The amended Rule addresses upselling transactions separately, rather than attempting to sweep them within the definition of "outbound telephone call."[156] The amended Rule reinstates the original definition of "outbound telephone call," with only a modification to reflect the expanded reach of the Rule to charitable contributions pursuant to the USA PATRIOT Act. In the amended Rule, then, an "'[o]utbound telephone call' means a telephone call initiated by a telemarketer to induce the purchase of goods or services or to solicit a charitable contribution."

§ 310.2(w)—Preacquired account information

The amended Rule adds a definition of "preacquired account information" to address the problems that have been associated with telemarketing transactions where the telemarketer already has access to the customer's billing information at the time the outbound call is placed.[157] The NPRM discussed these problems at length. The Commission used the term "preacquired account telemarketing" in the NPRM during its discussion of the proposed ban on disclosing or receiving billing information for use in telemarketing, but did not use the term itself in the proposed Rule, and so did not define it.[158] In response, several industry commenters asked for more specificity as to what the Commission intends the term to mean.[159] Thus, the definition of "preacquired account information" also serves to address these commenters' concerns about clarifying the concept of preacquired account telemarketing.

As explained in detail in the discussion of § 310.4(a)(6) below, the amended Rule sets forth specific requirements for obtaining express informed consent in any telemarketing transaction that involves "preacquired account information." To clarify the situations where these requirements come into play, the amended Rule defines "preacquired account information" as:

> any information that enables a seller or telemarketer to cause a charge to be placed against a customer's or donor's account without obtaining the account number directly from the customer or donor during the telemarketing transaction pursuant to which the account will be charged.

The Commission intends this definition to be construed broadly. The definition includes any type of billing information, encrypted or unencrypted,[160] that enables a seller or telemarketer to cause a charge to be placed on any customer's or donor's account without obtaining the account number directly from the customer or donor. It obviously covers instances where the seller or telemarketer is in actual possession of account information, whether by virtue of some prior relationship with the consumer or otherwise. It also is intended specifically to address affinity marketing campaigns where, for example, through a joint marketing arrangement, Seller A provides access to its customer base and those customers' accounts or account numbers to Seller B in exchange for a percentage of the proceeds from each sale.[161]

Some industry members expressed their belief that this second class of transactions does not involve preacquired account information at all because, in such affinity marketing campaigns, Seller B may possess only encrypted account numbers, or no account numbers at all prior to initiating the call to the consumer.[162] The Commission intends to clarify that such an arrangement *does* involve "preacquired account information," since the seller or telemarketer does not have to obtain the account number from the customer or donor in order to cause a charge to be placed on the customer's or donor's account.

Finally, this definition would apply to upsell transactions, because the seller or telemarketer in the upsell transaction may either already possess the account information from the initial transaction, or would, by virtue of a joint marketing or other arrangement, have access to that information, so as to be able to charge the customer without getting the account number directly from the customer in the upsell transaction.

§ 310.2 (cc) — Telemarketing

The Commission received very few comments on its proposed definition of "telemarketing,"[163] but those it did receive expressed agreement that the definition should continue to include the phrase "by use of one or more telephones," to ensure that large and small telemarketing operations are covered by the Rule.[164] Based on the Commission's review of the record in this proceeding, the amended Rule retains unchanged the definition of "telemarketing" that was proposed in the NPRM. This definition is virtually the same as that in the original Rule, except that it now includes the phrase "or a charitable contribution" following "goods or services," pursuant to the mandate of the USA PATRIOT Act.

§ 310.2(dd) — Upselling

As described above in § 310.2(u), the Commission proposed in the NPRM to modify the Rule's definition of "outbound telephone call" to include most upsell transactions.[165] The majority of commenters who addressed this issue, including both industry members and consumer groups,

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[155] *See, e.g.*, ABA-NPRM at 4; AmEx-NPRM at 6; AFSA-NPRM at 16; Associations-NPRM at 3; Cendant-NPRM at 2; CCC-NPRM at 13; Cox-NPRM at 6; KeyCorp-NPRM at 6; Metris-NPRM at 9; MBA-NPRM at 4; NBCECP-NPRM at 2; NCTA-NPRM at 13-14; PCIC-NPRM at 1; PMA-NPRM at 10-11; Time-NPRM at 10; VISA-NPRM at 8; Wells Fargo-NPRM at 5-6.

[156] *See* § 310.2(dd), defining the term "upselling" in the amended Rule.

[157] *See* discussions of amended Rule §§ 310.4(a)(5) and (6) below.

[158] *See* 67 FR at 4512-14.

[159] *See, e.g.*, June 2002 Tr. II at 123-24 (CCC), 133-34 (ERA) and 173 (ATA); PMA-NPRM at 13-14; MPA-Supp. at 5; PRA-NPRM at 13-14.

[160] By "unencrypted," the Commission means both unencrypted readable account information, and encrypted information in combination with a decryption key. *See* discussion of amended Rule § 310.4(a)(5) below.

[161] *See* 67 FR at 4513.

[162] ERA/PMA-Supp. at 14; June 2002 Tr. II at 134 (ERA). ERA described such a scenario during the June 2002 Forum:

> "What typically might occur is L.L. Bean might enter into some type of [affinity] agreement with Timberland to say, We would like you to sell your boots . . . to our customers. . . . So L.L. Bean would provide the name and telephone number . . . and they might provide some unique identifier, it could be a four digit code. It might be an encrypted code that's used solely for the purpose of matching back, but the account billing number or any information that would provide access to the account is not transmitted to the telemarketer when you make that call. They make the call to the consumer. They ask the consumer if they want to order the boots. If the customer says yes, that information is then transferred to Timberland. Timberland would go back to L.L. Bean and say, This customer has accepted our offer. We would now like to get the account information to bill the consumer for something that they've authorized."

June 2002 Tr. II at 136-37.

[163] Although few commenters directly addressed this definition, many who commented on the USA PATRIOT Act amendments discussed the expansion of the Rule to cover the solicitation of charitable contributions. These comments are addressed above, in the discussion of amended Rule § 310.1 relating to the scope of the Rule.

[164] DOJ-NPRM at 1 (noting its experience with fraudulent telemarketers operating using only one or two telephones); Patrick-NPRM at 2 (urging that the practice of subcontracting telemarketing to individual sales agents who work from their homes using their home phones continue to be captured by the Rule).

[165] Specifically, the Commission proposed amending the definition to mean "any telephone call to induce the purchase of goods or services or to solicit a charitable contribution, when such telephone call: (1) is initiated by a telemarketer; (2) is transferred to a telemarketer other than the original telemarketer; or (3) involves a single telemarketer soliciting on behalf of more than one seller or charitable organization." Proposed Rule § 310.2(t), 67 FR at 4541.

supported the proposition that upsells should be expressly included in the Rule.[166] Most of these commenters, however, suggested that the Commission's proposal to address the problem by expanding the definition of "outbound telephone call" to include upselling was not the most effective way to achieve this goal.[167] Instead, many commenters recommended treating upsells as a distinct type of transaction by adding a definition of "upselling" to the Rule and specifying a unique set of disclosures required in upsell transactions.[168] Others suggested retaining the expanded definition of "outbound telephone call" but amending it to avoid application of certain provisions unnecessary or inappropriate to the upselling context,[169] such as application of the "do-not-call" and calling time provisions of the Rule, to upsells.[170] The Commission does not intend for upselling to be subject to the "do-not-call" requirements or the calling time restrictions in the Rule.[171] The goal of the initial proposal,[172] and the focus of the current amendments, is to ensure that consumers in upselling transactions receive the same information and protections as consumers in other telemarketing transactions subject to the Rule.

Based upon the comments received during the rulemaking period and the Commission's law enforcement experience, the Commission has taken a two-fold approach to upselling in the amended Rule. The Commission has added a definition of "upselling," which, in combination with certain amendments to §§ 310.4(d) and 310.6 of the Rule,[173] provides important protections to consumers who, after completing one transaction, are offered goods or services in an additional telemarketing transaction during the same telephone call.[174] By including the definition, the Commission intends to clarify that upsells are subject to all of the Rule's requirements except the "do-not-call" and calling time restrictions in §§ 310.4(b)(1)(iii) and 310.4(c).[175] With this definitional shift, the "do-not-call" regime no longer applies to upsells, since the "do-not-call" provisions specifically prohibit "initiating outbound telephone calls" to anyone who has placed their telephone numbers on a company-specific "do-not-call" list or on the FTC's "do-not-call" registry.[176] Second, the amended Rule expressly excludes upsell transactions from the exemptions in §§ 310.6(b)(4), (5) and (6)—*i.e.*, where the initial transaction is exempted from the Rule because the call was initiated by the consumer unilaterally or because it was initiated in response to a direct mail solicitation or general media advertisement.[177]

The definition of "upselling" encompasses any solicitation for goods or services that follows an initial transaction of any sort in a single telephone call. Thus, both solicitations made by or on behalf of the same seller involved in the initial transaction, and those made by or on behalf of a different seller are considered upsells, and both types of transactions are covered by the Rule.[178] The term "initial transaction" is intended to describe any sort of exchange between a consumer and a seller or telemarketer, including but not limited to sales offers, customer service calls initiated by either the seller or telemarketer or the consumer, consumer inquiries, or responses to general media advertisements or direct mail solicitations. The upsell is defined as a "separate telemarketing transaction, not a continuation of the initial transaction" to emphasize that an upsell is to be treated as a new telemarketing call, independently requiring adherence to all relevant provisions of the Rule.[179]

Upselling occurs in a wide variety of circumstances—as an addendum to a customer service call, or after an initial

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[166] *See, e.g.*, AmEx-NPRM at 6 ("We agree with the Commission that the disclosure requirements of the TSR should apply whenever a new offer is made to the consumer, whether by the original telemarketer or a telemarketer to whom a call is transferred. Consumers should always be informed of material terms and conditions before they purchase a product."); ERA-NPRM at 8, 11 ("The ERA is cognizant of the fact that the practice of upselling has increased dramatically since the Rule was originally promulgated in 1995. . . . The ERA acknowledges the Commission's desire to include upsells within the ambit of the Rule and supports the position that, in instances where solicitations are made during a single telephone call on behalf of multiple unaffiliated entities, there should be a clear disclosure. . . ."); ERA-Supp. at 6; LSAP-NPRM at 6; NAAG-NPRM at 36; NCL-NPRM at 3; PMA-NPRM at 4, 8 ("PMA acknowledges that the practice of marketing products and services via upsell offers has increased in recent years and that the existing TSR does not provide express guidance regarding responsible marketing practices via the upsell channel."); June 2002 Tr. II at 213-15, 249-50. *But see* CCC-NPRM at 15-16; CMC-NPRM at 7; Household Auto-NPRM at 3; Keycorp-NPRM at 5-6; Noble-NPRM at 3; NATN-NPRM at 3-4; NSDI-NPRM at 4; PCIC-NPRM at 1-2; Technion-NPRM at 5.

[167] AmEx-NPRM at 6; ARDA-NPRM at 4; DMA-NPRM at 38; ERA-NPRM at 8, 12; Household Auto-NPRM at 3; ICT-NPRM at 2; E-Commerce Coalition-NPRM at 2; NCTA-NPRM at 14; PMA-NPRM at 8-10; SIIA-NPRM at 3; Time-NPRM at 9; June 2002 Tr. II at 213-14.

[168] *See, e.g.*, ERA-NPRM at 14-15; ERA-Supp. at 6; PMA-NPRM at 8-10.

[169] ARDA-NPRM at 4; Cox-NPRM at 36; Discover-NPRM at 5; Eagle Bank-NPRM AT 4; NCL-NPRM at 3.

[170] ABA-NPRM at 4-5; AFSA-NPRM at 15; ARDA-NPRM at 4; CCC-NPRM at 13; DMA-NPRM at 38; Eagle Bank-NPRM at 4; NCTA-NPRM at 14; PMA-NPRM at 10; SIIA-NPRM at 3; Time-NPRM at 10. The "do-not-call" provision is found at proposed and amended Rules § 310.4(b)(1)(iii), while the calling time restrictions are at proposed and amended Rules § 310.4(c).

[171] June 2002 Tr. II at 213-15.

[172] *See* 67 FR at 4500.

[173] Section 310.4(d) now includes the phrase "or internal or external upsell" after "outbound telephone call" to clearly state that the basic disclosure requirements of that provision—the identity of the seller, that the purpose of the call is to sell goods or services, the nature of the goods or services, and disclosures related to prize promotions—must be made in any upsell associated with an initial telephone transaction. Sections 310.6(b)(4), (5) and (6) have been amended to expressly exclude upsells from these exemptions.

[174] The provisions relating to "upselling" address the practices which the Commission had proposed to address in the NPRM through modification of the definition of "outbound telephone call." Because the amended Rule addresses the practice of "upselling" in a different manner, the amended Rule retains unchanged the wording in the original Rule for the definition of "outbound telephone call" (now expanded to cover calls to induce charitable contributions, pursuant to the USA PATRIOT Act). *See* § 310.2(u) of the amended Rule.

[175] In the NPRM, the Commission noted that in addition to the disclosure requirements of § 310.4(d) (and the proposed disclosures of § 310.4(e)), the disclosures in § 310.3(a)(1):

"would, of course, also have to be made by each telemarketer. In fact . . . the Commission believes that [in any upsell] it is necessary for this transaction to be treated as separate for the purposes of complying with the TSR. Therefore, in such an instance, the telemarketer should take care to ensure that the customer/donor is provided with the necessary disclosures for the primary solicitation, as well as any further solicitation. Similarly, express verifiable authorization for each solicitation, when required, would be necessary. Of course, even absent the Rule's requirement to obtain express verifiable authorization, telemarketers must always take care to ensure that the consumer's or donor's explicit consent to the purchase or contribution is obtained."

67 FR at 4500, n.71.

[176] *See* § 310.4(b)(1)(iii).

[177] Treating upsells as "outbound telephone calls" meant that they were implicitly not covered by any of these exemptions (which all involve inbound telephone calls of one sort or another). Creating a separate definition for "upselling" requires that the Commission explicitly address which of the exemptions in § 310.6 of the Rule do *not* apply to upselling.

[178] In the NPRM, the Commission focused its analysis of upselling on whether there were one or two telemarketers or sellers involved in the upsell transaction. After reviewing the record in this matter, the Commission believes that the salient distinction is whether a separate offer is made in the course of a single telephone call.

[179] This definition also addresses the concerns of some telemarketers that simply transferring a consumer-initiated call to the individual most qualified to address the consumer's inquiry would trigger the application of the Rule to that otherwise exempt transaction. *See, e.g.*, CMC-NPRM at 7-8; Cox-NPRM at 35; Eagle Bank-NPRM at 4; HSBC-NPRM at 2. Instead of focusing on the transfer of a call, the definition of "upselling" centers on the instigation of an offer for sale of goods or services subsequent to an initial transaction. Thus, where a consumer calls a company, makes an inquiry, and is *immediately* transferred in direct response to that inquiry, that transfer would not fall within the definition of "upselling" and would not be subject to the Rule.

offer of goods or services via an inbound or outbound telephone call, for example.[180] The upsell can be made by or on behalf of the same seller involved in the initial transaction ("internal upsell"), or a different seller ("external upsell").[181] Commenters argue that upsell transactions provide benefits to both sellers and consumers. According to some industry commenters, sellers can reduce costs associated with telemarketing by linking transactions together in a single call,[182] and are more likely to make successful sales to consumers already predisposed to the transaction.[183] Consumers can benefit from the convenience of such transactions, and from receiving more targeted marketing offers.[184] Industry commenters also suggested that sellers' reduced costs in such transactions are passed along as savings to consumers.[185]

Despite these benefits, upsells are no less vulnerable to abuse than other telemarketing practices, and provide the potential for harm to consumers. Some industry commenters argued that this is not the case, suggesting that, particularly when the call is initiated by the consumer: "The consumer calling a business voluntarily puts herself in a business environment and knows that she is doing so. It should come as no surprise to the consumer if, once in that environment, she is solicited for products and services provided by affiliates or partners of the business . . . ."[186]

According to NCL, however, "[c]omplaints to the NFIC [National Fraud Information Center] indicate that abuses can occur when consumers who respond to an advertisement for one thing are then solicited for something else, especially if the new offer is significantly different than the original one or is from another vendor. In these situations, the only information that consumers have on which to decide whether to make a purchase or donation is that which is provided during the call."[187] In other words, in any upsell, the seller or telemarketer initiates the offer; it is not the consumer who solicits or requests the transaction. This means that the consumer is hearing the terms of that upsell offer for the first time on the telephone. The consumer has not had an opportunity to review and consider the terms of the offer in a direct mail piece, or to view an advertisement and gather information on pricing or quality of the particular good or service before determining to make the purchase. This makes an upsell very much akin to an outbound telephone call from the consumer's perspective, even when the seller is someone with whom the consumer is familiar. Thus, as NCL noted, every consumer needs "the same basic disclosures about who they're dealing with, what they're buying and the terms and conditions [of the offer]" regardless of the nature of the telephone sale.[188] The disclosure provisions of §§ 310.3(a) and 310.4(d) were designed to ensure that consumers know they are being offered goods or services for sale, and receive all information material to their decision to accept an offer before they pay for the purchase.

Moreover, it should be noted that the introductory paragraphs of §§ 310.3(a), 310.4(a) and 310.5 do not distinguish between types of telemarketing transactions.[189] The Rule is clear that its requirements and prohibitions apply to *all sellers and telemarketers* that are subject to the Commission's jurisdiction. Thus, a seller or telemarketer subject to the Rule must abide by the requirements of these sections, regardless of whether they are engaged in an initial telemarketing transaction or in an upsell transaction. Indeed, the Commission assumes that, where the initial transaction is subject to the Rule, most sellers and telemarketers treat the upsell as subject to the Rule as well, and comply with the Rule's requirements in both segments of the telephone call.[190]

The Commission also finds that consumers should have the Rule's billing protections in each of these transactions. CCC suggested that, at least in inbound calls that include upsells, consumers have "the highest level of consumer protection because the consumer is specifically asked and consents to the additional goods or services being charged to the same billing source the consumer provided and/or accessed just moments before."[191] However, the Commission's and states' law enforcement experience does not support CCC's assertion that, by giving consent to the use of an account number in an initial transaction, the consumer in an upsell is afforded protection from deception or unauthorized billing.[192]

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[180] *See, e.g.*, NAAG-NPRM at 33 ("The upsell can follow either a sales call or a call related to customer service, such as a call about an account payment or product repair. . . . Some examples are the upsell of membership programs, magazines and the like or a television solicitation to buy an inexpensive lighting product that includes an upsell of a costly membership program, consumers sold a membership program when attempting to purchase United States flags following the September 11, 2001, tragedy, or tickets to entertainment events.") (citations omitted). Industry commenters emphasized the prevalence of upselling in the inbound call context generally. *See, e.g.*, CCC-NPRM at 12; ERA-NPRM at 11-12; PMA-NPRM at 9-10.

[181] The NPRM described these forms of upselling as "internal" and "external." 67 FR at 4496. Some commenters, such as ERA, noted that the industry refers to multiple offers by a single seller—what the Commission calls an "internal upsell"—as a "cross sell," and to multiple offers by separate sellers—what the Commission calls an "external upsell"—as an "upsell." ERA-NPRM at 9, n.3. The Commission's approach, however, does not appear to have caused any confusion in the industry, or on the consumer side. So, for the sake of consistency both within the rulemaking process and with existing law enforcement cases, the Commission has decided to retain these terms as originally proposed.

[182] *See, e.g.*, PMA-NPRM at 9.

[183] CCC determined that 14 billion inbound calls are made per year, of which 40 percent have an upsell associated with them. June 2002 Tr. II at 218. ERA estimated, based on a 12 percent conversion rate, that approximately $1.5 billion in sales are generated through inbound upsells alone each year. ERA-NPRM at 11. Aegis estimated the conversion rate for consumers accepting upsell offers at between 25 and 30 percent. Aegis-NPRM at 4.

[184] DMA-NPRM at 40; PMA-NPRM at 10; SIIA-NPRM at 3.

[185] ERA-NPRM at 12; PMA-NPRM at 10; SIIA-NPRM at 3.

[186] CMC-NPRM at 9. *See also* Citigroup-NPRM at 6-7; Fleet-NPRM at 5; Household Auto-NPRM at 4.

[187] NCL-NPRM at 3. *Accord* ERA-NPRM at 11 ("The ERA is . . . aware of the fact that there have been some marketers who have engaged in unscrupulous marketing practices in soliciting purchases via upsells, particularly when such upsells involve a free trial offer and/or other advance consent marketing technique.").

[188] June 2002 Tr. II at 221-22.

[189] Section 310.3(a) states "it is a deceptive telemarketing act or practice and a violation of this Rule *for any seller or telemarketer to engage in the following conduct*." (emphasis added). Similarly, § 310.4(a) states "it is an abusive telemarketing act or practice and a violation of this Rule *for any seller or telemarketer to engage in the following conduct*." (emphasis added). Section 310.5(a) states "any seller or telemarketer shall keep, for a period of 24 months from the date the record is produced, the following records relating to its telemarketing activities."

[190] The record suggests, however, that the opposite is true when upsells are appended to calls that are otherwise exempt from the Rule. In these instances, the upsells have been treated as part of the exempt telemarketing transaction and, thus, consumers are not receiving the protections the Rule requires when a consumer receives an outbound telephone call, despite the fact that upsells are similar to outbound calls from the consumer's perspective. *See, e.g.*, PCIC-NPRM at 1-2. The Commission believes that the protections provided a consumer in an upsell should be the same as the protections accorded to consumers receiving an outbound telephone call, regardless of whether the upsell is appended to an exempt telemarketing transaction or to a transaction subject to the Rule. As noted above, consumer advocates and the FTC's law enforcement experience confirm that upselling can be equally or more problematic, and thus sellers and telemarketers engaged in upselling should be required to provide the basic disclosures mandated by the Rule. In addition, there is no evidence to suggest that upsells should not be subject to any other part of the Rule (other than the "do-not-call" and calling time restrictions).

[191] CCC-NPRM at 12.

[192] Indeed, law enforcement experience indicates that the fact that the consumer has already provided or authorized use of his or her billing information

Continued

Other recommendations

Limitations to the definition of "upselling." Some commenters suggested that the definition of "upselling" be limited to "external upselling" transactions (*i.e.*, where there are two different sellers in the two transactions).[193] They argued that any requirements that the Commission might apply to "upselling" should not include upsells made by or on behalf of the same seller.[194] However, the Commission believes that law enforcement experience indicates that "internal upsells" (where both transactions are by or on behalf of the same seller) have as much potential for deception and abuse as other types of telemarketing transactions that are subject to the Rule's requirements.[195] Therefore, the Commission has not adopted this suggestion.

Other commenters argued that the definition of "upselling" should not include upsells by "affiliates."[196] Still others made more specific requests to exempt banks, their affiliates and non-affiliated third parties who provide services on the banks' behalf or with whom the banks have joint marketing relationships;[197] to exempt agents or affiliates of common carriers;[198] and to exempt affiliates of insurance companies.[199] However, once again, there is scant support justifying such an approach. On the contrary, the record as a whole and law enforcement experience indicate that upsells by affiliates and non-affiliated third parties with whom there is a joint marketing relationship have as much potential for deception and abuse as other types of telemarketing transactions that are subject to the Rule's requirements.[200]

The Commission has made it very clear that the Rule does not apply to entities or activities that fall outside the Commission's authority under the FTC Act, such as banks, savings associations and federal credit unions; regulated common carriers, and the business of insurance. However, the Commission has also made it very clear that the exemption enjoyed by those entities does not extend to any third-party telemarketers who may make or receive calls on behalf of those exempt entities. As the Commission stated in the SBP for the original Rule:

> The Commission is not aware of any reason why the Final Rule should create a special exemption for such companies where the FTC Act does not do so. Accordingly, the Final Rule does not include special provisions regarding exemptions of parties acting on behalf of exempt organizations; where such a company would be subject to the FTC Act, it would be subject to the Final Rule as well.[201]

Clarification of "seller" in an upsell transaction. ERA and PMA recommended that the Commission clarify what is meant by "seller" in the context of upselling.[202] First, ERA and PMA suggested that "seller" be construed as the marketer who will submit the charge for payment against the consumer's account.[203] As ERA stated:

> [A] marketer might offer (and bill) a consumer for a product that it obtains on a wholesale basis from a manufacturer (in many instances, the marketer may not even take possession of the product, but rather have the manufacturer ship directly to the purchaser). Both the marketer and the manufacturer receive consideration in exchange for providing, or arranging for the other to provide, the product to the consumer. Thus, both entities are arguably 'sellers.' However, only the marketer will bill the consumer for the sale. As such, there should be no need to identify both entities to the consumer. In fact it would likely be confusing to the consumer to do so.[204]

The Commission has retained in the amended Rule the definition of "seller," which states that a "seller" is "any person who, in connection with a telemarketing transaction, provides, offers to provide, or arranges for others to provide goods or services to the customer in exchange for consideration."[205] The Commission believes that this definition makes clear that, for purposes of the Rule, a "seller" is not necessarily the manufacturer of a product, nor the sole financial beneficiary from its sale. Rather, the definition of "seller" is predicated upon a person's provision of goods or services—whether consummated, merely offered, or even simply "arranged for"— to the customer. Therefore, in the case of an upselling transaction, or, indeed, any telemarketing transaction, the marketer or other entity who provides, offers to provide, or arranges for the provision of the goods or services that are the subject of the offer would be the "seller" for purposes of the Rule.

Second, both ERA and PMA, as well as a number of other commenters, suggested that the Commission "clarify that affiliated entities do not constitute separate sellers."[206] To this end, ERA recommended looking to the Commission's Privacy of Consumer Financial Information Rule,[207] while PMA and NRF suggested using the standard laid out by the FCC for "do-not-call" purposes.[208] NCL and AARP disagreed. NCL stated:

> We believe affiliates have to be treated as second sellers. They may be selling totally different products with different terms and conditions. Consumers don't have any way of knowing what is an affiliate of that company and what isn't, and ultimately it doesn't really matter to them because they need the same basic disclosures about who they're dealing with, what they're buying and the terms and conditions, whether it's entirely a different seller or an affiliate of the original one.[209]

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in an initial transaction may actually result in greater risk of abuse during the second transaction. For example, in actions by the FTC and several states against Triad Discount Buying Service, Inc., and related entities, the Commission and the states alleged that the defendants crafted a marketing campaign designed to lure consumers to call solely for the purpose of upselling them. *See FTC v. Smolev*, No. 01-8922-CIV ZLOCH (S.D. Fla. 2001). Specifically, the Commission and states alleged that the defendants ran an advertising campaign for a free product, inviting consumers to call a toll-free number. When they called, consumers were asked to provide account information to pay for shipping and handling for the free product, and then were upsold a "free trial" in a membership club or buyers club, that was then charged, without the consumer's knowledge or consent, to the account provided by the consumer to pay for the shipping of the first product. *See also* NAAG-NPRM at 30, n.73 (*citing*, among others such cases, *Illinois v. Blitz Media, Inc.* (Sangamon County, No. 2001-CH-592) and *New York v. Ticketmaster and Time, Inc.*, (Assurance of Discontinuance)).

[193] ERA-NPRM at 9; NCTA-NPRM at 14.

[194] *Id.*

[195] *See* NAAG-NPRM at 30, n.73, citing cases involving internal upsells, including but not limited to *Illinois v. Blitz Media, Inc.* (Sangamon County, Case No. 2001-CH-592); *Triad Discount Buying Serv., Inc.* [a/k/a *Smolev*] and related entities; and *Minnesota v. Fleet Mortgage Corp.*, 158 F. Supp. 2d 962 (D. Minn. 2001).

[196] ABIA-NPRM at 5; AFSA-NPRM at 15; NFC-NPRM at 6.

[197] ABIA-NPRM at 5; MBA-NPRM at 3.

[198] SBC-NPRM at 2, 5, 8.

[199] PCIC-NPRM at 1-2.

[200] *See* NAAG-NPRM at 30, n.73 ("States have taken actions against companies using preacquired information as part of an upsell of membership programs or magazines. *See* note 188. *See also New York v. Ticketmaster and Time, Inc.* (Assurance of Discontinuance)").

[201] 60 FR at 43843.

[202] ERA-NPRM at 9-10; PMA-NPRM at 12-13. *See also* VISA-NPRM at 9 (requesting clarification of the term in all transactions, not just those involving upselling).

[203] ERA-NPRM at 10; PMA-NPRM at 13.

[204] ERA-NPRM at 11.

[205] Amended Rule § 310.2(z).

[206] ERA-NPRM at 10. *See also* June 2002 Tr. II at 222 (ATA); PMA-NPRM at 13; SBC-NPRM at 9.

[207] The Privacy of Consumer Financial Information Rule, 16 CFR 313.3(a), defines an affiliate as "any company that controls, is controlled by or is under common control with another company." (quoted in ERA-NPRM at 11).

[208] The applicable definition in the FCC's regulations is found at 47 CFR 64.1200(e)(2)(v). PMA-NPRM at 13 ("Thus, we suggest that corporate affiliates be exempt in those situations where the consumer would reasonably expect such affiliates to be related to the original seller."). *See also* June 2002 Tr. II at 217-18; and at 226-28 (NRF).

[209] June 2002 Tr. II at 221-22; and at 228 (AARP).

The Commission shares this viewpoint. As discussed above, the record in this matter, as well as law enforcement experience, indicate that upsells by affiliates and non-affiliated third parties with whom there is a joint marketing relationship have as much potential for deception and abuse as other types of telemarketing transactions that are subject to the Rule's requirements. For that reason, the Commission believes that affiliates should be treated as separate sellers for purposes of upsell transactions.

C. Section 310.3 — Deceptive Telemarketing Acts or Practices.

Section 310.3 of the original Rule sets forth required disclosures that must be made in every telemarketing call; prohibits misrepresentations of material information; requires that a telemarketer obtain a customer's express verifiable authorization before obtaining or submitting for payment a demand draft; prohibits false and misleading statements to induce the purchase of goods or services; holds liable anyone who provides substantial assistance to another in violating the Rule; and prohibits credit card laundering in telemarketing transactions.

In the NPRM, the Commission proposed amendments to require that disclosures made pursuant to this section be made "truthfully;" require additional disclosures regarding prize promotions and in the sale of credit card loss protection plans; prohibit misrepresentations in the sale of credit card loss protection plans; expand the reach of the express verifiable authorization provision to include all methods of payment lacking certain key consumer protections; and make certain changes pursuant to the USA PATRIOT Act, which extends the coverage of the Rule to include the inducement of a charitable solicitation.

Based on the record in this proceeding, the Commission has determined to make additional modifications in the amended Rule. These changes, and the reasoning supporting the Commission's decisions, are set forth below.

§ 310.3(a)(1) — Required disclosures

Section 310.3(a)(1) of the original Rule requires the seller or telemarketer to disclose, in a clear and conspicuous manner, certain material information before a customer pays for goods or services offered.[210] The NPRM proposed to make a minor modification to the wording, by adding the word "truthfully" to clarify that it is not enough that the disclosures be made; the disclosures must also be true. The Commission received no comment on this proposed change, and therefore has determined to retain this additional wording in amended § 310.3(a)(1).

The few comments that the Commission received on § 310.3(a)(1) in response to the NPRM focused primarily on the timing of the required disclosures. AARP argued that, to be meaningful, the disclosures required by this section must be given before payment is *requested*, not merely before it is "collected."[211] According to AARP, "[s]uch information is key to making truly informed buying decisions," and so all the necessary disclosures should be given before a consumer is requested to pay for goods and services.[212] DOJ commented that the use of money-transmission services, rather than couriers, is increasingly popular in fraudulent telemarketing schemes, and recommended that the Commission amend the current footnote addressing the meaning of "before the customer pays" to state: "Similarly, when a seller or telemarketer directs a customer to use a money-transmission service to wire payment, the seller or telemarketer must make the disclosures required by § 310.3(a)(1) before directing the customer to take money to an office or agent of a money-transmission service to wire payment."[213]

In the SBP for the original Rule, the Commission noted that for a telemarketer to make the required disclosures "before a customer pays," the disclosures must be made "*before* the consumer sends funds to a seller or telemarketer or divulges to a telemarketer or seller credit card or bank account information."[214] In the original Rule's TSR Compliance Guide, the Commission further clarified that the disclosures required by § 310.3(a)(1) must be made "[b]efore a seller or telemarketer obtains a consumer's consent to purchase, or persuades a consumer to send any full or partial payment. . . ."[215] The Guide goes on to say that "[a] seller or telemarketer also must provide the required information before requesting any credit card, bank account, or other information that a seller or telemarketer will or could use to obtain payment."[216] The Commission believes that its statements to date on the meaning of the term "before the customer pays" are sufficiently clear and declines to modify this provision.

§ 310.3(a)(1)(i) — Disclosure of total costs

Section 310.3(a)(1)(i) of the original Rule requires a seller or telemarketer to disclose the total costs to purchase, receive, or use the goods or services. As noted in the TSR Compliance Guide, "[i]t is sufficient to disclose the total number of installment payments, and the amount of each payment, to satisfy this requirement."[217] Some commenters in the Rule Review urged the Commission to require, in sales involving monthly installment payments, the disclosure of the total cost of the entire contract, not just the amount of the periodic installment.[218] In the NPRM, the Commission declined to modify the provision, but clarified that "the disclosure of the number of installment payments and the amount of each must correlate to the billing schedule that will actually be implemented. Therefore, to comply with the Rule's total cost disclosure provision, it would be inadequate to state the cost per week if the installments are to be paid monthly or quarterly."[219] The NPRM further noted that the best practice to ensure compliance with the clear and conspicuous standard governing all the § 310.3(a)(1) disclosures is to "do the math" for the consumer, stating the total cost of the contract whenever possible.[220] The Commission acknowledged that such a statement might not be possible in an open-ended installment contract, and stated that in such contracts, "particular care must be taken to ensure that the cost disclosure is easy for the consumer to understand."[221]

In response to the NPRM, the Commission again received some comments urging that the Commission affirmatively mandate that, in installment sales contracts, the total cost of the contract be disclosed, rather than the number and amount of payments.[222] For example, LSAP opined that "it is illogical to maintain a provision that demands a subjective determination of whether or not a disclosure meets a 'clear and conspicuous' standard when an objective and unambiguous standard

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[210] *See* ARDA-NPRM at 5 (noting that ARDA members support the current disclosures required by this section).

[211] AARP-NPRM at 8.

[212] *Id.*

[213] DOJ-NPRM at 2.

[214] 60 FR at 4384.

[215] TSR Compliance Guide at 11.

[216] *Id.*

[217] *Id.* at 12.

[218] *See* 67 FR at 4502.

[219] *Id.*

[220] *Id.*

[221] *Id.* at n.92.

[222] *See, e.g.*, LSAP-NPRM at 6-8; NACAA-NPRM at 7-8; NCL-NPRM at 3-4; NCLC-NPRM at 13.

can be adopted."[223] NACAA suggested that the Commission require disclosure of the total cost of the contract, noting that consumers do not always have the time or ability to "do the math" during a telemarketing call.[224] NCL concurred with LSAP and NACAA, and noted that since the seller or telemarketer would know the total contract price in an installment offer, it would impose no undue burden on industry members to mandate disclosure of the total contract price.[225]

The Commission declines to adopt the recommendations to modify the total cost disclosure provision. The Commission believes that its interpretation, set forth in the NPRM, allows sellers and telemarketers the flexibility necessary to make a truthful and meaningful disclosure when goods or services are offered in conjunction with an open-ended installment agreement. The Commission's interpretation makes clear, however, that, at a minimum, the total number of payments and the amount of each must be clearly and conspicuously disclosed in order to satisfy the requirements of § 310.3(a)(1)(i). Although the Commission continues to believe that the best practice is for the telemarketer or seller to disclose the full amount of payments under of the contract whenever possible, it declines to impose such a requirement, which would be unworkable in the context of open-ended contracts, such as negative option plans.[226]

The Commission also declines to adopt the recommendation that the Commission explicitly state that for electricity sales, it is permissible to disclose the price per kilowatt hour.[227] The Commission recognizes that a vast number of goods and services can be sold through telemarketing, and believes it unnecessary to specify, for each, the specific terms that must be disclosed. Rather, the Commission believes that the language of § 310.3(a)(1)(i), which requires that the disclosure of total costs (among others) be made "truthfully, and in a clear and conspicuous manner," provides sufficient guidance for sellers who must make these disclosures, without necessitating explicit approval from the Commission for each of the myriad variations of "total cost" disclosures for the many kinds of goods and services sold through telemarketing. Therefore, § 310.3(a)(1)(i) is retained unchanged in the amended Rule.

§ 310.3(a)(1)(ii) — Disclosure of material restrictions

Section 310.3(a)(1)(ii) requires the disclosure of "[a]ll material restrictions, limitations, or conditions to purchase, receive, or use the goods or services that are the subject of the sales offer." In response to the Rule Review, NAAG recommended that this provision explicitly state that the illegality of the goods or services offered is a material term. NAAG's concern arose out of the numerous cross-border foreign lottery scams in which U.S. citizens are offered the sale of foreign lottery chances.[228] The Commission declined to modify the Rule, stating its position that the term "material" is "sufficiently clear and broad enough to encompass the illegality of goods or services offered."[229]

In response to the NPRM, DOJ supported NAAG's reasoning, and recommended that the Commission add to § 310.3(a)(1)(ii) "a specific and unambiguous reference to the illegality of goods and services that the seller or telemarketer is offering," noting that such an amendment would enhance law enforcement and consumer education efforts regarding foreign lottery scams.[230] The Commission remains confident that the breadth of the term "material," as used in the Rule, would necessarily encompass the underlying illegality of goods or services offered in telemarketing.[231] Therefore, the Commission declines to modify the language in this provision and the amended Rule retains unchanged the original text of § 310.3(a)(1)(ii).

§ 310.3(a)(1)(iv) — Disclosures regarding prize promotions

Section 310.3(a)(1)(iv) requires that, in any prize promotion, a telemarketer must disclose, before a customer pays, the odds of being able to receive the prize, that no purchase or payment is required to win a prize or participate in a prize promotion, and the no-purchase/no-payment method of participating in the prize promotion. In the NPRM, the Commission proposed adding a disclosure that making a purchase will not improve a customer's chances of winning,[232] which would make the TSR's disclosure provision consistent with the requirements for direct mail solicitations under the Deceptive Mail Prevention and Enforcement Act of 1999 ("DMPEA").[233] After reviewing the record in this matter, the Commission has determined to amend the Rule by adding this disclosure requirement to two provisions: in § 310.3(a)(1) (governing all telemarketing calls), and in § 310.4(d) (governing outbound telemarketing).[234]

As noted in the NPRM, the Commission believes that this disclosure will prevent consumer deception. The legislative history of the DMPEA suggests that without such a disclosure, many consumers reasonably interpret the overall presentation of many prize promotions to convey the message that making a purchase will enhance their chances of winning the touted prize.[235] Such a message is likely

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[223] LSAP-NPRM at 7.

[224] NACAA-NPRM at 7-8 (citing, as an example of the harm that would persist absent such a provision, the sale of purportedly "free" magazines, for which consumers are billed exorbitant "shipping and handling" fees).

[225] NCL-NPRM at 3-4.

[226] *See* 60 FR at 43846 (noting that the total cost of a contract cannot be ascertained in negative option or continuity plans).

[227] *See* Green Mountain-NPRM at 7.

[228] 67 FR at 4502-03.

[229] *Id.* at 4503.

[230] DOJ-NPRM at 3.

[231] As the Commission noted in the NPRM, the definition of "material" under the Rule comports with the Commission's Deception Statement and established Commission precedent. *See* 67 FR at 4503.

[232] 67 FR at 4503. Although NCL originally made this suggestion with respect to § 310.4(d), which governs oral disclosures required in outbound telemarketing calls, the rationale and purpose of the proposed disclosure applies with equal force to all telemarketing, as covered by § 310.3(a). See NCL-RR at 9. *See also* the discussion below in the section on sweepstakes disclosures within the analysis of § 310.4(d).

[233] 67 FR at 4503. The DMPEA is codified at 39 U.S.C. 3001(k)(3)(A)(II). *See also* "The DMA Guidelines for Ethical Business Practice," revised Aug. 1999, at http://www.the-dma.org/library/guidelines/dotherightthing.shtml#23 (Article #23, Chances of Winning). In this regard, it is noteworthy that the DMA's Code of Ethics advises that "[n]o sweepstakes promotion, or any of its parts, should represent . . . that any entry stands a greater chance of winning a prize than any other entry when this is not the case."

[234] *See* discussion below regarding the disclosure in § 310.4(d).

[235] *See* SEN. REP. NO. 106-102 (1999); and H. REP. NO. 106-431 (1999). Law enforcement actions since enactment of DMPEA further support this conclusion. For example, Publishers Clearing House ("PCH") agreed to settle an action brought by 24 states and the District of Columbia alleging, among other things, that the PCH sweepstakes mailings deceived consumers into believing that their chances of winning the sweepstakes would be improved by buying magazines from PCH. As part of the settlement, PCH agreed to include disclaimers in its mailings stating that buying does not increase the consumer's chances of winning, and pay $18.4 million in redress. In 2001, PCH agreed to pay $34 million in a settlement with the remaining 26 states. *See, e.g., Missouri ex rel. Nixon v. Publishers Clearing House*, Boone County Circuit Ct., No. 99 CC 084409 (2002); *Ohio ex rel. Montgomery v. Publishers Clearing House*, Franklin County Ct. of Common Pleas, No. 00CVH-01-635 (2001). Similarly, in 1999, American Family Publishers ("AFP") settled several multi-state class actions that alleged the AFP sweepstakes mailings induced consumers to buy magazines to better their chances of winning a sweepstakes. The original suit, filed by 27 states, was settled in March 1998 for $1.5 million, but was reopened and expanded to 48 states and the District of Columbia after claims that AFP had violated its agreement. The state action was finally settled in August 2000 with AFP agreeing to pay an additional $8.1 million in

to influence these consumers' purchasing decisions, inducing them to purchase a product or service they otherwise would not purchase just so they can increase their chances of winning. For this reason, the Commission believes that entities using these promotions must disclose that a purchase will not enhance the chance of winning, to ensure that consumers are not deceived.

Commenters who addressed this proposal generally were supportive of adding the disclosure.[236] NAAG supported the additional disclosure, but asked the Commission to go further. First, NAAG suggested that any telemarketer using a prize promotion should be required to disclose the actual or estimated odds—not simply how the odds might be calculated.[237] Second, NAAG recommended that the original Rule's definition of "prize"[238] be made consistent with state laws and regulations, and the several multi-state settlements with large promotional sweepstakes companies.[239] Third, they recommended that the Commission track provisions in the recent settlements between the states and PCH, which would ensure that the means by which a consumer might enter a sweepstakes without making a purchase is not more difficult than if a purchase were made.[240] Each of these suggestions is discussed below.

As noted in the SBP for the original Rule, the Commission continues to believe that, in many instances, actual odds cannot be calculated in advance. In such circumstances, the Commission believes that requiring prize promoters to disclose "estimated" odds has greater potential for abuse than a disclosure of the method used to calculate those odds.[241] Furthermore, in many instances, such a requirement to disclose odds would reveal that virtually every entrant gets a "prize." The Commission believes that the better course is to require prize promoters to disclose the method by which odds are calculated. With regard to the suggestions to revise the definition of "prize" and the ease of entry for non-purchasers, the record provides no evidence on why the difference between a "prize" and a "free gift" would be material to consumers. The Commission believes that its authority to reach deceptive or unfair acts or practices under the FTC Act has been sufficient to address any deceptive prize promotions that have not been reachable under the Rule.[242] The Commission's requirements regarding prize promotion disclosures are not inconsistent and do not conflict with the more restrictive state laws. Therefore, the Commission declines to adopt NAAG's recommendations.

PMA maintained that the disclosure that making a purchase would not improve a customer's chances of winning was unnecessary and that there was no evidence on the record to support its addition to the Rule.[243] They suggested that the disclosure makes sense in the context of direct mail, but not in the types of representations more often found in telemarketing.[244] Nonetheless, the PMA stated that, as a gesture of good faith, they would not oppose the change.[245]

Therefore, the Commission has determined that it is a deceptive telemarketing act or practice to fail to disclose before the customer pays, in any prize promotion, the odds of being able to receive the prize, that no purchase or payment is required to win a prize or participate in a prize promotion, that any purchase or payment will not increase the person's chances of winning, and the no-purchase/no-payment method of participating in the prize promotion.

§ 310.3(a)(1)(v) — Required disclosure of material costs in prize promotions

NACAA expressed concern that original and proposed Rule § 310.3(a)(1)(v) requires that a prize promoter disclose to consumers all "material costs or conditions to receive or redeem a prize that is the subject of the prize promotion" when there should be *no* costs to receive a prize.[246] NACAA suggests removing the "material costs" portion of subsection (v). The Commission agrees that there should be no costs to receive or redeem a prize. In fact, § 310.3(a)(1)(iv) requires a disclosure that "no purchase or payment is required to win a prize or to participate in a prize promotion." Moreover, § 310.3(a)(2)(v) prohibits misrepresentations "that a purchase or payment is required to win a prize or participate in a prize promotion." Thus the Rule is unequivocal in forbidding conditioning a "prize" on a payment or purchase. Section 310.3(a)(1)(v) is intended to further clarify that *any* incidental cost that a consumer must incur— not merely a purchase or payment—must be disclosed in advance to avoid deception and to comply with the Rule. Despite NACAA's comment, the Commission does not believe there is any confusion regarding the role of this provision. Therefore, the Commission has determined to retain the original wording of this provision.

§ 310.3(a)(1)(vi) — Required disclosures in the sale of credit card loss protection

The telemarketing of credit card loss protection plans has been a persistent source of a significant number of complaints about fraud.[247] Telemarketers of credit card loss protection plans represent to consumers that these plans will limit the consumer's liability if his credit card is lost or stolen.[248] These telemarketers frequently misrepresent themselves as being affiliated with the consumer's credit card issuer, or misrepresent either affirmatively or by omission that the consumer is not currently protected against credit card fraud, or that the consumer has greater potential legal liability for unauthorized use of his or her credit cards than he or she actually

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damages. *See, e.g., Washington v. Am. Family Publishers*, King County Super. Ct., No. 99-09354-2 SEA (2000).

[236] ARDA-NPRM at 5; NAAG-NPRM at 54-55; NACAA-NPRM at 6-7; NCL-NPRM at 4; DOJ-NPRM at 3-4. *See also* June 2002 Tr. II at 105-15.

[237] NAAG-NPRM at 54. NACAA also recommended that the Commission require more specificity in the disclosure regarding the odds. NACAA-NPRM at 6-7; and discussion regarding the disclosure of odds, June 2002 Tr. II at 113-15. DOJ recommended that the Commission include a brief explanation in the Rule or in a footnote of what is meant by the phrase "the odds of being able to receive a prize," and clarify that the disclosure must give the odds for each prize. DOJ-NPRM at 3-4.

[238] Original Rule § 310.2(v).

[239] NAAG-NPRM at 54. NAAG recommended that "prize" be defined to be an item of value and that it not be an item that substantially all entrants in the promotion will receive.

[240] *Id.* at 54-55.

[241] Ironically, requiring accurate disclosure of the odds of winning also is likely to subject some sellers and telemarketers to liability under the Rule for activity that does not cause consumer injury, since it is hard to imagine what harm is caused to consumers by *underestimating* the odds of winning.

[242] *See, e.g., FTC v. Landers*, No. 100-CV-1582 (N.D. Ga. filed June 22, 2000); *New World Bank Servs., Inc.*, No. CV-00-07225-GHK (C.D. Cal. filed July 5, 2001); *Global Network Enters., Inc.*, No. 00-625 (GET) (ANX) (C.D. Cal. 2001).

[243] PMA-NPRM at 4-8.

[244] *Id. See also* June 2002 Tr. II at 104-05.

[245] PMA-NPRM at 5, 7. *See also* June 2002 Tr. II at 106, 108 (PMA and ARDA, each stating that they do not oppose the disclosure). ARDA stated in its comment that, while it is inconvenient to include additional verbiage in a telephone call, it did not find the additional disclosure unduly burdensome. ARDA-NPRM at 5.

[246] NACAA-NPRM at 6-7 (pointing out that, if there are costs, then the "prize offer" becomes a sales pitch for add-ons, not a prize).

[247] *See, e.g.*, NCL-NPRM at 6.

[248] Credit card loss protection plans are distinguished from credit card registration plans, in which consumers pay a fee to register their credit cards with a central party, who agrees to contact the consumers' credit card companies if the consumers' cards are lost or stolen.

does under the law.[249] In fact, federal law limits this liability to no more than $50.[250]

In the NPRM, the Commission proposed two new provisions to address this practice. The first provision—§ 310.3(a)(1)(vi)—requires the seller or telemarketer of credit card loss protection plans to disclose, before the customer pays, the limit, pursuant to 15 U.S.C. § 1643, on a cardholder's liability for unauthorized use of a credit card. Since many consumers appear to be unaware of the protection they have, the Commission reasoned that a disclosure of the limits of their liability would deter many consumers from paying for protection that duplicates the free protection they already have under federal law. The second provision—§ 310.3(a)(2)(viii)—prohibits sellers or telemarketers from misrepresenting that any customer needs offered goods or services to provide protections a customer already has pursuant to 15 U.S.C. § 1643.[251]

The Commission received little comment on these proposed provisions. Those commenters who addressed the disclosure provision strongly supported it, noting that complaints about the fraudulent sale of credit card loss protection plans have continued unabated since the original Rule became effective.[252] In its NPRM comment, NCL reported that fraudulent solicitations for credit card loss protection plans ranked eighth among the most numerous complaints to the NFIC in 2001.[253] The Commission's complaint-handling experience is consistent with that of NCL, with credit card loss protection plans continuing to be a source of consumer complaints. In its comment, NCL pointed out that fraud in the sale of credit card protection plans is particularly pernicious because it usually involves blatant misrepresentations and scare tactics about consumers' liability for lost or stolen credit cards.[254] Furthermore, the fraud is especially egregious because these schemes appear disproportionately to affect older consumers: in 2001, NCL reported, 55 percent of the victims of credit card loss protection plans were age 60 or older, while that age group accounted for only 26 percent of telemarketing fraud victims overall.[255] As noted in the NPRM, large numbers of complaints have prompted both the Commission and the state Attorneys General to devote substantial resources to bringing cases that challenge the deceptive marketing of credit card loss protection plans.[256]

NCL supported the Commission's decision to require disclosures and prohibit misrepresentations in the sale of credit card loss protection plans. However, NCL also recommended that the Commission go further and mandate requirements similar to those under the Credit Repair Organizations Act[257]—*i.e.*, written disclosures regarding the consumer's rights, coupled with a written agreement or an agreement signed by the buyer who has three days to cancel.[258] The Commission believes that disclosures coupled with the prohibition against misrepresentation are appropriate and sufficient remedies to cure the problems associated with deceptive sales of credit card loss protection plans. The likely outcome of enforcement of these remedies is that consumers will decline to purchase such plans once they know that they duplicate free protection the law already provides them. The Commission will continue to monitor complaints regarding the sale of these plans to ensure that these provisions are adequate to remedy this problem.

Therefore, the Commission has determined that it is a deceptive telemarketing act or practice to fail to disclose the limits on a cardholder's liability for unauthorized use of a credit card pursuant to 15 U.S.C. § 1643, and has adopted § 310.3(a)(1)(vi), to require that this information be disclosed.

§ 310.3(a)(1)(vii) — Disclosures regarding negative option features

The amended Rule adds a new provision, § 310.3(a)(1)(vii), which requires sellers and telemarketers to disclose certain material information any time a seller or telemarketer makes an offer including any "negative option feature" as that term is defined under new § 310.2(t) of the amended Rule. This disclosure, like all of those listed in § 310.3(a)(1), must be made before a customer pays for goods or services. This new provision requires disclosure of all material terms and conditions of the negative option feature.

During the Rule Review, several commenters recommended that the Commission specifically address the problems associated with "free" or "trial" offers that include a negative option feature, particularly when the telemarketer already possesses the consumer's billing information.[259] These offers frequently are presented to consumers as "low involvement marketing decisions"[260] in which they are simply "previewing" the product or service. However, the Rule Review record, as well as federal and state law enforcement experience, show that consumers frequently are confused about their obligations in these transactions, mistakenly believing that, because they did not provide any billing information to the telemarketer, they are under no obligation unless they take some additional affirmative step to consent to the purchase.[261] As a result,

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[249] NCL-RR at 10. *See, e.g., FTC v. Universal Mktg. Servs., Inc.*, No. CIV-00-1084L (W.D. Okla. filed June 20, 2000); *FTC v. NCCP Ltd.*, No. 99 CV-0501 A(Sc) (W.D.N.Y. filed July 22, 1999); *S. Fla. Bus. Ventures*, No. 99-1196-CIV-T-17F (M.D. Fla. filed May 24, 1999); *Tracker Corp. of Am.*, No. 1:97-CV-2654-JEC (N.D. Ga. filed Sept. 11, 1997).

[250] Under § 133 of the Consumer Credit Protection Act, the consumer's liability for unauthorized charges is limited to $50 when there is a signature involved. For transactions where no signature was involved (*e.g.*, where the transaction did not take place face-to-face), the consumer has zero liability for unauthorized charges. 15 U.S.C. 1643.

[251] This approach parallels the Rule's treatment of cost and quantity of goods (§§ 310.3(a)(1)(i) and 310.3(a)(2)(i)), material restrictions, limitations, or conditions (§§ 310.3(a)(1)(ii) and 310.3(a)(2)(ii)), refund policy (§§ 310.3(a)(1)(iii) and 310.3(a)(2)(iv)), and prize promotions (§§ 310.3(a)(1)(iv) & (v) and 310.3(a)(2)(v)). In each case, material facts must be disclosed, and misrepresentations of those facts are prohibited. *See* additional discussion below regarding § 310.3(a)(2)(viii).

[252] DOJ-NPRM at 4; LSAP-NPRM at 7-8; NAAG-NPRM at 55; NCL-NPRM at 6. *See also* June 2002 Tr. II at 104.

[253] NCL-NPRM at 6.

[254] *Id.*

[255] *Id.* In its Rule Review comment, NCL reported that in 1999, over 71 percent of the complaints about these schemes were from consumers over 50 years of age. NCL-RR at 10.

[256] *See, e.g., FTC v. Consumer Repair Servs., Inc.*, No. 00-11218 (C.D. Cal. filed Oct. 23, 2000); *FTC v. Forum Mktg. Servs., Inc.*, No. 00 CV 0905C(F) (W.D.N.Y. filed Oct. 23, 2000); *FTC v. 1306506 Ontario, Ltd.*, No. 00 CV 0906A (SR) (W.D.N.Y. filed Oct. 23, 2000); *FTC v. Advanced Consumer Servs.*, No. 6-00-CV-1410-ORL-28-B (M.D. Fla. filed Oct. 23, 2000); *Capital Card Servs., Inc.* No. CIV 00 1993 PHX ECH (D. Ariz. filed Oct. 23, 2000); *.FTC v. First Capital Consumer Membership Servs., Inc.*, No. 00-CV- 0905C(F) (W.D.N.Y. filed Oct. 23, 2000); *FTC v. Universal Mktg. Servs., Inc.*, No. CIV-00-1084L (W.D. Okla. filed June 20, 2000); *FTC v. Liberty Direct, Inc.*, No. 99-1637 (D. Ariz. filed Sept. 13, 1999); *FTC v. Source One Publ'ns, Inc.*, No. 99-1636 PHX RCP (D. Ariz. filed Sept. 14, 1999); *FTC v. Creditmart Fin. Strategies, Inc.*, No. C99-1461 (W.D. Wash. filed Sept. 13, 1999); *FTC v. NCCP Ltd.*, No. 99 CV-0501 A(Sc) (W.D.N.Y. filed July 22, 1999); *FTC v. S. Fla. Bus. Ventures*, No. 99-1196-CIV-T-17F (M.D. Fla. filed May 24, 1999); *FTC v. Bank Card Sec. Ctr., Inc.*, No. 99-212-Civ-Orl-18C (M.D. Fla. filed Feb. 26, 1999); F*TC v. Tracker Corp. of Am.*, No. 1:97-CV-2654-JEC (N.D. Ga. filed Sept. 11, 1997).

[257] 15 U.S.C. 1679.

[258] NCL-NPRM at 6.

[259] *See, e.g.* NACAA-RR at 2; NAAG-RR at 11-12, 16-17; NCL-RR at 5-6.

[260] NAAG-RR at 11.

[261] 67 FR at 4501, *citing FTC v. Triad Disc. Buying Serv., Inc.*, No. 01-8922 CIV ZLOCH (S.D. Fla. 2001); *New York v. MemberWorks, Inc.*, Assurance of Discontinuance (Aug. 2000); *Minnesota v. MemberWorks, Inc.*, No. MC99-010056 (4th Dist. Minn. June 1999); *Minnesota v. Damark Int'l, Inc.*, Assurance of Discontinuance (Ramsey County Dist. Ct. Dec. 3, 1999); *FTC v. S.J.A. Soc'y, Inc.*, No. 2:97 CM 472 (E.D. Va. filed May 31, 1997). To this list may be added several more law enforcement actions, including but not limited to actions by state

such scenarios have resulted in significant abuse as consumers discover they have been charged for something they did not realize they had been deemed to have consented to purchase.[262]

In the NPRM, the Commission proposed a broad prohibition on the receipt or disclosure of a consumer's billing information from any source other than the consumer herself. This expansive approach would have obviated the need for a more narrowly-tailored remedy specifically addressing negative options.[263] The Commission believed that without preacquired account information, telemarketers' ability to exploit the negative option scenario to bill charges to consumers' accounts without their knowledge or consent would have been eliminated. The seller or telemarketer would have been required to obtain the account information directly from the consumer, thus putting the consumer on notice that he is agreeing to purchase something.[264]

Based on the entire record in this proceeding, however, the Commission has determined that a blanket prohibition on preacquired account telemarketing sweeps too broadly, curtailing much activity that has not generated a record of consumer harm. As explained in detail below in § 310.4(a)(6) of this SBP, the Commission has refocused this aspect of the amended Rule on the core problem of preacquired account telemarketing, which is to ensure that a customer's consent is obtained before charges are billed to the customer's account, regardless of the source from which the seller or telemarketer obtained the customer's billing information. Therefore, the amended Rule contains a new provision, § 310.4(a)(6), that prohibits charging a customer's account without the customer's express informed consent. As a result of the more narrowly-tailored approach to the problems associated with preacquired account telemarketing, a new solution to the problems associated with negative option features is also required.

The amended Rule now takes a two-pronged approach to remedying the harms associated with offers involving negative option features, either alone or in combination with preacquired account telemarketing. Although the record shows that the greatest consumer injury occurs when these two practices occur together,[265] each practice can, and often does, occur without the other,[266] and both, alone or in combination, can be problematic for consumers. Thus, the amended Rule sets forth separate requirements specific to each practice—disclosure requirements for offers with a negative option feature, in § 310.3(a)(1)(vii); and, separately, consent requirements for offers where the telemarketer possesses preacquired account information, in § 310.4(a)(6). The application of these two separate provisions depends on the details of the transaction, thus addressing with greater precision different potential telemarketing scenarios.

Commenters stressed one issue: the need for consumers to clearly understand and consent to the precise terms of the negative option feature of an offer.[267] The problematic aspect of an offer with a negative option feature is that the consumer's inaction—not an affirmative action taken by the consumer—is deemed to signal acceptance (or continuing acceptance) of an offer for goods or services. By accepting the initial offer (*e.g.*, to *try* a membership in a buying club service for 30 days, or to receive a daily newspaper for six months) and doing nothing further, the consumer actually contracts to pay for something more (*e.g.*, an automatic annual membership fee or long-term newspaper subscription renewal). In these circumstances, it is crucial that consumers clearly understand the precise terms of such a negative option feature before they agree to accept the initial "free offer" or purchase, since this agreement subjects them to continuing charges, often long-term, if they fail to understand that they must take action to decline the offer or terminate the agreement.

Therefore, new § 310.3(a)(1)(vii) requires that the following disclosures must be made if an offer includes any negative option feature, as that term is defined under § 310.2(t): (1) the fact that the customer's account will be charged unless the customer takes an affirmative action to avoid the charge(s); (2) the date(s) the charge(s) will be submitted for payment; and (3) the specific steps the customer must take to avoid the charge(s).[268] As noted above in the discussion of § 310.2(t) defining "negative option feature," that term is intended to reach any provision under which a consumer's failure to take affirmative action to reject the goods or services will be deemed by the seller to constitute acceptance (or continuing acceptance) of goods or services. Thus, the term includes, but is not limited to, "free-to-pay conversions," automatic renewal offers, and continuity plans.[269]

The required material disclosures must be made truthfully, and in a clear and conspicuous manner, before a customer pays.[270] Under the amended Rule's treatment of preacquired account telemarketing,[271] "before a customer pays" shall be construed as meaning before a customer provides express informed consent to be charged for the goods or services offered, and to be charged using a specifically identified account.[272] Thus, § 310.3(a)(1)(vii), and indeed, all of § 310.3(a)(1), must be read in conjunction with new § 310.4(a)(6), which prohibits any seller or telemarketer from causing billing information to be submitted for payment, directly or indirectly, without the express informed consent of the customer.

Attorneys General against BrandDirect Marketing Corp. (Assurances of Discontinuance with the States of Connecticut and Washington); Cendant Membership Services (Consent Judgment with State of Wisconsin); Signature Fin. Mktg. (Assurance of Discontinuance with State of New York); *Illinois v. Blitz Media, Inc.* (Sangamon County, No. 2001-CH-592); *New York v. Ticketmaster and Time, Inc.* (Assurance of Discontinuance), and additional actions by New York and California against MemberWorks, and by New York against Damark Int'l. *See* NAAG-NPRM at 30, n.73.

[262] *See* 67 FR 4513-14, *citing* NAAG-RR at 11-12.

[263] *Id.* at 4514.

[264] *Id.* at 4512-14.

[265] *See* discussion of § 310.4(a)(6) below.

[266] For example, the seller or telemarketer of a magazine or newspaper subscription, who does not have preacquired account information, may make an offer for a subscription that includes an automatic annual renewal by obtaining account information or payment directly from the consumer in the initial transaction. Or, as noted in the NPRM, a customer may have an ongoing relationship with a particular contact lens retailer, in which he expects the retailer to retain account information for future similar purchases, none of which involve a negative option feature. *See* 67 FR 4513, n.196.

[267] NACAA-RR at 2; NAAG-RR at 11-12; NCL-RR at 5-6; NAAG-NPRM at 32-33. *See also* ERA-NPRM at 2-3, 16; June 2002 Tr. II at 209-10 (ERA).

[268] These disclosures are similar to those required in the Commission's Rule concerning "Prenotification Negative Option Plans." *See* 16 CFR 425.2(a)(1).

[269] Each of these terms describes a form of negative option feature, as discussed in this SBP at § 310.2(t), regarding the definition of "negative option feature," and § 310.2(o), regarding the definition of "free-to-pay conversion."

[270] 16 CFR 310.3(a)(1).

[271] The Commission has determined to include provisions prohibiting the disclosure, for consideration, of unencrypted account information for use in telemarketing in § 310.4(a)(5), and prohibiting unauthorized billing in § 310.4(a)(6) of the amended Rule. As explained below in the discussion of these new provisions, these provisions address the harm caused by sellers or telemarketers who possess preacquired account information, as well as the broader abuse of charging a consumer's account without the consumer's express informed consent, regardless of the nature of the telemarketing transaction.

[272] *See* discussion of § 310.4(a)(6) below.

§ 310.3(a)(2) — Prohibited misrepresentations in the sale of goods or services

Section 310.3(a)(2) in the original Rule prohibits a seller or telemarketer from misrepresenting certain material information in a telemarketing transaction, including: total cost; any material restrictions; any material aspect of the performance, efficacy, nature, or central characteristics of the goods or services offered; any material aspect of the seller's refund policy; any material aspect of a prize promotion; any material aspect of an investment opportunity; and a seller's or telemarketer's affiliation with, or endorsement by, any governmental or third-party organization.[273]

In the NPRM, the Commission proposed three changes to the provision. First, the phrase "in the sale of goods or services" was added to the section to clarify that these prohibited misrepresentations apply only in that context. This change was made because, pursuant to the mandate of the USA PATRIOT Act, the Commission proposed adding to the Rule § 310.3(d), which delineates misrepresentations prohibited in the specific context of charitable solicitations. Second, § 310.3(a)(2)(vii) was modified slightly to conform with proposed § 310.3(d)(7) which is an almost identical provision, but in the charitable solicitation context. Finally, the Commission proposed an additional prohibited misrepresentation regarding credit card loss protection plans.[274]

The Commission received no comments regarding the first two changes, and thus retains these in the amended Rule.

§ 310.3(a)(2)(viii) — Misrepresentations regarding credit card loss protection plans

As discussed in detail above, the telemarketing of credit card loss protection plans has been a persistent source of a significant number of complaints about fraud and, as a result, has been the target of numerous law enforcement actions by both the Commission and the state Attorneys General.[275] In the NPRM, the Commission proposed two new provisions to address this practice. The first provision, in § 310.3(a)(1)(vi), discussed above, requires that sellers or telemarketers of such plans disclose, before the customer pays, the limit, pursuant to 15 U.S.C. § 1643, on a cardholder's liability for unauthorized use of a credit card. This provision is retained unchanged in the amended Rule.

In addition to advising consumers of their rights, the Commission also believes that additional protection is needed to curb the misrepresentations that are prevalent in the sale of credit card loss protection plans. Telemarketers often misrepresent various aspects of the credit card loss protection plan to consumers, especially the existing legal limits on consumer liability if their cards are lost or stolen.[276] Therefore, the Commission proposed to add a second provision —§ 310.3(a)(2)(viii)—which prohibits sellers or telemarketers from misrepresenting that any customer needs offered goods or services to provide protections a customer already has pursuant to 15 U.S.C. § 1643, which limits a cardholder's liability for unauthorized charges.[277]

The Commission received little comment on this proposed provision. Those commenters who addressed the Commission's proposal strongly supported the provision's method of addressing problems with these plans, noting that complaints about the fraudulent sale of credit card loss protection plans have continued unabated since the original Rule became effective.[278] Therefore, the Commission has determined that it is a deceptive telemarketing act or practice to misrepresent that any customer needs particular goods or services in order to have protections provided pursuant to 15 U.S.C. § 1643, and has adopted § 310.3(a)(2)(viii), which prohibits a seller or telemarketer from misrepresenting that any consumer needs to purchase protections that they already have under 15 U.S.C. § 1643.

§ 310.3(a)(2)(ix) — Misrepresentations regarding negative option feature offers

The original Rule did not specifically require disclosures or prohibit misrepresentations regarding negative option features in telemarketing offers. However, as noted above, in the discussion of § 310.3(a)(1)(vii), as a result of the more narrowly-tailored approach to the problems associated with preacquired account telemarketing, a newly focused approach to the problems related to negative option features is also required. This includes specific disclosure requirements, which are set forth in § 310.3(a)(1)(vii) and explained above. Consistent with the structure of the Rule to date, and to ensure that the disclosures are not only made, but made truthfully, the amended Rule includes a mirroring provision to these disclosure requirements, at § 310.3(a)(2)(ix), which prohibits misrepresentations regarding "[a]ny material aspect of a negative option feature including, but not limited to, the fact that the customer's account will be charged unless the customer takes an affirmative action to avoid the charge(s), the date(s) the charge(s) will be submitted for payment, and the specific steps the customer must take to avoid the charge(s)."

§ 310.3(a)(3) — Express verifiable authorization

Section 310.3(a)(3) of the original Rule requires that a seller or telemarketer obtain express verifiable authorization in sales involving payment by demand drafts or similar negotiable paper.[279] The Rule also provides that authorization is deemed verifiable if any of three specified means are employed to obtain it: (1) express written authorization by the customer, including signature; (2) express oral authorization that is tape recorded and made available upon request to the customer's bank; or (3) written confirmation of the transaction, sent to the customer before submission of the draft for payment. If the telemarketer chooses to use the taped oral authorization method, the Rule requires the telemarketer to provide, upon request, tapes evidencing the customer's oral authorization, including the customer's receipt of the following information: the number, date(s) and amount(s) of payments to be made; date of authorization; and a telephone number for customer inquiry that is answered during normal business hours.[280]

In the NPRM, the Commission proposed to amend the express verifiable authorization provision to

[273] *See* 16 CFR 310.3(a)(2).

[274] Proposed Rule § 310.3(a)(2)(viii).

[275] *See* note 256 above.

[276] *See* discussion of § 310.3(a)(1)(vi) above, and notes 249 and 253.

[277] As noted above, this approach parallels the TSR's treatment of cost and quantity of goods (§§ 310.3(a)(1)(i) and 310.3(a)(2)(i)), material restrictions, limitations, or conditions (§§ 310.3(a)(1)(ii) and 310.3(a)(2)(ii)), refund policy (§§ 310.3(a)(1)(iii) and 310.3(a)(2)(iv)), and prize promotions (§§ 310.3(a)(1)(iv) & (v) and 310.3(a)(2)(v)). In each case, material facts must be disclosed, and misrepresentations of those facts are prohibited.

[278] DOJ-NPRM at 4; LSAP-NPRM at 7-8; NAAG-NPRM at 55; NCL-NPRM at 6. *See also* June 2002 Tr. II at 104; and discussion of § 310.3(a)(1)(vi) above.

[279] The use of demand drafts, or "phone checks," enables a merchant to obtain funds from a person's bank account without that person's signature on a negotiable instrument.

[280] *See* original Rule § 310.3(a)(3). Section 310.3(a)(3)(iii)(A) of the original Rule requires that all information required to be included in a taped oral authorization be included in any written confirmation of the transaction.

require that the seller or telemarketer obtain the customer's express verifiable authorization in any telemarketing transaction where the method of payment lacks the protections provided by, or comparable to those available under, the Fair Credit Billing Act ("FCBA") and the Truth in Lending Act ("TILA"). In addition, the proposed amendment would have required that the customer receive two additional pieces of information in order for authorization to be deemed verifiable: the name of the account to be charged and the account number, which would have been required to have been recited by either the customer or donor, or the telemarketer. The Commission also proposed to delete § 310.3(a)(3)(iii), which allowed a seller or telemarketer to obtain express verifiable authorization by confirming a transaction in writing, provided the confirmation was sent to the customer prior to the submission of the customer's billing information for payment. Finally, the Commission proposed in the NPRM, pursuant to the USA PATRIOT Act, to bring charitable contributions within the coverage of the express verifiable authorization provision.[281]

Based on the record in this proceeding, the Commission has decided to modify the proposed express verifiable authorization provision. The amended Rule prohibits "[c]ausing billing information to be submitted for payment, or collecting or attempting to collect payment for goods or services or a charitable contribution, directly or indirectly, without the customer's or donor's express verifiable authorization, except when the method of payment used is a credit card subject to protections of the TILA and Regulation Z,[282] or a debit card subject to the protections of the Electronic Fund Transfer Act ("EFTA") and Regulation E."[283] This modified language draws a "bright line" to simplify compliance. The amended Rule retains the express written authorization and oral authorization provisions (§§ 310.3(a)(3)(i) and (ii) of the original and proposed Rules), with slight modifications, and has reinstated the provision of the original Rule allowing written confirmation, with certain additional requirements and limitations.

In addition, certain modifications to this express verifiable authorization provision have been adopted in the amended Rule pursuant to the mandate of the USA PATRIOT Act. First, where the term "customer" appeared in the original Rule, that term has been replaced in the amended Rule with the phrase "customer or donor" (including, where applicable, the plural form). Similarly, where the phrase "goods or services" had been used in the Rule, it has been replaced with the phrase "goods or services or charitable contribution" to reflect the expansion of the Rule to cover charitable solicitations. And, the term "telemarketing transaction" has been substituted for the term "sales offer," again to reflect the expansion of the provision to cover authorization in the context of a charitable solicitation.

The Commission received numerous comments addressing the proposed amendments to § 310.3(a)(3). In addition, the topic was the subject of extensive discussion at the June 2002 Forum.[284] The major themes that emerged from the record are summarized below.

Express verifiable authorization for novel payment methods. In the NPRM, the Commission noted two separate rationales in support of the requirement that a customer's express verifiable authorization be obtained any time the payment method used lacks certain protections against unauthorized charges and fails to provide dispute resolution rights. First, the Commission stated its belief that the use of novel payment methods may lead to unauthorized billing.[285] If consumers fail to understand that a telemarketer has the ability to place a charge using a novel payment method (such as utility or mortgage account billing), based on this misperception, they may be induced to divulge billing information that enables such charges. Second, the Commission noted that many emerging payment methods lack both dispute resolution rights and protection against unlimited liability for unauthorized charges.[286] These two facts—that consumers can be charged unwittingly by means of novel payment methods and that the resulting injury due to unauthorized charges is magnified when dispute resolution procedures and liability limits are absent—persuaded the Commission that it was appropriate to require express verifiable authorization when protections pursuant or comparable to TILA and FCBA are absent.[287]

Comments on the requirement for express verifiable authorization in novel payment method scenarios were many and varied. Some industry commenters—with the notable exception of DialAmerica—rejected the notion that novel payment methods should be subject to more stringent requirements under the Rule, arguing that, as long as the consumer has a clear understanding that he or she is purchasing a particular product or service and that the purchase will be charged to a particular account, nothing further should be required of the telemarketer.[288] NACHA advocated scaling back the proposed express verifiable authorization requirement, which it argued was "overly broad" in its coverage of payment methods, such as debit cards, with protections comparable to TILA and FCBA.[289] EFSC noted its concern that emerging payment methods would be disadvantaged because they would be subject to the express verifiable authorization provision.[290]

NAAG, on the other hand, supported the Commission's proposed approach.[291] Some consumer groups urged the Commission to take an even more stringent approach than it did in the NPRM, and require express verifiable authorization in *all* telemarketing transactions. For example, NCL argued that since most telemarketers use audio recordings to verify authorizations anyway, it would hardly be burdensome to require express verifiable authorization, which

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[281] Proposed Rule § 310.(3)(a)(3), 67 FR at 4542.

[282] TILA, 15 U.S.C. 1601 *et seq.* (including the FCBA amendments, at 15 U.S.C. 1637 *et seq.*), and Regulation Z, 12 CFR part 226.

[283] EFTA, 15 U.S.C. 1693 *et seq.*, and Regulation E, 12 CFR part 205.

[284] *See* June 2002 Tr. III at 4-52.

[285] *See* 67 FR at 4507. This concern was also articulated by the Commission in the original rulemaking in connection with the use of demand drafts as a payment method. 60 FR at 43850-51.

[286] *See* 67 FR at 4507.

[287] *Id.*

[288] See, e.g., Aegis-NPRM at 4; Green Mountain-NPRM at 27 ("there is little danger that consumers will give their [debit card] account numbers to telemarketers without knowing that their accounts will be debited"); ITC-NPRM at 5; NATN-NPRM at 4; Noble-NPRM at 4; NSDI-NPRM at 4; and Technion-NPRM at 5. *But see* June 2002 Tr. III at 22 (DialAmerica representative noting that his company declines to use novel payment methods because it "had experience with charging people's bank accounts and [ ] also [with] LEC billing, and they have not been good experiences.").

[289] NACHA-NPRM at 2.

[290] EFSC-NPRM at 7. *See also* NATN-NPRM at 4; June 2002 Tr. III at 39. The Commission notes that it was in part because of this concern that the original Rule did not require written authorization in every instance for demand drafts. *See* 60 FR at 43850-51. The amended Rule's allowance for obtaining express verifiable authorization by any of three means, including written confirmation, should obviate concerns about the burden imposed on sellers who choose to accept novel payment methods. Further, the Commission believes, for the reasons stated above, that it is precisely when such novel methods—unfamiliar to the consumer and devoid of legally-mandated consumer protections—are used that express verifiable authorization of a consumer's acquiescence to the transaction is critical.

[291] See NAAG-NPRM at 48.

can be evidenced by such a recording, in every instance.[292] In support of this position, NCL offered statistics showing that complaints to the NFIC for 2001 show that 60 percent of the payments for fraudulent buyers club offers—a "category in which nearly all of the consumers said they never agreed to purchase the service"—were made by credit card.[293] According to NCL, even when the payment method used by consumers may be subject to legal protections, "all consumers whose accounts will be billed should have the basic protections that such [express verifiable authorization] provides.[294] LSAP concurred, suggesting that the Rule would better serve all consumers if express verifiable authorization were required in every purchase.[295] Similarly, NCLC urged the Commission to extend the express verifiable authorization requirements to cover all transactions, or at least those not subject to the protection of FCBA and TILA.[296]

The Commission declines to require in every transaction that a seller or telemarketer obtain the express verifiable authorization of a customer or donor prior to submitting billing information for payment. As it made clear in the original rulemaking, the Commission believes that the burden of requiring express verifiable authorization is justified in limited circumstances; namely, when consumers are unaware that they may be billed via a particular method, when that method lacks legal protection against unlimited unauthorized charges, and when the method fails to provide dispute resolution rights.[297] However, the Commission agrees that consumers could benefit from a more explicit Rule provision mandating what should be obvious: a transaction is valid only when the telemarketer has obtained the consumer's express informed consent to be charged, and to be charged using a particular account. Therefore, as is discussed in detail below, new § 310.4(a)(6) of the Rule explicitly requires, in every telemarketing transaction, that the seller or telemarketer obtain the express informed consent of the customer or donor to be charged for the goods or services or charitable contribution that is the subject of the transaction. This more explicit treatment will achieve the goals of consumer groups without unduly burdening industry members with the recordkeeping required by the express verifiable authorization provision.

The comments from consumer groups addressing the express verifiable authorization issue opposed the "comparability" standard set out in the proposed amended Rule, *i.e.*, the provision which would have exempted from the requirement to obtain express verifiable authorization any payment method with protections comparable to those available under FCBA and TILA. Some commenters stated that it would be too difficult for merchants to determine, during the course of each telemarketing transaction, whether a given payment method had protections comparable to those available under TILA.[298] NCL and NCLC argued that the impermanent nature of voluntary policies, such as the "zero liability" guarantees made by MasterCard and VISA, makes them a poor substitute for legal protection.[299] NCLC further argued that such an amendment would "invite sham internal review procedures,"[300] thereby making it deleterious to consumers, by placing the power of determining which transactions required express verifiable authorization in the hands of the merchant.[301]

Industry commenters, on the other hand, urged the Commission to clarify that "comparable protection," whether in the form of a business rule or private contract, should be sufficient to relieve sellers and telemarketers of requirement to obtain express verifiable authorization.[302] In this regard, some industry commenters noted the "zero liability" protection for unauthorized charges provided by the two main issuers of debit cards, VISA and MasterCard, as a voluntary initiative.[303] MasterCard and VISA noted that their respective "zero liability policies" provided greater protection to cardholders than is provided by federal law.[304] Similarly, Fleet urged the Commission to take note of the unauthorized use liability provisions that VISA and MasterCard offer for debit cards.[305] Other commenters requested that the Commission explicitly state that certain other protections are "comparable."[306]

Based on the record evidence, the Commission has decided to eliminate the "comparability" language from the express verifiable authorization provision. The comments made clear that it is far more desirable to

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[292] NCL-NPRM at 5.

[293] *Id.*

[294] *Id.* (noting that even when legal protections exist to protect consumers from unauthorized charges, consumers must still bear the burden to "contest the charges in the required manner and time frame to assert their rights"); *see also* LSAP at 10.

[295] LSAP-NPRM at 9-11.

[296] NCLC-NPRM at 8.

[297] *See* 60 FR at 43850-51. The Commission notes that despite its request for detailed evidence regarding the cost of obtaining express verifiable authorization and the prevalence of each of the three methods allowed by the original Rule, *see, e.g.*, 67 FR 4537; June Tr. III at 32, there remains a dearth of specific record evidence regarding such costs. Industry commenters who did address the cost merely stated that creating and maintaining audio recordings of express verifiable authorization was "expensive." *See, e.g.*, Capital One-NPRM at 7; June Tr. III at 38 (CCC).

[298] *See* NCLC-NPRM at 2, 4 (noting the exemption from express verifiable authorization for methods of payment with protections comparable to TILA and FCBA "essentially sanctions an on-the-spot judgment made by telemarketers regarding a complex and much disputed legal issue. . ."). Some industry members also noted that the comparability standard was too vague to be useful. *See, e.g.*, CMC-NPRM at 12; EFSC-NPRM at 4 (noting that the vagueness could inhibit the use of novel payment methods).

[299] *See* NCL-NPRM at 5; NCLC-NPRM at 8.

[300] NCLC-NPRM at 7.

[301] *See* NCLC-NPRM at 4-5.

[302] *See, e.g.*, ABA-NPRM at 7-8; BofA-NPRM at 6; Capital One-NPRM at 7; Citigroup-NPRM at 10; DMA-NPRM at 56-57.

[303] *Id.*

[304] *See* MasterCard-NPRM at 4; VISA-NPRM at 5. The Commission notes, however, that the "zero liability" protection offered by MasterCard and VISA does not come into play in all circumstances. For example, MasterCard extends this protection only to a consumer whose account is in good standing and who has not reported two or more instances of unauthorized use in the past year. *See* http://www.mastercard.com/general/zero_liability.html. VISA offers its coverage only for "VISA credit and debit card transactions processed over the VISA network," and allows the financial institution that issued the card to determine liability for transactions processed over other networks. *See* http://www.usa.visa.com/personal/secure_with_visa/zero_liability.html?it=f2_/personal/secure_with_visa/.

[305] *See* Fleet-NPRM at 5. *See also* KeyCorp-NPRM at 5; June Tr. III at 11 (DMA) (endorsing voluntary protections).

[306] *See* Capital One-NPRM at 7 (exempt transactions subject to the UCC); CMC-NPRM at 12 (state that protections under the Real Estate Settlement Procedures Act ("RESPA") and EFTA are comparable to those under the FCBA and TILA); Fleet-NPRM at 5 (exempt transactions where the goods or services are subject to a "liberal refund policy"); KeyCorp-NPRM at 5 (exempt transactions subject to the UCC); NACHA-NPRM at 2 (exempt transactions subject to the NACHA Rules); VISA-NPRM at 5 (exempt transactions subject to UCC when the revisions to Article 4 are complete). The Commission declines, at this time, to exclude from the express verifiable authorization requirement transactions subject to RESPA. While the Commission recognizes that RESPA provides important protections for consumers, it does not believe that most real estate transactions would be subject to the TSR at all. And, in instances of mortgage billing, which *would* be subject to the Rule, the Commission believes that consumers, unfamiliar with this method of billing for anything other than their mortgage payment, need the protections of the express verifiable authorization provision. The Commission also declines to exclude transactions subject to the UCC from the requirements of express verifiable authorization, but may revisit this issue when modifications to the UCC are completed. The Commission also declines to exempt transactions subject to the NACHA Rules or for which the seller provides a liberal refund policy, believing that it is preferable to limit exemptions and thus maintain a "bright line" rule to simplify compliance.

implement a "bright line" rule in this instance to avoid the costs to businesses and consumers of requiring a telemarketer to make a real-time determination of whether a payment method provides adequate protection while on the telephone with a consumer. Moreover, the Commission is persuaded that the impermanent nature of voluntary consumer protections makes them ill-suited as a predicate for circumventing the express verifiable authorization provision.[307] Therefore, the amended Rule requires express verifiable authorization in all transactions where payment is made by a method other than a debit card subject to Regulation E, or a credit card subject to Regulation Z.

Several industry commenters specifically urged the Commission to ensure that express verifiable authorization not be required when a consumer uses a debit card to pay for goods and services offered, or a charitable contribution solicited, through telemarketing. Commenters raised several arguments in support of this position. First, commenters noted that debit cards are not "novel" payment methods.[308] Commenters contended that, on the contrary, debit cards are widely accepted and used by consumers, who understand that by providing their debit card number in a telemarketing transaction, the account with which the card is associated will be debited.[309] Second, commenters argued that debit cards are subject to the protections of the EFTA and its implementing regulation, Regulation E, which provide similar, although not identical, protection to that available under TILA.[310] Third, commenters argued that distant sellers cannot distinguish between a debit and credit card until, in the best case scenario, the consumer reads the entire number.[311] Finally, commenters noted that VISA has an "honor all cards" policy that would prohibit a merchant from declining to accept VISA-branded debit cards if it accepted VISA-branded credit cards.[312] These commenters contended that the practical result of requiring express verifiable authorization for debit cards would be that express verifiable authorization would have to be obtained in all transactions—whether payment was made by credit or debit card, demand draft, or any other method.[313]

Based on the extensive record on this issue, and on the Commission's law enforcement experience, the Commission has determined to modify the express verifiable authorization provision in the amended Rule. The Commission is persuaded that debit cards should not be subject to the express verifiable authorization provision, based on their wide consumer acceptance and the fact that they are subject to the protections of the EFTA and Regulation E. The Commission believes that debit cards are so commonly used that it cannot persuasively be argued that consumers do not understand that when they provide their debit card account number to a telemarketer, their account can be debited by using that number.[314] Moreover, the Commission is persuaded that the practical result of requiring express verifiable authorization when a consumer pays using a debit card would be to require it in all instances when a debit *or* credit card is used, because it is not currently possible to distinguish these methods in a distance transaction.[315]

Regulation E provides protections that are similar, though not identical, to those provided under TILA. Some commenters argued that express verifiable authorization should be required for debit cards because Regulation E's three-tiered liability scheme for unauthorized use, with increasing liability when the unauthorized use is reported after two business days, is less advantageous for consumers than the TILA protections, which cap a consumer's losses, in all instances, at $50.[316] The Commission believes that this disparity will not disadvantage consumers who face unauthorized charges pursuant to a telemarketing transaction. Both Regulation Z and Regulation E provide that, in a situation where the consumer retains control of the card, no liability shall attach; Regulation Z does so unconditionally,[317] while Regulation E provides such protection on condition that the consumer reports the unauthorized charge within 60 days of transmittal of the consumer's statement.[318] The Commission believes that, despite the reporting requirement imposed by Regulation E, consumers who face unauthorized charges due to telemarketing fraud have important fundamental protections whether they use a debit or credit card. The Commission will continue its campaign to educate consumers about their varying obligations in reporting unauthorized charges involving both debit and credit cards, and will monitor the effectiveness of this provision from

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[307] *See* June 2002 Tr. III at 29 (NCL) (noting receipt of complaints about the enforceability of these voluntary protections).

[308] *See, e.g.*, ABA-NPRM at 6; DMA-NPRM at 57; and ERA-NPRM at 47.

[309] *See, e.g.*, Collier Shannon-NPRM at 16; Green Mountain-NPRM at 27; June 2002 Tr. III at 24 (ERA).

[310] *See, e.g.*, ABA-NPRM at 2-7; AFSA-NPRM at 18-19; BofA-NPRM at 5-6; Citigroup-NPRM at 10; Collier Shannon-NPRM at 11; KeyCorp-NPRM at 5; MasterCard-NPRM at 4; NACHA-NPRM at 2. Some commenters suggested that any method of payment subject to Regulation E be exempted from the express verifiable authorization requirements. *See* Citigroup-NPRM at 10 (exempt all electronic fund transfers, including wire transfers); EFSC (exempt automated clearinghouse ("ACH") transactions, as well as other novel payments, such as prepaid smart cards). The Commission declines to exempt all electronic fund transfers subject to Regulation E. The record does not support exclusion of other methods of payment subject to Regulation E; and the Commission believes that, despite any consumer protections available, many emerging payment methods covered by Regulation E are still relatively unknown to consumers who will thus benefit from express verifiable authorization when these payment methods are used.

[311] BofA-NPRM at 6; Collier Shannon-NPRM at 6 ("Merchants who process credit and debit card transactions over the phone do not have the ability to differentiate between credit cards and debit cards."); ERA-NPRM at 46; June 2002 Tr. III at 11 (DMA) (noting that "it is impossible for a marketer to know whether it's a debit card or a credit card, in the best instance, until after the entire number has been given"); June 2002 Tr. III at 18 (NRF) (stating that "remote sellers cannot distinguish a debit card from the credit card with any great degree of reliability pre-purchase").

[312] June 2002 Tr. III at 19-20 (NRF) (noting that VISA and MasterCard "have what's called an Honor-All-Cards rule" that requires that merchants accept any card branded with these issuers' logos as a condition of being able to accept the VISA and MasterCard branded credit cards).

[313] Collier Shannon-NPRM at 6-7; June 2002 Tr. III at 11 (DMA) (noting that "[i]n some instances you don't even know [whether a number provided by a consumer is for a debit or credit card] when the number is given, which would force marketers to have express verifiable authorization for everything. . ."). Some commenters argued that such a provision would have the effect of eliminating or reducing the use of debit cards as a form of payment. *See* Gannett-NPRM at 1-2; Intuit-NPRM at 19.

[314] This is not to say, of course, that an unscrupulous telemarketer could not misrepresent the purpose for which it needed such an account number, leading to consumer injury. Section 310.3(a)(4) of the Rule, which prohibits making a false or misleading statement to induce any person to pay for goods or services, would come into play in such situations. Moreover, the record and the Commission's consumer protection experience suggest that, while consumers do understand that their debit cards can be used as a method of payment, it is not clear that consumers understand the varying degrees of consumer protection afforded by credit versus debit cards. *See* June 2002 Tr. III at 24-25. The Commission has issued consumer education materials to reinforce the material differences in protection under federal law for debit and credit cards. *See, e.g.*, FTC Facts for Consumers, Credit, ATM and Debit Cards: What to do if They're Lost or Stolen, http://www.ftc.gov/bcp/conline/pubs/credit/atmcard.htm.

[315] *See* note 311 above.

[316] Compare Regulation E, 12 CFR 205.6(b) to Regulation Z, 12 CFR 226.12(b).

[317] *See* Regulation Z, 12 CFR 226.12(b)(2)(iii), Official Staff Interpretation, Suppl. I.

[318] *See* Regulation E, 12 CFR 205.6(b)(3). The 60-day notification period is somewhat flexible. Section 205.6(b)(4) notes that "[i]f the consumer's delay in notifying the financial institution was due to extenuating circumstances, the institution shall extend the [time limit] to a reasonable period."

the implementation of the amended Rule through the next Rule Review, making any modifications as necessary.

The record reflects a variety of viewpoints on whether dispute resolution rights are essential to the determination of whether a payment method should be excluded from the requirement of obtaining express verifiable authorization.[319] The Commission continues to believe that dispute resolution protection is a key predicate for excluding a payment method from coverage under the express verifiable authorization provision, to ensure that consumers are not unduly burdened during the investigation of any claim of unauthorized billing. The Commission believes that, although the substantive dispute resolution protections of Regulation E are somewhat less extensive than those of Regulation Z,[320] the core protections provided by Regulation E—allowing a consumer to report an unauthorized electronic fund transfer and to receive a provisional credit of the disputed amount within ten business days of the financial institution's receipt of such notice—will afford sufficient basic protection to consumers who choose to use debit cards to pay for goods or services or charitable contributions in telemarketing transactions.

Furthermore, the Commission notes that its decision not to require express verifiable authorization for payments made by debit card is based in part on the practical reality that it is currently impossible for merchants to distinguish credit cards from debit cards, particularly in distance transactions. The Commission believes that the appropriate balance of protecting consumers without unduly burdening industry is best met by excluding debit cards from the requirements of the express verifiable authorization provision, for to do otherwise would result in requiring express verifiable authorization for all credit card payments, an unnecessary and costly burden.[321] The core dispute resolution protection provided by Regulation E, in conjunction with its critical protection against unauthorized charges, will provide a vital safety net for consumers who choose to pay by debit card. Thus, the Commission has determined that express verifiable authorization will be required only in instances when the payment method is not a credit card subject to the protections of Regulation Z or a debit card subject to the protections of Regulation E.[322]

Express written authorization. Section 310.3(a)(3)(i) of the proposed Rule states that authorization will be deemed verifiable if it is by "express written authorization . . . which includes the customer's or donor's signature." The footnote to this section of the Rule notes that "the term 'signature' shall include a verifiable electronic or digital form of signature, to the extent that such form of signature is recognized as a valid signature under applicable federal law or state contract law."

The Commission received few comments on this provision overall. AARP reiterated its long-standing position that all express verifiable authorizations should be in writing.[323] The Commission maintains its position that to require written authorization in every instance would unduly burden sellers and telemarketers, potentially impede the growth of new payment mechanisms, and not provide meaningful benefits to consumers above and beyond those ensured by the other two means of obtaining authorization under the Rule. Therefore, the Commission declines to require written authorization of a transaction in every instance. Another commenter requested clarification that a signed check would meet the requirements of § 310.3(a)(3)(i) of the amended Rule.[324] The original Rule's express verifiable authorization only pertained to demand drafts; and, as the Commission noted in the TSR Compliance Guide, "[a]ny form of written authorization from a consumer is acceptable," including "a 'voided' signed check."[325] While the language of the amended Rule is arguably broad enough to cover payment methods such as check and money order, the customer's or donor's signed check or money order would, in every instance, be sufficient to serve as written authorization pursuant to 310.3(a)(3)(i).

A handful of commenters addressed the interplay between the E-SIGN Act[326] and the Rule. One industry commenter urged that the Commission explicitly state that the E-SIGN Act governs transactions under the TSR,[327] and another requested the amended Rule expressly adopt the definitions of "electronic record" and "electronic signature" used in the E-SIGN Act.[328] In particular, commenters expressed concern over the Commission's use of the term "verifiable"[329] as a modifier in discussing what would constitute a valid signature under the Rule. While the Commission declines at this time to expressly incorporate the E-SIGN Act's definitions into the Rule, it has determined that deleting the term "verifiable" from the amended Rule will alleviate the concerns expressed by industry, without compromising the protections afforded to consumers.[330]

NCLC suggested that the Rule incorporate the procedures set forth in § 101(c) of the E-SIGN Act for using electronic records to provide a consumer with written disclosures

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[319] *See* ABA-NPRM at 5, 7 (encouraging the Commission to delete from the express verifiable authorization provision the requirement that any exempt payment mechanism include dispute resolution procedures); Collier Shannon-NPRM at 11-15 (noting that the dispute resolution protections under Regulations E and Z are similar).

[320] For example, unlike Regulation Z, Regulation E does not provide that a consumer may assert against a financial institution all claims (other than tort) and defenses arising out of the transaction and relating to the failure to resolve the dispute. *See* Regulation Z, 12 CFR 226.12(c). However, Collier Shannon argued that, in some instances, Regulation E provides greater consumer dispute resolution rights. For example, Collier Shannon noted that investigations under Regulation E must be completed within ten days of the financial institution's receipt of the consumer's complaint, or a provisional credit must be issued. Collier Shannon also noted that the coverage of the regulations diverges in some instances because some of the dispute resolution protections available under Regulation Z only make sense in the context of a credit transaction, such as the provision that a creditor may not seek to collect funds or issue a negative statement on a consumer's credit report). *See* Collier Shannon-NPRM at Appendix F. The Commission notes, in regard to the argument made by Collier Shannon regarding the shorter time period allowed for investigations under Regulation E, that a shorter time frame is entirely appropriate because the funds at issue are the consumer's, not the funds of a credit card lender.

[321] *See* June 2002 Tr. III at 11 (DMA) (noting that requiring express verifiable authorization in all instances would be "highly expensive.").

[322] Cendant requested that the Commission explicitly note in the Rule that the marketer can rely upon the statement by the consumer identifying the type of billing mechanism that the customer is using to pay. Cendant-NPRM at 9. The Commission believes that its modified approach, exempting from the express verifiable authorization provision both credit *and* debit cards, obviates the need for such a statement to be included in the Rule.

[323] AARP-NPRM at 7.

[324] Tribune at 7.

[325] TSR Compliance Guide at 19.

[326] Electronic Signatures in Global and National Commerce Act ("E-SIGN Act"), Pub. L. No. 106-229, 106th Cong. 2d Sess., 114 Stat. 464 (2000), codified at 15 U.S.C. § 7001 *et seq.*

[327] EFSC-NPRM at 9-10.

[328] Intuit-NPRM at 22.

[329] 67 FR 4542. In the NPRM, the Commission noted, in a footnote to § 310.3(a)(3)(i), that "[f]or purposes of this Rule, the term 'signature' shall include a *verifiable* electronic or digital form of signature, to the extent that such form of signature is recognized as a valid signature under applicable federal law or state contract law." (emphasis added).

[330] The Commission believes that the remaining language regarding signatures makes plain that sellers and telemarketers who choose to obtain express verifiable authorization using the express written authorization method, and who wish to use digital or electronic signatures, will need to comply with applicable federal law and state contract law. The Commission believes, by way of example, that a seller or telemarketer who obtained a signature that would be valid under the E-SIGN Act's standards would meet its burden under this provision of the Rule.

required by the Rule.[331] Under § 101(c), the consumer must, among other things, affirmatively consent to such use of electronic records and acknowledge that he or she has the hardware and software necessary to access the requisite information electronically. The Commission is deferring any determination at this time as to the specific manner in which the Rule should incorporate these statutory procedures until it has clearer evidence or experience from which to develop an appropriate and effective regulatory interpretation, consistent with the E-SIGN Act, to ensure that written disclosures required under the Rule are provided clearly and conspicuously to consumers if and when a seller or telemarketer uses electronic means to provide such disclosures.[332]

Finally, NCLC suggested that the Commission require that the information set forth in § 310.3(a)(3)(ii)(A)-(G), be required when the written method of express verifiable authorization is used.[333] The Commission declines to adopt this suggestion because the record does not support the argument that such a requirement is necessary in instances when the consumer controls the method of payment, and provides written authorization, including a signature, to the seller or telemarketer prior to the submission for payment of the consumer's billing information.

Oral authorization. The proposed Rule modified and expanded the list of information that must be recited in order for oral authorization to be deemed verifiable. In particular, the proposed Rule added the requirement that the specific billing information of the customer or donor, including the name of the account and the account number that will be used to collect payment for the transaction, must be identified as part of the express verifiable authorization process. Finally, certain wording changes were proposed to address the expansion of the express verifiable authorization provision to cover not just demand drafts, but all methods of payment that lacked specific protections under TILA and FCBA. In addition, the information was reorganized.[334]

In § 310.3(a)(3)(ii) of the amended Rule, the Commission has retained the proposed oral authorization provision, with three minor wording changes. First, the broader term "other billing entity" replaces the term "credit card company," which was included in the proposed Rule as an example of an entity to whom a seller or telemarketer would need to make available a recording of a customer's or donor's express oral authorization. Second, the phrase "authorization of payment for goods or services or charitable contribution" is inserted to reflect the expansion of this provision to reach charitable solicitations. Third, the term "sales offer" has been replaced with "telemarketing transaction." These last two changes are intended to conform this provision to the mandate of the USA PATRIOT Act.

Few comments were prompted by this section generally, or by any of the specific proposed disclosures required to satisfy the oral authorization provision. One commenter noted that the audio recording method of obtaining express verifiable authorization may require the consent of the customer or donor in states that require two-party consent to record telephone calls.[335] The Commission notes that determining compliance with state law taping requirements has been and will continue to be the responsibility of those sellers and telemarketers who choose to use this method of authorization. Another commenter asked the Commission to state explicitly that "a telemarketer cannot circumvent a writing requirement [such as required by EFTA for recurring drafts] by holding up the express oral authorization in the [TSR]."[336] Clearly, compliance with the EFTA and compliance with the TSR are separate obligations, and to the extent that an entity is subject to both regulations, it must determine how best to comply with both. Therefore, the Commission declines to modify the Rule to include such guidance.

Another commenter, ARDA, requested that § 310.3(a)(3)(ii)(A), which requires disclosure of the number of debits, charges or payments, be modified. ARDA requested that the parenthetical phrase "if more than one" be reinstated in the Rule to ensure that this disclosure is only made in instances where there will be multiple debits, charges, or payments; to do otherwise, ARDA argued, would be a burden on industry to state what would likely be presumed by consumers—that is, that only a single payment will be required.[337] The Commission agrees that the benefit to consumers of disclosing that there will only be a single payment does not outweigh the burden on sellers and telemarketers to have to make such a disclosure. Therefore, the Commission has reinstated the phrase "(if more than one)" at the end of § 310.3(a)(3)(ii)(A). No comments in the record suggest modification of proposed § 310.3(a)(3)(ii)(C) (requiring disclosure of the amount of the debit(s), charge(s), or payment(s)); (D) (disclosure of the customer's or donor's name); (F) (the disclosure of a telephone number for customer or donor inquiry); or (G) (the date of the customer's or donor's oral authorization). Therefore, these sections are retained in the amended Rule without alteration.

Proposed § 310.3(a)(3)(ii)(B) required that "the date of the debit(s), charge(s), or payment(s)" be recited for oral authorization to be deemed verifiable. This proposal drew criticism from members of industry, including MasterCard and KeyCorp, who noted that, in many instances, telemarketers would not possess this information, and suggested that the frequency of the payment could be recited instead.[338] The Commission agrees that in at least some instances the exact date of payment—that is, the date on which the charge will appear on a customer's or donor's billing statement or be debited from a customer's or donor's account—may be unknown at the time of the transaction. Therefore, the amended Rule provision requires instead that the seller or telemarketer recite the date on which the debit(s), charge(s), or payment(s) will be submitted for payment. The Commission believes that this piece of information is, or without much burden can be, known to a seller or telemarketer, and that providing this date to the customer or donor will supply a means for determining approximately when such debit(s), charge(s), or payment(s) will be posted to the customer's or donor's account.

Several commenters also expressed concern about the requirement, in § 310.3(a)(3)(ii)(E), that, as part of oral authorization, a customer or donor

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[331] NCLC-NPRM at 3.

[332] *See generally* FTC and Dept. of Commerce, *Report to Congress on the Electronic Signatures in Global and National Commerce Act: The Consumer Consent Provision in Section 101(c)(1)(C)(ii)*, June 2001 (noting that nearly all participants in a workshop held to discuss the provision agreed that further study of the provision and its role in the marketplace was necessary). *See also* E-SIGN Act § 104 (preserving agency authority to interpret § 101).

[333] NCLC-NPRM at 10-11.

[334] *See* Proposed Rule § 310.3(a)(3)(ii)(A)-(D), (F)-(G). For example, the term "draft," used in the original provision, was replaced with the phrase "debit(s), charge(s), or payment(s)" in the proposed version, to reflect that methods of payment other than demand draft would now be covered by the Rule. For the same reason, and because of the mandate of the USA PATRIOT Act, the term "payor's" was replaced by the phrase "customer's or donor's."

[335] Worsham-NPRM at 6.

[336] NCLC-NPRM at 11.

[337] ARDA-NPRM at 5-6.

[338] MasterCard-NPRM at 6-7; KeyCorp-NPRM at 5.

receive his or her specific billing information, including the name of the account and the account number to be charged.[339] These commenters stated that there are dangers inherent in having a telemarketing sales representative recite or receive from the consumer the consumer's full account number over the telephone.[340]

On the other hand, comments from consumer groups were generally supportive of the expanded disclosures required as a predicate for oral authorization to be deemed verifiable. NCL noted that billing disputes are prevalent in connection with deceptive or abusive telemarketing, and complaints about such disputes often arise when a consumer has been duped into providing his or her billing information for some bogus purpose, such as "verification," or to enable the seller purportedly to deposit sweepstakes winnings to the consumer's account.[341] NCL also noted that consumers may provide their account information in conjunction with a payment for a particular item, but then be billed for additional goods or services that they did not authorize.[342] Based on its experience, NCL "believes that it is important to verify both the account that will be billed and the fact that the consumer is agreeing to purchase specific products or services using that account."[343] NAAG concurred, stating that the proposed Rule's express requirements to recite the account name and number would be beneficial to consumers who, as law enforcement experience demonstrates, may otherwise be unaware of this critical information.[344]

Based on the record, the Commission has decided to modify the proposed provision to limit the required amount of information about an account that must be received by a customer or donor to comply with the express verifiable authorization provision. The amended Rule requires that the customer or donor receive "billing information, identified with sufficient specificity that the customer or donor understands what account will be used to collect payment for the goods or services or charitable contribution."[345] This more flexible standard takes into account concern about identity theft, but still mandates that the customer receive information sufficient to understand what account is being used to process payment for the transaction. It will allow telemarketers the option to state, for example, the name and the last four digits of the account to be charged, rather than the full account number.

Written confirmation. The Commission received several comments regarding its proposal to delete § 310.3(a)(3)(iii) from the Rule. This section of the original Rule allows a seller or telemarketer to obtain express verifiable authorization by sending written confirmation of the transaction to the customer prior to submitting the customer's billing information to be charged. In general, industry commenters opposed the Commission's proposal to delete this provision from the Rule, arguing that, contrary to the evidence presented during the Rule Review, this method of authorization is commonly used in telemarketing.[346] Aegis noted that there is nothing "inherently fraudulent, abusive, or problematic" with this method of obtaining express verifiable authorization, and urged the Commission to retain it.[347] Industry commenters urged the Commission to retain this provision, especially because it provides a low-cost alternative to recording a customer's oral authorization.[348]

Consumer groups and law enforcement officials expressed their support for deleting this provision from the Rule, or modifying it to ensure that consumers are better protected when this method is used.[349] NAAG, for example, noted the potential danger inherent in the written confirmation provision as it is worded in the original Rule. Specifically, NAAG opined that consumers are likely to overlook a confirmation that appears to be yet

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[339] *See, e.g.*, AFSA-NPRM at 17-18; CCC-NPRM at 12 (recommending § 310.3(a)(3)(ii)(E) be deleted entirely); DialAmerica-NPRM at 27 (noting its support for the disclosure of the account name); Fleet-NPRM at 6; KeyCorp-NPRM at 5; MasterCard-NPRM at 5 (noting that if the provision is not deleted, the amended Rule should at least exempt from compliance entities subject to the privacy provisions of the GLBA); Wells Fargo-NPRM at 3.

[340] *See, e.g.*, KeyCorp-NPRM at 5; MasterCard-NPRM at 5. These commenters expressed concern about identity theft and unauthorized charges occurring as a result of the express disclosure of this information. Several commenters noted that consumers are disinclined to provide their account numbers in telemarketing, in part due to the success of consumer protection education campaigns that have stressed that a consumer should only provide his or her account number in telemarketing if the consumer knows the seller with whom he or she is dealing. *See, e.g.*, Bank One-NPRM at 4; Cendant-NPRM at 7; Household Auto-NPRM at 2-3; VISA-NPRM at 6-7. Some commenters noted that marketers will not have such account numbers in some instances, such as in preacquired account telemarketing involving a joint marketing program, and thus will be unable to ensure the customer's "receipt" of this information. *See, e.g.*, Household Auto-NPRM at 4; NEMA-NPRM at 8-10 (noting that the " receipt" language directly contradicts the NEMA's guidelines to ensure that the customer "disclose" such information before processing a charge, and will result in duplicative information being exchanged); Green Mountain-NPRM at 26 (requesting an exemption because the energy industry is highly regulated). As discussed below, the Commission decided to delete the requirement that the account number be disclosed, and therefore the Commission anticipates that this will ameliorate the concern about preacquired account telemarketing. In every instance, the seller or telemarketer should be able to tell the customer or donor the name of the billing vehicle and enough other information to ensure that the customer or donor knows what account will be used to collect payment. As to NEMA's and, to some extent, Green Mountain's concern about redundancy, it is true that in a non-preacquired account call, some information, such as the customer's or donor's billing information, will initially be unknown to the telemarketer. It is equally true that some of the information a customer must receive under § 310.3(a)(3)(ii) is known only to the telemarketer, such as the date a charge will be submitted for payment and a customer or donor service number. The Commission believes that, for payment methods that are novel and lacking in certain consumer protections, it is critical for the customer to authorize the payment. If a seller or telemarketer chooses the express oral authorization method, then it is incumbent upon them to ensure that a consumer receives this information, even if redundant, as part of the recorded authorization.

[341] NCL-NPRM at 4.

[342] *Id.*

[343] *Id.*

[344] NAAG-NPRM at 48-49.

[345] Amended Rule § 310.3(a)(3)(ii)(E). The requirement that the account be identified with sufficient specificity that the customer or donor understands what account will be used to collect payment mirrors the provision in amended Rule § 310.4(a)(6)(ii)(A), requiring that, in telemarketing transactions involving preacquired account information, a seller or telemarketer obtain express informed consent by identifying the account to be charged with specificity such that the customer or donor understands what account will be charged.

[346] *See, e.g.*, ARDA-NPRM at 5 (noting that the written confirmation method may actually increase in popularity if the additional requirements during oral authorization are adopted in a final Rule); ARDA-Supp. at 1 (noting that the Rule should allow for flexibility given the rapid technological changes in payment methods); CCC-NPRM at 14 (asserting that "this method is readily available, straightforward, reliable and is currently used by many marketers."); CNHI-NPRM at 1 (noting that eliminating this method would place newspapers at "an unfair competitive disadvantage"); EFSC-NPRM at 8; NAA-NPRM at 16 ("many newspapers regularly and legitimately used this method" and would incur considerable expense using the written or oral authorization methods instead).

[347] Aegis-NPRM at 4. *Accord* Noble-NPRM at 4 (arguing there is nothing inherently fraudulent about this method of authorization); PMA-NPRM at 20 (suggesting that the record does not support elimination of this method of authorization); Technion-NPRM at 5 (arguing there is nothing "wrong with" this method of authorization).

[348] *See, e.g.*, Capital One-NPRM at 8; Gannett-NPRM at 1; Intuit-NPRM at 19-20; MPA-NPRM at 27; PMA-NPRM at 20 (urging that this method be retained in part to reduce costs for inbound call centers who, under proposed revisions to address upselling, would need to conduct express verifiable authorization and may not be equipped to do so by taping); June 2002 Tr. III at 40-42 (CCC, noting that written confirmation "is the cheapest way of effectuating a transaction;" ERA, stating that reinstating the written confirmation method will "help balance the additional costs" incurred due to the expansion of the express verifiable authorization requirement).

[349] *See, e.g.*, NAAG-NPRM at 49.

another piece of "junk mail,"[350] and recommended that the Rule be amended to specifically require that any confirmation document sent pursuant to this method of authorization be clearly and conspicuously labeled as such.[351] NAAG also suggested that, if reinstated, the written confirmation method should not be considered a "verifiable" means of obtaining consumers' authorization in circumstances when the consumer is already vulnerable, such as when the goods or services to be paid for are offered in conjunction with a "free-to-pay conversion" or "negative option feature," or when the seller or telemarketer has preacquired account information prior to the initiation of the call.[352] MPA suggested that perhaps this method could be reinstated if used in the sale of goods or services for which a liberal refund policy exists.[353] NAAG raised the concern that there might exist a material inconsistency between the disclosures made in the sales portion of the call and those sent as part of a post-call confirmation.[354]

In response to this range of comment, the Commission has decided to reinstate the written confirmation method of obtaining express verifiable authorization, with certain modifications. After balancing the concerns enunciated by consumer groups against industry's strongly-stated desire to reinstate this economical means of obtaining express verifiable authorization, the Commission has determined to modify the provision to enhance the likelihood that consumers will receive these written confirmations in a timely manner and will recognize the confirmations as important documents that should not be thrown away unopened. The amended Rule continues to require that the written confirmation disclose all of the information contained in § 310.3(a)(3)(ii)(A)-(G), as well as a statement of the procedures by which the customer can obtain a refund from the seller or telemarketer or charitable organization in the event the confirmation is inaccurate. However, the amended Rule requires that the written confirmation be "clearly and conspicuously labeled" as such, on the outside of the envelope in which it is sent, and that it be sent to the customer by first class mail[355] prior to the submission for payment of the customer's or donor's billing information.[356] The Commission will continue to monitor the use of the post-sale written confirmation method of express verifiable authorization and may revisit this issue in a subsequent Rule Review should circumstances warrant.

The amended Rule also proscribes the use of the post-sale method of authorization when the goods or services that are the subject of the transaction are offered in conjunction with a "free-to-pay conversion" feature and preacquired account information. The record is replete with evidence, detailed in the section below discussing new § 310.4(a)(6), that "free-to-pay conversion" offers, particularly when coupled with the use of preacquired account information, have often resulted in unauthorized charges to consumers.[357] Given this evidence, coupled with NAAG's observation that "[a] consumer who does not believe they entered into a transaction would be less likely to even open mail from a company whose offer he or she had recently 'declined,'"[358] the Commission will require that authorization in such situations must be obtained pursuant to either § 310.3(a)(3)(i) or (ii).

§ 310.3(a)(4) — Prohibition of false and misleading statements to induce the purchase of goods or services or a charitable contribution

The only proposed modification of this provision in the NPRM was to expand it, pursuant to the mandate of the USA PATRIOT Act, to encompass misrepresentations made to induce a charitable contribution.[359] The Commission received few comments on this section, and none opposing this proposed expansion.[360] Therefore, the Commission adopts the wording of proposed § 310.3(a)(4) unchanged in the amended Rule.

§ 310.3(b) — Assisting and facilitating

Section 310.3(b) of the original Rule prohibits a person from providing substantial assistance or support to any seller or telemarketer when that person knows or consciously avoids knowing that the seller or telemarketer is violating certain provisions of the Rule. During the Rule Review, the Commission received comments from consumer protection and law enforcement groups who argued that the "conscious avoidance" standard adopted in the original Rule should be modified to a "knew or should have known standard."[361] The Commission noted that it continued to support the "conscious avoidance" standard, believing that such a standard is appropriate "in a situation where a person's liability to pay redress or civil penalties for a violation of this Rule depends on the wrongdoing of another person."[362] Although the provision was retained in the proposed Rule without amendment, its coverage was expanded to cover assisting and facilitating in the solicitation of charitable contributions pursuant to the USA PATRIOT Act. The Commission invited additional comment on, and proposed alternatives to, the assisting and facilitating standard.[363]

In response to the NPRM, VISA noted that although this provision was retained unchanged in the proposed Rule, "the expanded scope of the Proposed Rule, including provisions that conflict with the GLBA privacy rules, could require financial institutions to police the activities of third parties, many of whom are themselves regulated entities."[364] The Commission believes that the modifications to the preacquired account telemarketing provisions in the amended Rule obviate the concerns expressed by VISA.[365]

ARDA expressed its support for retaining the "conscious avoidance" standard, endorsing the rationale

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[350] *Id.* (noting that such confirmations "tend to go unnoticed or unrecognized by consumers, thereby failing in their function of 'authorizing' a payment").

[351] *Id.*

[352] *See* June 2002 Tr. III at 42-43 (NAAG).

[353] *Id.* at 44 (MPA).

[354] *Id.* at 48-49 (NAAG).

[355] The requirement that such confirmations be sent via first class mail should cause industry to incur no additional expense. According to the DMA representative at the June 2002 Forum, federal postal regulations require that such confirmations be sent via first class mail. *See* June 2002 Tr. III at 45; *see also* June 2002 Tr. III at 47 (CCC) (noting that company practice is to ensure that written confirmations are clearly and conspicuously labeled). This change to the Rule, then, will merely echo the postal regulations, which require that personalized business correspondence be sent via first class mail. *See* 39 CFR 3001.68, App. A.

[356] The Commission has declined, at this time, to follow the suggestion by Capital One that the written confirmation method should be reinstated, "provided that the confirmation is delivered 30 days prior to submission for payment, and the customer is permitted to repudiate the sale within that time by calling a toll-free number," because the record provides too little evidence to suggest that these additional protections are necessary to prevent consumer injury. *See* Capital One-NPRM at 8.

[357] *See* discussion of amended Rule § 310.4(a)(6), below. *See also* June 2002 Tr. III at 42-43 (NAAG).

[358] NAAG-NPRM at 49.

[359] Proposed Rule § 310.3(a)(4). *See* 67 FR 4508.

[360] *See, e.g.*, Make-A-Wish-NPRM, *passim* (detailing complaints received by Make-A-Wish, which does not solicit donations by telephone, regarding fraudulent telemarketers claiming or implying that they are calling from or affiliated with Make-A-Wish).

[361] *See* 67 FR at 4508-09.

[362] *Id.* at 4509.

[363] *Id.*

[364] VISA-NPRM at 12.

[365] *See* discussion of amended Rule §§ 310.4(a)(5) and (6) below.

enunciated by the Commission in the NPRM for the heightened knowledge requirement.[366] But AARP reiterated its concern that the conscious avoidance standard places too high a burden on law enforcement, and urged the Commission to substitute a "knew or should have known" standard for the assisting and facilitating provision.[367] NACAA also urged the Commission to adopt a "knew or should have known" standard in the amended Rule.[368] NAAG made a similar recommendation, noting that the current standard results in "both federal and state authorities [being] unduly hampered in trying to reduce telemarketing fraud."[369] NAAG also noted that this provision is critical in addressing the participation of those United States-based entities, such as sellers of victim lists, fulfillment house operators, and credit card launderers, who provide necessary assistance to fraudulent telemarketers, many of whom have begun operating from outside the country.[370]

The Commission declines, on the record evidence, to lower the standard for assisting and facilitating under the Rule. The Commission continues to believe the "conscious avoidance" standard is the appropriate one in instances when liability to pay redress or civil penalties rests on another person's violation of the Rule. Further, the Commission believes the "conscious avoidance" standard is one that can be met in situations where third parties provide substantial assistance to fraudulent telemarketers. As stated in the original SBP, this standard "is intended to capture the situation where actual knowledge cannot be proven, but there are facts and evidence that support an inference of deliberate ignorance."[371] In the hypothetical situations posed in NAAG's comment, the Commission believes it would be possible to demonstrate such "deliberate ignorance" on the part of, for example, a fulfillment house that ships only inexpensive prizes on behalf of a telemarketer about whom it receives numerous complaints. The Commission itself has brought several cases successfully using the assisting and facilitating provision, and has found the provision to be a useful tool in combating fraudulent telemarketing.[372]

§ 310.3(c) — Credit card laundering

In the NPRM, the Commission retained the original Rule provision addressing credit card laundering, but noted that the coverage of the provision in the proposed Rule would expand to cover credit card laundering in the solicitation of charitable contributions, pursuant to the mandate of the USA PATRIOT Act.[373] Although the proposed Rule was issued with this provision unmodified, the Commission expressed concern that the provision's "usefulness may be unduly restricted by the phrases '[e]xcept as expressly permitted by the applicable credit card system,' in the preamble to § 310.3(c), and 'when such access is not authorized by the merchant agreement or the applicable credit card system,' in § 310.3(c)(3)."[374]

Having received no comment regarding the credit card laundering provision generally, or regarding the Commission's specific concerns, the Commission has determined to retain this provision in its original form. The Commission will continue to monitor its effectiveness, however, and may reconsider modifications at the next Rule Review.

§ 310.3(d) — Prohibited deceptive acts or practices in the solicitation of charitable contributions

Pursuant to § 1011(b)(1) of the USA PATRIOT Act, the Commission proposed in the NPRM to include in the Rule new prohibited misrepresentations in the solicitation of charitable contributions.[375] The amended Rule retains § 310.3(d) unchanged, with the following exceptions. First, the phrase "after any administrative or fundraising expenses are deducted" has been deleted from § 310.3(d)(4). The Commission believes that the provision is clearer absent this qualifying phrase, and thus has stricken it in the amended Rule. Second, § 310.3(d)(6), the prohibited misrepresentation regarding advertising sales has been deleted. As discussed below, in the section addressing § 310.6(b)(7), the Commission has determined to exempt from the Rule's coverage business-to-business calls to induce a charitable solicitation. As a result, the prohibition against misrepresentations regarding the sale of advertising, which would occur in a business-to-business context, is no longer necessary. Finally, proposed § 310.3(d)(7), prohibiting misrepresentations regarding a charitable organization's or telemarketer's affiliation with, or endorsement or sponsorship by, any person or government entity, is renumbered in the amended Rule as § 310.3(d)(6).

Section 310.3(d) prohibits misrepresentations regarding certain material information that a telemarketer might choose to convey to a donor to induce a charitable contribution.[376] The goal of the prohibition on these misrepresentations is to ensure that donors solicited for charitable contributions are not deceived, a purpose squarely in line with the mandate of the USA PATRIOT Act, which directed the Commission to include "fraudulent charitable solicitations" in the deceptive practices prohibited by the TSR.[377] Deception occurs if there is a representation, omission, or practice that is likely to mislead consumers acting reasonably under the circumstances, and the representation, omission, or practice is material.[378] As set forth in the NPRM, the Commission believes that if any of the items listed in this section are misrepresented, donors are likely to be misled, as false representations of material facts are likely to mislead.[379] Moreover, the Commission's enforcement experience shows that often such representations are express, and therefore presumptively material. If implied, such representations are still likely to influence a donor's decision whether to contribute. Therefore, "misrepresentation of any of these [] categories of material information is deceptive, in violation of section 5 of the FTC Act."[380]

In response to the NPRM, some commenters expressed their general support for the USA PATRIOT Act amendments, which extended the Rule's coverage to for-profit telemarketers soliciting charitable donations. AARP, for example, noted its support for the general purposes of the USA PATRIOT Act, stating that the amendments would

[366] ARDA-NPRM at 6.

[367] AARP-NPRM at 8.

[368] NACAA-NPRM at 8.

[369] NAAG-NPRM at 56.

[370] *Id.* (suggesting that liability for those who assist and facilitate is particularly important when the fraudulent telemarketer holds no assets in the United States).

[371] 60 FR at 43852.

[372] *See* 67 FR at 4509, n.155. *See also FTC v. Allstate Bus. Distrib'n. Ctr., Inc.*, No. 00-10335AHM (CTX) (C.D. Cal. 2001); *FTC v. Sweet Song Corp.*, No. CV-97-4544 LGB (Jgx) (C.D. Cal. 1997); *FTC v. Walton* (d/b/a Pinnacle Fin. Servs.), No. CIV98-0018 PCT SMM (D. Ariz. Jan. 1998).

[373] *See* 67 FR at 4509.

[374] *Id.*

[375] *Id.* at 4509-10 (discussing the reasoning behind the prohibited misrepresentations included in proposed Rule § 310.3(d)).

[376] Amended Rule § 310.3(d)(1)-(7).

[377] USA PATRIOT Act § 1011(b)(1).

[378] *See Cliffdale Assocs., Inc.*, 103 F.T.C. 110, 165, *appeal dismissed sub nom., Koven v. FTC*, No. 84-5337 (11th Cir. 1984).

[379] *See Thompson Med. Co.*, 104 F.T.C. 648, 818 (1984), *aff'd* 791 F.2d 189 (D.C. Cir. 1986), *cert. denied*, 479 U.S. 1086 (1987).

[380] 67 FR at 4510.

prevent fraudulent charitable solicitations while still allowing "legitimate fundraising appeals."[381] Similarly, NCL noted that the new provisions in the TSR regarding for-profit fundraisers will be "very helpful in curbing deceptive and abusive practices."[382]

Very few comments were received specifically on § 310.3(d) of the proposed Rule. One such comment, from NCL, noted that "[t]he proposed list of prohibited practices covers most of the common abuses that are reported by consumers and businesses."[383] NCL did suggest adding an additional prohibited misrepresentation on "sound-alikes," or the use of a name similar or identical to that of a legitimate charity in an attempt to benefit from that charity's good will.[384] Similarly, Make-A-Wish proposed prohibiting misrepresentations of the "identity" of the entity on whose behalf the charitable solicitation is being sought.[385] NAAG and NASCO suggested that the Commission clarify that proposed § 310.3(d)(7), which prohibits misrepresentations regarding "[a] seller's or telemarketer's affiliation with, or endorsement or sponsorship by, any person or government entity," would prohibit misrepresentations of a seller's or telemarketer's affiliation with any charity.[386] The Commission believes that proposed § 310.3(d)(7), renumbered as § 310.3(d)(6) in the amended Rule, is broad enough to prohibit the "sound-alike" misrepresentation NCL raised, as well as to prohibit a misrepresentation regarding one's affiliation with any charity. Therefore, the Commission declines to add a further misrepresentation to specifically address the "sound-alike" scenario, or add the "identity" of the charity to the prohibited misrepresentations.

NAAG and NASCO also proposed one further modification: the addition of a prohibited misrepresentation of "[t]he address or location of the charitable organization, and where the organization conducts its activities."[387] NAAG stated that the addition of such a provision would ensure that telemarketers do not misrepresent that the charities on whose behalf they are soliciting are "local" or that their activities are local, since the local character of a charity or its programs often is material to prospective donors. According to NAAG, because many prospective donors prefer to support organizations that will benefit their own community, fundraisers sometimes take advantage of that sentiment by using a local post office box or other local address as their return address, to make it seem as if the charity is based close to the donors.[388]

The Commission believes that any misrepresentation of the charitable organization's location, or the location where the funds are to be used, would likely violate § 310.3(d)(3), which prohibits misrepresentation of the "purpose for which any charitable contribution will be used." Therefore, the Commission declines to include a specific prohibited misrepresentation regarding the address or location of a charity.

D. Section 310.4 — Abusive Telemarketing Acts or Practices.

The Telemarketing Act authorizes the Commission to prescribe rules "prohibiting deceptive telemarketing acts or practices *and other abusive telemarketing acts or practices.*"[389] The Act does not define the term "abusive telemarketing act or practice." It directs the Commission to include in the TSR provisions prohibiting three specific "abusive" telemarketing practices, namely, for any telemarketer to: 1) "undertake a pattern of unsolicited telephone calls which the reasonable consumer would consider coercive or abusive of such consumer's right to privacy;" 2) make unsolicited phone calls to consumers during certain hours of the day or night; and 3) fail to "promptly and clearly disclose to the person receiving the call that the purpose of the call is to sell goods or services and make such other disclosures as the Commission deems appropriate, including the nature and price of the goods and services."[390] The Act does not limit the Commission's authority to address abusive practices beyond these three practices legislatively determined to be abusive.[391] Accordingly, the Commission adopted a Rule that addresses the three specific practices mentioned in the statute, and, additionally, five other practices that the Commission determined to be abusive under the Act.

Each of the three abusive practices enumerated in the Act implicates consumers' privacy. In fact, with respect to the first of these practices, the explicit language of the statute directs the FTC to regulate "calls which the reasonable consumer would consider coercive or abusive of such consumer's *right to privacy.*"[392] Similarly, by directing that the Commission regulate the times when telemarketers could make unsolicited calls to consumers in the second enumerated item,[393] Congress recognized that telemarketers' right to free speech is in tension with consumers' right to privacy within the sanctity of their homes, but that a balance must be struck between the two that meshes with consumers' expectations while not unduly burdening industry. The calling times limitation protects consumers from telemarketing intrusions during the late night and early morning, when the toll on their privacy from such calls would likely be greatest. The third enumerated practice[394] also relates to privacy, in that it requires the consumer be given information promptly that will enable him to decide whether to allow the infringement on his time and privacy to go beyond the initial invasion. Congress provided authority for the Commission to curtail these practices that impinge on consumers' right to privacy but are not likely deceptive under FTC jurisprudence. This recognition by Congress, that even non-deceptive telemarketing business practices can seriously impair consumers' right to be free from harassment and abuse, and its directive to the Commission to rein in these tactics lie at the heart of § 310.4 of the TSR.

The practices not specified as abusive in the Act, but determined by the Commission to be abusive and thus prohibited in the original rulemaking are: (1) threatening or intimidating a consumer, or using profane or obscene language; (2) "causing any telephone to ring, or engaging any person in telephone conversation, repeatedly or continuously with intent to annoy, abuse, or harass any person;" (3) requesting or receiving payment for credit repair services prior to delivery and proof that such services have been rendered; (4) requesting or receiving payment for recovery services prior to delivery and proof that such services

[381] AARP-NPRM at 4.
[382] NCL-NPRM at 2.
[383] *Id.* at 5.
[384] *Id.*
[385] Make-A-Wish-NPRM at 5.
[386] NAAG-NPRM at 53. *See also* NASCO-NPRM at 7.
[387] NAAG-NPRM at 53.
[388] *Id.*
[389] 15 U.S.C. 6102(a)(1) (emphasis added).
[390] 15 U.S.C. 6102(a)(3).
[391] *See* KENNETH CULP DAVIS & RICHARD J. PIERCE, JR., ADMINISTRATIVE LAW TREATISE § 3.2 (3d ed. 1994) (noting that agencies have the power to "fill any gaps" that Congress either expressly or implicitly left to the agency to decide pursuant to the decision in *Chevron v. Natural Res. Def. Council*, 467 U.S. 837 (1984)). It is, therefore, permissible for agencies to engage in statutory construction to resolve ambiguities in laws directing them to act, and courts must defer to this administrative policy decision.
[392] 15 U.S.C. 6102(a)(3)(A) (emphasis added).
[393] 15 U.S.C. 6102(a)(3)(B).
[394] 15 U.S.C. 6102(a)(3)(C).

have been rendered; and (5) "requesting or receiving payment for an advance fee loan when a seller or telemarketer has guaranteed or represented a high likelihood of success in obtaining or arranging a loan or other extension of credit."

The first two of these are directly consistent with the Act's emphasis on privacy protection, and with the intent, made explicit in the legislative history, that the TSR address these particular practices.[395] In the SBP for the original Rule, the Commission stated, with respect to the prohibition on threats, intimidation, profane and obscene language, that these tactics "are clearly abusive in telemarketing transactions."[396] The Commission also noted that the commenters supported this view, and specifically cited the fact that "threats are a means of perpetrating a fraud on vulnerable victims, and [that] many older people can be particularly vulnerable . . . ."[397]

The remaining three abusive practices identified in the Rule—relating to credit repair services, recovery services, and advance fee loan services—were included in the Rule under the Telemarketing Act's grant of authority for the Commission to prescribe rules prohibiting other unspecified abusive telemarketing acts or practices. The Act gives the Commission broad authority to identify and prohibit additional abusive telemarketing practices beyond the specified practices that implicate privacy concerns,[398] and gives the Commission discretion in exercising this authority.[399]

As noted above, some of the practices prohibited as abusive under the Act flow directly from the Telemarketing Act's emphasis on protecting consumers' privacy. When the Commission seeks to identify practices as abusive that are less distinctly within that parameter, the Commission now thinks it appropriate and prudent to do so within the purview of its traditional unfairness analysis, as developed in Commission jurisprudence[400] and codified in the FTC Act.[401] This approach constitutes a reasonable exercise of authority under the Telemarketing Act, and provides an appropriate framework for several provisions of the original Rule. Whether privacy-related intrusions or concerns might independently give rise to a Section 5 violation outside of the Telemarketing Act's purview is not addressed or affected by this analysis.

The abusive practices relating to credit repair services, recovery services, and advance fee loan services each meet the criteria for unfairness. An act or practice is unfair under Section 5 of the FTC Act if it causes substantial injury to consumers, if the harm is not outweighed by any countervailing benefits, and if the harm is not reasonably avoidable.[402] An important characteristic common to credit repair services, recovery services, and advance fee loan services is that in each case the offered service is fundamentally bogus. It is the essence of these schemes to take consumers' money for services that the seller has no intention of providing and in fact does not provide. Each of these schemes had been the subject of large numbers of consumer complaints and enforcement actions,[403] and in each case caused substantial injury to consumers. Amounting to nothing more than outright theft, these practices conferred no potentially countervailing benefits. Finally, having no way to know these offered services were illusory, consumers had no reasonable means to avoid the harm that resulted from accepting the offer. Thus, these practices meet the statutory criteria for unfairness, and accordingly, the remedy imposed by the Rule to correct them is to prohibit requesting or receiving payment for these services until after performance of the services is completed.

§ 310.4(a) — Abusive conduct generally

Section 310.4(a) of the original Rule sets forth specific conduct that is considered to be an "abusive telemarketing act or practice" under the Rule. None of the comments in the Rule Review recommended that changes be made to the original wording of §§ 310.4(a)(1)-(3); nor had the Commission's enforcement experience revealed any difficulty with these provisions that would warrant amendment.[404] Although one

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[395] "With respect to the bill's reference to 'other abusive telemarketing activities' . . . the Committee intends that the Commission's rulemaking will include proscriptions on such inappropriate practices as threats or intimidation, obscene or profane language, refusal to identify the calling party, continuous or repeated ringing of the telephone, or engagement of the called party in conversation with an intent to annoy, harass, or oppress any person at the called number. The Committee also intends that the FTC will identify other such abusive practices that would be considered by the reasonable consumer to be abusive and thus violate such consumer's right to privacy." H.R. REP. NO. 103-20 at 8 (1993).

[396] 60 FR at 30415.

[397] *Id.*

[398] 15 U.S.C. 6102(a)(1). The ordinary meaning of "abusive" is (1) "wrongly used; perverted; misapplied; catachrestic;" (2) "given to or tending to abuse,"(which is in turn defined as "improper treatment or use; application to a wrong or bad purpose"). Webster's International Dictionary, Unabridged 1949.

[399] 15 U.S.C. 6102(a)(1).

[400] *See* Letter from the FTC to Hon. Wendell Ford and Hon. John Danforth, Committee on Commerce, Science and Transportation, United States Senate, Commission Statement of Policy on the Scope of Consumer Unfairness Jurisdiction, appended to *Int'l Harvester Co.*, 104 F.T.C. 949, 1064 (1984); Letter from the FTC to Hon. Bob Packwood and Hon. Bob Kasten, Committee on Commerce, Science and Transportation, United States Senate, reprinted in FTC Antitrust & Trade Reg. Rep. (BNA) No. 1055, at 568-70 (Mar. 5, 1982); *Orkin Exterminating Co., Inc. v. FTC*, 849 F.2d 1354, 1363-68, *reh'g denied*, 859 F.2d 928 (11th Cir. 1988), *cert. denied*, 488 U.S. 1041 (1989).

[401] 15 U.S.C. 45(n).

[402] *Id.*

[403] During 1995 and 1996, the Commission brought or settled lawsuits against numerous individuals and companies involved in nearly a dozen recovery room operations. *See, e.g., FTC v. Meridian Capital Mgmt.*, No. CV-S-96-63-PMP (RLH) (D. Nev. filed Nov. 20, 1996). The Commission's efforts against recovery rooms have borne fruit. The volume of consumer complaints concerning recovery rooms logged into the FTC Telemarketing Complaint System in 1996 plummeted to 153—less than one-fifth the record high volume of 869 complaints recorded in 1995. *See* "1995-1996 Staff Summary of FTC Activities Affecting Older Americans" (Mar. 1998). Complaints about "recovery" schemes have continued to decline dramatically, from a number three ranking in 1995 to a number twenty-five ranking in 1999, while complaints about credit repair have remained at a relatively low level since 1995 (steadily ranking about number twenty-three or twenty-four in terms of number of complaints received by the NFIC). NCL-RR at 11. The Commission continues to take action against fraudulent credit repair schemes; for example, in August 2000, the FTC, the Department of Justice and forty-seven other federal, state and local law enforcement and consumer protection agencies surfed the Web looking for illegal scams that promise consumers that they can restore their creditworthiness for a fee. Over 180 websites were put on notice that their credit repair claims may violate state and federal laws. *See* "Surf's Up for Crack Down on "Credit Repair" Scams," FTC press release dated Aug. 21, 2000). Unfortunately, complaints about advance fee loan schemes rose from a number fifteen ranking in 1995 to the number two ranking in 1998, with about 80 percent of the advance fee loan companies reported to the NFIC located in Canada. NCL-RR at 12. RR Tr. at 378. The Commission and the state Attorneys General continue to launch law enforcement "sweeps" targeting corporations and ind ividuals that promise loans or credit cards for an advance fee, but never deliver them. A sweep was announced June 20, 2000, involving five cases filed by the FTC, 13 actions taken by state officials, and three cases filed by Canadian law enforcement authorities. *See* "FTC, States and Canadian Provinces Launch Crackdown on Outfits Falsely Promising Credit Cards and Loans for an Advance Fee," FTC press release dated June 20, 2000. Among the most recent FTC cases targeting advance fee loans, four involved advance fee credit card schemes: *FTC v. Fin. Servs. of N. Am.*, No. 00-792 (GEB) (D.N.J. filed June 9, 2000); *FTC v. Home Life Credit*, No. CV00-06154 ĆM (Ex) (C.D. Cal. filed June 8, 2000); *FTC v. First Credit Alliance*, No. 300 CV 1049 (D. Conn. filed June 8, 2000); and *FTC v. Credit Approval Serv.*, No. G-00-324 (S.D. Tex. filed June 7, 2000). In addition, another case against a fraudulent credit card loss protection seller also included elements of illegal advance fee credit card fees. *FTC v. First Capital Consumer Membership Servs., Inc.*, Civil No. 00-CV-0905C(F) (W.D.N.Y. filed Oct. 23, 2000).

[404] Section 310.4(a)(1) prohibits as an abusive practice "threats, intimidation, or the use of profane

commenter suggested amendments to § 310.4(a)(4), the Commission determined that no amendment was needed to the language of that provision.[405] Therefore, the language in these provisions was unchanged in the proposed Rule.

As noted in the NPRM, however, the Rule amendments mandated by the USA PATRIOT Act expand the reach of § 310.4(a) to encompass the solicitation of charitable contributions. The section begins with the statement "It is an abusive telemarketing act or practice and a violation of this Rule for any seller or telemarketer to engage in [the conduct specified in subsections (1) through (6) of this provision of the Rule]."[406] The proposed Rule modified the definitions of "telemarketing," and, by association, "telemarketer," to encompass the solicitation of charitable contributions. Consequently § 310.4(a) of the proposed Rule would have applied to all telemarketers, including those engaged in the solicitation of charitable contributions. Each of the prohibitions in § 310.4(a) will therefore now apply to those telemarketers soliciting on behalf of either sellers or charitable organizations. As noted in the NPRM, the Commission believes it unlikely that §§ 310.4(a)(2)-(4) will have any significant impact on telemarketers engaged in the solicitation of charitable contributions, since those sections all deal with practices that are commercial in nature and not associated with charitable solicitations. Sections 310.4(a)(1), (5), (6), (7) and (8) of the proposed Rule, however, addressed practices that are not necessarily confined to telemarketing to induce purchases of goods or services. They therefore may have had an impact upon telemarketers engaged in the solicitation of charitable contributions.

The Commission received many comments discussing the proposed modifications to § 310.4(a), and significant time was devoted to these issues at the June 2002 Forum. A summary of the major points on the record regarding the proposed amendments is provided below.

§ 310.4(a)(1) — Threats and intimidation

Section 310.4(a)(1), unchanged in the proposed Rule, specifies that it is an abusive telemarketing practice to engage in threats, intimidation, or the use of profane or obscene language. None of the comments in response to the NPRM recommended that changes be made to the wording of § 310.4(a)(1), although ICFA did request clarification of the term "intimidation," arguing that "a person could potentially claim to have been 'intimidated' simply because a pre-need caller suggested meeting to discuss funeral arrangements."[407] The Commission believes that under the language of the Rule, which focuses on the telemarketer's behavior, to "engage in . . . intimidation" could not reasonably be extended to cover the situation where a telemarketer merely invites a consumer to discuss funeral arrangements, even if the person called finds the prospect of funeral planning an "intimidating" one. Rather, as the Commission noted in the TSR Compliance Guide, this provision is meant to prohibit "intimidation, including acts which put undue pressure on a consumer, or which call into question a person's intelligence, honesty, reliability or concern for family."[408] The Commission believes further clarification is unnecessary, and thus declines to include in the amended Rule a definition of "intimidation." Therefore, the language in this provision remains unchanged in the amended Rule. However, the USA PATRIOT Act expansion of the TSR brings within the ambit of this provision telemarketers soliciting charitable contributions.

§ 310.4(a)(2) — Credit repair

Section 310.4(a)(2) prohibits requesting or receiving a fee or consideration for goods or services represented to improve a person's creditworthiness until: 1) the time frame within which the seller has represented that the promised services will be provided has expired; and 2) the seller has provided the consumer with evidence that the services were successful—that is, that the consumer's creditworthiness has improved. No change to this section was incorporated in the proposed Rule, except to note its expanded coverage as a result of the USA PATRIOT Act.[409] The only comment received in response to the NPRM was from DBA, which requested that debt collectors be specifically exempted from compliance with this section.[410] As DBA itself noted, debt collection activities do not fall within the Rule's ambit in any event because they are outside the definition of "telemarketing."[411] Therefore, it is unnecessary to exempt debt collectors from compliance with this provision.

§ 310.4(a)(5) — Disclosing or receiving, for consideration, unencrypted consumer account numbers for use in telemarketing

The Commission has added a new provision, § 310.4(a)(5), which specifies that it is an abusive practice and a violation of the Rule to disclose or receive, for consideration, unencrypted consumer account numbers for use in telemarketing.

As mentioned above, since the original Rule was promulgated, consumer concern over encroachments on their privacy has become widespread. One response to privacy concerns was passage of the GLBA[412] and its related regulations,[413] under which financial institutions, and the third parties with which they do business, may provide consumer account information to other third parties only in encrypted form for marketing purposes. To do otherwise is not only a violation of the GLBA and its related regulations,[414] but is construed by consumers as a breach of the financial institution's promise to consumers to keep the consumer's account information confidential and secure.[415]

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or obscene language." Section 310.4(a)(2) prohibits requesting advance payment for so-called "credit repair" services. Section 310.4(a)(3) prohibits requesting advance payment for the recovery of money lost by a consumer in a previous telemarketing transaction.

[405] Section 310.4(a)(4) prohibits requesting advance payment for obtaining a loan or other extension of credit when the seller or telemarketer has represented a high likelihood that the consumer will receive the loan or credit. NCL reported in its Rule Review comment that the number of complaints it received about such advance fee loan schemes had risen steeply in the five years since the Rule was promulgated. NCL also speculated that consumers may be confused about whether and under what circumstances fees are legitimately required for different types of loans, as evidenced by the numerous complaints about advance fee credit cards. NCL-RR at 11. The Commission noted in the NPRM its belief that the language of § 310.4(a)(4) already prohibits such advance fee credit card offers via telemarketing and that numerous federal and state law enforcement efforts have been directed at such offers. *See* discussion at 67 FR at 4510.

[406] Original and amended Rule § 310.4(a).

[407] ICFA-NPRM at 3.

[408] TSR Compliance Guide at 23 (noting that "[r]epeated calls to an individual who has declined to accept an offer may also be an act of intimidation").

[409] 67 FR at 4512 (noting that "[i]t is unlikely that [this section] will have any significant impact on telemarketers engaged in the solicitation of charitable contributions. . .").

[410] DBA-NPRM at 2-4.

[411] *Id.*

[412] Gramm-Leach-Bliley Act, see note 64 above.

[413] *See* 16 CFR 313.65 (2000) (FTC's Privacy Regulation). *See also* 17 CFR 160; 12 CFR 332; 12 CFR 715; 12 CFR 40; 12 CFR 573; and 17 CFR 248.

[414] *See, e.g.*, 12 CFR 313.12.

[415] *See* AARP-Supp. at 2 (describing the results of a survey AARP conducted in which the majority of consumers reported that they did not believe telemarketers could or should freely share their account information). *See also* Dave Finlayson (Msg. 491) ("I will cease doing business with any firm which gives out my personal private information."); BL (Msg. 1175) ("I also agree that

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Indeed, trading in unencrypted consumer account numbers has been uniformly condemned by virtually all parties who participated in this rulemaking proceeding. Although there was substantial debate regarding the Commission's proposal for a blanket prohibition on the transfer or receipt of consumers' billing information (*i.e.*, "preacquired account information"),[416] there was no disagreement among commenters and forum participants about the notion that trafficking in lists of consumer account numbers was improper, in many cases illegal, and should be a violation of the Rule.[417] As ERA explained during the forum:

> [I]f there is a transfer of consumer information without knowledge of and prior to the consumers' consent, which would encompass, for example, your scenario where a list is compiled and a marketer [sold] its list with its credit card numbers to another marketer without telling the consumers on that list that they sold the list of account numbers, I think everyone at this table would agree . . . that this is a violation. . . . We've said in our comments that we would agree to a ban on that. Legitimate marketers don't do that. They don't sell consumer credit card numbers for money.[418]

Given that there is no legitimate reason to purchase unencrypted credit card numbers, the Commission believes there is a strong likelihood that telemarketers who engage in this practice will misuse the information in a manner that results in unauthorized charges to consumers. This conclusion is consistent with the Commission's law enforcement experience.[419] Consumers cannot avoid the injury because they likely are unaware that their credit card numbers have been purchased and that a telemarketer possesses that information when they receive a telemarketing call. In addition, there is no evidence on the record of any countervailing benefits to consumers or competition by trafficking in lists of account numbers. As a result, the Commission concludes that the practice of selling unencrypted lists of credit card numbers is likely to cause substantial and unavoidable consumer injury in the form of unauthorized charges without any countervailing benefits. Thus, the Commission has determined to add Section 310.4(a)(5). This provision is consistent with the basic prohibition in the GLBA, and in essence, extends the ban on this practice beyond financial institutions and ensures that all sellers and telemarketers subject to the TSR are prohibited from this practice.

The prohibition in § 310.4(a)(5) is not limited to compilation and disclosure of lists of account numbers. Rather, any disclosure (or receipt) of unencrypted account information violates the Rule, unless the disclosure is for purposes of processing a payment for a transaction to which the consumer has consented after receiving all disclosures and other protections of the Rule. A seller or telemarketer could not, for example, provide or receive account numbers one at a time in order to circumvent this provision. Nor could a telemarketer obtain account information from consumers on behalf of one seller, and then retain it for sale or disclosure to another seller in another telemarketing campaign.[420]

By "unencrypted," the Commission means the actual account number, or lists of actual account numbers, or encrypted information with a key to unencrypt the data.[421] "Consideration" is not limited to cash payment for a list of account numbers. "Consideration" can take a variety of forms, including receiving a percentage of every "sale" using the unencrypted account information.

This provision allows processing a properly obtained payment for goods or services pursuant to a transaction. In addition, pursuant to the USA PATRIOT Act's expansion of the TSR to cover charitable solicitations, the provision also allows for the disclosure or receipt of a donor's account number to process a payment for a charitable contribution pursuant to a transaction. By "transaction," the Commission means a telemarketing transaction that complies with all applicable sections of the Rule, including new § 310.4(a)(6), discussed below, which prohibits any seller or telemarketer from causing a charge to be placed against a customer's or donor's account without that customer's or donor's express informed consent to the charge.[422]

§ 310.4(a)(6) — Causing a charge to be submitted for payment without the consumer's express informed consent

In the NPRM, the Commission proposed a prohibition on "receiving from any person other than the consumer or donor for use in telemarketing any consumer's or donor's billing information, or disclosing any consumer's or donor's billing information to any person for use in telemarketing."[423] This proposed provision was prompted by extensive comments during the Rule Review concerning the severity and the scope of harm to consumers related to

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they should not get a credit card or other account number except from the consumer who chooses to deal with them. . . . This should include not SELLING (not just sharing as stated in our newspaper article) these numbers."); Anonymous (Msg. 3457) ("This is not what any reasonable person would consider "public information.'. . . Why would ANYONE consider this information that they can "share" without the customer's express permission?").

[416] Over 50 of the major organizational commenters addressed the issue of preacquired account telemarketing, as did over 200 consumer commenters. In addition, a session of the June 2002 Forum was dedicated to the topic, and generated extensive discussion. *See* June 2002 Tr. II at 116-212.

[417] *See, e.g.*, ERA/PMA-Supp. at 14-15; PMA-NPRM at 14; June 2002 Tr. II at 183 (ERA). *See also* ATA-Supp. at 6; NCTA-NPRM at 12 ("[T]he trafficking of customer account information by unscrupulous telemarketers is a legitimate concern."). Also, the GLBA prohibits this practice on the part of financial institutions. 15 U.S.C. 6802(d); and *see, e.g.* 12 CFR 313.12.

[418] June 2002 Tr. II at 183.

[419] *See, e.g., FTC v. J.K. Publ'ns, Inc.*, 99 F. Supp. 2d 1176 (C.D. Cal. 2000) (in which, outside the telemarketing context, defendant purchased unencrypted lists of consumer account numbers, which it used to charge consumers, purportedly for visits to adult websites, despite the fact that many of those charged did not even own computers). In addition, given the evidence that preacquired account telemarketing involving encrypted account information can result in unauthorized charges (as discussed in more detail below), the Commission believes that there is an even greater likelihood of consumer injury when telemarketers have purchased consumers' actual credit card numbers before contacting consumers about an offer.

[420] *See, e.g., FTC v. Capital Club*, No. 94-6335 (D.N.J. 1994). According to the FTC complaint in that case, two companies, National Media and Media Arts, which marketed products through infomercials, allegedly sold or rented their customer lists to third-party service companies that sold products and services such as memberships in shopping and travel clubs. The lists contained customers' names, addresses, and telephone numbers, as well as their credit-card types, account numbers and expiration dates. The lists were provided to the service companies without the customers' knowledge or authorization. Some of the Capital Club defendants' roles included maintaining the lists, marketing them to the service companies, and conducting telemarketing calls on behalf of the service companies, according to the complaint. Industry representatives at the June 2002 Forum registered agreement that the Capital Club scenario would run afoul of a ban on trafficking in consumer account information. *See* June 2002 Tr. II at 193 (ERA) ("[T]hat's exactly the scenario that we're talking about that would be prohibited because when that third-party telemarketer retained that account information, it did so as an agent for the seller, so it was not that telemarketer's account information to begin with. They were capturing that for the seller on whose behalf that call was made, so if that telemarketer were then to call a consumer without knowledge and prior consent and use that credit card information again, that would be the kind of a transfer prior to and without consumer consent that we're talking about.")

[421] This, too, is consistent with the financial privacy regulations issued pursuant to the GLBA. *See* 12 CFR 313.12(c)(1) ("An account number, or similar form of access number or access code, does not include a number or code in an encrypted form, *as long as you do not provide the recipient with a means to decode the number or code.*") (emphasis added).

[422] *See* amended Rule § 310.4(a)(6) and discussion of that provision, below.

[423] Proposed Rule § 310.4(a)(5), 67 FR at 4543.

preacquired account telemarketing.[424] The proposal also arose from the Commission's law enforcement experience in this area, as well as that of the states, which demonstrates the consumer harm that can result from this practice.[425] The comments received in response to the NPRM, however, demonstrate that much preacquired account telemarketing does not necessarily give rise to consumer injury—specifically, unauthorized charges—and in fact may benefit consumers. With this in mind, the Commission has focused more narrowly on the tangible harm, and has crafted precise solutions to the specific abuses evident in instances involving preacquired account information.

Section 310.4(a)(6) of the amended Rule is one of a number of provisions that collectively address the harm caused by certain forms of preacquired account telemarketing. The scope of this section, however, extends beyond the context of preacquired account telemarketing to any instance where the seller or telemarketer causes a charge to be submitted for payment without first obtaining the express informed consent of the customer or donor to be charged, and to be charged using a particular account or payment mechanism. This provision, along with several new definitions (amended Rule § 310.2(o) "free-to-pay conversion," § 310.2(t) "negative option feature," and § 310.2(w) "preacquired account information"), a new provision requiring specific disclosures of material information in any telemarketing transaction involving a negative option feature (amended Rule § 310.3(a)(1)(vii)), and a new provision prohibiting misrepresentations regarding any material aspect of a negative option feature (amended Rule § 310.3(a)(2)(ix)), together are designed to address in a more narrowly-tailored manner the problem originally targeted by the blanket prohibition against receiving account information from any person other than the consumer or disclosing that information for use in telemarketing.

The blanket prohibition proposed in the NPRM, and the issue of preacquired account telemarketing generally, received substantial comment. Consumer groups and law enforcement agencies strongly supported the proposal, citing continued evidence of substantial consumer injury resulting from abusive preacquired account telemarketing practices.[426] Their comments strongly criticized a distinctive feature of preacquired account telemarketing—that is, that it fundamentally changes the customary bargaining relationship between seller and consumer by giving the seller the means to bill charges to the consumer's account without the consumer divulging his or her account number to evidence consent to the transaction.[427]

Industry commenters opposed the proposed provision, making a number of legal and factual arguments. Several industry members suggested that without specific legislative authority, the Commission could not prohibit the transfer of account information under the TSR.[428] A few commenters argued that the Commission lacked record evidence sufficient to support the proposed prohibition.[429] It bears noting that, although business and industry representatives acknowledged during the Rule Review that the practice of preacquired account telemarketing was quite common, maintaining that it was "very important" to them, they provided scant information that would help to quantify the benefits conferred by this practice or better explain how these benefits might outweigh the substantial consumer harm it can cause.[430] By contrast, the record of consumer injury arising from preacquired account telemarketing scenarios was extensive at the time of the Rule Review.[431]

Three arguments echoed throughout virtually all industry comments received in response to the NPRM. First, financial institutions, as well as other industry members, argued that the proposal was unnecessary or improper in light of the enactment of the GLBA and the various regulations thereunder.[432] Specifically, these commenters argued that the issue of releasing account information for marketing purposes already has been dispositively addressed in the GLBA and its implementing regulations, with a different result from that proposed by the Commission in the TSR.[433]

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[424] *See* 67 FR at 4512-14.

[425] *See, e.g., FTC v. Smolev*, No. 01-8922 CIV ZLOCH (S.D. Fla. 2001); *FTC v. Technobrands, Inc.*, No. 3:02 cv 00086 (E.D. Va. 2002); NAAG-NPRM at 30, n.73; Illinois-Supp. *passim*.

[426] AARP-NPRM at 6-7; AARP-Supp. at 4; EPIC-NPRM at 9; Horick-NPRM at 1 (endorsing EPIC's NPRM comment); NAAG-NPRM at 30-41; NCLC-NPRM at 12-13. *See also* Covington-Supp. at 2-5; and NCL-NPRM at 6 ("Checks and money orders are no longer the most common methods of payment in telemarketing complaints made to the NFIC. As NCL noted earlier, demand drafts, credit cards, debit cards, utility bills, and other types of accounts are increasingly used for payments. Sometimes consumers contend that they never provided their account numbers to the telemarketers; many of these complaints say they never even heard of the companies before they received their bills or bank statements.").

[427] NAAG-NPRM at 30; NCL-NPRM at 7. *See also* Covington-Supp. at 2-5.

[428] ATA-NPRM at 18 (arguing that, because the Telemarketing Act made no reference to preacquired account telemarketing, the Commission cannot regulate it); Cendant-NPRM at 6 (similar argument to ATA); CCC-NPRM at 8; DMA-NPRM at 41-42 (arguing that the Commission lacks authority under Telemarketing Act to establish a law violation based on unfairness standard); ERA-NPRM at 20 (same argument as DMA); Green Mountain-NPRM at 29-31; Household Auto-NPRM at 5; PMA-NPRM at 16 (same argument as DMA and ERA). Contrary to these assertions, the Commission has the authority to define and restrict deceptive and abusive telemarketing acts or practices, pursuant to the Telemarketing Act. Moreover, the Commission has analyzed proposed Rule provisions addressing abusive practices under the FTC Act's unfairness standard to narrow, not expand, the scope of activities brought under the purview of the statute. 67 FR at 4511. The unfairness standard requires that several specific elements be met before an act or practice may be deemed "unfair" under the FTC Act. *See* 15 U.S.C. 45(n) and discussion of § 310.4(a) above. If anything, the Commission is taking a more conservative approach in analyzing what constitutes an "abusive practice" than is required under the Telemarketing Act.

[429] DMA-NPRM at 39, 41; Household Auto-NPRM at 5; MPA-NPRM at 21-22.

[430] *See* 67 FR at 4512-14; and June 2002 Tr. II at 211-12 (E. Harrington) ("One of the reasons that the Commission has proposed a prohibition is because it looked very carefully at the record of the request for justification for the practice and found it is sorely wanting. Why this needs to happen, in other words, has been a real mystery to us, why it is that companies should be permitted to get account information from third parties and have it at the time that they call a prospective customer, charge that account information and oftentimes not obtain consent for that.").

[431] *See* 67 FR at 4512-14. Moreover, the evidence continues to mount as the Commission and states continue to bring law enforcement actions involving these practices. *See, e.g.*, NAAG-NPRM at 30, n.73; Minnesota-Supp. *passim*; Illinois-Supp. *passim*.

[432] Advanta-NPRM at 3; Allstate-Supp. at 2; ABA-NPRM at 8; ABIA-NPRM at 1; AFSA-NPRM at 11-12; AmEx-NPRM at 4-5; ATA-Supp. at 5; Assurant-NPRM at 6; BofA-NPRM at 7; Bank One-NPRM at 2-3; Capitol One-NPRM at 8; Cendant-NPRM at 6-7; CBA-NPRM at 9; Citigroup-NPRM at 8-9; CCC-NPRM at 9; CMC-NPRM at 13; Discover-NPRM at 5-6; E-Commerce Coalition-NPRM at 2; Eagle Bank-NPRM at 4; FSR-NPRM at 7-8; Fleet-NPRM at 4-5; Household Auto-NPRM at 5; Household Bank-NPRM at 2, 7-9; Household Finance-NPRM at 2, 5; HSBC-NPRM at 3; KeyCorp-NPRM at 4; MasterCard-NPRM at 7; MBA-NPRM at 3; MBNA-NPRM at 5; Metris-NPRM at 2-4; NRF-NPRM at 21; PCIC-NPRM at 2; VISA-NPRM at 6; Wells Fargo-NPRM at 3; Letter from Reps. Ney, Sandlin, Jones, Cantor, and Shows to Chairman Timothy Muris, dated Apr. 15, 2002; Letter from Sens. Hagel, Johnson, and Carper to Chairman Timothy Muris, dated Apr. 17, 2002. *See also* Letter from Rep. Manzullo to Chairman Timothy Muris, dated Apr. 12, 2002 (suggesting that the blanket prohibition on transferring or receiving billing information "seems excessive"); and Letter from Sen. Inhofe to Chairman Timothy Muris, dated Mar. 22, 2002 (same).

[433] ABA-NPRM at 8; BofA-NPRM at 7; Bank One-NPRM at 2-3; CBA-NPRM at 9; Discover-NPRM at 5. *See also* CMC-NPRM at 14 ("We see no reason why financial institutions should be subject to any more stringent rules in connection with the use of consumer information for telemarketing purposes than for other purposes, and for this reason, we think the Rule should impose no more stringent limits on the sharing of billing information than the

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Commenters noted that the various privacy regulations under the GLBA prohibit sharing account numbers with telemarketers, but provide exceptions for encrypted information, sale of an entity's own product through an agent, and co-branding and affinity programs. Thus, they argued, "since the proposed Rule fails to include these exceptions, it is inconsistent with the GLBA regulations, rendering the regulations irrelevant."[434] NAAG challenged these arguments, pointing out that the goals of the GLBA and the TSR are very different. NAAG expressed the view that the GLBA did not address the economic injury to consumers caused by preacquired account telemarketing, as it was focused on the privacy of account information; thus there is no conflict between the regulations, as they are aimed at different consumer harms.[435] According to NAAG:

> The essential characteristic of [preacquired account telemarketing] is the ability of the telemarketer to charge the consumer's account without traditional forms of consent. . . . The key is how the agreement between a company controlling access to a consumer's account and the telemarketer who preacquired the ability to charge a consumer's account affects the bargaining power between the telemarketer and the consumer. GLBA and implementing regulations do not address this relationship. . . . [Indeed as] a result of the [GLBA and implementing regulations] . . . vendors . . . can still send through charges to consumers' accounts without consumers giving their credit card numbers. . . . This allows the same [preacquired account telemarketing] process to continue. . . .[436]

Another common theme in industry comments on this issue was that the use of preacquired account information in telemarketing provides protection for consumers from identity theft perpetrated by individual telemarketing agents, and assuages consumers' concerns about divulging their account information.[437] According to one such commenter, having consumers provide billing information over the telephone:

> will actually operate to introduce account numbers into broader circulation. As customers provide account numbers, employees of telemarketers, processors and others in the distribution chain may have access to them. This practice will actually increase the chances for unauthorized use. . . . Sophisticated encryption processes keep account numbers out of circulation, and out of the hands of potential unauthorized users.[438]

A number of commenters pointed out that the GLBA implementing regulations assume the confidentiality benefits of transferring encrypted account information so that consumers would not have to provide such information during the marketing transaction.[439] Other commenters noted some contradiction in industry's identity theft argument, suggesting it is illogical to assert that a telemarketer cannot be trusted with a consumer's account information, but that same telemarketer can be trusted to tell the seller truthfully that the consumer has provided express informed consent to the purchase, absent obtaining any part of the account number from the consumer.[440] One such commenter further suggested that the best protection against individual telemarketers perpetrating identity theft is proper screening, training, monitoring and supervision of salespeople.[441] In addition, the vast majority of non-cash transactions in both telemarketing and face-to-face retail situations entail the consumer's disclosure of his or her account number to the seller's representative.[442] The record does not reveal any reason to support the notion that the risk of identity theft is any different in these transactions than in transactions where the seller has opted to make use of preacquired account information.

The third recurring theme in industry comments on this issue was the existence of a variety of efficiencies for both sellers and consumers. Among the most common examples cited was avoiding error in the transmission of account numbers from consumer to telemarketer, as either the consumer misstates or the telemarketer miskeys the account number.[443] Another benefit cited by numerous industry commenters was the reduction of time on the telephone to complete the transaction in the initial call,[444] particularly in

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GLBA and the Commission's privacy rule impose.").

[434] ABA-NPRM at 8. *See also* ABIA-NPRM at 2 (arguing that the proposed provision "would . . . disrupt a coordinated body of federal and state privacy laws and regulations enacted since passage of GLBA"); AFSA-NPRM at 11; AmEx-NPRM at 4; BofA-NPRM at 7; Bank One-NPRM at 3; Cendant-NPRM at 6-7; CMC-NPRM at 13.

[435] NAAG-NPRM at 41-43.

[436] *Id.* at 43. *Accord* Covington-Supp. at 2-5.

[437] ABA-NPRM at 8; AmEx-NPRM at 5; Assurant-NPRM at 4; BofA-NPRM at 7; Bank One-NPRM at 3-4; Capital One-NPRM at 9; Cendant-NPRM at 7; Household Auto-NPRM at 2, 5; Household Bank-NPRM at 2, 7; Household Finance-NPRM at 2, 7; MasterCard-NPRM at 7; MPA-NPRM at 24; Metris-NPRM at 2, 5-7; NRF-NPRM at 20; Time-NPRM at 8-9; VISA-NPRM at 6-7; Wells Fargo-NPRM at 3. *See also* June 2002 Tr. II at 124-25 (CCC); *Id.* at 133 (PMA) and 194-95 (DialAmerica).

[438] AmEx-NPRM at 8. *Accord* Assurant-NPRM at 5; Bank One-NPRM at 3-4. Additionally, several commenters suggested that the blanket prohibition was "inconsistent with the longstanding and well considered advice [of the Commission and other consumer protection groups and law enforcement agencies] that they not release their account numbers to telemarketers. . . ." MasterCard-NPRM at 7. *Accord* BofA-NPRM at 7; Bank One-NPRM at 3. *See also* ABA-NPRM at 8; Metris-NPRM at 6. In fact, the Commission's advice has not been to refuse to divulge account information in any telemarketing transaction, but rather only to divulge such information when the seller is known to the consumer. *See, e.g.*, "Facts for Consumers: Are You a Target of ... Telephone Scams," http://www.ftc.gov/bcp/confine/pubs/tmarkg/target.htm; and "Consumer Alert: Customized Cons Calling," http://www.ftc.gov/bcp/confine/pubs/alerts/consalrt.htm. Moreover, the reason for this advice is not to avoid identity theft, but to protect consumers from fraudulent telemarketers selling bogus goods or services. *Id.* In the identity theft context, the danger identified by the Commission and discussed in its publications is not the potential misuse of account information that a consumer has provided in the course of a sale of goods or services, but rather "pretexting"—*i.e.*, the practice of eliciting a consumer's personal information under false pretenses, such as claiming to be from the consumer's bank, calling to confirm the consumer's account information. *See* "Pretexting: Your Personal Information Revealed," http://www.ftc.gov/bcp/confine/pubs/credit/pretext.htm.

[439] Bank One-NPRM at 4; Cendant-NPRM at 7; Household Auto-NPRM at 2-3; Metris-NPRM at 5; E-Commerce Coalition-NPRM at 3; VISA-NPRM at 6-7.

[440] June 2002 Tr. II at 130-31 (AARP), 143 (NAAG), and 205 (NCL). Indeed, in both their Rule Review and NPRM comments, NAAG provided several examples of instances where obviously confused elderly consumers were charged for products or services using preacquired account information, despite no clear evidence of consent during the telemarketing call. NAAG-RR at 11 and Exs. 2 - 4 attached thereto; NAAG-NPRM at 32, and Ex. B attached thereto. *See also* Synergy Global-NPRM at 1-2 (comments from a former teleservices agent stating that he was encouraged by his superiors to "falsify sales in an attempt to artificially inflate the statistics compiled nightly").

[441] NCL-NPRM at 7.

[442] NAAG-RR at 10. Indeed, NEMA described its own current procedures, under the Uniform Business Practices guidelines created for the retail energy market, whereby it obtains complete billing information directly from each customer as proof of the customer's intent to switch utility providers. NEMA-NPRM at 8-9.

[443] ABA-NPRM at 8; Assurant-NPRM at 3-4; BofA-NPRM at 7; Cendant-NPRM at 7; Cox-NPRM at 33; Metris-NPRM at 7.

[444] *See, e.g.*, MPA-NPRM at 24 ("The Commission must also not underestimate the economic efficiencies such practices afford to businesses. . . . It is estimated that requiring consumers to retrieve and repeat their entire account number and verifying this information will increase the length of the call substantially, with one provider estimating an increase of 35 seconds and additional evidence suggesting that increase could be 60 seconds or more.") *See also* Cox-NPRM at 33; Metris-NPRM at 6-7; NCTA-NPRM at 12; Tribune-NPRM at 8. MPA's argument on this point is somewhat contradicted by its recommended alternative to the prohibition, express verifiable authorization, which involves additional expense, regardless of the method of express verifiable authorization selected. *See* MPA-NPRM at 26-29. NCL challenged this proposition, suggesting that, on the contrary, "[r]equiring telemarketers to ask for [the consumer's account number] would benefit both parties by helping to confirm a consumer's intention to make the purchase and the correct account that will be used for that purchase, reducing the potential for billing disputes later." NCL-NPRM at 7.

upsells.[445] As DMA noted, "it is a significant benefit to consumers for second businesses in an upsell to obtain and use information such as address and credit card information. This eliminates the need for a consumer to have to restate the information just provided. Transfer of information in such scenarios with informed consent is inherently efficient for both the merchant and the consumer."[446] The final benefit cited in several comments was that preacquired account telemarketing helped consumers by enabling them to avoid the inconvenience of having to pull out their wallets in order to make a purchase.[447] This alleged benefit was sharply questioned by consumer advocates, who argued that whatever time savings or convenience may accrue from the use of preacquired account information does not offset the potential harm from its use.[448] The record makes clear, in fact, that it is the very act of pulling out a wallet and providing an account number that consumers generally equate with consenting to make a purchase, and that this is the most reliable means of ensuring that a consumer has indeed consented to a transaction.[449]

As it stated in the NPRM, the Commission still believes that whenever preacquired account information enables a seller or telemarketer to cause charges to be billed to a consumer's account without the necessity of persuading the consumer to demonstrate his or her consent by divulging his or her account number, the customary dynamic of offer and acceptance is inverted. In such a case, what is customarily under the sole control of the consumer—whether to divulge one's account number, thereby determining whether to accept the offer and how to pay for it—is now in the hands of the seller or telemarketer.[450] This reversal in the traditional paradigm is not one that is generally expected or favored by consumers, who consistently state that, as a general proposition, they do not believe it is or should be possible for them to be charged if they do not provide their account number in a transaction.[451] The Commission understands this to mean that, generally speaking, consumers believe they ordinarily signal their consent to an offer by providing their account information to the seller or telemarketer.

Although some commenters argue that this shift in the normal paradigm of offer and acceptance is, in and of itself, inherently unfair,[452] the record overall suggests that, in general, it is not preacquired account telemarketing *per se* that is harmful, but rather the abuse of preacquired account information that causes the harm.[453] Commenters persuasively note that there are many transactions involving preacquired account information that are beneficial to, indeed sometimes expected by, consumers. For example, as noted in the NPRM, "a customer who places

[445] Associations-Supp. at 5-6; DMA-NPRM at 40. *See also* PMA-NPRM at 18-19; Time-NPRM at 8.

[446] DMA-NPRM at 40. *See also* Time-NPRM at 8.

[447] Assurant-NPRM at 6; June 2002 Tr. II at 125 (CCC).

[448] *See, e.g.*, June 2002 Tr. II at 131 (AARP) ("To imply that . . . it's more inconvenient for the consumer to get their credit card than to have an unknown source debit their account without their knowledge, I don't think any consumer would ever agree with that statement.")

[449] Covington-Supp. at 2-5:

"The Commission is also correct that the best way to be certain that a consumer really wants to make a purchase is to see if the consumer is willing to reach into a purse or pocket, open a wallet, take out a credit card, and read from it. When that happens, there is nothing ambiguous about what's taking place; there can be no misunderstanding. . . . Even during a chaotic dinner hour, a consumer cannot open a wallet, pull out a credit card, and read from it without knowing that he or she is making some kind of purchase. . . . This short-hand method for consumers to signal assent to a deal leaves complete control of the transaction in the hands of the consumer while preventing the industry burden from being any greater than necessary."

Indeed, this conclusion derives from the actual experience of a telemarketing firm that engages in preacquired account telemarketing. *See* Letter from Stephen Calkins to the FTC, dated October 28, 2002 ("Calkins Letter"). This firm attempted to cure the high customer return rates generated by this practice in several ways, including adjusting the disclosures and reading at least four digits of the account number to the consumers during the call. *Id.* at 2. The firm found that none of these attempted cures ensured that consumers "knowingly consented" to the purchase while maintaining a competitive level of sales. *Id.* at 1-2. Only when the firm began requesting a portion of the account number from the consumer herself did complaint rates drop significantly, without an unacceptable drop in sales. According to the commenter, "Sales were about 25% lower than when the telemarketer read those digits to the consumer, but consumers really understood that they were making purchases . . . . My client believes that consumer complaints pertaining to their intent to purchase dropped, and that his seller clients now experience an acceptable level of product returns." *Id.* at 2-3. *See also* June 2002 Tr. II at 139-44 (NAAG); NACAA-NPRM at 6 ("That the consumer has to provide this information to the seller provides a check on the transaction, and an assurance that the consumer does indeed wish to enter the transaction."); Vermont-Supp. *passim* and attachment. AARP commissioned a survey by telephone on June 14-19, 2002, among a nationally representative sample of 1,240 respondents 18 years of age and older. Participants were asked a handful of questions, such as, "Often telemarketers ask you to buy something with a credit card or debit card. Do you think telemarketers are able to cause charges to your credit card or debit card without getting your credit or debit card numbers directly from you?" Only 30 percent of respondents stated that they were aware that telemarketers have the ability to cause a charge to their credit or debit card accounts without getting the account numbers from them. AARP-Supp. at 2. That number was higher in the instance of upsells, but still less than half of the respondents understood that it was possible to be charged without providing account information to a seller or telemarketer. *Id.* Additionally, the majority (80 percent) of respondents stated that they thought telemarketers should only be able to cause charges to their credit or debit card accounts if the consumers expressly provide their account numbers to the seller or telemarketer. *Id.* at 4; Vermont-Supp. at 2-3. The survey addresses a fairly complex issue in broad terms. For example, it does not tease out the specific instances where a consumer might actually have an expectation that the seller will retain and reuse the consumer's account information, such as the contact lens seller who, with the consumer's permission, retains the consumer's account information to facilitate quarterly lens purchases. The results do, however, provide insight into the general expectations of consumers when engaging in telemarketing transactions.

[450] State law enforcers, consumers and consumer groups, as well as some industry members, consistently voiced concerns over the shift of control over a transaction from the consumer to the seller or telemarketer, and noted consumer disbelief that purchases could actually be made without their ever disclosing payment information. *See* 67 FR at 4513; June 2002 Tr. II at 130-32 (AARP); Covington-Supp. at 2, 5; EPIC-NPRM at 9; NAAG-RR at 10-11; NAAG-NPRM 30-31; June 2002 Tr. II at 139-44 (NAAG). *But see* CMC-NPRM at 13 (questioning this proposition).

[451] *See* 67 FR at 4513; AARP-Supp. at 4 (*see* note 449 above, describing survey showing that the majority of consumers do not believe their accounts can, or should, be charged by telemarketers without obtaining the account number directly from the consumers); June 2002 Tr. II at 131-32 (AARP); EPIC-NPRM at 9; NAAG-RR at 10-11; NAAG-NPRM 30-31; Vermont-Supp. at 2-3. As Minnesota explained during the June 2002 Forum:

"In a preacquired situation, the consumer doesn't have that control because we have shorthand ways of signaling consent in our society. We aren't many lawyers out there. Josh, who . . . has a trade school degree and comes home from a job and Esther is sitting on the couch at 85 years old doesn't understand all this. . . . They just get a call from somebody. What they know is I've got to sign my name, I've got to give somebody my credit card or in the context of a telemarketing transaction, I have to read my account number to the person or I have to pay cash, and what this does is by circumventing those forms of consent, it makes it impossible for consumers to control the transactions."

June 2002 Tr. II at 140. *See also* James Andris (Msg. 171) ("Our mortgage company has been deducting a monthly premium, via our mortgage payment, to a 3rd party insurance policy. I have written a letter demanding refunds for the payments for 16 months. We, my wife and I, never gave written or verbal permission fot such payments to either parties [sic]."); Albert Bruce Crutcher (Msg. 229) ("I also favor not allowing my credit card and account numbers to be given out by anyone other than ME!!"); Harold D. Howlett (Msg. 300) ("Do not allow telemarketers to obtain and use credit card or other account information from anyone except the consumer. . . ."); Carole & Cory Walker (Msg. 810) ("Every year we have at least one unauthorized charge to our card and we are extremely cautious with our information.").

[452] *See, e.g.*, EPIC-NPRM at 9; NAAG-NPRM at 30; NCL-NPRM at 6-7.

[453] ERA-NPRM at 16; Household Auto-NPRM at 5; PMA-NPRM at 17. Other commenters asserted that using preacquired account information is not inherently fraudulent. *See* Allstate-Supp. at 2; Associations-NPRM at 4; ATA-NPRM at 19; ATA-Supp. at 5-6; ERA/PMA-Supp. at 10; ITC-NPRM at 5; NCTA-NPRM at 11; Noble-NPRM at 3; NATN-NPRM at 3; NSDI-NPRM at 3; PMA-NPRM at 13-16; Technion-NPRM at 4; TRC-NPRM at 3; Time-NPRM at 7.

quarterly orders for contact lenses by calling a particular lens retailer may provide her billing information in an initial call, with the understanding and intention that the telemarketer will retain it so that, in any subsequent call, the retailer has access to this billing information."[454] Similarly, a customer who provides his account number to make a purchase in an initial telemarketing transaction may be frustrated to have to repeat that account information to consummate certain upsell transactions, particularly when the upsell is offered by the same telemarketer. In that case, there may be an expectation that the telemarketer will have retained, and be able to reuse, the account information the customer provided only moments ago.[455] As another commenter pointed out during the Rule Review, the key to such transactions is the fact that the consumer makes the decision to supply the billing information to the seller, and understands and expects that the information will be retained and reused for an additional purchase, should the consumer consent to that purchase.[456]

The record shows that the specific harm resulting from the use of preacquired account telemarketing is manifested in unauthorized charges.[457] These may appear not only on consumers' credit card or checking accounts, but also on mortgage statements and other account sources not traditionally used to pay for purchases.[458] Of course, unauthorized charges are not exclusively associated with preacquired account telemarketing. The Commission has brought numerous law enforcement actions against sellers and telemarketers alleging violations of the FTC Act for the unfair practice of billing unauthorized charges to consumers' accounts in a variety of contexts not involving preacquired account information, including but not limited to: advanced fee credit card offers,[459] sweepstakes,[460] vacation or travel packages,[461] credit card loss protection offers,[462] and magazine subscriptions.[463] Thus, in essence, preacquired account telemarketing has proven in certain circumstances to be an additional, but not the only, vehicle for imposing unauthorized charges on consumers in telemarketing transactions.

One of the problems, therefore, with the proposed prohibition on receiving billing information from a source other than the consumer or sharing it with others for the purposes of telemarketing is that it fails to remedy patterns of unauthorized billing that occur even though preacquired account information is not used. As our cases amply demonstrate, the practice unequivocally meets the criteria for unfairness, and therefore violates Section 5 of the FTC Act.[464] Yet until now, the Rule has not specified that unauthorized billing is an abusive practice and a Rule violation.[465] The Commission therefore has decided to add § 310.4(a)(6) to correct that deficiency. The new provision specifies that it is an abusive practice and a violation of the Rule to cause a charge to be submitted for payment, directly or indirectly, without the express informed consent of the customer or donor. This prohibition is not limited to instances of unauthorized charges resulting from preacquired account telemarketing. Rather, this provision is applicable whenever a seller or telemarketer subject to the Rule causes a charge to be submitted against a customer's or donor's account without obtaining the customer's or donor's express informed consent to do so. This broader prohibition on unauthorized billing is supported by the Commission's extensive law enforcement record of instances of unauthorized billing in telemarketing transactions.

Section 310.4(a)(6) also specifies that, in every transaction, the seller or telemarketer must obtain the consumer's express informed consent to be charged for the goods or services or charitable contribution, and to be charged using the identified account. "Express" consent means that consumers must affirmatively and unambiguously articulate their consent. Silence is not tantamount to consent; nor does an ambiguous response from a consumer equal consent.[466] Consent is "informed" only when customers or donors have received all required material disclosures under the Rule, and can thereby gain a clear understanding that they will be charged, and of the payment mechanism that will be used to effect the charge. Of course, the best evidence of "consent" is consumers' affirmatively stating that they do agree to purchase the goods or services (or make the donation), identifying the account they have selected to make the purchase, and providing part or all of that account number to the seller or

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[454] 67 FR at 4513.

[455] *See, e.g.*, June 2002 Tr. II at 196 (Time) ("[T]he catalog clients that we deal with that are . . . selling our magazines on our behalf . . . tell us that the cost would be loss of sales of the catalog products because the customers would just be so annoyed about having to give the credit card number again that they just gave.")

[456] 67 FR at 4513, n.196.

[457] In its supplemental comment, Minnesota argued that evidence gathered in its law enforcement actions showed that consumers consistently stated that they had not authorized charges arising out of preacquired account telemarketing, particularly when the offers involved "free-to-pay conversion" features:

"The data we have reviewed in our investigations uniformly supports our impression that underlying the high cancellation rates with preacquired account telemarketing is consumer sentiment that the charges were unauthorized. In addition to the survey of Fleet Mortgage Corporation customer service representatives presented in the prior NAAG Comments [see NAAG-NPRM at 31-32], an investigation of a subsidiary of another of the nation's largest banks revealed a similar pattern. During a thirteen month period, this bank processed 173,543 cancellations of membership clubs and insurance policies sold by preacquired account sellers. Of this number of cancellations, 95,573, or 55 percent, of the consumers stated unauthorized billing as the reason for the request to remove the charge. The other primary reason given for canceling (by 56,794 customers, or 32% of the total) was a general "request to cancel" code that may have also included many consumers claiming unauthorized charges."

Minnesota-Supp. at 4.

[458] NAAG-NPRM at 31 ("Fleet Mortgage Corporation, for instance, entered into contracts in which it agreed to charge its customer-homeowners for membership programs and insurance policies sold using preacquired account information. If the telemarketer told Fleet that the homeowner had consented to the deal, Fleet added the payment to the homeowner's mortgage account.")

[459] *See, e.g., FTC v. Corporate Mktg. Solutions*, No. CIV-02 1256 PHX RCB (D. Ariz. filed July 8, 2002); *FTC v. Capital Choice*, No. 02-21050-CIV-Ungaro-Benages (S.D. Fla. filed Apr. 15, 2002); *FTC v. Fin. Servs. of N. Am.*, No. 00792 (GEB) (D.N.J. filed June 9, 2000); *FTC v. SureCheK Sys., Inc.*, No. 1:97-CV-2015-JTC (N.D. Ga. filed July 9, 1997); *FTC v. Thornton Communications, Inc.*, No. 1 97-CV-2047 (N.D. Ga. filed July 14, 1997).

[460] *See, e.g., FTC v. New World Servs., Inc.*, No. CV-00-625 (GLT) (C.D. Cal. filed July 5, 2000); *FTC v. Hold Billing*, Ltd., No. SA-98-CA-0629-FB (W.D. Tex. filed July 15, 1998).

[461] *See, e.g., FTC v. Lubell*, No. 3-96-CV-80200 (S.D. Iowa filed Dec. 1996); *FTC v. Disc. Travel*, No. 88-113-CIV-FtM-15C (M.D. Fla. filed Aug. 8, 1988); *Citicorp Credit Servs.*, 116 F.T.C. 87 (1993).

[462] *See, e.g., FTC v. Andrews*, No. 6:00-CV-1410-ORL-28-B (M.D. Fla. filed Oct. 2000); *FTC v. First Capital Consumer Membership Servs.*, No. 00 CV 0905C(F) (W.D.N.Y. filed Oct. 23, 2000); *FTC v. Consumer Repair Servs., Inc.*, No. 00-11218 CM(RZx) (C.D. Cal. filed Oct. 23, 2000); *FTC v. Capital Card Servs.*, No. CV 00 1993 PHX EHC (D. Ariz. filed Oct. 23, 2000); *FTC v. Forum Mktg. Servs.*, No. 00CV0905C(F) (W.D.N.Y. filed Oct. 26, 2000); *FTC v. 1306506 Ontario, Ltd.*, No. 00-CV-906 (W.D.N.Y filed Oct. 23, 2000); *FTC v. OPCO Int'l Agencies, Inc.*, No. CO1-2053R (W.D. Wash. filed Feb. 2001).

[463] *See, e.g., FTC v. Diversified Mktg. Servs. Corp.*, No. 1:96-CV-615-FM. (W.D. Okla. filed Mar. 12, 1996); *FTC v. Windward Mktg.*, No. 1:9 6-CV-615-FM. (N.D. Ga. filed May 26, 1996); *FTC v. S.J.A. Soc'y*, No. X97 0061 (E.D. Va. filed May 1997).

[464] *See* discussion and note 400 above of § 310.4 generally, and 67 FR at 4511, regarding the Commission's determination that, in specifying practices as abusive when they do not directly implicate the privacy concerns embodied in the Telemarketing Act, it will demand that the practice meet the criteria for unfairness codified in § 5(n) of the FTC Act, 15 U.S.C. 45(n).

[465] Section 310.3(a)(4) specifies that it is a deceptive practice to make "a false or misleading statement to induce any person to pay for goods or services."

[466] *See* Electronic Retailing Association, GUIDELINES FOR ADVANCE CONSENT MARKETING, http://www.retailing.org/regulatory/publicpolicy_consent.html ("ERA Guidelines").

telemarketer for payment purposes (not for purposes of "identification," or to prove "eligibility" for a prize or offer, for example). But in most instances, the Commission leaves it up to sellers to determine what procedures to employ in order to meet the requirement for obtaining express informed consent. As explained below, however, in certain particularly problematic scenarios, the Commission does impose specific procedures.

Having treated the overall problem of unauthorized billing in new § 310.4(a)(6), the Commission has included additional subsections to address problems particularly associated with preacquired account telemarketing. As noted in the NPRM, evidence shows that, at least to date, unquestionably the greatest risk of harm (*i.e.*, unauthorized charges) to consumers is associated with telemarketing involving the combination of preacquired account information with an offer involving a "free-to-pay conversion."[467] NAAG describes the "free-to-pay conversion" offer (which it refers to as an "opt-out free trial" offer) as the "constant companion" of the preacquired account telemarketer in state law enforcement efforts to date.[468] Indeed, as of the date of this notice, all of the law enforcement actions taken by the Commission and by the states that involved telemarketing using preacquired account information also involved an offer with a "free-to-pay conversion" feature.[469]

It is noteworthy that the coupling of preacquired account information with a "free-to-pay conversion" offer is not limited to outbound telephone calls. In *FTC v. Smolev*,[470] for example, the defendants were alleged to have lured consumers to call by offering an inexpensive lighting product in general media advertisements, obtaining account information from the consumer in the initial transaction, and then upselling a "free-to-pay conversion" buyers club membership.[471] In fact, the majority of companies that have been targeted by state or FTC law enforcement action market their "free-to-pay conversion" products or services via upsells, sometimes exclusively, and other times also using outbound telephone calls.[472]

Consequently, the Commission has determined that in any transaction involving both preacquired account information and a "free-to-pay conversion," the evidence of abuse is so clear and abundant that comprehensive requirements for obtaining express informed consent in such transactions are warranted.[473] Specifically, § 310.4(a)(6)(i) provides that a seller or telemarketer making an offer involving both preacquired account information and a "free-to-pay conversion" must (1) obtain from the customer, at a minimum, the last four digits of the account number to be charged; (2) obtain from the customer his or her express agreement to be charged for the goods or services and to be charged using the account for which the consumer provided the four digits; and (3) make and maintain an audio recording of the *entire* telemarketing transaction. Thus, in every instance where the combination of preacquired account information and "free-to-pay conversion" is involved in a telemarketing transaction, the customer must be required to reach into his or her wallet, and provide at least a portion of the account number to be charged.[474] It

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[467] The Commission has inserted a definition of "free-to-pay conversion" at § 310.2(o) of the amended Rule, which states that "free-to-pay conversion" means: "in an offer or agreement to sell or provide any goods or services, a provision under which a customer receives a product or service for free for an initial period and will incur an obligation to pay for the product or service if he or she does not take affirmative action to cancel before the end of that period." *See* discussion of § 310.2(o) above.

[468] NAAG-NPRM at 32. *Accord* AARP-NPRM at 6. CCC attempted to counter this finding by presenting the results of a survey, conducted on behalf of MemberWorks, in April of 2001 by the Luntz Research Companies (the "Luntz Survey"). CCC-NPRM at 10; June 2002 Tr. II at 127; MemberWorks-Supp. *passim*. In the survey, the caller told the consumer that the caller would read an offer, and would ask for the consumer's reaction. So, it was clear to the consumer that he or she was not buying anything, and instead that the consumer should listen carefully to the terms of the offer so that he or she could answer the caller's questions. Then, the caller read a script involving a "free-to-pay conversion" feature (the script was not submitted with the survey results for the public record). The caller then asked several questions about what the consumer just heard. CCC argued that the results of this survey showed that 85 percent of the respondents said the billing methods were understandable, and that the seller was acting fairly. CCC-NPRM at 10. Examination of the Luntz survey in greater detail suggests that the survey does little to support these assertions. First, in fact, none of the respondents said that the billing methods were understandable. According to the survey, 52 percent of the respondents said the billing methods were "mostly" understandable, while 33 percent said they were "somewhat" understandable, and 13 percent said they were not understandable. This means that at least 46 percent of the respondents did not even "mostly" understand the way in which they would be billed after listening carefully to a sales offer involving preacquired account information and a "free-to-pay conversion" feature. *See* MemberWorks-Supp. at 1. In addition, after asking whether the billing methods were understandable, the callers asked two questions structured in ways that strongly suggested the desired result: first they asked, "And if you *agree to join*, and receive a welcome kit with all of the rules in writing, who is responsible *if you forget to cancel* and are billed," then "*If the company tells you three times on the telephone call and then tells you twice in writing that you can cancel* your program membership anytime, but if you don't cancel, you will be charged, is the company acting fairly or not." *Id.* (emphasis added). Moreover, regardless of the merits of the survey results, they do little to offset the extensive evidence of consumer injury from this practice, the continuing flow of complaints into the offices of consumer groups and law enforcement officials at both the state and federal levels, and the AARP survey evidence of consumer perceptions and opinions about preacquired account telemarketing. *See* notes 424-25 and 449 above.

[469] For example, MemberWorks, Inc. (Assurances of Discontinuance with the States of Nebraska and New York; Consent Judgments with the States of California and Minnesota) (primarily "free-to-pay conversion" membership clubs); BrandDirect Mktg. Corp. (Assurances of Discontinuance with the States of Connecticut and Washington) ("free-to-pay conversion" membership clubs); Cendant Membership Servs. (Consent Judgment with State of Wisconsin) (same); Signature Fin. Mktg. (Assurance of Discontinuance with State of New York) (same); Damark Int'l, Inc. (Assurances of Discontinuance with States of Minnesota and New York) ("free-to-pay conversion" buyers club); *Illinois v. Blitz Media, Inc.*, No. 2001-CH-592(Sangamon County) ("free-to-pay conversion" membership club); *New York v. Ticketmaster and Time, Inc.* (Assurance of Discontinuance) ("free-to-pay conversion" magazine subscription); Triad Discount Buying Service (sued by 29 states and the Commission) ("free-to-pay conversion" membership clubs); *Minnesota v. U.S. Bancorp, Inc.*, No. 99-872, (Consent Judgment, D. Minn) (account information provider to seller/telemarketer of "free-to-pay conversion" membership/buyers clubs); *Minnesota v. Fleet Mortgage Corp.*, 158 F. Supp. 2d 962 (D. Minn. 2001) (same, plus insurance packages); *FTC v. Technobrands, Inc.*; No. 3:02-cv-00086 (E.D. Va. 2002) ("free-to-pay conversion" membership clubs); *U.S. v. Prochnow*, No. 1:02-cv-917-JLF (N.D. Ga. 2002) (inbound calls from direct mail solicitations, upsold "free-to-pay conversion" membership clubs).

[470] (a/k/a Triad Disc. Buying Serv.) No. 01-8922 CIV ZLOCH (S.D. Fla. 2001).

[471] Thus, the assertion of some commenters that "the potential for abuse or confusion as to where the [account] information was obtained does not exist in upsells," *see, e.g.*, ANA-NPRM at 6, is not supported by the record, at least in the context of offers with a "free-to-pay conversion" feature, as was the case in *Smolev*.

[472] Unfortunately, the argument made by several commenters that the abusive use of preacquired account information is limited to a discrete number of bad actors (*see* ATA-NPRM at 19; ERA-NPRM at 16; MPA-NPRM at 23-24) is not supported by the record. Law enforcement actions alleging injuries caused by abuses of preacquired account telemarketing have been brought against well-known, national companies and financial institutions, including but not limited to: U.S. Bancorp, Fleet Mortgage Corporation, MemberWorks, Ticketmaster, and Time. *See* NAAG-NPRM at 30, n.73.

[473] NAAG recommended prohibiting the use of preacquired account information, even if that information was previously obtained by the same seller or telemarketer from the consumer, in solicitations involving a "free-to-pay conversion" feature. NAAG-NPRM at 39. The Commission declines to adopt this recommendation at this time, and is confident that the solution adopted will provide consumers the information and command over these transactions they need to protect themselves from unauthorized charges.

[474] *See* note 449 above. Moreover, industry's argument that there is no evidence of problems where there is a transfer of account information

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must be clear that the customer is providing that account number to authorize a purchase. This means that, at a minimum, the disclosures required in § 310.3(a)(1) in general, and also § 310.3(a)(1)(vii) in particular, must be provided to the customer before the customer provides express informed consent—which, in the case of preacquired account telemarketing and a "free-to-pay conversion" feature, means before the customer provides account information and express agreement to be charged for the goods or services on the account provided. It must also be clear that the customer agrees that the charge be placed on the account whose digits the customer provided. The Commission expects that, to comply with this requirement, the seller or telemarketer shall expressly identify the account to be charged, and inform the customer that it possesses the customer's account number already, or has the ability to charge that account without obtaining the full account number from the customer.

Finally, the Commission is requiring that the entire sales transaction be recorded. The record evidence shows that it is not adequate in offers involving both preacquired account information and "free-to-pay conversions" to record a portion of the call that allegedly includes some or all of the required disclosures regarding cost and payment.[475] Often, what law enforcement efforts have gleaned is that the necessary disclosures are grouped together during the "verification" process, at the end of a lengthy telemarketing pitch during which consumers are led to reasonably believe that they are not committing to a purchase. As one commenter explained:

> [C]onsumers are led to believe that they are agreeing to accept materials in the mail, preview a program along with a free gift, or the like. As one telemarketer explicitly stated in its scripts: 'we're sending you the information through the mail, so you don't have to make a decision over the phone.' Only at the tail end of a lengthy call does the telemarketer obliquely disclose that the consumer's preacquired account will be charged. By this time, many consumers have already concluded that they understood the deal to require their consent only after they review the mailed materials. . . . Preacquired account telemarketing verification taping typically is preceded by statements suggesting that the taping is 'to prevent clerical error' and critical information is revealed in ways that many consumers will not grasp at the end of a conversation.[476]

Thus, not only the material terms provided the consumer, but also the context and manner in which the offer is presented are vital to determining that the consumer's consent is both express and informed. Moreover, consumers' confusion about the nature of "free-to-pay conversion" offers—particularly in the context of preacquired account telemarketing—is evidenced by the steady stream of complaints, as well as evidence uncovered in law enforcement actions by the states.[477] Further, the record contains compelling evidence of cancellation patterns for membership programs offered on a "free-to-pay conversion" basis in preacquired account telemarketing transactions. As explained by the Minnesota Attorney General,

> [c]onsumers canceling within the 30-day free trial period likely indicate that [they] understood (either during the phone call or with the follow-up material or both) the terms of the deal. If all consumers understood the free trial offer, one would expect to see a significant cancellation rate within the 30 day free trial offer period followed by a scattered pattern of later cancellations. The data we have reviewed [from two financial institutions of cancellation dates relative to date of enrollment for Minnesota consumers charged by the institutions as a result of preacquired account telemarketing transactions involving a "free-to-pay conversion"] suggest this is not the typical pattern. . . . The overall pattern of [the data from each institution] is strikingly similar. The largest concentration of cancellations occurs immediately after the free trial period but coincident with the first account charge for the service. The cancellation rate in the free trial period is less than half the cancellation rate in the 31-90 day period, when consumers have been billed for the service. This result is consistent with the pattern of consumer complaints alleging unauthorized charges received by Attorneys General and with the data suggesting that most consumers cancel these charges because they believe they are unauthorized.[478]

Consequently, to ensure that the consent provided by the consumer is not only "express" but is also "informed" in this limited, but problematic, context of "free-to-pay conversion" features in preacquired account telemarketing offers, the amended Rule requires that an audio recording of the entire transaction, from start to finish, be created and maintained. A handful of commenters argued that such audio recording would be prohibitively expensive, particularly in the inbound context, where some sellers and telemarketers have not traditionally recorded the telemarketing calls.[479] Given the narrow category of calls to which this requirement applies, and the rapidly growing use of inexpensive and efficient digital audio recording technology,[480] the Commission believes that this requirement will not pose a significant burden to sellers and telemarketers who freely choose to market their goods or services using a "free-to-pay conversion" feature and preacquired account information. Moreover, the record is compelling that any incremental costs to industry of these requirements are likely outweighed by the benefit to consumers of curtailing the practice as it is currently employed in the marketplace.

In addition to the requirements noted above, in any telemarketing transaction involving preacquired account information (but not a "free-to-pay conversion" feature), § 310.4(a)(6)(ii) specifically requires that the seller or telemarketer (1) at a *minimum*, identify the account to be charged with

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"after consent" is belied by the record of law enforcement actions in this area. *See, e.g., FTC v. Smolev*, No. 01-8922 CIV ZLOCH (S.D. Fla. 2001). In fact, in virtually all of the state and federal law enforcement actions in this area, consumers stated that they did not recognize the billing entity or understand how that seller obtained their account information. *See* notes 450-51 above.

[475] NAAG-NPRM at 32-33 (discussing ineffectiveness of verification).

[476] *Id.*

[477] *See* Illinois-NPRM at 2 (In Illinois' lawsuit against Blitz Media, Inc., the attorney general initially received 146 consumer complaints. After initiating the litigation, the Illinois attorney general found that approximately 45,000 Illinois consumers had been enrolled in Blitz Media's buyers club, but only about 8,000 of them remain "active" members of the buyers club, since the rest had discovered these charges and cancelled the membership, or initiated a chargeback, claiming the charge was unauthorized.).

[478] Minnesota-Supp. at 4-5. One industry commenter submitted the results of a telephone survey, which it asserted showed that consumers do, in fact, understand the terms of these "free-to-pay conversion" features. *See* note 469 above. The data received in litigation from the institutions participating in these telemarketing campaigns, however, belies the purported conclusions of this survey. *See* note 457 above.

[479] ERA/PMA-Supp. at 3, 7 ("We understand from certain of our members that imposing the record keeping requirement[s] on inbound [upsells] may require substantial investments of money and resources to develop the systems necessary to comply with these requirements.").

[480] *See generally* Contract Digital Recorder, by Data-Tel Info Solutions, at http://www.datatel-info.com/digicorder.html (describing affordable digital recording system for telemarketing operations); Veritape Call Centre-Case Study 2, at http://www.veritape.com/veritape/vtcccase.htm (describing a US call center that saved $70,000 annually by switching from analog taping process to digital recording); Ron Elwell, *Streamlining Call Center Operations*, Teleprofessional, Sept. 1998, at 130-34 (discussing "how CTI-enabled digital recording technology is helping call centers of all types be more productive and profitable"); Teleprofessional, Inc., *CCPN's System Owner Shootout*, CALL CENTER PRODUCT NEWS, Fall 1998, at 52-54, 56 (explanations by several telemarketers' systems professionals of savings and efficiencies experienced using improved digital recording and monitoring systems); Michael Binder, *The Evolution of Digital Recording in the Call Center*, TELEMARKETING & CALL CENTER SOLUTIONS, Nov. 1997, at 38. *Cf.* Duncan Furness, *Choosing a Tape Technology*, COMPUTER TECHNOLOGY REVIEW, Nov. 2000, at 40.

sufficient specificity for the customer or donor to understand what account will be charged, and (2) obtain from the customer or donor his or her express agreement to be charged for the goods or services *and* to be charged using the account number identified during the transaction. Again, the Commission intends this to mean that the telemarketer expressly inform the customer that the seller or telemarketer already has the number of the customer's specifically identified account or has the ability to charge that account without getting the account number from the customer.

The Commission has taken a targeted approach in the amended Rule, focusing on the tangible harm caused by the practices identified as problematic in the rulemaking proceeding. It bears noting, however, that the Commission recognizes preacquired account telemarketing as an emerging practice, one that will receive close attention from the Commission, and, no doubt, the state Attorneys General. The Commission wishes to emphasize that, particularly in transactions involving "free-to-pay conversion" offers, so long as preacquired account information is involved, there exists that fundamental shift in the bargaining relationship discussed above, and therefore potential for abuse.[481] While the Commission is confident that the majority of industry members will abide by the new provisions, and that doing so will provide consumers the information and control needed to shield them from the abuses encountered in the past with these transactions, it also notes that the best practice in such circumstances is to ensure that the seller or telemarketer does not have the ability to cause a charge to a consumer's account without getting the account number from the consumer herself. This practice would, in effect, be self-enforcing, as the control over the transaction (absent misrepresentations by the telemarketer) would truly be with the consumer, where it belongs. Should it become apparent that the remedies imposed by the amended Rule are insufficient, or that preacquired account telemarketing practices have evolved further in such a way as to cause additional harm to consumers, the Commission will not hesitate to revisit its approach to the practice and revise the Rule accordingly.

Other Recommendations

Other than those commenters who suggested deleting the prohibition entirely,[482] industry commenters' primary recommendation was to substitute the express verifiable authorization provision of § 310.3(a)(3), or some variation on a disclosure and "consent" requirement,[483] for the proposed blanket prohibition on the transfer of billing information.[484] The general theme was that disclosures and "consent" were sufficient to remedy the harm being caused consumers by the misuse of preacquired account information. It is unclear what these commenters mean by "consent" in this context, as they also recommended that sellers and telemarketers be permitted to use any of the three existing avenues for achieving express verifiable authorization, including providing consumers a written confirmation after terminating the telephone call. In the context of "free-to-pay conversions," the record shows, in no uncertain terms, that disclosures are not sufficient to prevent widespread consumer injury.[485] Most sellers and telemarketers have been telling consumers at some point in the conversation, in greater or lesser detail, that they will be charged at some point for the goods or services being offered on a "free-to-pay conversion" basis; but, as noted above, these disclosures come late in the conversation, and do not resonate with consumers who understand "free" to mean "free" and that to obligate oneself to purchase something, the buyer must provide a payment mechanism to the seller.[486] Often, these disclosures come in writing in a "membership package" sent to the consumer some time after the call. Law enforcement experience has shown that these disclosures are meaningless to consumers—who either never receive the packets, or assume they are junk mail and discard them.[487] Moreover, in any telemarketing transaction, but most especially in preacquired account telemarketing, it is imperative that the seller or telemarketer ensure that the consumer actively, and unequivocally, provides his or her consent to be charged, and to be charged using a particular payment mechanism. The Commission has determined, therefore, that prohibiting unauthorized charges, and laying out what is required to obtain express informed consent in certain circumstances, is the most appropriate solution not only to the harm caused by preacquired account telemarketing abuses, but also by other exploitative billing methods in telemarketing.

§ 310.4(a)(7) — Failing to transmit caller identification information

Section 310.4(a)(7) of the amended Rule addresses transmission of caller identification ("Caller ID") information. This section prohibits any seller or telemarketer from "failing to transmit or cause to be transmitted the telephone number, and, when made available by the telemarketer's carrier, the name of the telemarketer, to any caller identification service in use by a recipient of a telemarketing call." A proviso to this section states that it is not a violation to substitute the actual name of the seller or charitable organization on whose behalf the call is placed for the telemarketer's name, or to substitute the seller's customer service number or the charitable organization's donor service number that is answered during regular business hours for the number the telemarketer is calling from or the number billed for making the call. Full compliance with the Caller ID provision will be required by January 29, 2004.

The record includes several key principles supporting the Commission's decision to adopt this approach to Caller ID information. First, transmission of Caller ID information is not a technical impossibility, as some commenters had argued or implied. Second, telemarketers are able to transmit this information at no extra cost, or minimal cost. Third, consumers will receive substantial privacy protection as a result of this provision.[488] Fourth, consumers and telemarketers will both benefit from the increased accountability in telemarketing that will result from this

[481] NAAG-NPRM at 30; Covington-Supp. at 4-5.

[482] ABA-NPRM at 8-9; ABIA-NPRM at 4; CMC-NPRM at 9-10; MBNA-NPRM at 6.

[483] *See, e.g.*, DMA-NPRM at 39-40 (specific to upselling) (the Commission "should instead require that notice of transfer of billing information be disclosed to the consumer and that consent be given by the consumer prior to the transfer").

[484] *See* ATA-NPRM at 20; ATA-Supp. at 5-6; CCC-NPRM at 11-12; ERA-NPRM at 24-25; ERA/PMA-Supp. at 11-15; ITC-NPRM at 5; MPA-NPRM at 26-29; MPA-Supp. at 5-6; NATN-NPRM at 3 (Supporting ERA Guidelines and recommendation); Noble-NPRM at 3 (same); NSDI-NPRM at 3 (same); PMA-NPRM at 19 (same). *See also* Associations-Supp. at 6.

[485] Review of taped verifications obtained as evidence in the Commission's law enforcement actions and in similar state actions convincingly demonstrates the inadequacy of disclosures in this context.

[486] *See* NCL-NPRM at 7 ("Merely requiring telemarketers to disclose that they have already obtained the billing account information from another source or that they may share that information with other marketers would not provide consumers with adequate protection from abuse. Express verifiable authorization to use the billing account information is not enough in these instances because it comes into play *after the fact*; it does not give consumers prior knowledge of or control over who has their account information.").

[487] *See* discussion of § 310.3(a)(3)(iii) above.

[488] EPIC-NPRM at 11-12.

provision.[489] Fifth, law enforcement groups will benefit from a vital new resource from the required transmission of Caller ID information in telemarketing.[490]

Background. The original Rule did not address the issue of Caller ID, or the feasibility or desirability of requiring telemarketers to transmit Caller ID information. During the Rule Review, however, the Commission received numerous comments from consumers and others expressing frustration about telemarketers' routine failure to transmit Caller ID information.[491] Commenters complained that when telemarketers called, consumers' Caller ID devices would show a phrase like "unknown," "out of area," or "unavailable," instead of displaying the name and telephone number of the telemarketer or seller on whose behalf the call was made.[492] Based on the Rule Review record, the Commission proposed in the NPRM to prohibit blocking, circumventing, or altering the transmission of Caller ID information.[493]

In support of this proposal, the Commission discussed in the NPRM the benefits that accrue to consumers from transmission of Caller ID information and the technical considerations implicated by transmission of this information.[494] Consumers benefit because Caller ID information allows them to screen out unwanted callers and identify companies that have contacted them so that they can place "do not call" requests to those companies. These features of Caller ID enable consumers to protect their privacy and are clearly within the ambit of the Telemarketing Act's mandate, set forth in 15 U.S.C. § 6302(a)(3)(A), to prohibit telemarketers from undertaking a pattern of unsolicited telephone calls which a reasonable consumer would consider coercive or abusive of their right to privacy.[495] The fact that consumers greatly value the privacy protection provided by receipt of Caller ID information is evidenced by the fact that, as of the year 2000, nearly half of all Americans subscribed to a Caller ID service.[496]

The Commission noted in the NPRM the conflict in opinion during the Rule Review regarding the feasibility of requiring Caller ID transmission by telemarketers.[497] Based on its assessment of the information on the record at the close of the Rule Review, the Commission expressed its uncertainty that telemarketers using "T-1" trunk lines could transmit Caller ID information, and the Commission therefore did not at that time propose to mandate such transmission.[498] The NPRM also acknowledged telemarketers' argument that, even if they could transmit Caller ID information, they would still face the challenge of transmitting a number that would be useful to consumers.[499]

The Commission received numerous comments in response to the NPRM's discussion of Caller ID. Some industry representatives simply posited that transmission of Caller ID information was not possible, or argued that it was possible to transmit a telephone number, but that it was impossible or prohibitively expensive to transmit a telephone number that consumers could use to call the telemarketer that had called them.[500] Consumer groups and law enforcement representatives urged the Commission not to accept telemarketers' claims that mandatory Caller ID transmission is impossible or prohibitively expensive without carefully examining the technical considerations involved.[501] A number of consumers expressed frustration with telemarketers who fail to transmit Caller ID information.[502]

Industry commenters generally supported the proposed prohibition on blocking Caller ID, but urged the Commission not to *require* Caller ID transmission,[503] although one telemarketer very strongly advocated that the Commission do so in order to remove the cloak of anonymity from telemarketers and thus promote accountability for the greater benefit of the industry as a whole.[504] A number of industry commenters wanted to make sure that "the prohibited practice is the deliberate manipulation of the Caller-ID signal" and that "[a]s long as no overt actions are taken to disrupt the information, there is no violation."[505] Several commenters expressly urged that purchasing or using telephone equipment that lacks Caller ID functionality should not be a violation of the Rule.[506]

Technical feasibility of mandatory transmission of Caller ID information. The rulemaking record as a whole shows that telemarketers' failure to transmit Caller ID information need not be the result of their blocking its transmission or some other affirmative measure on their part.[507] Rather, the record indicates that non-transmission

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[489] Make-A-Wish-NPRM at 6; Associations-Supp. at 7; DialAmerica-Supp. at 2.

[490] Make-A-Wish-NPRM at 6; McClure-NPRM at 2; NACAA-NPRM at 9; NYSCPB-NPRM at 4; Patrick-NPRM at 2-3; TRA-NPRM at 11.

[491] *See, e.g.*, Baressi-RR at 1; Bell Atlantic-RR at 8; Blake-RR at 1; Collison-RR at 1; Lee-RR at 1; LeQuang-RR at 1; Mack-RR at 1; Sanford-RR at 1.

[492] *See, e.g.*, Baressi-RR at 1; Blake-RR at 1; Collison-RR at 1; Lee-RR at 1; LeQuang-RR at 1; Mack-RR at 1; Sanford-RR at 1.

[493] The Caller ID provision is found at § 310.4(a)(7) of the proposed Rule; discussion of the proposed Rule provision is found at 67 FR at 4514-16.

[494] 67 FR at 4514-16. The Commission also asked whether trends in telecommunications might one day permit the transmission of full Caller ID information when the caller uses a trunk line or PBX system. *Id.* at 4538.

[495] 67 FR at 4514. DMA argued that the Commission lacks authority to require Caller ID transmission. DMA-NPRM at 48-49. However, the NPRM clearly explains that the harm to consumers that arises from failure to transmit Caller ID information falls within the areas of abuse that the Telemarketing Act explicitly aimed to address. 67 FR at 4514-16. The Commission therefore rejects DMA's "lack of authority" argument.

[496] Dina ElBoghdady, *Ears Wide Shut: Researchers Get Punished for Telemarketers' Crimes*, WASH. POST, Sept. 8, 2002, at H 2.

[497] 67 FR at 4515.

[498] *Id.*

[499] *Id.* Some telemarketers asserted that the telephone number that would likely be displayed on consumers' Caller ID services would be the telemarketer's central switchboard or trunk exchange, rather than a customer service number or a number where consumers could submit a "do not call" request.

[500] ANA-NPRM at 6; Associations-NPRM at 3; DMA-NPRM at 49; NAA-NPRM at 17; Nextel-NPRM at 25; Synergy Solutions-NPRM at 3-4; Teledirect-NPRM at 3; Associations-Supp. at 7. *See also* AFSA-NPRM at 19; Assurant-NPRM at 6. *But see* EPIC-NPRM at 11, 13; NAAG-NPRM at 45.

[501] EPIC-NPRM at 11-12; NAAG-NPRM at 45; AARP-NPRM at 5-6.

[502] *See, e.g.*, Robert Hawrylak (Msg. 3382); Carl Wallander (Msg. 861); George Kapnas (Msg. 2243); Tom Kaufmann (Msg. 2433); Bob Schmitt (Msg. 3494); Bradley Davis (Msg. 3890); Toryface (Msg. 19744). In all, more than 200 consumers stated that the Commission's proposed approach in the NPRM was not adequate to protect consumers' right to privacy.

[503] ABA-NPRM at 9; ARDA-NPRM at 6; ANA-NPRM at 6; Associations-NPRM at 3; BofA-NPRM at 7; CBA-NPRM at 10; Comcast-NPRM at 4; DMA-NPRM at 48; ERA-NPRM at 48-49; Green Mountain-NPRM at 27; ITC-NPRM at 3; Lenox-NPRM at 6; MPA-NPRM at 49; NAA-NPRM at 17; Nextel-NPRM at 24-25; Synergy Solutions-NPRM at 3-4; Tribune-NPRM at 10; VISA-NPRM at 13. In the NPRM, the Commission specifically asked, among other things, whether it would "be desirable to propose a date in the future by which all telemarketers would be required to transmit Caller ID information." 67 FR at 4538.

[504] DialAmerica-NPRM at 24; DialAmerica-Supp. at 10; June 2002 Tr. II at 83 (DialAmerica).

[505] Synergy Solutions-NPRM at 3. *See also* Nextel-NPRM at 25; Noble-NPRM at 4; NATN-NPRM at 4; NSDI-NPRM at 4; ITC-NPRM at 3.

[506] AFSA-NPRM at 19; Comcast-NPRM at 4; CBA-NPRM at 10; Cox-NPRM at 37; Household Bank-NPRM at 16; Nextel-NPRM at 25; Thayer-NPRM at 5; Wells Fargo-NPRM at 3. *But see* EPIC-NPRM at 11, 13-14; McClure-NPRM at 1; Patrick-NPRM at 2-3; Thayer-NPRM at 5 (Commenter raises issue of whether Internet telephony users could transmit Caller ID information. There is nothing in the record indicating that telemarketers use Internet telephony. If they do use such technology, they are reminded that all telemarketers subject to the Rule must transmit Caller ID information. The FTC's own telephone system uses IP telephones, which do provide Caller ID information.).

[507] ATA-Supp. at 16-17; Chicago ADM-NPRM at 1; Lenox-NPRM at 6; NRF-NPRM at 19.

of Caller ID information may be a by-product of purchasing or using telephone equipment that lacks Caller ID transmission functionality.[508]

In concluding that required transmission of Caller ID information is technically feasible and not costly for telemarketers, the Commission was persuaded in part by the example provided by DialAmerica. In its written comments and at the June 2002 Forum, DialAmerica explained how it transmits Caller ID information to the consumers it calls.[509] DialAmerica's carrier assigns a telephone number to each of DialAmerica's call centers. When a sales representative from a particular call center calls a consumer, that call center's assigned telephone number is transmitted to the consumer's Caller ID service. SBC, a large provider of common carriage services, provided support for the availability of DialAmerica's model.[510] DialAmerica stated at the June 2002 Forum that it does not pay its carrier any extra amount to transmit this assigned telephone number to consumers.[511]

The Commission believes the argument by telemarketers that required transmission of Caller ID information would be impossible or prohibitively expensive is based substantially on an erroneous supposition that telemarketers would be required to transmit the specific telephone number from which a sales representative placed a given call. The Commission's citation to DialAmerica's approach should make it clear that the Commission is not requiring this level of specificity. Under the amended Rule's Caller ID provision, telemarketers may transmit any number associated with the telemarketer that allows the called consumer to identify the caller. This includes a number assigned to the telemarketer by its carrier, the specific number from which a sales representative placed a call, or a number used by the telemarketer's carrier to bill the telemarketer for a given call. In the alternative, a telemarketer may transmit the seller's customer service number or the charitable organization's donor service number, provided that this number is answered during regular business hours.

Not every telemarketer will need to follow DialAmerica's approach for transmission of Caller ID information. The record reflects various options in calling equipment used by telemarketers.[512] A telemarketer's choice of calling equipment is determined in part by the telemarketer's size. The smallest telemarketers, most likely placing calls from home, may contact consumers using a "plain old telephone service" ("POTS") line. A telemarketer calling consumers with a POTS line will have no difficulty transmitting Caller ID information.[513] This is also true if, to call consumers, the telemarketer uses Integrated Services Digital Network-Basic Rate Interface ("ISDN-BRI") technology, which, like POTS lines, is likely to be utilized only by the smallest telemarketers.[514]

Larger telemarketers commonly use a "private branch exchange" switch ("PBX"), which enables them to place large volumes of calls more efficiently.[515] For telemarketers using a PBX, the primary determinant in transmitting Caller ID information is the telemarketer's connection to its telephone company. A telemarketer using a PBX connects to its telephone company through a "trunk."[516] The more modern type of trunk used in telemarketing is an "Integrated Services Digital Network-Primary Rate Interface" ("ISDN-PRI") trunk.[517] It is clear from the record that a telemarketer using such an "ISDN-PRI" trunk has no difficulty in transmitting Caller ID information to a consumer.[518]

The older kind of trunk used in telemarketing is a "T-1" trunk.[519] Telemarketers using a "T-1" trunk are perhaps most likely to follow DialAmerica's model by having their carriers assign a telephone number to the trunk for transmission to consumers' Caller ID services. This is true because, in contrast to "ISDN-PRI" trunks, "T-1" trunks do not routinely transmit the caller's telephone number to Caller ID devices.[520] Some telemarketers stated that it may be technically feasible (but costly) for them to upgrade, reconfigure, or replace their PBX switches or their "T-1" trunks in order to transmit a specific sales representative's telephone number.[521] However, the Commission's approach does not require this level of precision. Consequently, telemarketers will not have to absorb the expense associated with achievement of this level of precision.

Regardless of telemarketers' calling systems and carriers' ability to assign a telephone number to a telemarketer's call center, there are occasions in which Caller ID information does not reach the called consumer even when telemarketers arrange for the transmission of that information.[522] Two situations would seem to be outside the control of the telemarketer. First, the route traveled by a call could pass through a switch that lacks Caller ID functionality, essentially dropping

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[508] EPIC-NPRM at 11; TRA-NPRM at 11. As is discussed below, non-transmission may also result from errors in telephone companies' equipment.

[509] DialAmerica-Supp., Att. A at 1-2. *See also* June 2002 Tr. II at 81-83. According to one of DialAmerica's written comments: "Caller ID information can be delivered over T-1's today. We have been doing it for over two years. If the Commission does not mandate the delivery of Caller ID information, those who would want the Commission to believe that it cannot be done will have been successful." DialAmerica-Supp. at 10. *See also* DialAmerica-NPRM at 25 ("The conclusion stated in the NPRM . . . that trunk or T-1 lines will only display a term like "unavailable" is not correct.") and NAAG-NPRM at 45 ("We have been advised that all trunk lines . . . should be capable of supporting Caller ID.")

[510] *See* SBC-Supp. at 8-10; June 2002 Tr. II at 80-83. *See also* Cox-NPRM at 37; DMA-NPRM at 49; Green Mountain-NPRM at 28; Associations-Supp. at 7.

[511] June 2002 Tr. II at 83 (DialAmerica). Moreover, other moderate-sized telemarketers reported that they currently transmit Caller ID information. Because they are not compelled to do this, the Commission believes that doing so is not cost-prohibitive. *See* Aegis-NPRM at 5; Lenox-NPRM at 6. *See also* ANA-NPRM at 6; ARDA-NPRM at 6. *But see* ATA-Supp. at 18.

[512] *See, e.g.*, Nextel-NPRM at 25 (proprietary dialers); DialAmerica-Supp., Att. A at 1 (regular trunk groups provisioned by carrier); Fiber Clean-NPRM at 1 (telemarketers working from home).

[513] SBC-Supp. at 8.

[514] http://www.bell-labs.com/technology/access/ISDN-BRI.html. ISDN-BRI essentially uses a caller's existing wiring to transmit calls digitally. As such, its capability to transmit Caller ID information is akin to a POTS line's capability.

[515] SBC-Supp. at 8-9. This is also true of telemarketers using predictive dialers. Predictive dialers used by many telemarketers contain features similar to a PBX, and the capacity of such a predictive dialer to transmit Caller ID information is essentially the same as the capacity of a PBX to do so. *See, e.g.*, Sytel-NPRM at 8 (arguing that telemarketers using predictive dialers should transmit Caller ID information. This comment suggests that predictive dialers are capable of transmitting Caller ID information). *See also* http://www.pbxinfo.com/portal/modules.php?op=modload&name=Sections&file=index&req=viewarticle&artid=8.

[516] SBC-Supp. at 8-9. An alternative to PBX available to telemarketers (but not widely used) is called "Centrex." Telemarketers using Centrex connect to their telephone company using a telephone line; telemarketers using a PBX connect to their telephone company using a trunk. Because Centrex users use a line rather than a trunk, telemarketers using Centrex (like telemarketers using a POTS line or ISDN-BRI) should not find it difficult to transmit Caller ID information. *See* http://www.granitestatetelephone.com/sfb_centrex.html.

[517] June 2002 Tr. II at 76-77 (SBC).

[518] EPIC-NPRM at 12; SBC-Supp. at 8-9; June 2002 Tr. II at 80-81 (SBC).

[519] Some telemarketers may use a "T3" or "DS3" trunk. This kind of trunk is essentially a collection of "T-1" trunks; as such, it operates in a manner similar to a T-1 for purposes of Caller ID functionality. *See* http://www.hal-pc.org/~ascend/MaxTNT/hwinst/tntt3.htm.

[520] SBC-Supp. at 8-9.

[521] Synergy Solutions-NPRM at 4; TeleDirect-NPRM at 3. *But see* EPIC-NPRM at 11-12.

[522] *See, e.g.*, ABA-NPRM at 9; Chicago ADM-NPRM at 1; IMC-NPRM at 9; Lenox-NPRM at 6; Teledirect-NPRM at 3; Associations-Supp. at 7; ATA-Supp. at 17.

the Caller ID data but forwarding the rest of the call transmission.[523] Second, a malfunction within a carrier's system could result in the failure to transmit Caller ID information in a given call.[524] Because these phenomena are outside the control of the telemarketer, the telemarketer would not be held liable for violating this provision of the Rule when the failure to transmit Caller ID information results from such an occurrence. However, to avoid liability in such a case, a telemarketer must be able to establish that it has taken all available steps to "transmit or cause the transmission of" identifying information. This includes employing technical means within the telemarketer's operation, ensuring that the telemarketer's telephone company is equipped to transmit Caller ID information, and not using any means to block Caller ID transmission.

A very small number of telemarketers may be located in areas of the country that are served only by telephone companies that are not capable of transmitting Caller ID information or assigning a telephone number to the telemarketer that can be transmitted to a called consumer.[525] The Commission does not intend to require such telemarketers to relocate to areas of the country that are served by telephone companies that do provide Caller ID capability. Nonetheless, in enforcing this provision, the Commission would take into account any telemarketer's relocation from an area where it can transmit Caller ID information to a location where it cannot. However, the Commission believes it is unlikely that a telemarketer would go to such lengths in order to avoid compliance with this new requirement.

The Commission recognizes that transmission of Caller ID information does not depend on technical capability alone. Telemarketers who currently possess Caller ID capability may deliberately decline to transmit this information to the consumers they solicit. There is record evidence to support legitimate explanations for deliberate blocking of Caller ID transmission.[526] Fiber Clean, for example, uses telemarketers working from home; it advocates Caller ID blocking to protect its employees' privacy.[527] Other telemarketers may block Caller ID transmission because they are unable to transmit a telephone number which would be useful to consumers.[528]

The Commission has concluded that some flexibility regarding what telephone number and name the telemarketer may transmit best accommodates the current state of telemarketing.[529] A telemarketing service bureau calling on behalf of more than one seller, for example, may benefit from the option of transmitting the seller's name and telephone number rather than its own.[530] Under § 310.4(a)(7), telemarketers have the option of transmitting a telephone number associated with them that enables the consumer to identify who called, or, in the alternative, the seller's customer service number or the charitable organization's donor service number. If the telemarketer transmits its own number, that number ideally should enable the consumer to communicate with the caller to assert a company-specific "do not call" request. Alternatively, telemarketers can forward consumers' return calls to a customer service line.[531] At-home callers with a POTS line cannot alter, but they can acquire a second line for business calls, which would allay privacy concerns associated with transmission of the caller's residential number.

Consumers benefit from transmission of Caller ID information. The record, taken as a whole, establishes that it is neither technically nor economically infeasible for telemarketers to transmit Caller ID information. On the other side of the equation, consumers derive substantial benefit from receiving Caller ID information. Moreover, as the Commission explained in the NPRM, the transmission of Caller ID information is necessary to protect consumers' privacy under the Telemarketing Act.[532] Consumers in large numbers subscribe to, and pay for, Caller ID services offered by their telephone companies.[533] Many of these consumers subscribe to Caller ID specifically to identify incoming calls from telemarketers and screen out unwanted telemarketing calls.[534] Indeed, according to Private Citizen, consumers spend an aggregate of $1.4 billion annually on Caller ID services to limit unwanted telemarketing calls.[535] Consumers who commented on the record expressed frustration at the failure of telemarketers to provide Caller ID information.[536] These consumers have, over time, come to the conclusion that an incoming call that fails to provide Caller ID information is commonly a telemarketing call.[537] As a result, some consumers decline to answer these calls.[538] In an attempt to protect their privacy from incoming calls with no Caller ID information provided, other consumers have gone beyond call screening with services such as Caller Intercept and Privacy Manager, both of which are offered by telephone companies for a fee, that intercept incoming calls with no Caller ID information and require such callers to identify themselves before their call will be connected.[539] At present, Caller ID services are an ineffective solution from consumers' perspective: many

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[523] ATA-Supp. at 16; SBC-Supp. at 13.

[524] SBC-Supp. at 13.

[525] The record reflects that with the exception of some small interexchange carriers ("IXCs"), competitive local exchange carriers ("CLECs"), and some incumbent local exchange carriers ("ILECs") serving rural pockets of the country, all telephone companies can pass along Caller ID information. *See* June 2002 Tr. II at 78-79; FCC First Report and Order in the Matter of Access Charge Reform, CC Docket No. 96-262 (May 7, 1997), para. 137; http://www.ss7.net: Carriers connected to the Signaling System 7 ("SS7") network can transmit Caller ID information. SS7 is the predominant signaling system, and its use is increasing. *But see* Green Mountain-NPRM at 28.

[526] Fiber Clean-NPRM at 1; Cox-NPRM at 37-38; NRF-NPRM at 19. *But see* ERA-NPRM at 48; Teledirect-NPRM at 3; ATA-Supp. at 16.

[527] Fiber Clean-NPRM at 1.

[528] Cox-NPRM at 37-38; NRF-NPRM at 19.

[529] ARDA-NPRM at 6; Assurant-NPRM at 6; ATA-Supp. at 16; DMA-NPRM at 50; ERA-NPRM at 49; IMC-NPRM at 8; MPA-NPRM at 9, 49-50. *See also* Assurant-NPRM at 6 (Commenter asked that the Rule do more to prevent transmission of misleading Caller ID information. The Commission believes that the amended Rule addresses this concern.). *But see* AARP-NPRM at 6; NCL-NPRM at 8; Patrick-NPRM at 10 (telemarketer should be required to transmit the seller's name whenever possible). *See also* EPIC-NPRM at 12; Make-A-Wish-NPRM at 5-6; Worsham-NPRM at 4 (telemarketer should identify itself rather than the seller). *See also* BellSouth-NPRM at 4-5 (no flexibility in transmitted number should be permitted).

[530] MPA-NPRM at 9; DMA-NPRM at 50. *See also* Green Mountain at 28; ATA-Supp. at 16.

[531] DialAmerica provides a model for the use of call forwarding in this context. *See* DialAmerica-Supp., Att. A at 2.

[532] 67 FR at 4514.

[533] Dina ElBoghdady, *Ears Wide Shut: Researchers Get Punished for Telemarketers' Crimes*, WASH. POST, Sept. 8, 2002, at H2 (Noting that, according to a survey conducted in 2000, nearly half of all Americans subscribe to caller ID); ACUTA-NPRM at 2.

[534] McClure-NPRM at 3; Private Citizen-NPRM at 2, Susannah Fox (Msg. 3624), CN Rhodine (Msg. 480), Gautham Achar (Msg. 596), Brenda Hall (Msg. 825), Carl Wallander (Msg. 861). *See also* 67 FR at 4515, n.223 (citing Bell Atlantic survey finding that three out of four residential customers buy Caller ID to help stop abusive telephone calls).

[535] Private Citizen-NPRM at 2. *See also* Associated Press, *Phone Companies Act as Double Agents in Telemarketing War*, CHI. TRIB., Oct. 27, 2002, at C4.

[536] *See, e.g.*, Robert Hawrylak (Msg. 3382), Patricia Frank (Msg. 223), Jo Ann Kilmer (Msg. 530), Jim Kelly (Msg. 541), Carl Wallander (Msg. 861), John G. Talafous (Msg. 1236), Louis Sarvary (Msg. 1319), George M. Kapnas (Msg. 2243), Bob Greene (Msg. 2716), FarmGirl16F3 (Msg. 14015).

[537] *See, e.g.*, Karen Peters (Msg. 3814), Chuck Jackson (Msg. 209).

[538] *See, e.g.*, E Pereira (Msg. 214), Brenda Hall (Msg. 825), Victoria Brigman (Msg. 3889).

[539] *See, e.g.*, http://www22.verizon.com/ForYourHome/SAS/res__fam__identify.asp; Private Citizen-NPRM at 2; DC-NPRM at 5; EPIC-NPRM at 11; McClure-NPRM at 2.

consumers pay added costs simply to find out who is calling them, yet this investment is useless when the identifying information is not made available.[540]

With the exception of Fiber Clean, which argued in favor of allowing at-home telemarketers to block Caller ID transmission, comments from industry members on the whole did not argue that telemarketers have a reason to block Caller ID transmission which might override the substantial privacy protection afforded to consumers when their Caller ID service shows them who is calling.[541] To the contrary, comments from industry members *supported* the privacy principle behind the Rule's Caller ID provision, but took issue with the proposition that they should be required to transmit or cause transmission of Caller ID information.[542] Therefore, there is strong support for the Commission's position that requiring Caller ID transmission in telemarketing calls will help promote consumers' privacy by allowing them to know who is calling them at home.

Transmission of Caller ID information will also promote accountability throughout the industry—a goal championed by consumers[543] and industry members[544] alike. The Commission is persuaded by the argument DialAmerica presented in favor of requiring transmission of Caller ID in telemarketing calls. According to DialAmerica: "[d]elivery of Caller ID information, that will be displayed on a consumer's Caller ID device or that can be accessed through such services as *69, is essential to create accountability in the outbound telemarketing industry."[545]

Commenters noted that the increase in accountability that would accrue from requiring transmission of Caller ID information in telemarketing would provide particular benefit in addressing abandoned calls.[546] Consumers whose privacy has been abused by dead air and call abandonment find it difficult, if not impossible, to ascribe those practices to a particular telemarketer unless Caller ID information is provided.[547] As explained by DialAmerica, mandatory transmission of Caller ID information will provide "a strong incentive for companies to keep abandonment rates low and eliminate 'dead air,'" as these companies do not want to engage in practices that might encourage consumers to invoke their company-specific "do-not-call" rights.[548]

The enhanced accountability provided by Caller ID transmission extends beyond complaints about call abandonment and dead air. Caller ID information provides a record of identification that endures beyond the telemarketing call. The prompt disclosures required by 310.4(d) provide consumers with a needed introduction to a solicitation call, but do not provide an enduring record of identifying information, as most consumers do not answer the phone with pen and paper at the ready to write down the name of the calling party. Moreover, just as industry comments did not dispute the privacy protections provided by Caller ID transmission, neither did they present a rebuttal to the argument that such transmission will promote accountability in telemarketing. Indeed, the large majority of telemarketers—entities built upon good business practices and compliance with the Rule—will benefit from a provision designed to respond to deceptive and abusive practices aided by anonymity in telemarketing.[549]

By eliminating anonymity in telemarketing, the Caller ID provision will serve a third, equally important goal: it will provide law enforcement with a significant new resource.[550] In the years following promulgation of the original Rule, the Commission and the states have created a substantial record of enforcement.[551] However, enforcement efforts concerning some Rule provisions have been frustrated because of difficulty in identifying violators.[552] Sellers and telemarketers that have failed to honor "do-not-call" requests have been particularly hard to identify.[553] A number of comments in the record noted the need for greater ability to identify possible violators, and the advantages of Caller ID information in filling that need.[554] AARP noted that required transmission of Caller ID information will also enable consumers to contact government agencies and the Better Business Bureau to verify the legitimacy of the telemarketer, which will help to prevent fraud before it occurs.[555] Therefore, the transmission of Caller ID information likely will aid law enforcement's ability to enforce the TSR, and increase the Rule's effectiveness.

Consistency with FCC regulations. FCC regulations require carriers using SS7[556] to provide a mechanism by which a line subscriber can block the display of his or her telephone number on a Caller ID device.[557] SBC referenced the FCC's approach to Caller ID blocking to argue that calling parties' interest in privacy "outweighs the general usefulness of Caller ID service."[558] As the NPRM made clear, the FCC's requirement that common carriers be able to allow Caller ID blocking is meant to address specific calling situations in which protecting the calling party's privacy takes on particular urgency.[559] Cited examples include undercover law enforcement operations and calls placed from battered women's shelters.[560] No such privacy justification suggests itself in the case of telemarketers. Moreover, there is no conflict between the amended Rule's Caller ID provision and FCC regulations. The FTC's provision requires sellers and telemarketers to transmit Caller ID information; it does not create an obligation or a prohibition for common carriers. FCC regulations require certain carriers to provide a mechanism for blocking display of Caller ID information; they do not grant

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[540] AARP-NPRM at 5; EPIC-NPRM at 11; McClure-NPRM at 3. *But see* Lynn Gaubatz (Msg. 2769) (Consumer prefers current state of affairs where "most" telemarketers block transmission of Caller ID information because her Caller ID is programmed to refuse calls from parties who block such transmission. Using this arrangement, the consumer reports receiving few telemarketing calls.).

[541] Several comments from industry groups asserted that the Commission should yield to the FCC's standard on Caller ID blocking, under which the calling party's ability to block Caller ID transmission is preserved. *See, e.g.*, DMA-NPRM at 48-49; SBC Supp. at 10-11. As is discussed below, however, the concerns at stake in the FCC's regulation—law enforcement and safety—are not implicated by telemarketing calls.

[542] DMA-NPRM at 48; IMC-NPRM at 8.

[543] *See, e.g.*, Teresa Vargas (Msg. 1292) ("I think telemarketers should NOT be able to block their phone numbers on Caller ID screens or *69. This will make the telemarketers more accountable, particularly if their tactics are in violation of a "do-not-call" request or if, [sic] the telemarketers successfully scam consumers."); Lisa Bellanca (Msg. 2007).

[544] *See, e.g.*, DialAmerica-Supp. at 2; June 2002 Tr. II at 91-92 (ERA).

[545] DialAmerica-Supp. at 2.

[546] DialAmerica-NPRM at 25; Sytel-NPRM at 8; AARP-NPRM at 9; ARDA-NPRM at 15.

[547] http://www.opc-marketing.com/predictive.htm ("[I]t is assumed that abandoned calls to anonymous consumers do not harm the call center's business.").

[548] DialAmerica-Supp. at 3.

[549] *See, e.g.*, AARP-NPRM at 6.

[550] TRA-NPRM at 11; EPIC-NPRM at 11-12.

[551] FTC law enforcement actions alone total over 139 cases, resulting in total judgments of over $200 million since the Rule's inception.

[552] June 2002 Tr. II at 21.

[553] Donald Munson (Msg. 25516); EPIC-NPRM at 11; NYSCPB-NPRM Att. A at 4-5.

[554] DialAmerica-NPRM at 25-26; EPIC-NPRM at 11-12; Patrick-NPRM at 2-3; TRA-NPRM at 11; CN Rhodine (Msg. 480); Charles Goodwin (Msg. 2079); Donald Munson (Msg. 25516).

[555] AARP-NPRM at 6.

[556] *See* note 526 above for more on SS7 technology.

[557] 47 CFR 64.1601.

[558] SBC-Supp. at 10-11.

[559] 67 FR at 4515, n.228. *See also* ATA-Supp. at 16; EPIC-NPRM at 14.

[560] *Id.*

sellers and telemarketers the right to block transmission of that information.

§ 310.4(b) — Pattern of calls

Section 310.4(b)(1) of the original Rule specifies that "[i]t is an abusive telemarketing act or practice and a violation of this Rule for a telemarketer to engage in, or for a seller to cause a telemarketer to engage in," several practices deemed to be abusive of consumers. The proposed Rule contained some modifications to various subsections of this provision. The responses received in response to the NPRM, and the discussion at the June 2002 Forum, are set forth below.

§ 310.4(b)(1)(i) — Calling repeatedly or continuously

Section 310.4(b)(1)(i) specifies that it is an abusive telemarketing act or practice to cause any telephone to ring, or to engage any person in telephone conversation, repeatedly or continuously, with intent to annoy, abuse, or harass any person at the called number. None of the comments recommended that changes be made to the current wording of § 310.4(b)(1)(i).[561] Therefore, the language in that provision remains unchanged in the amended Rule.[562] However, the expansion in the scope of the Rule effectuated by the USA PATRIOT Act brings within the ambit of this provision telemarketers soliciting charitable contributions.

§ 310.4(b)(1)(ii) — Denying or interfering with "do-not-call" rights

In the NPRM, the Commission proposed to prohibit a telemarketer from denying or interfering in any way with a person's right to be placed on a "do-not-call" list, including hanging up the telephone when a consumer initiates a request that he or she be placed on the seller's list of consumers who do not wish to receive calls made by or on behalf of that seller.[563] In setting out the proposed prohibition, the Commission noted that during the Rule Review, numerous individual consumers had complained about being hung up on when they asked to be placed on a "do-not-call" list. In other instances, consumers complained that the telemarketer had used other means to hamper or impede these consumers' attempts to be placed on a "do-not-call" list. Participants in both the "Do-Not-Call" Forum and the Rule Review Forum echoed these complaints.[564]

A seller or telemarketer has an affirmative duty under the Rule to accept a "do-not-call" request, and to process that request. Failure to do so by impeding, denying, or otherwise interfering with an attempt to make such a request clearly would defeat the purpose of the "do-not-call" provision, and would frustrate the intent of the Telemarketing Act to curtail telemarketers from undertaking unsolicited telephone calls which the reasonable consumer would consider coercive or abusive of the consumer's right to privacy.[565]

Those commenters who addressed this provision strongly supported the prohibition.[566] For example, NAAG stated that an express prohibition against denying or interfering with a consumer's right to be added to a company-specific "do-not-call" list clarifies the seriousness of the telemarketer's obligation to process the consumer's request and will raise confidence in the system.[567]

NAAG noted that the consumer who receives the telemarketing call generally must rely exclusively on the telemarketer's truthful disclosure of his or her identity and the nature of the call, and that consumers are often confused because many company names are very similar.[568] In this respect, the Commission's determination to require telemarketers to transmit Caller ID information, discussed above, will provide a valuable tool to both consumers and law enforcement agencies in identifying those telemarketers who fail to comply with their obligation to process the consumer's request.

Therefore, the Commission has determined that it is an abusive telemarketing act or practice to deny or interfere in any way with a person's right to be placed on a "do-not-call" list, including hanging up on the individual when he or she initiates such a request. Section 310.4(b)(1)(ii) of the amended Rule prohibits this practice, and encompasses both telemarketers soliciting the purchase of goods or services and those soliciting charitable contributions in accordance with the USA PATRIOT Act amendments.[569] In addition, § 310.4(b)(1)(ii) prohibits anyone from directing another person to deny or interfere with a person's right to be placed on a "do-not-call" list. This aspect of the provision is intended to ensure that sellers who use third-party telemarketers cannot shield themselves from liability under this provision by suggesting that the violation was a single act by a "rogue" telemarketer where there is evidence that the seller caused the telemarketer to deny or defeat "do-not-call" requests.[570]

§ 310.4(b)(1)(iii) — "Do-not-call"

The original Rule prohibited a seller or telemarketer from calling a person who had previously asked not to be called by or on behalf of the seller whose goods or services were offered.[571] The proposed Rule added a second "do-not-call" provision that would prohibit a seller or telemarketer from calling a consumer who had placed his or her name and/or telephone number on a centralized registry maintained by the Commission, unless the consumer had provided express authorization for the seller to call him or her.[572] To effectuate the USA PATRIOT Act amendments, the Commission also proposed that for-profit telemarketers who solicit charitable donations be subject to the proposed national registry.[573]

The national "do-not-call" registry proposal generated extensive comment.[574] Consumer and privacy advocates, as well as individual consumers, overwhelmingly supported the creation of such a registry.[575]

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[561] In its comments in the Rule Review, NASAA stated that this provision strikes directly at one of the manipulative techniques used in high-pressure sales to coerce consumers to purchase a product, and noted that the organization advises consumers that one of the "warning signs of trouble" is the "three-call" technique used by fraudulent sellers of securities. NASAA-RR at 2.

[562] Section 310.4(b)(1)(i) of the amended Rule prohibits as an abusive practice "causing any telephone to ring, or engaging any person in telephone conversation, repeatedly or continuously with intent to annoy, abuse, or harass any person at the called number."

[563] 67 FR at 4516.

[564] *Id.*

[565] 15 U.S.C. 6102(a)(3)(A).

[566] *See, e.g.*, ARDA-NPRM at 6; Assurant-NPRM at 7; NAAG-NPRM at 44; NCL-NPRM at 8; NYSCPB-NPRM at 5-6; Proctor-NPRM at 4.

[567] NAAG-NPRM at 44. *See also* NCL-NPRM at 8.

[568] NAAG-NPRM at 44.

[569] Moreover, the Rule Review yielded evidence that, in some instances, telemarketers soliciting charitable contributions are unwilling to honor donors' "do-not-call" requests, even when threatened with withdrawal of future support. *See* Peters-RR at 1.

[570] Because the USA PATRIOT Act amendments do not give the Commission jurisdiction over non-profit organizations, the prohibition against causing a telemarketer to deny or defeat "do-not-call" requests applies only to sellers of goods or services, not to non-profit organizations.

[571] 16 CFR 310.4(b)(1)(ii). This is termed a "company-specific" approach to eliminating unwanted telephone solicitations.

[572] Proposed Rule §§ 310.4(b)(1)(iii)(B) and 310.4(b)(1)(iii)(B)(1) and (2).

[573] 67 FR at 4516, 4519.

[574] As discussed above, the Commission received about 64,000 written and electronic comments in response to the NPRM, including over 45 supplemental comments from organizations and individuals and almost 15,000 comments from Gottschalks' customers that were submitted by Gottschalks as its supplemental comment. The vast majority of comments touched, at least in part, on the proposed national "do-not-call" registry.

[575] *See, e.g.*, DOJ-NPRM at 4-5; EPIC-NPRM at 2-3; LSAP-NPRM at 12; NAAG-NPRM at 4, 6, 12, 29; NACAA-NPRM at 2; NCLC-NPRM at 13; NCL-

Indeed, many recommended that the Commission take a more restrictive "opt-in" approach, and prohibit telemarketing except to those consumers who expressly agree in advance to accept sales calls.[576] State regulators also supported a national registry, provided it did not preempt the "do-not-call" legislation already passed in many states or preclude the states from enforcing these laws.[577]

A number of industry commenters supported the general concept of a national "do-not-call" registry that would preempt state "do-not-call" laws, provided an exemption for "existing business relationships" were added to the Rule. The need for an established business relationship exemption was the most emphatic and consistent theme of industry comments, but other points were raised as well. Some questioned whether the Commission had the statutory authority to establish such a registry.[578] Others argued that a national "do-not-call" registry would impose an unconstitutional restriction on commercial speech.[579] Still others felt that an FTC registry was not necessary because the current system was sufficient to protect consumer privacy.[580] These commenters supported increased enforcement of existing federal and state "do-not-call" laws. Charitable organizations and the telemarketers who serve them uniformly opposed the national "do-not-call" registry proposal if applicable to charitable solicitations by for-profit telemarketers. They argued that such a registry would violate the First Amendment and that it would have a devastating impact on the level of contributions that non-profit organizations depend upon to fulfill their missions.[581]

Based on the entire record in this proceeding, the Commission has determined to retain the provision in the original Rule that prohibits a seller or telemarketer from calling a consumer who has previously asked not to be called by or on behalf of that seller. The Commission has also determined to supplement that provision by amending the Rule to establish a national "do-not-call" registry. For the reasons set forth herein, the Commission has decided to limit coverage of the national registry to telemarketing calls made by or on behalf of sellers of goods or services, thus exempting telemarketing calls on behalf of charitable organizations. Calls on behalf of charitable organizations will be subject to the company-specific "do-not-call" provision. In addition, the Commission has decided to retain the provision that allows consumers who sign up on the national "do-not-call" registry to provide express agreement to specific sellers to call them, but has modified that provision to require that evidence of such agreements be written, not oral. Furthermore, the Commission has decided to supplement that express agreement provision with a narrowly-defined exemption for "established business relationships." The Commission is persuaded that these provisions will work in a complementary fashion to effectuate the appropriate balance between protecting consumer privacy and enabling sellers to have access to their existing customers. Of course, even a seller who is exempt from the prohibition against calling a consumer based on the existence of an "established business relationship" with that consumer must honor that consumer's direct request not to be called under the company-specific "do-not-call" provision.

Background. The original Rule's company-specific approach, which prohibited a seller or telemarketer from calling a person who had previously asked not to be called, was intended to prohibit abusive patterns of calls from a seller or telemarketer to a person. During the Rule Review, industry representatives generally supported the Rule's current company-specific approach, stating that it provides consumer choice and satisfies the consumer protection mandate of the Telemarketing Act while not imposing an undue burden on industry.[582] The vast majority of individual commenters, however, joined by consumer groups and state law enforcement representatives, claimed that the TSR's company-specific "do-not-call" provision is inadequate to prevent the abusive patterns of calls it was intended to prohibit.[583] They cited several problems with the current "do-not-call" scheme as set out in the FTC and FCC regulations:[584] the company-specific approach is extremely burdensome to consumers, who must repeat their "do-not-call" request with every telemarketer that calls;[585] consumers' repeated requests to be placed on a "do-not-call" list are ignored;[586] consumers have no way to verify that their names have been taken off of a company's calling list;[587] consumers find that using the TCPA's private right of action[588] is very complex and time-consuming, and places an evidentiary burden on the consumer who must keep detailed lists of who called and when;[589] and finally, even if the consumer wins a lawsuit against a company, it is difficult for the consumer to enforce the judgment.[590]

In addition to the fact that it has proven ineffective, there is another problem that is not even addressed by the company-specific provision. In particular, because a great many telemarketers are now placing huge patterns of unsolicited telemarketing calls,[591] many consumers find even an

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NPRM at 8; NFPPA-NPRM at 1; Pelland-NPRM *passim*; Proctor-NPRM *passim*; PRC-NPRM at 2; Private Citizen-NPRM at 1; TDI-NPRM at 4-5; Worsham-NPRM at 1. Of the approximately 49,000 comments, about 33,000 supported the creation of a national registry, while about 13,700 opposed it. Of the 14,700 comments from Gottschalks' customers, almost 11,500 supported the creation of a "do-not-call" registry, while only about 1800 opposed the idea of a registry.

[576] *See, e.g.*, EPIC-NPRM at 4; NCL-NPRM at 8.

[577] *See, e.g.*, Connecticut-NPRM at 1-2, 3; DC-NPRM at 4; Kansas-NPRM at 2; NAAG-NPRM at 4-29; NYSCPB-NPRM at 1; Tennessee-NPRM at 2, 9-10; Texas PUC-NPRM at 1, 2; Virginia-NPRM at 1-2. *See also* AARP-NPRM at 1; NCL-NPRM at 9-10; NCLC-NPRM at 13; PRC-NPRM at 4; Private Citizen-NPRM at 2; TDI-NPRM at 4-5.

[578] *See, e.g.*, Discover-NPRM at 2; ERA-NPRM at 26; NRF-NPRM at 2-3; NAA-NPRM at 2; Paramount-NPRM at 1; PMA-NPRM at 6, 24-26.

[579] *See, e.g.*, NAA-NPRM at 2; Paramount-NPRM at 2; PBP-NPRM *passim*; Redish-NPRM *passim*.

[580] *See, e.g.*, Craftmatic-NPRM at 3; ERA-NPRM at 5, 26; PMA-NPRM at 6; TeleStar-NPRM at 2; Weber-NPRM at 2.

[581] *See, e.g.*, DMA-NonProfit-NPRM *passim*; Not-for-Profit Coalition-NPRM *passim*; Hudson Bay-NPRM *passim*. *See also* June 2002 Tr. III at 110, 205-10.

[582] ARDA-RR at 2; ATA-RR at 8-10; Bell Atlantic-RR at 4; DMA-RR at 2; ERA-RR at 6; MPA-RR at 16; NAA-RR at 2; NASAA-RR at 4; PLP-RR at 1. *See also* DNC Tr. at 132-80.

[583] *See* NAAG-RR at 17-19; NCL-RR at 13-14; DNC Tr. at 132-80. *See also, e.g.*, Anderson-RR at 1; Bennett-RR at 1; Card-RR at 1; Conway-RR at 1; Garbin-RR at 1; A. Gardner-RR at 1; Gilchrist-RR at 1; Gindin-RR at 1; Harper-RR at 1; Heagy-RR at 1; Johnson-RR at 1; McCurdy-RR at 1; Menefee-RR at 1; Mey-RR *passim*; Mitchelp-RR at 1; Nova53-RR at 1; Peters-RR at 1; Rothman-RR at 1; Vanderburg-RR at 1; Ver Steegt-RR at 1; Worsham-RR at 1.

[584] The FCC's "do-not-call" regulations under the TCPA are at 47 CFR 64.1201.

[585] Garbin-RR at 1; NAAG-RR at 17; Ver Steeg-RR at 1.

[586] Harper-RR at 1; Heagy-RR at 1; Holloway-RR at 1; Johnson-RR at 1; Menefee-RR at 1; Mey-RR *passim*; Nova53-RR at 1; Nurik-RR at 1; Peters-RR at 1; Rothman-RR at 1; Runnels-RR at 1; Schiber-RR at 1; Schmied-RR at 1; Vanderburg-RR at 1.

[587] McCurdy-RR at 1; Schiber-RR at 1.

[588] The TCPA permits a person who receives more than one telephone call in violation of the FCC's "do-not-call" regulations to bring an action in an appropriate state court to enjoin the practice, to receive money damages, or both. 47 U.S.C. 227(b)(3). The consumer may recover actual monetary loss from the violation or receive $500 in damages for each violation, whichever is greater. *Id.* If the court finds that a company willfully or knowingly violated the FCC's "do-not-call" rules, it can award treble damages. *Id.*

[589] Kelly-RR at 1; NAAG-RR at 17-19; NACAA-RR at 2; NCL-RR at 13-14.

[590] Kelly-RR at 1.

[591] Based on figures provided by the telemarketing industry, a study prepared for CCC

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initial call from a telemarketer or seller to be abusive and invasive of privacy. Several states responded to the growing consumer frustration with unsolicited telemarketing calls and the ineffectiveness of the company-specific approach by passing legislation to establish statewide "do-not-call" lists. To date, 27 states have passed such legislation, and numerous other states have considered similar bills.[592]

The comments received in response to the NPRM show that frustration with unsolicited telemarketing calls continues despite the efforts of the DMA, the states, and the TCPA/TSR company-specific approaches to the problem. Individual commenters overwhelmingly supported the establishment of a national "do-not-call" registry.[593] This was true even of those individuals who were already signed up on their state's "do-not-call" registry or on the DMA's TPS.[594] Although many of these individuals stated that they had found their state registry to be effective in reducing the number of unwanted calls, they thought that a national registry would be a beneficial addition to their state registry because, among other things, a central registry would eliminate some of the loopholes in the state laws, thus increasing coverage, and would provide the convenience of a one-stop method of reducing unwanted calls.[595] Similarly, individuals who were signed up on the DMA's TPS list also said that the list had been effective in reducing the number of unwanted calls, yet they felt that a national registry was needed because they were still receiving unwanted calls.[596]

Consumer groups supported the creation of a national "do-not-call" registry,[597] and some privacy advocates urged the Commission to take an even more restrictive "opt-in" approach by banning telemarketing to any consumer who has not expressly agreed to receive telephone solicitations.[598] With certain caveats, state regulators also supported the proposal for a national "do-not-call" registry.[599] Some states that already have a state "do-not-call" list in place indicated that a national list would complement the current regime of state legislation and could be an effective addition to the arsenal of tools available to consumers in reducing unwanted calls.[600] However, states and consumer advocates cautioned that such a system should be implemented in close coordination with the states and should not supplant more restrictive state laws.[601]

Industry commenters generally believed that the current system is working and that a national "do-not-call" registry is unnecessary.[602] They expressed the view that the DMA's Telephone Preference Service ("TPS") is tantamount to a national "do-not-call" registry. In fact, according to their comments, the TPS has greater coverage than the FTC registry would have because it covers certain entities such as common carriers, banks, and charitable organizations beyond FTC jurisdiction.[603] They argued that these

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estimates that the annual number of outbound calls that are answered by a consumer is 16,129,411,765 (*i.e.*, 16 billion calls). James C. Miller, III, Jonathan S. Bowater, Richard S. Higgins, and Robert Budd, "An Economic Assessment of Proposed Amendments to the Telemarketing Sales Rule," June 5, 2002, (hereinafter "Miller Study") at 28, Att. 1. This figure does not include those calls that are abandoned.

[592] DNC Tr. at 16, 137, 157-58. As of August, 2002, 27 states had passed "do-not-call" statutes. Florida established the first state "do-not-call" list in 1987. (Fla. Stat. Ann. § 501.059). Oregon and Alaska followed with "do-not-call" statutes in 1989. Instead of a central registry, these two states opted to require telephone companies to place a black dot in the telephone directory by the names of consumers who do not wish to receive telemarketing calls. (1999 Or. Laws 564; Alaska Stat. Ann. § 45.50.475). In 1999, Oregon replaced its "black dot" law with a "no-call" central registry program. (Or. Rev. Stat. § 464.567). *See also* article regarding Oregon law in 78 *BNA Antitrust & Trade Reg. Report* 97 (Feb. 4, 2000). After those three states adopted their statutes, there was little activity at the state level for about a decade. Then, in 1999, a new burst of legislation occurred as five more states passed "do-not-call" legislation—Alabama (Ala. Code § 8-19C); Arkansas (Ark. Code Ann. § 4-99-401); Georgia (Ga. Code Ann. § 46-5-27; *see also* rules at Ga. Comp. R. & Regs. 515-14-1); Kentucky (Ky. Rev. Stat. Ann. § 367.46955(15)); and Tennessee (Tenn. Code Ann. § 65-4-401; *see also* rules at Tenn. Comp. R. & Regs. Chap. 1220-4-11). During 2000, six more states enacted "do-not-call" statutes—Connecticut (Conn. Gen. Stat. Ann. § 42-288a); Idaho (Idaho Code § 48-1003); Maine (Me. Rev. Stat. § 4690-A); Missouri (Mo. Rev. Stat. § 407.1095); New York (N.Y. General Business Law § 399-z; *see also* rules at NY Comp. R. & Regs. tit. 12 § 4602); and Wyoming (Wyo. Stat. Ann. § 40-12-301). As of August, 2002, another eleven states had joined the ranks—California (S.B. 771, to be codified at Cal. Bus. & Prof. Code § 17590); Colorado (H.B. 1405, to be codified at Colo. Rev. Stat. § 6-1-901); Illinois (S.B. 1830, signed Aug. 9, 2002); Indiana (H.B. 1222, to be codified at Ind. Code Ann. § 24.4.7); Kansas (S.B. 296, to be codified at Kan . Stat. Ann. 2001 Supp. § 50-670, signed May 29, 2002); Louisiana (H.B. 175, to be codified at La. Rev. Stat. 45:844.11); Massachusetts (H.B. 5225, signed Aug. 10, 2002); Minnesota (S.B. 3246, to be codified at Minn. Stat. § 325E.311, signed May 15, 2002); Oklahoma (S.B. 950, to be codified at Okla. Stat. tit. 15 § 775B.1, signed Apr. 15, 2002); Pennsylvania (H.B. 1469, to be codified as amendment to Pa. Cons. Stat. § 2241; Texas (H.B. 472, to be codified at Tex. Bus. & Com. Code Ann. § 43.001); Vermont (S. 62, Pub. Act 120, to be codified at Vt. Stat. Ann. tit. 9 § 2464a, signed June 5, 2002); and Wisconsin (Section 2435 of 2001 Wisconsin Act 16, 2001 S.B. 55, to be codified at Wis. Stat. 100.52). In addition, numerous states are considering or recently have considered laws that would create state-run "do-not-call" lists, including Arizona, Delaware, District of Columbia, Hawaii, Illinois, Iowa, Maryland, Michigan, Mississippi, Montana, Nebraska, Nevada, New Jersey, North Carolina, Ohio, Rhode Island, South Carolina, South Dakota, Utah, Virginia, Washington, and West Virginia. *See* CallCompliance table of state "do-not-call" laws and proposed legislation, http://www.callcompliance.com/pages/STATElist.html (accessed July 24, 2002). The "do-not-call" issue has also drawn the attention of federal legislators, who have introduced several bills aimed at addressing consumers' concerns. For example, in the 106th Congress, H.R. 3180 (introduced by Rep. Salmon) would have required telemarketers to tell consumers that they have a right to be placed on either the DMA's "do-not-call" list or on their state's "do-not-call" list. This proposal also would have required all telemarketers to obtain and reconcile the DMA and state "do-not-call" lists with their call lists. Similar legislation was introduced in the 107th Congress by Rep. King (H.R. 232, the "Telemarketing Victim Protection Act"). In addition, on December 20, 2001, Sen. Dodd introduced S. 1881, the "Telemarketing Intrusive Practices Act of 2001," which would require the FTC to establish a national "do-not-call" registry.

[593] The Commission received approximately 64,000 email and written comments. Of those, approximately 44,000 supported the proposed national "do-not-call" registry, while only about 15,000 opposed the creation of such a registry. (The remaining 5,000 comments did not address this issue.)

[594] The Commission received approximately 7,500 comments from consumers who live in states that have "do-not-call" statutes. *See, e.g.*, Dan Seaman (AL) (Msg. 1127); Shawn Baumgartner (FL) (Msg. 2771); Edwin Rodriguez (CO) (Msg. 4573); Michelle Crouch (GA) (Msg. 4973); and Rona Owen (TX) (Msg. 6247).

[595] *See, e.g.*, Michelle Crouch (GA) (Msg. 4973); Dan Seaman (AL) (Msg. 1127) (state registry has too many exemptions); Clive and Jane Romig (FL) (Msg. 19125) (current remedies are inadequate).

[596] *See, e.g.*, Robert Winters (Msg. 18984) (resurgence of calls after a while); Gregory Stahmer (Feb. 21, Part 6, Msg. 150) (continues to get unwanted calls); Robert Baly (Feb. 27, Part 1, Msg. 551).

[597] AARP-NPRM at 1; CCA-NPRM at 1; ConsumerPrivacyGuide.com-NPRM at 1; EPIC-NPRM at 2-3; LSAP-NPRM at 12-15; NAAG-NPRM at 4; NACAA-NPRM at 2; NARUC-NPRM at 1, 3; NASUCA-NPRM at 2; NCL-NPRM at 8; NCLC-NPRM at 13; PRC-NPRM at 1; Worsham-NPRM at 1. The U.S. Department of Justice also supported the creation of a national "do-not-call" list maintained by the FTC. DOJ-NPRM at 4-5.

[598] *See, e.g.*, EPIC-NPRM at 3; Worsham-NPRM at 5.

[599] *See, e.g.*, CCA-NPRM at 1; Connecticut-NPRM at 1-2, 3; DC-NPRM at 4; Kansas-NPRM at 2; NAAG-NPRM at 4-29; NYSCPB-NPRM at 1-2; Tennessee-NPRM at 2; Texas PUC-NPRM at 1, 2; Virginia-NPRM at 1-2.

[600] CCA-NPRM at 1; Connecticut-NPRM at 1; Kansas-NPRM at 1; NAAG-NPRM at 6, 12, 29; NYSCPB-NPRM at 1-2; Tennessee-NPRM at 2.

[601] Connecticut-NPRM at 1-2, 3; Kansas-NPRM at 1; NAAG-NPRM at 6-13; NACAA-NPRM at 4-5; NCL-NPRM at 9; NYSCPB-NPRM at 2-4, 13-17; Private Citizen-NPRM at 2; Tennessee-NPRM at 2, 9-10; Texas PUC-NPRM at 3-4. *See also* June 2002 Tr. I at 19-40.

[602] *See, e.g.*, ATA-NPRM at 21-25; Craftmatic-NPRM at 3; DMA-NPRM at 7-8; ERA-NPRM at 5, 28; Fleet-NPRM at 2; Green Mountain-NPRM at 21-23; Lenox-NPRM at 4-5; MPA-NPRM at 34-35; Noble-NPRM at 2; NATN-NPRM at 2; NSDI-NPRM at 3; Pacesetter-NPRM at 2-3; PMA-NPRM at 6; Synergy Solutions-NPRM at 2; Technion-NPRM at 4; Teleperformance-NPRM at 2; TeleStar-NPRM at 2; TRC-NPRM at 2; Weber-NPRM at 2.

[603] *See, e.g.*, ATA-NPRM at 24-25; DMA-NPRM at 8-11; ERA-NPRM at 27-28; MPA-NPRM at 34-35; Noble-NPRM at 2; NATN-NPRM at 2; NSDI-NPRM

gaps in the national registry's coverage due to the FTC's limited jurisdiction would make a national "do-not-call" list more confusing than helpful to consumers.[604] Some industry members suggested that the states are the more appropriate forum for creation of "do-not-call" lists.[605] Some of these commenters argued that, unlike a national list, that must be "one size fits all," states can be more responsive to the needs of their citizens and tailor their lists to those differing needs.[606]

The record in this matter overwhelmingly shows the contrary—as detailed earlier, it shows that the company-specific approach is seriously inadequate to protect consumers' privacy from an abusive pattern of calls placed by a seller or telemarketer. The comments also show that consumers continue to be angered by and frustrated with the pattern of unsolicited telemarketing calls they receive from the multitude of sellers and telemarketers. A national "do-not-call" registry addresses both types of abuse. It provides a mechanism that a consumer may use to indicate that he or she finds unsolicited telemarketing calls abusive and an invasion of privacy. It will also protect a consumer from repeated abusive calls from a seller or telemarketer. These problems cannot be fully addressed by state lists. While state "do-not-call" lists may be effective in reducing calls for the citizens in those states, about half the states do not have such legislation. A federal list would protect those consumers who are not currently protected. In addition, as EPIC pointed out in its comment, the state "do-not-call" lists vary with regard to exempt entities, with some containing so many exemptions that virtually all telemarketers are exempt.[607] A federal list would provide uniformity with regard to those entities within the FTC's jurisdiction. Finally, although industry touts the state lists as the appropriate approach to "do-not-call," they also challenge the states' authority to regulate interstate calls under the state "do-not-call" laws.[608] The Telemarketing Act grants the states the authority to enforce the TSR in federal court.[609] Therefore, a national "do-not-call" registry maintained by the FTC pursuant to the TSR (and enforceable by the states) would quell any challenges to state "do-not-call" enforcement with respect to interstate telemarketing.

Some industry members would have the FTC forget about a national registry and continue to let consumers use the current national self-regulatory system set up through DMA's TPS.[610] DMA has provided an important public service by administering the TPS, and the Commission applauds the efforts of the industry to regulate itself. However, the self-regulatory model has two serious shortcomings which limit its use as an effective national "do-not-call" registry: a self-regulatory system is voluntary; and to the extent that sanctions exist for non-compliance, DMA may apply those sanctions only against its members, not non-members.[611] On the other hand, lists established pursuant to the FTC Act and the Telemarketing Act, as well as those established pursuant to state law, have the force of law, and violators are subject to civil penalties. This type of sanction makes it more likely that companies will take their "do-not-call" obligations seriously.

The Commission recognizes that its jurisdictional limitations will impact the effectiveness of a national "do-not-call" registry. However, the Commission notes that while certain specific entities are exempt from coverage, the telemarketing companies that solicit on their behalf are nonetheless covered by the TSR.[612] Moreover, many consumers have signed up for state "do-not-call" lists,[613] all of which include various exemptions. Consumers in those states have accepted the limitations of the state "do-not-call" lists and have been satisfied at the prospect of at least *reducing* the number of unwanted telephone solicitations that they receive.[614] Indeed, an FTC registry may be more inclusive than some state "do-not-call" lists.[615] The Commission believes that consumer education will minimize consumer confusion over what calls will and will not be allowed under a national "do-not-call" registry.

Industry pointed to the economic importance of outbound telemarketing, which accounted for $274.2 billion in 2001,[616] and warned that a national "do-not-call" registry would have dire economic consequences.[617] In its supplemental comments, DMA submitted a study showing "the face of the telemarketing industry."[618] According to DMA predictions, job losses would impact most seriously on women, minorities, and rural areas—the groups and regions from which most telemarketers are drawn.[619] Individual sellers and telemarketing firms estimated that they might have to lay off up to 50 percent of their employees if such a registry were to go into effect.[620] Numerous individual telemarketers submitted comments in which they talked about the pride they have in their work and their fear of losing their livelihood.[621]

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at 3; Synergy Solutions-NPRM at 2; Technion-NPRM at 4; Teleperformance-NPRM at 2; TRC-NPRM at 2.

[604] *See, e.g.*, ERA-NPRM at 28, 36; MPA-NPRM at 34-35; Noble-NPRM at 2; NATN-NPRM at 2; NSDI-NPRM at 3; Synergy Solutions-NPRM at 2; Technion-NPRM at 4; Teleperformance-NPRM at 2; TRC-NPRM at 2.

[605] *See, e.g.*, ATA-NPRM at 23-25; Noble-NPRM at 2; NATN-NPRM at 2; NSDI-NPRM at 3; possibleNOW.com-NPRM at 1; Success Marketing-NPRM at 2; Synergy Solutions-NPRM at 2; Technion-NPRM at 4; Teleperformance-NPRM at 2; TRC-NPRM at 2. *See also* Tennessee-NPRM at 6-7.

[606] *See, e.g.*, ATA-NPRM at 23-25; Noble-NPRM at 2; NATN-NPRM at 2; NEMA-NPRM at 4; NSDI-NPRM at 3; possibleNOW.com-NPRM at 1; Success Marketing-NPRM at 2; Synergy Solutions-NPRM at 3; Teleperformance-NPRM at 2; TRC-NPRM at 2. *See also* Tennessee-NPRM at 6-7.

[607] EPIC-NPRM at 19.

[608] *See, e.g.*, ATA-NPRM at 24.

[609] 15 U.S.C. 6108.

[610] *See, e.g.*, ATA-NPRM at 21-25; Craftmatic-NPRM at 3; DMA-NPRM at 7-8; ERA-NPRM at 5, 28; Fleet-NPRM at 2; Green Mountain-NPRM at 21-23; Lenox-NPRM at 4-5; MPA-NPRM at 34-35; Noble-NPRM at 2; NATN-NPRM at 2; NSDI-NPRM at 3; Pacesetter-NPRM at 2-3; PMA-NPRM at 6; Synergy Solutions-NPRM at 2; Technion-NPRM at 4; Teleperformance-NPRM at 2; TeleStar-NPRM at 2; TRC-NPRM at 2; Weber-NPRM at 2.

[611] DMA has about 5,000 members. DMA-NPRM at 1.

[612] 67 FR at 4497.

[613] For example, Missouri and Indiana each have more than 1 million telephone numbers on their lists; New York's list contains more than 2 million numbers. *See Missouri No Call Tops 1 Million Three Days Before One-Year Anniversary of Law*, Office of Missouri Attorney General, June 28, 2002, http://www.ago.state.mo.us/062802.htm; and David Wessel, *On Hold: Gagging the Telemarketers*, WALL ST. J., Apr. 11, 2002, at A2. *See also* NAAG-NPRM at 4, n.3.

[614] *See generally* June 2002 Tr. I at 110-21.

[615] *See* EPIC-NPRM at 19 (noting that some state laws are ineffective due to the number of exempted entities).

[616] DMA, "The Faces and Places of Outbound Telemarketing in the United States," (June 2002) ("DMA study") at 1.

[617] *See id. See also* NATN-NPRM at 1; NSDI-NPRM at 2; Success Marketing-NPRM at 2; Synergy Solutions-NPRM at 1.

[618] DMA study, *see* note 616 above.

[619] The DMA study indicates that teleservices workers are overwhelmingly female, high-school educated, and African-American or Hispanic. Almost 62 percent of all females working as teleservices agents are working mothers, and 30 percent are part of a welfare-to-work program or were recently on public assistance. DMA study at 2. The study also indicates that outbound telemarketing call centers can be found in every state, often in rural areas or small towns and cities that are economically distressed. *Id.* at 4. *See also* NATN-NPRM at 1; NSDI-NPRM at 2; Success Marketing-NPRM at 2; Synergy Solutions-NPRM at 1.

[620] *See* NATN-NPRM at 1; NSDI-NPRM at 2; Success Marketing-NPRM at 2; Synergy Solutions-NPRM at 1; Teleperformance-NPRM at 2; TRC-NPRM at 2-3. However, the Commission notes that these companies offered no analysis to substantiate their claims regarding the impact of the national registry.

[621] *See, e.g.*, Alhafez (Mar. 22, part 1, Msg. 1712); Cameron (Mar. 6, part 1, Msg. 951); Dillon (Mar. 21, part 2, Msg. 1622). *See also, e.g.*, ACI Telecentrics-

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The Commission recognizes that telemarketing is a legitimate method of selling goods and services. It is important to remember that the "do-not-call" registry will impact only outbound telemarketing, and will have no effect whatsoever on the greater portion of the industry devoted to inbound calls from consumers.[622] The Commission also recognizes the importance of outbound telemarketing to federal, state, and local economies. Telemarketing provides needed jobs to rural areas and small towns that often face high unemployment, and to people who often face difficulties in obtaining other employment, such as individuals moving off of welfare.

Although industry fears the economic impact a national registry might have, ironically, an FTC "do-not-call" registry may actually benefit rather than harm industry. For example, the federal framework, with its exemptions, would provide greater consistency of coverage, at least with regard to interstate calls. In addition, industry would benefit because telemarketers would reduce time spent calling consumers who do not want to receive telemarketing calls and would be able to focus their calls only on those who do not object to such calls.[623]

Industry emphasized the importance of harmonizing federal and state laws. To the extent that industry members supported creation of a national "do-not-call" list, they conditioned their support on preemption of state laws.[624] These commenters argued that the major, if not only, benefit to industry from a national "do-not-call" registry would be to eliminate the costs of purchasing multiple lists and complying with a patchwork of potentially 50 different state laws.[625] Absent preemption, industry believed that a national registry would only add another layer of bureaucracy and one more list that they must purchase.[626] The June 2002 Forum discussed in depth the interplay between the national "do-not-call" registry and state laws. Participants agreed that the Commission should seek comity with state laws, and that a single list would provide substantial benefits to both industry and consumers.[627]

For example, Dr. James Miller, testifying on behalf of CCC, estimated that if the Commission's "do-not-call" proposal were enacted as proposed, it would cost all firms that sell their products via outbound telemarketing combined a total of $6.6 million to purchase access to the FTC's "do-not-call" registry and to check their calling lists against the "do-not-call" list to ensure that they do not call consumers who have asked not to be called.[628] If companies could comply with both FTC and state regulations by purchasing access to the FTC's list and not calling consumers whose numbers appeared on that list, this would represent the total burden on firms to avoid calling consumers who did not wish to be called. However, Dr. Miller testified that the total cost to comply with the state regulations as well as the FTC requirements, should firms still have to purchase separate lists from each state having its own do-not-call provisions, could approximate $100 million.[629]

Finally, commenters raised various issues and offered suggestions relating to the implementation of a national "do-not-call" registry. For example, various commenters questioned the accuracy of automatic number identification ("ANI") verification, the length of time a consumer's telephone number should remain on the list, who should be able to sign up for the list, whether the Commission should allow third parties to submit telephone numbers, the type of information that should be collected, and the accuracy of the Commission's cost estimates.[630] These issues are discussed in the section below addressing implementation.

Coverage of the "do-not-call" provisions. A number of commenters asked the Commission to clarify coverage of its "do-not-call" provisions. Some queried whether calls to home businesses would be subject to the "do-not-call" requirements.[631] The Rule exempts telemarketing calls to businesses (except for sellers or telemarketers of nondurable office or cleaning supplies). Therefore, calls to home businesses would not be subject to the amended Rule's "do-not-call" requirements.

Some commenters asked whether the "do-not-call" requirements would cover calls to cellular or wireless telephones and pagers. The Commission intends that § 310.4(b)(1)(iii) apply to any call placed to a consumer, whether to a residential telephone number or to the consumer's cellular telephone or pager. Consumers are increasingly using cellular telephones in place of regular telephone service,[632] which is borne out by the dramatic increase in cellular phone usage.[633] The Commission believes that it is particularly important to allow consumers an option to reduce unwanted telemarketing calls to cellular telephones or to pagers because some cellular services charge the consumer for incoming calls, thus adding insult to injury when the consumer is charged for

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Levie (Msg. 19322); InfoCision Management-Davis (Msg. 23968); HFC-Beneficial-Darst (Msg. 33709); Household-Alioto (Msg. 27876); LTD Direct-Rockwood (Msg. 27601); and TCIM Services Inc.-Davis (Msg. 22871).

[622] In 2001, inbound telemarketing accounted for 55 percent of total teleservice expenditures and was expected to grow to 62 percent by 2004. Winterberry Group, "Industry Map: Teleservice Industry—Multi-Channel Marketing Drives Universal Call Centers" at 9 (Jan. 2001).

[623] Industry representatives also have indicated that they do not wish to call consumers who do not want to receive telemarketing calls. *See* DNC Tr. at 41, 51, 53-56, 61, 71.

[624] *See, e.g.*, AFSA-NPRM at 3-5; Craftmatic-NPRM at 3; Discover-NPRM at 2; HSBC-NPRM at 1; MBA-NPRM at 2; NCTA-NPRM at 15-16; NRF-NPRM at 7-8; Nextel-NPRM at 3-4, 26-27; PMA-NPRM at 28; SIIA-NPRM at 3; Time-NPRM at 3-4; Community Bankers-Supp. at 4; ARDA-Supp. at 1; ICTA-Supp. at 1. *See also* June 2002 Tr. at 19-40.

[625] See, e.g., AFSA-NPRM at 3-5; Craftmatic-NPRM at 3; Discover-NPRM at 2; HSBC-NPRM at 1; MBA-NPRM at 2; NCTA-NPRM at 15-16; NRF-NPRM at 7-8; Nextel-NPRM at 3-4, 26-27; PMA-NPRM at 28; SIIA-NPRM at 3; Time-NPRM at 3-4.

[626] *Id.*

[627] *See* June 2002 Tr. I at 19-40.

[628] *See* June 2002 Tr. I at 209. Dr. Miller's testimony drew from the Miller Study (*see* note 591 above). As the study explains, the $6.6 million figure assumes that 3,000 firms will pay $1,000 each on average to obtain access to the list and that it will take the average firm approximately two hours of effort at a cost of $50 per hour each time it is necessary to compare the firm's calling list against the "do-not-call" registry. As proposed in the NPRM, firms would have been required to do this comparison 12 times each year so that the average firm would have incurred a total expense of $2,200. Miller Study at 11-12. Because the amended Rule does not require firms to compare their calling lists to the FTC's "do-not-call" registry monthly as did the NPRM proposal, the estimated cost using Dr. Miller's methodology would now be around $4.5 million.

[629] *See* June 2002 Tr. I at 209.

[630] *See, e.g.*, AFSA-NPRM at 4-10; Craftmatic-NPRM at 3; DC-NPRM at 5; DialAmerica-NPRM at 13; Discover-NPRM at 3; EPIC-NPRM at 14; ERA-NPRM at 29-32; HSBC-NPRM at 2; MBA-NPRM at 2; NYSCPB-NPRM at 7-13. *See also* June 2002 Tr. I at 138-271.

[631] *See, e.g.*, IBM-NPRM at 11-12; Pelland-NPRM at 3.

[632] *See* FCC Notice of Proposed Rulemaking and Memorandum Opinion and Order in the Matter of Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991, CG Docket No. 02-278, CC Docket No. 92-90 (Sept. 18, 2002) (hereinafter "FCC TCPA 2002") at 27, para. 42 (citing a USA Today/CNN/Gallop poll showing that one in five mobile telephone users use their wireless phone as their primary phone, Michelle Kessler, *18 % See Cellphones as Their Main Phone*, USA TODAY, Feb. 1, 2002). *See also* Wendy Ruenzel, *More Cell Phone Users Dispense with Traditional Phone Line*, POST CRESCENT, Aug. 6, 2001; Simon Romero, *When the Cellphone Is the Home Phone*, N.Y. TIMES, Aug. 29, 2002; Joelle Tessler, *Small But Growing Number of Cell Phone Users Abandon Land Lines*, SAN JOSE MERCURY NEWS, Aug. 15, 2002.

[633] *See* FCC TCPA 2002 at 26-27, para. 42, n.160 (noting that, in the ten-year period between 1991 and 2001, the number of wireless subscribers increased from about 7.5 million to approximately 128 million. From 1993 to 2001, the average minutes of use per subscriber per month increased from 140 minutes to 385 minutes.) (citations omitted).

the unwanted telemarketing call to the consumer's cellular telephone.[634]

Established business relationship. Industry commenters overwhelmingly opposed as unworkable the Commission's proposal to allow consumers to give their express authorization to companies from which they wished to receive calls. Industry stated that it would be cost prohibitive for them to contact their customers to obtain authorization (although they provided no detailed support for this argument) and that consumer inertia would keep consumers from independently providing that type of affirmative authorization.[635] They also argued that consumers may not know in advance which companies they want to hear from.[636]

Industry commenters noted that, without an exemption permitting calls to existing customers, companies would be unable to conduct normal servicing of customers' accounts, since such customer service calls frequently are multiple purpose calls that also include attempts to sell additional goods or services to the customer.[637] Additionally, magazines and newspapers would be unable to contact consumers whose subscriptions had expired to offer them a new subscription.[638] Commenters from financial institutions pointed out that, if not permitted to call current customers, they may run afoul of their fiduciary relationship with those customers.[639] Sellers argued that it would be cost prohibitive for them to use direct mail or other means to contact their customers to obtain authorization to call.[640]

Industry commenters also pointed out that, in failing to include an exemption for existing business relationships, the proposed Rule was at odds with the approach taken by the states with regard to "do-not-call" registries. All state "do-not-call" laws, except Indiana's, include such an exemption.[641] State regulators noted that there have been few complaints from consumers about calls from companies with whom they have an existing business relationship.[642] In addition, FCC regulations under the TCPA exempt "established business relationships" from the company-specific "do-not-call" regulations.[643] Individual commenters who expressed an opinion on this issue were divided on whether there should be such an exemption. Analysis of individual consumer comments that touched on this issue indicates that about 860 favored an exemption for calls from firms with whom they already have an established relationship, while about 1080 opposed such an exemption.[644] Furthermore, over 13,000 of the nearly 15,000 comments submitted by Gottschalks' customers supported allowing Gottschalks to call them even if they signed up on a "do-not-call" registry to block other calls.

Finally, industry commenters suggested that the Commission's rationale for not including an exemption for "established business relationships" was faulty.[645] In adopting the original Rule, the Commission had expressed the view that such an exemption was inappropriate because it was not workable in the context of fraud.[646] These commenters pointed out that the "do-not-call" registry was driven by privacy concerns, not concerns about fraud. Therefore, they argued, the Commission's stated rationale was inapplicable in the "do-not-call" context.[647] However, these commenters misunderstood the Commission's rationale in not including an exemption for "established business relationship" in the proposed "do-not-call" provision. In fact, the Commission's rationale for not including such an exemption in its proposal was driven not by concerns about fraud, but by the same privacy concerns that those commenters noted. The Commission believed that the national registry should contain few exemptions in order to provide consumers with the most comprehensive privacy protection possible.

Because the proposed Rule did not contain any "established business relationship" exemption, it is not surprising that few commenters raised this issue unless they were advocating that such an exemption be added. In response to industry's strong advocacy in favor of an "established business relationship" exemption, however, the June 2002 Forum elicited comment on whether such an exemption would be appropriate. Privacy advocates opposed any exemptions to the registry, stating that exemptions erode the effectiveness of a "do-not-call" registry.[648] These commenters feared that, because of the difficulty in crafting such an exemption narrowly, an "established business relationship" exemption would provide too great a loophole, and would severely hamper the effectiveness of a national "do-not-call" registry.[649] One consumer spoke at the June 2002 Forum about the dangers inherent in such an exemption.[650] AARP noted in its supplemental comments that an exemption appeared to be necessary, but

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[634] *See, e.g.*, Andy Vuong, *Telemarketers tap cellphone: Complaints on rise as solicitors dial into no-call exemption*, DENVER POST, July 30, 2002; Jennifer Bayot, *Now, That Ringing Cellphone May Be a Telemarketer's Call*, N.Y. TIMES, July 5, 2002.

[635] *See, e.g.*, AFSA-NPRM at 8; BofA-NPRM at 9; Cox-NPRM at 6; MBA-NPRM at 5.

[636] *See, e.g.*, DialAmerica-NPRM at 14; Roundtable-NPRM at 4-5.

[637] *See, e.g.*, ACA-NPRM at 2; ARDA-NPRM at 17; Associations-NPRM at 2; Cendant-NPRM at 5; Comcast-NPRM at 2; DMA-NPRM at 34; HSBC-NPRM at 1; MBA-NPRM at 1-2.

[638] *See* NAA-NPRM at 12, June 28-Supp. at 1, and July 31-Supp. at 1; NNA-NPRM at 3.

[639] *See, e.g.*, ABA-NPRM at 10; ABIA-NPRM at 4; AFSA-NPRM at 13-14; AmEx-NPRM at 3; BofA-NPRM at 3; Bank One-NPRM at 4-5; VISA-NPRM at 13; Wells Fargo-NPRM at 4. However, unless such a customer service call includes an inducement to purchase additional goods or services, it would fall outside the definition of "telemarketing" and, therefore, beyond the scope of the Rule's coverage.

[640] *See, e.g.*, Comcast-NPRM at 2; CAP-Supp. at 1-2.

[641] *See, e.g.*, Ark. Code Ann. § 4-99-403(2)(A); Colo. Rev. Stat. § 6-1-903(10)(B)(II); Conn. Gen. Stat. Ann. § 42-288a(a)(9); Fla. Stat. Ann. § 501.059(1)(c); Ga. Code Ann. § 46-5-27(b)(3)(B); Mo. Rev. Stat. § 407.1095(3)(b); and Tenn. Code Ann. § 65-4-401(6)(B)(iii).

[642] *See* June 2002 Tr. I at 118 (New York: "Well, [consumers are not unhappy], and a lot of times they complain, and you could say that's prima facie evidence they're unhappy. We call them back and say, gee, did you have a transaction with these folks? They claim you did on X, Y and Z, and they furnished us this paperwork. And then they say, oh, yeah. They don't seem to be mad."); June 2002 Tr. I at 118-19 (Missouri: "Most people when you call them back are delighted that 70 to 80 percent of their phone calls have been caused to not come in, so when we explain to them that you had a relationship or you explain to them that some of these calls are exempt, they understand when you explain that to them, and they're delighted, because our anecdotal information shows that 70 to 80 percent of the calls people had been receiving, they're not receiving now."); and *see generally*, June 2002 Tr. I at 110-21.

[643] 47 CFR 64.1200(c)(3). The TCPA requires such an exemption. 47 U.S.C. 227(a)(3).

[644] *See, e.g.*, GBELois (Msg. 44) ("If a person is a member, subscriber, current customer, etc., of a company and the company is calling regarding the status of that relationship then the company should not be obligated to conform to the do not call registry."); Jerry Warnke (Msg. 371) ("Have to be a way to exempt businesses or organizations when they are returning your phone calls or they have a need to call you with an ongoing relationship."). *But see, e.g.*, Karl Engelberger (Msg. 331) ("All pre-existing agreements and relationships should be voided and can, at the line subscribers discretion be re-established."); Don Price (Msg. 483) ("Sometimes pre-existing relationships are those hardest to communicate with regarding the fact that the individual wants to end the relationship with the telemarketer business—once you give or buy something, many telemarketers expect you to continue what you started and make it a monthly habit—even if that was never your intent.").

[645] *See, e.g.*, DMA-NPRM at 34-36; NCTA-NPRM at 8; Nextel-NPRM at 13-15; Wells Fargo-NPRM at 4.

[646] *See* 60 FR at 43859.

[647] *See, e.g.*, DMA-NPRM at 34-36; NCTA-NPRM at 8; Nextel-NPRM at 13-15; Wells Fargo-NPRM at 4.

[648] *See, e.g.*, EPIC-NPRM at 20-21; NCL-NPRM at 10.

[649] NCL-NPRM at 10.

[650] June 2002 Tr. I at 278-82 (Diana Mey).

urged that the Commission keep the exemption very narrow and limit it to existing relationships only, as opposed to prior relationships.[651]

Based on the record as a whole, the Commission is persuaded that the benefits of including an exemption for established business relationships outweigh the costs of such an exemption. Therefore, the Commission has decided to provide an exemption for "established business relationships" from the national "do-not-call" registry, as long as the consumer has not asked to be placed on the seller's company-specific "do-not-call" list. Once the consumer asks to be placed on the seller's "do-not-call" list, the seller may not call the consumer again regardless of whether the consumer continues to do business with the seller. If the consumer continues to do business with the seller after asking not to be called, the consumer *cannot* be deemed to have waived his or her company-specific "do-not-call" request.[652]

The amended Rule limits the "established business relationship" exemption to relationships formed by the consumer's purchase, rental or lease of goods or services from, or financial transaction with, the seller within 18 months of the telephone call or, in the case of inquiries or applications, to three months from the inquiry or application. As indicated in the discussion of the definition of "established business relationship" in § 310.2(n), this time frame is consistent with most state laws that include a time limit.[653] The exemption is terminated by the consumer's request to be placed on the company's "do-not-call" list, which is consistent with the FCC's regulations and those of many of the states.[654] As explained above in the discussion of § 310.2(n), the definition of "established business relationship" encompasses those affiliates of the seller that the consumer would reasonably expect to be included given the nature and type of goods or services offered and the identity of the affiliate.

In addition to an exemption for "established business relationships," the Commission has decided to retain the provision that allows sellers to obtain the express agreement of consumers who wish to receive telephone calls from that seller, but has modified the provision to require that such express agreement may be evidenced only by a signed, written agreement. The Commission believes that it is important to limit the established business relationship to those where there is ongoing contact or where the relationship has recently lapsed or terminated. However, the Commission recognizes that consumers may have ongoing relationships with sellers where the contacts may be infrequent. Therefore, the Commission has decided to retain the provision that would allow sellers to obtain the consumer's express agreement to call, regardless of whether there has been contact during the prior 18 months. In order to minimize the potential for abuse, the amended Rule does not permit sellers or telemarketers to obtain the consumer's oral authorization. Rather, the amended Rule requires that the express agreement meet the same standards as written authorization in § 310.3(a)(3)(i)—*i.e.*, that the express agreement be in writing, signed by the consumer—and must also include the telephone number to which the calls may be placed. Because the express agreement requires the consumer's signature, the Rule makes it more difficult for sellers and telemarketers to bury the consent in the fine print of a document where the consumer might not notice it. The Commission intends that the consent be clear and conspicuous. This express agreement is effective as long as the consumer has not asked to be placed on the seller's company-specific "do-not-call" list. Once the consumer asks to be placed on the seller's "do-not-call" list, the seller may not call the consumer again regardless of whether the consumer continues to do business with the seller.

First Amendment and related considerations applicable to "do-not-call" provisions. As noted above, the proposal to include charitable solicitation telemarketing by for-profit telemarketers within the scope of a national "do-not-call" registry requirement drew extensive negative comment from non-profit organizations and their representatives. These commenters advanced a number of criticisms of the proposal based upon the practical effects it would foreseeably produce if adopted. They also argued that the proposal was fatally flawed from the standpoint of First Amendment analysis. Each of the major points made by these commenters is discussed below.

Because of the central role of the telephone and of professional fundraisers in the non-profit arena, non-profit organizations and their representatives uniformly predicted financial disaster for the non-profit sector if such a proposal were adopted.[655] According to DMA-NonProfit, a quarter of all charitable contributions raised in 2001 came from telephone solicitation,[656] and an estimated 60 to 70 percent of that solicitation was performed by professional fundraisers.[657] These commenters feared the detrimental impact of a national "do-not-call" registry on this important element of the non-profit world's financial support system.[658] One commenter opined that the proposed "do-not-call" registry requirement would reduce the potential donor pool by between 40 to 50 percent, and based on sign-up rates in some states, possibly by as much as 70 or 80 percent.[659]

The proposed registry's impact on non-profit organizations' ability to solicit previous donors was of particular concern. According to a number of commenters, it is axiomatic that persons who have already contributed to a non-profit or charitable organization are much more likely to contribute than are persons who have never done so.[660] In

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[651] AARP-Supp. at 3.

[652] *See* June 2002 Tr. I at 278-82 (Consumer recounted that a telemarketer from a retailer telephoned her, notwithstanding the fact that she was on the retailer's "do-not-call" list. When she questioned them about this apparent error, the telemarketer said that she had recently made a purchase at the retailer, which re-created an "established business relationship," which exempted them from complying with her "do-not-call" request.).

[653] *See* discussion of § 310.2(n) and note 135, above.

[654] *See* 47 CFR 64.1200(f)(4), and discussion in FCC TCPA 2002 (see note 633 above) at 8765, para. 23, and at 8770, para. 34, n.63. In addition, several state "do-not-call" statutes contain a similar provision in their exemption for "established business relationships" which terminates the exemption if the consumer has asked not to be called. *See, e.g.*, Alaska, California, Colorado, Connecticut, Illinois, Kansas, New York, Oklahoma, Texas, and Wyoming. *See* note 592, above, for citations to each state's "no-call" laws and/or regulations.

[655] *See, e.g.*, DMA-NonProfit-NPRM at 16; Not-for-Profit Coalition-NPRM at 7. *See also* Red Cross-NPRM at 3; APTS-NPRM at 2-3; Childhood Leukemia-NPRM at 1; FireCo-NPRM at 1; California FFA-NPRM at 2; Edwardsville FFA-NPRM at 1; HRC-NPRM at 1-2; Leukemia Society-NRPM at 1-2; March of Dimes-NPRM at 1; Michigan Nonprofit-NPRM at 1; Purple Heart-NPRM at 2; NC Zoo-NPRM at 1; NPR-NPRM at 2; AAST-NPRM at 5; FOP-NPRM at 2; Southern Poverty-NPRM at 2.

[656] DMA-NonProfit-NPRM at 2 (citing the Turner Study, *see* note 142 above).

[657] DMA-NonProfit-NPRM at 2. *See also* Not-for-Profit Coalition-NPRM at 6.

[658] *See, e.g.*, ACE-NPRM at 1; ADA-NPRM at 1; Red Cross-NPRM at 3; Blood Centers-NPRM at 2; Childhood Leukemia-NPRM at 1; LifeShare-NPRM at 1; March of Dimes-NPRM at 2; NPR-NPRM at 4-5; FOP-NPRM at 3, 4; Project Angel Food-NPRM at 1.

[659] Not-for-Profit Coalition-NPRM at 9.

[660] AFP-NPRM at 4 ("For nearly all nonprofit organizations, pre-existing donors and volunteers constitute the source of a majority of all gifts and volunteer time. These individuals are most committed to a cause and best understand the organization. Donors should not lose the opportunity to hear from organizations they supported in the past."); March of Dimes-NPRM at 3 ("The most generous donors and volunteers are

this regard, Not-for-Profit Coalition stated that "[c]ompounding the harm is the fact that the registry would apply equally to donors with a long history of supporting bona fide non-profit and charitable organizations as well as new prospective donors. Depriving charities and non-profits of the ability to contact prior supporters will be financially devastating."[661]

Not-for-Profit Coalition also argued that the effect of the "do-not-call" registry requirement would be to drive non-profit organizations away from efficient use of professional telefunders, and toward inefficient in-house operations.[662] According to commenters, the efficiency benefits of using professional telefunders may be substantial. For example, Hudson Bay stated:

> HBC's phone canvass is mostly for smaller non-profit organizations (and the state chapters of large ones). Instead of renting space, buying computers and phone equipment, hiring supervisors and so on, HBC's clients find it cheaper to contact their members and donors by sharing these resources. Even after paying HBC's fee, which ranges from 4 to 7%, it is much cheaper for these non-profits to centralize these services. The savings achieved by phone company volume discounts alone pays more than half of HBC's fee.[663]

Several representatives of non-profit organizations argued that under relevant First Amendment precedent, charitable fundraising is fully protected speech, and that attempts by the government to regulate it are subject to the highest level of scrutiny.[664] These commenters also noted that under the relevant precedents, no distinction between the speech of the non-profit organization and that of the professional telefunder actually making the calls is recognized—both are equally protected. Several criticized the proposal's exemptions for solicitations by "political clubs, committees, or parties" and "constituted religious organizations" as making distinctions based on the type of speech or speaker that are impermissible under the First Amendment.[665]

The Commission believes that, with respect to telemarketing that solicits sales of goods or services, the "do-not-call" registry provisions are consistent with the relevant First Amendment cases. In *Central Hudson Gas & Elec. v. Pub Serv. Comm. of N.Y.*, the Supreme Court established the applicable analytical framework for determining the constitutionality of a regulation of commercial speech that is not misleading and does not otherwise involve illegal activity.[666] Under that framework, the regulation (1) must serve a substantial governmental interest; (2) must directly advance this interest; and (3) may extend only as far as the interest it serves[667]—that is, there must be "a 'fit' between the legislative ends and the means chosen to accomplish those ends . . . a fit that is not necessarily perfect, but reasonable . . . that employs not necessarily the least restrictive means but . . . a means narrowly tailored to achieve the desired objective."[668]

With regard to the first of these criteria, protecting the privacy of consumers from unwanted commercial telemarketing calls is a substantial governmental interest.[669] "Individuals are not required to welcome unwanted speech into their own homes and the government may protect this freedom."[670] The "do-not-call" registry is designed to advance the privacy rights of consumers by providing them with an effective, enforceable means to make known to sellers their wishes not to receive solicitation calls. Simply put, sellers or telemarketers soliciting sales may not call persons who have placed themselves on the registry. The registry is also designed to cure the inadequacies as a privacy protection measure that became apparent in the company-specific "do-not-call" provisions included in the original Rule.[671] Thus, the second of *Central Hudson's* criteria is satisfied. Finally, the national "do-not-call" registry is a mechanism closely and exclusively fitted to the purpose of protecting consumers from unwanted telemarketing calls.

In *Rowan v. Post Office Dept.*, the Supreme Court upheld a federal statute empowering a homeowner to bar mailings from specific senders by notifying the Postmaster General that she wished to receive no further mailings from that sender.[672] The Court stated:

> We therefore categorically reject the argument that a vendor has a right under the constitution or otherwise to send unwanted material into the home of another. If this prohibition operates to impede the flow of even valid ideas, the answer is that no one has a right to press even "good" ideas on an unwilling recipient. That we are often "captives" outside the sanctuary of the home and subject to objectionable speech and other sound does not mean we must be captives everywhere. The asserted right of a mailer, we repeat, stops at the outer boundary of every person's domain. . . . To hold less would tend to license a form of trespass and would make hardly more sense than to say that a radio or television viewer may not twist the dial to cut off an offensive or boring communication and thus bar its entering his home. Nothing in the Constitution compels us to listen to or view any unwanted communication, whatever its merit; we see no basis for according the printed word or pictures a different or more preferred status because they are sent by mail. The ancient concept that "a man's home is his castle" into which "not even the king may enter" has lost none of its vitality, and none of the recognized exceptions includes any right to communicate offensively with another.[673]

Under *Rowan*, the First Amendment allows a statutory scheme whereby a person may block a sender's mailings by notifying the Postmaster General, who then will prevent that sender's mailings from being delivered to that person. The Commission believes that the First Amendment similarly raises no impediment to Rule provisions that will enable a person by signing up on a national "do-not-call" registry to block commercial communications via telephone, which are far more intrusive than the communications, at issue in *Rowan*, via printed words and images.[674]

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those who have a prior relationship with the Foundation . . . . If the Foundation cannot contact prior donors and volunteers on the basis of a preexisting relationship, then the effectiveness of our fundraising program will be jeopardized." *See also, e.g.*, APTS-NPRM at 2; ADA-NPRM at 1; AAST-NPRM at 3; FireCo-NPRM at 1; NTC-NPRM at 3; Southern Poverty-NPRM at 2; NCLF-NPRM at 1.

[661] Not-for-Profit Coalition-NPRM at 10.

[662] *Id.* at 18, 19.

[663] Hudson Bay-Goodman-NPRM at 2. *See also, e.g.*, APTS-NPRM at 3; Not-For-Profit Coalition-NPRM at 19.

[664] *See, e.g.*, Hudson Bay-Goodman-NPRM at 4, 5; DMA-NonProfit-NPRM at 7; Not-For-Profit Coalition-NPRM at 15.

[665] *See, e.g.*, DMA-NonProfit-NPRM at 5, 6; Not-for-Profit Coalition at 41.

[666] 447 U.S. 557 (1980).

[667] *Id.* at 566.

[668] *Bd. of Trs. of State Univ. of N.Y. v. Fox*, 492 U.S. 469, 480 (1989).

[669] In some instances, the "do-not-call" registry provisions will also serve another substantial governmental interest—prevention of fraud and abuse, as in cases where elderly consumers are signed up on the registry to protect them from exploitative or fraudulent telemarketers. *Cf. Metromedia v. San Diego*, 453 U.S. 490, 509 (1981) (holding, *inter alia*, that San Diego's "twin goals that the ordinance seeks to further—traffic safety and the appearance of the city—are substantial government goals.")

[670] *Frisby v. Schultz*, 487 US 474, 485 (1988).

[671] The shortcomings of the company-specific approach are set forth above in the discussion of § 310.4(b)(1)(iii).

[672] 397 U.S. 728 (1969).

[673] *Id.*, at 737-38 (internal citations omitted).

[674] While the statute under consideration in *Rowan* was focused on mailed advertisements of a sexual nature, the Court specifically rejected arguments that it should be read narrowly to cover only "salacious" or "pandering" advertisements—or even all advertisements. Instead, the court upheld the statute interpreted as covering all mailings from the sender, regardless of whether they were advertisements, and regardless of

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With respect to telemarketing that solicits charitable contributions, the Commission believes that the applicable analytical framework is more stringent.[675] "[C]haritable solicitations involve a variety of speech interests . . . that are within the protection of the First Amendment and therefore have not been dealt with as purely commercial speech."[676] In considering the more stringent analysis, the Commission notes, preliminarily, that the company-specific "do-not-call" provisions that apply to charitable solicitation telemarketing are content-neutral. "Laws that confer benefits or impose burdens on speech without reference to the ideas or views expressed are in most instances content neutral."[677] The company-specific "do-not-call" provisions apply equally to all for-profit solicitors, regardless of whether they are seeking sales of goods or services or charitable contributions, and regardless of what may be expressed in the solicitation calls themselves or the viewpoints of the organizations on whose behalf the solicitation calls are made. Thus, these provisions are content-neutral.[678]

As in the case of commercial speech, the analysis applicable to charitable solicitations also inquires into the nature of the governmental interest that the regulation seeks to advance. The case law indicates that with respect to the higher level of scrutiny applicable to charitable solicitation, privacy protection is a sufficiently strong governmental interest to support a regulation that touches on protected speech.[679] However, the case law also indicates that, in the case of charitable solicitation, greater care must be given to ensuring that the governmental interest is actually advanced by the regulatory remedy, and tailoring the regulation narrowly so as to minimize its impact on First Amendment rights. In *Riley* and *Schaumburg*, the Court rigorously examined laws that regulated the percentage of charitable contributions raised by a professional fundraiser that could be retained as the fundraiser's fee. The Court struck down the laws because there was, in the Court's view, at best an extremely tenuous correlation between charity fraud and the percentage of funds paid as a professional fundraiser's fee; the laws therefore were unlikely to achieve their intended purposes of preventing fraud and protecting charities. The Court also found that these laws were not tailored narrowly enough to minimize the impact on the charities' First Amendment rights.

By contrast, a very tight nexus exists between the Commission's legitimate interest in protecting consumers' privacy against unwanted telemarketing calls and the company-specific "do-not-call" provisions that apply to telemarketing to solicit charitable contributions. This nexus does not rely on an attenuated theoretical connection between fraud and the percentage of funds raised that a telefunder takes as its fee. Rather, there is a direct correlation between the governmental interest and the regulatory means employed to advance that interest: The consumer requests a specific caller not to call again, and the regulation requires the caller to make a record of and honor that request in the future.

The Commission approaches with extreme care the issue of tailoring "do-not-call" requirements narrowly to advance its legitimate interest in privacy protection and yet minimize the impact on the First Amendment rights of charitable organizations and the telemarketers who solicit on their behalf. The Commission is concerned that subjecting charitable solicitation telemarketing—along with commercial telemarketing to solicit sales of goods and services—to national "do-not-call" registry requirements may sweep too broadly, because it could, for example, prompt some consumers to accept the blocking of charitable solicitation calls that they would not mind receiving, as an undesired but unavoidable side-effect resulting from signing up for the registry to stop sales solicitation calls.[680] In the NPRM, the Commission proposed to resolve this problem by including in the Rule a provision enabling consumers who signed up for the "do-not-call" registry nonetheless to choose selectively to receive calls from specific entities from whom they would welcome solicitation calls. This proposed solution met with uniform condemnation from non-profit organizations, who opined that it would be too costly for non-profit organizations to obtain prospective donors' express permission to call, and too difficult for consumers to exercise their right to hear from them.[681] The Commission is persuaded that these objections may be well-founded, and that this, therefore, would not be an adequate approach to narrow tailoring.

Another solution alluded to in a specific question posed in the NPRM might be to bifurcate the registry into separate categories, one for commercial solicitation and another for charitable solicitation, enabling consumers to sign up separately to stop commercial calls while allowing charitable solicitations.[682] At this time, however,

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whether they were sexually provocative. The determinative factor was that the mailings were unwanted. The Commission does not advance a theory, however, that *Rowan* should be read here to cover any non-commercial communications.

[675] *Metromedia* makes clear that a less exacting standard is applied in analyzing a regulation's constitutionality with respect to commercial speech than in analyzing the same regulation's constitutionality with respect to noncommercial speech. "[I]nsofar as it regulates commercial speech, the San Diego ordinance meets the constitutional requirements of *Central Hudson*.... It does not follow, however, that San Diego's ban on signs carrying noncommercial advertising is also valid . . . . Commercial speech cases have consistently accorded noncommercial speech a greater degree of protection than commercial speech." *Metromedia*, 453 U.S. at 513. In *Watchtower Bible and Tract Soc'y v. Village of Stratton*, ____ U.S. ____, 122 S. Ct. 2080 (2002), where the Court invalidated an ordinance that required anyone who wanted to engage in door-to-door canvassing or soliciting to obtain a permit before doing so, the Court went out of its way to suggest that the ordinance might have been constitutional if it were limited to commercial speech. *Id.* at 2089. This may be dicta, but it is significant because the Court seems to have approved a distinction between commercial and noncommercial speech—the same distinction drawn in the amended Rule—and to have done so in the same context as the Rule, *i.e.*, solicitation that threatens to invade the privacy of the home.

[676] *Riley v. Nat'l. Fed. of the Blind*, 487 U.S. 781 (1988) (internal quotation marks omitted).

[677] *Turner Broad. Sys., Inc. v. FCC*, 512 U.S. 622, 648 (1994). "[R]egulations that are unrelated to the content of speech are subject to an intermediate level of scrutiny because in most cases they pose a less substantial risk of excising certain ideas or viewpoints from the public dialogue." *Turner* at 642, *citing Clark v. Cmty. for Creative Non-Violence*, 468 U.S. 288, 293 (1984). *See also Ward v. Rock Against Racism*, 491 U.S. 781, 791 (1989) ("[The] principal inquiry in determining content neutrality is whether the government has adopted a regulation of speech because of disagreement with the message it conveys."). *See also Am. Target Adver. v. Giani*, 199 F.3d 1241 (10th Cir. 2000), *cert. denied*, 531 U.S. 811 (200) (applying this principle in the context of solicitation).

[678] Similarly, the "do-not-call" registry provisions are also content-neutral, because they apply equally to all sellers and telemarketers engaged in the solicitation of sales of goods or services, regardless of the content of the calls, or the viewpoints of the telemarketers or the sellers.

[679] "The Village argues that three interests are served by its ordinance: the prevention of fraud, the prevention of crime, and the protection of residents' privacy. We have no difficulty concluding, in light of our precedent, that these are important interests that the village may seek to safeguard through some form of regulation." *Watchtower*, 122 S. Ct. 2080 (2002); *Schaumburg v. Citizens for Better Env't.*, 444 U.S. 620, 637 (1980) (protecting the public from fraud, crime, and undue annoyance are indeed substantial).

[680] Childhood Leukemia-NPRM at 1 ("I firmly believe if this change is implemented, people attempting to avoid calls from those who sell goods and services over the telephone will put themselves out of reach of our organization, thereby threatening our financial foundation. The victims will be the children because we will no longer have the resources to help them.")

[681] Non-profit organizations also argued that this proposal was tantamount to a constitutionally impermissible requirement for non-profits to seek permission to speak before speaking.

[682] "Should the "do-not-call" registry be structured so that requests not to receive

the Commission believes that such an approach may be impractical because of cost considerations and because of the difficulty for consumers to understand and deal with the complications of such a system. Thus, these factors may render a bifurcated registry an insufficient or excessively cumbersome response to the imperative of narrow tailoring.

After careful consideration of the record as a whole and the relevant case law, the Commission has determined that the best approach to achieve narrow tailoring of the "do-not-call" provisions at this time is to exempt from the "do-not-call" registry requirements solicitations to induce charitable contributions via outbound telephone calls,[683] and instead to bring charitable solicitation telemarketing only within the ambit of the company-specific "do-not-call" regime contained in the original Rule.[684]

The Commission believes that the encroachment upon consumers' privacy rights by unwanted solicitation calls is not exclusive to commercial telemarketers; consumers are disturbed by unwanted calls regardless of whether the caller is seeking to make a sale or to ask for a charitable contribution.[685] Thus, the Commission rejects the suggestion from numerous non-profit organizations and their representatives that no privacy protection measures are necessary with respect to charitable solicitation telemarketing, and that telefunders should be exempt from even the company-specific "do-not-call" provisions.[686]

The Commission believes that even though the company-specific approach has not been fully adequate to the task of protecting consumers' privacy rights against an onslaught of commercial solicitations, this more limited approach does provide some privacy protection in the context of charitable fundraising, and works better to accommodate both the right of privacy and the right of free speech. The Commission is persuaded by the arguments of Hudson Bay that fundamental differences between commercial solicitations and charitable solicitations may confer upon the company-specific "do-not-call" requirements a greater measure of success with respect to preventing a pattern of abusive calls from a fundraiser to a consumer than it was able to produce in the context of commercial fundraising:

> When a pure commercial transaction is at stake, callers have an incentive to engage in all the things that telemarketers are hated for. But non-commercial speech is a different matter. The success of an advocacy call does not hinge entirely on whether the recipient decides to part with a sum of money. A calling center employee working for a citizens' group is less interested in the volume of calls than in effective communication of the group's concerns. That is the reason the money is needed in the first place, not for profit.
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> In a non-commercial call the recipient is more than a potential source of income. Rather he or she is also a voter, a constituent, a consumer, a source of information to others, and a potential source of a future contribution, even if not in the current call. There is more than a sale, there is a cause at stake. It is, therefore, self-defeating for the advocacy caller to engage in the abusive telemarketing practices that motivated the draft TSR. Such a caller risks alienating the recipient of the call against the cause not just against the caller or their organization.[687]

Nevertheless, if experience indicates that the company-specific approach does not in fact provide adequate protections for consumers' privacy in the context of charitable solicitation telemarketing, the Commission may revisit this decision in the future, and reconsider whether to require telemarketing calls soliciting charitable donations to comply with the national "do-not-call" registry requirements.

FTC authority to establish a "do-not-call" registry. Several industry members questioned whether the FTC had the statutory authority to establish a national "do-not-call" registry.[688] They argued that the Telemarketing Act does not mention the creation of a "do-not-call" registry and that, in fact, another statute (TCPA) had directed another agency (the FCC) to explore the possibility of establishing such a registry.[689] They noted that the FCC had considered such a registry and rejected it in 1992 in favor of a company-specific approach that required consumers to tell those companies from which they did not wish to receive calls to place them on the company's "do-not-call" list.[690]

Congress passed the Telemarketing Act three years after the FCC rejected a national registry. As noted in the NPRM, the Telemarketing Act authorizes the Commission to prescribe rules "prohibiting deceptive telemarketing acts or practices *and other abusive telemarketing acts or practices*," and specifically mandates that these rules prohibit telemarketers from undertaking "a pattern of unsolicited telephone calls which the reasonable consumer would consider coercive or abusive of such consumer's right to privacy."[691] Thus, establishment of the national "do-not-call" registry is squarely within the authority granted by the statute.

The goal in both the TCPA and § 6102(a)(3) of the Telemarketing Act is to protect consumer privacy. When Congress directed the FTC to include in the TSR a prohibition against a pattern of unsolicited telephone calls which the reasonable consumer would consider

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telemarketing calls to induce the purchase of goods and services are handled separately from requests not to receive calls soliciting charitable contributions?" Question 5 i, 67 FR at 4539. Few commenters addressed this question, and those who did so expressed only the most general views, without advocating or opposing the concept of bifurcation. *See, e.g.*, NYSCPB-NPRM at 23 ("[T]he technical problems and costs of implementing such a system might be prohibitive."); NCLC-NPRM at 19; NCL-NPRM at 9; NAAG-NPRM at 20. Only about 100 individual consumer email comments received by the Commission responded to a direct question on the issue included on the Commission's website. A minority of these commenters (about 40 percent) expressed the view that the "do-not-call" registry should not treat calls from charitable fundraisers differently, while about 60 percent expressed the view that it should do so.

[683] "Solicitations to induce charitable contributions via outbound telephone calls are not covered by § 310.4(b)(1)(iii)(B) of this Rule." Section 310.6(a) of the amended Rule.

[684] The comments of many non-profit or charitable organizations indicate that these organizations have a policy of maintaining a "do-not-call" list even though not legally required to do so. Lautman-NPRM at 1 ("[Professional fundraisers] use the Direct Marketing Association's 'do not call' database, in addition to client maintained 'do not call' lists."); HRC-NPRM at 1 ("[W]e have (like most nonprofit organizations) eliminated unwanted calls to our donors by requiring our telemarketing partners to keep a 'do-not-call' list. We also require them to use the Direct Marketing Association's 'do not call' list."); Telefund-NPRM at 1 ("Most non-profit organizations maintain lists of their own donors who prefer to be contacted via the mail. Telefund Inc. also maintains such a database for its clients."). *See also* ADA-NPRM at 1; American Rivers-NPRM at 1; Angel Food-NPRM at 1; APTS-NPRM at 3; Childhood Leukemia-NPRM at 1; FOP-NPRM at 1; Italian American Police- NPRM at 1; Illinois Police-NPRM at 1; Leukemia Society-NPRM at 2; SO-CN-NPRM at 1; SO-CO-NPRM at 1; National Children's Cancer-NPRM at 1; Southern Poverty-NPRM at 2; Stage Door-NPRM at 1.

[685] One indication of this is that, even though the FTC web page advising consumers on how to comment specifically included a direct question calling attention to the possibility of a separate database for charitable fundraisers, only about 100 consumer email comments responded to it. A great many consumer email comments expressed the view that unsolicited calls disturb their privacy, and did not distinguish between sales calls and other types of solicitation calls, such as those for charities.

[686] *See generally* Not-For-Profit Coalition-NPRM; DMA-NonProfit-NPRM.

[687] *See also* HRC-NPRM at 1 ("Most importantly, nonprofits are dependent upon the revenue generated by their supporters and will do nearly anything to honor their requests and treat them with the utmost respect.")

[688] *See, e.g.*, Advanta-NPRM at 2; ATA-NPRM at 6-10, 20-21; DMA-NPRM at 16-22; ERA-NPRM at 26-27; MPA-NPRM at 34-38; PMA-NPRM at 25-26. *See also* ARDA-Supp. at 1; ATA-Supp. at 7.

[689] *See, e.g.*, DMA-NPRM at 16-22; ERA-NPRM at 26; MPA-NPRM at 34-38; PMA-NPRM at 25-26.

[690] FCC Report and Order, CC Docket No. 92-90, 7 FCC Rcd 8752 at 8762-67 (Oct. 16, 1992).

[691] 15 U.S.C. 6102 (a)(1) and (a)(3)(A) (emphasis added).

coercive or abusive of such consumer's right to privacy, Congress knowingly put the FTC on the same path that the FCC had trod three years earlier, but did not mandate that the two agencies arrive at the identical conclusion. Instead, the Telemarketing Act is written broadly and does not limit how the Commission is to effectuate the Congressional mandate; it leaves the method of achieving the goal of protecting privacy to the Commission's discretion.[692] There is nothing in the TCPA that would lead to the conclusion that the FCC was the only federal agency authorized to create a national registry. In fact, although Congress had passed the TCPA only three years earlier, it mandated in the Telemarketing Act that the FTC promulgate provisions similar to those that the FCC had promulgated pursuant to TCPA. For example, although FCC regulations already restricted the times that telemarketers can call consumers,[693] Section 6102(a)(3)(B) of the Telemarketing Act directed the FTC to also include in its regulations a provision that would prohibit telemarketers from making unsolicited phone calls to consumers during certain hours of the day or night. Thus, Congress clearly intended to provide the FTC with sufficient authority to remedy the problem of unwanted telemarketing calls by means of a national registry, notwithstanding that the FCC had earlier decided not to exercise its own authority to do so.

Interplay between the national "do-not-call" registry and state "do-not-call" laws. The NPRM specifically requested comment on how the proposed establishment of a national "do-not-call" registry should interplay with similar requirements on the state level.[694] In response, NAAG and representatives of individual states with "do-not-call" laws expressed concern about the possible preemptive effect of a national "do-not-call" registry.[695] On the other hand, industry representatives urged that if, despite their opposition, the Commission adopted TSR provisions establishing a national "do-not-call" registry, the national registry must preempt similar state requirements.[696]

At this time, the Commission does not intend the Rule provisions establishing a national "do-not-call" registry to preempt state "do-not-call" laws. Rather, the Commission's intent is to work with those states that have enacted "do-not-call" registry laws, as well as with the FCC, to articulate requirements and procedures during what it anticipates will be a relatively short transition period leading to one harmonized "do-not-call" registry system and a single set of compliance obligations.[697] The Commission is actively consulting with the individual states to coordinate implementation of the national registry to minimize duplication and maximize efficiency for consumers and business. The Commission's goal is a consistent, efficient system whereby consumers, in a single transaction, can register their requests not to receive calls to solicit sales of goods or services, and sellers and telemarketers can obtain a single list to ensure that in placing calls they do not contravene those consumers' requests. In adopting the "do-not-call" provisions in the amended Rule, the Commission intends to advance that goal. At this time, the Commission specifically reserves further action on the issue of preemption until sufficient time has passed to enable it to assess the success of the approach outlined above.[698]

Implementation of a National Do-Not-Call Registry

In developing an implementation plan for a national "do-not-call" registry, the Commission has been guided by a number of concerns. Most importantly, the Commission has sought to ensure the accuracy and validity of the consumer telephone numbers added to the registry, and to build a system that can handle the potential volume of consumer requests to be placed on the registry.[699] Equally important, the system must ensure the security of the information maintained in the registry. The registry also must be easily accessible to both telemarketers and appropriate law enforcement agencies. In addition, the Commission seeks to develop the system with the lowest possible costs.

The Commission conducted extensive research to determine the feasibility of a national "do-not-call" registry and to develop a plan for implementing such a registry. The NPRM asked for comment on a number of specific implementation questions.[700] The staff contacted the states with their own registries, and also contacted many of the contractors used by those states to develop their registries. On February 28, 2002, as part of its research, the Commission issued a Request for Information ("RFI") to contractors capable of assisting the FTC in the development, deployment, and operation of the national registry.[701] Thirty-six different companies responded to the RFI. In August 2002, the Commission issued a Request for Quotes ("RFQ") to selected vendors.[702] A number of those vendors have submitted proposals and quotes to the Commission; the agency is currently evaluating those proposals.[703]

Based on all of the information gathered during this process, the Commission plans to develop a national registry with three components: consumer registration; access to the consumer registration database by telemarketers and sellers; and law enforcement access to both the consumer registration database and the list of telemarketers and sellers who have accessed the consumer registration database. The entire system will be fully automated to simplify the process and keep costs to a minimum.

Consumer registration. Consumers will be able to add their telephone numbers to the national "do-not-call" registry through two methods: either through a toll-free telephone call or over

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[692] *See* KENNETH CULP DAVIS & RICHARD J. PIERCE, JR., ADMINISTRATIVE LAW TREATISE § 3.2 (3rd ed. 1994) (noting that agencies have the power to "fill any gaps" that Congress either expressly or implicitly left to the agency to decide pursuant to the decision in *Chevron v. Natural Res. Def. Council*, 467 U.S. 837 (1984)). It is, therefore, permissible for agencies to engage in statutory construction to resolve ambiguities in laws directing them to act, and courts must defer to this administrative policy decision.

[693] 47 CFR 64.1200(e)(1). *See also* discussion at 7 FCC Rcd at 8767-68.

[694] 67 FR at 4539.

[695] *See, e.g.*, NAAG-NPRM at 6-14; Connecticut-NPRM at 3; DC-NPRM at 4-5 (District of Columbia); NYSCPB-NPRM at 13-17 (New York); Texas PUC-NPRM at 3-4.

[696] *See, e.g.*, ATA-NPRM at 28-29; DMA-NPRM at 3, 14; ERA-NPRM at 34.

[697] In this regard, the Commission notes that in September 2002, the FCC published an NPRM to review its TCPA regulations, including, among other things, whether its company-specific "do-not-call" requirement has been effective and whether a national registry would better serve the public interest. *See* FCC TCPA 2002.

[698] *See generally English v. Gen. Elec. Co.*, 496 U.S. 72, 78-79 (1990) (preemption can occur "where it is impossible for a private party to comply with both state and federal requirements, *see, e. g., Florida Lime & Avocado Growers, Inc. v. Paul*, 373 U.S. 132, 142-143 (1963), or where state law 'stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.' *Hines v. Davidowitz*, 312 U.S. 52, 67 (1941)."); *Crosby v. Nat'l. Foreign Trade Council*, 530 U.S. 363, 372-73 (2000); *Ass'n of Banks in Ins. v. Duryee*, 270 F.3d 397, 404 (6th Cir. 2001) (where state and federal laws are inconsistent, state law can be pre-empted even if it was enacted to protect its citizens or consumers).

[699] Consumer interest in state "do-not-call" registries has varied from a few percent to over 40 percent of all telephone lines within the state.

[700] 67 FR at 4538-39.

[701] *See* http://www.ftc.gov/procurement.

[702] The Commission issued the RFQ to those vendors that expressed an interest in developing the national registry and that were on General Service Administration ("GSA") schedules to provide goods or services to the federal government.

[703] All vendor responses to both the RFI and RFQ contain confidential proprietary business information and therefore cannot be made public.

the Internet. Consumers who choose to register by phone will have to call the registration number from the telephone line that they wish to register. Their calls will be answered by an Interactive Voice Response ("IVR") system. After a brief introductory message, the consumer will be asked to enter on his or her telephone keypad the telephone number from which the consumer is calling. The number entered will be checked against the automatic number information ("ANI") that is transmitted with the call. If the telephone number the consumer enters on the keypad matches the ANI of the line from which the consumer is calling, then the IVR system will inform the consumer that the number is registered and the call will end. If the telephone number does not match, the IVR system will advise the consumer to call back from the telephone the consumer wishes to register. In the small percentage of calls in which ANI is not available, the system will offer other verification options.

Using this process, the Commission will verify, at a minimum, that each consumer is calling from a telephone line assigned the number the consumer is attempting to register. The Commission has determined that this is sufficient verification for the limited purposes involved here — ensuring that a telephone number in the national registry was entered by someone in the household to which that telephone number is assigned.[704] A number of commenters stated that the FTC should prohibit third parties from registering consumers' preferences not to receive telemarketing calls with the national "do-not-call" registry, citing concerns that such third-party registrations could lead to abuse.[705] The Commission agrees that third-party registrations should not be permitted, and believes that the verification procedures to be established for telephone registrations will prevent these potential types of third-party abuse, because the person registering will have to be present physically in the household with which the telephone number being registered is associated.

Other commenters suggested that only the line subscriber or person who is billed for the telephone line be allowed to register that number in the national registry.[706] In fact, one commenter suggested that the FTC should "permit each adult user of the telephone to prevent calls to him or herself, but not to be able to bar all calls to all adults using that telephone."[707] The Commission does not believe this is a realistic approach. Because numerous people in a household often share a common telephone number, the Commission has determined that the decision to be part of the "do-not-call" registry does not rest with the line subscriber (or any single resident) alone. In such a shared-number situation, the privacy rights of all are affected by unwanted telemarketing calls. Thus, the decision to register the household telephone number in the national registry is a joint decision of all household members. The Commission's telephone registration system will accept the registration from any member of the household, but will remind consumers that they are registering on behalf of all household members.[708]

Consumers who choose to register via the Internet will go to a website dedicated to the registration process, where they will be asked to enter the telephone number they wish to register. Consumers will be told that they may register only their household or personal telephone number(s). As with the telephone registration system, they will be reminded that if they share a household number with others, they are registering on behalf of all household members. The Commission is considering two possible methods for verifying consumers' information. One possible option is that a consumer will be asked to enter certain address information, such as his or her zip code and the numeric portion of his or her street address, which the system would then check against a national database to ensure that it matches the telephone number provided. The second possible option is that the consumer will be asked to enter his or her email address; the system will send a confirming email to that address, and the consumer will then have to respond to reconfirm his or her registration decision.

The Commission will use one or both of these verification methods for Internet registrations. Such verification processes will enhance the likelihood that individuals will register their own telephone numbers. If the email verification process is used, the Commission will also develop procedures to prevent large numbers of registrations from being confirmed through the same email account. Once again, the Commission has determined that these are sufficient verification procedures for the limited purpose of adding telephone numbers to the national "do-not-call" registry, and should help prevent the potential abuses cited concerning massive third-party registrations.

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[704] Unlike the Commission's cases challenging the unauthorized billing of goods or services to consumers' telephone numbers based solely on ANI verification, *see, e.g., FTC v. Verity Int'l, Ltd.*, No. 00 Civ. 7422 (LAK) (S.D.N.Y. 2000); *FTC v. American TelNet, Inc.*, No. 99-1587 CIV:KING (S.D. Fla. 1999), the verification process needed to ensure the validity of numbers in the national registry is much less stringent. Here, only the right not to receive unwanted telemarketing calls is being asserted; the line subscriber is not incurring charges for goods and services, possibly purchased by unauthorized third parties, based on ANI information.

[705] *See, e.g.*, DialAmerica-NPRM at 13; Household-NPRM at 13; Texas PUC-NPRM at 2; PMA-NPRM at 29. NAAG also cited recent state cases against companies that have deceptively offered to add consumers' numbers, for a fee, to "do-not-call" lists. *See* NAAG-NPRM at 19, n.47.

[706] *See, e.g.*, DialAmerica-NPRM at 13; Nextel-NPRM at 26.

[707] AFSA-NPRM at 8.

[708] Several commenters supported allowing any household member to register the household telephone number. *See, e.g.*, NCL-NPRM at 9 (allow registration requests to be made by the line subscriber, spouse, roommate, care giver, or others with a legitimate interest). One telemarketer that calls on behalf of non-profit organizations opposed this view, commenting that "each person has an individual, separate constitutional right to speak and be in association with other like-minded people, and the groups to which they belong also have the right to contact their members and the public at large. When dealing with fully protected, non-commercial speech, any do-not-call list that keeps track only of numbers, rather than names and numbers, needs some way to be certain that everyone who is lawfully and regularly reached at a telephone number has consented to be cut off from the organizations to which they belong." Hudson Bay-Goodman-NPRM at 13 (emphasis omitted). As an initial matter, non-commercial speech is not covered by the national "do-not-call" provisions of the amended Rule. *See* amended Rule § 310.6(a) (exempting solicitations to induce charitable contributions via outbound telephone calls from § 310.4(b)(1)(iii)(B) of the Rule). Moreover, the Commission has determined that to accomplish its privacy protection objectives, there is no workable alternative to allowing any member of a household to exercise the "do-not-call" rights of the entire household using a shared telephone number. Households in which one member wants to sign up with the national "do-not-call" registry and another does not have the option of subscribing to an additional telephone line that is not on the registry and may therefore receive telemarketing calls, or they can provide express authorization to specific entities to receive telemarketing calls from them, regardless of their national registry status, pursuant to § 310.4(b)(1)(iii)(B)(i) of the amended Rule. The Commission notes that the "do-not-call" provisions will not "cut off" individuals from organizations or sellers because it will not foreclose other means of communication with any member of the household, such as by conventional mail, email, or door to door solicitation. The "do-not-call" provisions are strongly analogous to laws requiring solicitors to honor a "no solicitation" sign posted by a homeowner, which the Supreme Court has approved in such cases as *Martin v. Struthers*, 319 U.S. 141 (1941), involving "a form of regulation . . . which would make it an offense for any person to ring the bell of a householder who has appropriately indicated that he is unwilling to be disturbed." According to the Court, "[t]his or any similar regulation leaves the decision as to whether distributers of literature may lawfully call at a home where it belongs—with the homeowner himself. A city can punish those who call at a home in defiance of the previously expressed will of the occupant. . . ." *Id.* at 148.

For both telephone and Internet registrations, the only personal identifying information that will be maintained by the national "do-not-call" registry will be the consumer's telephone number. Based on our discussions with the states, that appears to be the only piece of information that is needed by telemarketers.[709] Moreover, the Commission has determined that it has no need for consumer names or addresses in the registry.[710] Thus, the Commission will not collect that information.

Consumers will be able to verify or cancel their registration status using either the telephone or Internet. The same verification procedures established for the initial registration will apply to these requests as well. Allowing consumers to verify their registration status and to cancel their registrations if they so wish offers yet another method to enhance the accuracy of the national registry.

The Commission has determined that consumer registrations will remain valid for five years, with the registry periodically being purged of all numbers that have been disconnected or reassigned. The Commission wishes to minimize the inconvenience to consumers entailed in periodically re-registering their preference not to receive telemarketing calls.[711] However, the Commission is also aware that the length of time registrations remain valid directly affects the overall accuracy of the national registry.[712] A number of commenters stated that 16 percent of all telephone numbers change each year, and that 20 percent of all Americans move each year.[713] Unless the system includes a process to counteract this effect, numbers in the national registry that have been disconnected and then reassigned to other line subscribers would remain in the registry even though those line subscribers to whom the numbers are reassigned may not object to receiving telemarketing calls. To guard against this possibility, the system will include a procedure to periodically check all telephone numbers in the national registry against national databases, and those telephone numbers that have been disconnected or reassigned will be purged from the registry. This procedure will help maintain the accuracy of the national registry, while limiting the number of times consumers must go through the registration process.[714] The Commission believes that a five-year registration period coupled with the periodic purging of disconnected telephone numbers from the registry adequately balances, on the one hand, the need to maintain a high level of accuracy in the national registry and, on the other hand, the onus on consumers to periodically re-register their telephone numbers.

Access to consumer registration information. To comply with the amended Rule's "do-not-call" provisions, telemarketers and sellers must gain access to the telephone numbers in the national registry so that they can "scrub" their call lists to eliminate the telephone numbers of consumers who have registered a desire not to be called. For the telemarketer and seller access component of the registry, the Commission plans to develop a fully-automated, secure website dedicated to providing this information to telemarketers and sellers. The first time a telemarketer or seller accesses the system, the company will be asked to provide certain limited identifying information, such as company name and address, company contact person, and the contact person's telephone number and email address. If a telemarketer is accessing the registry on behalf of a client seller, the telemarketer will also need to identify that client.

The only consumer information telemarketers and sellers will receive from the national registry is the registrants' telephone numbers. Those telephone numbers will be sorted and available by area code. Telemarketers and sellers will be able to access as many area codes as desired, by selecting, for example, all area codes within a certain state or region of the country. Of course, telemarketers and sellers will also be able to access the entire national registry, if desired.

When a seller or telemarketer first submits an application to access registry information, the company will be asked to specify the area codes that they want to access.[715] Each company accessing the registry data will be required to pay an annual fee for that access, based on the number of area codes of data the company accesses.[716] Fees will be payable via credit card (which will permit the real-time transfer of data) or electronic funds transfer (which will require the telemarketer or seller to wait approximately one day for the funds to clear before data access will be provided).

After payment is processed, the telemarketer or seller will be given an account number and permitted access to the appropriate portions of the registry.

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[709] In fact, based on discussions between the states and the Commission staff, it appears that in states where additional information is provided to telemarketers, the states have received requests to strip their lists of all information except the telephone number.

[710] Some commenters stated that the Commission would have to collect consumers' names, addresses and telephone numbers for the national registry to remain accurate. *See, e.g.*, NAA-NPRM at 12; Household-NPRM at 13. Another stated that to keep the registry accurate, "the Commission must be prepared to accept a data stream from every local exchange carrier in the country on a daily basis." SBC-NPRM at 11. The Commission has learned that this is not necessarily true. National databases with sufficient accuracy that contain only telephone numbers now exist, permitting the Commission to purge a telephone number from the national registry when that number is disconnected or the party in whose name the number is registered changes.

[711] Consumer inconvenience includes not just their time and effort necessary to register, but also their need to remember when it is time to re-register. Of course, requiring frequent consumer re-registrations also increases the costs of operating the national registry. Several commenters supported allowing registrations to continue indefinitely, until the consumer's phone number is disconnected or he requests that his number be removed. *See, e.g.*, New Orleans at 9; NCL at 9. In addition, 14 states with "do-not-call" registries do not specify a renewal period for registrations in their "do-not-call" statutes (Alabama, Alaska, California, Colorado, Indiana, Kentucky, Louisiana, Massachusetts, Minnesota, Missouri, New York, Oklahoma, Pennsylvania, and Tennessee).

[712] Commenters citing this concern over the accuracy of the national registry reached various conclusions concerning the time period for which registrations remain should remain valid. Some suggested registrations remain valid for only one year. *See* DialAmerica-NPRM at 13; NCTA-NPRM at 16; Nextel-NPRM at 26. Others stated that registrations should remain valid for two years, unless the Commission can ensure greater accuracy through some purging process. *See* NRF-NPRM at 18; PMA-NPRM at 29. Still others suggested that a five-year registration period is sufficient. *See* NAAG-NPRM at 18; Household-NPRM at 13. State registration periods vary from one year to five years, while, as stated in the previous footnote, fourteen states impose no expiration on consumer registrations. Three states require consumers to renew their registration annually (Arkansas, Florida, and Oregon). Two states (Georgia and Wisconsin) have a two-year registration, and two others (Texas and Idaho) have registrations that are good for three years. Six states require consumers to re-register after five years (Connecticut, Illinois, Kansas, Maine, Vermont, and Wyoming).

[713] *See* DMA-NPRM at 12; Nextel-NPRM at 26; Household-NPRM at 13; SBC-NPRM at 11. Of course, not all consumers who move change their telephone numbers. For consumers who keep their existing telephone numbers when they move, no action by either the consumer or the Commission is necessary to maintain the registry's accuracy.

[714] The DMA TPS is operated in a similar manner. TPS registrations remain valid for five years. During that five-year period, the DMA checks the information in the TPS against the U.S. Postal Service's National Change of Address List, purging the telephone numbers of those registered consumers who have moved. DMA-NPRM at 7, 12.

[715] They will be able to amend the list of area codes for which they seek data on future visits, provided they pay the appropriate fee for the additional area codes.

[716] On May 29, 2002, the Commission issued a Notice of Proposed Rulemaking to add a new section 310.9 to the Rule, which would establish a "user fee" for telemarketer access to the national do-not-call registry. 67 FR. 37362. After reviewing the comments received in response to that NPRM, the Commission has decided that it will issue a revised NPRM seeking additional comment on the fee issue in the near future. Section 310.8 of the amended Rule has been reserved for the fee section.

That account number will be used in future visits to the website, to shorten the time needed to gain access. On subsequent visits to the website, telemarketers and sellers will be able to download either an entire updated list of numbers from their selected area codes, or a more limited list, consisting only of additions to or deletions from the registry that have occurred since the company's last download. This would limit the amount of data that a company needs to download during each visit. Telemarketers and sellers will be permitted to access the registry as often as they wish for no additional cost, once the annual fee has been paid. As indicated in the discussion of Section 310.4(b)(3)(iv), however, the Rule requires a seller or a telemarketer to employ a version of the "do-not-call" registry obtained from the Commission no more than three months prior to the date any telemarketing call is made.

Law enforcement access to the registry. Any law enforcement agency that has responsibility to enforce either the Rule or any state do-not-call statute or regulation will be permitted to access appropriate information in the national registry. This information will be provided through a secure Internet website, with access obtained through the Commission's existing Consumer Sentinel® system. Law enforcers will be able to query the registry to determine if and when a particular telephone number was registered by a consumer. They will also be able to query if and when a particular telemarketer or seller accessed the registry, and the information accessed by that telemarketer or seller. Such law enforcement access to data in the national registry is critical to enable state Attorneys General and other appropriate law enforcement officials to gather evidence to support enforcement actions under the Telemarketing and Consumer Fraud and Abuse Prevention Act,[717] and, as discussed below, once harmonization between the national registry and state do-not-call programs has been completed, to support law enforcement action under state law as well.

Harmonization of various do-not-call registries. As discussed above, the Commission is working with the states to develop a single, national "do-not-call" registry. The Commission envisions allowing consumers throughout the United States to register their preference not to receive telemarketing calls in a single transaction with one governmental agency. In addition, the Commission anticipates allowing telemarketers and sellers to access that consumer registration information through one visit to a national website, developed for that purpose.

To further those goals, the Commission will allow all states, and the DMA if it so desires, to download into the national registry—at no cost to the states or the DMA—the telephone numbers of consumers who have registered with them their preference not to receive telemarketing calls. Telemarketers and sellers will be allowed to access that data through the national registry as the information is received.

It will take some time to achieve these goals completely, however. Some states will be able to transfer their state "do-not-call" registration information, and will cease requiring telemarketers to access the state registries, by the time telemarketers first gain access to the national registry. For other states, it may take from 12 to 18 months to achieve those results. At least one state, Indiana, may need up to three years before it can become part of the national system. In any event, the Commission will continue to work diligently with the states in an effort to harmonize these different systems.

Implementation time line. As stated above, the Commission has issued an RFQ to vendors to develop and operate a national "do-not-call" registry. The implementation time line for the registry begins on the date the contract is awarded to a vendor in response to that RFQ. The Commission anticipates awarding the contract as soon as the agency receives appropriate authority and funding from Congress to begin building the national registry.

Consumers will be allowed to begin to register their preference not to receive telemarketing calls approximately four months after a contract for the national "do-not-call" registry is awarded. To avoid an unmanageable surge of calls when the national registry is initially opened, the Commission anticipates phasing in registry availability to consumers one geographic region at a time throughout the United States over a period of approximately two months. Telemarketers and sellers will be given access to the telephone numbers in the national registry approximately six months after the contract is awarded. The effective date for the "do-not-call" provisions of the amended Rule will be approximately seven months after the date the contract to develop and implement the system is awarded. Thus, to comply with the amended Rule, telemarketers will need to obtain the list of registered telephone numbers during the sixth month after the contract is awarded, allowing themselves sufficient time to scrub their calling lists before placing outbound telemarketing calls in the seventh month after the date the contract is awarded.

As stated below in the Effective Date section, in the future the Commission will announce the date by which full compliance with the national "do-not-call" registry provisions of the amended Rule will be required. As noted elsewhere in this document, full compliance with all other provisions of the amended Rule—with the exception of the Caller ID provision (§ 310.4(a)(7))—will be required by the date on which the amended Rule is effective, March 31, 2003. Full compliance with the Caller ID provisions will be required by January 29, 2004.

§ 310.4(b)(1)(iv) — Abandoned calls & § 310.4(b)(4) — Safe harbor for abandoned calls

In the NPRM, the Commission explained that "abandoned calls" violate § 310.4(d) of the original Rule because such calls failed to provide the requisite prompt disclosures.[718] In providing this explanation, the Commission noted that "abandoned calls" include two distinguishable scenarios: "hang up" calls, in which telemarketers hang up on consumers whom they have called without speaking to them; and "dead air" calls, in which there is a prolonged period of silence between the consumer's answering a call and the connection of that call to a sales representative.[719] The record shows that both types of abandoned calls arise from the use of predictive dialers, which promote telemarketers' efficiency by calling multiple consumers for every available sales representative.[720] Doing so maximizes the amount of time representatives spend speaking with consumers and minimizes the amount of time representatives spend waiting to reach a prospective customer.[721] An inevitable "side effect" of predictive dialers' functionality is that the dialer will reach more consumers than can be connected to available sales

[717] 15 U.S.C. 6101 *et seq.*

[718] 67 FR at 4524.

[719] 67 FR at 4522.

[720] ABA-NPRM at 12; ATA-NPRM at 32; CADM-NPRM at 3; DialAmerica-NPRM at 22; Pelland-NPRM at 2; Sytel-NPRM at 3; Miller Study at 13; http://www.predictive-dialers.com/home/faq.html.

[721] ATA-NPRM at 31; ERA-NPRM at 41; MPA-NPRM at 31; NAA-NPRM at 14; Private Citizen-NPRM at 3; PMA-NPRM at 30; TeleDirect-NPRM at 2.

representatives.[722] In those situations, the dialer will either disconnect the call or keep the consumer connected in case a sales representative becomes available.[723]

According to one consumer organization, the Rule's prohibition on abandoned calls as set forth in the NPRM addresses "one of the most invasive practices of the telemarketing industry."[724] "Hang up" calls and "dead air" frighten consumers,[725] invade their privacy,[726] cause some of them to struggle to answer the phone only to be hung up on,[727] and waste the time and resources of consumers working from home.[728]

The amended Rule prohibits abandoning outbound telephone calls, but constructs a safe harbor allowing telemarketers to continue using predictive dialers in a regulated manner. Under § 310.4(b)(1)(iv), an outbound telephone call is abandoned if, once the call has been answered by a consumer, the telemarketer fails to connect the call to a sales representative within two seconds of the consumer's completed greeting. (As explained herein, "hang up" calls and delays of more than two seconds before connecting the call to a sales representative are prohibited by this section of the Rule.) The Commission's prohibition of abandoned calls is authorized by § 6102(a)(3)(A) of the Telemarketing Act, which directs the Commission to prohibit telemarketers from undertaking a pattern of unsolicited telephone calls which the reasonable consumer would consider coercive or abusive of such consumer's right to privacy, and by § 6102(a)(3)(C), which directs the Commission to require telemarketers to promptly and clearly disclose certain material information. Section 6102(a)(3), which directs the Commission to consider recordkeeping requirements in prescribing rules regarding deceptive and abusive telemarketing acts or practices, is the authority for the required recordkeeping related to predictive dialers.

Section 310.4(b)(4), the amended Rule's safe harbor provision, provides that the Commission will refrain from bringing a Rule enforcement action against a seller or telemarketer based on violations of § 310.4(b)(1)(iv) if the seller or telemarketer's conduct meets certain specified standards designed to minimize call abandonment. These standards are: (1) the seller or telemarketer must employ technology that ensures abandonment of no more than three percent of all calls answered by a consumer, measured per day per calling campaign; (2) the seller or telemarketer must allow each telemarketing call placed to ring for at least fifteen seconds or four complete rings before disconnecting an unanswered call; (3) whenever a sales representative is not available to speak with the person answering the call within two seconds of that person's completed greeting, the seller or telemarketer must promptly play a recorded message; and (4) the seller or telemarketer must retain records, in accordance with § 310.5(b)-(d), establishing compliance with § 310.4(b)(4)(i)-(iii).

Telemarketers voiced strong objection to the NPRM discussion of abandoned calls as violative of § 310.4(d),[729] and argued that this interpretation would in effect ban the use of predictive dialers,[730] causing the loss of efficiency benefits that arise from the use of predictive dialers.[731] The Commission is mindful of the benefits of increased efficiency, but believes that the increased efficiency of predictive dialers must be balanced against the abusive nature of abandoned calls. The abuses of abandoned calls were delineated in the NPRM and elsewhere in the record.[732] As NAAG asserted at the June 2002 Forum, an abandoned call is basically a "prank call."[733] However, the Commission is persuaded that a total ban on abandoned calls, which would amount to a ban on predictive dialers, would not strike the proper balance between addressing an abusive practice and allowing for the use of a technology that provides substantially reduced costs for telemarketers. At the June 2002 Forum, one telemarketing group posited that consumers who make purchases via the telephone ultimately benefit from these reduced costs in the form of lower prices.[734] Therefore, taking into account the record as a whole, and arguments raised by both sides of this issue, the Commission has determined to prohibit abandoned calls from continuing without regulation, and has created requirements that, in effect, closely govern the use of predictive dialers. Under this approach, consumers will benefit from a substantial reduction in the number of abandoned calls they receive,[735] but telemarketers will not be deprived of a large part of the efficiency benefits that accrue from the use of predictive dialers.[736] The Commission also notes that the amended Rule's establishment of a national "do-not-call" registry should significantly reduce the number of calls received by consumers who place their numbers on the registry, thereby reducing the number of abandoned calls these consumers must contend with as well.

"*Abandoned call*": Section 310.4(b)(1)(iv) of the amended Rule defines a prohibited abandoned outbound call as one in which the recipient of the call answers the call, and the telemarketer does not connect the call to a sales representative within two seconds of the person's completed greeting. This definition of abandoned call covers "dead air" and "hang up" calls, in which the telemarketer hangs up on a called consumer without connecting that consumer to a sales representative. This approach to abandoned calls clarifies several issues raised by telemarketers in the record.

The amended Rule removes any possibility of doubt that a call placed by a telemarketer is an outbound telephone call within the meaning of the Rule, even if the telemarketer hangs up on the called consumer without speaking to him or her, or subjects the called consumer to dead air. The Rule's disclosure requirement is triggered once a recipient of a telemarketing call

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[722] June 2002 Tr. I at 211 (CCC); Time-NPRM at 11; ATA-Supp. at 11; Miller Study at 13-14.

[723] NASUCA-NPRM at 12-13; Sytel-NPRM at 4-7; ATA-Supp. at 11; Miller Study at 13-14.

[724] PRC-NPRM at 3.

[725] 67 FR at 4523.

[726] AARP-NPRM at 9.

[727] 67 FR at 4523; Texas PUC-NPRM at 5; Worsham-NPRM at 5.

[728] PRC at 3.

[729] ABA-NPRM at 12; ACA-NPRM at 9; ATA-NPRM at 30; Associations-NPRM at 3; Capital One-NPRM at 6; DialAmerica-NPRM at 24-25; DMA-NPRM at 44; ERA-NPRM at 40-41; Gannett-NPRM at 4; Infocision-NPRM at 6-7; Metris-NPRM at 10; MPA-NPRM at 29-30; NAA-NPRM at 13, 15; Time-NPRM at 11; Tribune-NPRM at 9.

[730] June 2002 Tr. I at 211 (CCC); ABA-NPRM at 12; Advanta-NPRM at 4; Aegis-NPRM at 5; AFSA-NPRM at 16; Capital One-NPRM at 6; Gannett-NPRM at 4; Household Auto-NPRM at 12; ICT-NPRM at 2; PMA-NPRM at 30; PCIC-NPRM at 2; VISA-NPRM at 12; Miller Study at 14. *But see* EPIC-NPRM at 23.

[731] ACA-NPRM at 8-9; ARDA-NPRM at 15; ANA-NPRM at 6; ATA-NPRM at 31; BofA-NPRM at 9; BRI-NPRM at 3; Discover-NPRM at 6; Fleet-NPRM at 6; FPIR-NPRM at 2; Household Auto-NPRM at 11-12; ICT-NPRM at 2; ITC-NPRM at 2-3; KeyCorp-NPRM at 6; Marketlink-NPRM at 3; MPA-NPRM at 8; NAA-NPRM at 14; Noble-NPRM at 4; NATN-NPRM at 4; NSDI-NPRM at 4; SHARE-NPRM at 4; Synergy Solutions-NPRM at 4; Technion-NPRM at 5; TeleDirect-NPRM at 2; Teleperformance-NPRM at 3; TRC-NPRM at 4; TeleStar-NPRM at 2; Time-NPRM at 10; Allstate-Supp. at 2; Miller Study at 15. *See also* Citigroup-NPRM at 10; IMC-NPRM at 7 (Predictive dialers enhance dialing accuracy); NAA-NPRM at 7 (Predictive dialers help with "do not call" compliance).

[732] 67 FR at 4522-24; AARP-NPRM at 9; NAAG-NPRM at 47; NACAA-NPRM at 10; PRC-NPRM at 3.

[733] June 2002 Tr. II at 27 (NAAG). *See also* NAAG-NPRM at 47; McKenna-Supp. at 2.

[734] June 2002 Tr. I at 212-13 (CCC). *But see* June 2002 Tr. I at 222-23 (EPIC).

[735] AFSA-NPRM at 16; Sytel-NPRM at 7-8.

[736] *See* KeyCorp-NPRM at 6; PCIC-NPRM at 2.

answers the phone.[737] This approach is consistent with the treatment of this issue in the NPRM.[738] The Commission rejects the argument, advanced by ACA, ATA, DMA, and ERA, that abandoned calls cannot be regulated by the Rule because they are not "outbound telephone calls."[739] If this theory were valid, telemarketers could abuse consumers in a variety of ways without violating the Rule as long as they did not also engage in a sales pitch. That interpretation and that result are contrary to the overall purpose and intent of the Telemarketing Act and plainly at odds with the Rule's definition of "outbound telephone call" and with the Rule generally. A telemarketer initiates a telephone call by causing the called consumer's telephone to ring. Abandoning the call after the consumer answers but before the sales representative begins a sales pitch is an abusive telemarketing act or practice. Certainly this is the type of practice that prompted Congress, in the Telemarketing Act, to direct the Commission to prohibit telemarketers from undertaking "a pattern of unsolicited telephone calls which the reasonable consumer would consider coercive or abusive of such consumer's right to privacy."[740] The record contains ample evidence that consumers find abandoned calls to be coercive or abusive of their privacy rights.[741]

ATA, in its comment and at the June 2002 Forum, requested guidance from the Commission on how "abandoned call" would be defined in the Rule.[742] Accordingly, the Commission has clarified, in § 310.4(b)(1)(iv), that an outbound call is "abandoned" if, once answered by a consumer, it is not connected to a sales representative within two seconds of the consumer's completed greeting (*i.e.*, no more than two seconds of "dead air").[743] As was explained above, this definition of "abandoned call" also includes situations in which the telemarketer hangs up on a consumer who has answered the telemarketer's call without connecting that call to a sales representative.

Abandoned call "safe harbor": The abandoned call safe harbor consists of four components, each of which is supported by record evidence. A seller or telemarketer will not be deemed to have violated § 310.4(b)(1)(iv) by abandoning calls, provided that the seller or telemarketer can show that its conduct conforms to the standards specified in this safe harbor.

Under the first subsection of the safe harbor, the seller or telemarketer must employ technology that ensures abandonment of no more than three percent of all calls answered by called consumers. The safe harbor's three percent abandonment rate is measured per day per calling campaign. The "per day per campaign" unit of measurement is consistent with DMA's guidelines addressing its members' use of predictive dialer equipment.[744] Under this standard, a telemarketer running two or more calling campaigns simultaneously cannot offset a six percent abandonment rate on behalf of one seller with a zero percent abandonment rate for another seller in order to satisfy the Rule's safe harbor provision. Each calling campaign must record a maximum abandonment rate of three percent per day to satisfy the safe harbor.

What constitutes an "acceptable" abandonment rate was the subject of substantial comment on the record. A number of telemarketers urged the Commission to alter the position implied in the NPRM that the appropriate standard is a zero percent abandonment rate.[745] Among industry representatives who advanced this argument, ATA took the most extreme position, arguing against any regulation of abandonment rates.[746] The Commission rejects this position in light of the record of conduct affiliated with abandoned calls and predictive dialers under the current regulatory scheme.[747] Other industry comments recommended that the Commission set a "reasonable" or "acceptable" abandonment rate above zero percent that would curb abuses while allowing use of predictive dialers to continue.[748] A third group of telemarketers argued that the Commission's abandonment rate should be consistent with DMA's current guideline, which calls for an abandonment rate no higher than five percent.[749] Consumer groups and law enforcement representatives advocated strongly for a zero abandonment rate.[750]

Taking all of these viewpoints into account, the Commission has concluded that neither extreme strikes the right balance on this issue. The Commission believes that a maximum abandonment rate of three percent strikes a reasonable balance between curbing a very abusive practice and preserving some of the substantial economic benefits that accrue from the use of predictive dialers. Two telemarketers essentially supported this abandonment rate as being "feasible, realistic" and "fully capable" of being achieved.[751] ATA asserted that the three percent standard would result in "a significant drop in efficiency" among some of its members.[752] Sytel, a leading provider of predictive dialer technology, urged the Commission not to set a rate *below* three

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[737] The safe harbor, which, among other things, directs how long telemarketers must allow a called consumer's telephone to ring before disconnecting the call, addresses telemarketers' practices before the consumer answers the phone.

[738] 67 FR at 4524.

[739] ACA-NPRM at 9-10; ATA-NPRM at 30; DMA-NPRM at 43-44; ERA-NPRM at 40. DMA, ERA, and PMA argued that the FTC lacks authority to regulate telemarketers' use of predictive dialer technology. [*See* DMA-NPRM at 4, 42-48; ERA-NPRM at 38-40; PMA-NPRM at 29-30.] Specifically, DMA, ERA, and PMA argued that the FCC has authority to regulate automatic telephone dialing systems through the TCPA. But nothing in the TCPA limits the authority of the FTC under the Telemarketing Act. The Rule's regulation of abandoned calls falls squarely within the FTC's authority to regulate abusive telemarketing acts or practices under the Telemarketing Act. As the Commission stated in the NPRM, the harm to consumers that arises from abandoned calls is very real and falls within the areas of abuse that the Telemarketing Act explicitly aimed to address. [*See* 67 FR at 4524.] The Commission therefore rejects the argument offered by DMA, ERA, and PMA that it lacks the legal authority to address call abandonment in the TSR.

[740] 15 U.S.C. 6102(a)(3)(A).

[741] AARP-NPRM at 8-9; EPIC-NPRM at 23; Private Citizen-NPRM at 4; McKenna-Supp. at 2. *See also* Pelland-NPRM at 2.

[742] ATA-NPRM at 34; June 2002 Tr. II at 38 (ATA). *See also* Convergys-NPRM at 6; MPA-NPRM at 32-33.

[743] DialAmerica-NPRM at 19; Sytel, Outbound Focus Issue 16, http://www.outboundfocus.com.

[744] *See* http://www.the-dma.org/library/guidelines/dotherightthing.shtml#38. See also MBNA-NPRM at 8. *But see* ATA-NPRM at 35: Commenter advocated a unit of measurement incorporating "a broad period of time" to allow for variances in abandonment rates caused by such factors as the time of day a call is placed; ERA-NPRM at 44; MPA-NPRM at 30, 32; NAA-NPRM at 15; PMA-NPRM at 31; ERA-Supp. at 24.

[745] DialAmerica-NPRM at 24; NAA-NPRM at 15; PMA-NPRM at 31.

[746] ATA-NPRM at 33; ATA-Supp. at 14. *See also* TeleDirect-NPRM at 2.

[747] 67 FR at 4522-23. In the present environment, telemarketers have engaged in predictive dialer practices that frighten, disturb, and aggravate consumers. *See, e.g.*, June 2002 Tr. II at 17-18 (AARP); June 2002 Tr. II at 21 (NAAG); June 2002 Tr. II at 22 (DialAmerica).

[748] BofA-NPRM at 9; Citigroup-NPRM at 10; ITC-NPRM at 3; KeyCorp-NPRM at 6; MasterCard-NPRM at 13; Time-NPRM at 11.

[749] http://www.the-dma.org/library/guidelines/dotherightthing.shtml#38; ABA-NPRM at 12; AFSA-NPRM at 16; ARDA-NPRM at 16; CBA-NPRM at 10; Citigroup-NPRM at 10; Discover-NPRM at 6; ERA-NPRM at 43; MPA-NPRM at 8, 32-33; June 2002 Tr. II at 24 (ERA). *See also* NAA-NPRM at 15; PMA-NPRM at 31; ERA-Supp. at 22-23; MPA-Supp. at 6, 23; NAA-Supp. at 2; Miller Study at 2. *But see* NASUCA-NPRM at 14; Tribune-NPRM at 9.

[750] EPIC-NPRM at 22-23; NAAG-NPRM at 47; NASUCA-NPRM at 14; NCL-NPRM at 11; PRC-NPRM at 3; Private Citizen-NPRM at 4; June 2002 Tr. I at 220 (Junkbusters). *See also* Horick-NPRM at 1; McKenna-Supp. at 2. *But see* McClure-NPRM at 1.

[751] PCIC-NPRM at 2; Aegis-NPRM at 5. *See also* ARDA-Supp. at 1: "A rate between three and five percent is reasonable."

[752] June 2002 Tr. II at 49 (ATA). *See also* ATA-Supp. at 15; Associations-Supp. at 6-7; ERA-Supp. at 23; MPA-Supp. at 23; NAA June 28-Supp. at 2.

percent to allow for continuing use of predictive dialers.[753] The three percent standard is also consistent with the California Public Utilities Commission's Interim Opinion regarding predictive dialer use and abandoned calls.[754]

The second component of the abandoned call safe harbor addresses "ring time" or "early hang ups." According to Sytel, some telemarketers using predictive dialers may disconnect calls to consumers after allowing the phone to ring for only a very short period of time before hanging up, without giving consumers a reasonable opportunity to answer the phone; these disconnected calls are not considered "abandoned" by predictive dialers.[755] Employing a short "ring time" is yet another way for telemarketers to maximize the efficiency of their sales representatives; the predictive dialer calls many more consumers than the telemarketer can handle to minimize the chance that a sales representative will remain idle.[756] This kind of call is abusive of a consumer's right to privacy, as consumers' lives at home are interrupted without any benefit or purpose whatsoever. One runs to the phone only to have it stop ringing before one can pick it up; or answers it only to find no one there. Surprisingly, one commenter, MPA, actually argued in favor of allowing telemarketers to hang up after one ring if no sales representatives were available to handle the call.[757] Sytel recommends that the Commission follow DMA guidelines on predictive dialers, which recommend allowing the phone to ring at least four times or for twelve seconds before disconnecting the call.[758] Sytel stated that the practice of "early hangups" is widespread, and it urged the Commission to set a "ring time" standard that allows consumers a reasonable length of time to answer the phone.[759] The Commission has concluded that a modified version of the DMA guidelines presents a reasonable approach. Under this part of the safe harbor, telemarketers must let the phone ring either four times or for fifteen seconds before disconnecting the call.[760] This ring time standard will give consumers, including the elderly or infirm who may struggle to get to the telephone, a reasonable opportunity to answer telemarketing calls while preventing the undesirable result of consumers' privacy being disrupted by ringing phones with no caller present on the other end of the line.

The third component of the abandoned call safe harbor requires telemarketers to play a recorded message whenever a sales representative is not available to speak with a consumer within two seconds of the consumer's completed greeting. The silence that consumers face when the sales representative is unavailable and does not respond after the consumer says, "hello", is "dead air."[761] The recorded message will significantly mitigate the problems associated with "dead air" by identifying the caller responsible for the extended silence.

According to the record amassed in this proceeding, dead air is an unavoidable feature of predictive dialers.[762] Some dead air in telemarketing calls is caused by answering machine detection ("AMD"): consumers are met with silence as the dialer determines whether the call was answered by a person or an answering machine.[763] Dead air also results when the dialer waits for a sales representative to become available to speak with the called consumer.[764] Sytel argued in favor of setting a maximum dead air standard of two seconds.[765] DMA's predictive dialer guidelines also set a two second maximum for dead air.[766] This standard is consistent with the recent CPUC Interim Opinion governing predictive dialers.[767] Based on the record established on this issue—that use of predictive dialers inevitably entails some dead air and that two seconds of dead air allows predictive dialers to impart significant efficiencies—the amended Rule provision allows two seconds of dead air before a call answered by a consumer will be considered "abandoned."

Consumers on the receiving end of dead air may wonder if "someone is waiting to get into my home when I'm away, or . . . determining when I'm home alone."[768] The Commission believes it is not so much the pause that frightens consumers, it is the silence. By playing a recorded message giving the name and telephone number of the seller responsible for the call, the fear generated by telemarketers' dead air is substantially mitigated, and telemarketers are able to continue using predictive dialer technology.[769]

The "recorded message" component of the safe harbor must be read in tandem with the prohibition of abandoned calls, under which telemarketers must connect calls to a sales representative within two seconds of the consumer's completed greeting to avoid a violation of the Rule. Clearly, telemarketers cannot avoid liability by connecting calls to a recorded solicitation message rather than a sales representative. The Rule distinguishes between calls handled by a sales representative and those handled by an automated dialing-announcing device.[770] The Rule specifies that telemarketers must connect calls to a sales representative rather than a recorded message.[771]

The record reflects a range of views regarding the prospect of using recorded messages in telemarketing. A consumer advocacy group, a law enforcement body, and some telemarketers expressed support for recorded messages as a way to mitigate the abuses arising from dead air.[772] Others opposed requiring the use of recorded messages.[773] DMA opposed it based on the assumption that telemarketers' messages would need to include all of the prompt disclosures required by § 310.4(d).[774] DMA noted

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[753] June 2002 Tr. II at 53 (Sytel).

[754] CPUC Interim Opinion, Rulemaking 02-02-020 (June 27, 2002) at 20. The CPUC concluded that, based on comments it had received in its rulemaking process, "most responsible users of predictive dialing equipment are either already at or near a 3 percent error rate or can achieve it with minimum reprogramming effort."

[755] Sytel-NPRM at 4; Sytel, Outbound Focus Issue 16, http://www.outboundfocus.com.

[756] Private Citizen-NPRM at 3.

[757] June 2002 Tr. II at 25 (MPA).

[758] Sytel-NPRM at 4; http://www.the-dma.org/library/guidelines/dotherightthing.shtml#38.

[759] Sytel-NPRM at 4.

[760] According to Sytel, the 15-second standard has been adopted by the United Kingdom DMA. Outbound Focus Issue 16, http://www.outboundfocus.com.

[761] ARDA-NPRM at 15.

[762] Sytel, Outbound Focus Issue 16, http://www.outbound.focus.com; Sytel-NPRM at 4-5. *See also* ATA-NPRM at 34; Cendant-NPRM at 9; DMA-NPRM at 42.

[763] DialAmerica-NPRM at 19-20; Private Citizen-NPRM at 3; Sytel-NPRM at 4-5; Time-NPRM at 10.

[764] ARDA-NPRM at 15; DialAmerica-NPRM at 20-21; Sytel-NPRM at 4.

[765] Sytel-NPRM at 5-6.

[766] *See* http://www.the-dma.org/library/guidelines/dotherightthing.shtml#38. *But see* ATA-Supp. at 14 (supporting a four-second dead air standard); ERA-Supp. at 25, MPA-Supp. at 23 (Commenters' proposed definition of "abandoned call" has no dead air time limit).

[767] CPUC Interim Opinion at 11-12.

[768] AARP-NPRM at 9.

[769] ARDA-NPRM at 15-16; Household Auto-NPRM at 12; NACAA-NPRM at 10; PCIC-NPRM at 2; TeleDirect-NPRM at 3; Texas PUC-NPRM at 5.

[770] *But see* Kans. Rev. Stat. 50-670(b)(6), which does not distinguish between the two.

[771] This comports with the CPUC Interim Opinion governing predictive dialers, DMA's guidelines for predictive dialers, and Sytel's recommended approach. *See* CPUC Interim Opinion at 10-12; http://www.the-dma.org/library/guidelines/dotherightthing.shtml#38; Sytel-NPRM at 3.

[772] AARP-NPRM at 9; ARDA-NPRM at 15; BofA-NPRM at 9; CADM-NPRM at 1; Household Auto-NPRM at 12; PCIC-NPRM at 2; Texas PUC-NPRM at 5. *See also* McClure-NPRM at 2. *But see* MasterCard-NPRM at 13.

[773] DMA-NPRM at 44; EPIC-NPRM at 24; Time-NPRM at 11; Worsham-NPRM at 5.

[774] DMA-NPRM at 44. *See also* Capital One-NPRM at 6-7; NASUCA-NPRM at 13-14; NCL-NPRM at 11; Private Citizen-NPRM at 4.

that recorded messages containing these disclosures could violate the TCPA.[775] Time similarly opposed it based on concern for requiring the recorded message to include the prompt disclosures and, in addition, posited that consumers would not support receiving recorded-message disclosures on their answering machines.[776] The Commission's approach to the recorded message component of this safe harbor should allay these concerns.[777] The recorded message need not include all required prompt disclosures; rather, the message need contain no more than the seller's name and telephone number.[778] Of course, it must comply with applicable state and federal laws governing the use of recorded messages, such as the FCC's TCPA regulations. Moreover, telemarketers are not required to leave a recorded message on the answering machines of consumers who are not home to answer the telemarketer's call. In light of the limited nature of the elements of the recorded message component of the safe harbor, the Commission's approach also resolves Sytel's caution against allowing the use of recorded messages without regulation.[779]

The fourth component of the abandoned call safe harbor is a recordkeeping requirement. Specifically, telemarketers using predictive dialers under this safe harbor must keep records documenting compliance with the first three components of this safe harbor in a manner that is in accordance with the recordkeeping requirements of the Rule set out in § 310.5(b)-(d). The record clearly establishes the need for this requirement. According to statements at the June 2002 Forum, some telemarketers routinely exceed DMA's recommended maximum abandonment rate of five percent.[780] At the June 2002 Forum, DMA explained that enforcement of its guideline was difficult despite receiving complaints.[781] The Commission foresees that, absent recordkeeping requirements, the Commission would encounter similar difficulty in enforcing this aspect of the amended Rule. Furthermore, the record does not contain opposition to a recordkeeping requirement associated with the use of predictive dialers, and the records required by the Commission in this provision of the Rule are similar to those supported by industry representatives in the CPUC's predictive dialer rulemaking proceeding.[782] The Commission believes that predictive dialer technology can capture and preserve abandonment rate records as a matter of routine;[783] records showing compliance with the ring time and recorded message requirements will not impose a significant burden on telemarketers who wish to take advantage of this safe harbor.

§ 310.4(b)(2) — Restrictions on use of list

Section 310.4(b)(1)(iv) of the proposed Rule prohibited any seller or telemarketer from selling, purchasing, or using a seller's "do-not-call" list for any purpose other than complying with the Rule's "do-not-call" provision. The amended Rule retains the provision but modifies the language to also prohibit the sale, purchase, rental, lease, or use of the national registry maintained by the Commission for any purpose other than compliance with the Rule's "do-not-call" provision or otherwise to prevent telephone calls to telephone numbers on either the sellers' lists or the national registry.

Those commenters who addressed this provision supported such a prohibition.[784] NCL stated that, since consumers who sign up for a "do-not-call" list are seeking to preserve their privacy, it would be an invasion of their privacy to use any information that would identify those consumers (*e.g.*, names or telephone numbers) for any purpose other than to ensure that those individuals do not receive unsolicited telemarketing calls.[785]

In addition to expanding the provision to cover the sale, purchase, rental, lease, or other use of the registry, the amended Rule has made this prohibition a separate and distinct abusive practice. In the proposed Rule, this provision was part of § 310.4(b)(1), which sets out prohibited practices by telemarketers, including adherence to the "do-not-call" provision. Section 310.4(b)(1) also prohibited sellers from causing telemarketers to engage in the prohibited practices. However, the Commission believes that it is important for *all* persons, not just sellers and telemarketers, to use the "do-not-call" lists properly. Therefore, the amended Rule retains this provision, renumbered as § 310.4(b)(2), but extends the prohibition to "*any person*," in order to prohibit all entities, not just sellers and telemarketers, from misusing "do-not-call" lists. By extending the prohibition to "any person," the Commission intends that the provision apply to such parties as list brokers and other entities that do not fall within the definitions of "seller" or "telemarketer." In addition, the amended Rule adds a provision that permits a person to use either seller-specific lists, or the national registry, not only to comply with the "do-not-call" provisions of the Rule, but also "to prevent telephone calls to telephone numbers on such lists." This provision will permit an entity not subject to the amended Rule for whatever reason (*e.g.*, because it is outside of the Commission's jurisdiction) to access the national registry in order to scrub its calling lists, if it wants to avoid calling consumers who have expressed a preference not to receive telemarketing calls.

§ 310.4(b)(3) — Safe harbor for "do-not-call"

Section 310.4(b)(3) provides sellers and telemarketers with a limited safe harbor from liability for violating the "do-not-call" provision found in § 310.4(b)(1)(iii).[786] During the original rulemaking, the Commission determined that sellers and telemarketers should not be held liable for calling a person who previously asked not to be called if they had made a good faith effort to comply with the Rule's "do-not-call" provision and the call was the result of error. The Rule established four requirements that a seller or telemarketer must meet in order to avail itself of the safe harbor: (1) it must establish and implement written procedures to comply with the "do-not-call" provision; (2) it must train its personnel in those procedures; (3) it must maintain and record lists of persons who may not be contacted; and (4) any subsequent call must be the result of error.

These criteria tracked the FCC's regulations, which set forth the minimum standards that companies must follow to comply with the TCPA's

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[775] DMA-NPRM at 44. *See also* Sytel-NPRM at 6; Worsham-NPRM at 5.

[776] Time-NPRM at 11. *See also* ANA-NPRM at 6; Associations-NPRM at 3.

[777] Capital One-NPRM at 6-7.

[778] When consumers receive this information, they will not have to wonder whether the call has been placed by someone with sinister motives, as described by AARP. *See* AARP-NPRM at 9; ATA-Supp. at 11.

[779] Sytel-NPRM at 6.

[780] June 2002 Tr. II at 29 (ATA); June 2002 Tr. II at 45 (DialAmerica); June 2002 Tr. II at 52 (Sytel). *See also* Capital One-NPRM at 6; DialAmerica-NPRM at 23; NASUCA-NPRM at 14; Sytel-NPRM at 7.

[781] June 2002 Tr. II at 51 (DMA).

[782] CPUC Interim Opinion at 20-22.

[783] TeleDirect-NPRM at 2.

[784] *See, e.g.*, AARP-NPRM at 3; EPIC-NPRM at 16; NCL-NPRM at 8-9; NYSCPB-NPRM at 6-7; Texas PUC-NPRM at 1-2; Verizon-NPRM at 5. *See also* June 2002 Tr. I at 215-25.

[785] NCL-NPRM at 8-9.

[786] This provision has been renumbered in the amended Rule. In the original Rule and in the NPRM, the "safe harbor" provision is § 310.4(b)(2).

"do-not-call" provision.[787] In the NPRM, the Commission proposed three additional requirements which have to be met by sellers or telemarketers or others acting on behalf of a seller or charitable organization before they may avail themselves of the "safe harbor:" (1) they must use a process to prevent telemarketing calls from being placed to any telephone number included on the Commission's national registry using a version of the registry obtained not more than 30 days before the calls are made; (2) they must maintain and record consumers' express verifiable authorizations to call; and (3) they must monitor and enforce compliance with their "do-not-call" procedures.

Based on the record in this matter, and for the reasons set forth below, the amended Rule retains the "safe harbor" requirement to monitor and enforce compliance. However, the amended Rule deletes the "safe harbor" provision expressly requiring maintenance and recording of express verifiable authorizations.[788] In addition, § 310.4(b)(3)(iv), the "safe harbor" requirement to purchase and reconcile the registry, has been modified to delete the 30-day requirement and, instead, require that telemarketers employ a version of the registry which has been obtained no more than three months before a call is made, and to maintain records documenting that process.[789]

The Commission continues to believe that the Rule should contain a "safe harbor" from liability for violations of its "do-not-call" provision. Commenters generally agreed with this position.[790] Sellers or telemarketers who have made a good faith effort to provide consumers or donors with an opportunity to exercise their "do-not-call" rights should not be liable for violations that result from error. Further, as discussed in the NPRM, the Commission believes that the same rationale applies to potential violations of § 310.4(b)(1)(ii), and therefore has, in the introductory sentence of § 310.4(b)(5), extended the "safe harbor" to cover violations of *both* amended §§ 310.4(b)(1)(ii) and (iii). Section 310.4(b)(1)(ii) prohibits a seller or telemarketer from denying or interfering with a person's right to be placed on a "do-not-call" list, whereas § 310.4(b)(1)(iii) prohibits calling a person who has previously requested to be placed on such a list.

Although the Commission has extended the "safe harbor" provision to cover the additional practice of denying or interfering with a consumer's right to be on a "do-not-call" list, it has also tightened the provision by adding the requirement that sellers and telemarketers monitor compliance and take disciplinary action for non-compliance in order to be eligible for the safe harbor. Section § 310.4(b)(5)(v) of the amended Rule requires the seller or telemarketer to monitor and enforce compliance with the procedures established in § 310.4(b)(5)(i).

During the Rule Review, numerous commenters described the problems they had encountered in attempting to assert their "do-not-call" rights and with companies that continued to call after the consumer asked not to be called.[791] Several commenters echoed these complaints in their responses to the NPRM.[792] This anecdotal evidence indicates that some entities may not be enforcing employee compliance with their "do-not-call" policies. In fact, one consumer reported that telemarketers for two different companies told her that it was not necessary that a company's "do-not-call" policy be effective; only that such a policy exist.[793]

To clarify this apparent misconception about the Rule's requirements, the Commission proposed that, in order to avail themselves of the "safe harbor" provision, sellers and telemarketers must be able to demonstrate that, as part of ordinary business practice, they monitor and enforce compliance with the written procedures required by § 310.4(b)(5)(i). The Commission received few comments on this proposal, and those commenters supported the proposal.[794] Therefore, the Commission retains § 310.4(b)(5)(v) unchanged, except for renumbering. It is not enough that a seller or telemarketer has written procedures in place; the company must be able to show that those procedures have been and *are implemented* in the regular course of business. Thus, a seller or telemarketer cannot take advantage of the safe harbor exemption in § 310.4(b)(5) unless it can demonstrate that it actually trains employees in implementing its "do-not-call" policy, and enforces that policy.

Finally, in the "safe harbor" provision in the proposed Rule, the Commission required that the seller or telemarketer use a process to prevent calls to telephone numbers on the national "do-not-call" list, employing a version of the "do-not-call" registry obtained from the Commission not more than 30 days before the calls are made, and to maintain records documenting this process.[795] Virtually all comments on the safe harbor provision were directed at the proposed 30-day requirement for using the registry, which would have required sellers and telemarketers to reconcile or "scrub" the names on the registry with their customer list every 30 days. Industry commenters were unanimous in their view that a 30-day requirement would be extremely burdensome.[796] They also pointed out that a 30-day requirement would be virtually impossible to meet without shutting down operations for a day to scrub their lists, and would be particularly burdensome for small businesses with few employees or those that do not use sophisticated technology.[797] Industry commenters urged the Commission to require quarterly updating, which is the standard adopted by the majority of states in implementing their "do-not-call" statutes.[798] They pointed out that, after an initial period of "volatility" when consumers sign up for the new registry, the number of names on the registry will stabilize and there may not be as great a need for frequent updating.[799]

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[787] 47 CFR 64.1200(e)(2).

[788] This requirement was in § 310.4(b)(2)(v) of the proposed Rule.

[789] This requirement was in § 310.4(b)(2)(iii) of the proposed Rule.

[790] *See, e.g.*, ARDA-NPRM at 13; BofA-NPRM at 6; NACAA-NPRM at 9; Verizon-NPRM at 4-6. *But see* CATS-NPRM at 2; Patrick-NPRM at 5-6 (cautioning that the standards set forth in the "safe harbor" should be obligatory for all telemarketers subject to the Rule).

[791] *See, e.g.*, Bennett-RR at 1; A. Gardner-RR at 1; Gilchrist-RR at 1; Gindin-RR at 1; Harper-RR at 1; Heagy-RR at 1; Johnson-RR at 3; McCurdy-RR at 1; Menefee-RR at 1; Mey-RR, *passim*; Nova53-RR at 1; Peters-RR at 1; Runnels-RR at 1.

[792] *See, e.g.*, Synergy Global-NPRM at 1-2 (ex-telemarketer says firm ignored "do-not-call" lists); Denny (Feb. 21, Msg. 970); Connolly (Mar. 6, Msg. 961); Young (Feb. 27, Msg. 165); Jackson (Feb. 2, Msg. 521); Horowitz (Feb. 27, Msg. 598); Truitt (Feb. 28, Msg. 687); Griffin (Feb. 28, Msg. 708); Loeher (Feb. 28, Msg. 729).

[793] Mey-RR at 2. *See also* DC-NPRM at 6-7.

[794] *See, e.g.*, DC-NPRM at 6-7; Verizon-NPRM at 5. *But see* Patrick-NPRM at 5-6 (cautioning that the standards set forth in the "safe harbor" should be obligatory for all telemarketers subject to the Rule).

[795] This requirement was in § 310.4(b)(2)(iii) of the proposed Rule.

[796] *See, e.g.*, ABA-NPRM at 12; AFSA-NPRM at 9-10; ARDA-NPRM at 13; Capital One-NPRM at 5-6; Cox-NPRM at 38; Discover-NPRM at 3; Household Auto-NPRM at 8; Household Credit-NPRM at 13; Household Finance-NPRM at 13; HSBC-NPRM at 2; Nextel-NPRM at 26; NFIB-NPRM at 2; NRF-NPRM at 16. *See also* June 2002 Tr. I at 234-72.

[797] *See, e.g.*, ABA-NPRM at 12; AFSA-NPRM at 9-10; ARDA-NPRM at 13; Capital One-NPRM at 5-6; Cox-NPRM at 38; Discover-NPRM at 3; HSBC-NPRM at 2; Nextel-NPRM at 26; NFIB-NPRM at 2; NRF-NPRM at 16. *See also* June 2002 Tr. I at 234-72.

[798] *See, e.g.*, ABA-NPRM at 12; AFSA-NPRM at 9-10; ARDA-NPRM at 13; Capital One-NPRM at 5-6; Cox-NPRM at 38; Discover-NPRM at 3; Household Auto-NPRM at 8, 10; Household Credit-NPRM at 13, 15; HSBC-NPRM at 2; Nextel-NPRM at 26; NFIB-NPRM at 2; NRF-NPRM at 16. *See also* June 2002 Tr. I at 234-72.

[799] *See* June 2002 Tr. I at 237-39.

The Commission is persuaded that the costs of requiring monthly updating outweigh any additional benefits that might accrue to consumers from such a provision. Based on the record in this matter, the amended Rule modifies the "safe harbor" requirement that lists be reconciled every 30 days. Instead, re-numbered § 310.4(b)(3)(iv) of the amended Rule requires that the seller or telemarketer employ a version of the registry obtained not more than three months before any call is made, and maintain records documenting the process it uses to prevent telemarketing to any number on the list. Thus, telemarketers will be required to update their lists at least every three months, a time period that is consistent with most state requirements. Instead of making the list available on specific dates, the registry will be available for downloading on a constant basis, 24 hours a day, seven days a week, so telemarketers can access the registry at any time. As a result, each telemarketer's three-month period may begin on a different date. The Commission intends that the records documenting the process to prevent telemarketing calls to telephone numbers on the "do-not-call" registry will include copies of any express agreements the seller has obtained from consumers giving their permission for the seller to call, as well as documentation showing when and how often the seller has reconciled its list of names and/or telephone numbers against the national "do-not-call" registry.

The Commission is confident that the additional criteria in the amended Rule do not conflict with FCC regulations. FCC regulations are silent as to the process to be used, or the specific time frame within which the company must reconcile the names on its "do-not-call" list with its list of prospective customers to be called in a telemarketing campaign.[800] Therefore, any FTC requirement that there be a process in place to prevent calls to telephone numbers on a "do-not-call" list would not conflict with the FCC's regulations. Similarly, FCC regulations are silent as to the requirement to monitor compliance and take action to correct any non-compliance, or to maintain evidence of express verifiable written authorization to accept telemarketing calls. Thus, the proposed Rule would not conflict with the FCC's regulations. Furthermore, as discussed more fully above, the Commission believes that it is necessary for the amended Rule to diverge from FCC regulations by imposing a monitoring requirement in the "safe harbor" provision in order to clarify the applicability of the safe harbor.

§ 310.4(c) — Calling time restrictions

Section 310.4(c) of the original Rule proscribes the making of outbound telemarketing calls before 8:00 a.m. and after 9:00 p.m. local time at the called person's location.[801] In response to comments received during the Rule Review suggesting further limitations on calling times, the Commission noted in the NPRM that it declined to adopt further restrictions because the original Rule's calling times strike the appropriate balance between protecting consumer privacy and not unduly burdening industry.

In response to the NPRM, the Commission received more than 100 comments from consumers on this issue, the vast majority of which recommended that the calling times be limited in some fashion. Many consumers urged that the calling times provision further restrict calls during the "dinner hour,"[802] or at either end of the day, arguing that calls that come at 8:00 a.m. or 9:00 p.m. are inconvenient, particularly for families with small children.[803] Some commenters urged the Commission to prohibit telemarketing on Saturdays, Sundays, or the entire weekend.[804] Still others urged the Commission to consider the plight of those shift workers for whom the current calling hours provide little or no protection from calls during "sleep time."[805]

The few industry comments regarding calling times were supportive of the current hours, but critical of the notion that allowing consumers to customize their preferred calling times via the national "do-not-call" registry would be workable.[806] EPIC noted that it favored retaining the current calling times provision, but found it desirable to allow consumers who wish to do so to set other preferred times via the national "do-not-call" registry.[807]

As noted in the NPRM, the Commission believes the current calling hours provide a reasonable window for telemarketers to reach their existing and potential customers. The Commission recognizes that while some consumers may find it objectionable to receive telemarketing calls between 8:00 a.m. and 9:00 p.m., the majority of consumers would not find calls within these hours to be particularly abusive of their privacy. Furthermore, consumers who wish to avoid telemarketing calls will, under the amended Rule, have the option of placing their telephone numbers on the national "do-not-call" registry, thus blocking most unwanted calls at all times.[808] Therefore, the Commission declines to modify the calling hours prescribed by § 310.4(c), and retains this provision without amendment.

§ 310.4(d) — Required oral disclosures

Section 310.4(d) of the original Rule requires that a telemarketer in an outbound call make certain oral disclosures promptly, and in a clear and conspicuous manner. The NPRM proposed to make two minor modifications to the wording of this section. First, the Commission proposed inserting, after the phrase "in an outbound telephone call," the phrase "to induce the purchase of goods or services." This would clarify that § 310.4(d) applies only to telemarketing calls made to induce sales of goods or services (in contrast to proposed new § 310.4(e), which contains an analogous phrase clarifying that § 310.4(e) will apply to calls made "to induce a charitable contribution"). Second, the Commission proposed to add the word "truthful" to clarify that it is not enough that the disclosures be made; the disclosures must also be made

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[800] FCC regulations require companies to reconcile "do-not-call" requests for company-specific lists on a continuing or ongoing basis. Specifically, 47 CFR § 64.1200(e)(2)(iii) requires the seller or telemarketer to record the consumer's "do-not-call" request and place the consumer's name and telephone number on the company's "do-not-call" list at the time the request is made. The TSR is silent as to how frequently a company must reconcile "do-not-call" requests for company-specific lists.

[801] *See* 16 CFR 310.4(c).

[802] *See, e.g.*, Harvey Butler (Msg. 197); Roy Broman (Msg. 452); Robert Clifton (Msg. 3762); Ernie and Helen Darrow (Msg. 9941); SSMBOYLE (Msg. 14401); Worsham-NPRM at 4.

[803] *See, e.g.*, John Hallberg Jones (Msg. 1644); Jim Coupal (Msg. 3504); Adam Block Willow (Msg. 3513); Donald Nelson (Msg. 4225); Lolla469 (Msg. 5115); Anonymous (Msg. 27184).

[804] *See, e.g.*, Sjkble (Msg. 12060) (no Saturday calls); OMEGA217 (no Sunday calls); David Meads (Msg. 13726) (no Sunday calls); Lisa Hallman (Msg. 20291) (no Sunday calls); H00Kie (Msg. 1040) (no weekend calls); Lee C. Clayton (Msg. 1950) (no weekend calls); Sherrell Goggin (Msg. 2247) (no weekend calls); Henry Miller (Msg. 10173) (no weekend calls); Nanagusgus (Msg. 12471) (no weekend calls).

[805] *See, e.g.*, Paul Merchant, Jr. (Msg. 387); Bobby Morris (Msg. 639); Gayle Tanner (Msg. 4505); Anonymous (Msg. 27196).

[806] *See* ARDA-NPRM at 13 (noting it felt no need to comment on this provision because the Commission had proposed no modification, and urging that no customizable calling preferences be allowed); NAA-NPRM at 17.

[807] *See* EPIC-NPRM at 18, 22 (noting that while generally acceptable, the current calling times "represent only the Commission's judgment on what time of day people most value their privacy," and urging the Commission to allow for customizable calling time preferences).

[808] *See* amended Rule § 310.4(b)(1)(iii)(B), discussed above.

truthfully. The amended Rule adopts both modifications, but also provides additional guidance on when the oral disclosures should be made in upsell transactions and what information should be disclosed in those situations.

The Commission received very few comments on these proposed changes. NAAG expressed its support for inclusion of the word "truthfully" in this section, noting that however obvious it might seem that mandatory disclosures be made truthfully, abuses have occurred when, for example, a telemarketer misstates the purpose of the call, claiming it is a "courtesy" call rather than a sales call.[809] The Commission agrees that the express requirement that the required disclosures be "truthful" will benefit consumers, and should impose no additional burden on telemarketers. Thus, this requirement is adopted in the amended Rule.

A few commenters recommended limiting or expanding the provision. ASTA urged the Commission to limit the applicability of parts of the oral disclosure provision so that sellers with whom a customer had a prior business or personal relationship would be exempt from making two particular disclosures: 1) that the purpose of the call is to sell goods and services (§ 310.4(d)(2)); and 2) the nature of the goods and services (§ 310.4(d)(3)).[810] ASTA argued that it does not believe "situations in which there is a prior business or personal relationship between the parties, are, in practice, subject to the same sort of abuses that the Rule seeks to address by way of [the § 310.4(d)(2) and (3) disclosures]."[811] Tribune made a similar argument, requesting an exemption from compliance with the § 310.4(d) disclosures for newspapers with whom a customer has a prior business relationship. According to Tribune, in many instances, newspapers call current subscribers to ascertain whether the customer is satisfied, and then to offer additional services, such as the weekday paper in addition to an existing Sunday-only subscription; Tribune also believes the required oral disclosures may be off-putting to customers.[812] The Commission does not believe that the existence of a prior or even an ongoing business or personal relationship obviates the need for the required prompt oral disclosures in calls that are, in whole or in part, designed to induce the purchase of goods or services. Therefore, the Commission declines to create exemptions to § 310.4(d).

DOJ recommended that an additional disclosure—the "seller's title or position in the company"—be added to this section, arguing that such a disclosure would directly address the fraudulent practice wherein a telemarketing sales agent misrepresents that he or she holds a position of great authority within the company on behalf of whom the call is made, such as a claim that he or she is the president of the company.[813] Although the Commission agrees that such misrepresentations could be injurious to consumers, the Commission does not believe that in non-fraudulent solicitations a prompt, truthful disclosure of the telemarketing sales representative's position within the company would be so beneficial to consumers as to outweigh the costs to business of making such an additional disclosure. Further, the Commission believes that it is highly likely that fraudulent telemarketers who resort to such prevarication to induce sales will be in violation of other provisions of the Rule as well.[814] Therefore, the Commission declines to add a disclosure regarding the telemarketing sales agent's position within the company.

A few commenters requested further clarification regarding the meaning of the term "promptly," suggesting that it is too vague to be a useful guideline in the Rule.[815] One of these commenters also sought to clarify the timing of the prompt oral disclosures required by this section in a multiple purpose call.[816] These two issues were discussed at length in the NPRM, and the Commission reiterates here what it has previously stated: 1) the term "promptly," as used in the Rule, means "at once or without delay, and before any substantive information about a prize, product or service is conveyed to the customer," a standard which allows for some flexibility without sacrificing the consumer's need to know certain material information prior to the beginning of any sales pitch; and 2) in "any multiple purpose call where the seller or telemarketer plans, in at least some of those calls, to sell goods or services, the [§ 310.4(d) disclosures] must be made 'promptly,' during the first part of the call, before the non-sales portion of the call takes place."[817] The Commission does not believe that any change in the text of the Rule is necessary to achieve clarity regarding these two issues, nor does it believe the suggested modifications would provide greater clarity; thus, the Commission declines to modify this section.

A few commenters suggested that an additional disclosure—of the seller's telephone number—should be added.[818] NASUCA suggested that this number be one useful to consumers who wish to be placed on a seller's "do-not-call" list, while Patrick suggested that the number be one consumers could use to report violations of the Rule. Patrick suggested, in the alternative, that the Rule prohibit the failure to provide name, address, and telephone number information for the seller or telemarketer, if such information is requested by the consumer. The Commission previously has expressed its concern that if too many disclosures are required, particularly in the beginning of the call, their effectiveness is diluted. Further, the Commission believes that amended § 310.4(a)(7), regarding transmission of Caller ID, and § 310.4(b)(1)(iii)(B), creating a national "do-not-call" registry, will help to mitigate the problem these commenters have proposed to cure. Therefore, the Commission declines to require a disclosure of the seller's telephone number in this section.

As explained in the discussion of § 310.2(dd) above, regarding the definition of "upselling," the Commission believes that upsell transactions are analogous to outbound telephone calls. Therefore, the amended Rule requires that the oral disclosures mandated by § 310.4(d) must be promptly disclosed at the initiation of the upsell if any of the information in these disclosures differs from the disclosures made in the initial transaction. For example, in an external upsell (where there is a second seller), the consumer must be told the identity of the second seller—the one on whose behalf the upsell offer is being made. In an internal upsell, however, the identity of the seller remains the same in both transactions and need not be repeated in the second transaction. Thus, the Commission has inserted the phrase "or internal or external upsell" after the

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[809] *See* NAAG-NPRM at 47.

[810] *See* ASTA-NPRM at 2.

[811] ASTA-NPRM at 2.

[812] *See* Tribune—NPRM at 9–10.

[813] DOJ-NPRM at 5 (also noting that some fraudulent telemarketers claim to be with government agencies. The Commission notes that such a misrepresentation would violate amended Rule § 310.3(a)(2)(vii)).

[814] For example, such a "false and misleading" statement, if made to "induce any person to pay for goods or services or to induce a charitable contribution," would violate amended Rule § 310.3(a)(4).

[815] LSAP-NPRM at 17 (urging that the term "promptly" be defined as "at the outset of the call"); NASUCA-NPRM at 16; Patrick-NPRM at 3 (suggesting that at least the identity of the seller be disclosed "*first*, before any other information is disclosed").

[816] *See* NASUCA-NPRM at 16.

[817] 67 FR at 4526 (citing the original SBP).

[818] NASUCA-NPRM at 15; Patrick-NPRM at 4.

term "outbound telephone call" in § 310.4(d) of the amended Rule; and has inserted the requirement that "in any internal upsell for the sale of goods or services, the seller or telemarketer must provide the disclosures listed in this section only to the extent the information in the upsell differs from the disclosures provided in the initial telemarketing transaction." The goal in this provision is to ensure that consumers receive all of the information they need in order to make an informed decision whether to make a purchase,[819] without requiring duplicative or irrelevant disclosures.

§ 310.4(d)(4) — Sweepstakes disclosure

Section 310.4(d)(4) of the original Rule required that a telemarketer promptly disclose that no purchase or payment is necessary to be eligible to win a prize or participate in a prize promotion if a prize promotion is offered. In the NPRM, the Commission proposed to modify § 310.4(d)(4) to require that the telemarketer disclose that a purchase will not enhance a customer's chances of winning a prize or sweepstakes, which would make the amended Rule's disclosure requirement consistent with the requirements for direct mail solicitations under the Deceptive Mail Prevention and Enforcement Act ("DMPEA").[820] As discussed above with regard to the same disclosure in § 310.3(a)(1)(iv), commenters generally supported this proposal.[821]

PMA maintained that the disclosure was unnecessary and that there was no evidence in the record to support adding the disclosure.[822] Nonetheless, PMA stated that, as a gesture of good faith, they would not oppose the change.[823] They asked, however, that the Commission allow them flexibility on when to make the disclosure, rather than mandating that it be made "promptly," as required by § 310.4(d), because the disclosure would be more meaningful if it were delivered in conjunction with the sales solicitation rather than the discussion about the sweepstakes.[824]

The Commission believes that it is important that consumers promptly be put on notice when a call promoting a sweepstakes also includes a sales solicitation. The Commission does not believe it necessary to script the telemarketing call or to define with finite specificity within how many seconds particular disclosures must be made. As with the Rule's requirement that the telemarketer promptly disclose that no purchase or payment is necessary to win a prize,[825] the Commission believes that the disclosure that a purchase will not enhance the consumer's chances of winning may occur "before or in immediate conjunction with the description of the prize."[826] As the Commission stated in the original Rule's SBP, this language was included in § 310.4(d)(4) "to prohibit deceptive telemarketers from separating the disclosure (in that instance, of the fact that no purchase or payment is necessary to win a prize) from the description of the prize, thereby negating or diluting its salutary effect."[827] Although this guidance does not alter the imperative that the disclosures be made "promptly"—*i.e.*, "at once or without delay," but "[a]t a minimum. . . before any sales pitch is given"[828]—it should provide telemarketers of prize promotions the necessary flexibility in making the requisite disclosures.

Therefore, the Commission has determined that it is an abusive telemarketing act or practice to fail to disclose truthfully, promptly, and in a clear and conspicuous manner, in any prize promotion, that no purchase or payment is required to win a prize or participate in a prize promotion, that any purchase or payment will not increase the customer's chances of winning, and, upon request, the no-purchase/no-payment method of participating in the prize promotion.

§ 310.4(e) — Required oral disclosures in charitable solicitations

As noted in the NPRM, § 1011(b)(2)(D) of the USA PATRIOT Act mandates that the TSR include a requirement to address abusive practices in the solicitation of charitable contributions.[829] Specifically, the USA PATRIOT Act directs the Commission to include in the Rule:

> a requirement that any person engaged in telemarketing for the solicitation of charitable contributions, donations, or gifts of money or any other thing of value, shall promptly and clearly disclose to the person receiving the call that the purpose of the call is to solicit charitable contributions, donations, or gifts, and to make such other disclosures as the Commission considers appropriate, including the name and mailing address of the charitable organization on behalf of which the solicitation is made.[830]

In response to this mandate, the Commission included in the proposed Rule new § 310.4(e), which requires in calls to solicit charitable contributions the truthful, prompt, clear and conspicuous disclosure of two pieces of information: 1) the identity of the charitable organization on behalf of which the request is being made; and 2) that the purpose of the call is to solicit a charitable contribution.[831] The Commission declined to require the oral disclosure of a charitable organization's mailing address because it was dubious that requiring disclosure of this information in every instance would prove sufficiently beneficial to consumers to justify the costs incurred by telemarketers, and the charities for whom they solicit, of making this disclosure.[832] However, the Commission did pose specific questions on this issue, including whether the disclosure requirement should be triggered only when a donor asks for such information.[833]

Few comments addressed the proposed requirements for disclosures in the solicitation of charitable

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[819] As the Commission noted in the NPRM:

"[I]n external up-selling, when calls are transferred from one seller or telemarketer to another, or when a single telemarketer solicits on behalf of two distinct sellers, it is crucial that consumers . . . clearly understand that they are dealing with separate entities. In the original Rule, the Commission determined that a disclosure of the seller's identity was necessary in every outbound call to enable the customer to make a fully-informed purchasing decision. In the case of a call transferred by one telemarketer to another to induce the purchase of goods or services, or one in which a single telemarketer offers the goods or services of two separate sellers, it is equally important that the consumer know the identity of the second seller, and that the purpose of the second call is to sell goods or services."

67 FR at 4500. The proposed Rule also required telemarketers on behalf of charitable organizations to adhere to the requirements for upsell transactions. However, the record in this proceeding does not show any evidence that upselling is prevalent in the solicitation of charitable contributions. Therefore, the Commission has deleted any reference to charitable solicitations from the upselling provisions. The Commission will continue to monitor this issue, and, if necessary, may address it in future rule reviews.

[820] *Id.* 39 U.S.G. 3001(k)(3)(A)(II).

[821] NAAG-NPRM at 54-55; NACAA-NPRM at 6-7; NCL-NPRM at 4. *See also* June 2002 Tr. II at 105-15.

[822] PMA-NPRM at 4-8.

[823] PMA-NPRM at 5, 7; ARDA-NPRM at 14-15. *See also* June 2002 Tr. II at 106, 108 (PMA and ARDA state that they do not oppose the disclosure).

[824] June 2002 Tr. II at 106-07. ARDA also requested flexibility in the timing of the disclosure. ARDA-NPRM at 14-15 and June 2002 Tr. II at 108.

[825] This provision is found at § 310.4(d)(4) of the original and amended Rules.

[826] 16 CFR 310.4(d)(4); 60 FR at 43856.

[827] 60 FR at 43856-57.

[828] TSR Compliance Guide at 15. *See also* 60 FR at 43856.

[829] *See* 67 FR at 4522 (discussing the USA PATRIOT Act's mandate to include in the TSR certain prompt disclosures in the solicitations of charitable contributions).

[830] Section 1011(b)(2)(D), Pub. L. 107-56 (Oct. 26, 2001).

[831] Proposed Rule § 310.4(e); *see also* 67 FR at 4522 (including the discussion of the rationale for including these specific disclosures).

[832] 67 FR at 4522.

[833] 67 FR at 4522, 4539.

contributions.[834] AFP agreed that the proposed Rule struck the appropriate balance, by requiring disclosure of both the identity of the charity and the fact that the purpose of the call was to solicit a charitable contribution, but not requiring disclosure of the mailing address of the charity.[835] AFP also noted that the required disclosures are consistent with its own ethics standards and its belief that these disclosures are sufficient to effectuate the purposes of the USA PATRIOT Act.[836] AFP recommended against including a required disclosure of the charitable organization's mailing address, arguing that such information would be of little use to consumers in discerning whether a charity was legitimate, and that the time and distraction involved in disclosing an address would be "counterproductive to the charitable contribution process."[837]

Hudson Bay expressed its view that both of the proposed disclosures are unconstitutional.[838] According to Hudson Bay, the requirement that a telefunder promptly disclose that the call is to solicit a charitable contribution runs afoul of the First Amendment because it mandates not only what must be said, but when.[839] Hudson Bay further argues that the mandatory disclosure of the name of the charitable organization on behalf of which the solicitation is made strips charitable organizations of their right to anonymity and violates the First Amendment's guarantee of freedom of association.[840]

As previously noted, the USA PATRIOT Act directs the Commission to include these specific disclosures in the TSR.[841] Congress' purpose in the Telemarketing Act, in requiring telemarketers to disclose basic identifying information in unsolicited outbound telemarketing calls, is to ensure that the consumer is given information promptly that will enable the consumer to decide whether to allow the infringement on his or her time and privacy to go beyond the initial invasion. The Commission believes that the USA PATRIOT Act amendments are consistent with this purpose. Moreover, the Commission believes there is a tight nexus between this purpose and the statutory and regulatory means employed to achieve this purpose. The Commission also believes that these disclosure requirements are very narrowly tailored to impinge as little as possible on protected speech while still accomplishing the purpose Congress intended. The Commission has exercised restraint in implementing this statutory mandate, keeping the disclosure requirements for charitable solicitation telemarketing to the bare minimum necessary to fulfill the purpose of the USA PATRIOT Act amendments. The Commission notes that the Supreme Court has specifically noted that requiring a professional fundraiser "to disclose unambiguously his or her professional status . . . [is a] narrowly tailored requirement [that] would withstand First Amendment scrutiny."[842] The Commission believes that if a requirement to disclose one's status as a professional fundraiser would pass First Amendment scrutiny, then so would a requirement to make the disclosures now required by the Rule to fulfill the mandate of the USA PATRIOT Act amendments.

Some commenters recommended that the Commission expand the provision to require additional disclosures in certain circumstances. For example, NAAG recommended that, in the event a paid telefundor is making the charitable solicitation, three additional disclosures be required: "(1) the name of the caller; (2) the name of the telemarketing company; and (3) the fact that the caller is being paid to solicit."[843] NCL concurred, suggesting that the Rule require fundraisers to "identify themselves as well as the charities on whose behalf they are operating."[844] NAAG and NCL argued that this additional set of disclosures would provide three distinct benefits. First, such disclosures would prevent donors from being deceived about the identity of the solicitor. NAAG noted that in many instances, for-profit fundraisers "misrepresent that they are affiliated with, or members of, the charity or public safety organization in whose name they are calling."[845] Second, the information would serve as an important means of identifying potential Rule violators.[846] The third benefit from these suggested disclosure requirements would be the triggering role they would serve, prompting consumers to inquire, of the telefunder or of a state regulatory agency, about the amount of their contribution that will go to charity after the fundraiser takes its share.[847]

The Commission declines to add a mandatory disclosure of the name of the caller in calls to induce charitable contributions. In the initial proposed TSR, the Commission had included such a requirement for all outbound telephone calls;[848] but it was deleted because commenters noted that "'desk names' are commonly used in the industry to protect the safety and privacy of employees, and to protect against potential prejudice and harassment."[849] The Commission concluded that the disclosure of the seller's identity is most meaningful to consumers, not the name of the individual with whom they are speaking. The Commission can conceive of no reason why this analysis would not apply with equal force in the context of charitable solicitations. Moreover, the Commission is not persuaded that disclosure of this information is necessary to advance the privacy objectives underlying the Commission's authority to prohibit "abusive" practices pursuant to § 6102(a)(3) of the Telemarketing Act.[850] Therefore, the Commission declines to include in the amended Rule a requirement that the caller's name be disclosed in charitable telemarketing solicitations.

The Commission also declines to adopt the suggestion that it mandate disclosure of the name of the telemarketing company.[851] In adopting the original Rule, the Commission rejected such a disclosure in the context of the sale of goods or services because it was deemed unnecessary; rather, a requirement to disclose the identity of the seller—which is clearly material to the consumer—was included. In the charitable fundraising context, the Commission believes the identity of the charity is the analogous material item of

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[834] As noted above in the section discussing amended § 310.3(d), AARP and NCL noted in their comments in response to the NPRM that they supported the goal of expanding the Rule's ambit to cover charitable solicitations.

[835] *See* AFP-NPRM at 3.

[836] *Id.*

[837] *Id.* (noting, however, that it had no objection to requiring the disclosure of the mailing address, provided the donor asked for such information).

[838] *See* Hudson Bay-Goodman-NPRM at 6-7.

[839] *Id.* (*citing Riley*, 441 [sic] U.S. at 791).

[840] *Id.* at 7 (*citing Talley v. California*, 362 U.S. 60 (1960)).

[841] USA PATRIOT Act, § 1011.

[842] *Riley*, 487 U.S. at 799, n.11.

[843] NAAG-NPRM at 52.

[844] NCL-NPRM at 11. *See also* Make-A-Wish-NPRM at 6 (recommending adding a disclosure that the professional fundraiser is being paid for its services); NASCO-NPRM at 6.

[845] NAAG-NPRM at 52.

[846] NCL-NPRM at 11.

[847] NAAG-NPRM at 52; *see also* NCL at 11.

[848] *See* 60 FR at 8331 (§ 310.4(d)(1)(i)).

[849] 60 FR at 30418.

[850] *See* discussion of § 310.4 above, describing the Commission's analysis of its authority to prohibit "abusive" practices.

[851] The Commission notes, however, as discussed by NAAG, that at least 20 states have statutes requiring such a disclosure. NAAG-NPRM at 52. The Commission believes that the states, which have extensive regulatory authority over charities, and extensive experience in such regulation, may continue to require disclosures beyond those mandated by the TSR, and notes that compliance with the TSR will not fulfill telemarketers obligations under any such state laws or regulations.

information. The Commission believes there is a limit to the number of distinct items of information that can reasonably be absorbed at the beginning of a solicitation call. This being the case, the Commission believes that the charity's identity is a more meaningful piece of information than the name of the professional fundraising company. In this regard, it is noteworthy that the USA PATRIOT Act did not specifically require such a disclosure.[852] Arguably, disclosure of the identity of the telemarketer may be beneficial to potential donors because it may prompt them to think and inquire about the portion of a contribution that will be consumed by a professional fundraiser's fee; but the Commission believes the record falls short of showing that the benefits of mandating such a disclosure would outweigh the burdens it would impose upon legitimate charities who choose to conduct their fundraising efforts using professional telemarketers.[853] Therefore, the Commission does not believe the current record supports a finding that disclosure of this information is necessary to prevent "abusive" practices pursuant to § 6102(a)(3) of the Telemarketing Act.[854]

For similar reasons, the Commission also declines to require a mandatory disclosure that the telemarketer is a paid fundraiser. The comments on this issue reflect considerable concern about instances where only a minuscule portion of contributions are devoted to the actual support of a charitable organization's mission, while the telefunder's fee gobbles up the lion's share. This occurs in some instances,[855] but the record does not support an inference that such a scenario inevitably follows from the use of paid telefunders by charitable organizations, and there is evidence on the record tending to show that the opposite is often true: the use of professional telemarketers saves charitable organizations money—as compared with in-house telephone fundraising.[856]

Additionally, the Commission is concerned here, as it is with the other recommended disclosures, about the potential negative consequences that derive from overloading the beginning of a charitable solicitation call. Further, it is notable that the USA PATRIOT Act did not specifically require such a disclosure.[857] While disclosure of the identity of the telemarketer may, arguably, be beneficial to potential donors because it may prompt them to think and inquire about the proportion of a contribution that will be consumed by a professional fundraiser's fee, the Commission believes the record does not support mandating such a disclosure because of the burden the disclosure would impose on legitimate charities who choose to conduct their fundraising efforts using professional telemarketers.[858] A showing of these benefits would be necessary to support a requirement for disclosure of this information. Therefore, the Commission declines at this time to add a requirement that the telemarketer disclose that he or she is being paid to solicit charitable contributions.

Other issues regarding abusive practices raised in response to the NPRM.

Commenters responded to the Commission's questions in the NPRM regarding additional issues related to abusive practices that had surfaced during the Rule Review, in particular, prison-based telemarketing. Commenters also raised other issues: telemarketers' use of courier services to pick up payments from consumers; telemarketers' targeting of vulnerable groups; and the sale of victim lists. Each of these issues, and the reasoning behind the Commission's responses to them, are discussed in detail below.

Prisoner telemarketing: During the Rule Review, the Commission received several comments describing problems that had occurred when sellers or telemarketers used prison inmates to telemarket goods or services. These commenters recommended that the Commission ban the use of prisoners as telemarketers or, in the alternative, tightly regulate it, including requiring that inmates disclose their status as prisoners when they make calls to, or receive calls from, the public.[859] These commenters cited several graphic incidents in which inmates have abused consumers' information and other resources to which they had access through inmate telemarketing to make improper, invasive, and illegal contact with members of the public.[860]

Specifically, these commenters pointed out that, while working as telemarketers, inmates inevitably gain access to personal information about individuals, including minors, that may endanger the lives and safety of those they call.[861] In the NPRM, the Commission stated that it was extremely concerned about the potential misuse of personal information and abusive telemarketing activity in connection with prison-based telemarketing, but

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[852] *See* USA PATRIOT Act § 1011(b)(2)(D). The absence of such a requirement from the USA PATRIOT Act is noteworthy because such a disclosure was specifically approved in *Riley*. 487 U.S. at 799, n.11.

[853] As noted by Not-for-Profit Coalition, Hudson Bay and others, telefunders play a critical role in enabling charitable organizations, particularly smaller ones, to raise funds necessary to fund their missions. Not-for-Profit Coalition-NPRM at 17-20; Hudson Bay-Goodman-NPRM at 2.

[854] The Commission believes that, as in the case of the required oral disclosures in the sale of goods or services, the failure to make certain material disclosures in the solicitation of a charitable contribution rises to the level of an abusive practice under the Rule. As noted in the NPRM, the Commission believes that the prompt disclosure of certain information in a telemarketing call to induce the sale of goods or services is necessary to enable a consumer "to decide whether to allow the infringement on his or her time and privacy to go beyond the initial invasion." 67 FR at 4511. Similarly, a consumer who receives a telemarketing solicitation to induce a charitable contribution must have certain information to determine if he or she wishes to continue the call. At this time, the Commission believes it prudent to require only the disclosure of the name of the charity on whose behalf the fundraising is occurring and that the call is being made to induce a charitable contribution. However, the Commission will continue to study the issue and will revisit it during the next Rule Review.

[855] *See, e.g.*, Pennies for Charity, 2001, New York Attorney General, http://www.oag.state.ny.us/charities/pennies01/penintro.html (accessed Oct. 8, 2002) (stating that "charities retained an average of 31.5% of the funds raised by telemarketers registered to solicit contributions in New York in 2000. Some of the charities received much less than that and some received nothing at all."); NASCO-NPRM at 2 (citing the New York Attorney General's report as well as a 1999 report by the California Attorney General showing charities received only 48.2 percent of funds raised by telemarketers who solicited on their behalf in California that year). *See also* Private Citizen-NPRM at 5.

[856] Hudson Bay-Goodman-NPRM at 2.

[857] *See* USA PATRIOT Act § 1011(b)(2)(D). This omission, too, is conspicuous in light of the fact that numerous states have included this mandatory disclosure and that such a disclosure is, at least in dicta, sanctioned by the Court in *Riley*. *See* NAAG-NPRM at 52; *Riley*, 487 U.S. at 799, n.11.

[858] *See* note 856 above.

[859] *See generally* Jordan-RR, S. Gardner-RR, Budro-RR, and Warren-RR. In addition, this issue received considerable attention during the Rule Review Forum. See RR Tr. at 220-45, 367-75, 443-47.

[860] For example, in its 1997 report to Congress on the privacy implications of individual reference services, the FTC cited an example where a prison inmate (and convicted rapist), who was employed as a data processor, used his access to a database containing personal information to compose and send a threatening letter to an Ohio grandmother. *See* FTC, "Individual Reference Services: A Report to Congress" (Dec. 1997), at 16. Several states, including Wisconsin, Nevada, and Massachusetts, have considered legislation that would require their Departments of Correction to restrict prisoners' access to personal information about individuals who are not prisoners and/or to require prisoners conducting telephone solicitations or answering inbound calls to identify themselves as prisoners. The Utah State Prison stopped using inmates as telemarketers after conceding that they could not ensure that prisoners would not misuse personal information they obtain. *See Prison to End Telemarketing By Inmates*, SALT LAKE TRIB., June 1, 2000, at B1. In addition, DMA noted that it had supported legislation banning the use of inmates in remote sales situations because these sales require the telemarketer to get personal information from the consumer. *See* RR Tr. at 371-72.

[861] *See generally* Jordan-RR, Gardner-RR, Warren-RR, and Budro-RR.

also that some public benefit likely came from inmate work programs that entail telemarketing. The Commission noted that the record contained insufficient information upon which to base a proposal regarding prisoner telemarketing or to assess the costs and benefits of such a proposal. Therefore, the NPRM posed several questions to elicit comment on what action by the Commission, if any, might be appropriate regarding this issue.

In response to the NPRM, the Commission received several comments on this issue.[862] In addition, the June 2002 Forum devoted a session to the topic.[863] Based on the entire record in this proceeding, the Commission has determined that any problems associated with the use of prison-based telemarketing would be more appropriately handled by the state legislatures and regulatory agencies than by adding a provision to the TSR.

The comments show that the number of inmates used for commercial telemarketing purposes is a small percentage of the prisoners who are employed in inmate work programs.[864] The majority of prison-based telemarketing programs are used by federal and state governments, often for such tasks as providing information to consumers who call state tourist bureaus.[865] A 1999 GAO Report reveals that only seven percent of the inmates who had access to consumer information were performing work for private firms, while 93 percent were working for government agencies, performing tasks such as answering calls from the public to state tourist centers.[866] Thus, the vast majority of prison-based telemarketing would be outside the ambit of the Rule because it does not involve "telemarketing" as that term is defined in the Rule.[867]

EPI estimates that there are only ten private companies in the United States who use prisoners as telemarketers, that these ten companies employ approximately 300 inmates in prison-based telemarketing programs, and that all these programs use inmates housed in state prisons.[868] Commenters noted that the state prison work programs are heavily regulated by the state legislatures and Departments of Correction.[869] EPI points out that the federally-administered Prison Industry Enhancement ("PIE") program was created to encourage the states and local governments to establish inmate work programs that mimic the private work environment. In passing the legislation, Congress elected to have the states manage these programs.[870]

Opponents of the use of prison-based telemarketing cited the potential for misuse of consumers' personal information by inmates, but were unable to point to actual incidents other than the isolated example raised during the Rule Review.[871] EPI noted that, after an exhaustive search, the 1999 GAO study was able to identify only nine incidents of misuse over an eight-year period, and only three of those nine incidents were the result of telemarketing for a private firm.[872] Commenters noted that similar problems occur, perhaps with even more frequency, among non-prisoner or civilian telemarketers.[873]

The proponents of prison-based telemarketing pointed out the significant social and economic benefits that accrue to the inmates, to the states, and to society as a whole by having inmates engage in productive work that develops skills that can later be transferred to a private sector job once the inmate is released.[874] They indicate that inmate jobs serve as a source of funds to compensate crime victims, provide financial support to children of inmates, repay taxpayers for the inmates' room and board, and are an effective tool for rehabilitation and reducing recidivism.[875] They maintain that inmate jobs are "vital to helping keep prisons safe and secure and offering meaningful educational and vocational training to aid in successful re-entry."[876] These commenters outlined the significant precautions taken in screening and monitoring inmates for these jobs.[877]

Based on the record in this proceeding, the Commission believes that, while there is some evidence of consumer injury in a very few documented cases, it is not possible to conclude that the risk of consumer harm outweighs the countervailing benefits. Such a conclusion would be necessary to condemn prison-based telemarketing as an abusive practice.[878] The extensive system of state regulation, coupled with the local nature of the work programs, persuades the Commission that any problems associated with prison-based telemarketing would best be handled at the state level.

Use of couriers: In response to the NPRM, AARP again raised its concern that the Commission ban the practice of allowing couriers, including overnight mail delivery services, to pick up payment for goods and services purchased through telemarketing.[879] AARP points out that the use of couriers in sweepstakes and lottery scams is prevalent, and that some unscrupulous telemarketers use couriers not only to quickly separate the consumer from his or her money, but to make a "contest seem more 'official.'"[880] AARP notes that, in some instances, even legitimate companies benefit unfairly from the use of couriers by avoiding oversight by the U.S. Postal Service, and by ensuring that non-refundable "deposits" are secured, diminishing the likelihood, in many instances, that a consumer would back out of a transaction.[881] NACAA concurred, and noted its further concern that in-person payment pickups by those posing as public safety officers is a practice perhaps even more harmful to consumers who are intimidated into quickly giving a contribution.[882]

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[862] DialAmerica-NPRM at 28; Spiegel-NPRM at 1; Worsham-NPRM at 6. In addition, *see generally* CURE-NPRM; CCA-NPRM; UNICOR-NPRM; EPI-NPRM; and EPI-Supp.

[863] June 2002 Tr. III at 115-57.

[864] The comments indicate that federal inmates are not used as telemarketers except in connection with sales to the federal government. (UNICOR is the trade name for Federal Prison Industries, Inc., a wholly-owned government corporation within the U.S. Department of Justice, Federal Bureau of Prisons. UNICOR sells its products primarily to federal agencies and uses federal prisoners in connection with those sales. In addition to calling UNICOR's federal government agencies, the federal prisoners also call the businesses that support UNICOR's federal sales.) UNICOR-NPRM at 2; *see also* EPI-Supp. at 1. UNICOR's sales using prisoner-based telemarketing would not be covered by the TSR. Section 310.6(g) of the Rule exempts telemarketing sales to businesses. In addition, sales to government entities do not fall within the Rule's definition of "person."

[865] EPI-Supp. at 1.

[866] "Prison Work Programs, Inmates" Access to Personal Information," GAO/GGD-99-146, cited in EPI-NPRM at 13, n.18. *See also* EPI-Supp. at 1 (All prisoners employed as telemarketers by the private sector are inmates in state prisons, regulated by state agencies.).

[867] "Telemarketing" is defined, in part, as a "plan, program or campaign which is conducted to induce the purchase of goods or services or a charitable contribution . . ." The prison-based telemarketing used by government agencies does not appear to involve calls to "induce the purchase of goods or services."

[868] EPI-NPRM at 2, 3, 9.

[869] CCA-NPRM at 2; EPI-NPRM at 3, 14

[870] EPI-NPRM at 3.

[871] DialAmerica-NPRM at 28; Spiegel-NPRM at 1; Worsham-NPRM at 6. *See also* June 2002 Tr. III at 115-57.

[872] EPI-NPRM at 10.

[873] CURE-NPRM at 1; EPI-NPRM at 13-14. *See also* June 2002 Tr. III 115-57.

[874] *See generally* CURE-NPRM; CCA-NPRM; EPI-NPRM; and UNICOR-NPRM. *See also* June 2002 Tr. III at 115-57.

[875] *Id.*

[876] CCA-NPRM at 1. *See also* EPI-NPRM at 5-8; *and generally* CURE-NPRM; and UNICOR-NPRM. *See also* June 2002 Tr. III at 115-57.

[877] EPI-NPRM at 5-8. *See also* June 2002 Tr. III at 115-57.

[878] *See* 67 FR at 4510-12.

[879] AARP-NPRM at 9-10.

[880] *Id.* (citing NAAG's comment in the original rulemaking proceeding).

[881] AARP-NPRM at 9-10.

[882] *See* NACAA-NPRM at 10-11.

The record does not contain any new evidence regarding the potential harm that accrues from the use of couriers, or any new evidence regarding the benefits to legitimate companies of being able to use couriers to collect payment. Although the Commission recognizes that fraudulent telemarketers often use couriers to collect payment, it continues to believe that "[t]here is nothing inherently deceptive or abusive about the use of couriers by legitimate business."[883] Moreover, the Commission reiterates its view that telemarketers who seek to use courier services to defraud consumers are likely to "engage in other acts or practices that clearly are deceptive or abusive, and that are prohibited by this Rule."[884] Therefore, the Commission declines to adopt the recommendation to ban the use of couriers to collect payment for goods or services sold through telemarketing.

Targeting vulnerable groups and the sale of victim lists: DOJ proposed that the Commission include in the amended Rule a provision that "would prohibit a seller or telemarketer who is engaged in any act or practice that violates §§ 310.3(a), (c), or (d) or 310.4(a)-(e) from purchasing lists of prospective contacts from any source."[885] This suggested change responds to the problems of the sale of victim lists and the targeting of vulnerable groups. As DOJ explains, such a provision would "ensure that any injunctive relief it sought in enforcement proceedings would include a prohibition on any further purchases of 'mooch lists' by any individual or corporate defendants in the action," and lay the foundation for criminal contempt proceedings if such an injunction were violated.[886] DOJ also argued that such an injunction, served on "any list provider known to have done business with the fraudulent telemarketer," would limit such telemarketer's ability to resume fraudulent solicitations.[887] Finally, DOJ noted that such a provision "would enable the Commission to address, at least in part, the targeting of vulnerable victims by fraudulent telemarketers, without having to grapple with the difficulties of defining what constitutes "vulnerability" or "targeting."[888]

After careful consideration, the Commission has determined not to adopt the provision proposed by DOJ. The Commission believes that it is unnecessary to include an explicit prohibition against Rule violators purchasing lists of prospective contacts to provide the benefits detailed by DOJ in its comment. In numerous cases, the Commission has already included a similar prohibition in final orders that achieves the goals articulated by DOJ.[889] Thus, the Commission declines to include a provision to this effect in the amended Rule.

E. Section 310.5 — Recordkeeping

Section 310.5 of the original Rule identifies the kinds of records that must be kept by sellers and telemarketers, and the time period for retention of these records.[890] In the NPRM, the Commission noted that it had declined to adopt any of the suggested modifications to this section submitted pursuant to the Rule Review. Specifically, the Commission declined to: (1) reduce the record retention period to less than 24 months; or (2) tie the duration of record retention either to the value of the goods or services sold or the refund policy of the seller, believing that such modifications would minimize the effectiveness of this provision in law enforcement.[891] The Commission did note that the effect of the USA PATRIOT Act amendments was to extend the recordkeeping requirement to include not only calls to induce the purchase of goods or services, but also calls to induce charitable contributions.[892] The only explicit change to the language of the section to implement the USA PATRIOT Act amendments was to add the phrase "or solicitations of charitable contributions" to § 310.5(a)(4) following the phrase "employees directly involved in telephone sales."[893]

Very few comments addressed the recordkeeping requirements set forth in § 310.5. ARDA noted that it "agrees with the Commission and feels that the current provisions are adequate."[894] DMA-NonProfit stated that "imposing burdensome and lengthy (two-year) recordkeeping responsibilities" on charities would hurt the ability of charities, especially small ones, because it would divert funds away from fulfillment of charities' missions.[895] The Commission believes that the recordkeeping burden on telemarketers who solicit on behalf of charities will be minimal. As noted in the SBP for the original Rule, the recordkeeping provision was already tailored to "strike a balance between minimizing the recordkeeping burden on industry and retaining the records necessary to pursue law enforcement actions. . ."[896] In addition, the Commission believes that the records required to be maintained are those commonly maintained by businesses in the ordinary course of business.[897] The Commission believes that, as applied to telemarketers who solicit on behalf of charities, the burden of compliance with the recordkeeping provision will be further lessened because many of the recordkeeping provisions will be inapplicable in the charitable solicitation context, or are burdens typically borne by the telemarketer, not the organization on whose behalf the calls are made.[898]

NEMA requested that the Commission consider the recordkeeping burden on energy marketers who must, pursuant to their self-regulatory guidelines, already

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[883] 60 FR at 30415.
[884] *Id.*
[885] DOJ-NPRM at 7.
[886] *Id.*
[887] *Id.*
[888] *Id.*

[889] *See, e.g., FTC v. Fed. Data Servs.*, No. 00-6462-CV-Ferguson (S.D. Fla. filed Apr. 3, 2000) (Stipulated final judgment entered Jan. 9, 2001); *FTC v. Data Med. Capital, Inc.*, No. SA-CV-99-1266AHS (EHC) (S.D. Cal. filed Oct. 14, 1999) (Stipulated final order for permanent injunction and other settlement of claims entered July 13, 2001); *FTC v. RJB Telecom, Inc.*, No. CIV002017PHXEHC (D. Ariz. filed Oct. 25, 2000) (Stipulated final judgment and order for permanent injunction filed Aug. 27, 2001); *FTC v. Story d/b/a Network Publ'ns.*, No. 3-99CV0968-L (N.D. Tex. filed Apr. 25, 1999) (Stipulated order for permanent injunction and civil penalty filed June 6, 2000).
[890] 16 CFR 310.5.
[891] 67 FR at 4527-28.
[892] 67 FR at 4528.
[893] Due to an oversight, the text of the NPRM noted the correct language of the provision ("or solicitations of charitable contributions"), while the text of the proposed Rule included an abbreviated version ("or solicitations").

[894] ARDA-NPRM at 17. ARDA did reiterate, however, its concern that "overlapping, inconsistent, and conflicting state laws create a substantial burden."
[895] DMA-NonProfit-NPRM at 16.
[896] 60 FR at 43857.
[897] *Id.*
[898] For example, § 310.5(a)(2) only applies when the offer includes a prize promotion, a circumstance unlikely to be implicated in most charitable solicitations. Section 310.5(a)(3) only applies in the commercial solicitation context, as it requires maintenance of records showing information about "customers." Section 310.5(a)(4) is a requirement typically borne by telemarketers, and the Commission believes that charitable organizations are unlikely to incur additional costs of compliance with this provision as a result of the Rule's inclusion of charitable solicitations. The Commission does not believe that compliance with amended § 310.5(a)(5), which requires that all verifiable authorizations or records of express informed consent or express agreement required to be provided under the Rule be maintained will be unduly burdensome to charities who are less likely to avail themselves of the marketing methods that implicate these Rule requirements. Therefore, the only provision of the recordkeeping section that is likely to affect charities is § 310.5(a)(1), the requirement that "[a]ll substantially different advertising, brochures, telemarketing scripts, and promotional materials" be maintained. To the extent that retention of such materials is not already customary in the non-profit sector, the Commission believes that the burden of compliance is offset by the corresponding law enforcement benefits that accrue from this provision.

maintain certain records.[899] As noted above in the discussion of the express verifiable authorization provision, § 310.3(a)(3)(ii), the Commission believes that sellers, when they accept payment via methods that are novel or lack certain fundamental consumer protections, must obtain express verifiable authorization by any of the three means allowed by the amended Rule. The maintenance of such records is also necessary to ensure the law enforcement goals of the recordkeeping provision.

Finally, ERA noted in its supplemental comment that it believed that it would be expensive for telemarketers conducting upsells to comply with the Rule's recordkeeping requirements.[900] As addressed above in the discussion of § 310.4(a)(6), the Commission believes that both because the cost of digital audio recording and storage is decreasing, and because of the limited circumstances in which such recording is required under the Rule, the burden on sellers who choose to market goods and services using a combination of a "free-to-pay conversion" coupled with preacquired account information is offset by the consumer protection benefits that will accrue from recording and maintaining consumers' express informed consent in these circumstances.

Thus, the only modification to the language of § 310.5(a)(5) in the amended Rule is to require that in addition to retaining all verifiable authorizations, a seller or telemarketer must keep all "records of express informed consent or express agreement" for 24 months. This modification is necessitated by the introduction of these two terms in § 310.4(a)(6), dealing with unauthorized billing, and § 310.4(b)(1)(iii)(B)(*i*), addressing permission to a seller to call despite a consumer's inclusion on the national "do-not-call" registry. The Commission believes it is necessary for a seller or telemarketer to retain such records of express informed consent and express agreement to enable the Commission and the states to determine compliance with these provisions of the Rule.

F. Section 310.6 — Exemptions

Section 310.6 exempts certain telemarketing activities from the Rule's coverage.[901] The exemptions to the Rule were designed to ensure that legitimate businesses are not unduly burdened by the Rule.[902] Based on the record in this proceeding, and on its law enforcement experience, the Commission has determined to add an exemption, § 310.6(a), to specifically exempt outbound calls to solicit charitable contributions from the national "do-not-call" registry provisions of the amended Rule. In addition, the Commission has determined to modify each of the subsections of the original Rule that are now found in renumbered § 310.6(b).

The Commission amends newly renumbered §§ 310.6(b)(1), (2), and (3)[903] to require telemarketers and sellers of pay-per-call services, franchises, and those whose sales involve a face-to-face meeting before consummation of the transaction, to comply with the "do-not-call" and certain other provisions of § 310.4.

The Commission amends renumbered § 310.6(b)(4),[904] which exempts inbound calls that are not a result of a solicitation, to make this exemption unavailable to upsell transactions and to calls in response to a message left pursuant to the abandoned call safe harbor provision in § 310.4(b)(4)(iii).

The Commission amends the general media exemption, now renumbered § 310.6(b)(5),[905] and the direct mail exemption, now renumbered § 310.6(b)(6),[906] to make these exemptions unavailable to upsells, and to telemarketers of credit card loss protection plans and business opportunities other than business arrangements covered by the Franchise Rule. In addition, the amended Rule makes clear that email and facsimile messages are direct mail for purposes of the Rule. Finally, the amended Rule modifies the proposed business-to-business exemption, now at § 310.6(b)(7)[907] to clarify that sellers and telemarketers of nondurable office or cleaning supplies need not comply with the amended Rule's "do-not-call" provisions.

In addition, the amended Rule removes the proposal that would have made the business-to-business exemption unavailable to the telemarketing of Web services, Internet services, and charitable solicitations to businesses. Pursuant to the USA PATRIOT Act amendments to the Telemarketing Act, the Commission amends the Rule to expand several of the exemptions to encompass calls to induce charitable solicitations. Thus, the amended Rule exempts: charitable solicitation calls that are followed by face-to-face payment, § 310.6(b)(3); prospective donors' inbound calls not prompted by a solicitation, § 310.6(b)(4); charitable solicitation calls placed in response to general media advertising, § 310.6(b)(5); and donors' inbound calls placed in response to direct mail solicitations that comply with § 310.4(e). In the NPRM, the Commission proposed to make the business-to-business exemption unavailable for charitable solicitation calls. Based upon the record in this proceeding, the Commission has determined that it should not proceed with this proposal.

§§ 310.6(b)(1), (2), and (3) — Exemptions for pay-per-call services, franchising, and face-to-face transactions

Section 310.6(a) of the original Rule exempts all transactions subject to the Commission's Pay-Per-Call Rule.[908] Similarly, § 310.6(b) exempts transactions subject to the Commission's Franchise Rule.[909] Section 310.6(c) exempts transactions in which the sale of goods or services is not completed, and payment or authorization of payment is not required, until after a face-to-face sales presentation by the seller.[910] In the NPRM, the Commission proposed to retain the exemptions for pay-per-call services, franchising, and face-to-face transactions,[911] and require

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[899] NEMA-NPRM at 8-10.

[900] ERA-Supp. at 7.

[901] Specifically, the original Rule exempts: (1) goods and services subject to the Commission's Pay-Per-Call Rule and Franchise Rule; (2) telemarketing sales consummated after face-to-face transactions; (3) inbound telephone calls that are not the result of any solicitation by the seller or telemarketer; (4) telephone calls in response to a general media advertisement (except those related to investment opportunities, credit repair, "recovery," or advance fee loan services); (5) inbound telephone calls in response to direct mail solicitations that truthfully disclose all material information (except solicitations relating to prize promotions, investment opportunities, credit repair, "recovery," or advance fee loan services); and (6) business-to-business telemarketing (except calls involving the retail sale of nondurable office or cleaning supplies).

[902] 60 FR at 43859.

[903] These exemptions were found at § § 310.6(a), (b), and (c) of the original Rule.

[904] This provision was § 310.6(d) in the original Rule.

[905] The general media exemption was at § 310.6(e) in the original Rule.

[906] The direct mail exemption was at § 310.6(f) in the original Rule.

[907] The business-to-business exemption was at § 310.6(g) in the original Rule.

[908] The renumbered exemption in the amended Rule is found at § 310.6(b)(1).

[909] The renumbered exemption in the amended Rule is found at § 310.6(b)(2).

[910] Face-to-face transactions are also covered by the Commission's Rule Concerning Cooling-Off Period for Sales Made at Homes or at Certain Other Locations, 16 CFR 429. This exemption has been renumbered in the amended Rule and is now found at § 310.6(b)(3).

[911] No modifications to § § 310.6(b)(1) and (2) are necessary to implement the USA PATRIOT Act amendments because charitable solicitations are not likely to be combined with pay-per-call or franchise sales. Therefore, there is no need to expressly exempt such an unlikely scenario from TSR coverage. However, it is necessary to amend

telemarketers selling these exempted goods and services to comply with § 310.4(a)(1) (prohibiting threats, intimidation, or use of profane or obscene language), § 310.4(a)(7) (requiring transmission of Caller ID), § 310.4(b) (prohibiting abusive pattern of calls and requiring compliance with "do-not-call" provisions), and § 310.4(c) (calling time restrictions).

The NPRM pointed out that the Rule Review record contained ample evidence of consumers' increasing frustration with unwanted telemarketing calls, including those soliciting for pay-per-call services or sales appointments.[912] A number of participants in the Rule Review Forum concurred that the "do-not-call" provision of the Rule should also be applicable to calls where a seller attempts to set up an in-person sales meeting at a later date.[913] For these reasons, the Commission proposed making face-to-face, franchise, and pay-per-call transactions subject to the "do-not-call," calling time restriction, and certain other abusive practices provisions in § 310.4.

Consumer and privacy advocates, as well as state regulators, supported the Commission's proposal to make these transactions subject to the "do-not-call" and certain other provisions of § 310.4.[914] They recommended that, in order to be effective, a "do-not-call" registry should have as few exemptions as possible. PRC pointed out:

> [T]elemarketing as a business practice transcends the boundaries of regulated and unregulated industries. So-called "cold calling" is a common marketing technique, used by the most established regulated entity down to the fraudulent "boiler room" that is here today and gone tomorrow.
> Each type of entity—and all those in between that make unwanted telephone calls to a private home—contribute to privacy invasions, costs for devices to stop the invasions, and the overall annoyance factor voiced so strongly by the public. For this reason, telemarketing abuses can only be curtailed if the practice itself— rather than the type of business involved—is subject to the Commission's rules.[915]

The Commission received no comments opposing application of the "do-not-call" and other abusive practices provisions to pay-per-call transactions. With regard to transactions subject to the Commission's Franchise Rule, industry commenters expressed concern about ambiguities on how the "do-not-call" and calling time restrictions would be applied when inbound calls are converted to outbound calls.[916] The Commission has addressed this issue in its discussions above of the definition of "outbound call" and required disclosures in upsell transactions. IFA also noted that compliance with a national "do-not-call" registry would be costly, particularly if the registry does not contain an exemption for established business relationships and does not preempt state "do-not-call" laws.[917] The Commission has addressed these issues in its discussion above regarding the national "do-not-call" registry.

Face-to-face transactions: Industry commenters generally opposed making face-to-face transactions subject to the "do-not-call," calling time restriction, and certain other abusive practices provisions.[918] These commenters argued that face-to-face transactions should continue to be exempt because their practices are already heavily regulated by the states and by the Commission through other FTC rules and thus are less susceptible to abusive practices.[919] However, the national "do-not-call" registry is not focused on fraud, but rather on consumer privacy. The Commission agrees that the incidence of fraud may be diminished in face-to-face transactions, where the transactions are subject to regulation by other Commission rules or by state regulations. For that reason, the Commission has retained the exemption for face-to-face transactions from the provisions of the Rule that address deceptive or other abusive practices. However, the commenters failed to provide arguments showing why they should be exempted from regulations covering the particular abusive practices set forth in the Commission's proposal— *i.e.*, a national "do-not-call" registry, calling time restrictions, the prohibition against denying or interfering with a consumer's right to be placed on a "do-not-call" list, the requirement to transmit Caller ID information, and the prohibition against threats and intimidation.

NAR argued that Congress intended the TSR to address abusive, deceptive, and fraudulent telemarketing practices, not to regulate or prohibit a single telephone call from a real estate professional that simply provides information to a consumer.[920] Transactions subject to the Commission's amended Rule (and thus subject to the national "do-not-call" registry) are those that fall within the definition of "telemarketing," *i.e.*, "a plan, program, or campaign which is conducted to induce the purchase of goods or services or a charitable contribution, by use of one or more telephones and which involves more than one interstate telephone call."[921] A single, isolated telephone call would not be part of a plan, program, or campaign and thus would not fall within the definition of "telemarketing." Furthermore, it is unlikely that the majority of real estate agents conduct campaigns of outbound calls to solicit potential customers who live out-of-state. Most of the outbound solicitation calls made by real estate agents are probably intrastate calls that would be excluded from the Rule's coverage. However, if a real estate agent routinely places outbound calls to solicit potential customers in other states, those calls, in the aggregate, would fall within the definition of "a plan, pattern, or campaign" of outbound calls and would be subject to the Rule.

NAR also argued that a call to set up a meeting does not fall within the definition of "telemarketing" because such calls do not involve the inducement to purchase using the telephone, but rather non-deceptive

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§ 310.6(b)(3) to exempt charitable solicitations that entail a face-to-face meeting before the donor pays.

[912] 67 FR at 4516-18. One consumer who spoke during the public participation portion of the DNC Forum noted frustration about her inability to invoke her right not to be called again by a company that called her to solicit a sales appointment. *See generally* DNC Tr. at 241-46 (Mey). *See also FTC v. Access Resource Servs.*, No. 02-60226 CIV GOLD (S.D. Fla. filed Feb. 13, 2002) (regarding Miss Cleo's psychic services where psychics continued to call consumers despite repeated requests from the consumer to stop calling).

[913] *See* RR Tr. at 291-96.

[914] EPIC-NPRM at 20; PRC-NPRM at 3-4 (there should be no exemptions whatsoever from "do-not-call" registry); FCA-NPRM at 1-2 (intrastate calls should not be exempt); NAAG-NPRM at 57; NFDA-NPRM at 5 (in connection with the face-to-face transaction exemption, telemarketers should also be required to comply with the oral disclosure requirements of § 310.4(d)).

[915] PRC-NPRM at 3-4.

[916] Car Wash Guys-NPRM at 51-56; IFA-NPRM at 2; NFC-NPRM at 3.

[917] IFA-NPRM at 2.

[918] *See generally* Craftmatic-NPRM; DSA-NPRM; NAR-NPRM; ICFA-NPRM at 2-3; Insight-NPRM. *See also* June 2002 Tr. III at 157-226. *But see* ARDA-NPRM at 2, 7-9, which supports creation of a national "do-not-call" registry as long as the registry preempts state laws and the Commission provides an exemption for established business relationships.

[919] *See, e.g.* DSA-NPRM at 6-7; NAR-NPRM at 4; June 2002 Tr. III 157-226.

[920] NAR-NPRM at 1-2. Similarly, DSA notes that many of the calls by direct sellers involve single telephone calls to individuals with whom the seller has a personal relationship. DSA maintains that calls to individuals with whom an on-going commercial or personal relationship exists are reasonable, frequently welcome, and expected by the consumer, and therefore suggests that the Commission provide an exemption for a prior business or personal relationship. DSA-NPRM at 5-8. As discussed above in the section regarding the national "do-not-call" registry, the amended Rule provides an exemption for "established business relationships."

[921] Amended Rule § 310.2(cc).

communication of information about services that are not offered or made available for purchase in a phone conversation.[922] However, the definition of "telemarketing" does not require that the purchase be made during the telephone conversation. The definition simply states that the call be "conducted to induce the purchase of goods or services." The inducement could be made during the telephone call, or it could be in the form of setting up a subsequent face-to-face meeting at which an additional sales presentation could take place.

In summary, the Telemarketing Act mandates that the Commission's Rule address abusive telemarketing practices and specifically mandates that the Commission's Rule include a prohibition on calls that a reasonable consumer would consider coercive or abusive of the consumer's right to privacy, as well as restrictions on calling times.[923] The rulemaking record shows that face-to-face transactions are *not* less susceptible to certain abusive practices prohibited in § 310.4.[924] For this reason, the Commission has determined that telemarketing calls to solicit a face-to-face presentation or the purchase of pay-per-call services should be subject to certain Rule provisions designed to limit abusive practices. Because franchise sales generally involve a face-to-face meeting at some point, these transactions are simply another type of face-to-face transaction and thus the telemarketing of franchises should be held to the same standard.

Therefore, the Commission retains the exemptions for pay-per-call services, franchising, and face-to-face transactions set out in §§ 310.6(b)(1)-(3), but amends the TSR to require that telemarketers making these types of calls comply with §§ 310.4(a)(1) and (7), and §§ 310.4(b) and (c). The amended Rule continues to exempt such calls from the requirements of § 310.3 relating to deceptive practices and from the recordkeeping requirements set out in § 310.5.[925] These calls would also continue to be exempt from providing the oral disclosures required by § 310.4(d). Similarly, telemarketers soliciting charitable donations would be exempt from § 310.4(e) when the payment or donation is made subsequently in a face-to-face setting. However, the amended Rule requires that, even when a call falls within these exemptions, a telemarketer may not engage in the following practices:

- threatening or intimidating a customer, or using obscene language;
- failing to transmit Caller ID information;
- causing any telephone to ring or engaging a person in conversation with intent to annoy, abuse, or harass the person called;
- denying or interfering with a persons's right to be placed on a "do-not-call" registry;
- calling persons whose telephone numbers have been placed on the national "do-not-call" registry maintained by the Commission, unless an established business relationship exists between the seller and the person (telemarketers seeking charitable solicitations are exempted from this requirement);
- calling persons who have placed their names on that seller's or charitable organization's "do-not-call" list; and
- calling outside the time periods allowed by the Rule.

§ 310.6(b)(4) — Inbound calls not in response to a solicitation

The amended Rule revises § 310.6(b)(4) to expressly except from the exemption any upsell following an exempt transaction initiated by the consumer. When the Commission issued the original Rule in 1995, this exemption was intended to apply to a single telemarketing transaction initiated by the consumer without any solicitation by the seller or telemarketer. Since then, the practice of upselling has emerged, and has grown dramatically, particularly in the inbound telemarketing context. The reasons for exempting a telemarketing transaction pursuant to § 310.6(b)(4) do not apply to an upsell linked to that initial transaction.

Section 310.6(b)(4) of the amended Rule exempts calls initiated by consumers without solicitation by the seller or telemarketer because such calls are not part of a "plan, program, or campaign to induce the purchase of goods or services."[926] Thus, these calls do not fall within the definition of "telemarketing." The exemption was intended to cover

> incidental uses of the telephone that are not in response to a direct solicitation, *e.g.*, calls from a customer to make hotel, airline, car rental, or similar reservations, to place carry-out or restaurant delivery orders, or to obtain information or customer technical support.[927]

Furthermore, in these calls, the consumer presumably is in control of the transaction that the consumer initiated, absent any outbound call or direct mail piece.

In contrast, the upsell is a direct solicitation for a product or service other than that for which the consumer initiated the call. As such, upsells *are* part of a telemarketing "plan, program, or campaign to induce the purchase of goods or services" and thus *do* fall within the definition of "telemarketing." Furthermore, in upsells, the consumer does not initiate the sales transaction; the sales solicitation is initiated by the seller. When the consumer initiates an unsolicited inbound call, the consumer does not necessarily expect to be offered a good or service during the course of that call (such as in the case of a technical support call), or to be offered additional goods or services (in the case where the consumer was calling to make a purchase). Some commenters suggested that upsells appended to inbound calls should be exempted.[928] However, the Commission's experience indicates that upsells appended to unsolicited inbound calls open the door to potential deception and abuse in the subsequent upsell transaction.[929] Accordingly, the amended Rule excepts upsell transactions from the exemption provided for unsolicited inbound calls by consumers in § 310.6(b)(4).

There was substantial comment on the potential cost of subjecting upsells associated with inbound calls to any provisions beyond the Rule's disclosure requirements.[930] The original Rule exempted most inbound calls entirely, since most would fall within either this exemption for calls initiated by the consumer, or into renumbered §§ 310.4(b)(5) or (6) for general media advertisements or certain direct mail solicitations—each of which is discussed below. As a result, sellers and telemarketers were not required to

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[922] NAR-NPRM at 3-4. *See also* ICFA-NPRM at 1-2 (regarding funeral goods and services).

[923] 15 U.S.C. 6102(a)(1) and (3)(A)-(B).

[924] *See* Gindin-RR at 1; Mey-RR *generally*; DNC Tr. at 241-46; RR Tr. at 291-95.

[925] Of course, a seller or telemarketer would have to keep documentation in order to successfully raise the "safe harbor" defense in § 310.4(b)(3) regarding compliance with the amended Rule's "do-not-call" requirements. The safe harbor relating to abandoned calls, discussed in § 310.4(b)(4), also includes a requirement to maintain certain records.

[926] *See* S. REP. NO. 103-80, at 8 (1993).

[927] 60 FR at 43860.

[928] *See, e.g.*, AFSA-NPRM at 15.

[929] Indeed, NAAG noted that the states' law enforcement experience revealed that upsells often proved problematic when appended to inbound calls initiated by the consumer, or by general media advertisements. NAAG-NPRM at 33 ("[Upsells] are usually inbound calls during which the company receiving the call completes the purpose for which the consumer initiated the call and then entices the consumer to consider another seller's products. The upsell can follow either a sales call or a call related to customer service such as a call about an account payment or product repair.") *See, e.g., New York v. Ticketmaster and Time, Inc.*, (Assurance of Discontinuance).

[930] *See, e.g.*, DMA-NPRM at 38; ERA-NPRM at 11; PMA-NPRM at 9-13.

comply with the Rule's recordkeeping requirements with respect to these exempt telephone calls. While the amended Rule retains these exemptions (although with some modification), upsell transactions are excluded from those exemptions. Thus, to the extent that the Rule requires that records be maintained, including recordings of express verifiable authorization or express informed consent, such records must be maintained regarding these inbound upsells.

Commenters expressed concern primarily about the potential need for sellers and telemarketers to record certain inbound transactions.[931] These commenters suggested that call centers accustomed to handling only inbound telemarketing calls were not necessarily equipped with recording equipment, and that obtaining and implementing the necessary systems would be prohibitively expensive for many such organizations.[932] However, the Commission notes that taping is required only in one circumstance: under new § 310.4(a)(6)(i)(C), the seller or telemarketer must make and maintain a recording of the entire sales transaction any time a telemarketing transaction involves both preacquired account information and a "free-to-pay conversion" feature.[933] In instances where it is necessary to obtain the consumer's express verifiable authorization pursuant to § 310.3(a)(3), the amended Rule provides alternatives to making a recording of the consumer's oral authorization.[934] Thus, the number of industry members who would be required to obtain recording equipment is relatively limited. Moreover, with the growth of digital recording technology, the capital investment in recording equipment and record storage is rapidly declining.[935]

CCC argued that in inbound calls not currently subject to the Rule, the impact of these amendments would be to "unnecessarily increase inbound call length by 50 percent or more and thereby increase the cost of goods or services to consumers."[936] CCC also suggested that additional recordkeeping, "public disclosure," and taping requirements will be overly burdensome.[937] While the Commission recognizes that, to the extent telemarketers have not been subject to the Rule, there is potential for additional burdens, the obligations of the Rule are minimal, and generally reflect regular practices already in place for most sellers and telemarketers in the ordinary course of business—such as the basic disclosure requirements, prohibition on misrepresentations, and recordkeeping requirements.[938] Moreover, the taping requirement is limited to those transactions that involve both preacquired account information and a "free-to-pay conversion" offer. Thus, only those sellers and telemarketers that choose to structure their upselling campaigns in this fashion will be subject to this additional requirement. The Commission therefore believes that any additional burden caused by these new requirements will be minimal. Ultimately, the Commission believes that the benefits to consumers of receiving the appropriate disclosures in an upsell transaction outweigh the costs to industry of providing those disclosures and ensuring that any charges are authorized by the consumer.

Additionally, it should be clear that telephone calls initiated by a customer or donor in response to a telemarketer's transmission of Caller ID information or use of a recorded message under the abandoned call safe harbor provision described in § 310.4(b)(4) are excepted from this exemption, as the customer or donor in this context would have had no reason to initiate a telephone call but for the solicitation efforts of the seller, charitable organization, or telemarketer. The transmission of Caller ID information and the use of a recorded message are considered forms of solicitation by a seller, charitable organization, or telemarketer under this exemption because they are part of a telemarketer's efforts to induce the purchase of goods or services or a charitable contribution. Although the information displayed on a consumer's caller identification service or provided via a recorded message will not include a sales pitch, it is a "result of [a] solicitation" and therefore outside the scope of the exemption described in this section.

310.6(b)(5) — Exemption for general media advertisements

The Commission received few comments addressing its proposal to narrow the general media exemption by adding two additional categories of goods or services to the list of its exceptions: credit card loss protection plans, and business opportunities other than those covered by the Franchise Rule or any subsequent rule covering business opportunities the Commission may promulgate.[939] The proposed expansion of the exemption to cover charitable solicitations pursuant to the USA PATRIOT Act yielded no comments.

Several of the commenters who addressed the general media exemption opposed having any exemption at all for general media, and therefore supported any effort to narrow it.[940] NCL stated that if the Commission determined to retain the general media exemption, it supported the addition of credit card loss protection plans and business opportunities other than those covered by the Franchise Rule to the list of goods and services excepted from the exemption. In support of its position, NCL noted that in 35 percent of the work-at-home complaints made to the NFIC in the year 2001, consumers reported that they were solicited through print media.[941] Since work-at-home solicitations are not "business arrangements covered by the Franchise Rule," the exception from the general media exemption will now ensure that inbound calls in response to general media advertisements touting work-at-home opportunities will be subject to the Rule. NCL also noted that although most of the solicitations for credit card loss protection plans were made by telephone, these services should be covered by the Rule regardless of how they are promoted "given the egregious nature of these complaints."[942]

While commenters and forum participants generally endorsed the proposed narrowing of the general media exemption, some urged the Commission to reconsider whether a general media exemption is "appropriate and workable," arguing that consumers who call in response to such advertisements are vulnerable to fraud and deception unless certain minimal disclosures are made.[943] NCL acknowledged that the Commission could combat such deception using its authority under Section 5 of the FTC Act, but argued that consumer injury could better be prevented if disclosures

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[931] CCC-NPRM at 12-13; June 2002 Tr. II at 224 (CCC); June 2002 Tr. II at 232-33 (MPA).

[932] CCC-NPRM at 12-13; June 2002 Tr. II at 224 (CCC); MPA-NPRM at 28-29; June 2002 Tr. II at 232-33 (MPA).

[933] *See* discussion of § § 310.2(o) and (w), and § 310.4(a)(6) above for a detailed explanation of these provisions.

[934] *See* discussion of § 310.3(a)(3) above.

[935] *See* note 480 above.

[936] CCC-NPRM at 16.

[937] *Id.*

[938] 60 FR at 32682-83 (June 23, 1995).

[939] This section was found at § 310.6(e) in the proposed Rule.

[940] *See, e.g.*, EPIC-NPRM at 25-26; NCL-NPRM at 12; NAAG-NPRM at 58; June 2002 Tr. III at 177, 182-83 (NAAG has historically opposed the exemption; AARP supports NAAG position).

[941] NCL-NPRM at 12.

[942] *Id.*

[943] *Id. See also* June 2002 Tr. III at 177-83 (NAAG and AARP).

were required. NCL further advanced the proposition that all telemarketers should be subject to the express verifiable authorization requirements when consumers' accounts will be billed, regardless of whether calls are outbound or inbound, and, in the latter instance, even when such calls are in response to an advertisement delivered by general media or direct mail.[944] EPIC noted its position that "[g]eneral media advertising may be deceptive, abusive or merely lack the information required to be disclosed under the Rule, thus substantially reducing the level of protection otherwise afforded to consumers by the Rule."[945]

The Commission declines to adopt these recommendations to further regulate inbound calls resulting from general media advertisements. In the SBP issued with the original Rule, the Commission explained that in its experience "calls responding to general media advertising do not typically involve the forms of deception and abuse the Act seeks to stem."[946] The Commission's experience since the promulgation of the Rule continues to support the exemption for general media advertising, with targeted exceptions for certain goods or services that have routinely been touted by fraudulent sellers using general media advertising to generate inbound calls. In response to the suggestion that express verifiable authorization be required in all telemarketing transactions when the consumer's account will be billed, the Commission notes that the parameters of the amended express verifiable authorization provision, and the Commission's rationale in adopting it, are discussed above in the analysis of § 310.3(a)(3).[947]

NAAG expressed concern about the growing number of sellers of membership or buying club opportunities that operate using an "upsell" technique after an initial inbound call is placed by consumers in response to an advertisement for a completely different product.[948] NAAG suggested that the Commission amend the general media exemption to ensure that the Rule does not inadvertently exempt upselling transactions that occur when a consumer calls a seller or telemarketer in response to a general media advertisement.[949] The Commission agrees that this scenario would be an unwelcome consequence of the provision's wording and thus has amended this provision to clarify that the exemption may not be claimed in any instances of upselling that occur in the call.

NAAG also recommended that the list of exceptions to the general media exemption be expanded to include other transactions that involve a high risk of abuse, such as discount buyers clubs and offers involving "opt out free trials."[950] The Commission agrees that the telemarketing of these products or services frequently involves fraudulent or deceptive practices. However, there is no evidence on the record indicating that these products or services are telemarketed through general media advertisements. Rather, the states and the Commission have brought law enforcement actions challenging the deceptive telemarketing of these products predominantly when they are sold via outbound cold calls or in upselling, after the consumer has called to purchase another product or service in response to a general media advertisement.[951] As discussed above, the amended Rule contains a modified general media exemption, which makes the exemption unavailable to upselling transactions that occur in a call in response to a general media advertisement. In addition, the amended Rule contains specific requirements for negative option, "free-to-pay conversion," and upselling transactions.[952] Therefore, the Commission finds it unnecessary to except discount buyers clubs and offers involving "opt out free trials" from the general media exemption.

DSA opposed the amendment of the general media exemption provision, expressing the concern that the exception for "business opportunities other than business arrangements covered by the Franchise Rule" will require individual direct sellers to comply with the Rule when they solicit customers or salespeople through general media advertisements.[953] DSA argues that "[t]here is nothing inherently deceptive or abusive about communications over the telephone (particularly those initiated by the consumer) regarding a business opportunity" and that "there should be even fewer concerns about communications related to *prospective* transactions involving activities clearly deemed de minimis by the Franchise Rule."[954] As the Commission stated in the NPRM, it has determined, based on the record and in particular on its extensive law enforcement experience in this area, that "telemarketing fraud perpetrated by the advertising of work-at-home and other business opportunity schemes in general media sources is a prevalent and growing phenomenon."[955] Outbound telephone calls to induce the purchase of a business opportunity not regulated by the Franchise Rule have been subject to the Rule's coverage since it was promulgated, and the new exception for general media advertisements merely expands that requirement when an inbound call results from the advertisement of such ventures in the general media.[956] Moreover, if a direct seller is marketing its underlying product to customers, the exception would not bring such activity under the Rule because it would not implicate the sale of a business opportunity.[957] Furthermore, as the Commission noted in the SBP for the original Rule, DSA's concern about recruitment of persons to engage in the direct sale of goods or services is likely unfounded because the face-to-face exemption takes such efforts outside the Rule's coverage.[958]

Based on its review of the record in this matter, and its law enforcement experience, the Commission has determined to retain the proposed general media provision in the amended

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[944] NCL-NPRM at 12.

[945] EPIC-NPRM at 25-26.

[946] 60 FR at 43860.

[947] The Commission also notes that new § 310.4(a)(6) requires that, in every instance, a seller or telemarketer secure the consumer's express informed consent to be charged for the goods or services or charitable contribution, and to be charged using the identified account.

[948] NAAG-NPRM at 58-59.

[949] *Id. See also* EPIC-NPRM at 25 (agreeing that upselling calls should be subject to the Rule). *Cf.* Capital One-NPRM at 5 (requesting clarification that upselling calls are exempt, at least in an internal upsell).

[950] NAAG-NPRM at 59.

[951] *See, e.g., FTC v. Smolev.*, No. 01-8922 CIV ZLOCH (S.D. Fla. 2001); *New York v. MemberWorks, Inc.*, Assurance of Discontinuance (Aug. 2000); *Minnesota v. MemberWorks, Inc.*, No. MC99-010056 (4th Dist. Minn. June 1999); *Minnesota v. Damark Int'l, Inc.*, No C8-99-10638, Assurance of Discontinuance (Ramsey County Dist. Ct. Dec. 3, 1999); *FTC v. S.J.A. Soc'y, Inc.*, No. 2:97 CM 472 (E.D. Va. filed May 31, 1997).

[952] *See* amended Rule § § 310.3(a)(1)(vii), 310.3(a)(2)(ix), 310.3(a)(3)(iii), 310.4(a)(6), 310.4(a)(7), and 310.4(d).

[953] DSA-NPRM at 8-9.

[954] *Id.*

[955] 67 FR at 4530-31 (this determination is equally applicable to the advertisement by direct mail of business opportunities other than business arrangements covered by the Franchise Rule).

[956] The Commission noted in the original SBP that "[w]hen a business venture is not covered by the Franchise Rule, then consumers do not receive the protection afforded by that Rule's pre-sale disclosure requirements. Therefore, it is appropriate that telephone sales of such ventures should be covered by this Rule, so that consumers may receive the benefit of its protections." 60 FR at 4360. The addition of the exception provisions to the direct mail and general media exemptions merely expands upon the initial requirement.

[957] For example, the exception to the general media exemption would bring under the Rule an effort by a direct seller to recruit others to market its products, but not the sale by the direct seller of cosmetics to its own end-customers.

[958] 60 FR at 43860, n.185.

Rule with two changes. First, the phrase "or any subsequent rule covering business opportunities the Commission may promulgate" has been deleted in the amended Rule. Should the Commission promulgate a rule covering business opportunities, the nexus between the TSR and any such rule will be considered, and any necessary conforming amendments made to the TSR at that time. Second, § 310.6(b)(5) has also been amended to expressly except from the general media exemption any upsell following the exempt transaction associated with the general media solicitation. As with telephone calls initiated by the consumer without any solicitation by the seller or telemarketer, the reasons for exempting a telemarketing transaction following certain general media solicitations do not apply to an upsell linked to that initial transaction.[959] The original Rule exempts calls in response to a general media advertisement because "calls responding to general media advertising do not typically involve the forms of deception and abuse the Act seeks to stem."[960] However, the Commission recognized that some fraudulent telemarketers and sellers have used general media advertisements to entice victims to call, and thus has excepted those problem areas from the exemption. Upselling is one of the problem areas where general media advertisements have provided the opening for subsequent deception and abuse.[961] In addition, an upsell transaction is not similar to a general media advertisement. It is a wholly new sales offer targeted at the consumer a seller or telemarketer has on the line for some other purpose, whether it be in response to a general media advertisement about a different product or service, or a customer service call initiated by the consumer. Accordingly, the amended Rule excepts upsell transactions from the general media exemption in § 310.6(b)(5).

§ 310.6(b)(6) — Exemption for direct mail solicitations

Section 310.6(b)(6) of the original Rule exempts from the Rule's requirements inbound telephone calls resulting from a direct mail solicitation that clearly, conspicuously, and truthfully disclosed all material information required by § 310.3(a)(1). Certain categories of transactions, specifically those in which the solicitation was for a prize promotion, investment opportunity, credit repair service, "recovery" service, or advance fee loan, were excepted from this exemption because the record and the Commission's law enforcement experience made clear that these particular products and services were so often subject to abuse by fraudulent telemarketers that regulation under the TSR was appropriate.

The proposed Rule retained the direct mail exemption provision, but clarified that advertisements sent via facsimile or electronic mail were considered direct mail for purposes of this exemption.[962] The proposed Rule also added two new categories of transactions to be excepted from the direct mail exemption: credit card loss protection plans and business opportunities other than those covered by the Franchise Rule or any subsequent Rule covering business opportunities the Commission may promulgate. Finally, pursuant to the USA PATRIOT Act, the proposed Rule expanded the exemption to exclude from the Rule's coverage inbound calls to solicit a charitable contribution made in response to a direct mail solicitation that complies with § 310.3(a)(1).

The Commission has determined, based on a review of the record and its own law enforcement experience, to adopt the proposed amendments to the direct mail exemption, renumbered in the amended Rule as § 310.6(b)(6). The amended Rule, however, differentiates between the requirements for direct mail solicitations for goods or services and direct mail solicitations for charitable contributions. The amended Rule retains unchanged the requirements of the original Rule—*i.e.*, the direct mail solicitation must clearly, conspicuously, and truthfully disclose all material information required by § 310.3(a)(1). However, because § 310.3(a)(1) applies only to goods and services and not to charitable solicitations, the amended Rule modifies the direct mail exemption language to ensure that prospective donors who receive direct mail solicitations for charitable contributions have protections similar to those enjoyed by consumers who purchase goods or services. Thus, the amended Rule adds language to the direct mail exemption provision prohibiting material misrepresentations regarding any item contained in § 310.3(d) in charitable solicitations sent by direct mail to donors.

In the proposed Rule, the Commission stated that the direct mail exemption would be applicable to inbound calls made in response to a direct mail charitable solicitation that complies with § 310.3(a)(1). NAAG suggested that inbound calls resulting from a direct mail charitable solicitation be exempt instead if the direct mail piece clearly, conspicuously, and truthfully sets forth the disclosure in § 310.4(e)(1) (the identity of the charitable organization) and the fact that the organization is soliciting a charitable contribution.[963] NAAG further recommended that, at a minimum, several categories of information (including the nature of the goods or services and the facts relating to a charitable contribution) deemed important to consumers and donors be expressly referenced in § 310.6(f).[964] The Commission agrees that the specific disclosures required by § 310.3(a)(1)—targeted at the sale of goods or services—are an imperfect fit with the type of information a potential donor would need to determine if he or she wished to contact a charitable organization in response to a solicitation received via direct mail. Therefore, the amended Rule requires that, in order for the telemarketer to take advantage of the direct mail exemption for inbound calls in response to any direct mail charitable solicitation, such solicitation contain no material misrepresentation regarding any item contained in § 310.3(d) of the Rule.

Section 310.6(b)(6) has also been amended to expressly except from the direct mail exemption any upsell following the exempt transaction associated with the direct mail advertisement. As with telephone calls initiated by the consumer without any solicitation by the seller or telemarketer, or in response to general media solicitations, the reasons for exempting a telemarketing transaction triggered by a direct mail advertisement do not apply to an upsell linked to that initial transaction.[965] Section 310.6(b)(6) of the amended Rule exempts direct mail solicitations only if the disclosures required by § 310.3(a)(1) are truthfully, clearly, and conspicuously provided in the direct mail piece. The Commission

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[959] The reasons for this exception are explained in greater detail in the discussion of amended Rule § 310.6(b)(4) above.

[960] 60 FR at 43860.

[961] *FTC v. Smolev* (a/k/a Triad Discount Buying Service) is one example of an internal upsell triggered by consumer response to a general media advertisement. *Smolev*, No. 01-8922-CIV ZLOCH (S.D. Fla. 2001). *New York v. Ticketmaster* (Settlement announced on Jan. 7, 2002).

[962] The direct mail exemption provision is found in the proposed Rule at § 310.6(f).

[963] NAAG-NPRM at 59-60.

[964] *Id.*

[965] The reasons for this exception are discussed in greater detail in the explanation of §§ 310.6(b)(4) and (5) above. Capital One requested clarification of the applicability of this exemption to upselling transactions. Capital One-NPRM at 5-6. EPIC requested that upselling be subject to the Rule. EPIC-NPRM at 25.

exempted these direct mail solicitations because such solicitations

> are not uniformly related to the forms of deception and abuse the Act seeks to stem, nor are they uniformly related to such misconduct. Rather, in certain discrete areas of telemarketing, such solicitations often provide the opening for subsequent deception and abuse. The Commission has drawn upon its enforcement experience, identified those problem areas, and excluded them from this exemption.[966]

Upselling transactions are one of the problem areas where direct mail solicitations have provided the opening for subsequent deception and abuse.[967] Upon receiving a direct mail solicitation in which all of the material terms of the offer may be available to evaluate in the direct mail piece, the consumer has the time and the information necessary to make an informed decision whether to call and inquire further or make a purchase. By contrast, an upsell presentation provides the consumer no opportunity to review the material disclosures pertinent to the offer. Once again, the upsell is more akin to an unsolicited outbound call to the consumer, who does not necessarily expect to be solicited for a purchase, and who has none of the material information he or she needs to evaluate the offer and make a purchasing decision. Accordingly, the amended Rule excepts upselling transactions from the direct mail exemption in § 310.6(b)(6).

Finally, the phrase "or any subsequent rule covering business opportunities the Commission may promulgate" has been deleted in the amended Rule. Should the Commission promulgate a rule covering business opportunities, the nexus between the TSR and any such rule will be considered, and any necessary conforming amendments made to the TSR at that time.

Facsimile and electronic mail solicitations as "direct mail": NCL and ARDA supported the Commission's view that facsimile and electronic mail solicitations are analogous to direct mail sent via the U.S. Postal Service, and should be considered direct mail for purposes of the exemption.[968] NCL noted that facsimile ("fax") or electronic mail ("email") solicitations are often sent to promote fraudulent goods or services.[969] For example, in "Nigerian money offer" schemes, the fastest growing category of telemarketing fraud reported to NCL, faxes and emails are the primary methods of solicitation.[970] NCL noted that faxes and email are also used to solicit businesses for a variety of telemarketing scams.[971] DMA also supported the interpretation that advertisements sent via fax or email should be considered as "direct mail" pieces for purposes of the Rule.[972]

Some commenters opposed the inclusion of fax and email advertisements in the exemption,[973] and some expressed concern that the Commission's interpretation could actually increase the number of unwanted solicitations sent to consumers by fax and email.[974] NCL stated that unsolicited fax advertisements were prohibited under the TCPA because of their intrusive impact on recipients' privacy, and expressed concern that exempting calls in response to unsolicited faxes from the Rule, even if the information in them is accurate and complete, "would ignore this important public policy determination."[975] NCL recommended that the Commission ban the sending of unsolicited fax advertisements as an abusive practice under the Rule.[976]

The record in this matter provides no support for the assertion that the number of unwanted, but truthful, fax and email solicitations may increase as a result of being exempted from the TSR. The Commission notes that the TCPA, enforced by the FCC, already bans unsolicited fax messages.[977] The FCC has promulgated rules effectuating the Congressional ban and has enforced those regulations.[978] Thus, the Commission's determination that, for the purposes of the TSR, faxes and email are forms of "direct mail" should have no impact on the number of unsolicited faxes that are sent. To presume such would be to anticipate that sellers would blatantly ignore the FCC's regulations. To be entirely clear, however, the Commission wishes to state that its interpretation of the term "direct mail" in no way alters the legality of the underlying direct mail contact. Rather, the new TSR provision will require that, to the extent that a fax or email solicitation is allowed by law, these direct mail solicitations must include the required disclosures, or else resulting inbound calls from consumers will be subject to the entire TSR.[979]

Although it favored the Commission's proposed interpretation which viewed faxes and email as "direct mail" for purposes of the Rule, DMA argued that the Rule should allow the disclosures of material information to be made in the telephone call, rather than in the fax or email advertisement.[980] As support for its position, DMA stated that to do otherwise could result in increased expense to sellers who use email to reach their target audience, due to the increased length of the message. DMA further argued that the Commission lacks authority to dictate the content of either email or fax advertisements. Finally, DMA posited that, if the intent of the provision is to mandate disclosures, the NPRM failed to evaluate the costs of requiring such disclosures, particularly in email solicitations.[981]

The Commission believes that, to warrant exemption of the inbound call in response to a direct mail solicitation from the Rule, it is critical that a consumer receive the required disclosures (or, in the case of a charitable solicitation, that the solicitation not contain misrepresentations) at the time the consumer contemplates contacting the seller or charitable organization by telephone. The amended Rule follows the reasoning of the original Rule, which requires that any direct mail

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[966] 60 FR at 43860.

[967] *See, e.g., United States v. Prochnow*, No. 1 02-cv-917 (N.D. Ga. 2002).

[968] *See* ARDA-NPRM at 17; NCL-NPRM at 12.

[969] *See* NCL-NPRM at 12.

[970] *Id.*

[971] *Id.*

[972] *See* DMA-NPRM at 56.

[973] *See, e.g.*, EPIC-NPRM at 26.

[974] *See, e.g.*, CNO-NPRM at 6; NCL-NPRM at 12.

[975] *See* NCL-NPRM at 12-13.

[976] NCL-NPRM at 13.

[977] 47 U.S.C. 227(b). In its recent Notice of Proposed Rulemaking, the FCC noted that complaints about unsolicited faxes have been steadily increasing, from 519 in 1996 to over 2100 in 2000. FCC TCPA 2002 (*see* note 633 above), at para. 8. There is no suggestion in the FCC's NPRM that a spike in the actual number of unsolicited faxes has occurred or that any increase is attributable to the FTC's determination that faxes and email are forms of direct mail for purposes of the TSR.

[978] 47 CFR 64.1200(a)(3). *See also* FCC Press Release: "FCC Cracks Down on 'Junk Fax' Violations," http://www.fcc.gov/cgb/news/080802.junkfax.html; FCC's 2002 NPRM at para. 7, n.40.

[979] If the fax or email advertisement is sent in violation of state or other federal law, the sender would be liable under those federal or state laws, but not under the TSR, unless the fax or email also failed to include the requisite disclosures and the seller or telemarketer, in any subsequent telemarketing effort, failed to abide by the Rule.

[980] DMA-NPRM at 58 ("The types of disclosures proposed by the Commission are worthwhile, so long as they can be provided over the phone by the telemarketer."). *See also* Associations-NPRM at 4; Associations-Supp. at 8.

[981] In their supplemental comment, Associations, of which DMA is a member, noted only that inclusion of the required disclosures in an email or fax "imposes significant costs on businesses. Particularly on email communications, 'real estate' and location have significant financial value." Associations-Supp. at 8. This mere assertion remains all that exists on the record regarding the cost of requiring the § 310.3(a)(1) disclosures in an email or fax, and the Commission finds this insufficient to cause it to reconsider its position based on the financial harm argument asserted by Associations.

solicitation contain the required disclosures in order to afford the consumer an opportunity to know certain material information before determining whether to call the telemarketer. Apart from DMA's comment, the Commission finds no record evidence to support alteration of this requirement simply because the direct mail solicitations are sent by email rather than the U.S. Postal Service. It is not the intent of the Commission to use this provision to require new disclosures surreptitiously; indeed, the disclosures required (and misrepresentations prohibited, in the case of a charitable solicitation) are merely those that a telemarketer must make in the course of any non-exempt telemarketing transaction. Sellers remain free to choose the most advantageous method by which to contact consumers, and those opting for direct mail solicitations sent by email must determine whether the costs of making the relevant disclosures[982] are offset by the savings attained by being exempt from the rest of the Rule.

Exceptions to the direct mail exemption: Commenters were generally supportive of the Commission's proposal to narrow the direct mail exemption to make it unavailable to sellers of credit card loss protection and business opportunities other than business arrangements covered by the Franchise Rule or any subsequent rule covering business opportunities the Commission may adopt. In expressing its support, NCL noted that, although most solicitations for credit card loss protection plans were made via outbound telephone calls, it endorsed excepting such plans from the exemption to ensure that they will be covered by the Rule regardless of how they are promoted.[983] Similarly, NCL supported the exclusion from the direct mail exemption of work-at-home solicitations, noting that in 2001, 42 percent of the victims of work-at-home scams said that the initial method of contact was direct mail.[984] Because work-at-home solicitations are not "business arrangements covered by the Franchise Rule," the exception from the direct mail exemption will now ensure that inbound calls in response to direct mail advertising work-at-home opportunities will be subject to the Rule.

Some consumer advocates and law enforcement officials argued, however, that by simply narrowing the categories of offers eligible for the exemption, the proposed Rule did not go far enough to protect consumers.[985] Instead of narrowing the exemption, NCL recommended that the Commission eliminate the direct mail exemption altogether,[986] a position with which NAAG and AARP concurred at the June 2002 Forum.[987] NCL argued that telemarketing fraud and abuse could be prevented if those currently exempt from the Rule's coverage were required to adhere to its provisions, particularly those Rule provisions mandating material disclosures and express verifiable authorization.[988] As an alternative to eliminating the direct mail exemption, NCL suggested that all telemarketers should be required to obtain customers' express verifiable authorization in every call, even those that would otherwise be exempt, such as inbound calls in response to a direct mail solicitation.[989] NAAG suggested that the Rule should also except from the direct mail exemption transactions that involve a high risk of abuse, such as the sale of memberships for discount buyers clubs and for transactions involving negative option features.[990]

Based on a review of the record, the Commission declines to adopt these suggestions. In the SBP of the original Rule, the Commission noted that the direct mail exemption was included in the Rule because, in its experience, direct mail solicitations were not "uniformly related to the forms of deception and abuse the Act seeks to stem."[991] Based on this understanding, and in an effort to strike the appropriate balance between reining in fraudulent telemarketers and not unduly burdening legitimate industry, the Commission included the direct mail exemption in the original Rule. While it may be true that fraudulent telemarketing scams might be reduced if the direct mail exemption were excised from the Rule, the Commission believes that to do so would tip the balance and unnecessarily burden legitimate telemarketers without bringing commensurate benefits to consumers. Therefore, the Commission declines to eliminate the exemption entirely.

The Commission also declines to require express verifiable authorization in all calls. The parameters of the amended express verifiable authorization provision, and the Commission's rationale in adopting it, are discussed above in the analysis of § 310.3(a)(3). Finally, the Commission declines to add the sale of discount buyers club memberships and solicitations in which there is a negative option feature to the exceptions to the direct mail exemption. The record does not demonstrate that the sale of membership clubs or solicitations in which there is a negative option feature are particularly subject to abuse in conjunction with direct mail solicitations, and thus does not support including such exceptions.[992]

Other suggested changes

Some commenters raised concerns about the situation where there is a disparity between the disclosures made in a direct mail solicitation and those made in the subsequent telephone call. NAAG urged the Commission to clarify that a pre-call mailing is not truthful if it is inconsistent in some material way with what is stated during the call.[993]

In order to avail itself of the exemption, a direct mail solicitation must provide the material disclosures required by § 310.3(a)(1) to ensure that the material information about the offer is in the hands of the consumer when the consumer elects whether to place a call to a telemarketer, including information about the total cost and quantity of the goods or services, all material restrictions, limitations or conditions to the offer, and certain information regarding refund policies and prize promotions. By its very definition, this material information is presumed "likely to affect a person's choice of goods or services, or their conduct regarding them."[994] Thus, in order to meet the Rule's requirement that the information in the direct mail solicitation be "truthful," the information provided to the consumer in the telemarketing call should not vary in any material respect from the disclosures provided in the direct mail solicitation.[995]

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[982] Presumably in the solicitation of a charitable contribution, there is no cost associated with refraining from making misrepresentations.

[983] NCL-NPRM at 12.

[984] *Id.*

[985] *See* NCL-NPRM at 12 (expressing concern that increasing the number of exceptions to exemptions is confusing to businesses and consumers).

[986] NCL-NPRM at 12.

[987] June 2002 Tr. III at 177, 182-83.

[988] NCL-NPRM at 12.

[989] *Id.*

[990] *See* NAAG-NPRM at 59.

[991] 60 FR at 43860.

[992] The record does show that buyers club memberships have frequently been associated with complaints regarding preacquired account telemarketing, a practice that is addressed by amended Rule § § 310.4(a)(5) and (6). Similarly, goods or services offered in conjunction with a "free-to-pay conversion" negative option feature have been shown to result in complaints of unauthorized charges, and are addressed by amended Rule § 310.4(a)(6) and § § 310.3(a)(1)(vii) and 310.3(a)(2)(ix).

[993] NAAG-NPRM at 59-60.

[994] *Cliffdale*, 103 F.T.C. at 165.

[995] The Commission recognizes that, in some instances, prices may be subject to change, or may only be in effect for a specified period of time. A

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AFSA expressed concern over the "specter of vicarious liability" for telemarketers who receive inbound calls in response to direct mail solicitations sent by another party in which the required disclosures are not made "truthfully." The Commission believes that under § 310.3(b), the assisting and facilitating provision, liability would only attach if a telemarketer knew or consciously avoided knowing that there was a disparity between the material representations in a direct mail piece and the telemarketing script being used in inbound calls in response to that solicitation.

EFSC requested, in connection with the proposal to broaden the direct mail provision to include solicitations by email and fax, that the Commission explicitly state that "a telemarketer's electronic disclosure of the material information satisfies" the telemarketer's obligation under the Rule.[996] EFSC argued that the E-SIGN Act makes such electronic disclosures permissible, and that the Commission should explicitly state that such is the case.[997] As noted above, in the response to DMA's suggestion that it should be permissible to make the required disclosures in the email or fax *or* in the subsequent telemarketing call, the Commission believes that to avail itself of the direct mail exemption, the seller must include the required disclosures in the direct mail piece itself, for to make these disclosures outside that context would defeat the consumer protection purpose of that requirement.[998] Thus, for the same reason, the Commission believes that in the case of any direct mail solicitation conveyed by email or fax, the required disclosures would have to be included in the email or fax itself in order for any subsequent telemarketing call to benefit from the § 310.6(b)(6) exemption.

Finally, NFC requested that the Commission clarify whether the direct mail exemption applies to franchisors.[999] The Commission believes that § 310.6(b)(2) makes clear that sales of franchises subject to the Commission's Franchise Rule are exempt from the TSR. The sale of business opportunities not covered by the Franchise Rule, however, is subject to regulation by the Rule. Section 310.6(b)(6) of the amended Rule expressly states that a seller of "business opportunities other than business arrangements covered by the Franchise Rule" would not be able to avail itself of the direct mail exemption, and thus would be required to comply with the Rule's provisions. Therefore a business opportunity seller, if not eligible for exemption pursuant to § 310.6(b)(2), would be ineligible for the direct mail exemption because of the specific exception for the sale of such services under § 310.6(b)(6).

§ 310.6(b)(7) — Business-to-business telemarketing

Section 310.6(g) of the original Rule exempts from the Rule's requirements telemarketing calls to businesses, except calls to induce the sale of nondurable office or cleaning supplies. Based on the Commission's law enforcement experience, the Commission proposed in the NPRM to add two more categories to the list of exceptions to the exemption for calls to businesses: the sale of Internet or Web services, and charitable solicitations.[1000] The Commission has determined, however, based upon comments received in response to the NPRM, not to include in the amended Rule the exception of the sale of Internet or Web services and charitable solicitations from the business-to-business exemption. The amended Rule retains unchanged the wording in the original Rule, except to add language clarifying that the Commission's national "do-not-call" registry provisions do not apply to the telemarketing of nondurable office or cleaning supplies to businesses. The provision is also renumbered, and can be found at § 310.6(b)(7) of the amended Rule.

Consumer groups and state law enforcement officials argued that the Rule should not contain any exemption for business-to-business telemarketing, but if the Commission were to retain the exemption, they supported narrowing the exemption as much as possible so that sellers and telemarketers of those products or services that have particularly been subject to abuse would not benefit from the exemption.[1001] Thus, these commenters generally supported the Commission's proposal to "carve out" the telemarketing of Internet and Web services from the business exemption, citing extensive law enforcement efforts to combat the proliferation of fraudulent telemarketing of website design, hosting, and maintenance services to small businesses.[1002]

On the other hand, industry commenters uniformly opposed the "carve out" of Internet and Web services from the business-to-business exemption.[1003] These commenters argued that the proposed definitions of these services were overly broad and that there was insufficient record evidence to support regulation of all Internet and Web services.[1004] They noted that federal and state law enforcement efforts had focused on website design, development, hosting, and maintenance services, but that the record does not reveal a pattern of fraud in the sale of Internet access services, including wireless Internet access services.[1005] Industry commenters argued that if the Commission persisted in requiring that the telemarketing of Internet and Web services comply with the TSR, the effect would be to chill innovation and development in a nascent industry that is rapidly changing.[1006] They also argued that such an action would be anticompetitive because it would subject those sellers and telemarketers who are within the FTC's jurisdiction to the TSR's requirements, while exempting competitors who happen to be common carriers.[1007] Furthermore, these commenters stated that although the Commission's goal is to protect small business from fraud in the sale of Internet and Web services, the Commission's proposal would actually

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disclosure to that effect in the direct mail solicitation should provide the consumer with sufficient notice that the price may fluctuate or may not be available after a particular date.

[996] EFSC-NPRM at 12.

[997] *Id.*

[998] The Commission believes that for purposes of § 310.6(b)(6), it is critical that telemarketing calls in response to direct mail solicitations be exempt only on the condition that the direct mail piece contains the requisite disclosures. The requirement that these disclosures be displayed in the direct mail piece itself ensures that these disclosures are proximate in time and location to the direct mail solicitation, which makes it more likely that consumers will be made aware of certain material information that is useful or necessary to evaluate the sales transaction proposed in the solicitation before responding to it. The Commission notes that this outcome is consistent with § 101(f) of the E-SIGN Act, which states that, "Nothing in this title affects the proximity required by any statute, regulation, or other rule of law with respect to any warning, notice, *disclosure*, or other record required to be posted, *displayed*, or publicly affixed." (emphasis added).

[999] NFC-NPRM at 4-5.

[1000] *See* NPRM discussion regarding proposed § 310.6(g), 67 FR at 4531-32.

[1001] *See, e.g.*, NAAG-NPRM at 60; NCL-NPRM at 11.

[1002] NAAG-NPRM at 60; NCL-NPRM at 11.

[1003] *See, e.g.*, Comcast-NPRM at 5; Cox-NPRM at 30-32; ICC-NPRM at 1-2; Nextel-NPRM at 23, 24; Reed-Elsevier-NPRM at 5; SBC-NPRM at 2, 13; SIIA-NPRM at 1-2; YPIMA-NPRM at 5. *See also* June 2002 Tr. III at 210-20, 222-23, 226.

[1004] *See, e.g.*, Nextel-NPRM at 23; SBC-NPRM at 3; SIIA-NPRM at 1-2. June 2002 Tr. III at 210-20, 222-23, 226.

[1005] *See, e.g.*, Nextel-NPRM at 23; SIIA-NPRM at 1-2. *See also* June 2002 Tr. III at 213-14, 217-18, 224.

[1006] Nextel-NPRM at 24; Reed-Elsevier-NPRM at 7; SBC-NPRM at 14; SIIA-NPRM at 1-2. *See also* June 2002 Tr. III at 210-24.

[1007] *See, e.g.*, DMA-NPRM at 9. *See also* June 2002 Tr. III at 213-14, 217-18, 224.

harm those small businesses because it would increase their costs and hamper their use of Web-based advertising such as online Yellow Pages.[1008] Industry commenters argued that current law enforcement tools, coupled with active industry self-regulation, are sufficient to challenge deceptive and fraudulent telemarketing of Internet or Web services.[1009]

The Commission finds persuasive industry's arguments that the proposal to make the business-to-business exemption unavailable to telemarketing of Internet and Web services is overbroad and likely to produce perverse results for the small businesses it was intended to protect. The Commission believes that, although coverage by the Rule would provide benefits to law enforcement efforts, current federal and state consumer protection statutes have been effective tools in challenging fraudulent practices in this industry.[1010] Furthermore, the Commission believes that it is preferable to move cautiously so as not to chill innovation in the development of cost-efficient methods for small businesses to join in the Internet marketing revolution. Therefore, the Commission has removed the proposed exception for Internet and Web services sales to businesses by telephone, which will continue to be exempt from the Rule's coverage. The Commission will, however, continue to monitor closely the practices in the telemarketing of Internet and Web services, and may revisit this issue in subsequent Rule Reviews should circumstances warrant.

Consumer groups and state law enforcement officials also supported the Commission's proposal to make the business-to-business exemption unavailable to entities soliciting charitable contributions, citing the extensive problems with telefunders soliciting on behalf of public safety organizations (so-called "badge fraud" operators) who often target small businesses.[1011] DMA-NonProfit and Not-For-Profit Coalition were among the few non-profit organizations that addressed the business-to-business exemption,[1012] arguing that the legislative history of the USA PATRIOT Act does not support extending the Rule's coverage to charitable solicitations directed to businesses, particularly in the absence of substantial evidence of abuse.[1013] As discussed above, the Commission already has determined to exempt telemarketing on behalf of charitable organizations from the national "do-not-call" registry, thus addressing the principal concern of the non-profit organizations.

The Commission notes that "badge fraud" telemarketing directed at businesses has been a particularly pernicious practice that has been attacked on a regular basis by both the Commission and state regulators.[1014] Commenters have made it clear, however, that many legitimate non-profit organizations rely heavily on business contributions as a major portion of their donor base.[1015] The Commission seeks to protect businesses—particularly small businesses—from fraudulent fundraising, without burdening legitimate non-profit organizations with the cost of complying with unnecessary regulations. As some commenters pointed out, many legitimate non-profit organizations operate on a very narrow margin, and such costs may have a very significant impact on the viability of an organization's fundraising efforts or even the very viability of the organization itself.[1016]

The Commission also notes that law enforcement actions attacking badge fraud under Section 5 and analogous state laws have been effective on a case-by-case basis.[1017] Furthermore, several of the entities that were targets of these law enforcement efforts also telemarketed to individuals, which would bring them within the purview of the amended Rule with respect to those transactions.[1018] In addition, the Commission recognizes that there are many legitimate public safety organizations that solicit funds for their charitable purposes in a non-deceptive manner. Therefore, the Commission believes that the more prudent course is to continue to rely upon its authority under Section 5 and the states' authority under their analogous laws to address fraudulent fundraising, and, at this time, to leave beyond the scope of the TSR legitimate charitable fundraising directed to businesses. This issue could be revisited in subsequent Rule Reviews should evidence develop that the Commission has not struck the correct balance in making this determination.

Other recommendations by commenters

Some commenters recommended that the Rule be amended to include more exemptions. For example, several commenters advocated that their industry be exempt from compliance with the national "do-not-call" registry and/or from all of the Rule's provisions.[1019] The Commission notes that many of those who requested

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[1008] *See, e.g.*, SBC-NPRM at 15; SIIA-NPRM at 2. *See also* June 2002 Tr. III at 213-14, 217-18, 224.

[1009] *See, e.g.*, Reed-Elsevier-NPRM at 4-5 (noting, for example, that industry has adopted the Best Billing Practices guidelines set forth by the FCC to address unauthorized billing or "cramming" problems); SBC-NPRM at 14. *See also* June 2002 Tr. III at 213-14, 217-18, 224.

[1010] *See E-Commerce Fraud Targeted at Small Business: Hearings on Web Site Cramming Before the Senate Committee on Small Business* (Oct. 25, 1999) (statement of Jodie Bernstein, Director of the Bureau of Consumer Protection, FTC); FTC Press Release: "FTC Cracks Down on Small Business Scams: Internet Cramming is Costing Companies Millions," June 17, 1999, http://www.ftc.gov/opa/1999/small9.htm. *See also, e.g., FTC v. Shared Network Servs., LLC.*, No. S-99-1087-WBS JFM (E.D. Cal. filed June 12, 2000); *FTC v. U.S. Republic Communications, Inc.*, No. H-99-3657 (S.D. Tex. filed Oct. 21, 1999) (Stipulated Final Order for Permanent Injunction and Other Equitable Relief entered Oct. 25, 1999); *FTC v. WebViper LLC*, No. 99-T-589-N, (M.D. Ala. June 9, 1999); *FTC v. Wazzu Corp.*, No. SA CV-99-762 AHS (ANx) (C.D. Cal. filed June 7, 1999).

[1011] *See, e.g.*, NAAG-NPRM at 60-61; NCL-NPRM at 11. *See also* June 2002 Tr. III at 224-25.

[1012] Most non-profit organizations commented on the application of the national "do-not-call" registry to their solicitation efforts, not on whether they should be otherwise excepted from the business-to-business exemption. *See, e.g.*, Childhood Leukemia-NPRM at 1; Community Safety-NPRM at 1-2; California FFA-NPRM at 1-2; FPIR-NPRM at 1-2; HRC-NPRM at 1-2; OSU-NPRM at 1; SO-AZ-NPRM at 1-2.

[1013] *See* DMA-NonProfit-NPRM at 14-15; Not-for-Profit Coalition-NPRM at 46-48. There is scant legislative history on the USA PATRIOT Act with regard to this issue.

[1014] *See, e.g., FTC. v. Southwest Mktg. Concepts, Inc.*, No. H-97-1070 (S.D. Tex. filed 1999) (Stipulated Final Judgment and Order for Permanent Injunction and Monetary Relief entered May 28, 1999); *FTC v. Saja*, No. CIV-97-0666 PHX SMM (D. Ariz. filed Apr. 1997); *FTC v. Dean Thomas Corp., Inc.*, No. 1:97CV0129 (N.D. Ind. 1997) (Stipulated Final Judgment entered Jan. 19, 1998); *FTC v. Century Corp.*, No. 1:97CV0130 (N.D. Ind. filed Apr. 7, 1998) (Stipulated Final Judgment and Order entered April 8, 1998); *FTC v. Image Sales & Consultants, Inc.*, No. 1:97CV0131, (N.D. Ind.) (Stipulated Final Judgment and Order entered June 9, 1998); *FTC v. Omni Adver., Inc.*, No. 1:98CV0301 (N.D. Ind. filed Oct. 9, 1998); *FTC v. T.E.M.M. Mktg., Inc.*, No. 1:98CV0300, (N.D. Ind. filed Oct. 5, 1998); *FTC v. Tristate Adver. Unlimited, Inc.*, No. 1:98CV0302 (N.D. Ind. filed Oct 5, 1998); *FTC v. Gold*, No. CV 99-99-2895-WDK (AIJx) (C.D. Calif. filed 1998); *FTC v. Eight Point Communications, Inc.*, No. 98-74855 (E.D. Mich. filed Nov. 10, 1998). *See also* Pa. Stat. Ann. tit. 10 § 162.15(A)(11) (West 2000).

[1015] *See, e.g.*, DMA-NonProfit-NPRM *passim*; Not-for-Profit Coalition-NPRM *passim*. *See also* June 2002 Tr. III at 110, 205-10, 220-21.

[1016] *Id.*

[1017] *See* note 1015 above.

[1018] *See, e.g., Saja*, No. CIV-97-0666 PHX SMM; and *Eight Point Communications*, No. 98-74855.

[1019] *See, e.g.*, Tribune-NPRM at 2-3 (exempt newspapers because of their "unique position and mission in our society"); Herald Bulletin-NPRM at 1 (exempt newspapers); CNHI-NPRM at 1-2 (exempt newspapers); AFSA-NPRM at 10 (exempt debt collection calls); ACA-NPRM at 2-4 (expressly exempt debt collection activities from the Rule); DBA-NPRM at 5 (expressly exempt debt collectors from the "do-not-call" registry provision); AFSA-NPRM at 14 (exempt financial services companies with an established business relationship); CASE-NPRM at 3 (exempt educational institutions from "do-not-call" registry provision); ANA-NPRM at 7 (explicitly exempt market researchers); Green Mountain-NPRM *passim* (exempt energy marketers).

exemptions already are exempt from the Rule and, therefore, there is no reason to expressly restate that exemption in the Rule.[1020] The Commission also declines to add additional exemptions on behalf of specific industry segments, with the exception of charitable organizations. As noted above in the discussion on exempting charities from compliance with the national "do-not-call" registry provision, the Commission believes that charitable solicitations present unique circumstances that make an exemption necessary and appropriate. The Commission declines, however, to introduce further limitations to the applicability of the "do-not-call" registry because it believes such action would be inconsistent with the privacy mandate of the Telemarketing Act and would likely result in consumer confusion and frustration.

G. Section 310.7 — Actions by States and Private Persons.

Section 310.7 in the original and proposed Rules sets forth the procedures by which the states and private persons may bring actions under the Rule, as is provided for in the Telemarketing Act.[1021] In the NPRM, the Commission noted that it received no comments directly on this section, but that commenters were generally supportive of the Rule's enforcement scheme allowing the Commission, the states, and private parties to bring actions under the TSR.[1022] The Commission noted that the record at that time contained evidence of two sources of frustration regarding enforcement of the Rule: 1) the $50,000 monetary threshold required for a private party to bring suit under the Rule; and 2) the difficulty in identifying Rule violators, particularly those who violate the abusive practices section of the Rule.[1023] The Commission noted then that the amount in controversy requirement was included in the Telemarketing Act, and it is therefore up to Congress to make any change to this amount.[1024] With regard to the difficulty in identifying violators, the Commission expressed its belief that two proposed provisions—the prohibition on blocking Caller ID information, and the prohibition on denying or interfering with a consumer's right to be placed on a "do-not-call" list—would be beneficial in addressing these concerns.[1025]

The Commission received no comments on this section in response to the NPRM, and thus no modifications are included in the amended Rule.[1026]

H. Section 310.8 — Fees.

This section of the Rule, now allocated for the new provision on fees, is reserved. When completed, the fee section will be included here.

I. Section 310.9 — Severability.

This provision of the Rule is retained in the amended Rule, but renumbered as § 310.9. Section 310.8, formerly the section number for the Severability provision, now contains the provision regarding fees for the national "do-not-call" registry.

J. Rulemaking Review Requirement.

The original Rule required that a Rule Review proceeding be commenced within five years of the effective date of the original Rule. The amended Rule does not contain an equivalent provision. The Commission has a policy of reviewing all of its Rules and guides on a periodic basis to ensure that they continue to meet their goals and provide the protections that were intended when they were promulgated. This periodic review also provides an opportunity to examine the economic costs and benefits of the particular Rule or guide under review. The Commission believes that this periodic review should be sufficient for the amended Rule, and that it is unnecessary to include a specific provision regarding review within the text of the amended Rule.

K. Effective Date.

The amended Rule is effective on March 31, 2003, and full compliance with all provisions of the amended Rule—except § 310.4(a)(7), the caller identification transmission provision, and § 310.4(b)(1)(iii)(B), the national "do-not-call" registry provision—is required by that date. The Commission believes that making the amended Rule effective on March 31, 2003 will provide more than sufficient time for sellers and telemarketers to change their practices to conform to the amended Rule. The publication of the proposed Rule in January 2002 provided industry members with ample notice of the proposed changes in the Rule, and making the amended Rule effective on March 31, 2003 will give industry members sufficient additional time to familiarize themselves with the requirements of the amended Rule, and to ensure that their operations are in full compliance with all except two provisions of the amended Rule.

The Commission has determined that additional time may be required to allow sellers and telemarketers to come into full compliance with the caller identification transmission requirement. Therefore, full compliance with § 310.4(a)(7) is required by January 29, 2004. The Commission will announce at a future time the date by which full compliance with § 310.4(b)(1)(iii)(B), the "do-not-call" registry provision, will be required. The Commission anticipates that full compliance with the "do-not-call" provision will be required approximately seven months from the date a contract is awarded to create the national registry.

IV. Paperwork Reduction Act

In light of both changes to the Rule following the NPRM and public comments received on Commission staff's prior PRA burden analysis for the NPRM, staff will submit for OMB review and clearance a supporting statement detailing its revised burden analysis.

V. Regulatory Flexibility Act

A. Need for and Objectives of the Rule.

The amendments to the TSR announced here are the result of a review of the existing Rule as required by the Telemarketing Act.[1027] As discussed above in this SBP, and in the NPRM, the objective of the amendments is to fulfill the mandate of the Telemarketing Act to ensure that consumers are protected from

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[1020] For example, debt collection and market research activities are not covered by the Rule because they are not "telemarketing"—*i.e.*, they are not calls made "to induce the purchase of goods or services." Of course, if the debt collection or market research call also included an upsell, the upsell portion of the call would be subject to the Rule as long as it met the criteria for "telemarketing" and was not otherwise exempt from the Rule.

[1021] 15 U.S.C. 6103 (states) and 6104 (private persons).

[1022] 67 FR at 4532-33.

[1023] 67 FR at 4533.

[1024] *Id.*

[1025] *Id.*

[1026] Some commenters did advocate for meaningful Rule enforcement, including random monitoring and publicity regarding enforcement. *See* AARP-NPRM at 10 (meaningful enforcement and publicity); EPIC-NPRM at 27 (suggesting random monitoring and also recommending registration and bonding requirements, which the Commission declines to adopt noting the states already have such requirements in many instances, and that further duplication of that effort would not enhance the Commission's law enforcement efforts). The Commission believes that the enforcement record for the TSR to date, with over 139 cases brought and $200 million in judgments, shows that the Commission and its state law enforcement partners have made enforcement of the Rule a top priority. Moreover, enforcement actions under the Rule often have been conducted as part of a "sweep" of cases, often accompanied by a media advisory and public education campaign, which serves as a means of raising public awareness of certain kinds of telemarketing fraud. In regard to the suggestion that call centers be randomly monitored for compliance with the Rule, the Commission notes that it has used, and will continue to use, a variety of law enforcement techniques to ensure compliance with the Rule.

[1027] 15 U.S.C. 6108.

"deceptive telemarketing acts or practices and other abusive telemarketing acts or practices."[1028] Other amendments, relating to the solicitation of charitable contributions through telemarketing, are made pursuant to the USA PATRIOT Act.[1029]

B. Summary of the Significant Issues.

The public comments on the proposed Rule are discussed above throughout the SBP, as are the changes that have been made in response to comments indicating that the costs of some of the proposed amendments would be excessive. Many of the commenters did not focus specifically on the costs faced by small businesses relative to those that would be borne by other firms. Rather, they argued that the costs to be borne by all firms—including small firms—would be excessive. In response to these comments, the Commission has made a number of modifications in the amended Rule. These changes should significantly reduce the burden on all businesses, including small businesses.

Calls permitted where there is an existing business relationship.

One proposal that commenters contended would impose particularly great costs on small businesses was the proposed national "do-not-call" registry. Commenters were particularly concerned with the requirement that businesses could only call consumers who had put their telephone numbers on the "do-not-call" registry if they had obtained the consumer's express verifiable authorization to make calls to that consumer. For example, Community Bankers expressed the concern that its members would be unable to use outside telemarketers to contact their existing customers. This would, they suggested, force community banks to do their own telemarketing, at higher cost, because calls made by third party telemarketing bureaus would be covered by FTC regulations.[1030] Another commenter noted that small firms may not have the recording equipment that would be needed to establish that they had obtained the consumer's express verifiable authorization to accept calls from that seller.[1031]

Furthermore, many small businesses may not keep their customer records in a form that would permit them to economically compare the telephone numbers of their customers with those on the national "do-not-call" registry and avoid calling those numbers that appear on the registry.[1032] According to NRF, converting their customer lists to a form that can be feasibly compared to the numbers on the national "do-not-call" registry could cost small businesses up to $1.00 per name. Furthermore, even after the records are converted, the NRF reports that the cost of eliminating names that appear on the "do-not-call" registry would be higher for small firms than for larger ones. Whereas, it might cost $0.01 per name to purge a large list, the cost for a small list is put at $0.10 to $0.15 per name.[1033]

As discussed above in the SBP, the Commission has decided to alter the "do-not-call" provision proposed in the NPRM. One of the changes is to create an exemption that will allow a seller and its telemarketer to call consumers with whom the seller has an established business relationship, even if the consumer has placed his or her telephone number on the "do-not-call" registry.[1034] The effect of this change will be that businesses—and in particular small businesses—will not need to check their lists of existing customers against the national "do-not-call" registry. There will also be no need to obtain express verifiable permission before calling someone with whom the business has an established business relationship. Thus, most, if not all, of the costs described above will not be faced by small businesses.[1035]

Quarterly access to "do-not-call" registry.

In addition, as discussed above, the Commission has decided not to require sellers and telemarketers to scrub their calling lists against the national "do-not-call" registry on a monthly basis. Instead, such updating will only be required on a quarterly basis.[1036] Commenters argued that this change was necessary to reasonably limit the costs imposed by the "do-not-call" registry.[1037] It should significantly reduce the expense associated with complying with the "do-not-call" requirements since firms will not need to scrub their lists twelve times per year at an expense that has been estimated at around $100 per seller or telemarketer each time its lists must be scrubbed.[1038]

Harmonization with state "do-not-call" regulations.

Many industry representatives argued that in order to avoid imposing an undue burden on business, particularly small businesses, it was essential that the proposed national "do-not-call" registry not simply be added on to the existing set of state "do-not-call" lists. Rather, in the view of industry, the national registry should incorporate existing and any future state lists and all of the lists should operate under a single, unified set of regulations.[1039] While many industry representatives argued that the way to achieve the necessary level of coordination between the state and federal lists was for the Commission to preempt inconsistent state regulations, the Commission has declined to do so at this time. Instead, as discussed above in the SBP, the Commission is engaged in a process of active consultation with the states that have enacted "do-not-call" statutes and with the FCC in order to develop procedures that will result in one harmonized "do-not-call" registry.[1040] Once fully effectuated, this harmonization should substantially reduce the burden of having to scrub against a large number of separate lists.

For-profit fundraisers exempted from national "do-not-call" registry compliance.

The burden placed on small charities by the "do-not-call" requirements has also been significantly reduced. As discussed above, the Commission has determined that for-profit firms that make fundraising calls on behalf of

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[1028] 15 U.S.C. 6102.

[1029] Pub. L. 107-56 (Oct. 26, 2001).

[1030] Community Bankers-User Fee at 3.

[1031] AmEx-NPRM at 2. One small company reported that in order to comply with Oregon's "do-not-call" requirements, they had been forced to spend $12,500 to get a computer program written and have hired two additional employees at a cost of approximately $800 per week. (Celebrity Prime Foods-User Fee at 1).

[1032] *See, e.g.*, Ameriquest-NPRM at 9.

[1033] NRF-NPRM at 4-5. ERA placed the cost of comparing a company's calling lists against the "do-not-call" registry at $3 to $5 per 1,000 names, while CCC suggested that the cost would be in the neighborhood of $50 per hour and that it would take two hours for the average firm to compare their calling lists to the national "do-not-call" registry and delete from the company's lists any numbers that appear on the "do-not-call" registry. ERA-NPRM at 36; Miller Study at 11-12.

[1034] *See* discussion of § 310.4(b)(1)(iii) above.

[1035] While small businesses that wish to telemarket their products to consumers who are not existing customers will still have to check their calling lists against the "do-not-call" registry, they will not necessarily have to perform this work themselves. It is the Commission's understanding that small businesses often find it more economical to employ telemarketing bureaus who make such calls on the behalf of these businesses. A seller that employs a telemarketing bureau can arrange to have the telemarketer compare the names and/or telephone numbers on its lists against the "do-not-call" registry.

[1036] Amended Rule § 310.4(b)(3).

[1037] Household Bank-User Fee at 2.

[1038] Miller Study at 11-12.

[1039] *See, e.g.*, Household Bank-User Fee at 2-3; ARDA-User Fee at 1; Ameriquest-User Fee at 9-10; ICIA-User Fee at 1; NEMA-User Fee at 4.

[1040] This approach is consistent with the recommendation of the Small Business Administration ("SBA"), Office of Advocacy. *See* SBA-User Fee at 5-6.

charitable organizations will not be required to ensure that they are not making calls to consumers who have placed their telephone numbers on the national "do-not-call" registry.[1041] Rather, they will only have to honor individual consumer requests not to be called by the particular charity.[1042]

This change is likely to be of significant benefit to smaller charitable organizations since these organizations often find it more efficient to employ for-profit firms to make their calls rather than developing and maintaining the capacity to make such calls using their own staff.[1043] For example, APTS reported that 75 percent of their members chose to hire other firms to manage their telemarketing operations. They further reported that the average annual cost of outsourcing these operations was $182,000, whereas the estimated cost of the stations doing the same amount of telemarketing with its own personnel was $224,000, an increase of almost 25 percent.[1044] Similarly, Red Cross commented that it is more economical to hire a third party to operate short term blood-donor recruitment programs than to hire and maintain a full-time staff to perform such functions. According to Red Cross "[s]uch trained third party professionals offer expertise and operational efficiencies that cannot be rapidly duplicated by Red Cross to respond to the volatile demand for blood."[1045]

Written confirmation as express verifiable authorization.

Another change that should reduce the burden on small firms involves the procedures a firm may use to obtain the consumer's express verifiable authorization to use an account other than the consumer's credit card or debit card to pay for a purchase. In the NPRM, the Commission proposed to eliminate a procedure by which a firm was permitted to obtain authorization by sending the consumer written confirmation prior to the time the account was charged. In part this proposal was based on the impression that very few firms used this method of obtaining express verifiable authorization.[1046] However, commenters indicated that this was not the case and that many smaller firms—particularly newspapers—used this method.[1047] In response, the Commission has decided to retain the written confirmation method of obtaining express verifiable authorization, with certain modifications, including an exception that makes it unavailable in cases where the transaction involves a "free-to-pay conversion" feature and preacquired account information.[1048]

No ban on preacquired account information.

Another proposal in the NPRM that attracted considerable business opposition was the prohibition on the disclosure or receipt of any consumer's billing information. Commenters argued that such a prohibition on the use of preacquired account information would increase the costs of telemarketing. While these costs were not argued to be specific to small businesses, the costs faced by small businesses would be increased along with those of larger ones. According to CCC, requiring the consumer to provide an account number would add between 60 and 90 seconds to the length of a telemarketing call in those instances where the telemarketer already has the consumer's account information.[1049] MPA estimated the cost of requiring consumers to repeat their account information in the case of an upsell to be between 35 and 60 seconds.[1050] In addition, MPA suggested that requiring consumers to read their account numbers in all instances would lead some consumers to decide not to purchase the item being offered. The effect could be, they suggested, a reduction of five to 30 percent in consumer purchases in response to particular offers.[1051] Finally, a ban on the use of preacquired account information could increase the costs of engaging in telemarketing because of errors in the account information obtained from the consumer—either because the consumer misreads the account number or because the telemarketer makes a mistake in taking down the number.[1052]

As discussed in the SBP above, the Commission has decided not to prohibit the acquisition and use of preacquired account information. Instead, the Commission is limiting the prohibition to unencrypted account information and is requiring that telemarketers and sellers obtain the consumer's express informed consent before any purchase is charged to a consumer's account using preacquired account information. Except for transactions that involve a "free-to-pay conversion" feature combined with preacquired account information, the only steps a seller or telemarketer is required to undertake to obtain this consent are to provide the consumer with sufficient information for the consumer to understand the account that will be charged and to obtain the consumer's express agreement to have the purchase charged to that account. Since both of these are practices that an honest business would follow even in the absence of a rule provision, it is clear that the costs businesses argued would follow from the original proposal have been eliminated.

Relaxed regulation of abandoned calls.

Another proposal contained in the NPRM that businesses argued would significantly increase the costs of telemarketing was the proposal to prohibit telemarketers from "abandoning" telemarketing calls—that is, to prohibit making a call unless a telemarketing sales representative is available to talk to the consumer if the consumer answers. Critics of this proposal argued that it would effectively ban the use of predictive dialers.[1053] This would, they argued, significantly reduce the amount of time the individual telemarketing sales person spends talking to consumers. According to CCC, a telemarketing sales person can handle 13 to 14 calls per hour using a predictive dialer set to abandon five percent of calls. Without a predictive dialer, the same agent can only handle around eight calls per hour—a reduction of about 40 percent.[1054] Another source suggested that a telemarketer using a predictive dialer could make 20 calls per hour, whereas only five calls per hour would be possible without the dialer.[1055]

[1041] Amended Rule § 310.6(a).

[1042] Amended Rule § 310.4(b)(1)(iii).

[1043] Hudson Bay-Goodman-NPRM at 2. Hudson Bay noted that "[i]nstead of renting space, buying computers and phone equipment, hiring supervisors and so on, HBC's clients find it cheaper to contact their members and donors by sharing these resources. Even after paying HBC's fee, which ranges from 4 to 7%, it is much cheaper for these non-profits to centralize these services. The savings achieved by phone company volume discounts alone pays more than half of HBC's fee."

[1044] APTS-NPRM at 3-4.

[1045] Red Cross-NPRM at 3-4.

[1046] 67 FR at 4508.

[1047] *See, e.g.*, June 2002 Tr. III at 32-33 (NAA).

[1048] *See* amended Rule § 310.3(a)(3)(iii), and discussion of that provision above.

[1049] Miller Study at 17. According to the Miller Study, the total cost of this prohibition would have been approximately $1.5 billion. However, this estimate appears to be based on the incorrect assumption that the prohibition on the use of preacquired account information would add 60 to 90 seconds to every sale made in an outbound telemarketing call. In fact, the only sales that would be affected are those where the seller would otherwise obtain payment using preacquired account information.

[1050] MPA-NPRM at 24.

[1051] *Id.* at 19.

[1052] ABA-NPRM at 8; Assurant-NPRM at 3-4; BofA-NPRM at 7; Cendant-NPRM at 7.

[1053] June 2002 Tr. I at 211 (CCC); PMA-NPRM at 30; PCIC-NPRM at 2.

[1054] Miller Study at 15.

[1055] Marketlink-NPRM at 3. This estimate, and perhaps the estimate of CCC, may overestimate the

As discussed in the SBP, the Commission has determined to create a safe harbor to the prohibition on abandoned calls. This safe harbor will allow firms to avoid being cited for violation of this provision of the Rule provided they play a recording that identifies the seller and provides the seller's phone number when a sales representative is not available to handle a call and provided that this occurs in three percent or less of calls that are answered by a consumer. This change should substantially reduce the burden that would have been imposed by a total prohibition on abandoned calls.[1056]

Regulation of upselling.

Finally, the Commission has eliminated an unintended burden that would have resulted from treating any upsell as a separate outbound telemarketing call. As several people have noted, this would have required telemarketers who receive inbound calls to comply with the "do-not-call" provisions of the Rule as well as the calling hours provision before offering any upsell product.[1057] Such a requirement would have imposed substantial burdens on sellers who receive inbound telemarketing calls. However, it was never the intention of the Commission to require compliance with either the "do-not-call" provisions or the calling hour provisions in this context,[1058] and this requirement has been eliminated in the amended Rule which provides a separate definition of an upsell and clarifies that these provisions do not apply to an upsell.

C. Description of Small Entities to Which the Rule Will Apply.

This Rule will primarily impact firms that make telephone calls to consumers in an attempt to sell their products or services or entities that make calls to solicit charitable contributions. That is, the Rule will primarily impact entities that make outbound calls to consumers. Also affected will be firms that provide such services for others on a contract basis. It has been estimated that outbound calls to consumers resulted in total sales of $274.2 billion in 2001, and that the telemarketing industry that markets to consumers employs 4.1 million workers.[1059]

The number of firms making such outbound telemarketing calls, and the number that qualify as small entities, cannot be reliably estimated. According to the Office of Advocacy of the SBA, United States Census data shows that there are 2,305 firms that are identified as telemarketing bureaus. Of these, 1,279 are classified as being small businesses because they have sales of less than $5 million per year.[1060] These are firms that provide telemarketing services for other firms. However, not all of these firms will be impacted by the Rule to the same extent. According to NAICS, firms that are classified as telemarketing bureaus include firms that provide "telemarketing services on a contract or fee basis for others, such as (1) promoting clients' products or services by telephone, (2) taking orders for clients by telephone, and (3) soliciting contributions or providing information for clients by telephone."[1061] Firms that take orders for clients by telephone, as well as some firms that provide information for their clients by telephone, are going to be responding to calls made by consumers and not making calls themselves. Unless such firms are engaging in upselling of products or services that involve a "free-to-pay conversion" feature, they will not be impacted by the proposed Rule to any significant extent.

In addition to firms that provide telemarketing services for others, the Rule will have an effect on firms that use telemarketing as a way to market their own products. These may include, among others, retailers, manufacturers, and financial service providers.[1062] The number of such firms—and the number of those that are classified as small businesses—cannot be determined because such firms generally think of themselves as producers or sellers of particular products and not as telemarketers. Similarly, in the available statistics, these firms will be classified as producers or sellers of particular products and not as telemarketers.[1063]

D. Description of the Projected Reporting, Recordkeeping, and Other Compliance Requirements of the Rule.

As discussed above in the SBP, the amended Rule alters some collection of information requirements. The effect of those requirements on all businesses is discussed in detail in the PRA section of this Notice. First, the amended Rule requires firms that use preacquired account information in conjunction with a "free-to-pay conversion" feature to tape record all such transactions to show that they have obtained the consumer's express informed consent to charge the consumer's account.[1064] Section 310.5(a)(5) requires that the seller or telemarketer maintain copies of such audio recordings for 24 months. Similarly, § 310.5(a)(5) requires that firms retain for 24 months copies of any written express agreements received from consumers permitting the company to call the consumer even though the consumer's phone number is included on the "do-not-call" registry.[1065] Finally, the amended Rule extends the recordkeeping requirements of § 310.5 to include charitable solicitations in a non-sales context, as required by the USA PATRIOT Act. All other amendments to the Rule relate to the Rule's disclosures or other compliance requirements and are necessary to prevent telemarketing fraud and abuse.

The classes of small entities affected by the amendments include telemarketers or sellers engaged in acts or practices covered by the Rule. The types of professional skills required to comply with the Rule's recordkeeping, disclosure, or other requirements would include attorneys or other skilled labor needed to ensure compliance.

E. Steps Taken to Minimize Impact on Small Entities.

As discussed above, the Telemarketing Act directs the Commission to enact "rules prohibiting deceptive telemarketing acts or practices and other abusive telemarketing acts or

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efficiency losses from prohibiting abandoned calls in that the five calls per hour figure is based on the assumption that calls are dialed "manually." This suggests that the estimate may be based on an operation in which the individual sales representative actually dials the number to be called. A requirement not to abandon calls would not require that sales representatives dial their own calls. It would still be possible, if it were cost efficient, to use computer systems to dial the calls, and this could generate some efficiencies relative to manual dialing. What would not be permitted is to dial a call prior to the time a sales representative becomes available or to dial more than one call at a time for each available sales representative.

[1056] As CCC testified at the workshop, "[W]hat we found out is that ... below 5 percent or 4 percent or 3 percent [rate of abandonment], you're really beginning to raise costs...." June 2002 Tr. I at 212 (CCC).

[1057] *See, e.g.*, June 2002 Tr. I at 210 (CCC); June 2002 Tr. II at 214-15 (DMA).

[1058] June 2002 Tr. I at 210-11 (FTC); June 2002 Tr. II at 215 (FTC).

[1059] DMA-NPRM at 5. ATA estimates employment in business-to-consumer telemarketing at 5.4 million. ATA-NPRM at 3.

[1060] SBA-User Fee at 3. The size of telemarketing bureaus that qualify as being small businesses was increased to $6 million as of October 2, 2002. *See* SBA, Small Business Size Standards Matched to North American Industry Classification System (NAICS), http://www.sba.gov/size/sizetable2002.html.

[1061] U.S. Census Bureau, 1997 NAICS Definitions, 561 Administrative and Support Services, http://www.census.gov/pub/epcd/naics/NDEF561.HTM.

[1062] ATA-User Fee at 2.

[1063] Some commenters suggested that small firms are more likely to rely on telemarketing to sell their products because they cannot afford other, more expensive forms of advertising. *See, e.g.*, Ameriquest-User Fee at 6; ATA-NPRM at 4.

[1064] *See* § 310.4(a)(6)(i)(C).

[1065] The provision allowing for such consent is at § 310.4(b)(1)(iii)(B)(*i*).

practices."[1066] Each of the amendments in the amended Rule is intended to better protect consumers from deceptive and abusive telemarketing practices. In order to achieve this end, the Commission believes that it is necessary to enact regulations that cover small and large firms equally. Based on the Commission's enforcement experience, it is clear that many of the firms that engage in fraudulent telemarketing activities are small firms. A failure to include such small firms within the requirements of the regulations would, therefore, fail to prohibit deceptive practices by the types of firms that account for a significant share of the problems the Commission encounters.

At the same time, as discussed above both in the SBP and in the "Summary of Significant Issues Raised by the Public Comments in Response to the IRFA," the Commission has sought to minimize as much as possible the burdens imposed on all affected entities, including small businesses. In general, the changes made in response to public comments have further reduced the burdens. The amendments to the disclosure and recordkeeping provisions of the TSR are generally consistent with the business practices that most sellers and telemarketers, regardless of size, would choose to follow, even absent legal requirements.

The Commission has taken care in developing the amendments to the Rule to set performance standards, which establish the objective results that must be achieved by regulated entities, but do not establish a particular technology that must be employed in achieving those objectives. For example, the Commission does not specify the form in which records required by the TSR must be kept. It also allows a seller and a telemarketer making calls on the seller's behalf to allocate between themselves the responsibility for maintaining required records.

VI. National Environmental Policy Act

Under the Commission's Rules of Practice implementing the National Environmental Policy Act of 1969 ("NEPA"),[1067] no "major action significantly affecting the quality of the human environment will be instituted unless an environmental impact statement ('EIS') has been prepared," if such is required.[1068] To determine if such an impact statement is required, the Commission generally prepares an "environmental assessment.'"However, such an environmental assessment is not necessary in every circumstance. For example, in circumstances when the "environmental effects, if any, would appear to be . . . so uncertain that environmental analysis would be based on speculation," no "environmental assessment" is required.[1069] The Commission believes, for the reasons set forth below, that this exception is applicable in the instant case, and that because the environmental effects, if any, of the amended TSR are uncertain and based on speculation, the Commission is not required to prepare an environmental assessment.

The amended TSR would modify the original Rule in several ways. Each of these is outlined above in Section I (F), which summarizes the changes in the amended Rule. However, the only comment that raised the issue of the environmental effects of the Rule did so solely with regard to the national "do-not-call" registry provision. Because the Commission does not believe that any other modification in the amended Rule implicates any impact on the environment, the analysis is confined to this provision.

The "do-not-call" registry provision will establish a centralized means for consumers across the country to notify sellers and telemarketers of their preference not to receive unsolicited outbound telemarketing calls.[1070] As discussed in greater detail above, in the section discussing § 310.4(b)(1)(iii), the "do-not-call" registry provision supplements the original Rule's provision that allows consumers to exercise their "do-not-call" rights on a company-by-company basis. The Commission determined, based on the extensive record evidence from the rulemaking proceeding, that a national "do-not-call" registry is necessary to effectuate the purposes of the Telemarketing Act.[1071]

The comment that addressed the potential environmental impact of the proposed national "do-not-call" registry stated, in relevant part,

> For obvious reasons the FTC's proposed action may drastically reduce the ability to sell goods and services via telemarketing. In addition, and for the reasons stated above [wherein the commenter argues that the national "do-not-call" registry will negatively impact inbound call centers who rely upon a combination of inbound and outbound calling to survive],[1072] consumers' ability to themselves purchase via catalogs may be compromised as well, as "call centers" are forced to close in the face of insufficient "outbound telemarketing work." Either event would force consumers to climb into their cars and return to the mall for their wares, a result that itself would increase gas consumption and cause more air pollution.[1073]

DeHart concluded, based on its belief that the "do-not-call" registry provision would increase the number of consumers driving to shopping at malls as a result of the implementation of the national "do-not-call" registry provision, that the Commission must prepare an EIS or, at minimum, an environmental assessment.[1074]

The underlying premise in the DeHart comment, that a national "do-not-call" registry will have a negative impact on call centers that rely in part on inbound telemarketing and in part on outbound telemarketing for their livelihood, is unsupported in the comment. No evidence, other than a mere allusion to a study that purportedly shows that some firms' cost of providing inbound call center service would increase if their outbound telemarketing load decreased, is provided by DeHart, nor is support for this proposition found in the record as a whole. Therefore, the fundamental assumption on which DeHart's argument is based is one that appears to be mere speculation.

The Commission believes that speculation, and indeed, logic, could as easily lead to the conclusion that a diminution in outbound calling, resulting from consumers' decision to place their telephone numbers on the national "do-not-call" registry, could lead sellers to use other channels of distance marketing to sell their products, including channels that would significantly increase inbound telemarketing, such as direct mail, catalog sales, and Internet sales. This would mean that, even if many consumers utilize the "do-not-call" registry, inbound calling may benefit, not suffer, from such a result. Moreover, DeHart cites no authority for the

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[1066] 15 U.S.C. 6102(a)(1).

[1067] 42 U.S.C. 4321 *et seq.*

[1068] 16 CFR 1.81, 1.82.

[1069] 16 CFR 1.83. *See also National Citizens Comm. for Broad. v. FCC*, 567 F.2d 1095, 1098 n.3 (D.C. Cir. 1977).

[1070] *See* discussion of § 310.4(b)(1)(iii) above.

[1071] 15 U.S.C. 6102(a)(3)(A) (mandating that the Commission include in its Rule "a requirement that telemarketers may not undertake a pattern of unsolicited telephone calls which the reasonable consumer would consider coercive or abusive of such consumer's right to privacy").

[1072] DeHart-NPRM at 2-3 (although the commenter alludes to a study that corroborates its assertion on this point, no title or citation is provided for such study).

[1073] DeHart-NPRM at 3.

[1074] *Id.* The Commission believes that this allegation would constitute, at most, "indirect effects" under the NEPA implementing regulations, or those "which are caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable." 40 CFR 1508.8(b). The Commission does not believe that the "do-not-call" registry provision has been or could reasonably be alleged to have "direct effects" or those "caused by the action and occur at the same time and place." 40 CFR 1508.8(a).

proposition that local retail shopping has, to date, been reduced as a result of inbound or outbound telemarketing. And, the fact remains that, other than DeHart, none of the commenters, including major sellers, telemarketers, and industry groups, provides any evidence relating to the potential for a national "do-not-call" registry to result in a reduction in service or an increase in cost for inbound telemarketing, nor in a concomitant increase in retail shopping done in local malls.

Moreover, the Commission believes there can be no hard evidence on which to base a prediction of consumers' actions following the implementation of the "do-not-call" registry provision. It seems likely, based on the experience of states that have implemented statewide "do-not-call" lists, and the overwhelmingly high response of consumers to the Commission's proposal, that many consumers will avail themselves of the opportunity to place their telephone numbers on the national "do-not-call" registry. However, as noted above, this may or may not have any impact on consumers' decision to shop at local malls, or on their choice of transportation. Thus, while consumer behavior may change as a result of the promulgation of amendments to the Rule, such changes cannot be quantified or even reasonably estimated because consumer decisions are influenced by many variables other than existence of the "do-not-call" registry. Any indirect impact of the amended Rule on the environment would therefore be highly speculative and impossible to accurately predict or measure.

The Commission does not believe that any alternative to creating a national "do-not-call" registry would both provide the benefits of the registry and ameliorate all potential concerns regarding environmental impact. For example, the Commission does not believe that given its justification for the necessity of the registry, eliminating the provision from the amended Rule would be appropriate based solely on the unsupported allegations of indirect environmental effect raised in the DeHart comment. Furthermore, the Commission can think of no alternative other than eliminating the national "do-not-call" registry that would address DeHart's unsupported and highly speculative concern.

In sum, although any evaluation of the environmental impact of the amendments to the TSR is uncertain and highly speculative, the Commission finds no evidence of avoidable adverse impacts stemming from the amended Rule. Therefore, the Commission has determined, in accordance with § 1.83 of the FTC's Rules of Practice, that no environmental assessment or EIS is required.[1075]

List of Subjects in 16 CFR Part 310.

Telemarketing, Trade practices.

Accordingly, title 16, part 310 of the Code of Federal Regulations, is revised to read as follows:

PART 310—TELEMARKETING SALES RULE

Sec.

310.1 Scope of regulations in this part.
310.2 Definitions.
310.3 Deceptive telemarketing acts or practices.
310.4 Abusive telemarketing acts or practices.
310.5 Recordkeeping requirements.
310.6 Exemptions.
310.7 Actions by states and private persons.
310.8 Reserved: Fee for access to "do-not-call" registry.
310.9 Severability.

Authority: 15 U.S.C. 6101–6108.

§ 310.1 Scope of regulations in this part.

This part implements the Telemarketing and Consumer Fraud and Abuse Prevention Act, 15 U.S.C. 6101-6108, as amended.

§ 310.2 Definitions.

(a) *Acquirer* means a business organization, financial institution, or an agent of a business organization or financial institution that has authority from an organization that operates or licenses a credit card system to authorize merchants to accept, transmit, or process payment by credit card through the credit card system for money, goods or services, or anything else of value.

(b) *Attorney General* means the chief legal officer of a state.

(c) *Billing information* means any data that enables any person to access a customer's or donor's account, such as a credit card, checking, savings, share or similar account, utility bill, mortgage loan account, or debit card.

(d) *Caller identification service* means a service that allows a telephone subscriber to have the telephone number, and, where available, name of the calling party transmitted contemporaneously with the telephone call, and displayed on a device in or connected to the subscriber's telephone.

(e) *Cardholder* means a person to whom a credit card is issued or who is authorized to use a credit card on behalf of or in addition to the person to whom the credit card is issued.

(f) *Charitable contribution* means any donation or gift of money or any other thing of value.

(g) *Commission* means the Federal Trade Commission.

(h) *Credit* means the right granted by a creditor to a debtor to defer payment of debt or to incur debt and defer its payment.

(i) *Credit card* means any card, plate, coupon book, or other credit device existing for the purpose of obtaining money, property, labor, or services on credit.

(j) *Credit card sales draft* means any record or evidence of a credit card transaction.

(k) *Credit card system* means any method or procedure used to process credit card transactions involving credit cards issued or licensed by the operator of that system.

(l) *Customer* means any person who is or may be required to pay for goods or services offered through telemarketing.

(m) *Donor* means any person solicited to make a charitable contribution.

(n) *Established business relationship* means a relationship between a seller and a consumer based on:

(1) the consumer's purchase, rental, or lease of the seller's goods or services or a financial transaction between the consumer and seller, within the eighteen (18) months immediately preceding the date of a telemarketing call; or

(2) the consumer's inquiry or application regarding a product or service offered by the seller, within the three (3) months immediately preceding the date of a telemarketing call.

(o) *Free-to-pay conversion* means, in an offer or agreement to sell or provide any goods or services, a provision under which a customer receives a product or service for free for an initial period and will incur an obligation to pay for the product or service if he or she does not take affirmative action to cancel before the end of that period.

(p) *Investment opportunity* means anything, tangible or intangible, that is offered, offered for sale, sold, or traded based wholly or in part on representations, either express or implied, about past, present, or future income, profit, or appreciation.

(q) *Material* means likely to affect a person's choice of, or conduct regarding, goods or services or a charitable contribution.

(r) *Merchant* means a person who is authorized under a written contract with an acquirer to honor or accept credit cards, or to transmit or process for payment credit card payments, for the

[1075] 16 CFR 1.83. *See also National Citizens. Comm. for Broad. v. FCC*, 567 F.2d 1095, 1098 n.3 (D.C. Cir. 1977).

purchase of goods or services or a charitable contribution.

(s) *Merchant agreement* means a written contract between a merchant and an acquirer to honor or accept credit cards, or to transmit or process for payment credit card payments, for the purchase of goods or services or a charitable contribution.

(t) *Negative option feature* means, in an offer or agreement to sell or provide any goods or services, a provision under which the customer's silence or failure to take an affirmative action to reject goods or services or to cancel the agreement is interpreted by the seller as acceptance of the offer.

(u) *Outbound telephone call* means a telephone call initiated by a telemarketer to induce the purchase of goods or services or to solicit a charitable contribution.

(v) *Person* means any individual, group, unincorporated association, limited or general partnership, corporation, or other business entity.

(w) *Preacquired account information* means any information that enables a seller or telemarketer to cause a charge to be placed against a customer's or donor's account without obtaining the account number directly from the customer or donor during the telemarketing transaction pursuant to which the account will be charged.

(x) *Prize* means anything offered, or purportedly offered, and given, or purportedly given, to a person by chance. For purposes of this definition, chance exists if a person is guaranteed to receive an item and, at the time of the offer or purported offer, the telemarketer does not identify the specific item that the person will receive.

(y) *Prize promotion* means:

(1) A sweepstakes or other game of chance; or

(2) An oral or written express or implied representation that a person has won, has been selected to receive, or may be eligible to receive a prize or purported prize.

(z) *Seller* means any person who, in connection with a telemarketing transaction, provides, offers to provide, or arranges for others to provide goods or services to the customer in exchange for consideration.

(aa) *State* means any state of the United States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, and any territory or possession of the United States.

(bb) *Telemarketer* means any person who, in connection with telemarketing, initiates or receives telephone calls to or from a customer or donor.

(cc) *Telemarketing* means a plan, program, or campaign which is conducted to induce the purchase of goods or services or a charitable contribution, by use of one or more telephones and which involves more than one interstate telephone call. The term does not include the solicitation of sales through the mailing of a catalog which: contains a written description or illustration of the goods or services offered for sale; includes the business address of the seller; includes multiple pages of written material or illustrations; and has been issued not less frequently than once a year, when the person making the solicitation does not solicit customers by telephone but only receives calls initiated by customers in response to the catalog and during those calls takes orders only without further solicitation. For purposes of the previous sentence, the term "further solicitation" does not include providing the customer with information about, or attempting to sell, any other item included in the same catalog which prompted the customer's call or in a substantially similar catalog.

(dd) *Upselling* means soliciting the purchase of goods or services following an initial transaction during a single telephone call. The upsell is a separate telemarketing transaction, not a continuation of the initial transaction. An "external upsell" is a solicitation made by or on behalf of a seller different from the seller in the initial transaction, regardless of whether the initial transaction and the subsequent solicitation are made by the same telemarketer. An "internal upsell" is a solicitation made by or on behalf of the same seller as in the initial transaction, regardless of whether the initial transaction and subsequent solicitation are made by the same telemarketer.

§ 310.3 Deceptive telemarketing acts or practices.

(a) *Prohibited deceptive telemarketing acts or practices.* It is a deceptive telemarketing act or practice and a violation of this Rule for any seller or telemarketer to engage in the following conduct:

(1) Before a customer pays[1] for goods or services offered, failing to disclose truthfully, in a clear and conspicuous manner, the following material information:

(i) The total costs to purchase, receive, or use, and the quantity of, any goods or services that are the subject of the sales offer;[2]

(ii) All material restrictions, limitations, or conditions to purchase, receive, or use the goods or services that are the subject of the sales offer;

(iii) If the seller has a policy of not making refunds, cancellations, exchanges, or repurchases, a statement informing the customer that this is the seller's policy; or, if the seller or telemarketer makes a representation about a refund, cancellation, exchange, or repurchase policy, a statement of all material terms and conditions of such policy;

(iv) In any prize promotion, the odds of being able to receive the prize, and, if the odds are not calculable in advance, the factors used in calculating the odds; that no purchase or payment is required to win a prize or to participate in a prize promotion and that any purchase or payment will not increase the person's chances of winning; and the no-purchase/no-payment method of participating in the prize promotion with either instructions on how to participate or an address or local or toll-free telephone number to which customers may write or call for information on how to participate;

(v) All material costs or conditions to receive or redeem a prize that is the subject of the prize promotion;

(vi) In the sale of any goods or services represented to protect, insure, or otherwise limit a customer's liability in the event of unauthorized use of the customer's credit card, the limits on a cardholder's liability for unauthorized use of a credit card pursuant to 15 U.S.C. 1643; and

(vii) If the offer includes a negative option feature, all material terms and conditions of the negative option feature, including, but not limited to, the fact that the customer's account will be charged unless the customer takes an affirmative action to avoid the charge(s), the date(s) the charge(s) will be submitted for payment, and the specific steps the customer must take to avoid the charge(s).

(2) Misrepresenting, directly or by implication, in the sale of goods or services any of the following material information:

(i) The total costs to purchase, receive, or use, and the quantity of, any goods or services that are the subject of a sales offer;

[1] When a seller or telemarketer uses, or directs a customer to use, a courier to transport payment, the seller or telemarketer must make the disclosures required by § 310.3(a)(1) before sending a courier to pick up payment or authorization for payment, or directing a customer to have a courier pick up payment or authorization for payment.

[2] For offers of consumer credit products subject to the Truth in Lending Act, 15 U.S.C. 1601 *et seq.*, and Regulation Z, 12 CFR 226, compliance with the disclosure requirements under the Truth in Lending Act and Regulation Z shall constitute compliance with § 310.3(a)(1)(i) of this Rule.

(ii) Any material restriction, limitation, or condition to purchase, receive, or use goods or services that are the subject of a sales offer;

(iii) Any material aspect of the performance, efficacy, nature, or central characteristics of goods or services that are the subject of a sales offer;

(iv) Any material aspect of the nature or terms of the seller's refund, cancellation, exchange, or repurchase policies;

(v) Any material aspect of a prize promotion including, but not limited to, the odds of being able to receive a prize, the nature or value of a prize, or that a purchase or payment is required to win a prize or to participate in a prize promotion;

(vi) Any material aspect of an investment opportunity including, but not limited to, risk, liquidity, earnings potential, or profitability;

(vii) A seller's or telemarketer's affiliation with, or endorsement or sponsorship by, any person or government entity;

(viii) That any customer needs offered goods or services to provide protections a customer already has pursuant to 15 U.S.C. 1643; or

(ix) Any material aspect of a negative option feature including, but not limited to, the fact that the customer's account will be charged unless the customer takes an affirmative action to avoid the charge(s), the date(s) the charge(s) will be submitted for payment, and the specific steps the customer must take to avoid the charge(s).

(3) Causing billing information to be submitted for payment, or collecting or attempting to collect payment for goods or services or a charitable contribution, directly or indirectly, without the customer's or donor's express verifiable authorization, except when the method of payment used is a credit card subject to protections of the Truth in Lending Act and Regulation Z,[3] or a debit card subject to the protections of the Electronic Fund Transfer Act and Regulation E.[4] Such authorization shall be deemed verifiable if any of the following means is employed:

(i) Express written authorization by the customer or donor, which includes the customer's or donor's signature;[5]

(ii) Express oral authorization which is audio-recorded and made available upon request to the customer or donor, and the customer's or donor's bank or other billing entity, and which evidences clearly both the customer's or donor's authorization of payment for the goods or services or charitable contribution that are the subject of the telemarketing transaction and the customer's or donor's receipt of all of the following information:

(A) The number of debits, charges, or payments (if more than one);

(B) The date(s) the debit(s), charge(s), or payment(s) will be submitted for payment;

(C) The amount(s) of the debit(s), charge(s), or payment(s);

(D) The customer's or donor's name;

(E) The customer's or donor's billing information, identified with sufficient specificity such that the customer or donor understands what account will be used to collect payment for the goods or services or charitable contribution that are the subject of the telemarketing transaction;

(F) A telephone number for customer or donor inquiry that is answered during normal business hours; and

(G) The date of the customer's or donor's oral authorization; or

(iii) Written confirmation of the transaction, identified in a clear and conspicuous manner as such on the outside of the envelope, sent to the customer or donor via first class mail prior to the submission for payment of the customer's or donor's billing information, and that includes all of the information contained in §§ 310.3(a)(3)(ii)(A)-(G) and a clear and conspicuous statement of the procedures by which the customer or donor can obtain a refund from the seller or telemarketer or charitable organization in the event the confirmation is inaccurate; *provided*, however, that this means of authorization shall not be deemed verifiable in instances in which goods or services are offered in a transaction involving a free-to-pay conversion and preacquired account information.

(4) Making a false or misleading statement to induce any person to pay for goods or services or to induce a charitable contribution.

(b) *Assisting and facilitating.* It is a deceptive telemarketing act or practice and a violation of this Rule for a person to provide substantial assistance or support to any seller or telemarketer when that person knows or consciously avoids knowing that the seller or telemarketer is engaged in any act or practice that violates §§ 310.3(a), (c) or (d), or § 310.4 of this Rule.

(c) *Credit card laundering.* Except as expressly permitted by the applicable credit card system, it is a deceptive telemarketing act or practice and a violation of this Rule for:

(1) A merchant to present to or deposit into, or cause another to present to or deposit into, the credit card system for payment, a credit card sales draft generated by a telemarketing transaction that is not the result of a telemarketing credit card transaction between the cardholder and the merchant;

(2) Any person to employ, solicit, or otherwise cause a merchant, or an employee, representative, or agent of the merchant, to present to or deposit into the credit card system for payment, a credit card sales draft generated by a telemarketing transaction that is not the result of a telemarketing credit card transaction between the cardholder and the merchant; or

(3) Any person to obtain access to the credit card system through the use of a business relationship or an affiliation with a merchant, when such access is not authorized by the merchant agreement or the applicable credit card system.

(d) *Prohibited deceptive acts or practices in the solicitation of charitable contributions.* It is a fraudulent charitable solicitation, a deceptive telemarketing act or practice, and a violation of this Rule for any telemarketer soliciting charitable contributions to misrepresent, directly or by implication, any of the following material information:

(1) The nature, purpose, or mission of any entity on behalf of which a charitable contribution is being requested;

(2) That any charitable contribution is tax deductible in whole or in part;

(3) The purpose for which any charitable contribution will be used;

(4) The percentage or amount of any charitable contribution that will go to a charitable organization or to any particular charitable program;

(5) Any material aspect of a prize promotion including, but not limited to: the odds of being able to receive a prize; the nature or value of a prize; or that a charitable contribution is required to win a prize or to participate in a prize promotion; or

(6) A charitable organization's or telemarketer's affiliation with, or endorsement or sponsorship by, any person or government entity.

§ 310.4 Abusive telemarketing acts or practices.

(a) *Abusive conduct generally.* It is an abusive telemarketing act or practice and a violation of this Rule for any seller or telemarketer to engage in the following conduct:

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[3] Truth in Lending Act, 15 U.S.C. 1601 *et seq.*, and Regulation Z, 12 CFR part 226.

[4] Electronic Fund Transfer Act, 15 U.S.C. 1693 *et seq.*, and Regulation E, 12 CFR part 205.

[5] For purposes of this Rule, the term "signature" shall include an electronic or digital form of signature, to the extent that such form of signature is recognized as a valid signature under applicable federal law or state contract law.

(1) Threats, intimidation, or the use of profane or obscene language;

(2) Requesting or receiving payment of any fee or consideration for goods or services represented to remove derogatory information from, or improve, a person's credit history, credit record, or credit rating until:

(i) The time frame in which the seller has represented all of the goods or services will be provided to that person has expired; and

(ii) The seller has provided the person with documentation in the form of a consumer report from a consumer reporting agency demonstrating that the promised results have been achieved, such report having been issued more than six months after the results were achieved. Nothing in this Rule should be construed to affect the requirement in the Fair Credit Reporting Act, 15 U.S.C. 1681, that a consumer report may only be obtained for a specified permissible purpose;

(3) Requesting or receiving payment of any fee or consideration from a person for goods or services represented to recover or otherwise assist in the return of money or any other item of value paid for by, or promised to, that person in a previous telemarketing transaction, until seven (7) business days after such money or other item is delivered to that person. This provision shall not apply to goods or services provided to a person by a licensed attorney;

(4) Requesting or receiving payment of any fee or consideration in advance of obtaining a loan or other extension of credit when the seller or telemarketer has guaranteed or represented a high likelihood of success in obtaining or arranging a loan or other extension of credit for a person;

(5) Disclosing or receiving, for consideration, unencrypted consumer account numbers for use in telemarketing; *provided*, however, that this paragraph shall not apply to the disclosure or receipt of a customer's or donor's billing information to process a payment for goods or services or a charitable contribution pursuant to a transaction;

(6) Causing billing information to be submitted for payment, directly or indirectly, without the express informed consent of the customer or donor. In any telemarketing transaction, the seller or telemarketer must obtain the express informed consent of the customer or donor to be charged for the goods or services or charitable contribution and to be charged using the identified account. In any telemarketing transaction involving preacquired account information, the requirements in paragraphs (a)(6)(i) through (ii) of this section must be met to evidence express informed consent.

(i) In any telemarketing transaction involving preacquired account information and a free-to-pay conversion feature, the seller or telemarketer must:

(A) obtain from the customer, at a minimum, the last four (4) digits of the account number to be charged;

(B) obtain from the customer his or her express agreement to be charged for the goods or services and to be charged using the account number pursuant to paragraph (a)(6)(i)(A) of this section; and,

(C) make and maintain an audio recording of the entire telemarketing transaction.

(ii) In any other telemarketing transaction involving preacquired account information not described in paragraph (a)(6)(i) of this section, the seller or telemarketer must:

(A) at a minimum, identify the account to be charged with sufficient specificity for the customer or donor to understand what account will be charged; and

(B) obtain from the customer or donor his or her express agreement to be charged for the goods or services and to be charged using the account number identified pursuant to paragraph (a)(6)(ii)(A) of this section; or

(7) Failing to transmit or cause to be transmitted the telephone number, and, when made available by the telemarketer's carrier, the name of the telemarketer, to any caller identification service in use by a recipient of a telemarketing call; *provided* that it shall not be a violation to substitute (for the name and phone number used in, or billed for, making the call) the name of the seller or charitable organization on behalf of which a telemarketing call is placed, and the seller's or charitable organization's customer or donor service telephone number, which is answered during regular business hours.

(b) *Pattern of calls.*

(1) It is an abusive telemarketing act or practice and a violation of this Rule for a telemarketer to engage in, or for a seller to cause a telemarketer to engage in, the following conduct:

(i) Causing any telephone to ring, or engaging any person in telephone conversation, repeatedly or continuously with intent to annoy, abuse, or harass any person at the called number;

(ii) Denying or interfering in any way, directly or indirectly, with a person's right to be placed on any registry of names and/or telephone numbers of persons who do not wish to receive outbound telephone calls established to comply with § 310.4(b)(1)(iii);

(iii) Initiating any outbound telephone call to a person when:

(A) that person previously has stated that he or she does not wish to receive an outbound telephone call made by or on behalf of the seller whose goods or services are being offered or made on behalf of the charitable organization for which a charitable contribution is being solicited; or

(B) that person's telephone number is on the "do-not-call" registry, maintained by the Commission, of persons who do not wish to receive outbound telephone calls to induce the purchase of goods or services unless the seller

(*i*) has obtained the express agreement, in writing, of such person to place calls to that person. Such written agreement shall clearly evidence such person's authorization that calls made by or on behalf of a specific party may be placed to that person, and shall include the telephone number to which the calls may be placed and the signature[6] of that person; or

(*ii*) has an established business relationship with such person, and that person has not stated that he or she does not wish to receive outbound telephone calls under paragraph (b)(1)(iii)(A) of this section; or

(iv) Abandoning any outbound telephone call. An outbound telephone call is "abandoned" under this section if a person answers it and the telemarketer does not connect the call to a sales representative within two (2) seconds of the person's completed greeting.

(2) It is an abusive telemarketing act or practice and a violation of this Rule for any person to sell, rent, lease, purchase, or use any list established to comply with § 310.4(b)(1)(iii)(A), or maintained by the Commission pursuant to § 310.4(b)(1)(iii)(B), for any purpose except compliance with the provisions of this Rule or otherwise to prevent telephone calls to telephone numbers on such lists.

(3) A seller or telemarketer will not be liable for violating § 310.4(b)(1)(ii) and (iii) if it can demonstrate that, as part of the seller's or telemarketer's routine business practice:

(i) It has established and implemented written procedures to comply with § 310.4(b)(1)(ii) and (iii);

(ii) It has trained its personnel, and any entity assisting in its compliance, in

[6] For purposes of this Rule, the term "signature" shall include an electronic or digital form of signature, to the extent that such form of signature is recognized as a valid signature under applicable federal law or state contract law.

the procedures established pursuant to § 310.4(b)(3)(i);

(iii) The seller, or a telemarketer or another person acting on behalf of the seller or charitable organization, has maintained and recorded a list of telephone numbers the seller or charitable organization may not contact, in compliance with § 310.4(b)(1)(iii)(A);

(iv) The seller or a telemarketer uses a process to prevent telemarketing to any telephone number on any list established pursuant to §§ 310.4(b)(3)(iii) or 310.4(b)(1)(iii)(B), employing a version of the "do-not-call" registry obtained from the Commission no more than three (3) months prior to the date any call is made, and maintains records documenting this process;

(v) The seller or a telemarketer or another person acting on behalf of the seller or charitable organization, monitors and enforces compliance with the procedures established pursuant to § 310.4(b)(3)(i); and

(vi) Any subsequent call otherwise violating § 310.4(b)(1)(ii) or (iii) is the result of error.

(4) A seller or telemarketer will not be liable for violating 310.4(b)(1)(iv) if:

(i) the seller or telemarketer employs technology that ensures abandonment of no more than three (3) percent of all calls answered by a person, measured per day per calling campaign;

(ii) the seller or telemarketer, for each telemarketing call placed, allows the telephone to ring for at least fifteen (15) seconds or four (4) rings before disconnecting an unanswered call;

(iii) whenever a sales representative is not available to speak with the person answering the call within two (2) seconds after the person's completed greeting, the seller or telemarketer promptly plays a recorded message that states the name and telephone number of the seller on whose behalf the call was placed[7]; and

(iv) the seller or telemarketer, in accordance with § 310.5(b)-(d), retains records establishing compliance with § 310.4(b)(4)(i)-(iii).

(c) *Calling time restrictions.* Without the prior consent of a person, it is an abusive telemarketing act or practice and a violation of this Rule for a telemarketer to engage in outbound telephone calls to a person's residence at any time other than between 8:00 a.m. and 9:00 p.m. local time at the called person's location.

(d) *Required oral disclosures in the sale of goods or services.* It is an abusive telemarketing act or practice and a violation of this Rule for a telemarketer in an outbound telephone call or internal or external upsell to induce the purchase of goods or services to fail to disclose truthfully, promptly, and in a clear and conspicuous manner to the person receiving the call, the following information:

(1) The identity of the seller;

(2) That the purpose of the call is to sell goods or services;

(3) The nature of the goods or services; and

(4) That no purchase or payment is necessary to be able to win a prize or participate in a prize promotion if a prize promotion is offered and that any purchase or payment will not increase the person's chances of winning. This disclosure must be made before or in conjunction with the description of the prize to the person called. If requested by that person, the telemarketer must disclose the no-purchase/no-payment entry method for the prize promotion; *provided*, however, that, in any internal upsell for the sale of goods or services, the seller or telemarketer must provide the disclosures listed in this section only to the extent that the information in the upsell differs from the disclosures provided in the initial telemarketing transaction.

(e) *Required oral disclosures in charitable solicitations.* It is an abusive telemarketing act or practice and a violation of this Rule for a telemarketer, in an outbound telephone call to induce a charitable contribution, to fail to disclose truthfully, promptly, and in a clear and conspicuous manner to the person receiving the call, the following information:

(1) The identity of the charitable organization on behalf of which the request is being made; and

(2) That the purpose of the call is to solicit a charitable contribution.

§ 310.5 Recordkeeping requirements.

(a) Any seller or telemarketer shall keep, for a period of 24 months from the date the record is produced, the following records relating to its telemarketing activities:

(1) All substantially different advertising, brochures, telemarketing scripts, and promotional materials;

(2) The name and last known address of each prize recipient and the prize awarded for prizes that are represented, directly or by implication, to have a value of $25.00 or more;

(3) The name and last known address of each customer, the goods or services purchased, the date such goods or services were shipped or provided, and the amount paid by the customer for the goods or services;[8]

(4) The name, any fictitious name used, the last known home address and telephone number, and the job title(s) for all current and former employees directly involved in telephone sales or solicitations; *provided*, however, that if the seller or telemarketer permits fictitious names to be used by employees, each fictitious name must be traceable to only one specific employee; and

(5) All verifiable authorizations or records of express informed consent or express agreement required to be provided or received under this Rule.

(b) A seller or telemarketer may keep the records required by § 310.5(a) in any form, and in the same manner, format, or place as they keep such records in the ordinary course of business. Failure to keep all records required by § 310.5(a) shall be a violation of this Rule.

(c) The seller and the telemarketer calling on behalf of the seller may, by written agreement, allocate responsibility between themselves for the recordkeeping required by this Section. When a seller and telemarketer have entered into such an agreement, the terms of that agreement shall govern, and the seller or telemarketer, as the case may be, need not keep records that duplicate those of the other. If the agreement is unclear as to who must maintain any required record(s), or if no such agreement exists, the seller shall be responsible for complying with §§ 310.5(a)(1)-(3) and (5); the telemarketer shall be responsible for complying with § 310.5(a)(4).

(d) In the event of any dissolution or termination of the seller's or telemarketer's business, the principal of that seller or telemarketer shall maintain all records as required under this Section. In the event of any sale, assignment, or other change in ownership of the seller's or telemarketer's business, the successor business shall maintain all records required under this Section.

§ 310.6 Exemptions.

(a) Solicitations to induce charitable contributions via outbound telephone calls are not covered by § 310.4(b)(1)(iii)(B) of this Rule.

(b) The following acts or practices are exempt from this Rule:

(1) The sale of pay-per-call services subject to the Commission's Rule

[7] This provision does not affect any seller's or telemarketer's obligation to comply with relevant state and federal laws, including but not limited to the TCPA, 47 U.S.C. 227, and 47 CFR part 64.1200.

[8] For offers of consumer credit products subject to the Truth in Lending Act, 15 U.S.C. 1601 *et seq.*, and Regulation Z, 12 CFR 226, compliance with the recordkeeping requirements under the Truth in Lending Act, and Regulation Z, shall constitute compliance with § 310.5(a)(3) of this Rule.

entitled "Trade Regulation Rule Pursuant to the Telephone Disclosure and Dispute Resolution Act of 1992," 16 CFR Part 308, *provided*, however, that this exemption does not apply to the requirements of § § 310.4(a)(1), (a)(7), (b), and (c);

(2) The sale of franchises subject to the Commission's Rule entitled "Disclosure Requirements and Prohibitions Concerning Franchising and Business Opportunity Ventures," ("Franchise Rule") 16 CFR Part 436, *provided*, however, that this exemption does not apply to the requirements of § § 310.4(a)(1), (a)(7), (b), and (c);

(3) Telephone calls in which the sale of goods or services or charitable solicitation is not completed, and payment or authorization of payment is not required, until after a face-to-face sales or donation presentation by the seller or charitable organization, *provided*, however, that this exemption does not apply to the requirements of § § 310.4(a)(1), (a)(7), (b), and (c);

(4) Telephone calls initiated by a customer or donor that are not the result of any solicitation by a seller, charitable organization, or telemarketer, *provided*, however, that this exemption does not apply to any instances of upselling included in such telephone calls;

(5) Telephone calls initiated by a customer or donor in response to an advertisement through any medium, other than direct mail solicitation, *provided*, however, that this exemption does not apply to calls initiated by a customer or donor in response to an advertisement relating to investment opportunities, business opportunities other than business arrangements covered by the Franchise Rule, or advertisements involving goods or services described in § § 310.3(a)(1)(vi) or 310.4(a)(2)-(4); or to any instances of upselling included in such telephone calls;

(6) Telephone calls initiated by a customer or donor in response to a direct mail solicitation, including solicitations via the U.S. Postal Service, facsimile transmission, electronic mail, and other similar methods of delivery in which a solicitation is directed to specific address(es) or person(s), that clearly, conspicuously, and truthfully discloses all material information listed in § 310.3(a)(1) of this Rule, for any goods or services offered in the direct mail solicitation, and that contains no material misrepresentation regarding any item contained in § 310.3(d) of this Rule for any requested charitable contribution; *provided*, however, that this exemption does not apply to calls initiated by a customer in response to a direct mail solicitation relating to prize promotions, investment opportunities, business opportunities other than business arrangements covered by the Franchise Rule, or goods or services described in §§ 310.3(a)(1)(vi) or 310.4(a)(2)-(4); or to any instances of upselling included in such telephone calls; and

(7) Telephone calls between a telemarketer and any business, except calls to induce the retail sale of nondurable office or cleaning supplies; *provided*, however, that § 310.4(b)(1)(iii)(B) and § 310.5 of this Rule shall not apply to sellers or telemarketers of nondurable office or cleaning supplies.

§ 310.7 Actions by states and private persons.

(a) Any attorney general or other officer of a state authorized by the state to bring an action under the Telemarketing and Consumer Fraud and Abuse Prevention Act, and any private person who brings an action under that Act, shall serve written notice of its action on the Commission, if feasible, prior to its initiating an action under this Rule. The notice shall be sent to the Office of the Director, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C. 20580, and shall include a copy of the state's or private person's complaint and any other pleadings to be filed with the court. If prior notice is not feasible, the state or private person shall serve the Commission with the required notice immediately upon instituting its action.

(b) Nothing contained in this Section shall prohibit any attorney general or other authorized state official from proceeding in state court on the basis of an alleged violation of any civil or criminal statute of such state.

§ 310.8 [Reserved: Fee for access to "do-not-call" registry.]

§ 310.9 Severability.

The provisions of this Rule are separate and severable from one another. If any provision is stayed or determined to be invalid, it is the Commission's intention that the remaining provisions shall continue in effect.

By direction of the Commission.

Donald S. Clark,

Secretary.

Note: Appendices A and B are published for informational purposes only and will not be codified in Title 16 of the Code of Federal Regulations.

Appendix A

List of Acronyms for Rule Review Commenters

February 28, 2000 Request for Comment

Acronym — Commenter

AARP—AARP
Alan—Alan, Alicia
ARDA—American Resort Development Association
ATA—American Teleservices Association
Anderson—Anderson, Wayne
Baressi—Baressi, Sandy
Bell Atlantic—Bell Atlantic
Bennett—Bennett, Douglas H.
Biagiotti—Biagiotti, Mary
Bishop—Bishop, Lew & Lois
Blake—Blake, Ted
Bowman-Kruhm—Bowman-Kruhm, Mary
Braddick—Braddick, Jane Ann
Brass—Brass, Eric
Brosnahan—Brosnahan, Kevin
Budro—Budro, Edgar
Card—Card, Giles S.
Collison—Collison, Doug
Conn—Conn, David
Conway—Conway, Candace
Croushore—Croushore, Amanda
Curtis—Curtis, Joel
Dawson—Dawson, Darcy
DMA—Direct Marketing Association
DSA—Direct Selling Association
Doe—Doe, Jane
ERA—Electronic Retailing Association
FAMSA—FAMSA-Funeral Consumers Alliance, Inc.
Gannett—Gannett Co., Inc.
Garbin—Garbin, David and Linda
A. Gardner—Gardner, Anne
S. Gardner—Gardner, Stephen
Gibb—Gibb, Ronald E.
Gilchrist—Gilchrist, Dr. K. James
Gindin—Gindin, Jim
Haines—Haines, Charlotte
Harper—Harper, Greg
Heagy—Heagy, Annette M.
Hecht—Hecht, Jeff
Hickman—Bill and Donna
Hollingsworth—Hollingsworth, Bob and Pat
Holloway—Holloway, Lynn S.
Holmay—Holmay, Kathleen
ICFA—International Cemetery and Funeral Association
Johnson—Johnson, Sharon Coleman
Jordan—Jordan, April
Kelly—Kelly, Lawrence M.
KTW—KTW Consulting Techniques, Inc.
Lamet—Lamet, Jerome S.
Lee—Lee, Rockie
LSAP—Legal Services Advocacy Project
LeQuang—LeQuang, Albert
Lesher—Lesher, David
Mack—Mack, Mr. and Mrs. Alfred
MPA—Magazine Publishers of America, Inc.
Manz—Manz, Matthias
McCurdy—McCurdy, Bridget E.
Menefee—Menefee, Marcie
Merritt—Merritt, Everett W.
Mey— Mey, Diana
Mitchelp—Mitchelp
TeleSource—Morgan-Francis/Tele-Source Industries
NACHA—NACHA-The Electronic Payments Association
NAAG—National Association of Attorneys General
NACAA—National Association of Consumer Agency Administrators
NCL—National Consumers League
NFN—National Federation of Nonprofits
NAA—Newspaper Association of America
NASAA—North American Securities Administrators Association
Nova53—Nova53
Nurik— Nurik, Margy and Irv
PLP—Personal Legal Plans, Inc.
Peters—Peters, John and Frederickson, Constance
Reese—Reese Brothers, Inc.
Reynolds—Reynolds, Charles
Rothman—Rothman, Iris
Runnels—Runnels, Mike
Sanford—Sanford, Kanija
Schiber—Schiber, Bill
Schmied—Schmied, R. L.
Strang—Strang, Wayne G.
TeleSource—Morgan-Francis/Tele-Source Industries
Texas—Texas Attorney General
Thai—Thai, Linh Vien
Vanderburg—Vanderburg, Mary Lou
Ver Steegt—Ver Steegt, Karen
Verizon—Verizon Wireless
Warren—Warren, Joshua
Weltha—Weltha, Nick
Worsham—Worsham, Michael C., Esq.

Appendix B

List of Acronyms for NPRM Commenters

Acronym — Commenter

1–800-DoNotCall—1–800-DoNotCall, Inc.
AARP—AARP
ACA—ACA International
ACUTA—ACUTA
Advanta—Advanta Corp.
Aegis—Aegis Communications Group
Alabama Police—Alabama State Police Association, Inc.
AAST—American Association of State Troopers
ABA—American Bankers Association
ABIA—American Bankers Insurance Association
American Blind—American Blind Products, Inc.
ACE—American Council on Education
ADA—American Diabetes Association
AmEx—American Express
AFSA—American Financial Services Association
Red Cross—American Red Cross
ARDA—American Resort Development Association
ARDA–2—American Resort Development Association-Do Not Call Registry
American Rivers—American Rivers
ASTA—American Society of Travel Agents
ATA—American Teleservices Association
Blood Centers—America's Blood Centers
Community Bankers—America's Community Bankers
Ameriquest—Ameriquest Mortgage Company
Armey—Armey, The Honorable Dick (U.S. House of Representatives)
AFP—Association of Fundraising Professionals
APTS—Association of Public Television Stations
ANA—Association of National Advertisers
Associations—joint comment of: American Teleservices Association, Direct Marketing Association, Electronic Retailing Association, Magazine Publishers Association, and Promotion Marketing Association
Assurant—Assurant Group
Avinta—Avinta Communications, Inc.
Ayres—Ayres, Ian
Baldacci—Baldacci, The Honorable John Elias (U.S. House of Representatives)
BofA—Bank of America
Bank One—Bank One Corporation
Beautyrock—Beautyrock, Inc.
BellSouth—BellSouth Corporation
Best Buy—Best Buy Company, Inc.
BRI—Business Response Inc.
CCAA—California Consumer Affairs Association
CATS—Californians Against Telephone Solicitation
Capital One—Capital One Financial Corporation
Car Wash Guys—WashGuy Systems
Carper—Carper, The Honorable Thomas R. (U.S. Senate)
Celebrity Prime Foods—Celebrity Prime Foods
Cendant—Cendant Corporation
Chamber of Commerce—Chamber of Commerce of the United States of America
CRF—Charitable Resource Foundation, Inc.
Chicago ADM—Chicago Association of Direct Marketing
Childhood Leukemia—Childhood Leukemia Foundation
CDI—Circulation Development, Inc.
CURE—Citizens United for Rehabilitation of Errants
Citigroup—Citigroup Inc.
Civil Service Leader—Civil Service Leader
Collier Shannon-Collier Shannon Scott
Comcast—Comcast
CNHI—Community Newspaper Holdings, Inc.
Community Safety—Community Safety, LLC
Connecticut—Connecticut Commissioner of Consumer Protection
CBA—Consumer Bankers Association
CCC—joint comment of: Consumer Choice Coalition, ACI Telecentrics, Coverdell & Company, Discount Development Services, HSN LP d/b/a HSN and Home Shopping Network, Household Credit Services, MBNA America Bank, MemberWorks

Incorporated, Mortgage Investors Corporation, Optima Direct, TCIM Inc., Trilegiant Corporation and West Corporation
CMC—Consumer Mortgage Coalition
Consumer Privacy—Consumer Privacy Guide
Convergys—Convergys Corporation
CCA—Corrections Corporation of America
CASE—Council for Advancement and Support of Education
Cox—Cox Enterprises
Craftmatic—Craftmatic Organization, Inc.
Davis—Davis, The Honorable Tom (U.S. House of Representatives)
DBA—Debt Buyers Association
DeHart—DeHart & Darr Associates
Deutsch—Deutsch, The Honorable Peter (U.S. House of Representatives)
DialAmerica—DialAmerica Marketing, Inc.
DMA—Direct Marketing Association/U.S. Chamber of Commerce
DMA-NonProfit—Direct Marketing Association NonProfit Federation
DSA—Direct Selling Association
Discover—Discover Bank
DC—District of Columbia, Office of the People's Counsel
Eagle—Eagle Bank
EFSC—Electronic Financial Services Council
EPIC—Joint comment: Electronic Privacy Information Center, Center for Digital Democracy, Junkbusters Corp, International Union UAW, Privacy Rights Clearinghouse, Consumers Union, Evan Hendricks of Privacy Times, Privacyactivisim, Consumer Action, Consumer Project on Technology, Robert Ellis Smith of Privacy Journal, Consumer Federation of America, Computer Scientists for Social Responsibility, and Private Citizen, Inc.
ERA—Electronic Retailing Association
EPI—Enterprise Prison Institute
Experian—Experian Marketing Information Solutions, Inc.
Fiber Clean—Fiber Clean
Roundtable—Financial Services Roundtable
Fire Fighters Associations:
Asheville FFA—Asheville (NC) Fire Fighters Association
Bethelehem FFA—Bethlehem (PA), IAFF Local 735
Boone FFA—Boone (IA)
California FFA—California Professional Firefighters
Cedar Rapids FFA—Cedar Rapids (IA), IAFF Local 11
Cedar Rapids Airport FFA—Cedar Rapids Airport (IA)
Chattanooga FFA—Chattanooga (TN) Fire Fighters Association, Local 820
Edwardsville FFA—Edwardsville (IL) Fire Fighters Local 1700
Greensboro FFA—Greensboro (NC)
Hickory FFA—Hickory (NC) Firefighters Association, IAFF Local 2653
Indiana FFA—Indiana, Professional Fire Fighters Union of
Iowa FFA—Iowa Professional Firefighters
Missouri FFA—Missouri State Council of Fire Fighters
North Carolina FFA—North Carolina, Professional Fire Fighters & Paramedics of
North Maine FFA—North Maine (Des Plaines, IL) Firefighters, IAFF Local 224
Ottumwa FFA—Ottumwa (IA)
Roanoke FFA—Roanoke (VA) Fire Fighters Association
Springfield FFA—Springfield (MO) Firefighters Association, Local 52
Sycamore FFA—Sycamore, IAFF Local 3046
Utah FFA—Utah, Professional Firefighters of
Vermont FFA—Vermont, Professional Firefighters of
Wisconsin FFA—Wisconsin, Professional Fire Fighters of
FireCo—FireCo, L.L.C.
Fleet—FleetBoston Financial Corporation
FOP—Fraternal Order of Police, Grand Lodge
FPIR—Fund for Public Interest Research, Inc.
FCA—Funeral Consumers Alliance, Inc.
Gannett—Gannett Co., Inc.
Gottschalks—Gottschalks, Inc.
Greater Niagara—Greater Niagara Newspapers
Green Mountain—Green Mountain Energy Company
Gryphon—Gryphon Networks
Hagel, Johnson & Carper—Joint letter from: The Honorable Chuck Hagel, Tim Johnson, and Thomas R. Carper (U.S. Senate)
Hastings—Hastings, The Honorable Doc (U.S. House of Representatives)
Herald Bulletin—Herald Bulletin
Horick—Horick, Bob
Household International:
Household Auto—Joint comment: Household Finance Corp, OFL-A Receivables Corp., and Household Automotive
Household Credit—Household Bank, Credit Card Services
Household Finance—Household Finance Corporation
Household-Montalvo—Montalvo, David
HSBC—HSBC Bank USA
Hudson Bay-Anderson—Hudson Bay Company of Illinois-owner
Hudson Bay-Goodman—Hudson Bay Company-Goodman
HRC—Human Rights Campaign
IBM—IBM
ICT—ICT Group, Inc.
Illinois Police—Illinois Council of Police & Sheriffs
Infocision—Infocision Management Corporation
Inhofe—Inhofe, The Honorable James (U.S. Senate)
Insight—Insight Realty, Inc.
ITC—Interactive Teleservices Corp.
ICFA—International Cemetery & Funeral Association
IFA—International Franchise Association
IUPA—International Union of Police Associations
ICC—Internet Commerce Coalition
Intuit—Intuit Inc.
Italian American Police—Italian American Police Society of New Jersey
Johnson—Johnson, The Honorable Tim (U.S. Senate)
Kansas—Kansas, House of Representatives
KeyCorp—KeyCorp.
Lautman—Lautman & Associates
LSAP—Legal Services Advocacy Project
Leggett & Platt—Leggett & Platt
Lenox—Lenox Inc.
Leukemia Society—Leukemia & Lymphoma Society
Life Share—Life Share
Lucas—Lucas, The Honorable Ken (U.S. House of Representatives)
MPA—Magazine Publishers Association
Make-A-Wish—Make-A-Wish Foundation of America
Manzullo—Manzullo, The Honorable Donald A. (U.S. House of Representatives)
March of Dimes—March of Dimes Birth Defects Foundation
Marketlink—Marketlink, Inc.
MBA—Massachusetts Bankers Association
MasterCard—MasterCard International
MBNA—MBNA America Bank, N.A.
McClure—McClure, Scott
McConnell—McConnell, The Honorable Mitch (U.S. Senate)
Metris—Metris Companies, Inc.
Michigan Nonprofit—Michigan Nonprofit Association
MidFirst—MidFirst Bank
MBAA—Mortgage Bankers Association of America
Myrick—Myrick, The Honorable Sue (U.S. House of Representatives)
NACHA—NACHA-The Electronic Payments Association
Nadel—Nadel, Mark S. (law review article: "Rings of Privacy: Unsolicited Telephone Calls and the Right to Privacy," 4 *Yale Journal on Regulation* 99 (Fall 1986)
NAAG—National Association of Attorneys General
NACAA—National Association of Consumer Agency Administrators
NAIFA—National Association of Insurance & Financial Advisors
NAR—National Association of Realtors
NARUC—National Association of Regulatory Utility Commissioners
ARVC—National Association of RV Parks & Campgrounds
NASCO—National Association of State Charity Officials
NASUCA—National Association of State Utility Consumer Advocates
E-Commerce Coalition—National Business Coalition on E-Commerce & Privacy
NCTA—National Cable & Telecommunications Association
National Children's Cancer—National Children's Cancer Society, Inc.
NCLC—Joint comment: National Consumer Law Center, National Association of Consumer Advocates, Consumer Federation of America, Consumers Union, and US Public Interest Research Group
NCLF—National Children's Leukemia Foundation
NCL—National Consumers League
NEMA—National Energy Marketers Association
NFPPA—National Family Privacy Protection Association
NFIB—National Federation of Independent Business
NFC—National Franchise Council
NFDA—National Funeral Directors Association
NNA—National Newspaper Association of America
NPMA—National Pest Management Association
NPR—National Public Radio
NRF—National Retail Federation
NTC—National Troopers Coalition
Nelson— Nelson, The Honorable E. Benjamin (U.S. Senate)
NetCoalition—NetCoalition

Nethercutt—Nethercutt, The Honorable George R., Jr. (U.S. House of Representatives)
NeuStar—NeuStar, Inc.
New Orleans—New Orleans, City Council of (CNO)-Utility, Cable & Telecommunications Committee
NJ Police—New Jersey Police Officers Foundation, Inc.
NYSCPB— New York State Consumer Protection Board
NAA—Newspaper Association of America
Nextel—Nextel Communications, Inc.
Ney, Sandlin, Jones, Shows and Cantor—Joint letter from: The Honorable Bob Ney, Max Sandlin, Walter Jones, Ronnie Shows, and Eric Cantor (U.S. House of Representatives)
Noble—Noble Systems
NATN—North American Telephone Network LLC
NC Zoo—North Carolina Zoological Society
Not-For-Profit Coalition—Not-For-Profit and Charitable Coalition
NSDI—NSDI Teleperformance
OSU—Ohio State University
OTC—Ohio Troopers Coalition
Pacesetter—Pacesetter Corporation
PVA—Paralyzed Veterans of America
Paramount—Paramount Lists, Inc.
Pascrell—Pascrell, The Honorable Bill, Jr. (U.S. House of Representatives)
Patrick—Patrick, George W.
Paul—Paul, The Honorable Ron (U.S. House of Representatives)
Pelland—Pelland, Paul
PLP—Personal Legal Plans, Inc.
Michigan Police—Police Officers Association of Michigan
possibleNOW—possibleNOW.com, Inc.
PRC—Privacy Rights Clearinghouse
Private Citizen—Private Citizen, Inc.
Proctor—Proctor, Alan
PBP—Progressive Business Publications
PCIC—Progressive Casualty Insurance Company
Angel Food—Project Angel Food
PMA—Promotion Marketing Association
Purple Heart—Purple Heart Service Foundation, Military Order of
Ramstad—Ramstad, The Honorable Jim (U.S. House of Representatives)
Redish—Redish, Martin H., Esq.
Reed Elsevier—Reed Elsevier Inc.
Reese—Reese Brothers, Inc.
SBC—SBC Comm.unications Inc.
Schrock—Schrock, The Honorable Edward L. (U.S. House of Representatives)
Sensenbrenner—Sensenbrenner, The Honorable F. James, Jr. (U.S. House of Representatives)
SHARE—SHARE
SIIA—Software & Information Industry Association
Southerland—Southerland, Inc.
Southern Poverty—Southern Poverty Law Center
Special Olympics—Special Olympics, Inc.
SO-AZ—Special Olympics Arizona
SO-CA—Special Olympics Southern California
SO-CO—Special Olympics Colorado
SO-CN—Special Olympics Connecticut
SO-IA—Special Olympics Iowa
SO-KY—Special Olympics Kentucky
SO-MD—Special Olympics Maryland
SO-MO—Special Olympics Missouri
SO-MT—Special Olympics Montana
SO-NH—Special Olympics New Hampshire
SO-NJ—Special Olympics New Jersey
SO-NM—Special Olympics New Mexico
SO-NY—Special Olympics New York
SO-VT—Special Olympics Vermont
SO-VA—Special Olympics Virginia
SO-WA—Special Olympics Washington
SO-WI—Special Olympics Wisconsin
SO-WY—Special Olympics Wyoming
Spiegel—Spiegel, Marilyn
Stage Door—Stage Door Music Productions, Inc.
Statewide Appeal—Statewide Appeal Inc.
Success Marketing—Success Marketing, Inc.
Synergy Global—Synergy Global Networks, The
Synergy Solutions—Synergy Solutions, Inc.
Sytel—Sytel Limited
Tate—Tate & Associates
Technion—Technion Communications Corp
TDI—Telecommunications for the Deaf, Inc.
TeleDirect—TeleDirect International, Inc.
Telefund—Telefund, Inc.
Teleperformance—Teleperformance USA
TRC—Tele-Response Center
TeleStar—TeleStar Marketing, L.P.
TRA—Tennessee Regulatory Authority
Terry—Terry, The Honorable Lee (U.S. House of Representatives)
Texas Environment—Texas Campaign for the Environment
Texas PUC—Texas Office of Public Utility Counsel
Thayer—Thayer, Richard E., Esq.
Time—Time, Inc.
Tribune—Tribune Publishing Company
UNICOR—UNICOR: (Federal Prison Industries, Inc, DOJ, Federal Bureau of Prisons)
DOJ—U.S. Department of Justice
Uniway—Uniway of Coastal Georgia
Verizon—Verizon Companies
Virginia—Virginia Attorney General
VISA—VISA U.S.A., Inc.
Watts—Watts, The Honorable J.C., Jr. (U.S. House of Representatives)
Weber—Weber, Ron & Associates, Inc.
Wells Fargo—Wells Fargo & Company
White—White, David T.
WTA—Wisconsin Troopers' Association Inc.
Worsham—Worsham, Michael C., Esq.
YPIMA—Yellow Pages Integrated Media Association (YPIMA)

Supplemental Comments

AARP-Supp.—AARP
AOP-Supp.—Aircraft Owners and Pilots Association (Marsha Mason-Thies)
Allstate-Supp.— Allstate Life Insurance Company
Community Bankers-Supp.— America's Community Bankers
AICR-Supp.— The American Institute for Cancer Research (Kathryn L. Ward)
Red Cross-Supp.—American Red Cross
ARDA-Supp.— The American Resort Development Association (Yartin DePoy and Stratis Pridgeon)
ATA-Supp.— American Teleservices Association
Associations-Supp.—Associations Letter
Avinta-Supp.— Avinta (Abe Chen)
Bond-Supp.— Bond, The Honorable Christopher S. (U.S. Senate)
Celebrity Prime Foods-Supp.— Celebrity Prime Foods
Chesapeake-Supp.—The Chesapeake Bay Foundation (Amelia Koch and Melissa Livingston)
Christian Appalachian-Supp.— The Christian Appalachian Project
Comic Relief-Supp.—Comic Relief, Inc. (Dennis Albaigh)
Covington & Burling-Supp.— Covington and Burling
DialAmerica-Supp.—DialAmerica Marketing, Inc.
DMA Letter-Supp.—Direct Marketing Association-Transmittal Letter
DMA Study-Supp.—Direct Marketing Association-Study
ERA and PMA-Supp.—Electronic Retailing Association and Promotion Marketing Association
EPI-Supp.— Enterprise Prison Institute
Domenici-Supp.—Domenici, The Honorable Pete V. (U.S. Senate)
FDS-Supp.— Federation Department Stores
Hoar-Supp.— Hoar, Wesley C.
Illinois-Supp.— Illinois Attorney General's Office
ICTA-Supp.— Industry Council for Tangible Assets
Luntz-Supp.— Luntz Research Companies (Chrys Lemon)
MPA-Supp.— Magazine Publishers of America
Maryland-Supp.—Maryland Attorney General's Office (Carol Beyers)
McIntyre-Supp.—McIntyre Law Firm, PLLC (Chrys Lemon)
McKenna-Supp.—McKenna, Douglas M.
Memberworks-Supp.—Memberworks National Survey Topline (Chrys Lemon)
Minnesota-Supp.—Minnesota Attorney General's Office
Missouri-Supp.—Missouri Attorney General's Office
NACDS-Supp.—National Association of Chain Drug Stores
Ney, Sandlin, Jones, Shows and Cantor-Supp.—Joint letter from: The Honorable Bob Ney, Max Sandlin, Walter Jones, Ronnie Shows, and Eric Cantor (U.S. House of Representatives)
NAR-Supp.— National Association of Realtors
NWF-Supp.— National Wildlife Federation
NAA June 28-Supp.—Newspaper Association of America (John F. Sturm)
NAA July 31-Supp.—Newspaper Association of America
Not-For-Profit Coalition-Supp.—Not-For-Profit and Charitable Coalition
PMA-Supp.—Promotion Marketing Association
Putnam-Supp.— Putnam, The Honorable Adam H. (U.S. House of Representatives)
Riley-Supp.—Riley, The Honorable Bob (U.S. House of Representatives)
SBC-Supp.— SBC Communications Inc.
Time-Supp.— Time, Inc.
Vermont-Supp.—Vermont Attorney General's Office
WWF-Supp.— World Wildlife Fund (Deborah Hechinger)
Worsham-Supp.—Worsham, Michael C.

User Fee Comments

AARP-User Fee—AARP

ABA-User Fee—American Bankers Association
Red Cross-User Fee—American Red Cross
ARDA-User Fee—American Resort Development Association
ATA-User Fee—American Teleservices Association
Community Bankers-User Fee— America's Community Bankers
Ameriquest-User Fee—Ameriquest Mortgage Company
Celebrity Prime Foods-User Fee— Celebrity Prime Foods
CBA-User Fee—Consumer Bankers Association
DialAmerica-User Fee— DialAmerica Marketing, Inc.
DMA Letter-User Fee— Direct Marketing Association
DMA Comments-User Fee— Direct Marketing Association
Discover-User Fee—Discover Bank
ERA/PMA-User Fee—Electronic Retailing Association and Promotion Marketing Association (joint comment)
Household-User Fee—Household Bank (SB), N.A. and Household Bank (Nevada), N.A. (joint comment)
Hudson Bay-User Fee— Hudson Bay Company of Illinois, Inc.
ICTA-User Fee—Industry Council for Tangible Assets
InfoCision-User Fee—InfoCision Management Corporation
ITC-User Fee— Interactive Teleservices Corporation
MPA-User Fee—Magazine Publishers of America
MasterCard-User Fee—MasterCard International, Inc.
NACDS-User Fee—National Association of Chain Drug Stores
NAR-User Fee—National Association of Realtors
NASUCA-User Fee—National Association of State Utility Consumer Advocates
NEMA-User Fee—National Energy Marketers Association
Not-For-Profit Coalition-User Fee—Not-For-Profit and Charitable Coalition
SBC-User Fee—SBC Communications, Inc.
Tennessee-User Fee—Tennessee Regulatory Authority
SBA-User Fee—United States Small Business Administration, Office of Advocacy
Visa-User Fee— Visa U.S.A., Inc.
Wells Fargo-User Fee— Wells Fargo & Company

Concurring Statement of Commissioner Orson Swindle in *Telemarketing Sales Rule*, File No. R411001

I wholeheartedly support the amendments to the Telemarketing Sales Rule ("TSR"), because I believe that they will help protect consumers from deceptive and abusive telemarketing practices. In particular, these amendments will give consumers the ability to avoid the sheer volume of unwanted telemarketing calls that many consider to be a nuisance. I write separately to explain my views on two issues — how the Commission determines whether an act or practice is "abusive" for purposes of the TSR, and the national do-not-call registry.

Abusive Telemarketing Acts or Practices

The Telemarketing and Consumer Fraud and Abuse Prevention Act ("Telemarketing Act") directs the Commission to promulgate rules that prohibit "deceptive telemarketing acts or practices and other abusive telemarketing acts or practices." 15 U.S.C. 6102 (a)(1). To determine what constitutes an abusive telemarketing practice, the Commission for the most part has used the examples of abusive practices that Congress provided in the Telemarketing Act and principles drawn from these examples. I agree that this is an appropriate analysis, and in light of the rulemaking record as a whole, I fully support the TSR amendments that fall within these parameters. These amendments include, among other things, the provisions involving the national do-not-call registry, transmission of caller identification information, and abandoned calls and predictive dialers.

When the Commission seeks to identify practices as abusive that are less distinctly within the parameters of the Act's examples and their emphasis on privacy protection, the Commission employs its traditional unfairness analysis.[1] I understand the Commission's intention to narrow the potentially expansive scope of the term "abusive" by using its unfairness analysis. However, given the broad ordinary meaning of the term "abusive," I believe that the standard for determining what constitutes an abusive telemarketing practice likely is broader than the stringent definition of the term "unfair." Therefore, I would have preferred it had the Commission looked to the plain meaning of the term "abusive" and then formulated a separate standard to identify abusive telemarketing practices for purposes of the Telemarketing Act and the TSR.

Nevertheless, I agree with the Commission's conclusion that a telemarketing practice that meets the strict unfairness standard will constitute an abusive practice for purposes of the Act and the TSR. In light of the rulemaking record, I therefore support the TSR amendments that are analyzed under this standard. This includes the requirement that telemarketers obtain consumers' or donors' express informed consent before causing their information to be submitted for payment. The rulemaking record evidences the harm that results from unauthorized billing, the need for the consent requirement, and the need to mandate specific steps that telemarketers must take to obtain consumers' consent in transactions involving preacquired account information.

In addition, the record supports the prohibition on the disclosure or receipt, for consideration, of unencrypted account numbers for use in telemarketing (except to process a payment for goods or services or a charitable contribution pursuant to a transaction). I do not believe that the mere disclosure of personal financial information, without more, causes or is likely to cause substantial consumer injury. In this situation, however, the rulemaking record provides a basis for concluding that trafficking in unencrypted account numbers is likely to cause substantial consumer injury in the form of unauthorized billing. Industry comments state that there is no legitimate reason to purchase unencrypted lists of credit card numbers. Therefore, there is a strong likelihood that telemarketers who do engage in this practice will misuse the information in a manner that results in unauthorized charges to consumers' accounts. The Commission's law enforcement experience corroborates this conclusion.[2] As a result, I conclude that this practice is abusive for purposes of the Telemarketing Act.

The National Do-Not-Call Registry

The Telemarketing Act and the TSR recognize consumers' "right to be let alone." *See, e.g., Olmstead v. U.S.*, 277 U.S. 438, 478 (1928) (Brandeis, J., dissenting) (stating that the "right to be let alone" is the "most comprehensive of rights and the right most valued by

[1] Given that nothing in the language of the Telemarketing Act or its legislative history indicates that Congress intended the Commission to use its unfairness standard to determine which practices are abusive, I previously raised concerns about this analysis and requested comment on this issue. *Concurring Statement of Commissioner Orson Swindle in Telemarketing Sales Rule Review*, File No. R411001, available at (www.ftc.gov/os/2002/01/swindletsrstatment.htm). Although some comments agreed with this concern, they did not offer an alternative analysis of abusive practices beyond suggesting that the Commission's authority is limited to the examples of abusive practices included in the Telemarketing Act and its legislative history. *See Statement of Basis and Purpose* at 100, n. 428. However, because the Act does not limit the Commission's authority to identify abusive practices to the examples in the Act, the Commission may prohibit other practices that it identifies as abusive.

[2] *See Statement of Basis and Purpose* at 97-98. In addition, given the evidence that the use of encrypted account information in telemarketing can result in unauthorized charges, there is an even greater likelihood that injury will occur when a telemarketer has obtained, for consideration, consumers' actual credit card numbers.

civilized men"). In the context of telemarketing, there is an inherent tension between this right and the First Amendment's right to free speech. With this in mind, and in light of the rulemaking record as a whole, the Commission has determined to establish a national do-not-call registry. This will enable consumers to stop certain telemarketing calls — calls to induce the purchase of goods and services from companies within the FTC's jurisdiction (except where the consumer has an "established business relationship" with the seller).

Although the USA PATRIOT Act of 2001 gave the Commission authority to regulate for-profit companies that make telephone calls seeking charitable donations on behalf of charities, the Commission has determined to exempt these entities from the national do-not-call registry requirements. Instead, the Commission requires these telemarketers to comply with the "entity-specific" do-not-call provision, which prohibits them from calling consumers who have said they do not want to be called by or on behalf of a particular entity. This more narrowly tailored approach seeks to protect consumers from unwanted telemarketing calls seeking charitable donations, while minimizing the impact of the TSR on charities' First Amendment rights. I do not object to taking this approach at the outset; but if there is evidence that suggests that this approach is not effective in protecting consumers from unsolicited telemarketing calls, the Commission should revisit this decision and require for-profit telemarketers seeking charitable donations to comply with the national do-not-call registry.

While I believe that the amended TSR and the national do-not-call registry will go a long way to help consumers prevent unwanted intrusions into their homes, a number of entities are not subject to the TSR's requirements. Under the Telemarketing Act and the TSR, the Commission does not have jurisdiction in whole or in part over the calls of entities such as banks, telephone companies, airlines, insurance companies, credit unions, charities, political campaigns, and political fund-raisers. From the perspective of consumers, the right to be let alone is invaded just as much by unwanted calls from exempt entities (*e.g.*, banks, telephone companies, or political fund-raisers) as it is by such calls from covered entities.[3] Therefore, I believe that the entire spectrum of entities that make telemarketing calls to consumers should be subject to do-not-call requirements.

[FR Doc. 03–1811 Filed 1–28–03; 8:45 am]

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[3] The Federal Communications Commission, however, has requested comment on whether to establish a national do-not-call registry that would address telemarketing calls by at least some of the entities that are exempt from the FTC's jurisdiction. *Notice of Proposed Rulemaking*, Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991, 67 FR 62667 (Oct. 8, 2002).

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Rules and Regulations

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 550

RIN 3206–AJ57

Administratively Uncontrollable Overtime Pay

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management is issuing final regulations concerning the rules governing payment of administratively uncontrollable overtime (AUO) pay. AUO is a form of premium pay paid to employees in positions in which the hours of duty cannot be controlled administratively and which require substantial amounts of irregular or occasional overtime work. This final rule permits agencies to pay AUO pay to an employee during a temporary assignment that would not otherwise warrant the payment of AUO pay, if the temporary assignment is directly related to a national emergency declared by the President. In determining the average hours used in computing future AUO payments, this final rule also excludes from consideration the time period for which AUO pay is paid during a temporary assignment.

DATES: March 3, 2003.

FOR FURTHER INFORMATION CONTACT: Kevin Kitchelt, (202) 606–2858; FAX: (202) 606–0824; e-mail: *payleave@opm.gov*.

SUPPLEMENTARY INFORMATION: On February 13, 2002, the Office of Personnel Management issued interim regulations (67 FR 6640) to permit agencies to pay AUO pay to an employee during a temporary assignment that would not otherwise warrant the payment of AUO pay, if the temporary assignment is directly related to a national emergency. We proposed that an agency should be permitted to continue to pay AUO pay for a period of not more than 30 consecutive workdays for such a temporary assignment and for a total of not more than 90 workdays in a calendar year while on such a temporary assignment. The 90-day comment period ended on April 15, 2002. We received comments from two Federal agencies and an employee association.

One agency suggested that the phrase "declared by the President" be added to the regulation at 5 CFR 550.162(g), which states that an agency may continue to pay AUO pay during a temporary assignment that would not otherwise warrant AUO pay, if the temporary assignment is directly related to a national emergency. We agree and have added the phrase "declared by the President" to 5 CFR 550.162(g).

Another agency requested that we explain the relationship between the existing 60-workday annual limitation for temporary assignments in the last paragraph of 5 CFR 550.162(c) and the new 90-workday annual limitation for temporary assignments directly related to a national emergency in 5 CFR 550.162(g). The new 90-workday annual limitation is separate from the 60-workday limitation provided in 5 CFR 550.162(c). Therefore, 150 workdays is the theoretical maximum number of workdays in a calendar year during which an agency may continue to pay AUO pay for temporary assignments provided the conditions in both 5 CFR 550.162(c) and (g) are met.

The employee association provided several comments on issues that are outside the scope of the interim regulations. We are not addressing these issues in these regulations.

E.O. 12866, Regulatory Review

The Office of Management and Budget has reviewed this rule in accordance with E.O. 12866.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they will apply only to Federal agencies and employees.

List of Subjects in 5 CFR part 550

Administrative practice and procedure, Claims, Government employees, Wages. Office of Personnel Management.

Kay Coles James,
Director.

Accordingly, OPM is adopting the interim regulations amending 5 CFR part 550, published at 67 FR 6640 on February 13, 2002, as final with the following changes:

PART 550—PAY ADMINISTRATION (GENERAL)

Subpart A—Premium Pay

1. The authority citation for part 550, subpart A, continues to read as follows:

Authority: 5 U.S.C. 5304 note, 5305 note, 5541(2)(iv), 5545a(h)(2)(B) and (i), 5548, and 6101(c); sections 407 and 2316, Pub. L. 105–277, 112 Stat. 2681–101 and 2681–828 (5 U.S.C. 5545a); E.O. 12748, 3 CFR, 1992 Comp., p. 316.

2. In § 550.162, paragraph (g) is revised to read as follows:

§ 550.162 Payment provisions.

* * * * * *

(g) Notwithstanding paragraph (c)(1) of this section, an agency may continue to pay premium pay under § 550.151 to an employee during a temporary assignment that would not otherwise warrant the payment of AUO pay, if the temporary assignment is directly related to a national emergency declared by the President. An agency may continue to pay premium pay under § 550.151 for not more than 30 consecutive workdays for such a temporary assignment and for a total of not more than 90 workdays in a calendar year while on such a temporary assignment.

[FR Doc. 03–2192 Filed 1–29–03; 8:45 am]
BILLING CODE 6325–39–P

OFFICE OF GOVERNMENT ETHICS

5 CFR Part 2641

RIN 3209–AA07

Post-Employment Conflict of Interest Restrictions; Revision of Departmental Component Designations

AGENCY: Office of Government Ethics (OGE).

ACTION: Final rule.

SUMMARY: The Office of Government Ethics is issuing this rule to designate

several departmental components, to revoke an existing component designation, and to change the names of two existing departmental components, for purposes of the one-year post-employment conflict of interest restriction at 18 U.S.C. 207(c).

EFFECTIVE DATES: This amendatory rule is effective January 30, 2003, except for the removal of the listing for the International Joint Commission, United States and Canada (American Section), as set forth in amendatory instruction 3, which is effective on April 30, 2003.

FOR FURTHER INFORMATION CONTACT: Richard M. Thomas, Associate General Counsel, Office of Government Ethics; telephone: 202–208–8000, extension 1152; TDD: 202–208–8025; FAX: 202–208–8037.

SUPPLEMENTARY INFORMATION:

A. Substantive Discussion

The Director of OGE (Director) is authorized by 18 U.S.C. 207(h) to designate distinct and separate departmental or agency components in the executive branch for purposes of 18 U.S.C. 207(c). The representational bar of 18 U.S.C. 207(c) usually extends to the whole of any department or agency in which a former senior employee served in any capacity during the year prior to termination from a senior employee position. However, eligible senior employees may be permitted to communicate to or appear before parts of their former department or agency if one or more components of the department or agency have been designated as separate agencies or bureaus by OGE.

As specified in 5 CFR 2641.201(e)(3)(iii), the Director of OGE "shall by rule make or revoke a component designation after considering the recommendation of the designated agency ethics official." Component designations are listed in appendix B of 5 CFR part 2641. Pursuant to the procedures prescribed in 5 CFR 2641.201(e), several departments have forwarded letters to OGE recommending the amendment of appendix B since it was last revised in 1999 (64 FR 5709–5710 (February 5, 1999)). After carefully reviewing these recommendations in light of the criteria in 18 U.S.C. 207(h) as implemented in 5 CFR 2641.201(e)(6), the Director has determined to revise appendix B as explained below.

At the recommendation of the Department of Defense (DOD), the Director is designating the National Reconnaissance Office (NRO) as a distinct and separate component of that Department. NRO is charged, under 50 U.S.C. 403–5(b)(3), with responsibility for the "continued operation of an effective unified organization for the research and development, acquisition, and operation of overhead reconnaissance systems necessary to satisfy the requirements of all elements of the intelligence community." NRO is the sole designer, builder and operator of the United States' reconnaissance satellites. According to DOD, NRO was omitted from the Department's original list of recommended components in 1990 because the existence of the NRO was, at that time and for several years thereafter, a highly classified fact. That is no longer the case, and NRO can now be designated as a new component of the DOD.

The Director is also granting the request of the Department of Labor to designate the Office of Disability Employment Policy (ODEP) as a distinct and separate component of that Department. ODEP is a new office established by legislation enacted on December 21, 2000, section 1(a)(1), Pub. L. 106–554, as codified at 29 U.S.C. 557b. The office, which is headed by an Assistant Secretary, is charged to "provide leadership, develop policy and initiatives, and award grants furthering the objective of eliminating barriers to the training and employment of people with disabilities." 29 U.S.C. 557b.

As recommended by the Department of Transportation (DOT), the Director is designating the Federal Motor Carrier Safety Administration (FMCSA) as a distinct and separate component of that Department. The FMCSA commenced operations on January 2, 2000. It was created pursuant to the Motor Carrier Safety Improvement Act of 1999, section 101(a), Pub. L. 106–159, as codified at 49 U.S.C. 113, to perform functions relating to motor carriers and motor carrier safety. These functions were previously performed by DOT's Federal Highway Administration.

Also pursuant to the recommendation of DOT, the Director is designating the Transportation Security Administration (TSA) as a distinct and separate component of that Department. Under the Aviation and Transportation Security Act, section 101(a), Pub. L. 107–71, as codified at 49 U.S.C. 114, TSA was created as an administration of DOT, with the responsibility for civil aviation security as well as the security of other modes of transportation. Although the functions of TSA are expected to be transferred to the new Department of Homeland Security at a later time during 2003, this separate component designation will define the relationship between DOT and TSA with respect to section 207(c) immediately.

As requested by the Department of the Treasury (Treasury), the Director is designating the Financial Crimes Enforcement Network (FinCEN) as a distinct and separate component of that Department. Under 31 U.S.C. 310, FinCEN is designated as a bureau in Treasury to provide trend analysis and threat assessments, regulate financial and other institutions under the Bank Secrecy Act, and foster international cooperation in efforts to deter and detect money laundering.

Additionally, as recommended by the Department of State, the Director is revoking the designation of the International Joint Commission, United States and Canada (American Section) (IJC). Section 207(h) of 18 U.S.C. authorizes the designation of agencies and bureaus "within" a department or agency. Although the IJC receives funding from the Department of State and Federal employees serve in its American Section, IJC is not a part of the Department of State. Rather, it is an international organization in which the United States participates. *See, e.g.*, 22 U.S.C. 288 (IJC is among the international organizations in which the United States participates which are entitled to certain privileges, exemptions, and immunities).

Finally, the Department of Health and Human Services (HHS) has advised that the names of two HHS components currently listed in appendix B of part 2641 have been changed. According to HHS, the "Agency for Health Care Policy and Research" is now the "Agency for Healthcare Research and Quality," and the "Health Care Financing Administration" is now the "Centers for Medicare and Medicaid Services." Accordingly, the Director is amending the HHS listing in appendix B to reflect the current names of these components.

As indicated in 5 CFR 2641.201(e)(4), a designation "shall be effective as of the effective date of the rule that creates the designation, but shall not be effective as to employees who terminated senior service prior to that date." Initial designations were effective as of January 1, 1991. The effective date of subsequent designations is indicated by means of parenthetical entries in appendix B. The new component designations made by this rulemaking document, as well as the component name changes being reflected herein (which do not affect their underlying component designation dates), are effective January 30, 2003. As also provided in 5 CFR 2641.201(e)(4), a revocation is effective 90 days after the

effective date of the rule that revokes the designation. Accordingly, the component designation revocation made in this rulemaking will take effect April 30, 2003. Revocations are not effective as to any individual terminating senior service prior to the expiration of the 90-day period.

B. Matters of Regulatory Procedure

Administrative Procedure Act

Pursuant to 5 U.S.C. 553, as the Director of OGE, I find that good cause exists for waiving the general requirements for notice of proposed rulemaking, opportunity for public comment, and, except as to the component revocation (see the preamble discussion above), a 30-day delayed effective date. It is important and in the public interest that the designation or revocation herein by OGE of the specified separate departmental components, as well as the component name changes, all of which reflect the current organization of the concerned departments and, as to the new component designations, relieve a restriction, be published in the **Federal Register** and take effect as promptly as possible.

Regulatory Flexibility Act

As Director of the Office of Government Ethics, I certify under the Regulatory Flexibility Act (5 U.S.C. chapter 6) that this rule will not have a significant economic impact on a substantial number of small entities because it affects only Federal departments and agencies and current and former Federal employees.

Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. chapter 35) does not apply to this rule because it does not contain information collection requirements that require the approval of the Office of Management and Budget.

Unfunded Mandates Reform Act

For purposes of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. chapter 25, subchapter II), the final rule would not significantly or uniquely affect small governments and would not result in increased expenditures by State, local and tribal governments, in the aggregate, or by the private sector, of $100 million or more (as adjusted for inflation) in any one year.

Congressional Review Act

The Office of Government Ethics has determined that this rulemaking involves a nonmajor rule under the Congressional Review Act (5 U.S.C. chapter 8) and has submitted a report thereon to the U.S. Senate, House of Representatives and General Accounting Office in accordance with the law.

Executive Order 12866

In promulgating this final rule, the Office of Government Ethics has adhered to the regulatory philosophy and the applicable principles of regulation set forth in section 1 of Executive Order 12866, Regulatory Planning and Review. This rule has not been reviewed by the Office of Management and Budget under that Executive order since it deals with agency organization, management, and personnel matters and is not "significant" under the order.

Executive Order 12988

As Director of the Office of Government Ethics, I have reviewed this rule in light of section 3 of Executive Order 12988, Civil Justice Reform, and certify that it meets the applicable standards provided therein.

List of Subjects in 5 CFR Part 2641

Conflict of interests, Government employees.

Approved: January 23, 2003.

Amy L. Comstock,

Director, Office of Government Ethics.

Accordingly, for the reasons set forth in the preamble, the Office of Government Ethics is amending 5 CFR part 2641 as follows:

PART 2641—POST-EMPLOYMENT CONFLICT OF INTEREST RESTRICTIONS

1. The authority citation for part 2641 continues to read as follows:

Authority: 5 U.S.C. App. (Ethics in Government Act of 1978); 18 U.S.C. 207; E.O. 12674, 54 FR 15159, 3 CFR, 1989 Comp., p. 215, as modified by E.O. 12731, 55 FR 42547, 3 CFR, 1990 Comp., p. 306.

2. Effective January 30, 2003, appendix B to part 2641 is amended by revising the listings for the Department of Defense, the Department of Health and Human Services, the Department of Labor, the Department of Transportation, and the Department of the Treasury to read as follows:

Appendix B to Part 2641—Agency Components for Purposes of 18 U.S.C. 207(c)

* * * * *

Parent: Department of Defense

Components

Department of the Air Force
Department of the Army
Department of the Navy
Defense Information Systems Agency
Defense Intelligence Agency
Defense Logistics Agency
Defense Threat Reduction Agency (effective February 5, 1999)
National Imagery and Mapping Agency (effective May 16, 1997)
National Reconnaissance Office (effective January 30, 2003)
National Security Agency

Parent: Department of Health and Human Services

Components

Administration on Aging (effective May 16, 1997)
Administration for Children and Families (effective January 28, 1992)
Agency for Healthcare Research and Quality (formerly Agency for Health Care Policy and Research) (effective May 16, 1997)
Agency for Toxic Substances and Disease Registry (effective May 16, 1997)
Centers for Disease Control and Prevention (effective May 16, 1997)
Centers for Medicare and Medicaid Services (formerly Health Care Financing Administration)
Food and Drug Administration
Health Resources and Services Administration (effective May 16, 1997)
Indian Health Service (effective May 16, 1997)
National Institutes of Health (effective May 16, 1997)
Substance Abuse and Mental Health Services Administration (effective May 16, 1997)

* * * * *

Parent: Department of Labor

Components:

Bureau of Labor Statistics
Employment and Training Administration
Employment Standards Administration
Mine Safety and Health Administration
Occupational Safety and Health Administration
Office of Disability Employment Policy (effective January 30, 2003)
Pension and Welfare Benefits Administration (effective May 16, 1997)

* * * * *

Parent: Department of Transportation

Components:

Federal Aviation Administration
Federal Highway Administration
Federal Motor Carrier Safety Administration (effective January 30, 2003)
Federal Railroad Administration
Federal Transit Administration
Maritime Administration
National Highway Traffic Safety Administration
Saint Lawrence Seaway Development Corporation
Surface Transportation Board (effective May 16, 1997)
Transportation Security Administration (effective January 30, 2003)

United States Coast Guard

Parent: Department of the Treasury

Components

Bureau of Alcohol, Tobacco and Firearms
Bureau of Engraving and Printing
Bureau of the Mint
Bureau of the Public Debt
Comptroller of the Currency
Federal Law Enforcement Training Center
Financial Crimes Enforcement Network (FinCEN) (effective January 30, 2003)
Financial Management Service
Internal Revenue Service
Office of Thrift Supervision
United States Customs Service
United States Secret Service

3. Effective April 30, 2003, appendix B to part 2641 is further amended by removing the word and colon "Components:" and adding in place thereof the word and colon "Component:" in the listing for the Department of State and by removing the "International Joint Commission, United States and Canada (American Section)" from that listing.

[FR Doc. 03–2117 Filed 1–29–03; 8:45 am]

BILLING CODE 6345–02–P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

7 CFR Part 1738

RIN 0572–AB81

Rural Broadband Access Loans and Loan Guarantees

AGENCY: Rural Utilities Service, USDA.

ACTION: Final rule.

SUMMARY: The Rural Utilities Service (RUS) is amending its regulations in order to establish the Rural Broadband Access Loan and Loan Guarantee Program as authorized by the Farm Security and Rural Investment Act of 2002 (Pub. L. 101–171) (2002 Act). Section 6103 of the Farm Security and Rural Investment Act of 2002 amended the Rural Electrification Act of 1936, as amended (RE Act), to add Title VI, Rural Broadband Access, to provide loans and loan guarantees to fund the cost of construction, improvement, or acquisition of facilities and equipment for the provision of broadband service in eligible rural communities. This final rule prescribes the types of loans available, facilities financed, and eligible applicants, as well as minimum credit support requirements to be considered for a loan. In addition, the rule prescribes the process through which RUS will consider applicants under the priority consideration and the state allocations required in Title VI.

EFFECTIVE DATE: This rule is effective January 30, 2003.

FOR FURTHER INFORMATION CONTACT: Roberta D. Purcell, Assistant Administrator, Telecommunications Program, Rural Utilities Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW., STOP 1590, Room 4056, Washington, DC 20250–1590. Telephone number (202) 720–9554, Facsimile (202) 720–0810.

SUPPLEMENTARY INFORMATION:

Notice and Comment

Section 6103(b) of the 2002 Act requires that the regulations necessary to implement the Rural Broadband Access Loan and Loan Guarantee Program are to be promulgated without regard to the notice and comment provisions of 5 U.S.C. 553 or the Statement of Policy of the Secretary of Agriculture, effective July 24, 1971 (36 FR 13804), relating to notices of proposed rulemaking and public participation in rulemaking. Therefore, these regulations are issued as a final rule.

Executive Order 12866

This rule has been determined to be significant for purposes of Executive Order 12866 and, therefore, has been reviewed by the Office of Management and Budget (OMB). In accordance with Executive Order 12866, an Economic Impact Analysis was completed, outlining the costs and benefits of implementing this program in rural America. The complete analysis is available from RUS upon request.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. RUS has determined that this rule meets the applicable standards provided in section 3 of that Executive Order. In addition, all State and local laws and regulations that are in conflict with this rule will be preempted. No retroactive effect will be given to the rule and, in accordance with section 212(e) of the Department of Agriculture Reorganization Act of 1994 (7 U.S.C. 6912(e)), administrative appeal procedures must be exhausted before an action against the Department or its agencies may be initiated.

Regulatory Flexibility Act Certification

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) is not applicable to this rule because the agency is not required by 5 U.S.C. 553 or any other law to publish a notice of proposed rulemaking for the subject matter of this rule. The RUS broadband program provides loans to borrowers at interest rates and terms that are more favorable than those generally available from the private sector. RUS borrowers, as a result of obtaining federal financing, receive economic benefits that exceed any direct cost associated with complying with RUS regulations and requirements.

Information Collection and Recordkeeping Requirements

Section 1601(c) of the 2002 Act provides that the promulgation of regulations necessary to implement the Rural Broadband Access Loan and Loan Guarantee Program shall be made without regard to chapter 5 of title 44 of the United States Code (the Paperwork Reduction Act).

Catalog of Federal Domestic Assistance

The program described by this rule is listed in the Catalog of Federal Domestic Assistance Programs under No. 10.851, Rural Telephone Loans and Loan Guarantees; No. 10.852, Rural Telephone Bank Loans; and No. 10.857, Rural Broadband Access Loans and Loan Guarantees. This catalog is available on a subscription basis from the Superintendent of Documents, the United States Government Printing Office, Washington, DC 20402. Telephone: (202) 512–1800.

Executive Order 12372

This rule is excluded from the scope of Executive Order 12372, Intergovernmental Consultation, which may require consultation with State and local officials. See the final rule related notice entitled "Department Programs and Activities Excluded from Executive Order 12372," (50 FR 47034).

Unfunded Mandates

This rule contains no Federal mandates (under the regulatory provision of Title II of the Unfunded Mandate Reform Act of 1995) for State, local, and tribal governments or the private sector. Thus, this rule is not subject to the requirements of sections 202 and 205 of the Unfunded Mandate Reform Act of 1995.

National Environmental Policy Act Certification

RUS has determined that this rule will not significantly affect the quality of the human environment as defined by the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*). Therefore, this action does not require an environmental impact statement or assessment.

Background

Section 6103 of the 2002 Act amended the RE Act, to add Title VI, Rural Broadband Access, to provide loans and loan guarantees to fund the costs of construction, improvement, or acquisition of facilities and equipment for the provision of broadband service in eligible rural communities. Title VI defines eligible communities and entities, and sets forth the types of loans, as well as a state allocation system and a priority system for consideration of applicants.

Section 6103(b) of the 2002 Act provides that the regulations for this program are exempt from the notice and comment provisions of section 553 of title 5, United States Code (Administrative Procedures Act). RUS held a public meeting on June 27, 2002, in order to obtain background information for consideration in the implementation and administration of the Rural Broadband Access program. There were 22 presenters including lenders, telecommunications and broadband providers, trade associations, and capital market specialists. The presenter's written comments are available on the RUS Web site at *http://www.usda.gov/rus/telecom/publicmeeting/public_meeting.htm*.

RUS considered the oral and written comments of the presenters as well as the Conference Report accompanying the 2002 Act (Report 107–424) to formulate the regulations implementing the Rural Broadband Access Loan and Loan Guarantee Program.

Types of loans. The Rural Broadband Access Loan and Loan Guarantee Program will offer three types of loans: (1) A direct cost-of-money loan, bearing interest at the cost of borrowing to the Department of the Treasury for obligations of comparable maturity; (2) a direct 4 percent loan; and (3) a private lender guaranteed loan.

Eligible entities can apply for a direct cost-of-money loan or a private lender guaranteed loan to provide service in any eligible rural community. Four-percent direct loans will be available only to provide service in the most rural, economically-challenged communities which currently do not have broadband service to residents.

Four-percent direct loans will be available to eligible entities proposing to provide service in communities with no residential broadband service, population of 2,500 or less, and certain density and income requirements. The density requirement is a maximum number of persons per square mile of the applicant's defined service area. The income requirement is the average per capita income in the county containing the applicant's service area as a percent of the national average per capita income. This requirement will be set at a maximum number. The income and density requirements are subject to review and adjustment on an annual basis and will be published in the **Federal Register** at the beginning of each fiscal year.

All the requirements for a 4-percent loan are in place to encourage build out of broadband facilities to the very poor, rural parts of the country. RUS feels that offering a fixed low interest rate program for these areas helps offset the high cost of serving remote areas which require more telecommunications plant per subscriber than the more densely populated communities.

Credit support requirement. At the public hearing on June 27, RUS heard comments from lenders and equity capital specialists on financing broadband infrastructure projects. In all cases, the lender or investor would require the borrower to contribute support to the project, from 35 to 100 percent of the cost of the project. This reflects the risk that lenders and investors perceive to exist in these projects. The contributions can be in the form of assets, cash, or guarantees from parent companies.

RUS believes that prudent lending practice, especially in the current telecommunications environment, dictates a credit support requirement as well. RUS also considered what form of support would be appropriate.

RUS set the requirement at a lower percent than other telecommunications lenders, 20 percent of the requested loan amount. This lower requirement is enhanced by the requirement that certain applicants have, at the time of application, sufficient cash on hand to support operations for one year. This amount can be part of the minimum 20 percent requirement, or if the cash required for one year of operating expenses is in excess of 20 percent of the loan, that cash requirement will be the minimum requirement. RUS set this requirement for start-up broadband operations to assure that they have cash on hand to cover operations until revenues generate sufficient cash flows to pay expenses as they become due.

RUS recognizes that the expenses of an ongoing telecommunications company can be covered through a regular stream of revenues, and therefore the need to have a large amount of cash on hand is unnecessary and imprudent. This requirement may deter operating telecommunications companies with a viable business plan from applying for funds to upgrade facilities for broadband, perhaps denying a rural community of broadband service. Therefore, RUS will waive the minimum cash requirement for an ongoing company that can show positive cash flow for the two calendar years immediately preceding the date of the application.

Priority Consideration. Title VI directs RUS to give priority to eligible rural communities in which broadband service is not available. In addition, following Congressional guidance in the Conference Report accompanying the 2002 Act (H.R. Rpt. 107–424, 107th Cong. 2nd Sess., 579), RUS will evaluate for expedited approval, any completed application which meets the priority criteria and to evaluate the priority classification of applications on hand at least once every three months.

In addition, pursuant to Title VI, RUS will set up a State reserve in which, for the first 6 months of each fiscal year, the available funding for the fiscal year is allocated among the States, territories, and insular possessions based on the number of communities with populations of 2,500 or less in each State, territory, and insular possession in relation to the total number of such communities in the United States, its territories, and insular possessions.

At the same time, RUS did not want completed, feasible applications which did not meet the priority consideration to go unfunded until the end of the fiscal year. Consequently, RUS came up with a priority system which allows for the funding of completed, feasible applications in a timely manner so long as funding is available in the applicant's state reserve or, after April 1 of the fiscal year, the national reserve.

RUS will expedite for consideration for funding, applications proposing to provide service where none is physically available on a first-in, first-out basis. RUS will also give a lesser priority to those areas currently receiving service but (1) at rates that are not comparable to those in neighboring urban and suburban areas or (2) of quality that is considered unsatisfactory due to, among other criteria, data rate restrictions, system latency, or unreliable connections.

One-time priority for pilot program applicants. Language in the Conference Report accompanying the 2002 Act (H.R. Rpt. 107–424, 107th Cong. 2nd Sess., 579), specifically states, "The Managers expect the RUS to evaluate the priority status of all pending broadband applications as soon as practicable after the date of enactment. Any completed application which meets the priority criteria should be evaluated for expedited approval."

The pending, unfunded applications received under the broadband pilot program were returned to the applicants as required in the **Federal Register** at 67 FR 3140. Therefore, RUS has given these applicants a 30-day window to reapply under the requirements of this section. Applications which are submitted and determined to be complete within 30 days of publication of this section will be given priority for funding over new applicants under this program. Only completed applications which are technically and economically feasible will be considered for funding.

Availability of broadband service. As state above, Title VI directs RUS to give priority to eligible rural communities in which broadband service is not available. RUS took into consideration its long history in the telecommunications program in setting forth the criteria for determining the availability of broadband service and decided to consider not only whether broadband was physically available but also the quality of any existing broadband service in a community in granting priority status for funding.

RUS will first consider applications proposing to provide service where none is physically available, the "unserved" communities.

Second, RUS will consider applications proposing to provide service where rates are not comparable to similar service in urban and suburban areas, or quality of service is not satisfactory, the "underserved" communities.

In determining whether broadband service is available, RUS requires the applicant to publish a legal notice stating its intent to provide service in a community and requesting any incumbent provider to submit certain information to RUS including service territory, cost of service, rates of data transmission. RUS understands that this may be Confidential Business Information and will protect the confidentiality of the information.

Acquisitions. Title VI permits the use of loan funds for the acquisition of facilities and equipment for the provision of broadband facilities. However, RUS believes the primary intent of the legislation is to provide funding for broadband deployment in rural communities where residential service is not available. RUS will fund the acquisition of eligible facilities and equipment only if the applicant demonstrates it is necessary and incidental to furnishing or improving rural broadband service and the acquisition is less than 50 percent of the loan amount requested.

Refinancing. Title VI permits RUS to refinance existing RUS telecommunications debt if the use of the proceeds will further the construction, improvement, or acquisition of facilities and equipment for broadband service. RUS will limit the funds lent for refinancing to 40 percent of the total loan amount.

Competition with Existing RUS Telecommunications Borrowers. RUS believes that loan security for an existing telecommunications borrower may be at risk should RUS fund a competing service which could also offer traditional telephone service in addition to broadband service. However, residents in RUS telecommunications borrower service areas should not be denied the opportunity to subscribe to broadband service if the incumbent is not willing to provide the service. RUS will give existing telecommunication borrowers a two-year window in which RUS would not consider applications proposing to offer broadband service in an existing RUS telecommunications borrower's service area if the existing borrower, not later than 90 days after RUS receipt of an application proposing to provide broadband service in the borrower's local exchange service territory, submits to RUS a letter of intent to provide or begin to construct residential broadband service in its local exchange service territory within two years.

The incumbent RUS telecommunications borrower must provide, prior to October 1, 2004, support of its intent through submitting either a loan application to construct broadband facilities to RUS or another lender or proof that construction of broadband facilities has begun. Should the existing telecommunications borrower construct or begin to construct broadband facilities during the two-year window, RUS will not consider any applications proposing to provide competitive broadband service in that incumbent borrower's territory. RUS will monitor the incumbent's compliance with the letter of intent through onsite inspections or any other means necessary. If the borrower is not making satisfactory progress in providing broadband service in its local exchange service territory, RUS will consider applications proposing to provide broadband service in their territory.

This same principle will hold for borrowers under the Rural Broadband Access Loan and Loan Guarantee Program. In order to protect loan security, RUS will not fund applications proposing to construct broadband facilities in communities served by borrowers using funds under this part regardless of the definition used for broadband service at the time of loan approval.

Rate-of-data transmission criteria for defining broadband service. Title VI states that the Secretary shall review and recommend modifications of rate-of-data transmission criteria for purposes of the identification of broadband service technologies. Given the rate of change in technology RUS feels that the rate-of-data transmission criteria may need to be changed within the 6-year time frame of the broadband loan program. Therefore, RUS will publish the criteria in the **Federal Register** at the beginning of each fiscal year. The newly published rate will be the minimum for all new applicants in that fiscal year. Unfunded, complete applications from the previous fiscal year will not be required to meet the new rate-of-data transmission criteria. Those applications will be evaluated for approval on the basis of the criteria in place as of the date of completion.

Conference language also suggests that RUS continue the use of the FCC definition of broadband service, as was used in the pilot program, in order to "* * * continue the current high standard used by RUS in determining what broadband service is." In the broadband pilot program, RUS used the FCC standard for "advanced telecommunications capability" as the rate-of-data transmission criteria for broadband. As of the date of publication of this regulation, the FCC uses the term "advanced telecommunications capability" to describe services and facilities with an upstream (customer-to-provider) and downstream (provider-to-customer) transmission speed exceeding 200 kilobits per second. RUS will continue to use this current standard for the rate-of-data transmission criteria unless the FCC changes the rate used in "advanced telecommunications capability". If FCC changes the rate, RUS will revisit its definition of broadband. RUS recognizes the value of coordinating with other agencies in determining rate-of-data transmission criteria for the purpose of determining broadband, and will continue to do so.

Notice of application deadline. At the beginning of each fiscal year, RUS will publish in the **Federal Register** a Notice of Application Deadline. The notice will cover those items in the regulation which are subject to annual review and change, including loan levels in each type of loan, rate-of-data transmission criteria, density and income requirements for 4-percent direct loans, and the dollar amounts available in each State under the allocation.

List of Subjects in 7 CFR Part 1738

Broadband, Loan programs-communications, Rural areas, Telephone, Telecommunications.

For reasons set out in the preamble, RUS amends chapter XVII of title 7 of the Code of Federal Regulations by adding a new part 1738 to read as follows:

PART 1738—RURAL BROADBAND ACCESS LOANS AND LOAN GUARANTEES

Subpart A—General

Sec.
1738.1 General statement.
1738.2 Definitions.
1738.3—1738.9 [Reserved]

Subpart B—Loan Purposes and Basic Policies

1738.10 General.
1738.11 Availability of broadband service.
1738.12 Location of facilities.
1738.13 Allocation of funds.
1738.14 One-time priority for unfunded applications from the broadband pilot program
1738.15 Priorities.
1738.16 Eligible entities.
1738.17 Civil rights.
1738.18 Minimum and maximum loan amount.
1738.19 Facilities financed.
1738.20 Equity requirement.
1738.21 Interim financing.
1738.22 Loan security.
1738.23—1738.29 [Reserved].

Subpart C—Types of Loans

1738.30 Rural broadband access loans and loan guarantees.
1738.31 Full faith and credit.
1738.32—1738.39 [Reserved]

Subpart D—Terms of Loans

1738.40 General.
1738.41 Payments on loans.
1738.42—1738.49 [Reserved]

Authority: Pub. L. 107–171, 7 U.S.C. 901 *et seq.*

Subpart A—General

§ 1738.1 General statement.

(a) This part sets forth the general policies, types of loans and loan guarantees, and program requirements under the Rural Broadband Access Loan and Loan Guarantee Program to provide funds for the costs of the construction, improvement, and acquisition of facilities and equipment for broadband service in eligible rural communities.

(b) Additional information regarding the Rural Broadband Access Loan and Loan Guarantee Program can be found in RUS Bulletin 1738–1, "Rural Broadband Access Loan and Loan Guarantee Application Guide" and RUS Bulletin 1738–2, "Rural Broadband Access Loan and Loan Guarantee Advance and Construction Procedures Guide".

(c) When reference is made in this part to existing RUS regulations, an applicant or borrower under this part will follow the requirements applicable to an RUS telecommunications borrower.

§ 1738.2 Definitions.

As used in this part:

Acquisition means the purchase of operating broadband facilities or another broadband system whether by acquiring broadband facilities or equipment, or majority stock interest of one or more organizations.

Administrator means the Administrator of the Rural Utilities Service, or his or her designee.

Affiliate means an organization that directly, or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, the applicant.

Applicant means an eligible entity requesting approval of a loan or loan guarantee under this part.

Borrower means any organization that has an outstanding loan made or guaranteed by RUS.

Broadband pilot program means that program implemented through Notices of Funds Availability, published in the **Federal Register** at 65 FR 75920 and at 67 FR 3140.

Broadband service means any technology identified by the Administrator as having the capacity to transmit data to enable a subscriber to the service to originate and receive high-quality voice, data, graphics, and video. To qualify as broadband, the project must offer data transmission services, and may provide voice, graphics, video, and other services. At the beginning of each fiscal year, RUS will publish a notice in the **Federal Register** defining the minimum rate-of-data transmission criteria to qualify as broadband service during that fiscal year's funding period.

Composite economic life means the weighted (by dollar amount of each class of facility in the loan) average economic life of all classes of facilities in the loan.

Economic life means the estimated useful service life of an asset as determined by RUS.

Eligible rural community means any incorporated or unincorporated place in the United States, its territories and insular possessions (including any area within the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau) that:

(1) Has no more than 20,000 inhabitants based on the most recent available population statistics of the Bureau of the Census and

(2) Is not located in an area designated as a standard metropolitan statistical area. For purposes of this part, "place" may include any area located outside the boundaries of any incorporated or unincorporated city, village or borough having a population exceeding 20,000 that is not within an area designated as a standard metropolitan statistical area.

Feasibility study means the pro forma financial analysis prepared by the applicant, and acceptable to RUS, to determine the economic feasibility of a loan.

Fiscal year means the fiscal year of the federal government.

Forecast period means the time period beginning on the date (base date) of the applicant's balance sheet used in preparing the feasibility study and ending on a date equal to the base date plus the number of years estimated in the feasibility study for completion of the construction covered by the loan. Feasibility projections are usually for 5 years.

Initial loan means the first loan made under section 601 of the RE Act to each eligible entity.

Interim construction means the construction, improvement, or acquisition of facilities and equipment prior to loan approval and release of funds.

Interim financing means funding for a project that RUS has acknowledged could be included in a loan prior to approving the loan.

Loan means any loan made or guaranteed under this part by RUS, unless otherwise noted.

Loan contract means the loan agreement between RUS and the borrower, including all amendments thereto.

Loan documents means the loan contract, note, and security instrument between the borrower and RUS and any associated document pertaining to a loan.

Loan funds means funds provided pursuant to a loan made or guaranteed under this part by RUS.

Mortgage means the security document between the borrower, as debtor, and RUS, as creditor, including any amendments and supplements thereto.

Private loan guarantee means a loan made by a non-Federal lender and guaranteed by RUS.

RE Act means the Rural Electrification Act of 1936, as amended (7 U.S.C. 901 *et seq.*).

Release of funds means a determination by RUS that an applicant has complied with all of the conditions

prerequisite to the advance of funds as set forth in the loan contract.

RUS means the Rural Utilities Service, an agency of the United States Department of Agriculture, and successor to the Rural Electrification Administration.

RUS telecommunications borrower means any organization that has an outstanding telecommunications loan made or guaranteed by RUS under Titles II, III, or IV of the RE Act.

Service area means the geographical area within which the applicant proposes to make broadband service available with a loan provided under this part.

Telecommunications means the transmission and reception of voice, data, sounds, signals, pictures, writings, or signs of all kinds, by wire, fiber, radio, light, or other visual or electromagnetic means.

TIER means Times Interest Earned Ratio. TIER is the ratio of an applicant's net income (after taxes) plus interest expense, all divided by interest expense. For the purpose of this calculation, all amounts will be annual figures and interest expense will include only interest on debt with a maturity greater than one year.

§§ 1738.3–1738.9 [Reserved]

Subpart B—Loan Purposes and Basic Policies

§ 1738.10 General.

(a) The purpose of the Rural Broadband Access Loan and Loan Guarantee Program is to provide loans to provide funds, on a technology neutral basis, for the costs of construction, improvement, and acquisition of facilities and equipment for broadband service in eligible rural communities.

(b) The proceeds of any loan made under this part may be used to refinance an outstanding obligation on another telecommunications loan made under the RE Act if the use of the proceeds will further the construction, improvement, or acquisition of facilities in eligible rural communities.

(1) Funds used for refinancing may not constitute more than 40 percent of the loan. The remainder of the proceeds shall only be used for the construction or improvement of facilities and equipment for broadband services.

(2) In calculating the expected composite economic life under § 1738.41 of this part, the economic life of any loan refinanced under this section will be based on the remaining economic life of the assets underlying that loan.

(c) RUS will not assess fees or charges for any loan made under this part.

(d) Loans will only be made under this part if the applicant's financial operations, taking into account the impact of the facilities financed with the proceeds of the loan and the associated debt, are economically feasible, as determined by RUS.

§ 1738.11 Availability of broadband service.

(a) As provided in § 1738.15 of this part, priority will be given to loans to finance service to eligible rural communities in which broadband service is not available to residential customers in the applicant's proposed service area.

(b) RUS shall consider the following criteria in determining whether broadband service is not available to residential customers:

(1) Broadband service is not being provided to residential customers in the applicant's proposed service area and no entity is committed to provide such service before the service would reasonably be expected to be available pursuant to the loan application;

(2) Broadband service is not provided at rates comparable to those of similar services in neighboring urban and suburban areas, as determined by RUS; and

(3) The quality of existing service, including, but not limited to, the availability of specified data rates, system latency, and data rate restrictions, is not satisfactory as determined by RUS.

(c) All applicants, as part of submitting a completed application, shall:

(1) Certify to RUS the extent to which paragraphs (b)(1) through (b)(3) of this section, apply to residential customers in the proposed service area, and

(2) Publish legal notice stating the applicant's intent to offer broadband service in a particular community.

(i) The notice must set forth the applicant's proposed service area, and request any incumbent broadband service provider to submit to RUS within 30 days:

(A) The number of residential customers receiving broadband service in the applicant's proposed service area, the rates of data transmission, and the cost of each level of service, or proof of commitment to provide service in the proposed service area, and

(B) A map of its service territory.

(ii) The notice must satisfy all other requirements to constitute legal notice within the areas proposed to be served.

(iii) The notice must be published in state and local newspapers covering the applicant's proposed service area if such publication is not included in the legal notice requirement.

§ 1738.12 Location of facilities.

RUS will make broadband loans for facilities which RUS determines are necessary to serve subscribers located in eligible rural communities. RUS may determine that it is necessary for facilities financed with loan funds to be located outside of eligible rural communities.

§ 1738.13 Allocation of funds.

(a) On October 1, of each fiscal year, or as soon as possible after funds become available, RUS will:

(1) Establish a national reserve for broadband loans, and

(2) Allocate amounts in the reserve to each State, territory, and insular possession, based on the ratio of the number of communities with a population of 2,500 inhabitants or less in the state, territory, and insular possession to the number of communities with a population of 2,500 inhabitants or less in all states, territories, and insular possessions. Population will be based upon the Bureau of the Census' latest decennial census.

(b) To be considered eligible for funding from the State reserve during the fiscal year, an application, determined by RUS to be complete, must be postmarked no later than January 31 of the fiscal year.

(c) On April 1 of each fiscal year, RUS will return all unobligated amounts in each state's reserve to the national reserve and will make the national reserve available to eligible entities in any state.

(d) To be considered eligible for funding from the national reserve during the current fiscal year, a completed application, satisfactory to RUS, must be postmarked no later than July 31 of the fiscal year.

(e) Completed applications that are economically and technically feasible, as determined by RUS, will be considered for funding in accordance with the priority requirements set forth in § 1738.15 of this part.

§ 1738.14 One-time priority for unfunded applications from the broadband pilot program.

(a) Each application that was submitted and remains unfunded from the broadband pilot program will be given a one-time priority for funding for a loan under this part.

(b) Each applicant will be given 30 days from the date of publication of this part in the **Federal Register** to resubmit

a completed application in accordance with the provisions of this part.

(c) Completed applications submitted within the 30-day time-frame will be considered for financing:

(1) First, where broadband service is not available to residential customers, as set forth in § 1738.11 of this part.

(i) Completed applications will be funded on a first-in, first-out basis, as long as funds remain available in the applicable state's reserve.

(ii) When the state reserve is not adequate to fund the next completed application on a first-in, first-out basis, RUS will consider subsequent completed applications for that state for funding on a first-in, first-out basis. All unfunded, completed applications will be carried forward for consideration for funding from the national reserve.

(2) Second, where broadband service is available to residential customers:

(i) On January 1, 2003, after all new applications submitted under this part proposing to provide service where none is available have been considered under § 1738.15(b) of this part, all completed applications will be considered for funding on a first-in, first-out basis, as long as funds remain available in the applicable state's reserve.

(ii) When the state reserve is not adequate to fund the next completed application on a first-in, first-out basis, RUS will consider subsequent completed applications for that state for funding on a first-in, first-out basis. All unfunded, completed applications will be carried forward for consideration for funding from the national reserve.

§ 1738.15 Priorities.

Subject to the one-time priority set forth in § 1738.14 of this part, in making loans under this part, priority will be given to eligible entities submitting completed applications for the construction, improvement, or acquisition of facilities and equipment for broadband service in eligible rural communities as follows:

(a) As of October 1 of the fiscal year, completed applications remaining unfunded from the previous fiscal year where broadband service is not available to residential customers, as set forth in § 1738.11(b)(1) of this part, will be considered for funding on a first-in, first-out basis, as long as funds remain available in the applicable state's reserve. When the state reserve is not adequate to fund the next completed application on a first-in, first-out basis, RUS will consider subsequent completed applications for that state for funding on a first-in, first-out basis. All unfunded, completed applications will be carried forward for consideration for funding from the national reserve.

(b) New completed applications proposing to provide service where none is available to residential customers, as set forth in § 1738.11 of this part, will be considered for funding, from the state reserve prior to April 1 and the national reserve after April 1, on a first-in, first-out basis, as long as funds remain available. As applications are processed using the first-in, first-out process, RUS may expedite for consideration for funding applications proposing to provide service where none is available, as set forth in § 1738.11(b)(1). When funds are not adequate to fund the next completed application on a first-in, first-out basis, RUS will consider subsequent completed applications for funding on a first-in, first-out basis.

(c) On January 1, March 30, April 1, July 1 and September 30 of the fiscal year, all unfunded, completed applications on hand will be prioritized and considered for funding, from the state reserve prior to April 1 and the national reserve after April 1, as follows:

(1) First, where broadband service is not available to residential customers, as set forth in § 1738.11(b)(1) of this part, on a first-in, first-out basis, as long as funds remain available.

(2) Second, where broadband service is not available to residential customers, as set forth in § 1738.11(b)(2) and (3) of this part, on a first-in, first-out basis, as long as funds remain available.

(3) Third, where broadband service is available to residential customers, on a first-in, first-out basis, so long as funds remain available.

§ 1738.16 Eligible entities.

(a) RUS makes broadband loans to legally organized entities providing, or proposing to provide, broadband services in eligible rural communities.

(1) Types of eligible entities include cooperative, nonprofit, limited dividend or mutual associations, limited liability companies, commercial organizations and Indian tribes and tribal organizations as defined in 25 U.S.C. 450b (b) and (c). Individuals or partnerships of individuals are not eligible entities.

(2) An entity is not eligible if it serves more than 2 percent of the telephone subscriber lines installed in the United States.

(3) To be eligible, an entity must have sufficient authority to enter into a contract with RUS and to carry out the purposes of the proposed loan.

(b) A State or local government, including any agency, subdivision, or instrumentality thereof (including consortia thereof) shall be eligible for a broadband loan only if, not later than April 30, 2003, no other eligible entity is already offering or has committed to offer broadband services to the eligible rural community. RUS will determine whether the commitment is sufficient for purposes of this paragraph.

§ 1738.17 Civil rights.

Applicants are required to comply with certain regulations on nondiscrimination and equal employment opportunity. See RUS Bulletin 1790–1, "Nondiscrimination Among Beneficiaries of RUS Programs" and RUS Bulletin 20–15:320–15, "Equal Employment Opportunity in Construction Financed with RUS Loans"; 7 CFR parts 15 and 15b and 45 CFR part 90.

§ 1738.18 Minimum and maximum loan amount.

Recognizing plant costs, the applicant's cost of system design, and RUS' administrative costs, RUS will not consider applications for loans or loan guarantees of less than $100,000. Maximum loan amounts apply only to an applicant for a direct 4-percent broadband loan, as provided for in § 1738.30(b)(2) of this part.

§ 1738.19 Facilities financed.

(a) RUS makes broadband loans to finance the construction, improvement, and acquisition of facilities and equipment to provide broadband service in eligible rural communities.

(b) RUS makes broadband loans to finance broadband facilities leased under the terms of a capital lease as defined in generally accepted accounting principles. RUS will not make a broadband loan to finance facilities leased under the terms of an operating lease as defined in generally accepted accounting principles.

(c) RUS makes broadband loans to finance an acquisition by an eligible entity only when the acquisition is necessary and incidental to furnishing or improving rural broadband service.

(d) RUS will not approve the use of broadband loans to acquire any stock or any facilities or equipment of an affiliate of the applicant.

(e) RUS will not make a broadband loan to finance the following items:

(1) Customer terminal equipment (including modems) not owned by the applicant during its economic life and any associated inside wiring;

(2) Vehicles not used primarily in construction; and

(3) Operating expenses.

(f) RUS will not make a broadband loan to finance systems or facilities that

have not been designed and constructed to RUS' satisfaction. *See* RUS' Bulletins 1738–1 and 1738–2.

(g) Prior to October 1, 2004, RUS will not make a broadband loan under this part to provide broadband service in an area receiving local exchange telephone service from an RUS telecommunications borrower to any entity other than the incumbent RUS telecommunications borrower if, not later than 90 days after RUS receives an application proposing to provide broadband service in the borrower's local exchange service territory, the incumbent RUS telecommunications borrower submits to RUS a letter of intent to provide or begin to construct residential broadband service in its local exchange service territory prior to October 1, 2004. The incumbent RUS telecommunications borrower must provide, prior to October 1, 2004, support of their intent to provide broadband service through submitting either a loan application to construct broadband facilities or proof that construction of broadband facilities has begun. Thereafter, unless the RUS telecommunications borrower has constructed or begun to construct broadband facilities in its service area, RUS will consider an application for a loan under this part to provide the broadband service in an area served by an RUS telecommunications borrower according to the criteria for determining broadband availability in § 1738.11(b) of this part.

(h) RUS will not approve loans to more than one applicant to provide broadband service within the same eligible rural community, nor to an applicant proposing to provide service in a community served by a borrower using funds under this part regardless of the definition of broadband service at the time of loan approval.

(i) If an unadvanced loan, or a portion thereof, is rescinded, a new loan shall not be made to the same applicant for the same purposes as in the rescinded loan.

§ 1738.20 Credit support requirement.

(a) To be eligible for a loan, RUS will require an applicant to provide credit support in an amount equal to 20 percent of the requested loan amount.

(b) The applicant must have, as part of the minimum 20 percent requirement, cash or, in the case of State and local governments, cash equivalents in an amount equal to operating expenses for the first full year of providing service, as determined by a feasibility study satisfactory to RUS. This cash requirement will be waived for applicants operating as telecommunications companies which have positive cash flow for the two calendar years immediately preceding the date of application.

(c) The remainder of the minimum requirement can be met by undepreciated assets which would normally be financed as part of a loan under this part, additional cash or cash equivalents, licenses, or an unconditional letter of credit, or the equivalent, satisfactory to RUS.

(d) For purposes of this section, assets and licenses will be valued based on the lower of cost or market value, net of liens or other obligations of payments for those assets and licenses.

§ 1738.21 Interim financing.

(a) Upon notification by RUS that an applicant's application is considered complete, the applicant may enter into an interim financing agreement with a lender other than RUS or use its own internally generated funds for interim construction.

(b) For an applicant to preserve the option of obtaining loan funds for reimbursement of interim financing, the following procedures must be followed:

(1) Interim construction shall be conducted in accordance with RUS Bulletin 1738–2 and 7 CFR part 1788, except that the applicant shall not begin interim construction until all necessary licenses, permits, and other governmental approvals have been obtained;

(2) Equal employment opportunity requirements apply to interim construction. See RUS Bulletin 20–15: 320–15; and

(3) Interim construction shall be covered by an Environmental Report prepared in accordance with 7 CFR part 1794 and approved by RUS.

(c) RUS approval of interim financing is not a commitment that RUS will make loan funds available.

§ 1738.22 Loan security.

(a) RUS makes loans only if, in the judgment of the Administrator, the security therefore is reasonably adequate and the loan will be repaid within the time agreed.

(b) RUS generally requires that an applicant provide RUS with a first lien, in form and substance satisfactory to RUS, on all of the applicant's property and such additional security as RUS may require. If necessary, RUS will share in the first lien with another lender provided the RUS loan is adequately secured and will be repaid within the time agreed.

(c) Unless otherwise approved by RUS, the applicant shall purchase and own the collateral for the loan free from liens or security interests, other than those securing the RUS loan.

(d) In the case of loans that include the financing of broadband facilities that do not constitute self-contained operating systems or units, the applicant shall, in addition to the mortgage lien on all of the applicant's facilities financed by RUS, furnish adequate assurance, in the form of contractual or other arrangements, satisfactory to RUS, that continuous and efficient broadband service will be rendered.

(e) Beginning with the first calendar year following the end of the forecast period, RUS will require the recipient of a broadband loan to maintain, at a minimum, a TIER at least equal to the projected TIER determined by the feasibility study prepared in connection with the loan, but at least 1.25 and not greater than 2.0.

(f) Additional financial, investment, operational, and managerial controls appear in the loan documents required by RUS.

§§ 1738.23—1738.29 [Reserved]

Subpart C—Types of Loans

§ 1738.30 Rural broadband access loans and loan guarantees.

(a) Direct cost-of-money broadband loans shall bear interest at a rate (the "Cost of Money Interest Rate") equal to the cost of borrowing to the Department of Treasury for obligations of comparable maturity. The Cost of Money Interest Rate will be provided by RUS when the funds are advanced to the borrower.

(b) Direct 4 percent broadband loan.

(1) To be eligible for a direct loan bearing an interest rate of 4 percent, the applicant must be proposing to serve:

(i) A community that:

(A) Has a population of less than 2,500 inhabitants;

(B) Is not currently receiving broadband service as set forth in § 1738.11(b)(1) of this part, and

(C) Is located in a county with per capita personal income that is less than or equal to that percent of the national average per capita personal income which RUS will publish in the **Federal Register** at the beginning of each fiscal year. County per capita personal income as a percent of the national average per capita personal income is published by the Bureau of Economic Analysis, U.S. Department of Commerce, at *http://www.bea.doc.gov/bea/regional/reis/*. RUS will use the most recent statistics published on October 1 of the fiscal year in which the application is deemed complete by RUS; and

(ii) A service area with a certain maximum population density,

calculated as the total number of persons in the service area divided by the square miles of the service area. The maximum population density requirement will be published by RUS in the **Federal Register** at the beginning of each fiscal year.

(2) The total amount of financing made available by RUS, in each fiscal year, for direct loans bearing an interest rate of 4 percent and the maximum of any one loan will be published by RUS in the **Federal Register** at the beginning of each fiscal year.

(3) When an approved application exceeds the maximum amount of 4 percent financing that may be made available to the borrower, a direct loan made at 4 percent may be made simultaneously with a "Cost-of-Money Interest Rate" loan.

(4) A 4 percent direct loan may be made simultaneously with a Cost-of-Money Interest Rate loan or a private loan guarantee.

(c) Private loan guarantees. A private loan guarantee shall bear interest at a rate set by the lender consistent with the current applicable market rate for a loan of comparable maturity.

(1) A private loan guarantee is available to any legally organized lending agency which includes commercial banks, trust companies, mortgage banking firms, insurance companies, and any other institutional investor authorized by law to loan money, hereafter referred to as "lender". At the time of application, applicants must provide RUS the name of the lender who will be providing the funding and a commitment from that lender to provide the funds.

(i) The lender shall be subject to credit examination and supervision by a Federal or state agency unless RUS determines that alternative examination and supervisory mechanisms are adequate.

(ii) The lender shall demonstrate to RUS the capability to adequately service guaranteed loans. The lender shall also be in good standing with its licensing authority and meet the loan making, loan servicing, and other requirements of the jurisdiction in which the lender makes loans guaranteed under this part.

(2) The lender selected by the borrower shall provide evidence satisfactory to RUS of its qualification under this part, along with the name of the authority that supervises such lender.

(3) The lender may establish charges and fees for the loan provided they are not greater than those normally charged other applicants for the same type of loan in the ordinary course of business. RUS will not guarantee any portion of the loan used to pay lender charges and fees.

(4) Loans are guaranteed for no more than 80 percent of the amount of principal except for those purposes in § 1738.30(c)(3) of this part for which RUS will not provide a guarantee. RUS' guarantee is limited to the loan repayment obligation of the borrower and does not extend to guaranteeing that a lender will remit to a holder loan payments made by the borrower.

(5) The interest rate must be fixed and must be the same for the Guaranteed Loan Amount or the respective Guaranteed Loan Portion Amount or the respective Guaranteed-Amount Equivalent, as the case may be, and Unguaranteed Loan Amount or the respective Unguaranteed Loan Portion Amount or the respective Unguaranteed-Amount Equivalent, as the case may be.

(6) The entire loan will be secured by the same security with equal lien priority for the Guaranteed Loan Amount or the respective Guaranteed Loan Portion Amount or the respective Guaranteed-Amount Equivalent, as the case may be, and Unguaranteed Loan Amount or the respective Unguaranteed Loan Portion Amount or the respective Unguaranteed-Amount Equivalent, as the case may be. The Unguaranteed Loan Amount or the respective Unguaranteed Loan Portion Amount or the respective Unguaranteed-Amount Equivalent, as the case may be, will neither be paid first nor given any preference or priority over the Guaranteed Loan Amount or the respective Guaranteed Loan Portion Amount or the respective Guaranteed-Amount Equivalent, as the case may be.

(7) All loan documents, including, but not limited to, a loan guarantee agreement between RUS and the lender, the loan note guarantee, the guaranteed loan note, and the mortgage will be prepared by RUS. Contact RUS for copies of forms of the loan documents. The guaranteed loan agreement between the borrower and the lender shall be subject to RUS approval.

(8) Once a private loan guarantee is approved, the lender will be required to fully service the loan including:

(i) Determining that all prerequisites to each advance of loan funds by the lender under the terms of the contract of guarantee, all financing documents, and all related security documents have been fulfilled. The lender must obtain RUS approval to advance funds prior to each advance of funds.

(ii) Billing and collecting loan payments from the borrower.

(iii) Notifying the Administrator promptly of any default in the payment of principal and interest on the loan and submit a report, as soon thereafter as possible, setting forth its views as to the reasons for the default, how long it expects the borrower will be in default, and what corrective actions the borrower states it is taking to achieve a current debt service position.

(iv) Notifying the Administrator of any known violations or defaults by the borrower under the lending agreement, contract of guarantee, or related security instruments, or conditions of which the lender is aware which might lead to nonpayment, violation, or other default.

(9) Upon notice to the lender, RUS may assume loan servicing responsibilities for the loan or the Guaranteed Loan Amount or the respective Guaranteed Loan Portion Amount or the respective Guaranteed-Amount Equivalent, as the case may be, or require the lender to assign such responsibilities to a different entity, if the lender fails to perform its loan servicing responsibilities under the loan guarantee agreement, or if the lender becomes insolvent, makes an admission in writing of its inability to pay its debts generally as they become due, or becomes the subject of proceedings commenced under the Bankruptcy Reform Act of 1978 (11 U.S.C. 101 *et seq.*) or any similar applicable Federal or state law, or is no longer in good standing with its licensing authority, or ceases to meet the eligibility requirements of this section. Such negligent servicing is defined as the failure to perform those services which a reasonable prudent lender would perform in servicing its own portfolio of loans that are not guaranteed, and includes not only a failure to act but also not acting in a timely manner.

(10)(i) The Guarantee shall cease to be effective with respect to any Guaranteed Loan Amount or any Guaranteed Loan Portion Amount or any Guaranteed-Amount Equivalent to the extent that:

(A) The Guaranteed Loan Amount or the respective Guaranteed Loan Portion Amount or the respective Guaranteed-Amount Equivalent, as the case may be, is separated at any time from the Unguaranteed Loan Amount or the respective Unguaranteed Loan Portion Amount or the respective Unguaranteed-Amount Equivalent, as the case may be, in any way, directly or through the issuance of any Guaranteed-Amount Equity Derivative or any Guaranteed-Amount Debt Derivative; or

(B) Any holder of the Guaranteed Loan Note or any Guaranteed Loan Portion Note or any Derivative, as the case may be, having a claim to payments on the Guaranteed Loan receives more than its pro-rata percentage of any

payment due to such holder from payments made under the Guarantee at any time during the term of the Guaranteed Loan.

(ii) The assignment by the lender requires prior written approval from RUS.

(iii) The assignment shall entitle the holder to all of the lender's rights. However, the lender shall remain responsible for servicing the entire loan.

(iv) The borrower, its principal officers, members of the borrower's board of directors and members of the immediate families of said officials shall not be a holder of the borrower's loan.

(11) RUS will not guarantee any loan under this subpart that provides for:

(i) A balloon payment of principal or interest at the final maturity date of the loan; or

(ii) The payment of interest on interest.

(12) For purposes of this subsection:

(i) Derivative means any right, interest, instrument or security issued or traded on the credit of the Guaranteed Loan or any Guaranteed Loan Portion, including but not limited to:

(A) Any participation share of, or undivided ownership or other equity interest in, the Guaranteed Loan or any Guaranteed Loan Portion;

(B) Any note, bond or other debt instrument or obligation which is collateralized or otherwise secured by a pledge of, or security interest in, the Guaranteed Loan or any Guaranteed Loan Portion; or

(C) Any such interest in such an interest or any such instrument secured by such an instrument.

(ii) Guaranteed-Amount Debt Derivative means any note, bond or other debt instrument or obligation which is collateralized or otherwise secured by a pledge of, or security interest in, the Guaranteed Loan Note or any Guaranteed Loan Portion Note or any Derivative, as the case may be, which has an exclusive or preferred claim to the Guaranteed Loan Amount or the respective Guaranteed Loan Portion Amount or the respective Guaranteed-Amount Equivalent, as the case may be.

(iii) Guaranteed-Amount Equity Derivative means any participation share of, or undivided ownership or other equity interest in, the Guaranteed Loan or any Guaranteed Loan Portion or any Derivative, as the case may be, which has an exclusive or preferred claim to the Guaranteed Loan Amount or the respective Guaranteed Loan Portion Amount or the respective Guaranteed-Amount Equivalent, as the case may be.

(iv) Guaranteed-Amount Equivalent means:

(A) With respect to any Derivative which is equal in principal amount to the Guaranteed Loan or any Guaranteed Loan Portion, that amount of payment on account of such Derivative which is equal to the Guaranteed Loan Amount or the respective Guaranteed Loan Portion Amount, as the case may be; or

(B) With respect to any Derivatives which in the aggregate are equal in principal amount to the Guaranteed Loan or any Guaranteed Loan Portion, that amount of payment on account of such derivatives which is equal to the Guaranteed Loan Amount or the respective Guaranteed Loan Portion Amount, as the case may be.

(v) Guaranteed Loan Amount means that amount of payment on account of the Guaranteed Loan which is guaranteed under the terms of the Guarantee.

(vi) Guaranteed Loan Portion Amount means that amount of payment on account of any Guaranteed Loan Portion which is guaranteed under the terms of the Guarantee.

(vii) Guaranteed Loan Note means, collectively, the note or notes executed and delivered by the Borrower to evidence the Guaranteed Loan.

(viii) Guaranteed Loan Portion means any portion of the Guaranteed Loan.

(ix) Guaranteed Loan Portion Note means any note executed and delivered by the Borrower to evidence a Guaranteed Loan Portion.

(x) Unguaranteed-amount equivalent means all amounts of payment on account of any Derivative other than the respective Guaranteed-Amount Equivalent.

(xi) Unguaranteed loan amount means all amounts of payment on account of the Guaranteed Loan other than the Guaranteed Amount.

(xii) Unguaranteed loan portion Amount means all amounts of payment on account of any Guaranteed Loan Portion other than the respective Guaranteed Loan Portion Amount.

§ 1738.31 Full faith and credit.

Loan guarantees made under this part are supported by the full faith and credit of the United States.

§§ 1738.32—1738.39 [Reserved]

Subpart D—Terms of Loans

§ 1738.40 General.

Terms and conditions of loans are set forth in a mortgage, note, and loan contract. Provisions of the mortgage and loan contract are implemented by provisions in RUS bulletins and regulations. Standard forms of the mortgage, note, and loan contract can be obtained from RUS. However, RUS reserves the right to establish terms and conditions, including security requirements, on a case-by-case basis.

§ 1738.41 Payments on loans.

(a) Broadband loans must be repaid with interest within a period that, rounded to the nearest whole year, equals the expected composite economic life of the facilities to be financed, as calculated by RUS.

(1) The expected composite economic life shall be based upon the depreciation rates for the facilities financed by the loan.

(2) The depreciation rates used shall be the rates currently in place, as long as RUS finds them to be reasonable for the telecommunications industry.

(b) Applicants may request a repayment period that is shorter than the expected composite economic life of the facilities financed. A shorter period may be approved as long as the Administrator determines that the loan remains feasible.

(c) Interest is payable on funds advanced each month as it accrues beginning with the first billing after the advance, as defined in the note. Principal payments on each note are scheduled to begin one year after the date of the first advance. After this deferral period, interest and principal payments on all funds advanced during this one-year period shall be made in equal monthly installments. Principal payments on funds advanced 1 year or more after the date of the first advance will begin with the first billing after the advance. The interest and principal payments on each of these advances shall be made in equal monthly installments.

§§ 1738.42—1738.49 [Reserved]

Dated: January 27, 2003.

Hilda Gay Legg,

Administrator, Rural Utilities Service.

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DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

15 CFR Part 270

[Docket No: 021224331–2331–01]

RIN 0693–AB52

Procedures for Implementation of the National Construction Safety Team Act

AGENCY: National Institute of Standards and Technology, United States Department of Commerce.

ACTION: Interim final rule; request for comments.

SUMMARY: The Director of the National Institute of Standards and Technology (NIST), Technology Administration, United States Department of Commerce, requests comments on an interim final rule pertaining to the implementation of the National Construction Safety Team Act ("Act"). This interim final rule with a request for public comments contains general provisions regarding implementation of the Act and establishes procedures for the collection and preservation of evidence obtained and the protection of information created as part of investigations conducted pursuant to the Act.

DATES: This rule is effective on January 30, 2003. Comments must be received no later than March 3, 2003.

ADDRESSES: Comments on the interim final rule must be submitted to: Dr. James E. Hill, Deputy Director, Building and Fire Research Laboratory, National Institute of Standards and Technology, Mail Stop 8600, Gaithersburg, MD 20899–8600, telephone number (301) 975–5900.

FOR FURTHER INFORMATION CONTACT: Dr. James E. Hill, Deputy Director, Building and Fire Research Laboratory, National Institute of Standards and Technology, Mail Stop 8600, Gaithersburg, MD 20899–8600, telephone number (301) 975–5900.

SUPPLEMENTARY INFORMATION:

Background

The National Construction Safety Team Act, Pub. L. 107–231, was enacted to provide for the establishment of investigative teams ("Teams") to assess building performance and emergency response and evacuation procedures in the wake of any building failure that has resulted in substantial loss of life or that posed significant potential of substantial loss of life. The purpose of investigations by Teams is to improve the safety and structural integrity of buildings in the United States. A Team will (1) Establish the likely technical cause or causes of the building failure; (2) evaluate the technical aspects of evacuation and emergency response procedures; (3) recommend, as necessary, specific improvements to building standards, codes, and practices based on the findings made pursuant to (1) and (2); and recommend any research and other appropriate actions needed to improve the structural safety of buildings, and improve evacuation and emergency response procedures, based on the findings of the investigation. Section 2(c)(1) of the Act requires that the Director develop procedures for certain activities to be carried out under the Act as follows: Regarding conflicts of interest related to service on a Team; defining the circumstances under which the Director will establish and deploy a Team; prescribing the appropriate size of Teams; guiding the disclosure of information under section 7 of the Act; guiding the conduct of investigations under the Act; identifying and prescribing appropriate conditions for provision by the Director of additional resources and services Teams may need; to ensure that investigations under the Act do not impede and are coordinated with any search and rescue efforts being undertaken at the site of the building failure; for regular briefings of the public on the status of the investigative proceedings and findings; guiding the Teams in moving and preserving evidence; providing for coordination with Federal, State, and local entities that may sponsor research or investigations of building failures; and regarding other issues.

NIST plans to publish two separate documents in the **Federal Register** regarding procedures to implement the Act. This interim final rule with a request for public comments contains general provisions regarding implementation of the Act and establishes procedures for the collection and preservation of evidence obtained and the protection of information created as part of investigations conducted pursuant to the Act, including guiding the disclosure of information under section 7 of the Act (§§ 270.350, 270.351, and 270.352) and guiding the Teams in moving and preserving evidence (§ 270.330). These general provisions and procedures, which will comprise Subparts A and D of the rule, are necessary to the conduct of the investigation of the World Trade Center disaster, already underway, and are effective immediately. At a later date, NIST plans to publish in the **Federal Register** a notice of proposed rulemaking and request for comments, establishing the remaining procedures necessary for implementation of the Act.

Request for Public Comment: Persons interested in commenting on the interim final rule should submit their comments in writing to the above address. All comments received in response to this notice will become part of the public record and will be available for inspection and copying at the Department of Commerce Central Reference and Records Inspection facility, room 6228, Hoover Building, Washington, DC 20230.

Additional Information

Executive Order 12866

This rule has been determined not to be significant under section 3(f) of Executive Order 12866.

Executive Order 12612

This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612.

Administrative Procedure Act

Prior notice and an opportunity for public comment are not required for this rule of agency organization, procedure, or practice. 5 U.S.C. 553(b)(A).

Regulatory Flexibility Act

Because notice and comment are not required under 5 U.S.C. 553, or any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are inapplicable. As such, a regulatory flexibility analysis is not required, and none has been prepared.

Paperwork Reduction Act

Notwithstanding any other provision of the law, no person is required to, nor shall any person be subject to penalty for failure to comply with, a collection of information, subject to the requirements of the Paperwork Reduction Act, unless that collection of information displays a currently valid OMB Control Number.

There are no collections of information involved in this rulemaking.

National Environmental Policy Act

This rule will not significantly affect the quality of the human environment. Therefore, an environmental assessment or Environmental Impact Statement is not required to be prepared under the National Environmental Policy Act of 1969.

List of Subjects in 15 CFR Part 270

Administrative practice and procedure; Buildings and facilities; Disaster assistance; Evidence; Investigations; National Institute of Standards and Technology; Science and technology; Subpoena.

Dated: January 23, 2003.

Karen H. Brown,

Deputy Director.

For reasons set forth in the preamble, the National Institute of Standards and Technology amends 15 CFR chapter II to add a new Subchapter G, part 270, as follows:

Subchapter G—National Construction Safety Teams

PART 270—NATIONAL CONSTRUCTION SAFETY TEAMS

Subpart A—General

Sec.

270.1 Description of rule; purpose; applicability.
270.2 Definitions used in this subpart.

Subpart B—[Reserved]

Subpart C—[Reserved]

Subpart D—Collection and Preservation of Evidence; Information Created Pursuant to an Investigation; and Protection of Information

270.300 Scope.
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270.330 Moving and preserving evidence.

Information Created Pursuant to an Investigation

270.340 Information created by investigation participants who are not NIST employees.

Protection of Information

270.350 Freedom of Information Act.
270.351 Protection of voluntarily submitted information.
270.352 Public safety information

Authority: Pub. L. 107–231, 116 Stat. 1471 (15 U.S.C. 3701 note).

Subpart A—General

§ 270.1 Description of rule; purpose; applicability.

(a) The National Construction Safety Team Act (the Act) (Pub. L. 107–231) provides for the establishment of investigative teams to assess building performance and emergency response and evacuation procedures in the wake of any building failure that has resulted in substantial loss of life or that posed significant potential of substantial loss of life.

(b) The purpose of investigations by Teams is to improve the safety and structural integrity of buildings in the United States.

(c) This part is applicable to the establishment and deployment of Teams and the conduct of investigations under the Act.

§ 270.2 Definitions used in this part.

The following definitions are applicable to this part:

Act. The National Construction Safety Team Act (Pub. L. 107–231, 116 Stat. 1471).

Advisory Committee. The National Construction Safety Team Advisory Committee.

Credentials. Photo identification issued by a Federal or state government entity.

Director. The Director of the National Institute of Standards and Technology.

Evidence. Any document, record, book, artifact, building component, material, witness testimony, or physical evidence collected pursuant to an investigation.

General Counsel. The General Counsel of the U.S. Department of Commerce.

Investigation participant. Any person participating in an investigation under the Act, including all Team members, other NIST employees participating in the investigation, private sector experts, university experts, representatives of professional organizations, employees of other Federal, state, or local government entities, and other contractors.

Lead Investigator. A Team member who is a NIST employee and is designated by the Director to lead a Team.

Team. A team established by the Director and deployed to conduct an investigation under the Act.

NIST. The National Institute of Standards and Technology.

Subpart B—[Reserved]

Subpart C—[Reserved]

Subpart D—Collection and Preservation of Evidence; Information Created Pursuant to an Investigation; and Protection of Information

§ 270.300 Scope.

During the course of an investigation conducted pursuant to the Act, evidence will be collected, and information will be created by the Team, NIST, and other investigation participants. This subpart sets forth the policy and procedures for the collection, preservation, and protection of evidence obtained and information created pursuant to an investigation.

§ 270.301 Policy.

Evidence collected and information created by Team members and all other investigation participants will be collected, preserved, and protected in accordance with the procedures set forth in this subpart.

Collection of Evidence

§ 270.310 Evidence collected by investigation participants who are not NIST employees.

Upon receipt of information pursuant to an investigation under the Act, each investigation participant who is not a NIST employee shall:

(a) As soon as practicable, transfer the original evidence to NIST, and retain a copy of the evidence only if necessary to carry out their duties under the investigation; and

(b) For any evidence that cannot reasonably be duplicated, retain the evidence in accordance with NIST procedures for preserving evidence as described in § 270.330 of this subpart, and upon completion of the duties for which retention of the evidence is necessary, transfer the evidence to NIST.

§ 270.311 Collection of evidence.

(a) In the course of an investigation, evidence normally will be collected following the procedures described in §§ 270.312 through 270.315 of this subpart.

(b) Upon a written showing by the Lead Investigator of urgent and

compelling reasons to believe that evidence may be destroyed, or that a witness may become unavailable, were the procedures described in §§ 270.312 through 270.314 of this subpart followed, the Director, with the concurrence of the General Counsel, may immediately issue a subpoena for such evidence or testimony, pursuant to § 270.315 of this subpart.

§ 270.312 Voluntary submission of evidence.

After the Director establishes and deploys a Team, members of the public are encouraged to voluntarily submit to the Team non-privileged evidence that is relevant to the subject matter of the pending investigation. Confidential information will only be accepted pursuant to an appropriate nondisclosure agreement.

§ 270.313 Requests for evidence.

(a) After the Director establishes and deploys a Team, the Lead Investigator, or their designee, may request the testimony of any person by deposition, upon oral examination or written questions, and may request documents or other physical evidence without seeking prior approval of the Director.

(b) Requests for responses to written questions will be made in writing and shall include:

(1) A statement that the request is made to gather evidence necessary to an investigation being conducted under the Act;

(2) Identification of the person whose responses are sought;

(3) Contact information for the person to whom the responses should be submitted;

(4) The date and time by which the responses are requested;

(5) A statement that the questions for which responses are sought are attached; and

(6) Contact information for the person to whom questions or problems regarding the request should be addressed.

(c) Requests for documents or other physical evidence will be made in writing and shall include:

(1) A statement that the request is made to gather evidence necessary to an investigation being conducted under the Act;

(2) A description of the documents or other physical evidence sought;

(3) Identification of the person or persons to whom the request is made;

(4) A request that each person to whom the request is directed produce and permit inspection and copying of the documents and physical evidence in the possession, custody, or control of that person at a specific time and place; and

(5) Contact information for the person to whom questions or problems regarding the request should be addressed.

(d) Requests for witness testimony will be made in writing and shall include:

(1) The name of the person whose testimony is requested;

(2) The date, time, and place of the deposition;

(3) A statement that the person whose testimony is requested may be accompanied by an attorney; and

(4) Contact information for the person to whom questions or problems regarding the request should be addressed.

§ 270.314 Negotiations.

The Lead Investigator may enter into discussions with appropriate parties to address problems identified with the submission of evidence requested pursuant to § 270.312 of this subpart. Should negotiations fail to result in the submission of such evidence, a subpoena may be issued pursuant to § 270.315.

§ 270.315 Subpoenas.

(a) *General.* Subpoenas requiring the attendance of witnesses or the production of documentary or physical evidence for the purpose of taking depositions or at a hearing may be issued only under the signature of the Director with the concurrence of the General Counsel, but may be served by any person designated by the Director.

(b) *Determination whether to issue a subpoena.* In determining whether to issue a subpoena, the Director will consider the following factors:

(1) Whether the testimony, documentary, or physical evidence is required for an investigation being conducted pursuant to the Act;

(2) Whether the evidence sought is relevant to the purpose of the investigation;

(3) Whether NIST already has the evidence in its possession; and

(4) Whether the evidence required is described with specificity.

(c) *Contents of a subpoena.* A subpoena issued by the Director will contain the following:

(1) A statement that the subpoena is issued by the Director pursuant to section 5 of the Act;

(2) A description of the documents or physical evidence or the subject matter of the testimony required by the subpoena;

(3) A command that each person to whom it is directed attend and give testimony or produce and permit inspection and copying of designated books, documents or physical evidence in the possession, custody or control of that person at a time and place specified in the subpoena;

(4) A statement that any person whose testimony is required by the subpoena may be accompanied by an attorney; and

(5) The signature of the Director.

(d) *Service of a subpoena.* Service of a subpoena will be effected:

(1) By personal service upon the person or agent of the person whose testimony is required or who is in charge of the documentary or physical evidence required; or

(2) By certified mail or delivery to the last known residence or business address of such person or agent; or

(3) Where personal service, mailing, or delivery has been unsuccessful, service may also be effected by publication in the **Federal Register**.

(e) *Witness fees.* Witnesses will be entitled to the same fees and mileage as are paid to witnesses in the courts of the United States.

(f) *Failure to obey a subpoena.* If a person disobeys a subpoena issued by the Director under the Act, the Attorney General, acting on behalf of the Director, may bring civil action in a district court of the United States to enforce the subpoena. The court may punish a failure to obey an order of the court to comply with the subpoena as a contempt of court.

§ 270.316 Public hearings.

(a) During the course of an investigation by a Team, if the Director considers it to be in the public interest, NIST may hold a public hearing for the purposes of gathering testimony from witnesses and informing the public on the progress of the investigation.

(b) Should NIST plan to hold a public hearing, NIST will publish a notice in the **Federal Register**, setting forth the date, time, and place of the hearing, and procedures for members of the public wishing to speak at the hearing. In addition, witnesses may be subpoenaed to provide testimony at a public hearing, in accordance with § 270.315 of this subpart.

(c) The Director, or his designee, will preside over any public hearing held pursuant to this section.

Entry and Inspection

§ 270.320 Entry and inspection of site where a building failure has occurred.

When the Director establishes and deploys a Team, the Team members will be issued notices of inspection authority

to enter and inspect the site where the building failure has occurred.

§ 270.321 Entry and inspection of property where building components, materials, artifacts, and records with respect to a building failure are located.

(a) In the course of an investigation, entry and inspection of property where building components, materials, artifacts and records with respect to a building failure are located normally will be conducted following the procedures described in §§ 270.322 through 270.325 of this subpart.

(b) Upon a written showing by the Lead Investigator of urgent and compelling reasons to believe that building components, materials, artifacts or records located on a particular property may be destroyed were the procedures described in §§ 270.322 through 270.324 of this subpart followed, the Director, with the concurrence of the General Counsel may immediately issue a notice of inspection authority for such property, pursuant to § 270.325 of this subpart.

§ 270.322 Voluntary permission to enter and inspect property where building components, materials, artifacts, and records with respect to a building failure are located.

After the Director establishes and deploys a Team, members of the public are encouraged to voluntarily permit Team members to enter property where building components, materials, artifacts, and records with respect to the building failure are located, and take action necessary, appropriate, and reasonable in light of the nature of the property to be inspected and to carry out the duties of the Team.

§ 270.323 Requests for permission to enter and inspect property where building components, materials, artifacts, and records with respect to a building failure are located.

(a) After the Director establishes and deploys a Team, the Lead Investigator or their designee may request permission to enter and inspect property where building components, materials, artifacts, and records with respect to a building failure are located, and take action necessary, appropriate, and reasonable in light of the nature of the property to be inspected and to carry out the duties of the Team.

(b) Requests for permission to enter and inspect such property will be made in writing and shall include:

(1) The name and title of the building owner, operator, or agent in charge of the building;

(2) If appropriate, the name of the building to be inspected;

(3) The address of the building to be inspected;

(4) The date and time of the inspection;

(5) If appropriate, a description of particular items to be inspected; and

(6) Contact information for the person to whom questions or problems regarding the request should be addressed.

§ 270.324 Negotiations.

The Lead Investigator may enter into discussions with appropriate parties to address problems identified with the goal of obtaining the permission requested pursuant to § 270.323 of this subpart.

§ 270.325 Notice of authority to enter and inspect property where building components, materials, artifacts, and records with respect to a building failure are located.

(a) *General.* In investigating a building failure pursuant to the Act, any member of a Team, or any other person authorized by the Director to support a Team, on display of written notice of inspection authority provided by the Director with concurrence of the General Counsel and appropriate credentials, may

(1) Enter property where a building failure being investigated has occurred, or where building components, materials, and artifacts with respect to the building failure are located, and take action necessary, appropriate, and reasonable in light of the nature of the property to be inspected and to carry out the duties of the Team;

(2) During reasonable hours, inspect any record (including any design, construction, or maintenance record), process, or facility related to the investigation;

(3) Inspect and test any building components, materials, and artifacts related to the building failure; and

(4) Move any record, component, material and artifact as provided by this part.

(b) *Conduct of inspection, test, or other action.* An inspection, test, or other action taken by a Team pursuant to section 4 of the Act will be conducted in a way that does not interfere unnecessarily with services provided by the owner or operator of the building components, materials, or artifacts, property, records, process, or facility, and to the maximum extent feasible, preserves evidence related to the building failure, consistent with the ongoing needs of the investigation.

(c) *Determination whether to issue a notice of inspection authority.* In determining whether to issue a notice of inspection authority, the Director will consider whether the specific entry and inspection is reasonable and necessary for the Team to carry out its duties under the Act.

(d) *Notice of inspection authority.* Notice of inspection authority will be made in writing and shall include:

(1) A statement that the notice of inspection authority is issued pursuant to section 4 of the Act;

(2) The name and title of the building owner, operator, or agent in charge of the building;

(3) If appropriate, the name of the building to be inspected;

(4) The address of the building to be inspected;

(5) The date and time of the inspection;

(6) If appropriate, a description of particular items to be inspected; and

(7) The signature of the Director.

(e) *Refusal of entry on to property.* If upon being presented with a notice of inspection by any member of a Team, or any other person authorized by the Director, the owner, operator, or agent in charge of the building or property being inspected refuses to allow entry or inspection, the Director may seek the assistance of the Department of Justice to obtain a warrant or other authorized judicial order enabling entry on to the property.

Preservation of Evidence

§ 270.330 Moving and preserving evidence.

(a) A Team and NIST will take all necessary steps in moving and preserving evidence obtained during the course of an investigation under the Act to ensure that such evidence is preserved.

(b) In collecting and preserving evidence in the course of an investigation under the Act, a Team and NIST will:

(1) Maintain records to ensure that each piece of evidence is identified as to its source;

(2) Maintain and document an appropriate chain of custody for each piece of evidence;

(3) Use appropriate means to preserve each piece of evidence; and

(4) Ensure that each piece of evidence is kept in a suitably secure facility.

(c) If a Federal law enforcement agency suspects and notifies the Director that a building failure being investigated by a Team under the Act may have been caused by a criminal act, the Team, in consultation with the Federal law enforcement agency, will take necessary actions to ensure that evidence of the criminal act is preserved

and that the original evidence or copies, as appropriate, are turned over to the appropriate law enforcement authorities.

Information Created Pursuant to an Investigation

§ 270.340 Information created by investigation participants who are not NIST employees.

Unless requested sooner by the Lead Investigator, at the conclusion of an investigation, each investigation participant who is not a NIST employee shall transfer any original information they created pursuant to the investigation to NIST. An investigation participant may retain a copy of the information for their records but may not use the information for purposes other than the investigation, nor may they release, reproduce, distribute, or publish any information first developed pursuant to the investigation, nor authorize others to do so, without the written permission of the Director or their designee. Pursuant to 15 U.S.C. 281a, no such information may be admitted or used as evidence in any suit or action for damages arising out of any matter related to the investigation.

Protection of Information

§ 270.350 Freedom of Information Act.

As permitted by section 7(b) of the Act, the following information will not be released:

(a) Information described by section 552(b) of Title 5, United States Code, or protected from disclosure by any other law of the United States; and

(b) Copies of evidence collected, information created, or other investigation documents submitted or received by NIST, a Team, or any other investigation participant, until the final investigation report is issued.

§ 270.351 Protection of voluntarily submitted information.

Notwithstanding any other provision of law, a Team, NIST, any investigation participant, and any agency receiving information from a Team, NIST, or any other investigation participant, will not disclose voluntarily provided safety-related information if that information is not directly related to the building failure being investigated and the Director finds that the disclosure of the information would inhibit the voluntary provision of that type of information.

§ 270.352 Public safety information.

A Team, NIST, and any other investigation participant will not publicly release any information it receives in the course of an investigation under the Act if the Director finds that the disclosure might jeopardize public safety.

[FR Doc. 03–2084 Filed 1–29–03; 8:45 am]
BILLING CODE 3510–13–P

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1500

Exemptions From Classification as Banned Hazardous Substances; Exemption for Certain Model Rocket Propellant Devices for Use With Rocket-Powered Model Cars

AGENCY: Consumer Product Safety Commission.

ACTION: Final rule.

SUMMARY: The Commission is issuing a rule to exempt from the Federal Hazardous Substances Act ("FHSA") certain model rocket propellant devices for vehicles that travel on the ground. The Commission's current regulations exempt motors used for flyable model rockets. The rule exempts certain propellant devices for rocket-powered model cars if they meet requirements similar to those required for flyable model rockets and additional requirements to avoid possible injuries if the cars are operated off of their tether.

DATES: The rule becomes effective on January 30, 2003.

FOR FURTHER INFORMATION CONTACT: James G. Joholske, Office of Compliance, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 504–0608 ext. 1419.

SUPPLEMENTARY INFORMATION:

A. Background

Section 2(q)(1)(A) of the FHSA bans toys that are or contain hazardous substances that are accessible to a child. 15 U.S.C. 1261(q)(1)(A). However, the FHSA authorizes the Commission, by regulation, to grant exemptions from classifications as banned hazardous substances for:

> articles, such as chemistry sets, which by reason of their functional purpose require the inclusion of the hazardous substance involved, or necessarily present an electrical, mechanical, or thermal hazard, and which bear labeling giving adequate directions and warnings for safe use and are intended for use by children who have attained sufficient maturity, and may reasonably be expected to read and heed such directions and warnings.

15 U.S.C. 1261(q)(1)(A). Thus, the Commission may issue an exemption if it finds that the product requires inclusion of a hazardous substance in order for it to function, has sufficient directions and warnings, and is intended for children who are old enough to read and follow the directions and warnings. *Id.* The Food and Drug Administration, which administered the FHSA before the Commission was established, issued a rule under this authority that exempted from the definition of banned hazardous substances model rocket propellant devices (motors) designed for use in light-weight, recoverable, and reflyable model rockets, if they meet certain requirements. 16 CFR 1500.85(a)(8).

B. The Petition

The Commission received a petition from Centuri Corporation ("Centuri") requesting that the Commission issue a rule exempting certain model rocket propellant devices to be used for model cars that travel on the ground along a tethered line and are propelled in a manner similar to flyable rockets. The petitioner requested an exemption that would allow the sale of both of its two prototype rocket-powered model cars. The smaller car, named "Blurzz," uses an "A" motor, and is shaped like a "rail," a type of custom-made vehicle used in competitive drag racing. The larger prototype, named "Screamin' Eagle," uses a "D" motor, and is shaped like a "Bonneville Speed Record" custom vehicle. The Commission decided to grant the petition in part and propose an exemption for model rocket propellant devices to be used for rocket-powered model cars like the smaller "Blurzz" car only.[1]

C. The Proposed Exemption

On January 30, 2002, the Commission published a notice of proposed rulemaking ("NPR") proposing to exempt model rocket propellant devices for use with smaller rocket-powered model cars like the "Blurzz." 67 FR 4373. As explained in the NPR, the Commission concluded that due to the weight, speed and the height it can reach, the larger "Screamin' Eagle" posed a significant risk of injury to any person downrange from it when it is used in the absence of the tether. The Commission, therefore, denied the petition insofar as it requested an exemption from the FHSA for model rocket propellant devices for cars like the "Screamin' Eagle." However, the Commission concluded that when the smaller "Blurzz" car was ignited

[1] The Commission voted 2–1 to grant the petition with regard to the smaller vehicles and deny it regarding the larger ones. Commissioners Thomas Moore and Mary Sheila Gall voted to take this action. Then-Chairman Ann Brown voted to deny the entire petition.

without the tether, it ordinarily simply flipped onto its back and skittered around on the ground or traveled downrange only a very limited distance, and rose only a few inches in the air, before flipping onto its back. Thus, the Commission concluded that there is a reasonable probability that model rocket propellant devices for rocket-powered model cars like the "Blurzz" present no unreasonable risk of injury even when operated in reasonably foreseeable misuse without the tether. The Commission also preliminarily found that children interested in model rockets and rocket-powered model cars such as the "Blurzz" are of sufficient maturity that they may reasonably be expected to read and heed the directions for use and warnings that accompany model cars like the "Blurzz." The Commission also preliminarily found that those directions and warnings are adequate to guide users in the safe use of the product.

D. Comments on the NPR

The Commission received three comments on the NPR from Centuri, Intertek Testing Services ("Intertek"), and the National Association of Rocketry ("NAR"). Centuri commented on some of the technical statements in the staff's memos that were part of the briefing package concerning Centuri's petition. The comment from Intertek was actually test results submitted by Centuri. Intertek suggested enlarging the safety alert symbol that appears in directions for the model car. Commission staff agrees that the entire warning label should be larger. NAR agreed with the Commission that the exemption should be limited to smaller "A" motors.

E. The Final Rule

When reviewing data for the petition, the Commission's Directorate for Epidemiology found two deaths over a 20-year period involving model airplanes (both involved adult males, 40 and 44 years of age). Centuri provided additional information about these. In one incident, the plane weighed about 5 pounds (compared to 2.7 oz. for a size "A" rocket-powered model car), and was traveling at an estimated 200 mph (compared to the top speed of 28 mph for the size "A" car). Centuri characterized the airplane in the other incident as "quite large and heavy." The staff reviewed data available after the petition briefing package (for the period May 26, 2001 to April 15, 2002) and found no deaths that could be considered comparable to deaths that might involve rocket-powered model cars.

The Commission's Human Factors staff reviewed revised instructions submitted by Centuri and concluded that the revisions were an improvement over previous instructions and would make them easier for users age 10 and up to follow.

The Commission's Engineering staff reviewed results of testing from Intertek. Intertek was primarily concerned with the dangers of launching the engine alone without the vehicle. Because such motors are currently available with other exempted products, the staff does not believe that exempting rocket-powered model cars creates or increases the hazard of igniting motors outside the vehicles. Intertek was also concerned about launching cars from a ramp or vertical support. However, the Engineering staff believes such operation would be similar to launching a model rocket, and injury data do not suggest a problem with model rockets in those types of launches.

The Commission's staff was concerned about possible injuries if rocket powered cars are operated off the tether. As discussed above, when the "Blurzz" was used without the tether it traveled only a limited distance a few inches off the ground and then flipped on its back. Such performance is not likely to injure operators or bystanders. However, Compliance staff was concerned that in the future a company may develop a rocket-powered model car that when operated off the tether could obtain sufficient height, distance and force to injure operators or bystanders. Thus, the final rule contains a limitation that vehicles must be designed so that they either cannot operate off of a track or line (*i.e.*, tether), or if operated off the tether the vehicle will be unstable and will not travel in a guided fashion, so that the car will not strike operators or bystanders. The Commission reminds manufacturers that under section 15 of the Consumer Product Safety Act they have an obligation to report to the Commission if they have information which reasonably supports the conclusion that their product creates an unreasonable risk of serious injury or death or contains a defect which could create a substantial product hazard. 15 U.S.C. 2064(b)(2) & (3). The Commission has the authority to pursue corrective action regarding any toy or other children's article that creates a substantial risk of injury to children. 15 U.S.C. 1274(c)(1).

A small change was made to the final rule in order to correct a cross reference that conflicted with the characteristics of an A motor described in section 1500.85(a)(14)(i)(B) of the rule and to include appropriate provisions of the cross-reference in the rule itself.

F. Effective Date

This rule exempts certain model rocket propellant devices for rocket-powered model cars that would otherwise be banned under the FHSA. Because the rule grants an exemption, it is not subject to the requirement under the Administrative Procedure Act ("APA") that a rule must be published 30 days before it takes effect. 5 U.S.C 553(d)(1). The rule lifts an existing restriction and allows a product not previously permitted. Thus, the Commission believes it is appropriate for the rule to become effective upon publication in the **Federal Register**.

G. Impact on Small Business

The NPR discussed the Commission's assessment of the impact that a rule to exempt propellant devices for use with small rocket-powered model cars like the "Blurzz" might have on small businesses. Because the exemption would relieve manufacturers from existing restrictions, the Commission concluded that the proposed exemption would not have a significant impact on a substantial number of small businesses or other small entities. No comments or additional information alter that conclusion.

H. Environmental Considerations

Pursuant to the National Environmental Policy Act, and in accordance with the Council on Environmental Quality regulations and CPSC procedures for environmental review, the Commission assessed the possible environmental effects associated with the proposed exemption. As discussed in the NPR, the Commission concluded that the rule would have no adverse effect on the environment, and therefore, neither an environmental assessment nor an environmental impact statement is required.

I. Executive Orders

According to Executive Order 12988 (February 5, 1996), agencies must state in clear language the preemptive effect, if any, of new regulations.

The FHSA provides that, generally, if the Commission issues a rule under section 2(q) of the FHSA to protect against a risk of illness or injury associated with a hazardous substance, "no State or political subdivision of a State may establish or continue in effect a requirement applicable to such substance and designed to protect against the same risk of illness or injury unless such requirement is identical to

the requirement established under such regulations." 15 U.S.C. 1261n(b)(1)(B). (The FHSA also provides for the state or political subdivision of a state to apply for an exemption from preemption if certain requirements are met.) Thus, the rule exempting model rocket propellant devices for use with certain surface vehicles will preempt non-identical requirements for such propellant devices.

The Commission has also evaluated the rule in light of the principles stated in Executive Order 13132 concerning federalism, even though that Order does not apply to independent regulatory agencies such as CPSC. The Commission does not expect that the rule will have any substantial direct effects on the States, the relationship between the national government and the States, or the distribution of power and responsibilities among various levels of government.

List of Subjects in 16 CFR Part 1500

Consumer protection, Hazardous materials, Hazardous substances, Imports, Infants and children, Labeling, Law enforcement, Toys.

Conclusion

For the reasons stated above, the Commission concludes that, with the requirements stated in the exemption, model rocket propellant devices to propel small rocket-powered cars like the "Blurzz" require inclusion of a hazardous substance in order to function, have sufficient directions and warnings for safe use, and are intended for children who are mature enough that they may reasonably be expected to read and heed the directions and warnings. Therefore, the Commission amends title 16 of the Code of Federal Regulations as follows:

PART 1500—HAZARDOUS SUBSTANCES AND ARTICLES: ADMINISTRATION AND ENFORCEMENT REGULATIONS

1. The authority for part 1500 continues to read as follows:

Authority: 15 U.S.C. 1261–1278.

2. Section 1500.85 is amended by adding a new paragraph (a)(14) to read as follows:

§ 1500.85 Exemptions from classification as banned hazardous substances.

(a) * * *

(14) Model rocket propellant devices (model rocket motors) designed to propel rocket-powered model cars, provided—

(i) Such devices:

(A) Are designed to be ignited electrically and are intended to be operated from a minimum distance of 15 feet (4.6 m) away;

(B) Contain no more than 4 g. of propellant material and produce no more than 2.5 Newton-seconds of total impulse with a thrust duration not less than 0.050 seconds;

(C) Are constructed such that all the chemical ingredients are pre-loaded into a cylindrical paper or similarly constructed non-metallic tube that will not fragment into sharp, hard pieces;

(D) Are designed so that they will not burst under normal conditions of use, are incapable of spontaneous ignition, and do not contain any type of explosive or pyrotechnic warhead other than a small recovery system activation charge;

(E) Bear labeling, including labeling that the devices are intended for use by persons age 12 and older, and include instructions providing adequate warnings and instructions for safe use; and

(F) Comply with the requirements of 16 CFR 1500.83(a)(36)(ii and iii); and

(ii) The surface vehicles intended for use with such devices:

(A) Are lightweight, weighing no more than 3.0 oz. (85 grams), and constructed mainly of materials such as balsa wood or plastics that will not fragment into sharp, hard pieces;

(B) Are designed to utilize a braking system such as a parachute or shock absorbing stopping mechanism;

(C) Are designed so that they cannot accept propellant devices measuring larger than 0.5″ (13 mm) in diameter and 1.75″ (44 mm) in length;

(D) Are designed so that the engine mount is permanently attached by the manufacturer to a track or track line that controls the vehicle's direction for the duration of its movement;

(E) Are not designed to carry any type of explosive or pyrotechnic material other than the model rocket motor used for primary propulsion;

(F) Bear labeling and include instructions providing adequate warnings and instructions for safe use; and

(G) Are designed to operate on a track or line that controls the vehicles' direction for the duration of their movement and either cannot operate off the track or line or, if operated off the track or line, are unstable and fail to operate in a guided fashion so that they will not strike the operator or bystanders.

* * * * *

3. Section 1500.83(a)(36)(i) is revised to read as follows:

§ 1500.83 Exemptions for small packages, minor hazards, and special circumstances.

(a) * * *

(36) * * *

(i) The devices are designed and constructed in accordance with the specifications in § 1500.85(a)(8), (9) or (14);

* * * * *

Dated: January 27, 2003.

Todd Stevenson,

Secretary, Consumer Product Safety Commission.

Appendix to Preamble—List of Relevant Documents

1. Briefing memorandum from Terrance R. Karels, Directorate for Economic Analysis, to the Commission, "Exemption from Classification as Banned Hazardous Substances Rocket-powered Model Cars, January 13, 2003.
2. Memorandum from Joyce McDonald, Hazard Analysis Division, to Terrance R. Karels, "Model Rocket Car Petition," October 18, 2002.
3. Memorandum from Sharon R. White, Directorate for Engineering Sciences, Division of Human Factors, to Terrance R. Karels, "Responses to Comments on Briefing Package concerning Centuri Corporation's Petition for Exemption of Model Rocket Propellant Devices for Surface Vehicles, HP 01–02," September 6, 2002.
4. Memorandum from Troy W. Whitfield, Directorate for Engineering Sciences, to Terrance R. Karels, "Rocket Powered Model Cars--Public Comment," September 12, 2002.
5. Memorandum from Terrance R. Karels, Directorate for Economic Analysis, to Files, "Rocket powered cars," May 8, 2002.
6. Memorandum from Terrance R. Karels, Directorate for Economic Analysis, to Patricia M. Pollitzer, Office of General Counsel, "Rocket-powered Model Cars—Economic Considerations," December 20, 2002.
7. Memorandum from Jason R. Goldsmith, Ph.D., Division of Health Sciences, to Terrance R. Karels, "Rocket-Powered Model Cars—Response to Comments," October 17, 2002.

[FR Doc. 03–2205 Filed 1–29–03; 8:45 am]

BILLING CODE 6355–01–P

TENNESSEE VALLEY AUTHORITY

18 CFR Part 1301

Revision of Tennessee Valley Authority Freedom of Information Act Regulations

AGENCY: Tennessee Valley Authority (TVA).

ACTION: Final rule.

SUMMARY: The Tennessee Valley Authority is amending its Freedom of

Information Act (FOIA) regulations to reflect a change in the cut-off date for determining which records are responsive to a request.

EFFECTIVE DATE: January 30, 2003.

FOR FURTHER INFORMATION CONTACT: Denise Smith, FOIA Officer, Tennessee Valley Authority, 400 W. Summit Hill Drive (ET 5D), Knoxville, Tennessee 37902–1499, telephone number (865) 632–6945.

SUPPLEMENTARY INFORMATION: This rule was not published in proposed form since it relates to agency procedure and practice. Since this rule is nonsubstantive, it is being made effective January 30, 2003.

List of Subjects in 18 CFR Part 1301

Freedom of Information, Government in the Sunshine, Privacy

For the reasons stated in the preamble, TVA amends 18 CFR part 1301 as follows:

PART 1301—PROCEDURES

1. The authority citation for part 1301, Subpart A, continues to read as follows:

Authority: 16 U.S.C. 831–831ee, 5 U.S.C. 552.

2. In § 1301.4, revise paragraph (a) to read as follows:

§ 1301.4 Responsibility for responding to requests.

(a) TVA's FOIA Officer, or the FOIA Officer's designee, is responsible for responding to all FOIA requests. In determining which records are responsive to a request, TVA will ordinarily include only records in its possession as of the date it begins its search for them. If any other date is used, the FOIA Officer shall inform the requester of that date.

* * * * *

Tracy S. Williams,

Vice President, External Communications, Tennessee Valley Authority.

[FR Doc. 03–2178 Filed 1–29–03; 8:45 am]

BILLING CODE 8120–08–M

SOCIAL SECURITY ADMINISTRATION

20 CFR Part 404

[Reg. No. 4]

RIN 0960–AE03

Changes in the Retirement Age

AGENCY: Social Security Administration.

ACTION: Final rules.

SUMMARY: These final rules amend our regulations to reflect the changes in full retirement age and in monthly benefit reduction for early retirement as established by section 201 of the Social Security Amendments of 1983 (the 1983 Amendments), and the change in delayed retirement credits (DRCs) as established by section 4 of the Senior Citizens' Freedom to Work Act of 2000 (the Freedom to Work Act). Section 201 of the 1983 Amendments gradually increases the full retirement age for unreduced old-age, wife's or husband's, and widow's or widower's benefits from age 65 to age 67. Section 201 provides for an additional reduction in old-age and wife's or husband's benefits when early retirement is elected more than 36 months prior to full retirement age. It also requires a different method of computing the amount of reduction for early retirement for widow's or widower's benefits. Section 4 of the Freedom to Work Act allows a beneficiary who has attained full retirement age to voluntarily suspend retirement benefits to earn DRCs.

EFFECTIVE DATE: These rules are effective January 30, 2003.

FOR FURTHER INFORMATION CONTACT: Bill Hilton, Social Insurance Specialist, Office of Program Benefits, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235–6401, (410) 965–2468 or TTY (410) 966–5609. For information on eligibility, filing for benefits, or coverage of earnings, call our national toll-free number, 1–800–772–1213 or TTY at 1–800–325–0778.

SUPPLEMENTARY INFORMATION: Section 201 of the 1983 Amendments changed the age at which unreduced old-age benefits, wife's or husband's benefits, and widow's or widower's benefits are payable from age 65 to age 67. The change is phased in over a period of 22 years. This increase affects those born after January 1, 1938.

Section 201 also changed the way reduced monthly benefits are computed for early retirement. The reduction factor for early retirement of the worker and wife or husband will remain the same as under the pre-amendment law for the first 36 months of the reduction period. For each month in excess of 36 months there will be an additional reduction of 5/12 of one percent. The maximum reduction increases to 30 percent for old-age benefits and 35 percent for wife's or husband's benefits.

The maximum reduction for widow's or widower's benefits will continue to be 28½ percent, but that reduction is prorated over a period of months equal to the total possible months of early retirement. That total is now 60 months for those with a full retirement age of 65 but will increase incrementally to 84 months for those with a full retirement age of 67.

Section 4 of the Freedom to Work Act allows people who have attained full retirement age and are receiving retirement benefits to voluntarily suspend those benefits in order to earn DRCs.

Explanation of Changes

We are adding new § 404.409 to our regulations to explain the effect of section 201 of the 1983 Amendments. This new section shows the full range of dates of birth and the corresponding full retirement ages (the age at which a person can retire and receive unreduced old-age, wife's, husband's, widow's or widower's benefits).

We are revising §§ 404.315, 404.316 and 404.321 to reflect the change in full retirement age mandated by section 201 of the 1983 Amendments.

We are revising § 404.277 to reflect the change in full retirement age as mandated by section 201 of the 1983 Amendments, We are rewriting this section in plain language format to comply with the provisions of Executive Order 12866, as amended by Executive Order 13258. We are correcting this section to show that automatic cost-of-living adjustments now occur in December.

We are revising § 404.304 to reflect the change in full retirement age as mandated by section 201 of the 1983 Amendments. We are rewriting this section in plain language format to comply with the provisions of Executive Order 12866, as amended by Executive Order 13258. We are correcting language in this section to say that benefits may be reduced because of the receipt of a government pension instead of saying that benefits will be reduced. This allows for the exceptions that sometimes occur. We are removing the incorrect language that indicated the benefit will be reduced by the amount of the pension.

We are revising § 404.313 to reflect the change in full retirement age mandated by section 201 of the 1983 Amendments. We are including a section to explain that delayed retirement credits may now be earned by a voluntary suspension of benefits as provided for in section 4 of the Freedom To Work Act. We are rewriting the section in plain language format to comply with the provisions of Executive Order 12866, as amended by Executive Order 13258.

We are revising § 404.317 to reflect the change in full retirement age as mandated by section 201 of the 1983 Amendments. We are rewriting this section in plain language format to

comply with the provisions of Executive Order 12866, as amended by Executive Order 13258. We are correcting the age at which the receipt of workers' compensation or public disability benefits no longer affect the disability benefit from age 62 to age 65.

We are revising § 404.352 to reflect the change in full retirement age as mandated by section 201 of the 1983 Amendments. We are rewriting this section in plain language format to comply with the provisions of Executive Order 12866, as amended by Executive Order 13258. We are expanding the explanation of when benefits end.

We are revising § 404.410 to reflect the change in full retirement age as mandated by section 201 of the 1983 Amendments. We are rewriting this section in plain language format to comply with the provisions of Executive Order 12866, as amended by Executive Order 13258. We are adding an explanation that benefits to a widow or widower based on disability before age 60 are reduced only for months before full retirement age because the disabled widow or widower is deemed to be age 60.

We are revising §§ 404.201, 404.310, 404.311, 404.312, 404.335, 404.336, 404.337, 404.338, 404.411, 404.412, 404.413, 404.421, 404.621 and 404.623 to reflect the change in full retirement age mandated by section 201 of the 1983 Amendments. We are rewriting these entire sections in plain language format to comply with the provisions of Executive Order 12866, as amended by Executive Order 13258.

Regulatory Procedure

Pursuant to section 702(a)(5) of the Social Security Act, 42 U.S.C. 902(a)(5), we follow the Administrative Procedure Act (APA) rulemaking procedures specified in 5 U.S.C. 553 when developing our regulations. The APA provides exceptions to its notice and comment procedures when an agency finds there is good cause for dispensing with such procedures on the basis that they are impracticable, unnecessary, or contrary to the public interest. We have determined that under 5 U.S.C. 553(b)(B), good cause exists for dispensing with the notice and public comment procedures for these rules. Good cause exists because these regulations simply reflect statutory changes and do not involve the making of any discretionary policy. Therefore, we have determined that opportunity for prior comment is unnecessary and we are issuing these changes to our regulations as final rules.

In addition, we find good cause for dispensing with the 30-day delay in the effective date of a substantive rule, provided by 5 U.S.C. 553(d). As explained above, these regulations merely reflect self-executing statutory changes that have their own effective dates. We believe it would be misleading and contrary to the public interest for the regulations to show a later effective date, because we must compute benefits as directed by the statute in all cases.

Executive Order 12866, as Amended by Executive Order 13258

We have consulted with the Office of Management and Budget (OMB) and determined that these final rules do not meet the criteria for a significant regulatory action under Executive Order 12866, as amended by Executive Order 13258. Thus, they were not subject to OMB review.

Paperwork Reduction Act

These final regulations impose no additional reporting or recordkeeping requirements requiring OMB clearance.

Regulatory Flexibility Act

We certify that these final regulations will not have a significant economic impact on a substantial number of small entities because they affect only individuals. Therefore, a regulatory flexibility analysis as provided in the Regulatory Flexibility Act, as amended, is not required.

(Catalog of Federal Domestic Assistance Program Nos. 96.001, Social Security—Disability Insurance; 96.002, Social Security—Retirement Insurance; and 96.004, Social Security-Survivors Insurance)

List of Subjects in 20 CFR Part 404

Administrative practice and procedure, Blind, Disability benefits, Old-age, Survivors and disability insurance, Reporting and recordkeeping requirements, Social Security.

Dated: January 21, 2003.

Jo Anne B. Barnhart,

Commissioner of Social Security.

For the reasons set out in the preamble, we are amending subparts C, D, E, and G of part 404 of chapter III of title 20 of the Code of Federal Regulations as set forth below:

PART 404—FEDERAL OLD-AGE, SURVIVORS AND DISABILITY INSURANCE (1950–)

Subpart C—[Amended]

1. The authority citation for subpart C of part 404 continues to read as follows:

Authority: Secs. 202(a), 205(a), 215, and 702(a)(5) of the Social Security Act (42 U.S.C. 402(a), 405(a), 415, and 902(a)(5)).

2. Section 404.201 is revised to read as follows:

§ 404.201 What is included in this subpart?

In this subpart we describe how we compute your primary insurance amount (PIA), how and when we will recalculate or recompute your PIA to include credit for additional earnings, and how we automatically adjust your PIA to reflect changes in the cost of living.

(a) *What is my primary insurance amount?* Your primary insurance amount (PIA) is the basic figure we use to determine the monthly benefit amount payable to you and your family. For example, if you retire in the month you attain full retirement age (as defined in § 404.409) or if you become disabled, you will be entitled to a monthly benefit equal to your PIA. If you retire prior to full retirement age your monthly benefit will be reduced as explained in §§ 404.410—404.413. Benefits to other members of your family are a specified percentage of your PIA as explained in subpart D. Total benefits to your family are subject to a maximum as explained in § 404.403.

(b) *How is this subpart organized?* (1) In §§ 404.201 through 404.204, we explain some introductory matters.

(2) In §§ 404.210 through 404.213, we describe the average-indexed-monthly-earnings method we use to compute the primary insurance amount (PIA) for workers who attain age 62 (or become disabled or die before age 62) after 1978.

(3) In §§ 404.220 through 404.222, we describe the average-monthly-wage method we use to compute the PIA for workers who attain age 62 (or become disabled or die before age 62) before 1979.

(4) In §§ 404.230 through 404.233, we describe the guaranteed alternative method we use to compute the PIA for people who attain age 62 after 1978 but before 1984.

(5) In §§ 404.240 through 404.243, we describe the old-start method we use to compute the PIA for those who had all or substantially all of their social security covered earnings before 1951.

(6) In §§ 404.250 through 404.252, we describe special rules we use to compute the PIA for a worker who previously had a period of disability.

(7) In §§ 404.260 through 404.261, we describe how we compute the special minimum PIA for long-term, low-paid workers.

(8) In §§ 404.270 through 404.278, we describe how we automatically increase your PIA because of increases in the cost of living.

(9) In §§ 404.280 through 404.288, we describe how and when we will recompute your PIA to include additional earnings which were not used in the original computation.

(10) In § 404.290 we describe how and when we will recalculate your PIA.

(11) Appendices I–VII contain material such as figures and formulas that we use to compute PIAs.

3. Section 404.277 is revised to read as follows:

§ 404.277 When does the frozen minimum primary insurance amount increase because of cost-of-living adjustments?

(a) *What is the frozen minimum primary insurance amount (PIA)?* The frozen minimum is a minimum PIA for certain workers whose benefits are computed under the average-indexed-monthly-earnings method. Section 404.210(a) with § 404.212(e) explains when the frozen minimum applies.

(b) *When does the frozen minimum primary insurance amount (PIA) increase automatically?* The frozen minimum PIA increases automatically in every year in which you or your dependents or survivors are entitled to benefits and a cost-of-living increase applies.

(c) *When are automatic increases effective for old-age or disability benefits based on a frozen minimum primary insurance amount (PIA)?* Automatic cost-of-living increases apply to your frozen minimum PIA beginning with the earliest of:

(1) December of the year you become entitled to benefits and receive at least a partial benefit;

(2) December of the year you reach full retirement age (as defined in § 404.409) if you are entitled to benefits in or before the month you attain full retirement age, regardless of whether you receive at least a partial benefit; or

(3) December of the year you become entitled to benefits if that is after you attain full retirement age.

(d) *When are automatic increases effective for survivor benefits based on a frozen minimum primary insurance amount (PIA)?* (1) Automatic cost-of-living increases apply to the frozen minimum PIA used to determine survivor benefits in December of any year in which your child(ren), your surviving spouse caring for your child(ren), or your parent(s), are entitled to survivor benefits for at least one month.

(2) Automatic cost-of-living increases apply beginning with December of the earlier of:

(i) The year in which your surviving spouse or surviving divorced spouse (as defined in §§ 404.335 and 404.336) has attained full retirement age (as defined in § 404.409) and receives at least a partial benefit, or

(ii) The year in which your surviving spouse or surviving disabled spouse becomes entitled to benefits and receives at least a partial benefit.

(3) Automatic cost-of-living increases are not applied to the frozen minimum PIA in any year in which no survivor of yours is entitled to benefits on your social security record.

Subpart D—[Amended]

4. The authority citation for subpart D of part 404 continues to read as follows:

Authority: Secs. 202, 203(a) and (b), 205(a), 216, 223, 225, 228(a)–(e), and 702(a)(5) of the Social Security Act (42 U.S.C. 402, 403(a) and (b), 405(a), 416, 423, 425, 428(a)–(e), and 902(a)(5)).

5. Section 404.304 is revised to read as follows:

§ 404.304 What are the general rules on benefit amounts?

This subpart describes how we determine the highest monthly benefit amount you ordinarily could qualify for under each type of benefit. However, the highest monthly benefit amount you could qualify for may not be the amount you will be paid. In a particular month, your benefit amount may be reduced or not paid at all. Under some circumstances, your benefit amount may be increased. The most common reasons for a change in your benefit amount are listed below.

(a) *Age.* Sections 404.410 through 404.413 explain how your old-age, wife's or husband's, or widow's or widower's benefits may be reduced if you choose to receive them before you attain full retirement age (as defined in § 404.409).

(b) *Earnings.* Sections 404.415 through 404.418 explain how deductions will be made from your benefits if your earnings or the insured person's earnings go over certain limits.

(c) *Overpayments and Underpayments.* Your benefits may be increased or decreased to make up for any previous overpayment or underpayment made on the insured person's record. For more information about this, see subpart F of this part.

(d) *Family Maximum.* Sections 404.403 through 404.406 explain that there is a maximum amount payable on each insured person's earnings record. If you are entitled to benefits as the insured's dependent or survivor, your benefits may be reduced to keep total benefits payable to the insured's family within these limits.

(e) *Government Pension Offset.* If you are entitled to wife's, husband's, widow's, widower's, mother's or father's benefits and receive a Government pension for work that was not covered under social security, your monthly benefits may be reduced because of that pension. Special age 72 payments may also be reduced because of a Government pension. For more information about this, see § 404.408a which covers reductions for Government pensions and § 404.384(c) which covers special age 72 payments.

(f) *Rounding.* After all other deductions or reductions, we reduce any monthly benefit that is not a multiple of $1 to the next lower multiple of $1.

6. 404.310 is revised to read as follows:

§ 404.310 When am I entitled to old-age benefits?

We will find you entitled to old-age benefits if you meet the following three conditions:

(a) You are at least 62 years old;

(b) You have enough social security earnings to be fully insured as defined in §§ 404.110 through 404.115; and

(c) You apply; or you are entitled to disability benefits up to the month you attain full retirement age (as defined in § 404.409). When you attain full retirement age, your disability benefits automatically become old-age benefits.

7. Section 404.311 is revised to read as follows:

§ 404.311 When does my entitlement to old-age benefits begin and end?

(a) We will find you entitled to old-age benefits beginning with:

(1) If you have attained full retirement age (as defined in § 404.409), the first month covered by your application *in* which you meet all requirements for entitlement; or

(2) If you have attained age 62, but have not attained full retirement age (as defined in § 404.409), the first month covered by your application *throughout* which you meet all requirements for entitlement.

(b) We will find your entitlement to old-age benefits ends with the month before the month you die.

8. Section 404.312 is revised to read as follows:

§ 404.312 How is my old-age benefit amount calculated?

(a) If your old-age benefits begin in the month you attain full retirement age (as defined in § 404.409), your monthly benefit is equal to the primary insurance amount (as explained in subpart C of this part).

(b) If your old-age benefits begin after the month you attain full retirement age, your monthly benefit is your primary insurance amount plus an increase for retiring after full retirement age. See § 404.313 for a description of these increases.

(c) If your old-age benefits begin before the month you attain full retirement age, your monthly benefit amount is the primary insurance amount minus a reduction for each month you are entitled before you attain full retirement age. These reductions are described in §§ 404.410 through 404.413.

9. Section 404.313 is revised to read as follows:

§ 404.313 What are delayed retirement credits and how do they increase my old-age benefit amount?

(a) *What are delayed retirement credits and how do I earn them?* Delayed retirement credits (DRCs) are credits we use to increase the amount of your old-age benefit amount. You may earn a credit for each month during the period beginning with the month you attain full retirement age (as defined in § 404.409) and ending with the month you attain age 70 (72 before 1984). You earn a credit for each month for which you are fully insured and eligible but do not receive an old-age benefit either because you do not apply for benefits or because you elect to voluntarily suspend your benefits to earn DRCs. Even if you were entitled to old-age benefits before full retirement age you may still earn DRCs for months during the period from full retirement age to age 70, if you voluntarily elect to suspend those benefits.

(b) *How is the amount of the increase because of delayed retirement credits computed?* (1) *Computation of the increase amount.* The amount of the increase depends on your date of birth and the number of credits you earn. We total the number of credits (which need not be consecutive) and multiply that number by the applicable percentage from paragraph (b)(2) of this section. We then multiply the result by your benefit amount and round the answer to the next lower multiple of 10 cents (if the answer is not already a multiple of 10 cents). We add the result to your benefit amount. If a supplementary medical insurance premium is involved it is then deducted. The result is rounded to the next lower multiple of $1 (if the answer is not already a multiple of $1).

(2) *Credit Percentages.* The applicable credit amount for each month of delayed retirement can be found in the table below.

If your date of birth is:	The credit for each month you delay retirement is:
Before 1/2/1917	1/12 of 1%
1/2/1917—1/1/1925	1/4 of 1%
1/2/1925—1/1/1927	7/24 of 1%
1/2/1927—1/1/1929	1/3 of 1%
1/2/1929—1/1/1931	3/8 of 1%
1/2/1931—1/1/1933	5/12 of 1%
1/2/1933—1/1/1935	11/24 of 1%
1/2/1935—1/1/1937	1/2 of 1%
1/2/1937—1/1/1939	13/24 of 1%
1/2/1939—1/1/1941	7/12 of 1%
1/2/1941—1/1/1943	5/8 of 1%
After 1/1/1943	2/3 of 1%

Example: Alan was qualified for old-age benefits when he reached age 65 on January 15, 1998. He decided not to apply for old-age benefits immediately because he was still working. When he became age 66 in January 1999, he stopped working and applied for benefits beginning with that month. Based on his earnings, his primary insurance amount was $782.60. However, because he did not receive benefits immediately upon attainment of full retirement age (65), he is due an increase based on his delayed retirement credits. He earned 12 credits, one for each month from January 1998 through December 1998. Based on his date of birth of 1/15/1933 he is entitled to a credit of 11/24 of one percent for each month of delayed retirement. 12 credits multiplied by 11/24 of one percent equals a credit of 5.5 percent. 5.5% of the primary insurance amount of $782.60 is $43.04 which is rounded to $43.00, the next lower multiple of 10 cents. $43.00 is added to the primary insurance amount, $782.60. The result, $825.60 is the monthly benefit amount. If a supplementary medical insurance premium is involved it is then deducted. The result is rounded to the next lower multiple of $1 (if the answer is not already a multiple of $1).

(c) *When is the increase because of delayed retirement credits effective?*— (1) *Credits earned after entitlement and before the year of attainment of age 70.* If you are entitled to benefits, we examine our records after the end of each calendar year to determine whether you have earned delayed retirement credits during the previous year for months when you were at or over full retirement age and you were fully insured and eligible for benefits but did not receive them. Any increase in your benefit amount is effective beginning with January of the year after the year the credits were earned.

(2) *Credits earned after entitlement in the year of attainment of age 70.* If you are entitled to benefits in the month you attain age 70, we examine our records to determine if you earned any additional delayed retirement credits during the calendar year in which you attained age 70. Any increase in your benefit amount is effective beginning with the month you attained age 70.

(3) *Credits earned prior to entitlement.* If you are full retirement age or older and eligible for old-age benefits but do not apply for benefits, your delayed retirement credits for months from the month of attainment of full retirement age through the end of the year prior to the year of filing will be included in the computation of your initial benefit amount. Credits earned in the year you attain age 70 will be added in the month you attain age 70.

(d) *How do delayed retirement credits affect the special minimum primary insurance amount?* We do not add delayed retirement credits to your old-age benefit if your benefit is based on the special minimum primary insurance amount described in § 404.260. We add the delayed retirement credits only to your old-age benefit based on your regular primary insurance amount, *i.e.* as computed under one of the other provisions of subpart C of this part. If your benefit based on the regular primary insurance amount plus your delayed retirement credits is higher than the benefit based on your special minimum primary insurance amount, we will pay the higher amount to you. However, if the special minimum primary insurance amount is higher than the regular primary insurance amount without the delayed retirement credits, we will use the special minimum primary insurance amount to determine the family maximum and the benefits of others entitled on your earnings record.

(e) *What is the effect of my delayed retirement credits on the benefit amount of others entitled on my earnings record?*

(1) *Surviving Spouse or Surviving Divorced Spouse.* If you earn delayed retirement credits during your lifetime, we will compute benefits for your surviving spouse or surviving divorced spouse based on your regular primary insurance amount plus the amount of those delayed retirement credits. All delayed retirement credits, including any earned during the year of death, can be used in computing the benefit amount for your surviving spouse or surviving divorced spouse beginning with the month of your death. We compute delayed retirement credits up to but not including the month of death.

(2) *Other Family Member.* We do not use your delayed retirement credits to increase the benefits of other family members entitled on your earnings record.

(3) *Family Maximum.* We add delayed retirement credits to your benefit after we compute the family maximum. However, we add delayed retirement credits to your surviving spouse's or

surviving divorced spouse's benefit before we reduce for the family maximum.

10. Section 404.315 is amended by revising the section heading, and paragraph (a), introductory text, to read as follows:

§ 404.315 Who is entitled to disability benefits?

(a) *General.* You are entitled to disability benefits while disabled before attaining full retirement age as defined in § 404.409 if * * *

* * * * *

11. Section 404.316 is amended by revising paragraph (b)(2) to read as follows:

§ 404.316 When entitlement to disability benefits begins and ends.

* * * * *

(b) * * *

(2) The month before the month you attain full retirement age as defined in § 404.409 (at full retirement age your disability benefits will be automatically changed to old-age benefits);

* * * * *

12. Section 404.317 is revised to read as follows:

§ 404.317 How is the amount of my disability benefit calculated?

Your monthly benefit is equal to the primary insurance amount (PIA). This amount is computed under the rules in subpart C of this part as if it was an old-age benefit, and as if you were 62 years of age at the beginning of the 5-month waiting period mentioned in § 404.315(a). If the 5-month waiting period is not required because of your previous entitlement, your PIA is figured as if you were 62 years old when you become entitled to benefits this time. Your monthly benefit amount may be reduced if you receive worker's compensation or public disability payments before you become 65 years old as described in § 404.408. Your benefits may also be reduced if you were entitled to other retirement-age benefits before you attained full retirement age (as defined in § 404.409).

13. Section 404.321 is amended by revising paragraph (a) and paragraph (c)(1) to read as follows:

§ 404.321 When a period of disability begins and ends.

(a) *When a period of disability begins.* Your period of disability begins on the day your disability begins if you are insured for disability on that day. If you are not insured for disability on that day, your period of disability will begin on the first day of the first calendar quarter after your disability began in which you become insured for disability. Your period of disability may not begin after you have attained full retirement age as defined in § 404.409.

* * * * *

(c) * * *

(1) The month before the month in which you attain full retirement age as defined in § 404.409.

* * * * *

14. Section 404.335 is revised to read as follows:

§ 404.335 How do I become entitled to widow's or widower's benefits?

We will find you entitled to benefits as the widow or widower of a person who died fully insured if you meet the requirements in paragraphs (a) through (e) of this section:

(a) You are the insured's widow or widower based upon a relationship described in §§ 404.345 through 404.346, and you meet one of the conditions in paragraphs (a)(1) through (4) of this section:

(1) Your relationship to the insured as a wife or husband lasted for at least 9 months immediately before the insured died.

(2) Your relationship to the insured as a wife or husband did not last 9 months before the insured died, but at the time of your marriage the insured was reasonably expected to live for 9 months, and you meet one of the conditions in paragraphs (a)(2)(i) through (iii) of this section:

(i) The death of the insured was accidental. The death is accidental if it was caused by an event that the insured did not expect; it was the result of bodily injuries received from violent and external causes; and as a direct result of these injuries, death occurred not later than 3 months after the day on which the bodily injuries were received. An intentional and voluntary suicide will not be considered an accidental death.

(ii) The death of the insured occurred in the line of duty while he or she was serving on active duty as a member of the uniformed services as defined in § 404.1019.

(iii) You had been previously married to the insured for at least 9 months.

(3) You and the insured were the natural parents of a child; or you were married to the insured when either of you adopted the other's child or when both of you adopted a child who was then under 18 years old.

(4) In the month before you married the insured, you were entitled to or, if you had applied and had been old enough, could have been entitled to any of these benefits or payments: widow's, widower's, father's (based on the record of a fully insured individual), mother's (based on the record of a fully insured individual), wife's, husband's, parent's, or disabled child's benefits; or annuity payments under the Railroad Retirement Act for widows, widowers, parents, or children age 18 or older.

(b) You apply, except that you need not apply again if you meet one of the conditions in paragraphs (b)(1) through (4) of this section:

(1) You are entitled to wife's or husband's benefits for the month before the month in which the insured dies and you have attained full retirement age (as defined in § 404.409) or you are not entitled to either old-age or disability benefits.

(2) You are entitled to mother's or father's benefits for the month before the month in which you attained full retirement age (as defined in § 404.409).

(3) You are entitled to wife's or husband's benefits and to either old-age or disability benefits in the month before the month of the insured's death, you are under full retirement age (as defined in § 404.409) in the month of death, and you have filed a Certificate of Election in which you elect to receive reduced widow's or widower's benefits.

(4) You applied in 1990 for widow's or widower's benefits based on disability and you meet both of the conditions in paragraphs (b)(4)(i) and (ii) of this section:

(i) You were entitled to disability insurance benefits for December 1990, or eligible for supplemental security income or federally administered State supplementary payments, as specified in subparts B and T of part 416 of this chapter, respectively, for January 1991.

(ii) You were found not disabled for any month based on the definition of disability in §§ 404.1577 and 404.1578, as in effect prior to January 1991, but would have been entitled if the standard in § 404.1505(a) had applied. (This exception to the requirement for filing an application is effective only with respect to benefits payable for months after December 1990.)

(c) You are at least 60 years old; or you are at least 50 years old and have a disability as defined in § 404.1505 and you meet all of the conditions in paragraphs (c)(1) through (4) of this section:

(1) Your disability started not later than 7 years after the insured died or 7 years after you were last entitled to mother's or father's benefits or to widow's or widower's benefits based upon a disability, whichever occurred last.

(2) Your disability continued during a waiting period of 5 full consecutive

months, unless months beginning with the first month of eligibility for supplemental security income or federally administered State supplementary payments are counted, as explained in the Exception in paragraph (c)(3) of this section. The waiting period may begin no earlier than the 17th month before you applied; the fifth month before the insured died; or if you were previously entitled to mother's, father's, widow's, or widower's benefits, the 5th month before your entitlement to benefits ended. If you were previously entitled to widow's or widower's benefits based upon a disability, no waiting period is required.

(3) Exception: For monthly benefits payable for months after December 1990, if you were or have been eligible for supplemental security income or federally administered State supplementary payments, as specified in subparts B and T of part 416 of this chapter, respectively, your disability need not have continued through a separate, full 5-month waiting period before you may begin receiving benefits. We will include as months of the 5-month waiting period the months in a period beginning with the first month you received supplemental security income or a federally administered State supplementary payment and continuing through all succeeding months, regardless of whether the months in the period coincide with the months in which your waiting period would have occurred, or whether you continued to be eligible for supplemental security income or a federally administered State supplementary payment after the period began, or whether you met the nondisability requirements for entitlement to widow's or widower's benefits. However, we will not pay you benefits under this provision for any month prior to January 1991.

(4) You have not previously received 36 months of payments based on disability when drug addiction or alcoholism was a contributing factor material to the determination of disability (as described in § 404.1535), regardless of the number of entitlement periods you may have had, or your current application for widow's or widower's benefits is not based on a disability where drug addiction or alcoholism is a contributing factor material to the determination of disability.

(d) You are not entitled to an old-age benefit that is equal to or larger than the insured person's primary insurance amount.

(e) You are unmarried, unless for benefits for months after 1983 you meet one of the conditions in paragraphs (e)(1) through (3) of this section:

(1) You remarried after you became 60 years old.

(2) You are now age 60 or older and you meet both of the conditions in paragraphs (e)(2)(i) and (ii) of this section:

(i) You remarried after attaining age 50 but before attaining age 60.

(ii) At the time of the remarriage, you were entitled to widow's or widower's benefits as a disabled widow or widower.

(3) You are now at least age 50, but not yet age 60 and you meet both of the conditions in paragraphs (e)(3)(i) and (ii) of this section:

(i) You remarried after attaining age 50.

(ii) You met the disability requirements in paragraph (c) of this section at the time of your remarriage (*i.e.*, your disability began within the specified time and before your remarriage).

15. Section 404.336 is revised to read as follows:

§ 404.336 How do I become entitled to widow's or widower's benefits as a surviving divorced spouse?

We will find you entitled to widow's or widower's benefits as the surviving divorced wife or the surviving divorced husband of a person who died fully insured if you meet the requirements in paragraphs (a) through (e) of this section:

(a) You are the insured's surviving divorced wife or surviving divorced husband and you meet both of the conditions in paragraphs (a)(1) and (2) of this section:

(1) You were validly married to the insured under State law as described in § 404.345 or are deemed to have been validly married as described in § 404.346.

(2) You were married to the insured for at least 10 years immediately before your divorce became final.

(b) You apply, except that you need not apply again if you meet one of the conditions in paragraphs (b)(1) through (4) of this section:

(1) You are entitled to wife's or husband's benefits for the month before the month in which the insured dies and you have attained full retirement age (as defined in § 404.409) or you are not entitled to old-age or disability benefits.

(2) You are entitled to mother's or father's benefits for the month before the month in which you attain full retirement age (as defined in § 404.409).

(3) You are entitled to wife's or husband's benefits and to either old-age or disability benefits in the month before the month of the insured's death, you have not attained full retirement age (as defined in § 404.409) in the month of death, and you have filed a Certificate of Election in which you elect to receive reduced widow's or widower's benefits.

(4) You applied in 1990 for widow's or widower's benefits based on disability, and you meet the requirements in both paragraphs (b)(4)(i) and (ii) of this section:

(i) You were entitled to disability insurance benefits for December 1990 or eligible for supplemental security income or federally administered State supplementary payments, as specified in subparts B and T of part 416 of this chapter, respectively, for January 1991.

(ii) You were found not disabled for any month based on the definition of disability in §§ 404.1577 and 404.1578, as in effect prior to January 1991, but would have been entitled if the standard in § 404.1505(a) had applied. (This exception to the requirement for filing an application is effective only with respect to benefits payable for months after December 1990.)

(c) You are at least 60 years old; or you are at least 50 years old and have a disability as defined in § 404.1505 and you meet all of the conditions in paragraphs (c)(1) through (4) of this section:

(1) Your disability started not later than 7 years after the insured died or 7 years after you were last entitled to mother's or father's benefits or to widow's or widower's benefits based upon a disability, whichever occurred last.

(2) Your disability continued during a waiting period of 5 full consecutive months, unless months beginning with the first month of eligibility for supplemental security income or federally administered State supplementary payments are counted, as explained in the Exception in paragraph (c)(3) of this section. This waiting period may begin no earlier than the 17th month before you applied; the fifth month before the insured died; or if you were previously entitled to mother's, father's, widow's, or widower's benefits, the 5th month before your previous entitlement to benefits ended. If you were previously entitled to widow's or widower's benefits based upon a disability, no waiting period is required.

(3) Exception: For monthly benefits payable for months after December 1990, if you were or have been eligible for supplemental security income or federally administered State supplementary payments, as specified in subparts B and T of part 416 of this

chapter, respectively, your disability does not have to have continued through a separate, full 5-month waiting period before you may begin receiving benefits. We will include as months of the 5-month waiting period the months in a period beginning with the first month you received supplemental security income or a federally administered State supplementary payment and continuing through all succeeding months, regardless of whether the months in the period coincide with the months in which your waiting period would have occurred, or whether you continued to be eligible for supplemental security income or a federally administered State supplementary payment after the period began, or whether you met the nondisability requirements for entitlement to widow's or widower's benefits. However, we will not pay you benefits under this provision for any month prior to January 1991.

(4) You have not previously received 36 months of payments based on disability when drug addiction or alcoholism was a contributing factor material to the determination of disability (as described in § 404.1535), regardless of the number of entitlement periods you may have had, or your current application for widow's or widower's benefits is not based on a disability where drug addiction or alcoholism is a contributing factor material to the determination of disability.

(d) You are not entitled to an old-age benefit that is equal to or larger than the insured person's primary insurance amount.

(e) You are unmarried, unless for benefits for months after 1983 you meet one of the conditions in paragraphs (e)(1) through (3) of this section:

(1) You remarried after you became 60 years old.

(2) You are now age 60 or older and you meet both of the conditions in paragraphs (e)(2)(i) and (ii) of this section:

(i) You remarried after attaining age 50 but before attaining age 60.

(ii) At the time of the remarriage, you were entitled to widow's or widower's benefits as a disabled widow or widower.

(3) You are now at least age 50 but not yet age 60 and you meet one of the conditions in paragraphs (e)(3)(i) and (ii) of this section:

(i) You remarried after attaining age 50.

(ii) You met the disability requirements in paragraph (c) of this section at the time of your remarriage (*i.e.*, your disability began within the specified time and before your remarriage).

16. Section 404.337 is revised to read as follows:

§ 404.337 When does my entitlement to widow's and widower's benefits start and end?

(a) We will find you entitled to widow's or widower's benefits under § 404.335 or § 404.336 beginning with the first month covered by your application in which you meet all other requirements for entitlement.

(b) We will end your entitlement to widow's or widower's benefits at the earliest of the following times:

(1) The month before the month in which you become entitled to an old-age benefit that is equal to or larger than the insured's primary insurance amount.

(2) The second month after the month your disability ends or, where disability ends on or after December 1, 1980, the month before your termination month (§ 404.325). However your payments are subject to the provisions of paragraphs (c) and (d) of this section. **Note:** You may remain eligible for payment of benefits if you attained full retirement age (as defined in § 404.409) before your termination month and you meet the other requirements for widow's or widower's benefits.

(3) If drug addiction or alcoholism is a contributing factor material to the determination of disability as described in § 404.1535, the month after the 12th consecutive month of suspension for noncompliance with treatment or after 36 months of benefits on that basis when treatment is available regardless of the number of entitlement periods you may have had, unless you are otherwise disabled without regard to drug addiction or alcoholism.

(4) The month before the month in which you die.

(c)(1) If you are entitled to widow's or widower's benefits based on a disability and your impairment is no longer disabling, generally, we will continue your benefits if you meet all the conditions in paragraphs (c)(1)(i) through (iv) of this section:

(i) Your disability did not end before December 1980, the effective date of this provision of the law.

(ii) You are participating in an appropriate program of vocational rehabilitation as described in § 404.316(c)(1)(ii).

(iii) You began the program before your disability ended.

(iv) We determined that your completion of the program, or your continuation in the program for a specified period of time, would significantly increase the likelihood that you will not have to return to the disability benefit rolls.

(2) Generally, we will stop your benefits with the month you meet one of the conditions in paragraphs (c)(2)(i) through (iii) of this section:

(i) You complete the program.

(ii) You stop participating in the program for any reason.

(iii) We determined that your continuing participation in the program would no longer significantly increase the likelihood that you will be permanently removed from the disability benefit rolls.

(iv) Exception: In no case will we stop your benefits with a month earlier than the second month after the month your disability ends.

(d) If, after November 1980, you have a disabling impairment (§ 404.1511), we will pay you benefits for all months in which you do not do substantial gainful activity during the reentitlement period (§ 404.1592a) following the end of your trial work period (§ 404.1592). If you are unable to do substantial gainful activity in the first month following the reentitlement period, we will pay you benefits until you are able to do substantial gainful activity. (Earnings during your trial work period do not affect the payment of your benefits.) We will also pay you benefits for the first month after the trial work period in which you do substantial gainful activity and the two succeeding months, whether or not you do substantial gainful activity during those succeeding months. After those three months, we cannot pay you benefits for any months in which you do substantial gainful activity.

17. Section 404.338 is revised to read as follows:

§ 404.338 How is the amount of my widow's or widower's benefit calculated?

Your widow's or widower's monthly benefit is equal to the insured person's primary insurance amount. If the insured person died before reaching age 62 and you are first eligible after 1984, we may compute a special primary insurance amount to determine the amount of your monthly benefit (*see* § 404.212(b)). We may increase your monthly benefit amount if the insured person earned delayed retirement credit after full retirement age (as defined in § 404.409) by working or by delaying filing for benefits (*see* § 404.313). The amount of your monthly benefit may change as explained generally in § 404.304. In addition, your monthly benefit will be reduced if the insured person was entitled to old-age benefits that were reduced for age because he or she chose to receive them before

attaining full retirement age. In this instance, your benefit is reduced, if it would otherwise be higher, to either the amount the insured would have been entitled to if still alive or 82½ percent of his or her primary insurance amount, whichever is larger.

18. Section 404.352 is revised to read as follows:

§ 404.352 When does my entitlement to child's benefits begin and end?

(a) We will find your entitlement to child's benefits begins at the following times:

(1) If the insured is deceased, with the first month covered by your application in which you meet all other requirements for entitlement.

(2) If the insured is living and your first month of entitlement is September 1981 or later, with the first month covered by your application throughout which you meet all other requirements for entitlement.

(3) If the insured is living and your first month of entitlement is before September 1981, with the first month covered by your application in which you meet all other requirements for entitlement.

(b) We will find your entitlement to child's benefits ends at the earliest of the following times:

(1) With the month before the month in which you become 18 years old, if you are not disabled or a full-time student.

(2) With the second month following the month in which your disability ends, if you become 18 years old and you are disabled. If your disability ends on or after December 1, 1980, your entitlement to child's benefits continues, subject to the provisions of paragraphs (c) and (d) of this section, until the month before your termination month (§ 404.325).

(3) With the last month you are a full-time student or, if earlier, with the month before the month you become age 19, if you become 18 years old and you qualify as a full-time student who is not disabled. If you become age 19 in a month in which you have not completed the requirements for, or received, a diploma or equivalent certificate from an elementary or secondary school and you are required to enroll for each quarter or semester, we will find your entitlement ended with the month in which the quarter or semester in which you are enrolled ends. If the school you are attending does not have a quarter or semester system which requires reenrollment, we will find your entitlement to benefits ended with the month you complete the course or, if earlier, the first day of the third month following the month in which you become 19 years old.

(4) With the month before the month you marry. We will not find your benefits ended, however, if you are age 18 or older, disabled, and you marry a person entitled to child's benefits based on disability or person entitled to old-age, divorced wife's, divorced husband's, widow's, widower's, mother's, father's, parent's, or disability benefits.

(5) With the month before the month the insured's entitlement to old-age or disability benefits ends for a reason other than death or the attainment of full retirement age (as defined in § 404.409). Exception: We will continue your benefits if the insured person was entitled to disability benefits based on a finding that drug addiction or alcoholism was a contributing factor material to the determination of his or her disability (as described in § 404.1535), the insured person's benefits ended after 36 months of payment (see § 404.316(e)) or 12 consecutive months of suspension for noncompliance with treatment (see § 404.316(f)), and the insured person remains disabled.

(6) With the month before the month you die.

(c) If you are entitled to benefits as a disabled child age 18 or over and your disability is based on a finding that drug addiction or alcoholism was a contributing factor material to the determination of disability (as described in § 404.1535), we will find your entitlement to benefits ended under the following conditions:

(1) If your benefits have been suspended for a period of 12 consecutive months for failure to comply with treatment, with the month following the 12 months unless you are otherwise disabled without regard to drug addiction or alcoholism (see § 404.470(c)).

(2) If you have received 36 months of benefits on that basis when treatment is available, regardless of the number of entitlement periods you may have had, with the month following such 36-month payment period unless you are otherwise disabled without regard to drug addiction or alcoholism.

(d)(1) Generally, we will continue your benefits after your impairment is no longer disabling if you meet all the following conditions:

(i) Your disability did not end before December 1980, the effective date of this provision of the law.

(ii) You are participating in an appropriate program of vocational rehabilitation as described in § 404.316(c)(1)(ii).

(iii) You began the program before your disability ended.

(iv) We have determined that your completion of the program, or your continuation in the program for a specified period of time, will significantly increase the likelihood that you will not have to return to the disability benefit rolls.

(2) Generally, we will end your entitlement to benefits with the month you meet one of the following conditions:

(i) You complete the program.

(ii) You stop participating in the program for any reason.

(iii) We determine that your continuing participation in the program will no longer significantly increase the likelihood that you will be permanently removed from the disability benefit rolls.

(iv) Exception: In no case will we stop your benefits with a month earlier than the second month after the month your disability ends.

(e) If, after November 1980, you have a disabling impairment (§ 404.1511), we will pay you benefits for all months in which you do not do substantial gainful activity during the reentitlement period (§ 404.1592a) following the end of your trial work period (§ 404.1592). If you are unable to do substantial gainful activity in the first month following the reentitlement period, we will pay you benefits until you are able to do substantial gainful activity. (Earnings during your trial work period do not affect the payment of your benefits during that period.) We will also pay you benefits for the first month after the trial work period in which you do substantial gainful activity and the two succeeding months, whether or not you do substantial gainful activity during those succeeding months. After those three months, we cannot pay you benefits for any months in which you do substantial gainful activity.

Subpart E—[Amended]

19. The authority citation for subpart E of part 404 is revised to read as follows:

Authority: Secs. 202, 203, 204(a) and (e), 205(a) and (c), 216(l), 222(b), 223(e), 224, 225, 702(a)(5) and 1129A of the Social Security Act (42 U.S.C. 402, 403, 404(a) and (e), 405(a) and (c), 416(l), 422(b), 423(e), 424a, 425, 902(a)(5) and 1320a–8a).

20. Section 404.409 is added to read as follows:

§ 404.409 What Is Full Retirement Age?

Full retirement age is the age at which you may receive unreduced old-age, wife's, husband's, widow's, or

widower's benefits. Full retirement age has been 65 but is being gradually raised to age 67 beginning with people born after January 1, 1938. See § 404.102 regarding determination of age.

(a) *What is my full retirement age for old-age benefits or wife's or husband's benefits?* You may receive unreduced old-age, wife's, or husband's benefits beginning with the month you attain the age shown.

If your birth date is:	Full retirement age is:
Before 1/2/1938	65 years.
1/2/1938—1/1/1939 ...	65 years and 2 months.
1/2/1939—1/1/1940 ...	65 years and 4 months.
1/2/1940—1/1/1941 ...	65 years and 6 months.
1/2/1941—1/1/1942 ...	65 years and 8 months.
1/2/1942—1/1/1943 ...	65 years and 10 months.
1/2/1943—1/1/1955 ...	66 years.
1/2/1955—1/1/1956 ...	66 years and 2 months.
1/2/1956—1/1/1957 ...	66 years and 4 months.
1/2/1957—1/1/1958 ...	66 years and 6 months.
1/2/1958—1/1/1959 ...	66 years and 8 months.
1/2/1959—1/1/1960 ...	66 years and 10 months.
1/2/1960 and later	67 years.

(b) *What is my full retirement age for widow's or widower's benefits?* You may receive unreduced widow's or widower's benefits beginning with the month you attain the age shown.

If your birth date is:	Full retirement age is:
Before 1/2/1912	62 years.
1/2/1912—1/1/1940 ...	65 years.
1/2/1940—1/1/1941 ...	65 years and 2 months.
1/2/1941—1/1/1942 ...	65 years and 4 months.
1/2/1942—1/1/1943 ...	65 years and 6 months.
1/2/1943—1/1/1944 ...	65 years and 8 months.
1/2/1944—1/1/1945 ...	65 years and 10 months.
1/2/1945—1/1/1957 ...	66 years.
1/2/1957—1/1/1958 ...	66 years and 2 months.
1/2/1958—1/1/1959 ...	66 years and 4 months.
1/2/1959—1/1/1960 ...	66 years and 6 months.
1/2/1960—1/1/1961 ...	66 years and 8 months.
1/2/1961—1/1/1962 ...	66 years and 10 months.
1/2/1962 and later	67 years.

(c) *Can I still retire before full retirement age?* You may still elect early retirement. You may receive old-age, wife's or husband's benefits at age 62. You may receive widow's or widower's benefits at age 60. Those benefits will be reduced as explained in § 404.410.

21. Section 404.410 is revised to read as follows:

§ 404.410 How does SSA reduce my benefits when my entitlement begins before full retirement age?

Generally your old-age, wife's, husband's, widow's, or widower's benefits are reduced if entitlement begins before the month you attain full retirement age (as defined in § 404.409). However, your benefits as a wife or husband are not reduced for any month in which you have in your care a child of the worker on whose earnings record you are entitled. The child must be entitled to child's benefits. Your benefits as a widow or widower are not reduced below the benefit amount you would receive as a mother or father for any month in which you have in your care a child of the worker on whose record you are entitled. The child must be entitled to child's benefits. Subject to §§ 404.411 through 404.413, reductions in benefits are made in the amounts described.

(a) *How does SSA reduce my old-age benefits?* The reduction in your primary insurance amount is based on the number of months of entitlement prior to the month you attain full retirement age. The reduction is 5/9 of 1 percent for each of the first 36 months and 5/12 of 1 percent for each month in excess of 36.

Example: Alex's full retirement age for unreduced benefits is 65 years and 8 months. She elects to begin receiving benefits at age 62. Her primary insurance amount of $980.50 must be reduced because of her entitlement to benefits 44 months prior to full retirement age. The reduction is 36 months at 5/9 of 1 percent and 8 months at 5/12 of 1 percent.

$980.50 \times 36 \times 5/9 \times .01 = \$196.10$
$980.50 \times 8 \times 5/12 \times .01 = \$\ 32.68$

The two added together equal a total reduction of $228.78. This amount is rounded to $228.80 (the next higher multiple of 10 cents) and deducted from the primary insurance amount. The resulting $751.70 is the monthly benefit payable.

(b) *How does SSA reduce my wife's or husband's benefits?* Your wife's or husband's benefits before any reduction (see §§ 404.304 and 404.333) are reduced first (if necessary) for the family maximum under § 404.403. They are then reduced based on the number of months of entitlement prior to the month you attain full retirement age. This does not include any month in which you have a child of the worker on whose earnings record you are entitled in your care. The child must be entitled to child benefits. The reduction is 25/36 of 1 percent for each of the first 36 months and 5/12 of 1 percent for each month in excess of 36.

Example: Sam is entitled to old-age benefits. His spouse Ashley elects to begin receiving wife's benefits at age 63. Her full retirement age for unreduced benefits is 65 and 4 months. Her benefit will be reduced for 28 months of entitlement prior to full retirement age. If her unreduced benefit is $412.40 the reduction will be $412.40 × 28 × 25/36 × .01. The resulting $80.18 is rounded to $80.20 (the next higher multiple of 10 cents) and subtracted from $412.40 to determine the monthly benefit amount of $332.20.

(c) *How does SSA reduce my widow's or widower's benefits?*

Your entitlement to widow's or widower's benefits may begin at age 60 based on age or at age 50 based on disability. Refer to § 404.335 for more information on the requirements for entitlement. Both types are reduced if entitlement begins prior to attainment of full retirement age (as defined in § 404.409).

(1) *Widow's or widower's benefits based on age.* Your widow's or widower's unreduced benefit amount (the worker's primary insurance amount after any reduction for the family maximum under § 404.403), is reduced or further reduced based on the number of months of entitlement prior to the month you attain full retirement age. This does not include any month in which you have in your care a child of the worker on whose earnings record you are entitled. The child must be entitled to child's benefits. The number of months of entitlement prior to full retirement age is multiplied by .285 and then divided by the number of months in the period beginning with the month of attainment of age 60 and ending with the month immediately before the month of attainment of full retirement age.

Example: Ms. Bogle is entitled to an unreduced widow benefit of $785.70 beginning at age 64. Her full retirement age for unreduced old-age benefits is 65 years and 4 months. She will receive benefits for 16 months prior to attainment of full retirement age. The number of months in the period from age 60 through full retirement age of 65 and 4 months is 64. The reduction in her benefit is $785.70 × 16 × .285 divided by 64 or $55.98. $55.98 is rounded to the next higher multiple of 10 cents ($56.00) and subtracted from $785.70. The result is a monthly benefit of $729.70.

(2) *Widow's or widower's benefits based on disability.* (i) For months after December 1983, your widow's or widower's benefits are not reduced for months of entitlement prior to age 60. You are deemed to be age 60 in your

month of entitlement to disabled widow's or widower's benefits and your benefits are reduced only under paragraph (c)(1) of this section.

(ii) For months from January 1973 through December 1983, benefits as a disabled widow or widower were reduced under paragraph (c)(1) of this section. The benefits were then subject to an additional reduction of 43/240 of one percent for each month of entitlement prior to age 60 based on disability.

(3) *Widow's or widower's benefits prior to 1973.* For months prior to January 1973 benefits as a widow or widower were reduced only for months of entitlement prior to age 62. The reduction was 5/9 of one percent for each month of entitlement from the month of attainment of age 60 through the month prior to the month of attainment of age 62. There was an additional reduction of 43/198 of one percent for each month of entitlement prior to age 60 based on disability.

(d) *If my benefits are reduced under this section does SSA ever change the reduction?* The reduction computed under paragraphs (a), (b) or (c) of this section may later be adjusted to eliminate reduction for certain months of entitlement prior to full retirement age as provided in § 404.412. For special provisions on reducing benefits for months prior to full retirement age involving entitlement to two or more benefits, see § 404.411.

(e) *Are my widow's or widower's benefits affected if the deceased worker was entitled to old-age benefits?* If the deceased individual was entitled to old-age benefits, see § 404.338 for special rules that may affect your reduced widow's or widower's benefits.

22. Section 404.411 is revised to read as follows:

§ 404.411 How are benefits reduced for age when a person is entitled to two or more benefits?

(a) *What is the general rule?* Except as specifically provided in this section, benefits of an individual entitled to more than one benefit will be reduced for months of entitlement before full retirement age (as defined in § 404.409) according to the provisions of § 404.410. Such age reductions are made before any reduction under the provisions of § 404.407.

(b) *How is my disability benefit reduced after entitlement to an old-age benefit or widow's or widower's benefit?* A person's disability benefit is reduced following entitlement to an old-age or widow's or widower's benefit (or following the month in which all conditions for entitlement to the widow's or widower's benefit are met except that the individual is entitled to an old-age benefit which equals or exceeds the primary insurance amount on which the widow's or widower's benefit is based) in accordance with the following provisions:

(1) *Individuals born January 2, 1928, or later whose disability began January 1, 1990, or later.* When an individual is entitled to a disability benefit for a month after the month in which she or he becomes entitled to an old-age benefit which is reduced for age under § 404.410, the disability benefit is reduced by the amount by which the old-age benefit would be reduced under § 404.410 if she or he attained full retirement age in the first month of the most recent period of entitlement to the disability benefit.

(2) *Individuals born January 2, 1928, or later whose disability began before January 1, 1990, and, all individuals born before January 2, 1928, regardless of when their disability began.*

(i) *First entitled to disability in or after the month of attainment of age 62.* When an individual is first entitled to a disability benefit in or after the month in which she or he attains age 62 and for which she or he is first entitled to a widow's or widower's benefit (or would be so entitled except for entitlement to an equal or higher old-age benefit) before full retirement age, the disability benefit is reduced by the larger of:

(A) The amount the disability benefit would have been reduced under paragraph (b)(1) of this section; or

(B) The amount equal to the sum of the amount the widow's or widower's benefit would have been reduced under the provisions of § 404.410 if full retirement age for unreduced benefits were age 62 plus the amount by which the disability benefit would have been reduced under paragraph (b)(1) of this section if the benefit were equal to the excess of such benefit over the amount of the widow's or widower's benefit (without consideration of this paragraph).

(ii) *First entitled to disability before age 62.* When a person is first entitled to a disability benefit for a month before the month in which she or he attains age 62 and she or he is also entitled to a widow's or widower's benefit (or would be so entitled except for entitlement to an equal or higher old-age benefit), the disability benefit is reduced as if the widow or widower attained full retirement age in the first month of her or his most recent period of entitlement to the disability benefits.

(c) *How is my old-age benefit reduced after entitlement to a widow's or widower's benefit?*

(1) *Individual born after January 1, 1928.* The old-age benefit is reduced in accordance with § 404.410(a). There is no further reduction.

(2) *Individual born before January 2, 1928.* The old-age benefit is reduced if, in the first month of entitlement, she or he is also entitled to a widow's or widower's benefit to which she or he was first entitled for a month before attainment of full retirement age or if, before attainment of full retirement age, she or he met all conditions for entitlement to widow's or widower's benefits in or before the first month for which she or he was entitled to old-age benefits except that the old-age benefit equals or exceeds the primary insurance amount on which the widow's or widower's benefit would be based. Under these circumstances, the old-age benefit is reduced by the larger of the following:

(i) The amount by which the old-age benefit would be reduced under the regular age reduction provisions of § 404.410; or

(ii) An amount equal to the sum of:

(A) The amount by which the widow's or widower's benefit would be reduced under § 404.410 for months prior to age 62; and

(B) The amount by which the old-age benefit would be reduced under § 404.410 if it were equal to the excess of the individual's primary insurance amount over the widow's or widower's benefit before any reduction for age (but after any reduction for the family maximum under § 404.403).

(d) *How is my wife's or husband's benefit reduced when I am entitled to a reduced old-age benefit in the same month?* When a person is first entitled to a wife's or husband's benefit in or after the month of attainment of age 62, that benefit is reduced if, in the first month of entitlement, she or he is also entitled to an old-age benefit (but is not entitled to a disability benefit) to which she or he was first entitled before attainment of full retirement age. Under these circumstances, the wife's or husband's benefit is reduced by the sum of:

(1) The amount by which the old-age benefit would be reduced under the provisions of § 404.410; and

(2) The amount by which the spouse benefit would be reduced under the provisions of § 404.410 if it were equal to the excess of such benefit (before any reduction for age but after reduction for the family maximum under § 404.403) over the individual's own primary insurance amount.

(e) *How is my wife's or husband's or widow's or widower's benefit reduced when I am entitled to a reduced disability benefit in the same month?* When a person is first entitled to a spouse or widow's or widower's benefit in or after the month of attainment of age 62 (or in the case of widow's or widower's benefits, age 50) that benefit is reduced if, in the first month of entitlement to that benefit, he or she is also entitled to a reduced disability benefit. Under these circumstances, the wife's or husband's or widow's or widower's benefit is reduced by the sum of:

(1) The amount (if any) by which the disability benefit is reduced under paragraph (b)(1) of this section, and

(2) The amount by which the wife's or husband's or widow's or widower's benefit would be reduced under § 404.410 if it were equal to the excess of such benefit (before any reduction for age but after reduction for the family maximum under § 404.403) over the disability benefit (before any reduction under paragraph (b) of this section).

23. Section 404.412 is revised to read as follows:

§ 404.412 After my benefits are reduced for age when and how will adjustments to that reduction be made?

(a) *When may adjustment be necessary?* The following months are not counted for purposes of reducing benefits in accordance with § 404.410;

(1) Months subject to deduction under § 404.415, § 404.417, or § 404.422;

(2) In the case of a wife's or husband's benefit, any month in which she or he had a child of the insured individual in her or his care and for which the child was entitled to child's benefits;

(3) In the case of a wife's or husband's benefit, any month for which entitlement to such benefits is precluded because the insured person's disability ceased (and, as a result, the insured individual's entitlement to disability benefits ended);

(4) In the case of a widow's or widower's benefit, any month in which she or he had in her or his care a child of the deceased insured individual and for which the child was entitled to child's benefits;

(5) In the case of a widow's or widower's benefit, any month before attainment of full retirement age for which she or he was not entitled to such benefits;

(6) In the case of an old-age benefit, any month for which the individual was entitled to disability benefits.

(b) *When is the adjustment made?* We make automatic adjustments in benefits to exclude the months of entitlement described in paragraphs (a)(1) through (6) of this section from consideration when determining the amount by which such benefits are reduced. Each year we examine beneficiary records to identify when an individual has attained full retirement age and one or more months described in paragraphs (a)(1) through (6) of this section occurred prior to such age during the period of entitlement to benefits reduced for age. Increases in benefit amounts based upon this adjustment are effective with the month of attainment of full retirement age. In the case of widow's or widower's benefits, this adjustment is made in the month of attainment of age 62 as well as the month of attainment of full retirement age.

24. Section 404.413 is revised to read as follows:

§ 404.413 After my benefits are reduced for age what happens if there is an increase in my primary insurance amount?

(a) *What is the general rule on reduction of increases?* After an individual's benefits are reduced for age under §§ 404.410 through 404.411, the primary insurance amount on which such benefits are based may subsequently be increased because of a recomputation, a general benefit increase pursuant to an amendment of the Act, or increases based upon a rise in the cost-of-living under section 215(i) of the Social Security Act. When the primary insurance amount increases the monthly benefit amount also increases.

(b) *How are subsequent increases in the primary insurance amount reduced after 1977?* After 1977, when an individual's benefits have been reduced for age and the benefit is increased due to an increase in the primary insurance amount, the amount of the increase to which the individual is entitled is proportionately reduced as provided in paragraph (c) of this section. The method of reduction is determined by whether entitlement to reduced benefits began before 1978 or after 1977. When an individual is entitled to more than one benefit which is reduced for age, the rules for reducing the benefit increases apply to each reduced benefit.

(c) *How is the reduction computed for increases after 1977?*

(1) *Entitlement to reduced benefits after 1977.* If an individual becomes entitled after 1977 to a benefit reduced for age, and the primary insurance amount on which the reduced benefit is based is increased, the amount of the increase payable to the individual is reduced by the same percentage as we use to reduce the benefit in the month of initial entitlement. Where the reduced benefit of an individual has been adjusted at full retirement age (age 62 and full retirement age for widows or widowers), any increase to which the individual becomes entitled thereafter is reduced by the adjusted percentage.

(2) *Entitlement to reduced benefits before 1978.* For an individual, who became entitled to a benefit reduced for age before 1978, whose benefit may be increased as a result of an increase in the primary insurance amount after 1977, we increase the amount of the benefit by the same percentage as the increase in the primary insurance amount.

(d) *How was the reduction computed for increases prior to 1978?* When the individual's primary insurance amount increased, the amount of the increase was reduced separately under §§ 404.410 and 404.411. The separate reduction was based on the number of months from the effective date of the increase through the month of attainment of age 65. This reduced increase amount was then added to the reduced benefit that was in effect in the month before the effective date of the increase. The result was the new monthly benefit amount.

25. Section 404.421 is revised to read as follows:

§ 404.421 How are deductions made when a beneficiary fails to have a child in his or her care?

Deductions for failure to have a child in care (as defined in subpart D of this part) are made as follows:

(a) *Wife's or husband's benefit.* A deduction is made from the wife's or husband's benefits to which he or she is entitled for any month if he or she is under full retirement age and does not have in his or her care a child of the insured entitled to child's benefits. However, a deduction is not made for any month in which he or she is age 62 or over, but under full retirement age, and there is in effect a certificate of election for him or her to receive actuarially reduced wife's or husband's benefits for such month (see subpart D of this part).

(b) *Mother's or father's benefits.*—(1) *Widow or widower.* A deduction is made from the mother's or father's benefits to which he or she is entitled as the widow or widower (see subpart D of this part) of the deceased individual upon whose earnings such benefit is based, for any month in which he or she does not have in his or her care a child who is entitled to child's benefits based on the earnings of the deceased insured individual.

(2) *Surviving divorced mother or father.* A deduction is made from the mother's or father's benefits to which he or she is entitled as the surviving

divorced mother or father (see subpart D of this part) of the deceased individual upon whose earnings record such benefit is based, for any month in which she or he does not have in care a child of the deceased individual who is her or his son, daughter, or legally adopted child and who is entitled to child's benefits based on the earnings of the deceased insured individual.

(c) *Amount to be deducted.* The amount deducted from the benefits, as described in paragraphs (a) and (b) of this section, is equal to the amount of the benefits which is otherwise payable for the month in which she or he does not have a child in his or her care.

(d) *When a child is considered not entitled to benefits.* For purposes of paragraphs (a) and (b) of this section a person is considered not entitled to child's benefits for any month in which she or he is age 18 or over, and:

(1) Is entitled to child's benefits based on her or his own disability and a deduction is made from the child's benefits because of her or his refusal of rehabilitation services as described in § 404.422(b); or

(2) Is entitled to child's benefits because she or he is a full-time student at an educational institution. This paragraph applies to benefits for months after December 1964.

Subpart G—[Amended]

26. The authority citation for subpart G of part 404 continues to read as follows:

Authority: Secs. 202(i), (j), (o), (p) and (r), 205(a), 216(i)(2), 223(b), 228(a) and 702(a)(5) of the Social Security Act (42 U.S.C. 402(i), (j), (o), (p) and (r), 405(a), 416(i)(2), 423(b), 428(a) and 902(a)(5)).

27. Section 404.621 is revised to read as follows:

§ 404.621 What happens if I file after the first month I meet the requirements for benefits?

(a) *Filing for disability benefits and for old-age, survivors', or dependents' benefits.* (1) If you file an application for disability benefits, widow's or widower's benefits based on disability, or wife's, husband's, or child's benefits based on the earnings record of a person entitled to disability benefits, after the first month you could have been entitled to them, you may receive benefits for up to 12 months immediately before the month in which your application is filed. Your benefits may begin with the first month in this 12-month period in which you meet all the requirements for entitlement. Your entitlement, however, to wife's or husband's benefits under this rule is limited by paragraph (a)(3) of this section.

(2) If you file an application for old-age benefits, widow's or widower's benefits not based on disability, wife's, husband's, or child's benefits based on the earnings record of a person not entitled to disability benefits, or mother's, father's, or parent's benefits, after the first month you could have been entitled to them, you may receive benefits for up to 6 months immediately before the month in which your application is filed. Your benefits may begin with the first month in this 6-month period in which you meet all the requirements for entitlement. Your entitlement, however, to old-age, wife's, husband's, widow's, or widower's benefits under this rule is limited by paragraph (a)(3) of this section.

(3) If the effect of the payment of benefits for a month before the month you file would be to reduce your benefits because of your age, you cannot be entitled to old-age, wife's, husband's, widow's, or widower's benefits for any month before the month in which your application is filed, unless you meet one of the conditions in paragraph (a)(4) of this section. (An explanation of the reduction that occurs because of age if you are entitled to these benefits for a month before you reach full retirement age, as defined in § 404.409, is in § 404.410.) An example follows that assumes you do not meet any of the conditions in paragraph (a)(4) of this section.

Example: You will attain full retirement age in March 2003. If you apply for old-age benefits in March, you cannot be entitled to benefits in the 6-month period before March because the payment of benefits for any of these months would result in your benefits being reduced for age. If you do not file your application until June 2003, you may be entitled to benefits for the month of March, April and May because the payment of benefits for these months would not result in your benefits being reduced for age. You will not, however, receive benefits for the 3 months before March.

(4) The limitation in paragraph (a)(3) of this section on your entitlement to old-age, wife's, husband's, widow's, or widower's benefits for months before you file an application does not apply if:

(i) You are a widow, widower, surviving divorced wife, or surviving divorced husband who is disabled and could be entitled to retroactive benefits for any month before age 60. If you could not be entitled before age 60, the limitation will prevent payment of benefits to you for past months, but it will not affect the month you become entitled to hospital insurance benefits.

(ii) You are a widow, widower, or surviving divorced spouse of the insured person who died in the month before you applied and you were at least age 60 in the month of death of the insured person on whose earnings record you are claiming benefits. In this case, you can be entitled beginning with the month the insured person died if you choose and if you file your application on or after July 1, 1983.

(b) *Filing for lump-sum death payment.* An application for a lump-sum death payment must be filed within 2 years after the death of the person on whose earnings record the claim is filed. There are two exceptions to the 2-year filing requirement:

(1) If there is a good cause for failure to file within the 2-year period, we will consider your application as though it were filed within the 2-year period. Good cause does not exist if you were informed of the need to file an application within the 2-year period and you neglected to do so or did not desire to make a claim. Good cause will be found to exist if you did not file within the time limit due to—

(i) Circumstances beyond your control, such as extended illness, mental or physical incapacity, or a language barrier;

(ii) Incorrect or incomplete information we furnished you;

(iii) Your efforts to get evidence to support your claim without realizing that you could submit the evidence after filing an application; or

(iv) Unusual or unavoidable circumstances which show that you could not reasonably be expected to know of the time limit.

(2) The Soldiers' and Sailors' Civil Relief Act of 1940 provides for extending the filing time.

(c) *Filing for special age 72 payments.* An application for special age 72 payments is not effective as a claim for benefits for any month before you actually file.

(d) *Filing for a period of disability.* You must file an application for a period of disability while you are disabled or no later than 12 months after the month in which your period of disability ended. If you were unable to apply within the 12-month time period because of a physical or mental condition, you may apply not more than 36 months after your disability ended. The general rule we use to decide whether your failure to file was due to a physical or mental condition is stated in § 404.322.

(e) *Filing after death of person eligible for disability benefits or period of disability.* If you file for disability benefits or a period of disability for

another person who died before filing an application and you would qualify under § 404.503(b) to receive any benefits due the deceased, you must file an application no later than the end of the third month following the month in which the disabled person died.

28. Section 404.623 is revised to read as follows:

§ 404.623 Am I required to file for all benefits if I am eligible for old-age and husband's or wife's benefits?

(a) *Presumed filing for husband's or wife's benefits.* If you file an application for old-age benefits, you are presumed to have filed an application for husband's or wife's benefits in the first month of your entitlement to old-age benefits, if—

(1) Your old-age benefits are reduced for age because you choose to receive them before you reach full retirement age (as defined in § 404.409); and

(2) You are eligible for either a husband's or a wife's benefit for the first month of your entitlement to old-age benefits.

(b) *Presumed filing for old-age benefits.* If you file an application for a husband's or a wife's benefit, you are presumed to have filed an application for old-age benefits in the first month of your entitlement to husband's or wife's benefits if—

(1) Your husband's or wife's benefits are reduced for age because you choose to receive them before you reach full retirement age (as defined in § 404.409); and

(2) You are eligible for old-age benefits for the first month of your entitlement to husband's or wife's benefits.

(c) *Exception.* Paragraph (b) of this section does not apply if you are also entitled to disability benefits in the first month of your entitlement to husband's or wife's benefits. In this event, you are presumed to have filed for old-age benefits only if your disability benefits end before you reach full retirement age (as defined in § 404.409).

[FR Doc. 03–1949 Filed 1–29–03; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 510 and 524

Ophthalmic and Topical Dosage Form New Animal Drugs; Ivermectin Pour-On

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of an abbreviated new animal drug application (ANADA) filed by ECO LLC. The ANADA provides for topical use of ivermectin on cattle for treatment and control of various species of external and internal parasites.

DATES: This rule is effective January 30, 2003.

FOR FURTHER INFORMATION CONTACT: Lonnie W. Luther, Center for Veterinary Medicine (HFV–104), Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855, 301–827–8549, e-mail: lluther@cvm.fda.gov.

SUPPLEMENTARY INFORMATION: ECO LLC, 8209 Hollister Ave., Las Vegas, NV 89131, filed ANADA 200–348 for ECOMECTIN (ivermectin). The application provides for topical use of 0.5 percent ivermectin solution on cattle for the treatment and control of various species of gastrointestinal nematodes, lungworms, grubs, horn flies, lice, and mites. ECO's ECOMECTIN is approved as a generic copy of Merial Limited's IVOMEC Pour-On for Cattle, approved under NADA 140–841. The ANADA is approved as of November 15, 2002, and 21 CFR 524.1193 is amended to reflect the approval. The basis of approval is discussed in the freedom of information summary.

In addition, ECO LLC has not been previously listed in the animal drug regulations as a sponsor of an approved application. At this time, 21 CFR 510.600(c) is being amended to add entries for the firm.

In accordance with the freedom of information provisions of 21 CFR part 20 and 21 CFR 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.33(a)(1) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

This rule does not meet the definition of "rule" in 5 U.S.C. 804(3)(A) because it is a rule of "particular applicability." Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects

21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

21 CFR Part 524

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR parts 510 and 524 are amended as follows:

PART 510—NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 510 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 360b, 371, 379e.

2. Section 510.600 is amended in the table in paragraph (c)(1) by alphabetically adding an entry for "ECO LLC" and in the table in paragraph (c)(2) by numerically adding an entry for "066916" to read as follows:

§ 510.600 Names, addresses, and drug labeler codes of sponsors of approved applications.

* * * * *

(c) * * *

(1) * * *

Firm name and address	Drug labeler code
* * *	* *
ECO LLC, 8209 Hollister Ave., Las Vegas, NV 89131.	066916
* * *	* *

(2) * * *

Drug labeler code	Firm name and address
* * * * *	
066916	ECO LLC, 8209 Hollister Ave., Las Vegas, NV 89131
* * * * *	

PART 524—OPHTHALMIC AND TOPICAL DOSAGE FORM NEW ANIMAL DRUGS

3. The authority citation for 21 CFR part 524 continues to read as follows:

Authority: 21 U.S.C. 360b.

§ 524.1193 [Amended]

4. Section 524.1193 *Ivermectin pour-on* is amended in paragraph (b) by removing "and 059130" and by adding in its place ", 059130, and 066916".

Dated: January 6, 2003.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 03–2111 Filed 1–29–03; 8:45 am]

BILLING CODE 4160–01–S

POSTAL SERVICE

39 CFR Part 111

Experimental Outside-County Periodicals Co-Palletization Classification

AGENCY: Postal Service.

ACTION: Interim rule.

SUMMARY: This interim rule provides standards for a Postal Service experiment testing whether additional rate incentives would encourage the co-palletization and drop-shipment of currently sacked bundles of individual Periodicals publications. This interim rule will implement two additional per-piece discounts for co-palletization of Periodicals publications that otherwise would have been prepared in sacks prior to co-palletization. The additional per-piece discounts, resulting from Docket No. MC2002–3 at the Postal Rate Commission, would apply to pieces in bundles placed on SCF and ADC pallets that are drop-shipped to either a destination area distribution center (DADC) or a destination sectional center facility (DSCF). This interim rule includes procedures for preparing and documenting co-palletized mailings and for requesting approval to participate in the experiment.

DATES: This interim rule is effective January 30, 2003. Applications for participation in the experiment will be available beginning February 3, 2003. The starting date for the experiment is April 20, 2003. Comments on the standards must be received on or before March 3, 2003.

ADDRESSES: Written comments should be mailed or delivered to the Manager, Mail Preparation and Standards, U.S. Postal Service, 1735 N. Lynn St., Room 3025, Arlington, VA 22209–6037. Copies of all written comments will be available for inspection and photocopying at USPS Headquarters Library, 475 L'Enfant Plaza, Washington, DC, between 9 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Joel Walker, 703–292–3652; *jwalke13@email.usps.gov*.

SUPPLEMENTARY INFORMATION: The Postal Service offers certain worksharing incentives in the form of discounts to encourage palletization and drop-shipping of Periodicals mailings. Co-palletization allows mailers to combine separately presorted bundles of different titles and editions on pallets to achieve the minimum pallet weight required to take advantage of current pallet and drop-shipment discounts for Periodicals mail (*e.g.*, 250 pounds of mail to a destination ADC). However, many publishers of small-circulation publications do not choose to take advantage of this opportunity due to the increased preparation costs associated with co-palletization. [**Note:** A group of flats presorted together to a common destination is currently defined as a "package" in the Domestic Mail Manual. However, packages in this context are usually referred to as "bundles" by the mailing industry, as well as many postal employees, and will be referred to as such throughout this document.]

Because mail prepared in sacks accounts for a disproportionate amount of the Postal Service's costs for processing Periodicals, the Postal Service designed an experiment to test whether an additional discount would encourage the co-palletization of mail that would otherwise be prepared in sacks. Eligibility requires the co-palletized mail to be prepared on ADC or SCF pallets that are drop-shipped to DADCs or DSCFs. The primary beneficiaries of this incentive should be smaller circulation publications, for which, in some cases, complete mailings are now in sacks. Some smaller portions of larger mailings (sometimes referred to as "residual" or "tail of the mail"), as well as smaller circulation versions, editions, and supplemental mailings of large circulation publications could also qualify under the experiment. The objective of the additional discount is to move mail from origin-entered sacks to drop-shipped pallets.

On September 26, 2002, pursuant to 39 U.S.C. 3623, the Postal Service filed with the Postal Rate Commission a request for a decision recommending an experimental co-palletization classification, with associated discounts, for Outside-County Periodicals. The request was designated as Docket No. MC2002–3 by the Commission. The Commission recommended the experimental classification and discounts on December 20, 2002. This recommendation was approved by the Governors on January 6, 2003, and the Board of Governors set April 20, 2003, as the anticipated implementation date for the experiment, which is to last two years.

This experiment provides additional per-piece discounts to co-palletized Periodicals that cannot be palletized currently because of volume and density. The discounts will be available for pieces in Periodicals mailings and mailing segments that are currently prepared in sacks that, as a result of co-palletizaton, are prepared on ADC or SCF pallets and are drop-shipped to DADCs and DSCFs.

For mail that otherwise would have been prepared in sacks under the original presort for the mailing (before co-palletization), a new per-piece discount of $0.007 would be available for bundles on ADC and SCF pallets entered at destination ADCs. For SCF pallets drop-shipped to destination SCFs, the new per-piece discount would be $0.01. The discounts do not apply to mail prepared on any other pallet level. While mailers will be expected to prepare pallets of at least 250 pounds, the new discount would be available for pallets weighing less than 250 pounds. Less than 250-pound pallets (except overflow pallets) would not be eligible for the existing pallet discounts (*e.g.*, $0.015 for drop-shipped mail on pallets of 250 or more pounds).

Co-palletization will consist of bundles of mail that remain intact (before and after co-palletization) and are moved from sacks (before co-palletization) to either ADC or SCF pallets to be drop-shipped to the appropriate DADC or DSCF. Mail that moves from an ADC pallet before co-palletization (*e.g.*, 250 or more pounds to an ADC) to an SCF pallet as a result of co-palletization would not be entitled to either of the new discounts.

The following explains the Periodicals mail types that could be eligible for the experimental co-palletization discounts:

- Small circulation publications.
- Residual volume of independently presorted versions of publications, as well as editions of current issues of larger circulation publications for those destinations where there is insufficient volume to prepare an ADC pallet of at least 250 pounds.
- Supplemental mailings of large circulation publications.
- Multiple titles or multiple versions of a publication that are presorted together into bundles through a selective binding operation if movement of the presorted bundles (created as a result of selective binding) is from sacks to co-pallets.
- Mail that is combined in a co-mailing operation that moves from sacks (if titles or versions are sorted independently) onto pallets that are drop-shipped.

Co-palletized pieces with less than 250 pounds per title or edition per ADC destination, if independently presorted, could qualify for the co-palletization discounts. Co-palletized pieces with less that 250 pounds of mail per title or edition within an ADC remaining after preparing SCF pallets could qualify for the co-palletization discounts because this mail otherwise would have been prepared in sacks. Mailers may build upon originally presorted SCF and ADC pallets, but only the co-palletized pieces with less than 250 pounds per title or edition per ADC destination, if independently presorted, would qualify for the co-palletization discounts.

Other drop-ship and palletization incentives available on the current rate schedule would apply to all the pieces based on their eligibility (*e.g.*, drop-ship discounts and pallet discounts).

Because co-palletized volumes are difficult to predict, during the experiment co-palletized mail will not be required to be placed on the finest level pallet possible. For example, if a co-palletized ADC pallet contains more than 500 pounds to a particular SCF, an SCF pallet will not be required. Mailers and consolidators will be encouraged to periodically reevaluate mail volumes for SCF/ADC destinations to determine whether additional SCF pallets could be created on a regular basis to maximize presort and worksharing benefits.

The Postal Service recognizes that there is a relatively small volume of mail that is currently either co-palletized or co-mailed and drop-shipped. Consolidators who already drop-ship co-palletized volume are eligible for the additional discounts if the standards outlined below are met.

Documentation Requirements

The Postal Service will require documentation (summarized for each title and identified by edition, version, or segment) that profiles mailings before co-palletization, to substantiate that without co-palletization the mail would have been prepared in sacks (*e.g.*, ADC pallets of 250 or more pounds for any individual title, independently presorted version, or selectively bound pool, could not have been made). Supplemental mailings prepared after, and separate from, the original mailing, would be treated as a separate title and would have to meet the same requirements for pieces to be eligible for the additional discounts.

The mailer or consolidator must provide documentation of the mail both before and after co-palletization (*e.g.*, mail.dat files that can be printed, if necessary), relating only to the mail that is co-palletized. The "before" documentation must be in files that permit easy identification of mailings (*e.g.*, by job ID, segment ID, and container summary) included in the co-palletization program separate from mailings that are not included in the program. The "after" documentation must identify publications or segments with 250 or more pounds to an ADC on pallets (mail that does not qualify for added co-palletization incentives) separately from volumes of other publications or segments with less than 250 pounds that do qualify for the incentives. Documentation must be prepared by title and version, segment, or edition; or by codes representing each title or version, segment, or edition. The mailer or consolidator will output a new file for the mail after co-palletization showing how the mail was presorted and where it was entered. Data in the "after" co-palletization files must be easily reconciled with the "before" files to validate that proper postage has been paid for all pieces.

The Postal Service is issuing a new postage statement that includes the new co-palletization discounts. Periodicals mailers must use this postage statement for mailings that qualify for and claim the new discounts.

Publications mailed under the CPP program may be included as part of a co-palletized mailing. Publishers may elect to (1) remove the co-palletized portion of a mailing job from the CPP consolidated postage statement and pay postage at the consolidation point, or (2) provide, to the preparer of the consolidated postage statement, information about the co-palletized portion of their mailing to be included on the consolidated postage statement submitted to the New York Rates and Classification Service Center.

Publishers that co-palletize multiple editions of the same publication must submit a consolidated postage statement and register of mailings.

Data Reporting

Over the course of the experiment, mailers and consolidators must provide the Postal Service with appropriate data regarding publication titles that include pieces for which the discounts are claimed. The purpose of collecting these data is to provide a measure of the experiment's effectiveness. The Postal Service intends to provide participants with details regarding the frequency and methodology for data reporting prior to implementation of the experiment and expects to provide an easily accessible vehicle for reporting via the Internet or email.

Such data will, in aggregated form not identifying particular mailings or publications, be reported also to the Postal Rate Commission under the terms of its recommendation in Docket No. MC2002–3 and may be necessary for preparation of any request for future related permanent classification changes.

Participants must provide the following data to the Postal Service monthly in spreadsheet format (a model spreadsheet is shown in Exhibit A):

1. Number of titles receiving one or both of the co-palletization discounts.
2. Number of sacks that would have been prepared without co-palletization, as well as the weight and the number of addressed pieces that would have been in these sacks.
3. Number of pallets that would have been prepared without co-palletization, as well as the weight and the number of addressed pieces that would have been on pallets.
4. Number of sacks prepared after co-palletization, as well as the weight and the number of addressed pieces in these sacks.
5. Number of pallets containing mail qualifying for the ADC co-palletization discount (both new pallets and existing pallets built upon), as well as the weight and the number of addressed pieces receiving the ADC discount on both of these types of pallets.
6. Number of pallets containing mail qualifying for the SCF co-palletization discount (both new pallets and existing pallets built upon), as well as the weight and the number of addressed pieces receiving the SCF discount on both of these types of pallets.

Application Process

Parties interested in participating as consolidators in the experiment must request approval from the Postal Service. Requests must be sent to the Manager, Mail Preparation and Standards, at 1735 N. Lynn St., Room 3025, Arlington, VA 22209–6037. The request must be accompanied by the following information, which will be treated as confidential by the Postal Service:

1. A completed application form. Application forms will be available from the Manager, Mail Preparation and Standards, beginning February 3, 2003. Application forms may be requested via email to *jwalke13@email.usps.gov*.

2. A process map and narrative describing mail movement from production through the co-palletization process to dispatch to destination entry postal facilities.

3. Samples of presort documentation (before and after co-palletization), and a description of when and how presort documentation and postage statements are generated.

4. An explanation of how data for mailings included under the co-palletization experiment will be collected and reported to the Postal Service, including whether the model spreadsheet provided by the Postal Service can be used.

5. A list of the publications to be included in the test initially and evidence that each publication has obtained the appropriate authorizations at the office(s) where mailings will be verified and postage paid. If the applicant is not a printer and/or is consolidating publications for other printers, a list of these printers must also be included with the application. If the location where mail will be consolidated currently does not have a detached mail unit (DMU), arrangements must be made to establish one with the local post office responsible for the acceptance and verification of mailings.

Requests to participate will be accepted beginning February 10, 2003. Applicants meeting all requirements for the co-palletization test will receive a 90-day conditional authorization. Final approval will be given after the successful completion of the 90-day conditional period.

The effective date of implementation is April 20, 2003.

Accordingly, the Postal Service hereby adopts the following regulations on an interim basis. Although exempt from the notice and comment requirements of the Administrative Procedure Act (5 U.S.C. 410 (a)), the Postal Service invites comments on the following revisions to the Domestic Mail Manual, incorporated by reference in the Code of Federal Regulations. *See* 39 CFR part 111.

PART 111—[AMENDED]

1. The authority citation for 39 CFR part 111 continues to read as follows:

Authority: U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 414, 3001–3011, 3201–3219, 3403–3406, 3621, 3626, 5001.

2. Amend the following sections of the Domestic Mail Manual (DMM) as set forth below:

G General Information

G000 The USPS and Mailing Standards

* * * * *

G090 Experimental Classifications and Rates

* * * * *

[Add new G092 to read as follows:]

G092 Outside-County Periodicals Co-Palletization Drop-Ship Classification

1.0 ELIGIBILITY

1.1 Description

The standards in G092 apply to mailings that are produced by mailers and consolidators who are approved to participate in the Outside-County Periodicals Co-Palletization Drop-Ship Classification experiment.

1.2 Rate Application

The Outside-County Co-Palletization Drop-Ship Classification discounts apply to pieces meeting the standards in G092.

1.3 Basic Standards

The basic standards for co-palletized mailings are as follows:

a. Each mailing must consist of at least two different Periodicals publications or two different editions, segments, or versions of a Periodicals publication.

b. Each mailing must be presented with the correct postage statement(s). Mailings consisting of different Periodicals publications must be accompanied by a separate postage statement for each publication. Mailings consisting of different editions or versions of the same Periodicals publication must be accompanied by one consolidated postage statement and a register of mailings.

c. Each mailing must meet the documentation and postage payment standards outlined in 2.0 and P200.

d. Each mailing must be entered and postage paid at the post office where consolidation takes place, except that postage for publications authorized under the Centralized Postage Payment (CPP) system may be paid to the New York Rates and Classification Center (RCSC). Each publication included in a mailing under these standards must be authorized for original entry or additional entry at the post office where the consolidated mailing is entered.

1.4 Discount Eligibility

To be eligible for one of the discounts, mailpieces must be:

a. Part of a Periodicals mailing meeting the standards in M200, M820, or M900.

b. Part of a mailing segment with less than 250 pounds per title or version per ADC destination, if independently presorted. This includes mail for an ADC service area that remains after finer levels of pallets are prepared.

c. Prepared as bundles (packages) on pallets under M041 and M045, or under M900.

d. Prepared on either an ADC or SCF pallet of co-palletized pieces. Mailers may build on ADC or SCF pallets of 250 or more pounds prepared as part of the original presort. However, the pieces originally on these pallets (250 or more pounds per title or edition) do not qualify for the co-palletization discounts.

e. Drop-shipped to the appropriate DADC or DSCF.

2.0 DOCUMENTATION

Each mailing must be accompanied by documentation meeting the standards in P012, as well as any other mailing information requested by the Postal Service to support the postage claimed (e.g., advertising percentage and weight per copy). Documentation must be presented by title and version, segment, or edition; or by codes representing each title and version, segment, or edition included in the co-palletized mailing. In addition, documentation for the co-palletized mailing must:

a. Upon request, include presort reports showing how the pieces would have been prepared prior to co-palletization.

b. Include presort and pallet reports showing how the co-palletized pieces are prepared and where they will be entered (DADC or DSCF).

c. Distinguish publications or segments that do not qualify for the co-palletization discounts (*e.g.*, because there are 250 or more pounds to an ADC destination) from those that do qualify for the discounts.

d. Allow easy reconciliation with reports prepared to reflect how mail would have been prepared prior to co-

palletization if requested to verify compliance with standards for discount eligibility.

e. Provide the following data in spreadsheet format (using the model spreadsheet provided by the Postal Service):

(1) Number of titles receiving one or both of the co-palletization discounts.

(2) Number of sacks that would have been prepared without co-palletization, as well as the weight and the number of addressed pieces that would have been in these sacks.

(3) Number of pallets that would have been prepared without co-palletization, as well as the weight and the number of addressed pieces that would have been prepared on pallets.

(4) Number of sacks prepared after co-palletization, as well as the weight and the number of addressed pieces in these sacks.

(5) Number of pallets containing mail qualifying for the ADC co-palletization discount, as well as the weight and the number of addressed pieces receiving the ADC discount on these pallets.

(6) Number of pallets containing mail qualifying for the SCF co-palletization discount, as well as the weight and the number of addressed pieces receiving the SCF discount on these pallets.

3.0 DISCOUNTS

The following discounts are available:

a. For pieces sorted to an SCF or ADC pallet of 250 or more pounds and drop-shipped to the appropriate DADC: $0.007 per piece.

b. For pieces sorted to an SCF pallet of 250 or more pounds and drop-shipped to the appropriate DSCF: $0.01 per piece.

c. Co-palletized pieces sorted to overflow DSCF or DADC pallets qualify for the corresponding co-palletization discount.

d. Co-palletized pieces sorted to ADC pallets weighing between 100 and 250 pounds and drop-shipped to the appropriate DADC: $0.007per piece.

4.0 REQUEST TO PARTICIPATE

A mailer or consolidator may request approval to mail in the experimental Outside-County Periodicals Co-Palletization Drop-Ship test by submitting a written request to the Manager, Mail Preparation and Standards. The request must be accompanied by the following:

a. A completed application form (available from the Manager, Mail Preparation and Standards).

b. A process map and narrative demonstrating how and where presort and co-palletization reports (including "before" and "after" data) are created as they relate to mail movement and consolidation of packages to be co-palletized. The map and narrative must also describe mail movement from production through the co-palletization process to dispatch to destination entry postal facilities.

c. Samples of all required documentation that must be provided at the time of mailing, including "before" and "after" reports and postage statements. The sample reports must demonstrate:

(1) How the co-palletized portion of the mailing is segregated from other mailing segments on the "before" reports.

(2) How mailing jobs, mailing segments, and containers will be identified in both "before" and "after" reports to allow reconciliation of the reports.

(3) How pieces appearing on the "after" reports that qualify for the co-palletization discounts (mailing segments with less than 250 pounds to an ADC) are differentiated from those that do not (mailing segments with 250 or more pounds to an ADC).

d. An explanation of how data for mailings included under the co-palletization experiment will be collected and reported to the Postal Service, including whether the model spreadsheet provided by the Postal Service can a copy of the spreadsheet that will be used.

e. An initial list of the publications to be included in the test and evidence that each publication has obtained the appropriate additional entry authorizations at the office where mailings will be verified and postage paid. The list must indicate if the publications are authorized under the Centralized Postage Payment (CPP) System. If the applicant is not a printer and/or is consolidating publications for other printers, a list of these printers must be included with the application.

5.0 DECISION ON REQUEST

The Manager, Mail Preparation and Standards, approves or denies a written request to participate in the experimental Outside-County Periodicals Co-Palletization Drop-Ship Classification test. If the application is approved, the mailer or consolidator will be notified in writing by the Manager, Mail Preparation and Standards. Initial approval is for a conditional 90-day period. When the mailer or consolidator has demonstrated the ability to prepare and enter mailings under the standards in G092, final authorization will be granted. If the application is denied, the mailer or consolidator may file at a later date or submit additional information needed to support the request.

6.0 POSTAL SERVICE SUSPENSION

The Manager, Mail Preparation and Standards, may suspend at any time an approval to participate in the experiment when there is an indication that postal revenue is not fully protected. The manager will notify the participant in writing of the decision. The suspension becomes effective upon the mailer's receipt of the notification.

* * * * *

An appropriate amendment to 39 CFR 111 to reflect the changes will be published if the interim rule becomes final.

Neva R. Watson,

Attorney, Legislative.

BILLING CODE 7710–12–P

Exhibit A

Co-Palletization Report to be filed by each participant

No. of New Titles in Run*	

	Without Co-palletization			With Co-palletization					
					New Pallets		Existing Pallets Built Upon		
	Sacked	Palletized	Total	Sacked	ADC Pallets	SCF Pallets	ADC Pallets	SCF Pallets	Total
No. of Containers			-						-
Weight (lbs.)			-						-
Addressed Pieces			-						-

*For the first report in each 6-month period (for which the Postal Service reports data) each participant (cosolidator/printer) will be asked to provide the number of titles that are co-palletized & dropshipped. For each new run, only the number of new titles (not previously co-palletized) will be reported.

Note: Sacked volume before co-palletization should equal the total volume after Co-palletization

[FR Doc. 03-2198 Filed 1-29-03; 8:45 am]
BILLING CODE 7710-12-C

DEPARTMENT OF TRANSPORTATION

Bureau of Transportation Statistics

49 CFR Part 1420

[Docket No. BTS–2003–14317]

RIN Number 2139–AA10

Reports of Motor Carriers—Correction of Obsolete References and Minor Editorial Corrections

AGENCY: BTS, DOT.

ACTION: Final rule.

SUMMARY: The BTS is amending its regulation to eliminate obsolete agency references to the Interstate Commerce Commission and to make other minor editorial corrections that will improve the clarity of its regulations. This action is taken on BTS' initiative.

EFFECTIVE DATE: This rule is effective January 30, 2003.

FOR FURTHER INFORMATION CONTACT: Russell B. Capelle, Jr., Ph.D., Assistant BTS Director for Motor Carrier Information, Department of Transportation, 400 7th Street, SW., Washington, DC 20590; (202) 366–5685; e-mail: *russ.capelle@bts.gov* or Paula Robinson at (202) 366–2984; e-mail: *paula.robinson@bts.gov*.

SUPPLEMENTARY INFORMATION:

Electronic Access

An electronic copy of this document may be downloaded by using a computer, modem, and suitable communications software from the Government Printing Office's Electronic Bulletin Board Services at (202) 512–1661. Internet users may reach the Office of the Federal Register's home page at: *http://www.nara.gov/fedreg* and the Government Printing Office's database at: *http://www.access.gpo.gov/nara*. You can also view and download this document by going to the webpage of the Department's Docket Management System (*http://dms.dot.gov/*). On that page, click on "search." On the next page, type the last five digits of the docket number shown in the heading of this document. Then click on "search."

The public should be aware that anyone can search the electronic form of all comments received in the Department's Docket Management System by using the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, *etc.*). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov*.

Background

The ICC Termination Act of 1995 (ICCTA) abolished the Interstate Commerce Commission (ICC) and transferred certain ICC functions to the Secretary of Transportation. The authority for the collection and dissemination of motor carrier financial information was transferred to the Secretary of Transportation under 49 U.S.C. 14123 and BTS' implementing regulations (49 CFR part 1420). The Secretary of Transportation delegated this responsibility to the BTS. This rule removes all references to the ICC and amends the regulatory language in 49 CFR part 1420 to reflect the delegation to BTS. The final rule also makes other minor editorial corrections to improve the clarity of the regulations.

Executive Order 12866 and DOT Regulatory Policies and Procedures

This rule is not a significant regulatory action under section 3(f) of E. O. 12866. Therefore, it has not been reviewed by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979). Because this rule is editorial in nature and involves no costs or burdens, BTS has not prepared an economic evaluation.

Executive Order 12612 (Federalism)

These amendments have been analyzed in accordance with the principles and criteria contained in E.O. 12612. The BTS has determined that the amendments do not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. Because this rule is editorial in nature and involves no costs or burdens, the amendments will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

Regulatory Flexibility Act Analysis

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires an agency to review its regulations to assess their impact on small entities unless the agency determines that a rule is not expected to have a significant impact on a substantial number of small entities. The changes in this direct final rule do not increase or decrease the data collected under Part 1420, the changes are editorial in nature and the purpose of the rule is to remove obsolete references. Thus, based on the above discussion, I certify this rule will not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act

This rule does not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It does not result in costs of $100 million or more to either State, local, or tribal governments, in the aggregate, or to the private sector.

Environmental Assessment

The amendments in this final rule do not increase or decrease the data collected under part 1420, the changes are editorial in nature and the purpose of the rule is to remove obsolete references. Therefore, we find that these amendments will have no impact on the quality of the human environment.

Paperwork Reduction Act Analysis

There are no reporting or recordkeeping requirements associated with this final rule.

Regulation Identifier Number

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number 2139–AA10 contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

Notice and Opportunity for Public Comment Is Unnecessary

Under the Administrative Procedure Act (5 U.S.C. section 553), the BTS has determined that notice and an opportunity for public comment are unnecessary and contrary to the public interest. Because the amendments made in this final rule are ministerial and will have no substantive impact on the public, the rule is effective upon publication.

Regulatory Text

Accordingly, the Bureau of Transportation Statistics, under delegated authority pursuant to 49 CFR part 1, amends 49 CFR part 1420 as follows:

List of Subjects in 49 CFR Part 1420

Motor carriers, Reporting and recordkeeping requirements.

PART 1420—[AMENDED]

1. The authority citation for Part 1420 continues to read as follows:

Authority: 49 U.S.C. 14123.

2. The note following the authority citation for the Part is removed.

§ 1420.2 [Amended]

3. Section 1420.2, paragraph (b)(1), is amended by removing the word "effected," and, in its place, adding the word "effective".

4. Section 1420.2, paragraph (b)(5), is amended by removing the words "Annual Carrier Classification Survey Form" and, in their place, adding the words "Worksheet for Calculating Carrier Classification".

§ 1420.3 [Amended]

5. Section 1420.3, paragraph (a), is amended by removing the words "subject to the Interstate Commerce Act."

6. Section 1420.3, paragraph (b)(1), is amended by removing the word "effected," and, in its place, adding the word "effective".

7. Section 1420.3, paragraph (b)(4), is amended by removing the words "the Commission", each time they appear, and in their place, adding the words "the BTS"; removing the phrase "Class I" and, in its place, adding "Class II"; and removing the words "the Bureau of Accounts, Interstate Commerce Commission, Washington, DC 20423" and, in their place, adding the words "the Bureau of Transportation Statistics at the address in § 1420.6".

8. Section 1420.3, paragraph (c) is amended by removing the words "the Commission", and in their place, adding the words "the BTS".

§ 1420.4 [Amended]

9. Section 1420.4, paragraph (b), is amended by removing the words "the Commission", each time they appear, and, in their place, adding the words "the BTS".

10. Section 1420.4, paragraph (c), is amended by removing the words "The Bureau of Accounts, Interstate Commerce Commission, Washington, DC 20423", and in their place, adding the words "the Bureau of Transportation Statistics at the address in § 1420.6" and, in the paragraph's final sentence, removing the words "the Bureau of Accounts" and in their place, adding the words "the BTS".

§ 1420.6 [Amended]

11. Section 1420.6 is amended by removing the designation "K–27" and, in its place, adding "K–13".

12. Section 1420.10, paragraph (a), is amended by removing the word "other" and, in its place, adding the word "otherwise".

§ 1420.11 [Amended]

13. Section 1420.11, is amended by removing the words "as defined in § 1240.4 of this chapter, subject to part II of the Interstate Commerce Act" and adding the words § as defined in § 1420.3(a)"; removing the words "motor carrier Quarterly Report of Revenues, Expenses, and Statistics (class I carriers of passengers), form QPA." and, in their place, adding the words "Motor Carrier Quarterly and Annual Report, Form MP–1."; and removing the words "the Bureau of Accounts, Interstate Commerce Commission, Washington, DC 20423" and, in their place, adding the words "the Bureau of Transportation Statistics at the address in § 1420.6".

Issued in Washington, DC, on January 22, 2003.

Russell B. Capelle, Jr.,

Assistant BTS Director for Motor Carrier Information, Bureau of Transportation Statistics.

[FR Doc. 03–2062 Filed 1–29–03; 8:45 am]

BILLING CODE 4910–FE–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 021209299–2299–01; I.D. 112502B]

Magnuson-Stevens Act Provisions; Fisheries off the West Coast States and in the Western Pacific; Pacific Coast Groundfish Fishery; Groundfish Fishery Management Measures; Correction

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Emergency rule; correction.

SUMMARY: This document contains corrections to the emergency rule published on January 7, 2003 for the Pacific Coast groundfish fishery.

DATES: Effective January 27, 2003 through February 28, 2003.

FOR FURTHER INFORMATION CONTACT: Jamie Goen or Carrie Nordeen (NMFS, Northwest Region), 206–526–6140.

SUPPLEMENTARY INFORMATION: The specifications and management measures for the 2003 fishing year (January 1 through December 31, 2003) are initially being published in the **Federal Register** as an emergency rule for January 1 through February 28, 2003 (68 FR 908, January 7, 2003), and as a proposed rule for March 1 through December 31, 2003 (68 FR 936, January 7, 2003). The final rule for March 1 through December 31, 2003, will be published in the **Federal Register** after the public comment period ends on February 7, 2003.

Management measures for the Pacific Coast groundfish fishery, effective January 1 through February 28, 2003 (68 FR 908, January 7, 2003), contained errors in the trawl trip limit tables, errors in management area coordinates for both commercial and recreational fisheries, and technical errors that require correction.

The limited entry trawl trip limit table, Table 3 (North)- line 23, is corrected to clarify the yellowtail rockfish small footrope trawl trip limit north of 40°10′ N. latitude (lat.). The original language was confusing, and this correction adds a section to emphasize the limits to the amount of yellowtail that can be harvested if it's not associated with flatfish. Coastwide, the whiting trip limits, Table 3 (North)- line 14 and Table 3 (South)- line 18, are corrected to allow only mid-water trawling for Pacific whiting inside the rockfish conservation area (RCA) during the primary season (May through August). This is because harvest of whiting outside of the primary season is only allowed as an incidental catch in other groundfish fisheries, which are not supposed to occur in the RCA. Regulatory language for the recreational groundfish fishery off California is corrected to prohibit the retention of bocaccio, canary rockfish, yelloweye rockfish and cowcod in the Rockfish, Cabezon, Greenling Complex (RCG Complex) bag limits south of 40°10′ N. lat. This prohibition was explained in the preamble to the proposed rule, which was published in the same issue of the **Federal Register** with the emergency rule which this rule corrects. The emergency rule crossed referenced the proposed rule for the rationale for the management measures.

Coordinates for the following lines are corrected in this notice: the 50–fm (91–m) depth contour used between 40°10′ N. lat. and 34°27′ N. lat. as an eastern boundary for the trawl RCA in the months of January and February; the 60–fm (110–m) depth contour used between 40°10′ N. lat. and 34°27′ N. lat. as an eastern boundary for the trawl RCA in March through October; the 100–fm (183–m) depth contour used north of 40°10′ N. lat. as an eastern

boundary for the trawl RCA and as a western boundary for the non-trawl RCA; the 100–fm (183–m) depth contour used between 34°27′ N. lat. and the U.S. border with Mexico as an eastern boundary for the trawl RCA; the 150–fm (274–m) depth contour used between 40°10′ N. lat. and the U.S. border with Mexico as a western boundary for the trawl RCA and used between 38° N. lat. and the U.S. border with Mexico as a western boundary for the non-trawl RCA; and the Winter Petrale Boundary (explained at 68 FR, 936, January 7, 2003) used north of 38° N. lat. as a western boundary for the trawl RCA and modified to allow fishing for petrale in winter months of January, February, November, and December.

The Yelloweye Rockfish Conservation Area (YRCA), an "L-shaped" area off Washington closed to recreational fishing for groundfish and halibut, is corrected to read an "L-shaped" rather than a "C-shaped" area. The YRCA is proposed to become a "C-shaped" area from March - December 2003 (68 FR 936, January 7, 2003). The YRCA coordinates are also corrected by rearranging them to read consecutively in the right order from top to bottom.

Technical Corrections

The emergency rule for January 1 through February 28, 2003 (68 FR 908, January 7, 2003), contained errors in references to regulatory section 50 CFR 660.304. The 2003 emergency rule specifications and management measures should refer to the Cowcod Conservation Areas (CCAs) in § 660.304(i) not in § 660.304(c).

This document corrects the errors and re-publishes the limited entry trawl trip limit tables (Table 3 (North) and Table 3 (South)).

Corrections

In the rule FR Doc. 02–32755, in the issue of Tuesday, January 7, 2003 (68 FR 908), under IV. NMFS Actions, make the following corrections:

Under A. General Definitions and Provisions:

1. On page 912, in columns 2 and 3, paragraphs (19)(a) and (b) are corrected to read as follows:

* * * * *

(19) * * *

(a) *Yelloweye Rockfish Conservation Area.* Recreational fishing for groundfish is prohibited within the YRCA. It is unlawful for recreational fishing vessels to take, retain, possess, or land groundfish inside the YRCA. The YRCA is an "L-shaped" area off the northern Washington coast that is bound by straight lines connecting all of the following points in the order listed:

48°18′ N. lat., 125°18′ W. long.;
48°18′ N. lat., 125°11′ W. long.;
48°04′ N. lat., 125°11′ W. long.;
48°04′ N. lat., 124°59′ W. long.;
48°00′ N. lat., 124°59′ W. long.;
48°00′ N. lat., 125°18′ W. long.;

and connecting back to 48°18′ N. lat., 125°18′ W. long.

(b) *Cowcod Conservation Areas.* The coordinates of the Cowcod Conservation Areas (CCAs) are defined at § 660.304(i). Recreational and commercial fishing for groundfish is prohibited within the CCAs, except that recreational and commercial fishing for rockfish and lingcod is permitted in waters inside 20 fathoms (36.9 m). It is unlawful to take and retain, possess, or land groundfish inside the CCAs, except for rockfish and lingcod taken in waters inside the 20–fathom (36.9 m) depth contour, when those waters are open to fishing. Commercial fishing vessels may transit through the Western CCA with their gear stowed and groundfish on board only in a corridor through the Western CCA bounded on the north by the latitude line at 33°00′30" N. lat., and bounded on the south by the latitude line at 32°59′30" N. lat.

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2. On page 914, in column 3, line 49, number (81) is corrected to read as follows:

"(81) 46°17.52′ N. lat., 124°35.35′ W. long.;"

3. On page 917, in column 3, paragraph (19)(e)(v) introductory text and on page 918, paragraphs (109) through (129) are corrected and paragraphs (130) through (150) are correctly added to read as follows:

* * * * *

(e) * * *

(v) The Winter Petrale Boundary used north of 38° N. lat. as a western boundary for the trawl RCA, modified to allow fishing for petrale in winter months of January, February, November, and December, is defined by straight lines connecting all of the following points in the order stated:

* * * * *

(109) 41°47.79′ N. lat., 124°29.52′ W. long.;
(110) 41°21.00′ N. lat., 124°29.00′ W. long.;
(111) 41°11.00′ N. lat., 124°23.00′ W. long.;
(112) 41°5.00′ N. lat., 124°23.00′ W. long.;
(113) 40°54.00′ N. lat., 124°26.00′ W. long.;
(114) 40°50.00′ N. lat., 124°26.00′ W. long.;
(115) 40°44.51′ N. lat., 124°30.83′ W. long.;
(116) 40°40.61′ N. lat., 124°32.06′ W. long.;
(117) 40°37.36′ N. lat., 124°29.41′ W. long.;
(118) 40°35.64′ N. lat., 124°30.47′ W. long.;
(119) 40°37.43′ N. lat., 124°37.10′ W. long.;
(120) 40°36.00′ N. lat., 124°40.00′ W. long.;
(121) 40°31.59′ N. lat., 124°40.72′ W. long.;
(122) 40°24.64′ N. lat., 124°35.62′ W. long.;
(123) 40°23.00′ N. lat., 124°32.00′ W. long.;
(124) 40°23.39′ N. lat., 124°28.70′ W. long.;
(125) 40°22.28′ N. lat., 124°25.25′ W. long.;
(126) 40°21.90′ N. lat., 124°25.17′ W. long.;
(127) 40°22.00′ N. lat., 124°28.00′ W. long.;
(128) 40°21.35′ N. lat., 124°29.53′ W. long.;
(129) 40°19.75′ N. lat., 124°28.98′ W. long.;
(130) 40°18.15′ N. lat., 124°27.01′ W. long.;
(131) 40°17.45′ N. lat., 124°25.49′ W. long.;
(132) 40°18.00′ N. lat., 124°24.00′ W. long.;
(133) 40°16.00′ N. lat., 124°26.00′ W. long.;
(134) 40°17.00′ N. lat., 124°35.00′ W. long.;
(135) 40°16.00′ N. lat., 124°36.00′ W. long.;
(136) 40°10.00′ N. lat., 124°22.75′ W. long.;
(137) 40°03.00′ N. lat., 124°14.75′ W. long.;
(138) 39°49.25′ N. lat., 124°06.00′ W. long.;
(138) 39°34.75′ N. lat., 123°58.50′ W. long.;
(140) 39°03.07′ N. lat., 123°57.81′ W. long.;
(141) 38°52.25′ N. lat., 123°56.25′ W. long.;
(142) 38°41.42′ N. lat., 123°46.75′ W. long.;
(143) 38°39.47′ N. lat., 123°46.59′ W. long.;
(144) 38°35.25′ N. lat., 123°42.00′ W. long.;
(145) 38°19.97′ N. lat., 123°32.95′ W. long.;
(146) 38°15.00′ N. lat., 123°26.50′ W. long.;
(147) 38°08.09′ N. lat., 123°23.39′ W. long.;
(148) 38°10.08′ N. lat., 123°26.82′ W. long.;
(149) 38°04.08′ N. lat., 123°32.12′ W. long.; and
(150) 38°00.00′ N. lat., 123°29.85′ W. long.

* * * * *

4. On page 919,

a. In column 1, the last two lines, number (34) is corrected to read as follows:

"(34) 34°27.00′ N. lat., 120°36.00′ W. long.;"

b. In column 3, line 3, number (34) is corrected to read as follows:

"(34) 34°27.00′ N. lat., 120°36.00′ W. long.;"

c. In column 3, line 12, number (1) is corrected to read as follows:

"(1) 34°27.00′ N. lat., 120°39.00′ W. long.;"

5. On page 920, in column 1, line 9, paragraph (19)(e)(ix) is corrected to read as follows:

* * * * *

(e) * * *

(ix) The 150–fm (274–m) depth contour used between 40°10′ N. lat. and the U.S. border with Mexico as a western boundary for the trawl RCA and used between 38° N. lat. and the U.S. border with Mexico as a western boundary for the non-trawl RCA is defined by straight lines connecting all of the following points in the order stated:

(1) 40°10.01′ N. lat., 124°22.90′ W. long.;
(2) 40°7.00′ N. lat., 124°19.00′ W. long.;
(3) 40°8.10′ N. lat., 124°16.70′ W. long.;
(4) 40°5.90′ N. lat., 124°17.77′ W. long.;
(5) 40°1.46′ N. lat., 124°12.85′ W. long.;
(6) 40°4.32′ N. lat., 124°10.33′ W. long.;
(7) 40°3.21′ N. lat., 124°8.83′ W. long.;
(8) 40°1.33′ N. lat., 124°8.70′ W. long.;
(9) 39°58.51′ N. lat., 124°12.44′ W. long.;
(10) 39°55.73′ N. lat., 124°7.49′ W. long.;
(11) 39°34.75′ N. lat., 123°58.50′ W. long.;
(12) 39°03.07′ N. lat., 123°57.81′ W. long.;
(13) 38°54.00′ N. lat., 123°57.00′ W. long.;
(14) 38°08.09′ N. lat., 123°23.39′ W. long.;
(15) 38°10.08′ N. lat., 123°26.82′ W. long.;
(16) 38°04.08′ N. lat., 123°32.12′ W. long.;
(17) 37°59.73′ N. lat., 123°29.85′ W. long.;
(18) 37°51.46′ N. lat., 123°25.16′ W. long.;
(19) 37°44.06′ N. lat., 123°11.44′ W. long.;
(20) 37°35.26′ N. lat., 123°2.29′ W. long.;
(21) 37°14.00′ N. lat., 122°50.00′ W. long.;
(22) 37°1.00′ N. lat., 122°36.00′ W. long.;
(23) 36°58.07′ N. lat., 122°28.35′ W. long.;
(24) 37°0.71′ N. lat., 122°24.53′ W. long.;
(25) 36°57.50′ N. lat., 122°24.98′ W. long.;
(26) 36°58.38′ N. lat., 122°21.85′ W. long.;
(27) 36°55.85′ N. lat., 122°21.95′ W. long.;
(28) 36°52.86′ N. lat., 122°12.89′ W. long.;
(29) 36°48.71′ N. lat., 122°9.28′ W. long.;
(30) 36°46.65′ N. lat., 122°4.10′ W. long.;
(31) 36°51.00′ N. lat., 121°58.00′ W. long.;
(32) 36°44.00′ N. lat., 121°59.00′ W. long.;
(33) 36°38.00′ N. lat., 122°2.00′ W. long.;
(34) 36°26.00′ N. lat., 121°59.50′ W. long.;
(35) 36°22.00′ N. lat., 122°1.00′ W. long.;
(36) 36°19.00′ N. lat., 122°5.00′ W. long.;
(37) 36°14.00′ N. lat., 121°58.00′ W. long.;
(38) 36°10.61′ N. lat., 121°44.51′ W. long.;
(39) 35°50.53′ N. lat., 121°29.93′ W. long.;
(40) 35°46.00′ N. lat., 121°28.00′ W. long.;
(41) 35°38.94′ N. lat., 121°23.16′ W. long.;
(42) 35°26.00′ N. lat., 121°8.00′ W. long.;
(43) 35°7.42′ N. lat., 120°57.08′ W. long.;
(44) 34°42.00′ N. lat., 120°54.00′ W. long.;
(45) 34°29.00′ N. lat., 120°44.00′ W. long.;
(46) 34°22.00′ N. lat., 120°32.00′ W. long.;
(47) 34°21.00′ N. lat., 120°21.00′ W. long.;
(48) 34°24.00′ N. lat., 120°15.00′ W. long.;
(49) 34°22.11′ N. lat., 119°56.63′ W. long.;
(50) 34°19.00′ N. lat., 119°48.00′ W. long.;
(51) 34°15.00′ N. lat., 119°48.00′ W. long.;
(52) 34°8.00′ N. lat., 119°37.00′ W. long.;
(53) 34°7.00′ N. lat., 120°11.00′ W. long.;
(54) 34°13.00′ N. lat., 120°30.00′ W. long.;
(55) 34°9.00′ N. lat., 120°38.00′ W. long.;
(56) 33°58.00′ N. lat., 120°29.00′ W. long.;
(57) 33°51.00′ N. lat., 120°9.00′ W. long.;
(58) 33°38.00′ N. lat., 119°58.00′ W. long.;
(59) 33°38.00′ N. lat., 119°50.00′ W. long.;
(60) 33°46.25′ N. lat., 119°49.32′ W. long.;
(61) 33°53.82′ N. lat., 119°53.42′ W. long.;
(62) 33°59.00′ N. lat., 119°21.00′ W. long.;
(63) 34°2.00′ N. lat., 119°13.00′ W. long.;
(64) 34°1.52′ N. lat., 119°4.50′ W. long.;
(65) 33°58.83′ N. lat., 119°3.76′ W. long.;
(66) 33°56.55′ N. lat., 118°40.50′ W. long.;
(67) 33°51.00′ N. lat., 118°38.00′ W. long.;
(68) 33°39.63′ N. lat., 118°18.75′ W. long.;
(69) 33°35.44′ N. lat., 118°17.57′ W. long.;
(70) 33°31.98′ N. lat., 118°12.59′ W. long.;
(71) 33°33.25′ N. lat., 117°54.15′ W. long.;
(72) 33°31.43′ N. lat., 117°49.84′ W. long.;
(73) 33°16.53′ N. lat., 117°36.13′ W. long.;
(74) 33°6.51′ N. lat., 117°24.11′ W. long.;
(75) 32°54.11′ N. lat., 117°21.45′ W. long.;
(76) 32°46.15′ N. lat., 117°24.26′ W. long.;
(77) 32°41.97′ N. lat., 117°22.10′ W. long.;
(78) 32°39.00′ N. lat., 117°28.13′ W. long.; and
(79) 32°34.84′ N. lat., 117°24.62′ W. long.

* * * * *

Under B. Limited Entry Fishery:

6. On pages 924–925, Table 3 (North) and Table 3 (South) are corrected to read as follows:

BILLING CODE 3510–22–S

Table 3 (North). Trip Limits and Gear Requirements[1/] for Limited Entry Trawl Gear North of 40°10' N. Latitude[2/]

Other Limits and Requirements Apply – Read Sections A. and B. of NMFS Actions before using this table

		JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
	Rockfish Conservation Area[10/] (RCA):	100 fm - 250 fm (line modified to incorporate petrale sole fishing grounds)	100 fm - 250 fm		75 fm - 250 fm	100 fm - 250 fm	100 fm - 250 fm (line modified to incorporate petrale sole fishing grounds)
	Small footrope is required shoreward of the RCA; both large and small footropes are permitted seaward of the RCA. Only one type of trawl gear is allowed on board a vessel at any one time.						
1	**Minor slope rockfish[3/]**	1,800 lb/ 2 months					
2	**Pacific ocean perch**	3,000 lb/ 2 months					
3	**DTS complex**						
4	Sablefish	6,000 lb/ 2 months		7,000 lb/ 2 months			6,000 lb/ 2 months
5	Longspine thornyhead	8,000 lb/ 2 months		9,000 lb/ 2 months			7,000 lb/ 2 months
6	Shortspine thornyhead	2,300 lb/ 2 months		2,400 lb/ 2 months			2,200 lb/ 2 months
7	Dover sole	26,000 lb/ 2 months		25,000 lb/ 2 months			26,000 lb/ 2 months
8	**Flatfish**						
9	All other flatfish[4/]	100,000 lb/ 2 months	100,000 lb/ 2 months, no more than 30,000 lb/ 2 months of which may be petrale sole				100,000 lb/ 2 months
10	Petrale sole	Not limited					Not limited
11	Rex sole	Included in all other flatfish					
12	Arrowtooth flounder	30,000 lb/ trip	60,000 lb/ 2 months; 7,500 lb/ trip				30,000 lb/ trip
13	**Whiting[5/]**						
14	mid-water trawl	20,000 lb/ trip		Primary Season - (mid-water trawling permitted in the RCA)		10,000 lb/ trip	
15	**Other Fish[9/]**	Not limited					
16	**Use of small footrope bottom trawl[7/] or mid-water trawl is required for landing all of the following species:**						
17	**Minor shelf rockfish and widow rockfish[3/]**	300 lb/ month		1,000 lb/ month, no more than 200 lb/ month of which may be yelloweye rockfish			300 lb/ month
18	**Widow rockfish - mid-water trawl**						
19	mid-water trawl - permitted within the RCA	CLOSED[6/]		During primary whiting season, in trips of at least 10,000 lb of whiting: combined widow and yellowtail limit of 500 lb/ trip, cumulative widow limit of 1,500 lb/ month		CLOSED[6/]	12,000 lb/ 2 months
20	**Canary rockfish**	100 lb/ month		300 lb/ month		100 lb/ month	
21	**Yellowtail**						
22	mid-water trawl - permitted within the RCA	CLOSED[6/]		During primary whiting season, in trips of at least 10,000 lb of whiting: combined widow and yellowtail limit of 500 lb/ trip, cumulative yellowtail limit of 2,000 lb/ month			18,000 lb/ 2 months
23	small footrope trawl[7/]	In landings without flatfish, 1,000 lb/ month. As flatfish bycatch, per trip limit is the sum of 33% (by weight) of all flatfish except arrowtooth flounder, plus 10% (by weight) of arrowtooth flounder, not to exceed 3,000 lb/month. Total yellowtail landings not to exceed 3,000 lb/month, no more than 1,000 lb of which may be landed without flatfish.					
24	**Minor nearshore rockfish**	300 lb/ month					
25	**Lingcod[8/]**	800 lb/ 2 months		1,000 lb/ 2 months		800 lb/ 2 months	

1/ Gear requirements and prohibitions are explained above. See A.(14).

2/ "North" means 40°10' N. lat. to the U.S.-Canada border. 40°10' N. lat. is about 20 nm south of Cape Mendocino, CA.

3/ Bocaccio and chilipepper are included in the trip limits for minor shelf rockfish and splitnose rockfish is included in the trip limits for minor slope rockfish.

4/ "Other" flatfish means all flatfish at 50 CFR 660.302 except those in this Table 3 with species specific management measures, including trip limits.

5/ The whiting "per trip" limit in the Eureka area shoreward of 100 fm is 10,000 lb/ trip throughout the year. Outside Eureka area, the 20,000 lb/ trip limit applies. See B.(3).

6/ Closed means that it is prohibited to take and retain, possess, or land the designated species in the time or area indicated. See A.(7).

7/ Small footrope trawl means a bottom trawl net with a footrope no larger than 8 inches (20 cm) in diameter.

8/ The minimum size limit for lingcod is 24 inches (61 cm) total length.

9/ Other fish are defined at 50 CFR 660.302, as those groundfish species or species groups for which there is no trip limit, size limit, quota, or harvest guideline.

10/ The "Rockfish Conservation Area" is a gear and/or sector specific closed area generally described by depth contours but specifically defined by lat/long coordinates set out at A.(19)(e), that may vary seasonally.

To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

Table 3 (South). Trip Limits and Gear Requirements[1/] for Limited Entry Trawl Gear South of 40°10' N. Latitude[2/]

Other Limits and Requirements Apply -- Read Sections A. and B. of NMFS Actions before using this table

		JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
	Rockfish Conservation Area[10/] (RCA):						
	40°10' - 38° N. lat.	50 fm - 250 fm	60 fm - 250 fm				
	38° - 34°27' N. lat.	50 fm - 150 fm	60 fm - 150 fm				
	South of 34°27' N. lat.	100 fm - 150 fm along the mainland coast; shoreline - 150 fm around islands					
	Small footrope is required shoreward of the RCA; both large and small footropes are permitted seaward of the RCA Only one type of trawl gear is allowed on board a vessel at any one time						
1	**Minor slope rockfish[3/]**						
2	40°10' - 38° N. lat.	1,800 lb/ 2 months					
3	South of 38° N. lat.	30,000 lb/ 2 months					
4	**Splitnose**						
5	40°10' - 38° N. lat.	1,800 lb/ 2 months					
6	South of 38° N. lat.	30,000 lb/ 2 months					
7	**DTS complex**						
8	Sablefish	6,000 lb/ 2 months		7,000 lb/ 2 months			6000 lb/ 2 months
9	Longspine thornyhead	8,000 lb /2 months		9,000 lb/ 2 months			7000 lb/ 2 months
10	Shortspine thornyhead	2,300 lb/ 2 months		2,400 lb/ 2 months			2,200 lb/ 2 months
11	Dover sole	26,000 lb/ 2 months		25,000 lb/ 2 months			26,000 lb/ 2 months
12	**Flatfish**						
13	All other flatfish[4/]	70,000 lb/ 2 months	70,000 lb/ 2 months, no more than 10,000 lb/ 2 months of which may be petrale sole				70,000 lb/ 2 months
14	Petrale sole	No limit					No limit
15	Rex sole	Included in all other flatfish					
16	Arrowtooth flounder	No limit	1,000 lb/ 2 months				No limit
17	**Whiting[5/]**						
18	mid water trawl	20,000 lb/ trip		Primary Season - (mid-water trawling permitted in the RCA)		10,000 lb/ trip	
19	**Other Fish[9/]**	Not limited					
20	**Use of small footrope bottom trawl[7/] or mid-water trawl is required for landing all of the following species:**						
21	**Minor shelf rockfish, widow, and chilipepper rockfish[3/]**	300 lb/ month					
22	**Widow rockfish**						
23	mid water trawl - permitted within the RCA	CLOSED[6/]					12, 000 lb/ 2 months
24	**Canary rockfish**	100 lb/ month		300 lb/ month		100 lb/ month	
25	**Bocaccio**	CLOSED[6/]					
26	**Cowcod**	CLOSED[6/]					
27	**Minor nearshore rockfish**	300 lb/ month					
28	**Lingcod[8/]**	800 lb/ 2 months		1,000 lb/ 2 months		800 lb/ 2 months	

1/ Gear requirements and prohibitions are explained above. See A.(14).

2/ "South" means 40°10' N. lat. to the U.S.-Mexico border. 40°10' N. lat. is about 20 nm south of Cape Mendocino, CA.

3/ Yellowtail is included in the trip limits for minor shelf rockfish and POP is included in the trip limits for minor slope rockfish.

4/ "Other" flatfish means all flatfish at 50 CFR 660.302 except those in this Table 3 with species specific management measures, including trip limits.

5/ The whiting "per trip" limit in the Eureka area shoreward of 100 fm is 10,000 lb/ trip throughout the year. Outside Eureka area, the 20,000 lb/ trip limit applies. See B.(3).

6/ Closed means that it is prohibited to take and retain, possess, or land the designated species in the time or area indicated. See A.(7).

7/ Small footrope trawl means a bottom trawl net with a footrope no larger than 8 inches (20 cm) in diameter.

8/ The minimum size limit for lingcod is 24 inches (61 cm) total length.

9/ Other fish are defined at 50 CFR 660.302, as those groundfish species or species groups for which there is no trip limit, size limit, quota, or harvest guideline.

10/ The "Rockfish Conservation Area" is a gear and/or sector specific closed area generally described by depth contours but specifically defined by lat./long. coordinates set out at A.(19)(e), that may vary seasonally.

To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

BILLING CODE 3510–22–C

Under D. Recreational Fishery:

7. On page 931, in column 2, paragraph (1)(a) is corrected to read as follows:

* * * * *

(1) * * *

(a) *Yelloweye Rockfish Conservation Area.* The YRCA is an "L-shaped" area which is closed to recreational groundfish and halibut fishing. The coordinates for the YRCA are defined at A.(19).

* * * * *

8. On page 932, in column 1, line 29, paragraph (3)(b)(i)(A) is corrected to read as follows:

* * * * *

(3) * * *

(b) * * *

(i) * * *

(A) *Cowcod Conservation Areas.* Recreational fishing for groundfish is prohibited within the CCAs, for coordinates described in Federal regulations at 50 CFR 660.304(i), except that fishing for sanddabs is permitted subject to the provisions in paragraph D.(3)(iv) and that fishing for species managed under this section (not including cowcod, bocaccio, canary, and yelloweye rockfishes) is permitted in waters shoreward of the 20- fm (37–m) depth contour within the CCAs from July 1 through December 31, 2003, subject to the bag limits in this section.

* * * * *

9. On page 932, in column 2, line 3, paragraph (3)(b)(ii)(B) is corrected to read as follows:

* * * * *

(ii) * * *

(B) *Bag limits, boat limits, hook limits.* South of 40°10′ N. lat., in times and areas when the recreational season for the RCG Complex is open, there is a limit of two hooks and one line when fishing for rockfish, and the bag limit is 10 RCG Complex fish per day (not including bocaccio, canary rockfish, yelloweye rockfish and cowcod which are prohibited), of which up to 10 may be rockfish, no more than 2 of which may be shallow nearshore rockfish. [Note: The shallow nearshore rockfish group off California are composed of kelp, grass, black-and-yellow, China, and gopher rockfishes.] Also within the 10 RCG Complex fish per day limit, no more than 2 fish per day may be greenling (kelp and/or rock greenling) and no more than 3 fish per day may be cabezon. Lingcod, California scorpionfish, and sanddabs taken in recreational fisheries off California do not count toward the 10 RCG Complex fish per day bag limit. Multi-day limits are authorized by a valid permit issued by California and must not exceed the daily limit multiplied by the number of days in the fishing trip.

* * * * *

Classification

The Assistant Administrator for Fisheries, NOAA (AA) finds that good cause exists pursuant to 5 U.S.C. 553(b)(B) to waive prior notice and opportunity for public comment as such prior notice and opportunity for public comment is unnecessary, impracticable, and contrary to the public interest. It is unnecessary because this notice publishes a minor technical correction, changing the 2003 emergency rule specifications and management measures to refer to the CCAs in section 660.304(i) to section 660.304(c). It is impracticable because NMFS does not have sufficient time to seek public comment on the clarifications to harvest levels and management measures in this notice and to incorporate such comments into the notice before it is published in the **Federal Register**. NMFS must act quickly to publish this notice as it corrects harvest trip limits and other management measures that will protect overfished groundfish stocks. Such measures include clarifying the trip limits of yellowtail rockfish and Pacific whiting, allowing only mid-water trawling for Pacific whiting inside the RCA from May through August, and prohibiting the retention of bocaccio, canary rockfish, yelloweye rockfish, and cowcod in the RCG complex bag limits south of 40°10′ N. lat. Prior notice and opportunity for public comment is contrary to the public interest because such notice and opportunity for public comment will delay implementing this correction notice, thereby increasing the risk of further depletion of overfished groundfish stocks. Such depletion would most likely result in the premature closure of certain sectors in the Pacific Coast groundfish fishery later in 2003 to protect such stocks. These fishery closures would likely have a negative socio-economic impact on local fishing communities. Finally, one of the measures corrects the western boundary of the trawl RCA in order to allow access to areas where petrale sole congregate in the winter. Delay in implementing this correction would prevent fishers from accessing the petrale sole before they disperse, and would have a negative socio-economic impact on local fishing communities.

The AA also finds good cause pursuant to 5 U.S.C. 553(D)(3) to waive the 30 day delay in the effective date of this correction notice. Such a delay would increase the probability that fishermen would further deplete overfished groundfish species as they would continue to fish in areas and with gear that are incompatible with the conservation efforts contained in the 2003 harvest specifications and management measures. For the correction of the petrale sole area, the delay would prevent fishermen of taking advantage of an opportunity to harvest healthy stocks of petrale sole when they can be taken with minimal bycatch.

Authority: 1801 *et seq.*

Dated: January 23, 2003.

Rebecca Lent,

Deputy Assistant Administrator for Regulatory Affairs, National Marine Fisheries Service.

[FR Doc. 03–1910 Filed 1–27–03; 2:12 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 68, No. 20
Thursday, January 30, 2003

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–88–AD]

RIN 2120–AA64

Airworthiness Directives; Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model EMB–135 and –145 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain EMBRAER Model EMB–135 and –145 series airplanes. This proposal would require replacing the four Gamah clamp/sleeve joints on an engine bleed air duct with new threaded coupling assemblies. For certain airplanes, this proposal would also require replacing the two supports for the engine bleed air duct with two new supports. This action is necessary to prevent hot air leaks from the bleed air duct due to disconnection of the duct joint, which could result in heat damage to components near the duct, and consequent increased risk of fire in the rear baggage compartment. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by March 3, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–88–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2002-NM–88–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Empresa Brasileira de Aeronautica S.A. (EMBRAER), P.O. Box 343—CEP 12.225, Sao Jose dos Campos—SP, Brazil. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Robert D. Breneman, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1263; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2002–NM–88–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–88–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Departmento de Aviacao Civil (DAC), which is the airworthiness authority for Brazil, notified the FAA that an unsafe condition may exist on certain EMBRAER Model EMB–135 and –145 series airplanes. The DAC advises that the engine bleed air duct between frames 68 and 69 in the rear baggage compartment could leak. The cause of the leakage has been attributed to possible disconnection of the duct joint. This condition, if not corrected, could result in hot air leaks from the bleed air duct, which could lead to heat damage to components near the duct, and consequent increased risk of fire in the rear baggage compartment.

Explanation of Relevant Service Information

EMBRAER has issued Service Bulletin 145–36–0024, dated May 31, 2001, which describes procedures for replacing the four Gamah clamp/sleeve joints from the bleed line at the baggage compartment between frames 68 and 69 with new threaded coupling assemblies (including re-identifying, cleaning, and lubricating the bleed ducts; and installing protection sleeves). For certain airplanes, the service bulletin also describes procedures for replacing the two supports for the engine bleed air duct with two new supports. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition. The DAC classified this service bulletin as

mandatory and issued Brazilian airworthiness directive 2001–09–03, dated October 2, 2001, in order to assure the continued airworthiness of these airplanes in Brazil.

FAA's Conclusions

These airplane models are manufactured in Brazil and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously.

Difference Between the Brazilian Airworthiness Directive and the Proposed AD

The proposed AD would differ from the parallel Brazilian airworthiness directive in that the applicability would only affect those Model EMB–135 and –145 series airplanes listed in the Effectivity of EMBRAER Service Bulletin 145–36–0024, dated May 31, 2001. The Brazilian airworthiness directive affects all Model–135 and –145 series airplanes. As indicated in EMBRAER Service Bulletin 145–36–0024, certain airplanes had the replacement specified in that service bulletin done during production. The limited applicability has been coordinated and concurred with by the DAC.

Cost Impact

The FAA estimates that 346 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 3 work hours per airplane to accomplish the proposed replacement, and that the average labor rate is $60 per work hour. Required parts would cost approximately between $1,978 and $2,007 per airplane. Based on these figures, the cost impact of the proposed AD on U.S. operators of these airplanes is estimated to be between $746,668 and $756,702; or between $2,158 and $2,187 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this proposed AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Empresa Brasileira de Aeronautica S.A. (EMBRAER): Docket 2002–NM–88–AD.

Applicability: Model EMB–135 and –145 series airplanes, as listed in EMBRAER Service Bulletin 145–36–0024, dated May 31, 2001; excluding those airplanes listed in "In-production effectivity" in paragraph 1.A., "Effectivity," of the service bulletin; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent hot air leaks from the bleed air duct due to disconnection of the duct joint, which could result in heat damage to components near the duct, and consequent increased risk of fire in the rear baggage compartment, accomplish the following:

Replacement

(a) Within 1,000 flight hours after the effective date of this AD, do the actions specified in paragraphs (a)(1) and (a)(2) of this AD, as applicable, per EMBRAER Service Bulletin 145–36–0024, dated May 31, 2001.

(1) For all airplanes: Replace the four Gamah clamp/sleeve joints from the bleed line at the baggage compartment between frames 68 and 69 with new threaded coupling assemblies (including re-identifying, cleaning, and lubricating the bleed ducts; and installing protection sleeves).

(2) For airplanes having serial numbers listed in paragraph 3.G. of the Accomplishment Instructions of the service bulletin: Replace the two supports for the engine bleed air duct with two new supports, having part number 145–35923–007.

Parts Installation

(b) As of the effective date of this AD, no person shall install parts listed in paragraphs (b)(1) and (b)(2) of this AD, as applicable.

(1) For all airplanes: Gamah clamp/sleeve joints, from the bleed line at the baggage compartment between frames 68 and 69, having part number G30020CD, G30020TD, G30020C, or G30020T.

(2) For airplanes having serial numbers listed in paragraph 3.G. of the Accomplishment Instructions of EMBRAER Service Bulletin 145–36–0024, dated May 31, 2001: Supports for the engine bleed air duct, with part number 145–35923–007.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 3: The subject of this AD is addressed in Brazilian airworthiness directive 2001–09–03, dated October 2, 2001.

Issued in Renton, Washington, on January 23, 2003.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–2096 Filed 1–29–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–152–AD]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–8–11, DC–8–12, DC–8–21, DC–8–31, DC–8–32, DC–8–33, DC–8–41, DC–8–42, and DC–8–43 Airplanes; DC–8–50 Series Airplanes; DC–8–61 Airplanes; DC–8–61F Airplanes; DC–8–71 Airplanes, and DC–8–71F Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to revise an existing airworthiness directive (AD), applicable to certain McDonnell Douglas airplanes. That AD currently requires visual or eddy current inspections of the left and right wing front spar lower caps to detect cracks migrating from attachment holes; and repair, if necessary. That AD also requires a terminating modification of the front spar lower cap. That AD was prompted by a report that additional cracking was found in the front spar lower cap of a wing. The actions specified by that AD are intended to prevent reduced structural integrity of the left or right wing due to metal fatigue failure of the front spar lower cap. This action would extend the compliance time for the follow-on inspection after accomplishment of the terminating modification.

DATES: Comments must be received by March 17, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–152–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2001-NM–152-AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California.

FOR FURTHER INFORMATION CONTACT: Jon Mowery, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712; telephone (562) 627–5231; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2001–NM–152–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–152–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On March 12, 2001, the FAA issued AD 2001–06–02, amendment 39–12149 (66 FR 16107, March 23, 2001), applicable to McDonnell Douglas Model DC–8 series airplanes, as listed in McDonnell Douglas Service Bulletin DC–8–57–090, Revision 05, dated June 16, 1997. That AD requires visual or eddy current inspections of the left and right wing front spar lower caps to detect cracks migrating from attachment holes; and repair, if necessary. That AD also requires a terminating modification of the front spar lower cap and a follow-on inspection. That action was prompted by a report that additional cracking was found in the front spar lower cap of a wing. The requirements of that AD are intended to prevent reduced structural integrity of the left or right wing due to metal fatigue failure of the front spar lower cap.

Actions Since Issuance of Previous Rule

Since the issuance of that AD, the FAA has received information that the compliance time for the follow-on inspection after accomplishment of the terminating modification should be within 32,900 landings after the modification rather than within 32,900 flight hours. The compliance time based on landings is longer than that based on flight hours, since the fleet averages 2.7 flight hours for every landing. The FAA has determined that extending the compliance time for the follow-on inspection after the terminating modification will provide an acceptable level of safety.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would continue to require modification of the lower front spar cap and a follow-on inspection. However, the proposed AD would change the compliance time for the follow-on inspection from 32,900 flight hours to 32,900 landings after the modification.

Explanation of Change to Applicability in Proposed AD

The FAA has revised the applicability of the existing AD to identify model designations as published in the most recent type certificate data sheet for the affected models. The existing AD specifies the applicability as Model DC–8 series airplanes, as listed in McDonnell Douglas Service Bulletin DC8–57–090, Revision 05, dated June 16, 1997." The proposed AD specifies the applicability as "McDonnell Douglas Model DC–8–11, DC–8–12, DC–8–21, DC–8–31, DC–8–32, DC–8–33, DC–8–41, DC–8–42, and DC–8–43 airplanes; DC–8–50 series airplanes; DC–8–61 airplanes; DC–8–61F airplanes; DC–8–71 airplanes, and DC–8–71F airplanes."

Cost Impact

There are approximately 264 Model DC–8 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 244 airplanes of U.S. registry would be affected by this proposed AD.

The initial and repetitive eddy current inspection currently required by AD 2001–06–02 takes approximately 2 work hours per airplane to accomplish at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the currently required inspections on U.S. operators is estimated to be $29,280, or $120 per airplane, per inspection cycle.

The preventive modification currently required by AD 2001–06–02 takes approximately 12 to 14 work hours per airplane to accomplish at an average labor rate of $60 per work hour. Required parts cost between $303 and $1,202 per airplane. Based on these figures, the cost impact of the currently required preventive modification on U.S. operators is estimated to be between $256,773 and $512,542, or between $1,023 and $2,042, per airplane.

The follow-on (post-modification) inspection currently required by AD 2001–06–02 takes approximately 2 work hours per airplane to accomplish at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the currently required follow-on inspection on U.S. operators is estimated to be $29,280, or $120 per airplane. This proposal would increase the compliance time for performing the follow-on inspection, but would not change the estimated cost of that inspection.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–12149 (66 FR 16107, March 23, 2001), and by adding a new airworthiness directive (AD), to read as follows:

McDonnell Douglas: Docket 2001–NM–152–AD. Revises AD 2001–06–02, Amendment 39–12149.

Applicability: Model DC–8–11, DC–8–12, DC–8–21, DC–8–31, DC–8–32, DC–8–33, DC–8–41, DC–8–42, and DC–8–43 airplanes; DC–8–51, –52, –53, and –55 airplanes; DC–8–61 airplanes; DC–8–61F airplanes; DC–8–71 airplanes, and DC–8–71F airplanes; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (i) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent reduced structural integrity of the left or right wing due to metal fatigue failure of the front spar lower cap, accomplish the following:

Note 2: This AD will affect the inspections, corrective actions, and reports required by AD 93–01–15, amendment 39–8469 (58 FR 5576, January 22, 1993), for Principal Structural Elements (PSE) 57.08.021 and 57.08.022 of the DC–8 Supplemental Inspection Document (SID).

Note 3: Where there are differences between this AD and the referenced service bulletin, the AD prevails.

Eddy Current Inspection

(a) For airplanes equipped with left or right wing front spar lower cap, part number (P/N) 5597838–1 or –2, not modified per any of the McDonnell Douglas DC–8 service bulletins listed in Table 1 of this AD: Do an eddy current inspection to detect cracks of the lower front spar caps of the wings at the attachment holes of the leading edge assembly between stations Xfs=515.000 and Xfs=526.760, per McDonnell Douglas Service Bulletin DC8–57–090, Revision 05, dated June 16, 1997, at the time specified in either paragraph (a)(1), (a)(2), or (a)(3) of this AD, as applicable. Eddy current inspections done before the effective date of this AD per McDonnell Douglas DC–8 Service Bulletin 57–90, Revision 1, dated June 16, 1988; Revision 2, dated March 1, 1991; Revision 3, dated March 25, 1992; or Revision 4, dated March 3, 1995; are considered acceptable for compliance with the requirements of paragraph (a) of this AD. Table 1 is as follows:

TABLE 1.—APPLICABLE SERVICE BULLETINS FOR PREVENTIVE MODIFICATION

Service bulletin	Revision level	Date
57–90	Original	October 3, 1983
57–90	1	June 16, 1988
57–90	2	March 1, 1991
57–90	3	March 25, 1992
57–90	4	March 3, 1995
DC8–57–090	05	June 16, 1997

(1) For airplanes on which the immediately preceding inspection was conducted using eddy current techniques per AD 86–20–08, amendment 39–5434, prior to April 27, 2001, (the effective date of AD 2001–06–02, amendment 39–12149). Inspect within 3,600 flight hours or 3 years after accomplishment of the last eddy current inspection, whichever occurs first.

(2) For airplanes on which the immediately preceding inspection was conducted visually per AD 86–20–08 prior to April 27, 2001: Inspect within 3,200 flight hours or 2 years after accomplishment of the last visual inspection, whichever occurs first.

(3) For airplanes on which a visual or eddy current inspection or the modification required by AD 86–20–08 has not been done: Inspect before the accumulation of 30,000 total flight hours, or within 200 flight hours after April 27, 2001.

(b) For airplanes other than those identified in paragraph (a) of this AD, not modified per any of the McDonnell Douglas DC–8 service bulletins listed in Table 1 of this AD: Within 3,200 flight hours or 2 years after April 27, 2001, whichever occurs first, do the eddy current inspection specified in paragraph (a) of this AD.

Repetitive Inspections

(c) If no crack is detected during any inspection required by this AD, repeat the eddy current inspection every 3,600 flight hours or 3 years, whichever occurs first.

Repair

(d) If any crack is detected during any inspection required this AD, before further flight, do the action specified in either paragraph (d)(1) or (d)(2) of this AD, as applicable.

(1) For cracks within the limits specified in Conditions 2 through 6, inclusive, Table 1 of paragraph 3.B.4 of the Accomplishment Instructions of McDonnell Douglas Service Bulletin DC8–57–090, Revision 05, dated June 16, 1997: Modify the lower front spar cap per McDonnell Douglas Service Bulletin DC8–57–090, Revision 05, dated June 16, 1997. Accomplishment of the modification constitutes compliance with the requirements of paragraphs (c) and (e) of this AD.

(2) For cracks that exceed the limits specified in Conditions 2 through 6, inclusive, Table 1 of paragraph 3.B.4 of the Accomplishment Instructions of McDonnell Douglas Service Bulletin DC8–57–090, Revision 05, dated June 16, 1997: Repair per a method approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA.

Preventive Modification

(e) Before the accumulation of 100,000 total flight hours, modify the lower front spar cap per paragraph 3.B.2.B of the Accomplishment Instructions of McDonnell Douglas Service Bulletin DC8–57–090, Revision 05, dated June 16, 1997. Accomplishment of the modification constitutes compliance with the requirements of paragraphs (a) and (b) of this AD and terminates the repetitive inspection requirements of paragraph (c) of this AD. Modification of the lower front spar cap accomplished before the effective date of this AD per McDonnell Douglas DC–8 Service Bulletin 57–90, dated October 3, 1993; Revision 1, dated June 16, 1988; Revision 2, dated March 1, 1991; Revision 3, dated March 25, 1992; or Revision 4, dated March 3, 1995; is considered acceptable for compliance with the requirements of paragraph (e) of this AD.

(f) Accomplishment of the modification required by paragraph B. of AD 90–16–05, amendment 39–6614 (55 FR 31818, August 6, 1990) (which references "DC–8 Aging Aircraft Service Action Requirements Document" (SARD), McDonnell Douglas Report MDC K1579, Revision A, dated March 1, 1990, as the appropriate source of service information for accomplishing the modification) constitutes compliance with paragraphs (a), (b), and (e) of this AD and terminates the repetitive inspection requirements of paragraph (c) of this AD.

Follow-On Inspection

(g) Within 32,900 landings after accomplishment of the modification specified in paragraph (g)(1), (g)(2), (g)(3), or (g)(4) of this AD, or within 2 years after the effective date of this AD, whichever occurs later, perform an inspection to detect cracks in the area specified in paragraph (a) of this AD, and corrective actions, if necessary; per a method approved by the Manager, Los Angeles ACO.

(1) Modification required by paragraph (d)(1) of this AD;

(2) Modification required by paragraph (e) of this AD;

(3) Modification specified in paragraph D. of AD 86–20–08; or

(4) Modification required by paragraph B. of AD 90–16–05.

Certain Actions Constitute Compliance With AD 90–16–05

(h) Accomplishment of the eddy current inspection(s) required by this AD constitutes compliance with the inspections required by paragraph A. of AD 90–16–05, as it pertains to McDonnell Douglas DC–8 Service Bulletin 57–90, Revision 2, dated March 1, 1991. Accomplishment of the eddy current inspection(s) does not terminate the remaining requirements of AD 90–16–05, as it applies to other service bulletins. Operators are required to continue to inspect and/or modify per the other service bulletins listed in that AD.

Alternative Methods of Compliance

(i) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

Special Flight Permits

(j) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on January 23, 2003.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–2095 Filed 1–29–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NE–42–AD]

RIN 2120–AA64

Airworthiness Directives; Honeywell International Inc. (formerly AlliedSignal) Model RE220 (RJ) Auxiliary Power Units

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The Federal Aviation Administration (FAA) proposes to adopt a new airworthiness directive (AD) that is applicable to Honeywell International Inc. (formerly AlliedSignal) model RE220 (RJ) auxiliary power units (APUs) part number (P/N) WE3800770–2. This proposal would require replacing the existing fuel nozzles with new design fuel nozzles, making reidentification updates to the APU identification plate, and operating the APU to perform a visual inspection for fuel leaks. This proposal is prompted by reports received by the FAA of cracks occurring in the existing APU fuel nozzles leading to fuel leaks. The actions specified by the proposed AD are intended to prevent APU compartment fires and fuel vapor explosion.

DATES: Comments must be received by March 31, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 2002–NE–42–AD, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may be inspected at this location, by appointment, between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. Comments may also be sent via the Internet using the following address: "*9-ane-adcomment@faa.gov*". Comments sent via the Internet must contain the docket number in the subject line.

FOR FURTHER INFORMATION CONTACT: Roger Pesuit, Aerospace Engineer, Los Angeles Aircraft Certification Office, FAA, Transport Airplane Directorate, 3960 Paramount Blvd., Lakewood, CA 90712–4137; telephone (562) 627–5251, fax (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2002–NE–42–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 2002–NE–42–AD, 12 New England Executive Park, Burlington, MA 01803–5299.

Discussion

In May 2002, the FAA became aware of several reports of fuel leaks, occurring in APU compartments of Bombardier model CL–600–2C10 airplanes. The fuel leaks were determined to be caused by cracks of threaded fittings on fuel nozzles, installed in Honeywell International Inc. (formerly AlliedSignal) model RE220 (RJ) APUs P/N WE3800770–2. This condition, if not corrected, could result in APU compartment fires and fuel vapor explosion.

FAA's Determination of an Unsafe Condition and Proposed Actions

Since an unsafe condition has been identified that is likely to exist or develop on other Honeywell International Inc. (formerly AlliedSignal) model RE220 (RJ) APUs of the same type design, the proposed AD would require replacing the existing fuel nozzles, P/N WE3830486–2, with new design fuel nozzles, P/N WE3830513–1, making reidentification updates to the APU identification plate, and operating the APU to perform a visual inspection for fuel leaks.

Economic Analysis

There are approximately 95 Honeywell International Inc. (formerly AlliedSignal) model RE220 (RJ) APUs of the affected design in the worldwide fleet. The FAA estimates that 67 APUs installed on airplanes of U.S. registry would be affected by this proposed AD. The FAA also estimates that it would take approximately 3.5 work hours per APU to perform the proposed actions, and that the average labor rate is $60 per work hour. Required parts would cost approximately $34,077 per engine. Based on these figures, the total cost of the proposed AD to U.S. operators is estimated to be $2,297,249. The manufacturer has advised the FAA that they may provide fuel nozzles P/N WE3830513–1 at no cost to the operator, and 3.5 hours of labor credit, thereby substantially reducing the cost of this proposed rule.

Regulatory Analysis

This proposed rule does not have federalism implications, as defined in Executive Order 13132, because it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the FAA has not consulted with state authorities prior to publication of this proposed rule.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the

Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Honeywell International Inc. (formerly AlliedSignal): Docket No. 2002–NE–42–AD.

Applicability: This airworthiness directive (AD) is applicable to Honeywell International Inc. (formerly AlliedSignal) model RE220 (RJ) auxiliary power units (APUs) part number (P/N) WE3800770–2. These APUs are installed on, but not limited to Bombardier model CL–600–2C10 airplanes.

Note 1: This AD applies to each APU identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For APUs that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Compliance with this AD is required as indicated, unless already done.

To prevent APU compartment fires and fuel vapor explosion, do the following:

(a) Within six months after the effective date of this AD, replace APU fuel nozzles, P/N WE3830486–2, with new design fuel nozzles, P/N WE3830513–1. Information on fuel nozzle replacement can be found in Honeywell International Inc. alert service bulletin (ASB) RE220–49–A7714, dated November 4, 2002.

(b) Reidentify the APU as follows:

(1) Change the P/N from WE3800770–2 to WE3800770–3 on the identification plate, by removing the –2 and vibropeening or hand stamping a –3 in its place.

(2) Vibropeen or hand stamp the letter "C" after the serial number to show conversion.

(3) Vibropeen or hand stamp "Change Number 3" on the identification plate adjacent to the MOD RECORD.

(c) Start the APU and perform a visual fuel leak check after one minute of operation.

(d) After the effective date of this AD, do not install fuel nozzles P/N WE3830486–2 into any APU P/N WE3800770–3.

Alternative Methods of Compliance

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (LAACO). Operators must submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, LAACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the LAACO.

Special Flight Permits

(f) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be done.

Issued in Burlington, Massachusetts, on January 21, 2003.

Francis A. Favara,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 03–2094 Filed 1–29–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–128–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747–400 Series Airplanes Equipped With General Electric Model CF6–80C2 Series Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to certain Boeing Model 747–400 series airplanes, that currently requires repetitive tests of the cone brake of the central drive unit (CDU) of the thrust reversers, and corrective actions if necessary. This action would require installation of a thrust reverser actuation system (TRAS) lock and various related modifications and installations. Following installation of the TRAS lock, this action also would require repetitive functional tests of the TRAS lock, and corrective action if necessary. These actions are intended to prevent an inadvertent deployment of a thrust reverser during flight, which could result in loss of control of the airplane.

DATES: Comments must be received by March 17, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–128–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9–anm–nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2002–NM–128–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, PO Box 3707, Seattle, Washington 98124–2207; and AlliedSignal Aerospace Services, PO Box 52170, Phoenix, Arizona 85072–2170. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Sulmo Mariano, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2686; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (e.g., reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2002–NM–128–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–128–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On April 26, 2000, the FAA issued AD 2000–09–03, amendment 39–11711 (65 FR 25829, May 4, 2000), to supersede AD 2000–02–33, amendment 39–11551 (65 FR 5742). AD 2000–09–03 is applicable to certain Boeing Model 747–400 series airplanes, and requires repetitive tests of the cone brake of the central drive unit (CDU) of the thrust reversers, and corrective actions if necessary. That action was prompted by a report indicating that completion of a cone brake test required by AD 2000–02–33 was ineffective for certain airplanes. The requirements of that AD 2000–09–03 are intended to ensure the integrity of the fail-safe features of the thrust reverser system by preventing possible failure modes in the thrust reverser control system that can result in inadvertent deployment of a thrust reverser during flight.

Actions Since Issuance of Previous Rule

In the preamble to AD 2000–02–33, the FAA specified that the actions required by that AD were considered "interim action" and that the manufacturer was developing a modification to positively address the unsafe condition. We indicated that we might consider further rulemaking action once the modification was developed, approved, and available. The manufacturer now has developed such a modification, and we have determined that further rulemaking action is indeed necessary; this proposed AD follows from that determination.

While the service information for installation of the modification has been available for some time, we have prioritized the issuance of ADs for corrective actions for the thrust reverser system on Boeing airplane models. Based on service experience, analyses, and flight simulator studies, it was determined that an in-flight deployment of a thrust reverser has more effect on controllability of twin-engine airplane models than of Model 747 series airplanes, which have four engines. For this reason, the highest priority was given to rulemaking that required corrective actions for the twin-engine airplane models. ADs that correct the same type of unsafe condition as would be addressed by this proposed AD have been issued previously for specific airplanes within the Boeing Model 737, 757, and 767 series.

After the issuance of the service information related to the modification, we received a report from the airplane manufacturer indicating that there have been several incidents of failure of a connection shaft for the thrust reverser actuation system (TRAS) brake, which is installed as part of the modification. Such failure of the connection shaft would result in the TRAS lock being ineffective.

Based on data on the connection shaft failures that have been collected by the airplane manufacturer to date, we have determined that we can best ensure the continued safety of the affected fleet of airplanes by proceeding with rulemaking at this time to propose to require installation of a TRAS lock on the thrust reversers on Model 747–400 series airplanes. The airplane manufacturer is continuing to investigate the failures of the connection shaft. If the investigation reveals that corrective actions are necessary to prevent failure of the connection shaft, we may consider further rulemaking to mandate such corrective actions.

Explanation of Relevant Service Information

We have reviewed and approved Boeing Service Bulletin 747–78–2151, Revision 1, dated August 21, 1997, as revised by Notice of Status Change (NSC) 747–78–2151 NSC 04, dated November 26, 1997, and NSC 747–78–2151 NSC 05, dated December 18, 1997; and Boeing Service Bulletin 747–78–2151, Revision 2, dated January 13, 2000. Those service bulletins describe procedures for completing the installation of and activating a TRAS lock on each thrust reverser. These procedures include replacing a certain microswitch pack with a new one; adding new wires; routing certain new wire bundles; changing certain wiring, circuit breakers, and components; installing thrust-reverser relay panels; and performing repetitive functional tests to ensure that the thrust reverser actuation system operates properly. In addition, those service bulletins refer to several other service bulletins that describe actions that must be accomplished prior to or concurrently with Boeing Service Bulletin 747–78–2151. These service bulletins, which describe various modifications and installations associated with the TRAS locks, are as follows:

- Lockheed Martin Service Bulletin 78–1007, Revision 1, dated March 18, 1997, which describes procedures for installation of a bracket and fastening hardware for the TRAS lock on each thrust reverser.
- Boeing Service Bulletin 747–78–2132, Revision 2, dated December 11, 1997, which describes procedures for installing wiring provisions for the TRAS lock in various areas of the airplane.
- Lockheed Martin Service Bulletin 78–1020, Revision 2, dated March 20, 1997, which describes procedures for installing the TRAS lock (also called an electromechanical lock or brake) and a flexible drive cable on each thrust reverser.
- Boeing Service Bulletin 747–31–2242, dated April 18, 1996, which describes procedures for installing new integrated display system software in six integrated display units and three electronic flight information/engine indication and crew alerting system (EICAS) interface units.
- Boeing Service Bulletin 747–45–2016, Revision 1, dated May 2, 1996, which describes procedures for replacing two central maintenance computers (CMCs) with new, improved CMCs, and installing new software for the CMCs.

Accomplishment of the actions specified in these service bulletins is intended to adequately address the identified unsafe condition.

We also have reviewed and approved Boeing Alert Service Bulletin 747–78A2166, Revision 2, dated March 15, 2001. (AD 2000–09–03 refers to Boeing Service Bulletin 747–78A2166, Revision 1, dated October 9, 1997, as an appropriate source of service information for the functional test of the CDU cone brake and corrective actions on certain airplanes.) Among other things, Revision 2 of the service bulletin includes revised procedures for the functional test of the CDU cone brake that are appropriate for airplanes on

which a TRAS lock has been installed, and procedures for a functional test of the TRAS lock. That service bulletin also specifies corrective action (*e.g.*, replacement of a flexshaft and/or electromechanical gearbox with new or serviceable parts, and/or replacement of the TRAS lock (electromechanical brake) or CDU with new or serviceable parts) if any discrepancy is found during the functional test of the CDU cone brake or TRAS lock. We have revised paragraphs (a) and (c) under the heading "Requirements of AD 2000–09–03" in this proposed AD to include Boeing Alert Service Bulletin 747–78A2166, Revision 2, as an acceptable source of service information for actions in those paragraphs.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would supersede AD 2000–09–03 to continue to require repetitive tests of the CDU cone brake of the thrust reversers, and corrective actions if necessary. The proposed AD would add requirements for installation of a TRAS lock, and various related modifications and installations. The actions would be required to be accomplished in accordance with the service bulletins described previously, except as discussed below.

Explanation of Differences Between Service Bulletins and Proposed AD

The new actions in this proposed AD would apply to Boeing Model 747–400 series airplanes as listed in Boeing Service Bulletin 747–78–2151, Revision 2. However, the effectivity listings of Boeing Service Bulletins 747–78–2132, Revision 2, 747–31–2242, and 747–45–2016, Revision 1, identify airplanes with line numbers other than those identified in Boeing Service Bulletin 747–78–2151, Revision 2, as being subject to the actions therein. We have coordinated with the airplane manufacturer on this issue, and the manufacturer agrees with our determination that, to be correct and complete, the new actions in paragraph (d) of this proposed AD should apply to Model 747–400 series airplanes as listed in Boeing Service Bulletin 747–78–2151, Revision 2.

Cost Impact

There are approximately 145 airplanes of the affected design in the worldwide fleet. The FAA estimates that 8 airplanes of U.S. registry would be affected by this proposed AD.

The functional test that is currently required by AD 2000–09–03 takes approximately 12 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the currently required actions on U.S. operators is estimated to be $5,760, or $720 per airplane, per test cycle.

The installations in Boeing Service Bulletin 747–78–2151, Revision 2, would take approximately 410 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts would be provided at no charge. Based on these figures, the cost impact of this proposed requirement on U.S. operators is estimated to be $196,800, or $24,600 per airplane.

The installation specified in Lockheed Martin Service Bulletin 78–1007, Revision 1, would take approximately 60 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts would be provided at no charge. Based on these figures, the cost impact of this proposed requirement on U.S. operators is estimated to be $28,800, or $3,600 per airplane.

The installation specified in Boeing Service Bulletin 747–78–2132, Revision 2, would take approximately 223 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts would cost between $32,219 and $36,562 per airplane. Based on these figures, the cost impact of this proposed requirement is estimated to be between $45,599 and $49,942 per airplane. The manufacturer may cover the cost of replacement parts associated with this service bulletin, subject to warranty conditions. As a result, the costs attributable to this proposed action may be less than stated above.

The installation specified in Lockheed Martin Service Bulletin 78–1020, Revision 2, would take approximately 16 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts would be provided at no charge. Based on these figures, the cost impact of this proposed requirement on U.S. operators is estimated to be $7,680, or $960 per airplane.

The installation specified in Boeing Service Bulletin 747–31–2242 would take approximately 2 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. The cost of required parts would be negligible. Based on these figures, the cost impact of this proposed requirement is estimated to be $960, or $120 per airplane. The manufacturer may cover the cost of replacement parts and labor costs associated with accomplishment of this service bulletin, subject to warranty conditions. As a result, the costs attributable to this proposed action may be less than stated.

The installation specified in Boeing Service Bulletin 747–45–2016, Revision 1, would take approximately 3 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. The cost of required parts would be negligible. Based on these figures, the cost impact of this proposed requirement is estimated to be $1,440, or $180 per airplane. The manufacturer may cover the labor costs associated with accomplishment of this service bulletin, subject to warranty conditions. As a result, the costs attributable to this proposed action may be less than stated above.

The functional test that would be required following installation of the TRAS lock would take approximately 12 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of this proposed requirement is estimated to be $5,760, or $720 per airplane, per test cycle.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this proposed AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft

regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–11711 (65 FR 25829, May 4, 2000), and by adding a new airworthiness directive (AD), to read as follows:

Boeing: Docket 2002–NM–128–AD. Supersedes AD 2000–09–03, Amendment 39–11711.

Applicability: Model 747–400 series airplanes equipped with General Electric (GE) Model CF6–80C2 series engines, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (h)(1) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent an inadvertent deployment of a thrust reverser during flight, which could result in loss of control of the airplane, accomplish the following:

Requirements of AD 2000–09–03

Repetitive Functional Tests

(a) Within 1,000 hours time-in-service after the most recent test of the center drive unit (CDU) cone brake as specified in paragraph (b)(1) of AD 94–15–05, amendment 39–8976; or within 650 hours time-in-service after May 19, 2000 (the effective date of AD 2000–09–03, amendment 39–11711); whichever occurs later: Perform a functional test to detect discrepancies of the CDU cone brake on each thrust reverser as specified in paragraph (a)(1) or (a)(2) of this AD, as applicable.

(1) For Model 747–400 series airplanes equipped with thrust reversers that have not been modified in accordance with Boeing Service Bulletin 747–78–2151 or a production equivalent: Perform the test in accordance with Boeing Service Bulletin 747–78A2166, Revision 1, dated October 9, 1997; or paragraph 3.C. of Boeing Alert Service Bulletin 747–78A2166, Revision 2, excluding Evaluation Form, dated March 15, 2001; or the applicable section of paragraph III.A. of the Accomplishment Instructions of Boeing Service Bulletin 747–78A2113, Revision 2, dated June 8, 1995; or Revision 3, dated September 11, 1997. Repeat the test thereafter at intervals not to exceed 650 hours time-in-service.

(2) For Model 747–400 series airplanes equipped with thrust reversers that have been modified in accordance with Boeing Service Bulletin 747–78–2151 or a production equivalent: Perform the test in accordance with Appendix 1 (including Figure 1) of this AD, or paragraph 3.C. of Boeing Alert Service Bulletin 747–78A2166, Revision 2, excluding Evaluation Form, dated March 15, 2001. After the effective date of this AD, only Boeing Alert Service Bulletin 747–78A2166, Revision 2, may be used. Repeat the test thereafter at intervals not to exceed 1,000 hours time-in-service.

Note 2: Accomplishment of the CDU cone brake test during production in accordance with Production Revision Record (PRR) 80452–102 prior to May 19, 2000, is considered acceptable for compliance with the initial test required by paragraph (a) of this AD.

Note 3: Model 747–400 series airplanes, line numbers 1061 and subsequent, equipped with GE CF6–80C2 engines, had a third locking system installed during production in accordance with Production Revision Record (PRR) 80452–102, and were not modified in accordance with Boeing Service Bulletin 747–78–2151 (which is a retrofit action for airplanes having line numbers 700 through 1060 inclusive).

Terminating Action

(b) Accomplishment of the functional test of the CDU cone brake, as specified in paragraph (a) of this AD, constitutes terminating action for the repetitive tests of the CDU cone brake required by paragraph (b)(1) of AD 94–15–05.

Corrective Action

(c) If any functional test required by paragraph (a) of this AD cannot be successfully performed as specified in the referenced service bulletin, or if any discrepancy is detected during any functional test required by paragraph (a) of this AD, accomplish either paragraph (c)(1) or (c)(2) of this AD.

(1) Prior to further flight, repair in accordance with Boeing Service Bulletin 747–78A2166, Revision 1, dated October 9, 1997; Boeing Alert Service Bulletin 747–78A2166, Revision 2, excluding Evaluation Form, dated March 15, 2001; Boeing Service Bulletin 747–78A2113, Revision 2, dated June 8, 1995; or Revision 3, dated September 11, 1997. After the effective date of this AD, only Boeing Alert Service Bulletin 747–78A2166, Revision 2; or Boeing Service Bulletin 747–78A2113, Revision 2 or Revision 3; may be used.

(2) The airplane may be operated in accordance with the provisions and limitations specified in the operator's FAA-approved Minimum Equipment List (MEL), provided that no more than one thrust reverser on the airplane is inoperative.

New Requirements of This AD

Installation of Thrust Reverser Actuator System Lock and Associated Actions

(d) For airplanes listed in Boeing Service Bulletin 747–78–2151, Revision 2, dated January 13, 2000: Within 36 months after the effective date of this AD, do paragraphs (d)(1) and (d)(2) of this AD.

(1) Install and activate a thrust reverser actuator system (TRAS) lock on each thrust reverser per the Accomplishment Instructions of Boeing Service Bulletin 747–78–2151, Revision 1, excluding Evaluation Form, dated August 21, 1997; as revised by Notice of Status Change (NSC) 747–78–2151 NSC 04, dated November 26, 1997; and NSC 747–78–2151 NSC 05, dated December 18, 1997; or Boeing Service Bulletin 747–78–2151, Revision 2, excluding Evaluation Form. The procedures for completing the installation and activating the TRAS lock include replacing a certain microswitch pack with a new one; adding new wires; routing certain new wire bundles; changing certain wiring, circuit breakers, and components; installing thrust-reverser relay panels; and performing a functional test to ensure that the thrust reverser actuation system operates properly.

(2) Prior to or concurrently with the installation required by paragraph (d)(1) of this AD, do the requirements of paragraphs (d)(2)(i), (d)(2)(ii), (d)(2)(iii), (d)(2)(iv), and (d)(2)(v) of this AD.

(i) Install a bracket and fastening hardware for the third locking system on each thrust reverser, per Lockheed Martin Service Bulletin 78–1007, Revision 1, dated March 18, 1997.

(ii) Install wiring provisions in various areas of the airplane, per the Accomplishment Instructions of Boeing Service Bulletin 747–78–2132, Revision 2, excluding Evaluation Form, dated December 11, 1997.

(iii) Install a TRAS lock (also called an electromechanical lock or brake) and a flexible drive cable on each thrust reverser, per Lockheed Martin Service Bulletin 78–1020, Revision 2, dated March 20, 1997.

(iv) Install new integrated display system software in six integrated display units and three electronic flight information/engine indication and crew alerting system (EICAS) interface units, per the Accomplishment Instructions of Boeing Service Bulletin 747–31–2242, dated April 18, 1996.

(v) Replace two central maintenance computers (CMCs), part number 622–8592–103, with new, improved CMCs, part number 622–8592–105, and install new software for the CMCs, per the Accomplishment

Instructions of Boeing Service Bulletin 747–45–2016, Revision 1, dated May 2, 1996.

Repetitive Tests

(e) For airplanes on which a TRAS lock is installed on the thrust reversers: Within 1,000 flight hours after the installation of the TRAS lock, or within 90 flight hours after the effective date of this AD, whichever is later, do a functional test of the TRAS lock (also called an electromechanical lock or brake) per the Accomplishment Instructions of Boeing Alert Service Bulletin 747–78A2166, Revision 2, excluding Evaluation Form, dated March 15, 2001. Then, repeat this test at least every 1,000 flight hours. If the functional test cannot be successfully performed, before further flight, repair per the Accomplishment Instructions of the service bulletin, and repeat the test until it is successful.

Dispatch Limitations

(f) If, prior to accomplishment of Boeing Service Bulletin 747–78–2151 on any airplane, it becomes necessary to install a thrust reverser with the TRAS lock installed, dispatch of the airplane is allowed per the provisions and limitations specified in the 747–400 Master Minimum Equipment List (MMEL), provided that the thrust reverser assembly that has the TRAS lock installed is deactivated per the 747–400 Dispatch Deviation Guide, Boeing Document D6U10151, dated June 28, 2002. Installation of a thrust reverser without a TRAS lock installed and reactivation of the thrust reverser must be accomplished within the time constraints specified in the MMEL.

(g) If, after accomplishment of Boeing Service Bulletin 747–78–2151 on any airplane, it becomes necessary to install a thrust reverser assembly that does not have the TRAS lock installed, dispatch of the airplane is allowed per the provisions and limitations specified in the Boeing Model 747–400 MMEL, provided that the thrust reverser assembly that does not have the TRAS lock installed is deactivated per the 747–400 Dispatch Deviation Guide, Boeing Document D6U10151, dated June 28, 2002. Installation of a thrust reverser with the TRAS lock installed and reactivation of the thrust reverser must be accomplished within the time constraints specified in the MMEL.

Alternative Methods of Compliance

(h)(1) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

(2) Alternative methods of compliance, approved previously in accordance with AD 2000–09–03, amendment 39–11711, are not considered to be approved as alternative methods of compliance with this AD.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

(i) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Appendix 1.—Thrust Reverser CDU Cone Brake Test

1. This procedure contains steps to do a check of the holding torque of the CDU cone brake.

2. CDU cone brake check (Figure 1):

A. Prepare to do the check:

(1) Open the fan cowl panels.

(2) Pull up on the manual release handle to unlock the electro-mechanical brake.

(3) Pull the manual brake release lever on the CDU to release the cone brake.

Note: This will release the pre-load tension that may occur during a stow cycle.

(4) Return the manual brake release lever to the locked position to engage the cone brake.

(5) Remove the two bolts that hold the lockout plate to the CDU and remove the lockout plate.

(6) Install a ¼-inch drive and a dial-type torque wrench into the CDU drive pad.

Caution: Do not use more than 100 pound-inches of torque when you do this check. Excessive torque will damage the CDU.

(7) Turn the torque wrench to try to manually extend the translating cowl until you get at least 15 pound-inches.

Note: The cone brake prevents movement in the extend direction only. If you try to measure the holding torque in the retract direction, you will get a false reading.

(8) If the torque is less than 15 pound-inches, you must replace the CDU.

(9) Reinstall the lockout plate.

B. Return the airplane to its usual condition:

(1) Fully retract the thrust reverser (unless already accomplished).

(2) Pull down on the manual release handle on the electro-mechanical brake until the handle fully engages the retaining clip (unless already accomplished).

Note: This will lock the electro-mechanical brake.

(3) Close the fan cowl panels.

BILLING CODE 4910–13–P

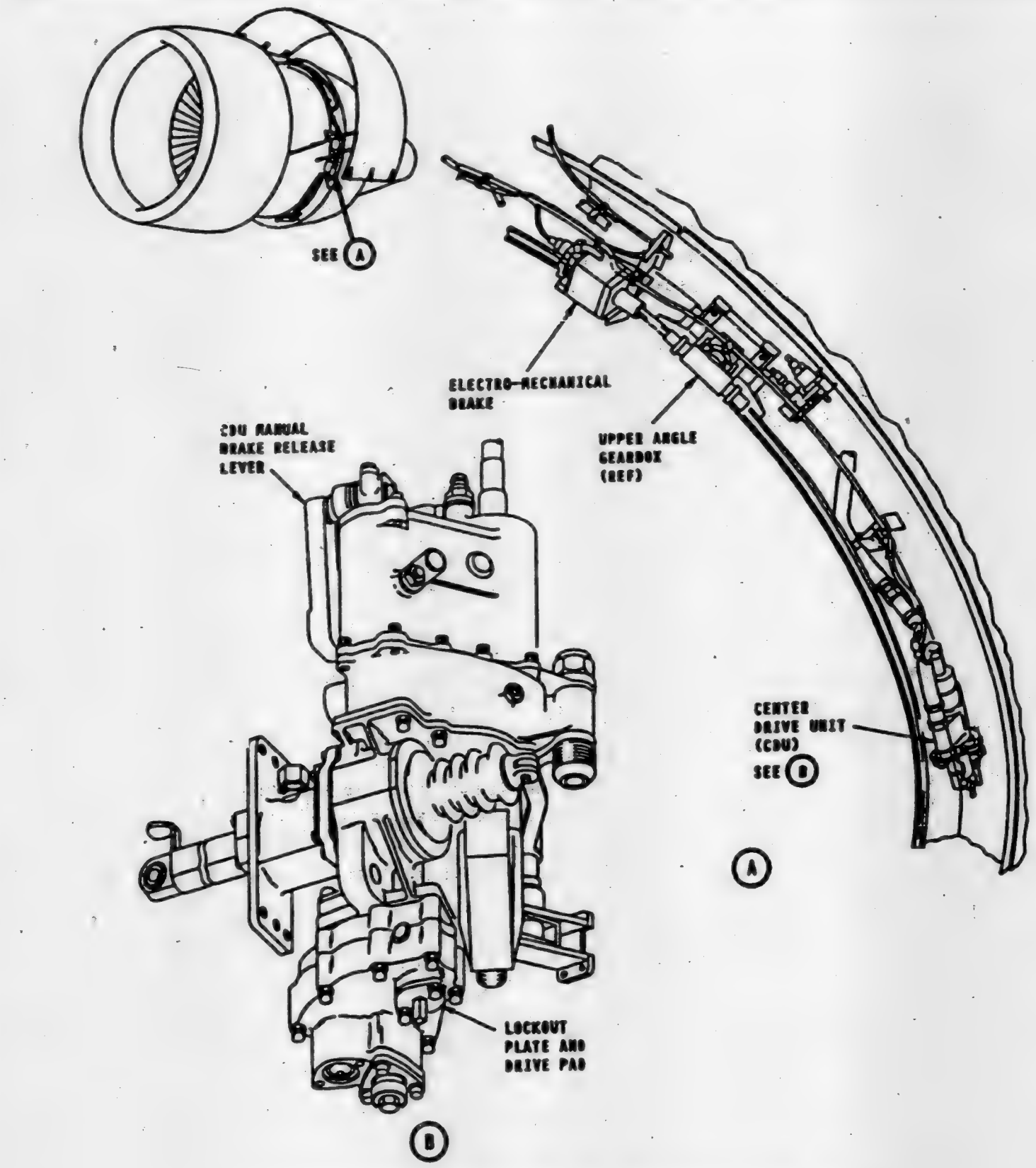

Electro-Mechanical Brake and CDU Cone Brake Torque Check
Figure 1

Issued in Renton, Washington, on January 23, 2003.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–2097 Filed 1–29–03; 8:45 am]

BILLING CODE 4910–13–C

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–112–AD]

RIN 2120–AA64

Airworthiness Directives; Bombardier Model CL–600–2B19 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Bombardier Model CL–600–2B19 series airplanes. This proposal would require a one-time general visual inspection of the dust covers for the flight data recorder (FDR) and cockpit voice recorder (CVR) equipment for the presence of markings that indicate the presence of a chemical-resistant coating, and corrective actions if necessary. This action is necessary to prevent stripping of the paint and markings from the dust covers for FDR and CVR equipment due to hydraulic mist from the actuators, which could result in the inability to identify FDR and CVR equipment in the event of an accident-recovery mission. The lack of data from FDR and CVR equipment could hamper discovery of the unsafe condition that caused an accident or an incident and prevent the FAA from developing and mandating actions to prevent additional accidents or incidents caused by that same unsafe condition. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by March 3, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–112–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9–anm–nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2002–NM–112–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Bombardier, Inc., Canadair, Aerospace Group, P.O. Box 6087, Station Centre-ville, Montreal, Quebec H3C 3G9, Canada. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York.

FOR FURTHER INFORMATION CONTACT: Luciano L. Castracane, Aerospace Engineer, Systems and Flight Test Branch, ANE–172, FAA, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York 11581; telephone (516) 256–7535; fax (516) 568–2716.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2002–NM–112–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–112–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

Transport Canada Civil Aviation (TCCA), which is the airworthiness authority for Canada, notified the FAA that an unsafe condition may exist on certain Bombardier Model CL–600–2B19 series airplanes. TCCA advises that the environment within the aft equipment compartment has proven conducive to stripping the orange paint and markings from the dust covers for the flight data recorder (FDR) and cockpit voice recorder (CVR) equipment. Reports indicate that such stripping of the FDR and CVR dust covers are due to hydraulic mist from the actuators. Additional information indicates that engine oil spills could also be a factor. A protective coating applied to the dust covers will prevent stripping of the paint and markings from the FDR and CVR dust covers. Such stripping, if not corrected, could result in the inability to identify the FDR and CVR equipment in the event of an accident-recovery mission. Identification of the FDR and CVR equipment is essential in order to recover the information necessary for evaluating the specific and related causes of an accident so that such occurrences can be prevented in the future.

FAA's Determination of Unsafe Condition

This action is necessary to prevent the loss of data recorded on the FDR and CVR equipment. The FAA uses the data collected on the FDR and CVR to analyze events leading up to and during airplane accidents in an effort to identify the cause of the accident. Based on FDR and CVR data, we can develop and mandate certain actions to prevent additional accidents. Although the loss of FDR and CVR data does not directly affect the safety of the airplane, the installation of dust covers per this

proposed AD will prevent stripping of the paint and markings from the dust covers for the FDR and CVR that could make it difficult or impossible to identify, recover, and analyze data from the recorder. The lack of data would make it difficult for us to then take appropriate corrective actions to prevent similar accidents in the future. Therefore, we have determined that the proposed action is necessary.

It should be noted that the purpose of this proposed action is not to enhance the safety of Bombardier Model CL–600–2B19 series airplanes, but rather to restore the level of safety provided by the FDR and CVR equipment that have been treated with a protective coating to ensure identification of such equipment. Therefore, this proposed AD is the appropriate regulatory vehicle to achieve this purpose.

Explanation of Relevant Service Information

Bombardier has issued two service bulletins, both dated October 12, 2001, which are described as follows:

- Canadair Regional Jet Service Bulletin 601R–31–026, including the Service Bulletin Comment Sheet—Facsimile Reply Sheet and the CRJ 100/200 Service Bulletin Compliance Facsimile Reply Sheet, describes procedures for a general visual inspection of the FDR dust cover for the presence of markings that indicate the presence of a chemical-resistant coating, and corrective actions if necessary. Corrective actions include either reworking the FDR dust cover, or replacing the dust cover with a new dust cover.
- Canadair Regional Jet Service Bulletin 601R–23–056, including the Service Bulletin Comment Sheet—Facsimile Reply Sheet and the CRJ 100/200 Service Bulletin Compliance Facsimile Reply Sheet, describes procedures for a general visual inspection of the CVR dust cover for the presence of markings that indicate the presence of a chemical-resistant coating, and corrective actions if necessary. Corrective actions include either reworking the CVR dust cover, or replacing the dust cover with a new dust cover.

Accomplishment of the actions specified in the service bulletins is intended to adequately address the identified unsafe condition. TCCA classified these service bulletins as mandatory and issued Canadian airworthiness directive CF–2001–45, dated December 3, 2001, in order to assure the continued airworthiness of these airplanes in Canada.

FAA's Conclusions

This airplane model is manufactured in Canada and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, TCCA has kept the FAA informed of the situation described above. The FAA has examined the findings of TCCA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the service bulletins described previously, except as discussed below.

Difference Between Service Bulletins and Proposed Rule

Operators should note that the Accomplishment Instructions of the referenced service bulletins describe procedures for completing the Comment Sheet—Facsimile Reply Sheet, and CRJ 100/200 Service Bulletin Compliance Facsimile Reply Sheet. However, this proposed AD would not require such action.

Cost Impact

There are approximately 570 Model CL–600–2B19 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 220 airplanes of U.S. registry would be affected by this proposed AD.

It would take approximately 1 work hour per airplane to accomplish the proposed inspection at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $132,000, or $60 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. However, for affected airplanes within the period under the warranty agreement, the FAA has been advised that manufacturer has committed previously to its customers that it will bear the cost of replacement parts. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Bombardier, Inc. (Formerly Canadair): Docket 2002–NM–112–AD.

Applicability: Model CL–600–2B19 airplanes, serial numbers 7003 through 7573 inclusive, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been

modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent peeling of the paint and markings from the dust covers for the flight data recorder (FDR) and cockpit voice recorder (CVR) equipment due to hydraulic mist from the actuators, which could result in the inability to identify the FDR and CVR equipment in the event of an accident-recovery mission, accomplish the following:

One-Time Inspection and Corrective Actions

(a) For airplanes having serial numbers 7003 through 7067 inclusive, and 7069 through 7570 inclusive: Within 18 months after the effective date of this AD, do a general visual inspection of the dust cover for the FDR to determine if a chemical agent resistant coating has been applied to the dust cover. Dust covers that have had a protective coating applied are identified through the markings specified in the service bulletin. Do the inspection per Part A of the Accomplishment Instructions of Canadair Regional Jet Service Bulletin 601R–31–026, dated October 12, 2001; excluding the Service Bulletin Comment Sheet—Facsimile Reply Sheet and the CRJ 100/200 Service Bulletin Compliance Facsimile Reply Sheet.

(1) If specified markings are present, no further action is required by this paragraph.

(2) If specified markings are not present, before further flight, do the action required by either paragraph (a)(2)(i) or (a)(2)(ii) of this AD:

(i) Rework the FDR dust cover per Part B of the Accomplishment Instructions of the service bulletin; or

(ii) Replace the FDR dust cover with a new dust cover per Part C of the Accomplishment Instructions of the service bulletin.

Note 2: For the purposes of this AD, a general visual inspection is defined as: "A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made from within touching distance unless otherwise specified. A mirror may be necessary to enhance visual access to all exposed surfaces in the inspection area. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked."

(b) For airplanes having serial numbers 7003 through 7067 inclusive, and 7069 through 7573 inclusive: Within 18 months after the effective date of this AD, do a general visual inspection of the CVR dust cover to determine if a chemical agent resistant coating has been applied to the dust cover. Dust covers that have had a protective coating applied are identified through the markings specified in the service bulletin. Do the inspection per Part A of the Accomplishment Instructions of Bombardier Canadair Regional Jet Service Bulletin 601R–23–056, dated October 12, 2001; excluding Comment Sheet—Facsimile Reply Sheet, and CRJ 100/200 Service Bulletin Compliance Facsimile Reply Sheet.

(1) If specified markings are present, no further action is required by this paragraph.

(2) If specified markings are not present, before further flight, do the action required by either paragraph (b)(2)(i) or (b)(2)(ii) of this AD:

(i) Rework the CVR dust cover per Part B of the Accomplishment Instructions of the service bulletin; or

(ii) Replace the CVR dust cover with a new dust cover per Part C of the Accomplishment Instructions of the service bulletin.

Parts Installation

(c) As of the effective date of this AD, no person shall install an FDR dust cover, part number (P/N) 074E0198–00; or a CVR dust cover, P/N 075E0604–00 or 9300A218S; unless the rework action required by paragraphs (a)(2)(i) and (b)(2)(i) of this AD, as applicable, has been done.

Alternative Methods of Compliance

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, New York Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, New York ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the New York ACO.

Special Flight Permits

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 4: The subject of this AD is addressed in Canadian airworthiness directive CF–2001–45, dated December 3, 2001.

Issued in Renton, Washington, on January 23, 2003.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service

[FR Doc. 03–2098 Filed 1–29–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–269–AD]

RIN 2120–AA64

Airworthiness Directives; Dassault Model Falcon 900 EX and Mystere-Falcon 900 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Dassault Model Falcon 900 EX and Mystere-Falcon 900 series airplanes. This proposal would require installing an attachment support assembly for the fire extinguishing piping in the baggage compartment. This action is necessary to prevent distortion of the fire extinguishing discharge nozzle as a result of the nozzle not being secure, which could result in poor diffusion of the fire extinguishing agent in the event of a fire in the baggage compartment. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by March 3, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–269–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2001–NM–269–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Dassault Falcon Jet, PO Box 2000, South Hackensack, New Jersey 07606. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2125; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2001–NM–269–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–269–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified the FAA that an unsafe condition may exist on certain Dassault Model Falcon 900 EX and Model Mystere-Falcon 900 series airplanes. The DGAC advises of a reported case where, after the fire extinguisher for the baggage compartment discharged, the discharge nozzle for the fire extinguishing piping through which the fire extinguishing agent passes, was found damaged. Distortion of the discharge nozzle occurred at the bulkhead feedthrough at frame 30 because the nozzle was not secure. This condition, if not corrected, could result in poor diffusion of the fire extinguishing agent in the event of a fire in the baggage compartment.

Explanation of Relevant Service Information

Dassault has issued Service Bulletins F900EX–142 (for Model Falcon 900 EX series airplanes) and F900–279 (for Model Mystere-Falcon 900 series airplanes), both dated June 7, 2001, including Service Bulletins Compliance page, which describe procedures for installing an attachment support assembly for the fire extinguishing piping in the baggage compartment, and submitting a compliance report to Dassault. Accomplishment of the actions specified in the applicable service bulletin is intended to adequately address the identified unsafe condition. The DGAC classified these service bulletins as mandatory and issued French airworthiness directive 2001–192–034(B), dated May 16, 2001, in order to assure the continued airworthiness of these airplanes in France.

FAA's Conclusions

These airplane models are manufactured in France and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the applicable service bulletin described previously.

Differences Between Proposed Rule and Service Bulletin

Operators should note that, although the Accomplishment Instructions of the referenced service bulletin describe procedures for completing and submitting a compliance report, this proposed AD would not require such reporting.

Cost Impact

The FAA estimates that 150 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 3 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Required parts would be provided by the manufacturer at no cost to the operators. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $27,000, or $180 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this proposed AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory

Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Dassault Aviation: Docket 2001–NM–269–AD.

Applicability: Model Falcon 900 EX and Mystere-Falcon 900 series airplanes, certificated in any category; excluding those airplanes on which the modification specified in Dassault Service Bulletin F900EX–142 (Modification F900 EX M3368), or Dassault Service Bulletin F900–279 (Modification MF900 M3368); both dated June 7, 2001; as applicable; has been done.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent distortion of the fire extinguishing discharge nozzle as a result of the nozzle not being secure, which could result in poor diffusion of the fire extinguishing agent in the event of a fire in the baggage compartment, accomplish the following:

Installation

(a) Within 7 months or 330 flight hours after the effective date of this AD, whichever comes first, install an attachment support assembly for the fire extinguishing piping in the baggage compartment per paragraphs 2.A. through 2.C. of the Accomplishment Instructions of Dassault Service Bulletin F900EX–142 (for Model Falcon 900 EX series airplanes); or Dassault Service Bulletin F900–279 (for Model Mystere-Falcon F900 series airplanes); both dated June 7, 2001; including Service Bulletins Compliance page; as applicable.

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 3: The subject of this AD is addressed in French airworthiness directive 2001–192–034(B), dated May 16, 2001.

Issued in Renton, Washington, on January 24, 2003.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–2148 Filed 1–29–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2002–13994; Airspace Docket No. 02–AAL–10]

RIN 2120–AA66

Proposed Establishment of Colored Federal Airways; AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to establish two colored Federal airways, Amber–5 (A–5) and Blue 1 (B–1), in Alaska. This action would add to the instrument flight rules (IFR) airway and route structure in Alaska. The FAA is taking this action to enhance safety and the management of aircraft operations in Alaska.

DATES: Comments must be received on or before March 17, 2003.

ADDRESSES: Send comments on this proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2002–13994/Airspace Docket No. 02–AAL–10, at the beginning of your comments.

You may also submit comments on the Internet at *http://dms.dot.gov*. You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division, Federal Aviation Administration, 222 West 7th Avenue, #14, Anchorage, AK 99533.

FOR FURTHER INFORMATION CONTACT: Ken McElroy, Airspace and Rules Division, ATA–400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. FAA–2002–13994/Airspace Docket No. 02–AAL–10." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified

closing date for comments will be considered before taking action on the proposed rule.

The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

An electronic copy of this document may be downloaded through the Internet at *http://dms.dot.gov*. Recently published rulemaking documents can also be accessed through the FAA's web page at *http://www.faa.gov* or the Superintendent of Document's web page at *http://www.access.gpo.gov/nara*.

Additionally, any person may obtain a copy of this notice by submitting a request to the Federal Aviation Administration, Office of Air Traffic Airspace Management, ATA–400, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–8783. Communications must identify both docket numbers for this notice. Persons interested in being placed on a mailing list for future NPRM's should contact the FAA's Office of Rulemaking, (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

The FAA is proposing to amend Title 14 Code of Federal Regulations (CFR) part 71 (part 71) by establishing two colored Federal airways, A–5 and B–1, in Alaska. Presently there are several uncharted nonregulatory routes that use the same routing as the proposed colored Federal airways. These uncharted nonregulatory routes are used daily by commercial and general aviation aircraft. However, the air traffic control (ATC) management of aircraft operations is limited on these routes. The FAA is proposing to convert these uncharted nonregulatory routes to colored Federal airways. This action would add to the IFR airway and route structure in Alaska. The routes conversion would provide an airway structure to support existing commercial services in Alaska.

Additionally, adoption of these Federal airways would: (1) Provide pilots with minimum en route altitudes and minimum obstruction clearance altitudes information; (2) establish controlled airspace thus eliminating some of the commercial IFR operations in uncontrolled airspace; and (3) improve the management of air traffic operations and thereby enhance safety.

Colored Federal airways are published in paragraph 6009 of FAA Order 7400.9K dated August 30, 2002, and effective September 16, 2002, which is incorporated by reference in 14 CFR Section 71.1. The colored Federal airways listed in this document would be published subsequently in the order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the FAA Order 7400.9K, Airspace Designations and Reporting Points, dated August 30, 2002, and effective September 16, 2002, is amended as follows:

Paragraph 6009(c)—Amber Federal Airways

* * * * *

A–5 [New]

From Ambler, AK, NDB to Evansville, AK, NDB.

* * * * *

Paragraph 6009(d)—Blue Federal Airways

* * * * *

B–1 [New]

From Woody Island, AK, NDB to Iliamna, AK, NDB.

* * * * *

Issued in Washington, DC, on January 23, 2003.

Reginald C. Matthews,

Manager, Airspace and Rules Division.

[FR Doc. 03–2189 Filed 1–29–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2002–14010; Airspace Docket No. 02–AAL–09]

RIN 2120–AA66

Proposed Modification and Revocation of Federal Airways; AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to revoke two Very High Frequency Omnidirectional Range (VOR) Federal airways, Victor 307 and 362 (V–307 and V–362); and revise Victor 317 (V–317) and Colored Federal Airway Amber 15 (A–15) in Alaska. The FAA is proposing this action due to the decommissioning of the McInnes Nondirectional Radio Beacon (NDB), Canada.

DATES: Comments must be received on or before March 17, 2003.

ADDRESSES: Send comments on this proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2002–14010/ Airspace Docket No. 02–AAL–9, at the beginning of your comments.

You may also submit comments on the Internet at *http://dms.dot.gov*. You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the

Department of Transportation NASSIF Building at the above address.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division, Federal Aviation Administration, 222 West 7th Avenue; #14, Anchorage, AK 99533.

FOR FURTHER INFORMATION CONTACT: Ken McElroy, Airspace and Rules Division, ATA–400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. FAA–2002–14010/Airspace Docket No. 02–AAL–09." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

An electronic copy of this document may be downloaded through the Internet at *http://dms.dot.gov*. Recently published rulemaking documents can also be accessed through the FAA's web page at *http://www.faa.gov* or the Superintendent of Document's web page at *http://www.access.gpo.gov/nara*.

Additionally, any person may obtain a copy of this notice by submitting a request to the Federal Aviation Administration, Office of Air Traffic Airspace Management, ATA–400, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–8783. Communications must identify both docket numbers for this notice. Persons interested in being placed on a mailing list for future NPRM's should call the FAA's Office of Rulemaking, (202) 267–9677, for a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

Background

In November 2002, the FAA was notified by NAV Canada that the continued operation of the Canadian Coast Guard's McInnes Island NDB was in jeopardy and that action was needed to reconfigure airways using the McInnes NDB.

The Proposal

The FAA is proposing to amend Title 14 Code of Federal Regulations (14 CFR) part 71 (part 71) that inpart revokes two VOR Federal Airways (V–307 and V362); and modifies VOR Federal Airway V–317, and Colored Federal Airway A–15, in Alaska. The FAA is proposing this action in preparation for the decommissioning of the McInnes Nondirectional Radio Beacon (NDB), Canada.

Colored Federal airways and Alaska VOR Federal airways are published in paragraphs 6009© and paragraph 6010(b), respectively, of FAA Order 7400.9K dated August 30, 2002, and effective September 16, 2002, which is incorporated by reference in 14 CFR Section 71.1. The colored Federal airway and Alaskan VOR Federal airways listed in this document would be published subsequently in the order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.9K, Airspace Designations and Reporting Points, dated August 30, 2002, and effective September 16, 2002, is amended as follows:

Paragraph 6010(b) Alaskan VOR Federal Airways

* * * * *

V–307 [Revoke]

* * * * *

V–362 [Revoke]

* * * * *

V–317 [Revised]

From Vancouver, BC, Canada via Comox, BC, Canada; Port Hardy, BC, Canada; Sandspit, BC, Canada; Annette Island, AK; Level Island, AK; Sisters Island, AK; to INT Sisters Island 272° and Yakutat, AK, 139° radials. The airspace within Canada is excluded.

* * * * *

Paragraph 6009(c)—Amber Federal Airways

* * * * *

A–15 [Revised]

From Port Hardy, BC, Canada, NDB, via Nichols, AK, NDB; Sumner Strait, AK, NDB; Coghlan Island, AK, NDB; Haines, AK, NDB; Burwash, YT, Canada, NDB; Nabesna, AK, NDB; to Delta Junction, AK, NDB. From Chena, AK, NDB via Chandalar Lake, AK, NDB; Put River, AK, NDB. The airspace within Canada is excluded.

* * * * *

Issued in Washington, DC, January 23, 2003.

Reginald C. Matthews,

Manager, Airspace and Rules Division.

[FR Doc. 03–2190 Filed 1–29–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 973

[FHWA Docket No. FHWA–99–4968]

RIN 2125–AE53

Federal Lands Highway Program; Management Systems Pertaining to the Bureau of Indian Affairs and the Indian Reservation Roads Program

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of public informational meetings.

SUMMARY: On January 8, 2003, at 68 FR 1105, the FHWA published a notice of proposed rulemaking (NPRM) proposing Management Systems Pertaining to the Bureau of Indian Affairs (BIA) and the Indian Reservation Roads (IRR) Program. The NPRM proposed rulemaking would require the BIA, in consultation with the Tribes, to develop and implement nationwide pavement, bridge, and safety management systems. In addition, the NPRM proposed to require the BIA and the FHWA to develop criteria to determine when congestion management systems are required for BIA or Tribal transportation facilities. The FHWA will hold a series of seven public meetings to provide more information to the public regarding this NPRM. These meetings will be used to provide an overview of the rulemaking process, particularly regarding how to submit comments, and to describe FHWA's purpose and intent in developing the proposed rules. Tribal representatives are encouraged to attend these meetings, and to submit suggestions and comments on the proposed rulemaking to the docket.

DATES: The meetings will be held on Thursday, February 6, 2003; two meeting sites for Tuesday, February 11, 2003; Thursday, February 13, 2003; two meeting sites for Wednesday, February 19, 2003; and one meeting on Thursday, February 20, 2003.

ADDRESSES: The February 6, 2003, meeting will take place at 9 a.m. at the Boardwalk Hotel, 3750 Las Vegas Boulevard South, Las Vegas, NV 89109 (this meeting will be held concurrently with a previously scheduled meeting of the Transportation Equity Act for the 21st Century Negotiated Rulemaking Committee); one of the February 11, 2003, meetings will take place at 1 p.m. in the Borealis Room of the Wedgewood Resort, 212 Wedgewood Drive, Fairbanks, AK 99701 (this is a change from the Anchorage, AK location listed in the January 8, 2003, NPRM); the other February 11, 2003, meeting will take place at 2 p.m. at the Indian Pueblo Cultural Center, 2401 12th St. N.W., (1 block north of I–40), Albuquerque, NM 87104; the February 13, 2003, meeting will take place at 9 a.m. at the U.S. Department of the Interior, Bureau of Indian Affairs, Federal Building Auditorium located at 911 N.E. 11th Avenue, Portland, OR 97232; one of the February 19, 2003, meetings will take place at 9 a.m. at the U.S. Department of the Interior, Bureau of Indian Affairs, Bishop Henry Whipple Federal Building, Room G110, One Federal Drive, Fort Snelling, MN 55111 (Minneapolis, MN area); the other February 19, 2003, meeting will take place at 9 a.m. at the U.S. Department of the Interior, Bureau of Indian Affairs, 711 Stewarts Ferry Pike, Nashville, TN 37214; the February 20, 2003, meeting will take place at 2 p.m. at the Oklahoma State University-Tulsa Campus in North Hall, Room 150, 700 N. Greenwood, Tulsa, OK 74016.

FOR FURTHER INFORMATION, CONTACT: Mr. Bob Bini, Federal Lands Highway, HFPD–2, (202) 366–6799, or Ms. Cynthia Hatley, Federal Lands Highway, HFPD–2, (202) 493–0426, FHWA, 400 Seventh St., SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION: Additional information is also available from the following Tribal Technical Assistance Program Centers for the specified meeting locations:

Las Vegas, NV—Mr. Evan Hong, NCAI TTAP, 626–350–4446; Fairbanks, AK—Mr. Jeff Harman, NW and Alaska TTAP, 800–399–6376; Albuquerque, NM—Mr. Ron Hall, CSU TTAP, 800–262–7623; Portland, OR—Mr. Dennis Frey, NW and Alaska TTAP, 888–944–5454; Fort Snelling, MN (Minneapolis, MN area)—Mr. Dennis Trusty, Northern Plains TTAP, 701–255–3285; Nashville, TN—Mr. Robert Gagnon, MTU TTAP, 906–487–3164; and Tulsa, OK—Mr. James Selfe, OSU—TTAP, 405–744–6049.

Electronic Access

An electronic copy of this document may be downloaded by using a computer, modem, and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202) 512–1661. Internet users may reach the Office of the Federal Register's Home page at: *http://www.archives.gov* and the Government Printing Office's Web site at: *http://www.access.gpo.gov.*

Authority: 23 U.S.C. 204, 315, 42 U.S.C. 7410 *et seq.*; 49 CFR 1.48.

Issued on: January 28, 2003.

Mary E. Peters,

Federal Highway Administrator.

[FR Doc. 03–2355 Filed 1–28–03; 5:01 pm]

BILLING CODE 4910–22–P

LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 260

[Docket No. 2001–1 CARP DSTRA2]

Determination of Reasonable Rates and Terms for the Digital Performance of Sound Recordings by Preexisting Subscription Services

AGENCY: Copyright Office, Library of Congress.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Copyright Office is requesting comment on proposed regulations that set rates and terms for the use of sound recordings by preexisting subscription services for the period January 1, 2002 through December 31, 2007.

DATES: Comments are due no later than March 3, 2003.

ADDRESSES: An original and five copies of any comment shall be delivered by hand to: Office of the General Counsel, Copyright Office, James Madison Building, Room LM–403, First and Independence Avenue, SE. Washington, DC; or mailed to: Copyright Arbitration Royalty Panel (CARP), P.O. Box 70977, Southwest Station, Washington, DC 20024–0977.

FOR FURTHER INFORMATION CONTACT: David O. Carson, General Counsel, or Tanya M. Sandros, Senior Attorney, Copyright Arbitration Royalty Panel, P.O. Box 70977, Southwest Station, Washington, DC 20024. Telephone: (202) 707–8380. Telefax: (202) 252–3423.

SUPPLEMENTARY INFORMATION:

Background

Section 106(6) of the Copyright Act, title 17 of the United States Code, gives a copyright owner of sound recordings an exclusive right to perform the copyrighted works publicly by means of a digital audio transmission. This right is limited by section 114(d), which allows certain non-interactive digital audio services to make digital transmissions of a sound recording under a compulsory license, provided that the services pay a reasonable royalty fee and comply with the terms of the license. Moreover, these services may make any necessary ephemeral

reproductions to facilitate the digital transmission of the sound recording under a second license set forth in section 112(e) of the Copyright Act.

The procedure for setting the rates and terms for these two statutory licenses is a two-step process. 17 U.S.C. 112(e)(3),(4) and (6) and 17 U.S.C. 114(f)(1). The first step requires the Librarian of Congress to initiate a voluntary negotiation period to give interested parties an opportunity to determine the applicable rates and terms through a less formal process. However, if the parties are unable to reach an agreement during this period, sections 112(e)(4) and 114(f)(1)(B) directs the Librarian of Congress to convene a three-person Copyright Arbitration Royalty Panel ("CARP") for the purpose of determining the rates and terms for the compulsory license upon receipt of a petition filed in accordance with 17 U.S.C. 803(a)(1).

The first proceeding to set rates and terms for the section 114 license for preexisting subscription services began in 1995 and concluded with the issuance of a final rule and order by the Librarian of Congress on May 8, 1998. *See* 63 FR 25394 (May 8, 1998). The parties in that proceeding numbered four: the Recording Industry Association of America ("RIAA"); Digital Cable Radio Associates, now known as Music Choice; DMX Music, Inc. ("DMX"); and Muzak, L.P. ("Muzak").

Later that same year, Congress passed the Digital Millennium Copyright Act ("DMCA"), amending the section 114 statutory license to cover additional transmission services and extending the term of the existing section 114 license rate as it applies to preexisting subscription services [1] through December 31, 2001. The DMCA also created a new statutory license to allow for the making of ephemeral reproductions for the purpose of facilitating certain digital audio transmissions, including those made by preexisting subscription services.

In accordance with the time frame set forth in the law for the purpose of setting rates and terms for use of the section 114 license by preexisting services, the Copyright Office published a notice in the **Federal Register** on January 9, 2001. 66 FR 1700 (January 9, 2001). This notice initiated a six-month negotiation period the purpose of which was to provide an opportunity for interested parties to set rates and terms for use of the section 114 license as it applied to both the preexisting subscription services and the preexisting satellite digital audio radio services. Unfortunately, no agreement was reached by the end of that period. Consequently, Music Choice and RIAA filed separate petitions with the Copyright Office, requesting that the Librarian of Congress convene a CARP to determine the rates and terms for both categories of preexisting services.

On November 13, 2001, the Copyright Office initiated the next phase of the rate adjustment proceeding with the publication of a notice in the **Federal Register** calling for Notices of Intent to Participate. 66 FR 58180 (November 13, 2001). Music Choice, DMX, Muzak, RIAA, the American Federation of Television and Radio Artists ("AFTRA"), the American Federation of Musicians of the United States and Canada ("AFM"), XM Satellite Radio, Inc., and Sirius Satellite Radio, Inc. filed the requisite notices with the Office, and the Office scheduled the 45-day precontroversy discovery period. Initially, it set the date for the filing of direct cases for December 2, 2002. Order in Docket No. 2001–1 CARP DSTRA2, dated September 12, 2002. However, at the request of the parties, the Office readjusted the schedule and set February 24, 2003, as the new date for the filing of direct cases. Order in Docket No. 2001–1 CARP DSTRA2, dated December 16, 2003. However, in light of a petition filed with the Copyright Office, a hearing may not be necessary to establish rates and terms for the use of sound recordings by the preexisting services.

Joint Petition for Adjustment of Rates and Terms Applicable to Preexisting Subscription Services

On January 17, 2003, RIAA, AFTRA, AFM, Music Choice, DMX Music, Inc. and Muzak, LLC (collectively, "Petitioners") filed a joint petition for adjustment of rates and terms for statutory licenses applicable to preexisting subscription services and a request for an immediate stay of the obligation to file direct cases on February 24, 2002.[2] Having reached agreement on the rates and terms for the use of sound recordings by preexisting services for the period January 1, 2002, through December 31, 2007, the petitioners request that the Office publish the proposed rates and terms for public comment in lieu of convening a CARP to determine the rates and terms for this period.

Pursuant to § 251.63(b) of title 37 of the Code of Federal Regulations, the Librarian can adopt the parties' proposed terms without convening a CARP, provided that the proposed terms are published in the **Federal Register** and no interested party with an intent to participate in the proceeding files a comment objecting to the proposed terms. In other words, unless there is an objection from a person with a significant interest in the proceeding who is prepared and eligible to participate in a CARP proceeding, the purpose of which is to adopt rates and terms for preexisting subscription services that use sound recordings to make digital audio transmissions pursuant to the section 112 and section 114 statutory licenses, the Librarian can adopt the rates and terms in the proposed settlement in final regulations without convening a CARP. This procedure to adopt negotiated rates and terms in the case where an agreement has been reached has been specifically endorsed by Congress.

> If an agreement as to rates and terms is reached and there is no controversy as to these matters, it would make no sense to subject the interested parties to the needless expense of an arbitration proceeding conducted under (section 114(f)(2) (1995)). Thus, it is the Committee's intention that in such a case, as under the Copyright Office's current regulations concerning rate adjustment proceedings, the Librarian of Congress should notify the public of the proposed agreement in a notice-and-comment proceeding and, if no opposing comment is received from a party with a substantial interest and an intent to participate in an arbitration proceeding, the Librarian of Congress should adopt the rates embodied in the agreement without convening an arbitration panel.
>
> S. Rep. No. 104–128, at 29 (1995)(citations omitted).

Accordingly, the Copyright Office is granting the joint petition and is publishing for public comment the proposed rates and terms embodied in the January 17, 2003, joint petition. Any party who objects to the proposed rates and terms set forth herein must file a written objection with the Copyright Office and an accompanying Notice of Intent to Participate, if the party has not already done so. The content of the written challenge should describe the party's interest in the proceeding, the proposed rule the party finds objectionable, and the reasons for the challenge. If no comments are received, the regulations shall become final upon

[1] In the DMCA, Congress recognized two types of subscription services that were either in operation on or before July 31, 1998, or licensed by the Federal Communications Commission pursuant to a satellite digital audio radio service license on or before July 31, 1998. The former were designated as "preexisting subscription services" and the latter were termed a "preexisting satellite digital audio radio service." See 17 U.S.C. 114(j)(10) and (11).

[2] The request for an immediate stay of the petitioners' obligation to file direct cases on February 24, 2002, will be addressed in a separate order.

publication of a final rule, and shall cover the period from January 1, 2002, to December 31, 2007.

List of Subjects in 37 CFR Part 260

Copyright, Digital Audio Transmissions, Performance Right, Sound Recordings.

Proposed Regulation

In consideration of the foregoing, the Copyright Office proposes amending part 260 of 37 CFR as follows:

PART 260—USE OF SOUND RECORDINGS IN A DIGITAL PERFORMANCE

1. The authority citation for part 260 continues to read as follows:

Authority: 17 U.S.C. 114, 801(b)(1)

2. The heading of Part 260 is revised as follows:

PART 260—RATES AND TERMS FOR PREEXISTING SUBSCRIPTION SERVICES' DIGITAL TRANSMISSIONS OF SOUND RECORDINGS AND THE MAKING OF EPHEMERAL PHONORECORDS

3. Section 260.1 is revised to read as follows:

§ 260.1 General

(a) This part 260 establishes rates and terms of royalty payments for the public performance of sound recordings by nonexempt preexisting subscription services in accordance with the provisions of 17 U.S.C. 114(d)(2), and the making of ephemeral phonorecords in connection with the public performance of sound recordings by nonexempt preexisting subscription services in accordance with the provisions of 17 U.S.C. 112(e).

(b) Upon compliance with 17 U.S.C. 114 and the terms and rates of this part, nonexempt preexisting subscription services may engage in the activities set forth in 17 U.S.C. 114(d)(2).

(c) Upon compliance with 17 U.S.C. 112(e) and the terms and rates of this part, nonexempt preexisting subscription services may engage in the activities set forth in 17 U.S.C. 112(e) without limit to the number of ephemeral phonorecords made.

(d) For purposes of this part, *Licensee* means any preexisting subscription service as defined in 17 U.S.C. 114(j)(11).

4. Section 260.2 is amended as follows:

a. By revising the section heading;

b. By revising paragraphs (a) and (b);

c. By redesignating paragraph (c) as paragraph (e), and adding a new paragraph (c);

d. By redesignating paragraph (d) as paragraph (f), and adding a new paragraph (d);

e. In redesignated paragraph (e)(1)(ii) by adding "a" before "recognized advertising agency";

f. In redesignated paragraphs (e)(1)(iii) and (vi), by removing "Programming Service" and adding "programming service" in its place; and

g. In redesignated paragraphs (e)(1)(viii) and (e)(2), by removing "(c)" and adding "(e)" in its place.

The additions and revisions to § 260.2 read as follows:

§ 260.2 Royalty fees for the digital performance of sound recordings and the making of ephemeral phonorecords by preexisting subscription services.

(a) Commencing January 1, 2002 and continuing through December 31, 2003, a Licensee's monthly royalty fee for the public performance of sound recordings pursuant to 17 U.S.C. 114(d)(2) and the making of any number of ephemeral phonorecords to facilitate such performances pursuant to 17 U.S.C. 112(e) shall be 7.0% of such Licensee's monthly gross revenues resulting from residential services in the United States.

(b) Commencing January 1, 2004 and continuing through December 31, 2007, a Licensee's monthly royalty fee for the public performance of sound recordings pursuant to 17 U.S.C. 114(d)(2) and the making of any number of ephemeral phonorecords to facilitate such performances pursuant to 17 U.S.C. 112(e) shall be 7.25% of such Licensee's monthly gross revenues resulting from residential services in the United States.

(c) Commencing in the year 2003 and continuing through the year 2007, each Licensee making digital performances of sound recordings pursuant to 17 U.S.C. 114(d)(2) and ephemeral phonorecords pursuant to 17 U.S.C. 112(e) shall make an advance payment of $100,000 per year, payable no later than January 20th of each year; Provided, however, that for 2003, the annual advance payment shall be due on [the 20th day following the month in which these rates and terms are published in the **Federal Register** notice as a final rule]. The annual advance payment shall be nonrefundable, but the royalties due and payable for a given year or any month therein under paragraphs (a) and (b) of this section shall be recoupable against the annual advance payment for such year; Provided, however, that any unused annual advance payment for a given year shall not carry over into a subsequent year.

(d) A Licensee shall pay a late fee of 1.5% per month, or the highest lawful rate, whichever is lower, for any payment received after the due date. Late fees shall accrue from the due date until payment is received.

* * * * *

5. Section 260.3 is amended as follows:

a. In paragraph (b), by removing "twentieth" and adding "forty-fifth" in its place;

b. By revising paragraphs (d) and (e); and

c. By adding a new paragraph (f).

The additions and revisions to § 260.3 read as follows:

§ 260.3 Terms for making payments of royalty fees.

* * * * *

(d) The designated agent may deduct from any of its receipts paid by Licensees under § 260.2, prior to the distribution of such receipts to any person or entity entitled thereto, the reasonable costs permitted to be deducted under 17 U.S.C. 114(g)(3); Provided, however, that the parties entitled to receive royalty payments according to the provisions set forth at 17 U.S.C. 114(g)(1) & (2) who have authorized a designated agent may agree to deduct such other costs agreed to by such other parties and the designated agent.

(e) Until such time as a new designation is made, SoundExchange, which initially is an unincorporated division of the Recording Industry Association of America, Inc., shall be the agent receiving royalty payments and statements of account and shall continue to be designated if it should be separately incorporated.

(f) A Licensee shall make any payments due under § 260.2(a) for digital transmissions or ephemeral phonorecords made between January 1, 2002, and [last day of the month in which these rates and terms are published in the **Federal Register** as a final rule] 2003, to the Designated Agent, less any amounts previously paid by such period to the Recording Industry Association of America, Inc., or SoundExchange by [the 45th day following the month in which these rates and terms are published in the **Federal Register** notice as a final rule].

6. Section 260.4 is amended as follows:

a. In paragraphs (a) and (b), by removing "nonexempt subscription digital transmission service" in each place it appears and adding "nonexempt preexisting subscription service" in its place; and

b. By revising paragraphs (d)(1) and (e).

The revisions to § 260.4 read as follows:

§ 260.4 Confidential information and statements of account.

* * * * *

(d)(1)Those employees, agents, consultants and independent contractors of the designated agent, subject to an appropriate confidentiality agreement, who are engaged in the collection and distribution of royalty payments hereunder and activities directly related hereto, who are not also employees or officers of a sound recording copyright owner or performing artist, and who, for the purpose of performing such duties during the ordinary course of employment, require access to the records; and

* * * * *

(e) The designated agent or any person identified in paragraph (d) of this section shall implement procedures to safeguard all confidential financial and business information, including, but not limited to royalty payments, submitted as part of the statements of account, using a reasonable standard of care, but no less than the same degree of security used to protect confidential financial and business information or similarly sensitive information belonging to the designated agent or such person.

* * * * *

§ 260.5 [Amended]

7. Section 260.5(b) is amended by removing "nonexempt subscription digital transmission service" and adding "nonexempt preexisting subscription service" in its place.

§ 260.6 [Amended]

8. Section 260.6(g) is amended by removing "copyright owners".

§ 260.7 [Amended]

9. Section 260.7 is amended by removing "the cost of the administration of the collection and distribution of the royalty fees' and adding "any costs deductible under 17 U.S.C. 114(g)(3)" in its place.

Dated: January 24, 2003.

David O. Carson,

General Counsel.

[FR Doc. 03–2081 Filed 1–29–03; 8:45 am]

BILLING CODE 1410–33–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 216

[Docket No. 020603140–3010–02 , I.D. 050102G]

RIN 0648–AQ00

Regulations Governing the Taking and Importing of Marine Mammals; Eastern North Pacific Southern Resident Killer Whales

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: Following a review of the status of the eastern North Pacific Southern Resident stock of killer whales (*Orcinus orca*), NMFS has determined that the stock is below its Optimal Sustainable Population (OSP) and, therefore, proposes to designate the Southern Resident stock of killer whales as depleted under the Marine Mammal Protection Act (MMPA). NMFS requests that interested parties submit comments on this proposal and on potential conservation measures that may benefit these whales.

DATES: Information and comments must be received by March 31, 2003.

ADDRESSES: Information and comments should be submitted to Chief, Protected Resources Division, NMFS, 525 NE Oregon Street, Suite 500, Portland, OR 97232. Alternatively, comments may also be submitted via the Internet (*see* Electronic Access) or by facsimile (fax) to (503) 230–5435.

FOR FURTHER INFORMATION CONTACT: Mr. Garth Griffin, Northwest Regional Office, NMFS, Portland, OR (503) 231–2005, or Dr. Thomas Eagle, Office of Protected Resources, NMFS, Silver Spring, MD (301) 713–2322, ext. 105.

SUPPLEMENTARY INFORMATION:

Electronic Access

A list of the references used in this notice and other information related to the status of this stock of killer whales is available on the Internet at *http://www.nwr.noaa.gov/mmammals/whales/srkw.htm*. Comments may be submitted at the Internet address above or at the following: *http://www.nmfs.noaa.gov/ibrm*.

Background

Section 3(1)(A) of the MMPA (16 U.S.C. 1362(1)(A)) defines the term, "depletion" or "depleted", as any case in which "the Secretary, after consultation with the Marine Mammal Commission and the Committee of Scientific Advisors on Marine Mammals ... determines that a species or population stock is below its optimum sustainable population [(OSP)]." Section 3(9) of the MMPA defines OSP "...with respect to any population stock, [as] the number of animals which will result in the maximum productivity of the population or the species, keeping in mind the carrying capacity [(K)] of the habitat and the health of the ecosystem of which they form a constituent element." NMFS' regulations at 50 CFR 216.3 clarify the definition of OSP as a population size which falls within a range from the population level of a given species or stock that is the largest supportable within the ecosystem (carrying capacity [K]) to the population level that results in the maximum net productivity level (MNPL). MNPL is the greatest net annual increment (increase) in population numbers resulting from additions due to reproduction less losses due to natural mortality.

A population stock below its MNPL is, by definition, below OSP and, thus, would be considered depleted under the MMPA. Historically, the estimated MNPL has been expressed as a range of values, generally 50 to 70 percent of K (42 FR 12010, March 1, 1977). In 1977, the midpoint of this range (60 percent of K) was used to determine whether dolphin stocks in the eastern tropical Pacific Ocean were depleted under the MMPA (42 FR 64548, December 27, 1977). The 60–percent-of-K value was used in the final rule governing the taking of marine mammals incidental to commercial tuna purse seine fishing in the eastern tropical Pacific Ocean (45 FR 72178, October 31, 1980) and has been used since that time for other status reviews under the MMPA. For stocks of marine mammals, including killer whales, K is generally unknown. NMFS, therefore, has used the best estimate available of maximum historical abundance as a proxy for K.

Pursuant to section 115 of the MMPA (16 U.S.C. 1383b), NMFS published an advance notice of proposed rulemaking (ANPR) (67 FR 44132, July 1, 2002) which included a request for scientific information. The notice requested information, comments, and supporting documents on stock status, areas of significance to the stock, and any factors that may be causing the decline or impeding the recovery of the stock. The 60–day comment period on the ANPR closed on August 30, 2002. A summary of the public comments received and

the agency's responses is presented below.

Comments and Responses

NMFS received 51 comments in response to the ANPR. The majority of the comments were form letters that did not provide substantive information, but voiced general support for the listing of Southern Resident killer whales under the Endangered Species Act. Summaries and responses are provided below only for those comments that address the ANPR or the status of Southern Resident killer whales under the MMPA.

Comment 1: Fourteen commenters disagreed with NMFS' intent to make a depleted designation for Southern Resident killer whales, indicating that there is no advantage to designating the population as depleted since it would only make extinction more likely.

Response: NMFS is concerned about the recent trends of the Southern Resident killer whale stock. The stock has exhibited considerable fluctuations in the 28 years it has been surveyed. More significantly, stock size has declined approximately 20 percent over the past six years (1996–2002). The best available scientific information indicates that the stock is below its OSP, and, accordingly, NMFS proposes to designate Southern Resident killer whales as depleted. Advantages of a depleted designation and protections under the MMPA are included in the response to comment 2.

Comment 2: Nineteen commenters were neutral toward NMFS' intent to designate the Southern Resident stock as depleted and stated that the MMPA provides only weak or ineffective protection for killer whales.

Response: NMFS disagrees with the assertion that the MMPA provides weak or ineffective conservation benefits to killer whales. The MMPA generally prohibits the taking of these marine mammals and generally requires the preparation of a conservation plan for depleted stocks as soon as possible. NMFS may generally prescribe such regulations as are necessary and appropriate to carry out the purposes of the MMPA. In addition, NMFS may develop conservation or management measures to alleviate impacts on marine mammal habitat that NMFS determines may be causing the decline or impeding the recovery of strategic stocks, the definition of which includes depleted stocks. Moreover, depleted stock designation under the MMPA is a useful tool to elevate public awareness of Southern Resident killer whale status and threats and to highlight conservation opportunities for Federal, state, tribal and local agencies.

Comment 3: Three commenters supported NMFS' intent to designate the Southern Resident stock of killer whales as depleted and agreed that the available information indicates that the stock is below OSP.

Response: The agency agrees with the comment.

Comment 4: One commenter supported a depleted designation, but provided information suggesting that the MNPL for killer whales is higher than the 60–percent-of-K stated in the ANPR. The commenter suggested that the MNPL for Southern Resident killer whales is near 80 percent of K.

Response: The agency has insufficient information to determine reliably if the MNPL for Southern Resident killer whales is as high as 80 percent of K. The current stock abundance is below the MNPL that can be estimated from the best available information and indicates that the stock is depleted.

Comment 5: One commenter stated that the lower bound of the estimated historical abundance for this stock (140) is conservative and that the actual historical population size was likely to have been much higher.

Response: The maximum historical abundance of Southern Resident killer whales likely exceeded 140 whales; however, there is insufficient information to estimate historical abundance directly. Based on the best available scientific evidence, from available census and whale-capture data, the estimate of 140 whales should be considered conservative, and, thus, it was used only to establish a lower bound of estimates for maximum historical abundance.

Comment 6: One commenter stated that an accurate determination of the historical population size is needed before the population could be considered recovered.

Response: Under the MMPA, NMFS must base its determinations on the best scientific information available. Consequently, the agency will use the best information available in establishing goals in planning for the recovery of Southern Resident killer whales. NMFS lacks sufficient information to support a direct estimate of historical abundance. However, NMFS has used the best indirect scientific information available to estimate historical abundance and will continue to update that information in making future determinations regarding this stock.

Comment 7: One commenter encouraged NMFS to develop a conservation plan for the Southern Resident stock as soon as possible.

Response: If the Southern Resident stock is designated as depleted the agency will immediately begin such planning. Section 115(b)(1) of the MMPA (16 U.S.C. 1383b(b)(1)) provides that a conservation plan shall be prepared as soon as possible unless NMFS determines that such a plan would not promote the recovery of the stock.

Determination of "Population Stock" or "Stock"

Section 3(11) of the MMPA defines a population stock or stock as a group of marine mammals of the same species or smaller taxa in a common spatial arrangement, that interbreed when mature. Although this definition is in part a legal concept, stocks, species, and populations are biological concepts that must be defined on the basis of the best scientific data available.

The killer whale is the largest member of the dolphin family (Delphinidae), and the species is distributed throughout the world's oceans. Along the west coast of North America, killer whales occur along the entire Alaskan coast, in British Columbia and Washington inland waterways, and along the outer coasts of Washington, Oregon, and California. North Pacific killer whales have been classified into three forms, termed Residents, Transients, and Offshore whales. All three of these forms are currently classified as the same biological species, O. orca. The three forms vary in morphology, ecology, behavior, group size, social organization, acoustic repertoire, and genetic characteristics. Behavioral evidence suggests that Offshore and Transient groups rarely interact with the Resident pods (pods are close-knit family groups ranging from 10 to 70 whales). Although the Transient form overlaps extensively in range with the Resident form, genetic evidence suggests that the two forms do not interbreed. Furthermore, distinct feeding habits exist, with Transient killer whales primarily preying on other marine mammals and Residents primarily feeding on fishes. Little is known about the feeding habits of the Offshore form.

Specific stock definitions for west coast killer whales are provided in the U.S. Pacific Marine Mammal Stock Assessments (Carretta et al. 2001) and include consideration of data on association patterns, acoustics, movements, genetic differences and potential fishery interactions. Five killer whale stocks are recognized within the Pacific U.S. exclusive economic zone: 1) the eastern North Pacific Northern Resident stock; 2) the eastern North

Pacific Southern Resident stock; 3) the eastern North Pacific Transient stock; 4) the eastern North Pacific Offshore stock; and 5) the Hawaiian stock. Eastern North Pacific Southern Residents occur in the inland waterways of southern British Columbia and Washington, including the Georgia Strait, the Strait of Juan de Fuca, and Puget Sound.

Southern Resident killer whales include members of 3 pods of killer whales (J, K, and L pods). These whales have been intensively studied, particularly by the Center for Whale Research, and all members of each pod have been identified. Ongoing research efforts include descriptions and photographs of new calves, and these animals are observed regularly as long as they remain in the population.

Determination as Depleted Under the MMPA

There are no empirical estimates of the historical stock size for Southern Resident killer whales; however, NMFS examined indirect evidence to derive an estimate of historical abundance for the population. A minimum historical abundance of 140 whales was derived by combining the total abundance based upon the original 1974 census population (71) with the estimated number of animals that were removed or died (68) during live capture operations for display conducted in the 1960's and early 1970's (67 FR 44132, 44133, July 1, 2002). The number of animals that may have been killed by shooting or other human interactions is unknown but, based on anecdotal evidence, may have been greater than zero. Additionally, a comparison of genetic diversity with the larger Northern Resident killer whale stock (214 whales) indicates that the Southern Resident stock may have been of similar size in the recent past (Barrett-Lennard, L.G. and Ellis, G.M. 2001 and NMFS 2002). Therefore, the best available scientific information suggests a historical abundance of approximately 140 to 200 whales.

The abundance of the Southern Resident stock has declined by approximately 20 percent over the past 6 years (1996–2002)(NMFS 2002). The true K and MNPL are unknown for Southern Resident killer whales. Using an estimated range of historical stock size of 140–200 whales as a proxy for K, the estimated MNPL for the Southern Resident stock would be 84–120 whales (i.e., 60 percent of 140–200). A more complete discussion of the estimated historical stock size can be found in the ANPR referenced above. The 2002 abundance of 80 Southern Resident killer whales (Center for Whale Research, 2002 Orca Survey) is below the lower bound of the estimated MNPL range (84) for the stock. The current population size meets the statutory definition of a depleted stock. NMFS recognizes that the current population size is very near the estimated lower bound of MNPL for this stock but is proposing this risk averse approach in light of the recent declining trend. Accordingly, NMFS has initiated consultation with the Marine Mammal Commission and has received initial support for the proposed action. Therefore, based on the best scientific information available, NMFS proposes to designate this stock as depleted under the MMPA.

Information Solicited

NMFS is soliciting comments on the proposed designation of this stock as depleted under the MMPA and is particularly interested in the historical abundance of the eastern North Pacific Southern Resident stock. The agency is also interested in: areas of ecological significance (mating, rearing, resting, feeding) to the eastern North Pacific Southern Resident stock; impacts that may be causing the decline or impeding the recovery of the stock; potential conservation measures that may be useful in alleviating those impacts and rebuilding the stock; and the potential economic impacts and the potential biological benefits of alternative conservation measures. It is requested that data, information, and comments be accompanied by: (1) supporting documentation such as maps, logbooks, bibliographic references, personal notes, or reprints of pertinent publications; and (2) the name of the person submitting the data, their address, and any association, institution, or business that the person represents.

Public Meetings

If Southern Resident killer whales are designated as depleted, NMFS will hold public meetings to define the scope and develop the content for a conservation plan. Dates, addresses, and times of the meetings would be announced in the preamble of the final rule.

References

A complete list of all cited references is available via the Internet (*see* Electronic Access) or upon request (*see* **ADDRESSES**).

Classification

This proposed rule has been determined to be not significant for the purposes of Executive Order 12866. Depletion designations under the MMPA are similar to ESA listing decisions, which are exempt from the requirement to prepare an environmental assessment or environmental impact statement under the National Environmental Policy Act. *See* NOAA Administrative Order 216–6.03(e)(1). Thus, NMFS has determined that the proposed depletion designation of this stock under the MMPA is exempt from the requirements of the National Environmental Policy Act of 1969, and an Environmental Assessment or Environmental Impact Statement is not required.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities as follows: "The MMPA imposes a general moratorium on the taking of marine mammals. This proposed rule would designate the Eastern North Pacific Southern Resident stock of killer whales as depleted; however, this designation would not, by itself, place any additional restrictions on the public. Any subsequent restrictions placed on the public to protect these whales would be included in separate regulations, and appropriate analyses under the Regulatory Flexibility Act would be conducted during those rulemaking procedures." Hence, implementation of this proposed rule would not have a significant economic impact on a substantial number of small entities. As a result, no regulatory flexibility analysis for this rule has been prepared.

This proposed rule does not contain a collection-of-information requirement for purposes of the Paperwork Reduction Act of 1980. This rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under Executive Order 13132.

List of Subjects in 50 CFR Part 216

Administrative practice and procedure, Exports, Imports, Marine mammals, Transportation.

Dated: January 22, 2003.

Rebecca Lent,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 216 is proposed to be amended as follows:

PART 216–REGULATIONS GOVERNING THE TAKING AND IMPORTING OF MARINE MAMMALS

1. The authority citation for part 216 continues to read as follows:

Authority: 16 U.S.C. 1361 *et seq.* unless otherwise noted.

2. In § 216.15, a new paragraph (h) is added to read as follows:

§ 216.15 Depleted species.

* * * * *

(h) Eastern North Pacific Southern Resident stock of killer whales (*Orcinus orca*). The stock includes all resident killer whales in pods J, K, and L in the waters of, but not limited to, the inland waterways of southern British Columbia and Washington, including the Georgia Strait, the Strait of Juan de Fuca, and Puget Sound.

[FR Doc. 03–2031 Filed 1–29–03; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register
Vol. 68, No. 20
Thursday, January 30, 2003

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Summer Food Service Program for Children Program Reimbursement for 2003

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: This notice informs the public of the annual adjustments to the reimbursement rates for meals served in the Summer Food Service Program for Children (SFSP). These adjustments reflect changes in the Consumer Price Index and are required by the statute governing the Program. In addition, further adjustments are made to these rates to reflect the higher costs of providing meals in the States of Alaska and Hawaii, as authorized by the William F. Goodling Child Nutrition Reauthorization Act of 1998.

EFFECTIVE DATE: January 1, 2003.

FOR FURTHER INFORMATION CONTACT: Robert M. Eadie, Branch Chief, Policy and Program Development Branch, Child Nutrition Division, Food and Nutrition Service, U.S. Department of Agriculture, 3101 Park Center Drive, Room 640, Alexandria, Virginia 22302, (703) 305–2620.

SUPPLEMENTARY INFORMATION: This program is listed in the Catalog of Federal Domestic Assistance under No. 10.559 and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials (7 CFR part 3015, subpart V, and final rule related notice published at 48 FR 29114, June 24, 1983).

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3518), no new recordkeeping or reporting requirements have been included that are subject to approval from the Office of Management and Budget.

This notice is not a rule as defined by the Regulatory Flexibility Act (5 U.S.C. 601–612) and thus is exempt from the provisions of that Act. Additionally, this notice has been determined to be exempt from review by the Office of Management and Budget under Executive Order 12866.

Definitions

The terms used in this Notice shall have the meaning ascribed to them in the regulations governing the Summer Food Service Program for Children (7 CFR part 225).

Background

In accordance with section 13 of the National School Lunch Act (NSLA)(42 U.S.C. 1761) and the regulations governing the SFSP (7 CFR part 225), notice is hereby given of adjustments in Program payments for meals served to children participating in the SFSP in 2003. Adjustments are based on changes in the food away from home series of the Consumer Price Index (CPI) for All Urban Consumers for the period November 2001 through November 2002.

Section 104(a) of the William F. Goodling Child Nutrition Reauthorization Act of 1998 (Pub. L. 105–336) amended section 12(f) of the NSLA (42 U.S.C. 1760(f)) to allow adjustments to SFSP reimbursement rates to reflect the higher cost of providing meals in the SFSP in Alaska and Hawaii. Therefore, this notice contains adjusted rates for Alaska and Hawaii. This change was made in an effort to be consistent with other Child Nutrition Programs, such as the National School Lunch Program and the School Breakfast Program, which already had the authority to provide higher reimbursement rates for programs in Alaska and Hawaii.

The 2003 reimbursement rates, in dollars, for all States excluding Alaska and Hawaii:

MAXIMUM PER MEAL REIMBURSEMENT RATES FOR ALL STATES (NOT AK OR HI)

	Operating costs	Administrative costs	
		Rural or self-preparation sites	Other types of sites
Breakfast	$1.35	$.1350	$.1050
Lunch or Supper	2.35	.2475	.2050
Supplement	.55	.0675	.0525

The 2003 reimbursement rates, in dollars, for Alaska:

MAXIMUM PER MEAL REIMBURSEMENT RATES FOR ALASKA ONLY

	Operating costs	Administrative costs	
		Rural or self-preparation sites	Other types of sites
Breakfast	$2.19	$.2175	$.1725
Lunch or Supper	3.82	.4000	.3300

MAXIMUM PER MEAL REIMBURSEMENT RATES FOR ALASKA ONLY—Continued

	Operating costs	Administrative costs	
		Rural or self-preparation sites	Other types of sites
Supplement	.89	.1075	.0850

The 2003 reimbursement rates, in dollars, for Hawaii:

MAXIMUM PER MEAL REIMBURSEMENT RATES FOR HAWAII ONLY

	Operating Costs	Administrative costs	
		Rural or self-preparation sites	Other types of sites
Breakfast	$1.58	$.1575	$.1250
Lunch or Supper	2.75	.2875	.2400
Supplement	.64	.0775	.0625

The total amount of payments to State agencies for disbursement to Program sponsors will be based upon these Program reimbursement rates and the number of meals of each type served. The above reimbursement rates, for both operating and administrative reimbursement rates, represent a 2.28 percent increase during 2002 (from 175.8 in November 2001 to 179.8 in November 2002) in the food away from home series of the Consumer Price Index for All Urban Consumers, published by the Bureau of Labor Statistics of the Department of Labor. The Department would like to point out that the SFSP administrative reimbursement rates continue to be adjusted up or down to the nearest quarter-cent, as has previously been the case. Additionally, operating reimbursement rates have been rounded down to the nearest whole cent, as required by Section 11(a)(3)(B) of the NSLA (42 U.S.C. 1759 (a)(3)(B)).

Authority: Secs. 9, 13 and 14, National School Lunch Act, as amended (42 U.S.C. 1758, 1761, and 1762a).

Dated: January 24, 2003.

Roberto Salazar,

Administrator.

[FR Doc. 03–2113 Filed 1–29–03; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Forest Service

Idaho Panhandle National Forests, Bonners Ferry Ranger District, Cancellation of Notice of Intent To Prepare an Environmental Impact Statement for the Bonners Ferry Ranger District Salvage Sales Project

AGENCY: Forest Service, USDA

ACTION: Cancellation notice.

SUMMARY: On May 31, 2000 a Notice of Intent (NOI) to prepare an environmental impact statement for the Bonners Ferry Ranger District Salvage Sales Project was published in the **Federal Register** (Volume 65, Number 105, pages 34654–34655). The proposal was to analyze the potential environmental effects of salvage harvesting up to 20,000 acres of dead and damaged trees in scattered areas located on the Bonners Ferry Ranger District, Idaho Panhandle National Forests. Since the publication of the Notice of Intent, public scoping and interdisciplinary team involvement have resulted in a project design that utilizes mitigation measures and restrictive design criteria that either eliminated or minimized potential impacts to resources that could result from the small salvage sales. Due to the redefined design and criteria of the project, the Interdisciplinary Team determined there will be no significant effects resulting from implementing the proposed action, therefore preparation of an environmental impact statement is not warranted.

ADDRESSES: Bonners Ferry Ranger District, 6286 Main St, Bonners Ferry, Idaho 83805–9764

FOR FURTHER INFORMATION CONTACT: Barry Wynsma, Project Team Leader, (208) 267–5561.

SUPPLEMENTARY INFORMATION: The public was first notified of this proposal and the intention to prepare an environmental impact statement in October 1999. The Bonners Ferry Ranger District of the Idaho Panhandle National Forests proposed salvage harvesting up to 20,000 acres of dead and damaged trees in scattered areas across the district. The small-scale salvage sales were expected to contribute to hazardous fuels reduction and to help restore productive stand conditions and/or ecological functioning in areas affected by windstorms, insects, disease and other damaging events. Salvage of the trees was expected to help provide forest products for local post and pole mills, small sawmills, and other forest product manufacturers.

Ensuring project design and development of action alternatives included incorporation of restrictive criteria such as avoiding resource areas of concern, old growth and riparian areas for instance, and mitigation measures such as timing salvage operations to take place during periods that minimized potential impacts to wildlife species of concern. The result of the project design for the proposed activities has led the project team to the conclusion that there will be no significant effects associated with the proposal, and therefore preparation of an environmental impact statement is not warranted. An environmental assessment will be prepared to document the proposed action, alternatives to the proposed action, and environmental consequences of implementing each of the alternatives.

Since an environmental assessment will be prepared instead of an environmental impact statement, the NOI is hereby rescinded.

Dated: January 24, 2003

Ranotta K. Mcnair,

Forest Supervisor.

[FR Doc. 03–2150 Filed 1–29–03; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Resource Advisory Committee Meeting

AGENCY: Southwest Idaho Resource Advisory Committee, Boise, ID, Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committee Act (Public Law 92–463) and under the Secure Rural Schools and Community Self-Determination Act of 2000 (Public Law 103–393), the Boise and Payette National Forests' Southwest Idaho Resource Advisory Committee will conduct a business meeting. The meeting is open to the public.

DATES: Wednesday, February 19, 2003 beginning at 10:30 a.m.

ADDRESSES: Idaho Counties Risk Management Program Building, 3100 South Vista Avenue, Boise, Idaho.

SUPPLEMENTARY INFORMATION: Agenda topics will include review and approval of project proposals and an open public forum.

FOR FURTHER INFORMATION CONTACT: Randy Swick, Designated Federal Officer, at (208) 634–0400.

Dated: January 23, 2003.

Mark J. Madrid,

Forest Supervisor.

[FR Doc. 03–2157 Filed 1–29–03; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Rural Broadband Access Loans and Loan Guarantees Program

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice of application deadline.

SUMMARY: The Rural Utilities Service (RUS) announces funding available for the Rural Broadband Access Loan and Loan Guarantee program. For FY 2003, no less than $1.455 billion in loans is available, $1.295 billion for direct cost-of-money loans, $80 million for direct 4-percent loans, and $80 million for loan guarantees.

DATES: All returned applications from the Broadband Pilot Program must be delivered to RUS or bear postmark no later than March 3, 2003 in order to have a priority consideration in FY 2003. All applications must be delivered to RUS or bear postmark no later than January 31, 2003, to be considered for funding from their applicable state's allocation. All other applications must be delivered to RUS or bear postmark no later than July 31, 2003, to be considered for funding in Fiscal Year 2003.

FOR FURTHER INFORMATION CONTACT: Roberta D. Purcell, Assistant Administrator, Telecommunications Program, Rural Utilities Service, STOP 1590, 1400 Independence Avenue, SW., Washington, DC 20250–1590, Telephone (202) 720–9554, Facsimile (202) 720–0810.

SUPPLEMENTARY INFORMATION:

General Information

During FY 2003, no less than $1.455 billion will be made available for loans and loan guarantees for the construction, improvement, and acquisition of facilities and equipment for broadband service in eligible rural communities. Of the total loan funds available, $1.295 billion will be available for direct cost-of-money loans, $80 million for 4-percent direct loans, and $80 million for loan guarantees. The Rural Broadband Access Loan and Loan Guarantee Program is authorized by the Rural Electrification Act (7 U.S.C. 601) (the Act), as added by the Farm Security and Rural Investment Act of 2002, Pub. L. 101–171.

Priority will be given to applications previously received by RUS under its Broadband Pilot Program, described at 67 FR 45079.

Applications must be submitted in accordance with 7 CFR part 1738. This part and an application guide to assist in the preparation of applications are available in the Internet at: *http://www.usda.gov/rus/telecom*. Application guides may also be requested from RUS by contacting the appropriate agency contact:

Agency Contacts

For application information, contact the following individual: Deborah Jackson, Telecommunications Program, RUS/USDA, Room 2919, Stop 1541, 1400 Independence Avenue, SW., Washington, DC, (202) 720–8427.

Minimum and Maximum Loan Amounts

Loans and loan guarantees under this authority will not be made for less than $100,000. Maximum loan amounts apply only to the direct 4-percent loan program. The maximum amount available for any one applicant for a direct 4-percent loan is $5,000,000.

Minimum Rate of Data Transmission Criteria

The Secretary of Agriculture determines what qualifies as broadband service for the purpose of determining eligibility for financial assistance under the Rural Broadband Access Loan and Loan Guarantee Program. During fiscal year 2003 (and thereafter until further notice), to qualify as broadband service, the minimum rate-of-data transmission shall be 200 kilobits/second in the customer's connection to the network, both from the provider to the customer (downstream) and from the customer to the provider (upstream).

State Allocations

Due to the date of publication of the regulation and the regulatory deadline of January 31 for applications to be considered under the state allocation, applications submitted pursuant to this notice for fiscal year 2003 will be funded from the national reserve.

The Act requires RUS, from amounts made available each fiscal year, to establish a national reserve for loans and loan guarantees to eligible entities in states and to allocate amounts in the reserve to each state for each fiscal year. The Act further sets forth the method of allocation as follows:

"The amount of an allocation made to a State for a fiscal year * * * shall bear the same ratio to the amount of allocations made for all States for the fiscal year as the number of communities with a population of 2,500 inhabitants or less in the State bears to the number of communities with a population of 2,500 inhabitants or less in all States, as determined on the basis of the latest available census".

The following table shows the number of communities with 2,500 inhabitants or less (from the 2000 U.S. Census data), the percent in each state of such communities in relation to the total of all states, and the dollar amount of loan and loan guarantee funds available to each state:

State	Number of communities w/2,500 or less	Percent of national total	Dollars allocated ($ mil)
Alabama	312	1.94	28,214,611
Alaska	225	1.40	20,347,075
Arizona	125	0.78	11,303,931
Arkansas	374	2.32	33,821,361
California	296	1.84	26,767,708
Colorado	212	1.32	19,171,467
Connecticut	40	0.25	3,617,258
Delaware	51	0.32	4,612,004
Florida	307	1.91	27,762,454
Georgia	380	2.36	34,363,950
Hawaii	67	0.42	6,058,907
Idaho	154	0.96	13,926,443
Illinois	856	5.32	77,409,318
Indiana	418	2.60	37,800,345
Iowa	826	5.13	74,696,375
Kansas	527	3.27	47,657,372
Kentucky	324	2.01	29,299,789
Louisiana	237	1.47	21,432,253
Maine	53	0.33	4,792,867
Maryland	148	0.92	13,383,854
Massachusetts	65	0.40	5,878,044
Michigan	355	2.21	32,103,163
Minnesota	659	4.09	59,594,323
Mississippi	228	1.42	20,618,370
Missouri	758	4.71	68,547,036
Montana	239	1.48	21,613,116
Nebraska	487	3.03	44,040,114
Nevada	27	0.17	2,441,649
New Hampshire	24	0.15	2,170,355
New Jersey	123	0.76	11,123,068
New Mexico	168	1.04	15,192,483
New York	528	3.28	47,747,804
North Carolina	428	2.66	38,704,659
North Dakota	356	2.21	32,193,595
Ohio	627	3.89	56,700,517
Oklahoma	565	3.51	51,093,767
Oregon	186	1.16	16,820,249
Pennsylvania	866	5.38	78,313,633
Rhode Island	5	0.03	452,157
South Carolina	221	1.37	19,985,350
South Dakota	321	1.99	29,028,494
Tennessee	228	1.42	20,618,370
Texas	960	5.96	86,814,189
Utah	185	1.15	16,729,818
Vermont	47	0.29	4,250,278
Virginia	207	1.29	18,719,309
Washington	276	1.71	24,959,079
West Virginia	219	1.36	19,804,487
Wisconsin	429	2.66	38,795,091
Wyoming	171	1.06	15,463,777
Puerto Rico	113	0.70	10,218,753
Guam	19	0.12	1,718,197
Am. Samoa	68	0.42	6,149,338
Commonwealth of Northern Mariana Islands	8	0.05	723,452
U.S. Virgin Islands	1	0.01	90,431
Total	6,099	100.00	1,455,855,856

4-Percent Direct Loans

An applicant will be eligible for a direct 4-percent loan if (1) the community being served has a population of less than 2,500, and is not currently receiving broadband service as defined at § 1738.11(b)(1), (2) the per capita income in the county being served as a percent of national per capita income, is not more than 55 percent of the national per capita income, as determined by the Bureau of Economic Analysis, U.S. Department of Commerce, at *http://www.bea.doc.gov/bea/regional/reis*, and (3) the population density, calculated as the total number of persons in the service area divided by the square miles of the service area is not more than 10 persons per square mile.

Applications Submitted Under the Broadband Pilot Program

Each application remaining unfunded from the Broadband Pilot Program will be returned to the applicant. The applicant will be given 30 days from the date of publication of final rule 7 CFR 1738, Rural Broadband Access Loans and Loan Guarantees, in the **Federal**

Register to resubmit a completed application.

Applications submitted within the 30-day time frame, that are economically and technically feasible, as determined by RUS and as set forth in RUS Bulletin 1738–1 will be given priority for funding as set forth in § 1738.14.

Dated: January 27, 2003.

Hilda Gay Legg,

Administrator, Rural Utilities Service.

[FR Doc. 03–2200 Filed 1–29–03; 8:45 am]

BILLING CODE 3410–15–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Arizona Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Arizona Advisory Committee to the Commission will convene at 9 a.m. and adjourn at 1 p.m. on Friday, March 7, 2003, at the Crowne Plaza Hotel (Metro Center), 2532 West Peoria, the Executive Board Room, Phoenix, Arizona 85029. The purpose of the meeting is to plan a follow-up to the 1997 report on civil rights problems along the United States/Mexico border. The report is: Federal Immigration Law Enforcement in the Southwest: Civil Rights Impacts on Border Communities. Four states will be involved.

Persons desiring additional information, or planning a presentation to the Committee, should contact Philip Montez, Director of the Western Regional Office, 213–894–3437 (TDD 213–894–3435). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, January 24, 2003.

Ivy L. Davis,

Chief, Regional Programs Coordination Unit.

[FR Doc. 03–2186 Filed 1–29–03; 8:45 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Texas Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Texas Advisory Committee to the Commission will convene at 11 a.m. and adjourn at 3 p.m. on Friday, February 21, 2003, at the St. Anthony Hotel, Midland Room, 300 East Travis, San Antonio, TX 78205. The purpose of the meeting is to hold new member orientation and discuss civil rights issues in the State.

Persons desiring additional information, or planning a presentation to the Committee, should contact Philip Montez, Director of the Western Regional Office, 213–894–3437 (TDD 213–894–3435). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, January 24, 2003.

Ivy L. Davis,

Chief, Regional Programs Coordination Unit.

[FR Doc. 03–2185 Filed 1–29–03; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Census Bureau

National Survey of Volunteering and Giving Among Youths and Adults

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before March 31, 2003.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Ken Kaplan or Sue Montfort, U.S. Census Bureau, FOB 3, Room 3351, Washington, DC 20233–8400 at (301) 763–3836.

SUPPLEMENTARY INFORMATION:

I. Abstract

The purpose of this voluntary survey is to provide trend data on the volunteering and giving behavior of youths and adults; to chart the impact of major institutions, such as schools and religious institutions on encouraging such behavior; to highlight people's attitudes on a variety of issues relating to their volunteering behavior; and to explore behavioral and motivational factors that influence volunteering and giving.

Independent Sector, a nonprofit, nonpartisan coalition of more than 700 national organizations, foundations, and corporate philanthropy programs, began to study volunteerism in the United States in the early 1990s. Original survey content was developed by a national advisory group of scholars and practitioners and addressed the following issues:

- Who volunteers? Who gives? To whom? How much?
- What are determinants of giving and volunteering behavior?
- What is the motivation for giving and volunteering to various types of charitable causes?
- When do youths begin to volunteer and give?
- What skills have young people learned from their community service?
- To what degree do schools encourage volunteering? Do they offer courses requiring community service or require community service for graduation?
- What level of confidence do young people have in the institutions of our society?

This survey is unique because it contains information about both adults and youths who give or volunteer and those that do neither. The findings have been of interest to policymakers, the media, researchers, and school principals and teachers, as well as leaders of voluntary organizations.

As part of the emerging literature on "social capital," or social attachments, one important correlation of interest is that of religious practice and volunteering. This survey seeks to confirm and understand better that correlation by asking questions such as attendance at religious services and whether a volunteer organization is religiously-affiliated. The Census Bureau considers the religiously-oriented questions appropriate in the context of the survey's objective. We will not ask respondents to identify any particular religion.

For the national sample, we will select a sample of households from

expired Current Population Survey rotations. We will obtain parental consent prior to interviewing the youths.

II. Method of Collection

The information will be collected by telephone-only interviews in one of the Census Bureau's telephone centers. The data methodology will utilize computer-assisted telephone interviewing (CATI).

III. Data

Office of Management and Budget (OMB) Number: Not available.

Form Number: There will be no form number because it will be conducted by CATI.

Type of Review: New collection.

Affected Public: Individuals or households.

Estimated Number of Respondents: 5,000 respondents.

Estimated Time Per Response: 30 minutes per response.

Estimated Total Annual Burden Hours: 2,500 hours.

Estimated Total Annual Cost: There is no cost to respondents other than their time.

Respondent's Obligation: Voluntary.

Legal Authority: Title 13, United States Code, section 182.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology and; (e) whether questions about religion, when contextually relevant and in a voluntary survey, are an appropriate area of inquiry to the Census Bureau.

Comments submitted in response to this notice will be summarized or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: January 24, 2003.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 03–2090 Filed 1–29–03; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Census Bureau

Submission for OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: U.S. Census Bureau.

Title: 2001 Panel of the Survey of Income and Program Participation, Wave 8 Topical Modules.

Form Number(s): SIPP–21805(L) Director's Letter; SIPP/CAPI Automated Instrument; SIPP–21003 Reminder Card.

Agency Approval Number: 0607–0875.

Type of Request: Revision of a currently approved collection.

Burden: 119,378 hours.

Number of Respondents: 78,750.

Avg Hours Per Response: Interview—30 minutes; reinterview—10 minutes.

Needs and Uses: The U.S. Census Bureau requests authorization from the Office of Management and Budget (OMB) to conduct the Wave 8 Topical Module interview for the 2001 Panel of the Survey of Income and Program Participation (SIPP). We also request approval for a few replacement questions in the reinterview instrument. The core SIPP instrument and reinterview instrument were cleared previously. The reinterview instrument will be used for quality control purposes.

The SIPP is designed as a continuing series of national panels of interviewed households that are introduced every few years, with each panel having durations of 3 to 4 years. The 2001 SIPP Panel is scheduled for three years and will include nine waves beginning February 1, 2001.

The survey is molded around a central "core" of labor force and income questions that remain fixed throughout the life of a panel. The core is supplemented with questions designed to answer specific needs. These supplemental questions are included with the core and are referred to as "topical modules." The topical modules for the 2001 Panel Wave 8 are Child Support Agreements, Support for Nonhousehold Members, Functional Limitations and Disability for Adults and Children, Adult Well-Being, and Welfare Reform. Wave 8 interviews will be conducted from June through September 2003.

Data provided by the SIPP are being used by economic policymakers, the Congress, state and local governments, and Federal agencies that administer social welfare or transfer payment programs, such as the Department of Health and Human Services and the Department of Agriculture. The SIPP represents a source of information for a wide variety of topics and allows information for separate topics to be integrated to form a single and unified database so that the interaction between tax, transfer, and other government and private policies can be examined. Government domestic policy formulators depend heavily upon the SIPP information concerning the distribution of income received directly as money or indirectly as in-kind benefits and the effect of tax and transfer programs on this distribution. They also need improved and expanded data on the income and general economic and financial situation of the U.S. population. The SIPP has provided these kinds of data on a continuing basis since 1983, permitting levels of economic well-being and changes in these levels to be measured over time.

Affected Public: Individuals or households.

Frequency: Every 4 months.

Respondent's Obligation: Voluntary.

Legal Authority: Title 13 U.S.C., Section 182.

OMB Desk Officer: Susan Schechter, (202) 395–5103.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *mclayton@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Susan Schechter, OMB Desk Officer either by fax (202–395–7245) or e-mail (*susan_schechter@omb.eop.gov*).

Dated: January 24, 2003.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 03–2091 Filed 1–29–03; 8:45 am]

BILLING CODE 3510–07–U

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 4–2003]

Foreign-Trade Zone 2—New Orleans, LA Expansion of Manufacturing Authority—Subzone 2J Murphy Oil USA, Inc., Meraux, LA

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Port of New Orleans, grantee of FTZ 2, requesting authority on behalf of Murphy Oil USA, Inc. (Murphy), to expand the scope of manufacturing activity conducted under zone procedures within Subzone 2J at the Murphy oil refinery complex in Meraux, Louisiana. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on January 17, 2003.

Subzone 2J (620 acres, 250 employees) was approved by the Board in 1997 and is located at 2500 East St. Bernard Highway, Meraux, St. Bernard Parish, Louisiana. Authority was granted for the manufacture of fuel products and certain petrochemical feedstocks and refinery by-products (Board Order 895, (62 FR 32582, 6/16/97)).

The refinery (105,000 barrels per day) is used to produce fuels and petrochemical feedstocks. The expansion request involves several modified and upgraded processing units. Murphy has been expanding and modifying several units to allow for the processing of high-sulfur crude into low-sulfur gasoline and diesel fuels. The new facilities will increase the overall capacity of the refinery to 125,000 BPD. The feedstocks used and product slate will remain unchanged. Some 96 percent of the crude oil will be sourced from abroad.

Zone procedures would exempt the new refinery facilities from Customs duty payments on the foreign products used in its exports. On domestic sales, the company would be able to choose the Customs duty rates for certain petrochemical feedstocks (duty-free) by admitting foreign crude oil in non-privileged foreign status. The application indicates that the savings from zone procedures help improve the refinery's international competitiveness.

In accordance with the Board's regulations, a member of the FTZ staff has been appointed examiner to investigate the application and report to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at one of the following addresses:

1. Submissions Via Express/Package Delivery Services: Foreign-Trade-Zones Board, U.S. Department of Commerce, Franklin Court Building—Suite 4100W, 1099 14th St. NW., Washington, DC 20005; or

2. Submissions Via the U.S. Postal Service: Foreign-Trade-Zones Board, U.S. Department of Commerce, FCB—Suite 4100W, 1401 Constitution Ave. NW., Washington, DC 20230. The closing period for their receipt is March 31, 2003. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to April 15, 2003).

A copy of the application and accompanying exhibits will be available for public inspection at the Office of the Foreign-Trade Zones Board's Executive Secretary at the first address listed above, and at the U.S. Department of Commerce Export Assistance Center, 365 Canal Street, Suite 1170 New Orleans, LA 70130.

Dated: January 22, 2003.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 03–2106 Filed 1–29–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[A(32c)–12–02]

Notification of New Grantee Foreign-Trade Zone 138 Franklin County, OH

The Foreign-Trade Zones (FTZ) Board (the Board) has considered the documentation indicating that the Columbus Municipal Airport Authority (CMAA) was reorganized to include the Rickenbacker Port Authority (RPA). Upon review, we concur with the findings that the CMAA is the legal successor to RPA and we recognize the CMAA as grantee of FTZ 138 as of January 1, 2003.

Dated: January 22, 2003.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 03–2105 Filed 1–29–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–560–803]

Notice of Rescission of Antidumping Duty Administrative Review: Extruded Rubber Thread From Indonesia

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of rescission of antidumping duty administrative review.

SUMMARY: On June 25, 2002, the Department of Commerce ("the Department") initiated an administrative review of the antidumping duty order on extruded rubber thread ("ERT") from Indonesia, covering the period May 1, 2001, through April 30, 2002, and one manufacturer/exporter of the subject merchandise, P.T. Swasthi Parama Mulya ("Swasthi"). *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 67 FR 42753 (June 25, 2002). This review has now been rescinded due to Swasthi's withdrawal of its request for an administrative review.

EFFECTIVE DATE: January 30, 2003.

FOR FURTHER INFORMATION CONTACT: Lyman Armstrong or Jim Neel, AD/CVD Enforcement, Office 6, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–3601 or (202) 482–4161, respectively.

SUPPLEMENTARY INFORMATION:

Case History

On May 31, 2002, the Department received a letter from Swasthi requesting an administrative review of the antidumping order on ERT from Indonesia. On June 25, 2002, the Department initiated an administrative review of this order for the period May 1, 2001, through April 30, 2002. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 67 FR 42753 (June 25, 2002). On August 16, 2002, the Department sent the antidumping questionnaires to Swasthi. On August 29, 2002, Swasthi submitted a letter requesting to withdraw from the above referenced administrative review. *See* letter from Swasthi to the Department (August 29, 2002).

Scope of the Review

For purposes of this review, the product covered is ERT from Indonesia. ERT is defined as vulcanized rubber thread obtained by extrusion of stable or concentrated natural rubber latex of any cross sectional shape, measuring from 0.18 mm, which is 0.007 inches or 140 gauge, to 1.42 mm, which is 0.056 inch or 18 gauge, in diameter.

ERT is currently classified under subheading 4007.00.00 of the *Harmonized Tariff Schedule of the United States* ("*HTSUS*"). Although the *HTSUS* subheading is provided for convenience and customs purposes, the written description of the scope of this review is dispositive.

Rescission of Review

Within 90 days of the June 25, 2002 notice of initiation, Swasthi requested to withdraw its request for an administrative review. *See* Letter from Swasthi to the Department (August 29, 2002).

In accordance with the Department's regulations, and consistent with its practice, the Department hereby rescinds the administrative review of ERT from Indonesia for the period May 1, 2001, to April 30, 2002. *See* 19 CFR section 351.213(d)(1), which states in pertinent part: "The Secretary will rescind an administrative review under this section, in whole or in part, if a party that requested a review withdraws the request within 90 days of the date of publication of notice of initiation of the requested review."

This notice is in accordance with section 751(a)(1) of the Tariff Act of 1930 as amended and section 351.213(d) of the Department's regulations.

Dated: January 10, 2003.

Holly A. Kuga,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. 03–2197 Filed 1–29–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-570–831]

Fresh Garlic from the People's Republic of China; Final Results of Antidumping Duty Administrative Review and Rescission of Administrative Review in Part

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Final Results of Antidumping Duty Administrative Review and Rescission of Administrative Review in Part.

SUMMARY: On August 9, 2002, the Department of Commerce published the preliminary results of the administrative review of the antidumping duty order on fresh garlic from the People's Republic of China. The period of review is November 1, 2000, through October 31, 2001. The administrative review covers thirteen producers/exporters of subject merchandise.

We invited interested parties to comment on our preliminary results. Based on our analysis of the comments received, we have made no changes to our analysis of our intent to rescind the review with respect to one respondent company. We have determined that we should rescind the review of another respondent company instead of assigning that company a rate based on adverse facts available. For a discussion of the rescissions, see the section "Partial Rescission of Review" listed below. The final dumping margins for the administrative review are listed in the "Final Results of the Review" section below.

EFFECTIVE DATE: January 30, 2003.

FOR FURTHER INFORMATION CONTACT: Edythe Artman or Catherine Cartsos, Office of Antidumping/Countervailing Duty Enforcement 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, DC 20230; telephone (202) 482–3931 or (202) 482–1757, respectively.

SUPPLEMENTARY INFORMATION:

Background

On August 9, 2002, the Department published the preliminary results of the administrative review of the antidumping duty order on fresh garlic from the People's Republic of China. *See Fresh Garlic from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review, Partial Rescission of Administrative Review, and Intent to Rescind Administrative Review in Part*, 67 FR 51822 (August 9, 2002) (*Preliminary Results*). We invited parties to comment on our preliminary results. With respect to our intent to rescind the administrative review in part, we received comments from the petitioners and Clipper Manufacturing Ltd. (Clipper). With respect to the preliminary results of the administrative review, we received comments from the petitioners, the respondent Taian Fook Huat Tong Kee Foods Co., Ltd. (FHTK), and the respondent Golden Light Trading Company, Ltd. (Golden Light).

We have conducted these reviews in accordance with section 751 of the Tariff Act of 1930, as amended, and 19 CFR 351.213 (2001) .

Scope of the Order

The products covered by this antidumping duty order are all grades of garlic, whole or separated into constituent cloves, whether or not peeled, fresh, chilled, frozen, provisionally preserved, or packed in water or other neutral substance, but not prepared or preserved by the addition of other ingredients or heat processing. The differences between grades are based on color, size, sheathing, and level of decay.

The scope of this order does not include the following: (a) garlic that has been mechanically harvested and that is primarily, but not exclusively, destined for non-fresh use; or (b) garlic that has been specially prepared and cultivated prior to planting and then harvested and otherwise prepared for use as seed.

The subject merchandise is used principally as a food product and for seasoning. The subject garlic is currently classifiable under subheadings 0703.20.0010, 0703.20.0020, 0703.20.0090, 0710.80.7060, 0710.80.9750, 0711.90.6000, and 2005.90.9700 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this order is dispositive. In order to be excluded from the antidumping duty order, garlic entered under the HTSUS subheadings listed above that is (1) mechanically harvested and primarily, but not exclusively, destined for non-fresh use or (2) specially prepared and cultivated prior to planting and then harvested and otherwise prepared for use as seed must be accompanied by declarations to the Customs Service to that effect.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to the administrative review are addressed in the "Issues and Decision Memorandum for the Administrative Review of Fresh Garlic from the People's Republic of China" from Susan Kuhbach to Faryar Shirzad (January 21, 2003) (Decision Memo), which is hereby adopted by this notice. A list of the issues which parties raised and to which we responded in the Decision Memo is attached to this notice as an Appendix. The Decision Memo is a public document and is on file in the Central Records Unit (CRU), Main Commerce Building, Room B-099, and is accessible on the Web at

www.ia.ita.doc.gov. The paper copy and electronic version of the memorandum is identical in content.

Separate Rates

In our preliminary results, we presumed that Golden Light was a market-economy company and that, accordingly, it qualified for a company-specific rate. We determined that a separate-rate analysis was not warranted for FHTK because, as a wholly owned foreign subsidiary, its parent company was beyond the jurisdiction of the People's Republic of China (PRC). See *Preliminary Results*, 67 FR at 51823. We have not received any information since the issuance of the *Preliminary Results* that provides a basis for reconsideration of these determinations.

Use of Adverse Facts Available

In the Preliminary Results, we determined that Golden Light, Phil-Sino International Trading Inc. (Phil-Sino), and Wo Hing (H.K.) Trading Co. (Wo Hing) should be assigned the rate of 376.67 percent based on use of the adverse facts available. In addition, we determined that this rate should be used as the adverse facts available for the PRC-wide entity and, accordingly, we applied this rate to Foshan Foodstuffs Import & Export Company, Jinan Import & Export Corporation, Jinxiang Foreign Trade Corporation, Jinxiang Hong Chong Fruits & Vegetable Products Company, Ltd., Quingdao Rui Sheng Food Company, Ltd., Rizhao Hanxi Fisheries & Comprehensive Development Co., Ltd., Shandong Commercial Group Corporation, and Zhejiang Materials Industry International Co., Ltd. See *Preliminary Results*, 67 FR at 51825.

Because we are rescinding the review for Golden Light, we find that the use of adverse facts available for its margin is not warranted. See the section "Partial Rescission of Review" below for a discussion of our determination.

Changes Since the Preliminary Results

Based on our analysis of comments received, we have rescinded the review of Golden Light.

With respect to FHTK, we have based the surrogate value for garlic sprouts on data from the *Monthly Trade Statistics of Foreign Trade of India Volume II Imports*(Indian Import Statistics) that falls under the tariff category for onions, shallots, garlic, leeks, and other alliaceous vegetables, fresh or chilled. We have based the value for potassium fertilizer on Indian import data that falls under the tariff category for mineral or chemical fertilizers, potassic, and covers the entire period of review. We have updated the financial information for the three Indian mushroom producers upon which we based our calculation of the surrogate financial ratios. Finally, we have based the value for electricity on data from the 1999/2000 *Teri Energy Data Directory and Yearbook*.

We have not changed our analysis with respect to the rescission of Clipper from the review or with respect to the other respondents in the review.

Partial Rescission of Review

A. Clipper

Section 772(a) of the Act, states, in part:

The term "export price" means the price at which the subject merchandise is first sold (or agreed to be sold) before the date of importation by the producer or exporter of the subject merchandise outside of the United States to an unaffiliated purchaser in the United States or to an unaffiliated purchaser for exportation to the United States....

Accordingly, we have interpreted section 772(a) of the Act to mean that we are to use the price at which the first party in the chain of distribution who has knowledge of the U.S. destination of the merchandise sells the subject merchandise, either directly to a U.S. purchaser or to an intermediary such as a trading company. The party making such a sale, with knowledge of destination, is the appropriate party to be reviewed. Our focus is on the first party in the chain of distribution with knowledge of the U.S. destination, rather than on the first chronological sale of the merchandise. One exception to this rule is that, in non-market economy (NME) cases, we do not base export price on internal transactions between two companies located in the NME. See *Fresh Garlic from the People's Republic of China; Final Results of Antidumping Duty Administrative Review and Partial Termination of Administrative Review*, 62 FR 23758, 23759 (May 1, 1997).

Applying these principles, we have not reviewed Clipper's sales to its U.S. customer because the evidence on the record supports a finding that PRC export agents which sold the subject merchandise to Clipper had knowledge of the U.S. destination when they made the sales to Clipper. In addition, the sales of the garlic from the export agents to Clipper were the first non-intra-NME sales in the chain of distribution of the merchandise. Thus, these sales provide the appropriate basis on which to determine the export price.

The Department did not receive a request for review of the PRC export agents during the anniversary month of the publication of the antidumping duty order. See 19 CFR 351.213(b). Thus, it is not appropriate to conduct a review of the sales at issue. Therefore, we are rescinding this administrative review as it applies to Clipper. With this rescission, we will instruct the Customs Service to liquidate the entries during the period of review of subject merchandise from Clipper in accordance with 19 CFR 351.213(d).

B. Golden Light

For reasons discussed in response to comment 5 of the Decision Memo, we have determined that it is appropriate to rescind Golden Light from the review pursuant to 19 CFR 351.213(d)(3) on the basis that Golden Light had no entries, exports, or sales of subject merchandise during the POR.

Final Results of the Administrative Review

We determine that the following dumping margins exist for the period November 1, 2000, through October 31, 2001:

Exporter	Weighted-average percentage margin
Phil-Sino International Trading Inc.	376.67
Wo Hing (H.K.) Trading Co.	376.67
Taian Fook Huat Tong Kee Foods Co.	0.00

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. We will issue appropriate assessment instructions directly to the Customs Service within 15 days of publication of these final results of review.

Cash-Deposit Requirements

The following cash-deposit requirements will be effective upon publication of this notice of final results of administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(C) of the Act: (1) for merchandise exported by FHTK, the cash-deposit rate will be zero percent; (2) for Phil-Sino and Wo Hing, the cash-deposit rate will be 376.67 percent; (3) for all other PRC exporters which have not been found to be entitled to a separate rate, the cash-deposit rate will be the PRC-wide rate of 376.67 percent; and (4) for all other non-PRC exporters

of subject merchandise from the PRC, including Clipper and Golden Light, the cash-deposit rate will be the rate applicable to the PRC supplier of that exporter. These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) (2001) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during these review periods. Pursuant to 19 CFR 351.402(f)(3), failure to comply with this requirement, could result in the Department's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

We are issuing and publishing this determination and notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.210(c) (2001).

Dated: January 21, 2003.

Faryar Shirzad,

Assistant Secretary for Import Administration.

Appendix

Decision Memo

1. Rescission of Review of Clipper
2. Rescission of Review of Golden Light
3. Bona Fides of FHTK's Sale
4. Use of Facts Available
5. Valuation of Garlic Seed
6. Valuation of Garlic Sprouts
7. Valuation of Urea
8. Valuation of Potassium Fertilizer
9. Calculation of Surrogate Financial Ratios
10. Valuation of Electricity
11. Valuation of Cartons

[FR Doc. 03–2100 Filed 1–29–03; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–863]

Honey From the People's Republic of China: Partial Rescission of Antidumping Duty New Shipper Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of partial rescission of the antidumping duty new shipper review of honey from the People's Republic of China.

SUMMARY: On August 6, 2002, the Department of Commerce published the initiation of the new shipper reviews of the antidumping duty order on honey from the People's Republic of China. The review covers Chengdu-Dujiangyan Dubao Bee Industrial Co., Ltd., and Wuhan Bee Healthy Co., Ltd. The period of review is December 1, 2001, through May 31, 2002. For the reasons discussed below, we are rescinding the review of Chengdu-Dujiangyan Dubao Bee Industrial Co., Ltd.[1]

EFFECTIVE DATE: January 30, 2003.

FOR FURTHER INFORMATION CONTACT: Angelica Mendoza or Donna Kinsella at (202) 482–3019 and (202) 482–0194, respectively; AD/CVD Enforcement, Office 8, Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department of Commerce's (the Department's) regulations are to 19 CFR part 351 (April 2002).

Scope of the Order

The products covered by this antidumping duty order are natural honey, artificial honey containing more than 50 percent natural honey by weight, preparations of natural honey containing more than 50 percent natural honey by weight, and flavored honey. The subject merchandise includes all grades and colors of honey whether in liquid, creamed, comb, cut comb, or chunk form, and whether packaged for retail or in bulk form. The merchandise subject to this order is currently classifiable under subheadings 0409.00.00, 1702.90.90, and 2106.90.99 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and U.S. Customs Service (U.S. Customs) purposes, the Department's written description of the merchandise under order is dispositive.

Background

On June 28, 2002, Chengdu-Dujiangyan Dubao Bee Industrial Co., Ltd. (Dubao), a producer and exporter of subject merchandise, submitted a request for a new shipper review. Dubao certified in its new shipper review request that (1) it did not export honey to the United States during the period of investigation (POI), (2) it has never been affiliated with any exporter or producer which did export honey during the POI, and (3) its export activities are not controlled by the central government of the People's Republic of China (PRC). Based on Dubao's certifications, the Department initiated a new shipper review of the antidumping duty order on honey from the PRC for "Chengdu-Dujiangyan Dubao Bee Industrial Co., Ltd." for the time period December 1, 2001, through May 31, 2002. *See Honey from the People's Republic of China: Initiation of New Shipper Antidumping Duty Reviews*, 67 FR 50862 (August 6, 2002).

On November 21, 2002, Dubao informed the Department that its counsel incorrectly referred to Dubao as "Chengdu-Dujiangyan Dubao Bee Industrial Co., Ltd." in its submissions to the Department. Dubao claims that the correct name of the company is "Sichuan-Dujiangyan Dubao Bee Industrial Co., Ltd." We did not receive any comments from the American Honey Producers Association nor the Sioux Honey Association (collectively, petitioners) on this issue.

Rescission of Review

Dubao did not provide the Department with the correct certifications required under 351.214(b)(2) of the Department's regulations for a new shipper review. The Department's regulations at 19 CFR 351.214(b)(2) state that, if the company requesting the review is both the exporter and the producer of the subject merchandise, then the request from this company must contain a certification that the company did not export subject

[1] We are continuing the new shipper review of the antidumping duty order on honey from the People's Republic of China for Wuhan Bee Healthy Co., Ltd.

merchandise to the United States during the POI. In addition, those regulations require that the request for the new shipper review contain a certification that the exporter or producer has never been affiliated with any exporter or producer that exported subject merchandise to the United States during the POI. Moreover, those regulations further specify that, in an antidumping proceeding involving imports from a nonmarket economy country, the request for a new shipper review must also contain a certification that the export activities of the exporter or producer are not controlled by the central government.

As noted above, Dubao failed to identify the correct name of the exporter and producer of the subject merchandise for purposes of its required certifications. Therefore, we find it appropriate to rescind the new shipper review of Dubao based on its failure to provide the proper certifications pursuant to 19 CFR 351.214(b)(2).

Notification

Bonding is no longer permitted to fulfill security requirements for shipments from Dubao of honey from the PRC entered, or withdrawn from warehouse, for consumption in the United States on or after the publication of this rescission notice in the **Federal Register**.

This notice also serves as the only reminder to parties subject to administrative protective orders (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return/destruction of APO material or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanctions.

We are issuing and publishing this determination and notice in accordance with sections 751(a)(2)(B)(iv) and 777(i) of the Tariff Act of 1930, as amended.

Dated: January 23, 2003.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 03–2104 Filed 1–29–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–863]

Honey From the People's Republic of China: Extension of Time Limit for Preliminary Results of New Shipper Antidumping Duty Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of extension of time limit for preliminary results of new shipper antidumping duty review.

EFFECTIVE DATE: January 30, 2003.

FOR FURTHER INFORMATION CONTACT: Angelica Mendoza or Donna Kinsella at (202) 482–3019 or (202) 482–0194, respectively; Antidumping and Countervailing Duty Enforcement Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

The Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930, as amended (the Act). In addition, unless otherwise indicated, all citations to the Department's regulations are references to the provisions codified at 19 CFR part 351 (2002).

Background

The Department received a timely request from Wuhan Bee Healthy Co., Ltd. (Wuhan), in accordance with 19 CFR 351.214(c), for a new shipper review of the antidumping duty order on honey from the People's Republic of China (PRC), which has a December annual anniversary month and a June semiannual anniversary month. On July 31, 2002, the Department found that the request for review met all the regulatory requirements set forth in section 351.214(b) of the Department's regulations and initiated this new shipper antidumping review covering the period December 1, 2001, through May 31, 2002. *See* Honey from the People's Republic of China: Initiation of New Shipper Antidumping Reviews, 67 FR 50862 (August 6, 2002).[1] The preliminary results are currently due no later than January 27, 2003.

Extension of Time Limits for Preliminary Results

Pursuant to section 751(a)(2)(B) of the Act, the Department may extend the deadline for completion of the preliminary results of a new shipper review if it determines that the case is extraordinarily complicated. The Department has determined that this case is extraordinarily complicated, and the preliminary results of this new shipper review cannot be completed within the statutory time limit of 180 days. Specifically, a number of complex affiliation issues have been raised. The Department has issued supplemental questionnaires to collect additional information about these issues. In addition, we need more time to obtain additional information on sales and factors of production. Given the issues in this case, the Department finds that this case is extraordinarily complicated, and cannot be completed within the statutory time limit.

Accordingly, the Department is fully extending the time limit for the completion of the preliminary results by 300 days, to May 27, 2003, in accordance with section 751(a)(2)(B)(iv) of the Act and 351.214(i)(2) of the Department's regulations. The final results will in turn be due 90 days after the date of issuance of the preliminary results, unless extended.

Dated: January 23, 2003.

Joseph A. Spetrini,

Deputy Assistant Secretary for Import Administration, Group III.

[FR Doc. 03–2196 Filed 1–29–03; 8:45 am]

BILLING CODE 3510–DS–P

[1] On January 23, 2003, the Department rescinded Chengdu-Dujiangyan Dubao Bee Industrial Co., Ltd.'s request (initiated on July 31, 2002) for a new shipper review.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–501]

Notice of Extension of Time Limit for Preliminary Results of Administrative Review: Natural Bristle Paint Brushes and Brush Heads From the People's Republic of China

AGENCY: Import Administration, International Trade Administration, U.S. Department of Commerce.

SUMMARY: The Department of Commerce is extending the time limit for the preliminary results of the administrative review of the antidumping duty order on natural bristle paint brushes and brush heads from the People's Republic of China until no later than February 28, 2003. The period of review is February 1, 2001, through January 31, 2002. This

extension is made pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended.

EFFECTIVE DATE: January 30, 2003.

FOR FURTHER INFORMATION CONTACT: Douglas Kirby or Sean Carey, AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–3782 or (202) 482–3964, respectively.

SUPPLEMENTARY INFORMATION:

Statutory Time Limits

Section 351.213(h)(1) of the Department's regulations requires the Department to issue the preliminary results of an administrative review within 245 days after the last day of the anniversary month of the order or suspension agreement for which the administrative review was requested, and final results of review within 120 days after the date on which notice of the preliminary results was published in the **Federal Register**. However, if the Department determines that it is not practicable to complete the review within this time period, section 351.213(h)(2) of the regulations allows the Department to extend the 245-day period to 365 days and may extend the 120-day period to 180 days.

Background

On February 1, 2002, the Department published a notice of opportunity to request an administrative review of the antidumping duty order on natural bristle paint bushes and brush heads from the People's Republic of China (PRC) (67 FR 4945). On February 28, 2002, the Department received a timely request from the Paint Applicator Division of the American Brush Manufacturers Association, the petitioner, for administrative reviews of Hunan Provincial Native Produce and Animal By-Products Import and Export Corporation (Hunan) and Hebei Founder Import and Export Company (Hebei). On March 27, 2002, the Department initiated an administrative review of the antidumping duty order on natural bristle paintbrushes, for the period from February 1, 2001, through January 31, 2002, in order to determine whether merchandise imported into the United States is being sold at less than fair value with respect to these two companies. *See Initiation of Antidumping and Countervailing Duty Administrative Review and Requests for Revocations in Part*, 67 FR 14696 (March 27, 2002).

On May 1, 2002, the Department issued antidumping questionnaires to Hebei and Hunan. In its reply to Section A of the questionnaire, Hebei stated that it had made no sales or shipments of subject merchandise to the United States during the POR. The Department also performed a U.S. Customs Service (Customs) query for entries of natural bristle paintbrushes and brush heads from the PRC during the POR. We found no entries or shipments from Hebei during the POR. Thus, the Department rescinded the review with respect to Hebei. *See Natural Bristle Paintbrushes From the People's Republic of China; Notice of Rescission, In Part, of Antidumping Administrative Review*, 67 FR 58018 (September 13, 2002). On November 1, the Department extended the preliminary results of the review of Hunan by 84 days, until January 23, 2003 (67 FR 66614).

Pursuant to section 751(a)(3)(A) of the Act, the Department may extend the deadline for completion of the preliminary results of an administrative review if it determines that it is not practicable to complete the review within the time specified in section 351.213(h)(2) of the Department's regulations. The Department has determined that the preliminary results of this administrative review cannot be completed within the statutory time limit of 245 days. The Department finds that it is not practicable to complete the preliminary results of this administrative review because there are a number of issues that must be addressed, including analysis of recently submitted supplemental questionnaire responses. Therefore, in accordance with section 351.213(h)(2) of the Department's regulations, the Department is extending the time limit for the completion of preliminary results by an additional 36 days. The preliminary results will now be due no later than February 28, 2003. The final results continue to be done within 120 days of the preliminary results.

This notice is published pursuant to sections 751(a)(3)(A) and 777(i)(1) of the Act.

Dated: January 23, 2003.

Joseph A. Spetrini,

Deputy Assistant Secretary for Import Administration, Group III.

[FR Doc. 03–2101 Filed 1–29–03; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A-570–855]

Non-Frozen Apple Juice Concentrate from the People's Republic of China: Initiation of Antidumping New Shipper Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Initiation of Antidumping New Shipper Review

SUMMARY: The Department of Commerce has received a request to conduct a new shipper review of the antidumping duty order on non-frozen apple juice concentrate from the People's Republic of China. In accordance with section 751(a)(2)(B) of the Tariff Act of 1930, as amended, and 19 CFR 351.214, we are initiating this new shipper review.

EFFECTIVE DATE: January 30, 2003.

FOR FURTHER INFORMATION CONTACT: Craig Matney, Audrey Twyman or Stephen Cho, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–1778, (202) 482–3534, and (202) 482–3798 respectively.

SUPPLEMENTARY INFORMATION:

Background

On December 17, 2002, the Department of Commerce ("the Department") received a request from Yantai Golden Tide Fruits & Vegetable Food Co., Ltd. ("Golden Tide"), pursuant to section 751(a)(2)(B) of the Tariff Act of 1930, as amended ("the Act"), and in accordance with 19 CFR 351.214(b), to conduct a new shipper review of the antidumping duty order on non-frozen apple juice concentrate ("NFAJC") from the People's Republic of China ("PRC"). Golden Tide identified itself as a producer and exporter of non-frozen apple juice concentrate from the PRC. This order has a June anniversary month.

Initiation of Review

Pursuant to 19 CFR 351.214(b), Golden Tide certified in its request that it did not export the subject merchandise to the United States during the period of investigation ("POI") (October 1, 1998 through March 31, 1999), that it has never been affiliated with any exporter or producer who exported the subject merchandise to the United States during the POI, and that its export activities are not controlled by

the central government of the PRC. Golden Tide submitted documentation establishing: (i) the date on which its NFAJC was first shipped to the USA; (ii) the volume of that shipment and subsequent shipments; and (iii) the date of the first sale to an unaffiliated customer in the United States.

In accordance with section 751(a)(2)(B) of the Act and 19 CFR 351.214, we are initiating a new shipper review of the antidumping duty order on NFAJC from the PRC. We intend to issue the preliminary results of this review not later than 180 days from the date of publication of this notice. We intend to issue final results of this review no later than 90 days after the date on which the preliminary results were issued. See 19 CFR 351.214(i). All provisions of 19 CFR 351.214 will apply to Golden Tide throughout the duration of this new shipper review. Pursuant to 19 CFR 351.214(g)(1)(i)(B), the standard period of review in a new shipper review initiated in the month immediately following the semiannual anniversary month will be the six-month period immediately preceding the semi-annual anniversary month.

Antidumping Duty Proceeding	Period to be Reviewed
People's Republic of China: Non-Frozen Apple Juice Concentrate, A-570–855: Yantai Golden Tide Fruits & Vegetable Food Co., Ltd.	06/01/02 through 11/30/02

Concurrent with publication of this notice, and in accordance with 19 CFR 351.214(e), we will instruct the U.S. Customs Service to allow, at the option of the importer, the posting of a bond or security in lieu of a cash deposit for each entry of the subject merchandise exported by the company listed above, until the completion of the review. As Golden Tide has certified that it both produced and exported the subject merchandise exported to the United States during the relevant period of review, we will apply the bonding option under 19 CFR 351.107(b)(1)(i) only to subject merchandise for which it is both the producer and exporter.

Interested parties must submit applications for disclosure under administrative protective orders in accordance with 19 CFR 351.305 and 351.306.

This initiation notice is in accordance with section 751(a)(2)(B)(ii) of the Act (19 U.S.C. 1675(a)) and 19 CFR 351.214 and 351.221(c)(1)(i).

Dated: January 24, 2003.

Susan Kuhbach,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. 03–2195 Filed 1–29–03; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A-570–879, A-580–850]

Postponement of Preliminary Determinations of Antidumping Duty Investigations: Polyvinyl Alcohol from the People's Republic of China and the Republic of Korea

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: SUMMARY: The Department of Commerce is postponing the preliminary determinations in the antidumping duty investigations of polyvinyl alcohol from the People's Republic of China and the Republic of Korea from February 12, 2003, until no later than March 14, 2003. These postponements are made pursuant to section 733(c)(1)(A) of the Tariff Act of 1930, as amended.

EFFECTIVE DATE: January 30, 2003.

FOR FURTHER INFORMATION CONTACT: Elizabeth Eastwood (People's Republic of China) or Irina Itkin (Republic of Korea) at (202) 482–3874 or (202) 482–0656, respectively, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Postponement of Due Date for Preliminary Determination

On October 1, 2002, the Department initiated antidumping duty investigations of imports of polyvinyl alcohol from the People's Republic of China (PRC) and the Republic of Korea (Korea). *See* 67 FR 61591 (Oct. 1, 2002). The notice of initiation stated that we would issue our preliminary determinations no later than 140 days after the date of initiation. *See Id.* Currently, the preliminary determinations in this investigation are due on February 12, 2003.

On January 21, 2003, the petitioners made a timely request pursuant to 19 CFR 351.205(e) for a 30-day postponement for the PRC and Korea, pursuant to section 733(c)(1)(A) of the Tariff Act of 1930, as amended (the Act). The petitioners stated that a postponement of these preliminary determinations is necessary in order to permit more complete and effective investigations and more accurate preliminary determinations.

Under section 733(c)(1)(A) of the Act, if the petitioner makes a timely request for an extension of the period within which the preliminary determination must be made under subsection (b)(1), then the Department may postpone making the preliminary determination under subsection (b)(1) until not later than the 190th day after the date on which the administering authority initiated the investigation. Therefore, in accordance with the petitioners' requests for postponement, the Department is postponing the preliminary determinations in these investigations until March 14, 2003, which is 170 days from the date on which the Department initiated these investigations.

This notice is issued and published pursuant to section 733(c)(2) of the Act and 19 CFR 351.205(f).

Dated: January 23, 2003.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 03–2102 Filed 1–29–03; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A-583–816]

Notice of Amended Final Results of Antidumping Duty Administrative Review: Stainless Steel Butt-Weld Pipe Fittings from Taiwan

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: January 30, 2003.

FOR FURTHER INFORMATION CONTACT: Lilit Astvatsatrian, AD/CVD Enforcement Group III, Office IX, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–6412.

SUPPLEMENTARY INFORMATION:

Scope of the Review

The merchandise subject to this administrative review is certain stainless steel butt-weld pipe fittings ("SSBWPF") whether finished or unfinished, under 14 inches inside diameter. Certain SSBWPF are used to connect pipe sections in piping systems where conditions require welded connections. The subject merchandise is used where one or more of the following conditions is a factor in designing the piping system: (1) Corrosion of the piping system will occur if material other than stainless steel is used; (2) contamination of the material in the system by the system itself must be prevented; (3) high temperatures are present; (4) extreme low temperatures are present; and (5) high pressures are contained within the system.

Pipe fittings come in a variety of shapes, with the following five shapes the most basic: "elbows", "tees", "reducers", "stub-ends", and "caps." The edges of finished pipe fittings are beveled. Threaded, grooved, and bolted fittings are excluded from this review. The pipe fittings subject to this review are classifiable under subheading 7307.23.00 of the Harmonized Tariff Schedule of the United States ("HTSUS").

Although the HTSUS subheading is provided for convenience and customs purposes, our written description of the scope of the review is dispositive. Pipe fittings manufactured to American Society of Testing and Materials specification A774 are included in the scope of this order.

On April 12, 2001, during this administrative review, the Department received a scope ruling request, in accordance with 19 CFR 351.225(c), from Allegheny Bradford Corporation d/b/a Top Line Process Equipment Company (≥Top Line≥), for a scope ruling on whether the stainless steel butt-weld tube fittings it plans to import are covered by the antidumping duty order on stainless steel butt-weld pipe fittings from Taiwan. On November 15, 2001, the Department issued its preliminary scope ruling. *See Memorandum from Edward C. Yang, Director, Enforcement, Group III, Office 9, to Joseph A. Spetrini, Deputy Assistant Secretary for Import Administration, Group III: Preliminary Scope Ruling on the Antidumping Duty Order on Stainless Steel Butt-Weld Pipe Fittings: Allegheny Bradford Corporation d/b/a Top Line Process Equipment* ("*Preliminary Scope Ruling*"), dated November 15, 2001, which is on file at the U.S. Department of Commerce, in the Central Records Unit, in room B-099. We gave interested parties an opportunity to comment on our *Preliminary Scope Ruling*. Top Line and petitioners filed briefs on November 21, 2001. On November 26, 2001, Top Line and petitioners filed rebuttal briefs. On December 10, 2001, the Department issued its final scope ruling that Top Line's stainless steel butt-weld tube fittings are within the scope of the Order. *See Memorandum from Edward C. Yang, Director, Enforcement, Group III, Office 9, to Joseph A. Spetrini, Deputy Assistant Secretary for Import Administration, Group III: Final Scope Ruling on the Antidumping Duty Order on Stainless Steel Butt-Weld Pipe Fittings: Allegheny Bradford Corporation d/b/a Top Line Process Equipment*, dated December 10, 2001, which is also on file at the U.S. Department of Commerce, in the Central Records Unit, in room B-099.

Amendment of the Final Results

On December 17, 2002, the Department of Commerce ("the Department") issued its final results for stainless steel butt-weld pipe fittings from Taiwan for the June 1, 2000 through May 31, 2001, period of review. *See Notice of Final Results and Final Rescission in Part of Antidumping Duty Administrative Review: Stainless Steel Sheet and Strip in Coils From France: Stainless Steel Butt-Weld Pipe Fittings From Taiwan ("Final Results")*, 67 FR 78417 (December 24, 2002).

In accordance with 19 C.F.R. §:351.224(c), on December 20, 2002, the petitioners in this administrative review requested that the Department extend the deadline to file ministerial errors regarding the *Final Results* from December 20, 2002 to December 27, 2002. On December 20, 2002, the Department extended the deadline to file any ministerial error allegations on the Final Results from December 20, 2002 to December 27, 2002. Subsequently, on December 27, 2002, the petitioners timely filed an allegation pursuant to 19 CFR §351.224(c) that the Department made six ministerial errors in the **FINAL RESULTS**. Ta Chen Stainless Steel Pipe Co., ("Ta Chen"), the only respondent covered by the review, did not submit any ministerial error allegations or rebuttal comments in reply to petitioners' ministerial error allegations.

Allegation 1: Improper Revision to General and Administrative Expense ("G&A") Ratio

The petitioners state that in the final results the Department erred in the method of applying the revised general and administrative expenses ("G&A") to the total cost of manufacture when adding certain bonus payments to the reported G&A. According to the petitioners, the Department erroneously applied the revised G&A ratio to the reported G&A, instead of applying the revised G&A to the reported total cost of manufacture. The petitioners note that the same error of not applying the revised G&A to the total cost of manufacture was also made in the Margin Calculation Program.

Department's Position: We agree with the petitioners and have revised both the Model Match and Margin Calculation programs to apply the revised G&A correctly. See Analysis Memo.

Allegation 2: Improper Use of Fiscal Year for U.S. Indirect Selling Expense Calculation

The petitioners argue that in the final results the Department erroneously did not rely on 2001 financial statements of Ta Chen International ("TCI") for the calculation of the U.S. indirect selling expense. The petitioners further argue that the Department has erred in its decision by finding that TCI had not been given the opportunity to adjust its 2001 financial data because record evidence shows that the relevant adjusted information was in fact on the record. Thus, the petitioners state that the Department should revise its final results by using TCI's adjusted 2001 indirect selling expense percentage of the gross unit price.

Department's Position: With regard to this allegation, we disagree that a change to the calculation would represent a ministerial error correction. At the outset, we note that petitioners are correct that this information is on the record. However, we note that reliance on that erroneous observation is only one of the two bases of our decision in the final results. The second basis of the Department's decision was that TCI's year 2000 data overlaps a longer portion of the POR than the year 2001 data. This fact is unchallenged by the petitioners. Therefore, petitioners' request that the Department overturn its decision to use the year 2000 TCI data is not ministerial in nature, but rather involves a methodological change. A ministerial error is defined under 19 CFR 351.224(f) as "an error in addition, subtraction, or other arithmetic function, clerical error resulting from inaccurate copying, duplication, or the like, and any other similar type of unintentional error which the Secretary considers ministerial." Accordingly, we have not made the requested change.

Allegation 3: Improper Use of Short-term Borrowing Rate for U.S. Credit Expense Calculation

The petitioners argue that in the final results, the Department incorrectly based the U.S. credit expenses for certain "indent" sales on Ta Chen Taiwan's short-term borrowing rate, instead of its U.S. subsidiary TCI's short-term borrowing rate. The petitioners conclude the Department should revise U.S. credit expenses based TCI's short-term interest rate as opposed to that of Ta Chen.

Department's Position: We agree with the petitioners that the Department inadvertently used Ta Chen's short-term borrowing rate for calculation of imputed credit expense for the U.S. sales at issue, instead of correctly using TCI's short-term borrowing rate. We have corrected this error. See Analysis Memo.

Allegation 4: Improper Application of Average Margin to Unreported Sales

Petitioners note that in the preliminary results, the Department decided to impose partial facts available on two sets of Ta Chen's U.S. sales and assigned Ta Chen's average positive margin to those sales. The petitioners further note that in the final results, the Department changed from using the average positive margin to the average margin on the basis that use of the average positive margin was implicitly an unintended adverse margin. However, petitioners argue that using the average margin produces an incorrect result. *See, Memorandum For The File from Lilit Astvatsatrian through James Doyle*, dated January 20, 2003, for identification of the precise nature of the alleged incorrect result. Moreover, petitioners assert that the average positive margin is not adverse as the highest dumping margin calculated would have been the proper adverse facts available margin. As a result of these considerations, petitioners conclude that the Department should apply the average positive margin to the two sets of Ta Chen's U.S. sales at issue.

Department's Position: We disagree with petitioners' assertion that the use of the average margin represents a ministerial error and accordingly will not adjust the final results. The final results computer program correctly calculated and applied the average margin to these sales, which was precisely the Department's intent as expressed in the final results. While the petitioners may disagree with the use of the calculated average margin, such disagreement regarding the figure does not represent identification of a ministerial error as described in 19 CFR 351.224(f).

Allegation 5: Omission of Negative Data Test in the Model Match Program

The petitioners maintain that in its Margin Calculation Program, the Department conducted a "negative data test" to find and remove a negative reported price or quantity from the calculation. Petitioners also note that the Department did not conduct a similar negative data test in the Model Match Program. Petitioners conclude that conducting the test in one program and not the other results in the incorrect use of different databases between the two programs.

Department's Position: We disagree with petitioners. As an initial matter, we note that petitioners did not comment on this standard Department calculation practice after the preliminary results, which was the correct time to raise this methodological consideration. Finally, as this is a methodological issue, it cannot be understood to be a ministerial error.

Allegation 6: Improper Admission of CEP Offset

Petitioners allege that the Department, in granting Ta Chen a CEP offset, failed: (1) to analyze the proper levels of trade for determining whether a CEP offset should be granted, and (2) to confirm the type and extent of the selling expenses offered by Ta Chen to the U.S. and home markets in the submitted record. Petitioners argue that after a proper analysis, the Department should find that the U.S. level of trade is at a higher level (or at a minimum, an equal level) of trade than home market sales and deny Ta Chen's request for a CEP offset and then correct the final results accordingly.

Department's Position: We disagree with the petitioners. Rather than requesting the Department to correct an unintentional error such as these listed at 19 CFR 351.224 (f), the petitioners are requesting the Department to review its analysis and subsequently reverse its decision at the final results. Accordingly, we cannot agree this represents a ministerial error.

We are amending the *Final Results* to reflect the correction of the above-cited two ministerial errors. All changes made to the model match and margin program can be found in the analysis memorandum. *See Memorandum to the File from Lilit Astvatsatrian, Case Analyst to James C. Doyle, Program Manager, Final Analysis for Ta Chen Stainless Steel Pipe Co. for the Amended Final Results of the Administrative Review of Stainless Steel Butt-Weld Pipe Fittings from Taiwan for the period June 1, 2000 through May 31, 2001*, dated January 20, 2003.

The revised weighted-average dumping margin is as follows:

Producer/Manufacturer/Exporter	Final Weighted-Average Margin (percent)	Amended Final Weighted Average Margin (percent)
Ta Chen	2.38	2.41

The Department will determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b), we have calculated importer-specific assessment rates. With respect to the constructed export price sales, we divided the total dumping margins for the reviewed sales by the total entered value of those reviewed sales for each importer. We will direct Customs to assess any resulting *non-de minimis* percentage margins against the entered Customs values for the subject merchandise on each of that importer's entries during the review period. We will issue appropriate assessment instructions directly to the Customs Service within 15 days of publication of these amended final results of review.

We will also direct the Customs Service to collect cash deposits of estimated antidumping duties on all appropriate entries in accordance with the procedures discussed in the Final Results and at the rates amended by this determination. The amended deposit requirements are effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice and shall remain until publication of the final results of the next administrative review.

We are issuing and publishing this determination and notice in accordance with sections 751(a)(1) and 777(i) of the Act and CFR 351.210(c).

Dated: January 23, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 03–2103 Filed 1–29–03; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF DEFENSE

Office of the Secretary

Proposed Collection; Comment Requested

AGENCY: Office of the Under Secretary of Defense (Personnel and Readiness).

ACTION: Notice.

In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Under Secretary of Defense (Personnel and Readiness) announces the following proposed reinstatement of a public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received march 31, 2003.

ADDRESSES: Written comments and recommendations on the proposed information collection should be sent to the Office of the Under Secretary of Defense (Personnel and Readiness) (Program Integration) Legal Policy, ATTN: Lt Col Patrick Lindemann, 4000 Defense Pentagon, Washington, DC 20301–4000.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the above address or call at (703) 697–3387.

Title, Associated Form, and OMB Control Number: Application for Correction of Military Record Under the Provisions of Title 10, U.S. Code, Section 1552, DD Form 149, OMB Control Number 0704–0003.

Needs and Uses: This information collection requirement is necessary for all Service personnel (current and former servicemembers) to apply to their respective Boards for Correction of Military Records (BCMR) for a correction of their military records under Title 10, United States Code Section 1552. The BCMRs of the Services are the highest administration boards and appellate review authorities in the Services for the resolution of military personnel disputes. The Service Secretaries, acting through the BCMRs, are empowered with broad powers and are duty bound to correct records if an error or injustice exists. The range of issues includes, but is not limited to, awards, clemency petitions (of courts-martial sentences), disabilities, evaluation reports, home of record, memoranda of reprimands, promotions, retirements, separations, survivor benefit plans, and titling decisions by law enforcement authorities.

Information collection is needed to provide current and former servicemembers with a method through which to request correction of a military record, and to provide the Services with the basic data needed to process the request.

Affected Public: Individuals or households.

Annual Burden Hours: 14,000.

Number of Respondents: 28,000.

Responses Per Respondent: 1.

Average Burden Per Response: 30 minutes.

Frequency: On Occasion.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

The respondents for this information collection are current and former servicemembers requesting correction to their military records. The servicemember submits to the respective Board for Correction of Military Records (BCMR) a DD Form 149, "application for Correction of Military Record Under the provisions of Title 10, U.S. Code Section 1552." The information from the DD Form 149 is used by the respective Service Boards for Correction of Military Records in processing the applicant's request authorized under Title 10 U.S.C. 1552. The DD Form 149 was devised to standardize applications to the BCMRs. This information is used to identify and secure the appropriate official military and medical records from the appropriate records storage facilities. Information on the form is used by the BCMRs to identify the issues and arguments raised by applicants, identify any counsel representing applicants, and determine if the applicants filed their petitions within the three-year statute of limitations established by Congress.

Dated: January 22, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 03–2160 Filed 1–29–03; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense will submit to OMB for emergency processing, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Consideration will be given to all comments received by February 10, 2003.

Title, Applicable Form, and OMB Number: Application for Department of Defense Impact Aid for Children with Severe Disabilities; SD Form 816 and SD Form 816C; OMB Number 0704—[To be Determined].

Type of Request: New Collection; Emergency processing requested with a shortened public comment period of ten days. An approval date by February 28, 2003, has been requested.

Number of Respondents: 50.

Responses Per Respondent: 1.

Annual Responses: 50.

Average Burden Per Response: 8 hours.

Annual Burden Hours: 400.

Needs and Uses: Department of Defense funds are authorized for local educational agencies (LEAs) that educate military dependent students with severe disabilities and meet certain criteria. Eligible LEAs are determined by their responses to the U.S. Department of Education (ED) from information they submitted on children with disabilities, when they completed the Impact Program form for the Department of Education. This new application will be requested of LEAs who educate military dependent students with disabilities, who have been deemed eligible for the U.S. Department of Education Impact Aid program, to determine if they meet the criteria to receive additional funds from the Department of Defense due to high special education costs of the military dependents with severe disabilities that they serve.

Affected Public: State, Local or Tribal Government.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Ms. Jacqueline A. Zeiher.

Written comments and recommendations on the proposed information collection should be sent to Ms. Zeiher at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. Robert Cushing.

Written requests for copies of the information collection proposal should be sent to Ms. Cushing, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302, or by fax at (703) 604–1514.

Dated: January 24, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 03–2282 Filed 1–29–03; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Department of the Air Force

Community College of the Air Force

AGENCY: Department of the Air Force, DoD.

ACTION: Notice of meeting.

SUMMARY: The Community College of the Air Force (CCAF) Board of Visitors will hold a meeting to review and discuss academic policies and issues relative to the operation of the college. Agenda items include a review of the operations of the CCAF and an update on the activities of the CCAF Policy Council. Members of the public who wish to make oral or written statements at the meeting should contact Second Lieutenant Richard W. Randolph, Designated Federal Officer for the Board, at the address below no later than 4 p.m. on 8 April 2003. Please mail or electronically mail all requests. Telephone requests will not be honored. The request should identify the name of the individual who will make the presentation and an outline of the issues to be addressed. At least 35 copies of the presentation materials must be given to Second Lieutenant Randolph no later than three days prior to the time of the board meeting for distribution. Visual aids must be submitted to Second Lieutenant Richard Randolph on a 3½″ computer disk in Microsoft PowerPoint format no later than 4 p.m. on 8 April 2003 to allow sufficient time for virus scanning and formatting of the slides.

DATES: April 15, 2003, 8 a.m.

ADDRESSES: Community College of the Air Force, First floor Conference room, 130 West Maxwell Boulevard, Maxwell Air Force Base, AL 36112.

FOR FURTHER INFORMATION CONTACT: Second Lieutenant Richard W. Randolph, (334) 953–7322, Community College of the Air Force, 130 West Maxwell Boulevard, Maxwell Air Force Base, AL 36112–6613, or through electronic mail at *richard.randolph@maxwell.af.mil.*

Pamela D. Fitzgerald,

Air Force Federal Register Liaison Officer.

[FR Doc. 03–2179 Filed 1–29–03; 8:45 am]

BILLING CODE 5001–05–M

DEPARTMENT OF EDUCATION

Intent To Compromise Claim Against Community Unit School District 300, Carpentersville, IL

AGENCY: Department of Education.

ACTION: Notice of intent to compromise a claim with request for comments.

SUMMARY: The United States Department of Education (Department) intends to compromise a claim against Community Unit School District 300, Carpentersville, Illinois (CUSD 300) now pending before the Office of Administrative Law Judges (OALJ), Docket No. 02–91–R. Before compromising a claim, the Department must publish its intent to do so in the **Federal Register** and provide the public an opportunity to comment on that action (20 U.S.C. 1234a(j)).

DATES: We must receive your comments on the proposed action on or before March 17, 2003.

ADDRESSES: Address all comments concerning the proposed action to Ronald B. Petracca, Esq., Office of the General Counsel, U.S. Department of Education, 400 Maryland Avenue, SW., room 6C111, Washington, DC 20202–2110.

FOR FURTHER INFORMATION CONTACT: Ronald B. Petracca, *Esq.* Telephone (202) 401–8316. If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in alternative format (*e.g.*, Braille, large print, audio tape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT.**

SUPPLEMENTARY INFORMATION:

Invitation to Comment

We invite you to submit comments regarding this proposed action. During and after the comment period, you may inspect all public comments in room 6c111, FB–6, 400 Maryland Avenue, SW., Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Eastern time, Monday through Friday of each week except Federal holidays.

Assistance to Individuals With Disabilities in Reviewing Comments

On request, we will supply an appropriate aid, such as a reader or print magnifier, to an individual with a disability who needs assistance to review the comments. If you want to schedule an appointment for this type of aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT.**

Background

The claim in question arose when the Director of the Department's Post Audit Group, Financial Improvement and Post Audit Operations, Office of the Chief Financial Officer, issued a program determination letter (PDL) on September 20, 2002. The PDL demanded a refund of $684,299 of funds awarded by the Department to CUSD 300 under the Systemwide Improvement Grant Program, which was authorized by sections 7115 and 7116 of the Elementary and Secondary Education Act of 1965, as amended by Improving America's Schools Act of 1994, 20 U.S.C. 7425–7426 (2000). The purpose of this program is to support the efforts of school districts to serve Limited English proficient students. The grant in question had a funding period that began on August 1, 1997 and ended on July 31, 1999. The Director determined that the funds disallowed had been used for improper or unsupported expenditures for personnel, fringe benefits, travel, supplies, training, and other items. In addition, the Director disallowed indirect costs charged to the grant that were related to these unallowable direct expenditures. Finally, the Director disallowed grant funds draw down by CUSD 300 that exceeded the amount of funds CUSD 300's own accounting records show as having been expended on this grant.

CUSD 300 filed a timely request for review of the PDL with the OALJ. Thereafter, the Administrative Law Judge assigned to the appeal granted the parties' joint motion to conduct voluntary discovery, engage in settlement negotiations, and suspend the procedural schedule.

CUSD 300, during the course of settlement discussion with the Department, submitted documentation and analysis to support its view that $77,706.32 of questioned and

unsupported personnel costs and unsupported fringe benefit, training, and other costs disallowed by the PDL are allowable. After consideration of this documentation and analysis, the Department proposes to compromise the claim of $684,299 for $607,906.08; nearly 90% of the amount disallowed by the Director in the PDL.

Based on the amount that would be repaid by CUSD 300 under the proposed settlement agreement, the documentation CUSD 300 submitted during settlement discussions, and the litigation risks and costs of proceeding through the administrative and, possibly, court process for this appeal, the Department has determined that it would not be practical or in the public interest to continue this proceeding. Rather, under the authority in 20 U.S.C. 1234a(j), the Department has determined that compromise of this claim for $607,906.08 is appropriate.

The public is invited to comment on the Department's intent to compromise this claim. Additional information may be obtained by calling or writing to Ronald B. Petracca, Esq. at the telephone number and address listed at the beginning of this document.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *www.ed.gov/legislation/FedRegister.*

To use PDF, you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC area, at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.access.gpo.gov/nara/index.html.*

Program Authority: 20 U.S.C. 1234a(j).

Dated: January 23, 2003.

Jack Martin,

Chief Financial Officer.

[FR Doc. 03–2108 Filed 1–29–03; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Special Education Programs, Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Notice of proposed extension of project period and waiver.

SUMMARY: The Secretary proposes to waive the requirements in Education Department General Administrative Regulations (EDGAR), at 34 CFR 75.250 and 75.261(a), that generally prohibit project periods exceeding 5 years and project extensions involving the obligation of additional Federal funds to enable the Technical Assistance ALLIANCE for Parent Centers to receive funding from April 1, 2003, until September 30, 2003.

DATES: We must receive your comments on or before March 3, 2003.

ADDRESSES: Address all comments concerning this proposal to Debra Sturdivant or Donna Fluke, U.S. Department of Education, 400 Maryland Avenue, SW., Room 3527, Switzer Building, Washington, DC 20202–2641. If you prefer to send your comments through the Internet, use the following address: *Debra.Sturdivant@ed.gov* or *Donna.Fluke@ed.gov.*

FOR FURTHER INFORMATION CONTACT: Debra Sturdivant, Telephone: (202) 205–8038, or Donna Fluke, Telephone: (202) 205–9161.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact persons listed under **FOR FURTHER INFORMATION CONTACT.**

SUPPLEMENTARY INFORMATION:

Invitation to Comment

We invite you to submit comments regarding this proposed extension of project period and waiver.

During and after the comment period, you may inspect all public comments about this extension of project period and waiver in Room 3414, Switzer Building, 330 C Street, SW., Washington, DC, between the hours of 8:30 a.m. and 4 p.m., eastern time, Monday through Friday of each week except Federal holidays.

Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record

On request, we will supply an appropriate aid, such as a reader or print magnifier, to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for this proposed extension of project period and waiver. If you want to schedule an appointment for this type of aid, you may call (202) 205–8113 or (202) 260–9895. If you use a TDD, you may call the Federal Information Relay Service at 1–800–877–8339.

Background

On July 29, 2002, we published in the **Federal Register** (67 FR 49014–49015) a notice of extension of project period and waiver. In this notice we announced that the Secretary intends to redesign the technical assistance component of the Training and Information for Parents of Children with Disabilities program and provide funding in fiscal year 2003. The notice of waiver and extension of project period was issued to enable the current technical assistance provider, the Technical Assistance ALLIANCE for Parent Centers Project to receive funding from October 1, 2002, until March 31, 2003. The grant for the ALLIANCE expired, after a 5-year project period, on September 30, 2002.

Technical assistance is provided on an ongoing basis to parent centers, and it would be contrary to the public interest to have any service lapses for the parent centers being served by the current grantee.

Reasons

We have determined that an additional period of time is needed for redesigning the technical assistance component. To avoid any lapse in service for the intended beneficiaries before the redesigned technical assistance component can be fully implemented, the Secretary proposes to fund this project until September 30, 2003. However, to do so, the Secretary must waive the requirements in 34 CFR 75.250 and 75.261(c)(2), which prohibit project periods exceeding 5 years and period extensions that involve the obligation of additional Federal funds. We are proposing a waiver at this time in order to give the affected grantee early notice of the availability of an additional six months of funding.

Regulatory Flexibility Act Certification

The Secretary certifies that the proposed waiver and extension of the project period will not have a significant economic impact on a substantial

number of small entities. The only small entity that would be affected is the PACER Center, Inc., which operates the Technical Assistance ALLIANCE for Parent Centers project.

Paperwork Reduction Act of 1995

This extension and waiver does not contain any information collection requirements.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive Order is to foster an intergovernmental partnership and a strengthened federalism. The Executive Order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and actions for this program.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/legislation/FedRegister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.access.gpo.gov/nara/index.html.*

(Catalog of Federal Domestic Assistance Number 84.328, Training and Information for Parents of Children with Disabilities.)

Dated: January 27, 2003.

Robert H. Pasternack,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 03–2193 Filed 1–29–03; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

DOE Response to Recommendation 2002–2 of the Defense Nuclear Facilities Safety Board, Weapons Laboratory Support of the Defense Nuclear Complex

AGENCY: Department of Energy, DOE.

ACTION: Notice.

SUMMARY: The Defense Nuclear Facilities Safety Board Recommendation 2002–2, concerning weapons Laboratory support of the DOE nuclear complex at Department of Energy Defense Nuclear Facilities was published in the **Federal Register** on October 10, 2002 (67 FR 63081). On November 21, 2002 the Secretary requested a 45-Day Extension to respond. In accordance with section 315(b) of the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2286d(b), the Secretary transmitted the following response to the Defense Nuclear Facilities Safety Board on January 8, 2003.

DATES: Comments, data, views, or arguments concerning the Secretary's response are due on or before February 7, 2003.

ADDRESSES: Send comments, data, views, or arguments concerning the Secretary's response to: Defense Nuclear Facilities Safety Board, 625 Indiana Avenue NW., Suite 700, Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT: Ms. Karen L. Boardman, Director, Office of Complex Readiness, Albuquerque Operations Office, Pennsylvania & H Street, Kirtland Air Force Base, Albuquerque, NM 87116.

Issued in Washington, DC, on January 8, 2003.

Mark B. Whitaker, Jr.,

Departmental Representative to the Defense Nuclear Facilities Safety Board.

January 8, 2003.

The Honorable John T. Conway,
Chairman, Defense Nuclear Facilities Safety Board, 625 Indiana Avenue NW., Washington, DC 20004.

Dear Mr. Chairman: On October 3, 2002, the Defense Nuclear Facilities Safety Board (Board) issued recommendation 2002–2, Weapons Laboratory Support of the Defense Nuclear Complex. The Department agrees that providing the defense nuclear complex with appropriate support is an essential priority. We also recognize that "one-size-fits-all" organizational structures and systems are not appropriate for our weapons laboratories.

The Department accepts recommendation 2002–2 and will develop an implementation plan to accomplish the following:

- We will re-emphasize the policy that the nuclear weapons program is the top priority among all activities at the weapons laboratories.
- Each weapons laboratory will review its existing processes for assigning individuals as the senior point of contact for each weapons system and ensure that selection criteria, training and mentoring, and succession planning are in place. Personnel management is an internal process of the weapons laboratories and should not be prescribed by the Department. However, the Department will ensure that the end result is that senior technically competent individuals are assigned as the point of contact for each weapons system. A list of senior individuals assigned as the point of contact of each weapon system will be provided.
- Each weapons laboratory will review its existing management system and demonstrate that through the appropriate alignment of a combination of internal organizational structure, programs, and procedures that the roles and responsibilities of each weapons point of contact are clearly defined. The point of contact for each weapon will be empowered to direct appropriate resources to ensure the safety of operations in the nuclear weapons complex within his/her assigned weapon system or have direct access to the management authority to acquire the necessary support.
- The Department will establish and staff a Federal function at each site office managing a weapons laboratory contract to ensure that the laboratory support requirements related to safety of operations of the defense nuclear weapons complex are being tracked and met. For this function, the National Nuclear Security Administration reengineering will clarify the roles and responsibilities and the contractual lines of authority for providing direction and resolving competing requirements for resources.

I have designated Ms. Karen Boardman as the responsible manager for developing the Department's implementation plan for this recommendation. Ms. Boardman may be reached at (505) 845–6039.

Sincerely,

Signed by Secretary Spencer Abraham.

[FR Doc. 03–2165 Filed 1–29–03; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2597]

Northeast Generation Company (Proposed To Be Combined With Project No. 2576); Notice of Authorization for Continued Project Operation

January 24, 2003.

On August 31, 1999, The Connecticut Light and Power Company, licensee for the Falls Village Project No. 2597, filed an application for a new or subsequent license pursuant to the Federal Power Act (FPA) and the Commission's regulations thereunder. Project No. 2597 is located on the Housatonic River in Litchfield County, Connecticut. The application proposes to combine Project No. 2597 with the licensed Housatonic Project No. 2576. The application further requests that the Commission issue a single new license for both

projects to be called the Housatonic River Project No. 2576. On November 17, 1999, the Commission issued an order transferring the licenses for Project Nos. 2597 and 2576 to Northeast Generation Company.

The license for Project No. 2597 was issued for a period ending August 31, 2001. Section 15(a)(1) of the FPA, 16 U.S.C. 808(a)(1), requires the Commission, at the expiration of a license term, to issue from year to year an annual license to the then licensee under the terms and conditions of the prior license until a new license is issued, or the project is otherwise disposed of as provided in Section 15 or any other applicable section of the FPA. If the project's prior license waived the applicability of Section 15 of the FPA, then, based on Section 9(b) of the Administrative Procedure Act, 5 U.S.C. 558(c), and as set forth at 18 CFR 16.21(a), if the licensee of such project has filed an application for a subsequent license, the licensee may continue to operate the project in accordance with the terms and conditions of the license after the minor or minor part license expires, until the Commission acts on its application. If the licensee of such a project has not filed an application for a subsequent license, then it may be required, pursuant to 18 CFR 16.21(b), to continue project operations until the Commission issues someone else a license for the project or otherwise orders disposition of the project.

If the project is subject to Section 15 of the FPA, notice is hereby given that an annual license for Project No. 2597 has been issued to Northeast Generation Company for a period effective September 1, 2001, through August 31, 2002. This license was effective until the issuance of a new license for the project or other disposition under the FPA. Because issuance of a new license (or other disposition) did not take place on or before September 1, 2002, notice is hereby given that, pursuant to 18 CFR 16.18(c), an annual license under Section 15(a)(1) of the FPA is renewed automatically without further order or notice by the Commission, unless the Commission orders otherwise.

If the project is not subject to Section 15 of the FPA, notice is hereby given that Northeast Generation Company is authorized to continue operation of the Falls Village Project No. 2597 until such time as the Commission acts on its application for subsequent license.

Magalie R. Salas,

Secretary.

[FR Doc. 03–2235 Filed 1–29–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP03–38–000]

Northern Natural Gas Company and Natural Gas Pipeline Company of America; Notice of Application

January 24, 2003.

Take notice that on January 9, 2003, Northern Natural Gas Company (Northern), 1111 South 103rd Street, Omaha, Nebraska 68124–1000 and Natural Gas Pipeline Company of America (Natural), 747 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP03–38–000 a joint abbreviated application pursuant to Section 7(b) of the Natural Gas Act (NGA) and the Federal Energy Regulatory Commission's (Commission) Regulations thereunder requesting permission and approval to abandon effective January 7, 2003, an exchange service under Northern's Rate Schedule X–82 and Natural's Rate Schedule X–85 jointly authorized in Docket No. CP81–64–000.

Specifically, Northern and Natural explain that they are parties to a gas exchange agreement dated May 5, 1980, pursuant to which natural gas was delivered to various small customers in Mills County, Iowa via an exchange arrangement. Northern and Natural state that these customers are currently being supplied with gas in a manner that no longer requires the use of the exchange arrangement. Northern and Natural state that by a termination agreement dated January 7, 2003, they agreed to terminate their gas exchange agreement.

This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866)208–3676, or for TTY, contact (202) 502–8659.

Any person desiring to intervene or to protest this filing should file on or before the comment date with the Federal Energy Regulatory Commission, 888 First Street, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the regulations under the Natural Gas Act (18 CFR 157.10). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the Protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list.

Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Comment Date: February 14, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–2232 Filed 1–29–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–114–002]

Tennessee Gas Pipeline Company; Notice of Compliance and Refund Plan Filing

January 24, 2003.

Take notice that on January 21, 2003, Tennessee Gas Pipeline Company, (Tennessee) tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, Sixth Revised Sheet No. 209A, with an effective date of February 20, 2003 and a revised refund plan.

Tennessee states that the revised tariff sheet and refund plan are being filed in accordance with the Commission's December 19, 2002 Order in the referenced proceeding, which relates to Tennessee's Cashout Report for the period from September 2000 through August 2001.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before January 31, 2003. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket

number field to access the document. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208-3676, or TTY, contact (202) 502-8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-filing" link.

Magalie R. Salas,

Secretary.

[FR Doc. 03–2237 Filed 1–29–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–378–001]

Texas Gas Transmission Corporation; Notice of Compliance Filing

January 24, 2003.

Take notice that on January 21, 2003, Texas Gas Transmission Corporation (Texas Gas) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the tariff sheets listed below to become effective on March 1, 2003:

First Revised Sheet No. 239.
First Revised Sheet No. 240.
First Revised Sheet No. 241.
Sheet No. 395.
Original Sheet No. 400.
Original Sheet No. 401.
Original Sheet No. 402.
Original Sheet No. 403.
Sheet No. 404.

Texas Gas states that the tariff sheets filed herewith are being submitted in compliance with the Commission's Order, which conditionally accepted Texas Gas's web-based auction proposal, effective December 31, 2002, and, in Ordering Paragraph (A), further directed Texas Gas to file within 21 days actual revised tariff sheets incorporating the pro forma modifications proposed in its October 2, 2002, submission and other changes discussed within the Order itself.

Texas Gas states that copies of the tariff sheets are being mailed to all parties in this docket, on Texas Gas's official service list, and to Texas Gas's jurisdictional customers and to interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Protest Date: February 3, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–2238 Filed 1–29–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC03–33–000, et al.]

Avista Corporation, et al.; Electric Rate and Corporate Filings

January 23, 2003.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Avista Corporation

[Docket No. EC03–48–000]

Take notice that on January 21, 2003, Avista Corporation filed with the Federal Energy Regulatory Commission (Commission) an application pursuant to Section 203 of the Federal Power Act for authorization of a disposition of jurisdictional facilities whereby Avista Corporation will sell approximately one-half mile of 115 kV transmission line to Modern Electric Company by cash sale.

Comment Date: February 11, 2003.

2. New York State Electric & Gas Corporation

[Docket No. ER97–2353–011]

Take notice that on December 27, 2002, New York State Electric & Gas Corporation (NYSEG) tendered an Errata Filing for correction to a Refund Report filed November 7, 2002 pursuant to the Commission's Opinion No. 447-B issued October 10, 2002 in the above mentioned docket.

NYSEG states that copies of the filing have been served upon the parties in the above-captioned proceeding.

Comment Date: February 3, 2003.

3. Sithe New Boston, LLC

[Docket No. ER02–648–002]

Take notice that on January 21, 2003, Sithe New Boston, LLC filed in compliance with the Commission's December 20, 2002 order in the above-captioned proceeding, 101 FERC ¶ 61,323, the Amended Reliability Must Run Agreement between Sithe New Boston and ISO New England, Inc., Sithe New Boston Rate Schedule FERC No. 3, amended to comply with the Commission's Order No. 614, Designation of Electric Rate Schedule Sheets, FERC Stats. & Regs. ¶ 31,096.

Comment Date: February 11, 2003.

4. Southwestern Public Service Company

[Docket Nos. ER02–1420–003 and ER02–1420–004]

Take notice that on January 21, 2003, Southwestern Public Service Company (Southwestern or the Company) tendered for filing a Compliance Report regarding its plans to participate in the regional transmission organization (RTO) to be formed by the proposed merger of the Midwest Independent Transmission System Operator, Inc., (Midwest ISO) and the Southwest Power Pool, Inc., (SPP).

Comment Date: February 11, 2003.

5. Quonset Point Cogen, L.P.

[Docket No. ER03–6–001]

Take notice that on January 17, 2003, Quonset Point Cogen, L.P. and PSEG Energy Technologies Inc. (Applicants) filed with the Federal Energy Regulatory Commission (Commission) a request to withdraw their November 8, 2002 request for deferral of Commission action in the above-captioned matter; and a request that the Commission resume its review, for approval, of the Thermal and Electric Energy Purchase Agreement filed on October 2, 2002 in Docket No. ER03–6–000.

Comment Date: February 7, 2003.

6. Idaho Power Company and NorthWestern Energy, a division of NorthWestern Corporation

[Docket No. ER03–102–001]

Take notice that on January 21, 2003, Idaho Power Company (Idaho Power) and NorthWestern Energy (NWE), a

division of NorthWestern Corporation, submitted a filing in compliance with the Letter Order issued December 19, 2002 in this proceeding by the Director, Division of Tariffs and Market Development—West (December 19 Order). Pursuant to the December 19 Order, Idaho Power and NWE provided revised copies of the Agreement for Load Following Services between Idaho Power and NWE designated as required by Order No. 614, FERC Stats. & Regs., ¶ 31,096.

Comment Date: February 11, 2003.

7. New York State Electric & Gas Corporation

[Docket No. ER03–316–001]

Take notice that on January 17, 2003, New York State Electric & Gas Corporation (NYSEG) tendered an Errata Filing for corrections to its December 23, 2002 filing letter for revisions to the annual charges for routine operation and maintenance and general expenses, as well as revenue and property taxes based on data from NYSEG's annual report to FERC (FERC form 1) for the twelve month period ending December 31, 2001 for the Facilities Agreement with the Steuben Rural Electric Cooperative, Inc. in the above mentioned docket.

NYSEG states that copies of the filing have been served upon the other parties to the above captioned proceeding.

Comment Date: February 11, 2003.

8. Klondike Wind Power LLC

[Docket No. ER03–416–001]

Take notice that on January 21, 2003, Klondike Wind Power LLC (Klondike) submitted for filing a revised market-based tariff (Tariff) with the Federal Energy Regulatory Commission (Commission) reflecting its name change from West Valley Generation LLC. Klondike requests waiver of the 60-day prior notice requirement to allow its revised Tariff to become effective as of December 19, 2002.

Comment Date: February 11, 2003.

9. PPL Electric Utilities Corporation

[Docket No. ER03–431–000]

Take notice that on January 21, 2003, PPL Electric Utilities Corporation (PPL Electric) filed with the Federal Energy Regulatory Commission an executed Generator Interconnection Agreement between PPL Electric and Lower Mount Bethel Energy, LLC (Lower Mount Bethel).

PPL Electric and Lower Mount Bethel request an effective date for the Interconnection Agreement of March 24, 2003, which is the first business day falling at least sixty days from the date of filing.

Comment Date: February 11, 2003.

10. SP Newsprint Co.

[Docket No. ER03–432–000]

Take notice that on January 21, 2003, SP Newsprint Co. tendered for filing an application for authorization to sell energy, capacity, and other auxiliary services at market-based rates pursuant to Section 205 of the Federal Power Act.

Comment Date: February 11, 2003.

11. Progress Energy Service Company, on behalf of Progress Energy Carolinas, Inc.

[Docket No. ER03–433–000]

Take notice that on January 21, 2003, Progress Energy Service Company on behalf of Progress Energy Carolinas, Inc., (Progress Carolinas) tendered for filing an executed long-term Service Agreement between Progress Carolinas' and the following eligible buyer, The Town of Waynesville, NC. Service to this eligible buyer will be in accordance with the terms and conditions of Progress Carolinas' Market-Based Rates Tariff, FERC Electric Tariff No. 5.

Progress Carolinas requests an effective date of January 1, 2003 for this Service Agreement. Progress Carolinas also states that copies of the filing were served upon the North Carolina Utilities Commission and the South Carolina Public Service Commission.

Comment Date: February 11, 2003.

Standard Paragraph

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov* , using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866)208–3676, or for TTY, contact (202)502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. 03–2233 Filed 1–29–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP02–37–000]

Williston Basin Interstate Pipeline Company; Notice of Availability of and Public Comment Meetings on the Draft Environmental Impact Statement for the Proposed Grasslands Project

January 24, 2003.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared a Draft Environmental Impact Statement (DEIS) on the natural gas pipeline facilities proposed by Williston Basin Interstate Pipeline Company (WBI) in the above referenced docket.

The DEIS was prepared to satisfy the requirements of the National Environmental Policy Act. The staff concludes that approval of the proposed project, with the appropriate mitigating measures as recommended, would have limited adverse environmental impact. The DEIS also evaluates alternatives to the proposal, including system alternatives, major route alternatives, and route variations.

The U.S. Department of the Interior, Bureau of Land Management (BLM) is participating as a cooperating agency in the preparation of this DEIS because the project would cross Federal land under the jurisdiction of two field offices in Wyoming and Montana. The U.S. Department of Agriculture, Forest Service (USFS) is also a cooperating agency in the preparation of this document because the Little Missouri National Grasslands would be crossed by the project. The DEIS will be used by the BLM to consider issuance of a right-of-way grant for the portion of the project on all Federal lands.

The DEIS addresses the potential environmental effects of the construction and operation of the following facilities:

- Approximately 223 miles of new 16-inch-diameter pipeline from near Belle Creek, Montana, to the proposed

Manning Compressor Station in Dunn County, North Dakota;

- Approximately 28 miles of 16-inch-diameter pipeline loop [1] adjacent to WBI's existing Bitter Creek supply lateral pipeline in Wyoming;
- Maximum allowable operating pressure (MAOP) upgrade on approximately 28 miles of existing 8-inch-diameter Bitter Creek supply lateral pipeline in Wyoming from 1,203 pounds per square inch gauge (psig) to 1,440 psig, and abandonment in-place of segments of existing pipe at three road crossings and replacement with heavier walled pipe;
- MAOP upgrade on approximately 40 miles of existing 8-inch-diameter Recluse-Belle Creek supply lateral pipeline in Wyoming and Montana from 1,203 psig to 1,440 psig, and abandonment in-place of segments of existing pipe at eight road crossings and replacement with heavier walled pipe;
- 4,180 horsepower (hp) of gas fired compression (comprised of two 2,090 hp compressors) at one new compressor station located in Dunn County, North Dakota (Manning Compressor Station), and electric coolers installation at this station;
- An additional transmission compressor unit (1,200 hp) at the existing Cabin Creek Compressor Station in Fallon County, Montana;
- 0.9 mile of 12-inch-diameter pipeline from the proposed mainline to the existing Cabin Creek Compressor Station in Fallon County, Montana;
- 1.0 mile of 16-inch-diameter pipeline from the proposed Manning Compressor Station to interconnect with Northern Border Pipeline Company's Compressor Station 5 in Dunn County, North Dakota; and
- Various additional facilities, including 14 mainline valves, 4 cathodic protection units, 8 pig launchers/receivers, 5 metering stations, and 2 regulators.

The purpose of the proposed facilities would be to provide an additional outlet for the increased production of natural gas in the Powder River Basin, allowing transportation of about 80 million cubic feet per day of natural gas; provide access to WBI's storage facilities to shippers of gas produced in the Powder River Basin and elsewhere; and provide access to and from WBI's storage facilities to and from the facilities of Northern Border Pipeline Company for delivery to Midwestern and other national markets.

[1] A loop is a segment of pipeline that is usually installed adjacent to an existing pipeline and connected to it at both ends. The loop allows more gas to be moved through the system.

Comment Procedures and Public Meeting

Any person wishing to comment on the DEIS may do so. To ensure consideration prior to a Commission decision on the proposal, it is important that we receive your comments before the date specified below. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

- Send an original and two copies of your comments to: Secretary, Federal Energy Regulatory Commission, 888 First St., NE., Room 1A, Washington, DC 20426;
- Label one copy of the comments for the attention of Gas Branch 1, PJ11.1;
- Reference Docket No. CP02–37–000; and
- Mail your comments so that they will be received in Washington, DC on or before March 17, 2003.

Please note that we are continuing to experience delays in mail deliveries from the U.S. Postal Service. As a result, we will include all comments that we receive within a reasonable time frame in our environmental analysis of this project. However, the Commission strongly encourages electronic filing of any comments or interventions or protests to this proceeding. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the "e-Filing" link and the link to the User's Guide. Before you can file comments you will need to create a free account which can be created by clicking on "Login to File" and then "New User Account."

In addition to or in lieu of sending written comments, the FERC invites you to attend the public meetings the staff will conduct in the project area to receive comments on the DEIS. All meetings will begin at 7 p.m., and are scheduled as follows:

Date/Location

Monday, March 3, 2003—Travelodge Hotel, 532 15th St. W., Dickinson, North Dakota, (701) 483–5600

Tuesday, March 4, 2003—Fallon County Fairgrounds, Exhibit Hall, Baker, Montana, (406) 778–2451

Wednesday, March 5, 2003—Tower West Lodge, 109 N U.S. Highway 14/16, Gillette, Wyoming, (307) 686–2210

Interested groups and individuals are encouraged to attend and present oral comments on the DEIS. Transcripts of the meetings will be prepared.

After these comments are reviewed, any significant new issues are investigated, and modifications are made to the DEIS, a Final Environmental Impact Statement (FEIS) will be published and distributed by the staff. The FEIS will contain the staff's responses to timely comments filed on the DEIS.

Comments will be considered by the Commission but will not serve to make the commentor a party to the proceeding. Any person seeking to become a party to the proceeding must file a motion to intervene pursuant to Rule 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.214).

Anyone may intervene in this proceeding based on this DEIS. You must file your request to intervene as specified above.[2] You do not need intervenor status to have your comments considered.

The DEIS has been placed in the public files of the FERC and is available for public inspection at: Federal Energy Regulatory Commission, Public Reference and Files Maintenance Branch, 888 First Street, NE., Room 2A, Washington, DC 20426, (202) 502–8371.

A limited number of copies of the DEIS are available from the Public Reference and Files Maintenance Branch identified above. In addition, copies of the DEIS have been mailed to Federal, state and local agencies, public interest groups, individuals who have requested the DEIS, newspapers, and parties to this proceeding.

Additional information about the project is available from the Commission's Office of External Affairs, at 1–866–208–FERC or on the FERC Internet Web site (*http://www.ferc.gov*) using the FERRIS link. Click on the FERRIS link, enter the docket number excluding the last three digits in the Docket Number field. Be sure you have selected an appropriate date range. For assistance with FERRIS, the FERRIS helpline can be reached at 1–866–208–3676, TTY (202) 502–8659 or at *FERCOnlineSupport@ferc.gov*. The FERRIS link on the FERC Internet Web site also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

Information concerning the involvement of the BLM is available from Dalice Landers, Realty Specialist and Project Lead at (406) 233–2836. Information concerning the involvement of the USFS is available from Tina

[2] Interventions may also be filed electronically via the Internet in lieu of paper. *See* the previous discussion on filing comments electronically.

Thornton, Realty Specialist and Project Lead at (701) 225–5151.

Magalie R. Salas,

Secretary.

[FR Doc. 03–2231 Filed 1–29–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 12400–000]

Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests, and Comments

January 24, 2003.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 12400–000.

c. *Date filed:* October 28, 2002.

d. *Applicant:* Universal Electric Power Corp.

e. *Name of Project:* Mississippi Lock and Dam #22 Project.

f. *Location:* On Mississippi River, in Ralls County, Missouri, utilizing the U.S. Army Corps of Engineers' Mississippi Lock and Dam #22.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)—825(r).

h. *Applicant Contact:* Mr. Raymond Helter, Universal Electric Power Corp., 1145 Highbrook Street, Akron, OH 44301, (330) 535–7115.

i. *FERC Contact:* Robert Bell, (202) 502–6062.

j. *Deadline for filing comments, protests, and motions to intervene:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings. Please include the project number (P–12400–000) on any comments or motions filed. The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project:* The proposed project would utilize the Corps' existing Mississippi Lock and Dam #22 and consist of: (1) Eight proposed 80-foot-long, 108-inch-diameter steel penstocks, (2) a proposed powerhouse containing eight generating units having an installed capacity of 10 MW, (3) a proposed 200-foot-long, 14.7 kV transmission line, and (4) appurtenant facilities.

Applicant estimates that the average annual generation would be 61 GWh and would be sold to a local utility.

l. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *ferconlineSupport@ferc.gov*. For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

m. *Competing Preliminary Permit:* Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (*see* 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

n. *Competing Development Application:* Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

o. *Notice of Intent:* A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

p. *Proposed Scope of Studies under Permit:* A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

q. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

r. *Filing and Service of Responsive Documents:* Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

s. *Agency Comments:* Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,
Secretary.
[FR Doc. 03–2234 Filed 1–29–03; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM98–1–000]

Regulations Governing Off-the-Record Communications; Public Notice

January 24, 2003.

This constitutes notice, in accordance with 18 CFR 385.2201(h), of the receipt of exempt and prohibited off-the-record communications.

Order No. 607 (64 FR 51222, September 22, 1999) requires Commission decisional employees, who make or receive an exempt or a prohibited off-the-record communication relevant to the merits of a contested on-the-record proceeding, to deliver a copy of the communication, if written, or a summary of the substance of any oral communication, to the Secretary.

Prohibited communications will be included in a public, non-decisional file associated with, but not part of, the decisional record of the proceeding. Unless the Commission determines that the prohibited communication and any responses thereto should become part of the decisional record, the prohibited off-the-record communication will not be considered by the Commission in reaching its decision. Parties to a proceeding may seek the opportunity to respond to any facts or contentions made in a prohibited off-the-record communication, and may request that the Commission place the prohibited communication and responses thereto in the decisional record. The Commission will grant such requests only when it determines that fairness so requires. Any person identified below as having made a prohibited off-the-record communication should serve the document on all parties listed on the official service list for the applicable proceeding in accordance with Rule 2010, 18 CFR 385.2010.

Exempt off-the-record communications will be included in the decisional record of the proceeding, unless the communication was with a cooperating agency as described by 40 CFR 1501.6, made under 18 CFR 385.2201(e)(1)(v).

The following is a list of exempt and prohibited off-the-record communications recently received in the Office of the Secretary. These filings are available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866)208–3676, or for TTY, contact (202)502–8659.

EXEMPT

Docket No.	Date filed	Presenter or Requester
1. Project No. 2042–000	1–22–03	Frank Winchell.
2. Project No. 1927–000	1–22–03	Richard Hoffman.*
3. Project No. 1971–000	1–22–03	Kenneth C. Reid, Ph.D./ Susan Pengilly Neitzel.
4. Project No. 1971–000	1–22–03	Jay Minthorn.
5. RT02–2–000	1–23–03	Len Tao.
6. Project No. 5018–004	1–24–03	Caleb Slater.

*Copy of Programmatic Agreement.

Magalie R. Salas,
Secretary.
[FR Doc. 03–2236 Filed 1–29–03; 8:45 am]
BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL 7446–5]

EPA Science Advisory Board; Notification of Ecological Processes and Effects Committee Meeting; Request for Comments on the Consultative Panel

Purpose of this Notice—To: (1) Announce a public meeting of a Federal advisory committee, and (2) solicit public comment on the proposed consultative panel.

1. Meeting of the Ecological Processes and Effects Committee (EPEC)—February 13–14, 2003

Pursuant to the Federal Advisory Committee Act, Pub. L. 92–463, notice is hereby given that the Ecological Processes and Effects Committee (EPEC) of the U.S. EPA Science Advisory Board (SAB) will meet on Thursday and Friday, February 13–14, 2003 to conduct a consultation with the EPA Office of Water on its plans to revise the "Guidelines for Deriving Numerical National Water Quality Criteria for the Protection of Aquatic Organisms and Their Uses"; to receive Agency briefings on ecological science priorities; and to discuss potential future SAB studies. All times noted are Eastern Time. The meeting is open to the public, however, seating is limited and available on a first come basis. *Important Notice:* Documents that are the subject of SAB reviews or consultations are normally available from the originating EPA office and are not available from the SAB Office—information concerning availability of documents generated by the SAB and the relevant Program Office is included below.

The meeting will begin on Thursday, February 13 at 9 am and adjourn no later than 5:30 pm that day. On Friday, February 14 the meeting may begin at 8:30 am and adjourn no later than 5:30 pm. The meeting will be held in EPA Conference Room 4530 in the EPA Ariel Rios North Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20004. For further information concerning the meeting, please contact the individuals listed at the end of this *FR* notice.

Availability of the Meeting Materials

The materials are available from the Office of Water (OW) Web site, located at: *http://epa.gov/waterscience/criteria/aqlife.html*. The existing guidelines subject to revision are available through the National Technology Information Service at *http://www.NTIS.gov*. The document number for ordering the Guidelines is: PB85227049. For questions and information concerning the materials, please contact Ms. Heidi Bell, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave, NW., Washington, DC 20460; tel. (202) 566–1089, or e-mail: *bell.heidi@epa.gov*.

2. Solicitation of Public Comment on the Proposed Consultative Panel

A "consultation" is one of several types of formal interaction between the Agency and the Science Advisory Board. The purpose of a consultation is to conduct an early discussion between the Agency and the SAB to help articulate important issues in the development of a project. The meeting is public and consists of briefings and discussions. In some cases a partial document, or an early draft is available to serve a the basis for discussions. A charge is often used, but is less focused than that used in a formal peer review. No consensus advice is sought and no report is generated by the SAB.

To provide the Agency with meaningful input, we have determined that the following expertise is needed for the consultation: ecotoxicology, chemistry, ecological risk assessment, and uncertainty analysis. The EPA Science Advisory Board Staff Office has determined that the Ecological Processes and Effects Committee (EPEC), a standing committee of the Board, will conduct this consultation since EPEC already has the appropriate expertise without the need for additional expert consultants. Therefore, we are not soliciting additional experts for this consultation.

The SAB Staff Office will post the names and biosketches for members of the consultative Panel on the SAB Web site at: *http://www.epa.gov/sab*. Public comments will be accepted until February 7, 2003 on the information provided. During this comment period, the public will be requested to provide information, analysis or other documentation relevant to the membership of the panel for the Staff Office's final decision. Information, analysis or documentation must be received by the EPEC Designated Federal Officer (DFO) no later than February 7, 2003. Please see the address/contact information noted below.

For the EPA SAB, a balanced review panel (*i.e.*, committee, subcommittee, or panel) is characterized by inclusion of candidates who possess the necessary domains of knowledge, the relevant scientific perspectives (which, among other factors, can be influenced by work history and affiliation), and the collective breadth of experience to adequately address the charge. Information provided by the public will be considered in the selection of the panel, along with information provided by candidates and information gathered by EPA SAB Staff independently on the background of each candidate (*e.g.*, financial disclosure information and computer searches to evaluate a nominee's prior involvement with the topic under review). Specific criteria to be used in evaluating an individual subcommittee member include: (a) scientific and/or technical expertise, knowledge, and experience (primary factors); (b) availability and willingness to serve; (c) absence of financial conflicts of interest; (d) scientific credibility and impartiality; and (e) ability to work constructively and effectively in committees.

3. General Information

Providing Oral or Written Comments at SAB Meetings

It is the policy of the EPA Science Advisory Board (SAB) to accept written public comments of any length, and to accommodate oral public comments whenever possible. The EPA SAB expects that public statements presented at its meetings will not be repetitive of previously submitted oral or written statements. *Oral Comments:* In general, each individual or group requesting an oral presentation at a face-to-face meeting will be limited to a total time of ten minutes (unless otherwise indicated). For teleconference meetings, opportunities for oral comment will usually be limited to no more than three minutes per speaker and no more than fifteen minutes total. Interested parties should contact the DFO at least one week prior to the meeting in order to be placed on the public speaker list for the meeting. Speakers may attend the meeting and provide comment up to the meeting time. Speakers should bring at least 35 copies of their comments and presentation slides for distribution to the reviewers and public at the meeting. *Written Comments:* Although the SAB accepts written comments until the date of the meeting (unless otherwise stated), written comments should be received in the SAB Staff Office at least one week prior to the meeting date so that the comments may be made available to the review panel for their consideration. Comments should be supplied to the EPEC DFO at the address/contact information noted above in the following formats: one hard copy with original signature, and one electronic copy via e-mail (acceptable file format: Adobe Acrobat, WordPerfect, Word, or Rich Text files (in IBM–PC/Windows 95/98 format). Those providing written comments and who attend the meeting are also asked to bring 35 copies of their comments for public distribution. Should comment be provided at the meeting and not in advance of the meeting, they should be in-hand to the DFO up to and immediately following the meeting. The SAB allows a grace period of 48 hours after adjournment of the public meeting to provide written comments supporting any verbal comments stated at the public meeting to be made a part of the public record.

For Further Information

Any member of the public wishing further information concerning this meeting, who wish to submit brief oral comments, or have comment on the constitution or balance of EPEC membership, must contact Mr. Lawrence Martin, DFO, USEPA Science Advisory Board (1400A), Suite 6450, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone/voice mail at (202) 564–6497; fax at (202) 501–0582; or via e-mail at *martin.lawrence@epa.gov*. Requests for oral comments must be *in writing* (e-mail, fax or mail) and received by Mr. Martin no later than noon Eastern Time five business days prior to the meeting date (February 7, 2003).

Members of the public desiring additional information about the meeting location must contact Ms. Zisa Lubarov-Walton, EPA Science Advisory Board (1400A), Suite 6450, U.S. EPA, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone/voice mail at (202) 564–4537; fax at (202) 501–0582; or via e-mail at *Zisa Lubarov-Walton@epa.gov*.

A copy of the draft agenda for the meeting will be posted on the SAB Web site *(http://www.epa.gov/sab)* (under the AGENDAS subheading) approximately 10 days before the meeting.

Meeting Access

Individuals requiring special accommodation at this meeting, including wheelchair access to the conference room, should contact Ms. Lubarov-Walton at least five business days prior to the meeting so that appropriate arrangements can be made.

Dated: January 27, 2003.

Vanessa T. Vu,

Director, EPA Science Advisory Board Staff Office.

[FR Doc. 03–2334 Filed 1–29–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7445–6]

Notice of Availability of Enforcement and Compliance History Online Web Site for 60–Day Comment Period; Extension

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of extension of original comment period.

SUMMARY: The Office of Compliance (OC), within EPA's Office of Enforcement and Compliance Assurance (OECA), announces an extension of the comment period from the originally scheduled deadline of January 21, 2003, to March 31, 2003, for its pilot Web site, Enforcement and Compliance History Online (ECHO), which contains searchable, facility-level enforcement and compliance information.

DATES: Comments must be submitted no later than March 31, 2003.

ADDRESSES: The Web site is available at *http://www.epa.gov/echo*. Comments may be submitted to *echo@epa.gov* as a Word or WordPerfect file or mailed to Rebecca Kane, Environmental Protection Agency, Office of Enforcement and Compliance Assurance, MC 2222A, 1200 Pennsylvania Avenue NW., Washington, DC, 20460. Specific data errors should be submitted using the error correction process on the ECHO site.

FOR FURTHER INFORMATION CONTACT: Rebecca Kane at *kane.rebecca@epa.gov* or (202) 564–5960.

SUPPLEMENTARY INFORMATION: Due to several requests from stakeholders, EPA has extended ECHO's comment period, which was scheduled to end on January 21, 2003, to March 31, 2003. The site's availability and comment period were announced in the **Federal Register** on November 20, 2002. The original notice, a link to which is posted on the ECHO site, provides detailed information on ECHO and specific questions for consideration.

Dated: January 21, 2003.

Michael M. Stahl,

Director, Office of Compliance.

[FR Doc. 03–2177 Filed 1–29–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPPT–2003–0001; FRL–7288–2]

Certain New Chemicals; Receipt and Status Information

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5 of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture (defined by statute to include import) a new chemical (i.e., a chemical not on the TSCA Inventory) to notify EPA and comply with the statutory provisions pertaining to the manufacture of new chemicals. Under sections 5(d)(2) and 5(d)(3) of TSCA, EPA is required to publish a notice of receipt of a premanufacture notice (PMN) or an application for a test marketing exemption (TME), and to publish periodic status reports on the chemicals under review and the receipt of notices of commencement to manufacture those chemicals. This status report, which covers the period from December 11, 2002 to December 26, 2002, consists of the PMNs pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period.

DATES: Comments identified by the docket ID number OPPT– 2003–0001 and the specific PMN number or TME number, must be received on or before March 3, 2003.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Barbara Cunningham, Acting Director, Environmental Assistance Division, Office of Pollution Prevention and Toxics (7408M), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 554–1404; e-mail address: *TSCA-Hotline@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. As such, the Agency has not attempted to describe the specific entities that this action may apply to. Although others may be affected, this action applies directly to the submitter of the premanufacture notices addressed in the action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of This Document and Other Related Information?

1. *Docket*. EPA has established an official public docket for this action under docket identification (ID) number OPPT–2003–0001. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the EPA Docket Center, Rm. B102-Reading Room, EPA West, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The EPA Docket Center Reading Room telephone number is (202) 566–1744 and the telephone number for the OPPT Docket, which is located in EPA Docket Center, is (202) 566–0280.

2. *Electronic access*. You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select "search," then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in

printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and To Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number and specific PMN number or TME number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically.* If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket*, and follow the online instructions for submitting comments. Once in the system, select" search," and then key in docket ID number OPPT–2003–0001. The system is an" anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by e-mail to *oppt.ncic@epa.gov*, Attention: Docket ID Number OPPT–2003–0001 and PMN Number or TME Number. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail.* Send your comments to: Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

3. *By hand delivery or courier.* Deliver your comments to: OPPT Document Control Office (DCO) in EPA East Building Rm. 6428, 1201 Constitution Ave., NW., Washington, DC. Attention: Docket ID Number OPPT–2003–0001 and PMN Number or TME Number. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 564–8930.

D. How Should I Submit CBI To the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Offer alternative ways to improve the notice or collection activity.

7. Make sure to submit your comments by the deadline in this document.

8. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action and the specific PMN number you are commenting on in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Why is EPA Taking this Action?

Section 5 of TSCA requires any person who intends to manufacture (defined by statute to include import) a new chemical (i.e., a chemical not on the TSCA Inventory to notify EPA and comply with the statutory provisions pertaining to the manufacture of new chemicals. Under sections 5(d)(2) and 5(d)(3) of TSCA, EPA is required to publish a notice of receipt of a PMN or an application for a TME and to publish periodic status reports on the chemicals under review and the receipt of notices of commencement to manufacture those chemicals. This status report, which covers the period from December 11, 2002 to December 26, 2002, consists of the PMNs pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period.

III. Receipt and Status Report for PMNs

This status report identifies the PMNs pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period. If you are interested in information that is not included in the following tables, you may contact EPA as described in Unit II. to access additional non-CBI information that may be available.

In Table I of this unit, EPA provides the following information (to the extent that such information is not claimed as CBI) on the PMNs received by EPA during this period: the EPA case number assigned to the PMN; the date the PMN was received by EPA; the projected end date for EPA's review of the PMN; the submitting manufacturer; the potential uses identified by the manufacturer in the PMN; and the chemical identity.

I. 59 PREMANUFACTURE NOTICES RECEIVED FROM: 12/11/02 TO 12/26/02

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–03–0170	12/12/02	03/12/03	CBI	(G) Resin coating	(G) Methacrylated polyol
P–03–0171	12/12/02	03/12/03	CBI	(G) Polymer for waterborne paints	(G) Epoxy-acrylic graft copolymer
P–03–0172	12/12/02	03/12/03	CBI	(G) Radiation cured inks	(G) Polyester acrylate
P–03–0173	12/12/02	03/12/03	CBI	(G) 1st substance, generic name = polymer resin intermediate.	(G) Modified polycarbocycles, maleated
P–03–0174	12/12/02	03/12/03	CBI	(G) 2nd and 3rd substances, generic names = surfactant resin polymers.	(G) Modified polycarbocycles, maleated, ethoxylated
P–03–0175	12/12/02	03/12/03	CBI	(G) 2nd and 3rd substances, generic names = surfactant resin polymers.	(G) Modified polycarbocycles, maleated, ethoxylated, phosphates
P–03–0176	12/12/02	03/12/03	CBI	(G) Resin coating	(G) Urethane acryiate
P–03–0177	12/12/02	03/12/03	CBI	(G) Concrete additive	(G) Substituted hydroxyethylcellulose ethers
P–03–0178	12/12/02	03/12/03	CBI	(G) Textile colorant	(G) Substituted pyridinemethanesulfonic acid, [[[(sulfooxy)ethyl]sulfonyl]phenyl] [sulfophenyl], sodium salt
P–03–0180	12/13/02	03/13/03	Mitsui Chemicals America, Inc.	(S) Reagents for nucleic acid testing (on subject resulting from farm animals, crops, plants, foods, living entities other than humans)	(S) Cytidine, 2′-deoxy-, monohydrochloride
P–03–0181	12/13/02	03/13/03	CBI	(S) Wood floor coating; wood moulding coating; wood furniture coating	(G) Amino resin modified polyether polyurethane
P–03–0182	12/13/02	03/13/03	CBI	(G) Open, non-dispersive (resin)	(G) Polysulfonated dpo/diphone
P–03–0183	12/13/02	03/13/03	CBI	(G) Parts of automobile	(G) Methyl styrene acrylonitrile copolymer
P–03–0184	12/13/02	03/13/03	CBI	(G) Parts of automobile	(G) Methyl styrene acrylonitrile copolymer
P–03–0185	12/13/02	03/13/03	CBI	(G) 1. Inner parts of automobile; 2. Air spoiler of automobile	(G) Butadiene styrene polymer
P–03–0186	12/16/02	03/16/03	CBI	(G) Lubricant additive.	(G) Fatty acid amide
P–03–0187	12/16/02	03/16/03	CBI	(G) Polymer catalyst (contained use)	(G) Organometallic compound
P–03–0188	12/17/02	03/17/03	Meadwestvaco Corporation - Specialty Chemicals Division	(S) Asphalt emulsifier	(G) Fatty acids, tall-oil, reaction products with substituted ethyleneamines
P–03–0192	12/13/02	03/13/03	CBI	(G) Surfactant	(G) Mixed alkyl phosphate ester
P–03–0193	12/13/02	03/13/03	CBI	(G) Surfactant	(G) Mixed alkyl phosphate ester, potassium salt
P–03–0194	12/17/02	03/17/03	Vantico Corp.	(S) Resin for electronic laminates; adhesive resin; encapsulants resin; composites resin	(G) Bis[phenyl, 2h-1,3-benzoxazine] derivative

I. 59 PREMANUFACTURE NOTICES RECEIVED FROM: 12/11/02 TO 12/26/02—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–03–0195	12/17/02	03/17/03	Arteva Specialties S.A.R.L. D/B/A Kosa	(G) Chemical intermediate and component of structural materials, destructive uses	(G) Aromatic acid ester
P–03–0196	12/17/02	03/17/03	CBI	(G) Additive for coatings, inks, adhesives and composites.	(G) Metallic diol
P–03–0197	12/18/02	03/18/03	Marubeni Specialty Chemicals, Inc.	(G) Surface active agent for emulsion polymerization	(G) Polyoxyethylene polyalkylarylphenylether sulfate ammonium salt
P–03–0198	12/18/02	03/18/03	CBI	(S) Site limited intermediate	(G) Fatty acid amide
P–03–0199	12/19/02	03/19/03	CBI	(G) Resin coating	(G) Polyurethane
P–03–0200	12/18/02	03/18/03	CBI	(G) Sealant	(S) 2-propenoic acid, 2-methyl-, C_{9-11}-isoalkyl esters, C_{10}-rich
P–03–0201	12/18/02	03/18/03	CBI	(G) Oil well additive	(G) Fatty acid amide ammonium chloride salts
P–03–0202	12/18/02	03/18/03	Reichhold, Inc.	(G) Coating	(G) Alkanediol homopolymer, polymer with polyether polyol and isocyanate.
P–03–0203	12/18/02	03/18/03	Reichhold, Inc.	(G) Coating	(G) Alkanediol homopolymer, polymer with polyether polyol and isocyanate.
P–03–0204	12/18/02	03/18/03	Reichhold, Inc.	(G) Coating	(G) Alkanediol homopolymer, polymer with polyether polyol and isocyanate.
P–03–0205	12/19/02	03/19/03	Meadwestvaco Corporation - Specialty Chemicals Division	(S) Asphalt emulsifier salt	(G) Fatty acids, tall-oil, reaction products with substituted ethyleneamines, hydrochlorides
P–03–0206	12/19/02	03/19/03	Meadwestvaco Corporation - Specialty Chemicals Division	(S) Asphalt emulsifier salt	(G) Fatty acids, tall-oil, reaction products with substituted ethylenamines, acetates
P–03–0207	12/19/02	03/19/03	Meadwestvaco Corporation - Specialty Chemicals Division	(S) Asphalt emulsifier salt	(G) Fatty acids, tall-oil, reaction products with substituted ethylenamines, phosphates
P–03–0208	12/19/02	03/19/03	CBI	(S) Additive in radiation cured coatings; additive in radiation cured inks; additive in unsaturated polyester composites; addtive in radiation cured adhesives	(G) Urethane acylate
P–03–0209	12/19/02	03/19/03	CBI	(G) Chemical intermediate	(G) Polyester polyol
P–03–0210	12/19/02	03/19/03	Solutia Inc	(S) Wetting agent for industrial coatings	(G) Urethane modified acrylic copolymer
P–03–0211	12/20/02	03/20/03	Powdertech International Corporation	(S) Coating resin of carrier particles for contrlling surface resistance of the particles for electrophotographic developer	(S) Siloxanes and silicones,methyl methoxy,polymers with methyl silsesquioxanes methoxy teiminated,reaction products with methyl ethyl ketone 0,0′,0″-(methylsilylidyne)trioxime and 2,4,6-trimethyl-2,4,6-tris(3,3,3-trifluoropropyl)cyclotrisiloxane
P–03–0212	12/20/02	03/20/03	Cognis Corporation	(S) Phase transfer catalyst	(S) Quaternary ammonium compounds, tri-8-10-alkylmethyl, sulfates (1:1)
P–03–0213	12/20/02	03/20/03	CBI	(G) Additive	(G) Modified polythioaminoketone
P–03–0214	12/20/02	03/20/03	CBI	(G) Laminating adhesive; open, non-dispersive use	(G) Polyurethane prepolymer; polurethane hot melt
P–03–0215	12/23/02	03/23/03	Mcp Metalspecialties, Inc.	(G) catalyst	(S) 4h-1,3,2-benzodioxabismin-4-one, 2-hydroxy-
P–03–0216	12/23/02	03/23/03	CBI	(G) Rheology modifier	(G) Acrylic copolymer
P–03–0217	12/23/02	03/23/03	CBI	(G) Chemical intermediate	(G) Polyester polyol
P–03–0218	12/23/02	03/23/03	CBI	(G) Petroleum additive	(G) Alkyl borate
P–03–0219	12/24/02	03/24/03	Solutia Inc	(S) Wetting agent for industrial coatings	(G) Urethane modified acrylic copolymer
P–03–0220	12/24/02	03/24/03	CBI	(G) Monomer for polymer	(G) Polycarbonate polyol
P–03–0221	12/24/02	03/24/03	CIBA Specialty Chemicals Corporation, Textile Effects	(S) Exhaust dyeing of polyester fibers	(G) Substituted isothiazole benzenamide derative
P–03–0222	12/26/02	03/26/03	CBI	(G) Surface treatment chemical	(G) Substituted phenolic resin
P–03–0223	12/26/02	03/26/03	CBI	(G) Surface treatment chemical	(G) Substituted phenolic resin
P–03–0224	12/26/02	03/26/03	CBI	(G) Surface treatment chemical	(G) Substituted phenolic resin
P–03–0225	12/26/02	03/26/03	CBI	(G) Surface treatment chemical	(G) Substituted phenolic resin

I. 59 PREMANUFACTURE NOTICES RECEIVED FROM: 12/11/02 TO 12/26/02—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–03–0226	12/26/02	03/26/03	CBI	(G) Surface treatment chemical	(G) Substituted phenolic resin
P–03–0227	12/26/02	03/26/03	CBI	(G) Surface treatment chemical	(G) Substituted phenolic resin
P–03–0237	12/24/02	03/24/03	CBI	(G) Adhesives	(G) Polyurethane acrylate included polyester bone
P–03–0238	12/24/02	03/24/03	CBI	(G) Adhesives	(G) Acrylate of hydroxyimide
P–03–0243	12/24/02	03/24/03	CBI	(G) Polyurethane	(G) Polyol
P–03–0244	12/24/02	03/24/03	CBI	(G) Polyurethane	(G) Polyol
P–03–0245	12/24/02	03/24/03	CBI	(G) Polyurethane	(G) Polyol

In Table II of this unit, EPA provides the following information (to the extent that such information is not claimed as CBI) on the Notices of Commencement to manufacture received:

II. 40 NOTICES OF COMMENCEMENT FROM: 12/11/02 TO 12/26/02

Case No.	Received Date	Commencement/ Import Date	Chemical
P–00–0310	12/26/02	12/06/02	(G) Acrylic polyester resin
P–00–0328	12/26/02	11/18/02	(G) Maleic anhydride polyester
P–01–0166	12/26/02	12/17/02	(S) 5-hexen-1-ol
P–01–0208	12/24/02	12/12/02	(G) Polyester polycarbamate
P–01–0212	12/24/02	12/11/02	(G) Polyester polycarbamate
P–01–0774	12/20/02	11/22/02	(G) Unsaturated epoxy acrylate resin
P–02–0172	12/26/02	12/02/02	(G) Aromatic polyester polyol
P–02–0320	12/26/02	12/12/02	(G) Polymer of phenol and substituted benzenes
P–02–0328	12/19/02	11/26/02	(G) Acrylate copolymer
P–02–0374	12/24/02	12/11/02	(G) Chlorinated polyester
P–02–0495	12/18/02	12/10/02	(G) Branched alkyl ester
P–02–0551	12/19/02	11/25/02	(G) 1,5(naphthalenedisulfonic acid, substituted sulfopheny)azo)-1-naphthalenyl)amino)-substituted-piperazinyl)substituted naphthalenyl)azo)-, sodium salt
P–02–0668	12/19/02	12/06/02	(S) Siloxanes and silicones, di-me, polymers with ph silsesquioxanes, hydrolyzed, reaction products with trimethoxy[3-(oxiranylmethoxy)propyl]silane
P–02–0670	12/11/02	11/14/02	(S) Titanium, chlorotris(2-propanolato)-
P–02–0707	12/11/02	12/02/02	(G) Camphorsulfonate
P–02–0746	12/11/02	11/12/02	(G) Aromatic - aliphatic polyamide
P–02–0808	12/19/02	11/08/02	(G) Amine salt of iscyanate, polymer with polyester, vegetable oils, alkyleneamines, hydroxy substituted carboxylic acid and tetra hydroxy alkane
P–02–0821	12/20/02	12/15/02	(G) Polymer of (alkylene ether)glycol, methylene bis [isocyanatobenzene] and toluene diisocyanate
P–02–0841	12/11/02	11/01/02	(G) Brominated epoxy resin
P–02–0844	12/19/02	12/02/02	(G) Hydroxyfunctional acrylic copolymer
P–02–0864	12/19/02	11/18/02	(G) Fluoropolymeric sulfonic acid
P–02–0865	12/19/02	11/22/02	(G) Perfluoro alkoxy acid fluoride derivative
P–02–0870	12/19/02	11/17/02	(G) Perfluorinated difunctional acid fluoride
P–02–0876	12/23/02	12/15/02	(G) Pyridone
P–02–0886	12/11/02	12/09/02	(G) Imidazoline derivative, reaction products with polybasic acid
P–02–0888	12/20/02	12/12/02	(G) Ammonium amps homopolymer
P–02–0898	12/17/02	12/01/02	(G) Ester of acid modified hydrocarbon resin
P–02–0911	12/11/02	12/02/02	(G) Aromatic compound
P–02–0918	12/19/02	12/06/02	(G) Vegetable fatty acids, polymer with cyclic carboxylic acid and tetra hydroxy alkane.
P–02–0921	12/19/02	12/13/02	(G) Aliphatic polyester-polyether polyurethane
P–02–0929	12/23/02	11/26/02	(G) Disubstituted-phenyl-alkyl-heteromonocycle
P–02–0975	12/17/02	12/10/02	(G) Polyester resin
P–02–0979	12/19/02	12/11/02	(G) Epoxy modified polyvinyl butyral
P–02–0985	12/19/02	12/14/02	(G) Vegetable fatty acids, polymer with peroxide, alkyl acrylate, cyclic carboxlic acid, alkeneioc acid, tetra hydroxy alkane and alkenylbenzene.
P–02–0986	12/19/02	12/11/02	(G) Vegetable fatty acids, polymer with peroxide, alkyl acrylate, alkeneoic acid and alkenylbenzene.
P–02–0995	12/20/02	12/19/02	(G) Aminonitrile
P–02–1053	12/16/02	12/05/02	(G) Substituted acrylate polymer
P–96–1309	12/23/02	09/28/96	(G) 2-propenoic acid, half ester with fatty acid anhycloride
P–96–1619	12/17/02	12/13/02	(G) *N,N,'*-bis(fatty alkyl) -aromatic-di-urea
P–96–1620	12/17/02	12/13/02	(G) *N,N,'*-bis(fatty alkyl) -aromatic-di-urea

List of Subjects

Environmental protection, Chemicals, Premanufacturer notices.

Dated: January 23, 2003.

Sandra R. Wilkins,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 03–2170 Filed 1–29–03; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPPT–2003–0005; FRL–7291–6]

Certain New Chemicals; Receipt and Status Information

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5 of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture (defined by statute to include import) a new chemical (i.e., a chemical not on the TSCA Inventory) to notify EPA and comply with the statutory provisions pertaining to the manufacture of new chemicals. Under sections 5(d)(2) and 5(d)(3) of TSCA, EPA is required to publish a notice of receipt of a premanufacture notice (PMN) or an application for a test marketing exemption (TME), and to publish periodic status reports on the chemicals under review and the receipt of notices of commencement to manufacture those chemicals. This status report, which covers the period from December 27, 2002 to January 10, 2003, consists of the PMNs pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period.

DATES: Comments identified by the docket ID number OPPT– 2003–2005 and the specific PMN number or TME number, must be received on or before March 3, 2003.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Barbara Cunningham, Acting Director, Environmental Assistance Division, Office of Pollution Prevention and Toxics (7408M), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 554–1404; e-mail address: *TSCA-Hotline@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. As such, the Agency has not attempted to describe the specific entities that this action may apply to. Although others may be affected, this action applies directly to the submitter of the premanufacture notices addressed in the action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Copies of This Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPPT–2003–2005. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the EPA Docket Center, Rm. B102-Reading Room, EPA West, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The EPA Docket Center Reading Room telephone number is (202) 566–1744 and the telephone number for the OPPT Docket, which is located in EPA Docket Center, is (202) 566–0280.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/.*

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select "search," then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and To Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper

receipt by EPA, identify the appropriate docket ID number and specific PMN number or TME number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically.* If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket*, and follow the online instructions for submitting comments. Once in the system, select" search," and then key in docket ID number OPPT–2003–2005. The system is an" anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by e-mail to *oppt.ncic@epa.gov*, Attention: Docket ID Number OPPT–2003–2005 and PMN Number or TME Number. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail.* Send your comments to: Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

3. *By hand delivery or courier.* Deliver your comments to: OPPT Document Control Office (DCO) in EPA East Building Rm. 6428, 1201 Constitution Ave., NW., Washington, DC. Attention: Docket ID Number OPPT–2003–2005 and PMN Number or TME Number. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 564–8930.

D. How Should I Submit CBI To the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Offer alternative ways to improve the notice or collection activity.
7. Make sure to submit your comments by the deadline in this document.
8. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action and the specific PMN number you are commenting on in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

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In Table I of this unit, EPA provides the following information (to the extent

that such information is not claimed as CBI) on the PMNs received by EPA during this period: the EPA case number assigned to the PMN; the date the PMN was received by EPA; the projected end date for EPA's review of the PMN; the submitting manufacturer; the potential uses identified by the manufacturer in the PMN; and the chemical identity.

I. 28 Premanufacture Notices Received From: 12/27/02 to 01/10/03

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–03–0228	12/27/02	03/27/03	BASF Corporation	(G) Industrial solvent	(G) Alkoxylated monobutyl ether
P–03–0229	12/27/02	03/27/03	CBI	(G) Open-non-dispersive uses	(G) Silylated polyurethane prepolymer
P–03–0230	12/27/02	03/27/03	CBI	(S) Polyurethane intermediate	(G) Urethane diol
P–03–0231	12/27/02	03/27/03	CBI	(S) Polyurethane coating	(G) Aqueous polyurethane dispersion
P–03–0232	12/27/02	03/27/03	Degussa Corporation	(S) Adhesion promoter; mineral filler treatment	(G) Alkylpolysiloxanes, aminoalkyl groups modified
P–03–0233	12/27/02	03/27/03	CBI	(G) Detergent for lubricant	(G) Calcium salt of a polyolefin substituted phenol
P–03–0234	12/27/02	03/27/03	CBI	(G) Intermediate for lubricant detergents	(G) Phenolic resin
P–03–0235	12/27/02	03/27/03	NA Industries, Inc.	(S) A binder resin for plastics coating	(G) 2-propenoic acid, 2-methyl-, methyl ester, polymer with alkyl 2-methyl-2-propenoate and alkyl 2-propenoate and ethenylbenzene
P–03–0236	12/30/02	03/30/03	NOF America Corp.	(S) Low temperature melting wax to be added to toner	(S) Tetradecanoic acid, 2-[[3-[(1-oxotetradecyl)oxy]-2,2-bis[[(1-oxotetradecyl)oxy] methyl]propoxy]methyl]-2-[[(1-oxotetradecyl)oxy] methyl]-1,3-propanediyl ester
P–03–0239	12/30/02	03/30/03	Degussa Corporation	(G) Contained use	(S) Benzenemethanol, titanium(4+) salt
P–03–0240	12/30/02	03/30/03	Degussa Corporation	(G) Contained use	(S) Cyclohexanol, titanium(4+) salt
P–03–0241	12/30/02	03/30/03	National Starch and Chemical	(G) Binder for non-wovens	(G) Vinyl acetate copolymer
P–03–0242	12/30/02	03/30/03	CBI	(G) Binder for adhesive	(G) Vinyl acetate copolymer
P–03–0246	12/31/02	03/31/03	Perstorp Polyols, Inc.	(S) Cross-linker for polyurethane foams and elastomers; starting material for acrylate oligomers used in ultraviolet-cure applications	(S) Poly(oxy-1,2-ethanediyl), alpha-hydro-.omega.-hydroxy-, ether with 2,2′-[oxybis(methylene)] bis[2-(hydroxymethyl)-1,3-propanediol] (6:1)
P–03–0247	12/31/02	03/31/03	BASF Corporation	(G) Intermediate in the production of amines.	(G) Aliphatic esters
P–03–0248	12/31/02	03/31/03	CBI	(G) Plastic film additive	(G) Glycerol fatty acid ester
P–03–0249	01/03/03	04/03/03	Henkel Adhesives	(S) Hot melt and molding adhesive	(S) Amines, C_{36}-alkylenedi-, polymers with ethylenediamine, 2-methyl-1,5-pentanediamine, piperazine, polypropylene glycol diamine and sebacic acid
P–03–0250	01/03/03	04/03/03	Henkel Adhesives	(S) Hot melt and molding adhesive	(S) Fatty acids, C_{18}-unsaturated, dimers, polymer with azelaic acid, ethylenediamine, piperazine and 4,4′(1,3-propanediyl)bis[piperidine]
P–03–0251	01/03/03	04/03/03	Henkel Adhesives	(S) Hot melt adhesive	(S) Fatty acids, C_{18}-unsaturated, dimers, polymers with ethylenediamine, 7-oxabicyclo[4.1.0]hept-3-ylmethyl 7-oxabicycloI[4.1.0]heptane-3-carboxylate, piperazine, polypropylene glycol diamine and sebacic acid
P–03–0252	01/06/03	04/06/03	CBI	(G) Open non-dispersive	(G) Mixed metal oxide
P–03–0253	01/07/03	04/07/03	CBI	(G) Binder resin	(G) Acrylic polyol
P–03–0254	01/07/03	04/07/03	CIBA Specialty Chemicals Corporation USA - additives	(S) Ultraviolet absorber for use in thermoplastics	(G) Triazine derivative
P–03–0255	01/08/03	04/08/03	CBI	(G) Epoxy dilvent for epoxy type coatings for metal surfaces. dispersive use.	(G) Phenol and vinyltolvene based hydrocarbon resin.
P–03–0256	01/08/03	04/08/03	CBI	(G) Intermediate for disponil surfactants	(G) Hydroxyalkylpolyglycolether
P–03–0257	01/09/03	04/09/03	The Sherwin Williams Company	(G) Open, non-dispersive	(G) Polyester polymer

I. 28 PREMANUFACTURE NOTICES RECEIVED FROM: 12/27/02 TO 01/10/03—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–03–0258	01/09/03	04/09/03	Wacker Silicones, a Division of Wacker Chemical Corporation	(S) Additive for engine coolants	(S) 2,5-furandione, dihydro-3-[3-(triethoxysilyl)propyl]-
P–03–0259	01/10/03	04/10/03	CBI	(G) Open, non-dispersive (resin)	(G) Self-crosslinking acrylic polymer
P–03–0260	01/10/03	04/10/03	Sumitomo Chemical America, Inc.	(G) Encapsulation of electronic devices	(S) 1,3-benzenedimethanol, alpha, alpha, alpha',alpha'-tetramethyl-polymer with phenol, glycidyl ethers

In Table II of this unit, EPA provides the following information (to the extent that such information is not claimed as CBI) on the Notices of Commencement to manufacture received:

II. 23 NOTICES OF COMMENCEMENT FROM: 12/27/02 TO 01/10/03

Case No.	Received Date	Commencement/ Import Date	Chemical
P–00–0817	12/31/02	12/18/02	(G) Silicon resin
P–02–0744	01/03/03	11/11/02	(G) Lithium salt of azo bridged acid
P–02–0809	12/27/02	11/16/02	(G) Polyester polymer
P–02–0818	01/07/03	12/19/02	(G) Isocyanate amine adduct
P–02–0829	01/08/03	11/30/02	(G) Molybdenum dithio carbamate
P–02–0836	01/08/03	11/13/02	(G) Polymer of: butyl methacrylate, ethylene glycol dimethacrylate, 2-hydroxypropyl methacrylate, divinylbenzene, ethylvinylbenzene
P–02–0837	01/08/03	11/13/02	(G) Polymer of: 2,3-epoxypropyl neodecanoate, cyclohexyl methacrylate, acrylic acid
P–02–0866	12/31/02	12/02/02	(G) Substituted anthraquinone
P–02–0867	12/31/02	12/16/02	(G) Substituted anthraquinone
P–02–0869	12/31/02	11/21/02	(G) Substituted anthraquinone
P–02–0928	12/31/02	12/10/02	(G) Substituted-phenyl-alkyl-heteropolycycle
P–02–0962	12/27/02	12/17/02	(G) Acryl based copolymer
P–02–1019	01/07/03	12/16/02	(G) Acrylic resin
P–98–1224	01/07/03	12/02/02	(G) Calprylic acid, compound with monoalicylamino-alcohol
P–98–1226	01/07/03	12/02/02	(G) Ethoxylated alcohol phosphate ester, compound with monoalkylamino-alcohol
P–98–1229	01/07/03	12/02/02	(G) Fatty acids, monomer, compound with monoalkylamino alcohol
P–98–1232	01/07/03	12/02/02	(G) 9-octadecenoic acid (7)-,sulfurized compound with monoalkylamino-alcohol
P–98–1234	01/07/03	12/02/02	(G) Boric acid, compound with monoalkylamino-alcohol
P–98–1236	01/07/03	12/02/02	(G) Fatty acid, tall-oil, compound with monoalkylamino-alcohol
P–98–1246	01/07/03	12/02/02	(G) Decanoic acid, compound with monoalkyl amino alcohol
P–98–1248	01/07/03	12/02/02	(G) Isooctadecanoic acid, compound with monoalkylamino-alcohol
P–99–0941	01/08/03	12/27/02	(G) Salt of an acrylic polymer
P–99–1398	01/02/03	12/09/02	(G) Quaternary ammonium compound

List of Subjects

Environmental protection, Chemicals, Premanufacturer notices.

Dated: January 23, 2003.

Sandra R. Wilkins,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 03–2171 Filed 1–29–03; 8:45 am]

BILLING CODE 6560–50–S

FEDERAL ELECTION COMMISSION

Sunshine Act Meeting

AGENCY: Federal Election Commission.

PREVIOUSLY ANNOUNCED DATE AND TIME: Tuesday, January 28, 2003, Meeting Closed to the Public.

This meeting has been cancelled.

DATE AND TIME: Tuesday, February 4, 2003 at 10 a.m.

PLACE: 999 E Street, NW., Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. 437g.

Audits conducted pursuant to 2 U.S.C. 437g, § 438(b), and Title 26, U.S.C.

Matters concerning participation in civil actions or proceedings or arbitration.

Internal personnel rules and procedures or matters affecting a particular employee.

PERSON TO CONTACT FOR INFORMATION: Mr. Ron Harris, Press Officer, Telephone: (202) 694–1220.

Mary W. Dove,

Secretary of the Commission.

[FR Doc. 03–2297 Filed 1–28–03; 11:37 am]

BILLING CODE 6715–01–M

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center Web site at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 24, 2003.

A. Federal Reserve Bank of Kansas City (Susan Zubradt, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. Sundance State Bank Profit Sharing ESOP and Trust, Sundance Wyoming; to become a bank holding company by acquiring 28 percent of the voting shares of Sundance Bankshares, Inc., and Sundance State Bank, both of Sundance, Wyoming.

Board of Governors of the Federal Reserve System, January 24, 2003.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 03–2107 Filed 1–29–03; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 concerning opportunity for public comment on proposed collections of information, the Substance Abuse and Mental Health Services Administration will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the information collection plans, call the SAMHSA Reports Clearance Officer on (301) 443–7978.

Comments are invited on: (a) Whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project

Mandatory Guidelines for Federal Workplace Drug Testing Programs (0930–0158, revision)—SAMHSA will request renewal of OMB approval for the Federal Drug Testing Custody and Control Form for Federal agency and federally regulated drug testing programs which must comply with the HHS Mandatory Guidelines for Federal Workplace Drug Testing Programs (59 FR 29908) dated June 9, 1994, and for the information provided by laboratories for the National Laboratory Certification Program (NLCP).

The Federal Drug Testing Custody and Control Form is used by all Federal agencies and employers regulated by the Department of Transportation to document the collection and chain of custody of urine specimens at the collection site, for laboratories to report results, and for Medical Review Officers to make a determination. The Federal Drug Testing Custody and Control Form approved by OMB three years ago will be submitted for OMB approval without any revision.

Prior to an inspection, a laboratory is required to submit specific information regarding its laboratory procedures. A major change in the submitted information requires a laboratory to provide specific information on its specimen validity testing procedures. Since all certified laboratories are expected to have the capability to conduct specimen validity tests on regulated specimens, collecting this information prior to an inspection allows the inspectors to thoroughly review and understand the laboratory's specimen validity testing procedures before arriving at the laboratory.

The NLCP application form is being revised compared to the previous form. The major change in the NLCP application form includes, where appropriate in each section, a request for specific information on the applicant laboratory's ability to conduct specimen validity testing (*i.e.*, determining if a specimen is adulterated or substituted). Since all certified laboratories are expected to have the capability to conduct specimen validity tests on regulated specimens, it is necessary to ensure that each applicant laboratory has the same capability before being certified.

The annual total burden estimates for the Federal Drug Testing Custody and Control Form, the NLCP application, the NLCP inspection checklist, and NLCP recordkeeping requirements are shown in the following table.

Form/respondent	Burden/response (Hrs.)	Number of responses	Total annual burden (Hrs.)
Custody and Control Form:			
Donor	.08	7,096,000	567,680
Collector	.07	7,096,000	496,720
Laboratory	.05	7,096,000	354,800
Medical Review Officer	.05	7,096,000	354,800
Laboratory Application	3.00	3	9
Laboratory Inspection Checklist	3.00	110	330

Form/respondent	Burden/response (Hrs.)	Number of responses	Total annual burden (Hrs.)
Laboratory Recordkeeping	250.00	55	13,750
Total			1,788,089

Send comments to Nancy Pearce, SAMHSA Reports Clearance Officer, Room 16–105, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: January 23, 2003.

Richard Kopanda,

Executive Officer, SAMHSA.

[FR Doc. 03–2154 Filed 1–29–03; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 02P–0494]

Medical Devices; Exemptions From Premarket Notification; Class II Devices

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that it has received a petition requesting exemption from the premarket notification requirements for a data acquisition unit for ceramic dental restoration systems. FDA is publishing this notice in order to obtain comments on this petition in accordance with procedures established by the Food and Drug Administration Modernization Act of 1997 (FDAMA).

DATES: Submit written or electronic comments by March 3, 2003.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to http://www.fda.gov/dockets/ecomments.

FOR FURTHER INFORMATION CONTACT: Heather S. Rosecrans, Center for Devices and Radiological Health (HFZ–404), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–1190.

SUPPLEMENTARY INFORMATION:

I. Background

Under section 513 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360c), FDA must classify devices into one of three regulatory classes: Class I, class II, or class III. FDA classification of a device is determined by the amount of regulation necessary to provide a reasonable assurance of safety and effectiveness. Under the Medical Device Amendments of 1976 (the 1976 amendments) (Public Law 94–295), as amended by the Safe Medical Devices Act of 1990 (the SMDA) (Public Law 101–629), devices are to be classified into class I (general controls) if there is information showing that the general controls of the act are sufficient to assure safety and effectiveness; into class II (special controls), if general controls, by themselves, are insufficient to provide reasonable assurance of safety and effectiveness, but there is sufficient information to establish special controls to provide such assurance; and into class III (premarket approval), if there is insufficient information to support classifying a device into class I or class II and the device is a life-sustaining or life-supporting device or is for a use which is of substantial importance in preventing impairment of human health, or presents a potential unreasonable risk of illness or injury.

Most generic types of devices that were on the market before the date of the 1976 amendments (May 28, 1976) (generally referred to as preamendments devices) have been classified by FDA under the procedures set forth in section 513(c) and (d) of the act through the issuance of classification regulations into one of these three regulatory classes. Devices introduced into interstate commerce for the first time on or after May 28, 1976 (generally referred to as postamendments devices) are classified through the premarket notification process under section 510(k) of the act (21 U.S.C. 360(k)). Section 510(k) of the act and the implementing regulations, 21 CFR part 807, require persons who intend to market a new device to submit a premarket notification report containing information that allows FDA to determine whether the new device is "substantially equivalent" within the meaning of section 513(i) of the act to a legally marketed device that does not require premarket approval.

On November 21, 1997, the President signed into law FDAMA (Public Law 105–115). Section 206 of FDAMA, in part, added a new section 510(m) to the act. Section 510(m)(1) of the act requires FDA, within 60 days after enactment of FDAMA, to publish in the **Federal Register** a list of each type of class II device that does not require a report under section 510(k) of the act to provide reasonable assurance of safety and effectiveness. Section 510(m) of the act further provides that a 510(k) will no longer be required for these devices upon the date of publication of the list in the **Federal Register**. FDA published that list in the **Federal Register** of January 21, 1998 (63 FR 3142).

Section 510(m)(2) of the act provides that, 1 day after date of publication of the list under section 510(m)(1), FDA may exempt a device on its own initiative or upon petition of an interested person, if FDA determines that a 510(k) is not necessary to provide reasonable assurance of the safety and effectiveness of the device. This section requires FDA to publish in the **Federal Register** a notice of intent to exempt a device, or of the petition, and to provide a 30-day comment period. Within 120 days of publication of this document, FDA must publish in the **Federal Register** its final determination regarding the exemption of the device that was the subject of the notice. If FDA fails to respond to a petition under this section within 180 days of receiving it, the petition shall be deemed granted.

II. Criteria for Exemption

There are a number of factors FDA may consider to determine whether a 510(k) is necessary to provide reasonable assurance of the safety and effectiveness of a class II device. These factors are discussed in a guidance the agency issued on February 19, 1998, entitled "Procedures for Class II Device Exemptions From Premarket Notification, Guidance for Industry and CDRH Staff." That guidance can be obtained through the Internet on the CDRH home page at http://www.fda.gov/cdrh or by facsimile through CDRH Facts-on-Demand at 1–800–899–0381 or 301–827–0111. Specify "159" when prompted for the document shelf number.

III. List of Petitions

FDA has received the following petition requesting an exemption from premarket notification for a class II device: Medical Device Consultants, Inc., on behalf of Sirona Dental Systems GmbH for data acquisition systems used in the computer aided design and milling of dental restorative prosthetic devices, classified under 21 CFR 872.3660, impression material.

IV. Comments

Interested persons may submit to the Dockets Management Branch (see **ADDRESSES**) written or electronic comments regarding this document. Submit a single copy of electronic comments to *http://www.fda.gov/dockets/ecomments* or two hard copies of any written comments, except that individuals may submit one hard copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The petition and received comments may be seen in the Dockets Managment Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: January 15, 2003.

Linda S. Kahan,

Deputy Director, Center for Devices and Radiological Health.

[FR Doc. 03–2112 Filed 1–29–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 02D–0018]

Draft Guidance for Industry on the Collection of Race and Ethnicity Data in Clinical Trials for FDA Regulated Products; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance for industry entitled "Collection of Race and Ethnicity Data in Clinical Trials for FDA Regulated Products." This draft guidance recommends a standardized approach for collecting race and ethnicity information in clinical trials conducted in the United States and abroad for certain FDA regulated products. The standardized approach being recommended was developed by the Office of Management and Budget (OMB).

DATES: Submit written or electronic comments on the draft guidance by March 31, 2003. General comments on agency guidance documents are welcome at any time.

ADDRESSES: Submit written requests for single copies of the draft guidance to the Division of Drug Information (HFD–240), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, or the Office of Communication, Training and Manufacturers Assistance (HFM–40), Center for Biologics Evaluation and Research, Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448. Send two self-addressed adhesive labels to assist that office in processing your requests. Submit written comments on the draft guidance to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT:

Katherine Hollinger, Office of Health Science and Coordination (HF–8), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–5400; or

Nancy Derr, Center For Drug Evaluation and Research (HFD–5), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–5400; or

Ilan Irony, Center for Biologics Evaluation and Research (HFM–576), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852, 301–827–5378; or

IDE Staff, Center for Devices and Radiological Health (HFZ–403), 9200 Corporate Blvd., Rockville, MD 20850, 301–594–1190.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance for industry entitled "Collection of Race and Ethnicity Data in Clinical Trials for FDA Regulated Products." FDA believes that the use of the OMB race and ethnicity categories will facilitate comparisons across clinical studies analyzed by FDA with data collected by other Federal agencies. Although FDA has long requested race and ethnicity data on subjects in certain clinical trials, the agency is now making recommendations on the categories to use when collecting and reporting the data.

In the final rule entitled "Investigational New Drug Applications and New Drug Applications" (demographic rule) (63 FR 6854, February 11, 1998), the agency recommended that sponsors ask subjects in certain clinical trials to identify their racial group and, if desired, to use the OMB categories when collecting race and ethnicity data.

The Department of Health and Human Services (HHS) issued a 1999 report entitled "Improving the Collection and Use of Racial and Ethnic Data in HHS" in which HHS announces the adoption of OMB Directive 15 as part of its policy on collecting and reporting data on race and ethnicity. HHS recommended methods for the collection and inclusion of racial and ethnic categories in HHS-funded and HHS-sponsored data collection and reporting systems in all HHS programs, including both health and social services. This HHS policy states that the categories in OMB Directive 15 and its revisions be used when collecting and reporting data in HHS data systems or reporting HHS-funded statistics. The HHS policy was developed to: (1) Help monitor HHS programs, (2) determine that Federal funds are being used in a nondiscriminatory manner, and (3) promote the availability of standard racial and ethnic data across various agencies to facilitate HHS responses to major health and human services issues.

Information on patient safety is reported by Federal agencies using the OMB recommendations. The application of OMB recommendations for the standardized collection and representation of race and ethnicity in clinical trial data is expected to enhance the comparability of data among clinical studies submitted to FDA and with reported health statistics. The recommendations made in this draft guidance are suggested for collecting race and ethnicity data in clinical trials developed to study pharmaceutical products and devices where necessary to determine safety and effectiveness. The agency recommends using more detailed race and ethnicity categories when appropriate to the study or locale, but recommends that the OMB categories be identified for all clinical trial participants when submitting data to the agency. In addition to asking for comments on this guidance generally, FDA specifically is asking for comments on the general applicability of this draft guidance to clinical trials of medical devices.

This draft guidance does not discuss increasing the number of studies in

which subpopulations are exposed to a product. The draft guidance also does not discuss increasing the total number of participants or members of a subpopulation in clinical trials.

This draft guidance contains information collection provisions that are subject to review by OMB under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520). The collection of information in sections III and IV of this draft guidance are approved under OMB control number 0910–0014.

This level 1 draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the agency's current thinking on how to collect race and ethnicity data in certain clinical trials for FDA regulated products. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

II. Comments

Interested persons may submit to the Dockets Management Branch (see **ADDRESSES**) written or electronic comments on the draft guidance. Two copies of any mailed comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The draft guidance and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

Persons with access to the Internet may obtain the document at either *http://www.fda.gov/cder/guidance/index.htm*, *http://www.fda.gov/cber/guidelines.htm*, or *http://www.fda.gov/ohrms/dockets/default.htm*.

Dated: January 24, 2003.

Margaret M. Dotzel,

Assistant Commissioner fro Policy.

[FR Doc. 03–2162 Filed 1–29–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM–090–03–9971–EK]

Conservation Helium Sales

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice implementing first Conservation Helium sale.

SUMMARY: The purpose of this action is to implement the terms of the Helium Privatization Act (HPA) of 1996 dealing with the disposal of the Conservation Helium reserve. The Act requires the Department of the Interior *to offer for sale*, beginning no later than 2005, a portion of the Conservation Helium stored underground at the Cliffside Field north of Amarillo, Texas. The Department of the Interior in consultation with the private helium industry has determined that private companies with refining capacity along the crude helium pipeline will need a supply of helium in excess of that available from their own storage accounts and that available from crude helium extractors in the region, and that given the current market, Conservation Helium sold in this sale will likely minimize market disruption. The Bureau just concluded a 30-day comment period in which eight comments were received. The comments were generally supportive with mainly long-term concerns expressed. The Bureau made some minor modifications to address concerns expressed by those comments.

DATES: Submit bids and other documentation as required in notice on or before March 3, 2003.

ADDRESSES: You may submit your bids and other documentation as required in this notice to the Bureau of Land Management, Amarillo Field Office, 810 S. Fillmore, Suite 500, Amarillo, TX 79101, Attention: Crude Helium Sale.

FOR FURTHER INFORMATION CONTACT: Timothy R. Spisak, (806) 356–1002. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

1.01 What Is the Purpose of the Sale?

The purpose of this sale is to begin implementation of the terms of the Helium Privatization Act (HPA) of 1996 dealing with the disposal of the Conservation Helium reserve. The Act requires the Department of the Interior *to offer for sale*, beginning no later than 2005, a portion of the Conservation Helium stored underground at the Cliffside Field north of Amarillo, TX. The Department of the Interior in consultation with the private helium industry has determined that private companies with refining capacity along the crude helium pipeline will need a supply of helium in excess of that available from their own storage accounts and that available from crude helium extractors in the region. This is the first of 12 annual sales that the Department will conduct to dispose of the Conservation Helium stored underground at the Cliffside Field. The annual sales are being conducted in a manner intended to prevent pure helium market disruptions from occurring to end users; shortages of crude helium to pure helium refiners; and an oversupply of crude helium on the market for crude helium extractors. This first sale will be used to test the disposal process with subsequent sales adjusted as needed.

1.02 What Terms Do I Need To Know To Understand This Sale?

Allocated Sale—That portion of the annual sale volume of Conservation Helium that will be set aside for purchase by the crude helium refiners.

Annual Conservation Helium Sale—The sale of a certain volume of Conservation Helium to private entities conducted annually beginning no later than 2005.

Bidder—Any entity or person who submits a request for purchase of a volume of the annual Conservation Helium sale and has met the qualifications contained in part 1.05 in this notice.

BLM—The Bureau of Land Management.

Conservation Helium—The crude helium purchased by the U.S. Government under the authority of the Helium Act of 1960 and stored underground in the Cliffside Field.

Crude Helium—A partially refined gas containing about 70 percent helium and 30 percent nitrogen. However, the helium concentration may typically vary from 50 to 95 percent.

Crude Helium Refiners—Those entities with a capability of refining crude helium and having a connection point on the crude helium pipeline and a valid helium storage contract as of the date of a Conservation Helium sale.

Excess Volumes—Allocated sale volumes not requested by the crude helium refiners.

Helium Storage Contract— A contract between the BLM and a private entity allowing the private entity to store crude helium in underground storage at the Cliffside Field.

HPA— The Helium Privatization Act of 1996.

In-Kind Crude Helium— Conservation Helium purchased by private refiners in exchange for like amounts of pure helium sold to Federal agencies and

their contractors in accordance with the HPA.

MMcf— One million cubic feet of gas measured at standard conditions of 14.65 pounds per square inch (psi) and 60° F.

Mcf—One thousand cubic feet of gas measured at standard conditions of 14.65 psi and 60° F.

Non-allocated Sale— That portion of the annual sale volume of Conservation Helium that will be offered to all qualified bidders.

1.03 What Volume of Conservation Helium Will Be Offered in the Year 2003 Annual Conservation Helium Sale?

The volume of helium available for this sale is 2,100 MMcf. In accordance with the HPA, this volume was determined by dividing the total volume of stored Conservation Helium less the statutory required reservation of 600 MMcf for government purposes less estimated in-kind crude helium transfers for 12 years divided by 12.

1.04 At What Price Will the Conservation Helium Be Sold?

The Conservation Helium will be sold at the same price as in-kind crude helium. In accordance with the HPA, this price covers helium debt repayment and includes administrative and storage costs associated with the Conservation Helium. For Fiscal Year 2003, that price is $52.50 per Mcf.

1.05 Am I Qualified To Purchase Conservation Helium at This Sale?

Any person, firm, partnership, joint stock association, corporation, or other domestic or foreign organization operating partially or wholly within the United States who meets one or more of the following requirements is qualified to submit a purchase request:

- Operates a helium purification plant within the U.S., or
- Operates a crude helium extraction plant within the U.S., or
- Is a wholesaler of pure helium or purchases helium for resale within the U.S., or
- Is a consumer of pure helium within the U.S., or
- Has an agreement with a helium refiner to provide its helium processing needs, commonly referred to as a "tolling agreement."

All entities requesting participation in the Non-allocated Sale must submit proof of being qualified to purchase Conservation Helium and must either have a Helium Storage Contract with the BLM or have a third-party agreement in place with a valid storage contract holder so that all Conservation Helium sold to the Bidder will be properly covered by a Helium Storage Contract (including associated storage charges).

1.06 When Will the Conservation Helium Be Offered for Sale?

The BLM, Amarillo Field Office, will accept requests for purchase of Conservation Helium from final publication of this notice until March 3, 2003. On the next business day after this notice closes, requests to purchase Conservation Helium will be opened and evaluated. Thereafter, volumes of this Conservation Helium sale will be apportioned and allocated according to the sale rules described in this notice.

1.07 What Must I Do To Submit a Request for Purchase?

You must submit the following information to the BLM, Amarillo Field Office:

- Billing address information and name(s) of principle officers of the company.
- Proof of being an entity qualified to purchase Conservation Helium at this sale as defined in part 1.05 above. Documents such as invoices for sale or purchase of helium, helium storage contracts, or other relevant documents may be submitted as proof of qualification.
- The amount (in Mcf) of Conservation Helium requested.
- Certified check or money order in the amount of $1,000 made payable to the Bureau of Land Management. This money will be used to cover administrative expenses to conduct this sale and is nonrefundable.

1.08 Where Do I Send My Request for Purchase?

All requests for purchase of helium as part of this sale must be sent by certified mail to: Bureau of Land Management, Amarillo Field Office, 810 S. Fillmore, Suite 500, Amarillo, TX 79101, Attention: Crude Helium Sale.

1.09 When Do I Need To Submit Payment For Any Conservation Helium Sold To Me?

Successful purchasers will submit payments according to the following schedule: 25% by February 28, 2003, or 30 days after notification of the award volumes, whichever is later; 25% by April 30, 2003; 25% by June 30, 2003; 25% by September 30, 2003.

Conservation Helium will not be transferred to the purchaser's storage account until payment is received for that portion. Successful purchasers may, at their option, accelerate the purchase schedule.

1.10 To Whom Do I Make Payments for Awarded Conservation Helium Volumes?

Make checks payable to the Bureau of Land Management at the address listed in part 1.08 in this notice.

1.11 What Are the Penalties for Not Paying for the Conservation Helium in a Timely Manner?

If a payment is not received by the due date, the purchaser will forfeit the remainder of its allotment unless the purchaser can show that payment was late through no fault of its own. However, penalty interest will be assessed in accordance with the Debt Collection Act of 1982, 31 U.S.C. 951–953.

1.12 How Will I Know if I Have Been Successful in My Purchase Request?

Successful purchasers will be notified in writing by BLM no later than 2 weeks after the close of this notice with the awarded volumes and payment schedule.

Allocated Sale

2.01 What Is the Allocated Sale?

That portion of the annual sale volume of Conservation Helium that will be set aside for purchase by the crude helium refiners.

2.02 Who Will Be Allowed To Purchase Conservation Helium in the Allocated Sale?

Only those who meet the definition of crude helium refiners as defined in part 1.02 in this notice.

2.03 What Volume of Conservation Helium Is Available in the Allocated Sale?

The amount available will be 90 percent of the total volume of the annual Conservation Helium sale—1,890 MMcf.

2.04 How Will the Conservation Helium Be Apportioned Among the Refiners?

The apportionment to each crude helium refiner will be based on its percentage share (rounded to the nearest 1/10th of 1 percent) of the total refining capacity as of October 1, 2000, connected to the BLM crude helium pipeline.

2.05 What Will Happen if a Refiner or Refiners Request an Amount Other Than Their Share of What Is Offered for Sale?

- If one or more refiners request less than their allocated share, any other refiner(s) that requested more than their share will be allowed to purchase the

excess volume based on proportionate shares of remaining refining capacities.

• Requests by the Crude Helium Refiners that are in excess of the amount available above will be carried over to the Non-allocated Sale and considered a separate bid under the Non-allocated Sale rules.

2.06 What Will Happen if the Total Amount Requested by the Crude Helium Refiners Is Less Than the 1,890 MMcf Offered in the Allocated Sale?

Any excess volume not sold to the crude helium refiners will be added to the non-allocated sale volume.

2.07 Do You Have a Hypothetical Example of How an Allocated Sale Would Be Conducted?

2,100 MMcf available for total sale with 90 percent available for allocated sale (1,890 MMcf).

Bidder-allocated sale	Installed refining capacity (percent)	Refiner bid volume*	Allocated volume*	Excess volume requested*	Proration percent	Excess allocated*	Total allocated*	Carry over to non-allocated sale*
Refiner A	10	225	189	36	20	36	225	0
Refiner B	50	750	750	0	0	0	750	0
Refiner C	40	985	756	229	80	156 + 3	915	70
Total	100	1,960	1,695	265	100	195	1,890	0

*All volumes in MMcf.

After the initial allocation, Refiner B has received all requested. However, 265 MMcf is deemed excess of the total in the first iteration of the allocated sale and reallocated to the two remaining refiners based on the refining capacity between them. With the reallocation, Refiner A gets all requested, but Refiner C is still short by 73 MMcf. Additionally, 3 MMcf remains unallocated and without any other Refiners is awarded to Refiner C, who now has a remaining request of 70 MMcf that is posted into the non-allocated sale. All percentages used in the calculation will be rounded to the nearest 1/10th of 1 percent. All volumes calculated will be rounded to the nearest 1 Mcf.

Non-allocated Sale

3.01 What Is the Non-Allocated Sale?

That portion of the annual sale volume of conservation helium that will be offered to all qualified bidders.

3.02 What Is the Minimum Volume I Can Request?

The minimum request is 5 MMcf.

3.03 What Volume of Conservation Helium Is Available for the Non-allocated Sale?

The total volume of Conservation Helium available for this portion of the sale is 210 MMcf plus any additional helium that is not sold as part of the allocated sale.

3.04 How Is the Ratio of Allocated to Non-Allocated Sale Volumes Determined?

According to the terms of the HPA, the BLM must conduct the annual Conservation Helium sales in a manner not to cause undue helium market disruptions; and therefore, the majority of the Conservation Helium is being offered as part of the allocated sale. Currently, the crude helium refiners have refining capacity roughly double what can be supplied through the annual Conservation Helium sales. Although there are other crude helium supplies available to the crude helium refiners, these supplies are declining each year. The BLM must be sensitive to the crude helium refiners requirements while maintaining a balance with other helium industry requirements. The exact ratio of allocated to non-allocated sale volumes may change for subsequent annual Conservation Helium sales.

3.05 How Will the Non-Allocated Conservation Helium Be Apportioned Among the Bidders?

The Conservation Helium will be apportioned equally in 1 Mcf increments among the bidders with no prospective bidder receiving more than its request.

3.06 What Will Happen if the Bidders Request More Than What Is Made Available for Sale in Part 3.03 of This Notice?

• If one or more bidders request less than their apportioned amount, any other bidder(s) that requested more than its apportioned amount will be allowed to purchase equally apportioned amounts of the remaining volume available for this sale.

• If all bidders request more than their apportioned amount each bidder will receive its apportioned amount as determined in part 3.05 in this notice.

3.07 What Will Happen if a Bidder Requests Less Than Its Apportioned Amount?

Any bidder requesting less than the calculated apportioned volume, will receive the amount of its request and amounts remaining will be reapportioned in accordance with part 3.05 in this notice.

3.08 What Will Happen if the Total Requests From All Bidders Are Less Than That Offered for Sale in the Non-Allocated Sale?

If the total non-allocated volume requested is less than the non-allocated volume offered for this portion of the sale, the excess amount will not be sold and will be held in storage for future sales.

3.09 Do You Have a Hypothetical Example of How a Non-Allocated Sale Would Be Conducted?

2,100 MMcf available for total sale with 10 percent available for non-allocated sale (210 MMcf).

Bidder—non-allocated sale	Bid volume*	Apportioned volume*	Excess volume requested*	Proration percent	Excess apportioned*	Total apportioned*	Amount requested not received*
Refiner C	70	52.5	17.5	50	15	67.5	2.5
Company D	100	52.5	47.5	50	15	67.5	32.5

Bidder—non-allocated sale	Bid volume*	Apportioned volume*	Excess volume requested*	Proration percent	Excess apportioned*	Total apportioned*	Amount requested not received*
Company E	50	50	0	0	0	50	0
Company F	25	25	0	0	0	25	0
Total	245	180	65	100	30	210	35

* All volumes in MMcf.

In this example, three companies submit a request and there is a carryover amount from one of the crude helium refiners in the allocated sale that is considered as a separate request. Each bidder would be apportioned 52.5 MMcf, (*i.e.*, 210 MMcf of non-allocated Conservation Helium ÷ 4 bidders = 52.5 MMcf per bidder). After the initial allocation, Companies E and F have received all they requested. However, 30 MMcf is deemed excess in the first iteration of the non-allocated sale and reallocated to the two remaining bidders. With the reallocation, Refiner C and Company D each receives an additional 15 MMcf. No more helium is available, Refiner C and Company D do not receive all that they requested, and the sale is complete. All percentages used in the calculation will be rounded to the nearest 1/10th of 1 percent. All volumes calculated will be rounded to the nearest 1 Mcf.

Dated: December 13, 2002.

Timothy R. Spisak,

Acting State Director, New Mexico.

[FR Doc. 03–2048 Filed 1–29–03; 8:45 am]

BILLING CODE 4310–FB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–023–03–1310–PB–018L–241A]

National Petroleum Reserve—Alaska Research and Monitoring Advisory Team (RMT) Public Meeting

AGENCY: Northern Field Office, Bureau of Land Management, Interior.

ACTION: Notice of the National Petroleum Reserve—Alaska Research and Monitoring Advisory Team Public Meeting.

SUMMARY: A joint public meeting of the National Petroleum Reserve—Alaska Research and Monitoring Advisory Team and the NPR–A Subsistence Advisory Panel (SAP) will be held in Barrow, Alaska, on March 18–19, 2003, to discuss research and monitoring needs in the NPR–A and to make recommendations to the Authorized Officer on priority projects to be implemented by the BLM. This will also be the first joint meeting of the RMT and SAP as stipulated in the charter of the RMT.

DATES: The public meeting will be held at the Iñupiat Heritage Center in Barrow, Alaska, on March 18–19, 2003. A field trip to view a winter seismic operation is tentatively planned for March 20. Hours of the meeting have not yet been set. Please call the phone number below for a time update.

PUBLIC PARTICIPATION: This meeting is open to the public.

FOR FURTHER INFORMATION CONTACT: Additional information concerning the NPR–A Research and Monitoring Advisory Team may be obtained from Herb Brownell, Arctic Team Manager, BLM Northern Field Office, 1150 University Avenue, Fairbanks, Alaska 99709–3844. Mr. Brownell may be reached at (907) 474–2333 or at 1–800–437–7021, x2333, or at *Herb_Brownell@ak.blm.gov.*

SUPPLEMENTARY INFORMATION: The RMT's membership represents the BLM, Minerals Management Service, Department of Energy, U.S. Fish and Wildlife Service, U.S. Geological Survey—Biological Resources Division, the North Slope Borough, the oil and gas industry, environmental/resource conservation organizations, natural resource management/science academicians, and the public at large. The RMT advises the BLM in assessing the effectiveness and appropriateness of mitigative stipulations established in the Northeast NPR–A Integrated Activity Plan/Environmental Impact Statement, Record of Decision, 1998. The team focuses on assessing NPR–A research and monitoring needs, developing and recommending research priorities, and applying improved technology and operating practices to oil and gas exploration and development in the NPR–A.

The Subsistence Advisory Panel advises the BLM on how subsistence resources, uses, and users may be impacted by oil and gas exploration and development in the NPR–A.

Dated: January 23, 2003.

Robert W. Schneider,

Field Manager, Northern Field Office, Bureau of Land Management.

[FR Doc. 03–2153 Filed 1–29–03; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of extension of an information collection (1010–0128).

SUMMARY: To comply with the Paperwork Reduction Act of 1995 (PRA), we are inviting comments on a collection of information that we will submit to the Office of Management and Budget (OMB) for review and approval. The information collection request (ICR) concerns the paperwork requirements in the regulations under 30 CFR 250, Subpart O, "Well Control and Production Safety Training."

DATES: Submit written comments by March 31, 2003.

ADDRESSES: Mail or hand carry comments to the Department of the Interior; Minerals Management Service; Attention: Rules Processing Team; Mail Stop 4024; 381 Elden Street; Herndon, Virginia 20170–4817. If you wish to e-mail comments, the address is: *rules.comments@mms.gov.* Reference "Information Collection 1010–0128" in your e-mail subject line and mark your message for return receipt. Include your name and return address in your message.

FOR FURTHER INFORMATION CONTACT: Arlene Bajusz, Rules Processing Team, (703) 787–1600. You may also contact Arlene Bajusz to obtain a copy, at no cost, of the regulations that require the subject collection of information.

SUPPLEMENTARY INFORMATION:

Title: 30 CFR 250, Subpart O, Well Control and Production Safety Training.

OMB Control Number: 1010–0128.

Abstract: The Outer Continental Shelf (OCS) Lands Act, as amended (43 U.S.C. 1331 *et seq.* and 43 U.S.C. 1801 *et seq.*), authorizes the Secretary of the Interior (Secretary) to prescribe rules and regulations to administer leasing of the OCS. Such rules and regulations will apply to all operations conducted under a lease. Operations on the OCS must preserve, protect, and develop oil and natural gas resources in a manner that is consistent with the need to make such resources available to meet the Nation's energy needs as rapidly as possible; to balance orderly energy resource development with protection of human, marine, and coastal environments; to ensure the public a fair and equitable return on the resources of the OCS; and to preserve and maintain free enterprise competition.

Section 1332(6) of the OCS Lands Act (43 U.S.C. 1332) requires that "operations in the [O]uter Continental Shelf should be conducted in a safe manner by well trained personnel using technology, precautions, and other techniques sufficient to prevent or minimize the likelihood of blowouts, loss of well control, fires, spillages, physical obstructions to other users of the waters or subsoil and seabed, or other occurrences which may cause damage to the environment or to property or endanger life or health." This authority and responsibility are among those delegated to the Minerals Management Service (MMS). To carry out these responsibilities, MMS issues regulations governing oil and gas or sulphur operations in the OCS.

Regulations at 30 CFR 250, subpart O, implement these safe operation requirements. The MMS uses the information collected under subpart O to ensure that workers in the OCS are properly trained with the necessary skills to perform their jobs in a safe and pollution-free manner. In some instances, MMS will conduct oral interviews of offshore employees to evaluate the effectiveness of a company's training program. The information collected is necessary to verify personnel training compliance with the requirements.

We will protect information from respondents considered proprietary under the Freedom of Information Act (5 U.S.C. 552) and its implementing regulations (43 CFR part 2) and under regulations at 30 CFR parts 250, 251, and 252. No items of a sensitive nature are collected. Responses are mandatory or required to obtain or retain a benefit.

Frequency: Primarily on occasion or annual.

Estimated Number and Description of Respondents; Approximately 130 Federal OCS lessees.

Estimated Reporting and Recordkeeping "Hour" Burden: The currently approved annual reporting burden for this collection is 5,739 hours. The following chart details the individual components and respective hour burden estimates of this ICR. In calculating the burdens, we assumed that respondents perform certain requirements in the normal course of their activities. We consider these to be usual and customary and took that into account in estimating the burden.

BURDEN BREAKDOWN

Citation 30 CFR 250 subpart O	Reporting and recordkeeping requirement	Hour burden
1502	Notify MMS of early implementation of revised final regulations	1
1503(b), (c)	Develop training plans	60
1503(c)	Maintain copies of training plan and employee training documentation for 5 years	plan = 15 min. employee record = 5 min.
1503(c)	Upon request, provide MMS copies of employee training documentation or provide copy of training plan.	5
1507(b)	Employee oral interview conducted by MMS	10 min.
1507(c), (d); 1508; 1509	Written testing conducted by MMS or authorized representative. [Exempt under 5 CFR 1320.3(h)(7).]	
1510(b)	Revise training plan and submit to MMS	4
1500–1510	General departure or alternative compliance requests not specifically covered elsewhere in subpart O.	2

Estimated Reporting and Recordkeeping "Non-Hour Cost" Burden: We have identified no cost burdens for this collection.

Public Disclosure Statement: The PRA (44 U.S.C. 3501, *et seq.*) provides that an agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. Until OMB approves a collection of information, you are not obligated to respond.

Comments: Before submitting an ICR to OMB, PRA section 3506(c)(2)(A) requires each agency "* * * to provide notice * * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information * * *". Agencies must specifically solicit comments to: (a) Evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

Agencies must also estimate the "non-hour cost" burdens to respondents or recordkeepers resulting from the collection of information. Therefore, if you have costs to generate, maintain, and disclose this information, you should comment and provide your total capital and startup cost components or annual operation, maintenance, and purchase of service components. You should describe the methods you use to estimate major cost factors, including system and technology acquisition, expected useful life of capital equipment, discount rate(s), and the period over which you incur costs. Capital and startup costs include, among other items, computers and software you purchase to prepare for collecting information, monitoring, and record storage facilities. You should not include estimates for equipment or services purchased: (i) Before October 1, 1995; (ii) to comply with requirements not associated with the information collection; (iii) for reasons other than to provide information or keep records for the Government; or (iv) as part of customary and usual business or private practices.

We will summarize written responses to this notice and address them in our submission for OMB approval. As a result of your comments, we will make

any necessary adjustments to the burden in our submission to OMB.

Public Comment Policy: Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the record, which we will honor to the extent allowable by law. There may be circumstances in which we would withhold from the record a respondent's identity, as allowable by the law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

MMS Information Collection Clearance Officer: Jo Ann Lauterbach, (202) 208–7744.

Dated: January 22, 2003.

E.P. Danenberger,

Chief, Engineering and Operations Division.

[FR Doc. 03–2145 Filed 1–29–03; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Availability of a Supplemental Draft Environmental Impact Statement

AGENCY: National Park Service, Interior.

ACTION: Notice of availability of a Supplemental Draft Environmental Impact Statement for the General Management Plan for Big South Fork National River and Recreation Area, Kentucky and Tennessee.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969 and National Park Service policy in Director's Order Number 2 (Park Planning) and Director's Order Number 12 (Conservation Planning, Environmental Impact Analysis, and Decision-making) the National Park Service announces the availability of a Supplemental Draft Environmental Impact Statement and General Management Plan (SDEIS/GMP) for Big South Fork National River and Recreation Area (NRRA), Kentucky and Tennessee.

The SDEIS/GMP analyzes three action alternatives and one no-action alternative for guiding management of the park over the next 15 to 20 years. The three action alternatives incorporate various management prescriptions to ensure resource protection and quality visitor experience conditions. The no-action alternative would continue current management practices and policies.

DATES: The comment period will extend until April 30, 2003. A series of public meetings will be held in surrounding communities during this period. Dates, times, and locations of the meetings will be announced in the local media, posted on the internet at *http://www.nps.gov/biso/gmp*, and the park may be contacted for this information. Representatives of the National Park Service will be available at the public meetings to receive comments, concerns, and other input from the public related to the SDEIS/GMP.

ADDRESSES: Limited numbers of copies of the SDEIS/GMP are available from the Superintendent, Big South Fork NRRA, 4564 Leatherwood Ford Road, Oneida, TN 37841. Public reading copies of the SDEIS/GMP will also be available for review at the following locations, including others to be announced:

- Office of the Superintendent, Big South Fork NRRA, 4564 Leatherwood Ford Road, Oneida, TN 37841. Telephone: (423) 569–9778.
- Division of Planning and Compliance, Southeast Regional Office, National Park Service, Attention: John Fischer, 100 Alabama Street, 1924 Building, Atlanta, Georgia 30303. Telephone: (404) 562–3124, ext. 607.
- An electronic copy of the SDEIS/GMP is available for download in .pdf format on the internet at *http://www.nps.gov/biso/gmp*.

FOR FURTHER INFORMATION CONTACT: Superintendent, Big South Fork NRRA, 4564 Leatherwood Ford Road, Oneida, TN 37841. Telephone: (423) 562–9778.

SUPPLEMENTARY INFORMATION: This Supplemental Draft Environmental Impact Statement/General Management Plan is being distributed for public review based on comments received on the initial draft document. Those comments indicated that additional information was needed to allow for more meaningful public participation in the area's management planning. This led to more data collection and the development of a new alternative.

This plan examines and reaffirms Congress' purpose and direction for the National Area. It identifies the management requirements placed on the National Area as a unit of the national park system. The plan then considers different alternatives for managing the National Area along with an environmental evaluation of the alternatives. A no-action alternative is included for comparison. Development sites, roads, and trails within the National Area are examined.

In addition to Alternatives A and B identified in the previous draft, a new, more detailed alternative is presented in this supplemental document. This new alternative, Alternative D, is the NPS' preferred alternative. More localized areas are identified for different zone types, with particularized management prescriptions. A greater degree of guidance for resource management and visitor use is achieved. This is augmented with information, proposals, and alternatives for development of facilities, including roads and trails. Many existing facilities are reaffirmed as appropriate for inclusion in an official system; a number of new facilities are proposed to fill gaps and to provide for areas more recently acquired; and some existing facilities would be removed. Overall, the scale of development and types of facilities proposed over the planning horizon of 15 to 20 years would remain essentially the same. Special provisions are proposed for hunting access and for off-road vehicles. All routes proposed for use by off-road vehicles would be designated, according to Executive Order.

Special projects including management of oil and gas activities, reclamation of contaminated mine drainage, native species management, cultural landscape identification and management, and increased monitoring would be continued or initiated. Interpretation of National Area resources would be increased and more focused through completion of comprehensive interpretive planning.

Dated: November 15, 2002.

Patricia A. Hooks,

Acting Regional Director, Southeast Region.

[FR Doc. 03–2086 Filed 1–29–03; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Acadia National Park, Bar Harbor, Maine; Acadia National Park Advisory Commission; Notice of Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770, 5 U.S.C. App. 1, sec. 10), that the Acadia National Park Advisory Commission will hold a meeting on Monday, February 3, 2003.

The Commission was established pursuant to Public Law 99–420, sec.

103. The purpose of the commission is to consult with the Secretary of the Interior, or his designee, on matters relating to the management and development of the park, including but not limited to the acquisition of lands and interests in lands (including conservation easements on islands) and termination of rights of use and occupancy.

The meeting will convene at park Headquarters, McFarland Hill, Bar Harbor, Maine, at 1 p.m. to consider the following agenda:

1. Review and approval of minutes from the meeting held September 9, 2002.
2. Committee reports:

—Land Conservation,
—Park Use,
—Science.

3. Old business.
4. Superintendent's report.
5. Public comments.
6. Proposed agenda for next Commission meeting, September 9, 2002.

The meeting is open to the public. Interested persons may make oral/written presentations to the Commission or file written statements. Such requests should be made to the Superintendent at least seven days prior to the meeting.

Further information concerning this meeting may be obtained from the Superintendent, Acadia National Park, P.O. Box 177, Bar Harbor, Maine 04609, tel: (207) 288–3338.

Dated: January 3, 2003.

Len Bobinchock,

Acting Superintendent, Acadia National Park.

[FR Doc. 03–2089 Filed 1–29–03; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Gettysburg National Military Park Advisory Commission

AGENCY: National Park Service, Interior.

ACTION: Notice of February 20, 2003 meeting.

SUMMARY: This notice sets forth the date of the February 20, 2003 meeting of the Gettysburg National Military Park Advisory Commission.

DATES: The public meeting will be held on February 20, 2003 from 7 p.m. to 9 p.m.

LOCATION: The meeting will be held at the Cyclorama Auditorium, 125 Taneytown Road, Gettysburg, Pennsylvania 17325.

AGENDA: The February 20, 2003 meeting will consist of the Sub-Committee Reports from the Historical, Executive, and Interpretive Committees; Federal Consistency Reports Within the Gettysburg Battlefield Historic District; Operational Updates on Park Activities which consists of an update on Gettysburg National Battlefield Museum Foundation and National Park Service activities related to the new Visitor Center/Museum Complex, update on the 5-year plan for the Historic Landscape Rehabilitation; updating the schedule of repairs on the Pennsylvania Monument; Construction Updates such as the fire suppression project for 50 historic structures; the Gettysburg Borough Interpretive Plan which will consist of updates on the Wills House and the Train Station; Transportation which consists of the National Park Service and the Gettysburg Borough working on the shuttle system; Update on land acquisition within the park boundary or in the historic district; and the Citizens Open Forum where the public can make comments and ask questions on any park activity.

FOR FURTHER INFORMATION CONTACT: John A. Latschar, Superintendent, Gettysburg National Military Park, 97 Taneytown Road, Gettysburg, Pennsylvania 17325,

SUPPLEMENTARY INFORMATION: The meeting will be open to the public. Any member of the public may file with the Commission a written statement concerning agenda items. The statement should be addressed to the Gettysburg National Military Park Advisory Commission, 97 Taneytown Road, Gettysburg, Pennsylvania 17325.

Dated: January 9, 2003.

John A. Latschar,

Superintendent, Gettysburg NMP/Eisenhower NHS.

[FR Doc. 03–2087 Filed 1–29–03; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF INTERIOR

National Park Service

Notice of Realty Action Proposed Exchange of Interest in Federally-Owned Lands for Privately-Owned Lands Both Within Smyth County, VA

AGENCY: National Park Service, Interior.

ACTION: Notice of realty action for proposed land exchange.

SUMMARY: The following described interests in federally-owned lands acquired by the National Park Service have been determined to be suitable for disposal by exchange. The authority for this exchange is section 5(b) of the Land and Water Conservation Fund Act Amendments in Pub. L. 90–401, approved July 15, 1968, and section 7(f) of the National Trails System Act, Pub. L. 90–543, as amended.

DATES: Comments on this proposed land exchange will be accepted through March 17, 2003.

ADDRESSES: Detailed information concerning this exchange including precise legal descriptions, Land Protection Plan, environmental assessment, and cultural reports, and Finding of No Significant Impact are available at the National Trails Land Resources Program Center, 1314 Edwin Miller Boulevard, PO Box 908, Martinsburg, West Virginia 25402. Comments may also be mailed to this address.

FOR FURTHER INFORMATION CONTACT: Judy L. Brumback, Chief, Acquisition Division, National Park Service, National Trails Land Resources Program Center, PO Box 908, Martinsburg, West Virginia 25402–0908. Phone: (304) 263–4943.

SUPPLEMENTARY INFORMATION: The selected interest in Federal land is within the boundaries of the Appalachian National Scenic Trail. The land has been surveyed for cultural resources and endangered and threatened species. These reports are available upon request.

Permanent and temporary easements, in varying widths from 168.45′ to 15.62′, providing the right to construct, install and maintain a natural gas pipeline are to be exchanged on this federally owned property. Tract 514–50, (permanent easement) consisting of Parcel A, with 0.27 of an acre, more or less, which occupies a portion of the land acquired by the United States of America from Ronald H. Cumbow, *et al.*, by deed recorded in Smyth County; Deed Book 383, Page 709 (Tract 514–12) and Parcel B, with 0.82 of an acre, more or less, which occupies a portion of the land acquired by the United States of America from J. W. Cumbow, *et ux.*, by deed recorded in Smyth County in Deed Book 427, Page 730 (Tract 514–37). Tract 514–51, (temporary easement, not to exceed 18 months) consisting of Parcel A, with 0.16 of an acre, more or less, which occupies a portion of the land acquired by the United States of America from Ronald H. Cumbow, *et al.*, by deed recorded in Smyth County; Deed Book 383, Page 709 (Tract 514–12); Parcel B, with 0.64 of an acre, more or less, which occupies a portion of the same land acquired by the United States of America from Lucille L. Davis, *et vir.*, by deed recorded in Smyth County in Deed Book 409, page 159 (Tract 514–

33); Parcel C, with 0.09 of an acre, more or less, which occupies a portion of the same land acquired by the United States of America from J. W. Cumbow, *et ux.*, by deed recorded in Smyth County in Deed Book 427, Page 730 (Tract 514–37) and Parcel D, with 1.69 acres, more or less, which occupies a portion of the same land acquired by the United States of America from J. W. Cumbow, *et ux.*, by deed recorded in Smyth County in Deed Book 427, Page 730 (Tract 514–37).

Conveyance of the interest in land by the United States of America will be done by a Grant of Easement without warranty and will include easements terms to ensure that impact of construction and operation of the pipeline are minimized. Once construction and installation has been completed, the company will restore the disturbed property and carry out other reclamation and mitigation measures to further minimize impacts to the environment.

In exchange for the land described in Paragraph I above, the United States of America will acquire the fee interest in Tract 514–52, containing 1.13 acres, more or less and an easement over Tract 514–53, Parcels A and Parcel B, containing in the aggregate .82 of an acre, more or less, to be acquired by East Tennessee Natural Gas Pipeline Company. The Appalachian Trail footpath is located approximately 200 feet from this property. Acquisition of the fee and easement interests will provide additional protection for the footpath by protecting the resources. This land will be administered by the National Park Service as a part of the Appalachian National Scenic Trail upon completion of the exchange. This exchange of real property will provide permanent protection for the Appalachian Trail.

The land to be acquired by the United States of America is described as follows: Tract 514–52, the fee interest in 1.13 acres, more or less and Tract 514–53, a easement interest over 0.82 of an acre, more or less, acquired by East Tennessee Natural Gas Pipeline Company from Ron C. Reedy. The property is a portion of the lands acquired by Ron C. Reedy from J. W. Cumbow, *et ux.*, recorded in Deed Book 453, Page 508, in the Clerk's Office of the Circuit Court of Smyth County, Commonwealth of Virginia.

Conveyance of the fee simple title and easement to the United States will be done by a General Warranty Deed.

The value of the properties exchanged shall be determined by a current fair market value appraisal. If the value of Tracts 514–50/51 exceeds the value of Tract 514–52/53, East Tennessee Natural Gas Pipeline Company shall make an equalization payment to the United States. If the value of Tracts 514–52/53 exceeds the value of Tract 514–50/51, East Tennessee Natural Gas Pipeline Company will donate the excess value to the United States.

Interested parties may submit written comments to the address listed in the **ADDRESSES**, paragraph. Adverse comments will be evaluated and this action may be modified or vacated accordingly. In the absence of any action to modify or vacate, this realty action will become the final determination of the Department of Interior.

Dated: November 22, 2002.

Pamela Underhill,

Park Manager, Appalachian National Scenic Trail.

[FR Doc. 03–2088 Filed 1–29–03; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

Closure Order Establishing Prohibitions at Nimbus Dam and Power Plant, CA

AGENCY: Bureau of Reclamation.

ACTION: Notice of closure.

SUMMARY: The Bureau of Reclamation is prohibiting public access to Nimbus Dam and power plant. The prohibition (closure) area consists of the entire dam and power plant structure; the fenced in area at each end of and immediately adjacent to the structure; lands and water 85 feet downstream of the dam and power plant; and lands and waters 75 feet upstream of the dam and power plant.

DATES: The closure will be effective January 2, 2003 and will remain in effect indefinitely.

ADDRESSES: A map is available for inspection at the Bureau of Reclamation's Central California Area Office, located at 7794 Folsom Dam Road, Folsom, California 95630. The map may be viewed between the hours of 8 a.m. and 4 p.m., Monday through Friday. To have a map mailed to your address, send your request to the above address, Attention: Nimbus Dam Map Request.

FOR FURTHER INFORMATION CONTACT: Bureau of Reclamation, Mid-Pacific Region Public Affairs Office at (916) 978–5100 or the Bureau of Reclamation, Central California Area Office at (916) 988–1707.

SUPPLEMENTARY INFORMATION: This action is being taken under 43 CFR 423.3 to improve facility security and public safety. The Bureau of Reclamation will be prohibiting access to the structure in an effort to prevent activities that may inadvertently or deliberately cause property damage to the structure. The following acts are prohibited on the facilities, lands and waters in the closure area: (a) Trespassing, entering, or remaining in or upon the closure areas described above. (Exceptions: Operation and Maintenance personnel that have expressed authorization from the Bureau of Reclamation; law enforcement and fire department officers and Bureau of Reclamation employees acting within the scope of their employment, and any others who have received expressed written authorization from the Bureau of Reclamation to enter the closure areas). (b) Tampering or attempting to tamper with the facilities, structures or other property or real property located within the closure areas or moving, manipulating, or setting in motion any of the parts thereof. (Exceptions: *see* a. above). (c) Vandalism or destroying, injuring, defacing, or damaging property that is not under one's lawful control or possession.

Closing of the area will also improve the agency's ability to detect and respond to potential problems at the facility. In addition, prohibiting public access to the tailrace area will reduce the likelihood of drowning incidents. The water releases from the power plant are turbulent and should an individual fall into the tailrace, drowning is a highly probable outcome. This order is posted in accordance with 43 CFR 423.3(b). Violation of this prohibition or any prohibition listed in 43 CFR part 423 is punishable by fine, or imprisonment for not more than six months, or both.

Dated: October 21, 2002.

Thomas J. Aiken,

Area Manager, Central California Area Office, Mid-Pacific Region.

[FR Doc. 03–2156 Filed 1–29–03; 8:45 am]

BILLING CODE 4310–MN–M

INTERNATIONAL TRADE COMMISSION

[USITC SE–03–002]

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: International Trade Commission.

TIME AND DATE: February 5, 2003, at 9:30 a.m.

PLACE: Room 101, 500 E Street, SW., Washington, DC 20436. Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda for future meetings: none.
2. Minutes.
3. Ratification list.
4. Inv. No. TA–421–2 (Remedy)(Certain Steel Wire Garment Hangers from China)—briefing and vote. (The Commission is currently scheduled to transmit its proposals on remedy to the President and the United States Trade Representative on February 18, 2003.)
5. Outstanding action jackets: none.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

By order of the Commission.

Issued: January 27, 2003.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 03–2259 Filed 1–27–03; 4:52 pm]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Office of Justice Programs

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 60-day emergency notice of information collection under review: Reinstatement, without change, of a previously approved collection for which approval has expired. Certification of compliance with eligibility requirements of grants to reduce crimes against women.

The Department of Justice, Office of Justice Programs, Office on Violence Against Women has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with emergency review procedures of the Paperwork Reduction Act of 1995. OMB approval has been requested by January 31, 2003. The proposed information collection is published to obtain comments from the public and affected agencies. If granted, the emergency approval is only valid for 180 days. Comments should be directed to OMB, Office of Information and Regulation Affairs, Attention: Department of Justice Desk Officer (202) 395–6466, Washington, DC 20503.

During the first 60 days of this same review period, a regular review of this information collection is also being undertaken. All comments and suggestions, or questions regarding additional information, to include obtaining a copy of the proposed information collection instrument with instructions, should be directed to Cathy Poston, Attorney/Advisor, Office on Violence Against Women, Office of Justice Programs, Department of Justice, 810 7th Street, NW., Washington DC 20531, or facsimile (202) 305–2589.

Request written comments and suggestions from the public and affected agencies concerning the proposed collection of information. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of This Information

(1) Type of information collection: Reinstatement, without Change, of a Previously Approved Collection for which Approval has expired.

(2) The title of the form/collection: Certification of Compliance with Eligibility Requirements of Grants to Reduce Crimes against Women.

(3) The agency form number, if any, and the applicable component of the department sponsoring the collection: Form Number: none. Office on Violence Against Women, Office of Justice Programs, Department of Justice.

(4) Affected public who will be asked or required to respond, as well as a brief abstract: Primary: Institutions of Higher Education. Other: None. The grants to Reduce Violent Crimes Against Women on Campus Program was authorized through section 826 of the Higher Education Amendments of 1998 to make funds available to institutions of higher education to combat domestic violence, dating violence, sexual assault and stalking crimes.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply: It is estimated that 125 respondents will complete the application in approximately 30 minutes.

(6) An estimate of the total public burden (in hours) associated with the collection: The estimated total public burden associated with this application is 62 hours.

If additional information is required contact: Brenda E. Dyer, Department Deputy Clearance Officer, Information Management and Security Staff, Justice Management Division, United States Department of Justice, 601 D Street NW., Patrick Henry Building, Suite 1600, NW., Washington, DC 20530.

Dated: January 24, 2003.

Brenda Dyer,

Department Deputy Clearance Officer, United States Department of Justice.

[FR Doc. 03–2109 Filed 1–29–03; 8:45 am]

BILLING CODE 4410–18–M

DEPARTMENT OF LABOR

Employment Standards Administration

Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor (the Department), as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment Standards Administration is soliciting comments concerning the Office of Federal Contract Compliance Programs' (OFCCP) proposed information collection entitled Equal Opportunity Survey (EO Survey). A copy of the proposed information collection request can be obtained by contacting the office listed below in the addresses section of this Notice.

DATES: Written comments must be submitted to the office listed in the addresses section below on or before March 31, 2003.

ADDRESSES: Ms. Hazel Bell, U.S. Department of Labor, 200 Constitution Ave., NW., Room S–3201, Washington, DC 20210, telephone (202) 693–0418 (voice) or (202) 693–1308 (TTY), fax (202) 693–1451, E-mail *hbell@fenix2.dol-esa.gov*. Please use only one method of transmission for comments (mail, fax, or E-mail).

SUPPLEMENTARY INFORMATION

I. Background

OFCCP's regulations at 41 CFR 60–2.18 authorize OFCCP to collect data through use of the EO Survey. The EO Survey requests data that can be derived from employment and other related records that contractors are required to collect and retain under OFCCP's regulations at 41 CFR 60–1.12. With these data, the EO Survey is intended to improve the selection of contractors for compliance evaluations, which the Department uses to determine compliance with non-discrimination and equal employment opportunity (EEO) regulations. OFCCP seeks to develop a selection tool that is able to identify those contractors that are more likely to be engaging in discriminatory employment practices. This revised selection tool would enable OFCCP to efficiently allocate its resources and avoid initiating evaluation of those employers who are in general compliance with EEO guidelines, thereby reducing the burden on them, and efficiently spending tax-payer dollars. Time constraints and a number of data problems affected an earlier pilot study of the EO Survey data in such a way so as not to be able to assess the Survey's predictive power. To perform a study that is not limited by these obstacles, OFCCP has engaged an outside contractor to study the Survey data. The contractor will assess data from the EO Survey submissions as part of its study. It is anticipated that the study will not be completed until 2004.

The current PRA authorization for the EO Survey is scheduled to expire on March 31, 2003. Accordingly, OFCCP requests a two-year extension of PRA authorization for the EO Survey, involving 10,000 EO Surveys per year. The two-year extension will permit OFCCP to complete the ongoing study of the EO Survey. Ten-thousand Surveys is the number the outside contractor needs to assess the Survey's reliability for finding employers that discriminate against their employees.

II. Review Focus

The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

III. Current Actions

The Department seeks the extension of approval to collect this information to complete a study of the EO Survey as a tool to identify those contractors that are more likely to be engaging in discriminatory employment practices. The Survey could enable OFCCP to efficiently allocate its resources to avoid initiating evaluation of those employers who are in general compliance with EEO guidelines, thereby reducing the burden on them and efficiently spending tax-payer dollars. The OFCCP seeks a two-year extension to the approval of the Equal Opportunity Survey. There is no change in the substance or method of collection since the last OMB approval.

Type of Review: Extension.

Agency: Employment Standards Administration.

Title: Equal Opportunity Survey.

OMB Number: 1215–0196.

Affected Public: Business or other for-profit; Not-for-profit institutions.

Total Respondents/Responses: 10,000.

Frequency: Annually.

Average Burden per Response: 21 hours.

Estimated Total Burden Hours: 210,000.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintenance): $30,000.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; comments will also become a matter of public record.

Dated: January 28, 2003.

Bruce Bohanon,

Chief, Branch of Management Review and Internal Control, Division of Financial Management, Office of Management, Administration and Planning, Employment Standards Administration.

[FR Doc. 03–2283 Filed 1–29–03; 8:45 am]

BILLING CODE 4510–CM–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Once approved by NARA, records schedules provide mandatory instructions on what happens to records when no longer needed for current Government business. They authorize the preservation of records of continuing value in the National Archives of the United States and the destruction, after a specified period, of records lacking administrative, legal, research, or other value. Notice is published for records schedules in which agencies propose to destroy records not previously authorized for disposal or reduce the retention period of records already authorized for disposal. NARA invites public comments on such records schedules, as required by 44 U.S.C. 3303a(a).

DATES: Requests for copies must be received in writing on or before March 17, 2003. Once the appraisal of the records is completed, NARA will send a copy of the schedule. NARA staff usually prepare appraisal memorandums that contain additional information concerning the records covered by a proposed schedule. These, too, may be requested and will be provided once the appraisal is completed. Requesters will be given 30 days to submit comments.

ADDRESSES: To request a copy of any records schedule identified in this notice, write to the Life Cycle Management Division (NWML), National Archives and Records Administration (NARA), 8601 Adelphi Road, College Park, MD 20740–6001. Requests also may be transmitted by FAX to 301–837–3698 or by e-mail to

records.mgt@nara.gov. Requesters must cite the control number, which appears in parentheses after the name of the agency which submitted the schedule, and must provide a mailing address. Those who desire appraisal reports should so indicate in their request.

FOR FURTHER INFORMATION CONTACT: Paul M. Wester, Jr., Director, Life Cycle Management Division (NWML), National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001. Telephone: 301–837–3120. E-mail: *records.mgt@nara.gov*.

SUPPLEMENTARY INFORMATION: Each year Federal agencies create billions of records on paper, film, magnetic tape, and other media. To control this accumulation, agency records managers prepare schedules proposing retention periods for records and submit these schedules for NARA's approval, using the Standard Form (SF) 115, Request for Records Disposition Authority. These schedules provide for the timely transfer into the National Archives of historically valuable records and authorize the disposal of all other records after the agency no longer needs them to conduct its business. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. Most schedules, however, cover records of only one office or program or a few series of records. Many of these update previously approved schedules, and some include records proposed as permanent.

No Federal records are authorized for destruction without the approval of the Archivist of the United States. This approval is granted only after a thorough consideration of their administrative use by the agency of origin, the rights of the Government and of private persons directly affected by the Government's activities, and whether or not they have historical or other value.

Besides identifying the Federal agencies and any subdivisions requesting disposition authority, this public notice lists the organizational unit(s) accumulating the records or indicates agency-wide applicability in the case of schedules that cover records that may be accumulated throughout an agency. This notice provides the control number assigned to each schedule, the total number of schedule items, and the number of temporary items (the records proposed for destruction). It also includes a brief description of the temporary records. The records schedule itself contains a full description of the records at the file unit level as well as their disposition. If NARA staff has prepared an appraisal memorandum for the schedule, it too includes information about the records. Further information about the disposition process is available on request.

Schedules Pending

1. Department of the Army, Agency-wide (N1–AU–01–20, 7 items, 6 temporary items). Records relating to the management of models and simulations. Included are records documenting standards and requirements development, board and working group proceedings, improvement proposals, and domain management. Also included are electronic copies of documents created using electronic mail and word processing. Proposed for permanent retention are recordkeeping copies of policy and program management reports, which include such records as standards reports, master plans, and acquisition and training guidelines. This schedule authorizes the agency to apply the proposed disposition instructions to any recordkeeping medium.

2. Department of the Army, Agency-wide (N1–AU–03–1, 2 items, 2 temporary items). Electronic master files and outputs/reports relating to child and spouse abuse. A copy of the master file becomes part of a Department of Defense database that was previously approved for permanent retention.

3. Department of the Army, Agency-wide (N1–AU–03–02, 2 items, 2 temporary items). Master files and reports associated with the Groups Operational Passenger System. Records contain information regarding the receipt and processing of group movement requests and associated offers of service from the commercial carrier industry. This schedule authorizes the agency to apply the proposed disposition instructions to any recordkeeping medium.

4. Department of Defense, Office of the Inspector General (N1–509–03–1, 2 items, 1 temporary item). Criminal investigation case files. This schedule modifies slightly the previously approved selection criteria for permanent case files and also increases the retention period for files that lack historical significance, which were previously scheduled for disposal.

5. Department of Defense, Defense Security Service (N1–446–03–2, 14 items, 14 temporary items). Records relating to international programs. Records relate to such matters as trips, foreign government contacts and liaison assignments, transportation plans, security violations, secured communications, and security briefings. Also included are electronic copies of documents created using electronic mail and word processing. This schedule authorizes the agency to apply the proposed disposition instructions to any recordkeeping medium.

6. Department of Health and Human Services, Centers for Medicare and Medicaid Services (N1–440–00–5, 10 items, 7 temporary items). Records of the Office of Actuary relating to national expenditures for health-related goods and services, including paper and electronic source records and a web version of the annual report. Also included are electronic copies of records created using electronic mail and word processing. Proposed for permanent retention are electronic data files, annual reports, and system documentation.

7. Department of Interior, U.S. Geological Survey (N1–57–03–1, 46 items, 27 temporary items). Audiovisual records, geospatial data, cartographic records, remote sensing records, architectural drawings, engineering records, and publishing records. Included are such materials as miscellaneous general interest photographs, duplicate video prints, surveillance recordings, pre-mix sound elements and sound library recordings, unaltered or minimally altered data layers and non-significant data layers, contract negotiation drawings, publication approval records, copyright files, manuscripts, working papers and background materials, publications research records, information products management files, unofficial information products, and electronic files and artwork used in publishing. Also included are electronic copies of records created using electronic mail, spreadsheet, and word processing applications. Proposed for permanent retention are such records as mission-related photographs, motion pictures, stock footage, video recordings, audio recordings, geospatial data sets, and remote sensing records.

8. Department of Justice, Civil Rights Division (N1–60–03–3, 5 items, 2 temporary items). Inputs and outputs of the Case Management System, which is used for tracking investigations and cases. Proposed for permanent retention are the master files of the database (both the public-use and full-text versions) and the associated system documentation.

9. Department of Justice, Federal Bureau of Investigation (N1–65–03–1, 2 items, 2 temporary items). Work papers relating to financial management audits and electronic data processing audits. Also included are electronic copies of

records created using word processing and electronic mail.

10. Administrative Office of the U.S. Courts, Office of Internal Services (N1–116–03–3, 5 items, 4 temporary items). Briefing book background materials and appropriations hearing correspondence files. Included are such records as statements, questions prepared by program offices, and correspondence with judges and others relating to judicial appropriations. Also included are electronic copies of documents created using electronic mail and word processing. Recordkeeping copies of House and Senate hearings briefing books are proposed for permanent retention.

11. Commission on Affordable Housing and Health Facility Needs for Seniors in the 21st Century, Agency-wide (N1–220–03–3, 20 items, 11 temporary items). Audio cassette copies of meeting minutes and hearings used solely for making transcripts, administrative general correspondence, staff working papers, copies of contracts, reference materials, electronic copies created using electronic mail and word processing, and the Commission's web site. Recordkeeping copies of such files as meeting minutes, Commissioners' working papers, task force records, reports and studies, hearing transcripts, press releases, and photographs are proposed for permanent retention.

12. Environmental Protection Agency, Office of Pollution, Prevention, and Toxics (N1–412–01–11, 3 items, 2 temporary items). Paper records relating to regulating chemical or chemical mixtures under Section 6 of the Toxic Substances Control Act that have been microfilmed. Also included are electronic copies of documents created using electronic mail and word processing. Microfilm copies and paper records that have not been filmed are proposed for permanent retention.

13. Executive Office of the President, Office of Management and Budget (N1–51–03–2, 8 items, 1 temporary item). Backup tapes of electronic mail of the Management Division, the Office of Federal Procurement Policy, and the Health and Income Maintenance Division. Master files of messages and the related indexes and documentation are proposed for permanent retention.

14. National Bioethics Advisory Commission, Agency-wide (N1–220–01–6, 13 items, 5 temporary items). Copies of materials used solely for answering requests, reference materials, electronic copies created using electronic mail and word processing, and the Commission's web site. Proposed for permanent retention are recordkeeping copies of such files as the Commission's final report, surveys, hearing transcripts, correspondence, and meeting minutes.

15. Tennessee Valley Authority, Fossil Power Group (N1–142–03–2, 15 items, 15 temporary items). Records documenting the operation and maintenance of generators and auxiliary equipment at fossil power plants. Records relate to such matters as meter readings, temperature and pressure points, electrical power distribution, and inspections. Also included are electronic copies of documents created using electronic mail and word processing.

Dated: January 22, 2003.

Michael J. Kurtz,

Assistant Archivist for Record Services,—Washington, DC.

[FR Doc. 03–2114 Filed 1–29–03; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL COUNCIL ON DISABILITY

International Watch Advisory Committee Meetings (Conference Calls); Correction

ACTION: Notice; correction.

SUMMARY: The National Council on Disability published a document in the **Federal Register** on December 2, 2002, concerning meeting dates for its International Watch Advisory Committee. The document contained one incorrect date.

FOR FURTHER INFORMATION CONTACT: Joan M. Durocher, Attorney Advisor and Designated Federal Official, National Council on Disability, 1331 F Street NW., Suite 850, Washington, DC 20004; 202–272–2004 (voice), 202–272–2074 (TTY), 202–272–2022 (fax), *jdurocher@ncd.gov* (e-mail).

Correction

In the **Federal Register** of December 2, 2002, in FR Doc. 02–30401, on page 71595, correct the "Time and Dates for 2003" caption to read:

Time and Dates for 2003: 12 noon, Eastern Time, January 9, March 13, May 1, July 3, September 4, November 6.

Dated: January 27, 2003.

Ethel D. Briggs,

Executive Director.

[FR Doc. 03–2191 Filed 1–29–03; 8:45 am]

BILLING CODE 6820–MA–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–238, 50–249, 50–254, and 50–265]

Exelon Generation Company, LLC; Dresden Nuclear Power Station, Units 2 and 3; Quad Cities Nuclear Power Station, Units 1 and 2; Notice of Receipt of Application for Renewal of Facility Operating License Nos. DPR–19, DPR–25, DPR–29, and DPR–30 for an Additional 20-Year Period

The U.S. Nuclear Regulatory Commission (NRC or Commission) has received an application, dated January 3, 2003, from the Exelon Generation Company, LLC, filed pursuant to section 104b of the Atomic Energy Act of 1954, as amended, and 10 CFR part 54, to renew Operating License Nos. DPR–19, DPR–25, DPR–29, and DPR–30 for the Dresden Nuclear Power Station, Units 2 and 3, and the Quad Cities Nuclear Power Station, Units 1 and 2, respectively. Renewal of the licenses would authorize the applicant to operate each of the facilities for an additional 20-year period. The current operating licenses for the Dresden Nuclear Power Station, Units 2 and 3, expire on December 22, 2009, and January 12, 2011, respectively. Both of the current operating licenses for the Quad Cities Nuclear Power Station, Units 1 and 2, expire on December 14, 2012. The Dresden Nuclear Power Station, Units 2 and 3, are boiling-water reactors designed by General Electric Company and are located in Grundy County, Illinois. The Quad Cities Nuclear Power Station, Units 1 and 2, are also boiling-water reactors designed by General Electric Company, and are located in Rock Island County, Illinois. The acceptability of the tendered application for docketing and other matters, including an opportunity to request for a hearing, will be the subject of a subsequent **Federal Register** notice.

Copies of the application are available for public inspection at the Commission's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, or electronically from the Publicly Available Records (PARS) component of the NRC's Agencywide Documents Access and Management System (ADAMS) under accession number ML030090359. The ADAMS Public Electronic Reading Room is accessible from the NRC Web site at *http://www.nrc.gov/reading-rm/adams.html*. In addition, the application is available on the NRC web page at *http://www.nrc.gov/reactors/operating/licensing/renewal/applications.html*,

while the application is under review. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC's PDR Reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov*.

The license renewal application is also available to local residents near the Dresden Nuclear Power Station at the Morris Public Library in Morris, Illinois, and at the Coal City Public Library in Coal City, Illinois. For local residents near the Quad Cities Nuclear Power Station, the license renewal application is available at the River Valley District Library in Port Byron, Illinois.

For the Nuclear Regulatory Commission:

Dated at Rockville, Maryland, this 24th day of January 2003.

Pao-Tsin Kuo,

Program Director, License Renewal and Environmental Impacts, Division of Regulatory Improvement Programs, Office of Nuclear Reactor Regulation.

[FR Doc. 03–2181 Filed 1–29–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Revised Analysis of Decommissioning Reference Non-Fuel-Cycle Facilities, Availability of NUREG

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of availability and request for public comment.

SUMMARY: The Nuclear Regulatory Commission's (NRC) is announcing the availability of NUREG/CR–6477, "Revised Analysis of Decommissioning Reference Non-Fuel-Cycle Facilities." This report analyses changes in conceptual decommissioning costs for a number of different types of reference nuclear materials facilities.

DATES: Submit comments by March 3, 2003. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

ADDRESSES: Submit comments to: Clark Prichard, Division of Industrial and Medical Nuclear Safety, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, *cwp@nrc.gov*.

Deliver comments to 11555 Rockville Pike, Rockville, MD, between 7:30 a.m. and 4:15 p.m. on Federal workdays.

The NRC maintains an Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. These documents may be accessed through the NRC's Public Electronic Reading Room on the Internet at *http://www.nrc.gov/reading-rm/adams.html*. The ADAMS accession number for NUREG/CR–6477 is ML030160573. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov*.

Single hard copies are available from the contact listed below.

FOR FURTHER INFORMATION, CONTACT: Clark Prichard, Division of Industrial and Medical Nuclear Safety, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001 (301–415–6203), *cwp@nrc.gov*.

SUPPLEMENTARY INFORMATION: "Revised Analysis of Decommissioning Reference Non-Fuel-Cycle Facilities," NUREG/CR–6477 provides estimates of the costs of decommissioning for a number of different types of non-fuel-cycle materials facilities, such as laboratories for the manufacture of sealed sources, laboratories for the manufacture of radionuclide-labeled compounds, and an institutional user laboratory. It is a re-evaluation of the original study of decommissioning costs for these types of facilities (NUREG/CR–1754 and NUREG/CR–1754, Addendum 1. It is part of a series of reports developed by Pacific Northwest National Laboratory providing decommissioning cost information.

Dated at Rockville, Maryland, this 22nd day of January, 2003.

For the Nuclear Regulatory Commission.

Patricia K. Holahan,

Chief, Regulation and Guidance Branch, Division of Industrial and Medical Nuclear Safety, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 03–2180 Filed 1–29–03; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–25912; 812–12502]

LB Series Fund Inc. et al.; Notice of Application

January 24, 2003,

AGENCY: Securities and Exchange Commission ("Commission")

ACTION: Notice of application for an order under section 6(c) of the Investment Company Act of 1940 (the "Act") for an exemption from section 15(a) of the act and rule 18f–2 under the Act.

SUMMARY OF APPLICATION: Applicants request an order that would permit them to enter into and materially amend subadvisory agreements without shareholder approval.

APPLICANTS: LB Series Fund, Inc. ("LBSF"), AAL Variable Product Series Fund, Inc. ("AAL VPSF"), The Lutheran Brotherhood Family of Funds ("The LB Family of Funds"), and The AAL Mutual Funds ("AAL Funds")(each a "Company") and Thrivent Financial for Lutherans ("Thrivent") and Thrivent Investment Management Inc. ("TIMI")(each a "Manager").

FILING DATES: The application was filed on April 17, 2001 and amended on January 22, 2003.

HEARING OR NOTIFICATION OF HEARING: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on February 18, 2003 and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Applicants, Peter T. Fariel, Esq., Goodwin Procter LLP, Exchange Place, Boston, MA 02109 or James E. Nelson, Thrivent Financial for Lutherans, 625 Fourth Avenue South, Minneapolis, MN 55415.

FOR FURTHER INFORMATION CONTACT: Todd F. Kuehl, Branch Chief, at (202) 942–0564, or Nadya Roytblat, Assistant Director, at (202) 942–0564 (Office of Investment Company Regulation, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 Fifth Street NW., Washington, DC 20549–0102 (tel. 202–942–8090).

Applicants' Representations

1. Each Company is registered under the Act as an open-end management investment company. Each Company

currently offers multiple series ("Portfolios"), each with its own investment objectives, policies and restrictions. LBSF is incorporated under the laws of the State of Minnesota. AAL VPSF is incorporated under the laws of the State of Maryland. The LB Family of Funds is organized as a Delaware business trust. AAL Funds is organized as a Massachusetts business trust. Shares of the Portfolios of LBSF are offered exclusively to separate accounts that fund variable annuity and life insurance contracts issued by Thrivent, Lutheran Brotherhood Variable Insurance Products Company, a wholly owned subsidiary of Thrivent, and retirement plans sponsored by Thrivent. Shares of the Portfolios of AAL VPSF are offered exclusively to separate accounts that fund variable annuity and variable life insurance contracts issued by Thrivent and retirement plans sponsored by Thrivent.

2. Thrivent, organized as a fraternal benefit society under the laws of the State of Wisconsin, is registered as an investment adviser under the Investment Advisers Act of 1940 ("Advisers Act"). Under separate investment advisory agreements with LBSF (the "LBSF Advisory Contract") and AAL VPSF (the "AAL VPSF Advisory Contract"), respectively. Thrivent serves as the investment adviser to the LBSF portfolios and AAL VPSF Portfolios. TIMI, a Delaware corporation and wholly owned subsidiary of Thrivent, is registered as an investment adviser under the Advisers Act. TIMI serves as investment adviser to the AAL Funds and The LB Family of Funds, providing services for the AAL Funds' Portfolios and The LB Family of Funds' Portfolios under separate advisory agreements (the "AAL Funds Advisory Contract" and the "LB Family of Funds Advisory Contract," respectively, and together with the LBSF Advisory Contract and AAL VPSF Advisory Contract, each an "Advisory Contract" and collectively the "Advisory Contracts"). The terms of each existing Advisory Contract comply with section 15(a) of the Act. The Advisory Contracts each require approval by shareholders of the applicable Portfolio and by the board of directors or trustees of each Company (each a "Board"), including a majority of the directors or trustees who are not "interested persons" (as defined in section 2(a)(19) of the Act) of such Portfolio (the "Independent Directors"), at the time and in the manner required by sections 15(a) and (c) of the Act and Rule 18f–2 thereunder.[1] For their services under the Advisory Contracts, the Managers receive a fee from each Portfolio as a percentage of the net assets of the Portfolio.

3. Pursuant to the Advisory Contract with each Manager, the Managers have primary responsibility for management of the Portfolios and may hire one or more sub-advisers ("Sub-Advisers") to invest all or a portion of each Portfolio's assets pursuant to separate sub-advisory agreements ("Sub-Advisory Agreements"). Each Sub-Adviser has discretionary authority to invest that portion of a Portfolio's assets assigned to it. Each Sub-Adviser is or will be either registered or exempt from registration under the Advisers Act. For its services, each Sub-Adviser will receive a sub-advisory fee payable by the Manager out of the fee the Manager receives from the relevant Portfolio.

4. The Managers are subject to the general oversight and approval of the respective Boards. Sub-Adviser evaluation on both a quantitative and qualitative basis will be an ongoing process with the Manager selecting Sub-Advisers, as well as allocating and reallocating Portfolio assets among Sub-Advisers, subject to approval by the Portfolio's Board.

5. Applicants request relief to permit the Managers to enter into and materially amend Sub-Advisory Agreements without seeking shareholder approval. Applicants will not enter into any Sub-Advisory Agreement with a Sub-Adviser that is an "affiliated person" (as defined in section 2(a)(3) of the Act) of the Companies or the Managers, other than by reason of serving as a Sub-Adviser to one or more of the Portfolios ("Affiliated Sub-Adviser"), without that agreement, including the compensation to be paid thereunder, being approved by the shareholders of the Portfolio.

Applicants' Legal Analysis

1. Section 15(a) of the Act provides, in relevant part, that it is unlawful for any person to act as an investment adviser to a registered investment company except under a written contract that has been approved by the vote of a majority of the company's outstanding voting securities. Rule 18f–2 under the Act provides that each series or class of stock in a series company affected by a matter must approve such matter if the Act requires shareholder approval.

2. Section 6(c) of the Act provides that the Commission may exempt any person, security, or transaction or any class or classes of persons, securities, or transactions from any provision of the Act, or from any rule thereunder, if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants believe the requested relief meets this standard for the reasons discussed below.

3. Applicants assert that each Portfolio's shareholders are relying on the Manager's experience to select, monitor and replace Sub-Advisers. Applicants assert that, from the perspective of the shareholder, the role of the Sub-Advisers is comparable to that of individual portfolio managers employed by other investment advisory firms. Applicants contend that requiring shareholder approval of Sub-Advisory Agreements would impose costs and unnecessary delays on the Portfolios, and may preclude the Managers from acting promptly in a manner considered advisable by the applicable Board. Applicants note that the Advisory Contracts will remain subject to the shareholder approval requirements of section 15(a) of the Act and rule 18f–2 under the Act.

Applicants' Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. Before a Portfolio may rely on the order requested in the application, (i) the operation of the Portfolio in the manner described in the application will be approved by a majority of the outstanding voting securities of such Portfolio (or if the Portfolio serves as a funding medium for any sub-account of a registered separate account, pursuant to voting instructions provided by the owners of variable annuity and variable life insurance contracts ("Owners") who have allocated assets to that sub-account) within the meaning of the Act, or (ii) in the case of a Portfolio whose shareholders (or Owners through a sub-account of a registered separate account) purchase shares on the basis of a

[1] Applicants also request that the requested relief apply to all series of the Companies now existing or established in the future and to all other registered open-end management investment companies and series thereof that (1) Are advised by a Manager, (or any person controlling, controlled by, or under common control with a Manager), (2) operate in a manager/sub-adviser structure as described in the application (the "Manager/Sub-Adviser Structure"), and (3) comply with the terms and conditions of the applications (included in the term "Portfolios"). All entities that currently intend to rely on the requested relief are named as applicants. If the name of any Portfolio should, at any time, contain the name of a Sub-Adviser (as defined above), it will also contain the name of the Manager, which will appear before the name of the Sub-Adviser.

prospectus containing the disclosure contemplated by condition 2 below, by the initial shareholder(s) before shares of such Portfolio are offered to the public (or to Owners through a sub-account of a registered separate account).

2. Each Portfolio relying on the requested order will disclose in its prospectus the existence, substance and effect of any order granted pursuant to the application. In addition, each Portfolio relying on the requested order will hold itself out to the public as employing the Manager/Sub-Adviser Structure described in the application. Such Portfolio's prospectus will prominently disclose that the Manager has ultimate responsibility (subject to oversight by the Board) to oversee the Sub-Advisers and recommend their hiring, termination and replacement.

3. The Manager will provide general management and administrative services to each Portfolio, including overall supervisory responsibility for the general management and investment of each Portfolio's securities and other assets, and, subject to review and approval by the applicable Board, will: (i) Set each Portfolio's overall investment strategies; (ii) evaluate, select and recommend Sub-Advisers to manage all or a part of a Portfolio's assets: (iii) when appropriate, allocate and reallocate a Portfolio's assets among multiple Sub-Advisers; (iv) monitor and evaluate the investment performance of Sub-Advisers; and (v) implement procedures reasonably designed to ensure Sub-Advisers comply with the relevant Portfolio's investment objectives, policies and restrictions.

4. At all times, a majority of the Board of a Portfolio will be Independent Directors, and the nomination of new or additional Independent Directors will be at the discretion of the then existing Independent Directors.

5. Neither the Manager nor any Portfolio will enter into a Sub-Advisory Agreement with any Affiliated Sub-Adviser without such Sub-Advisory Agreement, including the compensation to be paid thereunder, being approved by the shareholders of the applicable Portfolio (or, if the Portfolio serves as a funding medium for any sub-account of a registered separate account, then pursuant to voting instructions of the Owners who have allocated assets to that sub-account).

6. When a Sub-Adviser change is proposed for a Portfolio with an Affiliated Sub-Adviser, the Board, including a majority of the Independent Directors, will make a separate finding, reflected in the minutes of the meeting of the Board, that such change is in the best interests of the applicable Portfolio and its shareholders (or, if the Portfolio serves as a funding medium for any sub-account of a registered separate account, in the best interests of the Portfolio and the Owners who have allocated assets to the sub-account) and does not involve a conflict of interest from which the Manager of the Affiliated Sub-Adviser derives an inappropriate advantage.

7. No director or officer of a Portfolio or director or officer of the Manager will own directly or indirectly (other than through a polled investment vehicle that is not controlled by the director or officer) any interest in Sub-Adviser except (i) for the ownership of interests in the Manager or any entity that controls, is controlled by, or is under common control with the Manager; or (ii) for ownership of less than 1% of the outstanding securities of any class of equity or debt of a publicly-traded company that is either a Sub-Adviser or an entity that controls, is controlled by, or is under common control with a Sub-Adviser.

8. Within 90 days of the hiring of any new Sub-Adviser, the Manager will furnish the shareholders (or, if the Portfolio serves as a funding medium for a sub-account of a registered separate account, the Owners who have allocated assets to that sub-account) of the applicable Portfolio all the information about the new Sub-Adviser that would have been included in a proxy statement. To meet this obligation, the Manager will provide the shareholders (or if the Portfolio serves as a funding medium for any sub-account of a registered separate account, the Owners) of the applicable Portfolio with an information statement meeting the requirements of Regulation 14C and Schedule 14C under the Securities Exchange Act of 1934, as amended, as well as the requirements of Item 22 of Schedule 14A under that Act.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–2167 Filed 1–29–03; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–25913; File No. 812–12885]

Nationwide Life Insurance Company, et al.

January 24, 2003.

AGENCY: The Securities and Exchange Commission (the "Commission").

ACTION: Notice of Application for an order pursuant to section 6(c) of the Investment Company Act of 1940 (the "1940 Act") to amend a prior order of the Commission under section 6(c) of the 1940 Act which granted exemptions from the provisions of Sections 2(a)(32), 22(c), and 27(i)(2)(A) of the 1940 Act and Rule 22c–1 thereunder to permit the recapture of credits applied to purchase payments made under certain deferred variable annuity contracts.

SUMMARY OF APPLICATION: On January 19, 2000 the Commission issued an order pursuant to section 6(c) of the 1940 Act granting exemptions from sections 2(a)(32), 22(c) and 27(i)(2)(A) of the 1940 Act and Rule 22c–1 thereunder to permit the recapture of credits applied to purchase payments made under certain variable annuity contracts issued by Nationwide Life Insure Company (the "Original Order". *See* Nationwide Life Insurance Company, *et al.*, Investment Company Act Release No. 24256 (File No. 812–11824). Applicants seek an amendment to the Original Order pursuant to section 6(c) of the 1940 Act granting exemptions from the provisions of sections 2(a)(32), 22(c) and 27(i)(2)(A) of the 1940 Act and Rule 22c–1 thereunder to permit the recapture of credits applied to purchase payments made under certain variable annuity contracts under circumstances not contemplated under the Original Order. Applicants also request the relief under the order to extend to any current or current separate accounts of Nationwide Life Insurance Company which may in the future offer or support contracts that are substantially similar in all material respects to the contracts described in the Application (the "Other Separate Accounts") and to any other NASD registered broker/dealers under common control with Nationwide Life Insurance Company which may in the future serve as general distributor-principal underwriter of VA–II or Other Separate Accounts that offer or support variable annuity contracts that are substantially similar in all material respects to those describe in this Application.

APPLICANTS: Nationwide Life Insurance Company ("Nationwide"); Nationwide Variable Account-II ("VA–II"); and Nationwide Investment Services Corporation ("NISC") (all collectively, the "Applicants").

FILING DATE: The Application was filed on September 23, 2002. Amended Applications were filed on January 14, 2003 and January 24, 2003.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be

issued unless the Commission orders a hearing. Interested persons may request a hearing by writing the Secretary of the Commission and serving Applicants with a copy of the request, personally or by mail. Hearing request should be received by the Commission by 5:30 p.m. on February 14, 2003, and should be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Secretary of the Commission.

ADDRESS: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Applicants, c/o Nationwide Life Insurance Company, One Nationwide Plaza 01–09–V3, Columbia, Ohio 43215, Attn: Jamie Casto, Esq.

FOR FURTHER INFORMATION CONTACT: Rebecca A. Marquigny, Senior Counsel, or Zandra Bailes, Branch Chief, at (202) 942–0670, Office of Insurance Products, Division of Investment Management.

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a fee from the Commission's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549–0102 (telephone (202) 942–8090).

Applicants' Representations

1. Nationwide is a stock life insurance company organized under the laws of the State of Ohio. Nationwide offers traditional group and individual life insurance products as well as group and individual variable and fixed annuity contracts. Nationwide is wholly owned by Nationwide Financial Services, Inc. ("NFS"). NFS, a Delaware Corporation, is a publicly traded holding company with two classes of common stock outstanding, each with different voting rights. This enables Nationwide Corporation (the holder of all the outstanding Class B Common Stock) to control NFS. Nationwide Corporation stock is held by Nationwide Mutual Insurance Company (95.24%) and Nationwide Mutual Fire Insurance Company (4.76%), the ultimate controllers of Nationwide.

2. On October 7, 1981, the Nationwide Spectrum Variable Account was established under Ohio law by Nationwide for the purpose of funding variable annuity contracts. On April 1, 1987, the Board of Directors for Nationwide changed the name of the Nationwide Spectrum Variable Account to Nationwide Variable Account–II. VA–II is registered as a unit investment trust (1940 Act No. 811–3330) and supports several different variable annuity contracts that are (or will be) registered separately on Form N–4.

3. On January 19, 2000, the Commission issued the Original Order pursuant to Section 6(c) of the 1940 Act granting exemptions from Section 2(a)(32), 22(c) and 27(i)(2)(A) of the 1940 Act and Rule 22c–1 thereunder to permit the recapture of credits applied to purchase payments made under certain variable annuity contracts (the "Original Contracts").

4. Recapture of Credits under the Original Order. Nationwide currently offers an optional benefit (for a charge equal to an annualized rate of 0.45% of the daily net assets of the variable account for the first 7 contract years) that allows for the investment of 103% of all purchase payments made during the first twelve months of the contract. The investment in excess of the remitted purchase payment (3% in connection with the Original Contracts) is referred to as the "Credit."

During the first 7 contract years, the Credit is fully vested except during the contractual free-look period and when certain withdrawals are taken from the contract.

If the contract owner cancels the contract pursuant to the contractual free-look privilege, Nationwide recaptures the Credit. For those jurisdictions that allow a return of contract value upon exercise of the free-look provision, the contract owner will also forfeit any amounts deducted from the contract as an Extra Value Option charge.

If, after the free-look period and before the end of the 7th contract year, the contract owner withdraws value from the contract that is subject to a Contingent Deferred Sales Charge ("CDSC"), Nationwide recaptures a portion of the Credit. The CDSC schedule is as follows:

Number of completed years from date of purchase payment	CDSC percentage
0	7
1	7
2	6
3	5
4	4
5	3
6	2
7	0

Nationwide does not recapture any Credit if the withdrawal is a free withdrawal (a withdrawal not subject to the CDSC) as described in the contract. Thus, the percentage of the Credit that Nationwide recaptures is determined by the percentage of withdrawn purchase payments that are subject to CDSC. The recaptured amount is taken proportionately from each investment option as allocated at the time of the withdrawal.

No recapture takes place after the end of the 7th contract year; if the contract is annuitized; if a death benefit becomes payable; if distributions are required in order to meet minimum distribution requirements under the Internal Revenue Code of 1986, as amended (the "Code"); if free withdrawals are being taken pursuant to an aged-based systematic withdrawal program; or in connection with any other type of withdrawal not otherwise subject to a CDSC.

5. The Original Order does not contemplate the following recapture procedures, which Nationwide intends to include in 4 new annuity contracts that will be registered with the Commission (the "New Contracts"):

a. Recapture of larger Credits over a longer period of time. In one of the New Contracts, Nationwide intends to offer a 3% Credit option and a 4% Credit option while imposing an 8 year CDSC schedule with a maximum CDSC of 8%. In another one of the New Contracts, Nationwide intends to offer a 3% Credit option and a 4% Credit option while imposing a 7 year CDSC schedule with a maximum CDSC of 7%. In the other 2 New Contracts, Nationwide intends to offer only the 3% Credit option while imposing a 7 year CDSC schedule with a maximum CDSC of 7%. Each of the 7 year CDSC schedules described above is the same schedule that was contemplated in the Original Order.

b. Recapture of Credits for 7 contract years for all of the New Contracts. Three of the 4 New Contracts have CDSC-reducing options that the contract owner can purchase: one option reduces the standard CDSC schedule to 4 years and the other option eliminates CDSC completely. For all of the New Contracts, Nationwide intends to recapture Credits for 7 contract years, even if the contract owner elected a CDSC-reducing option.

c. Recapture of Purchase Payment Credits. Purchase Payment Credits are credits that Nationwide applies to contracts when purchase payments reach certain aggregate amounts. Nationwide applies Purchase Payment Credits to every contract that meets the purchase payment thresholds (except for those contracts where the contract owner elected the No CDSC Option). Nationwide intends to recapture Purchase Payment Credits only upon a

contract owner's cancellation of the contract pursuant to the contractual free-look provisions.

6. The New Contracts generally. The New Contracts are flexible purchase payment deferred annuity contracts that will be sold to individuals as: (i) Non-qualified contracts which are governed for tax purposes by section 72 of the Code; (ii) Individual Retirement Annuities ("IRAs"), Roth IRAs, SEP IRAs or Simple IRAs which are governed by section 408 of the Code; (iii) Non-ERISA Tax Sheltered Annuities which are governed by section 403(b) of the Code; or (iv) Investment-Only Contracts, sold to qualified plans governed by section 401(a) of the Code. Contract owners may allocate their investments in the contract to variable investment options (underlying mutual funds), fixed investment options (including a fixed account Guaranteed Term Options or "GTOs"), or a combination of fixed and variable investment options. The contracts also provide for certain services such as asset rebalancing, dollar cost averaging, and systematic withdrawals. If the annuitant dies before the annuitization date, Nationwide will pay a death benefit to the beneficiary. After two years from the date a New Contract is issued, a contract owner may elect to begin receiving annuity payments.

7. Purchase Payment Credits. Nationwide intends to apply Purchase Payment Credits to the New Contracts when total cumulative purchase payments reach retain aggregate levels. When cumulative purchase payments (minus surrenders) reach $500,000, Nationwide will apply to the contract Purchase Payment Credits equal to 0.50% of total purchase payments up to $999,999. When cumulative purchase payments (minus surrenders) reach $1 million, Nationwide will apply to the contract Purchase Payment Credits equal to 1.00% of total purchase payments (reduced by any previous Purchase Payment Credits applied), and on all purchase payments thereafter. Purchase Payment Credits are considered earnings, not purchase payments.

Purchase Payment Credits will be fully vested except during the contractual free-look period. If the contract owner cancels the contract pursuant to the contractual free-look provisions, Nationwide intends to recapture any Purchase Payment Credits applied.

8. Individual Characteristics of the New Contracts. Each of the 4 New Contracts is distinct and will be referred to as "Contract A," "Contract B," "Contract C," and "Contract D."

a. Contract A. Contract A requires an initial purchase payment of $5,000 for non-qualified contracts and $3,000 for the remaining contract types (e.g., IRAs, etc.). If the contract owner elects to make subsequent purchase payments, they must be at least $500 each ($50 each if submitted via automatic electronic transfer).

i. Contract A assesses a Variable Account Charge equal to an annualized rate of 1.15% of the daily net assets of the variable account and an annual Contract Maintenance charge of $30 that is waived when the contract value reaches $50,000 on any contract anniversary.

ii. Contract A assesses a CDSC when certain amounts are withdrawn from the contract. The CDSC schedule is as follows:

Number of completed years from date of purchase payment	CDSC percentage
0	7
1	7
2	6
3	5
4	4
5	3
6	2
7	0

Under Contract A, a certain amount of CDSC-free withdrawals is permitted each year. This annual "free-out" amount is equal to 10% of purchase payments that are subject to CDSC. Contract A also provides for the waiver of CDSC: upon the annuitant's death, upon annuitization of the contract, when distributions are necessary in order to meet minimum distribution requirements under the Code, and under an age-based "free-withdrawal" program that allows contract owners to take systematic withdrawals of certain contract value percentages as specified ages without incurring a CDSC. Contact A includes a Long-Term Care/Nursing Home Waiver at no additional charge. The Long-Term Care/Nursing Home allows a contract owner to withdraw value from the contract free of CDSC if: (1) The third contract anniversary has passed and the contract owner has been confined to a long-term care facility or hospital for a continuous 90-day period that began after the contract issue date; or (2) the contract owner has been diagnosed by a physician to have a terminal illness.

iii. Contact A may be modified or augmented by a number of "rider options" that enable owners to elect certain contract features or benefits that fit their particular needs. The election of a rider option will result in a charge in addition to the basic Variable Account Charge. Rider options must be chosen at the time of application and once elected, a rider may not revoked. The rider options available under Contract A include:

- Four year CDSC Option. The Four Year CDSC Option reduces the standard 7 year CDSC period to 4 years as follows:

Numbers of completed years from date of purchase payment	CDSC percentage
0	7
1	6
2	5
3	4
4	0

An annualized charge of 0.25% of the daily net assets of the variable account is assessed for the election of this rider option. Election of the Four Year CDSC Option increases the minimum initial purchase payment to $10,000. The charge associated with this option will be assessed for the life of the contract.

- No CDSC Option. The No CDSC Option eliminates the assessment of CDSC upon withdrawal of value from the contract. An annualized charge of 0.30% of the daily net assets of the variable account is assessed for the election of this rider option. Election of the No CDSC Option: increases the minimum initial purchase payment to $10,000; eliminates the fixed account as an investment option under the contract; eliminates Enhanced Rate Dollar Cost Averaging as a contract owner service; and disqualifies the contract from receiving Purchase Payment Credits. The charge associated with the No CDSC Option will be assessed for the life of the contract.
- 3% Extra Value Option. Nationwide intends to offer a 3% Extra Value Option whereby Nationwide applies a Credit equal to 3% of all purchase payments made during the first 12 months of the contract. The Credit will be funded from Nationwide's general account and will be credited proportionately among the investment options chosen by the contract owner. The charge for this rider will be an annualized rate of 0.45% of the daily net assets of the variable account for the first 7 contract years only.
- One-Year Enhanced Death Benefit.
- Greater of One-Year or 5% Enhanced Death Benefit.
- Beneficiary Protector II Option.

b. Contract B. Contract B requires an initial purchase payment of $5,000 for non-qualified contracts and $3,000 for the remaining contract types (*e.g.*, IRAs, etc.). If the contract owner elects to make subsequent purchase payments, they must be at least $500 each ($50 each if submitted via automatic electronic transfer).

i. Contract B assesses a Variable Account Charge equal to an annualized rate of 1.10% of the daily net assets of the variable account and an annual Contract Maintenance Charge of $30 that is waived when the contract values reaches $50,000 on any contract anniversary.

ii. Contract B assesses a CDSC when certain amounts are withdrawn from the contract. The CDSC schedule is as follows:

Number of completed years from date of purchase payment	CDSC percentage
0	7
1	7
2	6
3	5
4	4
5	3
6	2
7	0

Under Contract B, a certain amount of CDSC-free withdrawals is permitted each year. This annual free-out'' amount is equal to 10% of purchase payments that are subject to CDSC. Contract B also provides for the waiver of CDSC: upon the annuitant's death, upon annuitization of the contract, when distributions are necessary in order to meet minimum distribution requirements under the Code, and under an age-based ''free-withdrawal'' program that allows contract owners to take systematic withdrawals of certain contract value percentages as specified ages without incurring a CDSC. Contract B includes a Long-Term Care/Nursing Home Waiver at no additional charge. The Long-Term Care/Nursing Home allows a contract owner to withdraw value from the contract free of CDSC if: (1) The third contract anniversary has passed and the contract owner has been confined to a long-term care facility or hospital for a continuous 90-day period that began after the contract issue date; or (2) the contract owner has been diagnosed by a physician to have a terminal illness.

iii. Contract B also offers rider options that will result in a charge in addition to the basic Variable Account Charge. Rider options must be chosen at the time of application and once elected, a rider option may not be revoked. The rider options available under Contract B include:

- 3% Extra Value Option. Nationwide intends to offer a 3% Extra Value Option whereby Nationwide applies a Credit equal to 3% of all purchase payments made during the first 12 months of the contract. The Credit will be funded from Nationwide's general account and will be credited proportionately among the investment options chosen by the contract owner. The charge for this rider will be an annualized rate of 0.45% of the daily net assets of the variable account for the first 7 contract years only.
- Spousal Protection Annuity Option.
- One-Year Enhanced Death Benefit.
- Greater of One-Year or 5% Enhanced Death Benefit.
- One-Month Enhanced Death Benefit.
- Beneficiary Protector II Option.

c. Contract C. Contract C requires an initial purchase payment of $5,000 for non-qualified contracts and $3,000 for the remaining contract types (*e.g.*, IRAs, etc.). If the contract owner elects to make subsequent purchase payments, they must be at least $500 each ($50 each if submitted via automatic electronic transfer).

i. Contract C assesses a Variable Account Charge equal to an annualized rate of 1.15% of the daily net assets of the variable account and an annual Contract Maintenance Charge of $30 that is waived when the contract value reaches $50,000 on any contract anniversary.

ii. Contract C assesses a CDSC when certain amounts are withdrawn from the contract. The CDSC schedule is as follows:

Number of completed years from date of purchase payment	CDSC percentage
0	7
1	7
2	6
3	5
4	4
5	3
6	2
7	0

Under Contract C, a certain amount of CDSC-free withdrawals is permitted each year. This annual ''free-out'' amount is equal to 10% of purchase payments that are subject to CDSC. Contract C also provides for the waiver of CDSC: upon the annuitant's death, upon annuitization of the contract, when distributions are necessary in order to meet minimum distribution requirements under the Code, and under an age-based ''free-withdrawal'' program that allows contract owners to take systematic withdrawals of certain contract value percentages as specified ages without incurring a CDSC. Contract C includes a Long-term Care/Nursing Home Waiver at no additional charge. The Long-Term Care/Nursing Home allows a contract owner to withdraw value from the contract free of CDSC if: (1) The third contract anniversary has passed and the contract owner has been confined to a long-term care facility or hospital for a continuous 90-day period that began after the contract issue date; or (2) the contract owner has been diagnosed by a physician to have a terminal illness.

iii. Contract C also offers rider options that will result in a charge in addition to the basic Variable Account Charge. Rider options must be chosen at the time of application and once elected, a rider option may not be revoked. The rider options available under Contract C include:

- Four Year CDSC Option. The Four Year CDSC Option reduces the standard 7 year CDSC period to 4 years as follows:

Number of completed years from date of purchase payment	CDSC percentage
0	7
1	6
2	5
3	4
4	0

An annualized charge of 0.25% of the daily net assets of the variable account is assessed for the election of this rider option. Election of the Four Year CDSC Option increases the minimum initial purchase payment to $10,000. The charge associated with this option will be assessed for the life of the contract.

- No CDSC Option. The No CDSC Option eliminates the assessment of CDSC upon withdrawal of value from the contract. An annualized charge of 0.30% of the daily net assets of the variable account is assessed for the election of this rider option. Election of the No CDSC Option: increases the minimum initial purchase payment to $10,000; eliminates the fixed account as an investment option under the contract; eliminates Enhanced Rate Dollar Cost Averaging as a contract owner service; and disqualifies the contract from receiving Purchase Payment Credits. The charge associated with the No CDSC Option will be assessed for the life of the contract.

• 3% Extra Value Option. Nationwide intends to offer a 3% Extra Value Option whereby Nationwide applies a Credit equal to 3% of all purchase payments made during the first 12 months of the contract. The Credit will be funded from Nationwide's general account and will be credited proportionately among the investment options chosen by the contract owner. The charge for this rider will be an annualized rate of 0.30% of the daily net assets of the variable account for the first 7 contract years only.

• 4% Extra Value Option. Nationwide intends to offer a 4% Extra Value Option whereby Nationwide applies a Credit equal to 4% of all purchase payments made during the first 12 months of the contract. The Credit will be funded from Nationwide's general account and will be credited proportionately among the investment options chosen by the contract owner. The charge for this rider will be an annualized rate of 0.40% of the daily net assets of the variable account for the first 7 contract years only.

• One-Year Enhanced Death Benefit.

d. Contract D. Contract D requires an initial purchase payment of $15,000. If the contract owner elects to make subsequent purchase payments, they must be at least $1,000 each ($150 each if submitted via automatic electronic transfer).

i. Contract D assesses a Variable Account Charge equal to an annualized rate of 1.55% of the daily net assets of the variable account.

ii. Contract D assesses a CDSC when certain amounts are withdrawn from the contract. The CDSC schedule is as follows:

Number of completed years from date of purchase payment	CDSC percentage
0	8
1	7
2	6
3	5
4	4
5	3
6	2
7	1
8	0

Under Contract D, a certain amount of CDSC-free withdrawals is permitted each year. This annual "free-out" amount is equal to 15% of purchase payments that are subject to CDSC. Contract D also provides for the waiver of CDSC: upon the annuitant's death, upon annuitization of the contract, when distributions are necessary in order to meet minimum distribution requirements under the Code, and under an age-based "free-withdrawal" program that allows contract owners to take systematic withdrawals of certain contract value percentages as specified ages without incurring a CDSC. Contract D includes a Long-Term Care/Nursing Home Waiver at no additional charge. The Long-Term Care/Nursing Home allows a contract owner to withdraw value from the contract free of CDSC if: (1) The third contract anniversary has passed and the contract owner has been confined to a long-term care facility or hospital for a continous 90-day period that began after the contract issue date; or (2) the contract owner has been diagnosed by physician to have a terminal illness.

iii. Contract D also offers rider options that will result in a charge in addition to the basic Variable Account Charge. Rider options must be chosen at the time of application and once elected, a rider option may not be revoked. The rider options available under Contract D include:

• Four Year CDSC Option. The Four Year CDSC Option reduces the standard 8 year CDSC period to 4 years as follows:

Number of completed years from date of purchase payment	CDSC percentage
0	7
1	6
2	5
3	4
4	0

An annualized charge of 0.20% of the daily net assets of the variable account is assessed for the election of this rider option. The charge associated with this option will be assessed for the life of the contract.

• No CDSC Option. The No CDSC Option eliminates the assessment of CDSC upon withdrawal of value from the contract. An annualized charge of 0.25% of the daily net assets of the variable account is assessed for the election of this rider option. Election of the No CDSC Option: eliminates the fixed account as an investment option under the contract; eliminates enhanced Rate Dollar Cost Averaging as a contract owner service; and disqualifies the contract from receiving Purchase Payment Credits. The charge associated with the No CDSC Option will be assessed for the life of the contract.

• 3% Extra Value Option. Nationwide intends to offer a 3% Extra Value Option whereby Nationwide applies a Credit equal to 3% of all purchase payments made during the first 12 months of the contract. The Credit will be funded from Nationwide's general account and will be credited proportionately among the investment options chosen by the contract owner. The charge for this rider will be an annualized rate of 0.10% of the daily net assets of the variable account for the first 8 contract years only.

• 4% Extra Value Option. Nationwide intends to offer a 4% Extra Value Option whereby Nationwide applies a Credit equal to 4% of all purchase payments made during the first 12 months of the contract. The Credit will be funded from Nationwide's general account and will be credited proportionately among the investment options chosen by the contract owner. The charge for this rider will be an annualized rate of 0.25% of the daily net assets of the variable account for the first 8 contract years only.

• Greater of One-Year or 5% Enhanced Death Benefit.

• Beneficiary Protector II Option.

9. Credits under the New Contracts.

a. Credits applied to the New Contracts will be fully vested except during the contractual free-look period and when certain surrenders of contract value are made.

i. Similar to the Original Contracts, if the contract owner exercises the contractual free-look privilege, Nationwide will recapture the Credit. For those jurisdictions that allow a return of contract value upon exercise of the free-look provision, the contract owner will also forfeit any amounts deducted from the contract as an Extra Value Option charge.

ii. After the contractual free-look period and before the end of the 7th contract year, certain withdrawals from contract value will subject the Credit to recapture. Prior to the end of the 7th contract year, if the contract owner withdraws value from the contract that is or would be subject to a CDSC under the standard CDSC schedule applicable to the contract, then Nationwide may recapture a portion of the Credit. Accordingly, any amount withdrawn pursuant to the contractual free withdrawal privilege is not subject to recapture. CDSC in the New Contracts is calculated in the same manner that CDSC is calculated in the Original Contracts. Thus, the percentage of the Credit to be recaptured will be determined by the percentage of total purchase payments reflected in the amount withdrawn that is or would be subject to CDSC under the standard CDSC schedule applicable to the contract. The recaptured amount will be taken proportionately from each

investment option as allocated at the time of the withdrawal.

b. Similar to the Original Contracts, under the New Contracts, Nationwide will not recapture Credits: (i) Upon annuitization of the contract; (ii) when a death benefit becomes payable; (iii) if distributions are taken in order to meet minimum distribution requirements under the Code; and (iv) if free withdrawals are taken pursuant to an age-based systematic withdrawal program.

c. Similar to the Original Contracts, all Credits applied to the New Contracts are considered earnings, not purchase payments.

d. Similar to the Original Contacts, under the New Contracts, at the end of the 7th contract year, Credits are fully vested and are no longer subject to recapture.

e. Similar to the Original Contracts, under the New Contracts, the charge associated with the Extra Value Option will no longer be assessed after the end of the 7th contract year for Contracts A, B, and C, and after the end of the 8th contract year for Contract D. To remove the rider option charge, Nationwide will replace the class of sub-account units corresponding to total variable account charges that include the rider option charge with another class of sub-account units associated with total variable account charges without the rider option charge. The latter class of units will have a greater individual unit value than the original class. Therefore, a reduction in the number of units is necessary to ensure that the contract value remains the same as it was prior to the removal of the charge.

From the date of the removal forward, the variable account value will be calculated using the class of sub-account unit values that do not reflect the rider option charge. Thus, the charge for that option is no longer assessed in the daily sub-account valuation for the contract.

10. Applicants seek an amendment to the Order, pursuant to section 6(c) of the 1940 Act, for exemption from sections 2(a)(32), 22(c) and 27(i)(2)(A) of the 1940 Act and Rule 22c–1 thereunder to the extent necessary to permit Nationwide to issue contracts from the Nationwide Variable Account-II and the Other Separate Accounts that:

a. provide for the recapture of Purchase Payment Credits upon a contract owner's cancellation of the contract pursuant to the contractual free-look provisions; and

b. provide for the recapture of 3% and 4% Credits for 7 contract years, regardless of whether the contract owner elects a CDSC-reducing option.

Applicants' Legal Analysis

1. Section 6(c) of the 1940 Act authorizes the Commission to exempt any person, security or transaction, or any class or classes of persons, securities or transactions from the provisions of the 1940 Act and the rules promulgated thereunder if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act. Applicants request that the Commission issue an order pursuant to section 6(c) of the 1940 Act granting the exemptions outlined herein with respect to the New Contracts funded by VA–II that are issued by Nationwide and underwritten or distributed by NISC. Applicants also request the relief under the order to extend to any of the Other Separate Accounts of Nationwide and to any other NASD registered broker/dealers under common control with Nationwide which may in the future serve as general distributor-principal underwriter of VA–II or Other Separate Accounts that offer or support variable annuity contracts that are substantially similar in all material respects to those described in the Application. Applicants represent that any such future contracts funded by VA–II or Other Separate Accounts will be substantially similar in all material respects to the New Contracts described herein. Applicants believe that the requested exemptions are appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

2. Applicants represents that the charges associated with the respective Extra Value Options are consistent with the requirements of section 26(e)(A)(2) of the 1940 Act. Section 26(e)(A)(2) provides that it is unlawful for registered separate accounts or sponsoring insurance companies to sell any variable insurance contract "unless the fees and charges deducted under the contract, in the aggregate, are reasonable in relation to the services rendered, the expenses expected to be incurred, and the risks assumed by the insurance company." Because the Credits associated with the Extra Value Options will be funded from Nationwide's general account, the Credits create an expense for Nationwide. In addition, the risk of not recovering that expense is substantial in light of the fact that under several different contingencies, the Credit will be fully or partially vested, and thus may be withdrawn from the contract, long before the expense associated with furnishing the Credit has been recouped. Accordingly, Applicants represent that the charges associated with the Extra Value Options, in addition to the basic Variable Account Charge applicable to each contract, are reasonable and therefore consistent with the requirements of section 26(e)(2)(A) of the 1940 Act. A similar representation will be made in the registration statements for the contracts, as required under section 26(e)(2)(A). Applicants also submit that the risk of not recovering the expense associated with rider options is substantially diminished if the contract value, including the Credit, is not surrendered or otherwise distributed prior to the end of the 7th contract year. Thus, the elimination of the rider option charge is entirely warranted and will benefit contract owners.

3. Applicants represent that it is not administratively feasible to track the Credit amounts in VA–II after the Credits are applied. Accordingly, the asset-based charges associated with the Extra Value Options will be assessed against the entire amounts held in VA–II for 7 contract years for Contracts A, B, and C, and for 8 contract years for Contract D.

4. Subsection (i) of section 27 provides that section 27 does not apply to any registered separate account funding variable insurance contracts, or to the sponsoring insurance company and principal underwriter of such account, except as provided in paragraph (2) of the subsection. Paragraph (2) provides that it shall be unlawful for any registered separate account funding variable insurance contracts or a sponsoring insurance company of such account to sell a contract funded by the registered separate account unless, among other things, such contract is a redeemable security. Section 2(a)(32) defines "redeemable security" as any security, other than short-term paper, under the terms of which the holder, upon presentation to the issuer, is entitled to receive approximately his or her proportionate share of the issuer's current net assets, or the cash equivalent thereof.

5. Applicants submit that recapturing the Credit will not deprive an owner of his or her proportionate share of VA–II's current net assets. Applicants state that an owner's interest in the Credit allocated to his or her contract value is not entirely vested until the end of the 7th contract year. Until the Credit is vested, Applicants submit that Nationwide retains the right and interest in the Credit, although not in any earnings attributable to the Credit.

Applicants argue that when Nationwide recaptures a Credit, it is merely retrieving its own assets and the contract owner is not deprived of his or her proportionate share of separate account assets because his/her interest in the Credit has not vested.

6. Furthermore, Applicants state that permitting a contract owner to retain the Credit upon cancellation of the contract pursuant to the contractual free-look privilege would be unfair and would encourage individuals to purchase a contract with the intention of retaining the credited amount for an unjustified profit at Nationwide's expense. Furthermore, the recapture of the Credit is designed to protect Nationwide when a contract owner takes partial or full surrender of the contract shortly after the Credit is applied, leaving Nationwide insufficient time to recover the cost of the Credit.

7. Applicants assert that the Extra Value Option will be attractive to and in the interest of investors because it will permit owners to have an additional 3% or 4% of purchase payments remitted during the first twelve months invested in selected investment options from the date the purchase payment is received. Also, any earnings attributable to the Credit will be retained by the contract owner in addition to the principal amount of the Credit, provided the contingencies set forth in this Application are satisfied. Finally, Applicants believe that the Extra Value Option will be particularly attractive to and in the interest of long-term investors due to the elimination of the charge after 7 contract years for Contracts A, B, and C, and after 8 contract years for Contract D. Applicants assert that the elimination of the Extra Value Option charge will allow prospective purchasers to assess the value of the Extra Value Option, and elect or decline it, based on their particular circumstances, preferences and expectations.

8. Applicants submit that recapturing the Purchase Payment Credit will not deprive an owner of his or her proportionate share of VA–II's current net assets. Applicants state that an owner's interest in the Purchase Payment Credit allocated to his or her contract value is not entirely vested until the end of the contractual free-look period. Until the Purchase Payment Credit is vested, Applicants submit that Nationwide retains the right and interest in the Purchase Payment Credit, although not in any earnings attributable to the Purchase Payment Credit. Applicants argue that when Nationwide recaptures a Purchase Payment Credit, it is merely retrieving its own assets, and the contract owner is not deprived of his or her proportionate share of separate account assets because his/her interest in the Purchase Payment Credit has not vested.

9. Furthermore, Applicants state that permitting a contract owner to retain the Purchase Payment Credit upon cancellation of the contract pursuant to the contractual free-look privilege would be unfair and would encourage individuals to purchase a contract with the intention of retaining the credited amount for an unjustified profit at Nationwide's expense.

10. Applicants assert that Purchase Payment Credits recognize the efficiencies associated with issuing and administering contracts with higher aggregate purchase payments, and are thus attractive to, and in the best-interest of, certain purchasers.

11. Applicants submit that the provisions for recapture of the Credit and the Purchase Payment Credit under the contracts do not violate section 2(a)(32) and 27(i)(2)(A) of the 1940 Act. Nevertheless, to avoid any possible uncertainties, Applicants request an exemption from those sections, to the extent deemed necessary to permit the recapture of any Credit or Purchase Payment Credit under the circumstances described herein with respect to the New Contracts and any future contracts issued in conjunction with VA–II or any Other Separate Accounts without loss of the relief from section 27 provided by section 27(i).

12. Section 22(c) of the 1940 Act authorizes the Commission to make rules and regulations applicable to registered investment companies and to principal underwriters of, and dealers in, the redeemable securities of any registered investment company to accomplish the same purposes as contemplated by section 22(a). Rule 22c–1 thereunder prohibits a registered investment company issuing any redeemable security, a person designated in such issuer's prospectus as authorized to consummate transactions in any such security, and a principal underwriter of, or dealer in, such security, from selling, redeeming, or repurchasing any such security except at a price based on the current net asset value of such security which is next computed after receipt of a tender of such security for redemption or of an order to purchase or sell such security.

13. It could be argued that Nationwide's recapture of the Credit and/or the Purchase Payment Credit constitutes a redemption of securities for a price other than one based on the current net asset value of the separate accounts. Applicants contend, however, that recapture of these credits does not violate section 22(c) and Rule 22c–1. Applicants argue that such recapture does not involve either of the evils or harmful events that Rule 22c–1 was intended to eliminate or reduce, namely: (1) The dilution of the value of outstanding redeemable securities of registered investment companies through their sale at a price below net asset value or their redemption or repurchase at a price above it, and (2) other unfair results including speculative trading practices. These evils were the result of backward pricing, the practice of pricing a mutual fund share based on the per share net asset value determined as of the close of the market on the previous day. Backward pricing diluted the value of outstanding mutual fund shares by allowing investors to take advantage of increases or decreases in net asset value that were not yet reflected in the mutual fund share price. Applicants submit that the recapture of Credits and Purchase Payment Credits described herein does not pose such a threat of dilution. To recapture any credit, Nationwide will redeem contract owners' interests in the sub-accounts at a price determined on the basis of current sub-account accumulation unit values. In no event will the amount recaptured be more than the amount of the Credit or Purchase Payment Credit that Nationwide paid out of its general account. Although Contract owners will be entitled to retain any investment gain attributable to a credit, the amount of such gain will be determined on the basis of the current net asset value of the respective sub-account. Thus, no dilution will occur upon the recapture of the Credit or Purchase Payment Credit.

14. Applicants also submit that the second harm that Rule 22c–1 was designed to address, namely, speculative trading practices calculated to take advantage of backward pricing, will not occur as a result of the recapture of the Credit or Purchase Payment Credit.

15. To avoid any uncertainty as to full compliance with the 1940 Act, Applicants request an exemption from the provisions of section 22(c) and Rule 22c–1 to the extent deemed necessary to permit them to recapture the Credit and the Purchase Payment Credit under the contracts and any future contracts (that are substantially similar in all material respects to the contracts described herein) issued in conjunction with VA–II or any Other Separate Accounts.

Conclusion

Applicants submit that their request for an amended Order is appropriate in the public interest. Applicants state that such an amended Order would promote competitiveness in the variable annuity market by eliminating the need to file redundant exemptive applications, thereby reducing administrative expenses and maximizing the efficient use of Applicants' resources. Applicants argue that investors would not receive any benefit or additional protection by requiring Applicants to repeatedly seek exemptive relief that would present no issue under the 1940 Act that has not already been addressed in the Application described herein. Applicants submit that filing additional applications would impair their ability to effectively take advantage of business opportunities as they arise. Furthermore, Applicants state that if they were repeatedly required to seek exemptive relief with respect to the same issues addressed in the Application described herein, investors would not receive any benefit or additional protection thereby.

Applicants further submit, based on the grounds summarized above, that their exemptive request meets the standards set out in section 6(c) of the 1940 Act, namely, that the exemptions requested are necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act, and that, therefore, the Commission should grant the requested amended Order.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–2168 Filed 1–29–03; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47240; File No. SR–NASD–2002–113]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc; Order Granting Approval of Proposed Rule Change Relating to the Implementation of a Fingerprinting Program for Nasdaq Employees and Independent Contractors

January 23, 2003.

On August 16, 2002, the National Association of Securities Dealers, Inc. ("NASD" or "Association"), through its subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to establish a program for conducting fingerprint-based background checks of Nasdaq employees and independent contractors. On September 10, 2002, Nasdaq submitted an amendment to the proposed rule change.[3] The proposed rule change, as amended, was published for comment in the **Federal Register** on December 16, 2002.[4] The Commission received no comments on the proposal.

After careful review, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder,[5] and, in particular, the requirements of section 15A of the Act[6] and the rules and regulations thereunder. The Commission finds specifically that the proposed rule change is consistent with sections 15A(b)(2) and 15A(b)(6) of the Act.[7] Section 15A(b)(2)[8] requires that the Association have the capacity to enforce compliance by its members and persons associated with its members with the federal securities laws and the rules of the Association. Section 15A(b)(6)[9] requires, among other things, that the NASD's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.

The Commission believes that the proposed rule change, as amended, promotes the objectives of these sections of the Act. The Commission notes that Nasdaq is an important component of the National Market System and that a serious disruption in the operation of Nasdaq systems could have a significant deleterious impact on the U.S. and global financial markets. The proposed rule change will promote the objectives of the Act by establishing procedures that should help prevent a serious disruption to Nasdaq systems. Specifically, the proposal should provide Nasdaq with an effective tool for identifying and excluding individuals whose prior criminal activities may pose a threat to the security of Nasdaq operations.[10]

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[11] that the proposed rule change, as amended, (File No. SR–NASD–2002–113) be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–2169 Filed 1–29–03; 8:45 am]

BILLING CODE 8010–01–P

[1]

[2] 17 CFR 240.19b–4.

[3] *See* September 9, 2002 letter from Mary M. Dunbar, Vice President and Deputy General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division of Market Regulation, Commission ("Amendment No. 1").

[4] *See* Securities Exchange Act Release No. 46974 (December 9, 2002), 67 FR 77119 ("Notice").

[5] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[6] 15 U.S.C. 78*o*–3.

[7] 15 U.S.C. 78*o*–3(b)(2) and 15 U.S.C. 78*o*–3(b)(6).

[8] 15 U.S.C. 78*o*–3(b)(2).

[9] 15 U.S.C. 78*o*–3(b)(6).

[10] As explicitly stated in the proposed rule language in the Notice, such identification and exclusion of individuals will be carried out by Nasdaq only when permitted by applicable law.

[11] 15 U.S.C. 78s(b)(2).

[12] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 4255]

Culturally Significant Objects Imported for Exhibition Determinations: "Ernst Ludwig Kirchner: 1880–1938"

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236 of October 19, 1999, as amended, I hereby determine that the object to be included in the exhibition "Ernst Ludwig Kirchner: 1880—1938," imported from abroad for temporary exhibition within the United States, is of cultural significance. The objects are imported pursuant to a loan agreement with the foreign owners. I also determine that the exhibition or display of the exhibit objects at the National Gallery of Art, Washington, DC from on or about March 2, 2003 to on or about June 1, 2003, and at possible additional venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of

the exhibit objects, contact Carol B. Epstein, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State, (telephone: 202/619–6981). The address is U.S. Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: January 24, 2003.

Patricia S. Harrison,

Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 03–2203 Filed 1–29–03; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF STATE

[Public Notice 4254]

Culturally Significant Objects Imported for Exhibition Determinations: "Van Gogh: Fields"

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236 of October 19, 1999, as amended, I hereby determine that the object to be included in the exhibition "Van Gogh: Fields," imported from abroad for temporary exhibition within the United States, is of cultural significance. The objects are imported pursuant to a loan agreement with the foreign owners. I also determine that the exhibition or display of the exhibit objects at The Toledo Museum of Art, Toledo, OH from on or about February 21, 2003 to on or about May 18, 2003, and at possible additional venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Carol B. Epstein, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State, (telephone: 202/619–6981). The address is U.S. Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: January 24, 2003.

Patricia S. Harrison,

Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 03–2204 Filed 1–29–03; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF STATE

[Public Notice 4256]

In the Matter of the Designation of Lashkar I Jhangvi as a Foreign Terrorist Organization Pursuant to Section 219 of the Immigration and Nationality Act

Based upon a review of the Administrative Record assembled in this matter and in consultation with the Attorney General and the Secretary of the Treasury, I conclude that there is a sufficient factual basis to find that the relevant circumstances described in section 219 of the Immigration and Nationality Act, as amended (hereinafter "INA"), exist with respect to Lashkar i Jhangvi. Therefore, I intend to designate that organization as a foreign terrorist organization pursuant to section 219(a) of the INA.

This designation shall be published in the **Federal Register**.

Dated: January 21, 2003.

Colin L. Powell,

Secretary of State, Department of State.

[FR Doc. 03–2201 Filed 1–29–03; 5:00 pm]

BILLING CODE 4710–10–P

TENNESSEE VALLEY AUTHORITY

Paperwork Reduction Act of 1995, as Amended by Public Law 104–13; Submission for OMB review; Comment Request

AGENCY: Tennessee Valley Authority.

ACTION: Submission for OMB review; comment request.

SUMMARY: The proposed information collection described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C chapter 35, as amended). The Tennessee Valley Authority is soliciting public comments on this proposed collection as provided by 5 CFR 1320.8(d)(1). Requests for information, including copies of the information collection proposed and supporting documentation, should be directed to the Agency Clearance Officer: Wilma H. McCauley, Tennessee Valley Authority, 1101 Market Street (EB 5B), Chattanooga, Tennessee 37402–2801; (423) 751–2523.

Comments should be sent to OMB Office of Information & Regulatory Affairs, Attention: Desk Officer for Tennessee Valley Authority, no later than March 3, 2003.

SUPPLEMENTARY INFORMATION:

Type of Request: Regular Submission, new collection of information.

Title of Information Collection: TVA Accounts Payable Customer Satisfaction Survey.

Frequency of Use: On occasion.

Small Business or Organizations Affected: Yes.

Estimated Number of Annual Responses: 2,000.

Estimated Total Annual Burden Hours: 200.

Estimated Average Burden Hours Per Response: 10 minutes.

Need for and Use of Information: This information collection will be distributed by e-mail to TVA's suppliers that receive remittance information by e-mail. The information collected will be used to evaluate current performance of the Accounts Payable Department (APD) which will identify areas for improvement and enable APD to provide better service to suppliers and facilitate commerce between TVA and its suppliers.

Jacklyn J. Stephenson,

Senior Manager, Enterprise Operations, Information Services.

[FR Doc. 03–2155 Filed 1–29–03; 8:45 am]

BILLING CODE 8120–08–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA Special Committee 200/EUROCAE Working Group 60: Modular Avionics, Second Joint Plenary Meeting

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of RTCA Special Committee 200/EUROCAE Working Group 60 meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of RTCA Special Committee 200/EUROCAE Working Group 60: Modular Avionics.

DATES: The meeting will be held February 19–21, 2003 starting at 9 am.

ADDRESSES: The meeting will he held at RTCA, Inc., 1828 L Street, NW., Suite 805, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: (1) RTCA Secretariat, 1828 L Street, NW., Suite 805, Washington, DC, 20036; telephone (202) 833–9339; fax (202) 833–9434; Web site *http://www.rtca.org.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C. appendix 2), notice is hereby given for a Special Committee 200/EUROCAE Working Group 60 meeting. The agenda will include:

- February 19:
  - Opening Plenary Session (Welcome and Introductory Remarks, Review Agenda Review/Approve previous Common Plenary Summary, Review Open Action Items)
  - Report on Subgroup Activities since Joint Meeting Number 1
  - Plenary review of Document Outline
  - Plenary review of Glossary
- February 20:
  - Subgroups 1–3 form and work in individual meetings
- February 21:
  - Report of Subgroup 1–3 meetings
  - Closing Plenary Session (Review Action Items, Date and Place of Next Meeting, Adjourn)

Attendance is open to the interested public but limited to space availability. With the approval of the chairmen, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on January 23, 2003.

Janice L. Peters,

FAA Special Assistant, RTCA Advisory Committee.

[FR Doc. 03–2187 Filed 1–29–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Policy Statement No. ANM–01–115–11]

Certification of Strengthened Flightdeck Doors on Transport Category Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of final policy.

SUMMARY: The Federal Aviation Administration (FAA) announces the availability of final policy concerning certification of strengthened flightdeck doors.

DATES: This final policy was issued by the Transport Airplane Directorate on September 6, 2002.

FOR FURTHER INFORMATION CONTACT: Jeff Gardlin, Federal Aviation Administration, Transport Airplane Directorate, Transport Standards Staff, Airframe/Cabin Safety Branch, ANM–115, 1601 Lind Avenue SW., Renton, WA 98055–4056; telephone (425) 227–2136; fax (425) 227–1320; e-mail: *jeff.gardlin@faa.gov*.

SUPPLEMENTARY INFORMATION:

Discussion of Comments

A notice of final policy; request for comments was published in the **Federal Register** on May 16, 2001 (66 FR 27196). One comment was received that did not address the policy statement so much as the applicability of the rule itself. No changes were made to the policy statement.

Background

The final policy provides all transport category airplane programs an acceptable method of compliance with 14 CFR part 25 for intrusion resistance and ballistic protection of flightdeck doors. The Frequently Asked Questions (FAQ) section has also been updated.

The final policy as well as the disposition of public comments are available on the Internet at the following address: *http://www.faa.gov/certification/aircraft/anminfo/finalpaper.cfm*. If you do not have access to the Internet, you can obtain a copy of the policy by contacting the person listed under **FOR FURTHER INFORMATION CONTACT.**

Issued in Renton, Washington, on January 17, 2003.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–2188 Filed 1–29–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2003–14370]

Information Collection Available for Public Comments and Recommendations

ACTION: Notice and Request for Comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Maritime Administration's (MARAD's) intentions to request extension of approval for three years of a currently approved information collection.

DATES: Comments should be submitted on or before March 31, 2003.

FOR FURTHER INFORMATION CONTACT: Taylor E. Jones II, Maritime Administration (MAR–630), 400 Seventh St., SW., Washington, DC 20590. Telephone: 202–366–2323; FAX: 202–493–2180, or e-mail: *taylor.jones@marad.dot.gov*. Copies of this collection also can be obtained from that office.

SUPPLEMENTARY INFORMATION:

Title of Collection: Voluntary Intermodal Sealift Agreement (VISA).

Type of Request: Extension of currently approved information collection.

OMB Control Number: 2133–0532.

Form Numbers: MA–1020.

Expiration Date of Approval: Three years after date of approval by the Office of Management and Budget.

Summary of Collection of Information. This information collection is in accordance with Section 708, Defense Production Act, 1950, as amended, under which participants agree to provide commercial sealift capacity and intermodal shipping services and systems necessary to meet national defense requirements. In order to meet national defense requirements, the government must assure the continued availability of commercial sealift resources.

Need and Use of the Information: The information collection is needed by MARAD and the Department of Defense (DOD), including representatives from the U.S. Transportation Command and its components, to evaluate and assess the applicants' eligibility for participation in the VISA program. The information will be used by MARAD and the U.S. Transportation Command, and its components, to assure the continued availability of commercial sealift resources to meet the DOD's military requirements.

Description of Respondents: Operators of qualified dry cargo vessels.

Annual Responses: 40.

Annual Burden: 200 hours.

Comments: Comments should refer to the docket number that appears at the top of this document. Written comments may be submitted to the Docket Clerk, U.S. DOT Dockets, Room PL–401, 400 Seventh Street, SW., Washington, D.C. 20590. Comments may also be submitted by electronic means via the Internet at *http://dmses.dot.gov/submit*. Specifically address whether this information collection is necessary for proper performance of the functions of the agency and will have practical utility, accuracy of the burden estimates, ways to minimize this burden, and ways to enhance the quality, utility, and clarity of the information to be collected. All comments received will be available for examination at the above address between 10 a.m. and 5 p.m. EDT (or EST), Monday through Friday, except Federal Holidays. An electronic version of this document is available on the World Wide Web at *http://dms.dot.gov*.

By order of the Maritime Administrator.

Dated: January 27, 2003.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 03–2183 Filed 1–29–03; 8:45 am]

BILLING CODE 4910–81–P.

DEPARTMENT OF TRANSPORTATION

Maritime Administration

Reports, Forms and Recordkeeping Requirements Agency Information Collection Activity Under OMB Review

AGENCY: Maritime Administration, DOT.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and approval. The nature of the information collection is described as well as its expected burden. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on October 31, 2002. No comments were received.

DATES: Comments must be submitted on or before March 3, 2003.

FOR FURTHER INFORMATION CONTACT: Joe Strassburg, Maritime Administration (MAR–782), 400 Seventh Street, SW., Washington, DC 20590. Telephone: 202–366–4161; FAX: 202–366–7901 or e-mail: *joe.strassburg@marad.dot.gov.* Copies of this collection also can be obtained from that office.

SUPPLEMENTARY INFORMATION: Maritime Administration (MARAD).

Title: Seamen's Claims' Administrative Action and Litigation.

OMB Control Number: 2133–0522.

Type of Request: Extension of currently approved collection.

Affected Public: Officers or members of a crew who suffered death, injury, or illness while employed on vessels owned or operated by the United States. Also included are surviving dependents, beneficiaries, and legal representatives of officers or crew members.

Form(s): None.

Abstract: The collection consists of information obtained from claimants for death, injury, or illness suffered while serving as officers or members of a crew on board a vessel owned or operated by the United States. The Maritime Administration reviews the information and makes a determination regarding agency liability and payments.

Annual Estimated Burden Hours: 1,875 hours.

ADDRESSES: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention MARAD Desk Officer.

Comments Are Invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

Issued in Washington, DC on January 24, 2003.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 03–2184 Filed 1–29–03; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF THE TREASURY

Departmental Offices; Notice of Availability of the Treasury Department's Annual Reports on Alternative Fuel Vehicle Acquisitions

AGENCY: Departmental Offices, Treasury.

ACTION: Notice.

SUMMARY: This notice advises the public how it may access the Treasury Department's annual reports on alternative fuel vehicle acquisitions for FY 1999–2001.

FOR FURTHER INFORMATION CONTACT: Carolyn Austin-Diggs, Director, Office of Asset Management, 202–622–0500 (not a toll-free call).

SUPPLEMENTARY INFORMATION: In accordance with section 8 of the Energy Policy Act, Pub. L. 105–388, as amended (42 U.S.C. 13218), the Department of the Treasury gives notice that the Department's annual reports on alternative fuel vehicle acquisitions for FY 1999–2001 are available at the following website: *http://www.treas.gov/offices/management/asset-management/personal-property/fleet-and-aviation.*

Dated: January 24, 2003.

Timothy L. Weatherford,

Acting Deputy Assistant Secretary of the Treasury.

[FR Doc. 03–2182 Filed 1–29–03; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0570]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Health Administration (VHA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on the burden estimates relating to customer satisfaction surveys.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before March 31, 2003.

ADDRESSES: Submit written comments on the collection of information to Ann W. Bickoff (193B1), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail: *ann.bickoff@hq.med.va.gov.* Please refer to "OMB Control No. 2900–0570" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Ann Bickoff at (202) 273–8310.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Public Law 104–13; 44 U.S.C., 3501–3520), Federal agencies must obtain approval from OMB for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VHA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VHA's functions, including whether the information will have practical utility; (2) the accuracy of VHA's estimate of the burden of the proposed collection of

information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Generic Clearance for the Veterans Health Administration Customer Satisfaction Surveys.

OMB Control Number: 2900–0570.

Type of Review: Extension of a currently approved collection.

Abstract: Executive Order 12862, Setting Customer Service Standards, requires Federal agencies and departments to identify and survey its customers to determine the kind and quality of services they want and their level of satisfaction with existing services. VHA uses customer satisfaction surveys to gauge customer perceptions of VA services as well as customer expectations and desires. The results of these information collections lead to improvements in the quality of VHA service delivery by helping to shape the direction and focus of specific programs and services.

Affected Public: Individuals or households.

Estimated Annual Burden: 108,617 hours.

a. Special Emphasis Programs Conducted at Headquarters—72,882 hours.

b. Local Facilities Surveys (VA Medical Facilities)—35,735 hours.

Estimated Average Burden Per Respondent:

a. Special Emphasis Programs Conducted at Headquarters—18 minutes.

b. Local Facilities Surveys (VA Medical Facilities)—16 minutes.

Frequency of Response: Occasion.

Estimated Number of Respondents:

a. Special Emphasis Programs Conducted at Headquarters—241,312.

b. Local Facilities Surveys (VA Medical Facilities)—136,229.

Dated: January 15, 2003.

By direction of the Secretary.

Loise A. Russell,

Acting Director, Records Management Service.

[FR Doc. 03–2124 Filed 1–29–03; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0013]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on the information needed to determine eligibility for issuance of a burial flag for a deceased veteran.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before March 31, 2003.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20S52), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail: *irmnkess@vba.va.gov*. Please refer to "OMB Control No. 2900–0013" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Public Law 104–13; 44 U.S.C., 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Application for United States Flag for Burial Purposes, VA Form 21–2008.

OMB Control Number: 2900–0013.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 21–2008 is used to determine eligibility for issuance of a burial flag to a family member or friend of a deceased veteran.

Affected Public: Individuals or households, Federal Government and State, Local or Tribal Government.

Estimated Annual Burden: 162,500 hours.

Estimated Average Burden Per Respondent: 15 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 650,000.

Dated: January 15, 2003.

By direction of the Secretary.

Loise Russell,

Acting Director, Records Management Service.

[FR Doc. 03–2125 Filed 1–29–03; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0112]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments for information needed to determine whether a veteran can be released from liability on a Government home loan.

DATES: Written comments and recommendations on the proposed

collection of information should be received on or before March 31, 2003.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20S52), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or *mailto:irmnkess@vba.va.gov*. Please refer to "OMB Control No. 2900–0112" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Public Law 104–13; 44 U.S.C., 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Statement of Holder or Servicer of Veteran's Loan, VA Form 26–559.

OMB Control Number: 2900–0112.

Type of Review: Extension of a currently approved collection.

Abstract: Veteran-borrowers may sell their homes subject to the existing VA-guaranteed mortgage lien without prior approval of VA if the commitment for the loan was made prior to March 1, 1988. However, if they request release from personal liability to the Government in the event of a subsequent default by a transferee, VA must determine that (1) loan payments are current; (2) the transferee will assume the veteran's legal liabilities in connection with the loan; and (3) the purchaser qualifies from a credit standpoint. A veteran-borrower may sell his or her home to a veteran-transferee. However, eligible transferees must meet all the requirements in addition to having sufficient available loan guaranty entitlement to replace the amount of entitlement used by the seller in obtaining the original loan.

Affected Public: Individuals or households, Business or other for profit.

Estimated Annual Burden: 1,167 hours.

Estimated Average Burden Per Respondent: 10 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 7,000.

Dated: January 16, 2003.

By direction of the Secretary.

Ernesto Castro,

Director, Records Management Service.

[FR Doc. 03–2126 Filed 1–29–03; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0321]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a previously approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments for information needed to determine whether representatives of veterans service organization are authorized to have access to a beneficiary's claim file.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before March 31, 2003.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20S52), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail: *irmnkess@vba.va.gov*. Please refer to "OMB Control No. 2900–0321" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Public Law 104–13; 44 U.S.C., 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Appointment of Veterans Service Organization as Claimant's Representative, VA Form 21–22.

OMB Control Number: 2900–0321.

Type of Review: Extension of a previously approved collection.

Abstract: VA beneficiaries to appoint a representative from a recognized veterans service organization to represent them in the prosecution of their VA claims, must complete VA Form 21–22. The information is used to determine who has access to the beneficiary's claim file and the right to receive copies of correspondence from VA to the beneficiary. Title 38, U.S.C. 5902(b)(2), provides that VA may recognize representatives of service organizations to assist beneficiaries in the prosecution of VA claims, but that no individual shall be recognized unless such individual has filed a power of attorney, executed in a manner prescribed by VA.

Affected Public: Individuals or households.

Estimated Annual Burden: 27,083 hours.

Estimated Average Burden Per Respondent: 5 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 325,000.

Dated: January 15, 2003.

By direction of the Secretary.

Loise A. Russell,

Acting Director, Records Management Service.

[FR Doc. 03–2127 Filed 1–29–03; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0208]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the Veterans Health Administration (VHA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before March 3, 2003.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Records Management Service (005E3), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–8030, FAX (202) 273–5981 or e-mail: *denise.mclamb@mail.va.gov*. Please refer to "OMB Control No. 2900–0208."

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to "OMB Control No. 2900–0208" in any correspondence.

SUPPLEMENTARY INFORMATION:

Titles:

a. VA Form 10–6131, Daily Log—Formal Contract.

b. VA Form 10–6298, Architect—Engineer Fee Proposal.

OMB Control Number: 2900–0208.

Type of Review: Extension of a currently approved collection.

Abstract:

a. VA Form 10–6131 is used by contractors to record the data necessary to assure that sufficient labor and materials were used to accomplish the contract work.

b. VA Form 10–6298 is used by architect-engineering firms to submit a fee proposal to VA on the scope and complexity of an individual project.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on October 15, 2002, at pages 63734–63735.

Affected Public: Business or other for-profit.

Estimated Annual Burden: 4,600 hours.

a. VA Form 10–6131—3,600.

b. VA Form 10–6298—1,000.

Estimated Average Burden Per Respondent:

a. VA Form 10–613—12 minutes.

b. VA Form 10–6298—4 hours.

Frequency of Response: On occasion.

Estimated Number of Respondents: 18,250.

a. VA Form 10–6131—18,000.

b. VA Form 10–6298—250.

Dated: January 14, 2003.

By direction of the Secretary.

Loise A. Russell,

Acting Director, Records Management Service.

[FR Doc. 03–2120 Filed 1–29–03; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0121]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before March 3, 2003.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Records Management Service (005E3), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–8030, FAX (202) 273–5981 or e-mail: *denise.mclamb@mail.va.gov*. Please refer to "OMB Control No. 2900–0121."

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to "OMB Control No. 2900–0121" in any correspondence.

SUPPLEMENTARY INFORMATION:

Title: Obtaining Supplemental Information from Hospital or Doctor, VA FL 29–551b.

OMB Control Number: 2900–0121.

Type of Review: Extension of a currently approved collection.

Abstract: This form letter is used to request medical evidence from an insured's attending physician or hospital in connection with continuing disability insurance benefits.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on November 1, 2002, at page 66710.

Affected Public: Individuals or households.

Estimated Annual Burden: 61 hours.

Estimated Average Burden Per Respondent: 15 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 244.

Dated: January 14, 2003.

By direction of the Secretary.

Loise A. Russell,

Acting Director, Records Management Service.

[FR Doc. 03–2121 Filed 1–29–03; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0132]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before March 3, 2003.

FOR FURTHER INFORMATION CONTACT: Denise McLamb, Records Management Service (005E3), Department of Veterans Affairs, 810 Vermont Avenue, NW, or e-mail *denise.mclamb@mail.va.gov*. Please refer to "OMB Control No. 2900–0132."

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to "OMB Control No. 2900–0132" in any correspondence.

SUPPLEMENTARY INFORMATION:

Title: Veteran's Application in Acquiring Specially Adapted Housing or Special Home Adaptation Grant, VA Form 26–4555.

OMB Control Number: 2900–0132.

Type of Review: Extension of a currently approved collection.

Abstract: The form is used to gather the necessary information to determine a veteran's eligibility for specially adapted housing or the special home adaptation grant.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on November 1, 2002, at page 66711.

Affected Public: Individuals or households.

Estimated Annual Burden: 250 hours.

Estimated Average Burden Per Respondent: 10 minutes.

Frequency of Response: On occasion.

Estimated Number of Total Respondents: 1,500.

Dated: January 14, 2003.

By direction of the Secretary.

Loise A. Russell,

Acting Director, Records Management Service.

[FR Doc. 03–2122 Filed 1–29–03; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0610]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Health Administration, Department of Veterans Affairs

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the Veterans Health Administration (VHA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before March 3, 2003.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Records Management Service (005E3), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–8030, FAX (202) 273–5981 or e-mail: *denise.mclamb@mail.va.gov*. Please refer to "OMB Control No. 2900–0610."

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to "OMB Control No. 2900–0610" in any correspondence.

SUPPLEMENTARY INFORMATION:

Title: Ecclesiastical Endorsing Organization Verification/Reverification Information, VA Form 10–0379.

OMB Control Number: 2900–0610.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 10–0379 is used to assure that individuals employed by VA as chaplains are qualified to provide for the constitutional rights of veterans to free exercise of religion. Each applicant submits an official statement ("ecclesiastical endorsement") from their religion or faith group, certifying that the applicant is in good standing with the faith group and is qualified to perform the full range of ministry required in VA setting. VA uses this information to determine (1) who the faith group designates as its endorsing official(s); (2) whether the faith group provides ministry to a lay constituency; and (3) what is the constituency to which person endorsed by this group may minister.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on November 15, 2002, at pages 69303–69304.

Affected Public: Not-for-profit Institutions.

Estimated Annual Burden: 3 hours.

Estimated Average Burden Per Respondent: 15 minutes

Frequency of Response: One time.

Estimated Number of Respondents: 10

Dated: January 15, 2003.

By direction of the Secretary.

Loise A. Russell,

Acting Director, Records Management Service.

[FR Doc. 03–2123 Filed 1–29–03; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on Homeless Veterans; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 (Federal Advisory Committee Act) that a meeting of the Advisory Committee on Homeless Veterans will be held from Thursday, February 20, 2003, through Friday, February 21, 2003, from 8:30 a.m. until 4 p.m. each day. The meeting will be held at the Department of Veterans Affairs, 810 Vermont Avenue, NW., Room 730, Washington, DC 20420. The meeting is open to the public.

The purpose of the Committee is to advise the Secretary of Veterans Affairs with an on-going assessment of the effectiveness of the policies, organizational structures, and services of the Department in assisting homeless veterans. The Committee shall assemble and review information relating to the needs of homeless veterans and provide on-going advice on the most appropriate means of providing assistance to homeless veterans. The Committee shall assemble and review information relating to the needs of homeless veterans and provide on-going advice on the most appropriate means of providing assistance to homeless veterans. The Committee will make recommendations to the Secretary regarding such activities.

On February 20, the Committee will review information about efforts to coordinate services and increase veteran access to homeless services from VA and other health and benefits programs and review new draft recommendations to assist veterans. On February 21, the Committee will continue its review and discussion of its draft recommendations to the Secretary.

Those wishing to attend the meeting should contact Mr. Pete Dougherty,

Department of Veterans Affairs, at (202) 273–5764. No time will be allocated for receiving oral presentations from the public. However, the Committee will accept written comments from interest parties on issues affecting homeless veterans. Such comments should be referred to the Committee at the following address: Advisory Committee on Homeless Veterans, Homeless Veterans Programs Office (075D), U.S. Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420.

Dated: January 23, 2003.

By Direction of the Secretary.

Nora E. Egan,

Committee Management Officer.

[FR Doc. 03–2128 Filed 1–29–03; 8:45 am]

BILLING CODE 8320–01–M

Federal Register

Thursday,
January 30, 2003

Part II

Securities and Exchange Commission

17 CFR Parts 228, 229, et al.
Conditions for Use of Non-GAAP Financial Measures; Final Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR PARTS 228, 229, 244 and 249

[RELEASE NO. 33–8176; 34–47226; FR–65; FILE NO. S7–43–02]

RIN 3235–A169

Conditions for Use of Non-GAAP Financial Measures

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: As directed by the Sarbanes-Oxley Act of 2002, we are adopting new rules and amendments to address public companies' disclosure or release of certain financial information that is calculated and presented on the basis of methodologies other than in accordance with generally accepted accounting principles (GAAP). We are adopting a new disclosure regulation, Regulation G, which will require public companies that disclose or release such non-GAAP financial measures to include, in that disclosure or release, a presentation of the most directly comparable GAAP financial measure and a reconciliation of the disclosed non-GAAP financial measure to the most directly comparable GAAP financial measure. We also are adopting amendments to Item 10 of Regulation S–K and Item 10 of Regulation S–B to provide additional guidance to those registrants that include non-GAAP financial measures in Commission filings. Additionally, we are adopting amendments to Form 20–F to incorporate into that form the amendments to Item 10 of Regulation S–K. Finally, we are adopting amendments that require registrants to furnish to the Commission, on Form 8–K, earnings releases or similar announcements.

DATES: Effective Date: March 28, 2003. Compliance Dates: Regulation G will apply to all subject disclosures as of March 28, 2003. The requirement to furnish earnings releases and similar materials to the Commission on Form 8–K will apply to earnings releases and similar announcements made after March 28, 2003. The amendments to Item 10 of Regulation S–K, Item 10 of Regulation S–B and Form 20–F will apply to any annual or quarterly report filed with respect to a fiscal period ending after March 28, 2003.

FOR FURTHER INFORMATION CONTACT: Joseph P. Babits or Craig Olinger, at (202) 942–2910, Division of Corporation Finance, U.S. Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0402.

SUPPLEMENTARY INFORMATION: We are adopting new Regulation G.[1] We also are adopting amendments to Item 10 of Regulation S–K,[2] Item 10 of Regulation S–B,[3] and Securities Exchange Act of 1934[4] Forms 8–K[5] and 20–F.[6]

I. Background

On July 30, 2002, President Bush signed into law the Sarbanes-Oxley Act of 2002 (Sarbanes-Oxley Act).[7] As directed by Section 401(b) of the Sarbanes-Oxley Act, we published for comment a number of new rules and amendments to address the use of "non-GAAP financial measures" on November 4, 2002.[8] As discussed in that proposing release, the Commission has expressed concerns regarding the improper use of non-GAAP financial measures during the past 30 years.[9] The rules we adopt today reflect the letter and spirit of the Sarbanes-Oxley Act, our history in regulating non-GAAP financial measures, and the comments we received on the proposals.

We are adopting the proposals relating to the use of non-GAAP financial measures substantially as proposed.[10] The rules we adopt today, however, reflect the following changes from those proposals:

- *Regulation G—*
- Regulation G will not apply to a non-GAAP financial measure included in disclosure relating to a proposed business combination, the entity resulting therefrom or an entity that is a party thereto if the disclosure is contained in a communication that is subject to the communications rules applicable to business combination transactions;
- The safe harbor from the application of Regulation G for disclosure of non-GAAP financial measures by foreign private issuers outside of the United States will make clearer that Regulation G does not apply to written communications released in the United States, as well as outside the United States, so long as the communication is released in the United States contemporaneously with or after its release outside the United States and is not otherwise targeted at persons located in the United States;
- The reference to "comparable [GAAP] financial measure or measures" will read "most directly comparable [GAAP] financial measure or measures"; and
- The definition of GAAP for purposes of financial measures prepared by foreign private issuers will be further clarified.
- *Item 10 of Regulation S–K and Item 10 of Regulation S–B—*
- These items will not include a prohibition on "non-GAAP per share measures" in documents filed with the Commission;[11]
- These items will not apply to a non-GAAP financial measure included in disclosure relating to a proposed business combination, the entity resulting therefrom or an entity that is a party thereto if the disclosure is contained in a communication that is subject to the communications rules applicable to business combination transactions;
- The reference to "comparable [GAAP] financial measure or measures" will read "most directly comparable [GAAP] financial measure or measures";
- The required quantitative reconciliation will include the same exception for forward-looking non-GAAP financial measures as in Regulation G;
- The measures EBIT (earnings before interest and taxes) and EBITDA (earnings before interest, taxes, depreciation, and amortization) will be exempted specifically from the prohibition on excluding charges or liabilities that required, or will require, cash settlement, or would have required cash settlement absent an ability to settle in another manner, from non-GAAP liquidity measures;
- The prohibition on adjusting a non-GAAP performance measure to eliminate or smooth items identified as non-recurring, infrequent or unusual, when the nature of the charge or gain is such that it is reasonably likely to recur will make clear that such an adjustment is prohibited only when (1) the nature of the charge or gain is such that it is reasonably likely to recur within two years,

[1] 17 CFR 244.100–244.102.

[2] 17 CFR 229.10.

[3] 17 CFR 228.10.

[4] 15 U.S.C. §§ 78a *et seq.*

[5] 17 CFR 249.308.

[6] 17 CFR 249.220.

[7] Pub. L. No. 107–204, 116 Stat. 745 (2002).

[8] See Release No. 33–8145 (Nov. 4, 2002) [67 FR 68490].

[9] See *Accounting Series Release No. 142*, Release No. 33–5337 (Mar. 15, 1973); *Cautionary Advice Regarding the Use of "Pro Forma" Financial Information*, Release No. 33–8039 (Dec. 4, 2001); and *In the Matter of Trump Hotels & Casino Resorts, Inc.*, Release No. 34–45287 (Jan. 16, 2002). We also note that the Financial Accounting Standards Board (FASB) has initiated a project called Financial Performance Reporting by Business Enterprises. The objective of the project is to ensure that users of financial statements have sufficient quality information in order to evaluate a company's performance. The project's focus includes the presentation of key performance measures, or information necessary to permit calculation of key financial measures, used by investors and creditors. However, it will not address non-GAAP measures in press releases or other communications outside financial statements.

[10] Regulation G and the amendments to our rules are intended to ensure that investors receive adequate information in evaluating a company's use of non-GAAP financial measures. In addition, having earnings announcements furnished on Form 8–K would provide the public a source of reference for obtaining a company's most recent statements regarding its financial condition. Therefore, we believe that the new rules and amendments are in the public interest and consistent with the protection of investors.

[11] While we have not included a prohibition on per share non-GAAP financial measures in Item 10 of Regulation S–K or Item 10 of Regulation S–B, per share measures that are prohibited specifically under GAAP or Commission rules continue to be prohibited in materials filed with or furnished to the Commission. See, for example, the prohibition on cash flow per share in paragraph 33 of FASB Statement No. 95, Statement of Cash Flows.

or (2) there was a similar charge or gain within the prior two years; and

• The definition of GAAP for purposes of financial measures prepared by foreign private issuers will be further clarified.

• *Definition of non-GAAP financial measures—*

• "Non-GAAP financial measures" will not include financial measures that are required to be disclosed by GAAP, Commission rules or a system of regulation that is applicable to a registrant.

• *Form 8–K—*

• The Form 8–K requirement with respect to earnings releases and similar announcements will require that those materials be "furnished to," rather than "filed with," the Commission.

II. The Rules and Amendments

A. Regulation G

We are adopting new Regulation G substantially as proposed. Regulation G will apply whenever a company publicly discloses or releases material information that includes a non-GAAP financial measure.[12]

1. Application

a. General Standard

Regulation G applies to any entity that is required to file reports pursuant to Sections 13(a) or 15(d) of the Exchange Act, other than a registered investment company.[13] Regulation G applies whenever such a registrant, or a person acting on its behalf, discloses publicly or releases publicly any material information that includes a non-GAAP financial measure.

b. Foreign Private Issuers

Regulation G applies to registrants that are foreign private issuers,[14] subject to a limited exception. Specifically, Regulation G does not apply to public disclosure of a non-GAAP financial measure by, or on behalf of, a registrant that is a foreign private issuer if:

• The securities of the foreign private issuer are listed or quoted on a securities exchange or inter-dealer quotation system outside the United States;

• The non-GAAP financial measure is not derived from or based on a measure calculated and presented in accordance with generally accepted accounting principles in the United States; and

• The disclosure is made by or on behalf of the foreign private issuer outside the United States, or is included in a written communication that is released by or on behalf of the foreign private issuer outside the United States.

These conditions focus on whether the financial measure relates to U.S. GAAP and whether the disclosure is made by or on behalf of the foreign private issuer outside of the United States. We believe these conditions appropriately take into account the interests of U.S. investors (including both the interests reflected in the Sarbanes-Oxley Act and the interest of receiving information that is communicated globally) and the interests of foreign private issuers in communicating globally, including in their home markets.

Therefore, we believe that the worldwide availability of information properly disclosed outside the United States and the interests of U.S. investors in information communicated by, or on behalf of, the issuer outside the United States dictate that the exception for foreign private issuers should continue to apply even where any one or more of the following circumstances are present:

• A written communication is released in the United States as well as outside the United States, so long as the communication is released in the United States contemporaneously with or after the release outside the United States and is not otherwise targeted at persons located in the United States;

• Foreign journalists, U.S. journalists or other third parties have access to the information;

• The information appears on one or more web sites maintained by the registrant, so long as the web sites, taken together, are not available exclusively to, or targeted at, persons located in the United States; or

• Following the disclosure or release of the information outside the United States, the information is included in a submission to the Commission made under cover of a Form 6–K.[15]

c. Disclosures Relating to Business Combination Transactions

As proposed, Regulation G would have applied to disclosures of non-GAAP financial measures that represent projections or forecasts of results of proposed business combination transactions. We sought comment specifically on this point, and several of the comment letters we received in response to the proposal argued strongly that Regulation G should not apply to these measures.[16] After consideration of the comments regarding the application of Regulation G to these disclosures, we are including in Regulation G an exception for non-GAAP financial measures included in disclosure relating to a proposed business combination transaction, the entity resulting from the business combination transaction, or an entity that is a party to the business combination transaction if the disclosure is contained in a communication that is subject to the Commission's communications rules applicable to business combination transactions.[17]

2. Non-GAAP Financial Measures

a. Definition

For purposes of Regulation G, a non-GAAP financial measure is a numerical measure of a registrant's historical or future financial performance, financial position or cash flows that:

• Excludes amounts, or is subject to adjustments that have the effect of excluding amounts, that are included in the most directly comparable measure calculated and presented in accordance with GAAP in the statement of income, balance sheet or statement of cash flows (or equivalent statements) of the issuer; or

• Includes amounts, or is subject to adjustments that have the effect of including amounts, that are excluded from the most directly comparable measure so calculated and presented.

In this regard, GAAP refers to generally accepted accounting principles in the United States.

The proposed version of Regulation G indicated that, with respect to foreign private issuers whose primary financial statements are prepared in accordance with non-U.S. generally accepted accounting principles, references to

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[12] Section 401(b) of the Sarbanes-Oxley Act directs the Commission to adopt rules concerning the public disclosure or release of "pro forma financial information" by a company filing reports under Section 13(a) [15 U.S.C. § 78m(a)] or 15(d) [15 U.S.C. § 780(d)]. Because the Commission's rules and regulations address the use of "pro forma financial information" in other contexts, particularly in Regulation S–X, and use that term differently from its use in the Sarbanes-Oxley Act, we are adopting the term "non-GAAP financial measures" to identify the types of information targeted by Section 401(b) of the Sarbanes-Oxley Act.

[13] See Rule 101(c) of Regulation G [17 CFR 244.101(c)]. Registered investment companies are excluded from the definition of "registrant" for purposes of Regulation G, as Section 405 of the Sarbanes-Oxley Act exempts investment companies registered under Section 8 of the Investment Company Act of 1940 (15 U.S.C. § 80a–8) from Section 401 of the Sarbanes-Oxley Act and any rules adopted by the Commission under Section 401.

[14] "Foreign private issuer" is defined in Rule 405 [17 CFR 230.405] under the Securities Act 1933 [15 U.S.C. §§ 77a *et seq.*].

[15] 17 CFR 249.306.

[16] See, for example, the comment letters of the Association of the Bar of the City of New York, Special Committee on Mergers, Acquisitions, and Corporate Control Contests; Association of the Bar of the City of New York, Committee on Securities Regulation; Deloitte & Touche, LLP; and Cleary, Gottlieb, Steen & Hamilton.

[17] See Exchange Act Rules 14a–12 (17 CFR 240.14a–12) and 14d–2 (17 CFR 240.14d–2), Securities Act Rules 165 (17 CFR 230.165) and 425 (17 CFR 230.425), and Item 1015 of Regulation M–A (17 CFR 229.1015).

GAAP would "also include" the principles under which those primary financial statements are prepared. Commenters expressed the concern that the words "also include" meant that foreign private issuers would have to reconcile the non-GAAP financial measure to both GAAP in their home country and U.S. GAAP.[18] As adopted, Regulation G clarifies this issue. First, in the case of foreign private issuers whose primary financial statements are prepared in accordance with non-U.S. generally accepted accounting principles, Regulation G makes clear that GAAP refers to the principles under which those primary financial statements are prepared. Second, in the case of foreign private issuers that include a non-GAAP financial measure derived from or based on a measure calculated in accordance with U.S. generally accepted accounting principles, Regulation G makes clear that GAAP refers to U.S. generally accepted accounting principles for purposes of the application of the requirements of Regulation G to the disclosure of that measure.

b. Discussion of the Definition

We do not intend the definition of "non-GAAP financial measures" to capture measures of operating performance or statistical measures that fall outside the scope of the definition set forth above. As such, non-GAAP financial measures do not include:

- Operating and other statistical measures (such as unit sales, numbers of employees, numbers of subscribers, or numbers of advertisers); and
- Ratios or statistical measures that are calculated using exclusively one or both of:
- Financial measures calculated in accordance with GAAP; and
- Operating measures or other measures that are not non-GAAP financial measures.

Non-GAAP financial measures do not include financial information that does not have the effect of providing numerical measures that are different from the comparable GAAP measure. Examples of measures to which Regulation G does not apply include the following:

- Disclosure of amounts of expected indebtedness, including contracted and anticipated amounts;
- Disclosure of amounts of repayments that have been planned or decided upon but not yet made;
- Disclosure of estimated revenues or expenses of a new product line, so long as such amounts were estimated in the same manner as would be computed under GAAP; and
- Measures of profit or loss and total assets for each segment required to be disclosed in accordance with GAAP.[19]

We do intend that the definition of non-GAAP financial measure capture all measures that have the effect of depicting either:

- A measure of performance that is different from that presented in the financial statements, such as income or loss before taxes or net income or loss, as calculated in accordance with GAAP; or
- A measure of liquidity that is different from cash flow or cash flow from operations computed in accordance with GAAP.

An example of a non-GAAP financial measure would be a measure of operating income[20] that excludes one or more expense or revenue items that are identified as "non-recurring." Another example would be EBITDA, which could be calculated using elements derived from GAAP financial presentations but, in any event, is not presented in accordance with GAAP. Examples of ratios and measures that would not be non-GAAP financial measures would include sales per square foot (assuming that the sales figure was calculated in accordance with GAAP) or same store sales (again assuming the sales figures for the stores were calculated in accordance with GAAP).

An example of a ratio that would not be a non-GAAP financial measure would be a measure of operating margin that is calculated by dividing revenues into operating income, where both revenue and operating income are calculated in accordance with GAAP. Conversely, an example of a ratio that would be a non-GAAP financial measure would be a measure of operating margin that is calculated by dividing revenues into operating income, where either revenue or operating income, or both, were not calculated in accordance with GAAP.

We received comment regarding the exclusion of financial measures used for regulatory purposes from the definition.[21] In response to these comments, we have provided an exclusion from the definition of "non-GAAP financial measure" for financial measures required to be disclosed by GAAP, Commission rules, or a system of regulation of a government or governmental authority or self-regulatory organization that is applicable to the registrant. Examples of such financial measures would include measures of capital or reserves calculated for such a regulatory purpose.

3. Requirements of Regulation G

Regulation G contains a general disclosure requirement and a specific requirement of a reconciliation of the non-GAAP financial measure to the most directly comparable GAAP financial measure.

a. General Disclosure Requirement[22]

Regulation G includes the general disclosure requirement that a registrant, or a person acting on its behalf, shall not make public a non-GAAP financial measure that, taken together with the information accompanying that measure, contains an untrue statement of a material fact or omits to state a material fact necessary in order to make the presentation of the non-GAAP financial measure, in light of the circumstances under which it is presented, not misleading.[23]

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[18] See, for example, the comment letters of Deloitte & Touche, LLP and the Association of Private French Enterprises-Association of Large French Enterprises.

[19] FASB Statement No. 131, Disclosures About Segments of an Enterprise and Related Information, requires that companies report a measure of profit or loss and total assets for each reportable segment. This tabular information is presented in a note to the audited financial statements and is required to be reconciled to the GAAP measures, with all significant reconciling items separately identified and described. A registrant is required to provide a Management's Discussion & Analysis of segment information if such a discussion is necessary to an understanding of the business. Such discussion would generally include the measures reported under FASB Statement No. 131.

[20] Rule 5–03(b)(1) through Rule 503(b)(7) of Regulation S–X [17 CFR 210.5–03(b)(1) through 17 CFR 210.5–03(b)(7)] includes guidance on the components of operating income (loss).

[21] See, for example, the comment letters of America's Community Bankers and the American Bankers Association.

[22] 17 CFR 244.100(b).

[23] In its comment letter, the Association for Investment Management and Research expressed concern regarding the presentation of non-GAAP financial measures that appear to have been calculated and presented in a manner consistent with prior presentations of that measure when, in fact, the method of calculating or presenting the measure has changed since prior periods. We agree with this concern. As such, registrants should consider whether a change in the method of calculating or presenting a non-GAAP financial measure from one period to another, without a complete description of the change in that methodology, complies with the requirement of Regulation G that a registrant, or a person acting on its behalf, shall not make public a non-GAAP financial measure that, taken together with the information accompanying that measure, contains an untrue statement of a material fact or omits to state a material fact necessary in order to make the presentation of the non-GAAP financial measure, in light of the circumstances under which it is presented, not misleading.

b. Reconciliation Requirement [24]

Whenever a company that is subject to Regulation G, or a person acting on its behalf, publicly discloses any material information that includes a non-GAAP financial measure, Regulation G requires the registrant to provide the following information as part of the disclosure or release of the non-GAAP financial measure:[25]

- A presentation of the most directly comparable financial measure calculated and presented in accordance with GAAP;[26] and
- A reconciliation (by schedule or other clearly understandable method), which shall be quantitative for historic measures and quantitative, to the extent available without unreasonable efforts, for prospective measures, of the differences between the non-GAAP financial measure presented and the most directly comparable financial measure or measures calculated and presented in accordance with GAAP.[27]

If a non-GAAP financial measure is released orally, telephonically, by webcast, by broadcast, or by similar means, the registrant may provide the accompanying information required by Regulation G by: (1) Posting that information on the registrant's web site; and (2) disclosing the location and availability of the required accompanying information during its presentation.[28]

With regard to the quantitative reconciliation of non-GAAP financial measures that are forward-looking, Regulation G requires a schedule or other presentation detailing the differences between the forward-looking non-GAAP financial measure and the appropriate forward-looking GAAP financial measure. If the GAAP financial measure is not accessible on a forward-looking basis, the registrant must disclose that fact and provide reconciling information that is available without an unreasonable effort. Furthermore, the registrant must identify information that is unavailable and disclose its probable significance.

Some commenters suggested that we define "public" disclosure and persons acting "on behalf of" a registrant.[29] In both cases, the commenters made reference to Regulation FD [30] as a precedent. We believe that the precedent of Regulation FD is largely inapposite in this regard and, therefore, have not added these definitions. Under Regulation FD, broad "public" disclosure is the requirement, not the triggering event. The perceived need for exclusions from the triggering disclosures and the specified list of company officials that are acting for the company under Regulation FD was the concern that any disclosure—private or otherwise—would trigger a public disclosure requirement. There should be no such concerns with Regulation G. Only "public" disclosure triggers Regulation G, and an issuer is properly responsible for any person making "public" disclosures on its behalf.[31]

We understand, and indeed intend, that Regulation FD and Regulation G will operate in tandem. A "private" communication of material, non-public information to, for example, an analyst or a shareholder triggers a requirement for broad public disclosure under Regulation FD. If that public disclosure is of material information containing a non-GAAP financial measure, Regulation G will apply to that disclosure.

4. Liability Matters

Rule 102 of Regulation G [32] expressly provides that neither the requirements of Regulation G nor a person's compliance or non-compliance with the requirements of Regulation G shall in itself affect any person's liability under Exchange Act Section 10(b) [33] or Rule 10b–5 thereunder.[34] Disclosure pursuant to Regulation G that is materially deficient may, in addition to violating Regulation G, give rise to a violation of Section 10(b) or Rule 10b–5 thereunder if all the elements for such a violation are present. In this regard, we reminded companies in December 2001 that, under certain circumstances, non-GAAP financial measures could mislead investors if they obscure the company's GAAP results.[35] We continue to be of the view that some disclosures of non-GAAP financial measures could give rise to actions under Rule 10b–5.[36]

Section 3(b) of the Sarbanes-Oxley Act provides that a violation of that Act or the Commission's rules thereunder shall be treated for all purposes as a violation of the Exchange Act. Therefore, if an issuer, or any person acting on its behalf, fails to comply with Regulation G, the issuer and/or the person acting on its behalf could be subject to a Commission enforcement action alleging violations of Regulation G. Additionally, if the facts and circumstances warrant, we could bring an action under both Regulation G and Rule 10b–5.

B. Non-GAAP Financial Measures in Filings With the Commission—. Amendments to Item 10 of Regulation S–K, Item 10 of Regulation S–B and Form 20–F

1. Application

a. General Standard

We are amending Item 10 of Regulation S–K and Item 10 of Regulation S–B to include a statement concerning the use of non-GAAP financial measures in filings with the Commission. The amendments do not apply to registered investment

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[24] 17 CFR 244.100(a).

[25] A registrant's failure to include all of the information required to be included in a public disclosure or release by Regulation G would not affect that registrant's form eligibility under the Securities Act or whether there is adequate current public information regarding the registrant for purposes of Securities Act Rule 144(c) (17 CFR 230.144(c)).

[26] Examples of financial measures calculated and presented in accordance with GAAP would include, but not be limited to, earnings or cash flows as reported in the GAAP financial statements. We believe that it is most appropriate to provide registrants with the flexibility to best make the determination as to which is the "most directly comparable financial measure calculated and presented in accordance with GAAP." We, therefore, do not believe that it is appropriate to provide a specific definition of that term. As general guidance, however, we note that our staff has been, and continues to be, of the view that (1) non-GAAP financial measures that measure cash or "funds" generated from operations (liquidity) should be balanced with disclosure of amounts from the statement of cash flows (cash flows from operating, investing and financing activities); and (2) non-GAAP financial measures that depict performance should be balanced with net income, or income from continuing operations, taken from the statement of operations.

[27] In the case of ratios or measures where a non-GAAP financial measure is the numerator and/or the denominator in the calculation of that ratio or measure, the registrant must provide a reconciliation with regard to each non-GAAP financial measure used in the calculation. The registrant must also show the ratio or measure as calculated using the most directly comparable GAAP financial measure(s).

[28] Note 1 to Rule 100 of Regulation G [17 CFR 244.100]. While Note 1 to Regulation G does not state how long a company must keep this information available on its web site, we encourage companies to provide ongoing web site access to this information. At a minimum, we suggest that companies provide web site access to this information for at least a 12-month period.

[29] See, for example, the comment letter of the American Bar Association Committee on Federal Regulation of Securities and the American Bar Association Committee on Law and Accounting.

[30] 17 CFR 243.100–243.103.

[31] Whether disclosure is "public" will, of course, depend on all of the facts and circumstances surrounding that disclosure. Whether disclosure is "on behalf of" the registrant also will depend on all of the facts surrounding that disclosure. However, consistent with Regulation FD, we intend that a person who discloses material non-public information in breach of a duty of trust or confidence to the registrant should not be considered to be acting "on behalf of" the registrant.

[32] 17 CFR 244.102

[33] 15 U.S.C. § 78j.

[34] 17 CFR 240.10b–5.

[35] See Release No. 33–8039 (Dec. 4, 2001) [59 FR 63731].

[36] See Release No. 33–8039 (Dec. 4, 2001) [59 FR 63731] and *In the Matter of Trump Hotels & Casino, Inc.*, Release No. 34–45287 (Jan. 16, 2002).

companies.[37] The non-GAAP financial measures provisions in amended Item 10 of Regulation S–K and Item 10 of Regulation S–B apply to the same categories of non-GAAP financial measures as are covered by Regulation G.[38]

b. Foreign Private Issuers

We are amending Exchange Act Form 20–F to incorporate Item 10 of Regulation S–K. Accordingly, foreign private issuers will be subject to the same requirements as domestic issuers with respect to the use of non-GAAP financial measures in filings with the Commission on Form 20–F.[39] Consistent with the proposal, filers on Form 40–F under the Multi-Jurisdictional Disclosure System are not subject to those requirements.[40]

As noted above, the definition of "non-GAAP financial measure" is the same for purposes of these amendments as for Regulation G. However, a non-GAAP financial measure that would otherwise be prohibited will be permitted in a Form 20–F filing of a foreign private issuer if the measure is (1) required or expressly permitted by the standard-setter that establishes the generally accepted accounting principles used in the foreign private issuer's primary financial statements and (2) included in the foreign private issuer's annual report or financial statements used in its home country jurisdiction or market.[41] We have modified the language of this provision to clarify its application. We intended, however, that this exception cover only situations where the foreign organization affirmatively acts to require or permit the measure, and not situations where the measure was merely not prohibited. We have, therefore, maintained the requirement of "express" permission, notwithstanding certain comments we received.[42]

2. Requirements of Amended Item 10 of Regulation S–K and Item 10 of Regulation S–B

The amendments to Item 10 of Regulation S–K and Item 10 of Regulation S–B require registrants using non-GAAP financial measures in filings with the Commission to provide:[43]

- A presentation, with equal or greater prominence, of the most directly comparable financial measure calculated and presented in accordance with GAAP;
- A reconciliation (by schedule or other clearly understandable method), which shall be quantitative for historical non-GAAP measures presented, and quantitative, to the extent available without unreasonable efforts, for forward-looking information, of the differences between the non-GAAP financial measure disclosed or released with the most directly comparable financial measure or measures calculated and presented in accordance with GAAP;
- A statement disclosing the reasons why the registrant's management believes that presentation of the non-GAAP financial measure provides useful information to investors regarding the registrant's financial condition and results of operations;[44] and
- To the extent material, a statement disclosing the additional purposes, if any, for which the registrant's management uses the non-GAAP financial measure that are not otherwise disclosed.

In addition to these mandated disclosure requirements, amended Item 10 of Regulation S–K and Item 10 of Regulation S–B prohibit the following:

- Excluding charges or liabilities that required, or will require, cash settlement, or would have required cash settlement absent an ability to settle in another manner, from non-GAAP liquidity measures, other than the measures EBIT and EBITDA;
- Adjusting a non-GAAP performance measure to eliminate or smooth items identified as non-recurring, infrequent or unusual, when (1) the nature of the charge or gain is such that it is reasonably likely to recur within two years, or (2) there was a similar charge or gain within the prior two years;[45]
- Presenting non-GAAP financial measures on the face of the registrant's financial statements prepared in accordance with GAAP or in the accompanying notes;
- Presenting non-GAAP financial measures on the face of any pro forma financial information required to be disclosed by Article 11 of Regulation S–X; and
- Using titles or descriptions of non-GAAP financial measures that are the same as, or confusingly similar to, titles or descriptions used for GAAP financial measures.

The requirements and prohibitions for filed information are more extensive and detailed than those of Regulation G. The additional requirements and prohibitions are generally consistent with the staff's historical practice in situations where it has reviewed filings containing non-GAAP financial measures.

Commenters expressed the concern that the prohibition on excluding from non-GAAP liquidity measures charges or liabilities that required, or will require, cash settlement, or would have required cash settlement absent an ability to settle in another manner, would prohibit the use of the non-GAAP financial measure EBITDA.[46] We are exempting EBIT and EBITDA from this provision because of their wide and recognized existing use. However, registrants must reconcile these measures to their most directly comparable GAAP financial measure. Also, in the discussion of why the measure is useful to investors, registrants must discuss why investors would find it valuable in the context in which it is presented, given the excluded items.

We had proposed that the requirements for a reconciliation to the most directly comparable GAAP financial measure be slightly more stringent than those set forth under Regulation G. In particular, in filings

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[37] Regulation S–B does not apply to registered investment companies, as they are excluded from the definition of "small business issuer" [17 CFR 228.10(a)(1)(iii)]. The amendments to Regulation S–K include a specific exemption for registered investment companies [17 CFR 229.10(e)(7)].

[38] These amendments apply only to non-GAAP financial measures in filings with the Commission. Regulation G applies to any public disclosure of material information that includes a non-GAAP financial measure, regardless of whether it is in a filing with the Commission. Accordingly, the requirement of Regulation G that the presentation of a non-GAAP financial measure, taken together with the information accompanying the measure and any other accompanying discussion, not contain a material misstatement or material omission necessary in order to make the presentation not misleading, in light of the circumstances in which the presentation is made, also applies to disclosures in documents filed with the Commission.

[39] Item 10 of Regulation S–K will not apply to materials submitted to the Commission on Form 6–K. However, if the information in the Form 6–K is incorporated by reference into a registration statement, prospectus or annual report, Item 10 of Regulation S–K would then apply to that information.

[40] Any public disclosure by these issuers that is not covered by the exclusion for foreign private issuers would, however, be subject to Regulation G.

[41] While such a non-GAAP financial measure would not be prohibited in a Form 20–F, the remaining requirements of Item 10 of Regulation S–K would, of course, continue to apply.

[42] See, for example, the comment letters of the American Institute of Certified Public Accountants; Deloitte & Touche, LLP; and Cleary, Gottlieb, Steen & Hamilton.

[43] As with Regulation G, the requirements of Item 10 of Regulation S–K and Item 10 of Regulation S–B will not apply to non-GAAP financial measures included in disclosure relating to a proposed business combination transaction, the entity resulting from the business combination transaction, or an entity that is a party to the business combination transaction if the disclosure is contained in a communication that is subject to the Commission's communications rules applicable to business combination transactions.

[44] With regard to the issuer's statement as to why management believes the non-GAAP financial measure provides useful information to investors, the fact that the non-GAAP financial measure is used by or useful to analysts cannot be the sole support for presenting the non-GAAP financial measure. Rather, the justification for the use of the measure must be substantive; it can, of course, be a substantive justification that causes a measure to be used by or useful to analysts.

[45] Permitted adjustments (including those permitted because they satisfy the two-year condition) would, of course, be subject to the reconciliation requirement.

[46] See, for example, the comment letters of Latham & Watkins; Intel Corporation; the Association of the Bar of the City of New York, Committee on Securities Regulation; BDO Seidman, LLP; and Ernst & Young LLP.

with the Commission, it was proposed that there not be an "unreasonable effort" exception for forward-looking information to the requirement for a quantitative reconciliation between the non-GAAP financial measure and the comparable GAAP financial measure. Commenters expressed the view that the need for such an exception was present equally in disclosure that was filed with the Commission and disclosure that was not filed.[47] In response to these comments, we have revised the requirement for filed documents to include the same exception as in Regulation G. Accordingly, with regard to the quantitative reconciliation of non-GAAP financial measures that are forward-looking, Item 10 of Regulation S–K and Item 10 of Regulation S–B require a schedule or other presentation detailing the differences between the forward-looking non-GAAP financial measure and the appropriate forward-looking GAAP financial measure. If the GAAP financial measure is not accessible on a forward-looking basis, the registrant must disclose that fact and provide reconciling information that is available without an unreasonable effort. Furthermore, the registrant must identify information that is unavailable and disclose its probable significance.

As proposed, Item 10 of Regulation S–K and Item 10 of Regulation S–B would have included a prohibition on the use of "non-GAAP per share financial measures." We received significant comment expressing concern with this part of the proposal.[48] The commenters were of the view that the proposed prohibition would deprive investors of useful information and that the other requirements of Regulation G and Item 10 would provide adequate protections with regard to the use of such financial measures.[49] In response to those comments, we have not included a prohibition on "non-GAAP per share financial measures" in the amendments to Item 10 of Regulation S–K or Item 10 of Regulation S–B.[50]

Some commenters were of the view that the proposed requirements of (1) a statement regarding the purposes for which management uses the non-GAAP financial measure and (2) a statement of the utility of the non-GAAP financial measure to investors would likely result in duplicative disclosure.[51] In response to these comments, we have revised the requirement of a statement of the purposes for which management uses the non-GAAP financial measure to apply only to the extent that the information is material and is not presented in the statement of the utility of the non-GAAP financial measure to investors. Consistent with the proposal, the requirement for these statements may be satisfied by including the statements in the most recent annual report filed with the Commission (or a more recent filing) and by updating those statements, as necessary, no later than the time of the filing containing the non-GAAP financial measure.

The required statements of the purposes for which management uses the non-GAAP financial measure and the utility of the information to investors should not be boilerplate. We intend these statements to be clear and understandable. We also intend these statements to be specific to the non-GAAP financial measure used, the registrant, the nature of the registrant's business and industry, and the manner in which management assesses the non-GAAP financial measure and applies it to management decisions.

C. New Item 12 of Form 8–K

We are amending Form 8–K to add new Item 12, "Disclosure of Results of Operations and Financial Condition."[52] The addition of Item 12 to Form 8–K will bring earnings information within our current reporting system by requiring registrants to furnish to the Commission all releases or announcements disclosing material non-public financial information about completed annual or quarterly fiscal periods. New Item 12 does not require that companies issue earnings releases or similar announcements. However, such releases and announcements will trigger the requirements of Item 12.

1. General Requirement

Item 12 requires registrants to furnish to the Commission a Form 8–K within five business days of any public announcement or release disclosing material non-public information regarding a registrant's results of operations or financial condition for an annual or quarterly fiscal period that has ended.[53] The requirements of Item 12 will apply regardless of whether the release or announcement includes disclosure of a non-GAAP financial measure. Item 12 requires the registrant to identify briefly the announcement or release and include the announcement or release as an exhibit to the Form 8–K.

Repetition of information that was publicly disclosed previously or the release of the same information in a different form (for example in an interim or annual report to shareholders) would not trigger the Item 12 requirement. This result would not

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[47] See, for example, the comment letters of the Securities Law Committee of the American Society of Corporation Secretaries and Deloitte & Touche, LLP.

[48] See, for example, the comment letters of Fannie Mae; the Securities Law Committee of the American Society of Corporate Secretaries; the American Council of Life Insurers; the American Institute of Certified Public Accountants; the National Association of Real Estate Investment Trusts; the Real Estate Roundtable; the New York Clearing House Association; and the Committee on Corporate Reporting of Financial Executives International.

[49] See footnote 11 for additional information regarding the use of "non-GAAP per share financial measures." Further, despite the absence of a prohibition against the use of "non-GAAP per share financial measures" in Item 10 of Regulation S–K and Item 10 of Regulation S–B, registrants should consider whether the use of any per share measure that is not calculated using a share figure that is presented on a diluted basis complies with (1) the requirement of Regulation G that a registrant, or a person acting on its behalf, shall not make public a non-GAAP financial measure that, taken together with the information accompanying that measure, contains an untrue statement of a material fact or omits to state a material fact necessary in order to make the presentation of the non-GAAP financial measure, in light of the circumstances under which it is presented, not misleading; and (2) generally accepted accounting principles (see, for example, FASB Statement No. 128, Earnings Per Share).

[50] A number of commenters in the real estate industry expressed concern regarding the use of the non-GAAP financial measure "funds from operations per share" in earnings releases and materials that are filed with or furnished to the Commission. Because amended Item 10 of Regulation S–K and amended Item 10 of Regulation S–B do not include a prohibition on "non-GAAP per share financial measures," registrants may use the "funds from operations per share" measure, subject to the requirements of Regulation G, amended Item 10 of Regulation S–K and amended Item 10 of Regulation S–B.

[51] See, for example, the comment letter of the American Bar Association Committee on Federal Regulation of Securities and the American Bar Association Committee on Law and Accounting.

[52] In Release No. 33–8106 (June 17, 2002) [67 FR 42913], we proposed significant amendments to Form 8–K. We intend to address those proposals in the near future. As we have not yet revised Form 8–K as proposed in Release No. 33–8106, we have adopted the proposed requirement regarding earnings releases and similar disclosures without using the new numbering system proposed for Form 8–K. At the time we address the proposals in Release No. 33–8106, we will consider the need to renumber all of the items in Form 8–K, including new Item 12.

[53] The proposing release would have required a registrant to file the Form 8–K under Item 12 within two business days after the earnings release or similar disclosure. We had proposed this deadline in anticipation of the adoption of our proposal, in Release No. 33–8106, to shorten the filing deadline for all reports on Form 8–K. As we have not yet addressed those proposals, we believe it is appropriate to adopt a temporary deadline for furnishing a report on Form 8–K under Item 12 of five business days, the shorter of the two existing Form 8–K deadlines. When we address the Form 8–K proposals, we may then shorten the Item 12 deadline. At that time, we will consider the comments received in response to the proposing release and our proposal therein to set a two-business day deadline for earnings releases or similar disclosures on Form 8–K.

change if the repeated information were accompanied by information that was not material, whether or not already public. However, release of additional or updated material non-public information regarding the registrant's results of operations or financial condition for a completed fiscal year or quarter would trigger an additional Item 12 obligation. Issuers that make earnings announcements or other disclosures of material non-public information regarding a completed fiscal quarter or year in an interim or annual report to shareholders would be permitted to specify in the Form 8–K which portion of that report contains the information required to be furnished under Item 12. In addition, the requirement to furnish a Form 8–K under Item 12 would not apply to issuers that make these announcements and disclosures only in their quarterly reports filed with the Commission on Form 10–Q[54] (or 10–QSB[55]) or their annual reports filed with the Commission on Form 10–K[56] (or 10–KSB[57]).

Item 12 includes an exception from its requirements where non-public information is disclosed orally, telephonically, by webcast, by broadcast, or by similar means in a presentation that is complementary to, and occurs within 48 hours after, a related, written release or announcement that triggers the requirements of Item 12.[58] In this situation, Item 12 would not require the registrant to furnish an additional Form 8–K with regard to the information that is disclosed orally, telephonically, by webcast, by broadcast, or by similar means if:[59]

- The related, written release or announcement has been furnished to the Commission on Form 8–K pursuant to Item 12 prior to the presentation;[60]
- The presentation is broadly accessible to the public by dial-in conference call, webcast or similar technology;
- The financial and statistical information contained in the presentation is provided on the registrant's web site, together with any information that would be required under Regulation G;[61] and
- The presentation was announced by a widely disseminated press release that included instructions as to when and how to access the presentation and the location on the registrant's web site where the information would be available.

Item 12 of Form 8–K will apply only to publicly disclosed or released material non-public information concerning an annual or quarterly fiscal period that has ended. While such disclosure may also include forward-looking information, it is the material information about the completed fiscal period that triggers Item 12. Accordingly, Item 12 will not apply to public disclosure of earnings estimates for future or ongoing fiscal periods, unless those estimates are included in the public announcement or release of material non-public information regarding an annual or quarterly fiscal period that has ended.[62]

2. Filing Versus Furnishing—Liability and Incorporation by Reference

As proposed, Item 12 would have required registrants to "file" a Form 8–K meeting the requirements of Item 12. This proposal was in contrast to Item 9 of Form 8–K, which permits registrants to "furnish" a Form 8–K to the Commission. The most significant implications of "furnishing" a Form 8–K to the Commission, rather than "filing" a Form 8–K with the Commission are clear:

- Information that is "furnished to the Commission" in such a Form 8–K is not subject to Section 18[63] of the Exchange Act unless the registrant specifically states that the information is to be considered "filed";
- Information that is "furnished to the Commission" in such a Form 8–K is not incorporated by reference into a registration statement, proxy statement or other report unless the registrant specifically incorporates that information into those documents by reference; and
- Information that is "furnished to the Commission" in such a Form 8–K is not subject to the requirements of amended Item 10 of Regulation S–K or Item 10 of Regulation S–B, while "filed" information would be subject to those requirements.

We have considered the views of commenters that requiring earnings releases to be filed would have a detrimental effect on the level and quality of information that is provided to investors.[64] These commenters expressed the concern that the enhanced liability may preclude registrants from making earnings releases or similar disclosures. Further, the commenters were concerned that the need to satisfy the more stringent requirements in amended Item 10 of Regulation S–K and Item 10 of Regulation S–B within the required timeframe of Form 8–K would cause registrants to limit their publication of earnings releases or similar disclosures.

After consideration of these comments, Item 12 of Form 8–K, as adopted, requires that earnings releases or similar disclosures be furnished to the Commission rather than filed. Regulation G would, of course, apply to these releases and disclosures. In addition, to provide certain of the protections provided by the amendments to Item 10 of Regulation S–K and Item 10 of Regulation S–B to earnings releases, even if they are not filed, we have included in Item 12 of Form 8–K the requirements of paragraph (e)(1)(i) of Item 10 of Regulation S–K and paragraph (h)(1)(i) of Item 10 of Regulation S–B. As a result, in addition to the requirements already imposed by Regulation G, registrants would be required to disclose:

- The reasons why the registrant's management believes that presentation of the non-GAAP financial measure provides useful information to investors regarding the registrant's financial condition and results of operations;[65] and
- to the extent material, the additional purposes, if any, for which the registrant's management uses the non-GAAP financial measure that are not otherwise disclosed.

Registrants may satisfy this requirement by including the disclosure

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[54] 17 CFR 249.308a.

[55] 17 CFR 249.308b.

[56] 17 CFR 249.310.

[57] 17 CFR 249.310b.

[58] We intend this exception to permit current practices where these presentations include information that, although not already included in the related, written release or announcement, is complementary thereto. We do not intend this exception to foster changes in practice whereby disclosure is shifted from the written release or announcement to the complementary presentation.

[59] In its comment letter, the American Bar Association Committee on Federal Regulation of Securities asked whether the phrase "similar means" in proposed Item 1.04(b) related to the entire preceding list (as proposed, this list read "orally, telephonically, webcast, or by similar means") or whether it merely related to "webcast." We intend the phrase "similar means" to relate to the entire preceding list. We have revised Item 12 to be clearer in this regard.

[60] As the deadline for furnishing the Form 8–K to the Commission is five business days, this exception would be available only to registrants that furnish that Form 8–K to the Commission in advance of the deadline specified in Item 12.

[61] While Item 12 does not state how long a company must keep this information available on its web site, we encourage companies to provide ongoing web site access to this information. At a minimum, we suggest that companies provide web site access to this information for at least a 12-month period. Further, we understand that a company may have multiple web sites that it uses for various purposes, such as investor relations, product information and business-to-business activities. We interpret this requirement to mean that the information is provided on the web site or page that the company normally uses for its investor relations functions.

[62] Of course, Regulation FD would continue to apply to disclosure of such forward-looking information if it were material.

[63] 15 U.S.C. § 78r.

[64] *See*, for example, the comment letters of the American Bar Association Committee on Federal Regulation of Securities; the American Bar Association Committee on Law and Accounting; the American Council of Life Insurers; and the Association of the Bar of the City of New York, Committee on Securities Regulation.

[65] *See* footnote 44 and the related discussion of the amendments to Item 10 of Regulation S–K and Item 10 of Regulation S–B for additional information with regard to this requirement.

in the Form 8–K or in the release or announcement that is included as an exhibit to the Form 8–K. As indicated above, registrants also may satisfy the requirement to provide these additional two statements by including the disclosure in their most recent annual report filed with the Commission (or a more recent filing) and by updating those statements, as necessary, no later than the time the Form 8–K is furnished to the Commission. The other amendments to Item 10 of Regulation S–K and Item 10 of Regulation S–B would not apply.

3. Relationship of Item 12 to Regulation FD

Earnings releases and similar disclosures that trigger the requirements of Item 12 are also subject to Regulation FD. The application of Item 12 would differ from Regulation FD, however, in that the requirements of Item 12 would always implicate Form 8–K for those disclosures, while Regulation FD provides that Form 8–K is an alternative means of satisfying its requirements. Further, a Form 8–K furnished to the Commission pursuant to Item 9 would satisfy an issuer's obligation under Regulation FD only if the Form 8–K were furnished to the Commission within the time frame required by Regulation FD. Regulation FD could, of course, be satisfied by public disclosure other than through the filing of a Form 8–K meeting Regulation FD's requirements; in that case, Item 12 would require that a Form 8–K be furnished to the Commission within the five business day timeframe of Item 12. A Form 8–K furnished within the timeframe required by Regulation FD and otherwise satisfying the requirements of both Item 9 and Item 12 could be furnished to the Commission once, indicating that it is being furnished under both Item 9 and Item 12, and satisfy both requirements.

III. Paperwork Reduction Act

Regulation G and related amendments to Regulation S–K, Regulation S–B, Form 8–K and Form 20–F contain "collections of information" requirements within the meaning of the Paperwork Reduction Act of 1995 ("PRA"),[66] and the Commission has submitted the proposals to the Office of Management and Budget ("OMB") for review in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11. The titles for the information collections are: Regulation G, Regulation S–K, Regulation S–B, Form 8–K and Form 20–F. The Commission did not receive any comments on the paperwork burden. OMB has approved all but one of the collections of information. OMB has not yet approved the changes to Form 8–K. We will announce the approval by separate release.

The Commission is adopting Regulation G pursuant to Section 401 of the Sarbanes-Oxley Act. Regulation G will require registrants that publicly disclose material information that includes non-GAAP financial measures to provide a reconciliation to the most directly comparable GAAP financial measures. Regulation G is intended to implement the requirements of the Sarbanes-Oxley Act. Specifically, Regulation G is intended to provide investors with balanced financial disclosure when non-GAAP financial measures are presented. Regulation G defines a non-GAAP financial measure as a numerical measure of an issuer's historical or future financial performance, financial position or cash flow that:

- Excludes amounts, or is subject to adjustments that have the effect of excluding amounts, that are included in the most directly comparable measure calculated and presented in accordance with GAAP in the statement of income, balance sheet or statement of cash flows (or equivalent statements) of the issuer; or
- Includes amounts, or is subject to adjustments that have the effect of including amounts, that are excluded from the most directly comparable measure calculated and presented in accordance with GAAP.

Accordingly, by definition, a non-GAAP financial measure that triggers the application of Regulation G would have been derived from a GAAP measure. We continue to expect the cost of obtaining the additional disclosure required by Regulation G to be minimal. Accordingly, we have estimated for purposes of the PRA that it will take .5 burden hour for each time a respondent complies with Regulation G. We anticipate that on average a company will have to comply with Regulation G roughly six times a year. Since there are approximately 14,000 public companies that would be subject to Regulation G we have estimated that there will be 84,000 disclosures made in accordance with Regulation G for a total of 42,000 burden hours. We would expect that an in-house junior accountant would prepare the actual reconciliation.

Regulation S–K (OMB Control No. 3235–0071) and Regulation S–B (OMB Control No. 3235–0417) prescribe disclosure requirements that registrants must follow when filing registration statements, reports and schedules with the Commission. Our amendments to Item 10 of Regulation S–K and Item 10 of Regulation S–B incorporate the requirements of Regulation G and codify existing staff interpretations. Because the collection of information regarding the reconciliation is already being accounted for in Regulation G, we do not believe that adding the same requirement to Item 10 of Regulation S–K and Item 10 of Regulation S–B creates an additional collection of information within the meaning of the PRA. To account for the reconciliation in both Regulation G and Item 10 or Regulation S–K and Item 10 of Regulation S–B would result in double counting. Additionally, companies already, usually and customarily, disclose the purposes for which the registrant's management uses the non-GAAP financial measure and why it believes that its presentation of the non-GAAP financial measure provides useful information to investors. Accordingly, we continue to believe that our amendments to Item 10 of Regulation S–K and Item 10 of Regulation S–B do not contain a new "collection of information" or alter the existing burden of these collections of information within the meaning of the PRA.

Form 8–K (OMB Control No. 3235–0060) prescribes information, such as material events or corporate changes that a registrant must disclose. Item 12 of Form 8–K requires a company that publicly discloses material information regarding its actual or expected quarterly or annual results of operations or financial condition for a completed fiscal period to furnish the text of the public disclosure and any accompanying analysis. Item 12 of Form 8–K does not require companies to actually issue an earnings announcement or release but only requires that it be furnished if they choose to issue an earnings announcement or release. Item 12 will bring earnings announcements and releases into the formal disclosure system although they would not be deemed filed or, absent additional action by the registrant, incorporated into registration statements or proxy statements filed with the Commission. The Forms 8–K would be available to investors on a widespread basis on our Internet Web site.

Item 12 of Form 8–K was modified from our proposing release in that the Form 8–K is no longer considered to be filed with the Commission but, rather, it would be considered furnished to the Commission. This change does not, however, alter the paperwork burden. We estimate, for purposes of the PRA, the burden associated with actually furnishing the Form 8–K to be minimal.

[66] 44 U.S.C. § 3501 *et seq.*

We believe that complying with Item 12 of Form 8–K would require approximately .5 of a burden hour. We estimate that approximately 14,000 public companies would make an average of four filings per year. We believe the total burden hours associated with Item 12 would be 28,000 hours. We would expect that companies would use in-house personnel to file the Form 8–K.

We have amended Form 20–F (OMB Control Number 3235–0288) to incorporate our amendments to Item 10 of Regulation S–K. While Regulation G provides a limited exception for foreign private issuers, this exception would not apply to their Form 20–F filings or any disclosure of non-GAAP financial measures made in the United States. Accordingly, we do not believe our amendment to Form 20–F would result in an additional collection of information as any burden is already accounted for in Regulation G.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. Compliance with the disclosure requirements is mandatory. There is no mandatory retention period for the information disclosed, and responses to the disclosure requirements will not be kept confidential.

IV. Cost-Benefit Analysis

The Sarbanes-Oxley Act seeks to enhance the financial disclosure of public companies. In furtherance of this goal, the Sarbanes-Oxley Act has required the Commission, among other things, to adopt rules requiring that if a company publicly discloses non-GAAP financial measures or includes them in a Commission filing, the company must reconcile those non-GAAP financial measures to a company's financial condition and results of operations under GAAP. Moreover, the Sarbanes-Oxley Act requires that any public disclosure of a non-GAAP financial measure not contain an untrue statement of a material fact or omit to state a material fact necessary in order to make the non-GAAP financial measure, in light of circumstances under which it is presented, not misleading. Additionally, the Sarbanes-Oxley Act seeks to have companies that report under Sections 13(a) and 15(d) of the Exchange Act disclose to the public on a rapid and current basis information concerning material changes in their financial condition or operations.

New Regulation G and the amendments to Item 10 of Regulation S–K, Item 10 of Regulation S–B and Form 20–F will fulfill the statutory directive under Section 401(b) of the Sarbanes-Oxley Act. We recognize that any implementation of the Sarbanes-Oxley Act would likely result in costs as well as benefits and have an effect on the economy. We are sensitive to the costs and benefits. While our proposals received significant public comment, no commenter provided any quantitative data on costs or benefits.

A. Benefits

Regulation G and the amendments to our rules are intended to ensure that investors and others are not misled by the use of non-GAAP financial measures. Additionally, the amendments to Form 8–K are intended to create a central depository where investors and other market participants can look to find the latest earnings announcements and releases by public companies and provide enhanced attention to those announcements and releases.

Regulation G and amendments to Item 10 of Regulations S–K and S–B require that any non-GAAP financial measure presented be reconciled with its most directly comparable financial measure prepared in accordance with GAAP. We anticipate that this reconciliation will help investors and market professionals to better evaluate the non-GAAP financial measures presented. We continue to believe that the reconciliation will provide the securities markets with additional information to more accurately evaluate companies' securities and, in turn, result in a more accurate pricing of securities.

B. Costs

We believe that the costs associated with the Regulation G and amendments will be minimal. As noted earlier, no commenter provided any quantitative data in their comment letters to the Commission. We contacted a sample of commenters to gather additional data about the costs associated with reconciling a non-GAAP financial measure with the most directly comparable GAAP financial measure. The commenters stated that, in most cases, for historical measures, registrants have the most directly comparable GAAP financial measure available at the time they prepare or release a non-GAAP financial measure.[67] In addition, the commenters stated that the cost of reconciling a non-GAAP financial measure with the most directly comparable GAAP financial measure is not significant for historical measures. Most of the commenters that responded to our inquiries already prepare a reconciliation (either for internal use, external release, or both) between a non-GAAP financial measure and the most directly comparable GAAP financial measure when a non-GAAP financial measure, on an historical basis, is presented. Accordingly, those companies do not expect to incur any significant incremental costs in complying with the proposal in this particular area.[68]

Three commenters in the group that we contacted indicated that they present forward-looking non-GAAP financial measures in earnings releases. Those companies indicated that they do not have the most directly comparable GAAP financial measure available at the time they prepare their non-GAAP measure because they are unable to quantify certain amounts that would be required to be included in the GAAP measure.[69] However, those companies would be able to explain, at the date the forward-looking non-GAAP financial measure is released, the types of gains, losses, revenues or expenses that would need to be added to or subtracted from the non-GAAP financial measure to arrive at the most directly comparable GAAP measure, even though they cannot quantify all of those items. The companies indicated that if they were to be required to quantify the reconciling items between the non-GAAP forward-looking financial measure and the most directly comparable GAAP financial

[67] We continue to believe that, in cases where the GAAP financial measure is not available for historical measures, any costs associated with obtaining the GAAP financial measure would reduce future costs associated with filing other forms, such as the Form 10–Q and Form 10–K where the GAAP measure must be presented. See also footnote 68.

[68] One company indicated that, for a performance-based non-GAAP financial measure, the company already prepares a reconciliation to net income determined in accordance with GAAP by the date of the earnings release. However, for non-GAAP measures that are liquidity measures, the company does not currently prepare a reconciliation to the most comparable GAAP measure by the date of the company's earnings release because the statement of cash flows is not prepared until later in the financial reporting process. This company estimated that, under the proposal, the company would not necessarily incur significant additional costs to reconcile its non-GAAP liquidity financial measures to GAAP-based cash flow measures, but some salaried employees would be required to work additional hours earlier in the financial reporting process to complete the preparation of the statement of cash flows by the date of the earnings release.

[69] For example, one company that uses a non-GAAP financial measure derived from net income told us that it excludes realized capital gains and losses, gains and/or losses on dispositions of operations, and accounting changes in preparing its non-GAAP financial measure, because it is unable to forecast with any degree of comfort the amounts that would be recorded under GAAP for these items.

measure, it would be very difficult and may result in the company deciding not to provide the non-GAAP financial measure to the public. Regulation G requires that, for forward-looking measures, the reconciliation between non-GAAP and GAAP financial measures must be quantitative "to the extent available and without unreasonable efforts." Accordingly, we do not believe Regulation G will impose significant additional costs on registrants with respect to reconciling forward-looking non-GAAP and GAAP financial measures.

We continue to estimate that public companies would have to comply with Regulation G six times a year. There are roughly 14,000 public companies. Using our estimates from the Paperwork Reduction Act section, we would expect that it would take a junior accountant roughly .5 hours to complete the required reconciliation and ensure there are no material misstatements. Accordingly, we have estimated that the total burden hours needed to comply with Regulation G would be 42,000 hours. Using cost data from the Securities Industry Association's Report on Management & Professional Earnings in the Securities Industry 2001 (SIA Report) [70] and adding an additional 35% for costs associated with overhead, we find that, on average, a junior accountant would earn $26 an hour. We believe the salary of a junior accountant is appropriate for our estimates because, in most cases, we would expect the most directly comparable GAAP measure to be available. Therefore, we have estimated the total costs associated with complying with Regulation G to be $1,092,000.

Most commenters had concerns with our amendments to Item 10 of Regulation S–K and Item 10 of Regulation S–B and our requirement to file their earnings release, if any, on Form 8–K. Commenters generally opposed the prohibitions of Item 10 as they would apply to their earnings release. Commenters particularly opposed the prohibition against presenting a non-GAAP per share measure. Accordingly, we have made two modifications to our proposals. First, Item 10 would no longer prohibit the presentation of a non-GAAP per share measure.[71] Second, the earnings release would no longer be required to be filed on Form 8–K but, rather, it would be required to be furnished to the Commission under Form 8–K. The change from filing to furnishing has two consequences. First, a company's earnings releases would no longer be subject to Item 10 prohibitions. Second, the earnings release would no longer be subject to Section 18 of the Exchange Act.

With regard to other filings with the Commission, Item 10 would continue to apply. Because the costs associated with providing a reconciliation are already being accounted for in Regulation G, we do not believe adding the same requirement to Item 10 of Regulation S–K and Item 10 of Regulation S–B incurs any incremental cost to the registrant. To account for the required reconciliation in both Regulation G and Item 10 of Regulation S–K and Item 10 of Regulation S–B would result in double counting. Additionally, because companies currently are expected to disclose the purposes for which the registrant's management uses the non-GAAP financial measure and why it believes that presentation of the non-GAAP financial measure provides useful information to investors, this aspect of the rule would not increase costs already properly being borne by registrants. Accordingly, we do not believe our amendments to Item 10 of Regulation S–K and Item 10 of Regulation S–B would result in any additional costs not already included in Regulation G or current filing requirements.

With regard to the required submission on Form 8–K, we continue to believe that personnel in finance, investor relations or corporate communications departments would most likely submit the earnings announcements or releases, as most earnings announcements are disseminated via press release. We have estimated that the actual time required to submit an earnings announcement or release on Form 8–K to be .5 hour. In estimating this time burden we note that most press releases are fairly short in length, making the actual process of filing easier. We also note that the software necessary to file a Form 8–K is available free of charge from the Commission. We have estimated that public companies would be required to comply with the required submission on Form 8–K roughly four times a year. Assuming 14,000 public companies and a total burden of .5 hour for the filing, we estimate that companies will spend 28,000 hours complying with our Form 8–K amendment. Again using the SIA Report, and adding an additional 35% for costs associated with overhead, we find that a Corporate Communications Manager, on average, earns $56.00 an hour. Accordingly, we have estimated the total salary cost associated with our amendments to Form 8–K to be $1,568,000.

Finally, our amendments to Form 20–F would incorporate Item 10 of Regulation S–K. While Regulation G provides a limited exception for foreign private issuers, this exception would not apply to their Form 20–F filing or any disclosure of non-GAAP financial measures made in the United States. Accordingly, the costs associated with our amendment to Form 20–F are already accounted for in our cost estimates for Regulation G.

V. Regulatory Flexibility Act Certification

Pursuant to 5 U.S.C. § 605(b), the Commission has certified that Regulation G and our amendments to Item 10 of Regulation S–B, Item 10 of Regulation S–K and Form 8–K under the Securities Act and the Exchange Act will not have a significant economic impact on a substantial number of small entities. This certification, including the basis for the certification, was included in the proposing release. We solicited comments on the potential impact of the amendments on small entities, but received none.

VI. Consideration of Impact on the Economy, Burden on Competition and Promotion of Efficiency, Competition and Capital Formation

Section 23(a)(2) of the Exchange Act [72] requires us to consider the anti-competitive effects of any rules that we adopt under the Exchange Act. Section 23(a)(2) prohibits us from adopting any rule that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act. Furthermore, Section 2(b) of the Securities Act [73] and Section 3(f) of the Exchange Act [74] require us, when engaging in rulemaking, to consider or determine whether an action is necessary or appropriate in the public interest, and consider whether the action will promote efficiency, competition, and capital formation.

We requested comment on any anti-competitive effects of the proposals. We did not receive any comments regarding any anti-competitive effects of the proposal. We do not believe that Regulation G or our amendments to Item 10 of Regulation S–K, Item 10 of Regulation S–B, Form 8–K or Form 20–F will have a quantifiable effect on

[70] The cost estimates are based on the SIA Report for employees based outside the New York City metropolitan area.

[71] However, see the guidance on the use of per share measures in footnote 11.

[72] 15 U.S.C. § 78w(a)(2).

[73] 15 U.S.C § 77b(b).

[74] 15 U.S.C. § 78c(f).

efficiency, competition, and capital formation.

VII. Statutory Basis

New Regulation G, new Item 12 to Form 8–K and the amendments to the General Instructions to Form 8–K, Item 10 of Regulation S–K, Item 10 of Regulation S–B and Form 20–F are being adopted pursuant to Sections 2(b), 6, 7, 8, 19(a), and 28 of the Securities Act of 1933, as amended, Sections 3, 4, 10, 12, 13, 15, 23, and 36 of the Securities Exchange Act of 1934, as amended, and Sections 3(a), 401, and 409 of the Sarbanes-Oxley Act.

List of Subjects

17 CFR Part 228

Reporting and recordkeeping requirements, Securities, Small businesses.

17 CFR Parts 229, 244 and 249

Reporting and recordkeeping requirements, Securities.

Text of the Amendments

In accordance with the foregoing, the Securities and Exchange Commission amends Title 17, chapter II of the Code of Federal Regulations as follows:

PART 228—INTEGRATED DISCLOSURE SYSTEM FOR SMALL BUSINESS ISSUERS

1. The general authority citation for Part 228 is revised to read as follows:

Authority: 15 U.S.C. 77e, 77f, 77g, 77h, 77j, 77k, 77s, 77z–2, 77z–3, 77aa(25), 77aa(26), 77ddd, 77eee, 77ggg, 77hhh, 77jjj, 77nnn, 77sss, 78l, 78m, 78n, 78o, 78u-5, 78w, 78ll, 78mm, 80a-8, 80a-29, 80a–30, 80a–37 and 80b–11.

* * * * *

2. Amend § 228.10 by adding paragraph (h) to read as follows:

§ 228.10 (Item 10) General.

* * * * *

(h) *Use of non-GAAP financial measures in Commission filings.* (1) Whenever one or more non-GAAP financial measures are included in a filing with the Commission:

(i) The registrant must include the following in the filing:

(A) A presentation, with equal or greater prominence, of the most directly comparable financial measure or measures calculated and presented in accordance with Generally Accepted Accounting Principles (GAAP);

(B) A reconciliation (by schedule or other clearly understandable method), which shall be quantitative for historical non-GAAP measures presented, and quantitative, to the extent available without unreasonable efforts, for forward-looking information, of the differences between the non-GAAP financial measure disclosed or released with the most directly comparable financial measure or measures calculated and presented in accordance with GAAP identified in paragraph (h)(1)(i)(A) of this section;

(C) A statement disclosing the reasons why the registrant's management believes that presentation of the non-GAAP financial measure provides useful information to investors regarding the registrant's financial condition and results of operations; and

(D) To the extent material, a statement disclosing the additional purposes, if any, for which the registrant's management uses the non-GAAP financial measure that are not disclosed pursuant to paragraph (h)(1)(i)(C) of this section; and

(ii) A registrant must not:

(A) Exclude charges or liabilities that required, or will require, cash settlement, or would have required cash settlement absent an ability to settle in another manner, from non-GAAP liquidity measures, other than the measures earnings before interest and taxes (EBIT) and earnings before interest, taxes, depreciation, and amortization (EBITDA);

(B) Adjust a non-GAAP performance measure to eliminate or smooth items identified as non-recurring, infrequent or unusual, when the nature of the charge or gain is such that it is reasonably likely to recur within two years or there was a similar charge or gain within the prior two years;

(C) Present non-GAAP financial measures on the face of the registrant's financial statements prepared in accordance with GAAP or in the accompanying notes;

(D) Present non-GAAP financial measures on the face of any pro forma financial information required to be disclosed by Article 11 of Regulation S-X (17 CFR 210.11–01 through 210.11–03); or

(E) Use titles or descriptions of non-GAAP financial measures that are the same as, or confusingly similar to, titles or descriptions used for GAAP measures; and

(iii) If the filing is not an annual report on Form 10–KSB (17 CFR 249.310b), a registrant need not include the information required by paragraphs (h)(1)(i)(C) and (h)(1)(i)(D) of this section if that information was included in its most recent annual report on Form 10-KSB or a more recent filing, provided that the required information is updated to the extent necessary to meet the requirements of paragraphs (h)(1)(i)(C) and (h)(1)(i)(D) of this section at the time of the registrant's current filing.

(2) For purposes of this paragraph (h), a non-GAAP financial measure is a numerical measure of a registrant's historical or future financial performance, financial position or cash flow that:

(i) Excludes amounts, or is subject to adjustments that have the effect of excluding amounts, that are included in the most directly comparable measure calculated and presented in accordance with GAAP in the statement of income, balance sheet or statement of cash flows (or equivalent statements) of the issuer; or

(ii) Includes amounts, or is subject to adjustments that have the effect of including amounts, that are excluded from the most directly comparable measure so calculated and presented.

(3) For purposes of this paragraph (h), GAAP refers to generally accepted accounting principles in the United States.

(4) For purposes of this paragraph (h), non-GAAP financial measures exclude:

(i) Operating and other statistical measures; and

(ii) Ratios or statistical measures calculated using exclusively one or both of:

(A) Financial measures calculated in accordance with GAAP; and

(B) Operating measures or other measures that are not non-GAAP financial measures.

(5) For purposes of this paragraph (h), non-GAAP financial measures exclude financial measures required to be disclosed by GAAP, Commission rules, or a system of regulation of a government or governmental authority or self-regulatory organization that is applicable to the registrant. However, the financial measure should be presented outside of the financial statements unless the financial measure is required or expressly permitted by the standard setter that is responsible for establishing the GAAP used in such financial statements.

(6) The requirements of paragraph (h) of this section shall not apply to a non-GAAP financial measure included in disclosure relating to a proposed business combination, the entity resulting therefrom or an entity that is a party thereto, if the disclosure is contained in a communication that is subject to § 230.425 of this chapter, § 240.14a–12 or § 240.14d–2(b)(2) of this chapter or § 229.1015 of this chapter.

PART 229—STANDARD INSTRUCTIONS FOR FILING FORMS UNDER SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934 AND ENERGY POLICY AND CONSERVATION ACT OF 1975—REGULATION S–K

3. The general authority citation for part 229 is revised to read as follows:

Authority: 15 U.S.C. 7261, 77e, 77f, 77g, 77h, 77j, 77k, 77s, 77z–2, 77z–3, 77aa(25), 77aa(26), 77ddd, 77eee, 77ggg, 77hhh, 77iii, 77jjj, 77nnn, 77sss, 78c, 78i, 78j, 78*l*, 78m, 78n, 78o, 78u–5, 78w, 78*ll*(d), 78mm, 79e, 79n, 79t, 80a–8, 80a–29, 80a–30, 80a–31(c), 80a–37, 80a–38(a) and 80b–11, unless otherwise noted.

* * * * *

4. Amend § 229.10 by revising the section heading and adding paragraph (e) to read as follows:

§ 229.10 (Item 10) General.

* * * * *

(e) *Use of non-GAAP financial measures in Commission filings.* (1) Whenever one or more non-GAAP financial measures are included in a filing with the Commission:

(i) The registrant must include the following in the filing:

(A) A presentation, with equal or greater prominence, of the most directly comparable financial measure or measures calculated and presented in accordance with Generally Accepted Accounting Principles (GAAP);

(B) A reconciliation (by schedule or other clearly understandable method), which shall be quantitative for historical non-GAAP measures presented, and quantitative, to the extent available without unreasonable efforts, for forward-looking information, of the differences between the non-GAAP financial measure disclosed or released with the most directly comparable financial measure or measures calculated and presented in accordance with GAAP identified in paragraph (e)(1)(i)(A) of this section;

(C) A statement disclosing the reasons why the registrant's management believes that presentation of the non-GAAP financial measure provides useful information to investors regarding the registrant's financial condition and results of operations; and

(D) To the extent material, a statement disclosing the additional purposes, if any, for which the registrant's management uses the non-GAAP financial measure that are not disclosed pursuant to paragraph (e)(1)(i)(C) of this section; and

(ii) A registrant must not:

(A) Exclude charges or liabilities that required, or will require, cash settlement, or would have required cash settlement absent an ability to settle in another manner, from non-GAAP liquidity measures, other than the measures earnings before interest and taxes (EBIT) and earnings before interest, taxes, depreciation, and amortization (EBITDA);

(B) Adjust a non-GAAP performance measure to eliminate or smooth items identified as non-recurring, infrequent or unusual, when the nature of the charge or gain is such that it is reasonably likely to recur within two years or there was a similar charge or gain within the prior two years;

(C) Present non-GAAP financial measures on the face of the registrant's financial statements prepared in accordance with GAAP or in the accompanying notes;

(D) Present non-GAAP financial measures on the face of any *pro forma* financial information required to be disclosed by Article 11 of Regulation S–X (17 CFR 210.11–01 through 210.11–03); or

(E) Use titles or descriptions of non-GAAP financial measures that are the same as, or confusingly similar to, titles or descriptions used for GAAP financial measures; and

(iii) If the filing is not an annual report on Form 10–K or Form 20–F (17 CFR 249.220f), a registrant need not include the information required by paragraphs (e)(1)(i)(C) and (e)(1)(i)(D) of this section if that information was included in its most recent annual report on Form 10–K or Form 20–F or a more recent filing, provided that the required information is updated to the extent necessary to meet the requirements of paragraphs (e)(1)(i)(C) and (e)(1)(i)(D) of this section at the time of the registrant's current filing.

(2) For purposes of this paragraph (e), a non-GAAP financial measure is a numerical measure of a registrant's historical or future financial performance, financial position or cash flows that:

(i) Excludes amounts, or is subject to adjustments that have the effect of excluding amounts, that are included in the most directly comparable measure calculated and presented in accordance with GAAP in the statement of income, balance sheet or statement of cash flows (or equivalent statements) of the issuer; or

(ii) Includes amounts, or is subject to adjustments that have the effect of including amounts, that are excluded from the most directly comparable measure so calculated and presented.

(3) For purposes of this paragraph (e), GAAP refers to generally accepted accounting principles in the United States, except that:

(i) In the case of foreign private issuers whose primary financial statements are prepared in accordance with non-U.S. generally accepted accounting principles, GAAP refers to the principles under which those primary financial statements are prepared; and

(ii) In the case of foreign private issuers that include a non-GAAP financial measure derived from or based on a measure calculated in accordance with U.S. generally accepted accounting principles, GAAP refers to U.S. generally accepted accounting principles for purposes of the application of the requirements of this paragraph (e) to the disclosure of that measure.

(4) For purposes of this paragraph (e), non-GAAP financial measures exclude:

(i) Operating and other statistical measures; and

(ii) Ratios or statistical measures calculated using exclusively one or both of:

(A) Financial measures calculated in accordance with GAAP; and

(B) Operating measures or other measures that are not non-GAAP financial measures.

(5) For purposes of this paragraph (e), non-GAAP financial measures exclude financial measures required to be disclosed by GAAP, Commission rules, or a system of regulation of a government or governmental authority or self-regulatory organization that is applicable to the registrant. However, the financial measure should be presented outside of the financial statements unless the financial measure is required or expressly permitted by the standard-setter that is responsible for establishing the GAAP used in such financial statements.

(6) The requirements of paragraph (e) of this section shall not apply to a non-GAAP financial measure included in disclosure relating to a proposed business combination, the entity resulting therefrom or an entity that is a party thereto, if the disclosure is contained in a communication that is subject to § 230.425 of this chapter, § 240.14a–12 or § 240.14d–2(b)(2) of this chapter or § 229.1015 of this chapter.

(7) The requirements of paragraph (e) of this section shall not apply to investment companies registered under section 8 of the Investment Company Act of 1940 (15 U.S.C. 80a–8).

Note to paragraph (e). A non-GAAP financial measure that would otherwise be prohibited by paragraph (e)(1)(ii) of

this section is permitted in a filing of a foreign private issuer if:

1. The non-GAAP financial measure relates to the GAAP used in the registrant's primary financial statements included in its filing with the Commission;

2. The non-GAAP financial measure is required or expressly permitted by the standard-setter that is responsible for establishing the GAAP used in such financial statements; and

3. The non-GAAP financial measure is included in the annual report prepared by the registrant for use in the jurisdiction in which it is domiciled, incorporated or organized or for distribution to its security holders.

5. Part 244 is added to read as follows:

PART 244—REGULATION G

Sec.

244.100 General rules regarding disclosure of non-GAAP financial measures.
244.101 Definitions.
244.102 No effect on antifraud liability.

Authority: 15 U.S.C. 7261, 78c, 78i, 78j, 78m, 78o, 78w, 78mm, and 80a–29

§ 244.100 General rules regarding disclosure of non-GAAP financial measures.

(a) Whenever a registrant, or person acting on its behalf, publicly discloses material information that includes a non-GAAP financial measure, the registrant must accompany that non-GAAP financial measure with:

(1) A presentation of the most directly comparable financial measure calculated and presented in accordance with Generally Accepted Accounting Principles (GAAP); and

(2) A reconciliation (by schedule or other clearly understandable method), which shall be quantitative for historical non-GAAP measures presented, and quantitative, to the extent available without unreasonable efforts, for forward-looking information, of the differences between the non-GAAP financial measure disclosed or released with the most comparable financial measure or measures calculated and presented in accordance with GAAP identified in paragraph (a)(1) of this section.

(b) A registrant, or a person acting on its behalf, shall not make public a non-GAAP financial measure that, taken together with the information accompanying that measure and any other accompanying discussion of that measure, contains an untrue statement of a material fact or omits to state a material fact necessary in order to make the presentation of the non-GAAP financial measure, in light of the circumstances under which it is presented, not misleading.

(c) This section shall not apply to a disclosure of a non-GAAP financial measure that is made by or on behalf of a registrant that is a foreign private issuer if the following conditions are satisfied:

(1) The securities of the registrant are listed or quoted on a securities exchange or inter-dealer quotation system outside the United States;

(2) The non-GAAP financial measure is not derived from or based on a measure calculated and presented in accordance with generally accepted accounting principles in the United States; and

(3) The disclosure is made by or on behalf of the registrant outside the United States, or is included in a written communication that is released by or on behalf of the registrant outside the United States.

(d) This section shall not apply to a non-GAAP financial measure included in disclosure relating to a proposed business combination, the entity resulting therefrom or an entity that is a party thereto, if the disclosure is contained in a communication that is subject to § 230.425 of this chapter, § 240.14a–12 or § 240.14d–2(b)(2) of this chapter or § 229.1015 of this chapter.

Notes to § 244.100: 1.If a non-GAAP financial measure is made public orally, telephonically, by Web cast, by broadcast, or by similar means, the requirements of paragraphs (a)(1)(i) and (a)(1)(ii) of this section will be satisfied if:

(i) The required information in those paragraphs is provided on the registrant's Web site at the time the non-GAAP financial measure is made public; and

(ii) The location of the web site is made public in the same presentation in which the non-GAAP financial measure is made public.

2. The provisions of paragraph (c) of this section shall apply notwithstanding the existence of one or more of the following circumstances:

(i) A written communication is released in the United States as well as outside the United States, so long as the communication is released in the United States contemporaneously with or after the release outside the United States and is not otherwise targeted at persons located in the United States;

(ii) Foreign journalists, U.S. journalists or other third parties have access to the information;

(iii) The information appears on one or more web sites maintained by the registrant, so long as the web sites, taken together, are not available exclusively to, or targeted at, persons located in the United States; or

(iv) Following the disclosure or release of the information outside the United States, the information is included in a submission by the registrant to the Commission made under cover of a Form 6–K.

§ 244.101 Definitions.

This section defines certain terms as used in Regulation G (§§ 244.100 through 244.102).

(a)(1) *Non-GAAP financial measure.* A non-GAAP financial measure is a numerical measure of a registrant's historical or future financial performance, financial position or cash flows that:

(i) Excludes amounts, or is subject to adjustments that have the effect of excluding amounts, that are included in the most directly comparable measure calculated and presented in accordance with GAAP in the statement of income, balance sheet or statement of cash flows (or equivalent statements) of the issuer; or

(ii) Includes amounts, or is subject to adjustments that have the effect of including amounts, that are excluded from the most directly comparable measure so calculated and presented.

(2) A non-GAAP financial measure does not include operating and other financial measures and ratios or statistical measures calculated using exclusively one or both of:

(i) Financial measures calculated in accordance with GAAP; and

(ii) Operating measures or other measures that are not non-GAAP financial measures.

(3) A non-GAAP financial measure does not include financial measures required to be disclosed by GAAP, Commission rules, or a system of regulation of a government or governmental authority or self-regulatory organization that is applicable to the registrant.

(b) *GAAP.* GAAP refers to generally accepted accounting principles in the United States, except that:

(1) In the case of foreign private issuers whose primary financial statements are prepared in accordance with non-U.S. generally accepted accounting principles, GAAP refers to the principles under which those primary financial statements are prepared; and

(2) In the case of foreign private issuers that include a non-GAAP financial measure derived from a measure calculated in accordance with U.S. generally accepted accounting principles, GAAP refers to U.S. generally accepted accounting

principles for purposes of the application of the requirements of Regulation G to the disclosure of that measure.

(c) *Registrant.* A registrant subject to this regulation is one that has a class of securities registered under Section 12 of the Securities Exchange Act of 1934 (15 U.S.C. 78*l*), or is required to file reports under Section 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(d)), excluding any investment company registered under Section 8 of the Investment Company Act of 1940 (15 U.S.C. 80a–8).

(d) *United States.* United States means the United States of America, its territories and possessions, any State of the United States, and the District of Columbia.

§ 244.102 No effect on antifraud liability.

Neither the requirements of this Regulation G (17 CFR 244.100 through 244.102) nor a person's compliance or non-compliance with the requirements of this Regulation shall in itself affect any person's liability under Section 10(b) (15 U.S.C. 78j(b)) of the Securities Exchange Act of 1934 or § 240.10b–5 of this chapter.

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

7. The authority citation for part 249 continues to read in part as follows:

Authority: 15 U.S.C. 78a, *et seq.*, unless otherwise noted.

* * * * *

8. Amend Form 8–K (referenced in § 249.308) by adding General Instruction B.6., revising Item 9 and adding Item 12.

Note—The text of Form 8–K does not, and this amendment will not, appear in the Code of Federal Regulations.

Form 8–K

Current Report

Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934

* * * * *

General Instructions

* * * * *

B. Events To Be Reported and Time of Filing for Reports

* * * * *

6. A report on this form is required to be furnished upon the occurrence of any of the events specified in Item 12 of this form. A report of an event specified in Item 12 is to be furnished within 5 business days after the occurrence of the event; if the event occurs on a Saturday, Sunday or holiday on which the Commission is not open for business, the 5 business day period shall begin to run on and include the first business day thereafter. The information in a report furnished pursuant to Item 12 shall not be deemed to be "filed" for purposes of Section 18 of the Exchange Act or otherwise subject to the liability of that section, except if the registrant specifically states that the information is to be considered "filed" under the Exchange Act or incorporates it by reference into a filing under the Securities Act or the Exchange Act.

* * * * *

Information To Be Included in the Report

* * * * *

Item 12. Results of Operations and Financial Condition

(a) If a registrant, or any person acting on its behalf, makes any public announcement or release (including any update of an earlier announcement or release) disclosing material non-public information regarding the registrant's results of operations or financial condition for a completed quarterly or annual fiscal period, the registrant shall briefly identify the announcement or release and include the text of that announcement or release as an exhibit;

(b) A Form 8–K is not required to be furnished to the Commission under this Item 12 in the case of disclosure of material non-public information that is disclosed orally, telephonically, by webcast, by broadcast, or by similar means if:

(1) The information is provided as part of a presentation that is complementary to, and initially occurs within 48 hours after, a related, written announcement or release that has been furnished on Form 8–K pursuant to this Item 12 prior to the presentation;

(2) The presentation is broadly accessible to the public by dial-in conference call, by webcast, by broadcast, or by similar means;

(3) The financial and other statistical information contained in the presentation is provided on the registrant's web site, together with any information that would be required under § 244.100 of Regulation G; and

(4) The presentation was announced by a widely disseminated press release, that included instructions as to when and how to access the presentation and the location on the registrant's web site where the information would be available.

Instructions

1. The requirements of this Item 12 are triggered by the disclosure of material non-public information regarding a completed fiscal year or quarter. Release of additional or updated material non-public information regarding a completed fiscal year or quarter would trigger an additional Item 12 requirement.

2. The requirements of paragraph (e)(1)(i) of Item 10 of Regulation S–K (or paragraph (h)(1)(i) of Item 10 of Regulation S–B in the case of a small business issuer) shall apply to disclosures under this Item 12.

3. Issuers that make earnings announcements or other disclosures of material non-public information regarding a completed fiscal year or quarter in an interim or annual report to shareholders, are permitted to specify which portion of the report contains the information required to be furnished under Item 12.

4. This Item 12 does not apply in the case of a disclosure that is made in a quarterly report filed with the Commission on Form 10–Q (or 10–QSB) or an annual report filed with the Commission on Form 10–K (or 10–KSB).

* * * * *

9. By amending Form 20–F (referenced in § 249.220) by removing in General Instruction C.(e) the words "performance and the Commission's policy on securities ratings" and adding, in their place, the words "performance, the Commission's policy on securities ratings, and the Commission's policy on use of non-GAAP financial measures in Commission filings".

By the Commission.

Dated: January 22, 2003.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–1977 Filed 1–29–03; 8:45 am]

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Federal Register

Thursday,
January 30, 2003

Part III

Environmental Protection Agency

40 CFR Parts 52 and 81

Determination of Nonattainment as of November 15, 1996, and Reclassification of the St. Louis Ozone Nonattainment Area; Approval and Promulgation of Implementation Plans for the State of Missouri; Determination of Attainment, Approval and Promulgation of Implementation Plans, and Designation of Areas for Air Quality Planning Purposes; States of Missouri and Illinois; Final Rule and Proposed Rules

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[MO 169–1169; IL 187–2; FRL–7444–4]

Determination of Nonattainment as of November 15, 1996, and Reclassification of the St. Louis Ozone Nonattainment Area; States of Missouri and Illinois

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule finalizes and makes effective EPA's finding that the St. Louis ozone nonattainment area (hereinafter referred to as the St. Louis area) failed to attain the 1-hour ozone national ambient air quality standard (NAAQS or standard) by November 15, 1996, the attainment date for moderate nonattainment areas set forth in the Clean Air Act (CAA or Act). As a result of this finding, the St. Louis area is reclassified from a moderate to a serious 1-hour ozone nonattainment area by operation of law, effective as of the date of publication. In addition, EPA is establishing a schedule for Missouri and Illinois to submit State Implementation Plan (SIP) revisions addressing the CAA's pollution control requirements for serious ozone nonattainment areas within 12 months of the effective date of this rule, and is establishing November 15, 2004, as the date by which the St. Louis area must attain the ozone NAAQS.

EFFECTIVE DATE: This rule is effective January 30, 2003.

ADDRESSES: Relevant documents for this rule are available for inspection at the Environmental Protection Agency, Region 7, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101; or the Environmental Protection Agency, Region 5, Regulation Development Section, Air Programs Branch (AR–18J), 77 West Jackson Boulevard, Chicago, Illinois 60604; interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours in advance.

FOR FURTHER INFORMATION CONTACT: Tony Petruska, Region 7, (913) 551–7637, (*petruska.anthony@epa.gov*), or Edward Doty, Region 5, (312) 886–6057 (*doty.edward@epa.gov*).

SUPPLEMENTARY INFORMATION:

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What Is the Background for This Action?

On November 25, 2002, the U.S. Court of Appeals for the Seventh Circuit (Court) issued a decision in the case of the *Sierra Club and Missouri Coalition for the Environment* v. *EPA*, 311 F. 3d 853 (7th Cir. 2002). In this decision, the Court vacated a June 26, 2001, rule which extended the St. Louis area's attainment date, and remanded to EPA for entry of a final rule that reclassifies the St. Louis area as a serious nonattainment area. This rule reclassifies the St. Louis area as a serious nonattainment area in accordance with the Court's Order. The reclassification is based on a finding that the area did not attain the 1-hour ozone standard by November 15, 1996, the statutory attainment date for moderate areas. The finding is based on monitored data for the 1994 through 1996 ozone seasons. As explained in more detail below, EPA originally proposed to find that the area failed to attain the ozone standard by November 15, 1996, and to reclassify the area to serious nonattainment in a proposed rulemaking published March 18, 1999 (64 FR 13384). EPA finalized the finding and reclassification in a rulemaking published March 19, 2001 (66 FR 15578), and withdrew that final rulemaking prior to its effective date in the June 26, 2001, rulemaking vacated by the Court. In response to the Court's order, EPA is reinstating the finding of nonattainment and notice of reclassification, effective today, and to reflect the new effective date, is reinstating the schedule for Missouri and Illinois to submit SIP revisions to meet the new serious area requirements.

In a separate rulemaking, EPA is proposing to redesignate the St. Louis area to attainment with the 1-hour ozone standard. The proposal is based, in part, on three years of complete, quality-assured, ambient air monitoring data for the 2000 through 2002 ozone seasons which EPA believes shows that the area has now attained the 1-hour ozone NAAQS. Redesignation to attainment would eliminate the need for the states of Missouri and Illinois to submit SIP revisions addressing the CAA's pollution control requirements for serious ozone nonattainment areas. However, should the St. Louis area not be redesignated to attainment, the states of Missouri and Illinois will continue to be required to submit the serious area SIP revisions within one year as specified in this rule.

What Are the National Ambient Air Quality Standards?

Since the CAA's inception in 1970, EPA has set NAAQS for six common air pollutants: carbon monoxide, lead, nitrogen dioxide, ozone, particulate matter, and sulfur dioxide. The CAA requires that these standards be set at levels that protect public health and welfare with an adequate margin of safety. These standards present state and local governments with the air quality levels they must meet to achieve clean air. Also, these standards allow the American people to assess whether or not the air quality in their communities is healthful.

What Is the NAAQS for Ozone?

The NAAQS for ozone is expressed in two forms which are referred to as the 1-hour and 8-hour standards. Table 1 summarizes the ozone standards.

TABLE 1.—SUMMARY OF OZONE STANDARDS

Standard	Value	Type	Method of compliance
1-hour	0.12 ppm	Primary and Secondary	Must not be exceeded, on average, more than one day per year over any three-year period at any monitor within an area.
8-hour annual	0.08 ppm	Primary and Secondary	The average of the fourth highest daily maximum 8-hour average ozone concentration measured at each monitor over any three-year period.

(Primary standards are designed to protect public health and secondary standards are designed to protect public welfare and the environment.)

The 1-hour ozone standard of 0.12 parts per million (ppm) was promulgated in 1979. The 1-hour ozone standard continues to apply to the St. Louis area, and it is the classification of the St. Louis area with respect to the 1-hour ozone standard that is addressed in this document.

What Is a SIP?

Section 110 of the CAA requires states to develop air pollution regulations and control strategies to ensure that state air quality meet the NAAQS established by EPA. These ambient standards are established under section 109 of the CAA, and they currently address six criteria pollutants: Carbon monoxide, nitrogen dioxide, ozone, lead, particulate matter, and sulfur dioxide.

Each state must submit these regulations and control strategies to us for approval and incorporation into the Federally-enforceable SIP.

Each Federally-approved SIP protects air quality primarily by addressing air pollution at its point of origin. These SIPs can be extensive. They may contain state regulations or other enforceable documents and supporting information such as emission inventories, monitoring networks, and modeling demonstrations.

What Is the St. Louis Ozone Nonattainment Area?

The St. Louis ozone nonattainment area is an interstate area which includes Madison, Monroe, and St. Clair Counties in Illinois; and Franklin, Jefferson, St. Charles, and St. Louis Counties and the City of St. Louis in Missouri.

Under section 107(d)(1)(C) of the CAA, each ozone area designated nonattainment for the 1-hour ozone standard prior to enactment of the 1990 CAA Amendments, such as the St. Louis area, was designated nonattainment by operation of law upon enactment of the 1990 Amendments. In addition, under section 181(a) of the Act, each area designated nonattainment under section 107(d) was classified as "marginal," "moderate," "serious," "severe," or "extreme," depending on the severity of the area's air quality problem. The design value for an area, *i.e.*, the highest of the fourth highest 1-hour daily maximums in a given three-year period, characterizes the severity of the air quality problem. Table 2 provides the design value ranges for each nonattainment classification. Ozone nonattainment areas with design values between 0.138 and 0.160 ppm, such as the St. Louis area (which had a design value of 0.156 ppm in 1989), were classified as moderate. These nonattainment designations and classifications were initially codified in 40 CFR part 81 (see 56 FR 56694, November 6, 1991).

TABLE 2.—OZONE NONATTAINMENT CLASSIFICATIONS

Area class	Design value (ppm)	Attainment
Marginal	0.121 up to 0.138	November 15, 1993.
Moderate	0.138 up to 0.160	November 15, 1996.
Serious	0.160 up to 0.180	November 15, 1999.
Severe	0.180 up to 0.280	November 15, 2005.
Extreme	0.280 and above	November 15, 2010.

In addition, under section 182(b)(1)(A) of the CAA, states containing areas that were classified as moderate nonattainment were required to submit SIPs to provide for certain air pollution controls, to show progress toward attainment of the ozone standard through incremental emissions reductions, and to provide for attainment of the ozone standard as expeditiously as practicable, but no later than November 15, 1996. SIP requirements for moderate areas are listed primarily in section 182(b) of the CAA.

What Does This Action Do?

On March 18, 1999, EPA proposed (64 FR 13384) its finding that the St. Louis area did not attain the 1-hour ozone NAAQS by November 15, 1996, as required by the CAA. The proposed finding was based on 1994–1996 air quality data which indicated the area's air quality violated the standard and the area did not qualify for an attainment date extension under the provisions of section 181(a)(5).[1] Under the CAA, the effect of a final finding that an area has not attained the 1-hour ozone standard by the attainment date is that the area is reclassified to a higher classification (commonly referred to as a "bump up" of the area).

Although the area was not eligible for an attainment date extension under section 181(a)(5), the March 18, 1999, proposal included a notice of the St. Louis area's potential eligibility for an attainment date extension, pursuant to EPA's July 16, 1998, "Guidance on Extension of Air Quality Attainment Dates for Downwind Transport Areas" (hereinafter referred to as the extension policy), signed by Richard D. Wilson, Acting Assistant Administrator for Air and Radiation. The extension policy, published in a March 25, 1999, **Federal Register** notice (64 FR 14441), addresses circumstances where pollution from upwind areas interferes with the ability of a downwind area to attain the 1-hour ozone standard by its attainment date.

EPA proposed to finalize its action on the determination of nonattainment and reclassification of the St. Louis area only after the area had received an opportunity to qualify for an attainment date extension under the extension policy. On January 29, 2001, the U.S. District Court for the District of Columbia ordered EPA to make a determination whether the St. Louis nonattainment area attained the requisite ozone standards. (*Sierra Club* v. *Whitman*, No. 98–2733 (CKK).)

On March 19, 2001 (66 FR 15578), EPA finalized its finding that the St. Louis area failed to attain the 1-hour ozone NAAQS by November 15, 1996, and reclassified the area to "serious" as of the effective date of the rule. In addition, that rule established the dates by which Missouri and Illinois were to submit SIP revisions addressing the CAA's pollution control requirements for serious ozone nonattainment areas and attain the 1-hour NAAQS for ozone. The March 19, 2001, rulemaking action was to be effective on May 18, 2001.

On May 16, 2001, EPA published a rule (66 FR 27036) extending the effective date of the March 19, 2001, rulemaking to June 29, 2001.

[1] Section 181(a)(5) specifies that a state may request, and EPA may grant, up to two one-year attainment date extensions. EPA may grant an extension if: (1) The state has complied with the requirements and commitments pertaining to the applicable implementation plan for the area, and (2) the area has measured no more than one exceedance of the ozone standard at any monitoring site in the nonattainment area in the year in which attainment is required.

On June 26, 2001, EPA issued a final rule (66 FR 33996) in which EPA extended the attainment date for the St. Louis area, consistent with the extension policy, and withdrew the March 19, 2001, rulemaking. The rule also approved the attainment demonstration for the St. Louis area and took several other related actions.

Petitions were filed in the U.S. Court of Appeals for the Seventh Circuit (Court) (*Sierra Club and Missouri Coalition for the Environment* v. *EPA*, (Nos. 01–2844 and 01–2845)) for review of the May 16, 2001, and June 26, 2001, rules. On November 25, 2002, the Court granted the petitions, vacated the June 26, 2001, rule extending the St. Louis area's attainment date, and remanded to EPA for "entry of a final rule that reclassifies St. Louis as a serious nonattainment area effective immediately * * *" (*Sierra Club and Missouri Coalition for the Environment* v. *EPA*, 311 F. 3d 853 (7th Cir. 2002)).

This rule reclassifies the St. Louis area as a serious nonattainment area in accordance with the Court's Order, and in accordance with section 181(b)(2)(A) of the CAA. Additional background for this rule may be found in the March 18, 1999, proposal (64 FR 13384) and in the March 19, 2001, final rule (66 FR 15578). This action reinstates EPA's finding that the St. Louis area failed to attain the 1-hour standard by November 15, 1996, as prescribed in Section 181 of the CAA. A summary and discussion of the air quality monitoring data for the St. Louis area for 1994 through 1996 used to make this finding can be found in the March 18, 1999, proposal (64 FR 13384, 13385–87) and in the March 19, 2001, rule (66 FR 15578, 15580–15581, 15583–15584). EPA incorporates by reference in this rule the analyses and discussion of the air quality monitoring data and of the area's new classification set forth in the March 18, 1999, proposed rule and in the March 19, 2001, final rule.

EPA received comments on the March 18, 1999, proposal (and on an April 17, 2000, proposal, 65 FR 20404—see 66 FR 15585–15586 for a discussion of comments on the April 17, 2000, proposal) relating to the necessity and scope of a reclassification of the St. Louis area, which are summarized in the March 19, 2001, final rule (66 FR 15578, 15585–15587). The final rule also contains EPA's detailed response to the comments, which is incorporated by reference in this final rule.

What Is the New Attainment Date for the St. Louis Area?

As part of the reclassification of an area, EPA must establish an attainment date for the reclassified area. Section 181 of the CAA states that the attainment date for serious nonattainment areas shall be as expeditiously as practicable but not later than 9 years after enactment (November 15, 1999). Where an attainment date has already passed and is therefore impossible to meet, EPA has reasoned that the Administrator may establish an attainment date later than the date specified in the CAA. However, EPA believes that it must establish a new attainment date in accordance with the principle in the CAA that attainment must be achieved as expeditiously as practicable.

In the March 19, 2001, rule (66 FR 15578), EPA set forth its reasoning and conclusion that the most appropriate attainment date is one which is as expeditious as practicable and accounts for the upwind reductions associated with the NO_X SIP call, or no later than November 15, 2004. In the March 19, 2001, rule (66 FR 15578, 15587), EPA summarized the comments on the appropriate attainment date for the reclassified area and provided EPA's responses to the comments. EPA incorporates its responses and its rationale by reference in this final rule.

When Must Missouri and Illinois Submit SIP Revisions Fulfilling the Requirements for Serious Ozone Nonattainment Areas?

In addition to establishing a new attainment date, EPA must also address the schedule by which Illinois and Missouri are required to submit SIP revisions meeting the CAA's pollution control requirements for serious areas. The measures required by section 182(c) of the CAA include, but are not limited to, the following: (1) Attainment and reasonable further progress demonstrations; (2) enhanced vehicle inspection and maintenance (I/M) programs; (3) clean-fuel vehicle programs; (4) the major source threshold lowered from 100 to 50 tons per year for volatile organic compounds (VOCs) and nitrogen oxide compounds (NO_X); (5) more stringent new source review requirements; (6) an enhanced air monitoring program; and (7) contingency provisions.

In the March 18, 1999, proposal (64 FR 13384) and in the March 19, 2001, rule (66 FR 15585), EPA stated that a submittal deadline of 12 months after the effective date of reclassification will give the states adequate time to adopt and submit the additional serious area requirements. EPA also noted that the 12-month deadline is consistent with the time given to other areas (such as Dallas-Fort Worth, Phoenix, and Santa Barbara) which were reclassified from moderate to serious. EPA received one comment in support of a 12-month deadline and no other comments on the proposed deadline. In the March 19, 2001, rule, EPA required Missouri and Illinois to submit SIP revisions addressing the Act's pollution control requirements for serious ozone nonattainment areas within 12 months of the effective date of the rule.

EPA has determined that a 12-month deadline for submitting SIP revisions meeting the CAA's pollution control requirements for serious areas is appropriate for the reasons stated in the March 19, 2001, rule. Therefore, EPA is requiring that the "serious" area measures be submitted within 12 months of the date of publication of this rule.

What Is the Effective Date of the Reclassification to a Serious Nonattainment Area?

The Court, in its November 25, 2002, Order, vacated the June 26, 2001, rule (66 FR 33996) and remanded for entry of a final rule that reclassifies St. Louis as a serious nonattainment area effective immediately.

On May 16, 2001, EPA published a rule (66 FR 27036) delaying the effective date of reclassification of the St. Louis area to a serious nonattainment area until June 29, 2001. On June 26, 2001, EPA published a rule (66 FR 33996) in which the reclassification of the St. Louis area to a serious nonattainment area was withdrawn. By vacating the June 26, 2001, rule, the Court's Order also vacated the withdrawal of the reclassification.

One conclusion which could be drawn from the Court's Order vacating the June 26, 2001, rule is that the effective date of the reclassification to a serious nonattainment area reverts back to June 29, 2001. Such a conclusion would be inconsistent with the language used by the Court in its remand. The court ordered EPA to "reclassify" the St. Louis area, and to make the reclassification "effective immediately." Thus, EPA believes that the Court intended for the reclassification of the St. Louis area to a serious nonattainment to be effective immediately upon publication of this rule.

Although it is not appropriate to make this rule retroactive, EPA is making this final rulemaking effective upon publication. Section 553(d) of the Administrative Procedures Act generally provides that rules may not take effect earlier than 30 days after they are published in the **Federal Register**. However, if an Agency identifies a good

cause, section 553(d)(3) allows a rule to take effect earlier, provided that the Agency publishes its reasoning in the final rule. EPA is making this action effective upon publication in order to comply with an order of the United States Court of Appeals for the Seventh Circuit. As discussed elsewhere in this rulemaking, the Court ordered EPA to publish this final rule and to make it immediately effective. Therefore, in accordance with section 553(d)(3), EPA finds good cause to establish the date of publication as the effective date of the rule.

For the foregoing reasons, EPA is establishing the date of publication as the effective date of this rule.

Statutory and Executive Order Reviews

A. Executive Order 12866, Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), EPA is required to determine whether regulatory actions are significant and therefore should be subject to Office of Management and Budget (OMB) review, economic analysis, and the requirements of the Executive Order. The Executive Order defines a "significant regulatory action" as one that is likely to result in a rule that may meet at least one of the four criteria identified in section 3(f), including, under paragraph (1), that the rule may "have an annual effect on the economy of $100 million or more or adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local or tribal governments or communities."

The Agency has determined that the determination of nonattainment would result in none of the effects identified in section 3(f) of the Executive Order. Under section 181(b)(2) of the CAA, determinations of nonattainment are based upon air quality considerations and the resulting reclassifications must occur by operation of law. They do not, in and of themselves, impose any new requirements on any sectors of the economy. In addition, because the statutory requirements are clearly defined with respect to the differently classified areas, and because those requirements are automatically triggered by classifications that, in turn, are triggered by air quality values, determinations of nonattainment and reclassification cannot be said to impose a materially adverse impact on state, local, or tribal governments or communities.

B. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. This action does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

Determinations of nonattainment and the resulting reclassification of nonattainment areas by operation of law under section 181(b)(2) of the CAA do not in and of themselves create any new requirements. Instead, this rulemaking only makes a factual determination, and does not directly regulate any entities. See 62 FR 60001, 60007–60008, and 60010 (November 6, 1997) for additional analysis of the RFA implications of attainment determinations. Therefore, pursuant to 5 U.S.C. 605(b), I certify that today's final action does not have a significant impact on a substantial number of small entities within the meaning of those terms for RFA purposes.

D. Unfunded Mandates Reform Act

Under section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to state, local, or tribal governments in the aggregate, or to the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA believes, as discussed above, that the finding of nonattainment is a factual determination based upon air quality considerations and that the resulting reclassification of the area must occur by operation of law. Thus, the finding does not constitute a Federal mandate, as defined in section 101 of the UMRA, because it does not impose an enforceable duty on any entity.

E. Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be economically significant as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. This action is not subject to Executive Order 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

F. Executive Order 13132, Federalism

Federalism (64 FR 43255, August 10, 1999) requires EPA to develop an accountable process to ensure "meaningful and timely input by state and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government." Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal Government provides the funds

necessary to pay the direct compliance costs incurred by state and local governments, or EPA consults with state and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts state law unless the Agency consults with state and local officials early in the process of developing the proposed regulation.

This determination of nonattainment and the resulting reclassification of a nonattainment area by operation of law will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because this action does not, in and of itself, impose any new requirements on any sectors of the economy, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. Thus, the requirements of section 6 of the Executive Order do not apply to these actions.

G. Executive Order 13175, Coordination With Indian Tribal Governments

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." This final rule does not have tribal implications, as specified in Executive Order 13175. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes. Thus, Executive Order 13175 does not apply to this rule.

H. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the United States Senate, the United States House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

I. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 31, 2003. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* CAA section 307(b)(2).)

List of Subjects in 40 CFR Part 81

Environmental protection, Air pollution control, National Parks, Ozone, Wilderness areas.

Dated: January 13, 2003.

James Gulliford,

Regional Administrator, Region 7.

Dated: January 16, 2003.

Thomas V. Skinner,

Regional Administrator, Region 5.

Chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 81—[AMENDED]

1. The authority citation for part 81 continues to read as follows:

Authority: 42 U.S.C. 7401, *et seq.*

2. In § 81.314 the table entitled "Illinois—Ozone (1–Hour Standard)" is amended by revising the entry for St. Louis Area to read as follows:

§ 81.314 Illinois.

* * * * *

ILLINOIS—OZONE (1-HOUR STANDARD)

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
* * *	*	* *		*
St. Louis Area:				
Madison County	1–30–2003	Nonattainment	1–30–2003	Serious.
Monroe County	1–30–2003	Nonattainment	1–30–2003	Serious.
St. Clair County	1–30–2003	Nonattainment	1–30–2003	Serious.
* * *	*	* *		*

[1] This date is October 18, 2000, unless otherwise noted.

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3. In § 81.326 the table entitled "Missouri—Ozone (1–Hour Standard)" is amended by revising the entry for St. Louis Area to read as follows:

§ 81.326 Missouri.

* * * * *

MISSOURI—OZONE (1-HOUR STANDARD)

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
* * *	*	* *	*	*
St. Louis Area:				
Franklin County	1–30–2003	Nonattainment	1–30–2003	Serious.
Jefferson County	1–30–2003	Nonattainment	1–30–2003	Serious.
St. Charles County	1–30–2003	Nonattainment	1–30–2003	Serious.
St. Louis County	1–30–2003	Nonattainment	1–30–2003	Serious.
St. Louis County	1–30–2003	Nonattainment	1–30–2003	Serious.
* * *	*	* *	*	*

[1] This date is October 18, 2000, unless otherwise noted.

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[FR Doc. 03–1771 Filed 1–29–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MO 168–1168; FRL–7444–3]

Approval and Promulgation of Implementation Plans; State of Missouri

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: We, the EPA, are announcing a proposal to approve a revision to the state implementation plan (SIP) for the inspection and maintenance (I/M) program operating in the Missouri portion of the St. Louis, Missouri, nonattainment area. Missouri has made several amendments to the I/M rule to improve performance of the program and has requested that the SIP be revised. The effect of this action would be to ensure Federal enforceability of the state air program rules and to maintain consistency between the state-adopted rules and the approved SIP.

DATES: Comments must be received on or before March 3, 2003.

ADDRESSES: Written comments should be mailed to Leland Daniels, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101.

Copies of documents relative to this action are available for public inspection during normal business hours at the above-listed Region 7 location. Interested persons wanting to examine these document should make an appointment with the office at least 24 hours in advance.

FOR FURTHER INFORMATION CONTACT: Leland Daniels at (913) 551–7651.

SUPPLEMENTARY INFORMATION: Throughout this document whenever "we," "us," or "our" is used, we mean EPA. This section provides additional information by addressing the following questions:

What is a SIP?
What is the Federal approval process for a SIP?
What are the criteria for SIP approval?
What does Federal approval of a state regulation mean to me?
What is being addressed in this document?
Have the requirements for approval of a SIP revision been met?
What action is EPA taking?

What Is a SIP?

Section 110 of the Clean Air Act (CAA) requires states to develop air pollution regulations and control strategies to ensure that state air quality meets the national ambient air quality standards established by EPA. These ambient standards are established under section 109 of the CAA, and they currently address six criteria pollutants. These pollutants are: Carbon monoxide, nitrogen dioxide, ozone, lead, particulate matter, and sulfur dioxide.

Each state must submit these regulations and control strategies to us for approval and incorporation into the Federally-enforceable SIP.

Each Federally-approved SIP protects air quality primarily by addressing air pollution at its point of origin. These SIPs can be extensive, containing state regulations or other enforceable documents and supporting information such as emission inventories, monitoring networks, and modeling demonstrations.

What Is the Federal Approval Process for a SIP?

In order for state regulations to be incorporated into the Federally-enforceable SIP, states must formally adopt the regulations and control strategies consistent with state and Federal requirements. This process generally includes a public notice, public hearing, public comment period, and a formal adoption by a state-authorized rulemaking body.

Once a state rule, regulation, or control strategy is adopted, the state submits it to us for inclusion in the SIP. We must provide public notice and seek additional public comment regarding the proposed Federal action on the state submission. If relevant adverse comments are received, they must be addressed prior to any final Federal action by us.

All state regulations and supporting information approved by EPA under section 110 of the CAA are incorporated into the Federally-approved SIP. Records of such SIP actions are maintained in the Code of Federal Regulations (CFR) at Title 40, Part 52, entitled "Approval and Promulgation of Implementation Plans." The actual state regulations which are approved are not reproduced in their entirety in the CFR outright but are "incorporated by reference," which means that we have approved a given state regulation with a specific effective date.

What Are the Criteria for SIP Approval?

In order to be approved into a SIP, the submittal must meet the requirements of section 110. In addition to the procedural requirements mentioned above, the plan must provide for the attainment, maintenance, and enforcement of the national ambient air quality standards.

The CAA has additional requirements for the approval of SIPs for ozone nonattainment areas. It requires the adoption of either a "basic" or an "enhanced" I/M program depending on the severity of the ozone problem and the population of the area. Section 182(a)(2)(B) directed us to publish guidance for state I/M programs. We promulgated I/M regulations and subsequent amendments, codified in 40 CFR part 51, subpart S.

What Does Federal Approval of a State Regulation Mean to Me?

Enforcement of the state regulation before and after it is incorporated into the Federally-approved SIP is primarily a state responsibility. However, after the regulation is Federally approved, we are authorized to take enforcement action against violators. Citizens are also offered legal recourse to address violations as described in section 304 of the CAA.

What Is Being Addressed in This Document?

On May 18, 2000 (65 FR 31480), we took final action to approve Missouri's SIP for the I/M program in the St. Louis nonattainment area (St. Louis City, and the counties of St. Louis, St. Charles, Jefferson, and Franklin) and incorporated by reference the state I/M rule, 10 CSR (Code of State Regulations) 10–5.380. Although Missouri's program contains most of the features of an enhanced program, we approved the program with regard to compliance with the basic I/M requirements in Section 182(b)(4) of the Clean Air Act (CAA) and 40 CFR part 51, subpart S, because those are the I/M requirements currently applicable to the St. Louis area.[1] On April 5, 2000, the Missouri Department of Natural Resources (MDNR) began implementation of the I/M program. On February 4, 2002, the program began using the final, lower test levels,

[1] As discussed in a final rulemaking being published today in the Rules Section of the **Federal Register**, we are reclassifying the area to "serious" nonattainment in response to an order in *Sierra Club and Missouri Coalition for the Environment* v. *Environmental Protection Agency*, 311 F. 3d 853 (7th Cir. 2002). In that rule, EPA is establishing a schedule to require Missouri and Illinois to submit SIPs to meet the "serious" area requirements within one year from today. As a result, Missouri would be required to meet the I/M requirements in section 182(c)(3) by that deadline. However, in another proposed rule also published today, EPA is proposing to redesignate the St. Louis area to attainment. If the area is redesignated before the serious area requirements come due, Missouri would not be required to meet these requirements. In any event, the revisions which are the subject of this proposal are properly reviewed against the section 182(b)(4) requirements.

commonly known as cutpoints, to determine if a vehicle passed or failed the inspection.

MDNR has made several submissions concerning the I/M SIP. The content of those being considered here are discussed below.

The legal authority for the I/M program was amended in 1999 by Senate Bill 019. Amendments which affected the design of the I/M program include the following: requires the MDNR and the Missouri Highway Patrol to enter into an interagency agreement covering all aspects of the administration and enforcement of Section 307.366, Missouri Revised Statutes (RSMo); establishes criteria and procedures for a contract for the construction and operation of the I/M program; provides the residents of Franklin County the option of a biennial motor vehicle registration. For the purpose of registration, for vehicles sold by a licensed motor vehicle dealer, any inspection and approval within 120 days preceding the date of the sale is considered timely. Costs for repair work may only be included toward reaching the waiver amount if the repairs are performed by a recognized repair technician. It deleted the $5.00 fee reduction for any person required to wait for up to 15 minutes before the inspection begins. Penalties for longer wait times were retained. The I/M amendments contained in the October 25, 2000, submittal reflected these statutory changes.

On October 25, 2000, we received a request from Roger Randolph, Director of the Air Pollution Control Program, MDNR, to amend the I/M SIP and incorporate changes made to the I/M rule (10 CSR 10–5.380) by the Missouri Air Conservation Commission. These changes removed a fee reduction (otherwise known as a wait time penalty) of $5.00 whenever someone had to wait up to 15 minutes for a test; incorporated a transition program from January 1 through April 4, 2000; and provided another test option for residents of Franklin County.

On June 19, 2002, we received a letter from MDNR that contained their plan for incorporating the On-Board Diagnostic (OBD) test into the I/M program and a commitment to do so. This was in response to our amendment of the Federal I/M rule that changed the implementation date for use of the OBD test from January 1, 2001, to January 1, 2002, and provide options for other implementation dates.

On December 13, 2002, we received a request from MDNR to approve a revision to the I/M SIP and incorporate amendments made to the I/M rule. In addition to restructuring the rule, a number of amendments were made to: clarify the meaning of vehicles primarily operated in the area (section 1); clarify existing definitions and include new definitions (section 2); clarify fleet vehicle testing requirements, set fee payment methods, station and clean screening testing procedures, emission test standards and waiver requirements (section 3); clarify the vehicle test report requirement for vehicles that fail the OBD test, the clean screening test report requirements and the fleet vehicle reporting requirements (section 4); clarify the test methods for the OBD and the visual test methods; exempt hybrid electric vehicles from tailpipe test methods; include clean screening test methods as valid test methods (section 5), and delete the transition period. The submittal also included a list of nonregulatory provisions that will be updated early in 2003.

The following sections address whether the elements of the state's submittal comply with the applicable elements in the Federal rule. Only those elements affected by changes in the state rule are reviewed. Our decision for approval is based solely on the State's ability to meet the I/M requirements for a basic program.

Applicability (40 CFR 51.350)

As required in the I/M rule, any area classified as a moderate ozone nonattainment area and not required to implement an enhanced I/M program shall implement a basic I/M program in any 1990 census-defined, urbanized area within the nonattainment area with a population of 200,000 or more.

The legal authority for the I/M program is contained in the Missouri Revised Statutes (RSMo), sections 643.300–643.355 and section 307.366. The implementing regulations are in Missouri rule 10 CSR 10–5.380. In 1999 the legal authority for the I/M program was amended by Senate Bill 019. The amendments required MDNR and the Missouri Highway Patrol to enter into an interagency agreement covering all aspects of the administration and enforcement of Section 307.366, RSMo; established criteria and procedures for a contract for the construction and operation of the I/M program; and provided the residents of Franklin County the option of a biennial motor vehicle registration. For the purpose of registration, for vehicles sold by a licensed motor vehicle dealer, any inspection and approval within 120 days preceding the date of the sale is considered timely. Costs for repair work may only be included toward reaching the waiver amount if the repairs are performed by a recognized repair technician. It deleted the $5.00 fee reduction for any person who is required to wait for up to 15 minutes before the inspection begins.

The legal authority and regulations necessary to establish the program boundaries for the areas required by EPA's rule to be included in a basic I/M program continue. Thus, this portion of the SIP continues to be approvable.

Adequate Tools and Resources (40 CFR 51.354)

The Federal regulation requires Missouri to provide a description of the resources to be used in the program. The state must provide a detailed budget plan that describes the source of funds for personnel, program administration, program enforcement, and purchase of equipment. In addition, the SIP must include public education and assistance and funding for other necessary functions.

These amendments do not alter the detailed budget, fee amounts, source of funds for personnel, program administration, program enforcement, and purchase of equipment contained in the I/M SIP. The amendment does allow fees to be paid by cash, check or credit card. Thus, this portion of the SIP continues to be approvable.

Test Frequency and Convenience (40 CFR 51.355)

The I/M performance standard assumes an annual test frequency; however, other schedules may be approved if the performance standard is achieved. The Missouri legislation provides the legal authority to implement a biennial program. In 1999, the statutory authority was revised by Senate Bill 019 and it provided the residents of Franklin County the option of a biennial motor vehicle registration. Enforcement is accomplished through registration denial. Missouri did demonstrate that it met the performance standard. This portion of the SIP continues to meet the Federal requirements.

Although not required for a basic program, enhanced I/M programs shall be designed in such a way as to provide convenient service to motorists required to have their vehicles tested. To meet the enhanced requirements, the state must show that the network of stations is sufficient to ensure short waiting times, short driving distances, and regular testing hours. The State has assured consumer convenience by both State law, rule and contract provisions regarding station location, accessibility, and operation; equipment availability

and reliability, and wait time penalties. Although the shortest wait time penalty was deleted (the one for waits of up to 15 minutes), the wait time penalties for waits longer than 30 and 60 minutes remain. Since the beginning of the program, the average wait time is 12 minutes. Therefore, this portion of the SIP meets the test frequency and convenience requirements for an enhanced I/M program which exceed the requirements for a basic program.

Vehicle Coverage (40 CFR 51.356)

The performance standards for enhanced I/M programs assumes coverage of all 1968 and later model year light-duty vehicles (LDV) and light-duty trucks (LDT) up to 8500 pounds gross vehicle weight rating (GVWR) and includes vehicles operating on all fuel types. The standard for basic I/M programs does not include light duty trucks. Other levels of coverage may be approved if the necessary emission reductions are achieved.

Missouri's I/M statute requires coverage of all 1971 and newer LDVs and LDTs up to 8500 pounds GVWR which are domiciled or primarily operated in the area. As of the date of the original I/M SIP submittal (November 1999), 1.3 million vehicles are in the nonattainment area. The Missouri I/M regulation provides the regulatory authority to implement and enforce the vehicle coverage.

In section 1, the June 17, 2002, amendments added a definition of those vehicles that are primarily operated in the geographic area. In section 2, it also established a definition of a hybrid electric vehicle and specified in subsection 5(F) that they are not subject to tailpipe emission tests but are subject to other test methods.

In section 2, a number of definitions were clarified or added. These include compliance cycle, control chart, diagnostic trouble code, emission inspection, hybrid electric vehicle, malfunction indicator lamp, on-board diagnostics, OBD test, qualifying repair, readiness flag, and recognized labor costs.

The amendment established a compliance cycle for both privately- and publicly-owned vehicles. For privately-owned vehicles, the compliance cycle begins 60 days prior to the expiration of the vehicle's registration. For publicly-owned vehicles, the compliance cycle begins on January 1 of each even-numbered year. All applicable vehicles are to demonstrate compliance with the emission standards set in the rule during the compliance cycle. Federal fleets and federal employee vehicles are to comply with the December 1999 Interim Guidance for Federal Facility Compliance with Clean Air Act Section 118(c) and 118(d) and Applicable Provisions of State Vehicle Inspection and Maintenance Programs.

Missouri has revised its regulations to require Federal facilities operating vehicles in the I/M program area to report certification of compliance to the state. These requirements appear to be different than those for other non-Federal groups of Missouri registered vehicles. However, at this time we are not requiring states to implement 40 CFR 51.356(a)(4) dealing with Federal installations within I/M areas. The Department of Justice has recommended to us that this Federal regulation be revised since it appears to grant states authority to regulate Federal installations in circumstances where the Federal government has not waived sovereign immunity. It would not be appropriate to require compliance with this regulation if it is not authorized. We will be revising this provision in the future and will review state I/M SIPs with respect to this issue when this new rule is final. Therefore, for these reasons, we are neither proposing approval nor disapproval of the specific requirements which apply to Federal facilities at this time.

The amendments did not alter the level of coverage. Thus the level of coverage remains approvable as it meets the requirements for an enhanced I/M program which exceed the requirements for a basic program. In addition, Missouri has legal authority to implement fleet-testing requirements and to implement requirements for special exemptions. As noted above we are neither proposing approval nor disapproval of the requirements which apply to Federal facilities. Therefore, this portion of the SIP is approvable as it meets the requirements for a basic and an enhanced I/M program.

Test Procedures and Standards (40 CFR 51.357)

The Federal rule requires Missouri to establish written test procedures and pass/fail standards that are followed for each model year and vehicle type included in the program.

The October 25, 2000, submittal did provide for the use of the idle test and set emission limits for carbon monoxide and hydrocarbons during the transition period (see motorist compliance enforcement below). This test and the emission limits are applicable to automobile dealers and used vehicle purchasers. This submittal did not alter the program's test procedures and standards for the I/M program which started on April 5, 2000. This portion of the SIP continues to be approvable.

Although the submittal of December 13, 2002, retained the test methods contained in the previously approved SIP, two significant changes were made. First, the December 13, 2002, submittal took advantage of the flexibility included in our April 5, 2001, rulemaking concerning the integration of OBD testing in the I/M program. Second, the submittal added a hybrid method as one of the clean screening methods (see on-road testing below). In addition, per our guidance, it exempted hybrid electric vehicles from tailpipe test methods but subjected them to the evaporative system pressure test, OBD test, anti-tampering test, and clean screening.

The original, Federally-approved SIP committed to begin OBD testing beginning January 1, 2001. The December 13, 2002, submittal revises the original OBD start date commitment by introducing a two-year phase-in period for the OBD test starting January 1, 2003, and ending December 31, 2004. During the two-year phase-in period, the OBD test would be used as a "clean screen" test. Then starting January 1, 2005, the OBD test would be used to pass or fail the 1996 and newer model year vehicles.

During the phase-in period if a model year 1996 or newer, OBD-equipped vehicle passes its initial OBD test, the owner will be issued a passing compliance certificate and allowed to register the vehicle without further testing. If the vehicle fails its initial OBD inspection, it will then receive a "second-chance" IM240 test. Only if the vehicle fails both tests during this two-year period phase-in period will it be required to be repaired. Once the vehicle has been repaired, it must be submitted for a retest. According to the December 13, 2002, submittal, vehicles submitted for a retest will receive both an OBD test and an IM240 test, the latter of which must be passed for the vehicle to pass its retest. The December 13, 2002, submittal's requirement that the IM240 test be the deciding test for the retest is inconsistent with the April 5, 2001, Federal rule which requires only the OBD test be used for the retest.

Although the Missouri regulation is not consistent with our requirements for the OBD test during the 2003–2004 phase-in period, the Federal I/M rule (see 40 CFR 51.372) provides additional flexibility with regard to as-of-yet unimplemented I/M program elements

for basic I/M areas [2] that qualify for redesignation to attainment. Under this additional flexibility, an as-of-yet unimplemented I/M program element may be converted into a contingency measure as part of the area's approved maintenance plan (which, in turn, forms a part of the area's approved redesignation request). We believe that the St. Louis nonattainment area is eligible for redesignation and, in a separate rulemaking, are proposing to find that the area has attained the 1-hour ozone standard and to redesignate the area from nonattainment to attainment for that standard.

Other elements needed for the I/M program and redesignation request to be approved include legal authority for the as-of-yet unimplemented I/M program element(s), a request to place the as-of-yet unimplemented I/M upgrade into the contingency measures portion of the maintenance plan upon redesignation, a commitment to adopt (or consider adopting) the regulations needed to implement the deferred I/M program element(s) including an enforceable schedule for adoption and implementation of those I/M program element(s). See 40 CFR 51.372(c).

The legal authority for the program is discussed above (see Applicability). Missouri has legal authority to implement and operate an I/M program as required including OBD.

Section 6.1 of the maintenance plan, contingency measures, contains a request that the OBD test measures in 40 CFR Parts 51 and 82 be placed in the contingency measures portion of the SIP, upon redesignation of the area to attainment. This requirement is fulfilled.

Section 6.1 of the maintenance plan also contains a commitment that MDNR will adopt or consider adopting regulations to implement EPA's OBD testing requirement to correct a violation of the ozone standard. This requirement is fulfilled.

Section 6.1 of the maintenance plan also contains an enforceable schedule for development, proposal, adoption, submission, and implementation of the OBD testing requirements. This requirement is fulfilled.

The criteria for full approval also requires that basic areas continuing operation of I/M programs as part of the maintenance plan without implemented upgrades shall be assumed to be 80 percent as effective as an implemented, upgraded version of the same I/M program. The presumption that Missouri's I/M program is 80 percent as effective is not applicable. We are not discounting the effectiveness of Missouri's program as they are not taking any credit for emissions reduction benefits for OBD testing during the 2003–2004 time period in the MOBILE modeling efforts done for the emission inventories in the maintenance plan.

For the reasons set forth above, this portion of the SIP is approvable only if the St. Louis nonattainment area is redesignated. This portion of the SIP is not approvable if the area is not redesignated. For the reasons listed above we are not discounting the effectiveness of the Missouri program by 20 percent.

Test Equipment (40 CFR 51.358)

As required by Federal rule, the original state submittal contained the written technical specifications for all test equipment to be used in the program. The specifications required the use of computerized test systems. The specifications also included performance features and functional characteristics of the computerized test systems that meet the applicable Federal I/M regulations and were approvable.

Additional language was added to the regulatory amendment to clarify the performance features of the emission test equipment, the functional characteristic of computerized test systems, and that the evaporative system pressure test equipment, the single-speed and two-speed idle test equipment, the transient emission test equipment, and the OBD test equipment must meet standards specified by EPA. This portion of the SIP continues to be approvable.

Waivers and Compliance via Diagnostic Inspection (40 CFR 51.360)

The Federal I/M regulation allows for the issuance of a waiver, which is a form of compliance with the program requirements, that permits a motorist to comply without meeting the applicable test standards. For enhanced I/M programs, an expenditure of at least $450 in repairs, adjusted annually to reflect the change in the Consumer Price Index (CPI) as compared with the CPI for 1989, is required to qualify for a waiver. For the basic program the minimum expenditure is $75 for pre-1981 vehicles and $200 for 1981 and newer vehicles.

As required, the Missouri statute provides legislative authority to issue waivers, set and adjust cost limits, and administer and enforce the waiver system. Previously, the dollar amounts were set by statutes. This amendment increased the amount that must be spent on qualifying repairs and added a requirement that measured tailpipe emissions must show a reduction upon reinspection. The waiver amount for pre-1981 model year vehicles is set at $200 and the amount for 1981 and all subsequent model year vehicles is $450. After January 1, 2005, 1996 and newer model year vehicles will not be eligible for a waiver. The state statute allows these amounts to be adjusted for inflation after January 1, 2001, to be consistent with an enhanced I/M program. Waivers will be issued for vehicles that do not pass the emission inspection and meet the waiver criteria. The repair record must show that the repair expenditures were not covered by either a recall or manufacturer warranty and that parts costs and labor costs of recognized technicians total the minimum applicable amount for the model year of the vehicle. However, because Missouri is subject to the basic program requirements, they are only required to meet or exceed the basic I/M requirements of a minimum of $75 for pre-1981 vehicles and $200 for 1981 and newer vehicles.

Missouri regulations include provisions that address waiver criteria and procedures, including cost limits, tampering and warranty-related repairs, quality control, and administration. Parts and labor costs for qualifying emission repairs count toward the waiver amount if the repairs were performed or supervised by a recognized repair technician. The SIP sets a waiver rate and describes corrective action that will be taken if the actual waiver rate exceeds the commitment in the SIP. The SIP meets this portion of the regulation and is acceptable.

Motorist Compliance Enforcement (40 CFR 51.361)

The Federal regulation requires that compliance will be ensured through the denial of motor vehicle registration in enhanced I/M programs unless an exception for use of an existing alternative is approved. A basic I/M area may use an alternative enforcement mechanism if it demonstrates that the alternative will be as effective as registration denial. To register a vehicle subject to the I/M requirements, the Missouri Department of Revenue by rule, 12 CSR 10–23.170, requires an owner to present an original, current certificate of emissions inspection no older than 60 days. Senate Bill 019 in 1999 provided that for the purpose of registration, for vehicles sold by a licensed motor vehicle dealer, any inspection and approval within 120

[2] As noted previously, the St. Louis area is still being evaluated as a basic area, since the enhanced area requirements have not yet come due.

days preceding the date of the sale is considered timely. Thus the enforcement method used is registration denial.

The December 13, 2002, submittal did not alter Missouri's SIP commitment to a compliance rate of 96 percent which was used in the performance standard modeling demonstration and continues to be approvable. This submittal did not alter the registration denial enforcement process, the identification of agencies responsible for performing each applicable activity, and a plan for testing fleet vehicles. Therefore, this portion of the SIP is approvable.

Inspector Training and Licensing or Certification (40 CFR 51.367)

The Federal I/M regulation requires all inspectors to be formally trained and licensed or certified to perform inspections. The training, licensing or certification requirements previously approved were retained. In addition, four hours of continuing education per year is required. This portion of the SIP continues to be approvable.

On-Road Testing (40 CFR 51.371)

On-road testing is required in enhanced I/M areas and is an option for basic areas. The on-road testing program shall provide information about the emission performance of in-use vehicles. The use of either remote sensing devices (RSD) or roadside pullovers where tailpipe emission testing is done can be used to meet the Federal regulations. For enhanced areas, the on-road testing program must test 0.5 percent of the vehicles or 20,000 vehicles, whichever is less. A motorist that has passed an emissions test and is found to be a high emitter as a result of an on-road test shall be notified that the vehicle is required to pass an out-of-cycle emissions test.

To improve motorist convenience and reduce the number of test lanes needed in the St. Louis area, approximately 40 percent of the vehicles are excused from some I/M testing that would otherwise be required. This is accomplished by exempting the two newest model year vehicles (roughly 11 to 15 percent of all vehicles) and using RSD to test and identify another 25 to 29 percent of the vehicles, those that are low emitting vehicles. This is known as clean screening.

In subsection (3)(J) and (K), the rule specifies the clean screening emission inspection requirements (test methods and procedures) and the inspection standards. The rule includes a hybrid test method (see (3)(J)(B)) for clean screening that does not meet our guidance. This hybrid test method excuses vehicles from further I/M testing if the vehicle is a known low emitter and has passed one RSD test.

The original SIP committed to a minimum of 0.5 percent of the fleet receiving a RSD test each year. The original contract contained a description of the program and methods of collecting, analyzing, and reporting data. Enabling authority to enforce off-cycle inspection and repair requirements is not contained in Missouri's legislation. As stated above, the on-road testing requirements are optional for basic programs. Therefore, this is not relevant to the EPA's proposed action with respect to the current I/M requirement applicable to St. Louis.

Have the Requirements for Approval of a SIP Revision Been Met?

The state submittal has met the public notice requirements for SIP submissions in accordance with 40 CFR 51.102. The submittal also satisfied the completeness criteria of 40 CFR part 51, appendix V. In addition, as explained above and in more detail in the technical support document which is part of this document, the revision meets the substantive SIP requirements of the CAA, including section 110 and implementing regulations.

What Action Is EPA Taking?

Our review of the material submitted indicates that the state has revised the I/M program in accordance with the requirements of the CAA and the Federal rule except for one. The state's use of the IM240 test during the phase-in period to test model year 1996 and newer vehicles is inconsistent with the Federal rule (see Test Procedures and Standards above). As discussed above, since this SIP revision was made in conjunction with a request to redesignate the St. Louis area to attainment, and as provided for in the Federal I/M rule, we are proposing to approve the Missouri SIP revision for the St. Louis I/M program and incorporate by reference the state I/M rule, 10 CSR 10–5.380, which was submitted on December 13, 2002, if the area is redesignated to attainment. If the area is not redesignated, we are proposing to disapprove this SIP revision. We are neither proposing to approve nor disapprove the specific requirements which apply to Federal facilities at this time. We are soliciting comments on this proposed action. Final rulemaking will occur after consideration of any comments.

Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This proposed action merely proposes to approve state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule proposes to approve pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4).

This proposed rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely proposes to approve a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. This proposed rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus

standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the CAA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This proposed rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: January 13, 2003.

James Gulliford,

Regional Administrator, Region 7.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[MO 170–1170; IL 216–1; FRL–7444–5]

Determination of Attainment, Approval and Promulgation of Implementation Plans, and Designation of Areas for Air Quality Planning Purposes; States of Missouri and Illinois

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to determine that the St. Louis ozone nonattainment area (St. Louis area) has attained the 1-hour ozone National Ambient Air Quality Standard (NAAQS). This proposal is based on three years of complete, quality-assured ambient air quality monitoring data for the 2000 through 2002 ozone seasons that demonstrate that the 1-hour ozone NAAQS has been attained in the area. On the basis of this proposal, EPA is also proposing to determine that certain attainment demonstration requirements along with certain other related requirements of part D of Title I of the Clean Air Act (CAA) are not applicable to the St. Louis area.

The EPA is also proposing to approve an exemption from certain nitrogen oxides (NO_X) requirements as provided for in section 182(f) for the Illinois portion of the St. Louis area. Section 182(f) establishes NO_X requirements for ozone nonattainment areas. However, it provides that these requirements do not apply to an area if the Administrator determines that NO_X reductions would not contribute to attainment. Because the St. Louis area is currently attaining the ozone NAAQS, EPA is proposing to grant the Illinois portion of the St. Louis area an NO_X exemption from NO_X reasonably available control technology (RACT) requirements. If final action is taken, the Illinois portion of the St. Louis area would no longer be subject to these NO_X emission control requirements. However, all emission controls previously adopted by the state must continue to be implemented.

EPA is also proposing to approve requests from the States of Missouri and Illinois, submitted on December 6, 2002, and December 30, 2002, respectively, to redesignate the St. Louis area to attainment of the 1-hour ozone NAAQS. In proposing to approve these requests EPA is also proposing to approve the states' plans for maintaining the 1-hour ozone NAAQS through 2014, as revisions to the Missouri and Illinois State Implementation Plans (SIPs). EPA is also proposing to find adequate and approve the states' 2014 Motor Vehicle Emission Budgets (MVEBs) for volatile organic compounds (VOCs) and nitrogen oxide compounds (NO_X) in the submitted maintenance plans for transportation conformity purposes.

The St. Louis nonattainment area is located in portions of Illinois and Missouri. The Illinois portion of the nonattainment area includes Madison, Monroe, and St. Clair Counties (collectively referred to as the Metro-East area). The Missouri portion of the nonattainment area includes Franklin, Jefferson, St. Charles, and St. Louis Counties and St. Louis City.

DATES: Comments must be received on or before March 3, 2003.

ADDRESSES: Written comments should be mailed to Joshua Tapp, Chief, Air Planning and Development Branch, Environmental Protection Agency, Region 7, 901 North 5th Street, Kansas City, Kansas 66101; or, J. Elmer Bortzer, Chief, Regulation Development Section, Air Programs Branch (ART–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Relevant documents are available for inspection during normal business hours at the above-listed Region 7 and Region 5 locations. Interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours in advance.

FOR FURTHER INFORMATION CONTACT: Tony Petruska, Region 7, (913) 551–7637, (*petruska.anthony@epa.gov*) or Edward Doty, Region 5, (312) 886–6057, (*doty.edward@epa.gov*).

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I. Proposed Determination of Attainment and Redesignation

A. What Actions Is EPA Proposing to Take?

EPA is proposing to determine that the St. Louis nonattainment area has attained the 1-hour ozone standard. On the basis of this determination, EPA is also proposing to determine that certain attainment demonstration requirements (section 172(c)(1) of the CAA), along with certain other related requirements, of part D of Title I of the CAA, specifically the section 172(c)(9) contingency measure requirement (measures needed to mitigate a state's failure to achieve reasonable further progress toward, and attainment of, a NAAQS), the section 182(b)(1) attainment demonstration requirement and the section 182(j) multi-state attainment demonstration requirement, are not applicable to the St. Louis area as long as it continues to attain the ozone NAAQS. EPA is also proposing the following actions with respect to each state:

Illinois

EPA is proposing to approve a request from the state of Illinois to redesignate the Illinois portion of the St. Louis nonattainment area to attainment of the 1-hour ozone NAAQS.

In addition, for Illinois, EPA is proposing the following:

- Approve Illinois' plan for maintaining the 1-hour ozone NAAQS through 2014, as a revision to the Illinois SIP;
- Find adequate and approve the 2014 MVEBs for VOC and NO_X in the submitted maintenance plan for transportation conformity purposes;
- Determine that the attainment demonstration (and associated contingency measures) and Reasonably Available Control Measures (RACM) requirements of the CAA are not applicable so long as the area continues to attain the NAAQS; and
- Exempt the Illinois portion of the area from the NO_X RACT requirements of the CAA.

Missouri

EPA is proposing to approve a request from the State of Missouri to redesignate the Missouri portion of the St. Louis nonattainment area to attainment of the 1-hour ozone NAAQS.

In addition, for Missouri, EPA is proposing the following:

- Approve Missouri's plan for maintaining the 1-hour ozone NAAQS through 2014, as a revision to the Missouri SIP;
- Find adequate and approve the 2014 MVEBs for VOC and NO_X in the submitted maintenance plans for transportation conformity purposes; and,
- Determine that the attainment demonstration (and related contingency measure requirements) and RACM requirements of the CAA are not applicable so long as the area continues to attain the NAAQS.

Although EPA is addressing separate requests from Missouri and Illinois, all of the above actions are being proposed in this rule. Where applicable, notations have been made indicating items specifically applicable to Missouri and those specifically applicable to Illinois. In any final rulemaking(s), EPA will consider addressing the above proposed actions in either one rule or in rules specific to each state.

B. Why Is EPA Taking These Actions?

As detailed below, EPA is proposing to determine that the St. Louis area has attained the 1-hour ozone standard and has fully met the requirements for redesignation found at section 107(d)(3)(E) of the CAA for redesignation of an area from nonattainment to attainment. The EPA believes that each state has demonstrated that the area has attained, and that the criteria for redesignation have been met.

C. What Would Be the Effect of These Actions?

A final determination that the St. Louis area has met the 1-hour ozone standard would relieve the states from the obligation to meet certain additional requirements, as identified above, which apply to areas not attaining that standard. EPA notes, however, that the area is likely to be designated nonattainment for the 8-hour ozone standard, and would be subject to any additional requirements as a result of such designation. EPA also notes that it is not proposing to revoke the 1-hour standard for the St. Louis area.

Approval of the Missouri redesignation request would change the official designation for the 1-hour ozone NAAQS found at 40 CFR part 81 for the St. Louis area, including the City of St. Louis, and the Counties of Franklin, Jefferson, St. Charles, and St. Louis from nonattainment to attainment. It would also incorporate into the Missouri SIP a plan for maintaining the 1-hour ozone NAAQS through 2014. The plan includes contingency measures to remedy any future violations of the 1-hour ozone NAAQS, and includes VOC and NO_X MVEBs for 2014 for the Missouri portion of the St. Louis area.

Approval of the Illinois redesignation request would change the official designation for the 1-hour ozone NAAQS found at 40 CFR part 81 for the Illinois counties of Madison, Monroe, and St. Clair from nonattainment to attainment. It would also incorporate into the Illinois SIP a plan for maintaining the 1-hour ozone NAAQS through 2014. The plan includes contingency measures to remedy any future violations of the 1-hour ozone NAAQS, and includes VOC and NO_X MVEBs for 2014 for the Illinois portion of the St. Louis area.

D. What Is the Background for These Actions?

With respect to the proposed finding of attainment and proposed determination that certain requirements are not applicable to an area monitoring attainment of the 1-hour ozone standard, EPA described its interpretation of the attainment demonstration requirements (and related requirements) in detail in its proposed rule on the Cincinati-Hamilton area (65 FR 3630, 3631–3632, January 24, 2000). In summary, EPA interprets the CAA's general nonattainment provisions of subpart 1 of part D of Title I (sections 171 and 172) and the more specific attainment demonstration and related provisions of subpart 2 (section 182), relating to SIP requirements for ozone nonattainment areas to not require the submission of SIP revisions concerning reasonable further progress (RFP), attainment demonstrations, or contingency measures for areas where the monitoring data show that the area is attaining the 1-hour ozone standard. (*See Sierra Club* v. *EPA*, 99 F.3d 1551 (10th Cir. 1996)). This rationale is described in a memorandum from John S. Seitz, Director, Office of Air Quality Planning and Standards, entitled "Reasonable Further Progress, Attainment Demonstration, and Related Requirements for Ozone Nonattainment Areas Meeting the Ozone National Ambient Air Quality Standard," dated May 10, 1995. (See also, the proposed determination of attainment for Louisville, 66 FR 27483, 27486, May 17, 2001, and the proposed determination of attainment for Pittsburgh-Beaver Valley, 66 FR 1925, January 10, 2001, for more recent applications of this interpretation.)

With regard to the redesignation requests, under section 107(d) of the CAA, the St. Louis area was designated as an ozone nonattainment area in March 1978 (43 FR 8962). On November

15, 1990, the CAA Amendments of 1990 were enacted. Under section 107(d)(4)(A) of the CAA, on November 6, 1991 (56 FR 56694), the St. Louis area was designated as a moderate ozone nonattainment area as a result of monitored violations of the one-hour ozone NAAQS during the 1987–1989 period. In a separate rulemaking, EPA is reclassifying the area to a serious nonattainment area. However, as explained below, in Section I.F.2, the basis for the proposed redesignation does not depend on the area's "serious" classification.

Illinois and Missouri have adopted and implemented emission control programs required under the CAA to reduce emissions of VOC and NO_X. These emission control programs include stationary source RACT, vehicle inspection and maintenance (I/M) programs, transportation control measures (TCMs), and other measures (see the analysis and discussion of specific emission control measures below). As a result of the emission control programs, ozone monitors in the St. Louis area have recorded three years of ozone monitoring data for the 2000–2002 period showing that the area has attained the 1-hour ozone NAAQS.

On December 6, 2002, the Missouri Department of Natural Resources submitted a Redesignation Demonstration and Maintenance Plan for the Missouri Portion of the St. Louis ozone nonattainment area along with a request to redesignate the Missouri portion of the St. Louis nonattainment area to attainment of the 1-hour ozone NAAQS. Included in the Redesignation Demonstration and Maintenance Plan for the Missouri Portion of the St. Louis nonattainment area is a plan to maintain the 1-hour ozone NAAQS for a least the next 10 years, and the 2014 MVEBs for transportation conformity purposes.

On December 30, 2002, the Illinois Environmental Protection Agency submitted a Maintenance Plan for the Illinois Portion of the St. Louis ozone nonattainment area along with a request to redesignate the Illinois portion of the St. Louis nonattainment area to attainment of the 1-hour ozone NAAQS. Included in the Maintenance Plan for the Illinois Portion of the St. Louis ozone nonattainment area is a plan to maintain the 1-hour ozone NAAQS for at least the next 10 years, and the 2014 MVEBs for transportation conformity purposes.

E. What Are the Redesignation Review Criteria?

The CAA provides the requirements for redesignating a nonattainment area to attainment. Specifically, section 107(d)(3)(E) allows for redesignation providing that: (1) The Administrator determines that the area has attained the applicable NAAQS; (2) the Administrator has fully approved the applicable implementation plan for the area under section 110(k); (3) the Administrator determines that the improvement in air quality is due to permanent and enforceable reductions in emissions resulting from implementation of the applicable SIP and applicable Federal air pollutant control regulations and other permanent and enforceable reductions; (4) the Administrator has fully approved a maintenance plan for the area as meeting the requirements of section 175A; and, (5) the state containing such area has met all requirements applicable to the area under section 110 and part D.

EPA provided guidance on redesignation in the General Preamble for the Implementation of Title I of the CAA Amendments of 1990, on April 16, 1992 (57 FR 13498), and supplemented this guidance on April 28, 1992 (57 FR 18070). EPA has provided further guidance on processing redesignation requests in the following documents:

State Implementation Plans; General Preamble for the Implementation of Title I of the CAA Amendments of 1990 (57 FR 13498), April 16, 1992 (General Preamble);

"Maintenance Plans for Redesignation of Ozone and Carbon Monoxide Nonattainment Areas," Memorandum from G.T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, April 30, 1992;

"Contingency Measures for Ozone and Carbon Monoxide (CO) Redesignations," Memorandum from G. T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, June 1, 1992;

"Procedures for Processing Requests to Redesignate Areas to Attainment," Memorandum from John Calcagni, Director, Air Quality Management Division, September 4, 1992;

"State Implementation Plan (SIP) Actions Submitted in Response to Clean Air Act (ACT) Deadlines," Memorandum from John Calcagni, Director, Air Quality Management Division, October 28, 1992;

"Technical Support Documents (TSD's) for Redesignation Ozone and Carbon Monoxide (CO) Nonattainment Areas," Memorandum from G. T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, August 17, 1993;

"State Implementation Plan (SIP) Requirements for Areas Submitting Requests for Redesignation to Attainment of the Ozone and Carbon Monoxide (CO) National Ambient Air Quality Standards (NAAQS) On or After November 15, 1992," Memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation, September 17, 1993;

"Part D New Source Review (part D NSR) Requirements for Areas Requesting Redesignation to Attainment," Memorandum from Mary D. Nichols, Assistant Administrator for Air and Radiation, October 14, 1994; and

"Reasonable Further Progress, Attainment Demonstration, and Related Requirements for Ozone Nonattainment Areas Meeting the Ozone National Ambient Air Quality Standard," Memorandum from John S. Seitz, Director, Office of Air Quality Planning and Standards, May 10, 1995.

F. What Is EPA's Analysis of the Requests?

EPA believes that Missouri and Illinois have demonstrated that the St. Louis area has attained the 1-hour ozone standard and have demonstrated that the area meets all of the applicable criteria for redesignation to attainment as specified in Section 107(d)(3)(E) of the CAA.

1. Criterion (1): The Area Must Be Attaining the 1-Hour Ozone NAAQS

EPA proposes to find that the area has attained the 1-hour ozone standard and to approve the redesignation requests submitted by Missouri and Illinois for the St. Louis area as meeting this requirement because complete, quality-assured, ambient air monitoring data for the 2000 to 2002 ozone seasons (April through September, when the highest ozone concentrations are expected to occur in this area) demonstrate that the 1-hour ozone NAAQS has been attained in the entire St. Louis area. For ozone, an area may be considered to be attaining the 1-hour ozone NAAQS if there are no violations, as determined in accordance with 40 CFR 50.9 and appendix H, based on three complete, consecutive calendar years of quality-assured ambient monitoring data. A violation of the 1-hour ozone NAAQS occurs when the estimated number of exceedances per year averaged over three years is greater than 1.0 at any monitoring site in the area or its downwind environs, using conventional rounding techniques.

The calculation of the estimated exceedances takes into account not only the number of exceedances during a

given ozone season, but also completeness of data, and daily peak ozone concentrations on days in the ozone season that can be assumed to be less than the level of the standard. An example calculation of estimated exceedances at the West Alton monitor is given below. A daily exceedance occurs when the maximum hourly ozone concentration during a given day is greater than or equal to 0.125 parts per million (ppm), using conventional rounding techniques. Monitoring data must be collected and quality-assured in accordance with 40 CFR part 58, and recorded in EPA's Aerometric Information Retrieval System (AIRS).

MDNR and IEPA submitted quality-assured ozone monitoring data to EPA for the 2000 to 2002 ozone monitoring seasons. Table 1 below summarizes these air quality data.

TABLE 1.—1-HOUR OZONE NAAQS EXCEEDANCES IN THE ST. LOUIS, ILLINOIS-MISSOURI AREA FROM 2000 TO 2002

Site name	County or city and state	Estimated exceedances			Average number of estimated exceedances 2000–2002
		2000	2001	2002	
Jerseyville	Jersey, IL	0.0	1.0	1.0	0.7
Alton	Madison, IL	0.0	0.0	0.0	0.0
Maryville	Madison, IL	0.0	0.0	1.0	0.3
Edwardsville	Madison, IL	0.0	0.0	0.0	0.0
Wood River	Madison, IL	0.0	1.0	0.0	0.3
Houston	Randolph, IL	0.0	0.0	0.0	0.0
East St. Louis	St. Clair, IL	0.0	0.0	0.0	0.0
Arnold	Jefferson, MO	0.0	0.0	0.0	0.0
West Alton	St. Charles, MO	1.0	1.0	1.0	1.0
Orchard Farm	St. Charles, MO	0.0	0.0	2.0	0.7
Bonne Terre	St. Genevieve, MO	0.0	0.0	0.0	0.0
South Lindbergh	St. Louis, MO	0.0	0.0	2.0	0.7
Queeny	St. Louis, MO	0.0	0.0	0.0	0.0
Hunter	St. Louis, MO	0.0	0.0	0.0	0.0
Flo Valley	St. Louis, MO	0.0	0.0	0.0	0.0
St. Ann (old)	St. Louis, MO	0.0	n/a	n/a	[1] 0.0
St. Ann (new)	St. Louis, MO	n/a	0.0	0.0	[1] n/a
Broadway	St. Louis City, MO	0.0	0.0	0.0	0.0
Clark	St. Louis City, MO	0.0	0.0	0.0	0.0
Margaretta	St. Louis City, MO	0.0	0.0	0.0	0.0

[1] The owner of the property on which the old St. Ann monitor was located terminated the lease agreement with MDNR. The new site is 0.7 miles east of the old site. In general, ambient monitors should remain at the same location for the duration of the monitoring period required for demonstrating attainment. However, when three complete, consecutive calendar years of data is not available for a monitoring site, adjustments are made consistent with EPA monitoring criteria, in determining the average number of estimated exceedances per year. The average number of estimated exceedances for 2000–2002 for the old St. Ann monitor is the estimated exceedances for 2000, or 0.0. In addition, where a monitor has been in operation less than three years, the average estimated number of exceedances cannot be determined. Since the new St. Ann monitor has been in operation less than three years, the average number of estimated exceedances for 2000–2002 was not determined.

The following is an example of how the number of estimated exceedances at the West Alton Monitor were determined: During the 2000 to 2002 time period, the West Alton monitor was determined to have an annual average number of estimated exceedances of 1.0. This value was determined in accordance with 40 CFR 50.9 and appendix H, as follows:

e = v + [(v/n)*(N-n-z)] where

Variable description	Comments
e = the estimated number of exceedances for the year.	Calculated.
N = the number of required monitoring days in the year.	Missouri's ozone season is April 1 through September 30.
n = the number of valid daily maxima.	Days with valid data based on 40 CFR part 50 and appendix H.

e = v + [(v/n)*(N-n-z)] where

Variable description	Comments
v = the number of daily values above the level of the standard.	Based on monitored values.
Z = the number of days assumed to be less than the standard level.	Based on 40 CFR part 50, Appendix H, for days that were likely below the standard.

WEST ALTON MONITOR

Variable	2000	2001	2002
e	1.0	1.0	1.0
N	214	214	214
n	214	213	213
v	1	1	1
z	0	1	0

WEST ALTON MONITOR—Continued

Variable	2000	2001	2002
Average Number of Estimated Exceedances = (1.0 + 1.0 + 1.0)/3 = 1.0			

2. Criteria (2) and (5): The Area Must Have a Fully Approved SIP Under Section 110(k); and the Area Must Have Met All Applicable Requirements Under Section 110 and Part D

Background

In order to analyze whether the Missouri and the Illinois portions of the area each meet these criteria, it is necessary to discuss what requirements are applicable to the St. Louis area, and for the applicable SIP requirements, the extent to which they are fully approved under section 110(k). In a notice accompanying a rulemaking published June 26, 2001, EPA explained how the states had previously submitted, and

EPA had previously approved, various SIPs for the area in order to meet the CAA requirements applicable to a moderate ozone nonattainment area (66 FR 33996, 34001). The EPA incorporates that discussion into this notice by reference. In redesignating an area EPA may rely on prior SIP approvals and rulemaking actions, and need not reopen earlier issues with regard to the SIP. See, *Wall* v. *EPA*, 265 F. 3d 426, 438 (6th Cir. 2001) and *Southwestern Pa. Growth Alliance* v. *Browner*, 144 F. 3d 984, 989–90 (6th Cir. 1998). In the June 26, 2001, rulemaking, EPA also approved into the Missouri and Illinois SIPs, several plan elements which ensured that the states had fully approved SIPs (*e.g.*, the states' attainment demonstrations for the area) (66 FR 33996, 34010).

On November 25, 2002, the U.S. Court of Appeals for the Seventh Circuit (Court) issued a decision in *Sierra Club and Missouri Coalition for the Environment* v. *EPA*, 311 F. 3d 853 (7th Cir. 2002)("Sierra Club"). In this decision, the Court vacated the June 26, 2001, rule and remanded to EPA for entry of a final rule that reclassifies St. Louis as a serious nonattainment area for ozone. Although the Court addressed only EPA's action extending the attainment date for St. Louis, the Court's order vacated the other EPA actions in the rulemaking as well. EPA has reviewed the other actions in the June 26, 2001, rulemaking, and proposes to find, as discussed below, that the SIP actions vacated by the Court are no longer applicable requirements since the area has attained the NAAQS. EPA is also reproposing to approve the exemption granted in the June 26 rule to Illinois from the NO_X RACT requirements under section 182(f) of the Act, since the area has attained the NAAQS. Therefore, EPA is proposing to grant the exemption in this rulemaking, as discussed elsewhere in this notice. In addition, in a separate rulemaking, EPA is reclassifying the St. Louis area as a serious nonattainment area in accordance with the Court's Order. With respect to the redesignation criteria applicable to St. Louis, the following includes a discussion of the effect of the Court's action and of the reclassification on EPA's ability to redesignate the area.

The September 4, 1992, Calcagni memorandum (see "Procedures for Processing Requests to Redesignate Areas to Attainment," Memorandum from John Calcagni, Director, Air Quality Management Division, September 4, 1992) describes EPA's interpretation of the Section 107(d)(3)(E) requirement. Under this interpretation, states requesting redesignation to attainment must meet the relevant CAA requirements that come due prior to the submittal of a complete redesignation request. Areas may be redesignated even though they have not adopted measures that come due after the submission of a complete redesignation request.

The May 10, 1995, Seitz memorandum (see "Reasonable Further Progress, Attainment Demonstration, and Related Requirements for Ozone Nonattainment Areas Meeting the Ozone National Ambient Air Quality Standard," Memorandum from John S. Seitz, Director, Office of Air Quality Planning and Standards, May 10, 1995) states that certain SIP revisions need not be submitted for EPA to approve a request for redesignation, since the requirements would no longer be considered applicable requirements as long as the area continues to attain the 1-hour ozone NAAQS. The SIP requirements subject to this policy are described as the general provisions of subpart 1, part D, title I of the CAA (sections 171 and 172) concerning RFP, attainment demonstrations, and contingency measures, as well as the ozone-specific provisions of subpart 2 of the CAA. The Seitz memorandum was discussed above, in section I.D. and in more detail in the proposed rulemaking on the Cincinnati-Hamilton area, 65 FR 3630, 3631–3632 (January 24, 2000), also referenced previously.

EPA sets forth, in a separate rulemaking published today, a schedule for the states of Missouri and Illinois to submit the serious area SIP requirements within one year after today's date. However, because the States have already submitted complete redesignation requests, EPA believes, pursuant to the policies described above, that the serious nonattainment requirements are not applicable, for purposes of reviewing and acting on the redesignation requests. Therefore, for purposes of acting on the redesignation requests, EPA's analysis includes a proposed determination that the area has met the applicable CAA requirements for moderate nonattainment areas.

If the area violates the 1-hour ozone NAAQS prior to final action on the redesignation request, however, not only would the serious area requirements become applicable, but the redesignation request could not be approved because the area would no longer meet the criterion of having attained the 1-hour NAAQS. (Seitz memorandum dated May 10, 1995.) Furthermore, requirements of the CAA that come due subsequent to the area's submittal of a complete redesignation request would continue to be applicable to the area until a redesignation is approved but are not required as a prerequisite for redesignation (see section 175A(c) of the CAA). If the redesignation were to be disapproved, the States remain obligated to fulfill all of the serious area requirements.

The following is a discussion of the relevant requirements for the St. Louis area. Where appropriate, EPA addresses the SIP actions in the June 26, 2001, rulemaking vacated by the Court in *Sierra Club*, and explains its conclusion that each state has met its obligation to have fully approved SIPs for its portion of the nonattainment area. EPA also identifies the SIP actions for the area which pre-dated the June 26, 2001, rulemaking and were not impacted by the *Sierra Club* ruling. (As stated above, those prior actions were also discussed in the June 26, 2001, rulemaking.)

a. Section 110 Requirements

General SIP elements and requirements are delineated in section 110(a)(2) of Title I, part A of the CAA. These requirements include, but are not limited to, the following: Submittal of a SIP that has been adopted by the state after reasonable public notice and hearing; provisions for establishment and operation of appropriate apparatus, methods, systems, and procedures needed to monitor ambient air quality; implementation of a source permit program; provisions for the implementation of part C requirements (Prevention of Significant Deterioration (PSD)); provisions for the implementation of part D requirements (New Source Review (NSR) permit programs); provisions for stationary source emission control measures, source monitoring, and source reporting; provisions for air pollution modeling; and provisions for public and local agency participation in planning and emission control rule development.

Illinois

Review of the Illinois SIP, as codified in 40 CFR part 52, subpart O, and specifically 40 CFR 52.720, 52.722, and 52.726, shows that Illinois has an approved ozone SIP which meets the general requirements of section 110(a)(2) of the CAA, and which can be considered to be approved under section 110(k) of the CAA. The SIP, which has undergone public review: (a) Provides for the control of ozone precursor emissions, including those from stationary sources, in the Metro-East area at sufficient control levels to attain the ozone standard; (b) provides for continued monitoring of ozone in this area; (c) contains provisions covering permitting of new sources

under PSD and NSR provisions; and (d) where appropriate, requires stationary source monitoring.

Missouri

The Missouri SIP, is codified in 40 CFR part 52, subpart AA. If EPA finalizes its proposal for the revisions to the Missouri motor vehicle inspection and maintenance (I/M) program, published elsewhere in this **Federal Register**, as described below in the Vehicle Inspection/Maintenance Requirements, the Missouri ozone SIP will meet the applicable requirements of section 110 and part D, and can be considered to be approved under section 110(k) of the CAA. The SIP, which has undergone public review: (a) Provides for the control of ozone precursor emissions, including those from stationary sources, at sufficient control levels to attain the ozone standard; (b) provides for continued monitoring of ozone in this area; (c) contains provisions covering permitting of new sources under PSD and NSR provisions; and (d) where appropriate, requires stationary source monitoring.

b. Transport of Ozone Precursors to Downwind Areas

Modeling results generated using EPA's Regional Oxidant Model (ROM) indicate that ozone precursor emissions from various states outside of the Ozone Transport Region (OTR), in the Northeastern United States, contribute significantly to increased ozone concentrations in the OTR (as well as to increased ozone concentrations in other states in the Eastern portion of the United States). On October 27, 1998, (63 FR 57356), EPA issued a NO_X SIP call, requiring the District of Columbia and 22 states, including Illinois and Missouri, to reduce their statewide emissions of NO_X in order to reduce the transport of ozone and ozone precursors. In March 2000, the United States Circuit Court of Appeals for the District of Columbia largely upheld the SIP call, *Michigan* v. *EPA*, 213 F.3d 663 (D.C. Cir. 2000). Illinois is currently subject to the NO_X SIP call. However, the Court vacated and remanded the SIP call as it relates to Missouri.

Illinois

In compliance with EPA's NO_X SIP call, Illinois has developed rules governing the control of NO_X emissions from Electric Generating Units (EGUs), major non-EGU industrial boilers, and major cement kilns. EPA approved Illinois' rules for major non-EGU industrial boilers and major cement kilns on November 8, 2001 (66 FR 56449), and Illinois' rules for EGUs on November 8, 2001 (66 FR 56454).

Missouri

On February 22, 2002 (67 FR 8396), EPA proposed modifications to the NO_X SIP call for Missouri. EPA has not finalized the rulemaking to require Missouri to submit this SIP revision. When finalized, EPA anticipates that the rule will specify a schedule for submission of necessary SIP revisions. Missouri is not subject to the NO_X SIP call at this time.

c. Part D: General Provisions for Nonattainment Areas

Before an area may be redesignated to attainment, it must have fulfilled the applicable requirements of part D. Under part D of Title I of the CAA, an area's ozone classification determines the requirements to which it is subject. Subpart 1 of part D specifies the basic requirements applicable to all nonattainment areas. Subpart 2 of part D establishes additional requirements for nonattainment areas classified under Table 1 of section 181(a) of the CAA. As described in the General Preamble for Implementation of Title I of the CAA, specific requirements of subpart 2 may override or modify subpart 1's general provisions (57 FR 13501, April 16, 1992). Therefore, in order to be redesignated, the states must meet the applicable requirements of subpart 1 of part D—specifically sections 172(c) and 176, as well as the applicable requirements of subpart 2 of part D.

EPA believes that Illinois and Missouri have each met the requirements of subpart 1 of part D—specifically sections 172(c), and 176, insofar as applicable, as well as the applicable requirements of subpart 2 of part D of the CAA as described below. EPA is proposing to determine that the requirement for a SIP revision providing an attainment demonstration to meet the requirements of sections 172(c)(1), 182(b)(1), and 182(j) is not applicable. In addition, although the St. Louis area is being reclassified to a serious nonattainment area in a separate rulemaking, EPA believes that the serious area requirements which have not yet been adopted by the states [2] are not yet applicable to the St. Louis area until such time as they are due. The States of Missouri and Illinois are not required to submit the serious area SIP requirements for one year from today. The discussion below demonstrates how the St. Louis area has met the applicable requirements of subpart 1 of part D—specifically sections 172(c) and 176, as well as the applicable requirements of subpart 2 of part D.

d. Section 172(c) Requirements

This section contains general requirements for nonattainment area SIPs. For reasons discussed previously, EPA proposes to determine that certain requirements relating to attainment of the NAAQS do not apply to St. Louis because the area has attained the standard. A thorough discussion of the requirements contained in section 172(c) may be found in the General Preamble for Implementation of Title I (57 FR 13498, April 16, 1992). The following discussion summarizes the requirements in section 172(c) of the CAA. This is followed by a discussion of the extent to which the St. Louis area has met these requirements, and an identification of the requirements which EPA proposes to find are not applicable to the St. Louis area.

General Plan Requirements—The plan provisions, to the extent applicable, must provide for the implementation of all RACM as expeditiously as practicable. At a minimum, the plan must require the implementation of RACT for stationary sources. Also to the extent applicable, the plan must also provide for the attainment of the national primary ambient air quality standards (those standards set to protect public health);

RFP—RFP reflects a steady, annual progress towards attainment of the air quality standards, generally addressed in terms of annual emission reductions. To the extent applicable, the plan must document and provide for such annual progress;

Emissions Inventory—The plan needs to include a comprehensive, accurate, current inventory of actual emissions from all sources of the relevant pollutant as determined necessary by the Administrator to assure that the requirements of part D of the CAA are met;

Identification and Quantification of Allowable Emissions for Major New or Modified Stationary Sources—The quantified emissions must be consistent with the emission levels needed to achieve RFP and attainment of the NAAQS;

Permits for New and Modified Major Stationary Sources—The plan provisions must require permits for the construction and operation of new or

[2] Each state has adopted certain permit applicability rules which are dependent on the nonattainment area's classification (*e.g.*, the minimum applicability threshold is 50 tons per year of VOC or NO_X in a serious area as compared to a 100-ton minimum threshold in a moderate area). These rules apply, according to their terms, as long as the area remains classified as a "serious" nonattainment area for the 1-hour ozone standard.

modified major stationary sources anywhere in the nonattainment area;

Other Emission Control Measures—The plan must include enforceable emission limitations and other control measures and time schedules for implementation of emission controls as needed to assure attainment of the NAAQS by the applicable attainment date;

Compliance With Section 110(a)(2)—The plan must contain provisions to meet the requirements of section 110(a)(2) of the CAA (see the discussion of section 110 requirements above); and

Contingency Measures—The plan must provide, to the extent applicable, for the implementation of specific measures to be undertaken if the area fails to achieve RFP or to attain the NAAQS by the applicable attainment date. Such measures must take effect, if triggered, without further action by the State or the EPA.

(1) RACM and RACT

These requirements are discussed below under Subpart 2, Section 182 Requirements.

(2) RFP

The RFP requirement under section 172(c)(2) is defined as progress that must be made toward attainment. Section 182(b)(1)(A) sets forth the specific requirements for RFP. As described elsewhere in this proposal, EPA believes it is reasonable to interpret that the Clean Air Act provisions regarding RFP and attainment demonstrations, along with certain other related provisions do not require certain SIP submissions if an ozone nonattainment area subject to those requirements is monitoring attainment of the ozone standard (*i.e.*, has three consecutive years of complete, quality-assured, air quality monitoring data) without those provisions being implemented. However, EPA has approved the regulations that were submitted by Illinois and Missouri, and their respective 15 percent rate-of-progress (or ROP) plans, as described below in the discussion of the section 182 requirements. These plans were submitted before the 2000 to 2002 time frame during which attainment has been monitored, and provided permanent and enforceable emission reductions for the St. Louis area during the 2000 through 2002 ozone seasons (*see* the discussion under the heading "Criterion 3," below). These previously-approved SIP control measures must continue to be implemented and enforced and are not affected by this action.[3]

(3) Emissions Inventories

These requirements are discussed below under Subpart 2, Section 182 Requirements.

(4) Identification and Quantification of Allowable

Emissions for Major New or Modified Stationary Sources and Permits for New and Modified Major Stationary Sources

Illinois

The state of Illinois has a fully approved set of adopted Prevention of Significant Deterioration (PSD) and nonattainment area New Source Review (NSR) rules, as documented at the following EPA Web site: *http://www.epa.gov/region5/air/sips/sips.htm*.

Missouri

The state of Missouri has a fully approved set of adopted Prevention of Significant Deterioration (PSD) and nonattainment area New Source Review (NSR) rules, as documented at the following EPA Web site: *http://www.epa.gov/region07/programs/artd/air/rules/missouri/chap6.htm*.

Both states' maintenance plans for the St. Louis ozone nonattainment area and the 15 percent ROP plans for the area document expected additional VOC and NO_X emissions due to major source growth. Where possible, the states specifically identified the emission increases expected by source category. The emission growth estimates take into account the allowable emissions increases expected to result for each source category. As such, EPA believes the states have complied with the requirement for the identification and quantification of allowable emissions due to major new or modified stationary sources.

(5) Other Emission Control Measures

Illinois

Illinois' maintenance plan for the St. Louis area indicates emission control measures which will maintain the 1-hour ozone standard until 2014. In addition, the state's 15 percent ROP plan identifies sufficient emission controls to achieve the required rate of progress (*see* EPA's approval of Illinois' ROP plan at 62 FR 37494, July 14, 1997).

Missouri

Missouri's maintenance plan for the St. Louis area indicates emission control measures which will maintain the 1-hour ozone standard until 2014. In addition, the State's 15 percent ROP plan identifies sufficient emission controls to achieve the required rate of progress (*see* EPA's approval of Missouri's ROP plan at 65 FR 31485, May 18, 2000).

(6) Contingency Measures

In the June 26, 2001, rulemaking, EPA found that both states had met their obligations to have contingency measures in the event of failure to attain the 1-hour standard. Although that finding was not challenged, the finding was vacated in the *Sierra Club* decision. However, because the area has now attained the standard, and for the reasons described previously, the relevant contingency measures are those necessary to maintain the standard. The contingency measures are identified below, and a more detailed discussion is included under the discussion of the maintenance plan, in Criterion 4, below.

Illinois

Illinois' ozone redesignation request for the St. Louis area contains a contingency plan for the area that will result in the adoption and implementation of contingency measures as needed to maintain the ozone standard in the St. Louis area.

Missouri

Missouri's ozone redesignation request for the St. Louis area contains a contingency plan for the area that will result in the adoption and implementation of contingency measures as needed to maintain the ozone standard in the St. Louis area.

e. Section 176 Conformity Requirements

Section 176(c) of the CAA requires states to establish criteria and procedures to ensure that Federally supported or funded projects conform to the air quality planning goals in the applicable SIP. The requirement to determine conformity applies to transportation plans, programs and projects developed, funded or approved under Title 23 U.S.C. of the Federal Transit Act ("transportation conformity"), as well as to all other Federally supported or funded projects ("general conformity"). Section 176 further provides that state conformity revisions must be consistent with Federal conformity regulations that the CAA required the EPA to promulgate.

EPA believes it is reasonable to interpret the conformity requirements as

[3] The RFP requirements in section 182(c)(2)(B), relating to RFP for serious nonattainment areas, are not yet due (as explained elsewhere, they would be due within a year after the reclassification), and, in any event, are not applicable requirements for the reasons stated above.

not applying for purposes of evaluating the redesignation request under section 107(d). The rationale for this is based on a combination of two factors. First, the requirement to submit SIP revisions to comply with the conformity provisions of the CAA continues to apply to areas after redesignation to attainment, since such areas would be subject to a section 175A maintenance plan. Second, the EPA's Federal conformity rules require the performance of conformity analyses in the absence of Federally approved state rules. Therefore, because areas are subject to the conformity requirements regardless of whether they are redesignated to attainment and must implement conformity under Federal rules if state rules are not yet approved, EPA believes it is reasonable to view these requirements as not applying for purposes of evaluating a redesignation request. *See, Wall* v. *EPA*, 265 F. 3d 426, 439 (6th Cir. 2001) upholding this interpretation.

Illinois

The State of Illinois has fully adopted general conformity procedures, approved by the EPA on December 23, 1997 (62 FR 67000). The State does not have fully adopted and approved transportation conformity procedures in the SIP. For the reasons stated above, EPA believes the adoption of conformity rules is not a prerequisite for redesignation. For the Illinois portion of the area, the Federal conformity rules continue to apply.

Missouri

The State of Missouri has adopted general conformity procedures found at 10 CSR 10–6.300, approved by EPA on May 14, 1997 (62 FR 26395), and has adopted transportation conformity procedures found at 10 CSR 10–5.480, approved by EPA on September 5, 1997 (62 FR 46880), corrected on February 10, 1998 (63 FR 6645).

f. Subpart 2 Section 182 Requirements

For purposes of this redesignation, the part D, subpart 2, section 182 (a) and (b) requirements for a nonattainment area apply to the St. Louis area.

g. Attainment Demonstration

Section 182(b)(1) of the CAA requires an attainment demonstration that provides specific annual reductions in emissions necessary to attain the NAAQS by the attainment date. Section 182(j) provides additional requirements for multistate areas.

EPA approved Missouri's and Illinois' attainment demonstrations in the June 26, 2001, rulemaking (66 FR 33996). This rulemaking was vacated in the November 25, 2002, U.S. Court of Appeals for the Seventh Circuit (Court) decision in the *Sierra Club* case (311 F. 3d 853, 862). The Court vacated the rulemaking based on EPA's granting of an attainment date extension for the area, which the Court found unlawful. In its petition, the Sierra Club raised other objections to the rulemaking, including EPA's approval of the attainment demonstration. The Court stated that it would not reach these other issues, and that it expressed no opinion on them. *Id.* However, because the Court vacated the entire rule, the area does not have an approved attainment demonstration.

Although the approval of the attainment demonstration for the St. Louis area has been vacated, for the reasons discussed previously, EPA believes that the attainment demonstration requirement under Section 182(b)(1) and 182(j) is no longer applicable provided the area continues to attain the 1-hour ozone NAAQS. This conclusion is based upon the monitored attainment with the NAAQS. EPA believes that upon monitoring attainment, there is no need for an area to take further action regarding additional measures to achieve attainment. This is consistent with the interpretation of certain section 172(c) requirements provided by EPA in the General Preamble to Title I. EPA stated in the Preamble no other measures to provide for attainment would be needed by areas seeking redesignation to attainment since "attainment will have been reached" (57 FR 13564). Upon attainment of the NAAQS, the focus of state planning efforts shifts to the maintenance of the NAAQS and the development of a maintenance plan under section 175A. (See also, the proposal on Cincinnati-Hamilton, discussed previously in Section I.F.2 of this proposal, 65 FR 3630, 3631–32.)

h. 1990 Base Year Inventory and Periodic Emissions Inventories Updates

Illinois

Illinois has submitted a complete and accurate 1990 emissions inventory for VOC and NO_X for the Metro-East area as noted in EPA's final approval of the emissions inventory on March 14, 1995 (60 FR 13631). The 1990 emissions inventory has formed the basic emissions input for the State's ROP plan.

Illinois has submitted updated versions of the emissions inventories for 1996 and 2000.

Missouri

Missouri submitted a complete and accurate 1990 emissions inventory of VOC and NO_X for the St. Louis area as noted in EPA's final approval of the emissions inventory on February 17, 2000 (65 FR 8060).

Missouri submitted updated versions of the emissions inventories for 1996 as part of the ROP plan approved on May 18, 2000 (65 FR 31485), and for 2000 as part of the redesignation request submitted on December 6, 2002.

i. Emissions Statement Requirements

Illinois

As noted in the following EPA web site for adopted SIP revisions, Illinois' SIP includes regulations requiring annual emissions statements from major sources. The Web site is: *http://www.epa.gov/region5/air/sips/sips.htm*

Missouri

As noted in the following EPA web site for adopted SIP revisions, Missouri's SIP includes regulations requiring annual emissions statements from major sources. The Web site is: *http://www.epa.gov/region07/programs/artd/air/rules/missouri/chap6.htm.*

Missouri's requirements to submit annual emissions statements from major sources can be found at the above web site at 10 CSR 10–6.110.

j. 15 Percent Rate-Of-Progress Plan Requirements

Section 182(b)(1) of the CAA requires the submission of a 15 percent Rate-Of-Progress (ROP) plan. This plan is to provide for VOC emission reductions in the nonattainment area of at least 15 percent, from the 1990 baseline emissions levels, by no later than November 15, 1996. A discussion of the extent to which the requirement is applicable to an area monitoring attainment of the standard is included above. We note that the Missouri and Illinois SIPs contain these provisions as indicated below.

Illinois

In November 1994 the IEPA submitted a 15 percent ROP plan for the control of VOC emissions in the Metro-East area. This ROP plan was supplemented by the state through a submittal on January 31, 1995. The ROP plan, as supplemented, was approved by the EPA in a final rulemaking on July 14, 1997 (62 FR 37494).

Missouri

In 1995 MDNR submitted a 15 percent ROP plan for the control of VOC emissions in the St. Louis area. On

March 18, 1996, EPA proposed a limited approval of the ROP plan (61 FR 10968). On November 12, 1999, MDNR submitted a revised ROP. The revised ROP plan was approved by the EPA in a final rulemaking on May 18, 2000 (65 FR 31485). EPA's approval of the Missouri ROP was upheld in *Sierra Club v. EPA*, 252 F.3d 943 (8th Cir. 2001).

k. VOC RACT Requirements

Sections 172(c) of the CAA specifies that SIPs must provide for the implementation of all Reasonably Available Control Measures (RACM) including all Reasonably Available Control Technology (RACT) as expeditiously as practicable to attain the NAAQS. At a minimum, the SIPs must require the implementation of RACT for two classes of VOC sources. The VOC source classes are: (a) All sources covered by a Control Techniques Guideline (CTG) document issued by the Administrator by the date of attainment of the ozone standard; and (b) all other major non-CTG stationary sources.

Illinois

The Illinois redesignation request, submitted on December 30, 2002, shows that Illinois has adopted and implemented all required VOC RACT rules. EPA, through a number of rulemakings, has approved RACT rules for Illinois fully meeting the VOC RACT requirements of the CAA. The contents of these RACT rules and EPA's rulemakings approving these RACT rules are documented at the following EPA Web site: *http://www.epa.gov/region5/air/sips/sips.htm*.

Missouri

The Missouri redesignation request, submitted on December 6, 2002, shows that Missouri has adopted and implemented all required VOC RACT rules. EPA, through a number of rulemakings, has approved RACT rules for Missouri fully meeting the RACT requirements of the CAA. The contents of these RACT rules and EPA's rulemakings approving these RACT rules are documented at the following EPA Web site: *http://www.epa.gov/region07/programs/artd/air/rules/missouri/chap5.htm*.

l. RACM

On April 19, 2001, EPA proposed to approve Illinois' and Missouri's SIPs for the St. Louis area as meeting the RACM requirements of the CAA (66 FR 20122). The approval of the Illinois and Missouri SIPs as meeting the RACM requirements of the CAA was finalized on June 26, 2001 (66 FR 33996). As explained previously, the June 26, 2001, rule was vacated on November 25, 2002, by the Seventh Circuit in the *Sierra Club* case.

EPA believes that no additional RACM controls beyond what are already required in the SIP are necessary for redesignation to attainment. The General Preamble, April 16, 1992 (57 FR 13560), explains that section 172(c)(1) requires the plans for all nonattainment areas to provide for the implementation of RACM as expeditiously as practicable. EPA interprets this requirement to impose a duty on all nonattainment areas to consider all available control measures and to adopt and implement those measures that are reasonably available and necessary to attain as expeditiously as practicable. However, measures need not be adopted, and would not be considered RACM, if they would not accelerate attainment (see 57 FR 13498, 13560). Because attainment has been achieved, no additional measures are needed to provide for attainment.

The suspension of the attainment demonstration requirements pursuant to our determination of attainment include the section 172(c)(1) RACM requirements as well. The General Preamble treats the RACM requirements as a "component" of an area's attainment demonstration. Thus, the suspension of the attainment demonstration requirement pursuant to our determination of attainment applies to the RACM requirement, since it is a component of the attainment demonstration.

m. Stage II Vapor Recovery Requirements

Section 182(b)(3) of the CAA requires states to submit Stage II vapor recovery rules.

Illinois

The Stage II vapor recovery regulations for the Metro-East area were originally found in Illinois Administrative Code, Title 35: Environmental Protection; subtitle B: Air Pollution, chapter I: Pollution Control Board, part 219: Organic Material Standards and Limitations for the Metro-East Are: subpart Y: Gasoline Distribution; section 219.583: Gasoline Dispensing Facilities—Storage Tank Filling Operations, and section 219.586: Gasoline Dispensing Facilities—Motor Vehicle Fueling Operations. EPA approved the incorporation of these regulations into the Illinois SIP on January 12, 1993 (58 FR 3841).

Section 202(a)(6) of the CAA provides that Stage II vapor recovery regulations are not required in moderate ozone nonattainment areas if EPA promulgates On-Board Vapor Recovery (OBVR) regulations for vehicles. EPA promulgated such regulations on April 6, 1994 (59 FR 16262), which became effective on May 6, 1994.

Pursuant to section 202 of the CAA, the State of Illinois repealed the Stage II vapor recovery regulations for the Metro-East area and requested a SIP revision to remove these regulations from the SIP. EPA approved the removal of these regulations from the SIP on December 16, 1994 (59 FR 64853). Therefore, the Metro-East area has no Stage II vapor recovery regulations currently in place in the SIP, and is not required to have such regulations by virtue of section 202(a)(6) of the CAA.

Missouri

Missouri established a Stage II vapor recovery program in the 1970s and has revised the program periodically. On May 18, 2000 (65 FR 31489), EPA approved into Missouri's SIP the most recent revisions to the state rule entitled "Control of Petroleum Liquid Storage, Loading, and Transfer" (10 CSR 10–5.220). This rule fully adopts and implements the Stage II vapor recovery requirements in Missouri.

n. Vehicle Inspection/Maintenance (I/M) Requirements

Section 182(b)(4) and EPA's final I/M regulations in 40 CFR part 51, subpart S require the states to submit a fully adopted I/M program.

Illinois

EPA approved an enhanced vehicle I/M program for the Metro-East area as part of the Illinois SIP on February 22, 1999 (64 FR 8517). This revision to the SIP became effective on April 23, 1999.

Missouri

EPA approved Missouri's I/M program on May 18, 2000 (65 FR 31480). It can be found at 10 CSR 10–5.380.

In April 2000, Missouri began testing vehicles under its SIP approved I/M program. In April 2001, EPA published revised I/M program requirements including the use of on-board diagnostics (OBD) testing. These rules are found at 40 CFR part 85. The use of OBD testing was to begin January 1, 2002.

Under EPA's new OBD rule, states were given the opportunity to request an extension of one year to implement the OBD testing. If requested, a state could delay implementation of OBD testing until January 1, 2003. In a letter dated January 10, 2002, the MDNR stated its intent to implement OBD testing but requested to delay implementation of

OBD testing along with incorporating a phase-in period. In this letter, MDNR requested a one-year delay in implementing the OBD testing, along with a two-year phase-in period. Under MDNR's request, full implementation of the OBD testing will not occur until January 1, 2005.

In August 2002, Missouri revised its state rule incorporating the requested delay and phase-in period. The new state rule requires OBD testing to begin January 1, 2003, but allows for the use of the transient emissions test only, for the retest, if a vehicle fails the initial OBD emissions test during the two-year phase-in period. EPA's rule requires an OBD test for the retest during the phase-in period.

In a separate proposed rulemaking in this **Federal Register**, EPA is proposing to modify Missouri's SIP by approving revisions to the state's Motor Vehicle Emission Inspection rule found at 10 CSR 10–5.380. A detailed discussion of the revision and EPA's rationale for approval can be found in that proposal.

The regulation at 40 CFR 51.372(c) states, in part, that a redesignation request for any nonattainment area that would qualify for redesignation to attainment shall receive full approval of a SIP submittal if the submittal contains legal authority to implement an I/M program, the inclusion of an I/M upgrade into the contingency measures portion of the maintenance plan, and a contingency commitment that includes the legal authority and an enforceable commitment and schedule for adoption and implementation of the OBD program.

Pursuant to the provisions of 40 CFR 51.372(c), by incorporating the OBD testing program as a contingency into the maintenance plan (the OBD testing program is the I/M upgrade required by EPA's new OBD rule), and by meeting the other requirements specified in 40 CFR 51.372(c), the SIP can receive full approval.

The maintenance plan submitted by Missouri contains the OBD testing program, consistent with EPA's OBD rule, as a contingency measure in the maintenance plan. It also contains a demonstration of legal authority to adopt the program, and a schedule for adoption with appropriate milestones. EPA believes the submission meets the requirement of 40 CFR 51.372(c). A more detailed discussion of the rule is contained in EPA's proposed rule on the I/M revisions for Missouri elsewhere in this **Federal Register**. Thus, upon completion of the accompanying rulemaking approving Missouri's I/M rule into the SIP, EPA believes that the Missouri SIP for the St. Louis 1-hour ozone nonattainment area will satisfy all of the Section 182(b)(4) requirements of the CAA. Note, however, that EPA will not approve the redesignation request unless it takes final action to approve the I/M SIP revision.

o. NO_X Emission Control Requirements

Section 182(f) establishes NO_X requirements for ozone nonattainment areas which require the same provisions for major stationary sources of NO_X as apply to major stationary sources of VOCs. One of the requirements for major sources of VOCs is RACT. However, section 182(f) also provides that these requirements do not apply to an area if the Administrator determines that NO_X reductions would not contribute to attainment.

Illinois

As part of the June 26, 2001, rulemaking (66 FR 33996) regarding the St. Louis ozone nonattainment area, EPA granted a waiver to the state of Illinois from the section 182(f) requirements for NO_X RACT. The basis for the waiver was that Illinois demonstrated that additional NO_X emission controls in the Metro-East area would not contribute to the attainment of the 1-hour ozone standard in the area. EPA concluded that the area would achieve the 1-hour ozone standard without these additional NO_X emission controls. This conclusion was not challenged in the *Sierra Club* case and was not addressed by the Court. However, the grant of the waiver was vacated as part of the Court's action on the June 26, 2001, rule.

EPA's policy on the NO_X RACT requirements for areas which qualify for redesignation is stated in the September 17, 1993, memorandum from Michael H. Shapiro, referenced previously. The memorandum states that additional NO_X reductions would not contribute to attainment if attainment is already being monitored, but that such reductions might contribute to maintenance. Therefore, EPA stated that it could allow an exemption from the section 182(f) NO_X requirement, in the absence of a modeling demonstration, if the maintenance plan contains NO_X RACT as a contingency measure.

The EPA is reproposing to approve Illinois' request for an exemption from the NO_X RACT requirement. This proposal is based on the area attaining the 1-hour ozone NAAQS. Illinois has included NO_X RACT as a contingency measure in its maintenance plan. Therefore, EPA believes that it can exempt the Illinois portion of the St. Louis area from the section 182(f) requirements. If EPA finalizes this exemption as proposed, and finalizes the redesignation as proposed, all controls previously adopted by Illinois must continue to be implemented, but no additional NO_X RACT measures would be required. However, if there is a violation of the ozone NAAQS in any portion of the St. Louis area, Illinois would be required to evaluate, and if appropriate, implement additional NO_X controls to address the violation.

Missouri

On May 18, 2000 (65 FR 31482), EPA approved Missouri's NO_X RACT rule into the SIP. This rule can be found at 10. CSR 10–5.510 and imposes RACT requirements for major sources of NO_X emissions. This rule meets the Section 182(f) requirements for the Missouri portion of the St. Louis area.

Based on the analysis described above, EPA believes the area meets the requirements for redesignation in Section 107(d)(3)(E)(ii) and (v).

3. Criterion (3): The Improvement in Air Quality Must Be Due to Permanent and Enforceable Reductions in Emissions

The improvement in air quality must be due to permanent and enforceable reductions in emissions resulting from implementation of the SIP, Federal measures, and other state-adopted measures.

a. Emission Controls

EPA believes that the states have demonstrated that the observed air quality improvements are due to the implementation of permanent and enforceable emission reductions through the implementation of emission controls contained in their SIPs.

Illinois

Subsequent to the 1990 CAA amendments, Illinois implemented a number of emission controls. The area has complied with all of the emission requirements for a moderate ozone nonattainment area as required by the CAA.

Some of the emission reductions were achieved through the implementation of a 15 percent ROP plan, approved by EPA on December 18, 1997 (62 FR 66279). The 15 percent ROP plan produced a VOC emission reduction of 38.1 tons per day in the Metro-East area, and included both Federal and state emission control measures, including the use of low volatility gasoline, more stringent Tier I motor vehicle emission standards, implementation of a more stringent vehicle inspection and maintenance (I/M) program, controls on area sources, and the adoption of tighter emissions limits on existing stationary

sources. Some of the specific state emission control measures included in the 15 percent ROP plan are:

- Basic I/M for Motor Vehicles
- Transportation Control Measures (TCMs)
- Low-Volatility (low Reid Vapor Pressure (RVP)) Gasoline
- Tightened Reasonably Available Control Technology (RACT) Standards for Some Source Categories
- RACT for Sources Covered By New Control Techniques Guidelines (CTGs)
- Architectural Surface Coating Standards
- Volatile Organic Liquids Storage Facility Controls
- Automobile Refinishing Operation Controls
- Marine Vessel Loading Emission Controls

All of the emission control measures contained in Illinois' 15 percent ROP plan have been fully adopted, have been implemented, and are enforceable in the Metro-East area.

Illinois has adopted and implemented emission control rules requiring existing sources of VOC to meet, at minimum, RACT. These requirements apply to sources in categories covered by CTGs and other major non-CTG sources. Some of these RACT emission controls were achieved in addition to the RACT controls reflected in the 15 percent ROP plan.

The stationary NO_X source emission reductions in Illinois are primarily due to the implementation of acid rain emission controls implemented in compliance with Title IV of the CAA.

Missouri

MDNR explained that some of the VOC emission reductions were due to the implementation of Missouri's 15 percent ROP plan, including its implementation of a centralized motor vehicle inspection and maintenance program and stationary source controls. Additional reductions were due to tighter Federal standards for new vehicles, and some were due to requirements for reformulated and low RVP gasoline for motor vehicles. In addition, Title IV of the CAA resulted in reduced NO_X emissions from utility sources.

b. Meteorological Conditions

In addition to identifying the controls which have led to emission reductions and air quality improvements, both Illinois and Missouri have evaluated whether ozone air quality improvements in the St. Louis area could be attributable to favorable meteorological conditions, by comparing the trend of 1-hour ozone design values [4] to the number of ozone conducive days [5] that have occurred annually from 1989 to the present. While ozone design values trended significantly downward from 1989 to the present, the number of ozone conducive days, which varied from year-to-year, showed no significant trend over the period studied. Therefore, EPA believes that concentration is not due to changes in meteorology. EPA believes that reductions in emissions due to regulatory control programs have led to the improvement in ozone air quality.

Illinois

The IEPA assessed the changes in VOC and NO_X emissions in the Metro-East area for 1990 and 2000 (the first year of the three year attainment period). The 1990 emissions are the base year emissions taken from an inventory approved by EPA on September 13, 1994 (59 FR 46920). To derive the 2000 emissions, the IEPA used a 1999 update to the emissions inventory. Emissions documented in this emissions inventory were grown to 2000 to derive the 2000 attainment year emissions. Point source emissions were grown using EPA's EGAS model. Area source emissions were grown using source activity levels (indicators, such as population, source sector employment, etc.) appropriate for each source category grown to the 2000 levels and applied using appropriate source emission factors. On-road mobile source emissions for 2000 were calculated using EPA's MOBILE6 emissions model and 1999 Vehicle Miles Traveled (VMT) data grown to 2000 assuming a 2 percent per year growth rate. On-road mobile source emissions for 1990 were calculated using EPA's MOBILE6 emissions model. Off-road emissions were grown to 2000 using source sector activity levels and growth factors employed in the 1999 periodic emissions inventory update.

[4] An ozone design value is the fourth highest daily peak 1-hour ozone concentration at the worst-case ozone monitor for a given three-year period.

[5] The IEPA and the MDNR have analyzed ozone concentrations and meteorological conditions in the St. Louis area, and have found that peak ozone concentrations are highly dependent on certain meteorological conditions. Days are judged to be conducive to high ozone concentrations if the following conditions simultaneously exist:

- Maximum temperatures greater than 85 degrees Fahrenheit
- Wind speeds less than 10 miles per hour
- Solar insolation greater than 500 Langleys
- Little or no precipitation
- Southerly wind directions.

The table below documents the 1990 and 2000 VOC and NO_X emissions in the Metro-East area.

1990 AND 2000 METRO-EAST AREA VOC AND NO_X EMISSIONS

[Emissions in tons per ozone season weekday]

Source category	VOC	NO_X
1990		
Point Sources	74.05	95.85
Area Sources	33.84	1.66
On-Road Mobile Sources	43.27	45.13
Off-Road Mobile Sources	23.49	23.99
1990 Totals	174.65	166.63
2000		
Point Sources	17.91	61.91
Area Sources	28.32	1.18
On-Road Mobile Sources	26.57	54.71
Off-Road Mobile Sources	21.31	23.85
2000 Totals	94.11	141.64

It can be seen that both the VOC emissions and NO_X emissions have decreased in the Metro-East area between 1990 and 2000. The IEPA notes that these emission decreases are primarily due to the application of permanent and enforceable emission controls, and that these emission controls have contributed to the ozone air quality emission improvement in the St. Louis area.

Missouri

Similar to Illinois, Missouri compared VOC and NO_X emissions in 1990 (the base year emissions inventory) to those in 2000 (the attainment year emissions inventory). The 2000 emissions were derived by growing the 1999 periodic emissions inventory emissions. The 1999 periodic emissions inventory and source growth parameters are documented in the state's redesignation request. MDNR developed the 1990 on-road emissions using EPA's MOBILE5b emissions model. For purposes of comparison, MDNR included in the redesignation request, 2000 on-road emissions developed using EPA's MOBILE5b emissions model and MOBILE6 emissions model. Note that the discussion below only includes the 2000 on-road mobile emissions derived from using the MOBILE6 emissions model.

The following table presents the 1990 and 2000 VOC and NO_X emissions for the Missouri portion of the St. Louis ozone nonattainment area.

1990 AND 2000 MISSOURI PORTION OF THE ST. LOUIS NONATTAINMENT AREA VOC AND NO_X EMISSIONS

[Emissions in tons per ozone season weekday]

Source category	VOC	NO_X
1990		
Point Sources	81.97	347.61
Area Sources	87.74	29.47
On-Road Mobile Sources	135.42	135.00
Off-Road Mobile Sources	64.30	114.32
1990 Totals	369.43	626.40
2000		
Point Sources	46.59	165.96
Area Sources	57.38	32.27
On-Road Mobile Sources	103.79	181.75
Off-Road Mobile Sources	40.59	73.16
2000 Totals	248.35	453.14

As can be seen from the above table, both the VOC and the NO_X emissions in the Missouri portion of the St. Louis ozone nonattainment area have been significantly reduced between 1990 and 2000 (VOC emissions have been reduced by 121 tons per day and NO_X emissions have been reduced by 173 tons per day). These emission reductions are primarily due to the implementation of permanent and enforceable emission controls and are primarily responsible for the observed improvement in ozone air quality in the area.

The states have demonstrated that the implementation of permanent and enforceable emission controls have reduced local VOC and NO_X emissions. The states have also demonstrated that year-to-year meteorological changes and trends are not the likely source of the overall, long-term improvement in ozone levels. EPA believes that emission reductions are the cause of the long-term improvement in ozone levels, and are the cause of the area achieving attainment of the ozone standard.

4. Criterion (4): The Area Must Have a Fully Approved Maintenance Plan Meeting the Requirements of Section 175A

Section 175A of the CAA sets forth the elements of a maintenance plan for areas seeking redesignation from nonattainment to attainment. The maintenance plan is a SIP revision that provides for maintenance of the relevant NAAQS in the area for at least 10 years after redesignation. The Calcagni memorandum dated September 4, 1992, provides additional guidance on the required content of a maintenance plan. An ozone maintenance plan should address the following five areas: the attainment emissions inventory, maintenance demonstration, monitoring network, verification of continued attainment, and a contingency plan. The attainment emissions inventory identifies the emissions level in the area that is sufficient to attain the 1-hour ozone NAAQS, based on emissions during a three-year period which had no monitored violations. Maintenance is demonstrated by showing that future emissions will not exceed the level established by the attainment inventory. The "attainment inventory" approach to demonstrating maintenance was upheld in *Wall* v. *EPA*, 426 F. 3d at 435–37. Provisions for continued operation of an appropriate air quality monitoring network are to be included in the maintenance plan. The state must show how it will track and verify the progress of the maintenance plan. Finally, the maintenance plan must include a list of potential contingency measures which ensure prompt correction of any violation of the 1-hour ozone NAAQS.

a. Attainment Emissions Inventory

Both Illinois and Missouri selected 2000 as "the attainment year" for purposes of demonstrating attainment of the 1-hour ozone NAAQS.

The projected 2000 VOC and NO_X emissions for the St. Louis area are summarized in the table above.

b. Maintenance Demonstration

To demonstrate maintenance of the ozone standard through a ten-year maintenance period, both Illinois and Missouri projected VOC and NO_X emissions for the St. Louis area to 2007 and 2014 and compared these projected emissions to the 2000 attainment year emissions. The 2007 emission estimates were generated to test a midpoint in the ten-year maintenance period.

The following tables summarize the VOC and NO_X emission estimates for the St. Louis area for 2000, 2007, and 2014 periods.

ILLINOIS 2000, 2007, AND 2014 METRO-EAST AREA VOC AND NO_X EMISSIONS

[Emissions in tons per ozone season weekday]

Source category	VOC	NO_X
2000		
Point Sources	17.91	61.91
Area Sources	28.32	1.18
On-Road Mobile Sources	26.57	54.71
Off-Road Mobile Sources	21.31	23.85
2000 Totals	94.11	141.64
2007		
Point Sources	21.19	54.34
Area Sources	28.07	1.24
On-Road Mobile Sources	16.31	36.87
Off-Road Mobile Sources	16.04	19.07
2007 Totals	81.61	111.52
2014		
Point Sources	24.49	62.13
Area Sources	28.10	1.29
On-Road Mobile Sources	10.13	18.72
Off-Road Mobile Sources	13.26	14.54
2014 Totals	75.98	96.67

MISSOURI 2000, 2007, AND 2014 ST. LOUIS AREA VOC AND NO_X EMISSIONS

[Emissions in tons per ozone season weekday]

Source category	VOC	NO_X
2000		
Point Sources	46.59	165.96
Area Sources	57.38	32.27
On-Road Mobile Sources (MOBILE6-based estimates)	103.79	181.75
Off-Road Mobile Sources	40.59	73.16
2000 Totals	248.35	453.14
2007		
Point Sources	47.72	149.5
Area Sources	57.19	34.12
On-Road Mobile Sources	74.46	130.55
Off-Road Mobile Sources	27.91	66.01
2007 Totals	207.28	380.18
2014		
Point Sources	51.73	154.57
Area Sources	59.42	35.58
On-Road Mobile Sources	47.14	68.59
Off-Road Mobile Sources	24.28	58.84
2014 Totals	182.57	317.58

c. Monitoring Network

Missouri and Illinois have addressed the maintenance plan requirements for monitoring and emissions inventories. Both have committed to continue the operation of the monitors in the area in accordance with 40 CFR part 58.

d. Verification of Continued Attainment

Both the states of Illinois and Missouri have the legal authority to implement and enforce the requirements of the ozone maintenance plan. This includes the authority to adopt, implement, and enforce any subsequent emission control contingency measures determined to be necessary to correct future ozone attainment problems.

To implement the ozone maintenance plan, the states will continue to monitor ozone levels in the St. Louis area. The states also committed to update the emissions inventory for the St. Louis area every three years for the duration of the maintenance plan. The ozone monitoring data and the updated emissions inventories will be used through the states' contingency plan to assure maintenance of the 1-hour ozone standard.

e. Contingency Plan

The contingency plan portion of each state's maintenance plans delineate the states' planned actions in the event of future 1-hour ozone standard violations, increasing ozone levels threatening a subsequent violation of the ozone standard, and unanticipated increases in ozone precursor emissions threatening a subsequent violation of the ozone standard. Illinois and Missouri have prepared similar and compatible contingency plans, with some differences in the possible emission control contingency measures list selected for each state. The states have developed contingency plans with several levels of triggered actions depending on whether the ozone standard has actually been violated after the redesignation of the area to attainment or whether a subsequent violation of the ozone standard is threatened on the basis of increased ozone concentrations approaching the standard or unanticipated significant increases in ozone precursor emissions. Each state has also committed to continue to implement all control measures included in the SIP prior to redesignation consistent with section 175A(d) of the CAA.

The action trigger levels and planned corrective actions in each contingency plan are the following:

A Level I Trigger will be exceeded if: (1) The monitored ambient ozone levels exceed 124 parts per billion, one-hour averaged, more than once per year at any monitoring site in the St. Louis maintenance area (the current St. Louis ozone nonattainment area), or more than two exceedances in any two- or three-year period; or (2) the St. Louis maintenance area's VOC or NO_X emissions for 2005 or 2008 increase more than 5 percent above the 2000 attainment levels. In the event one of these action trigger levels are exceeded, Illinois and Missouri will work together to evaluate the situation and determine if adverse emissions trends are likely to continue. If so, the states will determine what and where emission controls may be required to avoid a violation of the 1-hour ozone NAAQS. A study shall be completed within nine months of the determination of the action trigger exceedance.

A Level II Trigger will be exceeded if a violation of the 1-hour ozone NAAQS at any monitoring site in the St. Louis ozone maintenance area is recorded after the area is redesignated to attainment of the standard. If this trigger is exceeded, Illinois and Missouri will work together to conduct a thorough analysis to determine appropriate measures, from those listed below, to address the cause of the ozone standard violation.

Missouri

The contingency plan for Missouri lists a number of possible contingency measures. The plan calls for the appropriate contingency measures to be adopted and implemented within 18 months of a Level I or Level II trigger being exceeded. The list of possible contingency measures in Missouri's contingency plan include the following:

Point Source Measures—
- NO_X SIP Call Phase II (non-utility)
- Apply RACT to smaller existing sources
- Tighten RACT for existing sources covered by EPA Control Techniques Guidelines
- Expanded geographic coverage of current point source measures
- Maximum Available Control Technology for industrial sources
- New source offsets and Lowest Achievable Emission Rates
- Other measures to be identified

Mobile Source Measures—
- Transportation Control Measures, including, but not limited to, area-wide rideshare programs, telecommuting, transit improvements, and traffic flow improvements.
- High Enhanced I/M (OBDII)
- California Engine Standards
- Other measures to be identified

Area Source Measures—
- California Architectural/Industrial Maintenance (AIM)
- California Commercial and Consumer Products
- Broader geographic applicability of existing measures
- California Off-road Engine Standards
- Other measures to be identified

Illinois

The contingency plan for Illinois lists a number of possible contingency measures. The plan calls for the appropriate contingency measures to be adopted no later than 18 months of a Level I or Level II trigger being exceeded. The list of possible contingency measures in Illinois' contingency plan include the following:

Point Source Measures—
- NO_X SIP call Phase II (non-utility measures)
- Reinstatement of requirements for new source offsets and/or Lowest Achievable Emission Rates
- Apply RACT to smaller existing sources
- Tighten RACT for existing sources covered by Control Techniques Guidelines
- NO_X RACT
- Expand geographic coverage of current point source emission control measures
- Apply Maximum Available Control Technology for industrial sources
- Other point source measures to be identified

Mobile Source Measures —
- Transportation Control Measures, including, but not limited to, area-wide rideshare programs, telecommuting, transit improvements, and traffic flow improvements
- High-enhanced vehicle inspection/maintenance (OBDII)
- California engine standards
- Other mobile source measures to be identified

Area Source Measures—
- California architectural/industrial maintenance coating emission controls
- California commercial and consumer products coating emission controls
- Broader geographic applicability of existing emission control measures
- California off-road engine standards
- Other area source measures to be identified

Missouri's and Illinois' submittals adequately address the five basic components which comprise a maintenance plan (attainment inventory, maintenance demonstration, monitoring network, verification of continued attainment, and a contingency plan) and, therefore, satisfy the maintenance plan requirement.

f. Motor Vehicle Emissions Budgets

In addition to meeting the criteria for redesignation, as a control strategy SIP, the maintenance plans must contain motor vehicle emissions budgets that, in conjunction with emissions from all other sources, are consistent with attainment and maintenance. Illinois and Missouri developed MVEBs for the maintenance plan year of 2014. The MVEBs are for both VOC and NO_X, as precursors to ozone formation, and would be applicable for the St. Louis area upon the effective date of a MVEB adequacy finding.

A motor vehicle emissions budget is the total allowable VOC and NO_X

emissions allocated to highway and transit vehicle use during the maintenance period (highway and transit vehicle use emissions impacted by transportation plans would be projected to 2014 and tested against the 2014 motor vehicle emissions budget). The rules and requirements governing transportation conformity require certain transportation activities to be consistent with the motor vehicle emissions budgets contained in emission control SIPs (40 CFR 93.118). The projected emissions resulting from the transportation activities must be less than or equal to the emissions budget levels (40 CFR 93.118(a)). The review of the transportation plan impacts relative to the emissions budget will occur after EPA declares that the emissions budget meets the adequacy criteria of the transportation conformity rule under 40 CFR 93.118(e).

The motor vehicle emissions budgets for the St. Louis area were developed using emission factors generated through the use of EPA's MOBILE6 model. Inputs into this model were developed through coordinated efforts and review of a workgroup formed by representatives of the IEPA, MDNR, East-West Gateway Coordinating Council, Missouri Department of Transportation, Illinois Department of Transportation, and EPA.

EPA is proposing to find the MVEBs included in Missouri's and Illinois' maintenance plans adequate and is proposing to approve these budgets for conformity purposes. EPA believes that the MVEBs submitted by each state are consistent with the control measures identified in each SIP, and that each SIP, as a whole, demonstrates maintenance with the 1-hour ozone standard.

The 2014 motor vehicle emission budgets included in the states' maintenance plans are summarized in the table below:

ST. LOUIS AREA 2014 MOTOR VEHICLE EMISSION BUDGETS

[Emissions in tons per ozone season weekday]

State	VOC	NO_x
Illinois	10.13	18.72
Missouri	47.14	68.59

G. Where Is the Public Record and Where Do I Send Comments?

The official record for this proposed rule is located at the addresses in the **ADDRESSES** section at the beginning of this document. The addresses for sending comments are also provided in the **ADDRESSES** section at the beginning of this document. Public comments are solicited on EPA's proposed rulemaking action. Public comments received by March 3, 2003, will be considered in the development of EPA's final rulemaking action.

II. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This proposed action merely proposes to approve state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule proposes to approve pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4).

This proposed rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely proposes to approve a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. This proposed rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the CAA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This proposed rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

40 CFR Part 81

Environmental protection, Air pollution control, National Parks, Wilderness areas.

Dated: January 13, 2003.

James Gulliford,

Regional Administrator, Region 7.

Dated: January 16, 2003.

Thomas V. Skinner,

Regional Administrator, Region 5.

[FR Doc. 03–1773 Filed 1–29–03; 8:45 am]

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Federal Register

Thursday,
January 30, 2003

Part IV

Securities and Exchange Commission

17 CFR Part 210
Retention of Records Relevant to Audits and Review; Final Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 210

[Release Nos. 33–8180; 34–47241; IC–25911; FR–66; File No. S7–46–02]

RIN 3235–AI74

Retention of Records Relevant to Audits and Reviews

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: We are adopting rules requiring accounting firms to retain for seven years certain records relevant to their audits and reviews of issuers' financial statements. Records to be retained include an accounting firm's workpapers and certain other documents that contain conclusions, opinions, analyses, or financial data related to the audit or review.

DATES: Effective Date: March 3, 2003. Compliance Date: Compliance is required for audits and reviews completed on or after October 31, 2003.

FOR FURTHER INFORMATION CONTACT: Samuel L. Burke, Associate Chief Accountant, D. Douglas Alkema, Professional Accounting Fellow, or Robert E. Burns, Chief Counsel, at (202) 942–4400, Office of the Chief Accountant, U.S. Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–1103.

SUPPLEMENTARY INFORMATION: We are adding rule 2–06 to Regulation S–X.

I. Executive Summary

As mandated by section 802 of the Sarbanes-Oxley Act of 2002 ("Sarbanes-Oxley Act" or "the Act"),[1] we are amending Regulation S–X to require accountants who audit or review an issuer's financial statements to retain certain records relevant to that audit or review. These records include workpapers and other documents that form the basis of the audit or review, and memoranda, correspondence, communications, other documents, and records (including electronic records), which are created, sent or received in connection with the audit or review, and contain conclusions, opinions, analyses, or financial data related to the audit or review. To coordinate with forthcoming auditing standards concerning the retention of audit documentation, the rule requires that these records be retained for seven years after the auditor concludes the audit or review of the financial statements, rather than the proposed period of five years from the end of the fiscal period in which an audit or review was concluded. As proposed,[2] the rule addresses the retention of records related to the audits and reviews of not only issuers' financial statements but also the financial statements of registered investment companies.

II. Discussion of Final Rule

Section 802 of the Sarbanes-Oxley Act[3] is intended to address the destruction or fabrication of evidence and the preservation of "financial and audit records."[4] We are directed under that section to promulgate rules related to the retention of records relevant to the audits and reviews of financial statements that issuers file with the Commission.

Section 802 states that the record retention requirements should apply to audits of issuers of securities to which section 10A(a) of the Securities Exchange Act of 1934 ("Exchange Act") applies. The term "issuer" in this context is defined in section 10A(f) of the Exchange Act to include certain entities filing reports under that Act and entities that have filed and not withdrawn registration statements to sell securities under the Securities Act of 1933.[5] As adopted, the record retention requirements also apply to any audit or review of the financial statements of any registered investment company.[6] We believe that it is important for these record retention requirements, like our other record retention requirements, to apply consistently with respect to all registered investment companies, regardless of whether they fall within the periodic reporting requirements of the Exchange Act.[7]

Neither section 802 nor the final rule exempts auditors of foreign issuers'

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[1] Pub. L. 107–204, 116 Stat. 745 (2002).

[2] These amendments were proposed in Securities Act Release No. 8151 (November 21, 2002) (the "Proposing Release") [67 FR 71017 (November 27, 2002)].

[3] Section 802 of the Sarbanes-Oxley Act, among other things, adds sections 1519 and 1520 to Chapter 73 of Title 18 of the United States Code. Section 1519 states, among other things, that anyone who knowingly alters, destroys, mutilates, conceals, covers up, falsifies, or makes a false entry in any record, document, or tangible object with the intent to impede, obstruct, or influence an investigation or proper administration of any matter within the jurisdiction of any department or agency of the United States or any case filed under the bankruptcy code, or in relation to or contemplation of any such matter or case, may be fined, imprisoned for not more than 20 years, or both.

Section 1520(a)(1) specifies that: "Any accountant who conducts an audit of an issuer of securities to which section 10A(a) of the Securities Exchange Act of 1934 applies, shall maintain all audit or review workpapers for a period of 5 years from the end of the fiscal period in which the audit or review was concluded." Section 1520(a)(2) directs the Commission to promulgate, by January 26, 2003:

> * * * such rules and regulations, as are reasonably necessary, relating to the retention of relevant records such as workpapers, documents that form the basis of an audit or review, memoranda, correspondence, communications, other documents, and records (including electronic records) which are created, sent, or received in connection with an audit or review and contain conclusions, opinions, analyses, or financial data relating to such an audit or review, which is conducted by an accountant who conducts an audit of an issuer of securities to which section 10A(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78j–1(a)) applies. The Commission may, from time to time, amend or supplement the rules and regulations that it is required to promulgate under this section, after adequate notice and an opportunity for comment, in order to ensure that such rules and regulations adequately comport with the purposes of this section.

Section 1520 also provides that any person who knowingly and willfully violates subsection (a)(1), or any rule or regulation promulgated by the Securities and Exchange Commission under subsection (a)(2), may be fined, imprisoned for not more than 10 years, or both. It further provides that nothing in section 1520 shall be deemed to diminish or relieve any person of any other duty or obligation imposed by Federal or State law or regulation to maintain, or refrain from destroying, any document.

[4] Floor statement by Senator Leahy, 148 Cong. Rec. S7418 (July 26, 2002).

[5] Section 802 states that the record retention requirement applies to "an audit of an issuer of securities to which section 10A(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78j–1(a)) applies." Section 10A(a) of the Securities Exchange Act of 1934 ("Exchange Act") states, "Each audit required pursuant to this title of the financial statements of an issuer by an independent public accountant shall include" designated procedures. Section 10A(f), which has been added to the Exchange Act by section 205(d) of the Sarbanes-Oxley Act, states: "As used in this section the term "issuer" means an issuer (as defined in section 3 [of the Exchange Act]), the securities of which are registered under section 12, or that is required to file reports pursuant to section 15(d), or that files or has filed a registration statement that has not yet become effective under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*), and that it has not withdrawn." Section 3(a)(8) of the Exchange Act, 15 U.S.C. 78c(a)(8), states that, with certain exceptions, an "issuer" is "any person who issues or proposes to issue any security. * * *" Accordingly, the definition of "issuer" includes entities that have filed and not withdrawn a registration statement for an initial public offering.

Because investment advisers and broker-dealers are not necessarily issuers, audits of their financial statements required for regulatory purposes are not subject to the rule. In other words, only the audits of the financial statements of investment advisers and broker-dealers meeting the definition of "issuer" in section 10A(f) are subject to the retention requirements in rule 2–06. One commenter suggested that investment advisers and broker-dealers be included within the scope of the rule. Letter from Lynette Downing, HLB Tautges Redpath, Ltd., dated December 27, 2002. Another commenter noted, however, that broadening some but not all rules under the Sarbanes-Oxley Act beyond "issuers" as defined in the Act would be confusing. Letter from Grant Thornton LLP dated December 27, 2002.

[6] *See* section 8 of the Investment Company Act of 1940, 15 U.S.C. 80a–8.

[7] *Cf.* rules 31a–1 and 31a–2 under the Investment Company Act of 1940, 17 CFR 270.31a–1 and 31a–2 (record-keeping and record-retention requirements for registered investment companies).

financial statements. Commenters, including the European Commission, noted that application of the rule to foreign auditors would place additional and differing layers of retention requirements on those firms.[8] However, none of the commenters identified any direct conflicts with foreign requirements.

The availability of documents under this rule will assist in the oversight and quality of audits of an issuer's financial statements. Increased retention of identified records also may provide critical evidence of financial reporting impropriety or deficiencies in the audit process. In light of these benefits, and absent a direct conflict with foreign requirements, the retention requirements are to apply equally to domestic and foreign accounting firms auditing the financial statements of foreign issuers. Issues raised by commenters regarding Public Company Accounting Oversight Board ("the Oversight Board") oversight of foreign accounting firms and access by the SEC and the Oversight Board to the records retained by foreign accounting firms, as provided by Section 106 of the Sarbanes-Oxley Act, will be the subject of further discussion among staff, the Commission and the Oversight Board.[9]

In restricting the application of the rule to the audits and reviews of the financial statements of issuers and registered investment companies, we are not condoning more liberal document destruction policies for the audits and reviews of financial statements of other entities. For example, we would expect that auditors of the financial statements of those investment advisers, broker-dealers, and entities subject to Municipal Securities Rulemaking Board regulations that are not subject to the rule would retain relevant audit and review records consistent with applicable laws, regulations, and professional standards.

Documents To Be Retained

Paragraph (a) of rule 2–06 identifies the documents that must be retained and the time period for retaining those documents.[10] The final rule requires that the auditor[11] retain records relevant to the audit or review, including workpapers and other documents that form the basis of the audit or review of an issuer's financial statements, and memoranda, correspondence, communications, other documents, and records (including electronic records) that meet two criteria. The two criteria are that the materials (1) are created, sent or received in connection with the audit or review, and (2) contain conclusions, opinions, analyses, or financial data related to the audit or review.

Paragraph (a) of the proposed rule did not contain the phrase, "records relevant to the audit or review." The proposal listed the records to be retained without a reference to the general notion of relevance to the audit or review. In response to commenters,[12] and to track more closely the wording in section 802,[13] we have added those words to the final rule.

In the Proposing Release, we stated that non-substantive materials that are not part of the workpapers, such as administrative records, and other documents that do not contain relevant financial data or the auditor's conclusions, opinions or analyses would not meet the second of the criteria in rule 2–06(a) and would not have to be retained. Commentators questioned whether the following documents would be considered substantive and have to be retained:

- Superseded drafts of memoranda, financial statements or regulatory filings,[14]
- Notes on superseded drafts of memoranda, financial statements or regulatory filings that reflect incomplete or preliminary thinking,[15]
- Previous copies of workpapers that have been corrected for typographical errors or errors due to training of new employees,[16]
- Duplicates of documents,[17] or
- Voice-mail messages.[18]

These records generally would not fall within the scope of new rule 2–06 provided they do not contain information or data, relating to a significant matter, that is inconsistent with the auditor's final conclusions, opinions or analyses on that matter or the audit or review.[19] For example, rule 2–06 would require the retention of an item in this list if that item documented a consultation or resolution of differences of professional judgment.

Commenters also questioned whether all of the issuer's financial information, records, databases, and reports that the auditor examines on the issuer's premises, but are not made part of the auditor's workpapers or otherwise currently retained by the auditor, would be deemed to be "received" by the auditor under rule 2–06(a)(1) and have to be retained by the auditor.[20] We do not believe that Congress intended for accounting firms to duplicate and retain all of the issuer's financial information, records, databases, and reports that might be read, examined, or reviewed by the auditor. Accordingly, we do not believe that the "received" criterion in rule 2–06(a)(1) requires that such records be retained.

Some commentators suggested that paragraph (a) of the proposed rule was overly broad and that the language in the rule, rather than following section 802 of the Sarbanes-Oxley Act, should conform to current auditing standards.[21] It would appear, however, that by requiring the retention of documents in addition to audit workpapers required by generally accepted auditing standards ("GAAS") Congress has rejected this approach. Congress intended that accounting firms retain substantive materials that are relevant to

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[8] Letter from the European Commission dated December 20, 2002; letter from PricewaterhouseCoopers dated December 27, 2002; letter from KPMG LLP dated December 27, 2002; letter from the American Institute of Certified Public Accountants dated December 27, 2002.

[9] We also note that this rule is not intended to expand or restrict the Commission's exisiting authority to investigate cross-border violations of the federal securities laws.

[10] Rule 2–06 is not intended to pre-empt or supersede any other federal or state record retention requirements.

[11] Rule 2–06 uses the term "accountant," which is defined in rule 2–01(f)(1) of the Commission's auditor independence rules, 17 CFR 210.2–01(f)(1), to mean "a certified public accountant or public accountant performing services in connection with an engagement for which independence is required. References to the accountant include any accounting firm with which the certified public or public accountant is affiliated." In a companion release, the Commission proposed to amend this definition to include the term "registered public accounting firm." We will apply the definition in rule 2–01(f)(1), as amended, to rule 2–06.

[12] *See, e.g.*, letter from Deloitte & Touche dated December 27, 2002, and letter from McGladrey & Pullen dated December 31, 2002, which states, in part, "The key to promulgating record retention rules that enhance audit quality lies in the word 'relevant'."

[13] *See* note 3, *supra*.

[14] *See, e.g.*, letter from BDO Seidman, LLP, dated December 27, 2002; letter from Ernst & Young LLP, dated December 27, 2002; letter from PricewaterhouseCoopers dated December 27, 2002.

[15] *See* letter from BDO Seidman, LLP, dated December 27, 2002.

[16] *See* letter from Gelfond Hochstadt Pangburn, P.C. dated November 26, 2002.

[17] *See* letter from Ernst & Young LLP, dated December 27, 2002, and letter from Gelfond Hochstadt Pangburn, P.C. dated November 26, 2002.

[18] Letter from Sullivan & Cromwell dated December 26, 2002.

[19] Senator Leahy stated on the Senate floor, "Non-substantive materials, however, which are not relevant to the conclusions or opinions expressed (or not expressed), need not be included in such retention regulations." 148 Cong. Rec. S7419 (July 26, 2002).

[20] *See, e.g.*, letter from PricewaterhouseCoopers dated December 27, 2002.

[21] *See, e.g.*, letter from BDO Seidman, LLP, dated December 27, 2002; letter from Deloitte & Touche dated December 27, 2002; letter from Ernst & Young LLP, dated December 27, 2002; letter from Grant Thornton LLP dated December 27, 2002; letter from KPMG LLP dated December 27, 2002. *See* the discussion of Statement on Auditing Standards No. 96, "Audit Documentation," *infra*.

the review or audit of financial statements filed with the Commission and enumerated the records described in the rule as being relevant to audits and reviews. Narrowing the scope of the rule to conform to the current auditing literature would be contrary to the apparent congressional purpose embodied in section 802.

Time of Retention

The final rule states that records must be retained for seven years. We proposed that these materials be retained for five years after the end of the fiscal period in which an accountant audits or reviews an issuer's financial statements,[22] which is the period prescribed by section 802.[23] We also noted in the Proposing Release, however, that section 103 of the Sarbanes-Oxley Act directs the Oversight Board to require auditors to retain for seven years audit workpapers and other materials that support the auditor's conclusions in any audit report.[24] There may be fewer documents retained pursuant to section 103, which focuses more on workpapers that support the auditor's conclusions, than under section 802, which includes not only workpapers but also other documents that meet the criteria noted in this release. Many documents, however, may be covered by both retention requirements.[25]

Some commenters suggested that we adopt a uniform seven-year retention period,[26] while others indicated that the longer period would increase audit costs without any commensurate benefit.[27] We anticipate that most accounting firms, for administrative convenience, would retain all relevant materials for the longer of the two periods prescribed by the Commission and by the Oversight Board.[28] Incremental costs associated with requiring a seven-year retention period, therefore, should not be significant. We also believe that adopting a seven-year retention period would reduce inconsistencies between the forthcoming Oversight Board rules and the Commission's rules and lessen any potential confusion related to the calculation of retention periods.[29] Accordingly, the final rule requires that auditors retain the required documents for seven years from the conclusion of the audit or review.

Workpapers Defined

Section 802 is intended to require the retention of more than what traditionally has been thought of as auditor's "workpapers." [30] To clarify the distinction between workpapers and other materials that would be retained, paragraph (b) of the final rule defines the term "workpapers." The legislative history to section 802 states that the term is to be used as it is "widely understood" by the Commission and by the accounting profession.[31] We believe that the term is understood to refer to the documents required to be retained by GAAS.

GAAS does not use the specific term "workpapers," [32] but Statement on Auditing Standards No. 96, "Audit Documentation," states, in part:

> The auditor should prepare and maintain audit documentation, the content of which should be designed to meet the circumstances of the particular audit engagement. Audit documentation is the principal record of the auditing procedures applied, evidence obtained, and conclusions reached by the auditor in the engagement.[33]

We have placed the body of this provision into paragraph (b) and stated that "workpapers" means "documentation of auditing or review procedures applied, evidence obtained, and conclusions reached by the accountant in the audit or review engagement, as required by standards established or adopted by the Commission or by the Public Company Accounting Oversight Board." [34] The proposed rule, therefore, recognizes that the Oversight Board, subject to Commission oversight, has the ability to review and change the nature and scope of the required documentation of procedures, evidence, and conclusions related to audits and reviews of financial statements.[35]

As noted by several commenters, there may be significant overlap of the documents falling within the definition of "workpapers" and the documents that would be retained pursuant to the description in paragraph (a) of the rule of "other documents that form the basis of the audit or review, and memoranda, correspondence, communications, other documents, and records (including electronic records), which (1) are created, sent or received in connection with the audit or review, and (2) contain conclusions, opinions, analyses, or financial data related to the audit or review." [36]

Differences of Opinion

SAS 96 states that audit documentation serves mainly to provide the principal support for the auditor's report and to aid the auditor in the conduct and supervision of the audit.[37] Section 802, however, is intended to

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[22] The proposed retention period was not based on the fiscal period covered by the financial statements being audited or reviewed, but when the audit or review would occur. For example, if a company has a calendar year-end fiscal year, for an audit of year 2002 financial statements that concludes in February or March 2003, under the proposal, the records would have been required to be retained until January 1, 2009.

[23] *See* Statement of Senator Leahy on the Senate floor: "[I]t is intended that the SEC promulgate rules and regulations that require the retention of such substantive material * * * for such a period as is reasonable and necessary for effective enforcement of the securities laws and the criminal laws, most of which have a five-year statute of limitations." 148 Cong. Rec. S7419 (July 26, 2002).

[24] The Oversight Board is required under section 103(a)(2)(A)(i) of the Sarbanes-Oxley Act to adopt an auditing standard that requires accounting firms registered with the Oversight Board to "* * * prepare, and maintain for a period of not less than 7 years, audit work papers, and other information related to any audit report, in sufficient detail to support the conclusions reached in such report." The standard to be adopted by the Oversight Board, therefore, is to be both a documentation and retention standard.

[25] *See, e.g.*, letter from KPMG LLP, dated December 27, 2002, which states, in part: "Clearly, the documents to be retained under both Sections [103 and 802] overlap to a large extent."

[26] *See, e.g.*, letter from Wendy Perez, President of California Board of Accountancy dated December 23, 2002; letter from Grant Thornton LLP dated December 27, 2002; letter from Lynette Downing, HLB Tautges Redpath, Ltd., dated December 27, 2002.

[27] *See, e.g.*, letter form Donald G. DeBuck, Controller, Computer Sciences Corporation dated December 26, 2002; letter from PricewaterhouseCoopers dated December 27, 2002; letter from the American Institute of Certified Public Accountants dated December 27, 2002.

[28] *See e.g.*, letter from Grant Thornton LLP dated December 27, 2002, which states, "We believe that most firms will adopt a policy of retaining all audit documentation for the longer period of seven years."

[29] *Id.*

[30] Senator Leahy stated on the Senate floor that section 802 "requires the SEC to promulgate reasonable and necessary regulations * * * regarding the retention of categories of electronic and non-electronic audit records, which contain opinions, conclusions, analysis or financial data, in addition to the actual work papers." 148 Cong. Rec. S7418 (July 26, 2002).

[31] Statement by Senator Leahy on the Senate floor, 148 Cong. Rec. S7418 (July 26, 2002).

[32] American Institute of Certified Public Accountants ("AICPA"), Statement on Auditing Standards No. ("SAS") 96, "Audit Documentation," at footnote 1, however, acknowledges that: "*Audit Documentation* also may be referred to as *working papers*"; Codification of Statements on Auditing Standards ("AU") § 339.

[33] SAS 96, at ¶ 1; AU § 339.01. This paragraph also states: "The quality, type, and content of audit documentation are matters of the auditor's professional judgment." The rule does not include this sentence, but instead notes that the Commission or the Oversight Board may reexamine these requirements in the auditing standards.

[34] Prior to the establishment or adoption of auditing standards by the Oversight Board, "workpapers" would continue to mean the documentation of auditing or review procedures applied, evidence obtained, and conclusions reached by the accountant in the audit or review engagement as required by GAAS.

[35] *See* section 103(a) of the Sarbanes-Oxley Act.

[36] *See, e.g.*, letter from PricewaterhouseCoopers dated December 27, 2002.

[37] SAS 96, at ¶ 3; AU § 339.03.

facilitate effective enforcement of the securities laws and criminal laws,[38] which requires the retention of not only records that *support* the auditor's report (as required by SAS 96) but also records that would be inconsistent with, or otherwise challenge, the conclusions in the auditor's report. In order to ensure that the purposes of the Act are fulfilled, we proposed that paragraph (c) of the rule include the specific requirement that the materials retained under paragraph (a) would include not only those that support an auditor's conclusions about the financial statements but also those materials that may "cast doubt" on those conclusions.[39] We stated in the Proposing Release that paragraph (c) was intended to ensure the preservation of those records that reflect differing professional judgments and views (both within the accounting firm and between the firm and the issuer) and how those differences were resolved. To better communicate what we intended by "cast doubt" on the auditor's conclusions, we included in the proposed rule the example of documentation of differences of opinion concerning accounting and auditing issues.

The auditor in a variety of contexts may create materials related to differences of opinion. For example, SAS No. 22, "Planning and Supervision," states in part:

> The auditor with final responsibility for the audit and assistants should be aware of the procedures to be followed when differences of opinion concerning accounting and auditing issues exist among firm personnel involved in the audit. Such procedures should enable an assistant to document his disagreement with the conclusions reached if, after appropriate consultation, he believes it necessary to disassociate himself from the resolution of the matter. In this situation, the basis for the final resolution should also be documented.[40]

An interpretation of this section issued by the AICPA's Auditing Standards Board emphasizes the professional obligation on each person involved in an audit engagement to bring his or her concerns to the attention of others in the firm and, as appropriate, to document those concerns. This interpretation states:

> Accordingly, each assistant has a professional responsibility to bring to the attention of appropriate individuals in the firm, disagreements or concerns the assistant might have with respect to accounting and auditing issues that he believes are of significance to the financial statements or auditor's report, however those disagreements or concerns may have arisen. In addition, each assistant should have a right to document his disagreement if he believes it is necessary to disassociate himself from the resolution of the matter.[41]

In addition, SAS 96 states that the documentation for an audit should include the findings or issues that in the auditor's judgment are significant, the actions taken to address them (including any additional evidence obtained), and the basis for the final conclusions reached.[42] For example, if a memorandum is prepared by a member of a large accounting firm's national office that is critical of the accounting used by an audit client, or of a position taken by the partner in charge of the audit of those financial statements, that memorandum should be retained.[43] Another example would be documentation related to an auditor's communications with an issuer's audit committee about alternative disclosures and accounting methods used by the issuer that are not the disclosures or accounting preferred by the auditor.[44]

We continue to believe that retaining any materials that might cast doubt on the final conclusions reflected in the auditor's report, including those created under SAS 22 and SAS 96, would be consistent with the letter and spirit of the Sarbanes-Oxley Act. One commenter, the National Association of State Boards of Accountancy ("NASBA"), endorsed requiring the retention of documents that "cast doubt" on an auditor's audit or review because "state attorneys' general staff members assigned to accountancy boards often have complained of receiving only those documents that support the final report." NASBA also noted, however, that the Commission promptly should revise the rule if it becomes too burdensome or otherwise unworkable.[45]

Several commentators stated that the proposed "cast doubt" language was unworkable. They indicated that the phrase was pejorative,[46] vague and unnecessary, and might be used to attribute doubt to virtually any remark made during an audit, regardless of its relevance or materiality.[47] One accounting firm stated that the proposed rule "could be read to require retention of every document reflecting an error however temporary—even typographical or addition errors made in preparing a workpaper. * * * It also could be read to require preservation of each and every exchange of differing views on any topic, however fleeting and trivial the differences."[48] Another accounting firm stated that on many occasions correcting or redoing workpapers is not the result of differences of opinion but from on-the-job training and a normal learning

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[38] *See* Statement of Senator Leahy on the Senate floor, 148 Cong. Rec. S7419 (July 26, 2002).

[39] *Senator Leahy stated on the Senate floor:*

> In light of the apparent massive document destruction by Andersen, and the company's apparently misleading document retention policy, even in light of its prior SEC violations, it is intended that the SEC promulgate rules and regulations that require the retention of such substantive material, including material that casts doubt on the views expressed in the audit or review, for such a period as is reasonable and necessary for effective enforcement of the securities laws and the criminal laws, most of which have a five-year statute of limitations.

148 Cong. Rec. S7419 (July 26, 2002).

[40] SAS 22, ¶ 22 (as amended by SAS 47, 48 and 77); AU § 311.22. "Assistants," in the context of the first sentence of the quoted paragraph, is intended to include other partners who are on the audit engagement team.

[41] "Planning and Supervision: Auditing Interpretations of Section 311," AU § 9311.37. "Assistants," in the context of this interpretation, includes other partners who are on the audit engagement team.

[42] SAS 96, ¶ 9; AU § 339.09, which states:

> In addition, the auditor should document findings or issues that in his or her judgment are significant, actions taken to address them (including any additional evidence obtained), and the basis for the final conclusions reached.

See also, SAS 96, ¶ 6; AU § 339.06, which states:

> Audit documentation should be sufficient to (a) Enable members of the engagement team with supervision and review responsibilities to understand the nature, timing, extent, and results of auditing procedures performed, and the evidence obtained; (b) indicate the engagement team member(s) who performed and reviewed the work; and (c) show that the accounting records agree or reconcile with the financial statements or other information being reported on.

[43] Such a memorandum might be prepared in connection with the consultation process that is part of an accounting firm's quality controls. *See, e.g.*, section 103(a)(2)(B)(ii) of the Sarbanes-Oxley Act.

[44] Section 204 of the Sarbanes-Oxley Act adds section 10A(k) to the Exchange Act and requires auditors to report certain matters to audit committees, including: "(a) All critical accounting policies and practices to be used, (2) all alternative treatments of financial information within generally accepted accounting principles that have been discussed with management officials of the issuer, ramifications of the use of such alternative disclosures and treatments, and the treatment preferred by the registered public accounting firm; and (3) other material written communications between the registered public accounting firm and the management of the issuer, such as the management letter or schedule of unadjusted differences."

[45] Letter from K. Michael Conaway, Chair, NASBA, and David A. Costello, President and CEO, NASBA, dated December 23, 2002.

[46] Letter from Donald G. DeBuck, Computer Sciences Corporation, dated December 26, 2002.

[47] *See, e.g.*, letter from BDO Seidman, LLP, dated December 27, 2002; letter from Grant Thornton LLP dated December 27, 2002; letter from KPMG LLP dated December 27, 2002; letter from Deloitte & Touche LLP dated December 27, 2002.

[48] Letter from Ernst & Young LLP, dated December 27, 2002.

process.[49] One commenter stated that the "cast doubt" language in the proposed rule might deter auditors from asking legitimate questions.[50]

Some commenters suggested language to replace the provision in subparagraph (c) that documents be retained if they "cast doubt on the final conclusions reached by the auditor." For example, commenters suggested that records be retained only if they would constitute a reportable "disagreement" under Item 304 of Regulation S–K.[51] Item 304 indicates that a disagreement is reportable upon a change in an entity's principal accountant if, among other things, the disagreement occurs at the decision-making level on any matter of accounting principles or practices, financial statement disclosure, or auditing scope or procedure, which, if not resolved to the accountant's satisfaction, would cause the auditor to make reference to the matter in connection with his or her audit report.[52]

We are reluctant, however, to follow Item 304 of Regulation S–K, which has a different purpose than the rule being adopted in this release. Item 304 requires disclosure to investors of potential "opinion shopping" situations and provides a forum for the registrant, the newly engaged auditor, and the former auditor to provide their views of "disagreements" and other "reportable events." New rule 2–06, on the other hand, addresses the retention of documents relevant to enforcement of the securities laws, Commission rules, and criminal laws.

In the proposing release we asked if, in place of the "cast doubt" language, a different test for retention of documents would be appropriate. We specifically asked if such a test should be documentation of "significant differences in professional judgment" or "differences of opinion on issues that are material to the issuer's financial statements or to the auditor's final conclusions regarding any audit or review." Several commenters supported using one or a combination of these tests.[53]

In consideration of the comments received, we have revised paragraph (c) of the rule. We have removed the phrase "cast doubt" to reduce the possibility that the rule mistakenly would be interpreted to reach typographical errors, trivial or "fleeting" matters, or errors due to "on-the-job" training. We continue to believe, however, that records that either support or contain significant information that is inconsistent with the auditor's final conclusions would be relevant to an investigation of possible violations of the securities laws, Commission rules, or criminal laws and should be retained. Paragraph (c), therefore, now provides that the materials described in paragraph (a) shall be retained whether they support the auditor's final conclusions or contain information or data, relating to a significant matter, that is inconsistent with the final conclusions of the auditor on that matter or on the audit or review. Paragraph (c) also states that the documents and records to be retained include, but are not limited to, those documenting consultations on or resolutions of differences in professional judgment.

The reference in paragraph (c) to "significant" matters is intended to refer to the documentation of substantive matters that are important to the audit or review process or to the financial statements of the issuer or registered investment company.[54] Rule 2–06(c) requires that the documentation of such matters, once prepared, must be retained even if it does not "support" the auditor's final conclusions, because it may be relevant to an investigation.[55] Similarly, the retention of records regarding a consultation about, and resolution of, differences in professional judgment would be relevant to such an investigation and must be retained. We intend for Rule 2–06 to be incremental to, and not to supersede or otherwise affect, any other legal or procedural requirement related to the retention of records or potential evidence in a legal, administrative, disciplinary, or regulatory proceeding.

Finally, we recognize that audits and reviews of financial statements are interactive processes and views within an accounting firm on accounting, auditing or disclosure issues may evolve as new information or data comes to light during the audit or review. We do not view "differences in professional judgment" within subparagraph (c) to include such changes in preliminary views when those preliminary views are based on what is recognized to be incomplete information or data.

Response to Other Significant Comments

In response to our request in the Proposing Release, commenters addressed whether issuers and registered investment companies should be required to retain documents that the auditor examines, reviews or otherwise considers during the audit or review but are not made part of the auditor's records. Commenters generally opposed such a requirement.[56] One commenter indicated that it was unclear whether section 802 of the Sarbanes-Oxley Act applies to such records and that, if such a requirement was imposed, it would go beyond those documents that are relevant to the audit or review or that contain the auditor's conclusions, opinions, or analyses.[57] An accounting firm similarly stated that it was not practical for an issuer to keep track of the documents examined by the auditor and then apply the retention

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[49] Letter from Donald D. Pangburn, Director, Gelfond Hochstadt Pangburn, P.C., dated November 26, 2002.

[50] Letter from Sullivan & Cromwell dated December 26, 2002.

[51] *See, e.g.*, letter from Ernst & Young LLP, dated December 27, 2002; letter from PricewaterhouseCoopers dated December 27, 2002; letter from Deloitte & Touche dated December 27, 2002.

[52] Item 304 of Regulation S–K, 17 CFR 229.304.

[53] *See, e.g.*, letter from Sullivan & Cromwell dated December 26, 2002; letter from Lynette Downing, HLB Tautges Redpath, Ltd. dated December 27, 2002; letter from Grant Thornton LLP dated December 27, 2002; letter from KPMG LLP dated December 27, 2002; letter from the American Institute of Certified Public Accountants dated December 27, 2002.

[54] SAS 96 requires the auditor to document findings or issues that in his or her judgment are significant. It states that "significant audit findings or issues" include:

- "Matters that both (a) are significant and (b) involve issues regarding the appropriate selection, application, and consistency of accounting principles with regard to the financial statements, including related disclosures. Such matters often relate to (a) accounting for complex or unusual transactions or (b) estimates and uncertainties and, if applicable, the related management assumptions.
- "Results of auditing procedures that indicate that (a) the financial statements or disclosures could be materially misstated or (b) auditing procedures need to be significantly modified.
- "Circumstances that cause significant difficulty in applying auditing procedures that the auditor considered necessary.
- "Other findings that could result in modification of the auditor's report." SAS 96, ¶ 9, AU § 339.09 (Footnote omitted.)

This literature may provide helpful guidance as to the scope of the term "significant." However, the term significant as used in this rule is not limited to items identified in SAS 96. Moreover, we do not intend for the auditor's subjective judgment of whether a matter is significant to be determinative. Instead, we believe that the more objective test of what may be significant to a reasonable investor should be applied in evaluating whether information is "significant."

[55] *See* letter from Deloitte & Touche dated December 27, 2002, *quoting* Statement of Senator Orrin Hatch before the Senate Judiciary Committee (April 25, 2002): "I anticipate that the SEC will exercise its discretion to promulgate only those rules and regulations that are necessary to ensure that documents material to an audit or review, as well as any future investigation, are retained."

[56] One commenter supported such a requirement. Letter from Lynette Downing, HLB Tautges Redpath, Ltd. dated December 27, 2002.

[57] Letter from Sullivan & Cromwell dated December 26, 2002.

requirements to those documents.[58] An issuer commented that, due to the host of documents, databases, and other material provided to an auditor, it is impossible for an issuer to determine what, if any, documents provided to the auditor were relevant to the auditor or provided the basis for the auditor's conclusions.[59] Accordingly, we are not instituting such a requirement at this time.

We also requested comments on whether a transition period was necessary or appropriate in implementing the rule. Accounting firms[60] and a law firm[61] noted that time may be required to develop systems related to the retention of documents (particularly electronic documents) and to train people to use them. Accordingly, we have indicated in the beginning of this release that accounting firms should comply with the rule no later than October 31, 2003.

Several items were raised in the comment letters that may be addressed more appropriately by the Public Company Accounting Oversight Board. For example, one commenter suggested that the Commission adopt the standard promulgated by the General Accounting Office, or a previously proposed draft auditing standard, related to the form and content of audit workpapers.[62] This commenter also suggested that the Commission adopt standards requiring accounting firms to: Document differences of opinion on issues that are material to the audit; have written documentation and destruction policies; document significant relationships regarding the auditor and issuer; and have auditors performing audit or review work related to the issuer's subsidiaries or foreign affiliates document all work performed and certify in writing that such documentation is complete and available for inspection.[63] These matters are more appropriately within the purview of setting auditing standards and should be addressed, in the first instance, by the Oversight Board.[64]

The same commenter suggested that the Commission provide that if audit work is not documented in the workpapers then the burden of proof shifts to the auditor to prove by a preponderance of evidence that the work in fact was performed.[65] We note that the retention requirements under SAS 96, as discussed above, and new rule 2–06 should provide documentation of all significant matters considered during the audit. If such work is performed but not documented, the auditor generally would violate GAAS or new rule 2–06.

Another commenter suggested that the Commission require that all accounting firms registered with the Public Company Accounting Oversight Board comply with consultation requirements, and related documentation requirements, currently prescribed by the SEC Practice Section of the American Institute of Certified Public Accountants for large accounting firms.[66] We believe these matters relate to quality control standards within the scope of the Oversight Board's standard setting authority and we encourage the Oversight Board to consider adoption of such requirements. This commenter also suggested that the Commission address the application of rule 2–06 to documents prepared for a firm's internal inspection or outside peer review.[67] Such documents generally would not be considered to be created, sent or received in connection with an audit or review engagement and, therefore, would not be within the new rule. We would encourage the Oversight Board to consider, however, whether there are circumstances in which certain of the records prepared for inspection purposes may be considered part of the audit or review workpapers.

III. Paperwork Reduction Act

Certain provisions of rule 2–06 contain "collections of information" requirements within the meaning of the Paperwork Reduction Act of 1995 ("PRA") (44 U.S.C. 3501 *et seq.*), and the Commission submitted them to the Office of Management and Budget ("OMB") for review in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11. The title for the collection of information is "Regulation S–X—Record Retention." The request for approval of the rule's collection of information requirements is pending at OMB.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number. Compliance with the proposed requirements would be mandatory. Rule 2–06 requires that accounting firms retain certain records for seven years. Retained information would be kept confidential unless or until made public during an enforcement, disciplinary or other legal or administrative proceeding.

The final rule, which is included in Regulation S-X, requires accountants to retain certain records for a period of seven years after the accountant concludes an audit or review of an issuer's or registered investment company's financial statements. The proposed rules do not require accounting firms to create any new records. It also is important to note that decisions about the retention of records currently are made as a part of each audit or review.

The records to be retained include records relevant to the audit or review, including workpapers and other documents that form the basis of the audit or review, and memoranda, correspondence, communications, other documents, and records (including electronic records), which are created, sent or received in connection with the audit or review, and contain conclusions, opinions, analyses, or financial data related to the audit or review. Records described in the rule are to be retained whether the conclusions, opinions, analyses, or financial data in the records support the final conclusions reached by the auditor, or contain information or data, relating to a significant matter, that is inconsistent with the final conclusions of the auditor on that matter or the audit or review. The required retention of audit and review records should discourage the destruction, and assist in the availability, of records that may be relevant to investigations conducted and litigation brought under the securities laws, Commission rules or criminal laws.

In the proposing release, we estimated that approximately 850 accounting firms audit and review the financial statements of approximately 20,000 public companies and registered

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[58] Letter from BDO Seidman, LLP dated December 27, 2002. See also letter from the American Institute of Certified Public Accountants dated December 27, 2002.

[59] Letter from Mr. Donald G. DeBuck, Computer Sciences Corporation, dated December 26, 2002.

[60] *See, e.g.*, letter from BDO Seidman, LLP dated December 27, 2002 and letter from KPMG LLP dated December 27, 2002.

[61] Letter from Sullivan & Cromwell dated December 26, 2002.

[62] Letter from Wendy S. Perez, President, California Board of Accountancy, dated December 23, 2002.

[63] *Id.*

[64] Sections 103(a) and 103(c) of the Sarbanes-Oxley Act empower the Oversight Board to establish auditing standards, including, to the extent it determines appropriate, adopting standards proposed by professional groups of accountants or by expert advisory groups convened by the Oversight Board.

[65] *Id.*

[66] Letter from BDO Seidman, LLP dated December 27, 2002. *See* Section 1000.08(q) of the SECPS membership requirements. This section requires large firms to have policies on internal consultations and to document: the matter, the action taken to address the matter, and the basis for the final conclusion reached. Under this provision, the auditor must either follow the position taken by the person consulted or appeal any disagreement to a higher level of authority within the firm for ultimate resolution.

[67] *Id.*

investment companies filing financial statements with the Commission.[68] Each firm currently is required to perform its audits and reviews in accordance with generally accepted auditing standards ("GAAS"), which require auditors to retain certain documentation of their work.[69] Accounting firms, therefore, currently make decisions about the retention of each record created during the audit or review. GAAS, however, currently does not require explicitly that auditors retain documents that do not support their opinions and GAAS does not set definite retention periods. As a result, rule 2–06 might result in the retention of more records than currently required under GAAS, and might result in some accounting firms keeping those records for a longer period of time.

To cover all increases in burden hours, we estimated in the proposing release that, on average, the incremental burden on firms would be no more than one hour for each public company audit client, or approximately 15,000 hours.[70]

We received comments on the proposed collection of information requirements indicating that, in view of the possible breadth of the proposed rule, the estimated burden hours appeared to be low.[71] These commenters suggested that this burden would be mitigated by revising the portion of the proposed rule related to the retention of records that "cast doubt" on the final conclusions reached by the auditor on the audit or review.[72] In view of the revisions made to the rule and the clarifications in this release provided in response to commenters' concerns, we believe that the estimated burden is reasonable.

[68] These estimates are based on information in Commission databases. The number of public companies includes those filing annual reports and those filing registration statements to conduct initial public offerings. The same auditors also audit the financial statements of approximately 5,587 investment companies.

[69] *See* American Institute of Certified Public Accountants ("AICPA"), Statement on Auditing Standards No. ("SAS") 96, "Audit Documentation'; Codification of Statements on Auditing Standards ("AU") 339. GAAS does not specify a required retention period. The documents to be retained under SAS 96 include those indicating the auditing procedures applied, the evidence obtained during the audit, and the conclusions reached by the auditor in the engagement.

[70] This burden accounts for incidental reading and implementation of the rule. Fifteen thousand burden hours should be sufficient to cover the audits and reviews of not only public companies but also registered investment companies. Because of the nature and scope of the audits of investment companies, there would be an even smaller and insignificant incremental burden imposed on those audits than on the audits of public companies.

[71] *See* letter from Lynette Downing, HLB Tautges Redpath, Ltd. dated December 27, 2002; letter from PricewaterhouseCoopers dated December 27, 2002; letter from Deloitte & Touche dated December 27, 2002.

[72] *See* letter from PricewaterhouseCoopers dated December 27, 2002 and letter from Deloitte & Touche dated December 27, 2002.

IV. Cost—Benefit Analysis

The record retention requirements in rule 2–06 implement a congressional mandate. We recognize that any implementation of the Sarbanes-Oxley Act likely will result in costs as well as benefits and will have an effect on the economy. We are sensitive to the costs and benefits imposed by our rules and, in the Proposing Release, we identified certain costs and benefits of the proposed rule.

A. Background

Under section 802 of the Sarbanes-Oxley Act, accountants who audit or review an issuer's financial statements must retain certain records relevant to that audit or review. Rule 2–06 implements this provision and indicates the records to be retained, but it does not require accounting firms to create any new records.

The records to be retained would include those relevant to the audit or review, including workpapers and other documents that form the basis of the audit or review and memoranda, correspondence, communications, other documents, and records (including electronic records), which are created, sent or received in connection with the audit or review, and contain conclusions, opinions, analyses, or financial data related to the audit or review. Records described in the rule would be retained whether the conclusions, opinions, analyses, or financial data in the records support the final conclusions reached by the auditor, or contain information or data, relating to a significant matter, that is inconsistent with the final conclusions of the auditor on that matter or the audit or review. The required retention of audit and review records should discourage the destruction, and assist in the availability, of records that may be relevant to investigations conducted under the securities laws, Commission rules or criminal laws.

B. Potential Benefits of the Retention Requirements

Rule 2–06 requires that accountants retain certain records relevant to an audit or review of an issuer's or registered investment company's financial statements for seven years. To the extent that the rule increases the availability of documents beyond current professional practices, the rule may benefit investigations and litigation conducted by the Commission and others. Increased retention of these records will preserve evidence reflecting significant accounting judgments and may provide important evidence of financial reporting improprieties or deficiencies in the audit process.

One of the most important factors in the successful operation of our securities markets is the trust that investors have in the reliability of the information used to make voting and investment decisions. In addition to providing materials for investigations, the availability of the documents subject to rule 2–06 might facilitate greater oversight of audits and improved audit quality, which, in turn, ultimately could increase investor confidence in the reliability of reported financial information.

C. Potential Costs of the Proposal

In the proposing release, we estimated that approximately 850 accounting firms audit and review the financial statements of approximately 20,000 public companies and registered investment companies filing financial statements with the Commission.[73] Each firm currently is required to perform its audits and reviews in accordance with generally accepted auditing standards ("GAAS"), which require auditors to retain certain documentation of their work.[74] Accounting firms, therefore, currently make decisions about the retention of each record created during the audit or review. GAAS explicitly requires that auditors retain documents that support their audit reports, but it does not set definite retention periods. As noted above, to ensure the purposes of the Act are achieved, the final rule requires the retention of materials that not only support the auditor's report but also records that are inconsistent with that report, and sets a seven-year retention period. As a result, rule 2–06 might result in the retention of more records than currently required under GAAS, and might result in some accounting firms keeping those records for a longer period of time.

It is important to note, however, that the proposed rules do not require the creation of any record; they require only that existing records be maintained for the prescribed time period. It also is important to note that decisions about

[73] These estimates are based on information in Commission databases. The number of public companies includes those filing annual reports and those filing to conduct an initial public offering. The same auditors also audit the financial statements of approximately 5,587 investment companies.

[74] *See* American Institute of Certified Public Accountants ("AICPA"), Statement on Auditing Standards No. ("SAS") 96, "Audit Documentation'; Codification of Statements on Auditing Standards ("AU") 339.

the retention of records currently are made as a part of each audit or review.

In the proposing release, we estimated that adoption of the rule would not result in any significant increase in costs for accounting firms or issuers because the rule would not require the creation of records, would not significantly increase procedures related to the review of documents, and minimal, if any, work would be associated with the retention of these records. We indicated that the disposal of those records, which would occur in any event, merely would be delayed. In addition, because an already large and ever-increasing portion of the records required to be retained are kept electronically, we stated that the incremental increase in storage costs for documents would not be significant for any firm or for any single audit client. We recognize, however, that firms may incur some cost to retain access to older technologies as electronic storage technology advances.

For purposes of the Paperwork Reduction Act, we estimated in the proposing release the total burden to be 15,000 burden hours. We further estimated that, assuming an accounting firm's average cost of in-house staff is $110 per hour,[75] the total cost would be $1,650,000.

We received comments indicating that, based on the proposed rule, our cost estimate was low. Due to revisions made to the rule the cost estimates provided by the commenters, however, may no longer be accurate. For example, a large accounting firm stated that if it would be required to retain all financial data "received" from the issuer in the course of the audit, its current document retention costs of approximately $4.5 million would double.[76] This firm questioned whether all of the issuer's financial information, records, databases, and reports that the auditor examines on the issuer's premises, but are not made part of the auditor's workpapers or otherwise retained by the auditor, would be deemed to be "received" by the auditor and subject to the retention requirements in rule 2–06. As noted previously in this release, we do not believe that Congress intended for accounting firms to duplicate and retain all of the issuer's financial information, records, databases, and reports that might be read, examined, or reviewed by the auditor. Accordingly, we do not believe that the "received" criterion in rule 2–06(a)(1) requires that auditors retain such records and the firm's anticipated document retention costs, therefore, should be significantly reduced.

Another accounting firm indicated that administrative costs of retaining records, based on the proposed rule, could include a one-time cost of $1 million and ongoing annual costs of $500,000 to $1 million.[77] This firm also estimated that increased litigation costs associated with complying with discovery requests and payment of damages would increase annual audit costs by at least five percent and perhaps as much as fifteen to twenty percent.[78] As noted above, we believe that revisions to the rule in response to commenters' concerns should lessen the administrative costs anticipated by this commenter. Regarding the commenter's cost estimates related to potential litigation, we recognize that one purpose of section 802 is to facilitate investigations of potential violations of securities laws and criminal laws,[79] which could impact a firm's litigation costs. Nonetheless, the firm's estimate would appear to be speculative. If the retention requirements lead to more efficient oversight of the accounting profession then they may result in improved audit quality and enhanced investor confidence in the profession.

Other accounting firms noted that many variables would affect the costs related to the rule, and that the ultimate increase in costs is difficult to quantify.[80] One commenter indicated that the amount of changes to be made to current record retention systems, and the related costs, depends on whether the accounting firm has a good record management system already in place.[81] For those firms with established records management programs, this commenter indicated that the rule would require a review and possibly fine-tuning of the firms' existing policies and procedures. This commenter also noted that adopting the proposed five-year retention requirement would have been more costly than adopting the seven-year retention requirement that is consistent with the forthcoming auditing standard to be promulgated by the Public Company Accounting Oversight Board. In this commenter's view, having two retention periods would have increased costs associated with processing the records.[82]

V. Consideration of Impact on the Economy, Burden on Competition, and Promotion of Effeciency, Competition, and Capital Formation

Section 23(a)(2) of the Exchange Act[83] requires the Commission, when adopting rules under the Exchange Act, to consider the anti-competitive effects of any rule it adopts. In addition, Section 2(b) of the Securities Act of 1933,[84] Section 3(f) of the Exchange Act,[85] and Section 2(c) of the Investment Company Act[86] require the Commission, when engaging in rulemaking that requires it to consider or determine whether an action is necessary or appropriate in the public interest, to consider whether the action will promote efficiency, competition, and capital formation.

We believe that rule 2–06 would not have an adverse impact on competition. To the extent the proposed rules would increase the quality of audits and the efficiency of enforcement and disciplinary proceedings, there might be an increase in investor confidence in the efficacy of the audit process and the efficiency of the securities markets.

One commenter agreed that the rule should have no adverse effect on competition.[87] This commenter also noted that those firms with good records management systems should have more efficient services and more secure information.[88]

In any event, to the extent the rule has any anti-competitive effect, or impacts efficiency, competition, or capital formation, we believe those effects are necessary and appropriate in

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[75] We estimate that associates would perform three-fourths of the required work, with a partner performing about one-fourth of the work. We also estimate that, on average, an associate's annual salary would be approximately $125,000 and a partner's annual compensation would be approximately $500,000. Based on these amounts, the in-house cost of an associate's time would be approximately $65 per hour, and the in-house cost of a partner's time would be approximately $250 per hour. The average hourly rate, therefore, would be about $110 per hour ([(3 × $65) + $250] / 4).

[76] Letter from PricewaterhouseCoopers dated December 27, 2002.

[77] Letter from BDO Seidman, LLP dated December 27, 2002.

[78] *Id.*

[79] *See* Statement of Senator Leahy on the Senate floor: "[I]t is intended that the SEC promulgate rules and regulations that require the retention of such substantive material * * * for such a period as is reasonable and necessary for effective enforcement of the securities laws and the criminal laws.* * *" 148 Cong. Rec. S7419 (July 26, 2002).

[80] *See, e.g.*, letter from Grant Thornton, dated December 27, 2002.

[81] Letter from Lynette Downing, HLB Tautges Redpath, Ltd., dated December 27, 2002. This commenter estimated that, depending on the information systems and staff currently in place, to maintain electronic records "an investment of $100,000 to $250,000 for each $5 million in net fees is likely with ongoing annual expenses of $50,000 to $100,000."

[82] *Id.*

[83] 15 U.S.C. 78w(a)(2).

[84] 15 U.S.C. 77b(b).

[85] 15 U.S.C. 78c(f).

[86] 15 U.S.C. 80a–2(c).

[87] Letter from Lynette Downing, HLB Tautges Redpath, Ltd., dated December 27, 2002.

[88] *Id.*

furtherance of the goals of implementing section 802 of the Sarbanes-Oxley Act.

We received no comments indicating that the rule would impact efficiency or capital formation.

VI. Final Regulatory Flexibility Act Analysis

This Final Regulatory Flexibility Act Analysis has been prepared in accordance with 5 U.S.C. 604. It relates to new rule 2–06 of Regulation S–X, which requires auditors to retain certain audit and review documentation.

A. Reasons for and Objectives of the New Rule

The rule generally carries out a congressional mandate. The rule, in general, prohibits the destruction for seven years of certain records related to the audit or review of an issuer's or registered investment company's financial statements.[89] The rule, however, would not require accounting firms to create any new records.

The objective of the rule is to implement section 802 of the Sarbanes-Oxley Act in order to increase investor confidence in the audit process and in the reliability of reported financial information. This is accomplished by defining the records to be retained related to an audit or review of an issuer's financial statements. Having these records available should enhance oversight of corporate reporting and of the performance of auditors and facilitate the enforcement of the securities laws.

B. Significant Issues Raised by Public Comments

One commenter anticipated that the record retention requirements, if adopted as proposed, would have placed an "enormous" burden on small accounting firms, and could have resulted in some firms deciding to no longer audit public companies.[90] The final rule, however, contains several revisions designed to lower the costs on all firms, including smaller accounting firms. These revisions include removing the "cast doubt" language from the rule, which commenters generally viewed as requiring the auditor to retain virtually all documents generated or reviewed during an audit or review, regardless of their relevance or materiality.[91] We have replaced this language with language that focuses on documents that contain information or data relating to a significant matter that are inconsistent with the auditor's final conclusions regarding that matter or the audit or review. We also have adopted a seven-year retention period to coincide with a forthcoming retention requirement to be promulgated by the Public Company Accounting Oversight Board, which, according to one commenter, should reduce processing costs associated with the rule.[92] Also, as noted above, we have clarified in this release that the auditor need not retain every document read, examined or reviewed as part of the audit or review process. As a result of these revisions and clarifications, we believe that implementation of the revised rule should be less costly for accounting firms than anticipated by the commenters.

Furthermore, one commenter noted that records management procedures for smaller accounting firms should be the same as they are for larger firms.[93] This commenter indicated that "the cost of implementing a [formalized records management] program at any-sized firm will be surpassed by the benefits received and the future cost savings."[94]

C. Small Entities Subject to the Rule

Our rules do not define "small business" or "small organization" for purposes of accounting firms. The Small Business Administration defines small business, for purposes of accounting firms, as those with under $6 million in annual revenues.[95] We have only limited data indicating revenues for accounting firms, and we cannot estimate the number of firms with less than $6 million in revenues that practice before the Commission.

In the Initial Regulatory Flexibility Analysis we requested comment on the number of firms with less than $6 million in revenue in order to determine the number of small firms potentially affected by the rule, but we received no response.

D. Projected Reporting, Recordkeeping and Other Compliance Requirements

Under the new rule,[96] accountants who audit or review an issuer's or registered investment company's financial statements must retain certain records for a period of seven years from conclusion of the audit or review. The records to be retained include records relevant to the audit or review, such as workpapers and other documents that form the basis of the audit or review and memoranda, correspondence, communications, other documents, and records (including electronic records), which are created, sent or received in connection with the audit or review, and contain conclusions, opinions, analyses, or financial data related to the audit or review. Records described in the rule would be retained whether the conclusions, opinions, analyses, or financial data in the records support the final conclusions reached by the auditor, or contain information or data, relating to a significant matter, that is inconsistent with the final conclusions of the auditor on that matter or the audit or review. The required retention of audit and review records should discourage the destruction, and assist in the availability, of records that may be relevant to investigations conducted under the securities laws.

In the Proposing Release, we estimated that adoption of the rule would not result in any significant increase in costs for accounting firms or issuers because the rule would not require the creation of records, would not significantly increase procedures related to the review of documents, and minimal, if any, work would be associated with the retention of these records. We indicated that the disposal of those records, which would occur in any event, merely would be delayed. In addition, because an already large and ever-increasing portion of the records required to be retained are kept electronically, we stated that the incremental increase in storage costs for documents would not be significant for any firm or for any single audit client.

For purposes of the Paperwork Reduction Act, we estimated in the proposing release the total burden to be 15,000 burden hours. We further estimated that, assuming an accounting firm's average cost of in-house staff is $110 per hour,[97] the total cost would be $1,650,000.

We received comments indicating that, based on the proposed rule, our cost estimate was low. Due to revisions made to the rule the cost estimates

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[89] *See* section 802 of the Sarbanes-Oxley Act.

[90] Letter from Grant Thornton LLP, dated December 27, 2002.

[91] *See, e.g.*, letter from BDO Seidman, LLP, dated December 27, 2002; letter from Grant Thornton LLP dated December 27, 2002; letter from KPMG LLP dated December 27, 2002; letter from Deloitte & Touche LLP dated December 27, 2002.

[92] Letter from Lynette Downing, HLB Tautges Redpath, Ltd., dated December 27, 2002.

[93] Letter from Lynette Downing, HLB Tautges Redpath, Ltd., dated December 27, 2002.

[94] *Id.*

[95] 13 CFR 121.201.

[96] *See* section 802 of the Sarbanes-Oxley Act of 2002.

[97] We estimate that associates would perform three-fourths of the required work, with a partner performing about one-fourth of the work. We also estimate that, on average, an associate's annual salary would be approximately $125,000 and a partner's annual compensation would be approximately $500,000. Based on these amounts, the in-house cost of an associate's time would be approximately $65 per hour, and the in-house cost of a partner's time would be approximately $250 per hour. The average hourly rate, therefore, would be about $110 per hour ([(3 × $65) + $250] / 4).

provided by the commenters, however, may no longer be accurate. For example, a large accounting firm stated that if it would be required to retain all financial data "received" from the issuer in the course of the audit, its current document retention costs of approximately $4.5 million would double.[98] This firm questioned whether all of the issuer's financial information, records, databases, and reports that the auditor examines on the issuer's premises, but are not made part of the auditor's workpapers or otherwise retained by the auditor, would be deemed to be "received" by the auditor and subject to the retention requirements in rule 2–06. As noted previously in this release, we do not believe that Congress intended for accounting firms to duplicate and retain all of the issuer's financial information, records, databases, and reports that might be read, examined, or reviewed by the auditor.[99] Accordingly, we do not believe that the "received" criterion in rule 2–06(a)(1) requires that the auditor retain such records and the firm's anticipated document retention costs, therefore, should be significantly reduced.

Another accounting firm indicated that administrative costs of retaining records, based on the proposed rule, could include a one-time cost of $1 million and ongoing annual costs of $500,000 to $1 million.[100] This firm also estimated that increased litigation costs associated with complying with discovery requests and payment of damages would increase annual audit costs by at least five percent and perhaps as much as fifteen to twenty percent.[101] As noted above, we believe that revisions to the rule in response to commenters' concerns should lessen the administrative costs anticipated by this commenter. Regarding the commenter's cost estimates related to potential litigation, we recognize that one purpose of section 802 is to facilitate investigations of potential violations of securities laws, Commission rules and criminal laws,[102] which could impact a firm's litigation costs. Nonetheless, the firm's estimate would appear to be speculative. If the retention requirements lead to more efficient oversight of the accounting profession then they may result in improved audit quality and enhanced investor confidence in the profession.

Other accounting firms noted that many variables would affect the costs related to the rule, and that the ultimate increase in costs is difficult to quantify.[103] One commenter indicated that the amount of changes to be made to current record retention systems, and the related costs, depends on whether the accounting firm has a good record management system already in place.[104] For those firms with established records management programs, this commenter indicated that the rule would require a review and possibly fine-tuning of the firms' existing policies and procedures. This commenter also noted that adopting the proposed five-year retention requirement would have been more costly than adopting the seven-year retention requirement that is consistent with the forthcoming auditing standard to be promulgated by the Public Company Accounting Oversight Board. In this commenter's view, having two retention periods would have increased costs associated with processing the records.[105]

E. Agency Action To Minimize Effect on Small Entities

The Regulatory Flexibility Act directs us to consider significant alternatives that would accomplish the stated objective, while minimizing any significant adverse impact on small entities. In connection with the proposed amendments, we considered the following alternatives:

1. The establishment of differing compliance or reporting requirements or timetables that take into account the resources of small entities;

2. The clarification, consolidation, or simplification of compliance and reporting requirements under the rule for small entities;

3. The use of performance rather than design standards; and

4. An exemption from coverage of the proposed amendments, or any part thereof, for small entities.

The Sarbanes-Oxley Act provides the basis for the requirements and timetables for the record retention rules. The rule is designed to require the retention of those records necessary for oversight of the audit process, to enhance the reliability and credibility of financial statements for all public companies, and to facilitate enforcement of the securities laws.

We considered not applying the proposals to small accounting firms. We believe, however, that investors would benefit if accountants subject to the proposed record retention rules, regardless of their size, audit all companies. We do not believe that it is feasible to further clarify, consolidate, or simplify the proposed rules for small entities.

VII. Codification Update

The "Codification of Financial Reporting Policies" announced in Financial Reporting Release No. 1 (April 15, 1982) is amended as follows:

By amending section 602 to add a new discussion at the end of that section under Financial Reporting Release Number 66 (FR–66) that includes the text in Section II of this release.

The Codification is a separate publication of the Commission. It will not be published in the Code of Federal Regulations.

VIII. Statutory Bases and Text of Amendments

We are adopting amendments to Regulation S–X under the authority set forth in sections 3(a) and 802 of the Sarbanes-Oxley Act, and Schedule A and sections 7, 8, 10, 19 and 28 of the Securities Act, sections 3, 10A, 12, 13, 14, 17, 23 and 36 of the Exchange Act, sections 5, 10, 14 and 20 of the Public Utility Holding Company Act of 1935, sections 8, 30, 31, 32 and 38 of the Investment Company Act of 1940.

List of Subjects in 17 CFR Part 210

Accountants, Accounting.

Text of Amendments

In accordance with the foregoing, Title 17, Chapter II of the Code of Federal Regulations is amended as follows:

1. The authority citation for Part 210 is revised to read as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 77z–2, 77aa(25), 77aa(26), 78j–1, 78*l*, 78m, 78n, 78o(d), 78u–5, 78w(a), 78*ll*(d), 79e(b), 79j(a), 79n, 79t(a), 80a–8, 80a–20, 80a–29,

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[98] Letter from PricewaterhouseCoopers dated December 27, 2002.

[99] See letter from Deloitte & Touche dated December 27, 2002, *quoting* Statement of Senator Orrin Hatch before the Senate Judiciary Committee (April 25, 2002): "I anticipate that the SEC will exercise its discretion to promulgate only those rules and regulations that are necessary to ensure that documents material to an audit or review, as well as any future investigation, are retained."

[100] Letter from BDO Seidman, LLP dated December 27, 2002.

[101] *Id.*

[102] *See* Statement of Senator Leahy on the Senate floor: "[I]t is intended that the SEC promulgate rules and regulations that require the retention of such substantive material * * * for such a period as is reasonable and necessary for effective enforcement of the securities laws and the criminal laws * * *." 148 Cong. Rec. S7419 (July 26, 2002).

[103] Letter from Grant Thornton, dated December 27, 2002.

[104] Letter from Lynette Downing, HLB Tautges Redpath, Ltd., dated December 27, 2002. This commenter estimated that, depending on the information systems and staff currently in place, to maintain electronic records "an investment of $100,000 to $250,000 for each $5 million in net fees is likely with ongoing annual expenses of $50,000 to $100,000."

[105] *Id.*

80a–30, 80a–31, 80a–37(a), unless otherwise noted.

2. By adding § 210.2–06 to read as follows:

§ 210.2–06 Retention of audit and review records.

(a) For a period of seven years after an accountant concludes an audit or review of an issuer's financial statements to which section 10A(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78j-1(a)) applies, or of the financial statements of any investment company registered under section 8 of the Investment Company Act of 1940 (15 U.S.C. 80a-8), the accountant shall retain records relevant to the audit or review, including workpapers and other documents that form the basis of the audit or review, and memoranda, correspondence, communications, other documents, and records (including electronic records), which:

(1) Are created, sent or received in connection with the audit or review, and

(2) Contain conclusions, opinions, analyses, or financial data related to the audit or review.

(b) For the purposes of paragraph (a) of this section, *workpapers* means documentation of auditing or review procedures applied, evidence obtained, and conclusions reached by the accountant in the audit or review engagement, as required by standards established or adopted by the Commission or by the Public Company Accounting Oversight Board.

(c) Memoranda, correspondence, communications, other documents, and records (including electronic records) described in paragraph (a) of this section shall be retained whether they support the auditor's final conclusions regarding the audit or review, or contain information or data, relating to a significant matter, that is inconsistent with the auditor's final conclusions regarding that matter or the audit or review. Significance of a matter shall be determined based on an objective analysis of the facts and circumstances. Such documents and records include, but are not limited to, those documenting a consultation on or resolution of differences in professional judgment.

(d) For the purposes of paragraph (a) of this section, the term *issuer* means an issuer as defined in section 10A(f) of the Securities Exchange Act of 1934 (15 U.S.C. 78j–1(f)).

By the Commission.

Dated: January 24, 2003.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–2118 Filed 1–29–03; 8:45 am]

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Federal Register

Thursday,
January 30, 2003

Part V

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Parts 2, 12, and 52
Federal Acquisition Regulation; Commercially Available Off-the-Shelf Items; Proposed Rule

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 2, 12, and 52

[FAR Case 2000–305]

RIN 9000–AJ55

Federal Acquisition Regulation; Commercially Available Off-the-Shelf Items

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Federal Acquisition Regulatory Council is soliciting comments regarding the implementation of section 4203 of the Federal Acquisition Reform Act (the Act) with respect to Commercially Available Off-the-Shelf Item Acquisitions. The Act requires the Federal Acquisition Regulation (FAR) to list certain provisions of law that are inapplicable to contracts for acquisition of commercially available off-the-shelf items. The statute excludes section 15 of the Small Business Act and bid protest procedures from the list. The list of statutes cannot include a provision of law that provides for criminal or civil penalties.

Certain laws have already been determined to be inapplicable to all commercial items as a result of the implementation of the Federal Acquisition Streamlining Act of 1994 (see FAR 12.503). The additional provisions of law that could be determined inapplicable to commercially available off-the-shelf items are listed under **SUPPLEMENTARY INFORMATION** below.

DATES: Comments are due on or before March 31, 2003.

ADDRESSES: Interested parties should submit written comments to—General Services Administration, FAR Secretariat (MVA), 1800 F Street, NW., Room 4035, *Attn:* Laurie Duarte, Washington, DC 20405.

Submit electronic comments via the Internet to—*farcase.2000–305@gsa.gov*.

Please submit comments only and cite FAR case 2000–305 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, at (202) 501–4755 for information pertaining to status or publication schedules. For clarification of content, contact Ms. Victoria Moss, Procurement Analyst, at (202) 501–4764. Please cite FAR case 2000–305.

SUPPLEMENTARY INFORMATION: The provisions of law that could be determined inapplicable to commercially available off-the-shelf items are: 5 U.S.C. 552a, Privacy Act (*see* 52.239–1); 29 U.S.C. 793, Affirmative Action for Handicapped Workers (*see* 52.222–36); 31 U.S.C. 529, Restriction on Advance Payments (allow agencies to modify paragraph (i) in the clause at 52.212–4 to require payment upon notice of shipping); 38 U.S.C. 4212, Affirmative Action for Special Disabled Vietnam Era Veterans (*see* 52.222–35); 38 U.S.C. 4212(d)(1), Employment Reports on Special disabled Veterans and Veterans of the Vietnam Era (*see* 52.222–37); 41 U.S.C. 10, Buy American Act—Supplies (*see* 52.225–1 and 52.225–3); 41 U.S.C. 253d, Validation of Proprietary Data Restrictions (*see* section 12.211); 41 U.S.C. 253g and 10 U.S.C. 2482, Prohibition on Limiting Subcontractor Direct Sales to the United States (*see* 52.203–6); 41 U.S.C. 254d(c) and 10 U.S.C. 2513(c), Examination of Records of Contractor (*see* 52.215–2); 41 U.S.C. 418a, Rights in Technical Data (*see* section 12.211); 41 U.S.C. 442, Cost Accounting Standards (*see* section 12.214 and the FAR Appendix, 48 CFR Chapter 99); 41 U.S.C. 423(e)(3), Administrative Actions (*see* 3.104); 46 U.S.C. 1241(b), Transportation in American Vessels of Government Personnel and Certain Cargo (*see* 52.247–64); and 42 U.S.C. 6962(c)(3)(A)(ii), Estimate of Percentage of Recovered Material Content for EPA-Designated Products (see 52.223–9).

For purposes of this notice, a "commercially available off-the-shelf item"—

(a) Means any item of supply, other than real property, that—

(1) Is of a type customarily used by the general public for nongovernmental purposes;

(2) Has been sold in substantial quantities in the commercial marketplace; and

(3) Is offered to the Government, without modification, in the same form in which it is sold in the commercial marketplace.

(b) This does not include bulk cargo, as defined in 46 U.S.C. App. 1702, such as agricultural and petroleum products.

Dated: January 23, 2003.

Al Matera,

Director, Acquisition Policy Division.

[FR Doc. 03–1961 Filed 1–29–03; 8:45 am]

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Federal Register

Thursday,
January 30, 2003

Part VI

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Parts 2 and 31
Federal Acquisition Regulation; Depreciation Cost Principle; Proposed Rule

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 2 and 31

[FAR Case 2001–026]

RIN 9000–AJ56

Federal Acquisition Regulation; Depreciation Cost Principle

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) are proposing to amend the Federal Acquisition Regulation (FAR) to revise the depreciation cost principle.

DATES: Interested parties should submit comments in writing on or before March 31, 2003 to be considered in the formulation of a final rule.

ADDRESSES: Submit written comments to—General Services Administration, FAR Secretariat (MVA), 1800 F Street, NW., Room 4035, Attn: Laurie Duarte, Washington, DC 20405.

Submit electronic comments via the Internet to—*farcase.2001–026@gsa.gov*.

Please submit comments only and cite FAR case 2001–026 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, at (202) 501–4755 for information pertaining to status or publication schedules. For clarification of content, contact Mr. Ralph De Stefano at (202) 501–1758. Please cite FAR case 2001–026.

SUPPLEMENTARY INFORMATION:

A. Background

The Councils performed a comprehensive review of the cost principle at FAR 31.205–11, Depreciation, to evaluate the need for each specific requirement. As a result of the review, the Councils are proposing to revise the cost principle as follows:

1. *Definition of depreciation.* The language currently at FAR 31.205–11(a) is a definition for the term "depreciation." Since the term is used throughout the FAR, the definition was moved to FAR 2.101, Definitions.

2. *Residual values.* The depreciation cost principle is more restrictive than cost accounting standards (CAS) because it requires a contractor to use residual values in establishing depreciation costs, while the cost accounting standard for depreciation of tangible capital assets at 48 CFR 9904.409–50(h) allows contractors to ignore residual values under 10 percent for tangible personal property. The rule adds language at FAR 31.205–11(a) to make the policy on residual values consistent with CAS.

3. *Depreciation claimed for tax purposes.* Currently, FAR 31.205–11(e) limits allowable depreciation to the lesser of the depreciation used for Federal income tax purposes or for financial statements. This policy encourages contractors to use the same depreciation for both tax and financial reporting purposes. The Councils have eliminated all references to Federal income tax accounting since it is unnecessary to tie allowable depreciation to depreciation claimed for tax purposes, and to penalize contractors because they use an acceptable depreciation method for tax purposes that is different from that used for financial purposes.

4. *Write-down due to business combinations/impaired assets.* The Councils added "except as indicated in paragraphs (g) and (h) of this subsection" to FAR 31.205–11(c) of the proposed rule to eliminate any potential inequity caused among these paragraphs. In the proposed rule, the language currently in paragraphs FAR 31.205–11(n) and (o) are moved to new paragraphs (g) and (h) to specifically disallow the effect on depreciation when contractors are involved in the write-down of assets from carrying value to fair market value as a result of business combinations or impairments. In effect, these paragraphs require contractors to continue to use their depreciation schedules as if the business combination (paragraph (g)) or impaired asset write-down (paragraph (h)) never occurred. However, if there is an asset write-down due to either of these events, the depreciation calculated based on generally accepted accounting principles (GAAP) will be lower than the depreciation generated by the use of the contractor's previous depreciation schedule. Without a stated exception to the general rule in the proposed paragraph (c) that allowable depreciation cannot exceed the amount calculated based on GAAP, one might misinterpret the cost principle and inappropriately disallow the depreciation in excess of GAAP when a write-down of an asset due to a business combination or impairment occurs.

5. *Emergency facilities.* The current paragraph at FAR 31.205–11(i) has been deleted since the Councils are not aware of any existing contracts supporting the operation of emergency facilities covered by certificates of necessity.

6. The rule makes other changes to clarify, improve the structure, and remove redundancies throughout the cost principle.

This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The Councils do not expect this proposed rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because most contracts awarded to small entities use simplified acquisition procedures or are awarded on a competitive, fixed-price basis, and do not require application of the cost principles discussed in this rule. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. We invite comments from small businesses and other interested parties. The Councils will consider comments from small entities concerning the affected FAR parts in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 601, *et seq.* (FAR case 2001–026), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 2 and 31

Government procurement.

Dated: January 23, 2003.

Al Matera,

Director, Acquisition Policy Division.

Therefore, DoD, GSA, and NASA propose amending 48 CFR parts 2 and 31 as set forth below:

1. The authority citation for 48 CFR parts 2 and 31 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 2—DEFINITIONS OF WORDS AND TERMS

2. Amend section 2.101 in paragraph (b) by adding, in alphabetical order, the definition "Depreciation" to read as follows:

2.101 Definitions.

* * * * *

Depreciation means a charge to current operations that distributes the cost of a tangible capital asset, less estimated residual value, over the estimated useful life of the asset in a systematic and logical manner. It does not involve a process of valuation. Useful life refers to the prospective period of economic usefulness in a particular contractor's operations as distinguished from physical life; it is evidenced by the actual or estimated retirement and replacement practice of the contractor.

* * * * *

PART 31—CONTRACT COST PRINCIPLES AND PROCEDURES

3. Revise section 31.205–11 to read as follows:

31.205–11 Depreciation.

(a) Depreciation on a contractor's plant, equipment, and other capital facilities is an allowable contract cost, subject to the limitations contained in this cost principle. For tangible personal property, only estimated residual values that exceed 10 percent of the capitalized cost of the asset shall be used in establishing depreciable costs. Depreciation cost that would reduce the book value of a tangible capital asset below its residual value is unallowable.

(b) Contractors having contracts subject to 48 CFR 9904.409, Depreciation of Tangible Capital Assets, shall adhere to the requirement of that standard for all fully CAS-covered contracts and may elect to adopt the standard for all other contracts. All requirements of 48 CFR 9904.409 are applicable if the election is made, and contractors shall continue to follow it until notification of final acceptance of all deliverable items on all open negotiated Government contracts.

(c) For contracts to which 48 CFR 9904.409 is not applied: Except as indicated in paragraphs (g) and (h) of this subsection, allowable depreciation shall not exceed the amount used for financial accounting purposes and shall be determined in a manner consistent with the depreciation policies and procedures followed in the same segment on non-Government business.

(d) Depreciation, rental, or use charges are unallowable on property acquired from the Government at no cost by the contractor or by any division, subsidiary, or affiliate of the contractor under common control.

(e) The depreciation on any item that meets the criteria for allowance at price under 31.205–26(e) may be based on that price; provided the same policies and procedures are used for costing all business of the using division, subsidiary, or organization under common control.

(f) No depreciation or rental is allowed on property fully depreciated by the contractor or by any division, subsidiary, or affiliate of the contractor under common control. However, a reasonable charge for using fully depreciated property may be agreed upon and allowed (but see 31.109(h)(2)). In determining the charge, the contractor shall consider cost, total estimated useful life at the time of negotiations, effect of any increased maintenance charges or decreased efficiency due to age, and the amount of depreciation previously charged to Government contracts or subcontracts.

(g) Whether or not the contract is otherwise subject to CAS, the contractor shall comply with the requirements of 31.205–52, which limit the allowability of depreciation.

(h) In the event of a write-down from carrying value to fair value as a result of impairments caused by events or changes in circumstances, allowable depreciation of the impaired assets is limited to the amounts that would have been allowed had the assets not been written down (see 31.205–16(g)). However, this does not preclude a change in depreciation resulting from other causes such as permissible changes in estimates of service life, consumption of services, or residual value.

(i) A "capital lease" as defined in Statement of Financial Accounting Standard No. 13 (FAS–13), Accounting for Leases, is subject to the requirements of this cost principle. FAS–13 requires that capital leases be treated as purchased assets; *i.e.*, be capitalized, and the capitalized value of such assets be distributed over their useful lives as depreciation charges, or over the leased life as amortization charges, as appropriate. Capital leases under FAS–13 are subject to the requirements of 31.205–11. Operating leases are subject to the requirements of 31.205–36. The standards of financial accounting and reporting prescribed by FAS–13 are incorporated into this principle and govern its application, except as follows:

(1) Rental costs under a sale and leaseback arrangement are allowable up to the amount that would have been allowed had the contractor retained title to the asset.

(2) If it is determined that the terms of the capital lease have been significantly affected by the fact that the lessee and lessor are related, depreciation charges are not allowable in excess of those that would have occurred if the lease contained terms consistent with those found in a lease between unrelated parties.

(j) The undepreciated balance of assets acquired before the effective date of this cost principle need not be retroactively adjusted if the assets were properly depreciated on Government contracts at the time the depreciation was charged. However, the remaining undepreciated balance as of the effective date of this cost principle shall be depreciated using the same method as used for financial statement purposes.

31.205–16 [Amended]

4. Amend section 31.205–16 in the first sentence of paragraph (b) by removing "31.205–11(m))" and adding "31.205–11(i))" in its place.

5. Amend section 31.205–36 by revising paragraph (a); and removing paragraph (b)(4) to read as follows:

31.205–36 Rental costs.

(a) This subsection is applicable to the cost of renting or leasing real or personal property acquired under "operating leases" as defined in Statement of Financial Accounting Standards No. 13 (FAS–13), Accounting for Leases. Compliance with 31.205–11(i) requires that assets acquired by means of capital leases, as defined in FAS–13, be treated as purchased assets; *i.e.*, be capitalized and the capitalized value of such assets be distributed over their useful lives as depreciation charges, or over the lease term as amortization charges, as appropriate.

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Federal Register

Thursday,
January 30, 2003

Part VII

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Parts 31 and 52
Federal Acquisition Regulation; Insurance and Pension Costs; Proposed Rule

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 31 and 52

[FAR Case 2001–037]

RIN 9000–AJ57

Federal Acquisition Regulation; Insurance and Pension Costs

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) are proposing to amend the Federal Acquisition Regulation (FAR) to amend the insurance and indemnification cost principle and the portion of the compensation cost principle relating to pension costs.

DATES: Interested parties should submit comments in writing on or before March 31, 2003 to be considered in the formulation of a final rule.

ADDRESSES: Submit written comments to—General Services Administration, FAR Secretariat (MVA), 1800 F Street, NW., Room 4035, *Attn:* Laurie Duarte, Washington, DC 20405.

Submit electronic comments via the Internet to—*farcase.2001–037@gsa.gov*.

Please submit comments only and cite FAR case 2001–037 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, at (202) 501–4755 for information pertaining to status or publication schedules. For clarification of content, contact Mr. Ralph De Stefano at (202) 501–1758. Please cite FAR case 2001–037.

SUPPLEMENTARY INFORMATION:

A. Background

The Councils have performed an analysis of FAR 31.205–6(j), Pension costs, and FAR 31.205–19, Insurance and indemnification, and propose the following revisions:

1. Substitute the term "assign" for the term "account" in the newly renumbered paragraphs (j)(1) and (j)(5) of FAR 31.205–6 in order to be consistent with the terminology used in 48 CFR 9904.412, Cost Accounting Standard for Composition and Measurement of Pension Cost (CAS 412), and 48 CFR 9904.413, Adjustment and Allocation of Pension Cost (CAS 413).

2. Revise the current paragraph (j)(4)(i) (renumbered as (j)(3)(i)) at FAR 31.205–6 and the contract clause at FAR 52.215–15 to specifically address how the Government will receive the pension cost adjustment amount when there is a segment closing, a pension plan termination, or a curtailment of benefits for CAS–covered and non-CAS-covered contracts.

3. Move and revise the current paragraph FAR 31.205–6(j)(8) that addresses employee stock ownership plans (ESOPs).

a. Move the discussion of ESOPs out of the current paragraph FAR 31.205–6(j) that addresses pension plans to a new paragraph FAR 31.205–6(q) so that the discussion of ESOPs is included in the coverage addressing all deferred compensation plans, both pension and nonpension.

b. Delete the term "individual" from the phrase "individual stock bonus plan" to preclude misinterpretation that a separate plan is required for each employee.

c. Add the term "primarily" to the phrase "invest in the stock of the employer corporation" to clarify that an ESOP does not have to invest 100 percent in the stock of the employer corporation.

d. Consistent with current policies and recent developments in applicable case law, clarify that ESOP costs are to be measured, assigned and allocated in accordance with 48 CFR 9904.412 for ESOPs that meet the definition of a pension plan, and in accordance with 48 CFR 9904.415, Accounting for the Cost of Deferred Compensation, for all other ESOPs. As ESOP accounting techniques continue to evolve, this FAR provision may require further modifications, *e.g.*, if the present CAS treatment of this topic is changed as a result of the current ESOP project being pursued by the CAS Board.

e. Increase the limitation of ESOP contributions in any one year from 15 percent to 25 percent, which is consistent with the Internal Revenue Code limitation on ESOP contributions for corporations.

f. Remove the requirement for the contracting officer to approve the contribution rate in order to be consistent with the requirements for defined contribution pension and deferred compensation plans that are not ESOPs.

4. Eliminate the discount rate provision at the current paragraph FAR 31.205–19(a)(3)(i). The CAS Board revised 48 CFR 9904.416, Accounting for Insurance Costs, to use the Treasury Rate, which is the same rate currently contained in the insurance and indemnification cost principle. Therefore, it is no longer necessary for the cost principle to specify the discount rate.

5. Other editorial changes. The rule makes other editorial changes, including deleting—

a. The current paragraph FAR 31.205–6(j)(1) since FAR 31.001 already has a definition of "pension plan" that is the same as the definition in CAS 412 and 413;

b. The descriptions of defined-benefit pension plans at FAR 31.205–6(j)(3) and defined-contribution pension plans at FAR 31.205–6(j)(5) since the definitions of these terms are currently at FAR 31.001.

c. References to "reasonableness" and "allocability" currently found at FAR 31.205–6(j)(2)(ii) and (j)(3)(ii) because these general allowability standards are already addressed at FAR 31.201–2 and FAR 31.201–3. The Councils do not intend to make these changes to alter any current policy.

This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The Councils do not expect this proposed rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because most contracts awarded to small entities use simplified acquisition procedures or are awarded on a competitive, fixed-price basis, and do not require application of the cost principles that are discussed in this rule. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. We invite comments from small businesses and other interested parties. The Councils will consider comments from small entities concerning the affected FAR parts in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 601, *et seq.* (FAR case 2001–037), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed changes to the FAR do not impose information collection requirements that require the

approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 31 and 52

Government procurement.

Dated: January 23, 2003.

Al Matera,

Director, Acquisition Policy Division.

Therefore, DoD, GSA, and NASA propose amending 48 CFR parts 31 and 52 as set forth below:

1. The authority citation for 48 CFR parts 31 and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 31—CONTRACT COST PRINCIPLES AND PROCEDURES

2. Amend section 31.205–6 by—

a. Removing from the second sentence of paragraph (g)(1) "(j)(7)" and adding "(j)(6)" in its place;

b. Revising paragraph (j);

c. Removing from the second parenthetical in paragraph (p)(2)(i) "paragraphs (j)(5) and (j)(8)" and adding "paragraphs (j)(4) and (q)" in its place; and

d. Adding paragraph (q) to read as follows:

31.205–6 Compensation for personal services.

* * * * *

(j) *Pension costs.* (1) Pension plans are normally segregated into two types of plans: defined-benefit and defined-contribution pension plans. The contractor shall measure, assign, and allocate the costs of all defined-benefit pension plans and the costs of all defined-contribution pension plans in compliance with 48 CFR 9904.412—Cost Accounting Standard for Composition and Measurement of Pension Cost, and 48 CFR 9904.413—Adjustment and Allocation of Pension Cost. Pension costs are allowable subject to the referenced standards and the cost limitations and exclusions set forth in paragraph (j)(1)(i) and in paragraphs (j)(2) through (j)(6) of this section.

(i) Except for nonqualified pension plans using the pay-as-you-go cost method, to be allowable in the current year, the contractor shall fund pension costs by the time set for filing of the Federal income tax return or any extension. Pension costs assigned to the current year, but not funded by the tax return time, are not allowable in any subsequent year. For nonqualified pension plans using the pay-as-you-go method, to be allowable in the current year, the contractor shall allocate pension costs in the cost accounting period that the pension costs are assigned.

(ii) Pension payments must be paid pursuant to an agreement entered into in good faith between the contractor and employees before the work or services are performed; and the terms and conditions of the established plan. The cost of changes in pension plans are not allowable if the changes are discriminatory to the Government or are not intended to be applied consistently for all employees under similar circumstances in the future.

(iii) Except as provided for early retirement benefits in paragraph (j)(6) of this subsection, one-time-only pension supplements not available to all participants of the basic plan are not allowable as pension costs, unless the supplemental benefits represent a separate pension plan and the benefits are payable for life at the option of the employee.

(iv) Increases in payments to previously retired plan participants covering cost-of-living adjustments are allowable if paid in accordance with a policy or practice consistently followed.

(2) *Defined-benefit pension plans.* The cost limitations and exclusions pertaining to defined-benefit plans are as follows:

(i)(A) Except for nonqualified pension plans, pension costs (see 48 CFR 9904.412–40(a)(1)) assigned to the current accounting period, but not funded during it, are not allowable in subsequent years (except that a payment made to a fund by the time set for filing the Federal income tax return or any extension thereof is considered to have been made during such taxable year). However, any portion of pension cost computed for a cost accounting period, that exceeds the amount required to be funded pursuant to a waiver granted under the provisions of the Employee Retirement Income Security Act of 1974 (ERISA), will be allowable in those future accounting periods in which the funding of such excess amounts occurs (see 48 CFR 9904.412–50(c)(5)).

(B) For nonqualified pension plans, except those using the pay-as-you-go cost method, allowable costs are limited to the amount allocable in accordance with 48 CFR 9904.412–50(d)(2).

(C) For nonqualified pension plans using the pay-as-you-go cost method, allowable costs are limited to the amounts allocable in accordance with 48 CFR 9904.412–50(d)(3).

(ii) Any amount funded in excess of the pension cost assigned to a cost accounting period is not allowable in that period and shall be accounted for as set forth at 48 CFR 9904.412–50(a)(4). The excess amount is allowable in the future period to which it is assigned, to the extent it is not otherwise unallowable.

(iii) Increased pension costs are unallowable if the increase is caused by a delay in funding beyond 30 days after each quarter of the year to which they are assignable. If a composite rate is used for allocating pension costs between the segments of a company and if, because of differences in the timing of the funding by the segments, an inequity exists, allowable pension costs for each segment will be limited to that particular segment's calculation of pension costs as provided for in 48 CFR 9904.413–50(c). The contractor shall make determinations of unallowable costs in accordance with the actuarial method used in calculating pension costs.

(iv) The contracting officer will consider the allowability of the cost of indemnifying the Pension Benefit Guaranty Corporation (PBGC) under ERISA section 4062 or 4064 arising from terminating an employee deferred compensation plan on a case-by-case basis, provided that if insurance was required by the PBGC under ERISA section 4023, it was so obtained and the indemnification payment is not recoverable under the insurance. Consideration under the foregoing circumstances will be primarily for the purpose of appraising the extent to which the indemnification payment is allocable to Government work. If a beneficial or other equitable relationship exists, the Government will participate, despite the requirements of 31.205–19(c)(3) and (d)(3), in the indemnification payment to the extent of its fair share.

(v) Increased pension costs resulting from the withdrawal of assets from a pension fund and transfer to another employee benefit plan fund, or transfer of assets to another account within the same fund, are unallowable except to the extent authorized by an advance agreement. If the withdrawal of assets from a pension fund is a plan termination under ERISA, the provisions of paragraph (j)(3) of this subsection apply. The advance agreement shall—

(A) State the amount of the Government's equitable share in the gross amount withdrawn or transferred; and

(B) Provide that the Government receive a credit equal to the amount of the Government's equitable share of the gross withdrawal or transfer.

(3) *Pension adjustments and asset reversions.* (i) For segment closings, pension plan terminations, or

curtailment of benefits, the amount of the adjustment shall be—

(A) For contracts and subcontracts that are subject to full coverage under the Cost Accounting Standards (CAS) Board rules and regulations, the amount measured, assigned, and allocated in accordance with 48 CFR 9904.413–50(c)(12);

(B) For contracts and subcontracts that are not subject to full coverage under the CAS, the amount measured, assigned, and allocated in accordance with 48 CFR 9904.413–50(c)(12), except the numerator of the fraction at 48 CFR 9904.413–50(c)(12)(vi) is the sum of the pension plan costs allocated to all non-CAS-covered contracts and subcontracts that are subject to Subpart 31.2 or for which cost or pricing data were submitted; and

(C) Credited to the Government either as a cost reduction or by cash refund, at the option of the Government.

(ii) For all other situations where assets revert to the contractor, or such assets are constructively received by it for any reason, the contractor shall, at the Government's option, make a refund or give a credit to the Government for its equitable share of the gross amount withdrawn. The Government's equitable share shall reflect the Government's participation in pension costs through those contracts for which cost or pricing data were submitted or that are subject to Subpart 31.2. Excise taxes on pension plan asset reversions or withdrawals under this paragraph (j)(3)(ii) are unallowable in accordance with 31.205–41(b)(6).

(4) *Defined-Contribution Pension Plans.* In addition to defined-contribution pension plans, this paragraph also covers profit sharing, savings plans, and other such plans, provided the plans fall within the definition of a pension plan at 31.001.

(i) Allowable pension cost is limited to the net contribution required to be made for a cost accounting period after taking into account dividends and other credits, where applicable. However, any portion of pension cost computed for a cost accounting period that exceeds the amount required to be funded pursuant to a waiver granted under the provisions of ERISA will be allowable in those future accounting periods in which the funding of such excess amounts occurs (see 48 CFR 9904.412–50(c)(5)).

(ii) The provisions of paragraphs (j)(2)(ii) and (iv) of this subsection apply to defined-contribution plans.

(5) *Pension plans using the pay-as-you-go cost method.* When using the pay-as-you-go cost method, the contractor shall measure, assign, and allocate the cost of pension plans in accordance with 48 CFR 9904.412 and 9904.413. Pension costs for a pension plan using the pay-as-you-go cost method are allowable to the extent they are not otherwise unallowable.

(6) *Early Retirement Incentives.* An early retirement incentive is an incentive given to an employee to retire early. For contract costing purposes, costs of early retirement incentives are allowable subject to the pension cost criteria contained in paragraphs (j)(2)(i) through (iv) of this section provided—

(i) The contractor measures, assigns, and allocates the costs in accordance with the contractor's accounting practices for pension costs;

(ii) The incentives are in accordance with the terms and conditions of an early retirement incentive plan;

(iii) The contractor applies the plan only to active employees. The cost of extending the plan to employees who retired or were terminated before the adoption of the plan is unallowable; and

(iv) The present value of the total incentives given to any employee in excess of the amount of the employee's annual salary for the previous fiscal year before the employee's retirement is unallowable. The contractor shall compute the present value in accordance with its accounting practices for pension costs. The contractor shall account for any unallowable costs in accordance with 48 CFR 9904.412–50(a)(2).

* * * * *

(q) *Employee stock ownership plans (ESOP).* (1) An ESOP is a stock bonus plan designed to invest primarily in the stock of the employer corporation. The contractor's contributions to an Employee Stock Ownership Trust (ESOT) may be in the form of cash, stock, or property.

(2) Costs of ESOPs are allowable subject to the following conditions:

(i) For ESOPs that meet the definition of a pension plan at 31.001, the contractor—

(A) Measures, assigns, and allocates the costs in accordance with 48 CFR 9904.412;

(B) Funds the pension costs by the time set for filing of the Federal income tax return or any extension. Pension costs assigned to the current year, but not funded by the tax return time, are not allowable in any subsequent year; and

(C) Meets the requirements of paragraph (j)(2)(ii) of this section.

(ii) For ESOPs that do not meet the definition of a pension plan at 31.001, the contractor measures, assigns, and allocated costs in accordance with 48 CFR 9904.415.

(iii) Contributions by the contractor in any one year that exceed 25 percent of salaries and wages of employees participating in the plan in that year are unallowable.

(iv) When the contribution is in the form of stock, the value of the stock contribution is limited to the fair market value of the stock on the date that title is effectively transferred to the trust.

(v) When the contribution is in the form of cash—

(A) Stock purchases by the ESOT in excess of fair market value are unallowable; and

(B) When stock purchases are in excess of fair market value, the contractor shall credit the amount of the excess to the same indirect cost pools that were charged for the ESOP contributions in the year in which the stock purchase occurs. However, when the trust purchases the stock with borrowed funds which will be repaid over a period of years by cash contributions from the contractor to the trust, the contractor shall credit the excess price over fair market value to the indirect cost pools pro rata over the period of years during which the contractor contributes the cash used by the trust to repay the loan.

(vi) When the fair market value of unissued stock or stock of a closely held corporation is not readily determinable, the valuation will be made on a case-by-case basis taking into consideration the guidelines for valuation used by the IRS.

* * * * *

3. Revise section 31.205–19 to read as follows:

31.205–19 Insurance and indemnification.

(a) Insurance by purchase or by self-insuring includes—

(1) Coverage the contractor is required to carry or to have approved, under the terms of the contract; and

(2) Any other coverage the contractor maintains in connection with the general conduct of its business.

(b) For purposes of applying the provisions of this subsection, the Government considers insurance provided by captive insurers (insurers owned by or under control of the contractor) as self-insurance, and charges for it shall comply with the provisions applicable to self-insurance costs in this subsection. However, if the captive insurer also sells insurance to the general public in substantial quantities and it can be demonstrated that the charge to the contractor is based on competitive market forces, the Government will consider the insurance as purchased insurance.

(c) Whether or not the contract is subject to CAS, self-insurance charges

are allowable subject to paragraph (e) of this subsection and the following limitations:

(1) The contractor shall measure, assign, and allocate costs in accordance with 48 CFR 9904.416, Accounting for Insurance Costs.

(2) The contractor shall comply with FAR Part 28. However, approval of a contractor's insurance program in accordance with FAR Part 28 does not constitute a determination as to the allowability of the program's cost.

(3) If purchased insurance is available, any self-insurance charge plus insurance administration expenses in excess of the cost of comparable purchased insurance plus associated insurance administration expenses is unallowable.

(4) Self-insurance charges for risks of catastrophic losses (large dollar coverage with a very low frequency of loss) are unallowable (*see* 48 CFR 28.308(e)).

(d) Purchased insurance costs are allowable, subject to paragraph (e) of this subsection and the following limitations:

(1) For contracts subject to full CAS coverage, the contractor shall measure, assign, and allocate costs in accordance with 48 CFR 9904.416.

(2) For all contracts, premiums for insurance purchased from fronting insurance companies (insurance companies not related to the contractor but who reinsure with a captive insurer of the contractor) are unallowable to the extent they exceed the sum of—

(i) The amount that would have been allowed had the contractor insured directly with the captive insurer; and

(ii) Reasonable fronting company charges for services rendered.

(3) Actual losses are unallowable unless expressly provided for in the contract, except—

(i) Losses incurred under the nominal deductible provisions of purchased insurance, in keeping with sound business practice, are allowable; and

(ii) Minor losses, such as spoilage, breakage, and disappearance of small hand tools that occur in the ordinary course of business and that are not covered by insurance are allowable.

(e) Self-insurance and purchased insurance costs are subject to the cost limitations in the following paragraphs:

(1) Costs of insurance required or approved pursuant to the contract are allowable.

(2) Costs of insurance maintained by the contractor in connection with the general conduct of its business are allowable subject to the following limitations:

(i) Types and extent of coverage shall follow sound business practice, and the rates and premiums shall be reasonable.

(ii) Costs allowed for business interruption or other similar insurance shall be limited to exclude coverage of profit.

(iii) The cost of property insurance premiums for insurance coverage in excess of the acquisition cost of the insured assets is allowable only when the contractor has a formal written policy assuring that in the event the insured property is involuntarily converted, the new asset shall be valued at the book value of the replaced asset plus or minus adjustments for differences between insurance proceeds and actual replacement cost. If the contractor does not have such a formal written policy, the cost of premiums for insurance coverage in excess of the acquisition cost of the insured asset is unallowable.

(iv) Costs of insurance for the risk of loss of, or damage to, Government property are allowable only to the extent that the contractor is liable for such loss or damage and such insurance does not cover loss or damage which results from willful misconduct or lack of good faith on the part of any of the contractor's directors or officers, or other equivalent representatives.

(v) Costs of insurance on the lives of officers, partners, proprietors, or employees are allowable only to the extent that the insurance represents additional compensation (see 31.205–6).

(3) The cost of insurance to protect the contractor against the costs of correcting its own defects in materials and workmanship is unallowable. However, insurance costs to cover fortuitous or casualty losses resulting from defects in materials or workmanship are allowable as a normal business expense.

(4) Premiums for retroactive or backdated insurance written to cover losses that have occurred and are known are unallowable.

(5) The Government is obligated to indemnify the contractor only to the extent authorized by law, as expressly provided for in the contract, except as provided in paragraph (d)(3) of this subsection.

(6) Late premium payment charges related to employee deferred compensation plan insurance incurred pursuant to Section 4007 (29 U.S.C. 1307) or Section 4023 (29 U.S.C. 1323) of the Employee Retirement Income Security Act of 1974 are unallowable.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

4. Amend section 52.215–15 by revising the date of the clause and paragraph (b) to read as follows:

52.215–15 Pension Adjustments and Asset Reversions.

* * * * *

Pension Adjustments and Asset Reversions (Date)

* * * * *

(b) For segment closings, pension plan terminations, or curtailment of benefits, the amount of the adjustment shall be—

(1) For contracts and subcontracts that are subject to full coverage under the Cost Accounting Standards (CAS) Board rules and regulations (48 CFR Chapter 99), the amount measured, assigned, and allocated in accordance with 48 CFR 9904.413–50(c)(12);

(2) For contracts and subcontracts that are not subject to full coverage under the CAS, the amount measured, assigned, and allocated in accordance with 48 CFR 9904.413–50(c)(12), except the numerator of the fraction at 48 CFR 904.413–50(c)(12)(vi) shall be the sum of the pension plan costs allocated to all non-CAS covered contracts and subcontracts that are subject to Federal Acquisition Regulation (FAR) Subpart 31.2 or for which cost or pricing data were submitted; and

(3) Credited to the Government either as a cost reduction or by cash refund, at the option of the Government.

* * * * *

(End of Clause)

[FR Doc. 03–1963 Filed 1–29–03; 8:45 am]

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Thursday,
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Part VIII

The President

Proclamation 7643—National Consumer Protection Week, 2003

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Presidential Documents

Title 3—

The President

Proclamation 7643 of January 27, 2003

National Consumer Protection Week, 2003

By the President of the United States of America

A Proclamation

Few technologies have become fixtures in our daily lives as quickly as computers and the Internet. Today, more than half of all Americans log on to the Internet, and that number is growing. Our access to information, entertainment, credit and banking, products, and services from every corner of the world is greater than ever before. As our personal information becomes more accessible, consumers, corporations, and government agencies must take precautions against the misuse of that information.

Computer technology and the Internet have revolutionized our ability to communicate and share knowledge. This new freedom offers incredible opportunities; but as individuals and as a Nation, we must guard against the misuse of personal information and identity theft. The theme of this year's National Consumer Protection Week is "Information Security," and during this week we resolve to help all Americans learn how to keep personal information secure.

For consumers, securing a computer is a matter of routine maintenance and caution. Effective passwords, firewalls, and up-to-date antivirus software can help protect computers, and the personal or business information we store on them, from those who would damage a network operation or steal personal information to commit a crime. By practicing effective information security measures, all citizens can contribute to the protection of our national information infrastructure.

To assist consumers, public and private entities have joined forces to highlight the importance of information security. They include the Federal Trade Commission, the U.S. Postal Service, the U.S. Postal Inspection Service, the Federal Consumer Information Center, the National Association of Attorneys General, the National Consumers League, the American Association of Retired Persons, the Better Business Bureau, the Consumer Federation of America, and the National Association of Consumer Agency Administrators. The National Strategy to Secure Cyberspace also offers guidance for the full range of computer users on information security. By working together, we can help consumers and businesses understand how information security affects their decisions at home and in the marketplace.

During National Consumer Protection Week, I encourage all Americans to take the appropriate steps to ensure the security of their personal or sensitive information. By learning ways to safeguard this data, individuals can help ensure their financial security, and contribute to the strength and prosperity of our Nation.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim February 2 through 8, 2003, as National Consumer Protection Week. I call upon Government officials, industry leaders, and consumer advocates to provide consumers with information about how we can help safeguard the economic future of all Americans by keeping our personal information secure.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-seventh day of January, in the year of our Lord two thousand three, and of the Independence of the United States of America the two hundred and twenty-seventh.

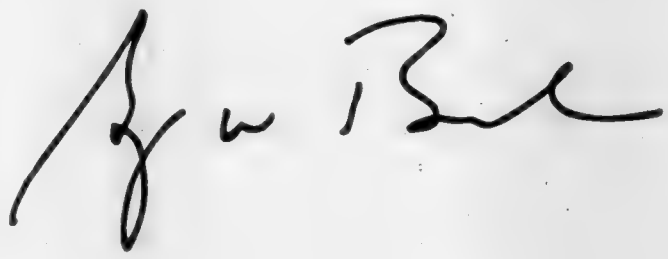

[FR Doc. 03–2366
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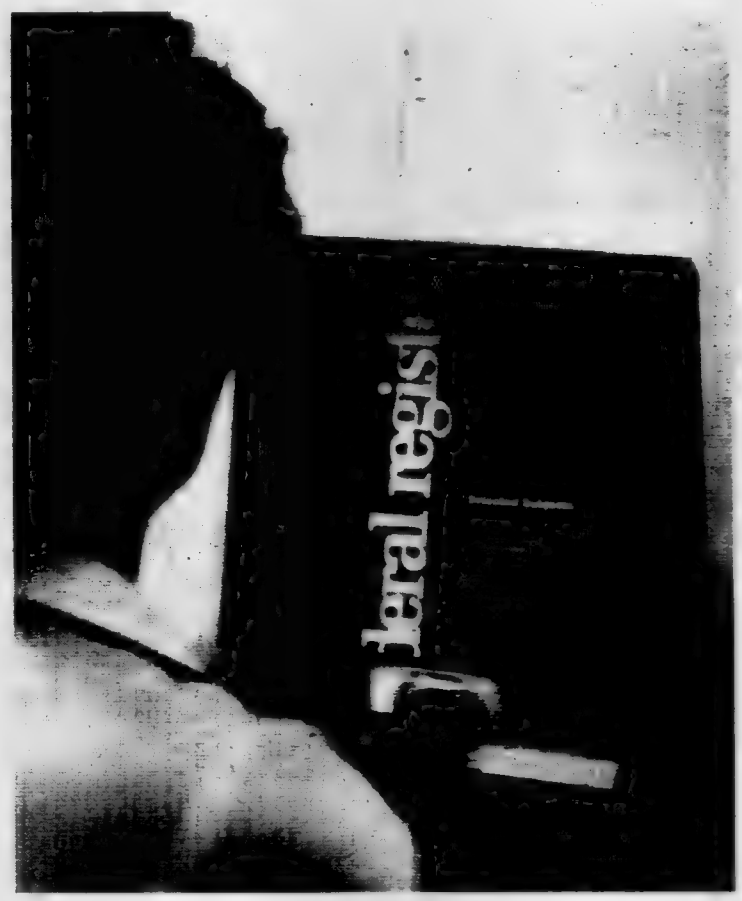

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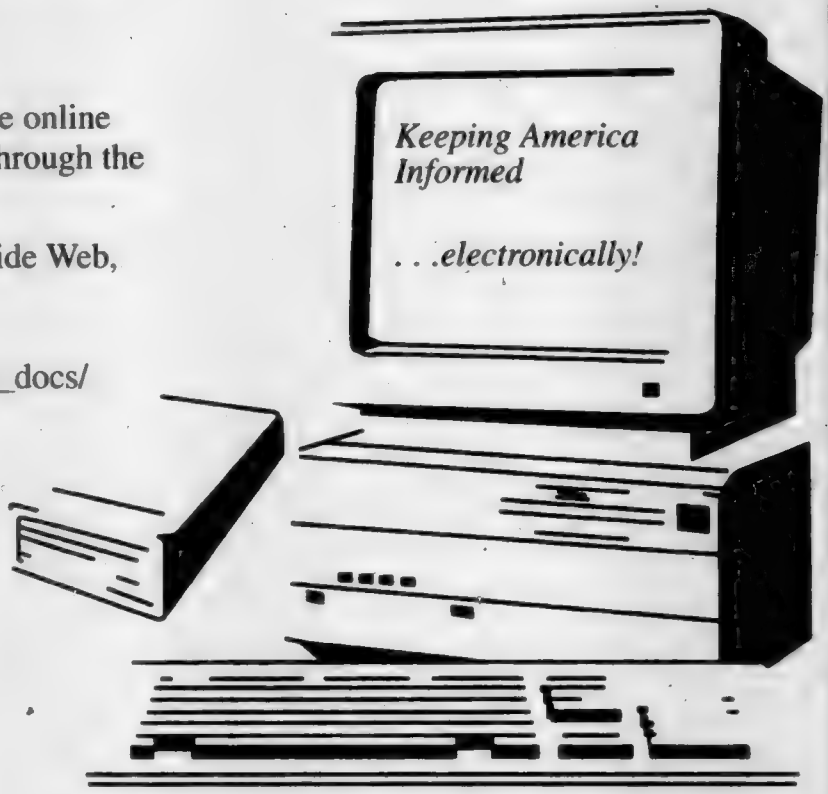

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Friday, January 31, 2003

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The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 96–NM–179–AD; Amendment 39–13028; AD 2003–03–04]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A300 B2 and B4; A300 B4–600, B4–600R, and F4–600R (Collectively Called A300–600); A310; A319; A320; A321; A330; and A340 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all Airbus Model A300 B2 and B4; A300 B4–600, B4–600R, and F4–600R (collectively called A300–600); A310; and certain Airbus Model A319; A320; A321; A330; and A340 series airplanes, that requires repetitive visual inspections of the striker and guide valve of the passenger door actuators and certain emergency door actuators for corrosion, and corrective action, if necessary. This AD also requires modification of the striker mechanism of the emergency and passenger door actuators, which terminates the repetitive inspections. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to prevent corrosion of the emergency actuator mechanism, which could cause failure of the emergency actuator striker mechanism on the passenger or emergency doors, and lead to difficulty in opening the passenger or emergency doors during an emergency evacuation.

DATES: Effective March 7, 2003.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 7, 2003.

ADDRESSES: The service information referenced in this AD may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Dan Rodina, Aerospace Engineer, FAA, Transport Airplane Directorate, International Branch, ANM–116, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2125; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to all Airbus Model A300 B2 and B4; A300 B4–600, B4–600R, and F4–600R (collectively called A300–600); A310; and certain Airbus Model A319; A320; A321; A330; and A340 series airplanes was published in the **Federal Register** on May 17, 2002 (67 FR 35059). That action proposed to require repetitive visual inspections of the striker and guide valve of the passenger door actuators and certain emergency door actuators for corrosion, and corrective action, if necessary. That action also proposed to require modification of the striker mechanism of the emergency and passenger door actuators, which would terminate the repetitive inspections.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comment received.

Request To Allow Credit for Accomplishment of Earlier Service Bulletin

One commenter requests that the FAA allow credit for accomplishment of Airbus Service Bulletin A320–52–1094, Revision 1, dated June 17, 1998, as terminating action for the repetitive inspections. We agree. We find that the procedures specified in that service bulletin revision are essentially identical to those specified in Revision 02 of the service bulletin (which was referenced in the notice of proposed rulemaking (NPRM) as an appropriate source of service information for accomplishment of the terminating action). Therefore, we have revised the final rule to include a new paragraph (g) to specify that modification of the striker mechanism before the effective date of this AD per Revision 1 of Airbus Service Bulletin A320–52–1094 is considered acceptable for compliance with the requirements of paragraph (f) of this AD (designated as paragraph (d) in the NPRM).

Explanation of Editorial Changes

Since the language in Notes 4 and 5 of the proposed AD is regulatory in nature, those notes have been redesignated as paragraphs (d) and (e) of this final rule, respectively (subsequent paragraphs and notes also have been redesignated).

We have changed certain service bulletin citations throughout this final rule to exclude the Service Bulletin Acceptance/Rejection Sheet. The sheet is intended to be completed by operators and submitted to the airplane manufacturer to provide inspection reports to Airbus; however, this AD does not include such a requirement.

Conclusion

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes described previously. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

The FAA estimates that 127 Model A300 B2 and B4 and A300–600 series airplanes of U.S. registry will be affected by this AD.

For these airplanes, it will take approximately 9 work hours per airplane to accomplish the required inspections, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the inspections on U.S. operators is

estimated to be $68,580, or $540 per airplane, per inspection cycle.

It will take approximately 60 work hours per airplane to accomplish the required modification, at an average labor rate of $60 per work hour. Parts cost per airplane will be minimal. Based on these figures, the cost impact of the modification on U.S. operators is estimated to be $457,200, or $3,600 per airplane.

The FAA estimates that 47 Model A310 series airplanes of U.S. registry will be affected by this AD, that it will take approximately 6 work hours per airplane to accomplish the required inspections, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the inspections on U.S. operators is estimated to be $16,920, or $360 per airplane, per inspection cycle.

For these airplanes, it will take approximately 20 work hours per airplane to accomplish the required modification, at an average labor rate of $60 per work hour. Parts cost per airplane will be minimal. Based on these figures, the cost impact of the modification on U.S. operators is estimated to be $56,400, or $1,200 per airplane.

The FAA estimates that 887 Model A319, A320, and A330 series airplanes of U.S. registry will be affected by this AD, that it will take approximately 4 work hours per airplane to accomplish the required inspection, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the AD on U.S. operators of these airplanes is estimated to be $212,880, or $240 per airplane, per inspection cycle.

For these airplanes, it will take approximately 80 work hours per airplane to accomplish the required modification, at an average labor rate of $60 per work hour. Parts cost per airplane will be minimal. Based on these figures, the cost impact of the modification on U.S. operators is estimated to be $4,257,600, or $4,800 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

There are currently no affected Model A321 or A340 series airplanes on the U.S. Register. All of these airplanes included in the applicability of this rule currently are operated by non-U.S. operators under foreign registry; therefore, they are not directly affected by this AD action. However, the FAA considers it necessary to include these airplanes in the applicability of this rule in order to ensure that the unsafe condition is addressed in the event that any of the subject airplanes are imported and placed on the U.S. Register in the future.

Should an affected Model A321 series airplane be imported and placed on the U.S. Register in the future, it will take approximately 8 work hours per airplane to accomplish the required inspections. Based on an average labor rate of $60 per work hour, the cost impact of the inspections would be $480 per airplane, per inspection cycle.

It will take approximately 20 work hours per airplane to accomplish the required modification on a Model A321 series airplane. Parts cost per airplane will be minimal. Based on an average labor rate of $60 per work hour, the cost impact of the modification will be $1,200 per airplane.

Should an affected Model A340 series airplane be imported and placed on the U.S. Register in the future, it will take approximately 32 work hours per airplane to accomplish the required inspections. Based on an average labor rate of $60 per work hour, the cost impact of the inspections would be $1,920 per airplane, per inspection cycle.

It will take approximately 80 work hours per airplane to accomplish the required modification on a Model A340 series airplane. Parts cost per airplane will be minimal. Based on an average labor rate of $60 per work hour, the cost impact of the modification would be $4,800 per airplane.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2003–03–04 AIRBUS: Amendment 39–13028. Docket 96–NM–179–AD.

Applicability: All Model A300 B2 and B4; A300 B4–600, B4–600R, and F4–600R (collectively called A300–600); A310; A319; A320; A321; A330; and A340 series airplanes; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (i) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent corrosion of the emergency actuator mechanism, which could cause failure of the emergency actuator striker mechanism on the passenger or emergency doors, and lead to difficulty in opening the passenger or emergency doors during an emergency evacuation, accomplish the following:

Repetitive Inspections

(a) Within 500 flight hours after the effective date of this AD, or within 36 months after the airplane's date of manufacture, whichever occurs later: Determine if Airbus Modification(s) 45090, 45155, 45197, 45904, 45905, 26015, 26211, 11549, or 12024, as applicable, has been done. If the applicable modification(s) has been done, no further action is required by this AD. If the applicable modification(s) has not been done, before further flight, do the inspections required by paragraph (b) of this AD.

(b) Perform the inspections required by paragraphs (b)(1) and/or (b)(2) of this AD, as applicable, in accordance with Airbus Service Bulletin A300–52–0168, Revision 02, excluding Service Bulletin Acceptance/Rejection Sheet (for Model A300 B2 and B4 series airplanes); A300–52–6052, Revision 02, excluding Service Bulletin Acceptance/Rejection Sheet (for Model A300–600 series airplanes); or A310–52–2058, Revision 02, excluding Service Bulletin Acceptance/Rejection Sheet (for Model A310 series airplanes); all dated October 25, 1999; A330–52–3038, Revision 01, dated December 2, 1996 (for Model A330 series airplanes); A340–52–4048, Revision 03, dated June 10, 1997 (for Model A340 series airplanes); or Airbus All Operator Telex (AOT) 52–12, Revision 1, dated May 9, 1996 (for Model A319, A320, and A321 series airplanes); as applicable. Although certain service bulletins reference a reporting requirement, such reporting is not required by this AD. Repeat the inspections thereafter at intervals not to exceed 3 years:

(1) For Model A321, A330, and A340 series airplanes: Do a detailed inspection of the striker and guide valve of the emergency door actuators for corrosion.

(2) *For all airplanes:* Do a detailed inspection of the striker and guide valve of the passenger door actuators for corrosion.

Note 2: For the purposes of this AD, a detailed visual inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

Note 3: Additional service information regarding the required inspections on Airbus Model A300 B2 and B4, A300–600, and A310 series airplanes is provided in RATIER–FIGEAC Service Bulletin 701–5000–52–9, Revision 1, dated October 10, 1996.

Corrective Action

(c) If any corrosion is found during any inspection required by paragraph (b) of this AD, before further flight, accomplish either paragraph (c)(1) or (c)(2) of this AD, in accordance with Airbus Service Bulletin A300–52–0168, Revision 02, excluding Service Bulletin Acceptance/Rejection Sheet (for Model A300 B2 and B4 series airplanes); A300–52–6052, Revision 02, excluding Service Bulletin Acceptance/Rejection Sheet (for Model A300–600 series airplanes); or A310–52–2058, Revision 02, excluding Service Bulletin Acceptance/Rejection Sheet (for Model A310 series airplanes); all dated October 25, 1999; A330–52–3038, Revision 01, dated December 2, 1996 (for Model A330 series airplanes); A340–52–4048, Revision 03, dated June 10, 1997 (for Model A340 series airplanes); or Airbus AOT 52–12, Revision 1, dated May 9, 1996 (for Model A319, A320, and A321 series airplanes); as applicable. Although certain service bulletins reference a reporting requirement, such reporting is not required by this AD.

(1) Clean the corroded areas of the emergency actuator striker mechanism to restore proper function, and re-install the mechanism; and, within 18 months after the corrosion is found, replace the mechanism with a serviceable part; or

(2) Replace the emergency actuator striker mechanism with a serviceable part.

(d) Inspections and corrective action done before the effective date of this AD in accordance with Airbus Service Bulletin A300–52–0168, dated December 4, 1996, or Revision 01, dated March 26, 1998; A300–52–6052, dated December 4, 1996, or Revision 01, dated March 26, 1998; or A310–52–2058, dated December 4, 1996, or Revision 01, dated March 26, 1998; are considered acceptable for compliance with the applicable actions specified in this amendment.

(e) Inspections and corrective action accomplished prior to the effective date of this AD in accordance with Airbus A320 Maintenance Planning Document, task number 521000–13–1, are considered acceptable for compliance with paragraphs (b) and (c) of this AD.

Terminating Action

(f) Within 36 months after the effective date of this AD: Modify the striker mechanism of the emergency and passenger door actuators (includes replacement of the existing copper diaphragm in the striker mechanism with an aluminum diaphragm and re-identification of the actuators) in accordance with Airbus Service Bulletin A300–52–0173, Revision 01, dated September 7, 2000 (for Model A300 B2 and B4 series airplanes); A300–52–6061, Revision 01, dated September 7, 2000 (for Model A300–600 series airplanes); A310–52–2065, Revision 01, dated September 7, 2000 (for Model A310 series airplanes); A330–52–3048, Revision 01, dated December 2, 1998 (for Model A330 series airplanes); A340–52–4059, Revision 01, dated December 2, 1998 (for Model A340 series airplanes); or A320–52–1094, Revision 02, dated April 7, 1999 (for Model A319, A320, and A321 series airplanes); as applicable.

(g) Modification of the striker mechanism accomplished prior to the effective date of this AD in accordance with Airbus Service Bulletin A320–52–1094, Revision 1, dated June 17, 1998, is considered acceptable for compliance with paragraph (f) of this AD.

Part Installation

(h) As of the effective date of this AD, no person shall install a passenger door or emergency door actuator on any airplane without first inspecting that actuator in accordance with paragraph (b) of this AD; and repairing, if necessary, in accordance with paragraph (c) of this AD.

Alternative Methods of Compliance

(i) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(j) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(k) The actions shall be done per the applicable Airbus service information in the following table:

TABLE.—SERVICE INFORMATION

Airbus service information	Revision level	Excluding	Date
All Operator Telex (AOT) 52–12	1	not applicable	May 9, 1996.
Service Bulletin A300–52–0168	02	Service Bulletin Acceptance/Rejection Sheet.	October 25, 1999.
Service Bulletin A300–52–0173	01	not applicable	September 7, 2000.
Service Bulletin A300–52–6052	02	Service Bulletin Acceptance/Rejection Sheet.	October 25, 1999.
Service Bulletin A300–52–6061	01	not applicable	September 7, 2000.

TABLE.—SERVICE INFORMATION—Continued

Airbus service information	Revision level	Excluding	Date
Service Bulletin A310–52–2058	02	Service Bulletin Acceptance/Rejection Sheet.	October 25, 1999.
Service Bulletin A310–52–2065	01	not applicable	September 7, 2000.
Service Bulletin A320–52–1094	02	not applicable	April 7, 1999.
Service Bulletin A330–52–3038	01	not applicable	December 2, 1996.
Service Bulletin A330–52–3048	01	not applicable	December 2, 1998.
Service Bulletin A340–52–4048	03	not applicable	June 10, 1997.
Service Bulletin A340–52–4059	01	not applicable	December 2, 1998.

(1) This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

(2) Copies may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 5: The subject of this AD is addressed in French airworthiness directives 1998–482–122(B) R1, dated April 21, 1999; 1999–410–294(B) R1, dated November 17, 1999; and 98–507–085(B) and 98–508–106(B), both dated December 16, 1998.

Effective Date

(l) This amendment becomes effective on March 7, 2003.

Issued in Renton, Washington, on January 22, 2003.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–1831 Filed 1–30–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–43–AD; Amendment 39–13039; AD 2003–03–15]

RIN 2120–AA64

Airworthiness Directives; Various Boeing and McDonnell Douglas Transport Category Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to various Boeing and McDonnell Douglas transport category airplanes. This AD requires revising the Airplane Flight Manual (AFM) to advise the flightcrew to don oxygen masks as a first and immediate step when the cabin altitude warning horn sounds. This action is necessary to prevent incapacitation of the flightcrew due to lack of oxygen, which could result in loss of control of the airplane. This action is intended to address the identified unsafe condition.

DATES: Effective March 7, 2003.

ADDRESSES: Information pertaining to this AD may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California.

FOR FURTHER INFORMATION CONTACT: *Boeing Airplane Models:* Don Eiford, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2788; fax (425) 227–1181.

McDonnell Douglas Airplane Models: Joe Hashemi, Aerospace Engineer, Flight Test Branch, ANM–160L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5380; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to various Boeing and McDonnell Douglas transport category airplanes was published in the **Federal Register** on June 26, 2002 (67 FR 43058). That action proposed to require revising the Airplane Flight Manual (AFM) to advise the flightcrew to don oxygen masks as a first and immediate step when the cabin altitude warning horn sounds.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Support for the Proposed AD

One commenter supports the proposed AD, and another commenter states that it has surveyed its fleet and is already in compliance with the proposed AD.

Request To Expand Applicability of Proposed AD

One commenter notes an inconsistency in the proposed AD. In the preamble of the proposed AD, the FAA states that appropriate instructions for donning emergency oxygen masks are already contained in the AFM for Boeing Model 737–600, –700, –800, and "900 series airplanes. Thus, those airplanes are not included in the applicability of the proposed AD. The commenter points out, however, that the AFM for Boeing Model 737–600, –700, –800, and –900 series airplanes contains wording similar to that in the AFM for Boeing Model 737–300, –400, and –500 series airplanes, which are included in the applicability of the proposed AD. The commenter also notes that the AFM for Boeing Model 757–300 series airplanes does not address the donning of crew oxygen masks during rapid depressurization, although the proposed AD states that the AFMs for 757 series airplanes contain appropriate instructions for donning oxygen masks. The commenter asks that we review all AFMs again to ensure that the AFM contains appropriate instructions.

We partially concur with the commenter's request. Where we state in the proposed AD that the AFMs for certain models already contain appropriate instructions for the donning of oxygen masks, we should have stated that either the AFM or the airplane operations manual (AOM) contains appropriate instructions for the donning of oxygen masks. For the models identified by the commenter, the AOM contains appropriate instructions for donning oxygen masks. For this reason, those airplanes were not included in the applicability of the proposed AD.

We acknowledge the commenter's concerns. Thus, we have repeated the

review of AFMs of all airplanes that were not included in the proposed AD because correct instructions exist in the AOM. We are planning additional rulemaking to revise the AFMs for all airplane models that have inadequate instructions for donning oxygen masks.

The FAA does not agree that it is necessary to repeat the review of the AFMs for all transport category airplanes to ensure that instructions for donning oxygen masks are adequate. As we stated previously, the models identified by the commenter are all airplanes for which adequate instructions for donning oxygen masks are included in the AOM. As this is a specific and finite group of airplanes, and we have repeated the review of AFMs for this group, we find that it is unnecessary to repeat the review of the AFMs for all transport category airplanes. No change to this final rule is necessary in this regard.

Revise Figure 5 of Proposed AD

One commenter requests that we revise Figure 5 of the proposed AD, which contains revised AFM wording for McDonnell Douglas Model DC–9–10, –20, –30, –40, and –50 series airplanes. The commenter requests that the wording "If the cabin altitude warning horn sounds" be changed to "If a cabin altitude warning occurs." The commenter's rationale is that not all DC–9 series airplanes have a cabin altitude warning horn. The commenter also requests that the words "crew oxygen mask" be revised to "crew oxygen masks" to match the wording of the original AFM.

We concur and have revised Figure 5 of this final rule accordingly.

Request To Omit Certain Wording From Other Documents

One commenter states that it finds the new AFM wording within the proposed AD acceptable and will revise its AFMs accordingly. However, in view of the deletion of the references to 14,000-feet altitude, the commenter requests that we not include references to 14,000 feet altitude in supplementary or separate AFM checklists or other documents. The commenter states no rationale for its request.

We acknowledge the commenter's request and will take steps to ensure that supplemental or separate AFM revisions do not contain the wording specified by the commenter. No change to this final rule is needed in this regard.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. We have determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

There are approximately 7,077 airplanes (5,178 Boeing airplanes and 1,899 McDonnell Douglas airplanes) of the affected designs in the worldwide fleet. The FAA estimates that 3,479 airplanes (2,392 Boeing airplanes and 1,087 McDonnell Douglas airplanes) of U.S. registry will be affected by this AD. It will take approximately 1 work hour per airplane to accomplish the required AFM revision, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of this AD on U.S. operators is estimated to be $208,740, or $60 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2003–03–15 Transport Category Airplanes: Amendment 39–13039. Docket 2002–NM–43–AD.

Applicability: The airplanes listed in Table 1 of this AD, certificated in any category:

TABLE 1.—AFFECTED AIRPLANE MODELS

Airplane manufacturer	Airplane model
Boeing	707 series airplanes
	720 series airplanes
	727 series airplanes
	737–100 series airplanes
	737–200 series airplanes
	737–200C series airplanes
	737–300 series airplanes
	737–400 series airplanes
	737–500 series airplanes
	747–100 series airplanes
	747–100B series airplanes
	747–100B SUD series airplanes
	747–200B series airplanes
	747–200F series airplanes
	747–200C series airplanes
	747–300 series airplanes
	747SR series airplanes
	747SP series airplanes
McDonnell Douglas.	DC–8–11 airplanes
	DC–8–12 airplanes
	DC–8–21 airplanes
	DC–8–31 airplanes
	DC–8–32 airplanes
	DC–8–33 airplanes
	DC–8–41 airplanes
	DC–8–42 airplanes
	DC–8–43 airplanes
	DC–8–51 airplanes
	DC–8–52 airplanes
	DC–8–53 airplanes
	DC–8F–54 airplanes
	DC–8–55 airplanes

TABLE 1.—AFFECTED AIRPLANE MODELS—Continued

Airplane manufacturer	Airplane model
	DC–8F–55 airplanes
	DC–8–61 airplanes
	DC–8–61F airplanes
	DC–8–62 airplanes
	DC–8–62F airplanes
	DC–8–63 airplanes
	DC–8–63F airplanes
	DC–8–71 airplanes
	DC–8–71F airplanes
	DC–8–72 airplanes
	DC–8–72F airplanes
	DC–8–73 airplanes
	DC–8–73F airplanes
	DC–9–11 airplanes
	DC–9–12 airplanes
	DC–9–13 airplanes
	DC–9–14 airplanes
	DC–9–15 airplanes
	DC–9–15F airplanes
	DC–9–21 airplanes
	DC–9–31 airplanes
	DC–9–32 airplanes
	DC–9–32 (VC–9C) airplanes
	DC–9–32F airplanes
	DC–9–32F airplanes (C–9A, C–9B)

TABLE 1.—AFFECTED AIRPLANE MODELS—Continued

Airplane manufacturer	Airplane model
	DC–9–33F airplanes
	DC–9–34 airplanes
	DC–9–34F airplanes
	DC–9–41airplanes
	DC–9–51 airplanes
	DC–9–81 (MD–81) airplanes
	DC–9–82 (MD–82) airplanes
	DC–9–83 (MD–83) airplanes
	DC–9–87 (MD–87) airplanes
	MD–88 airplanes
	MD–90–30 airplanes
	DC–10–10 airplanes
	DC–10–10F airplanes
	DC–10–15 airplanes
	DC–10–30 airplanes
	DC–10–30F airplanes
	DC–10–30F (KC–10A, KDC–10) airplanes
	DC–10–40 airplanes
	DC–10–40F airplanes
	MD–10–10F airplanes
	MD–10–30F airplanes
	MD–11 airplanes
	MD–11F airplanes

Compliance: Required as indicated, unless accomplished previously.

To prevent incapacitation of the flightcrew due to lack of oxygen, which could result in loss of control of the airplane, accomplish the following:

Revision to the Airplane Flight Manual

(a) Within 90 days after the effective date of this AD: For the applicable airplane models listed in the "For—" column of Table 2 of this AD, revise the procedures regarding donning oxygen masks in the event of rapid depressurization, as contained in the Emergency Procedures section of the FAA-approved Airplane Flight Manual (AFM), by replacing the text in the "Replace—" column of Table 2 of this AD with the information in the applicable figure referenced in the "With the Information In—" column of Table 2 of this AD. This may be accomplished by recording the AD number of this AD on the applicable figure and inserting it into the AFM. Table 2 and Figures 1 through 9 follow:

TABLE 2.—AFM REVISIONS

For—	Replace—	With the information in—
Boeing Model 707, 720, and 727 series airplanes	"*RAPID DEPRESSURIZATION* Oxygen Masks & Regulators—ON, 100% ALL"	Figure 1 of this AD.
Boeing Model 737–100, –200, and –200C series airplanes	"*RAPID DEPRESSURIZATION* (With airplane altitude above 14,000 feet M.S.L.) PRIMARY Oxygen Masks & Regulators—ON, 100%"	Figure 2 of this AD.
Boeing Model 737–300, 737–400, 737–500, 747–100, 747–100B, 747–100B SUD, 747–200B, 747–200F, 747–200C, 747–300, 747SR, and 747SP series airplanes	"*RAPID DEPRESSURIZATION* (With airplane altitude above 14,000 feet M.S.L.) RECALL Oxygen Masks & Regulators—ON, 100%"	Figure 3 of this AD.
McDonnell Douglas Model DC–8–11, DC–8–12, DC–8–21, DC–8–31, DC–8–32, DC–8–33, DC–8–41, DC–8–42, DC–8–43, DC–8–51, DC–8–52, DC–8–53, DC–8F–54 DC–8–55, DC–8F–55, DC–8–61, DC–8–61F, DC–8–62, DC–8–62F, DC–8–63, DC–8–63F, DC–8–71, DC–8–71F, DC–8–72, DC–8–72F, DC–8–73, and DC–8–73F airplanes	"*RAPID DEPRESSURIZATION* Phase I and II Crew oxygen mask—ON"	Figure 4 of this AD.
McDonnell Douglas Model DC–9–11, DC–9–12, DC–9–13, DC–9–14, DC–9–15, DC–9–15F, DC–9–21, DC–9–31, DC–9–32, DC–9–32 (VC–9C), DC–9–32F, DC–9–32F (C–9A, C–9B), DC–9–33F, DC–9–34, DC–9–34F, DC–9–41, and DC–9–51 airplanes	"*RAPID DECOMPRESSION/EMERGENCY DESCENT* Phase I and II Manual Pressurization Control— FULL FORWARD AND MANUALLY LOCKED Note: Manual Pressurization control forces may be high, apply forces as required Crew Oxygen Masks—ON"	Figure 5 of this AD.

TABLE 2.—AFM REVISIONS—Continued

For—	Replace—	With the information in—
McDonnell Douglas Model DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), DC–9–87 (MD–87), and MD–88 airplanes	"*RAPID DECOMPRESSION/EMERGENCY DESCENT* Phase I and II Manual Pressurization Control — FULL FORWARD AND MANUALLY LOCKED Note: Manual Pressurization control forces may be high, apply forces as required Crew Oxygen Masks—ON/EMERGENCY/100%"	Figure 6 of this AD.
McDonnell Douglas Model MD–90–30 airplanes	"*RAPID DECOMPRESSION* OXY MASKS—ON/100%/EMERGENCY"	Figure 7 of this AD.
McDonnell Douglas Model DC–10–10, DC–10–10F, DC–10–15, DC–10–30, DC–10–30F, DC–10–30F (KC–10A, KDC–10), DC–10–40, and DC–10–40F airplanes	"*RAPID DEPRESSURIZATION/EMERGENCY DESCENT* *Recall* Cabin OUTFLOW VALVE—VERIFY CLOSED (CLOSE ELECTRICALLY OR MANUALLY IF NOT CLOSED) Oxygen Masks — 100% (if required)"	Figure 8 of this AD.
McDonnell Douglas Model MD–10–10F, MD–10–30F, MD–11, and MD–11F airplanes	"*CABIN ALTITUDE* Memory Item Outflow Valve—Verify Closed"	Figure 9 of this AD.

Figure 1.—For Boeing Model 707, 720, and 727 Series Airplanes

Insert the information in this figure into the "Emergency Procedures" section of the FAA-approved Airplane Flight Manual.

* * * * * * *

"CABIN ALTITUDE WARNING OR RAPID DEPRESSURIZATION
If the cabin altitude warning horn sounds:
Oxygen Masks & Regulators—ON, 100%, ALL"

* * * * * * *

The rest of the steps under this heading in the AFM are unchanged.

Figure 2.—For Boeing Model 737–100, –200, and –200C Series Airplanes

Insert the information in this figure into the "Emergency Procedures" section of the FAA-approved Airplane Flight Manual.

* * * * * * *

"CABIN ALTITUDE WARNING OR RAPID DEPRESSURIZATION
If the cabin altitude warning horn sounds:
PRIMARY
Oxygen Masks & Regulators—ON, 100%"

* * * * * * *

The rest of the steps under this heading in the AFM are unchanged.

Figure 3.—For Boeing Model 737–300, 737–400, 737–500, 747–100, 747–100B, 747–100B SUD, 747–200B, 747–200F, 747–200C, 747–300, 747SR, and 747SP Series Airplanes

Insert the information in this figure into the "Emergency Procedures" section of the FAA-approved Airplane Flight Manual.

* * * * * * *

"CABIN ALTITUDE WARNING OR RAPID DEPRESSURIZATION
If the cabin altitude warning horn sounds:
RECALL
Oxygen Masks & Regulators—ON, 100%"

* * * * * * * *

The rest of the steps under this heading in the AFM are unchanged.

Figure 4.—For McDonnell Douglas Model DC–8–11, DC–8–12, DC–8–21, DC–8–31, DC–8–32, DC–8–33, DC–8–41, DC–8–42, DC–8–43, DC–8–51, DC–8–52, DC–8–53, DC–8F–54, DC–8–55, DC–8F–55, DC–8–61, DC–8–61F, DC–8–62, DC–8–62F, DC–8–63, DC–8–63F, DC–8–71, DC–8–71F, DC–8–72, DC–8–72F, DC–8–73, and DC–8–73F Airplanes

Insert the information in this figure into the "Emergency Procedures" section of the FAA-approved Airplane Flight Manual.

* * * * * * *

"CABIN ALTITUDE WARNING OR RAPID DEPRESSURIZATION
Phase I and II
If the cabin altitude warning horn sounds:
Crew oxygen mask—ON"

* * * * * * *

The rest of the steps under this heading in the AFM are unchanged.

Figure 5.—For McDonnell Douglas Model DC–9–11, DC–9–12, DC–9–13, DC–9–14, DC–9–15, DC–9–15F, DC–9–21, DC–9–31, DC–9–32, DC–9–32 (VC–9C), DC–9–32F, DC–9–32F (C–9A, C–9B), DC–9–33F, DC–9–34, DC–9–34F, DC–9–41, and DC–9–51 Airplanes

Insert the information in this figure into the "Emergency Procedures" section of the FAA-approved Airplane Flight Manual.

* * * * * * *

"CABIN ALTITUDE WARNING OR RAPID DECOMPRESSION/EMERGENCY DESCENT
Phase I and II
If a cabin altitude warning occurs:
Crew Oxygen Masks—ON
Manual Pressurization Control—FULL FORWARD AND MANUALLY LOCKED
NOTE: Manual Pressurization control forces may be high, apply forces as required."

* * * * * * *

The rest of the steps under this heading in the AFM are unchanged.

Figure 6.—For McDonnell Douglas Model DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), DC–9–87 (MD–87), and MD–88 Airplanes

Insert the information in this figure into the "Emergency Procedures" section of the FAA-approved Airplane Flight Manual.

* * * * * * *

"CABIN ALTITUDE WARNING OR RAPID DECOMPRESSION/EMERGENCY DESCENT
Phase I and II
If the cabin altitude warning horn sounds:
Crew Oxygen Mask—ON/EMERGENCY/100%
Manual Pressurization Control—FULL FORWARD AND MANUALLY LOCKED
NOTE: Manual Pressurization control forces may be high, apply forces as required."

* * * * * * *

The rest of the steps under this heading in the AFM are unchanged.

Figure 7.—For McDonnell Douglas MD–90–30 Airplanes

Insert the information in this figure into the "Emergency Procedures" section of the FAA-approved Airplane Flight Manual.

* * * * * * *

"CABIN ALTITUDE WARNING OR RAPID DECOMPRESSION
If the cabin altitude warning horn sounds:
• OXY MASKS—ON/100%/EMERGENCY"

* * * * * * *

The rest of the steps under this heading in the AFM are unchanged.

Figure 8.—For McDonnell Douglas Model DC–10–10, DC–10–10F, DC–10–15, DC–10–30, DC–10–30F, DC–10–30F (KC–10A, KDC–10), DC–10–40, and DC–10–40F Airplanes:

Insert the information in this figure into the "Emergency Procedures" section of the FAA-approved Airplane Flight Manual.

* * * * * * * * *

"CABIN ALTITUDE WARNING OR RAPID DEPRESSURIZATION/EMERGENCY DESCENT
Recall
If the cabin altitude warning horn sounds:
Oxygen Masks—100%
Cabin
OUTFLOW VALVE—VERIFY CLOSED (CLOSE ELECTRICALLY OR MANUALLY IF NOT CLOSED)"

* * * * * * * * *

The rest of the steps under this heading in the AFM are unchanged.

Figure 9.—For McDonnell Douglas Model MD–10–10F, MD–10–30F, MD–11, and MD–11F Airplanes:

Insert the information in this figure into the "Emergency Procedures" section of the FAA-approved Airplane Flight Manual.

* * * * * * * * *

"CABIN ALTITUDE WARNING OR CABIN ALTITUDE
If the cabin altitude warning horn sounds:
Memory Item
Oxygen Masks—ON/100%/EMERGENCY
Outflow Valve—Verify Closed"

* * * * * * * * *

The rest of the steps under this heading in the AFM are unchanged.

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA; or the Manager, Los Angeles ACO, FAA; as applicable. Operators shall submit their requests through an appropriate FAA Principal Operations Inspector, who may add comments and then send it to the Manager, Seattle ACO, or Los Angeles ACO, as applicable.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO or the Los Angeles ACO, as applicable.

Special Flight Permits

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Effective Date

(d) This amendment becomes effective on March 7, 2003.

Issued in Renton, Washington, on January 24, 2003.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–2147 Filed 1–30–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NE–31–AD; Amendment 39–13035; AD 2003–03–11]

RIN 2120–AA64

Airworthiness Directives; Air Cruisers Company Emergency Evacuation Slide/Rafts

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to a certain Air Cruisers Company Emergency Evacuation Slide/Raft System. This amendment requires a one-time unpacking and subsequent repacking of the slide/raft system, identified by serial numbers (SN's), and mandates repacking of all other slide/raft systems of the same design at the next required normal maintenance schedule of the slide/ raft system. This amendment is prompted by reports of separation of the lower aspirator during a number of deployments. The actions specified by this AD are intended to prevent failure of the slide/raft to properly inflate, which could impede the emergency evacuation of passengers in the event of an airplane emergency.

DATES: Effective March 7, 2003. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 7, 2003.

ADDRESSES: The service information referenced in this AD may be obtained from Air Cruisers Company, Technical Publications Department, P.O. Box 180, Belmar, NJ 07719–0180; telephone: (732) 681–3527, fax: (732) 280–8212. This information may be examined, by appointment, at the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Leung Lee, Aerospace Engineer, New York Aircraft Certification Office, FAA, Engine and Propeller Directorate, 10 Fifth Street, 3rd floor, Valley Stream, NY 11581–1200; telephone (516) 256–7509; fax (516) 568–2716.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that is applicable to a certain Air Cruisers Company Emergency Evacuation Slide/Raft System was published in the **Federal Register** on November 9, 1999 (64 FR 61042). That action proposed to require a one-time unpacking and subsequent repacking of affected slide/raft systems identified by SN's in accordance with Air Cruisers Company Service Bulletin (SB) 777–107–25–06, dated February 19, 1999, and repacking of all other slide/raft systems of the same design in accordance with Air Cruisers Company SB 777–107–25–06, dated February 19,

1999 and the applicable Air Cruisers Company Folding Procedures P–12054 or P–12064, Revision E, dated October 14, 1998.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Revise the Number of Affected Slide/Rafts

Two commenters state that the proposal implies that the problem extends beyond the 93 affected slide/rafts that are listed by SN's in SB 777–107–25–06, dated February 19, 1999. In the proposed actions section, the proposal states that an unsafe condition has been identified that is likely to exist or develop on other emergency evacuation slide/raft systems of the same type design. The commenters disagree with this statement because at the time the problem was identified, a program was implemented to repack all slide/raft systems in inventory, leaving only those identified by SN's listed in the SB as affected.

The FAA disagrees. Because emergency evacuation slide/raft systems of this same design are suspect to potential failure due to the use of improper folding instructions, this AD must address all emergency evacuation slide/raft systems of this same type design, including those specifically identified in the Air Cruisers Company Service Bulletin 777–107–25–06.

Use One Compliance Time

Two commenters request a one-time repacking compliance time of within 18 months after the effective date of this AD for all slide/rafts, instead of the current proposed repacking within two months for slide/rafts identified by SN's, and repacking all other slide/rafts within 18 months after the effective date of this AD. This would make the associated risk consistent for all affected slide/rafts.

The FAA disagrees. The FAA position is that there is still a risk of potential separation of the lower aspirator in this emergency evacuation slide/raft system. In the event of an emergency evacuation, even one slide/raft malfunction may be extremely dangerous. Furthermore, because the Air Cruisers Company Service Bulletin 777–107–25–06, dated February 19, 1999 has been available for more than 18 months, the burden of this AD should be less on all involved. Therefore, the FAA made no changes to the rule with respect to this request.

One-Time Repacking With No Repetitive Repacking

Three commenters request that a one-time unpacking and subsequent repacking be done with no repetitive repacking procedure added to the regular maintenance of the airplane. Since the problem will be corrected with the one-time repacking, the need for repetitive repacking will be eliminated.

The FAA partially agrees. A one-time unpacking and subsequent repacking of the 93 slide/raft systems identified by SN's per this AD is all that is required for conformance to this AD. The requirement of this AD for "repetitive repacking" is for addressing all other slide/raft systems of the same design. These slide/raft systems are to be repacked at the next scheduled maintenance cycle within the compliance time of this AD in accordance with the applicable Air Cruisers Company Folding Procedures. The FAA will modify the wording "repetitive repacking" to read "repacking of all other slide/raft systems of the same design."

Revision Level of the Applicable Folding Procedures

One commenter states that it is not appropriate to designate the folding procedure revision number since the procedure may be revised in the future. The commenter requests including "or latest as revised" to Folding Procedures P–12054 and P–12064, Revision E. Another commenter requests that the specific revision level of the applicable folding procedure not be listed at all.

The FAA partially agrees. Since the proposal was issued, the FAA has determined that Folding Procedures P–12054 and P–12064, Revision E and earlier, are insufficent and are not to be used to comply with this AD. Repacking must be done in accordance with the applicable Air Cruisers Company Folding Procedure P–12054 or P–12064, Revision F, dated March 12, 1999, or later FAA approved revision, for all emergency evacuation slide/raft systems of the same design. Therefore paragraphs (a) through (d) of the AD is reworded, stating to repack the slide/raft systems in accordance with the applicable Air Cruisers Company Folding Procedure P–12054 (for left-hand slide/rafts), Revision F, dated March 12, 1999, or later FAA approved revision, or Folding Procedure P–12064 (for right-hand slide/rafts), Revision F, dated March 12, 1999, or later FAA approved revision.

Limit the Applicability

One commenter requests removing the words " but not limited to" from the proposed AD applicability paragraph. Otherwise, unaffected owners/operators will have to spend resources in determining that compliance is unnecessary.

The FAA disagrees. Although these emergency evacuation slide/raft systems are currently installed on Boeing 777–200 and –300 only, it is possible that these slide/raft systems could be installed on other airplanes. Therefore, the FAA made no changes to the rule with respect to this request.

Identify Only Basic Part Numbers

One commenter requests that the AD remove the dash numbers from part numbers identifying the slide/raft systems, and use only the basic, open-ended part numbers. Then for part number details, refer to the effectivity of the applicable Air Cruisers Service Bulletin.

The FAA disagrees. Open-ended slide/raft systems part numbers would cause any future part numbers to become falsely applicable to this AD. Therefore, the FAA made no changes to the rule with respect to this request.

Approval As-Written

One commenter approves the proposal as-written.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes described previously. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Economic Analysis

There are approximately 388 slide/raft systems of the affected design in the worldwide fleet. The FAA estimates that 74 slide/raft systems installed on airplanes of U.S. registry would be affected by this AD, that it would take approximately 5 work hours per slide/raft system to accomplish the repacking, and that the average labor rate is $60 per work hour. Based on these figures, the total cost of the AD on U.S. operators is estimated to be $22,200.

Regulatory Analysis

This final rule does not have federalism implications, as defined in Executive Order 13132, because it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of

power and responsibilities among the various levels of government. Accordingly, the FAA has not consulted with state authorities prior to publication of this final rule.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

2003–03–11 Air Cruisers Company: Amendment 39–13035. Docket No. 99–NE–31–AD.

Applicability

This airworthiness directive (AD) is applicable to Air Cruisers Company Emergency Evacuation Slide/Raft System part numbers (P/N's) 62774–401, 62774–402, 62774–403, 62774–404, 62774–405, 62774–406, 62774–407 and 62774–408, with the affected slide/raft systems identified by the serial numbers (SN's) listed in the following Table 1:

TABLE 1.—AFFECTED SLIDE/RAFT SN'S

0203	0207	0220	0234	0235	0239	0241	0245	0250	0255
0267	0277	0280	0302	0305	0306	0310	0312	0316	0318
0320	0330	0332	0333	0335	0339	0342	0343	0344	0345
0348	0349	0350	0351	0354	0355	0356	0358	0364	0365
0366	0368	0369	0372	0373	0374	0376	0378	0379	0380
0381	0384	0385	0388	0389	0390	0391	0392	0394	0395
0396	0397	0398	0399	0402	0403	0404	0406	0408	0409
0411	0413	0415	0417	0418	0419	0420	0421	0422	0423
0425	0426	0427	0428	0429	0430	0431	0433	0438	0443
0445	0455	0456							

These Emergency Evacuation Slide/Raft Systems are installed on, but not limited to Boeing 777–200 and –300 series airplanes.

Note 1: This AD applies to each Emergency Evacuation Slide/Raft System identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired. For Emergency Evacuation Slide/Raft Systems that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance

Compliance with this AD is required as indicated, unless already done.

To prevent failure of the emergency evacuation slide/raft to properly inflate, which could impede the emergency evacuation of passengers in the event of an airplane emergency, do the following:

Repacking

(a) For slide/raft systems identified by SN's as listed in Table 1 of this AD, do the following in accordance with Accomplishment Instructions described in Air Cruisers Company SB 777–107–25–06, dated February 19, 1999, and the applicable Air Cruisers Company Folding Procedure P–12054 (for left-hand slide/rafts), Revision F, dated March 12, 1999, or later FAA approved revision, or Folding Procedure P–12064 (for right-hand slide/rafts), Revision F, dated March 12, 1999, or later FAA approved revision:

(1) For slide/raft systems currently installed on airplanes, repack within 2 months after the effective date of this AD.

(2) For uninstalled slide/raft systems, repack before installation.

(b) Repack all slide/raft systems, excluding those identified in paragraph (a) of this AD, in accordance with the applicable Air Cruisers Company Folding Procedure P–12054 (for left-hand slide/rafts), Revision F, dated March 12, 1999, or later FAA approved revision, or Procedure P–12064 (for right-hand slide/rafts), Revision F, dated March 12, 1999, or later FAA approved revision, at the next required normal maintenance schedule of the slide/raft system, or no later than 18 months after the effective date of this AD.

(c) Emergency Evacuation Slide/Raft Systems which have already been repacked in accordance with the applicable Air Cruisers Company Folding Procedures P–12054 or P–12064, Revision F or later FAA approved revision, are considered in compliance to the requirements of paragraph (b) of this AD.

(d) All subsequent repacking of the Emergency Slide/Raft System during the normal scheduled maintenance must be performed in accordance with the applicable Air Cruisers Company Folding Procedures P–12054 or P–12064, Revision F or later FAA approved revision.

Alternative Methods of Compliance

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, New York Aircraft Certification Office. Operators must submit their request through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, New York Aircraft Certification Office.

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the New York Aircraft Certification Office.

Special Flight Permits

(f) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be done.

Documents That Have Been Incorporated by Reference

(g) The repacking must be done in accordance with the following Air Cruisers Company service bulletin (SB) and Folding Procedures (FP):

Document No.	Pages	Revision	Date
SB 777–107–25–06 Total pages: 3	All	Original	February 19, 1999.
P–12054 Total pages: 158	All	F	March 12, 1999.
P–12064 Total pages: 156	All	F	March 12, 1999.

The incorporations by reference were approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Air Cruisers Company, Technical Publications Department, PO Box 180, Belmar, NJ 07719–0180; telephone: (732) 681–3527, fax: (732) 280–8212. Copies may be inspected by appointment at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(h) This amendment becomes effective on March 7, 2003.

Issued in Burlington, Massachusetts, on January 22, 2003.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 03–1952 Filed 1–30–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–277–AD; Amendment 39–13032; AD 2003–03–06]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–9–10, DC–9–20, DC–9–30, DC–9–40, and DC–9–50 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain McDonnell Douglas Model DC–9–10, DC–9–20, DC–9–30, DC–9–40, and DC–9–50 series airplanes, that requires a one-time inspection at a certain disconnect panel in the left forward cargo compartment to find contamination of electrical connectors and to determine if a dripshield is installed over the disconnect panel, and corrective actions if necessary. The actions specified by this AD are intended to find and fix contamination of certain electrical connectors and prevent future contamination of these connectors, which could cause electrical arcing that could result in a fire on the airplane. This action is intended to address the identified unsafe condition.

DATES: Effective March 7, 2003.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 7, 2003.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Elvin K. Wheeler, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5344; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model DC–9–10, DC–9–20, DC–9–30, DC–9–40, and DC–9–50 series airplanes was published in the **Federal Register** on August 23, 2002 (67 FR 54597). That action proposed to require a one-time inspection at a certain disconnect panel in the left forward cargo compartment to find contamination of electrical connectors and to determine if a dripshield is installed over the disconnect panel, and corrective actions if necessary.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Request To Clarify Applicability

One commenter asks that the applicability in the proposed AD be clarified, in that it only applies to airplanes with forward lavatories installed. The commenter notes that Boeing Alert Service Bulletin DC9–24A190, Revision 01, dated November 21, 2001 (which is referenced as the appropriate source of service information for accomplishment of the actions specified in the proposed AD), specifies airplanes that had forward lavatories installed. The commenter adds that such clarification would eliminate the need for an alternative method of compliance for airplanes without a forward lavatory.

The FAA agrees with the commenter. We have changed the applicability section in this final rule to clarify that it applies only to airplanes with forward lavatories installed.

Request To Extend Compliance Time

One commenter asks that the compliance time in the proposed AD be extended from 18 to 24 months after the effective date of the AD. The commenter states that per the 18 month compliance time, 159 airplanes in the DC–9 fleet must be modified during normal "L," "H," and "M" maintenance checks. The commenter adds that meeting the 18-month compliance time may require special maintenance visits, and changing the compliance time to 24 months would allow time for accomplishment of the inspection and for the airplane manufacturer to provide parts to support replacement of the dripshield, if necessary, during normal maintenance visits.

We do not agree with the commenter. The commenter provides no technical data to justify its statement that the proposed compliance time should be extended. In developing an appropriate compliance time for this AD, we considered not only the safety implications, but the manufacturer's recommendations, availability of spare parts, and the practical aspect of accomplishing the inspection within an interval of time that parallels normal scheduled maintenance for affected operators. In consideration of all of these factors, we have determined that the compliance time, as proposed, represents an appropriate interval in which the inspection can be

accomplished in a timely manner within the fleet and still maintain an adequate level of safety. However, under the provisions of paragraph (c) of the final rule, we may approve requests for adjustments to the compliance time if data are submitted to substantiate that such an adjustment would provide an acceptable level of safety. No change to the final rule is necessary in this regard.

Request To Change Cost Impact Section

One commenter does not agree with the manpower estimates in the Cost Impact section of the proposed AD. The commenter states that, under the worst conditions, an airplane will have blue water contamination and no dripshield installed. The commenter adds that it will take one sheet metal mechanic 6 hours to install the dripshield and all open/close access requirements; and it will take one electrical technician 8 hours to clean each electrical connector and do affected system checks. The commenter notes that these estimates are based on actual labor done on one of its airplanes. The commenter also provided estimates of the inflated cost of parts ordered with a 300-day lead-time.

From this comment, we infer that the commenter is asking that the cost impact estimate be revised. We do not agree. The economic analysis of the AD is limited only to the cost of actions actually required by the rule. It does not consider the costs of "on condition" actions, such as installation of an electrical connector or a dripshield if discrepancies are found during a required inspection ("corrective actions, if necessary"). Such "on-condition" corrective actions would be required to be accomplished, regardless of AD direction, to correct an unsafe condition identified in an airplane and to ensure operation of that airplane in an airworthy condition, as required by the Federal Aviation Regulations. Therefore, no change to the final rule is necessary in this regard.

Explanation of Editorial Change

We have changed the service bulletin citation throughout this final rule to exclude the Evaluation Form. (The form is intended to be completed by operators and submitted to the manufacturer to provide input on the quality of the service bulletin; however, this AD does not include such a requirement.)

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

There are approximately 80 airplanes of the affected design in the worldwide fleet. The FAA estimates that 51 airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per airplane to accomplish the required inspection, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the inspection on U.S. operators is estimated to be $3,060, or $60 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2003–03–08 McDonnell Douglas: Amendment 39–13032. Docket 2001–NM–277–AD.

Applicability: Model DC–9–11, DC–9–12, DC–9–13, DC–9–14, DC–9–15, DC–9–15F, DC–9–21, DC–9–31, DC–9–32, DC–9–32 (VC–9C), DC–9–32F, DC–9–32F (C–9A, C–9B), DC–9–33F, DC–9–34, DC–9–34F, DC–9–41, and DC–9–51 airplanes equipped with forward lavatories; as listed in Boeing Alert Service Bulletin DC9–24A190, Revision 01, dated November 21, 2001; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To find and fix contamination of certain electrical connectors and prevent future contamination of these connectors, which could cause electrical arcing and result in a fire on the airplane, accomplish the following:

One-Time Inspection and Corrective Actions

(a) Within 18 months after the effective date of this AD, perform a one-time general visual inspection of the disconnect panel at station Y=237.000 in the left forward cargo compartment to find evidence of contamination (*e.g.*, staining or corrosion) of electrical connectors by blue water, and to determine if a dripshield is installed over the

disconnect panel. Do this inspection according to the Accomplishment Instructions of Boeing Alert Service Bulletin DC9–24A190, Revision 01, excluding Evaluation Form, dated November 21, 2001.

(1) If no evidence of contamination of electrical connectors is found, and a dripshield is installed, no further action is required by this AD.

(2) If any evidence of contamination of any electrical connector is found: Before further flight, remove each affected connector, and install a new or serviceable connector according to the service bulletin.

(3) If no dripshield is installed over the disconnect panel: Before further flight, install a dripshield according to the service bulletin.

Previously Accomplished Inspections and Corrective Actions

(b) Inspections and corrective actions accomplished before the effective date of this AD in accordance with Boeing Alert Service Bulletin DC9–24A190, dated July 31, 2001, are considered acceptable for compliance with the corresponding action specified in this AD.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

Special Flight Permits

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(e) Unless otherwise specified by this AD, the actions shall be done in accordance with Boeing Alert Service Bulletin DC9–24A190, Revision 01, excluding Evaluation Form, dated November 21, 2001. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1-L5A (D800–0024). Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(f) This amendment becomes effective on March 7, 2003.

Issued in Renton, Washington, on January 22, 2003.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–1954 Filed 1–30–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–48–AD; Amendment 39–13034; AD 2003–03–10]

RIN 2120–AA64

Airworthiness Directives; BAE Systems (Operations) Limited Model BAe 146 and Avro 146-RJ Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all BAE Systems (Operations) Limited Model BAe 146 and Avro 146–RJ series airplanes, that requires replacement of the existing "Low Temp" terminal blocks "G" with new, fireproof ceramic terminal blocks "G" in engine zones 412, 422, 432, and 442. This action is necessary to prevent failure of the engine fire detection and suppression systems to operate properly in the event of a fire due to failure of non-fireproof terminal blocks, which could result in an undetected and uncontrollable fire in an engine. This action is intended to address the identified unsafe condition.

DATES: Effective March 7, 2003.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 7, 2003.

ADDRESSES: The service information referenced in this AD may be obtained from British Aerospace Regional Aircraft American Support, 13850 Mclearen Road, Herndon, Virginia 20171. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Todd Thompson, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1175; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to all BAE Systems (Operations) Limited Model BAe 146 and Avro 146-RJ series airplanes was published in the **Federal Register** on May 15, 2002 (67 FR 34633). That action proposed to require replacement of the existing "Low Temp" terminal blocks "G" with new, fireproof ceramic terminal blocks "G" in engine zones 412, 422, 432, and 442.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comment received.

Request To Extend the Compliance Time

One commenter requests that the FAA extend the compliance time for the replacement in the proposed AD from 21 months to July 31, 2004, (the equivalent of an additional 12 months). The commenter states that the request is based upon limited parts availability and feedback from large fleet operators. The commenter also states that the Civil Aviation Authority for the United Kingdom has approved the extension of the compliance time for airplanes operating in the United Kingdom.

The FAA concurs with the commenter's request. We have verified that the lead time for obtaining the required modification parts will exceed the proposed compliance time of 21 months. In light of this situation, we will extend the compliance time from 21 months to 31 months after the effective date of this AD. We have determined that such an extension will accommodate the time necessary for affected operators to order and obtain the replacement parts, without adversely affecting safety. We have revised paragraph (a) of this AD accordingly.

Explanation of New Relevant Service Information

Since issuance of the proposed AD, the manufacturer has issued BAE Systems (Operations) Limited Service Bulletin SB.71–077–01693A, Revision 1, dated March 28, 2002; and Revision 2, dated May 28, 2002. The proposed rule

referenced the original issue of this service bulletin, dated October 10, 2001, as the appropriate source of service information for the proposed replacement. We find that the procedures described in Revision 1 and Revision 2 of the service bulletin are essentially the same as those in the original issue. Therefore, we have revised paragraph (a) of the final rule to reference Revision 2 of the service bulletin as the appropriate source of service information. We have also included a new paragraph (b) to this final rule (and re-lettered subsequent paragraphs accordingly) to give credit for replacements accomplished before the effective date of this AD per the original issue or Revision 1 of the service bulletin.

Conclusion

After careful review of the available data, including the comment noted above, we have determined that air safety and the public interest require the adoption of the rule with the changes described previously. We have determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

We estimate that 55 Model BAe 146 and Avro 146-RJ series airplanes of U.S. registry will be affected by this AD, that it will take approximately 4 work hours per airplane (1 hour per engine, 4 engines per airplane) to accomplish the required actions, and that the average labor rate is $60 per work hour. The cost for required parts will be negligible. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $13,200, or $240 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2003–03–10 BAE Systems (Operations) Limited: Amendment 39–13034. Docket 2002–NM–48–AD.

Applicability: All Model BAE 146 and Avro 146–RJ series airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the engine fire detection and suppression systems to operate properly in the event of a fire, which could result in an undetected and uncontrollable fire in an engine, accomplish the following:

Replacement

(a) Within 31 months after the effective date of this AD, replace the existing "Low Temp" terminal blocks "G" with new, fireproof ceramic terminal blocks "G," part number S3409–872, in engine zones 412, 422, 432, and 442; per BAE Systems (Operations) Limited Service Bulletin SB.71–077–01693A, Revision 2, dated May 28, 2002.

(b) Replacements accomplished prior to the effective date of this AD per BAE Systems (Operations) Limited Service Bulletin SB.71–077–01693A, dated October 10, 2001; or Revision 1, dated March 28, 2002; are acceptable for compliance with the requirements of paragraph (a) of this AD.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(e) Unless otherwise specified in this AD, the replacement shall be done per BAE Systems (Operations) Limited Service Bulletin SB.71–077–01693A, Revision 2 dated May 28, 2002. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from British Aerospace Regional Aircraft American Support, 13850 Mclearen Road, Herndon, Virginia 20171. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the **Federal Register**, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in British airworthiness directive 005–10–2001.

Effective Date

(f) This amendment becomes effective on March 7, 2003.

Issued in Renton, Washington, on January 22, 2003.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–1955 Filed 1–30–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NE–06–AD; Amendment 39–13036; AD 2003–03–12]

RIN 2120–AA64

Airworthiness Directives; Turbomeca S.A. Arriel 1 A2, 1 C, 1 C1, 1 C2, 1 D, 1 D1, 1 E2, 1 K, 1 K1, 1 S, 1 S1 and Arriel 2 B, 2 B1, 2 C, 2 C1, 2 S1 Series Turboshaft Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), that is applicable to Turbomeca S.A. Arriel 1 A2, 1 C, 1 C1, 1 C2, 1 D, 1 D1, 1 E2, 1 K, 1 K1, 1 S, 1 S1 and Arriel 2 B, 2 B1, 2 C, 2 C1, 2 S1 series turboshaft engines. This amendment requires the insertion of a sleeve in the attachment boss of the compressor bleed valve, and bonding the sleeve in the bleed-valve mounting pad. This amendment is prompted by several cases of contained centrifugal compressor impeller blade ruptures that occurred in service. The actions specified by this AD are intended to prevent acoustic excitation of the centrifugal compressor impeller blades resulting in contained compressor impeller blade ruptures and power loss that could lead to an uncommanded in-flight shutdown.

DATES: Effective March 7, 2003. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 7, 2003.

ADDRESSES: The service information referenced in this AD may be obtained from Turbomeca S.A, 64511 Bordes Cedex, France; telephone 33 05 59 64 40 00; fax 33 05 59 64 60 80. This information may be examined, by appointment, at the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Antonio Cancelliere, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7751; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that is applicable to Turbomeca S.A. Arriel 1 D, 1 D1, 1 S, 1 S1, and – 2B series turboshaft engines was published in the **Federal Register** on September 6, 2001 (66 FR 46562). That proposal was revised by a supplemental notice of proposed rulemaking (SNPRM) to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that expanded the applicability to Turbomeca S.A. Arriel 1 A2, 1 C, 1 C1, 1 C2, 1 D, 1 D1, 1 E2, 1 K, 1 K1, 1 S, 1 S1 and Arriel 2 B, 2 B1, 2 C, 2 C1, 2 S1 series turboshaft engines. That SNPRM was published in the **Federal Register** on September 20, 2002 (67 FR 59217). That action proposed to require the insertion of a sleeve in the attachment boss of the compressor bleed valve, and bonding the sleeve in the bleed-valve mounting pad, in accordance with Turbomeca S.A. Mandatory Service Bulletin (MSB) No. 292 72 2054, dated September 20, 1999; MSB No. 292 72 0261, dated September 20, 1999; MSB No. 292 72 2070, Update No. 1, dated October 5, 2001; and MSB No. 292 72 0275, Update No. 1, dated October 2, 2001. Since the publication of the SNPRM, MSB No. 292 72 0275 has been reissued as Update No. 2, dated April 15, 2002. This MSB expands the engine model applicability of this AD by referencing MSB No. 292 72 0261, dated September 20, 1999, and Service Bulletin (SB) No. 292 72 0262, dated September 28, 1999. Accordingly, a new paragraph (b) has been added to reflect the updated MSB.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposal or the FAA's determination of the cost to the public. The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Economic Analysis

There are approximately 1,406 Turbomeca S.A. Arriel 1 and Arriel 2 model turboshaft engines of the affected design in the worldwide fleet. The FAA estimates that 476 engines installed on helicopters of U.S. registry will be affected by this AD, that it will take approximately 1.0 work hour per engine to perform the required actions, and that the average labor rate is $60 per work hour. Required parts will cost approximately $430 per engine. Based on these figures, the total cost of the AD to U.S. operators is estimated to be $233,240.

Regulatory Analysis

This final rule does not have federalism implications, as defined in Executive Order 13132, because it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the FAA has not consulted with state authorities prior to publication of this final rule.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

2003–03–12 Turbomeca S.A.: Amendment 39–13036. Docket No. 2001–NE–06–AD.

Applicability: This airworthiness directive (AD) is applicable to Turbomeca S.A. Arriel

1 A2, 1 C, 1 C1, 1 C2, 1 D, 1 D1, 1 E2, 1 K, 1 K1, 1 S, 1 S1 and Arriel 2 B, 2 B1, 2 C, 2 C1, 2 S1 series turboshaft engines. These engines are installed on, but not limited to, Eurocopter France AS350B1, AS350B2, AS350B3; Astar 350D, Fennic AD550U2 and Sikorsky S–76A and S–76C series helicopters.

Note 1: This AD applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (f) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Compliance with this AD is required within 30 days after the effective date of this AD, unless already done.

To prevent acoustic excitation of the centrifugal compressor impeller blades, resulting in contained blade ruptures and power loss that could lead to an uncommanded in-flight shutdown, do the following:

Modification TU 300 Not Incorporated

(a) For Arriel 1 D, 1 D1, 1 S, and 1 S1 engines that do not have TU 300 incorporated, incorporate TU 300 and TU 316A as follows:

(1) Remove the bleed valve in accordance with the Instructions to be Incorporated of Turbomeca mandatory service bulletin (MSB) No. 292 72 0261, dated September 20, 1999.

(2) Install sleeve part number (P/N) 0 292 15 333 0 and the bleed valve in accordance with 2.B.(1)(d) through 2.B.(1)(g) of the Instructions to be Incorporated of Turbomeca MSB No. 292 72 0275, Update No. 2, dated April 15, 2002.

(b) For Arriel 1 A2, 1 C, 1 C1, 1 C2, 1 E2, 1K, 1 K1 engines that do not have TU 300 incorporated, incorporate TU 300 and TU 316A as follows:

(1) Remove the bleed valve in accordance with the Instructions to be Incorporated of Turbomeca service bulletin (SB) No. 292 72 0262, dated September 28, 1999.

(2) Install sleeve part number (P/N) 0 292 15 333 0 and the bleed valve in accordance with 2.B.(1)(d) through 2.B.(1)(g) of the Instructions to be Incorporated of Turbomeca MSB No. 292 72 0275, Update No. 2, dated April 15, 2002.

Modification TU 300 Incorporated

(c) For Arriel 1 A2, 1 C, 1 C1, 1 C2, 1 D, 1 D1, 1 E2, 1 K, 1 K1, 1 S and 1 S1 engines that have modification TU 300 incorporated, incorporate modification TU 316A in accordance with 2.B.(1)(a) through 2.B.(1)(g) or 2.B.(2) of the Instructions to be Incorporated of Turbomeca. MSB No. 292 72 0275, Update No. 2, dated April 15, 2002.

Modification TU 54 Not Incorporated

(d) For Arriel 2 B and 2 S1 engines that do not have modification TU 54 incorporated, incorporate TU 54 and TU 70A as follows:

(1) Remove the bleed valve in accordance with the Instructions to be Incorporated of Turbomeca MSB No. 292 72 2054, dated September 20, 1999.

(2) Install sleeve P/N 0 292 15 333 0 and the bleed valve in accordance with the 2.B.(1)(d) through 2.B.(1)(g) or 2.B.(2) of the Instructions to be Incorporated of Turbomeca MSB No. 292 72 2070, Update No. 1, dated October 5, 2001.

Modification TU 54 Incorporated

(e) For Arriel 2 B, 2 B1, 2 C, 2 C1 and 2 S1 engines that have modification TU 54 incorporated, incorporate modification TU 70A in accordance with 2.B.(1)(a) through 2.B.(1)(g) or 2.B.(2) of the Instructions to be Incorporated of Turbomeca MSB No. 292 72 2070, Update No. 1, dated October 5, 2001.

Alternative Methods of Compliance

(f) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office (ECO). Operators must submit their request through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, ECO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the ECO.

Special Flight Permits

(g) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the aircraft to a location where the requirements of this AD can be done.

Documents That Have Been Incorporated by Reference

(h) The actions must be done in accordance with the following Turbomeca S.A. Mandatory Service Bulletins (MSB's) and Service Bulletin (SB):

Document No.	Pages	Revision	Date
MSB No. 292 72 2054 ..... Total Pages: 6	All	Original	Sept. 20, 1999.
MSB No. 292 72 0261 ..... Total Pages: 6	All	Original	Sept. 20, 1999.
SB No. 292 72 0262 ..... Total Pages: 6	All	Original	Sept. 28, 1999.
MSB No. 292 72 2070 ..... Total Pages: 9	All	1	Oct. 5, 2001.
MSB No. 292 72 0275 ..... Total Pages: 9	All	2	April 15, 2002.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Turbomeca S.A, 64511 Bordes Cedex, France; telephone 33 05 59 64 40 00; fax 33 05 59 64 60 80. Copies may be inspected at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in Direction Generale de L'Aviation Civile (DGAC) Airworthiness Directives No. 2002–126(A) and 2002–127(A), dated March 6, 2002 that replaced DGAC AD's 1999–391(A) and 1999–392(A), dated October 6, 1999.

Effective Date

(i) This amendment becomes effective on March 7, 2003.

Issued in Burlington, Massachusetts, on January 22, 2003.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 03–2093 Filed 1–30–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–CE–05–AD; Amendment 39–13037; AD 2003–03–13]

RIN 2120–AA64

Airworthiness Directives; MORAVAN a.s. Model Z–242L Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to all MORAVAN a.s. (Moravan) Model Z-242L airplanes. This AD establishes a technical service life for these airplanes by restricting Acrobatic and Utility category operations and requiring replacement of the wings after a certain operational time period. This AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for the Czech Republic. The actions specified by this AD are intended to prevent structural failure of the wing due to fatigue cracking. Such failure could result in a wing separating from the airplane with consequent loss of airplane control.

DATES: This AD becomes effective on March 21, 2003.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulations as of March 21, 2003.

ADDRESSES: You may get the service information referenced in this AD from Moravan, Inc., 765 81 Otrokovice, Czech Republic; telephone: +420 67 767 3940; facsimile: +420 67 792 2103. You may view this information at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2000-CE–05-AD, 901 Locust, Room 506, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4059; facsimile: (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Discussion

What Events Have Caused This AD?

The Civil Aviation Authority Czech Republic (CAA CZ), which is the airworthiness authority for the Czech Republic, notified FAA that an unsafe condition may exist on all Moravan Model Z-242L airplanes. The CAA CZ reports that these airplanes are operated over the load spectrum that was used at certification. The CAA CZ further reports that a technical service life for these airplanes is needed. The affected airplanes fall into two different groups:

—Group 1: those airplanes with a serial number in the range of 0001 through 0656 with the original wings installed; and

—Group 2: those airplanes with stronger wings installed either through modification (serial numbers 0001 through 0656) or at manufacture (all serial numbers beginning with 0657).

Based on analysis, the CAA CZ reports that the technical service life should be:

	Acrobatic and utility category operations	All operations
Group 1	190 hours time-in-service (TIS) only in these categories. Operation only in the Normal category thereafter.	3,500 hours TIS. New wings must be installed prior to further operation.
Group 2	450 hours TIS only in these categories. Operation only in the Normal category thereafter.	5,500 hours TIS. New wings must be installed prior to further operation.

What Is the Potential Impact if FAA Took No Action?

Fatigue cracks in the wing, if not detected and corrected or prevented, could result in structural failure of the wing. Such failure could result in a wing separating from the airplane with consequent loss of airplane control.

Has FAA Taken Any Action to This Point?

We issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to all Moravan Model Z–242L airplanes. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on October 4, 2002 (67 FR 62214). The NPRM proposed to establish a technical service life for these airplanes by restricting Acrobatic and Utility category operations and requiring replacement of the wings after a certain operational time period.

Was the Public Invited to Comment?

The FAA encouraged interested persons to participate in the making of this amendment. The following presents the comments received on the proposal and FAA's response to each comment:

Comment Issue No. 1: Delay the AD Until Moravan America Completes an Analysis of the Problem and Presents an Alternative

What Is the Commenters' Concern?

Several commenters request that FAA delay issuing the final rule AD until after Moravan America has a chance to present an alternative to the actions specified in the NPRM. Specific comments in this area are as follows:

—One of the alternatives that Moravan America is working on allows an extension of the 450-hour time-in-service (TIS) Acrobatic and Utility operations life limit to 700 hours TIS. This would only apply to airplanes with strengthened wings;

—Moravan America will produce a service bulletin tailored to the operational characteristics of the U.S. safety assurance system and will provide operational guidelines and a measurement system for exceeding load limits. Included in this service bulletin would be guidelines for continued airworthiness and operational constraints;

—The FAA should delay issuing this AD until Moravan America has a chance to evaluate all the facts leading to the issuance of the Czech Republic AD. The Moravan America proposed solution will be a better option; and

—Moravan America can have a proposed alternative to this AD within 90 days.

What Is FAA's Response to the Concern?

The FAA is continuing with this AD action. However, we will add a grace period of "90 days after the effective date of this AD" to the compliance time of the life limits in the Utility and Acrobatic categories. This would make the compliance time "upon accumulating either 190 hours TIS or 450 hours TIS in the Utility or Acrobatic category or on or before June 10, 2003 (90 days after the effective date of this AD), whichever occurs later." This compliance time change will give Moravan America the time it needs to develop an alternative method of compliance and service bulletin for FAA approval.

Based on data submitted, we may approve an alternative method of compliance and amend the AD, as appropriate.

Comment Issue No. 2: The Life Limit for Airplanes With Strengthened Wings Should Be 5,500 Hours Time-in-Service (TIS)

What Is the Commenter's Concern?

One commenter states that the life limit for airplanes with the strengthened wings should be 5,500 hours TIS. We infer that the commenter wants the NPRM changed to reflect this.

What Is FAA's Response to the Concern?

We partially concur. The life limit for the affected airplanes with strengthened wings is 5,500 hours TIS while operated in the Normal category. The life limit for these airplanes in the Utility and Acrobatic categories is 450 hours TIS. After the sum of time in the Utility and Acrobatic categories equals 450 hours TIS or within 90 days after the effective date of the AD (whichever occurs later), you may only operate the airplane in the Normal category until the accumulation of 5,500 hours TIS. Utility and Acrobatic category operation would be prohibited until the installation of new wings.

The life limits for Utility and Acrobatic category operation and Normal category operation would start over again after replacement of the wings.

We are not changing the final rule AD action as a result of this comment.

Comment Issue No. 3: Allow a Life Limit Extension Through Installation of the AMU1 Monitoring Unit

What Is the Commenters' Concern?

Several commenters request that FAA change the NPRM to allow those airplanes that incorporate the strengthened wings to operate past 450 hours TIS in the Utility and Acrobatic categories if an AMU1 (acceleration monitoring unit) is installed. The commenters state that this unit regularly monitors the load factors on the primary structure and evaluates the measured load spectrum and collates it with the CAA–FAA and ZLIN–A spectrums. The commenters feel that this AMU1 unit has had an indisputable and substantial impact on increasing the safe fatigue life on the Model Z–242L airplanes.

What Is FAA's Response to the Concern?

We do not concur that the AMU1 unit should be part of the proposed AD. The CAA CZ examined all the available data and decided that these airplanes should be life limited to the levels described in the NPRM.

We have determined that these life limit values are valid and that allowing all airplanes to exceed these values through the use of an acceleration monitoring unit does not address the unsafe condition. The FAA will evaluate requests for this option on an individual basis and may issue alternative methods of compliance provided the request is made in accordance with the procedures in paragraph (e) of the AD and provides a level of safety acceptable to FAA.

We are not changing the final rule AD action as a result of this comment.

Comment Issue No. 4: Allow Moravan to Extend the Life Limits on a Case-by-Case Basis

What Is the Commenters' Concern?

Several commenters state that Moravan has the capability of approving the data from the acceleration monitoring unit and allowing continued operation past the specified life limits. The commenters further state that Moravan recognizes the information from both the AMU1 unit and the Corsa Data Acquisition System (CDAS) in allowing the affected airplanes to operate past the 450-hour TIS life limit in the Utility and Acrobatic categories and operate to the 5,500-hour TIS Normal category life limit.

The commenters suggest that FAA give Moravan the authority to allow the affected airplane operators to operate past the Utility and Acrobatic life limit categories.

What Is FAA's Response to the Concern?

We do not concur. As earlier stated, the CAA CZ examined all the available data and decided that these airplanes should be life limited to the levels described in the NPRM. We have determined that these life limits are valid.

The FAA is not allowed to delegate its rulemaking authority to an aircraft manufacturer. Allowing Moravan to determine whether an airplane can exceed these values through the use of an AMU1 or CDAS would be the same as delegating our rulemaking authority.

We will evaluate requests for this option on an individual basis and may issue alternative methods of compliance provided the request is found to be at a level of safety acceptable to FAA and is made in accordance with the procedures in paragraph (e) of the AD.

We are not changing the final rule AD action as a result of this comment.

Comment Issue No. 5: Allow a Root Wing Modification

What Is the Commenter's Concern?

One commenter recommends that FAA add the option of incorporating a wing root modification to allow operation in the Utility and Acrobatic categories to 3,500 hours TIS. This is for airplanes with unstrengthened wings that are not eligible for the AMU1 method to increase operation to the 5,500 hours TIS.

What Is FAA's Response to the Concern?

We do not concur. As earlier stated, the CAA CZ examined all the available data and decided that these airplanes should be life limited to the levels described in the NPRM. We have determined that these life limits are valid.

Moravan has superseded the service bulletin that incorporated the referenced root wing modification, and the CAA CZ does not have current AD action that references this root wing modification. The FAA has examined all of the information available from CAA CZ and has determined that the root wing modification is not a valid option for this AD action.

We are not changing the final rule AD action as a result of this comment.

Comment Issue No. 6: The Model Z–242L Airplanes Should Either Be Eliminated From the AD or Not Have Utility and Acrobatic Category Life Limit Restrictions

What Is the Commenters' Concern?

Several comments state that both the CAA CZ and FAA have approved fatigue testing done on 3 Model Z242L airplanes that shows that the airplanes can be operated to 5,500 hours TIS without any life limits on Utility or Acrobatic category operations. These commenters recommend that we remove the Utility and Acrobatic category life limit requirement from the AD for the Model Z–242L airplanes.

Another commenter states that the service history on this subject matter is only for the earlier manufactured airplane models and no data exists for the Model Z–242L airplanes. The airplane models that the commenter refers to are not certificated for operation in the United States. This commenter recommends that FAA withdraw the NPRM.

One commenter states that the proposed AD action is based on an accident of a Model Z–142 airplane (not certificated in the United States) in Australia. The commenter points out that the wing on the Model Z–242L has a totally different design and should not be affected by the subject matter in this AD. The commenter proposes that FAA withdraw the NPRM.

What Is FAA's Response to the Concern?

The FAA does not concur that the Model Z–242L airplanes should be

excluded from the AD or exempt from the Utility and Acrobatic category life limit requirements. We concur that there may be differences in the design of the aircraft, but we do not concur that the Model Z–242L is not affected by this subject matter. The CAA CZ has approved the life limits that are included in this AD for the Model Z–242L airplanes, and FAA has determined that they are valid for these airplanes that are registered in the United States. The FAA has to issue an AD to mandate the reduction in a life limit or a change or addition of an airworthiness limitation, even if the reduction, change, or addition is FAA-approved. Therefore, the AD is necessary in order to ensure the life limits are required.

We are not changing the final rule AD action as a result of this comment.

Comment Issue No. 7: Why Issue an AD When the Life Limits Are Already Published in the Maintenance Manual

What Is the Commenter's Concern?

One commenter states that the current life limits are already in force because the manufacturer included them in a revision to the maintenance manual. Because of this, the commenter believes the AD is unnecessary and requests that FAA withdraw the NPRM.

What Is FAA's Response to the Concern?

We do not concur that the AD is unnecessary and the NPRM should be withdrawn. There are distinct differences between the CAA CZ and FAA's rulemaking processes. If the CAA CZ determines an airworthiness limitation should be added or a life limit should be reduced, it only has to stamp CAA CZ approved on the document (service bulletin or maintenance manual revision) to enforce the change. The FAA has to issue an AD to mandate the reduction in a life limit or a change or addition of an airworthiness limitation, even if the reduction, change, or addition is FAA-approved. Therefore, the AD is necessary in order to ensure the life limits are required.

We are not changing the final rule AD action as a result of this comment.

Comment Issue No. 8: Allow the Option of Repetitive Inspections Instead of Wing Replacement

What Is the Commenter's Concern?

One commenter requests that FAA allow repetitive inspection of the wings once one of the affected airplanes reaches the life limit in Utility and Acrobatic operations. The commenter believes that the aircraft could then continue to fly until it reached the total hours TIS life limit provided no cracks are found during the inspections. The commenter states that this would provide the same level of safety because cracks would be detected before failure, and then FAA could mandate replacement of the wings when the cracks were found.

What Is FAA's Response to the Concern?

There currently are no procedures available for detecting cracks in the wings of the affected airplanes. The CAA CZ has not approved inspections in this area and has approved the life limits. Therefore, we are mandating the life limits through this AD action.

We would consider repetitive inspections as an alternative method of compliance provided the method:

—included procedures that provided details on how the onset of the fatigue damage was going to be detected;
—was submitted in accordance with the procedures specified in this AD; and
—provided a level of safety that was acceptable to FAA.

We are not changing the final rule AD action as a result of this comment.

Comment Issue No. 9: The Cost of This AD Is Too High

What Is the Commenters' Concern?

Several commenters request that FAA not issue the AD because of the high cost.

What Is FAA's Response to the Concern?

The FAA does not concur. While we do take the cost impact into consideration on AD actions, the most important aspect is the safety issue. The passenger injuries that might be prevented through compliance with this AD outweigh the cost of compliance with this AD. We have determined that the CAA CZ life limits are valid and should be mandated for airplanes certificated for operation in the United States. We will approve any alternative method of compliance from the commenters provided it is submitted in accordance with the procedures in the AD and we determine that it provides an acceptable level of safety.

We are not changing the final rule AD action as a result of this comment.

Comment Issue No. 10: How Do You Track Utility and Acrobatic Time?

What Is the Commenter's Concern?

One commenter wants clarification on how time in the Utility and Acrobatic categories is calculated. This commenter states that no U.S. operator has an accurate account of acrobatic time at this point so all wings would have to be replaced or no one is going to claim the right number of hours in these categories.

What Is FAA's Response to the Concern?

We concur that it could be difficult to account for the number of hours TIS previously accumulated in the Utility and Acrobatic categories. However, the CAA CZ established the limits in the Utility and Acrobatic categories at 190 or 450 hours TIS and we have determined that they are valid and should be mandated for airplanes certificated for operation in the United States. As previously discussed, we are adding a grace period of "90 days after the effective date of this AD" to the compliance time of the life limits in the Utility and Acrobatic categories. This would make the compliance time "upon accumulating either 190 hours TIS or 450 hours TIS in the Utility or Acrobatic category or on or before June 10, 2003 (90 days after the effective date of this AD), whichever occurs later."

All operators will have at least 90 days before they are restricted from operations in the Utility and Acrobatic categories.

We have added procedures to the AD on how to track time in the Acrobatic and Utility categories. These procedures are also specified in Moravan Mandatory Service Bulletin Z 242L/37a (Z 142C/17a), Rev. 1, dated October 31, 2000; and Moravan Mandatory Service Bulletin Z 242L/38a (Z 142C/18a), dated October 31, 2000.

Comment Issue No. 11: Aircraft Equipped With Nitrogen Spars Should Be Exempt From the AD

What Is the Commenter's Concern?

One commenter states that the life limits are not valid because the affected airplanes are equipped with nitrogen spars. With these spars, you can detect cracks through pressure leakage. The commenter believes that because of these early signs of failure, it is inconceivable that the wings will fall off due to stress. The commenter requests that FAA withdraw the NPRM.

What Is FAA's Response to the Concern?

We do not concur that the AD action is not valid because the affected airplanes are equipped with nitrogen spars. The CAA CZ was aware of this when it performed the analysis to determine the life limits. We have determined that the CAA CZ life limits are valid and should be mandated for airplanes certificated for operation in the United States.

We are not changing the final rule AD action as a result of this comment.

FAA's Determination

What Is FAA's Final Determination on This Issue?

After careful review of all available information related to the subject presented above, we have determined that air safety and the public interest require the adoption of the rule as proposed except for the compliance time change, the addition of procedures on how to track time in the Acrobatic and Utility categories, and minor editorial corrections. We have determined that the change, the addition, and the minor editorial corrections:

—provide the intent that was proposed in the NPRM for correcting the unsafe condition; and

—do not add any additional burden upon the public than was already proposed in the NPRM.

Cost Impact

How Many Airplanes Does This AD Impact?

We estimate that this AD affects 39 airplanes in the U.S. registry.

What Is the Cost Impact of This AD on Owners/Operators of the Affected Airplanes?

We estimate the following costs to replace the wings after the technical service life is reached:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
60 work hours × $60 per hour = $3,600	$17,400 per set of wings	$21,000	$819,000

We have no way of determining the monetary cost of the inconvenience of restricting flight to Normal category operations.

Regulatory Impact

Does This AD Impact Various Entities?

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

Does This AD Involve a Significant Rule or Regulatory Action?

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. FAA amends § 39.13 by adding a new AD to read as follows:

2003–03–13 MORAVAN A.S.: Amendment 39–13037; Docket No. 2000–CE–05–AD.

(a) *What airplanes are affected by this AD?* This AD affects Model Z–242L airplanes, all serial numbers, that are certificated in any category.

(b) *Who must comply with this AD?* Anyone who wishes to operate any of the airplanes identified in paragraph (a) of this AD must comply with this AD.

(c) *What problem does this AD address?* The actions specified by this AD are intended to prevent structural failure of the wing due to fatigue cracking. Such failure could result in a wing separating from the airplane with consequent loss of airplane control.

(d) *What actions must I accomplish to address this problem?* To address this problem, you must establish a technical service life and restrict Acrobatic and Utility category operations. This must be done by accomplishing the following, as applicable:

Actions	Compliance	Procedures
(1) You must annotate Acrobatic and Utility category operational time in the logbook. If the airplane is utilized in either of these categories at any time during a flight, you must annotate the total time for that flight in the Utility or Acrobatic category, as appropriate. The owner/operator holding at least a private pilot certificate as authorized by section 43.7 of the Federal Aviation Regulations (14 CFR 43.7) may annotate the logbook.	As of the March 21, 2003 (the effective date of this AD).	This is specified in Moravan Mandatory Service Bulletin Z 242L/37a (Z 142C/17a), Rev. 1, dated October 31, 2000; and Moravan Mandatory Service Bulletin Z 242L/38a (Z 142C/18a), dated October 31, 2000.

Actions	Compliance	Procedures
(2) If you have an airplane with a serial number in the range of 0001 through 0656 that does not have strengthened wings installed (both left and right wings) in accordance with Moravan Mandatory Service Bulletin Z 242L/27a—Rev. 1, dated October 31, 2000, accomplish the following:. (i) Insert the following information into the Limitations Section of the Airplane Flight Manual (AFM): "Do not operate in the Acrobatic or Utility category. Operate in the Normal category only." (ii) Replace both wings with the following part numbers: (A) L 242.2100 left-hand wing; and (B) L 242.2200 right-hand wing	*AFM incorporation:* Upon the accumulation of 190 hours time-in-service (TIS) in the Acrobatic category and/or Utility category or on or before June 10, 2003 (90 days after the effective date of this AD), whichever occurs later; and *Replacement:* Upon the accumulation of 3,500 hours TIS in all operations or within the next 50 hours TIS in all operations after March 21, 2003 (the effective date of this AD), whichever occurs later.	*AFM incorporation:* The owner/operator holding at least a private pilot certificate as authorized by section 43.7 of the Federal Aviation Regulations (14 CFR 43.7) may accomplish this AFM insertion of this AD. Make an entry into the aircraft records showing compliance with these portions of the AD in accordance with section 43.9 of the Federal Aviation Regulations (14 CFR 43.9). This operational restriction is referenced in Moravan Mandatory Service Bulletin Z 242L/37a (Z 142C/17a), Rev. 1, dated October 31, 2000. *Replacement:* In accordance with Moravan Mandatory Service Bulletin Z 242L/27a—Rev. 1, dated October 31, 2000.
(3) If you have an airplane with a serial number of 0657 or higher or one in the range of 0001 through 0656 that has strengthened wings (both left and right) installed in accordance with Moravan Mandatory Service Bulletin Z 242L/27a—Rev. 1, dated October 31, 2000, accomplish the following:. (i) Insert the following information into the Limitations Section of the Airplane Flight Manual (AFM): "Do not operate in the Acrobatic or Utility category. Operate in the Normal category only." (ii) Replace both wings with the following part numbers: (A) L 242.2100 left-hand wing; and (B) L 242.2200 right-hand wing	*AFM incorporation:* Upon the accumulation of 450 hours (TIS) in the Acrobatic category and/or Utility category or on or before June 10, 2003 (90 days after the effective date of this AD), whichever occurs later; and *Replacement:* Upon the accumulation of 5,500 hours TIS in all operations or within the next 50 hours TIS after March 21, 2003 (the effective date of this AD), whichever occurs later. You must maintain the AFM requirement until replacement of the wings.	*AFM incorporation:* The owner/operator holding at least a private pilot certificate as authorized by section 43.7 of the Federal Aviation Regulations (14 CFR 43.7) may accomplish this AFM insertion of this AD. Make an entry into the aircraft records showing compliance with these portions of the AD in accordance with section 43.9 of the Federal Aviation Regulations (14 CFR 43.9). This operational restriction is referenced in Moravan Mandatory Service Bulletin Z 242L/38a (Z 142C/18a), dated October 31, 2000. *Replacement:* In accordance with Moravan Mandatory Service Bulletin Z 242L/27a—Rev. 1, dated October 31, 2000.
(4) Only install a wing with a part number of L 242.2100 left-hand wing or L 242.2200 right-hand wing.	As of March 21, 2003 (the effective date of this AD).	Not applicable.
(5) When you install new wings (both left and right) on your airplane, the AFM and replacement requirements of paragraph (d)(2) of this AD apply.	*AFM incorporation:* Upon the accumulation of 450 hours TIS in the Acrobatic category and/or Utility category; and *Replacement:* Upon the accumulation of 5,500 hours TIS in all operations.	See paragraph (d)(3) of this AD.

(e) *Can I comply with this AD in any other way?* You may use an alternative method of compliance or adjust the compliance time if:

(1) Your alternative method of compliance provides an equivalent level of safety; and

(2) The Manager, Standards Office, Small Airplane Directorate, approves your alternative. Submit your request through an FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standards Office, Small Airplane Directorate.

Note 1: This AD applies to each airplane identified in paragraph (a) of this AD, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if you have not eliminated the unsafe condition, specific actions you propose to address it.

(f) *Where can I get information about any already-approved alternative methods of compliance?* Contact Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4059; facsimile: (816) 329–4090.

(g) *What if I need to fly the airplane to another location to comply with this AD?* The FAA can issue a special flight permit under sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate your airplane to a location where you can accomplish the requirements of this AD.

(h) *Are any service bulletins incorporated into this AD by reference?* The replacements required by this AD must be done in accordance with Moravan Mandatory Service Bulletin Z 242L/27a—Rev. 1, dated October 31, 2000. The Director of the Federal Register approved this incorporation by reference under 5 U.S.C. 552(a) and 1 CFR part 51. You may get copies from Moravan, Inc., 765 81 Otrokovice, Czech Republic; telephone: +420 67 767 3940; facsimile: +420 67 792 2103. You may view copies at the FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

Note 2: The subject of this AD is addressed in Czech Republic AD Number CAA–AD–T–099/2000R1, dated June 28, 2001.

(i) *When does this amendment become effective?* This amendment becomes effective on March 21, 2003.

Issued in Kansas City, Missouri, on January 21, 2003.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–1956 Filed 1–30–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–172–AD; Amendment 39–13033; AD 2003–03–09]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model MD–90–30 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain McDonnell Douglas Model MD–90–30 airplanes. This AD requires a one-time inspection of the single-phase remote control circuit breaker(s) (RCCBs) in a certain area of the electrical/electronic (E/E) compartment to determine the part number and serial number of the RCCB(s), and replacement of certain RCCBs with new or serviceable RCCBs, if necessary. This action is necessary to prevent failure of an RCCB to trip during an overload condition due to a defective braze joint in the RCCB latch assembly, which could result in overheating of the RCCB load wire, and consequent smoke and possible fire in the E/E compartment of the airplane. This action is intended to address the identified unsafe condition.

DATES: Effective March 7, 2003.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 7, 2003.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: George Mabuni, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5341; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model MD–90–30 airplanes was published in the **Federal Register** on October 1, 2002 (67 FR 61569). That action proposed to require a one-time inspection of the single-phase remote control circuit breaker(s) (RCCBs) in a certain area of the electrical/electronic (E/E) compartment to determine the part number and serial number of the RCCB(s), and replacement of certain RCCBs with new or serviceable RCCBs, if necessary.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

There are approximately 86 Model MD–90–30 airplanes of the affected design in the worldwide fleet. We estimate that 21 airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per airplane to accomplish the required inspection, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of this inspection on U.S. operators is estimated to be $1,260, or $60 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2003–03–09 McDonnell Douglas: Amendment 39–13033. Docket 2001–NM–172–AD.

Applicability: Model MD–90–30 airplanes as listed in McDonnell Douglas Alert Service Bulletin MD90–24A053, Revision 01, dated February 23, 2001; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by

this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of a remote control circuit breaker (RCCB) to trip during an overload condition due to a defective braze joint in the RCCB latch assembly, which could result in overheating of the RCCB load wire, and consequent smoke and possible fire in the electrical/electronic (E/E) compartment of the airplane, accomplish the following:

Inspection and Replacement, If Necessary

(a) Within 6 months after the effective date of this AD, perform a one-time inspection of the single-phase RCCB or RCCBs, as applicable, at station Y=120.050 in the E/E compartment of the airplane to determine the part number and serial number of the RCCB(s), per the Accomplishment Instructions of McDonnell Douglas Alert Service Bulletin MD90–24A053, Revision 01, excluding Evaluation Form, dated February 23, 2001.

(1) If an RCCB has a part number that is not listed in Table 1, Figure 1, or Table 2, Figure 2, of the service bulletin, as applicable: No further action is required by this AD for that RCCB. It is not necessary to report findings to Boeing by completing the form in the Appendix of the service bulletin.

(2) If an RCCB has a part number that is listed in Table 1, Figure 1, or Table 2, Figure 2, of the service bulletin, as applicable, and the corresponding serial number is not identified in that table: No further action is required by this AD for that RCCB. It is not necessary to report findings to Boeing by completing the form in the Appendix of the service bulletin.

(3) If an RCCB has a part number that is listed in Table 1, Figure 1, or Table 2, Figure 2, of the service bulletin, as applicable; and the corresponding serial number is identified in that-table: Before further flight, replace the RCCB with a new or serviceable RCCB per the Accomplishment Instructions of the service bulletin. The replacement RCCB must have the same part number as the part being replaced, and a serial number that is not identified in Table 1, Figure 1, or Table 2, Figure 2, of the service bulletin, as applicable. It is not necessary to report findings to Boeing by completing the form in the Appendix of the service bulletin.

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

Special Flight Permits

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(d) The actions shall be done in accordance with McDonnell Douglas Alert Service Bulletin MD90–24A053, Revision 01, excluding Evaluation Form, dated February 23, 2001. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(e) This amendment becomes effective on March 7, 2003.

Issued in Renton, Washington, on January 22, 2003.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–1953 Filed 1–30–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 203

[Docket No. 92N–0297]

RIN 0905–AC81

Prescription Drug Marketing Act of 1987; Prescription Drug Amendments of 1992; Policies, Requirements, and Administrative Procedures; Delay of Effective Date

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; delay of effective date.

SUMMARY: The Food and Drug Administration (FDA) is further delaying, until April 1, 2004, the effective date of certain requirements of a final rule published in the **Federal Register** of December 3, 1999 (64 FR 67720). In the **Federal Register** of May 3, 2000 (65 FR 25639), the agency delayed until October 1, 2001, the effective date of certain requirements in the final rule relating to wholesale distribution of prescription drugs by distributors that are not authorized distributors of record, and distribution of blood derivatives by entities that meet the definition of a "health care entity" in the final rule. The agency further delayed the effective date of these requirements in two subsequent **Federal Register** documents. Most recently, in the **Federal Register** of February 13, 2002 (67 FR 6645), FDA delayed the effective date until April 1, 2003. This action further delays the effective date of these requirements until April 1, 2004. The final rule implements the Prescription Drug Marketing Act of 1987 (PDMA), as modified by the Prescription Drug Amendments of 1992 (PDA), and the Food and Drug Administration Modernization Act of 1997 (the Modernization Act). The agency is taking this action to address concerns about the requirements raised by affected parties.

To the extent that 5 U.S.C. 553 applies to this action, it is exempt from notice and comment because it constitutes a rule of procedure under 5 U.S.C. 553(b)(3)(A). Alternatively, the agency's implementation of this action without opportunity for public comment, effective immediately upon publication today in the **Federal Register**, is based on the good cause exceptions in 5 U.S.C. 553(b)(3)(B) and (d)(3). Seeking public comment is impracticable, unnecessary, and contrary to the public interest. As explained in the **SUPPLEMENTARY INFORMATION** section, FDA has prepared a report for Congress and concluded that although FDA can address some of industry's concerns with the PDMA regulation through regulatory changes, other concerns would have to be addressed by Congress through legislative action. The further delay is necessary to give Congress additional time to consider the information and conclusions contained in the agency's report, and to determine if legislative action is appropriate. The further delay will also give the agency additional time to consider whether regulatory changes are appropriate and, if so, to initiate such changes.

DATES: The effective date for §§ 203.3(u) and 203.50, and the applicability of § 203.3(q) to wholesale distribution of blood derivatives by health care entities, added at 64 FR 67720, December 3, 1999, is delayed until April 1, 2004. Submit written or electronic comments by April 1, 2003.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20857. All comments should be identified with the docket number found in brackets in the heading of this document. Submit electronic comments to http://www.fda.gov/dockets/ecomments.

FOR FURTHER INFORMATION CONTACT: Aileen H. Ciampa, Center for Drug Evaluation and Research (HFD–7), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–2041.

SUPPLEMENTARY INFORMATION: PDMA (Public Law 100–293) was enacted on April 22, 1988, and was modified by the PDA (Public Law 102–353, 106 Stat. 941) on August 26, 1992. The PDMA, as modified by the PDA, amended sections 301, 303, 503, and 801 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 331, 333, 353, and 381) to, among other things, establish requirements for the wholesale distribution of prescription drugs and for the distribution of blood derived prescription drug products by health care entities.

On December 3, 1999, the agency published final regulations in part 203 (21 CFR part 203) implementing PDMA (64 FR 67720). After publication of the final rule, the agency received communications from industry, industry trade associations, and members of Congress objecting to the provisions in §§ 203.3(u) and 203.50. On March 29, 2000, the agency met with representatives from the wholesale drug industry and industry associations to discuss their concerns. In addition, FDA received a petition requesting that the relevant provisions of the final rule be stayed until October 1, 2001. The agency also received a petition from the Small Business Administration requesting that FDA reconsider the final rule and suspend its effective date based on the severe economic impact it would have on more than 4,000 small businesses.

In addition to the communications regarding wholesale distribution by unauthorized distributors, the agency received several letters on, and held several meetings to discuss, the implications of the final regulations for blood centers that distribute blood derivative products and provide health care to hospitals and patients.

Based on the concerns expressed by industry, industry associations, and Congress about implementing §§ 203.3(u) and 203.50 by the December 4, 2000, effective date, the agency published a notice in the **Federal Register** of May 3, 2000 (65 FR 25639), delaying the effective date for those provisions until October 1, 2001. In addition, the May 2000 document delayed the applicability of § 203.3(q) to wholesale distribution of blood derivatives by health care entities until October 1, 2001. The May 2000 document also reopened the administrative record to give interested persons until July 3, 2000, to submit written comments.

On May 16, 2000, the House Committee on Appropriations (the Committee) stated in its report accompanying the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Bill, 2001 (H. Rept. 106–619) that it supported the "recent FDA action to delay the effective date for implementing certain requirements of the Prescription Drug Marketing Act until October 1, 2001, and reopen the administrative record in order to receive additional comments." In addition, the Committee stated that it "believes the agency should thoroughly review the potential impact of the proposed provisions on the secondary wholesale pharmaceutical industry." The Committee directed the agency to provide a report to the Committee summarizing the comments and issues raised and agency plans to address the concerns.

After issuing the delay of the effective date, the agency announced in the **Federal Register** of September 19, 2000 (65 FR 56480), that a public hearing would be held to discuss the requirements at issue. The hearing was held on October 27, 2000, and comments were accepted until November 20, 2000.

In the **Federal Register** of March 1, 2001 (66 FR 12850), the agency announced that it was further delaying, until April 1, 2002, the effective date of §§ 203.3(u) and 203.50, and the applicability of § 203.3(q) to wholesale distribution of blood derivatives by health care entities. As explained by the agency, the effective date was further delayed to give FDA additional time to consider comments and testimony received, for FDA to prepare its report to Congress, and, if appropriate, for Congress or the agency to make legislative or regulatory changes. The report was completed and submitted to Congress on June 7, 2001.

In its report to Congress, the agency concluded that it could address some, but not all, of the concerns raised by the secondary wholesale industry and the blood industry through regulatory changes. However, to make other changes requested by the secondary wholesale industry, Congress would have to amend section 503(e) of the act. As a result, on February 13, 2002, FDA further delayed the effective date of the relevant provisions of the final rule until April 1, 2003, in part to give Congress time to consider the information and conclusions contained in the agency's report and to determine if legislative action was appropriate. Based on a recent petition submitted by affected parties, FDA understands that members of Congress are, in fact, considering the issues presented in the agency's report. Due to competing legislative priorities, however, the issues have not yet been resolved. Therefore, to give Congress additional time to determine if legislative action is appropriate, the agency is further delaying the effective date for §§ 203.3(u) and 203.50, and the applicability of § 203.3(q) to wholesale distribution of blood derivatives by health care entities. The further delay of the effective date until April 1, 2004, will also give the agency additional time to consider whether regulatory changes are warranted.

FDA has examined the impacts of this delay of effective date under Executive Order 12866. Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this action is consistent with the regulatory philosophy and principles identified in the Executive order. This action will ease the burden on industry by delaying the effect of §§ 203.3(u) and 203.50, and the applicability of § 203.3(q) to wholesale distribution of blood derivatives by health care entities while Congress considers taking legislative action. Thus, this action is not a significant action as defined by the Executive order.

This action is being taken under FDA's authority under 21 CFR 10.35(a). The Commissioner of Food and Drugs finds that this delay of the effective date is in the public interest.

Dated: January 23, 2003.

Margaret M. Dotzel,

Assistant Commissioner for Policy.

[FR Doc. 03–2293 Filed 1–30–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 510, 520, 522, 524, 526, and 558

New Animal Drugs; Change of Sponsor

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect a change of sponsor for 25 approved new animal drug applications (NADAs) and abbreviated new animal drug applications (ANADAs) from Bimeda, Inc., to Cross Vetpharm Group Ltd.

DATES: This rule is effective January 31, 2003.

FOR FURTHER INFORMATION CONTACT: David R. Newkirk, Center for Veterinary Medicine (HFV–100), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–6967; e-mail: dnewkirk@cvm.fda.gov.

SUPPLEMENTARY INFORMATION: Bimeda, Inc., 291 Forest Prairie Rd., LeSueur, MN 56058, has informed FDA that it has transferred ownership of, and all rights and interest in, the following 25 approved NADAs and ANADAs to Cross Vetpharm Group Ltd., Broomhill Rd., Tallaght, Dublin 24, Ireland.

NADA Number	Trade Name
010–092	GALLIMYCIN 50
010–346	COMBUTHAL Powder
012–123	ERYTHRO–100, –200; GALLIMYCIN Injectable
035–157	GALLIMYCIN 100; GALLIMYCIN 500
035–455	ERYTHRO–36 Dry; GALLIMYCIN–36 Dry
035–456	GALLIMYCIN–36 Sterile
038–241	ERYTHRO (High Lev)/Zoalene Plus Arsanilic Acid
038–242	ERYTHRO (Low Lev)/Amp Plus Etho
038–624	PRO-GALLIMYCIN–10
038–661	SPECTAM Water Soluble Concentrate
041–955	Erythromycin Medicated Premix
044–756	TEVCODYNE
055–059	TEVCOCIN Tablets
093–515	SPECTAM Tablets
095–218	Dexamethasone Tablets, 0.25 mg
100–128	Supersweet Medipak TYLAN 10
101–690	ERYTHRO–100 Injection
107–506	CARBAM Tablets
118–032	CARBAM PALATABS
118–979	BUTATRON Gel
120–615	SUSTAIN III Bolus
126–504	Nitrofurazone Ointment
200–050	Neomycin 325 Soluble Powder
200–103	Penicillin G Potassium, USP
200–144	Oxytetracycline HCl Soluble Powder; TETROXY

Accordingly, the agency is amending the regulations in 21 CFR 520.390a, 520.540b, 520.622a, 520.823, 520.1484, 520.1660d, 520.1696b, 520.1720a, 520.1720d, 520.2123a, 520.2123b, 520.2260b, 522.820, 522.2444b, 524.1580b, 526.820, 558.248, and 558.625 to reflect the transfer of ownership.

Following this change of sponsorship, Bimeda, Inc., is no longer the sponsor of any approved application. Accordingly, 21 CFR 510.600(c) is being amended to remove the entries for Bimeda, Inc.

This rule does not meet the definition of "rule" in 5 U.S.C. 804(3)(A) because it is a rule of "particular applicability." Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects

21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

21 CFR Parts 520, 522, 524, and 526

Animal drugs.

21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR parts 510, 520, 522, 524, 526, and 558 are amended as follows:

PART 510—NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 510 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 360b, 371, 379e.

§ 510.600 [Amended]

2. Section 510.600 *Names, addresses, and drug labeler codes of sponsors of approved applications* is amended in the table in paragraph (c)(1) by removing the entry for "Bimeda, Inc." and in the table in paragraph (c)(2) by removing the entry for "061133".

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

3. The authority citation for 21 CFR part 520 continues to read as follows:

Authority: 21 U.S.C. 360b.

§ 520.390a [Amended]

4. Section 520.390a *Chloramphenicol tablets* is amended in paragraph (b)(2) by removing "061133" and by adding in its place "061623".

§ 520.540b [Amended]

5. Section 520.540b *Dexamethasone tablets and boluses* is amended in paragraph (b)(2) by removing "061133" and by adding in its place "061623".

§ 520.622a [Amended]

6. Section 520.622a *Diethylcarbamazine citrate tablets* is amended in paragraph (a)(3) by removing "061133" and by adding in its place "061623".

§ 520.823 [Amended]

7. Section 520.823 *Erythromycin phosphate* is amended in paragraphs (b) by removing "061133" and by adding in its place "061623".

§ 520.1484 [Amended]

8. Section 520.1484 *Neomycin sulfate soluble powder* is amended in paragraph (b)(2) by removing "061133" and by adding in its place "061623".

§ 520.1660d [Amended]

9. Section 520.1660d *Oxytetracycline hydrochloride soluble powder* is amended in paragraph (b)(7) by removing "061133" and by adding in its place "061623".

§ 520.1696b [Amended]

10. Section 520.1696b *Penicillin G potassium in drinking water* is amended in paragraph (b) by removing "061133" and by adding in its place "061623".

§ 520.1720a [Amended]

11. Section 520.1720a *Phenylbutazone tablets and boluses* is amended in paragraph (b)(3) by

removing "061133" and by adding in its place "061623".

§ 520.1720d [Amended]

12. Section 520.1720d *Phenylbutazone gel* is amended in paragraph (b) by removing "061133" and by adding in its place "No. 061623".

§ 520.2123a [Amended]

13. Section 520.2123a *Spectinomycin dihydrochloride pentahydrate tablets* is amended in paragraph (b) by removing "061133" and by adding in its place "061623".

§ 520.2123b [Amended]

14. Section 520.2123b *Spectinomycin dihydrochloride pentahydrate soluble powder* is amended in paragraph (b) by removing "061133" and by adding in its place "061623".

§ 520.2260b [Amended]

15. Section 520.2260b *Sulfamethazine sustained-release boluses* is amended in paragraphs (c)(1) and (e)(1) by removing "061133" and by adding in its place "061623".

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS

16. The authority citation for 21 CFR part 522 continues to read as follows:

Authority: 21 U.S.C. 360b.

§ 522.820 [Amended]

17. Section 522.820 *Erythromycin injection* is amended in paragraph (a) by removing "061133" and by adding in its place "No. 061623".

§ 522.2444b [Amended]

18. Section 522.2444b *Sodium thiopental, sodium pentobarbital for injection* is amended in paragraph (b) by removing "061133" and by adding in its place "061623".

PART 524—OPHTHALMIC AND TOPICAL DOSAGE FORM NEW ANIMAL DRUGS

19. The authority citation for 21 CFR part 524 continues to read as follows:

Authority: 21 U.S.C. 360b.

§ 524.1580b [Amended]

20. Section 524.1580b *Nitrofurazone ointment* is amended in paragraph (b) by removing "061133" and by adding in its place "061623".

PART 526—INTRAMAMMARY DOSAGE FORM NEW ANIMAL DRUGS

21. The authority citation for 21 CFR part 526 continues to read as follows:

Authority: 21 U.S.C. 360b.

§ 526.820 [Amended]

22. Section 526.820 *Erythromycin* is amended in paragraph (b) by removing "061133" and by adding in its place "061623".

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

23. The authority citation for 21 CFR part 558 continues to read as follows:

Authority: 21 U.S.C. 360b, 371.

§ 558.248 [Amended]

24. Section 558.248 *Erythromycin thiocyanate* is amended in paragraphs (a)(1) and (a)(2) by removing "061133" and by adding in its place "061623"; and in the table in paragraph (d)(1) in the "Sponsor" column by removing "061133" wherever it appears and by adding in its place "061623".

§ 558.625 [Amended]

25. Section 558.625 *Tylosin* is amended in the table in paragraph (b)(39) by removing "061133" and by adding in its place "061623".

Dated: January 6, 2003.

Steven D. Vaughn,

Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 03–2295 Filed 1–30–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 510 and 524

Ophthalmic and Topical Dosage Form New Animal Drugs; Triamcinolone Spray

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by RMS Laboratories, Inc. The NADA provides for use of triamcinolone topical spray in dogs for the control of pruritus associated with allergic dermatitis.

DATES: This rule is effective January 31, 2003.

FOR FURTHER INFORMATION CONTACT: Melanie R. Berson, Center for Veterinary Medicine (HFV–110), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–7543, e-mail: mberson@cvm.fda.gov.

SUPPLEMENTARY INFORMATION: RMS Laboratories, Inc., 1903 East First St., Vidalia, GA 30474, filed NADA 141–210 that provides for use of GENESIS (triamcinolone acetonide) Topical Spray in dogs for the control of pruritus associated with allergic dermatitis. The NADA is approved as of November 4, 2002, and the regulations are amended in part 524 (21 CFR part 524) by adding new § 524.2482 to reflect the approval. The basis of approval is discussed in the freedom of information summary.

In addition, RMS Laboratories, Inc., has not been previously listed in the animal drug regulations as a sponsor of an approved application. At this time, 21 CFR 510.600(c) is being amended to add entries for the firm.

In accordance with the freedom of information provisions of 21 CFR part 20 and 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

Under section 512(c)(2)(F)(ii) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(c)(2)(F)(ii)), this approval qualifies for 3 years of marketing exclusivity beginning November 4, 2002.

The agency has determined under 21 CFR 25.33(d)(1) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

This rule does not meet the definition of "rule" in 5 U.S.C. 804(3)(A) because it is a rule of "particular applicability." Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects

21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

21 CFR Part 524

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under the authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR parts 510 and 524 are amended as follows:

PART 510—NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 510 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 360b, 371, 379e.

2. Section 510.600 is amended in the table in paragraph (c)(1) by alphabetically adding an entry for "RMS Laboratories, Inc." and in the table in paragraph (c)(2) by numerically adding an entry for "067292" to read as follows:

§ 510.600 Names, addresses, and drug labeler codes of sponsors of approved applications.

* * * * *

(c) * * *

(1) * * *

Firm name and address	Drug labeler code
* * * * *	
RMS Laboratories, Inc., 1903 East First St., Vidalia, GA 30474.	067292
* * * * *	

(2) * * *

Drug labeler code	Firm name and address
* * * * *	
067292	RMS Laboratories, Inc., 1903 East First St., Vidalia, GA 30474
* * * * *	

PART 524—OPHTHALMIC AND TOPICAL DOSAGE FORM NEW ANIMAL DRUGS

3. The authority citation for 21 CFR part 524 continues to read as follows:

Authority: 21 U.S.C. 360b.

4. Section 524.2482 is added to read as follows:

§ 524.2482 Triamcinolone spray.

(a) *Specifications.* Each milliliter of solution contains 0.15 milligrams triamcinolone acetonide.

(b) *Sponsor.* See No. 067292 in § 510.600(c) of this chapter.

(c) *Conditions of use in dogs*—(1) *Amount.* Apply sufficient pump sprays to uniformly and thoroughly wet the affected areas while avoiding run off of excess product. Administer twice daily for 7 days, then once daily for 7 days, then every other day for an additional 14 days (28 days total).

(2) *Indications for use.* For the control of pruritus associated with allergic dermatitis.

(3) *Limitations.* Federal law restricts this drug to use by or on the order of a licensed veterinarian.

Dated: January 10, 2003.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 03–2211 Filed 1–30–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 520

Oral Dosage Form New Animal Drugs; Levamisole Powder

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of an abbreviated new animal drug application (ANADA) filed by Phoenix Scientific, Inc. The ANADA provides for use of levamisole hydrochloride soluble powder in the drinking water of swine for the treatment of various internal parasites.

DATES: This rule is effective January 31, 2003.

FOR FURTHER INFORMATION CONTACT: Lonnie W. Luther, Center for Veterinary Medicine (HFV–104), Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855, 301–827–8549, e-mail: *lluther@cvm.fda.gov.*

SUPPLEMENTARY INFORMATION: Phoenix Scientific, Inc., 3915 South 48th Street Terrace, St. Joseph, MO 64503, filed ANADA 200–313 for Levamisole Hydrochloride Soluble Pig Wormer used to make medicated drinking water for the treatment of various internal parasites. Phoenix Scientific, Inc.'s Levamisole Hydrochloride Soluble Pig Wormer is approved as a generic copy of Schering-Plough Animal Health's TRAMISOL (levamisole hydrochloride) Soluble Pig Wormer, approved under NADA 112–049. The ANADA is approved as of October 25, 2002, and the regulations are amended in 21 CFR 520.1242a to reflect the approval. The basis of approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of 21 CFR part 20 and 21 CFR 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.33(a)(1) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

This rule does not meet the definition of "rule" in 5 U.S.C. 804(3)(A) because it is a rule of "particular applicability." Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects in 21 CFR Part 520

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 520 is amended as follows:

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 520 continues to read as follows:

Authority: 21 U.S.C. 360b.

2. Section 520.1242a is amended by adding paragraph (b)(4) to read as follows:

§ 520.1242a Levamisole hydrochloride drench and drinking water.

* * * * *

(b) * * *

(4) See No. 059130 for use of 18.15-gram packages as in paragraph (d)(3) of this section.

* * * * *

Dated: January 6, 2003.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 03–2212 Filed 1–30–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9039]

RIN 1545–BA33

Guidance Regarding the Definition of Foreign Personal Holding Company Income

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations that provide that gain or loss arising from certain commodities

hedging transactions and currency gain or loss arising from certain interest-bearing liabilities do not constitute (or are not netted against) foreign personal holding company income. This treatment is implemented because the applicable commodities hedging transactions and interest-bearing liabilities typically offset transactions that do not generate foreign personal holding company income.

DATES: *Effective Date:* These regulations are effective January 31, 2003.

Applicability Date: For dates of applicability, see § 1.954–2(f)(2)(iv)(C), (v)(D), and (g)(2)(ii)(C)(*2*)(*iii*).

FOR FURTHER INFORMATION CONTACT: Kenneth Christman or Gregory Spring at (202) 622–3870 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

On May 13, 2002, proposed regulations (REG–154920–01) were published in the **Federal Register** (67 FR 31995) under section 954 governing the definition of *foreign base company income* and *foreign personal holding company income* of a *controlled foreign corporation* (a CFC). These regulations addressed, among other matters, the circumstances in which income from transactions in commodities will be treated as foreign personal holding company income.

Following the publication of the proposed regulations, the IRS scheduled a public hearing and requested written comments on the regulations. The public hearing was canceled because no one requested to speak at the hearing. The IRS received one written comment, which recommended the proposed regulations be finalized as written.

Explanation of Revisions

The language of the proposed regulations is unchanged except for nonsubstantive changes to §§ 1.954–2(g)(2)(ii)(C)(*2*)(*i*) and (*ii*) that more explicitly set out the relationship between those paragraphs and § 1.954–2(g)(2)(ii)(C)(*1*).

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because these regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding these regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal authors of these regulations are Kenneth Christman and Ted Setzer of the Office of the Associate Chief Counsel (International). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * * .

Par. 2. In § 1.954–0, paragraph (b) is amended by:

1. Removing the entry for § 1.954–2(f)(2)(iii)(E).
2. Revising the entry for § 1.954–2(f)(2)(iv).
3. Adding entries for § 1.954–2(f)(2)(iv)(C), and (f)(2)(v) through (f)(2)(vi).
4. Adding entries for § 1.954–2(g)(2)(ii)(C)(*1*) through (g)(2)(ii)(C)(*2*)(*iii*).

The additions and revisions read as follows:

§ 1.954–0 Introduction.

* * * * *

(b) * * *

§ 1.954–2 Foreign personal holding company income.

* * * * *

(f) * * *

(2) * * *

(iv) Qualified hedging transaction entered into prior to January 31, 2003.

* * * * *

(C) Effective date.

(v) Qualified hedging transaction entered into on or after January 31, 2003.

(A) In general.

(B) Exception.

(C) Examples.

(D) Effective date.

(vi) Financial institutions not a producer, etc.

(g) * * *

(2) * * *

(ii) * * *

(C) Regular dealers.

(*1*) General rule.

(*2*) Certain interest-bearing liabilities treated as dealer property.

(*i*) In general.

(*ii*) Failure to identify certain liabilities.

(*iii*) Effective date.

* * * * *

Par. 3. Section 1.954–2 is amended by:

1. Removing paragraph (f)(2)(iii)(E).
2. Revising the heading of paragraph (f)(2)(iv).
3. Adding paragraphs (f)(2)(iv)(C) and (f)(2)(v) through (f)(2)(vi).
4. Adding paragraphs (g)(2)(ii)(C)(*1*) through (g)(2)(ii)(C)(*2*)(*iii*).
5. Revising paragraph (g)(2)(iii).

The revisions and additions read as follows:

§ 1.954–2 Foreign personal holding company income.

* * * * *

(f) * * *

(2) * * *

(iv) *Qualified hedging transaction entered into prior to January 31, 2003.*

* * * * *

(C) *Effective date.* This paragraph (f)(2)(iv) applies to gain or loss realized by a controlled foreign corporation with respect to a qualified hedging transaction entered into prior to January 31, 2003.

(v) *Qualified hedging transaction entered into on or after January 31, 2003*—(A) *In general.* The term *qualified hedging transaction* means a bona fide hedging transaction, as defined in paragraph (a)(4)(ii) of this section, with respect to one or more commodities transactions reasonably necessary to the conduct of any business by a producer, processor, merchant or handler of commodities in a manner in which such business is customarily and usually conducted by others. For purposes of this paragraph (f)(2)(v), a producer, processor, merchant or handler of commodities includes a controlled foreign corporation that regularly uses commodities in a manufacturing, construction, utilities, or transportation business.

(B) *Exception.* The term *qualified hedging transaction* does not include a transaction described in section 988(c)(1) (without regard to section 988(c)(1)(D)(i)).

(C) *Examples.* The following examples illustrate the provisions of this paragraph (f)(2)(v):

Example 1. CFC1 is a controlled foreign corporation located in country A. CFC1 manufactures and sells machinery in country B using aluminum and component parts

purchased from third parties that contain significant amounts of aluminum. CFC1 conducts its manufacturing business in a manner in which such business is customarily and usually conducted by others. To protect itself against increases in the price of aluminum used in the machinery it manufactures, CFC1 enters into futures purchase contracts for the delivery of aluminum. These futures purchase contracts are bona fide hedging transactions. As CFC1 purchases aluminum and component parts containing significant amounts of aluminum in the spot market for use in its business, it closes out an equivalent amount of aluminum futures purchase contracts by entering into offsetting aluminum futures sales contracts. The aluminum futures purchase contracts are qualified hedging transactions as defined in paragraph (f)(2)(v)(A) of this section. Accordingly, any gain or loss on such aluminum futures purchase contracts is excluded from the computation of foreign personal holding company income.

Example 2. CFC2 is a controlled foreign corporation located in country B. CFC2 operates an airline business within country B in a manner in which such business is customarily and usually conducted by others. To protect itself against increases in the price of aviation fuel, CFC2 enters into forward contracts for the purchase of aviation fuel. These forward purchase contracts are bona fide hedging transactions. As CFC2 purchases aviation fuel in the spot market for use in its business, it closes out an equivalent amount of its forward purchase contracts for cash pursuant to a contractual provision that permits CFC2 to terminate the contract and make or receive a one-time payment representing the contract's fair market value. The aviation fuel forward purchase contracts are qualified hedging transactions as defined in paragraph (f)(2)(v)(A) of this section. Accordingly, any gain or loss on such aviation fuel forward purchase contracts is excluded from the computation of foreign personal holding company income.

(D) *Effective date.* This paragraph (f)(2)(v) applies to gain or loss realized by a controlled foreign corporation with respect to a qualified hedging transaction entered into on or after January 31, 2003.

(vi) *Financial institutions not a producer, etc.* For purposes of this paragraph (f), a corporation is not a producer, processor, merchant or handler of commodities if its business is primarily financial. For example, the business of a controlled foreign corporation is primarily financial if its principal business is making a market in notional principal contracts based on a commodities index.

* * * * *

(g) * * *

(2) * * *

(ii) * * *

(C) *Regular dealers—(1) General rule.* Transactions in dealer property (as defined in paragraph (a)(4)(v) of this section) described in section 988(c)(1)(B) or (C) that are entered into by a controlled foreign corporation that is a regular dealer (as defined in paragraph (a)(4)(iv) of this section) in such property in its capacity as a dealer will be treated as directly related to the business needs of the controlled foreign corporation under paragraph (g)(2)(ii)(A) of this section.

(2) Certain interest-bearing liabilities treated as dealer property—(i) In general. For purposes of this paragraph (g)(2)(ii)(C), an interest-bearing liability incurred by a controlled foreign corporation that is denominated in (or determined by reference to) a non-functional currency shall be treated as dealer property of the type described in paragraph (g)(2)(ii)(C)(*1*) of this section if the liability, by being denominated in such currency, reduces the controlled foreign corporation's currency risk with respect to dealer property, and the liability is identified on the controlled foreign corporation's records as a liability treated as dealer property before the close of the day on which the liability is incurred.

(ii) Failure to identify certain liabilities. If a controlled foreign corporation identifies certain interest-bearing liabilities as liabilities treated as dealer property under paragraph (g)(2)(ii)(C)(*2*)(*i*) of this section but fails to so identify other interest-bearing liabilities that manage its currency risk with respect to assets held that constitute dealer property, the Commissioner may treat such other liabilities as properly identified as dealer property under paragraph (g)(2)(ii)(C)(*2*)(*i*) of this section if the Commissioner determines that the failure to identify such other liabilities had as one of its principal purposes the avoidance of Federal income tax.

(iii) Effective date. This paragraph (g)(2)(ii)(C)(*2*) applies only to gain or loss from an interest-bearing liability entered into by a controlled foreign corporation on or after January 31, 2003.

* * * * *

(iii) *Special rule for foreign currency gain or loss from an interest-bearing liability.* Except as provided in paragraph (g)(2)(ii)(C)(*2*) or (g)(5)(iv) of this section, foreign currency gain or loss arising from an interest-bearing liability is characterized as subpart F income and non-subpart F income in the same manner that interest expense associated with the liability would be allocated and apportioned between subpart F income and non-subpart F income under §§ 1.861–9T and 1.861–12T.

* * * * *

David A. Mader,

Assistant Deputy Commissioner of Internal Revenue.

Approved: January 17, 2003.

Pamela F. Olson,

Assistant Secretary of the Treasury.

[FR Doc. 03–2209 Filed 1–30–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1, 301 and 602

[TD 9040]

RIN 1545–AY56

Guidance Necessary To Facilitate Electronic Tax Administration

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final and removal of temporary regulations.

SUMMARY: This document contains final regulations that eliminate regulatory impediments to the electronic filing of Form 1040, "U.S. Individual Income Tax Return." These regulations affect taxpayers who file Form 1040 and who are required to file any of the following forms: Form 56, "Notice Concerning Fiduciary Relationship"; Form 2120, "Multiple Support Declaration"; Form 2439, "Notice to Shareholder of Undistributed Long-Term Capital Gains"; Form 3468, "Investment Credit"; and Form T (Timber), "Forest Activities Schedules."

DATES: *Effective Date:* These regulations are effective January 31, 2003.

FOR FURTHER INFORMATION CONTACT: Joseph P. Dewald, (202) 622–4910 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in these final regulations has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) under control number 1545–1783. The collection of information in these final regulations is in §§ 1.48–12(d)(7)(iv), 1.152–3(c), 1.611–3(h), 1.852–9(c)(1), and 301.6903–1(b). Responses to this collection of information are mandatory.

An agency may not conduct or sponsor, and a person is not required to

respond to, a collection of information unless the collection of information displays a valid control number assigned by the Office of Management and Budget.

The estimated additional burden in final regulations §§ 1.611–3(h), 1.852–9(c)(1), and 301.6903–1(b) is 0 hours because the records that are required to be maintained were previously required to be maintained to document the reporting requirements. This reporting burden will be reflected in the burden estimate for Form T (Timber), Form 2439, and Form 56, respectively.

Estimated additional total annual reporting burden for 2002 for Form 3468: 376 hours.

Estimated number of responses for 2002 for Form 3468: 22,575.

Estimated additional average annual burden hours per response for 2002 for Form 3468: 1 minute.

Estimated additional total annual reporting burden for 2002 for Form 2120: 550 hours.

Estimated number of responses for 2002 for Form 2120: 11,000.

Estimated additional average annual burden hours per response for 2002 for Form 2120: 3 minutes.

The estimated additional reporting burden for the reporting in final regulations §§ 1.48–12(d)(7)(iv) and 1.152–3(c) will be reflected in the burden estimate for Form 3468 and Form 2120, respectively.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be sent to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, W:CAR:MP:FP:S, Washington, DC 20224, and to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

This document contains amendments to the Income Tax Regulations (26 CFR part 1) and the Procedure and Administration Regulations (26 CFR part 301) designed to eliminate regulatory impediments to the electronic filing of Form 1040.

In 1998, Congress enacted the Internal Revenue Service Restructuring and Reform Act of 1998 (RRA 1998), Public Law 105–206 (112 Stat. 685) (1998). Section 2001(a) of RRA 1998 states that the policy of Congress is that paperless filing should be the preferred and most convenient means of filing Federal tax returns. Section 2001(a) of RRA 1998 also sets a long-range goal for the IRS to have at least 80 percent of all Federal tax returns filed electronically by 2007. Section 2001(b) of RRA 1998 requires the IRS to establish a 10-year strategic plan to eliminate barriers to electronic filing. On April 24, 2002, the IRS published temporary regulations (TD 8989, 67 FR 20028) and a cross-reference notice of proposed rulemaking (REG–107184–00, 67 FR 20072) to facilitate the implementation of this plan by eliminating regulatory impediments to the electronic filing of Form 1040.

The temporary regulations amended the Procedure and Administration Regulations to provide a regulatory statement of IRS authority to prescribe what return information or documentation must be filed with a return, statement, or other document required to be made under any provision of the internal revenue laws or regulations. The regulations give the IRS maximum flexibility in prescribing (1) what needs to be filed in support of a return or claim, and (2) the form of the filing, *e.g.*, electronic versus paper. The regulations permit the IRS to prescribe required return information in forms, instructions, or other appropriate guidance.

In addition, the IRS identified five regulatory provisions that impede electronic filing by requiring the taxpayer to either include a third-party signature, or attach a document generated by a third party. The temporary regulations amended those provisions to eliminate the impediments.

No written comments were received in response to the cross-reference notice of proposed rulemaking and no public hearing was requested or held.

Explanation of Provisions

This Treasury decision removes the temporary regulations and adopts the proposed regulations with minor clarifications explained below.

These final regulations clarify how to "file" a written declaration waiving the dependency deduction under section 152(c)(4). Section 1.152–3(a)(4) of the existing regulations provides that each person waiving the deduction should "file" a written declaration stating that the person waiving the deduction will not claim the individual as a dependent. However, the term "file" is confusing because it usually refers to a submission to the IRS. These final regulations amend section 1.152–3(a)(4) to provide that each person waiving the deduction should "furnish" a written waiver declaration to the taxpayer claiming the deduction.

Section 1.152–3(b) of the existing regulations provides two examples explaining the requirements in section 1.152–3(a). The examples require that the written declarations furnished by each person waiving the deduction be attached to the income tax return of the taxpayer. These final regulations update the examples by removing the requirement that the waivers be attached to the taxpayer's return. The amended regulations require the taxpayer to retain the waivers consistent with section 1.152–3(c).

Under section 1.152–3(c)(3) of the proposed regulations, the taxpayer claiming the individual as a dependent must retain the declarations furnished by the persons waiving the deduction. Section 1.152–3(c)(3) of the proposed regulations also provides that the IRS may request other information from the taxpayer to substantiate the dependency claim. The proposed regulation then states that the other information that will substantiate the claim may include a statement showing the names of all contributors and the amount contributed by each. These final regulations clarify that the statement is just one of many pieces of information that the IRS may request to substantiate the dependency claim. No one statement or piece of information is necessarily determinative.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. It is hereby certified that the collection of information in these regulations will not have a significant economic impact on a substantial number of small entities. This certification is based upon the fact that the persons responsible for recordkeeping are principally individuals, and the burden is not significant as described earlier in the preamble. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding these regulations was submitted to the Chief Counsel for Advocacy of the Small Business

Administration for comment on their impact on small business.

Drafting Information

The principal author of these regulations is Joseph P. Dewald, Office of Associate Chief Counsel (Procedure and Administration), Administrative Provisions and Judicial Practice Division. However, other personnel from the IRS and the Treasury Department participated in the development of the regulations.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 1, 301 and 602 are amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 1.48–12 is amended as follows:

1. Revising paragraph (d)(7)(iii).
2. Adding a new paragraph (d)(7)(iv).

§ 1.48–12 Qualified rehabilitated building; expenditures incurred after December 31, 1981.

* * * * *

(d) * * *

(7) * * *

(iii) *Effective dates.* Paragraph (d)(7)(i) of this section applies to returns for taxable years beginning before January 1, 2002. The requirement in the fourth sentence of paragraph (d)(7)(ii) of this section applies only if the first income tax return filed after receipt by the taxpayer of the certification is for a taxable year beginning before January 1, 2002. For rules applicable to returns for taxable years beginning after December 31, 2001, see paragraph (d)(7)(iv) of this section.

(iv) *Returns for taxable years beginning after December 31, 2001*—(A) *In general.* Except as otherwise provided in paragraph (d)(7)(ii) of this section and this paragraph (d)(7)(iv), a taxpayer claiming the credit for rehabilitation of a certified historic structure (within the meaning of section 47(c)(3) and paragraph (d)(1) of this section) for a taxable year beginning after December 31, 2001, must provide with the return for the taxable year in which the credit is claimed, the NPS project number assigned by, and the date of the final certification of completed work received from, the Secretary of the Interior. If a credit (including a credit for a taxable year beginning before January 1, 2002) is claimed under the late certification procedures of paragraph (d)(7)(ii) of this section and the first income tax return filed by the taxpayer after receipt of the certification is for a taxable year beginning after December 31, 2001, the taxpayer must provide the NPS project number assigned by, and the date of the final certification of completed work received from, the Secretary of the Interior with that return.

(B) *Reporting and recordkeeping requirements.* The information required under paragraph (d)(7)(iv)(A) of this section must be provided on Form 3468 (or its successor) filed with the taxpayer's return. In addition, the taxpayer must retain a copy of the final certification of completed work for as long as its contents may become material in the administration of any internal revenue law.

(C) *Passthrough entities.* In the case of a credit for qualified rehabilitation expenditures of a partnership, S corporation, estate, or trust, the requirements of this paragraph (d)(7)(iv) apply only to the entity. Each partner, shareholder or beneficiary claiming a credit for such qualified rehabilitation expenditures from a passthrough entity must, however, provide the employer identification number of the entity on Form 3468 (or its successor).

§ 1.48–12T [Removed]

Par. 3. Section 1.48–12T is removed.

§ 1.152–3 [Amended]

Par. 4. In § 1.152–3, paragraphs (a)(4) and (b) are revised and paragraph and (c) is added to read as follows:

§ 1.152–3 Multiple support agreements.

(a) * * *

(4) Each other person in the group who contributed more than 10 percent of such support furnishes to the taxpayer claiming the dependent a written declaration that such other person will not claim the individual as a dependent for any taxable year beginning in such calendar year.

(b) *Examples.* Application of the rule contained in paragraph (a) of this section may be illustrated by the following examples:

Example (1). During the taxable year, brothers A, B, C, and D contributed the entire support of their mother in the following percentages: A, 30 percent; B, 20 percent; C, 29 percent; and D, 21 percent. Any one of the brothers, except for the fact that he did not contribute more than half of her support, would have been entitled to claim his mother as a dependent. Consequently, any one of the brothers could claim a deduction for the exemption of the mother if he obtained a written declaration (as provided in paragraph (a)(4) of this section) from each of the other brothers. Even though A and D together contributed more than one-half the support of the mother, A, if he wished to claim his mother as a dependent, would be required to obtain written declarations from B, C, and D, since each of those three contributed more than 10 percent of the support and, but for the failure to contribute more than half of the mother's support, would have been entitled to claim his mother as a dependent.

Example (2). During the taxable year, E, an individual who resides with his son, S, received his entire support for that year as follows:

Source	Percentage of total
Social Security	25
N, an unrelated neighbor	11
B, a brother	14
D, a daughter	10
S, a son	40
Total received by E	100

B, D, and S are persons each of whom, but for the fact that none contributed more than half of E's support, could claim E as a dependent for the taxable year. The three together contributed 64 percent of E's support, and, thus, each is a member of the group to be considered for the purpose of section 152(c). B and S are the only members of such group who can meet all the requirements of section 152(c), and either one could claim E as a dependent for his taxable year if he obtained a written declaration (as provided in paragraph (a)(4) of this section) signed by the other, and furnished the other information required by the return with respect to all the contributions to E. Inasmuch as D did not contribute more than 10 percent of E's support, she is not entitled to claim E as a dependent for the taxable year nor is she required to furnish a written declaration with respect to her contributions to E. N contributed over 10 percent of the support of E, but, since he is an unrelated neighbor, he does not qualify as a member of the group for the purpose of the multiple support agreement under section 152(c).

(c)(1) The member of a group of contributors who claims an individual as a dependent for a taxable year beginning before January 1, 2002, under the multiple support agreement provisions of section 152(c) must attach to the member's income tax return for

the year of the deduction a written declaration from each of the other persons who contributed more than 10 percent of the support of such individual and who, but for the failure to contribute more than half of the support of the individual, would have been entitled to claim the individual as a dependent.

(2) The taxpayer claiming an individual as a dependent for a taxable year beginning after December 31, 2001, under the multiple support agreement provisions of section 152(c) must provide with the income tax return for the year of the deduction—

(i) A statement identifying each of the other persons who contributed more than 10 percent of the support of the individual and who, but for the failure to contribute more than half of the support of the individual, would have been entitled to claim the individual as a dependent; and

(ii) A statement indicating that the taxpayer obtained a written declaration from each of the persons described in section 152(c)(2) waiving the right to claim the individual as a dependent.

(3) The taxpayer claiming the individual as a dependent for a taxable year beginning after December 31, 2001, must retain the waiver declarations and should be prepared to furnish the waiver declarations and any other information necessary to substantiate the claim, which may include a statement showing the names of all contributors (whether or not members of the group described in section 152(c)(2)) and the amount contributed by each to the support of the claimed dependent.

§ 1.152–3T [Removed]

Par. 5. Section 1.152–3T is removed.

§ 1.611–3 [Amended]

Par. 6. In § 1.611–3, paragraph (h) is added to read as follows:

§ 1.611–3 Rules applicable to timber.

* * * * *

(h) *Reporting and recordkeeping requirements—(1) Taxable years beginning before January 1, 2002.* A taxpayer claiming a deduction for depletion of timber for a taxable year beginning before January 1, 2002, shall attach to the income tax return of the taxpayer a filled-out Form T (Timber) for the taxable year covered by the income tax return, including the following information—

(i) A map where necessary to show clearly timber and land acquired, timber cut, and timber and land sold;

(ii) Description of, cost of, and terms of purchase of timberland or timber, or cutting rights, including timber or timber rights acquired under any type of contract;

(iii) Profit or loss from sale of land, or timber, or both;

(iv) Description of timber with respect to which claim for loss, if any, is made;

(v) Record of timber cut;

(vi) Changes in each timber account as a result of purchase, sale, cutting, reestimate, or loss;

(vii) Changes in improvements accounts as the result of additions to or deductions from capital and depreciation, and computation of profit or loss on sale or other disposition of such improvements;

(viii) Operation data with respect to raw and finished material handled and inventoried;

(ix) Statement as to application of the election under section 631(a) and pertinent information in support of the fair market value claimed thereunder;

(x) Information with respect to land ownership and capital investment in timberland; and

(xi) Any other data which will be helpful in determining the reasonableness of the depletion or depreciation deductions claimed in the return.

(2) *Taxable years beginning after December 31, 2001.* A taxpayer claiming a deduction for depletion of timber on a return filed for a taxable year beginning after December 31, 2001, shall attach to the income tax return of the taxpayer a filled-out Form T (Timber) for the taxable year covered by the income tax return. In addition, the taxpayer must retain records sufficient to substantiate the right of the taxpayer to claim the deduction, including a map, where necessary, to show clearly timber and land acquired, timber cut, and timber and land sold for as long as their contents may become material in the administration of any internal revenue law.

§ 1.611–3T [Removed]

Par. 7. Section 1.611–3T is removed.

§ 1.852–9 [Amended]

Par. 8. In § 1.852–9, paragraph (c)(1) is added to read as follows:

§ 1.852–9 Special procedural requirements applicable to designation under section 852(b)(3)(D).

* * * * *

(c) *Shareholders*—(1) *Return and Recordkeeping Requirements*—(i) *Return requirements for taxable years beginning before January 1, 2002.* For taxable years beginning before January 1, 2002, the copy B of Form 2439 furnished to a shareholder by the regulated investment company or by a nominee, as provided in § 1.852–9(a) or (b) shall be attached to the income tax return of the shareholder for the taxable year in which the amount of undistributed capital gains is includible in gross income as provided in § 1.852–4(b)(2).

(ii) *Recordkeeping requirements for taxable years beginning after December 31, 2001.* For taxable years beginning after December 31, 2001, the shareholder shall retain a copy of Form 2439 for as long as its contents may become material in the administration of any internal revenue law.

* * * * *

§ 1.852–9T [Removed]

Par. 9. Section 1.852–9T is removed.

PART 301—PROCEDURE AND ADMINISTRATION

Par. 10. The authority citation for part 301 continues to read as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 11. Section 301.6011–1 is added to read as follows:

§ 301.6011–1 General requirement of return, statement or list.

(a) For provisions requiring returns, statements, or lists, see the regulations relating to the particular tax.

(b) The Internal Revenue Service may prescribe in forms, instructions, or other appropriate guidance the information or documentation required to be included with any return or any statement required to be made or other document required to be furnished under any provision of the internal revenue laws or regulations.

§ 301.6011–1T [Removed]

Par. 12. Section 301.6011–1T is removed.

§ 301.6903–1 [Amended]

Par. 13. In § 301.6903–1, paragraph (b) is added to read as follows:

§ 301.6903–1 Notice of fiduciary relationship.

* * * * *

(b) *Manner of notice*—(1) *Notices filed before April 24, 2002.* This paragraph (b)(1) applies to notices filed before April 24, 2002. The notice shall be signed by the fiduciary, and shall be filed with the Internal Revenue Service office where the return of the person for whom the fiduciary is acting is required to be filed. The notice must state the name and address of the person for whom the fiduciary is acting, and the nature of the liability of such person; that is, whether it is a liability for tax, and, if so, the type of tax, the year or

years involved, or a liability at law or in equity of a transferee of property of a taxpayer, or a liability of a fiduciary under section 3467 of the Revised Statutes, as amended (31 U.S.C. 192) in respect of the payment of any tax from the estate of the taxpayer. Satisfactory evidence of the authority of the fiduciary to act for any other person in a fiduciary capacity must be filed with and made a part of the notice. If the fiduciary capacity exists by order of court, a certified copy of the order may be regarded as satisfactory evidence. When the fiduciary capacity has terminated, the fiduciary, in order to be relieved of any further duty or liability as such, must file with the Internal Revenue Service office with whom the notice of fiduciary relationship was filed written notice that the fiduciary capacity has terminated as to him, accompanied by satisfactory evidence of the termination of the fiduciary capacity. The notice of termination should state the name and address of the person, if any, who has been substituted as fiduciary. Any written notice disclosing a fiduciary relationship which has been filed with the Commissioner under the Internal Revenue Code of 1939 or any prior revenue law shall be considered as sufficient notice within the meaning of section 6903. Any satisfactory evidence of the authority of the fiduciary to act for another person already filed with the Commissioner or district director need not be resubmitted.

(2) *Notices filed on or after April 24, 2002.* This paragraph (b)(2) applies to notices filed on or after April 24, 2002. The notice shall be signed by the fiduciary, and shall be filed with the Internal Revenue Service Center where the return of the person for whom the fiduciary is acting is required to be filed. The notice must state the name and address of the person for whom the fiduciary is acting, and the nature of the liability of such person; that is, whether it is a liability for tax, and if so, the type of tax, the year or years involved, or a liability at law or in equity of a transferee of property of a taxpayer, or a liability of a fiduciary under 31 U.S.C. 3713(b), in respect of the payment of any tax from the estate of the taxpayer. The fiduciary must retain satisfactory evidence of his or her authority to act for any other person in a fiduciary capacity as long as the evidence may become material in the administration of any internal revenue law.

* * * * *

§ 301.6903–1T [Removed]

Par. 14. Section 301.6903–1T is removed.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 15. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 16. In § 602.101, paragraph (b), the table is amended as follows:

1. The following entries are removed:

§ 602.101 OMB Control numbers.

* * * * *

(b) * * *

CFR part or section where identified and described	Current OMB control No.
* * * * *	
1.48–12T	1545–0155 1545–1783
* * * * *	
1.152–3T	1545–0071 1545–1783
* * * * *	
1.611–3T	1545–0007 1545–0099 1545–1784
* * * * *	
1.852–9T	1545–0074 1545–0123 1545–0144 1545–0145 1545–1783
* * * * *	
301.6903–1T	1545–0013 1545–1783
* * * * *	

2. The following entries are revised:

§ 602.101 OMB Control numbers.

* * * * *

(b) * * *

CFR part or section where identified and described	Current OMB control No.
* * * * *	
1.48–12	1545–0155 1545–1783
* * * * *	
1.152–3	1545–0071 1545–1783
* * * * *	
1.611–3	1545–0007 1545–0099 1545–1784
* * * * *	
1.852–9	1545–0074 1545–0123 1545–0144 1545–0145 1545–1783
* * * * *	
301.6903–1	1545–0013 1545–1783
* * * * *	

David A. Mader,

Assistant Deputy Commissioner of Internal Revenue.

Approved: January 14, 2003.

Pamela F. Olson,

Assistant Secretary of the Treasury.

[FR Doc. 03–2063 Filed 1–30–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 31

[TD 9041]

RIN 1545–BB88

Taxpayer Identification Number (TIN) Matching Program

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final and temporary regulations.

SUMMARY: This document contains final and temporary regulations under section 3406 relating to the IRS Taxpayer Identification Number (TIN) Matching Program. These final and temporary regulations affect payors, and their authorized agents, and provide guidance necessary to comply with the law. The text of the temporary regulations also serves as the text of the proposed regulations set forth in the Proposed Rules section published elsewhere in this issue of the **Federal Register**.

DATES: *Effective Date.* These regulations are effective January 31, 2003.

Applicability Date. For dates of applicability, *see* §§ 31.3406(j)–1(f) and 31.3406(j)–1T(f).

FOR FURTHER INFORMATION CONTACT: Donna Welch at (202) 622–4910.

SUPPLEMENTARY INFORMATION:

Background

This document contains amendments to the Employment Tax Regulations (26

CFR part 31) relating to the IRS TIN Matching Program.

Section 3406(a)(1) requires a *payor* to withhold on any reportable payment (as defined in section 3406(b)(1)) in certain situations, including if (1) the payee fails to furnish his TIN to the *payor* as required or (2) the Secretary notifies the *payor* that the TIN furnished by the payee is incorrect. Section 3406(i) provides that the Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of section 3406.

Regulations under section 3406(i) provide that the Commissioner has the authority to establish TIN matching programs through revenue procedures or other appropriate guidance. Under the regulations, a *payor* participating in a TIN matching program may, before filing information returns with respect to reportable payments, contact the IRS with respect to the TIN furnished by the payee. The regulations provide that the IRS will inform the *payor* whether or not the name/TIN combination furnished by the payee matches a name/TIN combination maintained for the TIN matching program.

Pursuant to the authority in the regulations, the IRS issued Rev. Proc. 97–31 (1997–1 C.B. 703) and implemented a TIN matching program for Federal agency payors. The IRS is now issuing a second revenue procedure pursuant to that authority (as amended by these temporary regulations). This revenue procedure will expand the scope of the IRS TIN Matching Program to allow all payors (and not merely Federal agency payors), as well as payors' authorized agents, to participate in TIN matching. In addition, the IRS and the Treasury Department expect to issue additional published guidance that will allow payment card organizations to act on behalf of cardholder/payors for purposes of soliciting, collecting, and validating merchant/payees' names and TINs through TIN matching if certain requirements are met.

Explanation of Provisions

These regulations specifically authorize a payor's authorized agent to participate in TIN matching by providing that, for purposes of the TIN matching program, the term *payor* includes an agent designated by the *payor* to participate in TIN matching on behalf of the *payor*.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. For the applicability of the Regulatory Flexibility Act (5 U.S.C. chapter 6) refer to the Special Analyses section of the preamble to the cross-reference notice of proposed rulemaking published in the Proposed Rules section of this issue of the **Federal Register**. Pursuant to section 7805(f), the temporary regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of the regulations is Donna Welch, Office of Associate Chief Counsel (Procedure and Administration), Administrative Provisions and Judicial Practice Division. However, other personnel from the IRS and the Treasury Department participated in the development of the regulations.

List of Subjects in 26 CFR Part 31

Employment taxes, Income taxes, Penalties, Pensions, Railroad retirement, Reporting and recordkeeping requirements, Social security, Unemployment compensation.

Amendments to the Regulations

Accordingly, 26 CFR part 31 is amended as follows:

PART 31—EMPLOYMENT TAXES AND COLLECTION OF INCOME TAX AT SOURCE

1. The authority citation for part 31 is amended by adding an entry in numerical order to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Section 31.3406(j)–1T also issued under 26 U.S.C. 3406(i). * * *

2. Section 31.3406(j)–1 is amended by revising paragraphs (a) and (f) to read as follows:

§ 31.3406(j)–(1) Taxpayer Identification Number (TIN) matching program.

(a) [Reserved]. For further guidance, *see* § 31.3406(j)–1T(a).

* * * * *

(f) [Reserved]. For further guidance, *see* § 31.3406(j)–1T(f).

3. Section 31.3406(j)–1T is added to read as follows:

§ 31.3406(j)–1T Taxpayer Identification Number (TIN) matching program (temporary).

(a) *The matching program.* Under section 3406(i), the Commissioner has the authority to establish Taxpayer Identification Number (TIN) matching programs. The Commissioner may prescribe in a revenue procedure (*see* § 601.601(d)(2) of this chapter) or other appropriate guidance the scope and the terms and conditions of participating in any TIN matching program. In general, under a matching program, prior to filing information returns with respect to reportable payments as defined in section 3406(b)(1), a *payor* of those reportable payments who is entitled to participate in the matching program may contact the Internal Revenue Service (IRS) with respect to the TIN furnished by a payee who has received or is likely to receive a reportable payment. The IRS will inform the *payor* whether or not a name/TIN combination furnished by the payee matches a name/TIN combination maintained in the data base utilized for the particular matching program. For purposes of this section, the term *payor* includes an agent designated by the *payor* to participate in TIN matching on the *payor's* behalf.

(b) through (e) [Reserved]. For further guidance, *see* § 31.3406(j)–1(b) through (e).

(f) *Effective date.* The provisions of this section are applicable on or after June, 18, 1997, except the last sentence in paragraph (a) of this section which is applicable on January 31, 2003. The applicability of this section expires on January 30, 2006.

David A. Mader,

Acting Deputy Commissioner of Internal Revenue.

Approved: January 17, 2003.

Pamela F. Olson,

Assistant Secretary of the Treasury.

[FR Doc. 03–2207 Filed 1–30–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF JUSTICE

28 CFR Parts 0, 9, 11, 16, 71, 77

[AG Order No. 2650–2003]

Organization of the Bureau of Alcohol, Tobacco, Firearms, and Explosives

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: The Homeland Security Act of 2002 transferred certain law enforcement and regulatory functions of the Bureau of Alcohol, Tobacco and Firearms from the Department of the Treasury to the Department of Justice and changed its name to the Bureau of Alcohol, Tobacco, Firearms, and Explosives. This rule delegates specific authorities to that Bureau and

incorporates it into the structure of the Department of Justice.

EFFECTIVE DATE: January 24, 2003.

FOR FURTHER INFORMATION CONTACT: Stuart Frisch, General Counsel, Justice Management Division, Rm. 520, National Place Building, United States Department of Justice, Washington, DC 20530; Telephone (202) 514–3452; FAX: (202) 514–4317.

SUPPLEMENTARY INFORMATION:

Introduction

The Homeland Security Act of 2002, Pub. L. 107–296, title XI, 116 Stat. 2135 (Nov. 25, 2002) ("Act"), transferred certain law enforcement and regulatory authorities, functions, personnel, and assets of the former Bureau of Alcohol, Tobacco and Firearms of the Department of the Treasury to the Department of Justice as the Bureau of Alcohol, Tobacco, Firearms, and Explosives. The Act also created new authorities, particularly in the area of regulation of explosives.

The Attorney General (with minimal exceptions not relevant here) is vested with the responsibility for the management of all functions of the Department of Justice and may delegate those functions to officials of the Department as he deems appropriate. 28 U.S.C. 509, 510. In implementing his statutory responsibilities for the Act and the administration of the Department, the Attorney General is issuing these regulations for the internal management of the Bureau of Alcohol, Tobacco, Firearms, and Explosives.

This final rule creates a new subpart of title 28, Code of Federal Regulations (CFR), part 0, regarding the establishment, functions, and management of the Bureau of Alcohol, Tobacco, Firearms, and Explosives. This rule also makes minor technical amendments to other Department regulations relating to authority for processing petitions for remission or mitigation of forfeitures, compromise of claims, maintenance of reading rooms, program fraud civil remedies, and ethical standards. These changes align the Bureau of Alcohol, Tobacco, Firearms, and Explosives with other law enforcement components within the Department of Justice.

Transfer Authority in the Homeland Security Act of 2002

On November 25, 2002, the President signed into law the Homeland Security Act of 2002, Pub. L. No. 107–296, 116 Stat. 2135 (2002). Section 1111 of the Act establishes in the Department the "Bureau of Alcohol, Tobacco, Firearms, and Explosives," and generally transfers most of the non-tax authorities, functions, personnel and assets of the Bureau of Alcohol, Tobacco and Firearms of the Department of the Treasury to the Department of Justice. This transfer is effective on January 24, 2003.

Under the Homeland Security Act of 2002, the Department of the Treasury retains authority over certain tax provisions relating to alcohol, tobacco and firearms, as well as the Federal Alcohol Administration Act. Those functions will be handled by the new Tax and Trade Bureau in the Department of the Treasury.

A. Part 0—Organization of the Department of Justice

The amendment to 28 CFR 0.1 adds the Bureau of Alcohol, Tobacco, Firearms, and Explosives to the list of bureaus within the Department of Justice.

This rule redesignates subpart W as subpart W–1, and creates a new subpart W for the Bureau of Alcohol, Tobacco, Firearms, and Explosives, consistent with the subparts that delegate authority to other bureaus of the Department.

New 28 CFR 0.130 delegates to the Director of the Bureau of Alcohol, Tobacco, Firearms, and Explosives ("Director"), subject to the direction of the Attorney General and Deputy Attorney General, responsibilities with respect to the investigation and enforcement of federal firearms, explosives, and arson laws, as well as the provisions of title 18, United States Code, with respect to violations involving alcohol and tobacco. Paragraphs (a) through (c) reflect the authorities that were previously exercised by the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury and which were transferred in the Homeland Security Act of 2002, plus new authority enacted in the Safe Explosives Act, title XI, subtitle C, of the Homeland Security Act of 2002. Paragraph (d) reflects the management of new authority which may be delegated by the Attorney General in the future as authorized by section 1111(b)(3) of the Homeland Security Act of 2002.

Section 0.131 delegates to the Director specific functions previously performed by the Bureau of Alcohol, Tobacco and Firearms, including the operation of laboratories, the National Explosives Licensing Center, the National Firearms Licensing Center, the National Firearms Registration and Transfer Record, the Arson and Explosives National Repository, the National Tracing Center, and a new Explosives Training and Research Facility, as well as specific functions performed by law enforcement bureaus of the Department of Justice.

Section 0.132 delegates to the Director authority to settle certain claims against the Bureau of Alcohol, Tobacco, Firearms, and Explosives and its personnel within certain applicable monetary limits.

Section 0.133 of this rule provides administrative continuity in the transfer of functions from the Department of the Treasury to the Department of Justice by adopting and carrying forward certain extant regulations specifically relating to the authorities transfered to the Department of Justice. In a separate rule, these regulations are being recodified in a new chapter II of 27 CFR.

There are other regulations issued by the Department of the Treasury, or the former Bureau of Alcohol, Tobacco and Firearms, that apply to both the authorities that were transferred to the Department of Justice and the authorities that were retained in the Department of the Treasury pursuant to the Homeland Security Act. For example, the regulations in 27 CFR part 70 contain general rules on procedure and administration. Many of these rules apply only to taxes collected by the Department of the Treasury. However, some of these rules also apply to administration of the National Firearms Act, which will be enforced by the Department of Justice. Paragraph (a)(2) continues the application of these regulations to the operations of the Bureau of Alcohol, Tobacco, Firearms, and Explosives until amended, or otherwise revised.

Accordingly, this section provides that, pending the issuance of new regulations or other changes in authority, all other regulations issued by the Department of the Treasury or the Bureau of Alcohol, Tobacco and Firearms prior to January 24, 2003, shall continue to apply to the operations of the Bureau of Alcohol, Tobacco, Firearms, and Explosives, to the extent that such regulations apply to the authorities or functions transferred to the Department of Justice pursuant to the Homeland Security Act of 2002 or the regulations in this part, unless the application of such regulations would be inconsistent with statutes or regulations applicable to the Department of Justice.

Similarly, paragraph (a)(3) continues the orders and other legal authorities related to the former Bureau of Alcohol, Tobacco and Firearms. Paragraph (a)(4) alters the effect of the reference to appropriate entities and officials of the Department of the Treasury before the transfer to refer to the corresponding

entities and officials of the Department of Justice after the transfer. Finally, paragraph (b) makes four exceptions for specific matters relating to forfeitures. In the future, when it is clear that pending proceedings no longer depend on such pre-existing authority, the Department will make the necessary adjustments to change the nomenclature in the regulations transferred to chapter II, title 27, and to eliminate obsolete regulations.

B. Conforming Authorities in Other Parts of 28 CFR

Additionally, a number of conforming changes are required in other parts in 28 CFR to incorporate the Bureau of Alcohol, Tobacco, Firearms, and Explosives into the Department of Justice. These changes affect only the internal administration of the Department.

Amendments to part 9 apply the procedures used by the Department of Justice for remission and mitigation of forfeiture to the Bureau of Alcohol, Tobacco, Firearms, and Explosives. 27 CFR part 72 will not be applicable to the Bureau of Alcohol, Tobacco, Firearms, and Explosives after transfer to the Department of Justice.

Similarly, under the Department of Justice authority in amendments to part 11, the Director is delegated authority to compromise claims under the Debt Collection Act, 31 U.S.C. 3711. This replaces authority previously exercised within the Department of the Treasury under 31 CFR part 5.

Amendments to part 16 establish the various Freedom of Information Act functions, 5 U.S.C. 552, within the Department for the Bureau of Alcohol, Tobacco, Firearms, and Explosives. These provisions replace Department of the Treasury regulations. 31 CFR part 1.

The Chief Counsel of the Bureau of Alcohol, Tobacco, Firearms, and Explosives is designated as the reviewing official under the Program Fraud Civil Remedies Act of 1986, 31 U.S.C. 3801 *et seq.* Finally, in 28 CFR part 77 attorneys in the office of the Chief Counsel of the Bureau of Alcohol, Tobacco, Firearms, and Explosives are brought under the ethical standards applicable to Department of Justice attorneys under 28 U.S.C. 530B.

Finally, the Department notes that all Department of Justice regulations and policy applicable to its Bureaus and employees, such as the policy statements of 28 CFR part 50, automatically become applicable to the Bureau of Alcohol, Tobacco, Firearms, and Explosives through this transfer of functions under the Act.

Administrative Procedure Act

This rule relates to matters of agency management and personnel and, therefore, is exempt from the usual requirements of prior notice and comment and a 30-day delay in effective date. *See* 5 U.S.C. 553(a)(2) and (d). The rule only continues extant provisions of the regulations of the former Bureau of Alcohol, Tobacco and Firearms and makes appropriate changes to reflect the transfer certain law enforcement functions of the former Bureau of Alcohol, Tobacco and Firearms to the Department of Justice.

Regulatory Flexibility Act

The Attorney General, in accordance with the Regulatory Flexibility Act, 5 U.S.C. 605(b), has reviewed this rule and, by approving it, certifies that it will not have a significant economic impact on a substantial number of small entities because it pertains to personnel and administrative matters affecting the Department. Further, a Regulatory Flexibility Analysis is not required for this final rule because the Department was not required to publish a general notice of proposed rulemaking for this matter.

Executive Order 12866

This rule has been drafted and reviewed in accordance with Executive Order 12866, Regulatory Planning and Review, section 1(b), Principles of Regulation. This rule is limited to agency organization, management and personnel matters as described by Executive Order 12866, § 3(d)(3) and, therefore, is not a "regulation" or "rule" as defined by that Executive Order.

Executive Order 12988

This regulation meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform.

Executive Order 13132

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, Federalism, the Department has determined that this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions are necessary under the provisions of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1501 *et seq.*

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 804. This rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets.

This action pertains to agency management, personnel, and organization and does not substantially affect the rights or obligations of non-agency parties. Accordingly, it is not a rule for purposes of the reporting requirement of 5 U.S.C. 801.

List of Subjects 28 CFR Part 0

Authority delegations (government agencies), Government employees, Organization and functions (government agencies), Whistleblowing.

28 CFR Part 9

Administrative practice and procedure, Crime, Seizures and forfeitures.

28 CFR Part 11

Claims, Government contracts, Government employees, Income taxes, Lawyers, Wages.

28 CFR Part 16

Administrative practice and procedure, Courts, Freedom of information, Privacy, Sunshine Act.

28 CFR Part 71

Administrative practice and procedure, Claims, Fraud, Penalties.

28 CFR Part 77

Government employees, Investigations, Law enforcement, Lawyers.

Accordingly, chapter I of title 28 of the Code of Federal Regulations is amended as follows:

PART 0—ORGANIZATION OF THE DEPARTMENT OF JUSTICE

1. The authority citation for part 0 continues to read as follows:

Authority: 5 U.S.C. 301; 28 U.S.C. 509, 510, 515–519.

§ 0.1 [Amended]

2. In § 0.1, under the subheading "Bureaus", the words "Bureau of Alcohol, Tobacco, Firearms, and Explosives." are added following "United States Marshals Service."

§ 0.137 [Removed]

3. Section 0.137 is removed.

Subpart W—[Redesignated as Subpart W–1]

4. Subpart W (§§ 0.130 through 0.132) is redesignated as subpart W–1.

§§ 0.130–0.132 [Redesignated]

5. Sections 0.130 through 0.132 are redesignated as sections 0.135 through 0.137, respectively.

§§ 0.130–0.133 [Added]

6. Subpart W, and §§ 0.130 through 0.133 are added to read as follows:

Subpart W—Bureau of Alcohol, Tobacco, Firearms, and Explosives

Sec.
0.130 General functions.
0.131 Specific functions.
0.132 Delegation respecting claims against the Bureau of Alcohol, Tobacco, Firearms, and Explosives.
0.133 Transition and continuity of regulations.

Subpart W—Bureau of Alcohol, Tobacco, Firearms, and Explosives

§ 0.130 General functions.

Subject to the direction of the Attorney General and the Deputy Attorney General, the Director of the Bureau of Alcohol, Tobacco, Firearms, and Explosives shall:

(a) Investigate, administer, and enforce the laws related to alcohol, tobacco, firearms, explosives, and arson, and perform other duties as assigned by the Attorney General, including exercising the functions and powers of the Attorney General under the following provisions of law:

(1) 18 U.S.C. chapters 40 (related to explosives), 44 (related to firearms), 59 (related to liquor trafficking), and 114 (related to trafficking in contraband cigarettes);

(2) Chapter 53 of the Internal Revenue Code of 1986, 26 U.S.C. chapter 53 (related to certain firearms and destructive devices);

(3) Chapters 61 through 80, inclusive, of the Internal Revenue Code of 1986, 26 U.S.C. chapters 61—80, insofar as they relate to activities administered and enforced with respect to chapter 53 of the Internal Revenue Code of 1986, 26 U.S.C. chapter 53;

(4) 18 U.S.C. 1952 and 3667, insofar as they relate to liquor trafficking;

(5) 49 U.S.C. 80303 and 80304, insofar as they relate to contraband described in section 80302(a)(2) or 80302(a)(5); and

(6) 18 U.S.C. 1956 and 1957, insofar as they involve violations of:

(i) 18 U.S.C. 844(f) or (i) (relating to explosives or arson),

(ii) 18 U.S.C. 922(l) (relating to the illegal importation of firearms),

(iii) 18 U.S.C. 924(n) (relating to illegal firearms trafficking),

(iv) 18 U.S.C. 1952 (relating to traveling in interstate commerce in aid of racketeering enterprises insofar as they concern liquor on which Federal excise tax has not been paid);

(v) 18 U.S.C. 2341—2346 (trafficking in contraband cigarettes);

(vi) Section 38 of the Arms Export Control Act, as added by Public Law 94–329, section 212(a)(1), as amended, 22 U.S.C. 2778 (relating to the importation of items on the U.S. Munitious Import List), except violations relating to exportation, in transit, temporary import, or temporary export transactions;

(vii) 18 U.S.C. 1961 insofar as the offense is an act or threat involving arson that is chargeable under State law and punishable by imprisonment for more than one year; and

(viii) Any offense relating to the primary jurisdiction of Bureau of Alcohol, Tobacco, Firearms, and Explosives that the United States would be obligated by a multilateral treaty either to extradite the alleged offender or to submit the case for prosecution if the offender were found within the territory of the United States;

(b) Investigate, seize, and forfeit property involved in a violation or attempted violation within the investigative jurisdiction set out in paragraph (a), under 18 U.S.C. 981 and 982;

(c) Subject to the limitations of 3 U.S.C. 301, exercise the authorities of the Attorney General under section 38 of the Arms Export Control Act, 22 U.S.C. 2778, relating to the importation of defense articles and defense services, including those authorities set forth in 27 CFR part 47; and

(d) Perform any other function related to the investigation of violent crime or domestic terrorism as may be delegated to the Bureau of Alcohol, Tobacco, Firearms, and Explosives by the Attorney General.

§ 0.131 Specific functions.

The Director of the Bureau of Alcohol, Tobacco, Firearms, and Explosives shall:

(a) Operate laboratories in support of Bureau activities; provide, with or without cost, technical and scientific assistance, including expert testimony, to Federal, State, or local agencies; and make available the services of the laboratories to foreign law enforcement agencies and courts under procedures agreed upon by the Secretary of State and the Attorney General;

(b) Operate the National Explosives Licensing Center to review applications for explosives licenses and permits; determine the eligibility of applicants; issue licenses and permits on approved explosives applications; coordinate with field offices the inspection of applicants, licensees, and permittees; and maintain an explosives license and permit database;

(c) Operate the National Firearms Licensing Center to review applications for firearms licenses; determine the eligibility of applicants; issue licenses on approved firearms applications; coordinate with field offices the inspection of applicants and licensees; and maintain a firearms license database;

(d) Maintain and operate the National Firearms Registration and Transfer Record (NFRTR), pursuant to section 5841 of the Internal Revenue Code of 1986, 26 U.S.C. 5841, as a registry of all National Firearms Act (NFA) firearms in the United States that are not in the possession or under the control of the United States;

(e) Maintain and operate the Arson and Explosives National Repository, a national repository of information on incidents involving arson and the suspected criminal misuse of explosives, under 18 U.S.C. 846(b);

(f) Maintain and operate the National Tracing Center to process requests from Federal, State, local, and foreign law enforcement agencies for the tracing of crime guns; and collect and analyze trace data, out-of-business records, reports of firearms stolen or lost from the inventories of licensees or interstate shipments, and multiple sales reports contained in the Firearms Tracing System (FTS), under 18 U.S.C. chapter 44;

(g) Establish, maintain and operate an Explosives Training and Research Facility to train Federal, State, and local law enforcement officers to investigate bombings and explosions, properly handle, utilize, and dispose of explosives materials and devices, train canines as explosives detection canines, and conduct research on explosives, as authorized by section 1114 of the Homeland Security Act of 2002;

(h) Pay awards for information or assistance and pay for the purchase of

evidence or information as authorized by 28 U.S.C. 524;

(i) Subject to applicable statutory restrictions on the disclosure of records of information:

(1) Release information obtained by the Bureau and Bureau investigative reports to Federal, State, and local officials engaged in the enforcement of laws related to alcohol, tobacco, arson, firearms, and explosives offenses;

(2) Release information obtained by Bureau and Bureau investigative reports to Federal, State, and local prosecutors, and State licensing boards, engaged in the institution and prosecution of cases before courts and licensing boards related to alcohol, tobacco, arson, firearms and explosives offenses;

(3) Authorize the testimony of Bureau officials in response to subpoenas or demands issued by the prosecution in Federal, State, or local criminal cases involving offenses under the jurisdiction of the Bureau; and

(4) Except as provided in paragraph (i)(1) of this section, authorize all other production of information or testimony of Bureau officials in response to subpoenas or demands of courts or other authorities as governed by subpart B of part 16 of this chapter.

§ 0.132 Delegation respecting claims against the Bureau of Alcohol, Tobacco, Firearms, and Explosives.

(a) The Director of the Bureau of Alcohol, Tobacco, Firearms, and Explosives is authorized to exercise the power and authority vested in the Attorney General under 28 U.S.C. 2672 to consider, ascertain, adjust, determine, compromise and settle any claim thereunder not exceeding $50,000 in any one case caused by the negligent or wrongful act or omission of any employee of the Bureau of Alcohol, Tobacco, Firearms, and Explosives.

(b) The Director of the Bureau of Alcohol, Tobacco, Firearms, and Explosives is authorized to exercise the power and authority vested in the Attorney General under 31 U.S.C. 3724, with regard to claims arising out of the lawful activities of Bureau of Alcohol, Tobacco, Firearms, and Explosives personnel in an amount not to exceed $50,000 in any one case.

(c) The Director of the Bureau of Alcohol, Tobacco, Firearms, and Explosives is authorized to redelegate the power and authority vested in him in paragraph (b) of this section to the Chief Counsel of the Bureau of Alcohol, Tobacco, Firearms, and Explosives and the Chief Counsel's designee within the Office of Chief Counsel. This authority shall not be further redelegated below the Associate Chief Counsel level.

§ 0.133 Transition and continuity of regulations.

(a) Except as otherwise provided in this section, and to the extent applicable to the functions transferred to the Department of Justice by the Homeland Security Act of 2002:

(1) The regulations contained in 27 CFR part 46, subpart F (Distribution of Cigarettes), part 47 (Importation of Arms, Ammunition and Implements of War), part 55 (Commerce in Explosives), part 178 (Commerce in Firearms and Ammunition), and part 179 (Machine Guns, Destructive Devices, and Certain Other Firearms) as in effect on January 23, 2003 (*see* 27 CFR chapter I, revised as of July 1, 2002), shall continue in effect with respect to the operations of the Bureau of Alcohol, Tobacco, Firearms, and Explosives according to their terms until amended, modified, superseded, terminated, set aside, or revoked in accordance with law.

(2) The regulations promulgated by the Department of the Treasury relating to the Bureau of Alcohol, Tobacco and Firearms, or by the Bureau of Alcohol, Tobacco and Firearms of the Department of the Treasury, in effect as of January 23, 2003, shall continue to apply to the operations of the Bureau of Alcohol, Tobacco, Firearms, and Explosives until amended, modified, superseded, terminated, set aside, or revoked in accordance with law, unless the application of such regulations would be inconsistent with statutes or regulations applicable to the Department of Justice.

(3) All orders, delegations, determinations, rules, personnel actions, permits, agreements, grants, contracts, certificates, licenses, registrations, and privileges of the Bureau of Alcohol, Tobacco and Firearms completed or in effect as of January 23, 2003, and all matters and proceedings pending therein on January 23, 2003, shall continue in effect according to their terms, to the extent that they relate to the authorities or functions transferred to the Department of Justice pursuant to the Homeland Security Act of 2002, until amended, modified, superseded, terminated, set aside, or revoked in accordance with law, unless such application would be inconsistent with statutes or regulations applicable to the Department of Justice.

(4) References in such regulations, orders, delegations, determinations, rules, personnel actions, permits, agreements, grants, contracts, certificates, licenses, registrations, and privileges to the Secretary of Treasury, the Department of Treasury, the Director of the Bureau of Alcohol, Tobacco and Firearms, or the Bureau of Alcohol, Tobacco and Firearms or its officers, employees, agents or organizational units or functions shall be deemed to refer, as appropriate, on and after January 24, 2003, to the Attorney General, the Department of Justice, the Director of the Bureau of Alcohol, Tobacco, Firearms, and Explosives, the Bureau of Alcohol, Tobacco, Firearms, and Explosives or to its officers, employees, or agents or its corresponding organizational units or functions, respectively.

(b) Exceptions. Notwithstanding the provisions of paragraph (a) of this section, 27 CFR part 72, and 27 CFR 46.155, 178.152 and 179.182 as in effect on January 23, 2003, shall not be deemed applicable to the Bureau of Alcohol, Tobacco, Firearms, and Explosives.

§ 0.138 [Amended]

7. In § 0.138, in the section heading, "Bureau of Alcohol, Tobacco, Firearms, and Explosives," is added following the words "Drug Enforcement Administration," and in paragraph (a), the words "the Director of the Bureau of Alcohol, Tobacco, Firearms, and Explosives," are added following "the Administrator of the Drug Enforcement Administration,".

§ 0.140 [Amended]

8. In § 0.140, the words "the Director of the Bureau of Alcohol, Tobacco, Firearms, and Explosives," are added following the words "the Administrator of the Drug Enforcement Administration,".

§ 0.141 [Amended]

9. In § 0.141, the words "the Director of the Bureau of Alcohol, Tobacco, Firearms, and Explosives," are added following "the Administrator of the Drug Enforcement Administration,".

§ 0.142 [Amended]

10. In § 0.142 introductory text, the words "Director of the Bureau of Alcohol, Tobacco, Firearms, and Explosives," are added following the words "Administrator of the Drug Enforcement Administration,".

11. In paragraph (g) of § 0.142, the words "the Director of the Bureau of Alcohol, Tobacco, Firearms, and Explosives," are added following the words "the Director of the Federal Bureau of Investigation".

§ 0.143 [Amended]

12. In § 0.143, the words "the Director of the Bureau of Alcohol, Tobacco, Firearms, and Explosives," are added following the words "the Administrator

of the Drug Enforcement Administration,".

§ 0.144 [Amended]

13. In § 0.144, the words "Director of the Bureau of Alcohol, Tobacco, Firearms, and Explosives," are added following the words "Administrator of the Drug Enforcement Administration,".

§ 0.145 [Amended]

14. In § 0.145, the words "the Director of the Bureau of Alcohol, Tobacco, Firearms, and Explosives," are added following the words "the Administrator of the Drug Enforcement Administration,".

§ 0.146 [Amended]

15. In § 0.146, the words "the Director of the Bureau of Alcohol, Tobacco, Firearms, and Explosives," are added following the words "the Administrator of the Drug Enforcement Administration,".

§ 0.147 [Amended]

16. In § 0.147, the words "for the Bureau of Alcohol, Tobacco, Firearms, and Explosives, the Assistant Director, Management;" are added following the words "Drug Enforcement Administration, the Director of the Office of Administration and Management;".

§ 0.148 [Amended]

17. In § 0.148, the words "the Director of the Bureau of Alcohol, Tobacco, Firearms, and Explosives," are added following the words "the Administrator of the Drug Enforcement Administration,".

§ 0.149 [Amended]

18. In § 0.149:

a. Redesignate paragraphs (a) through (c) as paragraphs (a)(1) through (a)(3);

b. Redesignate the introductory paragraph of the section as paragraph (a) introductory text and add the words "the Director of the Bureau of Alcohol, Tobacco, Firearms, and Explosives," following the words "the Administrator of the Drug Enforcement Administration,"; and

c. Designate the undesignated paragraph at the end of the section as paragraph (b).

§ 0.151 [Amended]

19. In § 0.151, the words "the Director of the Bureau of Alcohol, Tobacco, Firearms, and Explosives," are added following the words "the Administrator of the Drug Enforcement Administration,".

§ 0.152 [Amended]

20. In § 0.152, the words ", the Director of the Bureau of Alcohol, Tobacco, Firearms, and Explosives," are added following the words "the Administrator of the Drug Enforcement Administration".

§ 0.153 [Amended]

21. In § 0.153, the words "the Director of the Bureau of Alcohol, Tobacco, Firearms, and Explosives," are added following the words "the Administrator of the Drug Enforcement Administration,".

§ 0.154 [Amended]

22. In § 0.154, the words "the Director of the Bureau of Alcohol, Tobacco, Firearms, and Explosives," are added following the words "the Administrator of the Drug Enforcement Administration,".

§ 0.155 [Amended]

23. In § 0.155, the words "the Director of the Bureau of Alcohol, Tobacco, Firearms, and Explosives," are added following "the Administrator of the Drug Enforcement Administration,".

PART 9—REGULATIONS GOVERNING THE REMISSION OR MITIGATION OF CIVIL AND CRIMINAL FORFEITURES

24. The authority citation for part 9 continues to read as follows:

Authority: 28 U.S.C. 509, 510, 515–518, 524; 8 U.S.C. 1324; 15 U.S.C. 1177; 17 U.S.C. 509; 18 U.S.C. 512, 981, 982, 1467, 1955, 1963, 2253, 2254, 2513; 19 U.S.C. 1613, 1618; 21 U.S.C. 853, 881; 22 U.S.C. 401.

§ 9.1 [Amended]

25. In § 9.1, in paragraph (b)(1), the words "within the Bureau of Alcohol, Tobacco, Firearms, and Explosives, authority to grant remission and mitigation is delegated to the Director of the Bureau of Alcohol, Tobacco, Firearms, and Explosives;" are added following the words "within the Drug Enforcement Administration, authority to grant remission and mitigation is delegated to the Forfeiture Counsel, Office of Chief Counsel;".

26. In § 9.3, redesignate paragraph (e)(1)(iii) as paragraph (e)(1)(iv), and add a new paragraph (e)(1)(iii) to read as follows:

§ 9.3 Petitions in administrative forfeiture cases.

* * * * *

(e) * * *

(1) * * *

(iii) Bureau of Alcohol, Tobacco, Firearms, and Explosives, Special Agent in Charge, Asset Forfeiture and Seized Property Branch, 650 Massachusetts Avenue, NW., Washington, DC 20226.

* * * * *

§ 9.4 [Amended]

27. In § 9.4, before the period at the end of paragraph (e), add the words ", and except in Bureau of Alcohol, Tobacco, Firearms, and Explosives cases, where the copy shall be submitted to the Special Agent in Charge, Asset Forfeiture and Seized Property Branch, Bureau of Alcohol, Tobacco, Firearms, and Explosives, 650 Massachusetts Avenue, NW., Washington, DC 20226".

PART 11—DEBT COLLECTION

28. The authority citation for part 11 continues to read as follows:

Authority: 5 U.S.C. 301, 28 U.S.C. 509, 510, 31 U.S.C. 3718, 3720A.

§ 11.6 [Amended]

29. In § 11.6(b), the words "the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF)," are added following the abbreviation "(FBI),".

PART 16—PRODUCTION OR DISCLOSURE OF MATERIAL OR INFORMATION

30. The authority citation for part 16 continues to read as follows:

Authority: 5 U.S.C. 301, 552, 552a, 552b(g), 553; 18 U.S.C. 4203(a)(1); 28 U.S.C. 509, 510, 534; 31 U.S.C. 3717, 9701.

31. In § 16.2, redesignate paragraphs (b)(11) and (b)(12) as paragraphs (b)(12) and (b)(13), respectively, and add a new paragraph (b)(11) to read as follows:

§ 16.2 Public reading rooms.

* * * * *

(11) Bureau of Alcohol, Tobacco, Firearms, and Explosives—650 Massachusetts Avenue, NW., Washington, DC;

* * * * *

Appendix I to Part 16 [Amended]

32. In Appendix I to part 16—Components of the Department of Justice, Subpart C, add the words "Bureau of Alcohol, Tobacco, Firearms, and Explosives, U.S. Department of Justice, Washington, DC 20226" following the item headed "Tax Division":

PART 71—IMPLEMENTATION FOR ACTIONS INITIATED BY THE DEPARTMENT OF JUSTICE

33. The authority citation for part 71 continues to read as follows:

Authority: 5 U.S.C. 301; 28 U.S.C. 509, 510; 31 U.S.C. 3801–3812; Pub. L. 101–410, 104 Stat. 890, as amended by Pub. L. 104–134, 110 Stat. 1321.

34. In § 71.2, in the definition of "Reviewing Official", redesignate paragraphs (e) and (f) as paragraphs (f) and (g), respectively, and add a new paragraph (e) to read as follows:

§ 71.2 Definitions.

* * * * *

(e) For the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF), the Chief Counsel, ATF;

* * * * *

PART 77—ETHICAL STANDARDS FOR ATTORNEYS FOR THE GOVERNMENT

35. The authority citation for part 77 continues to read as follows:

Authority: 28 U.S.C. 530B.

§ 77.2 [Amended]

36. In § 77.2, in paragraph (a), add the words "the Chief Counsel for ATF and any attorney employed in that office;" following the words "the Chief Counsel for the DEA and any attorney employed in that office;".

Dated: January 23, 2003.

John Ashcroft,

Attorney General.

[FR Doc. 03–1896 Filed 1–29–03; 8:45 am]

BILLING CODE 4410–19–P

DEPARTMENT OF JUSTICE

28 CFR Part 16

[AAG/A Order No. 005–2003]

Privacy Act of 1974; Implementation

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: The Department of Justice, Office of the Pardon Attorney (OPA), is exempting a Privacy Act system of records entitled "Executive Clemency Case Files/Executive Clemency Tracking System (JUSTICE/OPA–001)" from subsections (c)(3), (c)(4), (d)(1), (d)(2), (d)(3), (d)(4), and (e)(5) of the Privacy Act. Information in this system relates to the investigation and evaluation of applicants for executive clemency and case-related correspondence regarding such applicants and the clemency process. The exemptions are necessary to avoid interference with clemency investigations and decision-making, when such interference could impair the Department of Justice's ability to provide candid recommendations to the President for his ultimate decisions on clemency matters, and to prevent unwarranted invasions of the personal privacy of third parties.

EFFECTIVE DATE: This final rule is effective January 31, 2003.

FOR FURTHER INFORMATION CONTACT: Mary Cahill, (202) 307–1823.

SUPPLEMENTARY INFORMATION: On October 31, 2002 (67 FR 66348), a proposed rule was published in the **Federal Register** with an invitation to comment. No comments were received.

This order relates to individuals rather than small business entities. Nevertheless, pursuant to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601–612, it is hereby stated that the order will not have "a significant impact on a substantial number of small entities."

List of Subjects in Part 16

Administrative practices and procedures, Courts, Freedom of Information and Privacy.

Pursuant to the authority vested in the Attorney General by 5 U.S.C. 552a, and delegated to me by Attorney General Order No. 793–78, 28 CFR Part 16 is amended as follows:

PART 16—[AMENDED]

1. The authority citation for Part 16 continues to read as follows:

Authority: 5 U.S.C. 301, 552, 552a, 552b(g), 553; 18 U.S.C. 4203(a)(1); 28 U.S.C. 509, 510, 534; 31 U.S.C. 3717, 9701.

2. Section 16.79 is revised to read as follows:

§ 16.79 Exemption of Pardon Attorney System.

(a) The following system of records is exempt from 5 U.S.C. 552a, subsections (c)(3), (c)(4), (d)(1), (d)(2), (d)(3), (d)(4), and (e)(5): Executive Clemency Case Files/Executive Clemency Tracking System (JUSTICE/OPA–001). These exemptions apply only to the extent that information in this system of records is subject to exemption pursuant to 5 U.S.C. 552a(j)(2).

(b) Exemption from the particular subsections is justified for the following reasons:

(1) From subsection (c)(3) because:

(i) The purpose of the creation and maintenance of the Executive Clemency Case Files/Executive Clemency Tracking System (JUSTICE/OPA–001) is to enable the Justice Department to prepare reports and recommendations to the President for his ultimate decisions on clemency matters, which are committed to exclusive discretion of the President pursuant to Article II, Section 2, Clause 1 of the Constitution.

(ii) Release of the disclosure accounting, for disclosures pursuant to the routine uses published for this system, would permit the requester to obtain valuable information concerning the nature and scope of a clemency investigation, invade the right of candid and confidential communications among officials concerned with making recommendations to the President in clemency matters, and disclose the identity of persons who furnished information to the Government under an express or implied promise that their identities would be held in confidence.

(2) From subsection (c)(4) because the exemption from subsections (d)(1), (d)(2), (d)(3), and (d)(4) will make notification of disputes inapplicable.

(3) From subsections (d)(1), (d)(2), (d)(3), and (d)(4) is justified for the reasons stated in paragraph (b)(1) of this section.

(4) From subsection (e)(5) is justified for the reasons stated in paragraph (b)(1) of this section.

Dated: January 17, 2003.

Paul R. Corts,

Assistant Attorney General for Administration.

[FR Doc. 03–2252 Filed 1–30–03; 8:45 am]

BILLING CODE 4410–29–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 273–0370a; FRL–7441–5]

Revisions to the California State Implementation Plan, Imperial County Air Pollution Control District and Monterey Bay Unified Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve revisions to the Imperial County Air Pollution Control District (ICAPCD) and the Monterey Bay Unified Air Pollution Control District (MBUAPCD) portions of the California State Implementation Plan (SIP). The ICAPCD revision concerns the emission of particulate matter (PM–10) from agricultural burning. The MBUAPCD revision concerns the emission of PM–10 from incinerator burning. We are approving the local rules that regulate these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act).

DATES: This rule is effective on April 1, 2003 without further notice, unless EPA receives adverse comments by March 3, 2003. If we receive such comments, we

will publish a timely withdrawal in the **Federal Register** to notify the public that this rule will not take effect.

ADDRESSES: Mail comments to Andy Steckel, Rulemaking Office Chief (AIR–4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

You can inspect a copy of the submitted rules and EPA's technical support documents (TSDs) at our Region IX office during normal business hours. You may also see a copy of the submitted rules and TSDs at the following locations:

Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, (Mail Code 6102T), Room B–102, 1301 Constitution Avenue, NW., Washington, DC 20460.

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1001 "I" Street, Sacramento, CA 95814.

Imperial County Air Pollution Control District, 150 South 9th Street, El Centro, CA 92243.

Monterey Bay Unified Air Pollution Control District, 24580 Silver Cloud Court, Monterey, CA 93940.

A copy of a rule may also be available via the Internet at *http://www.arb.ca.gov/drdb/drdbltxt.htm*. This is not an EPA Web site and it may not contain the same version of the rule that was submitted to EPA. Readers should verify that the adoption date of the rule listed is the same as the rule submitted to EPA for approval and be aware that the official submittal is only available at the agency addresses listed above.

FOR FURTHER INFORMATION CONTACT: Al Petersen, Rulemaking Office (AIR–4), U.S. Environmental Protection Agency, Region IX; (415) 947–4118.

SUPPLEMENTARY INFORMATION: Throughout this document, "we," "us" and "our" refer to EPA.

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I. The State's Submittal

A. What Rules Did the State Submit?

Table 1 lists the rules we are approving with the date that they were revised by the local air agencies and submitted by the California Air Resources Board (CARB).

TABLE 1.—SUBMITTED RULES

Local agency	Rule #	Rule title	Revised	Submitted
ICAPCD	701	Agricultural burning	08/13/02	10/16/02
MBUAPCD	408	Incinerator burning	08/21/02	10/16/02

On December 3; 2002, this submittal was found to meet the completeness criteria in 40 CFR Part 51 Appendix V, which must be met before formal EPA review.

B. Are There Other Versions of These Rules?

We gave a limited approval and limited disapproval to a version of ICAPCD Rule 701 on July 11, 2001 (66 FR 36170). We approved a version of MBUAPCD Rule 408 on July 13, 1987 (52 FR 26148).

C. What Is the Purpose of the Submitted Rule Revisions?

The purpose of the submitted revised ICAPCD Rule 701 is to remedy the deficiency cited in the limited approval and limited disapproval action on July 11, 2001 (66 FR 36170).

The purposes of the submitted revised MBUAPCD Rule 408 are to reformat the rule and to remove the blanket exemption from the rule for burning household rubbish and yard trimmings at single- and two-family homes in all of San Benito County.

II. EPA's Evaluation and Action

A. How Is EPA Evaluating the Rules?

Generally, SIP rules must be enforceable (see section 110(a) of the CAA) and must not relax existing requirements (see sections 110(l) and 193). Section 189(a) of the CAA requires moderate PM–10 nonattainment areas with significant PM–10 sources to adopt reasonably available control measures (RACM), including reasonably available control technology (RACT). RACM/RACT is not required for attainment areas unless required by a maintenance attainment plan. ICAPCD regulates a moderate PM–10 nonattainment area. MBUAPCD is a PM–10 attainment area. See 40 CFR 81.305.

The following guidance documents were used for reference:

- *Requirements for Preparation, Adoption, and Submittal of Implementation Plans*, U.S. EPA, 40 CFR part 51.
- *General Preamble Appendix C3—Prescribed Burning Control Measures* (57 FR 18072, April 28, 1992).
- *PM–10 Guideline Document*, EPA–452/R–93–008.

B. Do the Rules Meet the Evaluation Criteria?

The deficiency in ICAPCD Rule 701 was that the APCO had open-ended discretion to allow burning on No-Burn Days in case of imminent and substantial economic loss. The deficiency was remedied in paragraph B.1 with the addition that the APCO must limit the amount of acreage per No-Burn Day and that the APCO may authorize such burning only when downwind populated areas are forecast by the ICAPCD to achieve the ambient air quality standards.

The cited changes improve MBUAPCD Rule 408 with increased stringency by eliminating a blanket exemption.

We believe the rules are consistent with the relevant policy and guidance regarding enforceability, SIP relaxations, and RACM/RACT requirements. The TSDs have more information on our evaluation.

C. Public Comment and Final Action

As authorized in section 110(k)(3) of the CAA, EPA is fully approving the submitted rules because we believe they fulfill all relevant requirements. We do not think anyone will object to this, so we are finalizing the approval without proposing it in advance. However, in the Proposed Rules section of this **Federal Register**, we are simultaneously proposing approval of the same submitted rules. If we receive adverse comments by March 3, 2003, we will publish a timely withdrawal in the **Federal Register** to notify the public that the direct final approval will not take effect and we will address the comments in a subsequent final action based on the proposal. If we do not

receive timely adverse comments, the direct final approval will be effective without further notice on April 1, 2003. This will incorporate these rules into the federally-enforceable SIP and will terminate all sanctions and Federal Implementation Plan implications associated with our June 11, 2001 action on a previous version of ICAPCD Rule 701.

Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this direct final rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

III. Background Information

A. Why Were These Rules Submitted?

PM–10 harms human health and the environment. Section 110(a) of the CAA requires states to submit regulations that control PM–10 emissions. Table 2 lists some of the national milestones leading to the submittal of local agency PM–10 rules.

TABLE 2.—PM–10 NONATTAINMENT MILESTONES

Date	Event
March 3, 1978	EPA promulgated a list of total suspended particulate (TSP) nonattainment areas under the Clean Air Act, as amended in 1977. 43 FR 8964; 40 CFR 81.305.
July 1, 1987	EPA replaced the TSP standards with new PM standards applying only up to 10 microns in diameter (PM–10). 52 FR 24672.
November 15, 1990	Clean Air Act Amendments of 1990 were enacted, Pub. L. 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671*q*.
November 15, 1990	PM–10 areas meeting the qualifications of section 107(d)(4)(B) of the CAA were designated nonattainment by operation of law and classified as moderate pursuant to section 188(a). States are required by section 110(a) to submit rules regulating PM–10 emissions in order to achieve the attainment dates specified in section 188(c).

IV. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. This rule also is not subject to Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the CAA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. section 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. section 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 1, 2003. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. See section 307(b)(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

Dated: December 12, 2002.

Keith Takata,

Acting Regional Administrator, Region IX.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52 [AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart F—California

2. Section 52.220 is amended by adding paragraph (c)(302) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(302) New and amended regulations for the following APCDs were submitted on October 16, 2002, by the Governor's designee.

(i) Incorporation by reference.

(A) Imperial County Air Pollution Control District.

(*1*) Rule 701, revised on August 13, 2002.

(B) Monterey Bay Unified Air Pollution Control District.

(*1*) Rule 408, adopted on September 1, 1974 and revised on August 21, 2002.

* * * * *

[FR Doc. 03–2174 Filed 1–30–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 273–0370c; FRL–7441–7]

Interim Final Determination to Stay and/or Defer Sanctions, Imperial County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Interim final rule.

SUMMARY: EPA is making an interim final determination to stay and/or defer imposition of sanctions based on a proposed approval of revisions to the Imperial County Air Pollution Control District (ICAPCD) portion of the California State Implementation Plan (SIP) published elsewhere in today's **Federal Register**. The revisions concern ICAPCD Rule 701.

DATES: This interim final determination is effective on January 31, 2003. However, comments will be accepted until March 3, 2003.

ADDRESSES: Mail comments to Andy Steckel, Rulemaking Office Chief (AIR–4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

You can inspect copies of the submitted rule revisions and EPA's technical support document (TSD) at our Region IX office during normal business hours. You may also see copies of the submitted rule revisions and TSD at the following locations:

Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1001 "I" Street, Sacramento, CA 95814.

Imperial County Air Pollution Control District, 150 South 9th Street, El Centro, CA 92243.

A copy of the rule may also be available via the Internet at *http://www.arb.ca.gov/drdb/drdbltxt.htm*. Please be advised that this is not an EPA Web site and may not contain the same version of the rule that was submitted to EPA.

FOR FURTHER INFORMATION CONTACT: Al Petersen, Rulemaking Office (AIR–4), U.S. Environmental Protection Agency, Region IX; (415) 947–4118.

SUPPLEMENTARY INFORMATION: Throughout this document, "we," "us" and "our" refer to EPA.

I. Background

On July 11, 2001 (66 FR 36170), we published a limited approval and limited disapproval of ICAPCD Rule 701 as adopted locally on September 14, 1999 and submitted by the State on May 26, 2000. We based our limited disapproval action on certain deficiencies in the submittal. This disapproval action started a sanctions clock for imposition of offset sanctions 18 months after August 10, 2001 and highway sanctions 6 months later, pursuant to section 179 of the Clean Air Act (CAA) and our regulations at 40 CFR 52.31.

On August 13, 2002, ICAPCD adopted revisions to Rule 701 that were intended to correct the deficiencies identified in our disapproval action. On October 16, 2002, the State submitted these revisions to EPA. In the Proposed Rules section of today's **Federal Register**, we have proposed approval of this submittal because we believe it corrects the deficiencies identified in our July 11, 2001 disapproval action. Based on today's proposed approval, we are taking this final rulemaking action, effective on publication, to stay and/or defer imposition of sanctions that were triggered by our July 11, 2001 disapproval.

EPA is providing the public with an opportunity to comment on this stay/deferral of sanctions. If comments are submitted that change our assessment described in this final determination and the proposed approval of revised ICAPCD Rule 701, we intend to take subsequent final action to reimpose sanctions pursuant to 40 CFR 51.31(d). If no comments are submitted that change our assessment, then all sanctions and sanction clocks will be permanently terminated on the effective date of a final rule approval.

II. EPA Action

We are making an interim final determination to stay and/or defer CAA section 179 sanctions associated with ICAPCD Rule 701 based on our concurrent proposal to approve the State's SIP revision as correcting deficiencies that initiated sanctions.

Because EPA has preliminarily determined that the State has corrected the deficiencies identified in EPA's limited disapproval action, relief from sanctions should be provided as quickly as possible. Therefore, EPA is invoking the good cause exception under the Administrative Procedure Act (APA) in not providing an opportunity for comment before this action takes effect (5 U.S.C. 553(b)(3)). However, by this action EPA is providing the public with a chance to comment on EPA's determination after the effective date, and EPA will consider any comments received in determining whether to reverse such action.

EPA believes that notice-and-comment rulemaking before the effective date of this action is impracticable and contrary to the public interest. EPA has reviewed the State's submittal and, through its proposed action, is indicating that it is more likely than not that the State has corrected the deficiencies that started the sanctions clocks. Therefore, it is not in the public interest to initially impose sanctions or to keep applied sanctions in place when the State has most likely done all it can to correct the deficiencies that triggered the sanctions clocks. Moreover, it would be impracticable to go through notice-and-comment rulemaking on a finding that the State has corrected the deficiencies prior to the rulemaking approving the State's submittal. Therefore, EPA believes that it is necessary to use the interim final rulemaking process to stay and/or defer sanctions while EPA completes its rulemaking process on the approvability of the State's submittal. Moreover, with respect to the effective date of this

action, EPA is invoking the good cause exception to the 30-day notice requirement of the APA because the purpose of this notice is to relieve a restriction (5 U.S.C. 553(d)(1)).

III. Administrative Requirements

This action stays and/or defers federal sanctions and imposes no additional requirements.

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget.

This action is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001) because it is not a significant regulatory action.

The administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

This rule does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4).

This rule does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

This action does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999).

This rule is not subject to Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

The requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272) do not apply to this rule because it imposes no standards.

This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report to Congress and the Comptroller General. However, section 808 provides that any rule for which the issuing agency for good cause finds that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest, shall take effect at such time as the agency promulgating the rule determines. 5 U.S.C. 808(2). EPA has made such a good cause finding, including the reasons therefor, and established an effective date of January 31, 2003. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 1, 2003. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purpose of judicial review nor does it extend the time within which petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. See section 307(b)(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental regulations, Particulate matter, Reporting and recordkeeping requirements.

Dated: December 12, 2002.

Keith Takata,

Acting Regional Administrator, Region IX.

[FR Doc. 03–2175 Filed 1–30–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[SIP NO. CO–001–0068; FRL–7443–8]

Approval and Promulgation of Air Quality Implementation Plans; State of Colorado

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the Governor of Colorado on November 5, 1999. The November 5, 1999 submittal exempts military training exercises at the United States Army Installation Fort Carson and United States Army Pinon Canyon Maneuver Site (PCMS) from opacity limits. The intended effect of this action is to allow the use of smoke and obscurants for military training exercises when operated under applicable requirements. This action is being taken under section 110 of the Clean Air Act (CAA).

EFFECTIVE DATE: This final rule is effective March 3, 2003.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air and Radiation Program, Environmental Protection Agency, Region 8, 999 18th Street, Suite 300, Denver, Colorado 80202 and copies of the Incorporation by Reference material at the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, Room B–108 (Mail Code 6102T), 1301 Constitution Ave., NW., Washington, DC 20460. Copies of the State documents relevant to this action are available for public inspection at the Colorado Department of Public Health and Environment, Air Pollution Control Division, 4300 Cherry Creek Drive South, Denver, Colorado 80246–1530.

FOR FURTHER INFORMATION CONTACT: Laurel Dygowski, EPA, Region 8, (303) 312–6144.

SUPPLEMENTARY INFORMATION: On October 23, 2002 (67 FR 65080), EPA published a notice of proposed rulemaking (NPR) for the State of Colorado. The NPR proposed approval of a State Implementation Plan (SIP) revision submitted by the Governor of Colorado on November 5, 1999. The November 5, 1999 submittal exempts military training exercises at the United States Army Installation Fort Carson and United States Army Pinon Canyon Maneuver Site from opacity limits. The intended effect of this action is to allow the use of smoke and obscurants for military training exercises when operated under applicable requirements.

I. Final Action

Since we received no comment on the October 23, 2002 notice of proposed rulemaking, EPA is approving a State Implementation Plan (SIP) revision submitted by the Governor of Colorado on November 5, 1999. The November 5,

1999 submittal revises Colorado's Regulation No. 1 Emission Control for Particulates, Smokes, Carbon Monoxide and Sulfur Dioxide by adding a new subsection D to section II.

II. Regulatory Assessment Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 1, 2003. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: January 13, 2003.

Robert E. Roberts,

Regional Administrator, Region 8.

40 CFR part 52, Chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart G—Colorado

2. Section 52.320 is amended by adding paragraph (c)(98) to read as follows:

§ 52.320 Identification of plan.

* * * * *

(c) * * *

(98) On November 5, 1999 the Governor of Colorado submitted a revision to Regulation No. 1, "Emission Control for Particulates, Smokes, Carbon Monoxide and Sulfur Dioxide." The November 5, 1999 submittal exempts military training exercises at the United States Army Installation Fort Carson and United States Army Pinon Canon Maneuver Site (PCMS) from opacity limits. A new subsection D to Regulation No. 1, section II, has been approved into the SIP.

(i) Incorporation by reference.

(A) Colorado Regulation No. 1, section II, subsection D effective September 30, 1998.

[FR Doc. 03–2173 Filed 1–30–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 761

[OPPT–2002–0013; FRL–7288–6]

RIN 2070–AB20

Polychlorinated Biphenyls; Manufacturing (Import) Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: With certain exceptions, section 6(e)(3) of the Toxic Substances Control Act (TSCA) bans the manufacture (including import), processing, and distribution in commerce of polychlorinated biphenyls (PCBs). One of these exceptions is TSCA section 6(e)(3)(B), which gives EPA authority to grant petitions through rulemaking, to perform these banned activities for a period of up to 12 months, provided EPA can make certain

findings. In January and April 2001, the United States Defense Logistics Agency (DLA), a component of the Department of Defense (DoD), submitted two petitions to EPA to import foreign-manufactured PCBs that DoD currently owns in Japan and Wake Island for disposal in the United States. EPA is amending its rules to grant both of DLA's petitions; this action will allow DLA to engage in the import of these PCBs for disposal.

DATES: This rule shall become effective April 18, 2003, and shall expire on April 17, 2004. This rule shall be promulgated for purposes of judicial review at 1 p.m. eastern standard time on January 31, 2003.

FOR FURTHER INFORMATION CONTACT: *For general information contact*: Barbara Cunningham, Acting Director, Environmental Assistance Division, Office of Pollution Prevention and Toxics (7408M), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 554–1404; e-mail address: TSCA-Hotline@epa.gov.

For technical information contact: Peter Gimlin, Environmental Protection Specialist, National Program Chemicals Division (7404T), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 566–0515; fax number: (202) 566–0473; e-mail address: gimlin.peter@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. To Whom Does this Action Apply?

This action applies to the petitioner, the DLA. Potentially affected categories and entities include, but are not necessarily limited to:

Public Administration (NAICS Code 92), e.g., Petitioning Agency (i.e., DLA).

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action applies to certain entities. To determine whether you or your business is affected by this action, you should carefully examine the applicability provisions in 40 CFR part 761. If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document or Other Related Information?

1. *Docket*. EPA has established an official public docket for this action under docket identification (ID) number OPPT–2002–0013. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the EPA Docket Center, Rm. B102-Reading Room, EPA West, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The EPA Docket Center Reading Room telephone number is (202) 566–1744 and the telephone number for the OPPT Docket, which is located in the EPA Docket Center, is (202) 566–0280.

2. *Electronic access*. You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at http://www.epa.gov/fedrgstr/. A frequently updated electronic version of 40 CFR part 761 is available at http://www.access.gpo.gov/nara/cfr/cfrhtml_00/Title_40/40cfr761_00.html, a beta site currently under development. To access information about PCBs, go directly to the PCB Home Page for the Office of Pollution Prevention and Toxics at http://www.epa.gov/pcb.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at http://www.epa.gov/edocket/ to view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select "search," then key in the appropriate docket ID number.

II. Background

A. What Action is the Agency Taking?

In this document, the Agency is granting two petitions submitted by DLA to import PCB waste for disposal. In the absence of an exemption, import of this waste would be banned by TSCA section 6(e)(3). One petition, dated January 19, 2001, is for an exemption to import foreign-source PCBs that were used on DoD installations in Japan and are currently stored on Wake Island, a United States territory in the Pacific Ocean west of Hawaii (Ref. 9). (While Wake Island is part of the United States, it is outside the Customs Territory of the United States, and TSCA defines "manufacture" to include "import into the Customs Territory of the United States.") In addition, 40 CFR 761.99(c) does not exclude this waste from EPA's regulatory interpretation of "import," because it was not present in the United States on January 1, 1979. For more information on these definitional issues, see the **Federal Register** documents of November 1, 2000 (Ref. 7) and March 30, 2001 (Ref. 8). The other petition, dated April 16, 2001, is to import foreign-generated PCBs owned by DoD that are currently in use or storage in Japan (Ref. 10). (The term "foreign-generated PCBs" is used to identify those PCBs that DoD acquired from foreign sources and that are subject to the TSCA ban on import.)

B. What is the Agency's Statutory Authority for Taking this Action?

Section 6(e) of TSCA, 15 U.S.C. 2605(e), generally prohibits the manufacture of PCBs after January 1, 1979, the processing and distribution in commerce of PCBs after July 1, 1979, and most uses of PCBs after October 11, 1977. Section 6(e)(3)(A) of TSCA prohibits the manufacture, processing, and distribution in commerce of PCBs except for the distribution in commerce of PCBs that were sold for purposes other than resale before July 1, 1979. Section 6(e)(1) of TSCA also authorizes EPA to regulate the disposal of PCBs consistent with the provisions in TSCA section 6(e)(2) and (3). Section 6(e)(3)(B) of TSCA provides that any person may petition the Administrator for an exemption from the prohibition on the manufacture, processing, and distribution in commerce of PCBs. The Administrator may by rule grant an exemption if the Administrator finds that:

(i) an unreasonable risk of injury to health or the environment would not result, and (ii) good faith efforts have been made to develop a chemical substance which does not present an unreasonable risk of injury to health or the environment and which may be substituted for such polychlorinated biphenyl. (15 U.S.C.2605(e)(3)(B)(i)–(ii)).

The Administrator may prescribe terms and conditions for an exemption

and may grant an exemption for a period of not more than 1 year from the date the petition is granted. In addition, TSCA section 6(e)(4) requires that a rule under TSCA section 6(e)(3)(B) be promulgated in accordance with TSCA sections 6(c)(2), (3), and (4), which provides for publication of a proposed rule and an opportunity for an informal public hearing before a final rule can be issued.

C. What is the Agency's Regulatory Authority for Taking this Action?

EPA's procedures for rulemaking under TSCA section 6 are found under 40 CFR part 750. This part includes Subpart B—Interim Procedural Rules for Manufacturing Exemptions (40 CFR 750.10 through 750.21) that describe the required content for manufacturing exemption petitions and the procedures EPA follows in rulemaking on these petitions.

III. Findings Necessary to Grant Petitions

A. Unreasonable Risk Finding.

Before granting an exemption petition, TSCA section 6(e)(3)(B)(i) requires the Administrator to find that granting an exemption would not result in an unreasonable risk of injury to health or the environment in the United States. To determine whether a risk is unreasonable, EPA balances the probability that harm will occur to health or the environment against the benefits to society from granting or denying each petition (see generally, 15 U.S.C. 2605(c)(1)). Specifically, EPA considers the following factors:

1. *Effects of PCBs on human health and the environment.* In deciding whether to grant an exemption, EPA considers the magnitude of exposure and the effects of PCBs on humans and the environment. The following discussion summarizes EPA's assessment of these factors. A more complete discussion of these factors is provided in the preamble to the proposed rule: Polychlorinated Biphenyls; Manufacturing, Processing, and Distribution in Commerce Exemptions (Ref. 3), in the rulemaking record for that proposed rule (OPTS Docket–66008F), 40 CFR 761.20, and in EPA's 1996 PCB Cancer Assessment (Ref. 32).

i. *Health effects.* EPA has determined that PCBs cause significant human health effects including cancer, immune system suppression, liver damage, skin irritation, and endocrine disruption. PCBs exhibit neurotoxicity as well as reproductive and developmental toxicity. PCBs are readily absorbed through the skin and are absorbed at even faster rates when inhaled. Because PCBs are stored in animal fatty tissue, humans are also exposed to PCBs through ingestion of animal products (Ref. 32).

ii. *Environmental effects.* Certain PCB congeners are among the most stable chemicals known, and decompose very slowly once they are released in the environment. PCBs are absorbed and stored in the fatty tissue of higher organisms as they bioaccumulate up the food chain through invertebrates, fish, and mammals. Significantly, bioaccumulated PCBs appear to be even more toxic than those found in the ambient environment, since the more toxic PCB congeners are more persistent and thus more likely to be retained (Ref. 32). PCBs also have reproductive and other toxic effects in aquatic organisms, birds, and mammals.

iii. *Risks.* Toxicity and exposure are the two basic components of risk. EPA has concluded that any exposure of humans or the environment to PCBs may be significant, depending on such factors as the quantity of PCBs involved in the exposure, the likelihood of exposure to humans and the environment, and the effect of exposure. Minimizing exposure to PCBs should minimize any eventual risk. EPA has previously determined that some activities, including the disposal of PCBs in accordance with 40 CFR part 761, pose no unreasonable risks. Other activities, such as long-term storage of PCB waste, are generally considered by EPA to pose unreasonable risks.

2. *Benefits and costs.* The benefits to society of granting an exemption vary, depending on the activity for which the exemption is requested. The reasonably ascertainable costs of denying an exemption vary, depending on the individual petition. EPA takes benefits and costs into consideration when evaluating each exemption petition.

B. Good Faith Efforts Finding

Section 6(e)(3)(B)(ii) of TSCA also requires the Administrator to find that "good faith efforts have been made to develop a chemical substance which does not present an unreasonable risk of injury to health or the environment and which may be substituted for [PCBs]." EPA considers several factors in determining whether good faith efforts have been made. For each petition, EPA considers the kind of exemption the petitioner is requesting and whether the petitioner expended time and effort to develop or search for a substitute. To satisfy this finding in the context of an exemption to import PCBs for disposal, EPA looks at why such activity should occur in the United States, including what steps the petitioner has taken to find an alternative to importing the PCBs for disposal. While requiring a petitioner to demonstrate that good faith efforts to develop a substitute for PCBs makes sense when dealing with traditional manufacturing and distribution exemption petitions, the issue of the development of substitute chemicals seems to have little bearing on whether to grant a petition for exemption that would allow the import into the United States for disposal of waste generated by the DoD overseas. EPA believes the more relevant "good faith" issue for such an exemption request is whether the disposal of the waste should occur outside the United States.

IV. Summary of the Final Action

A. The Petitions

1. *January 19, 2001, petition to import PCBs located on Wake Island.* On January 19, 2001, DLA submitted a petition for a 1–year exemption to import certain PCBs and PCB items into the Customs Territory of the United States for disposal. The waste in question consists of approximately 91 metric tons [a metric ton is 1,000 kilograms, or 2,200 pounds] of material, of which 31 metric tons DLA estimates to be liquids. Non-liquid material consists of electrical transformers, switches, circuit breakers, and debris (rags, small parts, and packaging materials). The laboratory analyses conducted by DLA indicate PCB concentrations of less than 50 parts per million (ppm) for all materials that could be tested without disassembly. DLA indicates that while it believes any components that could not be tested were excluded from this waste in question, there is a possibility that inaccessible internal components (e.g., small capacitors) of certain transformers may contain PCB constituents at or above 50 ppm.

The material is currently stored in overpack containers at a U.S. Government-owned storage site on Wake Island. DLA proposes to ship the materials in these containers to the Customs Territory of the United States using U.S. flag carriers, and in accordance with applicable laws. Upon arrival in port, the containers would be transported by Department of Transportation (DOT) permitted carriers to the destination facility. On April 16,2001, DLA also amended its petition to include the possibility that the materials could be transported by air on U.S. military aircraft.

DLA proposes in its January 19, 2001, petition to ship the materials to an EPA-approved PCB disposal facility. While DLA initially identified Trans Cycle Industries, Inc. (TCI) in Pell City, Alabama as the receiving facility, it amended its petition on September 28, 2001, to include any EPA-approved PCB disposal facility as a potential receiving facility, indicating that it is premature to specify which approved facility would be contracted to treat and dispose of the waste. DLA would treat and dispose of all material in compliance with the U.S. PCB regulations at 40 CFR part 761. Generally, DLA indicates its intention is to recycle all metal components that can be decontaminated; if they are not decontaminated they would be buried in a chemical waste landfill or incinerated. Used oils or liquids would be decontaminated by dechlorination or sent for energy recovery as fuel. Non-recyclable material will be disposed of as residual solid waste. DLA also notes that EPA-approved alternative disposal methods may also be used. (Note that while DLA is proposing to send this material to a TSCA-approved facility for initial processing, this is not normally required for materials containing less than 50 ppm PCBs that have not been subject to dilution.)

A detailed summary of this petition can be found in Unit IV.A.1 of the September 17, 2002, proposal to this rule (Ref. 38)

2. *April 16, 2001, petition to import PCBs located in Japan.* On April 16, 2001, DLA submitted a second petition; this petition sought a 1–year exemption to import PCBs and PCB items currently in temporary storage on U.S. military installations in Japan. In revised figures provided in June 2001, DLA estimates that as much as 4,293,621 pounds, or approximately 1,952 metric tons of waste containing PCBs could be generated in Japan through the year 2006 and beyond; however, much of this material is currently still in use, and will not become waste requiring disposal for several years. Exactly how much waste can be imported under this exemption will depend on what is available for shipment for disposal while the exemption is in effect, as the exemption is limited to a 1–year maximum. The material in Japan consists of liquids, electrical transformers, capacitors, switches, circuit breakers, other miscellaneous items, and debris (rags, small parts, and packaging materials). PCB concentrations of the waste include amounts at all concentrations; however, most of the waste is at concentrations below 50 ppm PCB. Details of particular amounts and concentrations are provided in Appendix 1 (Refs. 10 and 11).

DLA proposes to package and transport, treat, and dispose of this PCB waste in the same manner as waste identified in the previous petition. DLA states it would handle and dispose of all PCBs in conformance with the PCB regulations at 40 CFR part 761. DLA notes that it has "considerable experience and expertise in awarding and administering disposal contracts for PCB waste in the United States" and that it will only "use contracts with commercial firms providing such services in accordance with all applicable Federal procurement statutes and the Federal Acquisition Regulations (FAR)." DLA states that it has not yet identified the specific companies that would receive the waste, but that only Federal and State-permitted facilities would be used. Proposed treatment would be in accordance with the options allowed by 40 CFR part 761, including landfilling, incineration, decontamination and recovery of metal, decontamination or burning of used oil, and alternative disposal technologies where allowed.

A detailed summary of this petition can be found in Unit IV.A.2 of the September 17, 2002, proposal to this rule (Ref. 38)

B. Comments On the Proposed Rule

On September 17, 2002, EPA published a notice in the **Federal Register** proposing to grant both of DLA's petitions (Ref. 38). The notice also solicited comments on the proposed action and offered an opportunity for a public hearing if requested. Two comments were received on the proposed action; no person requested a public hearing.

Both comments supported the Agency's proposed decision to grant the petitions. One commenter, Perry & Spann (Ref. 39), urged EPA to grant the applicant's petition as "...the best manner to control and eliminate PCBs and any potential toxic contamination." The other commenter, Environmental Technology Council (Ref. 40), noted "...not only is there no unreasonable risk ... the risks to public health and the environment will be decreased by importing this waste for proper disposal." Additionally, this commenter questioned the need for persons wishing to import PCB waste for disposal to demonstrate "good faith efforts" under TSCA section 6(e)(3)(B)(ii). In light of the fact that the Agency has determined that the DLA petitions meet this "good faith" test, no response to this comment is necessary at this time. However, the Agency does note that it does not agree with the comment, and continues to believe it appropriate to examine whether there are good reasons that disposal of PCB wastes should occur in the United States when reviewing petitions for exemptions under TSCA section 6(e)(3) that would authorize import of PCB wastes for disposal in this country.

C. EPA's Final Decision on Petitions

1. *January 19, 2001, petition; EPA grants this petition.* EPA agrees with DLA's reasoning in its petition that this waste, being primarily and perhaps exclusively at concentrations below 50 ppm PCBs, has little inherent potential to pose an unreasonable risk to health or the environment. Even more germane to this waste than the "Excluded PCB Products" processing, distribution, and use standards referred to by DLA in the petition are the disposal regulations at 40 CFR part 761, subpart D, that do not require waste below 50 ppm PCBs be disposed of in a TSCA or RCRA approved facility, provided the concentration was not affected by dilution. EPA notes the prohibition on import of PCBs at concentrations less than 50 ppm stems from the TSCA ban on "manufacture" of PCBs and is not based on any specific finding of EPA that importing PCBs at concentrations less than 50 ppm for disposal presents any unreasonable risk. Prior to 1997, EPA allowed such imports for disposal without restriction. (EPA authorized the import for disposal of PCBs at concentrations of less than 50 ppm in 1984 (Ref.37), at 40 CFR 761.20(b)(2), using the authority of TSCA section 6(e)(1). This import provision was recodified from § 761.20(b) to § 761.93(a)(1)(i) as part of the March 18, 1996, PCB Import for Disposal Rule (Ref. 5). On July 7, 1997, the U.S. Court of Appeals for the Ninth Circuit overturned the PCB Import for Disposal Rule, on the grounds that EPA could not rely, as it did, on TSCA section 6(e)(1) to authorize imports of PCBs for disposal. *Sierra Club* v. *EPA*, 118 F 3d 1324 (9th Cir. 1997). EPA amended § 761.93 on June 29, 1998 (Ref.6) to reflect the Sierra Club decision, by changing it to state that no person may import PCBs or PCB items for disposal without a TSCA section 6(e)(3) exemption.)

EPA also concurs with DLA's assessment in its petition that transportation of this waste poses no significant risk if conducted in accordance with all applicable laws and regulations. Domestically, EPA permits the processing and distribution in commerce of PCBs and PCB items at concentrations less than 50 ppm for

disposal (§ 761.20(c)(4)) without additional restriction. Higher concentration PCBs and PCB items may be processed and distributed in commerce for disposal in compliance with part 761 (which requires marking, manifesting, registration, recordkeeping, etc.). In issuing the PCB Import for Disposal Rule, EPA investigated and sought comment on the risks inherent in transportation of imported PCB waste, and determined those risks to be insignificant (Ref. 5, p. 11097).

As this waste will be processed and, where required, disposed of at EPA-approved PCB disposal facilities, EPA finds that the import and disposal of this waste will not pose an unreasonable risk of injury to health or the environment. EPA approves all TSCA PCB disposal facilities on the basis of this standard, whether the unit be an incinerator, chemical waste landfill, or alternative process, such as a decontamination or chemical dechlorination operation. Similarly, EPA has previously determined that other disposal options for PCB waste at concentrations below 50 ppm, such as burning used oil for energy recovery in compliance with 40 CFR 761.20(e), pose no unreasonable risk to health or the environment.

Moreover, any risks inherent in transportation and disposal must be weighed against the risks of continued long-term storage. As DLA noted in its petition, Wake Island is a part of the United States and under TSCA it is entitled to the protection against unreasonable risk of injury to health or the environment. Generally, EPA considers long-term storage of PCB waste to pose an unacceptable risk due to threat of leaks and spills, and with certain limited exceptions, EPA limits storage for disposal of PCB waste to 1–year from the date the waste was generated (40 CFR 761.65(a)). As discussed at length by EPA in recent **Federal Register** documents (Refs. 7 and 8), the long-term storage of PCBs in U.S. territories and possessions outside the Customs Territory of the United States, such as Wake Island, often poses additional risks; examples of problems cited included risk of severe storms, sensitive ecosystems, limited available land, low elevation, and water resources that are vulnerable to contamination. For instance, while 40 CFR 761.65(b)(1)(v) stipulates that PCB waste storage sites should not be located below the 100–year flood water elevation, the highest elevation on Wake Island is only 6 meters above sea level. Therefore, EPA concludes that removal of this PCB material from Wake Island in the most expeditious manner possible will reduce risk of injury to health and the environment.

Other benefits to the United States will be realized through the granting of this petition, as well. One of EPA's purposes in promulgating 40 CFR 761.99(c) was to address the inequitable treatment of the territories outside the Customs Territory of the United States that was inadvertently created by the manufacturing ban of TSCA section 6(e)(3) (Refs. 7 and 8). EPA believes that granting this exemption will likewise allow waste stored in the territories to be managed and disposed of in a manner similar to waste generated in other States, and it will prevent the Pacific Island territories of the United States from bearing any undue burden for the disposal of such waste. Furthermore, as this waste is the property of the U.S. Government, and it was generated by the U.S. Government while conducting its affairs abroad, EPA believes the U.S. Government has an obligation to allow this waste to be safely disposed of under its jurisdiction in the United States. A grant of this petition will allow the United States Government to solve one of its own toxic waste problems without relying on other countries' disposal resources. Thus, EPA finds that DLA has provided adequate justification for a finding that the activity proposed in this petition would not pose an unreasonable risk of injury to health or the environment.

EPA also finds that DLA has made good faith efforts to find alternatives to import into the Customs Territory of the United States. EPA agrees with DLA's contention in its petition that Wake Island is an unsuitable location for attempts at on-site disposal, due to its extremely remote location, small size, lack of facilities, and fragile environment. In addition, as DLA notes in its petition, decontamination procedures typical for this type of waste would not eliminate all PCBs and the concomitant need for an exemption. EPA also believes DLA has made good faith efforts to find disposal alternatives in other countries; indeed, the waste came to Wake Island as a result of an unsuccessful effort to dispose of it abroad. EPA is well aware of DLA's growing difficulty in disposing of its foreign-manufactured waste abroad, a problem outlined in DLA's report to Congress in 1999 (Ref. 33), and EPA has been aware of DLA's substantial efforts since April 2000 to identify options for disposal of this particular waste in a responsible manner, including disposal in another country. EPA accepts DLA's assessment that with the notoriety that is now attached to this particular waste shipment and the difficulty of satisfying Basel Convention obligations, acceptance of this waste by another country for disposal is unlikely to ever occur. EPA further notes that disposal in a facility in the United States, but outside the Customs Territory of the United States, e.g., in another Pacific territory, is not an alternative because no suitable facilities exist. Finally, EPA also believes it relevant to the good faith issue that, as noted earlier, this waste was generated by the U.S. Government while conducting its affairs abroad, and thus the United States bears some obligation to provide for the safe disposal of this waste in the United States if it can not be easily disposed elsewhere.

For these reasons, EPA finds DLA has satisfied the exemption criteria of TSCA section 6(e)(3)(B) and grants this petition.

2. *April 16, 2001, petition; EPA grants this petition.* As with the previous petition, EPA concurs with DLA's assessment that transportation of this waste will pose no unreasonable risk if conducted in accordance with all applicable laws and regulations. As noted in Unit IV.C.1., EPA permits the domestic processing and distribution in commerce of PCBs and PCB items for disposal in compliance with part 761, and in issuance of the PCB Import for Disposal Rule EPA investigated and sought comment on the risks inherent in transportation of imported PCB waste, and determined those risks to be insignificant (Ref. 5, p. 11097). Also, as discussed in Unit IV.C.1. in regard to the Wake Island petition, EPA finds generally that the disposal of imported PCB waste at an EPA-approved PCB disposal facility poses no unreasonable risks as these facilities have been approved on the basis of that standard.

EPA believes that granting this petition will benefit the United States in several ways. As DLA notes in its petition, the continued long-term storage of PCB waste on U.S. military facilities in Japan poses risks of exposure to U.S. personnel and the environment—risks that can be mitigated through the action proposed in this petition. Also, the reduction of risk to Japanese citizens must be considered advantageous, especially in light of the heightened concerns over PCBs in that country and the sensitivities surrounding the U.S. military's presence in Japan. Currently, the U.S. military is in the awkward position of explaining to its Japanese hosts that it can not remove its toxic waste from their country because United States law does not allow the waste to be sent to the United States. As with the Wake Island petition, granting this

petition allows the United States to accept responsibility for solving its own toxic waste problems. Thus, EPA finds that the activity proposed in this petition would not pose an unreasonable risk of injury to health or the environment.

EPA believes that DLA has demonstrated good faith efforts to find alternatives to disposal of this PCB waste in the United States. EPA is aware of the lack of adequate PCB disposal capacity in Japan, to which DoD's large inventory of PCB waste is itself testimony. While EPA is aware that some recent efforts are underway to establish new disposal capacity in Japan (Refs. 34 and 35), EPA believes it will be some time before these new facilities are operational and the large inventories of commercial and government PCB waste that have accumulated over the years in Japan will be eliminated. Moreover, as DLA notes in its petition, even assuming adequate disposal capacity becomes available in Japan in the near future, there are significant political obstacles that are likely to prevent the U.S. military disposing of its PCB waste in Japan, either off-site at a commercial facility or on-site at a U.S. base.

EPA is generally aware of the increasing difficulties DoD has in disposing of its foreign-generated PCB waste abroad, as described in its report to Congress, and as evidenced by the difficulties with the waste now stored on Wake Island. EPA also acknowledges the peculiar circumstances of DoD's PCBs, which, while present in one country, are owned by another's government, leading to significant difficulty in providing Basel notification to third countries. Given these difficulties, EPA concurs with DLA's conclusion that disposal in a third country is not a viable option for this waste. And, as stated earlier, EPA also believes it is relevant to the good faith issue that since this waste was generated by the U.S. Government while conducting its affairs abroad, the United States bears some obligation to provide for the safe disposal of this waste in the United States if it can not be easily disposed of elsewhere.

For these reasons EPA finds DLA has satisfied the exemption criteria of TSCA section 6(e)(3)(B) and grants this petition.

V. References

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2. USEPA. Polychlorinated Biphenyls (PCBs); Expiration of the Open Border Policy for PCB Disposal; Notice. OPTS–62008. **Federal Register** (45 FR 29115, May 1, 1980).

3. USEPA. Polychlorinated Biphenyls (PCBs); Manufacturing, Processing, and Distribution in Commerce Exemptions; Proposed Rule. OPTS–66008F. **Federal Register** (53 FR 32326, August 24, 1988).

4. USEPA. Disposal of Polychlorinated Biphenyls; Proposed Rule. OPPTS–6009A. **Federal Register** (59 FR 62788, December 6, 1994) (FRL–4167–1).

5. USEPA. Disposal of Polychlorinated Biphenyls (PCBs); Import for Disposal; Final Rule. OPPTS–66009F. **Federal Register** (61 FR 11096, March 18, 1996) (FRL–5354–8).

6. USEPA. Disposal of Polychlorinated Biphenyls (PCBs); Final Rule. OPPTS–66009C. **Federal Register** (63 FR 35384, June 29, 1998) (FRL–5726–1).

7. USEPA. Polychlorinated Biphenyls (PCBs); Return of PCB Waste from U.S. Territories Outside the Customs Territory of the United States; Proposed Rule. OPPTS–66020. **Federal Register** (65 FR 65654, November 1, 2000) (FRL–6750–6).

8. USEPA. Polychlorinated Biphenyls (PCBs); Return of PCB Waste from U.S. Territories Outside the Customs Territory of the United States; Final Rule. OPPTS–66020A. **Federal Register** (66 FR 17468, March 30, 2001) (FRL–6764–9).

9. DoD, DLA. Petition from Lieutenant General, Henry T. Glisson, Director, to Carol Browner, Administrator, EPA. Subject: Enclosed petition. January 19, 2001. 15 pp. with attachments.

10. DoD, DLA. Letter from Lieutenant General, Henry T. Glisson, Director, to Christine Todd Whitman, Administrator, EPA. Subject: Enclosed petition. April 16, 2001. 12 pp. with attachments.

11. DoD, DLA. Electronic mail from Karen Moran, Environmental Quality Division, to Peter Gimlin, National Program Chemicals Division, OPPT, EPA. Subject: Updated inventory, Appendix 1 to April petition. June 28, 2001. 2 pp. with attachments.

12. DoD, DLA. Letter from Richard J. Connelly, Director, DLA Support Services, to Peter Gimlin, Office of Pollution Prevention and Toxics, EPA. Subject: Revisions to both petitions. September 28, 2001. 2 pp. with attachments.

13. Cabinet set to approve two bills on PCB disposal. *The Japanese Times Online*. February 20, 2001. 3 pp.

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15. United Nations Environment Programme (UNEP). Survey of Currently Available Non-Incineration PCB Destruction Technologies. First Issue. August 2000. 70 pp.

16. Defense Agency will Inspect PCB Storage. *The Yomiuri Shimbun*. Tokyo. August 20, 2000. 2 pp.

17. Pollution at Okinawa Bases Cannot be Left Uncorrected. *Asahi Shimbun*. January 14, 1999. 3 pp.

18. David Armstrong. U.S. Presence on Foreign Soil is Tainted. *Boston Globe*. November 15, 1999. 3 pp.

19. Danielle Knight. Environment: Asian Women Demand Cleanup of U.S. Military Bases. *Inter Press Service*. October 16, 1998. 3 pp.

20. Japan: Probe Fails to Confirm Source of Pollutant at Kadena Air Base. *Kyodo News Service*. September 28, 1998. 1 p.

21. High Level of PCB Detected in Okinawa. *Jiji Press Ticker Service*. February 21, 1997. 1 p.

22. Toxic PCB Detected at Ex-U.S. Facility. *Jiji Press Ticker Service*. October 2, 1996. 1 p.

23. MOFA, Environment Agency to Investigate Base PCB Dumping. *Ryukyu Shimpo*. August 19, 1998. 4 pp.

24. Editorial: Probe Pollution at U.S. Bases. *Ryukyu Shimpo*. August 18, 1998. 3 pp.

25. U.S. Base Pollution #8. *Ryukyu Shimpo*. August 28, 1998. 1 p.

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27. Agency Concerned about U.S. Base Pollution. *Jiji Press Ticker Service*. February 21, 1992. 1 p.

28. Japan to Check U.S. Base Employees for Waste Contamination. *Asahi News Service*. February 18, 1992. 2 p.

29. Sagamihara City. Letter from Tokio Kanero, Councilman, to Chief, DRMO Sagami. Subject: FOIA request for information on hazardous material shipments. March 3, 1999. 1 p.

30. Sagamihara City. Letter from Tokio Kanero, Councilman, to Paul Ortiz, Asia Zone Manager, DRMS International. Subject: March 3, 1999, FOIA request pertains to PCBs, heavy metals and asbestos only. March14, 1999. 1 p.

31. DoD, DLA. Letter from Vice Admiral Keith W. Lippert, Director, to Christie Whitman, Administrator, EPA. Subject: Opportunity to meet regarding petitions. November 14, 2001. 1 p.

32. USEPA, Office of Research and Development (ORD). PCBs Cancer Dose-Response Assessment and Application to Environmental Mixtures. EPA600P–96001F. September 1996. 75 pp. OPPTS–66009C (B3–026)

33. DoD. Report to Congress: Foreign-Manufactured PCBs at U.S. Military Installations Overseas. March 1999. 20 pp.

34. USEPA, Region 9. Electronic Mail from Max Weintraub to Peter Gimlin, EPA, OPPT, Re: Startech Environmental's 8/23/2001 Press Release. September 5, 2001. 2 pp.

35. Japan Government Submits Legislation Requiring Destruction of All PCBs in 15 years. *BNA International Environment Daily*. March 23, 2001. 1 p.

36. USEPA. Hazardous Waste Management System; Notification Concerning the Basel Convention's Potential Implications for Hazardous Waste Exports and Imports. **Federal Register** (57 FR 20602, May 13,1992).

37. USEPA. Toxic Substances Control Act; Polychlorinated Biphenyls (PCBs) Manufacturing, Processing, Distribution in Commerce, and Use Prohibitions; Exclusions, Exemptions and Use Authorizations; Final Rule. OPTS–62032A. **Federal Register** (49 FR 28172, July 10, 1984).

38. USEPA. Polychlorinated Biphenyls; Manufacturing (Import) Exemptions; Proposed Rule. OPPT–2002–0013. **Federal Register** (67 FR 58567, September 17, 2002) (FRL–7176–1).

39. Perry & Spann. Letter from Victor Alan Perry, Esq. to EPA Document Control Office. Subject: Comment on OPPT–2002–0013. October 4, 2002. 1 p.

40. Environmental Technology Council. Letter from Scott Slesinger, Vice President for Governmental Affairs, to EPA Docket. Subject: Comment on Proposed Rule. October 15, 2002. 3 pp.

VI. Statutory and Executive Order Reviews

A. Regulatory Planning and Review

Under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993), it has been determined that this action is not a "significant regulatory action" subject to review by the Office of Management and Budget (OMB), because this action is not likely to result in a rule that meets any of the criteria for a "significant regulatory action" provided in section 3(f) of the Executive order.

B. Paperwork Reduction Act

Pursuant to the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register**, listed in 40 CFR part 9, and included on the related collection instrument or form, if applicable.

This rule does not impose any new information collection burden. DLA is subject to the existing EPA regulations regarding the storage and disposal of PCBs in 40 CFR part 761. OMB has previously approved the information collection requirements contained in 40 CFR part 761 under the PRA, and has assigned OMB Control No. 2070–0112 (EPA ICR No. 1446.07).

The annual public burden approved under OMB Control No. 2070–0112, is estimated to average 0.57 hours per response. As defined by the PRA and 5 CFR 1230.3(b), "burden" means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. For this collection it includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Copies of this ICR document may be obtained from Susan Auby, by mail at the Office of Environmental Information, Collection Strategies Division (2822T), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, by e-mail at auby.susan@epa.gov, or by calling (202) 566–1972. Copies may also be downloaded from the Internet at http://www.epa.gov/icr. Include the EPA ICR number and/or OMB control number in any correspondence.

C. Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Agency hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities, because this rule will not impose any requirements on small entities. Under section 601 of RFA, "small entity" is defined as:

1. A small business that meets the Small Business Administration size standards codified at 13 CFR 121.201.

2. A small governmental jurisdiction that is a government of a city, county, town, school district, or special district with a population of less than 50,000.

3. A small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field. In this rule, EPA is granting two petitions by DLA to import PCBs for disposal. Only DLA, which is not a small entity, will be regulated by this rule.

D. Unfunded Mandates Reform Act

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995, (UMRA), Public Law 104–4, EPA has determined that this action does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any 1 year. Nor does this rule contain regulatory requirements that might significantly or uniquely affect small governments. EPA is granting two petitions by DLA to import PCBs for disposal. DLA is required to comply with the existing regulations on PCB disposal at 40 CFR part 761. The only mandate imposed by this rule is imposed on DLA. In addition, EPA has determined that this rule does not significantly or uniquely affect small governments. The DLA petitions state that the PCBs will be disposed of in facilities approved to handle PCBs. No new facilities, which could affect small government resources if a permit is required, are contemplated. EPA believes that the disposal of PCBs in previously approved disposal facilities in the amounts specified in this rule would have little, if any, impact on small governments. Thus, this rule is not subject to the requirements of UMRA sections 202, 203, 204, and 205.

E. Federalism

Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" are defined in the Executive order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of

power and responsibilities among the various levels of government."

This rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. EPA is granting two petitions from DLA to import PCBs and dispose of them in accordance with existing regulations. There will be no direct effects on the States, nor will there be any impact on the relationships between the various levels of government with respect to PCB disposal issues. Thus, Executive Order 13132 does not apply to this rule.

F. Consultation and Coordination with Indian Tribal Governments

Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (59 FR 22951, November 9, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." This rule does not have tribal implications, as specified in Executive Order 13175. EPA is granting two petitions from DLA to import PCBs and dispose of them in facilities approved to handle PCBs in accordance with existing regulations. EPA does not believe that this activity will have any impacts on the communities of Indian tribal governments. Thus, Executive Order 13175 does not apply to this rule.

G. Children's Health

This rule is not subject to Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997), because it is not economically significant as defined by Executive Order 12866, and because the Agency does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. EPA is granting two petitions from DLA to import PCBs and dispose of them in facilities approved to handle PCBs in accordance with existing regulations. EPA believes that the import and disposal of the amount of PCBs specified in the exemption petitions will present little, if any, additional risk to persons living in the vicinity of the approved disposal facilities or in the communities through which the PCBs may be transported.

H. Energy Effects

This rule is not subject to Executive Order 13211, entitled *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001), because it is not a significant regulatory action under Executive Order 12866.

I. The National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. This rule does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

J. Environmental Justice

This action does not involve special considerations of environmental justice related issues as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994).

K. Constitutionally Protected Property Rights

EPA has complied with Executive Order 12630, entitled *Governmental Actions and Interference with Constitutionally Protected Property Rights* (53 FR 8859, March 15, 1988), by examining the takings implications of this rule in accordance with the *Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings* issued under the Executive order.

L. Civil Justice Reform

In issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct, as required by section 3 of Executive Order 12988, entitled *Civil Justice Reform* (61 FR 4729, February 7, 1996).

VII. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Act of 1996, generally provides that before a final rule may take effect, the Agency promulgating it must submit a final rule report, which includes a copy of the final rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this final rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the final rule in the **Federal Register**. This final rule is not a "major rule" as defined by 5 U.S.C. 804(2).

Lists of Subjects in 40 CFR Part 761

Environmental protection, Hazardous substances, Labeling, Polychlorinated biphenyls (PCBs), Reporting and recordkeeping requirements.

Dated: January 23, 2003.

Stephen L. Johnson,

Assistant Administrator for Prevention, Pesticides and Toxic Substances.

Therefore, 40 CFR chapter I is amended as follows:

PART 761—[AMENDED]

1. The authority citation for part 761 continues to read as follows:

Authority: 15 U.S.C. 2605, 2607, 2611, 2614, and 2616.

2. Section 761.80 is amended by adding a new paragraph (j) to read as follows:

§ 761.80 Manufacturing, processing and distribution in commerce exemptions.

* * * * *

(j) The Administrator grants the following petitions to import PCBs and PCB items for disposal pursuant to this part:

(1) United States Defense Logistics Agency's January 19, 2001, petition for an exemption for 1 year to import PCBs and PCB Items stored on Wake Island and identified in its petition for disposal. This exemption shall expire on April 17, 2004.

(2) United States Defense Logistics Agency's April 16, 2001, petition for an exemption for 1 year to import PCBs and PCB Items stored or in use in Japan and identified in its petition, as

amended, for disposal. This exemption shall expire on April 17, 2004.

* * * * *

[FR Doc. 03–2344 Filed 1–31–03; 8:45 am]
BILLING CODE 6560–50–S

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 65

[Docket No. FEMA–P–7620]

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, (FEMA).

ACTION: Interim rule.

SUMMARY: This interim rule lists communities where modification of the Base (1-percent-annual-chance) Flood Elevations (BFEs) is appropriate because of new scientific or technical data. New flood insurance premium rates will be calculated from the modified BFEs for new buildings and their contents.

DATES: These modified BFEs are currently in effect on the dates listed in the table below and revise the Flood Insurance Rate Map(s) in effect prior to this determination for the listed communities.

From the date of the second publication of these changes in a newspaper of local circulation, any person has ninety (90) days in which to request through the community that the Administrator for Federal Insurance and Mitigation Administration reconsider the changes. The modified BFEs may be changed during the 90-day period.

ADDRESSES: The modified BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Michael M. Grimm, Acting Chief, Hazard Study Branch, Federal Insurance and Mitigation Administration, 500 C Street, SW., Washington, DC 20472, (202) 646–2878 or (e-mail) *michael.grimm@fema.gov*.

SUPPLEMENTARY INFORMATION: The modified BFEs are not listed for each community in this interim rule. However, the address of the Chief Executive Officer of the community where the modified BFE determinations are available for inspection is provided.

Any request for reconsideration must be based on knowledge of changed conditions or new scientific or technical data.

The modifications are made pursuant to Section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and with 44 CFR Part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified BFEs are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities.

The changes in BFEs are in accordance with 44 CFR 65.4.

National Environmental Policy Act. This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act. The Administrator for Federal Insurance and Mitigation Administration certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified BFEs are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification. This interim rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism. This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform. This rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and record keeping requirements.

Accordingly, 44 CFR Part 65 is amended to read as follows:

PART 65—[AMENDED]

1. The authority citation for Part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 65.4 [Amended]

2. The tables published under the authority of § 65.4 are amended as follows:

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Arkansas:					
Sebastian (Case No. 02–06–1094P).	City of Greenwood.	Nov. 13, 2002, Nov. 20, 2002, *Greenwood Democrat.*	The Honorable Judy Selkirk, Mayor, City of Greenwood, City Hall, P.O. Box 1450, 101 North Aster Street, Greenwood, Arkansas 72936.	Nov. 25, 2002	050198
Crawford (Case No. 02–06–873P).	City of Van Buren	Nov. 13, 2002, Nov. 20, 2002, *Van Buren Press Argus Courier.*	The Honorable John Riggs, Mayor, City of Van Buren, 1003 Broadway, Van Buren, Arkansas 72956.	Feb. 19, 2003	050053
Kansas:					
Johnson (Case No. 01–07–457P).	City of Overland Park.	Nov. 13, 2002, Nov. 20, 2002, *The Sun Newspapers.*	The Honorable Ed Eilert, Mayor, City of Overland Park, City Hall, 8500 Santa Fe Drive, Overland Park, Kansas 66212.	Feb. 19, 2003	200174

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Minnesota:					
Washington (Case No. 02–05–0419P).	City of Hugo	Nov. 6, 2002, Nov. 13, 2002, *The White Bear Press.*	The Honorable Fran Miron, Mayor, City of Hugo, 14669 Fitzgerald Avenue North, Hugo, Minnesota 55038.	Nov. 15, 2002	270504
Nebraska:					
Lancaster (Case No. 02–07–1012P).	City of Lincoln	Nov. 18, 2002, Nov. 25, 2002, *Lincoln Journal Star.*	The Honorable Don Wesely, Mayor, City of Lincoln, 555 South 10th Street, Room 208, Lincoln, Nebraska 68508.	Oct. 25, 2002	315273
Ohio:					
Franklin (Case No. 02–05–3971P).	Unincorporated Areas.	Oct. 31, 2002, Nov. 7, 2002, *The Columbus Dispatch.*	The Honorable Arlene Shoemaker, President, Franklin County Board of Commissioners, 373 South High Street, 26th Floor, Columbus, Ohio 43215–6304.	Oct. 15, 2002	390167
Texas:					
Denton (Case No. 02–06–1264P).	Town of Copper Canyon.	Nov. 18, 2002, Nov. 25, 2002, *Denton Record Chronicle.*	The Honorable Chuck Wainscott, Mayor, Town of Copper Canyon, 400 Woodland Drive, Copper Canyon, Texas 75067–8501.	Oct. 25, 2002	481508
Denton (Case No. 02–06–419P).	City of Denton	Nov. 19, 2002, Nov. 26, 2002, *Denton Record Chronicle.*	The Honorable Euline Brock, Mayor, City of Denton, 215 East McKinney Street, Denton, Texas 76201.	Feb. 25, 2003	480194
Denton (Case No. 02–06–419P).	Unincorporated Areas.	Nov. 19, 2002, Nov. 26, 2002, *Denton Record Chronicle.*	The Honorable Mary Horn, Judge, Denton County, Courthouse on the Square, 110 West Hickory Street, Denton, Texas 76201.	Feb. 25, 2003	480774
Tarrant (Case No. 02–06–263P).	City of Fort Worth	Dec. 2, 2002, Dec. 9, 2002, *Fort Worth Star Telegram.*	The Honorable Kenneth Barr, Mayor, City of Forth Worth, 1000 Throckmorton Street, Fort Worth, Texas 76102.	March 10, 2003	480596
Harris (Case No. 02–06–1092P).	Unincorporated Areas.	Nov. 19, 2002, Nov. 26, 2002, *Houston Chronicle.*	The Honorable Robert Eckels, Judge, Harris County, 1001 Preston Street, Houston, Texas 77002.	Oct. 29, 2002	480287
Harris (Case No. 02–06–1537P).	City of Houston ..	Dec. 12, 2002, Dec. 19, 2002, *Houston Chronicle.*	The Honorable Lee P. Brown, Mayor, City of Houston, P.O. Box 1562, Houston, Texas 77251–1562.	Mar. 20, 2003	480296
Dallas (Case No. 01–06–1230P).	City of Mesquite	Nov. 7, 2002, Nov. 14, 2002, *Mesquite Morning News.*	The Honorable Mike Anderson, Mayor, City of Mesquite, P.O. Box 850137, Mesquite, Texas 75185.	Oct. 9, 2002	485490
Midland (Case No. 02–06–1417P).	City of Midland ...	Nov. 12, 2002, Nov. 19, 2002, *Midland Reporter-Telegram.*	The Honorable Michael J. Canon, Mayor, City of Midland, 300 North Loraine, P.O. Box 1152, Midland, Texas 79702.	Nov. 6, 2002	480477
Midland (Case No. 02–06–1417P).	Unincorporated Areas.	Nov. 12, 2002, Nov. 19, 2002, *Midland Reporter-Telegram.*	The Honorable William Morrow, Judge, Midland County, County Courthouse, 200 West Wall Street, Midland, Texas 79701.	Nov. 6, 2002	481239
Tarrant (Case No. 01–06–1464P).	City of North Richland Hills.	Dec. 10, 2002, Dec. 17, 2002, *The Star Telegram.*	The Honorable Oscar Trevino, Jr., Mayor, City of North Richland Hills, 7301 N.E. Loop 820, North Richland Hills, Texas 76180.	Mar. 18, 2003	480607
Collin (Case No. 02–06–536P).	City of Plano	Nov. 13, 2002, Nov. 20, 2002, *Plano Star Courier.*	The Honorable Pat Evans, Mayor, City of Plano, P.O. Box 860358, Plano, Texas 75086–0358.	Feb. 19, 2003	480140
Collin (Case No. 02–06–992P).	City of Plano	Dec. 4, 2002, Dec. 11, 2002, *Plano Star Courier.*	The Honorable Pat Evans, Mayor, City of Plano, P.O. Box 860358, Plano, Texas 75086–0358.	MAR. 12, 2003	480140
Bexar (Case No. 02–06–1072P).	City of San Antonio.	Nov. 13, 2002, Nov. 20, 2002, *San Antonio Express News.*	The Honorable Ed Garza, Mayor, City of San Antonio, P.O. Box 839966, San Antonio, Texas 78283.	Feb. 19, 2003	480045
Bexar (Case No. 02–06–1707P).	City of San Antonio.	Dec. 4, 2002, Dec. 11, 2002, *San Antonio Express News.*	The Honorable Ed Garza, Mayor, City of San Antonio, P.O. Box 839966, San Antonio, Texas 78283.	Mar. 12, 2003	480045

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Tarrant (Case No. 02–06–263P).	Unincorporated Areas.	Dec. 2, 2002, Dec. 9, 2002, *Fort Worth Star Telegram.*	The Honorable Tom Vandergriff, Judge, Tarrant County, 100 E. Weatherford, Fort Worth, Texas 76196.	Mar. 10, 2003	480582
Bell (Case No. 02–06–590P).	City of Temple	Dec. 11, 2002, Dec. 18, 2002, *Temple Daily Telegram.*	The Honorable Bill Jones, III, Mayor, City of Temple, 2 North Main Street, Temple, Texas 76501.	Mar. 19, 2003	480034
Tarrant (Case No. 02–06–263P).	City of Watauga	Dec. 2, 2002, Dec. 9, 2002, *Fort Worth Star Telegram.*	The Honorable Harry Jeffries, Mayor, City of Watauga, 7101 Whitley Road, Watauga, Texas 76148.	Mar. 10, 2003	480613

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Dated: January 21, 2003.

Anthony S. Lowe,

Administrator, Federal Insurance and Mitigation Administration.

[FR Doc. 03–2246 Filed 1–30–03; 8:45 am]

BILLING CODE 6718–04–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 65

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, (FEMA).

ACTION: Final rule.

SUMMARY: Modified Base (1-percent-annual-chance) Flood Elevations (BFEs) are finalized for the communities listed below. These modified elevations will be used to calculate flood insurance premium rates for new buildings and their contents.

EFFECTIVE DATES: The effective dates for these modified BFEs are indicated on the table below and revise the Flood Insurance Rate Maps ((FIRMs) in effect for the listed communities prior to this date.

ADDRESSES: The modified BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Michael M. Grimm, Acting Chief, Hazard Study Branch, Federal Insurance and Mitigation Administration, 500 C Street, SW., Washington, DC 20472, (202) 646–2878 (e-mail) Michael.grimm@fema.gov.

SUPPLEMENTARY INFORMATION: FEMA makes the final determinations listed below of the final determinations of modified BFEs for each community listed. These modified elevations have been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Administrator, Federal Insurance and Mitigation Administration, has resolved any appeals resulting from this notification.

The modified BFEs are not listed for each community in this notice. However, this rule includes the address of the Chief Executive Officer of the community where the modified BFE determinations are available for inspection.

The modifications are made pursuant to section 206 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified BFEs are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities.

These modified BFEs are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

The changes in BFEs are in accordance with 44 CFR 65.4.

National Environmental Policy Act. This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act. The Administrator, Federal Insurance and Mitigation Administration, certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification. This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism. This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform. This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and record keeping requirements.

Accordingly, 44 CFR Part 65 is amended to read as follows:

PART 65—[AMENDED]

1. The authority citation for Part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR,

1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 65.4 [Amended]

2. The tables published under the authority of § 65.4 are amended as follows:

State and county	Location	Dates and names of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Arkansas:					
Washington (Case No. 02–06–1260P) (FEMA Docket No. P7616).	City of Fayetteville.	Aug. 1, 2002, Aug. 8, 2002, *Northwest Arkansas Times.*	The Honorable Dan Coody Mayor, City of Fayetteville 113 West Mountain Street, Fayetteville, Arkansas 72701.	July 23, 2002	050216
Pulaski (Case No. 01–06–1835P) (FEMA Docket No. P7614).	City of Little Rock	July 10, 2002, July 17, 2002, *Little Rock Free Press.*	The Honorable Jim Dailey Mayor, City of Little Rock, 500 West Markham Street Room 203, Little Rock, Arkansas 72201.	Oct. 16, 2002	050181
Illinois:					
Cook (Case No. 02–05–2333P) (FEMA Docket No. P7614).	Village of Palos Park.	July 9, 2002, July 16, 2002, *Daily Southtown.*	The Honorable Jean A. Moran, Mayor, Village of Palos Park, 8999 West 123rd Street, Palos Park, Illinois 60464.	Oct. 15, 2002	170144
Cook (Case No. 01–05–3037P) (FEMA Docket No. P7616).	Village of Palos Park.	Aug. 8, 2002, Aug. 15, 2002, *Daily Southtown.*	The Honorable Jean A. Moran, Mayor, Village of Palos Park, 8999 West 123rd Street, Palos Park, Illinois 60464.	Nov. 14, 2002	170144
Will (Case No. 02–05–1170P) (FEMA Docket No. 7616).	Village of Romeoville.	Aug. 1, 2002, Aug. 8, 2002, *The Herald News.*	The Honorable Fred Dewald, Mayor, Village of Romeoville, Village Hall, 13 Montrose Drive, Romeoville, Illinois 60446.	Nov. 7, 2002	170711
Michigan:.					
Wayne (Case No. 01–05–2843P) (FEMA Docket No. 7612).	Township of Canton.	July 11, 2002, July 18, 2002, *Michigan Community Newspapers.*	Mr. Thomas Yack, Township Supervisor, Township of Canton, 1150 South Canton Center, Canton, Michigan 48188.	June 14, 2002	260219
Minnesota:					
Olmsted (Case No. 01–05–746P) (FEMA Docket No. P7616).	Unincorporated Areas.	Aug. 1, 2002, Aug. 8, 2002, *Post Bulletin.*	Mr. Richard Devlin, County Administrator, Olmsted County, 151 4th Street SE, Rochester, Minnesota 55904.	July 18, 2002	270626
Olmsted (Case No. 01–05–746P) (FEMA Docket No. P7616).	City of Rochester	Aug. 1, 2002, Aug. 8, 2002, *Post Bulletin.*	The Honorable Chuck Canfield, Mayor, City of Rochester, City Hall, Room 281, 201 4th Street, SE, Rochester, Minnesota 55904.	July 18, 2002	275246
Missouri:.					
Howell (Case No. 00–07–791P) (FEMA Docket No. 76112).	City of West Plains.	June 21, 2002, June 28, 2002, *West Plains Daily Quill.*	The Honorable Joe Paul Evans, Myor, City of West Plains, P.O. Box 710, West Plains, Missouri 65775.	Dec. 6, 2002	290166
Ohio:					
Lorain (Case No. 02–05–0982P) (FEMA Docket No. P7614).	City of Avon	July 9, 2002, July 16, 2002, *The Morning Journal.*	The Honorable James Smith, Mayor, City of Avon, 36080 Chester Road, Avon, Ohio 44011.	June 20, 2002	390348
Franklin (Case No. 01–05–1827P) (FEMA Docket No. P7614).	City of Columbus	July 8, 2002, July 15, 2002, *Columbus Dispatch.*	The Honorable Mike Coleman, Mayor, City of Columbus, 90 West Broad Street, Columbus, Ohio 43215.	Oct. 14, 2002	390170
Franklin (Case No. 01–05–1827P) (FEMA Docket No. P7614).	Unincorporated Areas.	July 8, 2002, July 15, 2002, *Columbus Dispatch.*	Ms. Arlene Shoemaker, President, Franklin County Board of Commissioners, 373 South High Street, 26th Floor, Columbus, Ohio 43215.	Oct. 14, 2002	390167
Franklin (Case No. 01–05–1827P) (FEMA Docket No. P7614).	Village of Groveport.	July 8, 2002, July 15, 2002, *Southwest Messenger.*	Mr. Anthony Bales, Village Administrator, Village of Groveport, Groveport Municipal Building, 655 Blacklick Street, Groveport, Ohio 43125.	Oct. 14, 2002	390174

State and county	Location	Dates and names of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Montgomery (Case No. 02–05–0845P) (FEMA Docket No. P7614).	Unincorporated Areas.	July 9, 2002, July 16, 2002, *Dayton Daily News.*	Mr. Charles J. Curran, Commissioner, Montgomery County, 451 West Third Street, Dayton, Ohio 45422.	Oct. 15, 2002	390775
Oklahoma:					
Oklahoma (Case No. 02–06–281P) (FEMA Docket No. P7614).	City of Edmond ..	July 16, 2002, July 23, 2002, *The Edmond Sun.*	The Honorable Saundra Naifeh, Mayor, City of Edmond, P.O. Box 2970, Edmond, Oklahoma 73083.	July 2, 2002	400252
Oklahoma, Canadian, Cleveland, McClain and Pottawatomie (Case No. 01–06–1912P) (FEMA Docket No. P7614).	City of Oklahoma City.	July 24, 2002, July 31, 2002, *The Daily Oklahoman.*	The Hon. Kirk Humphreys, Mayor, City of Oklahoma City, 200 North Walker, Suite 302, Oklahoma City, Oklahoma 73102.	Oct. 30, 2002	405378
Texas:					
Dallas (Case No. 02–06–478P) (FEMA Docket No. P7616).	City of Cedar Hill	July 25, 2002, Aug. 1, 2002, *DeSoto Today.*	The Hon. Robert L. Franke, Mayor, City of Cedar Hill, P.O. Box 96, Cedar Hill, Texas 75106.	July 12, 2002	480168
Denton (Case No. 02–06–525P) (FEMA Docket No. P7614).	Town of Corinth ..	July 16, 2002, July 23, 2002, *Denton Record Chronicle.*	The Honorable J. B. Troutman, Mayor, Town of Corinth, 2002 South Corinth Street, Corinth, Texas 76210.	Oct. 22, 2002	481143
Tarrant (Case No. 02–06–453P) (FEMA Docket No. P7614).	City of Fort Worth	July 19, 2002, July 26, 2002, *Fort Worth Star Telegram.*	The Honorable Kenneth Barr, Mayor, City of Fort Worth, City Hall, 1000 Throckmorton Street, Fort Worth, Texas 76102—6311.	Oct. 25, 2002	480596
Dallas (Case No. 02–06–1535P) (FEMA Docket No. P7614).	City of Garland ...	July 18, 2002, July 25, 2002 *Garland Morning News.*	The Honorable Jim Spence, Mayor, City of Garland, P.O. Box 469002 Garland, TX 75046.	June 28, 2002	458471
Tarrant (Case No. 02–06–046P) (FEMA Docket No. P7616).	City of Keller	Aug. 13, 2002, Aug. 20, 2002, *The Keller Citizen.*	The Honorable David Phillips, Mayor, City of Keller, P.O. Box 770, Keller, Texas 76244–0770.	Aug. 2, 2002	480602
Harrison and Gregg (Case No. 02–06–1946P) (FEMA Docket No. P7614).	City of Longview	July 11, 2002, July 18, 2002, *Longview News Journal.*	The Honorable Earl Roberts, Mayor, City of Longview, P.O. Box 1952, Longview, TX 75606–1952.	Oct. 17, 2002	480264
Collin (Case No. 02–06–823P) (FEMA Docket No. P7616).	City of Plano	Aug. 21, 2002, Aug. 28, 2002, *Plano Star Courier.*	The Honorable Pat Evans, Mayor, City of Plano, P.O. Box 860358, Plano, Texas 75086–0358.	Aug. 6, 2002	480140
Bexar (Case No. 02–06–1320P) (FEMA Docket No. P7614).	City of San Antonio.	July 11, 2002, July 18, 2002, *San Antonio Express News.*	The Honorable Ed Garza, Mayor, City of San Antonio, P.O. Box 839966,News San Antonio, Texas 78283–3966.	Oct. 17, 2002	480045
Bexar (Case No. 02–06–252P) (FEMA Docket No. P7614).	City of San Antonio.	July 19, 2002, July 26, 2002, *San Antonio Express News.*	The Honorable Ed Garza, Mayor, City of San Antonio, P.O. Box 839966, San Antonio, Texas 78283–3966.	Oct. 25, 2002	480045
Tarrant (Case No. 02–06–453P) (FEMA Docket No. P7614).	Unincorporated Areas.	July 19, 2002, July 26, 2002, *Fort Worth Star Telegram.*	The Hon. Tom Vandergriff, Judge, Tarrant County, 100 East Weatherford Street, Fort Worth, Texas 76196–0101.	Oct. 25, 2002	480582
Bexar (Case No. 01–06–1218P) (FEMA Docket No. P7614).	City of Universal City.	July 11, 2002, July 18, 2002, *Primetime Newspapers.*	The Honorable Wesley Becken, Mayor, City of Universal City, P.O. Box 3008, Universal City, Texas 78148.	Oct. 17, 2002	480049

State and county	Location	Dates and names of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Collin (Case No. 01–06–1232P) (FEMA Docket No. P7610).	City of Wylie	March 20, 2002, March 27, 2002, *Wylie News*.	The Honorable John Mondy, Mayor, City of Wylie, 2000 State Highway 78 North, Wylie, Texas 75098.	Mar. 1, 2002	480759

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Dated: January 21, 2003.

Anthony S. Lowe,

Administrator, Federal Insurance and Mitigation Administration.

[FR Doc. 03–2247 Filed 1–30–03; 8:45 am]

BILLING CODE 6718–04–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 65

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: Modified Base (1-percent-annual-chance) Flood Elevations (BFEs) are finalized for the communities listed below. These modified elevations will be used to calculate flood insurance premium rates for new buildings and their contents.

EFFECTIVE DATES: The effective dates for these modified BFEs are indicated on the following table and revise the Flood Insurance Rate Maps in effect for the listed communities prior to this date..

ADDRESSES: The modified BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Michael M. Grimm, Acting Chief, Hazards Study Branch, Federal Insurance and Mitigation Administration, FEMA, 500 C Street SW., Washington, DC 20472, (202) 646–2878, or (e-mail) *Michael.Grimm@fema.gov*.

SUPPLEMENTARY INFORMATION: FEMA makes the final determinations listed below of the modified BFEs for each community listed. These modified elevations have been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Administrator, Federal Insurance and Mitigation Administration has resolved any appeals resulting from this notification.

The modified BFEs are not listed for each community in this notice. However, this rule includes the address of the Chief Executive Officer of the community where the modified BFEs determinations are available for inspection.

The modifications are made pursuant to section 206 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified BFEs are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities.

These modified elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

The changes in BFEs are in accordance with 44 CFR 65.4.

National Environmental Policy Act. This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act. The Administrator, Federal Insurance and Mitigation Administration certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified BFEs are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification. This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism. This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform. This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and Recordkeeping requirements.

Accordingly, 44 CFR Part 65 is amended to read as follows:

PART 65—[AMENDED]

1. The authority citation for Part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 65.4 [Amended]

1. The tables published under the authority of § 65.4 are amended as follows:

State and county	Location and case No.:	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Arizona:					

State and county	Location and case No.:	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Cochise (FEMA Docket No. B–7429).	Cochise County (01–09–019P).	April 25, 2001, May 2, 2001, *Arizona Range News.*	The Honorable Pat Call, Chairman, Cochise County, Board of Supervisors, 1415 West Melody Lane, Bisbee, Arizona 85603.	July 31, 2001	040012
Cochise (FEMA Docket No. B–7429).	City of Sierra Vista (01–09–492P).	April 18, 2002, April 25, 2002, *Sierra Vista Herald.*	The Honorable Thomas J. Hessler, Mayor, City of Sierra Vista, 1011 North Coronado Drive, Sierra Vista, Arizona 85635.	August 1, 2002	040017
Maricopa (FEMA Docket No. B–7431).	Town of Carefree (01–09–1157P) (02–09–1409X).	August 29, 2002, September 5, 2002, *Arizona Business Gazette.*	The Honorable Edward C. Morgan, Mayor, Town of Carefree, P.O. Box 740, Carefree, Arizona 85377.	December 5, 2002	040126
Maricopa (FEMA Docket No. B–7431).	Town of Cave Creek (01–09–1157P) (02–09–1409X).	August 29, 2002, September 5, 2002, *Arizona Business Gazette.*	The Honorable Vincent Francia, Mayor, Town of Cave Creek, 37622 North Cave Creek Road, Cave Creek, Arizona 85331.	December 5, 2002	040129
Maricopa (FEMA Docket No. B–7431).	City of Chandler (02–09–248P).	July 24, 2002, July 31, 2002, *Arizona Republic.*	The Honorable Jay Tibshraeny, Mayor, City of Chandler, 55 North Arizona Place, Chandler, Arizona 85225.	October 30, 2002	040040
Maricopa (FEMA Docket No. B–7429).	City of Mesa (02–09–260P).	June 13, 2002, June 20, 2002, *Arizona Business Gazette.*	The Honorable Keno Hawker, Mayor, City of Mesa, P.O. Box 1466, Mesa, Arizona 85211–1466.	September 19, 2002.	040048
Maricopa (FEMA Docket No. B–7429).	City of Scottsdale (02–09–1084X).	July 18, 2002, July 25, 2002, *Arizona Republic.*	The Honorable Mary Manross, Mayor, City of Scottsdale, 3939 North Drinkwater Boulevard, Scottsdale, Arizona 85251.	October 24, 2002	045012
Maricopa (FEMA Docket No. B–7431).	City of Scottsdale (01–09–1157P) (02–09–1409X).	August 29, 2002, September 5, 2002, *Arizona Business Gazette.*	The Honorable Mary Manross, Mayor, City of Scottsdale, 3939 North Drinkwater Boulevard, Scottsdale, Arizona 85251.	December 5, 2002	045012
Maricopa (FEMA Docket No. B–7431).	Unincorporated Areas (02–09–068P).	September 5, 2002, September 12, 2002, *Arizona Business Gazette.*	The Honorable Don Stapley, Chairman, Maricopa County Board of Supervisors, 301 West Jefferson, 10th Floor, Phoenix, Arizona 85003.	August 21, 2002 ...	040037
Pima (FEMA Docket No. B–7431).	City of Tucson (02–09–1050P).	September 18, 2002, September 25, 2002, *Daily Territorial.*	The Honorable Robert Walkup, Mayor, City of Tucson, P.O. Box 27210, Tucson, Arizona 85726.	September 11, 2002.	040076
Pima (FEMA Docket No. B–7431).	Unincorporated Areas (02–09–1007P).	September 19, 2002, September 26, 2002, *Arizona Daily Star.*	The Honorable Raul Grijalva, Chairman, Pima County Board of Supervisors, 130 West Congress, 11th Floor, Tucson, Arizona 85701.	September 9, 2002	040073
Pima (FEMA Docket No. B–7429).	Unincorporated Areas (02–09–746X).	April 18, 2002, April 25, 2002, *Tucson Citizen.*	The Honorable Raul Grijalva, Chairman, Pima County Board of Supervisors, 130 West Congress, 11th Floor, Tucson, Arizona 85701.	July 25, 2002	040073
Pinal (FEMA Docket No. B–7429).	Town of Kearny (01–09–283P).	June 5, 2002, June 12, 2002, *Copper Basin News.*	The Honorable Debra Sommers, Mayor, Town of Kearny, P.O. Box 639, Kearny, Arizona 85237.	September 11, 2002.	040085
Pinal (FEMA Docket No. B–7429).	Unincorporated Areas (01–09–283P).	June 5, 2002, June 12, 2002, *Copper Basin News.*	The Honorable Jimmie B. Kerr, Chairman, Pinal County Board of Supervisors, P.O. Box 827, Florence, Arizona 85232–0827.	September 11, 2002.	040077
California:					
Alameda (FEMA Docket No. B–7431).	City of Dublin (00–09–931P).	July 26, 2002, August 2, 2002, *Tri-Valley Herald.*	The Honorable Janet Lockhart, Mayor, City of Dublin, 100 Civic Plaza, Dublin, California 94568.	November 1, 2002	060705
Kern (FEMA Docket No. B–7429).	Unincorporated Areas (01–09–764P).	May 22, 2002, May 29, 2002, *News Review.*	The Honorable Barbara Patrick, Chairperson, Kern County Board of Supervisors, 1115 Truxton Avenue, Fifth Floor, Bakersfield, California 93301.	August 28, 2002 ...	060075
Los Angeles (FEMA Docket No. B–7429).	Unincorporated Areas (01–09–559P).	July 18, 2002, July 25, 2002, *Los Angeles Times.*	The Honorable Zev Yaroslavsky, Chairperson, Los Angeles County Board of Supervisors, 821 Kenneth Hahn Hall of Administration, 500 West Temple Street, Los Angles, California 90012.	October 24, 2002	065043
Orange (FEMA Docket No. B–7429).	City of Orange (01–09–975P).	June 6, 2002, June 13, 2002, *Orange County Register.*	The Honorable Mark Murphy, Mayor, City of Orange, 300 East Chapman Avenue, Orange, California 92866.	September 12, 2002.	060228
Placer (FEMA Docket No. B–7429).	Town of Loomis (02–09–862P).	June 20, 2002, June 27, 2002, *Loomis News.*	The Honorable Rhonda Morillas, Mayor, Town of Loomis, Town Hall, 6140 Horseshoe Bar Road, Suite K, Loomis, California 95650.	September 26, 2002.	060721
Riverside (FEMA Docket No. B–7429).	City of Murrieta (01–09–849P).	April 4, 2002, April 11, 2002, *Press-Enterprise.*	The Honorable Dick Ostling, Mayor, City of Murrieta, 26442 Beckman Court, Murrieta, California 92562.	March 18, 2002	060751
Riverside (FEMA Docket No. B–7429).	City of Perris (01–09–524P).	April 25, 2002, May 2, 2002, *Press-Enterprise.*	The Honorable Daryl Busch, Mayor, City of Perris, 101 North D Street, Perris, California 92570.	April 1, 2002	060258
Riverside (FEMA Docket No. B–7429).	Unincorporated Areas (01–09–849P).	April 4, 2002, April 1,, 2002, *Press-Enterprise.*	The Honorable Jim Venable, Chairman, Riverside County Board of Supervisors, 4080 Lemon Street, 14th Floor, Riverside, California 92501..	March 18, 2002	060245
San Diego (FEMA Docket No. B–7429).	City of Carlsbad (02–09–594P).	May 23, 2002, May 30, 2002, *North County Times.*	The Honorable Claude, A. Lewis, Mayor, City of Carlsbad, 1200 Carlsbad Village Drive, Carlsbad, California 92008.	August 29, 2002 ...	060285

State and county	Location and case No.:	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Yolo (FEMA Docket No. B–7431).	City of Winters (02–09–649P).	August 1, 2002, August 8, 2002, *Winters Express.*	The Honorable Harold Anderson, Mayor, City of Winters, 318 First Street, Winters, California 95694–1923.	July 11, 2002	060425
Colorado:					
Arapahoe (FEMA Docket No. B–7429).	City of Cherry Hills Village (02–08–052P).	May 2, 2002, May 9, 2002, *Denver Post.*	The Honorable John Welbron, Mayor, City of Cherry Hills Village, 2450 East Quincy Avenue, Cherry Hills Village, Colorado 80110.	April 12, 2002	080013
Boulder (FEMA Docket No. B–7429).	Unincorporated Areas (02–08–082P).	April 4, 2002, April 11, 2002, *Daily Camera.*	The Honorable Jana L. Mendez, Chairperson, Boulder County Board of Commissioners, P.O. Box 471, Boulder, Colorado 80306–0471.	March 25, 2002	080023
Boulder (FEMA Docket No. B–7429).	City of Lafayette (02–08–331P).	May 20, 2002, May 24, 2002, *Daily Camera.*	The Honorable Dale Avery, Mayor, City of Lafayette, 1290 South Public Road, Lafayette, Colorado 80026.	August 23, 2002 ...	080026
Boulder (FEMA Docket No. B–7429).	City of Longmont (02–08–082P).	April 4, 2002, April 11, 2002, *Daily Times Call.*	The Honorable Julia Pirnack, Mayor, City of Longmont, 350 Kimbark Street, Longmont Colorado 80501.	March 25, 2002	080027
El Paso (FEMA Docket No. B–7431).	City of Colorado Springs (02–08–141P).	August 14, 2002, August 21, 2002, *The Gazette .*	The Honorable Mary Lou Makepeace, Mayor, City of Colorado Springs, P.O. Box 1575, Colorado Springs, Colorado 80901–1575.	August 6, 2002	080060
Jefferson (FEMA Docket No. B–7431).	City of Golden (02–08–185P).	August 8, 2002, August 15, 2002, *Denver Post.*	The Honorable Charles J. Branch, Mayor City of Golden, 911 10th Street, Golden, Colorado 80401.	November 14, 2002.	080090
Jefferson (FEMA Docket No. B–7431).	City of Westminster (02–08–013P).	September 12, 2002, September 19, 2002, *Westminster Window.*	The Honorable Ed Moss, Mayor, City of Westminster, 4800 West 92nd Avenue, Westminster, Colorado 80031.	December 19, 2002.	080008
Jefferson (FEMA Docket No. B–7431).	Unincorporated Areas (02–08–185P).	August 8, 2002, August 15, 2002, *Denver Post.*	The Honorable Michelle Lawrence, Chairman, Jefferson County Board of Commissioners, 100 Jefferson County Parkway, Golden, Colorado 80419.	July 23, 2002	080087
Weld (FEMA Docket No. B–7431).	Town of Firestone (01–08–384P).	July 31, 2002, August 7, 2002, *Farmer and Miner.*	The Honorable Michael Simone, Mayor, Town of Firestone, P.O. Box 100, Firestone, Colorado 80520.	November 6, 2002	080241
Weld (FEMA Docket No. B–7431).	Unincorporated Areas (01–08–384P).	July 31, 2002, August 7, 2002, *Farmer and Miner.*	The Honorable Glenn Vaad, Chairman, Weld County Board of Commissioners, P.O. Box 758, Greeley, Colorado 80632–0758.	July 11, 2002	080266
Hawaii:					
Hawaii (FEMA Docket No. B–7429).	Hawaii County (02–09–633P).	May 23, 2002, May 30, 2002, *Hawaii Tribune Herald.*	The Honorable Harry Kim, Mayor, Hawaii County, 25 Aupuni Street, Hilo, Hawaii 96720.	May 3, 2002	155166
North Dakota:					
Stark (FEMA Docket No. B–7429).	City of Dickinson (02–08–057P).	May 9, 2002, May 16, 2002, *Dickinson Press.*	The Honorable Dennis W. Johnson, Mayor, City of Dickinson, 99 Second Street East, Dickinson, North Dakota 58601.	August 15, 2002 ...	380117
Utah:					
Salt Lake (FEMA Docket No. B–7429).	City of Draper (02–08–198P).	June 26, 2002, July 7, 2002, *Salt Lake Tribune.*	The Honorable Darrell H. Smith, Mayor, City of Draper, 12441 South 900 East, Draper, UT 84020.	October 2, 2002 ...	490244
Utah (FEMA Docket No. B–7431).	City of Spanish Fork (01–08–306P).	August 28, 2002, September 4, 2002, *Daily Herald .*	The Honorable Dale Barney, Mayor, City of Spanish Fork, 40 South Main Street, Spanish Fork, Utah 84660.	February 16, 2003	490241
Utah (FEMA Docket No. B–7431).	Unincorporated Areas (01–08–306P).	August 28, 2002, September 4, 2002, *Daily Herald.*	The Honorable Jerry Grover, Chairman, Utah County Board of Commissioners, County Administration Building, 100 East Center Street, Suite 2300, Provo, Utah 84606.	December 4, 2002	495517
Wyoming: Teton (FEMA Docket No. B–7429).	Unincorporated Areas (02–08–268P).	July 17, 2002, July 24, 2002, *Jackson Hole News.*	The Honorable Bill Paddleford, Chairperson, Teton County Board of Commissioners, County Courthouse, P.O. Box 3594, Jackson, Wyoming 83001.	July 8, 2002	560094

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Dated: January 21, 2003.

Anthony S. Lowe,

Administrator, Federal Insurance and Mitigation Administration.

[FR Doc. 03–2248 Filed 1–30–03; 8:45 am]

BILLING CODE 6718–04–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

Final Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: Base (1-percent-annual-chance) Flood Elevations and modified Base Flood Elevations (BFEs) are made final for the communities listed below. The BFEs and modified BFEs are the basis for the floodplain management measures that each community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATE: The date of issuance of the Flood Insurance Rate Map (FIRM)

showing BFEs and modified BFEs for each community. This date may be obtained by contacting the office where the FIRM is available for inspection as indicated in the table below.

ADDRESSES: The final base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Michael M. Grimm, Acting Chief, Hazard Study Branch, Federal Insurance and Mitigation Administration, 500 C Street, SW., Washington, DC 20472, (202) 646–2878 or (e-mail) *michael.grimm@fema.gov.*

SUPPLEMENTARY INFORMATION: FEMA makes final determinations listed below of BFEs and modified BFEs for each community listed. The proposed BFEs and proposed modified BFEse were published in newspapers of local circulation and an opportunity for the community or individuals to appeal the proposed determinations to or through the community was provided for a period of ninety (90) days. The proposed BFEs and proposed modified BFEs were also published in the **Federal Register**.

This final rule is issued in accordance with Section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67.

FEMA has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and FIRM available at the address cited below for each community.

The BFEs and modified BFEs are made final in the communities listed below. Elevations at selected locations in each community are shown.

National Environmental Policy Act. This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act. The Administrator of the Federal Insurance and Mitigation Administration certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because final or modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification. This final rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism. This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform. This rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and record keeping requirements.

Accordingly, 44 CFR Part 67 is amended to read as follows:

PART 67—[AMENDED]

1. The authority citation for Part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.11 [Amended]

2. The tables published under the authority of § 67.11 are amended as follows:

State	City/town/county	Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD) Modified ♦Elevation in feet (NAVD) Modified
IL	Bradley (Village) (Kankakee County) (FEMA Docket No. 7613).	Kankakee River	The southwest corner of the Village of Bradley.	*599
		North Branch Soldier Creek.	Just upstream of Conrail bridge	*628
		Soldier Creek	At the confluence of North Branch Soldier Creek.	*627
			Approximately 400 feet upstream of North Street.	*634
Maps are available for inspection at the Department of Building Standards, 147 S. Michigan Avenue, Bradley, Illinois.				
IL	Kankakee (City) (Kankakee County) (FEMA Docket No. P7613).	Kankakee River	Approximately 7,600 feet downsteam of Conrail.	*598
		Soldier Creek	Approximately 3,600 feet upstream of I–57.	*606
			Just upstream of Illinois Central Railroad	*627
			Approximately 4,300 feet upstream of State Route 50 (Kinzie Avenue).	*631
			.....	
Maps are available for inspection at the City of Kankakee Planning Department, 165 N. Schuyler Avenue, Kankakee, Illinois.				
OK	Prague (City) (Oklahoma County) (FEMA Docket No. P7615).	Shan Creek	.....	*992
		Shan Creek Tributary	.....	*983
Maps are available for inspection at 1116 North Jim Thorpe Boulevard, Prague, Oklahoma.				

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Dated: January 21, 2003.

Anthony S. Lowe,

Administrator, Federal Insurance and Mitigation Administration.

[FR Doc. 03–2244 Filed 1–30–03; 8:45 am]

BILLING CODE 6718–04–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

Final Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: Base (1-percent-annual-chance) Flood Elevations and modified Base Flood Elevations (BFEs) are made final for the communities listed below. The BFEs and modified BFEs are the basis for the floodplain management measures that each community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATE: The date of issuance of the Flood Insurance Rate Map (FIRM) showing BFEs and modified BFEs for each community. This date may be obtained by contacting the office where the FIRM is available for inspection as indicated in the table below.

ADDRESSES: The final base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Michael M. Grimm, Acting Chief, Hazard Study Branch, Federal Insurance and Mitigation Administration, 500 C Street, SW., Washington, DC 20472, (202) 646–2878 or (e-mail) *michael.grimm@fema.gov.*

SUPPLEMENTARY INFORMATION: FEMA makes final determinations listed below of BFEs and modified BFEs for each community listed. The proposed BFEs and proposed modified BFEse were published in newspapers of local circulation and an opportunity for the community or individuals to appeal the proposed determinations to or through the community was provided for a period of ninety (90) days. The proposed BFEs and proposed modified BFEs were also published in the **Federal Register**.

This final rule is issued in accordance with Section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67.

FEMA has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and FIRM available at the address cited below for each community.

The BFEs and modified BFEs are made final in the communities listed below. Elevations at selected locations in each community are shown.

National Environmental Policy Act. This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act. The Administrator of the Federal Insurance and Mitigation Administration certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because final or modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification. This final rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism. This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform. This rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and record keeping requirements.

Accordingly, 44 CFR part 67 is amended to read as follows:

PART 67—[AMENDED]

1. The authority citation for Part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.11 [Amended]

2. The tables published under the authority of § 67.11 are amended as follows:

Source of flooding and location of referenced elevation	*Elevation in feet (NGVD) modified	Commuities affected
Elm Creek:		
Approximately 700 feet downstream of South Main Street	*756	(FEMA Docket No. P7611) City of Grove, Delaware County
Approximately 2,700 feet upstream of N4640 Road	*837	
Flint Creek:		
Approximately 6,850 feet downstream of U.S. 59	*858	Delaware County
Approximately 1,100 feet upstream of D579 Road (Beckwith Bridge)	*889	
Grand Lake of the Cherokees: Entire shoreline	*756	(FEMA Docket No. P7611) City of Grove, Town of Bernice, Delaware County
Illinois River:		
Approximately 7,150 feet downstream of the confluence of Flint Creek	*851	Delaware County
Approximately 5,850 feet upstream of the confluence of Flint Creek	*863	
North Tributary to Spring Branch:		
Approximately 350 feet upstream of North Cherokee Street	*753	Delaware County
Approximately 1,100 feet downstream of North Cherokee Street	*756	
*National Geodetic Vertical Datum		

Delaware County

Maps are available for inspection at the Floodplain Administrator's Office, County Court House, Delaware County, Jay, Oklahoma.

Source of flooding and location of referenced elevation	*Elevation in feet (NGVD) modified	Communities affected
City of Grove		
Maps are available for inspection at the City Manager's Office, City of Grove, 104 West 3rd Street, Grove, Oklahoma.		
Town of Bernice		
Maps are available for inspection at the Mayor's Office, Town of Bernice, 400 East Main, Bernice, Oklahoma.		
Alsuma Creek:		
Approximately 200 feet upstream of Missouri Kansas Texas Railroad	*668	(FEMA Docket No. P7611) City of Tulsa
Approximately 150 feet upstream of East 55th Street	*680	
Audubon Creek:		
At the mouth	*637	
Approximately 1,600 feet upstream of East 31st Street South	*673	
Bell Creek:		
At the mouth	*644	
Approximately 1,200 feet upstream of East 41st Street South	*671	
Bell Creek Tributary:		
At the mouth	*652	
Just downstream of 50th Street South	*682	
Brookhollow Creek:		
Approximately 150 feet downstream of Mingo Road	*640	
Approximately 150 feet downstream of South 129th East Avenue	*692	
Catfish Creek:		
Approximately 50 feet upstream of Railroad Bridge	*688	(FEMA Docket No. 7611) City of Tulsa
Just downstream of East 61st Street	*678	
Cooley Creek:		
At the mouth	*615	
At the county boundary	*699	
Douglas Creek:		
At the mouth	*609	City of Tulsa, Tulsa County
Just downstream of State Highway 11	*630	
Eagle Creek:		
At the mouth	*608	City of Tulsa
Approximately 2,600 feet upstream of East Pine Street	*655	
Ford Creek:		
At the mouth	*661	
Just down of East 51st Street South	*719	
Fulton Creek:		
At the mouth	*647	
Approximately 200 feet downstream of 39th Street	*666	
Jones Creek:		
At the mouth	*629	(FEMA Docket No. P7611) City of Tulsa
Approximately 200 feet upstream of 69th East Avenue	*686	
Little Creek:		
Approximately 1,200 feet downstream of Mingo Valley Expressway (Highway 169).	*602	
Just downstream of 129th East Avenue	*649	
Mill Creek:		
At the mouth	*622	
Just downstream of East 15th Street	*727	
Mingo Creek:		
Approximately 600 feet upstream of East 56th Street North	*589	City of Tulsa, Tulsa County
Approximately 500 feet downstream of South Memorial Drive	*724	
Quarry Creek:		
Approximately 350 feet upstream of the mouth	*604	City of Tulsa
Just downstream of North 145th East Avenue	*680	
Southpark Creek:		
At the mouth	*652	
Approximately 6,150 feet upstream of Garnett Road	*688	
Sugar Creek:		
At the mouth	*647	(FEMA Docket No. P7611) City of Tulsa
Just downstream of South 129th East Avenue	*692	
Tupelo Creek:		
Approximately 200 feet upstream of Mingo Road	*621	
Approximately 700 feet upstream of East 16th Street	*661	
Tupelo Creek Tributary A:		
At the mouth	*647	
Just downstream of South 129th East Avenue	*696	
Tupelo Creek Tributary C:		
Approximately 200 feet downstream of South Garnett Road	*643	
Just downstream of South 129th East Avenue	*697	
*National Geodetic Vertical Datum		
City of Tulsa		

Source of flooding and location of referenced elevation	*Elevation in feet (NGVD) modified	Communities affected
Maps are available for inspection at 200 Civic Center, Tulsa, Oklahoma.		
Tulsa County		
Maps are available for inspection at the Tulsa County Anex Building, 633 West 3rd, Room 140, Tulsa, Oklahoma.		

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Dated: January 21, 2003.

Anthony S. Lowe,

Administrator, Federal Insurance and Mitigation Administration.

[FR Doc. 03–2245 Filed 1–30–03; 8:45 am]

BILLING CODE 6718–04–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR part 101

[WT Docket No. 00–19; RM–9418; FCC 02–218]

Streamline Processing of Microwave Applications in the Wireless Telecommunications Services and Telecommunications Industry Association Petition for Rulemaking

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, we take further actions to streamline, clarify, and update our rules. We take these actions to provide increased flexibility to licensees, ensure greater and more efficient use of the spectrum bands regulated under the rules, and ensure that our rules are consistent with international agreements.

DATES: Effective April 1, 2003.

FOR FURTHER INFORMATION CONTACT: Edward Hayes or Michael Pollak of the Wireless Telecommunications Bureau, Public Safety and Private Wireless Division at (202) 418–0680 (voice), (202) 418–7233 (TTY).

SUPPLEMENTARY INFORMATION: This is a summary of the Federal Communications Commission's *Report and Order*, FCC 02–218, adopted on July 18, 2002, and released on July 31, 2002. The full text of this document is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street, SW., Washington, DC 20554. The complete text may be purchased from the Commission's copy contractor, Qualex International, 445 12th Street, SW., Room CY–B402, Washington, DC 20554. The full text may also be downloaded at: *http://www.fcc.gov*. Alternative formats are available to persons with disabilities by contacting Brian Millin at (202) 418–7426 or TTY (202) 418–7365 or at *bmillin@fcc.gov*.

1. In the *Report and Order* in WT Docket No. 94–148 and CC Docket No. 93–2, the Commission consolidated the rules for the common carrier and private operational fixed (POFS) microwave services contained in parts 21 and 94, respectively, of the Commission's Rules to create a new part 101. The new consolidated part 101 reduces or eliminates the differences in processing applications between common carriers and POF microwave service licensees, and furthers regulatory parity between these microwave services. On February 14, 2000, the Commission released the *Memorandum Opinion and Order and Notice of Proposed Rule Making* ("NPRM"), 65 FR 38333, June 20, 2000, in this proceeding. In the *NPRM*, the Commission proposed eliminating duplicative, outmoded, or otherwise unnecessary regulations in order to further the work begun by the consolidation of parts 21 and 94 into a single part 101 in the *R&O* and the implementation of the Universal Licensing System (ULS) for wireless applications. Applicants, licensees and related industries were invited to examine these rules and procedures and offer their views and explanations of ways to streamline them and to make sure that the regulations conform with the Communications Act of 1934, as amended (Act).

2. In this *Report and Order*, we take further actions to streamline, clarify, and update our part 101 rules. These actions will provide increased flexibility to licensees, ensure greater and more efficient use of the spectrum bands regulated under part 101, and ensure that our Rules are consistent with international agreements. The significant rule changes and clarifications that we adopt in this *Report and Order* to streamline part 101 are:

- We permit POFS licensees to lease reserve capacity to common carriers for their common carrier traffic. Further, we grandfather certain POFS licensees who formerly carried private traffic now classified as common carrier traffic.
- We clarify that conditional authorization in the 23 GHz Band is permitted only on the frequency pairs identified in Section 101.147(s), and only if the maximum Effective Isotropic Radiated Power (EIRP) utilized does not exceed 55 dBm.
- We allow conditional operation in the 952.95–956.15 and 956.55–959.75 MHz bands.
- We clarify and correct the frequency tolerance table in Section 101.107(a) in accordance with the proposal contained in the *MO&O and NPRM*, 15 FCC Rcd at 3153 ¶ 45.
- We amend the EIRP table in § 101.113(a) to divide the 10.55–10.68 GHz band into two separate bands: 10.55–10.6 GHz with the maximum power of 55 dBW and 10.6–10.68 GHz with a maximum power of 40 dBW.
- We permit any Local Multipoint Distribution Service (LMDS) antenna polarization away from service boundaries.
- We amend § 101.507 to provide the frequency tolerance of ±0.0001% for Digital Electronic Message Service (DEMS) Nodal Stations and ±0.0003% for DEMS User Stations in the 10,550–10,680 MHz band.
- We modify the part 101 emission mask to make it less severe for LMDS by adopting for LMDS the same mask requirements that we did for the 24 GHz service, as outlined in § 101.111(a)(2)(iv).
- We modify the reference bandwidth in § 101.111(a)(2)(iii) from 4 kHz to 1 MHz for consistency with § 101.111(a)(2)(ii) and Appendix S3 of the International Radio Regulations.

3. Additionally, in response to the Telecommunications Industry Association (TIA) Petition for Rulemaking relating to the 10 GHz and 23 GHz bands, we adopt the following rule changes:

- We specify a channel plan for the 23 GHz band in our Rules.
- We adopt frequency tolerance standards for both digital and analog radios operating in the 23 GHz band.
- We extend a 1 bps/Hz spectrum efficiency rate requirement to the 23 GHz band for digital transmitters.
- We allow the use of smaller antennas in the 10 GHz and 23 GHz bands.

I. Procedural Matters

A. Regulatory Flexibility Act Analysis

4. A Final Regulatory Flexibility Analysis (FRFA) with respect to the *Report and Order*, pursuant to the Regulatory Flexibility Act (RFA), is contained below. The Commission's Consumer Information Bureau, Reference Information Center, will send a copy of this *Report and Order*, including the FRFA, to the Chief Counsel of the Small Business Administration in accordance with the RFA.

B. Paperwork Reduction Act of 1995 Analysis

5. This Report and Order does not contain either a proposed or modified information collection.

II. Final Regulatory Flexibility Analysis

6. As required by Section 603 of the Regulatory Flexibility Act, 5 U.S.C. 603 (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *MO&O and NPRM* in this proceeding. The Commission sought written public comments on the proposals in those proceedings, including on the IRFA. The Commission's Final Regulatory Flexibility Analysis (FRFA) for the *Report and Order* (*R&O*) conforms to the RFA.

A. Need For and Purpose of This Action

7. This *R&O* furthers the Commission's continuing efforts to eliminate and/or modify regulations in part 101 that are duplicative, outmoded, or otherwise unnecessary. This action will (1) clarify the existing rules so they are easier to understand, (2) facilitate the awarding of licenses more quickly, and (3) eliminate unnecessary regulation.

B. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

8. Commenters did not file any comments in direct response to the IRFA. Some commenters, however, raised issues that may be of particular concern to small entities. The specific suggestions, modifications, and deletions have been discussed above. We have reviewed the comments to determine the impact of the decisions set forth herein on small entities.

C. Description and Estimate of the Number of Small Entities to Which the Rules Apply

9. The rules will affect all common carrier and private operational fixed microwave licensees who are authorized under part 101 of the Commission's Rules. The Commission has not developed a definition of small entities applicable to these licensees. Therefore, the applicable definition of small entity is the definition under the Small Business Administration (SBA) rules for the radiotelephone industry, which provides that a small entity is a radiotelephone company employing fewer than 1,500 persons. The 1992 Census of Transportation, Communications, and Utilities, conducted by the Bureau of the Census, which is the most recent information available, shows that 12 radiotelephone firms out of a total of 1,178 such firms which operated during 1992 had 1,000 or more employees. With respect to these entities, we note that the effect will be to lessen time and input and thereby any costs associated with processing their applications.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

10. There is only one new reporting requirement adopted in this *R&O*. We are amending § 101.31(b) to require that an application for authority to operate a fixed station at temporary locations must specify the precise geographic area within which the operation will be confined. We will require that the area specified must be defined as a radius of operation about a given state or states, latitude/longitude, or as a rectangular area bounded by upper and lower lines of latitude and longitude. This requirement previously was in our rules and inadvertently deleted during recodification. Nothing in the record indicates that the requirement was, or will be, burdensome to small entities. Other than this, we have amended the fixed microwave rules to make them less burdensome and clarified the language of some of the rules.

E. Significant Alternatives Considered

11. The comments offered various alternatives for modification of proposals contained in the notice of proposed rule making portion of the *MO&O and NPRM*. An additional alternative was to maintain the *status quo*. Generally, the comments supported the proposals, but offered changes to make the rules more clear and accurate. Some of the suggested modifications are contained in the final rules. Aside from the amendment of § 101.31 highlighted above, the rules impose no additional regulatory burdens. The Commission will continue to examine alternatives in the future with the objective of eliminating unnecessary regulations and minimizing economic impact on small business entities.

F. Commission's Outreach Efforts To Learn of and Respond to the Views of Small Entities Pursuant to 5 U.S.C. 609

12. In this proceeding, the Commission has taken several steps to learn and respond to the views of small entities. Throughout the course of this proceeding, representatives of the Public Safety and Private Wireless Division (PSPWD) of the Wireless Telecommunications Bureau have had numerous discussions with the representatives of small entities. The staff of the Licensing and Technical Analysis Branch of the PSPWD in Gettysburg, Pennsylvania routinely respond to questions posed by the representatives of small entities and, when appropriate, refer issues arising from those questions to PSPWD staff in Washington, DC for determination of whether a rule change or clarification will benefit the small entities posing the questions.

G. Report to Congress

13. The Commission shall send a copy of this Final Regulatory Flexibility Analysis, along with the *Report and Order*, in a report to Congress pursuant to section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 801(a)(1)(A). A copy of this FRFA will also be published in the **Federal Register**.

III. Ordering Clauses

14. Accordingly, pursuant to sections 1, 2, 4(i), 5(c), 7(a), 11(b), 301, 302, 303, 307, 308, 309(j), 310, 312a, 316, 319, 323, 324, 332, 333, 336, 337, and 351 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i), 155(c), 157(a), 161(b), 301, 302, 303, 307, 308, 309(j), 310, 312a, 316, 319, 323, 324, 332, 333, 336, 337, 351, and §§ 1.421 and 1.425 of the Commission's Rules, 47 CFR 1.421, 1.425, the *Report and Order* in this proceeding *is hereby adopted*.

15. The Commission's Consumer Information Bureau, Reference Information Center, *shall send* a copy of this *Report and Order*, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the U.S. Small Business Administration.

List of Subjects in 47 CFR Part 101

Communications equipment, Marine safety, Radio, Reporting and recordkeeping requirements.

Federal Communications Commission.
Marlene H. Dortch,
Secretary.

Rule Changes

Part 101 of chapter 1 of title 47 of the Code of Federal Regulations is amended as follows:

PART 101—FIXED MICROWAVE SERVICES

1. The authority citation for part 101 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

2. Section 101.3 is amended by removing the definition for MHz Service Bands and by revising the Multiple address system (MAS) definition to read as follows:

§ 101.3 Definitions.

* * * * *

Multiple address system (MAS). A point-to-multipoint or point-to-point radio communications system used for either one-way or two-way transmissions that operates in the 928/952/956 MHz, the 928/959 MHz or the 932/941 MHz bands in accordance with § 101.147.

* * * * *

3. Section 101.5 is amended by revising paragraph (b) to read as follows:

§ 101.5 Station authorization required.

* * * * *

(b) A separate application form must be filed electronically via ULS for each Digital Electronic Message Service (DEMS) Nodal Station. No license is required for a DEMS User Station or for a Multiple Address System (MAS) remote or mobile station. Authority for a DEMS Nodal Station licensee to serve a specific number of user stations to be licensed in the name of the carrier must be requested on FCC Form 601 filed for the DEMS Nodal Station. Authority for any number of MAS remotes and authority to serve MAS mobiles (to the extent this part permits such operation) within a specified area will be included in the authority for the MAS fixed master stations.

* * * * *

4. Section 101.31 is amended by revising paragraphs (a)(2), (b)(1) introductory text, (b)(1) (vii) and (b)(3), by removing paragraphs (a)(3) through (a)(5) and paragraph (b)(4), by redesignating paragraphs (a)(6) as paragraph (a)(3) and by revising newly designated paragraph (a)(3) to read as follows:

§ 101.31 Temporary and conditional authorizations.

(a) * * *

(2) Applications for authorizations to operate stations at temporary locations under the provisions of this section shall be made upon FCC Form 601. Blanket applications may be submitted for the required number of transmitters. An application for authority to operate a fixed station at temporary locations must specify the precise geographic area within which the operation will be confined. The area specified must be defined as a radius of operation about a specific coordinate (latitude/longitude), or as a county, or as a State. Exception to this specific requirement may be made for exceptionally large areas, such as the continental United States. Sufficient data must be submitted to show the need for the proposed area of operation.

(3) Operations in the 17.8–19.7 GHz band are prohibited in the areas defined in § 1.924 of this chapter. Operations proposed in the areas defined in § 1.924 of this chapter may not commence without prior specific notification to, and authorization from, the Commission.

* * * * *

(b) * * *

(1) An applicant for a new point-to-point microwave radio station(s) or a modification of an existing station(s) in the 952.95–956.15, 956.55–959.75, 3,700–4,200; 5,925–6,425; 6,525–6,875; 10,550–10,680; 10,700–11,700; 11,700–12,200; 12,700–13,200; 13,200–13,250; 17,700–19,700; and 21,800–22,000 MHz, and 23,000–23,200 MHz bands (*see* § 101.147(s) for specific service usage) may operate the proposed station(s) during the pendency of its applications(s) upon the filing of a properly completed formal application(s) that complies with subpart B of part 101 if the applicant certifies that the following conditions are satisfied:

* * * * *

(vii) With respect to the 21.8–22.0 GHz and 23.0–23.2 GHz band, the filed application(s) does not propose to operate on a frequency pair centered on other than 21.825/23.025 GHz, 21.875/23.075 GHz, 21.925/23.125 GHz or 21.975/23.175 GHz and does not propose to operate with an E.I.R.P. greater than 55 dBm. The center frequencies are shifted from the center frequencies listed above for certain bandwidths as follows: add 0.005 GHz for 20 MHz bandwidth channels, add 0.010 GHz for 30 MHz bandwidth channels, and subtract 0.005 GHz for 40 MHz bandwidth channels. *See* specific channel listings in § 101.147(s).

* * * * *

(3) Conditional authorization does not prejudice any action the Commission may take on the subject application(s). Conditional authority is accepted with the express understanding that such authority may be modified or cancelled by the Commission at any time without hearing if, in the Commission's discretion, the need for such action arises. An applicant operating pursuant to this conditional authority assumes all risks associated with such operation, the termination or modification of the conditional authority, or the subsequent dismissal or denial of its applications(s).

* * * * *

1. Section 101.55 is amended by revising paragraph (a) introductory text and removing paragraph (e) to read as follows:

§ 101.55 Considerations involving transfer or assignment applications.

(a) Except as provided for in paragraph (d) of this section, licenses not authorized pursuant to competitive bidding procedures may not be assigned or transferred prior to the completion of construction of the facility.

* * * * *

6. Section 101.101 is amended by revising frequency band 2450–2500, 18,820–18,920 and 19,160–19,210 the table to read as follows:

§ 101.101 Frequency availability.

Frequency band (MHz)	Radio service				
	Common carrier (part 101)	Private radio (part 101)	Broadcast auxiliary (part 74)	Other (parts 15, 21, 24, 25, 74, 78, & 100)	Notes
* * *	*	*	*	*	*
2450–2500	CC	OFS	TV BAS	ISM	F/M/TF

Frequency band (MHz)	Radio service				
	Common carrier (part 101)	Private radio (part 101)	Broadcast auxiliary (part 74)	Other (parts 15, 21, 24, 25, 74, 78, & 100)	Notes
* * *	*	*		*	*
18,820–18,920	CC	OFS		SAT	
* * *	*	*		*	*
19,160–19,260	CC	OFS		SAT	
* * *	*	*		*	*

7. Section 101.107 is amended by revising the table in paragraph (a) to read as follows:

§ 101.107 Frequency tolerance.

(a) * * *

Frequency (MHz)	Frequency tolerance (percent)
928 to 929[5]	0.0005
932 to 932.5	0.00015
932.5 to 935	0.00025
941 to 941.5	0.00015
941.5 to 944	0.00025
952 to 960[5]	0.0005
1,850 to 1,990	0.002
2,110 to 2,200	0.001
2,450 to 2,500[1]	0.001
3,700 to 4,200[1]	0.005
5,925 to 6,875[1]	0.005
10,550 to 11,700[1 2]	0.005
11,700 to 12,200[1]	0.005
12,200 to 13,250[4]	0.005
14,200 to 14,400	0.03
17,700 to 18,820[3]	0.003
18,820 to 18,920[3]	0.001
928 to 929[5]	0.0005
18,920 to 19,700[3]	0.003
19,700 to 27,500[4 7]	0.001
27,500 to 28,350	0.001
29,100 to 29,250	0.001
31,000 to 31,300[6]	0.001
31,300 to 40,000[4]	0.03

* * * * *

[1] Applicable only to common carrier LTTS stations. Tolerance for 2450–2500 MHz is 0.005%. Beginning Aug. 9, 1975, this tolerance will govern the marketing of LTTS equipment and the issuance of all such authorizations for new radio equipment. Until that date new equipment may be authorized with a frequency tolerance of .03% in the frequency range 2,200 to 10,500 MHz and .05% in the range 10,500 MHz to 12,200 MHz, and equipment so authorized may continue to be used for its life provided that it does not cause interference to the operation of any other licensee.

[2] *See* subpart G of this part for the stability requirements for transmitters used in the Digital Electronic Message Service.

[3] Existing type accepted equipment with a frequency tolerance of ±0.03% may be marketed until December 1, 1988. Equipment installed and operated prior to December 1, 1988 may continue to operate after that date with a minimum frequency tolerance of ±0.03%. However, the replacement of equipment requires that the current tolerance be met.

[4] Applicable to private operational fixed point-to-point microwave and stations providing MVDDS.

[5] For private operational fixed point-to-point microwave systems, with a channel greater than or equal to 50 KHz bandwidth, ±0.0005%; for multiple address master stations, regardless of bandwidth, ±0.00015%; for multiple address remote stations with 12.5 KHz bandwidths, ±0.00015%; for multiple address remote stations with channels greater than 12.5 KHz bandwidth, ±0.0005%.

[6] For stations authorized prior to March 11, 1997, transmitter tolerance shall not exceed 0.03%.

[7] The frequency tolerance for stations authorized on or before April 1, 2005 is 0.03%. Existing licensees and pending applicants on that date may continue to operate after that date with a frequency tolerance of 0.03%, provided that it does not cause harmful interference to the operation of any other licensee. For analog systems, if the channel bandwidth is greater than 30 MHz up to 50 MHz, the frequency tolerance standard will be 0.03%; if the channel bandwidth is 30 MHz or less, then the frequency tolerance standard will be 0.003%. This analog standard is conditional provided that harmful interference is not caused to digital stations operating within the 0.001% tolerance standards. If harmful interference is caused to stations operating with the more stringent standard, the onus shall be on the operators with the less stringent parameters to develop an engineering solution to the problem. For exceptions, *see* § 101.147 and § 101.507.

8. Section 101.109 is amended by revising the frequency band of 21,200 to 23,600 table in paragraph (c) to read as follows:

§ 101.109 Bandwidth.

* * * * *

(c) * * *

Frequency band (MHz)	Maximum authorized bandwidth
* * *	* *
21,200 to 23,600	50 MHz[1 4]

* * * * *

9. Section 101.111 is amended by revising (a)(2)(i) through (a)(2)(iv) to read as follows:

§ 101.111 Emission limitations.

* * * * *

(a) * * *

(2) * * *

(i) For operating frequencies below 15 GHz, in any 4 kHz band, the center frequency of which is removed from the assigned frequency by more than 50 percent up to and including 250 percent of the authorized bandwidth: As specified by the following equation but in no event less than 50 decibels:

$A = 35 + 0.8(P - 50) + 10 \text{ Log}_{10} B.$

(Attenuation greater than 80 decibels or to an absolute power of less than −13 dBm/1MHz is not required.)

where:

A = Attenuation (in decibels) below the mean output power level.

P = Percent removed from the center frequency of the transmitter bandwidth.

B = Authorized bandwidth in MHz.

Note: MVDDS operations in the 12.2–12.7 GHz band shall use 24 megahertz for the value of B in the emission mask equation set forth in this section.

(ii) For operating frequencies above 15 GHz, in any 1 MHz band, the center frequency of which is removed from the assigned frequency by more than 50 percent up to and including 250 percent of the authorized bandwidth: As specified by the following equation but in no event less than 11 decibels:

$A = 11 + 0.4(P - 50) + 10 \text{ Log}_{10} B.$

(Attenuation greater than 56 decibels or to an absolute power of less than −13 dBm/1MHz is not required.)

(iii) In any 1 MHz band, the center frequency of which is removed from the assigned frequency by more than 250 percent of the authorized bandwidth: At least $43 + 10 \text{ Log}_{10}$ (the mean output power in watts) decibels, or 80 decibels, whichever is the lesser attenuation. The authorized bandwidth includes the nominal radio frequency bandwidth of an individual transmitter/modulator in block-assigned bands. Equipment licensed prior to April 1, 2005 shall only be required to meet this standard in any 4 kHz band.

(iv) The emission mask for LMDS and the 24 GHz Service shall use the equation in paragraph (a)(2)(ii) of this section and apply it only to the band edge of each block of spectrum, but not

to subchannels established by licensees. The value of P in the equation is the percentage removed from the carrier frequency and assumes that the carrier frequency is the center of the actual bandwidth used. The emission mask can be satisfied by locating a carrier of the subchannel sufficiently far from the channel edges so that the emission levels of the mask are satisfied. The LMDS or 24 GHz emission mask shall use a value B (bandwidth) of 40 MHz, for all cases even in the case where a narrower subchannel is used (for instance the actual bandwidth is 10 MHz) and the mean output power used in the calculation is the sum of the output power of a fully populated channel. For block assigned channels, the out-of-band emission limits apply only outside the assigned band of operation and not within the band.

* * * * *

10. Section 101.113 is amended by revising the frequency band of 10,550 to 10,680 and by revising footnote 5 of the table in paragraph (a) to read as follows:

§ 101.113 Transmitter power limitations.

(a) * * *

Frequency band (MHz)	Maximum allowable EIRP [1 2]	
	Fixed (dBW)	Mobile (dBW)
* * * * *		
10,550 to 10,600 [5]	+55	
10,600 to 10,680 [5]	+40	
* * * * *		

* * * * *

[5] The output power of a DEMS System nodal transmitter shall not exceed 0.5 watt per 250 kHz. The output power of a DEMS System user transmitter shall not exceed 0.04 watt per 250 kHz. The transmitter power in terms of the watts specified is the peak envelope power of the emission measured at the associated antenna input port. The operating power shall not exceed the authorized power by more than 10 percent of the authorized power in watts at any time. Frequencies from 10,600–10,680 MHz are subject to footnote US265 in the Table of Frequency Allocations in § 2.106 of the Commission's Rules. Stations authorized prior to April 1, 2003 to exceed the 40 dBW limit may continue to operate at their authorized output power level indefinitely, provided that neither end point of the relevant link is relocated.

* * * * *

11. Section 101.115 is amended by removing paragraph (b) and redesignating paragraphs (c) through (g) as (b) through (f), and revising footnote 7 and the frequency bands of 10,550 to 16,680 and 21,200 to 23,600, and by adding footnote 7 to frequency 21,200 to 23,600 of the table in newly designated paragraph (b) to read as follows:

§ 101.115 Directional antennas.

* * * * *

(b) * * *

(2) * * *

ANTENNA STANDARDS

Frequency (MHz)	Category	Maximum beamwidth to 3 dB points [1] (included angle in degrees)	Minimum antenna gain (dBi)	Minimum radiation suppression to angle in degrees from centerline of main beam in decibels						
				5° to 10°	10° to 15°	15° to 20°	20° to 30°	30° to 100°	100° to 140°	140° to 180°
* * * * *										
10,550 to 10,680 [7]	A	3.5	33.5	18	24	28	32	35	55	55
	B	3.5	33.5	17	24	28	32	35	40	45
* * * * *										
21,200 to 23,600 [7,11] ..	A	3.3	33.5	18	26	26	33	33	55	55
	B	3.3	33.5	17	24	24	29	29	40	50
* * * * *										

[7] For stations authorized or pending on April 1, 2003, the minimum radiation suppression for Category B is 35 dB in the 10,550–10,680 MHz band and 36 dB in the 21,200–23,600 MHz band for discrimination angles from 100° to 180°.

* * * * *

12. Section 101.117 is revised to read as follows:

§ 101.117 Antenna polarization.

Except as set forth herein, stations operating in the radio services included in this part are not limited as to the type of polarization of the radiated signal that may be employed. However, in the event interference in excess of permissible levels is caused to the operation of other stations as a result of employing other than linear polarization, the Commission may order a licensee to change its system polarization to mitigate the interference. No change in polarization may be made without prior authorization from the Commission. Unless otherwise allowed, only linear polarization (horizontal and vertical) shall be used. For LMDS systems, unless otherwise authorized, system operators are permitted to use any polarization within its service area, but only vertical and/or horizontal polarization for antennas located within 20 kilometers of the outermost edge of their service area.

13. Section 101.133 is amended by adding paragraph (e) to read as follows:

§ 101.133 Limitations on use of transmitters.

* * * * *

(e) Existing private operational fixed wireless licensees applying to become common carrier wireless licensees shall comply with all provisions of the Communications Act and the Commission's rules. Applicants must take all required filings, including FCC Form 601, and receive all necessary Commission approval prior to operating

as a common carrier wireless licensee. The regulatory fee associated with FCC wireless application Form 601 is waived for applicants who are existing private operational fixed licensees seeking common carrier status, provided that such licensees have also complied with all other discontinuance requirements of Title II of the Act. Applicants are responsible for all other Commission regulatory fees.

14. Section 101.135 is amended by revising paragraph (a) to read as follows:

§ 101.135 Shared use of radio stations and the offering of private carrier service.

* * * * *

(a) Persons or governmental entities licensed to operate radio systems pursuant to subpart H of this part on any of the private radio frequencies set out in § 101.101 may share such systems with, or provide private carrier service to, any eligible entity for licensing under this part, regardless of individual eligibility restrictions, provided that the communications being carried are permissible under § 101.603.

* * * * *

15. Section 101.139 is amended by revising paragraphs (a) and (g) to read as follows:

§ 101.139 Authorization of transmitters.

(a) Unless specified otherwise, transmitters used in the private operational fixed and common carrier fixed point-to-point microwave and point-to-multipoint services under this part must be a type that has been verified for compliance.

* * * * *

(g) After April 1, 2005, the manufacture (except for export) or importation of equipment for operation in the 21,200–23,600 MHz band must meet:

(1) The 0.001% frequency tolerance requirement for digital systems in § 101.107(a) or the 0.03–0.003% frequency tolerance for analog sytems; and

(2) For equipment employing digital modulation techniques, the minimum bit rate requirements of § 101.141(a).

16. Section 101.141 is amended by revising paragraph (a) introductory text and revising paragraph (a)(1) to read as follows:

§ 101.141 Microwave modulation.

(a) Microwave transmitters employing digital modulation techniques and operating below 25.25 GHz (except for MVDDS stations in the 12,200–12,700 MHz band) must, with appropriate multiplex equipment, comply with the following additional requirements:

(1) The bit rate, in bits per second, must be equal to or greater than the bandwidth specified by the emission designator in Hertz (*e.g.*, to be acceptable, equipment transmitting at a 20 Mb/s rate must not require a bandwidth of greater than 20 MHz), except the bandwidth used to calculate the minimum rate may not include any authorized guard band.

(i) Stations authorized prior to December 1, 1988 may install equipment after that date with no minimum bit rate. Equipment applied for or authorized prior to April 1, 2005 in the 21.2–23.6 GHz band may be installed with no minimum bit rate.

(ii) However, any digital equipment applied for after April 1, 2005 and equipment replacing existing equipment in the 21.2–23.6 GHz band must meet the bit rate standard.

* * * * *

17. Section 101.147 is amended by removing note 4 and adding note 12 to the frequency band of 2,450 to 2,500 in the table following paragraph (a), by revising notes (1), (12), (14), (26) to the table in paragraph (a), by adding a note to paragraph (b) introductory text, by revising the remote transmit of frequency 928.75675 of Table 3 in paragraph (b)(2) , by removing and reserving paragraph (k) and by revising paragraphs (r) (10) introductory text and paragraph (s) to read as follows:

§ 101.147 Frequency assignments.

(a) * * *

* * * * *

2,450–2,500 MHz (12)

* * * * *

(1) Frequencies in this band are shared with control and repeater stations in the Public Mobile Services and with stations in the International Fixed Public Radio communication Services located south of 25°30′ north latitude in the State of Florida and U. S. possessions in the Caribbean area. Additionally, the band 2160–2162 MHz is shared with stations in the Multipoint Distribution Service.

* * * * *

(12) Frequencies in this band are available for assignment to the common carrier and private-operational fixed point-to-point microwave services.

* * * * *

(14) Frequencies in this band are shared with stations in the fixed-satellite service.

* * * * *

(26) Frequencies from 21.8–22.0 GHz and 23.0–23.2 GHz may be authorized for low power, limited coverage systems subject to the provisions of paragraph (s)(8) of this section.

* * * * *

(b) * * *

Note to paragraph (b) introductory text: Paragraphs (b)(1) through (b)(5) and Tables 1 through 7 of this section pertain to Multiple Address System (MAS) frequencies and paragraph (b)(6) and Tables 8 through 11 of this section pertain to Point-To-Point frequencies.

* * * * *

(2) * * *

TABLE 3.—PAIRED FREQUENCIES (MHz)

[12.5 kHz bandwidth]

Remote transmit	Master transmit
928.75625	952.75625

* * * * *

(k) [Reserved]

* * * * *

(r) * * *

(10) Special provision for low power systems in the 17–700–19700 MHz band: Notwithstanding other provisions in this rule part, and except for specified areas around Washington, DC, and Denver, Colorado, licensees of point-to-multipoint channel pairs 25–29 identified in paragraph (r)(9) of this section may operate multiple low power transmitting devices within a defined service area. New operations are prohibited within 55 km when used outdoor and within 20 km when used indoor of the coordinates 38°48′ N/ 76°52′ W and 39°43′ N/104°46′ W. The service area will be a 28 kilometer omnidirectional radius originating from specified center reference coordinates. The specified center coordinates must be no closer than 56 kilometers from any co-channel nodal station or the specified center coordinates of another co-channel system. Applicants/licensees do not need to specify the location of each individual transmitting device operating within their defined service areas. Such operations are available to private and common carriers and are subject to the following requirements for the low power transmitting devices:

* * * * *

(s) *21,200 to 23,600 MHz:* 50 MHz authorized bandwidth.

Transmit (receive) (MHz)	Receive (transmit) (MHz)
(1) 2.5 MHz bandwidth channels:	
21601.25	22801.25
21603.75	22803.75

Transmit (receive) (MHz)	Receive (transmit) (MHz)
21606.25	22806.25
21608.75	22808.75
21611.25	22811.25
21613.75	22813.75
21616.25	22816.25
21618.75	22818.75
21621.25	22821.25
21623.75	22823.75
21626.25	22826.25
21628.75	22828.75
21631.25	22831.25
21633.75	22833.75
21636.25	22836.25
21638.75	22838.75
21641.25	22841.25
21643.75	22843.75
21646.25	22846.25
21648.75	22848.75
21651.25	22851.25
21653.75	22853.75
21656.25	22856.25
21658.75	22858.75
21661.25	22861.25
21663.75	22863.75
21666.25	22866.25
21668.75	22868.75
21671.25	22871.25
21673.75	22873.75
21676.25	22876.25
21678.75	22878.75
21681.25	22881.25
21683.75	22883.75
21686.25	22886.25
21688.75	22888.75
21691.25	22891.25
21693.75	22893.75
21696.25	22896.25
21698.75	22898.75
21701.25	22901.25
21703.75	22903.75
21706.25	22906.25
21708.75	22908.75
21711.25	22911.25
21713.75	22913.75
21716.25	22916.25
21718.75	22918.75
21721.25	22921.25
21723.75	22923.75
21726.25	22926.25
21728.75	22928.75
21731.25	22931.25
21733.75	22933.75
21736.25	22936.25
21738.75	22938.75
21741.25	22941.25
21743.75	22943.75
21746.25	22946.25
21748.75	22948.75
21751.25	22951.25
21753.75	22953.75
21756.25	22956.25
21758.75	22958.75
21761.25	22961.25
21763.75	22963.75
21766.25	22966.25
21768.75	22968.75
21771.25	22971.25
21773.75	22973.75
21776.25	22976.25
21778.75	22978.75
21781.25	22981.25
21783.75	22983.75
21786.25	22986.25
21788.75	22988.75
21791.25	22991.25
21793.75	22993.75
21796.25	22996.25
21798.75	22998.75
22301.25	23501.25
22303.75	23503.75
22306.25	23506.25
22308.75	23508.75
22311.25	23511.25
22313.75	23513.75
22316.25	23516.25
22318.75	23518.75
22321.25	23521.25
22323.75	23523.75
22326.25	23526.25
22328.75	23528.75
22331.25	23531.25
22333.75	23533.75
22336.25	23536.25
22338.75	23538.75
22341.25	23541.25
22343.75	23543.75
22346.25	23546.25
22348.75	23548.75
22351.25	23551.25
22353.75	23553.75
22356.25	23556.25
22358.75	23558.75
22361.25	23561.25
22363.75	23563.75
22366.25	23566.25
22368.75	23568.75
22371.25	23571.25
22373.75	23573.75
22376.25	23576.25
22378.75	23578.75
22381.25	23581.25
22383.75	23583.75
22386.25	23586.25
22388.75	23588.75
22391.25	23591.25
22393.75	23593.75
22396.25	23596.25
22398.75	23598.75

(2) 5 MHz bandwidth channels:

21602.5	22802.5
21607.5	22807.5
21612.5	22812.5
21617.5	22817.5
21622.5	22822.5
21627.5	22827.5
21632.5	22832.5
21637.5	22837.5
21642.5	22842.5
21647.5	22847.5
21652.5	22852.5
21657.5	22857.5
21662.5	22862.5
21667.5	22867.5
21672.5	22872.5
21677.5	22877.5
21682.5	22882.5
21687.5	22887.5
21692.5	22892.5
21697.5	22897.5
21702.5	22902.5
21707.5	22907.5
21712.5	22912.5
21717.5	22917.5

Transmit (receive) (MHz)	Receive (transmit) (MHz)
21722.5	22922.5
21727.5	22927.5
21732.5	22932.5
21737.5	22937.5
21742.5	22942.5
21747.5	22947.5
21752.5	22952.5
21757.5	22957.5
21762.5	22962.5
21767.5	22967.5
21772.5	22972.5
21777.5	22977.5
21782.5	22982.5
21787.5	22987.5
21792.5	22992.5
21797.5	22997.5
22302.5	23502.5
22307.5	23507.5
22312.5	23512.5
22317.5	23517.5
22322.5	23522.5
22327.5	23527.5
22332.5	23532.5
22337.5	23537.5
22342.5	23542.5
22347.5	23547.5
22352.5	23552.5
22357.5	23557.5
22362.5	23562.5
22367.5	23567.5
22372.5	23572.5
22377.5	23577.5
22382.5	23582.5
22387.5	23587.5
22392.5	23592.5
22397.5	23597.5

(3) 10 MHz bandwidth channels:

21205	22405
21215	22415
21225	22425
21235	22435
21245	22445
21255	22455
21265	22465
21275	22475
21285	22485
21295	22495
21305	22505
21315	22515
21325	22525
21335	22535
21345	22545
21355	22555
21365	22565
21375	22575
21385	22585
21395	22595
21405	22605
21415	22615
21425	22625
21435	22635
21445	22645
21455	22655
21465	22665
21475	22675
21485	22685
21495	22695
21505	22705
21515	22715
21525	22725
21535	22735

Transmit (receive) (MHz)	Receive (transmit) (MHz)
21545	22745
21555	22755
21565	22765
21575	22775
21585	22785
21595	22795
21605 [1]	[1] 22805
21615 [1]	[1] 22815
21625 [1]	[1] 22825
21635 [1]	[1] 22835
21645 [1]	[1] 22845
21655 [1]	[1] 22855
21665 [1]	[1] 22865
21675 [1]	[1] 22875
21685 [1]	[1] 22885
21695 [1]	[1] 22895
21705 [1]	[1] 22905
21715 [1]	[1] 22915
21725 [1]	[1] 22925
21735 [1]	[1] 22935
21745 [1]	[1] 22945
21755 [1]	[1] 22955
21765 [1]	[1] 22965
21775 [1]	[1] 22975
21785 [1]	[1] 22985
21795 [1]	[1] 22995
21805 [2]	[2] 23005
21815 [2]	[2] 23015
21825 [2]	[2] 23025
21835 [2]	[2] 23035
21845 [2]	[2] 23045
21855 [2]	[2] 23055
21865 [2]	[2] 23065
21875 [2]	[2] 23075
21885 [2]	[2] 23085
21895 [2]	[2] 23095
21905 [2]	[2] 23105
21915 [2]	[2] 23115
21925 [2]	[2] 23125
21935 [2]	[2] 23135
21945 [2]	[2] 23145
21955 [2]	[2] 23155
21965 [2]	[2] 23165
21975 [2]	[2] 23175
21985 [2]	[2] 23185
21995 [2]	[2] 23195
22005	23205
22015	23215
22025	23225
22035	23235
22045	23245
22055	23255
22065	23265
22075	23275
22085	23285
22095	23295
22105	23305
22115	23315
22125	23325
22135	23335
22145	23345
22155	23355
22165	23365
22175	23375
22185	23385
22195	23395
22205	23405
22215	23415
22225	23425
22235	23435
22245	23445
22255	23455
22265	23465
22275	23475
22285	23485
22295	23495
22305 [1]	[1] 23505
22315 [1]	[1] 23515
22325 [1]	[1] 23525
22335 [1]	[1] 23535
22345 [1]	[1] 23545
22355 [1]	[1] 23555
22365 [1]	[1] 23565
22375 [1]	[1] 23575
22385 [1]	[1] 23585
22395 [1]	[1] 23595
(4) 20 MHz bandwidth channels:	
21210	22410
21230	22430
21260	22460
21280	22480
21310	22510
21330	22530
21360	22560
21380	22580
21410	22610
21430	22630
21460	22660
21480	22680
21510	22710
21530	22730
21560	22760
21580	22780
21610 [1]	[1] 22810
21630 [1]	[1] 22830
21660 [1]	[1] 22860
21680 [1]	[1] 22880
21710 [1]	[1] 22910
21730 [1]	[1] 22930
21760 [1]	[1] 22960
21780 [1]	[1] 22980
21810 [2]	[2] 23010
21830 [2]	[2] 23030
21860 [2]	[2] 23060
21880 [2]	[2] 23080
21910 [2]	[2] 23110
21930 [2]	[2] 23130
21960 [2]	[2] 23160
21980 [2]	[2] 23180
22010	23210
22030	23230
22060	23260
22080	23280
22110	23310
22130	23330
22160	23360
22180	23380
22210	23410
22230	23430
22260	23460
22280	23480
22310 [1]	[1] 23510
22330 [1]	[1] 23530
22360 [1]	[1] 23560
22380 [1]	[1] 23580
(5) 30 MHz bandwidth channels:	
21235	22435
21285	22485
21335	22535
21385	22585
21435	22635
21485	22685
21535	22735
21585	22785
21635 [1]	[1] 22835
21685 [1]	[1] 22885
21735 [1]	[1] 22935
21785 [1]	[1] 22985
21835 [2]	[2] 23035
21885 [2]	[2] 23085
21935 [2]	[2] 23135
21985 [2]	[2] 23185
22035	23235
22085	23285
22135	23335
22185	23385
22235	23435
22285	23485
22335 [1]	[1] 23535
22385 [1]	[1] 23585
(6) 40 MHz bandwidth channels:	
21220	22420
21270	22470
21320	22520
21370	22570
21420	22620
21470	22670
21520	22720
21570	22770
21620 [1]	[1] 22820
21670 [1]	[1] 22870
21720 [1]	[1] 22920
21770 [1]	[1] 22970
21820 [2]	[2] 23020
21870 [2]	[2] 23070
21920 [2]	[2] 23120
21970 [2]	[2] 23170
22020	23220
22070	23270
22120	23320
22170	23370
22220	23420
22270	23470
22320 [1]	[1] 23520
22370 [1]	[1] 23570
(7) 50 MHz bandwidth channels:	
21225	22425
21275	22475
21325	22525
21375	22575
21425	22625
21475	22675
21525	22725
21575	22775
21625 [1]	[1] 22825
21675 [1]	[1] 22875
21725 [1]	[1] 22925
21775 [1]	[1] 22975
21825 [2]	[2] 23025
21875 [2]	[2] 23075
21925 [2]	[2] 23125
21975 [2]	[2] 23175
22025	23225
22075	23275
22125	23325
22175	23375
22225	23425
22275	23475
22325 [1]	[1] 23525

Transmit (receive) (MHz)	Receive (transmit) (MHz)
22375 [1]	[1]23575

[1] Alternate channels. These channels are set aside for narrow bandwidth systems and should be used only if all other channels are blocked.

[2] These frequencies may be assigned to low power systems, as defined in paragraph (8) of this section.

(8) *Special provisions for low power, limited coverage systems in the 21.8–22.0 GHz and 23.0–23.2 GHz band segments.* Notwithstanding any contrary provisions in this part, the frequency band segment 21.8–22.0 GHz paired with the frequency band segment 23.0–23.2 GHz may be authorized for low power, limited coverage systems subject to the following provisions:

(i) The maximum EIRP shall be 55 dBm and the rated transmitter output power shall not exceed 0.100 Watts;

(ii) In the band segments from 21.8–22.0 GHz and 23.0–23.2 GHz, the frequency tolerance for stations authorized on or before April 1, 2005 is 0.05%. Existing licensees and pending applicants on that date may continue to operate after that date with a frequency tolerance of 0.05%, provided that it does not cause harmful interference to the operation of any other licensee. The frequency tolerance of § 101.107(a) shall apply to stations applied for after April 1, 2005;

(iii) The maximum beamwidth shall not exceed 4 degrees;

(iv) The sidelobe suppression criteria contained in § 101.115 of this part shall not apply, except that a minimum front-to-back ratio of 38 dB shall apply;

(v) Upon showing of need, a maximum bandwidth of 50 MHz may be authorized per frequency assigned;

(vi) Radio systems authorized under the provisions of this section shall have no more than five hops in tandem, except upon showing of need, but in any event the maximum tandem length shall not exceed 40 km (25 miles);

(vii) Interfering signals at the antenna terminals of station authorized under this section shall not exceed –90 dBm and –70 dBm respectively, for co-channel and adjacent channel interfering signals; and

(viii) Stations authorized under the provisions of this section shall provide the protection from interference specified in § 101.105 to stations operating in accordance with the provisions of this part.

* * * * *

18. Section 101.507 is revised to read as follows:

§ 101.507 Frequency stability.

The frequency stability in the 10,550–10,680 MHz band must be ±0.0001% for each DEMS Nodal Station transmitter and ±0.0003% for each DEMS User Station transmitter. The frequency stability in the 24,250–25,250 MHz bands must be ±0.001% for each Nodal Station transmitter and ±0.003% for each User Station transmitter.

19. Section 101.603 is amended by revising paragraph (b)(1) to read as follows:

§ 101.603 Permissible communications.

* * * * *

(b) * * *

(1) Render a common carrier service of any kind. However, licensees are allowed to lease excess capacity to common carriers. In addition, Specialized Mobile Radio (SMR) licensees reclassified by the Commission as Commercial Mobile Radio Services (CMRS), that were formerly private land mobile radio service providers, may continue to utilize private operational fixed microwave systems licensed prior to April 1, 2003 for their land mobile connecting facilities.

* * * * *

20. Section 101.803 is amended by revising paragraph (a)(5), paragraph (d)(8), by removing paragraph (e) and redesignating paragraphs (f) and (g) as paragraphs (e) and (f) to read as follows:

§ 101.803 Frequencies.

(a) * * *

(5) This frequency band is shared with the common carrier and private-operational fixed point-to-point microwave services.

* * * * *

(d) * * *

(8) This frequency band is shared with the common carrier and private-operational fixed point-to-point microwave services.

* * * * *

21. Section 101.809 is amended by revising paragraph (d) to read as follows:

§ 101.809 Bandwidth and emission limitations.

* * * * *

(d) Maximum bandwidths in the following frequency bands must not exceed the limits set forth below:

MAXIMUM AUTHORIZED

Frequency band (MHz)	Bandwidth (MHz)
3,700 to 4,200	[1]20
5,925 to 6,425	[1]30
6,425 to 6,525	25
10,700 to 12,200	[1]40
13,200 to 13,250	25
21,200 to 23,600	[1]50

[1] The maximum bandwidth that will be authorized for each particular frequency in this band is detailed in the appropriate frequency table in § 101.147.

* * * * *

22. Section 101.815 is amended by revising paragraph (a)(1) to read as follows:

§ 101.815 Stations at temporary fixed locations.

(a) * * *

(1) When a fixed station is to remain at a single location for less than 6 months, the location is considered to be temporary.

* * * * *

23. Section 101.1325 is amended by revising paragraph (a) to read as follows:

§ 101.1325 Construction requirements.

(a) Incumbent and site-based licenses are subject to the construction requirements set forth in § 101.63.

* * * * *

24. Section 101.1333 is amended by revising paragraph (c) to read as follows:

§ 101.1333 Interference protection criteria

* * * * *

(c) EA licensees are prohibited from exceeding a signal strength of 40 dBμV/m at incumbent licensees' 40.2 kilometer (25-mile) radius composite contour specified in § 101.1331(c).

* * * * *

[FR Doc. 03–1325 Filed 1–30–03; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA 02–14270]

RIN 2127–AI71

Federal Motor Vehicle Safety Standards; Occupant Crash Protection

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Final rule.

SUMMARY: In May 2000, we published a rule to require advanced air bags in light vehicles. The requirements of that rule

are being phased in during two stages, the first of which extends from September 1, 2003, to August 31, 2006. In September 2002, in response to petitions for rulemaking, we published a notice of proposed rulemaking (NPRM) to reduce the percentage of vehicles that must comply with the advanced air bag requirements during the first year of the first stage, *i.e.*, from September 1, 2003, through August 31, 2004, from 35 percent to 20 percent. This final rule adopts that proposed change, which reflects the technical challenges being faced by the vehicle manufacturers in meeting the new requirements and the fact that two of the automotive suppliers dropped plans to offer devices that suppress the passenger air bag when a child is present. In the NPRM, we also requested comments on possible adjustments in the alternative phase-in requirement available to limited line manufacturers. We plan to address that issue in a separate document, in the near future.

DATES: *Effective Date:* The amendments made in this rule are effective March 3, 2003.

Petitions: Petitions for reconsideration must be received by March 17, 2003.

ADDRESSES: Petitions for reconsideration should refer to the docket and notice number of this document and be submitted to: Administrator, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: The following persons at the National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC, 20590:

For technical issues: Mr. Louis Molino, Office of Crashworthiness Standards, NVS–112, telephone (202) 366–2264, facsimile (202) 493–2739.

For legal issues: Mr. Edward Glancy, Office of the Chief Counsel, NCC–112, telephone (202) 366–2992, facsimile (202) 366–3820.

SUPPLEMENTARY INFORMATION:

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I. Background

A. The Advanced Air Bag Final Rule

On May 12, 2000, we published in the **Federal Register** (65 FR 30680) a rule to require advanced air bags. (Docket No. NHTSA 00–7013; Notice 1.) The rule amended Standard No. 208, *Occupant Crash Protection*, to require that future air bags be designed so that, compared to current air bags, they create less risk of serious air bag-induced injuries, particularly for small women and young children, and provide improved frontal crash protection for all occupants, by means that include advanced air bag technology.

The rule will be phased in during two stages. The first stage phase-in will improve protection by requiring vehicles to be certified as passing the unbelted test requirements [1] for both the 5th percentile adult female and 50th percentile adult male dummies in a 32–40 km/h (20–25 mph) rigid barrier crash, and belted test requirements [2] for the same two dummies in a rigid barrier crash with a maximum test speed of 48 km/h (30 mph). In addition, the first stage will minimize the risk of injury from air bags by requiring vehicles to include technologies that will minimize the risk of air bag-induced injuries for young children and small adults.

During the first stage phase-in, from September 1, 2003, to August 31, 2006, increasing percentages of motor vehicles will be required to meet requirements for minimizing air bag risks,[3] primarily by either automatically turning off the air bag when young children are present or deploying the air bag more benignly so that it is much less likely to cause serious or fatal injury to out-of-position occupants.[4] If they so wish, manufacturers may choose to use a combination of those approaches.

Manufacturers that decide to design their passenger air bags to turn off will use weight sensors and/or other means of detecting the presence of young children. To test the ability of those means to detect the presence of children, the rule specifies that child dummies be placed in child seats that are, in turn, placed on the passenger seat in both proper and (to simulate misuse) improper ways. It also specifies tests that are conducted with unrestrained child dummies sitting, kneeling, standing, or lying on the passenger seat.

The ability of air bags to deploy in a low-risk manner will be tested using child dummies on the passenger side and the small adult female dummy on the driver side. For manufacturers that decide to design their passenger air bags to deploy in a low risk manner, the rule specifies that unbelted child dummies be placed against the instrument panel in two different positions. The air bag is then deployed with the dummies in each position. This placement was specified because pre-crash braking can cause unrestrained children to move forward into or near the instrument panel before the air bag deploys. The ability of driver air bags to deploy in a low risk manner will be tested by placing the 5th percentile adult female dummy against the steering wheel in two different positions and then deploying the air bag with the dummy in each position.

The second stage phase-in will require vehicles to be certified as passing the belted test requirements for the 50th percentile adult male dummy at a test speed up to 56 km/h (35 mph). This requirement will provide improved protection for belted occupants.

B. September 2002 Proposal To Adjust Phase-in

On September 24, 2002, we published in the **Federal Register** (67 FR 59800) a document responding to petitions for rulemaking from the Alliance of Automobile Manufacturers, Toyota, and DaimlerChrysler requesting changes in the advanced air bag final rule. (Docket No. NHTSA 02–13393; Notice 1.)

In response to the petitions, we proposed to reduce the percentage of vehicles that must comply with the advanced air bag requirements during the first year of the phase-in, *i.e.*, from September 1, 2003, through August 31, 2004, from 35 percent to 20 percent. We stated that the proposed change reflected the technical challenges being faced by the vehicle manufacturers in meeting the new requirements and the fact that two of the automotive suppliers had dropped plans to offer devices that suppress the passenger air bag when a child is present. We also stated that we had tentatively concluded that a reduction in the first year's phase-in requirement from 35 percent to 20 percent strikes a reasonable balance between ensuring that the industry provides advanced air bags as quickly as is reasonably possible, while avoiding a situation in which the industry must put new technologies into vehicles before they have been fully tested.

[1] "Unbelted test requirements" are requirements that specify the use of unbelted dummies in testing vehicles.

[2] "Belted test requirements" are requirements that specify the use of belted dummies in testing vehicles.

[3] The complete phase-in schedule was: 9/1/03 to 8/31/04—35 percent; 9/1/04 to 8/31/05—65 percent; 9/1/05 to 8/31/06—100 percent (manufacturers may use credits for early compliance); 9/1/06—all vehicles must comply (no use of credits).

[4] The rule also establishes very general performance requirements for dynamic automatic suppression systems (DASS) and a special expedited petitioning and rulemaking process for considering procedures for testing advanced air bag systems incorporating a DASS.

We otherwise denied the petitions or, as to certain requests, dismissed them because the agency had subsequently considered or was considering the same requests in the context of another rulemaking proceeding.

In addition, in response to a petition for rulemaking from Porsche, we stated that we were considering possible adjustments in the alternative phase-in requirements available to limited line manufacturers.

II. Public Comments

We received a total of nine comments, seven from automobile manufacturers and two from automotive suppliers. The automobile manufacturer commenters were the Alliance of Automobile Manufacturers (Alliance) and six individual manufacturers—Subaru, Nissan, Porsche, General Motors (GM), DaimlerChrysler (DC), and BMW. The automotive supplier commenters were Delphi and Elesys.

The commenters were generally supportive of the agency's proposal to reduce the percentage of vehicles that must comply with the advanced air bag requirements during the first year of the first stage phase-in. No commenter opposed reducing the percentage from 35 percent to 20 percent, although two, the Alliance and DC, argued that a greater reduction should be provided.

Nissan stated that it supports the proposal. According to that company, the developmental period for the occupant sensing technology needed to meet the requirements has been longer than expected due to the developmental capacity of the suppliers of this technology.

BMW cited the significant technical challenges it has faced and will continue to face and stated that it believes that reducing the first year percentage to 20 percent will provide the necessary flexibility such that sufficiently robust advanced air bag systems will be developed for new vehicles, as well as redesigned for current production vehicles and implemented during the phase-in period.

Subaru stated that a reduction in the first year percentage to 20 percent or less would permit it to focus on applying its manpower during the first year on implementing suppression functionality in a single specific model. That company stated that it would then be in a position to effectively develop systems with some certainty for vehicles in the second and third years.

GM stated that it agrees with the agency's proposed reduction to 20 percent of the percentage of vehicles that must meet the first-year phase-in requirements for advanced air bags. That company stated that although it would be able to satisfy the original first-year requirement of 35 percent, it agrees with the agency that the proposal "strikes a reasonable balance between ensuring the industry provides advanced air bags as quickly as is reasonably possible, while avoiding a situation in which the industry must put new technologies into vehicles before they have been fully tested."

The Alliance stated that it is unaware of any new data or information that would lead it to change its conclusion, presented in its petition for rulemaking, that 10 percent is the correct phase-in percentage requirement to be applied to the first year. That organization argued that not every manufacturer could accede to a phase-in percentage greater than 10 percent. The Alliance also stated that, while it did not request modification of the second year percentage in its petition, the continued difficulty in developing effective and reliable air bag systems, including occupant classification sensor technologies, supplier constraints, as well as the significant challenge of implementing these new technologies might require modification of the second year phase-in percentage as well.

DC stated that it believes the agency has underestimated the complexity, difficulty, and technical challenges related to the phase-in of the advanced air bag requirements. It stated that in its quest to develop low risk air bag systems, which it believes minimizes real world risk, and to reduce the uncertainty associated with occupant classification systems in the real world, it continues to uncover additional unforeseen technical development and vehicle integration challenges. DC asked that the agency adopt a percentage of 10 percent for the first year phase-in and reconsider its decision not to reduce the second year percentage from 65 percent to 40 percent, as DC had requested in its petition for rulemaking.

Delphi stated that it has, at this time, both technical capability and production capacity to support its customers in meeting either the original or the proposed advanced air bag regulatory volume requirements. That company stated that its product enables compliance with Standard No. 208's suppression requirements and meets real world reliability requirements in calibrated production seats.

Elesys stated that its product meets or exceeds all applicable Standard No. 208 requirements, as well as the significant real-world durability, configuration, production and installation challenges posed by its automotive customers. That company stated that it understands why the agency proposed to reduce the first year percentage, but that any further reduction in the required percentages for later years is unnecessary for two reasons: (1) Viable, real-world-tested solutions already exist in the marketplace, and (2) such a delay would unduly penalize companies, including Elesys, who have invested heavily in research and development to meet the implementation schedule as it is currently configured.

Only one commenter, Porsche, commented on the issue of possible adjustments in the alternative phase-in requirements available to limited line manufacturers. That company suggested a revised approach for addressing the issues it had raised in its petition.

III. Agency Decision

After carefully considering the comments, we have decided, for the reasons discussed in the NPRM, to adopt as final our proposal to reduce the percentage of vehicles that must comply with the advanced air bag requirements during the first year of the phase-in, *i.e.*, from September 1, 2003, through August 31, 2004, from 35 percent to 20 percent. We are making this change in light of the technical challenges being faced by the vehicle manufacturers in meeting the new requirements and the fact that two of the automotive suppliers had dropped plans to offer devices that suppress the passenger air bag when a child is present. We have not yet reached a decision with respect to possible adjustments in the alternative phase-in requirements available to limited line manufacturers, and will address that issue in a separate document, in the near future.

As noted above, no commenter opposed reducing the percentage from 35 percent to 20 percent, although two, the Alliance and DC, argued that a greater reduction should be provided. These commenters recommended that the agency reduce the first year percentage to 10 percent, and DC also recommended that the agency reduce the second year percentage from 65 percent to 40 percent.

While we have considered the recommendations of the Alliance and DC, they have not provided information or analysis demonstrating that a further reduction is necessary, either for the first or second year. We do not disagree with their contention that the advanced air bag final rule poses significant technical challenges, but believe a reduction in the first year percentage from 35 percent to 20 percent adequately addresses that concern. We have had periodic discussions with

vehicle manufacturers over the past two years to assess our original phase-in requirements, as well as the vehicle manufacturers' projections for meeting the phase-in schedule. We have also monitored the advanced air bag systems that they have been developing, as well as met with individual restraint system suppliers. While DC has commented that it is disappointed that the agency has denied its recommendation of a 10 percent first year phase-in, GM has indicated an ability to meet the original first-year requirement of 35 percent. As previously noted, four of the five larger manufacturers that commented on the NPRM, *i.e.*, GM, Subaru, Nissan and BMW, specifically indicated that the reduction of the first year phase-in to 20 percent would give them the necessary flexibility and relief to meet the new phase-in schedule. Thus, the remaining 15 percent of their respective fleets that no longer need to meet the first year phase-in requirements could be deferred to year two, if more development time is needed, or could be certified in model year 2003 to earn advanced credits. Although the Alliance represents many manufacturers, the only member that provided specific comments supporting the Alliance position that the reduction to 20 percent is not sufficient was DC.

DC noted that the agency's original driver automatic protection rule included a phase-in of 10–25–40–100 percent, and argued that the advanced air bag final rule raises issues of even greater complexity. There is no reason, however, why the specific production year percentages for phase-ins of different rules should be the same. We also note that, as part of the May 2002 final rule for advanced air bags, we eliminated altogether the first year of the phase-in schedule we had proposed, which would have required 25 percent of each manufacturer's light vehicles manufactured during the production year beginning September 1, 2002, to comply with the advanced air bag requirements.

Finally, for model year 2003, which began approximately one year before the required phase-in begins, significant numbers of production vehicles are being certified to comply with the advanced air bag requirements. GM has announced introduction of a passenger sensing system that is being installed in nearly 1.6 million vehicles. This system is standard on most of GM's model year 2003 full-size pickups and sport-utility vehicles, including the Chevrolet Silverado and GMC Sierra pickups (except commercial models or chassis-cabs) and Chevrolet Suburban, Tahoe and Avalanche; GMC Yukon XL, Yukon and Denali; and Cadillac Escalade and Escalade EXT. GM has certified that the system meets the advanced air bag requirements. NHTSA has performed some compliance tests on three of the GM C/K trucks that were certified to the advanced air bag requirements. These included the infant, three-year-old and six-year-old child dummy suppression (presence) tests, the 5th percentile adult female driver low risk deployment tests, the belted 5th percentile adult female offset deformable barrier crash test, the frontal unbelted 5th percentile adult female and 50th percentile adult male crash tests. The three units tested passed the applicable performance requirements.

Other manufacturers are certifying, for purposes of the risk minimization requirements for children, on the basis of a combination of air bag suppression (for the infant and three-year-old child dummy tests) and low risk deployment (for the six-year-old child dummy tests) in model year 2003. This demonstrates that vehicle manufacturers are not constrained to a particular advanced air bag technology, and that both suppression and low risk deployment certification methods are viable options for meeting the advanced air bag requirements ahead of the required phase-in schedule. We are also aware that vehicle manufacturers are working with multiple technology suppliers and are not reliant upon a single entity for production.

As with the phase-in of any new requirement involving the use of new technology, we will, of course, continue to monitor the ability of the automobile manufacturers to meet the specified requirements.

V. Rulemaking Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

NHTSA has considered the impact of this rule under Executive Order 12866 and the Department of Transportation's regulatory policies and procedures. This rule was reviewed under E.O. 12866, "Regulatory Planning and Review." This action is "significant" under the Department of Transportation's regulatory policies and procedures.

This rule reduces the percentage of vehicles that must comply with the advanced air bag requirements during the first year of the phase-in, *i.e.*, from September 1, 2003, through August 31, 2004, from 35 percent to 20 percent. However, the rule does not change the requirements for vehicles equipped with advanced air bags. Readers who are interested in the costs and benefits of advanced air bags are referred to the agency's Final Economic Assessment (FEA) for the May 2000 final rule. The estimated benefits compared to pre-model year 1998 (pre-depowered air bags) in that rule for the suppression technologies were estimated to be 93 fatalities and 151 AIS 3–5 injuries. These benefits can be considered to accrue over the 20–25 year lifetime of one model year's fleet. As noted in the NPRM, the reduction in the phase-in schedule for the model year 2004 fleet from 35 percent to 20 percent could result in the potential loss in benefits over the lifetime of the model year 2004 fleet of 14 lives and 23 AIS 3–5 injuries.

B. Regulatory Flexibility Act

We have considered the effects of this rulemaking action under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). I certify that the amendment will not have a significant economic impact on a substantial number of small entities. A Regulatory Flexibility Analysis was prepared for the May 2000 final rule as part of the FEA. This action will not have a significant economic impact on small businesses because the only change it makes to the May 2000 final rule is to reduce the percentage of vehicles that must comply with that rule during the first year of the phase-in. Small organizations and small governmental units will not be significantly affected since the potential cost impacts associated with this amendment should only slightly affect the price of new motor vehicles.

C. National Environmental Policy Act

NHTSA has analyzed this amendment for the purposes of the National Environmental Policy Act and determined that it will not have any significant impact on the quality of the human environment.

D. Executive Order 13132 (Federalism)

The agency has analyzed this rulemaking action in accordance with the principles and criteria contained in Executive Order 13132 and has determined that it does not have sufficient federalism implications to warrant consultation with State and local officials or the preparation of a federalism summary impact statement. The rule will have no substantial effects on the States, or on the current Federal-State relationship, or on the current distribution of power and responsibilities among the various local officials.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 requires agencies to prepare a written assessment of the costs, benefits and other effects of proposed or final

rules that include a Federal mandate likely to result in the expenditure by State, local or tribal governments, in the aggregate, or by the private sector, of more than $100 million annually (adjusted for inflation with base year of 1995). While the May 2000 final rule is likely to result in over $100 million of annual expenditures by the private sector, the only effect of today's amendment will be to reduce the percentage of vehicles that must comply with that rule during the first year of the phase-in. Accordingly, this rule will not mandate any expenditure by State, local or tribal governments, or by the private sector.

F. Executive Order 12778 (Civil Justice Reform)

This rule does not have any retroactive effect. Under section 49 U.S.C. 30103, whenever a Federal motor vehicle safety standard is in effect, a state may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard, except to the extent that the state requirement imposes a higher level of performance and applies only to vehicles procured for the State's use. Section 49 U.S.C. 30161 sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

G. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995, a person is not required to respond to a collection of information by a Federal agency unless the collection displays a valid OMB control number. This document does not establish any new information collection requirements.

H. Regulation Identifier Number (RIN)

The Department of Transportation assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. You may use the RIN contained in the heading at the beginning of this document to find this action in the Unified Agenda.

List of Subjects in 49 CFR part 571

Imports, Motor vehicle safety, Reporting and recordkeeping requirements, Tires.

In consideration of the foregoing, NHTSA amends 49 CFR chapter V as follows:

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

1. The authority citation for part 571 of title 49 continues to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.50.

2. Section 571.208 is amended by revising S14.1.1.1 to read as follows:

§ 571.208 Standard No. 208, Occupant crash protection.

* * * * *

S14.1.1.1 *Vehicles manufactured on or after September 1, 2003, and before September 1, 2004.* Subject to S14.1.2(a), for vehicles manufactured by a manufacturer on or after September 1, 2003, and before September 1, 2004, the amount of vehicles complying with S14.5.1(a), S14.5.2, S15.1, S15.2, S17, S19, S21, S23, and S25, shall be not less than 20 percent of:

(a) If the manufacturer has manufactured vehicles for sale in the United States during both of the two production years prior to September 1, 2003, the manufacturer's average annual production of vehicles manufactured on or after September 1, 2001, and before September 1, 2004, or

(b) The manufacturer's production on or after September 1, 2003, and before September 1, 2004.

* * * * *

Issued: January 28, 2003.

Jeffrey W. Runge,

Administrator.

[FR Doc. 03–2358 Filed 1–28–03; 5:03 pm]

BILLING CODE 4910–59–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 001005281–0369–02; I.D. 012703A]

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic; Trip Limit Increase

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Trip limit increase.

SUMMARY: NMFS increases the trip limit in the commercial hook-and-line fishery for king mackerel in the Florida east coast subzone to 75 fish per day in or from the exclusive economic zone (EEZ). This trip limit increase is necessary to maximize the socioeconomic benefits of the quota.

DATES: This rule is effective 12:01 a.m., local time, February 1, 2003, through March 31, 2003, unless changed by further notification in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Mark Godcharles, telephone: 727–570–5305, fax: 727–570–5583, e-mail: *Mark.Godcharles@noaa.gov.*

SUPPLEMENTARY INFORMATION: The fishery for coastal migratory pelagic fish (king mackerel, Spanish mackerel, cero, cobia, little tunny, dolphin, and, in the Gulf of Mexico only, bluefish) is managed under the Fishery Management Plan for the Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic (FMP). The FMP was prepared by the Gulf of Mexico and South Atlantic Fishery Management Councils (Councils) and is implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622.

Based on the Councils' recommended total allowable catch and the allocation ratios in the FMP, on April 30, 2001 (66 FR 17368, March 30, 2001) NMFS implemented a commercial quota of 2.25 million lb (1.02 million kg) for the eastern zone (Florida) of the Gulf migratory group of king mackerel. That quota is further divided into separate quotas for the Florida east coast subzone and the northern and southern Florida west coast subzones. The quota implemented for the Florida east coast subzone is 1,040,625 lb (472,020 kg) (50 CFR 622.42(c)(1)(i)(A) (1)).

In accordance with 50 CFR 622.44(a)(2)(i), beginning on February 1, if less than 75 percent of the Florida east coast subzone's quota has been harvested by that date, king mackerel in or from that subzone's EEZ may be possessed on board or landed from a permitted vessel in amounts not exceeding 75 fish per day. The 75–fish daily trip limit will continue until a closure of the subzone's fishery has been effected or the fishing year ends on March 31.

NMFS has determined that 75 percent of the quota for Gulf group king mackerel for vessels using hook-and-line gear in the Florida east coast subzone was not reached before February 1, 2003. Accordingly, a 75–fish

trip limit applies to vessels in the commercial hook-and-line fishery for king mackerel in or from the EEZ in the Florida east coast subzone effective 12:01 a.m., local time, February 1, 2003. The 75–fish trip limit will remain in effect until the fishery closes or until the end of the current fishing season (March 31, 2003) for this subzone. From November 1 through March 31, the Florida east coast subzone of the Gulf group king mackerel is that part of the eastern zone north of 25°20.4' N. lat. (a line directly east from the Miami-Dade County, FL boundary).

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, has determined that this action to increase the trip limit relieves a restriction and enhances the socio-economic benefits derived from this sector of the fishery and, therefore, finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth in 5 U.S.C. 553(b)(3)(B), as such procedures would be contrary to the public interest. Any delay in implementing this action would be impractical and contradictory to the Magnuson-Stevens Act, the FMP, and the public interest. NMFS finds for good cause that the implementation of this action cannot be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is waived.

This action is taken under 50 CFR 622.44(a)(2)(iii) and is exempt from review under Executive Order 12866.

Authority: Authority: 16 U.S.C. 1801 *et seq.*

Dated: January 28,2003.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 03–2342 Filed 1–28–03; 3:37 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 68, No. 21
Friday, January 31, 2003

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 51

[Doc. No. FV–00–303]

Peaches, Plums, and Nectarines; Grade Standards

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Reopening and extension of the comment period.

SUMMARY: Notice is hereby given that the comment period on proposed changes to the United States Standards for Grades of Peaches, the United States Standards for Grades of Fresh Plums and Prunes, and the United States Standards for Grades of Nectarines is reopened and extended.

DATES: Comments must be received by March 7, 2003.

ADDRESSES: Interested persons are invited to submit written comments to the Standardization Section, Fresh Products Branch, Fruit and Vegetable Programs, Agricultural Marketing Service, U.S. Department of Agriculture, 1400 Independence Ave. SW., Room 2065 South Building, STOP 0240, Washington, DC 20250; Fax (202) 720–8871, E-mail *FPB.DocketClerk@usda.gov*. Comments should make reference to the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the above office during regular business hours.

FOR FURTHER INFORMATION CONTACT: David L. Priester, at the above address or call (202) 720–2185; E-mail *David.Priester@usda.gov*.

SUPPLEMENTARY INFORMATION: A proposed rule was published in the **Federal Register**, September 25, 2002, (Vol 67, No. 186, Pages 60171—60184) requesting comments on the proposed revisions of the United States Standards for Grades of Peaches, the United States Standards for Grades of Fresh Plums and Prunes, and the United States Standards for Grades of Nectarines. The proposal would delete the "Unclassified" section, establish a 25-count minimum sample, revise standard pack and size requirements to reflect current marketing and packaging practices for all three standards, and develop en route or at destination tolerances for grades of peaches to make the standards more uniform and consistent with other tree fruit standards. The proposal would also make changes to the color requirements for grades of nectarines to reflect newer varieties being marketed, as well as current cultural and marketing practices. Also, a definition would be provided for damage and serious damage by discoloration, and additional definitions for damage and serious damage by growth cracks would be provided for grades of fresh plums and prunes. In addition, the proposed rule contains conforming and editorial changes. The comment period ended November 25, 2002.

A comment was received from two industry associations representing peach growers requesting additional time to review the proposed revisions. The associations stated they were not aware changes were being made to the standards. Therefore, they requested the comment period be extended to allow the associations an opportunity to meet with their members to discuss the proposal.

After reviewing the request, AMS is reopening and extending the comment period in order to allow sufficient time for interested persons, including the associations, to file comments.

Authority: 7 U.S.C. 1621–1627.

Dated: January 27, 2003.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 03–2250 Filed 1–30–03; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Treasury

12 CFR Part 19

[Docket No. 02–15]

RIN 1557–AB43

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

12 CFR Part 263

[Docket No. R–1139]

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 308

RIN 3064–AC57

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Part 513

[No. 2002–58]

RIN 1550–AB53

Removal, Suspension, and Debarment of Accountants From Performing Audit Services

AGENCIES: Office of the Comptroller of the Currency (OCC), Treasury; Board of Governors of the Federal Reserve System (Board); Federal Deposit Insurance Corporation (FDIC); and Office of Thrift Supervision (OTS), Treasury.

ACTION: Joint notice of proposed rulemaking; technical correction.

SUMMARY: The OCC, Board, FDIC, and the OTS jointly published in the **Federal Register** of January 8, 2003 (68 FR 1116), a joint notice of proposed rulemaking that proposed to revise their respective rules of practice pursuant to section 36 of the Federal Deposit Insurance Act (FDIA). This document makes technical corrections to the joint notice of proposed rulemaking.

FOR FURTHER INFORMATION CONTACT: *FDIC:* Richard Bogue, Counsel, Enforcement Unit, (202) 898–3276.

OTS: Teresa A. Scott, Counsel (Banking and Finance), (202) 906–6478.

SUPPLEMENTARY INFORMATION: In FR Doc. 03–98, published on January 8, 2003 (68

FR 1116), make the following corrections:

PART 308—[Corrected]

1. On page 1126, in the second column, the heading of the table of contents and new Subpart U heading are revised to read as follows: "Subpart U—Removal, Suspension, and Debarment of Accountants From Performing Audit Services"

§ 308.604 [Corrected]

2. On page 1128, in the first column, in § 308.604(b)(1), remove "§§ 308.603(b) through (d); or" and add, "§§ 308.603(a)(2) through (a)(4); or" in its place.

§ 513.8 [Corrected]

3. On page 1128, in the second line of the third column, in § 513.8(a), remove "loan holding." and add, "loan holding companies." in its place.

4. On page 1130, in the first column, in the last word of § 513.8(j)(1)(iii), remove the word "and" and add "or" in its place.

Dated: January 17, 2003.

By order of the Board of Directors of the Federal Deposit Insurance Corporation.

Robert Feldman,

Executive Secretary.

Dated: January 22, 2003.

Marilyn K. Burton,

Federal Register Liaison Officer, Office of Thrift Supervision.

[FR Doc. 03–1960 Filed 1–30–03; 8:45 am]

BILLING CODE 6714–01–P; 6720–01–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1310

[DEA–228A]

RIN 1117–AA66

Chemical Mixtures Containing Listed Forms of Phosphorus

AGENCY: Drug Enforcement Administration (DEA), Justice.

ACTION: Advance Notice of Proposed Rulemaking.

SUMMARY: The Drug Enforcement Administration (DEA) is soliciting information on chemical mixtures that contain the list I chemical phosphorus, which includes red phosphorus, white phosphorus, and hypophosphorous acid (and its salts) (hereafter referred to as regulated phosphorus). Specifically, DEA is interested in learning what products contain regulated phosphorus, and what concentrations of regulated phosphorus and other chemicals are used in their formulations. DEA is also interested in how chemical mixtures containing regulated phosphorus are packaged, distributed and used, and their availability at the retail level. DEA is seeking this information to help determine whether there are chemical mixtures (as defined in 21 U.S.C. 802(40)) containing regulated phosphorus that should be exempt from the regulations governing listed chemicals, pursuant to 21 U.S.C. 802(39)(A)(v). Exempt chemical mixtures are those formulations that contain any listed chemical, but are not subject to the regulatory controls of the Controlled Substances Act (CSA) that pertain to listed chemicals because they pose a limited risk of diversion to illicit channels.

On September 16, 1998, DEA published a Notice of Proposed Rulemaking in the **Federal Register** (63 FR 49506) that proposed regulations to define exempt chemical mixtures. Because regulated phosphorus was not then a listed chemical, regulations defining potential exempt chemical mixtures were not proposed. The information being requested in this Advance Notice of Proposed Rulemaking (ANPRM) will be used to help propose regulations to define what chemical mixtures containing regulated phosphorus may be exempt.

DATES: Written comments must be received on or before April 1, 2003.

ADDRESSES: Comments should be received to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, Washington, DC, 20537, Attention: DEA **Federal Register** Representative/CCR.

FOR FURTHER INFORMATION CONTACT: Frank L. Sapienza, Chief, Drug and Chemical Evaluation Section, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537; Telephone (202) 307–7183.

SUPPLEMENTARY INFORMATION:

What Is Phosphorus, How Is It Used, and Which Forms Are Regulated?

Phosphorus is a nonmetallic element that can occur in three main allotropic (*i.e.* crystalline) forms (white, red, and black), none of which have retail uses. White phosphorus, red phosphorus, and hypophosphrous acid and its salts are list I chemicals. Black phosphorus is not a regulated form of phosphorus. Phosphorus is used as a co-reactant, along with iodine or hydriodic acid, in the clandestine manufacture of the Schedule II controlled substances methamphetamine and amphetamine.

White phosphorus is the most abundant form of phosphorus produced industrially. Most other forms of phosphorus and phosphorus chemicals are produced from white phosphorus, including phosphorus acid, phosphorus trichloride, phosphorus pentasulfide, and phosphorus pentoxide. Over 98% of the annual U.S. phosphorus demand is used in the production of these four compounds, none of which is regulated.

The second crystalline form is red phosphorus. Red phosphorus is usually prepared as a powder and is more stable and less toxic than the white form. Industrial uses of red phosphorus include the manufacture of pyrotechnics, safety matches, phosphoric acid an other phosphorus compounds, fertilizers, incendiary shells, smoke bombs, tracer bullets, and pesticides. Red phosphorus is used to produce an ultra-high-purity phosphorus for application in the electronics industry. A black crystalline form of phosphorus is also occasionally made and is similar to graphite in its physical, thermal, and electrical properties. Black phosphorus is not regulated because it does not have the reactivity needed for use in clandestine operations.

Hypophosphorus acid (H_3PO_2) and its salts are list I chemicals. Hypophosphorus acid is most commonly sold in aqueous solutions, all of which are regulated as list I chemicals and not regarded as chemical mixtures. There are no retail uses for this chemical. Hypophosphorus acid is commonly used by large industry as a bleaching, color stabilization or decoloring agent for plastics, synthetic fibers (primarily polyester) and chemicals. Hypophosphorus acid is also used as a chemical intermediate in organic synthesis and as a polymerization and polycondensation catalyst. It also has applications as a reducing agent and as an antioxidant.

Salts of hypophosphorus acid are known as hypophosphite salts. Examples of these salts include: ammonium hypophosphite, iron hypophosphite, potassium hypophosphite, manganese hypophosphite, and sodium hypophosphite. The two most common salts of hypophosphorus acid are sodium hypophosphite and manganese hypophosphite. The sodium salt is used primarily in electroless nickel plating. It is also used as a reducing agent, analytical reagent, polymerization catalyst, polymer stabilizer, and fire retardant. While the manganese salt is used primarily in nylon fiber production, it also has application as a

chemical intermediate. They are not sold at retail.

How Did Red Phosphorus, White Phosphorus, and Hypophosphorus Acid (and Its Salts) Become List I Chemicals?

On September 25, 2000, DEA published a Notice of Proposed Rulemaking (65 FR 57577) that proposed that red phosphorus, white phosphorus, and hypophosphorus acid (and its salts) be placed in list I by amending 21 Code of Federal Regulations (CFR) 1310.02(a). On October 17, 2001, a Final Rule with request for comments was published in the **Federal Register** (66 FR 52670) which amended 21 CFR 1310.02(a) and placed these chemicals in list I of the CSA. Placing these forms of phosphorus in list I became necessary because they are used in the illicit manufacturing of methamphetamine, a Schedule II controlled substance.

The CSA requires that all handlers of red phosphorus, white phosphorus, and hypophosphorus acid (and its salts) must register as set forth in 21 CFR part 1309 and keep records and file reports as set forth in 21 CFR part 1310. Until regulations that delineate criteria and procedures for exempting specific regulated phosphorus-containing chemical mixtures are finalized, DEA is treating regulated phosphorus-containing chemical mixtures as being exempt from the chemical regulatory requirements of the CSA.

Why Is DEA Interested in Learning About Chemical Mixtures Containing Regulated Phosphorus?

DEA is in the process of establishing regulations that define which chemical mixtures are exempt from CSA regulatory controls. The CSA defines the term "chemical mixture" as "a combination of two or more chemical substances, at least one of which is not a list I chemical or a list II chemical, except that such term does not include any combination of a lsit I chemical or a list II chemical that is present solely as an impurity." The CSA further allows exemption of chemical mixtures "based on a finding that the mixture is formulated in such a way that it cannot be easily used in the illicit production of a controlled substance and that the listed chemical or chemicals contained in the mixture cannot be readily recovered."

A notice of proposed rule making (NPRM) regarding the exemption of chemical mixtures was published in the **Federal Register** on September 16, 1998 (63 FR 49506). The NPRM proposed regulations to identify if a chemical mixture is automatically exempt from CSA regulatory controls. When the NPRM was published, white phosphorus, red phosphorus, and hypophosphorus acid (and its salts) were not regulated chemicals. Therefore, regulations addressing the exemption of chemical mixtures containing regulated phosphorus were not proposed.

The NPRM proposed a concentration limit for each listed chemical. If a listed chemical is found in a chemical mixture at or below the concentration limit, the mixture is exempt. Also proposed were categories of exempt chemical mixtures and an application process. The application process is a means to exempt chemical mixtures not automatically exempted by regulation. These approaches were well received by the regulated industry and may be proposed to identify exempt chemical mixtures containing regulated phosphorus.

What Is DEA Requesting in This ANPRM?

To propose regulations in line with the above approaches, DEA is interested in learning about formulations that contain regulated phosphorus. While some formulations containing regulated phosphorus have been identified, DEA is not aware of the entire scope of mixtures containing regulated phosphorus, including how they are used, traded, and their chemical composition. DEA invites all interested persons to provide any information on chemical mixtures containing regulated phosphorus. Both quantitative and qualitative information is requested. If the concentration of a chemical(s) varies in a formulation, DEA is interested in the range of concentration. Also of interest is how the mixtures are packaged, distributed, type of application, and the target market (*e.g.*, type of industry, availability at retail, Internet sales). This information will be used to propose regulations to exempt any chemical mixture that, according to 21 U.S.C. 802(39)(A)(v), is "formulated in such a way that it cannot be easily used in the illicit production of a controlled substance and that the listed chemical or chemicals contained in the mixture cannot be readily recovered."

Such information may be submitted to the address listed above and is requested by April 1, 2003. Information designated as confidential or proprietary will be treated accordingly. The release of confidential business information that is protected from disclosure under Exemption 4 of the Freedom of Information Act, 5 U.S.C. 552(b)(4), is governed by section 310(c) of the CSA (21 U.S.C. 830(c)) and the Department of Justice procedures set forth in 28 CFR 16.8.

Dated: January 22, 2003.

Laura M. Nagel,

Deputy Assistant Administrator, Office of Diversion Control.

[FR Doc. 03–2296 Filed 1–30–03; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–125638–01]

RIN 1545–BA00

Guidance Regarding Deduction and Capitalization of Expenditures; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains corrections to a notice of proposed rulemaking and notice of public hearing that explains how section 263(a) of the Internal Revenue Code (Code) applies to amounts paid to acquire, create, or enhance intangible assets. This document was published in the **Federal Register** on December 19, 2002 (67 FR 77701).

FOR FURTHER INFORMATION CONTACT: Andrew J. Keyso (202) 927–9397 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The proposed regulations that are the subject of these corrections are under sections 263(a), 167, and 446 of the Internal Revenue Code.

Need for Correction

As published, the proposed regulations REG–125638–01, contains errors that may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication of the proposed regulations REG–125638–01, which is the subject of FR Doc. 02–31859, is corrected as follows:

1. On page 77704, column 1, in the preamble, under the paragraph heading "Amounts Paid to Obtain or Modify Contract Rights", paragraph 4, the last two lines of the paragraph, the language "agreement is a separate and distinct asset" is corrected to read "agreement is a separate and distinct intangible asset".

§ 1.263(a)–4 [Corrected]

2. On page 77722, column 2, § 1.263(a)–4, paragraph (h)(4)(i), line 6, the language "(relating to *de minimis* applicable to" is corrected to read "(relating to *de minimis* rules applicable to".

Cynthia E. Grigsby,

Chief, Regulations Unit, Associate Chief Counsel, (Procedure and Administration).

[FR Doc. 03–2332 Filed 1–30–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 31 and 301

[REG–116641–01]

RIN 1545–BA17

Information Reporting and Backup Withholding for Payment Card Transactions

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking; notice of proposed rulemaking by cross-reference to temporary regulations; and notice of public hearing.

SUMMARY: In the Rules and Regulation section of this issue of the **Federal Register**, the IRS is issuing temporary regulations relating to the IRS Taxpayer Identification Number (TIN) Matching Program. The text of the temporary regulations published in the Rules and Regulations section of this issue of the **Federal Register** serves as the text of this portion of the proposed regulations. This document also contains proposed regulations relating to the information reporting requirements, information reporting penalties, and backup withholding requirements for payment card transactions. These regulations affect payors (and their authorized agents) and payees of certain reportable payments and provide guidance necessary to comply with the law. This document also provides notice of a public hearing on these proposed regulations.

DATES: Written or electronic comments must be received by May 1, 2003. Outlines of topics to be discussed at the public hearing scheduled for May 21, 2003, must be received by April 30, 2003.

ADDRESSES: Send submissions to: CC:PA:RU (REG–116641–01), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to: CC:PA:RU (REG–116641–01), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. Alternatively, taxpayers may submit electronic comments directly to the IRS Internet site at *www.irs.gov/regs*. The public hearing will be held in room 6718, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Donna Welch, (202) 622–4910; concerning submissions of comments, the hearing, and/or to be placed on the building access list to attend the hearing, Sonya Cruse, (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collections of information contained in this notice of proposed rulemaking have been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collections of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, W:CAR:MP:T:T:SP, Washington, DC 20224. Comments on the collection of information should be received by April 1, 2003. Comments are specifically requested concerning:

Whether the proposed collection of information is necessary for the proper performance of the functions of the Internal Revenue Service, including whether the information will have practical utility;

The accuracy of the estimated burden associated with the proposed collection of information (see below);

How the quality, utility, and clarity of the information to be collected may be enhanced;

How the burden of complying with the proposed collections of information may be minimized, including through the application of automated collection techniques or other forms of information technology; and

Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of service to provide information.

The collection of information in this proposed regulation is in § 31.3406(g)–1(f)(3). This information is required in order for a Qualified Payment Card Agent (QPCA) to notify a cardholder/payor that a merchant/payee is not a qualified payee for purposes of the proposed regulations. This information will alert a cardholder/payor that backup withholding under 3406 may apply. The collection of information is voluntary to obtain a benefit. The likely respondents are business or other for-profit institutions.

Estimated total annual reporting burden: 11,750,000 hours.

Estimated average annual burden hours per respondent: 5,875 hours.

Estimated number of respondents: 2,000.

Estimated annual frequency of responses: monthly.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

1. Summary

This document contains proposed amendments to 26 CFR part 31 relating to backup withholding under section 3406 of the Internal Revenue Code and proposed amendments to 26 Part 301 relating to waivers under section 6724 of information reporting penalties under sections 6721 and 6722.

Temporary regulations in the Rules and Regulations portion of this issue of the **Federal Register** provide that, for purposes of the IRS TIN Matching Program, the term *payor* includes an agent designated by the payor to participate in TIN matching on behalf of the payor. The text of those temporary regulations also serves as the text of proposed amendments to § 31.3406(j)–1(a) of the regulations. The preamble to the temporary regulations explains the proposed amendments to § 31.3406(j)–1(a).

2. Information Reporting and Backup Withholding Provisions

Section 6041(a) requires persons engaged in a trade or business and making payment in the course of such trade or business to another person of rent, salaries, wages, premiums, annuities, compensations,

remunerations, emoluments, or other fixed or determinable gains, profits, and income of $600 or more in any one taxable year to file information returns with the IRS and to furnish information statements to payees. Among other items, the payor must include the payee's name and taxpayer identification number (TIN) on the information return and the information statement.

Section 1.6041–3 of the Income Tax Regulations provides that information returns are not required for certain payments. Section 1.6041–3(q)(1) provides that an information return is not required for payments made to a corporation. Section 1.6041–3(c) provides that an information return is not required for payments of bills for merchandise, telegrams, telephone, freight, storage, and similar charges.

Section 6109(a)(1) provides that a person required to make a return must include that person's identifying number in the return. Section 6109(a)(2) provides that a person (the payee) with respect to whom a return is required to be made by another person (the payor) or whose identifying number is required to be shown on a return of another person must furnish to the other person the identifying number prescribed for securing the proper identification of the payee. Section 6109(a)(3) provides that a person (the payor) required to make a return with respect to another person (the payee) must ask the other person for the identifying number prescribed for securing the proper identification of the payee and include that number in the return.

In general, section 6721(a)(1) imposes a $50 penalty for each failure to file an information return on or before the required filing date, for any failure to include all of the information required to be shown on the return, or for the inclusion of incorrect information.

Section 6724(a) provides that no penalty will be imposed under section 6721 if it is shown that the failure is due to reasonable cause and not to willful neglect.

Section 3406(a)(1) requires a payor to withhold on any reportable payment (as defined in section 3406(b)(1)) in certain situations, including if (1) the payee fails to furnish his TIN to the payor as required or (2) the Secretary notifies the payor that the TIN furnished by the payee is incorrect.

Section 3406(i) provides that the Secretary shall prescribe the regulations necessary or appropriate to carry out the purposes of section 3406.

3. TIN Matching

Regulations issued under section 3406(i) (§ 31.3406(j)–1 of the Employment Tax Regulations) provide that the Commissioner has the authority to establish TIN matching programs through revenue procedures or other appropriate guidance. Under the regulations, a payor participating in a TIN matching program may contact the IRS with respect to the TIN furnished by a payee before filing information returns for reportable payments. The regulations further provide that the IRS will inform the payor whether or not the name/TIN combination furnished by the payee matches a name/TIN combination maintained for the TIN matching program.

Pursuant to the authority in § 31.3406(j)–1, the IRS issued Rev. Proc. 97–31 (1997–1 C.B. 703) and implemented TIN matching for reportable payments by Federal agency payors. The IRS is issuing a second TIN matching revenue procedure to expand the scope of the TIN Matching Program by allowing all payors (and not merely Federal agency payors) to participate in TIN matching for reportable payments. Under the authority of the temporary regulations discussed above, payors' authorized agents will also be permitted to participate in TIN matching.

4. Payment Card Transactions

A *payment card transaction* is a transaction in which a cardholder/payor uses a payment card to purchase goods or services and a merchant agrees to accept a payment card as a means of obtaining payment. A *payment card* is a card (or an account) issued by a payment card organization, or one of its members or affiliates, to a cardholder/payor which, upon presentation to a merchant/payee, represents an agreement of the cardholder to pay the merchant through the payment card organization. A *payment card organization* is an entity that sets the standards and provides the mechanism, either directly or indirectly through members and affiliates, for effectuating payment between a purchaser and a merchant in a payment card transaction. A payment card organization generally provides this mechanism by issuing payment cards, enrolling merchants as authorized acceptors of payment cards for payment for goods or services, and ensuring the system conducts the transactions in accordance with prescribed standards of payment card transactions.

The parties involved in payment card transactions may include the cardholder/payor, the merchant/payee, a bank that issues a payment card (issuing bank), a merchant/payee's bank (merchant bank, acquiring bank, or acquirer), and the payment card organization.

Cash does not pass directly from the cardholder/payor to the merchant/payee for purchases made with a payment card. Rather, in some situations, payment is made by a credit from the issuing bank, through the payment card organization, to the merchant's bank account. In turn, the cardholder pays the issuing bank upon receipt of the payment card monthly billing statement. In other situations, payment is made directly from the payment card organization to the merchant. In turn, the cardholder pays the payment card organization upon receipt of the payment card monthly billing statement.

5. Information Reporting and Backup Withholding Difficulties for Payment Card Transactions

Information reporting compliance is difficult in payment card transactions because an invoice may not be issued, and the employee of the cardholder/payor may not request and obtain the name/TIN combination of the merchant/payee at the time of the transaction. In addition, backup withholding may be difficult because a merchant receives payment from the payment card organization within a few days after the transaction, but the cardholder does not pay the payment card organization until after it receives a payment card monthly billing statement from the payment card organization.

Because of these difficulties, representatives of the payment card industry and the Information Reporting Program Advisory Committee (IRPAC) have proposed that the IRS allow a payment card organization to act on behalf of a cardholder/payor for purposes of soliciting, collecting, and validating the names/TINs of the merchant/payees through TIN matching. In addition, they suggest that the payment card organization be allowed to inform the cardholder about a merchant's corporate status.

The IRS is issuing a proposed revenue procedure that would allow a payment card organization to obtain an IRS determination that it is a *Qualified Payment Card Agent* (QPCA). The proposed procedure would permit a QPCA to act on behalf of a payor for purposes of soliciting, collecting, and validating merchants' names/TINs, and providing merchants' corporate status. To obtain a QPCA determination, the payment card organization would be required, among other things, to

demonstrate the reliability of its data by participating in the IRS TIN Matching Program and matching its merchant name/TIN data with IRS name/TIN data.

Certain payment card industry representatives have suggested that, for payments made through a QPCA, the information provided to the cardholder/payor should be sufficiently reliable that backup withholding should not apply. In addition, they have suggested that a cardholder/payor who files incorrect information returns should be considered to meet the reasonable cause requirements for a waiver under section 6724 if the cardholder/payor relied on payee information provided by a QPCA.

The IRS and the Treasury Department agree that QPCAs, by obtaining TINs and participating in the IRS TIN Matching Program, can enhance the accuracy of information reporting by the cardholder/payors. Accordingly, the IRS and the Treasury Department agree that a limited exception to the backup withholding requirements is appropriate if cardholder/payors rely on a QPCA to solicit, collect, and validate merchant/payees' TINs. In addition, the IRS and the Treasury Department agree that cardholder/payors may establish reasonable cause based on reliance on merchant/payees' TINs supplied through a QPCA.

Explanation of Provisions

1. Backup Withholding

The proposed regulations provide that backup withholding does not apply to payment card transactions if the reportable payments are made through a QPCA and the payee is a qualified payee. The proposed regulations provide that a payee is qualified if, at the time of the payment, the QPCA has validated the payee's TIN through the IRS TIN Matching Program or if the payment is made during the 6-month period following the date on which the QPCA first obtained the payee's TIN.

The proposed regulations provide that reportable payments made through a QPCA are also exempt from backup withholding if the payment is made within 60 days after the date of the first payment with respect to which the QPCA is required to provide notification to the payor that the payee is not a qualified payee. Under the proposed regulations, a QPCA must notify a cardholder/payor of any merchant/payees that are not qualified payees. The notice must appear on the billing information for the payment. The regulations clarify that this notification does not constitute notice by the IRS that the payee's TIN is incorrect for purposes of backup withholding.

2. Waiver Under Section 6724 for Reasonable Cause

The proposed regulations provide that a cardholder/payor may establish reasonable cause based on its reliance on a QPCA. Under the proposed regulations, special solicitation rules will apply if the cardholder/payor relies on a QPCA. Under those rules, a cardholder/payor is not required to make the initial solicitation of a payee's TIN at the time of the transaction and generally is not required to undertake the first and second annual solicitations. Under the proposed regulations, a cardholder/payor that relies on a QPCA is required to solicit a payee's TIN only if the QPCA fails to provide, within a specified period, a TIN that the cardholder/payor believes in good faith to be the payee's correct TIN.

3. Effective Dates

Section 31.3406(j)–1(a) and (f) are applicable January 31 2003. The amendments of § 31.3406(g)–1 are proposed to be applicable for payments on or after January 1, 2004. The amendments of § 301.6724–1 are proposed to be applicable for information returns required to be filed, and information statements required to be furnished, after December 31, 2004. The amendments to §§ 31.3406(g)–1 and 301.6724–1 will not be applicable until they are finalized.

Special Analyses

It has been determined that these proposed regulations are not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations.

It is hereby certified pursuant to the Regulatory Flexibility Act (5 U.S.C. chapter 6) that the collection of information contained in these regulations will not have a significant economic impact on a substantial number of small entities. The reporting burden affects financial institution members of the payment card network that are affiliates of QPCAs. Most of these financial institution members are large businesses. To the extent that small financial institutions have a reporting burden, the burden is expected to be insignificant. Accordingly, a Regulatory Flexibility Analysis is not required.

Pursuant to section 7805(f), this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written or electronic comments that are submitted timely to the IRS. The IRS and the Treasury Department specifically request comments on the clarity of the proposed regulations and how they can be made easier to understand. All comments will be available for public inspection and copying.

A public hearing has been scheduled for May 21, 2003, beginning at 10 a.m. in room 6718 of the Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Due to building security procedures, visitors must enter at the Constitution Avenue entrance. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be permitted beyond the immediate entrance area more than 30 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit written or electronic comments and an outline of the topics to be discussed and the time to be devoted to each topic (signed original and eight copies by April 30, 2003. A period of 10 minutes will be allotted to each person for making comments. An agenda showing the schedule of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal author of the regulations is Donna Welch, Office of Associate Chief Counsel (Procedure and Administration), Administrative Provisions and Judicial Practice Division. However, other personnel from the IRS and the Treasury Department participated in the development of the regulations.

List of Subjects

26 CFR Part 31

Employment taxes, Income taxes, Penalties, Pensions, Railroad retirement, Reporting and recordkeeping requirements, Social security, Unemployment compensation.

26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR parts 31 and 301 are proposed to be amended as follows:

PART 31—EMPLOYMENT TAXES AND COLLECTION OF INCOME TAX AT THE SOURCE

1. The authority citation for part 31 continues to read in part as follows:

Authority: 26 U.S.C. 7805. * * *

2. Section 31.3406(g)–1 is amended by adding paragraph (f) to read as follows:

§ 31.3406(g)–1 Exceptions for payments to certain payees and certain other payments.

* * * * *

(f) *Special rule for certain payment card transactions*—(1) *In general.* No withholding under section 3406 is required for a reportable payment made through a payment card organization if the payment is made on or after January 1, 2004, the organization is a Qualified Payment Card Agent (QPCA), and—

(i) The payee is a qualified payee (as defined in paragraph (f)(2)(v) of this section) with respect to the payment; or

(ii) The payment is made during the 60-day period following the date on which the payor made the first payment with respect to which the QPCA is required under paragraph (f)(3) of this section to provide notification that the payee is a not a qualified payee.

(2) *Definitions*—(i) *Payment card defined.* For purposes of this section, a *payment card* is a card (or an account) issued by a payment card organization, or one of its members or affiliates, to a cardholder/payor which, upon presentation to a merchant/payee, represents an agreement of the cardholder to pay the merchant through the payment card organization.

(ii) *Payment card organization defined.* For purposes of this section, a *payment card organization* is an entity that sets the standards and provides the mechanism, either directly or indirectly through members and affiliates, for effectuating payment between a purchaser and a merchant in a payment card transaction. A payment card organization generally provides such a payment mechanism by issuing payment cards, enrolling merchants as authorized acceptors of payment cards for payment for goods or services, and ensuring the system conducts the transactions in accordance with prescribed standards for payment card transactions.

(iii) *Payment card transaction defined.* For purposes of this section, a *payment card transaction* is a transaction in which a cardholder/payor uses a payment card to purchase goods or services and a merchant agrees to accept a payment card as a means of obtaining payment.

(iv) *Qualified Payment Card Agent (QPCA) defined.* For purposes of this section, a *Qualified Payment Card Agent* (QPCA) is a payment card organization that has a current QPCA determination from the Internal Revenue Service (IRS) under applicable procedures (see § 601.601(d)(2) of this chapter).

(v) *Qualified payee defined.* For purposes of this section, a payee is a *qualified payee* with respect to a reportable payment if—

(A) At the time of the payment, the QPCA has obtained the payee's TIN and the payee's TIN has been validated through the IRS TIN Matching Program; or

(B) The payment is made during the 6-month period following the date on which the QPCA first obtained the payee's TIN.

(3) *Notification of payee status.* In the case of a reportable payment to a payee other than a qualified payee (as defined in paragraph (f)(2)(v) of this section) with respect to the payment, the QPCA must notify the payor on the billing information for the payment that the payee is not a qualified payee. The notification must appear on the face of the bill in print size no smaller than the print size used for the charge amount relating to the purchase from the payee. Notification may consist of an asterisk, footnote, or other mark next to the payee's name or the charge, with the text of the notification at the bottom of the page or at the end of the list of charges. Notification by the QPCA that a payee is not a qualified payee does not constitute notice by the IRS that the payee's TIN is incorrect for purposes of section 3406(a)(1)(B) and § 31.3406(d)–5.

3. In § 31.3406(j)–1, paragraphs (a) and (f) are revised to read as follows:

§ 31.3406(j)–1 Taxpayer Identification Number (TIN) matching program.

(a) [Section 31.3406(j)–1(a) is the same as § 31.3406(j)–1T(a) published elsewhere in this issue of the **Federal Register**.]

* * * * *

(f) [Section 31.3406(j)–1(f) is the same as § 31.3406(j)–1T(f) published elsewhere in this issue of the **Federal Register**.]

PART 301—PROCEDURE AND ADMINISTRATION

4. The authority citation for part 301 continues to read in part as follows:

Authority: 26 U.S.C. 7805. * * *

5. Section 301.6724–1 is amended by:

1. Revising the introductory language of paragraph (c)(6).

2. Adding paragraphs (e)(1)(vi)(H) and (f)(5)(vii).

The revision and additions read as follows:

§ 301.6724–1 Reasonable cause.

* * * * *

(c) * * *

(6) *Actions of the payee or any other person.* In order to establish reasonable cause under paragraph (c)(1) of this section due to the actions of the payee or any other person, such as a broker as defined in section 6045(c) or a Qualified Payment Card Agent (QPCA) as defined in § 31.3406(g)–1(f)(2)(iv) of this chapter, providing information with respect to the return or payee statement, the filer must show either—

* * * * *

(e) * * *

(1) * * *

(vi) * * *

(H) In the case of information returns required to be filed, and information statements required to be furnished, after December 31, 2004, the filer—

(*1*) Satisfies the solicitation requirements of paragraphs (e)(1)(i) and (ii) of this section with respect to a payment made through a QPCA if the filer relies in good faith on the QPCA to solicit, record, validate, and furnish the payee's TIN; and

(*2*) Satisfies the solicitation requirement of paragraph (e)(1)(iii) of this section with respect to such a payment if, on or before December 31 of the year immediately succeeding the calendar year in which the payment is made, the filer undertakes a solicitation of the payee's TIN or receives from the QPCA a TIN that the filer believes in good faith to be the payee's correct TIN.

* * * * *

(f) * * *

(5) * * *

(vii) In the case of information returns required to be filed, and information statements required to be furnished, after December 31, 2004, the filer—

(A) Satisfies the solicitation requirement of paragraph (f)(1)(i) of this section with respect to a payment made through a QPCA if the filer relies in good faith on the QPCA to solicit, record, validate, and furnish the payee's TIN; and

(B) Satisfies the solicitation requirement of paragraph (f)(1)(ii) or (iii)

of this section, whichever is applicable, with respect to such a payment if, after the date the filer is notified that the account of the payee contains an incorrect TIN and on or before the date by which the applicable requirement must be satisfied, the filer solicits the payee's correct TIN in a manner that satisfies the applicable requirement or receives from the QPCA a TIN that the filer believes in good faith to be the payee's correct TIN.

* * * * *

David A. Mader,

Assistant Deputy Commissioner of Internal Revenue.

[FR Doc. 03–2208 Filed 1–30–03; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF JUSTICE

28 CFR Part 16

[FBI 109P; AAG/A ORDER No. 006–2003]

RIN 1110–AA08

Privacy Act of 1974; Implementation

AGENCY: Department of Justice.

ACTION: Proposed rule.

SUMMARY: The Department of Justice (DOJ), Federal Bureau of Investigation (FBI), proposes to exempt the FBI's National Crime Information Center (NCIC) (JUSTICE/FBI–001), Central Records System (CRS) (JUSTICE/FBI–002), and National Center for the Analysis of Violent Crime (NCAVC) (JUSTICE/FBI–015) systems of records from the Privacy Act. The exemption is necessary to avoid interference with law enforcement functions and responsibilities of the FBI.

DATES: Written comments must be received on or before March 3, 2003.

ADDRESSES: All comments concerning this proposed rule should be mailed to: Mary Cahill, Management and Planning Staff, Justice Management Division, Department of Justice, Washington, DC 20530 (1400 National Place Building).

FOR FURTHER INFORMATION CONTACT: Mary Cahill, (202) 307–1823.

SUPPLEMENTARY INFORMATION: The FBI proposes to exempt the FBI's National Crime Information Center, Central Records System and National Center for the Analysis of Violent Crime systems of records from subsection (e)(5) of the Privacy Act, 5 U.S.C. 552a. Also, the FBI proposes to correct a typographical error by moving the title of the National Crime Information Center to the correct subsection. Except for these amendments, the proposed rule changes do not alter practices and procedures that are currently in effect. However, the FBI is currently reviewing additional changes to this regulation for possible promulgation in future rulemaking.

This proposed rule relates to individuals, as opposed to small business entities. Nevertheless, pursuant to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601–612, the proposed rule will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 28 CFR Part 16

Administrative practices and procedures, Courts, Freedom of Information, and Privacy.

Pursuant to the authority vested in the Attorney General by 5 U.S.C. 552a and delegated to me by Attorney General Order 793–78, it is proposed to amend 28 CFR part 16 as follows:

PART 16—[AMENDED]

Subpart E—Exemption of Records Systems Under the Privacy Act

1. The authority citation for Part 16 continues to read as follows:

Authority: 5 U.S.C. 301, 552, 552a, 552b(g), 553; 18 U.S.C. 4203(a)(1); 28 U.S.C. 509, 510, 534; 31 U.S.C. 3717, 9701.

2. Section 16.96 is amended as follows:

(a) By revising the introductory text of paragraph (a);

(b) By redesignating paragraph (b)(6) as (b)(7) and adding a new paragraph (b)(6);

(c) By revising the introductory text of paragraph (g) and adding new paragraph (g)(1);

(d) By redesignating paragraph (h)(5) as (h)(6) and adding new paragraph (h)(5);

(e) By revising the introductory text of paragraph (j);

(f) By adding a new paragraph (k)(5);

(g) By removing "National Crime Information Center (NOIC) [sic] (JUSTICE/FBI–001)." from paragraph (k)(4).

The revisions and additions read as follows.

§ 16.96 Exemption of Federal Bureau of Investigation Systems—limited access.

(a) The following system of records is exempt from 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(2), (e)(3), (e)(4)(G) and (H), (e)(5), (e)(8), (f) and (g):

* * * * *

(b) * * *

(6) From subsection (e)(5) because in the collection of information for law enforcement purposes it is impossible to determine in advance what information is accurate, relevant, timely and complete. With the passage of time, seemingly irrelevant or untimely information may acquire new significance as further investigation brings new details to light. The restrictions imposed by subsection (e)(5) would limit the ability of trained investigators and intelligence analysts to exercise their judgment in reporting on investigations and impede the development of criminal intelligence necessary for effective law enforcement. In addition, because many of these records come from other federal, state, local, joint, foreign, tribal, and international agencies, it is administratively impossible to ensure compliance with this provision.

* * * * *

(g) The following system of records is exempt from 5 U.S.C. 552a (c)(3) and (4), (d), (e)(1), (e)(2), (e)(3), (e)(4)(G) and (H), (e)(5), (e)(8), (f), and (g):

(1) National Crime Information Center (NCIC) (JUSTICE/FBI–001). These exemptions apply only to the extent that information in the system is subject to exemption pursuant to 5 U.S.C. 552a(j)(2) and (k)(3).

* * * * *

(h) * * *

(5) From subsection (e)(5) because in the collection of information for law enforcement purposes it is impossible to determine in advance what information is accurate, relevant, timely and complete. With the passage of time, seemingly irrelevant or untimely information may acquire new significance as further investigation brings new details to light. The restrictions imposed by subsection (e)(5) would limit the ability of trained investigators and intelligence analysts to exercise their judgment in reporting on investigations and impede the development of criminal intelligence necessary for effective law enforcement. In addition, the vast majority of these records come from other federal, state, local, joint, foreign, tribal, and international agencies and it is administratively impossible to ensure that the records comply with this provision. Submitting agencies are, however, urged on a continuing basis to ensure that their records are accurate and include all dispositions.

* * * * *

(j) The following system of records is exempt from 5 U.S.C. 552a (c)(3), (d), (e)(1), (e)(4)(G) and (H), (e)(5), (f) and (g):

* * * * *

(k) * * *

(5) From subsection (e)(5) because in the collection of information for law enforcement purposes it is impossible to

determine in advance what information is accurate, relevant, timely and complete. With the passage of time, seemingly irrelevant or untimely information may acquire new significance as further investigation brings new details to light. The restrictions imposed by subsection (e)(5) would limit the ability of trained investigators and intelligence analysts to exercise their judgment in reporting on investigations and impede the development of criminal intelligence necessary for effective law enforcement. In addition, because many of these records come from other federal, state, local, joint, foreign, tribal, and international agencies, it is administratively impossible to ensure compliance with this provision.

* * * * *

Dated: January 17, 2003.

Paul R. Corts,

Assistant Attorney General for Administration.

[FR Doc. 03–2251 Filed 1–30–03; 8:45 am]

BILLING CODE 4410–02–P

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 4

RIN 1024–AC69

Operating Under the Influence of Alcohol or Drugs

AGENCY: National Park Service, Interior.

ACTION: Proposed rule.

SUMMARY: The National Park Service (NPS) is proposing to amend its regulations concerning motor vehicle operation under the influence of alcohol. Currently, the NPS has regulations prohibiting operation with a blood alcohol concentration (BAC) of 0.10 grams or more of alcohol per 100 milliliters of blood or 0.10 grams of alcohol per 210 liters of breath. On March 3, 1998, a Presidential directive was issued directing the NPS, and other federal agencies, to promulgate regulations adopting a stricter limit of 0.08 grams BAC.

DATES: Written comments will be accepted through April 1, 2003.

ADDRESSES: Comments should be addressed to Kym Hall, National Park Service, 1849 C Street, NW., Room 7248, Washington, DC 20240. Fax: (202) 219–8835. Email: *WASO_Regulations@nps.gov.*

FOR FURTHER INFORMATION CONTACT: Kym Hall, Regulations Program Manager, National Park Service, 1849 C Street, NW., Room 7248, Washington, DC 20240. Telephone: (202) 208–4206. Email: *Kym_Hall@nps.gov.*

SUPPLEMENTARY INFORMATION:

Background

The NPS administers 385 areas throughout the country under the broad statutory mandates to promote and regulate their use; to conserve the scenery, the natural and cultural objects and the wildlife therein; and to provide for their enjoyment in such manner as will leave them unimpaired for the enjoyment of future generations. Although the nearly 300 million annual visitors to the National Park System use a variety of access methods, the vast majority rely on motor vehicles and roadways to reach park areas and to circulate within them. Consequently, the NPS has major responsibilities and program involvement in the areas of road construction and maintenance, traffic safety and traffic law enforcement.

The NPS currently administers over 8,000 miles of roads within the National Park System that are open to the public. These 8,000 miles compare in magnitude to the State of Arizona's state road system, except that they are scattered throughout the United States and its territories. There is great variety in the nature and extent of park roads, ranging from very short lengths of unpaved secondary roadways, to well-developed road systems complete with spur roads, parking areas and overlooks, to parkways running for hundreds of miles through several States, to parkways used primarily as commuter routes in the Washington, DC area. In addition, many park areas contain State and/or county highways and roads over which the NPS may exercise varying degrees of jurisdiction.

On April 2, 1987, the NPS promulgated a final rule (36 CFR 4.23) concerning operating a motor vehicle under the influence of alcohol (52 FR 10683). That rule prohibits the operation or control of a motor vehicle if the alcohol concentration in the operator's blood or breath is 0.10 grams or more of alcohol per 100 milliliters of blood or 0.10 grams of alcohol per 210 liters of breath. The regulation provides, however, that if State Law that applies to operating a motor vehicle while under the influence of alcohol establishes more restrictive limits of alcohol concentration in the operator's blood or breath, those limits supercede the limits specified in this paragraph. The regulation is implemented primarily through signing, text in brochures and incidental public contact.

President Clinton issued a directive on March 3, 1998, which directed the NPS to propose rules and take other appropriate measures to lower the BAC limit in National Park Service areas. This includes, but is not limited to, strong enforcement, conducting education, awareness and other appropriate programs about the importance of the 0.08 BAC standard. The benefits of the 0.08 standard in lives saved and injuries prevented have been documented extensively.

Compliance With Other Laws

Regulatory Planning and Review (Executive Order 12866)

This document is not a significant rule and is not subject to review by the Office of Management and Budget under Executive Order 12866.

(1) This rule will not have an effect of $100 million or more on the economy. It will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, Local, or tribal governments or communities.

(2) This rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. Actions taken under this rule will not interfere with other agencies or local government plans, policies, or controls. This is an agency specific rule.

(3) This rule does not alter the budgetary effects of entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients. This rule will have no effects of entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients. No grants or other forms of monetary supplements are involved.

(4) This rule does not raise novel legal or policy issues. This change to the legal blood alcohol concentration level is prevalent throughout the United States and has been adopted by most other federal agencies and states.

Regulatory Flexibility Act

The Department of the Interior certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*)

Although the regulation has significant implications for public safety, it does not have monetary implications. There are no businesses that depend on the public's ability to operate a motor vehicle while intoxicated. The rule will likely provide non-monetized benefits to the NPS and other law enforcement agencies through decreased accidents and injuries.

Small Business Regulatory Enforcement Fairness Act (SBREFA)

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

a. Does not have an annual effect on the economy of $100 million or more.

b. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.

c. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Unfunded Mandates Reform Act

This rule does not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than $100 million per year. The rule does not have a significant or unique effect on State, local or tribal governments or the private sector.

Takings (Executive Order 12630)

In accordance with Executive Order 12630, the rule does not have significant takings implications. A takings implication assessment is not required. No taking of personal property will occur as a result of this rule.

Federalism (Executive Order 13132)

In accordance with Executive Order 13132, the rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. This proposed rule only affects use of NPS administered lands and waters. It has no outside effects on other areas and only allows use within a small portion of the park.

Civil Justice Reform (Executive Order 12988)

In accordance with Executive Order 12988, the Office of the Solicitor has determined that this rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order.

Paperwork Reduction Act

This regulation does not require an information collection from 10 or more parties and a submission under the Paperwork Reduction Act is not required. An OMB form 83–I is not required.

National Environmental Policy Act

The National Park Service has analyzed this rule in accordance with the criteria of the National Environmental Policy Act and 516 DM. This rule does not constitute a major federal action affecting the quality of the human environment. An environmental assessment is not required.

Government-to-Government Relationship with Tribes

In accordance with Executive Order 13175 "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, the President's memorandum of April 29, 1994, "Government to Government Relations with Native American Tribal Governments" (59 FR 22951) and 512 DM 2:

We have evaluated potential effects on federally recognized Indian tribes and have determined that there are no potential effects.

Clarity of Rule

Executive Order 12866 requires each agency to write regulations that are easy to understand. We invite your comments on how to make this rule easier to understand, including answers to questions such as the following: (1) Are the requirements in the rule clearly stated? (2) Does the rule contain technical language or jargon that interferes with its clarity? (3) Does the format of the rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Would the rule be easier to read if it were divided into more (but shorter) sections? (A "section" appears in bold type and is preceded by the symbol "§" and a numbered heading; for example § 4.23 Operating Under the Influence of Alcohol or Drugs.) (5) Is the description of the rule in the "Supplementary Information" section of the preamble helpful in understanding the proposed rule? What else could we do to make the rule easier to understand?

Send a copy of any comments that concern how we could make this rule easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street, NW., Washington, DC 20240. You may also email the comments to this address: *Exsec@ios.doi.gov.*

Drafting Information: The primary author of this regulation was Chip Davis, Criminal Investigator, National Park Service.

Public Participation: If you wish to comment, you may submit your comments by any one of several methods. You may mail comments to Kym Hall, National Park Service, 1849 C Street, NW., Room 7248, Washington, DC 20240. Fax: (202) 219–8835. You may also comment via the internet to *WASO_Regulations@nps.gov.* Please also include "Attn: RIN 1024–AC69" in the subject line and your name and return address in the body of your internet message. Finally, you may hand deliver comments to Kym Hall, National Park Service, 1849 C Street, NW., Room 7248, Washington, DC. Our practice is to make comments, including names and addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection.

List of Subjects in 36 CFR Part 4

National parks, Traffic regulations.

In consideration of the foregoing, we propose to amend 36 CFR Part 4 as follows:

PART 4—VEHICLES AND TRAFFIC SAFETY

1. The authority citation for Part 4 continues to read as follows:

Authority: 16 U.S.C. 1, 3, 9a, 462(k).

2. Section 4.23 is (a)(2) revised to read as follows:

§ 4.23 Operating under the influence of alcohol or drugs.

(a) * * *

(2) The alcohol concentration in the operator's blood or breath is 0.08 grams or more of alcohol per 100 milliliters of blood or breath is 0.08 grams or more of alcohol per 210 liters of breath. Provided however, that if State law that applies to operating a motor vehicle while under the influence of alcohol establishes more restrictive limits of alcohol concentration in the operator's blood or breath, those limits supersede the limits specified in this paragraph.

* * * * *

Dated: January 10, 2003.

Craig Manson,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 03–2321 Filed 1–30–03; 8:45 am]

BILLING CODE 4310–70–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 273–0370b; FRL–7441–6]

Revisions to the California State Implementation Plan, Imperial County Air Pollution Control District and Monterey Bay Unified Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the Imperial County Air Pollution Control District (ICAPCD) and the Monterey Bay Unified Air Pollution Control District (MBUAPCD) portions of the California State Implementation Plan (SIP). The ICAPCD revision concerns the emission of particulate matter (PM–10) from agricultural burning. The MBUAPCD revision concerns the emission of PM–10 from incinerator burning. We are proposing to approve local rules that regulate these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act).

DATES: Any comments on this proposal must arrive by March 3, 2003.

ADDRESSES: Mail comments to Andy Steckel, Rulemaking Office Chief (AIR–4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

You can inspect a copy of the submitted rule revisions and EPA's technical support documents (TSDs) at our Region IX office during normal business hours. You may also see a copy of the submitted rule revisions and TSDs at the following locations:

Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, (Mail Code 6102T), Room B–102, 1301 Constitution Avenue, NW., Washington, DC 20460.

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1001 "I" Street, Sacramento, CA 95814.

Imperial County Air Pollution Control District, 150 South 9th Street, El Centro, CA 92243.

Monterey Bay Unified Air Pollution Control District, 24580 Silver Cloud Court, Monterey, CA 93940.

A copy of a rule may also be available via the Internet at *http://www.arb.ca.gov/drdb/drdbltxt.htm*. This is not an EPA Web site and it may not contain the same version of the rule that was submitted to EPA. Readers should verify that the adoption date of the rule listed is the same as the rule submitted to EPA for approval and be aware that the official submittal is only available at the agency addresses listed above.

FOR FURTHER INFORMATION CONTACT: Al Petersen, Rulemaking Office (AIR–4), U.S. Environmental Protection Agency, Region IX; (415) 947–4118.

SUPPLEMENTARY INFORMATION: This proposal addresses the approval of local ICAPCD Rule 701 and MBUAPCD Rule 408. In the Rules section of this **Federal Register**, we are approving these local rules in a direct final action without prior proposal because we believe this SIP revision is not controversial. If we receive adverse comments, however, we will publish a timely withdrawal of the direct final rule and address the comments in subsequent action based on this proposed rule. We do not plan to open a second comment period, so anyone interested in commenting should do so at this time. If we do not receive adverse comments, no further activity is planned. For further information, please see the direct final action.

Dated: December 12, 2002.

Keith Takata,

Acting Regional Administrator, Region IX.

[FR Doc. 03–2176 Filed 1–30–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 194

[FRL–7446–3]

Central Characterization Project Waste Characterization Program Documents Applicable to Transuranic Radioactive Waste From the Argonne National Laboratory—East Site Proposed for Disposal at the Waste Isolation Pilot Plant

AGENCY: Environmental Protection Agency.

ACTION: Notice of availability; opening of public comment period.

SUMMARY: The Environmental Protection Agency (EPA, or "we") is announcing an inspection for the week of February 10, 2003, at the Argonne National Laboratory—East (ANL–E). With this notice, we also announce availability of Department of Energy (DOE) documents in the EPA Docket, and solicit public comments on the documents available in the docket for a period of 30 days. The following DOE documents, entitled "CCP–PO–001—Revision 4, 5/31/02—CCP Transuranic Waste Characterization Quality Assurance Project Plan" and "CCP–PO–002—Revision 4, 5/17/02—CCP Transuranic Waste Certification Plan," are available for review in the public dockets listed in **ADDRESSES.** In accordance with EPA's WIPP Compliance Criteria, we will conduct an inspection at ANL–E to verify that, using the systems and processes developed as part of the DOE Carlsbad Office's central characterization project (CCP), DOE can characterize TRU waste at ANL–E properly, consistent with the Compliance Criteria.

DATES: EPA is requesting public comment on the documents. Comments must be received by EPA's official Air Docket on or before March 3, 2003.

ADDRESSES: Comments should be submitted to: EPA Docket Center (EPA/DC), Air and Radiation Docket, Docket No. A–98–49, EPA West, Mail Code 6102T, 1200 Pennsylvania Avenue, N.W., Washington, DC 20460. The DOE documents are available for review in the official EPA Air Docket in Washington, DC, Docket No. A–98–49, Category II–A2, and at the following three EPA WIPP informational docket locations in New Mexico: in Carlsbad at the Municipal Library, Hours: Monday–Thursday, 10 a.m.–9 p.m., Friday–Saturday, 10 a.m.–6 p.m., and Sunday 1 p.m.–5 p.m.; in Albuquerque at the Government Publications Department, Zimmerman Library, University of New Mexico, Hours: vary by semester; and in Santa Fe at the New Mexico State Library, Hours: Monday–Friday, 9 a.m.–5 p.m.

As provided in EPA's regulations at 40 CFR Part 2, and in accordance with normal EPA docket procedures, if copies of any docket materials are requested, a reasonable fee may be charged for photocopying. Air Docket A–98–49 in Washington, DC, accepts comments sent electronically or by fax (fax: 202–566–1741; e-mail: *a-and-r-docket@epa.gov*).

FOR FURTHER INFORMATION CONTACT: Ms. Rajani D. Joglekar, Office of Radiation and Indoor Air, (202) 564–7734. You can also call EPA's toll-free WIPP Information Line, 1–800–331–WIPP or visit our Web site at *http://www.epa/gov/radiation/wipp*.

SUPPLEMENTARY INFORMATION:

Background

DOE is operating the WIPP near Carlsbad in southeastern New Mexico as a deep geologic repository for disposal of TRU radioactive waste. As defined by the WIPP Land Withdrawal Act (LWA) of 1992 (Pub. L. 102–579), as amended (Pub. L. 104–201), transuranic (TRU) waste consists of materials containing elements having atomic numbers greater

than 92 (with half-lives greater than twenty years), in concentrations greater than 100 nanocuries of alpha-emitting TRU isotopes per gram of waste. Much of the existing TRU waste consists of items contaminated during the production of nuclear weapons, such as rags, equipment, tools, and sludges.

On May 13, 1998, EPA announced its final compliance certification decision to the Secretary of Energy (published May 18, 1998, 63 FR 27354). This decision stated that the WIPP will comply with EPA's radioactive waste disposal regulations at 40 CFR part 191, subparts B and C.

The final WIPP certification decision includes conditions that (1) prohibit shipment of TRU waste for disposal at WIPP from any site other than the Los Alamos National Laboratory (LANL) until the EPA determines that the site has established and executed a quality assurance program, in accordance with §§ 194.22(a)(2)(i), 194.24(c)(3), and 194.24(c)(5) for waste characterization activities and assumptions (Condition 2 of appendix A to 40 CFR part 194); and (2) prohibit shipment of TRU waste for disposal at WIPP from any site other than LANL until the EPA has approved the procedures developed to comply with the waste characterization requirements of § 194.22(c)(4) (Condition 3 of appendix A to 40 CFR part 194). The EPA's approval process for waste generator sites is described in § 194.8. As part of EPA's decision-making process, the DOE is required to submit to EPA appropriate documentation of quality assurance and waste characterization programs at each DOE waste generator site seeking approval for shipment of TRU radioactive waste to WIPP. In accordance with § 194.8, EPA will place such documentation in the official Air Docket in Washington, DC, and informational dockets in the State of New Mexico for public review and comment.

EPA will perform an inspection of the TRU waste characterization activities performed by the DOE's Central Characterization Project (CCP) staff at the Argonne National Laboratory-East (ANL–E) in accordance with Condition 3 of the WIPP certification. We will evaluate the adequacy, implementation, and effectiveness of the CCP technical activities contracted by the ANL–E for characterization of the disposal of retrievably-stored homogeneous solid waste at the WIPP. We also will evaluate DOE's corrective action(s) responding to the EPA finding (identified during the September 2002 inspection) related to the implementation of a procedure to compile acceptable knowledge. This finding resulted in the denial of DOE's request for approving the CCP-characterized TRU debris waste at ANL. Therefore, until EPA is satisfied with the corrective action taken to resolve this finding ANL–E cannot ship TRU debris waste for disposal at WIPP. The overall program adequacy and effectiveness of CCP/ANL–E documents will be based on the following DOE-provided documents: (1) CCP–PO–001—Revision 4, 5/31/02—CCP Transuranic Waste Characterization Quality Assurance Project Plan and (2) CCP–PO–002—Revision 4, 5/17/02—CCP Transuranic Waste Certification Plan. EPA has placed these DOE-provided documents pertinent to the ANL–E inspection in the public docket described in **ADDRESSES.** The documents are included in item II–A2–40 in Docket A–98–49. In accordance with 40 CFR 194.8, EPA is providing the public 30 days to comment on these documents. The inspection is scheduled to take place the week of February 10, 2003.

EPA will inspect the following technical elements for characterizing retrievably-stored TRU debris and solid waste: data validation and verification, acceptable knowledge, nondestructive assay (NDA–WIT and APNEA), Digital Radiography/Computed Tomography, visual examination, and data tracking and reporting via the WIPP Waste Information System.

If EPA determines as a result of the inspection that the proposed CCP waste characterization processes and programs used at ANL–E adequately control the characterization of transuranic waste, we will notify DOE by letter and place the letter in the official Air Docket in Washington, DC, as well as in the informational docket locations in New Mexico. A letter of approval will allow DOE to ship transuranic waste from ANL–E to the WIPP. The EPA will not make a determination of compliance prior to the inspection or before the 30-day comment period has closed.

Information on the certification decision is filed in the official EPA Air Docket, Docket No. A–93–02 and is available for review in Washington, DC, and at three EPA WIPP informational docket locations in New Mexico. The dockets in New Mexico contain only major items from the official Air Docket in Washington, DC, plus those documents added to the official Air Docket since the October 1992 enactment of the WIPP LWA.

Dated: January 24, 2003.

Robert Brenner,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 03–2343 Filed 1–30–03; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA–P–7619]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Proposed rule.

SUMMARY: Technical information or comments are requested on the proposed Base (1% annual-chance) Flood Elevations (BFEs) and proposed BFE modifications for the communities listed below. The BFEs and modified BFEs are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The comment period is ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

ADDRESSES: The proposed BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Michael M. Grimm, Acting Chief, Hazard Study Branch, Federal Insurance and Mitigation Administration, FEMA, 500 C Street, SW., Washington, DC 20472, (202) 646–2878 or (e-mail) *michael.grimm@fema.gov.*

SUPPLEMENTARY INFORMATION: FEMA proposes to make determinations of BFEs and modified BFEs for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed BFEs and modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more

stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

National Environmental Policy Act. This proposed rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act. The Administrator for Federal Insurance and Mitigation Administration certifies that this proposed rule is exempt from the requirements of the Regulatory Flexibility Act because proposed or modified BFEs are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification. This proposed rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism. This proposed rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform. This proposed rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, flood insurance, reporting and record keeping requirements.

Accordingly, 44 CFR Part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

1. The authority citation for Part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.4 Proposed flood elevation determination.

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

Source of flooding and location of referenced elevation	*Elevation in feet (NGVD)		Communities affected
	Existing	Modified	
Grand Lake O' the Cherokees Entire shoreline	None	*756	Town of Grand Lake Towne.
Unnamed Tributary to Spavinaw Creek approximately 750 feet upstream of the confluence with Spavinaw Creek.	None	*637	Town of Spavinaw.
Neosho River/Lake Hudson Entire shoreline	None	*637	Town of Strang.

*National Geodetic Vertical Datum

Town of Grand Lake Towne

Maps are available for inspection at the Town Hall, Grand Lake Towne, Oklahoma.
Send comments to The Honorable Earl Hart, Mayor, Grand Lake Towne, P.O. Box 398, Grand Lake Towne, Oklahoma 74349.

Town of Spavinaw

Maps are available for inspection at the Town Hall, 215 Lake Avenue, Spavinaw, Oklahoma.
Send comments to The Honorable Allan Sutton, Mayor, Town of Spavinaw, P.O. Box 196, Spavinaw, Oklahoma 74366.

Town of Strang

Maps are available for inspection at the Town Hall, Strang, Oklahoma.
Send comments to The Honorable Steve Long, Mayor, Town of Strang, P.O. Box 196, Strang, Oklahoma 74366.

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Dated: January 21, 2003.

Anthony S. Lowe,

Administrator, Federal Insurance and Mitigation Administration.

[FR Doc. 03–2242 Filed 1–30–03; 8:45 am]

BILLING CODE 6718–04–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA–P–7621]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Proposed rule.

SUMMARY: Technical information or comments are requested on the proposed Base (1% annual-chance) Flood Elevations (BFEs) and proposed BFE modifications for the communities listed below. The BFEs and modified BFEs are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The comment period is 90 days following the second publication of this proposed rule in a newspaper of local circulation in each community.

ADDRESSES: The proposed BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Michael M. Grimm, Acting Chief, Hazard Study Branch, Federal Insurance and Mitigation Administration, FEMA, 500 C Street, SW., Washington, DC 20472, (202) 646–2878 or (e-mail) *michael.grimm@fema.gov*.

SUPPLEMENTARY INFORMATION: FEMA proposes to make determinations of BFEs and modified BFEs for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed BFEs and modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any

existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

National Environmental Policy Act. This proposed rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act. The Administrator for Federal Insurance and Mitigation Administration certifies that this proposed rule is exempt from the requirements of the Regulatory Flexibility Act because proposed or modified BFEs are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification. This proposed rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism. This proposed rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform. This proposed rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and record keeping requirements.

Accordingly, 44 CFR part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.4 Proposed flood elevation determination.

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet.	
				*(NGVD) Existing	♦ (NAVD) Modified
MN	Upper Sioux Community (Yellow Medicine County).	Minnesota River		881–882.	

Maps are available for inspection at the Office of the Tribal Council Secretary/FDPO Administrator, Upper Sioux Community Board of Trustees, Granite Falls, Minnesota.

Send comments to The Honorable Helen M. Blue, Tribal Chairperson, Upper Sioux Community Board of Trustees, P.O. Box 147, Granite Falls, MN 56241.

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Dated: January 21, 2003.

Anthony S. Lowe,

Administrator, Federal Insurance and Mitigation Administration.

[FR Doc. 03–2243 Filed 1–30–03; 8:45 am]

BILLING CODE 6718–04–P

Notices

Federal Register
Vol. 68, No. 21
Friday, January 31, 2003

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Research Service

Notice of Intent To Grant Exclusive License

AGENCY: Agricultural Research Service, USDA.

ACTION: Notice of intent.

SUMMARY: Notice is hereby given that the U.S. Department of Agriculture, Agricultural Research Service, intends to grant NutraSciences Corp., of San Diego, California a license to U.S. Patent No. 6,017,713, "Ferritin Formation as a Predictor of Iron Availability in Foods," issued on January 25, 2000. This will be the second license granted for this invention. ARS intends to grant no additional licenses. Notice of Availability of this invention for licensing was published in the **Federal Register** on November 3, 1999.

DATES: Comments must be received March 3, 2003.

ADDRESSES: Send comments to: USDA, ARS, Office of Technology Transfer, 5601 Sunnyside Avenue, Rm. 4–1174, Beltsville, Maryland 20705–5131.

FOR FURTHER INFORMATION CONTACT: June Blalock of the Office of Technology Transfer at the Beltsville address given above; telephone: 301–504–5989.

SUPPLEMENTARY INFORMATION: The Federal Government's patent rights in this invention are assigned to the United States of America, as represented by the Secretary of Agriculture. It is in the public interest to so license this invention as NutraSciences Corp. of San Diego, California has submitted a complete and sufficient application for a license. The prospective license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective license may be granted unless, within thirty (30) days from the date of this published Notice, the Agricultural Research Service receives written evidence and argument which establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Michael D. Ruff,

Assistant Administrator.

[FR Doc. 03–2249 Filed 1–30–03; 8:45 am]

BILLING CODE 3410–03–P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. 03–001N]

Codex Alimentarius Commission: 25th (Extraordinary) Session of the Codex Alimentarius Commission

AGENCY: Office of the Under Secretary for Food Safety.

ACTION: Notice of public meeting; request for comments.

SUMMARY: The Office of the Under Secretary for Food Safety, United States Department of Agriculture, and the Food and Drug Administration (FDA) are sponsoring a public meeting on January 31, 2003, to provide information and receive public comments on agenda items that will be discussed at the meeting of the Codex Alimentarius Commission to be held in Geneva, Switzerland on February 13–15, 2003. The Under Secretary and FDA recognize the importance of providing interested parties the opportunity to obtain background information on the Twenty-fifth (Extraordinary) Session of Codex Alimentarius Commission (Codex) and to address items on the Agenda for the 25th Commission meeting.

DATES: The public meeting is scheduled for Friday, January 31, 2003, from 10 a.m. to 1 p.m.

ADDRESSES: The public meeting will be held in Room 107A, Jamie L. Whitten Federal Building, USDA, 12th and Jefferson Drive, SW., Washington, DC. To receive copies of the documents referenced in the notice contact the FSIS Docket Clerk, U.S. Department of Agriculture, Food Safety and Inspection Service, Room 102, Cotton Annex, 300 12th Street, SW., Washington, DC 20250–3700. The documents will also be accessible via the World Wide Web. If you have comments, please send an original and two copies to the FSIS Docket Clerk and reference Docket Number 03–001N. All comments submitted will be available for public inspection in the Docket Clerk's Office between 8:30 a.m. and 4:30 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: F. Edward Scarbrough, Ph.D., U.S. Manager for Codex, U.S. Codex Office, Food Safety and Inspection Service, Room 4861, South Building, 1400 Independence Avenue, SW., Washington, DC 20250, Phone: (202) 205–7760, Fax: (202) 720–3157.

SUPPLEMENTARY INFORMATION:

Background

Codex was established in 1962 by two United Nations organizations, the Food and Agriculture Organization (FAO) and the World Health Organization (WHO). Codex is the major international organization for protecting the health and economic interests of consumers and encouraging fair international trade in food. Through adoption of food standards, codes of practice, and other guidelines developed by its committees, and by promoting their adoption and implementation by governments, Codex seeks to ensure that the world's food supply is sound, wholesome, free from adulteration, and correctly labeled. In the United States, USDA, FDA, and the Environmental Protection Agency (EPA) manage and carry out U.S. Codex activities.

Issues To Be Discussed at the Public Meeting

Report of the Evaluation of the Codex Alimentarius and other FAO and WHO Food Standards Work. An evaluation was commissioned by FAO and WHO and also designed to meet the request for a review by the Codex Alimentarius Commission. The evaluation team has completed its work and made over 40 recommendations regarding Codex policies and procedures, the expert committees, and capacity building efforts of FAO and WHO. These recommendations will be discussed at the public meeting and at the 25th (Extraordinary) Session of the Commission.

FAO/WHO Trust Fund. At its 24th Session, the Codex Alimentarius Commission agreed in principle to establish an FAO/WHO Trust Fund to support developing country participation in the Codex Commission and subsidiary body meetings. FAO and

WHO were to develop clear rules and procedures for the establishment and functioning of a trust fund for consideration by the Commission to ensure its complete transparency and avoidance of bias and influence, to report on its implementation and indicate envisioned sources of funding. These rules and procedures will be discussed at the public meeting and at the 25th (Extraordinary) Session of the Commission.

Public Meeting

At the January 31st public meeting, the agenda items will be described and discussed, and attendees will have the opportunity to pose questions and offer comments. Comments may be sent to the FSIS Docket Room (see **ADDRESSES**). Written comments should state that they relate to activities of the 25th (Extraordinary) Session of the Codex Alimentarius Commission.

Additional Public Notification

Pursuant to Departmental Regulation 4300–4, "Civil Rights Impact Analysis," dated September 22, 1993, FSIS has considered the potential civil rights impact of this notice on minorities, women, and persons with disabilities. Therefore, to ensure that these groups and others are made aware of this meeting, FSIS will announce it and provide copies of the **Federal Register** publication in the FSIS Constituent Update. FSIS provides a weekly FSIS Constituent Update, which is communicated via Listserv, a free e-mail subscription service. In addition, the update is available on line through the Internet at *http://www.fsis.usda.gov*. The update is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, recalls, and any other types of information that could affect or would be of interest to our constituents and stakeholders. The constituent Listserv consists of industry, trade, and farm groups, consumer interest groups, allied health professionals, scientific professionals, and other individuals who have requested to be included. Through the Listserv and web page, FSIS is able to provide information to a much broader, more diverse audience.

For more information, contact the Congressional and Public Affairs Office at (202) 720–9113. To be added to the free e-mail subscription service (Listserv), go to the "Constituent Update" page on the FSIS Web site at *http://www.fsis.usda.gov/oa/update.htm*. Click on the "Subscribe to the Constituent Update Listserv" link, then fill out and submit the form.

Done at Washington, DC, on January 28, 2003.

F. Edward Scarbrough,

U.S. Manager for Codex Alimentarius.

[FR Doc. 03–2305 Filed 1–30–03; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. 03–002N]

Codex Alimentarius: Meeting of the Codex Committee on Residues of Veterinary Drugs in Foods

AGENCY: Office of the Under Secretary for Food Safety.

ACTION: Notice of public meeting; request for comments.

SUMMARY: The Office of the Under Secretary for Food Safety, U.S. Department of Agriculture (USDA) and the Center for Veterinary Medicine (CVM), U.S. Food and Drug Administration (FDA), are sponsoring a public meeting on Tuesday, February 18, 2003, to provide information and receive public comments on agenda items that will be discussed at the 14th Session of the Codex Committee on Residues of Veterinary Drugs in Foods (CCRVDF), which will be held in Washington, DC on March 4–7, 2003. The Under Secretary and CVM recognize the importance of providing interested parties with information about CCRVDF of the Codex Alimentarius Commission and of discussing items on the Agenda for the 14th Session of the Committee.

DATES: The public meeting is scheduled for Tuesday, February 18, 2003 from 9 a.m. to 12 p.m.

ADDRESSES: The public meeting will be held in Room 0161 of the South Building, Department of Agriculture, 1400 Independence Avenue SW., Washington, DC (Smithsonian Metro Stop). To receive copies of the documents referenced in the notice contact the FSIS Docket Clerk, U.S. Department of Agriculture, Food Safety and Inspection Service, Room 102, Cotton Annex, 300 12th Street, SW., Washington, DC 20250–3700. The documents will also be accessible via the World Wide Web at the following address: *http://www.codexalimentarius.net/current.asp*. A link is provided there to the agenda.

If you have comments, please send an original and two copies to the FSIS Docket Clerk and reference Docket Number 03–002N. All comments submitted will be available for public inspection in the Docket Clerk's Office between 8:30 am and 4:30 pm, Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Edith E. Kennard, Staff Officer, U.S. Codex Office, Food Safety and Inspection Service, Room 4861, South Building, 1400 Independence Avenue SW., Washington, DC 20250, Phone: (202) 720–5261, Fax: (202) 720–3157, e-mail: *edith.kennard@fsis.usda.gov*.

SUPPLEMENTARY INFORMATION:

Background

The Codex Alimentarius Commission was established in 1962 by two United Nations organizations, the Food and Agriculture Organization (FAO) and the World Health Organization (WHO). Codex is the major international organization for encouraging fair international trade in food and protecting the health and economic interests of consumers. Through adoption of food standards, codes of practice, and other guidelines developed by its committees, and by promoting their adoption and implementation by governments, Codex seeks to ensure that the world's food supply is sound, wholesome, free from adulteration, and correctly labeled. In the United States, USDA, FDA, and the Environmental Protection Agency (EPA) manage and carry out U.S. Codex activities.

The Codex Committee on Residues of Veterinary Drugs in Foods held its First Session in Washington, DC on 27–31 October, 1986. The Committee's Terms of Reference are:

(a) To determine priorities for the consideration of residues of veterinary drugs in foods;

(b) To recommend maximum levels of such substances;

(c) To develop codes of practice as may be required;

(d) To consider methods of sampling and analysis for the determination of veterinary drug residues in foods.

The Codex Committee on Residues of Veterinary Drugs in Foods is hosted by the United States.

Issues To Be Discussed at the Public Meeting

Provisional agenda items to be discussed during the public meeting:

—Consideration of Draft Maximum Residue Limits for Veterinary Drugs;

—Proposed Draft Appendix on the Prevention and Control of Veterinary Drug Residues in Milk and Milk Products;

—Proposed Draft Code of Practice to Minimize and Contain Antimicrobial Resistance;

—Proposed Draft Revised Guidelines for the Establishment of a Regulatory Programme for the Control of Veterinary Drugs in Foods;
—Discussion Paper on Risk Analysis Principles and Methodologies, including Risk Assessment;
—Policies in the Codex Committee on Residues of Veterinary Drugs in Foods;
—Discussion Paper on Residue Issues;
—Review of Performance-Based Criteria for Methods of Analysis;
—Consideration of the Identification of Routine Methods of Analysis;
—Consideration of the Priority List of Veterinary Drugs Requiring Evaluation or Re-evaluation.

Public Meeting

At the February 18 public meeting, the agenda items will be described and discussed, and attendees will have the opportunity to pose questions and offer comments. Comments may be sent to the FSIS Docket Room (see **ADDRESSES**). Written comments should state that they relate to activities of the Codex Committee on Residues of Veterinary Drugs in Foods.

Additional Public Notification

Pursuant to Departmental Regulation 4300–4, "Civil Rights Impact Analysis," dated September 22, 1993, FSIS has considered the potential civil rights impact of this notice on minorities, women, and persons with disabilities. Therefore, to ensure that these groups and others are made aware of this meeting, FSIS will announce it and provide copies of the **Federal Register** publication in the FSIS Constituent Update. FSIS provides a weekly FSIS Constituent Update, which is communicated via Listserv, a free e-mail subscription service. In addition, the update is available on line through the Internet at *http://www.fsis.usda.gov*. The update is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, recalls, and any other types of information that could affect or would be of interest to our constituents and stakeholders. The constituent Listserv consists of industry, trade, and farm groups, consumer interest groups, allied health professionals, scientific professionals, and other individuals who have requested to be included. Through the Listserv and Web page, FSIS is able to provide information to a much broader, more diverse audience.

For more information, contact the Congressional and Public Affairs Office at (202) 720–9113. To be added to the free e-mail subscription service (Listserv), go to the "Constituent Update" page on the FSIS Web site at *http://www.fsis.usda.gov/oa/update.htm*. Click on the "Subscribe to the Constituent Update Listserv" link, then fill out and submit the form.

Done at Washington, DC, on January 28, 2003.

F. Edward Scarbrough,

U.S. Manager for Codex Alimentarius.

[FR Doc. 03–2306 Filed 1–30–03; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. 03–003N]

Codex Alimentarius Commission: 4th Session of the Codex Ad Hoc Intergovernmental Task Force on Foods Derived From Biotechnology

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice of public meeting, request for comments.

SUMMARY: The Office of the Under Secretary for Food Safety, United States Department of Agriculture (USDA), and the Food and Drug Administration (FDA) are sponsoring a public meeting on February 20, 2003, to provide information and receive public comments on agenda items that will be discussed at the 4th Session of the Codex Ad Hoc Intergovernmental Task Force on Foods Derived from Biotechnology (FBT) to be held in Yokohama, Japan, on March 11–14, 2003. The Under Secretary and FDA recognize the importance of providing interested parties the opportunity to obtain background information on the 4th Session of the Codex Ad Hoc Intergovernmental Task Force on Foods Derived from Biotechnology and to address items on the Agenda for the 4th FBT.

DATES: The public meeting is scheduled for Thursday, February 20, 2003 from 2 p.m. to 4 p.m.

ADDRESSES: The public meeting will be held in the Lincoln Room, White House Conference Center, 726 Jackson Place, NW., Washington, DC. To receive copies of the documents referenced in the notice contact the FSIS Docket Clerk, U.S. Department of Agriculture, Food Safety and Inspection Service, Room 102, Cotton Annex, 300 12th Street, SW., Washington, DC 20250–3700. The documents will also be accessible via the World Wide Web at *http://www.codexalimentarius.net/ccfbt4/bt03_01e.htm*. If you have comments, please send an original and two copies to the FSIS Docket Clerk and reference Docket #03–003N. All comments submitted will be available for public inspection in the Docket Clerk's Office between 8:30 a.m. and 4:30 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: F. Edward Scarbrough, Ph.D., U.S. Manager for Codex, U.S. Codex Office, Food Safety and Inspection Service, Room 4861, South Building, 1400 Independence Avenue SW., Washington, DC 20250, Phone: (202) 205–7760, Fax: (202) 720–3157.

SUPPLEMENTARY INFORMATION:

Background

Codex was established in 1962 by two United Nations organizations, the Food and Agriculture Organization (FAO) and the World Health Organization (WHO). Codex is the major international organization for protecting the health and economic interests of consumers and encouraging fair international trade in food. Through adoption of food standards, codes of practice, and other guidelines developed by its committees, and by promoting their adoption and implementation by governments, Codex seeks to ensure that the world's food supply is sound, wholesome, free from adulteration, and correctly labeled. In the United States, USDA, FDA, and the Environmental Protection Agency (EPA) manage and carry out U.S. Codex activities.

The Codex Ad Hoc Intergovernmental Task Force on Foods Derived from Biotechnology was established to develop standards, guidelines or recommendations, as appropriate, for foods derived from biotechnology or traits introduced into foods by biotechnology, on the basis of scientific evidence, risk analysis and having regard, where appropriate to other legitimate factors relevant to the health of consumers and the promotion of fair trade practices. The Task Force, which was given four years to complete its work, held its first session in 2000.

Issues To Be Discussed at the Public Meeting

The provisional agenda items will be discussed during the public meeting:

1. Adoption of the Agenda (CX/FBT 03/1).
2. Matters Referred to the Task Force by Other Codex Committees (CX/FTB 03/2).
3. Matters of Interest from Other International Organizations with respect to the Evaluation of the Safety and Nutrition Aspects of Foods Derived from Biotechnology (CX/FBT 03/3).

4. Consideration of Draft Guideline for the Conduct of Food Safety Assessment of Foods Produced Using Recombinant-DNA Microorganisms (CL 2002/40–FBT, ALINORM 03/34, Appendix V).

5. Open Discussion on Traceability.

Public Meeting

At the February 20th public meeting, the agenda items will be described, discussed, and attendees will have the opportunity to pose questions and offer comments. Comments may be sent to the FSIS Docket Room (see **ADDRESSES**). Written comments should state that they relate to activities of the 4th Session of the Codex Ad Hoc Intergovernmental Task Force on Foods Derived from Biotechnology, Docket #03–003N.

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, in an effort to better ensure that minorities, women, and persons with disabilities are aware of this notice, FSIS will announce it and make copies of this **Federal Register** publication available through the FSIS Constituent Update. FSIS provides a weekly Constituent Update, which is communicated via Listserv, a free e-mail subscription service. In addition, the update is available on-line through the FSIS Web page located at *http://www.fsis.usda.gov*. The update is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, recalls, and any other types of information that could affect or would be of interest to our constituents/stakeholders. The constituent Listserv consists of industry, trade, and farm groups, consumer interest groups, allied health professionals, scientific professionals, and other individuals that have requested to be included. Through the Listserv and Web page, FSIS is able to provide information to a much broader, more diverse audience.

For more information, contact the Congressional and Public Affairs Office, at (202) 720–9113. To be added to the free e-mail subscription service (Listserv) go to the "Constituent Update" page on the FSIS Web site at *http://www.fsis.usda.gov/oa/update/update.htm*. Click on the "Subscribe to the Constituent Update Listserv" link, then fill out and submit the form.

F. Edward Scarbrough,

U.S. Manager for Codex Alimentarius.

[FR Doc. 03–2307 Filed 1–30–03; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Forest Service

Madera County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of resource advisory committee meeting

SUMMARY: Pursuant to the authorities in the Federal Advisory Committee Act of 1972 (Pub. L. 92–463) and under the secure Rural Schools and Community Self-Determination Act of 2000 (Pub. L. 106–393) the Sierra National Forest's Resource Advisory Committee for Madera County will meet on Monday, February 17, 2003. The Madera Resource Advisory Committee will meet at the U.S.D.A. Forest Service Office, 57003 Road 225, North Fork, CA. The purpose of the meeting is update on the RAC committee outreach and RAC Proposal presentations.

DATES: The Madera Resource Advisory Committee meeting will be held Monday, February 17, 2002. The meeting will be held from 7 p.m. to 9 p.m.

ADDRESSES: The Madera County RAC meeting will be held a the U.S.D.A. Forest Service Office, 57003 Road 225, North Fork, CA.

FOR FURTHER INFORMATION CONTACT: Dave Martin, U.S.D.A., Sierra National Forest, 57003 Road 225, North Fork, CA, 93643 (559) 877–2218 ext. 3100; e-mail *dmartin05@fs.fed.us.*

SUPPLEMENTARY INFORMATION: Agenda items to be covered include: (1) Update on RAC committee outreach, and (2) RAC Proposal presentations. The meeting is open to the public. Public input opportunity will be provided and individuals will have the opportunity to address the Committee at that time.

Dated: January 24, 2003.

David W. Martin,

District Ranger.

[FR Doc. 03–2274 Filed 1–30–03; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Brazos Electric Power Cooperative, Inc.; Notice of Intent To Hold Public Workshops and Prepare an Environmental Assessment

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice of intent To hold public workshops and prepare an environmental assessment.

SUMMARY: The Rural Utilities Service (RUS) intends to hold public scoping workshops and prepare an environmental assessment (EA) in connection with possible impacts related to the construction and operation of a new gas-fired combustion turbine generation facility. The project is proposed by Brazos Electric Power Cooperative, Inc. (Brazos), of Waco, Texas. RUS may provide financing assistance for the project. RUS will hold two public scoping workshops for a proposed Gas-fired Electrical Generation Plant. The first workshop is scheduled for Tuesday, February 11, 2003, from 3 p.m. until 7 p.m. at the Decatur Civic Center. The Decatur Civic Center is located at 2010 W. U.S. 380, in Decatur, Texas. The second workshop will be held on Wednesday, February 12, 2003, from 3 p.m. until 7 p.m. at the Twin Lakes Community Center. The Twin Lakes Community Center is located at 420 Highway 59, Jacksboro, Texas.

FOR FUTHER INFORMATION CONTACT: Dennis E. Rankin, Environmental Protection Specialist, RUS, Engineering and Environmental Staff, Stop 1571, 1400 Independence Avenue, SW., Washington, DC 20250–1571, telephone: (202) 720–1953 or e-mail: *drankin@rus.usda.gov.*; or Mike McClendon, Brazos at (254) 750–6326 or e-mail: *mmlendon@brazoselectric.com.*

SUPPLEMENTARY INFORMATION: Brazos is proposing to construct a new gas-fired combustion turbine and is evaluating potential sites located in Wise and Jack Counties, Texas. One potential site is located in the southwest corner of Wise County. It is approximately 11 miles northwest of Springtown, west of the intersection of State Highway 199 and FM 920. A second potential site is located north of the City of Bridgeport on or adjacent to the former U.S. Stone Mining company operation northwest of the intersection of State Highway 101 and FM 1658. The third potential site is located northeast of State Highway 199 and FM 1156 in Jack County and southeast of the intersection of Shepard Road/Henderson Ranch Rd. and FM 1156. Associated facilities include a gas pipeline, water pipeline and transmission facilities generation plant.

Comments regarding the proposed project may be submitted in writing at the public workshop or in writing no later than March 14, 2003, to RUS at the address provided above.

An environmental assessment (EA) will be prepared for the proposed project. Based on a review of the Environmental Assessment and other relevant information, RUS will determine if the preparation of an

environmental impact statement is necessary. Should RUS determine that the preparation of an environmental impact statement is not necessary, it will prepare a Finding of No Significant Impact.

Any final action by RUS related to the proposed project will be subject to, and contingent upon, compliance with all relevant Federal, State, and local environmental laws and regulations and completion of the environmental review procedures as prescribed by RUS' Environmental Policies and Procedures.

Dated: January 28, 2003.

Lawrence R. Wolfe,

Acting Director, Engineering and Environmental Staff, Rural Utilities Service.

[FR Doc. 03–2314 Filed 1–30–03; 8:45 am]

BILLING CODE 3410–15–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to Procurement List.

SUMMARY: The Committee is proposing to add to the Procurement List services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

COMMENTS MUST BE RECEIVED ON OR BEFORE: March 2, 2003.

ADDRESS: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION CONTACT: Sheryl D. Kennerly, (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, the entities of the Federal Government identified in the notice for each service will be required to procure the services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the services to the Government.

2. If approved, the action will result in authorizing small entities to furnish the services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the services proposed for addition to the Procurement List. Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following services are proposed for addition to Procurement List for production by the nonprofit agencies listed:

Services

Service Type/Location: Janitorial/Custodial, U.S. Army Reserve Center, Arlington Heights, Illinois.
NPA: Jewish Vocational Service and Employment Center, Chicago, Illinois.
Contract Activity: Headquarters, 88th Regional Support Command, Fort Snelling, Minnesota.
Service Type/Location: Janitorial/Custodial, U.S. Army Reserve Center, Marion, Illinois.
NPA: Franklin-Williamson Human Services, Inc., West Frankfort, Illinois.
Contract Activity: Headquarters, 88th Regional Support Command, Fort Snelling, Minnesota.

G. John Heyer,

General Counsel.

[FR Doc. 03–2303 Filed 1–30–03; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List Additions

AGENCY: Committee for Purchase from People Who Are Blind or Severely Disabled.

ACTION: Additions to Procurement List.

SUMMARY: This action adds to the Procurement List services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: March 2, 2003.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION CONTACT: Sheryl D. Kennerly, (703) 603–7740.

SUPPLEMENTARY INFORMATION: On November 22, December 6, and December 20, 2002, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (67 FR 70401, 72640, and 77926) of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the services and impact of the additions on the current or most recent contractors, the Committee has determined that the services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4. I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the services to the Government.

2. The action will result in authorizing small entities to furnish the services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the services proposed for addition to the Procurement List.

Accordingly, the following services are added to the Procurement List:

Services

Service Type/Location: Chemical Latrine Rental Servicing, Vault Latrine Servicing, Fort Lewis & Yakima Training Center, Fort Lewis, Washington.
NPA: Skookum Educational Programs, Port Townsend, Washington.
Contract Activity: Directorate of Contracting, Fort Lewis, Washington.
Service Type/Location: Food Service, 105th Airlift Wing, Newburgh, New York.
NPA: Occupations, Inc., Middletown, New York.
Contract Activity: 105th Airlift Wing/LGC, Newburgh, New York.
Service Type/Location: Janitorial/Custodial, National Park Service, C&O Canal National Historical Park Visitor Center, Cumberland, Maryland.
NPA: Hagerstown Goodwill Industries, Inc., Hagerstown, Maryland.
Contract Activity: National Park Service, C&O Canal NHP, Hagerstown, Maryland.

This action does not affect current contracts awarded prior to the effective

date of this addition or options that may be exercised under those contracts.

G. John Heyer,
General Counsel.
[FR Doc. 03–2304 Filed 1–30–03; 8:45 am]
BILLING CODE 6353–01–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-122–845, A-122–847]

Notice of Postponement of Preliminary Antidumping Duty Determinations: Certain Durum Wheat and Hard Red Spring Wheat from Canada

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce is extending the time limit for the preliminary determinations in the antidumping duty investigations on certain durum wheat and hard red spring wheat from Canada from March 12, 2003 until no later than May 1, 2003. This extension is made pursuant to section 733(c)(1)(B) of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act.

EFFECTIVE DATE: January 31, 2003.

FOR FURTHER INFORMATION CONTACT: Jarrod Goldfeder at (202) 482–0189 or Cole Kyle at (202) 482–1503, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

Postponement of Preliminary Determinations

On October 29, 2002, the Department of Commerce ("the Department") published the initiation of the antidumping duty investigations of imports of certain durum wheat and hard red spring wheat from Canada (*see Notice of Initiation of Antidumping Duty Investigations: Certain Durum Wheat and Hard Red Spring Wheat from Canada*, 67 FR 65947 (October 29, 2002) ("*Initiation Notice*")). The *Initiation Notice* stated that we would make our preliminary determinations for these antidumping duty investigations no later than March 12, 2003, 140 days after the date of issuance of the initiation.

Pursuant to section 733(c)(1)(B) of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act ("the Act"), the Department can extend the period for reaching a preliminary determination until no later than the 190th day after the date on which the administrating authority initiates an investigation if:

(B) the administrating authority concludes that the parties concerned are cooperating and determines that

(i) the case is extraordinarily complicated by reason of

(I) the number and complexity of the transactions to be investigated or adjustments to be considered,

(II) the novelty of the issues presented, or

(III) the number of firms whose activities must be investigated, and (ii) additional time is necessary to make the preliminary determination.

Regarding the first requirement, we find that all concerned parties are cooperating in each case.

Regarding the second requirement, we find that these cases are extraordinarily complicated because of the novelty of the issues presented. Specifically, the Department requires additional time to examine all relevant facts pertaining to whether a particular market exists in the Canadian market in accordance with section 773(a)(1)(C)(iii) of the Act. Furthermore, once we have determined the appropriate comparison market for these investigations, we need adequate time to gather and analyze the appropriate sales data from the respondent.

Pursuant to section 733(c)(1)(B) of the Act, we have determined that these cases are extraordinarily complicated and that additional time is necessary to make our preliminary determinations. Therefore, we are postponing the preliminary determinations until no later than May 1, 2003.

This notice is published pursuant to section 733(c)(2) of the Act.

Dated: January 24, 2003.
Faryar Shirzad,
Assistant Secretary for Import Administration.
[FR Doc. 03–2329 Filed 1–30–03; 8:45 am]
BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–552–801]

Notice of Preliminary Determination of Sales at Less Than Fair Value, Affirmative Preliminary Determination of Critical Circumstances and Postponement of Final Determination: Certain Frozen Fish Fillets From the Socialist Republic of Vietnam

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: January 31, 2003.

FOR FURTHER INFORMATION CONTACT: Alex Villanueva, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–3208.

Preliminary Determination

We preliminarily determine that certain frozen fish fillets from the Socialist Republic of Vietnam are being, or are likely to be, sold in the United States at less than fair value ("LTFV"), as provided in section 733 of the Tariff Act of 1930, as amended ("the Act"). The estimated margins of sales at LTFV are shown in the "Suspension of Liquidation" section of this notice.

Case History

On June 28, 2002, the Department of Commerce ("Department") received a petition on imports of certain frozen fish fillets from the Socialist Republic of Vietnam ("Vietnam") filed in proper form by Catfish Farmers of America ("CFA") and the individual U.S. catfish processors America's Catch Inc.; Consolidated Catfish Co., L.L.C.; Delta Pride Catfish, Inc.; Harvest Select Catfish, Inc.; Heartland Catfish Company; Pride of the Pond; Simmons Farm Raised Catfish, Inc.; and Southern Pride Catfish Co., Inc., hereinafter referred to collectively as "the petitioners." This investigation was initiated on July 18, 2002. *See Notice of Initiation of Antidumping Duty Investigation: Certain Frozen Fish Fillets from the Socialist Republic of Vietnam* ("*Notice of Initiation*"), 67 FR 48437 (July 24, 2002). The Department initiated the investigation using both a market economy and non-market economy analysis. For a further discussion of Vietnam's market analysis, please see the "Non Market Economy Country Status" section below. The Department set aside a period for all interested parties to raise issues regarding product coverage. *See Notice of Initiation* at 48437–38. We received comments regarding product coverage from interested parties. For a detailed discussion of the comments regarding the scope of the merchandise under investigation, please see the "Scope of the Investigation" section below.

On August 8, 2002, the United States International Trade Commission ("ITC") issued its affirmative preliminary determination that there is a reasonable indication that an industry in the United States is threatened with material injury by reason of imports from Vietnam of certain frozen fish fillets, which was published in the

Federal Register on August 15, 2002. *See Certain Frozen Fish Fillets from Vietnam*, 67 FR 53362 (August 15, 2002).

On August 9, 2002, the Department requested quantity and value ("Q&V") information from a total of fifty-three Vietnamese companies, which were identified in the *Petition for the Imposition of Antidumping Duties: Frozen Fish Fillets from the Socialist Republic of Vietnam*, dated June 28, 2002 ("*Petition*") and for which the Department was able to locate contact information. On August 9, 2002, the Department also sent the Government of Vietnam a letter requesting assistance locating all known Vietnamese producers/exporters of frozen fish fillets who exported certain frozen fish fillets to the United States during the market (April 1, 2001 through March 31, 2002) and non-market (October 1, 2001 through March 31, 2002) economy periods of investigation and quantity and value information for all exports to the United States of the merchandise under investigation during the period of investigation. On August 20, 2002, we received a letter from Grobest Industrial (Vietnam) Co., Ltd., ("Grobest"), which indicated that Grobest did not sell certain frozen fish fillets to the United States during the market or non-market economy periods. On August 22, 2002, the Department received a letter from Minh Hai Sea Products Import and Export Corporation ("SEAPRIMEXCO"), which indicated that SEAPRIMEXCO did not sell certain frozen fish fillets to the United States during the market or non-market economy periods. Additionally, on August 23, 2002, we received thirteen responses to our Q&V information request. The following thirteen companies submitted quantity and value information: An Giang Agriculture and Food Import Export Company ("Afiex"), An Giang Fisheries Import Export Joint Stock Company ("Agifish"), Ben Tre Frozen Aquaproduct Export Company ("Ben Tre"), Can Tho Agricultural and Animal Products Import Export Company ("CATACO"), Can Tho Animal Fishery Products Processing Export Enterprise ("CAFATEX"), Da Nang Seaproducts Import-Export Corporation ("Da Nang"), Mekong Fish Company ("Mekonimex"), Nam Viet Company Limited ("Nam Viet"), QVD Food Company Limited ("QVD"), Tien Gang Seaproduct Company ("Tieng Gang"), Viet Hai Seafood Company Limited ("Viet Hai"), Vinh Hoan Company Limited ("Vinh Hoan") and Vinh Long Import-Export Company ("Vinh Long").

On August 27, 2002, the Department published a postponement of the preliminary antidumping duty determination on certain frozen fish fillets from Vietnam. *See Notice of Postponement of the Preliminary Determination of the Certain Frozen Fish Fillets from the Socialist Republic of Vietnam Antidumping Duty Investigation* (*Notice of Prelim Postponement*") 67 FR 55003 (August 27, 2002).

On August 30, 2002, the Department requested comments on surrogate country and factor valuation information in order to have sufficient time to consider them for the preliminary determination.

On September 4, 2002, the Department issued its respondent selection memorandum, selecting Agifish, Vinh Hoan, Nam Viet and CATACO, hereinafter referred to collectively as "the respondents," to be investigated. *See Memorandum to the File from James C. Doyle, Program Manager to Edward C. Yang, Director, Office IX, Antidumping Duty Investigation of Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Selection of Respondents* ("*Respondent Selection Memo*"), dated September 4, 2002.

On September 4, 2002, the Department requested comments from parties regarding the appropriate physical characteristics of certain frozen fish fillets to be reported. On September 5, 2002, the petitioners requested a revision in the schedule for submission of surrogate country comments. On September 6, 2002 the respondents also requested an extension of time to submit surrogate country and factor value information. On September 9, 2002, the Department revised its schedule for submitting comments on the appropriate surrogate country.

On September 11, 2002, the petitioners and the respondents submitted comments regarding the appropriate physical characteristics of certain frozen fish fillets. On September 13, 2002, the respondents submitted rebuttal comments regarding the appropriate physical characteristics of certain frozen fish fillets. On September 16, 2002, the Department sent the respondents Section A of the Department's market and non-market economy antidumping duty questionnaires. In addition, on September 16, 2002, we sent the Government of Vietnam Section A of the Department's market and non-market economy antidumping duty questionnaires.

On September 18, 2002, the petitioners submitted rebuttal comments addressing the respondents' comments and rebuttal comments regarding the appropriate physical characteristics of certain frozen fish fillets.

On September 23, 2002, the petitioners submitted a letter notifying the Department of increased shipments of subject merchandise to the United States in advance of the Department's preliminary determination in this proceeding, and accordingly, requested that the Department take action to collect information regarding entries of subject merchandise pursuant to section 732a(e) of the Act (19 U.S.C. 1673a(e)) and 19 CFR 351.206(g).

On September 23, 2002, the Department sent the respondents and the Government of Vietnam Sections B, C and E of the Department's market economy questionnaire and Sections C & D of the non-market economy questionnaire.

On October 2, 2002, the respondents requested a two-week extension to file their Section A market economy and non-market economy questionnaire responses. On October 3, 2002, the Department granted a partial extension for the respondents to submit their Section A market economy and non-market economy questionnaire responses.

On October 7, 2002, the petitioners requested an extension of time to submit a country-wide sales below cost allegation in the event the Department determines that Vietnam is to be treated as a market economy for antidumping duty purposes. On October 10, 2002, the respondents requested an additional extension to file Section A market and non-market economy questionnaire responses. On October 15, 2002, the petitioners withdrew their October 7, 2002 request for an extension of the deadline to submit a country-wide sales below cost allegation. On October 15, 2002, the Department extended the deadline for the respondents to submit Section A market and non-market economy questionnaire responses. On October 15, 2002, the respondents submitted their Section A market and non-market economy responses. The Government of Vietnam did not provide a response.

On October 23, 2002, the Department received Section A market and non-market economy responses from Afiex, Cafatex, Da Nang, Mekonimex, QVD, Viet Hai and Vinh Long, hereinafter referred to as "the voluntary Section A respondents." On October 24, 2002, the petitioners submitted comments on the market and non-market economy Section A questionnaire responses. On October 24, 2002, the respondents requested an extension for filing the respondents' and the voluntary Section A respondents' non-market economy

Sections C and D questionnaire responses. On October 25, 2002, the Department issued supplemental Section A market and non-market economy questionnaires to the respondents and the voluntary Section A respondents. On October 28, 2002, the respondents requested an extension of time to submit responses to the Department's market and non-market economy supplemental Section A questionnaires. On October 30, 2002, the Department granted the respondents' extension request for their responses to the market and non-market economy Sections C and D questionnaires.

On November 5, 2002, the petitioners submitted comments regarding the voluntary Section A respondents' market and non-market economy responses. On November 6, 2002, the respondents requested an extension of time to submit their market economy Sections B and C of the questionnaires. On November 8, 2002, the petitioners requested an extension of time to submit surrogate country comments and factor value information. Additionally, on November 8, 2002, the Department determined that Vietnam will be treated as a non-market economy country for the purposes of antidumping and countervailing duty proceedings. *See Memorandum for Faryar Shirzad, Assistant Secretary, Import Administration from Shauna Lee-Alaia, George Smolik, Athanasios Mihalakas and Lawrence Norton, Office of Policy through Albert Hsu, Senior Economist, Office of Policy, Import Administration, Jeffrey May, Director, Office of Policy, Import Administration, Antidumping Duty Investigation of Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Determination of Market Economy Status* ("*Market Status Memo*"), dated November 8, 2002. For a more detailed discussion, please see the "Non-Market Economy Status" section below.

On November 12, 2002, the Department sent the respondents and the voluntary Section A respondents a letter informing them that because the Department determined that Vietnam is to be treated as a non-market economy, the respondents and the voluntary Section A respondents were no longer required to submit Sections B, C & E of the market economy antidumping duty questionnaire sent on September 23, 2002. In addition, we stated that the respondents and the voluntary Section A respondents were no longer required to submit the market economy Section A supplemental questionnaire sent on October 25, 2002. On November 13, 2002, the respondents submitted non-market economy Sections C & D questionnaire responses. All subsequent responses from the respondents and voluntary Section A respondents were responses to the non-market economy questionnaire.

On November 14, 2002, the respondents submitted a letter agreeing to the extension of time request submitted by the petitioners on November 8, 2002 for purposes of submitting surrogate country comments and factor value information. On November 14, 2002, the Department granted an extension request for interested parties to submit surrogate country comments and factor value information.

On November 15, 2002, the petitioners filed a formal critical circumstances allegation in accordance with 19 CFR 351.206(c)(2)(iii). For a more detailed discussion, please see the "Critical Circumstances" section below. On November 15, 2002, the Department issued a supplemental questionnaire on the respondents' Section D responses. On November 15, 2002, the respondents submitted their responses to the Department's Section A supplemental questionnaire.

On November 18, 2002, the Department issued a Section A supplemental questionnaire to the voluntary Section A respondents. On November 22, 2002, the respondents submitted their responses to the Department's Section D supplemental questionnaire dated November 15, 2002. On November 25, 2002, Agifish and Vinh Hoan submitted a correction to their factors of production database. On November 25, 2002, the Department received an extension request to delay the submittal of the supplemental responses from the voluntary Section A respondents. Also on November 25, 2002, the Department requested that the respondents provide monthly shipment data for use in the critical circumstances determination.

On December 2, 2002, the petitioners submitted comments regarding the respondents' Sections C and D questionnaire responses dated November 13, 2002. On December 6, 2002, the respondents requested an extension of time regarding the Department's request for monthly shipment data. Additionally, the voluntary Section A respondents requested an extension of time to submit their supplemental questionnaire responses. Also on December 6, 2002, the Department issued a Sections C and D supplemental questionnaire to the respondents. On December 6, 2002, the Department granted a second extension of time to submit surrogate country and factor value information. On December 6, 2002, the Ministry of Trade of Vietnam submitted comments regarding the surrogate country. On December 9, 2002, the respondents and the petitioners submitted comments regarding surrogate country and factor value information. On December 9, 2002, the Department granted an extension of time to the voluntary Section A respondents to submit their supplemental responses and an extension of time for the respondents to submit monthly shipment data.

On December 10, 2002, the petitioners submitted comments regarding the respondents' supplemental Section A questionnaire responses. On December 10, 2002, the respondents submitted the monthly shipment data requested by the Department on November 25, 2002 and supplemental questionnaire responses from the voluntary Section A respondents. On December 12, 2002, the petitioners submitted an additional financial statement to supplement the factor value information submitted on November 9, 2002.

On December 13, 2002, the Ministry of Fisheries of Vietnam submitted comments regarding the selection of the surrogate country. On December 13, 2002, the Department granted an extension of time to submit rebuttal comments regarding the surrogate country and the factor value information. On December 18, 2002, the respondents requested an extension of time to submit their supplemental Sections C and D questionnaire responses. On December 18, 2002, the petitioners submitted rebuttal comments regarding the surrogate country and factor value information submitted by the respondents on December 9, 2002.

On December 19, 2002, the respondents requested an extension of time to submit their supplemental Sections C and D questionnaire responses. On December 19, 2002, the Department granted the respondents an extension of time to submit their Section C and D supplemental questionnaire responses. Additionally, on December 19, 2002, the Department issued a second Section A supplemental questionnaire to the respondents. On December 20, 2002, the petitioners submitted comments regarding the voluntary Section A respondents' supplemental questionnaire responses. On December 27, 2002, the Department issued a second supplemental questionnaire to the voluntary Section A respondents. On December 31, 2002, the respondents and the voluntary Section A respondents requested an extension of time to submit their second supplemental questionnaire responses.

On January 2, 2003, the Department granted an extension of time to the respondents and the voluntary Section A respondents to submit their second Section A questionnaire responses. On January 8, 2003, Agifish, one of the respondents, submitted a revised Sections C and D supplemental response. On January 10, 2003, the Department issued a section Sections C and D supplemental questionnaire to the respondents. On January 10, 2003, the respondents submitted an extension of time to submit their second Sections C and D supplemental questionnaire responses. On January 14, 2003, the Department granted an extension of time to the respondents to submit their second Sections C and D supplemental questionnaire responses. On January 16, 2003, the petitioners submitted comments relevant to the Department's preliminary determination. On January 17, 2003, the respondents submitted their responses to the second Sections C & D supplemental questionnaire. Also on January 17, 2003, the respondents submitted a letter requesting the Department to reject the petitioners' submission of January 16, 2003 as untimely. On January 21, 2003, the respondents submitted comments requesting that the Department use their actual reported factors of production. On January 22, 2003, the petitioners submitted a letter requesting that the Department reject the respondents' January 16, 2003 submission on the grounds that it was untimely filed. On January 23, 2003, the respondents submitted a request that the Department not use the petitioners' recently filed submissions for the preliminary determination. Also on January 23, 2003, the respondents and the voluntary Section A respondents requested that the Department postpone the final determination until no later than 135 days after the date of publication of the preliminary determination.

Postponement of Final Determination

Section 735(a) of the Act provides that a final determination may be postponed until no later than 135 days after the date of the publication of the preliminary determination if, in the event of an affirmative preliminary determination, a request for such postponement is made by exporters who account for a significant proportion of exports of the subject merchandise, or in the event of a negative preliminary determination, a request for such postponement is made by the petitioners. The Department's regulations, at 19 CFR 351.210(e)(2), require that requests by respondents for postponement of a final determination be accompanied by a request for an extension of the provisional measures from a four-month period to not more than six months.

On January 23, 2003, the respondents and the voluntary Section A respondents requested that, in the event of an affirmative preliminary determination in this investigation, the Department postpone its final determination until 135 days after the publication of the preliminary determination. The respondents and the voluntary Section A respondents also included a request to extend the provisional measures to not more than six months after the publication of the preliminary determination. Accordingly, since we have made an affirmative preliminary determination, and the requesting parties account for a significant proportion of the exports of the subject merchandise, we have postponed the final determination until no later than 135 days after the date of publication of the preliminary determination, and are extending the provisional measures accordingly.

Period of Investigation

The period of investigation ("POI") is October 1, 2001 through March 31, 2002. This period corresponds to the two most recent fiscal quarters prior to the month of the filing of the Petition (June 28, 2001). *See* 19 CFR 351.204(b)(1).

Scope of Investigation

For purposes of this investigation, the product covered is frozen fish fillets, including regular, shank, and strip fillets, whether or not breaded or marinated, of the species *Pangasius Bocourti, Pangasius Hypophthalmus* (also known as *Pangasius Pangasius*), and *Pangasius Micronemus*. The subject merchandise will be hereinafter referred to as frozen "basa" and "tra" fillets, which are the Vietnamese common names for these species of fish. These products are classifiable under tariff article codes 0304.20.60.30 (Frozen Catfish Fillets), 0304.20.60.96 (Frozen Fish Fillets, NESOI), 0304.20.60.43 (Frozen Freshwater Fish Fillets) and 0304.20.60.57 [1] (Frozen Sole Fillets) of the Harmonized Tariff Schedule of the United States ("HTSUS"). This investigation covers all frozen fish fillets meeting the above specification, regardless of tariff classification. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

On August 13, 2002, the respondents submitted comments regarding the scope of this investigation. On August 22, 2002, the petitioners also submitted comments regarding the scope language. Citing a report from Tyson Roberts at the California Academy of Sciences and Bhavalit Vidthayanon, National Inland Fisheries Institute, the respondents argued that *Pangasius Micronemus* is an outdated and inaccurate designation that has not been used by the scientific community since the early 1990s. The respondents argued that biologists who specialize in the freshwater fish of Southeast Asia now include the fish once thought to belong to the separate species *Pangasius Micronemus* as part of the species *Pangasius Hypopthalmus*, a correct scientific designation that is already included in the scope of the antidumping investigation. Consequently, the respondents requested that the Department examined more closely the appropriateness of including *Pangasius Micronemus* in the scope of this antidumping investigation.

The petitioners argue that *Pangasius Micronemus* must remain within the scope of this antidumping investigation. According to the petitioners, *Pangasius Micronemus* is a designation that has been, and continues to be, used to describe the species of fish that are being filleted, frozen and exported to the United States, and which are intended to be covered by the scope of this investigation. Referencing the company websites from some of the mandatory and voluntary Section A respondents in this investigation, the petitioners note that *Pangasius Micronemus* continues to be used interchangeably with the *Pangasius Hypopthalmus* species appellation. In addition, the petitioners note that the U.S. Food and Drug Administration continues to recognize *Pangasius Micronemus* as a separate scientific description.

For this preliminary determination, we continue to include the species *Pangasius Micronemus* in the description of the scope. The evidence on the record clearly demonstrates that the producers/exporters of the merchandise under investigation continue to market the species designation *Pangasius Micronemus*. For example, Afiex's (a voluntary Section A respondent) product brochure identifies *Pangasius Micronemus* as the live fish species used to produce the subject merchandise. Furthermore, the petitioners submitted a news article regarding Agifish, one of the

[1] The petitioners have included this tariff classification code because they believe that the merchandise under investigation is entering the United States under this classification based on previous uses of the term "sole" to describe Vietnamese basa and tra.

respondents, that mentions that it produces fish fillets from *Pangasius Micronemus*. Therefore, because the designation is clearly still in use commercially by the Vietnamese respondents, for purposes of this preliminary determination, we continue to include *Pangasius Micronemus* as part of the scope in this antidumping investigation.

Selection of Respondents

Section 777A(c)(1) of the Act directs the Department to calculate individual dumping margins for each known exporter and producer of the subject merchandise. However, section 777A(c)(2) of the Act gives the Department discretion, when faced with a large number of exporters/producers, to limit its examination to a reasonable number of such companies if it is not practicable to examine all companies. Where it is not practicable to examine all known producers/exporters of subject merchandise, this provision permits the Department to investigate either: (1) A sample of exporters, producers, or types of products that is statistically valid based on the information available to the Department at the time of selection; or (2) exporters/producers accounting for the largest volume of the merchandise under investigation that can reasonably be examined. After consideration of the complexities expected to arise in this proceeding and the resources available to the Department, we determined that it was not practicable in this investigation to examine all known producers/exporters of subject merchandise. Instead, we limited our examination to the four exporters and producers accounting for the largest volume of the subject merchandise pursuant to section 777A(c)(2)(B) of the Act. The four Vietnamese producers/exporters, Agifish, Vinh Hoan, Nam Viet and CATACO, accounted for a significant percentage of all exports of the subject merchandise from the Vietnam during the POI, and were therefore selected as mandatory respondents. *See Respondent Selection Memo* at 4.

Nonmarket Economy Country Status

For purposes of initiation, the petitioners submitted LTFV analyses for Vietnam as a non-market economy and a market economy. *See Notice of Initiation*, at 48438. Because the petitioners alleged that Vietnam has a nonmarket economy, the Department invited parties to comment on Vietnam's economy with regards to the factors listed in section 771(18)(B) of the Act, which the Department must take into account when making a non-market economy status determination. *See Opportunity to Comment on Petitioner's Allegation that Vietnam Has a Non-Market Economy: Investigation of Certain Frozen Fish Fillets from the Socialist Republic of Vietnam* ("*Notice of Request for Comment*"), 67 FR 52942 (August 14, 2002). Consequently, on November 8, 2002, the Department determined, after analyzing comments from interested parties, that based on the preponderance of evidence related to economic reforms in Vietnam to date, analyzed as required under section 771(18)(B) of the Act, that Vietnam will be treated as a non-market economy country for the purposes of antidumping and countervailing duty proceedings, effective July 1, 2001. *See Market Status Memo* at 44.

A designation as a non-market economy remains in effect until it is revoked by the Department (*see* section 771(18)(C) of the Act). When the Department is investigating imports from a non-market economy, section 773(c)(1) of the Act directs us to base the normal value on the non-market economy producer's factors of production, valued in an economically comparable market economy that is a significant producer of comparable merchandise. The sources of individual factor prices are discussed under the "Factor Valuations" section, below.

Separate Rates

In proceedings involving non-market economy countries, the Department begins with a rebuttable presumption that all companies within the country are subject to government control and thus should be assessed a single antidumping duty deposit rate. It is the Department's policy to assign all exporters of merchandise subject to investigation in a non-market economy country this single rate, unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate. The four companies that the Department selected to investigate (*i.e.*, Agifish, Vinh Hoan, Nam Viet and CATACO), and the Vietnamese producers/exporters that were not selected as mandatory respondents by the Department for this investigation, but which have submitted separate rates responses and had exports sales to the United States during the POI (*i.e.* Afiex, CAFATEX, Da Nang, Mekonimex, QVD, and Viet Hai) have provided company-specific separate rates information and have each stated that they met the standards for the assignment of separate rates.

We considered whether each Vietnamese company is eligible for a separate rate. The Department's separate rate test to determine whether the exporters are independent from government control does not consider, in general, macroeconomic/border-type controls, *e.g.*, export licenses, quotas, and minimum export prices ("EP"), particularly if these controls are imposed to prevent dumping. The test focuses, rather, on controls over the investment, pricing, and output decision-making process at the individual firm level. *See Certain Cut-to-Length Carbon Steel Plate from Ukraine: Final Determination of Sales at Less than Fair Value*, 62 FR 61754, 61757 (November 19, 1997) and *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 62 FR 61276, 61279 (November 17, 1997).

To establish whether a firm is sufficiently independent from government control of its export activities to be entitled to a separate rate, the Department analyzes each entity exporting the subject merchandise under a test arising out of the *Notice of Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588 (May 6, 1991) (*"Sparklers"*), as amplified by *Notice of Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585 (May 2,1994) (*"Silicon Carbide"*). In accordance with the separate rates criteria, the Department assigns separate rates in non-market economy cases only if respondents can demonstrate the absence of both *de jure* and *de facto* governmental control over export activities.

1. Absence of De Jure Control

The Department considers the following *de jure* criteria in determining whether an individual company may be granted a separate rate: (1) An absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) other formal measures by the government decentralizing control of companies. *See* Sparklers at 20589.

Our analysis shows that the evidence on the record supports a preliminary finding of *de jure* absence of governmental control based on: (1) An absence of restrictive stipulations associated with the individual exporter's business and export licenses; (2) the applicable legislative enactments decentralizing control of the companies;

and (3) any other formal measures by the government decentralizing control of companies. *See Memorandum to Joseph A. Spetrini, Deputy Assistant Secretary, Import Administration, Enforcement Group III from Joseph Welton, Lisa Shishido and Paul Walker, Case Analysts through James C. Doyle, Program Manager, Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Separate Rates for Producers/ Exporters that Submitted Questionnaire Responses ("Separate Rates Memo")*, dated January 24, 2003.

2. Absence of De Facto Control

The Department typically considers four factors in evaluating whether each respondent is subject to *de facto* governmental control of its export functions: (1) Whether the export prices are set by or are subject to the approval of a governmental agency; (2) whether the respondent has authority to negotiate and sign contracts and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses. *See, Silicon Carbide*, 59 FR at 22586–87; *see, also Notice of Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol From the People's Republic of China*, 60 FR 22544, 22545 (May 8, 1995). The Department has determined that an analysis of *de facto* control is critical in determining whether respondents are, in fact, subject to a degree of governmental control which would preclude the Department from assigning separate rates.

We determine that the evidence on the record supports a preliminary finding of *de facto* absence of governmental control based on record statements and supporting documentation showing that: (1) Each exporter sets its own export prices independent of the government and without the approval of a government authority; (2) each exporter retains the proceeds from its sales and makes independent decisions regarding disposition of profits or financing of losses; (3) each exporter has the authority to negotiate and sign contracts and other agreements; and (4) each exporter has autonomy from the government regarding the selection of management.

Therefore, the evidence placed on the record of this investigation by Agifish, Vinh Hoan, Nam Viet, CATACO, Afiex, CAFATEX, Da Nang, Mekonimex, QVD and Viet Hai demonstrates an absence of government control, both in law and in fact, with respect to each of the exporter's exports of the merchandise under investigation, in accordance with the criteria identified in *Sparklers* and *Silicon Carbide*. As a result, for the purposes of this preliminary determination, we are granting separate, company-specific rates to each of the ten responding exporters which shipped certain frozen fish fillets to the United States during the POI. For a full discussion of this issue, please see the *Separate Rates Memo*.

Vietnam-Wide Rate

The Department's review of import data from the United States Customs Service shows that imports of certain frozen fish fillets from Vietnam during the POI are higher than the volume and value of U.S. sales reported by exporters that responded to our request for this information. *See Respondent Selection Memo*, at Attachment I. Therefore, the Department preliminarily determines that there were exports of the merchandise under investigation from other Vietnamese producers/exporters, which are treated as part of the countrywide entity. All exporters were given an opportunity to provide information showing they qualify for separate rates. However, none of these other exporters provided a response to the Department's Section A questionnaire.

Section 776(a)(2) of the Act provides that if an interested party: (A) Withholds information that has been requested by the Department; (B) fails to provide such information in a timely manner or in the form or manner requested, subject to subsections 782(c)(1) and (e) of the Act; (C) significantly impedes a determination under the antidumping statute; or (D) provides such information but the information cannot be verified, the Department shall, subject to subsection 782(d) of the Act, use facts otherwise available in reaching the applicable determination. In this case, the government of Vietnam did not respond to the Department's questionnaire, thereby necessitating the use of facts available to determine their rate.

Section 776(b) of the Act provides that, in selecting from among the facts available, the Department may employ adverse inferences if an interested party fails to cooperate by not acting to the best of its ability to comply with requests for information. *See* also "Statement of Administrative Action" accompanying the URAA, H.R. Rep. No. 103–316, 870 (1994) ("SAA"). The Department finds that because the Vietnam-wide entity did not respond at all to our request for information, it has failed to cooperate to the best of its ability. Therefore, the Department preliminarily finds that, in selecting from among the facts available, an adverse inference is appropriate. Consistent with Department practice in cases where a respondent is considered uncooperative, as adverse facts available, we have applied a rate of 63.88 percent, the highest rate calculated in the initiation stage of the investigation from information provided in the petition (as adjusted by the Department). *See, e.g., Notice of Preliminary Determination of Sales at Less Than Fair Value: Stainless Steel Wire Rod From Germany*, 63 FR 10847 (March 5, 1998).

Section 776(c) of the Act provides that, when the Department relies on secondary information rather than on information obtained in the course of an investigation as facts available, it must, to the extent practicable, corroborate that information from independent sources reasonably at its disposal. Secondary information is described in the SAA as "information derived from the petition that gave rise to the investigation or review, the final determination concerning subject merchandise, or any previous review under section 751 concerning the subject merchandise." *See SAA* at 870. The SAA provides that to "corroborate" means simply that the Department will satisfy itself that the secondary information to be used has probative value. *See id.* The SAA also states that independent sources used to corroborate may include, for example, published price lists, official import statistics and customs data, and information obtained from interested parties during the particular investigation. *Id.* As noted in *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, from Japan; Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews*, 61 FR 57391, 57392 (November 6, 1996) *("TRB Notice")*, to corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information used.

In order to determine the probative value of the initiation margin for use as facts otherwise available for the purposes of this determination, we examined evidence supporting the initiation calculations. We have now corroborated the information in the

petition, with some small changes. *See Memorandum to Edward C. Yang, Director, Office IX from Alex Villanueva, Case Analyst through James C. Doyle, Program Manager, Preliminary Determination in the Investigation of Certain Frozen Fish Fillets from Vietnam, Corroboration Memorandum ("Corroboration Memo")*, dated January 24, 2003.

Consequently, we are applying a single antidumping rate—the Vietnam wide rate—to producers/exporters that failed to respond to the Q&V questionnaire and demonstrate entitlement to a separate rate. *See, e.g., Final Determination of Sales at Less Than Fair Value: Synthetic Indigo from the People's Republic of China*, 65 FR 25706, 25707 (May 3, 2000). The Vietnam-wide rate applies to all entries of the merchandise under investigation except for entries from Agifish, Vinh Hoan, Nam Viet, CATACO, Afiex, CAFATEX, Da Nang, Mekonimex, QVD and Viet Hai.

Because this is a preliminary margin, the Department will consider all margins on the record at the time of the final determination for the purpose of determining the most appropriate final Vietnam-wide margin. *See Notice of Preliminary Determination of Sales at Less Than Fair Value: Saccharin from the People's Republic of China ("Saccharin from China")*, 67 FR 79049, 79054 (December 27, 2002).

Margins for Cooperative Exporters Not Selected

The exporters who responded to Section A of the Department's antidumping questionnaire and had sales of the merchandise under investigation to the United States, but were not selected as mandatory respondents in this investigation (Afiex, CAFATEX, Da Nang, Mekonimex, QVD and Viet Hai) have applied for separate rates, and provided information for the Department to consider for this purpose. Although the Department is unable, due to administrative constraints *(see Respondent Selection Memo)*, to calculate for each of these voluntary Section A respondents who are exporters a rate based on their own data, these companies cooperated in providing all the information that the Department requested of them. Therefore, for Afiex, CAFATEX, Da Nang, Mekonimex, QVD and Viet Hai, we have calculated a weighted-average margin based on the rates calculated for those exporters that were selected to respond in this investigation, excluding any rates that are zero, *de minimis* or based entirely on adverse facts available. Companies receiving this rate are identified by name in the "Suspension of Liquidation" section of this notice. *See Notice of Preliminary Determination of Sales at Less Than Fair Value: Honey from the People's Republic of China*, 64 FR 24101 (May 11, 2001).

In addition, several companies indicated that during the POI, they had no sales of the merchandise under investigation to the United States. Specifically, Grobest, SEAPRIMEXCO, Tieng Gang and Ben Tre reported that they did not have sales of the merchandise under investigation to the United States during the POI. We note, moreover, that Vinh Long provided extensive separate rates information to the Department, but because the date of sale used in this investigation is the invoice date and because Vinh Long's only sale of the merchandise under investigation to the United States has a commercial invoice date outside the POI, Vinh Long did not make a sale of the merchandise under investigation to the United States during the POI. Consequently, Vinh Long is not eligible to receive a separate rate at this time. Likewise, because Grobest, SEAPRIMEXCO, Tieng Gang, Ben Tre and Vinh Long made no sales of the merchandise under investigation to the United States during the POI, these companies are not eligible to receive a separate rate.

Surrogate Country

When the Department is investigating imports from a non-market economy country, section 773(c)(1) of the Act directs it to base NV, in most circumstances, on the non-market economy producer's factors of production, valued in a surrogate market economy country or countries considered to be appropriate by the Department. In accordance with section 773(c)(4) of the Act, the Department, in valuing the factors of production, shall utilize, to the extent possible, the prices or costs of factors of production in one or more market economy countries that: (1) Are at a level of economic development comparable to that of the non-market economy country; and (2) are significant producers of comparable merchandise. The sources of the surrogate factor values are discussed under the NV section below.

The Department determined that India, Bangladesh, Kenya, Pakistan, and Guinea are countries comparable to Vietnam in terms of economic development. *See Memorandum from Jeffrey May to James Doyle: Antidumping Duty Investigation on Certain Frozen Fish Fillets from the Socialist Republic of Vietnam*, dated August 23, 2002. Customarily, we select an appropriate surrogate country based on the availability and reliability of data from the countries. In this case, we have found that Bangladesh is a significant producer of comparable merchandise, *Pangasius* fish, and is at a similar level of economic development pursuant to 733(c)(4) of the Act. *See Memorandum to Edward C. Yang, Director, Office IX, from Alex Villanueva and Paul Walker, Case Analyst, through James C. Doyle, Program Manager: Antidumping Duty Investigation on Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Selection of a Surrogate Country ("Surrogate Country Memorandum")*, dated January 24, 2003.

Therefore, we used Bangladesh as the primary surrogate country and, accordingly, we have calculated NV using Bangladeshi prices to value the respondents' factors of production, when available and appropriate. Where Bangladeshi values were not available or were impracticable to use, we relied upon data from India, as adequate valuation data for each of the factors of production is available on the record from Indian sources. We have obtained and relied upon publicly available information wherever possible. *See Memorandum to the File from Alex Villanueva, Lisa Shishido, Joseph Welton and Paul Walker, Case Analysts, through James C. Doyle, Program Manager and Edward C. Yang, Director, Office IX, Factors Valuation for An Giang Fisheries Import and Export Joint Stock Company, Can Tho Agricultural and Animal Products Import Export Company, Nam Viet Company Limited, and Vinh Hoan Company Limited ("Factor Valuation Memo")*, dated January 24, 2003.

In accordance with section 351.301(c)(3)(i) of the Department's regulations, for the final determination in an antidumping investigation, interested parties may submit publicly available information to value factors of production within 40 days after the date of publication of this preliminary determination.

Date of Sale

Section 351.401(i) of the Department's regulations state that "in identifying the date of sale of the subject merchandise or foreign like product, the Secretary normally will use the date of invoice, as recorded in the exporter or producer's records kept in the normal course of business." After examining the sales documentation placed on the record by the respondents, we preliminarily determine that invoice date is the most appropriate date of sale for all

respondents. We made this determination because, at this time, there is not enough evidence on the record to determine whether the contracts used by the respondents establish the material terms of sale to the extent required by our regulations in order to rebut the presumption that invoice date is the proper date of sale. *See Saccharin from China* at 67 FR 79054.

Fair Value Comparisons

To determine whether sales of certain frozen fish fillets to the United States by Agifish, Vinh Hoan, Nam Viet and CATACO were made at less than fair value, we compared EP to NV, as described in the "Export Price" and "Normal Value" sections of this notice. In accordance with section 777A(d)(1)(A)(i) of the Act, we calculated weighted-average EPs.

Export Price

In accordance with section 772(a) of the Act, EP is the price at which the subject merchandise is first sold (or agreed to be sold) before the date of importation by the producer or exporter of the subject merchandise outside of the United States to an unaffiliated purchaser in the United States or to an unaffiliated purchaser for exportation to the United States, as adjusted under subsection (c).

We calculated EP for Agifish, Vinh Hoan, Nam Viet and CATACO based on delivered prices to unaffiliated purchasers in the United States. We made deductions for movement expenses in accordance with section 772(c)(2)(A) of the Act. These included foreign inland freight from the plant to the port of exportation, ocean freight and brokerage and handling, where appropriate.

Normal Value

Section 773(c)(1) of the Act provides that the Department shall determine the NV using a factors-of-production methodology if: (1) The merchandise is exported from a non-market economy country; and (2) the information does not permit the calculation of NV using home-market prices, third-country prices, or constructed value under section 773(a) of the Act.

As the basis for normal value, the respondents in this investigation provided integrated factors of production data from the fingerling stage to the frozen fish fillet processing stage. In response to a supplemental questionnaire, the respondents also provided factors of production information used in each of the production stages, including the frozen fish fillet processing stage, separately. Although the respondents reported the inputs used to produce the main input to the processing stage (live fish), for the purposes of this preliminary determination, we are not valuing those inputs when calculating the normal value. Rather, our normal value calculation begins with a valuation of the fish input (live fish) used to produce the merchandise under investigation for the following reasons.

Our general policy, consistent with section 773(c)(1)(B) of the Act, is to value the factors of production that a respondent uses to produce the subject merchandise. If the NME respondent is an integrated producer, we take into account the factors utilized in each stage of the production process. For example, in the case of preserved canned mushrooms produced by a fully integrated firm, the Department valued the factors used to grow the mushrooms, the factors used to further process and preserve the mushrooms, and any additional factors used to can and package the mushrooms, including any used to manufacture the cans (if produced in-house). If, on the other hand, the firm was not integrated, but simply a processor that bought fresh mushrooms to preserve and can, the Department valued the purchased mushrooms and not the factors used to grow them. *See* final results valuation memorandum for *Final Results of First New Shipper Review and First Antidumping Duty Administrative Review: Certain Preserved Mushrooms From the People's Republic of China*; 66 FR 31204 (June 11, 2001) (Final Results Valuation Memorandum). This policy has been applied to both agricultural and industrial products. *See, e.g., Persulfates From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and Notice of Partial Recission*; 67 FR 50866 (August 6, 2002) (unchanged in final) and *Notice of Final Determinations of Sales at Less Than Fair Value: Brake Drums and Brake Rotors From the People's Republic of China*; 62 FR 9160 (February 28, 1997). Accordingly, our standard NME questionnaire asks respondents to report the factors used in the various stages of production.

There are, however, two limited exceptions to this general rule. First, in some cases a respondent may report factors used to produce an intermediate input that accounts for a small or insignificant share of total output. The Department recognizes that, in those cases, the increased accuracy in our overall calculations that would result from valuing (separately) each of those factors may be so small so as to not justify the burden of doing so. Therefore, in those situations, the Department would value the intermediate input directly.

Second, in certain circumstances, it is clear that attempting to value the factors used in a production process yielding an intermediate product would lead to an inaccurate result because a significant element of cost would not be adequately accounted for in the overall factors buildup. For example, in a recent case, we addressed whether we should value the respondent's factors used in extracting iron ore—an input to its wire rod factory. The Department determined that, if it were to use those factors, it would not sufficiently account for the capital costs associated with the iron ore mining operation given that the surrogate used for valuing production overhead did not have mining operations. Therefore, because ignoring this important cost element would distort the calculation, the Department declined to value the inputs used in mining iron ore and valued the iron ore instead. *See Notice of Final Determination of Sales at Less Than Fair Value: Carbon and Certain Alloy Steel Wire Rod From Ukraine*; 67 FR 55785 (August 30, 2002); *Final Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products From the People's Republic of China*; 66 FR 49632 (September 28, 2001); *Final Determination of Sales at Less Than Fair Value; Certain Cut-to-Length Carbon Steel Plate From the People's Republic of China*; 62 FR 61964 (November 20, 1997); and *Notice of Final Determination of Sales at Less Than Fair Value; Furfuryl Alcohol From the People's Republic of China*; 60 FR 22544 (May 8, 1995).

In this investigation, we have determined at this time that the exceptions described above do not apply. However, we have carefully reviewed and analyzed the information submitted by each respondent and find that the data pertaining to the fish farming stage of production cannot be used for purposes of the preliminary determination. The respondents' integrated production is a multifaceted process that poses unique issues, particularly as the fish growth portion of the process occurs in an uncontrolled, river environment. Despite respondents' cooperation in providing significant information, certain critical questions regarding the data remain. These questions relate to the seasonality of the production of fish, the narrowness of the six-month period of investigation in relation to the growth cycle of the fish,

and the possible impact of the yield ratios at various stages of production. The Department's ability to analyze these issues was particularly constrained given the large number of supplemental questionnaires issued in this case and the lack of sufficient time to fully evaluate the responses to those questionnaires and issue any follow-up requests for information.

In light of these concerns, we have not used the multi-stage factor data for the preliminary determination and have incorporated, instead, the value of the whole fish used at the filleting/processing stage of production. Subsequent to the preliminary determination, we will make every attempt to clarify the factors data for the fish farming stage of production that respondents have reported. If the questions raised can be addressed, we intend to revert to our standard methodology and use the factor information for the various stages. In that case, before the final determination, we will release to interested parties for comment a preliminary calculation sheet and analysis memorandum using that methodology.

The factors of production for the frozen fish fillet processing stage included: (1) Hours of labor required; (2) quantities of raw materials employed; (3) amounts of energy and other utilities consumed; and (4) representative capital costs. We calculated NV based on factors of production, reported by each respondent, for materials, energy, labor, and packing. Where applicable, we deducted from each respondent's normal value the value of by-products sold during the POI. For a further discussion, see the analysis memorandum for each respondent. We valued the majority of input factors using publicly available published information as discussed in the "Surrogate Country" and "Factor Valuations" sections of this notice.

Factor Valuations

The Department will normally use publicly available information to value factors of production. However, in accordance with 19 CFR 351.408(c)(1), the Department's regulations also provide that where a producer sources an input from a market economy and pays for it in market economy currency, the Department employs the actual price paid for the input to calculate the factors-based NV. *See Lasko Metal Products* v. *United States*, 43 F. 3d 1442, 1445–1446 (Fed. Cir. 1994) ("*Lasko*").

In accordance with section 773(c) of the Act, we calculated NV based on factors of production reported by respondents for the POI. To calculate NV, the reported per-unit factor quantities were multiplied by publicly available Bangladeshi surrogate values (except as noted below). In selecting the surrogate values, we considered the quality, specificity, and contemporaneity of the data. As appropriate, we adjusted input prices by including freight costs to make them delivered prices. Specifically, we added surrogate freight costs to surrogate values using the shorter of the reported distance from the domestic supplier to the factory or the distance from the nearest seaport to the factory, where appropriate. This adjustment is in accordance with the Court of Appeals for the Federal Circuit's decision in *Sigma Corp.* v. *United States*, 117 F. 3d 1401 (Fed. Cir. 1997). For a detailed description of all surrogate values used for respondents, *see Factor Valuation Memo.*

Certain raw material surrogate values were calculated using data from the *2000 Statistical Yearbook of Bangladesh* ("Bangladesh government statistics"), published by the Bangladesh Bureau of Statistics, Planning Division, Ministry of Planning. The information represents cumulative values for the period of 2000, for inputs classified according to the Harmonized Commodity Description and Coding System ("HS"). Unit values were initially calculated in takas. Since the values were not contemporaneous with the POI, we adjusted the values for inflation and converted them to U.S. dollars using the Department's exchange rate for Bangladesh.

Where Bangladeshi values were not available or were impracticable to use for raw materials inputs, we relied upon data from India, as adequate valuation data for each of these factors of production is available on the record from Indian sources. We also valued certain raw material inputs using weighted-average unit import values derived from the *Monthly Trade Statistics of Foreign Trade of India—Volume II—Imports* ("*Indian Import Statistics*") for the time period April 2001–March 2002. As appropriate, we adjusted rupee-denominated values for inflation using wholesale price indices published in the International Monetary Fund's *International Financial Statistics* and excluded taxes.

The Department decided to value live fish using data from the financial statement of a Bangladeshi company that produces *Pangasius* fish, Gachihata Aquaculture Farms Limited ("Gachihata"). The data from Gachihata was specific to the price for sales of *Pangasius* fish, the input in question. In addition, while the financial report was not contemporaneous with the POI, it was for the fiscal year ending June 30, 2001, which is reasonably close to the POI. To calculate the surrogate value for live fish, the Department adjusted Gachihata's value for *Pangasius* fish in takas for inflation and converted the value to U.S. dollars, to arrive at a value of $1.23 USD/kg. *See Factor Valuation Memo* Exhibit 1 for CPI data, Exhibit 2 for exchange rate, and Exhibit 3 for the live fish calculation. *See* petitioners' December 18, 2002 submission, Exhibit 2, for Gachihata's complete financial statement.

In valuing live fish, the Department did not use the data from the financial statements of another Bangladeshi company, Dhaka Fisheries Ltd. ("Dhaka"), because although it appeared to produce Pangasius fish as its main fish product, the data represented the company's valuation of its fish inventory. As the Department prefers the use of actual sales data rather than inventory data, use of this source is less than ideal. *See* petitioners' December 18, 2002 submission, Exhibit 4, for Dhaka's complete financial statement.

The Department also did not use a proposed value for live fish in Bangladesh based on the financial statement of another Bangladeshi company submitted by the respondents, Beximco Fisheries Limited ("Beximco"), because it represented the company's valuation of its fish inventory, and it was not specific to the input in question. The data submitted by the respondents was listed as a value for "fish" in the financial report, without specifying the species. *See* respondents' December 9, 2002 submission, Exhibit 7. In response to a supplemental questionnaire, respondents stated that "there is insufficient information on Beximco's financial statement to determine precisely whether or not the values for "fish" and "fish feed" are specific to the production of *Pangasius* fish." *See* respondents" January 7, 2002 submission, page 12.

To value electricity, we used data from Bangladesh government statistics. The unit value was initially calculated in takas. Since the value was not contemporaneous with the POI, we adjusted the rate for inflation and converted the rate to U.S. dollars using the Department's exchange rate for Bangladesh. *See Factor Valuation Memorandum* at page 6.

As Bangladeshi values were not available or were impracticable for use to value water, we relied upon data from India as adequate valuation data for this factor of production is available on the record from Indian sources. To value water, we used data reported as the average water tariff rate for four cities in

India as reported in the Asian Development Bank's *Second Water Utilities Data Book: Asian and Pacific Region* published in 1997. Because the data from this source was not contemporaneous with the POI, we adjusted the rate for inflation. *See Factor Valuation Memorandum* at page 6.

For domestic inland freight (truck), we used data from Bangladesh government statistics. The unit value was initially calculated in takas. Since the value was not contemporaneous with the POI, we adjusted the rate for inflation and converted the rate to U.S. dollars using the Department's exchange rate for Bangladesh.

Our treatment of by-products is in accordance with the Department's practice. *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Steel Flat Products from the Peoples' Republic of China and accompanying Issues and Decision Memorandum*, 66 FR 49632 (September 28, 2001) at Comment 3. ("In the case of Angang and Benxi, we allowed recovery/by-product credits where the company provided information demonstrating that the recoveries/by-products were sold and/or reused in the production process.") Where a respondent provided evidence that the by-product generated during the frozen fish fillet processing stage of the production was sold, we valued that by-product using a surrogate value. If a respondent claimed that it sold a by-product generated during the frozen fish fillet processing stage, but did not provide evidence that the by-product generated was sold, we could not include the by-product offset in the calculation. Several of the respondents reported that certain by-products were reintroduced into the production process. If the by-product was reintroduced into the production process at any stage, we granted the by-product offset in an amount no greater than the volume actually re-introduced into the production process during the POI. *See Factor Valuation Memo* at 7.

To value factory overhead, selling, general and administrative expenses ("SG&A"), and profit, we calculated surrogate financial ratios based on the financial information from Apex Foods, Limited, a Bangladeshi seafood processor. *See Factor Valuation Memorandum* at page 7.

For labor, consistent with section 351.408(c)(3) of the Department's regulations, we used the Vietnam regression-based wage rate at Import Administration's home page, Import Library, Expected Wages of Selected NME Countries, revised in September 2002 (*see http://ia.ita.doc.gov/wages/index.html*). The source of the wage rate data on the Import Administration's Web site can be found in the *Yearbook of Labour Statistics 2000*, International Labor Office (Geneva: 2000), Chapter 5B: Wages in Manufacturing.

Critical Circumstances

On November 15, 2002, petitioners alleged that there is a reasonable basis to believe or suspect critical circumstances exist with respect to the antidumping investigations of certain frozen fish fillets from Vietnam. In accordance with 19 CFR 351.206(c)(2)(i), because petitioners submitted critical circumstances allegations more than 20 days before the scheduled date of the preliminary determination, the Department must issue preliminary critical circumstances determinations not later than the date of the preliminary determination.

Section 733(e)(1) of the Act provides that the Department will preliminarily determine that critical circumstances exist if there is a reasonable basis to believe or suspect that: (A)(i) There is a history of dumping and material injury by reason of dumped imports in the United States or elsewhere of the subject merchandise; or (ii) the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the subject merchandise at less than its fair value and that there was likely to be material injury by reason of such sales; and, (B) there have been massive imports of the subject merchandise over a relatively short period. Section 351.206(h)(1) of the Department's regulations provides that, in determining whether imports of the subject merchandise have been "massive," the Department normally will examine: (i) The volume and value of the imports; (ii) seasonal trends; and (iii) the share of domestic consumption accounted for by the imports. In addition, section 351.206(h)(2) of the Department's regulations provides that an increase in imports of 15 percent during the "relatively short period" of time may be considered "massive." Section 351.206(i) of the Department's regulations defines "relatively short period" as normally being the period beginning on the date the proceeding begins (*i.e.*, the date the petition is filed) and ending at least three months later. The regulations also provide, however, that if the Department finds importers, exporters, or producers had reason to believe, at some time prior to the beginning of the proceeding, that a proceeding was likely, the Department may consider a period of not less than three months from that earlier time.

In determining whether the relevant statutory criteria have been satisfied, we considered: (i) The evidence presented by petitioners in their November 15, 2002 letter; (ii) new evidence obtained since the initiation of the less-than-fair-value ("LTFV") investigation (*i.e.*, additional import statistics released by the U.S. Census Bureau); and (iii) the ITC's preliminary threat of injury determination.

To determine whether there is a history of injurious dumping of the merchandise under investigation, in accordance with section 733(e)(1)(A)(i) of the Act, the Department normally considers evidence of an existing antidumping duty order on the subject merchandise in the United States or elsewhere to be sufficient. *See Preliminary Determination of Critical Circumstances; Steel Concrete Reinforcing Bars From Ukraine and Moldova*, 65 FR 70696 (November 27, 2000). With regard to imports of certain frozen fish fillets from Vietnam, petitioners make no specific mention of a history of dumping for Vietnam. We are not aware of any antidumping order in the United States or in any country on certain frozen fish fillets from Vietnam. For this reason, the Department does not find a history of injurious dumping of the subject merchandise from Vietnam pursuant to section 733(e)(1)(A)(i) of the Act.

In determining whether there is a reasonable basis to believe or suspect that an importer knew or should have known the exporter was selling certain frozen fish fillets at less than fair value, the Department normally considers margins of 25 percent or more for export price sales or 15 percent or more for constructed export price transactions sufficient to impute knowledge of dumping. *See, e.g., Preliminary Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from the People's Republic of China*, 62 FR 31972, 31978 (October 19, 2001). The Department normally bases its preliminary decision with respect to knowledge on the margins calculated in the preliminary determination. Because the preliminary dumping margins for all exporters are greater than 25 percent, we find there is a reasonable basis to impute to importer knowledge of dumping with respect to all imports from Vietnam.

In determining whether there is a reasonable basis to believe or suspect an importer knew or should have known there was likely to be material injury by reason of dumped imports, the Department normally will look to the

preliminary injury determination of the Commission. If the Commission finds a reasonable indication of present material injury to the relevant U.S. industry, the Department will normally determine a reasonable basis exists to impute importer knowledge that there was likely to be material injury by reason of dumped imports. *See, e.g., Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from the People's Republic of China*, 62 FR 61967 (November 20, 1997). If, as in this case, the Commission preliminarily finds threat of material injury, the Department will also consider: (1) The extent of the increase in the volume of imports of the subject merchandise during the critical circumstances period and (2) the magnitude of the margins in determining whether a reasonable basis exists to impute knowledge that material injury was likely. (*See Preliminary Determination of Sales at Less Than Fair Value; Certain Cut-to-Length Carbon Steel Plate from the People's Republic of China*, 62 FR 31972 (June 11, 1997); *Preliminary Determination of Sales at Less Than Fair Value, Certain Cut-to-Length Carbon Steel Plate from the Russian Federation*, 62 FR 31967 (June 11, 1997); *Preliminary Determination of Sales at Less Than Fair Value, Certain Cut-To-Length Carbon Steel Plate from Ukraine*, 62 FR 31958 (June 11, 1997).

In determining whether there are "massive imports" over a "relatively short period," pursuant to section 733(e)(1)(B) of the Act, the Department normally compares the import volumes of the subject merchandise for at least three months immediately preceding the filing of the petition (*i.e.*, the "base period") to a comparable period of at least three months following the filing of the petition (*i.e.*, the "comparison period"). However, as stated in section 351.206(i) of the Department's regulations, if the Secretary finds importers, exporters, or producers had reason to believe at some time prior to the beginning of the proceeding that a proceeding was likely, then the Secretary may consider a time period of not less than three months from that earlier time. Imports normally will be considered massive when imports during the comparison period have increased by 15 percent or more compared to imports during the base period.

For the reasons set forth in the Critical Circumstances Memorandum, we find sufficient bases exist for finding importers, or exporters, or producers knew or should have known antidumping cases were pending on certain frozen fish fillet imports from Vietnam by May 2002 at the latest. Accordingly, we determined December 2001 through April 2002 should serve as the "base period," while May 2002 through September 2002 should serve as the "comparison period" in determining whether or not imports have been massive in the comparison period.

In this case, the volume of imports of certain frozen fish fillets from Vietnam increased 72.91 percent from the critical circumstances base period (May 2002 to September 2002) to the critical circumstances comparison period (December 2001 to April 2002), nearly five times the level of increase needed to find "massive imports." Furthermore, the preliminary dumping margins range from 37.94 to 61.88 percent for the mandatory respondents.

Based on the Commission's preliminary determination of threat of injury, the increase in the volume of imports of subject merchandise noted above, and the high margins from the preliminary dumping margins, the Department preliminarily finds that there is a reasonable basis to believe or suspect that the importer knew or should have known that there was likely to be material injury by means of sales at less than fair value of certain frozen fish fillets from Vietnam.

Pursuant to 19 CFR 351.206(h), we found imports increased by more than 15 percent for the respondent Nam Viet and for the Vietnam-wide entity as a whole, but did not increase by more than 15 percent for the respondents Agifish, Vinh Hoan, and CATACO. We therefore, find that imports of subject merchandise were massive in the comparison period for Nam Viet, but not for Agifish, Vinh Hoan, or CATACO.

The Department does not have the individual monthly shipment data necessary to determine if there were massive imports from the six non-selected respondents at this time. While the Department has, in the past, utilized the experience of the mandatory respondents to inform its judgement regarding the non-selected respondents, in this case, there are mixed results among the mandatory respondents. Moreover, the results for the majority of the mandatory respondents are at odds with the broader Customs data available to the Department. Consequently, the Department has determined that the most appropriate action would be to obtain producer-specific shipment data from the non-selected respondents to form the basis of its analysis.

In addition, we find that imports of subject merchandise were massive in the comparison period for the Vietnam-wide entity. *See* the Critical Circumstances Memorandum for more detailed information.

In summary, we find there is a reasonable basis to believe or suspect importers had knowledge of dumping and the likelihood of material injury with respect to imports of certain frozen fish fillets from Vietnam. We further find there have been massive imports of certain frozen fish fillets over a relatively short period from respondent Nam Viet. However, such imports have been found to be not massive over a relatively short period from Agifish, Vinh Hoan and CATACO. In addition, we find that imports of certain frozen fish fillets have been massive over a relatively short period from the Vietnam-wide entity.

Given the analysis summarized above, and described in more detail in the Critical Circumstances Memorandum, we preliminarily determine critical circumstances exist for imports of certain frozen fish fillets from Nam Viet and the Vietnam-wide entity. We will publish our preliminary critical circumstances decision with respect to Afiex, Cafatex, Da Nang, Mekonimex, QVD, and Viet Hai as soon as we have obtained the additional data.

In accordance with section 733(e)(2) of the Act, upon issuance of an affirmative preliminary determination of sales at less than fair value in the investigation with respect to imports of certain frozen fish fillets from Vietnam, the Department will direct the U.S. Customs Service (Customs) to suspend liquidation of all entries of certain frozen fish fillets from Vietnam (excluding entries from Agifish, Vinh Hoan, CATACO, Afiex, Cafatex, Da Nang, Mekonimex, QVD, and Viet Hai) that are entered, or withdrawn from warehouse, for consumption on or after 90 days prior to the date of publication in the **Federal Register** of our preliminary determinations in these investigations. Customs shall require a cash deposit or posting of a bond equal to the estimated preliminary dumping margins reflected in the preliminary determinations published in the **Federal Register**. The suspension of liquidation to be issued after our preliminary determination will remain in effect until further notice.

We will make a final determination concerning critical circumstances for all producers and exporters of subject merchandise from Vietnam when we make our final dumping determinations in this investigation, which will be 135 days after issuance of the preliminary dumping determination.

The weighted-average dumping margins are as follows:

CERTAIN FROZEN FISH FILLETS FROM VIETNAM

Producer/manufacturer/exporter	Weighted-average margin (percent)
Agifish	61.88
Vinh Hoan	37.94
Nam Viet	53.96
CATACO	41.06
Afiex	49.16
CAFATEX	49.16
Da Nang	49.16
Mekonimex	49.16
QVD	49.16
Viet Hai	49.16
Vietnam Wide Rate	63.88

Verification

As provided in section 782(I)(1) of the Act, we intend to verify all company information relied upon in making our final determination.

Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the U.S. Customs Service to suspend liquidation of all imports of subject merchandise, entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register** with respect to Agifish, Vinh Hoan, CATACO, Afiex, Cafatex, Da Nang, Mekonimex, QVD and Viet Hai. We will instruct U.S. Customs Service to require a cash deposit or the posting of a bond equal to the weighted-average amount by which the NV exceeds EP, as indicated above. With respect to Nam Viet and all other Vietnam exporters, the Department will direct the U.S. Customs Service to suspend liquidation of all entries of certain frozen fish fillets from Vietnam that are entered, or withdrawn from warehouse, for consumption on or after 90 days prior to the date of publication in the **Federal Register** of our preliminary determinations in these investigations. Customs shall require a cash deposit or posting of a bond equel to the estimated preliminary dumping margins reflected in the preliminary determinations published in the **Federal Register**. The suspension of liquidation to be issued after our preliminary determination will remain in effect until further notice. These suspension of liquidation instructions will remain in effect until further notice.

International Trade Commission Notification

In accordance with section 733(f) of the Act, we have notified the ITC of the Department's preliminary affirmative determination of sales at less than fair value. If our final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after our final determination whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports of certain frozen fish fillets, or sales (or the likelihood of sales) for importation, of the subject merchandise.

Public Comment

In accordance with 19 CFR 351.301(c)(3), interested parties may submit publicly available information to value the factors of production for purposes of the final determination within 40 days after the date of publication of this preliminary determination. Case briefs or other written comments may be submitted to the Assistant Secretary for Import Administration no later than fifty days after the date of publication of this notice, and rebuttal briefs, whose content is limited to issues raised in case briefs, no later than fifty-five days after the date of publication of this preliminary determination. *See* 19 CFR 351.309(c)(1)(i); 19 CFR 351.309(d)(1). A list of authorities used and an executive summary of issues should accompany any briefs submitted to the Department. This summary should be limited to five pages total, including footnotes.

In accordance with section 774 of the Act, we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. If a request for a hearing is made, we will tentatively hold the hearing two days after the deadline of submission of rebuttal briefs at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, at a time and location to be determined. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, within 30 days of the date of publication of this notice. *See* 19 CFR 351.310(c). Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. At the hearing, each party may make an affirmative presentation only on issues raised in that party's case brief, and may make rebuttal presentations only on arguments included in that party's rebuttal brief.

This determination is issued and published in accordance with sections 733(f) and 777(i)(1) of the Act.

Dated: January 24, 2003.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 03–2331 Filed 1–30–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C-507–501; C-507–601]

Certain In-Shell Pistachios (C-507–501) and Certain Roasted In-Shell Pistachios (C-507–601) from the Islamic Republic of Iran: Final Results of New Shipper Countervailing Duty Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Final Results of Countervailing Duty New Shipper Reviews.

SUMMARY: On September 4, 2002, the Department of Commerce (the Department) published in the **Federal Register** its preliminary results in the countervailing duty (CVD) new shipper reviews of certain in-shell pistachios and certain in-shell roasted pistachios from Iran.

The net subsidy rates in these *Final Results* differ from those of the *Preliminary Results*. The revised final net subsidy rates for the reviewed companies are listed below in the "Suspension of Liquidation" section of this notice.

EFFECTIVE DATE: January 31, 2003.

FOR FURTHER INFORMATION CONTACT: Darla Brown at (202) 482–2849 or Alicia Kinsey (202) 482–4793, Office of AD/CVD Enforcement VI, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, Room 4012, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230.

SUPPLEMENTARY INFORMATION:

Background

On September 4, 2002, the Department published the preliminary results of the new shipper reviews on certain in-shell pistachios and certain in-shell roasted pistachios from Iran. *See Certain In-Shell Pistachios (C-507–501) and Certain Roasted In-Shell Pistachios (C-507–601) from the Islamic*

Republic of Iran: Preliminary Results of New Shipper Countervailing Duty Reviews, 67 FR 56534 (September 4, 2002) (*Preliminary Results*). In accordance with 19 CFR 351.214, these new shipper reviews cover only those producers or exporters for which a review was specifically requested. Accordingly, these new shipper reviews cover Tehran Negah Nima Trading Company (Nima) and nine programs.

We invited interested parties to comment on the *Preliminary Results*. On December 16, 2002, we received comments from interested parties. On December 23, 2002, we received rebuttal comments from interested parties. At the request of the Department, respondents submitted revised case brief and rebuttal comments on January 8, 2003, and petitioners submitted revised rebuttal comments on January 10, 2003 that removed new factual information that was included in their initial submissions. A public hearing was held at the Department of Commerce on January 13, 2003.

Scope of the Reviews

In-Shell Pistachios

The product covered by this new shipper review is in-shell pistachio nuts from which the hulls have been removed, leaving the inner hard shells and edible meat, as currently classifiable in the Harmonized Tariff Schedules of the United States (HTSUS) under item number 0802.50.20.00. The written description of the scope of this proceeding is dispositive.

Roasted In-Shell Pistachios

The product covered by this new shipper review is all roasted in-shell pistachio nuts, whether roasted in Iran or elsewhere, from which the hull has been removed, leaving the inner hard shells and the edible meat, as currently classifiable in the HTSUS under item number 0802.50.20.00. The written description of the scope of this proceeding is dispositive.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to these new shipper reviews are addressed in the "Issues and Decision Memorandum" (Decision Memorandum) dated January 24, 2003, which is hereby adopted by this notice. A list of issues which parties have raised and to which we have responded, all of which are in the Decision Memorandum, is attached to this notice as Appendix I. Parties can find a complete discussion of all issues raised in these reviews and the corresponding recommendations in this public memorandum which is on file in room B-099 of the Main Commerce Building. In addition, a complete version of the Decision Memorandum can be accessed directly on the World Wide Web at http://www.ia.ita.doc.gov, under the heading "Federal Register Notices." The paper copy and electronic version of the Decision Memorandum are identical in content.

Suspension of Liquidation

In accordance with section 705(c)(1)(B)(i)(I) of the Tariff Act of 1930, as amended (the Act), we have calculated individual rates for the company under these new shipper reviews. For the period October 1, 2000, to September 30, 2001, we determine the net subsidy rates for the company under these new shipper reviews to be as follows:

CERTAIN RAW IN-SHELL PISTACHIOS

Producer/Exporter	Net Subsidy Rate
Tehran Negah Nima Trading Company, Inc.	23.18 percent ad valorem

CERTAIN ROASTED IN-SHELL PISTACHIOS

Producer/Exporter	Net Subsidy Rate
Tehran Negah Nima Trading Company, Inc.	21.68 percent ad valorem

Bonding is no longer permitted to fulfill security requirements for shipments from Tehran Negah Nima Trading Company, Inc. (Nima) of certain raw in-shell pistachios and certain roasted in-shell pistachios from Iran entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of these new shipper reviews. As Nima is the exporter but not the producer of subject merchandise, the Department's final results will apply to certain raw in-shell pistachios and certain roasted in-shell pistachios from Iran exported by Nima and produced by Maghsoudi Farms. *See* 19 CFR 351.107(b).

The following deposit requirements will be effective upon publication of this notice of final results of these new shipper reviews for all shipments of certain raw in-shell pistachios and certain roasted in-shell pistachios from Iran entered, or withdrawn from warehouse, for consumption on or after the date of publication, as provided by section 751(a)(2)(B) of the Act: (1) For the merchandise exported by Nima and produced by Maghsoudi Farms, the cash deposit rates will be equal to the net subsidy rates listed above; (2) for subject merchandise exported by Nima but not produced by Maghsoudi Farms, the cash deposit rate will be the "all others" rate established in the original CVD investigations. *See Final Affirmative Countervailing Duty Determination and Countervailing Duty Order: In-Shell Pistachios from Iran*, 51 FR 8344 (March 11, 1986) and *Final Affirmative Countervailing Duty Determination and Countervailing Duty Order: Roasted In-Shell Pistachios from Iran*, 51 FR 35679 (October 7, 1986); (3) if the exporter is not a firm covered in these new shipper reviews, a prior review, or the CVD investigations, but the manufacturer is, the cash deposit rates will be the rates established for the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor manufacturer is a firm covered in these new shipper reviews or the original investigations, the cash deposit rates will continue to be the "all others" rates established in the original CVD investigations.

Return or Destruction of Proprietary Information

This notice will serve as the only reminder to parties subject to Administrative Protective Order (APO) of their responsibility concerning the destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Failure to comply is a violation of the APO.

This determination is published pursuant to sections 705(d) and 777(i) of the Act.

Dated: January 24, 2003.

Faryar Shirzad,

Assistant Secretaryfor Import Administration.

Appendix I - Issues and Decision Memorandum

Methodology and Background Information

Analysis of Programs

I. Use of Facts Available
II. Programs Determined to Confer Subsidies
A. Provision of Fertilizer and Machinery
B. Provision of Water and Irrigation equipment
C. Provision of Credit
D. Technical Support from the GOI
E. Duty Refunds on Imported Raw or Intermediate Materials Used in the Production of Exported Goods
F. Program to Improve Quality of Exports of Dried Fruit
III. Program Determined to Be Not Countervailable
A. Price Supports and/or Guaranteed Purchase of All Production
IV. Programs Determined to Be Not Used
A. Export Certificate Voucher Program
B. Tax Exemptions
V. Total Ad Valorem Rate
VI. Analysis of Comments
Comment 1: Discovery of Additional Farm Does Not Render Nima Ineligible for a New Shipper Review
Comment 2: Nima's Sale of Subject Merchandise to the United States Is Bona Fide
Comment 3: Application of Adverse Facts Available to Grower-Related Subsidies
Comment 4: Undisclosed Benefits Relating to Maghsoudi Farms' Land Title
Comment 5: Application of Adverse Facts Available to the Price Supports and/or Guaranteed Purchase of Production Program
Comment 6: Application of Adverse Facts Available to the Provision of GOI Credit Program
Comment 7: Application of Adverse Facts Available to the Provision of Fertilizer and Machinery Program
Comment 8: Application of Adverse Facts Available to the Tax Exemption Program
Comment 9: Application of Adverse Facts Available to the Water and Irrigation Program
Comment 10: Application of Adverse Facts Available to the Technical Assistance Program
Comment 11: Application of Adverse Facts Available to the Program for Imported Raw or Intermediate Materials Used in the Production of Exported Goods
Comment 12: Application of Adverse Facts Available to the Program to Improve Quality of Exports of Dried Fruit
Comment 13: Application of Adverse Facts Available to the Export Certificate Voucher Program
Comment 14: Application of a Combination Rate Limited to Production Exported by Nima from the Single Farm Disclosed by Maghsoudi
Comment 15: Completeness and Accuracy of Data Reported by Nima
Comment 16: Reliability of Sales Information Submitted by Fallah Pistachios

[FR Doc. 03–2330 Filed 1–30–03; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF DEFENSE

Department of the Army

Intent To Prepare an Environmental Impact Statement for the Digital Multi-Purpose Range Complex at Fort Benning, GA

AGENCY: Department of the Army, DoD.

ACTION: Notice of intent.

SUMMARY: Fort Benning proposes to construct and operate a digital multi-purpose range complex (DMPRC). The DMPRC would provide a state-of-the-art range facility to meet the Army's training needs for soldiers to conduct gunnery courses in a realistic training environment by expanding the installation's training capacity. The current facilities (ranges) on Fort Benning do not meet modern gunnery standards and are inadequate to support full gunnery training and qualifications, requiring either training to modified standards or transporting units from Fort Benning to Fort Stewart, a distance of approximately 200 miles, for the required training. The project would include construction of the firing and target area, installation of fiber optics, construction of support facilities, upgrading of associated existing roadways, and construction of utilities to support the site. The proposed DMPRC would ensure soldiers are fully combat ready. The DMPRC would provide a suitable training range to fully support future needs of Army Transformation. Incorporating modern technology and range design into the DMPRC will allow Intermediate Brigade Combat Teams at Fort Benning to train more realistically and efficiently.

DATES: To be considered in the Draft EIS, comments and suggestion should be received not later than March 3, 2003.

ADDRESSES: Please direct written comments concerning the scope of the Digital Multi-Purpose Range Complex to Mr. Archibald Caldwell, Assistant Range Officer, Directorate of Training, U.S. Army Infantry Center, Attn: ATZB–OTR, Fort Benning, GA, 31905–5122 or e-mail to *Caldwella@benning.army.mil.*

FOR FURTHER INFORMATION CONTACT: Mr. Archibald Caldwell by telephone at (706) 545–3446 or by e-mail to *Caldwella@benning.army.mil.*

SUPPLEMENTARY INFORMATION: Fort Benning is the "Home of the Infantry" and conducts Program of Instruction training for Mechanized Infantry Students and sustainment training for elements of Mechanized Infantry Division units. Today's Army includes Mechanized Infantry units with both M2 Bradley Fighting Vehicles (BFVs) and M1A1 and M1A2 Abrams tanks. Although the Army is undergoing a transformation, Abrams tanks and BFVs will play vital roles in Army operations for a significant period of time (20–30 years). In addition to Infantry School training, Fort Benning is the home of several Forces Command deployable units and approximately 44 tank crews and 84 BFV crews. These assigned units are stationed at Fort Benning and must maintain their proficiency through required gunnery training. Consequently, Fort Benning needs a range that will accommodate all weapon systems that are relevant to ground warfare.

BFV crews and Abrams tank crews train for combat readiness by practicing and qualifying at different skill levels, known as gunnery Tables I through XII. Existing facilities on Fort Benning do not meet full training standards for BFV or Abrams tank training due to inadequate firing distance to the targets and width between the firing lanes. Currently Hastings Range (the existing facility) can only support a modified version of Table XII gunnery qualification training for the BFV and Abrams tank in a non-digitized environment. The digital component of the proposed DMPRC will enhance training by providing real time monitoring to increase safety and by providing feedback for after action reviews.

The proposed DMPRC would support Army Transformation by providing a quality range that would meet the training requirements of the current operational assets (Legacy Forces) as

well as support the additional training requirements of the Intermediate Armored Vehicles to be used by the Intermediate Brigade Combat Teams.

Alternatives to be considered include:

1. No Action—Continue to conduct some modified gunnery training at Fort Benning and conduct remainder of gunnery training at existing ranges at Fort Stewart.

2. Transport to Fort Stewart (transport troops from Fort Benning to existing ranges at Fort Stewart to conduct all Table XII gunnery and related training).

3. Proposed Action—Conduct and operate DMPRC in Fort Benning Training Compartment D–13.

4. Construct DMPRC in Training Compartment K–21 on Fort Benning.

Scoping: A mailing list has been prepared for public scoping and review throughout the process of preparation of a draft Environmental Impact Statement (EIS). This list includes local, state, and Federal officials having jurisdictional expertise or other interests in the project; concerned citizens; conservation groups; and local news media. Comments received as a result of this notice will be used to assist the Army in identifying additional significant resources to be evaluated, as well as potential impacts to the quality of the human and natural environments. Individuals or organizations may participate in the scoping process by submitting written comments or attending a public scoping meeting. The time and location of the scoping meeting will be announced in the Columbus Ledger Enquirer, on the Fort Benning Web site (*http://www.benning.army.mil/EMD/index.htm*), and by public notice sent to parties on the mailing list. Comments concerning the scope of the EIS may also be submitted to the address listed above.

Robert L. Hope,

Chief of Staff, Installation Management Agency, Southeast Region.

[FR Doc. 03–2317 Filed 1–30–03; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Availability for Non-Exclusive, Exclusive, or Partially Exclusive Licensing of U.S. Patent Application Concerning Chemosensitizing Agents Against Chloroquine Resistant P. Falciparum and Methods of Making and Using Thereof

AGENCY: Department of the Army, DoD.

ACTION: Notice.

SUMMARY: In accordance with 37 CFR 404.6 and 404.7, announcement is made of the availability for licensing of U.S. Patent Application No. 09/849,400 entitled "Chemosensitizing Agents Against Chloroquine Resistant P. Falciparum and Methods of Making and Using Thereof," filed May 7, 2001. Foreign rights are also available (PCT/US01/14574). The United States Government, as represented by the Secretary of the Army, has rights in this invention.

ADDRESSES: Commander, U.S. Army Medical Research and Materiel Command, ATTN: Command Judge Advocate, MCMR–JA, 504 Scott Street, Fort Detrick, Frederick, MD 21702–5012.

FOR FURTHER INFORMATION CONTACT: For patent issues, Ms. Elizabeth Arwine, Patent Attorney, (301) 619–7808. For licensing issues, Dr. Paul Mele, Office of Research & Technology Assessment, (301) 619–6664, both at telefax (301) 619–5034.

BILLING CODE 2316–08–M

SUPPLEMENTARY INFORMATION: A compound having the structural formula

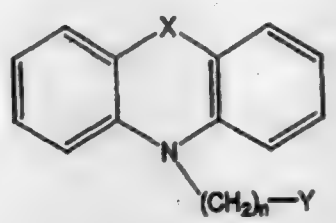

or pharmaceutically acceptable salt or prodrug thereof, wherein X is a substituted or unsubstituted alkyl or a heteroatom; n is 4,5 or 6; Y is a substituted or unsubstituted alkyl, cycloalkyl, heterocycloalkyl, aryl, heteroaryl, or 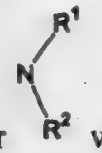 wherein R1 and R2 are each independently, H, a heteroatom, substituted or unsubstituted alkyl, cycloalkyl, heterocycloalkyl, aryl, or heteroaryl; and wherein each ring structure are independently substituted or unsubstituted is disclosed. Also disclosed are chemosensitizing agents and methods of modulating, attenuating, reversing, or affecting a cell's or organism's resistance to a given drug such as an antimalarial.

Luz D. Ortiz
Army Federal Register Liaison Officer

[FR Doc. 03–2316 Filed 1–30–03; 8:45 am]
BILLING CODE 3710–08–C

DEPARTMENT OF DEFENSE

Department of the Army; U.S. Army Corps of Engineers

Intent To Prepare a Joint Environmental Impact Statement and Environmental Impact Report for North Delta Improvements Project

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DoD.

ACTION: Notice of intent.

SUMMARY: The U.S. Army Corps of Engineers (Corps) and California Department of Water Resources (DWR) are proposing the North Delta Improvements Project (NDIP). The project would implement flood control improvements in the northern Sacramento-San Joaquin Delta, principally on and around Staten Island, Dead Horse Island, and McCormack Williamson Tract, in a manner that would benefit aquatic and terrestrial habitats and alleviate flood-related problems in the North Delta area.

Pursuant to the National Environmental Policy Act (NEPA) and the California Environmental Quality Act (CEQA), the Corps and DWR, respectively, are initiating the NDIP Feasibility Study for a portion of the Sacramento-San Joaquin Delta, and plan to prepare an Environmental Impact Statement/Environmental Impact Report (EIS/EIR) for the proposed NDIP. Development of the Feasibility Report will be closely coordinated with development of the draft EIS/EIR, which will document existing conditions, project actions, and project effects. Responsible and trustee agencies under CEQA may include: California Department of Fish and Game; The Reclamation Board of the State of California; State Lands Commission; California Regional Water Quality Control Boards; State Water Resources Control Board; California Department of Transportation; California Department of Conservation; and California Department of Boating and Waterways.

DATES: Scoping meetings will be held on February 19, 2003, 6–8 PM, Jean Harvie Community Center, Walnut Grove, CA, and February 20, 2003, 1:30–4 PM, Bonderson Building, Sacramento, CA. If special assistance is required, please contact Gwen Knittweis (see information below) as far in advance of the workshops as possible to enable DWR to secure the needed services. If a request cannot be honored, the requestor will be notified.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action and EIS/EIR should be addressed to: Ms. Becky Wren, Environmental Manager, U.S. Army Corps of Engineers, CESPK–PD–R, 1325 J Street, Sacramento, CA 95814–2922, telephone: (916) 557–5162, e-mail address: *rebecca.wren@usace.army.mil*, or Ms. Gwen Knittweis, North Delta Project Manager/Engineer, California Department of Water Resources, PO Box 942836, Sacramento, CA 94236–0001, telephone: (916) 653–2118, e-mail address: *gwenk@water.ca.gov*. Also, *http://ndelta.water.ca.gov* contains further project information.

SUPPLEMENTARY INFORMATION:

1. Background

A resolution adopted by the Senate Committee on Public Works on June 1, 1948, requests a review of reports submitted on the Sacramento River, California, to determine if it is advisable to modify existing projects in any way, particularly to (1) provide for the closing of Georgiana Slough and (2) eliminate tidal flow into lower Sherman Island, Frank's Tract, the area south of Dutch Slough, and similar areas subject to tidal inundation, so that the tidal prism of the Sacramento-San Joaquin Delta (Delta) may be reduced to a minimum.

A resolution adopted by both the Senate and House Committee on Public Works on January 31, 1961, and June 7, 1961, respectively, requests a review of Delta reports to determine the advisability of measures to preserve scenic values and to preserve and enhance recreational and related opportunities in project areas in the Delta region, consistent with the primary flood protection purposes of existing and proposed levees and channel improvements. Study authority is also contained in Section 205 of the Flood Control Act of 1950, which authorized the Secretary of the Army to make preliminary examinations and surveys for flood protection and allied purposes in the Delta.

2. Proposed Action

The Corps and DWR are conducting a study on flood control system improvements that would benefit aquatic and terrestrial habitats and alleviate flood-related problems in the North Delta. This study will result in a feasibility report.

3. Project Background

The Sacramento-San Joaquin estuary provides water for a wide range of beneficial uses, including drinking water for millions of Californians, irrigation water for millions of acres of agricultural land, an spawning and rearing habitat for aquatic organisms. The estuary also provides a permanent or seasonal home for a large variety of native plants and wildlife. Over the past several decades increase in the demand for the estuary's resources have increased conflict between the needs of water users and efforts to sustain the estuary's aquatic ecosystem and support recovery of listed fish.

The North Delta area of the estuary faces the need to balance the same issues as the larger estuary, particularly with regard to flood control and ecosystem restoration. The Sacramento-San Joaquin Delta is the focus of complex issues involving water supply, water quality, flood control requirements, and the environment. Of particular concern to this project, runoff from the Sacramento, San Joaquin, Mokelumne, and Cosumnes rivers, as well as from the South Sacramento Stream Group (Morrison Creek, Florin Creek, Union House Creek, Elder Creek, and North Beach-Stone Lakes area) during large storm events has caused flooding in the North Delta. Additionally, the degradation and loss of aquatic and terrestrial habitat are a primary concern in the North Delta.

The joint state-federal CALFED Bay-Delta Program (CALFED) was formed to develop and implement a long-term comprehensive plan to restore ecological health and improve water management for beneficial uses of the Bay-Delta system. The CALFED Programmatic EIS/EIR (PEIS/EIR) and Programmatic Record of Decision (ROD) were issued in July and August 2000, respectively. The CALFED ROD identifies, as a component of conveyance actions, the NDIP, which is to design and construct floodway improvements in the North Delta (such as on the lower Mokelumne River and Georgiana Slough) to provide conveyance, flood control, and ecosystem benefits.

The CALFED ROD also identifies other improvements to the North Delta, including changes to the Delta Cross Channel (DCC) and an evaluation of a through-Delta facility on the Sacramento River. The NDIP will not be addressing these improvements.

4. Need for the Project

Flood control improvements are needed to reduce flood damage to land uses, infrastructure, and the Bay-Delta ecosystem resulting from overflows caused by insufficient channel capacities and catastrophic levee failures within the NDIP study area, including the Point Pleasant area. The existing and historical conditions that warrant flood control and ecosystem quality improvements are described below.

Flood Control—The Mokelumne and Cosumnes rivers and the Morrison Creek Stream group do not have sufficient channel capacity to safely convey 100-year peak flows from Sierra Nevada watersheds through the North Delta to the San Joaquin River. Channel capacities for the north and south forks of the Mokelumne River are approximately 40,000 cubic feet per second (cfs). The combined channel capacity required to safely convey flows from a 100-year flood event would be 90,000 cfs. The lack of channel capacity, combined with constrictions in vulnerable areas (*e.g.*, bridge abutments) and an increase in sedimentation levels over time (which reduces channel capacity), makes a number of areas in the North Delta vulnerable to flooding. Since 1955, several areas have been flooded after levees were either breeched or overtopped, including the Point Pleasant area, McCormack-Williamson Tract, Dead Horse Island, New Hope Tract, Brack and Canal

Ranch Tracts, and the Franklin Pond area. The potential for flooding also threatens important public facilities and institutions in the North Delta area, including Interstate 5, the Union Pacific Railroad line, and the Rio Cosumnes Correctional Center.

The North Delta is also susceptible to levee failure during peak flows. Levees on McCormack-Williamson Tract and Dead Horse Island frequently have been overtopped or have failed during large storm events, and many other levees have been subject to structural failure during past storm events. Failure of Bay-Delta levees could:

(1) Result in flooding of Delta communities, farmland, habitat, key roads and highways;

(2) Expose adjacent islands to increased wave action, increased seepage, and risk of levee erosion;

(3) Affect water supply distribution systems; or

(4) Affect flow patterns, potentially resulting in adverse impacts on water quality if the levee breach is not repaired.

Ecosystem Quality—Degradation and the loss of habitats that support various life stages of aquatic and terrestrial biota are a primary concern in the North Delta. These habitat changes have many causes, including sedimentation from hydraulic mining, habitat conversion, dredging and water diversions. Thirty years of hydraulic mining (in the 19th century) in the river drainages along the eastern edge of the Central Valley have increased sedimentation levels in downstream watercourses, degrading valuable aquatic habitat. In addition, many of the seasonally-inundated lands in the Bay-Delta system that historically provided habitat to a variety of bird and animal species have been converted to agricultural, industrial, and urban uses. Levees constructed to protect lands in the Delta from inundation eliminated fish access to shallow overflow areas. Dredging to construct levees eliminated the tule bed habitat along the river channels. Upstream water development and use, depletion of natural flows by local diverters, and the export of water from the Bay-Delta system have altered hydrodynamic processes. This alteration has resulted in changed seasonal patterns of inflow, reduced Delta outflow, and diminished natural variability of flows into and through the Bay-Delta system. Facilities constructed to support water diversions may contribute to straying or direct losses of fish and can increase exposure of juvenile fish to predation.

5. Purpose of the Project

The purpose of the NDIP is to implement flood control improvements in a manner that benefits aquatic and terrestrial habitats.

To be consistent with the overall goals of CALFED, the NDIP would also be compatible with and supportive of the other programmatic elements outlined in the PEIS/EIR. Therefore, to the extent that meeting other goals is consistent with the primary purpose of the NDIP, the Corps and DWR will incorporate project elements that support the following CALFED objectives:

(a) Improve conveyance to improve water supply reliability at the South Delta export pumps.

(b) Improve conveyance to facilitate reductions in salinity levels in the San Joaquin River and improve the quality of the water at the South Delta export pumps.

(c) Recommend ecosystem restoration and science actions in the project area consistent with the CALFED Ecosystem Restoration Program's strategic goals and objectives.

(d) Improve levee stability and integrity in the NDIP project area.

(e) Minimize the conversion of prime, statewide-important, and unique farmlands to NDIP uses.

(f) Minimize impacts to recreational use in the NDIP project area.

6. Project Area

The NDIP project area is approximately 197 square miles. The project area defines the area within which DWR is considering alternatives for flood control and restoration actions. Direct (on-the-ground) impacts of constructing the alternatives will be evaluated within the project area. However, this area does not represent the limits of the area considered during impact analysis.

7. Alternatives

The NDIP is currently in the preliminary design phase, meaning that alternatives for project actions have not yet been fully defined. However, the team has a list of project design concepts that will be run through a hydraulic model to test their feasibility. The draft concepts include:

(a) *Whole/Partial Island Flood Detention Areas*—Whole and partial island flood detention areas have been proposed for Staten Island, Dead Horse Island, and McCormack-Williamson Tract. This concept would entail strengthening the landward sides of an island's levees and installing weirs and pumps to allow flood control operators to divert water on and off the island from swollen rivers during peak flood flows.

(b) *Parallel Levee Bypasses*—The parallel levee concept would create a controlled flood bypass by constructing a second levee inland from an existing levee and installing weirs at either end of the new bypass area, allowing flood control operators to divert water into the bypass to alleviate peak flood flows. This concept could include the placement of pumps at the downstream end of the bypass in order to return floodflows to the main channel.

(c) *Steback Levees*—Under this concept, a second levee, or setback levee, would be built inland from the existing levee, and the existing levee would be removed or breached in order to permanently widen the existing floodplain and create more capacity in the river corridor.

(d) *Bridge Replacement*—Historically, many bridges in the Delta have constricted channels as a result of their large concrete abutments and pilings. In addition, floating debris often gets entangled on the low bridges during flood events and continues to collect, forming a dam, which restricts flow and can cause upstream flooding. Bridge replacement in the North Delta area would include redesigning bridges with smaller abutments and pilings. Such bridge redesign would place less concrete in the channel, increasing channel capacity. Redesigned bridges would span rivers at a higher elevation, facilitating debris passage, and avoiding or minimizing debris buildup during flood events.

(e) *Maintenance Dredging*—Maintenance dredging has been proposed on the north and south forks of the Mokelumne River to increase channel capacity.

8. Scoping Process

(a) The Corps and DWR invites comments from State and Federal agencies with respect to the scope and content of the environmental information in the proposed EIS/EIR that are within each agency's statutory responsibilities in connection with the proposed NDIP. In addition, written comments from interested parties regarding the scope and content of the environmental documents are invited to ensure that the full range of alternatives and issues related to the proposed project are identified. All comments received, including names and addresses, will become part of the official administrative record and may be made available to the public. Comments should be submitted to the previously mentioned Corps or DWR

contact at the earliest possible date, but no later than February 28, 2003.

(b) The draft EIS/EIR will contain an analysis of the physical and biological impacts to the environment rising from the proposed project and alternatives to the project. In addition, it will address the cumulative impacts of implementation of alternatives in conjunction with other past, present, and reasonably foreseeable future actions.

Potential environmental effects could include, but are not limited to, the following: permanent and temporary effects on bodies of water and wetlands associated with the construction of flood control structures and flood control and ecosystem improvements; effects are rare and sensitive biological plant and animal species from construction of flood control structures and flood control and ecosystem improvements; short term effects on water quality associated with excavation and dredging in bodies of water; short term effects on air quality during construction from the operation of heavy equipment; and effects on cultural resources during earth moving operations associated with the construction of flood control structures and flood control and ecosystem improvements.

(c) DWR will consult with the State Historic Preservation Officer to comply with the National Historic Preservation Act, and the Corps will consult with the U.S. Fish and Wildlife Service to provide a Fish and Wildlife Coordination Act Report as an appendix to the EIS/EIR.

(d) A 30-day public review period will be provided for individuals and agencies to review and comment on the draft EIS/EIR. All interested parties are encouraged to respond to this notice and provide a current address if they wish to be notified of the EIS/EIR circulation.

(e) Scoping is an early and open process designed to determine the issues and alternatives to be addressed in a draft EIS/EIR. Two public scoping meetings are scheduled (see **DATES**).

9. Availability

The draft EIS/EIR is scheduled to be available for review and comment in the summer of 2004.

Dated: January 24, 2003.

Mark W. Connelly,

LTC, EN, Acting Commander.

[FR Doc. 03–2318 Filed 1–30–03; 8:45 am]

BILLING CODE 3710–EZ–M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before April 1, 2003.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.*, new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: January 27, 2003.

John D. Tressler,

Leader, Regulatory Management Group, Office of the Chief Information Officer.

Office of Elementary and Secondary Education

Type of Review: Reinstatement, with change, of a previously approved collection for which approval has expired.

Title: Indian Education Formula Grants to Local Educational Agencies (LEAs) (KA).

Frequency: Annually.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs (primary).

Reporting and Recordkeeping Hour Burden:

Responses: 11240.

Burden Hours: 17340.

Abstract: Application for funding under the Indian Education Formula Grant Program to Local Educational Agencies. The application is used to determine applicant eligibility, amount of award, and appropriateness of project services for Indian students to be served. The application also includes the Indian Student Eligibility Certification Form that LEAs have parents complete to certify Indian student eligibility for the program.

Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address *vivian_reese@ed.gov*. Requests may also be faxed to 202–708–9346. *Please specify the complete title of the information collection when making your request.*

Comments regarding burden and/or the collection activity requirements should be directed to Kathy Axt at her e-mail address *Kathy.Axt@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 03–2260 Filed 1–30–03; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before March 3, 2003.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Lauren Wittenberg, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the Internet address *Lauren.Wittenberg@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.,* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: January 27, 2003.

John D. Tressler,

Leader, Regulatory Management Group, Office of the Chief Information Officer.

Office of the Undersecretary

Type of Review: New Collection.

Title: Evaluation of Title I Accountability Systems and School Improvement Efforts (TASSIE) (SC).

Frequency: Annually.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs (primary).

Reporting and Recordkeeping Hour Burden:

Responses: 100.

Burden Hours: 100.

Abstract: The purpose of the Evaluation of Title I Accountability Systems and School Improvement Efforts (TASSIE) is to examine and evaluate ESEA Title I accountability systems and school improvement efforts in a nationally representative sample of districts and schools. This project addresses both the implementation of accountability practices in 1,300 school districts and 740 schools. The state data collection component of TASSIE will provide data on the impact of state policies that impact district and school responses to accountability requirements.

Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or directed to her e-mail address *Vivian.Reese@ed.gov.* Requests may also be faxed to 202–708–9346. *Please specify the complete title of the information collection when making your request.*

Comments regarding burden and/or the collection activity requirements should be directed to Jackie Montague at her e-mail address *Jackie.Montague@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Office of the Chief Financial Officer

Type of Review: Revision of a currently approved collection.

Title: U.S. Department of Education Budget Information—Non-Construction Programs Form and Grant Performance Report Form (SC).

Frequency: Annually Other: Once, only per application for new awards (524).

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs (primary), Businesses or other for-profit, Not-for-profit institutions.

Reporting and Recordkeeping Hour Burden:

Responses: 23250.

Burden Hours: 421875.

Abstract: This collection is necessary for the award and administration of discretionary and formula grants. The collections specific to ED forms are part of the reinvented process ED used for awarding multi-year discretionary grants. The new process substantially increases flexibility of the grant process by enabling all years of multi-year budget to be negotiated in at the time of initial award (Budget Information Non-Construction Programs, ED FORM 524). The U.S. Department of Education Grant Performance Report (ED Form 524B) is one of the tools used by ED staff as a monitoring tool in the Post-Award and Grant Administration functions.

Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or directed to her e-mail address *Vivian.Reese@ed.gov.* Requests may also be faxed to 202–708–9346. *Please specify the complete title of the information collection when making your request.*

Comments regarding burden and/or the collection activity requirements should be directed to Jackie Montague at her e-mail address *Jackie.Montauge@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 03–2261 Filed 1–30–03; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

National Advisory Committee on Institutional Quality and Integrity; Notice of Members

AGENCY: National Advisory Committee on Institutional Quality and Integrity, Department of Education.

What Is the Purpose of This Notice?

The purpose of this notice is to list the members of the National Advisory Committee on Institutional Quality and Integrity (National Advisory Committee) and to give the public the opportunity to nominate candidates for the positions to be vacated by those members whose terms will expire on September 30, 2003. This notice is required under Section 114(c) of the Higher Education Act (HEA), as amended.

What Is the Role of the National Advisory Committee?

The National Advisory Committee is established under Section 114 of the HEA, as amended, and is composed of 15 members appointed by the Secretary of Education from among individuals who are representatives of, or knowledgeable concerning, education and training beyond secondary education, including representatives of all sectors and type of institutions of higher education.

The National Advisory Committee meets at least twice a year and provides recommendations to the Secretary of Education pertaining to:

- The establishment and enforcement of criteria for recognition of accrediting agencies or associations under subpart 2 of part H of Title IV, HEA.

- The recognition of specific accrediting agencies or associations.
- The preparation and publication of the list of nationally recognized accrediting agencies and associations.

As the Committee deems necessary or on request, the Committee also advises the Secretary about:

- The eligibility and certification process for institutions of higher education under Title IV, HEA.
- The development of standards and criteria for specific categories of vocational training institutions and institutions of higher education for which there are no recognized accrediting agencies, associations, or State agencies in order to establish the interim eligibility of those institutions to participate in Federally funded programs.
- The relationship between (1) accreditation of institutions of higher education and the certification and eligibility of such institutions, and (2) State licensing responsibilities with respect to such institutions.
- Any other advisory functions relating to accreditation and institutional eligibility that the Secretary may prescribe.

What Are the Terms of Office for Committee Members?

The term of office of each member is 3 years, except that any member appointed to fill a vacancy occurring prior to the expiration of the term for which the member's predecessor was appointed is appointed for the remainder of the term. A member may be appointed, at the Secretary's discretion, to serve more than one term.

Who Are the Current Members of the Committee?

The current members of the National Advisory Committee are:

Members With Terms Expiring 9/30/03

- Mr. David Johnson, III, Student Member, Brigham Young University and University of Utah.
- Dr. Estela R. Lopez, Vice Chancellor for Academic Affairs, Connecticut State University System Office.
- Dr. Ronald F. Mason, Jr., President, Jackson State University, Mississippi.
- Dr. Eleanor P. Vreeland, Chairman, Barland Educational Associates, Florida.
- Dr. John A. Yena, President, Johnson & Wales University, Rhode Island.

Members With Terms Expiring 9/30/04

- Dr. Robert C. Andringa, President, Council for Christian Colleges and Universities, Washington, DC.
- Dr. Lawrence W. Burt, Director, Student Financial Services, University of Texas at Austin.
- Dr. Lawrence J. DeNardis, President, University of New Haven, Connecticut.
- Mr. Steven W. McCullough, Executive Director, Iowa Student Loan Liquidity Corporation.
- Dr. Laura Palmer Noone, President, University of Phoenix, Arizona.

Members With Terms Expiring 9/30/05

- Honorable Randolph A. Beales, Former Attorney General of Virginia, Attorney at Law, Christian & Barton, LLP, Virginia.
- Dr. Karen A. Bowyer, President, Dyersburg State Community College, Tennessee.
- Dr. Gerrit W. Gong, Assistant to the President, Brigham Young University, Utah.
- Mr. Donald R. McAdams, President, Center for Reform of School Systems, Texas.
- Dr. George A. Pruitt, President, Thomas A. Edison State College, New Jersey.

How Do I Nominate an Individual for Appointment as a Committee Member?

If you would like to nominate an individual for appointment to the Committee, send the following information to the Committee's Executive Director:

- A copy of the nominee's resume; and
- A cover letter that provides your reason(s) for nominating the individual and contact information for the nominee (name, title, business address, and business phone and fax numbers).

The information must be sent by May 1, 2003 to the following address: Bonnie LeBold, Executive Director, National Advisory Committee on Institutional Quality and Integrity, U.S. Department of Education, room 7007, MS 7592, 1990 K Street, NW., Washington, DC 20006.

How Can I Get Additional Information?

If you have any specific questions about the nomination process or general questions about the National Advisory Committee, please contact Ms. Bonnie LeBold, the Committee's Executive Director, telephone: (202) 219–7009, fax: (202) 219–7008, e-mail: *Bonnie.LeBold@ed.gov* between 9 a.m. and 5 p.m., Monday through Friday.

Authority: 20 U.S.C. 1011c.

Dated: January 27, 2003.

Sally L. Stroup,

Assistant Secretary for Postsecondary Education.

[FR Doc. 03–2290 Filed 1–30–03; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[CFDA Nos: 84.031A, 84.031T, 84.031N and 84.031W]

Office of Postsecondary Education; Strengthening Institutions (SIP), American Indian Tribally Controlled Colleges and Universities (TCCU), and Alaska Native and Native Hawaiian-Serving Institutions (ANNH) Programs; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2003

Purpose of Programs: The SIP, TCCU, and ANNH Programs are all authorized under Title III, Part A of the Higher Education Act of 1965, as amended (HEA). These programs will be referred to collectively in this notice as the "Title III, Part A Programs." Each provides grants to eligible institutions of higher education (IHEs) to enable them to improve their academic quality, institutional management, and fiscal stability, and increase their self-sufficiency.

Eligible Applicants: To qualify as an eligible institution under any of the programs included in this notice, an accredited or preaccredited institution must, among other requirements, have a high enrollment of needy students, and its Educational and General (E&G) expenditures per full-time equivalent (FTE) undergraduate student must be low in comparison with the average E&G expenditures per FTE undergraduate student of IHEs that offer similar instruction. The complete eligibility requirements are found in 34 CFR 607.2–607.5. The regulations may also be accessed by visiting the following Department of Education Web site: *http://www.ed.gov/legislation/FedRegister*

Notes: 1. A grantee under the Developing Hispanic-Serving Institutions (HSI) Program, authorized under Title V of the HEA, may not receive a grant under any Title III, Part A Program. Further, an HSI Program grantee may not give up that grant in order to receive a grant under any Title III, Part A Program. Therefore, a current HSI grantee may not apply for a grant under any Title III, Part A Program in FY 2003.

2. An IHE that does not fall within the limitation described in NOTE 1 may apply for a FY 2003 grant under all Title III, Part A Programs for which it is eligible, as well as under the HSI Program. An applicant may receive only one grant.

Applications Available: January 31, 2003.

Deadline for Transmittal of Applications: March 5, 2003.

Deadline for Intergovernmental Review: May 5, 2003.

Estimated Available Funds: The Administration has requested $76.275

million for the SIP, $18.130 million for the TCCU Program, and $6.734 million for the ANNH Program for FY 2003. The actual level of funding, if any, depends on final congressional action. However, we are inviting applications to allow enough time to complete the grant process if Congress appropriates funds for these programs.

Estimated Range of Awards: $330,000–$365,000 per year for 5-year development grants under SIP; $30,000–$35,000 for 1-year planning grants under the Title III, Part A Programs; $800,000–$1,200,000 for 1-year construction and renovation grants and $347,000–$395,000 per year for 5-year development grants under the TCCU Program; and $300,000–$350,000 per year for 5 year development grants under the ANNH Program.

Estimated Average Size of Awards: $362,000 per year for 5-year development grants under SIP; $32,667 for 1-year planning grants under the Title III, Part A Programs; $1,182,000 per grant for 1-year construction and renovation grants and $380,000 per year for 5-year development grants under the TCCU Program; and $328,000 per year for 5-year development grants under the ANNH Program. Development grants monies may be used for a variety of allowable activities. Construction funds may be used solely for construction, maintenance, renovation and improvement in classrooms, libraries, laboratories, and other instructional facilities, including purchase or rental of telecommunications technology equipment or services. We will refer to grants to carry out construction as construction grants.

Estimated Number of Awards: 15 planning grants under the Title III, Part A Programs; 58 development grants under the SIP; 7 construction and renovation grants and 1 development grant under the TCCU Program; and 4 development grants under the ANNH Program.

Note: The Department is not bound by any estimates in this notice. Applicants should periodically check the Title III, Part A Web site for further information on these programs. The address is: *http://www.ed.gov/offices/OPE/HEP/idues/title3a.html*

Project Period: 60 months for development grants, 12 months for planning grants and 12 months for construction grants.

Page Limit: The application narrative is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. You must limit your narrative to the equivalent of no more than 100 pages for the individual development grant, 140 pages for the cooperative arrangement development grant and 30 pages for the planning grant, using the following standards:

- A "page" is 8.5″ × 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles and headings. You may single space footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12-point or larger or no smaller than 10 pitch (characters per inch).

The page limit does not apply to the application cover sheet (ED 424), the one-page abstract, the assurances and certification forms, and the Cooperative Arrangement Form (ED–851A–1). The page limit does, however, apply to all remaining parts of the application.

We will reject your application if—

- You apply these standards and exceed the page limit; or
- You apply other standards and exceed the equivalent of the page limit.

Special Funding Considerations: In tie-breaking situations described in 34 CFR 607.23, the Title III, Part A Program regulations require that we award one additional point to an application from an IHE that has an endowment fund for which the 1999–2000 market value per FTE student was less than the comparable average per FTE student at a similar type IHE. We also award one additional point to an application from an IHE that had expenditures for library materials in 1999–2000 per FTE student that were less than the comparable average per FTE student at a similar type IHE.

For the purpose of these funding considerations, an applicant must demonstrate that the market value of its endowment fund per FTE student and library expenditures per FTE student, were less than the average expenditure per FTE student when calculated using the data submitted by applicants for the year 1999–2000.

If a tie remains, after applying the additional point(s) we will determine the ranking of applicants based on the lowest combined library expenditures per FTE student and endowment values per FTE student.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 82, 85, 86, 97, 98, and 99; and, (b) The regulations for this program in 34 CFR part 607.

Applicability of Executive Order 13202: Applicants that apply for construction funds under these programs must comply with the Executive Order 13202 signed by President Bush on February 17, 2001 and amended on April 6, 2001. This Executive order provides that recipients of Federal construction funds may not "require or prohibit bidders, offerors, contractors, or subcontractors to enter into or adhere to agreements with one or more labor organizations, on the same or other construction project(s)" or "otherwise discriminate against bidders, offerors, contractors, or subcontractors for becoming or refusing to become or remain signatories or otherwise adhere to agreements with one or more labor organizations, on the same or other construction project(s)." However, the Executive order does not prohibit contractors or subcontractors from voluntarily entering into these agreements.

Projects funded under this program that include construction activity will be provided a copy of this Executive order and will be asked to certify that they will adhere to it.

Priority

Invitational Priority

We are particularly interested in applications that meet the following priority.

Academic programs designed to improve and enhance opportunities for low-income students in the workforce and meet local community workforce needs.

Under 34 CFR 75.105(c)(1) we do not give an application that meets the priority a competitive or absolute preference over other applications.

Application Procedures

Note: Some of the procedures in these instructions for transmitting applications differ from those in the Education Department General Administrative Regulations (EDGAR) (34 CFR 75.102). Under the Administrative Procedure Act (5 U.S.C. 553) the Department generally offers interested parties the opportunity to comment on proposed regulations. However, these amendments make procedural changes only and do not establish new substantive policy. Therefore, under 5 U.S.C. 553(b)(A), the Secretary has determined that proposed rulemaking is not required.

Pilot Project for Electronic Submission of Applications

In FY 2003, the U.S. Department of Education is continuing to expand its pilot project for electronic submission of applications to include additional formula grant programs and additional discretionary grant competitions. The Title III, Part A Programs—84.031A, 84.031N, 84.031T, and 84.031W are

included in the pilot project. If you are an applicant under the Title III, Part A Programs, you may submit your application to us in either electronic or paper format.

The pilot project involves the use of the Electronic Grant Application System (e-Application) portion of the Grant Administration and Payment System (GAPS). Users of e-Application will be entering data on-line while completing their applications. You may not e-mail a grant application to us. If you participate in this voluntary pilot project by submitting an application electronically, the data you enter on-line will be saved into a database. We request your participation in e-Application. We shall continue to evaluate its success and solicit suggestions for improvement.

If you participate in e-Application, please note the following:

- Your participation is voluntary.
- You will not receive any additional point value because you submit a grant application in electronic format, nor will we penalize you if you submit an application in paper format. When you enter the e-Application system, you will find information about its hours of operation.
- You may submit all documents electronically, including the Application for Federal Assistance (ED 424), Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.
- After you electronically submit your application, you will receive an automatic acknowledgement, which will include a PR/Award number (an identifying number unique to your application).
- Within three working days after submitting your electronic application, fax a signed copy of the Application for Federal Assistance (ED 424) to the Application Control Center after following these steps:

(1) Print ED 424 from the e-Application system.

(2) The institution's Authorizing Representative must sign this form.

(3) Place the PR/Award number in the upper right hand corner of the hard copy signature page of the ED 424.

(4) Fax the signed ED 424 to the Application Control Center at (202) 260–1349.

- We may request that you give us original signatures on all other forms at a later date.
- *Closing Date Extension in Case of System Unavailability:* If you elect to participate in the e-Application pilot for the Title III, Part A Programs and you are prevented from submitting your application on the closing date because the e-Application system is unavailable, we will grant you an extension of one business day in order to transmit your application electronically, by mail, or by hand delivery. For us to grant this extension—

(1) You must be a registered user of e-Application, and have initiated an e-Application for this competition; and

(2)(a) The e-Application system must be unavailable for 60 minutes or more between the hours of 8:30 and 3:30 p.m., Washington, DC time, on the deadline date; or

(b) The e-Application system must be unavailable for any period of time during the last hour of operation (that is, for any period of time between 3:30 and 4:30 p.m., Washington, DC time) on the deadline date. The Department must acknowledge and confirm these periods of unavailability before granting you an extension. To request this extension you must contact either (1) the person listed elsewhere in this notice under *For Applications and Further Information Contact* or (2) the e-GRANTS help desk at 1–888–336–8930.

You may access the electronic grant application for the Title III, Part A Programs at: *http://e-grants.ed.gov*

We have included additional information about the e-Application pilot project (see Parity Guidelines between Paper and Electronic Applications) in the application package.

For Applications and Further Information Contact: Darlene B. Collins, U.S. Department of Education, 1990 K Street, NW, 6th Floor, Washington, DC 20006–8513. Telephone: (202) 502–7777 or via Internet: *darlene.collins@ed.gov*

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the program contact person listed under *For Applications and Further Information Contact.*

Individuals with disabilities may obtain a copy of the application package in an alternative format by contacting that person. However, the Department is not able to reproduce in an alternative format the standard forms included in the application package.

Electronic Access to This Document

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To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

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Program Authority: 20 U.S.C. 1057–1059d.

Dated: January 28, 2003.

Sally L. Stroup,

Assistant Secretary, Office of Postsecondary Education.

[FR Doc. 03–2347 Filed 1–30–03; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

National Committee on Foreign Medical Education and Accreditation; Meeting

AGENCY: National Committee on Foreign Medical Education and Accreditation, Department of Education.

What Is the Purpose of This Notice?

The purpose of this notice is to announce the upcoming meeting of the National Committee on Foreign Medical Education and Accreditation. Parts of this meeting will be open to the public, and the public is invited to attend those portions.

When and Where Will the Meeting Take Place?

We will hold the public meeting on March 13, 2003 beginning at 9:30 a.m. in Plaza C at The Ritz-Carlton Hotel at Pentagon City, 1250 South Hayes Street, Arlington, VA 22202. You may call the hotel at (703) 415–5000 or fax the hotel at (703) 415–5061 to inquire about room accommodations.

What Assistance Will Be Provided to Individuals With Disabilities?

The meeting site is accessible to individuals with disabilities. If you will need an auxiliary aid or service to participate in the meeting (*e.g.*, interpreting service, assistive listening device, or materials in an alternate format) notify the contact person listed in this notice at least two weeks before the scheduled meeting date. Although we will attempt to meet a request received after that date, we may not be able to make available the requested

auxiliary aid or service because of insufficient time to arrange it.

Who Is the Contact Person for the Meeting?

Please contact Ms. Bonnie LeBold, the Executive Director of the National Committee on Foreign Medical Education and Accreditation, if you have questions about the meeting. You may contact her at the U.S. Department of Education, room 7007, MS 7563, 1990 K St. NW., Washington, DC 20006, telephone: (202) 219–7009, fax: (202) 219–7008, e-mail: *Bonnie.LeBold@ed.gov*.

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service at 1–800–877–8339.

What Are the Functions of the National Committee?

The National Committee on Foreign Medical Education and Accreditation was established by the Secretary of Education under section 102 of the Higher Education Act of 1965, as amended. The Committee's responsibilities are to:

- Evaluate the standards of accreditation applied to applicant foreign medical schools; and
- Determine the comparability of those standards to standards for accreditation applied to United States medical schools.

What Items Will Be on the Agenda for Discussion at the Meeting?

The National Committee on Foreign Medical Education and Accreditation will review the standards of accreditation applied to medical schools by several foreign countries to determine whether those standards are comparable to the standards of accreditation applied to medical schools in the United States. Discussions of the standards of accreditation will be held in sessions open to the public. Discussions that focus on specific determinations of comparability are closed to the public in order that each country may be properly notified of the decision. The countries tentatively scheduled to be discussed at the meeting include Australia/New Zealand, Costa Rica, Czech Republic, Denmark, Hungary, India, Ireland, Pakistan, the Philippines, Saba, and St. Lucia. Beginning February 24, you may call the contact person listed above to obtain the final listing of the countries whose standards will be discussed during this meeting. The listing of countries will also be posted on the Department of Education's Web site at the following address: *http://www.ed.gov/offices/OPE/ncfmea/ncfmeetings.html*.

How May I Obtain Electronic Access to This Document?

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/legislation/FedRegister*.

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Authority: 5 U.S.C. Appendix 2.

Dated: January 27, 2003.

Sally L. Stroup,

Assistant Secretary for Postsecondary Education.

[FR Doc. 03–2289 Filed 1–30–03; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Arbitration Panel Decision Under the Randolph-Sheppard Act

AGENCY: Department of Education.

ACTION: Notice of arbitration panel decision under the Randolph-Sheppard Act.

SUMMARY: The Department gives notice that on November 30, 2001, an arbitration panel rendered a decision in the matter of *California Department of Rehabilitation Services* v. *United States Postal Service (Docket No. R–S/00–4)*. This panel was convened by the U.S. Department of Education under 20 U.S.C. 107d–1(b), after the Department received a complaint filed by petitioner, the California Department of Rehabilitation Services.

SUPPLEMENTARY INFORMATION: Under section 6(c) of the Randolph-Sheppard Act (the Act), 20 U.S.C. 107d–2(c), the Secretary publishes in the **Federal Register** a synopsis of each arbitration panel decision affecting the administration of vending facilities on Federal and other property.

Background

This dispute concerns the alleged improper denial by the United States Postal Service (USPS) of the request of the California Department of Rehabilitation Services, the State licensing agency (SLA), to establish a Randolph-Sheppard vending facility at the Long Beach Processing and Distribution Center in Long Beach, California, in violation of the satisfactory site provisions of the Act (20 U.S.C. 107 *et seq.*) and the implementing regulations in 34 CFR part 395.

A summary of the facts is as follows: In February 1997, the SLA submitted a proposal to USPS to establish a Randolph-Sheppard vending facility by combining the food service facility at the Long Beach Processing and Distribution Center with nine satellite locations. A permit agreement was entered into between the SLA and USPS. In reliance upon the signed permit agreement, the SLA purchased vending machines and other equipment in the amount of $181,000. Additionally, a blind vendor was assigned to the vending facility and route. The blind vendor invested in storage space and hired an assistant to help him service the vending route.

In September 1997, the Manager for Corporate Personnel Management at USPS Headquarters in Washington, DC, became aware of the permit agreement with the SLA to provide food service at the Long Beach Processing and Distribution Center and the nine satellite locations. Subsequently, USPS asserted that the permit agreement violated USPS policies concerning the establishment of vending services operated by the blind. According to USPS, the blind vendor had to be physically present at each vending route where food service was being provided. In the absence of having a blind vendor present at each location, USPS required that the SLA pay USPS $8,400 in service fees. The SLA objected to the payment of service fees and to the directive from USPS Headquarters to terminate the satellite vending routes as a violation of the terms of the permit agreement signed by the SLA and USPS.

As a result of this dispute, the SLA requested the Secretary of Education to convene a Federal arbitration panel to hear this complaint. A panel was convened, and a hearing on this matter was held on May 4, 2001.

Arbitration Panel Decision

After considering the evidence presented, the panel concluded that USPS had entered into a permit agreement with the SLA in February 1997. The panel further determined that the permit agreement at the Long Beach Processing and Distribution Center

provided for a main vending facility and nine satellite vending routes. The panel rejected the explanation of USPS for terminating the permit agreement and ruled that the termination was in violation of the Randolph-Sheppard Act for a number of reasons. First, the panel found that the Act does not prohibit vending routes where blind vendors are not regularly onsite at each location. Secondly, the panel found that having an onsite requirement only for blind vendors and not for commercial vendors was not supported by a reading of the Act. Therefore, the panel concluded that USPS could not unilaterally withdraw its participation in a vending facility permit agreement as this was a violation of the Randolph-Sheppard Act, 20 U.S.C. 107 *et seq.*, and the implementing regulations in 34 CFR part 395.

The panel directed USPS to pay damages as established by the SLA and the blind vendor. The panel retained jurisdiction concerning the matter of payment of damages.

The views and opinions expressed by the panel do not necessarily represent the views and opinions of the U.S. Department of Education.

FOR FURTHER INFORMATION CONTACT: You may obtain a copy of the full text of the arbitration panel decision from Suzette E. Haynes, U.S. Department of Education, 400 Maryland Avenue, SW., room 3232, Mary E. Switzer Building, Washington, DC 20202–2738. Telephone: (202) 205–8536. If you use a telecommunications device for the deaf (TDD), you may call the TDD number at (202) 205–8298.

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Dated: January 28, 2003.

Robert H. Pasternack,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 03–2315 Filed 1–30–03; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Office of Science; Notice of Renewal of the High Energy Physics Advisory Panel

Pursuant to Section 14(a)(2)(A) of the Federal Advisory Committee Act, App.2, and section 102–3.65, title 41, Code of Federal Regulations and following consultation with the Committee Management Secretariat, General Services Administration, notice is hereby given that the High Energy Physics Advisory Panel has been renewed for a two-year period, beginning in January 2003.

The Panel will provide advice to the Director of the Office of Science (DOE), and the Assistant Director, Mathematical & Physical Sciences Directorate (NSF), on long-range planning and priorities in the national high-energy physics program. The Secretary of Energy has determined that renewal of the Panel is essential to conduct business of the Department of Energy and the National Science Foundation and is in the public interest in connection with the performance of duties imposed by law upon the Department of Energy. The Panel will continue to operate in accordance with the provisions of the Federal Advisory Committee Act (Pub. L. No. 92–463), the General Services Administration Final Rule on Federal Advisory Committee Management, and other directives and instructions issued in implementation of those acts.

FOR FURTHER INFORMATION CONTACT: Ms. Rachel Samuel at (202) 586–3279.

Issued in Washington, DC on January 24, 2003.

James N. Solit,

Advisory Committee Management Officer.

[FR Doc. 03–2300 Filed 1–30–03; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Paducah

AGENCY: Department of Energy (DOE).

ACTION: Notice of Open Meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Paducah. The Federal Advisory Committee Act (Pub. L. No. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Thursday, February 20, 2003, 5:30 p.m.–9 p.m.

ADDRESSES: 111 Memorial Drive, Barkley Centre, Paducah, Kentucky.

FOR FURTHER INFORMATION CONTACT: W. Don Seaborg, Deputy Designated Federal Officer, Department of Energy Paducah Site Office, Post Office Box 1410, MS–103, Paducah, Kentucky 42001, (270) 441–6806.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration and waste management activities.

Tentative Agenda

5:30 p.m.—Informal Discussion
6 p.m.—Call to Order; Introductions; Approve November Minutes; Review Agenda; Board Retreat
6:10 p.m.—DDFO's Comments
- Budget Update
- Environment, Safety and Health (ES&H) Issues
- Environmental Management (EM) Project Updates
- Citizen Advisory Board (CAB) Recommendation Status
- Other

6:30 p.m.—Ex-officio Comments
6:40 p.m.—Public Comments and Questions
6:50 p.m.—Review of Action Items
7:05 p.m.—Break
7:15 p.m.—Presentation
- Kentucky Pollutant Discharge Elimination System (KPDES) Permit Discussion (Water Task Force)
- Request for Letter of Support from Active Citizens for Truth (ACT) (M. Kemp)

8 p.m.—Public Comments and Questions
8:10 p.m.—Task Force and Subcommittee Reports
- Water Task Force
- Waste Operations Task Force
- Long Range Strategy/Stewardship
- Community Concerns
- Public Involvement/Membership

8:40 p.m.—Administrative Issues
- Review of Work Plan
- Review of Next Agenda
- Federal Coordinator Comments
- Final Comments

9 p.m.—Adjourn

Copies of the final agenda will be available at the meeting.

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact David Dollins at the address listed above or by telephone at (270) 441–6819. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer (DDFO) is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of five minutes to present their comments as the first item of the meeting agenda.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585 between 9 a.m. and 4 p.m., Monday–Friday, except Federal holidays. Minutes will also be available at the Department of Energy's Environmental Information Center and Reading Room at 115 Memorial Drive, Barkley Centre, Paducah, Kentucky between 8 a.m. and 5 p.m. on Monday thru Friday or by writing to David Dollins, Department of Energy Paducah Site Office, Post Office Box 1410, MS–103, Paducah, Kentucky 42001 or by calling him at (270) 441–6819.

Issued at Washington, DC on January 28, 2003.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 03–2301 Filed 1–30–03; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

Biomass Research and Development Technical Advisory Committee

AGENCY: Department of Energy.

ACTION: Notice of Open Meeting.

SUMMARY: This notice announces an open meeting of the Biomass Research and Development Technical Advisory Committee under the Biomass Research and Development Act of 2000. The Federal Advisory Committee Act (Public Law No. 92–463, 86 Stat. 770) requires that agencies publish these notices in the **Federal Register** to allow for public participation. This notice announces the meeting of the Biomass Research and Development Technical Advisory Committee.

DATES: February 24–25, 2003, 8:30 a.m.

ADDRESSES: Hilton Crystal City Hotel at National Airport, Farragut Room, 2399 Jefferson Davis Highway, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: John Ferrell, Designated Federal Officer for the Committee, Office of Energy Efficiency and Renewable Energy, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585; (202) 586–7766.

SUPPLEMENTARY INFORMATION:

Purpose of Meeting: To provide advice and guidance that promotes research and development leading to the production of biobased industrial products.

Tentative Agenda: Agenda will include discussions on the following:

- Presentations by representatives from USDA, DOE, DOI, EPA, NSF, OFEE, and OSTP on their respective biomass research and development activities for FY03 and FY04. Meeting will include a joint meeting of the Committee and the Biomass R&D Board members.

Public Participation: In keeping with procedures, members of the public are welcome to observe the business of the Biomass Research and Development Technical Advisory Committee. To attend the meeting and/or to make oral statements regarding any of the items on the agenda, you should contact John Ferrell at 202–586–7766 or *Bioenergy @ee.doe.gov* (email). You must make your request for an oral statement at least 5 business days before the meeting. Members of the public will be heard in the order in which they sign up at the beginning of the meeting. Reasonable provision will be made to include the scheduled oral statements on the agenda. The Chair of the Committee will make every effort to hear the views of all interested parties. If you would like to file a written statement with the Committee, you may do so either before or after the meeting. The Chair will conduct the meeting to facilitate the orderly conduct of business.

Minutes: The minutes of the meeting will be available for public review and copying within 60 days at the Freedom of Information Public Reading Room; Room 1E–190; Forrestal Building; 1000 Independence Avenue, SW., Washington, DC, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC on January 28, 2003.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 03–2299 Filed 1–30–03; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Energy Information Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Energy Information Administration (EIA), Department of Energy (DOE).

ACTION: Agency Information Collection Activities: Proposed Collection; Comment Request.

SUMMARY: The EIA is soliciting comments on the proposed three-year extension to the Form DOE–887, "Department of Energy Customer Surveys."

DATES: Comments must be filed by April 1, 2003. If you anticipate difficulty in submitting comments within that period, contact the person listed below as soon as possible.

ADDRESSES: Send comments to Herbert Miller. To ensure receipt of the comments by the due date, submission by FAX (202–287–1705) or e-mail (*herbert.miller@eia.doe.gov*) is recommended. The mailing address is Energy Information Administration, EI–70, Forrestal Building, U.S. Department of Energy, Washington, DC 20585. Alternatively, Mr. Miller may be contacted by telephone at 202–287–1711.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Mr. Miller at the address listed above.

SUPPLEMENTARY INFORMATION:

I. Background
II. Current Actions
III. Request for Comments

I. Background

The Federal Energy Administration Act of 1974 (Pub. L. No. 93–275, 15 U.S.C. 761 *et seq.*) and the DOE Organization Act (Pub. L. No. 95–91, 42 U.S.C. 7101 *et seq.*) require the EIA to carry out a centralized, comprehensive, and unified energy information program. This program collects, evaluates, assembles, analyzes, and disseminates information on energy resource reserves, production, demand, technology, and related economic and

statistical information. This information is used to assess the adequacy of energy resources to meet near and longer term domestic demands.

The EIA, as part of its effort to comply with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35), provides the general public and other Federal agencies with opportunities to comment on collections of energy information conducted by or in conjunction with the EIA. Any comments received help the EIA to prepare data requests that maximize the utility of the information collected, and to assess the impact of collection requirements on the public. Also, the EIA will later seek approval by the Office of Management and Budget (OMB) under section 3507(a) of the Paperwork Reduction Act of 1995.

On September 11, 1993, the President signed Executive Order No. 12862 aimed at "* * * ensuring the Federal government provides the highest quality service possible to the American people." The Order discusses surveys as a means for determining the kinds and qualities of service desired by Federal Government customers and for determining satisfaction levels for existing services: These voluntary customer surveys will be used to ascertain customer satisfaction with the Department of Energy in terms of services and products. Respondents will be individuals and organizations that are the recipients of the Department's services and products. Previous customer surveys have provided useful information to the Department for assessing how well the Department is delivering its services and products and for making improvements. The results are used internally and summaries are provided to the Office of Management and Budget on an annual basis, and are used to satisfy the requirements and the spirit of Executive Order No. 12862.

II. Current Actions

The request to OMB will be for a three-year extension of the expiration date of approval for DOE to conduct customer surveys. During the past three years, 10 customer surveys were conducted by telephone, mail, and the World Wide Web. Examples of previously conducted customer surveys are available upon request. Our planned activities in the next three fiscal years reflect our increased emphasis on and expansion of these activities, including an increased use of electronic means for obtaining customer input (World Wide Web).

III. Request for Comments

Prospective respondents and other interested parties should comment on the actions discussed in item II. The following guidelines are provided to assist in the preparation of comments.

General Issues

A. Is the proposed collection of information necessary for the proper performance of the functions of the agency and does the information have practical utility? Practical utility is defined as the actual usefulness of information to or for an agency, taking into account its accuracy, adequacy, reliability, timeliness, and the agency's ability to process the information it collects.

B. What enhancements can be made to the quality, utility, and clarity of the information to be collected?

As a Potential Respondent to the Request for Information

A. Public reporting burden for a customer surveys is estimated to average .25 hours per response. The estimated burden includes the total time necessary to provide the requested information. In your opinion, how accurate is this estimate?

B. The agency estimates that the only cost to a respondent is for the time it will take to complete the collection. Will a respondent incur any start-up costs for reporting, or any recurring annual costs for operation, maintenance, and purchase of services associated with the information collection?

C. What additional actions could be taken to minimize the burden of this collection of information? Such actions may involve the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

D. Does any other Federal, State, or local agency collect similar information? If so, specify the agency, the data element(s), and the methods of collection.

As a Potential User of the Information To Be Collected

A. Are there alternate sources for the information and are they useful? If so, what are their weaknesses and/or strengths?

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of the form. They also will become a matter of public record.

Statutory Authority: Section 3507(h)(1) of the Paperwork Reduction Act of 1995 (Pub. L. No. 104–13, 44 U.S.C. Chapter 35).

Issued in Washington, DC, January 23, 2003.

Jay H. Casselberry,

Agency Clearance Officer, Statistics and Methods Group, Energy Information Administration.

[FR Doc. 03–2302 Filed 1–30–03; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–219–001]

Discovery Gas Transmission LLC; Notice of Compliance Filing

January 27, 2003.

Take notice that on January 13, 2003, Discovery Gas Transmission LLC (Discovery) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, Substitute First Revised Sheet No. 186, to be effective February 1, 2003.

Discovery states that this filing is made to modify the tariff filing made by Discovery in the above-captioned proceeding on December 26, 2002.

Discovery further states that copies of the filing have been mailed to each of its customers, interested State Commissions and other interested persons.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: February 3, 2003.

Magalie R. Salas,
Secretary.
[FR Doc. 03–2270 Filed 1–30–03; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–162–001]

Trailblazer Pipeline Company; Notice of Compliance Filing

January 27, 2003.

Take notice that on January 22, 2003, Trailblazer Pipeline Company (Trailblazer) tendered for filing to be a part of its FERC Gas Tariff, Third Revised Volume No. 1, Substitute Original Sheet No. 174A, to be effective January 1, 2003.

Trailblazer states that the filing is submitted pursuant to the Commission's order issued December 31, 2002, in Docket No. RP03–162–000, which conditionally accepted Sheet No. 174A.

Trailblazer states that copies of the filing have been mailed to all parties set out on the Commission's official service list in Docket No. RP03–162.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's rules and regulations. All such protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Protest Date: February 3, 2003.

Magalie R. Salas,
Secretary.
[FR Doc. 03–2269 Filed 1–30–03; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP00–497–002 and RP01–47–004]

Viking Gas Transmission Company; Notice of Compliance Filing

January 27, 2003.

Take notice that on January 23, 2003, Viking Gas Transmission Company (Viking) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1 the tariff sheets listed on Appendix A to the filing, to become effective January 1, 2003.

Viking states that the purpose of this filing is to comply with the Order on Compliance with Order No. 637, that the Commission issued on December 24, 2002 in the above-referenced proceedings.

Viking states that copies of the filing have been mailed to all of its jurisdictional customers, to affected state regulatory commissions and all parties to this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's rules and regulations. All such protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Protest Date: February 4, 2003.

Magalie R. Salas,
Secretary.
[FR Doc. 03–2268 Filed 1–30–03; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG03–39–000, et al.]

Bowie Power Station, LLC, et al.; Electric Rate and Corporate Filings

January 24, 2003.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Bowie Power Station, LLC

[Docket No. EG03–39–000]

Take notice that on January 23, 2003, Bowie Power Station, LLC (Bowie), an Arizona limited liability company with its principal place of business at 4350 East Camelback Road, Suite 150, Phoenix, Arizona, 85018, filed with the Federal Energy Regulatory Commission (Commission) an application for determination of exempt wholesale generator status pursuant to part 365 of the Commission's regulations.

Bowie states that it owns and operates a 900 MW power generation facility located in Cochise County, Arizona (the Facility) and that electric energy produced from the Facility will be sold by Bowie to the wholesale power market.

Comment Date: February 14, 2003.

2. El Paso Electric Company

[Docket No.ER99–2416–001]

Take notice that on January 21, 2003, El Paso Electric Company (EPE) submitted an updated market analysis.

Comment Date: February 11, 2003.

3. PJM Interconnection, L.L.C.

[Docket No. ER02–1326–004]

Take notice that on January 21, 2003, PJM Interconnection, L.L.C. (PJM), in compliance with the Commission's December 19, 2002 Order, submitted for filing amendments to the PJM Open Access Transmission Tariff and the Amended and Restated Operating Agreement. This Amended and Restated Operating Agreement, permits end use customers that have real-time LMP-based contracts to participate in PJM's Economic Load Response Program.

Consistent with the Commission's order, PJM requests an effective date of June 1, 2002 for the compliance amendments.

PJM states that copies of this filing have been served on all parties listed on the official service list compiled by the Secretary in this proceeding, all PJM members, and each state electric utility regulatory commission in the PJM region.

Comment Date: February 11, 2003.

4. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER02–1420–008]

Take notice that in compliance with the Commission's Order in Midwest Independent Transmission System Operator Inc., 101 FERC ¶ 61,319, on January 21, 2003, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) submitted revisions to the Second Revised, Volume No. 1 Resulting Company Open Access Transmission Tariff (Resulting Company Tariff) and the Second Revised Agreement (Resulting Company Agreement) of Transmission Facilities Owners to Organize the company formerly known as the Midwest Independent Transmission System Operator, Inc., a Delaware Non-stock Corporation. The Midwest ISO has requested the Commission to determine the effective date of its compliance filing to be the day immediately following the consummation of the business combination between the Midwest ISO and Southwest Power Pool as contemplated by the Purchase and Assumption Agreement.

The Midwest ISO has requested waiver of the requirements set forth in 18 CFR 385.2010. The Midwest ISO states that it has electronically served a copy of this filing upon all Midwest ISO Members, Member representatives of Transmission Owners and Non-Transmission Owners, the Midwest ISO Advisory Committee participants, Policy Subcommittee participants, as well as all state commissions within the region. In addition, the filing has been electronically posted on the Midwest ISO's Web site at http://*www.midwestiso.org* under the heading "Filings to FERC" for other interested parties in this matter. The Midwest ISO also states that it will provide hard copies to any interested parties upon request.

Comment Date: February 11, 2003.

5. New England Power Pool and ISO New England, Inc.

[Docket No. ER02–2330–007]

Take notice that on January 21, 2003, the New England Power Pool (NEPOOL) Participants Committee and ISO New England Inc., (ISO–NE) submitted their Report of Compliance in response to the requirements of the Commission's December 20, 2002 Order, 101 FERC ¶ 61,344.

The Participants Committee states that copies of these materials were sent to the New England state governors and regulatory commissions and the Participants in NEPOOL.

Comment Date: February 11, 2003.

6. Northeast Utilities Service Company

[Docket No. ER03–434–000]

Take notice that on January 21, 2003, Northeast Utilities Service Company (NUSCO), on behalf of The Connecticut Light and Power Company (CL&P), tendered for filing the executed Interconnection Agreement (IA) by and between CL&P and Exeter Energy Limited Partnership (Exeter), designated as Original Service Agreement No. 94 under Northeast Utilities System Companies' Open Access Transmission Tariff No. 9. The IA is a new agreement establishing the terms and conditions under which CL&P will provide interconnection service to Exeter's 26 megawatt waste tire fired electrical generating facility (Generating Facility) located in Sterling, Connecticut.

NUSCO states that a copy of this filing has been mailed to Exeter and that Exeter fully consents to and supports this filing. NUSCO requests an effective date of July 15, 2002 for the IA and requests any waivers of the Commission's regulations that may be necessary to permit such an effective date.

Comment Date: February 11, 2003.

7. ISO New England Inc.

[Docket No. OA97–237–000]

Take notice that on January 22, 2003, ISO New England Inc. filed its "Quarterly Report for Regulators," as required by New England Power Pool Market Rules and Procedures 17, for the first quarter.

Comment Date: February 12, 2003.

Standard Paragraph

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number filed to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. 03–2266 Filed 1–30–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER00–38–003, et al.]

Broad River Energy LLC, et al.; Electric Rate and Corporate Filings

January 27, 2003.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Broad River Energy LLC

[Docket No. ER00–38–003]

Take notice that on January 22, 2003, Broad River Energy LLC submitted for filing its triennial market analysis update.

Comment Date: February 12, 2003.

2. Lyon Rural Electric Cooperative

[Docket No. ER02–2001–000]

Take notice that on December 16, 2002, Lyon Rural Electric Cooperative (Lyon) filed a request for waiver of the requirements of Order No. 2001 pursuant to 18 CFR 385.207 of the Federal Energy Regulatory Commission's Regulations. Lyon's filing is available for public inspection at its offices in Rock Rapids, Iowa.

Comment Date: February 18, 2003.

3. NM Colton Genco LLC, NM Mid-Valley Genco LLC, and NM Milliken Genco LLC

[Docket Nos. ER03–320–001, ER03–321–001, and ER03–322–001]

Take notice that on January 23, 2003, NM Colton Genco LLC (NM Colton), NM Mid-Valley Genco LLC (NM Mid-Valley) and NM Milliken Genco LLC (NM Milliken) (collectively, Applicants), tendered for filing with the Federal Energy Regulatory Commission, an amendment to the Application of NM

Colton Genco LLC, NM Mid-Valley Genco LLC, and NM Milliken Genco LLC for Order Approving Market Based Rates filed with the Commission on December 23, 2002.

Comment Date: February 13, 2003.

4. Elk Hills Power, LLC

[Docket No. ER03–394–001]

Take notice that on January 22, 2003, Elk Hills Power, LLC (Elk Hills) tendered for filing amendments to its petition for waivers and blanket approvals under various regulations of the Federal Energy Regulatory Commission and for an order accepting its FERC Electric Tariff No. 1, originally filed on January 9, 2003.

Comment Date: February 12, 2003.

5. Avista Corporation

[Docket No. ER03-435–000]

Take notice that on January 22, 2003, Avista Corporation (Avista) tendered for filing with the Federal Energy Regulatory Commission (Commission), pursuant to part 35 of the Commission's Rules and Regulations, 18 CFR part 35, Original Service Agreement No. 297, which is an Agreement for Purchase and Sale of Power between Avista and Public Utility District No. 1 of Douglas County, Washington.

Avista requests an effective date of January 1, 2003.

Avista states that copies of the filing were served upon Douglas, the sole party to the Service Agreement.

Comment Date: February 12, 2003.

6. Southern California Edison Company

[Docket No. ER03–436–000]

Take notice that on January 22, 2003, Southern California Edison Company (SCE) tendered for filing revisions to the Agreement For Interconnection Service and the Interconnection Facilities Agreement between SCE and Harbor Cogeneration Company (Harbor), Service Agreement Nos. 2 and 9 under SCE's FERC Electric Tariff, First Revised Volume No. 6.

The revisions to these agreements reflect an extension of their terms and conditions to provide interconnection service to Harbor's 110 MW generating facility through April 30, 2003.

SCE states that copies of this filing were served upon the Public Utilities Commission of the State of California and Harbor.

Comment Date: February 12, 2003.

7. Puget Sound Energy, Inc.

[Docket No. ER03–437–000]

Take notice that on January 22, 2003, Puget Sound Energy, Inc. (Puget) tendered for filing: (i) A change in Puget Rate Schedule FERC No. 86 between the Department of Energy acting by and through the Bonneville Power Administration (Bonneville) and Puget, effective October 1, 2001 (the Revision); and (ii) the Settlement Exchange Agreement between Puget and Bonneville, executed September 17, 1985, as amended.

Puget states that a copy of the filing was served upon Bonneville. Puget also states that the Revision is to Exhibit E to the Settlement Exchange Agreement between Puget and Bonneville. Exhibit E relates to transmission service and charges by Bonneville for deliveries by Bonneville under the Settlement Exchange Agreement.

Comment Date: February 12, 2003.

8. ManChief Power Company, L.L.C.

[Docket No. ER03–438–000]

Take notice that on January 22, 2003, ManChief Power Company, L.L.C. (ManChief Power) tendered for filing pursuant Section 205 of the Federal Power Act proposed revisions to its FERC Electric Tariff, Original Volume No. 1 (Tariff).

ManChief Power requests that the Tariff be modified to provide for sales of electric energy and capacity by ManChief Power on a stand-alone basis. The Tariff currently is shared by ManChief Power with Fulton Cogeneration Associates, L.P. (Fulton) with whom ManChief Power previously was, but is no longer, affiliated.

ManChief Power requests an effective date of November 4, 2002 .

Comment Date: February 12, 2003.

9. Fulton Cogeneration Associates, L.P.

[Docket No. ER03–439–000]

Take notice that on January 22, 2003, Fulton Cogeneration Associates, L.P. (Fulton), tendered for filing pursuant Section 205 of the Federal Power Act proposed revisions to its FERC Electric Tariff, Original Volume No. 1 (Tariff).

Fulton requests that the Tariff be modified to provide for sales of electric energy and capacity by Fulton on a stand-alone basis. The Tariff is currently shared by Fulton and ManChief Power Company, L.L.C. (ManChief).

Fulton requests an effective date of November 4, 2002, the date that member interests in ManChief were transferred to an unaffiliated entity.

Comment Date: February 12, 2003.

10. California Independent System Operator Corporation

[Docket No. ER03–440–000]

Take notice that on January 22, 2003, the California Independent System Operator Corporation (ISO) tendered for filing a notice concerning the termination of the Scheduling Coordinator Agreement (SCA) between the ISO and the Department of Water and Power of the City of Los Angeles (LADWP). The ISO requests that the SCA be terminated effective May 21, 2003.

The ISO states that copies of this filing have been served upon all parties in Docket No. ER99–2241–000.

Comment Date: February 12, 2003.

11. Progress Energy Inc. on behalf of Progress Energy Carolinas, Inc.

[Docket No. ER03–441–000]

Take notice that on January 23, 2003, Progress Energy Carolinas (Progress Carolinas) filed a Service Agreement with Virginia Electric Power Company under Progress Carolinas' market-based rates Tariff, FERC Electric Tariff, First Revised, Volume No. 5.

Progress Carolinas is requesting an effective date of January 1, 2003 for this Agreement. Progress states that copies of the filing were served upon the North Carolina Utilities Commission and the South Carolina Public Service Commission.

Comment Date: February 13, 2003.

12. Progress Energy, Inc. on behalf of Progress Energy Carolinas, Inc.

[Docket No. ER03–442–000]

Take notice that on January 23, 2003, Progress Energy Carolinas, Inc. (Progress Carolinas) tendered for filing an executed long-term Service Agreement between Progress Carolinas and the following eligible buyer, The Town of Winterville, NC. Service to this eligible buyer will be in accordance with the terms and conditions of Progress Carolinas Market-Based Rates Tariff, FERC Electric Tariff No. 5.

Progress Carolinas requests an effective date of March 1, 2003 for this Service Agreement. Progress also states that copies of the filing were served upon the North Carolina Utilities Commission and the South Carolina Public Service Commission.

Comment Date: February 13, 2003.

13. Public Service Company of New Mexico

[Docket No. ER03–443–000]

Take notice that on January 23, 2003, Public Service Company of New Mexico (PNM) submitted for filing an executed service agreement, dated January 1, 2003, for firm point-to-point transmission service and ancillary services, between PNM Transmission Development and Contracts (Transmission Provider) and PNM International Business Development

(Transmission Customer), under the terms of PNM's Open Access Transmission Tariff. The agreement is for 27 MW of reserved transmission capacity (and certain ancillary services) from the San Juan Generating Station 345kV Switchyard to the Luna 345kV Switching Station and represents the Transmission Customer's exercise of its Right of First Refusal to extend service under a predecessor (now expired) agreement for one year (through calendar year 2003). PNM requests January 1, 2003, as the effective date for each agreement. PNM's filing is available for public inspection at its offices in Albuquerque, New Mexico.

PNM states that copies of the filing have been sent to PNM International Business Development, PNM Transmission Development and Contracts, the New Mexico Public Regulation Commission and the New Mexico Attorney General.

Comment Date: February 13, 2003.

14. Public Service Company of New Mexico

[Docket No. ER03–444–000]

Take notice that on January 23, 2003, Public Service Company of New Mexico (PNM) submitted for filing two executed service agreements for firm point-to-point transmission service with Texas-New Mexico Power Company (TNMP), under the terms of PNM's Open Access Transmission Tariff. The agreements are for 5 MW and 15 MW (respectively) of reserved transmission capacity from the Four Corners 345kV Switchyard to the Hidalgo 345kV Switching Station during calendar year 2003. PNM requests January 1, 2003, as the effective date for each agreement. PNM's filing is available for public inspection at its offices in Albuquerque, New Mexico.

PNM states that copies of the filing have been sent to TNMP, the New Mexico Public Regulation Commission and the New Mexico Attorney General.

Comment Date: February 13, 2003.

15. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER03–445–000]

Take notice that on January 23, 2003, pursuant to Section 205 of the Federal Power Act and Section 35.12 of the Commission's regulations, 18 CFR 35.12 the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) submitted for filing an Interconnection and Operating Agreement among Dakota I Power Partners, the Midwest ISO and Montana-Dakota Utilities Co., a Division of MDU Resources Group, Inc.

Midwest ISO states a copy of this filing was sent to the Dakota I Power Partners and Montana-Dakota Utilities Co.

Comment Date: February 13, 2003.

16. Calpine Philadelphia, Inc.

[Docket No. ER03–446–000]

Take notice that on January 23, 2003, Calpine Philadelphia, Inc., (CPI), filed a Notice of Succession to adopt O'Brien (Philadelphia) Cogeneration, Inc."s market-based rate authorizations.

Comment Date: February 13, 2003.

Standard Paragraph

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number filed to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. 03–2267 Filed 1–30–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP03–31–000]

Paiute Pipeline Company; Notice of Intent To Prepare an Environmental Assessment for the Proposed Carson Lateral Replacement Project and Request for Comments on Environmental Issues

January 27, 2003.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of Paiute Pipeline Company's (Paiute) proposed Carson Lateral Replacement Project in Lyon, Douglas, Carson City, and Washoe Counties, Nevada.[1] Paiute seeks to construct about 14 miles of 20-inch-diameter pipeline; abandon about 8 miles of existing 10-inch-diameter pipeline; and modify 4 existing regulation stations. The EA will be used by the Commission in its decision-making process to determine whether the project is in the public convenience and necessity.

If you are a landowner receiving this notice, you may be contacted by a Paiute representative about the acquisition of an easement to construct, operate, and maintain the proposed facilities. The pipeline company would seek to negotiate a mutually acceptable agreement. However, if the project is approved by the Commission, that approval conveys with it the right of eminent domain. Therefore, if easement negotiations fail to produce an agreement, Paiute could initiate condemnation proceedings in accordance with state law.

A fact sheet prepared by the FERC entitled "An Interstate Natural Gas Facility On My Land? What Do I Need To Know?" was attached to the project notice Paiute provided to landowners. This fact sheet addresses a number of typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. It is available for viewing on the FERC Internet Web site (*http://www.ferc.gov*).

This Notice of Intent (NOI) is being sent to landowners along Pauite's proposed pipeline route; Federal, state, and local government agencies; national and local elected officials; regional environmental and public interest

[1] Paiute's application was filed on December 19, 2002, under section 7 of the Natural Gas Act and part 157 of the Commission's regulations.

groups; Indian tribes that might attach religious and cultural significance to historic properties in the area of potential effects; local libraries and newspapers; and the Commission's list of parties to the proceeding.[1] Government representatives are encouraged to notify their constituents of this proposed action and encourage them to comment on their areas of concern.

Additionally, with this NOI we[2] are asking Federal, state, local, and tribal agencies with jurisdiction and/or special expertise with respect to environmental issues (especially those listed in appendix 3) to cooperate with us in the preparation of the EA. These agencies may choose to participate once they have evaluated Paiute's proposal relative to their agencies' responsibilities. Agencies which would like cooperating status should follow the instructions for filing comments described below.

Summary of the Proposed Project

Paiute wants to abandon and replace a deteriorating segment of pipeline, install a new loop[3] at another segment along its existing Carson Lateral; and increase capacity at 4 existing regulation stations. The proposed facilities would allow Paiute to expand its existing natural gas transmission system capacity by 5,868 dekatherms per day to meet the future demands of existing shippers. Paiute seeks to:

- Construct and operate about 6.4 miles of new 20-inch-diameter loop between mileposts (MP) 9.45 and 15.85 on Paiute's existing Carson Lateral, parallel to U.S. Highway 95A north of Silver Springs, in Lyon County, Nevada (Highway 95A Loop);
- Abandon in place about 8.0 miles of 10-inch-diameter pipeline between MP 37.34 and MP 45.34 on the Carson Lateral in Lyon County, Nevada;
- Construct and operate about 8.1 miles of 20-inch-diameter pipeline, to replace the pipe abandoned in place, between MP 37.34 and MP 45.34 on the Carson Lateral, parallel to U.S. Highway 50 near Dayton, in Lyon County, Nevada (Highway 50 Replacement); and
- Replace and/or install pressure regulation facilities at the White Sage Pressure Limiting Station in Lyon County, Nevada; the Carson Pressure Limiting Station in Carson City County, Nevada; the CP National Corporation City Gate in Douglas County, Nevada; and the California Check Meter in Washoe County, Nevada.

The general location of the proposed facilities is shown in appendix 1.[4]

Land Requirements for Construction

Construction of the facilities would affect a total of about 203 acres of land. Following construction, about 62 acres would be maintained as new easement for operation of the facilities. The remaining 141 acres would be restored and allowed to revert to its former use.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us to discover and address concerns the public may have about proposals. This process is referred to as "scoping." The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this NOI, the Commission requests public comments on the scope of the issues it will address in the EA. All comments received are considered during the preparation of the EA.

The EA will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

- Geology and soils.
- Land use.
- Water resources, fisheries, and wetlands.
- Cultural resources.
- Vegetation and wildlife.
- Air quality and noise.
- Endangered and threatened species.
- Public safety.

We will also evaluate possible alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas. Our independent analysis of the issues will be in the EA. The U.S. Department of the Interior, Bureau of Land Management, Carson City Field Office (BLM) is participating as a cooperating agency in the preparation of the EA.

Depending on the comments received during the scoping process, the EA may be published and mailed to Federal, state, and local agencies, public interest groups, interested individuals, Native American Tribes, affected landowners, newspapers, libraries, and the Commission's official service list for this proceeding. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we make our recommendations to the Commission.

To ensure your comments are considered, please carefully follow the instructions in the public participation section below.

Currently Identified Environmental Issues

We have already identified several issues that we think deserve attention based on a preliminary review of the proposed facilities and the environmental information provided by Paiute. This preliminary list of issues may be changed based on your comments and our analysis.

- The proposed project would cross 4.02 miles of private land; 4.05 miles of state lands; 6.25 of federal (BLM-administered) lands; and 0.2 miles of county lands (Lyon County).
- The project is located in seismic risk zone 3, and the pipelines would cross 4 known faults.
- The Highway 50 Replacement would be within 0.25 mile of the Dayton State Park, and a proposed access road would cross through the northwest portion of the park.
- Nine residences and 15 industrial/commercial structures are within 50 feet of the construction right-of-way; 2 of these residences are within 15 feet.
- The Highway 50 Replacement would cross through the Gold Canyon area (MP 41.5 to 41.6), which has riparian vegetation and was identified as potential raptor nesting habitat.
- The Highway 50 Replacement would cross through the Carson River Mercury Site, which is a National Priorities List Superfund site.
- The Highway 50 Replacement would cross through a portion of the Comstock Historic District, which is listed on the National Register of Historic Places, and is associated with the Virginia City National Historic Landmark.

Public Participation

You can make a difference by providing us with your specific comments or concerns about the project. By becoming a commentor, your concerns will be addressed in the EA

[2] "We," "us," and "our" refer to the environmental staff of the FERC's Office of Energy Projects.

[3] A loop is a segment of pipeline installed adjacent to an existing pipeline and connected to it at both ends. The loop allows more gas to be moved through the system.

[4] The appendices referenced in this notice are not being printed in the **Federal Register**. Copies are available on the Commission's Web site (*http://www.ferc.gov*) at the "FERRIS" link, or from the Commission's Public Reference and Files Maintenance Branch, 888 First Street, NE., Washington, DC 20426, or call (202) 502–8371. For instructions on connecting to FERRIS refer to the last page of this notice. Copies of the appendices were sent to all those receiving this notice in the mail.

and considered by the Commission. You should focus on the potential environmental effects of the proposal, alternatives to the proposal (including alternative routes variations), and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

- Send an original and two copies of your letter to: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First St., NE., Room 1A, Washington, DC 20426;
- Label one copy of the comments for the attention of the Gas/Hydro Branch, PJ–11.3;
- Reference Docket No. CP03–31–000; and
- Mail your comments so that they will be received in Washington, DC on or before February 28, 2003.

, Please note that we are continuing to experience delays in mail deliveries from the U.S. Postal Service. As a result, we will include all comments that we receive within a reasonable time frame in our environmental analysis of this project. However, the Commission strongly encourages electronic filing of any comments or interventions or protests to this proceeding. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the "e-Filing" link and the link to the User's Guide. Before you can file comments you will need to create a free account which can be created by clicking on "Login to File" and then "New User Account."

We might mail the EA for comments. If you are interested in receiving it, please return the Information Request form (appendix 4). If you do not return the Information Request form, you will be taken off the environmental mailing list.

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an official party to the proceeding known as an "intervenor". Intervenors play a more formal role in the process. Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intervenor must provide 14 copies of its filings to the Secretary of the Commission and must send a copy of its filings to all other parties on the Commission's service list for this proceeding. If you want to become an intervenor you must file a motion to intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) (*see* appendix 2). [5] Only intervenors have the right to seek rehearing of the Commission's decision.

Affected landowners and parties with environmental concerns may be granted intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which would not be adequately represented by any other parties. You do not need intervenor status to have your environmental comments considered.

Additional Information

Additional information about the project is available from the Commission's Office of External Affairs, at 1–866–208–FERC or on the FERC Internet Web site (*http://www.ferc.gov*) using the FERRIS link. Click on the FERRIS link, enter the docket number excluding the last three digits in the Docket Number field. Be sure you have selected an appropriate date range. For assistance with FERRIS, the FERRIS helpline can be reached at 1–866–208–3676, TTY (202) 502–8659, or e-mail *FERCOnlineSupport@ferc.gov*. The FERRIS link on the FERC Internet Web site also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

Magalie R. Salas,

Secretary.

[FR Doc. 03–2265 Filed 1–30–03; 8:45 am]

BILLING CODE 6717–01–P

[5] Interventions may also be filed electronically via the Internet in lieu of paper. *See* the previous discussion on filing comments electronically.

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6637–2]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7167 or *http://www.epa.gov/compliance/nepa.*

Weekly receipt of Environmental Impact Statements

Filed January 20, 2003 Through January 24, 2003

Pursuant to 40 CFR 1506.9.

EIS No. 030032, FINAL EIS, NPS, CA, Santa Monica Mountains National Recreation Area General Management Plan, Implementation, Los Angeles and Ventura Counties, CA, *Wait Period Ends:* March 3, 2003, *Contact:* Allan Schmierer (510) 817–1441.

EIS No. 030033, FINAL SUPPLEMENT, COE, OR, WA, Columbia River Channel Improvement Project, Additional Information to Update the Disposal Plan and to Update the Project Economics, Columbia and Lower Williamette River Federal Navigation Channel, OR, *Wait Period Ends:* March 3, 2003, *Contact:* Laura Hicks (503) 808–4705.

EIS No. 030034, DRAFT EIS, AFS, CA, Stream Fire Restoration Project, Implementation, Plumas National Forest, Mt. Hough Ranger District, Plumas County, CA, *Comment Period Ends:* March 17, 2003, *Contact:* Rich Bednarski (520) 283–7641.

EIS No. 030035, DRAFT SUPPLEMENT, JUS, CA, Pinal County Private Detention Facility, Updated Information, Single Contact for 3,000 Beds Possible Sites (1) Undeveloped Parcel of Land in the City of Eloy and the Existing Central Arizona Detention Center Located in Florence, Pinal County, AZ, *Comment Period Ends:* March 17, 2003, *Contact:* Charles Coburn (202) 307–9045.

EIS No. 030036, FINAL SUPPLEMENT, NRC, PA, Peach Bottom Atomic Power Station Unit 2 and 3, Renewal of the Operating License for Nuclear Plants, NUREG–1437 Supplement 10 Located on the Banks of the Susquehanna River, York County, PA, *Wait Period Ends:* March 3, 2003, *Contact:* Duke Wheeler (301) 414–1444.

EIS No. 030037, FINAL EIS, FHW, IL, MO, Chicago-St. Louis High-Speed Rail Project, Improvement from Chicago to St. Louis to enhance the Passenger Transportation Network, NPDES Permit and COE Section 404 Permit, Cook, Will, Kankakee Grundy, Livington, McLean, Sangemon, Macoupin, Jersey, Madison and St. Louis Counties, IL and St. Louis County, MO, *Wait Period Ends:* March 10, 2003, *Contact:* Norman R. Stoner, P.E. (217) 492–4640.

EIS No. 030038, FINAL EIS, FHW, WA, WA–509 Extension/South Access Road Corridor Project, Construction, Funding and Possible COE Section 404 Permit, the Cities of SeaTac, Des Moines, Kent and Federal Way, King County, WA, *Wait Period Ends:* March 3, 2003, *Contact:* James Christian (306) 753–9480.

EIS No. 030039, FINAL EIS, BLM, OR, Lakeview Resource Management Plan, Unified Land Use Plan to Replace All or Portions of Three nearly Twenty Year Old Existing Land Use Plans, Implementation, Lake and Bend Counties, OR, *Wait Period Ends:* March 3, 2003, *Contact:* Paul Whitman (541) 947–6110.

EIS No. 030040, DRAFT EIS, AFS, WI, Hoffman-Sailor West Project, Proposal for Timber Harvest, Regeneration Activities, Connected Road Construction and Decommissioning Chequamegon-Nicolet National Forest, Medford/Park Falls Ranger District, Price County, WI, *Comment Period Ends:* March 17, 2003, *Contact:* Jane Darnell (715) 748–4875.

EIS No. 030041, FINAL EIS, EPA, FL, Peace River/Manasota Regional Surface Water Supply Authority's Surface Water Supply, Storage and Interconnect Project, Construction and Operation to Increase Finished Water Delivery Capacity of 32.7 Million Gallons Per Day To Meet Year 2015 Potable Water Demand, DeSoto, Manatee, Sarasota and Charlotte Counties, FL, *Wait Period Ends:* March 3, 2003, *Contact:* John Hamilton (404) 562–9617.

EIS No. 030042, FINAL EIS, DOE, WA, Schultz-Hanford Transmission Line Project, New 500 kilovolt (kV) Transmission Line Construction, Central Washington, north of Hanford connecting to existing line at the Schultz Substation, Kittitas, Yakima, Grant and Benton Counties, WA, *Wait Period Ends:* March 3, 2003, *Contact:* Nancy Wittpenn (503) 230–3297.

EIS No. 030043, FINAL EIS, JUS, CA, Sacramento County Juvenile Hall Expansion Project, To Accommodate 90 new beds in the Short-Term, and 240 new beds in the Long-Term, Sacramento County, CA, *Wait Period Ends:* March 3, 2003, *Contact:* John Veen (202) 616–2251.

EIS No. 030044, DRAFT EIS, FRC, WY, MT, ND, Grasslands Pipeline Project, Construct and Operate an Interstate Natural Gas Pipeline System, Docket No. CP02–037–000, WY, ND and MT, *Comment Period Ends:* March 17, 2003, *Contact:* Rich McGuire (202) 502–6177. This document is available on the Internet at: *http://www.ferc.gov.*

EIS No. 030045, FINAL SUPPLEMENT, BLM, NV, Betze-Post Project, Updated Information, Dewatering Operations and a Proposed Pipeline, Elko and Eureka Counties, NV, *Wait Period Ends:* March 3, 2003, *Contact:* Kirk Laird (775) 753–0272.

Dated: January 28, 2003.

Joseph C. Montgomery,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 03–2345 Filed 1–30–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6637–3]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 564–7167.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 12, 2002 (67 FR 17992).

Draft EISs

ERP No. D–COE–K32012–CA Rating EC2, San Diego Harbor Deepening (Central Navigation Channel) involving Three Components: Deepening Federal Central Navigation Channel, Disposal of the Dredged Material at the LA–5 Ocean Disposal Site and Relocation and Disposal and Abandonment of a 69 kV Electrical Site, San Diego County.

Summary: EPA expressed environmental concerns and requested additional information regarding potential connected actions, water quality, air quality, endangered species and environmental justice.

ERP No. D–COE–L32011–AK Rating EO2, Akutan Harbor Navigation Improvements Project, Construction and Implementation, Bering Sea, City of Akutan, AK.

Summary: EPA raised environmental objections to the recommended project alternative due to direct and indirect impacts to wetlands and the likely exceedances of fully allocated TMDLs for dissolved oxygen and settleable solid residues. EPA also determined that there was insufficient information regarding the full range of reasonable alternatives and potential mitigation measures. EPA recommended that the final EIS demonstrates that alternatives analysis and mitigation measures are consistent with the Clean Water Act Section 404(b)(1) guidelines and that the proposed alternative will not exceed established TMDLs.

ERP No. D–FHW–F40410–IL Rating LO, Milan Beltway Extension (FAU 5822), Airport Road to Blackhawk Road/John Deere Expressway, Funding and Permits Issuance, Rock River, Rock Island County, IL.

Summary: EPA believes that the proposed project will result in minimum adverse impacts to the environment with appropriate mitigation and that we did not identify any outstanding environmental issues that need additional analysis.

ERP No. D–FHW–L40216–OR Rating EC2, Newberg-Dundee Transportation Improvement Project (TEA 21 Prog. #37), Proposal to Relieve Congestion on OR–9W through the Cities of Newberg and Dundee, Bypass Element Location (Tier 1), Yamhill County, OR.

Summary: EPA expressed environmental concern regarding air quality and air toxics, environmental justice issues, alternatives, habitat connectivity effectiveness and wetland impacts. EPA requested additional information, analysis, mitigation and outreach regarding these issues.

ERP No. D–NRC–E05099–FL Rating EC1, Generic EIS—License Renewal of Nuclear Plants for the St. Lucie Units 1 and 2, Supplement 11, NUREG–1437, Implementation, Hutchinson Island, St. Lucie County, FL.

Summary: EPA has environmental concerns with certain aspects of this license renewal and requests clarification of measures to avoid and mitigate for impacts to the Big Mud Creek ecosystem and to herbicide use in the transmission right-of-way. EPA also notes the ongoing need to consult during the facility's operating life with the appropriate agencies regarding threatened and endangered species.

Final EISs

ERP No. F–AFS–K65220–NV Cave Rock Management Direction, Implementation, Lake Tahoe Basin Management Unit, Douglas County, NV.

Summary: No formal comment letter was sent to the preparing agency.

ERP No. F–AFS–K65364–CA Red Star Restoration Project, Fire-Killed Trees Removal, Fuel Reduction, Road Reconstruction and Decommissioning and Associated Restoration, Tahoe Tahoe National Forest, Foresthill Ranger District, Placer County, CA.

Summary: No formal comment letter was sent to the preparing agency.

ERP No. F–DOE–E09808–KY Kentucky Pioneer Integrated Gasification Combined Cycle Demonstration Project, Construction and Operation of a 540 Megawatt-Electric Power Plant, Clean Coal Technology Program, Clark County, KY.

Summary: EPA still has environmental concerns with certain impacts, but the Final EIS adequately addresses mitigation of potential impacts associated with Cultural Resources, Aesthetic and Scenic Resources, Geology, Air, Traffic and Transportation. EPA requested that the

Record of Decision address our remaining concerns.

ERP No. F–DOE–L08062–WA Grand Coulee-Bell 500-kV Transmission Line Project, Construction and Operation, U.S. Army COE Section 10 Permit Issuance, Douglas, Lincoln, Spokane and Grant Counties, WA.

Summary: EPA still has environmental concerns with BPA's rationale for not more fully considering the alternative action, which appears to have advantages for future transmission needs as well as for environmental protection. EPA requested that BPA provide an explanation for this decision in the Record of Decision.

ERP No. F–FHW–H40403–KS US 59 Highway Construction Improvements, Lawrence to Ottawa, Funding, NPDES Permit Issuance and Possible U.S. Army COE Permit Issuance, Douglas and Franklin Counties, KS.

Summary: EPA had no environmental concerns with the preferred alternative. EPA recommended that the Record of Decision provide more information regarding necessary mitigation.

ERP No. FS–AFS–J65312–WY Squirrel Meadows Grand Targhee Land Exchange Proposal, New Information and Current Environmental and Socioeconomic Conditions, Implementation, Targhee National Forest, Teton County, WY.

Summary: No formal comment letter was sent to the preparing agency.

ERP No. FS–NRC–A00150–00 Generic EIS—Decommissioning of Nuclear Facilities, Updated Information on Dealing With Decommissioning of Nuclear Power Reactors (NUREG–0586).

Summary: EPA continues to express environmental concern with NRC's not requiring consideration of environmental changes to the facility site during plant operation in the environmental assessment of the decommissioning process.

Dated: January 28, 2003.

Joseph C. Montgomery,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 03–2346 Filed 1–30–03; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2590]

Petitions for Reconsideration of Action in Rulemaking Proceeding

January 22, 2003.

Petitions for reconsideration have been filed in the Commission's rulemaking proceeding listed in this public notice and published pursuant to 47 CFR 1.429(e). The full text of this document is available for viewing and copying on Room CY–A257, 445 12th Street SW., Washington, DC or may be purchased from the Commission's copy contractor, Qualex International (202) 863–2893. Oppositions to these petitions must be filed by February 18, 2003. *See* § 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: In the Matter of digital audio broadcasting systems and their impact on the terrestrial radio broadcast service (MM Docket No. 99–325).

Number of Petitions Filed: 2.

Marlene H. Dortch,

Secretary.

[FR Doc. 03–2264 Filed 1–30–03; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL ELECTION COMMISSION

[Notice 2003–4]

Filing Dates for the Texas Special Election in the 19th Congressional District

AGENCY: Federal Election Commission.

ACTION: Notice of filing dates for special election.

SUMMARY: Texas has scheduled a special election on May 3, 2003, to fill the U.S. House of Representatives seat in the Nineteenth Congressional District vacated by Representative Larry Combest. There are two possible elections, but only one may be necessary. If no candidate wins a majority of votes in the Special General Election, the two top vote-getters, regardless of party affiliation, will participate in a Special Runoff Election on a date to be set by the Governor after May 3, 2003.

Committees participating in the Texas special election are required to file pre- and post-election reports.

FOR FURTHER INFORMATION CONTACT: Mr. Kevin R. Salley, Information Division, 999 E Street, NW., Washington, DC 20463; Telephone: (202) 694–1100; Toll Free (800) 424–9530.

SUPPLEMENTARY INFORMATION:

Principal Campaign Committees

All principal campaign committees of candidates participating in the Texas Special General Election shall file a 12-day Pre-General Report on April 21, 2003. If there is a majority winner, committees must also file a 30-day Post-General Report on June 2, 2003. (See chart below for the closing date for each report).

Unauthorized Committees (PACs and Party Committees)

Political committees that file on a semiannual basis in 2003 are subject to special election reporting if they make previously undisclosed contributions or expenditures in connection with the Texas Special General Election by the close of books for the applicable report(s). (See chart below for the closing date for each report).

Committees filing monthly that support candidates in the Texas Special General Election should continue to file according to the monthly reporting schedule.

Possible Special Runoff Election

In the event that no candidate receives a majority of the votes in the Special General Election, a Special Runoff Election will be held. The Commission will publish a future notice giving the filing dates for that election if it becomes necessary.

CALENDAR OF REPORTING DATES FOR TEXAS SPECIAL ELECTION

Report	Close of books[1]	Reg./cert. mailing date[2]	Filing date
If only the Special General is Held (05/03/03), Committees Must File:			
April Quarterly	—Waived—		
Pre-General	04/13/03	04/18/03	04/21/03
Post-General	05/23/03	06/02/03	06/02/03

CALENDAR OF REPORTING DATES FOR TEXAS SPECIAL ELECTION—Continued

Report	Close of books[1]	Reg./cert. mailing date[2]	Filing date
If Two Elections are Held, Committees Involved in Only the Special General (05/03/03) Must File			
April Quarterly	——Waived——		
Pre-General	04/13/03	04/18/03	04/21/03

[1] The period begins with the close of books of the last report filed by the committee. If the committee has filed no previous reports, the period begins with the date of the committee's first activity.
[2] Pre- and Post-General Reports sent registered or certified mail must be postmarked by the mailing date; otherwise, they must be received by the filing date. Committees should keep the mailing receipt with its postmark as proof of filing.

Dated: January 23, 2003.

Bradley A. Smith,

Vice Chairman, Federal Election Commission.

[FR Doc. 03–2298 Filed 1–23–03; 8:45 am]

BILLING CODE 6715–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Federal Emergency Management Agency (FEMA), as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed continuing information collections. In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)), this notice seeks comments concerning FEMA Form 85–3, National Defense Executive Reserve Personal Qualifications Statement. The form is used by Federal departments and agencies to recruit members for the National Defense Executive Reserve (NDER) program.

SUPPLEMENTARY INFORMATION: The NDER program was established by the Defense Production Act of 1950, as amended, Section 710(e). Under Executive Order 12919, National Defense Industrial Resources Preparedness, June 3, 1994, Part VI, Section 601, the Director of the Federal Emergency Management Agency coordinates the NDER program activities of departments and agencies that have NDER units. The NDER is composed of persons with recognized expertise from industry, organized labor, professional groups, and academia to serve in executive positions in the Federal Government during the event of an emergency that requires such employment. The head of a department or agency may activate an NDER unit in whole or in part, upon the written determination that an emergency affecting the national security or defense preparedness of the United States exists, and that the activation of the unit is necessary to carry out the emergency program functions of the department or agency.

Collection of Information

Title: The National Defense Executive Reserve Personal Qualifications Statement.

Type of Information Collection: Extension of a currently approved collection.

OMB Number: 3067–0001.

Form Numbers: FEMA Form 85–3, National Defense Executive Reserve Personal Qualifications Statement.

Abstract: The NDER is a Federal government program coordinated by FEMA. To become a member of the NDER, individuals with the requisite qualifications must complete a FEMA Form 85–3, National Defense Executive Reserve Personal Qualifications Statement. FEMA Form 85–3 is an application form that is used by Federal departments and agencies to fill NDER vacancies and to ensure that individuals are qualified to perform in the assigned emergency positions. FEMA reviews the application form to ensure that the candidate meets all basic membership qualifications for the Executive Reserve; ensures that the applicant is not already serving in a Federal department or agency sponsored unit; and, in some cases, determines the Federal department or agency best suited for the applicant.

Affected Public: Individuals or Households.

Estimated Total Annual Burden Hours: 25 hours.

Estimated Cost: The estimated annual hour burden for this collection is 25 hours. This estimate is based on 50 respondents completing this application form in approximately 30 minutes. (50 respondents × 30 minutes = 25 burden hours).

Comments: Written comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper performance of the Agency, including whether the information shall have practical utility; (b) evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses. Comments should be received within 60 days of the date of this notice.

ADDRESSES: Interested persons should submit written comments to Muriel B. Anderson, Chief, Records Management Branch, Information Resources Management Division, Information Technology Services Directorate, Federal Emergency Management Agency; 500 C Street, SW., Room 316, Washington, DC 20472.

FOR FURTHER INFORMATION CONTACT: For additional information contact Margaret B. Roberts, Program Manager, National Defense Executive Reserve, Response and Recovery Directorate at (202) 646–3564. You may contact Ms. Anderson for copies of the proposed collection of information at facsimile number (202) 646–3347 or e-mail address: *Information.Collections@fema.gov*.

Dated: January 17, 2003.

Edward W. Kernan,

Division Director, Information Resources Management Division, Information Technology Services Directorate.

[FR Doc. 03–2240 Filed 1–30–03; 8:45 am]

BILLING CODE 6718–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

Notice of Adjustment of Statewide Per Capita Threshold for Recommending a Cost Share Adjustment

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: FEMA gives notice that we are increasing the statewide per capita threshold for recommending cost share adjustments for disasters declared on or after January 1, 2003, through December 31, 2003.

EFFECTIVE DATE: January 16, 2003.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705, or *magda.ruiz@fema.gov*.

SUPPLEMENTARY INFORMATION: According to 44 CFR § 206.47, FEMA will annually adjust the statewide per capita threshold that is used to recommend an increase of the Federal cost share from seventy-five percent (75%) to not more than ninety percent (90%) of the eligible cost of permanent work under section 406 and emergency work under section 403 and section 407 of the Stafford Act. The adjustment to the threshold is based on the Consumer Price Index for All Urban Consumers published annually by the U. S. Department of Labor. For disasters declared on January 1, 2003, through December 31, 2003, the qualifying threshold is $104 per capita of State population.

We base the adjustment on an increase in the Consumer Price Index for All Urban Consumers of 2.4 percent for the 12-month period ended in December 2002. The Bureau of Labor Statistics of the U.S. Department of Labor released the information on January 16, 2003.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program).

Joe M. Allbaugh,

Director.

[FR Doc. 03–2241 Filed 1–30–03; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than February 18, 2003.

A. Federal Reserve Bank of Atlanta (Sue Costello, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30309–4470:

1. The Floyd C. Davis, Sr. Partnership, LP, Heflin, Alabama; to acquire additional voting shares of East Alabama Financial Group, Wedowee, Alabama, and thereby indirectly acquire additional voting shares of Small Town Bank, Wedowee, Alabama.

Board of Governors of the Federal Reserve System, January 27, 2003.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 03–2218 Filed 1–30–03; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

Community and Tribal Subcommittee of the Board of Scientific Counselors, Agency for Toxic Substances and Disease Registry: Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Agency for Toxic Substances and Disease Registry (ATSDR) announces the following subcommittee meeting.

Name: Community and Tribal Subcommittee.

Time and Date: 9:30 a.m.–4 p.m., March 5, 2003.

Place: Doubletree Hotel, 3342 Peachtree Street, Atlanta, Georgia 30326.

Status: Open to the public, limited by the available space. The meeting room accommodates approximately 50 people.

Purpose: This subcommittee brings to the Board advice, citizen input, and recommendations on community and tribal programs, practices, and policies of the Agency.

Matters to be Discussed: Agenda items include an update on new data and analysis of the National Health and Nutrition Examination Surveys; discussion on the National Policy on Military Munitions Document; Web-based demonstration on the Community Tool Box; update on collaborative activities on tribal-specific health outcome data; update on the Community and Tribal Subcommittee Evaluation Process; and, a review of action items and recommendations.

Written comments are welcomed and should be received by the contact person listed below prior to the opening of the meeting.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: James E. Tullos, Jr., Designated Federal Official, CTS/ATSDR contact, ATSDR, M/S E–33, 1600 Clifton Road, NE., Atlanta, Georgia 30333, telephone 404/498–0287.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: January 24, 2003.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 03–2279 Filed 1–30–03; 8:45 am]

BILLING CODE 4163–70–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30DAY–24–03]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 498–1210. Send written comments to CDC, Desk Officer, Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503. Written comments should be received within 30 days of this notice.

Proposed Project: YMC Tween Event Follow-up Survey—NEW—National Center For Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC). In FY 2001, Congress established the Youth Media Campaign at the Centers for Disease Control and Prevention (CDC). Specifically, the House Appropriations Language said: The Committee believes that, if we are to have a positive impact on the future health of the American population, we must change the behaviors of our children and young adults by reaching them with important health messages. CDC, working in collaboration with the Health Resources and Services Administration (HRSA), the National Center for Child Health and Human Development (NICHD), and the Substance Abuse and Mental Health Services Administration (SAMHSA), is coordinating an effort to plan, implement, and evaluate a campaign designed to clearly communicate messages that will help kids develop habits that foster good health over a lifetime. The Campaign is based on principles that have been shown to enhance success, including: designing messages based on research; testing messages with the intended audiences; involving young people in all aspects of Campaign planning and implementation; enlisting the involvement and support of parents and other influencers; tracking the Campaign's effectiveness and revising Campaign messages and strategies as needed.

Close monitoring of the implementation of the program through process evaluation is essential to the success of the campaign. Campaign planners are interested in understanding how well and under what conditions the Campaign was implemented and the size of the audience that was exposed to the messages. This understanding will facilitate any strategy changes that may be necessary to increase the Campaign's effectiveness and sustainability.

The Youth Media Campaign proposes to conduct process evaluation with convenience samples following community events in up to 7 communities nationwide. This process evaluation will gather information from teens and their parents through follow-up telephone interviews.

The purpose of the process research is to determine to what extent the Youth Media Campaign was implemented as planned, the challenges that occurred and how they were addressed in order to refine campaign strategies. The total annualized burden for this data collection is 485 hours.

Respondents	Number of respondents	Number of responses/ respondent	Average burden of response (in hours)
Screener (Parent)	3,332	1	2/60
Child	2,249	1	10/60

Dated: January 27, 2003.

Thomas Bartenfeld,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention.

[FR Doc. 03–2276 Filed 1–30–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30DAY–22–03]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 498–1210. Send written comments to CDC, Desk Officer, Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503. Written comments should be received within 30 days of this notice.

Proposed Project: Evaluating Toolbox Training Safety Program for Construction and Mining (OMB No. 0920–0535)—Extension—National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention (CDC) proposes to evaluate the effectiveness of various educational approaches utilizing "toolbox" safety training materials targeted to construction and mining industries. The mission of the National Institute for Occupational Safety and Health is to promote safety and health at work for all people through research and prevention.

In comparison to other industries, construction and mining, workers continue to have the highest rates of occupational fatalities and injuries. The Bureau of Labor Statistics estimated for 1999 that while the construction industry comprises only 6% of the workforce, they account for 20% of the fatal occupational injuries across all industry types (BLS, 1999). Similarly, though the mining industry comprises less than .5% of the workforce, this industry reflects 2% of all fatal occupational injuries (BLS, 1999).

Research on the effectiveness of safety and health training programs has revealed that training can lead to increases in worker knowledge and awareness of workplace safety practices. However, fewer evaluations of safety training effectiveness have investigated the relationship between various instructional approaches and the actual transfer of safety training information into workplace practices. Preliminary input from employees, managers, and union leaders representing construction and mining concerns revealed a desire in these industries for affordable safety training materials that can be effectively administered in short sessions on the job.

Representatives from these industries reported that safety training sessions need to establish a closer connection between the safety recommendations and the background experiences and knowledge of the workers. An instructional approach that may address these needs is often called "toolbox" or "tailgate" training. This type of training is characterized by brief (15 minute) workplace safety lessons. Despite the popularity of toolbox safety talks, research is needed to identify the most effective format for this medium. NIOSH will investigate the impact of using a narrative, case-study instructional approach versus a more typical, didactic "learn the facts" approach. Comparative analyses will examine differences in knowledge gain, safety attitudes and beliefs, and workplace behaviors. Findings from this research will help identify the conditions critical to effective toolbox safety training for mining and construction. The materials developed and evaluated during this

study will be made available to the public at the conclusion of the evaluation.

Construction and mining companies who participate in the study will be randomly assigned to receive eight weekly toolbox safety training sessions that use either a case-study narrative or conventional instructional approach. The training sessions are designed to last fifteen minutes. The impact of these materials will be evaluated through the examination of changes in employee knowledge gains, attitudes toward safety practices, and the use of safety behaviors prior to and following their participation in the safety training program. Trainers will complete brief response cards each week. A sample of trainers will participate in structured interviews. Findings of the study will be reported to participants and in the literature. The total annual burden for this data collection is 233 hours.

Respondents	Number of respondents	Number of responses/respondent	Average burden/response (in hours)
Worker Pre-training Survey (attitude survey)	412	1	15/60
Worker Post-training Survey (attitude survey)	412	1	15/60
Instructor Feedback Cards	41	8	5/60

Dated: January 27, 2003.

Thomas Bartenfeld,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention.

[FR Doc. 03–2277 Filed 1–30–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare and Medicaid Services

[Document Identifiers: CMS–R–242, CMS–10069, CMS–10078, CMS–R–52, and CMS–R–30]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare and Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare and Medicaid Services (CMS) (formerly known as the Health Care Financing Administration (HCFA)), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

(1) *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Refinement of RHC Certification and QAPI and Supporting Regulations in 42 CFR 491.8 and 491.11; *Form No.:* CMS–R–242 (OMB# 0938–0792); *Use:* This collection contains information collection requirements concerning requests for additional waivers of staffing requirements and documentation of quality assessment and performance improvement programs; *Frequency:* Annually; *Affected Public:* Business or other for-profit; *Number of Respondents:* 3,528; *Total Annual Responses:* 3,573; *Total Annual Hours:* 3,663.

(2) *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Medicare Waiver Demonstration Application; *Form No.:* CMS–10069 (OMB# 0938–0880); *Use:* The Medicare Waiver Demonstration Application will be used to collect standard information needed to implement Congressionally mandated and administration high priority demonstrations. The application will be used to gather information about the characteristics of the applicant's organization, benefits, and services they propose to offer, success in operating the model, and evidence that the model is likely to be successful in the Medicare program. The standard application will be used for all waiver demonstrations and will reduce the burden on applicants, provide for consistent and timely information collections across demonstration, and provide a user-friendly format for respondents; *Frequency:* On occasion; *Affected Public:* Business or other for-profit and not-for-profit institutions; *Number of Respondents:* 75; *Total Annual Responses:* 75; *Total Annual Hours:* 1600.

(3) *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Matching Grants to States for the Operation of High Risk Pools; *Form No.:* CMS–10078 (OMB# 0938–0887); *Use:* HHS/CMS is requiring this information as a condition of eligibility for grants that were authorized in the Trade Act of 2002 (Pub. L. 107–210). The information is necessary to determine if a state applicant meets the necessary eligibility criteria for a grant as required by the law. The respondents will be states that have a high risk pool as defined in section 2744(c)(2) of the Public Health Service Act. The grants will provide matching funds to states that incur losses in the operation of high risk pools. High risk pools are set up by states to provide heatlh insurance to individuals that cannot obtain health insurance in the private market because of a history of illness; *Frequency:* On occasion; *Affected Public:* State, local, or tribal government; *Number of Respondents:* 20; *Total Annual Responses:* 20; *Total Annual Hours:* 800.

(4) *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Conditions of Coverage of Suppliers of End Stage Renal Disease (ESRD); *Form No.:* CMS–R–52 (OMB# 0938–0386); *Use:* This package is needed to encourage proper distribution and effective utilization of ESRD treatment sources while maintaining and improving the efficient delivery of care by physicians and dialysis facilities; *Frequency:* Annually; *Affected Public:* Business or other for-profit and Federal Government; *Number of Respondents:* 4,297; *Total Annual Responses:* 4,297; *Total Annual Hours:* 148,785.

(5) *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Information Collection Requirements in the Hospice Conditions Coverage. The following

regulations are affected: 42 CFR 418.22; 418.24; 418.28; 418.56(b), (e)(1), (e)(3); 418.58; 418.70(e); 418.83; 418.96(b); and 418.100(b); *Form No.:* CMS–R–30 (OMB# 0938–0302); *Use:* Establishes standards for hospices that wish to participate in the Medicare program. The regulations establish standards for eligibility, reimbursement standards and procedure, and delineate conditions that hospices must meet to be approved for participation in Medicare; *Frequency:* On occasion; *Affected Public:* Business or other for-profit; *Number of Respondents:* 2,316; *Total Annual Responses:* 2,316; *Total Annual Hours:* 5,981,427.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS's Web Site address at *http://cms.hhs.gov/regulations/pra/default.asp,* or E-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@hcfa.gov,* or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the CMS Paperwork Clearance Officer designated at the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development and Issuances, Attention: Dawn Willinghan, Room: C5–14–03, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: January 23, 2003.

John P. Burke III,

CMS Reports Clearance Officer, Office of Strategic Operations and Strategic Affairs, Division of Regulations Development and Issuances.

[FR Doc. 03–2239 Filed 1–30–03; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Advisory Committees; Filing of Annual Reports

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that, as required by the Federal Advisory Committee Act, the agency has filed with the Library of Congress the annual reports of those FDA advisory committees that held closed meetings during fiscal year 2002.

ADDRESSES: Copies are available from the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, 301–827–6860.

FOR FURTHER INFORMATION CONTACT: Theresa L. Green, Advisory Committee and Oversight Management Staff (HF–4), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1220.

SUPPLEMENTARY INFORMATION: Under section 13 of the Federal Advisory Committee Act (5 U.S.C. app.2) and 21 CFR 14.60(c), FDA has filed with the Library of Congress the annual reports for the following FDA advisory committees that held closed meetings during the period October 1, 2001 through September 30, 2002:

Center for Biologics Evaluation and Research:

Allergenic Products Advisory Committee,

Biological Response Modifiers Advisory Committee,

Blood Products Advisory Committee,

Transmissible Spongiform Encephalopathies Advisory Committee, and

Vaccines and Related Biological Products Advisory Committee.

Center for Drug Evaluation and Research:

Arthritis Drugs Advisory Committee,

Nonprescription Drugs Advisory Committee, and

Pulmonary-Allergy Drugs Advisory Committee.

Center for Food Safety and Applied Nutrition:

Food Advisory Committee.

Center for Devices and Radiological Health:

Medical Devices Advisory Committee (consisting of reports for the Circulatory System Devices Panel, Dental Products Panel, Ear Nose and Throat Devices Panel, Microbiology Devices Panel, Obstetrics Devices Panel, Ophthalmic Devices Panel, General and Plastic Surgery Devices Panel, Orthopedic and Rehabilitation Devices Panel).

National Center for Toxicological Research:

Science Advisory Board to the National Center for Toxicological Research.

Annual Reports are available for public inspections between 9 a.m. and 4 p.m., Monday through Friday at the following locations:

(1) The Library of Congress, Madison Bldg., Newspaper and Current Periodical Reading Room, 101 Independence Ave. SE., rm. 133, Washington, DC; and

(2) The Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

Dated: January 16, 2003.

Linda Arey Skladany,

Associate Commissioner for External Relations.

[FR Doc. 03–2294 Filed 1–30–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 03D–0007]

Draft Guidance for Industry on Estrogen and Estrogen/Progestin Drug Products to Treat Vasomotor Symptoms and Vulvar and Vaginal Atrophy Symptoms—Recommendations for Clinical Evaluation; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance for industry entitled "Estrogen and Estrogen/Progestin Drug Products to Treat Vasomotor Symptoms and Vulvar and Vaginal Atrophy Symptoms—Recommendations for Clinical Evaluation." The agency is revising its guidance for industry entitled "Guidance for Clinical Evaluation of Combination Estrogen/Progestin-Containing Drug Products Used for Hormone Replacement Therapy of Postmenopausal Women," which was issued in March 1995 (the 1995 guidance). Once finalized, this guidance will replace the 1995 guidance.

DATES: Submit written or electronic comments on the draft guidance by April 1, 2003. General comments on agency guidance documents are welcome at any time.

ADDRESSES: Submit written requests for single copies of the draft guidance to the Division of Drug Information (HFD–240), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Send on self-addressed adhesive label to assist that office in processing your requests. Submit written comments on the draft guidance to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to http://

www.fda.gov/dockets/ecomments. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT: Margaret Kober, Center for Drug Evaluation and Research (HFD–580), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4243.

SUPPLEMENTARY INFORMATION:

I. Background

In March 1995, the agency issued a guidance entitled "Guidance for Clinical Evaluation of Combination Estrogen/Progestin-Containing Drug Products Used for Hormone Replacement Therapy of Postmenopausal Women". The agency was revising the 1995 guidance when the results of a substudy of the National Institutes of Health (NIH) Women's Health Initiative (WHI) trial were made available to the public.[1] In light of the interim results of the WHI substudy, on September 10, 2002 (67 FR 57432), the agency withdrew the 1995 guidance. Once finalized, this guidance will replace the 1995 guidance.

In the WHI substudy, postmenopausal women who took conjugated estrogen 0.625 milligram (mg) combined with medroxyprogesterone acetate 2.5 mg had higher risks of several serious adverse events relative to those women who took placebo. Conjugated estrogens alone also increased the rates of cardiovascular disease compared to placebo. Other doses of conjugated estrogens and medroxyprogesterone acetate and other combinations of estrogens and progestins were not studied in the WHI. However, in the absence of comparable data, the risks of serious adverse events should be assumed to be similar because other studies show that estrogens and progestins are associated with these types of events.

This draft guidance revises the 1995 guidance in several ways. For example, the draft guidance no longer uses the phrase "hormone replacement" because neither estrogen alone nor estrogen/progestin treatments for symptoms of menopause should be considered replacement hormones. The guidance only addresses two indications (moderate to severe vasomotor symptoms and moderate to severe vulvar and vaginal atrophy symptoms) and explains under what conditions both indications can be studied concurrently in a single trial. For other indications, such as the prevention of osteoporosis, sponsors are asked to direct inquiries to the appropriate review division in the Center for Drug Evaluation and Research. A section entitled Primary Endpoints has been added for each indication, and the Study Analysis section has been modified to clarify analyses of the primary endpoints. The Monitoring section for drug products containing estrogen plus progestin has been expanded. The additions to this section were made to address diagnostic ambiguities in the efficacy evaluation for protection of the endometrium.

This level 1 draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance represents the agency's current thinking on recommendations for clinical evaluation of estrogen and estrogen/progestin drug products to treat vasomotor symptoms and vulvar and vaginal atrophy symptoms. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

II. Comments

Interested persons may submit to the Dockets Management Branch (see **ADDRESSES**) written or electronic comments regarding the draft guidance. Submit a single copy of electronic comments to http://www.fda.gov/dockets/ecomments or two hard copies of any written comments, except that individuals may submit one hard copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The draft guidance and received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

Persons with access to the Internet may obtain the draft document at either http://www.fda.gov/cder/guidance/index.htm or http://www.fda.gov/ohrms/dockets/default.htm.

Dated: January 23, 2003.

Margaret M. Dotzel,

Assistant Commissioner for Policy.

[FR Doc. 03–2213 Filed 1–30–03; 8:45 am]

BILLING CODE 4160–01–S

[1] The results of the NIH Women's Health Initiative trial were reported in the *Journal of the American Medical Association*, 288: 321–333, 2002.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 01D–0488]

Guidance for Industry on Food-Effect Bioavailability and Fed Bioequivalence Studies; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a guidance for industry entitled "Food-Effect Bioavailability and Fed Bioequivalence Studies." This guidance provides recommendations to sponsors and/or applicants planning to conduct food-effect bioavailability (BA) and fed bioequivalence (BE) studies for orally administered drug products as part of investigational new drug applications (INDs), new drug applications (NDAs) and abbreviated new drug applications (ANDAs), and supplemental applications.

DATES: Submit written or electronic comments on agency guidances at any time.

ADDRESSES: Submit written requests for single copies of this guidance to the Division of Drug Information (HFD–240), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Send one self-addressed adhesive label to assist that office in processing your requests. Submit written comments on the guidance to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to http://www.fda.gov/dockets/ecomments. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

FOR FURTHER INFORMATION CONTACT: Ameeta Parekh, Center for Drug Evaluation and Research (HFD–870), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–5919.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a guidance for industry entitled "Food-Effect Bioavailability and Fed Bioequivalence Studies." This guidance document is intended to provide information to sponsors and/or applicants planning to include food-effect BA and fed BE studies for orally

administered drug products in INDs, NDAs, ANDAs, and supplemental applications. This guidance provides recommendations for when studies are appropriate, as well as recommendations on study design, data analysis, and product labeling.

In the **Federal Register** of November 28, 2001 (66 FR 59433), FDA published a draft guidance entitled "Food-Effect Bioavailability and Fed Bioequivalence Studies: Study Design, Data Analysis, and Labeling." Based on comments received on the draft guidance and the refinement of agency thinking on the conduct of such studies, FDA has revised the guidance.

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the agency's current thinking on submitting food-effect BA and fed BE information as part of INDs, NDAs, and ANDAs. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute and regulations.

II. Comments

Interested persons may submit to the Dockets Management Branch (see **ADDRESSES**) written or electronic comments on the guidance at any time. Two copies of mailed comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The guidance and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

Persons with access to the Internet may obtain the document at either http://www.fda.gov/cder/guidance/index.htm or http://www.fda.gov/ohrms/dockets/default.htm.

Dated: January 21, 2003.

Margaret M. Dotzel,

Assistant Commissioner for Policy.

[FR Doc. 03–2214 Filed 1–30–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with the requirement for the opportunity for public comment on proposed data collection projects (section 3506(c)(2)(A) of Title 44, United States Code, as amended by the Paperwork Reduction Act of 1995, Public Law 104–13), the Health Resources and Services Administration (HRSA) publishes periodic summaries of proposed projects being developed for submission to Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995. To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, call the HRSA Reports Clearance Officer at (301) 443–1129.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: Ryan White CARE Act: Title III Client-level Demonstration Project (CDP)—New

The CDP was originally established in 1994 to collect information from grantees and their subcontracted service providers funded under Titles I and II of the Ryan White Comprehensive AIDS Resources Emergency (CARE) Act of 1990, as amended by the Ryan White CARE Act Amendments of 1996 (codified under Title XXVI of the Public Health Service (PHS) Act). This new effort will collect client level data from a sample of Ryan White CARE Act Title III Grantees. The HRSA's HIV/AIDS Bureau administers funds for all titles of the CARE Act. The Title III program is authorized by Section 2651 of the PHS Act.

The PHS Act specifies that HRSA is responsible for the administration of grant funds, the allocation of funds, the evaluation of programs for the population served, and the improvement of the quantity and quality of care. Accurate records on the grantees receiving CARE Act funding, the services provided, and the clients served are critical to the implementation of the legislation and thus are necessary for HRSA to fulfill its responsibilities.

Client level information will be collected from a sample of Title III CARE Act funded grantees regarding the number of clients served, services provided, demographic information about clients served, and health status of clients served. In addition, client level information will be collected that measures mortality status and additional indicators of health status and whether standards of care are being followed by providers.

The primary purposes of the CDP are to examine client level demographic and service data on HIV/AIDS infected/affected clients being served by the Ryan White CARE Act and demonstrate the usefulness of these data for planning and evaluation purposes at both the local and national levels. Through this system, HRSA seeks to supplement the information collected in the CARE Act Data Report (CADR). Because there is no nationwide acceptance of client level reporting for HIV/AIDS services, the CADR collects data aggregated at the grantee level and contains duplicated counts of clients who have received services from more than one provider during a given reporting period.

Based on data from eligible grantees, the number of clients that a grantee serves ranges from 125 to 2748, with 422 being the median number of clients. About 30 minutes is required to respond to these questions and the data are collected 4 times a year.

The burden estimate for this project is as follows:

Grantee	Number of respondents	Responses per respondent	Total responses	Burden hour per respondent	Total burden hours
<500 Clients	15	250	3,750	2	7,500
500+ Clients	10	1,232	12,320	2	24,640
Total	25		16,070		32,140

Send comments to Susan G. Queen, Ph.D., HRSA Reports Clearance Officer, Room 14–45, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857. Written comments should be received within 60 days of this notice.

Dated: January 23, 2003.

Jane M. Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 03–2215 Filed 1–30–03; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection: Comment Request

In compliance with the requirement for opportunity for public comment on proposed data collection projects (section 3506(c)(2)(A) of Title 44, United States Code, as amended by the Paperwork Reduction Act of 1995, Public Law 104–13), the Health Resources and Services Administration (HRSA) publishes periodic summaries of proposed projects being developed for submission to OMB under the Paperwork Reduction Act of 1995. To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, call the HRSA Reports Clearance Officer on (301) 443–1129.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: Uniform Data System (OMB No. 0915–0193)—Revision

This is a request for a revision of approval of the Uniform Data System (UDS), which contains the annual reporting requirements for the cluster of primary care grantees funded by the Bureau of Primary Health Care (BPHC), Health Resources and Services Administration (HRSA). Authorizing Legislation is Section 330 of the Public Health Service Act. The UDS includes reporting requirements for grantees of the following primary care programs: Community Health Centers, Migrant Health Centers, Health Care for the Homeless, Outreach and Primary Health Services for Homeless Children and Public Housing Primary Care, and Healthy Schools Healthy Communities. BPHC collects data on its programs to ensure compliance with legislative mandates and to report to Congress and policy makers on program accomplishments. To meet these objectives, BPHC requires a core set of information collected annually that is appropriate for monitoring and evaluating performance and reporting on annual trends. The UDS includes two components: the Universal Report, completed by all grantees, provides data on services, staffing, and financing; and the Grant Report, completed by grantees funded under the Homeless, Public Housing Program or Healthy Schools Healthy Communities as well as one of the other programs, provides data on characteristics of users whose services fall within the scope of the Homeless, Public Housing Program, Healthy Schools Healthy Communities grant. Grantees are also asked to provide information on the charges, collections, bad debt write off and contractual disallowances by payor sources (Medicaid, Medicare, self pay and private insurance).

Estimated annualized reporting burden are as follows:

Type of report	Number of respondents	Hours per response	Total burden hours
Universal Report	982	27	26,514
Grant Report	184	18	3,312
Total	982		29,826

Send comments to Susan G. Queen, Ph.D., HRSA Reports Clearance Officer, Room 14–45, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: January 27, 2003.

Jane M. Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 03–2349 Filed 1–30–03; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Health Resources and Services Administration (HRSA) publishes abstracts of information collection requests under review by the Office of Management and Budget (OMB), in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). To request a copy of the clearance requests submitted to OMB for review, call the HRSA Reports Clearance Office on (301) 443–1129.

The following request has been submitted to the Office of Management and Budget for review under the Paperwork Reduction Act of 1995:

Proposed Project: Voluntary Partner Surveys To Implement Executive Order 12862 in the Health Resources and Services Administration—(OMB 0915–0212)—Extension

In response to Executive Order 12862, the Health Resources and Services Administration (HRSA) is proposing to conduct voluntary customer surveys of its "partners" to assess strengths and weaknesses in program services. A generic approval is being requested from OMB to conduct the partner surveys. HRSA partners are typically State or local governments, health care facilities, health care consortia, health care providers, and researchers.

Partner surveys to be conducted by HRSA might include, for example, mail or telephone surveys of grantees to

determine satisfaction with a technical assistance contractor, or in-class evaluation forms completed by providers who receive training from HRSA grantees, to measure satisfaction with the training experience. Results of these surveys will be used to plan and redirect resources and efforts as needed to improve service. Focus groups may also be used to gain partner input into the design of mail and telephone surveys. Focus groups, in-class evaluation forms, mail surveys, and telephone surveys are expected to be the preferred methodologies.

A generic approval will permit HRSA to conduct a limited number of partner surveys without a full-scale OMB review of each survey. If generic approval is granted, information on each individual partner survey will not be published in the **Federal Register**.

The estimated response burden is as follows:

Type of survey	Number of respondents	Responses per respondent	Hours per response	Total hour burden
In-class evaluations	40,000	1	.05	2,000
Mail/Telephone surveys	2,000	1	.25	3,000
Focus groups	50	1	1.5	75
Total	52,050			5,075

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: John Morrall, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: January 27, 2003.

Jane M. Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 03–2348 Filed 1–30–03; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Submission for OMB Review; Comment Request; Environmental Factors in the Development of Polycystic Ovary Syndrome

Summary: Under the provisions of section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the National Institute of Environmental Health Sciences (NIEHS), the National Institutes of Health (NIH) has submitted to the Office of Management and Budget (OMB) a request for review and approval of the information collection listed below. This proposed information collection was previously published in the **Federal Register** on October 25, 2002, pages 56690–56691 and allowed 60-days for public comment. No public comments were received. The purpose of this notice is to allow an additional 30 days for public comment. The National Institutes of Health may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

Proposed Collection: Title: Environmental Factors in the Development of Polycystic Ovary Syndrome. *Type of Information Collection Request:* Revision of OMB No. 0925–0483 and expiration date 2/28/2003. *Need and Use of Information Collection:* The purpose of this study is to identify a cohort of living female twin pairs in which at least one member is likely to have Polycystic Ovary Syndrome (PCOS) for future study. Potential participants (~3,700) will come from the Mid-Atlantic Twin Registry (MATR) and were chosen based on their answers to several questions (in a preliminary MATR survey) concerning irregular periods and a history of polycystic cystic ovaries. The instrument to be used here will be administered by telephone by professional interviewers at the MATR. It contains 15 simple and direct questions and will take about 10 minutes to complete. Its contents deal with the frequency of menstrual periods, a history of polycystic ovaries, obesity, excess facial hair and other evidence of hyperandrogenism. Since this is such a short telephone survey, participants will receive no prior notification. Informed consent will be asked for verbally over the phone at the time of the interview. All participants will be asked about their willingness to participate in future studies if their answers meet certain criteria. The major objectives of future studies using this cohort are to determine more reliable concordance rates for PCOS in monozygotic and dizygotic twins, establish baseline heritability estimates, and develop hypotheses concerning possible pathogenetic and/or environmental factors. The findings from this study will aid in developing: (1) Genetic tests to identify high risk women; (2) preventative strategies; and (3) more effective therapies for PCOS and related syndromes such as type 2 diabetes, obesity, idiopathic, hyperandogenism, and male pattern baldness. *Frequency of Response:* One time. *Affected Public:* Individuals or households. *Type of Respondents:* Adult women. The annual reporting burden is as follows: *Estimated Number of Respondents:* 3,700; *Estimated Number of Responses per Respondent:* 1; *Average Burden Hours Per Response:* 0.167; and *Estimated Total Annual Burden Hours Requested:* 205.9 hours. The annualized cost to respondents is estimated at $3,449.94. There are no Capital Costs to report. There are no Operating or Maintenance Costs to report.

Request for Comments: Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Direct Comments to OMB: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated

public burden and associated response time, should be directed to the Office of Management and Budget, Office of Regulatory Affairs, New Executive Office Building, Room 10235, Washington, DC 20503, Attention: Desk Officer for NIH. To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact: Dr. Patricia C. Chulada, Clinical Research Scientist, Clinical Research Office, NIEHS, PO Box 12233, Research Triangle Park, NC 27709 or call non-toll-free number (919) 541–7736 or E-mail your request, including your address to: *chulada@niehs.nih.gov.*

Comments Due Date: Comments regarding this information are best assured of having their full effect if received within 30-days of the date of this publication.

Dated: January 17, 2003.

Francine Little,

Associate Director for Management.

[FR Doc. 03–2228 Filed 1–30–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel, Prevention Research and Epidemiology.

Date: March 18–20, 2003.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Gaithersburg Marriott Washingtonian Center, 9751 Washingtonian Boulevard, Gaithersburg, MD 20878.

Contact Person: Marcy Jane Slesinski, PhD, Scientific Review Administrator, Special Review and Resources Branch, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, Room 8045, Bethesda, MD 20892, (301) 594–1566.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: January 24, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–2225 Filed 1–30–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel, SPORES in Prostate and GU Cancer.

Date: February 26–28, 2003.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave, Bethesda, MD 20814.

Contact Person: Bratin K. Saha, PhD, Scientific Review Administrator, Grants Review Branch, Division of Extramural Activities, National Cancer Institute, 6116 Executive Boulevard, Room 8123, Bethesda, MD 20892, (301) 402–0371, sahab@mail.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: January 24, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–2227 Filed 1–30–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institutes of Environmental Health Sciences; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel, Review of Independent Scientist Awards (K02s).

Date: March 4, 2003.

Time: 1:30 p.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: NIEHS, Building 4401, T.W. Alexander Drive, Room 122, Research Triangle Park, NC 27709, (Telephone Conference Call).

Contact Person: Linda K. Bass, PhD, Scientific Review Administrator, Scientific Review Branch, Office of Program Operations, Division of Extramural Research and Training, Nat. Institute of Environmental Health Sciences, P.O. Box 12233, MD EC–30, Research Triangle Park, NC 27709, (919) 541–1307.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel, Review of Mentored Clinical Scientist Development Awards (K08s).

Date: March 4, 2003.

Time: 2:30 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: NIEHS, Building 4401, T.W. Alexander Drive, Room 122, Research Triangle Park, NC 27709, (Telephone Conference Call).

Contact Person: Linda K. Bass, PhD, Scientific Review Administrator, Scientific Review Branch, Office of Program Operations, Division of Extramural Research and Training, Nat. Institute of Environmental Health Sciences, P.O. Box 12233, MD EC–30,

Research Triangle Park, NC 27709, (919) 541–1307.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel, Review of Mentored Quantitative Research Career Development Awards (K25s).

Date: March 4, 2003.

Time: 3:30 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: NIEHS, Building 4401, T.W. Alexander Drive, Room 122, Research Triangle Park, NC 27709, (Telephone Conference Call).

Contact Person: Linda K. Bass, PhD, Scientific Review Administrator, Scientific Review Branch, Office of Program Operations, Division of Extramural Research and Training, Nat. Institute of Environmental Health Sciences, P.O. Box 12233, MD EC–30, Research Triangle Park, NC 27709, (919) 541–1307.

(Catalogue of Federal Domestic Assistance Program Nos. 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing, 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences, National Institutes of Health, HHS)

Dated: January 23, 2003.

Laverne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–2220 Filed 1–30–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel, SEP Review Meeting (1 R01).

Date: February 18, 2003.

Time: 10 a.m. to 11 a.m.

Agenda: To review and evaluate grant applications.

Place: NIAAA, Willco Building, 6000 Executive Blvd., 409 Bethesda, MD 20852–7003, (Telephone Conference Call).

Contact Person: Elsie D. Taylor, Scientific Review Administrator, Extramural Project Review Branch, National Institute on Alcohol Abuse and Alcoholism, National Institutes of Health, Suite 409, 6000 Executive Blvd., Bethesda, MD 20892–7003, 301–443–9787 *etaylor@niaaa.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants, National Institutes of Health, HHS)

Dated: January 23, 2003.

LaVerne Y. Stringfield

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–2221 Filed 1–30–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel, NIAAA SEP Application (R13) Review Meeting.

Date: February 26, 2003.

Time: 9 a.m. to 11 a.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Willco, 6000 Executive Blvd., Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Sathasiva B. Kandasamy, PhD, Scientific Review Administrator, Extramural Project Review Branch, Office of Scientific Affairs, National Institute on Alcohol, Abuse and Alcoholism, 6000 Executive Blvd, Suite 409, Bethesda, MD 20892–7003, (301) 443–2926, *skandasa@mail.nih.gov*

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants, National Institutes of Health, HHS)

Dated: January 23, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–2222 Filed 1–30–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel, Immune Epitope Database and Analysis Program.

Date: February 19, 2003.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate contract proposals.

Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Katherine L. White, PhD, Scientific Review Administrator, AIDS Preclinical Research Review Branch, Scientific Review Program, National Institutes of Allergy and, Infectious Diseases, 6700 B Rockledge Drive, Room 3119, Bethesda, MD 20892, (301) 435–1615, *kw174b@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology,

and Transplantation Research, 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: January 24, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–2223 Filed 1–30–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Dental & Craniofacial Research; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel, 03–30, Review of R13 Grants.

Date: February 4, 2003.

Time: 11 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: H. George Hausch, PhD, Acting Director, 4500 Center Drive, Natcher Building, Rm. 4AN44F, National Institutes of Health, Bethesda, MD 20892, (301) 594–2372.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel, 03–50, Review of Clinical Trial applications.

Date: February 24, 2003.

Time: 11 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: H. George Hausch, PhD, Acting Director, 4500 Center Drive, Natcher Building, Rm. 4AN44F, National Institutes of Health, Bethesda, MD 20892, (301) 594–2372.

(Catalogue of Federal Domestic Assistance Program Nos. 93.12, Oral Diseases and Disorders Research, National Institutes of Health, HHS)

Dated: January 23, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–2224 Filed 1–30–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Immunological Sciences Integrated Review Group, Experimental Immunology Study Section.

Date: February 6–7, 2003.

Time: 8:30 a.m. to 11 a.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Cathleen L. Cooper, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4208, MSC 7812, Bethesda, MD 20892, (301) 435–3566, *cooperc@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Bridges to the Future.

Date: February 11, 2003.

Time: 8:30 a.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road, NW., Washington, DC 20015.

Contact Person: Cathleen L. Cooper, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, Department of Health and Human Services, 6701 Rockledge Drive, Room 4208, MSC 7812, Bethesda, MD 20892, (301) 435–3566, *cooperc@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Oncological Sciences Integrated Review Group, Pathology B Study Section.

Date: February 12–14, 2003.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Georgetown, 2101 Wisconsin Avenue, NW., Washington, DC 20007.

Contact Person: Martin L. Padarathsingh, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6212, MSC 7804, Bethesda, MD 20892, (301) 435–1717.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Integrative, Functional and Cognitive Neuroscience Integrated Review Group, Visual Sciences B Study Section.

Date: February 12–13, 2003.

Time: 8 a.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Christine Melchior, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5176 MSC 7844, Bethesda, MD 20892, (301) 435–1713, *melchioc@csr.nih.gov*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Pathophysiological Sciences Integrated Review Group, Alcohol and Toxicology Subcommittee 4.

Date: February 12–13, 2003.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Wyndham City Center, 1143 New Hampshire Avenue NW., Washington, DC 20037.

Contact Person: Rass M. Shayiq, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2182, MSC 7818, Bethesda, MD 20892, (301) 435–2359, *shayiqr@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Biophysical and Chemical Sciences Integrated Review Group, Medicinal Chemistry Study Section.

Date: February 12–13, 2003.

Time: 8:30 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Robert Lees, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4182, MSC 7806, Bethesda, MD 20892, (301) 435–2684, *leesro@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 IFCN2 (01) Neuroendocrinology, Neuroimmunology, and Behavior.

Date: February 12–13, 2003.

Time: 9 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Richard Marcus, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5168, MSC 7844, Bethesda, MD 20892, (301) 435–1245, *richard.marcus@nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1–SRB (50) R:PAR–02–010: Bioengineering Partnerships.

Date: February 12, 2003.

Time: 1 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Catamaran Resort Hotel, 3999 Mission Boulevard, San Diego, CA 92109.

Contact Person: Eileen W. Bradley, DSC, Chief and Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5120, MSC 7854, Bethesda, MD 20892, (301) 435–1179, *bradleye@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 RNM 01: Diagnostic Imaging Member Conflict.

Date: February 12, 2003.

Time: 7 p.m. to 9:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Catamaran Resort Hotel, 3999 Mission Boulevard, San Diego, CA 92109.

Contact Person: Eileen W. Bradley, DSC, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5120, MSC 7854, Bethesda, MD 20892, (301) 435–1179, *bradleye@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 DMG 01M Diagnostic Radiology Member Conflict.

Date: February 12, 2003.

Time: 7 p.m. to 10 p.m.

Agenda: To review and evaluate grant applications.

Place: Catamaran Resort Hotel, 3999 Mission Boulevard, San Diego, CA 92109.

Contact Person: Lee Rosen, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5116, MSC 7854, Bethesda, MD 20892, (301) 435–1171.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 RNM 02: Diagnostic Imaging Member Conflict.

Date: February 12, 2003.

Time: 9:30 p.m. to 10 p.m.

Agenda: To review and evaluate grant applications.

Place: Catamaran Resort Hotel, 3999 Mission Boulevard, San Diego, CA 92109.

Contact Person: Eileen W. Bradley, DSC, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5120, MSC 7854, Bethesda, MD 20892, (301) 435–1179, *bradleye@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Infectious Diseases and Microbiology Integrated Review Group, Experimental Virology Study Section.

Date: February 13–14, 2003.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: St. Gregory Hotel, 2033 M Street, NW., Washington, DC 20036.

Contact Person: Robert Freund, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4198, MSC 7808, Bethesda, MD 20892, (301) 435–1050, *freundr@csr.nih.gov.*

Name of Committee: Endocrinology and Reproductive Sciences Integrated Review Group, Endocrinology Study Section.

Date: February 13–14, 2003.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave, Bethesda, MD 20814.

Contact Person: Syed M. Amir, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6168, MSC 7892, Bethesda, MD 20892, (301) 435–1043 *amirs@csr.nih.gov.*

Name of Committee: Surgery, Radiology and Bioengineering Integrated Review Group, Diagnostic Imaging Study Section.

Date: February 13–14, 2003.

Time: 8 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Catamaran Resort Hotel, 3999 Mission Boulevard, San Diego, CA 92109.

Contact Person: Lee Rosen, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5116, MSC 7854, Bethesda, MD 20892, (301) 435–1171.

Name of Committee: Infectious Diseases and Microbiology Integrated Review Group, Tropical Medicine and Parasitology Study Section.

Date: February 13–14, 2003.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Georgetown, 2101 Wisconsin Avenue, NW., Washington, DC 20007.

Contact Person: Jean Hickman, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3194, MSC 7808, Bethesda, MD 20892, (301) 435–1146 *hickman@csr.nih.gov.*

Name of Committee: Endocrinology and Reproductive Sciences Integrated Review Group, Biochemical Endocrinology Study Section.

Date: February 13, 2003.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave, Bethesda, MD 20814.

Contact Person: Michael Knecht, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6176, MSC 7892, Bethesda, MD 20892, (301) 435–1046.

Name of Committee: Surgery, Radiology and Bioengineering Integrated Review Group, Diagnostic Radiology Study Section.

Date: February 13–14, 2003.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Catamaran Resort Hotel, 3999 Mission Boulevard, San Diego, CA 92109.

Contact Person: Eileen W. Bradley, DSC, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5120, MSC 7854, Bethesda, MD 20892, (301) 435–1179, *bradleye@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 BECM–01 Bioanalytical Engineering and Chemistry Panel.

Date: February 13–14, 2003.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Westin Grand, 2350 M Street, NW., Washington, DC 20037.

Contact Person: Noni Byrnes, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4196, MSC 7806, Bethesda, MD 20892, (301) 435–1217, *byrnesn@csr.nih.gov.*

Name of Committee: Risk, Prevention and Health Behavior Integrated Review Group, Risk, Prevention and Health Behavior 1.

Date: February 13–14, 2003.

Time: 8:30 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Victoria S. Levin, MSW, Scientific Review Administrator, Center for

Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3172, MSC 7848, Bethesda, MD 20892, (301) 435–0912, *levinv@csr.nih.gov.*

Name of Committee: Biobehavioral and Behavioral Process Initial Review Group, Biobehavioral and Behavioral Processes 2, Biobehavioral Mechanisms of Emotion, Stress, and Health.

Date: February 13–14, 2003.

Time: 9 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Georgetown, 2101 Wisconsin Avenue, NW., Washington, DC 20007.

Contact Person: Thomas A. Tatham, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3188, MSC 7848, Bethesda, MD 20892, (301) 435–0692, *tathamt@csr.nih.gov.*

Name of Committee: Genetic Sciences Integrated Review Group, Mammalian Genetics Study Section.

Date: February 13–14, 2003.

Time: 9 a.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave., Bethesda, MD 20814.

Contact Person: Cheryl M. Corsaro, PhD, Scientific Review Administrator, Genetic Sciences IRG, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2204, MSC 7890, Bethesda, MD 20892, (301) 435–1045, *corsaroc@csr.nih.gov.*

Name of Committee: Social Sciences, Nursing, Epidemiology and Methods Integrated Review Group, Epidemiology and Disease Control Subcommittee 1.

Date: February 13–14, 2003.

Time: 9 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave., Bethesda, MD 20814.

Contact Person: Scott Osborne, PhD, MPH, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4114, MSC 7816, Bethesda, MD 20892, (301) 435–1782.

Name of Committee: Genetic Sciences Integrated Review Group, Genetics Study Section.

Date: February 13–15, 2003.

Time: 9 a.m. to 7 p.m.

Agenda: To review and evaluate grant applications.

Place: The River Inn, 924 Twenty-Fifth Street, NW., Washington, DC 20037.

Contact Person: David J. Remondini, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6154, MSC 7890, Bethesda, MD 20892, (301) 435–1038, *remondid@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Gene and Radiation Therapy.

Date: February 13, 2003.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Shen K. Yang, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6198, MSC 7804, Bethesda, MD 20892, (301) 435–1213, *yangsh@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Collaborative Projects: Neglect.

Date: February 13, 2003.

Time: 4 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Georgetown, 2101 Wisconsin Avenue, NW., Washington, DC 20007.

Contact Person: Thomas A. Tatham, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3114, MSC 7848, Bethesda, MD 20892, (301) 594–6836, *tathamt@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Collaborative Projects: Hostility.

Date: February 13, 2003.

Time: 5 p.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Georgetown, 2101 Wisconsin Avenue, NW., Washington, DC 20007.

Contact Person: Thomas A. Tatham, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3114, MSC 7848, Bethesda, MD 20892, (301) 594–6836, *tathamt@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Basic and Clinical Studies of Anterior Eye Diseases.

Date: February 18–19, 2003.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Sofitel Lafayette Square, 806, 15th Street, NW., Washington, DC 20005.

Contact Person: Mary Custer, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5102, MSC 7850, Bethesda, MD 20892, (301) 435–1164, *custerm@csr.nih.gov.*

Name of Committee: Integrative, Functional and Cognitive Neuroscience Integrated Review Group, Integrative, Functional and Cognitive Neuroscience 4.

Date: February 18–19, 2003.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Wyndham Washington, DC, 1400 M Street, NW., Washington, DC 20005.

Contact Person: Dan Kenshalo, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Dr., Room 5176, MSC 7844, Bethesda, MD 20892, (301) 435–1255.

Name of Committee: Infectious Diseases and Microbiology Integrated Review Group, Virology Study Section.

Date: February 18–19, 2003.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Joanna M. Pyper, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3198, MSC 7808, Bethesda, MD 20892, (301) 435–1151, *pyperj@csr.nih.gov.*

Name of Committee: Integrative, Functional and Cognitive Neuroscience Integrated Review Group, Integrative, Functional and Cognitive Neuroscience 5.

Date: February 18–19, 2003.

Time: 8:30 a.m. to 10 a.m.

Agenda: To review and evaluate grant applications.

Place: Governor's House Hotel, 1615 Rhode Island Avenue, NW., Washington,DC 20036.

Contact Person: John Bishop, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5180, MSC 7844, Bethesda, MD 20892, (301) 435–1250.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Malarial Transmission.

Date: February 18, 2003.

Time: 3 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Marian Wachtel, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3208, MSC 7858, Bethesda, MD 20892, (301) 435–1148, *wachtelm@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 SSS–X (10)B Ultrasound.

Date: February 18, 2003.

Time: 7 p.m. to 9 p.m.

Agenda: To review and evaluate grant applications.

Place: Catamaran Resort Hotel, 3999 Mission Boulevard, San Diego, CA 92109.

Contact Person: Lee Rosen, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5116, MSC 7854, Bethesda, MD 20892, (301) 435–1171.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1–SSS–X 12B Ultrasound.

Date: February 18, 2003.

Time: 9 p.m. to 10 p.m.

Agenda: To review and evaluate grant applications.

Place: Catamaran Resort Hotel, 3999 Mission Boulevard, San Diego, CA 92109.

Contact Person: Lee Rosen, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5116, MSC 7854, Bethesda, MD 20892, (301) 435–1171.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333,

93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: January 23, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–2219 Filed 1–30–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel, Cancer Prognosis and Prediction.

Date: March 4, 2003.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Contact Person: Lalita D Palekar, PHD, Scientific Review Administrator, Special Review and Resources Branch, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, Room 8105, Bethesda, MD 20892–7405, (301) 496–7575.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Canter Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: January 24, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–2226 Filed 1–30–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish a summary of information collection requests under OMB review, in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these documents, call the SAMHSA Reports Clearance Officer on (301) 443–7978.

Protection and Advocacy for Individuals with Mental Illness (PAIMI) Annual Program Performance Report (OMB No. 0930–0169, Revision)—The Protection and Advocacy for Individuals with Mental Illness (PAIMI) Act (42 USC. 10801 *et seq.*) authorized funds to support protection and advocacy services on behalf of individuals with severe mental illness and severe emotional impairment who are at risk for abuse and neglect and other civil rights violations while under treatment in a residential facility. This program is managed by SAMHSA's Center for Mental Health Services (CMHS).

Under the PAIMI Act, formula grant awards are made to protection and advocacy (P&A) systems designated by the governors of the 50 states and 6 territories, and the District of Columbia to ensure that the rights of individuals with severe mental illness and severe emotional disturbance are not violated. In October 2000, the PAIMI Act was amended to create a 57th P&A system—the American Indian Consortium in Shiprock, New Mexico. Whenever the annual PAIMI appropriation reaches $30 million or more, State P&A systems may serve eligible individuals with serious mental illness or severe emotional impairments, as defined under the Act, residing in the community, including their own homes. However, PAIMI eligible persons residing in public and private residential care or treatment facilities have priority for all P&A system services.

The PAIMI Act requires P & A systems to file an annual report on their activities and accomplishments and to provide information on such topics as: numbers of individuals served, types of complaints addressed, and the number of intervention strategies used to resolve the presenting issues. Under the Act, there is an Advisory Council which is also required to submit an annual report that assesses the effectiveness of the services provided to, and the activities conducted by, the P&A systems on behalf of PAIMI eligible individuals and their family members. In this submission, CMHS is reinstating information on fiscal year actual budget expenditures and making primarily minor changes to the annual reports. The revised report formats will be effective for the report due on January 1, 2004. The annual burden estimate is as follows:

	Number of respondents	Number of responses per respondent	Hours per response	Total hour burden
Annual Program Performance Report	57	1	28	1,596
Activities & Accomplishments			(20)	(1,140)
Performance outcomes			(3)	(171)
Expenses			(2)	(114)
Budget			(2)	(114)
Priority statements & objectives			(1)	(57)
Advisory Council Report	57	1	10	570
Total	114			2,166

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: Allison Herron Eydt, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: January 15, 2003.

Richard Kopanda,

Executive Officer, SAMHSA.

[FR Doc. 03–2273 Filed 1–30–03; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4529–N–03]

Notice of Proposed Information; Collection: Comment Request; Applicant/Recipient Disclosure/Update Report—HUD 2880

AGENCY: Office of the General Counsel, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments Due Date: April 1, 2003.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Patricia A. Wash, Reports Liaison Officer, Department of Housing and Urban Development, 451 7th Street, SW., Room 10245, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Paula A. Lincoln, Assistant General Counsel, Ethics Law Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street, SW., Room 2130, Washington, DC 20410 telephone (202 708–3815) (this is not a toll-free number). For copies of the proposed form and other available documents.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Applicant/Recipient Disclosure/Update Report.

OMB Control Number, if applicable: 2510–0011.

Description of the need for the information and proposed use: Section 102 of The HUD Reform Act of 1989 requires the Department to ensure greater accountability and integrity in the provision of assistance administered by the Department. One feature of the statute requires certain disclosures by applicants seeking assistance from HUD. The disclosure includes the financial interests of persons involved in the activities, the sources of funds to be made available for the activities, and the proposed uses of the funds.

Each applicant who submits an application for assistance, within the jurisdiction of the Department, to HUD, to a State or to a unit of general local government for a specific project or activity, must disclose this information whenever the dollar threshold is met ($200,000 during the Fiscal Year in which the application is submitted). This information must be kept updated during the application review process and while the assistance is being provided.

Agency form numbers, if applicable: HUD–2880.

Members of affected public: Applicants for HUD competitive assistance.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response:

Number of disclosures (including updates)	Burden hours	Frequency of response	Total burden hours
16,900	2.0	1.2	40,560

Status of the proposed information collection: Extension of expiration date.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: January 28, 2003.

Richard A. Hauser,

General Counsel.

[FR Doc. 03–2350 Filed 1–30–03; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

U.S. Coral Reef Task Force Meeting

Time and Date: 8:30 a.m. to 5 p.m. EST, February 26 and 27, 2003.

Place: Departmental Auditorium, Department of the Interior, 1849 C Street, NW, Washington, DC 20240.

Status: The Department of the Interior, as co-chair with the Department of Commerce, on behalf of the U.S. Coral Reef Task Force (CRTF), announces a public meeting of the Task Force. Composed of the heads of eleven federal agencies and the Governors of seven states, territories, and commonwealths, the Task Force has helped lead U.S. efforts to address the coral reef crisis and sustainably manage the nation's valuable coral reef ecosystems.

Matters to be Considered: The CRTF will discuss implementation of the National Plan for Coral Reef Conservation Action, improvements in Task Force operations, and accept public comments. The agenda will be available from the contact person below and published on the web at *http://coralreef.gov/* when finalized.

Individuals and organizations will have opportunities to register for exhibit space and register to provide public comments limited to less that 5 minutes. Wherever possible, those with similar viewpoints or messages are encouraged to make joint statements. Testimony will be received on the afternoon of February 26. Written statements may also be submitted to the Task Force up to March 14, 2003.

Contact Person for More Information: Organizations and individuals desiring to register for public comments or to obtain additional information should contact Patty Myatt, c/o the Assistant Secretary for Fish and Wildlife Parks, Department of the Interior, 1849 C Street NW., MS–MIB–3156, Washington, DC 20240, telephone 202–208–6621, email *patty_myatt@ios.doi.gov.*

Dated: January 23, 2003.

Craig Manson,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 03–2129 Filed 1–30–03; 8:45 am]

BILLING CODE 4310–RK–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Applications for Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications for permit.

SUMMARY: The public is invited to comment on the following applications to conduct certain activities with endangered species and/or marine mammals.

DATES: Written data, comments or requests must be received by March 3, 2003.

ADDRESSES: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 30 days of the date of publication of this notice to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203; fax (703) 358–2281.

FOR FURTHER INFORMATION CONTACT: Division of Management Authority, telephone (703) 358–2104.

SUPPLEMENTARY INFORMATION:

Endangered Species

The public is invited to comment on the following application(s) for a permit to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*). Written data, comments, or requests for copies of these complete applications should be submitted to the Director (address above).

PRT–066885

Applicant: Secor Dustin, St. Petersburg, FL.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

PRT–066886

Applicant: Norman L. Delan, Jr., Fleetwood, PA.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

PRT–066978

Applicant: Dennis Mark Friend, Gladewater, TX.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

PRT–066574

Applicant: University of Idaho, Moscow, ID.

The applicant requests a permit to import biological samples from European brown bear (*Ursus arctos arctos*) collected in the wild in Italy, for scientific research. This notification covers activities conducted by the applicant over a five year period.

PRT–066901

Applicant: Wheeling Park Commission, Ogelbay's Good Zoo, Wheeling, WV.

The applicant requests a permit to acquire through interstate commerce one male captive-born Komodo monitor (Varanus komodoensis) from Miami Metrozoo for the purpose of enhancement of the survival of the species through conservation education.

The U.S. Fish and Wildlife Service has information collection approval from OMB through March 31, 2004, OMB Control Number 1018–0093. Federal Agencies may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a current valid OMB control number.

Dated: January 17, 2003.

Monica Farris,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. 03–2115 Filed 1–30–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Receipt of Endangered Species Recovery Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of permit applications.

SUMMARY: The following applicants have applied for a scientific research permit to conduct certain activities with endangered species pursuant to section 10(a)(1)(A) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*). We, the U.S. Fish and Wildlife Service, solicit review and comment from local, State, and Federal agencies, and the public on the following permit requests.

DATES: Comments on these permit applications must be received on or before March 3, 2003, to receive our consideration.

ADDRESSES: Written data or comments should be submitted to the Chief, Endangered Species, Ecological Services, U.S. Fish and Wildlife Service, 911 NE. 11th Avenue, Portland, Oregon 97232–4181 (fax: 503–231–6243). Please refer to the respective permit number for each application when submitting comments. All comments received, including names and addresses, will become part of the official administrative record and may be made available to the public.

FOR FURTHER INFORMATION CONTACT: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 20 days of the date of publication of this notice to the address above (telephone: 503–231–2063). Please refer to the respective permit number for each application when requesting copies of documents.

SUPPLEMENTARY INFORMATION:

Permit No. TE–062907

Applicant: Andrew Forde, Costa Mesa, California.

The applicant requests a permit to take (survey by pursuit) the Quino checkerspot butterfly (*Euphydryas editha quino*) in conjunction with surveys throughout the range of the species in California for the purpose of enhancing its survival.

Permit No. TE–066146

Applicant: Hugh Vance, Palm Springs, California.

The applicant requests a permit to take (collect and captively propagate) the desert pupfish (*Cyprinodon macularius*) in Riverside County, California for the purpose of enhancing its survival.

Permit No. TE–065925

Applicant: Raphael Mazor, Berkeley, California.

The applicant requests a permit to take (survey, collect, and sacrifice) the Conservancy fairy shrimp (*Branchinecta conservatio*) and the vernal pool fairy shrimp (Branchinecta lynchi), and take (capture and release) the vernal pool tadpole shrimp (*Lepidurus packardi*) in conjunction with genetic research, and dispersal and population demographics throughout the range of each species in California for the purpose of enhancing their survival.

Permit No. TE–066318

Applicant: Brian Knaus, Corvallis, Oregon.

The applicant requests a permit to reduce to possession the *Astragalus lintiginosus* var. *coachellae* (Coachella Valley milk-vetch) in conjunction with research in Riverside County, California for the purpose of enhancing its survival.

Permit No. TE–054802

Applicant: Anthony Adkins, Durango, Colorado.

The applicant requests a permit to take (survey by pursuit) the Quino checkerspot butterfly (*Euphydryas editha quino*) in conjunction with surveys throughout the range of the species in California for the purpose of enhancing its survival.

Permit No. TE–004939

Applicant: Gordon Pratt, Riverside, California.

The permittee requests an amendment to take (survey by pursuit, capture, captively propagate, and release) the Lotus blue butterfly (*Lycaeides argyrognomon lotis*) in conjunction with recovery efforts in Mendocino and Sonoma Counties, California for the purpose of enhancing its survival.

Permit No. TE–066455

Applicant: Scot A. Chandler, Murrieta, California.

The applicant requests a permit to take (survey by pursuit) the Quino checkerspot butterfly (*Euphydryas editha quino*) in conjunction with surveys throughout the range of the species in California for the purpose of enhancing its survival.

Permit No. TE–053777

Applicant: David Bise, Pasadena, California.

The permittee requests an amendment to take (survey by pursuit) the Quino checkerspot butterfly (*Euphydryas editha quino*) in conjunction with surveys throughout the range of the species in California for the purpose of enhancing its survival.

Permit No. TE–066457

Applicant: Kingsinger Environmental Consultants, Carlsbad, California.

The applicant requests a permit to take (survey by pursuit) the Quino checkerspot butterfly (*Euphydryas editha quino*) in conjunction with surveys throughout the range of the species in California for the purpose of enhancing its survival.

We solicit public review and comment on each of these recovery permit applications.

Dated: January 9, 2003.

William F. Shake,

Acting Regional Director, Region 1, U.S. Fish and Wildlife Service.

[FR Doc. 03–2278 Filed 1–30–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Submission of Information Collection to Office of Management and Budget for Review Under the Paperwork Reduction Act

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice announces that the Information Collection Request for the Application for Training or Employment Assistance Form, OMB Control No. 1076–0062, has been submitted to the Office of Management and Budget (OMB) for approval under the provisions of the Paperwork Reduction Act of 1995.

DATES: Submit your comments and suggestions on or before March 3, 2003.

ADDRESSES: Written comments should be sent directly to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Desk Officer for the Department of the Interior, 725 17th Street NW., Washington, DC 20503.

Send a copy of your comments to Lynn Forcia, Bureau of Indian Affairs, Office of Economic Development, 1849 C Street NW., Mailstop 2412 MIB, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Copies of the information collection may be obtained by contacting Lynn Forcia at 202–219–5270. (This is not a toll free number.)

SUPPLEMENTARY INFORMATION:

I. Abstract

The information collection is necessary to assess the need to help adult Indians who reside on or near Indian reservations to obtain reasonable and satisfactory employment. The information collection documents provide information necessary to administer the program for Employment Assistance or Vocational Training. The Department is authorized to undertake a program of vocational training that provides vocational counseling, guidance, and training in any recognized vocation, apprenticeship, trade, or on-the-job training. The program is available to Indians who are not less than 18 years old and not more than 35 years old who reside on or near an Indian reservation. Public Law 84–959 and Public Law 88–230 authorize the BIA to enter into contracts or agreements with Federal, State, local government agencies or associations with apprenticeship programs or on-the-job training that leads to skilled employment. The same application form is used for both 25 CFR parts 26 and 27. Information of a confidential nature is protected by the Privacy Act. A request for comments on this information collection was published in the **Federal Register** on November 15, 2002 (67 FR 69238). No comments were received.

II. Request for Comments

Comments are invited on (a) whether the information collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden (hours and cost) of the collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of the information on the respondents, including through the use of automated collection techniques or other forms of information technology.

The Office of Management and Budget has up to 60 days to approve or disapprove the information collection but may respond after 30 days; therefore, comments submitted in

response to this notice should be submitted to OMB within 30 days in order to assure their maximum consideration.

Please note that all comments are available for public review during regular office hours. If you wish to have your name and/or address withheld, you must state this prominently at the beginning of your comments. We will honor your request to the extent allowed by law. All comments from businesses or representatives of businesses will be open for public review.

III. Data

Title: The Adult Vocational Training and Employment Assistance Program Application Form.

OMB approval number: 1076–0062.

Summary of Collection of Information: The collection of information provides pertinent data concerning the individual's training and employment background to determine eligibility for program services.

Frequency: Annually.

Description of respondents: Individual tribal members residing on or near reservations seeking training and employment assistance services.

Estimated completion time: ½ hour.

Number of Annual responses: 4,900.

Annual Burden hours: 2,450 hours.

Dated: January 17, 2003.

Aurene M. Martin,

Assistant Secretary—Indian Affairs.

[FR Doc. 03–2216 Filed 1–30–03; 8:45 am]

BILLING CODE 4310–4M–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–010–1990–EX]

Notice of Availability of Final Supplemental Environmental Impact Statement; Betze Project Dewatering, Eureka and Elko Counties, NV

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability (NOA) of final Supplemental Environmental Impact Statement (SEIS).

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act, 40 CFR parts 1500–1508 and 43 CFR part 3809, notice is given that the Elko Field Office of the Bureau of Land Management has prepared a final SEIS for Barrick Goldstrike's dewatering operations for the Betze/Post Project in northeastern Nevada.

EFFECTIVE DATE: The final SEIS will be distributed and made available to the public following publication of this notice in the **Federal Register**. The period of availability for public review for the final SEIS ends 30 days after publication of this notice in the **Federal Register**.

ADDRESSES: A copy of the final SEIS can be obtained from: Bureau of Land Management, Elko Field Office; Attn: Kirk Laird, SEIS Coordinator; 3900 E. Idaho Street; Elko, NV 89801. The final SEIS may also be downloaded from the Elko Field Office Internet site at *http://www.nv.blm.gov/elko.*

FOR FURTHER INFORMATION CONTACT: Kirk Laird, SEIS Coordinator, at the above Elko Field Office address or telephone (775) 753–0200.

SUPPLEMENTARY INFORMATION: The SEIS supplements the analysis of dewatering for the Betze Project originally analyzed for an Environmental Impact Statement completed in 1991. The SEIS analysis is based on updated data, changes in the dewatering program, and improved hydrogeologic modeling. The draft SEIS analyzed a proposed additional water pipeline, which has been canceled, is no longer subject to analysis, and thus is not part of the final SEIS. The SEIS analyzes the potential impact of ongoing dewatering by Barrick's Goldstrike Mine, approved by the State of Nevada, and proposed dewatering by other mines along the Carlin Trend and analyzes updated mitigation measures. An abbreviated final SEIS has been produced. The abbreviated final SEIS contains copies of comment letters received on the draft SEIS, responses to those comments, and an errata section with specific modifications and corrections to the draft in response to the comments.

Dated: January 10, 2003.

Helen Hankins,

Field Manager.

[FR Doc. 03–1073 Filed 1–30–03; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

National Park Service

60-Day Notice of Intention To Request Clearance of Collection of Information; Opportunity for Public Comment

AGENCY: National Park Service, the Department of Interior.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 and 5 CFR part 1320, this notice announces the National Park Service (NPS) intention to request an extension for a currently approved information collection used in the Historic Preservation Tax Incentives Program administered by the NPS. The NPS also is asking for comments on the practical utility of the information being gathered; the accuracy of the burden hour estimate; ways to enhance the quality, utility, and clarity of the information being collected; and ways to minimize the burden to respondents, including use of automated information collection techniques or other forms of information technology. This program will measure performance in meeting goals as required by the 1995 Government Performance and Results Act (GPRA).

DATES: Public comments on this notice will be accepted on or before April 1, 2003, to be assured of consideration.

ADDRESSES: *Send Comments to:* Sharon C. Park, Heritage Preservation Services, National Park Service, 1849 C St., NW., Org. code 2255, Washington, DC 20240–0001.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record. Copies of the information collection can be obtained from Sharon C. Park, Chief, Technical Preservation Services, National Park Service, 1849 C St., NW., Org. code 2255, Washington, DC 20240–0001.

FOR FURTHER INFORMATION CONTACT: Sharon C. Park, (202)–354–2033.

SUPPLEMENTARY INFORMATION:

Title: Historic Preservation Certification Application.

OMB Number: 1024–0009.

Expiration Date of Approval: May 31, 2003.

Type of Request: Extension of a currently approved information collection.

Abstract: Section 47 of the Internal Revenue Code requires that the Secretary of the Interior certify to the Secretary of the Treasury upon application by owners of historic properties for Federal tax benefits, (a) the historic character of the property, and (b) that the rehabilitation work is consistent with that historic character. The NPS administers the program in partnership with the Internal Revenue Service. The Historic Preservation Certification Application is used by the NPS to evaluate the condition and historic significance of buildings undergoing rehabilitation for continued use, and to evaluate whether the rehabilitation work meets the Secretary of the Interior's Standards for Rehabilitation.

Respondents: Individuals or households, business or other for-profit entities.

Estimated Annual Burden on Respondents: 7,500 hours.

Estimated average burden hours per response: 2.5 hours.

Estimated average number of respondents: 3,000 annually.

Estimate frequency of response: 3,000 annually.

Dated: January 6, 2003.

Leonard E. Stowe,

Acting Information Collection Clearance Officer, National Park Service, WAPC.

[FR Doc. 03–2325 Filed 1–30–03; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Request for Extension and Revision of a Currently Approved Information Collection

AGENCY: National Park Service.

ACTION: Notice and request for comments on information collection regarding National Park Service mining regulations.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the National Park Service's (NPS) intention to request that the Office of Management and Budget (OMB) extend and revise the currently approved information collection budget for the NPS's minerals management regulatory program inside park boundaries. Under 36 CFR part 9, the NPS regulates mineral development activities in parks associated with mining claims located under the 1872 Mining Law, and with non-Federal oil and gas rights.

Under the Paperwork Reduction Act of 1995 and 5 CFR part 1320, Reporting and Record Keeping Requirements, the NPS invites public comments on (1) the need for the information including whether the information has practical utility; (2) the accuracy of the reporting burden estimate; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the information collection on respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Comments on this notice must be received by April 1, 2003.

ADDITIONAL INFORMATION OR COMMENTS: Contact Edward Kassman, Jr., Regulatory Specialist, Policy and Regulations Branch, Geologic Resources Division, National Park Service, P.O. Box 25287, Lakewood, Colorado 80225, (303) 969–2146.

SUPPLEMENTARY INFORMATION:

Title: NPS/Minerals Management Program/Mining Claims and Non-federal Oil and Gas Rights.

OMB Number: 1024–0064.

Expiration Date of Approval: June 30, 2003.

Type of Request: Extension and revision of a currently approved information collection budget for NPS minerals management regulatory program.

Abstract: While surprising, outstanding mineral rights exist in many units of the National Park System. In most cases, these rights predate the establishment of the units. Currently, 1,749 mining claims, which were located under the 1872 Mining Law, 30 U.S.C. 21, *et seq.*, exist in a total of 19 park units. The majority of these claims are located in Mojave National Preserve that was added to the National Park System through the California Desert Protection Act of 1994, 16 U.S.C. 410aaa. With respect to non-Federal oil and gas rights in park units, 703 non-Federal oil and gas operations exist in 12 park units. The potential for additional hardrock mining and non-Federal oil and gas operations in additional units is tied to market forces and the quality and quantity of hardrock minerals and oil and gas reserves in park boundaries that coincide with the presence of private rights.

The NPS regulates mineral development activities inside park boundaries on mining claims and on non-Federal oil and gas rights under regulations codified at 36 CFR part 9, subpart A ("9A regulations"), and 36 CFR part 9, subpart B ("9B regulations"), respectively. The NPS promulgated both sets of regulations in the late 1970's. In the case of mining claims, the NPS promulgated the 9A regulations pursuant to congressional authority granted under the Mining in the Parks Act of 1976, 16 U.S.C. 1901 *et seq.*, and individual park enabling statutes. For non-Federal oil and gas rights, the NPS regulates development activities pursuant to authority under the NPS Organic Act of 1916, 16 U.S.C. 1 *et seq.*, and individual enabling statutes. As directed by Congress, the NPS developed the regulations in order to protect park resources and visitor values from the adverse impacts associated with mineral development in park boundaries.

The heart of the regulations is the approved "plan of operations" requirement. Essentially, a plan of operations is a prospective operator's blueprint setting forth all intended activities from access to extraction to reclamation related to developing a particular mineral right in a given park unit. The information required in a plan of operations is set forth in NPS regulations. Before an operator can commence development activities in a park unit, the NPS must approve the plan of operations and the operator must secure a bond in an amount sufficient to cover the cost of reclamation to the Federal Government in the event the operator defaults on his/her obligations.

Usually, an approved plan of operations covers the life of the mine or well, from development and production to reclamation. Under NPS regulations, such plans may be revised. No set form is required for a plan of operations. Each plan is tailored to the intended activities of an operator and the particulars of the environment, *e.g.*, hardwood forest or desert, presence of endangered species or cultural resources, location and extent of water resources including wetlands.

Because of the variability among plans of operations and the duration of such plans, assessing the annual paperwork burden of complying with the NPS's mining regulations is difficult. Below is the NPS's best estimate, pro-rated on an annual basis, as to the number of respondents and number of hours involved in complying with the Service's regulations governing mining claims and non-Federal oil and gas rights.

Respondents: ¼ medium to large publicly owned companies and ¾ private entities.

Estimate of Number of Respondents: On an annual basis, the NPS estimates that it receives a range of between 13 to 20 plans of operations under its regulations: 3 to 5 plans of operations for mining claims, and 10 to 15 plans of operations for non-Federal oil and gas rights. For analysis purposes, the NPS used an overall estimate of 17 plans of operations per year: 4 plans of operations for mining claims, and 13 plans of operations for non-Federal oil and gas rights.

Estimated Number of Responses per Respondent: to conduct mineral development operations in park units, a prospective operator must submit a proposed plan of operations to the NPS for review and approval. Once approved, such a plan covers the life of the operation. If the plan is for geophysical work associated with private oil and gas rights it may only cover a period of a few months. In contrast, a plan for an oil and gas well

or a hardrock mine may cover a period of 10 or more years.

Estimate of Burden Per Respondent: Public reporting burden for this collection of information is estimated to average 176 hours per response.

Estimated total Annual Burden: 2992 hours. This number breaks down to 704 total hours to comply with the information requirements of the 9A regulations governing mining claim operations in parks, and 2288 total hours to comply with the information requirements of the 9B regulations governing non-Federal oil and gas operations in parks.

Methodology and Assumptions Underlying the Hour Estimate: Under the Service's 9A regulations and the 9B regulations, a complete plan may consist of 10 pages of text plus 2–10 pages of illustrations inclusive of location maps, site plans and cross-sections, and up to 100 pages of text plus several volumes of supporting material depending on the complexity of the proposed operations. The latter type of plan for hardrock mining is a rarity in the NPS. The time to prepare a plan could range from 24 hours to 6 months for a very complicated plan. Because the content of each plan is specific to the operation and site, and each operation and site present a unique set of circumstances, it is difficult to identify an "average" plan on which to base an estimate of preparation time. The NPS thus chose to use 160 hours (4 weeks) plus 10% for purposes of this analysis. In the case of the 9A regulations where an average of 4 complete proposed plans are expected per year, the estimated total amount of time involved to prepare plans of operations is 704 hours (*i.e.*, 176 hours × 4 complete proposed plans). In the case of the 9B regulations where an average of 13 complete proposed plans are expected per year, the estimated total amount of time involved to prepare plans of operations is 2288 hours (*i.e.* 176 hours × 13 complete proposed plans).

Estimated Cost Per Respondent to Comply with the Paperwork Requirements: The NPS estimates that the annualized cost to all respondents to comply with the 9A regulations ranges from $7,040 to $70,400. The NPS estimated the cost per plan at $1,760 to $17,600. In the case of the 9B regulations, the NPS estimates the annualized cost to all respondents ranges from $65,000 to $260,000 based on a likely individual compliance cost range of $5,000 to $20,000.

Methodology and Assumptions Underlying the Cost Estimate: For the 9A regulations, the annualized estimated cost to all the respondents was determined as follows:

(1) Nationwide, 4 plans of operations and associated information (*e.g.*, bond, commercial vehicle registration) are expected annually from different operators;

(2) Using an estimate of 160 hours to prepare a plan complete with attachments at a costs of $10 to $100 per hour (assuming the use of consultants for some or all parts of the plan requirements), the costs to prepare a plan could range from $1600 to $16,000.

(3) The NPS added ten percent (*i.e.*, $160 to $1,600) of the cost to prepare a plan of operations to account for administrative costs associated with changes in claim ownership, *etc.*

An operator with experience in preparing plans of operations likely can prepare an acceptable plan for a moderately complex operation in a few weeks, since most of the components of the plan are compiled during the course of normal business activities. Many of the information requirements of the regulations should be compiled by a responsible operator as part of normal business activities, to minimize liabilities, maintain business records for tax and other purposes, obtain financial backing, and ensure a safe, efficient, and well-planned operation. Under the regulations, information may be submitted in the manner in which is it customarily maintained in the industry. The reclamation plan and environmental report requirements, 36 CFR 9.9(b)(6) and (9), respectively, comprise the bulk of the information collection burden associated with these regulations. There is no standard form for submitting information. The NPS makes pertinent environmental information in park files available to prospective operators to aid in the preparation of proposed plans of operations.

For the 9B regulations, the NPS used a likely individual compliance cost range of $5,000 to $20,000. The range reflects the differences in types and numbers of operations that may be included in a single plan, the wide variations in the environmental settings in which non-Federal oil and gas development occurs in parks whether an applicant prepares the documents in house or uses a consultant, and the availability of pre-existing environmental data from parks. Much of the information required by 36 CFR 9.36 should be compiled by a responsible operator as part of his/her normal business activities to minimize liabilities, maintain business records for tax and other purposes, obtain financial backing, and ensure a safe, efficient, and well-planned operation. The information may be submitted in the manner in which it is customarily maintained in the industry. The NPS does not require conformance with a standardized format. The reclamation plan and environmental report requirements, 36 CFR 9.36(a)(12) and (16), respectively, comprise the bulk of the information collection burden associated with these regulations. The NPS makes pertinent environmental information in park files available to prospective operators to aid in the preparation of proposed plans of operations.

Dated: January 7, 2003.

Leonard E. Stowe,

Acting Information Collection Clearance Officer, WASO Administrative Program Center, National Park Service.

[FR Doc. 03–2326 Filed 1–30–03; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

National Park Service

AGENCY: National Park Service, Interior.

ACTION: Public Notice.

SUMMARY: Pursuant to 36 CFR 51.23, public notice is hereby given that the National Park Service proposes to extend the following expiring concession contracts for a period of up to one year, or until such time as a new contract is extended, whichever occurs sooner.

SUPPLEMENTARY INFORMATION: All of the listed concession authorizations will expire by their terms on or before December 31, 2002. The National Park Service has determined that the proposed short-term extensions are necessary in order to avoid interruption of visitor services and has taken all reasonable and appropriate steps to consider alternatives to avoid such interruption. These extensions will allow the National Park Service to complete and issue prospectuses leading to the competitive selection of concessioners for new long-term concession contracts covering these operations.

Conc ID No.	Concessioner name	Park
ACAD010–95	National Park Tours	Acadia National Park.
ACAD011–95	Oli's Trolley	Acadia National Park.
ASIS001–99	Eastern National	Assateague Island National Seashore.
CACO002–96	Benz Corporation	Cape Cod National Seashore.
CACO005–97	Highland Museum & LH	Cape Code National Seashore.
COLO005–95	Eastern National	Colonial National Historic Park.
DEWA004–98	Pepsi-Cola Co	Delaware Water Gap NRA.
FOMC001–96	Evelyn Hill, Inc	Fort McHenry NM & Historical Shrine.
GATE002–88	Shields & Dean (JB)	Gateway National Recreation Area.
GATE013–88	Shields & Dean (RP)	Gateway National Recreation Area.
GATE017–99	JEN Marine	Gateway National Recreation Area.
GEWA001–95	GW Birthplace Natl. Mem. Gift Shop	George Washington Birthplace NM.
SAHI001–97	Friends of SAHI	Sagamore Hill National historic Site.
SHEN002–90	Potomac Appalachian Trail Club	Shenandoah National Park.
STEA001–96	Steamtown Museum Association	Steamtown National Historic Site.
VAFO001–97	Valley Forge Tours	Valley Forge National Historic Park.

EFFECTIVE DATE: January 2, 2003.

FOR FURTHER INFORMATION CONTACT: Cynthia Orlando, Concession Program Manager, National Park Service, Washington, DC 20240, Telephone 202/513–7156.

Dated: December 13, 2002.

Richard G. Ring,

Associate Director, Administration, Business Practices and Workforce Development.

[FR Doc. 03–2322 Filed 1–30–03; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

National Park Service

Public Notice

AGENCY: National Park Service, Interior.

ACTION: Public notice.

SUMMARY: Pursuant to 36 CFR 51.23, public notice is hereby given that the National Park Service proposes to extend the following expiring concession contracts for a period of up to one year, or until such time as a new contract is executed, whichever occurs sooner.

SUPPLEMENTARY INFORMATION: All of the listed concession authorizations will expire by their terms on or before December 31, 2002. The National Park Service has determined that the proposed short-term extensions are necessary in order to avoid interruption of visitor services and has taken all reasonable and appropriate steps to consider alternatives to avoid such interruption. These extensions will allow the National Park Service to complete and issue prospectuses leading to the competitive selection of concessioners for new long-term concession contracts covering these operations.

Concessioner ID No.	Concessioner name	Park
CC–FOSU001–86	Fort Sumter Tours, Inc.	Fort Sumter.

EFFECTIVE DATE: January 2, 2003.

FOR FURTHER INFORMATION CONTACT: Cynthia Orlando, Concession Program Manager, National Park Service, Washington, DC 20240, Telephone 202/513–7156.

Dated: December 13, 2002.

Richard G. Ring,

Associate Director, Administration, Business Practices and Workforce Development.

[FR Doc. 03–2323 Filed 1–30–03; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

National Park Service

AGENCY: National Park Service, Interior.

ACTION: Public notice.

SUMMARY: Pursuant to the terms of existing concession contracts, public notice is hereby given that the National Park Service intends to request a continuation of visitor services for a period not-to-exceed one year from the date of contract expiration.

SUPPLEMENTARY INFORMATION: The contracts listed below have been extended to the maximum allowable under 36 CFR 51.23. Under the provisions of current concession contracts and pending the development and public solicitation of a prospectus for a new concession contract, the National Park Service authorizes continuation of visitor services for a period not-to-exceed one year under the terms and conditions of current contracts as amended. The continuation of operations does not affect any rights with respect to selection for award of a new concession contract.

Concessioner ID No.	Concessioner name	Park
CP–BISC002–87	Biscayne National Underwater Park, Inc	Biscayne National Park.
CP–BISC006–89	Florida National Parks & Monuments Assoc	Biscayne National Park.
CP–EVER006–89	Florida National Parks & Monuments Assoc	Big Cypress National Preserve.
TCC–BISO002–99	Bobby Gene and Gretta York	Big South Fork NRRA NRRA.
CP–BISO002–89	Eastern National	Big South Fork NRRA NRRA.
CP–BISO001–98	LeConte Lodge Limited Partnership	Big South Fork NRRA.
CP–BISO006–96	The View, Bear Creek Horse Camp	Big South Fork NRRA.
CP–BISO005–95	The View, Station Camp	Big South Fork NRRA.
CP–BLRI009–87	Parkway Inn	Blue Ridge Parkway.

Concessioner ID No.	Concessioner name	Park
CP–BLRI002–83	Northwest Trading Post	Blue Ridge Parkway.
CP–BLRI001–93	Southern Highland Handcraft Guild	Blue Ridge Parkway.
CP–BUIS001–98	Southern Seas, Inc	Buck Island Reef NM.
CP–BUIS006–98	Teroro, Inc	Buck Island Reef NM.
CP–BUIS008–98	Llewellyn Westerman	Buck Island Reef NM.
CP–BUIS014–98	Francis J. Waters	Buck Island Reef NM.
CP–BUIS015–98	Milemark, Inc	Buck Island Reef NM.
CP–BUIS019–98	Carl Punzenberger	Buck Island Reef NM.
CC–CAHA001–98	Avon-Thornton Limited Partnership	Cape Hatteras National Seashore.
CC–CAHA002–98	Cape Hatteras Fishing Pier, Inc	Cape Hatteras National Seashore.
CC–CAHA003–84	Hatteras Island Motel Limited Partnership	Cape Hatteras National Seashore.
CC–CALO004–98	Oregon Inlet Fishing Center, Inc	Cape Hatteras National Seashore.
CC–CALO003–98	Morris Marina, Kabin Kamps and Ferry Service, Inc.	Cape Lookout NS.
CC–CALO005–98	Alger G. Willis Fishing Camp, Inc	Cape Lookout NS.
CC–CUIS001–88	Lang Seafood, Inc	Cumberland Island NS.
CP–EVER006–89	Florida National Parks & Monuments Assoc	Everglades National Park.
CC–EVER001–80	Xanterra Parks and Resorts	Everglades National Park.
CI–FOFR001–98	Fort Frederica Association	Fort Frederica National Monument.
CP–GRSM004–98	Cades Cove Riding Stables, Inc	Great Smoky Mountains.
CP–GRSM005–98	Cherokee Boys Club	Great Smoky Mountains.
CP–GRSM010–98	Great Smokey Mountains NHA	Great Smoky Mountains.
CP–GRSM002–83	Leconte Lodge Limited	Great Smoky Mountains.
CP–GRSM003–98	Tammy Shular	Great Smoky Mountains.
CP–GRSM007–94	Smokemont Riding Stables of North Carolina, Inc.	Great Smoky Mountains.
CC–GUIS001–98	Dudley Food and Beverage, Inc	Gulf Island National Seashore.
CC–GUIS003–89	Pan Isles, Inc	Gulf Island National Seashore.
CP–NATR004–98	Craftmen's Guild of Mississippi, Inc	Natchez Trace Parkway.
CP–SERO001–92	Eastern National	South East Region.
CC–VIIS001–71	Caneel Bay, Inc	Virgin Islands NP.
CP–VIIS008–96	Caneel Bay, Inc	Virgin Islands NP.
CO–VIIS007–98	Maho, Inc	Virgin Islands NP.
CP–WRBR001–98	Kitty Hawk Aero Tours, Inc	Wright Brothers National Monument.

EFFECTIVE DATE: January 2, 2003.

FOR FURTHER INFORMATION CONTACT: Cynthia Orlando, Concession Program Manager, National Park Service, Washington, DC, 20240, Telephone 202/513–7156.

Dated: December 13, 2002.

Richard G. Ring,

Associate Director, Administration, Business Practices and Workforce Development.

[FR Doc. 03–2324 Filed 1–30–03; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

National Park Service

Golden Gate National Recreation Area; Notice of Public Meetings for Calendar Year 2003

Notice is hereby given that six public meetings of the Golden Gate National Recreation Area (GGNRA) will be scheduled bimonthly for calendar year 2003 to hear presentations on issues related to management of the Golden Gate National Recreation Area. These public meetings are scheduled for the following dates at San Francisco and at locations yet to be determined in San Mateo County and Marin County, California:

Tuesday, January 28—San Francisco, CA

Tuesday, March 18—San Mateo County, CA location

Tuesday, May 20—San Francisco, CA

Tuesday, July 15—Marin County, CA location

Tuesday, September 16—San Francisco, CA

Tuesday, November 18—San Francisco, CA

Some public meetings may be joint meetings with the Presidio Trust. All public meetings will be held at 7 p.m. at GGNRA Park Headquarters, Building 201, Fort Mason, Bay and Franklin Streets, San Francisco, except those on Tuesday, March 18 and Tuesday, July 15, which will be held at 7 p.m. at locations to be announced in San Mateo County and Marin County, California. Information confirming the time and location of all public meetings or cancellations of any meeting can be received by calling the Office of the Public Affairs at (415) 561–4733 or (415) 561–4730.

Anticipated possible agenda items at meetings during calendar year 2003 may include:

- Scoping and workshops for the Comprehensive Transportation Management Plan
- Updates on Advanced Notice of Proposed Rulemaking (ANPR)
- Updates on Planning Issues for Fort Baker
- Updates on schematic and program design process for Fort Baker Waterfront
- Environmental Impact Statement (EIS) and scoping for Park Site Ferry Planning
- Updates on Cliff House Reconstruction Project
- Environmental Assessment (EA) for Easkoot Creek
- Fort Mason Officer's Club Interim Use
- Public comment on Revision of 5-Year Plan
- Review of San Francisco environmental documents for the San Francisco Marina Small Yacht Harbor Master Plan
- Reports and updates on the Cliff House Restoration Plan and other elements of the Sutro Design Plan, including the Merrie Way Visitor Center design presentation
- Report on Haypress Pond Project
- Alternatives review and NEPA scoping for Tennessee Valley Tamalpais Transportation Initiative

(TTI) bridge redesign and trail extension
- Fort Mason—Pier I Construction Project Environmental Assessment (EA) and update reports on Fort Mason Center Pier One and Pier 2 seismic work
- Alcatraz construction/Laundry Building stabilization and adaptive use
- Draft Environmental Impact Statement (EIS) for Big Lagoon Alternatives
- Review of Marin County plans for Bolinas Lagoon
- Marin County Cape-Ivy removal
- Doyle Drive planning update
- Fort Mason—Pier 1 Construction and Reuse Update
- NEPA scoping for Fort Mason Center 50-year Lease
- Fort Mason FHLP project reconfigure front entrance
- Scoping for GGNRA General Management Plan Amendment (GMPA)
- Headlands Institute Landscape Environmental Assessment
- Marin Headlands / Fort Baker Transportation Management Plan (TMP) Alternatives
- Marine Mammal Center Environmental Assessment (EA)—Scoping Alternatives
- Presidio Trails Plan (1) Public Comment (2) Staff Report—Final Plan
- Update on Redwood Creek Watershed planning
- Updates on GGNRA's 5-Year Strategic Plan
- Update reports on Golden Gate Bridge Seismic Upgrade Project and Park Impacts
- Update reports on Fort Mason Center Pier One and Pier 2 Seismic Work
- GGNPA annual briefing
- Redwood Creek Watershed Planning
- Reports on Alcatraz Historic Preservation and Safety Construction
- Update on park expansion legislation
- Update on transfer of properties in GGNRA boundary to NPS
- Issues affecting San Mateo County national park lands
- Update on Slide Ranch site improvements
- Updates on Fort Mason Reuse projects and Upper Fort Mason planning
- Update on issues concerning areas managed by the Presidio Trust 4.

These meetings will also contain GGNRA Superintendent's Report and a report of the Presidio Trust Director.

Specific final agendas for these meetings will be made available to the public at least 20 days prior to each meeting and can be received by contacting the Office of Public Affairs, Golden Gate National Recreation Area, Building 201, Fort Mason, San Francisco, California 94123 or by calling (415) 561–4733. They are also noticed on the Golden Gate National Recreation Area Web site *http://nps.gov/goga* under the section "Public Meetings" and will posted throughout the park.

These meetings are open to the public. They will be recorded for documentation and transcribed for dissemination. Sign language interpreters are available by request at least one week prior to a meeting. The TDD phone number for these requests is (415) 556–2766. A verbatim transcript will be available three weeks after each meeting.

Dated: December 19, 2002.

Mai-Liis Bartling,

General Superintendent, Golden Gate National Recreation Area.

[FR Doc. 03–2319 Filed 1–30–03; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Kaloko-Honokohau National Historical Park Advisory Commission; Notice of Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act that a meeting of the Na Hoapili O Kaloko Honokohau, Kaloko-Honokohau National Historical Park Advisory Commission will be held at 9 a.m., February 21, 2003, at Kaloko-Honokohau National Historical Park headquarters, 73–4786 Kanalani St., Suite 14, Kailua-Kona, Hawaii.

The agenda will include Park Brochure and Illustration, Visitor Contact Station, Status of Hawaii Natural History Association Budget, Letter from Senator Akaka, Report on Alu Like Training Program, FY2003 Budget Plan.

The meeting is open to the public. Minutes will be recorded for documentation and transcribed for dissemination. Minutes of the meeting will be available to the public after approval of the full Advisory Commission. Transcripts will be available after 30 days of the meeting.

For copies of the minutes, contact Kaloko-Honokohau National Historical Park at (808) 329–6881.

Dated: December 19, 2002.

Geraldine K. Bell,

Superintendent, Kaloko-Honokohau National Historical Park.

[FR Doc. 03–2320 Filed 1–30–03; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before January 11, 2003. Pursuant to section 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded by United States Postal Service, to the National Register Historic Places, National Park Service, 1849 C St., NW., 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service, 1201 Eye St., NW., 8th floor, Washington, DC 20005; or by fax, 202–354–2229. Written or faxed comments should be submitted by February 18, 2003.

Carol D. Shull,

Keeper of the National Register of Historic Places.

CALIFORNIA

Mariposa County

Camp 4, Northside Dr., Yosemite National Park, Yosemite, 03000056

San Bernardino County

First Christian Church of Rialto, 201 N. Riverside Ave., Rialto, 03000037

Ventura County

Camarillo Ranch House, 201 Camarillo Ranch Rd., Camarillo, 03000039

COLORADO

Lincoln County

Limon Railroad Depot (Railroads in Colorado, 1858–1948 MPS), 897 First St., Limon, 03000038

FLORIDA

Pinellas County

North Shore Historic District, Bounded by 4th St. N, 5th Ave., N, Tampa Bay, and 30th Ave., N, St. Petersburg, 03000040

LOUISIANA

West Feliciana Parish

Red Hat Cell Block, Louisiana State Penitentiary, Louisiana State Penitentiary, Angola, 03000041

NEW MEXICO

Valencia County

Otero's 66 Service (Route 66 through New Mexico MPS), 100 Main St., Los Lunas, 03000051

NEW YORK

Broome County

Ouaquaga Lenticular Truss Bridge, Dutchman Rd. over Susquehanna R, Ouaquaga, 03000048

Chautauqua County

Erie Railroad Station, 211–217 W. Second St., Jamestown, 03000045

Delaware County

Jackson-Aitken Farm, 3240 Fall Clove Rd., Andes, 03000044

Steuben County

Adsit House, 34 Main St., Hornell, 03000047

Sullivan County

Masten-Quinn House, 59 First St., Wurtsboro, 03000046

OHIO

Cuyahoga County

East Ohio Gas Company Building, 1403 E. Sixth St., Cleveland, 03000043
First Church of Christ, Scientist, 2200 Overlook Rd., Cleveland, 03000042

OREGON

Lake County

Mitchell Recreation Area, Forest Service Rd. 34, Bly, 03000050

Wasco County

Mosier Mounds Complex, Address Restricted, Mosier, 03000053

UTAH

Weber County

Ogden Central Bench Historic District, 20th St. to 30th St., Adams Ave. to Harrison Blvd., Ogden, 03000055

VIRGINIA

Winchester Independent City

Winchester Historic District (Boundary Increase), 120 and 126 N. Kend St., Winchester (Independent City), 03000054

WISCONSIN

Kenosha County

Simmons Island Beach House, 5001 Simmons Island, Kenosha, 03000057

[FR Doc. 03–2327 Filed 1–30–03; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before January 18, 2002. Pursuant to section 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded by the United States Postal Service, to the National Register Historic Places, National Park Service, 1849 C St. NW., 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service, 1201 Eye St. NW., 8th floor, Washington, DC 20005; or by fax, 202–343–1836. Written or faxed comments should be submitted by February 18, 2003.

Carol D. Shull,

Keeper of the National Register of Historic Places.

CALIFORNIA

Los Angeles County

Superior Oil Company Building, 550 S. Flower St., Los Angeles, 03000059

IDAHO

Ada County

Anduiza Hotel, 619 Grove St., Boise, 03000064

ILLINOIS

Jo Daviess County

Millville Town Site, Apple River Canyon State Park, 8663 E. Canyon Rd., Apple River, 03000066

Montgomery County

Manske-Niemann Farm, 13 Fransk Ln., Litchfield, 03000065

IOWA

Polk County

Des Moines Art Center, 4700 Grand Ave., Des Moines, 03000063
Newens Sanitary Dairy Historic District, 2300–2312 University Ave., and 2225 University Ave., Des Moines, 03000062
Watkins, Augustus, Blacksmith Shop, 2314 University Ave., Des Moines, 03000060

Webster County

First National Bank Building, 629 Central Ave., Fort Dodge, 03000061

MICHIGAN

Wayne County

Crescent Brass and Pin Company Building, 5766 Trumball Ave., Detroit, 03000067
Sugar Hill Historic District, Bounded by Woodwar, Forest, John R. and Canfield, Detroit, 03000068

OREGON

Jefferson County

Camp Sherman Community Hall, 13025 SW Camp Sherman Rd., Camp Sherman, 03000070

Multnomah County

Martin, George W. and Hannah—John B. and Minnie Hosford House, 2004 NE 9th Ave., Oregon, 03000073
Peck Bros. and Bartle Tire Service Company Building, 900 SW 13th Ave., Portland, 03000072

PENNSYLVANIA

Chester County

Garrett Farmstead, 808 and 816 Warren Ave., Newtown Square, 03000076

Dauphin County

Quarries of the Hummelstown Brownstone Company, Roughly N of Brookline Dr., Amber Dr., Derry Township, 03000075

Delaware County

Crosley-Garrett Mill Workers' Housing, Store and Mill Site, Paper Mill Rd. and St. David's Rd., Newtown Township, 03000074
Tyler, John J., Arboretum, 515 Painter Rd., Lima, 03000080

Philadelphia County

Boekel Building, 505–515 Vine St., Philadelphia, 03000078
Hajoca Corporation Headquarters and Showroom, 3025 Walnut St., Philadelphia, 03000079
Larkin-Belber Building, 2200–2218 Arch St., Philadelphia, 03000077
Pennsylvania Railroad Office Building, 3175 John F. Kennedy Blvd., Philadelphia, 03000071

RHODE ISLAND

Providence County

Brown and Sharpe Manufacturing Company Complex, Promenade, Bath, Calverly, West Park, Holden, and Brownell Sts, and I–95, Providence, 03000081

UTAH

Box Elder County

Jeppson-Reeder House (Brigham City MPS), 631 North Main, Brigham City,03000082

WYOMING

Fremont County

Jackson Park Town Site Addition Brick Row, 615, 635 and 677 S. Third St., Lander, 03000083

Uinta County

Wyoming State Insane Asylum, 831 WY 150 S, Evanston, 03000084

In an effort to assist in the preservation of the following resource the comment period has been shortened to five (5) days:

NEBRASKA

Lancaster County

University Place Historic Residential District, Roughly Walker Ave. (51st–54 Sts), Leighton Ave. (49th–53rd Sts), Lincoln, 03000069

[FR Doc. 03–2328 Filed 1–30–03; 8:45 am]

BILLING CODE 4310–70–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–752 (Review)]

Crawfish Tail Meat From China

AGENCY: United States International Trade Commission.

ACTION: Scheduling of a full five-year review concerning the antidumping duty order on crawfish tail meat from China.

SUMMARY: The Commission hereby gives notice of the scheduling of a full review pursuant to section 751(c)(5) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(5)) (the Act) to determine whether revocation of the antidumping duty order on crawfish tail meat from China would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. For further information concerning the conduct of this review and rules of general application, consult the Commission's rules of practice and procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

EFFECTIVE DATE: January 24, 2003.

FOR FURTHER INFORMATION CONTACT: Olympia DeRosa Hand (202–205–3182), Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this review may be viewed on the Commission's electronic docket (EDIS–ON–LINE) at *http://dockets.usitc.gov/eol/public.*

SUPPLEMENTARY INFORMATION:

Background—On November 4, 2002, the Commission determined that responses to its notice of institution of the subject five-year review were such that a full review pursuant to section 751(c)(5) of the Act should proceed (67 FR 69557, November 18, 2002). A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements are available from the Office of the Secretary and at the Commission's Web site.

Participation in the review and public service list—Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in this review as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, by 45 days after publication of this notice. A party that filed a notice of appearance following publication of the Commission's notice of institution of the review need not file an additional notice of appearance. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the review.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in this review available to authorized applicants under the APO issued in the review, provided that the application is made by 45 days after publication of this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. 1677(9), who are parties to the review. A party granted access to BPI following publication of the Commission's notice of institution of the review need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff report—The prehearing staff report in the review will be placed in the nonpublic record on May 14, 2003, and a public version will be issued thereafter, pursuant to section 207.64 of the Commission's rules.

Hearing—The Commission will hold a hearing in connection with the review beginning at 9:30 a.m. on June 3, 2003, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before May 28, 2003. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on May 30, 2003, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), 207.24, and 207.66 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 days prior to the date of the hearing.

Written submissions—Each party to the review may submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.65 of the Commission's rules; the deadline for filing is May 23, 2003. Parties may also file written testimony in connection with their presentation at the hearing, as provided in section 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of section 207.67 of the Commission's rules. The deadline for filing posthearing briefs is June 12, 2003; witness testimony must be filed no later than three days before the hearing. In addition, any person who has not entered an appearance as a party to the review may submit a written statement of information pertinent to the subject of the review on or before June 12, 2003. On July 3, 2003, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before July 8, 2003, but such final comments must not contain new factual information and must otherwise comply with section 207.68 of the Commission's rules. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means except to the extent provided by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002).

In accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the review must be served on all other parties to the review (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

By order of the Commission.

Issued: January 27, 2003.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 03–2263 Filed 1–30–03; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–460]

Certain Sortation Systems, Parts Thereof, and Products Containing Same; Notice of Violation of Section 337 of the Tariff Act of 1930 and Issuance of Limited Exclusion Order

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined that there is a violation of section 337 of the Tariff Act of 1930 in the above-captioned investigation and issued a limited exclusion order.

FOR FURTHER INFORMATION CONTACT: Michael K. Haldenstein, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–205–3041. Copies of the limited exclusion order, the public version of the Commission's opinion, and all other nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202–205–2000.

General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). Hearing-impaired persons are advised that information on the matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS–ON–LINE) at *http://dockets.usitc.gov/eol/public.*

SUPPLEMENTARY INFORMATION: The Commission voted to institute this investigation on July 19, 2001, based upon a complaint filed on June 25, 2001, by Rapistan Systems Advertising Corp. and Siemens Dematic Corp., both of Grand Rapids, Michigan. 66 FR 38741 (July 25, 2001). Named as respondents were Vanderlande Industries Nederland BV of the Netherlands, and Vanderlande Industries of Atlanta, Georgia (collectively referred to as "Vanderlande"). Vanderlande Industries Nederland BV of the Netherlands designs and manufactures the accused sortation systems, and Vanderlande Industries of Atlanta imports, sells, and installs the accused sortation systems.

Complainants alleged that respondents had violated section 337 by importing into the United States, selling for importation, and selling within the United States after importation certain sortation systems, or components thereof, covered by independent claims 1, 13, 23, 30, and 42 and dependent claims 2, 3, 4, 8, 9, 17, 18, 20, 22, 24, 27, 29, 33, 35, 36, 37, 39, 43, 45, 46, 47, and 49 of U.S. Patent No. 5,127, 510 ("the "510 patent"), owned by Rapistan Systems and exclusively licensed to Siemens Dematic. On April 5, 2002, complainants filed an unopposed motion asking for the termination of the investigation with respect to claims 2, 3, 8, 9, 18, 24, 36, 37, 29, 46, 47, and 49. On May 16, 2002, the presiding administrative law judge (ALJ) granted the motion in an ID (Order No. 32) and the Commission determined not to review that ID. The claims of the "510 patent at issue were therefore claims 1, 4, 13, 17, 20, 22, 23, 27, 29, 30, 33, 35, 42, 43, and 45. The complaint further alleged that an industry in the United States exists, as required by subsection (a)(2) of section 337.

An evidentiary hearing was held on June 4–17, 2002. On October 22, 2002, the ALJ issued his final initial determination (ID), in which he determined that respondents' sortation systems, and parts thereof, infringe claims 1 and 4 of the "510 patent, and that the "510 patent is valid and enforceable. Based upon these findings and the finding that there is a domestic industry, he found a violation of section 337.

The ALJ recommended issuance of a limited exclusion order barring importation of the respondents' accused Mark 2 Posisorter sortation system and its parts and components. He recommended exempting spare parts destined for UPS's Hub 2000 facility in Louisville, Kentucky from the scope of the limited exclusion order. He also recommended a bond during the Presidential review period in the amount of 100 percent of the entered value of the infringing products.

On November 4, 2002, Vanderlande and the Commission investigative attorney (IA) petitioned for review of portions of the ALJ's final ID, and Rapistan submitted a contingent petition for review asking that the Commission review certain issues if it decided to review the ID. On November 12, 2002, Vanderlande, Rapistan, and the IA filed reply submissions.

The Commission determined to review the ID on the following issues: (1) The ID's construction of the claim limitation "contiguous, generally planar surfaces sloping downward from an upper extent of said diverting surface laterally inward and longitudinally forward or rearward" in independent claim 30, and dependent claims 33, and 35, and the infringement findings related to this claim element; and (2) the ID's findings regarding the affirmative defense of equitable estoppel.

Rapistan, Vanderlande, and the IA filed submissions on December 23, 2002, and reply submissions on December 30, 2002, addressing the two issues under review and remedy, the public interest, and bonding.

The Commission reviewed these issues and the parties' submissions and determined: (1) To modify the ALJ's construction of the limitation in claim 30 quoted above, and to find that the accused product does not meet this limitation; (2) that the elements of equitable estoppel have not been established.

The Commission also determined that the appropriate remedy consists of a limited exclusion order prohibiting the importation of the infringing sortation systems, and shoes and slats thereof, manufactured abroad by Vanderlande Industries. The Commission determined to include an exemption in the limited exclusion order for importations of spare parts for United Parcel Service's Hub 2000 facility in Louisville, Kentucky. The Commission further determined that the statutory public interest factors do not preclude the issuance of such relief. Finally, the Commission determined that during the Presidential review period importation should be permitted pursuant to a bond requirement in the amount of 100 percent of the entered value of the infringing products.

This action is taken under the authority of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and section 210.50 of the Commission's rules of practice and procedure (19 CFR 210.50).

By order of the Commission.

Issued: January 27, 2003.

Marilyn R. Abbott,

Secretary.

[FR Doc. 03–2262 Filed 1–30–03; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

[AAG/A Order No. 007–2003]

Privacy Act of 1974; System of Records

Pursuant to the provisions of the Privacy Act of 1974 (5 U.S.C. 552a), notice is hereby given that the Department of Justice proposes to establish a new system of records to be maintained by the Immigration and Naturalization Service (INS). The Nonimmigrant Information System (NIIS), JUSTICE/INS–036, is a new system of records for which no public notice consistent with the provisions of 5 U.S.C. 552a (e)(4) and (11) has been published.

In accordance with 5 U.S.C. 552a(e)(4) and (11), the public is given a 30-day period in which to comment on proposed new routine use disclosures. The Office of Management and Budget (OMB), which has oversight responsibility under the Act, requires a 40-day period in which to conclude its review of the system. Therefore, please submit any comments by (insert date 30 days from the publication date of this notice). The public, OMB, and the Congress are invited to submit any comments to Mary Cahill, Management Analyst, Management and Planning Staff, Justice Management Division, Department of Justice, Washington, DC 20530 (Room 1400, National Place Building).

In accordance with 5 U.S.C. 552a(r), the Department has provided a report to OMB and the Congress on this system.

Dated: January 21, 2003.

Paul R. Corts,

Assistant Attorney General for Administration.

JUSTICE/INS–036

SYSTEM NAME:

Nonimmigrant Information System (NIIS).

SYSTEM LOCATION:

The NIIS database and application is maintained at the Department of Justice Data Center (JDC–D) in Dallas, Texas. The system is accessible at Immigration and Naturalization Service (INS) offices at Headquarters, Regional and District offices, Service Centers, sub-offices, Ports-of-entry and foreign offices as detailed in JUSTICE/INS–999, last published in the **Federal Register** on October 17, 2002 (67 FR 64136) and at *http://www.INS.gov.*

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Immigrants and nonimmigrants entering and departing the United States. Please note that this system primarily pertains to nonimmigrants, who are generally not protected by the Privacy Act. However, as some nonimmigrants change status and become lawful permanent residents and United States citizens, information pertaining to them may incidentally remain in this system. Accordingly, the purpose of this notice is to cover only the United States citizens (USCs) and lawful permanent residents (LPRs) who are included in this information system.

CATEGORIES OF RECORDS IN THE SYSTEM:

NIIS is a centralized mainframe INS application designed to create, update, and report nonimmigrant arrivals and departures to and from the United States. The system may also contain change of address information for non-immigrants and immigrants. (**Please note:** this notice covers only USCs and LPRs whose information is contained in this system.)

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

8 U.S.C. 1103 and 8 U.S.C. 1184.

PURPOSE(S):

NIIS is a repository of records tracking persons arriving in or departing from the United States as nonimmigrant visitors. The system may also provide a central repository of baseline address information. Data in the system assists INS and other government agencies in law enforcement, intelligence, and counter-terrorism activities. NIIS is vital to the core mission of the INS in supporting immigration inspection at United States ports-of-entry and in capturing information used to evaluate nonimmigrant travel trends. (**Please note:** this notice covers only USCs and LPRs whose information is contained in this system.)

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM INCLUDING CATEGORIES OF USERS AND PURPOSE OF SUCH USES:

(**Please note:** this notice covers only USCs and LPRs whose information is contained in this system.)

A. In an appropriate proceeding before a court, grand jury, or administrative or regulatory body when records are determined by the Department of Justice to be arguably relevant to the proceeding.

B. To the appropriate agencyorganizationtask force, regardless of whether it is federal, state, local, foreign, or tribal, charged with the enforcement (*e.g.*, investigation and prosecution) of a law (criminal or civil), regulation, or treaty, of any record contained in this system of records which indicates either on its face, or in conjunction with other information, a violation or potential violation of that law, regulation, or treaty.

C. To a Member of Congress or staff acting on the Member's behalf when the Member or staff requests the information on behalf of and at the request of the individual who is the subject of the record.

D. To the General Services Administration (GSA) and the National Archives and Records Administration (NARA) in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

E. To the news media and the public pursuant to 28 CFR 50.2 unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

F. To contractors, grantees, experts, consultants, students, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for the Federal Government, when necessary to accomplish an agency function related to this system of records.

G. To a former employee of the Department for purposes of: responding to an official inquiry by a federal, state, or local government entity or professional licensing authority, in accordance with applicable Department regulations; or facilitating communications with a former employee that may be necessary for personnel-related or other official purposes where the Department requires information andor consultation assistance from the former employee regarding a matter within that person's former area of responsibility.

H. To a federal, state, tribal, local or foreign government agency in response to its request, in connection with the hiring or retention by such agency of an employee, the issuance of a security clearance, the reporting of an investigation of such an employee, the letting of a contract, or the issuance of a license, grant, loan or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records are stored in a mainframe computer database.

RETRIEVABILITY:

These records may be searched on a variety of data elements including name, place and date of entry or

departure, or country of citizenship as listed in the travel documents used at the time of entry to the United States. An admission number, issued at each entry to the United States to track the particular admission, may also be used to identify a database record.

SAFEGUARDS:

Most INS offices are located in buildings under security guard, and access to premises is by official identification. Access to records in this system is by restricted password.

RETENTION AND DISPOSAL:

The following INS proposal for retention and disposal is pending approval by NARA. INS arrival and departure records will be sent to a remote contractor facility where the information from the data fields is keyed into the NIIS database. Hard copies are stored at the facility for 180 calendar days and then destroyed. Electronic records will remain in the database until the system is obsolete or superceded. Form AR–11 ("Alien's Change of Address Card") is maintained for five years and then is destroyed.

SYSTEM MANAGER (S) AND ADDRESS:

Assistant Commissioner, Office of Inspections, Immigration and Naturalization Service, 425 I Street NW., Room 4064, Washington, DC 20536.

NOTIFICATION PROCEDURE:

Address inquiries to the system manager identified above.

RECORDS ACCESS PROCEDURE:

(**Please note:** this notice covers only USCs and LPRs whose information is contained in this system; only USCs and LPRs have records access rights under the Privacy Act.) Make all requests for access in writing to the Freedom of Information Act/Privacy Act (FOIA/PA) Officer at the nearest INS office, or the INS office maintaining the desired records (if known) by using the INS web page that contains a list of principal offices. Clearly mark the envelope and letter "Privacy Act Request." Provide the A-file number and/or the full name, nationality, and date of birth, with a notarized signature or pursuant to 28 U.S.C. 1746, make a dated statement under penalty of perjury as a substitute for notarization, of the individual who is the subject of the record, and a return address.

CONTESTING RECORDS PROCEDURES:

(**Please note:** this notice covers only USCs and LPRs whose information is contained in this system.) Direct all requests to contest or amend information in the record to the FOIA/PA Officer at one of the addresses identified above. State clearly and concisely the information being contested, the reason for contesting it, and the proposed amendment thereof. Clearly mark the envelope "Privacy Act Request." The record must be identified in the same manner as described for making a request for access.

RECORD SOURCE CATEGORIES:

Basic information is obtained from individuals, the individual's attorney/representative, INS officials, and other federal, state, local, and foreign agencies.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 03–2253 Filed 1–30–03; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

January 23, 2003.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35). A copy of each individual ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation contact Marlene Howze at (202) 693–4158 or e-mail *Howze-Marlene@dol.gov*.

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for ESA, Office of Management and Budget, Room 10235, Washington, DC 20503 (202) 395–7316), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Type of Review: Extension of a currently approved collection.

Agency: Employment Standards Administration (ESA).

Title: Optional Use Payroll Form Under the Davis-Bacon Act.

OMB Number: 1215–0149.

Affected Public: Business or other-for-profit; Individual or households; Federal government; and State, Local or Tribal Government.

Frequency: Weekly.

Number of Respondents: 100,880.

Number of Annual Responses: 9,280,960.

Estimated Time Per Response: Average of 56 minutes.

Total Burden Hours: 8,700,000.

Total Annualized Capital/Startup Costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $371,238.00.

Description: The Copeland Act (40 U.S.C. 276c) requires contractors and subcontractors performing work on Federally financed or assisted construction contracts to "furnish weekly a statement with respect to the wages paid each employee during the preceding week." Section 5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, provides that contractors submit weekly a copy of all payrolls to the Federal agency contracting for or financing the construction project, accompanied by a signed "Statement of Compliance" indicating that the payrolls are correct and complete and that each laborer or mechanic had been paid not less than the proper Davis-Bacon prevailing wage rate for the work performed. The Wh–347 is an optional form that may be used by contractors and subcontractors to certify payrolls, attesting that proper wage rates and fringe benefits have been paid to their employees performing work on contracts covered by the Davis-Bacon and related Acts and the Copeland Act.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 03–2284 Filed 1–30–03; 8:45 am]

BILLING CODE 4510–27–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request; Correction

January 23, 2003.

On Thursday, January 23, 2003, the Department of Labor (DOL) published a notice in the **Federal Register** (Vol: 68, No. 15, page 3276) announcing an opportunity to comment on an information collection request (ICR) that was submitted to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35). The notice announced an opportunity to comment on the ICR for ESA's Black Lung Provider Environment Form (OMB control number 1215–0137).

The corrections are as follows:

On page 3276, the Title should read "Provider Enrollment form" instead of "Black Lung Provider Enrollment Form".

The Description, paragraph one should read:

"The Office of Workers' Compensation Program (OWCP) administers the Federal Employees' Compensation program (FECA), the Coal Mine Workers' Compensation Program (DCMWC), the Energy Employees Occupational Illness Compensation Program (EEOICPA) and the Long shore and Harbor Workers Compensation Program (DLHWC). As part of their benefit structure, the four programs pay for medical services rendered for the diagnosis and treatment of conditions(s) compensable under the acts."

Instead of:

"The Division of Coal Mine Workers' (DCMWC) is responsible for maintaining a list of authorized treating physicians and medical facilities in the area of the miner's residence and for payment of certain medical bills for services and supplies provided to the miner under the Black Lung Benefits Act (30 U.S.C. 901 *et seq.*, 20 CFR 725.704(a) and 725.705(b))."

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 03–2285 Filed 1–30–03; 8:45 am]

BILLING CODE 4510–CK–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

January 22, 2003.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13 44 U.S.C. chapter 35). A copy of each individual ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation contact Marlene Howze at ((202) 693–4158) or Email *Howze-Marlene@dol.gov*.

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for BLS, Office of Management and Budget, Room 10235, Washington, DC 20503 ((202) 395–7316), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Type of Review: Revision of a currently approved collection.

Agency: Bureau of Labor Statistics (BLS).

Title: Job Openings and Labor Turnover Survey (JOLTS).

OMB Number: 1220–0170.

Affected Public: Business or other for-profit; not-for-profit institutions; Federal government and State, local or tribal government.

Frequency: Monthly.

Number of Respondents: 16,000.

Number of Annual Responses: 129,600.

Estimated Time Per Response: 10 minutes.

Total Annualized Capital/Startup Costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $0.

Description: The Job Openings and Labor Turnover Survey will collect data on job vacancies, labor hires, and labor separations. The data can be used as demand-side indicators of labor shortage. These indicators of labor shortages at the national level would greatly enhance policy makers' understanding of imbalances between the demand and supply of labor. Presently there is no economic indicator of labor demand with which to assess the presence of labor shortages in the U.S. labor market. The availability of unfilled jobs is an important measure of tightness of job markets, symmetrical to unemployment measures.

Ira L. Mills,

DOL Clearance Officer.

[FR Doc. 03–2286 Filed 1–30–03; 8:45 am]

BILLING CODE 4510–24–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

January 23, 2003.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35). A copy of each individual ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation contact Marlene Howze at (202) 693–4158 or Email *Howze-Marlene@dol.gov*.

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for ESA, Office of Management and Budget, Room 10235, Washington, DC 20503 ((202) 395–7316), within 30 days from the date of this publication in the **Federal Register.**

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

• Enhance the quality, utility, and clarity of the information to be collected; and minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Type of Review: Extension of a currently approved collection.

Agency: Employment Standards Administration (ESA).

Title: Notice of Final Payment or Suspension of Compensation Benefits.

OMB Number: 1215–0024.

Affected Public: Business or other for-profit.

Frequency: On occasion.

Number of Respondents: 500.

Number of Annual Responses: 18,950.

Estimated Time Per Response: 15 minutes.

Total Burden Hours: 4,738.

Total Annualized Capital/Startup Costs: 0.

Total Annual Costs (operating/maintaining systems or purchasing services): $10,620.00.

Description: The Office of Workers' Compensation Program (OWCP) administers the Longshore and Harbor Workers' Compensation Act. This Act provides benefits to workers inquired in maritime employment on the navigable waters of the United States or in an adjoining area customarily used by an employer in loading, unloading, repairing, or building a vessel. Under section 14(g) of the Act, the employer or its insurance carrier must file a report of the compensation paid to a claimant at the time final payment is made. The Act requires that the report (Form LS–208) be filed within 16 days of the final payment of compensation with the District Director in the compensation district in which the injury occurred. Filing of the report is mandatory as failure to do so is subject to a civil penalty.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 03–2287 Filed 1–30–03; 8:45 am]

BILLING CODE 1510–CF–M

DEPARTMENT OF LABOR

Office of the Secretary

Advisory Council on Employee Welfare and Pension Benefit Plans; Notice of Reestablishment

In accordance with the provisions of the Federal Advisory Committee Act and Office of Management and Budget Circular A–63 and after consultation with the General Services Administration (GSA), the Secretary of Labor has determined that the reestablishment of the Advisory Council on Employee Welfare and Pension Benefit Plans is in the public interest in connection with the performance of duties imposed on the Department by section 512(a)(1) of the Employee Retirement Income Security Act of 1974 (ERISA).

The Advisory Council on Employee Welfare and Pension Benefit Plans shall advise the Secretary of Labor on technical aspects of the provisions of ERISA and shall provide reports and/or recommendations by November 14 of each year on its findings to the Secretary of Labor.

The Council shall be composed of 15 members appointed by the Secretary. Not more than eight members of the Council shall be of the same political party. Three of the members shall be representatives of employee organizations, (at least one of whom shall be representative of any organization members of which are participants in a multiemployer plan); three of the members shall be representatives of employers (at a multiemployer plan); three of the members shall be representatives of employers (at least one of whom shall be representative of employers maintaining or contributing to multiemployer plans); three members shall be representatives appointed from the general public (one of whom shall be a person representing those receiving benefits from a pension plan); and there shall be one representative each from the fields of insurance, corporate trust, actuarial counseling, investment counseling, investment management, and the accounting field.

The Advisory Council will report to the Secretary of Labor. It will function solely as an advisory body and in compliance with the provisions of the Federal Advisory Committee Act, and its charter will be filed under the Act. For further information, contact Sharon K. Morrissey, Executive Secretary, Advisory Council on Employee Welfare and Pension Benefit Plans, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, telephone (202) 693–8322.

Signed in Washington, DC, this 23rd day of January, 2003.

Elaine L. Chao,

Secretary of Labor.

[FR Doc. 03–2288 Filed 1–30–03; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Employment Standards Administration; Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be

impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S–3014, Washington, DC 20210.

Modification to General Wage Determination Decisions

The number of the decisions listed to the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

Massachusetts
MA020001 (Mar. 1, 2002)
MA020002 (Mar. 1, 2002)
MA020003 (Mar. 1, 2002)
MA020005 (Mar. 1, 2002)
MA020007 (Mar. 1, 2002)
MA020009 (Mar. 1, 2002)
MA020013 (Mar. 1, 2002)
MA020017 (Mar. 1, 2002)
MA020018 (Mar. 1, 2002)
MA020019 (Mar. 1, 2002)
MA020020 (Mar. 1, 2002)
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NJ020002 (Mar. 1, 2002)
New York
NY020002 (Mar. 1, 2002)
NY020003 (Mar. 1, 2002)
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NY020008 (Mar. 1, 2002)
NY020011 (Mar. 1, 2002)
NY020012 (Mar. 1, 2002)
NY020013 (Mar. 1, 2002)
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NY020026 (Mar. 1, 2002)
NY020032 (Mar. 1, 2002)
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PA020020 (Mar. 1, 2002)
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PA020026 (Mar. 1, 2002)
PA020029 (Mar. 1, 2002)
PA020038 (Mar. 1, 2002)
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TN020060 (Mar. 1, 2002)
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IL020002 (Mar. 1, 2002)
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IL020009 (Mar. 1, 2002)
IL020011 (Mar. 1, 2002)
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IA020006 (Mar. 1, 2002)
IA020010 (Mar. 1, 2002)
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IA020029 (Mar. 1, 2002)
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IA020059 (Mar. 1, 2002)
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LA020054 (Mar. 1, 2002)

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ND020007 (Mar. 1, 2002)
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AZ020013 (Mar. 1, 2002)
AZ020015 (Mar. 1, 2002)
Nevada
NV020009 (Mar. 1, 2002)

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts." This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

General wage determinations issued under the Davis-Bacon and related Acts are available electronically at no cost on the Government Printing Office site at *http://www.access.gpo.gov/davisbacon.* They are also available electronically by subscription to the Davis-Bacon Online Service (*http://davisbacon.fedworld.gov)* of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at 1–800–363–2068. This subscription offers value-added features such as electronic delivery of modified wage decisions directly to the user's desktop, the ability to access prior wage decisions issued during the year, extensive Help Desk Support, etc.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the six separate Volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC this 23rd day of January 2003.

Carl J. Poleskey,

Chief, Branch of Construction Wage Determinations.

[FR Doc. 03–2008 Filed 1–30–03; 8:45 am]

BILLING CODE 4510–27–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts; Leadership Initiatives Advisory Panel

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Leadership Initiatives Advisory Panel, Media Arts section (Arts on Radio and Television category) to the National Council on the Arts will be held from February 12–14, 2003 in Room 730 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting, from 1 p.m. to 2 p.m. on February 14th, will be open to the public for policy discussion. The remaining portions of this meeting, from 9 a.m. to 6:30 p.m. on February 12th and 13th, and from 9 a.m. to 1 p.m. and 2 p.m. to 5 p.m. on February 14th, will be closed.

The closed portions of these meetings are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of May 2, 2002, these sessions will be closed to the public pursuant to (c)(4)(6) and (9)(B) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels that are open to the public, and, if time allows, may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of AccessAbility, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TDY–TDD 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Kathy Plowitz-Worden, Office of Guidelines & Panel Operations, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5691.

Dated: January 27, 2003.

Kathy Plowitz-Worden,

Panel Coordinator, Panel Operations, National Endowment for the Arts.

[FR Doc. 03–2217 Filed 1–30–03; 8:45 am]

BILLING CODE 7537–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–213–OLA, ASLBP No. 01–787–02–OLA]

Atomic Safety and Licensing Board; Before Administrative Judges: Ann Marshall Young, Chair, Dr. Peter S. Lam, Thomas D. Murphy; In the Matter of Connecticut Yankee Atomic Power Company (Haddam Neck Plant)

January 27, 2003.

Notice of Evidentiary Hearing and Opportunity To Make Limited Appearance Statements

This Atomic Safety and Licensing Board hereby gives notice that, beginning on Monday, March 10, 2003, it will convene an evidentiary hearing in New Britain, Connecticut, to receive testimony and exhibits and to allow the cross-examination of witnesses on certain matters at issue in this proceeding. In addition, the Board gives notice that, in accordance with 10 CFR 2.715(a), it will also entertain oral limited appearance statements from members of the public, as specified in Section B below.

This proceeding involves certain challenges of Intervenor Citizens Awareness Network (CAN) to a license amendment request by Connecticut Yankee Atomic Power Company (CYAPCO or Connecticut Yankee), seeking approval of a License Termination Plan (LTP) for its Haddam Neck Plant. (Intervenor Connecticut Department of Public Utility Control (CDPUC) has settled all its admitted contentions with CYAPCO, but continues to participate in the proceeding as an interested state.) On January 31, 2001, this Licensing Board was established to preside over this proceeding. 66 FR 9111 (Feb. 6, 2001). By Memorandum and Order dated July 9, 2001, the Licensing Board granted CAN's and CDPUC's requests for a hearing, and on July 12, 2001, issued a Notice of Hearing. 66 FR 37494 (July 18, 2001).

At the evidentiary hearing, the Board will receive evidence on CAN's challenges to the adequacy of certain aspects of the LTP to assure the protection of the public health and safety, relating to Connecticut Yankee's site characterization and methodology for detection and cleanup of transuranic, hard-to-detect-nuclide, and "hot particle" contamination; and to its dose modeling calculation methodology.

A. Timing and Location of Evidentiary Hearing

The evidentiary hearing will commence on the afternoon of March 10, 2003, at 1:30 p.m. in Hearing Room One, located on the first floor of the Connecticut Department of Public Utility Control Building, at Ten Franklin Square, New Britain, Connecticut.

The hearing will continue from day to day until concluded. At the conclusion of each day, the Board will announce when the hearing will reconvene, which will generally be at 9 a.m. each day (although the hearing may not start until 10 a.m. on Wednesday, March 12). Hearings will extend until approximately 5 p.m. each day (except that on Friday, March 14, the hearing will likely adjourn at approximately 12 noon). The Board may make changes in the schedule, lengthening or shortening each day's session or canceling a session as deemed necessary or appropriate to allow for witnesses' availability and other matters arising during the course of the proceeding.

Members of the public are encouraged to attend any and all sessions of the evidentiary hearing, but should note that these sessions are adjudicatory proceedings open to the public for observation only. Those who wish to participate are invited to offer limited appearance statements as provided in Section B, below.

B. Participation Guidelines for Oral Limited Appearance Statements

On *the evening of March 11, 2003, starting at 6 p.m. and continuing until 9 p.m. as necessary, in the same location as the evidentiary hearing,* any persons who are not parties to the proceeding will be permitted to make oral statements setting forth their positions on matters of concern relating to this proceeding. Although these statements do not constitute testimony or evidence, they may nonetheless help the Board and/or the parties in their consideration of the issues in this proceeding.

The time allotted for each statement will normally be no more than five minutes, but may be further limited depending on the number of written requests to make oral statements that are submitted in accordance with section C below, and/or on the number of persons present the evening of March 11, 2003. Persons who submit timely written requests to make oral statements will be given priority over those who have not filed such requests. If all scheduled and unscheduled speakers present have made their oral statements prior to 9 p.m., the Licensing Board may terminate the session before 9 p.m.

C. Submitting Requests To Make an Oral Limited Appearance Statements

To be considered timely, a written request to make an oral statement must be mailed, faxed, or sent by e-mail so as to be received by close of business (4:30 p.m. EST) on *Friday, February 28, 2003.* Written requests should be submitted to:

Mail: Office of the Secretary, Rulemakings and Adjudications Staff, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.
Fax: (301) 415–1101 (verification (301) 415–1966).
E-mail: *hearingdocket@nrc.gov.*

In addition, using the same method of service, a copy of the written request to make an oral statement should be sent to the Chair of this Licensing Board as follows:

Mail: Administrative Judge Ann Marshall Young, Atomic Safety and Licensing Board Panel, Mail Stop T–3F23, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.
Fax: 301/415–5599 (verification 301/415–7550).
E-mail: AMY@nrc.gov.

D. Submitting Written Limited Appearance Statements

A written limited appearance statement may be submitted at any time. Such statements should be sent to the Office of the Secretary using any of the methods prescribed above, with a copy to the Licensing Board Chair by the same method.

E. Availability of Documentary Information Regarding the Proceeding

Documents relating to this proceeding are available for public inspection at the NRC Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland; or electronically through the publicly available records component of the NRC Agencywide Documents Access and Management System (ADAMS). ADAMS is accessible through the NRC Web site at *http://www.nrc.gov/reading-rm/adams.html.* The PDR and many public libraries have terminals for public access to the Internet. Persons who do not have access to ADAMS or who encounter problems in obtaining access to the documents located in ADAMS may contact the NRC PDR reference staff by telephone at 1–800/397–4209 or 301/415–4737, or by e-mail to *pdr@nrc.gov.*

Dated in Rockville, Maryland, on January 27, 2003.

For the Atomic Safety and Licensing Board.

Ann Marshall Young,

Chair, Administrative Judge.

[FR Doc. 03–2311 Filed 1–30–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–369 and 50–370]

Duke Energy Corporation, McGuire Nuclear Station, Units 1 and 2; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC) is considering the re-issuance of an exemption from certain requirements of its regulations for Facility Operating License Nos. NPF–9 and NPF–17, issued to the Duke Power Company (the licensee), for operation of the McGuire Nuclear Station (McGuire), Units 1 and 2, located in Mecklenberg County, North Carolina.

Environmental Assessment

Identification of Proposed Action

The proposed action would continue to authorize an exemption that was granted to the licensee on July 31, 1997, from the requirements of 10 CFR 70.24, which requires a monitoring system that will energize clear audible alarms if accidental criticality occurs in each area in which special nuclear material is handled, used, or stored. The proposed action would also continue to exempt the licensee from the requirements to maintain emergency procedures for each area in which this licensed special nuclear material is handled, used, or stored to ensure that all personnel withdraw to an area of safety upon the sounding of the alarm, to familiarize personnel with the evacuation plan, and to designate responsible individuals for determining the cause of the alarm, and to place radiation survey instruments in accessible locations.

The proposed action is in response to the licensee's application for an exemption from 10 CFR 70.24 dated February 4, 1997, as supplemented by letter dated March 19, 1997, and reflects the licensee's letters dated April 18, August 7 and October 9, 2002, and January 15, 2003, wherein the licensee revised a portion of the technical basis supporting its request for the exemption.

The Need for the Proposed Action

The purpose of 10 CFR 70.24 is to ensure that, if a criticality were to occur

during the handling of special nuclear material, personnel would be alerted to that fact and would take appropriate action. At a commercial nuclear power plant, the provisions of 10 CFR 70.24 relate to an inadvertent criticality event that could occur during fuel handling operations. The special nuclear material that could be assembled into a critical mass at a commercial nuclear power plant is in the form of nuclear fuel; the quantity of other forms of special nuclear material that is stored on site is small enough to preclude achieving a critical mass.

By letter dated April 18, 2002, as supplemented by letters dated August 7 and October 9, 2002, and January 15, 2003, the licensee submitted an application for revisions to the McGuire Technical Specifications (TSs) to address the spent fuel pool Boraflex degradation issues. The analysis supporting this application proposed to take partial credit for boron in the spent fuel pool water. Therefore, a part of the technical basis for the granting of the exemption from 10 CFR 70.24 on July 31, 1997, is revised. Accordingly, the exemption and the associated environmental assessment are being reissued to reflect the revision in the design basis assumptions for the spent fuel pool in the calculation of the limiting value of the criticality parameter, k-effective. Because the fuel is not enriched beyond 4.75 weight percent Uranium-235 and because commercial nuclear plant licensees have procedures and features designed to prevent inadvertent criticality, the staff has determined that it is unlikely that an inadvertent criticality could occur due to the handling of special nuclear material at a commercial power reactor. The requirements of 10 CFR 70.24, therefore, are not necessary to ensure the safety of personnel during the handling of special nuclear materials at commercial power reactors.

Environmental Impacts of the Proposed Action

The NRC has completed its evaluation of the proposed action and concludes that there is no significant environmental impact if the exemption is granted. Inadvertent or accidental criticality will be precluded through compliance with the McGuire TSs, the design of the fuel storage racks that provide geometric spacing of fuel assemblies in their storage locations, and administrative controls imposed on fuel handling procedures. The TS requirements specify reactivity limits for the fuel storage racks and minimum spacing between the fuel assemblies in the storage racks.

Appendix A of 10 CFR part 50, "General Design Criteria for Nuclear Power Plants," Criterion 62, requires that criticality in the fuel storage and handling system be prevented by physical systems or processes, preferably by use of geometrically safe configurations. This is met at McGuire, as identified in the TS Section 4.3 and in the Updated Final Safety Analysis Report (UFSAR), Section 9.1, by detailed procedures that must be available for use by refueling personnel. Therefore, as stated in theTSs, these procedures, the TS requirements, and the design of the fuel handling equipment with built-in interlocks and safety features, provide assurance that it is unlikely that an inadvertent criticality could occur during refueling. In addition, the design of the facility does not include provisions for storage of spent fuel in a dry location within the fuel storage building.

UFSAR Section 9.1.1, "New Fuel Storage," states that new fuel is stored in the New Fuel Storage Racks located within a New Fuel Storage Vault at each McGuire unit. The new fuel storage racks are arranged to provide dry storage. The racks consist of vertical cells grouped in parallel rows, 6 rows wide and 16 cells long, which provide support for the new fuel assemblies and maintain a minimum center-to-center distance of 21 inches between assemblies. (Note that in none of these locations would criticality be possible.)

The proposed exemption would not result in any significant radiological impacts. The proposed exemption would not affect radiological plant effluents nor cause any significant occupational exposures since the TSs, design controls (including geometric spacing and design of fuel assembly storage spaces) and administrative controls preclude inadvertent criticality. The amount of radioactive waste would not be changed by the proposed exemption.

The proposed exemption does not result in any significant nonradiological environmental impacts. The proposed exemption involves features located entirely within the restricted area as defined in 10 CFR part 20. It does not affect nonradiological plant effluents and has no other environmental impact. Accordingly, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

Since the Commission has concluded that there is no measurable environmental impact associated with the proposed action, any alternatives with equal or greater environmental impact need not be evaluated. As an alternative to the proposed action, the staff considered denial of the proposed action (*i.e.*, the "no-action" alternative). Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in NUREG–0063, "Final Environmental Statement Related to the Operation of William B. McGuire Nuclear Station, Units 1 and 2," April 1976, and the Addendum to NUREG–0063 issued in January 1981.

Agencies and Persons Contacted

In accordance with its stated policy, on January 27, 2003, the staff consulted with the North Carolina State official, Mr. Johnny James of the Division of Environmental Health, Radiation Protection Section, North Carolina Department of Environment and Natural Resources, regarding the environmental impact of the proposed amendments. The State official had no comments.

Finding of No Significant Impact

On the basis of the environmental assessment, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter requesting an exemption that was dated February 4, 1997, and supplemented by letter dated March 19, 1997, and the licensee's letters dated April 18, August 7, October 9, 2002, and January 15, 2003, proposing a revision in certain design basis assumptions related to the issuance of the exemption from 10 CFR 70.24. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html*. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC PDR Reference staff by

telephone at 1–800–397–4209 or 301–415–4737, or by e-mail to *pdr@nrc.gov*.

Dated at Rockville, MD, this 27th day of January, 2003.

For the Nuclear Regulatory Commission.

Allen G. Howe,

Chief, Section 2 , Project Directorate II, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 03–2310 Filed 1–30–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–302]

Florida Power Corp.; Notice of Withdrawal of Environmental Assessment

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of Florida Power Corporation (the licensee) to withdraw its November 18, 2002, application for exemption for the Crystal River Nuclear Plant, Unit 3, located in Citrus County, Florida.

The proposed exemption would have allowed the licensed operator requalification examinations for Crystal River Unit 3 to be rescheduled due to a possible labor action.

The Commission had previously issued an Environmental Assessment and Finding of No Significant Impact published in the **Federal Register** on December 11, 2002 (67 FR 76198) for the proposed exemption as required by 10 CFR 51.21. However, by letter dated December 19, 2002, the licensee withdrew the proposed change. Therefore, the Commission is withdrawing its previously issued Environmental Assessment and Finding of No Significant Impact.

For further details with respect to this action, see the request for exemption dated November 18, 2002, and the licensee's letter dated December 19, 2002, which withdrew the request for exemption. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams/html*. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, or 301–415–4737 or by e-mail to *pdr@nrc.gov*.

Dated at Rockville, Maryland, this 27th day of January 2003.

For the Nuclear Regulatory Commission.

Matthew McConnell,

Acting Project Manager, Section 2, Project Directorate II, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 03–2308 Filed 1–30–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 030–05295]

Environmental Assessment and Finding of No Significant Impact

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Notice of Environmental Assessment and Finding of no Significant Impact related to license amendment of Byproduct Material License No. 29–03761–01, Warner-Lambert Company, Morris Plains, New Jersey.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is considering the issuance of a license amendment to Byproduct Material License No. 29–03761–01 to authorize release of its facility in Morris Plains, New Jersey, for unrestricted use and has prepared an Environmental Assessment in support of this action. Based upon the Environmental Assessment, the NRC has concluded that a Finding of No Significant Impact is appropriate, and, therefore, an Environmental Impact Statement is unnecessary.

FOR FURTHER INFORMATION CONTACT: Betsy Ullrich, Division of Nuclear Materials Safety, U.S. Nuclear Regulatory Commission, Region I, 475 Allendale Road, King of Prussia, Pennsylvania 19406; telephone (610) 337–5040 or e-mail *exu@nrc.gov*.

SUPPLEMENTARY INFORMATION: The U. S. Nuclear Regulatory Commission is considering terminating Byproduct Materials License No. 29–03761–01 and authorizing the release of the licensee's facilities in Morris Plains, New Jersey, for unrestricted use and has prepared an Environmental Assessment (EA) and a Finding of No Significant Impact (FONSI) in support of this action.

SUMMARY: The U. S. Nuclear Regulatory Commission (NRC) reviewed the results of the decommissioning of the Warner-Lambert Company (Warner-Lambert) facility in Morris Plains, New Jersey. Warner-Lambert was authorized by NRC from 1963 to 2002 to use radioactive materials for research and development purposes at the site. In 2002, Warner-Lambert ceased operations with licensed materials at the Morris Plains site, and requested that NRC terminate its license. Warner-Lambert has conducted surveys of the facility and determined that the facility meets the license termination criteria in subpart E of 10 CFR part 20. The NRC staff has evaluated Warner-Lambert's request and results of the surveys, and has developed an Environmental Assessment (EA) in accordance with the requirements of 10 CFR part 51. Based on the staff evaluation, the conclusion of the EA is a Finding of No Significant Impact (FONSI) on human health and the environment for the proposed licensing action.

Introduction

Warner-Lambert Company (Warner-Lambert) requested release for unrestricted use of the buildings at 170 and 182 Tabor Road, Morris Plains, New Jersey as authorized by the NRC License No. 29–03761–01, and termination of the license. License No. 29–03761–01 was issued in 1963 and amended periodically since that time. It authorizes Warner-Lambert to perform activities at 170, 175 and 182 Tabor Road, Morris Plains, New Jersey. The building at 175 Tabor Road, although authorized on the license, was not used for licensed activities. NRC-licensed activities performed at the Morris Plains site were limited to laboratory procedures typically performed on bench tops and in hoods. A variety of radionuclides were used primarily for research and development, but past activities also included manufacture and distribution of radio-labeled pharmaceuticals for medical research. No outdoor areas were affected by the use of licensed materials.

Licensed activities ceased completely in June 2002, and the licensee requested termination of the license and release of the facilities for unrestricted use. Based on the licensee's historical knowledge of the site and the conditions of the facility, the licensee determined that only routine decontamination activities, in accordance with licensee radiation safety procedures, were required. A decommissioning plan was not required to be submitted to the NRC. The licensee surveyed the facilities, decontaminated or remediated areas as needed, and provided documentation that the facilities meet the license termination criteria specified in subpart E of 10 CFR part 20, and do not require additional decommissioning activities

to be performed. The licensee subsequently requested that the facilities be released for unrestricted use.

The Proposed Action

The proposed action is to terminate Byproduct Materials License No. 29–03761–01 and release the facilities at 170 and 182 Tabor Road, Morris Plains, New Jersey for unrestricted use. Warner-Lambert provided survey results which demonstrate that the Morris Plains site is in compliance with the radiological criteria for license termination in subpart E, 10 CFR part 20, "Radiological Criteria for License Termination."

Purpose and Need for the Proposed Action

The purpose of the proposed action is to terminate Byproduct Materials License No. 29–03761–01 and release the Warner-Lambert site in Morris Plains, New Jersey, for unrestricted use. NRC is fulfilling its responsibilities under the Atomic Energy Act to make a decision on a proposed license amendment for termination of a license and release of facilities for unrestricted use that ensures protection of public health and safety and the environment.

Alternative to the Proposed Action

The only alternative to the proposed action of termination of the license and release of the Morris Plains site for unrestricted use is no action. The no-action alternative is not acceptable because the licensee does not plan to perform any activities with licensed materials at those locations and does not plan to maintain staff to perform licensed activities.

The Affected Environment and Environmental Impacts

The NRC staff has reviewed the surveys performed by Warner-Lambert to demonstrate compliance with the 10 CFR 20.1402 license termination criteria. Based on its review, the staff has determined that the affected environment and environmental impacts associated with the release for unrestricted use of the Warner-Lambert Morris Plains facilities are bounded by the impacts evaluated by the "Generic Environmental Impact Statement in Support of Rulemaking on Radiological Criteria for License Termination of NRC-Licensed Nuclear Facilities" (NUREG–1496). The staff also finds that the proposed release for unrestricted use of the Warner-Lambert facilities is in compliance with Title 10, Code of Federal Regulations, 10 CFR 20.1402, "Radiological Criteria for Unrestricted Use."

Agencies and Persons Consulted

This Environmental Assessment was prepared entirely by the NRC staff. The State Office of Historical Preservation, the State Fish and Wildlife Service, and the U. S. Fish and Wildlife Service were not contacted because release of the Warner-Lambert facilities for unrestricted use does not affect historical or cultural resources, nor will it affect threatened or endangered species. No other sources were used beyond those referenced in the EA.

NRC provided a draft of its Environmental Assessment to the State of New Jersey Department of Environmental Protection (NJDEP) for review. On January 9, 2003, NJDEP responded by letter, provided editorial comments and agreed with the conclusions of the EA.

Finding of No Significant Impact

The NRC staff concluded that the completed action complies with 10 CFR part 20. NRC has prepared this EA in support of the proposed license amendment to terminate the license and release the facilities for unrestricted use. On the basis of the EA, NRC has concluded that the environmental impacts from the proposed action are expected to be insignificant and has determined not to prepare an environmental impact statement for the proposed action.

List of Preparers

Betsy Ullrich, Senior Health Physicist, Division of Nuclear Materials Safety, Region 1.

List of References

1. NRC License No. 29–03761–01 inspection and licensing records.

2. Letter dated September 5, 2002, with enclosures, from Pfizer Consumer Healthcare for Warner-Lambert Company. [ADAMS Accession No. ML022670617]

3. Letter dated November 18, 2002, with attachments, from Pfizer Consumer Healthcare for Warner-Lambert Company. [ADAMS Accession No. ML023250206]

The application for the license amendment and supporting documentation are available for inspection at NRC's Public Electronic Reading Room at *http://www.nrc.gov/reading-rm/ADAMS.html*. Any questions with respect to this action should be referred to Betsy Ullrich, Nuclear Materials Safety Branch 2, Division of Nuclear Materials Safety, Region I, 475 Allendale Road, King of Prussia, Pennsylvania 19406, telephone (610) 337–5040, fax (610) 337–5269.

Dated at King of Prussia, Pennsylvania this 23rd day of January, 2002.

For the Nuclear Regulatory Commission.

John D. Kinneman,

Chief, Nuclear Materials Safety Branch 2, Division of Nuclear Materials Safety, Region I.

[FR Doc. 03–2309 Filed 1–30–03; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–27641]

Filings Under the Public Utility Holding Company Act of 1935, as Amended ("Act")

January 27, 2003.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated under the Act. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) is/are available for public inspection through the Commission's Branch of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by February 18, 2003, to the Secretary, Securities and Exchange Commission, Washington, DC 20549–0609, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of facts or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After February 18, 2003, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

CenterPoint Energy, Inc. et al. (70–9895)

CenterPoint Energy, Inc. ("CenterPoint"), 1111 Louisiana, Houston, TX 77002, a registered public-utility holding company, and its direct wholly owned registered holding company subsidiary, Utility Holding, LLC, 200 West Ninth Street Plaza, Suite 411, Wilmington, DE 19801 (together, "Applicants"), have filed a post-effective amendment to their

application-declaration in this filing under sections 6(a) and 7 of the Act and rules 44 and 54 under the Act.

CenterPoint is a registered public-utility holding company, created on August 31, 2002, as part of a corporate restructuring of Reliant Energy, Inc. On September 30, 2002, CenterPoint completed the distribution ("Distribution") to shareholders of the remaining stock of Reliant Resources, Inc. ("Reliant Resources"). The Distribution completed the separation from CenterPoint of the merchant power generation and energy trading and marketing business of Reliant Resources.

CenterPoint has three public-utility subsidiary companies that are wholly owned (except as indicated below), that own and operate electric generation plants, electric transmission and distribution facilities, natural gas distribution facilities and natural gas pipelines. CenterPoint Energy Houston Electric LLC ("T&D Utility") engages in the electric transmission and distribution business in a 5,000-square mile area of the Texas Gulf Coast that includes Houston.

Texas Genco Holdings, Inc. ("Texas Genco") is a section 3(a)(1) exempt holding company that indirectly owns the Texas generating plants formerly owned by the integrated electric utility that was a part of Reliant Energy, Inc. ("Texas Genco Assets").[1]

CenterPoint Energy Resources Corp. ("GasCo") owns gas distribution systems that together form one of the United States' largest natural gas distribution operations in terms of customers served. Through unincorporated divisions, GasCo provides natural gas distribution services in Louisiana, Mississippi and Texas (Entex Division), Arkansas, Louisiana, Oklahoma and Texas (Arkla Division) and Minnesota (Minnegasco Division). Through wholly owned subsidiaries, GasCo owns two interstate natural gas pipelines and gas gathering systems and provides various ancillary services.

Utility Holding, LLC is a Delaware limited liability company and an intermediate holding company that is registered under the Act. Utility Holding, LLC directly holds approximately 81% of the outstanding common stock of Texas Genco. Applicants state that Utility Holding, LLC is otherwise a conduit entity formed solely to minimize tax liability.

[1] On January 6, 2003, CenterPoint distributed to its shareholders approximately 19% of the common stock of Texas Genco. CenterPoint indirectly owns the remaining approximately 81% of the common stock of Texas Genco.

For the nine months ended September 30, 2002, CenterPoint had revenues of $5.8 billion and operating income of $1.1 billion. As of September 30, 2002, CenterPoint had assets totaling $19.0 billion.

By order dated July 5, 2002, in this filing ("July Order"),[2] the Commission authorized the formation of CenterPoint as a registered holding company and approved various financing proposals. Among other things, the July Order authorized CenterPoint to issue up to $5 billion in long-term debt and $6 billion in short-term debt, subject to an overall limit of no more than $6 billion in financings at any one time outstanding through June 30, 2003 ("Authorization Period"). In the July Order, CenterPoint committed that debt issued by it pursuant to such authorization would be unsecured.

CenterPoint seeks a modification of the July Order to permit CenterPoint to issue and sell during the Authorization Period up to $4 billion of debt that is secured by the stock of Texas Genco, including the assets and securities of its indirect subsidiary company, Texas Genco, LP (the entity that directly owns the Texas Genco Assets), to the extent permitted by and consistent with contractual restrictions and applicable law.[3]

The proceeds of this financing will be used to refinance the existing indebtedness of CenterPoint. The proposed financing will otherwise be subject to the terms and conditions as set forth in the July Order.

CenterPoint also seeks authority to issue warrants or other stock purchase rights, subject to the terms and conditions of the July Order. CenterPoint states that it may be required to issue debt securities convertible into common stock or debt securities with warrants or other stock purchase rights. CenterPoint further states that the proceeds of such financing will be used to refinance the existing indebtedness of CenterPoint. CenterPoint notes that the July Order grants CenterPoint the authority to issue convertible debt securities. CenterPoint now seeks authority to issue warrants to purchase the common stock of CenterPoint or other stock purchase rights subject to the terms and conditions of the July Order.

On October 10, 2002, CenterPoint entered into a $3.85 billion, 364-day credit facility ("CenterPoint Facility") to replace a similar facility that had expired. The CenterPoint Facility requires, among other things, mandatory commitment reductions of $600 million each by February 28, 2003, and June 30, 2003.

CenterPoint states that it is negotiating with its lenders to extend the maturity date of the CenterPoint Facility into 2005, by which time CenterPoint expects to have sold its generation assets and recovered its stranded costs as provided by Texas law.[4] CenterPoint asserts that deteriorating market conditions have made it difficult to refinance CenterPoint's debt on reasonable terms without providing some security. CenterPoint states that with the ability to provide collateral, an adequate financing arrangement may be implemented. As set forth above, CenterPoint seeks authorization pursuant to sections 6(a) and 7 of the Act to issue and sell during the Authorization Period up to $4 billion of debt that is secured by the stock of Texas Genco, including the assets and securities of its indirect subsidiary company, Texas Genco, LP.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–2255 Filed 1–30–03; 8:45 am]

BILLING CODE 8010–01–P

[2] Holding Co. Act Release No. 27548.

[3] Applicants anticipate that the term of the financing would be from three to five years.

[4] Reliant Resources has an option that may be exercised in January 2004 to purchase all of the shares of Texas Genco common stock then owned by CenterPoint. Applicants state that if Reliant Resources does not exercise the option, CenterPoint plans to sell or otherwise monetize its interest in Texas Genco. Applicants state that proceeds from the sale, plus proceeds from the securitization in 2004 or 2005 of stranded costs related to generating assets of Texas Genco and generation related regulatory assets, are expected to aggregate in excess of $5 billion.

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meetings

Notice is hereby given, pursuant to the provisions of the government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meetings during the week of February 3, 2003: Open meetings will be held on Tuesday, February 4, 2003, at 10 a.m., and Thursday, February 6, 2003, at 10 a.m. in Room 1C30, the William O. Douglas Room, and a closed meeting will be held on Wednesday, February 5, 2003, at 2:30 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries

will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (7), (9)(B) and (10) and 17 CFR 200.402(a)(3), (5), (7), (9)(ii) and (10), permit consideration of the scheduled matters at the closed meeting.

The subject matter of the open meeting scheduled for Tuesday, February 4, 2003, will be the following:

1. The Commission will consider whether to adopt Regulation Analyst Certification, a new rule that would require analysts to provide certifications regarding the views they express in research reports and public appearances and to provide disclosures regarding any compensation they may have received related to those views and recommendations.

2. The Commission will consider whether to adopt amendments to rule 17f-4 under the Investment Company Act of 1940, the rule that governs investment companies' use of securities depositories. The amendments are designed to update and simplify the rule in response to changes in business practices and commercial law that have occurred since the rule was adopted in 1978. The amendments eliminate unnecessary restrictions in the rule, to reduce compliance burdens on funds and fund boards, without jeopardizing investor protections.

3. The Commission will consider a recommendation to propose for public comment new rule 38a–1 under the Investment Company Act of 1940, new rule 206(4)–7 under the Investment Advisers Act, and amendments to rule 204–2 under the Investment Advisers Act. The recommended proposals would require each investment company and investment adviser registered with the Commission to (i) adopt and implement policies and procedures reasonably designed to prevent violation of the federal securities laws, (ii) review those policies and procedures annually for their adequacy and the effectiveness of their implementation, and (iii) appoint a chief compliance officer to be responsible for administering the policies and procedures. The Commission also will consider a recommendation to seek comment on other ways to involve the private sector in fostering compliance by investment companies and investment advisers with the federal securities laws.

The subject matter of the closed meeting scheduled for Wednesday, February 5, 2003, will be:

Formal orders of investigation;
Institution and settlement of administrative proceedings of an enforcement nature;
Institution and settlement of injunctive actions;
Adjudicatory matters;
Opinions.

The subject matter of the open meeting scheduled Thursday, February 6, 2003, will be the following:

1. The Commission will consider whether to adopt amendments to the definition of terms used in the exception from the definition of dealer for banks under section 3(a)(5) of the Securities Exchange Act of 1934. The Commission will consider whether to adopt amendments to the related exemptions for banks, savings associations, and savings banks as well as adopt a new exemption concerning securities lending. These proposals relate to the implementation of the specific exceptions for banks from the definitions of "broker" and "dealer" that were amended by the Gramm-Leach-Bliley Act.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted, or postponed, please contact:

The Office of the Secretary at (202) 942–7070.

Dated: January 28, 2003.

Jonathan G. Katz,

Secretary.

[FR Doc. 03–2403 Filed 1–29–03; 11:40 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47216; File No. SR–Amex–2002–114]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the American Stock Exchange LLC Relating to the Addition of a Fee for the Automatic Execution of Broker-Dealer Options Orders

January 17, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 23, 2002, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Amex. On January 14, 2003, Amex filed Amendment No. 1 to its proposal with the Commission.[3] The Commission is publishing this notice as amended to solicit comments on the proposed rule change from interested persons.[4]

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex proposes to modify its options fee schedule adding a fee for the automatic execution of broker-dealer orders. The text of the proposed rule change is available at the Office of the Secretary, Amex, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Amex included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Amex has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

On June 24, 2002, the Exchange filed with the SEC a proposal to permit broker-dealer orders to be executed through Auto-Ex (the "BD Auto-Ex Proposal").[5] The Commission approved the BD Auto-Ex Proposal on September 10, 2002.[6] The Amex is now proposing

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Jeffery P. Burns, Assistant General Counsel, Amex, to Katherine A. England, Assistant Director, Division of Market Regulation ("Division"), Commission, dated January 13, 2003. In Amendment No. 1, the Amex made technical corrections to the proposed rule change.

[4] On September 20, 2002, the Exchange submitted a proposed rule change (SR–Amex–2002–75) to adopt a broker-dealer Auto-Ex fee. The Commission returned the filing for failure to comply with the requirements of Section 19(b) of the Act and Form 19b–4, thereunder. *See* letter from Kelly Riley, Senior Special Counsel, Division, Commission to Jeffery P. Burns, Assistant General Counsel, Amex, dated October 16, 2002. The Exchange submitted a new Form 19b–4 (SR–Amex–2002–93) to comply with the filing requirements of Section 19(b) of the Act and Form 19b–4 on November 8, 2002. Because the proposed fee in SR–Amex–2002–93 did not accurately reflect the intention of the Exchange, Amex has withdrawn the filing. The instant proposal (SR–Amex–2002–114) corrects the prior inaccuracies.

[5] *See* Securities Exchange Act Release No. 46479 (September 10, 2002), 67 FR 58654 (September 17, 2002) (SR–Amex–2002–57).

[6] *See* Securities Exchange Act Release No. 46479 (September 10, 2002), 67 FR 58654 (September 17, 2002) (SR–Amex–2002–57). The Commission has also approved similar proposals by other options exchanges to permit the execution of broker-dealer orders through automatic execution systems that previously were limited to public customer orders. Securities Exchange Act Release Nos. 45032 (November 6, 2001), 66 FR 57145 (November 14, 2001) (SR–PCX–2000–05) and 45967 (May 20,

Continued

to add new Section VII entitled "Broker-Dealer Auto-Ex Fee" to the Options Fee Schedule for the purpose of adopting a $0.50 transaction fee per contract side for all broker-dealer orders [7] executed via the Exchange's automatic execution system ("Auto-Ex"). [8] Broker-dealer orders executed through Auto-Ex would also be subject to the Exchange's existing options comparison fee and options floor brokerage fee. For firms and broker-dealers, the comparison fee and floor brokerage fee is $0.04 and $0.03 per contract side, respectively, while for specialists and market makers these charges per contract side are each $0.05.

The Exchange represents that broker-dealer orders subject to the proposed fee, include without limitation, firm orders, specialist orders, market maker orders and orders for the account of registered broker-dealers. The Amex notes that it will only charge this fee to member firms through the customary monthly billing that occurs shortly after the close of each trading month. The Amex represents that non-members will not be subject to this proposed fee. Accordingly, the Amex will assess this fee solely against firms executing orders for the accounts of broker-dealers.

Broker-dealers who want to access the Exchange's markets without paying this additional fee may continue to send their orders to a floor broker for manual execution. However, broker-dealer orders that are automatically executed through Auto-Ex are not subject to fees otherwise imposed by an Amex floor broker in connection with a manual execution. The Amex believes that the benefits of automatic execution outweigh the potential burden of paying the proposed fee.

The Exchange submits that the proposed fee will provide additional revenue and recoup the costs associated with permitting the automatic execution of broker-dealer orders. In addition, the Amex submits that this fee will help to allocate to broker-dealer orders a fair share of the related costs of operating Auto-Ex and related Exchange systems. The Exchange further asserts that permitting the Auto-Ex system to accept and execute broker-dealer orders requires design modification, programming and testing. Accordingly, the Exchange believes that the proposed fee is reasonable.

2. Statutory Basis

The Exchange believes the proposed rule change, as amended, is consistent with Section 6(b) of the Act,[9] in general, and with Section 6(b)(4)[10] in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among its members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change establishes or changes a due, fee, or other charge and, therefore, has become effective immediately pursuant to Section 19(b)(3)(A)(ii) of the Act [11] and Rule 19b–4(f)(2) thereunder.[12] At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in the furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR–Amex–2002–114 and should be submitted by February 21, 2003.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–2291 Filed 1–30–03; 8:45 am]

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2002), 67 FR 37888 (May 30, 2002) (SR–CBOE–2002–22) (CBOE six-month pilot program permitting broker-dealer orders for QQQ options to be Executed on RAES); and 46113 (June 25, 2002), 67 FR 44486 (SR–CBOE–2002–35) (July 2, 2002) (extending CBOE pilot to all index products).

[7] A broker-dealer order is an order for the account of a registered broker-dealer.

[8] The Commission has approved the adoption of broker-dealer automatic execution fees for other options exchanges. *See* Securities Exchange Act Release Nos. 45662 (March 27, 2001), 67 FR 16786 (April 8, 2002) (SR–PCX–2002–10); 46212 (July 16, 2002), 67 FR 48235 (July 23, 2002) (SR–Phlx–2002–36); and 46455 (September 3, 2002), 67 FR 57468 (September 10, 2002) (SR–CBOE–2002–42).

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(4).

[11] 15 U.S.C. 78s(b)(3)(A)(ii).

[12] 17 CFR 240.19b–4(f)(2).

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47229; File No. SR–Amex–00–30]

Self-Regulatory Organizations; Notice of Filing of Amendments to Proposed Rule Change by the American Stock Exchange LLC Relating to the Allocation of and Participation in Options Trades

January 22, 2003.

On May 30, 2000, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] a proposed rule change relating to the allocation of and participation in options trades on the Exchange. The proposed rule change was published for comment in the **Federal Register** on June 28, 2000.[3] On August 25, 2000, August 30, 2001, February 19, 2002, April 22, 2002, September 16, 2002, and December 20, 2002, respectively, the Amex filed Amendment Nos. 1, 2, 3, 4, 5, and 6 to the proposed rule change.[4]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 42964 (June 20, 2000), 65 FR 39972 (June 28, 2000).

[4] *See* letters from Claire P. McGrath, Vice President and Special Counsel, Amex, to Nancy Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, dated August 24, 2000 (Amendment No. 1) and August 29, 2001 (Amendment No. 2); and from Claire P. McGrath, Senior Vice President and Deputy General Counsel, Amex, to Elizabeth King, Associate Director, Division, Commission, dated February 15, 2002 (Amendment No. 3), April 22, 2002 (Amendment

The proposed rule change, in its amended version, is described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex proposes to codify in Rule 933(d), Rule 950(d), Commentary .06, and Rule 950(n), Commentary .03 current practices regarding the participation in option trades executed on the Exchange by registered options traders and specialists and the allocation of those trades to the appropriate party. The text of the proposed rule change is set forth below. Deleted language is in brackets. Proposed new language is *italicized*.

* * * * *

Rule 933 Automatic Execution of Options Orders

(a)–(c) No change.

(d) Options orders executed through Auto-Ex shall be automatically allocated on a rotating basis to the specialist and to each trader that has signed on to Auto-Ex. Auto-Ex trades of ten contracts or less are allocated to each Auto-Ex participant as set forth below. If an Auto-Ex trade is greater than ten contracts, the Auto-Ex system divides the execution into lots of ten or fewer contracts and allocates a lot to each Auto-Ex participant. Each lot is considered a separate trade for purposes of allocating trades within Auto-Ex. The rotation is designed to provide that the allocation of Auto-Ex trades between the specialist and traders signed on to Auto-Ex in a given option class is as follows:

Number of traders signed on to Auto-Ex	*Approximate number of trades allocated to the specialist (percent)*	*Approximate number of trades allocated to the traders signed on to Auto-Ex (as a group) (percent)*
1	*60*	*40*
2–4	*40*	*60*
5–7	*30*	*70*
8–15	*25*	*75*
16 or more	*20*	*80*

* * * Commentary

.01–.02 No change.

* * * * *

Rules of General Applicability

Rule 950

(a)–(c) No change.

(d) The provisions of Rule 126, with the exception of subparagraphs (a) and (b) thereof, shall apply to Exchange option transactions and the following additional commentary shall also apply.

* * * Commentary

.01–.05 No change.

.06 (i) When two or more bids (offers) are made simultaneously by the specialist dealing for his own account and by registered options traders, all such bids (offers) shall be on parity and any contracts sold (bought) in execution of such bids (offers) shall be divided among the specialist and registered options trader(s) so that the specialist shall receive the following percentage of contracts executed and the registered options traders shall divide the remainder in accordance with Rule 950(n), Commentary .03(a)(iii):

Number of traders on parity	*Approximate number of contracts allocated to the specialist (percent)*	*Approximate number of contracts allocated to the traders (as a group) (percent)*
1	*60*	*40*
2–4	*40*	*60*
5–7	*30*	*70*
8–15	*25*	*75*
16 or more	*20*	*80*

Notwithstanding the foregoing, neither the specialist nor a registered options trader will be allocated more executed contracts than the number of contracts representing the specialist's or registered options trader's portion of the aggregate quotation size, as that term is used in Rule 958A, except, when the number of executed contracts to be allocated exceeds the aggregate quotation size disseminated for that options series.

(ii) The above provision applies only when the specialist and registered options trader(s) are on parity and does not include situations where a customer order is also on parity with the specialist and registered options traders. When a customer is on parity with the specialist and registered options traders, the specialist will allocate executed contracts (1) to the customer and to those registered options traders or specialist on parity with the customer on an equal basis subject to Rule 950(n), Commentary .03(a)(v); and then (2) to the specialist and the registered options traders in accordance with Rule 950(n), Commentary .03(a)(iii). The following rules set forth provisions regarding priority and parity of registered options traders and specialists when customer orders are involved: Rule 111, Commentary .07, which is made applicable to options trading by Rule 950(c), provides that registered options traders in establishing or increasing a position may not retain priority over or have parity with a customer order, and Rule 155, which is made applicable to options trading by Rule 950(a), requires a specialist to yield precedence to orders entrusted to him as agent before executing a purchase or sale at the same price for an account in which he has an interest.

(e)–(m) No change.

(n) The provisions of Rule 170 and Commentaries .03 and .04 thereto, shall apply to [e]Exchange option transactions. In addition, the following Commentary shall also apply:

* * * Commentary

[.10] *.01* A specialist in the course of maintaining a fair and orderly market shall adhere to the maximum permissible bid/ask differentials set forth in Rule 958(c).

.02 No change.

.03 (a) It is the responsibility of the specialist to allocate executed contracts among all participants to a trade.

(i) *In order for specialists to fulfill this function, registered options traders must announce either at the start of the trading day, upon entry into the trading crowd or prior to the dissemination of a quotation, the number of contracts for each option series in which they are willing to participate. The specialist may not assume a size for any registered options trader and only those registered options traders that have announced their sizes as discussed above will be allocated any executed contracts.*

(ii) The registered options traders announced sizes shall be promptly

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No. 4), September 13, 2002 (Amendment No. 5), and December 19, 2002 (Amendment No. 6).

Amendment No. 1 added proposed rule text concerning the allocation of an incoming order when a customer is on parity with the specialist and registered options traders. Amendment No. 2 provided further explanation of the interaction of existing and proposed rules in this situation. Amendment Nos. 03, 4, and 5 further clarified how options trades on the Exchange are allocated, and were submitted by Amex in compliance with Section IV.B.j. of the Commission's Order Instituting Public Administrative Proceedings Pursuant to Section 19(h)(1) of the Securities Exchange Act of 1934, Making Findings and Imposing Remedial Sanctions, Securities Exchange Act Release No. 43268 (September 11, 2000) ("Order"). Section IV.B.j. of the Order requires that respondent options exchanges adopt new, or amend existing, rules to set forth any practice or procedure "whereby market makers trading any particular option class determine by agreement the spreads or option prices at which they will trade any option class, or the allocation of orders in that option class." Amendment No. 6 made minor modifications and non-substantive changes to the proposal.

communicated to the Exchange as required by Rule 958A(c)(i).

(iii) As transactions occur the specialist shall allocate to the extent mathematically possible (A) the portion of the executed contracts that the customer is entitled to and the portion of the executed contracts to those on parity with the customer on an equal basis subject to subparagraph (v) of this paragraph (a); (B) the portion of the executed contracts that the specialist is entitled to pursuant to the participation percentages set forth in Rule 950(d), Commentary .06; and then (C) the portion of the executed contracts participating registered options traders are entitled to individually. The allocation pursuant to (C) is subject to the following provisions:

1. where all participants have equal stated sizes, their participations shall be equal;

2. where participants' stated sizes are not equal, their participations will depend upon whether the number of executed contracts left to be allocated exceeds the participants' aggregate stated sizes;

3. if the number of executed contracts left to be allocated does not exceed the participants' aggregate stated sizes, the specialist will allocate the executed contracts equally, unless a participant's stated size is for an amount less than an equal allocation, then the smallest sizes will be allocated first, until the number of executed contracts remaining to be allocated requires an equal allocation.

4. if the number of executed contracts left to be allocated does exceed the participants' aggregate stated sizes, the specialist will allocate the executed contracts by first allocating to each participant the number of executed contracts equal to each participant's stated size with the remainder being allocated based on the percentage a participant's stated size is of the participants' aggregate stated size.

5. The following chart illustrates how different numbers of executed contracts will be allocated to participants whose aggregate stated size is 100 contracts:

NUMBER OF EXECUTED CONTRACTS TO BE ALLOCATED

Each participant's stated size	200	90	70	50
50	100	40	25	17
30	60	30	25	17
20	40	20	20	16

(iv) In the event a specialist or registered options trader declines to accept any portion of the available contracts, any remaining contracts shall be apportioned among the remaining participants who bid or offered at the best price at the time the market was established in accordance paragraph (iii) above, until all contracts have been allocated.

(v) Specialists may direct some or all of their participation amount to competing public orders in the trading crowd.

(b) Notwithstanding the foregoing, when the transaction occurs without the participation of the specialist (either as principal or agent), the floor broker representing the contra-side of the trade shall distribute the executed contracts equally among the participating registered options traders, unless a registered options trader's portion of the disseminated size is less than an equal distribution. That registered options trader will be given a less than equal distribution and the remaining contracts will allocated equally among the remaining participants to the trade. In addition, if neither the specialist nor a floor broker representing a customer is participating in the trade, the participating registered options traders shall allocate the executed contracts among themselves in accordance with subparagraph (a)(iii) above.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Amex included statements concerning the purpose of and basis for the proposed rule change, as amended, and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Since the inception of options trading at the Exchange in 1975, both specialists and registered options traders ("traders") have had the responsibility of making markets in options. Exchange rules require that both specialists' and traders' transactions constitute a course of dealings reasonably calculated to contribute to the maintenance of a fair and orderly market and they should not enter into transactions or make bids or offers that are inconsistent with such a course of dealings. Specialists and traders shall engage, to a reasonable degree under the existing circumstances, in dealings for their own accounts when there exists a lack of price continuity, a temporary disparity between the supply of and demand for option contracts of a particular series, or a temporary distortion of the price relationships between option contracts of the same class. As the Commission stated in its Order announcing the effectiveness of the Exchange's plan to list and trade options, the Amex's "* * * registered floor traders will be expected to trade in a way that *assists* the specialist in maintaining a fair and orderly market * * *"[5] (emphasis supplied). Specialists do, however, have additional obligations which include, among other things, the obligation to (1) assure that disseminated market quotations are accurate; (2) assure that each disseminated market quotation in appointed options classes is honored up to the disseminated size; (3) determine any formula for generating the automatically updated market quotations and disclosing the elements of that formula to the members of the trading crowd; (4) be present at the trading post throughout every business day; (5) participate at all times in the automated execution system for each assigned option class; and (6) resolve trading disputes, subject to Floor Official review upon the request of any party to the dispute.

In the course of making markets, specialists are often on parity with registered options traders, that is, bidding and offering simultaneously to provide liquidity. Generally, Exchange Rule 126 (made applicable to options

[5] *See* Securities Exchange Act Release No. 11144 (December 19, 1974), 40 FR 3258 (January 20, 1975).

trading by Rule 950 (d)) provides that when bids (offers) are made simultaneously, all such bids (offers) are on parity, and any securities sold (bought) in execution of such bids (offers) shall be divided as equally as possible between those on parity up to the participants' stated or generally known sizes. In addition, as further discussed below, the trading crowds in many option classes give the specialist a greater than equal share when on parity with registered options traders. This proposal seeks to codify in the Exchange's rules these current allocation practices.

Although this rule proposal seeks to codify specifically the participation in and allocation of trades among specialists and registered options traders on parity, the Exchange notes that the Commission staff has requested a general description of the Exchange's rules regarding customer priority and parity. The following is a discussion of those rules: Exchange Rules 155 and 111 [6] set forth the obligations and responsibilities of specialists and registered options traders, respectively, when they handle or interact with customer orders. Rule 155 requires a specialist to yield precedence to orders entrusted to him as agent before executing a purchase or sale at the same price for an account in which he has an interest. Rule 111, Commentary .07 provides that registered options traders in establishing or increasing a position may not retain priority over or have parity with a customer order. Thus, Rules 155 and 111 require that, when the specialist as agent receives a customer marketable limit order, he and any registered options trader establishing or increasing a position must yield precedence to the customer order. Registered options traders closing or reducing a position and specialists not acting in an agency capacity can be on parity with a customer order.

Amendment No. 2 to the proposed rule change, which was submitted to the Commission in response to a specific question from the staff, sought to further describe how customer orders are handled when they are on parity with registered options traders. The example given in Amendment No. 2 stated the general proposition that if a customer order can be filled completely, it will be, before the specialist and registered options traders participate for their own accounts. The example is a correct description of what generally occurs on the Exchange's trading floor as the specialist and traders comply with the requirement that they generally deal for their own account only when there is a disparity between the supply of or demand for option contracts of the same series. Exchange priority and parity rules do not require the specialist and registered options trader to yield priority or parity in all circumstances to completely fill a customer order. Thus, if Exchange rules were strictly applied to the two examples posed in Amendment No. 2, the following would result:

(1) The specialist, one registered options trader (closing) and a customer (represented by a floor broker) are all bidding the same price, at the same time, for the same series of XYZ options and are, therefore, on parity. An incoming order to sell 300 XYZ contracts would be split evenly among the three participants.

(2) The specialist and a customer (represented by a floor broker) are bidding the same price, at the same time, for the same series of ABC options, and a registered options trader (opening) is also bidding at that same price and, thus, is not on parity. An incoming order for 300 ABC contracts would be split evenly between the specialist and the customer up to the size of the customer's order with the specialist receiving the same amount as the customer. Any remaining contracts would be split between the specialist and trader according to the percentages set forth in the proposed rules.

Notwithstanding the foregoing, specialists and registered options traders often do accommodate customer orders beyond what is required by Exchange rules as a means for attracting and retaining order flow in the increasingly competitive options markets. As a result, proposed Rule 950(n), Commentary .03(a)(v) would provide that the specialist and/or registered options traders may direct some or all of their participation to competing public orders (*i.e.*, competing orders for the accounts of non-broker-dealers) in the crowd. The Amex believes that this proposed provision would help to result in customers receiving allocations as described in Amendment No. 2, *i.e.*, an allocation beyond what is required by Exchange rules. In addition, specialists and registered options traders must comply with the requirement, noted above, that they trade for their own accounts only when there is a lack of supply and demand.

It is the specialist's responsibility to allocate executed contracts among all participants to a trade. This is generally a manual process involving the inputting of participant information into the Amex Order Display Book ("AODB").[7] However, as provided in proposed Commentary .03(b) to Rule 950(n), whenever a trade occurs without the participation of the specialist (*e.g.*, the order is represented by a floor broker with registered options traders as contra-parties to the trade), the Floor Broker representing the contra-side of the trade would distribute the executed contracts equally among the participating registered options traders, unless a registered options trader's portion of the disseminated quote size is less than an equal distribution. That registered options trader would be given a less than equal distribution and the remaining contracts would be allocated equally among the remaining participants to the trade. In addition, when only registered options traders are on both sides of a trade (*i.e.*, neither the specialist nor a customer is participating in the trade), the registered options traders would allocate the executed contracts among themselves in accordance with the same provisions setting forth allocations by the specialist. (*See* proposed Rule 950(n), Commentary .03(a)(iii) 1.–5.) In these situations, as well as others, registered options traders are only required to participate up to their portion of the Exchange's disseminated quote size. (*See* Amex Rule 958A).

Depending upon the level of activity and volatility of a particular option series, the level of participation of an individual registered options trader in each options series will vary. Registered options traders who regularly or only occasionally trade a particular option series are currently expected to and will be required under the proposed codification in Rule 950 (n), Commentary .03(a), to announce, either at the start of the trading day, upon entry into the trading crowd, or prior to the dissemination of a quotation, the number of contracts for which they are willing to participate. These generally known sizes will be aggregated into the size disseminated by the Exchange pursuant to the firm quote rule (see Exchange Rule 958A and Rule 11Ac1–1 under the Act, 17 CFR 240.11Ac1–1) so that the disseminated quote in each option series would reflect the level of participation by the specialist and each registered options trader. While the specialist would not be required to

[6] Rule 155 is made applicable to options trading by Rule 950(a) and Rule 111 is made applicable by Rule 950(c).

[7] The Exchange recently implemented Quick Trade, an enhancement to the Amex Order File (AOF) and AODB, which automates in certain situations the process of allocating trades to participating registered options traders. *See* Securities Exchange Act Release No. 45974 (May 22, 2002) 67 FR 37886 (May 30, 2002).

announce his size to the trading crowd, his size could be determined from the disseminated quote size.

The Exchange states that over the years, it, as well as registered options traders and specialists, have recognized that, given their role, specialists should be entitled to a greater than equal share when on parity with registered options traders. As a result, a practice has developed in Amex trading crowds for many option classes to give the specialist a greater than equal share when on parity with registered options traders. The Exchange now seeks to codify this practice.

The Exchange believes that it is appropriate to provide a greater participation to specialists because they have responsibilities that registered options traders do not have. For example, they have a continuous obligation to the market; to update and disseminate quotes in all securities; to reflect all market interest in the displayed quotes; and to act as contra-party on Auto-Ex at all times.[8] In addition, specialists incur costs that registered options traders do not, such as the fixed staffing costs committed to market making in a particular option whether it is actively traded or not, and the costs associated with participating in educational and marketing functions to attract order flow. In order to attract to the Exchange specialist units that are willing to accept these responsibilities, the Amex believes that it is necessary to provide specialists with an enhanced participation. The Exchange also believes that it must provide these enhanced participations in order to be competitive with other options exchanges that currently offer enhanced participation to their specialists and primary market makers.[9] In the Exchange's view, the enhanced participation would also give specialists the ability to attract order flow to the Exchange and its customers with tighter, more competitive markets. The Exchange states that, as a result, it would be able to attract new specialist units and retain the services of existing units.

The adoption of Commentary .06 to Rule 950(d) would provide that a specialist's participation in the number of option contracts executed varies depending upon the number of traders on parity. The proposed distribution of option contracts between the specialist and the traders on parity is as follows:

Number of traders on parity	Approximate number of option contracts allocated to the specialist (percent)	Approximate number of option contracts allocated to the traders (as a group) (percent)
1	60	40
2–4	40	60
5–7	30	70
8–15	25	75
16 or more	20	80

It should be emphasized that the above percentages would apply only when the specialist and/or registered options traders are on parity and would not include situations where a customer order is also on parity with the specialist and registered options traders. It should be noted, however, that a specialist cannot be on parity with an order for which he is acting as agent, and registered options traders (who never act as agents and trade only for their own accounts) cannot be on parity with a customer when either establishing or increasing their position in the option. In such situations, as provided in proposed subparagraph (a)(iii)(A) of Commentary .03 to Rule 950(n), the specialist would first allocate executed contracts to the customer and to the specialist and/or those registered options traders on parity with the customer. Any contracts that remain would be allocated among the specialist and registered options traders in accordance with proposed subparagraph (a)(iii)(B) of Commentary .03 to Rule 950(n), which would provide that the specialist would receive a participation in the remaining contracts in accordance with the table set forth above and in proposed Commentary .06(i) to Rule 950(d).

In addition, as specified in Commentary .06(i) to Rule 950(d), neither the specialist nor a registered options trader would be allocated more executed contracts than the number of contracts representing the specialist's or registered options trader's portion of the aggregate quotation size that the responsible broker or dealer would be obligated to communicate to the Exchange pursuant to Exchange Rule 958A(c), except when the number of executed contracts to be allocated exceeded the aggregate quotation size disseminated for that options series. Thus, for the following two examples, assume that the aggregate quotation size is 100 contracts, the specialist's portion is 25 contracts and the registered options trader's portion is 75 contracts.

First example. An off-floor to sell 80 contracts is submitted for execution at the disseminated bid. Pursuant to the chart set forth above, the specialist would be entitled to 60% of the executed contracts. The specialist, however, would only be allocated 25 executed contracts and the registered options trader would be allocated 55 executed contracts.

Second example. An off-floor order to sell 200 contracts is submitted for execution at the disseminated bid. The specialist and registered options trader would first be allocated 25 contracts and 75 contracts respectively, plus the specialist would receive 60% of the remaining 100 contracts for a total of 85 contracts, and the registered options trader would receive 40% for a total of 115 contracts.

Once the specialist determined his portion of the trade depending upon the number of traders on parity, he would deduct his portion and allocate the remaining contracts to the registered options traders based upon: (i) An equal distribution, as described in the first example below; (ii) filling the smallest size(s) first, as described in the second example below; (iii) a combination based on filling the smallest size first and equal distribution, as described in the third example below; or (iv) prorated based on the registered options traders' generally known sizes and the percentage those sizes represent of their aggregate disseminated size, as described in the fourth example below. The number of contracts in the incoming order would determine which of the methods would be used in the allocation.

Assume the following information for each of the following four examples: The disseminated bid for a particular option series has an aggregate size of 1,000 contracts. The specialist is bidding for 650 contracts, and four registered options traders' generally known sizes are as follows: Trader A—200 contracts; Trader B—100 contracts; Trader C—30 contracts; and Trader D—20 contracts. There are no customer orders participating in the bid.

First example. An off-floor order to sell 100 contracts is submitted for execution at the disseminated bid. The specialist would allocate the executed contracts as follows: The specialist would receive 40 contracts (or 40%), and would allocate the remaining executed contracts equally to each of the four traders 15 contracts (or 25% of the remaining 60 contracts).

Second example. An off-floor order to sell 500 contracts is submitted for execution at the disseminated bid. The executed contracts would be allocated by the specialist as follows: (i) The specialist would receive 40% (200 contracts) of the 500 executed contracts

[8] *See also* Amex Rule 26.

[9] *See* Chicago Board Options Exchange Rule 8.80; Pacific Exchange Rule 6.82, and Philadelphia Stock Exchange Rule 1014(g).

pursuant to the participation rates set forth above; and (ii) the remaining 60% (300 contracts) would be divided among the registered options traders based upon their generally known sizes with an attempt to completely fill the smallest size(s) first, which in this example would be 20 contracts for Trader D, 30 contracts for Trader C, and 100 contracts for Trader B. A total of 150 contracts would be deducted, leaving 150 contracts to be allocated to Trader A.

Third example. An off-floor order to sell 200 contracts is submitted for execution at the disseminated bid. The executed contracts would be allocated by the specialist as follows: (i) The specialist would receive 40% (80 contracts) of the 200 executed contracts pursuant to the participation rates set forth above; and (ii) the remaining 60% (120 contracts) would be divided among the registered options traders based upon their generally known sizes with an attempt to completely fill the smallest size(s) first and an equal distribution of any remainder. Thus, the smallest sizes would be filled first—20 contracts for Trader D and 30 contracts for Trader C—and the remaining 110 contracts would be divided equally, with 55 contracts distributed each to Trader A and Trader B. Trader B would not receive 100 contracts (its generally known size) because such size would be more than an equal share of the remaining 110 contracts.

Fourth example. An off-floor order to sell 2,000 contracts is submitted for execution at the disseminated bid. Pursuant to the firm quote rule, the specialist and registered options traders, as the responsible broker or dealers, would be obligated to execute order(s) at the disseminated bid up to their disseminated size. The specialist and traders would be able to execute the first 1,000 contracts at the disseminated bid and execute the remaining contracts at a lower bid or bids. If, however, the specialist and registered options traders have determined, either individually or collectively (pursuant to Amex Rules 950(n), Commentary .02(b) and 958(h)(ii)), to execute the entire order at their disseminated bid, the executed contracts will be allocated as follows: (i) the specialist would receive 650 executed contracts representing his portion of the aggregate quotation size, plus 40% of the remaining 1,000 executed contracts pursuant to the participation rates set forth above for a total of 1,050 executed contracts; and (ii) the remaining 950 contracts would be divided among the registered options traders proportionally based upon their generally known sizes, the aggregate of which, in this example is 350 contracts: Trader A would receive an allocation of approximately 542 contracts (200/350=57% of the 950); Trader B would receive an allocation of approximately 275 contracts (100/350=29% of the 950 contracts); Trader C would receive an allocation of approximately 81 contracts (30/350=8.5% of the 950 contracts); and Trader D would receive an allocation of approximately 52 contracts (20/350=5.5% of the 950 contracts).[10]

In addition, the proposed rule text sets forth a chart that illustrates how various numbers of executed contracts would be allocated to registered options traders after the specialist has allocated portions to the customer and to the specialist. In each example, the chart assumes the aggregate stated size is 100 contracts:

NUMBER OF EXECUTED CONTRACTS TO BE ALLOCATED

Each participant's stated size	200	90	70	50
50	100	40	25	17
30	60	30	25	17
20	40	20	20	16

The first column illustrates the situation when the number of executed contracts exceeded the registered options traders' aggregate stated size and each registered options trader had determined either individually or collectively to participate for a larger size. The rest of the columns illustrate situations when the number of executed contracts was less than the registered options traders' aggregate stated size: The second column illustrates the situation when two of the three registered options traders' smaller sizes would be filled first and the third registered options trader would be allocated the remainder; the third column illustrates the situation when only one registered options trader's smallest size would be filled and the remaining executed contracts would be allocated equally between the two remaining registered options traders; and the fourth column illustrates the situation when all executed contracts would be allocated equally among the participating registered options traders.

The Exchange notes that the Commission staff has also asked whether a specialist or registered options trader can decline an allocation of executed contracts. As noted above, the firm quote rule requires specialists and registered options traders to be "firm" up to their disseminated size unless one of the exceptions set forth in the rule applies. If a specialist or registered options trader declined an allocation or "backed away" from his disseminated size in whole or in part, he would be in violation of the firm quote rule, investigated, and sanctioned accordingly. If the other participants to the disseminated quote size determined to increase the size of their participation to cover for the declining specialist or registered options trader, the executed contracts would be allocated based upon the principles discussed above, that is, the specialist's participation would be based upon one less registered options trader participating and the allocation among the registered options traders would be increased proportionately. Moreover, if the size of the incoming order was greater than the disseminated size and one or more registered options traders were not willing to participate in a size larger than their disseminated size, then the additional executed contracts would be allocated to the remaining participants based upon their participation rights as set forth in proposed Rule 950(d), Commentary .06 and the principles set forth in proposed Rule 950(n),

[10] The Commission notes that the allocation to each trader, calculated above as a percentage of 950 contracts, is essentially equivalent to the number of contracts each trader would receive by allocating the contracts as follows: First, each trader would receive his or her portion of the first 1000 contracts, based on the size each trader was quoting. In addition to these contracts, each trader would receive a percentage of the 600 contracts that would remain out of the second 1000 contracts after the specialist's percentage of 40% was allocated. The percentage each trader would receive of those 600 contracts would be based on the percentage that that trader's quote had represented out of the 350 contracts that the traders were quoting in the aggregate originally.

Commentary .03 which sets forth the participation percentages allocated to the specialist and registered options traders based upon the number of registered options traders participating on the trade.

In addition, the Exchange proposes to codify in Rule 933(d) its procedures regarding the allocation of Auto-Ex executed options trades [11], which are automatically allocated on a rotating basis to the specialist and to each trader that has signed on to Auto-Ex [12]. Auto-Ex trades of ten contracts or fewer would be allocated to each Auto-Ex participant as set forth below.

If an Auto-Ex trade is greater than ten contracts, the Auto-Ex system divides the execution into lots or ten or fewer contracts and allocates a lot to each Auto-Ex participant [13]. Each lot is considered a separate trade for purposes of allocating trades within Auto-Ex. The rotation is designed to provide that the allocation of Auto-Ex trades between the specialist and traders signed on to Auto-Ex in a given option class is as follows:

Number of trades signed on to auto-ex	Approximate number of trades allocated to the specialist throughout the day (percent)	Approximate number of traders allocated to the traders signed on to auto-ex throughout the day (as a group)
1	60	40
2–4	40	60
5–7	30	70
8–15	25	75
16 or more	20	80

2. Statutory Basis

The Exchange believes that the proposed rule change, as amended, is consistent with Section 6(b) of the Act [14] in general and furthers the objectives of Section 6(b)(5) of the Act [15] in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change, as amended, will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change or the amendments.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the principal offices of the Amex. All submissions should refer to File No. SR–Amex–00–30 and should be submitted by February 21, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[16]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–2292 Filed 1–30–03; 8:45 am]

BILLING CODE 8010–01–P

[11] Auto-Ex automatically executes public customer market and marketable limit orders of a minimum of 10 and a maximum of 500 option contracts or less. Both the specialist and registered options traders are contra-parties to the trades executed on the Auto-Ex system.

[12] At the start of each trading day, the order in which trades are allocated to the specialist and traders signed on to Auto-Ex is randomly determined.

[13] For example, an option class that allows up to 50 contracts to be executed through Auto-Ex would have a trade of 25 contracts divided into lots of 10, 10 and 5.

[14] 15 U.S.C. 78f(b).

[15] 15 U.S.C. 78f(b)(5).

[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47243; File No. SR–ISE–2003–01]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by International Securities Exchange, Inc., Relating to Fee Changes

January 24, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and rule 19b–4 thereunder,[2] notice is hereby given that on January 9, 2003, the International Securities Exchange, Inc. ("Exchange" or "ISE") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in items I, II, and III below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to establish a $.10 surcharge for non-public customer transactions [3] in options on Select Sector SPDR Funds.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in item IV below. The Exchange has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Telephone conversation between Joseph W. Ferraro, Assistant General Counsel, ISE, and Jennifer Colihan, Special Counsel, Division of Market Regulation ("Division"), Commission, January 16, 2003.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange has entered into a license agreement to use various indexes and trademarks of Standard & Poor's, a division of The McGraw-Hill Companies, Inc. ("S&P"), in connection with the listing and trading of options on certain Select Sector SPDR Funds. The purpose of this proposed rule change is to adopt a fee for trading in three of these options that the Exchange has listed.[4] The ISE believes that charging the participants that trade in options on these instruments is the most equitable means of recovering the costs of the license. However, because competitive pressures in the industry have resulted in the waiver of all transaction fees for customers, we propose to exclude Public Customer Orders (as defined in Exchange Rule 100) from this additional fee. This additional fee will only be charged with respect to non-Public Customer Orders.

For example, if broker A has a Public Customer Order that broker A gives to broker B (an ISE electronic access member) to execute on the ISE, broker B will not be charged the proposed $.10 fee. On the other hand, if broker A gives broker B (an ISE electronic access member) an order for the account of broker A (or another broker-dealer), broker B will be charged the $.10 fee.[5]

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under section 6(b)(4) of the Act that an exchange have an equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities.[6]

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

[4] The proposed fee will apply to options on the Financial Select Sector SPDR Fund ("XLF"), Technology Select Sector SPDR Fund ("XLK") and Utilities Select Sector SPDR Fund ("XLU"). Telephone conversation between Joseph W. Ferraro, Assistant General Counsel, ISE, and Jennifer Colihan, Special Counsel, Division, Commission, January 16, 2003.

[5] Telephone conversation between Joseph W. Ferraro, Assistant General Counsel, ISE, and Jennifer Colihan, Special Counsel, Division, Commission, January 16, 2003.

[6] 15 U.S.C. 78f(b)(4).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change establishes or changes a due, fee, or other charge and, therefore, has become effective immediately pursuant to section 19(b)(3)(A)(ii) of the Act[7] and rule 19b–4(f)(2) thereunder.[8] At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by February 21, 2003.

[7] 15 U.S.C. 78s(b)(3)(A)(ii).

[8] 17 CFR 19b–4(f)(2).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–2258 Filed 1–30–03; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47206; File No. SR–NSCC–2002–10]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing of a Proposed Rule Change Relating to the Modification of Fixed Income Transaction System in Preparation for the Implementation of Real Time Trade Processing

January 16, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934,[1] notice is hereby given that on November 5, 2002, the National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change (File No. SR–NSCC–2002–10) as described in items I, II, and III below, which items have been prepared primarily by NSCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NSCC proposes to modify its Trade Comparison Service rules to modify its Fixed Income Transaction System ("FITS") in order to begin the move to real time trade matching processing ("RTTM") for fixed income securities that are eligible for processing by NSCC.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NSCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in item IV below. NSCC has prepared summaries set forth in sections A, B,

[9] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

and C below of the most significant aspects of such statements.[2]

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

RTTM[3] was implemented by the Government Securities Clearing Corporation ("GSCC"), an NSCC affiliate, in the fourth quarter of 2000 for the processing of government securities. It was designed with a vision to also use the platform for other fixed income securities. Once RTTM was deployed for government securities, GSCC and MBS Clearing Corporation ("MBSCC") worked together to adapt RTTM to support the requirements of mortgage-backed securities and was implemented by MBSCC on September 27, 2002. The next logical extension of RTTM is its further adaptation for fixed income securities that are eligible for processing by NSCC. NSCC currently plans to implement RTTM for corporate bonds, municipal bonds, and Unitary Investment Trusts ("UIT") in the fourth quarter of 2003. RTTM will eventually replace NSCC's current FITS.

One of NSCC's main objectives will be to ensure an orderly transition to RTTM. In order to prepare participants for the new RTTM functionality, NSCC proposes that certain modifications be made to FITS during March 2003. These modifications will enable participants to become familiar with RTTM-type processing. In addition, some lesser-utilized FITS functionality that will not be incorporated into RTTM will be eliminated from FITS. The proposed modifications have been endorsed by the RTTM Working Group, which consists of representatives of participants who maintain key positions in The Bond Market Association, the Securities Industry Association, and the Regional Municipal Operations Association.

The following is a summary of the proposed modifications to FITS:

- FITS will automatically compare a trade even if the counterparties submit data on the trade in different pieces, a process known as "trade summarization."[4]
- Except for trades where the settlement date is the same business day as or the business day after the trade date,[5] FITS will be modified to accept (instead of reject) trade submissions with a contractual settlement date of the day of input or of prior dates and will automatically assign a settlement date of the next business day to the trades.
- Corporate bond trades in quantities of other than multiples of a thousand (round-lots) must be divided into separate data submissions of the round lot quantity and the odd-lot quantity (multiples of less than one thousand).

The following is a summary of functions that NSCC proposes to eliminate from FITS:

- Demand As Of processing.[6]
- One Sided Deletes for compared, secondary market municipal security trades. In order to delete these trades, both counterparties will be required to submit Withholds that match in all respects.[7]
- Trade Submit and Carry Forward Totals will not be reported on the Supplemental and Added Trade Contracts.
- Regular Way Extended Settlement Carry Forward Totals.[8]

Along with these proposed changes, NSCC proposes to change the current cutoff time for trade submission and will require the submission of certain additional trade data.[9] Finally, NSCC wishes to make a technical correction to the use of the term "business day" in its rules. During the preparation of this filing, NSCC realized that the use of upper and lower case letters for the term is inconsistent in the rules. In order to carry out the intention of the drafters of the rules, NSCC proposes that each use of the term throughout its rules be "business day" (lower case) as specified in the definition of that term in NSCC rule 1–1.

NSCC believes that the proposed rule change is consistent with the provisions of the Act and the rules and regulations thereunder because it would prepare its participants for the new RTTM functionality that will enable NSCC to process trades in the efficient manner that is currently utilized by GSCC and MBSCC in connection with other fixed-income trades.

B. Self-Regulatory Organization's Statement on Burden on Competition

NSCC does not believe that the proposed rule change will have an impact on or impose a burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments relating to the proposed rule change have been solicited or received. NSCC will notify the Commission of any written comments it receives.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or such longer period (i) as the Commission may delegate up to ninety days of such date if it finds such longer period to be appropriate and published its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) By order approve such proposed rule change or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0069. Comments may also be submitted electronically at the following e-mail address: *rule-comments@sec.gov*. All comment letters should refer to File No. SR–NSCC–2002–10. This file number should be included on the subject line if e-mail is used. To help us process and review comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods. Copies of the submission, all subsequent amendments, all written statements

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[2] The Commission has modified the text of the summaries prepared by NSCC.

[3] RTTM provides firms with the ability to compare trades shortly after execution. It will facilitate Straight Through Processing by utilizing a single pipeline with one communications link for all fixed income products. Standardized message formats are utilized for all inbound and outbound interactive transmissions.

[4] For example, Firm A submits one trade for $30 million and Firm B "breaks down" the trade into three $10 million pieces. Alternatively, Firm A and Firm B may execute five separate trades each worth $10 million. Firm A submits each trade separately while Firm B "bunches" the five trades into one $50 million piece. In both of these examples, the trades will be compared.

[5] NSCC will continue to reject trades where the settlement date is the same business day as or the business day after the trade date regardless of the date of submission.

[6] The As Of capability will still be available to compare trades that do not initially compare in FITS. The As Of capability requires the submission by each counterparty of data that matches in all respects whereas the Demand As Of capability permitted a trade to be "force compared" on the submitter's terms even if the counterparty did not respond.

[7] One Sided Deletes functionality will be retained for syndicate takedown transactions and for uncompared municipal bond, corporate bond, and UIT trades.

[8] Carry Forward Totals will be retained on New Issue Contracts.

[9] The details for these technical changes can be found in Exhibit C to NSCC's proposed rule change, which is an important notice that was distributed to NSCC's participants on October 2, 2002.

with respect to the rule filing that are filed with the Commission, and all written communications relating to the rule filing between the Commission and any person, other than those that may be withheld from the public in accordance with provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room in Washington, DC. Copies of such filing will also be available for inspection and copying at NSCC's principal office. All submissions should refer to File No. SR–NSCC–2002–10 and should be submitted by February 21, 2003.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–2256 Filed 1–30–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47245; File No. SR–Phlx–2002–88]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to the Equity Transaction Charge

January 24, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act" or "Exchange Act"),[1] and rule 19b–4 thereunder,[2] notice is hereby given that on December 31, 2002, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in items I, II, and III below, which items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its schedule of dues, fees and charges to clarify the definition of a trade that utilizes the Phlx's Automated Communication and Execution System ("PACE") as it relates to the imposition of the Exchange's equity transaction value charge.[3] Currently, the Exchange's equity transaction value charge is assessed based on total shares per transaction,[4] with the exception of specialist trades and PACE trades.[5] The Exchange proposes to define with greater specificity a PACE trade in order to clarify the imposition of the equity transaction value charge, as it relates to PACE trades only.

First, the Exchange proposes to clarify that the equity transaction value charge applies in situations where an order, after being delivered to the Exchange by the PACE system, is executed by way of an outbound Intermarket Trading System ("ITS") commitment,[6] when such outbound ITS commitment reflects the PACE order's clearing information (and not the specialist's clearing information).[7] In this situation, the trade is not considered to be a PACE trade for purposes of the equity transaction value charge and thus, becomes subject to this charge.

Secondly, the Exchange proposes to clarify that the equity transaction value charge does not apply where a PACE trade was executed against an inbound ITS commitment. The execution (on the Phlx) against an inbound ITS commitment is considered a PACE trade and therefore, the equity transaction value charge does not apply to these transactions.

Thirdly, the Exchange proposes to rebate to any members who were charged an equity transaction value charge for PACE trades that were executed against an inbound ITS commitment for the months of September, October, November and December 2002.

Lastly, the Exchange proposes to rename the title of the "equity transaction value charge" to the "equity transaction charge," (hereinafter referred to as "equity transaction charge") because it is now a share-based charge and not a value-based charge.

The text of the proposed rule change is available at the principal offices of the Phlx and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and the basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to clarify the Exchange's Summary of Equity Charges as it relates to the Exchange's equity transaction charge. The Exchange believes that not charging members the equity transaction charge for PACE trades that are executed against an inbound ITS commitment should encourage greater use of the PACE system, which in turn should promote a more active and liquid equities market. Also, this clarification should help to avoid any member confusion.

The Exchange believes that, for the purposes of this fee, a PACE trade executed by way of an outbound ITS commitment, when such ITS commitment reflects the PACE order's clearing information, does not receive a PACE execution, and therefore the equity transaction charge should apply.[8]

Previously, the Exchange's billing system charged an equity transaction value charge for PACE trades executed against an inbound ITS commitment due to the difficulties in identifying executions of orders in this manner. Due to advances in billing, the Exchange can now more readily identify PACE trades that are executed against inbound ITS commitments. The Exchange believes that by not charging an equity transaction value charge and by providing a rebate, as described above, for the months of September through

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[10] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] PACE is the Exchange's order routing, delivery, execution, and reporting system for its equity-trading floor. *See* Exchange rules 229, Philadelphia Stock Exchange Automated Communication and Execution System, and 229A, Operation of PACE System When Competing Specialists Are Trading.

[4] *See* Securities Exchange Act Release No. 46874 (November 21, 2002), 67 FR 71226 (November 29, 2002).

[5] *See* Securities Exchange Act Release No. 44381 (June 1, 2001), 66 FR 31264 (June 11, 2001).

[6] The ITS means the application of the System that permits intra-day trading in Eligible Listed Securities between Participant markets as set forth in the ITS Plan. *See* Exchange rule 2001, Intermarket Trading System.

[7] If the outbound ITS commitment reflects the specialist's clearing information, the equity transaction value charge does not apply because it does not apply to specialist trades.

[8] Charging an equity transaction charge for PACE orders sent over ITS with the PACE order's clearing information attached is consistent with the Exchange's Outbound ITS Fee. See Securities Exchange Act Release No. 45388 (February 4, 2002), 67 FR 6310 (February 11, 2002).

December 2002 should encourage future use of the PACE system and will reimburse members who were charged the equity transaction value charge when the application of this charge may not have been clear, as it relates to PACE trades and inbound ITS commitments. Also, the Exchange believes that going forward, for trades settling on or after January 2, 2003, there should be no charge for these PACE trades due to the fact that the method of execution of these trades is outside of the customer's control.

The purpose of renaming the equity transaction charge is to make the title of the charge consistent with recent changes to this fee.[9]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act,[10] in general, and furthers the objectives of section 6(b)(4) of the Act,[11] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among its members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A)(ii) of the Act[12] and rule 19b–4(f)(2) thereunder,[13] as establishing or changing a due, fee, or other charge. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate, in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[14]

[9] See supra note 4.

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(4).

[12] 15 U.S.C. 78s(b)(3)(A)(ii).

[13] 17 CFR 240.19b–4(f)(2).

[14] *See* section 19(b)(3)(C) of the Act, 15 U.S.C. 78s(b)(3)(C).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR–Phlx–2002–88 and should be submitted by February 21, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–2257 Filed 1–30–03; 8:45 am]

BILLING CODE 8010–01–P

[15] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINSTRATION

Public Federal Regulatory Enforcement Fairness Hearing; Small Business Administration, Region IX Regulatory Fairness Board

The Small Business Administration Region IX Regulatory Fairness Board and the SBA Office of the National Ombudsman will hold a Public Hearing on Thursday, February 6, 2003 at 1:30 p.m. (Local Time) at the Cameron Center, 95 Mahalani Street, Wailuku, Maui, HI 96793, to receive comments and testimony from small business owners, small government entities, and small non-profit organizations concerning regulatory enforcement and compliance actions taken by federal agencies.

Anyone wishing to attend or to make a presentation must contact Ann Murata in writing or by fax, in order to be put on the agenda. Ann Murata, U.S. Small Business Administration, Hawaii District Office, 300 Ala Moana Boulevard, Room 2–235, Honolulu, HI 96850, phone (808) 541–2992, fax (202) 481–0267, e-mail *ann.murata@sba.gov.*

For more information, see our Web site at *http://www.sba.gov/ombudsman.*

Dated: January 24, 2003.

C. Edward Rowe III,

Counsel, Office of the National Ombudsman.

[FR Doc. 03–2271 Filed 1–30–03; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINSTRATION

Public Federal Regulatory Enforcement Fairness Hearing; Small Business Administration, Region IX Regulatory Fairness Board

The Small Business Administration Region IX Regulatory Fairness Board and the SBA Office of the National Ombudsman will hold a Public Hearing on Tuesday, February 4, 2003 at 9 a.m. (Local Time) at the Prince Jonah Kuhio Kalanianaole (PJKK) Federal Building, 300 Ala Moana Boulevard, Room 5–208, Honolulu, HI 96850–4981, to receive comments and testimony from small business owners, small government entities, and small non-profit organizations concerning regulatory enforcement and compliance actions taken by federal agencies.

Anyone wishing to attend or to make a presentation must contact Ann Murata in writing or by fax, in order to be put on the agenda. Ann Murata, U.S. Small Business Administration, Hawaii District Office, 300 Ala Moana Boulevard, Room 2–235, Honolulu, HI 96850, phone (808) 541–2992, fax (202) 481–0267, e-mail *ann.murata@sba.gov.*

For more information, see our Web site at *http://www.sba.gov/ombudsman.*

Dated: January 24, 2003.

C. Edward Rowe III,

Counsel, Office of the National Ombudsman.

[FR Doc. 03–2272 Filed 1–30–03; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 4257]

30-Day Notice of Proposed Information Collection: Form DS–158, Contact Information and Work History for Nonimmigrant Visa Applicant; OMB Control Number 1405–0144

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: The Department of State has submitted the following information collection request to the Office of Management and Budget (OMB) for

approval in accordance with the Paperwork Reduction Act of 1995. Comments should be submitted to OMB within 30 days of the publication of this notice.

The following summarizes the information collection proposal submitted to OMB:

Type of Request: Extension of currently approved collection.

Originating Office: Bureau of Consular Affairs, Department of State (CA/VO).

Title of Information Collection: Contact Information And Work History For Nonimmigrant Visa Applicant.

Frequency: Once per respondent.

Form Number: DS–158.

Respondents: All nonimmigrant visa applicants seeking to study in the United States and other nonimmigrant visa applicants as determined to be appropriate by the Department of State.

Estimated Number of Respondents: 2,500,000.

Average Hours Per Response: 1 hour.

Total Estimated Burden: 2,500,000 hours.

Public comments are being solicited to permit the agency to:

• Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility.

• Evaluate the accuracy of the agency's estimate of the burden of the collection, including the validity of the methodology and assumptions used.

• Enhance the quality, utility, and clarity of the information to be collected.

• Minimize the reporting burden on those who are to respond, including through the use of automated collection techniques or other forms of technology.

FOR FURTHER INFORMATION CONTACT: Copies of the proposed information collection and supporting documents may be obtained from Brendan Mullarkey of the Office of Visa Services at 202–663–1163, 2401 E St., NW., U.S. Department of State, Washington, DC 20520. Public comments and questions should be directed to the State Department Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20530, who may be reached on 202–395–3897.

Dated: January 18, 2003.

Janice L. Jacobs,

Deputy Assistant Secretary for Visa Services, Bureau of Consular Affairs, Department of State.

[FR Doc. 03–2313 Filed 1–30–03; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Ex Parte No. 290 (Sub No. 4)]

Railroad Cost Recovery Procedures—Productivity Adjustment

AGENCY: Surface Transportation Board.

ACTION: Proposed adoption of a Railroad Cost Recovery Procedures productivity adjustment.

SUMMARY: The Surface Transportation Board proposes to adopt 1.019 (1.9%) as the measure of average change in railroad productivity for the 1997–2001 (5-year) period. The current value of 4.2% was developed for the 1996 to 2000 period.

DATES: Comments are due by February 17, 2003.

EFFECTIVE DATE: The proposed productivity adjustment is effective 30 days after the date of service.

ADDRESSES: Send comments (an original and 10 copies) referring to STB Ex Parte No. 290 (Sub-No. 4) to: Office of the Secretary, Case Control Branch, 1925 K Street, NW., Washington, DC 20423–0001. Parties should submit all pleading and attachments on a 3.5-inch diskette in WordPerfect 6.0 or 6.1 compatible format.

FOR FURTHER INFORMATION CONTACT: H. Jeff Warren, (202) 565–1533. Federal Information Relay Service (FIRS) for the hearing impaired: 1–800–877–8339.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Board's decision, which is available on our Web site *http://www.stb.dot.gov.* To purchase a copy of the full decision, write to, call, or pick up in person from the Board's contractor, Dā-To-Dā Legal, Suite 405, 1925 K Street, NW., Washington, DC 20006, phone (202) 293–7776. [Assistance for the hearing impaired is available through FIRS: 1–800–877–8339.]

This action will not significantly affect either the quality of the human environment or energy conservation.

Pursuant to 5 U.S.C. 605(b), we conclude that our action will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

Decided: January 24, 2003.

By the Board, Chairman Nober, Vice Chairman Burkes, and Commissioner Morgan.

Vernon A. Williams,

Secretary.

[FR Doc. 03–2194 Filed 1–30–03; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Transportation Security Administration

Operation Safe Commerce Cooperative Agreement Program; Request for Application and Establishing the Closing Date for Receipt of Applications Under the Operation Safe Commerce Cooperative Agreement Program

AGENCY: Transportation Security Administration, Department of Transportation.

ACTION: Notice inviting applications for the Operation Safe Commerce Cooperative Agreement Program

SUMMARY: The Transportation Security Administration working in conjunction with an interagency Executive Steering Committee for Operation Safe Commerce (OSC) requests applications for the OSC Cooperative Agreement Program to fund business drive initiatives to enhance security for the movement of cargo through the supply chain. The goal of OSC is to explore business processes and technology prototypes that protect commercial shipments from threat of terrorist attack, illegal immigration, and contraband while minimizing the economic impact upon the transportation system. The Ports of Los Angeles, Long Beach, Seattle, Tacoma, and the Port Authority of New York and New Jersey are invited to submit proposals for funding consideration under this initiative. Persons and entities representing components of the supply chain may seek funding through these ports. The ports are encouraged to maximize their eligibility for funding by including representatives from all components of the supply chain, including major and minor load centers and feeder locations, their overseas customers and port partners, and the shipping lines serving these locations.

Authority for this program is contained in the fiscal year 2002 Supplemental Appropriations Act for Further Recovery From and Response to Terrorist Attacks on the United States, Pub. L. 107–206, 116 Stat. 820.

DATES: The program announcement and application forms for the Operation Safe Commerce Cooperative Agreement Program are expected to be available on or about January 31, 2003. Applications must be received on or before 4 p.m. e.s.t., Marcy 20, 2003.

ADDRESSES: Program Announcement #02MLPA0001 for the Operation Safe Commerce Cooperative Agreement Program will be available through the

TSA Internet at *http://www.tsa.dot.gov* under Business Opportunities.

FOR FURTHER INFORMATION CONTACT: For OSC technical information contact: Walter (Bud) Hunt, Office of Maritime and Land Security, Transportation Security Administration, 400 Seventh Street, SW., TSA–8, Washington, DC 20590; email: *OSC@tsa.dot.gov*, telephone 571–227–1200. For OSC Cooperative Agreement Program contact: Ronald Ouellet, Office of Maritime and Land Security, Transportation Security Administration, 400 Seventh Street, SW., TSA–8, Washington, DC 20590; email: *OSC@tsa.dot.gov*,; telephone 571–227–1200.

SUPPLEMENTARY INFORMATION: 64 FR 70110, November 20, 2002, provided background information and requested comments on the proposed project criteria for Operation Safe Commerce.

Total anticipated funding available for Operation Safe Commerce Cooperative Agreement Program is $26,040,000. Awards under this program are subject to availability of funds.

In addition, the OSC Executive Steering Committee and the Transportation Security Administration announces a non-funded federal program under OSC. This non-funded OSC Associates program seeks to capture lessons learned from private and public efforts to secure the supply chain. This program will be open to organizations that accept certain minimal requirements to be set forth by the ESC. In return, the ESC and TSA will review their efforts and, if appropriate, will include them in the final report on OSC.

Dated: January 23, 2003.

J.M. Loy, Adm,

Under Secretary of Transportation for Security.

[FR Doc. 03–1918 Filed 1–30–03; 8:45 am]

BILLING CODE 4110–62–M

DEPARTMENT OF THE TREASURY

Customs Service

Announcement of a National Customs Automation Program Test To Eliminate the Submission of the Paper Master Air Waybill Document

AGENCY: Customs Service, Treasury.

ACTION: General notice.

SUMMARY: This notice announces Customs plan to conduct a test under the National Customs Automation Program (NCAP) under which a participating air carrier must electronically transmit, through the Air Automated Manifest System, master air waybill data prior to arrival of the aircraft in the United States and will not have to submit a copy of the master air waybill as an attachment to the air cargo manifest upon arrival in the United States. Under the test, the participant still will be required to submit all other documentation as required and be capable of retrieving and printing a copy of the information contained in the master air waybill upon demand by Customs.

DATES: The test will commence no earlier than March 3, 2003, and will run for approximately one year. Comments concerning this notice and all aspects of the announced test must be received on or before February 20, 2003. Applications will be accepted throughout the duration of the test.

ADDRESSES: Written comments may be submitted to the U.S. Customs Service, Office of Field Operations, Manifest and Conveyance Branch, 1300 Pennsylvania Avenue, NW., Room 5.2B, Washington, DC 20229. Interested parties may apply to participate in the test by submitting a written request to the U. S. Customs Service, Office of Field Operations, Trade Compliance and Facilitation, 1300 Pennsylvania Avenue, NW., Room 5.2B, Washington, DC 20229, ATTN: Paperless Master AWB Test.

FOR FURTHER INFORMATION CONTACT: David King, Manifest and Conveyance Branch, Office of Field Operations (202–927–1133).

SUPPLEMENTARY INFORMATION:

Background

Title VI of the North American Free Trade Agreement Implementation Act (the Act), Pub. L. 103–182, 107 Stat. 2057, 2170 (December 8, 1993), contains provisions pertaining to Customs Modernization (107 Stat. 2170). Subtitle B of title VI establishes the National Customs Automation Program (NCAP), an automated and electronic system for the processing of commercial importations. Section 631 of the Act creates sections 411 through 414 of the Tariff Act of 1930 (19 U.S.C. 1411 through 1414), as amended, which define and list the existing and planned components of the NCAP (19 U.S.C. 1411), establish program goals (19 U.S.C. 1412), provide for the implementation and evaluation of the program (19 U.S.C. 1413), and provide for the remote location filing of entries (19 U.S.C. 1414).

Requirements for conducting an approved test program or procedure designed to evaluate planned components of the NCAP are set forth in § 101.9 of the Customs Regulations (19 CFR 101.9). These regulations, in part, enable the Commissioner of Customs to impose requirements different from those specified in the Customs Regulations, provided that the different requirements do not affect the collection of revenue, the public health and safety, or law enforcement. This test is established pursuant to that regulatory provision.

I. Description of Test Program

Air Cargo Manifest

Section 122.42(c) of the Customs Regulations (19 CFR 122.42(c)) requires that the commander of an aircraft arriving in the United States from a foreign area, or his agent, must deliver upon arrival any required forms to the Customs officer at the place of entry. (Among these forms are the general declaration (§ 122.43), crew baggage declaration (§ 122.44), crew list (§ 122.45), stores list (§ 122.47), air cargo manifest (§ 122.48), and the passenger and crew manifests (§ 122.49a).) Section 122.48 of the Customs Regulations (19 CFR 122.48) provides that an air cargo manifest is required for all cargo on board a flight arriving in the United States from a foreign area, except for cargo arriving from and departing for a foreign country on the same through flight. Section 122.48(c), Customs Regulations (19 CFR 122.48(c)), provides that the air cargo manifest must be on Customs Form (CF) 7509, that it must contain all required information, and that a more complete description of the cargo shipped under air waybills may be provided by attaching to the cargo manifest a copy of each air waybill and, if a consolidated shipment, copies of the house air waybills.

Electronic Submission of the Air Waybill Information

In an attempt to facilitate cargo processing and release, Customs has accepted, on a voluntary basis, the electronic transmission of air waybill information from qualified air carriers, through the Air Automated Manifest System (AAMS), either before or upon arrival of the aircraft in the United States. However, air carriers submitting air waybill information in this way are still required to submit the paper documents, even though the data is transmitted electronically. Now, to further facilitate the control, processing, and release of air cargo, Customs, via this test program, will relieve AAMS air carriers participating in the test from the requirement of submitting a copy of the master air waybill as an attachment to

the air cargo manifest when they electronically transmit master air waybill information to Customs prior to arrival of the aircraft in the United States. Test participants still must submit all other documentation as required under the regulations and be capable of retrieving and printing a copy of the master air waybill information upon demand by Customs.

It is anticipated that the test will run for one year. In the event, however, that Customs determines that a longer test program period is warranted, Customs will announce an extension of the test by publication of a notice in the **Federal Register**.

It is noted that Customs previously announced a NCAP test program regarding submission to Customs of electronic air cargo manifest information through publication of a notice in the **Federal Register** (65 FR 58840) on October 2, 2000 (Announcement of a National Customs Automated Program Test Regarding Submission to Customs of Electronic Air Cargo Manifest Information). This October 2000 test is distinct from the test announced today in this document and remains in effect for any qualified air carriers who may wish to submit electronic air cargo manifest information to Customs prior to arrival of the aircraft in the United States without having to submit upon arrival a CF 7509 (Air Cargo Manifest). (*See* the cited notice for eligibility and application instructions.) Submission of the CF 7509 is required under the test announced in this document.

Regulatory Provision Suspended

As noted above, § 122.48(c) provides that a more complete description of the cargo shipped under air waybills may be provided by attaching to the cargo manifest a copy of each air waybill and, if a consolidated shipment, copies of the house air waybills. Thus, when an air carrier opts to provide cargo information in this manner, copies of the master air waybill and any house air waybills must be submitted with the air cargo manifest. Under the test, this requirement to submit a copy of the master air waybill in paper form will be suspended when the test participant electronically transmits to Customs the air waybill information prior to the aircraft's arrival in the United States. Participants will not be required to submit copies of these air waybills with the cargo manifest but must be capable of providing Customs required air waybill information, electronically or otherwise, upon demand by Customs. Participation in this test program does not relieve carriers from compliance with applicable requirements of other government agencies.

II. Test Program Eligibility Criteria

To be eligible to participate in the test program, an air carrier must meet the following eligibility criteria:

1. A carrier must be a qualified AAMS carrier in the port where it will operate under the test. A qualified AAMS carrier has been tested and certified by Customs to possess the technical capability to transmit and receive AAMS data. Technical requirements for AAMS carriers are specified in the Customs publication entitled, "Customs Automated Manifest Interface Requirements —Air (CAMIR—Air)." Any carrier not currently AAMS qualified may submit a written request to become an AAMS participant to the Customs Client Representative Branch closest to the applicant's operational location. A list of Customs Client Representatives may be obtained from the United States Customs Service, Office of Information and Technology, Client Representatives Branch, 7501 Boston Blvd., Springfield, VA 22153 (703/921–7500).

2. A carrier must be a participant in the Customs-Trade Partnership Against Terrorism (C–TPAT) program. C–TPAT is a joint Customs-business initiative to build cooperative relationships that strengthen overall supply chain and border security. Application instructions for air carriers wishing to participate in the C–TPAT program may be found on the Internet at *www.Customs.gov* or may be requested in writing from the United States Customs Service, Office of Field Operations, Industry Partnership Programs, 1300 Pennsylvania Avenue, NW., Room 5.4C, Washington, DC 20229, ATTN: C–TPAT.

III. Test Program Application and Selection Process

Application Process

Any air carrier that satisfies the eligibility criteria may apply to participate in the test program by submitting a written request to the United States Customs Service, Office of Field Operations, Trade Compliance and Facilitation, 1300 Pennsylvania Avenue, NW., Room 5.2B, Washington, D.C. 20229, ATTN: Paperless Master AWB Test. Customs will accept applications from eligible air carriers throughout the duration of the test. The request must be signed by an authorized official, designate the Customs port where the participant will operate under the test, and designate a point of contact and telephone number within the applicant's organization.

Upon review, Customs will issue written notification regarding the approval or denial of the application. If denied, Customs will inform the applicant of the reasons for denial and the right to reapply after any deficiencies identified in the notice of denial have been corrected. Any air carrier that applies for permission to participate in the test program will be given due consideration by Customs and will be evaluated based on its ability to meet the requirements set forth in the notice.

Participation in this test program will not be considered confidential information, and the identity of participants will be made available to the public upon written request.

IV. Test Program Procedures

Test program procedures will be coordinated with all participating and affected parties. The following procedures apply to all participant air carriers and will be in effect for the duration of the test program:

1. The participant air carrier must transmit the master air waybill information to AAMS with all the necessary data elements as set forth in the CAMIR-Air publication prior to the arrival of the aircraft. Where the carrier transfers the freight to a deconsolidator that participates in the AAMS program, the deconsolidator must electronically transmit the house air waybill information. Where the carrier transfers the freight to a non-automated deconsolidator or releases the freight from its own facility, the carrier must supply through AAMS complete house air waybill details including piece count, weight, cargo description, shipper, and consignee information.

2. The participant must be able to print a paper copy of the master air waybill with the required data elements and submit it to Customs personnel upon demand by Customs.

3. If for any reason, the electronic data interchange system between Customs and the participant becomes inoperative or Customs is unable to receive electronic transmissions, the participant will print a copy of the master air waybill, attach it to the air cargo manifest, and submit it to Customs at the port of arrival.

V. Suspension/Termination From the Test Program and Administrative Review

Suspension/Termination Process

The failure of a participant to comply with the procedural requirements or to

maintain participation in the programs required for eligibility (AAMS and C–TPAT), or failure to adhere to all applicable laws and regulations, may result in the suspension or termination of the participant from the test program. Except in instances of willfulness on the part of the participant, or where public health, interest, or safety is at issue, the port director will issue a written notice of proposed suspension to the participant. The notice will inform the participant of the following:

1. The basis of the proposed action and all applicable terms and conditions regarding implementation of the proposed action and the administrative review process.

2. The right to seek administrative review of the action, pursuant to the terms set forth in the notice. A request for review must be received by Customs on or before the 10th calendar day from the date the notice of proposed suspension was issued.

3. That any action will be held in abeyance for a period of 10 calendar days from the date of the notice or, if the participant timely seeks administrative review of the matter pursuant to the terms set forth in the notice, pending conclusion of Customs review of the matter.

4. That failure to seek administrative review of the matter pursuant to the terms set forth in the notice will constitute acceptance of the terms and conditions set forth in the notice, preclude any further administrative review of the matter, and automatically commence the suspension at midnight of the 10th calendar day from the date of the notice.

Where there is willfulness on the part of the participant, or where public health, interest, or safety is concerned, suspension from the test program may go into effect immediately upon issuance of an electronic notice by the port director that sets forth the basis of the action and any related information. Within 5 calendar days from the date the electronic notice was issued, Customs will issue a written notice of immediate suspension to the participant. A notice of immediate action, whether electronic or in paper form, will provide the same kind of information as that contained in a notice of proposed suspension. An immediate suspension will remain in effect pending conclusion of any administrative review of the action by Customs.

Administrative Review

To seek administrative review of any suspension from the test program, the participant must submit documentation to the port director that issued the suspension notice within 10 calendar days from the date the notice of proposed suspension or an electronic notice of immediate suspension was issued. The documentation must establish, to the satisfaction of Customs, that the alleged deficiencies which led to the action did not occur or have been corrected.

The port director will review the documentation and issue a written final notice of decision to the participant within 30 days from the date the documentation was received by Customs, unless the time period is extended upon due notice. In the case of a participant seeking review of a proposed suspension, the final notice will either impose a suspension that is effective upon the date of the final notice or indicate that no suspension will be imposed. In the case of a participant seeking administrative review of an immediate suspension, the final notice will inform the participant that the suspension has been affirmed, modified, or revoked upon the date of the final notice.

If a suspension is imposed, the suspended participant may seek a second level of administrative review to appeal the final notice of suspension by submitting documentation to the Assistant Commissioner, Office of Field Operations, within 10 calendar days of the final notice. The Assistant Commissioner or its designee will issue to the suspended participant a written decision within 30 calendar days from the date the documentation was received, unless this time period is extended upon due notice. The decision will affirm, modify, or revoke the suspension and will set forth the basis for the determination, as well as any applicable terms and conditions.

VI. Test Evaluation Criteria

During the course of the test, Customs and the participants will evaluate the test, and the results of the evaluation will be published in the **Federal Register** and the Customs Bulletin as required by § 101.9(b) of the Customs Regulations (19 CFR 101.9(b)). The test will be evaluated through an analysis of questionnaires completed by affected participants and Customs personnel. Evaluation criteria for Customs and other government agencies include workload impact, policy and procedural accommodation, and trade compliance impact. Criteria for participants include cost benefits and operational efficiency.

Dated: January 28, 2003.

Jayson P. Ahern,

Assistant Commissioner, Office of Field Operations.

[FR Doc. 03–2280 Filed 1–30–03; 8:45 am]

BILLING CODE 4820–02–P

Corrections

Federal Register

Vol. 68, No. 21

Friday, January 31, 2003

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–823–808]

Ammendment to the Agreement Between the United States Department of Commerce and the Government of Ukraine Suspending the Antidumping Investigation on Cut-to-Length Carbon Steal Plate from Ukraine

Correction

In notice document 03–526 beginning on page 1438 in the issue of Friday, January 10, 2003, make the following corrections:

1. On page 1439, in the first column, in the sixth line from the bottom, "December 20, 2002" should read, "January 2, 2003".

2. On the same page, in the same column, after the signature section, please insert the following text:

Amendment to the Antidumping Suspension Agreement on Certain Cut-to-Length Carbon Steel Plate Between the United States Department of Commerce and the Government of Ukraine

The United States Department of Commerce (the Department) and the Government of Ukraine hereby amend section XII of the Agreement Suspending the Antidumping Investigation on Certain Cut-to-Length Carbon Steel Plate from Ukraine, signed October 24, 1997, by adding the following language immediately after the first sentence of section XII:

In order to provide for the continuation of exports of cut-to-length plate from Ukraine to the United States during and immediately following the five-year review by the Department and the International Trade Commission pursuant to section 751(c) of the Tariff Act, the export limits provided for in section III of this Agreement shall remain in force through November 1, 2003.

If, after said date, the underlying proceeding remains suspended, the Government of Ukraine and the Department will enter into consultations to agree upon export limits in order to permit future shipments under the Agreement. If, prior to said date, the underlying proceeding is terminated as a result of the sunset review or the administrative review, the Agreement, this Amendment and the export limits contained therein will be terminated. the United States Department of Commerce.

Dated: December 20, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration. For the Ministry of Economy and European Integration of Ukraine.

Dated: December 20, 2002.

Andriy I. Goncharuk,

State Secretary on Trade,Ministry of Economy and European Integration of Ukraine.

[FR Doc. C3–526 Filed 1–30–03; 8:45 am]

BILLING CODE 1505–01–D

FEDERAL ELECTION COMMISSION

11 CFR Part 104

[Notice 2002–26]

Bipartisan Campaign Reform Act of 2002 Reporting

Correction

In rule document 03–91 beginning on page 421 in the issue of Friday, January 3, 2003, make the following correction:

§104.20 [Corrected]

On page 419, in the third column, in §104.20 (a)(5), "11 CFR 100.29(a)(3)", should read "11 CFR 100.29 (b)(3)".

[FR Doc. C3–91 Filed 1–30–03; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF JUSTICE

[AAG/A Order No. 003–2003]

Privacy Act of 1974; System of Records

Correction

In notice document 03–1671 beginning on page 3894 in the issue of Monday, January 27, 2003, make the following correction:

On page 3894, in the third column, in the first three lines "[insert date 30 days after publication in the **Federal Register**]", should read "February 26, 2003".

[FR Doc. C3–1671 Filed 1–30–03; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF THE TREASURY

Office of the Comptroller o fthe Currency

12 CFR Part 19

[Docket No. 02–15]

RIN 1557–AB43

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

12 CFR Part 263

[Docket No. R–1139]

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 308

RIN 3064–AC57

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Part 513

[No. 2002–58]

RIN 1550–AB53

Removal, Suspension, and Debarment of Accountants From Performing Audit Services

Correction

In proposed rule document 03–98 beginning on page 1116 in the issue of Wednesday, January 8, 2003, make the following correction:

On page 1117, in the third column, above the footnotes, in the last line, after "effective;[11]", add "engages".

[FR Doc. C3–98 Filed 1–30–03; 8:45 am]

BILLING CODE 1505–01–D

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Federal Register

Friday
January 31, 2003

Part II

Reader Aids

Cumulative List of Public Laws
107th Congress, Second Session

CUMULATIVE LIST OF PUBLIC LAWS

This is the cumulative list of public laws for the 107th Congress, Second Session. Other cumulative lists (1993-2001) are available online at http://www.nara.gov/fedreg/plawcurr.html. Comments may be addressed to the Director, Office of the Federal Register, Washington, DC 20408 or send e-mail to info@nara.fedreg.gov.

The text of laws may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–2470). The text will also be made available on the Internet from GPO Access at http://www.acess.gpo.gov/nara/nara005.html. Some laws may not yet be available online or for purchase.

Public Law	Title	Approved	116 Stat.
107–137	To authorize the Secretary of the Interior to establish the Ronald Reagan Boyhood Home National Historic Site, and for other purposes.	Feb. 6, 2002	3
107–138	To require the valuation of nontribal interest ownership of subsurface rights within the boundaries of the Acoma Indian Reservation, and for other purposes.	Feb. 6, 2002	11
107–139	To amend the Higher Education Act of 1965 to establish fixed interest rates for student and parent borrowers, to extend current law with respect to special allowances for lenders, and for other purposes.	Feb. 8, 2002	8
107–140	To amend title 18 of the United States Code to correct a technical error in the codification of title 36 of the United States Code.	Feb. 8, 2002	12
107–141	Asian Elephant Conservation Reauthorization Act of 2002	Feb. 12, 2002	13
107–142	Pacific Northwest Feasibility Studies Act of 2002	Feb. 12, 2002	16
107–143	Recognizing the 91st birthday of Ronald Reagan	Feb. 14, 2002	17
107–144	To designate the facility of the United States Postal Service located at 811 South Main Street in Yerington, Nevada, as the "Joseph E. Dini, Jr. Post Office".	Feb. 14, 2002	18
107–145	To designate the facility of the United States Postal Service located at 39 Tremont Street, Paris Hill, Maine, as the "Horatio King Post Office Building".	Feb. 14, 2002	19
107–146	To designate the United States Post Office located at 60 Third Avenue in Long Branch, New Jersey, as the "Pat King Post Office Building".	Feb. 14, 2002	20
107–147	Job Creation and Worker Assistance Act of 2002	Mar. 9, 2002	21
107–148	Radio Free Afghanistan Act	Mar. 11, 2002	64
107–149	Appalachian Regional Development Act Amendments of 2002	Mar. 12, 2002	66
107–150	Family Sponsor Immigration Act of 2002	Mar. 13, 2002	74
107–151	To revise certain grants for continuum of care assistance for homeless individual and families	Mar. 13, 2002	76
107–152	Congratulating the United States Military Academy at West Point on its bicentennial anniversary, and commending its outstanding contributions to the Nation.	Mar. 14, 2002	77
107–153	To encourage the negotiated settlement of tribal claims	Mar. 19, 2002	79
107–154	To extend the period of availability of unemployment assistance under the Robert T. Stafford Disaster Relief and Emergency Assistance Act in the case of victims of the terrorist attacks of September 11, 2001.	Mar. 25, 2002	80
107–155	Bipartisan Campaign Reform Act of 2002	Mar. 27, 2002	81
107–156	To extend the authority of the Export-Import Bank until April 30, 2002	Mar. 31, 2002	117
107–157	District of Columbia College Access Improvement Act of 2002	Apr. 4, 2002	118
107–158	To amend Public Law 107-10 to authorize a United States plan to endorse and obtain observer status for Taiwan at the annual summit of the World Health Assembly in May 2002 in Geneva, Switzerland, and for other purposes.	Apr. 4, 2002	121
107–159	To amend the Act entitled "An Act to authorize the leasing of restricted Indian lands for public, religious, educational, recreational, residential, business, and other purposes requiring the grant of long-term leases", approved August 9, 1955, to provide for binding arbitration clauses in leases and contracts related to reservation lands of the Gila River Indian Community.	Apr. 4, 2002	122
107–160	To designate the facility of the United States Postal Service located at 3698 Inner Perimeter Road in Valdosta, Georgia, as the "Major Lyn McIntosh Post Office Building".	Apr. 18, 2002	123
107–161	To designate the facility of the United States Postal Service located at 805 Glen Burnie Road in Richmond, Virginia, as the "Tom Bliley Post Office Building".	Apr. 18, 2002	124
107–162	To designate the facility of the United States Postal Service located at 685 Turnberry Road in Newport News, Virginia, as the "Herbert H. Bateman Post Office Building".	Apr. 18, 2002	125
107–163	To designate the facility of the United States Postal Service located at 310 South State Street in St. Ignace, Michigan, as the "Bob Davis Post Office Building".	Apr. 18, 2002	126
107–164	To designate the facility of the United States Postal Service located in Harlem, Montana, as the "Francis Bardanouve United States Post Office Building".	Apr. 18, 2002	127
107–165	To designate the facility of the United States Postal Service located at 3131 South Crater Road in Petersburg, Virginia, as the "Norman Sisisky Post Office Building".	Apr. 18, 2002	128
107–166	To designate the facility of the United States Postal Service located at 125 Main Street in Forest City, North Carolina, as the "Vernon Tarlton Post Office Building".	Apr. 18, 2002	129
107–167	To designate the facility of the United States Postal Service located at 375 Carlls Path in Deer Park, New York, as the "Raymond M. Downey Post Office Building".	Apr. 18, 2002	130
107–168	To extend the authority of the Export-Import Bank until May 31, 2002	May 1, 2002	131
107–169	To make technical amendments to section 10 of title 9, United States Code	May 7, 2002	132
107–170	To extend for 8 additional months the period for which chapter 12 of title 11 of the United States Code is reenacted.	May 7, 2002	133
107–171	Farm Security and Rural Investment Act of 2002	May 13, 2002	134
107–172	Hematological Cancer Research Investment and Education Act of 2002	May 14, 2002	541
107–173	Enhanced Border Security and Visa Entry Reform Act of 2002	May 14, 2002	543
107–174	Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002	May 15, 2002	566
107–175	To designate the Federal building located in Charlotte Amalie, St. Thomas, United States Virgin Islands, as the "Ron de Lugo Federal Building.".	May 17, 2002	576
107–176	To designate the Federal building located at 143 West Liberty Street, Medina, Ohio, as the "Donald J. Pease Federal Building".	May 17, 2002	577
107–177	To designate the Federal building and United States courthouse located at 501 Bell Street in Alton, Illinois, as the "William L. Beatty Federal Building and United States Courthouse".	May 17, 2002	578

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107–178	To designate the Federal building and United States courthouse located at 400 North Main Street in Butte, Montana, as the "Mike Mansfield Federal Building and United States Courthouse".	May 17, 2002	579
107–179	To require a report on the operations of the State Justice Institute	May 20, 2002	580
107–180	Criminal Justice Coordinating Council Restructuring Act of 2002	May 20, 2002	581
107–181	Clergy Housing Allowance Clarification Act of 2002	May 20, 2002	583
107–182	To redesignate the Federal building located at 3348 South Kedzie Avenue, in Chicago, Illinois, as the "Paul Simon Chicago Job Corps Center".	May 21, 2002	584
107–183	To name the chapel located in the national cemetery in Los Angeles, California, as the "Bob Hope Veterans Chapel".	May 29, 2002	585
107–184	To name the Department of Veterans Affairs Medical and Regional Office Center in Wichita, Kansas, as the "Robert J. Dole Department of Veterans Affairs Medical and Regional Office Center".	May 29, 2002	586
107–185	To extend eligibility for refugee status of unmarried sons and daughters of certain Vietnamese refugees.	May 30, 2002	587
107–186	To extend the authority of the Export-Import Bank until June 14, 2002	May 30, 2002	589
107–187	Gerald B. H. Solomon Freedom Consolidation Act of 2002	June 10, 2002	590
107–188	Public Health Security and Bioterrorism Preparedness and Response Act of 2002	June 12, 2002	594
107–189	Export-Import Bank Reauthorization Act of 2002	June 14, 2002	698
107–190	To designate the United States Post Office building located at 3101 West Sunflower Avenue in Santa Ana, California, as the "Hector G. Godinez Post Office Building".	June 18, 2002	710
107–191	To designate the facility of the United States Postal Service located at 600 Calumet Street in Lake Linden, Michigan, as the "Philip E. Ruppe Post Office Building".	June 18, 2002	711
107–192	To designate the facility of the United States Postal Service located at 2829 Commercial Way in Rock Springs, Wyoming, as the "Teno Roncalio Post Office Building".	June 18, 2002	712
107–193	To designate the facility of the United States Postal Service located at 3719 Highway 4 in Jay, Florida, as the "Joseph W. Westmoreland Post Office Building".	June 18, 2002	713
107–194	To designate the facility of the United States Postal Service located at 1590 East Joyce Boulevard in Fayetteville, Arkansas, as the "Clarence B. Craft Post Office Building".	June 18, 2002	714
107–195	Auction Reform Act of 2002	June 19, 2002	715
107–196	Mychal Judge Police and Fire Chaplains Public Safety Officers' Benefit Act of 2002	June 24, 2002	719
107–197	To implement the International Convention for the Suppression of Terrorist Bombings to strengthen criminal laws relating to attacks on places of public use, to implement the International Convention of the Suppression of the Financing of Terrorism, to combat terrorism and defend the Nation against terrorist acts, and for other purposes.	June 25, 2002	721
107–198	Small Business Paperwork Relief Act of 2002	June 28, 2002	729
107–199	To amend title 31 of the United States Code to increase the public debt limit	June 28, 2002	734
107–200	Approving the site at Yucca Mountain, Nevada, for the development of a repository for the disposal of high-level radioactive waste and spent nuclear fuel, pursuant to the Nuclear Waste Policy Act of 1982.	July 23, 2002	735
107–201	Support of American Eagle Silver Bullion Program Act	July 23, 2002	736
107–202	Benjamin Franklin Tercentenary Commission Act	July 24, 2002	739
107–203	To provide for an independent investigation of Forest Service firefighter deaths that are caused by wildfire entrapment or burnover.	July 24, 2002	744
107–204	Sarbanes-Oxley Act of 2002	July 30, 2002	745
107–205	Nurse Reinvestment Act	Aug. 1, 2002	811
107–206	2002 Supplemental Appropriations Act for Further Recovery From and Response To Terrorist Attacks on the United States.	Aug. 2, 2002	820
107–207	Born-Alive Infants Protection Act of 2002	Aug. 5, 2002	926
107–208	Child Status Protection Act	Aug. 6, 2002	927
107–209	Conferring honorary citizenship of the United States posthumously on Marie Joseph Paul Yves Roche Gilbert du Motier, the Marquis de Lafayette.	Aug. 6, 2002	931
107–210	Trade Act of 2002	Aug. 6, 2002	933
107–211	To amend the Clear Creek County, Colorado, Public Lands Transfer Act of 1993 to provide additional time for Clear Creek County to dispose of certain lands transferred to the county under the Act.	Aug. 21, 2002	1050
107–212	Guam Foreign Investment Equity Act	Aug. 21, 2002	1051
107–213	To redesignate certain lands within the Craters of the Moon National Monument, and for other purposes.	Aug. 21, 2002	1052
107–214	Long Walk National Historic Trail Study Act	Aug. 21, 2002	1053
107–215	Booker T. Washington National Monument Boundary Adjustment Act of 2002	Aug. 21, 2002	1054
107–216	James Peak Wilderness and Protection Area Act	Aug. 21, 2002	1055
107–217	To revise, codify, and enact without substantive change certain general and permanent laws, related to public buildings, property, and works, as title 40, United States Code, "Public Buildings, Property, and Works".	Aug. 21, 2002	1062
107–218	Tumacacori National Historical Park Boundary Revision Act of 2002	Aug. 21, 2002	1328
107–219	To rename Wolf Trap Farm Park as "Wolf Trap National Park for the Performing Arts", and for other purposes.	Aug. 21, 2002	1330
107–220	To amend the Public Health Service Act to redesignate a facility as the National Hansen's Disease Programs Center, and for other purposes.	Aug. 21, 2002	1332
107–221	Fort Clatsop National Memorial Expansion Act of 2002	Aug. 21, 2002	1333
107–222	To amend title X of the Energy Policy Act of 1992, and for other purposes	Aug. 21, 2002	1336
107–223	To authorize the Secretary of the Interior to issue right-of-way permits for natural gas pipelines within the boundary of Great Smoky Mountains National Park.	Aug. 21, 2002	1338
107–224	John F. Kennedy Center Plaza Authorization Act of 2002	Sept. 18, 2002	1340
107–225	To redesignate the facility of the United States Postal Service located at 900 Brentwood Road, NE, in Washington, D.C., as the "Joseph Curseen, Jr. and Thomas Morris, Jr. Processing and Distribution Center".	Sept. 24, 2002	1344
107–226	Flight 93 National Memorial Act	Sept. 24, 2002	1345
107–227	To designate the facility of the United States Postal Service located at 6101 West Old Shakopee Road in Bloomington, Minnesota, as the "Thomas E. Burnett, Jr. Post Office Building".	Sept. 24, 2002	1349

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107–228	Foreign Relations Authorization Act, Fiscal Year 2003	Sept. 30, 2002	1350
107–229	Making continuing appropriations for the fiscal year 2003, and for other purposes	Sept. 30, 2002	1465
107–230	To provide a temporary waiver from certain transportation conformity requirements and metropolitan transportation planning requirements under the Clean Air Act and under other laws for certain areas in New York where the planning offices and resources have been destroyed by acts of terrorism, and for other purposes.	Oct. 1, 2002	1469
107–231	National Construction Safety Team Act	Oct. 1, 2002	1471
107–232	To amend section 5307 of title 49, United States Code, to allow transit systems in urbanized areas that, for the first time, exceeded 200,000 in population according to the 2000 census to retain flexibility in the use of Federal transit formula grants in fiscal year 2003, and for other purposes.	Oct. 1, 2002	1478
107–233	To amend the Communications Satellite Act of 1962 to extend the deadline for the INTELSAT initial public offering.	Oct. 1, 2002	1480
107–234	To extend the Irish Peace Process Cultural and Training Program	Oct. 4, 2002	1481
107–235	Making further continuing appropriations for the fiscal year 2003, and for other purposes	Oct. 4, 2002	1482
107–236	Santa Monica Mountains National Recreation Area Boundary Adjustment Act	Oct. 9, 2002	1483
107–237	Burnt, Malheur, Owyhee, and Powder River Basin Water Optimization Feasibility Study Act	Oct. 11, 2002	1485
107–238	Vicksburg National Military Park Boundary Modification Act of 2002	Oct. 11, 2002	1486
107–239	To ratify an agreement between The Aleut Corporation and the United States of America to exchange land rights received under the Alaska Native Claims Settlement Act for certain land interests on Adak Island, and for other purposes.	Oct. 11, 2002	1488
107–240	Making further continuing appropriations for the fiscal year 2003, and for other purposes	Oct. 11, 2002	1492
107–241	To amend the charter of the AMVETS organization	Oct. 16, 2002	1496
107–242	To amend the charter of the Veterans of Foreign Wars of the United States organization to make members of the armed forces who receive special pay for duty subject to hostile fire or imminent danger eligible for membership in the organization, and for other purposes.	Oct. 16, 2002	1497
107–243	Authorization for Use of Military Force Against Iraq Resolution of 2002	Oct. 16, 2002	1498
107–244	Making further continuing appropriations for the fiscal year 2003, and for other purposes	Oct. 18, 2002	1503
107–245	Sudan Peace Act	Oct. 21, 2002	1504
107–246	Russian Democracy Act of 2002	Oct. 23, 2002	1511
107–247	Veterans' Compensation Cost-of-Living Adjustment Act of 2002	Oct. 23, 2002	1517
107–248	Department of Defense Appropriations Act, 2003	Oct. 23, 2002	1519
107–249	Military Construction Appropriation Act, 2003	Oct. 23, 2002	1578
107–250	Medical Device User Fee and Modernization Act of 2002	Oct. 26, 2002	1588
107–251	Health Care Safety Net Amendments of 2002	Oct. 26, 2002	1621
107–252	Help America Vote Act of 2002	Oct. 29, 2002	1666
107–253	Inland Flood Forecasting and Warning System Act of 2002	Oct. 29, 2002	1731
107–254	To authorize the duration of the base contract of the Navy-Marine Corps Intranet contract to be more than five years but not more than seven years.	Oct. 29, 2002	1733
107–255	Recognizing the contributions of Patsy Takemoto Mink	Oct. 29, 2002	1734
107–256	Niagara Falls National Heritage Area Study Act	Oct. 29, 2002	1735
107–257	To designate the United States courthouse to be constructed at 8th Avenue and Mill Street in Eugene, Oregon, as the "Wayne Lyman Morse United States Courthouse".	Oct. 29, 2002	1737
107–258	Persian Gulf War POW/MIA Accountability Act of 2002	Oct. 29, 2002	1738
107–259	To identify certain routes in the States of Texas, Oklahoma, Colorado, and New Mexico as part of the Ports-to-Plains Corridor, a high priority corridor on the National Highway System.	Oct. 29, 2002	1741
107–260	Benign Brain Tumor Cancer Registries Amendment Act	Oct. 29, 2002	1743
107–261	To designate the facility of the United States Postal Service located at 127 Social Street in Woonsocket, Rhode Island, as the "Alphonse F. Auclair Post Office Building".	Oct. 30, 2002	1745
107–262	To designate the facility of the United States Postal Service located at 7 Commercial Street in Newport, Rhode Island, as the "Bruce F. Cotta Post Office Building".	Oct. 30, 2002	1746
107–263	To redesignate the facility of the United States Postal Service located at 89 River Street in Hoboken, New Jersey, as the "Frank Sinatra Post Office Building".	Oct. 30, 2002	1747
107–264	To designate the facility of the United States Postal Service located at 1299 North 7th Street in Philadelphia, Pennsylvania, as the "Herbert Arlene Post Office Building".	Oct. 30, 2002	1748
107–265	To designate the facility of the United States Postal Service located at 6150 North Broad Street in Philadelphia, Pennsylvania, as the "Rev. Leon Sullivan Post Office Building".	Oct. 30, 2002	1749
107–266	To designate the facility of the United States Postal Service located at 925 Dickinson Street in Philadelphia, Pennsylvania, as the "William A. Cibotti Post Office Building".	Oct. 30, 2002	1750
107–267	To designate the facility of the United States Postal Service located at 120 North Maine Street in Fallon, Nevada, as the "Rollan D. Melton Post Office Building".	Oct. 30, 2002	1751
107–268	To designate the facility of the United States Postal Service located at 1199 Pasadena Boulevard in Pasadena, Texas, as the "Jim Fonteno Post Office Building".	Oct. 30, 2002	1752
107–269	To designate the facility of the United States Postal Service located at 204 South Broad Street in Lancaster, Ohio, as the "Clarence Miller Post Office Building".	Oct. 30, 2002	1753
107–270	To designate the facility of the United States Postal Service located at 1895 Avenida Del Oro in Oceanside, California, as the "Ronald C. Packard Post Office Building".	Oct. 30, 2002	1754
107–271	To redesignate the facility of the United States Postal Service located at 265 South Western Avenue, Los Angeles, California, as the "Nat King Cole Post Office".	Oct. 30, 2002	1755
107–272	To redesignate the facility of the United States Postal Service located at 6910 South Yorktown Avenue in Tulsa, Oklahoma, as the "Robert Wayne Jenkins Station".	Oct. 30, 2002	1757
107–273	21st Century Department of Justice Appropriations Authorization Act	Nov. 2, 2002	1758
107–274	Border Commuter Student Act of 2002	Nov. 2, 2002	1923
107–275	Black Lung Consolidation of Administrative Responsibility Act	Nov. 2, 2002	1925
107–276	To amend section 527 of the Internal Revenue Code of 1986 to eliminate notification and return requirements for State and local party committees and candidate committees and avoid duplicate reporting by certain State and local political committees of information required to be reported and made publicly available under State law, and for other purposes.	Nov. 2, 2002	1929
107–277	Enterprise Integration Act of 2002	Nov. 5, 2002	1936
107–278	To amend the International Organizations Immunities Act to provide for the applicability of that Act to the European Central Bank.	Nov. 5, 2002	1939

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107–279	To provide for improvement of Federal education research, statistics, evaluation, information, and dissemination, and for other purposes.	Nov. 5, 2002	1940
107–280	Rare Diseases Act of 2002	Nov. 6, 2002	1988
107–281	Rare Diseases Orphan Product Development Act of 2002	Nov. 6, 2002	1992
107–282	Clark County Conservation of Public Land and Natural Resources Act of 2002	Nov. 6, 2002	1994
107–283	To designate the facility of the United States Postal Service located at 301 South Howes Street in Fort Collins, Colorado, as the "Barney Apodaca Post Office".	Nov. 6, 2002	2020
107–284	To designate the facility of the United States Postal Service located at 4 East Central Street in Worcester, Massachusetts, as the "Joseph D. Early Post Office Building".	Nov. 6, 2002	2021
107–285	To designate the facility of the United States Postal Service located at 380 Main Street in Farmingdale, New York, as the "Peter J. Ganci, Jr. Post Office Building".	Nov. 6, 2002	2022
107–286	To designate the facility of the United States Postal Service located at 5805 White Oak Avenue in Encino, California, as the "Francis Dayle 'Chick' Hearn Post Office".	Nov. 6, 2002	2023
107–287	Department of Veterans Affairs Emergency Preparedness Act of 2002	Nov. 7, 2002	2024
107–288	Jobs for Veterans Act	Nov. 7, 2002	2033
107–289	Accountability of Tax Dollars Act of 2002	Nov. 7, 2002	2049
107–290	To amend the District of Columbia Retirement Protection Act of 1997 to permit the Secretary of the Treasury to use estimated amounts in determining the service longevity component of the Federal benefit payment required to be paid under such Act to certain retirees of the Metropolitan Police Department of the District of Columbia.	Nov. 7, 2002	2051
107–291	To designate the facility of the United States Postal Service located at 206 South Main Street in Glennville, Georgia, as the "Michael Lee Woodcock Post Office".	Nov. 7, 2002	2052
107–292	Native American Housing Assistance and Self-Determination Reauthorization Act of 2002	Nov. 13, 2002	2053
107–293	To reaffirm the reference to one Nation under God in the Pledge of Allegiance	Nov. 13, 2002	2057
107–294	Making further continuing appropriations for the fiscal year 2003, and for other purposes	Nov. 23, 2002	2062
107–295	Maritime Transportation Security Act of 2002	Nov. 25, 2002	2064
107–296	Homeland Security Act of 2002	Nov. 25, 2002	2135
107–297	Terrorism Risk Insurance Act of 2002	Nov. 26, 2002	2322
107–298	Real Interstate Driver Equity Act of 2002	Nov. 26, 2002	2342
107–299	National Sea Grant College Program Act Amendments of 2002	Nov. 26, 2002	2345
107–300	Improper Payments Information Act of 2002	Nov. 26, 2002	2350
107–301	To facilitate the use of a portion of the former O'Reilly General Hospital in Springfield, Missouri, by the local Boys and Girls Club through the release of the reversionary interest and other interests retained by the United States in 1955 when the land was conveyed to the State of Missouri.	Nov. 26, 2002	2352
107–302	Court Services and Offender Supervision Agency Interstate Supervision Act of 2002	Nov. 26, 2002	2353
107–303	Great Lakes and Lake Champlain Act of 2002	Nov. 27, 2002	2355
107–304	To amend title 5, United States Code, to allow certain catch-up contributions to the Thrift Savings Plan to be made by participants age 50 or over; to reauthorize the Merit Systems Protection Board and the Office of Special Counsel; and for other purposes..	Nov. 27, 2002	2363
107–305	Cyber Security Research and Development Act	Nov. 27, 2002	2367
107–306	Intelligence Authorization Act for Fiscal Year 2003	Nov. 27, 2002	2383
107–307	Product Packaging Protection Act of 2002	Dec. 2, 2002	2445
107–308	North American Wetlands Conservation Reauthorization Act	Dec. 2, 2002	2446
107–309	To amend title 36, United States Code, to clarify the requirements for eligibility in the American Legion.	Dec. 2, 2002	2449
107–310	Dam Safety and Security Act of 2002	Dec. 2, 2002	2450
107–311	Armed Forces Domestic Security Act	Dec. 2, 2002	2455
107–312	To reduce the preexisting PAYGO balances, and for other purposes	Dec. 2, 2002	2456
107–313	Mental Health Parity Reauthorization Act of 2002	Dec. 2, 2002	2457
107–314	Bob Stump National Defense Authorization Act for Fiscal Year 2003	Dec. 2, 2002	2458
107–315	Approving the location of the commemorative work in the District of Columbia honoring former President John Adams.	Dec. 2, 2002	2763
107–316	Paul and Sheila Wellstone Center for Community Building Act	Dec. 2, 2002	2764
107–317	Dot Kids Implementation and Efficiency Act of 2002	Dec. 4, 2002	2766
107–318	Anton's Law	Dec. 4, 2002	2772
107–319	To amend the Consumer Product Safety Act to provide that low-speed electric bicycles are consumer products subject to such Act.	Dec. 4, 2002	2776
107–320	To direct the Secretary of the Army to convey a parcel of land to Chatham County, Georgia	Dec. 4, 2002	2778
107–321	Small Webcaster Settlement Act of 2002	Dec. 4, 2002	2780
107–322	To extend the deadline for commencement of construction of a hydroelectric project in the State of North Carolina.	Dec. 4, 2002	2786
107–323	POW/MIA Memorial Flag Act of 2002	Dec. 4, 2002	2787
107–324	To direct the Secretary of the Interior to convey certain land to the city of Haines, Oregon	Dec. 4, 2002	2789
107–325	Old Spanish Trail Recognition Act of 2002	Dec. 4, 2002	2790
107–326	FHA Downpayment Simplification Act of 2002	Dec. 4, 2002	2792
107–327	Afghanistan Freedom Support Act of 2002	Dec. 4, 2002	2797
107–328	Relative to the convening of the first session of the One Hundred Eighth Congress	Dec. 4, 2002	2814
107–329	To provide for the acquisition of land and construction of an interagency administrative and visitor facility at the entrance to American Fork Canyon, Utah, and for other purposes.	Dec. 6, 2002	2815
107–330	Veterans Benefits Act of 2002	Dec. 6, 2002	2820
107–331	Indian Financing Amendments Act of 2002	Dec. 13, 2002	2834
107–332	Homestead National Monument of America Additions Act	Dec. 16, 2002	2871
107–333	Guam War Claims Review Commission Act	Dec. 16, 2002	2873
107–334	Mount Nebo Wilderness Boundary Adjustment Act	Dec. 16, 2002	2876
107–335	Lease Lot Conveyance Act of 2002	Dec. 16, 2002	2878
107–336	To authorize the Secretary of the Interior to make adjustments to the boundary of the National Park of American Samoa to include certain portions of the islands of Ofu and Olosega within the park, and for other purposes.	Dec. 16, 2002	2882
107–337	Buffalo Bayou National Heritage Area Study Act	Dec. 16, 2002	2883
107–338	Metacomet-Monadnock-Mattabesett Trail Study Act of 2002	Dec. 16, 2002	2886
107–339	Fallon Rail Freight Loading Facility Transfer Act	Dec. 16, 2002	2887

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107–340	Pu'uhonua o Honaunau National Historical Park Addition Act of 2002	Dec. 16, 2002	2889
107–341	To direct the Secretary of the Interior to study the suitability and feasibility of designating the Waco Mammoth Site Area in Waco, Texas, as a unit of the National Park System, and for other purposes.	Dec. 16, 2002	2890
107–342	To amend the Omnibus Parks and Public Lands Management Act of 1996 to provide adequate funding authorization for the Vancouver National Historic Reserve.	Dec. 17, 2002	2891
107–343	To authorize the Secretary of the Interior to conduct a special resource study of Virginia Key Beach Park in Biscayne Bay, Florida, for possible inclusion in the National Park System.	Dec. 17, 2002	2892
107–344	To amend the Reclamation Wastewater and Groundwater Study and Facilities Act to authorize the Secretary of the Interior to participate in the design, planning, and construction of a project to reclaim and reuse wastewater within and outside of the service area of the Lakehaven Utility District, Washington.	Dec. 17, 2002	2893
107–345	To amend title 10, United States Code, to make receipts collected from mineral leasing activities on certain naval oil shale reserves available to cover environmental restoration, waste management, and environmental compliance costs incurred by the United States with respect to the reserves.	Dec. 17, 2002	2894
107–346	Virgin River Dinosaur Footprint Preserve Act	Dec. 17, 2002	2896
107–347	E-Government Act of 2002	Dec. 17, 2002	2899
107–348	Muscle Shoals National Heritage Area Study Act of 2002	Dec. 17, 2002	2971
107–349	Klamath Basin Emergency Operation and Maintenance Refund Act of 2002	Dec. 17, 2002	2973
107–350	To provide for the conveyance of certain public land in Clark County, Nevada, for use as a shooting range.	Dec. 17, 2002	2975
107–351	Lower Rio Grande Valley Water Resources Conservation and Improvement Act of 2002	Dec. 17, 2002	2978
107–352	To consent to certain amendments to the New Hampshire-Vermont Interstate School Compact	Dec. 17, 2002	2981
107–353	California Five Mile Regional Learning Center Transfer Act	Dec. 17, 2002	2982
107–354	To revise the boundaries of the George Washington Birthplace National Monument, and for other purposes.	Dec. 17, 2002	2984
107–355	Pipeline Safety Improvement Act of 2002	Dec. 17, 2002	2985
107–356	New River Gorge Boundary Act of 2002	Dec. 17, 2002	3013
107–357	To amend the Act entitled "An Act to authorize the Establishment of the Andersonville National Historic Site in the State of Georgia, and for other purposes", to provide for the addition of certain donated lands to the Andersonville National Historic Site.	Dec. 17, 2002	3014
107–358	Holocaust Restitution Tax Fairness Act of 2002	Dec. 17, 2002	3015
107–359	Civil War Battlefield Preservation Act of 2002	Dec. 17, 2002	3016
107–360	To amend the Public Health Service Act with respect to special diabetes programs for Type I diabetes and Indians.	Dec. 17, 2002	3019
107–361	To authorize the Secretary of the Interior to convey certain public land within the Sand Mountain Wilderness Study Area in the State of Idaho to resolve an occupancy encroachment dating back to 1971.	Dec. 17, 2002	3020
107–362	Russian River Land Act	Dec. 19, 2002	3021
107–363	Bainbridge Island Japanese-American Memorial Study Act of 2002	Dec. 19, 2002	3024
107–364	Gunn McKay Nature Preserve Act	Dec. 19, 2002	3026
107–365	Caribbean National Forest Wild and Scenic Rivers Act of 2002	Dec. 19, 2002	3027
107–366	To amend the Central Utah Project Completion Act to clarify the responsibilities of the Secretary of the Interior with respect to the Central Utah Project, to redirect unexpended budget authority for the Central Utah Project for wastewater treatment and reuse and other purposes, to provide for prepayment of repayment contracts for municipal and industrial water delivery facilities, and to eliminate a deadline for such prepayment.	Dec. 19, 2002	3030
107–367	To reauthorize the Mni Wiconi Rural Water Supply Project	Dec. 19, 2002	3033
107–368	National Science Foundation Authorization Act of 2002	Dec. 19, 2002	3034
107–369	Allegheny Portage Railroad National Historic Site Boundary Revision Act	Dec. 19, 2002	3069
107–370	Big Sur Wilderness and Conservation Act of 2002	Dec. 19, 2002	3071
107–371	To direct the Secretary of the Interior to disclaim any Federal interest in lands adjacent to Spirit Lake and Twin Lakes in the State of Idaho resulting from possible ommission of lands from an 1880 survey.	Dec. 19, 2002	3076
107–372	To reauthorize the Hydrographic Services Improvement Act of 1998, and for other purposes	Dec. 19, 2002	3078
107–373	Cedar Creek and Belle Grove National Historical Park Act	Dec. 19, 2002	3104
107–374	To direct the Secretary of the Interior to grant to Deschutes and Crook Counties in the State of Oregon a right-of-way to West Butte Road.	Dec. 19, 2002	3111
107–375	To extend the periods of authorization for the Secretary of the Interior to implement capital construction projects associated with the endangered fish recovery implementation programs for the Upper Colorado and San Juan River Basins.	Dec. 19, 2002	3113
107–376	To extend the deadline for commencement of construction of a hydroelectric project in the State of Oregon.	Dec. 19, 2002	3114
107–377	Protection of Family Farmers Act of 2002	Dec. 19, 2002	3115

Federal Register

Friday,
January 31, 2003

Part III

Department of Housing and Urban Development

Federal Property Suitable as Facilities to Assist the Homeless; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4809–N–05]

Federal Property Suitable as Facilities to Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

FOR FURTHER INFORMATION CONTACT: Mark Johnston, room 7266, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with 24 CFR part 581 and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Where property is described as for "off-site use only" recipients of the property will be required to relocate the building to their own site at their own expense. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Shirley Kramer, Division of Property Management, Program Support Center, HHS, room 5B–41, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 24 CFR part 581.

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to Mark Johnston at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (*i.e.*, acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: ARMY: Ms. Julie Jones-Conte, Department of the Army, Office of the Assistant Chief of Staff for Installation Management, Attn: DAIM–MD, Room 1E677, 600 Army Pentagon, Washington, DC 20310–600; (703) 692–9223 (These are not toll-free numbers).

Dated: January 23, 2003.

John D. Garrity,

Director, Office of Special Needs Assistance Programs.

TITLE V, FEDERAL SURPLUS PROPERTY PROGRAM FEDERAL REGISTER REPORT FOR 1/31/03

Suitable/Available Properties

Buildings (by State)

Alabama

Bldg. 02915
Fort Rucker
Ft. Rucker Co: Dale AL 36362–
Landholding Agency: Army
Property Number: 21200310050
Status: Excess
Comment: 1224 sq. ft., most recent use—bath house, off-site use only

Alaska

Bldgs. 09100, 09104–09106
Fort Richardson
Ft. Richardson Co: AK 99505–6500
Landholding Agency: Army
Property Number: 21200020158
Status: Unutilized
Comment: various sq. ft., concrete, most recent use—hazard bldg., off-site use only

5 Bldgs.
Fort Richardson
09108, 09110–09112, 09114
Ft. Richardson Co: AK 99505–6500
Landholding Agency: Army
Property Number: 21200020159
Status: Unutilized
Comment: various sq. ft., concrete, most recent use—hazard bldg., off-site use only

Bldgs. 09128, 09129
Fort Richardson
Ft. Richardson Co: AK 99505–6500
Landholding Agency: Army
Property Number: 21200020160
Status: Unutilized
Comment: various sq. ft., concrete, most recent use—hazard bldg., off-site use only

Bldgs. 09151, 09155, 09156
Fort Richardson
Ft. Richardson Co: AK 99505–6500
Landholding Agency: Army
Property Number: 21200020161
Status: Unutilized
Comment: various sq. ft., concrete, most recent use—hazard bldg., off-site use only

Bldg. 09158
Fort Richardson
Ft. Richardson Co: AK 99505–6500
Landholding Agency: Army
Property Number: 21200020162
Status: Unutilized
Comment: 672 sq. ft., most recent use—storage shed, off-site use only

Bldgs. 09160–09162
Fort Richardson
Ft. Richardson Co: AK 99505–6500
Landholding Agency: Army
Property Number: 21200020163
Status: Unutilized
Comment: 11520 sq. ft., concrete, most recent use—NCO-ENL FH, off-site use only

Bldgs. 09164, 09165

Fort Richardson
Ft. Richardson Co: AK 99505–6500
Landholding Agency: Army
Property Number: 21200020164
Status: Unutilized
Comment: 2304 & 2880 sq. ft., most recent use—storage, off-site use only

Bldg. 10100
Fort Richardson
Ft. Richardson Co: AK 99505–6500
Landholding Agency: Army
Property Number: 21200020165
Status: Unutilized
Comment: 4688 sq. ft., concrete, most recent use—hazard bldg., off-site use only

Bldg. 00390
Fort Richardson
Ft. Richardson Co: AK 99505–
Landholding Agency: Army
Property Number: 21200030067
Status: Excess
Comment: 13,632 sq. ft., off-site use only

Bldgs. 01200, 01202
Fort Richardson
Ft. Richardson Co: AK 99505–
Landholding Agency: Army
Property Number: 21200030068
Status: Excess
Comment: 4508 & 6366 sq. ft., most recent use—hazard bldg., off-site use only

Bldg. 01204
Fort Richardson
Ft. Richardson Co: AK 99505–
Landholding Agency: Army
Property Number: 21200030069
Status: Excess
Comment: 5578 sq. ft., most recent use—VOQ transient, off-site use only

Bldgs. 01205–01207
Fort Richardson
Ft. Richardson Co: AK 99505–
Landholding Agency: Army
Property Number: 21200030070
Status: Excess
Comment: various sq. ft., most recent use—hazard bldg., off-site use only

Bldgs. 01208, 01210, 01212
Fort Richardson
Ft. Richardson Co: AK 99505–
Landholding Agency: Army
Property Number: 21200030071
Status: Excess
Comment: various sq ft., most recent use—hazard bldg., off-site use only

Bldgs. 01213, 01214
Fort Richardson
Ft. Richardson Co: AK 99505–
Landholding Agency: Army
Property Number: 21200030072
Status: Excess
Comment: 11964 & 13740 sq. ft., most recent use—transient UPH, off-site use only

Bldgs. 01218, 01230
Fort Richardson
Ft. Richardson Co: AK 99505–
Landholding Agency: Army
Property Number: 21200030073
Status: Excess
Comment: 480 & 188 sq. ft., most recent use—hazard bldgs., off-site use only

Bldgs. 01231, 01232
Fort Richardson
Ft. Richardson Co: AK 99505–
Landholding Agency: Army
Property Number: 21200030074
Status: Excess
Comment: 458 & 4260 sq. ft., most recent use—hazard bldgs., off-site use only

Bldg. 01234
Fort Richardson
Ft. Richardson Co: AK 99505–
Landholding Agency: Army
Property Number: 21200030075
Status: Excess
Comment: 615 sq. ft., most recent use—admin., off-site use only

Bldg. 01237
Fort Richardson
Ft. Richardson Co: AK 99505–
Landholding Agency: Army
Property Number: 21200030076
Status: Excess
Comment: 408 sq. ft., most recent use—fuel/pol bldg., off-site use only

Bldg. 01272
Fort Richardson
Ft. Richardson Co: AK 99505–
Landholding Agency: Army
Property Number: 21200030077
Status: Excess
Comment: 308 sq. ft., most recent use—storage, off-site use only

Bldg. 08109
Fort Richardson
Ft. Richardson Co: AK 99505–
Landholding Agency: Army
Property Number: 21200030080
Status: Excess
Comment: 1920 sq. ft., most recent use—storage, off-site use only

Bldg. 21001
Fort Richardson
Ft. Richardson Co: AK 99505–
Landholding Agency: Army
Property Number: 21200030081
Status: Excess
Comment: 3200 sq. ft., most recent use—family housing, off-site use only

Bldg. 22001
Fort Richardson
Ft. Richardson Co: AK 99505–
Landholding Agency: Army
Property Number: 21200030082
Status: Excess
Comment: 1448 sq. ft., most recent use—family housing, off-site use only

Bldg. 22002
Fort Richardson
Ft. Richardson Co: AK 99505–
Landholding Agency: Army
Property Number: 21200030083
Status: Excess
Comment: 1508 sq. ft., most recent use—family housing, off-site use only

Armory
NG Noorvik
Noorvik Co: AK 99763–
Landholding Agency: Army
Property Number: 21200110075
Status: Unutilized
Comment: 1200 sq. ft., most recent use—armory, off-site use only

Bldg. 00229
Fort Richardson
Ft. Richardson Co: AK 99505–6500
Landholding Agency: Army
Property Number: 21200120085
Status: Excess
Comment: 13,056 sq. ft., off-site use only

Arizona

Bldg. 30012, Fort Huachuca
Sierra Vista Co: Cochise AZ 85635–
Landholding Agency: Army
Property Number: 21199310298
Status: Excess
Comment: 237 sq. ft., 1-story block, most recent use—storage

Bldg. S–306
Yuma Proving Ground
Yuma Co: Yuma/La Paz AZ 85365–9104
Landholding Agency: Army
Property Number: 21199420346
Status: Unutilized
Comment: 4103 sq. ft., 2-story, needs major rehab, off-site use only

Bldg. 503, Yuma Proving Ground
Yuma Co: Yuma AZ 85365–9104
Landholding Agency: Army
Property Number: 21199520073
Status: Underutilized
Comment: 3789 sq. ft., 2-story, major structural changes required to meet floor loading & fire code requirements, presence of asbestos, off-site use only

2 Bldgs.
Fort Huachuca
Sierra Vista Co: Cochise AZ 85635–
Location: 15542, 15546
Landholding Agency: Army
Property Number: 21200010082
Status: Unutilized
Comment: 552 & 400 sq. ft., presence of asbestos/lead paint, most recent use—restrooms, off-site use only

2 Bldgs.
Fort Huachuca
Sierra Vista Co: Cochise AZ 85635–
Location: 15544, 15552
Landholding Agency: Army
Property Number: 21200010083
Status: Unutilized
Comment: 9713 & 2895 sq. ft., presence of asbestos/lead paint, most recent use—classrooms, off-site use only

Bldg. 15543
Fort Huachuca
Sierra Vista Co: Cochise AZ 85635–
Landholding Agency: Army
Property Number: 21200010084
Status: Unutilized
Comment: 416 sq. ft., presence of asbestos/lead paint, most recent use—rec. shelter, off-site use only

California

Bldgs. 204–207, 517
Presidio of Monterey
Monterey Co: CA 93944–5006
Landholding Agency: Army
Property Number: 21200020167
Status: Unutilized
Comment: 4780 & 10950 sq. ft., presence of asbestos/lead paint, most recent use—classroom/admin/storage, off-site use only

Bldgs. 18026, 18028
Camp Roberts
Monterey Co: CA 93451–5000
Landholding Agency: Army
Property Number: 21200130081
Status: Excess
Comment: 2024 sq. ft. & 487 sq. ft., concrete, poor condition, off-site use only

Colorado

Bldg. F–107
Fort Carson
Ft. Carson Co: El Paso CO 80913–
Landholding Agency: Army
Property Number: 21200130082
Status: Unutilized
Comment: 10,126 sq. ft., poor condition, possible asbestos/lead paint, most recent use—storage, off-site use only

Bldg. T–108
Fort Carson
Ft. Carson Co: El Paso CO 80913–
Landholding Agency: Army
Property Number: 21200130083
Status: Unutilized
Comment: 9000 sq. ft., poor condition, possible asbestos/lead paint, most recent use—storage, off-site use only

Bldg. T–209
Fort Carson
Ft. Carson Co: El Paso CO 80913–
Landholding Agency: Army
Property Number: 21200130084
Status: Unutilized
Comment: 400 sq. ft., poor condition, possible asbestos/lead paint, most recent use—maint. shop, off-site use only

Bldg. T–217
Fort Carson
Ft. Carson Co: El Paso CO 80913–
Landholding Agency: Army
Property Number: 21200130085
Status: Unutilized
Comment: 9000 sq. ft., poor condition, possible asbestos/lead paint, most recent use—maint., off-site use only

Bldg. T–218
Fort Carson
Ft. Carson Co: El Paso CO 80913–
Landholding Agency: Army
Property Number: 21200130086
Status: Unutilized
Comment: 9000 sq. ft., poor condition, possible asbestos/lead paint, most recent use—maint., off-site use only

Bldg. T–220
Fort Carson
Ft. Carson Co: El Paso CO 80913–
Landholding Agency: Army
Property Number: 21200130087
Status: Unutilized
Comment: 690 sq. ft., poor condition, possible asbestos/lead paint, most recent use—heat plant, off-site use only

Bldg. T–6001
Fort Carson
Ft. Carson Co: El Paso CO 80913–
Landholding Agency: Army
Property Number: 21200130088
Status: Unutilized
Comment: 4372 sq. ft., poor condition, possible asbestos/lead paint, most recent use—vet clinic, off-site use only

Bldg. S6263
Fort Carson
Ft. Carson Co: El Paso CO 80913–
Landholding Agency: Army
Property Number: 21200310051
Status: Unutilized
Comment: 24,902 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—offices, off-site use only

Bldg. S6265
Fort Carson
Ft. Carson Co: El Paso CO 80913–
Landholding Agency: Army
Property Number: 21200310052
Status: Unutilized
Comment: 19,499 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—child development center, off-site use only

Bldg. S6266
Fort Carson
Ft. Carson Co: El Paso CO 80913–
Landholding Agency: Army
Property Number: 21200310053
Status: Unutilized
Comment: 27,286 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—office, off-site use only

Bldg. S6267
Fort Carson
Ft. Carson Co: El Paso CO 80913–
Landholding Agency: Army
Property Number: 21200310054
Status: Unutilized
Comment: 20,075 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—child development center, off-site use only

Bldg. S6286
Fort Carson
Ft. Carson Co: El Paso CO 80913–
Landholding Agency: Army
Property Number: 21200310055
Status: Unutilized
Comment: 13,128 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—armory, off-site use only

Georgia

Bldg. 2285
Fort Benning
Fort Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199011704
Status: Unutilized
Comment: 4574 sq. ft.; most recent use—clinic; needs substantial rehabilitation; 1 floor.

Bldg. 1252
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199220694
Status: Unutilized
Comment: 583 sq. ft., 1 story, most recent use—storehouse, needs major rehab, off-site removal only

Bldg. 4881
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199220707
Status: Unutilized
Comment: 2449 sq. ft., 1 story, most recent use—storehouse, need repairs, off-site removal only

Bldg. 4963
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199220710
Status: Unutilized
Comment: 6077 sq. ft., 1 story, most recent use—storehouse, need repairs, off-site removal only

Bldg. 2396
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199220712
Status: Unutilized
Comment: 9786 sq. ft., 1 story, most recent use—dining facility, needs major rehab, off-site removal only

Bldg. 4882, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199220727
Status: Unutilized
Comment: 6077 sq. ft., 1 story, most recent use—storage, need repairs, off-site removal only

Bldg. 4967, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199220728
Status: Unutilized
Comment: 6077 sq. ft., 1 story, most recent use—storage, need repairs, off-site removal only

Bldg. 4977, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199220736
Status: Unutilized
Comment: 192 sq. ft., 1 story, most recent use—offices, need repairs, off-site removal only

Bldg. 4944, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199220747
Status: Unutilized
Comment: 6400 sq. ft., 1 story, most recent use—vehicle maintenance shop, need repairs, off-site removal only

Bldg. 4960, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199220752
Status: Unutilized
Comment: 3335 sq. ft., 1 story, most recent use—vehicle maintenance shop, off-site removal only

Bldg. 4969, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199220753
Status: Unutilized
Comment: 8416 sq. ft., 1 story, most recent use—vehicle maintenance shop, off-site removal only

Bldg. 4884, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199220762
Status: Unutilized
Comment: 2000 sq. ft., 1 story, most recent use—headquarters bldg., need repairs, off-site removal only

Bldg. 4964, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199220763
Status: Unutilized
Comment: 2000 sq. ft., 1 story, most recent use—headquarters bldg., need repairs, off-site removal only

Bldg. 4966, Fort Benning

Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199220764
Status: Unutilized
Comment: 2000 sq. ft., 1 story, most recent use—headquarters bldg., need repairs, off-site removal only

Bldg. 4965, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199220769
Status: Unutilized
Comment: 7713 sq. ft., 1 story, most recent use—supply bldg., need repairs, off-site removal only

Bldg. 4945, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199220779
Status: Unutilized
Comment: 220 sq. ft., 1 story, most recent use—gas station, needs major rehab, off-site removal only

Bldg. 4979, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199220780
Status: Unutilized
Comment: 400 sq. ft., 1 story, most recent use—oil house, need repairs, off-site removal only

Bldg. 4023, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199310461
Status: Unutilized
Comment: 2269 sq. ft., 1-story, needs rehab, most recent use—maintenance shop, off-site use only

Bldg. 4024, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199310462
Status: Unutilized
Comment: 3281 sq. ft., 1-story, needs rehab, most recent use—maintenance shop, off-site use only

Bldg. 11813
Fort Gordon
Fort Gordon Co: Richmond GA 30905–
Landholding Agency: Army
Property Number: 21199410269
Status: Unutilized
Comment: 70 sq. ft.; 1 story; metal; needs rehab.; most recent use—storage; off-site use only

Bldg. 21314
Fort Gordon
Fort Gordon Co: Richmond GA 30905–
Landholding Agency: Army
Property Number: 21199410270
Status: Unutilized
Comment: 85 sq. ft.; 1 story; needs rehab.; most recent use—storage; off-site use only

Bldg. 12809
Fort Gordon
Fort Gordon Co: Richmond GA 30905–
Landholding Agency: Army
Property Number: 21199410272
Status: Unutilized
Comment: 2788 sq. ft.; 1 story; wood; needs rehab.; most recent use—maintenance shop; off-site use only

Bldg. 10306
Fort Gordon
Fort Gordon Co: Richmond GA 30905–
Landholding Agency: Army
Property Number: 21199410273
Status: Unutilized
Comment: 195 sq. ft.; 1 story; wood; most recent use—oil storage shed; off-site use only

Bldg 4051, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199520175
Status: Unutilized
Comment: 967 sq. ft., 1-story, needs rehab, most recent use—storage, off-site use only

Bldg. 322
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199720156
Status: Unutilized
Comment: 9600 sq. ft., needs rehab, most recent use—admin., off-site use only

Bldg. 1737
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199720161
Status: Unutilized
Comment: 1500 sq. ft., needs rehab, most recent use—storage, off-site use only

Bldg. 2593
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199720167
Status: Unutilized
Comment: 13644 sq. ft., needs rehab, most recent use—parachute shop, off-site use only

Bldg. 2595
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199720168
Status: Unutilized
Comment: 3356 sq. ft., needs rehab, most recent use—chapel, off-site use only

Bldgs. 2865, 2869, 2872
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199720169
Status: Unutilized
Comment: approx. 1100 sq. ft. each, needs rehab, most recent use—shower fac., off-site use only

Bldg. 4476
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199720184
Status: Unutilized
Comment: 3148 sq. ft., needs rehab, most recent use—vehicle maint. shop, off-site use only

8 Bldgs.
Fort Benning
4700–4701, 4704–4707, 4710–4711
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199720189
Status: Unutilized
Comment: 6433 sq. ft. each, needs rehab, most recent use—unaccompanied personnel housing, off-site use only

Bldg. 4714
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199720191
Status: Unutilized
Comment: 1983 sq. ft., needs rehab, most recent use—battalion headquarters bldg., off-site use only

Bldg. 4702
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199720192
Status: Unutilized
Comment: 3690 sq. ft., needs rehab, most recent use—dining facility off-site use only

Bldgs. 4712–4713
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199720193
Status: Unutilized
Comment: 1983 sq. ft. and 10270 sq. ft., needs rehab, most recent use—company headquarters bldg., off-site use only

Bldg. 305
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199810268
Status: Unutilized
Comment: 4083 sq. ft., most recent use—recreation center, off-site use only

Bldg. 318
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199810269
Status: Unutilized
Comment: 374 sq. ft., poor condition, most recent use—maint. shop, off-site use only

Bldg. 1792
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199810274
Status: Unutilized
Comment: 10,200 sq. ft., most recent use—storage, off-site use only

Bldg. 1836
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199810276
Status: Unutilized
Comment: 2998 sq. ft., most recent use—admin., off-site use only

Bldg. 4373
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199810286
Status: Unutilized
Comment: 409 sq. ft., poor condition, most recent use—station bldg. off-site use only

Bldg. 4628
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199810287

Status: Unutilized
Comment: 5483 sq. ft., most recent use—admin., off-site use only

Bldg. 92
Fort Benning
Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199830278
Status: Unutilized
Comment: 637 sq. ft., needs rehab, most recent use—admin., off-site use only

Bldg. 2445
Fort Benning
Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199830279
Status: Unutilized
Comment: 2385 sq. ft., needs rehab, most recent use—fire station, off-site use only

Bldg. 4232
Fort Benning
Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199830291
Status: Unutilized
Comment: 3720 sq. ft., needs rehab, most recent use—maint. bay, off-site use only

Bldg. 39720
Fort Gordon
Ft. Gordon Co: Richmond GA 30905–
Landholding Agency: Army
Property Number: 21199930119
Status: Unutilized
Comment: 1520 sq. ft., concrete block, possible asbestos/lead paint, most recent use—office, off-site use only

Bldg. 492
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199930120
Status: Unutilized
Comment: 720 sq. ft., most recent use—admin/maint, off-site use only

Bldg. 880
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199930121
Status: Unutilized
Comment: 57,110 sq. ft., most recent use—instruction, off-site use only

Bldg. 1370
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199930122
Status: Unutilized
Comment: 5204 sq. ft., most recent use—hdqts. bldg., off-site use only

Bldg. 2288
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199930123
Status: Unutilized
Comment: 2481 sq. ft., most recent use—admin., off-site use only

Bldg. 2290
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199930124
Status: Unutilized
Comment: 455 sq. ft., most recent use—storage, off-site use only

Bldg. 2293
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199930125
Status: Unutilized
Comment: 2600 sq. ft., most recent use—hdqts. bldg., off-site use only

Bldg. 2297
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199930126
Status: Unutilized
Comment: 5156 sq. ft., most recent use—admin.

Bldg. 2505
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199930127
Status: Unutilized
Comment: 10,257 sq. ft., most recent use—repair shop, off-site use only

Bldg. 2508
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199930128
Status: Unutilized
Comment: 2434 sq. ft., most recent use—storage, off-site use only

Bldg. 2815
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199930129
Status: Unutilized
Comment: 2578 sq. ft., most recent use—hdqts. bldg., off-site use only

Bldg. 3815
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199930130
Status: Unutilized
Comment: 7575 sq. ft., most recent use—storage, off-site use only

Bldg. 3816
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199930131
Status: Unutilized
Comment: 7514 sq. ft., most recent use—storage, off-site use only

Bldg. 5886
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199930134
Status: Unutilized
Comment: 67 sq. ft., most recent use—maint/storage, off-site use only

Bldgs. 5974–5978
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199930135
Status: Unutilized
Comment: 400 sq. ft., most recent use—storage, off-site use only

Bldg. 5993
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199930136
Status: Unutilized
Comment: 960 sq. ft., most recent use—storage, off-site use only

Bldg. 5994
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199930137
Status: Unutilized
Comment: 2016 sq. ft., most recent use—storage, off-site use only

Bldg. T–1003
Fort Stewart
Hinesville Co: Liberty GA 31514–
Landholding Agency: Army
Property Number: 21200030085
Status: Excess
Comment: 9267 sq. ft., poor condition, most recent use—admin., off-site use only

Bldgs. T–1005, T–1006, T–1007
Fort Stewart
Hinesville Co: Liberty GA 31514–
Landholding Agency: Army
Property Number: 21200030086
Status: Excess
Comment: 9267 sq. ft., poor condition, most recent use—storage, off-site use only

Bldgs. T–1015, T–1016, T–1017
Fort Stewart
Hinesville Co: Liberty GA 31514–
Landholding Agency: Army
Property Number: 21200030087
Status: Excess
Comment: 7496 sq ft., poor condition, most recent use—storage, off-site use only

Bldgs. T–1018, T–1019
Fort Stewart
Hinesville Co: Liberty GA 31514–
Landholding Agency: Army
Property Number: 21200030088
Status: Excess
Comment: 9267 sq. ft., poor condition, most recent use—storage, off-site use only

Bldgs. T–1020, T–1021
Fort Stewart
Hinesville Co: Liberty GA 31514–
Landholding Agency: Army
Property Number: 21200030089
Status: Excess
Comment: 9267 sq. ft., poor condition, most recent use—storage, off-site use only

Bldg. T–1022
Fort Stewart
Hinesville Co: Liberty GA 31514–
Landholding Agency: Army
Property Number: 21200030090
Status: Excess
Comment: 9267 sq. ft., poor condition, most recent use—supply center, off-site use only

Bldg. T–1027
Fort Stewart
Hinesville Co: Liberty GA 31514–
Landholding Agency: Army
Property Number: 21200030091
Status: Excess
Comment: 9024 sq ft., poor condition, most recent use—storage, off-site use only

Bldg. T–1028
Fort Stewart

Hinesville Co: Liberty GA 31514–
Landholding Agency: Army
Property Number: 21200030092
Status: Excess
Comment: 7496 sq. ft., poor condition, most recent use—storage, off-site use only

Bldgs. T–1035, T–1036, T–1037
Fort Stewart
Hinesville Co: Liberty GA 31514–
Landholding Agency: Army
Property Number: 21200030093
Status: Excess
Comment: 1626 sq ft., poor condition, most recent use—storage, off-site use only

Bldgs. T–1038, T–1039
Fort Stewart
Hinesville Co: Liberty GA 31514–
Landholding Agency: Army
Property Number: 21200030094
Status: Excess
Comment: 1626 sq. ft., poor condition, most recent use—storage, off-site use only

Bldgs. T–1040, T–1042
Fort Stewart
Hinesville Co: Liberty GA 31514–
Landholding Agency: Army
Property Number: 21200030095
Status: Excess
Comment: 1626 sq. ft., poor condition, most recent use—storage, off-site use only

Bldgs. T–1086, T–1087, T–1088
Fort Stewart
Hinesville Co: Liberty GA 31514–
Landholding Agency: Army
Property Number: 21200030096
Status: Excess
Comment: 7680 sq. ft., poor condition, most recent use—storage, off-site use only

Bldg. 223
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21200040044
Status: Unutilized
Comment: 21,556 sq. ft., most recent use—gen. purpose

Bldg. 228
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21200040045
Status: Unutilized
Comment: 20,220 sq. ft., most recent use—gen. purpose

Bldg. 2051
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21200040046
Status: Unutilized
Comment: 6077 sq. ft., most recent use—storage

Bldg. 2053
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21200040047
Status: Unutilized
Comment: 14,520 sq. ft., most recent use—storage

Bldg. 2677
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21200040048
Status: Unutilized
Comment: 19,326 sq. ft., most recent use—maint. shop

Bldg. 02301
Fort Gordon
Ft. Gordon Co: Richmond GA 30905–
Landholding Agency: Army
Property Number: 21200140075
Status: Unutilized
Comment: 8484 sq. ft., needs major rehab, potential asbestos/lead paint, most recent use—storage, off-site use only

Bldg. T0130
Fort Stewart
Hinesville Co: Liberty GA 31314–5136
Landholding Agency: Army
Property Number: 21200230041
Status: Excess
Comment: 10,813 sq. ft., off-site use only

Bldg. T0157
Fort Stewart
Hinesville Co: Liberty GA 31314–5136
Landholding Agency: Army
Property Number: 21200230042
Status: Excess
Comment: 1440 sq. ft., off-site use only

Bldg. T0251
Fort Stewart
Hinesville Co: Liberty GA 31314–5136
Landholding Agency: Army
Property Number: 21200230043
Status: Excess
Comment: 27,254 sq. ft., off-site use only

Bldgs. T291, T292
Fort Stewart
Hinesville Co: Liberty GA 31314–5136
Landholding Agency: Army
Property Number: 21200230044
Status: Excess
Comment: 5220 sq. ft. each, off-site use only

Bldg. T0295
Fort Stewart
Hinesville Co: Liberty GA 31314–5136
Landholding Agency: Army
Property Number: 21200230045
Status: Excess
Comment: 5220 sq. ft., off-site use only

Bldg. T0470
Fort Stewart
Hinesville Co: Liberty GA 31314–5136
Landholding Agency: Army
Property Number: 21200230046
Status: Excess
Comment: 27,254 sq. ft., off-site use only

Bldg. T1191
Fort Stewart
Hinesville Co: Liberty GA 31314–5136
Landholding Agency: Army
Property Number: 21200230047
Status: Excess
Comment: 9386 sq. ft., off-site use only

Bldg. T1192
Fort Stewart
Hinesville Co: Liberty GA 31314–5136
Landholding Agency: Army
Property Number: 21200230048
Status: Excess
Comment: 3992 sq. ft., off-site use only

Hawaii

P–88
Aliamanu Military Reservation
Honolulu Co: Honolulu HI 96818–
Location: Approximately 600 feet from Main Gate on Aliamanu Drive.
Landholding Agency: Army
Property Number: 21199030324
Status: Unutilized
Comment: 45,216 sq. ft. underground tunnel complex, pres. of asbestos clean-up required of contamination, use of respirator required by those entering property, use limitations

Bldg. T–337
Fort Shafter
Honolulu Co: Honolulu HI 96819–
Landholding Agency: Army
Property Number: 21199640203
Status: Unutilized
Comment: 132 sq. ft., most recent use—storage, off-site use only

Bldg. 01227
Schofield Barracks
Wahiawa Co: HI 96786–
Landholding Agency: Army
Property Number: 21200220104
Status: Unutilized
Comment: 525 sq. ft., poor condition, most recent use—storage, off-site use only

Bldg. 4334
Schofield Barracks
Wahiawa Co: HI 96786–
Landholding Agency: Army
Property Number: 21200220105
Status: Unutilized
Comment: 7402 sq. ft., concrete, needs repair, most recent use—housing, off-site use only

Bldg. 06508
Schofield Barracks
Wahiawa Co: HI 96786–
Landholding Agency: Army
Property Number: 21200220106
Status: Unutilized
Comment: 1140 sq. ft., most recent use—office, off-site use only

Bldg. 02605
Schofield Barracks
Wahiawa Co: Honolulu HI 96786–
Landholding Agency: Army
Property Number: 21200310056
Status: Unutilized
Comment: 320 sq. ft., most recent use—storage, off-site use only

Illinois

Bldg. 54
Rock Island Arsenal
Rock Island Co: Rock Island IL 61299–
Landholding Agency: Army
Property Number: 21199620666
Status: Unutilized
Comment: 2000 sq. ft., most recent use—oil storage, needs repair, off-site use only

Bldg. AR112
Sheridan Reserve
Arlington Heights Co: IL 60052–2475
Landholding Agency: Army
Property Number: 21200110081
Status: Unutilized
Comment: 1000 sq. ft., off-site use only

Kansas

Bldg. S–830
Fort Leavenworth
Leavenworth KS 66027–
Landholding Agency: Army
Property Number: 21199820161
Status: Unutilized

Comment: 5789 sq. ft., most recent use—underground storage, off-site use only
Bldg. S–831
Fort Leavenworth
Leavenworth KS 66027–
Landholding Agency: Army
Property Number: 21199820162
Status: Unutilized
Comment: 5789 sq. ft., most recent use—underground storage, off-site use only
Bldg. P–243
Fort Leavenworth
Leavenworth KS 66027–
Landholding Agency: Army
Property Number: 21199830321
Status: Unutilized
Comment: 242 sq. ft., most recent use—industrial, off-site use only
Bldg. P–469
Fort Leavenworth
Leavenworth Co: KS 66027–
Landholding Agency: Army
Property Number: 21200210031
Status: Unutilized
Comment: 625 sq. ft., most recent use—storage, off-site use only
Bldg. S–471
Fort Leavenworth
Leavenworth Co: KS 66027–
Landholding Agency: Army
Property Number: 21200210032
Status: Unutilized
Comment: 4535 sq. ft., most recent use—repair shop, off-site use only
Bldg. P–485
Fort Leavenworth
Leavenworth Co: KS 66027–
Landholding Agency: Army
Property Number: 21200210033
Status: Unutilized
Comment: 2006 sq. ft., most recent use—instructional, off-site use only
Bldg. S–486
Fort Leavenworth
Leavenworth Co: KS 66027–
Landholding Agency: Army
Property Number: 21200210034
Status: Unutilized
Comment: 960 sq. ft., most recent use—instructional, off-site use only
Bldg. S–496
Fort Leavenworth
Leavenworth Co: KS 66027–
Landholding Agency: Army
Property Number: 21200210035
Status: Unutilized
Comment: 7134 sq. ft., most recent use—vocational, off-site use only
Bldg. 00493
Fort Leavenworth
Ft. Leavenworth Co: KS 66027–
Landholding Agency: Army
Property Number: 21200230049
Status: Unutilized
Comment: 1020 sq. ft., most recent use—storage, off-site use only
Bldg. 00498
Fort Leavenworth
Ft. Leavenworth Co: KS 66027–
Landholding Agency: Army
Property Number: 21200230050
Status: Unutilized
Comment: 208 sq. ft., most recent use—shed, off-site use only

Louisiana

Bldg. 8423, Fort Polk
Ft. Polk Co: Vernon Parish LA 71459–
Landholding Agency: Army
Property Number: 21199640528
Status: Underutilized
Comment: 4172 sq. ft., most recent use—barracks
Bldg. 8449, Fort Polk
Ft. Polk Co: Vernon Parish LA 71459–
Landholding Agency: Army
Property Number: 21199640539
Status: Underutilized
Comment: 2093 sq. ft., most recent use—office

Maryland

Bldg. 907
Fort George G. Meade
Ft. Meade Co: Anne Arundel MD 20755–5115
Landholding Agency: Army
Property Number: 21200120092
Status: Unutilized
Comment: 2306 sq. ft., presence of asbestos/lead paint, most recent use—storage, off-site use only
Bldg. 930
Fort George G. Meade
Ft. Meade Co: Anne Arundel MD 20755–5115
Landholding Agency: Army
Property Number: 21200120097
Status: Unutilized
Comment: 3108 sq. ft., presence of asbestos/lead paint, most recent use—storage, off-site use only
Bldg. 938
Fort George G. Meade
Ft. Meade Co: Anne Arundel MD 20755–5115
Landholding Agency: Army
Property Number: 21200120098
Status: Unutilized
Comment: 1676 sq. ft., presence of asbestos/lead paint, most recent use—admin., off-site use only
Bldg. 2837
Fort George G. Meade
Ft. Meade Co: Anne Arundel MD 20755–5115
Landholding Agency: Army
Property Number: 21200120101
Status: Unutilized
Comment: 7670 sq. ft., presence of asbestos/lead paint, most recent use—admin., off-site use only
Bldg. 0310A
Aberdeen Proving Ground
Aberdeen Co: Harford MD 21005–5001
Landholding Agency: Army
Property Number: 21200120103
Status: Unutilized
Comment: 120 sq. ft., poor condition, presence of asbestos/lead paint, most recent use—storage, off-site use only
Bldg. 00313
Aberdeen Proving Ground
Aberdeen Co: Harford MD 21005–5001
Landholding Agency: Army
Property Number: 21200120104
Status: Unutilized
Comment: 983 sq. ft., most recent use—storage, off-site use only
Bldg. 00340
Aberdeen Proving Ground
Aberdeen Co: Harford MD 21005–5001
Landholding Agency: Army
Property Number: 21200120105
Status: Unutilized
Comment: 384 sq. ft., most recent use—storage, off-site use only
Bldg. 0459B
Aberdeen Proving Ground
Aberdeen Co: Harford MD 21005–5001
Landholding Agency: Army
Property Number: 21200120106
Status: Unutilized
Comment: 225 sq. ft., poor condition, most recent use—equipment bldg., off-site use only
Bldg. 00785
Aberdeen Proving Ground
Aberdeen Co: Harford MD 21005–5001
Landholding Agency: Army
Property Number: 21200120107
Status: Unutilized
Comment: 160 sq. ft., poor condition, most recent use—shelter, off-site use only
Bldg. E3728
Aberdeen Proving Ground
Aberdeen Co: Harford MD 21005–5001
Landholding Agency: Army
Property Number: 21200120109
Status: Unutilized
Comment: 2596 sq. ft., presence of asbestos/lead paint, most recent use—testing facility, off-site use only
Bldg. 05213
Aberdeen Proving Ground
Aberdeen Co: Harford MD 21005–5001
Landholding Agency: Army
Property Number: 21200120112
Status: Unutilized
Comment: 200 sq .ft., poor condition, most recent use—storage, off-site use only
Bldg. E5239
Aberdeen Proving Ground
Aberdeen Co: Harford MD 21005–5001
Landholding Agency: Army
Property Number: 21200120113
Status: Unutilized
Comment: 230 sq. ft., most recent use—storage, off-site use only
Bldg. E5317
Aberdeen Proving Ground
Aberdeen Co: Harford MD 21005–5001
Landholding Agency: Army
Property Number: 21200120114
Status: Unutilized
Comment: 3158 sq. ft., presence of asbestos/lead paint, most recent use—lab, off-site use only
Bldg. E5637
Aberdeen Proving Ground
Aberdeen Co: Harford MD 21005–5001
Landholding Agency: Army
Property Number: 21200120115
Status: Unutilized
Comment: 312 sq. ft., presence of asbestos/lead paint, most recent use—lab, off-site use only
Bldg. 503
Fort George G. Meade
Ft. Meade Co: Anne Arundel MD 20755–5115
Landholding Agency: Army
Property Number: 21200130092
Status: Unutilized
Comment: 14,244 sq. ft., needs rehab, presence of asbestos/lead paint, most recent use—training, off-site use only
Bldg. 2478
Fort George G. Meade

Ft. Meade Co: Anne Arundel MD 20755–5115
Landholding Agency: Army
Property Number: 21200130097
Status: Unutilized
Comment: 4720 sq. ft., needs rehab, presence of asbestos/lead paint, most recent use—medical clinic, off-site use only

Bldg. 8481
Fort George G. Meade
Ft. Meade Co: Anne Arundel MD 20755–5115
Landholding Agency: Army
Property Number: 21200130098
Status: Unutilized
Comment: 7718 sq. ft., needs rehab, presence of asbestos/lead paint, most recent use—heat plant, off-site use only

Bldg. 219
Ft. George G. Meade
Ft. Meade Co: Anne Arundel MD 20755–
Landholding Agency: Army
Property Number: 21200140078
Status: Unutilized
Comment: 8142 sq. ft., presence of asbestos/lead paint, most recent use—admin., off-site use only

Bldg. 229
Ft. George G. Meade
Ft. Meade Co: Anne Arundel MD 20755–
Landholding Agency: Army
Property Number: 21200140079
Status: Unutilized
Comment: 2250 sq. ft., presence of asbestos/lead paint, most recent use—admin., off-site use only

Bldg. 287
Ft. George G. Meade
Ft. Meade Co: Anne Arundel MD 20755–
Landholding Agency: Army
Property Number: 21200140080
Status: Unutilized
Comment: 2892 sq. ft., presence of asbestos/lead paint, most recent use—storehouse, off-site use only

Bldg. 294
Ft. George G. Meade
Ft. Meade Co: Anne Arundel MD 20755–
Landholding Agency: Army
Property Number: 21200140081
Status: Unutilized
Comment: 3148 sq. ft., presence of asbestos/lead paint, most recent use—entomology facility, off-site use only

Bldg. 949
Ft. George G. Meade
Ft. Meade Co: Anne Arundel MD 20755–
Landholding Agency: Army
Property Number: 21200140083
Status: Unutilized
Comment: 2441 sq. ft., presence of asbestos/lead paint, most recent use—storehouse, off-site use only

Bldg. 979
Ft. George G. Meade
Ft. Meade Co: Anne Arundel MD 20755–
Landholding Agency: Army
Property Number: 21200140084
Status: Unutilized
Comment: 2331 sq. ft., presence of asbestos/lead paint, most recent use—admin., off-site use only

Bldg. 1007
Ft. George G. Meade
Ft. Meade Co: Anne Arundel MD 20755–
Landholding Agency: Army
Property Number: 21200140085
Status: Unutilized
Comment: 3108 sq. ft., presence of asbestos/lead paint, most recent use—storage, off-site use only

Bldg. 2212
Ft. George G. Meade
Ft. Meade Co: Anne Arundel MD 20755–
Landholding Agency: Army
Property Number: 21200140086
Status: Unutilized
Comment: 9092 sq. ft., presence of asbestos/lead paint, most recent use—admin., off-site use only

Bldg. 3000
Ft. George G. Meade
Ft. Meade Co: Anne Arundel MD 20755–
Landholding Agency: Army
Property Number: 21200140087
Status: Unutilized
Comment: 10,663 sq. ft., presence of asbestos/lead paint, most recent use—storehouse, off-site use only

Bldg. 00546
Fort Meade
Ft. Meade Co: Anne Arundel MD 20755–
Landholding Agency: Army
Property Number: 21200220109
Status: Unutilized
Comment: 5659 sq. ft., possible asbestos/lead paint, most recent use—admin., off-site use only

Bldg. 00939
Fort Meade
Ft. Meade Co: Anne Arundel MD 20755–
Landholding Agency: Army
Property Number: 21200220110
Status: Unutilized
Comment: 8185 sq. ft., possible asbestos/lead paint, most recent use—admin., off-site use only

Bldg. 02206
Fort Meade
Ft. Meade Co: Anne Arundel MD 20755–
Landholding Agency: Army
Property Number: 21200220111
Status: Unutilized
Comment: 3075 sq. ft., possible asbestos/lead paint, most recent use—admin., off-site use only

Bldg. 02207
Fort Meade
Ft. Meade Co: Anne Arundel MD 20755–
Landholding Agency: Army
Property Number: 21200220112
Status: Unutilized
Comment: 6855 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only

Bldg. 02271
Fort Meade
Ft. Meade Co: Anne Arundel MD 20755–
Landholding Agency: Army
Property Number: 21200220114
Status: Unutilized
Comment: 10,080 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only

Bldg. 04675
Fort Meade
Ft. Meade Co: Anne Arundel MD 20755–
Landholding Agency: Army
Property Number: 21200220115
Status: Unutilized
Comment: 1710 sq. ft., possible asbestos/lead paint, most recent use—rental store, off-site use only

Bldg. 2050A
Fort George G. Meade
Fort Meade Co: Anne Arundel MD 20755–
Landholding Agency: Army
Property Number: 21200230051
Status: Unutilized
Comment: 200 sq. ft., needs rehab, most recent use—storage, off-site use only

Bldgs. 2211, 2213
Fort George G. Meade
Fort Meade Co: Anne Arundel MD 20755–
Landholding Agency: Army
Property Number: 21200230053
Status: Unutilized
Comment: 6936 & 8386 sq ft., needs rehab, possible asbestos/lead paint, most recent use—maint. shop, off-site use only

Bldg. 2214
Fort George G. Meade
Fort Meade Co: Anne Arundel MD 20755–
Landholding Agency: Army
Property Number: 21200230054
Status: Unutilized
Comment: 7740 sq. ft., needs rehab, possible asbestos/lead paint, most recent use—storage, off-site use only

Bldg. 2217
Fort George G. Meade
Fort Meade Co: Anne Arundel MD 20755–
Landholding Agency: Army
Property Number: 21200230055
Status: Unutilized
Comment: 7710 sq. ft., needs rehab, possible asbestos/lead paint, most recent use—admin/warehouse, off-site use only

Bldg. 2253
Fort George G. Meade
Fort Meade Co: Anne Arundel MD 20755–
Landholding Agency: Army
Property Number: 21200230056
Status: Unutilized
Comment: 18,912 sq. ft., needs rehab, possible asbestos/lead paint, most recent use—vehicle maint. shop, off-site use only

Bldg. 2275
Fort George G. Meade
Fort Meade Co: Anne Arundel MD 20755–
Landholding Agency: Army
Property Number: 21200230057
Status: Unutilized
Comment: 10,080 sq. ft., needs rehab, possible asbestos/lead paint, most recent use—warehouse, off-site use only

Bldg. 2276
Fort George G. Meade
Fort Meade Co: Anne Arundel MD 20755–
Landholding Agency: Army
Property Number: 21200230058
Status: Unutilized
Comment: 10,080 sq. ft., needs rehab, possible asbestos/lead paint, most recent use—warehouse, off-site use only

Bldg. 8880
Fort George G. Meade
Fort Meade Co: Anne Arundel MD 20755–
Landholding Agency: Army
Property Number: 21200230060
Status: Unutilized
Comment: 2500 sq. ft., needs rehab, most recent use—storehouse/maint. shop, off-site use only

Massachusetts

Bldg. 76
Army Soldier Systems Center
Natick Co: Middlesex MA 01760–
Landholding Agency: Army
Property Number: 21200210037
Status: Unutilized
Comment: 1000 sq. ft., most recent use—storage, off-site use only

Missouri

Bldg. T2171
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 21199340212
Status: Unutilized
Comment: 1296 sq. ft., 1-story wood frame, most recent use—administrative, no handicap fixtures, lead base paint, off-site use only

Bldg. T1497
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 21199420441
Status: Underutilized
Comment: 4720 sq. ft., 2-story, presence of lead base paint, most recent use—admin/gen. purpose, off-site use only

Bldg. T2139
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 21199420446
Status: Underutilized
Comment: 3663 sq. ft., 1-story, presence of lead base paint, most recent use—admin/gen. purpose, off-site use only

Bldg. T–2191
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 21199440334
Status: Excess
Comment: 4720 sq. ft., 2 story wood frame, off-site removal only, to be vacated 8/95, lead based paint, most recent use—barracks

Bldg. T–2197
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 21199440335
Status: Excess
Comment: 4720 sq. ft., 2 story wood frame, off-site removal only, to be vacated 8/95, lead based paint, most recent use—barracks

Bldg. T2385
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–
Landholding Agency: Army
Property Number: 21199510115
Status: Excess
Comment: 3158 sq. ft., 1-story, wood frame, most recent use—admin., to be vacated 8/95, off-site use only

Bldg. 1650
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 21199810311
Status: Unutilized
Comment: 1676 sq. ft., presence of asbestos/lead paint, most recent use—union hall, off-site use only

Bldg. 2170
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 21199810313
Status: Unutilized
Comment: 1296 sq. ft., presence of asbestos/lead paint, most recent use—admin., off-site use only

Bldg. 2167
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 21199820179
Status: Unutilized
Comment: 1296 sq. ft., presence of asbestos/lead paint, most recent use—admin., off-site use only

Bldgs. 2169, 2181, 2182, 2183
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 21199820180
Status: Unutilized
Comment: 4720 sq. ft., presence of asbestos/lead paint, most recent use—barracks, off-site use only

Bldg. 2186
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 21199820181
Status: Unutilized
Comment: 1296 sq. ft., presence of asbestos/lead paint, most recent use—admin., off-site use only

Bldg. 2187
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 21199820182
Status: Unutilized
Comment: 2892 sq. ft., presence of asbestos/lead paint, most recent use—dayroom, off-site use only

Bldgs. 2192, 2196, 2198
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 21199820183
Status: Unutilized
Comment: 4720 sq. ft., presence of asbestos/lead paint, most recent use—barracks, off-site use only

Montana

Bldg. 00405
Fort Harrison
Ft. Harrison Co: Lewis/Clark MT 59636–
Landholding Agency: Army
Property Number: 21200130099
Status: Unutilized
Comment: 3467 sq. ft., most recent use—storage, security limitations

Bldg. T0066
Fort Harrison
Ft. Harrison Co: Lewis/Clark MT 59636–
Landholding Agency: Army
Property Number: 21200130100
Status: Unutilized
Comment: 528 sq. ft., needs rehab, presence of asbestos, security limitations

New Hampshire

Bldg. KG001
Grenier Field USARC
Manchester Co: Rockingham NH 03103–7474
Landholding Agency: Army
Property Number: 21200030104
Status: Excess
Comment: 18,994 sq ft., presence of asbestos, most recent use—classroom, off-site use only

Bldg. KG002
Grenier Field USARC
Manchester Co: Rockingham NH 03103–7474
Landholding Agency: Army
Property Number: 21200030105
Status: Excess
Comment: 20,014 sq. ft., presence of asbestos, most recent use—storage/store, off-site use only

Bldg. KG003
Grenier Field USARC
Manchester Co: Rockingham NH 03103–7474
Landholding Agency: Army
Property Number: 21200030106
Status: Excess
Comment: 3458 sq. ft., presence of asbestos, most recent use—veh. maint., off-site use only

New Jersey

Bldg. 178
Armament R&D Engineering Center
Picatinny Arsenal Co: Morris NJ 07806–5000
Landholding Agency: Army
Property Number: 21199740312
Status: Unutilized
Comment: 2067 sq. ft., most recent use—research, off-site use only

Bldg. 732
Armament R&D Engineering Center
Picatinny Arsenal Co: Morris NJ 07806–5000
Landholding Agency: Army
Property Number: 21199740315
Status: Unutilized
Comment: 9077 sq. ft., needs rehab, most recent use—storage, off-site use only

Bldg. 816C
Armament R, D, & Eng. Center
Picatinny Arsenal Co: Morris NJ 07806–5000
Landholding Agency: Army
Property Number: 21200130103
Status: Unutilized
Comment: 144 sq. ft., most recent use—storage, off-site use only

New Mexico

Bldg. 34198
White Sands Missile Range
Dona Ana Co: NM 88002–
Landholding Agency: Army
Property Number: 21200230062
Status: Excess
Comment: 107 sq. ft., most recent use—security, off-site use only

New York
Bldg. T–181
Fort Drum
Ft. Drum Co: Jefferson NY 13602–
Landholding Agency: Army
Property Number: 21200130129
Status: Unutilized
Comment: 3151 sq. ft., needs rehab, most recent use—housing mnt., off-site use only

Bldg. T–201
Fort Drum
Ft. Drum Co: Jefferson NY 13602–
Landholding Agency: Army
Property Number: 21200130131
Status: Unutilized
Comment: 2305 sq. ft., needs rehab, most recent use—admin., off-site use only

Bldg. T–203
Fort Drum
Ft. Drum Co: Jefferson NY 13602–
Landholding Agency: Army
Property Number: 21200130132
Status: Unutilized
Comment: 2284 sq. ft., needs rehab, most recent use—admin., off-site use only

Bldg. T–252
Fort Drum
Ft. Drum Co: Jefferson NY 13602–
Landholding Agency: Army
Property Number: 21200130133
Status: Unutilized
Comment: 4720 sq. ft., needs rehab, most recent use—housing, off-site use only

Bldgs. T–253, T–256, T–257
Fort Drum
Ft. Drum Co: Jefferson NY 13602–
Landholding Agency: Army
Property Number: 21200130134
Status: Unutilized
Comment: 4720 sq. ft., needs rehab, most recent use—housing, off-site use only

Bldgs. T–271, T–272, T–273
Fort Drum
Ft. Drum Co: Jefferson NY 13602–
Landholding Agency: Army
Property Number: 21200130135
Status: Unutilized
Comment: 4720 sq. ft., needs rehab, most recent use—housing, off-site use only

Bldg. T–274
Fort Drum
Ft. Drum Co: Jefferson NY 13602–
Landholding Agency: Army
Property Number: 21200130136
Status: Unutilized
Comment: 2750 sq. ft., needs rehab, most recent use—BN HQ, off-site use only

Bldgs. T–276, T–277, T–278
Fort Drum
Ft. Drum Co: Jefferson NY 13602–
Landholding Agency: Army
Property Number: 21200130137
Status: Unutilized
Comment: 4720 sq. ft., needs rehab, most recent use—housing, off-site use only

Bldg. T–1030
Fort Drum
Ft. Drum Co: Jefferson NY 13602–
Landholding Agency: Army
Property Number: 21200130139
Status: Unutilized
Comment: 15606 sq. ft., needs rehab, most recent use—simulator bldg., off-site use only

Bldg. P–2159
Fort Drum
Ft. Drum Co: Jefferson NY 13602–
Landholding Agency: Army
Property Number: 21200130140
Status: Unutilized
Comment: 1948 sq. ft., needs rehab, most recent use—waste/water treatment, off-site use only

Bldg. T–2443
Fort Drum
Ft. Drum Co: Jefferson NY 13602–
Landholding Agency: Army
Property Number: 21200130142
Status: Unutilized
Comment: 793 sq. ft., needs rehab, most recent use—vet facility, off-site use only

Bldgs. T–401, T–403
Fort Drum
Ft. Drum Co: Jefferson NY 13602–
Landholding Agency: Army
Property Number: 21200210042
Status: Unutilized
Comment: 2305/2284 sq. ft., needs repair, most recent use—battalion hq bldg., off-site use only

Bldgs. T–404, T–406, T–407
Fort Drum
Ft. Drum Co: Jefferson NY 13602–
Landholding Agency: Army
Property Number: 21200210043
Status: Unutilized
Comment: 2000/1144 sq. ft., needs repair, most recent use—Co Hq Bldg., off-site use only

Bldg. T–430
Fort Drum
Ft. Drum Co: Jefferson NY 13602–
Landholding Agency: Army
Property Number: 21200210044
Status: Unutilized
Comment: 2731 sq. ft., needs repair, most recent use—Co Hq Bldg., off-site use only

4 Bldgs.
Fort Drum
T–431, T–432, T–433, T–434
Ft. Drum Co: Jefferson NY 13602–
Landholding Agency: Army
Property Number: 21200210045
Status: Unutilized
Comment: 1144 sq. ft., needs repair, most recent use—Co Hq Bldg., off-site use only

Bldg. T–435
Fort Drum
Ft. Drum Co: Jefferson NY 13602–
Landholding Agency: Army
Property Number: 21200210046
Status: Unutilized
Comment: 2731 sq. ft., needs repair, most recent use—Co Hq Bldg., off-site use only

Bldgs. T–437, T–438
Fort Drum
Ft. Drum Co: Jefferson NY 13602–
Landholding Agency: Army
Property Number: 21200210047
Status: Unutilized
Comment: 1144 sq. ft., needs repair, most recent use—Co Hq Bldg., off-site use only

Bldgs. T–439, T–460
Fort Drum
Ft. Drum Co: Jefferson NY 13602–
Landholding Agency: Army
Property Number: 21200210048
Status: Unutilized
Comment: 2588/2734 sq. ft., needs repair, most recent use—Co Hq Bldg., off-site use only

4 Bldgs.
Fort Drum
T–461, T–462, T–463, T–464
Ft. Drum Co: Jefferson NY 13602–
Landholding Agency: Army
Property Number: 21200210049
Status: Unutilized
Comment: 1144 sq. ft., needs repair, most recent use—Co Hq Bldg., off-site use only

Bldg. T–465
Fort Drum
Ft. Drum Co: Jefferson NY 13602–
Landholding Agency: Army
Property Number: 21200210050
Status: Unutilized
Comment: 2734 sq. ft., needs repair, most recent use—Co Hq Bldg., off-site use only

Bldgs. T–405, T–408
Fort Drum
Ft. Drum Co: Jefferson NY 13602–
Landholding Agency: Army
Property Number: 21200210051
Status: Unutilized
Comment: 1296 sq. ft., needs repair, most recent use—storage, off-site use only

6 Bldgs.
Fort Drum
T–410, T–411, T–412, T–416, T–417, T–418
Ft. Drum Co: Jefferson NY 13602–
Landholding Agency: Army
Property Number: 21200210052
Status: Unutilized
Comment: 4720 sq. ft., needs repair, most recent use—enlisted barracks AN TR, off-site use only

Bldgs. T421, T–422
Fort Drum
Ft. Drum Co: Jefferson NY 13602–
Landholding Agency: Army
Property Number: 21200210053
Status: Unutilized
Comment: 2510 sq. ft., needs repair, most recent use—enlisted barracks AN TR, off-site use only

Bldgs. T–423, T–424
Fort Drum
Ft. Drum Co: Jefferson NY 13602–
Landholding Agency: Army
Property Number: 21200210054
Status: Unutilized
Comment: 4720 sq. ft., needs repair, most recent use—enlisted barracks AN TR, off-site use only

7 Bldgs.
Fort Drum
T–441, T–442, T–443, T–444, T–446–T–448
Ft. Drum Co: Jefferson NY 13602–
Landholding Agency: Army
Property Number: 21200210055
Status: Unutilized
Comment: 4720 sq. ft., needs repair, most recent use—enlisted barracks AN TR, off-site use only

6 Bldgs.
Fort Drum
T–451, T–452, T–453, T–454, T–456, T–458
Ft. Drum Co: Jefferson NY 13602–
Landholding Agency: Army
Property Number: 21200210056
Status: Unutilized

Comment: 4720 sq. ft., needs repair, most recent use—enlisted barracks AN TR, off-site use only

5 Bldgs.
Fort Drum
T–471, T–472, T–473, T–474, T–477
Ft. Drum Co: Jefferson NY 13602–
Landholding Agency: Army
Property Number: 21200210057
Status: Unutilized
Comment: 4720 sq. ft., needs repair, most recent use—enlisted barracks AN TR, off-site use only

Bldgs. T–420, T–445, T–470
Fort Drum
Ft. Drum Co: Jefferson NY 13602–
Landholding Agency: Army
Property Number: 21200210058
Status: Unutilized
Comment: 2510 sq. ft., needs repair, most recent use—dining facility, off-site use only

Bldgs. T–440, T–450
Fort Drum
Ft. Drum Co: Jefferson NY 13602–
Landholding Agency: Army
Property Number: 21200210059
Status: Unutilized
Comment: 2360 sq. ft., needs repair, most recent use—dining facility, off-site use only

Bldg. T–478
Fort Drum
Ft. Drum Co: Jefferson NY 13602–
Landholding Agency: Army
Property Number: 21200210060
Status: Unutilized
Comment: 4720 sq. ft., needs repair, most recent use—classroom, off-site use only

North Carolina

Bldg. C5536
Fort Bragg
Ft. Bragg Co: Cumberland NC 28310–5000
Landholding Agency: Army
Property Number: 21200130150
Status: Unutilized
Comment: 600 sq. ft., single wide trailer w/ metal storage shed, needs major repair, presence of asbestos/lead paint, off-site use only

Oklahoma

Bldg. T–838, Fort Sill
838 Macomb Road
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199220609
Status: Unutilized
Comment: 151 sq. ft., wood frame, 1 story, off-site removal only, most recent use—vet facility (quarantine stable)

Bldg. T–954, Fort Sill
954 Quinette Road
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199240659
Status: Unutilized
Comment: 3571 sq. ft., 1 story wood frame, needs rehab, off-site use only, most recent use—motor repair shop

Bldg. T–3325, Fort Sill
3325 Naylor Road
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199240681
Status: Unutilized
Comment: 8832 sq. ft., 1 story wood frame, needs rehab, off-site use only, most recent use—warehouse

Bldg. T1652, Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199330380
Status: Unutilized
Comment: 1505 sq. ft., 1-story wood, possible asbestos, most recent use—storage, off-site use only

Bldg. T–4226
Fort Sill
Lawton Co: Comanche OK 73503–
Landholding Agency: Army
Property Number: 21199440384
Status: Unutilized
Comment: 114 sq. ft., 1-story wood frame, possible asbestos and lead paint, most recent use—storage, off-site use only

Bldg. P–1015, Fort Sill
Lawton Co: Comanche OK 73501–5100
Landholding Agency: Army
Property Number: 21199520197
Status: Unutilized
Comment: 15402 sq. ft., 1-story, most recent use—storage, off-site use only

Bldg. P–366, Fort Sill
Lawton Co: Comanche OK 73503–
Landholding Agency: Army
Property Number: 21199610740
Status: Unutilized
Comment: 482 sq. ft., possible asbestos, most recent use—storage, off-site use only

Building T–2952
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199710047
Status: Unutilized
Comment: 4,327 sq. ft., possible asbestos and lead paint, most recent use—motor repair shop, off-site use only

Building P–5042
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199710066
Status: Unutilized
Comment: 119 sq. ft., possible asbestos and lead paint, most recent use—heat plant, off-site use only

4 Buildings
Fort Sill
Lawton Co: Comanche OK 73503–5100
Location: T–6465, T–6466, T–6467, T–6468
Landholding Agency: Army
Property Number: 21199710086
Status: Unutilized
Comment: various sq. ft., possible asbestos and lead paint, most recent use—range support, off site use only

Bldg. T–810
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199730350
Status: Unutilized
Comment: 7205 sq. ft., possible asbestos/lead paint, most recent use—hay storage, off-site use only

Bldgs. T–837, T–839
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199730351
Status: Unutilized
Comment: approx. 100 sq. ft. each, possible asbestos/lead paint, most recent use—storage, off-site use only

Bldg. P–934
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199730353
Status: Unutilized
Comment: 402 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only

Bldg. T–1177
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199730356
Status: Unutilized
Comment: 183 sq. ft., possible asbestos/lead paint, most recent use—snack bar, off-site use only

Bldgs. T–1468, T–1469
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199730357
Status: Unutilized
Comment: 114 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only

Bldg. T–1470
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199730358
Status: Unutilized
Comment: 3120 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only

Bldg. T–1940
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199730360
Status: Unutilized
Comment: 1400 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only

Bldgs. T–1954, T–2022
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199730362
Status: Unutilized
Comment: approx. 100 sq. ft. each, possible asbestos/lead paint, most recent use—storage, off-site use only

Bldg. T–2184
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199730364
Status: Unutilized
Comment: 454 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only

Bldgs. T–2186, T–2188, T–2189
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army

Property Number: 21199730366
Status: Unutilized
Comment: 1656—3583 sq. ft., possible asbestos/lead paint, most recent use—vehicle maint. shop, off-site use only

Bldg. T–2187
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199730367
Status: Unutilized
Comment: 1673 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only

Bldg. T–2209
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199730368
Status: Unutilized
Comment: 1257 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only

Bldgs. T–2291 thru T–2296
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199730372
Status: Unutilized
Comment: 400 sq. ft. each, possible asbestos/lead paint, most recent use—storage, off-site use only

Bldgs. T–3001, T–3006
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199730383
Status: Unutilized
Comment: approx. 9300 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only

Bldg. T–3314
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199730385
Status: Unutilized
Comment: 229 sq. ft., possible asbestos/lead paint, most recent use—office, off-site use only

Bldgs. T–4401, T–4402
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199730393
Status: Unutilized
Comment: 2260 sq. ft., possible asbestos/lead paint, most recent use—office, off-site use only

Bldg. T–5041
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199730409
Status: Unutilized
Comment: 763 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only

Bldg. T–5420
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199730414
Status: Unutilized
Comment: 189 sq. ft., possible asbestos/lead paint, most recent use—fuel storage, off-site use only

Bldgs. T–7290, T–7291
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199730417
Status: Unutilized
Comment: 224/840 sq. ft., possible asbestos/lead paint, most recent use—kennel, off-site use only

Bldg. T–7775
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199730419
Status: Unutilized
Comment: 1452 sq. ft., possible asbestos/lead paint, most recent use—private club, off-site use only

4 Bldgs.
Fort Sill
P–617, P–1114, P–1386, P–1608
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199910133
Status: Unutilized
Comment: 106 sq. ft., possible asbestos/lead paint, most recent use—utility plant, off-site use only

Bldg. P–746
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199910135
Status: Unutilized
Comment: 6299 sq. ft., possible asbestos/lead paint, most recent use—admin., off-site use only

Bldgs. P–2581, P–2773
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199910140
Status: Unutilized
Comment: 4093 and 4129 sq. ft., possible asbestos/lead paint, most recent use—office, off-site use only

Bldg. P–2582
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199910141
Status: Unutilized
Comment: 3672 sq. ft., possible asbestos/lead paint, most recent use—admin., off-site use only

Bldgs. P–2912, P–2921, P–2944
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199910144
Status: Unutilized
Comment: 1390 sq. ft., possible asbestos/lead paint, most recent use—office, off-site use only

Bldg. P–2914
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199910146
Status: Unutilized
Comment: 1236 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only

Bldg. P–5101
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199910153
Status: Unutilized
Comment: 82 sq. ft., possible asbestos/lead paint, most recent use—gas station, off-site use only

Bldg. S–6430
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199910156
Status: Unutilized
Comment: 2080 sq. ft., possible asbestos/lead paint, most recent use—range support, off-site use only

Bldg. T–6461
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199910157
Status: Unutilized
Comment: 200 sq. ft., possible asbestos/lead paint, most recent use—range support, off-site use only

Bldg. T–6462
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199910158
Status: Unutilized
Comment: 64 sq. ft., possible asbestos/lead paint, most recent use—control tower, off-site use only

Bldg. P–7230
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199910159
Status: Unutilized
Comment: 160 sq. ft., possible asbestos/lead paint, most recent use—transmitter bldg., off-site use only

Bldg. S–4023
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21200010128
Status: Unutilized
Comment: 1200 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only

Bldg. P–747
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21200120120
Status: Unutilized
Comment: 9232 sq. ft., possible asbestos/lead paint, most recent use—lab, off-site use only

Bldg. P–842
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21200120123
Status: Unutilized
Comment: 192 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only

Bldg. T–911
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21200120124
Status: Unutilized
Comment: 3080 sq. ft., possible asbestos/lead paint, most recent use—office, off-site use only

Bldg. P–1672
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21200120126
Status: Unutilized
Comment: 1056 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only

Bldg. S–2362
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21200120127
Status: Unutilized
Comment: 64 sq. ft., possible asbestos/lead paint, most recent use—gatehouse, off-site use only

Bldg. P–2589
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21200120129
Status: Unutilized
Comment: 3672 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only

Bldg. T–3043
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21200120130
Status: Unutilized
Comment: 80 sq. ft., possible asbestos/lead paint, most recent use—guard shack, off-site use only

Bldg. S–4749
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21200130152
Status: Unutilized
Comment: 1438 sq. ft., possible asbestos/lead paint, most recent use—weather station, off-site use only

Pennsylvania

Bldg. 00634
Carlisle Barracks
Carlisle Co: Cumberland PA 17013–
Landholding Agency: Army
Property Number: 21200240089
Status: Unutilized
Comment: 113 sq. ft., presence of asbestos, most recent use—plant/utility bldg., off-site use only

South Carolina

Bldg. 3499
Fort Jackson
Ft. Jackson Co: Richland SC 29207–
Landholding Agency: Army
Property Number: 21199730310
Status: Unutilized
Comment: 3724 sq. ft., needs repair, most recent use—admin.

Bldg. 2441
Fort Jackson
Ft. Jackson Co: Richland SC 29207–
Landholding Agency: Army
Property Number: 21199820187
Status: Unutilized
Comment: 2160 sq. ft., needs repair, most recent use—admin.

Bldg. 3605
Fort Jackson
Ft. Jackson Co: Richland SC 29207–
Landholding Agency: Army
Property Number: 21199820188
Status: Unutilized
Comment: 711 sq. ft., needs repair, most recent use—storage

Bldg. 1765
Fort Jackson
Ft. Jackson Co: Richland SC 29207–
Landholding Agency: Army
Property Number: 21200030109
Status: Unutilized
Comment: 1700 sq. ft., need repairs, presence of asbestos/lead paint, most recent use—training bldg., off-site use only

Texas

Bldg. 7137, Fort Bliss
El Paso Co: El Paso TX 79916–
Landholding Agency: Army
Property Number: 21199640564
Status: Unutilized
Comment: 35,736 sq. ft., 3-story, most recent use—housing, off-site use only

Bldg. 919
Fort Hood
Ft. Hood Co: Coryell TX 76544–
Landholding Agency: Army
Property Number: 21199920212
Status: Unutilized
Comment: 11,800 sq. ft., needs repair, most recent use—Bde. Hq. Bldg., off-site use only

Bldg. 92043
Fort Hood
Ft. Hood Co: Bell TX 76544–
Landholding Agency: Army
Property Number: 21200020206
Status: Unutilized
Comment: 450 sq. ft., most recent use—storage, off-site use only

Bldg. 92044
Fort Hood
Ft. Hood Co: Bell TX 76544–
Landholding Agency: Army
Property Number: 21200020207
Status: Unutilized
Comment: 1920 sq. ft., most recent use—admin., off-site use only

Bldg. 92045
Fort Hood
Ft. Hood Co: Bell TX 76544–
Landholding Agency: Army
Property Number: 21200020208
Status: Unutilized
Comment: 2108 sq. ft., most recent use—maint., off-site use only

Bldg. 4469
Fort Hood
Ft. Hood Co: Bell TX 76544–
Landholding Agency: Army
Property Number: 21200030116
Status: Unutilized
Comment: 5310 sq. ft., most recent use—barracks, off-site use only

Bldg. 1281
Fort Bliss
El Paso Co: TX 79916–
Landholding Agency: Army
Property Number: 21200110091
Status: Unutilized
Comment: 25,027 sq. ft., most recent use—cold storage, off-site use only

Bldg. 3656
Fort Bliss
El Paso Co: TX 79916–
Landholding Agency: Army
Property Number: 21200110093
Status: Unutilized
Comment: 1806 sq. ft., most recent use—igloo str. inst., off-site use only

Bldg. 7113
Fort Bliss
El Paso Co: TX 79916–
Landholding Agency: Army
Property Number: 21200110094
Status: Unutilized
Comment: 14,807 sq. ft., most recent use—nursery school, off-site use only

Bldg. 7133
Fort Bliss
El Paso Co: TX 79916–
Landholding Agency: Army
Property Number: 21200110095
Status: Unutilized
Comment: 11,650 sq. ft., most recent use—storage, off-site use only

Bldg. 7136
Fort Bliss
El Paso Co: TX 79916–
Landholding Agency: Army
Property Number: 21200110096
Status: Unutilized
Comment: 11,755 sq. ft., most recent use—vet facility, off-site use only

Bldg. 7146
Fort Bliss
El Paso Co: TX 79916–
Landholding Agency: Army
Property Number: 21200110097
Status: Unutilized
Comment: most recent use—oil storage, off-site use only

Bldg. 7147
Fort Bliss
El Paso Co: TX 79916–
Landholding Agency: Army
Property Number: 21200110098
Status: Unutilized
Comment: most recent use—oil storage, off-site use only

Bldg. 7153
Fort Bliss
El Paso Co: TX 79916–
Landholding Agency: Army
Property Number: 21200110099
Status: Unutilized
Comment: 11924 sq. ft., most recent use—bowling center, off-site use only

Bldg. 7162
Fort Bliss
El Paso Co: TX 79916–
Landholding Agency: Army
Property Number: 21200110100
Status: Unutilized
Comment: 3956 sq. ft., most recent use—development center, off-site use only

Bldg. 11116
Fort Bliss
El Paso Co: TX 79916–

Landholding Agency: Army
Property Number: 21200110101
Status: Unutilized
Comment: 20,100 sq. ft., most recent use—storage, off-site use only

Bldg. 7113
Fort Bliss
El Paso Co: TX 79916–
Landholding Agency: Army
Property Number: 21200220132
Status: Unutilized
Comment: 8855 sq. ft., presence of asbestos/lead paint, most recent use—child development center, off-site use only

Bldg. T5900
Camp Bullis
San Antonio Co: Bexar TX 78257–
Landholding Agency: Army
Property Number: 21200220133
Status: Excess
Comment: 9876 sq. ft., possible lead paint, most recent use—theater/training bldg., off-site use only

Bldg. T6111
Camp Bullis
San Antonio Co: Bexar TX 78257–
Landholding Agency: Army
Property Number: 21200220134
Status: Excess
Comment: 521 sq. ft., possible lead paint, most recent use—gas station, off-site use only

Bldg. T5002
Camp Bullis
San Antonio Co: Bexar TX 78257–
Landholding Agency: Army
Property Number: 21200220135
Status: Excess
Comment: 370 sq. ft., presence of lead paint, off-site use only

Bldgs. 107, 108
Fort Hood
Ft. Hood Co: Bell TX 76544–
Landholding Agency: Army
Property Number: 21200220136
Status: Unutilized
Comment: 13,319 & 28,051 sq. ft., most recent use—admin., off-site use only

Bldg. 120
Fort Hood
Ft. Hood Co: Bell TX 76544–
Landholding Agency: Army
Property Number: 21200220137
Status: Unutilized
Comment: 1450 sq. ft., most recent use—dental clinic, off-site use only

Bldg. 134
Fort Hood
Ft. Hood Co: Bell TX 76544–
Landholding Agency: Army
Property Number: 21200220138
Status: Unutilized
Comment: 16,114 sq. ft., most recent use—auditorium, off-site use only

Bldg. 56305
Fort Hood
Ft. Hood Co: Bell TX 76544–
Landholding Agency: Army
Property Number: 21200220143
Status: Unutilized
Comment: 2160 sq. ft., most recent use—admin., off-site use only

Bldg. 56402
Fort Hood
Ft. Hood Co: Bell TX 76544–
Landholding Agency: Army
Property Number: 21200220144
Status: Unutilized
Comment: 2680 sq. ft., most recent use—recreation center, off-site use only

Bldgs. 56403, 56405
Fort Hood
Ft. Hood Co: Bell TX 76544–
Landholding Agency: Army
Property Number: 21200220145
Status: Unutilized
Comment: 480 sq. ft., most recent use—shower, off-site use only

Bldgs. 56620, 56621
Fort Hood
Ft. Hood Co: Bell TX 76544–
Landholding Agency: Army
Property Number: 21200220146
Status: Unutilized
Comment: 1120 sq. ft., most recent use—shower, off-site use only

Bldgs. 56626, 56627
Fort Hood
Ft. Hood Co: Bell TX 76544–
Landholding Agency: Army
Property Number: 21200220147
Status: Unutilized
Comment: 1120 sq. ft., most recent use—shower, off-site use only

Bldg. 56628
Fort Hood
Ft. Hood Co: Bell TX 76544–
Landholding Agency: Army
Property Number: 21200220148
Status: Unutilized
Comment: 1133 sq. ft., most recent use—shower, off-site use only

Bldgs. 56630, 56631
Fort Hood
Ft. Hood Co: Bell TX 76544–
Landholding Agency: Army
Property Number: 21200220149
Status: Unutilized
Comment: 1120 sq. ft., most recent use—shower, off-site use only

Bldgs. 56636, 56637
Fort Hood
Ft. Hood Co: Bell TX 76544–
Landholding Agency: Army
Property Number: 21200220150
Status: Unutilized
Comment: 1120 sq. ft., most recent use—shower, off-site use only

Bldg. 56638
Fort Hood
Ft. Hood Co: Bell TX 76544–
Landholding Agency: Army
Property Number: 21200220151
Status: Unutilized
Comment: 1133 sq. ft., most recent use—shower, off-site use only

Bldgs. 56703, 56708
Fort Hood
Ft. Hood Co: Bell TX 76544–
Landholding Agency: Army
Property Number: 21200220152
Status: Unutilized
Comment: 1306 sq. ft., most recent use—shower, off-site use only

Bldgs. 56750, 56751
Fort Hood
Ft. Hood Co: Bell TX 76544–
Landholding Agency: Army
Property Number: 21200220153
Status: Unutilized
Comment: 1120 sq. ft., most recent use—shower, off-site use only

Bldg. 56758
Fort Hood
Ft. Hood Co: Bell TX 76544–
Landholding Agency: Army
Property Number: 21200220154
Status: Unutilized
Comment: 1133 sq. ft., most recent use—shower, off-site use only

Bldg. P2789
Fort Sam Houston
San Antonio Co: Bexar TX 78234–
Landholding Agency: Army
Property Number: 21200220155
Status: Excess
Comment: 25,784 sq. ft., presence of asbestos/lead paint, provider responsible for hazard abatement, most recent use—dining, Historic Preservation requirement, off-site use only

Bldg. P6202
Fort Sam Houston
San Antonio Co: Bexar TX 78234–
Landholding Agency: Army
Property Number: 21200220156
Status: Excess
Comment: 1479 sq. ft., presence of asbestos/lead paint, provider responsible for hazard abatement, most recent use—officer's family quarters, off-site use only

Bldg. P6203
Fort Sam Houston
San Antonio Co: Bexar TX 78234–
Landholding Agency: Army
Property Number: 21200220157
Status: Excess
Comment: 1381 sq. ft., presence of asbestos/lead paint, provider responsible for hazard abatement, most recent use—military family quarters, off-site use only

Bldg. P6204
Fort Sam Houston
San Antonio Co: Bexar TX 78234–
Landholding Agency: Army
Property Number: 21200220158
Status: Excess
Comment: 1454 sq. ft., presence of asbestos/lead paint, provider responsible for hazard abatement, most recent use—military family quarters, off-site use only

Virginia

Bldg. T246
Fort Monroe
Ft. Monroe Co: VA 23651–
Landholding Agency: Army
Property Number: 21199940047
Status: Unutilized
Comment: 756 sq. ft., needs repair, possible lead paint, most recent use—scout meetings, off-site use only

Bldgs. 1516, 1517, 1552, 1567
Fort Eustis
Ft. Eustis Co: VA 23604–
Landholding Agency: Army
Property Number: 21200130154
Status: Unutilized
Comment: 2892 & 4720 sq. ft., most recent use—dining/barracks/admin, off-site use only

Bldg. 1559
Fort Eustis

Ft. Eustis Co: VA 23604–
Landholding Agency: Army
Property Number: 21200130156
Status: Unutilized
Comment: 2892 sq. ft., most recent use—storage, off-site use only

Bldg. T0058
Fort Monroe
Stillwell Dr.
Ft. Monroe Co: VA 23651–
Landholding Agency: Army
Property Number: 21200310057
Status: Excess
Comment: 7875 sq. ft., presence of asbestos/lead paint, most recent use—housing, off-site use only

Washington

Bldg. CO909, Fort Lewis
Ft. Lewis Co: Pierce WA 98433–9500
Landholding Agency: Army
Property Number: 21199630205
Status: Unutilized
Comment: 1984 sq. ft., possible asbestos/lead paint, most recent use—admin., off-site use only

Bldg. 1164, Fort Lewis
Ft. Lewis Co: Pierce WA 98433–9500
Landholding Agency: Army
Property Number: 21199630213
Status: Unutilized
Comment: 230 sq. ft., possible asbestos/lead paint, most recent use—storehouse, off-site use only

Bldg. 1307, Fort Lewis
Ft. Lewis Co: Pierce WA 98433–9500
Landholding Agency: Army
Property Number: 21199630216
Status: Unutilized
Comment: 1092 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only

Bldg. 1309, Fort Lewis
Ft. Lewis Co: Pierce WA 98433–9500
Landholding Agency: Army
Property Number: 21199630217
Status: Unutilized
Comment: 1092 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only

Bldg. 2167, Fort Lewis
Ft. Lewis Co: Pierce WA 98433–9500
Landholding Agency: Army
Property Number: 21199630218
Status: Unutilized
Comment: 288 sq. ft., possible asbestos/lead paint, most recent use—warehouse, off-site use only

Bldg. 4078, Fort Lewis
Ft. Lewis Co: Pierce WA 98433–9500
Landholding Agency: Army
Property Number: 21199630219
Status: Unutilized
Comment: 10200 sq. ft., needs rehab, possible asbestos/lead paint, most recent use—warehouse, off-site use only

Bldg. 9599, Fort Lewis
Ft. Lewis Co: Pierce WA 98433–9500
Landholding Agency: Army
Property Number: 21199630220
Status: Unutilized
Comment: 12366 sq. ft., possible asbestos/lead paint, most recent use—warehouse, off-site use only

Bldg. A1404, Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199640570
Status: Unutilized
Comment: 557 sq. ft., needs rehab, most recent use—storage, off-site use only

Bldg. A1419, Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199640571
Status: Unutilized
Comment: 1307 sq. ft., needs rehab, most recent use—storage, off-site use only

Bldg. EO347
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199710156
Status: Unutilized
Comment: 1800 sq. ft., possible asbestos/lead paint, most recent use—office, off-site use only

Bldg. B1008, Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199720216
Status: Unutilized
Comment: 7387 sq. ft., 2-story, needs rehab, possible asbestos/lead paint, most recent use—medical clinic, off-site use only

Bldgs. B1011–B1012, Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199720217
Status: Unutilized
Comment: 992 sq. ft. and 1144 sq. ft., needs rehab, possible asbestos/lead paint, most recent use—office, off-site use only

Bldgs. CO509, CO709, CO720
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199810372
Status: Unutilized
Comment: 1984 sq. ft., possible asbestos/lead paint, needs rehab, most recent use—storage, off-site use only

Bldg. 5162
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199830419
Status: Unutilized
Comment: 2360 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—office, off-site use only

Bldg. 5224
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199830433
Status: Unutilized
Comment: 2360 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—educ. fac., off-site use only

Bldg. U001B
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920237
Status: Excess
Comment: 54 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—control tower, off-site use only

Bldg. U001C
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920238
Status: Unutilized
Comment: 960 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—supply, off-site use only

10 Bldgs.
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Location: U002B, U002C, U005C, U015I, U016E, U019C, U022A, U028B, 0091A, U093C
Landholding Agency: Army
Property Number: 21199920239
Status: Excess
Comment: 600 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—range house, off-site use only

6 Bldgs.
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Location: U003A, U004B, U006C, U015B, U016B, U019B
Landholding Agency: Army
Property Number: 21199920240
Status: Unutilized
Comment: 54 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—control tower, off-site use only

Bldg. U004D
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920241
Status: Unutilized
Comment: 960 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—supply, off-site use only

Bldg. U005A
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920242
Status: Unutilized
Comment: 360 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—control tower, off-site use only

7 Bldgs.
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Location: U014A, U022B, U023A, U043B, U059B, U060A, U101A
Landholding Agency: Army
Property Number: 21199920245
Status: Excess
Comment: needs repair, presence of asbestos/lead paint, most recent use—ofc/tower/support, off-site use only

Bldg. U015J
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920246
Status: Excess
Comment: 144 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—tower, off-site use only

Bldg. U018B
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920247

Status: Unutilized
Comment: 121 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—range house, off-site use only

Bldg. U018C
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920248
Status: Unutilized
Comment: 48 sq. ft., needs repair, presence of asbestos/lead paint, off-site use only

Bldg. U024D
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920250
Status: Unutilized
Comment: 120 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—ammo bldg., off-site use only

Bldg. U027A
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920251
Status: Excess
Comment: 64 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—tire house, off-site use only

Bldg. U031A
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920253
Status: Excess
Comment: 3456 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—line shed, off-site use only

Bldg. U031C
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920254
Status: Unutilized
Comment: 32 sq. ft., needs repair, presence of asbestos/lead paint, off-site use only

Bldg. U040D
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920255
Status: Excess
Comment: 800 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—range house, off-site use only

Bldgs. U052C, U052H
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920256
Status: Excess
Comment: various sq. ft., needs repair, presence of asbestos/lead paint, most recent use—range house, off-site use only

Bldgs. U035A, U035B
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920257
Status: Excess
Comment: 192 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—shelter, off-site use only

Bldg. U035C
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920258
Status: Excess
Comment: 242 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—range house, off-site use only

Bldg. U039A
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920259
Status: Excess
Comment: 36 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—control tower, off-site use only

Bldg. U039B
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920260
Status: Excess
Comment: 1600 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—grandstand/bleachers, off-site use only

Bldg. U039C
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920261
Status: Excess
Comment: 600 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—support, off-site use only

Bldg. U043A
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920262
Status: Excess
Comment: 132 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—range house, off-site use only

Bldg. U052A
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920263
Status: Excess
Comment: 69 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—tower, off-site use only

Bldg. U052E
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920264
Status: Excess
Comment: 600 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—storage, off-site use only

Bldg. U052G
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920265
Status: Excess
Comment: 1600 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—shelter, off-site use only

3 Bldgs.
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Location: U058A, U103A, U018A
Landholding Agency: Army
Property Number: 21199920266
Status: Excess
Comment: 36 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—control tower, off-site use only

Bldg. U059A
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920267
Status: Excess
Comment: 16 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—tower, off-site use only

Bldg. U093B
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920268
Status: Excess
Comment: 680 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—range house, off-site use only

4 Bldgs.
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Location: U101B, U101C, U507B, U557A
Landholding Agency: Army
Property Number: 21199920269
Status: Excess
Comment: 400 sq. ft., needs repair, presence of asbestos/lead paint, off-site use only

Bldg. U110B
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920272
Status: Excess
Comment: 138 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—support, off-site use only

6 Bldgs.
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Location: U111A, U015A, U024E, U052F, U109A, U110A
Landholding Agency: Army
Property Number: 21199920273
Status: Excess
Comment: 1000 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—support/shelter/mess, off-site use only

Bldg. U112A
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920274
Status: Excess
Comment: 1600 sq. ft., needs repair, presence of asbestos/lead paint, most recent use-shelter, off-site use only

Bldg. U115A
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920275
Status: Excess
Comment: 36 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—tower, off-site use only

Bldg. U507A

Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920276
Status: Excess
Comment: 400 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—support, off-site use only

Bldg. C0120
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920281
Status: Excess
Comment: 384 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—scale house, off-site use only

Bldg. A0334
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920284
Status: Excess
Comment: 1092 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—sentry station, off-site use only

Bldg. 01205
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920290
Status: Excess
Comment: 87 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—storehouse, off-site use only

Bldg. 01259
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920291
Status: Excess
Comment: 16 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—storage, off-site use only

Bldg. 01266
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920292
Status: Excess
Comment: 45 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—shelter, off-site use only

Bldg. 1445
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920294
Status: Excess
Comment: 144 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—generator bldg., off-site use only

Bldgs. 03091, 03099
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920296
Status: Excess
Comment: various sq. ft., needs repair, presence of asbestos/lead paint, most recent use—sentry station, off-site use only

Bldg. 4040
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920298
Status: Excess
Comment: 8326 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—shed, off-site use only

Bldgs. 4072, 5104
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920299
Status: Excess
Comment: 24/36 sq. ft., needs repair, presence of asbestos/lead paint, off-site use only

Bldg. 4295
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920300
Status: Excess
Comment: 48 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—storage, off-site use only

Bldg. 5170
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency:
Property Number: 21199920301
Status: Excess
Comment: 19,411 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—store, off-site use only

Bldg. 6191
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920303
Status: Excess
Comment: 3663 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—exchange branch, off-site use only

Bldgs. 08076, 08080
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920304
Status: Excess
Comment: 3660/412 sq .ft., needs repair, presence of asbestos/lead paint, off-site use only

Bldg. 08093
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920305
Status: Excess
Comment: 289 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—boat storage, off-site use only

Bldg. 8279
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920306
Status: Excess
Comment: 210 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—fuel disp. fac., off-site use only

Bldgs. 8280, 8291
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920307
Status: Excess
Comment: 800/464 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—storage, off-site use only

Bldg. 8956
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920308
Status: Excess
Comment: 100 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—storage, off-site use only

Bldg. 9530
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920309
Status: Excess
Comment: 64 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—sentry station, off-site use only

Bldg. 9574
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920310
Status: Excess
Comment: 6005 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—veh. shop., off-site use only

Bldg. 9596
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920311
Status: Excess
Comment: 36 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—gas station, off-site use only

Land (by State)

Georgia

Land (Railbed)
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199440440
Status: Unutilized
Comment: 17.3 acres extending 1.24 miles, no known utilities potential

South Carolina

One Acre
Fort Jackson
Columbia Co: Richland SC 29207–
Landholding Agency: Army
Property Number: 21200110089
Status: Underutilized
Comment: approx. 1 acre

Suitable/Unavailable Properties

Buildings (by State)

Alabama

Bldgs. 1001–1006, 1106–1107
Fort Rucker
Ft. Rucker Co: Dale AL 36362–5138
Landholding Agency: Army
Property Number: 21200210027
Status: Unutilized
Comment: approx. 9000 sq. ft., poor condition, lead paint present, most recent use—warehouses, off-site use only

Bldg. 01433

Fort Rucker
Ft. Rucker Co: Dale AL 36362–
Landholding Agency: Army
Property Number: 21200220098
Status: Excess
Comment: 800 sq. ft., most recent use—office, off-site use only

Georgia

Bldg. 4090
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199630007
Status: Underutilized
Comment: 3530 sq. ft., most recent use—chapel, off-site use only

Bldg. 2410
Fort Gordon
Ft. Gordon Co: Richmond GA 30905–
Landholding Agency: Army
Property Number: 21200140076
Status: Unutilized
Comment: 8480 sq. ft., needs rehab, potential asbestos/lead paint, most recent use—storage, off-site use only

Bldg. 20802
Fort Gordon
Ft. Gordon Co: Richmond GA 30905–
Landholding Agency: Army
Property Number: 21200210078
Status: Unutilized
Comment: 740 sq. ft., needs repair, possible asbestos/lead paint, most recent use—storage, off-site use only

Bldg. T–920
Fort Stewart
Hinesville Co: Liberty GA 31314–
Landholding Agency: Army
Property Number: 21200240083
Status: Excess
Comment: 13,337 sq. ft., most recent use—office, off-site use only

Maryland

Bldg. 2282C
Fort George G. Meade
Fort Meade Co: Anne Arundel MD 20755–
Landholding Agency: Army
Property Number: 21200230059
Status: Unutilized
Comment: 46 sq. ft., needs rehab, most recent use—sentry tower, off-site use only

Missouri

Bldg. 2172
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–8994
Landholding Agency: Army
Property Number: 21200040059
Status: Unutilized
Comment: 2892 sq. ft., most recent use—operations, off-site use only

North Carolina

Bldgs. A2245, A2345
Fort Bragg
Ft. Bragg Co: Cumberland NC 28310–
Landholding Agency: Army
Property Number: 21200240084
Status: Excess
Comment: 3444 sq. ft. each, possible asbestos/lead paint, most recent use—vehicle maint. shop, off-site use only

Bldg. A2544
Fort Bragg
Ft. Bragg Co: Cumberland NC 28310–
Landholding Agency: Army
Property Number: 21200240085
Status: Excess
Comment: 4000 sq. ft., possible asbestos/lead paint, most recent use—admin. facility, off-site use only

Bldg. D2826
Fort Bragg
Ft. Bragg Co: Cumberland NC 28310–
Landholding Agency: Army
Property Number: 21200240086
Status: Excess
Comment: 41,520 sq. ft., possible asbestos/lead paint, most recent use—barracks, off-site use only

Bldg. N4116
Fort Bragg
Ft. Bragg Co: Cumberland NC 28310–
Landholding Agency: Army
Property Number: 21200240087
Status: Excess
Comment: 3944 sq. ft., possible asbestos/lead paint, most recent use—community facility, off-site use only

103 Bldgs.
Fort Bragg
Ft. Bragg Co: Cumberland NC 28310–5000
Location: WS001–WS02A, PE001–PE031, 002F1–02F36, 00651, 1101, DT001–DT035, DT052–DT056, 09051
Landholding Agency: Army
Property Number: 21200240088
Status: Excess
Comment: multi-use structures, various sq ft., possible asbestos/lead paint, off-site use only

Tennessee

Bldgs. 01551, 01552
Fort Campbell
Ft. Campbell Co: Montgomery TN 42223–
Landholding Agency: Army
Property Number: 21200230076
Status: Unutilized
Comment: 2052 sq. ft.

Texas

Bldgs. 4219, 4227
Fort Hood
Ft. Hood Co: Bell TX 76544–
Landholding Agency: Army
Property Number: 21200220139
Status: Unutilized
Comment: 8056 & 10,500 sq. ft., most recent use—admin., off-site use only

Bldgs. 4229, 4230, 4231
Fort Hood
Ft. Hood Co: Bell TX 76544–
Landholding Agency: Army
Property Number: 21200220140
Status: Unutilized
Comment: 9000 sq. ft., most recent use—hq. bldg., off-site use only

Bldgs. 4244, 4246
Fort Hood
Ft. Hood Co: Bell TX 76544–
Landholding Agency: Army
Property Number: 21200220141
Status: Unutilized
Comment: 9000 sq. ft., most recent use—storage, off-site use only

Bldgs. 4260, 4261, 4262
Fort Hood
Ft. Hood Co: Bell TX 76544–
Landholding Agency: Army
Property Number: 21200220142
Status: Unutilized
Comment: 7680 sq. ft., most recent use—storage, off-site use only

Washington

Bldg. 03272
Fort Lewis
Tacoma Co: Pierce WA 98335–
Landholding Agency: Army
Property Number: 21200220160
Status: Unutilized
Comment: 21,373 sq. ft., most recent use—hangar, off-site use only

Bldg. 04180
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–9500
Landholding Agency: Army
Property Number: 21200240091
Status: Excess
Comment: 72 sq. ft., most recent use—guard shack, off-site use only

Bldg. 05904
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–9500
Landholding Agency: Army
Property Number: 21200240092
Status: Excess
Comment: 82 sq. ft., most recent use—guard shack, off-site use only

Bldgs. 9003, 9517
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–9500
Landholding Agency: Army
Property Number: 21200240093
Status: Excess
Comment: 80 and 82 sq. ft., most recent use—guard shack, off-site use only

Land (by State)

North Carolina

.92 Acre—Land
Military Ocean Terminal, Sunny Point
Southport Co: Brunswick NC 28461–5000
Landholding Agency: Army
Property Number: 21199610728
Status: Underutilized
Comment: municipal drinking waterwell, restricted by explosive safety regs., New Hanover County Buffer Zone

10 Acre—Land
Military Ocean Terminal, Sunny Point
Southport Co: Brunswick NC 28461–5000
Landholding Agency: Army
Property Number: 21199610729
Status: Underutilized
Comment: municipal park, restricted by explosive safety regs., New Hanover County Buffer Zone

257 Acre—Land
Military Ocean Terminal, Sunny Point
Southport Co: Brunswick NC 28461–5000
Landholding Agency: Army
Property Number: 21199610730
Status: Underutilized
Comment: state park, restricted by explosive safety regs., New Hanover County Buffer Zone

24.83 Acres—Tract of Land
Military Ocean Terminal, Sunny Point
Southport Co: Brunswick NC 28461–5000
Landholding Agency: Army
Property Number: 21199620685
Status: Underutilized

Comment: 24.83 acres, municipal park, most recent use—New Hanover County explosive buffer zone

Unsuitable Properties

Buildings (by State)

Alabama

65 Bldgs.
Redstone Arsenal
Redstone Arsenal Co: Madison AL 35898–
Landholding Agency: Army
Property Number: 21200040001–21200040012, 21200120018, 21200220002–21200220004, 21200240006–21200240023
Status: Unutilized
Reason: Secured Area; Extensive deterioration

25 Bldgs.
Fort Rucker
Ft. Rucker Co: Dale AL 36362
Landholding Agency: Army
Property Number: 219740004, 219740006, 219830002, 21200010010, 21200040013, 21200220001, 21200230001, 21200240001–21200240005
Status: Unutilized
Reason: Extensive deterioration

Bldg. 28152
Rucker
Hartford Co: Geneva AL 36344
Landholding Agency: Army
Property Number: 21200230002
Status: Unutilized
Reason: Extensive deterioration

Alaska

8 Bldgs., Fort Wainwright
Ft. Wainwright AK 99703
Landholding Agency: Army
Property Number: 219710090, 219710195–219710198, 219810002, 219810007, 21199920001
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured area; Floodway; (Some are extensively deteriorated)

Arizona

32 Bldgs.
Navajo Depot Activity
Bellemont Co: Coconino AZ 86015–
Location: 12 miles west of Flagstaff, Arizona on I–40
Landholding Agency: Army
Property Number: 219014560–219014591
Status: Underutilized
Reason: Secured Area

10 properties: 753 earth covered igloos; above ground standard magazines
Navajo Depot Activity
Bellemont Co: Coconino AZ 86015–
Location: 12 miles west of Flagstaff, Arizona on I–40.
Landholding Agency: Army
Property Number: 219014592–219014601
Status: Underutilized
Reason: Secured Area

7 Bldgs.
Navajo Depot Activity
Bellemont Co: Coconino AZ 86015–5000
Location: 12 miles west of Flagstaff on I–40
Landholding Agency: Army
Property Number: 219030273–219030274, 219120177–219120181
Status: Unutilized
Reason: Secured Area

9 Bldgs.
Camp Navajo
Bellemont Co: AZ 86015
Landholding Agency: Army
Property Number: 21200140002–21200140010
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Bldgs. 15373, 15348
Fort Huachuca
Ft. Huachuca Co: Cochise AZ 85613
Landholding Agency: Army
Property Number: 21200220006, 21200240024
Status: Excess
Reason: Extensive deterioration

Arkansas

189 Bldgs.
Fort Chaffee
Ft. Chaffee Co: Sebastian AR 72905–5000
Landholding Agency: Army
Property Number: 219630019, 219630021, 219630029, 219640462–219640477, 21200110001–21200110017, 21200140011–21200140014
Status: Unutilized
Reason: Extensive deterioration

California

Bldg. 18
Riverbank Army Ammunition Plant
5300 Claus Road
Riverbank Co: Stanislaus CA 95367–
Landholding Agency: Army
Property Number: 219012554
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area

11 Bldgs., Nos. 2–8, 156, 1, 120, 181
Riverbank Army Ammunition Plant
Riverbank Co: Stanislaus CA 95367–
Landholding Agency: Army
Property Number: 219013582–219013588, 219013590, 219240444–219240446
Status: Underutilized
Reason: Secured Area

Bldgs. 13, 171, 178 Riverbank Ammun Plant
5300 Claus Road
Riverbank Co: Stanislaus CA 95367–
Landholding Agency: Army
Property Number: 219120162–219120164
Status: Underutilized
Reason: Secured Area

39 Bldgs.
DDDRW Sharpe Facility
Tracy Co: San Joaquin CA 95331
Landholding Agency: Army
Property Number: 219610289, 21199930021, 21200030005–21200030015, 21200040015, 21200120029–21200120039, 21200130004, 21200240025–21200240030
Status: Unutilized
Reason: Secured Area

Bldgs. 29, 39, 73, 154, 155, 193, 204, 257
Los Alamitos Co: Orange CA 90720–5001
Landholding Agency: Army
Property Number: 219520040
Status: Unutilized
Reason: Extensive deterioration

Bldgs. 1103, 1131, 1120, 341, 1160
Parks Reserve Forces Training Area
Dublin Co: Alameda CA 94568–5201
Landholding Agency: Army
Property Number: 219520056, 219830010, 21200110021–21200110022
Status: Unutilized
Reason: Extensive deterioration

10 Bldgs.
Sierra Army Depot
Herlong Co: Lassen CA 96113
Landholding Agency: Army
Property Number: 21199840015, 21199920033–21199920036, 21199940052–21199940056
Status: Underutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area

449 Bldgs.
Camp Roberts
Camp Roberts Co: San Obispo CA
Landholding Agency: Army
Property Number: 21199730014, 219820192–219820235
Status: Excess
Reason: Secured Area; Extensive deterioration

27 Bldgs.
Presidio of Monterey Annex
Seaside Co: Monterey CA 93944
Landholding Agency: Army
Property Number: 21199940051, 21200130005
Status: Unutilized
Reason: Extensive deterioration

46 Bldgs.
Fort Irwin
Ft. Irwin Co: San Bernardino CA 92310
Landholding Agency: Army
Property Number: 21199920037–21199920038, 21200030016–21200030018, 21200040014, 21200110018–21200110020, 21200130002–21200130003, 21200140015, 21200210001–21200210005, 21200240031–21200240033
Status: Unutilized
Reason: Secured Area; Extensive deterioration

Colorado

Bldgs. T–317, T–412, 431, 433
Rocky Mountain Arsenal
Commerce Co: Adams CO 80022–2180
Landholding Agency: Army
Property Number: 219320013–219320016
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area; Extensive deterioration

40 Bldgs.
Fort Carson
Ft. Carson Co: El Paso CO 80913–5023
Landholding Agency: Army
Property Number: 219830020–219830030, 21199910008, 21199930022, 21199930025, 21200130006–21200130011
Status: Unutilized
Reason: Extensive deterioration

Bldgs. 00087, 00088, 00096
Pueblo Chemical Depot
Pueblo CO 81006–9330
Landholding Agency: Army
Property Number: 21200030019–21200030021
Status: Unutilized
Reason: Extensive deterioration

Flatiron Facility

Colorado Army Natl Guard
Longmont Co: Weld CO 80504–9404
Landholding Agency: Army
Property Number: 21200230003
Status: Unutilized
Reason: Extensive deterioration

Georgia

Fort Stewart
Sewage Treatment Plant
Ft. Stewart Co: Hinesville GA 31314–
Landholding Agency: Army
Property Number: 219013922
Status: Unutilized
Reason: Sewage treatment

Facility 12304
Fort Gordon
Augusta Co: Richmond GA 30905–
Location: Located off Lane Avenue
Landholding Agency: Army
Property Number: 219014787
Status: Unutilized
Reason: Wheeled vehicle grease/inspection rack

15 Bldgs.
Fort Gordon
Augusta Co: Richmond GA 30905–
Landholding Agency: Army
Property Number: 219220269, 219410050–219410051, 219410071–219410072, 219410100, 219410109, 219630044–219630063, 219640011–219640024, 219830038–219830067, 21199910012, 21200210061–21200210073, 21200220007–21200220010, 21200230007–21200230015
Status: Unutilized
Reason: Extensive deterioration

3 Bldgs., Fort Benning
Ft. Benning Co: Muscogee GA 31905
Landholding Agency: Army
Property Number: 219220335–219220337
Status: Unutilized
Reason: Detached lavatory

16 Bldgs., Fort Benning
Ft. Benning Co: Muscogee GA 31905
Landholding Agency: Army
Property Number: 219520150, 219610320, 219720017–219720019, 219810028, 219810030, 219810035, 219830073, 219830076, 21199930031–21199930037, 21200030023–21200030027
Status: Unutilized
Reason: Extensive deterioration

18 Bldgs.
Fort Gillem
Forest Park Co: Clayton GA 30050
Landholding Agency: Army
Property Number: 219620815, 21199920044–21199920050, 21200140016, 21200220011–21200220012, 21200230005
Status: Unutilized
Reason: Extensive deterioration; Secured Area

Bldg. P8121, Fort Stewart
Hinesville Co: Liberty GA 31314
Landholding Agency: Army
Property Number: 21199940060
Status: Unutilized
Reason: Extensive Deterioration

3 Bldgs., Hunter Army Airfield
Savannah Co: Chatham GA 31409
Landholding Agency: Army
Property Number: 219630034, 219830068, 21200120042
Status: Unutilized
Reason: Extensive deterioration

4 Bldgs., Fort McPherson
Ft. McPherson Co: Fulton GA 30330–5000
Landholding Agency: Army
Property Number: 21200040016–21200040018, 21200230004
Status: Unutilized
Reason: Secured Area

Hawaii

13 Bldgs.
Schofield Barracks
Wahiawa Co: Wahiawa HI 96786–
Landholding Agency: Army
Property Number: 219014836–219014837, 219030361, 21200230018
Status: Unutilized
Reason: Secured Area; (Most are extensively deteriorated)

Bldgs. T–1305, 01507
Wheeler Army Airfield
Wahiawa HI 96857
Landholding Agency: Army
Property Number: 219610348, 21200310003
Status: Unutilized
Reason: Extensive deterioration

9 Bldgs.
Fort Shafter
Honolulu Co: HI 96819
Landholding Agency: Army
Property Number: 21200030029–21200030031, 21200230016, 21200240034, 21200310001–21200310002
Status: Unutilized
Reason: Extensive deterioration

12 Bldgs.
Dillingham Military Rsv
Waialua Co: HI 96791
Landholding Agency: Army
Property Number: 21200220014–21200220020, 21200310004–21200310005
Status: Unutilized
Reason: Extensive deterioration

Illinois

13 Bldgs.
Rock Island Arsenal
Rock Island Co: Rock Island IL 61299–5000
Landholding Agency: Army
Property Number: 219110104–219110108, 219210100, 219620427, 219620428, 21200140043–21200140046
Status: Unutilized
Reason: Some are in a secured area; Some are extensively deteriorated; Some are within 2000 ft. of flammable or explosive material

15 Bldgs.
Charles Melvin Price Support Center
Granite City Co: Madison IL 62040
Landholding Agency: Army
Property Number: 219820027, 21199930043–21199930053
Status: Unutilized
Reason: Secured Area; Extensive deterioration; Floodway

Indiana

170 Bldgs.
Newport Army Ammunition Plant
Newport Co: Vermillion IN 47966–
Landholding Agency: Army
Property Number: 219011584, 219011586–219011587, 219011589–219011590, 219011592–219011627, 219011629–219011636, 219011638–219011641, 219210149, 219430336, 219430338, 219530079–219530096, 219740021–219740026, 219820031–219820032, 21199920063, 21200310006
Status: Unutilized
Reason: Secured Area; (Some are extensively deteriorated.)

2 Bldgs.
Atterbury Reserve Forces Training Area
Edinburgh Co: Johnson IN 46124–1096
Landholding Agency: Army
Property Number: 219230030–219230031
Status: Unutilized
Reason: Extensive deterioration

Iowa

103 Bldgs.
Iowa Army Ammunition Plant
Middletown Co: Des Moines IA 52638–
Landholding Agency: Army
Property Number: 219012605–219012607, 219012609, 219012611, 219012613, 219012615, 219012620, 219012622, 219012624, 219013706–219013738, 219120172–219120174, 219440112–219440158, 219520002, 219520070, 219610414, 219740027, 21200220022, 21200230019–21200230023
Status: Unutilized
Reason: (Many are in a Secured Area); (Most are within 2000 ft. of flammable or explosive material.)

27 Bldgs.
Iowa Army Ammunition Plant
Middletown Co: Des Moines IA 52638
Landholding Agency: Army
Property Number: 219230005–219230029, 219310017, 219340091
Status: Unutilized
Reason: Extensive deterioration

Kansas

37 Bldgs.
Kansas Army Ammunition Plant
Production Area
Parsons Co: Labette KS 67357–
Landholding Agency: Army
Property Number: 219011909–219011945
Status: Unutilized
Reason: Secured Area; (Most are within 2000 ft. of flammable or explosive material)

121 Bldgs.
Kansas Army Ammunition Plant
Parsons Co: Labette KS 67357
Landholding Agency: Army
Property Number: 219620518–219620638
Status: Unutilized
Reason: Secured Area

Bldg. P–417
Fort Leavenworth
Leavenworth KS 66027
Landholding Agency: Army
Property Number: 219740029
Status: Unutilized
Reason: Extensive deterioration; Sewage pump station

29 Bldgs.
Fort Riley
Ft. Riley Co: Riley KS 66442
Landholding Agency: Army
Property Number: 21200310007–21200310016
Status: Unutilized
Reason: Extensive deterioration

Kentucky

Bldg. 126

Lexington—Blue Grass Army Depot
Lexington Co: Fayette KY 40511–
Location: 12 miles northeast of Lexington, Kentucky.
Landholding Agency: Army
Property Number: 219011661
Status: Unutilized
Reason: Secured Area; Sewage treatment facility

Bldg. 12
Lexington—Blue Grass Army Depot
Lexington Co: Fayette KY 40511–
Location: 12 miles Northeast of Lexington Kentucky.
Landholding Agency: Army
Property Number: 219011663
Status: Unutilized
Reason: Industrial waste treatment plant

469 Bldgs.
Fort Knox
Ft. Knox Co: Hardin KY 40121–
Landholding Agency: Army
Property Number: 21200130026–21200130029, 21200220030–21200220055, 21200240035–21200240045
Status: Unutilized
Reason: Extensive deterioration

29 Bldgs.
Fort Campbell
Ft. Campbell Co: Christian KY 42223
Landholding Agency: Army
Property Number: 21200110030–21200110049, 21200140048, 21200140053, 21200220029, 21200230029–21200230030
Status: Unutilized
Reason: Extensive deterioration

Louisiana

528 Bldgs.
Louisiana Army Ammunition Plant
Doylin Co: Webster LA 71023–
Landholding Agency: Army
Property Number: 219011714–219011716, 219011735–219011737, 219012112, 219013863–219013869, 219110131, 219240138–219240147, 219420332, 219610049–219610263, 219620002–219620200, 219620749–219620801, 219820047–219820078
Status: Unutilized
Reason: Secured Area (Most are within 2000 ft. of flammable or explosive material) (Some are extensively deteriorated)

41 Bldgs.
Fort Polk
Ft. Polk Co: Vernon Parish LA 71459–7100
Landholding Agency: Army
Property Number: 21199920070, 21199920078, 21199940074, 21199940075, 21200110050–21200110051, 21200120058, 21200130030–21200130043, 21200140054
Status: Unutilized
Reason: Extensive deterioration (Some are in Floodway.)

Maryland

45 Bldgs.
Aberdeen Proving Ground
Aberdeen City Co: Harford MD 21005–5001
Landholding Agency: Army
Property Number: 219011417, 219012610, 219012637–219012642, 219012658–219012662, 219013773, 219014711, 219610480, 219610489–219610490, 219730077–219730078, 219810070–219810121, 219820090–219820096, 21200120059–21200120060, 21200140055
Status: Unutilized
Reason: Most are in a secured area. (Some are within 2000 ft. of flammable or explosive material) (Some are in a floodway) (Some are extensively deteriorated)

73 Bldgs.
Ft. George G. Meade
Ft. Meade Co: Anne Arundel MD 20755–
Landholding Agency: Army
Property Number: 219710186, 219740068–219740076, 219810065, 21199910019, 21199940084, 21200140058–21200140060, 21200240046–21200240053, 21200310017
Status: Unutilized
Reason: Extensive deterioration

12 Bldgs.
Woodstock Military Rsv
Granite Co: Baltimore MD 22163
Landholding Agency: Army
Property Number: 21200130044–21200130052
Status: Unutilized
Reason: Extensive deterioration

Bldgs. 00602, 00605
Adelphi Lab Center
Adelphi Co: MD 20783
Landholding Agency: Army
Property Number: 21200220056–21200220057
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Massachusetts

Bldg. 3462,
Camp Edwards
Massachusetts Military Reservation
Bourne Co: Barnstable MA 024620–5003
Landholding Agency Army
Property Number: 219230095
Status: Unutilized
Reason: Secured Area; Extensive deterioration

Bldg. 1211 Camp Edwards
Massachusetts Military Reservation
Bourne Co: Barnstable MA 02462–5003
Landholding Agency: Army
Property Number: 219310020
Status: Unutilized
Reason: Secured Area

Facility No. 0G001
LTA Granby
Granby Co: Hampshire MA
Landholding Agency: Army
Property Number: 219810062
Status: Unutilized
Reason: Extensive deterioration

Michigan

Bldgs. 5755–5756
Newport Weekend Training Site
Carleton Co: Monroe MI 48166
Landholding Agency: Army
Property Number: 219310060–219310061
Status: Unutilized
Reason: Secured Area; Extensive deterioration

13 Bldgs.
Fort Custer Training Center 2501 26th Street
Augusta Co: Kalamazoo MI 49102–9205
Landholding Agency: Army
Property Number: 21200220058–21200220062
Status: Unutilized
Reason: Extensive deterioration

10 Bldgs.
Selfridge ANG Base
Selfridge Co: MI 48045
Landholding Agency: Army
Property Number: 21199930059, 21199940089–21199940093, 21200110052–21200110055
Status: Unutilized
Reason: Secured Area

Minnesota

160 Bldgs.
Twin Cities Army Ammunition Plant
New Brighton Co: Ramsey MN 55112–
Landholding Agency: Army
PropertyNumber:219120166, 219210014–219210015, 219220227–219220235, 219240328, 219310056, 219320152–219320156, 219330096–219330106, 219340015, 219410159–219410189, 219420198–219420283, 219430060–219430064, 21200130053–21200130054
Status: Unutilized
Reason: Secured Area (Most are within 2000 ft. of flammable or explosive material.) (Some are extensively deteriorated)

Missouri

83 Bldgs.
Lake City Army Ammo. Plant
Independence Co: Jackson MO 64050–
Landholding Agency: Army
Property Number: 219013666–219013669, 219530134–219530138, 21199910023–21199910035, 21199920082, 21200030049
Status: Unutilized
Reason: Secured Area (Some are within 2000 ft. of flammable or explosive material)

9 Bldgs.
St. Louis Army Ammunition Plant
4800 Goodfellow Blvd.
St. Louis Co: St. Louis MO 63120–1798
Landholding Agency: Army
Property Number: 219120067–219120068, 219610469–219610475
Status: Unutilized
Reason: Secured Area (Some are extensively deteriorated.)

8 Bldgs.
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 219430070–219430075, 21199910020–21199910021, 21200240056
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material (Some are extensively deteriorated.)

Bldgs. 218A, P4122
U.S. Army Reserve Center
St. Louis Co: St. Charles MO 63120–1794
Landholding Agency: Army
Property Number: 21200240054–21200240055
Status: Unutilized
Reason: Extensive deterioration

Bldgs. 220, P4074, P4072, P4073
St. Louis Ordnance Plant
St. Louis Co: St. Charles MO 63120–1794
Landholding Agency: Army
Property Number: 21200310018–21200310019
Status: Unutilized
Reason: Extensive deterioration

Nevada

Bldg. 292

Hawthorne Army Ammunition Plant
Hawthorne Co: Mineral NV 89415–
Landholding Agency: Army
Property Number: 219013614
Status: Unutilized
Reason: Secured Area

Bldg. 396
Hawthorne Army Ammunition Plant
Bachelor Enlisted Qtrs W/Dining Facilities
Hawthorne Co: Mineral NV 89415–
Location: East side of Decatur Street—North of Maine Avenue
Landholding Agency: Army
Property Number: 219011997
Status: Unutilized
Reason: Within airport runway clear zone; Secured Area

39 Bldgs.
Hawthorne Army Ammunition Plant
Hawthorne Co: Mineral NV 89415–
Landholding Agency: Army
Property Number: 219012013, 219013615–219013643,
Status: Underutilized
Reason: Secured Area (Some within airport runway clear zone; many within 2000 ft. of flammable or explosive material)

Group 101, 34 Bldgs.
Hawthorne Army Ammunition Plant Co: Mineral NV 89415–0015
Landholding Agency: Army
Property Number: 219830132
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area

New Jersey

128 Bldgs.
Picatinny Arsenal
Dover Co: Morris NJ 07806–5000
Landholding Agency: Army
Property Number: 219010444–219010474, 219010639–219010664, 219010680–219010715, 219012428, 219012430, 219012433–219012465, 219012469, 219012475, 219012765, 219014306, 219014311, 219014317, 219140617, 219230123, 219420006, 219530147, 219540005, 219540007, 219740113–219740127, 21199940094–21199940099, 21200130057–21200130063, 21200220063, 21200230071–21200230075
Status: Excess
Reason: Secured Area (Most are within 2000 ft. of flammable or explosive material.) (Some are extensively deteriorated) (Some are in a floodway)

59 Bldgs.
Ft. Monmouth
Ft. Monmouth Co: NJ 07703
Landholding Agency: Army
Property Number: 21200110056, 21200310020–21200310025
Status: Unutilized
Reason: Extensive deterioration

19 Bldgs.
Fort Dix
Ft. Dix Co: Burlington NJ 08640–5506
Landholding Agency: Army
Property Number: 21200310026–21200310037
Status: Unutilized
Reason: Extensive deterioration

New York

Bldgs. 110, 143, 2084, 2105, 2110
Seneca Army Depot
Romulus Co: Seneca NY 14541–5001
Landholding Agency: Army
Property Number: 219240439, 219240440–219240443
Status: Unutilized
Reason: Secured Area; Extensive deterioration

Parcel 19
Stewart Army Subpost, U.S. Military Academy
New Windsor Co: Orange NY 12553
Landholding Agency: Army
Property Number: 219730098
Status: Unutilized
Reason: Within airport runway clear zone

Bldgs. 12, 134
Watervliet Arsenal
Watervliet NY
Landholding Agency: Army
Property Number: 219730099, 21199840068
Status: Unutilized
Reason: Extensive deterioration; Secured Area

Bldgs. 4056, 4275
Stewart Army Subpost
New Windsor Co: Orange NY 12553
Landholding Agency: Army
Property Number: 21199930061
Status: Unutilized
Reason: sewage pump station1

3 Bldgs.
Youngstown Training Site
Youngstown Co: Niagara NY 14131
Landholding Agency: Army
Property Number: 21200220064–21200220069
Status: Unutilized
Reason: Extensive deterioration

North Carolina

75 Bldgs. Fort Bragg
Ft. Bragg Co: Cumberland NC 28307
Landholding Agency: Army
Property Number: 219620480, 219640074,219710102–219710111, 219710224, 219810167, 21199930063–21199930066, 21200040035–21200140064
Status: Unutilized
Reason: Extensive deterioration

Bldgs. 16, 139, 261, 273
Military Ocean Terminal
Southport Co: Brunswick NC 28461–5000
Landholding Agency: Army
Property Number: 219530155, 219810158–219810160
Status: Unutilized
Reason: Secured Area

North Dakota

Bldgs. 440, 455, 456, 3101, 3110
Stanley R. Mickelsen
Nekoma Co: Cavalier ND 58355
Landholding Agency: Army
Property Number: 21199940103–21199940107
Status: Unutilized
Reason: Extensive deterioration

Ohio

222 Bldgs.
Ravenna Army Ammunition Plant
Ravenna Co: Portage OH 44266–9297
Landholding Agency: Army
Property Number: 219012476–219012507, 219012509–219012513, 219012515, 219012517–219012518, 219012520, 219012522–219012523, 219012525–219012528, 219012530–219012532, 219012534–219012535, 219012537, 219013670–219013677, 219013781, 219210148, 1199840069–21199840104, 21199930070–21199930072, 21200240064
Status: Unutilized
Reason: Secured Area

7 Bldgs.
Lima Army Tank Plant
Lima OH 45804–1898
Landholding Agency: Army
Property Number: 219730104–219730110
Status: Unutilized
Reason: Secured Area

Bldgs. 32–36, 38–40
Defense Supply Center
Columbus Co: Franklin OH 43216–5000
Landholding Agency: Army
Property Number: 21200240059–21200240060
Status: Unutilized
Reason: Extensive deterioration

Oklahoma

548 Bldgs.
McAlester Army Ammunition Plant
McAlester Co: Pittsburg OK 74501–5000
Landholding Agency: Army
Property Number: 219011674, 219011680, 219011684, 219011687, 219012113, 219013981–219013991, 219013994, 219014081–219014102, 219014104, 219014107–219014137, 219014141–219014159, 219014162, 219014165–219014216, 219014218–219014274, 219014336–219014559, 219030007–219030127, 219040004, 21199910039–21199910040
Status: Underutilized
Reason: Secured Area (Some are within 2000 ft. of flammable or explosive material)

Bldg. M–1441
Fort Sill
Lawton Co: Comanche OK 73503–
Landholding Agency: Army
Property Number: 219510023
Status: Unutilized
Reason: Extensive deterioration

34 Bldgs.
McAlester Army Ammunition Plant
McAlester Co: Pittsburg OK 74501–
Landholding Agency: Army
Property Number: 219310050–219310052, 219320170–219320171, 219330149–219330160, 219430123–219430125, 219620485–219620490, 219630110–219630111, 219810174, 21200210023
Status: Unutilized
Reason: Secured Area (Some are extensively deteriorated)

Oregon

11 Bldgs.
Tooele Army Depot
Umatilla Depot Activity
Hermiston Co: Morrow/Umatilla OR 97838–
Landholding Agency: Army
Property Number: 219012174–219012176, 219012178–219012179, 219012190–219012191, 219012197–219012198, 219012217, 219012229
Status: Underutilized
Reason: Secured Area

34 Bldgs.

Tooele Army Depot
Umatilla Depot Activity
Hermiston Co: Morrow/Umatilla OR 97838–
Landholding Agency: Army
Property Number: 219012177, 219012185–219012186, 219012189, 219012195–219012196, 219012199–219012205, 219012207–219012208, 219012225, 219012279, 219014304–219014305, 219014782, 219030362–219030363, 219120032, 21199840108–21199840110, 21199920084–21199920090
Status: Unutilized
Reason: Secured Area

Pennsylvania

59 Bldgs.
Fort Indiantown Gap
Annville Co: Lebanon PA 17003–5011
Landholding Agency: Army
Property Number: 219640337, 219730122–219730128, 219740137, 219810178–219810193
Status: Unutilized
Reason: Extensive deterioration

31 Bldgs.
Defense Distribution Depot
New Cumberland Co: York PA 17070–5001
Landholding Agency: Army
Property Number: 219830135, 21199940108–21199940112, 21200030060, 21200110058–21200110063, 21200130070–21200130072, 21200140071, 21200220071–21200220073, 21200230028
Status: Unutilized
Reason: Secured Area

Rhode Island

Bldg. 104
Army Aviation
North Kingstown Co: Washington RI 02852
Landholding Agency: Army
Property Number: 21200120064
Status: Unutilized
Reason: Extensive deterioration

South Carolina

40 Bldgs., Fort Jackson
Ft. Jackson Co: Richland SC 29207
Landholding Agency: Army
Property Number: 219440237, 219440239, 219620312, 219620317, 219620348, 219620351, 219640138–219640139, 21199640148–21199640149, 219720095, 219720097, 219730130, 219730132, 219730145–219730157, 219740138, 219820102–219820111, 219830139–219830157
Status: Unutilized
Reason: Extensive deterioration

Tennessee

49 Bldgs.
Holston Army Ammunition Plant
Kingsport Co: Hawkins TN 61299–6000
Landholding Agency: Army
Property Number: 219012304–219012309, 219012311–219012312, 219012314, 219012316–219012317, 219012319, 219012325, 219012328, 219012330, 219012332, 219012334–219012335, 219012337, 219013789–219013790, 219030266, 219140613, 219330178, 219440212–219440216, 219510025–219510028, 21200040038, 21200230035–21200230036, 21200240066, 21200310038–21200310043
Status: Unutilized
Reason: Secured Area (Some are within 2000 ft. of flammable or explosive material)

10 Bldgs.
Milan Army Ammunition Plant
Milan Co: Gibson TN 38358
Landholding Agency: Army
Property Number: 219240447–219240449, 219320182–219320184, 219330176–219330177, 219520034, 219740139
Status: Unutilized
Reason: Secured Area

Bldg. Z–183A
Milan Army Ammunition Plant
Milan Co: Gibson TN 38358
Landholding Agency: Army
Property Number: 219240783
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material

10 Bldgs.
Fort Campbell
Ft. Campbell Co: Montgomery TN 42223
Landholding Agency: Army
Property Number: 21200220023–21200220025, 21200230031–21200230034, 21200240065
Status: Unutilized
Reason: Extensive deterioration

Texas

20 Bldgs.
Lone Star Army Ammunition Plant
Highway 82 West
Texarkana Co: Bowie TX 75505–9100
Landholding Agency: Army
Property Number: 219012524, 219012529, 219012533, 219012536, 219012539–219012540, 219012542, 219012544–219012545, 219030337–219030345
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area

225 Bldgs.
Longhorn Army Ammunition Plant
Karnack Co: Harrison TX 75661–
Location: State Highway 43 North
Landholding Agency: Army
Property Number: 219012546, 219012548, 219610555–219610584, 219610635, 219620244–219620287, 219620827–219620837, 21200020054–21200020070
Status: Unutilized
Reason: Secured Area (Most are within 2000 ft. of flammable or explosive material)

16 Bldgs., Red River Army Depot
Texarkana Co: Bowie TX 75507–5000
Landholding Agency: Army
Property Number: 219420315–219420327, 219430095–219430097
Status: Unutilized
Reason: Secured Area (Some are extensively deteriorated)

81 Bldgs. Fort Bliss
El Paso Co: El Paso TX 79916
Landholding Agency: Army
Property Number: 219730160–219730186, 219830161–219830197, 21200310044
Status: Unutilized
Reason: Extensive deterioration

Starr Ranch, Bldg. 703B
Longhorn Army Ammunition Plant
Karnack Co: Harrison TX 75661
Landholding Agency: Army
Property Number: 219640186, 219640494
Status: Unutilized
Reason: Floodway

Utah

Bldgs. 4555, 4554
Tooele Army Depot
Tooele Co: Tooele UT 84074–5008
Landholding Agency: Army
Property Number: 219012166, 219030366
Status: Unutilized
Reason: Secured Area

Bldg. S–4301
Tooele Army Depot
Tooele Co: Tooele UT 84074–5008
Landholding Agency: Army
Property Number: 219012751
Status: Underutilized
Reason: Secured Area

4 Bldgs.
Dugway Proving Ground
Dugway Co: Toole UT 84022–
Landholding Agency: Army
Property Number: 219013997, 219130012, 219130015, 21200120065
Status: Underutilized
Reason: Secured Area

51 Bldgs.
Dugway Proving Ground
Dugway Co: Toole UT 84022–
Landholding Agency: Army
Property Number: 219330181–219330182, 219330185, 219420328–219420329, 21199920091–21199920101
Status: Unutilized
Reason: Secured Area

Bldgs. 3102, 5145, 8030
Deseret Chemical Depot
Tooele UT 84074
Landholding Agency: Army
Property Number: 219820119–219820121
Status: Unutilized
Reason: Secured Area; Extensive deterioration

Virginia

326 Bldgs.
Radford Army Ammunition Plant
Radford Co: Montgomery VA 24141–
Landholding Agency: Army
Property Number: 219010833, 219010836, 219010839, 219010842, 219010844, 219010847–219010890, 219010892–219010912, 219011521–219011577, 219011581–219011583, 219011585, 219011588, 219011591, 219013559–219013570, 219110142–219110143, 219120071, 219140618–219140633, 219440219–219440225, 219510031–219510033, 219610607–219610608, 219830223–219830267, 21200020079–21200020081, 21200230038, 21200240071–21200240072
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area

13 Bldgs.
Radford Army Ammunition Plant
Radford Co: Montgomery VA 24141–
Landholding Agency: Army
Property Number: 219010834–219010835, 219010837–219010838, 219010840–219010841, 219010843, 219010845–219010846, 219010891, 219011578–219011580
Status: Unutilized

Reason: Within 2000 ft. of flammable or explosive material; Secured Area; Latrine, detached structure

36 Bldgs.
U.S. Army Combined Arms Support Command
Fort Lee Co: Prince George VA 23801–
Landholding Agency: Army
Property Number: 219240107, 219330210, 2129330219–219330220, 219330225–219330228, 219520062, 219610597, 219620497, 219620866–219620876, 219630115, 219740156, 219830208–219830210, 21199940129–21199940131, 21200030062, 21200040040, 21200110064, 21200120067, 21200230037, 21200240070
Status: Unutilized
Reason: Extensive deterioration (Some are in a secured area.)

16 Bldgs.
Radford Army Ammunition Plant
Radford VA 24141
Landholding Agency: Army
Property Number: 219220210–219220218, 219230100–219230103, 219520037
Status: Unutilized
Reason: Secured Area

Bldg. B7103–01, Motor House
Radford Army Ammunition Plant
Radford VA 24141
Landholding Agency: Army
Property Number: 219240324
Status: Unutilized
Reason: Secured Area; Within 2000 ft. of flammable or explosive material; Extensive deterioration

56 Bldgs.
Red Water Field Office
Radford Army Ammunition Plant
Radford VA 24141
Landholding Agency: Army
Property Number: 219430341–219430396
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area

15 Bldgs.
Fort A.P. Hill
Bowling Green Co: Caroline VA 22427
Landholding Agency: Army
Property Number: 21200110069, 21200240067–21200240069, 21200310045
Status: Unutilized
Reason: Secured Area; Extensive deterioration

Bldgs. 2013–00, B2013–00, A1601–00
Radford Army Ammunition Plant
Radford VA 24141
Landholding Agency: Army
Property Number: 219520052, 219530194
Status: Unutilized
Reason: Extensive deterioration

11 Bldgs.
Fort Belvoir
Ft. Belvoir Co: Fairfax VA 22060–5116
Landholding Agency: Army
Property Number: 21199910050–21199910051, 21199920107, 21199940117–21199940120, 21200030063–21200030064, 21200130075–21200130077
Status: Unutilized
Reason: Extensive deterioration

6 Bldgs., Fort Eustis
Ft. Eustis Co. VA 23604
Landholding Agency: Army
Property Number: 21200210025–21200210026
Status: Unutilized
Reason: Extensive deterioration

Bldg. 448, Fort Myer
Ft. Myer Co: Arlington VA 22211–1199
Landholding Agency: Army
Property Number: 21200010069
Status: Underutilized
Reason: Extensive deterioration

8 Bldgs.
Fort Monroe
Ft. Monroe Co: VA 23651
Landholding Agency: Army
Property Number: 21200220076–21200220079, 21200310047
Status: Excess
Reason: Extensive deterioration

19 Bldgs.
Fort Pickett
Blackstone Co: Nottoway VA 23824
Landholding Agency: Army
Property Number: 21200220087–21200220092
Status: Unutilized
Reason: Extensive deterioration

Bldg. 00723, Fort Story
Ft. Story Co: Princess Ann VA 23459
Landholding Agency: Army
Property Number: 21200310046
Status: Unutilized
Reason: Extensive deterioration

Washington

660 Bldgs., Fort Lewis
Ft. Lewis Co: Pierce WA 98433–5000
Landholding Agency: Army
Property Number: 219610006, 219610009–219610010, 219610045–219610046, 219620512–219620517, 219640193, 219720142–219720151, 219810205–219810242, 219820132, 21199910063–21199910078, 21199920125–21199920174, 21199930080–21199930104, 21199940134, 21200120068, 21200140072–21200140073, 21200210075, 21200220097
Status: Unutilized
Reason: Secured Area; Extensive deterioration

Bldg. HBC07, Fort Lewis
Huckleberry Creek Mountain Training Site
Co: Pierce WA
Landholding Agency: Army
Property Number: 219740166
Status: Unutilized
Reason: Extensive deterioration

Bldg. 415, Fort Worden
Port Angeles Co: Clallam WA 98362
Landholding Agency: Army
Property Number: 21199910062
Status: Excess
Reason: Extensive deterioration

Bldg. U515A, Fort Lewis
Ft. Lewis Co: Pierce WA 98433
Landholding Agency: Army
Property Number: 21199920124
Status: Excess
Reason: Gas chamber

Bldgs. 02401, 02402
Vancouver Barracks Cemetery
Vancouver Co: WA 98661
Landholding Agency: Army
Property Number: 21200310048
Status: Unutilized
Reason: Extensive deterioration

4 Bldgs. Renton USARC 00460, 00485, 00480, 00411
Renton Co: WA 980058
Landholding Agency: Army
Property Number: 21200310049
Status: Unutilized
Reason: Extensive deterioration

Wisconsin

5 Bldgs.
Badger Army Ammunition Plant
Baraboo Co: Sauk WI 53913–
Landholding Agency: Army
Property Number: 219011209–219011212, 219011217
Status: Underutilized
Reason: Within 2000 ft. of flammable or explosive material; Friable asbestos; Secured Area

153 Bldgs.
Badger Army Ammunition Plant
Baraboo Co: Sauk WI 53913–
Landholding Agency: Army
Property Number: 219011104, 219011106, 219011108–219011113, 219011115–219011117, 219011119–219011120, 219011122–219011139, 219011141–219011142, 219011144, 219011148–219011208, 219011213–219011216, 219011218–219011234, 219011236, 219011238, 219011240, 219011242, 219011244, 219011247, 219011249, 219011251, 219011256, 19011259, 219011263, 219011265, 219011268, 219011270, 219011275, 219011277, 219011280, 219011282, 219011284, 219011286, 219011290, 219011293, 219011295, 219011297, 219011300, 219011302, 219011304–219011311, 219011317, 219011319–219011321, 219011323
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Friable asbestos; Secured Area

4 Bldgs.
Badger Army Ammunition Plant
Baraboo Co: Sauk WI
Landholding Agency: Army
Property Number: 219013871–219013873, 219013875
Status: Underutilized
Reason: Secured Area

906 Bldgs.
Badger Army Ammunition Plant
Baraboo Co: Sauk WI
Landholding Agency: Army
Property Number: 219013876–219013878, 219210097–219210099, 219220295–219220311, 219510065, 219510067, 219510069–219510077, 219740184–219740271, 21200020083–21200020155, 21200240074–21200240080
Status: Unutilized
Reason: (Most are in a secured area); (Most are within 2000 ft. of flammable or explosive material); (Some are extensively deteriorated)

Land (by State)

Alabama

23 acres and 2284 acres
Alabama Army Ammunition Plant 110 Hwy. 235

Childersburg Co: Talladega AL 35044–
Landholding Agency: Army
Property Number: 219210095–219210096
Status: Excess
Reason: Secured Area

Indiana

Newport Army Ammunition Plant
East of 14th St. & North of S. Blvd.
Newport Co: Vermillion IN 47966–
Landholding Agency: Army
Property Number: 219012360
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area

Maryland

Carroll Island, Graces Quarters
Aberdeen Proving Ground
Edgewood Area
Aberdeen City Co: Harford MD 21010–5425
Landholding Agency: Army
Property Number: 219012630, 219012632
Status: Underutilized
Reason: Floodway; Secured Area

Minnesota

Portion of R.R. Spur
Twin Cities Army Ammunition Plant
New Brighton Co: Ramsey MN 55112
Landholding Agency: Army
Property Number: 219620472
Status: Unutilized
Reason: landlocked

New Jersey

Land
Armament Research Development & Eng. Center
Route 15 North
Picatinny Arsenal Co: Morris NJ 07806–
Landholding Agency: Army
Property Number: 219013788
Status: Unutilized
Reason: Secured Area

Spur Line/Right of Way
Armament Rsch., Dev., & Eng. Center
Picatinny Arsenal Co: Morris NJ 07806–5000
Landholding Agency: Army
Property Number: 219530143
Status: Unutilized
Reason: Floodway

2.0 Acres, Berkshire Trail
Armament Rsch., Dev., & Eng. Center
Picatinny Arsenal Co: Morris NJ 07806–5000
Landholding Agency: Army
Property Number: 21199910036
Status: Underutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Ohio

0.4051 acres, Lot 40 & 41
Ravenna Army Ammunition Plant
Ravenna Co: Portage OH 44266–9297
Landholding Agency: Army
Property Number: 219630109
Status: Excess
Reason: Within 2000 ft. of flammable or explosive material

Oklahoma

McAlester Army Ammunition Plant
McAlester Co: Pittsburg OK 74501–
Landholding Agency: Army
Property Number: 219014603
Status: Underutilized
Reason: Within 2000 ft. of flammable or explosive material

Texas

Land—Approx. 50 acres
Lone Star Army Ammunition Plant
Texarkana Co: Bowie TX 75505–9100
Landholding Agency: Army
Property Number: 219420308
Status: Unutilized
Reason: Secured Area

Training Land (3.764 acres)
Camp Swift Military Rsv.
Bastrop Co: TX
Landholding Agency: Army
Property Number: 21200130073
Status: Unutilized
Reason: Secured Area

Wisconsin

Land
Badger Army Ammunition Plant
Baraboo Co: Sauk WI 53913—
Location: Vacant land within plant boundaries.
Landholding Agency: Army
Property Number: 219013783
Status: Unutilized
Reason: Secured Area

[FR Doc. 03–2092 Filed 1–30–03; 8:45 am]
BILLING CODE 4210–23–P

Federal Register

Friday,
January 31, 2003

Part IV

Securities and Exchange Commission

17 CFR Parts 228, 229, and 249
Disclosure Required by Sections 406 and 407 of the Sarbanes-Oxley Act of 2002; Final Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 228, 229 and 249

[Release Nos. 33–8177; 34–47235; File No. S7–40–02]

RIN 3235–AI66

Disclosure Required by Sections 406 and 407 of the Sarbanes-Oxley Act of 2002

AGENCY: Securities and Exchange Commission.

ACTION: Final rule; request for comment.

SUMMARY: We are adopting rules and amendments requiring companies, other than registered investment companies, to include two new types of disclosures in their annual reports filed pursuant to the Securities Exchange Act of 1934. First, the rules require a company to disclose whether it has at least one "audit committee financial expert" serving on its audit committee, and if so, the name of the expert and whether the expert is independent of management. A company that does not have an audit committee financial expert must disclose this fact and explain why it has no such expert. Second, the rules require a company to disclose whether it has adopted a code of ethics that applies to the company's principal executive officer, principal financial officer, principal accounting officer or controller, or persons performing similar functions. A company disclosing that it has not adopted such a code must disclose this fact and explain why it has not done so. A company also will be required to promptly disclose amendments to, and waivers from, the code of ethics relating to any of those officers. These rules implement the requirements in Sections 406 and 407 of the Sarbanes-Oxley Act of 2002. We also request additional comments regarding the appropriate treatment of foreign private issuers in light of our proposed rules implementing Section 301 of the Act.

DATES: *Effective Date:* March 3, 2003.

Comment Date: Comments regarding treatment of certain foreign private issuers should be received on or before February 18, 2003.

Compliance Dates: Companies must comply with the code of ethics disclosure requirements promulgated under Section 406 of the Sarbanes-Oxley Act in their annual reports for fiscal years ending on or after July 15, 2003. They also must comply with the requirements regarding disclosure of amendments to, and waivers from, their ethics codes on or after the date on which they file their first annual report in which the code of ethics disclosure is required. Companies, other than small business issuers, similarly must comply with the audit committee financial expert disclosure requirements promulgated under Section 407 of the Sarbanes-Oxley Act in their annual reports for fiscal years ending on or after July 15, 2003. Small business issuers must comply with the audit committee financial expert disclosure requirements in their annual reports for fiscal years ending on or after December 15, 2003.

ADDRESSES: To help us process and review your comments more efficiently, comments should be sent by hard copy or e-mail, but not by both methods. Comments sent by hard copy should be submitted in triplicate to Jonathan G. Katz, Secretary, U.S. Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Comments also may be submitted electronically at the following e-mail address: *rule-comments@sec.gov*. All comment letters should refer to File No. S7–40–02; if e-mail is used, this file number should be included in the subject line. Comment letters will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549–0102. Electronically submitted comment letters will be posted on the Commission's Internet Web site (*http://www.sec.gov*).[1]

FOR FURTHER INFORMATION CONTACT: Ray Be, Special Counsel, N. Sean Harrison, Special Counsel, or Kim McManus, Attorney-Advisor, Division of Corporation Finance, at (202) 942–2910, or with respect to accounting issues, Michael Thompson, Professional Accounting Fellow, Office of Chief Accountant, at (202) 942–4400, U.S. Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: We are adopting amendments to Form 8–K,[2] Form 10–K,[3] Form 10–KSB,[4] Form 20–F[5] and Form 40–F[6] under the Securities Exchange Act of 1934,[7] Regulation S–B,[8] and Regulation S–K.[9]

[1] We do not edit personal information, such as names or electronic mail addresses, from electronic submissions. You should submit only information that you wish to make available publicly.

[2] 17 CFR 249.308.

[3] 17 CFR 249.310.

[4] 17 CFR 249.310b.

[5] 17 CFR 249.220f.

[6] 17 CFR 249.240f.

[7] 15 U.S.C. 78a *et seq.*

[8] 17 CFR 228.10 *et seq.*

[9] 17 CFR 229.10 *et seq.*

I. Background

The strength of the U.S. financial markets depends on investor confidence. Recent events involving allegations of misdeeds by corporate executives, independent auditors and other market participants have undermined that confidence.[10] In response to this threat to the U.S. financial markets, Congress passed, and the President signed into law, the Sarbanes-Oxley Act of 2002 (the "Sarbanes-Oxley Act"),[11] which effects sweeping corporate disclosure and financial reporting reform.

This release is one of several that the Commission is required to issue to implement provisions of the Sarbanes-Oxley Act. In this release, we adopt rules to implement the following two provisions of the Sarbanes-Oxley Act:

- Section 407, which directs us to adopt rules: (1) Requiring a company to disclose whether its audit committee includes at least one member who is a financial expert; and (2) defining the term "financial expert"; and
- Section 406, which directs us to adopt rules requiring a company to disclose whether it has adopted a code of ethics for its senior financial officers, and if not, the reasons therefor, as well as any changes to, or waiver of any provision of, that code of ethics.

We received over 200 comment letters in response to our release proposing requirements to implement Sections 404, 406 and 407 of the Sarbanes-Oxley Act.[12] These comment letters came from corporations, professional associations, accountants, law firms, analysts, consultants, academics, investors and others. In general, the commenters favored the objectives of the proposed new requirements. Investors generally supported the manner in which we proposed to achieve these objectives and, in some cases, urged us to require additional disclosure from companies. Many other commenters, however, thought that we were requiring more disclosure than necessary to fulfill the mandates of the Sarbanes-Oxley Act and suggested modifications to the proposals. We have reviewed and considered all of the comments on the proposals. The adopted rules reflect many of these comments—we discuss our conclusions with respect to each

[10] *See*, for example, John Waggoner and Thomas A. Fogarty, "Scandals Shred Investors' Faith: Because of Enron, Andersen and Rising Gas Prices, the Public Is More Wary Than Ever of Corporate America," USA Today, May 5, 2002, and Louis Aguilar, "Scandals Jolting Faith of Investors," Denver Post, June 27, 2002.

[11] Pub. L. 107–204, 116 Stat. 745 (2002).

[12] Release No. 33–8138 (October 22, 2002) [67 FR 66208] ("Proposing Release").

topic and related comments in more detail throughout the release. We believe that the new rules and amendments are in the public interest and consistent with the protection of investors.

The Proposing Release also included requirements to implement Section 404 of the Act, relating to internal control reports and auditor attestations of those reports. We will set forth the final rules to implement Section 404 in a separate adopting release to be issued at a later date. The Sarbanes-Oxley Act does not mandate that we issue final rules to implement Section 404 by a specific date. In addition, in the Proposing Release, we proposed to defer effectiveness of those rules so that they would apply only to companies whose fiscal years end on or after September 15, 2003 to allow the Public Company Accounting Oversight Board sufficient time to adopt standards for attestation engagements, and to allow companies and auditors sufficient time to prepare for imposition of the new requirements.

We also will set forth the rules to implement the requirements of Sections 406 and 407 of the Sarbanes-Oxley Act with respect to registered investment companies in a subsequent release. We expect to consider implementing these requirements at the same time that we consider adopting proposed Form N–CSR [13] to be used by registered management investment companies to file certified shareholder reports with the Commission under Section 302 of the Sarbanes-Oxley Act.

II. Discussion

A. Audit Committee Financial Experts

1. Title of the Expert

In the Proposing Release, we solicited comment as to whether we should use the term "financial expert" in our rules consistent with its use in Section 407 of the Sarbanes-Oxley Act, or whether a different term such as "audit committee financial expert" would be more appropriate. A number of commenters expressed a concern that neither the term "financial expert" nor "audit committee financial expert" accurately reflects the required experience and expertise of the type of expert contemplated by Section 407 and our proposed rules. Some noted that many of the key characteristics included in our proposed definition of a financial expert relate to the expert's accounting knowledge and experience in an accounting or auditing position. One commenter therefore recommended that we use the term "audit committee accounting expert." Other suggested terms included "accounting expert," "audit committee member financial lead" and "financially proficient director."

We agree that the term "financial" may not completely capture the attributes referenced in Section 407, given the provision's focus on accounting and auditing expertise and the fact that traditional "financial" matters extend to capital structure, valuation, cash flows, risk analysis and capital-raising techniques. Furthermore, several recent articles on the proposals have noted that many experienced investors and business leaders with considerable financial expertise would not necessarily qualify as financial experts under the proposed definition.[14] We have decided to use the term "audit committee financial expert" in our rules implementing Section 407 instead of the term "financial expert." [15] This term suggests more pointedly that the designated person has characteristics that are particularly relevant to the functions of the audit committee, such as: a thorough understanding of the audit committee's oversight role, expertise in accounting matters as well as understanding of financial statements, and the ability to ask the right questions to determine whether the company's financial statements are complete and accurate. The new rules include a definition of the term "audit committee financial expert." [16]

2. Disclosure of the Number and Names of Audit Committee Financial Experts

A substantial number of commenters opposed our proposal to require a company to disclose the number and names of the persons that the company's board determined to be audit committee financial experts. Some were opposed on the ground that our proposed rules exceeded the mandates of the Sarbanes-Oxley Act.[17] Much of the opposition stemmed from a fear that the designation of an audit committee financial expert may inappropriately suggest that the expert bears greater responsibility, and therefore is subject to a higher degree of liability, for audit committee decisions than other audit committee members. Some commenters thought that identification of the audit committee financial expert in the company's annual report would exacerbate that problem and discourage qualified persons from serving as such experts.

We have modified the proposals that would have required disclosure of the number and names of audit committee financial experts serving on a company's audit committee to more closely track the language used in Section 407 of the Sarbanes-Oxley Act. Under the rules that we are adopting, a company must disclose that its board of directors has determined that the company either:

- Has at least one audit committee financial expert serving on its audit committee; or
- Does not have an audit committee financial expert serving on its audit committee.

A company disclosing that it does not have an audit committee financial expert must explain why it does not have such an expert. We continue to believe that disclosure of the name of the audit committee financial expert is necessary to benefit investors and to carry out the purpose of Section 407. Therefore, under the final rules, if a company discloses that it has an audit committee financial expert, it also must disclose the expert's name. We believe that, in general, omission of the expert's name ultimately would not result in the expert's identity remaining non-public. To the extent that there are liability concerns, we believe that they are best addressed by our inclusion of a safe harbor in our rules, as discussed below.

The final rules permit, but do not require, a company to disclose that it has more than one audit committee financial expert on its audit committee. Therefore, once a company's board determines that a particular audit committee member qualifies as an audit committee financial expert, it may, but is not required to, determine whether additional audit committee members also qualify as experts. Every company subject to the audit committee disclosure requirements would, however, have to determine whether or not it has at least one audit committee financial expert; a company will not

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[13] *See* Release No. IC–25723 (Aug. 30, 2002) [67 FR 57298].

[14] *See* Andrew R. Sorkin, "Back to School, but This One Is for Top Corporate Officials," NY Times, Sept. 3, 2002, Cassell Bryan-Low, "Defining Moment for SEC: Who is a financial expert," Wall Street Journal, Dec. 9, 2002, and Geoffrey Colvin, "Sarbanes & Co. Can't Want This: Under Reform Law, Alan Greenspan Would Not Qualify as a Board's Financial Expert," Fortune, Dec. 30, 2002.

[15] Throughout this release, we will refer to both "audit committee financial experts" and "financial experts" as appropriate in a particular context. For example, when discussing statutory provisions, we will continue to refer to financial experts. For purposes of the discussions in this release, the meanings of these terms are identical.

[16] *See* new Item 401(h)(2) of Regulation S–K, Item 401(e)(2) of Regulation S–B, Item 16A(b) of Form 20–F, and paragraph (8)(b) of General Instruction II to Form 40–F.

[17] The Sarbanes-Oxley Act required only that we adopt rules requiring disclosure of whether a company had at least one financial expert on its audit committee, and if not, the reasons why.

satisfy the new disclosure requirements by stating that it has decided not to make a determination or by simply disclosing the qualifications of all of its audit committee members. Furthermore, if the company's board determines that at least one of the audit committee members qualifies as an expert, the company must accurately disclose this fact. It will not be appropriate for a company to disclose that it does not have an audit committee financial expert if its board has determined that such an expert serves on the audit committee.

3. Disclosure of Independence of Audit Committee Financial Experts

We proposed to require a company to disclose whether its audit committee financial expert is independent of management. A number of commenters opposed this disclosure requirement as unnecessary, noting that Section 301 of the Sarbanes-Oxley Act mandates the Commission to direct the self-regulatory organizations to prohibit the listing of any company that does not require all of its audit committee members to be independent. However, not all Exchange Act reporting companies are listed on a national securities exchange or association.[18] We believe that investors in these companies would be interested in knowing whether the audit committee financial expert is independent of management. Therefore, the final rules require a company to disclose whether the person or persons identified as the audit committee financial expert is independent of management.

In the proposing release, we defined "independent" by reference to Section 10A(m)(3) of the Exchange Act.[19] Several commenters noted that this reference may cause some confusion because the securities laws include different definitions of the term "affiliated," which is part of the definition used in Section 10A(m)(3).[20] Therefore, to provide clarity, the final rules refer to the definition of "independent" used in Item 7(d)(3)(iv) of Schedule 14A.[21] This revision ensures that the term "independent" is used consistently in our rules.[22]

4. Definition of "Audit Committee Financial Expert"

a. Proposed definition of the term "financial expert". We proposed to define the term "financial expert" to mean a person who has, through education and experience as a public accountant, auditor, principal financial officer, controller or principal accounting officer, of a company that, at the time the person held such position, was required to file reports pursuant to Section 13(a) or 15(d) of the Exchange Act, or experience in one or more positions that involve the performance of similar functions (or that results, in the judgment of the company's board of directors, in the person's having similar expertise and experience),[23] the following attributes:

(1) An understanding of generally accepted accounting principles and financial statements;

(2) Experience applying such generally accepted accounting principles in connection with the accounting for estimates, accruals, and reserves that are generally comparable to the estimates, accruals and reserves, if any, used in the registrant's financial statements;

(3) Experience preparing or auditing financial statements that present accounting issues that are generally comparable to those raised by the registrant's financial statements;

(4) Experience with internal controls and procedures for financial reporting; and

(5) An understanding of audit committee functions.

In addition, the proposed rule would have provided guidance to companies by providing a list of factors to be considered in making that evaluation, including:

- The level of the person's accounting or financial education, including whether the person has earned an advanced degree in finance or accounting;
- Whether the person is a certified public accountant, or the equivalent, in good standing, and the length of time that the person actively has practiced as a certified public accountant, or the equivalent;
- Whether the person is certified or otherwise identified as having accounting or financial experience by a recognized private body that establishes and administers standards in respect of such expertise, whether that person is in good standing with the recognized private body, and the length of time that the person has been actively certified or identified as having this expertise;
- Whether the person has served as a principal financial officer, controller or principal accounting officer of a company that, at the time the person held such position, was required to file reports pursuant to Section 13(a) or 15(d) of the Exchange Act, and if so, for how long;
- The person's specific duties while serving as a public accountant, auditor, principal financial officer, controller, principal accounting officer or position involving the performance of similar functions;
- The person's level of familiarity and experience with all applicable laws and regulations regarding the preparation of financial statements that must be included in reports filed under Section 13(a) or 15(d) of the Exchange Act;
- The level and amount of the person's direct experience reviewing, preparing, auditing or analyzing financial statements that must be included in reports filed under Section 13(a) or 15(d) of the Exchange Act;
- The person's past or current membership on one or more audit committees of companies that, at the time the person held such membership, were required to file reports pursuant to Section 13(a) or 15(d) of the Exchange Act;
- The person's level of familiarity and experience with the use and analysis of

[18] As we note in our recent release proposing rules to implement Section 301 of the Sarbanes-Oxley Act, there are only 7,250 listed companies out of a total of approximately 17,000 reporting companies. *See* Release No. 33–8173 (Jan. 8, 2003).

[19] 15 U.S.C. 78j–1(m)(3).

[20] For example, Section 2(a)(3) of the Investment Company Act of 1940 (15 U.S.C. 80a–2(a)(3)) defines an "affiliated person" as, among other things, any person owning with power to vote five percent of the outstanding voting securities of an entity. Rule 405 (17 CFR 230.405) under the Securities Act defines an "affiliate" as a person that controls or is controlled by, or is under common control with a specified person.

[21] 17 CFR 240.101. That item currently relies on the definitions of "independent" in the listing standards of the New York Stock Exchange, the American Stock Exchange and the NASD. Under Section 10A(m) of the Exchange Act (as amended by Section 301 of the Sarbanes-Oxley Act), we recently proposed rules directing the national securities exchanges and national securities associations to prohibit the listing of any security of an issuer that, among other things, does not have an independent audit committee as that term is used in Section 10A(m)(3). *See* Release No. 33–8173 (Jan. 8, 2003). As a result of those proposals, the current references in Item 7(d)(3)(iv) of Schedule 14A may be amended. *See id.*

[22] For domestic issuers, the audit committee independence standard is found in new Regulation S–K Item 401(h)(1)(ii) (17 CFR 229.401(h)(1)(ii)) and Regulation S–B Item 401(e)(1)(ii) (17 CFR 228.401(e)(1)(ii)). *See* Part II.C. below for further discussion of the audit committee financial expert disclosure requirements for foreign issuers.

[23] The proposed definition would have broadened the types of persons listed in Section 407 of the Sarbanes-Oxley Act as qualified to serve as experts by enabling the board of directors to conclude that a person is a financial expert if, in lieu of having experience as a public accountant, auditor, principal financial officer, principal accounting officer, or controller, or experience in a position involving the performance of similar functions, the person has experience in a position that results, in the judgment of the board of directors, in the person having similar expertise and experience. Under the proposals, if the board made such a determination, the company would have been required to disclose the basis for that determination.

financial statements of public companies; and

• Whether the person has any other relevant qualifications or experience that would assist him or her in understanding and evaluating the registrant's financial statements and other financial information and to make knowledgeable and thorough inquiries whether:

• The financial statements fairly present the financial condition, results of operations and cash flows of the company in accordance with generally accepted accounting principles; and

• The financial statements and other financial information, taken together, fairly present the financial condition, results of operations and cash flows of the company.

b. Comments on Proposed Definition. The proposed definition of the term "financial expert" proved to be the most controversial aspect of the proposals—more commenters remarked on it than on any other topic addressed by the proposed rules. Most of the commenters thought that the proposed definition was too restrictive. Several expressed concern that many companies, especially small ones, would have a difficult time attracting an audit committee member who would qualify as an expert under the proposed definition. Some of the corporate commenters were of the view that they already have exemplary audit committees, despite the fact that none of their current members would meet our proposed definition of an expert. A few complained that companies may have to sacrifice the diversity of their boards and nominate directors who satisfy the audit committee financial expert definition even if the company does not believe that these directors are best-suited for the position.

Furthermore, several commenters debated the merits of defining an audit committee financial expert as a person with strong accounting credentials, given that an audit committee member's role is one of oversight, rather than direct involvement in the company's accounting functions, and suggested that the emphasis on technical accounting expertise in the definition was misplaced. A few commenters further argued that it is unnecessary to have a financial expert serving on the audit committee because audit committee members should have the discretion to retain experts with specific financial expertise as they deem necessary or appropriate.

Other commenters asserted that the proposed definition was more restrictive than necessary to satisfy Congressional intent—they noted that Section 407 of the Sarbanes-Oxley Act requires us, in defining the term "financial expert," only to "consider" whether a person has, through education and experience as a public accountant, auditor, principal financial officer, comptroller, principal accounting officer, or similar position, the four attributes specified in the Act.[24] These commenters argued that in light of the Congressional directive only to consider the four attributes, our proposed definition did not need to incorporate all of them, or even any of them. Some commenters believed that a single member of the audit committee should not have to possess all of the required financial expert attributes so long as the members of the audit committee collectively possess these attributes. Others suggested various permutations such as requiring the financial expert to have the first and fifth attributes in our proposed definition, but only two of the other three attributes.

Many commenters criticized specific provisions of the proposed financial expert definition as being too narrow. In particular, many commenters asserted that our proposed requirement that an expert have direct experience preparing or auditing financial statements was greatly, and needlessly, restrictive. Other commenters were concerned that the requirement that a person have had experience with financial statements presenting issues generally comparable to those raised by the company's financial statements might have anti-competitive effects if we interpreted this requirement to mean that a financial expert would need previous experience with financial statements of other companies in the same industry.

Several commenters sought clarification regarding the relevant body of generally accepted accounting principles, in particular for financial experts of foreign private issuers. Other commenters expressed concern over the possible lack of potential financial experts that would be knowledgeable about accounting for estimates and reserves in specific industries, such as the insurance and oil industries.

Numerous additional commenters were concerned that the proposed definition was too restrictive regarding the means by which a person could acquire the required expertise to qualify as a financial expert. They suggested that a requirement that an expert have experience as a public accountant, auditor, principal financial officer, controller, principal accounting officer or in a similar position, would severely limit the number of persons qualified to be financial experts. Some believed that there are a substantial number of highly qualified persons who have sufficient knowledge and experience to effectively and competently perform the activities required of a financial expert, but do not have experience in one of the listed positions. They questioned the relevance of the means by which a person acquires the necessary expertise, so long as the person in fact has such expertise.

c. Final Definition of "Audit Committee Financial Expert". The final rules define an audit committee financial expert as a person who has the following attributes:

• An understanding of generally accepted accounting principles and financial statements;

• The ability to assess the general application of such principles in connection with the accounting for estimates, accruals and reserves;

• Experience preparing, auditing, analyzing or evaluating financial statements that present a breadth and level of complexity of accounting issues that are generally comparable to the breadth and complexity of issues that can reasonably be expected to be raised by the registrant's financial statements, or experience actively supervising one or more persons engaged in such activities;

• An understanding of internal controls and procedures for financial reporting; and

• An understanding of audit committee functions.[25]

Under the final rules, a person must have acquired such attributes through any one or more of the following:

(1) Education and experience as a principal financial officer, principal accounting officer, controller, public accountant or auditor or experience in one or more positions that involve the performance of similar functions;

(2) Experience actively supervising a principal financial officer, principal accounting officer, controller, public accountant, auditor or person performing similar functions;

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[24] The attributes listed in Section 407 of the Sarbanes-Oxley Act include:

(1) An understanding of generally accepted accounting principles and financial statements;

(2) Experience in: (a) The preparation or auditing of financial statements of generally comparable issuers; and (b) the application of such principles in connection with the accounting for estimates, accruals, and reserves;

(3) Experience with internal accounting controls; and

(4) An understanding of audit committee functions.

[25] *See* new Item 401(h)(2) of Regulation S–K, Item 401(e)(2) of Regulation S–B, Item 16A(b) of Form 20–F and paragraph (8)(b) of General Instruction B to Form 40–F.

(3) Experience overseeing or assessing the performance of companies or public accountants with respect to the preparation, auditing or evaluation of financial statements; or

(4) Other relevant experience.[26]

d. Discussion of Significant Modifications to the Proposed Definition of "Financial Expert". We have made several changes to our proposed definition of a financial expert. As already discussed, we have decided to use the term audit committee financial expert rather than financial expert in the final rules. We also have reorganized the components of the definition to make it easier to read and to emphasize, by including them in the first part of the definition, the attributes that an audit committee financial expert must possess. The second part of the definition discusses the means by which a person must acquire the necessary attributes. We also have eliminated the proposed instruction listing several factors that a company's board of directors should consider in evaluating the education and experience of an audit committee financial expert candidate.

Proposed attributes of a financial expert. i. The financial expert must have an understanding of generally accepted accounting principles and financial statements. We are adopting this attribute substantially as proposed. However, in response to comments, we have added an instruction to clarify that, with respect to foreign private issuers, the audit committee financial expert's understanding must be of the generally accepted accounting principles used by the foreign private issuer in preparing its primary financial statements filed with the Commission.[27] Our rules require foreign private issuers that do not prepare their primary financial statements in accordance with U.S. generally accepted accounting principles to include a reconciliation to those principles in the financial statements that they file with the Commission. Although an understanding of reconciliation to U.S. generally accepted accounting principles would be helpful, we believe that the proper focus of audit committee financial expertise is on the principles used to prepare the primary financial statement. We also are sensitive to the fact that requiring an audit committee financial expert to possess expertise relating to U.S. generally accepted accounting principles could burden foreign private issuers who use home country accounting principles or international accounting standards to prepare their primary financial statements.

ii. The financial expert must have experience applying such generally accepted accounting principles in connection with the accounting for estimates, accruals and reserves that are generally comparable to the estimates, accruals and reserves, if any, used in the registrant's financial statements. Several commenters were concerned that potential audit committee financial experts would not have experience with the unique and complex accounting for estimates, accruals and reserves in certain industries, such as the insurance industry, unless they have had direct previous experience in these industries. The commenters further noted that there could be a very limited pool of audit committee financial expert candidates available with such experience that would not have ties to a competitor within the same industry. In light of these comments, we have revised this attribute by eliminating the clause "that are generally comparable to the estimates, accruals and reserves, if any, used in the registrant's financial statements." We also have revised this attribute to state that the audit committee financial expert must have the ability to assess the general application of generally accepted accounting principles in connection with the accounting for estimates, accruals and reserves, rather than stating that the expert must have experience applying these principles.[28] We believe that this description of the attribute better satisfies the intent of the statute and better reflects the role to be played by audit committees. We recognize that the pool of persons possessing the highly specialized technical knowledge that some thought the proposals necessitated may be so small that a substantial percentage of companies in certain industries would be compelled to disclose that they could not retain an expert without recruiting a person associated with a competitor. We do not intend for the new requirements to lead to such a result. An audit committee financial expert must be able to assess the general application of generally accepted accounting principles in connection with accounting for estimates, accruals and reserves. This general attribute provides the necessary background for an audit committee when addressing more detailed industry-specific standards or other particular topics. Experience with such detailed standards or topics is not a necessary attribute of audit committee financial expertise.

iii. The financial expert must have experience preparing or auditing financial statements that present accounting issues that are generally comparable to those raised by the registrant's financial statements. The majority of commenters who thought that the proposed definition of "financial expert" was too restrictive focused on this attribute. We are convinced by the weight of the comments that the proposed requirement that an expert have direct experience preparing or auditing financial statements could impose an undue burden on some companies, especially small companies, that desire to have an audit committee financial expert. We also are persuaded by commenters' arguments that persons who have experience performing in-depth analysis and evaluation of financial statements should not be precluded from being able to qualify as audit committee financial experts if they possess the other four necessary attributes of an expert. We therefore have broadened this attribute by requiring an audit committee financial expert to have experience "preparing, auditing, analyzing or evaluating" financial statements.[29]

We believe that our revisions properly capture the clear intent of the statute that an audit committee financial expert must have experience actually working directly and closely with financial statements in a way that provides familiarity with the contents of financial statements and the processes behind them. We also believe that our revisions appropriately broaden the group of persons who are eligible to be audit committee financial experts. We recognize that many people actively engaged in industries such as investment banking and venture capital investment have had significant direct and close exposure to, and experience with, financial statements and related processes. Similarly, professional financial analysts closely scrutinize financial statements on a regular basis. Indeed, all of these types of individuals

[26] *See* new Item 401(h)(3) of Regulation S–K, Item 401(e)(3) of Regulation S–B, Item 16A(c) of Form 20–F and paragraph (8)(c) of General Instruction B to Form 40–F.

[27] *See* new Instruction 3 to Item 401(h) of Regulation S–K, Item 401(e) of Regulation S–B, Instruction 3 to Item 16A of Form 20–F, and Note 3 to paragraph (8) of General Instruction B to Form 40–F.

[28] *See* new Item 401(h)(2)(ii) of Regulation S–K, Item 401(e)(2)(ii) of Regulation S–B, Item 16A(b)(2) of Form 20–F and paragraph (8)(b)(2) of General Instruction B to Form 40–F.

[29] *See* new Item 401(h)(2)(iii) of Regulation S–K, Item 401(e)(2)(iii) on Regulation S–B, Item 16A(b)(3) of Form 20–F and paragraph (8)(b)(3) of General Instruction B to Form 40–F.

often hold positions that require them to inspect financial statements with a healthy dose of skepticism. They therefore would be well prepared to diligently and zealously question management and the company's auditor about the company's financial statements. Effective audit committee members must have both the ability and the determination to ask the right questions. Therefore, we have broadened this attribute to include persons with experience performing extensive financial statement analysis or evaluation.

We also are convinced by commenters that a potential audit committee financial expert should be considered to possess this attribute by virtue of his or her experience actively supervising a person who prepares, audits, analyzes or evaluates financial statements. The term "active supervision" means more than the mere existence of a traditional hierarchical reporting relationship between supervisor and those being supervised. Rather, we mean that a person engaged in active supervision participates in, and contributes to, the process of addressing, albeit at a supervisory level, the same general types of issues regarding preparation, auditing, analysis or evaluation of financial statements as those addressed by the person or persons being supervised. We also mean that the supervisor should have experience that has contributed to the general expertise necessary to prepare, audit, analyze or evaluate financial statements that is at least comparable to the general expertise of those being supervised. A principle executive officer should not be presumed to qualify. A principal executive officer with considerable operations involvement, but little financial or accounting involvement, likely would not be exercising the necessary active supervision. Active participation in, and contribution to, the process, albeit at a supervisory level, of addressing financial and accounting issues that demonstrates a general expertise in the area would be necessary.

Finally, we are retaining, with clarification, the requirement that an audit committee financial expert have experience with financial statements that present accounting issues that are "generally comparable" to those raised by the registrant's financial statements. We do not intend for this phrase to imply that a person must have previous experience in the same industry as the company that is evaluating the person as a potential audit committee financial expert, or that the person's experience must have been with a company subject to the Exchange Act reporting requirements. We therefore have modified the requirement to focus on the breadth and level of complexity of the accounting issues with which the person has had experience. We think that a company's board of directors will make the necessary assessment based on particular facts and circumstances. In making its assessment, the board should focus on a variety of factors such as the size of the company with which the person has experience, the scope of that company's operations and the complexity of its financial statements and accounting. We do not believe that familiarity with particular financial reporting or accounting issues, or any other narrow area of experience should be dispositive.

iv. A financial expert must have experience with internal controls and procedures for financial reporting. We are substituting the term "understanding" for the term "experience." [30] In our view, it is necessary that the audit committee financial expert understand the purpose, and be able to evaluate the effectiveness, of a company's internal controls and procedures for financial reporting. It is important that the audit committee financial expert understand why the internal controls and procedures for financial reporting exist, how they were developed, and how they operate. Previous experience establishing or evaluating a company's internal controls and procedures for financial reporting can, of course, contribute to a person's understanding of these matters, but the attribute as rephrased properly focuses on the understanding rather than the experience.

v. A financial expert must have an understanding of audit committee functions. We are adopting this attribute as proposed.[31]

Means of obtaining expertise. We have revised the audit committee financial expert definition to state that a person must have acquired the five necessary attributes through any one or more of the following:

(1) Education and experience as a principal financial officer, principal accounting officer, controller, public accountant or auditor or experience in one or more positions that involve the performance of similar functions;

(2) Experience actively supervising a principal financial officer, principal accounting officer, controller, public accountant, auditor or person performing similar functions;

(3) Experience overseeing or assessing the performance of companies or public accountants with respect to the preparation, auditing or evaluation of financial statements; or

(4) Other relevant experience.[32]

In response to commenters' remarks, we have eliminated the proposed requirement that an audit committee financial expert must have gained the relevant experience with a company that, at the time the person held such position, was required to file reports pursuant to Section 13(a) or 15(d) of the Exchange Act. Many private companies are contractually required to prepare audited financial statements that comply with generally accepted accounting principles. In addition, a potential expert may have gained relevant experience at a foreign company that is publicly traded in its home market but that is not registered under the Exchange Act.

We have added a provision in response to comments that experience overseeing or assessing the performance of companies or public accountants with respect to the preparation, auditing or evaluation of financial statements can provide a person with in-depth knowledge and experience of accounting and financial issues. For example, certain individuals serving in governmental, self-regulatory and private-sector bodies overseeing the banking, insurance and securities industries work on issues related to financial statements on a regular basis. We believe that such experience can constitute a very useful background for an audit committee financial expert.

In addition, we have revised the last provision of this part of the proposed definition. The original proposal stated that a person who had not served in one of the specified positions alternatively could have acquired the relevant attributes and experience in a position that results, in the judgment of the board of directors, in the person's having similar expertise and experience. The final rules state simply that a person may acquire the necessary attributes of an audit committee financial expert through other relevant experience, and no longer require the company to disclose the basis for the board's determination that a person has

[30] *See* new Item 401(h)(2)(iv) of Regulation S–K, Item 401(e)(2)(iv) on Regulation S–B, Item 16A(b)(4) of Form 20–F and paragraph (8)(b)(4) of General Instruction B to Form 40–F.

[31] *See* new Item 401(h)(2)(v) of Regulation S–K, Item 401(e)(2)(v) on Regulation S–B, Item 16A(b)(5) of Form 20–F and paragraph (8)(b)(5) of General Instruction B to Form 40–F.

[32] *See* new Item 401(h)(3) of Regulation S–K, Item 401(e)(3) on Regulation S–B, Item 16A(c) of Form 20–F and paragraph (8)(c) of General Instruction B to Form 40–F.

"similar expertise and experience." We also have eliminated the reference to the judgment of the board with respect to this provision because, as explicitly stated in the audit committee financial expert disclosure requirement, the board must make all determinations as to whether a person qualifies as an expert. Therefore, this reference is redundant.

This revision permitting a person to have "other relevant experience" recognizes that an audit committee financial expert can acquire the requisite attributes of an expert in many different ways. We do believe that this expertise should be the product of experience and not, for example, merely education. Under the final rules, if a person qualifies as an expert by virtue of possessing "other relevant experience," the company's disclosure must briefly list that person's experience.[33]

Proposed factors to be considered in evaluating the education and experience of a financial expert. The proposed definition of "financial expert" included a non-exclusive list of qualitative factors for a company's board to consider in assessing audit committee financial expert candidates. These factors focused on the breadth and level of a potential audit committee financial expert's experience, understanding and involvement in relevant activities, including the person's length of experience in relevant positions, and the types of duties held by such person in those positions. We believe that the board should consider all the available facts and circumstances, including but certainly not limited to, qualitative factors of the type that we had identified, in its determination. Some commenters were concerned that some boards would use the list as a mechanical checklist rather than as guidance to be used in considering a person's knowledge and experience as a whole. In light of these comments, the definition does not include this list.

The fact that a person previously has served on an audit committee does not, by itself, justify the board of directors in "grandfathering" that person as an audit committee financial expert under the definition. Similarly, the fact that a person has experience as a public accountant or auditor, or a principal financial officer, controller or principal accounting officer or experience in a similar position does not, by itself, justify the board of directors in deeming the person to be an audit committee financial expert. In addition to determining that a person possesses an appropriate degree of knowledge and experience, the board must ensure that it names an audit committee financial expert who embodies the highest standards of personal and professional integrity. In this regard, a board should consider any disciplinary actions to which a potential expert is, or has been, subject in determining whether that person would be a suitable audit committee financial expert.

Requirement that an audit committee financial expert possess all five required attributes. We are not convinced by comments stating that an audit committee financial expert should not have to possess all of the attributes included in our definition. Although Congress did not explicitly require us to incorporate all of the attributes listed in Section 407 of the Sarbanes-Oxley Act, it also did not limit us to consideration of those attributes. Congress obviously considered each of the listed attributes to be important. A definition of "audit committee financial expert" that leaves the meaning of the term entirely to the judgment of the board of directors would be highly subjective and could constitute an abrogation of our responsibilities under Section 407.

The Sarbanes-Oxley Act clearly was intended to enhance corporate responsibility by effecting significant change; its purpose was not to perpetuate the status quo. Therefore, while many companies likely will be able to determine that they already have an audit committee financial expert serving on their audit committees, we believe that the fact that some companies will not be able to draw this conclusion unless they are able to attract a new director with the requisite qualifications is consistent with the Act.

Moreover, the Sarbanes-Oxley Act did not contemplate that a company could disclose that it has an audit committee financial expert by virtue of the fact that the audit committee members collectively possess all of the attributes of an expert; the statute directs us to issue rules to require a company to disclose whether or its audit committee is comprised of "at least one member" who is a financial expert. Due to the statute's use of this specific language, there is no doubt that Congress had in mind individual experts and did not contemplate a "collective" expert. We note, however, that it would be appropriate under the final rules for a company disclosing that it does not have an audit committee financial expert to explain the aspects of the definition that various members of the committee satisfy.

5. Safe Harbor From Liability for Audit Committee Financial Experts

Several commenters urged us to clarify that the designation or identification of an audit committee financial expert will not increase or decrease his or her duties, obligations or potential liability as an audit committee member. A few recommended a formal safe harbor from liability for audit committee financial experts. Unlike the provisions of the Act that impose substantive requirements,[34] the requirements contemplated by Section 407 are entirely disclosure-based. We find no support in the Sarbanes-Oxley Act or in related legislative history that Congress intended to change the duties, obligations or liability of any audit committee member, including the audit committee financial expert, through this provision.

In the proposing release, we stated that we did not believe that the mere designation of the audit committee financial expert would impose a higher degree of individual responsibility or obligation on that person. Nor did we intend for the designation to decrease the duties and obligations of other audit committee members or the board of directors.

We continue to believe that it would adversely affect the operation of the audit committee and its vital role in our financial reporting and public disclosure system, and systems of corporate governance more generally, if courts were to conclude that the designation and public identification of an audit committee financial expert affected such person's duties, obligations or liability as an audit committee member or board member. We find that it would be adverse to the interests of investors and to the operation of markets and therefore would not be in the public interest, if the designation and identification affected the duties, obligations or liabilities to which any member of the company's audit committee or board is subject. To codify this position, we are including a safe harbor in the new audit committee disclosure item to clarify that:

- A person who is determined to be an audit committee financial expert will not be deemed an "expert" for any purpose, including without limitation

[33] *See* new Instruction 2 to Item 401(h) of Regulation S–K, Item 401(e) of Regulation S–B and Item 16A of Form 20–F and Note 2 to paragraph (8) of General Instruction B to Form 40–F.

[34] For example, the Sarbanes-Oxley Act requires the Commission to direct the self-regulatory organizations by rule to mandate the independence of all audit committee members of companies listed on national securities exchanges and associations. *See* Section 301 of the Sarbanes-Oxley Act. As another example, Section 402 of the Sarbanes-Oxley Act prohibits certain loans made by companies to their directors and executive officers.

for purposes of Section 11 of the Securities Act,[35] as a result of being designated or identified as an audit committee financial expert pursuant to the new disclosure item;

- The designation or identification of a person as an audit committee financial expert pursuant to the new disclosure item does not impose on such person any duties, obligations or liability that are greater than the duties, obligations and liability imposed on such person as a member of the audit committee and board of directors in the absence of such designation or identification; and
- The designation or identification of a person as an audit committee financial expert pursuant to the new disclosure item does not affect the duties, obligations or liability of any other member of the audit committee or board of directors.[36]

This safe harbor clarifies that any information in a registration statement reviewed by the audit committee financial expert is not "expertised" unless such person is acting in the capacity of some other type of traditionally recognized expert. Similarly, because the audit committee financial expert is not an expert for purposes of Section 11,[37] he or she is not subject to a higher level of due diligence with respect to any portion of the registration statement as a result of his or her designation or identification as an audit committee financial expert.

In adopting this safe harbor, we wish to emphasize that all directors bear significant responsibility. State law generally imposes a fiduciary duty upon directors to protect the interests of a company's shareholders. This duty requires a director to inform himself or herself of relevant facts and to use a "critical eye" in assessing information prior to acting on a matter.[38] Our new rule provides that whether a person is, or is not, an audit committee financial expert does not alter his or her duties, obligations or liabilities. We believe this should be the case under federal and state law.

6. Determination of a Person's Status as an Audit Committee Financial Expert

The Sarbanes-Oxley Act does not explicitly state who at the company should determine whether a person qualifies as an audit committee financial expert. We believe that the board of directors in its entirety, as the most broad-based body within the company, is best-equipped to make the determination. We think that it is appropriate that any such determination will be subject to relevant state law principles such as the business judgment rule.

7. Location of Audit Committee Financial Expert Disclosure

The Sarbanes-Oxley Act expressly states that companies must include the financial expert disclosure in their periodic reports required pursuant to Section 13(a) or 15(d) of the Exchange Act. The final rules that we are adopting require companies to include the new disclosure in their annual reports on Forms 10–K, 10–KSB, 20–F or 40–F. The requirement to provide the new audit committee disclosure item is included in Part III of Forms 10–K and 10–KSB, enabling a domestic company that voluntarily chooses to include this disclosure in its proxy or information statement to incorporate this information by reference into its Form 10–K or 10–KSB if it files the proxy or information statement with the Commission no later than 120 days after the end of the fiscal year covered by the Form 10–K or 10–KSB.[39]

Although some commenters recommended that we require companies to include the audit committee financial expert disclosure in their proxy and information statements, registration statements and quarterly reports, as well as in their annual reports, we are not convinced that the benefits to investors would exceed the costs to companies of requiring this disclosure in additional documents or on a more frequent basis.

8. Change in Item Number

We proposed to designate the audit committee financial expert disclosure requirement as new Item 309 of Regulations S–K and S–B.[40] However, existing Item 401 seems to be a more logical location for this requirement. Item 401 currently requires, among other things, a brief description of the business experience of each director. Therefore, we are designating the new disclosure item as Item 401(h) of Regulation S–K and Item 401(e) of Regulation S–B. The new item specifies that a company may choose to include the audit committee financial expert disclosure in its proxy or information statement if the company incorporates such information into its annual report as permitted by the instructions to Forms 10–K and 10–KSB.[41]

B. Code of Ethics

1. Code of Ethics Disclosure Requirements

a. Proposed Disclosure Requirements. Section 406 of the Sarbanes-Oxley Act directs us to issue rules requiring a company that is subject to the reporting requirements of Section 13(a) or 15(d) of the Exchange Act to disclose whether or not the company has adopted a code of ethics for its senior financial officers that applies to the company's principal financial officer and controller or principal accounting officer, or persons performing similar functions. The Act further directs us to require companies that have not adopted such a code of ethics to explain why they have not done so. In addition to requiring the disclosure mandated by Section 406, we proposed rules to require disclosure as to whether the company has a code of ethics that applies to its principal executive officer.

b. Commenters' Remarks. Some of the commenters thought that the required disclosure should be limited to a statement indicating whether the company has a code of ethics that applies to its senior financial officers, and if not, why not. Others stated that it was appropriate to expand the requirements of the Sarbanes-Oxley Act to also require a company to disclose whether it has a code of ethics that applies to its principal executive officer. A few commenters thought that we should extend the requirement even further to require a company to state whether it has a code of ethics that applies to other individuals, such as directors, all executive officers, and the company's employees generally.

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[35] 15 U.S.C. 77k.

[36] *See* new Item 401(h)(4) of Regulation S–K, Item 401(e)(4) of Regulation S–B, Item 16A(d) of Form 20–F and paragraph (8)(d) of General Instruction B to Form 40–F. Although other audit committee members may look to the audit committee financial expert as a resource on certain issues that arise, audit committee members should work together to perform the committee's responsibilities. The safe harbor provides that other audit committee members may not abdicate their responsibilities.

[37] Section 11 of the Securities Act imposes liability for material misstatements and omissions in a registration statement, but provides a defense to liability for those who perform adequate due diligence. The level of due diligence required depends on the position held by a defendant and the type of information at issue. *Escott* v. *BarChris Construction Corp.*, 283 F. Supp. 643 (S.D.N.Y. 1968). The type of information can be categorized as either "expertised," which means information that is prepared or certified by an expert who is named in the registration statement, or "non-expertised." Similarly, a defendant can be characterized either as an "expert" or a "non-expert."

[38] *See*, for example, *Smith* v. *Van Gorkom*, 488 A.2d 858 (Del. 1985).

[39] *See* General Instruction E(3) to Form 10–KSB [17 CFR 249.310b] and General Instruction G(3) to Form 10–K [17 CFR 249.310].

[40] We had proposed to add new items to Forms 20–F and 40–F as well. Those item numbers have not changed.

[41] *See* new Instruction 1 to Item 401(h) of Regulation S–K and Item 401(e) of Regulation S–B.

After considering the comments, we continue to think that it is appropriate and consistent with the purposes of the Sarbanes-Oxley Act to extend the scope of our rules under Section 406 to include a company's principal executive officer, as proposed. It seems reasonable to expect that a company would hold its chief executive officer, an official superior to the company's senior financial officers, to at least the same standards of ethical conduct to which it holds its senior financial officers. Some commenters who are investors confirmed that they not only have an interest in knowing whether a company holds its senior financial officers to certain ethical standards, but whether the company holds its principal executive officer to ethical standards as well.

c. Final Disclosure Requirements. The final rules require a company to disclose whether it has adopted a code of ethics that applies to the registrant's principal executive officer, principal financial officer, principal accounting officer or controller, or persons performing similar functions. If the company has not adopted such a code of ethics, it must explain why it has not done so.[42]

2. Definition of the Term "Code of Ethics"

a. Proposed Definition. We proposed to define the term "code of ethics" to mean written standards that are reasonably designed to deter wrongdoing and to promote: [43]

(1) Honest and ethical conduct, including the ethical handling of actual or apparent conflicts of interest between personal and professional relationships;

(2) Avoidance of conflicts of interest, including disclosure to an appropriate person or persons identified in the code of any material transaction or relationship that reasonably could be expected to give rise to such a conflict;

(3) Full, fair, accurate, timely, and understandable disclosure in reports and documents that a company files with, or submits to, the Commission and in other public communications made by the company;

(4) Compliance with applicable governmental laws, rules and regulations; [44]

(5) The prompt internal reporting to an appropriate person or persons identified in the code of violations of the code; and

(6) Accountability for adherence to the code.

The second, fifth and sixth prongs of this proposed definition were broader than the requirements specified by Section 406 of the Sarbanes-Oxley Act, but were intended to supplement the requirements contained in the Act.

b. Commenters' Remarks. We received several comments on the proposed definition of a code of ethics. Some commenters recommended that we make the code of ethics cover more issues or general topics than proposed. Some of these recommendations identified very specific topics that the code of ethics should address. These topics included matters such as: personal participation in initial public offerings, the reporting of any items of value received as a result of the officer's position with the company, and change of control transactions.

c. Final Definition of "Code of Ethics". The final rule defines the term "code of ethics" as written standards that are reasonably designed to deter wrongdoing and to promote:

- Honest and ethical conduct, including the ethical handling of actual or apparent conflicts of interest between personal and professional relationships;
- Full, fair, accurate, timely, and understandable disclosure in reports and documents that a registrant files with, or submits to, the Commission and in other public communications made by the registrant;
- Compliance with applicable governmental laws, rules and regulations;
- The prompt internal reporting to an appropriate person or persons identified in the code of violations of the code; [45] and
- Accountability for adherence to the code.[46]

We eliminated the component of the definition requiring the code to promote the avoidance of conflicts of interest, including disclosure to an appropriate person or persons identified in the code of any material transaction or relationship that reasonably could be expected to give rise to such a conflict, because the conduct addressed by this component already is addressed by the first prong of the proposed definition, requiring honest and ethical conduct and the ethical handling of actual and apparent conflicts of interest.

We are not adopting commenters' suggestions that we set forth additional ethical principles that the code of ethics should address. We continue to believe that ethics codes do, and should, vary from company to company and that decisions as to the specific provisions of the code, compliance procedures and disciplinary measures for ethical breaches are best left to the company. Such an approach is consistent with our disclosure-based regulatory scheme. Therefore, the rules do not specify every detail that the company must address in its code of ethics, or prescribe any specific language that the code of ethics must include. They further do not specify the procedures that the company should develop, or the types of sanctions that the company should impose, to ensure compliance with its code of ethics. We strongly encourage companies to adopt codes that are broader and more comprehensive than necessary to meet the new disclosure requirements.

We have added an instruction to the code of ethics disclosure item indicating that a company may have separate codes of ethics for different types of officers. The instruction also clarifies that the provisions of the company's code of ethics that address the elements listed in the definition and apply to those officers may be part of a broader code that addresses additional issues and applies to additional persons, such as all executive officers and directors of the company.[47]

3. Filing of Ethics Code as an Exhibit

We proposed to require a company to file a copy of its ethics code as an exhibit to its annual report. We received several comment letters stating that the rules should not include this requirement. A common ground for objection was that some codes are extremely lengthy and therefore would be difficult to file electronically on our

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[42] *See* new Items 406(a) of Regulation S–K, and S–B, Item 16B(a) of Form 20–F and paragraph (9)(a) of General Instruction B to Form 40–F.

[43] The Sarbanes-Oxley Act Section 406(c) definition of the term "code of ethics" does not include the phrase "to deter wrongdoing" that we have incorporated into proposed Item 406 of Regulations S–K and S–B, but we think that it is appropriate to expand the definition in this manner. Although codes of ethics typically are designed to promote high standards of ethical conduct, they also generally seek to instruct those to whom they apply as to improper or illegal conduct or activity and to prohibit such conduct or activity.

[44] We proposed to add "laws" to this prong of the proposed definition. The Sarbanes-Oxley Act Sectin 406(c) definition refers only to compliance with applicable governmental rules and regulations.

[45] Although the company retains discretion to determine the identity of the appropriate person or persons, such person should not be involved in the matter giving rise to the violation. Furthermore, we believe the person identified in the code should have sufficient status within the company to engender respect for the code and the authority to adequately deal with the persons subject to the code regardless of their stature in the company.

[46] *See* new Items 406(b) of Regulations S–K, and S–B, Item 16B(b) of Form 20–F and paragraph (9)(b) of General Instruction B to Form 40–F.

[47] *See* Instruction 1 to Items 406 of Regulations S–K and S–B, Instruction 2 to Item 16B of Form 20–F and Note 2 to paragraph (9) of General Instruction B to Form 40–F.

EDGAR system. Some also asserted that ethics codes may contain a significant amount of detailed information that would not be of particular interest to investors.

We are not entirely persuaded by the commenters that we should not require a company disclosing that it has a code of ethics that applies to its principal executive officer and senior financial officers to make those provisions of the code available. However, more flexibility seems appropriate in light of the fact that many companies already post their codes on their websites. We therefore are adopting rules that will allow companies to choose between three alternative methods of making their ethics codes publicly available. First, a company may file a copy of its code of ethics that applies to the registrant's principal executive officer, principal financial officer, principal accounting officer or controller, or persons performing similar functions and addresses the specified elements as an exhibit to its annual report.[48] Alternatively, a company may post the text of its code of ethics, or relevant portion thereof, on its Internet website, provided however, that a company choosing this option also must disclose its Internet address and intention to provide disclosure in this manner in its annual report on Form 10-K, 10-KSB, 20-F or 40-F.[49] As another alternative, a company may provide an undertaking in its annual report on one of these forms to provide a copy of its code of ethics to any person without charge upon request.[50]

If a company is complying with this disclosure item in its annual report, inclusion of the company's website address in the annual report will not, by itself, include or incorporate by reference the information on the company's website into the annual report, unless the company otherwise acts to incorporate the information by reference.[51] Also, we understand that a company may have multiple websites that it uses for various purposes, such as investor relations, product information and business-to-business activities. We intend the requirement to disclose the company's website address to mean the website the company normally uses for its investor relations functions.

4. Location of the Code of Ethics Disclosure

A company will have to include the new code of ethics disclosure in its annual report filed on Form 10–K, 10–KSB, 20–F or 40–F.

5. Form 8–K or Internet Disclosure Regarding Changes to, or Waivers From, the Code of Ethics

Section 406(b) of the Sarbanes-Oxley Act directs us to require a company to make "immediate disclosure" on Form 8–K or via Internet dissemination of any change to, or waiver from, the company's code of ethics for its senior financial officers. Consistent with this mandate, and in keeping with our decision to also require a company to disclose whether its principal executive officer is subject to a code of ethics, we are adding an item to the list of Form 8–K triggering events to require disclosure of:

- The nature of any amendment to the company's code of ethics that applies to its principal executive officer, principal financial officer, principal accounting officer or controller, or persons performing similar functions;[52] and
- The nature of any waiver, including an implicit waiver, from a provision of the code of ethics granted by the company to one of these specified officers, the name of the person to whom the company granted the waiver and the date of the waiver.[53]

Only amendments or waivers relating to the specified elements of the code of ethics and the specified officers must be disclosed. This clarification is intended to allow and encourage companies to retain broad-based business codes. For example, if a company has a code of ethics that applies to its directors, as well as its principal executive officer and senior financial officers, an amendment to a provision affecting only directors would not require Form 8–K or Internet disclosure.

A company choosing to provide the required disclosure on Form 8–K must do so within five business days after it amends its ethics code or grants a waiver.[54] As an alternative to reporting this information on Form 8–K, a company may use its Internet Web site as a method of disseminating this disclosure, but only if it previously has disclosed in its most recently filed annual report on Form 10–K or 10–KSB:[55]

- Its intention to disclose these events on its Internet website, and
- Its Internet website address.[56]

The commenters were mixed in their reaction to our proposal to permit Internet disclosure of changes and waivers of the code of ethics in lieu of a Form 8–K filing. Some commenters did not believe that Internet disclosure would provide sufficiently broad dissemination. Others believed that such disclosure would be sufficient. The final rules retain the Internet disclosure option because the language in Section 406(b) of the Sarbanes-Oxley Act clearly indicates that Congress intended companies to have this option.

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[48] See new Item 601(b)(14) of Regulations S–K and S–B. Although Section 406 of the Sarbanes-Oxley Act does not state that our rules must require a company to file a copy of the code of ethics as an exhibit to its annual report, some investors likely will be interested in examining the actual code itself, given that codes are likely to vary significantly from one company to another.

[49] See new Item 406(c)(2) of Regulations S–K and S–B, Item 16B(c)(2) of Form 20–F and paragraph (9)(c)(2) of General Instruction B to Form 40–F. We note that the NYSE has filed with the Commission a proposed rule change under Section 19(b)(1) of the Exchange Act[15 U.S.C. 78s(b)(1)] that, if adopted, would require listed companies to adopt codes of ethics and post them on their internet websites. See SR–NYSE–2002–33 (pending before the Commission). Therefore, this alternative would be consistent with the proposals of the NYSE, minimizing unnecessary duplication.

[50] *See* new Item 406(c)(3) of the Regulations S–K and S–B, Item 16B(c)(3) of Form 20–F and paragraph (9)(c)(3) of General Instruction B to Form 40–F.

[51] In Release No. 33–7856 (Apr. 28, 2000)[65 FR 25843], we provided interpretive guidance on the effect of including a Web site address in other situations. We are not changing that guidance for those other situations.

[52] The new rule includes an instruction clarifying that a company need not disclose technical, administrative or other non-substantive amendments to the code of ethics. See Instruction 1 to new Item 10 of Form 8–K, Instruction 6 to Item 16B of Form 20–F, and Note 6 to paragraph (9) of General Instruction B to Form 40–F.

[53] *See* new Form 8–K Item 10. In Release No. 33–8106 (June 17, 2002)[67 FR 42914], we proposed to reorganize and renumber the Form 8–K items as part of our Form 8–K proposals. In anticipation of such change, we had proposed to designate this item as Item 5.05. Because we are adopting it before we consider adoption of the reorganization of Form 8–K, we are designating this new item as Item 10 under the existing Form 8–K numbering system.

[54] We initially proposed a two business day filing period to be consistent with the accelerated Form 8–K filing deadlines that we proposed in Release No. 33–8106. Because we have not yet adopted those proposals, the five business day period will serve as an interim deadline for an Item 10 Form 8–K. The five business day period is the shorter of the two existing Form 8–K deadlines. When we address the Form 8–K proposals, we will consider whether to shorten the Item 10 deadline to two business days.

[55] *See* new Item 406(b) of Regulations S–K and S–B. Because investors may not expect these disclosures to be made on the company's Web site in lieu of a Form 8–K filing, we are requiring a company to provide investors with advance notice that it may choose to use this option to avoid confusion.

[56] If a company elects to disclose this information on its Web site, it must do so within the same five-business day period as required for a Form 8–K that includes this type of disclosure. In addition, a company electing to provide disclosure in this manner must make the disclosure available on its Web site for at least 12 months after it initially posts the disclosure. Although a company may remove information from its Web site after the 12-month posting period, the company must retain this disclosure for a period of not less than five years and make it available to the Commission or its staff upon request. New Item 10(c) of Form 8–K.

Several commenters remarked on the proposal to require a company to disclose ethics waivers. A number of these suggested that we provide guidance as to the meaning of the terms "waiver" and "implicit waiver." In response, the final rules define the term "waiver" as the approval by the company of a material departure from a provision of the code of ethics.[57] They define the term "implicit waiver" as the registrant's failure to take action within a reasonable period of time regarding a material departure from a provision of the code of ethics that has been made known to an executive officer, as defined in Rule 3b–7,[58] of the registrant.[59]

C. Foreign Private Issuers and Request for Comments

We included foreign private issuers within the scope of the proposed rules implementing both Sections 406 and 407 of the Sarbanes-Oxley Act. Some commenters requested that we exempt foreign private issuers from the application of these rules on the ground that the rules would overlap or conflict with the audit committee requirements and corporate governance code of ethics provisions in the issuers' home jurisdictions. Other commenters stated that, for the sake of simplicity, any rule requiring a company, whether foreign or domestic, to disclose whether its audit committee financial expert is independent should reflect the standard of independence set forth in the rules that we will adopt to implement Section 301 of the Sarbanes-Oxley Act.

We have determined to include foreign private issuers within the scope of the final rules implementing Sections 406 and 407. Their inclusion comports both with the plain language of the above statutory sections, which applies broadly to issuers, as well as with the overarching purpose of the Sarbanes-Oxley Act, which is to restore investor confidence in U.S. financial markets, regardless of the origin of the market participants.

Accordingly, like a domestic issuer, a foreign private issuer will have to disclose whether it has an audit committee financial expert in its Exchange Act annual report. Because foreign private issuers are not subject to Regulation S–K, however, we have amended Forms 20–F and 40–F to require the audit committee financial expert disclosure.[60]

We agree with the commenters that urged us to adopt an independence standard for the required audit committee financial expert disclosure that will be the same as that embodied in the rules to be adopted under Section 301 of the Sarbanes-Oxley Act. Accordingly, we intend to revise the Section 407 rules to reflect the independence standard eventually adopted and set forth in the rules implementing Section 301.[61]

In the interim, we believe that it is not appropriate or necessary at this time to require foreign private issuers to disclose whether their audit committee financial experts are independent.[62] Unlike domestic issuers, foreign private issuers currently are not required to disclose whether their audit committee members are independent.[63] Imposing the independence disclosure requirement immediately may compel a foreign private issuer to disclose that its expert is not independent under our definition even though there has been no prior context in which that issuer has been required to consider our definition of the term. In addition, immediate imposition of our current definition of "independent" would require foreign private issuers to familiarize themselves with rules which we expect to revise within one annual reporting period. Such imposition may be unfair to foreign private issuers. Therefore, the final rules do not require a foreign private issuer to disclose whether its audit committee financial expert is independent. However, we reiterate that in conjunction with the adoption of our rules under Section 301, which will apply to foreign private issuers, we intend to amend Forms 20–F and 40–F to require such disclosure.

In the release implementing Section 301, we propose a special accommodation for certain audit committee requirements for foreign private issuers with a board of auditors or statutory auditors under home country legal or listing provisions, subject to certain conditions. Specifically, foreign private issuers with boards of auditors or similar bodies or statutory auditors meeting the requirements of our proposals would be exempt from the requirements regarding the independence of audit committee members. We request comment on whether the disclosure requirements related to audit committee financial experts should apply to such issuers. To the extent they should apply to such issuers, should the requirements apply to the board of auditors or similar body? Should we apply different standards or disclosure requirements for such issuers? For example, should audit committee financial experts of such issuers be subject to the same disclosure requirement regarding independence as other foreign private issuers? One of the proposed requirements for the listing exemption would be that home country legal or listing provisions set forth standards for the independence of such board or body. Should we permit these issuers to use those independence standards for their independence disclosure?

Like a domestic issuer, under the adopted Section 406 rules, a foreign private issuer will have to provide the new code of ethics disclosure in its Exchange Act annual report. However, in contrast to a domestic issuer, a foreign private issuer will not have to provide in a current report "immediate disclosure" of any change to, or waiver from, the company's code of ethics for its senior financial officers and principal executive officer. Instead, we are adopting as proposed the requirement that a foreign private issuer disclose any such change or waiver that has occurred during the past fiscal year in its Exchange Act annual report.[64] This differing treatment reflects the fact that, unlike domestic Exchange Act reporting companies, reporting foreign private issuers do not have any specific interim or current disclosure requirements mandated by the Commission.[65]

The adopted revisions to Forms 20–F and 40–F do state, however, that a foreign private issuer may disclose any change to or waiver from the code of ethics obligations of its senior officers

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[57] *See* Instruction 3.a. to new Item 10 of Form 8–K.

[58] 17 CFR 240.3b–7.

[59] *See* Instruction 3.b. to new Item 10 of Form 8–K.

[60] *See* new Item 16A of Form 20–F and new paragraph (8) to General Instruction B of Form 40–F.

[61] *See* proposed Exchange Act Rule 10A–3 set forth in Release No. 33–8173 (Jan. 8, 2003).

[62] A domestic company must disclose whether its audit committee financial expert is independent under the existing dfinition of independence in Item 7 of Schedule 14A. Upon the expected revision of that item, a domestic company must disclose whether its audit committee financial expert is independent under the new definition of independence.

[63] Foreign private issuers generally are exempt from the requirements of Regulation 14A, including Item 7(d) of Schedule 14A which requires disclosure of whether audit committee members are independent. *See* 17 CFR 240.3a12–3(b).

[64] *See* Release No. 33–8138, the text before and after n. 84.

[65] Instead, a foreign private issuer must file under cover of Form 6–K copies of all information that it: Makes or is required to make public under the laws of its jurisdiction of incorporation, domicile or organization; files or is required to file under the rules of any stock exchange; or distributes or is required to distribute to its security holders. *See* General Instruction B to Form 6–K.

on a Form 6–K or its Internet Web site.[66] We strongly encourage foreign private issuers to use these alternative means of disclosure in the interest of promptness.

D. Asset-Backed Issuers

In several of our releases implementing provisions of the Sarbanes-Oxley Act, including the Proposing Release, we have noted the special nature of asset-backed issuers.[67] Because of the nature of these entities, such issuers are subject to substantially different reporting requirements. Most significantly, asset-backed issuers generally are not required to file the financial statements that other companies must file. Also, such entities typically are passive pools of assets, without an audit committee or board of directors or persons acting in a similar capacity. Accordingly, we are excluding asset-backed issuers from the new disclosure requirements.

E. Transition Periods

We received numerous comments urging us to adopt transition periods for compliance. Commenters noted that some companies desiring audit committee financial experts and codes of ethics that meet the definitions included in the new rules may need some time to adjust. Several commenters asserted that no special transition periods were necessary because the new rules only require disclosure. They noted that a company that has no audit committee financial expert or code of ethics would not be at risk of non-compliance with our rules as long as it makes appropriate disclosure. However, we recognize that a company that does not have an audit committee financial expert or a code of ethics that complies with these new definitions may be harmed by having to disclose these facts even if the company intends to obtain such expert or code. Therefore, we have decided to provide a limited transition period. Companies must comply with the code of ethics disclosure requirements promulgated under Section 406 of the Sarbanes-Oxley Act in their annual reports for fiscal years ending on or after July 15, 2003. They also must comply with the requirements regarding disclosure of amendments to, and waivers from, their ethics codes on or after the date on which they file their first annual report in which disclosure of their code of ethics is required. Companies, other than small business issuers, similarly must comply with the audit committee financial expert disclosure requirements promulgated under Section 407 of the Sarbanes-Oxley Act in their annual reports for fiscal years ending on or after July 15, 2003. Recognizing that smaller businesses may have the greatest difficulty attracting qualified audit committee financial experts, small business issuers must comply with the audit committee financial expert disclosure requirements in their annual reports for fiscal years ending on or after December 15, 2003.

[66] *See* new Item 16B to Form 20–F and new paragraph (9) to General Instruction B of Form 40–F.

[67] The term "asset-backed issuer" is defined in Exchange Act Rules 13a–14(g) and 15d–14(g) [17 CFR 240.13a–14(g) and 240.15d–14(g)].

III. Paperwork Reduction Act

The amendments contain "collection of information" requirements within the meaning of the Paperwork Reduction Act of 1995 ("PRA"). We published a notice requesting comment on the collection of information requirements in the Proposing Release, and we submitted requests to the Office of Management and Budget ("OMB") for approval in accordance with the PRA. These requests are pending before the OMB.

The titles for the collection of information are "Form 10–K," "Form 10–KSB," "Form 20–F," "Form 40–F" and "Form 8–K." An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Form 10–K (OMB Control No. 3235–0063) prescribes information that a registrant must disclose annually to the market about its business. Form 10–KSB (OMB Control No. 3235–0420) prescribes information that a "small business issuer" as defined under our rules must disclose annually to the market about its business. Form 20–F (OMB Control No. 3235–0288) prescribes information that a foreign private issuer must disclose annually to the market about its business. Form 40–F (OMB Control No. 3235–0381) prescribes information that certain Canadian issuers must disclose annually to the market about their businesses. Form 8–K (OMB Control No. 3235–0060) prescribes information about significant events that a registrant must disclose on a current basis. Form 8–K also may be used, at a registrant's option, to report any events that the registrant deems to be of importance to shareholders. Additionally, companies may use the form to disclose the nonpublic information required to be disclosed by Regulation FD.[68]

[68] 17 CFR 243.100–103.

A. Summary of Amendments

The amendments require two new types of disclosure that must be included in Form 10–K, Form 10–KSB, Form 20–F and Form 40–F. A domestic company may, at its discretion, provide the new disclosures in its proxy or information statement on Schedule 14A or 14C and incorporate those disclosures by reference into its annual report. These new disclosure items require a company to disclose the following:

- Whether it has at least one "audit committee financial expert" serving on its audit committee, and if so, the name of the expert and whether the expert is independent of management. A company that does not have an audit committee financial expert must disclose this fact and explain why it has no such expert.
- Whether it has adopted a code of ethics that applies to the company's principal executive officer, principal financial officer, principal accounting officer, controller, or persons performing similar functions. A company disclosing that it has not adopted such a code must disclose this fact and explain why it has not done so. A company also will be required to promptly disclose amendments to, and waivers from, the code of ethics relating to any of those officers.

None of these amendments requires a company to have an audit committee financial expert or a code of ethics.

B. Summary of Comment Letters and Revisions to Proposals

We requested comment on the PRA analysis contained in the proposing release. Several commenters asserted that the benefits of a rule requiring a company to file its code of ethics do not justify the costs. In response to those comments, the final rules provide for two additional means by which a company may make copies of its code of ethics available to the public. Instead of filing the code, the rules permit a company to either post its code of ethics on the company's Web site if it discloses in its annual report that it intends to do so or to include a written undertaking in its annual report to provide any person with a copy of the code of ethics free of charge upon request. We include in this PRA analysis an adjustment to reflect the added disclosure required if a company intends to post its ethics code on its Web site and by the undertaking if a company elects to make copies available to the public without charge upon request. The purpose of these new disclosures is to provide flexibility for companies in making their

codes of ethics available to the public and to ensure that interested investors will be able to obtain a copy of the code of ethics if the company does not otherwise make the code publicly accessible. At the same time, we assume that companies will choose the least burdensome means of providing the information.

Although we have made several other modifications to the proposals, they will not affect our estimates of the burden imposed on companies by the new disclosure requirements. These modifications clarify the definitions of certain terms, such as "audit committee financial expert" and "code of ethics," used in the new disclosure items. Although the revision to the audit committee financial expert definition may increase the number of persons who would qualify as an audit committee financial expert, it will not affect the amount of disclosure necessary under the disclosure items. The change to the code of ethics definition similarly will not affect the amount of disclosure required under the new rules. Therefore, we do not believe that these changes affect our previous estimates of the burden on registrants associated with these new disclosure items.

C. Burden Estimates

All Form 10–K, 10–KSB, 20–F and 40–F respondents will be subject to the new audit committee financial expert and code of ethics disclosure requirements. In the Proposing Release, we estimated that the total burden imposed by the new disclosure items that we are adopting would be one burden hour per year per registrant, of which 75%, or ¾ hour, would be borne by the company internally and 25%, or ¼ hour, would be borne externally by outside counsel retained by the company at a cost of $300 per hour.[69] We also estimated in the Proposing Release that preparation of a Form 8–K to report changes to, or waivers from, provisions of the code of ethics would impose a burden of 5 hours per form. We estimated that a company will file such a report once every three years. This results in an estimate of 1⅔ hours per company per year, of which 75%, or 1¼ hours would be borne by the company internally and 25%, or 5/12 of an hour, would be reflected as an outside counsel cost of $300 per hour.

The new disclosures required when a company elects to post its code of ethics on its Web site or to undertake to provide copies to persons upon request will result in an additional one or two sentences in the company's annual report. We estimate that this disclosure will add a burden of 6 minutes, or 0.1 hour, per year per company choosing the posting or undertaking option. We do not have data to accurately estimate the number of companies that will make such elections. However, we believe that a significant number of companies currently make their ethics codes available to the public on their Web sites. Therefore, we estimate that 75% of companies subject to the requirements will choose to disclose this information on their Web sites. We further estimate that 10% of companies will choose to undertake to offer copies of its code of ethics upon request.

Compliance with the revised disclosure requirements is mandatory. Responses to the disclosure requirements will not be kept confidential.

IV. Costs and Benefits

The Sarbanes-Oxley Act requires us to adopt the new audit committee financial expert and code of ethics disclosure requirements. These changes will affect all companies reporting under Section 13(a) and 15(d) of the Exchange Act, including foreign private issuers and small business issuers. We recognize that these requirements will result in costs as well as benefits and that they will have an effect on the economy.

A. Benefits

One of the main goals of the Sarbanes-Oxley Act is to improve investor confidence in the financial markets. These rules are intended to achieve the Act's goals by providing greater transparency as to whether an audit committee financial expert serves on a company's audit committee and whether the company's principal executive officer and senior financial officers are subject to ethical standards. By increasing transparency regarding key aspects of corporate activities and conduct, the proposals are designed to improve the quality of information available to investors. Greater transparency should assist the market to properly value securities, which in turn should lead to more efficient allocation of capital resources.

The new rules require a company to disclose the name of the audit committee financial expert serving on the audit committee and whether that person is independent of management if the company discloses that it has a financial expert. Investors should benefit from this disclosure by being able to consider it when reviewing currently required disclosure about all directors' past business experience and making voting decisions.[70] The new rules also require a company to make copies of its code of ethics available to investors. This requirement will allow investors to better understand the ethical principles that guide executives of companies in which they invest.

B. Costs

The new disclosure items require companies to make disclosure about two matters. First, a company must disclose whether it has at least one "audit committee financial expert" serving on its audit committee, and if so, the name of the expert and whether the expert is independent of management. A company that does not have an audit committee financial expert must disclose this fact and explain why it has no such expert. Second, a company must disclose whether it has adopted a code of ethics that applies to the company's principal executive officer and senior financial officers. A company disclosing that it has not adopted such a code must disclose this fact and explain why it has not done so. A company also will be required to promptly disclose amendments to, and waivers from, the code of ethics relating to any of those officers. This information will be readily available to the company. For purposes of the Paperwork Reduction Act, we estimated these burdens to be $7,760,000.

As stated above, in limited instances, the new rules require more disclosure than mandated by the Sarbanes-Oxley Act. For example, we expect that companies will incur added costs to disclose the name of the audit committee financial expert, to disclose whether that person is independent and to file or otherwise make available copies of their codes of ethics to investors. Companies electing to disclose changes in, and waivers from, their codes of ethics via their websites in lieu of publicly filing such disclosure on Form 8-K must disclose this election in their annual reports.

The added burden associated with the requirements to name the audit committee financial expert and disclose whether the audit committee financial expert is independent should be minimal.[71] We have added a safe harbor provision to clarify that we do not intend to increase or decrease the current level of liability of audit

[69] Estimates regarding burden within the company, for third party services, and for professional costs were obtained by contacting a number of law firms and other persons regularly involved in completing the forms.

[70] *See* Item 401 of Regulations S–K and S–B (17 CFR 229.401 and 228.401).

[71] This added burden is included in the Paperwork Reduction Act estimate discussed above.

committee members, or the audit committee member determined to be the expert, by requiring disclosure as to whether an audit committee financial expert serves on the audit committee. We also do not think that the requirement to name the audit committee financial expert should affect the expert's potential liability as an audit committee member.

Several commenters noted that a company may incur costs if it has to disclose that it does not have an audit committee financial expert on its audit committee. For example, a negative market reaction to this type of disclosure could hamper a company's ability to raise capital. In response to commenters' remarks, we have broadened the definition of the term "audit committee financial expert" so that more individuals will be able to qualify under the definition. For example, the final rules allow persons with experience preparing, auditing, analyzing or evaluating financial statements, or active supervision over those activities, to qualify. The proposals only permitted those with experience preparing or auditing financial statements to qualify as experts. Similarly, we have broadened the permissible means by which a person may acquire the requisite expertise. For example, we have added a clause that would permit a person to have acquired the attributes through experience overseeing or assessing the performance of companies or public accountants with respect to the preparation, auditing or evaluation of financial statements. We have also added a clause that allows a person to acquire the attributes through other relevant experience. While more companies will be able to disclose that they have an audit committee financial expert under the revised definition, we believe that definition still is consistent with the Act's objective to require an Exchange Act reporting company to disclose whether it has a person with a high level of financial expertise on its audit committee.

With respect to the code of ethics provisions, a number of commenters stated that the benefits of filing copies of the code of ethics do not justify the anticipated costs. They argued that some companies have long codes which would be expensive to file. Moreover, many details in those codes may not be material to investors. They argued that it should be sufficient for a company to disclose whether it has a code satisfying the definition of the term "code of ethics" in our rule. Recognizing that a number of companies currently post copies of their code of ethics on their websites, we have revised the rule to provide two alternatives to the filing requirement. A company may either post its code of ethics on its website if it discloses that it intends to do so in its annual report or undertake in its annual report to provide investors with a copy of its code of ethics upon request. These alternatives should allow issuers to choose the most cost efficient method to meet the new requirements. We believe that these additional requirements benefit investors, impose minimal burden on companies, and are consistent with the objectives of the Sarbanes-Oxley Act.

V. Effect on Efficiency, Competition and Capital Formation

Section 23(a)(2)[72] of the Exchange Act requires us, when adopting rules under the Exchange Act, to consider the impact that any new rule would have on competition. In addition, Section 23(a)(2) prohibits us from adopting any rule that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.

Section 2(b)[73] of the Securities Act and Section 3(f)[74] of the Exchange Act require us, when engaging in rulemaking where we are required to consider or determine whether an action is necessary or appropriate in the public interest, to consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation. The purpose of the amendments is to increase transparency of certain aspects of a company's corporate governance. This should improve the ability of investors to make informed investment and voting decisions. Informed investor decisions generally promote market efficiency and capital formation. As noted above, however, the new disclosure items could have certain indirect consequences, which could adversely impact a company's ability to raise capital. The possibility of these effects and their magnitude if they were to occur are difficult to quantify.

Much of the new disclosure required by the final rules discussed in this release is explicitly mandated by the Sarbanes-Oxley Act. The new disclosure items are intended to increase transparency as to whether an audit committee financial expert serves on a company's audit committee and whether the company has a code of ethics that applies to its principal executive officer and senior financial officers. We anticipate that these disclosures will enhance the proper functioning of the capital markets by giving investors greater insight into certain aspects of a company's corporate governance activities. These enhancements should, in turn, increase the competitiveness of companies participating in the U.S. capital markets. However, because only companies subject to the reporting requirements of Sections 13 and 15 of the Exchange Act must make the disclosures, competitors not subject to those reporting requirements potentially could gain an informational advantage.

We requested comment on whether the proposed amendments, if adopted, would impose a burden on competition or, conversely, promote efficiency, competition and capital formation. A number of commenters expressed concern that the definition of the term "audit committee financial expert" may have anti-competitive effects. Specifically, they were concerned that the definition was so narrow that it might cause some companies, desiring to have an expert on their board, to recruit persons associated with a competitor. In response to these comments, we have clarified that this provision does not require the audit committee financial expert to have experience with issuers in the same industry as the company, or that the person's experience must have been with a company subject to the Exchange Act reporting requirements. Rather, we have included this provision to focus on the level of sophistication of the accounting issues with which the person has had experience. We think that a company's board of directors will have to make the sophistication assessment based on particular facts and circumstances.

Other commenters expressed concern that the definition was so narrow that many companies would have trouble finding audit committee financial experts. They also feared that disclosure of the fact that a company does not have an audit committee financial expert could trigger an adverse market reaction. We have attempted to expand the definition of "audit committee financial expert" without sacrificing the quality of knowledge and experience required of such an expert. We believe that the revised definition, though expanded, is consistent with the purposes of the Act.

Commenters also expressed concern that requiring disclosure of the names of audit committee financial experts would further hamper their efforts to find qualified persons willing to serve on their audit committees as experts by

[72] 15 U.S.C. 78w(a)(2).
[73] 15 U.S.C. 77b(b).
[74] 15 U.S.C. 78c(f).

exposing such persons to increased liability. In response to these comments, we have created a safe harbor from liability for audit committee financial experts. This safe harbor states that an audit committee financial expert is not deemed an expert for any purpose, including for purposes of Section 11 of the Securities Act, which imposes, in private actions, a liability standard that is more strict than typically imposed by the anti-fraud provisions of the Securities Act and the Exchange Act. In addition, the safe harbor states that a person's potential liability as a director does not change as a result of being designated an audit committee financial expert. That person will be subject to the same duties, obligations and liability to which he or she would have been subject, absent such designation. The safe harbor also clarifies that the designation of an audit committee financial expert does not affect the duties, obligations and liability of other directors and audit committee members.

VI. Final Regulatory Flexibility Analysis

This Final Regulatory Flexibility Analysis has been prepared in accordance with 5 U.S.C. 603. It relates to revisions to Exchange Act Form 8–K, Form 10–K, Form 10–KSB, Form 20–F, Form 40–F, Regulation S–K and Regulation S–B.

A. Need for, and Objectives of, the Amendments

We are adopting these disclosure requirements to comply with the mandate of, and fulfill the purposes underlying the provisions of, the Sarbanes-Oxley Act of 2002. The new disclosure items are intended to enhance investor confidence in the fairness and integrity of the securities markets by increasing transparency as to whether a company has an audit committee financial expert on its audit committee and whether a company has adopted a code of ethics that applies to its principal executive officer and senior financial officers. We believe that these rules will help investors to understand and assess certain aspects of a company's corporate governance.

B. Significant Issues Raised by Public Comment

The Initial Regulatory Flexibility Analysis, or IRFA, appeared in the Proposing Release. We requested comment on any aspect of the IRFA, including the number of small entities that would be affected by the proposals, the nature of the impact, how to quantify the number of small entities that would be affected and how to quantify the impact of the proposals.

A number of commenters expressed concern that small business issuers, including small entities, would be particularly disadvantaged by the proposed definition of "audit committee financial expert," which they thought was too restrictive. Commenters believed that such entities may be more likely to be unable to attract qualified persons to serve on their audit committees and that a higher percentage of small companies than large companies would be compelled to state that they had no audit committee financial expert. They suggested that this problem would be exacerbated for companies whose operations are primarily conducted in relatively small geographic regions in which such expertise may not be available.

C. Small Entities Subject to the New Disclosure Requirements

The new disclosure items affect issuers that are small entities. Exchange Act Rule 0–10(a) [75] defines an issuer, other than an investment company, to be a "small business" or "small organization" if it had total assets of $5 million or less on the last day of its most recent fiscal year. We estimate that there are approximately 2,500 issuers, other than investment companies, that may be considered small entities. The new disclosure items apply to any small entity that is subject to Exchange Act reporting requirements.

D. Projected Reporting, Recordkeeping, and Other Compliance Requirements

The new disclosure items require companies to disclose information as to whether an audit committee financial expert serves on the company's audit committee and whether the company has adopted a code of ethics that applies to its principal executive officer and senior financial officers. All small entities that are subject to the reporting requirements of Section 13(a) or 15(d) of the Exchange Act are subject to these disclosure requirements. Because reporting companies already file the forms being amended, no additional professional skills beyond those currently possessed by these filers are necessary to prepare the new disclosure. We expect that these new disclosure items will increase costs incurred by small entities by requiring them to compile and report new information. In addition, to the extent that some small entities may have difficulty attracting qualified audit committee financial experts, disclosure that they have no audit committee financial expert may have a negative impact on the market price of their securities. We have calculated for purposes of the Paperwork Reduction Act that each company, including a small entity, would be subject to an added annual reporting burden of approximately 2.1 hours and an estimated annual average cost of approximately $206 for disclosure assistance from outside counsel as a result of the amendments. These burden estimates reflect only the burden and cost of the required collection of information. They do not reflect any potential burden or cost associated with recruitment of a qualified audit committee financial expert or creation of a code of ethics, neither of which is required by our rules.

E. Agency Action To Minimize Effect on Small Entities and Significant Alternatives

The Regulatory Flexibility Act directs the Commission to consider significant alternatives that would accomplish the stated objective, while minimizing any significant adverse impact on small entities. In connection with the new disclosure items, we considered the following alternatives: (a) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (b) the clarification, consolidation, or simplification of the reporting requirements for small entities; (c) the use of performance rather than design standards; and (d) an exemption from coverage of the requirements, or any part thereof, for small entities.

We believe that different compliance or reporting requirements for small entities would interfere with the primary goal of increasing transparency of corporate governance. Although we generally believe that an exemption for small entities from coverage of the new disclosure requirements is not appropriate and would be inconsistent with the policies underlying the Sarbanes-Oxley Act, we have provided a deferred compliance date for small business issuers, including those that constitute small entities, with respect to the required audit committee financial expert disclosures.[76] Under the adopted

[75] 17 CFR 240.0–10(a).

[76] Item 10 of Regulation S–B (17 CFR 228.10) defines a small business issuer as a company that has revenues of less than $25 million, is a U.S. or Canadian issuer, is not an investment company, and has a public float of less than $25 million. Also, if it is a majority owned subsidiary, the parent corporation also must be a small business issuer. Rule 0–10 of the Exchange Act (17 CFR 240.10) defines a small entity for purposes of the Regulatory

rules, small business issuers need not make such disclosure until they file their annual reports for fiscal years ending December 15, 2003 or later. This deferral provides a small business issuer that does not currently have an audit committee member that would qualify as an audit committee financial expert under the new definition with more time to identify and recruit one. We note in this regard that our rules do not require any company to have an audit committee financial expert serving on its audit committee; they only require disclosure of whether such an expert serves on the company's audit committee.

As explained in this release, we also have significantly expanded the definition of the term "audit committee financial expert" for all companies. Several commenters noted that small businesses, in particular, would have difficulty attracting qualified persons. By expanding the definition, the rules increase the pool of available experts and ease the burden for all companies, including small entities, interested in recruiting qualified persons.

Also, we have revised our proposed requirement that all companies, including small entities, must file a copy of their code of ethics as an exhibit to their annual reports. As stated in the release, the adopted rules provide three different alternatives for a company to make its code of ethics publicly available. This revision allows companies to choose the least burdensome alternative.

We believe that the new disclosure requirements are clear and straightforward. The new rules require only brief disclosure. Therefore, it does not seem necessary to develop separate requirements for small entities. Similarly, we believe that applying a different definition of "audit committee financial expert" in a rule applicable only to small entities would not be appropriate. The final rules clarify that factors such as the complexity of a company's business and the accounting issues involved in a company's financial statements affect the level of experience and understanding that an audit committee financial expert should have. Because small entities tend to have less complex businesses and accounting issues than large companies, the definition provides significant flexibility to small entities. We have used design rather than performance standards in connection with the new disclosure items because we want this disclosure to appear in a specific type of disclosure filing so that investors will know where to find the information. We do not believe that performance standards for small entities would be consistent with the purpose of the new rules.

VII. Statutory Basis

We are adopting amendments to Securities Exchange Act Form 10–K, Form 10–KSB, Form 20–F, Form 40–F, Form 8–K, Regulation S–B and Regulation S–K pursuant to Sections 5, 6, 7, 10, 17, 19 and 28 of the Securities Act, as amended, Sections 12, 13, 15, 23 and 36 of the Securities Exchange Act, as amended, and Sections 3(a), 406 and 407 of the Sarbanes-Oxley Act of 2002.

Text of the Proposed Amendments

List of Subjects

17 CFR Part 228

Reporting and recordkeeping requirements, Securities, Small businesses.

17 CFR Parts 229 and 249

Reporting and recordkeeping requirements, Securities.

For the reasons set out above, we amend title 17, chapter II of the Code of Federal Regulations as follows:

PART 228—INTEGRATED DISCLOSURE SYSTEM FOR SMALL BUSINESS ISSUERS

1. The authority citation for Part 228 is amended by adding the following citations in numerical order to read as follows:

Authority: 15 U.S.C. 77e, 77f, 77g, 77h, 77j, 77k, 77s, 77z–2, 77z–3, 77aa(25), 77aa(26), 77ddd, 77eee, 77ggg, 77hhh, 77jjj, 77nnn, 77sss, 78*l*, 78m, 78n, 78o, 78u–5, 78w, 78*ll*, 78mm, 80a–8, 80a–29, 80a–30, 80a–37 and 80b–11.

* * * * *

Section 228.401 is also issued under secs. 3(a) and 407, Pub. L. 107–204, 116 Stat. 745.

Section 228.406 is also issued under secs. 3(a) and 406, Pub. L. 107–204, 116 Stat. 745.

Section 228.601 is also issued under secs. 3(a) and 406, Pub. L. 107–204, 116 Stat. 745.

2. Amend § 228.401 by adding paragraph (e) to read as follows:

§ 228.401 (Item 401) Directors, Executive Officers, Promoters and Control Persons.

* * * * *

(e) *Audit committee financial expert.* (1)(i) Disclose that the small business issuer's board of directors has determined that the small business issuer either:

(A) Has at least one audit committee financial expert serving on its audit committee; or

(B) Does not have an audit committee financial expert serving on its audit committee.

(ii) If the small business issuer provides the disclosure required by paragraph (e)(1)(i)(A) of this Item, it must disclose the name of the audit committee financial expert and whether that person is *independent*, as that term is used in Item 7(d)(3)(iv) of Schedule 14A (240.14a–101 of this chapter) under the Exchange Act.

(iii) If the small business issuer provides the disclosure required by paragraph (e)(1)(i)(B) of this Item, it must explain why it does not have an audit committee financial expert.

Instruction to paragraph (e)(1) of Item 401. If the small business issuer's board of directors has determined that the small business issuer has more than one audit committee financial expert serving on its audit committee, the small business issuer may, but is not required to, disclose the names of those additional persons. A small business issuer choosing to identify such persons must indicate whether they are independent pursuant to Item 401(e)(1)(ii).

(2) For purposes of this Item, an *audit committee financial expert* means a person who has the following attributes:

(i) An understanding of generally accepted accounting principles and financial statements;

(ii) The ability to assess the general application of such principles in connection with the accounting for estimates, accruals and reserves;

(iii) Experience preparing, auditing, analyzing or evaluating financial statements that present a breadth and level of complexity of accounting issues that are generally comparable to the breadth and complexity of issues that can reasonably be expected to be raised by the small business issuer's financial statements, or experience actively supervising one or more persons engaged in such activities;

(iv) An understanding of internal controls and procedures for financial reporting; and

(v) An understanding of audit committee functions.

(3) A person shall have acquired such attributes through:

(i) Education and experience as a principal financial officer, principal accounting officer, controller, public accountant or auditor or experience in one or more positions that involve the performance of similar functions;

(ii) Experience actively supervising a principal financial officer, principal accounting officer, controller, public accountant, auditor or person performing similar functions;

(iii) Experience overseeing or assessing the performance of companies

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Flexibility Act as a company that, on the last day of its most recent fiscal year, had total assets of $5 million or less.

or public accountants with respect to the preparation, auditing or evaluation of financial statements; or

(iv) Other relevant experience.

(4) *Safe Harbor.* (i) A person who is determined to be an audit committee financial expert will not be deemed an *expert* for any purpose, including without limitation for purposes of section 11 of the Securities Act of 1933 (15 U.S.C. 77k), as a result of being designated or identified as an audit committee financial expert pursuant to this Item 401.

(ii) The designation or identification of a person as an audit committee financial expert pursuant to this Item 401 does not impose on such person any duties, obligations or liability that are greater than the duties, obligations and liability imposed on such person as a member of the audit committee and board of directors in the absence of such designation or identification.

(iii) The designation or identification of a person as an audit committee financial expert pursuant to this Item 401 does not affect the duties, obligations or liability of any other member of the audit committee or board of directors.

Instructions to Item 401(e). 1. The small business issuer need not provide the disclosure required by this Item 401(e) in a proxy or information statement unless that small business issuer is electing to incorporate this information by reference from the proxy or information statement into its annual report pursuant to general instruction E(3) to Form 10–KSB.

2. If a person qualifies as an audit committee financial expert by means of having held a position described in paragraph (e)(3)(iv) of this Item, the small business issuer shall provide a brief listing of that person's relevant experience. Such disclosure may be made by reference to disclosures required under paragraph (a)(4) of this Item 401 (§ 229.401(a)(4) or this chapter).

3. In the case of a foreign private issuer with a two-tier board of directors, for purposes of this Item 401(e), the term *board of directors* means the supervisory or non-management board. Also, in the case of a foreign private issuer, the term *generally accepted accounting principles* in paragraph (e)(2)(i) of this Item means the body of generally accepted accounting principles used by that issuer in its primary financial statements filed with the Commission.

4. A small business issuer that is an Asset-Backed Issuer (as defined in § 240.13a–14(g) and § 240.15d–14(g) of this chapter) is not required to disclose the information required by this Item 401(e).

5. Following the effective date of the first registration statement filed under the Securities Act (15 U.S.C. 77a *et seq.*) or Securities Exchange Act (15 U.S.C. 78a *et seq.*) by a small business issuer, the small business issuer or successor issuer need not make the disclosures required by this Item in its first annual report filed pursuant to Section 13(a) or 15(d) (15 U.S.C. 78m(a) or 78o(d)) of the Exchange Act after effectiveness.

3. Add § 228.406 to read as follows:

§ 228.406 (Item 406) Code of ethics.

(a) Disclose whether the small business issuer has adopted a code of ethics that applies to the small business issuer's principal executive officer, principal financial officer, principal accounting officer or controller, or persons performing similar functions. If the small business issuer has not adopted such a code of ethics, explain why it has not done so.

(b) For purposes of this Item 406, the term *code of ethics* means written standards that are reasonably designed to deter wrongdoing and to promote:

(1) Honest and ethical conduct, including the ethical handling of actual or apparent conflicts of interest between personal and professional relationships;

(2) Full, fair, accurate, timely, and understandable disclosure in reports and documents that a small business issuer files with, or submits to, the Commission and in other public communications made by the small business issuer;

(3) Compliance with applicable governmental laws, rules and regulations;

(4) The prompt internal reporting of violations of the code to an appropriate person or persons identified in the code; and

(5) Accountability for adherence to the code.

(c) The small business issuer must:

(1) File with the Commission a copy of its code of ethics that applies to the small business issuer's principal executive officer, principal financial officer, principal accounting officer or controller, or persons performing similar functions, as an exhibit to its annual report;

(2) Post the text of such code of ethics on its Internet website and disclose, in its annual report, its Internet address and the fact that it has posted such code of ethics on its Internet website; or

(3) Undertake in its annual report filed with the Commission to provide to any person without charge, upon request, a copy of such code of ethics and explain the manner in which such request may be made.

(d) If the small business issuer intends to satisfy the disclosure requirement under Item 10 of Form 8–K regarding an amendment to, or a waiver from, a provision of its code of ethics that applies to the small business issuer's principal executive officer, principal financial officer, principal accounting officer or controller, or persons performing similar functions and that relates to any element of the code of ethics definition enumerated in paragraph (b) of this Item by posting such information on its Internet website, disclose the small business issuer's Internet address and such intention.

Instructions to Item 406. 1. A small business issuer may have separate codes of ethics for different types of officers. Furthermore, a *code of ethics* within the meaning of paragraph (b) of this Item may be a portion of a broader document that addresses additional topics or that applies to more persons than those specified in paragraph (a). In satisfying the requirements of paragraph (c), a small business issuer need only file, post or provide the portions of a broader document that constitutes a *code of ethics* as defined in paragraph (b) and that apply to the persons specified in paragraph (a).

2. If a small business issuer elects to satisfy paragraph (c) of this Item by posting its code of ethics on its website pursuant to paragraph (c)(2), the code of ethics must remain accessible on its website for as long as the small business issuer remains subject to the requirements of this Item and chooses to comply with this Item by posting its code on its Web site pursuant to paragraph (c)(2).

3. A small business issuer that is an Asset-Backed Issuer (as defined in § 240.13a–14(g) and § 240.15d–14(g) of this chapter) is not required to disclose the information required by this Item.

4. Amend § 228.601 by:

a. Removing the "reserved" designation for exhibit (14) and adding "Code of ethics" in its place in the Exhibit Table;

b. Removing "N/A" corresponding to exhibit (14) under all captions in the Exhibit Table;

c. Adding an "X" corresponding to exhibit (14) under the caption "Exchange Act Forms", "8–K" and "10–KSB" in the Exhibit Table; and

d. Adding the text of paragraph (b)(14).

The revisions and additions read as follows:

§ 228.601 (Item 601) Exhibits.

* * * * *

(b) *Description of exhibits.* * * *

(14) *Code of ethics.* Any code of ethics, or amendment thereto, that is the subject of the disclosure required by Item 406 of Regulation S–B (§ 228.406) or Item 10 of Form 8–K (§ 249.308 of this chapter), to the extent that the small business issuer intends to satisfy the Item 406 or Item 10 requirements through filing of an exhibit.

* * * * *

PART 229—STANDARD INSTRUCTIONS FOR FILING FORMS UNDER SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934 AND ENERGY POLICY AND CONSERVATION ACT OF 1975—REGULATION S–K

5. The authority citation for Part 229 is amended by adding the following citations in numerical order to read as follows:

Authority: 15 U.S.C. 77e, 77f, 77g, 77h, 77j, 77k, 77s, 77z–2, 77z–3, 77aa(25), 77aa(26), 77ddd, 77eee, 77ggg, 77hhh, 77iii, 77jjj, 77nnn, 77sss, 78c, 78i, 78j, 78*l*, 78m, 78n, 78o, 78u–5, 78w, 78*ll*(d), 78mm, 79e, 79n, 79t, 80a–8, 80a–29, 80a–30, 80a–31(c), 80a–37, 80a–38(a) and 80b–11, unless otherwise noted.

* * * * *

Section 229.401 is also issued under secs. 3(a) and 407, Pub. L. 107–204, 116 Stat. 745.

Section 229.406 is also issued under secs. 3(a) and 406, Pub. L. 107–204, 116 Stat. 745.

Section 229.601 is also issued under secs. 3(a) and 406, Pub. L. 107–204, 116 Stat. 745.

6. Amend § 229.401 by adding paragraph (h) to read as follows:

§ 229.401 (Item 401) Directors, executive officers, promoters and control persons.

* * * * *

(h) *Audit committee financial expert.* (1)(i) Disclose that the registrant's board of directors has determined that the registrant either:

(A) Has at least one audit committee financial expert serving on its audit committee; or

(B) Does not have an audit committee financial expert serving on its audit committee.

(ii) If the registrant provides the disclosure required by paragraph (h)(1)(i)(A) of this Item, it must disclose the name of the audit committee financial expert and whether that person is *independent,* as that term is used in Item 7(d)(3)(iv) of Schedule 14A (240.14a–101 of this chapter) under the Exchange Act.

(iii) If the registrant provides the disclosure required by paragraph (h)(1)(i)(B) of this Item, it must explain why it does not have an audit committee financial expert.

Instruction to paragraph (h)(1) of Item 401. If the registrant's board of directors has determined that the registrant has more than one audit committee financial expert serving on its audit committee, the registrant may, but is not required to, disclose the names of those additional persons. A registrant choosing to identify such persons must indicate whether they are independent pursuant to Item 401(h)(1)(ii).

(2) For purposes of this Item, an *audit committee financial expert* means a person who has the following attributes:

(i) An understanding of generally accepted accounting principles and financial statements;

(ii) The ability to assess the general application of such principles in connection with the accounting for estimates, accruals and reserves;

(iii) Experience preparing, auditing, analyzing or evaluating financial statements that present a breadth and level of complexity of accounting issues that are generally comparable to the breadth and complexity of issues that can reasonably be expected to be raised by the registrant's financial statements, or experience actively supervising one or more persons engaged in such activities;

(iv) An understanding of internal controls and procedures for financial reporting; and

(v) An understanding of audit committee functions.

(3) A person shall have acquired such attributes through:

(i) Education and experience as a principal financial officer, principal accounting officer, controller, public accountant or auditor or experience in one or more positions that involve the performance of similar functions;

(ii) Experience actively supervising a principal financial officer, principal accounting officer, controller, public accountant, auditor or person performing similar functions;

(iii) Experience overseeing or assessing the performance of companies or public accountants with respect to the preparation, auditing or evaluation of financial statements; or

(iv) Other relevant experience.

(4) *Safe Harbor.* (i) A person who is determined to be an audit committee financial expert will not be deemed an *expert* for any purpose, including without limitation for purposes of section 11 of the Securities Act of 1933 (15 U.S.C. 77k), as a result of being designated or identified as an audit committee financial expert pursuant to this Item 401.

(ii) The designation or identification of a person as an audit committee financial expert pursuant to this Item 401 does not impose on such person any duties, obligations or liability that are greater than the duties, obligations and liability imposed on such person as a member of the audit committee and board of directors in the absence of such designation or identification.

(iii) The designation or identification of a person as an audit committee financial expert pursuant to this Item 401 does not affect the duties, obligations or liability of any other member of the audit committee or board of directors.

Instructions to Item 401(h). 1. The registrant need not provide the disclosure required by this Item 401(h) in a proxy or information statement unless that registrant is electing to incorporate this information by reference from the proxy or information statement into its annual report pursuant to general instruction G(3) to Form 10–K.

2. If a person qualifies as an audit committee financial expert by means of having held a position described in paragraph (h)(3)(iv) of this Item, the registrant shall provide a brief listing of that person's relevant experience. Such disclosure may be made by reference to disclosures required under paragraph (e) of this Item 401 (§ 229.401(e) or this chapter).

3. In the case of a foreign private issuer with a two-tier board of directors, for purposes of this Item 401(h), the term *board of directors* means the supervisory or non-management board. Also, in the case of a foreign private issuer, the term *generally accepted accounting principles* in paragraph (h)(2)(i) of this Item means the body of generally accepted accounting principles used by that issuer in its primary financial statements filed with the Commission.

4. A registrant that is an Asset-Backed Issuer (as defined in § 240.13a–14(g) and § 240.15d–14(g) of this chapter) is not required to disclose the information required by this Item 401(h).

7. Add § 229.406 to read as follows:

§ 229.406 (Item 406) Code of ethics.

(a) Disclose whether the registrant has adopted a code of ethics that applies to the registrant's principal executive officer, principal financial officer, principal accounting officer or controller, or persons performing similar functions. If the registrant has not adopted such a code of ethics, explain why it has not done so.

(b) For purposes of this Item 406, the term *code of ethics* means written standards that are reasonably designed to deter wrongdoing and to promote:

(1) Honest and ethical conduct, including the ethical handling of actual or apparent conflicts of interest between personal and professional relationships;

(2) Full, fair, accurate, timely, and understandable disclosure in reports and documents that a registrant files with, or submits to, the Commission and in other public communications made by the registrant;

(3) Compliance with applicable governmental laws, rules and regulations;

(4) The prompt internal reporting of violations of the code to an appropriate person or persons identified in the code; and

(5) Accountability for adherence to the code.

(c) The registrant must:

(1) File with the Commission a copy of its code of ethics that applies to the registrant's principal executive officer,

principal financial officer, principal accounting officer or controller, or persons performing similar functions, as an exhibit to its annual report;

(2) Post the text of such code of ethics on its Internet website and disclose, in its annual report, its Internet address and the fact that it has posted such code of ethics on its Internet Web site; or

(3) Undertake in its annual report filed with the Commission to provide to any person without charge, upon request, a copy of such code of ethics and explain the manner in which such request may be made.

(d) If the registrant intends to satisfy the disclosure requirement under Item 10 of Form 8–K regarding an amendment to, or a waiver from, a provision of its code of ethics that applies to the registrant's principal executive officer, principal financial officer, principal accounting officer or controller, or persons performing similar functions and that relates to any element of the code of ethics definition enumerated in paragraph (b) of this Item by posting such information on its Internet website, disclose the registrant's Internet address and such intention.

Instructions to Item 406. 1. A registrant may have separate codes of ethics for different types of officers. Furthermore, a *code of ethics* within the meaning of paragraph (b) of this Item may be a portion of a broader document that addresses additional topics or that applies to more persons than those specified in paragraph (a). In satisfying the requirements of paragraph (c), a registrant need only file, post or provide the portions of a broader document that constitutes a *code of ethics* as defined in paragraph (b) and that apply to the persons specified in paragraph (a).

2. If a registrant elects to satisfy paragraph (c) of this Item by posting its code of ethics on its website pursuant to paragraph (c)(2), the code of ethics must remain accessible on its Web site for as long as the registrant remains subject to the requirements of this Item and chooses to comply with this Item by posting its code on its Web site pursuant to paragraph (c)(2).

3. A registrant that is an Asset-Backed Issuer (as defined in § 240.13a–14(g) and § 240.15d–14(g) of this chapter) is not required to disclose the information required by this Item.

8. Amend § 229.601 by:

a. Removing the "reserved" designation for exhibit (14) and adding "Code of ethics" in its place in the Exhibit Table;

b. Removing "N/A" corresponding to exhibit (14) under all captions in the Exhibit Table;

c. Adding an "X" corresponding to exhibit (14) under the caption "Exchange Act Forms", "8–K" and "10–K" in the Exhibit Table; and

d. Adding the text of paragraph (b)(14).

The revisions and additions read as follows:

§ 229.601 (Item 601) Exhibits.

* * * * *

(b) *Description of exhibits.* * * *

(14) *Code of ethics.* Any code of ethics, or amendment thereto, that is the subject of the disclosure required by Item 406 of Regulation S–K (§ 229.406) or Item 10 of Form 8–K (§ 249.308 of this chapter), to the extent that the registrant intends to satisfy the Item 406 or Item 10 requirements through filing of an exhibit.

* * * * *

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

9. The authority citation for Part 249 is amended by revising the sectional authority for §§ 249.220f, 249.240f, 249.308, 249.310 and 249.310b to read as follows:

Authority: 15 U.S.C. 78a *et seq.*, unless otherwise noted.

Section 249.220f is also issued under secs. 3(a), 302, 306(a), 401(b), 406 and 407, Pub. L. 107–204, 116 Stat. 745.

Section 249.240f is also issued under secs. 3(a), 302, 306(a), 406 and 407, Pub. L. 107–204, 116 Stat. 745.

Section 249.308 is also issued under 15 U.S.C. 80a–29, 80a–37 and secs. 3(a), 306(a), 401(b) and 406, Pub. L. 107–204, 116 Stat. 745.

* * * * *

Section 249.310 is also issued under secs. 3(a), 302, 406 and 407, Pub. L. 107–204, 116 Stat. 745.

Section 249.310b is also issued under secs. 3(a), 302, 406 and 407, Pub. L. 107–204, 116 Stat. 745.

* * * * *

10. Amend Form 8–K (referenced in § 249.308) by:

a. Revising General Instruction B.1.; and

b. Adding Item 10.

The revision and addition read as follows:

Note: The text of Form 8–K does not, and this amendment will not, appear in the Code of Federal Regulations.

Form 8–K—Current Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934

* * * * *

General Instructions

* * * * *

B. Events To Be Reported and Time for Filing of Reports

1. A report on this form is required to be filed upon the occurrence of any one or more of the events specified in Items 1–4, 6 and 10 of this form. A report of an event specified in Items 1–3 is to be filed within 15 calendar days after the occurrence of the event. A report of an event specified in Item 4, 6 or 10 is to be filed within 5 business days after the occurrence of the event; if the event occurs on a Saturday, Sunday, or holiday on which the Commission is not open for business then the 5 business day period shall begin to run on and include the first business day thereafter. A report on this form pursuant to Item 8 is required to be filed within 15 calendar days after the date on which the registrant makes the determination to use a fiscal year end different from that used in its most recent filing with the Commission. A registrant either furnishing a report on this form under Item 9 or electing to file a report on this form under Item 5 solely to satisfy its obligations under Regulation FD (17 CFR 243.100 and 243.101) must furnish such report or make such filing in accordance with the requirements of Rule 100(a) of Regulation FD (17 CFR 243.100(a)). A report on this form pursuant to Item 11 is required to be filed not later than the date prescribed for transmission of the notice to directors and executive officers required by Rule 104(b)(2) of Regulation BTR (§ 245.104(b)(2) of this chapter).

* * * * *

Information To Be Included in the Report

* * * * *

Item 10. Amendments to the Registrant's Code of Ethics, or Waiver of a Provision of the Code of Ethics

(a) The registrant must briefly describe the nature of any amendment to a provision of its code of ethics that applies to the registrant's principal executive officer, principal financial officer, principal accounting officer or controller, or persons performing similar functions and that relates to any element of the code of ethics definition enumerated in Item 406(b) of Regulations S–K and S–B (§ 229.406(b) and § 228.406(b) of this chapter).

(b) If the registrant has granted a waiver, including an implicit waiver, from a provision of the code of ethics to one of these officers or persons that relates to one or more of the items set forth in Item 406(b) of Regulations S–K and S–B (§ 229.406(b) and § 228.406(b) of this chapter), the registrant must briefly describe the nature of the waiver, the name of the person to whom the waiver was granted, and the date of the waiver.

(c) The registrant does not need to provide any information pursuant to this Item if it discloses the required information on its Internet website within five business days following the date of the amendment or waiver and the registrant has disclosed in its most recently filed annual report its Internet address and intention to provide disclosure in this manner. If the registrant elects to disclose the information required by this Item through its website, such information must remain available on the website for at least a 12-month period. Following the 12-month period, the registrant must retain the information for a period of not less than five years. Upon request, the registrant must furnish to the Commission or its staff a copy of any or all information retained pursuant to this requirement.

Instructions. 1. The registrant does not need to disclose technical, administrative or other non-substantive amendments to its code of ethics.

2. For purposes of this Item: a. The term "waiver" means the approval by the registrant of a material departure from a provision of the code of ethics; and

b. The term "implicit waiver" means the registrant's failure to take action within a reasonable period of time regarding a material departure from a provision of the code of ethics that has been made known to an executive officer, as defined in Rule 3b-7 (§ 240.3b-7 of this chapter) of the registrant.

* * * * *

11. Amend Form 20–F (referenced in § 249.220f) by:

a. Redesignating Item 16 as Item 16A, adding text to Item 16A and adding Item 16B;

b. Redesignating paragraph 11 of "Instructions as to Exhibits" as paragraph 12; and

c. Adding new paragraph 11 to "Instructions as to Exhibits."

The additions and revisions read as follows:

Note: The text of Form 20–F does not, and this amendment will not, appear in the Code of Federal Regulations.

Form 20–F

* * * * *

Item 16A. Audit Committee Financial Expert

(a)(1) Disclose that the registrant's board of directors has determined that the registrant either: (i) Has at least one audit committee financial expert serving on its audit committee; or

(ii) Does not have an audit committee financial expert serving on its audit committee.

(2) If the registrant provides the disclosure required by paragraph (a)(1)(i) of this Item, it must disclose the name of the audit committee financial expert.

(3) If the registrant provides the disclosure required by paragraph (a)(1)(ii) of this Item, it must explain why it does not have an audit committee financial expert.

Instruction to paragraph (a) of Item 16A: If the registrant's board of directors has determined that the registrant has more than one audit committee financial expert serving on its audit committee, the registrant may, but is not required to, disclose the names of those additional persons.

(b) For purposes of this Item, an "audit committee financial expert" means a person who has the following attributes:

(1) An understanding of generally accepted accounting principles and financial statements;

(2) The ability to assess the general application of such principles in connection with the accounting for estimates, accruals and reserves;

(3) Experience preparing, auditing, analyzing or evaluating financial statements that present a breadth and level of complexity of accounting issues that are generally comparable to the breadth and complexity of issues that can reasonably be expected to be raised by the registrant's financial statements, or experience actively supervising one or more persons engaged in such activities;

(4) An understanding of internal controls and procedures for financial reporting; and

(5) An understanding of audit committee functions.

(c) A person shall have acquired such attributes through:

(1) Education and experience as a principal financial officer, principal accounting officer, controller, public accountant or auditor or experience in one or more positions that involve the performance of similar functions;

(2) Experience actively supervising a principal financial officer, principal accounting officer, controller, public accountant, auditor or person performing similar functions;

(3) Experience overseeing or assessing the performance of companies or public accountants with respect to the preparation, auditing or evaluation of financial statements; or

(4) Other relevant experience.

(d) *Safe Harbor*

(1) A person who is determined to be an audit committee financial expert will not be deemed an "expert" for any purpose, including without limitation for purposes of section 11 of the Securities Act of 1933 (15 U.S.C. 77k), as a result of being designated or identified as an audit committee financial expert pursuant to this Item 16A.

(2) The designation or identification of a person as an audit committee financial expert pursuant to this Item 16A does not impose on such person any duties, obligations or liability that are greater than the duties, obligations and liability imposed on such person as a member of the audit committee and board of directors in the absence of such designation or identification.

(3) The designation or identification of a person as an audit committee financial expert pursuant to this Item 16A does not affect the duties, obligations or liability of any other member of the audit committee or board of directors.

Instructions to Item 16A: 1. Item 16A applies only to annual reports, and does not apply to registration statements, on Form 20–F.

2. If a person qualifies as an audit committee financial expert by means of having held a position described in paragraph (c)(4) of this Item, the registrant shall provide a brief listing of that person's relevant experience. Such disclosure may be made by reference to disclosures required under Item 6.A.

3. In the case of a foreign private issuer with a two-tier board of directors, for purposes of this Item 16A, the term "board of directors" means the supervisory or non-management board. Also, the term "generally accepted accounting principles" in paragraph (b)(1) of this Item means the body of generally accepted accounting principles used by the foreign private issuer in its primary financial statements filed with the Commission.

4. A registrant that is an Asset-Backed Issuer (as defined in § 240.13a–14(g) and § 240.15d–14(g) of this chapter) is not required to disclose the information required by this Item 16A.

Item 16B. Code of Ethics

(a) Disclose whether the registrant has adopted a code of ethics that applies to the registrant's principal executive officer, principal financial officer, principal accounting officer or controller, or persons performing similar functions. If the registrant has not adopted such a code of ethics, explain why it has not done so.

(b) For purposes of this Item 16B, the term "code of ethics" means written standards that are reasonably designed to deter wrongdoing and to promote:

(1) Honest and ethical conduct, including the ethical handling of actual or apparent conflicts of interest between personal and professional relationships;

(2) Full, fair, accurate, timely, and understandable disclosure in reports and documents that a registrant files with, or submits to, the Commission and in other public communications made by the registrant;

(3) Compliance with applicable governmental laws, rules and regulations;

(4) The prompt internal reporting of violations of the code to an appropriate person or persons identified in the code; and

(5) Accountability for adherence to the code.

(c) The registrant must:

(1) File with the Commission a copy of its code of ethics that applies to the registrant's principal executive officer,

principal financial officer, principal accounting officer or controller, or persons performing similar functions, as an exhibit to its annual report;

(2) Post the text of such code of ethics on its Internet Web site and disclose, in its annual report, its Internet address and the fact that it has posted such code of ethics on its Internet Web site; or

(3) Undertake in its annual report filed with the Commission to provide to any person without charge, upon request, a copy of such code of ethics and explain the manner in which such request may be made.

(d) The registrant must briefly describe the nature of any amendment to a provision of its code of ethics that applies to the registrant's principal executive officer, principal financial officer, principal accounting officer or controller, or persons performing similar functions and that relates to any element of the code of ethics definition enumerated in Item 16B(b), which has occurred during the registrant's most recently completed fiscal year.

(e) If the registrant has granted a waiver, including an implicit waiver, from a provision of the code of ethics to one of the officers or persons described in Item 16B(a) that relates to one or more of the items set forth in Item 16B(b) during the registrant's most recently completed fiscal year, the registrant must briefly describe the nature of the waiver, the name of the person to whom the waiver was granted, and the date of the waiver.

Instructions to Item 16B. 1. Item 16B applies only to annual reports, and does not apply to registration statements, on Form 20–F.

2. A registrant may have separate codes of ethics for different types of officers. Furthermore, a "code of ethics" within the meaning of paragraph (b) of this Item may be a portion of a broader document that addresses additional topics or that applies to more persons than those specified in paragraph (a). In satisfying the requirements of paragraph (c), a registrant need only file, post or provide the portions of a broader document that constitute a "code of ethics" as defined in paragraph (b) and that apply to the persons specified in paragraph (a).

3. If a registrant elects to satisfy paragraph (c) of this Item by posting its code of ethics on its website pursuant to paragraph (c)(2), the code of ethics must remain accessible on its website for as long as the registrant remains subject to the requirements of this Item and chooses to comply with this Item by posting its code on its website pursuant to paragraph (c)(2).

4. A registrant that is an Asset-Backed Issuer (as defined in § 240.13a–14(g) and § 240.15d–14(g) of this chapter) is not required to disclose the information required by this Item.

5. The registrant does not need to provide any information pursuant to paragraphs (d) and (e) of this Item if it discloses the required information on its Internet website within five business days following the date of the amendment or waiver and the registrant has disclosed in its most recently filed annual report its Internet address and intention to provide disclosure in this manner. If the registrant elects to disclose the information required by paragraphs (d) and (e) through its website, such information must remain available on the website for at least a 12-month period. Following the 12-month period, the registrant must retain the information for a period of not less than five years. Upon request, the registrant must furnish to the Commission or its staff a copy of any or all information retained pursuant to this requirement.

6. The registrant does not need to disclose technical, administrative or other non-substantive amendments to its code of ethics.

7. For purposes of this Item 16B:

a. The term "waiver" means the approval by the registrant of a material departure from a provision of the code of ethics; and

b. The term "implicit waiver" means the registrant's failure to take action within a reasonable period of time regarding a material departure from a provision of the code of ethics that has been made known to an executive officer, as defined in Rule 3b–7 (§ 240.3b–7 of this chapter), of the registrant.

* * * * *

Instructions as to Exhibits

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11. Any code of ethics, or amendment thereto, that is the subject of the disclosure required by Item 16B of Form 20–F, to the extent that the registrant intends to satisfy the Item 16B requirements through filing of an exhibit.

* * * * *

12. Amend Form 40–F (referenced in § 249.240f) by adding paragraphs (8) and (9) to General Instruction B to read as follows.

Note: The text of Form 40–F does not, and this amendment will not, appear in the Code of Federal Regulations.

Form 40–F

* * * * *

General Instructions

* * * * *

B. Information To Be Filed on This Form

* * * * *

(8)(a)(1) Disclose that the registrant's board of directors has determined that the registrant either: (i) Has at least one audit committee financial expert serving on its audit committee; or

(ii) Does not have an audit committee financial expert serving on its audit committee.

(2) If the registrant provides the disclosure required by paragraph (8)(a)(1)(i) of this General Instruction B, it must disclose the name of the audit committee financial expert.

(3) If the registrant provides the disclosure required by paragraph (8)(a)(1)(ii) of this General Instruction B, it must explain why it does not have an audit committee financial expert.

Note to paragraph (8)(a) of General Instruction B: If the registrant's board of directors has determined that the registrant has more than one audit committee financial expert serving on its audit committee, the registrant may, but is not required to, disclose the names of those additional persons.

(b) For purposes of paragraph (8) of General Instruction B, an "audit committee financial expert" means a person who has the following attributes:

(1) An understanding of generally accepted accounting principles and financial statements;

(2) The ability to assess the general application of such principles in connection with the accounting for estimates, accruals and reserves;

(3) Experience preparing, auditing, analyzing or evaluating financial statements that present a breadth and level of complexity of accounting issues that are generally comparable to the breadth and complexity of issues that can reasonably be expected to be raised by the registrant's financial statements, or experience actively supervising one or more persons engaged in such activities;

(4) An understanding of internal controls and procedures for financial reporting; and

(5) An understanding of audit committee functions.

(c) A person shall have acquired such attributes through:

(1) Education and experience as a principal financial officer, principal accounting officer, controller, public accountant or auditor or experience in one or more positions that involve the performance of similar functions;

(2) Experience actively supervising a principal financial officer, principal accounting officer, controller, public accountant, auditor or person performing similar functions;

(3) Experience overseeing or assessing the performance of companies or public accountants with respect to the preparation, auditing or evaluation of financial statements; or

(4) Other relevant experience.

(d) *Safe Harbor*

(1) A person who is determined to be an audit committee financial expert will not be deemed an "expert" for any purpose, including without limitation for purposes of section 11 of the Securities Act of 1933 (15 U.S.C. 77k), as a result of being designated or

identified as an audit committee financial expert pursuant to this paragraph (8) of General Instruction B.

(2) The designation or identification of a person as an audit committee financial expert pursuant to this paragraph (8) of General Instruction B does not impose on such person any duties, obligations or liability that are greater than the duties, obligations and liability imposed on such person as a member of the audit committee and board of directors in the absence of such designation or identification.

(3) The designation or identification of a person as an audit committee financial expert pursuant to this paragraph (8) of General Instruction B does not affect the duties, obligations or liability of any other member of the audit committee or board of directors.

Notes to Paragraph (8) of General Instruction B: 1. Paragraph (8) of General Instruction B applies only to annual reports, and does not apply to registration statements, on Form 40–F.

2. If a person qualifies as an audit committee financial expert by means of having held a position described in paragraph (8)(c)(4) of General Instruction B, the registrant shall provide a brief listing of that person's relevant experience. Such disclosure may be made by reference to disclosures in the annual report relating to the business experience of that director.

3. In the case of a foreign private issuer with a two-tier board of directors, for purposes of this paragraph (8) of General Instruction B, the term "board of directors" means the supervisory or non-management board. Also, the term "generally accepted accounting principles" in paragraph (8)(b)(1) of General Instruction B means the body of generally accepted accounting principles used by the foreign private issuer in its primary financial statements filed with the Commission.

4. A registrant that is an Asset-Backed Issuer (as defined in § 240.13a–14(g) and § 240.15d–14(g) of this chapter) is not required to disclose the information required by this paragraph (8) of General Instruction B.

(9)(a) Disclose whether the registrant has adopted a code of ethics that applies to the registrant's principal executive officer, principal financial officer, principal accounting officer or controller, or persons performing similar functions. If the registrant has not adopted such a code of ethics, explain why it has not done so.

(b) For purposes of this paragraph (9) of General Instruction B, the term "code of ethics" means written standards that are reasonably designed to deter wrongdoing and to promote:

(1) Honest and ethical conduct, including the ethical handling of actual or apparent conflicts of interest between personal and professional relationships;

(2) Full, fair, accurate, timely, and understandable disclosure in reports and documents that a registrant files with, or submits to, the Commission and in other public communications made by the registrant;

(3) Compliance with applicable governmental laws, rules and regulations;

(4) The prompt internal reporting of violations of the code to an appropriate person or persons identified in the code; and

(5) Accountability for adherence to the code.

(c) The registrant must:

(1) File with the Commission a copy of its code of ethics that applies to the registrant's principal executive officer, principal financial officer, principal accounting officer or controller, or persons performing similar functions, as an exhibit to its annual report;

(2) Post the text of such code of ethics on its Internet Web site and disclose, in its annual report, its Internet address and the fact that it has posted such code of ethics on its Internet Web site; or

(3) Undertake in its annual report filed with the Commission to provide to any person without charge, upon request, a copy of such code of ethics and explain the manner in which such request may be made.

(d) The registrant must briefly describe the nature of any amendment to a provision of its code of ethics that applies to the registrant's principal executive officer, principal financial officer, principal accounting officer or controller, or persons performing similar functions and that relates to any element of the code of ethics definition enumerated in paragraph (9)(b) of General Instruction B, which has occurred during the registrant's most recently completed fiscal year. File a copy of the amendment as an exhibit to the annual statement.

(e) If the registrant has granted a waiver, including an implicit waiver, from a provision of the code of ethics to one of the officers or persons described in paragraph (9)(a) that relates to one or more of the items set forth in paragraph (9)(b) of General Instruction B during the registrant's most recently completed fiscal year, the registrant must briefly describe the nature of the waiver, the name of the person to whom the waiver was granted, and the date of the waiver.

Notes to paragraph (9) of General Instruction B: 1. Paragraph (9) of General Instruction B applies only to annual reports, and does not apply to registration statements, on Form 40–F.

2. A registrant may have separate codes of ethics for different types of officers. Furthermore, a "code of ethics" within the meaning of paragraph (9)(b) of this General Instruction may be a portion of a broader document that addresses additional topics or that applies to more persons than those specified in paragraph (9)(a). In satisfying the requirements of paragraph (9)(c), a registrant need only file, post or provide the portions of a broader document that constitutes a "code of ethics" as defined in paragraph (9)(b) and that apply to the persons specified in paragraph (9)(a).

3. If a registrant elects to satisfy paragraph (9)(c) of this General Instruction by posting its code of ethics on its Web site pursuant to paragraph (9)(c)(2), the code of ethics must remain accessible on its Web site for as long as the registrant remains subject to the requirements of this paragraph (9) of General Instruction B and chooses to comply with this paragraph (9) of General Instruction B by posting its code on its Web site pursuant to paragraph (9)(c)(2).

4. A registrant that is an Asset-Backed Issuer (as defined in § 240.13a–14(g) and § 240.15d–14(g) of this chapter) is not required to disclose the information required by this paragraph (9) of General Instruction B.

5. The registrant does not need to provide any information pursuant to paragraphs (9)(d) and (9)(e) of General Instruction B if it discloses the required information on its Internet Web site within five business days following the date of the amendment or waiver and the registrant has disclosed in its most recently filed annual report its Internet address and intention to provide disclosure in this manner. If the registrant elects to disclose the information required by paragraphs (9)(d) and (9)(e) of General Instruction B through its Web site, such information must remain available on the Web site for at least a 12-month period. Following the 12-month period, the registrant must retain the information for a period of not less than five years. Upon request, the registrant must furnish to the Commission or its staff a copy of any or all information retained pursuant to this requirement.

6. The registrant does not need to disclose technical, administrative or other non-substantive amendments to its code of ethics.

7. For purposes of this paragraph (9) of General Instruction B:

a. The term "waiver" means the approval by the registrant of a material departure from a provision of the code of ethics; and

b. The term "implicit waiver" means the registrant's failure to take action within a reasonable period of time regarding a material departure from a provision of the code of ethics that has been made known to an executive officer, as defined in Rule 3b–7 (§ 240.3b–7 of this chapter), of the registrant.

* * * * *

13. Amend Form 10–K (referenced in § 249.310) by revising Item 10 in Part III to read as follows:

Note: The text of Form 10–K does not, and this amendment will not, appear in the Code of Federal Regulations.

Form 10–K—Annual Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934

* * * * *

Part III

* * * * *

Item 10. Directors and Executive Officers of the Registrant

Furnish the information required by Items 401, 405 and 406 of Regulation S–K (§§ 229.401, 229.405 and 229.406 of this chapter).

* * * * *

14. Amend Form 10–KSB (referenced in § 249.310b) by revising Item 9 in Part III to read as follows:

Note: The text of Form 10–KSB does not, and this amendment will not, appear in the Code of Federal Regulations.

Form 10–KSB—[ ] Annual Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934

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Part III

* * * * *

Item 9. Directors and Executive Officers of the Registrant

Furnish the information required by Items 401, 405 and 406 of Regulation S–B (§§ 228.401, 228.405, and 228.406 of this chapter).

* * * * *

By the Commission.

Dated: January 23, 2003.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–2018 Filed 1–30–03; 8:45 am]

BILLING CODE 8010–01–P

Federal Register

Friday,
January 31, 2003

Part V

Department of Defense
General Services Administration
National Aeronautics and Space Administration
Small Business Administration

13 CFR Part 125 and 48 CFR Parts 2, 7, et al.

Small Business Government Contracting Programs; Federal Acquisition Regulation; Contract Bundling; Proposed Rules

SMALL BUSINESS ADMINISTRATION

13 CFR Part 125

RIN: 3245–AF07

Small Business Government Contracting Programs

AGENCY: Small Business Administration (SBA).

ACTION: Proposed rule.

SUMMARY: The U.S. Small Business Administration (SBA) proposes to amend its regulations governing small business prime contracting assistance, to implement the recommendations of the Office of Management and Budget (OMB) in its report entitled "Contract Bundling, A Strategy for Increasing Federal Contracting Opportunities for Small Businesses." The proposed changes would: revise the definition of bundling to expressly include multiple award contract vehicles and task and delivery orders under such contracting vehicles; require procuring activities to coordinate with the Small Business Specialist (SBS) proposed acquisition strategies or plans contemplating award of a contract or order above specified dollar thresholds and require the SBS to notify the agency Office of Small and Disadvantaged Business Utilization (OSDBU) when those strategies include contract bundling that is unnecessary, unjustified, or not identified as such by the procuring activity; reduce the threshold and revise the documentation required for "substantial bundling;" require contracting officers to provide bundling justification documentation to the agency OSDBU when "substantial bundling" is involved; and require agency OSDBUs to perform certain oversight functions.

DATES: Comments must be received on or before April 1, 2003.

ADDRESSES: Send Comments to Linda G. Williams, Associate Administrator for Government Contracting, 409 Third Street, SW., Mail Code 6530, Washington, DC, 20416, by email to *dean.koppel@sba.gov*, or by facsimile to (202) 205–6390. Upon request, SBA will make all public comments available.

FOR FURTHER INFORMATION CONTACT: Dean Koppel, Assistant Administrator, Office of Policy and Research, by telephone at (202) 401–8150, or by email at *dean.koppel@sba.gov*.

SUPPLEMENTARY INFORMATION:

A. Background

On March 19, 2002, the President unveiled a Small Business Agenda that proposed several substantive steps toward creating a dynamic environment where small businesses and entrepreneurs can flourish. Included in the President's plan were several proposals designed to improve the access of small businesses to Federal contracting opportunities. Among other things, the President called upon the Office of Management and Budget (OMB) to prepare a strategy for unbundling Federal contracts.

Contract bundling is defined in Section 3(o) of the Small Business Act to mean the consolidation of two or more requirements for goods and services into a single procurement that is "unlikely to be suitable for award to a small business concern." 15 U.S.C. 632(o). Over the past decade, the number and size of bundled contracts have increased sharply and have resulted in a dramatic decline in small business Federal contracting opportunities.

In response to the President's call for a strategy to unbundle contracts, the Office of Federal Procurement Policy (OFPP), within OMB, created an interagency working group to develop a plan for increasing contracting opportunities for small businesses. As part of the working group's efforts, OFPP published a notice in the **Federal Register** soliciting public comments and held a public meeting on June 14, 2002, to provide interested parties an opportunity to express their views on contract bundling. By the end of the comment period, OFPP received 27 public comments and 14 individual presentations at the June 14 public meeting.

Based on the working group's analysis of available data and information, including the public comments received in writing and at the June 14, 2002, public meeting, OMB issued a report in October 2002, entitled "Contract Bundling: A Strategy for Increasing Federal Contracting Opportunities for Small Business." *See http://www.acqnet.gov/Notes/contractbundlingreport.pdf* or *http://www.acqnet.gov/)*. The report cites data indicating that for every 100 "bundled" contracts, 106 individual contracts are no longer available to small businesses. *See* OMB Report at 3. The report also notes that for every $100 awarded on a "bundled" contract, there is a $33 decrease to small businesses. *Id.*

To address the harmful effects of contract bundling on the Nation's small businesses, OMB's report offers a 9-point action item plan designed to hold agencies accountable for eliminating unnecessary contract bundling and mitigating the effects of necessary contract bundling. Several of these action items, such as the action items calling for greater accountability of senior agency management, and for the collection and dissemination of best practices for maximizing prime and subcontracting opportunities for small businesses, will be implemented through separate agency initiatives including OMB, SBA and agency Offices of Small and Disadvantaged Business Utilization (OSDBUs).

Other action items, however, require a series of amendments to SBA's regulations and applicable provisions of the Federal Acquisition Regulation (FAR), to ensure maximum compliance with current contract bundling laws. Specifically, to close the loophole that enables agencies to avoid bundling reviews of consolidated task and delivery orders, Action Item 3 dictates regulatory changes to expressly require bundling reviews of multiple award contract vehicles and task and delivery orders under such procurements. OMB's report notes that there has been a significant increase in the use of such contracting vehicles. Since neither the FAR nor SBA's regulations specifically require bundling reviews of orders under multiple award contracts, multi-agency contracts, Government-wide Acquisition Contracts and the General Services Administration (GSA) Multiple Award Schedule Program, an explicit regulatory amendment mandating such reviews is essential.

Action Item 4 proposes the establishment of agency-specific acquisition dollar thresholds, within the range of $2 million and $7 million, that would trigger bundling reviews by the agency OSDBU. In addition, to ensure that agencies explore alternative acquisition strategies before bundling contracts above those thresholds, Action Item 5 mandates that when an agency contemplates a bundled procurement above the established threshold, the agency must identify alternative acquisition strategies and justify the rationale for selecting a particular strategy over another that would involve less bundling.

Finally, as a means of mitigating contract bundling determined to be necessary and justified, Action Item 6 calls for measures to strengthen compliance with the plans of large business prime contractors for subcontracting with small businesses. In addition, Action Item 7 further requires measures to facilitate small business teams including joint ventures to effectively compete for bundled contracts. In connection with Action Item 7, the report requires that SBA determine whether regulatory changes are appropriate to encourage the

development of such small business teaming arrangements.

This rule proposes to amend part 125 of SBA's regulations to implement these specific Action Items. SBA invites comments on this proposed rule. The proposed amendments were drafted in conjunction with a companion proposal to amend applicable provisions of the FAR, which is also published for comment in the **Federal Register** as a separate rulemaking action.

B. Section-by-Section Analysis

SBA proposes to amend § 125.2(b) to assign additional responsibilities to SBA Procurement Center Representatives (PCRs) and procuring activities in the acquisition planning process. With respect to PCRs, the proposed rule would revise § 125.2(b)(1) to require that when a PCR reviews an acquisition not set-aside for small businesses, the PCR must also identify alternative strategies to maximize the participation of small businesses in the procurement. Currently, § 125.2(b)(1) provides only that PCRs must review acquisitions not set-aside for small businesses to determine whether a set-aside would be appropriate. This proposed change would further OMB's general recommendation for the identification of alternative acquisition strategies to increase small business participation in procurements.

As required in connection with Action Items 4 and 5 of OMB's report, the proposed rule would add a new § 125.2(b)(2) to require bundling reviews of proposed acquisition strategies or plans contemplating award of a contract or order above specified dollar thresholds. As proposed, § 125.2(b)(2) would require that if an agency's contemplated acquisition strategy or plan exceeds the applicable acquisition threshold established in the proposed § 125.2(b)(2)(i) and is not set-aside for small businesses, the agency must coordinate the acquisition strategy or plan with the cognizant Small Business Specialist (SBS). The proposed § 125.2(b)(2) would also require the SBS to notify the agency OSDBU if the proposed acquisition strategy or plan includes bundled requirements that the agency has not identified as bundled *or* includes unnecessary or unjustified bundling of requirements. To ensure that the procuring activity consults the SBS at the earliest practical stage of the acquisition planning process, the proposed § 125.2(b)(2) would require the agency to coordinate the acquisition strategy or plan with the SBS as early in the planning process as practicable, but no later than 30 days before the issuance of the solicitation.

The acquisition dollar thresholds established in the proposed § 125.2(b)(2)(i) consist of 3 separate agency-specific dollar thresholds: $7 million or more for the Department of Defense; $5 million or more for the National Aeronautics and Space Administration, the Department of Energy and GSA; and $2 million or more for all other agencies. The dollar amounts of the 3-tier acquisition threshold are based on a comparative analysis of the number and size of the contracting actions of the major procuring activities, and are intended to target contracting actions that would most likely involve contract bundling, while at the same time, minimize the extent to which the bundling reviews would disrupt the procurement process of the individual agency. SBA specifically invites public comment on the proposed 3-tier acquisition threshold and on alternatives that would best achieve the intended purposes of Action Items 4 and 5.

Consistent with OMB's Action Item 6 proposal to mitigate the effects of contract bundling by strengthening compliance with small business subcontracting plans, the proposed rule would clarify the language in § 125.2(b)(5)(iii)(C), redesignated as § 125.2(b)(5)(iii)(C), to make clear that as part of their responsibilities to ensure that small business participation is maximized through subcontracting opportunities, PCRs may review an agency's oversight of its subcontracting programs, including its overall and individual assessment of contractor compliance. As currently written, the existing § 125.2(b)(5)(iii)(C) suggests that PCRs need only review an agency's assessment of a contractor's subcontracting plan compliance under bundled contracts. Based on the findings of the General Accounting Office (GAO) that agency oversight of large business compliance with subcontracting plans has been inconsistent, this proposed change contemplates a more systemic review of an agency's general oversight as well as its individual assessment of contractor subcontracting plan compliance to facilitate greater consistency in agency oversight in the future. *See* GAO Report, "Small Business Subcontracting Report Validation Can Be Improved," GAO–02–166R Subcontracting Data, December 13, 2001.

The proposed rule would also redesignate § 125.2(b)(7) as § 125.2(b)(8), and revise it to clarify that PCRs must work with the cognizant SBS and agency OSDBU as early in the acquisition process as practicable to identify acquisitions involving bundling and to revise acquisition strategies to increase the probability of small business participation through small business teams as prime contractors. The existing § 125.2(b)(7) does not expressly encourage early bundling reviews and does not specifically require OSDBU involvement. As a result, this proposed change will not only make early coordination among the appropriate small business contracting personnel more likely, but it will also further OMB's call for bundling reviews of proposed acquisition strategies.

Furthermore, since the proposed § 125.2(b)(8) specifically requires PCRs, the cognizant SBS and the agency OSDBU to recommend the restructuring of acquisitions as necessary to increase small business prime contract participation through small business teams, this provision also effectuates the recommendation in Action Item 7 for measures to encourage small business teams and joint ventures to mitigate the effects of contract bundling.

To implement OMB's Action Item 3 requirement for bundling reviews of task and delivery orders under multiple award contract vehicles, the proposed rule would add a new § 125.2(d)(1)(iii) to define a "single contract" to include: (1) An indefinite quantity contract awarded to two or more sources under a single solicitation for the same or similar supplies and services; and (2) an order under a Federal Supply Schedule contract or a task or delivery order contract awarded by another agency (*i.e.*, government-wide acquisition contract or multi-agency contract). This proposed rule would also add a new § 125.2(d)(1)(iv) to define an "order" to mean an order placed under a Federal Supply Schedule contract or a task or delivery order contract awarded by another agency. By adding these definitions of a "single contract" and an "order," the regulations would make clear that task and delivery orders under multiple award contract vehicles may fall within the scope of the definition of contract bundling and are therefore subject to the applicable requirements for bundling reviews and justifications.

In an effort to streamline the requirements for reviewing and justifying bundled requirements, the proposed § 125.2(d)(1)(v) revises the existing § 125.2(d)(1)(iii) to define "substantial bundling" as any bundling that meets the dollar amounts specified in the proposed § 125.2(b)(2)(i). This change will simplify the application of § 125.2(b)(2)(i) and § 125.2(d)(7), by using the same dollar thresholds to trigger SBS reviews under the proposed § 125.2(b)(2)(i), and to require supporting documentation for

substantial bundling under § 125.2(d)(7).

In the nature of a technical amendment, this proposed rule would revise § 125.2(d)(2) to specify each category of small business concerns for which the Small Business Act requires agencies to foster participation in Federal procurements. This rule also proposes technical amendments to § 125.2(d)(5), to clarify that bundled orders are subject to the same benefits analysis for demonstrating that the bundling is necessary and justified.

In keeping with OMB's recommendation in Action Item 5 that agencies identify alternative acquisition strategies for proposed bundling of contracts and justify the reason for not selecting an alternative that would involve less bundling, the proposed rule would add a new § 125.2(d)(7)(i)(E). This section would require that in the event of substantial bundling, the agency must identify the alternative strategies that would reduce or minimize the scope of the bundling and the rationale for not selecting those alternatives. Further, under the proposed new § 125.2(d)(7)(ii), at least 30 days prior to the release of a solicitation, the procuring agency would be required to provide both the PCR and the agency OSDBU a copy of the proposed acquisition strategy, including the analysis required under § 125.2(b)(3) and (d)(7).

Finally, in connection with OMB's general call for strengthening OSDBU oversight and greater utilization of their resources, the proposed rule would add a new § 125.2(e) to impose a new OSDBU oversight function. Under this proposed § 125.2(e), OSDBUs would be required to conduct periodic reviews to assess: (1) The extent to which small businesses are receiving their fair share of Federal procurements; (2) the adequacy of bundling documentation and justification; and (3) the adequacy of actions taken to mitigate the effects of necessary and justified contracting bundling, including the agency's oversight of large business prime contractor compliance with their subcontracting plans. OSDBUs would also be required to submit a copy of their assessment to the Agency Head and SBA Administrator.

C. Compliance With Executive Orders 12866, 12988, and 13132, the Paperwork Reduction Act (44 U.S.C. Ch. 35), and the Regulatory Flexibility Act (5 U.S.C. 601–602)

OMB has determined that this rule is a significant regulatory action under Executive Order 12866. The proposed rule implements the recommendations of the OMB report: "Contract Bundling, A Strategy for Increasing Federal Contracting Opportunities for Small Business." This plan is part of the President's initiative for small business growth.

For purposes of Executive Order 12988, SBA has drafted this proposed rule, to the extent practicable, in accordance with the standards set forth in section 3 of that Order.

For purposes of Executive Order 13132, SBA has determined that this proposed rule has no federalism implications warranting the preparation of a Federalism Assessment.

For purposes of the Paperwork Reduction Act, 44 U.S.C. Ch. 35, SBA determines that this proposed rule imposes no new reporting or recordkeeping requirements.

The proposed rule may have a significant beneficial economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule proposes to implement the recommendations of OMB to increase Federal contracting opportunities for small businesses. Therefore, an Initial Regulatory Flexibility Analysis (IRFA) was prepared and is provided below.

Initial Regulatory Flexibility Analysis

13 CFR Revision—Contract Bundling

The proposed rule may have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule proposes to implement the recommendations of the Office of Management and Budget to increase Federal contracting opportunities for small businesses. Therefore, an Initial Regulatory Flexibility Analysis has been prepared and is as follows:

1. Reasons for Proposed Rule

This rule proposes to amend 13 Codified Federal Regulation (CFR) Subpart 125.2 to implement the recommendations of the Office of Management and Budget (OMB) in its report entitled "Contract Bundling, A Strategy for Increasing Opportunities for Small Business." The proposed CFR changes will: (1) Clarify the definition of "bundling" to expressly include task and delivery orders placed against Federal Supply Schedules, Government-wide Acquisition Contracts (GWACs), and multi-agency contracts when those orders meet the definition; (2) require procuring activities to coordinate acquisition strategies above specified dollar thresholds with the Small Business Specialist (SBS) and require the SBS to notify the agency Office of Small and Disadvantaged Business Utilization (OSDBU) when those strategies include contract bundling that is unnecessary, unjustified, or not identified as such by the procuring activity; (3) reduce the threshold and revise the documentation required for "substantial bundling;" (4) require contracting officers to provide bundling justification documentation to the agency OSDBU when "substantial bundling" is involved; (5) require agency OSDBUs to perform certain oversight functions.

The rule is expected to have a positive economic impact on small prime contractors and subcontractors by providing more Federal contracting opportunities for small businesses. It imposes no reporting, recordkeeping, or other compliance requirements. No relevant Federal rules duplicate, overlap, or conflict with the rule and currently, there are no practical alternatives that will accomplish the objectives of this proposed rule.

2. Objectives of and Legal Basis for This Rule

The objective of this proposed rule is to further the Administration's commitment of creating a Government strategy for unbundling Federal contracts to increase Federal contracting opportunities for small business. In order to accomplish the Administration's commitment, this proposed rule is to provide CFR coverage implementing the recommendations of the Office of Management and Budget (OMB) in its report entitled "Contract Bundling, A Strategy for Increasing Opportunities for Small Business."

3. Description of and Estimate of the Number of Small Entities to Which the Rule Will Apply, or an Explanation if Such Estimate Is Not Available

The proposed rule will indirectly apply to all large and small entities that seek award of Federal contracts. The rule is expected to have a positive economic impact on small prime contractors and subcontractors by providing more Federal contracting opportunities for small businesses. In the Small Business Administration's 2001 State of Small Business Report filed with the House and Senate Small Business Committees, using data obtained from the Federal Procurement Data Center, the Agency identified only 4 material bundling cases with a total value of $60 million for the first 3 quarters of Fiscal Year (FY) 2001. This represents 0.0004% of Federal contract

dollar activity ($60 million divided by $150 billion for the first 3 quarters of the fiscal year). Based on FY 2001 data, the proposed rule will impact approximately $3 billion in orders placed against Federal Supply Schedules (FSS), GWACs, and multi-agency contracts. Applying the contract bundling estimate of 0.0004% to these un-reviewed orders, SBA expects approximately $1 million will be identified as bundled. This proposed rule establishes 3 dollar thresholds ranging from $2 million or more for the majority of civilian agencies to $7 million or more for the Department of Defense. The dollar amounts are based on a comparative analysis of the number and size of the contracting actions of the major procuring activities and are intended to target reviews of the contracting actions that would most likely involve contract bundling without unduly disruption the acquisition process of the individual agency.

4. Description of the Projected Reporting, Recordkeeping, and Other Compliance Requirements of the Rule, Including an Estimate of the Classes of Small Entities Which Will Be Subject to the Requirement and the Type of Professional Skills Necessary for Preparation of the Report or Record

The proposed rule imposes no reporting, recordkeeping, or other compliance requirements.

5. Relevant Federal Rules That May Duplicate, Overlap, or Conflict With the Rule

None.

6. Description of Any Significant Alternatives to the Proposed Rule Which Accomplish the Stated Objectives of Applicable Statutes and Which Minimize the Rule's Economic Impact on Small Entities

Currently, there are no practical alternatives that will accomplish the objectives of this proposed rule. However, SBA invites alternative proposals from the public.

List of Subjects in 13 CFR Part 125

Government contracts, Government procurement, Reporting and Recordkeeping requirements, Small business, Technical assistance.

For the reasons set forth in the preamble, SBA proposes to amend part 125 of title 13 of the Code of Federal Regulations as follows:

PART 125—GOVERNMENT CONTRACTING PROGRAMS

1. The authority citation for 13 CFR part 125 continues to read as follows:

Authority: 15 U.S.C. 634(b)(6), 637 and 644; 31 U.S.C. 9701 and 9702.

2. Amend § 125.2 as follows:

a. By revising the heading of paragraph (b);

b. By revising paragraph (b)(1);

c. By redesignating paragraphs (b)(2) through (b)(7) as paragraphs (b)(3) through (b)(8);

d. By adding paragraph (b)(2);

e. By revising redesignated paragraph (b)(3), introductory text, (b)(6)(iii), and (b)(8);

f. By revising paragraphs (d)(1)(iii), (d)(2) (i) and (ii), (d)(5)(i) (A) and (B) and (d)(7), and adding paragraphs (d)(1)(iv) and (v);

g. By adding paragraph (e).

The revisions and additions to § 125.2 read as follows:

§ 125.2 Prime contracting assistance.

* * * * *

(b) *Responsibilities in the acquisition planning process.* (1) SBA Procurement Center Representatives (PCRs) are generally located at Federal agencies and buying activities which have major contracting programs. PCRs are responsible for reviewing all acquisitions not set-aside for small businesses to determine whether a set-aside is appropriate and to identify alternative strategies to maximize the participation of small businesses in the procurement.

(2) As early in the acquisition planning process as practicable, but no later than 30 days before the issuance of a solicitation, the procuring activity must coordinate with the procuring activity's Small Business Specialist (SBS) when the acquisition strategy contemplates award of a contract or order meeting the dollar amounts in paragraph (b)(2)(i) of this section, unless the contract or order is entirely reserved or set-aside for small business concerns as authorized under the Small Business Act. The SBS must notify the agency Office of Small and Disadvantaged Business Utilization (OSDBU) if the strategy or plan includes bundled requirements that the agency has not identified as bundled or includes unnecessary or unjustified bundling of requirements.

(i) The procuring activity must coordinate the acquisition strategy with the cognizant SBS in accordance with paragraph (b)(2) of this section if the estimated contract or order value is:

(A) $7 million or more for the Department of Defense;

(B) $5 million or more for the National Aeronautics and Space Administration, the General Services Administration, and the Department of Energy; and

(C) $2 million or more for all other agencies.

(3) A procuring activity must provide a copy of a proposed acquisition strategy (*e.g.*, Department of Defense Form 2579, or equivalent) to the applicable PCR (or to the SBA Office of Government Contracting Area Office serving the area in which the buying activity is located if a PCR is not assigned to the procuring activity) at least 30 days prior to a solicitation's issuance whenever a proposed acquisition strategy: * * *

* * * * * *

(6) * * *

(iii) The PCR will also work to ensure that small business participation is maximized through teaming arrangements and subcontracting opportunities. This may include:

(A) Recommending that the solicitation and resultant contract specifically state the small business subcontracting goals, which are expected of the contractor awardee;

(B) Recommending that the small business subcontracting goals be based on total contract dollars instead of subcontract dollars; and

(C) Reviewing an agency's oversight of its subcontracting program, including its overall and individual assessment of a contractor's compliance with its small business subcontracting plans. The PCR will furnish a copy of the information to the SBA Commercial Market Representative (CMR) servicing the contractor.

* * * * *

(8) PCRs will work with the cognizant SBS and agency OSDBU as early in the acquisition process as practicable to identify proposed solicitations that involve bundling, and with the agency acquisition officials to revise the acquisition strategies for such proposed solicitations, where appropriate, to increase the probability of participation by small businesses, including small business contract teams, as prime contractors. If small business participation as prime contractors appears unlikely, the SBS and PCR will facilitate small business participation as subcontractors or suppliers.

* * * * *

(d) * * *

(1) * * *

(iii) Single contract, as used in this definition, includes:

(A) An indefinite quantity contract awarded to two or more sources under a single solicitation for the same or similar supplies and services; and

(B) An order placed against an indefinite quantity contract under a Federal Supply Schedule contract or a

task or delivery order contract awarded by another agency (*i.e.*, Government-wide acquisition contract or multi-agency contract).

(iv) Order means an order placed under:

(A) Federal Supply Schedule contract; or

(B) Task-order contract or delivery-order contract awarded by another agency, (*i.e.*, Government-wide acquisition contract or multi-agency contract).

(v) Substantial bundling means any bundling that meets the dollar amounts specified in paragraph (b)(2)(i) of this section.

(2) * * *

(i) Structure procurement requirements to facilitate competition by and among small business concerns, including small business concerns owned and controlled by veterans, small business concerns owned and controlled by service-disabled veterans, qualified HUBZone small business concerns, small business concerns owned and controlled by socially and economically disadvantaged individuals and small business concerns owned and controlled by women; and

(ii) Avoid unnecessary and unjustified bundling of contract requirements that inhibits or precludes small business participation in procurements as prime contractors.

* * * * *

(5) * * *

(i) * * *

(A) Benefits equivalent to 10 percent of the contract or order value (including options) where the contract or order value is $75 million or less; or

(B) Benefits equivalent to 5 percent of the contract or order value (including options) or $7.5 million, whichever is greater, where the contract or order value exceeds $75 million.

* * * * *

(7) Substantial bundling. (i) Where a proposed procurement strategy involves a substantial bundling of contract requirements, the procuring agency must, in the documentation of that strategy, include a determination that the anticipated benefits of the proposed bundled contract justify its use, and must include, at a minimum:

(A) The analysis for bundled requirements set forth in paragraph (d)(5)(i) of this section;

(B) An assessment of the specific impediments to participation by small business concerns as prime contractors that will result from the substantial bundling;

(C) Actions designed to maximize small business participation as prime contractors, including provisions that encourage small business teaming for the substantially bundled requirement;

(D) Actions designed to maximize small business participation as subcontractors (including suppliers) at any tier under the contract or contracts that may be awarded to meet the requirements; and

(E) The identification of the alternative strategies that would reduce or minimize the scope of the bundling, and the rationale for not choosing those alternatives (*i.e.*, consider the strategies under paragraphs (b)(6) (i) and (d) of this section).

(ii) At least 30 days prior to the solicitation release, the procuring activity shall provide the PCR and the agency OSDBU a copy of the proposed acquisition, including the analysis required by paragraph (d)(7) of this section, the acquisition plan, any bundling information required under paragraph (b)(3) of this section, and any other relevant information. The PCR and agency OSDBU or SBS, as applicable, shall work together to develop alternative acquisition strategies identified in paragraph (b)(6) of this section to enhance small business participation.

* * * * *

(e) *OSDBU Oversight Functions.* The Agency OSDBU must:

(1) Conduct periodic reviews to assess the:

(i) Extent to which small businesses are receiving their fair share of Federal procurements, including contract opportunities under programs administered under the Small Business Act;

(ii) Adequacy of the bundling documentation and justification; and

(iii) Adequacy of actions taken to mitigate the effects of necessary and justified contract bundling on small businesses (*e.g.*, review agency oversight of prime contractor subcontracting plan compliance under the subcontracting program).

(2) Provide a copy of the assessment under paragraph (e)(1) of this section to the Agency Head and SBA Administrator.

Dated: January 22, 2003.

Hector V. Barreto,

Administrator.

[FR Doc. 03–2158 Filed 1–30–03; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 2, 7, 8, 16, 19, and 42

[FAR Case 2002–029]

RIN: 9000–AJ58

Federal Acquisition Regulation; Contract Bundling

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) are proposing to amend the Federal Acquisition Regulation (FAR) to implement the recommendations of the Office of Management and Budget (OMB) in its report entitled. "A Strategy for Increasing Federal Contracting Opportunities for Small Business."

DATES: Interested parties should submit comments in writing on or before April 1, 2003 to be considered in the formulation of a final rule.

ADDRESSES: Submit written comments to—General Services Administration, FAR Secretariat (MVA), 1800 F Street, NW, Room 4035, ATTN: Laurie Duarte, Washington, DC 20405.

Submit electronic comments via the Internet to—*farcase.2002–029@gsa.gov*. Please submit comments only and cite FAR case 2002–029 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, at (202) 501–4755 for information pertaining to status or publication schedules. For clarification of content, contact Ms. Rhonda Cundiff, Procurement Analyst, at (202) 501–0044. Please cite FAR case 2002–029. The TTY Federal Relay Number for further information is 1–800–877–8973.

SUPPLEMENTARY INFORMATION:

A. Background

On March 19, 2002, the President unveiled a Small Business Agenda that proposed several substantive steps toward creating a dynamic environment where small businesses and entrepreneurs can flourish. The plan included new tax incentives, health care options, and a reduction in regulatory barriers. For those small businesses

seeking to do business with the Federal Government, the President announced several proposals to improve the access of small businesses to Federal contracting opportunities. Specifically, the President called upon the Office of Management and Budget (OMB) to prepare a strategy for unbundling contracts. Contract bundling is defined in Section 3(o) of the Small Business Act to mean the consolidation of two or more requirements for goods or services previously provided or performed under separate smaller contracts into a solicitation of offers for a single award contract that is "unlikely to be suitable for award to a small business concern." 15 U.S.C. 632(o). Over the past decade, the number and size of bundled contracts have increased sharply and have resulted in a dramatic decline in small business Federal contracting opportunities.

In response to the President's call for a strategy to unbundled contracts, the Office of Federal Procurement Policy (OFPP), within OMB, created an interagency working group to develop a plan for increasing contracting opportunities for small businesses. As part of the working group's efforts, OFPP published a notice in the **Federal Register** soliciting public comments and held a public meeting on June 14, 2002, to provide interested parties an opportunity to express their views on contract bundling. By the end of the comment period, OFPP received 27 public comments and 14 individual presentations at the June 14 public meeting.

Based on the working group's analysis of available data and information, including the public comments received in writing and at the June 14 public meeting, OMB issued a report in October 2002 entitled "Contract Bundling: A Strategy for Increasing Federal Contracting Opportunities for Small Business." *See http://www.acqnet.gov/Notes/contractbundlingreport.pdf* or *http://www.acqnet.gov/*. The report cites data indicating that for every 100 "bundled" contracts, 106 individual contracts are no longer available to small businesses. The report also notes that according to a report prepared for the Small Business Administration (SBA) Office of Advocacy, for every $100 awarded on a "bundled" contract, there is a $33 decrease to small businesses.

To address the harmful effects of contract bundling on the nation's small businesses, OMB's report offers a nine-point action plan designed to hold agencies accountable for eliminating unnecessary contract bundling and mitigating the effects of necessary contract bundling. Several of these Action Items, such as the Action Items calling for greater accountability of senior agency management, the collection and dissemination of best practices for maximizing prime and subcontracting opportunities for small businesses and facilitating development of the teams of small business contractors, will be implemented through initiatives conducted by OMB, SBA, and procuring agencies.

Other Action Items, however, require a series of amendments to SBA's regulations and applicable provisions of the Federal Acquisition Regulation (FAR). Action Item 3 recommends regulatory changes to expressly require bundling reviews of multiple award contract vehicles and task and delivery orders under such procurements. OMB's report notes that there has been a significant increase in the use of such contracting vehicles. Since neither the FAR nor SBA's regulations specifically require bundling reviews of orders under multiple award contracts, multi-agency contracts, Governmentwide acquisition contracts and the General Services Administration (GSA) Multiple Award Schedule Program, an explicit regulatory amendment mandating such reviews is necessary.

Action Item 4 proposes the establishment of agency-specific acquisition dollar thresholds, within the range of $2 million and $7 million, that would trigger bundling reviews by the agency Office of Small and Disadvantaged Business Utilization (OSDBU). In addition, to ensure that agencies explore alternative acquisition strategies, Action Item 5 recommends that when an agency contemplates a bundled procurement above the established threshold, the agency must identify alternative acquisition strategies and justify the rationale for selecting a particular strategy over another that would involve less bundling.

Finally, as a means of mitigating contract bundling determined to be necessary and justified, Action Item 6 calls for measures to strengthen compliance with the plans of large business prime contractors for subcontracting with small businesses. In addition, Action Item 7 further requires measures to facilitate small business teams including joint ventures to effectively compete for bundled contracts. In connection with Action Item 7, the report requires that SBA determine whether regulatory changes are appropriate to encourage the development of such small business teaming arrangements.

This rule proposes to amend the FAR to implement these specific Action Items. The proposed amendments were drafted in conjunction with a companion proposal to amend applicable provisions of the SBA regulations which is also published for comment in the **Federal Register** as a separate rulemaking action.

This is a significant regulatory action and, therefore, was subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Section-by-Section Analysis of the Federal Acquisition Regulation

To implement OMB's Action Item 3 requirement for bundling reviews of task and delivery orders under multiple award contract vehicles, the proposed rule would add to the bundling definition in FAR 2.101 the definition of a "single contract" to include (1) an indefinite quantity contract awarded to two or more sources under a single solicitation for the same or similar supplies and services, and (2) include an order under a Federal Supply Schedule contract or a task-or delivery-order contract awarded by another agency (*i.e.*, Governmentwide acquisition contract or multi-agency contract). By adding the definition of a "single contract", the regulations would make clear that some orders may fall within the scope of the definition of contract bundling and are, therefore, subject to the applicable requirements for bundling reviews and justifications.

As required in connection with Action Items 4 and 5 of OMB's report, the proposed rule would add FAR 7.104(d)(1) to require the planner to coordinate the acquisition plan or strategies with the cognizant small business specialist (SBS) when the strategy contemplates award of a contract or order meeting the agency dollar amounts as indicated in proposed new FAR 7.104(d)(2), unless the contract or order is entirely reserved or set-aside for small business under FAR Part 19. As proposed in FAR 7.104(d), the SBS shall notify the agency OSDBU if the proposed acquisition strategy involves contract bundling that the agency has not identified as bundled or includes unnecessary or unjustified bundling of requirements. In addition, as required in proposed FAR 7.104(d)(2), the acquisition strategy shall be coordinated with the cognizant small business specialist in accordance with FAR 7.104(d)(1) if the estimated contract or order value dollar thresholds established in the proposed three separate agency-specific dollar

thresholds: $7 million or more for the Department of Defense; $5 million or more for the National Aeronautics and Space Administration, the Department of Energy and GSA; and $2 million or more for all other agencies. The dollar amounts of the three-tier acquisition threshold are based on a comparative analysis of the number and size of the contracting actions of the major procuring activities and are intended to target contracting actions that would most likely involve contract bundling, while at the same time minimize the extent to which the bundling reviews would disrupt the procurement process of the individual agency. GSA specifically invites public comment on the proposed three-tier acquisition threshold and on alternatives that would best achieve the intended purposes of Action Items 4 and 5.

As part of Action Item 3, FAR 7.107(b)(1), 7.107(b)(2), 7.107(d), and 7.107(e) would be revised to add the word "order" to the additional requirements for acquisitions involving contract bundling. In an effort to streamline the requirements for reviewing and justifying bundled requirements, the proposed rule would revise the existing FAR 7.107(e) to define "substantial bundling" as any bundling that results in a contract or order that meets agency dollar amounts specified in the proposed FAR 7.104(d)(2). This change will simplify the application of FAR 7.107(e) by using the same dollar thresholds to trigger SBS notification to the agency OSDBU under the proposed FAR 7.104(d)(1), and to require supporting documentation for substantial bundling under 7.107(e). Consistent with OMB's Action Item 5, the FAR would be revised to add 7.107(e)(6) to require the identification of alternative strategies that would reduce or minimize the scope of the bundling, and the rationale for not choosing those alternatives.

In connection with OMB's Action Item 3, FAR 8.404(a)(1) would be revised to add that the requirement at FAR 19.202–1(e)(1)(iii) applies to orders placed against Federal Supply Schedules. Further, FAR 8.404(a)(2) would be revised to add that orders placed under a Federal Supply Schedule contract must comply with all FAR requirements for a bundled contract when the order meets the proposed FAR definition of "bundled contract".

In connection with OMB's Action Item 3, the proposed rule would add to FAR 16.505(a)(7) that orders placed under a task-order or delivery-order contract awarded by another agency must comply with all FAR requirements for a bundled contract when the order meets the proposed FAR definition of "bundled contract."

In connection with OMB's general call for strengthening OSDBU oversight and greater utilization of their resources, the proposed rule would add FAR 19.201(d)(11) to impose a new OSDBU oversight function. Under this proposed FAR 19.201(d)(11), OSDBUs would be required to conduct periodic reviews to assess: (1) The extent to which small businesses are receiving their fair share of Federal procurements under the programs administered under the Small Business Act; (2) the adequacy of contract bundling documentation and justification; and (3) the actions taken to mitigate the effects of necessary and justified contracting bundling on small businesses. Under this proposed rule, FAR 19.201(d)(12) would require OSDBUs to submit a copy of their assessment to the Agency Head and SBA Administrator.

FAR 19.202 would add a requirement that agencies shall establish procedures including dollar thresholds for review of acquisitions by the OSDBU Director, or the Director's designee, as to whether a particular acquisition should be awarded under FAR Subpart 19.5, 19.8, or 19.13. This proposed change would further OMB's general recommendation for the identification of alternative acquisition strategies to increase small business participation in procurements.

We propose to amend FAR 19.202(1)(e)(1)(iii) to assign additional responsibilities to the SBA Procurement Center Representatives (PCRs) and procuring activities in the acquisition planning process by adding the requirement that the contracting officer provide all information relative to the justification of contract bundling when the acquisition involves substantial bundling, including the acquisition plan or strategy, and if the acquisition involves substantial bundling, the information identified in 7.107(e). Further, 19.202(1)(e)(iii) will require the contracting officer to provide this same information to the agency OSDBU when the acquisition involves substantial bundling.

Consistent with OMB's Action Item 6 proposal to mitigate the effects of contract bundling by strengthening compliance with small business subcontracting plans, the proposed rule would add language in FAR 42.1502 to require an assessment of contractor compliance with the goals identified in the small business subcontracting plan in contracts that require a subcontracting plan. As currently written, FAR 15.304(c)(3)(iii) requires that only in solicitations involving bundling that offer a significant opportunity for subcontracting, the contracting officer must include a factor to evaluate past performance indicating the extent to which the offeror attained applicable goals for small business participation under contracts that required subcontracting plans. Based on the findings of the General Accounting Office (GAO) that agency oversight of large business compliance with subcontracting plans has been inconsistent, this proposed change contemplates a more systemic review of an agency's general oversight as well as its individual assessment of contractor subcontracting plan compliance to facilitate greater consistency in agency oversight in the future. *See* GAO Report, "Small Business Subcontracting Report Validation Can Be Improved", GAO–02–166R Subcontracting Data, December 13, 2001.

C. Regulatory Flexibility Act

The changes may have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because it proposes to increase small business contracting opportunities. An Initial Regulatory Flexibility Analysis (IRFA) has been prepared and will be provided to the Chief Counsel for Advocacy for the Small Business Administration. The analysis reads as follows:

1. Reasons for proposed rule

This rule proposes to amend the Federal Acquisition Regulation (FAR) to implement the recommendations of the Office of Management and Budget (OMB) in its report entitled "A Strategy for Increasing Opportunities for Small Business." The proposed FAR changes will: (1) Clarify the definition of "bundling" to indicate it applies to orders placed against Federal Supply Schedules and another agency's Governmentwide Acquisition contracts or Multi-agency contracts when those orders otherwise meet the parameters of the definition; (2) require the small business specialist to coordinate on agency acquisition strategies at specified dollar thresholds and notify the agency Office of Small and Disadvantaged Business Utilization (OSDBU) when those strategies include contract bundling that is unnecessary, unjustified, or not identified as such by the agency; (3) reduce the threshold for "substantial bundling"; (4) revise the documentation requirements for substantial bundling to include identification of alternative acquisition strategies that would result in the bundling of fewer requirements, along with justification for not choosing those alternatives; (5) require contracting officers to provide bundling justification documentation to the agency OSDBU when substantial bundling is involved; (6) require performance evaluations to include an assessment of

contractor compliance with small business subcontracting goals; and (7) require the OSDBU to be responsible for conducting periodic reviews to assess agency contract bundling requirements and the extent to which small businesses are receiving a fair share of Federal procurements.

2. Objectives of and legal basis for this rule

The objective of this proposed rule is to further the Administration's commitment of creating a Government strategy for unbundling Federal contracts to increase Federal contracting opportunities for small business. In order to accomplish this commitment, this proposed rule provides FAR coverage that implements the recommendations of OMB in its report entitled "Contract Bundling: A Strategy for Increasing Opportunities for Small Business."

3. Description of and Estimate of the Number of Small Entities to Which the Rule Will Apply, or an Explanation if Such Estimate is Not Available

The proposed rule will indirectly apply to all large and small entities that seek award of Federal service contracts. The rule should have a positive economic impact on small prime contractors and subcontractors by providing more Federal contracting opportunities for small businesses. In a report filed last year with the House and Senate Small Business Committee, the U.S. Small Business Administration identified from the Federal Procurement Data Center (FPDS) only four material bundling cases with a total value of $60 million for the first three quarters of FY 2001. This represents 0.0004% of Federal contract dollar activity (contract bundling estimate rate which is $60 million divided by $150 billion for three-fourths of a year). The new rule now encompasses reviews of high dollar value orders. At most, this is expected to be $3 billion. For example, using the data from table 1 for FY 2001 at DOD FFS–GWAC–MACS $7 million or more 659 and FSS+585 = $1.244 billion or for FY 2002 857+717 = $1.574 billion orders to be reviewed. Applying the contract bundling estimate rate SBA's .0004% to these previously un-reviewed contract order dollars of $3 billion, we expect that approximately $1 million dollars of orders will be identified as bundled.

4. Description of the Projected Reporting, Recordkeeping, and Other Compliance Requirements of the Rule, Including an Estimate of the Classes of Small Entities Which Will be Subject to the Requirement and the Type of Professional Skills Necessary for Preparation of the Report or Record

The proposed rule imposes no reporting, recordkeeping, or other compliance requirements.

5. Relevant Federal Rules That May Duplicate, Overlap, or Conflict With the Rule

The companion proposed rule being published by the Small Business Administration at the same time as the FAR proposed rule.

6. Description of Any Significant Alternatives to the Proposed Rule Which Accomplish the Stated Objectives of Applicable Statutes and Which Minimize the Rule's Economic Impact on Small Entities

Currently, there are no practical alternatives that will accomplish the objectives of this proposed rule.

The FAR Secretariat has submitted a copy of the IRFA to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the IRFA may be obtained from the FAR Secretariat. The Councils will consider comments from small entities concerning the affected FAR parts 2, 7, 8, 16, 19, and 42 in accordance with 5 U.S.C. 610. Comments must be submitted separately and should cite 5 U.S.C 601, *et seq.* (FAR case 2002–029), in correspondence.

D. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 2, 7, 8, 16, 19, and 42

Government procurement.

Dated: January 24, 2003.

Al Matera,

Director, Acquisition Policy Division.

Therefore, DoD, GSA, and NASA propose amending 48 CFR parts 2, 7, 8, 16, 19, and 42 as set forth below:

1. The authority citation for 48 CFR parts 2, 7, 8, 16, 19, and 42 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 2—DEFINITIONS OF WORDS AND TERMS

2. Amend section 2.101(b)(2) in the definition "Bundling" by redesignating paragraph (3) as (4) and adding a new paragraph (3) to read as follows:

2.101 Definitions.

* * * * *

Bundling means—

* * * * *

(3) *Single contract,* as used in this definition, includes—

(i) An indefinite quantity contract awarded to two or more sources under a single solicitation for the same or similar supplies and services (see FAR 16.504(c)); and

(ii) An order placed against an indefinite quantity contract under a—

(A) Federal Supply Schedule contract; or

(B) Task-order contract or delivery-order contract awarded by another agency (*i.e.*, Governmentwide acquisition contract or multi-agency contract).

* * * * *

PART 7—ACQUISITION PLANNING

3. Amend section 7.104 by adding paragraph (d) to read as follows:

7.104 General procedures.

* * * * *

(d)(1) The planner shall coordinate the acquisition plan or strategy with the cognizant small business specialist when the strategy contemplates award of a contract or order meeting the dollar amounts in paragraph (d)(2) of this section unless the contract or order is entirely reserved or set-aside for small business under Part 19. The small business specialist shall notify the agency Office of Small and Disadvantaged Business Utilization if the strategy involves contract bundling that is unnecessary, unjustified, or not identified as bundled by the agency.

(2) The strategy shall be coordinated with the cognizant small business specialist in accordance with paragraph (d)(1) of this section if the estimated contract or order value is—

(i) $7 million or more for the Department of Defense;

(ii) $5 million or more for the National Aeronautics and Space Administration, the General Services Administration, and the Department of Energy; and

(iii) $2 million or more for all other agencies.

4. Amend section 7.107 in paragraphs (b)(1), (b)(2), and (d) by adding the words "or order" after the word "contract"; revising paragraph (e), introductory text, paragraphs (e)(4) and (e)(5); and adding (e)(6) to read as follows:

7.107 Additional requirements for acquisitions involving bundling.

* * * * *

(e) Substantial bundling is any bundling that results in a contract or order that meets the dollar amounts specified in 7.104(d)(2). When the proposed acquisition strategy involves substantial bundling, the acquisition strategy must additionally—

* * * * *

(4) Specify actions designed to maximize small business participation as subcontractors (including suppliers) at any tier under the contracts, or order, that may be awarded to meet the requirements;

(5) Include a specific determination that the anticipated benefits of the

proposed bundled contract or order justify its use; and

(6) Identify alternative strategies that would reduce or minimize the scope of the bundling, and the rationale for not choosing those alternatives.

* * * * *

PART 8—REQUIRED SOURCES OF SUPPLIES AND CONTRACTS

5. Amend section 8.404 in the introductory text of paragraph (a)(1) by removing the period at the end of the first sentence and adding "and the requirement at 19.202–1(e)(1)(iii)." in its place; and revising paragraph (a)(2) to read as follows:

8.404 Using schedules.

(a) * * *

(2) Orders placed under a Federal Supply Schedule contract—

(i) Are not exempt from the development of acquisition plans (see Subpart 7.1), and an information technology acquisition strategy (see Part 39); and

(ii) Must comply with all FAR requirements for a bundled contract when the order meets the definition of "bundled contract" (see 2.101(b)).

* * * * *

PART 16—TYPES OF CONTRACTS

6. Amend section 16.505 by removing the word "and" from the end of paragraph (a)(7)(i); removing the period at the end of paragraph (a)(7)(ii) and adding "; and" in its place; and adding paragraph (a)(7)(iii) to read as follows:

16.505 Ordering.

(a) * * *

(7) * * *

(iii) Must comply with all FAR requirements for a bundled contract when the order meets the definition of "bundled contract" (see 2.101(b)).

* * * * *

PART 19—SMALL BUSINESS PROGRAMS

7. Amend section 19.201 by removing the period at the end of paragraph (d)(10) and adding a semicolon in its place; and adding paragraphs (d)(11) and (d)(12) to read as follows:

19.201 General policy.

* * * * *

(d) * * *

(11) Conduct periodic reviews to assess the—

(i) Extent to which small businesses are receiving a fair share of Federal procurements, including contract opportunities under the programs administered under the Small-Business Act;

(ii) Adequacy of contract bundling documentation and justifications; and

(iii) Actions taken to mitigate the effects of necessary and justified contract bundling on small businesses; and

(12) Provide a copy of the assessment made under paragraph (d)(11) of this section to the Agency Head and SBA Administrator.

* * * * *

8. Amend section 19.202 by adding a new sentence after the first sentence to read as follows:

19.202 Specific policies.

* * * Agencies shall establish procedures including dollar thresholds for review of acquisitions by the Director or the Director's designee for the purpose of making these recommendations. * * *

9. Amend section 19.202–1 by revising paragraph (e)(1)(iii) to read as follows:

19.202–1 Encouraging small business participation in acquisitions.

* * * * *

(e)(1) * * *

(iii) The proposed acquisition is for a bundled requirement. (See 10.001(c)(2)(i) for mandatory 30-day notice requirement to incumbent small business concerns.) The contracting officer shall provide all information relative to the justification of contract bundling, including the acquisition plan or strategy and, if the acquisition involves substantial bundling, the information identified in 7.107(e). When the acquisition involves substantial bundling, the contracting officer shall also provide the same information to the agency Office of Small and Disadvantaged Business Utilization.

* * * * *

PART 42—CONTRACT ADMINISTRATION AND AUDIT SERVICES

10. Amend section 42.1502 by adding a new sentence to the end of paragraph (a) to read as follows:

42.1502 Policy.

(a) * * * These procedures shall require an assessment of contractor compliance with the goals identified in the small business subcontracting plan when the contract includes the clause at 52.219–9, Small Business Subcontracting Plan.

* * * * *

[FR Doc. 03–2159 Filed 1–30–03; 8:45 am]

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Federal Register

Friday,
January 31, 2003

Part VI

Environmental Protection Agency

40 CFR Part 62
Federal Plan Requirements for Small Municipal Waste Combustion Units Constructed on or Before August 30, 1999; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[AD–FRL–7430–8]

RIN 2060–AJ46

Federal Plan Requirements for Small Municipal Waste Combustion Units Constructed On or Before August 30, 1999

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This action promulgates a Federal plan to implement emission guidelines for small municipal waste combustion (MWC) units (*i.e.*, units with a design combustion capacity of 35 to 250 tons per day of municipal waste) located in areas not covered by an approved State or tribal plan. The Federal plan is an interim action because on the effective date of an approved State plan or tribal plan, the Federal plan will no longer apply to small MWC units covered by the State or tribal plan. This Federal plan includes the same required elements as a State plan as specified in 40 CFR part 60, subpart B. These elements are: Identification of legal authority; identification of mechanisms for implementation; inventory of affected facilities; emissions inventory; emission limits; compliance schedules; public hearing requirements; reporting and recordkeeping requirements; and public progress reports.

EPA adopted emission guidelines for existing small MWC units on December 6, 2000. Existing small MWC units are those units for which construction was commenced on or before August 30, 1999. Sections 111 and 129 of the Clean Air Act (CAA) require States with existing small MWC units subject to the emission guidelines to submit plans to EPA that implement and enforce the emission guidelines. Indian tribes may submit, but are not required to submit, tribal plans to implement and enforce the emission guidelines in Indian country. State plans were due from States with small MWC units subject to the emission guidelines on December 6, 2001. States without small MWC units subject to the emission guidelines must submit a negative declaration statement by this date. Following receipt of a State plan, EPA has up to 6 months to approve or disapprove the plan. If a State with an existing small MWC unit subject to the emission guidelines does not submit an approvable plan within 2 years of the promulgation of the emission guidelines (*i.e.*, December 6, 2002), sections 111(d) and 129 of the CAA require EPA to develop, implement, and enforce a Federal plan for small MWC units located in that State or Tribal jurisdiction. This Federal plan for small MWC units was proposed on June 14, 2001.

EFFECTIVE DATE: This rule is effective on January 31, 2003. The incorporation by reference of certain publications listed in this rule are approved by the Director of the Federal Register as of January 31, 2003.

Judicial Review: The EPA proposed this section 111(d) rule for small MWC units on June 14, 2001 (66 FR 32484). This action adopting a rule for small MWC units constitutes final administrative action concerning that proposal. Under section 307(b)(1) of the CAA, judicial review of this final rule is available only by filing a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit by April 1, 2003. Under section 307(d)(7)(B) of the CAA, only an objection to this rule that was raised with reasonable specificity during the period for public comment can be raised during judicial review. Moreover, under section 307(b)(2) of the CAA, the requirements established by today's final action may not be challenged separately in any civil or criminal proceeding brought by the EPA to enforce these requirements.

ADDRESSES: *Docket.* Docket No. A–2000–39 contains the supporting information for the small MWC Federal plan. Docket Nos. A–89–08, A–90–45, and A–98–18 contain the supporting information for the EPA's promulgation of emission guidelines for existing small MWC units. The dockets are available for public inspection and copying between 8:30 a.m. and 4:30 p.m., Monday through Friday, at EPA's Air and Radiation Docket and Information Center, 1301 Constitution Avenue, NW., Room B102, Washington, DC 20460. The mailing address for the Center is Air and Radiation Docket, Mail Code 6102T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. The Center may be contacted by telephone by calling (202) 566–1742 between the hours of 7:30 a.m. and 5:30 p.m., Monday through Friday. The Center may also be contacted by fax using the fax number (202) 566–1741 and by E-mail using the E-mail address "*A-and-R-Docket@epa.gov*".

FOR FURTHER INFORMATION CONTACT: Mr. Lalit Banker at (919) 541–5420, Program Implementation and Review Group, Information Transfer and Program Integration Division (E143–02), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, email: *banker.lalit@epa.gov*. For State specific information regarding implementation of this Federal plan, contact the appropriate Regional Office as shown in table 1 of the **SUPPLEMENTARY INFORMATION** section.

SUPPLEMENTARY INFORMATION: *Docket.* The docket is an organized and complete file of all the information considered by the EPA in the development of this Federal plan. The docket is a dynamic file because material is added throughout the rulemaking process. The docketing system is intended to allow members of the public and industries involved to readily identify and locate documents so that they can effectively participate in the rulemaking process. Along with the proposed and promulgated Federal plan and their preambles, the contents of the docket will serve as the record in the case of judicial review. (See section 307(d)(7)(A) of the CAA.) The regulatory text and other materials related to this rulemaking are available for review in the docket or copies may be mailed on request from the Air Docket by calling (202) 566–1742. A reasonable fee may be charged for copying docket materials.

Public Comments. The small MWC Federal plan was proposed on June 14, 2001, and two comments were received on the proposal. The comment letters are available in docket No. A–2000–39, along with a memorandum summarizing the comment letters and EPA's responses to the comments. No requests for a public hearing were received by EPA.

Worldwide Web (WWW). A list of combustion related rules is available on the Combustion Group Web site on the EPA Technology Transfer Network Web site (TTN Web) at *http://www.epa.gov/ttn/atw/combust/list.html*. You may obtain **Federal Register** notices, supporting information, and docket indices for these combustion related rules.

Regional Office Contacts. For information regarding the implementation of the small MWC Federal plan, contact the appropriate EPA Regional Office as shown in table 1.

TABLE 1.—EPA REGIONAL CONTACTS FOR SMALL MUNICIPAL WASTE COMBUSTORS

Region	Contact	Phone/fax	States and protectorates
I	EPA New England, Director, Air Compliance Program, 1 Congress Street, Suite 1100 (SEA), Boston, MA 02114–2023.	617–918–1650, 617–918–1505 (fax).	CT, ME, MA, NH, RI, VT.
II	U.S. EPA—Region 2, Air Compliance Branch, 290 Broadway, New York, New York 10007.	212–637–4080, 212–637–3998 (fax).	NJ, NY, Puerto Rico, Virgin Islands.
III	U.S. EPA—Region 3, Chief, Air Enforcement Branch (3AP12), 1650 Arch Street, Philadelphia, PA 19103–2029.	215–814–3438, 215–814–2134 (fax).	DE, DC, MD, PA, VA, WV.
IV	U.S. EPA—Region 4, Air and Radiation Technology Branch, Atlanta Federal Center, 61 Forsyth Street, Atlanta, Georgia 30303–3104.	404–562–9105, 404–562–9095 (fax).	AL, FL, GA, KY, MS, NC, SC, TN.
V	U.S. EPA—Region 5, Air Enforcement and Compliance Assurance Branch (AR–18J), 77 West Jackson Boulevard, Chicago, IL 60604–3590.	312–353–2211, 312–886–8289 (fax).	IL, IN, MN, OH, WI.
VI	U.S. EPA—Region 6, Chief, Toxics Enforcement Section (6EN–AT), 1445 Ross Avenue, Dallas, TX 75202–2733.	214–665–7224, 214–665–7446 (fax).	AR, LA, NM, OK, TX.
VII	U.S. EPA—Region 7, 901 N. 5th Street, Kansas City, KS 66101.	913–551–7020, 913–551–7844 (fax).	IA, KS, MO, NE.
VIII	U.S. EPA—Region 8, Air Program Technical Unit (Mail Code 8P–AR), 999 18th Street, Suite 500, Denver, CO 80202.	303–312–6007, 303–312–6064 (fax).	CO, MT, ND, SD, UT, WY.
IX	U.S. EPA—Region 9, Air Division, 75 Hawthorne Street, San Francisco, CA 94105.	415–744–1219, 415–744–1076 (fax).	AZ, CA, HI, NV, American Samoa, Guam.
X	U.S. EPA—Region 10, Office of Air Quality, 1200 Sixth Avenue, Seattle, WA 98101.	(206) 553–4273, (206) 553–0110 (fax).	AK, OR, WA, ID.

Outline. The following outline shows the organization of the remainder of the **SUPPLEMENTARY INFORMATION** section of this preamble.

I. Background of Small MWC Regulations and Affected Facilities
A. Background of Small MWC Regulations
B. Regulated Entities
C. Status of State Plans
II. Required Elements of the Small MWC Federal Plan
III. Summary of the Comments and Changes Since Proposal
IV. Summary of the Federal Plan Emission Limits and Requirements
A. Subcategories of Small MWC Units
B. Emission Limits and Operating Practice Requirements
C. Compliance Schedules
D. Operator Training and Certification Requirements
E. Testing, Monitoring, Recordkeeping, and Reporting
V. Implementation of the Federal Plan and Delegation
A. Background of Authority
B. Delegation of the Federal Plan and Retained Authorities
C. Mechanisms for Transferring Authority
VI. Title V Operating Permits
A. Clarification to the Rule
B. Delegation of a Federal Plan
VII. Administrative Requirements
A. Executive Order 12866—Regulatory Planning and Review
B. Executive Order 13132—Federalism
C. Executive Order 13175—Consultation and Coordination With Indian Tribal Governments
D. Executive Order 13045—Protection of Children From Environmental Health Risks and Safety Risks
E. Unfunded Mandates Reform Act of 1995
F. Regulatory Flexibility Act (RFA) as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA)
G. Paperwork Reduction Act
H. National Technology Transfer and Advancement Act
I. Congressional Review Act
J. Executive Order 13211—Energy Effects

Tables

Table 1. EPA Regional Contacts for Small Municipal Waste Combustors
Table 2. Status of State Plans
Table 3. Required Elements of the Small MWC Federal Plan
Table 4. Deadlines for Title V Permits

I. Background of Small MWC Regulations and Affected Facilities

On December 6, 2000, EPA promulgated emission guidelines for existing small municipal waste combustion units (40 CFR part 60, subpart BBBB). Existing small MWC units are those units for which construction was commenced on or before August 30, 1999. States with existing small MWC units subject to the emission guidelines are required to submit to EPA a plan that implements and enforces the subpart BBBB emission guidelines within 1 year after promulgation of the emission guidelines, or by December 6, 2001. Section 129(b)(3) of the Act requires EPA to develop, implement, and enforce a Federal plan for small MWC units located in States that have not submitted an approvable plan within 2 years after promulgation of the guidelines, or by December 6, 2002. This action promulgates a Federal plan for small MWC units that are not covered by an EPA approved and effective State or Tribal plan. The small MWC Federal plan will become effective on December 6, 2002. The elements of the Federal plan are summarized in section II of this preamble.

A. Background of Small MWC Regulations

On December 19, 1995, EPA promulgated emission guidelines (40 CFR part 60, subpart Cb) for large and small MWC units. In 1997, the U.S. Court of Appeals for the D.C. Circuit vacated the emission guidelines as they applied to small MWC units (*Davis County Solid Waste Management and Recovery District* v. *EPA*, 108 F. 3d 1454, D.C. Cir.1997). After this decision, EPA reproposed and promulgated emission guidelines for small MWC units (40 CFR part 60, subpart BBBB, promulgated on December 6, 2000). States or tribes with existing large MWC units subject to the subpart Cb emission guidelines were required to submit to EPA a State or tribal plan for those large units by December 19, 1996. To regulate large MWC units in areas without approved and effective State or tribal plans, EPA promulgated a Federal plan for large units (40 CFR part 62, subpart FFF) on November 12, 1998. The subpart FFF Federal plan and previously submitted State plans apply to only large MWC units. A separate Federal plan and separate State plans are required to implement the subpart BBBB emission guidelines for small MWC units. The Federal plan for small MWC units was proposed on June 14, 2001.

B. Regulated Entities

The small MWC Federal plan affects existing small MWC units that are not

regulated by an EPA approved and effective State or Tribal plan. A small MWC unit is defined as any MWC unit with a combustion design capacity of 35 to 250 tons per day of municipal solid waste (MSW) that commenced construction on or before August 30, 1999. This Federal plan affects the following categories of sources:

Category	NAICS codes	SIC codes	Examples of regulated entities
Industry, Federal government, and State/local/Tribal governments.	562213, 92411	4953, 9511	Solid waste combustors or incinerators at waste-to-energy facilities that generate electricity or steam from the combustion of garbage (typically municipal waste); and solid waste combustors or incinerators at facilities that combust garbage (typically municipal waste) and do not recover energy from the waste.

This list is not intended to be exhaustive, but rather provides a guide regarding the entities potentially regulated by this Federal plan. The small MWC Federal plan primarily impacts facilities in North American Industrial Classification System (NAICS) codes 562213 and 92411, formerly Standard Industrial Classification (SIC) codes 4953 and 9511, respectively. Not all facilities classified under these codes will be affected. To determine whether a facility is regulated by this Federal plan, carefully examine the applicability criteria in §§ 62.15010 through 62.15035 of the Federal plan. If you have any questions regarding the applicability of this Federal plan to your small MWC unit contact the Regional Office listed in table 1.

Each small MWC unit will be subject to this Federal plan if any of the following is true on or after the effective date of the Federal plan:

(1) An applicable State or tribal plan has not become effective [1];

(2) An applicable State or tribal plan was in effect but was subsequently vacated in whole or in part; or

(3) An applicable State or tribal plan was in effect but was subsequently revised such that it is no longer as protective as the emission guidelines.

Once an approved State or tribal plan is in effect, the Federal plan will no longer apply to a small MWC unit covered by such plan. An approved State or tribal plan is a plan that EPA has reviewed and approved based on the requirements in 40 CFR part 60, subpart B to implement and enforce 40 CFR part 60, subpart BBBB.

Today's adoption of this Federal plan does not preclude a State or tribe from submitting a State or tribal plan later. If a State or tribe submits a State or tribal plan after today's promulgation of the small MWC Federal plan, EPA will review and approve or disapprove the plan. Upon the effective date of EPA's approval of the State or tribal plan, the Federal plan will no longer apply, except those Federal plan provisions that may have been incorporated by reference under the section 111(d)/129 State or tribal plan, or delegated to the State by EPA.

If a small MWC unit was overlooked by a State and the State submitted a negative declaration letter, the small MWC unit will be subject to this Federal plan. The EPA believes that no small MWC units are located in Indian country. In the event that a small MWC unit is located in Indian country, the unit would be covered under this Federal plan, unless it is covered by an approved and effective tribal plan.

C. Status of State Plans

Twenty-two States have small MWC units and require State plans. (Depending on whether Pennsylvania's small MWC unit closes on schedule, Pennsylvania may not require a State plan.) A number of states have either submitted or are currently preparing their State plans. The EPA expects several State plans to be approved in the next few months. Table 2 summarizes the status of State plans as of today's date. The table is based on information provided by the EPA Regional Offices.

The following States have submitted State plans to the EPA: Connecticut, Florida, Maryland, Montana, New Hampshire, and Utah. The small MWC units located in these States will be subject to the Federal plan until the State plan is approved and becomes effective. Small MWC units located in States with an approved and effective State plan will be subject to the Federal plan only in the event that the State plan is subsequently disapproved by EPA, in whole or in part.

The EPA has not received a State plan from the following states that are believed to have small MWC units: Alaska, Massachusetts, Maine, Michigan, Minnesota, New Jersey, New York, North Carolina, Oklahoma, Oregon, Tennessee, Texas, Virginia, Washington, and Wisconsin. Small MWC units located in these States are subject to this Federal plan until a State plan applicable to small MWC units is approved by the EPA and becomes effective.

As of today's date, the following States have submitted negative declaration letters: Alabama, Arizona, California, Colorado, Georgia, Hawaii, Illinois, Indiana, Iowa, Kansas, Kentucky, Mississippi, Missouri, Nebraska, Nevada, North Dakota, Ohio, Puerto Rico, Rhode Island, South Carolina, South Dakota, Vermont, West Virginia, and Wyoming. States that have not submitted a negative declaration letter but are believed to have no small MWC units include: American Samoa, Arkansas, Delaware, District of Columbia, Guam, Idaho, Louisiana, New Mexico, Northern Mariana Islands, and Virgin Islands. In the unlikely event that there are small MWC units located in any of these States, this Federal plan would automatically apply to them.

TABLE 2.—STATUS OF STATE PLANS

Region	State	Number of plants	Status
I	Connecticut	1	State plan has been submitted but is incomplete.
	Massachusetts	2	No State plan submitted.
	Maine	1	No State plan submitted.

[1] The effective date of a State or tribal plan from EPA's perspective (for purposes of State or tribal law, a State or tribal plan may have an earlier effective date) is 30 days after the State or tribal plan final approval is published in the **Federal Register** if the final approval is via the regular regulatory procedure of proposal with opportunity for comment followed by promulgation. If the approval is by direct final rulemaking, the effective date of the State or tribal plan is 60 days after the approval is published in the **Federal Register**, if no adverse comments are received.

TABLE 2.—STATUS OF STATE PLANS—Continued

Region	State	Number of plants	Status
	New Hampshire	1	State plan has been submitted but is incomplete.
II	New Jersey	1	No State plan submitted.
	New York	3	No State plan submitted.
III	Maryland	1	State plan has been submitted but is incomplete.
	Pennsylvania	1	Plant closure by June 18, 2003.
	Virginia	4	No State plan submitted
IV	Florida	2	State plan is being reviewed by EPA.
	North Carolina	1	No State plan submitted.
	Tennessee	1	No State plan submitted.
V	Michigan	2	No State plan submitted.
	Minnesota	7	No State plan submitted.
	Wisconsin	1	No State plan submitted.
VI	Oklahoma	1	No State plan submitted.
	Texas	3	No State plan submitted.
VIII	Montana	1	State Plan is being reviewed by EPA.
	Utah	1	State Plan is being reviewed by EPA.
X	Alaska	1	No State plan submitted.
	Oregon	1	No State plan submitted.
	Washington	3	No State plan submitted.

Part 62 of title 40 of the Code of Federal Regulations identifies the approval of section 111(d)/129 State or Tribal plans for designated pollutants and designated facilities in each State or area of Indian country. However, part 62 is updated only once a year. Thus, if part 62 does not indicate that your State or tribal area has an approved and effective plan, you should contact your State environmental agency's air director or your EPA Regional Office (table 1) to determine if approval occurred since publication of the most recent version of part 62.

II. Required Elements of the Small MWC Federal Plan

Sections 111(d) and 129 of the CAA, as amended, 42 U.S.C. 7411(d) and 7429(b)(2), require States to develop and implement State plans for MWC units to implement and enforce the MWC emission guidelines. Subparts B and BBBB of 40 CFR part 60 require States to submit State plans that include specified elements. Because this Federal plan is being adopted in lieu of State plans, it includes the same essential elements: Identification of legal authority; identification of mechanisms for implementation; inventory of affected facilities; emission inventory; emission limits; compliance schedules; public hearing requirements; reporting and recordkeeping requirements; and public progress reports.

Each State plan element was discussed in detail as it relates to the Federal plan in the preamble to the proposed rule (66 FR 32484). Table 3 lists each element and identifies where it is located or codified. The EPA received written comments on the proposed Federal plan, which are presented in section III of this preamble. No requests for a public hearing were received by EPA.

TABLE 3.—REQUIRED ELEMENTS OF THE SMALL MWC FEDERAL PLAN

Required element of the small MWC federal plan	Location
Legal authority and enforcement mechanism	Section 129(b)(3) of the CAA.
Inventory of Affected MWC Units	Docket A–2000–39.
Inventory of Emissions	Docket A–2000–39.
Emission Limits	40 CFR 62.15155 through 62.15165.
Compliance Schedules	40 CFR 62.15040 through 62.15095.
Record of Public Hearings	No hearing was requested.
Testing, Monitoring, Recordkeeping, and Reporting	40 CFR 62.15170 through 62.15360.
Progress Reports	Section II.H of the proposal preamble (66 FR 32488).

III. Summary of Comments and Changes Since Proposal

In this section of the preamble, the EPA presents a brief summary of its responses to the public comments it received on the proposed small MWC Federal plan. Copies of the public comments and a memorandum responding to them can be found in Docket No. A–2000–39.

The EPA received only two comments on the proposed small MWC Federal plan. Both commenters requested the EPA delay promulgation of the small MWC Federal plan until ongoing litigation of the emission guidelines for small MWC units (40 CFR part 60, subpart BBBB) is resolved. The EPA decided not to delay promulgation of the Federal plan because, under sections 111 and 129 of the CAA, the EPA is required to promulgate a Federal plan applicable to units located in States which have not submitted an approvable State plan within two years of EPA's promulgation of an emission guideline. Since this Federal plan implements the emission guidelines for small MWC units not covered by an EPA approved and effective State or tribal plan, this Federal plan will be amended, as necessary, for any future amendments of subpart BBBB.

No comments were received on the emission limits or other requirements of the Federal plan, and no changes were made to the Federal plan.

IV. Summary of the Federal Plan Limits and Requirements

The small MWC Federal plan contains the same subcategories, emission limits, and other requirements as the emission guidelines promulgated on December 6, 2000 (65 FR 76378). Refer to the attached regulation, 40 CFR part 62, subpart JJJ for the entire set of requirements. The major requirements are summarized in the following sections.

A. Subcategories of Small MWC Units

The small MWC unit population is subcategorized based on aggregate capacity of the plant where the individual small MWC unit is located. The resulting subcategories are as follows: Class I units are small MWC units located at plants with an aggregate plant capacity greater than 250 tons per day of municipal solid waste (MSW); Class II units are small MWC units located at plants with an aggregate plant capacity less than or equal to 250 tons per day of MSW.

B. Emission Limits and Operating Practice Requirements

In accordance with section 129(a)(4) of the Clean Air Act, the Federal plan contains emission limits for dioxins/furans, cadmium, lead, mercury, particulate matter, opacity, sulfur dioxide, hydrogen chloride, nitrogen oxides, and carbon monoxide. The emission limits for Class I and Class II small MWC units are listed in tables 2 through 5 of subpart JJJ. The emission limits in the small MWC Federal plan are the same as those contained in the emission guidelines (40 CFR part 60, subpart BBBB). In addition to emission limits, the Federal plan contains the emission guideline requirements for unit operating load, flue gas temperature at the particulate matter control device inlet, and carbon feed rate as part of the required good combustion practices. The Federal plan also includes requirements for the control of fugitive ash emissions.

C. Compliance Schedules

The Federal plan includes required increments of progress for MWC units with compliance schedules that are longer than 12 months. The increments of progress in the Federal plan are the same as those in the emission guidelines and the primary mechanism for ensuring progress toward final compliance. Each increment of progress has a specified date for achievement.

This Federal plan includes five increments of progress for Class I units and two increments of progress for Class II units. The increments of progress for Class I units are: Submitting a final control plan; awarding contracts for control systems or process modifications or orders for purchase of components; beginning on-site construction or installation of the air pollution control device(s) or process changes; completing on-site construction or installation of the air pollution control device(s) or process changes; and final compliance. For Class II units, dates for only the first and last increments are specified.

The MWC owner or operator is responsible for meeting each of the increments of progress for each MWC unit no later than the applicable date. The owner or operator must notify the EPA Regional Office as each increment of progress is achieved (or missed). (*See* table 1 under the **SUPPLEMENTARY INFORMATION** section of this notice for a list of Regional Offices.) Class I and Class II small MWC units are required to follow the generic compliance schedule in table 1 of subpart JJJ, unless the State or owner/operator submitted a site-specific compliance schedule that was approved by EPA and included in table 9 of subpart JJJ. Under the generic compliance schedule, Class I units are required to reach final compliance by November 6, 2005. Class II units are required to reach final compliance by May 6, 2005.

In the proposed Federal plan, EPA provided States or MWC owners or operators with the opportunity to submit to EPA a site-specific compliance schedule as negotiated between the State and an MWC owner or operator. This site-specific compliance schedule was included by EPA to allow flexibility for the award contract date, the start construction date, and the finish construction date. Site-specific schedules for Dutchess County RRF and Islip-Mac Arthur RRF in New York State, and Harrisburg Materials, Energy, Recycling and Recovery Facility in Pennsylvania have been included in table 9 of the final Federal plan.

D. Operator Training and Certification Requirements

In the Federal plan, ASME operator certification and the EPA MWC operator training course are required. The emission guidelines require ASME or a comparable State program for operator certification for chief facility operators and shift supervisors, and an EPA or comparable State MWC operator training course for chief facility operators. Therefore, the proposed Federal plan included the opportunity for States to submit a comparable State program for operator certification and comparable State MWC training courses for inclusion in the final Federal plan. The States were required to submit this information before November 14, 2001. As of June 5, 2002, no States have submitted a comparable State program for operator certification or comparable State MWC training courses, so no such programs are included in the final Federal plan.

E. Testing, Monitoring, Recordkeeping, and Reporting

The small MWC Federal plan includes the same testing, monitoring, recordkeeping, and reporting requirements specified in 40 CFR part 60, subpart BBBB. Small MWC units subject to this Federal plan are required to conduct initial and annual stack testing to measure the emission levels of dioxins/furans, cadmium, lead, mercury, particulate matter, opacity, hydrogen chloride, and fugitive ash. Continuous emission monitoring systems are required for monitoring oxygen (or carbon dioxide), sulfur dioxide, carbon monoxide, and nitrogen oxides. The owner or operator must also monitor the load level, the temperature of the flue gases at the inlet to the particulate matter air pollution control device, and the carbon feed rate if activated carbon is used to control dioxins/furans or mercury emissions.

In addition to the testing and monitoring requirements, the Federal plan includes recordkeeping and reporting requirements, which are intended to document compliance with the emission limits and operating requirements.

V. Implementation of the Federal Plan and Delegation

A. Background of Authority

Under sections 111(d) and 129(b) of the CAA, EPA is required to adopt emission guidelines that are applicable to existing solid waste incineration sources. These emission guidelines are not enforceable until a Federal plan or an EPA-approved State or tribal plan becomes effective. As discussed above, the Federal plan regulates small MWC units in a State or tribal area that does not have an EPA-approved plan.

Congress has determined that the primary responsibility for air pollution prevention and control rests with State and local agencies. *See* section 101(a)(3) of the CAA. Consistent with that overall determination, Congress established sections 111 and 129 of the CAA with the intent that the States and local agencies take the primary responsibility for ensuring that the emission limitations and other requirements in

the emission guidelines are achieved. Also, in section 111(d) of the CAA, Congress explicitly required that EPA establish procedures that are similar to those under section 110(c) for State Implementation Plans. Although Congress required EPA to propose and promulgate a Federal plan for States that fail to submit approvable State plans on time, States and tribes may submit approvable plans after today's publication of this Federal plan. The EPA strongly encourages States that are unable to submit approvable plans to request delegation of the Federal plan so that they can have primary responsibility for implementing the emission guidelines, consistent with Congress' intent.

Approved and effective State plans or delegation of the Federal plan is EPA's preferred outcome since EPA believes that State and local agencies not only have the responsibility to implement and enforce the emission guidelines, but also have the practical knowledge and enforcement resources critical to achieving the highest rate of compliance. For these reasons, EPA will do all that it can to expedite delegation of the Federal plan to State and local agencies, whenever possible.

The EPA also believes that Indian tribes are the primary parties responsible for regulating air quality within Indian country, if they desire to do so. *See* EPA's Indian Policy ("Policy for Administration of Environmental Programs on Indian Reservations," signed by William D. Ruckelshaus, Administrator of EPA, dated November 4, 1984), reaffirmed in a 1994 memorandum ("EPA Indian Policy," signed by Carol M. Browner, Administrator of EPA, dated March 14, 1994).

B. Delegation of the Federal Plan and Retained Authorities

If a State or Indian tribe intends to take delegation of the Federal plan, the State or Indian tribe must submit to the appropriate EPA Regional Office a written request for delegation of authority. The State or Indian tribe must explain how it meets the criteria for delegation specified in Delegation No. 7–139, "Implementation and Enforcement of sections 111(d)(2) and 111(d)(2)/129(b)(3) Federal Plans". *See generally* "Good Practices Manual for Delegation of NSPS and NESHAP" (EPA, February 1983). In order to obtain delegation, an Indian tribe must also establish its eligibility to be treated in the same manner as a State. The letter requesting delegation of authority to implement the Federal plan must demonstrate that the State or tribe has adequate resources, as well as the legal and enforcement authority to administer and enforce the program. A memorandum of agreement between the State or tribe and EPA will set forth the terms and conditions of the delegation, the effective date of the agreement, and will also serve as the mechanism to transfer authority. Upon signature of the agreement, the appropriate EPA Regional Office will publish an approval notice in the **Federal Register**, thereby incorporating the delegation of authority into the appropriate subpart of 40 CFR part 62.

If authority is not delegated to a State or Indian tribe, EPA will implement and enforce the Federal plan. Also, if a State or tribe fails to properly implement a delegated portion of the Federal plan, EPA will assume direct implementation and enforcement of that portion. The EPA will continue to hold enforcement authority along with the State or tribe even when a State or tribe has received delegation of the Federal plan. In all cases where the Federal plan is delegated, EPA will retain and will not transfer to a State or tribe certain authorities which could change the stringency of the underlying standard, which are likely to be nationally significant, or which may require a national rulemaking and subsequent **Federal Register** notice. The following authorities may not be delegated to State, tribal or local agencies: approval of alternative non-opacity emission standards, approval of alternative opacity standard, approval of major alternatives to test methods, approval of major alternatives to monitoring, waiver of recordkeeping, and approval of exemption to operating practice requirements in § 62.15145(e)(5).

C. Mechanisms for Transferring Authority

There are two mechanisms for transferring implementation authority to State or tribal agencies: When EPA approves a State or tribal plan after the Federal plan is in effect; and if a State or tribe does not submit or obtain approval of its own plan, EPA may delegate to a State or tribe the authority to implement the Federal plan. Both of these options are described in more detail below.

1. State or Tribe Submits a Plan After Small MWC Units Located in the Area Are Subject to the Federal Plan

After small MWC units in a State or tribal area become subject to the Federal plan, the State or tribal agency may still adopt and submit a plan to EPA. If EPA determines that the State or tribal plan is as protective as the emission guidelines, EPA will approve the State or tribal plan. If EPA determines that the plan is not as protective as the emission guidelines, EPA will disapprove the plan and the small MWC units proposed to be covered in the State or tribal plan will remain subject to the Federal plan until a State or tribal plan covering those small MWC units is approved and effective.

Upon the effective date of a State or tribal plan, the Federal plan will no longer apply to small MWC units covered by such a plan and the State or tribal agency will implement and enforce the State or tribal plan in lieu of the Federal plan. When an EPA Regional Office approves a State or tribal plan, it will amend the appropriate subpart of 40 CFR part 62 to indicate such approval.

2. State Takes Delegation of the Federal Plan

The EPA, in its discretion, may delegate to State or tribal agencies the authority to implement the Federal plan. As discussed above, EPA believes that it is advantageous and the best use of resources for State agencies to agree to undertake, on EPA's behalf, the administrative and substantive role in implementing the Federal plan to the extent EPA decides it is appropriate and where authorized by State law. If a State requests delegation, EPA will generally delegate the entire Federal plan to the State agency. These functions include administration and oversight of compliance reporting and recordkeeping requirements, small MWC inspections, and preparation of draft notices of violation and enforcement. Enforcement authority can be delegated to State and tribal agencies, but EPA always retains Federal enforcement authority. The EPA also believes that it is the best use of resources for tribal agencies to undertake a role in the implementation of the Federal plan. The Tribal Authority Rule (TAR) issued on February 12, 1998 (63 FR 7254), provides tribes the opportunity to develop and implement Clean Air Act programs. However, due to resource constraints and other factors unique to tribal governments, it leaves to the discretion of the tribe whether to develop these programs and which elements of a program they will adopt. Consistent with the approach of the TAR, EPA may choose to delegate a partial Federal plan (*i.e.*, to delegate authority for some functions needed to carry out the plan) in appropriate circumstances and where authorized by tribal law. Both States, or tribal agencies, that have taken delegation, as well as EPA, will have responsibility for

bringing enforcement actions against sources violating Federal plan provisions. EPA recognizes, however, that tribes have limited criminal enforcement authority, and EPA will address in the delegation agreement with the tribe how criminal enforcement issues are referred to EPA.

VI. Title V Operating Permits

Sources subject to this small MWC Federal plan must obtain title V operating permits. These title V operating permits must assure compliance with all applicable requirements for these sources, including all applicable requirements of this Federal plan. *See* 40 CFR 70.6(a)(1), 70.2, 71.6(a)(1) and 71.2.

Owners or operators of section 129 sources (including small MWC units) subject to standards or regulations under sections 111 and 129 must operate pursuant to a title V permit not later than 36 months after promulgation of emission guidelines under sections 111 and 129 or by the effective date of the State, tribal, or Federal title V operating permits program that covers the area in which the unit is located, whichever is later. The EPA has interpreted section 129(e) to be consistent with section 503(d) of the CAA and 40 CFR 70.7(b) and 71.7(b). (*See, e.g.*, the final Federal Plan for Hospital/Medical/Infectious Waste Incinerators, August 15, 2000 (65 FR 49868, 49878)). Section 503(d) of the CAA and 40 CFR 70.7(b) and 71.7(b) allow a source to operate without being in violation of title V once the source has submitted a timely and complete permit application, even if the source has not yet received a final title V operating permit from the permitting authority.[2] As a result, EPA interprets the dates in section 129(e) to be the dates by which complete title V applications need to be submitted. In the absence of such an interpretation, a section 129 source may be required to prepare and submit a complete title V application and the permitting authority issue a permit to this source in a very short period of time.[3]

As a result of EPA's interpretation, existing small MWC units must submit complete title V applications by the later of the following dates: not later than 36 months after the promulgation of 40 CFR part 60, subpart BBBB or by the effective date of the State, tribal, or Federal title V operating permits program that covers the area in which the unit is located. As of today's action, all areas of the country are covered by effective title V programs. As a result, the relevant section 129(e) date for existing small-MWC units is 36 months following promulgation of 40 CFR part 60, subpart BBBB, *i.e.*, December 6, 2003. Therefore, December 6, 2003, is the latest possible date by which complete applications for existing small MWC units can be submitted and still be considered timely. This date applies regardless of when the small MWC Federal plan becomes effective or when an EPA approved section 111(d)/129 plan for existing small MWC units becomes effective. If, however, an earlier application deadline applies to an existing small MWC unit, then this deadline must be met in order for the unit to be in compliance with section 502(a) of the CAA. To determine when an application is due for an existing small MWC unit, section 129(e) of the CAA must be read in conjunction with section 503(c) of the CAA.

As stated in section 503(c), a source has up to 12 months to apply for a title V permit once it becomes subject to a title V permitting program.[4] For example, if an existing small MWC unit becomes subject to a title V permitting program for the first time on the effective date of this Federal plan, then the source must apply for a title V permit within 12 months of the effective date of this Federal plan in order to operate after this date in compliance with Federal law.

An application deadline earlier than either of the two dates noted above, *i.e.*, December 6, 2003, or not later than 12 months after the effective date of this Federal plan, may apply to an existing small MWC unit if it is subject to title V for more than one reason. For example, an existing small MWC unit may already be subject to title V as a result of being a major source under one or more of three major source definitions in title V—section 112, section 302, or part D of title I of the CAA. *See* 40 CFR 70.3(a)(1) and 71.3(a)(1) (subjecting major sources to title V permitting) and 40 CFR 70.2 and 71.2 (defining major source for purposes of title V). *See also* 40 CFR 70.3(a) and (b) and 71.3(a) and (b) for a list of the applicability criteria which trigger the requirement to apply for a title V permit.

If an owner or operator is already subject to title V by virtue of some requirement other than this Federal plan and has submitted a timely and complete permit application, but the draft title V permit has not yet been released by the permitting authority, then the owner or operator must supplement the title V application by including the applicable requirements of this Federal plan in accordance with 40 CFR 70.5(b) or 71.5(b). If an existing small MWC unit is a major source or is part of a major source, is subject to this Federal plan, and is already covered by a title V permit with a remaining permit term of 3 or more years on the effective date of this Federal plan, then the owner or operator will receive from the permitting authority a notice of intent to reopen the source's title V permit to include the requirements of this Federal plan. Reopenings required for such small MWC units must be completed not later than 18 months after the effective date of this Federal plan in accordance with the procedures established in 40 CFR 70.7(f)(1)(i) or 71.7(f)(1)(i). If an existing small MWC unit subject to this Federal plan does not meet the above criteria, *e.g.*, the unit is part of a nonmajor source or is covered by a permit which has a remaining term of less than 3 years on the effective date of this Federal plan, then the permitting authority does not need to reopen the source's permit, as a matter of Federal law, to include the requirements of this Federal plan.[5]

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[2] A title V application should be submitted early enough for the permitting authority to find the application either complete or incomplete before the title V application deadline. In the event the application is found incomplete by the permitting authority, the source must submit the information needed to make the application complete by the application deadline in order to obtain the application shield. *See* 40 CFR 62.15400(c)and 40 CFR 70.5(a)(2) and 71.5(a)(2).

[3] For example, in the absence of such an interpretation, if a final Federal plan were to become effective more than 24 months after the promulgation of emission guidelines promulgated under sections 111 and 129, a source, if subject to the Federal plan, would have less than 12 months to prepare and submit a complete title V permit application and to have the permit issued. EPA's interpretation allows section 129(e) to be read consistently with section 503(d) of the Act and 40 CFR 70.7(b) and 71.7(b). EPA's interpretation is also consistent with section 503(c) of the Act which requires sources to submit title V applications not later than 12 months after becoming subject to a title V permits programs. If a permit as opposed to a title V application were required by the later of the two deadlines specified in section 129(e), some section 129 sources would be required to have been *issued final title V permits* in potentially much less time than allotted for non-section 129 sources to *submit their title V applications*.

[4] If a source is subject to title V for more than one reason, the 12-month time frame for submitting a title V application is triggered by the requirement which first causes the source to become subject to title V. As provided in section 503(c) of the CAA, permitting authorities may establish permit application deadlines earlier than the 12-month deadline.

[5] *See* CAA section 502(b)(9); 40 CFR 70.7(f)(1)(i) and 71.7(f)(1)(i). Owners or operators of small MWC units, which have been permitted and are subject to this Federal plan, may wish to consult their operating permits program regulations or permitting authorities to determine whether their permits must be reopened to incorporate the requirements of this Federal plan.

However, the owner or operator of a source subject to a section 111/129 Federal plan remains subject to, and must act in compliance with, section 111/129 requirements and all other applicable requirements to which the source is subject regardless of whether these requirements are included in a title V permit. *See* 40 CFR 70.6(a)(1), 70.2, 71.6(a)(1) and 71.2.

The EPA has recently become aware that there has been some confusion regarding the title V obligations of section 129 sources that are subject to standards or regulations under sections 111 and 129. We are therefore including table 4 to help clarify when small MWC units (even those not subject to this Federal plan) must apply for a title V permit. While table 4 provides specific information relative to small MWC units, the same title V obligations apply to all section 129 sources subject to standards or regulations under sections 111 and 129. Of course, specific deadlines will vary for other section 129 sources depending on when the relevant NSPS is promulgated, when the relevant State or tribal section 111(d)/129 plan is approved by EPA and becomes effective, etc. Lastly, table 4 takes into account that as of the promulgation date, *i.e.*, December 6, 2000, for the NSPS (subpart AAAA of part 60) and emission guidelines (subpart BBBB of part 60) for small MWC units, every area of the country was covered by a title V permits program under 40 CFR part 70 or part 71. This point is relevant because a section 111/129 standard cannot trigger the requirement for a source to apply for a title V permit unless a title V permits program is in effect in the area in which the source is located.

TABLE 4.—DEADLINES FOR TITLE V PERMITS

Submitting Title V Permit Applications	
If a small MWC unit is a major source or is part of a major source, and had commenced operation as of the effective date of relevant title V permits program.	then a complete title V application which covers the entire source[a] is due not later than 12 months (or if required by the title V permitting authority) after the effective date of the relevant title V permits program. *See* CAA section 503(c) and 40 CFR commenced 70.4(b)(11)(i), 71.4(i)(1), 70.5(a)(1)(i) and 71.5(a)(1)(i).
If a small MWC unit is a major source or is part of a major source, but did not commence operation until after the relevant title V permits program became effective.	then a complete title V application which covers the entire source is due not later than 12 months (or earlier if required by the title V permitting authority) after the date the source commences operation. *See* CAA section 503(c) and 40 CFR 70.5(a)(1)(i) and 71.5(a)(1)(i).
If a small MWC unit is a nonmajor source or is part of a nonmajor source, is subject to the small MWC NSPS (subpart AAAA of 40 CFR part 60), and had commenced operation as of December 6, 2000.	then a complete title V application[b] is due not later than 12 months after subpart AAAA was promulgated, *i.e.*, December 6, 2001 (or earlier if required by the title V permitting authority). *See* CAA section 503(c) and 40 CFR 70.5(a)(1)(i) and 71.5(a)(1)(i).
If a small MWC unit is a nonmajor source or is part of a nonmajor source, is subject to the small MWC NSPS (subpart AAAA of 40 CFR part 60), but did not commence operation until after December 6, 2000.	then a complete title V application is due not later than 12 months (or earlier if required by the title V permitting authority) after the date the source commences operation. *See* CAA section 503(c) and 40 CFR 70.5(a)(1)(i) and 71.5(a)(1)(i).
If a small MWC unit is a nonmajor source or is part of a nonmajor source, and is subject to an EPA approved and effective State or tribal section 111(d)/129 plan.	then a complete title V application is due not later than 12 months (or earlier if required by the title V permitting authority) after the effective date of the EPA approved State or tribal section 111(d)/129 plan.[c] *See* CAA section 503(c) and 40 CFR 70.5(a)(1)(i) and 71.5(a)(1)(i). In no event, however, can such an existing small MWC unit submit a complete title V application after December 6, 2003, and have it be considered timely. *See* CAA section 129(e) and section or tribal 62.15400 of subpart JJJ.
If a small MWC unit is nonmajor source or is part of a nonmajor source, and is subject to the small MWC Federal plan (subpart JJJ of 40 CFR part 62).	then a complete title V application is due not later than 12 months (or earlier if required by the title V permitting authority) after the effective date of 40 CFR part 62, subpart JJJ. *See* CAA section 503(c) and 40 CFR 70.5(a)(1)(i) and 71.5(a)(1)(i). In no event, however, can such an existing small MWC unit submit a complete title V application after December 6, 2003, and have it considered timely. *See* CAA section 129(e) and section 62.15400 of subpart JJJ.
If a small MWC unit is required to obtain a title permit due to triggering more than one of the applicability criteria listed above or in 40 CFR 70.3(a) or 71.3(a).	then a complete title V application is due not later than 12 months (or earlier if required by the title V permitting authority) after the unit triggers the criterion which first caused the unit to be subject to title V. *See* CAA section 503(c) and 40 CFR 70.3(a) and (b), 70.5(a)(1), 71.3(a) and (b) and 71.5(a)(1). In no event, however, can an existing small MWC unit submit a complete title V application after December 6, 2003, and have it be considered timely. *See* CAA section 129(e) and section 62.15400 of subpart JJJ.
Reopening Title V Permits	
If a small MWC unit is a major source or is part of a major source, is subject to the small MWC NSPS (subpart AAAA of 40 CFR part 60), and is covered by a title V permit with a remaining permit term of 3 or more years on December 6, 2000.	then the title V permitting authority must complete a reopening of the source's title V permit to incorporate the requirements of 40 CFR part 60, subpart AAAA not later than June 6, 2002. *See* CAA section 502(b)(9); 40 CFR 70.7(f)(1)(i) and 71.7(f)(1)(i).

TABLE 4.—DEADLINES FOR TITLE V PERMITS—Continued

If a small MWC unit is a major source or is part of a major source, is subject to an EPA approved and effective State or tribal section 111(d)/129 plan for small MWC units, and is covered by a title V permit with a remaining permit team of 3 or more years on the effective date of the EPA approved section 111(d)/129 plan.	then the title V permitting authority must complete a reopening of the source's title V permit to incorporate the requirements of this EPA approved and effective section 111(d)/129 plan not later than 18 months after the effective date of this plan. *See* CAA section 502(b)(9); 40 CFR 70.7(f)(1)(i) and 71.7(f)(1)(i).
If a small MWC unit is a major source or is part of a major source, is subject to the small MWC Federal plan (subpart JJJ of 40 CFR part 62), and is covered by a title V permit with a remaining permit term of 3 or more years on the effective date of this Federal plan.	then the title V permitting authority must complete a reopening of the source's title V permit to incorporate the requirements of subpart JJJ of 40 CFR part 62 not later than 18 months after the effective date of the small MWC Federal plan. *See* CAA section 502(b)(9); 40 CFR 70.7(f)(1)(i) and 71.7(f)(1)(i).
Updating Existing Title V Permit Applications	
If a small MWC unit is subject to the small MWC NSPS (subpart AAAA of 40 CFR part 60), but first became subject to title V permitting prior to the promulgation of this NSPS, and the owner or operator of the unit has submitted a timely and complete title V permit application, but the draft title V permit has not yet been released by the permitting authority.	then the owner or operator must supplement the title V application by including the applicable requirements of 40 CFR part 60, subpart AAAA in accordance with 40 CFR 70.5(b) or 71.5(b).
If a small MWC unit is subject to an EPA approved and effective State or tribal section 111(d)/129 plan for small MWC units, but first became subject to title V permitting prior to the effective date of the section 111(d)/129 plan, and the owner or operator of the unit has submitted a timely and complete title V permit application, but the draft title V permit has not yet been released by the permitting authority.	then the owner or operator must supplement the title V application by including the applicable requirements of the approved and effective section 111(d)/129 plan in accordance with 40 CFR 70.5(b) or 71.5(b).
If a small MWC unit is subject to the small MWC Federal plan (subpart JJJ of 40 CFR part 62), but first became subject to title V permitting prior to the effective date of this Federal plan, and the owner or operator of the unit has submitted a timely and complete title V permit application, but the draft title V permit has not yet been released by the permitting authority.	then the owner or operator must supplement the title V application by including the applicable requirements of 40 CFR part 62, subpart JJJ in accordance with 40 CFR 70.5(b) or 71.5(b).

[a] A title V application from a major source must address all emission units at the title V source, not just the section 129 emission unit. *See* 40 CFR 70.3(c)(1) and 71.3(c)(1). (For information on aggregating emission units to determine what is a source under title V, *see* the definition of *major source* in 40 CFR 70.2, 71.2 and 63.2.)

[b] Consistent with 40 CFR 70.3(c)(2) and 71.3(c)(2), a permit application from a nonmajor title V source is only required to address the emission units which caused the source to be subject to title V. The requirements which trigger the need for the owner or operator of a nonmajor source to apply for a title V permit are found in 40 CFR 70.3(a) and (b) and 71.3(a) and (b). Permits issued to these nonmajor sources must include *all* of the applicable requirements that apply to the triggering units, *e.g.*, State Implementation Plan requirements, not just the requirements which caused the source to be subject to title V. *See* footnote #2 in *Change to Definition of Major Source* rule, November 27, 2001 (66 FR 59161, 59163).

[c] If a small MWC unit becomes subject to an approved and effective State or tribal section 111(d)/129 plan after being subject to an effective Federal plan, the small MWC unit is still required to file a complete title V application consistent with the application deadlines for units subject to the small MWC Federal plan.

A. Clarification to the Rule

The language in § 62.15020(k) regarding air curtain incinerators has been clarified to be consistent with the language in § 62.15395 regarding title V permitting. In that air curtain incinerators are subject to this subpart, they are required to apply for and obtain a title V permit consistent with the requirements of §§ 62.15395 and 62.15400. As a result, the language in § 62.15020(k) has been modified to specify that air curtain incinerators which meet the definition of air curtain incinerator found in § 62.15410 must meet only the requirements of §§ 62.15365 through 62.15385 and the operating permit requirements of this subpart.

B. Delegation of a Federal Plan

During the development of the Federal plan for Hospital/Medical/Infectious Waste Incinerators (HMIWI), a State agency raised the question of whether a title V operating permits program could be used as a mechanism for transferring the authority to implement and enforce section 111/129 requirements from EPA to State and local agencies. *See* "Transfer of Authority" section of final Federal plan for HMIWI, August 15, 2000 (65 FR 49868, 49873). The State agency noted that the proposal for that rulemaking described two mechanisms for transferring authority to State and local agencies following promulgation of the Federal plan. Those two mechanisms were: (1) The approval of a State or tribal plan after the Federal plan is in effect; and (2) if a State or tribe does not submit or obtain approval of its own plan, EPA delegation to a State or tribe of the authority to implement and enforce the HMIWI Federal plan. The State asked EPA to recognize the title V operating permits program as a third mechanism for transferring authority to State and local agencies. The commenter said that State and local agencies implement title V programs and that title V permits must include the requirements of the Federal plan. The commenter concluded that title V permitting authorities already have implementation responsibility for the Federal plan through their title V permits programs, regardless of whether the authority to implement the Federal plan is delegated to the State or local agency.

In its response to the State, the EPA explained why the issuance of a title V permit is not equivalent to the approval of a State plan or delegation of a Federal plan by focusing on situations in which a title V permitting authority without delegation of a Federal plan could not

implement and enforce section 111/129 requirements. This situation would arise any time a title V permit was not in effect for a source subject to the section 111/129 Federal plan or where the permit did not contain the applicable section 111/129 requirements. For example, a title V source may be allowed to operate without a title V permit for a number of years in some cases between the time the source first triggers the requirement to apply for a permit and the issuance of the permit. The preamble to the final HMIWI Federal plan also noted that a source with a title V permit with a permit term less than 3 years is not required by part 70 to have its permit reopened by a State or tribe to include new applicable requirements such as the HMIWI standard.[6] *See* 40 CFR 70.7(f)(1)(i).

In addition to the explanation provided in the preamble to the final HMIWI Federal plan, there are additional State implementation and enforcement gaps which would not be addressed by implementing and enforcing the section 111/129 standard through a title V permit. The following is an example of such a gap: title V permits are not permanent. With two exceptions, all permits must be renewed at least every 5 years.[7] Although 40 CFR 70.4(b)(10) requires States to provide that a permit or the terms and conditions of a permit may not expire until the permit is renewed, this requirement only applies if a timely and complete application for a renewal permit has been submitted by the source, creating a potential gap. In contrast to this example, the two mechanisms that EPA has identified for transferring authority ensure that a State or tribe can implement and enforce the section 111/129 standards at all times.

Legally, delegation of a standard or requirement results in a delegated State or tribe standing in for EPA as a matter of Federal law. This means that obligations a source may have to the EPA under a federally promulgated standard become obligations to a State (except for functions that the EPA retains for itself) upon delegation.[8] Although a State or tribe may have the authority to incorporate section 111/129 requirements into its title V permits, and implement and enforce these requirements in these permits without first taking delegation of the section 111/129 Federal plan, the State or tribe is not standing in for EPA as a matter of Federal law in this situation. Where a State or tribe does not take delegation of a section 111/129 Federal plan, obligations that a source has to EPA under the Federal plan continue after a title V permit is issued to the source. As a result, the EPA continues to maintain that an approved part 70 operating permits program cannot be used as a mechanism to transfer the authority to implement and enforce the Federal plan from the EPA to a State or tribe.

As mentioned above, a State or tribe may have the authority under State or tribal law to incorporate section 111/129 requirements into its title V permits, and implement and enforce these requirements in that context without first taking delegation of the section 111/129 Federal plan.[9] Some States or tribes, however, may not be able to implement and enforce a section 111/129 standard in a title V permit until the section 111/129 standard has been delegated. In these situations, a State or tribe should not issue a part 70 permit to a source subject to a Federal plan before taking delegation of the section 111/129 Federal plan.

If a State or tribe can provide an Attorney General's (AG's) opinion delineating its authority to incorporate section 111/129 requirements into its title V permits, and then implement and enforce these requirements through its title V permits without first taking delegation of the requirements, then a State or Tribe does not need to take delegation of the section 111/129 requirements for purposes of title V permitting.[10] In practical terms, without approval of a State or tribal plan, delegation of a Federal plan, or an adequate AG's opinion, States and tribes with approved part 70 permitting programs open themselves up to potential questions regarding their authority to issue permits containing section 111/129 requirements and to assure compliance with these requirements. Such questions could lead to the issuance of a notice of deficiency for a State's or tribe's part 70 program. As a result, prior to a State or tribal permitting authority drafting a part 70 permit for a source subject to a section 111/129 Federal plan, the State or tribe, EPA Regional Office, and source in question are advised to ensure that delegation of the relevant Federal plan has taken place or that the permitting authority has provided to the EPA Regional Office an adequate AG's opinion.

In addition, if a permitting authority chooses to rely on an AG's opinion and not take delegation of a Federal plan, a section 111/129 source subject to the Federal plan in that State must simultaneously submit to both EPA and the State or tribe all reports required by the standard to be submitted to the EPA. Given that these reports are necessary to implement and enforce the section 111/129 requirements when they have been included in title V permits, the permitting authority needs to receive these reports at the same time as the EPA.

In the situation where a permitting authority chooses to rely on an AG's opinion and not take delegation of a Federal plan, EPA Regional Offices will be responsible for implementing and enforcing section 111/129 requirements outside of any title V permits. Moreover, in this situation, EPA Regional Offices will continue to be responsible for developing progress reports, entering emissions data into the Aerometric Information Retrieval System (AIRS)/AIRS Facility Subsystem (AFS), and conducting any other administrative functions required under this Federal plan or any other section 111/129 Federal plan. *See* section II.J. of the proposed Federal plan for HMIWI, July 6, 1999 (64 FR 36426, 36431); 40 CFR 60.25(e); and Appendix D of 40 CFR part 60.

It is important to note that the EPA is not using its authority under 40 CFR 70.4(i)(3) to request that all States and tribes which do not take delegation of this Federal plan submit supplemental AG's opinions at this time. However, the EPA Regional Offices shall request, and permitting authorities shall provide, such opinions when the EPA questions a State's or tribe's authority to incorporate section 111/129

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[6] An owner or operator of a source subject to a section 111/129 Federal plan remains subject to, and must act in compliance with, 111/129 requirements and all other applicable requirements to which the source is subject regardless of whether these requirements are included in a title V permit. *See* 40 CFR 70.6(a)(1), 70.2, 71.6(a)(1) and 71.2.

[7] Under 40 CFR 70.4(b)(3)(iv), permitting authorities are allowed to issue permits for solid waste incineration units combusting municipal waste subject to standards under section 129(e) of the Act for a period not to exceed 12 years, provided that the permits are reviewed at least every 5 years. Permits with acid rain provisions must be issued for a fixed term of 5 years; shorter terms for such permits are not allowed.

[8] If the Administrator chooses to retain certain authorities under a standard, those authorities cannot be delegated, *e.g.*, approval of major alternatives to test methods.

[9] The EPA interprets the phrase "assure complaince" in section 502(b)(5)(A) to mean that permitting authorities will implement and enforce each applicable standard, regulation, or requirement which must be included in the title V permits the permitting authorities issue. *See* definition of "applicable requirement" in 40 CFR 70.2. *See also* 40 CFR 70.4(b)(3)(i) and 70.6(a)(1).

[10] It is important to note that an AG's opinion submitted at the time of initial title V program apporoval is sufficient if it demonstrates that a State or tribe has adequate authority to incorporate section 111/129 requirements into its title V permits, and to implement and enforce these requirements through its title V permits without delegation.

requirements into a title V permit, and implement and enforce these requirements in that context without delegation.

Lastly, the EPA would like to correct and clarify the following sentences from the "Transfer of Authority" section of the preamble to the final HMIWI Federal plan (65 FR 49868, 49873): "Prior to delegation, only the EPA will have enforcement authority. In neither instance does the title V permit status of a source affect the enforcement responsibility of EPA and the State or tribal permitting authorities." In situations where a State or tribe is subject to a section 111/129 Federal plan and does not take delegation of the Federal plan, the following applies: Prior to delegation, only EPA can implement and enforce section 111/129 requirements outside of a title V permit. Whenever there is a title V permit in effect which includes section 111/129 requirements, however, EPA and the State or tribe have dual authority to implement and enforce the section 111/129 requirements in the title V permit. When a State or tribe has not taken delegation of a section 111/129 Federal plan, the previous sentence is relevant only in situations where a State or tribe has the authority to incorporate section 111/129 requirements into title V permits, and to implement and enforce these requirements in title V permits without delegation.

VII. Administrative Requirements

This section addresses the following administrative requirements: Regulatory Planning and Review; Federalism; Consultation and Coordination with Indian Tribal Governments; Protection of Children from Environmental Health Risks and Safety Rules; Unfunded Mandates Reform Act of 1995; Regulatory Flexibility Act as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996; Paperwork Reduction Act; National Technology Transfer and Advancement Act; Congressional Review Act; and Energy Effects. Many of these administrative requirements were addressed in the preamble to the small MWC emission guidelines (65 FR 76378). Since this Federal plan merely implements the emission guidelines promulgated on December 6, 2000, and does not impose any new requirements, many of the administrative requirements refer to the administrative requirements in the preamble to the small MWC emission guidelines.

A. Executive Order 12866—Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the EPA must determine whether the regulatory action is "significant," and therefore, subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Executive Order defines "significant regulatory action" as one that is likely to result in a rule that may:

1. Have an annual effect on the economy of $100 million or more, or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;
2. Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;
3. Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or
4. Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

The emission guidelines promulgated on December 6, 2000, are projected to have an impact of approximately $68 million annually (Docket No. A–98–18). This Federal plan merely implements those emission guidelines, and does not impose any new requirements. Therefore, EPA has determined that this Federal plan is not a "significant regulatory action" under the terms of Executive Order 12866 and is therefore not subject to OMB review.

B. Executive Order 13132: Federalism

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

Under section 6 of Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. The EPA also may not issue a regulation that has federalism implications and that preempts State law, unless EPA consults with State and local officials early in the process of developing the regulation.

This Federal plan does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. The States have the primary responsibility for negotiating compliance schedules and incorporating the emission limits into a State plan. Since sources are only covered by a Federal plan if an EPA approved and effective State plan is not in place, the Federal plan does not add substantial additional costs. Thus, the requirements of section 6 of the Executive Order do not apply to this Federal plan.

C. Executive Order 13175—Consultation and Coordination with Indian Tribal Governments

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes."

The EPA believes that no small MWC units are located in Indian country. As a result, this final rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

D. Executive Order 13045—Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), applies to any rule that is determined to be "economically significant" as defined under Executive Order 12866 and concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, EPA must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by EPA.

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. This Federal plan is not subject to Executive Order 13045 because it is not economically significant as defined in Executive Order 12866 and because it is based on technology performance and not on health and safety risks.

E. Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, or tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, or tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation of why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

The EPA has determined that this Federal plan does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, or tribal governments, in the aggregate, or the private sector in any 1 year. The Federal plan merely implements the small MWC emission guidelines and does not impose any new requirements. The Environmental Impact Assessment (EIA) for the small municipal waste combustor emission guidelines (Docket No. A–98–18) shows that the total annual costs of the emission guidelines is about $68 million per year (in 1997 dollars), starting on the fifth year after the emission guidelines are promulgated. The Federal plan will apply to only a small subset of the units considered in the EIA for the emission guidelines. Thus, this Federal plan is not subject to the requirements of sections 202 and 205 of UMRA. Although the emission guidelines were not subject to UMRA, EPA prepared a cost-benefit analysis under section 202 of UMRA for the 1995 emission guidelines. For a discussion of how EPA complied with UMRA for the 1995 emission guidelines, including its extensive consultations with State and local governments, see the preamble to the 1995 emission guidelines (60 FR 65405–65412, December 19, 1995). Because the emission guidelines are equivalent to the 1995 emission guidelines, no additional consultations were necessary during the reestablishment of emission guidelines for small MWC units. However, public comments were solicited in the process of reestablishing the small MWC emission guidelines and in proposing the Federal plan, providing the opportunity for input from state and local governments and small entities.

F. Regulatory Flexibility Act (RFA) as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA)

The Regulatory Flexibility Act (RFA) generally requires Federal agencies to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of the emission guidelines on small entities, a small entity is defined as:

1. A small business in this industry that has a gross annual revenue less than $6 million;
2. A small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; or
3. A small organization that is any not-for-profit enterprise that is independently owned and operated and is not dominant in its field.

After considering the economic impacts of the Federal plan on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. The EPA expects State plans to affect many small MWC units before the final small MWC Federal plan becomes effective. As State plans are submitted and become effective, the Federal plan no longer applies. Therefore, the impact of this Federal plan is expected to be less than the impact identified in developing the MWC emission guidelines.

EPA's analysis indicates eight existing small MWC units (operated by one small business and seven small governments) would be subject to the emission guidelines. In the analysis for the MWC units that are considered small entities, EPA calculated compliance costs as a percentage of sales for business and a percentage of income (total household income) for governments. The average estimated annual compliance cost as a percentage of income is 0.03 percent for the seven small government entities and 39 percent for the one small business. Among the seven potentially affected government entities, the maximum compliance cost was 0.25 percent.

Although this Federal plan will not have a significant economic impact on a substantial number of small entities, EPA has tried to reduce the impact of

the emission guidelines and this Federal plan on small entities by establishing different requirements for Class I and Class II MWC units and establishing provisions for less frequent testing for small Class II units. In addition, EPA involved representatives of small entities in the development of the emission guidelines. For a summary of the actions that EPA took to involve small entities and their representatives in the development of the emission guidelines, refer to the discussion of the Unfunded Mandates Reform Act in section VII.E.

G. Paperwork Reduction Act

The OMB has approved the information collection requirements in the emission guidelines under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq* and has assigned OMB control number 2060–0424.

The information will be used to ensure that the small MWC unit Federal plan requirements are implemented properly and are complied with on a continuous basis. Records and reports are necessary to identify small MWC units that might not be in compliance with the small MWC unit Federal plan. Based on reported information, the implementing agency will decide which small MWC units should be inspected and what records or processes should be inspected. Records that owners and operators of small MWC units maintain indicate whether personnel are operating and maintaining control equipment properly.

These recordkeeping and reporting requirements are specifically authorized by sections 114 and 129 of the CAA (42 U.S.C. 7414). All information submitted to the EPA for which a claim of confidentiality is made will be safeguarded according to EPA policies in 40 CFR part 2, subpart B, Confidentiality of Business Information.

The emission guidelines are projected to affect approximately 90 small MWC units located at 41 plants. The estimated average annual burden for industry for the first 3 years after implementation of the emission guidelines would be 1,297 person-hours annually. There will be no capital costs for monitoring or recordkeeping during the first 3 years. The estimated average annual burden, over the first 3 years, for the implementing agency would be 773 hours with a cost of $30,869 (including travel expenses) per year. The Federal plan will apply to only a subset of the units expected to be affected by the emission guidelines.

Burden means total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose, or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the agency displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15. The EPA is amending the table in 40 CFR part 9 of currently approved ICR control numbers issued by OMB for various regulations to list the information collection requirements contained in this Federal plan.

H. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) of 1995 (Pub. L. 104–113; 15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in their regulatory and procurement activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, business practices) developed or adopted by one or more voluntary consensus bodies. The NTTAA directs EPA to provide Congress, through annual reports to the Office of Management and Budget (OMB), with explanations when an agency does not use available and applicable voluntary consensus standards.

This final rule involves technical standards. This Federal Plan uses EPA Methods 1, 3, 3A, 5, 5D, 9, 10, 22, 23, 26, 26A, 29, and Performance Specifications (PS) 1, 2, 3, and 4A. Consistent with the NTTAA, EPA conducted searches to identify voluntary consensus standards in addition to these EPA methods/performance specifications. No applicable voluntary consensus standards were identified for EPA Methods 9, 22, PS 3, and PS 4A. The search and review results have been documented and are placed in the docket No. A–2000–39 for this plan.

Two voluntary consensus standards were identified as applicable and EPA has used them in this plan. One voluntary consensus standard was identified as applicable to PS 1. The standard ASTM D6216 (1998), "Standard Practice for Opacity Monitor Manufacturers to Certify Conformance with Design and Performance Specifications," has been incorporated by reference into PS 1. The PS 1 rule was published in the **Federal Register** on August 10, 2000.

Another voluntary consensus standard, ASTM D4536–96 "Particulate (Matter) Modified High Volume," has been adopted as an alternative to the sampling equipment and procedures in Methods 5 or 17 in conducting emissions testing of positive pressure fabric filter control devices. The ASTM D4536–96 equipment and procedures will be used in conjunction with the sample traverse and calculations as described in Method 5D for this application.

Three voluntary consensus standards have already been incorporated by reference into § 60.17. One consensus standard by the American Society of Mechanical Engineers (ASME) was identified for use in this plan for the measurement of MWC unit load level (steam output). The EPA believes this standard is practical to use in this plan as the method to measure MWC unit load. The EPA has already incorporated by reference (IBR) "ASME Power Test Codes: Test Code for Steam Generating Units, Power Test Code 4.1—1964 (R1991)" in 60.17 paragraphs (h)(1), (h)(2), and (h)(3).

A second consensus standard by ASME was identified for potential use in this plan for designing, constructing, installing, calibrating, and using nozzles and orifices. The EPA believes this standard is practical to use for the design, construction, installation, calibration, and use of nozzles and orifices. The EPA has already incorporated by reference (IBR) "American Society of Mechanical Engineers Interim Supplement 19.5 on Instruments and Apparatus: Application, Part II of Fluid Meters, 6th edition (1971)" in § 60.17, paragraphs (h)(1), (h)(2), and (h)(3).

A third consensus standard by ASME (QRO–1–1994) was identified for use for MWC plant operator certification requirements instead of developing new operator certification procedures. The EPA believes this standard is practical to use in the emission guidelines that require a chief facility operator and shift supervisor to successfully complete the

operator certification procedures developed by ASME. The EPA has already incorporated by reference (IBR) (QRO–1–1994) in § 60.17, paragraphs (h)(1), (h)(2), and (h)(3).

In addition to the voluntary consensus standards identified above, EPA identified 21 other voluntary consensus standards for emission measurement procedures. The EPA determined that 17 of these 21 standards were impractical alternatives to EPA test methods/performance specifications for the purposes of this Federal plan. Therefore, EPA has not adopted these standards today. The reasons for this determination for the 17 methods are discussed below.

The European standard EN 1911–1,2,3 (1998), "Stationary Source Emissions—Manual Method of Determination of HCl—Part 1: Sampling of Gases Ratified European Text—Part 2: Gaseous Compounds Absorption Ratified European Text—Part 3: Adsorption Solutions Analysis and Calculation Ratified European Text," is impractical as an alternative to EPA Methods 26 and 26A. Part 3 of this standard cannot be considered equivalent to EPA Method 26 or 26A because the sample absorbing solution (water) would be expected to capture both HCl and chlorine gas, if present, without the ability to distinguish between the two. The EPA Methods 26 and 26A use an acidified absorbing solution to first separate HCl and chlorine gas so that they can be selectively absorbed, analyzed, and reported separately. In addition, in EN 1911 the absorption efficiency for chlorine gas would be expected to vary as the pH of the water changed during sampling.

Three standards: ASTM D4358–94 (1999), "Standard Test Method for Lead and Chromium in Air Particulate Filter Samples of Lead Chromate Type Pigment Dusts by Atomic Absorption Spectroscopy;" ASTM E1741–95 (1995), "Standard Practice for Preparation of Airborne Particulate Lead Samples Collected During Abatement and Construction Activities for Subsequent Analysis by Atomic Spectrometry;" and ASTM E1979–98 (1998), "Standard Practice for Ultrasonic Extraction of Paint, Dust, Soil, and Air Samples for Subsequent Determination of Lead," are impractical as alternatives to EPA Methods 12 and 29 in this Federal plan. These ASTM standards do not require the use of glass fiber filters as in EPA Method 12 and require the use of significantly different digestion procedures that appear to be more mild than the EPA Method 12 digestion procedure. For these reasons, these ASTM standards cannot be considered equivalent to EPA Method 12. Also, the subject ASTM standards do not require the use of hydrogen fluoride (HF) as in EPA Method 29 and, therefore, they cannot be used for the preparation, digestion, and analysis of Method 29 samples. Additionally, Method 29 requires the use of a glass fiber filter, whereas these three ASTM standards require cellulose filters and other probable nonglass fiber media which cannot be considered equivalent to EPA Method 29.

The following nine methods are impractical alternatives to EPA test methods/performance specifications for the purposes of this plan because they are too general, too broad, or not sufficiently detailed to assure compliance with EPA regulatory requirements: ASTM D3154–91 (1995), "Standard Method for Average Velocity in a Duct (Pitot Tube Method)," for EPA Methods 1, 2, 3B, and 4; ASME C00031 or PTC 19–10–1981—part 10, "Flue and Exhaust Gas Analyses," for EPA Method 3; ASTM D5835–95, "Standard Practice for Sampling Stationary Source Emissions, for Automated Determination of Gas Concentration," for EPA Method 3A; ISO 10396:1993, "Stationary Source Emissions: Sampling for the Automated Determination of Gas Concentrations," for EPA Method 3A; CAN/CSA Z223.2–M86(1986), "Method for the Continuous Measurement of Oxygen, Carbon Dioxide, Carbon Monoxide, Sulphur Dioxide, and Oxides of Nitrogen in Enclosed Combustion Flue Gas Streams," for EPA Method 3A; CAN/CSA Z223.21–M1978, "Method for the Measurement of Carbon Monoxide: 3—Method of Analysis by Non-Dispersive Infrared Spectrometry," for EPA Methods 10 and 10A; European Committee for Standardization (CEN) EN 1948–3 (1997), "Determination of the Mass Concentration of PCDD'S/PCDF'S—Part 3: Identification and Quantification," for EPA Method 23; ISO 7935:1992, "Stationary Source Emissions—Determination of the Mass Concentration of Sulfur Dioxide—Performance Characteristics of Automated Measuring Methods," for EPA Performance Specification 2 (sulfur dioxide portion only); and ISO 10849:1996, "Determination of the Mass Concentration of Nitrogen Oxides—Performance Characteristics of Automated Measuring Systems," for EPA Performance Specification 2 (nitrogen oxide portion only).

The following four methods are impractical alternatives to EPA test methods for the purposes of this plan because they lack sufficient quality assurance and quality control requirements necessary for EPA compliance assurance requirements: ASME PTC–38–80 R85 or C00049, "Determination of the Concentration of Particulate Matter in Gas Streams," for EPA Method 5; ASTM D3685/D3685M–98, "Test Methods for Sampling and Determination of Particulate Matter in Stack Gases," for EPA Method 5; ISO 9096:1992, "Determination of Concentration and Mass Flow Rate of Particulate Matter in Gas Carrying Ducts—Manual Gravimetric Method," for EPA Method 5; and CAN/CSA Z223.26–M1987, "Measurement of Total Mercury in Air Cold Vapour Atomic Absorption Spectrophotometeric Method," for EPA Method 29.

The following four of the 21 voluntary consensus standards identified in this search were not available at the time the review was conducted for the purposes of this plan because they are under development by a voluntary consensus body: ASME/BSR MFC 13M, "Flow Measurement by Velocity Traverse," for EPA Method 1 (and possibly 2); ISO/DIS 12039, "Stationary Source Emissions—Determination of Carbon Monoxide, Carbon Dioxide, and Oxygen—Automated Methods," for EPA Method 3A; PREN 13211 (1998), "Air Quality—Stationary Source Emissions—Determination of the Concentration of Total Mercury," for EPA Methods 101, 101A, 29 (portion for mercury only); and ASTM Z6590Z, "Manual Method for Both Speciated and Elemental Mercury," for EPA Methods 101A and 29 (portion for mercury only). While we are not proposing to include these four voluntary consensus standards in today's proposal, the EPA will consider the standards when final.

Tables 6, 7, and 8 of subpart JJJ list the EPA testing methods/performance specifications included in the Federal Plan Requirements for Small Municipal Waste Combustion Units. Under § 63.8(f) of subpart A of the General Provisions, a source may apply to EPA for permission to use alternative monitoring in place of any of the EPA testing methods/performance specifications.

I. Congressional Review Act

The congressional Review Act, 5 U.S.C. 801, *et. seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency adopting the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and

the Comptroller General of the United States prior to publication of this rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

J. Executive Order 13211—Energy Effects

This Federal plan is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

List of Subjects in 40 CFR Part 62

Environmental protection, Air pollution control, Incorporation by reference, Municipal waste combustion.

Dated: December 19, 2002.

Christine Todd Whitman,

Administrator.

For the reasons stated in the preamble, title 40, chapter I, of the Code of Federal Regulations is amended as follows:

PART 62—[AMENDED]

1. The authority citation for part 62 continues to read as follows:

Authority: 42 U.S.C. 7401—7671q.

2. Section 62.02 is amended by revising paragraph (b) to read as follows:

§ 62.02 Introduction.

* * * * *

(b)(1) If a State does not submit a complete, approvable plan, the Administrator may then promulgate a substitute plan or part of a plan. The promulgated provision, plus the approved parts of the State plan, constitute the applicable plan for purposes of the act.

(2) The part 60 subpart A of this chapter general provisions and appendices to part 60 apply to part 62, except as follows: 40 CFR 60.7(a)(1), 60.7(a)(3), and 60.8(a) and where special provisions set forth under the applicable subpart of this part shall apply instead of any conflicting provisions.

* * * * *

3. Section 62.13 is amended by adding paragraphs (d) and (e) to read as follows:

§ 62.13 Federal plans.

* * * * *

(d) [Reserved]

(e) The substantive requirements of the small municipal waste combustion unit Federal plan are contained in subpart JJJ of this part. These requirements include emission limits, compliance schedules, testing, monitoring, and reporting and recordkeeping requirements.

4. Part 62 is amended by adding subpart JJJ to read as follows:

Subpart JJJ—Federal Plan Requirements for Small Municipal Waste Combustion Units Constructed on or Before August 30, 1999

Introduction

Sec.
62.15000 What is the purpose of this subpart?
62.15005 What are the principal components of this subpart?

Applicability of This Subpart

62.15010 Is my municipal waste combustion unit covered by this subpart?
62.15015 Can my small municipal waste combustion unit be covered by both a State plan and this subpart?
62.15020 Can my small municipal waste combustion unit be exempt from this subpart?
62.15025 How do I determine if my small municipal waste combustion unit is covered by an approved and currently effective State or Tribal plan?
62.15030 What are my obligations under this subpart if I reduce my small municipal waste combustion unit's combustion capacity to less than 35 tons per day?
62.15035 Is my small municipal waste combustion unit subject to different requirements based on plant capacity?

Compliance Schedule and Increments of Progress

62.15040 What are the requirements for meeting increments of progress and achieving final compliance?
62.15045 When must I complete each increment of progress?
62.15050 What must I include in the notifications of achievement of my increments of progress?
62.15055 When must I submit the notifications of achievement of increments of progress?
62.15060 What if I do not meet an increment of progress?
62.15065 How do I comply with the increment of progress for submittal of a final control plan?
62.15070 How do I comply with the increment of progress for awarding contracts?
62.15075 How do I comply with the increment of progress for initiating onsite construction?
62.15080 How do I comply with the increment of progress for completing onsite construction?
62.15085 How do I comply with the increment of progress for achieving final compliance?
62.15090 What must I do if I close my municipal waste combustion unit and then restart my municipal waste combustion unit?
62.15095 What must I do if I plan to permanently close my municipal waste combustion unit and not restart it?

Good Combustion Practices: Operator Training

62.15100 What types of training must I do?
62.15105 Who must complete the operator training course? By when?
62.15110 Who must complete the plant-specific training course?
62.15115 What plant-specific training must I provide?
62.15120 What information must I include in the plant-specific operating manual?
62.15125 Where must I keep the plant-specific operating manual?

Good Combustion Practices: Operator Certification

62.15130 What types of operator certification must the chief facility operator and shift supervisor obtain and by when must they obtain it?
62.15135 After the required date for operator certification, who may operate the municipal waste combustion unit?
62.15140 What if all the certified operators must be temporarily offsite?

Good Combustion Practices: Operating Requirements

62.15145 What are the operating practice requirements for my municipal waste combustion unit?
62.15150 What happens to the operating requirements during periods of startup, shutdown, and malfunction?

Emission Limits

62.15155 What pollutants are regulated by this subpart?
62.15160 What emission limits must I meet?
62.15165 What happens to the emission limits during periods of startup, shutdown, and malfunction?

Continuous Emission Monitoring

62.15170 What types of continuous emission monitoring must I perform?
62.15175 What continuous emission monitoring systems must I install for gaseous pollutants?
62.15180 How are the data from the continuous emission monitoring systems used?
62.15185 How do I make sure my continuous emission monitoring systems are operating correctly?
62.15190 Am I exempt from any 40 CFR part 60 appendix B or appendix F requirements to evaluate continuous emission monitoring systems?
62.15195 What is my schedule for evaluating continuous emission monitoring systems?
62.15200 What must I do if I choose to monitor carbon dioxide instead of oxygen as a diluent gas?
62.15205 What minimum amount of monitoring data must I collect with my continuous emission monitoring systems and is this requirement enforceable?
62.15210 How do I convert my 1-hour arithmetic averages into appropriate averaging times and units?

62.15215 What is required for my continuous opacity monitoring system and how are the data used?
62.15220 What additional requirements must I meet for the operation of my continuous emission monitoring systems and continuous opacity monitoring system?
62.15225 What must I do if my continuous emission monitoring system is temporarily unavailable to meet the data collection requirements?

Stack Testing

62.15230 What types of stack tests must I conduct?
62.15235 How are the stack test data used?
62.15240 What schedule must I follow for the stack testing?
62.15245 What test methods must I use to stack test?
62.15250 May I conduct stack testing less often?
62.15255 May I deviate from the 13-month testing schedule if unforeseen circumstances arise?

Other Monitoring Requirements

62.15260 What other requirements must I meet for continuous monitoring?
62.15265 How do I monitor the load of my municipal waste combustion unit?
62.15270 How do I monitor the temperature of flue gases at the inlet of my particulate matter control device?
62.15275 How do I monitor the injection rate of activated carbon?
62.15280 What minimum amount of monitoring data must I collect with my continuous parameter monitoring systems and is this requirement enforceable?

Recordkeeping

62.15285 What records must I keep?
62.15290 Where must I keep my records and for how long?
62.15295 What records must I keep for operator training and certification?
62.15300 What records must I keep for stack tests?
62.15305 What records must I keep for continuously monitored pollutants or parameters?
62.15310 What records must I keep for municipal waste combustion units that use activated carbon?

Reporting

62.15315 What reports must I submit and in what form?
62.15320 What are the appropriate units of measurement for reporting my data?
62.15325 When must I submit the initial report?
62.15330 What must I include in the initial report?
62.15335 When must I submit the annual report?
62.15340 What must I include in the annual report?
62.15345 What must I do if I am out of compliance with these standards?
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Subpart JJJ—Federal Plan Requirements for Small Municipal Waste Combustion Units Constructed on or Before August 30, 1999

Introduction

§ 62.15000 What is the purpose of this subpart?

(a) This subpart establishes emission requirements and compliance schedules for the control of emissions from existing small municipal waste combustion units that are not covered by an EPA approved and effective State plan. The pollutants addressed by these emission requirements are listed in tables 2, 3, 4, and 5 of this subpart. These emission requirements are developed in accordance with sections 111(d) and 129 of the Clean Air Act and subpart B of 40 CFR part 60.

(b) In this subpart, "you" means the owner or operator of a small municipal waste combustion unit.

§ 62.15005 What are the principal components of this subpart?

This subpart contains five major components:

(a) Increments of progress toward compliance.

(b) Good combustion practices:

(1) Operator training.

(2) Operator certification.

(3) Operating requirements.

(c) Emission limits.

(d) Monitoring and stack testing.

(e) Recordkeeping and reporting.

Applicability of this Subpart

§ 62.15010 Is my municipal waste combustion unit covered by this subpart?

(a) This subpart applies to your small municipal waste combustion unit if the unit meets the criteria in paragraphs (a)(1) and (a)(2) and the criteria in either paragraph (a)(3) or (a)(4) of this section:

(1) Your municipal waste combustion unit has the capacity to combust at least 35 tons per day of municipal solid waste or refuse-derived fuel but no more than 250 tons per day of municipal solid waste or refuse-derived fuel.

(2) Your municipal waste combustion unit commenced construction on or before August 30, 1999.

(3) Your municipal waste combustion unit is not regulated by an EPA approved and effective State or Tribal plan.

(4) Your municipal waste combustion unit is located in any State whose approved State plan is subsequently vacated in whole or in part, or the municipal waste combustion unit is located in Indian country if the approved tribal plan for that area is subsequently vacated in whole or in part.

(b) If you make a change to your municipal waste combustion unit that meets the definition of modification or reconstruction after June 6, 2001, your municipal waste combustion unit becomes subject to subpart AAAA of 40 CFR part 60 (New Source Performance Standards for Small Municipal Waste Combustion Units) and this subpart no longer applies to your unit.

(c) If you make physical or operational changes to your existing

municipal waste combustion unit primarily to comply with this subpart, then subpart AAAA of 40 CFR part 60 (New Source Performance Standards for Small Municipal Waste Combustion Units) does not apply to your unit. Such changes do not constitute modifications or reconstructions under subpart AAAA of 40 CFR part 60.

(d) Upon approval of the State or tribal plan, this subpart will no longer apply, except for the provisions of this subpart that may have been incorporated by reference under the State or Tribal plan, or delegated to the State by the Administrator.

§ 62.15015 Can my small municipal waste combustion unit be covered by both a State plan and this subpart?

(a) If your municipal waste combustion unit is located in a State that has a State plan that has not been approved by the EPA or has not become effective, then this subpart applies and the State plan would not apply to your municipal waste combustion unit. However, the State could enforce the requirements of a State regulation while your municipal waste combustion unit is still subject to this subpart.

(b) After the State plan is approved by the EPA and becomes effective, your municipal waste combustion unit is no longer subject to this subpart and will only be subject to the approved and effective State plan.

§ 62.15020 Can my small municipal waste combustion unit be exempt from this subpart?

(a) *Small municipal waste combustion units that combust less than 11 tons per day.* Your unit is exempt from this subpart if four requirements are met:

(1) Your municipal waste combustion unit is subject to a federally enforceable permit limiting municipal solid waste combustion to less than 11 tons per day.

(2) You notify the Administrator that the unit qualifies for this exemption.

(3) You submit to the Administrator a copy of the federally enforceable permit.

(4) You keep daily records of the amount of municipal solid waste combusted.

(b) *Small power production units.* Your unit is exempt from this subpart if four requirements are met:

(1) Your unit qualifies as a small power production facility under section 3(17)(C) of the Federal Power Act (16 U.S.C. 796(17)(C)).

(2) Your unit combusts homogeneous waste (excluding refuse-derived fuel) to produce electricity.

(3) You notify the Administrator that the unit qualifies for this exemption.

(4) You submit to the Administrator documentation that the unit qualifies for this exemption.

(c) *Cogeneration units.* Your unit is exempt from this subpart if four requirements are met:

(1) Your unit qualifies as a cogeneration facility under section 3(18)(B) of the Federal Power Act (16 U.S.C. 796(18)(B)).

(2) Your unit combusts homogeneous waste (excluding refuse-derived fuel) to produce electricity and steam or other forms of energy used for industrial, commercial, heating, or cooling purposes.

(3) You notify the Administrator that the unit qualifies for this exemption.

(4) You submit to the Administrator documentation that the unit qualifies for this exemption.

(d) *Municipal waste combustion units that combust only tires.* Your unit is exempt from this subpart if three requirements are met:

(1) Your municipal waste combustion unit combusts a single-item waste stream of tires and no other municipal waste (the unit can cofire coal, fuel oil, natural gas, or other nonmunicipal solid waste).

(2) You notify the Administrator that the unit qualifies for this exemption.

(3) You provide the Administrator documentation that the unit qualifies for this exemption.

(e) *Hazardous waste combustion units.* Your unit is exempt from this subpart if the unit has received a permit under section 3005 of the Solid Waste Disposal Act.

(f) *Materials recovery units.* Your unit is exempt from this subpart if the unit combusts waste mainly to recover metals. Primary and secondary smelters may qualify for this exemption.

(g) *Cofired units.* Your unit is exempt from this subpart if four requirements are met:

(1) Your unit has a federally enforceable permit limiting municipal solid waste combustion to 30 percent of the total fuel input by weight.

(2) You notify the Administrator that the unit qualifies for this exemption.

(3) You provide the Administrator with a copy of the federally enforceable permit.

(4) You record the weights, each quarter, of municipal solid waste and of all other fuels combusted.

(h) *Plastics/rubber recycling units.* Your unit is exempt from this subpart if four requirements are met:

(1) Your pyrolysis/combustion unit is an integrated part of a plastics/rubber recycling unit as defined under "Definitions" (§ 62.15410).

(2) You record the weight, each quarter, of plastics, rubber, and rubber tires processed.

(3) You record the weight, each quarter, of feed stocks produced and marketed from chemical plants and petroleum refineries.

(4) You keep the name and address of the purchaser of the feed stocks.

(i) *Units that combust fuels made from products of plastics/rubber recycling plants.* Your unit is exempt from this subpart if two requirements are met:

(1) Your unit combusts gasoline, diesel fuel, jet fuel, fuel oils, residual oil, refinery gas, petroleum coke, liquified petroleum gas, propane, or butane produced by chemical plants or petroleum refineries that use feed stocks produced by plastics/rubber recycling units.

(2) Your unit does not combust any other municipal solid waste.

(j) *Cement kilns.* Your unit is exempt from this subpart if your cement kiln combusts municipal solid waste.

(k) *Air curtain incinerators.* If your air curtain incinerator (see § 62.15410 for definition) combusts 100 percent yard waste, then you must meet only the requirements under "Air Curtain Incinerators That Burn 100 Percent Yard Waste" (§§ 62.15365 through 62.15385) and the title V operating permit requirements of this subpart. However, if your air curtain incinerator combusts municipal solid waste other than yard waste, it is subject to all provisions of this subpart.

§ 62.15025 How do I determine if my small municipal waste combustion unit is covered by an approved and effective State or Tribal Plan?

This part (40 CFR part 62) contains a list of all States and tribal areas with approved Clean Air Act section 111(d) and section 129 plans in effect. However, this part is only updated once per year. Thus, if this part does not indicate that your State or tribal area has an approved and effective plan, you should contact your State environmental agency's air director or your EPA Regional Office to determine if approval has occurred since publication of the most recent version of this part.

§ 62.15030 What are my obligations under this subpart if I reduce my small municipal waste combustion unit's combustion capacity to less than 35 tons per day?

If you reduce your small municipal waste combustion unit's combustion capacity to less than 35 tons per day by the final compliance date, you must comply only with the following requirements:

(a) You must submit a final control plan according to the schedule in table 1 of this subpart and comply with § 62.15065(b).

(b) The final control plan must, at a minimum, include two items:

(1) A description of the physical changes that will be made to accomplish the reduction in combustion capacity. A permit restriction or a change in the method of operation does not qualify as a reduction in combustion capacity.

(2) Calculations of the current maximum combustion capacity and the planned maximum combustion capacity after the reduction. Use the equations specified under § 62.15390(d) and (e) to calculate the combustion capacity of a municipal waste combustion unit.

(c) You must complete the physical changes to accomplish the reduction in combustion capacity by the final compliance date specified in table 1 of this subpart.

(d) If you comply with all of the requirements specified in paragraphs (a), (b), and (c) of this section, you are no longer subject to this subpart.

(e) You must comply with the requirements specified in § 62.15395 and § 62.15400 regarding title V permitting. If you comply with all of the requirements specified in paragraphs (a), (b), and (c) of this section, you are no longer subject to title V permitting requirements as a result of this subpart. You will remain subject to title V permitting requirements, however, if you are subject as a result of one or more of the applicability criteria in 40 CFR 70.3(a) and (b) or 71.3(a) and (b).

§ 62.15035 Is my small municipal waste combustion unit subject to different requirements based on plant capacity?

This subpart specifies different requirements for two different subcategories of municipal waste combustion units. These two subcategories are based on aggregate capacity of the municipal waste combustion plant as defined in paragraphs (a) and (b) of this section.

(a) *Class I units.* These are small municipal waste combustion units that are located at municipal waste combustion plants with aggregate plant combustion capacity greater than 250 tons per day of municipal solid waste. (*See* the definition of municipal waste combustion plant capacity in § 62.15410 for specification of which units at a plant are included in the aggregate capacity calculation.)

(b) *Class II units.* These are small municipal waste combustion units that are located at municipal waste combustion plants with aggregate plant combustion capacity of no more than 250 tons per day of municipal solid waste. (See the definition of municipal waste combustion plant capacity in § 62.15410 for specification of which units at a plant are included in the aggregate capacity calculation.)

Compliance Schedule and Increments of Progress

§ 62.15040 What are the requirements for meeting increments of progress and achieving final compliance?

(a) *Class I units.* If you plan to achieve compliance more than 1 year following the effective date of this subpart and a permit modification is not required, or more than 1 year following the date of issuance of a revised construction or operation permit if a permit modification is required, you must meet five increments of progress:

(1) Submit a final control plan.

(2) Submit a notification of retrofit contract award.

(3) Initiate onsite construction.

(4) Complete onsite construction.

(5) Achieve final compliance.

(b) *Class II units.* If you plan to achieve compliance more than 1 year following the effective date of this subpart and a permit modification is not required, or more than 1 year following the date of issuance of a revised construction or operation permit if a permit modification is required, you must meet two increments of progress:

(1) Submit a final control plan.

(2) Achieve final compliance.

§ 62.15045 When must I complete each increment of progress?

(a) You must complete each increment of progress according to the compliance schedule in table 1 of this subpart for Class I and II units. If your Class I or Class II unit is listed in table 9 of this subpart, then you must complete each increment of progress according to the schedule in table 9 of this subpart. (*See* § 62.15410 for definitions of classes.)

(b) For Class I units (*see* definition in § 62.15410) that must meet the five increments of progress, you must submit dioxins/furans stack test results for at least one test conducted during or after 1990. The stack tests must have been conducted according to the procedures specified under § 62.15245 and you must submit the stack test results when the final control plan is due for your Class I MWC unit according to the schedule in table 1 or table 9 of this subpart.

§ 62.15050 What must I include in the notifications of achievement of my increments of progress?

Your notification of achievement of increments of progress must include three items:

(a) Notification that the increment of progress has been achieved.

(b) Any items required to be submitted with the increment of progress (§§ 62.15065 through 62.15085).

(c) The notification must be signed by the owner or operator of the municipal waste combustion unit.

§ 62.15055 When must I submit the notifications of achievement of increments of progress?

Notifications of the achievement of increments of progress must be postmarked no later than 10 days after the compliance date for the increment.

§ 62.15060 What if I do not meet an increment of progress?

If you fail to meet an increment of progress, you must submit a notification to the Administrator postmarked within 10 business days after the specified date in table 1 of this subpart for achieving that increment of progress. This notification must inform the Administrator that you did not meet the increment. You must include in the notification an explanation of why the increment of progress was not met and your plan for meeting the increment as expeditiously as possible. You must continue to submit reports each subsequent month until the increment of progress is met.

§ 62.15065 How do I comply with the increment of progress for submittal of a final control plan?

For your final control plan increment of progress, you must complete two items:

(a) Submit the final control plan describing the devices for air pollution control and process changes that you will use to comply with the emission limits and other requirements of this subpart. If you plan to reduce your small municipal waste combustion unit's combustion capacity to less than 35 tons per day by the final compliance date, see § 62.15030.

(b) You must maintain an onsite copy of the final control plan.

§ 62.15070 How do I comply with the increment of progress for awarding contracts?

You must submit a signed copy of the contracts awarded to initiate onsite construction, initiate onsite installation of emission control equipment, and incorporate process changes. Submit the

copy of the contracts with the notification that this increment of progress has been achieved. You do not need to include documents incorporated by reference or the attachments to the contracts.

§ 62.15075 How do I comply with the increment of progress for initiating onsite construction?

You must initiate onsite construction and installation of emission control equipment and initiate the process changes outlined in the final control plan.

§ 62.15080 How do I comply with the increment of progress for completing onsite construction?

You must complete onsite construction and installation of emission control equipment and complete process changes outlined in the final control plan.

§ 62.15085 How do I comply with the increment of progress for achieving final compliance?

For the final compliance increment of progress, you must complete two items:

(a) Complete all process changes and complete retrofit construction as specified in the final control plan.

(b) Connect the air pollution control equipment with the municipal waste combustion unit identified in the final control plan and complete process changes to the municipal waste combustion unit so that if the affected municipal waste combustion unit is brought online, all necessary process changes and air pollution control equipment are operating as designed.

§ 62.15090 What must I do if I close my municipal waste combustion unit and then restart my municipal waste combustion unit?

(a) If you close your municipal waste combustion unit but will reopen it prior to the applicable final compliance date in table 1 of this subpart, you must meet the increments of progress specified in § 62.15040.

(b) If you close your municipal waste combustion unit but restart it after the applicable final compliance date in table 1 of this subpart, you must complete the emission control retrofit and meet the emission limits and good combustion practices on the date your municipal waste combustion unit restarts operation.

§ 62.15095 What must I do if I plan to permanently close my municipal waste combustion unit and not restart it?

(a) If you plan to close your municipal waste combustion unit rather than comply with this subpart, you must submit a closure notification, including the date of closure, to the Administrator by the date your final control plan is due.

(b) If the closure date is later than 1 year after the effective date of this subpart, you must enter into a legally binding closure agreement with the Administrator by the date your final control plan is due. The agreement must include two items:

(1) The date by which operation will cease. The closure date can be no later than the applicable final compliance date in table 1 of this subpart.

(2) For Class I units only, dioxins/furans stack test results for at least one test conducted during or after 1990. The stack tests must have been conducted according to the procedures specified under § 62.15245.

Good Combustion Practices: Operator Training

§ 62.15100 What types of training must I do?

There are two types of required training:

(a) Training of operators of municipal waste combustion units using the EPA or a State-approved training course.

(b) Training of plant personnel using a plant-specific training course.

§ 62.15105 Who must complete the operator training course? By when?

(a) Three types of employees must complete the EPA operator training course:

(1) Chief facility operators.

(2) Shift supervisors.

(3) Control room operators.

(b) These employees must complete the operator training course by the later of three dates:

(1) One year after the effective date of this subpart.

(2) Six months after your municipal waste combustion unit starts up.

(3) The date before an employee assumes responsibilities that affect operation of the municipal waste combustion unit.

(c) The requirement in paragraph (a) of this section does not apply to chief facility operators, shift supervisors, and control room operators who have obtained full certification from the American Society of Mechanical Engineers on or before the effective date of this subpart.

(d) You may request that the EPA Administrator waive the requirement in paragraph (a) of this section for chief facility operators, shift supervisors, and control room operators who have obtained provisional certification from the American Society of Mechanical Engineers on or before the effective date of this subpart.

§ 62.15110 Who must complete the plant-specific training course?

All employees with responsibilities that affect how a municipal waste combustion unit operates must complete the plant-specific training course. Include at least six types of employees:

(a) Chief facility operators.

(b) Shift supervisors.

(c) Control room operators.

(d) Ash handlers.

(e) Maintenance personnel.

(f) Crane or load handlers.

§ 62.15115 What plant-specific training must I provide?

For plant-specific training, you must do four things:

(a) For training at a particular plant, develop a specific operating manual for that plant by the later of two dates:

(1) Six months after your municipal waste combustion unit starts up.

(2) One year after the effective date of this subpart.

(b) Establish a program to review the plant-specific operating manual with people whose responsibilities affect the operation of your municipal waste combustion unit. Complete the initial review by the later of three dates:

(1) One year after the effective date of this subpart.

(2) Six months after your municipal waste combustion unit starts up.

(3) The date before an employee assumes responsibilities that affect operation of the municipal waste combustion unit.

(c) Update your manual annually.

(d) Review your manual with staff annually.

§ 62.15120 What information must I include in the plant-specific operating manual?

You must include 11 items in the operating manual for your plant:

(a) A summary of all applicable standards in this subpart.

(b) A description of the basic combustion principles that apply to municipal waste combustion units.

(c) Procedures for receiving, handling, and feeding municipal solid waste.

(d) Procedures to be followed during periods of startup, shutdown, and malfunction of the municipal waste combustion unit.

(e) Procedures for maintaining a proper level of combustion air supply.

(f) Procedures for operating the municipal waste combustion unit within the standards contained in this subpart.

(g) Procedures for responding to periodic upset or off-specification conditions.

(h) Procedures for minimizing carryover of particulate matter.

(i) Procedures for handling ash.

(j) Procedures for monitoring emissions from the municipal waste combustion unit.

(k) Procedures for recordkeeping and reporting.

§ 62.15125 Where must I keep the plant-specific operating manual?

You must keep your operating manual in an easily accessible location at your plant. It must be available for review or inspection by all employees who must review it and by the Administrator.

Good Combustion Practices: Operator Certification

§ 62.15130 What types of operator certification must the chief facility operator and shift supervisor obtain and by when must they obtain it?

(a) Each chief facility operator and shift supervisor must obtain and maintain a current provisional operator certification from either the American Society of Mechanical Engineers QRO–1–1994 or a State certification program in Connecticut and Maryland (if the affected facility is located in either of the respective States). If ASME certification is chosen, proceed in accordance with ASME QRO–1–1994. Standard for the Qualification and Certification of Resource Recovery Facility Operators. The Director of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C.552(a) and 1 CFR part 51. You may obtain a copy from the American Society of Mechanical Engineers, Service Center, 22 Law Drive, Post Office Box 2900, Fairfield, NJ 07007. You may inspect a copy at the Office of Air Quality Planning and Standards Air Docket, EPA, 109 T.W. Alexander Drive, Room C521C, RTP, NC 27709 or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

(b) Each chief facility operator and shift supervisor must obtain a provisional certification by the later of three dates:

(1) For Class I units, 12 months after the effective date of this subpart. For Class II units, 18 months after the effective date of this subpart.

(2) Six months after the municipal waste combustion unit starts up.

(3) Six months after they transfer to the municipal waste combustion unit or 6 months after they are hired to work at the municipal waste combustion unit.

(c) Each chief facility operator and shift supervisor must take one of two actions:

(1) Obtain a full certification from the American Society of Mechanical Engineers.

(2) Schedule a full certification exam with the American Society of Mechanical Engineers (QRO–1–1994 (incorporated by reference in § 60.17 of subpart A of 40 CFR part 60)).

(d) The chief facility operator and shift supervisor must obtain the full certification or be scheduled to take the certification exam by the later of the following dates:

(1) For Class I units, 12 months after the effective date of this subpart. For Class II units, 18 months after the effective date of this subpart.

(2) Six months after the municipal waste combustion unit starts up.

(3) Six months after they transfer to the municipal waste combustion unit or 6 months after they are hired to work at the municipal waste combustion unit.

§ 62.15135 After the required date for operator certification, who may operate the municipal waste combustion unit?

After the required date for full or provisional certification, you must not operate your municipal waste combustion unit unless one of four employees is on duty:

(a) A fully certified chief facility operator.

(b) A provisionally certified chief facility operator who is scheduled to take the full certification exam.

(c) A fully certified shift supervisor.

(d) A provisionally certified shift supervisor who is scheduled to take the full certification exam.

§ 62.15140 What if all the certified operators must be temporarily offsite?

If the certified chief facility operator and certified shift supervisor both are unavailable, a provisionally certified control room operator at the municipal waste combustion unit may fulfill the certified operator requirement. Depending on the length of time that a certified chief facility operator and certified shift supervisor is away, you must meet one of three criteria:

(a) When the certified chief facility operator and certified shift supervisor are both offsite for 12 hours or less and no other certified operator is onsite, the provisionally certified control room operator may perform those duties without notice to, or approval by, the Administrator.

(b) When the certified chief facility operator and certified shift supervisor are offsite for more than 12 hours, but for 2 weeks or less, and no other certified operator is onsite, the provisionally certified control room operator may perform those duties without notice to, or approval by, the Administrator. However, you must record the periods when the certified chief facility operator and certified shift supervisor are offsite and include this information in the annual report as specified under § 62.15340(l).

(c) When the certified chief facility operator and certified shift supervisor are offsite for more than 2 weeks and no other certified operator is onsite, the provisionally certified control room operator may perform those duties without notice to, or approval by, the Administrator. However, you must take two actions:

(1) Notify the Administrator in writing. In the notice, state what caused the absence and what you are doing to ensure that a certified chief facility operator or certified shift supervisor is onsite.

(2) Submit a status report and corrective action summary to the Administrator every 4 weeks following the initial notification. If the Administrator notifies you that your status report or corrective action summary is disapproved, the municipal waste combustion unit may continue operation for 90 days, but then must cease operation. If corrective actions are taken in the 90-day period such that the Administrator withdraws the disapproval, municipal waste combustion unit operation may continue.

Good Combustion Practices: Operating Requirements

§ 62.15145 What are the operating practice requirements for my municipal waste combustion unit?

(a) You must not operate your municipal waste combustion unit at loads greater than 110 percent of the maximum demonstrated load of the municipal waste combustion unit (4-hour block average), as specified under "Definitions" (§ 62.15410).

(b) You must not operate your municipal waste combustion unit so that the temperature at the inlet of the particulate matter control device exceeds 17°C above the maximum demonstrated temperature of the particulate matter control device (4-hour block average), as specified under "Definitions" (§ 62.15410).

(c) If your municipal waste combustion unit uses activated carbon to control dioxins/furans or mercury emissions, you must maintain an 8-hour block average carbon feed rate at or above the highest average level established during the most recent dioxins/furans or mercury test.

(d) If your municipal waste combustion unit uses activated carbon

to control dioxins/furans or mercury emissions, you must evaluate total carbon usage for each calendar quarter. The total amount of carbon purchased and delivered to your municipal waste combustion plant must be at or above the required quarterly usage of carbon. At your option, you may choose to evaluate required quarterly carbon usage on a municipal waste combustion unit basis for each individual municipal waste combustion unit at your plant. Calculate the required quarterly usage of carbon using the appropriate equation in § 62.15390.

(e) Your municipal waste combustion unit is exempt from limits on load level, temperature at the inlet of the particulate matter control device, and carbon feed rate during any of five situations:

(1) During your annual tests for dioxins/furans.

(2) During your annual mercury tests (for carbon feed rate requirements only).

(3) During the 2 weeks preceding your annual tests for dioxins/furans.

(4) During the 2 weeks preceding your annual mercury tests (for carbon feed rate requirements only).

(5) Whenever the Administrator permits you to do any of five activities:

(i) Evaluate system performance.

(ii) Test new technology or control technologies.

(iii) Perform diagnostic testing.

(iv) Perform other activities to improve the performance of your municipal waste combustion unit.

(v) Perform other activities to advance the state of the art for emission controls for your municipal waste combustion unit.

§ 62.15150 What happens to the operating requirements during periods of startup, shutdown, and malfunction?

(a) The operating requirements of this subpart apply at all times except during periods of municipal waste combustion unit startup, shutdown, or malfunction.

(b) Each startup, shutdown, or malfunction must not last for longer than 3 hours.

Emission Limits

§ 62.15155 What pollutants are regulated by this subpart?

Eleven pollutants, in four groupings, are regulated:

(a) *Organics.* Dioxins/furans.

(b) *Metals.*

(1) Cadmium.

(2) Lead.

(3) Mercury.

(4) Opacity.

(5) Particulate matter.

(c) *Acid gases.*

(1) Hydrogen chloride.

(2) Nitrogen oxides.

(3) Sulfur dioxide.

(d) *Other.*

(1) Carbon monoxide.

(2) Fugitive ash.

§ 62.15160 What emission limits must I meet?

(a) After the date the initial stack test and continuous emission monitoring system evaluation are required or completed (whichever is earlier), you must meet the applicable emission limits specified in the four tables of this section:

(1) For Class I units, see tables 2 and 3 of this subpart.

(2) For Class II units, see table 4 of this subpart.

(3) For carbon monoxide emission limits for both classes of units, see table 5 of this subpart.

(b) If your Class I municipal waste combustion unit began construction, reconstruction, or modification after June 26, 1987, then you must comply with the dioxins/furans and mercury emission limits specified in table 2 of this subpart as applicable by the later of the following two dates:

(1) One year after the effective date of this subpart.

(2) One year after the issuance of a revised construction or operating permit, if a permit modification is required. Final compliance with the dioxins/furans limits must be achieved no later than November 6, 2005, even if the date one year after the issuance of a revised construction or operating permit is later than November 6, 2005.

§ 62.15165 What happens to the emission limits during periods of startup, shutdown, and malfunction?

(a) The emission limits of this subpart apply at all times except during periods of municipal waste combustion unit startup, shutdown, or malfunction.

(b) Each startup, shutdown, or malfunction must not last for longer than 3 hours.

(c) A maximum of 3 hours of test data can be dismissed from compliance calculations during periods of startup, shutdown, or malfunction.

(d) During startup, shutdown, or malfunction periods longer than 3 hours, emissions data cannot be discarded from compliance calculations and all provisions under § 60.11(d) of subpart A of 40 CFR part 60 apply.

Continuous Emission Monitoring

§ 62.15170 What types of continuous emission monitoring must I perform?

To continuously monitor emissions, you must perform four tasks:

(a) Install continuous emission monitoring systems for certain gaseous pollutants.

(b) Make sure your continuous emission monitoring systems are operating correctly.

(c) Make sure you obtain the minimum amount of monitoring data.

(d) Install a continuous opacity monitoring system.

§ 62.15175 What continuous emission monitoring systems must I install for gaseous pollutants?

(a) You must install, calibrate, maintain, and operate continuous emission monitoring systems for oxygen (or carbon dioxide), sulfur dioxide, and carbon monoxide. If you operate a Class I municipal waste combustion unit, also install, calibrate, maintain, and operate a continuous emission monitoring system for nitrogen oxides. Install the continuous emission monitoring system for sulfur dioxide, nitrogen oxides, and oxygen (or carbon dioxide) at the outlet of the air pollution control device.

(b) You must install, evaluate, and operate each continuous emission monitoring system according to the "Monitoring Requirements" in § 60.13 of subpart A of 40 CFR part 60.

(c) You must monitor the oxygen (or carbon dioxide) concentration at each location where you monitor sulfur dioxide and carbon monoxide. Additionally, if you operate a Class I municipal waste combustion unit, you must also monitor the oxygen (or carbon dioxide) concentration at the location where you monitor nitrogen oxides.

(d) You may choose to monitor carbon dioxide instead of oxygen as a diluent gas. If you choose to monitor carbon dioxide, then an oxygen monitor is not required and you must follow the requirements in § 62.15200.

(e) If you choose to demonstrate compliance by monitoring the percent reduction of sulfur dioxide, you must also install a continuous emission monitoring system for sulfur dioxide and oxygen (or carbon dioxide) at the inlet of the air pollution control device.

(f) If you prefer to use an alternative sulfur dioxide monitoring method, such as parametric monitoring, or cannot monitor emissions at the inlet of the air pollution control device to determine percent reduction, you can apply to the Administrator for approval to use an alternative monitoring method under § 60.13(i) of subpart A of 40 CFR part 60.

§ 62.15180 How are the data from the continuous emission monitoring systems used?

You must use data from the continuous emission monitoring

systems for sulfur dioxide, nitrogen oxides, and carbon monoxide to demonstrate continuous compliance with the applicable emission limits specified in tables 2, 3, 4, and 5 of this subpart. To demonstrate compliance for dioxins/furans, cadmium, lead, mercury, particulate matter, opacity, hydrogen chloride, and fugitive ash, see § 62.15235.

§ 62.15185 How do I make sure my continuous emission monitoring systems are operating correctly?

(a) Conduct initial, daily, quarterly, and annual evaluations of your continuous emission monitoring systems that measure oxygen (or carbon dioxide), sulfur dioxide, nitrogen oxides (Class I municipal waste combustion units only), and carbon monoxide.

(b) Complete your initial evaluation of the continuous emission monitoring systems within 180 days after your final compliance date.

(c) For initial and annual evaluations, collect data concurrently (or within 30 to 60 minutes) using your oxygen (or carbon dioxide) continuous emission monitoring system, your sulfur dioxide, nitrogen oxides, or carbon monoxide continuous emission monitoring systems, as appropriate, and the appropriate test methods specified in table 6 of this subpart. Collect these data during each initial and annual evaluation of your continuous emission monitoring systems following the applicable performance specifications in appendix B of 40 CFR part 60. Table 7 of this subpart shows the performance specifications that apply to each continuous emission monitoring system.

(d) Follow the quality assurance procedures in Procedure 1 of appendix F of 40 CFR part 60 for each continuous emission monitoring system. These procedures include daily calibration drift and quarterly accuracy determinations.

§ 62.15190 Am I exempt from any 40 CFR part 60 appendix B or appendix F requirements to evaluate continuous emission monitoring systems?

Yes, the accuracy tests for your sulfur dioxide continuous emission monitoring system require you to also evaluate your oxygen (or carbon dioxide) continuous emission monitoring system. Therefore, your oxygen (or carbon dioxide) continuous emission monitoring system is exempt from two requirements:

(a) Section 2.3 of Performance Specification 3 in appendix B of 40 CFR part 60 (relative accuracy requirement).

(b) Section 5.1.1 of appendix F of 40 CFR part 60 (relative accuracy test audit).

§ 62.15195 What is my schedule for evaluating continuous emission monitoring systems?

(a) Conduct annual evaluations of your continuous emission monitoring systems no more than 13 months after the previous evaluation was conducted.

(b) Evaluate your continuous emission monitoring systems daily and quarterly as specified in appendix F of 40 CFR part 60.

§ 62.15200 What must I do if I choose to monitor carbon dioxide instead of oxygen as a diluent gas?

You must establish the relationship between oxygen and carbon dioxide during the initial evaluation of your continuous emission monitoring system. You may reestablish the relationship during annual evaluations. To establish the relationship use three procedures:

(a) Use EPA Reference Method 3A or 3B in Appendix A of 40 CFR part 60 to determine oxygen concentration at the location of your carbon dioxide monitor.

(b) Conduct at least three test runs for oxygen. Make sure each test run represents a 1-hour average and that sampling continues for at least 30 minutes in each hour.

(c) Use the fuel-factor equation in EPA Reference Method 3B to determine the relationship between oxygen and carbon dioxide.

§ 62.15205 What minimum amount of monitoring data must I collect with my continuous emission monitoring systems and is this requirement enforceable?

(a) Where continuous emission monitoring systems are required, obtain 1-hour arithmetic averages. Make sure the averages for sulfur dioxide, nitrogen oxides (Class I municipal waste combustion units only), and carbon monoxide are in parts per million by dry volume at 7 percent oxygen (or the equivalent carbon dioxide level). Use the 1-hour averages of oxygen (or carbon dioxide) data from your continuous emission monitoring system to determine the actual oxygen (or carbon dioxide) level and to calculate emissions at 7 percent oxygen (or the equivalent carbon dioxide level).

(b) Obtain at least two data points per hour in order to calculate a valid 1-hour arithmetic average. Section 60.13(e)(2) of subpart A of 40 CFR part 60 requires your continuous emission monitoring systems to complete at least one cycle of operation (sampling, analyzing, and data recording) for each 15-minute period.

(c) Obtain valid 1-hour averages for 75 percent of the operating hours per day for 90 percent of the operating days per calendar quarter. An operating day is any day the unit combusts any municipal solid waste or refuse-derived fuel.

(d) If you do not obtain the minimum data required in paragraphs (a) through (c) of this section, you are in violation of this data collection requirement regardless of the emission level monitored, and you must notify the Administrator according to § 62.15340(e).

(e) If you do not obtain the minimum data required in paragraphs (a) through (c) of this section, you must still use all valid data from the continuous emission monitoring systems in calculating emission concentrations and percent reductions in accordance with § 62.15210.

§ 62.15210 How do I convert my 1-hour arithmetic averages into appropriate averaging times and units?

(a) Use the equation in § 62.15390(a) to calculate emissions at 7 percent oxygen.

(b) Use EPA Reference Method 19 in Appendix A of 40 CFR part 60, section 4.3, to calculate the daily geometric average concentrations of sulfur dioxide emissions. If you are monitoring the percent reduction of sulfur dioxide, use EPA Reference Method 19, section 5.4, to determine the daily geometric average percent reduction of potential sulfur dioxide emissions.

(c) If you operate a Class I municipal waste combustion unit, use EPA Reference Method 19, section 4.1, to calculate the daily arithmetic average for concentrations of nitrogen oxides.

(d) Use EPA Reference Method 19, section 4.1, to calculate the 4-hour or 24-hour daily block averages (as applicable) for concentrations of carbon monoxide.

§ 62.15215 What is required for my continuous opacity monitoring system and how are the data used?

(a) Install, calibrate, maintain, and operate a continuous opacity monitoring system.

(b) Install, evaluate, and operate each continuous opacity monitoring system according to § 60.13 of subpart A 40 CFR part 60.

(c) Complete an initial evaluation of your continuous opacity monitoring system according to Performance Specification 1 in appendix B of 40 CFR part 60. Complete this evaluation by 180 days after your final compliance date.

(d) Complete each annual evaluation of your continuous opacity monitoring system no more than 13 months after the previous evaluation.

(e) Use tests conducted according to EPA Reference Method 9, as specified in § 62.15245, to determine compliance

with the applicable opacity limit in tables 2 or 4 of this subpart. The data obtained from your continuous opacity monitoring system are not used to determine compliance with the opacity limit.

§ 62.15220 What additional requirements must I meet for the operation of my continuous emission monitoring systems and continuous opacity monitoring system?

Use the required span values and applicable performance specifications in table 8 of this subpart.

§ 62.15225 What must I do if my continuous emission monitoring system is temporarily unavailable to meet the data collection requirements?

Refer to table 8 of this subpart. It shows alternate methods for collecting data when these systems malfunction or when repairs, calibration checks, or zero and span checks keep you from collecting the minimum amount of data.

Stack Testing

§ 62.15230 What types of stack tests must I conduct?

Conduct initial and annual stack tests to measure the emission levels of dioxins/furans, cadmium, lead, mercury, particulate matter, opacity, hydrogen chloride, and fugitive ash.

§ 62.15235 How are the stack test data used?

You must use results of stack tests for dioxins/furans, cadmium, lead, mercury, particulate matter, opacity, hydrogen chloride, and fugitive ash to demonstrate compliance with the applicable emission limits in tables 2 and 4 of this subpart. To demonstrate compliance for carbon monoxide, nitrogen oxides, and sulfur dioxide, see § 62.15180.

§ 62.15240 What schedule must I follow for the stack testing?

(a) Conduct initial stack tests for the pollutants listed in § 62.15230 by 180 days after your final compliance date.

(b) Conduct annual stack tests for these pollutants after the initial stack test. Conduct each annual stack test no later than 13 months after the previous stack test.

§ 62.15245 What test methods must I use to stack test?

(a) Follow table 8 of this subpart to establish the sampling location and to determine pollutant concentrations, number of traverse points, individual test methods, and other specific testing requirements for the different pollutants.

(b) Make sure that stack tests for all these pollutants consist of at least three test runs, as specified in § 60.8 (Performance Tests) of subpart A of 40 CFR part 60. Use the average of the pollutant emission concentrations from the three test runs to determine compliance with the applicable emission limits in tables 2 and 4 of this subpart.

(c) Obtain an oxygen (or carbon dioxide) measurement at the same time as your pollutant measurements to determine diluent gas levels, as specified in § 62.15175.

(d) Use the equations in § 62.15390(a) to calculate emission levels at 7 percent oxygen (or an equivalent carbon dioxide basis), the percent reduction in potential hydrogen chloride emissions, and the reduction efficiency for mercury emissions. See the individual test methods in table 6 of this subpart for other required equations.

(e) You can apply to the Administrator for approval under § 60.8(b) of subpart A of 40 CFR part 60 to

(1) Use a reference method with minor changes in methodology;

(2) Use an equivalent method;

(3) Use an alternative method the results of which the Administrator has determined are adequate for demonstrating compliance;

(4) Waive the requirement for a performance test because you have demonstrated by other means that you are in compliance; or

(5) Use a shorter sampling time or smaller sampling volume.

§ 62.15250 May I conduct stack testing less often?

(a) You may test less often if you own or operate a Class II municipal waste combustion unit and if all stack tests for a given pollutant over 3 consecutive years show you comply with the emission limit. In this case, you are not required to conduct a stack test for that pollutant for the next 2 years. However, you must conduct another stack test within 36 months of the anniversary date of the third consecutive stack test that shows you comply with the emission limit. Thereafter, you must perform stack tests every third year but no later than 36 months following the previous stack tests. If a stack test shows noncompliance with an emission limit, you must conduct annual stack tests for that pollutant until all stack tests over 3 consecutive years show compliance with the emission limit for that pollutant. This provision applies to all pollutants subject to stack testing requirements: dioxins/furans, cadmium, lead, mercury, particulate matter, opacity, hydrogen chloride, and fugitive ash.

(b) You can test less often for dioxins/furans emissions if you own or operate a municipal waste combustion plant that meets two conditions. First, you have multiple municipal waste combustion units onsite that are subject to this subpart. Second, all these municipal waste combustion units have demonstrated levels of dioxins/furans emissions less than or equal to 15 nanograms per dry standard cubic meter (total mass) for Class I units, or 30 nanograms per dry standard cubic meter (total mass) for Class II units, for 2 consecutive years. In this case, you may choose to conduct annual stack tests on only one municipal waste combustion unit per year at your plant. This provision only applies to stack testing for dioxins/furans emissions.

(1) Conduct the stack test no more than 13 months following a stack test on any municipal waste combustion unit subject to this subpart at your plant. Each year, test a different municipal waste combustion unit subject to this subpart and test all municipal waste combustion units subject to this subpart in a sequence that you determine. Once you determine a testing sequence, it must not be changed without approval by the Administrator.

(2) If each annual stack test shows levels of dioxins/furans emissions less than or equal to 15 nanograms per dry standard cubic meter (total mass) for Class I units, or 30 nanograms per dry standard cubic meter (total mass) for Class II units, you may continue stack tests on only one municipal waste combustion unit subject to this subpart per year.

(3) If any annual stack test indicates levels of dioxins/furans emissions greater than 15 nanograms per dry standard cubic meter (total mass) for Class I units, or 30 nanograms per dry standard cubic meter (total mass) for Class II units, conduct subsequent annual stack tests on all municipal waste combustion units subject to this subpart at your plant. You may return to testing one municipal waste combustion unit subject to this subpart per year if you can demonstrate dioxins/furans emission levels less than or equal to 15 nanograms per dry standard cubic meter (total mass) for Class I units, or 30 nanograms per dry standard cubic meter (total mass) for Class II units, for all municipal waste combustion units at your plant subject to this subpart for 2 consecutive years.

§ 62.15255 May I deviate from the 13-month testing schedule if unforeseen circumstances arise?

You may not deviate from the 13-month testing schedules specified in

§§ 62.15240(b) and 62.15250(b)(1) unless you apply to the Administrator for an alternative schedule, and the Administrator approves your request for alternate scheduling prior to the date on which you would otherwise have been required to conduct the next stack test.

Other Monitoring Requirements

§ 62.15260 What other requirements must I meet for continuous monitoring?

You must also monitor three operating parameters:

(a) Load level of each municipal waste combustion unit.

(b) Temperature of flue gases at the inlet of your particulate matter air pollution control device.

(c) Carbon feed rate if activated carbon is used to control dioxins/furans or mercury emissions.

§ 62.15265 How do I monitor the load of my municipal waste combustion unit?

(a) If your municipal waste combustion unit generates steam, you must install, calibrate, maintain, and operate a steam flowmeter or a feed water flowmeter and meet five requirements:

(1) Continuously measure and record the measurements of steam (or feed water) in kilograms per hour (or pounds per hour).

(2) Calculate your steam (or feed water) flow in 4-hour block averages.

(3) Calculate the steam (or feed water) flow rate using the method in "American Society of Mechanical Engineers (ASME PTC 4.1—1964): Test Code for Steam Generating Units, Power Test Code 4.1–1964 (Reaffirmed 1991)," section 4. The Director of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may obtain a copy from the American Society of Mechanical Engineers, Service Center, 22 Law Drive, Post Office Box 2900, Fairfield, NJ 07007. You may inspect a copy at the Office of Air Quality Planning and Standards Air Docket, EPA, 109 T.W. Alexander Drive, Room C521C, RTP, NC 27709 or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

(4) Design, construct, install, calibrate, and use nozzles or orifices for flow rate measurements, using the recommendations in "American Society of Mechanical Engineers Interim Supplement 19.5 on Instruments and Apparatus: Application, Part II of Fluid Meters", 6th Edition (1971), chapter 4. The Director of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may obtain a copy from the American Society of Mechanical Engineers, Service Center, 22 Law Drive, Post Office Box 2900, Fairfield, NJ 07007. You may inspect a copy at the Office of Air Quality Planning and Standards Air Docket, EPA, 109 T.W. Alexander Drive, Room C521C, RTP, NC 27709 or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

(5) Before each dioxins/furans stack test, or at least once a year, calibrate all signal conversion elements associated with steam (or feed water) flow measurements according to the manufacturer instructions.

(b) If your municipal waste combustion unit does not generate steam, or, if your municipal waste combustion units have shared steam systems and steam load cannot be estimated per unit, you must determine, to the satisfaction of the Administrator, one or more operating parameters that can be used to continuously estimate load level (for example, the feed rate of municipal solid waste or refuse-derived fuel). You must continuously monitor the selected parameters.

§ 62.15270 How do I monitor the temperature of flue gases at the inlet of my particulate matter control device?

You must install, calibrate, maintain, and operate a device to continuously measure the temperature of the flue gas stream at the inlet of each particulate matter control device.

§ 62.15275 How do I monitor the injection rate of activated carbon?

If your municipal waste combustion unit uses activated carbon to control dioxins/furans or mercury emissions, you must meet three requirements:

(a) Select a carbon injection system operating parameter that can be used to calculate carbon feed rate (for example, screw feeder speed).

(b) During each dioxins/furans and mercury stack test, determine the average carbon feed rate in kilograms (or pounds) per hour. Also, determine the average operating parameter level that correlates to the carbon feed rate. Establish a relationship between the operating parameter and the carbon feed rate in order to calculate the carbon feed rate based on the operating parameter level.

(c) Continuously monitor the selected operating parameter during all periods when the municipal waste combustion unit is operating and combusting waste and calculate the 8-hour block average carbon feed rate in kilograms (or pounds) per hour, based on the selected operating parameter. When calculating the 8-hour block average, do two things:

(1) Exclude hours when the municipal waste combustion unit is not operating.

(2) Include hours when the municipal waste combustion unit is operating but the carbon feed system is not working correctly.

§ 62.15280 What minimum amount of monitoring data must I collect with my continuous parameter monitoring systems and is this requirement enforceable?

(a) Where continuous parameter monitoring systems are used, obtain 1-hour arithmetic averages for three parameters:

(1) Load level of the municipal waste combustion unit.

(2) Temperature of the flue gases at the inlet of your particulate matter control device.

(3) Carbon feed rate if activated carbon is used to control dioxins/furans or mercury emissions.

(b) Obtain at least two data points per hour in order to calculate a valid 1-hour arithmetic average.

(c) Obtain valid 1-hour averages for at least 75 percent of the operating hours per day for 90 percent of the operating days per calendar quarter. An operating day is any day the unit combusts any municipal solid waste or refuse-derived fuel.

(d) If you do not obtain the minimum data required in paragraphs (a) through (c) of this section, you are in violation of this data collection requirement and you must notify the Administrator according to § 62.15340(e).

Recordkeeping

§ 62.15285 What records must I keep?

You must keep four types of records:

(a) Operator training and certification.

(b) Stack tests.

(c) Continuously monitored pollutants and parameters.

(d) Carbon feed rate.

§ 62.15290 Where must I keep my records and for how long?

(a) Keep all records onsite in paper copy or electronic format unless the Administrator approves another format.

(b) Keep all records on each municipal waste combustion unit for at least 5 years.

(c) Make all records available for submittal to the Administrator, or for onsite review by an inspector.

§ 62.15295 What records must I keep for operator training and certification?

You must keep records of six items:

(a) *Records of provisional certifications.* Include three items:

(1) For your municipal waste combustion plant, names of the chief facility operator, shift supervisors, and

control room operators who are provisionally certified by the American Society of Mechanical Engineers.

(2) Dates of the initial provisional certifications.

(3) Documentation showing current provisional certifications.

(b) *Records of full certifications.* Include three items:

(1) For your municipal waste combustion plant, names of the chief facility operator, shift supervisors, and control room operators who are fully certified by the American Society of Mechanical Engineers or an equivalent State-approved certification program.

(2) Dates of initial and renewal full certifications.

(3) Documentation showing current full certifications.

(c) *Records showing completion of the operator training course.* Include three items:

(1) For your municipal waste combustion plant, names of the chief facility operator, shift supervisors, and control room operators who have completed the EPA or State municipal waste combustion operator training course.

(2) Dates of completion of the operator training course.

(3) Documentation showing completion of operator training course.

(d) *Records of reviews for plant-specific operating manuals.* Include three items:

(1) Names of persons who have reviewed the operating manual.

(2) Date of the initial review.

(3) Dates of subsequent annual reviews.

(e) *Records of when a certified operator is temporarily offsite.* Include two main items:

(1) If the certified chief facility operator and certified shift supervisor are offsite for more than 12 hours but for 2 weeks or less and no other certified operator is onsite, record the dates that the certified chief facility operator and certified shift supervisor were offsite.

(2) When all certified chief facility operators and certified shift supervisors are offsite for more than 2 weeks and no other certified operator is onsite, keep records of four items:

(i) Your notice that all certified persons are offsite.

(ii) The conditions that cause these people to be offsite.

(iii) The corrective actions you are taking to ensure a certified chief facility operator or certified shift supervisor is onsite.

(iv) Copies of the written reports submitted every 4 weeks that summarize the actions taken to ensure that a certified chief facility operator or certified shift supervisor will be onsite.

(f) *Records of calendar dates.* Include the calendar date on each record.

§ 62.15300 What records must I keep for stack tests?

For stack tests required under § 62.15230, you must keep records of four items:

(a) The results of the stack tests for eight pollutants or parameters recorded in the appropriate units of measure specified in tables 2 or 4 of this subpart:

(1) Dioxins/furans.

(2) Cadmium.

(3) Lead.

(4) Mercury.

(5) Opacity.

(6) Particulate matter.

(7) Hydrogen chloride.

(8) Fugitive ash.

(b) Test reports including supporting calculations that document the results of all stack tests.

(c) The maximum demonstrated load of your municipal waste combustion units and maximum temperature at the inlet of your particulate matter control device during all stack tests for dioxins/furans emissions.

(d) The calendar date of each record.

§ 62.15305 What records must I keep for continuously monitored pollutants or parameters?

You must keep records of eight items.

(a) *Records of monitoring data.* Document six parameters measured using continuous monitoring systems:

(1) All 6-minute average levels of opacity.

(2) All 1-hour average concentrations of sulfur dioxide emissions.

(3) For Class I municipal waste combustion units only, all 1-hour average concentrations of nitrogen oxides emissions.

(4) All 1-hour average concentrations of carbon monoxide emissions.

(5) All 1-hour average load levels of your municipal waste combustion unit.

(6) All 1-hour average flue gas temperatures at the inlet of the particulate matter control device.

(b) *Records of average concentrations and percent reductions.* Document five parameters:

(1) All 24-hour daily block geometric average concentrations of sulfur dioxide emissions or average percent reductions of sulfur dioxide emissions.

(2) For Class I municipal waste combustion units only, all 24-hour daily arithmetic average concentrations of nitrogen oxides emissions.

(3) All 4-hour block or 24-hour daily block arithmetic average concentrations of carbon monoxide emissions.

(4) All 4-hour block arithmetic average load levels of your municipal waste combustion unit.

(5) All 4-hour block arithmetic average flue gas temperatures at the inlet of the particulate matter control device.

(c) *Records of exceedances.* Document three items:

(1) Calendar dates whenever any of the five pollutants or parameter levels recorded in paragraph (b) of this section or the opacity level recorded in paragraph (a)(1) of this section did not meet the emission limits or operating levels specified in this subpart.

(2) Reasons you exceeded the applicable emission limits or operating levels.

(3) Corrective actions you took, or are taking, to meet the emission limits or operating levels.

(d) *Records of minimum data.* Document three items:

(1) Calendar dates for which you did not collect the minimum amount of data required under §§ 62.15205 and 62.15280. Record these dates for five types of pollutants and parameters:

(i) Sulfur dioxide emissions.

(ii) For Class I municipal waste combustion units only, nitrogen oxides emissions.

(iii) Carbon monoxide emissions.

(iv) Load levels of your municipal waste combustion unit.

(v) Temperatures of the flue gases at the inlet of the particulate matter control device.

(2) Reasons you did not collect the minimum data.

(3) Corrective actions you took or are taking to obtain the required amount of data.

(e) *Records of exclusions.* Document each time you have excluded data from your calculation of averages for any of the following five pollutants or parameters and the reasons the data were excluded:

(1) Sulfur dioxide emissions.

(2) For Class I municipal waste combustion units only, nitrogen oxides emissions.

(3) Carbon monoxide emissions.

(4) Load levels of your municipal waste combustion unit.

(5) Temperatures of the flue gases at the inlet of the particulate matter control device.

(f) *Records of drift and accuracy.* Document the results of your daily drift tests and quarterly accuracy determinations according to Procedure 1 of appendix F of 40 CFR part 60. Keep these records for the sulfur dioxide, nitrogen oxides (Class I municipal waste combustion units only), and carbon monoxide continuous emissions monitoring systems.

(g) *Records of the relationship between oxygen and carbon dioxide.* If

you choose to monitor carbon dioxide instead of oxygen as a diluent gas, document the relationship between oxygen and carbon dioxide, as specified in § 62.15200.

(h) *Records of calendar dates.* Include the calendar date on each record.

§ 62.15310 What records must I keep for municipal waste combustion units that use activated carbon?

For municipal waste combustion units that use activated carbon to control dioxins/furans or mercury emissions, you must keep records of five items:

(a) *Records of average carbon feed rate.* Document five items:

(1) Average carbon feed rate (in kilograms or pounds per hour) during all stack tests for dioxins/furans and mercury emissions. Include supporting calculations in the records.

(2) For the operating parameter chosen to monitor carbon feed rate, average operating level during all stack tests for dioxins/furans and mercury emissions. Include supporting data that document the relationship between the operating parameter and the carbon feed rate.

(3) All 8-hour block average carbon feed rates in kilograms (pounds) per hour calculated from the monitored operating parameter.

(4) Total carbon purchased and delivered to the municipal waste combustion plant for each calendar quarter. If you choose to evaluate total carbon purchased and delivered on a municipal waste combustion unit basis, record the total carbon purchased and delivered for each individual municipal waste combustion unit at your plant. Include supporting documentation.

(5) Required quarterly usage of carbon for the municipal waste combustion plant, calculated using the appropriate equation in § 62.15390(f). If you choose to evaluate required quarterly usage for carbon on a municipal waste combustion unit basis, record the required quarterly usage for each municipal waste combustion unit at your plant. Include supporting calculations.

(b) *Records of low carbon feed rates.* Document three items:

(1) The calendar dates when the average carbon feed rate over an 8-hour block was less than the average carbon feed rates determined during the most recent stack test for dioxins/furans or mercury emissions (whichever has a higher feed rate).

(2) Reasons for the low carbon feed rates.

(3) Corrective actions you took or are taking to meet the 8-hour average carbon feed rate requirement.

(c) *Records of minimum carbon feed rate data.* Document three items:

(1) Calendar dates for which you did not collect the minimum amount of carbon feed rate data required under § 62.15280.

(2) Reasons you did not collect the minimum data.

(3) Corrective actions you took or are taking to get the required amount of data.

(d) *Records of exclusions.* Document each time you have excluded data from your calculation of average carbon feed rates and the reasons the data were excluded.

(e) *Records of calendar dates.* Include the calendar date on each record.

Reporting

§ 62.15315 What reports must I submit and in what form?

(a) Submit an initial report and annual reports, plus semiannual reports for any emission or parameter level that does not meet the limits specified in this subpart.

(b) Submit all reports on paper, postmarked on or before the submittal dates in §§ 62.15325, 62.15335, and 62.15350. If the Administrator agrees, you may submit electronic reports.

(c) Keep a copy of all reports required by §§ 62.15330, 62.15340, and 62.15355 onsite for 5 years.

§ 62.15320 What are the appropriate units of measurement for reporting my data?

See tables 2, 3, 4, and 5 of this subpart for appropriate units of measurement.

§ 62.15325 When must I submit the initial report?

As specified in § 60.7(c) of subpart A of 40 CFR part 60, submit your initial report within 180 days after your final compliance date.

§ 62.15330 What must I include in the initial report?

You must include seven items:

(a) The emission levels measured on the date of the initial evaluation of your continuous emission monitoring systems for all of the following five pollutants or parameters as recorded in accordance with § 62.15305(b).

(1) The 24-hour daily geometric average concentration of sulfur dioxide emissions or the 24-hour daily geometric percent reduction of sulfur dioxide emissions.

(2) For Class I municipal waste combustion units only, the 24-hour daily arithmetic average concentration of nitrogen oxides emissions.

(3) The 4-hour block or 24-hour daily arithmetic average concentration of carbon monoxide emissions.

(4) The 4-hour block arithmetic average load level of your municipal waste combustion unit.

(5) The 4-hour block arithmetic average flue gas temperature at the inlet of the particulate matter control device.

(b) The results of the initial stack tests for eight pollutants or parameters (use appropriate units as specified in tables 2 or 4 of this subpart):

(1) Dioxins/furans.

(2) Cadmium.

(3) Lead.

(4) Mercury.

(5) Opacity.

(6) Particulate matter.

(7) Hydrogen chloride.

(8) Fugitive ash.

(c) The test report that documents the initial stack tests including supporting calculations.

(d) The initial performance evaluation of your continuous emissions monitoring systems. Use the applicable performance specifications in appendix B of 40 CFR part 60 in conducting the evaluation.

(e) The maximum demonstrated load of your municipal waste combustion unit and the maximum demonstrated temperature of the flue gases at the inlet of the particulate matter control device. Use values established during your initial stack test for dioxins/furans emissions and include supporting calculations.

(f) If your municipal waste combustion unit uses activated carbon to control dioxins/furans or mercury emissions, the average carbon feed rates that you recorded during the initial stack tests for dioxins/furans and mercury emissions. Include supporting calculations as specified in § 62.15310(a)(1) and (2).

(g) If you choose to monitor carbon dioxide instead of oxygen as a diluent gas, documentation of the relationship between oxygen and carbon dioxide, as specified in § 62.15200.

§ 62.15335 When must I submit the annual report?

Submit the annual report no later than February 1 of each year that follows the calendar year in which you collected the data. (As with all other requirements in this subpart, the requirement to submit an annual report does not modify or replace the operating permits requirements of 40 CFR parts 70 and 71.)

§ 62.15340 What must I include in the annual report?

Summarize data collected for all pollutants and parameters regulated under this subpart. Your summary must include 12 items:

(a) The results of the annual stack test, using appropriate units, for eight pollutants, as recorded under § 62.15300(a):
(1) Dioxins/furans.
(2) Cadmium.
(3) Lead.
(4) Mercury.
(5) Opacity.
(6) Particulate matter.
(7) Hydrogen chloride.
(8) Fugitive ash.
(b) A list of the highest average emission levels recorded, in the appropriate units. List these values for five pollutants or parameters:
(1) Sulfur dioxide emissions.
(2) For Class I municipal waste combustion units only, nitrogen oxides emissions.
(3) Carbon monoxide emissions.
(4) Load level of the municipal waste combustion unit.
(5) Temperature of the flue gases at the inlet of the particulate matter air pollution control device (4-hour block average).
(c) The highest 6-minute opacity level measured. Base this value on all 6-minute average opacity levels recorded by your continuous opacity monitoring system (§ 62.15305(a)(1)).
(d) For municipal waste combustion units that use activated carbon for controlling dioxins/furans or mercury emissions, include four records:
(1) The average carbon feed rates recorded during the most recent dioxins/furans and mercury stack tests.
(2) The lowest 8-hour block average carbon feed rate recorded during the year.
(3) The total carbon purchased and delivered to the municipal waste combustion plant for each calendar quarter. If you choose to evaluate total carbon purchased and delivered on a municipal waste combustion unit basis, record the total carbon purchased and delivered for each individual municipal waste combustion unit at your plant.
(4) The required quarterly carbon usage of your municipal waste combustion plant calculated using the appropriate equation in § 62.15390(f). If you choose to evaluate required quarterly usage for carbon on a municipal waste combustion unit basis, record the required quarterly usage for each municipal waste combustion unit at your plant.
(e) The total number of days that you did not obtain the minimum number of hours of data for six pollutants or parameters. Include the reasons you did not obtain the data and corrective actions that you have taken to obtain the data in the future. Include data on:
(1) Sulfur dioxide emissions.
(2) For Class I municipal waste combustion units only, nitrogen oxides emissions.
(3) Carbon monoxide emissions.
(4) Load level of the municipal waste combustion unit.
(5) Temperature of the flue gases at the inlet of the particulate matter air pollution control device.
(6) Carbon feed rate.
(f) The number of hours you have excluded data from the calculation of average levels (include the reasons for excluding it). Include data for six pollutants or parameters:
(1) Sulfur dioxide emissions.
(2) For Class I municipal waste combustion units only, nitrogen oxides emissions.
(3) Carbon monoxide emissions.
(4) Load level of the municipal waste combustion unit.
(5) Temperature of the flue gases at the inlet of the particulate matter air pollution control device.
(6) Carbon feed rate.
(g) A notice of your intent to begin a reduced stack testing schedule for dioxins/furans emissions during the following calendar year if you are eligible for alternative scheduling (§ 62.15250(a) or (b)).
(h) A notice of your intent to begin a reduced stack testing schedule for other pollutants during the following calendar year if you are eligible for alternative scheduling (§ 62.15250(a)).
(i) A summary of any emission or parameter level that did not meet the limits specified in this subpart.
(j) A summary of the data in paragraphs (a) through (d) of this section from the year preceding the reporting year. This summary gives the Administrator a summary of the performance of the municipal waste combustion unit over a 2-year period.
(k) If you choose to monitor carbon dioxide instead of oxygen as a diluent gas, documentation of the relationship between oxygen and carbon dioxide, as specified in § 62.15200.
(l) Documentation of periods when all certified chief facility operafors and certified shift supervisors are offsite for more than 12 hours.

§ 62.15345 What must I do if I am out of compliance with these standards?

You must submit a semiannual report on any recorded emission or parameter level that does not meet the requirements specified in this subpart.

§ 62.15350 If a semiannual report is required, when must I submit it?

(a) For data collected during the first half of a calendar year, submit your semiannual report by August 1 of that year.
(b) For data you collected during the second half of the calendar year, submit your semiannual report by February 1 of the following year.

§ 62.15355 What must I include in the semiannual out-of-compliance reports?

You must include three items in the semiannual report:
(a) For any of the following six pollutants or parameters that exceeded the limits specified in this subpart, include the calendar date they exceeded the limits, the averaged and recorded data for that date, the reasons for exceeding the limits, and your corrective actions:
(1) Concentration or percent reduction of sulfur dioxide emissions.
(2) For Class I municipal waste combustion units only, concentration of nitrogen oxides emissions.
(3) Concentration of carbon monoxide emissions.
(4) Load level of your municipal waste combustion unit.
(5) Temperature of the flue gases at the inlet of your particulate matter air pollution control device.
(6) Average 6-minute opacity level. The data obtained from your continuous opacity monitoring system are not used to determine compliance with the limit on opacity emissions.
(b) If the results of your annual stack tests (as recorded in § 62.15300(a)) show emissions above the limits specified in table 2 or 4 of this subpart as applicable for dioxins/furans, cadmium, lead, mercury, particulate matter, opacity, hydrogen chloride, and fugitive ash, include a copy of the test report that documents the emission levels and your corrective actions.
(c) For municipal waste combustion units that apply activated carbon to control dioxins/furans or mercury emissions, include two items:
(1) Documentation of all dates when the 8-hour block average carbon feed rate (calculated from the carbon injection system operating parameter) is less than the highest carbon feed rate established during the most recent mercury and dioxins/furans stack test (as specified in § 62.15310(a)(1)). Include four items:
(i) Eight-hour average carbon feed rate.
(ii) Reasons for these occurrences of low carbon feed rates.
(iii) The corrective actions you have taken to meet the carbon feed rate requirement.
(iv) The calendar date.
(2) Documentation of each quarter when total carbon purchased and delivered to the municipal waste combustion plant is less than the total

required quarterly usage of carbon. If you choose to evaluate total carbon purchased and delivered on a municipal waste combustion unit basis, record the total carbon purchased and delivered for each individual municipal waste combustion unit at your plant. Include five items:

(i) Amount of carbon purchased and delivered to the plant.

(ii) Required quarterly usage of carbon.

(iii) Reasons for not meeting the required quarterly usage of carbon.

(iv) The corrective actions you have taken to meet the required quarterly usage of carbon.

(v) The calendar date.

§ 62.15360 Can reporting dates be changed?

(a) If the Administrator agrees, you may change the semiannual or annual reporting dates.

(b) *See* § 60.19(c) in subpart A of 40 CFR part 60 for procedures to seek approval to change your reporting date.

Air Curtain Incinerators that Burn 100 Percent Yard Waste

§ 62.15365 What is an air curtain incinerator?

An air curtain incinerator operates by forcefully projecting a curtain of air across an open chamber or open pit in which combustion occurs. Incinerators of this type can be constructed above or below ground and with or without refractory walls and floor.

§ 62.15370 What is yard waste?

Yard waste is grass, grass clippings, bushes, shrubs, and clippings from bushes and shrubs. They come from residential, commercial/retail, institutional, or industrial sources as part of maintaining yards or other private or public lands. Yard waste does not include two items:

(a) Construction, renovation, and demolition wastes that are exempt from the definition of "municipal solid waste" in § 62.15410.

(b) Clean wood that is exempt from the definition of "municipal solid waste" in § 62.15410 of this subpart.

§ 62.15375 What are the emission limits for air curtain incinerators that burn 100 percent yard waste?

If your air curtain incinerator combusts 100 percent yard waste, you must meet only the emission limits in this section.

(a) Within 180 days after your final compliance date, you must meet two limits:

(1) The opacity limit is 10 percent (6-minute average) for air curtain incinerators that can combust at least 35 tons per day of yard waste and no more than 250 tons per day of yard waste.

(2) The opacity limit is 35 percent (6-minute average) during the startup period that is within the first 30 minutes of operation.

(b) Except during malfunctions, the requirements of this subpart apply at all times. Each malfunction must not exceed 3 hours.

§ 62.15380 How must I monitor opacity for air curtain incinerators that burn 100 percent yard waste?

(a) Use EPA Reference Method 9 in Appendix A of 40 CFR part 60 to determine compliance with the opacity limit.

(b) Conduct an initial test for opacity as specified in § 60.8 of subpart A of 40 CFR part 60.

(c) After the initial test for opacity, conduct annual tests no more than 13 calendar months following the date of your previous test.

§ 62.15385 What are the recordkeeping and reporting requirements for air curtain incinerators that burn 100 percent yard waste?

(a) Provide a notice of construction that includes four items:

(1) Your intent to construct the air curtain incinerator.

(2) Your planned initial startup date.

(3) Types of fuels you plan to combust in your air curtain incinerator.

(4) The capacity of your incinerator, including supporting capacity calculations, as specified in § 62.15390 (d) and (e).

(b) Keep records of results of all opacity tests onsite in either paper copy or electronic format unless the Administrator approves another format.

(c) Keep all records for each incinerator for at least 5 years.

(d) Make all records available for submittal to the Administrator or for onsite review by an inspector.

(e) Submit the results (each 6-minute average) of the opacity tests by February 1 of the year following the year of the opacity emission test.

(f) Submit reports as a paper copy on or before the applicable submittal date. If the Administrator agrees, you may submit reports on electronic media.

(g) If the Administrator agrees, you may change the annual reporting dates (*see* § 60.19(c) in subpart A of 40 CFR part 60).

(h) Keep a copy of all reports onsite for a period of 5 years.

Equations

§ 62.15390 What equations must I use?

(a) *Concentration correction to 7 percent oxygen.* Correct any pollutant concentration to 7 percent oxygen using equation 1 of this section:

$$C_{7\%} = C_{unc} * (13.9) * \left(1/\left(20.9 - CO_2\right)\right) \qquad \text{(Eq. 1)}$$

Where:

$C_{7\%}$ = concentration corrected to 7 percent oxygen.

C_{unc} = uncorrected pollutant concentration.

C_{O2} = concentration of oxygen (%).

(b) *Percent reduction in potential mercury emissions.* Calculate the percent reduction in potential mercury emissions ($\%P_{Hg}$) using equation 2 of this section:

$$\%P_{Hg} = \left(E_i - E_o\right) * \left(100/E_i\right) \qquad \text{(Eq. 2)}$$

Where:

$\%P_{Hg}$ = percent reduction of potential mercury emissions

E_i = mercury emission concentration as measured at the air pollution control device inlet, corrected to 7 percent oxygen, dry basis

E_o = mercury emission concentration as measured at the air pollution control device outlet, corrected to 7 percent oxygen, dry basis

(c) *Percent reduction in potential hydrogen chloride emissions.* Calculate the percent reduction in potential hydrogen chloride emissions ($\%P_{HCl}$) using equation 3 of this section:

$$\%P_{HCl} = (E_i - E_o) * (100 / E_i) \qquad \text{(Eq. 3)}$$

Where:

$\%P_{HCl}$ = percent reduction of the potential hydrogen chloride emissions

E_i = hydrogen chloride emission concentration as measured at the air pollution control device inlet, corrected to 7 percent oxygen, dry basis

E_o = hydrogen chloride emission concentration as measured at the air pollution control device outlet, corrected to 7 percent oxygen, dry basis

(d) *Capacity of a municipal waste combustion unit.* For a municipal waste combustion unit that can operate continuously for 24-hour periods, calculate the capacity of the municipal waste combustion unit based on 24 hours of operation at the maximum charge rate. To determine the maximum charge rate, use one of two methods:

(1) For municipal waste combustion units with a design based on heat input capacity, calculate the maximum charging rate based on this maximum heat input capacity and one of two heating values:

(i) If your municipal waste combustion unit combusts refuse-derived fuel, use a heating value of 12,800 kilojoules per kilogram (5,500 British thermal units per pound).

(ii) If your municipal waste combustion unit combusts municipal solid waste, use a heating value of 10,500 kilojoules per kilogram (4,500 British thermal units per pound).

(2) For municipal waste combustion units with a design not based on heat input capacity, use the maximum designed charging rate.

(e) *Capacity of a batch municipal waste combustion unit.* Calculate the capacity of a batch municipal waste combustion unit as the maximum design amount of municipal solid waste they can charge per batch multiplied by the maximum number of batches they can process in 24 hours. Calculate this maximum number of batches by dividing 24 by the number of hours needed to process one batch. Retain fractional batches in the calculation. For example, if one batch requires 16 hours, the municipal waste combustion unit can combust 24/16, or 1.5 batches, in 24 hours.

(f) *Quarterly carbon usage.* If you use activated carbon to comply with the dioxins/furans or mercury limits, calculate the required quarterly usage of carbon using equation 4 or 5 of this section for plant basis or unit basis:

(1) Plant basis.

$$C = \sum_{i=1}^{n} f_i * h_i \qquad \text{(Eq. 4)}$$

Where:

C = required quarterly carbon usage for the plant in kilograms (or pounds).

f_i = required carbon feed rate for the municipal waste combustion unit in kilograms (or pounds) per hour. This is the average carbon feed rate during the most recent mercury or dioxins/furans stack tests (whichever has a higher feed rate).

h_i = number of hours the municipal waste combustion unit was in operation during the calendar quarter (hours).

n = number of municipal waste combustion units, i, located at your plant.

(2) Unit basis.

$$C = f * h \qquad \text{(Eq. 5)}$$

Where:

C = required quarterly carbon usage for the unit in kilograms (or pounds).

f = required carbon feed rate for the municipal waste combustion unit in kilograms (or pounds) per hour. This is the average carbon feed rate during the most recent mercury or dioxins/furans stack tests (whichever has a higher feed rate).

h = number of hours the municipal waste combustion unit was in operation during the calendar quarter (hours).

Title V Requirements

§ 62.15395 Does this subpart require me to obtain an operating permit under title V of the Clean Air Act?

Yes. If you are subject to this subpart on the effective date of this subpart or any time thereafter, you are required to apply for and obtain a title V operating permit.

§ 62.15400 When must I submit a title V permit application for my existing small municipal waste combustion unit?

(a) You must submit a complete title V permit application within 12 months of when your source first becomes subject to a title V permitting program. *See* 40 CFR 70.3(a) and (b), 70.5(a)(1), 71.3(a) and (b), and 71.5(a)(1). As provided in section 503(c) of the Clean Air Act, permitting authorities may establish permit application deadlines earlier than the 12-month deadline.

(b) If your existing small MWC unit is not subject to an earlier permit application deadline, a complete title V permit application must be submitted not later than the date 36 months after promulgation of 40 CFR part 60, subpart BBBB (December 6, 2003), or by the effective date of the applicable State, tribal, or Federal operating permits program, whichever is later. For any existing small MWC unit not subject to an earlier application deadline, this final application deadline applies regardless of when this Federal plan is effective, or when the relevant State or Tribal section 111(d)/129 plan is approved by EPA and becomes effective. *See* sections 129(e), 503(c), 503(d), and 502(a) of the Clean Air Act.

(c) A "complete" title V permit application is one that has been determined or deemed complete by the relevant permitting authority under section 503(d) of the Clear Air Act and 40 CFR 70.5(a)(2) or 71.5(a)(2). You must submit a complete permit application by the relevant application deadline in order to operate after this date in compliance with Federal law. *See* sections 503(d) and 502(a); 40 CFR 70.7(b) and 71.7(b).

Delegation of Authority

§ 62.15405 What authorities are retained by the Administrator?

These authorities are retained by the EPA Administrator and not transferred to the State upon delegation of authority to the State to implement and enforce this subpart.

(a) Approval of alternative non-opacity emission standard;

(b) Approval of alternative opacity standard;

(c) Approval of major alternatives to test methods;

(d) Approval of major alternatives to monitoring;

(e) Waiver of recordkeeping; and

(f) Approval of exemption to operating practice requirements in § 62.15145(e)(5).

Definitions

§ 62.15410 What definitions must I know?

Terms used but not defined in this section are defined in the Clean Air Act and in subparts A and B of 40 CFR part 60.

Administrator means the Administrator of the U.S. Environmental Protection Agency or his/her authorized representative or the Administrator of a State Air Pollution Control Agency.

Air curtain incinerator means an incinerator that operates by forcefully

projecting a curtain of air across an open chamber or pit in which combustion occurs. Incinerators of this type can be constructed above or below ground and with or without refractory walls and floor.

Batch municipal waste combustion unit means a municipal waste combustion unit designed so it cannot combust municipal solid waste continuously 24 hours per day because the design does not allow waste to be fed to the unit or ash to be removed during combustion.

Calendar quarter means three consecutive months (nonoverlapping) beginning on: January 1, April 1, July 1, or October 1.

Calendar year means 365 consecutive days (or 366 consecutive days in leap years) starting on January 1 and ending on December 31.

Chief facility operator means the person in direct charge and control of the operation of a municipal waste combustion unit. This person is responsible for daily onsite supervision, technical direction, management, and overall performance of the municipal waste combustion unit.

Class I units mean small municipal waste combustion units subject to this subpart that are located at municipal waste combustion plants with an aggregate plant combustion capacity greater than 250 tons per day of municipal solid waste. See the definition of "municipal waste combustion plant capacity" for specification of which units at a plant site are included in the aggregate capacity calculation.

Class II units mean small municipal combustion units subject to this subpart that are located at municipal waste combustion plants with aggregate plant combustion capacity less than or equal to 250 tons per day of municipal solid waste. See the definition of "municipal waste combustion plant capacity" for specification of which units at a plant site are included in the aggregate capacity calculation.

Clean wood means untreated wood or untreated wood products including clean untreated lumber, tree stumps (whole or chipped), and tree limbs (whole or chipped). Clean wood does not include two items:

(1) "Yard waste", which is defined in this section.

(2) Construction, renovation, or demolition wastes (for example, railroad ties and telephone poles) that are exempt from the definition of municipal solid waste in this section.

Cofired combustion unit means a unit that combusts municipal solid waste with nonmunicipal solid waste fuel (for example, coal, industrial process waste). To be considered a cofired combustion unit, the unit must be subject to a federally enforceable permit that limits it to combusting a fuel feed stream which is 30 percent or less (by weight) municipal solid waste as measured each calendar quarter.

Continuous burning means the continuous, semicontinuous, or batch feeding of municipal solid waste to dispose of the waste, produce energy, or provide heat to the combustion system in preparation for waste disposal or energy production. Continuous burning does not mean the use of municipal solid waste solely to thermally protect the grate or hearth during the startup period when municipal solid waste is not fed to the grate or hearth.

Continuous emission monitoring system means a monitoring system that continuously measures the emissions of a pollutant from a municipal waste combustion unit.

Contract means a legally binding agreement or obligation that cannot be canceled or modified without substantial financial loss.

De-rate means to make a permanent physical change to the municipal waste combustor unit that reduces the maximum combustion capacity of the unit to less than or equal to 35 tons per day of municipal solid waste. A permit restriction or a change in the method of operation does not qualify as de-rating.

Dioxins/furans mean tetra- through octachlorinated dibenzo-p-dioxins and dibenzofurans.

Effective date of State plan approval means the effective date that the EPA approves the State plan. The **Federal Register** specifies this date in the notice that announces EPA's approval of the State plan.

Eight-hour block average means the average of all hourly emission concentrations or parameter levels when the municipal waste combustion unit operates and combusts municipal solid waste measured over any of three 8-hour periods of time:

(1) 12 midnight to 8 a.m.

(2) 8 a.m. to 4 p.m.

(3) 4 p.m. to 12 midnight.

EPA-approved State plan means a State plan that EPA has reviewed and approved based on the requirements in 40 CFR part 60 subpart B to implement and enforce 40 CFR part 60, subpart BBBB. An approved State plan becomes effective on the date specified in the notice published in the **Federal Register** announcing EPA's approval.

Federally enforceable means all limits and conditions the Administrator can enforce (including the requirements of 40 CFR parts 60, 61, and 63), requirements in a State's implementation plan, and any permit requirements established under 40 CFR 52.21 or under 40 CFR 51.18 and 40 CFR 51.24.

First calendar half means the period that starts on January 1 and ends on June 30 in any year.

Fluidized bed combustion unit means a unit where municipal waste is combusted in a fluidized bed of material. The fluidized bed material may remain in the primary combustion zone or may be carried out of the primary combustion zone and returned through a recirculation loop.

Four-hour block average or *4-hour block average* means the average of all hourly emission concentrations or parameter levels when the municipal waste combustion unit operates and combusts municipal solid waste measured over any of six 4-hour periods:

(1) 12 midnight to 4 a.m.

(2) 4 a.m. to 8 a.m.

(3) 8 a.m. to 12 noon.

(4) 12 noon to 4 p.m.

(5) 4 p.m. to 8 p.m.

(6) 8 p.m. to 12 midnight.

Mass burn refractory municipal waste combustion unit means a field-erected municipal waste combustion unit that combusts municipal solid waste in a refractory wall furnace. Unless otherwise specified, this includes municipal waste combustion units with a cylindrical rotary refractory wall furnace.

Mass burn rotary waterwall municipal waste combustion unit means a field-erected municipal waste combustion unit that combusts municipal solid waste in a cylindrical rotary waterwall furnace.

Mass burn waterwall municipal waste combustion unit means a field-erected municipal waste combustion unit that combusts municipal solid waste in a waterwall furnace.

Maximum demonstrated load of a municipal waste combustion unit means the highest 4-hour block arithmetic average municipal waste combustion unit load achieved during 4 consecutive hours in the course of the most recent dioxins/furans stack test that demonstrates compliance with the applicable emission limit for dioxins/furans specified in this subpart.

Maximum demonstrated temperature of the particulate matter control device means the highest 4-hour block arithmetic average flue gas temperature measured at the inlet of the particulate matter control device during 4 consecutive hours in the course of the most recent stack test for dioxins/furans

emissions that demonstrates compliance with the limits specified in this subpart.

Medical/infectious waste means any waste meeting the definition of medical/infectious waste contained in 40 CFR 60.51c of subpart Ec.

Mixed fuel-fired (pulverized coal/refuse-derived fuel) combustion unit means a combustion unit that combusts coal and refuse-derived fuel simultaneously, in which pulverized coal is introduced into an air stream that carries the coal to the combustion chamber of the unit where it is combusted in suspension. This includes both conventional pulverized coal and micropulverized coal.

Modification or *modified municipal waste combustion unit* means a municipal waste combustion unit you have changed later than June 6, 2001, and that meets one of two criteria:

(1) The cumulative cost of the changes over the life of the unit exceeds 50 percent of the original cost of building and installing the unit (not including the cost of land) updated to current costs.

(2) Any physical change in the municipal waste combustion unit or change in the method of operating it that increases the emission level of any air pollutant for which standards have been established under section 129 or section 111 of the Clean Air Act. Increases in the emission level of any air pollutant are determined when the municipal waste combustion unit operates at 100 percent of its physical load capability and are measured downstream of all air pollution control devices. Load restrictions based on permits or other nonphysical operational restrictions cannot be considered in this determination.

Modular excess-air municipal waste combustion unit means a municipal waste combustion unit that combusts municipal solid waste, is not field-erected, and has multiple combustion chambers, all of which are designed to operate at conditions with combustion air amounts in excess of theoretical air requirements.

Modular starved-air municipal waste combustion unit means a municipal waste combustion unit that combusts municipal solid waste, is not field-erected, and has multiple combustion chambers in which the primary combustion chamber is designed to operate at substoichiometric conditions.

Municipal solid waste or *municipal-type solid waste* means household, commercial/retail, or institutional waste. Household waste includes material discarded by residential dwellings, hotels, motels, and other similar permanent or temporary housing. Commercial/retail waste includes material discarded by stores, offices, restaurants, warehouses, nonmanufacturing activities at industrial facilities, and other similar establishments or facilities. Institutional waste includes materials discarded by schools, by hospitals (nonmedical), by nonmanufacturing activities at prisons and government facilities, and other similar establishments or facilities. Household, commercial/retail, and institutional waste does include yard waste and refuse-derived fuel. Household, commercial/retail, and institutional waste does not include used oil; sewage sludge; wood pallets; construction, renovation, and demolition wastes (which include railroad ties and telephone poles); clean wood; industrial process or manufacturing wastes; medical waste; or motor vehicles (including motor vehicle parts or vehicle fluff).

Municipal waste combustion plant means one or more municipal waste combustion units at the same location as specified under "Applicability of State Plans" (§ 62.15010(a)).

Municipal waste combustion plant capacity means the aggregate municipal waste combustion capacity of all municipal waste combustion units at the plant that are not subject to subparts Ea, Eb, or AAAA of 40 CFR part 60.

Municipal waste combustion unit means any setting or equipment that combusts solid, liquid, or gasified municipal solid waste including, but not limited to, field-erected combustion units (with or without heat recovery), modular combustion units (starved-air or excess-air), boilers (for example, steam generating units), furnaces (whether suspension-fired, grate-fired, mass-fired, air curtain incinerators, or fluidized bed-fired), and pyrolysis/combustion units. Two criteria further define these municipal waste combustion units:

(1) Municipal waste combustion units do not include pyrolysis or combustion units located at a plastics or rubber recycling unit as specified under § 62.15020(h) and (i). Municipal waste combustion units do not include cement kilns that combust municipal solid waste as specified under § 62.15020(j). Municipal waste combustion units also do not include internal combustion engines, gas turbines, or other combustion devices that combust landfill gases collected by landfill gas collection systems.

(2) The boundaries of a municipal waste combustion unit are defined as follows. The municipal waste combustion unit includes, but is not limited to, the municipal solid waste fuel feed system, grate system, flue gas system, bottom ash system, and the combustion unit water system. The municipal waste combustion unit does not include air pollution control equipment, the stack, water treatment equipment, or the turbine-generator set. The municipal waste combustion unit boundary starts at the municipal solid waste pit or hopper and extends through three areas:

(i) The combustion unit flue gas system, which ends immediately after the heat recovery equipment or, if there is no heat recovery equipment, immediately after the combustion chamber.

(ii) The combustion unit bottom ash system, which ends at the truck loading station or similar equipment that transfers the ash to final disposal. It includes all ash handling systems connected to the bottom ash handling system.

(iii) The combustion unit water system, which starts at the feed water pump and ends at the piping that exits the steam drum or superheater.

Particulate matter means total particulate matter emitted from municipal waste combustion units as measured by EPA Reference Method 5 in Appendix A of 40 CFR part 60 and the procedures specified in § 62.15245.

Plastics or rubber recycling unit means an integrated processing unit for which plastics, rubber, or rubber tires are the only feed materials (incidental contaminants may be in the feed materials). These materials are processed and marketed to become input feed stock for chemical plants or petroleum refineries. The following three criteria further define a plastics or rubber recycling unit:

(1) Each calendar quarter, the combined weight of the feed stock that a plastics or rubber recycling unit produces must be more than 70 percent of the combined weight of the plastics, rubber, and rubber tires that recycling unit processes.

(2) The plastics, rubber, or rubber tires fed to the recycling unit may originate from separating or diverting plastics, rubber, or rubber tires from municipal or industrial solid waste. These feed materials may include manufacturing scraps, trimmings, and off-specification plastics, rubber, and rubber tire discards.

(3) The plastics, rubber, and rubber tires fed to the recycling unit may contain incidental contaminants (for example, paper labels on plastic bottles or metal rings on plastic bottle caps).

Potential hydrogen chloride emissions means the level of emissions from a municipal waste combustion unit that

would occur from combusting municipal solid waste without emission controls for acid gases.

Potential mercury emissions means the level of emissions from a municipal waste combustion unit that would occur from combusting municipal solid waste without controls for mercury emissions.

Potential sulfur dioxide emissions means the level of emissions from a municipal waste combustion unit that would occur from combusting municipal solid waste without emission controls for acid gases.

Protectorate means American Samoa, the Commonwealth of Puerto Rico, the District of Columbia, Guam, the Northern Mariana Islands, and the Virgin Islands.

Pyrolysis/combustion unit means a unit that produces gases, liquids, or solids by heating municipal solid waste. The gases, liquids, or solids produced are combusted and the emissions vented to the atmosphere.

Reconstruction means rebuilding a municipal waste combustion unit and meeting two criteria:

(1) The reconstruction begins on or after June 6, 2001.

(2) The cumulative cost of the construction over the life of the unit exceeds 50 percent of the original cost of building and installing the municipal waste combustion unit (not including land) updated to current costs (current dollars). To determine what systems are within the boundary of the municipal waste combustion unit used to calculate these costs, see the definition of "municipal waste combustion unit" in this section.

Refractory unit or *refractory wall furnace* means a municipal waste combustion unit that has no energy recovery (such as through a waterwall) in the furnace of the municipal waste combustion unit.

Refuse-derived fuel means a type of municipal solid waste produced by processing municipal solid waste through shredding and size classification. This includes all classes of refuse-derived fuel including two fuels:

(1) Low-density fluff refuse-derived fuel through densified refuse-derived fuel.

(2) Pelletized refuse-derived fuel.

Same location means the same or contiguous properties under common ownership or control, including those separated only by a street, road, highway, or other public right-of-way. Common ownership or control includes properties that are owned, leased, or operated by the same entity, parent entity, subsidiary, subdivision, or any combination thereof. Entities may include a municipality, other governmental unit, or any quasi-governmental authority (for example, a public utility district or regional authority for waste disposal).

Second calendar half means the period that starts on July 1 and ends on December 31 in any year.

Shift supervisor means the person who is in direct charge and control of operating a municipal waste combustion unit and who is responsible for onsite supervision, technical direction, management, and overall performance of the municipal waste combustion unit during an assigned shift.

Spreader stoker, mixed fuel-fired (coal/refuse-derived fuel) combustion unit means a municipal waste combustion unit that combusts coal and refuse-derived fuel simultaneously, in which coal is introduced to the combustion zone by a mechanism that throws the fuel onto a grate from above. Combustion takes place both in suspension and on the grate.

Standard conditions when referring to units of measure mean a temperature of 20°C and a pressure of 101.3 kilopascals.

Startup period means the period when a municipal waste combustion unit begins the continuous combustion of municipal solid waste. It does not include any warmup period during which the municipal waste combustion unit combusts fossil fuel or other solid waste fuel but receives no municipal solid waste.

State means any of the 50 United States and the protectorates of the United States.

State plan means a plan submitted pursuant to section 111(d) and section 129(b)(2) of the Clean Air Act and 40 CFR part 60, subpart B, that implements and enforces 40 CFR part 60, subpart BBBB.

Stoker (refuse-derived fuel) combustion unit means a steam generating unit that combusts refuse-derived fuel in a semisuspension combusting mode, using air-fed distributors.

Total mass dioxins/furans or *total mass* means the total mass of tetra- through octachlorinated dibenzo-p-dioxins and dibenzofurans as determined using EPA Reference Method 23 in Appendix A of 40 CFR part 60 and the procedures specified in § 62.15245.

Tribal plan means a plan submitted by a tribal authority pursuant to 40 CFR parts 9, 35, 49, 50, and 81 that implements and enforces 40 CFR part 60 subpart BBBB.

Twenty-four hour daily average or *24-hour daily average* means either the arithmetic mean or geometric mean (as specified) of all hourly emission concentrations when the municipal waste combustion unit operates and combusts municipal solid waste measured during the 24 hours between 12:00 midnight and the following midnight.

Untreated lumber means wood or wood products that have been cut or shaped and include wet, air-dried, and kiln-dried wood products. Untreated lumber does not include wood products that have been painted, pigment-stained, or pressure-treated by compounds such as chromate copper arsenate, pentachlorophenol, and creosote.

Waterwall furnace means a municipal waste combustion unit that has energy (heat) recovery in the furnace (for example, radiant heat transfer section) of the combustion unit.

Yard waste means grass, grass clippings, bushes, shrubs, and clippings from bushes and shrubs. They come from residential, commercial/retail, institutional, or industrial sources as part of maintaining yards or other private or public lands. Yard waste does not include two items:

(1) Construction, renovation, and demolition wastes that are exempt from the definition of "municipal solid waste" in this section.

(2) Clean wood that is exempt from the definition of "municipal solid waste" in this section.

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Table 1 of Subpart JJJ — Generic Compliance Schedules and Increments of Progress

Affected units	Increment 1 (Submit final control plan)	Increment 2 (Award contracts)	Increment 3 (Begin onsite construction)	Increment 4 (Complete onsite construction)	Increment 5 (Final compliance)
1. Class I units[a,b]	August 6, 2003	April 6, 2004	October 6, 2004	October 6, 2005	November 6, 2005
2. Class II units [c]	September 6, 2003	Not applicable	Not applicable	Not applicable	May 6, 2005

[a] Class I units mean small municipal waste combustion units subject to this subpart that are located at municipal waste combustion plants with an aggregate plant combustion capacity greater than 250 tons per day of municipal solid waste. See §62.15410 for definitions.

[b] For Class I units that began construction, reconstruction, or modification after June 26, 1987, comply with the dioxins/furans and mercury limits by the later of two dates:

1. One year after the effective date of this subpart.
2. One year after the issuance of a revised construction or operation permit, if a permit modification is required. Final compliance with the dioxins/furans limits must be achieved no later than the Class I final compliance date, even if the date one year after the issuance of a revised construction or operation permit exceeds the Class I final compliance date.

[c] Class II units mean all small municipal combustion units subject to this subpart that are located at municipal waste combustion plants with aggregate plant combustion capacity less than or equal to 250 tons per day of municipal solid waste. See §62.15410 for definitions.

Table 2 of Subpart JJJ — Class I Emission Limits for Existing Small Municipal Waste Combustion Units[a]

For these pollutants	You must meet these emission limits[b]	Using these averaging times	And determine compliance by these methods
1. Organics			
Dioxins/furans (total mass basis)	30 nanograms per dry standard cubic meter for municipal waste combustion units that do not employ an electrostatic precipitator-based emission control system -or- 60 nanograms per dry standard cubic meter for municipal waste combustion units that employ an electrostatic precipitator-based emission control system	3-run average (minimum run duration is 4 hours)	Stack test
2. Metals			
Cadmium	0.040 milligrams per dry standard cubic meter	3-run average (run duration specified in test method)	Stack test
Lead	0.490 milligrams per dry standard cubic meter	3-run average (run duration specified in test method)	Stack test
Mercury	0.080 milligrams per dry standard cubic meter -or- 85 percent reduction of potential mercury emissions	3-run average (run duration specified in test method)	Stack test
Opacity	10 percent	Thirty 6-minute averages	Stack test
Particulate Matter	27 milligrams per dry standard cubic meter	3-run average (run duration specified in test method)	Stack test

a Class I units mean small municipal waste combustion units subject to this subpart that are located at municipal waste combustion plants with an aggregate plant combustion capacity greater than 250 tons per day of municipal solid waste. See §62.15410 for definitions.

b All emission limits (except for opacity) are measured at 7 percent oxygen.

Table 2 of Subpart JJJ — Class I Emission Limits For Existing Small Municipal Waste Combustion Units (Continued)

For these pollutants	You must meet these emission limits[b]	Using these averaging times	And determine compliance by these methods
3. Acid gases			
Hydrogen Chloride	31 parts per million by dry volume -or- 95 percent reduction of potential hydrogen chloride emissions	3-run average (minimum run duration is 1 hour)	Stack test
Sulfur Dioxide	31 parts per million by dry volume -or - 75 percent reduction of potential sulfur dioxide emissions	24-hour daily block geometric average concentration -or- percent reduction	Continuous emission monitoring system
4. Other			
Fugitive Ash	Visible emissions for no more than 5 percent of hourly observation period	Three 1-hour observation periods	Visible emission test

[a] Class I units mean small municipal waste combustion units subject to this subpart that are located at municipal waste combustion plants with an aggregate plant combustion capacity greater than 250 tons per day of municipal solid waste. See §62.15410 for definitions.

[b] All emission limits (except for opacity) are measured at 7 percent oxygen.

Table 3 of Subpart JJJ — Class I Nitrogen Oxides Emission Limits for Existing Small Municipal Waste Combustion Units[a,b,c]

Municipal Waste Combustion Technology	Limits for Class I Municipal Waste Combustion Units
1. Mass burn waterwall	200 parts per million by dry volume
2. Mass burn rotary waterwall	170 parts per million by dry volume
3. Refuse-derived fuel	250 parts per million by dry volume
4. Fluidized bed	220 parts per million by dry volume
5. Mass burn refractory	350 parts per million by dry volume
6. Modular excess air	190 parts per million by dry volume
7. Modular starved air	380 parts per million by dry volume

[a] Class I units mean small municipal waste combustion units subject to this subpart that are located at municipal waste combustion plants with an aggregate plant combustion capacity greater than 250 tons per day of municipal solid waste. See §62.15410 for definitions.

[b] Nitrogen oxides limits are corrected to 7 percent oxygen, dry basis.

[c] All limits are 24-hour daily block arithmetic average concentration. Compliance is determined for Class I units by continuous emission monitoring systems.

Table 4 of Subpart JJJ — Class II Emission Limits for Existing Small Municipal Waste Combustion Units[a]

For these pollutants		You must meet these emission limits[b]	Using these averaging times	And determine compliance by these methods
1. Organics				
	Dioxins/furans (total mass basis)	125 nanograms per dry standard cubic meter	3-run average (minimum run duration is 4 hours)	Stack test
2. Metals				
	Cadmium	0.10 milligrams per dry standard cubic meter	3-run average (run duration specified in test method)	Stack test
	Lead	1.6 milligrams per dry standard cubic meter	3-run average (run duration specified in test method)	Stack test
	Mercury	0.080 milligrams per dry standard cubic meter -or- 85 percent reduction of potential mercury emissions	3-run average (run duration specified in test method)	Stack test
	Opacity	10 percent	Thirty 6-minute averages	Stack test
	Particulate Matter	70 milligrams per dry standard cubic meter	3-run average (run duration specified in test method)	Stack test
3. Acid gases				
	Hydrogen Chloride	250 parts per million by volume -or- 50 percent reduction of potential hydrogen chloride emissions	3-run average (minimum run duration is 1 hour)	Stack test

[a] Class II units mean all small municipal combustion units subject to this subpart that are located at municipal waste combustion plants with aggregate plant combustion capacity less than or equal to 250 tons per day of municipal solid waste. See §62.15410 for definitions.

[b] All emission limits (except for opacity) measured at 7 percent oxygen.

Table 4 of Subpart JJJ — Class II Emission Limits for Existing Municipal Small Waste Combustion Units[a] (Continued)

For these pollutants		You must meet these emission limits[b]	Using these averaging times	And determine compliance by these methods
3. Acid gases				
	Nitrogen Oxides	500 parts per million by dry volume	See footnote c	See footnote c
	Sulfur Dioxide	77 parts per million by dry volume -or- 50 percent reduction of potential sulfur dioxides emissions	24-hour daily block geometric average concentration -or- percent reduction	Continuous emission monitoring system
4. Other				
	Fugitive Ash	Visible emissions for no more than 5 percent of hourly observation period	Three 1-hour observation periods	Visible emission test

[a] Class II units mean all small municipal combustion units subject to this subpart that are located at municipal waste combustion plants with aggregate plant combustion capacity less than or equal to 250 tons per day of municipal solid waste. See §62.15410 for definitions.

[b] All emission limits (except for opacity) are measured at 7 percent oxygen.

[c] No monitoring, testing, recordkeeping or reporting is required to demonstrate compliance with the nitrogen oxides limit for Class II units.

Table 5 of Subpart JJJ — Carbon Monoxide Emission Limits for Existing Small Municipal Waste Combustion Units

For these municipal waste combustion units	You must meet the carbon monoxide limits[a]	Using these averaging times[b]
1. Fluidized bed	100 parts per million by dry volume	4-hour
2. Fluidized bed, mixed fuel, (wood/refuse-derived fuel)	200 parts per million by dry volume	24-hour[c]
3. Mass burn rotary refractory	100 parts per million by dry volume	4-hour
4. Mass burn rotary waterwall	250 parts per million by dry volume	24-hour
5. Mass burn waterwall and refractory	100 parts per million by dry volume	4-hour
6. Mixed fuel-fired, (pulverized coal/refuse-derived fuel)	150 parts per million by dry volume	4-hour
7. Modular starved-air and excess air	50 parts per million by dry volume	4-hour
8. Spreader stoker, mixed fuel-fired (coal/refuse-derived fuel)	200 parts per million by dry volume	24-hour daily
9. Stoker, refuse-derived fuel	200 parts per million by dry volume	24-hour daily

[a] All emission limits (except for opacity) are measured at 7 percent oxygen. Compliance is determined by continuous emission monitoring systems.

[b] Block averages, arithmetic mean. See §62.15410 for definitions.

[c] 24-hour block average, geometric mean.

Table 6 of Subpart JJJ — Requirements for Validating Continuous Emission Monitoring Systems (CEMS)

For these continuous monitoring systems	Use these methods to validate pollutant concentration levels[a]	Use these methods to measure oxygen (or carbon dioxide)[a]
1. Nitrogen oxides (Class I units only)[b]	Method 7, 7A, 7B, 7C, 7D, or 7E	Method 3 or 3A
2. Sulfur dioxide	Method 6 or 6C	Method 3 or 3A
3. Carbon monoxide	Method 10, 10A, or 10B	Method 3 or 3A

[a] Methods are in Appendix A of 40 CFR part 60.

[b] Class I units mean small municipal waste combustion units subject to this subpart that are located at municipal waste combustion plants with an aggregate plant combustion capacity greater than 250 tons per day of municipal solid waste. See §62.15410 for definitions.

Table 7 of Subpart JJJ — Requirements for Continuous Emission Monitoring Systems (CEMS)[a]

For these pollutants	Use these span values for your CEMS	Use these performance specifications for your CEMS (from appendix B in 40 CFR part 60)	If needed to meet minimum data requirements, use these alternate methods to collect data
1. Opacity	100 percent opacity	P.S. 1	Method 9
2. Nitrogen oxides (Class I units only)	**Control device outlet:** 125 percent of the maximum expected hourly potential nitrogen oxides emissions of the municipal waste combustion unit	P.S. 2	Method 7E
3. Sulfur dioxide	**Inlet to control device:** 125 percent of the maximum expected hourly potential sulfur dioxide emissions of the municipal waste combustion unit **Control device outlet:** 50 percent of the maximum expected hourly potential sulfur dioxide emissions of the municipal waste combustion unit	P.S. 2	Method 6C
4. Carbon monoxide	125 percent of the maximum expected hourly potential carbon monoxide emissions of the municipal waste combustion unit	P.S. 4A	Method 10 with alternative interference trap
5. Oxygen or carbon dioxide	25 percent oxygen or 25 percent carbon dioxide	P.S. 3	Method 3A or 3B

[a] Methods are in Appendix A of 40 CFR part 60.

Table 8 of Subpart JJJ — Requirements for Stack Tests

To measure these pollutants	Use these methods to determine the sampling location[a]	Use these methods to measure pollutant concentration[a]	Also note the following additional information
1. Organics			
Dioxins/furans	Method 1	Method 23[b]	The minimum sampling time must be 4 hours per test run while the municipal waste combustion unit is operating at full load.
2. Metals			
Cadmium	Method 1	Method 29[b]	Compliance testing must be performed while the municipal waste combustion unit is operating at full load.
Lead	Method 1	Method 29[b]	Compliance testing must be performed while the municipal waste combustion unit is operating at full load.
Mercury	Method 1	Method 29[b]	Compliance testing must be performed while the municipal waste combustion unit is operating at full load.
Opacity	Method 9	Method 9	Use Method 9 to determine compliance with opacity limits. 3-hour observation period (thirty 6-minute averages).
Particulate matter	Method 1	Method 5 or 29[b]	The minimum sample volume must be 1.0 cubic meters. The probe and filter holder heating systems in the sample train must be set to provide a gas temperature no greater than 160 $\pm$14 °C. The minimum sampling time is 1 hour.

[a] Methods are in Appendix A of 40 CFR part 60.
[b] Must simultaneously measure oxygen (or carbon dioxide) using Method 3A or 3B.
[c] Use CEMS to test sulfur dioxide, nitrogen oxide, and carbon monoxide. Stack tests are not required except for Appendix F quality assurance requirements.

Table 8 of Subpart JJJ — Federal Plan Requirements for Stack Tests (Continued)

To measure these pollutants	Use these methods to determine the sampling location[a]	Use these methods to measure pollutant concentration[a]	Also note the following additional information
3. Acid gases[c]			
Hydrogen chloride	Method 1	Method 26 or 26A[b]	Test runs must be at least 1 hour long while the municipal waste combustion unit is operating at full load.
4. Other[c]			
Fugitive ash	Not applicable	Method 22 (visible emissions)	The three 1-hour observation period must include periods when the facility transfers fugitive ash from the municipal waste combustion unit to the area where the fugitive ash is stored or loaded into containers or trucks.

[a] Must simultaneously measure oxygen (or carbon dioxide) using Method 3A or 3B.
[b] Use CEMS to test sulfur dioxide, nitrogen oxide, and carbon monoxide. Stack tests are not required except for Appendix F quality assurance requirements.

Table 9 of Subpart JJJ — Site-specific Compliance Schedules and Increments of Progress

Class I[a,b] units	State	Units that will Cease Operation	Increment 1 (Submit final control plan)	Increment 2 (Award contracts)	Increment 3 (Begin onsite construction)	Increment 4 (Complete onsite construction)	Increment 5 (Final compliance)
Dutchess County Resource Recovery Facility	NY	Not Applicable	August 6, 2003	February 6, 2004	August 6, 2004	October 6, 2005	December 6, 2005
Islip-MacArthur Resource Recovery Facility	NY	Not Applicable	August 6, 2003	February 6, 2004	August 6, 2004	October 6, 2005	December 6, 2005
Harrisburg Materials, Energy, Recycling and Recovery Facility	PA	June 18, 2003	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable

[a] Class I units mean small municipal waste combustion units subject to this subpart that are located at municipal waste combustion plants with an aggregate plant combustion capacity greater than 250 tons per day of municipal solid waste. See §62.15410 for definitions.

[b] For Class I units that began construction, reconstruction, or modification after June 26, 1987, comply with the dioxins/furans and mercury limits by the later of two dates:

1. One year after the effective date of this subpart.
2. One year after the issuance of a revised construction or operation permit, if a permit modification is required. Final compliance with the dioxins/furans limits must be achieved no later than the Class I final compliance date, even if the date one year after the issuance of a revised construction or operation permit exceeds the Class I final compliance date.

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Part VII

Department of Justice

Immigration and Naturalization Service

8 CFR Parts 212, 231, 235 and 286

Department of State

22 CFR Part 41

Removal of Visa and Passport Waiver for Certain Permanent Residents of Canada and Bermuda; Interim Rule

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Parts 212, 231, 235 and 286

[INS No. 2202–02]

RIN 1115–AG68

Removal of Visa and Passport Waiver for Certain Permanent Residents of Canada and Bermuda

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Interim rule with request for comments.

SUMMARY: This rule amends the Immigration and Naturalization Service (Service) regulations by providing that residents of Canada or Bermuda having a common nationality with Canadian nationals or with British subjects in Bermuda will be required to present a valid passport and visa when applying for admission to the United States. Nationals of Ireland and British Commonwealth countries, who reside in Canada, will be affected by this change. The Service is taking this action, revoking the prior passport and visa exemption for these individuals, in conjunction with the Department of State. (See Department of State regulations published elsewhere in this issue of the **Federal Register**.) This rule is intended to increase security and safeguard the United States.

DATES: *Effective date:* This rule is effective March 17, 2003.

Comment date: Written comments must be submitted on or before April 1, 2003.

ADDRESSES: Please submit written comments to the Director, Regulations, Forms and Services Division, Immigration and Naturalization Service, 425 I Street, NW., Room 4034, Washington, DC, 20536. To ensure proper handling, please reference the INS No. 2202–02 on your correspondence. You may also submit comments electronically to the Service at *insregs@usdoj.gov*. When submitting comments electronically, please include INS No. 2202–02 in the subject box. Comments are available for public inspection at the above location by calling (202) 514–3048 to arrange for an appointment.

FOR FURTHER INFORMATION CONTACT: Joyce Broughman, Assistant Chief Inspector, Office of Inspections, Immigration and Naturalization Service, 425 I Street, NW., Room 4064, Washington, DC 20536, telephone (202) 514–3019.

SUPPLEMENTARY INFORMATION:

Background

Section 212(d)(4)(B) of the Immigration and Nationality Act (Act) permits the Attorney General and the Secretary of State (acting jointly) to waive the passport and visa requirements of section 212(a)(7)(B)(i) of the Act, 8 U.S.C. 1182(a)(7), for admission to the United States in nonimmigrant status. This waiver may be granted on the basis of reciprocity with respect to nationals of foreign contiguous territories or adjacent islands or for residents of those territories or islands who have a common nationality with those nationals.

Service regulations at 8 CFR 212.1(a) implement this waiver authority for Canadian citizens, British subjects in Bermuda and certain aliens from other islands. In addition, the current regulations provide a waiver of the passport and visa requirements for residents of Canada or Bermuda who have a common nationality with citizens of Canada or with British subjects in Bermuda. This latter waiver includes citizens of British Commonwealth countries as well as citizens of Ireland. Nationals of 54 countries who reside in Canada or Bermuda currently benefit from this waiver. Country List "A" following the chart Current versus New Documentary Requirements lists the British Commonwealth countries as of the publication date of this regulation.

This rule eliminates the existing waiver for aliens, who are nationals of Ireland or the British Commonwealth countries listed above, who reside in either Canada or Bermuda and are not citizens of Canada or the British Overseas Territory of Bermuda.

Residents of Canada or Bermuda who are nationals of a designated Visa Waiver country listed in § 217.2(a), who present a valid passport issued by that country, may continue to be admitted without a visa if they are entering the United States for less than 90 days for business or pleasure. Countries that have been designated as eligible for the Visa Waiver Program may be found in Country List "B" after the chart "Current versus New Documentary Requirements'.

This rule does not alter existing waivers of passport and visa for Canadian citizens or for British subjects in Bermuda. In amending § 212.1(a), it is broken into subsections (1) through (4) to make the documentary requirements clearer to the reader. This rule makes no changes to the current documentary requirements for Bahamian nationals or British subjects resident in The Bahamas or British subjects resident in the Cayman Islands or in the Turks and Caicos Islands.

The following chart shows the current and new documentary requirements for residents of Canada and Bermuda.

CURRENT VERSUS NEW DOCUMENTARY REQUIREMENTS

If you are:	*And the purpose of your visit to the U.S. (and time of stay, if applicable) is:*	*Then the change this rule makes from current INS regulations is:*	And you will need the following to enter the U.S.:
1. Canadian citizen	Non-immigrant visitor (except E–1, E–2—treaty trader—and K–1 through K–4—spouses and fiance(e)s of U.S. citizens)	No change from current regulations	Identification; If coming from outside the Western Hemisphere a passport is required. (The following nonimmigrant classifications require a passport and visa: E–1, E–2, K–1, K–2, K–3, K–4. See INA Section 101(a).)
2. Permanent resident of Canada or Bermuda who is a citizen of a British Commonwealth country—Country List "A"	Non-immigrant	Change to now require a valid passport and valid nonimmingrant visa	Valid passport and valid non-immigrant visa.
3. Citizen of a country participating in the Visa Waiver Program (VWP) regardless of place of residence—Country List "B"	Non-immigrant visitor for business or pleasure for *less than 90* days	No change from current regulations	Valid passport.

CURRENT VERSUS NEW DOCUMENTARY REQUIREMENTS—Continued

If you are:	*And the purpose of your visit to the U.S. (and time of stay, if applicable) is:*	*Then the change this rule makes from current INS regulations is:*	And you will need the following to enter the U.S.:
4. Citizen of a country participating in the Visa Waiver Program (VWP) regardless of place of residence—Country List "B"	Non-immigrant visitor for business or pleasure for *more than 90* days or for any other non-immigrant purpose	No change from current regulations.	Valid passport and valid visas in the appropriate classification (Section 101(a)(15) of the INA).
5. Citizen of the British Overseas Territory of Bermuda	Nonimmigrant	No change from current regulations	Evidence of citizenship; if coming from outside the Western Hemisphere a passport is required.
6. Citizen of an country, other than Canada or Bermuda, not listed in Country List "B", Visa Waiver Countries	Nonimmigrant	No change from current regulation	Valid passport and valid non-immigrant visa.

The following list of countries comprises Country List "A"—British Commonwealth Countries: Antigua and Barbuda, Australia, Bangladesh, Barbados, Belize, Botswana, Brunei Darussalam, Cameroon, Cyprus, Dominica, Fiji Islands, Ghana, Grenada, Guyana, India, Jamaica, Kenya, Kiribati, Lesotho, Malawi, Malaysia, Maldives, Malta, Mauritius, Mozambique, Namibia, Nauru, New Zealand, Nigeria, Pakistan, Papua New Guinea, Samoa, Seychelles, Sierra Leone, Singapore, Solomon Islands, South Africa, Sri Lanka, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, Swaziland, The Bahamas, The Gambia, Tonga, Trinidad and Tobago, Tuvalu, Uganda, United Kingdom, United Republic of Tanzania, Vanuatu, Zambia, and Zimbabwe

The following list of countries comprises Country List "B"—Visa Waiver Program countries (*see* 8 CFR 217.2): Andorra, Australia, Austria, Belgium, Brunei, Denmark, Finland, France, Germany, Iceland, Ireland, Italy, Japan, Liechtenstein, Luxembourg, Monaco, the Netherlands, New Zealand, Norway, Portugal, San Marino, Singapore, Slovenia, Spain, Sweden, Switzerland, the United Kingdom, and Uruguay. The United Kingdom refers only to British citizens who have the unrestricted right of permanent abode in the United Kingdom (England, Scotland, Wales, Northern Ireland, the Channel Islands and the Isle of Man); it does not refer to British overseas citizens, British dependent territories' citizens, or citizens of British Commonwealth countries.

Elimination of the Passport and Visa Waiver for Nationals of Commonwealth Countries or of Ireland who are Residents of Canada or Bermuda

In light of the terrorist attacks of September 11, 2001, the Service, in conjunction with the Department of State, has determined that it is in the public interest to reconsider the existing waiver for such aliens. Because the Department of State requires special clearance procedures for nationals of some countries that are beneficiaries of the waiver, the Department of State and the Service have determined that requiring a passport and visa for these aliens will provide a higher level of security for the United States. Current beneficiaries of the waiver include nationals from countries with high rates of documentary and immigration fraud and abuse and nationals from countries with high nonimmigrant refusal rates. In many cases, documents presented by beneficiaries of the waiver do not meet current document security standards.

In view of these determinations, the Service is amending its current nonimmigrant documentary regulations in § 212.1(a) to eliminate the passport and visa waiver for residents of Canada or Bermuda who have a common nationality with citizens of Canada or with British subjects in Bermuda. Accordingly, such nationals will be required to present visas and passports when applying for admission to the United States. The Service also notes that, as a result of eliminating this existing waiver, these aliens will now be subject to 8 CFR 235.1(f)(1) and upon arrival shall be issued, upon payment of the appropriate fee for land border admissions, a Form I–94 Arrival/Departure Record as evidence of the terms of their admission.

Other Regulation Changes

In addition, the Service is changing the reference to "British subjects in Bermuda" to British Overseas Territory citizens in accordance with the British Overseas Territories Act of 2002.

In view of the elimination of the existing passport and visa waiver, this rule makes necessary changes to other portions of the regulations.

The interim rule amends § 231.1(d) to require the residents of Canada and Bermuda who are nationals of Ireland or British Commonwealth countries, who are entering the United States for business or pleasure to complete the Form I–94, Arrival/Departure Record.

As a result of the requirement for a passport and nonimmigrant visa, residents of Canada who must present those documents for admission to the United States will no longer be eligible for a Canadian Border Boat Landing Permit (Form I–68) described in § 235.1(e). United States citizens, Canadian citizens and those residents of Canada who are nationals of a designated Visa Waiver country listed in § 217.2(a) will continue to be eligible for the Canadian Boat Landing Permit.

Service regulations at 8 CFR 286.9(b) regarding the payment of a fee for a Form I–68, Canadian Border Boat Landing Permit, § 286.9(b) are being revised to remove the reference to lawful permanent resident of Canada having a common nationality with Canadians since this group of aliens will no longer be eligible for the program.

Good Cause Exception

The Service's implementation of this rule as an interim rule, with provisions for post-promulgation public comments, is based on the "good cause" exceptions found at 5 U.S.C. 553(b)(B). Implementation of this rule as an interim rule is necessary to ensure the national security needs of the United States. Specifically, the implementation of the passport and visa requirement on aliens residing in Canada or Bermuda including those aliens who are nationals of countries that require special clearance procedures, nationals of countries with high rates of documentary and immigration fraud and abuse, and nationals from countries with high nonimmigrant refusal rates, will ensure that these applicants for admission are properly screened via the Department of State's visa issuance process prior to arrival at a port-of-entry

to the United States and possess positive evidence of their identity and the intended purpose of their stay in the United States upon such arrival. This will lessen the possibility that persons who pose security risks to the United States and other potential immigration violators may improperly gain admission to the United States. There is reasonable concern that publication of the rule as a proposed rule could lead to an increase in applications for admissions by mala fide non-citizen residents of Canada or Bermuda seeking to avoid the passport requirement and consular screening process during the period between the publication of a proposed and a final rule. Accordingly, the Service finds that it is impracticable and contrary to the public interest to publish this rule with prior notice and comment period.

Regulatory Flexibility Act

The Commissioner of the Immigration and Naturalization Service, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and, by approving it, certifies that this rule will not have a significant economic impact on a substantial number of small entities. This rule removes the passport and visa waiver for certain residents of Canada and Bermuda having a common nationality with Canadian nationals or with British subjects in Bermuda respectively. Residents of Canada or Bermuda who are affected by the rule will be required to obtain a passport and nonimmigrant visa for entry to the United States. This rule will affect individual nonimmigrant aliens who are not considered small entities as that term is defined in 5 U.S.C. 601(6).

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Act of 1996. This rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Executive Order 12866

This rule is considered by the Department of Justice, Immigration and Naturalization Service to be a "significant regulatory action" under Executive Order 12866, section 3(f), Regulatory Planning and Review. Accordingly this regulation has been submitted to the Office of Management and Budget for review.

By requiring residents of Canada and Bermuda who are citizens of British Commonwealth countries to have a passport and nonimmigrant visa to enter the United States, they will also be required to complete Form I–94, Arrival/Departure Record and pay the appropriate fee, currently $6, at land border ports-of-entry. For those residents who travel frequently from Canada to the United States, the Service may issue the Form I–94, Arrival/Departure Record, allowing multiple entries.

The Service estimates approximately 1 million British Commonwealth nationals are living as permanent residents of Canada, and that there will be approximately 500,000 entries to the United States each year at land border ports-of-entry. Based on this total annual estimate of 500,000 entries of British Commonwealth nationals, the Service anticipates that the additional fees collected from Form I–94s, issued to these residents of Canada who are British commonwealth nationals, may amount to as much as 3 million dollars per year.

The Service believes inspections staffing already planned for the affected land border ports-of-entry will be sufficient to accommodate the workload that will be generated by the British Commonwealth nationals, an no increased staff payroll costs will be incurred to inspect and process the 500,000 annual estimated applicants.

Because currently planned staffing will be sufficient to accommodate the increased numbers of applicants, a cost benefit would accrue from the collection of the Form I–94 fee from British Commonwealth nationals. The cost benefit would result by offsetting part of the current payroll subsidy that is required because current Form I–94 fees do not fully recover the costs of the associated inspections operations.

Therefore, the collection of the fee from British Commonwealth nationals will serve to improve border security and will also contribute to clearer fiscal as well as operational separation of the inspections enforcement operations from the immigration service operations associated with Form I–94 applications. $3 million in new collections will fund the annual payroll cost of 48 of approximately 74 currently subsidized inspector positions at land border ports-of-entry.

As previously stated, the passport and visa requirement is being imposed to increase security and safeguard the United States. The events of September 11, 2001 resulted in the need to assess and evaluate current practices in order to strengthen the law enforcement and security interests of the United States. Requiring permanent residents of Canada and Bermuda who are British Commonwealth nationals to have a nonimmigrant visa will ensure that these applicants for admission are properly screened via the Department of State's visa issuance process prior to arrival at a port-of-entry to the United States and possess positive evidence of their identity and the intended purpose of their stay in the United States upon such arrival. This will lessen the possibility that potential immigration violators or persons who pose security risks to the United States may improperly gain admission to the United States.

Of the 54 countries affected by this regulation, only 6, Australia, Brunei, Ireland, New Zealand, Singapore and the United Kingdom, are eligible for the Visa Waiver Program. In order to be designated as a participating Visa Waiver Program country, nationals of the country must have a low refusal rate for U.S. visas. In addition, the Attorney General, in consultation with the Secretary of State must determine that the country's designation for the Visa Waiver Program would not compromise U.S. law enforcement or national security interests, including interests in enforcing immigration laws.

Implementation of this regulation will align the visa requirement for permanent residents of Canada or Bermuda who are nationals of the British Commonwealth countries with that of other permanent residents of Canada or Bermuda. All permanent residents of Canada or Bermuda who are not citizens of Canada or Bermuda will require a passport and nonimmigrant visa unless they are nationals of a country designated as eligible for the Visa Waiver Program, in which case they will only require a valid passport.

Executive Order 13132

This rule will not have substantial direct effects on the States, on the relationship between the National

Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

Executive Order 12988 Civil Justice Reform

This rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995, Pub. L. 104–13, all Departments are required to submit to the Office of Management and Budget (OMB), for review and approval, any reporting or recordkeeping requirements inherent in a rule. This rule does not impose any new reporting or recordkeeping requirements under the Paperwork Reduction Act. The OMB previously approved the information collection requirements contained in this rule for use. INS has submitted changes to the burden hours with regards to Form I–94, Arrival/Departure Record and Form I–68, Canadian Border Boat Landing Permit. As a result of this regulation, the burden hours associated with Form I–94 have increased by 33,000 total annual hours. The OMB control number associated with Form I–94 collection is 1115–0077. The burden hours associated with Form I–68 have decreased by 830 hours. The OMB control number associated with Form I–68 is 1115–0065.

List of Subjects

8 CFR Part 212

Administrative practice and procedure, Aliens, Immigration, Passports and visas, Reporting and recordkeeping requirements.

8 CFR Part 231

Air carriers, Aliens, Maritime carriers, Reporting and recordkeeping requirements.

8 CFR Part 235

Administrative practice and procedure, Aliens, Immigration, Reporting and recordkeeping requirements.

8 CFR Part 286

Air carriers, Immigration, Maritime carriers, Reporting and recordkeeping requirements.

Accordingly, chapter I of title 8 of the Code of Federal Regulations is amended as follows:

PART 212—DOCUMENTARY REQUIREMENTS: NONIMMIGRANTS; WAIVERS; ADMISSION OF CERTAIN INADMISSIBLE ALIENS; PAROLE

1. The authority citation for part 212 continues to read as follows:

Authority: 8 U.S.C. 1101, 1102, 1103, 1182, 1184, 1187, 1225, 1226, 1127; 8 CFR part 2.

2. In § 212.1, paragraph (a) is revised to read as follows:

§ 212.1 Documentary requirements for nonimmigrants.

* * * * *

(a) *Citizens of Canada or Bermuda, Bahamian nationals or British subjects resident in certain islands.*

(1) *Canadian citizens.* A passport is not required except after a visit outside of the Western Hemisphere. A visa is not required.

(2) *Citizens of the British Overseas Territory of Bermuda.* A passport is not required except after a visit outside of the Western Hemisphere. A visa is not required.

(3) *Bahamian nationals or British subjects resident in the Bahamas.* A passport is required. A visa required of such an alien unless, prior to or at the time of embarkation for the United States on a vessel or aircraft, the alien satisfied the examining U.S. immigration officer at the Bahamas, that he or she is clearly and beyond a doubt entitled to admission, under section 212(a) of the Immigration and Nationality Act, in all other respects.

(4) *British subjects resident in the Cayman Islands or in the Turks and Caicos Islands.* A passport is required. A visa is required of such an alien unless he or she arrives directly from the Cayman Islands or the Turks and Caicos Islands and presents a current certificate from the Clerk of Court of the Cayman Islands or the Turks and Caicos Islands indicating no criminal record.

* * * * *

PART 231—ARRIVAL-DEPARTURE MANIFESTS AND LISTS; SUPPORTING DOCUMENTS

3. The authority citation for part 231 is revised to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1182, 1221, 1228, 1229; 8 CFR Part 2.

4. Section 231.1, is amended by:

a. Revising the last sentence in paragraph (d) introductory text; and by

b. Removing paragraphs (d)(1) and (d)(2).

The revision reads as follows:

§ 231.1 Arrival manifest for passengers.

* * * * *

(d) * * * Citizens of Canada or the British Overseas Territory of Bermuda are not required to complete the departure portion of the Form I–94 if they are entering the United States for business or pleasure under section 101(a)(15)(B) of the Act, and intend to remain in the United States for less than 6 months.

* * * * *

PART 235—INSPECTION OF PERSONS APPLYING FOR ADMISSION

5. The authority citation for part 235 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1182, 1183, 1201, 1224, 1225, 1226, 1227, 1228, 1252; 8 CFR part 2.

6. Section 235.1 is amended by:

a. Revising paragraph (e) introductory text;

b. Revising paragraph (e)(1)(v); and by

c. Revising the last sentence in paragraph (e)(5)(ii).

The revisions read as follows:

§ 235.1 Scope of examination.

* * * * *

(e) *U.S. citizens, lawful permanent residents of the United States, and other aliens, entering the United States along the northern border, other than at a port-of-entry.* A citizen of Canada or a permanent resident of Canada who is a national of a country listed in § 217.2(a) of this chapter may, if in possession of a valid, unexpired, Canadian Border Boat Landing Permit (Form I–68) or evidence of enrollment in any other Service Alternative Inspections program (*e.g.*, the Immigration and Naturalization Service Passenger Accelerated Service System (INSPASS) or the Port Passenger Accelerated Service System (PORTPASS)), enter the United States by means of a pleasure craft along the northern border of the United States from time-to-time without further inspection. No persons other than those described in this paragraph may participate in this program. Permanent residents of Canada who are nationals of a designated Visa Waiver Program country listed in § 217.2(a) of this chapter must be in possession of a valid, unexpired passport issued by his or her country of nationality, and an unexpired multiple entry Form I–94W, Nonimmigrant Visa Waiver Arrival/Departure Form, or an unexpired passport, valid unexpired United States visa and I–94 Arrival/Departure Form. When an entry to the United States is made by a person who is a Canadian citizen or a permanent resident of

Canada who is a national of a designated Visa Waiver Program country listed in § 217.2(a) of this chapter, entry may be made under this program only for a purpose as described in section 101(a)(15)(B)(ii) of the Act as a visitor for pleasure. Persons seeking to enter the United States for any other purpose must do so at a port-of-entry staffed by immigration inspectors. Persons aboard a vessel which has crossed the international boundary between the United States and Canada and who do not intend to land in the United States, other than at a staffed port-of-entry, are not required to be in possession of Form I–68, Canadian Border Boat Landing Permit, or evidence of enrollment in an Alternative Inspections program merely because they have crossed the international boundary. However, the Service retains the right to conduct inspections or examinations of all persons applying for admission or readmission to or seeking transit through the United States in accordance with the Act.

(1) * * *

(v) A permanent resident of Canada who is a national of a Visa Waiver Program may apply for admission simultaneously with the Form I–68 application and thereby obtain a Form I–94 or I–94W.

* * * * *

(5) * * *

(ii) * * * Participants who are permanent residents of Canada who are nationals of a Visa Waiver Program country listed in § 217.2(a) of this chapter must also be in possession of proper documentation as described in paragraph (e) of this section.

* * * * *

PART 286—IMMIGRATION USER FEE

7. The authority citation for part 286 continues to read as follows:

Authority: 8 U.S.C. 1103, 1356; 8 CFR part 2.

8. Section 286.9 is amended by revising paragraph (b)(4).

The revision reads as follows:

§ 286.9 Fee for processing applications and issuing documentation at land border Ports-of-Entry.

* * * * *

(b) * * *

(4) A citizen or lawful permanent resident alien of the United States or a Canadian citizen or permanent resident of Canada who is a national of a designated Visa Waiver Program country listed in § 217.2(a) of this chapter who requests Form I–68, Canadian Border Boat Landing Permit, pursuant to § 235.1(e) of this chapter, for entry to the United States from Canada as an eligible pleasure boater on a designated body of water, must remit the required fee at the time of application for Form I–68.

Dated: January 24, 2003.

Michael J. Garcia,

Acting Commissioner, Immigration and Naturalization Service.

[FR Doc. 03–2164 Filed 1–30–03; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF STATE

22 CFR Part 41

[Public Notice 4163]

RIN 1400–AB43

Visas: Removal of Visa and Passport Waiver for Certain Permanent Residents of Canada and Bermuda

AGENCY: Department of State.

ACTION: Interim rule, with request for comments.

SUMMARY: This rule amends the Department of State's regulation that allows certain permanent residents of Canada and Bermuda who share a common nationality with nationals of Canada or with British subjects in Bermuda to enter the United States without a passport or visa. The Department is taking this action in conjunction with the Immigration and Naturalization Service of the Department of Justice (INS) due to the heightened border security concerns following the events of September 11, 2001. Aliens affected by this change will hereafter be required to present a passport and a visa when applying for entry into the United States. The Department is also changing the reference in the current regulation to "British subjects in Bermuda". In the amended regulation, in accordance with recent legislation adopted by the United Kingdom, those persons will instead be referred to as "citizens of the Overseas Territory of Bermuda". Canadian nationals and citizens of the Overseas Territory of Bermuda will retain their current waiver privileges.

DATES: *Effective Date:* This rule is effective 45 days from the date of publication in the **Federal Register**.

Comment Date: Interested persons should submit comments on or before 60 days from date of publication in the **Federal Register**.

ADDRESSES: Submit comments, in duplicate, to H. Edward Odom, Chief, Legislation and Regulations Division, Visa Services, Department of State, Washington, DC 20522–0113; or by e-mail to *visaregs@state.gov*.

FOR FURTHER INFORMATION CONTACT: For information regarding the publication of this regulation under the Administrative Procedures Act contact Patrick A. Chairge, Legislation and Regulations Division, Visa Office, Room L603–C, SA–1, Department of State, Washington, DC 20520–0106, (202) 663–1260; or e-mail:*chairgepa@state.gov*. For information regarding the possible effect of this regulation on individual visa applicants or any group of applicants contact the Public Inquiries Division of the Directorate for Visa Services at (202) 663–1225, or by e-mail to *usvisa@state.gov*.

SUPPLEMENTARY INFORMATION:

On What Authority Has the Department Granted This Waiver?

Section 212(d)(4)(B) of the Immigration and Nationality Act (INA), 8 U.S.C. 1182(d)(4), permits the Secretary of State and the Attorney General, acting jointly, to waive the passport and visa requirements of section 212(a)(7) of the INA, 8 U.S.C. 1182(a)(7). This waiver is granted on the basis of reciprocity with respect to nationals of foreign contiguous territories or adjacent islands or for residents who have a common nationality with those nationals.

Who Currently Benefits From This Waiver?

Currently, subsection (b) of 22 CFR 41.2 benefits Canadian permanent residents who have a common nationality with Canadians, British subjects in Bermuda and aliens who have a common nationality with such subjects. The waiver thus includes citizens of Commonwealth countries as well as citizens of Ireland. Nationals of 54 countries currently benefit from this waiver.

Why Is the Department Removing Part of This Waiver?

In light of the terrorist attacks of September 11, 2001, the Department has determined that it is in the public interest to reconsider this waiver, in part. Findings from the Department's review indicate that some beneficiaries of the waiver who are lawful permanent residents of Canada or Bermuda include nationals from countries requiring special clearance procedures. Beneficiaries also include nationals from countries with high rates of fraud and abuse and nationals from countries with high nonimmigrant refusal rates. In view of these determinations, the Department is removing that part of its

current regulation that benefits Canadian and Bermudan non-citizen residents who have a common nationality with Canadian and Bermudan citizens. Those non-citizen residents will be required to present visas and passports when attempting to enter the United States, except those entering pursuant to the permanent Visa Waiver Program who will require a passport but not a visa.

Why Has the Department Changed the Reference to "British Subjects in Bermuda"?

The "British Overseas Territory Act of 2002" changed former references to "dependent territories", including Bermuda, to "British Overseas Territories" and established the citizenship of such territories as "British Overseas Territories Citizenship". Therefore citizens of Bermuda will now be referred to in the regulation as "citizens of the British Overseas Territory of Bermuda", rather than "British subjects in Bermuda".

Request for Comments

The Department is seeking public comments regarding this interim rule. The Department welcomes comments on all topics contained within this interim rule.

Interim Rule

This interim rule amends the Department's regulation at 41.2(b) that grants visa and passport waivers to certain Canadian permanent residents, British subjects in Bermuda and certain permanent residents of Bermuda by removing from its application Canadian and Bermudan permanent residents.

Regulatory Analysis and Notices

Administrative Procedure Act

The Department's implementation of this regulation as an interim rule, with a provision for public comments, is based upon the "good cause" exceptions found at 5 U.S.C. 553(b)(B) and (d)(3). The Department believes that immediate implementation of this regulation is in the public interest to ensure public safety in light of ongoing security concerns following the terrorist attacks of September 11, 2001. Some beneficiaries of the visa and passport waiver include nationals from countries requiring special clearance procedures. Beneficiaries also include nationals from countries with high rates of fraud and abuse and nationals from countries with high nonimmigrant refusal rates. The Department has established a 45-day post publication effective date for this rule in order to allow sufficient time to those Canadian and Bermudan residents affected by it to obtain the documentation that it requires they present when applying for entry into the United States. In this manner the Department hopes to minimize any disruption to travel along the border and also to minimize strain on INS and Department resources that might otherwise occur if significant numbers of aliens did not have sufficient time to obtain proper documentation.

Regulatory Flexibility Act

The Department of State, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b), has reviewed this regulation and, by approving it, certifies that the rule will not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any year and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Act of 1996. This rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Executive Order 12866

The Department of State considers this rule to be a "significant regulatory action" under Executive Order 12866, section 3(f), Regulatory Planning and Review. Therefore, it was submitted for review by the Office of Management and Budget.

Executive Order 13132

This regulation will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

Paperwork Reduction Act

This rule does not impose any new reporting or record-keeping requirements.

List of Subjects in 22 CFR Part 41

Aliens, Nonimmigrants, Passports and visas.

Accordingly, amend 22 CFR part 41 as follows:

Part 41—[AMENDED]

1. The authority citation for Part 41 continues to read as follows:

Authority: 8 U.S.C. 1104; Pub. L. 105–277, 112 Stat. 2681 *et seq.*

2. Revise paragraph (b) of 41.2 to read as follows:

§ 41.2 Waiver by Secretary of State and Attorney General of passport and/or visa requirements for certain categories of nonimmigrants.

* * * * *

(b) Citizens of the British Overseas Territory of Bermuda. A passport is not required except after a visit outside the Western Hemisphere. A visa is not required.

* * * * *

Dated: January 23, 2003.

Timothy Egert,

Federal Register Liaison, Department of State.

[FR Doc. 03–2202 Filed 1–30–03; 8:45 am]

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Part VIII

The President

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Presidential Documents

Title 3—

The President

Notice of January 29, 2003

Notice of Intention To Enter Into a Free Trade Agreement With Chile

Pursuant to sections 2103(a) and 2105(a) of the Trade Act of 2002, I have notified the Congress of my intention to enter into a Free Trade Agreement with the Government of Chile.

Pursuant to section 2105(a)(1) of that Act, this notice shall be published in the **Federal Register**.

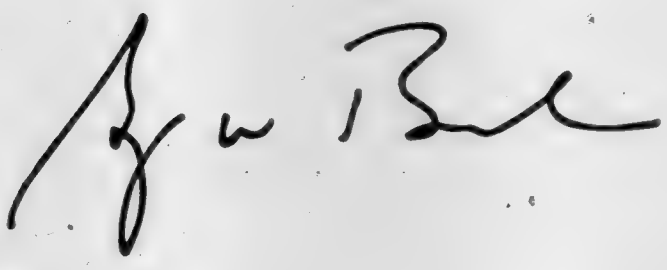

THE WHITE HOUSE,
Washington, January 29, 2003.

[FR Doc. 03–2529
Filed 1–30–03; 12:18 pm]
Billing code 3190–01–M

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Presidential Documents

Notice of January 29, 2003

Notice of Intention To Enter Into a Free Trade Agreement With Singapore

Pursuant to sections 2103(a) and 2105(a) of the Trade Act of 2002, I have notified the Congress of my intention to enter into a Free Trade Agreement with the Government of Singapore.

Pursuant to section 2105(a)(1) of that Act, this notice shall be published in the **Federal Register**.

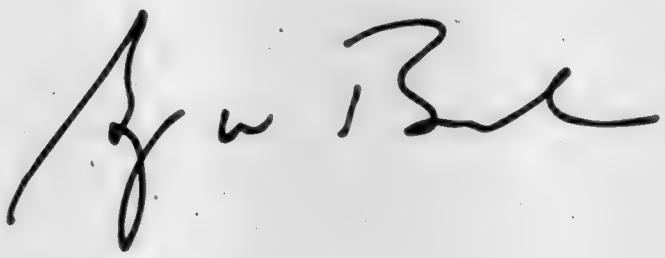

THE WHITE HOUSE,
Washington, January 29, 2003.

[FR Doc. 03–2530
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- Triamcinolone spray; published 1-31-03

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LIST OF PUBLIC LAWS

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National Flood Insurance Program Reauthorization Act of 2003 (Jan. 13, 2003; 117 Stat. 7)

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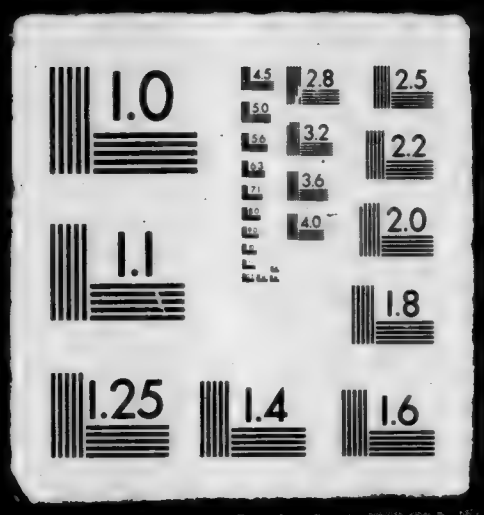
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Presidential Documents

Title 3—

The President

Executive Order 13285 of January 29, 2003

President's Council on Service and Civic Participation

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to encourage the recognition of volunteer service and civic participation by all Americans, and especially America's youth, it is hereby ordered as follows:

Section 1. *The President's Council on Service and Civic Participation.* (a) There is hereby established within the Corporation for National and Community Services (CNCS) the President's Council on Service and Civic Participation (Council).

(b) The Council shall be composed of up to 25 members, including representatives of America's youth, appointed by the President. Each member shall serve for a term of 2 years and may continue to serve after the expiration of their term until a successor is appointed. The President shall designate one member to serve as Chair and one member to serve as Vice Chair. Subject to the direction of the Chief Executive Officer of the CNCS, the Chair, and in the Chair's absence the Vice Chair, shall convene and preside at the meetings of the Council, determine its agenda, and direct its work.

Sec. 2. *Mission and Functions of the Council.*

(a) The mission of the Council shall be to:

(i) encourage the recognition of outstanding volunteer service and civic participation by individuals, schools, and organizations and thereby encourage more such activity, especially on the part of America's youth; and

(ii) facilitate awareness of the ways in which Americans throughout our history have helped to meet the vital needs of their communities and Nation through volunteer service and civic participation.

(b) In carrying out its mission, the Council shall:

(i) design and recommend programs to recognize individuals, schools, and organizations that excel in their efforts to support volunteer service and civic participation, especially with respect to students in primary schools, secondary schools, and institutions of higher learning;

(ii) exchange information and ideas with interested individuals and organizations on ways to expand and improve programs developed pursuant to subsection 2(b)(i) of this order;

(iii) advise the Chief Executive Officer of the CNCS on broad dissemination, especially among schools and youth organizations, of information regarding recommended practices for the promotion of volunteer service and civic participation, and other relevant educational and promotional materials;

(iv) monitor and advise the Chief Executive Officer of the CNCS on the need for the enhancement of materials disseminated pursuant to subsection 2(b)(iii) of this order; and

(v) make recommendations from time to time to the President, through the Director of the USA Freedom Corps, on ways to promote and recognize outstanding volunteer service and civic participation by individuals, schools, and organizations and to promote awareness of the ways in which Americans throughout our history have helped to meet the vital needs of their communities and Nation through volunteer service and civic participation.

Sec. 3. *Administration.* (a) Each Federal agency, to the extent permitted by law and subject to the availability of appropriations, shall furnish such information and assistance to the Council as the Council may, with the approval of the Director of the USA Freedom Corps, request.

(b) The members of the Council shall serve without compensation for their work on the Council. Members of the Council who are not officers or employees of the United States may receive travel expenses, including per diem in lieu of subsistence, as authorized by law for persons serving intermittently in the Government (5 U.S.C. 5701–5707).

(c) To the extent permitted by law, the Chief Executive Officer of the CNCS shall furnish the Council with necessary staff, supplies, facilities, and other administrative services and shall pay the expenses of the Council.

(d) The Chief Executive Officer of the CNCS shall appoint an Executive Director to head the staff of the Council.

(e) The Council, with the approval of the Chief Executive Officer of the CNCS, may establish subcommittees of the Council, consisting exclusively of members of the Council, as appropriate to aid the Council in carrying out its mission under this order.

Sec. 4. *General Provisions.* (a) Insofar as the Federal Advisory Committee Act, as amended (5 U.S.C. App.) (Act), may apply to the administration of any portion of this order, any functions of the President under the Act, except that of reporting to the Congress, shall be performed by the Chief Executive Officer of CNCS in accordance with the guidelines and procedures issued by the Administrator of General Services.

(b) Unless extended by the President, this order shall expire 2 years from the date of this order.

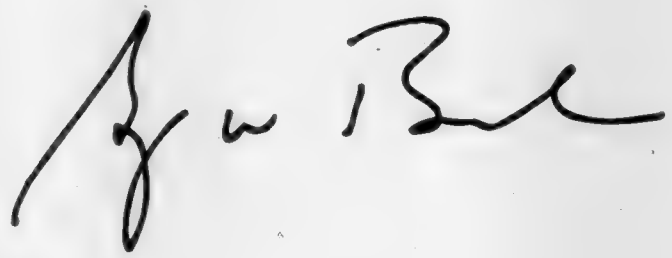

THE WHITE HOUSE,
January 29, 2003.

[FR Doc. 03–2606
Filed 01–31–03; 8:45 am]
Billing code 3195–01–P

Rules and Regulations

Federal Register
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Monday, February 3, 2003

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1413

RIN 0560–AG71

Hard White Wheat Incentive Program

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: This rule implements the Hard White Wheat Incentive Program (HWWIP). This program provides incentive payments to eligible hard white wheat producers in the amount of $0.20 per bushel, with a maximum of 60 bushels of hard white wheat production eligible for payment on each acre planted. Planting certified hard white wheat seed is not an eligibility requirement to receive payment under HWWIP; however, an additional incentive payment in the amount of $2.00 per acre is provided to hard white wheat producers who plant certified hard white wheat seed for any of the 2003 through 2005 crops of hard white wheat. The purpose of the program is to increase the production of both spring and winter varieties of hard white wheat during the 2003 through 2005 crop years.

DATES: Effective January 29, 2003.

FOR FURTHER INFORMATION CONTACT: Helen Smith, Production, Emergencies, and Compliance Division, FSA/USDA, Stop 0517, 1400 Independence Ave., SW., Washington, DC 20250–0512; telephone (202) 720–7641; facsimile (202) 690–3610; e-mail: *HSmith@wdc.usda.gov*. Persons with disabilities who require alternative means for communication (Braille, large print, audio tape, etc.) should contact the USDA Target Center at (202) 720–2600 (voice and TDD).

SUPPLEMENTARY INFORMATION:

Notice and Comment

Section 1601(c) of the Farm Security and Rural Investment Act of 2002 (Pub. L. 107–171) requires that the regulations necessary to implement these provisions be promulgated without regard to the notice and comment provisions of 5 U.S.C. 553 or the Statement of Policy of the Secretary of Agriculture (the Secretary) effective July 24, 1971 (36 FR 13804) relating to notices of proposed rulemaking and public participation in rulemaking. These provisions are thus issued as final and are effective immediately.

Executive Order 12866

This rule is issued in conformance with Executive Order 12866 and has been determined to be significant and has been reviewed by the Office of Management and Budget. A cost-benefit assessment was completed and is summarized after the background section.

Federal Assistance Programs

The titles and numbers of the Federal assistance programs, as found in the Catalog of Federal Domestic Assistance, to which this final rule applies are: Commodity Loans and Loan Deficiency Payments, 10.051.

Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is not applicable to this rule because the Commodity Credit Corporation (CCC) is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

Commodity Loans and Loan Deficiency Payments, 10.051.

Environmental Evaluation

The environmental impacts of this final rule have been considered in accordance with the provisions of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.*, the regulations of the Council on Environmental Quality (40 CFR parts 1500–1508), and the FSA regulations for compliance with NEPA, 7 CFR parts 799, and 1940, subpart G. FSA completed an environmental evaluation and concluded the rule requires no further environmental review. No extraordinary circumstances or other unforeseeable factors exist which would require preparation of an environmental assessment or environmental impact statement. A copy of the environmental evaluation is available for inspection and review upon request.

Executive Order 12988

This final rule has been reviewed in accordance with Executive Order 12988. The provisions of this final rule preempts State laws to the extent such laws are inconsistent with the provisions of this rule. Before any judicial action may be brought concerning provisions of this rule, administrative remedies must be exhausted.

Executive Order 12372

This program is not subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. See the notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

Unfunded Mandates Reform Act of 1995

This rule contains no Federal mandates under the regulatory provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) for State, local, and tribal governments or the private sector. Thus, this rule is not subject to the requirements of section 202 and 205 of UMRA.

Small Business Regulatory Enforcement Fairness Act of 1996

Section 1601(c) requires that authority in section 808 of the Small Business Regulatory Enforcement Fairness Act of 1996, (SBREFA), be used which allows an agency to forgo SBREFA's usual 60-day Congressional Review delay of the effective date of a major regulation if the agency finds that there is a good cause to do so. Accordingly, this rule is effective upon the date of filing for public inspection by the Office of the Federal Register.

Paperwork Reduction Act

Section 1601(c) of the 2002 Act provides that the promulgation of regulations and the administration of Title I of the 2002 Act shall be made without regard to chapter 5 of title 44 of the United States Code (the Paperwork Reduction Act). Accordingly, these regulations and the information collection activities needed to

administer the program authorized by these regulations, are not subject to review by the Office of Management and Budget under the Paper Reduction Act.

Government Paperwork Elimination Act

The Farm Service Agency (FSA) is committed to compliance with the Government Paperwork Elimination Act (GPEA) and the Freedom to E-File Act, which require Government agencies in general and FSA in particular to provide the public the option of submitting information or transacting business electronically to the maximum extent possible. The forms and other information collection activities required by participation in the Hard White Wheat Incentive Payment Program are not yet fully implemented for the public to conduct business with FSA electronically.

Applications for all programs may be submitted at the FSA county offices by mail or fax. At this time, electronic submission is not available. Full implementation of electronic submission is underway.

Executive Order 12612

It has been determined that this rule does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment. The provisions contained in this rule will not have a substantial direct effect on States or their political subdivisions, or on the distribution of power and responsibilities among the various levels of government.

Background

Section 1616 of the Farm Security and Rural Investment Act of 2002, (the 2002 Act), provides that a total of $20,000,000 of CCC funds be used during the 2003 through 2005 crop years, to provide incentive payments to producers of hard white wheat. The 2002 Act also mandates that this program shall be implemented on not more than 2,000,000 acres or equivalent volume of production for the 2003 through the 2005 crop years. An equivalent volume of production has been determined to be 120,000,000 bushels, which is the product of 2,000,000 acres times 60 bushels per acre.

In the event that the 2,000,000 acre limitation is reached under this program before the $20 million authorized for the program is distributed, the 120,000,000 million bushels shall become the cap for implementing the program.

The purpose of this program is to create an incentive for producers to plant hard white wheat of winter and for spring varieties, which would subsequently increase production for both domestic and export markets. Payments under this program are available to producers in every State.

The Hard White Wheat Incentive Program (HWWIP) will provide two payments to producers: An incentive payment of $0.20 for each bushel of eligible hard white wheat production, with a maximum of 60 bushels per acre eligible for payment, and (2) a payment of $2.00 per acre for certified seed. Producers do not have to plant certified seed to receive the production incentive payment.

With respect to the first payment, the reason for the 60 bushel per acre cap is to provide consistent payments to producers in the various geographic regions of the United States that have disparate hard white wheat production capabilities. Two payment options were considered. One, a direct payment per acre of production; and two, a direct payment for each bushel of production. Traditionally, hard white wheat yields in the Northwest growing region are significantly higher than in the Plains States. Accordingly, a per acre payment is not an equitable solution, nor does a payment based on production, with no limitation on the production eligible for payment, provide equitable assistance. Therefore, it was determined that a $0.20 per bushel payment, with a 60 bushel per acre cap, will most equitably distribute payments and address production disparities across the hard white wheat growing areas. Also, it was determined that a bushel-based payment system would likely result in the production of more bushels of hard white wheat than will an acre-based payment system because it will attract more productive land. This incentive payment will be issued only if hard white wheat is actually produced and after production is verified by means of a settlement sheet or other similar documentation delivered to CCC.

In order to encourage purity and yield potential of the hard white wheat production, an additional incentive payment is provided in the amount of $2.00 per acre for each acre a producer plants to 2003 through 2005 crops of hard white wheat with certified seed. Producers utilizing this option will be required to show proof that certified seed was planted on the reported acres. This additional payment is provided to help offset the added cost of the certified seed, and should increase the purity of the hard white wheat produced, decreasing the possibility that the seed used to plant the hard white wheat contains other types of wheat. This payment may be issued even if the crop subsequently fails and no hard white wheat production is realized from the acreage planted to the certified seed.

Minimum quality standards have been determined to be U.S. #2 Hard White Wheat or better, as established by Federal Grain Inspection Service. A settlement sheet or other similar documentation is required before incentive payments may be issued and must indicate at a minimum: That the wheat accounted for on the document is hard white wheat; the grade of the hard white wheat; name and address of person the hard wheat was purchased from; net bushels; and name and address of purchasing facility. The settlement sheet shall be subject to verification by CCC.

Cost Benefit Assessment Summary

Hard White Winter Wheat Incentive Payments

Increased plantings of hard white wheat varieties are expected to be offset by lower plantings of other classes of wheat. Thus, the incentive payments will not measurably affect total wheat production. On the demand side, millers are likely to use hard white wheat for domestic food use at the expense of other wheat classes. The net impact on the estimated annual quantity of wheat used for food is negligible.

Currently, U.S. hard white wheat exports are small, partly due to an inadequate supply of consistent quality. Target markets are predominantly in southeast Asia, where hard white wheat varieties are used to produce Chinese noodles. Incentives to grow hard white wheat should increase supplies of consistent quality so exporters can compete in this export market.

Federal outlays are expected to increase by the amount of CCC funds that must be made available for the incentive payments, or $20 million. Timing of these payments depends on producer participation. About $6 million will likely be expended for the 2003 crop, $12 million for the 2004 crop, and the remaining $2 million for the 2005 crop. Because of the potential for hard white wheat payment requests to exceed available funds during the 2004 and 2005 crops, procedures will allow factoring of payment levels to avoid expending more than the $20 million provided by the law.

For further information, contact: Phil Sronce at 202–720–2711, or *phil_sronce@usda.gov*.

List of Subjects in 7 CFR 1413

Agricultural commodities, Feed grains, Grains.

Accordingly, 7 CFR Chapter XIV is amended by adding part 1413 is set forth below.

1. Part 1413 is added to read as follows:

PART 1413—HARD WHITE WHEAT INCENTIVE PROGRAM

Sec.

1413.101 Applicability.
1413.102 Administration.
1413.103 Definitions.
1413.104 Signup and application process.
1413.105 Eligibility.
1413.106 Quality.
1413.107 Availability of funds and maximum eligible acreage and production.
1413.108 Applicant's maximum payment quantity.
1413.109 Calculation of assistance.
1413.110 Offsets and withholdings.
1413.111 Assignments.
1413.112 Appeals.
1413.113 Other regulations

Authority: 7 U.S.C. 7999; 15 U.S.C. 714b and 714c.

§ 1413.101 Applicability.

(a) These regulations in this part set forth the terms and conditions of the Hard White Wheat Incentive Program. The Farm Security and Rural Investment Act of 2002 provides that $20,000,000 of the funds of CCC shall be available during the 2003 through the 2005 crop years for producers to produce and market hard white wheat limits this program to not more than a total of 2,000,000 acres or an equivalent volume of 120,000,000 bushels of production for the 2003 through 2005 crop years.

(b) A production payment incentive shall be available only for hard white winter wheat that grades U.S. # 2 grade or higher, established by the Federal Grain Inspection Service, that is produced and harvested in the United States.

(c) A certified seed incentive payment shall be available for each acre planted to certified hard white wheat seed, as approved by CCC. Producers are eligible to receive incentive payments for the production incentive or the certified seed incentive, or both. Each incentive payment is independent of the other.

§ 1413.102 Administration.

(a) The program is administered under the general supervision of the Executive Vice-President, CCC, and shall be carried out by the Farm Service Agency (FSA) State and county committees (State and county committees).

(b) State and county committees, their representatives and employees, have no authority to modify or waive any of the provisions of the regulations of this part, except as provided in paragraph (e) of this section.

(c) The State committee shall take any action required by the regulations of this part that the county committee has not taken. The State committee shall also:

(1) Correct, or require a county committee to correct any action taken by such county committee that is not in accordance with the regulations of this part; or

(2) Require a county committee to withhold taking any action that is not in accordance with the regulations of this part.

(d) No provision or delegation of this part to a State or county committee shall preclude the Executive Vice President, CCC, or a designee, from determining any question arising under the program or from reversing or modifying any determination made by the State or county committee.

(e) The Deputy Administrator, Farm Programs, FSA, may authorize State and county committees to waive or modify deadlines and other program requirements in cases where lateness or failure to meet such other requirements do not adversely affect the operation of this program and does not violate statutory limitations on the program.

(f) Any payment applications not executed in accordance with the terms and conditions determined and announced by CCC, including any purported execution prior to the dates authorized by the Executive Vice President, CCC, is null and void and shall not be considered to be a contract between CCC and any person executing the contract.

§ 1413.103 Definitions.

The definitions set forth in this section shall be applicable for all purposes of administering the Hard White Wheat Incentive Program established by this part.

Application period means the date established by the Deputy Administrator for producers of hard white wheat to apply for program benefits.

CCC means the Commodity Credit Corporation.

Certified seed means hard white wheat seed grown from acceptable seedstock and sold, according to rules imposed by a State's Certified Seed Board, as determined acceptable by the Deputy Administrator.

County committee means the FSA county committee.

County office means the FSA office.

Department or USDA means the United States Department of Agriculture.

Deputy Administrator means the Deputy Administrator for Farm Programs (DAFP), Farm Service Agency or a designee.

Eligible bushels means hard white wheat bushels that were produced in the United States anytime during the 2003 through 2005 crop years, and for which an acceptable settlement sheet has been provided to the county committee.

Farm Service Agency or FSA means the Farm Service Agency of the United States Department of Agriculture.

Payment means the bushels of wheat or seed production for which an operation is eligible to be paid under this part.

Settlement sheet means a document provided to a seller of hard white wheat upon delivery of hard white wheat to a CCC-approved warehouse, or other hard white wheat purchasing facility determined acceptable by CCC, with information which includes, but is not limited to: the name and address of buyer and seller; gross quantity; net quantity; price per bushel; and type and grade of the delivered hard white wheat.

§ 1413.104 Signup and application process.

(a) Signup for the Hard White Wheat Incentive Program shall be conducted by CCC for each of the 2003 through 2005 crop years during the application period announced by the Deputy Administrator. Applications are available from any county FSA office. Applicants must submit a complete application to FSA during the application period.

(b) The producer shall submit one application for all farms within in a particular county. On the application, the applicant must certify to: The total number and location of acres planted to hard white wheat and the number of eligible bushels sold. Applicants must also provide a settlement sheet, to FSA upon disposal of the production certified to on the application.

(c) Each applicant for a certified seed incentive payment must submit an acceptable seed receipt for the certified seed to FSA, and certify to the number and location of acres planted with certified seed.

(d) Producers requesting benefits under this part must certify to the accuracy and truthfulness of the information provided in their application. All information provided is subject to verification by FSA.

§ 1413.105 Eligibility.

(a) The certified seed incentive payment and the production incentive payments are available to eligible producers under § 1413.101(b) and (c) for any or all of the years 2003 through

2005. Producers are eligible to receive both the certified seed and production incentive in the same year. Where an acre of land receives both the certified seed incentive and production incentive payment in the same year, only one acre shall be counted under the total 2,000,000 acreage limitation of § 1413.101(a).

(b) To be eligible to receive the certified seed incentive payment, a producer must:

(1) Submit a complete application during the application period.

(2) Submit a receipt for the purchase of certified seed to FSA.

(c) To be eligible to receive the production incentive payment, a producer must:

(1) Submit a complete application during the application period.

(1) Produce hard white wheat of the quality required under § 1413.106;

(2) Have an interested buyer with the intent to use the wheat for all purposes except for feed use.

§ 1413.106 Quality.

The hard white wheat must be grade #2 or higher under the grading standards, established by the Federal Grain Inspection Service (FGIS).

§ 1413.107 Availability of funds and maximum eligible acreage and production.

The total available program funds for the 2003 through 2005 crop years is $20 million. To ensure that funds are available for each of the 2003 through 2005 crop years, payments may be factored based on total eligible producers for any year the eligible payments exceed the total funds available to be spent. The maximum hard white wheat acreage and production for which payments may be issued for the 2003 through 2005 crop year is to total 2,000,000 acres, or 120,000 bushels, whichever is greater. The certified seed incentive may be discontinued, as determined by the Deputy Administrator, in any year sufficient funds are determined to be unavailable.

§ 1413.108 Applicant's maximum payment quantity.

(a) The maximum payment quantity of hard white wheat for which an applicant may be approved under the production incentive payment for any year shall be the smaller of:

(1) The actual number of bushels harvested from the acres certified on the application; or

(2) The product of:

(i) The number of acres certified on the application;

(ii) Times 60 bushels per acre.

(b) [Reserved]

§ 1413.109 Calculation of assistance.

(a) Payment for the production incentive shall be the product of:

(1) The bushels determined in accordance with § 1413.108

(2) Times $0.20.

(b) Payment for the certified hard white wheat planting incentive shall be the product of:

(1) The number of acres certified on the application;

(2) Times $2.00 per acre.

§ 1413.110 Offsets and withholdings.

CCC may offset or withhold payments approved under this part in accordance with part 1403 of this chapter.

§ 1413.111 Assignments.

Persons entitled to a HWWIP payment may assign their rights to such payments in accordance with part 1404 of this chapter.

§ 1413.112 Appeals.

Any producer who is dissatisfied with a determination made pursuant to this part may request reconsideration or appeal such determination in accordance with parts 11 and 780 of this title.

§ 1413.113 Other regulations.

(a) The provisions of part 12 of this title, and the controlled substance provisions of part 718 of this title apply to payments made under this part.

(b) The payment limitation provisions of part 1400 of this title shall not be applicable to payments made under this part.

(c) The provisions of part 707 of this title relating to the making of payments in the event of the death of a program participant or and in the event of other special circumstances shall apply to payments made under this part.

Signed in Washington, DC, on January 28, 2003.

James R. Little,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 03–2359 Filed 1–29–03; 11:56 am]

BILLING CODE 3410–05–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM243; Special Conditions No. 25–226–SC]

Special Conditions: Bombardier Model BD–100–1A10 Airplanes; High-Intensity Radiated Fields (HIRF).

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued for Bombardier Model BD–100–1A10 airplanes. These airplanes will have a novel or unusual design feature when compared to the state of technology envisioned in the airworthiness standards for transport category airplanes. The airplane design includes four large liquid crystal display (LCD) electronic displays, an integrated electronic standby system, and full authority digital engine controls (FADEC) all of which perform critical functions. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for the protection of these systems from the effects of high-intensity-radiated fields (HIRF). These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: The effective date of these special conditions is January 9, 2003. Comments must be received on or before March 5, 2003.

ADDRESSES: Comments on these special conditions may be mailed in duplicate to: Federal Aviation Administration, Transport Airplane Directorate, Attention: Rules Docket (ANM–113), Docket No. NM243, 1601 Lind Avenue SW., Renton, Washington 98055–4056; or delivered in duplicate to the Transport Airplane Directorate at the above address. All comments must be marked: Docket No. NM243.

FOR FURTHER INFORMATION CONTACT: Greg Dunn, FAA, Airplane and Flight Crew Branch, ANM–111, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (425) 227–2799; facsimile (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA has determined that notice and opportunity for public comment in

accordance with 14 CFR 11.38 are unnecessary, because the FAA has provided previous opportunities to comment on substantially identical special conditions and has fully considered and addressed all the substantive comments received. Based on a review of the comment history and the comment resolution, the FAA is satisfied that new comments are unlikely. The FAA, therefore, finds that good cause exists for making these special conditions effective upon issuance.

However, the FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data. We ask that you send us two copies of written comments.

We will file in the docket all comments we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning these special conditions. The docket is available for public inspection before and after the comment closing date. If you wish to review the docket in person, go to the address in the **ADDRESSES** section of this preamble between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

We will consider all comments we receive on or before the closing date for comments. We will consider comments filed late if it is possible to do so without incurring expense or delay. We may change these special conditions based on the comments we receive.

If you want the FAA to acknowledge receipt of your comments on these special conditions, include with your comments a pre-addressed, stamped postcard on which the docket number appears. We will stamp the date on the postcard and mail it back to you.

Background

On March 26, 1999, Bombardier Inc. submitted an application to Transport Canada for FAA type certification of its new Model BD–100–1A10 airplane. The BD–100–1A10 airplane is a business jet powered by two Honeywell AS907 High Bypass turbo-fan engines. The airplane has a two-pilot cockpit and interior seating for sixteen passengers. The overall length of the Model BD–100–A10 is 68.7 feet, the height is 20.25 feet, and the wing span is 63.8 feet. The airplane has a maximum takeoff weight of 37,500 pounds, a maximum landing weight of 33,750 pounds, a maximum operating altitude of 45,000 feet, and a design range of 3,100 nautical miles at Mach 0.8 or 2,780 nautical miles at Mach 0.82. The Model BD–100–1A10 airplane will include four large LCD electronic displays, an integrated electronic standby system, and FADEC, all of which perform critical functions. These systems may be vulnerable to HIRF external to the airplane.

Type Certification Basis

Under the provisions of 14 CFR 21.17, Bombardier Inc. must show that Model BD–100–1A10 airplanes meet the applicable provisions in effect on the date of application for the type certificate or applicable provisions of 14 CFR part 25, as amended by Amendments 25–1 through 25–98. Subsequent changes have been made to § 21.101 as part of Amendment 21–77, but those changes do not become effective until June 10, 2003.

If the Administrator finds that the applicable airworthiness regulations (*i.e.*, part 25, as amended) do not contain adequate or appropriate safety standards for Bombardier Model BD–100–1A10 airplanes because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

In addition to the applicable airworthiness regulations and special conditions, Model BD–100–1A10 airplanes must comply with the fuel vent and exhaust emission requirements of 14 CFR part 34 and the noise certification requirements of 14 CFR part 36, and the FAA must issue a finding of regulatory adequacy pursuant to § 611 of Public Law 92–574, the "Noise Control Act of 1972."

Special conditions, as defined in 14 CFR 11.19, are issued in accordance with § 11.38 and become part of the type certification basis in accordance with § 21.101(a)(2).

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same novel or unusual design feature, these special conditions would also apply to the other model under the provisions of § 21.101(a)(1), Amendment 21–69, effective September 16, 1991.

Novel or Unusual Design Features

As noted earlier, Model BD–100–1A10 airplanes will incorporate four LCD electronic displays, an integrated electronic standby system, and FADEC that will perform critical functions. These systems may be vulnerable to HIRF external to the airplane. The current airworthiness standards of part 25 do not contain adequate or appropriate safety standards for the protection of this equipment from the adverse effects of HIRF. Accordingly, these systems are considered to be novel or unusual designs.

Discussion

There is no specific regulation that addresses protection requirements for electrical and electronic systems from HIRF. Increased power levels from ground-based radio transmitters and the growing use of sensitive avionics/electronics and electrical systems to command and control airplanes have made it necessary to provide adequate protection.

To ensure that a level of safety is achieved equivalent to that intended by the regulations incorporated by reference, special conditions are needed for Model BD–100–1A10 airplanes. These special conditions require that avionic/electronic and electrical systems that perform critical functions be designed and installed to preclude component damage and interruption of function due to both the direct and indirect effects of HIRF.

High-Intensity Radiated Fields (HIRF)

With the trend toward increased power levels from ground-based transmitters and the advent of space and satellite communications, coupled with electronic command and control of the airplane, the immunity of critical avionic/electronic and electrical systems to HIRF must be established.

It is not possible to precisely define the HIRF to which the airplane will be exposed in service. There is also uncertainty concerning the effectiveness of airframe shielding for HIRF. Furthermore, coupling of electromagnetic energy to cockpit-installed equipment through the cockpit window apertures is undefined. Based on surveys and analysis of existing HIRF emitters, an adequate level of protection exists when compliance with the HIRF protection special condition is shown with either paragraph 1 or 2 below:

1. A minimum threat of 100 volts rms (root-mean-square) per meter electric field strength from 10 KHz to 18 GHz.

a. The threat must be applied to the system elements and their associated wiring harnesses without the benefit of airframe shielding.

b. Demonstration of this level of protection is established through system tests and analysis.

2. A threat external to the airframe of the field strengths identified in the table below for the frequency ranges indicated. Both peak and average field strength components from the table are to be demonstrated.

Frequency	Field strength (volts per meter)	
	Peak	Average
10 kHz–100 kHz ...	50	50
100 kHz–500 kHz	50	50
500 kHz–2 MHz	50	50
2 MHz–30 MHz	100	100
30 MHz–70 MHz ...	50	50
70 MHz–100 MHz	50	50
100 MHz–200 MHz	100	100
200 MHz–400 MHz	100	100
400 MHz–700 MHz	700	50
700 MHz–1 GHz ...	700	100
1 GHz–2 GHz	2000	200
2 GHz–4 GHz	3000	200
4 GHz–6 GHz	3000	200
6 GHz–8 GHz	1000	200
8 GHz–12 GHz	3000	300
12 GHz–18 GHz ...	2000	200
18 GHz–40 GHz ...	600	200

The field strengths are expressed in terms of peak of the root-mean-square (rms) over the complete modulation period.

The threat levels identified above are the result of an FAA review of existing studies on the subject of HIRF, in light of the ongoing work of the Electromagnetic Effects Harmonization Working Group of the Aviation Rulemaking Advisory Committee.

Applicability

As discussed above, these special conditions are applicable to Bombardier BD–100–1A10 airplanes. Should Bombardier apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design feature, these special conditions would apply to that model as well, under the provisions of § 21.101(a)(1), Amendment 21–69, effective September 16, 1991.

Conclusion

This action affects only certain novel or unusual design features on Bombardier Model BD–100–1A10 airplanes. It is not a rule of general applicability, and affects only the applicant which applied to the FAA for approval of these features on the airplane. The FAA has determined that notice and opportunity for public comment are unnecessary, because the FAA has provided previous opportunities to comment on substantially identical special conditions and has fully considered and addressed all the substantive comments received. The FAA is satisfied that new comments are unlikely and finds, therefore, that good cause exists for making these special conditions effective upon issuance.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for the Bombardier Model BD–100–1A10 airplane.

1. *Protection from Unwanted Effects of High-Intensity Radiated Fields (HIRF).* Each electrical and electronic system that performs critical functions must be designed and installed to ensure that the operation and operational capability of these systems to perform critical functions are not adversely affected when the airplane is exposed to high-intensity radiated fields.

2. For the purpose of these special conditions, the following definition applies: *Critical Functions:* Functions whose failure would contribute to or cause a failure condition that would prevent the continued safe flight and landing of the airplane.

Issued in Renton, Washington, on January 9, 2003.

Ali Bahrami,

Assistant Director, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–2422 Filed 1–31–03; 8:45 am]

BILLING CODE 4910–13–P

SOCIAL SECURITY ADMINISTRATION

20 CFR Parts 404 and 416

[Regulations Nos. 4 and 16]

RIN 0960–AE97

Federal Old-Age, Survivors and Disability Insurance and Supplemental Security Income for the Aged, Blind, and Disabled; Administrative Review Process; Video Teleconferencing Appearances Before Administrative Law Judges of the Social Security Administration

AGENCY: Social Security Administration (SSA).

ACTION: Final rules with request for comment.

SUMMARY: We are revising our rules to allow us to conduct hearings before administrative law judges (ALJs) at which a party or parties to the hearing and/or a witness or witnesses may appear before the ALJ by video teleconferencing (VTC). The revised rules provide that if we schedule your hearing as one at which you would appear by VTC, rather than in person, and you object to use of that procedure, we will reschedule your hearing as one at which you may appear in person before the ALJ. These revisions will provide us with greater flexibility in scheduling and holding hearings, improve hearing process efficiency, and extend another service delivery option to individuals requesting a hearing. Although we are issuing these rules as final rules, we are also requesting comments on a provision of the rules that involves a significant change from the proposed rules we previously published concerning our use of VTC.

DATES: These rules are effective March 5, 2003. To be sure your comments are considered, we must receive them by April 4, 2003.

ADDRESSES: You may give us your comments by using our Internet site facility (*i.e.*, Social Security Online) at *http://www.ssa.gov/regulations;* by e-mail to *http://www.regulations@ssa.gov;* by telefax to (410) 966–2830; or by letter to the Commissioner of Social Security, PO Box 17703, Baltimore, MD 21235–7703. You may also deliver them to the Office of Process and Innovation Management, Social Security Administration, L2109 West Low Rise Building, 6401 Security Boulevard, Baltimore, MD 21235–6401 between 8 a.m. and 4:30 p.m. on regular business days. Comments are posted on our internet site, or you may inspect them physically on regular business days by making arrangements with the contact person shown below.

FOR FURTHER INFORMATION CONTACT: Martin Sussman, Regulations Officer, Social Security Administration, Office of Regulations, 100 Altmeyer Building, 6401 Security Boulevard, Baltimore, MD 21235–6401, (410) 965–1767 or TTY 1–800–966–5906, for information about this notice. For information on eligibility or filing for benefits, call our national toll-free number, 1–800–772–1213 or TTY 1–800–325–0778, or visit our Internet site, Social Security Online, at *http://www.ssa.gov.*

SUPPLEMENTARY INFORMATION:

Background

Nationally, over 500,000 requests for a hearing before an ALJ are filed with us each year. Hearings have traditionally been held with all participants (the party(ies) to the hearing, the ALJ, any representative(s) appointed by the party(ies), any witness(es), any translator(s), and any other persons whom the ALJ considers necessary or proper to the hearing) present at the same location: either a hearing office or a remote hearing site. ALJs hold

hearings at remote hearing sites, which are generally at least 75 miles from a hearing office, to accommodate those individuals who do not live near a hearing office.

Approximately 40 percent of hearings are held at remote hearing sites.

To make travel to remote hearing sites as cost effective as possible, hearing offices wait until they have a sufficient number of requests for hearing to schedule a full day or, if travel to a remote hearing site requires an overnight stay, several days of hearings. Because of the need to accrue a docket, ALJs travel to some remote hearing sites infrequently. Because many remote hearing sites are in less-populous areas, it can be difficult to find a needed medical and/or vocational expert witness(es) to travel to these sites, and this difficulty may further delay scheduling a hearing. ALJs also travel from their assigned hearing offices to assist other hearing offices when the need arises.

Whether to conduct hearings at remote sites or assist other hearing offices, the time ALJs spend traveling could be used to perform other adjudicatory responsibilities.

In 1996 we published Social Security Ruling (SSR) 96–10p, Electronic Service Delivery (61 FR 68808, December 30 1996). In SSR 96–10p, we explained that we planned to explore ways for claimants to interact with us electronically. We also explained that we would not require claimants to work with us electronically, but that we would use technology to provide options for different service deliveries. VTC was one of the technologies we identified as having the potential to improve claimant service. VTC provides real-time transmission of audio and video between two or more locations and permits individuals to see, hear, and speak with each other as though they were at the same location.

As we explained in the Notice of Proposed Rulemaking (NPRM) that we published concerning these rules (66 FR 1059, January 5, 2001), we decided to propose conducting hearings by VTC based on testing conducted in the State of Iowa that demonstrated that VTC procedures can be effectively used where large scale, high quality VTC networks exist and claimants want to participate in VTC procedures because doing so reduces the distances they must travel to their hearings. In reaching that decision, we considered and discounted the results at two other test sites, Albuquerque-El Paso and Huntington-Prestonburg, because the tests at those sites offered no travel benefits to the claimants and resulted in low participation rates.

In the testing of VTC that we have been conducting since 1996 in the State of Iowa, which has a large VTC network, no one electing use of VTC procedures has had to travel more than about 20 miles from his or her home to have a hearing, and the travel typically required of claimants currently is only about 5 miles. The rate of claimant participation in the Iowa test currently exceeds 95 percent; that is, over 95 percent of the claimants offered a hearing using VTC procedures agree to the use of those procedures.

In a survey of participants in the Iowa test, a large percentage of the respondents rated hearings using VTC procedures as "convenient" or "very convenient," and overall service as either "good" or "very good." Test data showed that processing time for these hearings was substantially less than for hearings conducted in person at remote sites during the same time period, and that the ratio of hearings held to hearings scheduled was significantly higher for hearings using VTC procedures than for hearings conducted in person. Being able to hold hearings as scheduled increases our efficiency because we do not have to recontact the individual to determine why he or she did not appear at a scheduled hearing nor reschedule the hearing (which can be time consuming, especially when an expert witness(es) has been scheduled to testify). Further, an ALJ does not spend time waiting for someone who does not appear, as would be the case in a hearing conducted in person at a remote site.

Based on all these factors—claimant satisfaction, ability to provide more timely hearings, savings in ALJ travel time, faster case processing, and higher ratio of hearings held to hearings scheduled—we decided that conducting hearings by VTC is an efficient service delivery alternative. We also decided that scheduling a hearing for use of VTC, rather than asking someone to elect a hearing using VTC, as we have been doing in our testing of VTC, would improve hearing office efficiency and would permit us to provide faster access to a hearing for some individuals.

We plan to begin using VTC facilities in the servicing area of a hearing office when the Associate Commissioner for Hearings and Appeals determines that appearances at hearings conducted in the area can be conducted more efficiently by VTC than in person. We foresee initially scheduling VTC appearances where absent use of VTC:

- We would need to accrue a docket for a remote hearing site.
- An ALJ would need to travel to assist another hearing office.
- An expert witness(es) or appropriate medical specialist(s) would not be available for a hearing site. (In such a case, all participants could be at different locations; for example, the ALJ at a hearing office, the individual at a remote hearing site or another hearing office, and the expert witness(es) at a third location.)

At first, we plan to locate most remote sites for using VTC to conduct appearances either in space where we have a long-term lease or in another federal building. We are investigating sharing VTC facilities with other federal agencies and states, and, if we can ensure privacy, we may eventually rent commercial space to expand use of VTC as a service delivery option. Calling into SSA's VTC network from private facilities, such as facilities owned by a law firm, may also be possible. Regardless of the type of facility, we will make certain that:

- The individual has the same access to the hearing record when appearing by VTC as he or she would have if appearing in person before the ALJ.
- There is a means of transmitting and receiving additional evidence between all locations and all participants.
- An assistant is present at the VTC site to operate the equipment and provide other help, as required.
- The audio/video transmission is secure and the individual's privacy is protected.

We will follow the same procedures for audiotaping hearings that we conduct using VTC that we do for hearings where all the participants appear in person. We have no plans to videotape hearings in which a party or a witness appears by VTC. Should there be a problem with the VTC equipment, before or during a hearing, we will reschedule the hearing as we do now when unforeseen circumstances require us to reschedule a hearing: at the earliest time possible based on the request for hearing filing date.

We reserve the right not to schedule an appearance by VTC for someone who asks to appear by VTC. In many locations, especially in the near term, we may not have the capability to accommodate the request, and the ALJ may determine that an appearance must be conducted in person even where VTC capability exists. As access to VTC expands, we will generally accommodate requests to appear by VTC as space and time permit.

Despite the fact that conducting hearings by VTC has the potential to improve service, we will not require any

individual to appear at his or her hearing by VTC if the individual objects to that procedure at the earliest possible opportunity before the time scheduled for the hearing. Under these final rules, if a party so objects to making his or her appearance by VTC, we will reschedule the hearing as one at which the individual may appear in person.

When we reschedule a hearing because a party objects to making his or her appearance by VTC, we will reschedule the hearing at the earliest time possible based on the request for hearing filing date. Where necessary, to expedite the rescheduling, we will give the party the opportunity to appear in person at the hearing office or any other hearing site within the service area of the hearing office at which we are first able to schedule a hearing. The party's travel expenses to the remote site or to the hearing office, and the travel expenses of his or her appointed representative, if any, and the travel expenses of any unsubpoenaed witnesses we determine to be reasonably necessary, will be reimbursed in accordance with the provisions of 20 CFR 404.999a–404.999d and 416.1495–416.1499.

To ensure that a party fully understands the right to decline to appear by VTC, a notice scheduling an individual to appear at his or her hearing by VTC will clearly state:

- What it means to appear by VTC;
- That we have scheduled the individual's appearance to be by VTC;
- That we will schedule a hearing at which the individual may appear in person if the individual tells us that he or she does not want to appear by VTC; and
- How to tell us that.

We will evaluate hearings using VTC procedures to ensure that there is no significant difference in the outcome of hearings conducted using VTC and those conducted in person and that we maintain a high degree of accuracy in decisions made based on hearings using VTC. We will also ensure that individuals:

- Understand that they are not required to appear at their hearings by VTC;
- Know how to tell us if they do not want to appear by VTC;
- Receive a full and fair hearing; and
- Are satisfied with the VTC process in relation to their appearance and the appearances of any witnesses.

The Final Regulations

We are revising 20 CFR 404.929 and 416.1429 to state that you may appear at your hearing in person or by VTC. We are revising 20 CFR 404.936 and 416.1436 to state that we may schedule your appearance or that of any individual appearing at the hearing to be by VTC and that, if we schedule you to appear by VTC and you tell us that you want to appear in person, we will schedule a hearing at which you may appear in person. We are revising 20 CFR 404.938 and 416.1438 to state that if we schedule you or anyone to appear at your hearing by VTC, the notice of hearing will tell you that and provide information about VTC appearances and about how you can tell us that you do not want to appear by VTC. Finally, we are revising 20 CFR 404.950(a) and (e) and 416.1450(a) and (e) to state that a party or a witness may appear at a hearing in person or by VTC.

Public Comments

We published these regulatory provisions in the **Federal Register** as an NPRM on January 5, 2001 (66 FR 1059). We provided the public with a 60-day comment period. In response to the NPRM, we received seven comment letters from the following sources: the Railroad Retirement Board (RRB), the Disability Law Center, the National Organization of Social Security Claimants Representatives, the Association of Administrative Law Judges, and seven ALJs commenting as individuals.

Because some of the comments were detailed, we have condensed, summarized, or paraphrased them below. However, we have tried to summarize commenters' views accurately and to respond to all of the significant issues raised by the commenters that were within the scope of the proposed rules.

Based on our consideration of the comments received, we have made a number of changes in the rules as proposed in the NPRM. We have also made a number of decisions about administrative practices we will follow in using VTC procedures. We discuss our response to each of the comments below.

In the NPRM we spoke of "VTC hearings" and "in-person hearings" as a way of distinguishing easily between hearings at which VTC procedures are used and those at which all the participants are at the same location. The public comments received reflected our use of that language (see below) without raising any specific issue about it. However, from our general consideration of the comments and further evaluation of the use of VTC procedures, we have concluded that we should not rely on language that could erroneously suggest that there are two types of hearings and should instead use language that reflects the fact that all claimants are afforded an opportunity for one type of hearing—*i.e.*, a hearing at which the claimant's rights to procedural due process, including the right to appear and present evidence, are fully protected. Speaking of hearings as either "in-person" or "VTC" hearings would also not accurately reflect the circumstances of hearings in which some of the participants appear before the ALJ in person and some appear by VTC.

The distinctions between hearings at which all of the participants are at the same location and hearings at which some or all of the involved individuals participate by VTC are secondary distinctions. The distinctions involve the manner in which the parties and the witnesses make their appearances before the ALJ (*i.e.*, in person or by VTC), not fundamental differences that cause the hearings to be of different types. We reflect that view in the description of the final rules set forth above, in the discussion of our responses to the comments, and in specific changes we are making in the final rules. However, our comment summaries are couched in the terms we used in the NPRM.

We further discuss these revisions, and other changes in the final rules that are not in direct response to the comments, following the discussion of our responses to the comments. *See* below under the heading, *Additional Changes.*

Comment: The RRB commented that it was very pleased to see SSA's proposal. The RRB also indicated that it would be interested in determining the feasibility of its hearing officers using the VTC facilities of SSA on a fee basis to conduct some of its hearings—to reduce the significant travel in which the RRB is required to engage to conduct its hearings.

Response: As we noted above and in the NPRM, we are investigating whether we can share facilities with other federal agencies and states. We will pursue discussions with the RRB in that regard.

Comment: One organization commented that when claimants who need hearings at a remote site want to exercise their right to an in-person hearing, they will probably face even longer waits for their hearings, and that SSA must take steps to minimize the delays these claimants will face.

Response: In considering this comment, we have concluded that frequent use of VTC procedures in a remote area could delay the hearings of individuals in that area who do not want to appear by VTC. That is the case because the participation of other individuals in VTC procedures will

eliminate some or most of the pending hearings that could go to make up a complete docket for an ALJ trip to the affected remote site.

To ensure claimants in areas of high VTC usage a meaningful option to appear in person, we will make it our practice in those areas to afford claimants who do not want to appear by VTC the opportunity to appear in person either at the hearing office (where hearings are held without need to accumulate ALJ travel dockets), or at any remote site in the hearing office's service area (including, but not limited to, the designated remote site for the claimant's place of residence). We will schedule a hearing where the claimant may appear in person at the earliest possible time based on the filing date of the claimant's request for hearing; election of the option to appear in person will not cause the claimant to lose his or her place in the queue of individuals awaiting entry into the process for scheduling hearings.

In following these practices, we will apply our normal rules for reimbursing the travel expenses that claimants, their representatives, and any unsubpoenaed witnesses incur in traveling to the hearing office or to any remote site in the service area for hearings (*see* §§ 404.999a–404.999d and 416.1495–416.1499). A claimant's decision not to accept a scheduled appearance by VTC will not prevent reimbursement of travel expenses under §§ 404.999c(d)(4) and 416.1498(d)(4).

Comment: An organization commented that choice of hearing sites should be explained at an early, informal conference, and that the choice should be deferred where a claimant wants to appoint a representative. The commenter noted that ensuring that claimants make an informed choice of hearing site would further SSA's goal of reducing the rescheduling of hearings.

Response: In areas in which the Associate Commissioner for Hearings and Appeals has determined that hearings can be conducted more efficiently using VTC than by having appearances made in person, it will be our practice in our pre-hearing activities to provide claimants with information about VTC procedures and an opportunity to ask questions about and to state a preference for or against use of those procedures.

When the ALJ determines that a case is ready to be scheduled for hearing and sets the time and place of the hearing, the ALJ will also decide whether the claimant's appearance should be scheduled to occur by VTC or in person. In doing that, the ALJ will consider any stated preference of the claimant or the representative for or against appearing by VTC, as well as the availability of VTC technology and any other factors, such as a claimant's loss of visual and auditory capacities, that may affect how the appearance should be conducted.

When we issue a notice of hearing advising a claimant that his or her appearance has been scheduled to be by VTC, the claimant will then have an absolute right to decline to appear by VTC, irrespective of any preference he or she may have previously stated in this regard, and to choose to appear in person, under the practices on rescheduling and use of in-person appearance sites that we have described above. A timely statement by the claimant of any objection to appearing by VTC or of a desire to appear in person will constitute good cause for rescheduling the claimant's appearance to be in person (*see* §§ 404.936(e) and 416.1436(e) as revised in these final rules).

Our policy of giving claimants their option to decline to appear by VTC after issuance of the notice of hearing is designed to promote the effective use of VTC procedures while also maintaining a meaningful option for claimants who want to appear in person. We believe that claimants will carefully consider whether they should exercise this option since doing so could delay the occurrence of their hearings, even under the rescheduling and site-usage practices we have described above for expediting the rescheduling of hearings to allow in-person appearances. We believe this policy will help to ensure that VTC procedures will be frequently used where available and, thus, that these procedures will be effective in improving the overall efficiency of the hearings process, even though some hearings will have to be rescheduled because claimants decide against appearing by VTC. We believe the policy is warranted with respect to the individuals affected because the option of appearing by VTC will allow them to have their hearings before an ALJ in the shortest possible time.

Comment: An ALJ commented that claimants should not be given the option of demanding an in-person hearing instead of a VTC hearing. The commenter's reasoning was that VTC either is or is not in accord with due process and, if it is (as this commenter believes), the claimant has no legal basis for insisting on in-person proceedings. The commenter further contended that giving this option would be based, not on a legal right, but on an attempt to accommodate the claimant's preferences, and that mere preferences should be outweighed by the costs to the Agency and the public of accommodating those preferences for a hearing in a more costly forum. The commenter reported that it was his impression—based on pre-ALJ experience with use of VTC in criminal proceedings—that the participants in proceedings conducted by VTC paid little attention to the medium once the proceedings began. In this commenter's view, there is no legitimate reason to object to VTC procedures and many less than legitimate reasons for preferences against those procedures, including judge shopping and claimant discomfort at being "on TV."

Response: We believe that the hearing proceedings we conduct by VTC will be fundamentally fair and that they will fully protect the claimant's right to procedural due process. However, as explained below, there are sound reasons for assuring that all claimants retain an opportunity to appear in person at their hearings. Preserving that opportunity for claimants is also consistent with our general policy, as explained in SSR 96–10p, of using technology to provide claimants an optional way of communicating with us.

That certain procedures will provide due process does not mean that there are no legal issues to consider regarding those procedures. Use of VTC technology in administrative hearings is relatively new. In these final rules, we are interpreting the word "hearing" as used in sections 205(b)(1) and 1631(c)(1)(A) of the Social Security Act (the Act) to include hearings at which the claimant will appear by VTC, a technology that was not available when these statutes were created, as well as hearings at which the claimant appears in person before the ALJ. Our earliest regulations interpreting the hearing provisions of the Act specified that the claimant had a right to request a hearing "before" the decisionmaker (20 CFR 403.707, 1940), and our current regulations specify that claimants may appear "in person" at the hearing (20 CFR 404.929 and 416.1429), and that they have a "right to appear before the administrative law judge, either personally or by means of a designated representative * * *" (20 CFR 404.950(a) and 416.1450(a)). Therefore, we believe it is legally prudent to ensure that all claimants retain the opportunity to appear in person.

Claimant credibility is an important issue in many of our hearings, and some claimants may have strong opinions about whether they can best project their own credibility by appearing in person as opposed to appearing by VTC. Preserving an option for claimants to appear in person should increase their

comfort level in appearing by VTC and help to ensure that they perceive the hearing process as fair. The satisfaction of claimants with their hearing experiences is, of course, an important consideration in the administration of the Social Security hearings process.

It is also important that we try to ensure that preferences against appearing by VTC do not undermine the effectiveness with which we are able to use VTC, as could happen if such preferences frequently caused claimants to decline to appear by VTC. However, we believe we should pursue that end by promoting and continually improving the claimant-service advantages of VTC while also preserving the opportunity of claimants to appear in person.

Comment: An organization stated that we should guarantee the right of claimants to an in-person hearing to the extent of allowing the claimant to withdraw consent to participate in VTC proceedings even up to the point of arriving at the VTC site (because they may not realize that they do not want to proceed with a VTC appearance until they arrive at the site), and by ensuring that claimants do not lose their place in queue if they decline (or withdraw consent for) a VTC hearing.

Response: Under the provisions of §§ 404.936 and 416.1436, as they currently exist and as revised when these final rules become effective, claimants who object to the time or place of the hearing are required to "notify the [ALJ] at the earliest possible opportunity before the time set for the hearing." Under our existing provisions on dismissing requests for hearing based on failure to appear at a scheduled hearing, a request for hearing may be dismissed if a claimant does not appear at the scheduled hearing and has not given the ALJ, before the time set for the hearing, a good reason why he or she cannot appear at the scheduled hearing. (*See* §§ 404.957(b) and 416.1457(b), which we are not revising.) Under the above provisions, a claimant who has been scheduled to appear by VTC may establish good cause for changing the time or place of the hearing by notifying the ALJ at the earliest possible opportunity before the time set for the hearing that he or she has an objection to appearing by VTC. The notice of hearing will advise the claimant of that requirement. A timely statement by the claimant of any objection to appearing by VTC will cause the ALJ to find that there is good cause to change the time and place of the scheduled hearing and to reschedule the hearing for a time and place at which the claimant may appear in person (*see* §§ 404.936(e) and 416.1436(e)). No hard and fast rule for the latest time for a claimant to object to appearing by VTC may be set because many different factors (including the delayed appointment of a representative who opposes participation in VTC) could affect whether the claimant has notified the ALJ of his or her objection at the earliest possible time. In addition, as we discussed above, claimants who decide to decline to appear by VTC will not lose their place in the queue of individuals awaiting hearings.

Comment: An organization commented that while VTC hearings have the potential to be an improvement over some in-person hearings (such as those conducted in hotel rooms), there are concerns and we should not schedule a VTC hearing and require the claimant to respond affirmatively to choose an in-person hearing. This commenter noted that many claimants with mental impairments, cognitive limits, low education, and communication limitations will have difficulty understanding and responding to the notice.

Response: As discussed above, we believe that the policy of generally requiring claimants to take action to opt out of a scheduled appearance by VTC will be administratively beneficial and otherwise warranted. For the reasons set forth below, we also believe that the policy of generally requiring claimants affirmatively to decline to appear by VTC will not involve any significant risks for claimants, including those individuals who do not have an appointed representative and who may have mental, educational, and linguistic limitations—

- Hearing office staff will have provided claimants with information concerning their options for how they may appear at the hearing during the pre-hearing case preparation that occurs before the notice of hearing is issued;
- The ALJ will have discretion to prevent issuance of a notice scheduling a claimant to appear by VTC in instances in which the ALJ concludes that there are circumstances that make it necessary not to have the claimant appear by VTC;
- The notices of hearing used to schedule claimants to appear by VTC will explain VTC procedures and the option to appear in person in clear, easily understood language; and
- The claimant will be able to opt out of appearing by VTC merely by stating a desire not to appear in that way or a desire to appear in person.

Comment: An organization of individuals who represent claimants in proceedings before us reported that it generally supported the proposed rules and the use of VTC hearings, so long as the right to a full and fair hearing is adequately protected and the quality of VTC hearings is ensured. This organization reported that its members had had mixed experiences with the VTC tests and noted that while a member who had experience with one VTC hearing was dissatisfied with the quality of the VTC transmission (which was not sufficient to allow the ALJ to perceive shortness of breath and sweating experienced by the claimant), another member who had represented several hundred claimants in the Iowa test now preferred VTC to in-person hearings because of the calming effect that VTC procedures had on his clients, the reduction in claimant travel, and the quality of VTC facilities. This organization offered the general comment that its members could be expected not to encourage their clients to participate in VTC hearings if there is no travel advantage and the quality of the hearing experience is inadequate.

Response: We believe that providing high quality VTC facilities and travel advantages for claimants who use VTC services will be of critical importance in ensuring the active cooperation of claimant representatives in encouraging their clients to use those services. We will not achieve our goals in implementing VTC procedures unless claimant representatives support their use. For that reason, and because providing claimants high quality hearing experiences with as little inconvenience to them as reasonably possible is inherently part of our overall mission, we intend to ensure that our VTC facilities are of high quality and that the travel claimants are required to undertake to attend their hearings is reduced by participation in our VTC services. The Associate Commissioner for Hearings and Appeals will consider those factors in determining whether a service area should be designated as ready for VTC use.

Comment: An organization commented that we should establish procedures to ensure that files can be reviewed and that additional evidence is associated with the file. The organization noted that problems have occurred in these respects at in-person, remote-site hearings, especially where the hearing is conducted by a visiting ALJ, and these problems would also exist in VTC hearings.

Response: As we stated in the NPRM, we will make certain that claimants participating in VTC procedures will have the "same access" to the hearing record as individuals not participating in those procedures. It is our intent in this regard to ensure that claimants who

make in-person appearances and those who participate in VTC procedures will have equal and sufficient access to the record. The sufficiency of record access in an area will be one of the factors the Associate Commissioner for Hearings and Appeals considers in deciding whether to declare an area ready for use of VTC procedures.

Comment: While only one of the ALJs who commented on the NPRM opposed the proposal to give claimants the right to choose not to have their hearings conducted by VTC, all but one of the commenting ALJs strongly opposed the proposal to allow claimants to veto the use of VTC to conduct the appearances of vocational experts (VEs) and medical experts (MEs). (The comments of the remaining ALJ dealt with matters that were not within the scope of the NPRM.) The ALJs who opposed this provision included five ALJs who conducted hearings in the Iowa test and the Association of Administrative Law Judges.

The reasons offered for opposing this proposal included that it would defeat the purpose of using VTC as a way to obtain expert testimony when it is impractical for the expert to appear in person, and that it could force ALJs to forgo needed testimony or to take testimony through the time consuming and unwieldy method of written interrogatories. Concern was expressed that the right to veto the appearance of an expert by VTC could be used to prevent the taking of expert testimony that might be adverse to the claimant and to facilitate "expert shopping." It was pointed out that claimants can already object to witnesses based on bias or qualifications. The view was also expressed that due process is fully accorded to the claimant if the claimant can see and cross-examine the expert and confront the expert with documentary evidence.

The ALJs who commented based on their experience in the Iowa test strongly emphasized the practical problems that allowing claimants to veto having an expert testify by VTC would cause. These ALJs stated that using VTC to take the testimony of VEs is necessary to utilize these experts effectively because the cost of a VE's appearance can be reduced if, as is possible using VTC procedures, a docket of multiple appearances can be arranged for the expert. They also emphasized the value of VTC in reducing the problems involved in scheduling hearings, citing the example of how much easier it is to make arrangements for one VE to appear by VTC in four hearings occurring on a given day at four different sites than it is to arrange for four VEs to make in-person appearances, at odd times in their workdays, at four sites.

The ALJs involved in the Iowa test further emphasized that the practical problems in not using VTC to take VE testimony are greatly compounded when it comes to securing the testimony of MEs. They reported that it is only through VTC that they are able to provide ME testimony for hearings being held in remote sites, and that MEs will not travel to remote sites when it is technically possible to testify in hearings being held at such sites via VTC. These ALJs also reported that it was their experience that it is almost impossible to get MEs to testify in the larger urban areas where the hearing offices are located, and that it is sometimes necessary to rely on MEs testifying from the medical centers in Ames and Iowa City even in cases being heard in the West Des Moines area.

Response: In considering this comment, we have concluded that claimants should not be empowered to veto use of VTC to take the testimony of expert witnesses. Therefore, we have deleted from §§ 404.938 and 416.1438 the proposed provisions that would have given claimants that power. Because this represents a significant change from the proposed rule, we have decided to offer an additional opportunity for public comment on this provision.

Under these final rules, decisions as to whether hearings will be conducted with a witness or witnesses appearing by VTC will be made by the ALJ. The claimant may state objections to a witness appearing by VTC, just as they may state objections to any aspect of the hearing, and they may object to a witness on the basis of perceived bias or lack of expertise. However, a claimant's objection to a witness appearing by VTC will not prevent use of VTC for the appearance, unless the ALJ determines that the claimant's objection is based on a circumstance that warrants having the witness appear in person.

The analysis of the commenting ALJs concerning the impracticalities of giving claimants veto power over the medium whereby expert witnesses make their appearance has caused us to reevaluate our proposal in that regard. We believe these commenters are correct in indicating that giving claimants that power would undermine one of the primary practical benefits of using VTC procedures and adversely impact our ability to use those procedures effectively to improve the hearings process. The commenters also effectively emphasize the significance of the positive practical benefits that can flow from relying on VTC procedures in scheduling and conducting the appearances of expert witnesses.

An important point made in this comment is that implementation of VTC procedures reduces the readiness of experts to travel to remote sites. This is a result that might be expected logically, we believe, and the experience of the ALJs in the Iowa test bears out its occurrence.

Unless we ensure ALJ authority to use VTC to take expert testimony by not empowering claimants to veto its use for that purpose, the reduced readiness of expert witnesses to travel when VTC appearances are technologically possible will adversely affect our ability to preserve a reasonable opportunity for claimants to appear in person if they choose to opt out of scheduled appearances by VTC. If the authority of ALJs to secure expert testimony by VTC is not ensured, the reduced willingness of experts to travel when VTC technology is available could also reduce the efficiency with which we are able to schedule the appearances of experts at the hearings of individuals who live near hearing offices in urban areas and appear in person in those offices for their hearings.

MEs and VEs testify as impartial witnesses. They testify based on the evidence entered into the record and not based on any examination or personal evaluation of the claimant. Where they testify by VTC and their testimony is adverse to a party's claim, the party and his or her representative, if any, will have a complete opportunity to confront and examine the witness regarding the matters that are important with respect to expert testimony—*i.e.*, the expertise of the witness and the accuracy of his or her testimony.

Affording claimants the power to veto the appearance of expert witnesses by VTC would be inconsistent with our existing practices and instructions regarding use of interrogatories to secure the testimony of expert witnesses. While emphasizing the preferability of securing live testimony where feasible, and requiring the ALJ to consider and rule on any claimant objection to the use of interrogatories, our instructions do not mandate non-use of interrogatories merely because a claimant objects to their use. *See* Hearings, Appeals and Litigation Law Manual (HALLEX), sections I–2–530, I–2–542, and I–2–557. Thus, allowing claimants to veto the live testimony that experts can give by VTC would invest claimants with an authority that they do not currently have with respect to interrogatories.

Under these final rules, ALJs will have discretion to determine that the

appearance of any individual must be conducted in person. Thus, to the extent that circumstances could arise in which it would be advisable to schedule an in-person appearance by an expert witness even though a VTC appearance would be possible technologically, the ALJ may schedule such an appearance. That action could be appropriate, for example, where the claimant alleges personal bias or dishonesty on the part of the expert and the ALJ determines that the claimant should have the opportunity to cross-examine the witness in person because of the greater immediacy of an in-person confrontation.

Comment: An organization commented that the ALJ has exclusive control over the way hearings are conducted, so long as they are fundamentally fair and comport with requirements of due process, and such authority necessarily implies authority to settle disputes concerning the appropriate form of a hearing in a particular case. This commenter was concerned that the proposed rules did not expressly reflect the authority of ALJs to determine if a hearing will be conducted wholly or in part by VTC, and that the lack of clarity of these rules in this regard could lead to confusion and litigation.

Response: We agree that the proposed rules were unclear in this respect. In §§ 404.936 and 416.1436, the final rules clearly reflect the authority of the ALJ to determine how hearings are conducted with respect to the use of VTC to conduct appearances, while also setting forth specific policies that direct how that authority is to be exercised.

In paragraph (c) of §§ 404.936 and 416.1436, the final rules provide that in setting the time and place of the hearing, the ALJ will determine if the appearance of the claimant or that of any other individual who is to appear at the hearing will be made in person or by VTC. Determining the medium by which appearances will be made is part of the ALJ's function of setting the time and place of the hearing because determining the hearing's "place" requires consideration of whether VTC technology will be used to conduct an appearance or appearances. See below under *Additional Changes* regarding the definition of "place" included in the final rules.

The final rules include provisions in paragraph (c) of §§ 404.936 and 416.1436 that require the ALJ to direct that the appearance of an individual be conducted by VTC if VTC technology is available to conduct the appearance, use of VTC to conduct the appearance would be more efficient than conducting the appearance in person, and the ALJ does not determine that there is a circumstance preventing use of VTC to conduct the appearance. In setting these guidelines, it is our intent that ALJs routinely schedule appearances by VTC in areas that we have designated as ready for VTC use. An appearance in person should be scheduled in these areas only if the ALJ determines that there is a circumstance in the particular case that would make it inappropriate to use VTC in that case.

The final rules also include provisions requiring the ALJ to find good cause to change a scheduled VTC appearance of a party to an in-person appearance if the party objects to appearing by VTC. These provisions are located in paragraph (e) of §§ 404.936 and 416.1436.

Comment: An organization commented that VTC hearings have not been shown to equal the quality and accuracy of in-person hearings and that national rollout should await the study referenced in the NPRM to ensure that claimants have access to full and fair hearings.

Response: We anticipate that we will gradually rollout use of VTC procedures nationally as we are able to make high-quality VTC technology available in different areas. Under that approach, claimants and the hearing process will be able to benefit from VTC technology as soon as it is available, and we will be able to improve our VTC procedures as we move toward full national implementation.

Based on our experience in using VTC, we believe that VTC does not change adjudicative quality or change decisional outcomes. We will continue to assess the results of VTC procedures as we go forward. We will consider the accuracy and efficiency of VTC procedures and the reactions of claimants and their representatives to those procedures.

Additional Changes

Our decision not to use terminology referring to a hearing as a "video teleconference hearing" or an "in-person hearing," and to use instead language that distinguishes between appearances made in-person and by VTC, has resulted in editorial changes throughout the rules as proposed in the NPRM. These changes include eliminating the phrase "and type of hearing" from the proposed heading for §§ 404.936 and 416.1436. In the final rules, that heading reads, as it does in the current rules: "Time and place for a hearing before an administrative law judge."

To facilitate this change in terminology, and to address a question that the proposed rules did not address, we have included in §§ 404.936 and 416.1436 language defining the term "place." Under these final rules, generally, the "place" of the hearing is the hearing office or other site at which claimant is located when he or she makes his or her appearance before the administrative law judge, whether in person or by video teleconferencing. If there are multiple parties, the "place" of the hearing is the site or sites at which the parties are located when they make their appearances, whether in person or by VTC. That will be the "place" of the hearing even though the ALJ and a witness or witnesses may be located at one or more other sites. Thus, in notifying claimants of the "place" of their hearings, we will notify them, under these final rules as under our current rules, of the places at which they should arrive in order to make their appearances.

The rules as proposed were unclear regarding the function of the ALJ in setting the time and place of the hearing. We have clarified the rules in this regard by changing the final rules to use the language of the current regulations, which specifies that the "[ALJ] sets the time and place for the hearing." Use of the existing language is possible based on the definition of "place" noted above.

These final rules provide needed headings for the multiple paragraphs of §§ 404.936 and 416.1436. In doing that, the final rules distinguish the "General" material in current paragraph (a) from the matter included therein on where we hold hearings, and move the matter dealing with location into a separate, new paragraph (b) that has the heading, "Where we hold hearings." The rules include the definition of "place" in that paragraph.

The final rules also create a new paragraph (c) under the heading, "Determining how appearance will be made." This paragraph sets forth the rules, as discussed above, under which, in setting the time and place for the hearing, the ALJ determines if an appearance or appearances are to be made by VTC or in person. We have also included in this paragraph a reference to §§ 404.950 and 416.1450, which describe procedures under which parties to the hearing and witnesses appear and present evidence at hearings.

Paragraph (b) of the current regulations is redesignated paragraph (d) and given the heading, "Objecting to the time or place of the hearing." The language of this paragraph follows the

language of current paragraph (b). For reasons previously discussed, paragraph (d) of the final rules does not include, as the comparable language of the proposed rules did, language distinguishing between the "site and/or time" of a "video teleconference hearing" and the "time and/or place" of an "in person hearing."

The claimant's right to veto his or her appearance by VTC by objecting to it is established in paragraph (e) of §§ 404.936 and 416.1436 of the final rules. The heading for this paragraph is, "Good Cause for changing the time or place." Paragraph (e) of the final rules follows the language of paragraph (c) of the current rules except for the additions at the beginning of the paragraph that describe both the right of a claimant to object if he or she is scheduled to appear by VTC at the place of the hearing, and the required reaction of the ALJ to such an objection. Those additions make it clear that there is no evidentiary requirement that the claimant must satisfy in establishing this "good cause" condition (such as exists regarding the other "good cause" conditions described in the paragraph). Nor is there any requirement that the claimant state a reason for objecting to appearing by VTC beyond his or her wish not to do so.

The power of the claimant to veto a VTC appearance pertains in these final rules (with request for comment) only to his or her own appearance, not to the appearances of any other party or witness. The decision made in these final rules not to distinguish between hearings as "in-person hearings" or "VTC hearings" makes it possible to preserve the right of claimants to control the manner of their own appearances without expanding that right to include control over the manner in which other individuals make their appearances at the hearing.

The heading assigned to the last paragraph of §§ 404.936 and 416.1436 in the final rules, paragraph (f), is, "Good cause in other circumstances." The language of this paragraph follows the language of paragraph (d) of the current §§ 404.936 and 416.1436.

The final rules make a number of changes in the sections of the regulations that deal with the notice of hearing before an administrative law judge, §§ 404.938 and 416.1438. In the current regulations, these sections consist of a single paragraph that includes material that deals with the issuance of notices, information included in notices, and acknowledgment of the notice of hearing. In the proposed rules, this material was placed in a paragraph (a) with the heading, "General notice information." The proposed rules also added a new paragraph (b) with the heading, "Hearing via video teleconferencing [,]" which included material about the scheduling of a "[VTC] hearing" and information included in notices of such hearings. The proposed rules also added a new paragraph (c) with the heading, "For a hearing before an [ALJ,]" which discussed the scheduling of an "in-person hearing." In these final rules, paragraph (a) deals with the issuance of notices and has the heading, "Issuing the notice." Paragraph (b) deals with information contained in notices, including notices that schedule an appearance or appearances by VTC, and has the heading, "Notice information." Paragraph (c) deals with acknowledgment of the notice of hearing and has the heading, "Acknowledging the notice of hearing."

The language of the final rules follows the language of the current rules, except as regards the notice information pertaining to use of VTC procedures and acknowledgment of receipt of the notice of hearing. Paragraph (b) states that the claimant will be told if his or her appearance or that of any other party or witness is scheduled to be made by VTC rather than in person. If we have scheduled the claimant to appear at the hearing by VTC, the notice of hearing will also tell the claimant that the scheduled place for the hearing is a teleconferencing site and explain what it means to appear at the hearing by VTC. The notice will also tell the claimant how to object to appearing by VTC and how to request a hearing at a place for appearing in person. In paragraph (c), the information provided by the current rules regarding acknowledgement of receipt of the notice of hearing is expanded to include a statement explaining that the notice will ask the claimant to return a form acknowledging receipt of the notice. It has long been our practice to include an acknowledgement form with the notice of hearing. We plan to modify the current form to include a check block that claimants may use to object to appearing by VTC.

The final rules also make conforming changes in §§ 404.950 and 416.1450. In paragraph (a) of these sections, we specify that claimants may appear before the ALJ either in person or by VTC, and that if the claimant's appearance is made by a designated representative, the representative may appear in person or by VTC. In paragraph (e) of these sections, we specify that witnesses may appear at a hearing in person or by VTC.

Additional Comments

We invite your comments on the issue of whether claimants should or should not be empowered to veto use of VTC to take the testimony of expert witnesses. Comments may be submitted by the date and to the addresses shown above.

Electronic Version

The electronic file of this document is available on the Internet at *http://www.access.gpo.gov/su docs/aces/aces140.html*. It is also available on the Internet site for SSA (*i.e.*, SSA Online) at *http://www.ssa.gov/regulations*.

Regulatory Procedures

Executive Order 12866, As Amended by Executive Order 13258

The Office of Management and Budget (OMB) has reviewed these rules in accordance with Executive Order 12866, as amended by Executive Order 13258.

Regulatory Flexibility Act

We certify that these rules will not have a significant economic impact on a substantial number of small entities as they affect individuals only. Therefore, a regulatory flexibility analysis as provided in the Regulatory Flexibility Act, as amended, is not required.

Paperwork Reduction Act

These final rules contain reporting requirements as shown in the table below. Where the public reporting burden is accounted for in Information Collection Requests for the various forms that the public uses to submit the information to SSA, a 1-hour placeholder burden is being assigned to the specific reporting requirement(s) contained in these rules; we are seeking clearance of the burdens referenced in these rules because the rules were not considered during the clearance of the forms.

Section	Annual number of resonses	Frequency of response	Average burden per response (minutes)	Estimated annual burden (hours)
404.929	1	1	1	1
404.936(d), (e) & (f)	92,000	Once	10	15,333
404.938(c)	300,000	Once	1	5,000
404.950(a)	210,000	Once	30	105,000
416.1429	1	1	1	1
416.1436(d), (e) & (f)	75,000	Once	10	12,500
416.1438(c)	250,000	Once	1	4,166
416.1450(a)	172,000	Once	30	86,000
Total	1,099,002			228,001

An Information Collection Request has been submitted to OMB for clearance. While these rules will be effective 30 days from publication, these burdens will not be effective until cleared by OMB. We are soliciting comments on the burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility and clarity; and on ways to minimize the burden on respondents, including the use of automated collection techniques or other forms of information technology. We will publish a notice in the **Federal Register** upon OMB's approval of the information collection requirement(s). Comments should be submitted to the OMB desk officer for SSA within 30 days of publication of this final rule at the following address: Office of Management and Budget, Attn: Desk Officer for SSA, New Executive Office Building, Room 10230, 725 17th St., NW., Washington, DC 20530.

(Catalog of Federal Domestic Assistance Program Nos. 96.001, Social Security—Disability Insurance; 96.002, Social Security—Retirement Insurance; 96.003, Social Security—Special Benefits for Persons Aged 72 and Over; 96.004, Social Security—Survivors Insurance; 96.006, Supplemental Security Income.)

List of Subjects

20 CFR 404

Administrative practice and procedure, Aged, Blind, Disability benefits, Old-age, Survivors and Disability Insurance, Reporting and recordkeeping requirements, Social Security.

20 CFR 416

Administrative practice and procedure, Aged, Blind, Disability benefits, Public assistance programs, Reporting and recordkeeping requirements, Supplemental Security Income (SSI).

Dated: October 25, 2002.

Jo Anne B. Barnhart,

Commissioner of Social Security.

For the reasons set out in the preamble, subpart J of part 404 and subpart N of part 416 of chapter III of title 20 of the Code of Federal Regulations are amended as set forth below:

PART 404—FEDERAL OLD-AGE, SURVIVORS AND DISABILITY INSURANCE (1950–)

1. The authority citation for subpart J of part 404 continues to read as follows:

Authority: Secs. 201(j), 204(f), 205(a), (b), (d)–(h), and (j), 221, 225, and 702(a)(5) of the Social Security Act (42 U.S.C. 401(j), 404(f), 405(a), (b), (d)–(h), and (j), 421, 425, and 902(a)(5)); 31 U.S.C. 3720A; sec. 5, Pub. L. 97–455, 96 Stat. 2500 (42 U.S.C. 405 note); secs. 5, 6(c)–(e), and 15, Pub. L. 98–460, 98 Stat. 1802 (42 U.S.C. 421 note).

2. Section 404.929 is revised to read as follows:

§ 404.929 Hearing before an administrative law judge—general.

If you are dissatisfied with one of the determinations or decisions listed in § 404.930 you may request a hearing. The Associate Commissioner for Hearings and Appeals, or his or her delegate, shall appoint an administrative law judge to conduct the hearing. If circumstances warrant, the Associate Commissioner, or his or her delegate, may assign your case to another administrative law judge. At the hearing you may appear in person or by video teleconferencing, submit new evidence, examine the evidence used in making the determination or decision under review, and present and question witnesses. The administrative law judge who conducts the hearing may ask you questions. He or she shall issue a decision based on the hearing record. If you waive your right to appear at the hearing, either in person or by video teleconferencing, the administrative law judge will make a decision based on the evidence that is in the file and any new evidence that may have been submitted for consideration.

3. Section 404.936 is revised to read as follows:

§ 404.936 Time and place for a hearing before an administrative law judge.

(a) *General.* The administrative law judge sets the time and place for the hearing. He or she may change the time and place, if it is necessary. After sending you reasonable notice of the proposed action, the administrative law judge may adjourn or postpone the hearing or reopen it to receive additional evidence any time before he or she notifies you of a hearing decision.

(b) *Where we hold hearings.* We hold hearings in the 50 States, the District of Columbia, American Samoa, Guam, the Northern Mariana Islands, the Commonwealth of Puerto Rico and the Virgin Islands. The "place" of the hearing is the hearing office or other site(s) at which you and any other parties to the hearing are located when you make your appearance(s) before the administrative law judge, whether in person or by video teleconferencing.

(c) *Determining how appearances will be made.* In setting the time and place of the hearing, the administrative law judge determines whether your appearance or that of any other individual who is to appear at the hearing will be made in person or by video teleconferencing. The administrative law judge will direct that the appearance of an individual be conducted by video teleconferencing if video teleconferencing technology is available to conduct the appearance, use of video teleconferencing to conduct the appearance would be more efficient than conducting the appearance in person, and the administrative law judge does not determine that there is a circumstance in the particular case preventing use of video teleconferencing to conduct the appearance. Section 404.950 sets forth procedures under which parties to the hearing and witnesses appear and present evidence at hearings.

(d) *Objecting to the time or place of the hearing.* If you object to the time or place of your hearing, you must notify the administrative law judge at the earliest possible opportunity before the time set for the hearing. You must state the reason for your objection and state the time and place you want the hearing to be held. If at all possible, the request should be in writing. The administrative law judge will change the time or place of the hearing if you have good cause, as determined under paragraph (e) and (f) of this section. Section 404.938 provides procedures we will follow when you do not respond to a notice of hearing.

(e) *Good cause for changing the time or place.* If you have been scheduled to appear by video teleconferencing at the place of your hearing and you notify the ALJ as provided in paragraph (d) of this section that you object to appearing in that way, the administrative law judge will find your wish not to appear by video teleconferencing to be a good reason for changing the time or place of your scheduled hearing and will reschedule your hearing for a time and place at which you may make your appearance before the administrative law judge in person. The administrative law judge will also find good cause for changing the time or place of your scheduled hearing, and will reschedule your hearing, if your reason is one of the following circumstances and is supported by the evidence:

(1) You or your representative are unable to attend or to travel to the scheduled hearing because of a serious physical or mental condition, incapacitating injury, or death in the family; or

(2) Severe weather conditions make it impossible to travel to the hearing.

(f) *Good cause in other circumstances.* In determining whether good cause exists in circumstances other than those set out in paragraph (e) of this section, the administrative law judge will consider your reason for requesting the change, the facts supporting it, and the impact of the proposed change on the efficient administration of the hearing process. Factors affecting the impact of the change include, but are not limited to, the effect on the processing of other scheduled hearings, delays which might occur in rescheduling your hearing, and whether any prior changes were granted to you. Examples of such other circumstances, which you might give for requesting a change in the time or place of the hearing, include, but are not limited to, the following:

(1) You have attempted to obtain a representative but need additional time;

(2) Your representative was appointed within 30 days of the scheduled hearing and needs additional time to prepare for the hearing;

(3) Your representative has a prior commitment to be in court or at another administrative hearing on the date scheduled for the hearing;

(4) A witness who will testify to facts material to your case would be unavailable to attend the scheduled hearing and the evidence cannot be otherwise obtained;

(5) Transportation is not readily available for you to travel to the hearing;

(6) You live closer to another hearing site; or

(7) You are unrepresented, and you are unable to respond to the notice of hearing because of any physical, mental, educational, or linguistic limitations (including any lack of facility with the English language) which you may have.

4. Section 404.938 is revised to read as follows:

§ 404.938 Notice of a hearing before an administrative law judge.

(a) *Issuing the notice.* After the administrative law judge sets the time and place of the hearing, we will mail notice of the hearing to you at your last known address, or give the notice to you by personal service, unless you have indicated in writing that you do not wish to receive this notice. The notice will be mailed or served at least 20 days before the hearing.

(b) *Notice information.* The notice of hearing will contain a statement of the specific issues to be decided and tell you that you may designate a person to represent you during the proceedings. The notice will also contain an explanation of the procedures for requesting a change in the time or place of your hearing, a reminder that if you fail to appear at your scheduled hearing without good cause the ALJ may dismiss your hearing request, and other information about the scheduling and conduct of your hearing. You will also be told if your appearance or that of any other party or witness is scheduled to be made by video teleconferencing rather than in person. If we have scheduled you to appear at the hearing by video teleconferencing, the notice of hearing will tell you that the scheduled place for the hearing is a teleconferencing site and explain what it means to appear at your hearing by video teleconferencing. The notice will also tell you how you may let us know if you do not want to appear in this way and want, instead, to have your hearing at a time and place where you may appear in person before the ALJ.

(c) *Acknowledging the notice of hearing.* The notice of hearing will ask you to return a form to let us know that you received the notice. If you or your representative do not acknowledge receipt of the notice of hearing, we will attempt to contact you for an explanation. If you tell us that you did not receive the notice of hearing, an amended notice will be sent to you by certified mail. *See* § 404.936 for the procedures we will follow in deciding whether the time or place of your scheduled hearing will be changed if you do not respond to the notice of hearing.

5. In § 404.950, paragraphs (a) and (e) are revised to read as follows:

§ 404.950 Presenting evidence at a hearing before an administrative law judge.

(a) *The right to appear and present evidence.* Any party to a hearing has a right to appear before the administrative law judge, either in person or, when the conditions in § 404.936(c) exist, by video teleconferencing, to present evidence and to state his or her position. A party may also make his or her appearance by means of a designated representative, who may make the appearance in person or by video teleconferencing.

* * * * *

(e) *Witnesses at a hearing.* Witnesses may appear at a hearing in person or, when the conditions in § 404.936(c) exist, by video teleconferencing. They shall testify under oath or affirmation, unless the administrative law judge finds an important reason to excuse them from taking an oath or affirmation. The administrative law judge may ask the witnesses any questions material to the issues and shall allow the parties or their designated representatives to do so.

* * * * *

PART 416—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED

6. The authority citation for subpart N of part 416 continues to read as follows:

Authority: Secs. 702(a)(5), 1631, and 1633 of the Social Security Act (42 U.S.C. 902(a)(5), 1383, and 1383b); 31 U.S.C. 3720A.

7. Section 416.1429 is revised to read as follows:

§ 416.1429 Hearing before an administrative law judge—general.

If you are dissatisfied with one of the determinations or decisions listed in § 416.1430 you may request a hearing. The Associate Commissioner for Hearings and Appeals, or his or her delegate, shall appoint an

administrative law judge to conduct the hearing. If circumstances warrant, the Associate Commissioner, or his or her delegate, may assign your case to another administrative law judge. At the hearing you may appear in person or by video teleconferencing, submit new evidence, examine the evidence used in making the determination or decision under review, and present and question witnesses. The administrative law judge who conducts the hearing may ask you questions. He or she shall issue a decision based on the hearing record. If you waive your right to appear at the hearing, either in person or by video teleconferencing, the administrative law judge will make a decision based on the evidence that is in the file and any new evidence that may have been submitted for consideration.

8. Section 416.1436 is revised to read as follows:

§ 416.1436 Time and place for a hearing before an administrative law judge.

(a) *General.* The administrative law judge sets the time and place for the hearing. He or she may change the time and place, if it is necessary. After sending you reasonable notice of the proposed action, the administrative law judge may adjourn or postpone the hearing or reopen it to receive additional evidence any time before he or she notifies you of a hearing decision.

(b) *Where we hold hearings.* We hold hearings in the 50 States, the District of Columbia, and the Northern Mariana Islands. The "place" of the hearing is the hearing office or other site(s) at which you and any other parties to the hearing are located when you make your appearance(s) before the administrative law judge, whether in person or by video teleconferencing.

(c) *Determining how appearances will be made.* In setting the time and place of the hearing, the administrative law judge determines whether your appearance or that of any other individual who is to appear at the hearing will be made in person or by video teleconferencing. The administrative law judge will direct that the appearance of an individual be conducted by video teleconferencing if video teleconferencing technology is available to conduct the appearance, use of video teleconferencing to conduct the appearance would be more efficient than conducting the appearance in person, and the administrative law judge does not determine that there is a circumstance in the particular case preventing use of video teleconferencing to conduct the appearance. Section 416.1450 sets forth procedures under which parties to the hearing and witnesses appear and present evidence at hearings.

(d) *Objecting to the time or place of the hearing.* If you object to the time or place of your hearing, you must notify the administrative law judge at the earliest possible opportunity before the time set for the hearing. You must state the reason for your objection and state the time and place you want the hearing to be held. If at all possible, the request should be in writing. The administrative law judge will change the time or place of the hearing if you have good cause, as determined under paragraph (e) and (f) of this section. Section 416.1438 provides procedures we will follow when you do not respond to a notice of hearing.

(e) *Good cause for changing the time or place.* If you have been scheduled to appear by video teleconferencing at the place of your hearing and you notify the ALJ as provided in paragraph (d) of this section that you object to appearing in that way, the administrative law judge will find your wish not to appear by video teleconferencing to be a good reason for changing the time or place of your scheduled hearing and will reschedule your hearing for a time and place at which you may make your appearance before the administrative law judge in person. The administrative law judge will also find good cause for changing the time or place of your scheduled hearing, and will reschedule your hearing, if your reason is one of the following circumstances and is supported by the evidence:

(1) You or your representative are unable to attend or to travel to the scheduled hearing because of a serious physical or mental condition, incapacitating injury, or death in the family; or

(2) Severe weather conditions make it impossible to travel to the hearing.

(f) *Good cause in other circumstances.* In determining whether good cause exists in circumstances other than those set out in paragraph (e) of this section, the administrative law judge will consider your reason for requesting the change, the facts supporting it, and the impact of the proposed change on the efficient administration of the hearing process. Factors affecting the impact of the change include, but are not limited to, the effect on the processing of other scheduled hearings, delays which might occur in rescheduling your hearing, and whether any prior changes were granted to you. Examples of such other circumstances, which you might give for requesting a change in the time or place of the hearing, include, but are not limited to, the following:

(1) You have attempted to obtain a representative but need additional time;

(2) Your representative was appointed within 30 days of the scheduled hearing and needs additional time to prepare for the hearing;

(3) Your representative has a prior commitment to be in court or at another administrative hearing on the date scheduled for the hearing;

(4) A witness who will testify to facts material to your case would be unavailable to attend the scheduled hearing and the evidence cannot be otherwise obtained;

(5) Transportation is not readily available for you to travel to the hearing;

(6) You live closer to another hearing site; or

(7) You are unrepresented, and you are unable to respond to the notice of hearing because of any physical, mental, educational, or linguistic limitations (including any lack of facility with the English language) which you may have.

9. Section 416.1438 is revised to read:

§ 416.1438 Notice of a hearing before an administrative law judge.

(a) *Issuing the notice.* After the administrative law judge sets the time and place of the hearing, we will mail notice of the hearing to you at your last known address, or give the notice to you by personal service, unless you have indicated in writing that you do not wish to receive this notice. The notice will be mailed or served at least 20 days before the hearing.

(b) *Notice information.* The notice of hearing will contain a statement of the specific issues to be decided and tell you that you may designate a person to represent you during the proceedings. The notice will also contain an explanation of the procedures for requesting a change in the time or place of your hearing, a reminder that if you fail to appear at your scheduled hearing without good cause the ALJ may dismiss your hearing request, and other information about the scheduling and conduct of your hearing. You will also be told if your appearance or that of any other party or witness is scheduled to be made by video teleconferencing rather than in person. If we have scheduled you to appear at the hearing by video teleconferencing, the notice of hearing will tell you that the scheduled place for the hearing is a teleconferencing site and explain what it means to appear at your hearing by video teleconferencing. The notice will also tell you how you may let us know if you do not want to appear in this way and want, instead, to have your hearing at a time and place where you may appear in person before the ALJ.

(c) *Acknowledging the notice of hearing.* The notice of hearing will ask you to return a form to let us know that you received the notice. If you or your representative do not acknowledge receipt of the notice of hearing, we will attempt to contact you for an explanation. If you tell us that you did not receive the notice of hearing, an amended notice will be sent to you by certified mail. *See* § 416.1436 for the procedures we will follow in deciding whether the time or place of your scheduled hearing will be changed if you do not respond to the notice of hearing.

10. In § 416.1450, paragraphs (a) and (e) are revised to read as follows:

§ 416.1450 Presenting evidence at a hearing before an administrative law judge.

(a) *The right to appear and present evidence.* Any party to a hearing has a right to appear before the administrative law judge, either in person or, when the conditions in § 416.1436(c) exist, by video teleconferencing, to present evidence and to state his or her position. A party may also make his or her appearance by means of a designated representative, who may make the appearance in person or by video teleconferencing.

* * * * *

(e) *Witnesses at a hearing.* Witnesses may appear at a hearing in person or, when the conditions in § 416.1436(c) exist, video teleconferencing. They shall testify under oath or affirmation, unless the administrative law judge finds an important reason to excuse them from taking an oath or affirmation. The administrative law judge may ask the witnesses any questions material to the issues and shall allow the parties or their designated representatives to do so.

* * * * *

[FR Doc. 03–2402 Filed 1–31–03; 8:45 am]

BILLING CODE 4191–02–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[AL–200311; FRL–7444–7]

Approval and Promulgation of Air Quality Implementation Plans; Alabama Update to Materials Incorporated by Reference

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; notice of administrative change.

SUMMARY: EPA is updating the materials submitted by Alabama that are incorporated by reference (IBR) into the State implementation plan (SIP). The regulations affected by this update have been previously submitted by the State agency and approved by EPA. This update affects the SIP materials that are available for public inspection at the Office of the Federal Register (OFR), Office of Air and Radiation Docket and Information Center, and the Regional Office.

EFFECTIVE DATE: This action is effective February 3, 2003.

ADDRESSES: SIP materials which are incorporated by reference into 40 CFR part 52 are available for inspection at the following locations: Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, GA 30303; Office of Air and Radiation Docket and Information Center, Room B–108, 1301 Constitution Avenue, (Mail Code 6102T) NW., Washington, DC 20460, and Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Sean Lakeman at the above Region 4 address or at (404) 562–9043.

SUPPLEMENTARY INFORMATION: The SIP is a living document which the State can revise as necessary to address the unique air pollution problems in the state. Therefore, EPA from time to time must take action on SIP revisions containing new and/or revised regulations as being part of the SIP. On May 22, 1997 (62 FR 27968), EPA revised the procedures for incorporating by reference Federally-approved SIPs, as a result of consultations between EPA and OFR. The description of the revised SIP document, IBR procedures and "Identification of plan" format are discussed in further detail in the May 22, 1997, **Federal Register** document. On December 22, 1998, EPA published a document in the **Federal Register** (63 FR 70669) beginning the new IBR procedure for Alabama. In this document EPA is doing the update to the material being IBRed.

EPA has determined that today's rule falls under the "good cause" exemption in section 553(b)(3)(B) of the Administrative Procedures Act (APA) which, upon finding "good cause," authorizes agencies to dispense with public participation and section 553(d)(3) which allows an agency to make a rule effective immediately (thereby avoiding the 30-day delayed effective date otherwise provided for in the APA). Today's rule simply codifies provisions which are already in effect as a matter of law in Federal and approved State programs. Under section 553 of the APA, an agency may find good cause where procedures are "impractical, unnecessary, or contrary to the public interest." Public comment is "unnecessary" and "contrary to the public interest" since the codification only reflects existing law. Immediate notice in the CFR benefits the public by updating citations.

Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety

Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 4, 2003. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: January 16, 2003.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

Chapter I, title 40, Code of Federal Regulations, is amended as follows:

PART 52—[AMENDED]

1. The authority for citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart B—Alabama

2. Section 52.50 paragraph (b), (c), (d) and (e) are revised to read as follows:

§ 52.50 Identification of plan.

* * * * *

(b) Incorporation by reference.

(1) Material listed in paragraph (c) and (d) of this section with an EPA approval date prior to January 1, 2003, was approved for incorporation by reference by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Material is incorporated as it exists on the date of the approval, and notice of any change in the material will be published in the **Federal Register**. Entries in paragraphs (c) and (d) of this section with EPA approval dates after January 1, 2003, will be incorporated by reference in the next update to the SIP compilation.

(2) EPA Region 4 certifies that the rules/regulations provided by EPA in the SIP compilation at the addresses in paragraph (b)(3) of this section are an exact duplicate of the officially promulgated State rules/regulations which have been approved as part of the State implementation plan as of January 1, 2003.

(3) Copies of the materials incorporated by reference may be inspected at the Region 4 EPA Office at 61 Forsyth Street, SW., Atlanta, GA 30303; the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC; or at the EPA, Office of Air and Radiation Docket and Information Center, Room B–108, 1301 Constitution Avenue, (Mail Code 6102T) NW., Washington, DC 20460.

(c) EPA approved Alabama regulations.

EPA APPROVED ALABAMA REGULATIONS

State citation	Title/subject	State effective date	EPA approval date	Explanation
Chapter No. 335–3–1 General Provision				
Section 335–3–1–.01	Purpose	06/22/89	03/19/90 55 FR 10062	
Section 335–3–1–.02	Definitions	08/10/00	12/08/00 65 FR 76940	
Section 335–3–1–.03	Ambient Air Quality Standards	10/13/98	03/01/99 64 FR 9918	
Section 335–3–1–.04	Monitoring, Records, and Reporting	10/15/96	06/06/97 62 FR 30991	
Section 335–3–1–.05	Sampling and Test Methods	06/22/89	03/19/90 55 FR 10062	
Section 335–3–1–.06	Compliance Schedule	10/15/96	06/06/97 62 FR 30991	
Section 335–3–1–.07	Maintenance and Malfunctioning of Equipment; Reporting	10/15/89	03/19/90 55 FR 10062	
Section 335–3–1–.08	Prohibition of Air Pollution	08/10/00	12/08/00 65 FR 76940	
Section 335–3–1–.09	Variances	10/15/96	06/06/97 62 FR 30991	

EPA APPROVED ALABAMA REGULATIONS—Continued

State citation	Title/subject	State effective date	EPA approval date	Explanation
Section 335–3–1–.10	Circumvention	06/22/89	03/19/90 55 FR 10062	
Section 335–3–1–.11	Severability	10/15/96	06/06/97 62 FR 30991	
Section 335–3–1–.12	Bubble Provision	06/22/89	03/19/90 55 FR 10062	
Section 335–3–1–.13	Credible Evidence	04/13/99	11/03/99 64 FR 59633	
Section 335–3–1–.14	Emissions Reporting Requirements Relating to Budgets for NO_X Emissions.	04/06/01	07/16/01 66 FR 36921	
Chapter No. 335–3–2 Air Pollution Emergency				
Section 335–3–2–.01	Air Pollution Emergency	06/22/89	03/19/90 55 FR 10062	
Section 335–3–2–.02	Episode Criteria	08/10/00	12/08/00 65 FR 76940	
Section 335–3–2–.03	Special Episode Criteria	06/22/89	03/19/90 55 FR 10062	
Section 335–3–2–.04	Emission Reduction Plans	06/22/89	03/19/90 55 FR 10062	
Section 335–3–2–.05	Two Contaminant Episode	06/22/89	03/19/90 55 FR 10062	
Section 335–3–2–.06	General Episodes	06/22/89	03/19/90 55 FR 10062	
Section 335–3–2–.07	Local Episodes	06/22/89	03/19/90 55 FR 10062	
Section 335–3–2–.08	Other Sources	10/15/96	06/06/97 62 FR 30991	
Section 335–3–2–.09	Other Authority Not Affected	06/22/89	03/19/90 55 FR 10062	
Chapter No. 335–3–3 Control of Open Burning and Incineration				
Section 335–3–3–.01	Open Burning	08/10/00	12/08/00 65 FR 76940	
Section 335–3–3–.02	Incinerators	06/22/89	03/19/90 55 FR 10062	
Section 335–3–3–.03	Incineration of Wood, Peanut, and Cotton Ginning Waste	08/10/00	12/08/00 65 FR 76940	
Chapter No. 335–3–4 Control of Particulate Emissions				
Section 335–3–4–.01	Visible Emissions	10/15/96	06/06/97 62 FR 30991	
Section 335–3–4–.02	Fugitive Dust and Fugitive Emissions	10/15/96	06/06/97 62 FR 30991	
Section 335–3–4–.03	Fuel Burning Equipment	10/15/96	06/06/97 62 FR 30991	
Section 335–3–4–.04	Process Industries—General	10/15/96	06/06/97 62 FR 30991	
Section 335–3–4–.05	Small Foundry Cupola	06/22/89	03/19/90 55 FR 10062	
Section 335–3–4–.06	Cotton Gins	06/22/89	03/19/90 55 FR 10062	
Section 335–3–4–.07	Kraft Pulp Mills	10/15/96	06/06/97 62 FR 30991	
Section 335–3–4–.08	Wood Waste Boilers	08/10/00	12/08/00 65 FR 76940	
Section 335–3–4–.09	Coke Ovens	08/10/00	12/08/00 65 FR 76940	
Section 335–3–4–.10	Primary Aluminum Plants	06/22/89	03/19/90 55 FR 10062	
Section 335–3–4–.11	Cement Plants	10/15/96	06/06/97 62 FR 30991	
Section 335–3–4–.12	Xylene Oxidation Process	06/22/89	03/19/90 55 FR 10062	
Section 335–3–4–.13	Sintering Plants	06/22/89	03/19/90 55 FR 10062	

EPA APPROVED ALABAMA REGULATIONS—Continued

State citation	Title/subject	State effective date	EPA approval date	Explanation
Section 335–3–4–.14	Grain Elevators	10/15/96	06/06/97 62 FR 30991	
Section 335–3–4–.15	Secondary Lead Smelters	10/15/96	06/06/97 62 FR 30991	
Section 335–3–4–.17	Steel Mills Located in Etowah County	10/15/96	06/06/97 62 FR 30991	
Chapter No. 335–3–5 Control of Sulfur Compound Emissions				
Section 335–3–5–.01	Fuel Combustions	10/15/96	06/06/97 62 FR 30991	
Section 335–3–5–.02	Sulfuric Acid Plants	10/15/96	06/06/97 62 FR 30991	
Section 335–3–5–.03	Petroleum Production	08/10/00	12/08/00 65 FR 76940	
Section 335–3–5–.04	Kraft Pulp Mills	08/10/00	12/08/00 65 FR 76940	
Section 335–3–5–.05	Process Industries—General	06/22/89	03/19/90 55 FR 10062	
Chapter No. 335–3–6 Control of Organic Emissions				
Section 335–3–6–.01	Applicability	10/15/96	06/06/97 62 FR 30991	
Section 335–3–6–.02	VOC Water Separation	06/22/89	03/19/90 55 FR 10062	
Section 335–3–6–.03	Loading and Storage of VOC	06/22/89	03/19/90 55 FR 10062	
Section 335–3–6–.04	Fixed-Roof Petroleum Liquid Storage Vessels	10/15/96	06/06/97 62 FR 30991	
Section 335–3–6–.05	Bulk Gasoline Plants	10/15/96	06/06/97 62 FR 30991	
Section 335–3–6–.06	Bulk Gasoline Terminals	08/10/00	12/08/00 65 FR 76940	
Section 335–3–6–.07	Gasoline Dispensing Facilities—Stage I	10/15/96	06/06/97 62 FR 30991	
Section 335–3–6–.08	Petroleum Refinery Sources	06/22/89	03/19/90 55 FR 10062	
Section 335–3–6–.09	Pumps and Compressors	06/22/89	03/19/90 55 FR 10062	
Section 335–3–6–.10	Ethylene Producing Plants	06/22/89	03/19/90 55 FR 10062	
Section 335–3–6–.11	Surface Coating	10/15/96	06/06/97 62 FR 30991	
Section 335–3–6–.12	Solvent Metal Cleaning	10/15/96	06/06/97 62 FR 30991	
Section 335–3–6–.13	Cutback Asphalt	10/15/96	06/06/97 62 FR 30991	
Section 335–3–6–.14	Petition for Alternative Controls	06/22/89	03/19/90 55 FR 10062	
Section 335–3–6–.15	Compliance Schedules	10/15/96	06/06/97 62 FR 30991	
Section 335–3–6–.16	Test Methods and Procedures	08/10/00	12/08/00 65 FR 76940	
Section 335–3–6–.17	Manufacture of Pneumatic Tires	10/15/95	06/06/97 62 FR 30991	
Section 335–3–6–.18	Manufacture of Synthesized Pharmaceutical Products	10/15/96	06/06/97 62 FR 30991	
Section 335–3–6–.19	Reserved			
Section 335–3–6–.20	Leaks from Gasoline Tank Trucks and Vapor Collection Systems.	10/15/96	06/06/97 62 FR 30991	
Section 335–3–6–.21	Leaks from Petroleum Refinery Equipment	10/15/96	06/06/97 62 FR 30991	
Section 335–3–6–.22	Graphic Arts	10/15/96	06/06/97 62 FR 30991	
Section 335–3–6–.23	Petroleum Liquid Storage in External Floating Roof Tanks	10/15/96	06/06/97 62 FR 30991	
Section 335–3–6–.24	Applicability	10/15/96	06/06/97 62 FR 30991	

EPA APPROVED ALABAMA REGULATIONS—Continued

State citation	Title/subject	State effective date	EPA approval date	Explanation
Section 335–3–6–.25	VOC Water Separation	06/22/89	03/19/90 55 FR 10062	
Section 335–3–6–.26	Loading and Storage of VOC	06/22/89	03/19/90 55 FR 10062	
Section 335–3–6–.27	Fixed-Roof Petroleum Liquid Storage Vessels	10/15/96	06/06/97 62 FR 30991	
Section 335–3–6–.28	Bulk Gasoline Plants	10/15/96	06/06/97 62 FR 30991	
Section 335–3–6–.29	Gasoline Terminals	10/15/96	06/06/97 62 FR 30991	
Section 335–3–6–.30	Gasoline Dispensing Facilities Stage I	10/15/96	06/06/97 62 FR 30991	
Section 335–3–6–.31	Petroleum Refinery Sources	06/22/89	03/19/90 55 FR 10062	
Section 335–3–6–.32	Surface Coating	10/15/96	06/06/97 62 FR 30991	
Section 335–3–6–.33	Solvent Metal Cleaning	06/22/89	03/19/90 55 FR 10062	
Section 335–3–6–.34	Cutback Asphalt	10/15/96	06/06/97 62 FR 30991	
Section 335–3–6–.35	Petition for Alternative Controls	06/22/89	03/19/90 55 FR 10062	
Section 335–3–6–.36	Compliance Schedules	10/15/96	06/06/97 62 FR 30991	
Section 335–3–6–.37	Test Methods and Procedures	10/15/96	06/06/97 62 FR 30991	
Section 335–3–6–.38	Manufacture of Pneumatic Tires	06/22/89	03/19/90 55 FR 10062	
Section 335–3–6–.39	Manufacture of Synthesized Pharmaceutical Products	10/15/96	06/06/97 62 FR 30991	
Section 335–3–6–.40	Reserved			
Section 335–3–6–.41	Leaks from Gasoline Tank Trucks and Vapor Collection Systems.	10/15/96	06/06/97 62 FR 30991	
Section 335–3–6–.42	Leaks from Petroleum Refinery Equipment	10/15/96	06/06/97 62 FR 30991	
Section 335–3–6–.43	Graphic Arts	06/22/89	03/19/90 55 FR 10062	
Section 335–3–6–.44	Petroleum Liquid Storage in External Floating Roof Tanks	10/15/96	06/06/97 62 FR 30991	
Section 335–3–6–.45	Large Petroleum Dry Cleaners	10/15/96	06/06/97 62 FR 30991	
Section 335–3–6–.46	Aerospace Assembly and Component and Component Coatings Operation.	06/22/89	03/19/09 55 FR 10062	
Section 335–3–6–.47	Leaks from Coke by-Product Recovery Plant Equipment	10/15/96	06/06/97 62 FR 30991	
Section 335–3–6–.48	Emissions from Coke by-Product Recovery Plant Coke Oven Gas Bleeder.	10/15/96	06/06/97 62 FR 30991	
Section 335–3–6–.49	Manufacture of Laminated Countertops	06/22/89	03/19/90 55 FR 10062	
Section 335–3–6–.50	Paint Manufacture	10/15/96	06/06/97 62 FR 30991	
Section 335–3–6–.53	List of EPA Approved and Equivalent Test Methods and Procedures for the Purpose of Determining VOC Emissions.	06/26/91	09/27/91 58 FR 50262	
Chapter No. 335–3–7 Carbon Monoxide Emissions				
Section 335–3–7–.01	Metals Productions	06/22/89	03/19/90 55 FR 10062	
Section 335–3–7–.02	Petroleum Processes	06/22/89	03/19/90 55 FR 10062	
Chapter No. 335–3–8 Nitrogen Oxides Emissions				
Section 335–3–8–.01	Standards for Portland Cement Kilns	04/06/01	07/17/01 66 FR 36921	
Section 335–3–8–.02	Nitric Acid Manufacturing	10/15/96	06/06/97 62 FR 30991	
Section 335–3–8–.03	NO_x Emissions from Electric Utility Generating Units	10/24/00	11/07/01 66 FR 56223	

EPA APPROVED ALABAMA REGULATIONS—Continued

State citation	Title/subject	State effective date	EPA approval date	Explanation
Section 335–3–8–.04	Standards for Stationary Reciprocating Internal Combustion Engines (Reserved).	04/06/01	07/17/01 66 FR 36921	
Section 335–3–8–.05	NO_X Budget Trading Program	04/06/01	07/17/01 66 FR 36921	
Section 335–3–8–.06	Authorized Account Representative for NO_X Budget Sources	04/06/01	07/17/01 66 FR 36921	
Section 335–3–8–.07	Permits	04/06/01	07/17/01 66 FR 36921	
Section 335–3–8–.08	Compliance Certification	04/06/01	07/17/01 66 FR 36921	
Section 335–3–8–.09	NO_X Allowance Allocations	04/06/01	07/17/01 66 FR 36921	
Section 335–3–8–.10	NO_X Allowance Tracking System	04/06/01	07/17/01 66 FR 36921	
Section 335–3–8–.11	NO_X Allowance Transfers	04/06/01	07/17/01 66 FR 36921	
Section 335–3–8–.12	Monitoring and Reporting	04/06/01	07/17/01 66 FR 36921	
Section 335–3–8–.13	Individual Unit Opt-ins	05/07/02	07/17/01 66 FR 36921	
Section 335–3–8–.14	New Combustion Sources	04/06/01	07/17/01 66 FR 36921	
Chapter No. 335–3–9 Control Emissions From Motor Vehicles				
Section 335–3–9–.01	Visible Emission Restriction for Motor Vehicles	10/15/96	06/06/97 62 FR 30991	
Section 335–3–9–.02	Ignition System and Engine Speed	08/10/00	12/08/00 65 FR 76940	
Section 335–3–9–.03	Crankcase Ventilation Systems	08/10/00	12/08/00 65 FR 76940	
Section 335–3–9–.04	Exhaust Emission Control Systems	06/22/89	03/19/90 55 FR 10062	
Section 335–3–9–.05	Evaporative Loss Control Systems	06/22/89	03/19/90 55 FR 10062	
Section 335–3–9–.06	Other Prohibited Acts	08/10/00	12/08/00 65 FR 76940	
Section 335–3–9–.07	Effective Date	10/15/96	06/06/97 62 FR 30991	
Chapter No. 335–3–12 Continuous Monitoring Requirements for Existing Sources				
Section 335–3–12–.01	General	06/22/89	03/19/90 55 FR 10062	
Section 335–3–12–.02	Emission Monitoring and Reporting Requirements	02/17/98	09/14/98 63 FR 49005	
Section 335–3–12–.03	Monitoring System Malfunction	06/22/89	03/19/90 55 FR 10062	
Section 335–3–12–.04	Alternate Monitoring and Reporting Requirements	06/22/89	03/19/90 55 FR 10062	
Section 335–3–12–.05	Exemptions and Extensions	06/22/89	03/19/90 55 FR 10062	
Chapter No. 335–3–13 Control of Fluoride Emissions				
Section 335–3–13–.01	General	10/15/96	06/06/97 62 FR 30991	
Section 335–3–13–.02	Superphosphoric Acid Plants	10/15/96	06/06/97 62 FR 30991	
Section 335–3–13–.03	Diammonium Phosphate Plants	10/15/96	06/06/97 62 FR 30991	
Section 335–3–13–.04	Triple Superphosphoric Plants	10/15/96	06/06/97 62 FR 30991	
Section 335–3–13–.05	Granular Triple Superphosphoric Storage Facilities	10/15/96	06/06/97 62 FR 30991	
Section 335–3–13–.06	Wet Process Phosphoric Acid Plants	10/15/96	06/06/97 62 FR 30991	

EPA APPROVED ALABAMA REGULATIONS—Continued

State citation	Title/subject	State effective date	EPA approval date	Explanation
Chapter No. 335–3–14 Air Permits				
Section 335–3–14–.01	General Provisions	02/17/98	09/14/98 63 FR 49008	
Section 335–3–14–.02	Permit Procedures	10/15/96	06/06/97 62 FR 30991	
Section 335–3–14–.03	Standards for Granting Permits	08/10/96	12/02/00 65 FR 76940	
Section 335–3–14–.04	Air Permits Authorizing Construction in Clean Air Areas (prevention of Significant Deterioration (PSD)).	02/05/02	04/20/02 67 FR 17288	
Section 335–3–14–.05	Air Permits Authorizing Construction in or Near Nonattainment Areas.	08/10/00	12/02/00 65 FR 76940	
Chapter No. 335–3–15 Synthetic Minor Operating Permits				
Section 335–3–15–.01	Definitions	10/15/96	06/06/97 62 FR 30991	
Section 335–3–15–.02	General Provisions	08/10/00	12/02/00 65 FR 76940	
Section 335–3–15–.03	Applicability	11/23/93	10/20/94 59 FR 52916	
Section 335–3–15–.04	Synthetic Minor Operating Permit Requirements	10/15/96	06/06/97 62 FR 30991	
Section 335–3–15–.05	Public Participation	10/15/96	06/06/97 62 FR 30991	
Chapter No. 335–3–17 Conformity of Federal Actions to State Implementation Plans				
Section 335–3–17–.01	Transportation Conformity	03/27/98	05/11/00 65 FR 30361	
Section 335–3–17–.02	General Conformity	03/27/98	05/11/00 65 FR 30361	
Chapter No. 335–3–20 Control of Fuels				
Section 335–3–20–.01	Definitions	10/24/00	11/07/01 66 FR 56219	
Section 335–3–20–.02	Control of Fuels	10/24/00	11/07/01 66 FR 56219	
Section 335–3–20–.03	Recordkeeping, Reporting, and Testing	10/24/00	11/07/01 66 FR 56219	

(d) EPA approved Alabama source specific requirements.

EPA APPROVED ALABAMA SOURCE-SPECIFIC REQUIREMENTS

Name of source	Permit No.	State effective date	EPA approval date	Explanation
None.				

(e) EPA approved Alabama non-regulatory provisions.

EPA APPROVED ALABAMA NON-REGULATORY PROVISIONS

Name of nonregulatory SIP provision	Applicable geographic or nonattainment area	State submittal date/effective date	EPA approval date	Explanation
Birmingham 1990 Baseline Emissions Inventory	Birmingham Ozone Nonattainment Area.	11/13/92	06/04/99 64 FR 29961	
Alabama Interagency Transportation Conformity Memorandum of Agreement.		01/20/00	05/11/00 65 FR 30362	
Alabama Fuel Waiver Request-Appendix II of Attainment Demonstration of the 1-hour NAAQS for Ozone for the Birmingham Nonattainment Area.	Birmingham Ozone Nonattainment Area.	12/01/00	11/07/01 66 FR 56220	

EPA APPROVED ALABAMA NON-REGULATORY PROVISIONS—Continued

Name of nonregulatory SIP provision	Applicable geographic or nonattainment area	State submittal date/effective date	EPA approval date	Explanation
Attainment Demonstration of the 1-hour NAAQS for Ozone for the Birmingham Nonattainment Area.	Birmingham Ozone Non-attainment Area 1.	2/01/00	11/07/01 66 FR 56224	

[FR Doc. 03–2172 Filed 1–31–03; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MD129/130–3089a; FRL–7437–7]

Approval and Promulgation of Air Quality Implementation Plans; Maryland; Amendments to Volatile Organic Compound Requirements From Specific Processes

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve revisions to the Maryland State Implementation Plan (SIP). The revisions consist of two (2) amendments to Maryland's air pollution control regulations governing specific processes on volatile organic compound (VOC) requirements. The revisions pertain to alternative method of compliance and good operating practices. EPA is fully approving these revisions in accordance with the requirements of the Clean Air Act.

DATES: This rule is effective on April 4, 2003 without further notice, unless EPA receives adverse written comments by March 5, 2003. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Written comments should be mailed to Walter K. Wilkie, Acting Chief, Air Quality Planning and Information Services Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 1301 Constitution Avenue, NW., Washington, DC 20460; and Maryland Department of the Environment, 1800 Washington Blvd., Suite 730, Baltimore, Maryland 21230.

FOR FURTHER INFORMATION CONTACT: Betty Harris at (215) 814–2168, or by e-mail at *harris.betty@epa.gov*. Please note that while questions may be posed via telephone and e-mail, formal comments must be submitted in writing, as indicated in the **ADDRESSES** section of this document.

SUPPLEMENTARY INFORMATION:

I. Background

On November 20, 2001 and December 6, 2001, the State of Maryland submitted a formal revision to its State Implementation Plan (SIP). The SIP revision submitted by the Maryland Department of the Environment (MDE) consists of amended volatile organic compound (VOC) requirements to specific processes in the Code of Maryland Administrative Regulations (COMAR 26.11.19).

II. Summary of SIP Revision

A. On November 20, 2001, MDE submitted an amendment to COMAR 26.11.19.02B(2)(d). This amendment provides an alternative method for a source to achieve compliance with VOC requirements. The amendment allows sources that are subject to VOC limits in coatings or inks or other similar products, to reduce emissions by using water-based coatings, resins, inks, or similar products that contain less than twenty-five percent VOC by volume of the volatile portion of the product. This amendment was published in the MDE Register on January 30, 1998, and a public hearing was held on March 4, 1998. The amendment was adopted on April 9, 1998, and became effective on May 4, 1998.

B. On December 6, 2001, MDE submitted COMAR 26.11.19.02I. MDE expanded this rule to include good operating practices, equipment cleanup procedures and VOC storage tank vapor control requirements to reduce VOC emissions from any source presently subject to any VOC emission standard, limitation or requirement. The expanded rule was published in MDE Register on September 21, 2001, and a public hearing was held on October 23, 2001. The rule was adopted on November 6, 2001 and became effective on December 10, 2001.

III. Final Action

EPA is approving SIP revisions submitted by MDE on November 20, 2001 and December 6, 2001, respectively, the amendments to the VOC requirements [COMAR 26.11.19.02B(2)(d), COMAR 26.11.19.02I] concerning an alternative method of compliance for specific VOC processes; good operating practices, equipment cleanup, and VOC storage. EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comment. However, in the "Proposed Rules" section of today's **Federal Register**, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are filed. This rule will be effective on April 4, 2003 without further notice unless EPA receives adverse comment by March 5, 2003. If EPA receives adverse comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

IV. Regulatory Assessment

A. General Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal

requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

C. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 4, 2003. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action.

This action pertains to Maryland's amendments to volatile organic compound requirements from specific processes and may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: December 31, 2002.

Thomas C. Voltaggio,

Acting Regional Administrator, Region III.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart V—Maryland

2. Section 52.1070 is amended by adding paragraphs (c)(174) and (c)(175) to read as follows:

§ 52.1070 Identification of plan.

* * * * *

(c) * * *

(174) Revisions to the Maryland State Implementation Plan submitted on November 20, 2001, by the Maryland Department of the Environment:

(i) Incorporation by reference.

(A) Letter dated November 20, 2001 from the Maryland Department of the Environment transmitting a revision to Maryland State Implementation Plan concerning an alternative method for a source to achieve compliance with volatile organic compound (VOC) requirements for specific processes.

(B) Revisions to Code of Maryland Administrative Regulation (COMAR) 26.11.19.02B (Applicability, Determining Compliance, Reporting and General Requirements—Method of Compliance), effective May 4, 1998, which revises paragraph .02B(2)(c), adds a new paragraph .02B(2)(d), and renumbers former paragraph .02B(2)(d) as .02B(2)(e).

(ii) Additional Material.—Remainder of the State submittal pertaining to the revision listed in paragraph (c)(174)(i) of this section.

(175) Revisions to the Maryland State Implementation Plan submitted on December 6, 2001, by the Maryland Department of the Environment:

(i) Incorporation by reference.

(A) Letter dated December 6, 2001 from the Maryland Department of the Environment transmitting additions to Maryland's State Implementation Plan, concerning good operating practices, equipment cleanup procedures, and volatile organic compound (VOC) storage tank vapor control requirements for specific processes.

(B) Addition of Code of Maryland Administrative Regulation (COMAR) 26.11.19.02I—(Applicability, Determining Compliance, Reporting and General Requirements—Good Operating Practices, Cleanup, and VOC Storage), effective December 10, 2001.

(ii) Additional Material.—Remainder of the State submittal pertaining to the revision listed in paragraph (c)(175)(i) of this section.

[FR Doc. 03–2434 Filed 1–31–03; 8:45 am]

BILLING CODE 6560–50–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1804, 1827, 1835, and 1852

RIN 2700–AC33

Scientific and Technical Reports

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: This final rule adopts with changes the proposed rule published in the **Federal Register** on November 14, 2001. This final rule amends the NFS to clarify the review requirements for data produced under research and development (R&D) contracts, including data contained in final reports, and the review requirements for final reports prior to inclusion in NASA's Center for AeroSpace Information (CASI) scientific and technical information (STI) database.

EFFECTIVE DATE: February 3, 2003.

FOR FURTHER INFORMATION CONTACT: Celeste Dalton, NASA Headquarters, Office of Procurement, Contract Management Division (Code HK), (202) 358–1645, e-mail: *cdalton@hq.nasa.gov.*

SUPPLEMENTARY INFORMATION:

A. Background

NFS clause 1852.235–70, Center for Aerospace Information—Final Scientific and Technical Reports, is required in all R&D contracts. Paragraph (e) of the current NFS clause 1852.235–70 requires that contractors not release the final report required under the contract, outside of NASA, until a document availability authorization (DAA) review has been completed by NASA and availability of the report has been determined. The DAA review completed by NASA is intended to ensure that NASA disseminates NASA scientific and technical information (STI) in a manner consistent with U.S. laws and regulations, Federal information policy, intellectual property rights, technology transfer protection requirements, and budgetary and technological limitations. The DAA review process applies only to the publication and dissemination of NASA STI by NASA or under the direction of NASA.

This final report review requirement has been incorrectly interpreted by some university contractors as restricting their right to publish any of the data produced under the contract that may be included in the Final Report until NASA has completed its DAA review. The intent of paragraph (e) is to restrict only the release of the "The Final Report" as delivered under the contract until NASA completes its DAA review and availability of the report has been determined. This clause normally does not restrict the contractor's ability to publish, or otherwise disseminate, data produced during the performance of the contract, including data contained in the Final Report, as provided under FAR clause 52.227–14, Rights in Data—General. However, in certain limited situations, contract requirements may include research activity that will result in data subject to export control, national security restrictions, or other restrictions designated by NASA, or may require that the contractor receives or is given access to data that includes restrictive markings, *e.g.*, proprietary information of others. In these circumstances, NASA requires a review of data produced under the contract, before the contractor may publish, release, or otherwise disseminate the data.

This final rule clarifies the above by—

(a) Revising the existing clause, 1852.235–70, to delete reference to the submission of the final report. This revised clause is titled "Center for Aerospace Information," and advises contractors of the services provided by CASI;

(b) Establishing a new clause 1852.235–73, Final Scientific and Technical Reports, that requires submission of a final report; states that the contractor may publish, or otherwise disseminate, data produced during the performance of the contract, including data contained in the final report, without prior review by NASA; and retains restriction on release of the final report as delivered under the contract until NASA has completed its DAA review;

(c) Establishing an Alternate I to the new 1852.235–73 clause, for use in contracts for fundamental research in which the contractor may publish, or otherwise disseminate, data produced during performance of the contract, including the final report, without prior review by NASA;

(d) Establishing an Alternate II to the new 1852.235–73 clause, for use in contracts in which data resulting from the research activity may be subject to export control, national security restrictions or other restrictions designated by NASA, or, to the extent the contractor receives or is given access to data that includes restrictive markings, may include proprietary information of others, and thus will require NASA review before the contractor may publish, release, or otherwise disseminate data produced during the performance of the contract;

(e) Establishing a new clause 1852.235–74, Additional Reports of Work—Research and Development, for use in contracts in which monthly, quarterly and other reports in addition to the Final Report may be considered necessary for monitoring contract performance; and

(f) Moving the coverage for Reports of Work from Part 1827, Patents, Data, and Copyrights, to 1835, Research and Development Contracting, by deleting section 1827.406–70, Reports of Work, and adding §§ 1835.010, Scientific and technical reports, and 1835.011, Data.

NASA published a proposed rule in the **Federal Register** on November 14, 2001 (66 FR 57028). Public comments were received from one association. The comments suggested a change to the prescription for use of Alternate I to 1852.235–73 and objected to the inclusion of "information disclosing an invention in which the government may have rights" as an example of when it would be appropriate to use the proposed clause 1852.235–75, Review of Final Scientific and Technical Reports and Other Data. The comments were considered in formulation of this final rule. NASA is adopting the proposed rule as final with changes. The changes: (a) Modify, for consistency, the clause proscription for use of Alternate I to 1852.235–73; (b) delete the previously proposed clause 1852.235–75; (c) revise Alternate II of the new clause 1852.235–73 to include language from the deleted clause, and modifies that language to delete reference to "information disclosing an invention in which the government may have rights" since the FAR Patent Rights clause (52.227–11) requires the contractor to disclose inventions to the government, but does not restrict the publication of information disclosing an invention; (d) encourage electronic submission of reports; and (e) align the submission of documents with existing internal review procedures. Finally, this final rule amends an address in section 1804.202.

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This final rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

NASA certifies that this final rule will not have a significant economic impact on a substantial number of small business entities within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*), because these changes only clarify existing rights and responsibilities relating to release of

data produced in performance of a contract.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the NFS do not impose any recordkeeping or information collection requirements, or collection of information from offerors, contractors, or members of the public that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 1804, 1827, 1835, and 1852

Government procurement.

Tom Luedtke,

Assistant Administrator for Procurement.

Accordingly, 48 CFR Parts 1804, 1827, 1835, and 1852 are amended as follows:

1. The authority citation for 48 CFR Parts 1804, 1827, 1835, and 1852 continues to read as follows:

Authority: 42 U.S.C. 2473(c)(1).

PART 1804—ADMINISTRATIVE MATTERS

2. Revise section 1804.202 to read as follows:

1804.202 Agency distribution requirements.

In addition to the requirements in FAR 4.201, the contracting officer shall distribute one copy of each R&D contract, including the Statement of Work, to the NASA Center for AeroSpace Information (CASI), Attention: Acquisitions Collections Development Specialist, 7121 Standard Drive, Hanover, MD 21076–1320.

PART 1827—PATENTS, DATA, AND COPYRIGHTS

1827.406–70 [Removed]

3. Remove section 1827.406–70.

PART 1835—RESEARCH AND DEVELOPMENT CONTRACTING

4. Add sections 1835.010 and 1835.011 to read as follows:

1835.010 Scientific and technical reports.

(a)(i) *Final reports.* Final reports must be furnished by contractors for all R&D contracts. The final report should summarize the results of the entire contract, including recommendations and conclusions based on the experience and results obtained. The final report should include tables, graphs, diagrams, curves, sketches, photographs, and drawings in sufficient detail to explain comprehensively the results achieved under the contract. The final report should comply with formatting and stylistic guidelines contained in NPG 2200.2A, Guidelines for Documentation, Approval, and Dissemination of NASA Scientific and Technical Information. Electronic formats for submission of reports should be used to the maximum extent practical. When reports are submitted electronically, the contracting officer should also request the submission of a paper copy of the report that could be used to validate items such as math and symbols that can be transposed due to font substitution or other electronic transmission problems. Information regarding appropriate electronic formats for final reports is available from center STI/Publications Managers or the NASA Center for AeroSpace Information (CASI) at *http://www.sti.nasa.gov* under "Publish STI—Electronic File Formats."

(ii) In addition to the final report submitted to the contracting officer, the contractor shall concurrently provide CASI and the center STI/Publications Manager with a copy of the letter transmitting the final report to the contracting officer.

(iii) It is NASA policy to provide the widest practicable and appropriate dissemination of scientific and technical information (STI) derived from NASA activities, including that generated under NASA research and development contracts. One mechanism for disseminating NASA STI is through CASI. Before approving a final report delivered under a contract for inclusion in the CASI repository, NASA must complete a document availability authorization (DAA) review. The DAA review is intended to ensure that NASA disseminates NASA STI in a manner consistent with U.S. laws and regulations, federal information policy and publication standards, intellectual property rights, technology transfer protection requirements, and budgetary and technological limitations. NASA Form 1676, NASA Scientific and Technical Document Availability Authorization (DAA), or a center-specific version of this form, is used to complete this review. The DAA review process applies to the publication and dissemination of NASA STI by NASA or under the direction of NASA. The final report, as delivered under the contract, must not be released outside of NASA until NASA's DAA review has been completed and the availability of the document has been determined by NASA.

(iv) *Additional reports of work.* In addition to the final report required by paragraph (a)(i) of this section, the contracting officer, in consultation with the program or project manager, should consider the desirability of requiring periodic reports and reports on the completion of significant units or phases of work for monitoring contract performance. Any additional reports must be included in the clause at 1852.235–74 as a contract deliverable. (*See* FAR 27.403.)

(v) Upon receipt of the final report, or any additional reports required by 1852.235–74 if included in the contract, the contracting officer shall forward the reports to the contracting officer's technical representative (COTR) for review and acceptance. The COTR shall ensure that the DAA review is initiated upon acceptance of the final report or any additional reports that NASA elects to publish or release outside of NASA or present at internal meetings at which foreign nationals may be present. Upon completion of the DAA review, the COTR shall ensure that the DAA-approved STI and the original approved DAA form are sent to the center STI/Publication Manager. The contractor should be advised of the final availability determination. These responsibilities should be included in the COTR Delegation, NASA Form 1634.

(b) The final report shall include a completed Report Documentation Page, Standard Form (SF) 298, as the final page of the report.

1835.011 Data.

(a) In addition to any reports required by 1835.010, the contracting officer shall specify what additional data, (type, quantity, and quality) is required under the contract, for example, presentations, journal articles, and seminar notes. (*See* FAR 27.403.)

5. Revise Section 1835.070 to read as follows:

1835.070 NASA contract clauses and solicitation provision.

(a) The contracting officer shall insert the clause at 1852.235–70, Center for AeroSpace Information, in all research and development contracts, and interagency agreements and cost-reimbursement supply contracts involving research and development work.

(b) The contracting officer shall insert the clause at 1852.235–71, Key Personnel and Facilities, in contracts when source selection has been substantially predicated upon the possession by a given offeror of special capabilities, as represented by key personnel or facilities.

(c) The contracting officer shall ensure that the provision at 1852.235–72, Instructions for Responding to NASA Research Announcements, is inserted in all NRAs. The instructions

may be supplemented, but only to the minimum extent necessary.

(d) The contracting officer shall insert the clause at 1852.235–73, Final Scientific and Technical Reports, in all research and development contracts, and in interagency agreements and cost-reimbursement supply contracts involving research and development work.

(1) The contracting officer, after consultation with and concurrence of the program or project manager and the center Export Control Administrator, shall insert the clause with its Alternate I when the contract includes "fundamental research" as defined at 22 CFR 120.11(8) and no prior review of data, including the final report, produced during the performance of the contract is required for export control or national security purposes before the contractor may publish, release, or otherwise disseminate the data.

(2) The contracting officer, after consultation with and concurrence by the program or project manager and where necessary the center Export Control Administrator, shall insert the clause with its Alternate II, when prior review of all data produced during the performance of the contract is required before the contractor may publish, release, or otherwise disseminate the data. For example, when data produced during performance of the contract may be subject to export control, national security restrictions, or other restrictions designated by NASA; or, to the extent the contractor receives or is given access to data that includes restrictive markings, may include proprietary information of others.

(e) The contracting officer shall insert a clause substantially the same as the clause at 1852.235–74, Additional Reports of Work—Research and Development, in all research and development contracts, and in interagency agreements and cost-reimbursement supply contracts involving research and development work, when periodic reports, such as monthly or quarterly reports, or reports on the completion of significant units or phases of work are required for monitoring contract performance. The clause should be modified to reflect the reporting requirements of the contract and to indicate the timeframe for submission of the final report.

PART 1852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

6. Revise section 1852.235–70 to read as follows:

1852.235–70 Center for AeroSpace Information.

As prescribed in 1835.070(a), insert the following clause:

Center for Aerospace Information (Feb, 2003.)

(a) The Contractor should register with and avail itself of the services provided by the NASA Center for AeroSpace Information (CASI) (*http://www.sti.nasa.gov*) for the conduct of research or research and development required under this contract. CASI provides a variety of services and products as a NASA repository and database of research information, which may enhance contract performance.

(b) Should the CASI information or service requested by the Contractor be unavailable or not in the exact form necessary by the Contractor, neither CASI nor NASA is obligated to search for or change the format of the information. A failure to furnish information shall not entitle the Contractor to an equitable adjustment under the terms and conditions of this contract.

(c) Information regarding CASI and the services available can be obtained at the Internet address contained in paragraph (a) of this clause or at the following address: Center for AeroSpace Information (CASI), 7121 Standard Drive, Hanover, Maryland 21076–1320, E-mail: *help@sti.nasa.gov*, Phone: 301–621–0390, Fax: 301–621–0134.

(End of clause)

7. Add sections 1852.235–73 and 1852.235–74 to read as follows:

1852.235–73 Final Scientific and Technical Reports.

As prescribed in 1835.070(d) insert the following clause:

Final Scientific and Technical Reports (Feb, 2003.)

(a) The Contractor shall submit to the Contracting Officer a final report that summarizes the results of the entire contract, including recommendations and conclusions based on the experience and results obtained. The final report should include tables, graphs, diagrams, curves, sketches, photographs, and drawings in sufficient detail to explain comprehensively the results achieved under the contract.

(b) The final report shall be of a quality suitable for publication and shall follow the formatting and stylistic guidelines contained in NPG 2200.2A, Guidelines for Documentation, Approval, and Dissemination of NASA Scientific and Technical Information. Electronic formats for submission of reports should be used to the maximum extent practical. Before electronically submitting reports containing scientific and technical information (STI) that is export-controlled or limited or restricted, contact the Contracting Officer to determine the requirements to electronically transmit these forms of STI. If appropriate electronic safeguards are not available at the time of submission, a paper copy or a CD–ROM of the report shall be required. Information regarding appropriate electronic formats for final reports is available at *http://www.sti.nasa.gov* under "Publish STI—Electronic File Formats."

(c) The last page of the final report shall be a completed Standard Form (SF) 298, Report Documentation Page.

(d) In addition to the final report submitted to the Contracting Officer, the Contractor shall concurrently provide to the Center STI/Publication Manager and the NASA Center for AeroSpace Information (CASI) a copy of the letter transmitting the final report to the Contracting Officer. The copy of the letter shall be submitted to CASI at the following address: Center for AeroSpace Information (CASI), Attn: Acquisitions Collections Development Specialist, 7121 Standard Drive, Hanover, Maryland 21076–1320.

(e) In accordance with paragraph (d) of the Rights in Data—General clause (52.227–14) of this contract, the Contractor may publish, or otherwise disseminate, data produced during the reports required by 1852.235–74 when included in the contract, without prior review by NASA. The Contractor is responsible for reviewing publication or dissemination of the data for conformance with laws and regulations governing its distribution, including intellectual property rights, export control, national security and other requirements, and to the extent the contractor receives or is given access to data necessary for the performance of the contract which contain restrictive markings, for complying with such restrictive markings. Should the Contractor seek to publish or otherwise disseminate the final report, or any additional reports required by 1852.235–74 if applicable, as delivered to NASA under this contract, the Contractor may do so once NASA has completed its document availability authorization review, and availability of the report has been determined.

Alternate I (FEB 2003)

As prescribed by 1835.070(d)(1), insert the following as paragraph (e) of the basic clause:

(e) The data resulting from this research activity is "fundamental research" which will be broadly shared within the scientific community. No foreign national access or dissemination restrictions apply to this research activity. The Contractor may publish, release, or otherwise disseminate data produced during the performance of this contract, including the final report, without prior review by NASA for export control or national security purposes. However, NASA retains the right to review the final report to ensure that proprietary information, which may have been provided to the Contractor, is not released without authorization and for consistency with NASA publication standards. Additionally, the Contractor is responsible for reviewing any publication, release, or dissemination of the data for conformance with other restrictions expressly set forth in this contract, and to the extent it receives or is given access to data necessary for the performance of the contract which contain restrictive markings, for compliance with such restrictive markings.

Alternate II (FEB 2003)

As prescribed by 1835.070(d)(2), insert the following as paragraph (e) of the basic clause:

(e) Data resulting from this research activity may be subject to export control, national security restrictions or other restrictions designated by NASA; or, to the extent the Contractor receives or is given access to data necessary for the performance of the contract which contain restrictive markings, may include proprietary information of others. Therefore, the Contractor shall not publish, release, or otherwise disseminate, except to NASA, data produced during the performance of this contract, including data contained in the final report and any additional reports required by 1852.235–74 when included in the contract, without prior review by NASA. Should the Contractor seek to publish, release, or otherwise disseminate data produced during the performance of this contract, the Contractor may do so once NASA has completed its document availability authorization review and the availability of the data has been determined.

(End of clause)

1852.235–74 Additional Reports of Work—Research and Development.

As prescribed in 1835.070(e), insert a clause substantially the same as the following:

Additional Reports of Work—Research and Development (FEB 2003)

In addition to the final report required under this contract, the Contractor shall submit the following report(s) to the Contracting Officer:

(a) *Monthly progress reports.* The Contractor shall submit separate monthly reports of all work accomplished during each month of contract performance. Reports shall be in narrative form, brief, and informal. They shall include a quantitative description of progress, an indication of any current problems that may impede performance, proposed corrective action, and a discussion of the work to be performed during the next monthly reporting period.

(b) *Quarterly progress reports.* The Contractor shall submit separate quarterly reports of all work accomplished during each three-month period of contract performance. In addition to factual data, these reports should include a separate analysis section interpreting the results obtained, recommending further action, and relating occurrences to the ultimate objectives of the contract. Sufficient diagrams, sketches, curves, photographs, and drawings should be included to convey the intended meaning.

(c) *Submission dates.* Monthly and quarterly reports shall be submitted by the 15th day of the month following the month or quarter being reported. If the contract is awarded beyond the middle of a month, the first monthly report shall cover the period from award until the end of the following month. No monthly report need be submitted for the third month of contract effort for which a quarterly report is required. No quarterly report need be submitted for the final three months of contract effort since that period will be covered in the final report. The final report shall be submitted within ____ days after the completion of the effort under the contract.

(End of clause)

[FR Doc. 03–2435 Filed 1–31–03; 8:45 am]

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Proposed Rules

Federal Register
Vol. 68, No. 22
Monday, February 3, 2003

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

SMALL BUSINESS ADMINISTRATION

13 CFR Part 120

Business Loan Program

AGENCY: U.S. Small Business Administration.

ACTION: Advance notice of proposed rulemaking (ANPRM); notice of extension of the comment period.

SUMMARY: By means of an advance notice of proposed rulemaking (ANPRM), the U.S. Small Business Administration (SBA) is requesting comments addressing the Certified Development Company (CDC) Loan Program (the "CDC Program" or the "504 Program"). After a review of the comments, SBA will consider proposing amendments to existing program regulations that will improve overall program management.

SBA is revisiting the 504 Program policies as a prudent management exercise in light of major changes in the economy, the financial services industry, technology, and in CDCs' operations since the program's inception in 1980. The review has also been prompted by SBA's on-going discussions with the 504 industry and by specific requests made to SBA to expand CDCs' product base to include 7(a) loans or Small Business Investment Companies. In particular, SBA is seeking comments on the following: Whether the 504 Program is meeting its statutory purpose as defined in section 501(a) of the Small Business Investment Act; the appropriate long-term goals and annual performance measures for the program given its statutory requirement; the appropriate data elements required to assure solid program oversight while minimizing public data collection burdens; operational or regulatory impediments to providing long-term financing in rural or urban areas; and programmatic changes that could increase CDC competition and increase small businesses' access to loans.

The ANPRM is intended to stimulate dialogue on these and other issues pertaining to the CDC Program. The ANPRM was published on December 6, 2002, 67 FR 72622. The comment period closes on February 4, 2003. Because of the broad range of topics and issues addressed in the ANPRM, and due to requests from the public and members of Congress, SBA is extending the time period for comments by an additional 30 days to March 6, 2003. We do this because of our desire to have a meaningful dialogue on the important issues that seek to enhance SBA's efforts to serve small businesses through the CDC Program.

DATES: The comment period for the ANPRM published December 6, 2002 (67 FR 72622) is extended through March 6, 2003.

ADDRESSES: Address all comments to: James E. Rivera, Associate Administrator for Financial Assistance, U.S. Small Business Administration, 409 Third Street, SW., 8th Floor, Washington, DC 20416. Comments may be sent by e-mail to *ANPR@sba.gov*.

FOR FURTHER INFORMATION CONTACT: Gail H. Hepler, Chief, 504 Loan Policy Branch, U.S. Small Business Administration, 409 Third Street, SW., 8th Floor, Washington, DC 20416. Questions may be sent by e-mail to *gail.helpler@sba.gov* or by telephone at (202) 205–7530. This is not a toll-free number.

Dated: January 27, 2003.

James E. Rivera,

Associate Administrator for Financial Assistance.

[FR Doc. 03–2399 Filed 1–31–03; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

RIN 3245–AF03

Small Business Size Standards; Facilities Support Services (Including Base Maintenance)

AGENCY: Small Business Administration (SBA).

ACTION: Proposed rule.

SUMMARY: The U.S. Small Business Administration (SBA) proposes to increase the size standard for the Facilities Support Services industry (North American Industry Classification System (NAICS) code 561210) from $6 million in average annual receipts to $30 million and the size standard for the sub-category of Base Maintenance from $23 million to $30 million. This proposed revision is being made to better define the size of businesses in this industry that the SBA believes should be eligible for Federal small business assistance programs.

DATES: Comments must be received on or before April 4, 2003.

ADDRESSES: Send written comments to Gary M. Jackson, Assistant Administrator for Size Standards, 409 Third Street, SW, Mail Code 6530, Washington DC 20416; by email to *SIZESTANDARDS@sba.gov;* or by facsimile at (202) 205–6390. Upon request, SBA will make all public comments available to any person or entity.

FOR FURTHER INFORMATION CONTACT: Diane Heal, Office of Size Standards, Office of Government Contracting and Business Development, (202) 205–6618.

SUPPLEMENTARY INFORMATION: SBA has received requests from firms in the Facilities Support Services industry to review its $6 million size standard for this industry and the $23 million size standard for Base Maintenance, a sub-category of the industry. These size standards are based on annual receipts of the business, as described in 13 CFR 121.104. These firms argue that a size standard increase is warranted to reflect the size of Federal contracts issued in this area. These contracts include a broad spectrum of services involving administrative support, custodial services, facilities repair and maintenance, and technical services, which often are $10 million per year or more in value. A small business can lose its small businesses status with only one or two contracts. Costs on these types of contracts have increased greater than the general inflation rate, especially due to changes in the mandated labor rates under the Service Contract Act and increased health insurance costs. The requestors believe that to help develop small businesses to be competitive with large businesses in this industry, the size standard should be increased to the $25 million to $30 million range.

Based on a review of these issues and data on the Facilities Support Services industry, SBA concludes that a higher size standard for activities in this industry is supportable. This rule

proposes a $30 million size standard for all activities in the Facilities Support Services industry. As explained below, SBA believes that the activities comprising this industry and the characteristics of firms in the industry no longer support the need for separate size standards for Base Maintenance and for all other facilities support activities. SBA solicits comments on all aspects of this proposed rule, including its methodology and analysis. Below is a discussion of the SBA's size standards methodology and the analysis leading to the proposed $30 million size standard.

Size Standards Methodology: Congress granted SBA discretion to establish detailed size standards (15 U.S.C. 632(a)(2)). SBA's Standard Operating Procedure (SOP) 90 01 3, "Size Determination Program" (available on SBA's Web site at *http://www.sba.gov/library/soproom.html)* sets out four categories for establishing and evaluating size standards: (1) The structure of the industry and its various economic characteristics, (2) SBA program objectives and the impact of different size standards on these programs, (3) whether a size standard successfully excludes those businesses which are dominant in the industry, and (4) other factors if applicable. Other factors, including the impact on other agencies' programs, may come to the attention of SBA during the public comment period or from SBA's own research on the industry. No formula or weighting has been adopted so that the factors may be evaluated in the context of a specific industry. Below is a discussion of SBA's analysis of the economic characteristics of an industry, the impact of a size standard on SBA programs, and the evaluation of whether a firm at or below a size standard could be considered dominant in the industry under review.

Industry Analysis: Section 3(a)(2) of the Small Business Act (15 U.S.C. 632(a)(3)), requires that size standards vary by industry to the extent necessary to reflect differing industry characteristics. SBA has two "base" or "anchor" size standards that apply to most industries—500 employees for manufacturing industries and $6 million in average annual receipts for nonmanufacturing industries. SBA established 500 employees as the anchor size standard for the manufacturing industries at SBA's inception in 1953 and shortly thereafter established a $1 million average annual receipts size standard for the nonmanufacturing industries. The receipts-based anchor size standard for the nonmanufacturing industries was adjusted periodically for inflation so that, currently, the anchor size standard is $6 million. Anchor size standards are presumed to be appropriate for an industry unless its characteristics indicate that larger firms have a much greater significance within that industry than the "typical industry."

When evaluating a size standard, the characteristics of the specific industry under review are compared to the characteristics of a group of industries, referred to as a comparison group. A comparison group is a large number of industries grouped together to represent the typical industry. It can be comprised of all industries, all manufacturing industries, all industries with receipt-based size standards, or some other logical grouping.

If the characteristics of a specific industry are similar to the average characteristics of the comparison group, then the anchor size standard is considered appropriate for the industry. If the specific industry's characteristics are significantly different from the characteristics of the comparison group, a size standard higher or, in rare cases, lower than the anchor size standard may be considered appropriate. The larger the differences between the specific industry's characteristics and the comparison group's characteristics, the larger the difference between the appropriate industry size standard and the anchor size standard. SBA will consider adopting a size standard below the anchor size standard only when (1) all or most of the industry characteristics are significantly smaller than the average characteristics of the comparison group, or (2) other industry considerations strongly suggest that the anchor size standard would be an unreasonably high size standard for the industry under review.

The primary evaluation factors that SBA considers in analyzing the structural characteristics of an industry are listed in 13 CFR 121.102 (a) and (b). Those factors include average firm size, distribution of firms by size, start-up costs, and industry competition. The analysis also examines the possible impact of a size standard revision on SBA's programs as an evaluation factor. SBA generally considers these five factors to be the most important evaluation factors in establishing or revising a size standard for an industry. However, it will also consider and evaluate other information that it believes relevant to the decision on a size standard for a particular industry. Public comments submitted on proposed size standards are also an important source of additional information that SBA closely reviews before making a final decision on a size standard. Below is a brief description of each of the five evaluation factors.

1. "Average firm size" is simply total industry receipts (or number of employees) divided by the number of firms in the industry. If the average firm size of an industry is significantly higher than the average firm size of a comparison industry group, this fact would be viewed as supporting a size standard higher than the anchor size standard. Conversely, if the industry's average firm size is similar to or significantly lower than that of the comparison industry group, it would be a basis to adopt the anchor size standard or, in rare cases a lower size standard.

2. "Distribution of firms by size" is the proportion of industry receipts, employment, or other economic activity accounted for by firms of different sizes in an industry. If the preponderance of an industry's economic activity is by smaller firms, this tends to support adopting the anchor size standard. A size standard higher than the anchor size standard is supported for an industry in which the distribution of firms indicates that economic activity is concentrated among the largest firms in an industry. In this rule, SBA is comparing the size of firms within an industry to the size of firms in the comparison group at which predetermined percentages of receipts are generated by firms smaller than a particular size firm. For example, assume for the industry under review that 50 percent of total industry receipts are generated by firms of $28.5 million in receipts and less. This contrasts with the comparison group (composed of industries with the nonmanufacturing anchor size standard of $6 million) in which firms of $5.8 million and less in receipts generated 50 percent of total industry receipts. Viewed in isolation, the higher figure for the industry under review suggests that a size standard higher than the nonmanufacturing anchor size standard may be warranted. Other size distribution comparisons in the industry analysis include 40 percent, 60 percent, and 70 percent, as well as the 50 percent comparison discussed above.

3. "Start-up costs" affect a firm's initial size because entrants into an industry must have sufficient capital to start and maintain a viable business. To the extent that firms entering into one industry have greater financial requirements than firms do in other industries, SBA is justified in considering a higher size standard. In lieu of direct data on start-up costs, SBA uses a proxy measure to assess the financial burden for entry-level firms. For this analysis, SBA has calculated

nonpayroll costs per establishment for each industry. This is derived by first calculating the percent of receipts in an industry that are either retained or expended on costs other than payroll costs. (The figure comprising the numerator of this percentage is mostly composed of capitalization costs, overhead costs, materials costs, and the costs of goods sold or inventoried.) This percentage is then applied to average establishment receipts to arrive at nonpayroll costs per establishment (an establishment is a business entity operating at a single location). An industry with a significantly higher level of nonpayroll costs per establishment than that of the comparison group is likely to have higher start-up costs, which would tend to support a size standard higher than the anchor size standard. Conversely, if the industry showed a significantly lower nonpayroll costs per establishment when compared to the comparison group, the anchor size standard would be considered the appropriate size standard.

4. "Industry competition" is assessed by measuring the proportion or share of industry receipts obtained by firms that are among the largest firms in an industry. In this proposed rule, SBA compares the proportion of industry receipts generated by the four largest firms in the industry—generally referred to as the "four-firm concentration ratio—with the average four-firm concentration ratio for industries in the comparison groups. If a significant proportion of economic activity within the industry is concentrated among a few relatively large producers, SBA tends to set a size standard relatively higher than the anchor size standard in order to assist firms in a broader size range to compete with firms that are larger and more dominant in the industry. In general, however, SBA does not consider this to be an important factor in assessing a size standard if the four-firm concentration ratio falls below 40 percent for an industry under review.

5. "Impact of size standard revisions on SBA programs" refers to the possible impact a size standard change may have on the level of small businesses assistance. This assessment most often focuses on the proportion or share of Federal contract dollars awarded to small businesses in the industry in question. In general, the lower the share of Federal contract dollars awarded to small businesses in an industry which receives significant Federal procurement revenues, the greater is the justification for a size standard higher than the existing one.

Another factor to evaluate the impact of a proposed size standard on SBA programs is the volume of guaranteed loans within an industry and the size of firms obtaining those loans. This factor is sometimes examined to assess whether the current size standard may be restricting the level of financial assistance to firms in that industry. If small businesses receive significant amounts of assistance through these programs, or if the financial assistance is provided mainly to small businesses much lower than the size standard, a change to the size standard (especially if it is already above the anchor size standard) may not be necessary.

Elimination of Base Maintenance size standard: Currently, there are two size standards for activities in the Facilities Support Services industry—$23 million for Base Maintenance and $6 million for all other facilities support activities. In 1966, when SBA established a size standard for Base Maintenance, no facilities support related industry existed. Base Maintenance and other Facilities Support Services were classified under a general industry titled "Business Services, Not Elsewhere Classified," along with airplane rental, drafting services, lecture bureaus, and many other miscellaneous business services. The revisions to the 1972 Standard Industrial Classification (SIC) System moved facilities support activities to a new industry titled "Personnel Supply Services, Not Elsewhere Classified," which also consisted of temporary help services. The 1987 revisions to the SIC System eliminated this industry and established two new industries—"Facilities Support Management Services" and "Help Supply Services." In the absence of data on the new Facilities Support Management industry, SBA retained its $13.5 million size standard for Base Maintenance and applied its $3.5 million "nonmanufacturing anchor size standard" in effect at that time to all other industry activities.

The current NAICS industry description of Facilities Support Services is very similar to SBA's description of Base Maintenance (see footnotes 12 and 13 of 13 CFR 121.201). Facilities Support Services comprises establishments providing staff to perform a range of support services within a client's facilities. They do not provide staff to perform the core responsibilities of the client. SBA defines Base Maintenance in a similar manner, but limits the sub-industry to services and special trade activities related to supporting a specific base operation. SBA believes that firms performing Base Maintenance services also perform, or have the capability to perform, most other facilities support activities. Given the close similarity of the descriptions of Facilities Support Services and Base Maintenance, SBA believes a single size standard is appropriate for all activities within the Facilities Support Services industry.

Evaluation of Industry Size Standard: The two tables below show the characteristics for the Facilities Support Services industry and for the two comparison groups. The first comparison group is comprised of all industries with a $6 million receipts-based size standard, referred to as the nonmanufacturing anchor group. Since SBA assumes that the $6 million anchor size standard is appropriate for a nonmanufacturing industry, this is the most logical set of industries to group together for the industry analysis to assess whether a size standard at the anchor size standard or higher is appropriate. The second comparison group consists of nonmanufacturing industries which have the highest levels of receipt-based size standards established by SBA, referred to as the nonmanufacturing higher-level size standard group. Size standards for these industries range from $21 million to $29 million. If an industry's characteristics are significantly larger than those of the nonmanufacturing anchor group, SBA will compare them to the characteristics of the higher-level size standards group. By doing so, SBA can assess if a size standard among its highest receipts-based size standards is appropriate or whether an intermediate size standard between the anchor size standard and the higher size standards should be selected.

SBA examined economic data on the Facilities Support Services industry and the comparison group industries taken from a special tabulation of the 1997 Economic Census prepared under contract by the U.S. Bureau of the Census (Census), Federal contract award data for fiscal years 1999–2001 from the U.S. General Services Administration's Federal Procurement Data Center, and loan data from SBA's internal data base for SBA guaranteed loans.

Industry Structure Consideration: Table 1 below examines the size distribution of firms. For this factor, SBA is evaluating the size of firm that accounts for predetermined percentages of total industry receipts (40 percent, 50 percent, 60 percent, and 70 percent). The table shows firms up to a specific size that, along with smaller firms, account for a specific percentage of total industry receipts.

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Table 1: Size Distribution of Firms in the Facilities Support Services Industry, Nonmanufacturing Anchor Group, and Higher-level Size Standard Group (Data in Millions of Dollars)

Category	Size of Firm at 40%	Size of Firm at 50%	Size of Firm at 60%	Size of Firm at 70%
Facilities Support Services	$55.0	$134.8	$475.3	$1,333.6
Nonmanufacturing Anchor Group	$3.2	$5.8	$11.8	$28.0
Higher-level Size Standards	$24.2	$50.4	$135.6	$423.6

The Facilities Support Services industry is comprised of firms significantly larger than firms in the nonmanufacturing anchor group. Facilities Support Services firms of $55 million and less in receipts account for 40 percent of total industry receipts while firms of $3.2 million and less in receipts in the nonmanufacuturing anchor group received 40 percent of total industry receipts. For the remaining percentages of industry receipts, firms in the Facilities Support Services industry range between 11 to 47 times larger than the size of firms in the nonmanufacturing anchor group. In relation to the higher-level size standards group, Facilities Support Services firms are two to three times larger at every percentage level. These data indicate that a size standard at least comparable to SBA's highest receipts-based size standard of $29 million is appropriate for the Facilities Support Services industry.

Table 2 lists the other three evaluation factors for the Facilities Support Services industry and the comparison groups. These include comparisons of average firm size, the measurement of start-up costs as measured by nonpayroll receipts per establishment, and the four-firm concentration ratio.

Table 2: Industry Characteristics of the Facilities Support Services Industry, Nonmanufacturing Anchor Group, and Higher-level Size Standards Group

Category	Average Firm Size		Non payroll receipts per establishment (million $)	Four Firm Concentration Ratio
	Receipts (millions)	Employees		
Facilities Support Services	$6.2	93.0	$1.73	21.4%
Nonmanufacturing Anchor Group	$0.95	10.6	$0.56	14.4%
Higher-level Size Standards Group	$4.6	21.4	$1.80	26.7%

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The Facilities Support Services industry's average firm size in receipts is over six times larger than the average firm size in the nonmanufacturing anchor group and one-third higher than the higher-level size standard group. Moreover, its average firm size in employees is four to nine times the average sizes of these two comparison groups. The average size of firms in the Facilities Support Services industry is substantially higher than the comparison groups and also supports a size standard at least comparable to SBA's highest receipts-based size standard of $29 million.

As a measure of industry start-up costs, the nonpayroll receipts per establishment indicator for Facilities Support Services is twice that of the anchor comparison group, and at about the same as the higher-level size standard group. This factor suggests a Facilities Support Services size standard within the $21 million to $29 million range of size standards of the higher-level size standards group.

The Facilities Support Services four-firm concentration ratio is appreciably higher than the average of industries in the nonmanufacturer anchor group, but moderately below the level of the higher-level size standard. This factor shows the Facilities Support Services industry to be a relatively competitive industry where a size standard is between the $6 million nonmanufacturer anchor size standard and $21 million (the lowest size standard of the higher level size standard).

SBA Program Considerations: SBA also reviews its size standards in relationship to its programs. Since the

SBA is reviewing the Facilities Support Services industry's size standard because of concerns regarding the application of the size standard to Federal procurement, this proposed rule gives more consideration to the pattern of Federal contract awards than to the level of financial assistance to small businesses to assess whether its size standard should be revised. SBA provides a relatively small amount of financial assistance to Facilities Support Services firms. In fiscal years 2000 and 2001, an average of 19 loans for $4.5 million were guaranteed to firms in the Facilities Support Services industry. Most of these loans were to firms with less than $2 million in receipts. It's unlikely that an increase to the size standard will have a significant impact on the amount of new loans in SBA's financial programs or will crowd-out other small businesses from obtaining SBA guaranteed loans. Consequently, this factor is not part of the assessment of the size standard.

In the case of Federal procurements to Facilities Support Service firms, the share of Federal contracts awarded to small businesses supports an increase to the current size standard. Small Facilities Support Service firms account for 30.5 percent of total industry receipts but have received only 12 percent of the dollar value of Federal contracts awarded during fiscal years 1999 to 2001. Moreover, two-thirds of small business awards are made though programs reserved for small businesses or 8(a) firms. This disproportional share of Federal contract dollars relative to industry receipts generated by small Facilities Support Service firms indicates that contract requirements make it difficult for smaller firms to perform on Federal Facilities Support Services contracts. An increase to the size standard would be beneficial to small businesses in this industry by allowing them to grow in size to better perform the contract requirements.

Overview: Based on the analysis of each evaluation factor, SBA is proposing a $30 million size standard for Facilities Support Services. Two evaluation factors support a size standard of $29 million or higher, one factor supports a size standard within the range of SBA's higher-level size standards ($21 to $29 million), and one factor supports an intermediate range size standard between $6 million and $21 million. The assessment of small business participation in Federal procurements supports a size standard higher than the current Base Maintenance size standard of $23 million. The low amount of participation of small businesses in Federal government procurement is of special concern and suggests that contract requirements may indeed influence the size of Facilities Support Services firms that can perform the requirements of Federal contracts. The SBA believes that a size standard of $30 million, significantly higher than the current size standard of $23 million, is well supported by the analysis of industry data and will help small businesses in this industry compete for Federal contracts without including businesses that are so large that they could harm the ability of much smaller-sized small businesses to compete successfully for Federal contracts.

Dominant in Field of Operation: Section 3(a) of the Small Business Act defines a small concern as one that is (1) independently owned and operated, (2) not dominant in its field of operation and (3) within detailed definitions or size standards established by the SBA Administrator. The SBA considers as part of its evaluation of a size standard whether a business concern at or below a proposed size standard would be considered dominant in its field of operation. This assessment generally considers the market share of firms at the proposed or final size standard or other factors that may show whether a firm can exercise a major controlling influence on a national basis in which significant numbers of business concerns are engaged.

The SBA has determined that no firm at or below the proposed size standard for the Facilities Support Services industry would be of a sufficient size to dominate its field of operation. The largest firm at the proposed size standard level generates less than 0.4 percent of total industry receipts. This level of market share effectively precludes any ability for a firm at or below the proposed size standard to exert a controlling effect on this industry.

Alternative Size Standards: SBA considered an alternative size standard $35 million. As the industry evaluation showed, some of the factors might support a size standard at this level, but other factors supported a size standard within the range of its highest size standards ($21 million to $29 million). The industry data also show that firms earning $35 million in receipts tend to have more establishments than firms between $10 million to $30 million in size. This finding suggests that firms with $35 million in receipts have developed competitive capabilities that enable them to successfully expand operations.

SBA welcomes public comments on its proposed $30 million size standard for the Facilities Support Services industry. Comments on alternatives to the proposal, including the option of retaining the current size standards at $6 million and $23 million discussed above, should present the reasons that would make them preferable to the proposed size standard.

Compliance With Executive Orders 12866, 12988, and 13132, the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Paperwork Reduction Act (44 U.S.C. Ch. 35)

The Office of Management and Budget (OMB) has determined that this rule is a "significant" regulatory action for purposes of Executive Order 12866 because size standards determine which businesses are eligible for Federal small business programs. This is not a major rule under the Congressional Review Act, 5 U.S.C. 800. For the purpose of the Paperwork Reduction Act, 44 U.S.C. Ch. 35, SBA has determined that this rule would not impose new reporting or record keeping requirements. For purposes of Executive Order 13132, SBA has determined that this rule does not have any federalism implications warranting the preparation of a Federalism Assessment. For purposes of Executive Order 12988, SBA has determined that this rule is drafted, to the extent practicable, in accordance with the standards set forth in that order. Our Regulatory Impact Analysis follows.

Regulatory Impact Analysis

1. Need for This Regulatory Action

SBA is chartered to aid and assist small businesses through a variety of financial, procurement, business development, and advocacy programs. To effectively assist the intended beneficiaries of these programs, SBA must establish distinct definitions of which businesses are deemed small businesses. The Small Business Act (15 U.S.C. 632(a)) delegates to the SBA Administrator the responsibility for establishing small business definitions. The Act also requires that small business definitions vary to reflect industry differences. The supplementary information to this proposed rule explains the approach SBA follows when analyzing a size standard for a particular industry. Based on that analysis, SBA believes that a change in the Facilities Support Services size standard is needed to better reflect small businesses in this industry.

2. What Are the Potential Benefits and Costs of This Regulatory Action?

The most significant benefit to businesses obtaining small business status as a result of this rule will be eligibility for Federal small business assistance programs. Under this rule, 177 additional firms may obtain small business status and become eligible for these programs. Of these 177, 19 are between the current $23 million Base Maintenance size standards and the $30 million proposed size standard. Federal small business assistance programs include SBA's financial assistance programs and Federal procurement preference programs for small businesses, 8(a) firms, small disadvantaged businesses (SDB), small businesses located in Historically Underutilized Business Zones (HUBZone), as well as those awarded through full and open competition after application of the HUBZone or SDB price evaluation adjustment. Other Federal agencies use SBA size standards for a variety of regulatory and program purposes. SBA does not have information on each of these uses to evaluate the impact of size standards changes. In cases where SBA size standards are not appropriate, an agency may establish its own size standards with the approval of the SBA Administrator (see 13 CFR 121.902). Through the assistance of these programs, small businesses may benefit by becoming more knowledgeable, stable, and competitive businesses.

The benefits of a size standard increase to a more appropriate level would affect three groups: (1) Businesses that benefit by gaining small business status from the proposed size standard and use small business assistance programs; (2) growing small businesses that may exceed the current size standard in the near future and who will retain small business status under the proposed size standard; and (3) Federal agencies that award contracts under procurement programs that require small business status.

Newly defined small businesses would benefit from the SBA's 7(a) Guaranteed Loan Program. SBA estimates that approximately $2.5 million to $5.5 million in new Federal loan guarantees could be made to these newly defined small businesses. Because of the $2 million maximum size of SBA 7(a) loan guarantees, most loans are made to small businesses well below the size standard. Thus increasing the size standard will likely result in a smaller increase in guaranteed loans to small businesses than the estimated range. These additional loan guarantees, because of their limited magnitude, will have virtually no impact on the overall availability of loans for SBA's loan programs, which have averaged about 40,000 loans totaling about $10 billion per year in recent years.

The newly defined small businesses would also benefit from SBA's economic injury disaster loan program. Since this program is contingent upon the occurrence and severity of a disaster, no meaningful estimate of benefits can be projected.

SBA estimates that firms gaining small business status could potentially obtain Federal contracts worth $65 million to $95 million under the small business set-aside program, the 8(a), Small Disadvantaged Business, and HUBZone programs, or unrestricted contracts. This estimate is based on an analysis of small business participation in Federal contracting and the industry market share of businesses between the current and proposed size standards. During fiscal years 1999–2001, small businesses obtained 11.8 percent of Facilities Support Services contract dollars out of approximately $12 billion in total Federal Facilities Support Services contracts. About two-thirds of small business awards were made as small business set-aside or 8(a) contracts. Most facilities support contracts are for Base Maintenance services, which has a $23 million size standard. Businesses between $23 million and $30 million account for 3.6 percent of industry sales.

Federal agencies may benefit from the higher size standards if the newly defined and expanding small businesses compete for more set-aside procurements. The larger base of small businesses would likely increase competition and would lower the prices on set-aside procurements. A large base of small businesses may create an incentive for Federal agencies to set aside more procurements creating greater opportunities for all small businesses. Small business opportunities will be enhanced in open procurements as they gain experience in Federal contracting through the set-aside and other small business procurement preference programs. Large businesses with small business subcontracting goals may also benefit from a larger pool of small businesses by enabling them to better achieve their subcontracting goals and at lower prices. No estimate of cost savings from these contracting decisions can be made since data are not available to directly measure price or competitive trends on Federal contracts.

To the extent that 177 additional firms become active in Government programs, this may entail some additional administrative costs to the Federal government associated with additional bidders for Federal small business procurement programs, additional firms seeking SBA guaranteed lending programs, and additional firms eligible for enrollment in SBA's PRO-Net data base program. Among businesses in this group seeking SBA assistance, there will be some additional costs associated with compliance and verification associated with certification of small business status and protests of small business status. These costs are likely to generate minimal incremental costs since mechanisms are currently in place to handle these administrative requirements.

The costs to the Federal Government may be higher on some Federal contracts. With greater number of businesses defined as small, Federal agencies may choose to set-aside more contracts for competition among small businesses rather than using full and open competition. The movement from unrestricted to set-aside contracting is likely to result in competition among fewer bidders. Also, higher costs may result if additional full and open contracts are awarded to HUBZone and SDB businesses as a result of a price evaluation preference. The additional costs associated with fewer bidders, however, are likely to be minor since, as a matter of policy, procurements may be set aside for small businesses or reserved for the 8(a), HUBZone Programs only if awards are expected to be made at fair and reasonable prices.

The proposed size standard may have distributional effects among large and small businesses. Although the actual outcome of the gains and losses among small and large businesses cannot be estimated with certainty, several trends are likely to emerge. First, there will likely be a transfer of some Federal contracts to small businesses from large businesses. Large businesses may have fewer Federal contract opportunities as Federal agencies decide to set aside more Federal procurements for small businesses. Also, some Federal contracts may be awarded to HUZone or SDB concerns instead of large businesses since those two categories of small businesses may be eligible for a price evaluation adjustment for contracts competed on a full and open basis. Similarly, currently defined small businesses may obtain fewer Federal contacts due to the increased competition from more businesses defined as small. This transfer may be offset by a greater number of Federal procurements set aside for all small

businesses. The number of newly defined and expanding small businesses that are willing and able to sell to the Federal Government will limit the potential transfer of contracts away from large and currently defined small businesses. The potential distributional impacts of these transfers may not be estimated with any degree of precision because the data on the size of business receiving a Federal contract are limited to identifying small or other-than-small businesses.

The revision to current size standards for Facilities Support Services is consistent with SBA's statutory mandate to assist small businesses. This regulatory action promotes the Administration's objectives. One of SBA's goals in support of the Administration's objectives is to help individual small businesses succeed through fair and equitable access to capital and credit, government contracts, and management and technical assistance. Reviewing and modifying size standards when appropriate ensures that intended beneficiaries have access to small business programs designed to assist them. Size standards do not interfere with state, local, and tribal governments in the exercise of their government functions. In a few cases, state and local governments have voluntarily adopted SBA's size standards for their programs to eliminate the need to establish an administrative mechanism for developing their own size standards.

Initial Regulatory Flexibility Analysis

Under the Regulatory Flexibility Act (RFA), this rule may have a significant impact on a substantial number of small entities. As described above in the Regulatory Impact Analysis, this rule may impact small entities in two ways. First, small businesses in the Facilities Support Services industry competing for Federal Government procurements reserved for small business, and SDB and HUBZone businesses eligible for price adjustment, may face greater competition from newly eligible small businesses. Second, additional Federal procurements for Facilities Support Services may be set aside for small businesses as the pool of eligible small businesses expands.

The proposed size standard may affect small businesses participating in programs of other agencies that use SBA size standards. As a practical matter, SBA cannot fully estimate the impact of a size standard change on each and every Federal program that uses its size standards. In cases where an SBA's size standard is not appropriate, the Small Business Act and SBA's regulations allow Federal agencies to develop different size standards with the approval of the SBA Administrator (13 CFR 121.902). For purposes of a regulatory flexibility analysis, agencies must consult with SBA's Office of Advocacy when developing different size standards for their programs.

Immediately below, SBA sets forth an initial regulatory flexibility analysis (IRFA) of this proposed rule addressing the following questions: (1) What is the need for and objective of the rule, (2) what is SBA's description and estimate of the number of small entities to which the rule will apply, (3) what is the projected reporting, recordkeeping, and other compliance requirements of the rule, (4) what are the relevant Federal rules which may duplicate, overlap or conflict with the proposed rule, and (5) what alternatives will allow the Agency to accomplish its regulatory objectives while minimizing the impact on small entities?

1. What Is the Need for and Objective of the Rule?

The revision to the size standards for Facilities Support Services more appropriately defines the size of businesses in these industries that SBA believes should be eligible for Federal small business assistance programs. A review of the latest available industry data supports a change to the size standard.

2. What Is SBA's Description and Estimate of the Number of Small Entities to Which the Rule Will Apply?

Within the Facilities Support Services industry, 896 out of 1,219 businesses are small. SBA estimates that 177 additional businesses out of 1,219 firms in the Facilities Support Services industry would be considered small as a result of this rule, if adopted. Of these 177, 19 are between the current $23 million Base Maintenance size standards and the $30 million proposed size standard. These businesses would be eligible to seek available SBA assistance provided that they meet other program requirements. Businesses becoming eligible for SBA assistance as a result of this rule, if finalized, cumulatively generate approximately $25.8 billion out of a total of $75.8 billion in receipts, or 34.1 percent of industry receipts. The small business coverage in the Facilities Support Services industry would increase by 3.6 percent of total receipts. SBA estimates that $2.5 million to $5.5 million additional loans may be guaranteed by SBA and $65 million to $95 million in additional Federal contracts may be awarded to the newly eligible small businesses.

3. What Are the Projected Reporting, Record Keeping, and Other Compliance Requirements of the Rule and an Estimate of the Classes of Small Entities That Will Be Subject to the Requirements?

A new size standard does not impose any additional reporting, record keeping or compliance requirements on small entities. Increasing size standards expands access to SBA programs that assist small businesses, but does not impose a regulatory burden as they neither regulate nor control business behavior.

4. What Are the Relevant Federal Rules Which May Duplicate, Overlap or Conflict With the Proposed Rule?

This proposed rule overlaps other Federal rules that use SBA's size standards to define a small business. Under Section 632(a)(2)(C) of the Small Business Act, unless specifically authorized by statute, Federal agencies must use SBA's size standards to define a small business. In 1995, SBA published in the **Federal Register** a list of statutory and regulatory size standards that identified the application of SBA's size standards as well as other size standards used by Federal agencies (60 FR 57988–57991, dated November 24, 1995). SBA is not aware of any Federal rule that would duplicate or conflict with establishing size standards.

SBA cannot completely estimate the impact of a size standard change on each and every Federal program that uses its size standards. In cases where an SBA's size standard is not appropriate, the Small Business Act and SBA's regulations allow Federal agencies to develop different size standards with the approval of the SBA Administrator (13 CFR 121.902). For purposes of a regulatory flexibility analysis, agencies must consult with SBA's Office of Advocacy when developing different size standards for their programs.

5. What Alternatives Will Allow the Agency To Accomplish Its Regulatory Objectives While Minimizing the Impact on Small Entities?

SBA considered two alternative size standards. First, it considered adopting the current $23 million Base Maintenance size standard to all activities in the Facilities Support Services industry. SBA believes this size standard level is inadequate given that most Federal contracts obtained by small businesses have been awarded through reserved contracting methods. This indicates that small businesses at

the current size standard have not developed to a size to be competitive for most Facilities Support Services contracts. Thus, a size standard higher than $23 million will help small businesses to grow to a more competitive level.

Second, SBA considered proposing a $35 million standard for the Facilities Support Services industry. As discussed in the supplementary analysis, some industry factors support a size standard at this level. Businesses at that size and larger tend to have more establishments than those between $10 million to $35 million. This indicates that businesses of $35 million have developed more competitively than currently defined small businesses.

List of Subjects in 13 CFR Part 121

Administrative practice and procedure, Government procurement, Government property, Grant programs—business, Loan programs—business, Small businesses.

For the reasons stated in the preamble, SBA proposes to amend part 121 of title 13 Code of Federal Regulations as follows:

PART 121—SMALL BUSINESS SIZE REGULATIONS

1. The authority citation of part 121 continues to read as follows:

Authority: 15 U.S.C. 632(a), 634(b)(6), 637(a), 644(c) and 662(5) and Sec. 304, Pub. L. 103–403, 108 Stat. 4175, 4188.

2. Amend § 121.201 as follows:

a. In the table "Small Business Size Standards by NAICS Industry," under the heading NAICS Subsector 561, "Administrative and Support Services," revise the entry for 561210 to read as follows; and,

b. Revise footnotes 12 and 13 to read as follows:

§ 121.201 What size standards has SBA identified by North American Industry Classification System codes?

* * * * *

SMALL BUSINESS SIZE STANDARDS BY NAICS INDUSTRY

NAICS codes	NAICS U.S. industry title	Size standards in millions of dollars	Size standards in number of employees
*	*	*	*
	Subsector 561—Administrative and Support Services		
*	*	*	*
561210	Facilities Support Services [12]	.....	$30.0[12]
*	*	*	*

Footnotes

* * * * *

[12] *NAICS code 562120—Facilities Support Services:*

(a) If one or more activities of Facilities Support Services as defined in paragraph (b) (below in this footnote) can be identified with a specific industry and that industry accounts for 50 percent or more of the value of an entire procurement, then the proper classification of the procurement is that of the specific industry, not Facilities Support Services.

(b) "Facilities Support Services" requires the performance of three or more separate activities in the areas of services or specialty trade construction industries. If services are performed, these service activities must each be in a separate NAICS industry. If the procurement requires the use of specialty trade contractors (plumbing, painting, plastering, carpentry, etc.), all such specialty trade construction activities are considered a single activity and classified as Base Housing Maintenance. Since Base Housing Maintenance is only one activity, two additional activities of separate NAICS industries are required for a procurement to be classified as "Facilities Support Services."

[13] *NAICS code 238990 " Base Housing Maintenance:* If a procurement requires the use of multiple specialty trade contractors (*i.e.*, plumbing, painting, plastering, carpentry, etc.), and no specialty trade accounts for 50 percent or more of the value of the procurement, all such specialty trade construction activities are considered a single activity and classified as Base Housing Maintenance.

* * * * *

Dated: November 15, 2002.

Hector V. Barreto,

Administrator.

[FR Doc. 03–2455 Filed 1–31–03; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM242; Notice No. 25–03–01–SC]

Special Conditions: Embraer Model 170–100 and 170–200 Airplanes; Sudden Engine Stoppage; Operation Without Normal Electrical Power; Interaction of Systems and Structures

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed special conditions.

SUMMARY: This notice proposes special conditions for the Embraer Model 170–100 and 170–200 airplanes. These airplanes will have novel or unusual design features when compared to the state of technology envisioned in the airworthiness standards for transport category airplanes. These design features are associated with (1) engine size and torque load which affect sudden engine stoppage, (2) electrical and electronic flight control systems which perform critical functions, and

(3) systems which affect the structural performance of the airplane. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for these design features. These proposed special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards. Additional special conditions will be issued for other novel or unusual design features of the Embraer Model 170–100 and 170–200 airplanes.

DATES: Comments must be received on or before March 20, 2003.

ADDRESSES: Comments on this proposal may be mailed in duplicate to: Federal Aviation Administration, Transport Airplane Directorate, Attention: Rules Docket (ANM–113), Docket No. NM242, 1601 Lind Avenue SW., Renton, Washington 98055–4056; or delivered in duplicate to the Transport Airplane Directorate at the above address. All comments must be marked: *Docket No. NM242*. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Tom Groves, FAA, International Branch, ANM–116, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (425) 227–1503; facsimile (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data. We ask that you send us two copies of written comments.

We will file in the docket all comments we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning these proposed special conditions. The docket is available for public inspection before and after the comment closing date. If you wish to review the docket in person, go to the address in the **ADDRESSES** section of this notice between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

We will consider all comments we receive on or before the closing date for comments. We will consider comments filed late if it is possible to do so without incurring expense or delay. We may change the proposed special conditions in light of the comments we receive.

If you want the FAA to acknowledge receipt of your comments on this proposal, include with your comments a pre-addressed, stamped postcard on which the docket number appears. We will stamp the date on the postcard and mail it back to you.

Background

On May 20, 1999, Embraer applied for a type certificate for its new Model 170 airplane. Two basic versions of the Model 170 are included in the application. The Model 170–100 airplane is a 69–78 passenger twin-engine regional jet with a maximum takeoff weight of 81,240 pounds. The Model 170–200 is a lengthened fuselage derivative of the 170–100. Passenger capacity for the Model 170–200 is increased to 86, and maximum takeoff weight is increased to 85,960 pounds.

Type Certification Basis

Under the provisions of 14 CFR 21.17, Embraer must show that the Model 170–100 and 170–200 airplanes meet the applicable provisions of 14 CFR part 25, as amended by Amendments 25–1 through 25–98.

If the Administrator finds that the applicable airworthiness regulations (*i.e.*, part 25, as amended) do not contain adequate or appropriate safety standards for the Embraer Model 170–100 and 170–200 airplanes because of novel or unusual design features, special conditions are prescribed under the provisions of § 21.16.

In addition to the applicable airworthiness regulations and special conditions, the Embraer Model 170–100 and 170–200 airplanes must comply with the fuel vent and exhaust emission requirements of 14 CFR part 34 and the noise certification requirements of 14 CFR part 36, and the FAA must issue a finding of regulatory adequacy pursuant to section 611 of Public Law 93–574, the "Noise Control Act of 1972."

Special conditions, as defined in 14 CFR 11.19, are issued in accordance with § 11.38 and become part of the type certification basis in accordance with § 21.17(a)(2), Amendment 21–69, effective September 16, 1991.

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same novel or unusual design feature, or should any other model already included on the same type certificate be modified to incorporate the same novel or unusual design features, the special conditions would also apply to the other model under the provisions of § 21.101(a)(1), Amendment 21–69, effective September 16, 1991.

Novel or Unusual Design Features

The Embraer Model 170–100 and 170–200 airplanes will incorporate the following novel or unusual design features:

Engine Size and Torque Load

Since 1957 the limit engine torque load which is posed by sudden engine stoppage due to malfunction or structural failure—such as compressor jamming—has been a specific requirement for transport category airplanes. Design torque loads associated with typical failure scenarios were estimated by the engine manufacturer and provided to the airframe manufacturer as limit loads. These limit loads were considered simple, pure torque static loads. However, the size, configuration, and failure modes of jet engines have changed considerably from those envisioned when the engine seizure requirement of § 25.361(b) was first adopted. Current engines are much larger and are now designed with large bypass fans capable of producing much larger torque, if they become jammed.

Relative to the engine configurations that existed when the rule was developed in 1957, the present generation of engines are sufficiently different and novel to justify issuance of special conditions to establish appropriate design standards. The latest generation of jet engines are capable of producing, during failure, transient loads that are significantly higher and more complex than the generation of engines that were present when the existing standard was developed. Therefore, the FAA has determined that special conditions are needed for the Embraer Model 170–100 and 170–200 airplanes.

Electrical and Electronic Systems Which Perform Critical Functions

The Embraer Model 170–100 and 170–200 airplanes will have an electronic flight control system which performs critical functions. The current airworthiness standards of part 25 do not contain adequate or appropriate standards for the protection of this system from the adverse effects of operations without normal electrical power. Accordingly, this system is considered to be a novel or unusual design feature. Since the loss of normal

electrical power may be catastrophic to the airplane, special conditions are proposed to retain the level of safety envisioned by 14 CFR 25.1351(d).

Interactions of Systems and Structures

The Embraer Model 170–100 and 170–200 airplanes will have systems that affect the structural performance of the airplane, either directly or as a result of a failure or malfunction. These novel or unusual design features are systems that can alleviate loads in the airframe and, when in a failure state, can create loads in the airframe. The current regulations do not adequately account for the effects of these systems and their failures on structural performance.

Discussion

Engine Size and Torque Loads

In order to maintain the level of safety envisioned in 14 CFR 25.361(b), a more comprehensive criterion is needed for the new generation of high bypass engines. The proposed special conditions would distinguish between the more common seizure events and those rarer seizure events resulting from structural failures. For the rare but severe seizure events, the proposed criteria allow some deformation in the engine supporting structure (ultimate load design) in order to absorb the higher energy associated with the high bypass engines, while at the same time protecting the adjacent primary structure in the wing and fuselage by providing a higher safety factor. The criteria for the more severe events would no longer be a pure static torque load condition, but would account for the full spectrum of transient dynamic loads developed from the engine failure condition.

Electrical and Electronic Systems Which Perform Critical Functions

The Embraer Model 170–100 and 170–200 airplanes will require a continuous source of electrical power for the electronic flight control systems. Section § 25.1351(d), "Operation without normal electrical power," requires safe operation in visual flight rule (VFR) conditions for a period of not less than five minutes with inoperative normal power. This rule was structured around a traditional design utilizing mechanical connections between the flight control surfaces and the pilot controls. Such traditional designs enable the flightcrew to maintain control of the airplane while taking the time to sort out the electrical failure, start engines if necessary, and re-establish some of the electrical power generation capability.

The Embraer Model 170–100 and 170–200 airplanes will utilize an electronic flight control system for the pitch and yaw control (elevator, stabilizer, and rudder). There is no mechanical linkage between the pilot controls and these flight control surfaces. Pilot control inputs are converted to electrical signals which are processed and then transmitted via wires to the control surface actuators. At the control surface actuators, the electrical signals are converted to an actuator command, which moves the control surface.

In order to maintain the same level of safety as an airplane with conventional flight controls, an airplane with electronic flight controls, such as the Embraer Model 170, must not be time limited in its operation, including being without the normal source of electrical power generated by the engine or the Auxiliary Power Unit (APU) generators.

Service experience has shown that the loss of all electrical power generated by the airplane's engine generators or APU is not extremely improbable. Thus, it must be demonstrated that the airplane can continue safe flight and landing (including steering and braking on ground) after total loss of the normal electrical power with only the use of its emergency electrical power systems. These emergency electrical power systems must be able to power loads that are essential for continued safe flight and landing. The emergency electrical power system must be designed to supply electrical power for the following:

- Immediate safety, without the need for crew action, following the loss of the normal engine generator electrical power system (which includes APU power), and
- Continued safe flight and landing, and
- Restarting the engines.

For compliance purposes, a test of the loss of normal engine generator power must be conducted to demonstrate that when the failure condition occurs during night Instrument Meteorological Conditions (IMC), at the most critical phase of the flight relative to the electrical power system design and distribution of equipment loads on the system, the following conditions are met:

1. After the unrestorable loss of normal engine and APU generator power, the airplane engine restart capability must be provided and operations continued in IMC.

2. The airplane is demonstrated to be capable of continued safe flight and landing. The length of time must be computed based on the maximum diversion time capability for which the airplane is being certified. Consideration for speed reductions resulting from the associated failure must be made.

3. The availability of APU operation should not be considered in establishing emergency power system adequacy.

Interaction of Systems and Structure

The Embraer Model 170 has systems that affect the structural performance of the airplane. These systems can serve to alleviate loads in the airframe and, when in a failure state, can create loads in the airframe. This degree of system and structures interaction was not envisioned in the structural design regulations of 14 CFR part 25. This proposed special condition provides comprehensive structural design safety margins as a function of systems reliability.

Applicability

As discussed above, these special conditions are applicable to the Embraer Model 170–100 and 170–200 airplanes. Should Embraer apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design features, these special conditions would apply to that model as well under the provisions of § 21.101(a)(1), Amendment 21–69, effective September 16, 1991.

Conclusion

This action affects only certain novel or unusual design features on the Embraer Model 170–100 and 170–200 airplanes. It is not a rule of general applicability, and it affects only the applicant who applied to the FAA for approval of these features on the airplane.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

The Proposed Special Conditions

Accordingly, the Federal Aviation Administration (FAA) proposes the following special conditions as part of the type certification basis for Embraer Model 170–100 and 170–200 airplanes.

Sudden Engine Stoppage. In lieu of compliance with 14 CFR 25.361(b), the following special conditions apply:

1. For turbine engine installations: The engine mounts, pylons and adjacent supporting airframe structure must be designed to withstand 1g level flight loads acting simultaneously with the

maximum limit torque loads imposed by each of the following:

a. Sudden engine deceleration due to a malfunction which could result in a temporary loss of power or thrust.

b. The maximum acceleration of the engine.

2. For auxiliary power unit installations: The power unit mounts and adjacent supporting airframe structure must be designed to withstand 1g level flight loads acting simultaneously with the maximum limit torque loads imposed by each of the following:

a. Sudden auxiliary power unit deceleration due to malfunction or structural failure.

b. The maximum acceleration of the auxiliary power unit.

3. For an engine supporting structure: An ultimate loading condition must be considered that combines 1g flight loads with the transient dynamic loads resulting from each of the following:

a. The loss of any fan, compressor, or turbine blade.

b. Where applicable to a specific engine design, and separately from the conditions specified in paragraph 3.a., any other engine structural failure that results in higher loads.

4. The ultimate loads developed from the conditions specified in paragraphs 3.a. and 3.b. above must be multiplied by a factor of 1.0 when applied to engine mounts and pylons and multiplied by a factor of 1.25 when applied to adjacent supporting airframe structure.

Operation Without Normal Electrical Power. In lieu of compliance with 14 CFR 25.1351(d), the following special conditions apply:

It must be demonstrated by test or by a combination of test and analysis, that the airplane can continue safe flight and landing with inoperative normal engine and APU generator electrical power (in other words, without electrical power from any source, except for the battery and any other standby electrical sources). The airplane operation should be considered at the critical phase of flight and include the ability to restart the engines and maintain flight for the maximum diversion time capability being certified.

Interaction of Systems and Structures: In lieu of compliance with 14 CFR 25.1351(d), the following special conditions apply:

1. *General:* For airplanes equipped with systems that affect structural performance, either directly or as a result of a failure or malfunction, the influence of these systems and their failure conditions must be taken into account when showing compliance with the requirements of 14 CFR part 25, subparts C and D. The following criteria must be used for showing compliance with these special conditions for airplanes equipped with flight control systems, autopilots, stability augmentation systems; load alleviation systems, flutter control systems, and fuel management systems. If these special conditions are used for other systems, it may be necessary to adapt the criteria to the specific system.

(a) The criteria defined herein address only the direct structural consequences of the system responses and performances and cannot be considered in isolation but should be included in the overall safety evaluation of the airplane. These criteria may in some instances duplicate standards already established for this evaluation. These criteria are only applicable to structures whose failure could prevent continued safe flight and landing. Specific criteria that define acceptable limits on handling characteristics or stability requirements when operating in the system degraded or inoperative modes are not provided in these special conditions.

(b) Depending upon the specific characteristics of the airplane, additional studies that go beyond the criteria provided in these special conditions may be required in order to demonstrate the capability of the airplane to meet other realistic conditions, such as alternative gust or maneuver descriptions, for an airplane equipped with a load alleviation system.

(c) The following definitions are applicable to these special conditions.

Structural performance: Capability of the airplane to meet the structural requirements of 14 CFR part 25.

Flight limitations: Limitations that can be applied to the airplane flight conditions following an in-flight occurrence and that are included in the flight manual (*e.g.*, speed limitations, avoidance of severe weather conditions, etc.).

Operational limitations: Limitations, including flight limitations that can be applied to the airplane operating conditions before dispatch (*e.g.*, fuel, payload, and Master Minimum Equipment List limitations).

Probabilistic terms: The probabilistic terms (probable, improbable, extremely improbable) used in these special conditions are the same as those used in § 25.1309.

Failure condition: The term failure condition is the same as that used in § 25.1309; however, these special conditions apply only to system failure conditions that affect the structural performance of the airplane (*e.g.*, system failure conditions that induce loads, lower flutter margins, or change the response of the airplane to inputs such as gusts or pilot actions).

2. *Effects of Systems on Structures.* The following criteria will be used in determining the influence of a system and its failure conditions on the airplane structure.

(a) System fully operative. With the system fully operative, the following apply:

(1) Limit loads must be derived in all normal operating configurations of the system from all the limit conditions specified in subpart C, taking into account any special behavior of such a system or associated functions, or any effect on the structural performance of the airplane that may occur up to the limit loads. In particular, any significant nonlinearity (rate of displacement of control surface, thresholds, or any other system nonlinearities) must be accounted for in a realistic or conservative way when deriving limit loads from limit conditions.

(2) The airplane must meet the strength requirements of part 25 (static strength, residual strength), using the specified factors to derive ultimate loads from the limit loads defined above. The effect of nonlinearities must be investigated beyond limit conditions to ensure the behavior of the system presents no anomaly compared to the behavior below limit conditions. However, conditions beyond limit conditions need not be considered when it can be shown that the airplane has design features that will not allow it to exceed those limit conditions.

(3) The airplane must meet the aeroelastic stability requirements of § 25.629.

(b) System in the failure condition. For any system failure condition not shown to be extremely improbable, the following apply:

(1) At the time of occurrence. Starting from 1-g level flight conditions, a realistic scenario, including pilot corrective actions, must be established to determine the loads occurring at the time of failure and immediately after failure.

(i) For static strength substantiation, these loads multiplied by an appropriate factor of safety that is related to the probability of occurrence of the failure are ultimate loads to be considered for design. The factor of safety (FS) is defined in Figure 1.

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Figure 1
Factor of safety at the time of occurrence

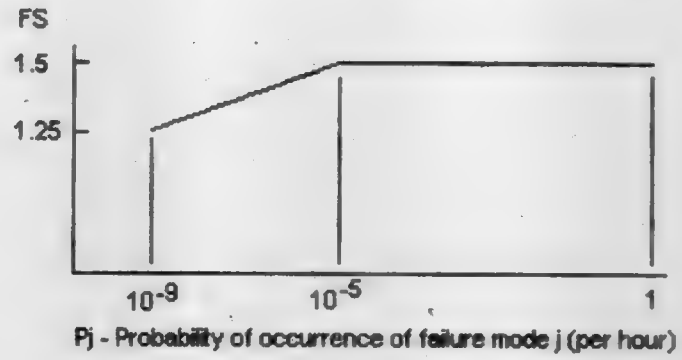

(ii) For residual strength substantiation, the airplane must be able to withstand two-thirds of the ultimate loads defined in paragraph 2.(b)(1)(i) above.

(iii) Freedom from aeroelastic instability must be shown up to the speeds defined in § 25.629(b)(2). For failure conditions that result in speed increases beyond Vc/Mc, freedom from aeroelastic instability must be shown to increased speeds, so that the margins intended by § 25.629(b)(2) are maintained.

(iv) Failures of the system that result in forced structural vibrations (oscillatory failures) must not produce loads that could result in detrimental deformation of primary structure.

(2) For the continuation of the flight. For the airplane in the system failed state and considering any appropriate reconfiguration and flight limitations, the following apply:

(i) The loads derived from the following conditions at speeds up to Vc, or the speed limitation prescribed for the remainder of the flight, must be determined:

(A) The limit symmetrical maneuvering conditions specified in §§ 25.331 and 25.345.

(B) The limit gust and turbulence conditions specified in §§ 25.341 and 25.345.

(C) The limit rolling conditions specified in § 25.349, and the limit unsymmetrical conditions specified in § 25.367 and § 25.427(b) and (c).

(D) The limit yaw maneuvering conditions specified in § 25.351.

(E) The limit ground loading conditions specified in §§ 25.473 and 25.491.

(ii) For static strength substantiation, each part of the structure must be able to withstand the loads defined in paragraph 2.(b)(2)(i) above, multiplied by a factor of safety depending on the probability of being in this failure state. The factor of safety is defined in Figure 2.

Figure 2
Factor of safety for continuation of flight

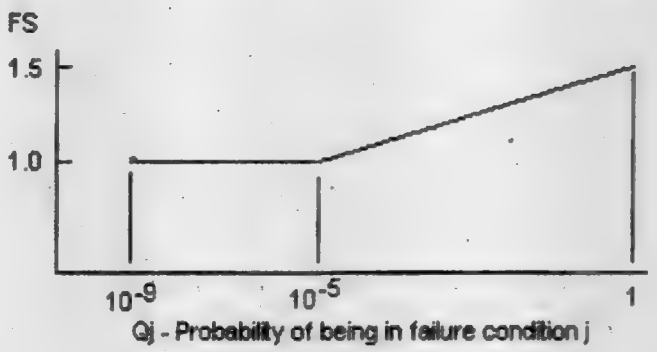

$Q_j = (T_j)(P_j)$ where:

T_j = Average time spent in failure condition j (in hours).

P_j = Probability of occurrence of failure mode j (per hour).

Note: If P_j is greater than 10^{-3} per flight hour, then a 1.5 factor of safety must be applied to all limit load conditions specified in subpart C.

(iii) For residual strength substantiation, the airplane must be able to withstand two thirds of the ultimate loads defined in paragraph 2.(b)(2)(ii) above.

(iv) If the loads induced by the failure condition have a significant effect on fatigue or damage tolerance, then their effects must be taken into account.

(v) Freedom from aeroelastic instability must be shown up to a speed determined from Figure 3. Flutter clearance speeds V^I and V^{II} may be based on the speed limitation specified for the remainder of the flight using the margins defined by § 25.629(b).

Figure 3
Clearance speed

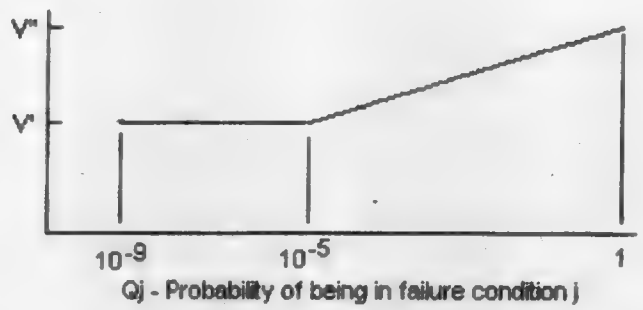

V^{I} = Clearance speed as defined by § 25.629(b)(2).

V^{II} = Clearance speed as defined by § 25.629(b)(1).

$Q_j = (T_j)(P_j)$ where:

T_j = Average time spent in failure condition j (in hours).

P_j = Probability of occurrence of failure mode j (per hour).

Note: If P_j is greater than 10^{-3} per flight hour, then the flutter clearance speed must not be less than V^{II}.

(vi) Freedom from aeroelastic instability must also be shown up to V^{I} in Figure 3 above for any probable system failure condition combined with any damage required or selected for investigation by § 25.571(b).

(3) Consideration of certain failure conditions may be required by other sections of 14 CFR part 25, regardless of calculated system reliability. Where analysis shows the probability of these failure conditions to be less than 10^{-9}, criteria other than those specified in this paragraph may be used for structural substantiation to show continued safe flight and landing.

(c) Warning considerations. For system failure detection and warning, the following apply:

(1) The system must be checked for failure conditions, not extremely improbable, that degrade the structural capability below the level required by 14 CFR part 25, or significantly reduce the reliability of the remaining system. The flightcrew must be made aware of these failures before flight. Certain elements of the control system, such as mechanical and hydraulic components, may use special periodic inspections, and electronic components may use daily checks, in lieu of warning systems, to achieve the objective of this requirement. These certification maintenance requirements must be limited to components that are not readily detectable by normal warning systems and where service history shows that inspections will provide an adequate level of safety.

(2) The existence of any failure condition, not extremely improbable, during flight that could significantly affect the structural capability of the airplane, and for which the associated reduction in airworthiness can be minimized by suitable flight limitations, must be signaled to the flightcrew. For example, failure conditions that result in a factor of safety between the airplane strength and the loads of 14 CFR part 25, subpart C below 1.25, or flutter margins below V^{II}, must be signaled to the crew during flight.

(d) Dispatch with known failure conditions. If the airplane is to be dispatched in a known system failure condition that affects structural performance, or affects the reliability of the remaining system to maintain structural performance, then the provisions of these special conditions must be met for the dispatched condition and for subsequent failures. Flight limitations and expected operational limitations may be taken into account in establishing Qj as the combined probability of being in the dispatched failure condition and the subsequent failure condition for the safety margins in Figures 2 and 3. These limitations must be such that the probability of being in this combined failure state and then subsequently encountering limit load conditions is extremely improbable. No reduction in these safety margins is allowed if the subsequent system failure rate is greater than 10^{-3} per hour.

Issued in Renton, Washington, on January 9, 2003.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–2423 Filed 1–31–03; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[DC052–7005, MD143–3096, VA152–5062; FRL–7445–8]

Approval and Promulgation of Air Quality Implementation Plans; District of Columbia, Maryland, Virginia; Post 1996 Rate-of-Progress Plans and One-Hour Ozone Attainment Demonstrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to conditionally approve the 1-hour ozone attainment demonstration and the 1996–1999 rate-of-progress (ROP) plans for the Metropolitan Washington DC ozone nonattainment area (the Washington area) submitted by the District of Columbia's Department of Health (DoH), by the Maryland Department of the Environment (MDE) and by the Virginia Department of Environmental Quality (VA DEQ), including enforceable commitments submitted by the District of Columbia, Virginia and Maryland as part of the 1-hour attainment demonstration plan to perform a mid-course review and to submit revised motor vehicle emissions budgets. We are also proposing to clarify what occurs if we issue a final conditional approval of any of these SIPs based on a State commitment to revise the SIP's 2005 motor vehicle emissions budgets in the future. If this occurs, the 2005 motor vehicle emissions budgets in the conditionally approved SIP will apply for transportation conformity purposes only until the budgets are revised consistent with the commitment and we have found the new budgets adequate. Once we have found the revised budgets adequate, then they would apply instead of the previous conditionally approved 2005 budgets. In the

alternative, the EPA is also proposing to disapprove the Washington area attainment demonstration with a protective finding for the 2005 motor vehicle emissions budgets and/or the 1996–1999 ROP plan with a protective finding for the 1999 motor vehicle emissions budgets.

DATES: Written comments must be received on or before March 5, 2003.

ADDRESSES: Comments may be mailed to Makeba Morris, Chief, Air Quality Planning and Information Services Branch, Mailcode 3AP21 U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; District of Columbia Department of Public Health, Air Quality Division, 51 N Street, NE., Washington, DC 20002; Maryland Department of the Environment, 1800 Washington Boulevard, Suite 705, Baltimore, Maryland 21230, Baltimore, Maryland 21224; and Virginia Department of Environmental Quality, 629 East Main Street, Richmond, Virginia 23219.

FOR FURTHER INFORMATION CONTACT: Christopher Cripps, (215) 814a–2179, or by e-mail at *cripps.christopher@epa.gov*.

SUPPLEMENTARY INFORMATION: The use of "we," "us," or "our" in this document refers to EPA.

This **SUPPLEMENTARY INFORMATION** section is organized to address the following questions:

I. What Action Is the EPA Proposing Today?
II. Background
  A. What Is the Washington Nonattainment Area?
  B. What Previous Action Has Been Taken on These SIP Revisions?
  C. What Is the Time Frame for Taking Action on These Washington Area SIP Revisions?
  D. What Is the Impact of the Reclassification of the Washington Area to Severe Ozone Nonattainment?
  E. What Is the Purpose of the Action EPA Is Taking Today?
III. Attainment Demonstrations
  A. What Is the Basis for the Attainment Demonstration SIP?
  B. What Is the Framework for Proposing Action on the Attainment Demonstration SIPs?
  C. The EPA's Review and Analysis of the District's, Maryland's and Virginia's Submittals Against the EPA's Framework for Proposing Action on the Attainment Demonstration SIPs
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  A. What Agencies and Organizations Developed the 1996–1999 ROP Plan for the Area?
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  D. Nonattainment Area-Wide Plan—Apportionment of Reduction Needs
  E. What Control Strategies Are the District, Maryland and Virginia Including in the 1996–1999 ROP Plan?
  F. What Are the Total Reductions in the 1996—1999 ROP plan?
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  B. What Is the EPA Proposing Today Regarding Clarification of the Applicability of Revised Motor Vehicle Emissions Budgets?
  C. How Does the 18-Month Clock Apply With Respect to These Budgets Revisions?
  D. What Are the Budgets in the Plans?
  E. What Is the Status of the 1999 Motor Vehicle Emission Budgets Contained in the 1996–1999 ROP Plan for the Area?
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  B. Disapproval in the Alternative
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  A. The District of Columbia—Rate-of-Progress Plan
  B. The District of Columbia—Attainment Demonstration
  C. The State of Maryland—Rate-of-Progress Plan
  D. The State of Maryland—Attainment Demonstration
  E. The Commonwealth of Virginia—Rate-of-Progress Plan
  F. The Commonwealth of Virginia—Attainment Demonstration
  G. Applicability of Revised Motor Vehicle Emissions Budgets
VIII. Statutory and Executive Order Reviews

I. What Action Is the EPA Proposing Today?

The EPA is proposing conditional approval of the 1996–1999 ROP plans and the one-hour attainment demonstrations submitted by the DoH, MDE and VADEQ for the Washington area. The following tables identify submittal dates and amendment dates for the 1996–1999 ROP plans and the attainment demonstrations:

TABLE 1.—1996–1999 ROP PLANS

	DC	MD	VA
Initial submittal dates	November 10, 1997	December 24, 1997	December 19, 1997.
Amendment dates	May 25, 1999	May 20, 1999	May 25, 1999.

TABLE 2.—ATTAINMENT DEMONSTRATIONS

	DC	MD	VA
Initial submittal dates	April 24, 1998	April 29, 1998	April 29, 1998.
Amendment dates	October 27, 1998	August 17, 1998	August 18, 1998.
Supplemental dates	February 16, 2000	February 14, 2000 (MD SIP No. 00–01).	February 9, 2000.
Supplemental dates	March 22, 2000	March 31, 2000 (MD SIP No. 00–02).	March 31, 2000.

Hereafter, the SIP revisions in the preceding Table submitted in April 1998 will be called the "1998 Plans;" those submitted in February 2000 will be called the "February 2000 plans;" and those submitted in March 2000 will be called the "March 2000 plans."

As noted elsewhere in this document, the EPA is also proposing in the alternative to disapprove these SIPs if we do not finalize the conditional approval of these SIPs.

II. Background

A. What Is the Washington Nonattainment Area?

The Washington area is comprised of the entire District of Columbia (the District), a portion of Maryland (namely, Calvert, Charles, Frederick, Montgomery, and Prince George's Counties), and a portion of Virginia (namely, Alexandria, Arlington County, Fairfax, Fairfax County, Falls Church, Manassas, Manassas Park, Prince William County, and Stafford County).

B. What Previous Action Has Been Taken on These SIP Revisions?

On January 3, 2001 (66 FR 586), the EPA approved the 1996–1999 ROP plans, an attainment date extension and the attainment demonstrations for the Washington, DC area. A petition for review of that final rule was filed. On July 2, 2002, the United States Courts of Appeals for the District of Columbia Circuit (the Circuit Court) ruled on the petition and vacated our January 3, 2001, approval of the attainment demonstration, 1996–1999 ROP plan and extension of the attainment date. See *Sierra Club* v. *Whitman*, 294 F.3d 155, 163 (D.C. Cir. 2002). With respect to the attainment date extension, the Court found that the plain language of Clean Air Act "sets a deadline without an exception for setbacks owing to ozone transport." *Id.* at 161. The Circuit Court said that the EPA was without authority to extend the Washington, DC area's attainment deadline unless it also ordered the area to be reclassified as a "severe" area. The Circuit Court also found that the attainment demonstration and ROP plan were deficient because neither SIP revision contained approved contingency measures as required by sections 172(c)(9) and 182(c)(9) of the Clean Air Act (CAA). *Id.* at 164. Furthermore, the Circuit Court determined that in addition to a nine percent reduction in baseline emissions from 1996 to 1999, an area with an attainment date in 2005 must submit a ROP plan that demonstrates additional ROP to 2005. *Id.* at 163. The Washington area's 1996–1999 ROP plan demonstrated ROP only through 1999. Lastly, although the Circuit Court upheld the EPA's definition of RACM "[b]ecause the statutory provision is ambiguous and the EPA's construction of the term 'RACM' is reasonable", the Court remanded this matter to the EPA to determine which measures, if any, are RACM to be implemented by the States in this case because the final rule did not present any determination on whether certain measures tendered as possible RACM in the notice of proposed rulemaking (64 FR 70460) met EPA's RACM definition. *Id.* at 162–63.

In response to the Circuit Court's ruling, on January 24, 2003 the EPA published a final action (68 FR 3410) determining that the Washington area failed to attain the serious ozone nonattainment deadline of November 15, 1999, and reclassifying the Washington area to severe ozone nonattainment.

C. What Is the Time Frame for Taking Action on These Washington Area SIP Revisions?

Under the CAA, the EPA is required to approve or disapprove a State's submission no later than 12 months after the submission is determined or deemed complete. On November 13, 2002, the Sierra Club filed a complaint in the United States District Court for the District of Columbia (District Court) against the EPA (*Sierra Club* v. *Whitman*, No. 1:02CV02235(JR)) claiming, among other things, that the EPA had not issued a final action on several SIP revisions (those listed in Tables 1 and 2 of this document) submitted by the District, Maryland and Virginia for the Washington area. On December 18, 2002, the District Court issued an order directing the EPA to publish, by February 3, 2003, a notice of proposed rulemaking on these SIP revisions and to publish by April 17, 2003, a final rule on these SIP revisions. This notice of proposed rulemaking complies with the Court's Order to publish a proposed notice by February 3, 2003.

D. What Is the Impact of the Reclassification of the Washington Area to Severe Ozone Nonattainment?

The reclassification to severe nonattainment imposes additional requirements on the Washington area including, among other things, CAA-mandated control measures, a fee program for major sources and ROP plans (an additional 9 percent reduction in base line emissions between 1999 and 2005). These new requirements, as well as all of the requirements for a severe ozone nonattainment SIP, must be submitted to the EPA by the date established in the reclassification final rule. (68 FR 3410).

Section 172(c)(9) of the CAA requires that specific measures must be undertaken if an area fails to make reasonable further progress, or to attain the NAAQS by the attainment date. Furthermore, such measures must be included in the SIP as contingency measures to take effect without further action by the State or the Administrator. As noted previously, the Circuit Court ruled that sections 172(c)(9) and 182(c)(9) of the CAA require that contingency measures must be included as an integral element in the attainment demonstration and ROP SIPs for the Washington area. The Court further determined that EPA lacked the authority to approve attainment demonstration and ROP SIPs without contingency measures. Therefore, the jurisdictions in the Washington area have committed to submit to the EPA those measures that qualify as contingency measures due to the failure of the Washington area to attain the ozone standard for serious areas by November 15, 1999. They have also committed to submit contingency measures for failure to meet the 1999 ROP milestone if we find that the area has not achieved the required reductions. The contingency measures for the 1999 ROP milestone and the contingency measures for failure to attain by 1999 could be the same measures. These measures need to provide for at least a 3 percent reduction in base line emissions and be fully adopted rules or measures that can be implemented without further action by the States or EPA after November 15, 1999. Such contingency measures must also meet all of the EPA's guidance and policy relating to contingency measures.

E. What Is the Purpose of the Action EPA Is Taking Today?

This proposed conditional approval is directed at issuing a final action on the previously submitted attainment demonstration and 1996–1999 ROP plan SIPs and associated RACM and contingency measures that now apply to the Washington area as elements required by classification as a severe ozone nonattainment area. In this case, the EPA could not approve a SIP that is not consistent with the principle in the CAA that attainment must be achieved as expeditiously as practicable but no later than November 15, 2005, the new attainment date provided under the statute. Furthermore, the EPA cannot fully approve the previously submitted serious area attainment demonstration because it lacks contingency measures, RACM and motor vehicle emission budgets that are consistent with a severe attainment deadline. Similarly, the EPA cannot fully approve the previously submitted 1996–1999 ROP plan because it lacks contingency measures.

Under section 110(k)(4) of the CAA, the EPA "may approve a plan revision based on a commitment of the State to adopt specific enforceable measures by a date certain, but not later than 1 year after the date of approval of the plan revision. Any such conditional approval

shall be treated as a disapproval if the State fails to comply with such commitment." The EPA is proposing to conditionally approve these SIP submissions as a severe area attainment demonstration and the 1996–99 portion of the Washington area's ROP obligation on the basis of the commitments from the affected jurisdictions. EPA believes that this action is appropriate because the attainment date for the Washington area, which will be reclassified as severe effective March 25, 2003 (68 FR 3410), will be November 15, 2005, and because the States have committed in accordance with section 110(k)(4) to submit revisions to remedy the inadequacies with the RACM and contingency measure aspects of the attainment demonstration and the 1996–99 ROP plans. Since the Court viewed the contingency measures as an element of an attainment demonstration and ROP plan, and rejected EPA's argument that contingency measures were a separate SIP submission, EPA believes it is appropriate to proceed on the basis of a commitment to deal with that aspect of the attainment plan and ROP plan. Similarly, the RACM demonstration is merely another element of the attainment demonstration and EPA believes that it is appropriate to proceed with a conditional approval on the basis of a commitment regarding the RACM demonstration. As a consequence of the reclassification to severe, the Washington area will need to submit additional SIP revisions concerning other matters, such as the 1999–2005 ROP obligation and new NSR requirements, but EPA believes that it can proceed on the SIPs before it as a severe area attainment demonstration plan and a 1996–1999 ROP plan without those additional SIP submissions.

III. Attainment Demonstrations

A. What Is the Basis for the Attainment Demonstration SIP?

1. CAA Requirements

The Clean Air Act (CAA) requires the EPA to establish national ambient air quality standards (NAAQS or standards) for certain widespread pollutants that cause or contribute to air pollution that is reasonably anticipated to endanger public health or welfare. *See* sections 108 and 109 of the CAA. In 1979, the EPA promulgated the 1-hour 0.12 parts per million (ppm) ground-level ozone standard. 44 FR 8202 (February 8, 1979). Ground-level ozone is not emitted directly by sources. Rather, emissions of nitrogen oxides (NO_X) and volatile organic compounds (VOCs) react in the presence of sunlight to form ground-level ozone. Emissions of NO_X and VOC are referred to as precursors of ozone.

An area exceeds the 1-hour ozone standard each time an ambient air quality monitor records a 1-hour average ozone concentration above 0.124 ppm. An area is violating the standard if, over a consecutive three-year period, more than three exceedances are expected to occur at any one monitor. The CAA, as amended in 1990, required the EPA to designate as nonattainment any area that was violating the 1-hour ozone standard, generally based on air quality monitoring data from the three-year period from 1987–1989. CAA section 107(d)(4); 56 FR 56694 (Nov. 6, 1991). The CAA further classified these areas, based on the area's design value, as marginal, moderate, serious, severe or extreme. CAA section181(a). Marginal areas were suffering the least significant air pollution problems while the areas classified as severe and extreme had the most significant air pollution problems. The control requirements and dates by which attainment needs to be achieved vary with the area's classification. Marginal areas are subject to the fewest mandated control requirements and have the earliest attainment date. Severe and extreme areas are subject to more stringent planning requirements but are provided more time to attain the standard. Serious areas are required to attain the 1-hour standard by November 15, 1999, and severe areas are required to attain by November 15, 2005, or November 15, 2007. The Washington area was classified as a serious nonattainment area with an attainment date of November 15, 1999. On January 24, 2003, the EPA published a final rule (68 FR 3410) reclassifying the area to severe ozone nonattainment, with an attainment date of November 15, 2005.

Under section 182(c)(2) and (d) of the CAA, serious and severe areas were required to submit by November 15, 1994, demonstrations of how they would attain the 1-hour standard and how they would achieve reductions in VOC emissions of 9 percent for each three-year period until the attainment year (rate-of-progress or ROP). (In some cases, NO_X emission reductions can be substituted for the required VOC emission reductions.) Today, in this proposed rule, the EPA is proposing action on the attainment demonstration SIP submitted by DoH, the MDE and the VADEQ for the Washington area.

In general, an attainment demonstration SIP includes a modeling analysis component showing how the area will achieve the standard by its attainment date and the control measures necessary to achieve those reductions. Another component of the attainment demonstration SIP is motor vehicle emissions budgets for transportation conformity purposes. Transportation conformity is a process for ensuring that States consider the effects of emissions associated with new or improved federally-funded roadways on attainment of the standard. As described in section 176(c)(2)(A) of the CAA, attainment demonstrations must include the estimates of motor vehicle emissions that are consistent with attainment, which then act as budgets for the purposes of determining whether transportation plans and projects conform to the attainment SIP.[1]

2. What Are the Components of a Modeled Attainment Demonstration?

The EPA allows that States may rely upon a modeled attainment demonstration supplemented with additional evidence to demonstrate attainment.[2] In order to have a complete modeling demonstration submission, States should have submitted the required modeling analysis and identified any additional evidence that the EPA should consider in evaluating whether the area will attain the standard.

The EPA addressed the sufficiency of the modeling demonstration to attain by November 15, 2005, in its previous notices regarding the Washington area attainment demonstration. See 64 FR 70460, December 16, 1999, and 66 FR 586, January 3, 2001. Since the Circuit Court did not address issues regarding the adequacy of the modeling demonstration, EPA believes that it may approve that modeling demonstration at this time. EPA incorporates by reference herein its prior proposal, the comments submitted thereon, and its response to those comments. EPA is not reprinting that discussion here but will address any further comments submitted in response to this re-proposal of its approval of the modeling demonstration showing attainment of the Washington area by November 2005.

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[1] Under the CAA, the District of Columbia has the same attainment planning authorities and responsibilities as any of the 50 States.

[2] EPA issued guidance on the air quality modeling that is used to demonstrate attainment with the 1-hour ozone NAAQS. *See* U.S. EPA, (1991), Guideline for Regulatory Application of the Urban Airshed Model, EPA–450/4–91–013, (July 1991). (A copy may be found on EPA's web site at *http://www.epa.gov/ttn/scram/* (file name: "UAMIVGUIDE")). *See also* U.S. EPA, (1996), Guidance on Use of Modeled Results to Demonstrate Attainment of the Ozone NAAQS, EPA–454/B–95–007, (June 1996). A copy may be found on EPA's web site at *http://www.epa.gov/ttn/scram/* (file name: "O3TEST").

B. What Is the Framework for Proposing Action on the Attainment Demonstration SIPs?

In addition to the modeling analysis, the EPA has identified the following key elements which must be present in order for the EPA to approve or conditionally approve the 1-hour attainment demonstration SIPs. These elements are first listed in this section and then described in detail.

CAA Measures and Measures Relied on in the Modeled Attainment Demonstration—This includes adopted and submitted rules for all previously required CAA mandated measures for the specific area classification, including contingency measures should the are fail to attain by the required date, and RACM. This also includes measures that may not be required for the area classification but that the State relied on in the SIP submission for attainment and ROP plans on which the EPA is proposing to take action on today.

NO_X reductions consistent with the modeling demonstration: *Motor vehicle emissions budgets*—Motor vehicle emissions budgets that EPA can determine to be consistent with the underlying purpose of the applicable CAA requirements.

Tier 2/Sulfur program benefits where needed to demonstrate attainment—Inclusion of reductions expected from the EPA's Tier 2 tailpipe and low sulfur-in-fuel standards in the attainment demonstration and the motor vehicle emissions budgets.

Mid-course review—An enforceable commitment to conduct a mid-course review and evaluation based on air quality and emission trends. The mid-course review would show whether the adopted control measures are sufficient to reach attainment by the area's attainment date, or that additional control measures are necessary.

1. CAA Measures and Measures Relied on in the Modeled Attainment Demonstration

The Washington area needs to achieve substantial reductions from its 1990 emissions levels in order to attain. The EPA believes the Washington area needs all of the measures required under the CAA for its former serious nonattainment classification to attain the 1-hour ozone NAAQS. The District, Maryland and Virginia have adopted the control measures required under the CAA for the former serious area classification as well as additional control measures within the local modeling domain that were relied on for purposes of the modeled attainment demonstration.

The Washington area attainment demonstration does not contain a RACM analysis which the Circuit Court held was required under section 172(c)(1) of the CAA. In its January 3, 2001, approval of the Washington area nonattainment demonstration and 1996–1999 ROP plan (66 FR 607), the EPA posited that a state must "consider all potentially available measures to determine whether they were reasonably available for implementation in the area, and whether they would advance the attainment date". Furthermore, the EPA determined that states may "reject measures as not being RACM because they would not advance the attainment date, would cause substantial widespread and long-term adverse impacts, or would be economically or technologically infeasible." Although the Circuit Court vacated the EPA's January 3, 2001, approval of the Washington area's attainment demonstration and 1996–1999 ROP plan, the Circuit Court upheld the EPA's definition of RACM. *See Sierra Club* v. *Whitman*, 294 F.3d at 162–63. However, the Circuit Court found that the EPA had not determined whether any measures for the Washington area fell within the EPA's definition and remanded the matter to the EPA to determine which measures, if any, are to be implemented as RACM. *Id.* at 163.

With respect to contingency measures, the Washington area attainment demonstration does not contain a contingency plan that identifies those measures that will be implemented should the area not attain the standard by November 15, 2005. Section 172(c)(9) of the CAA requires that specific measures must be undertaken if an area fails to make reasonable further progress, or to attain the NAAQS by the attainment date. Furthermore, such measures must be included in the SIP as contingency measures to take effect without further action by the State or the Administrator. As noted previously, the Circuit Court ruled that sections 172(c)(9) and 182(c)(9) of the CAA require that contingency measures must be included as an integral element in the attainment demonstration and ROP SIPs for the Washington area. The Circuit Court further determined that EPA lacked the authority to approve the Washington area attainment demonstration and ROP SIPs without contingency measures. Therefore, the jurisdictions in the Washington area have committed to submit to the EPA adopted contingency measures to be implemented if the Washington area does not attain the 1-hour ozone standard by November 15, 2005. These measures need to provide for at least a 3 percent reduction in base line emissions and be fully adopted rules or measures that can be implemented without further action by the States or EPA after November 15, 2005. The contingency measures must also meet all of the EPA's guidance and policy relating to contingency measures.

2. NO_X Reductions Consistent With the Modeling Demonstration

The EPA completed final rulemaking on the NO_X SIP Call on October 27, 1998, which required States to address transport of NO_X and ozone to other States. To address transport, the NO_X SIP Call established NO_X emissions budgets for 23 jurisdictions that are intended to reduce emissions in upwind States that significantly contribute to nonattainment problems. Emission reductions that will be achieved through the EPA's NO_X SIP Call will reduce the levels of ozone and ozone precursors entering nonattainment areas at their boundaries. For purposes of developing attainment demonstrations, States define local modeling domains that include both the nonattainment area and nearby surrounding areas. The ozone levels at the boundary of the local modeling domain are reflected in modeled attainment demonstrations and are referred to as boundary conditions. The 1-hour attainment demonstration for the Washington area relies, in part, on the NO_X SIP Call reductions for purposes of determining the boundary conditions of the modeling domain. Emission reductions assumed in the attainment demonstrations are modeled to occur both within the State and in upwind States; thus, intrastate reductions as well as reductions in other States impact the boundary conditions. If States assume control levels and emission reductions other than those of the NO_X SIP Call within their State but outside of the modeling domain, States must also adopt control measures to achieve those reductions in order to have an approvable plan.

Accordingly, States in which the nonattainment areas are located will not be required to adopt measures outside the modeling domain to achieve the NO_X SIP Call budgets prior to the time that all States are required to comply with the NO_X SIP Call. If the reductions from the NO_X SIP Call do not occur as planned, States will need to revise their SIPs to add additional local measures or obtain interstate reductions, or both, in order to provide sufficient reductions needed for attainment.

3. Motor Vehicle Emissions Budgets

The EPA believes that attainment demonstration SIPs must necessarily estimate the motor vehicle emissions that will be produced in the attainment year and demonstrate that this emissions level, when considered with emissions from all other sources, is consistent with attainment. This estimate of motor vehicle emissions is used to determine the conformity of transportation plans and programs to the SIP, as described by CAA section 176(c)(2)(A). For transportation conformity purposes, these estimates of motor vehicle emissions are known as the motor vehicle emissions budgets. The EPA believes that appropriately identified motor vehicle emissions budgets are a necessary part of an attainment demonstration SIP. A SIP cannot effectively demonstrate attainment unless it identifies the level of motor vehicle emissions that can be allowed while still demonstrating attainment.

4. Tier 2/Sulfur Program Benefits

On February 10, 2000 (65 FR 6698), the EPA published a final rule promulgating a major, comprehensive program designed to significantly reduce emissions from passenger cars and light trucks (including sport-utility vehicles, minivans, and pickup trucks) and to reduce sulfur in gasoline. Under this program, automakers would produce vehicles designed to have very low emissions when operated on low-sulfur gasoline, and oil refiners would provide that cleaner gasoline nationwide.

The final rule was supported by 1-hour ozone modeling and monitoring information that support the EPA's conclusion that the Tier 2/Sulfur program is necessary to help areas attain the 1-hour NAAQS. See 64 FR 35112, June 30, 1999, and 64 FR 57827, October 27, 1999. Under the final rule, NO_X and VOC emission reductions (as well as other reductions not directly relevant for attainment of the 1-hour ozone standard) would occur beginning in the 2004 ozone season. Nationwide, the Tier 2/Sulfur program is projected to result in emissions reductions of NO_X per year of approximately 856,000 tons per year by 2007 and 1,236,000 tons by 2010 tons (65 FR at 6698).

In the October 27, 1999, supplemental notice (64 FR at 57830), the EPA reported that the EPA's regional ozone modeling indicated that 17 metropolitan areas for which the 1-hour standard applies need the Tier 2/Sulfur program reductions to help attain the 1-hour ozone standard. The Washington area whose attainment demonstration the EPA is proposing to conditionally approve today is included on that list.

The EPA issued a memorandum that provides estimates of the emissions reductions associated with the Tier 2/Sulfur program proposal.[3] The memorandum provides the tonnage benefits for the Tier 2/Sulfur program in 2007 on a county-by-county basis for all counties within many serious and severe nonattainment areas and the 2005 tonnage benefits for the Tier 2/Sulfur program for each county for three areas.

The EPA also issued a memorandum which explains the connection between the Tier 2/Sulfur program, motor vehicle emissions budgets for conformity determinations, and timing for SIP revisions to account for the Tier 2/Sulfur program benefit.[4] This memorandum explains that conformity analyses in serious and severe ozone nonattainment areas can begin including Tier 2/Sulfur program benefits once the EPA's Tier 2 rule is promulgated, provided that the attainment demonstration SIPs and associated motor vehicle emissions budgets include the Tier 2 benefits. The motor vehicle emissions budgets in the February 2000 plans include Tier 2 benefits.

The District, Maryland and Virginia need to revise their motor vehicle emissions budgets in their attainment demonstration SIPs using the MOBILE6 model because the motor vehicle emissions budgets in the February 2000 plans to include the effects of the Tier 2/Sulfur program, which can not be accurately reflected with the MOBILE5 model. In addition, the budgets need to be revised using MOBILE6 even in an area that does not need the Tier 2/Sulfur program for attainment but decide to include its benefits in the motor vehicle emissions budgets anyway.

When we first proposed action on the attainment demonstration for the Washington area (64 FR 70460, December 16, 1999), the District, Maryland and Virginia needed to submit an enforceable commitment in the near term to revise their motor vehicle emissions budgets if the budgets include the effects of the Tier 2/Sulfur program within one year after the EPA's release of MOBILE6. When we released the Tier 2 guidance and policy in November 1999, we could not forecast the MOBILE6 release date in relation to final action on the attainment demonstration SIP revisions. Such release date could have been over one-year past the time we approved the attainment demonstration for an area, and therefore, a conditional approval would not have been a suitable approval option. Therefore, at that time, approval of an enforceable commitment would ensure the requirement to revise the motor vehicle emissions budgets could be enforced in court by the EPA or citizens. The enforceable commitment was to be submitted to the EPA along with the other commitments discussed elsewhere in this document, or alternatively, as part of the SIP revision that modified the motor vehicle emission inventories and budgets to include the Tier 2/Sulfur program benefits needed in order for the EPA to approve the SIP submittal. The MOBILE6 model was released on January 29, 2002 (67 FR 4254). Now that MOBILE6 has been released, the EPA may issue a conditional approval based on a State's commitment to expeditiously revise and submit not later than one-year after the EPA issues a conditional approval to the EPA an updated attainment demonstration SIP that reflects revised MOBILE6-based motor vehicle emissions budgets.

5. Mid-Course Review

A mid-course review (MCR) is a reassessment of modeling analyses and more recent monitored data to determine if a prescribed control strategy is resulting in emission reductions and air quality improvements needed to attain the ambient air quality standard for ozone as expeditiously as practicable but by no later than the statutory dates. The EPA believes that an enforceable commitment to perform a MCR is a critical element of the WOE analysis for the attainment demonstration on which the EPA is proposing to take action today. The State of Maryland, the Commonwealth of Virginia and the District submitted an enforceable commitment to perform a MCR as described here. However, an enforceable commitment to perform and submit a MCR is meaningless outside of the context of an approved attainment demonstration. For this reason, our conditional approval of the attainment

[3] Memorandum, "1-Hour Ozone Attainment Demonstrations and Tier 2/Sulfur Rulemaking" from Lydia Wegman, Office of Air Quality Planning and Standards and Merrylin Zaw-Mon, Office of Mobile Sources to the Air Division Directors, Regions I–IV, issued November 8, 1999. A copy of this memorandum may be found on the EPA's web site at *http://www.epa.gov/oms/transp/traqconf.htm*.

[4] Memorandum, "Guidance on Motor Vehicle Emissions Budgets in One-Hour Ozone Attainment Demonstrations", from Merrylin Zaw-Mon, Office of Mobile Sources, to Air Division Directors, Regions I–VI, issued November 3, 1999. A copy of this memorandum may be found on the EPA's web site at *http://www.epa.gov/oms/transp/traqconf.htm*.

demonstration includes the enforceable commitment to perform a mid-course review.

C. The EPA's Review and Analysis of the District's, Maryland's and Virginia's Submittals Against the EPA's Framework for Proposing Action on Attainment Demonstration SIPs

This section provides a review of Maryland's, Virginia's and the District's submittals and an analysis of how these submittals satisfy the frame work previously discussed.

As noted previously, the EPA addressed the sufficiency of the modeling demonstration of attainment in its previous notices regarding the Washington area attainment demonstration and incorporated by reference its prior proposal, the comments submitted thereon, and its response to those comments. *See* 64 FR 70460, December 16, 1999, and 66 FR 586, January 3, 2001. EPA is not reprinting that discussion here but will address any further comments submitted in response to this re-proposal of its approval of the modeling demonstration showing attainment of the Washington area by November 2005.

1. CAA Measures and Measures Relied on in the Current SIP Submission

Table 3 contains a summary of the CAA required ozone SIP elements for serious areas and any additional measures included in the attainment demonstration.

TABLE 3.—CONTROL MEASURES IN THE 1-HOUR OZONE 1996–1999 ROP PLAN AND ATTAINMENT PLANS FOR THE METROPOLITAN WASHINGTON NONATTAINMENT AREA

Control measure	Type of measure	Credited in 1996—1999 ROP plan	Credited in attainment plan
Enhanced Inspection & Maintenance	Approved SIP	Yes	Yes.
Federal Motor Vehicle Control program	Federal	Tier 1	Tier 1 and 2.
NLEV	Approved SIP opt-in	Yes	Yes[1].
Reformulated Gasoline (Phase 1 & 2)	State opt-in	Phase 1	Phase 2.
Transportation Control Measures (TCM)	Approved SIP	Yes	Yes.
Federal Non-road Gasoline Engine standards	Federal	Yes	Yes.
Federal Non-road Heavy Duty diesel engine standards	Federal	Yes	Yes.
Rail Road Locomotive Controls	Federal	No	Yes.
NO_X RACT	Approved SIP	Yes	Yes.
Non-CTG RACT to 50 tpy	Approved SIP	Yes	Yes.
VOC Point Source Regulations to 25 tons/year[2]	Approved SIP	Yes	Yes.
Stage II Vapor Recovery[3] & On-board Refueling Vapor Recovery (ORVR)	Approved SIP Federal	Yes	Yes.
AIM Surface Coatings	Federal	Yes	Yes.
Consumer & commercial products	Federal	Yes	Yes.
Autobody refinishing	Federal/State	Yes	Yes.
Surface Cleaning/Degreasing	Approved SIP	Yes	Yes.
Open Burning Ban[2]	Approved SIP	Yes	Yes.
Stage I Vapor Recovery[4]	Approved SIP	Yes	Yes.
Graphic Arts	Approved SIP	Yes	Yes.
Heavy Duty Diesel Engines (On-road)	Federal	No	Yes.
Beyond RACT NO_X Requirements on Utilities	Approved SIP	No	Yes.

Notes:
[1] To the extent NLEV not superceded by Tier 2.
[2] Maryland and Virginia only.
[3] Reduction credits calculated for Maryland and Virginia only. The District required implementation of Stage II in 1985 for most sources, and has claimed no reductions since 1990. (The District's Stage II regulation was amended after 1990 to comply with the requirements for Stage II controls set forth in the 1990 amendments to the Clean Air Act. The EPA has approved the District's rule into the SIP.
[4] Reductions in only in those additional areas in Maryland and Virginia that were added to the Metropolitan Washington DC area after 1990.

The MDE, VADEQ and DoH have submitted all measures relied on in the attainment demonstration and all required measures except RACM and specific contingency measures. All submitted measures have been approved to date with the exception of Transportation Control Measures (TCMs), which are as part of the Washington area attainment demonstration and 1996–1999 ROP plan that the EPA is proposing to conditionally approve in this document. TCMs are strategies to both reduce vehicle miles traveled (VMT) and decrease the amount of emissions per VMT. The CAA classifies TCMs as programs for improved transit, traffic flow, fringe parking facilities for multiple occupancy transit programs, high occupancy or share-ride programs, and support for bicycle and other non-automobile transit. The TCMs for Virginia and Maryland included projects programmed between fiscal years 1994–1999 in the transportation improvement plan (TIP) under the Congestion Mitigation and Air Quality (CMAQ) Improvement Program and funded for implementation in the Washington area. The specific projects that Virginia and Maryland are claiming credit for and the estimated benefits are listed in Appendix H of the 1996–1999 ROP plan and Appendix J of the February 2000 plans. TCMs are considered acceptable measures for states to use to achieve reductions and EPA has determined that the VOC and NO_X reductions attributable to these measures are creditable for the 1996–1999 ROP plan and attainment demonstration.

The EPA is also proposing to conditionally approve the attainment demonstration based on the District, Maryland and Virginia having committed to submit contingency measures that will be implemented if the area fails to attain the ozone standard by November 15, 2005. In addition, the District, Maryland and Virginia have committed to submitting to the EPA an appropriate RACM analysis and any revisions to the attainment demonstration necessitated by such an analysis, including revised emissions budgets as applicable.

2. NO_X Reductions Consistent With the Modeling Demonstration

Inside the Baltimore-Washington modeling domain, the District, Maryland and Virginia modeled only the measures indicated in Table 3. The only NO_X control measure beyond CAA requirements was an additional level of control beyond RACT at large stationary sources of NO_X in the District's and Maryland's portion of the Washington area. The status of all measures was discussed in the preceding section of this document.

3. Motor Vehicle Emissions Budgets

As discussed in section III.B.3 of this document, the motor vehicle emissions budgets are the estimate of motor vehicle emissions in the attainment year that when considered with emissions from all other sources is consistent with attainment. The attainment demonstrations for the Washington area contain levels of modeled emissions that the EPA concludes demonstrate attainment once transport from upwind areas is addressed. The basis for this conclusion will not be altered if the Washington area can demonstrate that the level of nonattainment area emissions in 2005 is equal to or less than the 1999 control strategy levels contained in the attainment demonstrations considering growth. Thus, Maryland, Virginia and the District have demonstrated that revised motor vehicle emissions budgets for 2005 in the attainment demonstrations for the Washington area are adequate by showing that overall emissions including the revised motor vehicle emissions budgets when considered with emissions from all other sources are less than the 1999 control strategy levels. In the February 2000 plans, the States submitted such a demonstration. The EPA has reviewed these submittals and found that all measures upon which the States relied are now in the approved SIP.

The EPA has interpreted the general adequacy criteria with respect to the 1-hour ozone attainment demonstrations to require the motor vehicle emissions budgets to include the effects of all motor vehicle controls, including Federal measures and the mobile source control measures assumed in the NO_X SIP Call, that will be in place in the attainment year. Therefore, the revised motor vehicle emissions budgets presumptively must include all currently promulgated Federal measures and State SIP measures and opt-ins shown in Table 4.

TABLE 4.—ON-ROAD MOBILE SOURCE CONTROL MEASURES CONTRIBUTING TO ATTAINMENT OF THE 1-HOUR OZONE NAAQS IN THE WASHINGTON NONATTAINMENT AREA IN 2005

Control measure	Implementation year	Assumed in local modeling demonstration?	In the 2005 motor vehicle emissions budget?
Federal Motor Vehicle Control Program (FMVCP):			
Tier 1	1994	Tier 1 FMVCP only	Yes.
Tier 2	2004		Yes.
High enhanced I/M (CAA Mandate)	1997	Yes	Yes.
Reformulated Gasoline (State Opt-in):			
Phase I	1995	Yes	Yes.
Phase II	2000	No	Yes.
Clean Fuel Fleets/National Low Emissions Vehicles (NLEV)	1999	No	Yes.
Federal Heavy-duty Diesel Vehicle (HDV) 2 gm std	2004	No	Yes.

4. Tier 2/Sulfur Program Benefits

The EPA concludes that based on the modeling and WOE that the Washington area would not need any additional emission reductions beyond those contained in the area attainment demonstration to ensure attainment of the ozone NAAQS by 2005. Like other areas that rely, in part or in full, on Tier 2 reductions in order to demonstrate attainment, the Washington area attainment demonstration was revised in the February 2000 plans to estimate the effects of Tier 2 according to our policy. However, as noted, this was done with the MOBILE5 model which is inaccurate and must be redone with the MOBILE6 model.

The EPA is proposing to conditionally approve the attainment demonstration SIP revisions which include the commitment found in section 9.1.1.2 of the March 2000 plans for the Washington area because the State of Maryland, Commonwealth of Virginia and the District of Columbia have committed to revise and submit to the EPA by April 17, 2004, an updated attainment demonstration SIP that reflects revised MOBILE6-based motor vehicle emissions budgets, including revisions to the attainment modeling and/or weight of evidence demonstration, as necessary, to demonstrate that the SIP continues to demonstrate attainment by November 15, 2005.

5. Mid-Course Review (MCR)

In accordance with the provisions of section III.B.5. of this document, the EPA must receive an enforceable commitment to include a MCR from each of the three Washington area States before their attainment demonstrations can be approved. Virginia, Maryland and the District submitted these commitments on February 9, 14 and 22, 2000, respectively. The EPA has concluded that the enforceable commitments found in February 2000 plans are acceptable. However, an enforceable commitment to perform a mid-course review is meaningless outside of the context of an approved attainment demonstration. For this reason, our proposal to conditionally approve the attainment demonstration includes the enforceable commitment to perform and submit the MCR contained within the February 2000 plans.

IV. Rate-of-Progress Plans

A. What Agencies and Organizations Developed the 1996–1999 ROP Plan for the Washington Area?

The District of Columbia, Virginia and Maryland must demonstrate reasonable further progress (RFP) for the Washington area. These jurisdictions, under the auspices of the Metropolitan Washington Air Quality Committee (MWAQC) (with the assistance of the Metropolitan Washington Council of Governments) collaborated on a coordinated 1996–1999 ROP plan for the Washington area. The MWAQC includes state and local elected officials and representatives of the DC

Department of Health, the Maryland Department of the Environment, the Virginia Department of Environmental Quality and the National Capital Region Transportation Planning Board (TPB). The Act provides for interstate coordination for multi-state nonattainment areas. Because ROP requirements such as the 1996–1999 ROP plan establish emission budgets for transportation improvement plans, municipal planning organizations have historically been involved in air quality planning in the Washington area. The MWAQC ensures consultation with the TPB during the development of the 1996–1999 ROP plan and emission budgets. As explained below, the regional 1996–1999 ROP plan determined the regional target level, regional projections of growth and finally the total amount of creditable reductions required under the 9 percent requirement in the Washington area. The District of Columbia, Maryland and Virginia agreed to apportion this total amount of required creditable reductions among themselves. Although the plan was developed by a regional approach, each jurisdiction is required to submit its portion of the 1996–1999 ROP plan to the EPA as a revision to its SIP.

B. What Are the Rate-of-Progress Requirements Applicable to the Washington Area?

The CAA requires that serious and above ozone nonattainment areas develop plans to reduce area-wide VOC emissions after 1996 by 3 percent per year until the year of the attainment date required for that classification of nonattainment area. In addition, section 172(c)(9) of the CAA requires the SIP to provide for specific measures to be undertaken if an area fails to make reasonable further progress. The Washington area is classified as a serious ozone nonattainment area with an attainment date of November 15, 1999. However, the EPA published its final rule reclassifying the Washington area to severe ozone nonattainment effective March 25, 2003. The statutory attainment date for severe areas is November 15, 2005. As a serious area, the 3 percent per year requirement is expressed as an average over consecutive 3-year periods; thus, the requirement is a 9 percent reduction by 1999. However, the Circuit Court ruling on the EPA's approval of the Washington area attainment demonstration and 1996–1999 ROP plan indicated that in addition to a nine percent reduction in baseline emissions from 1996 to 1999, an area with an attainment date in 2005 must submit a ROP plan for the Washington area that demonstrates additional ROP to 2005. 294 F. 3d at 163. The **Federal Register** notice reclassifying the Washington area to severe ozone nonattainment imposes additional requirements on the Washington area including, among other things, ROP plans that achieve an additional 18 percent reduction in base line emissions between 1999 and 2005. These new requirements, as well as all of the requirements for a severe ozone nonattainment SIP, must be submitted to the EPA by the date established in the reclassification final rule. This proposed action is confined to the 1996-1999 ROP requirements for a severe ozone nonattainment area that are currently pending before the Agency.

The ROP plans were to be submitted by November 15, 1994, and the first 9 percent reductions were required to be achieved within 9 years after enactment, that is, by November 15, 1999. This 9 percent reduction requirement is a continuation of the requirement for a 15 percent reduction in VOC by 1996. For the 1996–1999 ROP plan, the Act allows the substitution of NO_X emissions reductions for VOC emission reductions where equivalent air quality benefits are achieved as determined using the applicable EPA guidance. The 9 percent VOC/NO_X reduction required by November 15, 1999, is a demonstration of reasonable further progress in the Washington area. Our assessment of the 1996–1999 ROP plan is limited to whether or not the 9 percent reduction requirement is met.

C. How Is the 3 Percent per Year 1996–1999 Reduction Calculated?

A 1996–1999 ROP plan consists of a plan to achieve a target level of emissions. There are several important emission inventories and calculations associated with the plan. These include: The base year emission inventory, future year projection inventories, and target level calculations.

The EPA addressed the sufficiency of the 1996–1999 ROP plan base year emission inventory, future year projection inventories, and target level calculations in its previous notices regarding the Washington area attainment demonstration. *See* 65 FR 58243, September 28, 2000, and 65 FR 62658, October 19, 2000. Since the Circuit Court did not address issues regarding the adequacy of the base year emission inventory, future year projection inventories, and target level calculations, the EPA believes that it may approve these calculations at this time. EPA incorporates by reference herein its prior proposal, the comments submitted thereon, and its response to those comments. EPA is not reprinting that discussion here but will address any further comments submitted in response to this re-proposal of its approval of the base year emission inventory, future year projection inventories, and target level calculations.

D. Nonattainment Area-Wide Plan—Apportionment of Reduction Needs

The EPA must determine whether or not the Washington area 9 percent requirement has been met. In general, the emission reduction from a measure is the difference between the future year projected uncontrolled emissions and the future year controlled emissions, or is equal to a percentage of the future year projected uncontrolled emissions. For on-road mobile sources, the emission reductions from a measure or suite of measures are determined by the difference of projected future year emissions with and without new control measures.

The Washington area 1996–1999 ROP plan apportions among the District, Maryland and Virginia the amount of creditable emission reductions that each must achieve in order for the nonattainment area to achieve, as a region, the required 9 percent reduction in VOC net of growth. The 1996–1999 ROP plan identifies the amount of creditable emission reductions that each state must achieve for the nonattainment area-wide plan to get a 9 percent reduction accounting for any growth in emissions from 1990 to 1999. The District of Columbia, Maryland and Virginia each committed to achieving the necessary NO_X and VOC reductions, found in Table 5.

TABLE 5.—EMISSION REDUCTION COMMITMENTS FOR THE WASHINGTON AREA THROUGH 1999

[tons/day]

	District of Columbia	Maryland	Virginia	Area total
Total VOC reduction by 1999	10.6	63.7	57.2	131.5
Total NO_X reduction by 1999	7.2	96.8	46.6	150.6

The required VOC and NO_X emission reductions for each jurisdiction have been apportioned using a ratio of the regional reduction requirement to the claimed creditable measures for the nonattainment area. This result was then multiplied by each jurisdiction's total creditable measures to determine its emission reduction requirement. The EPA has determined that this apportionment of the emission reduction needed for ROP is approvable because the Act provides for interstate planning of SIPs, and because all three jurisdictions have committed to achieving, in the aggregate, sufficient reductions to achieve the 9 percent requirement in the entire nonattainment area.

E. What Control Strategies Are the District, Maryland and Virginia Including in the 1996–1999 ROP Plan?

The 1996–1999 ROP plan describes the emission reduction credits that the Washington area jurisdictions are claiming toward their 9 percent reduction requirement. We can credit reductions for the ROP requirement for rules promulgated by the EPA and for state measures in the approved SIP.

Transportation Control Measures (TCMs): TCMs are strategies to both reduce VMT and decrease the amount of emissions per VMT. The CAA classifies as TCMs programs for improved transit, traffic flow, fringe parking facilities for multiple occupancy transit programs, high occupancy or share-ride programs, and support for bicycle and other non-automobile transit. The 1996–1999 ROP plans for Virginia and Maryland included TCM projects programmed between fiscal years 1994–1999 in the transportation improvement plan (TIP) under the Congestion Mitigation and Air Quality (CMAQ) Improvement Program and funded for implementation in the Washington area. The specific projects that Virginia and Maryland are claiming credit for and the estimated benefits are listed in Appendix H of the 1996–1999 ROP plan and Appendix J of the February 2000 plans. TCMs are considered acceptable measures for states to use to achieve reductions and EPA has determined that the VOC and NO_X reductions attributable to these measures are creditable for the 1996–1999 ROP plan and attainment demonstration.

The 1996–1999 ROP plan control measures for the Washington area are listed in Table 3 of this document and described in more detail in the TSD for this rulemaking.

F. What Are the Total Reductions in the 1996–1999 ROP Plan?

Tables 6, 7 and 8 summarize the VOC and NO_X creditable measures in Maryland's, Virginia's and the District's 1996–1999 ROP plan for the Washington area.

TABLE 6.—CREDITABLE VOC EMISSION REDUCTIONS IN THE 1996–1999 ROP PLAN FOR THE METROPOLITAN WASHINGTON AREA

[tons/day]

Measure	District of Columbia	Maryland	Virginia
Tier 1 FMVCP	1.4	5.5	5.9
RFG Refueling Benefits	0.0	0.9	0.7
NLEV	0.2	0.6	1.3
Reformulated Gasoline (on/off road)	2.2	7.9	8.0
Surface Cleaning/Degreasing	0.0	2.9	0.0
Autobody Refinishing	0.5	3.8	2.7
AIM	1.6	6.6	5.6
Consumer Products	0.6	2.2	1.9
Seasonal Open Burning Ban	0.0	3.7	2.6
Graphic Arts	0.9	1.0	1.5
Landfill Regulations	0.0	0	0.3
Non-CTG RACT to 50 TPY	0.0	0.4	0.4
RACT on Additional Sources >25 TPY and <50 TPY	N/A	0.3	0
Stage II Vapor Recovery	0.0	8.9	7.9
Stage I Enhancement (excluding Loudoun County, VA)	0.0	0.9	0.3
Non-road Gasoline Engines Rule	0.9	6.3	6.8
TCMs	0.0	0.1	0.1
Enhanced I/M	3.9	18.0	17.9
Total Creditable Reductions	11.8	70.0	63.9

TABLE 7.—CREDITABLE NO_X EMISSION REDUCTIONS IN THE 1996–1999 ROP PLAN FOR THE METROPOLITAN WASHINGTON AREA

[tons/day]

Measure	District of Columbia	Maryland	Virginia
Enhanced I/M	2.4	14.8	16.9
Tier 1	2.5	13.7	14.7
NLEV	.2	0.3	1.5
Reformulated Gasoline (on-road)	0.0	0.1	0.1
Non-road Gasoline Engines	−0.1	−0.4	−0.5
Non-road Diesel Engines	0.4	3.7	3.2
State NO_X RACT	2.1	67.9	12.0
Open Burning Ban	0	0.8	0.6
TCMs	0	0.2	0.2
Total Creditable Reductions	7.5	101.1	48.7

TABLE 8.—CREDITABLE EMISSION REDUCTIONS VERSUS REDUCTION NEEDS FOR THE 1996–1999 ROP PLAN FOR THE METROPOLITAN WASHINGTON AREA

[tons/day]

	District of Columbia	Maryland	Virginia	Area-wide
VOC Reductions in Plan	11.8	70.0	63.9	145.7
Commitment/Area-wide Needs	10.6	63.7	57.2	131.5
Surplus	1.2	6.3	6.7	14.2
NO_X Reductions in Plan	7.5	101.1	48.7	157.3
Commitment/Area-wide Needs	7.2	96.8	46.6	150.6
Surplus	0.3	4.3	2.1	6.7

Section 172(c)(9) of the CAA requires that specific measures must be undertaken if an area fails to make reasonable further progress, or to attain the NAAQS by the attainment date. Furthermore, such measures must be included in the SIP as contingency measures to take effect without further action by the State or the Administrator. As noted previously, the Circuit Court ruled that sections 172(c)(9) and 182(c)(9) of the CAA require that contingency measures must be included as an element in the attainment demonstration and ROP SIPs for the Washington area. The Court further determined that EPA lacked the authority to approve attainment demonstration and ROP SIPs without contingency measures. Therefore, the jurisdictions in the Washington area have committed to submit contingency measures that will be implemented should EPA notify the Washington area jurisdictions that the area did not achieve the required 9 percent reductions by November 15, 1999. These measures need to provide for a 3 percent reduction in base line emissions and be fully adopted rules or measures that can implemented without further action by the States or EPA after November 15, 1999. Such contingency measures must also meet all of the EPA's guidance and policy relating to contingency measures.

V. Applicability of Revised Motor Vehicle Emissions Budgets

A. What Is the Background on Transportation Conformity?

1. What Is Transportation Conformity?

Transportation conformity is a Clean Air Act (CAA) requirement for metropolitan planning organizations and the U.S. Department of Transportation to ensure that federally supported highway and transit activities are consistent with ("conform to") the SIP. Conformity to a SIP means that an action will not cause or contribute to new violations; worsen existing violations; or delay timely attainment. The conformity requirements are established by CAA section 176(c). We issued the transportation conformity rule (40 CFR part 93) to implement this CAA requirement.

2. What Are Motor Vehicle Emissions Budgets?

As described in CAA section 176(c)(2)(A), attainment demonstrations necessarily include estimates of motor vehicle emissions to help areas reach attainment. These estimates act as a budget or ceiling for emissions from motor vehicles, and are used in conformity to determine whether transportation plans and projects conform to the attainment SIP. In order for transportation plans and projects to conform, estimated emissions from transportation plans and projects must not exceed the emission budgets contained in the attainment demonstration.

3. Which Motor Vehicle Emissions Budgets Usually Apply?

According to the transportation conformity rule, motor vehicle emissions budgets in a submitted SIP apply for conformity purposes even before we have approved the SIP, under certain circumstances. First, there must not be any other approved SIP motor vehicle emissions budgets that have been established for the same time frame and with respect to the same CAA requirements. For example, if there is already an approved attainment demonstration SIP that establishes motor vehicle emissions budgets for the attainment date, and the State submits a revision to those motor vehicle emissions budgets, the newly submitted budgets do not apply for conformity purposes until we have approved them into the SIP.

Second, submitted SIP motor vehicle emissions budgets cannot be used before we have approved the SIP unless we have found that the submitted SIP motor

vehicle emissions budgets are adequate for conformity purposes. Our process for determining adequacy is explained at 40 CFR 93.118(e) and the EPA's May 14, 1999, memo entitled, "Conformity Guidance on Implementation of March 2, 1999, Conformity Court Decision."

For more details about the applicability of submitted and approved budgets, *see* 61 FR 36117 (July 9, 1996) and 62 FR 43783 (August 15, 1997).

B. What Is the EPA Proposing Today Regarding Clarification of the Applicability of Revised Motor Vehicle Emissions Budgets?

We are proposing to clarify this proposal with regard to applicability of revised budgets under a conditional approval of the attainment demonstration SIPs for the Washington area. The following discussion addresses this issue specifically pertaining to the motor vehicle emissions budgets in the attainment demonstration for the Washington area.

1. How Are We Proposing to Clarify the Applicability of Revised Budgets?

In this notice, we are proposing to clarify what occurs if we issue a conditional approval of any of the February 2000 plans based on a State commitment to revise the 2005 motor vehicle emissions budgets for the Washington area in the future. If this occurs, the approved SIP motor vehicle emissions budgets will apply for conformity purposes only until the revised motor vehicle emissions budgets have been submitted and we have found the submitted motor vehicle emissions budgets to be adequate for conformity purposes.

In other words, when the State submits revised motor vehicle emissions budgets as they have committed, those revised motor vehicle emissions budgets will apply for conformity purposes as soon as we have found those motor vehicle emissions budgets to be adequate for conformity purposes and our adequacy finding is effective. The revised motor vehicle emissions budgets would then replace the motor vehicle emissions budgets in the conditionally approved attainment demonstration SIP, provided that (as we expect) the revised motor vehicle emissions budgets are submitted as a revision to part of the attainment demonstration SIP and are established for the same year as those in the approved SIP.

2. Why Are We Proposing to Clarify the Applicability of Revised Budgets?

In this notice of proposed rulemaking, we are proposing that for reasons described in section III.C. we would not conditionally approve the attainment demonstration SIPs unless the States commit to revise the SIPs' budgets in the future. As described in prior sections of this preamble, the motor vehicle emissions budgets must be revised using MOBILE6 because the attainment year budgets that would be conditionally approved reflect the benefits of our Tier 2/Sulfur regulation. The budgets might also be revised as a result of the RACM analysis the area has committed to complete.

Since we are proposing to approve attainment year motor vehicle emissions budgets only because the States have committed to revise them, we want our approval of the budgets to last only until adequate revised budgets are submitted pursuant to the commitments. We believe the revised motor vehicle emissions budgets should apply as soon as we find them adequate; we do not believe it is appropriate to wait until we have fully approved the revised attainment demonstration SIP. This is because we already know that once we have confirmed that the revised motor vehicle emissions budgets are adequate, they will be more appropriate than the originally approved budgets for conformity purposes.

In addition, we know now that the area cannot estimate accurately the benefits of the Tier 2 program until they revise the budgets using the MOBILE6 model. We are proposing to conditionally approve motor vehicle emissions budgets based on interim approximations of Tier 2 benefits only because the States are committing to recalculate the budgets using MOBILE6 in a timely fashion.

Finally, we know now that if the area identifies any additional mobile source RACM, the budgets, as revised to include those measures, will more accurately reflect the emissions levels necessary to demonstrate attainment. If we do not clarify our proposed conditional approval of the motor vehicle emissions budgets, States will revise their budgets as they have committed, but they will not be able to start using them quickly for conformity purposes. This would defeat the purpose of our original requirements for the budgets to be revised quickly. In contrast, according to this proposal, the revised budgets could be used for conformity after we have completed our adequacy review process, which we have committed to complete within 90 days after revisions are submitted, provided they are adequate.

This notice does not propose any change to the existing transportation conformity rule or to the way it is normally implemented with respect to other submitted and approved SIPs, which do not contain commitments to revise the motor vehicle emissions budgets.

C. How Does the 18-Month Clock Apply With Respect to These Budget Revisions?

Section 93.104(e)(2) of the conformity rule requires conformity of the transportation plan and transportation improvement program (TIP) to be redetermined within 18 months following the date of a State's initial submission of each SIP establishing a budget.

As described at 60 FR 44792 (August 29, 1995), the first submission of a given type of SIP that establishes a motor vehicle emissions budget (*e.g.*, an ozone attainment demonstration) starts the 18-month clock for redetermining conformity. However, the 18-month clock is unaffected by subsequent changes to that submitted SIP.

Therefore, the revisions to the attainment demonstration SIPs to reflect MOBILE6 or any additional RACM will not start a new 18-month clock. Of course, whenever conformity is determined in the future (in accordance with the 18-month clock or for any other reason), the demonstration must use whatever motor vehicle emissions budgets are applicable at that time. If an initial submission starts the 18-month clock but then is changed and the revised motor vehicle emissions budgets are found adequate, any subsequent conformity determination must use the new, adequate budgets.

Section 93.104(e)(3) also requires conformity of the transportation plan and TIP to be redetermined 18 months following our approval of a SIP that establishes or revises a budget. If we conditionally approve an ozone attainment demonstration, an 18-month clock will be started on the effective date of our conditional approval. A subsequent conversion of the conditional approval to full approval will not start another 18-month clock, unless the motor vehicle emissions budgets we are approving have changed since the conditional approval.

D. What Are the Budgets in the Plans?

The motor vehicle emissions budgets in the 1996–1999 ROP plan and attainment demonstrations are area-wide budgets for the entire Washington area. The motor vehicle emissions budgets for 1999 in the 1996–1999 ROP plan are 196.4 tons per day of NO_X and 128.5 tons per day of VOC. The motor vehicle emissions budgets for 2005 in the attainment demonstration are 101.8

tons per day for VOC and 161.8 tons per day of NO_X.

E. What Is the Status of the 1999 Motor Vehicle Emission Budgets Contained in the 1996–1999 ROP Plan for the Area?

We are proposing to conditionally approve the 1996–1999 ROP plan for the area including the 1999 motor vehicle emission budgets, or in the alternative, to disapprove this SIP with a protective finding. It should be noted that the 1999 budgets in the ROP plan do not have to be revised using MOBILE6 since these budgets were established for a year prior to the implementation of the Tier 2/ sulfur regulations.

VI. What Is the Basis for the Proposed Actions?

A. Conditional Approval

In the previous sections of this document, the EPA has presented our analysis of the 1996–1999 ROP plan and attainment demonstration plans submitted for the Washington area. The EPA has concluded that these submittals will be fully approvable once several deficiencies are corrected. Two of these deficiencies were identified by the Circuit Court, namely that the 1996–1999 ROP plan and the attainment demonstration lack contingency measures, and the attainment demonstration lacks an analysis showing that all RACM have been adopted for implementation in the Washington area. A third deficiency we have identified with the attainment demonstration is the lack of revised MOBILE6-based motor vehicle emissions budgets, including revisions to the attainment modeling and/or weight of evidence demonstration, as necessary, to show that the SIP continues to demonstrate attainment by November 15, 2005.

To cure these deficiencies and allow for full approval of the SIPs the States must undertake the actions set forth below. For contingency measures related to the attainment demonstration, the States need to identify which measures have been implemented since the area failed to attain by November 15, 1999. In addition, because the Washington area will on March 25, 2003, become a severe nonattainment area, the attainment demonstration for the Washington area must also include contingency measures if the area fails to attain by November 15, 2005. For the 1996–1999 ROP plan contingency requirement, the area needs to identify those adopted measures that qualify as contingency measures to be implemented if EPA notifies the states that the Washington area did not achieve the required 9 percent rate of progress reductions by November 15, 1999.

The deficiencies in the SIPS are due to the actual (or potential) lack of certain enforceable measures in the SIPs. Under section 110(k)(4) of the CAA, the EPA "may approve a plan revision based on a commitment of the State to adopt specific enforceable measures by a date certain, but not later than 1 year after the date of approval of the plan revision. Any such conditional approval shall be treated as a disapproval if the State fails to comply with such commitment."

The EPA concludes that the SIP revisions identified in the section of this document entitled "I. What action is the EPA proposing today?" can be conditionally approved because each of the States has committed to all of the following:

(1) Submit to the EPA by April 17, 2004, a contingency plan containing those adopted measures that qualify as contingency measures due to the failure of the Washington area to attain the one-hour ozone standard for serious areas by November 15, 1999, and also those adopted measures that qualify as contingency measures to be implemented if EPA notifies the states that the Washington area did not achieve the required 9 percent rate of progress reductions by November 15, 1999.

(2) Revise and submit to the EPA by April 17, 2004, an updated attainment demonstration SIP that reflects revised MOBILE6-based motor vehicle emissions budgets, including revisions to the attainment modeling and/or weight of evidence demonstration, as necessary, to show that the SIP continues to demonstrate attainment by November 15, 2005.

(3) Submit to the EPA by April 17, 2004, adopted contingency measures to be implemented if the Washington area does not attain the one-hour ozone NAAQS by November 15, 2005.

(4) Submit to the EPA by April 17, 2004, an appropriate RACM analysis for the Washington area, along with any revisions to the attainment demonstration SIP necessitated by such analysis, should there be any.

These commitments are embodied in the following letters:

(1) A letter, dated January 14, 2003, from Richard F. Pecora, Secretary, Maryland Department of the Environment, to Donald S. Welsh, Regional Administrator, EPA. Region III.

(2) A letter, dated January 14, 2003, from Robert G. Burnley, Director, Virginia Department of Environmental Quality, to Donald S. Welsh, Regional Administrator, EPA. Region III.

(3) A letter, dated January 14, 2003, from Theodore J. Gordon, Senior Deputy Director for Environmental Health Science and Regulation, Government of the District of Columbia Department of Health, to Donald S. Welsh, Regional Administrator, EPA. Region III.

These letters contain the commitments that are acceptable in form and substance to comply with sections 110(k)(3) and (4) of the Act.

Although each of the Washington area States has committed to submitting the RACM analysis, the contingency measures and the 2005 revised mobile vehicle emissions budgets to EPA by April 17, 2004, these three things are among the severe area SIP elements required by the reclassification of the Washington area to severe ozone nonattainment. Therefore, as a practical matter, these three elements will have to be submitted to EPA consistent with the schedule for submission of the severe area SIP revisions to EPA. Under the schedule set forth in the final rule reclassifying the Washington area, each of the three Washington area States must submit all of the severe area SIP revisions no later than March 1, 2004. (*See* 68 FR 3410). Notwithstanding the April 17, 2004, commitment date, failure of the States to submit these three elements by March 1, 2004, can have repercussions. If EPA makes a finding that any of the Washington area States have failed to submit any of the required severe area SIP elements by March 1, 2004, or if EPA makes a finding that any of the required submittals is incomplete in accordance with section 110(k)(1)(B) and 40 CFR part 51, Appendix V, section 179(a) provides for the imposition of two sanctions. *See* section 179(a) of the CAA and 40 CFR 52.31. Under EPA's sanctions regulations, 40 CFR 52.31, the first sanction would be 2:1 offsets for sources subject to the new source review requirements under section 173 of the CAA unless the EPA has determined the State has submitted the required SIP revisions meeting the completeness criteria section 110(k)(1)(B) and of 40 CFR part 51. If 6 months after the first sanction is imposed EPA has not determined that State has submitted the required SIP revisions meeting the completeness criteria section 110(k)(1)(B) and of 40 CFR part 51, the second sanction will apply. The second sanction is a limitation on the receipt of Federal highway funds.

However, as discussed previously in this document, because the commitment letter recites April 17, 2004, as the

controlling date for submission of the RACM analysis, the contingency measures and the 2005 revised mobile vehicle emissions budgets, any conditional approval issued pursuant to this proposed rulemaking shall convert to a disapproval only if the State fails to make the required submissions by April 17, 2004. If EPA disapproves a required SIP, such as an attainment demonstration SIP, section 179(a) provides for the imposition of two sanctions. In the event of a disapproval the two sanctions would be imposed in accordance with the EPA's sanctions regulation, 40 CFR 52.31, and in the same order as described in the preceding paragraph.

B. Disapproval in the Alternative

The EPA believes that the proposed conditional approval is consistent with sections 110(k)(3) and (4) of the Act and with rulings by the Circuit Court and the District Court cited previously in this document. We also believe that the proposed conditional approval is the most reasonable of the legally supported alternatives for allowing the Washington area to deal with the situation created by the two court rulings adverse to EPA. However, EPA is well aware that its past actions with respect to this area have been controversial and have resulted in separate actions in two different Federal courts. EPA is also well aware that it is under a District Court-ordered deadline to publish its final action on the Washington area attainment demonstration and ROP SIPs by no later than April 17, 2003. Because EPA anticipates that the proposed conditional approvals may receive adverse comment, we are also proposing in the alternative to disapprove either or both the attainment demonstration and ROPs SIPs. EPA believes that the proposed disapproval in the alternative is a prudent step to take to preserve the court-ordered schedule in the event that we cannot issue a timely final conditional approval for both the attainment demonstration and ROP SIP revisions.

In the event that we cannot issue a final conditional approval with respect to the attainment demonstration SIP revision, we propose to disapprove those submissions due to the following deficiencies: (1) Lack of contingency measures; (2) lack of an analysis showing that all RACM have been adopted for implementation in the Washington area; and, (3) lack of revised MOBILE6-based motor vehicle emissions budgets, including revisions to the attainment modeling and/or weight of evidence demonstration, as necessary, to show that the SIP continues to demonstrate attainment by November 15, 2005. With respect to the 1996–1999 ROP plan, in the event that we cannot issue a final conditional approval, we propose to disapprove the submissions because they lack contingency measures. As explained in the following paragraphs at VI.C. the EPA is proposing that disapproval of either the attainment demonstration or the 1996–1999 ROP plan will be made with a protective finding regarding their respective motor vehicle emissions budgets.

C. Proposed Protective Findings

Under the conformity rule if EPA disapproves any submitted control strategy implementation plan revision (with or without a protective finding), the conformity status of the transportation plan and transportation improvement plan (TIP) shall lapse on the date that highway sanctions as a result of the disapproval are imposed on the nonattainment area under section 179(b)(1) of the Clean Air Act.[5] No new transportation plan, TIP, or project may be found to conform until another control strategy implementation plan revision fulfilling the same Clean Air Act requirements is submitted and conformity to this submission is determined. *See* 40 CFR 93.120(a).

When the EPA disapproves a control strategy SIP the EPA has to determine whether to issue a protective finding. If the EPA does not issue a protective finding then the conformity freeze established by section 93.120(a)(2) of the conformity rule will occur on the effective date of the disapproval. *See* 40 CFR 93.120(a)(2).

Alternatively, when disapproving a control strategy implementation plan revision, the EPA would give a protective finding where a submitted plan contains adopted control measures or written commitments to adopt enforceable control measures that fully satisfy the emissions reductions requirements relevant to the statutory provision for which the implementation plan revision was submitted, such as reasonable further progress or attainment. *See* 40 CFR 93.120(a)(3).

In the preamble to the conformity rule, EPA explained the implications of a disapproval of a ROP plan or attainment demonstration and how a protective finding works. When disapproving a control strategy SIP revision the EPA may give the SIP a protective finding. If the EPA disapproves a SIP but gives a protective finding, the motor vehicle emissions budget in the disapproved SIP could still be used to demonstrate conformity. There would be no adverse conformity consequences unless highway sanctions were imposed, as is the case with respect to all other SIP planning failures. Highway sanctions would be imposed two years following the EPA's disapproval if the SIP deficiency had not been remedied. The conformity of the plan and TIP would lapse once highway sanctions were imposed. The EPA will make a protective finding only if a submitted SIP contains adopted control measures or commitments to adopt measures that fully satisfy the emissions reductions requirements relevant to the statutory provision for which the SIP was submitted, such as ROP. That is, the EPA will give such a submitted SIP a protective finding if it contains enough emissions reduction measures to achieve its purpose of either demonstrating ROP or attainment. The EPA will not make a protective finding with respect to a SIP that does not contain emission reduction measures or commitments adequate to achieve the required ROP or attainment. *See* 62 FR at 43796, August 15, 1997.

The EPA is proposing that based on the analysis discussed in section IV of this document that the 1996–1999 ROP plan meets the ROP requirement by providing enough reductions with the adopted measures to have achieved the 9 percent reduction requirement. The EPA believes that the ROP plan meets the requirement for a protective finding, however, the EPA will take final action with respect to this protective finding only if it finalizes the disapproval in the alternative option proposed in this document.

Likewise, the EPA is proposing that, based on the analysis discussed previously in this document, the attainment demonstration has demonstrated that the Washington area will attain the ozone NAAQS no later than November 15, 2005, by providing enough reductions with the adopted measures to demonstrate attainment. The EPA believes that the attainment demonstration meets the requirement for a protective finding, however, the EPA will take final action with respect to this protective finding only if it finalizes the disapproval in the alternative option proposed in this document.

[5] Under the conformity rule the term "control strategy implementation plan revisions" includes ROP and attainment demonstrations, or, more generally, those implementation plans which contain specific strategies for controlling the emissions of and reducing ambient levels of pollutants in order to satisfy CAA requirements for demonstrations of reasonable further progress and attainment (CAA sectons 182(b)(1), 182(c)(2)(A), 182(c)(2)(B), 187(a)(7), 189(a)(1)(B), and 189(b)(1)(A); and sections 192(a) and 192(b), for nitrogen dioxide).

Under this proposed protective finding the mobile source budgets that were established in the 1996–1999 ROP plan and attainment demonstration plans will be in effect for transportation planning and conformity purposes and can be used until such time that highway sanctions as required in accordance with 40 CFR 52.31 and would apply two years after the disapproval of the ROP plan, unless EPA takes final action to approve a revised plan correcting the deficiency within 2 years of EPA's findings. The 1999 mobile emissions budgets in the 1996–1999 ROP plan which would remain in place under the proposed protective finding are 196.8 tons of NO_x and 128.5 tons for VOC. The 2005 mobile emissions budgets in the attainment demonstration which would remain in place under the proposed protective finding are 101.8 tons of NO_x and 161.8 tons for VOC.

VII. Proposed Action

A. The District of Columbia—Rate-of-Progress Plan

EPA is proposing conditional approval of the District of Columbia's 1996–1999 ROP plan SIP revision for the Washington area which was submitted on November 3, 1997, and supplemented on May 25, 1999, and the transportation control measures in Appendix H of the May 25, 1999, submittal, because the District has committed to submit to the EPA by April 17, 2004, (a date that will not be later than 1 year after the date of approval of the plan revision) a contingency plan containing those adopted measures that qualify as contingency measures to be implemented if EPA notifies the states that the Washington area did not achieve the required 9 percent rate of progress reductions by November 15, 1999.

With respect to the 1996–1999 ROP plan, in the event that we cannot issue a final conditional approval, we propose in the alternative to disapprove the District of Columbia's 1996–1999 ROP plan SIP because it lacks contingency measures. The EPA is proposing disapproval in the alternative with a protective finding with respect to the 1999 ROP motor vehicle emissions budgets.

B. The District of Columbia—Attainment Demonstration

EPA is proposing conditional approval of the revisions to the State Implementation Plan submitted by the District of Columbia on April 24, 1998, October 27, 1998, and February 16, 2000, and only section 9.1.1.2 of the March 22, 2000, SIP supplement dealing with a commitment to revise the 2005 attainment motor vehicle emissions budgets within one-year of the EPA's release of the MOBILE6 model. EPA is proposing conditional approval because the District has committed to:

(1) Submit to the EPA by April 17, 2004, a contingency plan containing those adopted measures that qualify as contingency measures due to the failure of the Washington area to attain the one-hour ozone standard for serious areas by November 15, 1999;

(2) Revise and submit to the EPA by April 17, 2004, an updated attainment demonstration SIP that reflects revised MOBILE6-based motor vehicle emissions budgets, including revisions to the attainment modeling and/or weight of evidence demonstration, as necessary, to show that the SIP continues to demonstrate attainment by November 15, 2005;

(3) Submit to the EPA by April 17, 2004, adopted contingency measures to be implemented if the Washington area does not attain the one-hour ozone NAAQS by November 15, 2005; and

(4) Submit to the EPA by April 17, 2004, a revised RACM analysis and any revisions to the attainment demonstration SIP as necessitated by such analysis should there be any.

In the alternative, the EPA is proposing to disapprove the State Implementation Plan submitted by the District of Columbia on April 24, 1998, October 27, 1998, and February 16, 2000, and only section 9.1.1.2 of the March 22, 2000, SIP supplement, due to the following deficiencies: (1) Lack of contingency measures; (2) lack of an analysis showing that all RACM have been adopted for implementation in the Washington area; and, (3) lack of revised MOBILE6-based motor vehicle emissions budgets, including revisions to the attainment modeling and/or weight of evidence demonstration, as necessary, to show that the SIP continues to demonstrate attainment by November 15, 2005. The EPA is proposing disapproval with a protective finding with respect to the 2005 attainment motor vehicle emissions budgets.

C. The State of Maryland—Rate-of-Progress Plan

EPA is proposing conditional approval of the State of Maryland's 1996–1999 ROP plan SIP revision for the Washington area which was submitted on December 24, 1997, and supplemented on May 20, 1999, and the transportation control measures in Appendix H of the May 25, 1999, submittal because Maryland has committed to submit to the EPA by April 17, 2004, a contingency plan containing those adopted measures that qualify as contingency measures to be implemented if EPA notifies the states that the Washington area did not achieve the required 9 percent rate of progress reductions by November 15, 1999.

With respect to the 1996–1999 ROP plan, in the event that we cannot issue a final conditional approval, we propose in the alternative to disapprove the State of Maryland's 1996–1999 ROP plan SIP because it lacks contingency measures. The EPA is proposing disapproval in the alternative with a protective finding with respect to the 1999 ROP motor vehicle emissions budgets.

D. The State of Maryland—Attainment Demonstration

EPA is proposing conditional approval of the revisions to the State Implementation Plan submitted by the State of Maryland on April 29, 1998, August 17, 1998, and February 14, 2000, and the transportation control measures in Appendix J of the February 9, 2000, submittal and only section 9.1.1.2 of the March 31, 2000, SIP supplement dealing with a commitment to revise the 2005 attainment motor vehicle emissions budgets within one-year of the EPA's release of the MOBILE6 model. EPA is proposing conditional approval because Maryland has committed to:

(1) Submit to the EPA by April 17, 2004, a contingency plan containing those adopted measures that qualify as contingency measures due to the failure of the Washington area to attain the one-hour ozone standard for serious areas by November 15, 1999;

(2) Revise and submit to the EPA by April 17, 2004, an updated attainment demonstration SIP that reflects revised MOBILE6-based motor vehicle emissions budgets, including revisions to the attainment modeling and/or weight of evidence demonstration, as necessary, to show that the SIP continues to demonstrate attainment by November 15, 2005;

(3) Submit to the EPA by April 17, 2004, adopted contingency measures to be implemented if the Washington area does not attain the one-hour ozone NAAQS by November 15, 2005; and

(4) Submit to the EPA by April 17, 2004, a revised RACM analysis and any revisions to the attainment demonstration SIP as necessitated by such analysis should there be any.

In the alternative, the EPA is proposing to disapprove the State Implementation Plan submitted by the State of Maryland on April 29, 1998,

August 17, 1998, and February 14, 2000, and the transportation control measures in Appendix J of the February 9, 2000, submittal and only section 9.1.1.2 of the March 31, 2000 SIP supplement due to the following deficiencies: (1) Lack of contingency measures; (2) lack of an analysis showing that all RACM have been adopted for implementation in the Washington area; and, (3) lack of revised MOBILE6-based motor vehicle emissions budgets, including revisions to the attainment modeling and/or weight of evidence demonstration, as necessary, to show that the SIP continues to demonstrate attainment by November 15, 2005. The EPA is proposing disapproval with a protective finding with respect to the 2005 attainment motor vehicle emissions budgets.

E. The Commonwealth of Virginia—Rate-of-Progress Plan

EPA is proposing conditional approval of the Commonwealth of Virginia's 1996–1999 ROP plan SIP revision for the Washington area which was submitted on December 19, 1997, and supplemented on May 25, 1999, and the transportation control measures in Appendix H of the May 25, 1999, submittal because Virginia has committed to submit to the EPA by April 17, 2004, a contingency plan containing those adopted measures that qualify as contingency measures to be implemented if EPA notifies the states that the Washington area did not achieve the required 9 percent rate of progress reductions by November 15, 1999.

With respect to the 1996–1999 ROP plan, in the event that we cannot issue a final conditional approval, we propose in the alternative to disapprove the Commonwealth of Virginia's 1996–1999 ROP plan SIP because it lacks contingency measures. The EPA is proposing disapproval in the alternative with a protective finding with respect to the 1999 ROP motor vehicle emissions budgets.

F. The Commonwealth of Virginia—Attainment Demonstration

EPA is proposing conditional approval of the revisions to the State Implementation Plan submitted by the Commonwealth of Virginia on April 29, 1998, August 18, 1998, and February 9, 2000, and the transportation control measures in Appendix J of the February 9, 2000, submittal, and only section 9.1.1.2 of the March 31, 2000, SIP supplement dealing with a commitment to revise the 2005 attainment motor vehicle emissions budgets within one-year of the EPA's release of the MOBILE6 model. EPA is proposing conditional approval because Virginia has committed to:

(1) Submit to the EPA by April 17, 2004, a contingency plan containing those adopted measures that qualify as contingency measures due to the failure of the Washington area to attain the one-hour ozone standard for serious areas by November 15, 1999;

(2) Revise and submit to the EPA by April 17, 2004, an updated attainment demonstration SIP that reflects revised MOBILE6-based motor vehicle emissions budgets, including revisions to the attainment modeling and/or weight of evidence demonstration, as necessary, to show that the SIP continues to demonstrate attainment by November 15, 2005;

(3) Submit to the EPA by April 17, 2004, adopted contingency measures to be implemented if the Washington area does not attain the one-hour ozone NAAQS by November 15, 2005; and

(4) Submit to the EPA by April 17, 2004, a revised RACM analysis and any revisions to the attainment demonstration SIP as necessitated by such analysis should there be any.

In the alternative, the EPA is proposing to disapprove the State Implementation Plan submitted by the Commonwealth of Virginia on April 29, 1998, August 18, 1998, and February 9, 2000, and the transportation control measures in Appendix J of the February 9, 2000, submittal, and only section 9.1.1.2 of the March 31, 2000, SIP supplement due to the following deficiencies: (1) Lack of contingency measures; (2) lack of an analysis showing that all RACM have been adopted for implementation in the Washington area; and, (3) lack of revised MOBILE6-based motor vehicle emissions budgets, including revisions to the attainment modeling and/or weight of evidence demonstration, as necessary, to show that the SIP continues to demonstrate attainment by November 15, 2005. The EPA is proposing disapproval with a protective finding with respect to the 2005 attainment motor vehicle emissions budgets.

G. Applicability of Revised Motor Vehicle Emissions Budgets

In this notice, we are proposing to clarify what occurs if we issue a conditional approval of any of the February 2000 plans based on a State commitment to revise the 2005 motor vehicle emissions budgets for the Washington area in the future. If this occurs, the conditionally approved 2005 motor vehicle emissions budgets will apply for conformity purposes only until the revised motor vehicle emissions budgets have been submitted and we have found the submitted motor vehicle emissions budgets to be adequate for conformity purposes.

The EPA is soliciting public comments on the issues discussed in this document and any other relevant issues regarding the attainment demonstration for the Washington area. These comments will be considered before taking final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to the EPA Regional Office listed in the **ADDRESSES** section of this document. A more detailed description of the state submittal and the EPA's evaluation are included in a Technical Support Document (TSD) prepared in support of this rulemaking action. A copy of the TSD is available upon request from the EPA Regional Office listed in the **ADDRESSES** section of this document.

In 1995, Virginia adopted legislation that provides, subject to certain conditions, for an environmental assessment (audit) "privilege" for voluntary compliance evaluations performed by a regulated entity. The legislation further addresses the relative burden of proof for parties either asserting the privilege or seeking disclosure of documents for which the privilege is claimed. Virginia's legislation also provides, subject to certain conditions, for a penalty waiver for violations of environmental laws when a regulated entity discovers such violations pursuant to a voluntary compliance evaluation and voluntarily discloses such violations to the Commonwealth and takes prompt and appropriate measures to remedy the violations. Virginia's Voluntary Environmental Assessment Privilege Law, Va. Code sec. 10.1–1198, provides a privilege that protects from disclosure documents and information about the content of those documents that are the product of a voluntary environmental assessment. The Privilege Law does not extend to documents or information (1) that are generated or developed before the commencement of a voluntary environmental assessment; (2) that are prepared independently of the assessment process; (3) that demonstrate a clear, imminent and substantial danger to the public health or environment; or (4) that are required by law.

On January 12, 1997, the Commonwealth of Virginia Office of the Attorney General provided a legal opinion that states that the Privilege law, Va. Code sec. 10.1–1198, precludes granting a privilege to documents and

information "required by law," including documents and information "required by Federal law to maintain program delegation, authorization or approval," since Virginia must "enforce Federally authorized environmental programs in a manner that is no less stringent than their Federal counterparts. * * *" The opinion concludes that "[r]egarding § 10.1–1198, therefore, documents or other information needed for civil or criminal enforcement under one of these programs could not be privileged because such documents and information are essential to pursuing enforcement in a manner required by Federal law to maintain program delegation, authorization or approval."

Virginia's Immunity law, Va. Code sec. 10.1–1199, provides that "[t]o the extent consistent with requirements imposed by Federal law," any person making a voluntary disclosure of information to a state agency regarding a violation of an environmental statute, regulation, permit, or administrative order is granted immunity from administrative or civil penalty. The Attorney General's January 12, 1997 opinion states that the quoted language renders this statute inapplicable to enforcement of any Federally authorized programs, since "no immunity could be afforded from administrative, civil, or criminal penalties because granting such immunity would not be consistent with Federal law, which is one of the criteria for immunity."

Therefore, the EPA has determined that Virginia's Privilege and Immunity statutes will not preclude the Commonwealth from enforcing its program consistent with the Federal requirements. In any event, because the EPA has also determined that a State audit privilege and immunity law can affect only State enforcement and cannot have any impact on Federal enforcement authorities, the EPA may at any time invoke its authority under the Clean Air Act, including, for example, sections 113, 167, 205, 211 or 213, to enforce the requirements or prohibitions of the State plan, independently of any State enforcement effort. In addition, citizen enforcement under section 304 of the Clean Air Act is likewise unaffected by this, or any, State audit privilege or immunity law.

VIII. Statutory and Executive Order Reviews

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866, entitled "Regulatory Planning and Review."

B. Executive Order 13045

Executive Order entitled "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This proposed rule is not subject to Executive Order 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

C. Executive Order 13132

Executive Order entitled "Federalism" (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612 (Federalism) and 12875 (Enhancing the Intergovernmental Partnership). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have Federalism implications." "Policies that have Federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Under Executive Order 13132, EPA may not issue a regulation that has Federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has Federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This proposed rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

D. Executive Order 13175

This proposed rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

E. Executive Order 13211

This action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law.

F. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This proposed rule will not have a significant impact on a substantial number of small entities because conditional approvals of SIP submittals under section 110 and subchapter I, part D of the CAA do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA

to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

If the conditional approval is converted to a disapproval under section 110(k), based on the State's failure to meet the commitment, it will not affect any existing state requirements applicable to small entities. Federal disapproval of the state submittal does not affect its state-enforceability. Moreover, EPA's disapproval of the submittal does not impose a new Federal requirement. Therefore, I certify that this proposed disapproval action does not have a significant impact on a substantial number of small entities because it does not remove existing requirements nor does it substitute a new Federal requirement.

The EPA's alternative proposed disapproval of the State request under section 110 and subchapter I, part D of the Act would not affect any existing requirements applicable to small entities. Any pre-existing Federal requirements would remain in place after this disapproval. Federal disapproval of the State submittal does not affect State-enforceability. Moreover EPA's disapproval of the submittal would not impose any new Federal requirements. Therefore, I certify that the proposed disapproval would not have a significant impact on a substantial number of small entities.

G. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that this proposed approval action does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

Sections 202 and 205 do not apply to the proposed disapproval because the proposed disapproval of the SIP submittal would not, in and of itself, constitute a Federal mandate because it would not impose an enforceable duty on any entity. In addition, the Act does not permit EPA to consider the types of analyses described in section 202 in determining whether a SIP submittal meets the CAA. Finally, section 203 does not apply to the proposed disapproval because it would affect only the District of Columbia, the State of Maryland and the Commonwealth of Virginia, which are not small governments.

H. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use "voluntary consensus standards" (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

EPA believes that VCS are inapplicable to this action. Today's proposed action does not require the public to perform activities conducive to the use of VCS.

This proposed rule regarding the 1-hour ozone attainment demonstration and the 1996–1999 ROP plan for the Washington area does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Nitrogen dioxide, Ozone, Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: January 24, 2003.

James J. Burke,

Acting Regional Administrator, Region III.

[FR Doc. 03–2333 Filed 1–31–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MD129/130–3089b; FRL–7437–6]

Approval and Promulgation of Air Quality Implementation Plans; Maryland; Amendments to Volatile Organic Compound Requirements From Specific Processes

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the State of Maryland for the purpose of establishing two (2) amendments to COMAR 26.11.19, from specific processes on volatile organic compound (VOC) requirements. In the Final Rules section of this **Federal Register**, EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received in writing by March 5, 2003.

ADDRESSES: Written comments should be addressed to Walter K. Wilkie. Acting Chief, Air Quality Planning and Information Services Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; and the Maryland Department of the Environment, 1800 Washington Blvd., Suite 730, Baltimore, Maryland 21224.

FOR FURTHER INFORMATION CONTACT: Betty Harris at (215) 814–2168, at the EPA Region III address above, or by e-mail at *harris.betty@epa.gov*. Please note that while questions may be posed via telephone and e-mail, formal comments

must be submitted in writing, as indicated in the **ADDRESSES** section of this document.

SUPPLEMENTARY INFORMATION: For further information, please see the information provided in the direct final action for Maryland's amendments to the VOC requirements from specific processes, that is located in the "Rules and Regulations" section of this **Federal Register** publication. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

Dated: December 31, 2002.

Thomas C. Voltaggio,

Acting Regional Administrator, Region III.

[FR Doc. 03–2433 Filed 1–31–03; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 61

RIN 3067–AD34

National Flood Insurance Program (NFIP); Increased Rates for Flood Coverage

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Proposed Rule.

SUMMARY: We (the Federal Insurance and Mitigation Administration of FEMA) propose to change the way premiums are calculated for policyholders who purchase flood insurance coverage under the NFIP for "Pre-FIRM" buildings in Special Flood Hazard Areas (SFHAs). (The term "Pre-FIRM buildings" means buildings whose construction began on or before December 31, 1974, or before the effective date of the community's Flood Insurance Rate Map (FIRM), whichever date is later. Most Pre-FIRM buildings and their contents are eligible for subsidized rates under the NFIP.)

We are planning to increase flood insurance rates to be implemented in coordination with the elimination of the Expense Constant, a flat charge that the policyholder currently pays to defray certain expenses of the Federal Government related to flood insurance. As part of this planned increase in rates, we are proposing to increase Pre-FIRM subsidized rates. As a result of this change, the same amount of premium revenue will still be collected to cover those expenses currently generated by the Expense Constant; however, policyholders will pay for those expenses through premiums that vary by the amount of insurance that they purchase, instead of a flat charge per policy. The end result will be revenue neutral.

DATES: We invite comments on this proposed rule, which we should receive on or before March 5, 2003.

ADDRESSES: Please submit any written comments to the Rules Docket Clerk, Office of the General Counsel, Federal Emergency Management Agency, 500 C Street, SW., room 840, Washington, DC 20472, (facsimile) 202–646–4536, or (e-mail) *rules@fema.gov*.

FOR FURTHER INFORMATION CONTACT: Thomas Hayes, Federal Emergency Management Agency, Federal Insurance and Mitigation Administration, 500 C Street SW., Washington, DC 20472, 202–646–3419, (facsimile) 202–646–7970, or (e-mail) *Thomas.Hayes@fema.gov*.

SUPPLEMENTARY INFORMATION:

Background

The Flood Disaster Protection Act of 1973 requires us to charge full-risk premiums for flood insurance coverage on buildings when their construction began after December 31, 1974, or on or after the effective date of the Flood Insurance Rate Map, if the second date is later. (We call such construction "Post-FIRM" construction.)

The Flood Disaster Protection Act of 1973 also authorizes us to apply chargeable premiums to Pre-FIRM property and gives FEMA flexibility to set the flood insurance rates for such property. The legislation calls for us to balance the need to offer reasonable rates that encourage people to buy flood insurance with the statutory goal to distribute burdens fairly between all who will be protected by flood insurance and the general public.

Through the years, FIMA has increased these rates five times with the latest being the final rule 67 FR 8902, published February 27, 2002. Each of the prior changes has been implemented in order to distribute burdens fairly among all who will be protected by flood insurance and to reduce the burden on the general public.

However, with this rule, the proposed rate increase will simply offset the revenue that the Program would otherwise forego through the elimination of the Expense Constant, as explained in the next section. This rule is revenue-neutral, whereas the previous rules resulted in premium increases for the class of Pre-FIRM SFHA policyholders.

While this proposed change to offset the elimination of the Expense Constant will be premium-neutral for the class of Pre-FIRM SFHA policyholders, it will result in slightly different premiums for individual policyholders. For residential structures, the largest net premium increase for any policyholder will be $24, while policyholders that purchase either Contents-only (*e.g.*, renters) or building-only coverage will see net premium decreases of at least $10. Non-Residential policyholders will have slightly different results.

Section 572 of the National Flood Insurance Reform Act of 1994, Pub. L. 103–325, 42 U.S.C. 4015, however, imposes the following annual limitation on rate increases under the NFIP:

"Notwithstanding any other provision of this title, the chargeable risk premium rates for flood insurance under this title for any properties within any single risk classification may not be increased by an amount that would result in the average of such rate increases for properties within the risk classification during any 12-month period exceeding 10 percent of the average of the risk premium rates for properties within the risk classification upon commencement of such 12-month period."

This regulation complies with this statutory limitation on annual rate increase under the NFIP, since it will be revenue neutral.

Proposed Changes and Their Purposes

We are proposing to increase the rates for Pre-FIRM SFHA policies to offset the revenue that the Program would otherwise forego through the elimination of the Expense Constant. The Expense Constant is a flat charge that the policyholder currently pays to defray certain expenses of the Federal Government related to flood insurance. This proposed change will be premium-neutral for the class of Pre-FIRM SFHA policyholders.

FIMA believes that eliminating the Expense Constant will help us further the goals of the flood program, especially in regard to policy growth. Currently, policyholders see two flat charges on their flood insurance premium bills—$50 for the Expense Constant, and $30 for the Federal Policy Fee (a statutorily-mandated fee to cover certain administrative expenses of the National Flood Insurance Program that are not covered by the Expense Constant). Our marketing research has indicated that this is viewed very unfavorably by prospective insureds. They view it as having to pay $80 before they can even purchase any flood insurance coverage. By eliminating the expense constant, we can hopefully

overcome an objection at the point of sale, while still generating the same average revenue per policy. Although we are unable to quantify the expected impact of this proposal on future policy sales, we expect it to help the program generate a modest increase in policies in force.

As an additional benefit, this will bring the NFIP in closer conformity with the insurance industry standard of practice for property insurance where expense constants are rarely used. This proposal will make the NFIP's premium calculation more like that for other property lines. As such, it should also make it more intuitive for insurance agents to process flood insurance.

Comparison of Proposed Rate Increases with Current Rates

The following chart compares the current rates we charge for Pre-FIRM SFHA properties with the proposed rate increases for Pre-FIRM, SFHA properties. Also these proposed increases apply only to the rates charged for the "first layer" of flood insurance coverage set by Congress in Section 1306 of the National Flood Insurance Act of 1968, as amended (Pub. L. 90–448):

Type of structure	Current A zone [1] rates per year per $100 coverage on—		Proposed A zone [1] rates per year per $100 coverage on—			
			Structure			Contents
	Structure	Contents	RCBAP [2]		All other	
			High rise	Low rise		
1. Residential:						
No Basement or Enclosure	.68	.79	.85	.70	.76	.96
With Basement or Enclosure	.73	.79	.90	.75	.81	.96
2. All other including hotels and motels with normal occupancy of less than 6 months duration:						
No basement or Enclosure	.79	1.58	N/A	N/A	.83	1.62
With basement or Enclosure	.84	1.58	N/A	N/A	.88	1.62

[1] A zones are zones A1–A30, AE, AO, AH, and unnumbered A zones.
[2] Residential Condominium Building Association Policies (RCBAP) are distinguished between High Rise (those structures that have 3 or more floors and 5 or more units) and Low Rise (those structures that have either less than 3 floors or less than 5 units).

Type of structure	Current V zone [1] rates per year per $100 coverage on—		Proposed V zone [1] rates per year per $100 coverage on—			
			Structure			Contents
	Structure	Contents	RCBAP [2]		All other	
			High rise	Low rise		
1. Residential:						
No Basement or Enclosure	.91	1.06	1.08	.93	.99	1.23
With Basement or Enclosure	.98	1.06	1.15	1.00	1.06	1.23
2. All other including hotels and motels with normal occupancy of less than 6 months duration:						
No basement or Enclosure	1.06	2.10	N/A	N/A	1.10	2.14
With basement or Enclosure	1.12	2.10	N/A	N/A	1.16	2.14

[1] V zones are zones V1–V30, VE, and unnumbered V zones.
[2] Residential Condominium Building Association Policies (RCBAP) are distinguished between High Rise (those structures that have 3 or more floors and 5 or more units) and Low Rise (those structures that have either less than 3 floors or less than 5 units).

Prior to this change, as shown in the Current A Zone and Current V Zone table, RCBAP policyholders were always charged the same building rates as everyone else. In order to accomplish the elimination of the Expense Constant in a revenue-neutral manner, it is now necessary to vary the rates as shown in the Proposed tables.

National Environmental Policy Act (NEPA)

Pursuant to section 102(2) (C) of the National Environmental Policy Act (NEPA) of 1969, 42 U.S.C. 4317 *et seq.*, we are conducting an environmental assessment of this proposed rule. The assessment will be available for inspection through the Rules Docket Clerk, Federal Emergency Management Agency, room 840, 500 C St. SW., Washington, DC 20472.

Executive Order 12866, Regulatory Planning and Review

We have prepared and reviewed this proposed rule under the provisions of E.O. 12866, Regulatory Planning and Review. Under Executive Order 12866, 58 FR 51735, October 4, 1993, a significant regulatory action is subject to OMB review and the requirements of the Executive Order. The Executive Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

For the reasons that follow we have concluded that the proposed rule is

neither an economically significant nor a significant regulatory action under the Executive Order. The rule will be premium neutral for the National Flood Insurance Fund. The adjustment in premiums rates will be offset by the elimination of the Expense Constant. It would not have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, the insurance sector, competition, or other sectors of the economy. It would create no serious inconsistency or otherwise interfere with an action taken or planned by another agency. It would not materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof. Nor does it raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

The Office of Management and Budget has not reviewed this proposed rule under the provisions of Executive Order 12866.

Paperwork Reduction Act

This rule does not contain a collection of information and is therefore not subject to the provisions of the Paperwork Reduction Act.

Executive Order 13132, Federalism

Executive Order 13132 sets forth principles and criteria that agencies must adhere to in formulating and implementing policies that have federalism implications, that is, regulations that have substantial direct effects on the States, or on the distribution of power and responsibilities among the various levels of government. Federal agencies must closely examine the statutory authority supporting any action that would limit the policymaking discretion of the States, and to the extent practicable, must consult with State and local officials before implementing any such action.

We have reviewed this proposed rule under E.O.13132 and have determined that the rule does not have federalism implications as defined by the Executive Order. The rule would adjust the premiums for buildings in Pre-FIRM Special Flood Hazard Areas. The rule in no way that we foresee affects the distribution of power and responsibilities among the various levels of government or limits the policymaking discretion of the States.

List of Subjects in 44 CFR Part 61

Flood insurance.

Accordingly, we propose to amend 44 CFR Part 61 as follows:

PART 61—INSURANCE COVERAGE AND RATES

1. The authority citation for part 61 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.;* Reorganization Plan No. 3 of 1978, 43 FR 41943, 3 CFR, 1978 Comp., p. 329; E.O. 12127.of Mar. 31, 1979, 44 FR 19367, 3 CFR, 1979 Comp., p.376.

2. Revise §61.9 (a) to read as follows:

§ 61.9 Establishment of chargeable rates.

(a) Under section 1308 of the Act, we are establishing annual chargeable rates for each $100 of flood insurance coverage as follows for Pre-FIRM, A zone properties, Pre-FIRM, V-zone properties, and emergency program properties.

Type of structure	Proposed A zone[1] rates per year per $100 coverage on—				Proposed V zone[2] rates per year per $100 coverage on—			
	Structure			Contents	Structure			Contents
	RCBAP[3]		All other		RCBAP[3]		All other	
	High rise	Low rise			High rise	Low Rise		
1. Residential:								
No Basement or Enclosure	.85	.70	.76	.96	1.08	.93	.99	1.23
With Basement or Enclosure	.90	.75	.81	.96	1.15	1.00	1.06	1.23
2. All other including hotels and motels with normal occupancy of less than 6 months duration:								
No basement or Enclosure	N/A	N/A	.83	1.62	N/A	N/A	1.10	2.14
With basement or Enclosure	N/A	N/A	.88	1.62	N/A	N/A	1.16	2.14

[1] A zones are zones A1–A30, AE, AO, AH, and unnumbered A zones.
[2] V zones are zones V1–V30, VE, and unnumbered V zones.
[3] Residential Condominium Building Association Policies (RCBAP) are distinguished between High Rise (those structures that have 3 or more floors and 5 or more units) and Low Rise (those structures that have either less than 3 floors or less than 5 units).

* * * * *

Dated: January 23, 2003.

Anthony S. Lowe,

Administrator, Federal Insurance and Mitigation Administration.

[FR Doc. 03–2453 Filed 1–31–03; 8:45 am]

BILLING CODE 6718–03–P

Notices

Federal Register
Vol. 68, No. 22
Monday, February 3, 2003

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Intent To Prepare an Environmental Impact Statement for the Emigrant Wilderness Dams on the Stanislaus National Forest, Tuolumne County, CA

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The USDA Forest Service will prepare an Environmental Impact Statement (EIS) on a proposal to reconstruct, operate, and maintain 12 dams, to allow 6 dams to deteriorate naturally, and to restore 50–100 feet of the channel downstream from unit #7 on Long Lake in the Emigrant Wilderness on National Forest land in the county of Tuolumne.

The Stanislaus National Forest issued an EIS, ROD, and Forest Plan Amendment for the Emigrant Wilderness Management Direction on April 8, 1998. Because of subsequent administrative appeals, the Regional Forester later issued an appeal review decision. The "Emigrant Wilderness Management Direction" (April 2002) presents the current Emigrant Wilderness Management Direction, based on the original Forest Plan Amendment as modified through the appeal review process. In order to implement the Stanislaus National Forest Plan, specifically the Emigrant Wilderness Management Direction, there is a need to complete site-specific analyses and to determine if and how the 18 dams should be maintained or not maintained.

DATES: Submit comments on or before March 5, 2003.

The Draft EIS is expected to be filed with the Environmental Protection Agency (EPA) and to be available for public review during the fall of 2003. At that time, EPA will publish a Notice of Availability of the Draft EIS in the **Federal Register**. The comment period on the Draft EIS will be 45 days from the date the EPA publishes the Notice of Availability in the **Federal Register**. The Final EIS is scheduled to be completed in the winter of 2004.

ADDRESSES: Address all comments concerning this notice to the Stanislaus National Forest, ATTN: Emigrant Dams, 19777 Greenley Road, Sonora, CA 95370. E-mail comments may be sent to *jmaschi@fs.fed.us.*

FOR FURTHER INFORMATION CONTACT: John Maschi, Forest Planner, Stanislaus National Forest, (209) 532–3671 ext. 317.

SUPPLEMENTARY INFORMATION: The information presented in this notice is included to help the reviewer determine if they are interested in or potentially affected by the proposed action.

Background

Congress designated the 113,000 acre Emigrant Wilderness on January 3, 1975. Its borders include Yosemite National Park on the south, the Toiyabe National Forest on the east, and State Highway 108 on the north. The Emigrant Wilderness is an elongated area that trends northeast about 25 miles in length and up to 15 miles in width. Watersheds drain to the Stanislaus and Tuolumne rivers. The Wilderness is entirely within Tuolumne County.

Eighteen water control structures (dams) existed in the Emigrant Wilderness before its designation in 1975. Most of the dams were constructed in the 1920's and 1930's to develop a resident fishery. Prior to fish stocking by cattlemen during the 1890's, these high elevation lakes were naturally fishless. The original intent of most of the dams was to enhance downstream flows for fish habitat, not necessarily to promote lake fisheries. The remaining Emigrant Wilderness dams were built as late as 1951. The dams are composed mostly of rock and mortar (with the exception of one earth-filled dam). Because of the age and theme of some dams, seven are now eligible for the National Register of Historic Places.

Purpose and Need for Action

The Stanislaus National Forest issued an EIS, ROD, and Forest Plan Amendment for the Emigrant Wilderness Management Direction on April 8, 1998. Because of subsequent administrative appeals, the Regional Forester later issued an appeal review decision. The "Emigrant Wilderness Management Direction" (April 2002) presents the current Emigrant Wilderness Management Direction, based on the original Forest Plan Amendment as modified through the appeal review process.

In order to implement the Stanislaus National Forest Plan, specifically the Emigrant Wilderness Management Direction, there is a need to complete site-specific analyses and to determine if and how 18 dams should be maintained or not maintained.

Proposed Action

The Stanislaus National Forest proposes to reconstruct, operate, and maintain 12 dams in the Emigrant Wilderness. In addition, the Forest proposes to restore 50–100 feet of the channel downstream of Unit #7 on Long Lake. The Forest also proposes not to maintain six dams. These dams would be allowed to deteriorate naturally in order to restore natural processes. Attachment 1 provides a listing of the dams to be maintained and not maintained.

Reconstruction and standard maintenance would be completed using minimum tool and pack-it-in/pack-it-out philosophy and use native materials from the immediate vicinity (if available). No mechanized or motorized equipment would be used, materials would be packed in using livestock, and hand labor would be used for maintenance and reconstruction needs. Any temporary access routes to project sites would be designated by the Forest Service and decommissioned immediately following completion of the work. All activities would be conducted according to existing Forest Service law, regulation, policy, and direction (*e.g.* group size limits and campfire restrictions).

Standard maintenance of the 12 dams would also include, but not be limited to, log removal if the integrity of the structure were threatened, mortar replacement on the upstream face of the structure, and minor rock replacement.

Because no special funding is expected for this project, implementation would depend upon obtaining funds other than normal Forest Service appropriated dollars. Maintenance and reconstruction would

depend on funding and participation from interested partners, volunteers, etc.

The information below provides a summary of the proposed action which lists each of the 18 dams followed by:

a. Whether the dam is proposed to be maintained,

b. The initial activities proposed for the dam, and

c. Preliminary issues associated with the dam.

1. Cooper Meadow Dam

a. No maintenance.
b. No activities proposed.
c. Returning the area to natural processes.

2. Whitesides Meadow Dam

a. No maintenance.
b. No activities proposed.
c. Returning the area to natural processes.

3. Y-Meadow Dam

a. Maintain.
b. Replace outlet valve, control shaft/wheel, and sleeve outlet conduit and seal mortar on upstream face.
c. Habitat for Mountain yellow-legged frog (MYLF) and values of the proposed Wild & Scenic River (W&SR).

4. Bear Lake Dam

a. No maintenance.
b. No activities proposed.
c. Returning the area to natural processes, values of proposed W&SR, and wild trout fishery on Lower Clavey.

5. Long Lake Dam

a. Maintain.
b. Replace outlet valve, control shaft/wheel, and sleeve outlet conduit, repair control works well shaft, stabilize downstream base of Unit #7, and seal mortar on upstream face.
c. Historic values, recreational lake fishery, habitat for MYLF, and downstream flows for rainbow trout recruitment.

6. Lower Buck Lake Dam

a. Maintain.
b. Replace outlet valve, control shaft/wheel, and sleeve outlet conduit, log removal, and seal mortar on upstream face.
c. Historic values, downstream flows for rainbow trout recruitment, recreational lake fishery, and habitat for MYLF.

7. Red Can Lake Dam

a. No maintenance.
b. No activities proposed.
c. Returning the area to natural processes.

8. Leighton Lake Dam

a. Maintain.
b. Replace outlet valve, control shaft/wheel, and sleeve outlet conduit, disassemble and rebuild dam, construct control works well shaft, and seal mortar on upstream face.
c. Historic values and downstream self-sustaining fishery.

9. Yellowhammer Lake Dam

a. No maintenance.
b. No activities proposed.
c. Returning the area to natural processes.

10. High Emigrant Lake Dam

a. Maintain.
b. Replace outlet valve, control shaft/wheel, and sleeve outlet conduit, rebuild outlet control works well shaft, and seal mortar on upstream face.
c. Habitat for Yosemite toad (YT) and downstream flows for rainbow trout recruitment.

11. Emigrant Meadow Dam

a. Maintain.
b. Replace outlet valve, replace control shaft/wheel, insert plastic pipe into existing outlet conduit, and seal mortar on upstream face.
c. Historic values, habitat for YT, recreational lake fishery, and self-sustaining lake fishery.

12. Middle Emigrant Lake Dam

a. Maintain.
b. Rebuild failed left side of dam, insert plastic pipe into existing outlet conduit, replace outlet valve, and seal mortar on upstream face.
c. Habitat for MYLF, downstream flows for rainbow trout recruitment, and self-sustaining lake fishery.

13. Emigrant Lake Dam

a. Maintain.
b. Stabilize mortar downstream face of dam, repair spillway dike, and seal mortar on upstream face.
c. Historic values, recreational lake fishery, self-sustaining lake fishery, and downstream flows for rainbow trout recruitment.

14. Cow Meadow Lake Dam

a. Maintain.
b. Reconstruct entire Unit #1.
c. Habitat for MYLF and self-sustaining lake fishery.

15. Snow Lake Dam

a. Maintain.
b. Replace outlet valve, control shaft/wheel, and sleeve outlet conduit and seal mortar on upstream face.
c. Downstream self-sustaining fishery, recreational lake fishery, and habitat for MYLF.

16. Horse Meadow Dam

a. No maintenance.
b. No activities proposed.
c. Returning the area to natural processes.

17. Bigelow Lake Dam

a. Maintain.
b. Replace outlet valve, control shaft/wheel and sleeve outlet conduit, replace missing rocks, and seal mortar on upstream face.
c. Historic values, recreational lake fishery, and downstream flows for rainbow trout recruitment.

18. Huckleberry Lake Dam

a. Maintain.
b. Replace outlet valve, control shaft/wheel and sleeve outlet conduit, replace missing rocks, and seal mortar on upstream face.
c. Recreational lake fishery, self-sustaining lake fishery, and downstream recreational fishery.

Responsible Official

The Forest Supervisor, Stanislaus National Forest, is the Responsible Official.

Nature of Decision To Be Made

The Forest Supervisor, as Responsible Official, may decide to: (1) Select the proposed action, (2) select one of the alternatives, (3) select one of the alternatives after modifying the alternative with additional mitigating measures or combinations of activities from other alternatives, or (4) select the no action alternative and take no action at this time.

Comment Requested

The Forest Service would like to know of any issues, concerns, and suggestions you may have about this proposal. Comments should be as fully formed as possible to assist us in the analysis. If you have any questions, or if something is unclear, contact John Maschi at 209.532.3671 ext. 317 before submitting your comments. Although comments are welcome at any time, they will be most effective if received by March 5, 2003. Send comments to:

Stanislaus National Forest, ATTN: Emigrant Dams, 19777 Greenly Road, Sonora, CA 95370.

Alternately, e-mail your comments to *jmaschi@fs.fed.us.*

Authorization

National Environmental Policy Act of 1969 as amended (42 U.S.C. 4321–4346); Council on Environmental Quality Regulations (40 CFR parts 1500–1508); U.S. Department of Agriculture NEPA Policies and Procedures (7 CFR part 1b).

Reviewer's Obligation

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts the agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC,* 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel,* 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wisc. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the comment period so that substantive comments and objections are made available to the Forest Service at the time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewer may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points (Authority: 40 CFR 1501.7 and 1508.22; Forest Service Handbook 1909.15, Section 21).

Dated: January 24, 2003.

Tom Quinn,

Forest Supervisor, Stanislaus National Forest.

[FR Doc. 03–2275 Filed 1–31–03; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF COMMERCE

Census Bureau

Manufacturers' Shipments, Inventories, and Orders (M3) Survey

ACTION: Proposed collection; comment request

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before April 4, 2003.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dhynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to G. Daniel Sansbury, Census Bureau, FOB #4 Room 2232, Washington, DC 20233–6913, (301) 763–4834 or via the Internet at *g.daniel.sansbury@census.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

The Manufacturers' Shipments, Inventories, and Orders (M3) survey requests data from domestic manufacturers on form M–3(SD), which will be mailed at the end of each month. Data requested are shipments, new orders, unfilled orders, total inventory, materials and supplies, work-in-process, and finished goods. It is currently the only survey that provides broad-based monthly statistical data on the economic conditions in the domestic manufacturing sector.

The M3 survey is designed to measure current industrial activity and to provide an indication of future production commitments. The value of shipments measures the value of goods delivered during the month by domestic manufacturers. Estimates of new orders serve as an indicator of future production commitments and represent the current sales value of new orders received during the month, net of cancellations. Substantial accumulation or depletion of unfilled orders measures excess or deficient demand for manufactured products. The level of inventories, especially in relation to shipments, is frequently used to monitor the business cycle.

The estimated total annual burden hours have decreased from 24,000 to 13,860 due to a decrease in the number of respondents.

II. Method of Collection

Respondents submit data on form M–3(SD) via mail, facsimile machine, Touchtone Data Entry (TDE), Voice Recognition Entry (VRE), or via the Internet. Analysts call cooperative respondents who have not reported in time for preparing the monthly estimates.

III. Data

OMB Number: 0607–0008.
Form Number: M–3(SD).
Type of Review: Regular.
Affected Public: Businesses, large and small, or other for profit.
Estimated Number of Respondents: 3,500.
Estimated Time Per Response: .33 hour.
Estimated Total Annual Burden Hours: 13,860.
Estimated Total Annual Cost: $302,425.
Respondent's Obligation: Voluntary.
Legal Authority: Title 13, United States Code, sections 131 and 182.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: January 28, 2003.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 03–2362 Filed 1–31–03; 8:45 am]

BILLING CODE 3510–70–P

DEPARTMENT OF COMMERCE

Census Bureau

Survey of Income and Program Participation (SIPP) Wave 9 of the 2001 Panel

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before April 4, 2003.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *DHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Judith H. Eargle, Census Bureau, FOB 3, Room 3387, Washington, DC 20233–0001, (301) 763–3819.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Census Bureau conducts the SIPP which is a household-based survey designed as a continuous series of national panels. New panels are introduced every few years with each panel usually having durations of one to four years. Respondents are interviewed at 4-month intervals or "waves" over the life of the panel. The survey is molded around a central "core" of labor force and income questions that remain fixed throughout the life of the panel. The core is supplemented with questions designed to address specific needs, such as obtaining information about assets and liabilities, as well as expenses related to work, health care, and child support. These supplemental questions are included with the core and are referred to as "topical modules."

The SIPP represents a source of information for a wide variety of topics and allows information for separate topics to be integrated to form a single, unified database so that the interaction between tax, transfer, and other government and private policies can be examined. Government domestic-policy formulators depend heavily upon the SIPP information concerning the distribution of income received directly as money or indirectly as in-kind benefits and the effect of tax and transfer programs on this distribution. They also need improved and expanded data on the income and general economic and financial situation of the U.S. population. The SIPP has provided these kinds of data on a continuing basis since 1983 permitting levels of economic well-being and changes in these levels to be measured over time.

The 2001 Panel is currently scheduled for three years and will include nine waves of interviewing beginning February 2001. Approximately 50,000 households will be selected for the 2001 Panel, of which 37,500 are expected to be interviewed. We estimate that each household will contain 2.1 people, yielding 78,750 interviews in Wave 1 and subsequent waves. Interviews take 30 minutes on average. One wave of interviewing will occur in the 2001 SIPP Panel during FY 2004. The total annual burden for the 2001 Panel SIPP interviews would be 39,375 hours in FY 2004.

The topical modules for the 2001 Panel Wave 9 collect information about:

- Medical Expenses and Utilization of Health Care (Adults and Children).
- Work Related Expenses and Child Support Paid.
- Assets, Liabilities, and Eligibility.

Wave 9 interviews will be conducted from October 2003 through January 2004.

A 10-minute reinterview of 2,500 people is conducted at each wave to ensure accuracy of responses. Reinterviews would require an additional 418 burden hours in FY 2004.

II. Method of Collection

The SIPP is designed as a continuing series of national panels of interviewed households that are introduced every few years with each panel having durations of one to four years. All household members 15 years old or over are interviewed using regular proxy-respondent rules. During the 2001 Panel, respondents are interviewed a total of nine times (nine waves) at 4-month intervals making the SIPP a longitudinal survey. Sample people (all household members present at the time of the first interview) who move within the country and reasonably close to a SIPP primary sampling unit will be followed and interviewed at their new address. Individuals 15 years old or over who enter the household after Wave 1 will be interviewed; however, if these individuals move, they are not followed unless they happen to move along with a Wave 1 sample individual.

III. Data

OMB Number: 0607–0875.
Form Number: SIPP/CAPI Automated Instrument.
Type of Review: Regular.
Affected Public: Individuals or households.
Estimated Number of Respondents: 78,750 people per wave.
Estimated Time Per Response: 30 minutes per person, on average.
Estimated Total Annual Burden Hours: 39,793.
Estimated Total Annual Cost: The only cost to respondents is their time.
Respondent's Obligation: Voluntary.
Legal Authority: Title 13, United States Code, section 182.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized or included in the request for the Office of Management and Budget approval of this information collection. They also will become a matter of public record.

Dated: January 28, 2003.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 03–2363 Filed 1–31–03; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 50–2002]

Foreign-Trade Zone No. 2, Application for Expansion, Amendment of Application

Notice is hereby given that the application of the Board of Commissioners of the Port of New Orleans (the Port), grantee of FTZ 2, for

authority to expand FTZ 2 in the New Orleans, Louisiana area (Doc. 50–2002, 67 FR 70047, 11/20/02), has been amended to include 3 new parcels (6 acres total) located at 1883 Tchoupitoulas Street (2 acres), 2311 Tchoupitoulas Street (2 acres), and 2940 Royal Street (2 acres) New Orleans, Louisiana. The new parcels will be designated as Site 5—Parcels 33, 34, and 35, respectively, and will be operated by Port Cargo Services, Inc. The application otherwise remains unchanged.

Comments on the change may be submitted to the Foreign-Trade-Zones Board, U.S. Department of Commerce, FCB—Suite 4100W, 1401 Constitution Ave., NW., Washington, DC 20230, by February 18, 2003.

Dated: January 22, 2003.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 03–2439 Filed 1–31–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 6–2003]

Foreign-Trade Zone 40—Cleveland, OH, Area Application for Expansion

An application has been submitted to the Foreign-Trade Zones (FTZ) Board (the Board), by the Cleveland-Cuyahoga County Port Authority, grantee of Foreign-Trade Zone 40, requesting authority to expand its zone in the Cleveland, Ohio, area, within the Cleveland Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on January 23, 2003.

FTZ 40 was approved on September 29, 1978 (Board Order 135, 43 FR 46886, 10/11/78) and expanded in June 1982 (Board Order 194, 47 FR 27579, 6/25/82); April 1992 (Board Order 574, 57 FR 13694, 4/17/92); February 1997 (Board Order 870, 62 FR 7750, 2/20/97); June 1999 (Board Order 1040, 64 FR 33242, 6/22/99); and, April 2002 (Board Order 1224, 67 FR 20087, 4/15/02). The general-purpose zone project currently consists of the following sites in the Cleveland, Ohio, area: *Site 1* (94 acres)—Port of Cleveland complex on Lake Erie at the mouth of the Cuyahoga River, Cleveland; *Site 2* (175 acres)—the IX Center (formerly the "Cleveland Tank Plant"), in Brook Park, adjacent to the Cleveland Hopkins International Airport; *Site 3* (1,900 acres)—Cleveland Hopkins International Airport complex; *Site 4* (450 acres)—Burke Lakefront Airport, 1501 North Marginal Road, Cleveland; *Site 5* (298 acres)—Emerald Valley Business Park, Cochran Road and Beaver Meadow Parkway, Glenwillow; *Site 6* (30 acres)—Collinwood site, South Waterloo (South Marginal) Road and East 152nd Street, Cleveland; *Site 7* (47 acres)—Water Tower Industrial Park, Coit Road and East 140th Street, Cleveland; *Site 8* (83 acres)—Strongsville Industrial Park, Royalton Road (State Route 82), Strongsville; *Site 9* (13 acres)—East 40th Street between Kelley & Perkins Avenues (3830 Kelley Avenue), Cleveland; and, *Site 10* (15 acres)—Frane Industrial Park, Forman Road, Ashtabula. An application is pending with the FTZ Board to expand existing Site 3 to include the contiguous Snow Road Industrial Park (Docket 38–2002).

The applicant is now requesting authority to expand existing Site 1 by adding two non-contiguous public warehouse/distribution and manufacturing facilities: *Proposed Site 1b* (45 acres)—Cleveland Bulk Terminal (owned by the applicant), 5500 Whiskey Island Drive, Cleveland; and, *Proposed Site 1c* (1,200 acres)—Tow Path Valley Business Park, located on both the east and west banks of the Cuyahoga River, with its borders extending approximately between Jennings Road on the south, to Upper Campbell Road on the east, to I–490/I–77/Dille Road on the north, to W. 14th Street to the west, Cleveland. (Existing Site 1 would be redesignated as Site 1a.) Proposed Site 1b functions as an adjunct of the primary break-bulk and vessel container operations of the maritime facilities of the Port of Cleveland. Proposed Site 1c is a new industrial park related to an inner-city industrial redevelopment project at the former facilities of the LTV Steel Company. No steel-making or steel processing facilities are included within this proposal. The Tow Path Valley Business Park Development Company is the developer and operator of the site. Both sites will provide public warehousing and distribution services to area businesses. The Tow Path site will also offer sites suitable for manufacturing activity, though no specific manufacturing requests are being made at this time. Such requests would be made to the Board on a case-by-case basis.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at one of the following addresses:

1. Submissions via Express/Package Delivery Services: Foreign-Trade Zones Board, U.S. Department of Commerce, Franklin Court Building, Suite 4100W, 1099 14th Street, NW., Washington, DC 20005.

2. Submissions via the U.S. Postal Service: Foreign-Trade Zones Board, U.S. Department of Commerce, FCB-Suite 4100W, 1401 Constitution Avenue, NW., Washington, DC 20230.

The closing period for their receipt is April 4, 2003. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to April 21, 2003).

A copy of the application and accompanying exhibits will be available during this time for public inspection at address Number 1 listed above, and at the U.S. Department of Commerce Export Assistance Center, 600 Superior Avenue East, Suite 700, Cleveland, OH 44114.

Dated: January 23, 2003.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 03–2441 Filed 1–31–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1266]

Expansion of Foreign-Trade Zone 12, McAllen, Texas

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the McAllen Economic Development Corporation, grantee of Foreign-Trade Zone 12, submitted an application to the Board for authority to expand FTZ 12-Site 1 to include two additional parcels (90 acres) at the McAllen Southwest Industrial Area in Hidalgo County, Texas, within the Hidalgo/Pharr Customs port of entry (FTZ Docket 27–2002; filed 6/11/02);

Whereas, notice inviting public comment was given in the **Federal Register** (67 FR 41394, 6/18/02) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations are satisfied, and that the proposal is in the public interest;

Now, therefore, the Board hereby orders:

The application to expand FTZ 12–Site 1 is approved, subject to the Act and the Board's regulations, including Section 400.28.

Signed at Washington, DC, this 21st day of January 2003.

Faryar Shirzad,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 03–2442 Filed 1–31–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 8–2003]

Foreign-Trade Zone 62—Brownsville, Texas; Application for Expansion

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Brownsville Navigation District, grantee of Foreign-Trade Zone 62, requesting authority to expand its zone to include an additional site in the Brownsville, Texas, area, within the Brownsville/Los Indios Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on January 24, 2003.

FTZ 62 was approved on October 20, 1980 (Board Order 166, 45 FR 71638, 10/29/80) and expanded on September 30, 1983 (Board Order 226, 48 FR 45814, 10/7/83) and on October 24, 1989 (Board Order 444, 54 FR 46098, 11/1/89). The zone project currently consists of three sites (2,281 acres) in the Brownsville area: *Site 1* (1,971 acres) within the 21,000-acre developable portion of the 42,000-acre Brownsville Navigation District (includes the 71-acre NAFTA Industrial Park, located at 6984 N. FM 511); *Site 2* (3 parcels, 193 acres) within the Valley International Airport located on Rio Hondo Road, Harlingen: Parcel A (123 acres) within the Harlingen Industrial Airpark; and, Parcel B (55 acres) & Parcel C (15 acres) located on the west side of the airport; *Site 3* (3 parcels, 117 acres) within the 3,000-acre Harlingen Industrial Park II, Harlingen: Parcel A (91 acres) located at FM 106 and FM 1595; and, Parcel B (7 acres) & Parcel C (18 acres) located at FM 106; and, a *Temporary Site* (8 acres) located at 1101 Joaquin Cavazos Road, within the FINSA Industrial Park, Los Indios (expires 4/1/03).

The applicant is now requesting authority to expand the general-purpose zone to include an additional site at the FINSA Industrial Park (*Proposed Site 4*—4 parcels, 758 acres) located at 1101 Joaquin Cavazos Road, Los Indios. The proposed site will also include the temporary site. The applicant is also requesting that 10 acres at Site 2–Parcel A (Harlingen Industrial Airpark) be restored to zone status. No specific manufacturing authority is being requested at this time. Such requests would be made to the Board on a case-by-case basis.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at one of the addresses below: ZZzx

1. *Submissions via Express/Package Delivery Services:* Foreign-Trade Zones Board, U.S. Department of Commerce, Franklin Court Building—Suite 4100W, 1099 14th Street, NW., Washington, DC 20005; or

2. *Submissions via the U.S. Postal Service:* Foreign-Trade Zones Board, U.S. Department of Commerce, FCB—Suite 4100W, 1401 Constitution Avenue, NW., Washington, DC 20230.

The closing period for their receipt is April 4, 2003. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to April 21, 2003).

A copy of the application and accompanying exhibits will be available for public inspection at the Office of the Foreign-Trade Zones Board's Executive Secretary at the first address listed above, and at the Port of Brownsville, Brownsville Navigation District, 1000 Foust Road, Brownsville, TX 78521.

Dated: January 24, 2003.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 03–2440 Filed 1–31–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Opportunity to Request Administrative Review of Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation.

Background

Each year during the anniversary month of the publication of an antidumping or countervailing duty order, finding, or suspension of investigation, an interested party, as defined in section 771(9) of the Tariff Act of 1930, as amended (the Act), may request, in accordance with section 351.213(2002) of the Department of Commerce (the Department) Regulations, that the Department conduct an administrative review of that antidumping or countervailing duty order, finding, or suspended investigation.

Opportunity To Request a Review

Not later than the last day of February 2003, interested parties may request administrative review of the following orders, findings, or suspended investigations, with anniversary dates in February for the following periods:

	Period
Antidumping Duty Proceedings Period	
Brazil: Stainless Steel Bar, A–351–825	2/1/02—1/31/03
France:	
Certain Cut-to-Length Carbon-Quality Steel Plate, A–427–816	2/1/02—1/31/03
Low Enriched Uranium, A–427–818	7/13/01—1/31/03
Germany: Sodium Thiosulfate, A–428–807	2/1/02—1/31/03
India:	

	Period
Certain Cut-to-Length Carbon-Quality Steel Plate, A–533–817	2/1/02—1/31/03
Forged Stainless Steel Flanges, A–533–809	2/1/02—1/31/03
Stainless Steel Bar, A–533–810	2/1/02—1/31/03
Certain Preserved Mushrooms, A–533–813	2/1/02—1/31/03
Indonesia:	
Certain Cut-to-Length Carbon-Quality Steel Plate, A–560–805	2/1/02—1/31/03
Certain Preserved Mushrooms, A–560–802	2/1/02—1/31/03
Italy:	
Certain Cut-to-Length Carbon-Quality Steel Plate, A–475–826	2/1/02—1/31/03
Stainless Steel Butt-Weld Pipe Fittings, A–475–828	2/1/02—1/31/03
Japan:	
Carbon Steel Butt-Weld Pipe Fittings, A–588–602	2/1/02—1/31/03
Certain Cut-to-Length Carbon-Quality Steel Plate, A–588–847	2/1/02—1/31/03
Mechanical Transfer Presses, A–588–810	2/1/02—1/31/03
Melamine In Crystal Form, A–588–056	2/1/02—1/31/03
Stainless Steel Bar, A–588–833	2/1/02—1/31/03
Malaysia: Stainless Steel Butt-Weld Pipe Fittings, A–557–809	2/1/02—1/31/03
Mexico: Welded Large Diameter Line Pipe, A–201–828	8/15/01—1/31/03
Philippines: Stainless Steel Butt-Weld Pipe Fittings, A–565–801	2/1/02—1/31/03
Republic of Korea:	
Certain Cut-to-Length Carbon-Quality Steel Plate, A–580–836	2/1/02—1/31/03
Stainless Steel Butt-Weld Pipe Fittings, A–580–813	2/1/02—1/31/03
Taiwan: Forged Stainless Steel Flanges, A–583–821	2/1/02—1/31/03
The People's Republic of China:	
Axes/adzes, A–570–803	2/1/02—1/31/03
Bars/wedges, A–570–803	2/1/02—1/31/03
Certain Preserved Mushrooms, A–570–851	2/1/02—1/31/03
Coumarin, A–570–830	2/1/02—1/31/03
Creatine Monohydrate, A–570–852	2/1/02—1/31/03
Hammers/sledges, A–570–803	2/1/02—1/31/03
Natural Bristle Paint Brushes and Brush Heads, A–570–501	2/1/02—1/31/03
Picks/mattocks, A–570–803	2/1/02—1/31/03
Sodium Thiosulfate, A–570–805	2/1/02—1/31/03
The United Kingdom: Sodium Thiosulfate, A–412–805	2/1/02—1/31/03
Countervailing Duty Proceedings	
France:	
Certain Cut-to Length Carbon Quality Steel Plate, C–427–817	1/1/02—12/31/02
Low Enriched Uranium, C–427–819	5/14/01—12/31/02
Germany: Low Enriched Uranium, C–428–829	5/14/01—12/31/02
India: Certain Cut-to-Length Carbon-Quality Steel Plate, C–533–818	1/1/02—12/31/02
Indonesia: Certain Cut-to-Length Carbon-Quality Steel Plate, C–560–806	1/1/02—12/31/02
Italy: Certain Cut-to-Length Carbon-Quality Steel Plate, C–475–827	1/1/02—12/31/02
Netherlands: Low Enriched Uranium, C–421–809	5/14/01—12/31/02
Republic of Korea: Certain Cut-to-Length Carbon-Quality Steel Plate, C–580–837	1/1/02—12/31/02
The United Kingdom: Low Enriched Uranium, C–412–821	5/14/01—12/31/02
Suspension Agreements	
None.	

In accordance with section 351.213(b) of the regulations, an interested party as defined by section 771(9) of the Act, may request in writing that the Secretary conduct an administrative review. For both antidumping and countervailing duty reviews, the interested party must specify the individual producers or exporters covered by an antidumping finding or an antidumping or countervailing duty order or suspension agreement for which it is requesting a review, and the requesting party must state why it desires the Secretary to review those particular producers or exporters. If the interested party intends for the Secretary to review sales of merchandise by an exporter (or a producer if that producer also exports merchandise from other suppliers) which were produced in more than one country of origin and each country of origin is subject to a separate order, then the interested party must state specifically, on an order-by-order basis, which exporter(s) the request is intended to cover.

Six copies of the request should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, Room 1870, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW, Washington, DC 20230. The Department also asks parties to serve a copy of their requests to the Office of Antidumping/Countervailing Enforcement, Attention: Sheila Forbes, in room 3065 of the main Commerce Building. Further, in accordance with section 351.303(f)(l)(i) of the regulations, a copy of each request must be served on every party on the Department's service list.

The Department will publish in the **Federal Register** a notice of "Initiation of Administrative Review of Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation" for requests received by the last day of February 2003. If the Department does not receive, by the last day of February 2003, a request for review of entries covered by an order, finding, or suspended investigation listed in this notice and for the period identified above, the Department will instruct the Customs Service to assess antidumping or countervailing duties on those entries at a rate equal to the cash deposit of (or bond for) estimated antidumping or countervailing duties required on those entries at the time of

entry, or withdrawal from warehouse, for consumption and to continue to collect the cash deposit previously ordered.

This notice is not required by statute but is published as a service to the international trading community.

Dated: January 29, 2003.

Holly A. Kuga,

Senior Office Director, Group II, Office 4, Import Administration.

[FR Doc. 03–2446 Filed 1–31–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Howard Hughes Medical Institute; Notice of Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 A.M. and 5 P.M. in Suite 4100W, U.S. Department of Commerce, Franklin Court Building, 1099 14th Street, NW., Washington, DC.

Docket Number: 02–049. *Applicant:* Howard Hughes Medical Institute at New York University, New York, NY 10003. *Instrument:* Multisync Clinton Monoray monitor and FE–1 Goggles. *Manufacturer:* Cambridge Research Systems Ltd., United Kingdom. *Intended Use:* See notice at 67 FR 77749, December 19, 2002.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States. *Reasons:* The foreign instrument provides special goggles with rapid response time and a matched CRT display with very fast phosphors to obtain right eye/left eye image extinction values below 0.1% for study of stereopsis. The National Institutes of Health advises in its memorandum of December 10, 2002 that (1) this capability is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

We know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

Gerald A. Zerdy,

Program Manager, Statutory Import Programs Staff.

[FR Doc. 03–2447 Filed 1–31–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

National Institutes of Health—Bethesda, MD; Notice of Decision on Application for Duty-Free Entry of Electron Microscope

This is a decision pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 A.M. and 5 P.M. in Suite 4100W, U.S. Department of Commerce, Franklin Court Building, 1099 14th Street, NW., Washington, DC.

Docket Number: 02–047. *Applicant:* National Institutes of Health, Bethesda, MD 20892–8025. *Instrument:* Electron Microscope, Model Tecnai 12 TWIN. *Manufacturer:* FEI Company, The Netherlands. *Intended Use:* See notice at 67 FR 77749, December 19, 2002. *Order Date:* September 16, 2002.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as the instrument is intended to be used, was being manufactured in the United States at the time the instrument was ordered. *Reasons:* The foreign instrument is a conventional transmission electron microscope (CTEM) and is intended for research or scientific educational uses requiring a CTEM. We know of no CTEM, or any other instrument suited to these purposes, which was being manufactured in the United States at the time of order of the instrument.

Gerald A. Zerdy,

Program Manager, Statutory Import Programs Staff.

[FR Doc. 03–2448 Filed 1–31–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

North American Free-Trade Agreement, Article 1904; NAFTA Panel Reviews; Request for Panel Review

AGENCY: NAFTA Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Notice of first request for panel review.

SUMMARY: On January 27, 2003, CEMEX, S.A. de C.V. ("CEMEX") filed a first request for panel review with the United States Section of the NAFTA Secretariat pursuant to Article 1904 of the North American Free Trade Agreement. Panel review was requested of the 11th administrative review made by the International Trade Administration, respecting Gray Portland Cement and Clinker from Mexico. This determination was published in the **Federal Register** (68 FR 1816) on January 14, 2003. The NAFTA Secretariat has assigned Case Number USA–MEX–2003–1904–01 to this request.

FOR FURTHER INFORMATION CONTACT: Caratina L. Alston, United States Secretary, NAFTA Secretariat, Suite 2061, 14th and Constitution Avenue, Washington, DC 20230, (202) 482–5438.

SUPPLEMENTARY INFORMATION: Chapter 19 of the North American Free-Trade Agreement ("Agreement") establishes a mechanism to replace domestic judicial review of final determinations in antidumping and countervailing duty cases involving imports from a NAFTA country with review by independent binational panels. When a request for panel review is filed, a panel is established to act in place of national courts to review expeditiously the final determination to determine whether it conforms with the antidumping or countervailing duty law of the country that made the determination.

Under Article 1904 of the Agreement, which came into force on January 1, 1994, the government of the United States, the government of Canada and the government of Mexico established *Rules of Procedure for Article 1904 Binational Panel Reviews* ("rules"). These rules were published in the **Federal Register** on February 23, 1994 (59 FR 8686).

A first request for panel review was filed with the United States Section of the NAFTA Secretariat, pursuant to Article 1904 of the Agreement, on January 27, 2003, requesting panel review of the determination described above.

The rules provide that:

(a) A party or interested person may challenge the final determination in whole or in part by filing a complaint in accordance with rule 39 within 30 days after the filing of the first request for panel review (the deadline for filing a complaint is February 26, 2003);

(b) A party, investigating authority or interested person that does not file a complaint but that intends to appear in support of any reviewable portion of the final determination may participate in the panel review by filing a notice of appearance in accordance with rule 40 within 45 days after the filing of the first request for panel review (the deadline for filing a notice of appearance is March 13, 2003); and

(c) The panel review shall be limited to the allegations of error of fact or law, including the jurisdiction of the investigating authority, that are set out in the complaints filed in the panel review and the procedural and substantive defenses raised in the panel review.

Dated: January 28, 2003.

Caratina L. Alston,

United States Secretary, NAFTA Secretariat.

[FR Doc. 03–2361 Filed 1–31–03; 8:45 am]

BILLING CODE 3510–GT–U

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 010603D]

Endangered and Threatened Species; Take of Anadromous Fish

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Issuance of permit 1413 to Charlotte Ambrose.

SUMMARY: Notice is given that NMFS has issued permit 1413 to Charlotte Ambrose, of the NMFS Protected Resources Division in Santa Rosa, California, that authorizes takes of Endangered Species Act-listed anadromous fish species for research purposes, subject to certain conditions set forth therein.

ADDRESSES: The applications and related documents are available for review in the following offices, by appointment:

For permit 1413: Protected Resources Division, NMFS, 777 Sonoma Avenue, Room 325, Santa Rosa, CA 95404–6528.

FOR FURTHER INFORMATION CONTACT: For permit 1413: Daniel Logan, Protected Resources Division, NMFS, Santa Rosa, CA, (707) 575–6053, or e-mail: *dan.logan@noaa.gov*.

SUPPLEMENTARY INFORMATION:

Species Covered in This Notice:

The following species and evolutionarily significant units (ESU's) are covered in this notice: Chinook salmon (*Oncorhynchus tshawytscha*), coho salmon (*O. kisutch*), and steelhead (*O. mykiss*).

Issuance of this permit, as required by the ESA, was based on a finding that such modification was: (1) applied for in good faith; (2) would not operate to the disadvantage of the listed species which are the subject of the permit; and (3) are consistent with the purposes and policies set forth in section 2 of the ESA. This permit was issued in accordance with and is subject to part 222 of title 50 CFR, the NMFS regulations governing listed species permits.

The applicant's proposed activities are in support of a potential ESA violation enforcement action. The applicant proposes field investigations to document the potential harm or injury to ESA-listed salmonids within the California Coastal (CC) Chinook salmon Evolutionarily Significant Unit (ESU), the Southern Oregon/Northern California Coasts (SONCC) coho salmon ESU, and the Northern California (NC) steelhead ESU.

The NMFS SWR believes that because the health and life of the animals are in danger, the issuance of permit 1413 is an urgent action and sufficient to qualify as an emergency situation consistent with CFR 222.303(g).

Permit Issued

Permit 1413 was issued on December 11, 2002.

Charlotte Ambrose is authorized to capture and handle ESA- listed salmonids within the CC Chinook salmon ESU, the SONCC coho salmon ESU, and the NC steelhead ESU.

The expiration date of Permit 1413 is June 30, 2003.

Dated: January 8, 2003.

Phil Williams,

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 03–2412 Filed 1–31–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 010803B]

Permit 1233 Modification

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration, Commerce

ACTION: Issuance of Modification 1 to Permit 1233.

SUMMARY: NMFS has issued a permit 1233 to the State of Idaho Department of Fish and Game (IDFG).

ADDRESSES: Copies of the permit may be obtained from the Hatcheries and Inland Fisheries Branch, Sustainable Fisheries Division, NMFS, 525 N.E. Oregon Street, Suite 510, Portland, OR 97232.

FOR FURTHER INFORMATION CONTACT: Herbert Pollard, Boise, Idaho, at phone number: (208) 378–5614, e-mail: *Herbert.Pollard@noaa.gov*.

SUPPLEMENTARY INFORMATION: The following species and evolutionarily significant units (ESUs) are covered in this notice:

Spring/summer chinook salmon (*Oncorhynchus tshawytscha*): threatened Snake River;

Fall chinook salmon (*Oncorhynchus tshawytscha*): threatened Snake River;

Sockeye salmon (*Oncorhynchus nerka*): endangered Snake River; and

Steelhead (*Oncorhynchus mykiss*): threatened Snake River.

Permits

Permit 1233 was issued to IDFG on May 26, 2000, and Modification 1 to permit 1233 was issued to IDFG on December 6, 2002. Permit 1233 authorizes IDFG annual incidental take of naturally produced and artificially propagated ESA-listed anadromous fish associated with the operation of recreational fisheries that target non-listed, hatchery-origin anadromous fish and resident game fish species. Permit 1233 expires December 31, 2004.

Permit 1233 authorizes IDFG's recreational fishing programs including the following activities: (1) Resident sport-fishing in waters which also support ESA-listed chinook and sockeye salmon under the IDFG General Fishing Regulations, including kokanee and trout fisheries in Redfish, Alturas, and Pettit Lakes; (2) chinook salmon sport-fishing in the Clearwater River, Snake River, lower Salmon River, Little Salmon River, and South Fork Salmon River under the IDFG Anadromous Salmon Fishing Regulations; and (3) summer steelhead fishing during the fall and spring seasons under the IDFG Steelhead Fishing Regulations. The permit constitutes authorization for implementation of the IDFG General Fishing Regulations, the IDFG Anadromous Salmon Fishing Regulations, and the IDFG Steelhead Fishing Regulations. Modification 1 to permit 1233 includes additional authorized locations for conducting the state's recreational chinook salmon

fisheries and authorization of incidental take of steelhead resulting from the authorized recreational fisheries. When permit 1233 was issued on May 26, 2000, no take prohibitions had been established for Snake River steelhead. Anticipating that a 4(d) rule would soon be published, a provision was made to amend the permit when protective rules were published. Protective regulations for threatened Snake River steelhead under Section 4(d) of the ESA were promulgated by NMFS, effective September 8, 2000 (July 10, 2000, 65 FR 42422). Recreational fisheries are monitored in a manner that allows evaluation of the effectiveness of protective regulations and conservation strategies. Take of listed species may occur incidental to otherwise legal fishing activities or illegal actions. Measures are described in the permit to minimize such deleterious effects to the extent possible.

Modification 1 of permit 1233 authorizes take of ESA-listed Snake River Basin steelhead as a result of catch-and-release fisheries, with an associated incidental mortality of 3.2 percent of the natural origin return. The modification further authorizes take of ESA-listed Snake River spring chinook salmon of up to 2.0% of the naturally-produced return to Lower Granite Dam; this take limit applies when the return is greater than 25,000 adults, and decreases on a sliding scale for progressively smaller returns. No additional take of ESA-listed Snake River fall chinook or sockeye salmon is authorized. NMFS has determined that take levels authorized in the modified permit will not jeopardize listed salmon and steelhead nor result in the destruction or adverse modification of critical habitat where described.

NMFS' conditions in the permit will ensure that the take of ESA-listed anadromous fish will not jeopardize the continued existence of the listed species. In issuing the permits, NMFS determined that IDFG's Conservation Plan provides adequate mitigation measures to avoid, minimize, or compensate for take of ESA-listed anadromous fish.

Issuance of this permit, as required by the ESA, was based on a finding that the permit: (1) was applied for in good faith; (2) will not operate to the disadvantage of the listed species which are the subject of the permit; and (3) is consistent with the purposes and policies set forth in section 2 of the ESA. This permit was issued in accordance with, and is subject to, 50 CFR part 222, the NMFS regulations governing listed species permits.

Dated: January 24, 2003.

Phil Williams,

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 03–2411 Filed 1–31–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 012803A]

Pacific Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Pacific Fishery Management Council's (Council) Ad Hoc Groundfish Habitat Technical Review Committee (Habitat TRC) will hold a working meeting on the methodology and data being considered for an assessment of Pacific Coast groundfish essential fish habitat. The meeting is open to the public.

DATES: The Ad Hoc Groundfish Habitat Technical Review Committee working meeting will take place Wednesday, February 19, 2003, from 9 a.m. until 5 p.m. The meeting will reconvene from 8 a.m. to 5 p.m. Thursday, February 20.

ADDRESSES: The meeting will be held at the U.S. Department of Commerce, NOAA, 7600 Sand Point Way NE, Building 9 (NOAA Auditorium), Seattle, WA 98115–6349; (206) 526–6150. To gain admittance to the complex, visitors should tell the security guard they are attending the Ad Hoc Groundfish Habitat Technical Review Committee meeting sponsored by the Pacific Fishery Management Council.

Council address: Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 200, Portland, OR 97220–1384.

FOR FURTHER INFORMATION CONTACT: Ms. Jennifer Gilden; (503) 820–2280.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is to guide the ongoing assessment of essential fish habitat for Pacific Coast groundfish. Specifically, the Habitat TRC will review data consolidated thus far and review a proposed analytical framework for assessing the status of groundfish habitat. The data include mapping efforts and literature reviews on fishing impacts, impacts related to non-fishing activities, and fish/habitat associations. The analytical framework for the assessment has been designed to determine if habitat function has been degraded by environmental and anthropogenic inputs. In so doing, it will provide a basis for informed policy discussions. By holding a public meeting, the Habitat TRC will further provide opportunity for public participation in the assessment process. The Habitat TRC will only consider technical and scientific questions related to the assessment and will not engage in policy discussions as part of its mission.

Although nonemergency issues not contained in the meeting agenda may come before the Habitat TRC for discussion, those issues may not be the subject of formal Habitat TRC action during this meeting. Habitat TRC action will be restricted to those issues specifically listed in this document and any issues arising after publication of this document that require emergency action under section 305 (c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Habitat TRC's intent to take final action to address the emergency.

In our continuing efforts to streamline our meeting notification process, we are building an email notification list. If you would like to be notified of future meetings via email, please contact Ms. Kerry Aden at (503) 820–2409 or *kerry.aden@noaa.gov* to provide your email address.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Ms. Diane Marston at (206)526–6383 at least 5 days prior to the meeting date.

Dated: January 28, 2003.

Theophilus R. Brainerd,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 03–2410 Filed 1–31–03; 8:45 am]

BILLING CODE 3510–22–S

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Sunshine Act Meeting

The Board of Directors of the Corporation for National and Community Service gives notice of the following meeting:

DATE AND TIME: Tuesday, February 11, 2003, 9:15 a.m.–12 p.m.

PLACE: Corporation for National and Community Service, 1201 New York

Avenue, NW., 8th Floor, Room 8410, Washington, DC 20525.

STATUS: Open.

MATTERS TO BE CONSIDERED:

I. Chair's Opening Remarks.
II. Consideration of Prior Meeting's Minutes.
III. Committee Reports.
IV. Youth and State Service Commissions Panel Presentation.
V. White House Task Force on Disadvantaged Youth.
VI. Martin Luther King, Jr. Day of Service—Philadelphia, PA.
VII. National Association of Service Conservation Corps.

ACCOMMODATIONS: Anyone who needs an interpreter or other accommodation should notify the Corporation's contact person.

CONTACT PERSON FOR MORE INFORMATION: Michele Tennery, Senior Associate, Public Affairs, Corporation for National and Community Service, 8th Floor, Room 8601, 1201 New York Avenue NW., Washington, DC 20525. Phone (202) 606–5000 ext. 125. Fax (202)565–2784. TDD: (202) 565–2799. E-mail: *mtennery@cns.gov*.

Dated: January 30, 2003.

Frank R. Trinity,

General Counsel.

[FR Doc. 03–2518 Filed 1–30–03; 11:43 am]

BILLING CODE 6050–$$–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Proposed Collection; Comment Request

AGENCY: Defense Security Service, Office of the Secretary, DoD.

ACTION: Notice.

In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Defense Security Service (DSS) announces the proposed collection affecting cleared DOD contractors and seeks public comments on the provision thereof. Comments are invited on: (a) Whether the proposed collection shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the information to be collected; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by April 4, 2003.

ADDRESSES: Written comments and recommendations on the proposed information collection should be sent to Defense Security Service, Chief, Program Integration Branch, ATTN: Mr. Richard L. Lawhorn, 1340 Braddock Place, Alexandria, VA 22314–1650.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed data collection or obtain a copy of the proposal and associated collection instrument, please write to the above address, or call Defense Security Service, (703) 325–5327 or (703) 325–6034.

Title and OMB Number: "Defense Security Industrial Security Review Data", OMB No. 0704–XXXX and "Defense Security Service Industrial Security Facility Clearance Survey Data", OMB No. 0704–XXXX.

Needs and Uses: Executive Order (EO) 12829, "National Industrial Security Program (NISP)", dated January 6, 1993, as amended by EO 12885 dated December 14, 1993, established the NISP to safeguard Federal Government classified information. The Department of Defense (DOD) is one of four Cognizant Security Agencies that are signatories to the NISP. EO 12829 stipulates that the Secretary of Defense shall serve as the Executive Agent for inspecting and monitoring the contractors, licensees, and grantees who require or will require access, to or who store or will store classified information; and for determining the eligibility for access to classified information of contractors, licensees, and grantees and their respective employees. The specific requirements necessary to protect classified information released to private industry are set forth in DOD 5220.22M, "National Industrial Security Program Operating Manual (NISPOM). The Executive agent has the authority to issue, after consultation with affected agencies, standard forms or other standardization that will promote the implementation of the NISP. DOD Contractors are subject to an initial facility clearance survey and periodic government security reviews to determine their eligibility to participate in the NISP and ensure that safeguards employed are adequate for the protection of classified information.

DOD Directive, 5105.42 "Subject: Defense Security Service", delineates the mission, functions and responsibilities of DSS. DSS is an Agency of the Department of Defense under the authority, direction, and control of the Assistant Secretary of Defense (Command, Control, Communication and Intelligence) (ASD (C3I)). DSS functions and responsibilities include the administration and implementation of the Defense portion of the NISP pursuant to Executive Order 12829.

DSS is the office of record for the maintenance of information pertaining to contractor facility clearance records and industrial security information regarding cleared contractors under its cognizance. To the extent possible, information required as part of the survey or security review is obtained as a result of observation by the representative of the CSA or its designated Cognizant Security Office. Some of the information may be obtained in conference with Key Management Personnel and/or employees of the company. The information is used to respond to all inquires regarding the facility clearance status and storage capability of cleared contractors. It is also used to assess and/or advise Government Contracting Activities regarding the contractor's continued ability to protect classified information.

Affected Public: Businesses, universities, partnerships or other profit and non-profit organizations participating in the Defense portion of the NISP.

Respondent Burden

Industrial Security Review Data

Total Annual Burden Hours: 38,619.6 hours.
Total Number of Respondents: 11,403.
Possessors of classified: 4,792.
Non-Possessors of classified: 6,611.
Responses per Respondent: 1.
Average Burden Hours per Respondent:
Possessors of classified: 5.3 hours.
Non-Possessors of classified: 2 hours.
Frequency: Periodic (*e.g.* Possessors—Annually, Non-Possessors—18 months, compliance reviews, or when directed.)

Industrial Security Facility Clearance Survey Data:

Total Annual Burden Hours: 3,144 hours.
Number of Respondents: 1,572.
Responses per Respondent: 1.
Average Burden Hours Per Respondent: 2 hours.
Frequency: On occasion (*e.g.* initial eligibility determination and when a significant changed condition, such as change in ownership.)

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

The conduct of an Industrial Security Review and or Industrial Security Facility Clearance Survey assists in determining whether a contractor is eligible to establish its facility security

clearance and/or retain participation in the NISP. It is also the basis for verifying whether contractors are appropriately implementing NISP security requirements. These requirements are necessary in order to preserve and maintain the security of the United States through establishing standards to prevent the improper disclosure of classified information.

In accordance with Department of Defense (DOD), 5220.22–R "Industrial Security Regulation", DSS is required to maintain a record of the results of surveys and security reviews. Documentation for each survey and/or security review will be compiled addressing areas applicable to the contractor's security program. Portions of the data collected will be stored in databases. All data collected will be handled and marked, "For Official Use Only".

Dated: January 22, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 03–2281 Filed 1–31–03; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

City of Holyoke Gas & Electric Department Project No. 2004–075–Massachusetts; Notice

January 28, 2003.

The following Commission staff were assigned to help facilitate resolution of environmental and related issues associated with development of a comprehensive settlement agreement for the Holyoke Project. The parties anticipate completing the comprehensive settlement agreement and filing an offer of settlement by May 16, 2003. These "separated staff" will take no part in the Commission's review of the offer of settlement and the comprehensive settlement agreement, or deliberations concerning the disposition of the rehearings.

Office of General Counsel: John Katz; Office of Energy Projects: Steve Kartalia, Alan Mitchnick.

Different Commission "advisory staff" will be assigned to review the offer of settlement, the comprehensive settlement agreement, and process the requests for rehearing, including providing advice to the Commission with respect to the agreement and rehearings. Separated staff and advisory staff are prohibited from communicating with one another concerning the settlement and rehearings.

Magalie R. Salas,

Secretary.

[FR Doc. 03–2387 Filed 1–31–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP03–39–000]

Kinder Morgan Interstate Gas Transmission, LLC; Notice of Application

January 28, 2003.

On January 16, 2003, Kinder Morgan Interstate Gas Transmission, LLC, (KMIGT), located at 370 Van Gordon Street, Lakewood, Colorado, filed an application in the above referenced docket, pursuant to section 7(c) of the Natural Gas Act (NGA), and part 157of the Federal Energy Regulatory Commission's (Commission) Rules and Regulations for a certificate of public convenience and necessity authorizing KMIGT to construct and operate facilities necessary to develop its Cheyenne Market Center Service. To accomplish this, KMIGT proposes to construct (1) Two 3,550 horsepower compressor units and ten injection/withdrawal wells at the Huntsman Storage Field; (2) two 1,680 horsepower compressor units at the Rockport Compressor Station; (3) two 1,151 horsepower compressor units at the Kimball Junction Interconnect in Kimball County, Nebraska; (4) approximately 3,700 feet of 8 and 12-inch pipeline; and (5) certain section 2.55(a) facilities. These new facilities will create incremental storage capacity up to 6,000,000 Dth, with an associated withdrawal deliverability of approximately 62,400 Dth/d. It is estimated the facilities will cost approximately $26,905,570. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (866) 208–3676, or for TTY, (202) 502–8659.

Any questions regarding this application should be directed to Skip George, Manager of Certificates, Kinder Morgan Interstate Gas Transmission, LLC, PO Box 281304, Lakewood, Colorado 80228–8304, telephone (303) 914–4969.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made in the proceeding. with the Commission and must mail a copy to the applicant and to every other party. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right

to seek court review of the Commission's final order.

The Commission may issue a preliminary determination on non-environmental issues prior to the completion of its review of the environmental aspects of the project. This preliminary determination typically considers such issues as the need for the project and its economic effect on existing customers of the applicant, on other pipelines in the area, and on landowners and communities. For example, the Commission considers the extent to which the applicant may need to exercise eminent domain to obtain rights-of-way for the proposed project and balances that against the non-environmental benefits to be provided by the project. Therefore, if a person has comments on community and landowner impacts from this proposal, it is important either to file comments or to intervene as early in the process as possible.

Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

If the Commission decides to set the application for a formal hearing before an Administrative Law Judge, the Commission will issue another notice describing that process. At the end of the Commission's review process, a final Commission order approving or denying a certificate will be issued.

Comment Date: February 18, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–2381 Filed 1–31–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP03–32–000]

Northwest Pipeline Corporation; Notice of Intent To Prepare an Environmental Assessment for the Proposed White River Replacement Project and Request for Comments on Environmental Issues

January 28, 2003.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the White River Replacement Project involving construction and operation of facilities by Northwest Pipeline Corporation (Northwest) on its Ignacio to Sumas mainline in King County, Washington.[1] These facilities consist of approximately 4,400 feet each of parallel 26-inch- and 30-inch-diameter pipelines at the White River crossing located 3.3 miles east of the City of Auburn, Washington. This EA will be used by the Commission in its decision-making process to determine whether the project is in the public convenience and necessity.

If you are a landowner receiving this notice, you may be contacted by a pipeline company representative about the acquisition of an easement to construct, operate, and maintain the proposed facilities. The pipeline company would seek to negotiate a mutually acceptable agreement. However, if the project is approved by the Commission, that approval conveys with it the right of eminent domain. Therefore, if easement negotiations fail to produce an agreement, the pipeline company could initiate condemnation proceedings in accordance with state law.

A fact sheet prepared by the FERC entitled "An Interstate Natural Gas Facility On My Land? What Do I Need To Know?" was attached to the project notice Northwestprovided to landowners. This fact sheet addresses a number of typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. It is available for viewing on the FERC Internet Web site *(www.ferc.gov).*

Summary of the Proposed Project

The purpose of the proposed project is to provide a more permanent solution for improved pipeline safety and reliability while restoring the natural environment of the White River and its floodplain at this crossing. Recent highwater events have increased the risk of exposure to the parallel 26-inch- and 30-inch-diameter pipelines (existing pipelines) underneath the White River and along its south and north banks. A previously abandoned 26-inch-diameter pipeline has been exposed presenting a hazard to recreational use of the White River. Northwest installed a temporary rip-rap structure on the north riverbank in 1996 to protect its existing pipelines.

Northwest proposes to replace the pipelines at a deeper depth by constructing 4,300 feet of parallel 26-inch- and 30-inch-diameter pipelines (replacement pipelines) using a combination of horizontal directional drill (HDD) and conventional open-trench construction. Northwest proposes to abandon, in place and by removal, 3,200 feet of existing pipelines as well as retain 1,100 feet of existing pipelines. Northwest would also remove the previously abandoned 26-inch-diameter pipeline and the rip-rap structure, and would reconstruct the north riverbank to its surrounding contours (*see* Table 1). Northwest seeks authority to:

- Abandon by removal approximately 2,100 feet of existing pipelines from 3 sections: the south floodplain; the north riverbank; and a private property.
- Abandon in place approximately 1,100 feet of existing pipelines from 3 sections: underneath the White River channel (pipelines filled with grout); the slope above the north riverbank (pipelines filled with nitrogen and capped); and underneath State Highway 164 (pipelines immediately underneath highway filled with grout, remaining pipelines filled with nitrogen and capped).
- Retain approximately 1,100 feet of existing pipelines for continued service to the Enumclaw Meter Station.
- Remove the north riverbank rip-rap structure, 380 feet of sheet piling from the south floodplain, and the 665-foot-long previously abandoned 26-inch-diameter pipeline from the White River channel.
- Install approximately 1,200 feet of replacement pipelines in the south floodplain using conventional construction.

[1] Northwest's application was filed with the Commission under section 7 of the Natural Gas Act and part 157 of the Commission's regulations.

TABLE 1.—CONSTRUCTION AND ABANDONMENT FACILITIES PROPOSED BY NORTHWEST

Project component	Length (feet)	Beginning stationing	Ending stationing
Abandon by Removal 26″ & 30″ Existing Pipelines in the North Bank Structure	325	15388+93	15391+40
Abandon by Removal 26″ Existing Pipeline in the South Floodplain	1360	15370+30	15384+10
Abandon by Removal 30″ Existing Pipeline in the South Floodplain	1420	15370+30	15384+49
Abandon by Removal 26″ & 30″ Existing Pipelines on Private Property	300	15395+23	15397+60
Abandon In Place 26″; Existing Pipeline under the White River	500	15384+10	15388+93
Abandon In Place 30″ Existing Pipeline under the White River	450	15384+49	15388+93
Abandon In Place 26″ & 30″ Existing Pipelines under State Highway 164	340	15397+60	15400+21
Abandon In Place 26″ & 30″ Existing Pipelines on the North Bank Slope	410	15391+40	15395+23
Retain 26″ & 30″ Existing Pipelines for Service Feed to the Enumclaw Meter Station	1,100	15402+00	15413+00
Remove Sheet Piling in the South Floodplain	380	15380+74	15384+23
Remove the North Bank Structure	.....	15388+39	15390+22
Remove the previously abandoned 26″ Pipeline from the White River	665	15383+59	15390+21
Install 26″ Replacement Pipeline by HDD	3120	15378+62	15409+83
Install 30″ Replacement Pipeline by HDD	3260	15377+62	15410+23
Install 26″ Replacement Pipeline in the South Floodplain by conventional trenching	830	15370+30	15378+62
Install 30″ Replacement Pipeline in the South Floodplain by conventional trenching	730	15370+30	15377+62
Tie-in 26″ Replacement Pipeline at north end by conventional trenching	340	15409+83	15413+21
Tie-in 30″ Replacement Pipeline at north end by conventional trenching	300	15410+23	15413+21

• Install approximately 3,200 feet of replacement pipelines with 2 parallel HDDs traversing underneath the floodplain and White River channel, the slope north of the White River, State Route 164, and Cameron Park.

• Install 300–340 feet of replacement pipelines at the north end of the project to tie into the HDD pipelines.

Northwest must construct the replacement pipelines with HDD prior to removing the existing pipelines in order to maintain service though its Ignacio to Sumas Line. In order to limit in-stream construction to the drier summer months, Northwest proposes to break the construction schedule into two parts: (1) construction of the replacement pipelines from June to October 2003, and (2) removal of the existing pipelines and of the previously abandoned 665-foot-long pipeline from April to August 2004. The location of the project facilities is shown in appendix 1, figures1–4.[2]

Land Requirements for Construction

Construction of the proposed facilities would require 35 acres of land. The construction work area is comprised of 5 acres of existing permanent right-of-way and 30 acres of temporary work space. The construction work area is on 16.4 acres of forested riparian land in the floodplain and north slope, 13 acres of cropland/pasture, 4 acres of industrial land in the City of Auburn (for a utility yard), 1.5 acres of commercial property, and 1 acre of residential property. Due to the offsetting of the replacement pipelines 50 to 175 feet to the west, Northwest would require 3 additional acres of new permanent right-of-way but would relinquish 4.2 acres of existing permanent right-of-way.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us[3] to discover and address concerns the public may have about proposals. This process is referred to as "scoping". The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this Notice of Intent, the Commission requests public comments on the scope of the issues it will address in the EA. All comments received are considered during the preparation of the EA. State and local government representatives are encouraged to notify their constituents of this proposed action and encourage them to comment on their areas of concern.

The EA will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

- geology and soils
- land use
- water resources, fisheries,and wetlands
- cultural resources
- vegetation and wildlife
- air quality and noise
- endangered and threatened species
- hazardous wastes
- public safety
- alternative routes

We will make recommendations on how to lessen or avoid impacts on the various resource areas.

Our independent analysis of the issues will be in the EA. Depending on the comments received during the scoping process, the EA may be published and mailed to Federal, state, and local agencies, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commission's official service list for this proceeding. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we make our recommendations to the Commission.

To ensure your comments are considered, please carefully follow the instructions in the public participation section below.

Currently Identified Environmental Issues

We have already identified several issues that we think deserve attention based on a preliminary review of the proposed facilities and the environmental information provided by Northwest. This preliminary list of potential impacts may be changed based on your comments and our analysis.

- Federal species of concern which may occur in the project area and could be affected, including the chinook

[2] The appendices referenced in this notice are not being printed in the **Federal Register**. Copies are available on the Commission's Web site at the "FERRIS" link or from the Commission's Public Reference and Files Maintenance Branch, 888 First Street, NE., Washington, DC 20426, or call (202) 502–8371. For instructions on connecting to FERRIS refer to the last page of this notice. Copies of the appendices were sent to all those receiving this notice in the mail.

[3] "We", "us", and "our" refer to the environmental staff of the Office of Energy Projects (OEP).

salmon, coho salmon, bull trout, and bald eagle.

• Use of temporary and permanent Right-Of-Way on the Muckleshoot Indian Reservation involving fisheries habitat associated with the White River.

• Permanent removal of the rip-rap structure from the north riverbank of the White River and reconstruction of the north riverbank.

• Residential/commercial area in and around State Road 164 and City of Auburn's Cameron Park.

Public Participation

You can make a difference by providing us with your specific comments or concerns about the project. By becoming a commentor, your concerns will be addressed in the EA and considered by the Commission. You should focus on the potential environmental effects of the proposal and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

1. Send an original and two copies of your letter to: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First St., NE., Room 1A, Washington, DC 20426.

2. Label one copy of the comments for the attention of Gas 2 Branch.

3. Reference Docket No. CP03–32–000.

4. Mail your comments so that they will be received in Washington, DC on or before February 27, 2003

Please note that we are continuing to experience delays in mail deliveries from the U.S. Postal Service. As a result, we will include all comments that we receive within a reasonable time frame in our environmental analysis of this project. However, the Commission strongly encourages electronic filing of any comments or interventions or protests to this proceeding. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the "e-Filing" link and the link to the User's Guide. Before you can file comments you will need to create a free account which can be created by clicking on "Login to File" and then "New User Account."

We may mail the EA for comment. If you are interested in receiving it, please return the Information Request (appendix 4). If you do not return the Information Request, you will be taken off the mailing list.

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an official party to the proceeding known as an "intervenor". Intervenors play a more formal role in the process. Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intervenor must provide 14 copies of its filings to the Secretary of the Commission and must send a copy of its filings to all other parties on the Commission's service list for this proceeding. If you want to become an intervenor you must file a motion to intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) (*see* appendix 2). [4] Only intervenors have the right to seek rehearing of the Commission's decision.

Affected landowners and parties with environmental concerns may be granted intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which would not be adequately represented by any other parties. You do not need intervenor status to have your environmental comments considered.

Environmental Mailing List

This notice is being sent to individuals, organizations, and government entities interested in and/or potentially affected by the proposed project. It is also being sent to all identified potential right-of-way grantors. By this notice we are also asking governmental agencies, especially those in appendix 3, to express their interest in becoming cooperating agencies for the preparation of the EA.

Additional Information

Additional information about the project is available from the Commission's Office of External Affairs, at 1–866–208–FERC or on the FERC Internet Web site (*http://www.ferc.gov*)using the FERRIS link. Click on the FERRIS link, enter the docket number excluding the last three digits in the Docket Number field. Be sure you have selected an appropriate date range. For assistance with FERRIS, the FERRIS helpline can be reached at 1–866–208–3676, TTY (202) 502–8659, or at *FERCOnlineSupport@ferc.gov*. The FERRIS link on the FERC Internet Web site also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

[4] Interventions may also be filed electronically via the Internet in lieu of paper. *See* the previous discussion on filing comments electronically.

Magalie R. Salas,

Secretary.

[FR Doc. 03–2380 Filed 1–31–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Applications Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

January 28, 2003.

Take notice that the following hydroelectric applications have been filed with the Commission and are available for public inspection:

a. *Type of Applications:* Preliminary Permit (Competing).

b. *Project Nos.:* 12341–000, 12370–000, and 12386–000.

c. *Dates filed:* August 21, September 20, and October 7, 2002.

d. *Applicants:* Universal Electric Power Corporation, Nelson Hydroelectric, LLC and Overton Hydro, LLC.

e. *Name and Location of Project:* The proposed project would be located on an existing dam called John H. Overton/Red River L&D No. 2, owned by the U.S. Army Corps of Engineers, located on the Red River in Rapides Parish, Louisiana.

f. *Filed Pursuant to:* Federal Power Act, 16 U.S.C.§§ 791(a)—825(r).

g. *Applicant Contacts:* For Universal: Mr. Raymond Helter, Universal Electric Power Corporation, 1145 Highbrook Street, Akron, OH 44301, (330) 535–7115. For Nelson Hydroelectric LLC: Mr. Robert Larson; Gray, Plant, Mooty, Mooty & Bennett, 33 South Sixth Street, Minneapolis MN 55402, (612) 343–2913.For Overton Hydro, LLC: Mr. Brent L. Smith, Northwest Power Services, Inc., PO Box 535, Rigby, ID 83442, (208) 745–0834.

h. *FERC Contact:* Lynn R. Miles, (202) 502–8763.

i. *Deadline for filing comments, protests, and motions to intervene:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission

strongly encourages electronic filings. Please include the noted project numbers (P–12341–000, P–12370–000, and P–12386–000) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

j. *Description of Projects:* Universal Electric Power Corp (P–12341–00) and Nelson Hydroelectric, LLC (P–12370–00): The proposed run-of-river projects would utilize the Corps' existing dam and consist of: (1) Five proposed 100-foot-long, 120-inch diameter steel penstocks, (2) a proposed powerhouse containing five generating units having an installed capacity of 23 MW, (3) a proposed 300-foot-long, 14.7 kV transmission line, and (4) appurtenant facilities. Applicant estimates that the average annual generation would be 141 GWh and would be sold to a local utility.

Overton Hydro, LLC (P–12386–000): The proposed run-of river project would consist of modifications to the existing facility by adding: (1) Two 168-inch-diameter, 50-foot-long concrete penstocks, (2) a powerhouse containing two generating units with a total installed capacity of 20 MW, (3) a 25-kv transmission line approximately 1 mile long, and (4) appurtenant facilities. The project would have an annual generation of 165 GWh.

k. These filings are available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *ferconlineSupport@ferc.gov*. For TTY, call (202) 502–8659. Copies are also available for inspection and reproduction at the appropriate addresses in item g. above.

l. Competing Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (*see* 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

m. Competing Development Application—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

n. Notice of Intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

o. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

p. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

q. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

r. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. 03–2382 Filed 1–31–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Comments, Protests, and Motions To Intervene

January 28, 2003.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 12347–000 .

c. *Date filed:* August 21, 2002.

d. *Applicant:* Universal Electric Power Corporation .

e. *Name and Location of Project:* The Coffeeville L&D Hydroelectric Project would be located on the Tombigbee River in Choctaw County, Alabama. The proposed project would utilize the existing Coffeeville Lock and Dam

administered by the U.S. Army Corps of Engineers.

f. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)—825(r).

g. *Applicant contact:* Mr. Raymond Helter, Universal Electric Power Corporation, 1145 Highbrook Street, Akron, OH 44301, (330) 535–7115.

h. *FERC Contact:* Tom Papsidero, (202) 502–6002.

i. *Deadline for filing comments, protests, and motions to intervene:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with Magalie r. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings. Please include the project number (P–12347–000) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

j. *Description of Project:* The proposed project, using the Corps' existing Coffeeville Lock and Dam and Reservoir, would consist of: (1) Four proposed 328-foot-long, 12.5-foot-diameter steel penstocks, (2) a proposed powerhouse containing eight generating units with a combined installed capacity of 9.5 megawatts, (3) a proposed 25-kv transmission line, and (4) appurtenant facilities. The project would operate in a run-of-river mode and would have an average annual generation of 62 GWh.

k. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3678 or e-mail *ferconlineSupport@ferc.gov*. For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the applicant's address in item g above.

l. Competing Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (*see* 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

m. Competing Development Application—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

n. Notice of Intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

o. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

p. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

q. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

r. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. 03–2383 Filed 1–31–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

January 28, 2003.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 12350–000.

c. *Date filed:* August 21, 2002.

d. *Applicant:* Universal Electric Power Corporation.

e. *Name and Location of Project:* The Tom Bevill L&D Hydroelectric Project would be located on the Tombigbee River in Pickens County, Alabama. The project would utilize the U.S. Army Corps of Engineers' existing Tom Bevill Lock and Dam.

f. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)—825(r).

g. *Applicant Contact:* Mr. Raymond Helter, Universal Electric Power Corporation, 1145 Highbrook Street, Akron, OH 44301, (330) 535–7115.

h. *FERC Contact:* James Hunter, (202) 502–6086.

i. *Deadline for filing comments, protests, and motions to intervene:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings. Please include the project number (P–12350–000) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

j. *Description of Project:* The proposed project, using the existing Tom Bevill Lock and Dam, would consist of: (1) Penstocks connecting to the powerhouse, (2) a powerhouse containing five generating units with a total installed capacity of 3.66 megawatts, (3) a 12.7 or 14.7-kilovolt transmission line connecting to an existing power line, and (4) appurtenant facilities. The project would have an average annual generation of 24 gigawatthours.

k. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *ferconlineSupport@ferc.gov* . For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item g. above.

l. Competing Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (*see* 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

m. Competing Development Application—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

n. Notice of Intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

o. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

p. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

q. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

r. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. 03–2384 Filed 1–31–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

January 28, 2003.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 12430–000.

c. *Date filed:* December 27, 2002.

d. *Applicant:* Alternative Light & Hydro Associates.

e. *Name and Location of Project:* The Russell Falls Hydroelectric Project would be located at an existing dam owned by Indian River Power Supply, LLC on the Westfield River in Hampden County, Massachusetts.

f. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)—825(r).

g. *Applicant Contact:* Mr. Paul V. Nolan, 5515 North 17th Street, Arlington, VA 22205, (703) 534–5509.

h. *FERC Contact:* James Hunter, (202) 502–6086.

i. *Deadline for filing comments, protests, and motions to intervene:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings. Please include the project number (P–12430–000) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

j. *Description of Project:* The proposed project would consist of: (1) The existing 3-foot-high, 365-foot-long concrete weir creating a small impoundment that would have a normal water surface elevation of 275.5 feet, with the addition of one-foot flashboards, (2) two existing 60-foot-long, 84-inch-diameter steel penstocks and a proposed 50-foot-long, 60-inch-diameter steel penstock, (3) an existing powerhouse containing two generating units with a total installed capacity of 700 kilowatts and a proposed powerhouse containing one generating unit with a maximum installed capacity of 300 kilowatts, (4) a proposed 500-foot-long transmission line connecting to an existing distribution system, and (5) appurtenant facilities. The project would have an average annual generation of 4 gigawatthours.

k. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *ferconlineSupport@ferc.gov* . For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item g. above.

l. Competing Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (*see* 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

m. Competing Development Application— Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

n. Notice of Intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

o. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

p. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

q. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

r. Agency Comments—Federal, state, and local agencies are invited to file

comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. 03–2385 Filed 1–31–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Transfer of License and Soliciting Comments, Motions to Intervene, and Protests

January 28, 2003.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Transfer of License.

b. *Project No.:* 1651–024.

c. *Date Filed:* November 29, 2002.

d. *Applicants:* Swift Creek Power Company, Inc. (Transferor) and the Town of Afton, Wyoming (Transferee).

e. *Name of Project:* Swift Creek.

f. *Location:* Located partially within the Bridger-Teton National Forest, on Swift Creek, in Lincoln County, Wyoming.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicants Contacts:* Mr. E. Farley Eskelson, Swift Creek Power Company, Inc., 5864 South Green Street, Murray, UT 84123, (801) 713–3000 (Transferor); Mr. Scott Darrington, City Manager, 416 Washington Street, Afton, WY 83110, (307) 885–9831 (Transferee).

i. *FERC Contact:* Regina Saizan, (202) 502–8765.

j. *Deadline for filing comments and or motions:* February 28, 2003.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings. Please include the project number (P–1651–024) on any comments or motions filed.

The Commission's rules of practice and procedure require all interveners filing a document with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Transfer:* The applicants seek Commission approval to transfer the license for the Swift Creek Project from Swift Creek Power Company, Inc. to the Town of Afton, Wyoming, which has the resources to develop the project.

l. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *ferconlineSupport@ferc.gov*. For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the addresses in item h.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. 03–2386 Filed 1–31–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application for Amendment of License and Soliciting Comments, Motions To Intervene, and Protests

January 28, 2003.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Applicant Type:* Amendment of License to Change Project Boundary.

b. *Project No:* 2192–010.

c. *Date Filed:* July 30, 2002.

d. *Applicant:* Consolidated Water Power Company.

e. *Name of Project:* Biron Hydroelectric Project.

f. *Location:* The Biron Hydroelectric Project is located on the Wisconsin River, in Wood and Portage Counties, Wisconsin.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)-825 (r) and ** 799 and 801.

h. *Applicant Contact:* Mark E. Anderson, Resources Coordinator, Consolidated Water Power Company, General Offices, P.O. Box 8050, Wisconsin Rapids, WI 54495–8050, (715) 422–3927, or e-mail *mark.anderson@storaenso.com.*

i. *FERC Contact:* Any questions on this notice should be addressed to Etta Foster at (202) 502–8769, or e-mail address: *etta.foster@ferc.gov.*

j. *Deadline for filing comments and/or motions:* February 28, 2003.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Please include the project number (P–2192–010) on any comments or motions filed.

k. *Description of Request:* Consolidated Water Power Company (CWPCo) is proposing a land swap with a local resident, Joe Berry. The affected

parcels are located within Section 26, T23N, R6E, Town of Rudolph, Wood County, Wisconsin. Lot 1 contains 19.28 acres owned by CWPCo, and Lot 2 contains 9.18 acres owned by Joe Berry. The exchange would provide CWPCo with additional land to provide pedestrian access to the project and also provide additional land to buffer the existing wetlands. CWPCo requests that the project boundary be changed to include the 9.18 acres, and to remove the 19.28 acres conveyed to Mr. Berry from the project.

l. *Location of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866)208–3676, or for TTY, contact (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. Comments, Protests, or Motions to Intervene-Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of rules of practice and procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. Filing and Service of Responsive Documents-Any filings must bear in all capital letters the title "COMMENTS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. Agency Comments-Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives. q. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the "e-filing" link.

Magalie R. Salas,

Secretary.

[FR Doc. 03–2388 Filed 1–31–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Amendment of License and Soliciting Comments, Motions To Intervene, and Protests

January 28, 2003.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type*: Amendment of License.

b. *Project No.:* 516–374.

c. *Date Filed:* January 10, 2003.

d. *Applicant:* South Carolina Electric & Gas Company (SCE&G).

e. *Name of Project:* Saluda.

f. *Location:* On the Saluda River in Lexington, Newberry, Richland, and Saluda Counties, South Carolina. The project does not utilize federal or tribal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Thomas G. Eppink, SCANA Corporation, 1426 Main Street, Columbia, SC 29218–0001, (803) 217–9448; Brian J. McManus, Jones Day, 51 Louisiana Avenue, NW., Washington, DC 20001–2113, (202) 879–3939.

i. *FERC Contact:* Regina Saizan, (202) 502–8765.

j. *Deadline for filing comments and or motions:* February 28, 2003.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings. Please include the project number (P–516–374) on any comments or motions filed.

The Commission's rules of practice and procedure require all interveners filing a document with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Amendment:* SCE&G requests that its license be amended to extend the termination date by 5 years (from August 31, 2007 to August 31, 2012) to provide the time necessary to conduct, under normal operating conditions, the studies that will be requested or required under the relicensing procedures for the Saluda Project. The Commission has ordered a remediation of the project's dam that will necessitate a drawdown of Lake Murray for several years. The dam remediation project will create conditions that are not representative of the conditions under which the project normally operates and render meaningless any relicensing studies pursued under such conditions. SCE&G filed a notice of intent to relicense the project on August 30, 2002.

l. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *ferconlineSupport@ferc.gov*. For TTY, call (202) 502–8659. Copies are also available for inspection and reproduction at the addresses in item h.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments,

protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. 03–2389 Filed 1–31–03; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7446–7]

Agency Information Collection Activities OMB Responses

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notices.

SUMMARY: This document announces the Office of Management and Budget's (OMB) responses to Agency clearance requests, in compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et. seq.*). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

FOR FURTHER INFORMATION CONTACT: Susan Auby at (202) 566–1672, or email at *auby.susan@epa.gov.* and please refer to the appropriate EPA Information Collection Request (ICR) Number.

SUPPLEMENTARY INFORMATION:

OMB Responses to Agency Clearance Requests

OMB Approvals

EPA ICR No. 2085.01; 2003 Drinking Water Infrastructure Needs Survey; was approved 11/27/2002; OMB No. 2040–0251; expires 11/30/2005.

EPA ICR No. 1426.06; EPA Worker Protection Standard for Hazardous Waste Operations and Emergency Response in 40 CFR 311.1 and 311.2; was approved 12/20/2002; OMB No. 2050–0105; expires 12/31/2005.

EPA ICR No. 1131.07; NSPS for Glass Manufacturing Plants in 40 CFR part 60, subpart CC, was approved 12/30/2002; OMB No. 2060–0054; expires 12/31/2005.

EPA ICR No. 1031.07; Recordkeeping and Reporting Requirements for Allegations of Significant Adverse Reactions to Human Health or the Environment (TSCA section 8(c)) in 40 CFR part 717; was approved 12/30/2002; OMB No. 2070–0017; expires 12/31/2005.

EPA ICR No. 0938.09; General Administrative Requirements for Assistance Programs in 40 CFR parts 30 and 31; was approved 12/30/2002; OMB No. 2030–0020; expires 12/31/2005.

EPA ICR No. 0746.05; NSPS for Calciners and Dryers in Mineral Industries in 40 CFR part 60, subpart UUU; was approved 12/30/2002; OMB No. 2060–0251; expires 12/31/2005.

EPA ICR No. 1910.02; Synopses of Proposed Contract Actions and Market Research Activity; was approved 12/30/2002; OMB No. 2030–0039; expires 12/31/2005.

EPA ICR No. 1884.02; TSCA Inventory Update Rule Amendment in 40 CFR part 710; was approved 12/31/2002; OMB No. 2070–0162; expires 12/31/2005.

EPA ICR No. 0660.08; NSPS for Metal Coil Surface Coating in 40 CFR part 60, subpart TT; was approved 12/30/2002; OMB No. 2060–0107; expires 12/31/2005.

EPA ICR No. 1867.02; Voluntary Aluminum Industrial Partnership (VAIP); was approved 12/30/2002; OMB No. 2060–0411; expires 12/31/2005.

EPA ICR No. 0983.07; NSPS Equipment Leaks of VOC in Petroleum Refineries in 40 CFR part 60, subpart GGG; was approved 12/30/2002; OMB No. 2060–0067; expires 12/31/2005.

EPA ICR No. 1557.05; NSPS for Municipal Solid Waste Landfills; in 40 CFR part 60, subpart WWW; was approved 12/30/2002; OMB No. 2060–0220; expires 12/31/2005.

EPA ICR No. 0664.07; NSPS Bulk Gasoline Terminals in 40 CFR part 60, subpart XX; was approved 12/30/2002; OMB No. 2060–0006; expires 12/31/2005.

EPA ICR No. 1188.07; TSCA section 5(a)(2) Significant New Use Rules for Existing Chemicals in 40 CFR part 721; was approved on 01/13/2003; OMB No. 2070–0038; expires on 01/31/2006.

Short Term Extensions

EPA ICR No. 1838.01; Industry Detailed Questionnaire: Phase II Cooling Water Intake Structures; OMB No. 2040–0213; on 12/17/2002 OMB extended the expiration date through 03/31/2003.

EPA ICR No. 1912.01; Information Collection Request: National Primary Drinking Water Regulation for Lead and Copper (Final Rule); OMB No. 2040–0210; on 12/19/2002 OMB extended the expiration date through 03/31/2003.

EPA ICR No. 0794.09; Notification of Substantial Risk of Injury to Health and the Environment under TSCA section 8(e); OMB No. 2070–0046; on 01/06/2003 OMB extended the expiration date through 04/30/2003.

EPA ICR No. 0795.10; Notification of Chemical Exports—TSCA Section 12(b); OMB No. 2070–0030; on 01/06/2003 OMB extended the expiration date through 04/30/2003.

Comments Filed

EPA ICR No. 2080.01; Motor Vehicle and Engine Compliance Program Fees (Proposed Rule); on 12/30/2002 OMB filed a comment.

EPA ICR No. 2079.01; NESHAP: Metal Can Surface Coating (Proposed Rule); on 01/06/2003 OMB filed a comment.

EPA ICR No. 2050.01; NESHAP for Taconite Iron Ore Processing Industry (Proposed Rule); on 01/06/2003 OMB filed a comment.

Dated: January 23, 2003.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 03–2430 Filed 1–31–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OW–2002–0041; FRL–7446–8]

Agency Information Collection Activities; Proposed Collection; Comment Request; (OMB Control No. 2040–0095, EPA ICR No. 0909.07)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces

that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: Construction Grants Delegation to States. The ICR, which describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before March 5, 2003.

ADDRESSES: Follow the detailed instructions in **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Gajindar Singh, Office of Wastewater Management, Mail Code 4204M, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 564–0634 , fax number: (202) 501–2396, e-mail: *singh.gajindar@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On July 5, 2002, EPA sought comments on this ICR (67 FR 44829) pursuant to 5 CFR 1320.8(d). EPA received no comments.

EPA has established a public docket for this ICR under Docket ID No. OW–2002–0041, which is available for public viewing at the Water Docket in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Water Docket is (202) 566–2426. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket.* Use EDOCKET to submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA and OMB within 30 days of this notice, and according to the following detailed instructions: (1) Submit your comments to EPA online using EDOCKET (our preferred method), by e-mail to *OW-Docket@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Mailcode: 4204M, 1200 Pennsylvania Ave., NW., Washington, DC 20460, and (2) Mail your comments to OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, Confidential Business Information (CBI), or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, see EPA's **Federal Register** notice describing the electronic docket at 67 FR 38102 (May 31, 2002), or go to *http://www.epa.gov/edocket.*

Title: Construction Grants Delegation to States (OMB Control No. 2040–0095, EPA ICR Number 0909.07). This is a request to renew an existing approved collection that is scheduled to expire on 03/31/2003. Under the OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB.

Abstract: The purpose of this ICR is to revise and extend the current clearance for the collection of information under the Construction Grants Program Delegation to States, 40 CFR part 35, subpart J, and Title II of the Clean Water Act (CWA). While the Construction Grants Program is being phased out and replaced by the State Revolving Loan Fund (SRF) program, collection activities for the Construction Grants Program must continue until program completion in all the States and territories. The program includes reporting, monitoring and program requirements for municipalities and delegated States.

The information collection activities described in this ICR are authorized under section 205(g) of the Clean Water Act as amended, 33 U.S.C. 1251 *et seq.*, and under 40 CFR part 35, subpart J. The requested information provides the minimum data necessary for the Federal government to maintain appropriate fiscal accountability for use of section 205(g) construction grant funds. The information is also needed to assure an adequate management overview of those State project review activities that are most important to fiscal and project integrity, design performance, Federal budget control, and attainment of national goals.

Managers at the State and Federal levels both rely on the information described in this ICR. State managers rely on the information for their own program and project administration. Federal managers rely on this information to assess, control, and predict the impacts of the construction grants program on the Federal Treasury and future budget requirements. Federal managers also use this information to respond to OMB and Congressional requests and to maintain fiscal accountability. In addition, builders of wastewater treatment plants use the information discussed in this ICR.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15, and are identified on the form and/or instrument, if applicable.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average about 55 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: States and municipalities.

Estimated Number of Respondents: 15.

Frequency of Response: On occasion and annually.

Estimated Total Annual Hour Burden: 2,071 hours.

Estimated Total Annual Cost: $69,399, includes $0 in annual startup and O&M costs.

Changes in the Estimates: There is a decrease of 3,945 hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens. This decrease is a result of EPA phasing out the Title II Construction Grants Program, and State Delegation of this program, due to the establishment of a State Revolving Loan Fund program.

Dated: January 23, 2003.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 03–2429 Filed 1–31–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7446–9]

Notice of Open Meeting; Environmental Financial Advisory Board, March 4–5, 2003

The Environmental Protection Agency's (EPA) Environmental Financial Advisory Board (EFAB) will hold an open meeting of the full Board in Washington, DC on March 4–5, 2003. The meeting will be held at the National Press Club, 13th Floor in the Holeman Lounge, 14th and F Street, NW., Washington, DC. The Tuesday, March 4 session will run from 8:30 a.m. to 5 p.m. and the Wednesday, March 5 session will begin at 8 a.m. and end at approximately 11 a.m.

EFAB is chartered with providing analysis and advice to the EPA Administrator and program offices on environmental finance. The purpose of this meeting is to hear from informed speakers on environmental finance issues, proposed legislation and Agency priorities and to discuss progress with work products under EFAB's current strategic action agenda. Environmental financing topics expected to be discussed include: State environmental funding, financial assurance at industrial sites; water infrastructure gap, cost-effective environmental management and other public finance projects.

The meeting is open to the public, but seating is limited. To confirm your participation or get further information, please contact Vanessa Bowie, EFAB Coordinator, U.S. EPA on (202) 564–5186.

Dated: January 24, 2003.

Joseph Dillon,

Comptroller.

[FR Doc. 03–2432 Filed 1–31–03; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Approved by Office of Management and Budget

January 27, 2003.

The Federal Communications Commission (FCC) has received Office of Management and Budget (OMB) approval for the following public information collections pursuant to the Paperwork Reduction Act of 1995, Public Law 104–13. For further information contact Judith Boley Herman, Federal Communications Commission, (202) 418–0214.

Federal Communications Commission

OMB Control No.: 3060–1031.
Expiration Date: 07/31/2003.
Title: Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911.
Emergency Calling Systems: Petition of City of Richardson, Texas: Order on Reconsideration II.
Form No.: N/A.
Respondents: Business or other for-profit; public safety agencies.
Responses: 1,358.
Estimated Time Per Response: 2–40 hours.
Estimated Total Annual Burden: 13,960 hours.
Total Annual Cost: 0.
Description: The information and coordination burdens are needed to ensure the appropriate application of the Commission's E911 rules and to facilitate speedy E911 implementation.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 03–2370 Filed 1–31–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Approved by Office of Management and Budget

January 27, 2003.

The Federal Communications Commission (FCC) has received Office of Management and Budget (OMB) approval for the following public information collections pursuant to the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. For further information contact Judith Boley Herman, Federal Communications Commission, (202) 418–0214.

Federal Communications Commission

OMB Control No.: 3060–0954.
Expiration Date: 07/31/05.
Title: Implementation of the 911 Act.
Form No.: N/A.
Respondents: Business or other for-profit, not for profit institutions, state, local, or tribal governments.
Responses: 800.
Estimated Time Per Response: 4.5 hours.
Estimated Total Annual Burden: 3,100 hours.
Total Annual Cost: 0.
Description: The reporting requirement is a two time burden. All of the burdens contained in the submission are needed to ensure prompt and smooth transition to universal 911 emergency calling services.
OMB Control No.: 3060–0900.
Expiration Date: 12/31/05.
Title: Compatibility of Wireless Services with Enhanced 911; Second Report and Order in CC Docket No. 94–102.
Form No.: N/A.
Respondents: Individuals or households, business or other for-profit, state, local, or tribal governments, not for profit institutions.
Responses: 140.
Estimated Time Per Response: 20 hours.
Estimated Total Annual Burden: 2,190 hours.
Total Annual Cost: 0.
Description: The information submitted by manufacturers or carriers wishing to incorporate new or modified E911 call processing modes will be used to keep the Commission informed of technological developments and thus to ensure that the Commission's regulations are kept current and reflect the preferences of the industry in complying with E911 call completion regulations. The voluntary education program will enable consumers to use wireless analog sets to make E911 calls in an informative manner, ensuring a fast, reliable response.
OMB Control No.: 3060–0813.
Expiration Date: 6/30//05.
Title: Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Services.
Form No.: N/A.
Respondents: Business or other for-profit, state, local, or tribal governments.
Responses: 47,031.
Estimated Time Per Response: 1 to 5 hours.
Estimated Total Annual Burden: .198,200 hours.
Total Annual Cost: 0.
Description: The notification burden on Public Safety Answering Points

(PSAPs) will be used by the carriers to verify that wireless E911 calls are referred to PSAPs who have the technical capability to use the data to the caller's benefit. TTU and dispatch notification requirements will be used to avoid consumer confusion as to the capabilities of their handsets in reaching help in emergency situations, thus minimizing the possibility of critical delays in response time. The annual TTY reports will be used to monitor the progress of TTY technology and thus compatibility. Consultations on the specific meaning assigned to pseudo-ANI are appropriate to ensure that all parties are working with the same information. Coordination between carriers and State and local entities to determine the appropriate PSAPs to receive and respond to E911 calls is necessary because of the difficulty in assigning PSAPs based on the location of the wireless caller. The deployment schedule that must be submitted by carriers seeking a waiver of Phase I or Phase II deployment schedule will be used by the Commission to guarantee that the rules adopted in this proceeding are enforced in as timely a manner as possible within technological constraints.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 03–2371 Filed 1–31–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Submitted to OMB for Review and Approval

January 24, 2003.

SUMMARY: The Federal Communications Commissions, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before March 5, 2003. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commission, Room 1–A804, 445 12th Street, SW., Washington, DC 20554 or via the Internet to *lesmith@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via the Internet at *lesmith@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0960.

Title: Application of Network Non-Duplication, Syndicated Exclusivity, and Sports Blackout Rules to Satellite Retransmissions of Broadcast Signals.

Form Number: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Businesses or other for-profit entities.

Number of Respondents: 1,407.

Estimated Time per Response: 0.5 to 1.0 hours.

Frequency of Response: On occasion reporting requirements; Third party disclosure.

Total Annual Burden: 63,992 hours.

Total Annual Costs: None.

Needs and Uses: In response to the FCC's Report and Order in *Implementation of the Satellite Home Viewer Improvement Act of 1999: Application of Network Non-duplication, Syndicated Exclusivity and Sports Blackout Rules to Satellite Retransmission of Broadcast Signals,* CS Docket No. 00–2, FCC 00–38 (rel. November 2, 2000), parties filed petitions to reconsider certain aspects of the satellite program exclusivity rules adopted therein. In its Order on Reconsideration in the same docket, FCC 02–287 (rel. October 17, 2002), the Commission denied petitions to extend the phase-in period for implementation of the rules, and also maintained the application of the sports blackout rule to satellite carriage of network stations. The Commission revised section 76.122(c)(2), pertaining to identification of information about programming to be deleted, so that the satellite rule conforms to the cable rules. In addition, the Commission clarified and amended section 76.127(c), pertaining to notifications of deletions for sports broadcasts, to permit sports rights holders with a discernable season to submit blackout notifications for an entire season, but also to establish a date certain by when those notifications must be received by satellite carriers.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 03–2372 Filed 1–31–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[Report No. AUC–02–47–D (Auction No. 47); DA 02–3602]

Closed Auction Of Licenses For Cellular Unserved Service Areas Cancelled

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This document announces the cancellation of the auction of seven licenses to provide cellular service in unserved areas scheduled for February 12, 2003.

DATES: Auction No. 47 that was scheduled for February 12, 2003 is cancelled.

FOR FURTHER INFORMATION CONTACT: Kenneth Burnley, Attorney, Auctions and Industry Analysis Division, at (202) 418–0660 or Lisa Stover, Project Manager, Auctions and Industry Analysis Division, at (717) 338–2888.

SUPPLEMENTARY INFORMATION: This is a summary of the *Auction No. 47 Cancellation PN* released on December 26, 2002. The complete text of the *Auction No. 47 Cancellation PN* is available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC, 20554. The *Auction No. 47 Cancellation PN* may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC, 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com.*

The Wireless Telecommunications Bureau announces the cancellation of

the auction of seven licenses to provide cellular service in unserved areas ("Auction No. 47") scheduled for February 12, 2003. On December 23, 2002, the Policy and Rules Branch of the Commercial Wireless Division (the "Division"), Wireless Telecommunications Bureau, approved the Joint Motion for Dismissal and Approval of Settlement ("Settlement Agreement") filed by WWC License L.L.C. and WWC Holding Co, Inc., both wholly-owned subsidiaries of Western Wireless Corporation, and N.E. Colorado Cellular, Inc (DA 02–3573). The Division concluded that the Settlement Agreement resolved the mutual exclusivity of the applications that were filed, thus eliminating the need to conduct this auction.

Federal Communications Commission.

Margaret Wiener,

Chief, Auctions and Industry Analysis Division, WTB.

[FR Doc. 03–2373 Filed 1–31–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 28, 2003.

A. Federal Reserve Bank of Atlanta (Sue Costello, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30303:

1. Georgia Commerce Bancshares, Inc., Atlanta, Georgia; to become a bank holding company by acquiring 100 percent of the voting shares of Georgia Commerce Bank, Atlanta, Georgia (in organization).

B. Federal Reserve Bank of Kansas City (Susan Zubradt, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. ABM Holding Company, Miltonvale, Kansas; to become a bank holding company by acquiring 100 percent of the voting shares of The Citizens State Bank, Miltonvale, Kansas.

C. Federal Reserve Bank of San Francisco (Maria Villanueva, Consumer Regulation Group) 101 Market Street, San Francisco, California 94105-1579:

1. Five Star Bancorp , Rocklin, California; to become a bank holding company by acquiring 100 percent of the voting shares of Five Star Bank, Rocklin, California.

Board of Governors of the Federal Reserve System, January 28, 2003.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 03–2360 Filed 1–31–03; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 3, 2003.

A. Federal Reserve Bank of Richmond (A. Linwood Gill, III, Vice President) 701 East Byrd Street, Richmond, Virginia 23261–4528:

1. Surrey Bancorp, Mount Airy, North Carolina; to become a bank holding company by acquiring 100 percent of the voting shares of Surrey Bank and Trust, Mount Airy, North Carolina.

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166–2034:

1. Bank of Mulberry Employee Stock Ownership Trust, Mulberry, Arkansas; and its subsidiary, ACME Holding Company, Inc., Mulberry, Arkansas, to acquire 81.65 percent of Madison Corporation, Little Rock, Arkansas, and thereby indirectly acquire Madison Bank and Trust, Kingston, Arkansas.

2. Reliance Bancshares, Inc., Des Peres, Missouri; to acquire 100 percent of the voting shares of The Bank of Godfrey, Godfrey, Illinois.

C. Federal Reserve Bank of San Francisco (Maria Villanueva, Consumer Regulation Group) 101 Market Street, San Francisco, California 94105–1579:

1. Gaslight Leasing, Inc., Fremont, California; to become a bank holding company by acquiring 100 percent of Fremont Bancorporation, and thereby indirectly acquire Fremont Bank, all of Fremont, California.

Board of Governors of the Federal Reserve System, January 29, 2003.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 03–2445 Filed 1–31–03; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Sunshine Meeting Notice

TIME AND DATE: 11 a.m., Thursday, February 6, 2003.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, NW., Washington DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

FOR MORE INFORMATION PLEASE CONTACT: Michelle A. Smith, Assistant to the Board; 202–452–2955.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at *http://www.federalreserve.gov* for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: January 30, 2003.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 03–2596 Filed 1–30–03; 2:22 pm]

BILLING CODE 6210–01–P

GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090–0278]

National Contact Center; Customer Evaluation Survey

AGENCY: Citizen Services and Communications, Federal Citizen Information Center, (GSA).

ACTION: Notice of a new one-time collection.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the General Services Administration, Office of Citizen Services and Communications (OSCS), Federal Citizen Information Center, National Contact Center (NCC) will submit to the Office of Management and Budget (OMB) a request to review and approve a new information collection requirement. This information collection will be used to assess the public's satisfaction with the NCC service, to assist in increasing the efficiency in responding to the public's need for Federal information, and to assess the effectiveness of marketing efforts. The respondents include users of the NCC.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of the functions of the agency including whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected, including through the use of automated collection techniques or other forms of information technology.

DATES: Submit comments on or before: April 4, 2003.

FOR FURTHER INFORMATION CONTACT: Tonya Beres, Office of Citizen Services and Communications, at (202) 501–1803.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to the Regulatory and Federal Assistance Publications Division, General Services Administration (MVA), Room 4035, 1800 F Street, NW., Washington, DC 20405.

SUPPLEMENTARY INFORMATION:

A. Purpose

This information collection will be used to assess the public's satisfaction with the NCC service, to assist in increasing the efficiency in responding to the public's need for Federal information, and to assess the effectiveness of marketing efforts.

B. Annual Reporting Burden

Respondents: 2,250.

Responses Per Respondent: 1.

Total Responses: 2,250.

Hours Per Response: .05 (3 minutes).

Total Burden Hours: 112.5.

Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory and Federal Assistance Publications Division (MVA), 1800 F Street, NW., Room 4035, Washington, DC 20405, telephone (202) 208–7312, or by faxing your request to (202) 501–4067. Please cite 3090–0278, National Contact Center Customer Evaluation Survey in all correspondence.

Dated: January 2, 2003.

Michael W. Carleton,

Chief Information Officer (I).

[FR Doc. 03–2450 Filed 1–31–03; 8:45 am]

BILLING CODE 6820–CX–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Prospective Grant of Exclusive License: Nucleic Acid Vaccines for Prevention of Flavivirus Infection

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services.

ACTION: Notice.

SUMMARY: This is a notice in accordance with 35 U.S.C. 209(e) and 37 CFR 404.7(a)(1)(i) that the Centers for Disease Control and Prevention (CDC), Technology Transfer Office, Department of Health and Human Services (DHHS), is contemplating the grant of a worldwide exclusive license to practice the inventions embodied in the patents and patent applications referred to below to Fort Dodge Animal Health, a Division of Wyeth, located in Overland Park, Kansas. The patent rights in these inventions have been assigned to the government of the United States of America. The patents and patent applications to be licensed are:

Title:

U.S. Patent Application SN 60/087,908 entitled "Nucleic Acid Vaccines for Prevention of Flavivirus Infection," filed 5.13.1999. And related applications: PCT/US99/12298, filed 6.3.1999; U.S. Patent Application SN 09/701,536; and all foreign applications listed in Appendix A. CDC reference No. I–008–97

U.S. Patent application SN 09/826,115 entitled "Nucleic Acid Vaccines for Prevention of Flavivirus Infection," filed 4.4.2001. And related application PCT/US02/10764 filed 4.4.2002. CDC reference No. I–001–01

The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7.

This invention covers a recombinant DNA vaccine candidate for the prevention of flavivirus. Licensee will further develop this vaccine candidate for use as an animal vaccine.

ADDRESSES: Requests for a copy of the patent applications, inquiries, comments, and other materials relating

to the contemplated license should be directed to Andrew Watkins, Director, Technology Transfer Office, Centers for Disease Control and Prevention (CDC), 4770 Buford Highway, Mailstop K–79, Atlanta, GA 30341, telephone: (770) 488–8600; facsimile: (770) 488–8615. Applications for a license filed in response to this notice will be treated as objections to the grant of the contemplated license. Only written comments and/or applications for a license which are received by CDC within sixty days of this notice will be considered. Comments and objections submitted in response to this notice will not be made available for public inspection, and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552. A signed Confidential Disclosure Agreement will be required to receive a copy of any pending patent application.

Dated: January 27, 2003.

Joseph R. Carter,

Associate Director for Management and Operations, Centers for Disease Control and Prevention (CDC).

[FR Doc. 03–2393 Filed 1–31–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 02N–0454]

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Notice of a Claim for Generally Recognized as Safe Exemption Based on a Generally Recognized as Safe Determination

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the proposed collection of information listed below has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Submit written comments on the collection of information by March 5, 2003.

ADDRESSES: Submit written comments on the collection of information to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW., rm. 10235, Washington, DC 20503, Attn: Stuart Shapiro, Desk Officer for FDA.

FOR FURTHER INFORMATION CONTACT: Peggy Robbins, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Notice of a Claim for GRAS Exemption Based on a GRAS Determination (OMB Control Number 0910–0342)—Extension

Description: Section 409 of the act (21 U.S.C. 348) establishes a premarket approval requirement for "food additives;" section 201(s) of the act (21 U.S.C. 321) provides an exemption from the definition of "food additive" and thus from the premarket approval requirement, for uses of substances that are generally recognized as safe (GRAS) by qualified experts. FDA is proposing a voluntary procedure whereby members of the food industry who determine that use of a substance satisfies the statutory exemption may notify FDA of that determination. The notice would include a detailed summary of the data and information that support the GRAS determination, and the notifier would maintain a record of such data and information. FDA would make the information describing the GRAS claim, and the agency's response to the notice, available in a publicly accessible file; the entire GRAS notice would be publicly available consistent with the Freedom of Information Act and other Federal disclosure statutes.

Description of Respondents: Manufacturers of Substances Used in Food and Feed.

In the **Federal Register** of October 31, 2002 (67 FR 66404), the agency requested comments on the proposed collection of information. No comments were received that pertained to this collection of information.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
170.36	50	1	50	150	7,500
570.36	10	1	10	150	1,500
Total					9,000

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 2.—ESTIMATED ANNUAL RECORDKEEPING BURDEN[1]

21 CFR Section	No. of Recordkeepers	Annual Frequency of Recordkeeping	Total Annual Records	Hours per Recordkeeper	Total Hours
170.36(c)(v)	50	1	50	15	750
570.36(c)(v)	10	1	10	15	150
Total					900

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

The reporting requirement is for a proposed rule (62 FR 18937, April 17, 1997) that has not yet been issued as a final rule. In developing the proposed rule, FDA solicited input from representatives of the food industry on the reporting requirements, but could not fully discuss with those representatives the details of the proposed notification procedure. FDA received no comments on the agency's estimate of the hourly reporting requirements, and thus has no basis to revise that estimate at this time. During 1998, FDA received 12 notices that were submitted under the terms of the proposed rule. FDA received 23 notices in 1999, 30 notices in 2000, and 28 notices in 2001. To date, the number of annual notices is less than FDA's estimate; however, the number of annual notices could increase when the proposed rule becomes final.

Dated: January 28, 2003.

Margaret M. Dotzel,

Assistant Commissioner for Policy.

[FR Doc. 03–2458 Filed 1–31–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 03N–0015]

International Drug Scheduling; Convention on Psychotropic Substances; Single Convention on Narcotic Drugs; World Health Organization Scheduling Recommendation for Amineptine (7-[(10,11–dihydro–5*H*–dibenzo[*a*,*d*]cycloheptен–5–yl)amino]heptanoic acid)

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is providing interested persons with the opportunity to submit written comments concerning a recommendation by the World Health Organization (WHO) to impose international manufacturing and distribution restrictions, under international treaties, on a drug substance. The comments received in response to this notice will be considered in preparing the U.S. position on this proposal for a meeting of the United Nations Commission on Narcotic Drugs (CND) in Vienna, Austria, April 8 to 17, 2003. This notice is issued under the Controlled Substances Act.

DATES: Submit written or electronic comments by March 1, 2003.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. To ensure expeditious review of written comments, send a copy by facsimile or e-mail to: James R. Hunter (see following address).

FOR FURTHER INFORMATION CONTACT: James R. Hunter, Controlled Substances Staff (HFD–9) Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–2098, FAX: 301–443–9222, e-mail: *hunterj@cder.fda.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

The United States is a party to the 1971 Convention on Psychotropic Substances (the Convention). Section 201(d)(2)(B) of the Controlled Substances Act (the CSA) (21 U.S.C. 811(d)(2)(B)) provides that when the United States is notified under Article 2 of the Convention that CND proposes to decide whether to add a drug or other substance to one of the schedules of the Convention, transfer a drug or substance from one schedule to another, or delete it from the schedules, the Secretary of State must transmit notice of such information to the Secretary of Health and Human Services (HHS). The Secretary of HHS must then publish a summary of such information in the **Federal Register** and provide opportunity for interested persons to submit comments. The Secretary of HHS must then evaluate the proposal and furnish a recommendation to the Secretary of State that shall be binding on the representative of the United States in discussions and negotiations relating to the proposal.

As detailed in the following paragraphs, the Secretary of State has received notification from the Secretary-General of the United Nations (the Secretary-General) regarding a substance to be considered for control under the Convention. This notification reflects the recommendation from the 33d WHO Expert Committee for Drug Dependence (ECDD), which met September 14 to 16, 2002. In the **Federal Register** of April 9, 2002 (67 FR 17074), FDA announced the WHO ECDD review and invited interested persons to submit information for WHO's consideration.

The full text of the notification from the Secretary-General is provided in section II of this document. Section 201(d)(2)(B) of the CSA requires the Secretary of HHS, after receiving a notification proposing scheduling, to publish a notice in the **Federal Register** to provide the opportunity for interested persons to submit information and comments on the proposed scheduling action.

II. United Nations Notification

The formal United Nations notification that identifies the drug substance and explains the basis for the recommendation is reproduced below.

Notification on amineptine:

Reference: NAR/CL.12/2002 CS18/02 CU 2002/262.

The Secretary-General of the United Nations presents his compliments to the Secretary of State of the United States of America and has the honour to inform the Government that the World Health Organization (WHO), pursuant to article 2, paragraphs 1 and 4 of the Convention on Psychotropic Substances, 1971, has notified him that it is of the opinion that amineptine should be placed in Schedule II of that Convention.

Article 2, paragraphs 1 and 4, of the Convention read:"

1. If a Party or the World Health Organization has information relating to a substance not yet under international control which in its opinion may require the addition of that substance to any of the Schedules of this Convention, it shall notify the Secretary-General and furnish him with the information in support of that notification. The foregoing procedure shall also apply when a Party or the World Health Organization has information justifying the transfer of a substance from one Schedule to another among those Schedules, or the deletion of a substance from the Schedules."

"4. If the World Health Organization finds: (a) That the substance has the capacity to produce (i)(1) a state of dependence, and (2) central nervous system stimulation or depression, resulting in hallucinations or disturbances in motor function or thinking or behaviour or perception or mood, or (ii) similar abuse and similar ill effects as a substance in Schedule I, II, III or IV, and (b) That there is sufficient evidence that the substance is being or is likely to be abused so as to constitute a public health and social problem warranting the placing of the substance under international control, the World Health Organization shall communicate to the Commission an assessment of the substance, including the extent or likelihood of abuse, the degree of seriousness of the public health and social problem and the degree of usefulness of the substance in medical therapy, together with recommendations on control measures, if any, that would be appropriate in the light of its assessment."

In accordance with the provisions of article 2, paragraph 2, of the 1971 Convention, the Secretary-General hereby transmits the text of that notification as an annex to the present note. The notification together with the assessments and recommendations from WHO as well as any data received from governments on that substance, will also be brought to the attention of the Commission

on Narcotic Drugs at its forty-sixth session in April 2003.

Any decision taken by the Commission with respect to that notification, pursuant to article 2, paragraph 5 of the Convention, will be notified to States Parties in due course.

Article 2, paragraph 5, of the Convention reads:

"The Commission, taking into account the communication from the World Health Organization, whose assessments shall be determinative as to medical and scientific matters, and bearing in mind the economic, social, legal, administrative and other factors it may consider relevant, may add the substance to Schedule I, II, III or IV. The Commission may seek further information from the World Health Organization or from other appropriate sources."

The Secretary-General would appreciate it if the Government would submit data on seizures of amineptine or on the existence of clandestine laboratories manufacturing it, as well as any economic, social, administrative or other factors the Government may consider relevant to the question of the possible scheduling of amineptine by the Commission.

The Secretary-General would also appreciate it if the requested information could be communicated by 30 January 2003 to the Secretary, Commission on Narcotic Drugs, P.O. Box 500, A–1400 Vienna, Austria, fax: +43–1–26060–5885.

20 December 2002
NAR/CL.12/2002

Annex—Note Addressed to the United Nations by the World Health Organization

The World Health Organization presents its compliments to the United Nations and has the honour to submit, in accordance with article 2, paragraphs 1 and 4 of the Convention on Psychotropic Substances, 1971, assessments and recommendations of the World Health Organization, as set forth in the annex hereto, concerning the proposed placement of amineptine in Schedule II of the 1971 Convention.

The World Health Organization avails itself of this opportunity to present to the United Nations the assurance of its highest consideration.

AMINEPTINE (INN)

Substance identification

Amineptine (7-[(10,11–dihydro–5*H*-dibenzo[*a*,*d*]cyclohepten–5–yl)amino]heptanoic acid) is available as either the free base (CAS 57574–09–1) or as the hydrochloride salt (CAS 30272–08–3). There are no chiral carbon atoms; therefore, no stereoisomers or racemates are possible.

Similarity to known substances and effects on the central nervous system

Amineptine is a synthetic, atypical tricyclic antidepressant with central nervous system stimulating effects. It is an indirect dopamine agonist, selectively inhibiting dopamine uptake and inducing dopamine release, with additional stimulation of the adrenergic system. Its antidepressant effects are similar to other tricyclic antidepressant drugs but it has a more rapid action, is better tolerated and has little cardiovascular, analgesic or anorectic effects. It produces a similar spectrum of pharmacological effects to psychomotor stimulants in Schedule II of the 1971 Convention on Psychotropic Substances.

Dependence potential

There have been few animal studies regarding the dependence or abuse potential of amineptine. However, some clinical studies indicated that amineptine has both dependence and abuse potential, particularly in patients with a previous history of substance abuse. Clinical observations of significant abuse and dependence are reported in patients treated with amineptine in France. Its dependence potential appeared to be associated with its psychomotor stimulant effect. Withdrawal has been clinically manifested by anxiety, insomnia, psychomotor agitation or bulimia. Instances of dependence have been reported in Europe and Asia.

Actual abuse and/or evidence of likelihood of abuse

Amineptine abuse has mainly been reported in Europe and Asia. It has been withdrawn from the market in France, where the drug was developed a few decades ago, for reasons of considerable hepatotoxicity and abuse. Despite this measure, medical use in developing countries, as well as abuse still continues. The abuse-related adverse drug reaction reports for amineptine collected by the international drug monitoring programme indicate a larger number of case reports of abuse and dependence than anorectic stimulants currently placed in Schedule IV of the 1971 Convention on Psychotropic Substances, such as amfepramone. Response of governments to the WHO questionnaire also indicated limited diversion and abuse of the drug. Some reported hospital admissions due to adverse consequences of amineptine abuse.

Therapeutic usefulness

The therapeutic usefulness of amineptine is low because of hepatotoxicity, secondary features such as acne eruption and anxiety and the availability of safer antidepressants. Of the 103 countries that responded to the WHO questionnaire, only 17 indicated amineptine use.

III. Discussion

Although WHO has made specific scheduling recommendations for amineptine, the CND is not obliged to follow the WHO recommendations. Options available to the CND for substances considered for control under the Psychotropic Convention include: (1) Acceptance of the WHO recommendations; (2) acceptance of the recommendations to control, but control the drug substance in a schedule other than that recommended; or (3) rejection of the recommendations entirely. Amineptine is not approved for marketing in the United States and is not a controlled substance in the United States. Therefore, current controls in the United States on amineptine do not appear to meet the requirements of the recommended Schedule II of the Psychotropic Convention.

IV. Comments

Interested persons may, submit to the Dockets Management Branch (see **ADDRESSES**) written comments regarding this notice. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Dockets Management Branch (see **ADDRESSES**) between 9 a.m. and 4 p.m., Monday through Friday.

Dated: January 28, 2003.

Margaret M. Dotzel,

Assistant Commissioner for Policy.

[FR Doc. 03–2456 Filed 1–31–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Biological Response Modifiers Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). At least one portion of the meeting will be closed to the public.

Name of Committee: Biological Response Modifiers Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on February 27, 2003, from 8 a.m. to 6 p.m., and on February 28, 2003, from 8 a.m. to 4:30 p.m.

Location: Holiday Inn, 8777 Georgia Ave., Silver Spring, MD.

Contact Person: Gail Dapolito or Rosanna L. Harvey, Center for Biologics Evaluation and Research (HFM–71), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852, 301–827–0314, or FDA Advisory Committee Information Line, 1–800–741–8138 301–443–0572 in the Washington, DC area), code 12389. Please call the Information Line for up-to-date information on this meeting.

Agenda: On February 27, 2003, from 8 a.m. to approximately 3:45 p.m., the committee will discuss efficacy data for the use of minimally manipulated hematopoietic stem cells from placental/umbilical cord blood for hematopoietic reconstitution for particular age groups. From approximately 3:45 p.m. to 5:30 p.m., the committee will receive updates of

research programs in the Division of Monoclonal Antibodies, Center for Biologics Evaluation and Research (CBER). On February 28, 2003, from 8 a.m. to approximately 4:30 p.m., the committee will discuss safety issues related to the use of retrovirus vectors in gene therapy clinical trials.

Procedure: On February 27, 2003, from 8 a.m. to 5:30 p.m., the meeting is open to the public. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by February 20, 2003. On February 27, oral presentations from the public will be scheduled between approximately 11:30 a.m. and 12:30 p.m. On February 28, oral presentations from the public will be scheduled between approximately 11 a.m. and 12 noon. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before February 20, 2003, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Closed Committee Deliberations: On February 27, 2003, from approximately 5:30 p.m. to 6 p.m., the meeting will be closed to permit discussion where disclosure would constitute a clearly unwarranted invasion of personal privacy (5 U.S.C. 552b(c)(6)). The committee will discuss reports of a review of individual research programs in CBER.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Gail Dapolito or Rosanna L. Harvey at least 7 days in advance of the meeting.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: January 24, 2003.

William K. Hubbard,

Associate Commissioner for Policy and Planning.

[FR Doc. 03–2374 Filed 1–31–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Food Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Food Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on Monday, February 24, 2003, from 8:30 a.m. to 5 p.m., and Tuesday, February 25, 2003, from 8:30 a.m. to 5 p.m.

Location: Sheraton College Park Hotel, Salons A, B, and C, 4095 Powder Mill Rd., Beltsville, MD 20705, 301–937–4422.

Contact Person: Sylvia M. Smith, Center for Food Safety and Applied Nutrition (HFS–006), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 301–436–2397, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 10564. Please call the Information Line for up-to-date information on this meeting.

Agenda: On February 24 and 25, 2003, the committee will meet to discuss FDA's action plan for addressing the issue of acrylamide in food and to discuss the findings and recommendations from the Contaminants and Natural Toxicants Subcommittee of the Food Advisory Committee.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by February 10, 2003. Oral presentations from the public will be scheduled between approximately 4 p.m. and 5 p.m. on February 24, 2003. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person on or before February 10, 2003, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Sylvia Smith at least 7 days in advance of the meeting.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: January 24, 2003.

William K. Hubbard,

Associate Commissioner for Policy and Planning.

[FR Doc. 03–2457 Filed 1–31–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Advisory Committee for Pharmaceutical Science; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Advisory Committee for Pharmaceutical Science.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on March 12, 2003, from 8:30 a.m. to 5 p.m. and March 13, 2003, from 8:30 a.m. to 5 p.m.

Location: Center for Drug Evaluation and Research Advisory Committee Conference Room, rm. 1066, 5630 Fishers Lane, Rockville, MD.

Contact Person: Kathleen Reedy or Carolyn Jones, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane (for express delivery, 5630 Fishers Lane, rm. 1093), Rockville, MD 20857, 301–827–7001, or e-mail: *REEDYK@cder.fda.gov*, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the

Washington, DC area), code 12539. Please call the Information Line for up-to-date information on this meeting.

Agenda: On March 12, 2003, the committee will: (1) Receive a final report from the Process Analytical Technology Subcommittee and provide direction to the Manufacturing Subcommittee; (2) receive an update on sterile products produced by aseptic processing; (3) discuss and provide direction for future subcommittees: Biopharmaceutics Subcommittee and Microbiology Subcommittee; (4) discuss and provide comments on topical dermatological drug product nomenclature; and (5) discuss and provide comments on topical dermatological bioequivalence, methods development. On March 13, 2003, the committee will: (1) Discuss and provide direction for future subcommittee: Pharmacology/Toxicology Subcommittee; (2) receive an update on the Office of Pharmaceutical Science research projects; (3) discuss and provide comments on dose content uniformity, parametric interval test for aerosol products; (4) discuss and provide comments on levothyroxine bioequivalence; and (5) discuss and provide comments on comparability protocols.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by March 3, 2003. Oral presentations from the public will be scheduled between approximately 1:30 p.m. to 2 p.m. on March 12, 2003, and 11:30 a.m. to 12 noon on March 13, 2003. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before March 3, 2003, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Carolyn Jones at least 7 days in advance of the meeting.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: January 27, 2003.

William K. Hubbard,

Associate Commissioner for Policy and Planning.

[FR Doc. 03–2459 Filed 1–31–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99D–2212]

Medical Devices; Final Guidance on Quality System Information for Certain Premarket Application Reviews; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a final guidance entitled "Quality System Information for Certain Premarket Application Reviews." This guidance has been prepared by the Center for Devices and Radiological Health (CDRH), in coordination with the Center for Biologics Evaluation and Research (CBER), to assist medical device manufacturers in preparing and maintaining the quality system (QS) information required in certain premarket submissions.

DATES: Submit written or electronic comments on the guidance at any time. General comments on agency guidance documents are welcome at any time.

ADDRESSES: See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance. Submit written requests for single copies on a 3.5″ diskette of the final guidance document entitled "Quality System Information for Certain Premarket Application Reviews" to the Division of Small Manufacturers, International and Consumer Assistance (HFZ–220), Center for Devices and Radiological Health, Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850. Send two self-addressed adhesive labels to assist that office in processing your request, or fax your request to 301–443–8818.

FOR FURTHER INFORMATION CONTACT: Kimberly A. Trautman, Center for Devices and Radiological Health (HFZ–340), Food and Drug Administration, 2098 Gaither Rd., Rockville, MD 20850, 301–594–4648, or Leonard Wilson, Center for Biologics Evaluation and Research (HFM–25), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–827–0373.

SUPPLEMENTARY INFORMATION:

I. Background

This level 1 guidance entitled "Quality System Information for Certain Premarket Application Reviews" provides guidance to manufacturers who prepare and maintain QS information that should be included in premarket approval applications (PMA), PMA supplements, product development protocols (PDP), humanitarian device exemptions (HDE), and modular review submissions. This QS information guidance is meant to assist applicants in providing the information in a clear format for efficient review and timely decisions.

CDRH first published a guidance document entitled "Guidance for Preparation of PMA Manufacturing Information" on March 22, 1991, that was modified in 1992. The 1992 document was incorporated into the "Regulatory Requirements for Medical Devices: A Workshop Manual." Feedback from industry and FDA reviewers, as well as revisions to the regulation in 1996, prompted this revision to the guidance.

This guidance entitled "Quality System Information for Certain Premarket Application Reviews" replaces the 1991 and 1992 guidance documents concerning the kind of good manufacturing practice (GMP) information that should be submitted in premarket submissions before an inspection is conducted as part of the premarket approval process. The document should be used for PMA, PMA supplements, PDP, HDE, and modular review applications. The information identified in this guidance addresses the current GMP requirements found in the quality system regulation (see 21 CFR part 820).

Applicants who use this guidance should be able to focus their submissions on the information CDRH and CBER need to review. Based on their review, CDRH and CBER will provide to FDA field staff inspectional guidance to plan the premarket approval inspection. This should reduce the amount of time the investigator will need to conduct the onsite inspection.

II. Significance of Guidance

This guidance is being issued consistent with FDA's good guidance practices (GGPs) regulation (21 CFR 10.115). The guidance represents the agency's current thinking on QS

information for certain premarket application reviews. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute and regulations. This guidance document is issued as a level 1 guidance consistent with GGPs.

This guidance, when used in conjunction with the QS regulation, illustrates an approach for complying with the content requirements for premarket submissions found in section 515(c) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360e(c)) and 21 CFR part 814. A manufacturer who chooses to meet application requirements for the QS information in an alternative way may wish to consult with the appropriate office prior to the submission. The FDA staff can help identify areas that might raise particular concerns for CDRH and CBER reviewers or investigators.

III. Comments from the Draft Guidance

In the **Federal Register** of August 3, 1999 (64 FR 42137), "Medical Devices, Draft Guidance on Quality System Regulation Information for Various Premarket Submissions; Availability" was published as a draft level 1 guidance document for comment under GGPs. Six individuals or organizations filed comments on the draft guidance.

Most of the comments requested a better understanding of how FDA used the information previously submitted under the GMP manufacturing section and how the information requested in this guidance would be used. The introduction of the final guidance document explains that CDRH's Office of Compliance (OC) will review the QS information submitted in the premarket application at the same time the Office of Device Evaluation (ODE) reviews the other portions of the application. The appropriate offices in CBER will review the QS information submitted in CBER-regulated premarket submissions. Applicants who use this guidance should be able to focus their submissions on the information CDRH/CBER will need for review. Based on their review, CDRH/CBER will provide inspectional guidance to FDA field staff. Submission of this information can help focus the preapproval inspection process and limit the amount of time field staff will need to spend in the facility.

A few comments questioned the recommendation that manufacturers have design control information available, upon request, for devices subject to 510(k) clearance because it suggested that such documentation could be requested as part of the determination of substantial equivalence. FDA agrees with the comments and, therefore, has limited the applicability of this guidance document to exclude 510(k) submissions.

A few comments questioned whether the draft guidance document exceeded requirements in the QS regulation. The introduction to the final guidance document explains that the guidance document requests copies of written procedures or lists of items related to the QS regulation. In most cases, these procedures or lists are explicitly required under provisions of the QS regulation. In a few cases, the explanations or lists will facilitate FDA's review of your QS information. In the cases where the information is not explicitly required under statute or regulation (e.g., production flow diagram, list of any standards used, process validation master plan), FDA believes the information is the type you are likely to create and maintain as part of your QS. FDA believes submission of such information as part of your application will reduce or eliminate the need for us to request additional information during our review and preapproval inspection. However, because this is a guidance document, compliance with the recommendation is not required.

The final guidance also incorporates many editorial comments and wording suggestions that were submitted by comments.

IV. Electronic Access

In order to receive the guidance document "Quality System Information for Certain Premarket Application Reviews " via your fax machine, call the CDRH Facts-On-Demand (FOD) system at 800–899–0381 or 301–827–0111 from a touch-tone telephone. At the first voice prompt press 1 to access DSMA Facts, at the second voice prompt press 2, and then enter the document number (1140) followed by the pound sign (#). Then follow the remaining voice prompts to complete your request.

Persons interested in obtaining a copy of the document may also do so by using the Internet. CDRH maintains an entry on the Internet for easy access to information including text, graphics, and files that may be downloaded to a personal computer with access to the Internet. Updated on a regular basis, the CDRH home page includes the "Quality System Information for Certain Premarket Application Reviews," device safety alerts, **Federal Register** reprints, information on premarket submissions (including lists of approved applications and manufacturers' addresses), small manufacturers' assistance, information on video conferencing and electronic submissions, mammography matters, and other device-oriented information. The CDRH home page may be accessed at http://www.fda.gov/cdrh. The guidance entitled "Quality System Information for Certain Premarket Application Reviews" will be available at http://www.fda.gov/cdrh/comp/guidance/1140.pdf.

V. Paperwork Reduction Act of 1995

This guidance contains information collection provisions that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (the PRA) (44 U.S.C. 3501–3520) . The collections of information addressed in the guidance document have been approved by OMB in accordance with the PRA under the regulations governing premarket approval applications (21 CFR part 814, OMB control number 0910–0231) and the regulations governing quality systems (21 CFR part 820, OMB control number 0910–0073).

VI. Comments

Interested parties may submit to Dockets Management Branch (see **ADDRESSES**) written or electronic comments regarding this guidance. Submit two copies of any mailed comments, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The guidance document and received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: January 10, 2003.

Linda S. Kahan,

Deputy Director, Center for Devices and Radiological Health.

[FR Doc. 03–2375 Filed 1–31–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98N–1109]

Mercury Compounds in Drugs and Food; List

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; request for information.

SUMMARY: The Food and Drug Administration (FDA) is announcing a

request for information to update a list of drug and biologic products that contain intentionally introduced mercury compounds, e.g., phenylmercuric acetate, phenylmercuric nitrate, and thimerosal. This request is part of the implementation of the Food and Drug Administration Modernization Act of 1997 (FDAMA).

DATES: Submit written and electronic comments and information by April 4, 2003.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments.*

FOR FURTHER INFORMATION CONTACT: Gerald M. Rachanow, Center for Drug Evaluation and Research (HFD–560), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–2222.

SUPPLEMENTARY INFORMATION:

I. Background

FDAMA (Public Law 105–115) was enacted on November 21, 1997. Section 413 of FDAMA entitled "Food and Drug Administration Study of Mercury Compounds in Drugs and Food" required FDA to: (1) Compile a list of drugs and foods that contain intentionally introduced mercury compounds, and (2) provide a quantitative and qualitative analysis of the mercury compounds in this list. The statute did not differentiate whether the mercury compound was present in the products as an active or an inactive ingredient and required FDA to compile the list and provide the analysis within 2 years after the date of its enactment. FDA prepared this list and announced its availability in the **Federal Register** of November 19, 1999 (64 FR 63323).

II. Request for Information

The agency is aware that some manufacturers or distributors with products on the list have reformulated their products since 1999. Accordingly, the agency would like to update the list to delete any products that no longer contain mercury ingredients. The agency is requesting any affected manufacturer or distributor with a product(s) on the list that no longer contains mercury to send an acknowledgement to the agency [to Docket No. 98N–1109] stating that the product(s) has been reformulated to no longer contain mercury. The agency will compile this information and announce the availability of an updated list in a future issue of the **Federal Register**.

The agency wishes to assure that it has a copy of the revised labeling for any product that has been reformulated. Part 207 (21 CFR part 207) entitled "Registration of Producers of Drugs and Listing of Drugs in Commercial Distribution" provides that owners or operators of drug establishments that engage in the manufacture, preparation, propagation, compounding, or processing of a drug or drugs register and submit a list of every drug in commercial distribution (§ 207.20(a)). Owners or operators of establishments that distribute under their own label or trade name a drug manufactured or processed by a registered establishment may submit listing information directly to FDA and obtain a labeler code (§ 207.20(b)). Registrants are required to provide a copy of all current labeling for each new drug (§ 207.25(b)(2)) and human prescription drug that is not a new drug (§ 207.25(b)(4)), and a copy of the label for each human over-the-counter drug listed that is not a new drug (§ 207.25(b)(5)). Information about inactive ingredients in the product is requested but not required (§ 207.31(b)).

Owners and operators of all registered establishments are required to update their drug listing information every June and December (§ 207.21(b)). The updated information includes listing each drug for which commercial distribution has been discontinued or for which any material change has occurred in any information previously submitted (e.g., reformulation) (§ 207.30(a)(2) and (a)(4), respectively). The agency is requesting that any manufacturers or distributors who have reformulated their products to remove the mercury ingredients update their labeling in accordance with part 207. These submissions should be highlighted with the words "Mercury List" on the envelope. The submission of information to FDA under part 207 is an approved collection of information under the Office of Management and Budget (OMB) control number 0910–0045 entitled "Registration of Producers of Drugs and Listing of Drugs in Commercial Distribution," which expires July 31, 2004.

Affected manufacturers or distributors should submit the acknowledgement information to the Dockets Management Branch (see **ADDRESSES**). Two copies of all written information are to be submitted. Anyone submitting information electronically may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. A copy of the list and received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

The list is entitled "Mercury in Drug and Biologic Products" and is available on the Internet at *http://www.fda.gov/cder/fdama/mercury300.htm.*

Dated: January 15, 2003.

Margaret M. Dotzel,

Assistant Commissioner for Policy.

[FR Doc. 03–2378 Filed 1–31–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98D–0834]

Draft Guidance for Industry on Labeling for Noncontraceptive Estrogen Drug Products for the Treatment of Vasomotor Symptoms and Vulvar and Vaginal Atrophy Symptoms—Prescribing Information for Health Care Providers and Patient Labeling; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance for industry entitled "Labeling Guidance for Noncontraceptive Estrogen Drug Products for the Treatment of Vasomotor Symptoms and Vulvar and Vaginal Atrophy Symptoms—Prescribing Information for Health Care Providers and Patient Labeling." The draft guidance is intended to assist applicants in developing labeling for new drug applications for such drug products. This is the second draft of the guidance, which initially issued in September 1999.

DATES: Submit written or electronic comments on the draft guidance by April 4, 2003. General comments on agency guidance documents are welcome at any time.

ADDRESSES: Submit written requests for single copies of the draft guidance to the Division of Drug Information (HFD–240), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Send one self-addressed adhesive label to assist that office in processing your requests. Submit written comments on the draft guidance to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm.

1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT: Margaret Kober, Center for Drug Evaluation and Research (HFD–580), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4243.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance for industry entitled "Labeling Guidance for Noncontraceptive Estrogen Drug Products for the Treatment of Vasomotor Symptoms and Vulvar and Vaginal Atrophy Symptoms—Prescribing Information for Health Care Providers and Patient Labeling." The draft guidance describes the recommended labeling for health care providers and patient instructions for inclusion in new drug applications (NDAs). A draft of this guidance was first issued in September 1999 (64 FR 52100). However, on September 10, 2002, the agency withdrew the draft guidance (67 FR 57432), pending consideration of the results from the National Institutes of Health (NIH) Women's Health Initiative (WHI).[1] This second draft reflects the agency's thinking after considering the results of the WHI substudy.

In the WHI substudy, postmenopausal women who took conjugated estrogen 0.625 milligram (mg) combined with medroxyprogesterone acetate 2.5 mg had higher risks of several serious adverse events relative to those women who took placebo. Conjugated estrogens alone also increased the rates of cardiovascular disease compared to placebo. Other doses of conjugated estrogens and medroxyprogesterone acetate and other combinations of estrogens and progestins were not studied in the WHI. However, in the absence of comparable data, the risks of serious adverse events should be assumed to be similar because other studies show that estrogens and progestins are associated with these types of events.

This second draft of the guidance reflects several changes. For example, the draft guidance provides specific labeling recommendations for two indications (moderate to severe vasomotor symptoms and moderate to severe symptoms of vulvar and vaginal atrophy). It refers sponsors to the appropriate review divisions for guidance on labeling products to treat other indications. In addition, the guidance recommends that the following additions be made to the labeling for noncontraceptive estrogen drug products for the treatment of vasomotor symptoms and symptoms of vulvar and vaginal atrophy:

- New information to the boxed warning;
- Information from the WHI, including a statement that, although only a single dose and type of estrogen and progestin were studied in the WHI, risks for serious adverse events should be assumed to be similar for other estrogens and progestins until data show otherwise;
- A statement recommending that use of estrogens should be at the lowest doses and for the shortest duration in hopes of minimizing risks;
- A revised indication for the treatment of vulvar and vaginal atrophy in women who have moderate to severe symptoms so that benefits from drug therapy may outweigh risks; and
- Information from the WHI on cardiovascular and cancer risks as well as other information from the WHI and other studies.

Finally, the new draft updates other information in the label based on current scientific studies.

This level 1 draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance represents the agency's current thinking on labeling for noncontraceptive estrogen drug products for the treatment of vasomotor symptoms and vulvar and vaginal atrophy symptoms. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

II. Comments

Interested persons may submit to the Dockets Management Branch (see **ADDRESSES**) written or electronic comments regarding the draft guidance. Submit a single copy of electronic comments to http://www.fda.gov/dockets/ecomments or two hard copies of any written comments, except that individuals may submit one hard copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The draft guidance and received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

Persons with access to the Internet may obtain the document at either *http://www.fda.gov/cder/guidance/index.htm* or *http://www.fda.gov/ohrms/dockets/default.htm*.

Dated: January 23, 2003.

Margaret M. Dotzel,

Assistant Commissioner for Policy.

[FR Doc. 03–2377 Filed 1–31–03; 8:45 am]

BILLING CODE 4160–01–S

[1] The results of the NIH Women's Health Initiative trial were reported in the *Journal of the American Medical Association*, 288: 321–333, 2002.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 03D–0001]

Draft Guidance for Industry on Nonclinical Safety Evaluation of Pediatric Drug Products; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance for industry entitled "Nonclinical Safety Evaluation of Pediatric Drug Products." The draft guidance provides recommendations on the role and timing of animal studies in the safety evaluation of therapeutics intended for the treatment of pediatric patients.

DATES: Submit written or electronic comments on the draft guidance by May 5, 2003. General comments on agency guidance documents are welcome at any time.

ADDRESSES: Submit written requests for single copies of the draft guidance to the Division of Drug Information (HFD–240), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Send one self-addressed adhesive label to assist that office in processing your requests. Submit written comments on the draft guidance to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT: Karen Davis Bruno, Center for Drug Evaluation and Research (HFD–580), Food and Drug Administration, 5600

Fishers Lane, Rockville, MD 20857, 301–827–6430.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance for industry entitled "Nonclinical Safety Evaluation of Pediatric Drug Products." Many therapeutics marketed in the United States and used in pediatric patients lack adequate information in the labeling for use in that population. In most cases to date, safety data from clinical studies in adults, supported by nonclinical studies in adult animals, have been used to support the use of a drug in pediatric patients. These studies may not always assess possible drug effects on developmental processes specific to pediatric age groups. Some drug effects also may be difficult to detect in clinical trial or during routine postmarketing surveillance.

The draft guidance provides recommendations on the role and timing of animal studies in the safety evaluation of therapeutics intended for the treatment of pediatric patients. It describes how juvenile animal studies can be useful in monitoring, timing, and phasing of trials for initial enrollment in pediatric clinical studies. The draft guidance is intended to serve as a resource for general considerations in animal testing and to provide recommendations based on the available science and pragmatic considerations. The scope of animal studies is limited to safety effects that cannot be reasonably, ethically, and safely assessed in pediatric clinical trials.

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance represents the agency's current thinking on "Nonclinical Safety Evaluation of Pediatric Drug Products." It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

II. Comments

Interested persons may submit to the Dockets Management Branch (see **ADDRESSES**) written or electronic comments regarding this document. Submit a single copy of electronic comments to http://www.fda.gov/dockets/ecomments or two hard copies of any written comments, except that individuals may submit one hard copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The draft guidance and received comments may be seen in the Dockets Managment Branch between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

Persons with access to the Internet may obtain the document at either http://www.fda.gov/cder/guidance/index.htm or http://www.fda.gov/ohrms/dockets/default.htm.

Dated: January 21, 2003.

Margaret M. Dotzel,

Assistant Commissioner for Policy.

[FR Doc. 03–2376 Filed 1–31–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 concerning opportunity for public comment on proposed collections of information, the Substance Abuse and Mental Health Services Administration will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the information collection plans, call the SAMHSA Reports Clearance Officer on (301) 443–7978.

Comments are invited on: (a) Whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: SAMHSA/HRSA Collaboration to Link Health Care for the Homeless Programs and Community Mental Health Agencies—(New)—The Substance Abuse and Mental Health Services Administration (SAMHSA), Center for Mental Health Services (CMHS); the Health Resources and Services Administration (HRSA), Bureau of Primary Health Care (BPHC); and the Office of the Assistant Secretary for Planning and Evaluation (ASPE) propose to conduct a longitudinal, multi-site evaluation assessing their initiative to foster collaborations between Health Care for the Homeless programs (HCH) and community mental health agencies (CMHA). In 12 designated communities, an HCH site and a CMHA site will collaborate to increase the availability of mental health and primary care services for persons with serious mental illness and co-occurring substance use disorders who are homeless. The evaluation of these collaborative efforts will advance knowledge on elements of the implementation process associated with establishment of a successful collaboration, such as partnering mechanisms, success of referral links, intensity of services, the effects of collaboration on client outcomes, and plans for sustainability.

Data collection will be conducted over a 30-month period. In each community, both a process and an outcome evaluation will be conducted to address the following questions: How is the project being implemented? What are the identified collaboration mechanisms? What are the service/agency level outcomes? What are the system-level outcomes? What are the client-level outcomes? To what extent do the various collaboration strategies predict outcomes?

To reduce burden and increase uniformity across the study sites, a common case study protocol will be used to guide the evaluation. Information for the service/agency and system level evaluations will be collected by staff from the central Evaluation Center (EC) during annual site visits and through activity logs. Common site visit protocols will dictate what data collection methods will be used. Site visitors will rely on focus groups and interviews to obtain information from project directors, local evaluators, project staff, and clients. Activity logs monitoring each community's efforts to implement collaboration strategies, will be completed by program administrators and submitted to the EC quarterly. Key outcomes to be examined at the service/agency level through these data collection methods include increased availability of mental health, substance abuse, specialty care, housing and services; increased access to primary care, mental health, and substance abuse services; more comprehensive assessment of and services for individual needs; increased integrated delivery of services; and increased engagement and retention in services. System-level outcomes to be examined include increased cross-agency activity;

increased mental health capacity at Hch sites; less redundancy in data collection; and enhanced screening for multi-dimensional issues.

The estimated response burden for this project is as follows:

Instrument	Number of responses	Responses/ respondent	Burden/response (Hrs.)	Total burden hours
Administrative Interviews	24	3	1.5	108
Evaluator Interviews	12	3	1.0	36
Line Staff Interviews	48	3	1.0	144
Consumer Focus Groups	84	3	1.0	252
Other Key Informants	48	3	1.0	144
Activity Logs	12	10	2.0	240
Total	228			924
3-yr. Annual Average	228			308

A total of approximately 6,500 program participants are expected to be recruited from the 12 sites. Each site will collect GPRA data on these participants using the CMHS GPRA Core Client Outcome measures approved by the Office of Management and Budget under control number 0930–0208, which cover such domains as drug and alcohol use, family and living conditions, education, employment, and income, crime and criminal justice status, and mental and physical health problems and treatment. To obtain information on client-level outcomes the central Evaluation Center will work with each site to develop methods for obtaining relevant material from the GPRA data. It is expected that client-level data will be submitted to the Evaluation Center via electronic means. The Evaluation Center will provide training and technical assistance to all sites on data submission procedures.

Send comments to Nancy Pearce, SAMHSA Reports Clearance Officer, Room 16–105, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: January 27, 2003.

Richard Kopanda,

Executive Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 03–2392 Filed 1–31–03; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Current List of Laboratories Which Meet Minimum Standards To Engage in Urine Drug Testing for Federal Agencies

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Notice.

SUMMARY: The Department of Health and Human Services notifies Federal agencies of the laboratories currently certified to meet standards of Subpart C of Mandatory Guidelines for Federal Workplace Drug Testing Programs (59 FR 29916, 29925). A notice listing all currently certified laboratories is published in the **Federal Register** during the first week of each month. If any laboratory's certification is suspended or revoked, the laboratory will be omitted from subsequent lists until such time as it is restored to full certification under the Guidelines.

If any laboratory has withdrawn from the National Laboratory Certification Program during the past month, it will be listed at the end, and will be omitted from the monthly listing thereafter.

This notice is also available on the internet at the following websites: *http://workplace.samhsa.gov* and *http://www.drugfreeworkplace.gov*.

FOR FURTHER INFORMATION CONTACT: Mrs. Giselle Hersh or Dr. Walter Vogl, Division of Workplace Programs, 5600 Fishers Lane, Rockwall 2 Building, Room 815, Rockville, Maryland 20857; Tel.: (301) 443–6014, Fax: (301) 443–3031.

SUPPLEMENTARY INFORMATION: Mandatory Guidelines for Federal Workplace Drug Testing were developed in accordance with Executive Order 12564 and section 503 of Public Law 100–71. Subpart C of the Guidelines, "Certification of Laboratories Engaged in Urine Drug Testing for Federal Agencies," sets strict standards which laboratories must meet in order to conduct urine drug testing for Federal agencies. To become certified an applicant laboratory must undergo three rounds of performance testing plus an on-site inspection.

To maintain that certification a laboratory must participate in a quarterly performance testing program plus periodic, on-site inspections.

Laboratories which claim to be in the applicant stage of certification are not to be considered as meeting the minimum requirements expressed in the HHS Guidelines. A laboratory must have its letter of certification from SAMHSA, HHS (formerly: HHS/NIDA) which attests that it has met minimum standards.

In accordance with Subpart C of the Guidelines, the following laboratories meet the minimum standards set forth in the Guidelines:

ACL Laboratories, 8901 W. Lincoln Ave., West Allis, WI 53227, 414–328–7840/800–877–7016 (Formerly: Bayshore Clinical Laboratory).

ACM Medical Laboratory, Inc., 160 Elmgrove Park, Rochester, NY 14624, 585–429–2264.

Advanced Toxicology Network, 3560 Air Center Cove, Suite 101, Memphis, TN 38118, 901–794–5770/888–290–1150.

Aegis Analytical Laboratories, Inc., 345 Hill Ave., Nashville, TN 37210, 615–255–2400.

Alliance Laboratory Services, 3200 Burnet Ave., Cincinnati, OH 45229, 513–585–6870, (Formerly: Jewish Hospital of Cincinnati, Inc.).

Associated Pathologists Laboratories, Inc., 4230 South Burnham Ave., Suite 250, Las Vegas, NV 89119–5412, 702–733–7866 / 800–433–2750.

Baptist Medical Center—Toxicology Laboratory, 9601 I–630, Exit 7, Little Rock, AR 72205–7299, 501–202–2783, (Formerly: Forensic Toxicology Laboratory Baptist Medical Center).

Clinical Reference Lab, 8433 Quivira Rd., Lenexa, KS 66215–2802, 800–445–6917.

Cox Health Systems, Department of Toxicology, 1423 North Jefferson Ave., Springfield, MO 65802, 800–876–3652 / 417–269–3093, (Formerly: Cox Medical Centers).

Diagnostic Services Inc., dba DSI, 12700 Westlinks Drive, Fort Myers, FL 33913, 239–561–8200 / 800–735–5416.

Doctors Laboratory, Inc., P.O. Box 2658, 2906 Julia Dr., Valdosta, GA 31602, 912–244–4468.

DrugProof, Divison of Dynacare, 543 South Hull St., Montgomery, AL 36103, 888–777–9497 / 334–241–0522, (Formerly: Alabama Reference Laboratories, Inc.).

DrugProof, Division of Dynacare/ Laboratory of Pathology, LLC, 1229 Madison St., Suite 500, Nordstrom Medical Tower, Seattle, WA 98104, 206–386–2661 / 800–898–0180, (Formerly: Laboratory of Pathology of Seattle, Inc., DrugProof, Division of Laboratory of Pathology of Seattle, Inc.).

DrugScan, Inc., P.O. Box 2969, 1119 Mearns Rd., Warminster, PA 18974, 215–674–9310.

Dynacare Kasper Medical Laboratories *, 10150–102 Street, Suite 200, Edmonton, Alberta, Canada TJ5 5E2, 780–451–3702 / 800–661–9876.

ElSohly Laboratories, Inc., 5 Industrial Park Dr., Oxford, MS 38655, 662–236–2609.

Express Analytical Labs, 3405 7th Avenue, Suite 106, Marion, IA 52302, 319–377–0500.

Gamma-Dynacare Medical Laboratories *, A Division of the Gamma-Dynacare Laboratory Partnership, 245 Pall Mall St., London, ONT, Canada N6A 1P4, 519–679–1630.

General Medical Laboratories, 36 South Brooks St., Madison, WI 53715, 608–267–6225.

Kroll Laboratory Specialists, Inc., 1111 Newton St., Gretna, LA 70053, 504–361–8989 / 800–433–3823 (Formerly: Laboratory Specialists, Inc.).

LabOne, Inc., 10101 Renner Blvd., Lenexa, KS 66219, 913–888–3927 / 800–873–8845 (Formerly: Center for Laboratory Services, a Division of LabOne, Inc.).

Laboratory Corporation of America Holdings, 7207 N. Gessner Road, Houston, TX 77040, 713–856–8288 / 800–800–2387.

Laboratory Corporation of America Holdings, 69 First Ave., Raritan, NJ 08869, 908–526–2400 / 800–437–4986 (Formerly: Roche Biomedical Laboratories, Inc.).

Laboratory Corporation of America Holdings, 1904 Alexander Drive, Research Triangle Park, NC 27709, 919–572–6900 / 800–833–3984 (Formerly: LabCorp Occupational Testing Services, Inc., CompuChem Laboratories, Inc.; CompuChem Laboratories, Inc., A Subsidiary of Roche Biomedical Laboratory; Roche CompuChem Laboratories, Inc., A Member of the Roche Group).

Laboratory Corporation of America Holdings, 10788 Roselle Street, San Diego, CA 92121, 800–882–7272 (Formerly: Poisonlab, Inc.).

Laboratory Corporation of America Holdings, 1120 Stateline Road West, Southaven, MS 38671, 866–827–8042 / 800–233–6339 (Formerly: LabCorp Occupational Testing Services, Inc., MedExpress/National Laboratory Center).

Marshfield Laboratories, Forensic Toxicology Laboratory, 1000 North Oak Ave., Marshfield, WI 54449, 715–389–3734 / 800–331–3734.

MAXXAM Analytics Inc.*, 5540 McAdam Rd., Mississauga, ON, Canada L4Z 1P1, 905–890–2555 (Formerly: NOVAMANN (Ontario) Inc.).

Medical College Hospitals Toxicology Laboratory, Department of Pathology, 3000 Arlington Ave., Toledo, OH 43699, 419–383–5213.

MedTox Laboratories, Inc., 402 W. County Rd. D, St. Paul, MN 55112, 651–636–7466 / 800–832–3244.

MetroLab-Legacy Laboratory Services, 1225 NE 2nd Ave., Portland, OR 97232, 503–413–5295 / 800–950–5295.

Minneapolis Veterans Affairs Medical Center, Forensic Toxicology Laboratory, 1 Veterans Drive, Minneapolis, Minnesota 55417, 612–725–2088.

National Toxicology Laboratories, Inc., 1100 California Ave., Bakersfield, CA 93304, 661–322–4250 / 800–350–3515.

Northwest Drug Testing, a division of NWT Inc., 1141 E. 3900 South, Salt Lake City, UT 84124, 801–293–2300 / 800–322–3361 (Formerly: NWT Drug Testing, NorthWest Toxicology, Inc.).

One Source Toxicology Laboratory, Inc., 1705 Center Street, Deer Park, TX 77536, 713–920–2559 (Formerly: University of Texas Medical Branch, Clinical Chemistry Division; UTMB Pathology-Toxicology Laboratory).

Oregon Medical Laboratories, P.O. Box 972, 722 East 11th Ave., Eugene, OR 97440–0972, 541–687–2134.

Pacific Toxicology Laboratories, 6160 Variel Ave., Woodland Hills, CA 91367, 818–598–3110 / 800–328–6942 (Formerly: Centinela Hospital Airport Toxicology Laboratory).

Pathology Associates Medical Laboratories, 110 West Cliff Drive, Spokane, WA 99204, 509–755–8991 / 800–541–7891x8991.

PharmChem Laboratories, Inc., 4600 N. Beach, Haltom City, TX 76137, 817–605–5300 (Formerly: PharmChem Laboratories, Inc., Texas Division; Harris Medical Laboratory).

Physicians Reference Laboratory, 7800 West 110th St., Overland Park, KS 66210, 913–339–0372 / 800–821–3627.

Quest Diagnostics Incorporated, 3175 Presidential Dr., Atlanta, GA 30340, 770–452–1590/800–729–6432 (Formerly: SmithKline Beecham Clinical Laboratories, SmithKline Bio-Science Laboratories).

Quest Diagnostics Incorporated, 4770 Regent Blvd., Irving, TX 75063, 800–824–6152 (Moved from the Dallas location on 03/31/01; Formerly: SmithKline Beecham Clinical Laboratories, SmithKline Bio-Science Laboratories).

Quest Diagnostics Incorporated, 400 Egypt Rd., Norristown, PA 19403, 610–631–4600 / 877–642–2216 (Formerly: SmithKline Beecham Clinical Laboratories, SmithKline Bio-Science Laboratories).

Quest Diagnostics Incorporated, 506 E. State Pkwy., Schaumburg, IL 60173, 800–669–6995 / 847–885–2010 (Formerly: SmithKline Beecham Clinical Laboratories, International Toxicology Laboratories).

Quest Diagnostics Incorporated, 7600 Tyrone Ave., Van Nuys, CA 91405, 818–989–2520 / 800–877–2520 (Formerly: SmithKline Beecham Clinical Laboratories).

Scientific Testing Laboratories, Inc., 450 Southlake Blvd., Richmond, VA 23236, 804–378–9130.

S.E.D. Medical Laboratories, 5601 Office Blvd., Albuquerque, NM 87109, 505–727–6300 / 800–999–5227.

South Bend Medical Foundation, Inc., 530 N. Lafayette Blvd., South Bend, IN 46601, 574–234–4176x276.

Southwest Laboratories, 2727 W. Baseline Rd., Tempe, AZ 85283, 602–438–8507 / 800–279–0027.

Sparrow Health System, Toxicology Testing Center, St. Lawrence Campus, 1210 W. Saginaw, Lansing, MI 48915, 517–377–0520 (Formerly: St. Lawrence Hospital & Healthcare System).

St. Anthony Hospital Toxicology Laboratory, 1000 N. Lee St., Oklahoma City, OK 73101, 405–272–7052.

Sure-Test Laboratories, Inc., 2900 Broad Avenue, Memphis, Tennessee 38112, 901–474–6028.

Toxicology & Drug Monitoring Laboratory, University of Missouri Hospital & Clinics, 2703 Clark Lane, Suite B, Lower Level, Columbia, MO 65202, 573–882–1273.

Toxicology Testing Service, Inc., 5426 N.W. 79th Ave., Miami, FL 33166, 305–593–2260.

US Army Forensic Toxicology Drug Testing Laboratory, 2490 Wilson Street, Fort George G. Meade, MD 20755–5235, 301–677–3714.

The following laboratory will be voluntarily withdrawing from the National Laboratory Certification Program (NLCP) effective January 31, 2003:

American Medical Laboratories, Inc., 14225 Newbrook Dr., Chantilly, VA 20151, 703–802–6900.

*The Standards Council of Canada (SCC) voted to end its Laboratory Accreditation Program for Substance Abuse (LAPSA) effective May 12, 1998. Laboratories certified through that program were accredited to conduct forensic urine drug testing as required by U.S. Department of Transportation (DOT) regulations. As of that date, the certification of those accredited Canadian laboratories will continue under DOT authority. The responsibility for conducting quarterly performance testing plus periodic on-site inspections of those LAPSA-accredited laboratories was transferred to the U.S. DHHS, with the DHHS' National Laboratory Certification Program (NLCP) contractor continuing to have an active role in the performance testing and laboratory inspection processes. Other Canadian laboratories wishing to be considered for the NLCP may apply directly to the NLCP contractor just as U.S. laboratories do.

Upon finding a Canadian laboratory to be qualified, the DHHS will recommend that DOT certify the laboratory (**Federal Register**, 16 July 1996) as meeting the minimum standards of the "Mandatory Guidelines for Workplace Drug Testing" (59 **Federal Register**, 9 June 1994, Pages 29908–29931). After receiving the DOT certification, the laboratory will be included in the monthly list of DHHS certified laboratories and participate in the NLCP certification maintenance program.

Richard Kopanda,

Executive Officer, SAMHSA.

[FR Doc. 03–2490 Filed 1–31–03; 8:45 am]

BILLING CODE 4160–20–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

2003 Migratory Bird Hunting and Conservation Stamp (Federal Duck Stamp) Contest

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: The Fish and Wildlife Service announces the dates and locations of the 2003 Federal Duck Stamp contest; the public is invited to enter and to attend.

DATES: 1. The official date to begin submission of entries to the 2003 contest is July 1, 2003. All entries must be postmarked no later than midnight, Monday, September 15, 2003.

2. The public may view the 2003 Federal Duck Stamp Contest entries on Monday, November 3, 2003, from 10 a.m. to 2 p.m.

3. Judging will be held on Tuesday, November 4, 2003, from 10:30 a.m. to 5 p.m. and Wednesday, November 5, 2003, from 9 a.m. to 2 p.m.

ADDRESSES: Requests for complete copies of the regulations, reproduction rights agreement, and display and participation agreement may be requested by calling 1–703–358–2000, or requests may be addressed to: Federal Duck Stamp Contest, U.S. Fish and Wildlife Service, Department of the Interior, 4401 North Fairfax Drive, Mail Stop MBSP–4070, Arlington, VA 22203–1610. You may also download the information from the Federal Duck Stamp Web site at *http://duckstamps.fws.gov.*

FOR FURTHER INFORMATION CONTACT: Ms. Terry Bell, telephone (703) 358–2002, E-mail *terry_bell@fws.gov* or fax: (703) 358–2009.

SUPPLEMENTARY INFORMATION:

Background

On March 16, 1934, Congress passed and President Franklin Roosevelt signed the Migratory Bird Hunting Stamp Act. Popularly known as the Duck Stamp Act, it required all waterfowl hunters 16 years or older to buy a stamp annually. The revenue generated was originally earmarked for the Department of Agriculture, but 5 years later was transferred to the Department of the Interior and the Fish and Wildlife Service to buy or lease waterfowl sanctuaries.

In the years since its enactment, the Federal Duck Stamp Program has become one of the most popular and successful conservation programs ever initiated. Today, some 1.6 million stamps are sold each year, and, as of 2002, Federal Duck Stamps have generated more than $600 million for the preservation of more than 5 million acres of waterfowl habitat in the United States. Numerous other birds, mammals, fish, reptiles and amphibians have similarly prospered because of habitat protection made possible by the program. An estimated one-third of the Nation's endangered and threatened species find food or shelter in refuges preserved by Duck Stamp funds. Moreover, the protected wetlands help dissipate storms, purify water supplies, store flood water, and nourish fish hatchlings important for sport and commercial fishermen.

The Contest

The first Federal Duck Stamp was designed, at President Franklin Roosevelt's request, by Jay N. "Ding" Darling, a nationally known political cartoonist for the *Des Moines Register* and a noted hunter and wildlife conservationist. In subsequent years, noted wildlife artists were asked to submit designs. The first contest was opened in 1949 to any U.S. artist who wished to enter, and 65 artists submitted a total of 88 design entries in the only art competition of its kind sponsored by the U.S. Government. To select each year's design, a panel of noted art, waterfowl, and philatelic authorities are appointed by the Secretary of the Interior. Winners receive no compensation for the work, except a pane of their stamps, but winners may sell prints of their designs, which are sought by hunters, conservationists, and art collectors.

The public may view the 2003 Federal Duck Stamp Contest entries on Monday, November 3, 2003, from 10 a.m. to 2 p.m. in the Department of the Interior Auditorium ("C" Street entrance), 1849 C Street, NW., Washington, DC. This year's judging will be held Tuesday, November 4, 2003, beginning at 10:30 a.m. and continuing at 9 a.m. on Wednesday, November 5, 2003.

Dated: January 26, 2003.

Steve Williams,

Director.

[FR Doc. 03–2379 Filed 1–31–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID–070–1020–PG]

Notice of Public Meeting, Upper Snake River Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM) Upper Snake River Resource Advisory Council (RAC), will meet as indicated below.

DATES: The meeting will be held February 26 and 27 at the BLM's Fire Warehouse Conference Room, 3630 Overland Avenue, in Burley, Idaho. The meeting will start February 26 at 2 p.m., with the public comment period beginning at approximately 2:10 p.m. The meeting will adjourn on February 27 at noon.

SUPPLEMENTARY INFORMATION: The 15-member Council advises the Secretary of the Interior, through the Bureau of

Land Management, on a variety of planning and management issues associated with public land management in the BLM Upper Snake River District (USRD), which covers south-central and southeast Idaho. At this meeting, topics we plan to discuss include:

Updates on major planning projects in the USRD
Review feedback and action items from National RAC videoconference
Planning for RAC Allotment tours in 2003
Introduction to RAC of BLM Idaho State Director
Other items of interest raised by the Council

All meetings are open to the public. The public may present written comments to the Council. Each formal Council meeting will also have time allocated for hearing public comments. Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited. Individuals who plan to attend and need special assistance, such as sign language interpretation, tour transportation or other reasonable accommodations, should contact the BLM as provided below.

Other USRD RAC meetings for 2003 have been planned for June, July and November 2003, and will be announced in a future **Federal Register** Notice and through local media.

FOR FURTHER INFORMATION CONTACT: David Howell, RAC Coordinator, Upper Snake River District, 1405 Hollipark Dr., Idaho Falls, ID 83401. Telephone (208) 524–7559.

Dated: January 28, 2003.

David O. Howell,

Public Affairs Specialist.

[FR Doc. 03–2394 Filed 1–31–03; 8:45 am]

BILLING CODE 4310–GG–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID–090–1610–PG; DBG–0200001]

Notice of Public Meeting: Resource Advisory Council to the Lower Snake River District, Bureau of Land Management, U.S. Department of the Interior

AGENCY: Bureau of Land Management, U.S. Department of the Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM) Lower Snake River District Resource Advisory Council (RAC), will meet as indicated below.

DATES: The meeting will be held February 18, 2003 at the Lower Snake River District Offices, located at 3948 Development Avenue, Boise, Idaho, beginning at 9 a.m. The public comment periods will be held after each topic on the agenda. The meeting is expected to adjourn at 4 p.m.

FOR FURTHER INFORMATION CONTACT: MJ Byrne, Public Affairs Officer and RAC Coordinator, Lower Snake River District, 3948 Development Ave., Boise, ID 83705, Telephone (208) 384–3393.

SUPPLEMENTARY INFORMATION: The 15-member Council advises the Secretary of the Interior, through the Bureau of Land Management, on a variety of planning and management issues associated with public land management in southwestern Idaho. At this meeting, the following topics will be discussed:

- Subgroup reports on Sage Grouse Habitat Management, OHV and Transportation Management, River Recreation and Resource Management Plans, and Fire and Fuels Management;
- RAC Members will discuss and prioritize the issues and focus of the Council for 2003, finalize membership on the subcommittees, and plan for hosting a meeting with the other two BLM District RACs;
- A presentation on drought conditions in the Lower Snake River District, across Idaho and the region.
- An update will be given on the two Resource-Management Plans under development in the District, and
- Each of the Field Office Managers will provide an update on current activities and issues in each of their field office areas.

All meetings are open to the public. The public may present written comments to the Council. Each formal Council meeting will also have time allocated for hearing public comments. Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited. Individuals who plan to attend and need special assistance, such as sign language interpretation, tour transportation or other reasonable accommodations, should contact the BLM as provided below. Expedited publication is requested to give the public adequate notice. The urgency of having the meeting on the identified date is due to the emergency conditions of public lands caused by the drought.

Dated: January 29, 2003.

Howard Hedrick,

Acting District Manager.

[FR Doc. 03–2493 Filed 1–31–03; 8:45 am]

BILLING CODE 4310–GG–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UT–020–03–2640–HO–UTZA]

Notice

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: Notice is hereby given that an administrative settlement agreement under the Comprehensive Environmental Response Compensation and Liability Act is available for public comment.

SUPPLEMENTARY INFORMATION: Under section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. 9622(i), notice is hereby given that on October 30, 2002, the Bureau of Land Management ("BLM"), by and through the Department of the Interior and with the concurrence of the Department of Justice, signed a proposed administrative settlement agreement ("Agreement") concerning the Manning Canyon Mill Site ("Site") located near Fairfield, Utah.

The Site comprises public land managed by the BLM and private land owned by Leo Ault, Howard Ault, Louis O. Ault, Leonard Ault, and Virginia A. Coleman (collectively hereinafter the "Ault family"). A milling facility located at the Site produced approximately 720,000 cubic yards of tailings and other mine wastes between 1890 and 1937. These tailings were disposed of in tailings impoundments behind earthen dams that subsequently breached, allowing tailings to migrate down gradient from the Site. BLM and the U.S. Environmental Protection Agency conducted a preliminary assessment of the tailings impoundments on-Site as well as downstream areas to which tailings had migrated. BLM completed a site inspection in September, 1999. Sampling results revealed elevated levels of lead, mercury, arsenic and other hazardous substances in the tailings. BLM performed an engineering evaluation/cost analysis ("EE/CA") of response alternatives and, by action memorandum dated May 8, 2001, selected a non-time-critical removal action from among the alternatives

analyzed. BLM is currently implementing this removal action by which an engineered tailings repository will be built on-Site to consolidate tailings in order to prevent future migration of or exposure to hazardous substances. BLM expects that this removal action will fully protect human health and the environment from risks associated with hazardous substances at the Site.

Through the proposed Agreement the United States and the Ault family would resolve the alleged liability of the Ault family under section 107 of CERCLA, 42 U.S.C. 9607. The Ault family would provide resources and materials needed to implement the removal action. In addition, the proposed Agreement would authorize BLM to construct a portion of the tailings repository on Ault family property. The BLM estimates that the proposed Agreement with the Ault family will reduce the total response costs incurred to clean up the Manning Canyon Mill Site by approximately $4.5 million.

The BLM will receive comments on the proposed Agreement for a period of 30 days from the date of this publication. Comments should refer to the Manning Canyon Mill Site. The proposed Agreement may be examined at the BLM Salt Lake Field Office. A copy of the proposed Agreement may also be obtained from the BLM Salt Lake Field Office upon request. Comments or requests to obtain a copy of the proposed Agreement should be addressed to: Tim Ingwell, BLM Salt Lake Field Office, 2370 South 2300 West, Salt Lake City, UT 84119, (801) 977–4353.

Dated: December 5, 2002.

Glenn A. Carpenter,

Field Office Manager.

[FR Doc. 03–2368 Filed 1–31–03; 8:45 am]

BILLING CODE 4310–$$–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Kit Fox Mitigation Area Closure

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of closure of public lands to public access.

SUMMARY: The Bureau of Reclamation is temporarily closing 171 acres of Federal land to public access. The closure will protect a mitigation area for the San Joaquin kit fox. The closure includes all lands, waters, and facilities within the fence enclosure west and east of the San Luis Canal and adjacent to the San Luis Canal Right of Way in Merced County, California.

EFFECTIVE DATES: This closure is effective from February 3, 2003 until November 1, 2007.

ADDRESSES: A map of the closed area is available for inspection at the Bureau of Reclamation's South Central California Office, located at 1243 N Street, Fresno, California 93721. The map may be viewed between the hours of 8 a.m. and 4 p.m., Monday through Friday. To have a map mailed to your address, call Mr. Dan Holsapple at 559–487–5409.

FOR FURTHER INFORMATION CONTACT: Mr. Dan Holsapple, Bureau of Reclamation, telephone: 559–487–5409.

SUPPLEMENTARY INFORMATION: Following is the closure order:

By virtue of the authority vested in the authorized officer of this notice, under the regulations of the Secretary of the Interior, 43 CFR part 423, public access to the following facilities, lands, or waters is closed until November 1, 2007:

Kit Fox Mitigation Area—The closure area includes all lands, waters, and facilities within the fence enclosure west and east of the San Luis Canal and adjacent to the San Luis Canal Right of Way in Merced County. Property consists of approximately 171 acres.

The following acts are prohibited on the facilities, lands, and waters in the closure area:

1. Trespassing, entering, or remaining in or upon the closure areas described above. Exceptions: Operations and Maintenance personnel that have express authorization from Reclamation, law enforcement officers and Reclamation employees acting within the scope of their employment, and any others who have received express written authorization from Reclamation to enter the closure areas.

2. Tampering or attempting to tamper with the facilities, structures, or other property located within the closure areas or moving, manipulating, or setting in motion any of the parts thereof. Exceptions: see 1 above.

3. Vandalism or destroying, injuring, defacing, or damaging property or real property that is not under one's lawful control or possession.

4. Depositing or abandoning any refuse, agricultural wastes, hazardous materials/waste, vehicles, tires, or any other items not expressly authorized by Reclamation.

5. Grazing of sheep, cattle or any other livestock within the closure area without written permit from Reclamation or their managing agent.

6. Surface occupancy unless specifically authorized and permitted by Reclamation.

This order is posted in accordance with 43 CFR 423.3(b). Violations of this prohibition or any prohibition listed in 43 CFR part 423 are punishable by fine, or imprisonment for not more than 6 months, or both.

Dated: October 17, 2002.

Frank Michny,

Regional Environmental Officer, Mid-Pacific Region.

[FR Doc. 03–2391 Filed 1–31–03; 8:45 am]

BILLING CODE 4310–MN–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Millerton Lake Resource Management Plan and General Plan, Fresno and Madera Counties, CA

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of intent to prepare a programmatic environmental impact statement/environmental impact report for a resource management plan and general plan.

SUMMARY: Pursuant to Section 102(2)(c) of the National Environmental Policy Act (NEPA), Reclamation proposes to prepare a Programmatic Environmental Impact Statement/Environmental Impact Report (PEIS/EIR) for the Millerton Lake Resource Management Plan (RMP) and General Plan, which will be issued concurrent with the PEIS/EIR. A scoping meeting will be conducted to elicit comments on the scope and issues to be addressed in the PEIS/EIR. The date and time for this meeting is noted below. The draft RMP/General Plan and draft PEIS/EIR are expected to be issued in early 2003.

DATES: The scoping meeting will be held on February 12, 2003, at 6:30 p.m. in Friant, California. Written comments should be sent to Reclamation at the address below by March 5, 2003.

ADDRESSES: The meeting location is at the Millerton Courthouse, Millerton State Recreation Area, 5290 Millerton Road, Friant, California 93626.

Written comments on the scope of the alternatives and impacts should be sent to Mr. Dan Holsapple, Bureau of Reclamation, South-Central California Area Office, 1243 N Street, Fresno, CA 93721–1813; or faxed to 559–487–5130 (TDD 559–487–5933).

FOR FURTHER INFORMATION CONTACT: Mr. Dan Holsapple, Bureau of Reclamation, at the above address, telephone: 559–487–5409.

SUPPLEMENTARY INFORMATION: Millerton Lake is located in the southern portion of California's Central Valley in Fresno and Madera counties. The lake lies in the upper San Joaquin River Watershed. The San Joaquin River has an average annual inflow of 1,860,000 acre-feet upstream of Friant Dam. Millerton Lake was created in 1942 by the construction of Friant Dam, approximately 25 miles northeast of Fresno. The dam is a concrete gravity structure, 319 feet high and 3,488 feet wide at its crest. Millerton Lake has a total storage capacity of 520,500 acre-feet and supplies water to the Central Valley Project water users. The lake and the majority of adjacent lands are owned by Reclamation. Land within the project area is managed by Reclamation and the California Department of Parks and Recreation.

Millerton Lake is a multi-purpose facility, supplying agricultural irrigation water, flood control, and recreational functions such as boating, fishing, camping, and swimming. The lake receives approximately 600,000 visitor days per year. Operation of the reservoir requires evacuation of a large portion of the storage space prior to the rainy season. Due to its small capacity compared to the potential runoff from the watershed, it is necessary to draw down water levels annually to its minimum pool in order to make effective use of available storage space. Thus, there is little opportunity to carry over water from one season to another.

Reclamation is preparing an RMP and General Plan for the Millerton Lake area. The RMP will specifically address the Millerton Lake State Recreation Area, including the entire lake and all Reclamation land surrounding the lake. The objectives of the joint plan are to establish management objectives, guidelines, and actions to be implemented by Reclamation directly, or through its recreation contract with the California Department of Parks and Recreation, that will protect the water supply and water quality functions of Millerton Lake; protect and enhance natural and cultural resources in the Recreation Area, consistent with Federal law and Reclamation policies; and provide recreational opportunities and facilities consistent with the Central Valley Project purposes, and Reclamation policies. In addition, the General Plan is the primary management guideline for defining a framework for resource stewardship, interpretation, facilities, visitor use, and services. General plans define an ultimate purpose, vision, and intent for management through goal statements, guidelines, and broad objectives, but stop short of defining specific objectives, methodologies, and designs on how to accomplish these goals.

The development of the RMP and General Plan will be performed within the authorities provided by the Congress through the Reclamation Act, Federal Water Project Recreation Act, Reclamation Recreation Management Act, and applicable agency and Department of the Interior policies and the California Public Resources Code Division 5.

The RMP and General Plan shall be a long-term plan (with an approximate 20-year planning horizon) that will guide specific actions in the Millerton Lake State Recreation Area and on Reclamation lands surrounding the lake. The RMP and General Plan will be developed based on a comprehensive inventory of environmental resources and Project facilities. It will include an analysis of resources in the area, identification of land use suitability and capability, and development of management policies, objectives, responsibilities, guidelines, and plans. Resource areas to be addressed in the RMP and General Plan include: Soils and geology, biology, cultural resources, water resources, hydrology, groundwater and water quality, land use, transportation/traffic, rangeland, fire/fuels management, hazardous materials, recreation, and park administration. Data from these resource areas will be included in a GIS database, as available.

The RMP and General Plan will enable managers to make land use and resource decisions that are consistent with the overall management objectives of Reclamation land and water areas, while meeting the needs of the public. The RMP and General Plan will assist Reclamation in its efforts to minimize conflicts among the competing interests and types of use at Millerton Lake.

The RMP and General Plan will be developed through a cooperative effort between the Federal and State agencies and the public in an effort to manage the similar resources in the area as one. The plan will be developed with input from other Federal agencies such as U.S. Fish and Wildlife Service, the U.S. Forest Service, and the Bureau of Land Management; involved state agencies such as the California Department of Fish and Game and the California Department of Forestry and Fire Protection; and local involved agencies such as Friant Water Users Authority and the Chowchilla Madera Water and Power Authority; and the general public.

The environmental impacts of the RMP and General Plan and associated alternatives will be assessed in a PEIS/EIR that will be prepared concurrent with the RMP and General Plan. The environmental review will focus on the potential for management actions to cause adverse environmental impacts to natural and cultural resources such as water quality, endangered species, public safety, and historic resources. It will include an analysis of alternative land, recreation, and natural resource management approaches. The joint document will be programmatic in nature in that it will be used as a planning tool to guide future resource management. Specific projects will tier off this programmatic document and will have their own environmental process and report.

It is Reclamation's practice to make comments, including names and home addresses of respondents, available for public review. Individual respondents may request that we withhold their home address from public disclosure, which we will honor to the extent allowable by law. There may also be circumstances in which we would withhold a respondent's identity from public disclosure, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public disclosure in their entirety.

Dated: December 4, 2002.

Frank Michny,

Regional Environmental Officer, Mid-Pacific Region.

[FR Doc. 03–2390 Filed 1–31–03; 8:45 am]

BILLING CODE 4310–MN–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Proposed Information Collection Request Submitted for Public Comment and Recommendations; Qualification and Certification Program

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506 (c)(2)(A)]. This

program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

Currently, the Mine Safety and Health Administration (MSHA) is soliciting comments concerning the extension of the information collection related to the 30 CFR Sections 75.100—Certified Person; 75.155—Qualified hoisting engineer; qualifications; 77.100—Certified Person; and 77.105—Qualified hoist-man; slope or shaft sinking operation; qualifications.

DATES: Submit comments on or before April 4, 2003.

ADDRESSES: Send comments to Jane Tarr, Management Analyst, Administration and Management 1100 Wilson Boulevard, Room 2171, Arlington, VA 22209–3939. Commenters are encouraged to send their comments on computer disk, or via Internet E-mail to *Tarr-Jane@Msha.Gov*. Ms. Tarr can be reached at (202) 693–9824 (voice), or (202) 693–9801 (facsimile).

FOR FURTHER INFORMATION CONTACT: Jane Tarr, Management Analyst, Records Management Group, U.S. Department of Labor, Mine Safety and Health Administration, Room 2171, 1100 Wilson Boulevard, Arlington, VA 22209–3939. Ms. Tarr can be reached at *Tarr-Jane@Msha.Gov* (Internet E-mail), (202) 693–9824 (voice), or (202) 693–9801 (facsimile).

SUPPLEMENTARY INFORMATION:

I. Background

Persons performing tasks and certain required examinations at coal mines which are related to miner safety and health, and which required specialized experience, are required to be either "certified" or "qualified". The regulations recognize State certification and qualification programs. However, where state programs are not available, under the Mine Act and MSHA standards, the Secretary may certify and qualify persons for as long as they continue to safisfy the requirements needed to obtain the certification or qualification, fulfill any applicable retraining requirements, and remain employed at the same mine or by the same independent contractor. Applications for Secretarial certification must be submitted to the MSHA Qualification and Certification Unit in Denver, Colorado. MSHA Forms 5000–4 and 5000–7 provide the coal mining industry with a standardized reporting format that expedites the certification process while ensuring compliance with the regulations. The information provided on the forms enables the Secretary of Labor's delegate—MSHA, Qualification and Certification Unit—to determine if the applicants satisfy the requirements to obtain the certification or qualification. Persons must meet certain minimum experience requirements depending on the type of certification or qualification applied for.

MSHA is presently in the process of streamlining its Forms. Forms 5000–4 and 5000–7 will be combined into one form 5000–41 for future use by coal mine operators. MSHA is requesting approval of this form.

II. Desired Focus of Comments

MSHA is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

A copy of the proposed information collection request can be obtained by contacting the employee listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice, or viewed on the Internet by accessing the MSHA home page (*http://www.msha.gov*) and then choosing "Statutory and Regulatory Information" and "Federal Register Documents."

III. Current Actions

This request for collection of information contains provisions whereby persons may be temporarily qualified or certified to perform tests and examinations; requiring specialized expertise; related to miner safety and health at coal mines.

Type of Review: Extension.

Agency: Mine Safety and Health Administration.

Title: Qualification and Certification Program.

OMB Number: 1219–0069.

Recordkeeping: The information collection requires respondents to submit only the original MSHA form to the Agency. The information collection does not require the maintenance of records. However, 30 CFR 75.159 and 77.106 require mine operators to maintain lists of all certified and qualified persons. This recordkeeping requirement has been approved by OMB under control number 1219–0127.

Frequency: On Occasion.

Affected Public: Business or other for-profit.

Respondents: 684.

Estimated Time Per Respondent: .28 hours.

Total Burden Hours: 192 hours.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintaining): $0.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated at Arlington, Virginia, this 28th day of January, 2003.

David L. Meyer,

Director, Office of Administration and Management.

[FR Doc. 03–2354 Filed 1–31–03; 8:45 am]

BILLING CODE 4510–43–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (03–007)]

NASA Advisory Council, Aerospace Technology Advisory Committee, Revolutionize Aviation Subcommittee; Meeting

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Aerospace Technology Advisory Committee (ATAC), Revolutionize Aviation Subcommittee (RAS).

DATES: Tuesday, February 25, 2003, 8 a.m. to 4:30 p.m.

ADDRESSES: National Aeronautics and Space Administration, Room 7H46, 300 E Street, SW., Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Ms. Bernice E. Lynch, Office of Aerospace Technology, National Aeronautics and

Space Administration, Washington, DC 20546 (202) 358–4594.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

—Welcome/Review Actions
—Working Group Reports
—Aeronautics Technology Update
—Discussion on Integrated Results of Working Groups
—SATS Update & ASRS Subcommittee Briefings
—Next Steps/Action Summary

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Due to the increased security at NASA facilities, any members of the public who wish to attend the Revolutionize Aviation Subcommittee meeting must provide their name, date and place of birth, citizenship, social security number, passport or visa information (number, country of issuance and expiration), business address, and phone number. This information is to be provided at least 72 hours prior to the date of the public meeting (5 p.m. EDT on February 19, 2003). Identification information is to be provided to Bernice E. Lynch, 202/358–4594, *blynch@hq.nasa.gov*. Failure to timely provide such information may result in denial of attendance. Photo identification may be required for entry into the building. Persons with disabilities who require assistance should indicate this in their message. Due to limited availability of seating, members of the public will be admitted on a first-come, first-serve basis. News media wishing to attend the meeting should follow standard accreditation procedures. Members of the press who have questions about these procedures should contact the NASA Headquarters newsroom (202) 358–1600.

June W. Edwards,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 03–2451 Filed 1–31–03; 8:45 am]

BILLING CODE 7510–10–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (03–008)]

NASA Advisory Council, Aerospace Technology Advisory Committee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announces a meeting of the NASA Advisory Council, Aerospace Technology Advisory Committee (ATAC).

DATES: Wednesday, February 26, 2003, 8:30 a.m. to 5 p.m.; and Thursday, February 27, 2003, 8:30 a.m. to 12 Noon.

ADDRESSES: National Aeronautics and Space Administration, 300 E Street, SW., Room 7H46 (MIC 7), Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Mrs. Mary-Ellen McGrath, Code RG, National Aeronautics and Space Administration, Washington, DC 20546 (202) 358–4729.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

—Opening Remarks
—Aerospace Technology Enterprise Overview
—Subcommittee Reports
—Enterprise Plans for FY 2004
—Closing Comments

It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register. Due to the increased security at NASA facilities, any members of the public who wish to attend this meeting of the Aerospace Technology Advisory Committee must provide their name, date and place of birth, citizenship, social security number, or passport and visa information (number, country of issuance and expiration), business address and phone number, if any. This information is to be provided at least 72 hours (5 PM EDT on February 20, 2003) prior to the date of the public meeting. Identification information is to be provided to Mary-Ellen McGrath, (202) 358–4729, *mmcgrath@hq.nasa.gov*. Failure to timely provide such information may result in denial of attendance. Photo identification may be required for entry into the building. Persons with disabilities who require assistance should indicate this in their message. Due to limited availability of seating, members of the public will be admitted on a first-come, first-serve basis. NASA may provide for simulcast in an overflow facility. News media wishing to attend the meeting should follow standard accreditation procedures. Members of the press who have questions about these procedures should contact the NASA Headquarters Newsroom (202) 358–1600.

June W. Edwards,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 03–2452 Filed 1–31–03; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL SCIENCE FOUNDATION

Sunshine Act Meeting

AGENCY HOLDING MEETING: National Science Foundation, National Science Board and its Subdivisions.

DATE AND TIME: *February 5, 2003:* 8 a.m.–5:30 p.m.—Open Session.

Concurrent Session: February 5, 2003: 2:20 p.m.–3 p.m.—Closed Session.

February 6, 2003: 8 a.m.–4:30 p.m.—Open Session.

Concurrent Session: February 6, 2003: 8 a.m.–8:40 a.m.—Closed Session.

February 6, 2003: 12:30 p.m.–1 p.m.—Closed Session.

February 7, 2003: 8:30 a.m.–3 p.m.—Open Session.

PLACE: *February 5, 6, 2003:* The National Science Foundation, Room 1235, 4201 Wilson Boulevard, Arlington, VA 22230, *www.nsf.gov/nsb.*

February 7, 2003: Fairmont Hotel, Sulgrave Room, 2401 M Street NW., Washington, DC.

CONTACT FOR INFORMATION: NSF Information Center (703) 292–5111.

STATUS: Part of this meeting will be closed to the public.

Part of this meeting will be open to the public.

MATTERS TO BE CONSIDERED:

Wednesday, February 5, 2003

Open

Task Force on National Workforce Policy for S&E (8 a.m.–10 a.m.), Room 1295:

- Working session on draft NWP report.

Task Force on S&E Infrastructure (8:30 a.m.–10 a.m.), Room 1235:

- Analysis of comments received in response to the INF draft report.
- INF response to comments/suggested revisions.
- Plans for completing the report.

Committee on Strategy & Budget (10 a.m.–12 Noon), Room 1235:

- Future Role of CSB.
- Major Research Equipment & Facilities.
- NSF Strategic Plan Update.
- Strategies for Follow-up on NSB Studies.
- Update on Support of Environmental Sciences.

Subcommittee on S&E Indicators (1 p.m.–2 p.m.), Room 1295:
- S&E Indicators 2004.
- Assigning Chapter Reviewers.
- 2004 Companion Piece.

Executive Committee (2 p.m.–2:20 p.m.), Room 1295:
- Discussion of New Quorum Requirements.

Subcommittee on Polar Issues (2 p.m.–3 p.m.), Room 1235:
- OPP Director's Update.
- Study of Environmental Arctic Change (SEARCH).
- International Trans-Antarctic Science Expedition (ITASE).
- *Aircraft Safety:* Antarctica.

Committee on Education & Human Resources (3 p.m.–5:30 p.m.), Room 1235:
- Report from the Subcommittee on S&EI.
- Report from the EHR AD.
- Report from the Task Force on NWP.
- *Focus on the Future:* Virtual Laboratories.
- Report on Education & Diversity Activities in the CISE Directorate.
- The EHR Budget for FY 03 and Prospects for FY 04.
- Information Item: NSF Partnership with DoD for the Funding of REU Sites.

Closed

Executive Committee (2:20 p.m.–3 p.m.), Room 1295:
- Specific Personnel Matters.
- Future NSF Budgets.

Thursday, February 6, 2003

Closed

Committee on Programs & Plans (8 a.m.–8:40 a.m.), Room 1235:
- NSM Action Item: Elementary Particle Physics Program, Division of Physics, Mathematical and Physical Sciences Directorate.
- National Facilities & Instrumentation Program Award, Division of Materials Research, Mathematical and Physical Sciences Directorate.

Plenary Session of the Board (12:30 p.m.–1 p.m.):
- Awards & Agreements.
- Executive Officer Search.

Open

Committee on Audit & Oversight (8 a.m.–10 a.m.), Room 1295:
- Performance and Accountability Report Overview.
- FY 2002 Financial Statement Audit Process & Results.
- Responses to Audit Findings and Follow-up Activities.
- Security Considerations—CIO.

Committee on Programs & Plans (8:40 a.m.–10:15 a.m.), Room 1235:
- Infrastructure Task Force Report.
- CPP Issues.
- *NSB Information Item:* Status of George E. Brown Network for Earthquake Engineering Simulation.
- *NSB Information Item:* Science of Learning Centers.
- Polar Issues Subcommittee Report.

Plenary Session of the Board (10:30 a.m.–11:30 a.m.), Room 1235:
- Office of Polar Programs Science Update.

Plenary Session of the Board (1 p.m.–4:30 p.m.), Room 1235:
- Minutes.
- Closed Session Items for March 2003.
- Chairman's Report.
- Director's Report.
- Committee Reports.

Friday, February 7, 2003

Open

National Science Board Retreat, Sulgrave Room, Fairmont Hotel, 3401 M Street NW., Washington, DC.
- Review and Discussion of May, 2002 Retreat Issues.
- Director's Perspective on Next Steps and Challenges.
- Presentation and Discussion of White Paper on NSB Policy Voice.
- *Budget:* How to Give Input to Budget Priorities.
- Vision of Future Directions/ Challenges—Standing Committees.
- NSB/NSBO Operational Issues and Challenges.
- *Discussion:* Is the Board Organized Optimally To Do Its Work?
- General Discussion of Next Steps/ Other Business.

Gerard Glaser,

Executive Officer, NSB.

[FR Doc. 03–2516 Filed 1–30–03; 1:10 pm]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 030–28641]

Notice of Consideration of Amendment Request for Department of the Air Force, Eglin Air Force Base, Florida, and Opportunity for Providing Comments and Requesting a Hearing

I. Introduction

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of a license amendment to Materials License 42–23539–01AF issued to the Department of the Air Force (the licensee), to authorize decommissioning of its Test Area C–74L at Eglin Air Force Base in Florida.

The licensee currently possesses radioactive material under a master materials license of broad scope. The licensee uses radioactive material for a variety of reasons. On May 24, 2002, the Air Force submitted a Decommissioning Plan (DP) to the NRC and requested approval to begin decommissioning of a site previously used by the Air Force for depleted uranium munitions testing between 1974–1978. The area is known as Test Area C–74L and is located at Eglin Air Force Base, Florida. The licensee previously conducted limited decommissioning at the site and desires to conduct additional decommissioning with the goal of free-releasing the property for unrestricted use.

The DP was submitted to the NRC by letter dated May 24, 2002. Supplemental information was submitted by letter dated November 1, 2002. An NRC administrative review, documented in a letter to the licensee dated November 25, 2002, found the DP acceptable to begin a technical review.

If the NRC approves the DP, the approval will be documented in an amendment to NRC License 42–23539–01AF. However, before approving the proposed amendment, the NRC will need to make the findings required by the Atomic Energy Act of 1954, as amended, and NRC's regulations. These findings will be documented in a Safety Evaluation Report and an Environmental Assessment.

II. Opportunity To Provide Comments

In accordance with 10 CFR 20.1405, the NRC is providing notice to individuals in the vicinity of the site that the NRC is in receipt of a DP, and will accept comments concerning this decommissioning proposal and its associated environmental impacts. Comments with respect to this action should be provided in writing within 30 days of this notice and addressed to D. Blair Spitzberg, Ph.D., Chief, Fuel Cycle and Decommissioning Branch, Division of Nuclear Materials Safety, Region IV, U.S. Nuclear Regulatory Commission, 611 Ryan Plaza Drive, Suite 400, Arlington, Texas, 76011–4005. Telephone: (817) 860–8191, fax number (817) 860–8188, e-mail: *dbs@nrc.gov*. Comments received after 30 days will be considered if practicable to do so, but only those comments received on or before the due date can be assured consideration.

III. Opportunity To Request a Hearing

NRC also provides notice that this is a proceeding on an application for an amendment of a license falling within the scope of Subpart L, "Informal Hearing Procedures for Adjudications in

Materials and Operator License Proceedings," of NRC's rules and practice for domestic licensing proceedings in 10 CFR Part 2. Whether or not a person has or intends to provide comments as set out in Section II above, pursuant to § 2.1205(a), any person (other than an applicant) whose interest may be affected by this proceeding may file a request for a hearing in accordance with § 2.1205(d). A request for a hearing must be filed within thirty (30) days of the date of publication of this **Federal Register** notice.

The request for a hearing must be filed with the Office of the Secretary either:

1. By delivery to Secretary, U.S. Nuclear Regulatory Commission, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852–2738; between 7:45 a.m. and 4:15 p.m., Federal workdays; or

2. By mail, telegram, or facsimile (301–415–1101) addressed to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Attention: Rulemakings and Adjudications Staff.

In accordance with 10 CFR § 2.1205(f), each request for a hearing must also be served, by delivering it personally or by mail, to:

1. The applicant; Lt. Col. Kali K. Mather, Chief, AFMOA/SGZR, 110 Luke Avenue, Room 405, Bolling Air Force Base, Department of the Air Force, Washington, D.C. 20332–7050; and

2. The NRC staff; by delivery to the General Counsel, U.S. Nuclear Regulatory Commission, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852–2738, between 7:45 a.m. and 4:15 p.m., Federal workdays, or by mail, addressed to General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

In addition to meeting other applicable requirements of 10 CFR Part 2 of the NRC's regulations, a request for a hearing filed by a person other than an applicant must describe in detail:

1. The interest of the requestor in the proceeding;

2. How that interest may be affected by the results of the proceeding, including the reasons why the requestor should be permitted a hearing, with particular reference to the factors set out in § 2.1205(h);

3. The requester's areas of concern about the licensing activity that is the subject matter of the proceeding; and

4. The circumstances establishing that the request for a hearing is timely in accordance with § 2.1205(d).

IV. Public Meeting

There are no public meetings scheduled for this proceeding.

V. Further Information

The application for the license amendment and supporting documentation are available for inspection at NRC's Public Electronic Reading Room at *http://www.nrc.gov/NRC/ADAMS/index.html*. The DP can be found in ADAMS at Accession Numbers ML021970666 and ML021970654, while supporting documentation can be found at ML023370482. The acceptance letter can be found at ML023290265. Any questions with respect to this action should be referred to D. Blair Spitzberg, Ph.D., Chief, Fuel Cycle and Decommissioning Branch, Division of Nuclear Materials Safety, Region IV, U.S. Nuclear Regulatory Commission, 611 Ryan Plaza Drive, Suite 400, Arlington, Texas, 76011–4005. Telephone: (817) 860–8191, fax number (817) 860–8188.

Dated at Arlington, Texas, this 27th day of January 2003.

For the Nuclear Regulatory Commission.

D. Blair Spitzberg,

Chief, Fuel Cycle Decommissioning Branch, Division of Nuclear Materials Safety, Region IV.

[FR Doc. 03–2414 Filed 1–31–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Draft Revision 9 of NUREG–1021, "Operator Licensing Examination Standards for Power Reactors"; Notice of Availability

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of Availability for comment and voluntary, trial use.

SUMMARY: The Nuclear Regulatory Commission (NRC) has issued for public comment and voluntary use, on a trial basis, Draft Revision 9 of NUREG–1021, "Operator Licensing Examination Standards for Power Reactors." The Commission uses NUREG–1021 to provide policy and guidance for the development, administration, and grading of written examinations and operating tests used to determine the qualifications of individuals who apply for reactor operator (RO) and senior reactor operator (SRO) licenses at nuclear power plants pursuant to the Commission's regulations in 10 CFR Part 55, "Operators' Licenses." NUREG–1021 also provides guidance for verifying the continued qualifications of licensed operators when the staff determines that NRC requalification examinations are necessary.

The draft revision includes a number of changes that the NRC staff believes will reduce the regulatory burden on facility licensees and improve efficiency, while maintaining operational safety and public confidence: Notably, the RO written examination has been shortened from 100 to 75 questions, the design of the 100-question SRO written examination has been clarified and simplified, the administrative and systems portions of the walk-through operating test have been combined and reapportioned, and the grading criteria for the simulator operating test have been clarified to enhance consistency. A number of additional changes have been made to address questions raised since Revision 8, Supplement 1, was issued in April 2001 and to conform with other regulatory activities. The changes are outlined in the Executive Summary of the draft revision and are identified with highlights and strikeouts for ease of review.

The draft revision is available for review via the NRC's Public Electronic Reading Room (*http://www.nrc.gov/public-involve/doc-comment.html*), on the NRC's Operator Licensing Web site (*http://www.nrc.gov/reactors/operator-licensing.html*), and in the NRC's Public Document Room located at 11555 Rockville Pike, Rockville, Maryland. If you do not have electronic access to NRC documents, you may request a single copy of the draft revision by writing to the Office of the Chief Information Officer, Reproduction and Distribution Services Branch, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001 (Facsimile: 301–512–2289). Telephone requests cannot be accommodated. NUREG documents are not copyrighted, and Commission approval is not required to reproduce them.

Draft Revision 9 is being immediately implemented on a voluntary, trial basis. The NRC will evaluate any comments and recommendations that are received and any lessons that are learned during the trial period, incorporate any additional changes, as appropriate, and, thereafter, publish final Revision 9 for general use. Minor changes and clarifications that may become necessary during the trial period will be promulgated, without formal notice, via the NRC's Operator Licensing Web site (*http://www.nrc.gov/reactors/operator-licensing.html*).

DATES: The comment period ends December 31, 2003. Comments received after this date will be considered if it is practical to do so, but the staff is able to assure consideration only for comments received on or before this date.

ADDRESSES: Written comments may be submitted to the Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. You may also provide comments via the NRC's Operator Licensing Web site (*http://www.nrc.gov/reactors/operator-licensing.html*) or the NRC's Public Electronic Reading Room (*http://www.nrc.gov/reading-rm/doc-collections/nuregs/ #comments*). Copies of comments received may be examined at the NRC's Public Document Room, 11555 Rockville Pike, Rockville, Maryland.

FOR FURTHER INFORMATION CONTACT: Mr. S. Guenther by telephone at (301) 415–1056, or by e-mail at sxg@nrc.gov.

Dated at Rockville, Maryland, this 23rd day of January 2003.

For the Nuclear Regulatory Commission.

Theodore R. Quay,

Chief, Equipment and Human Performance Branch, Division of Inspection Program Management, Office of Nuclear Reactor Regulation.

[FR Doc. 03–2413 Filed 1–31–03; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47274; File No. 4–429]

Joint Industry Plan; Order Approving Joint Amendment No. 5 to the Options Intermarket Linkage Plan To Provide a Process for Potential New Options Exchanges To Have Interim Access to Linkage Information

January 29, 2003.

I. Introduction

On November 8, 2002, November 14, 2002, November 15, 2002, November 26, 2002, and December 6, 2002, the Philadelphia Stock Exchange, Inc. ("Phlx"), International Securities Exchange, Inc. ("ISE"), Chicago Board Options Exchange, Inc. ("CBOE"), American Stock Exchange LLC ("Amex"), and Pacific Exchange, Inc. ("PCX") (collectively the "Participants") respectively submitted to the Securities and Exchange Commission ("SEC" or "Commission") in accordance with section 11A of the Securities Exchange Act of 1934 ("Act")[1] and rule 11Aa3–2 thereunder,[2] a proposed amendment to the Options Intermarket Linkage Plan (the "Plan").[3] The amendment proposes to provide a process for potential new options exchanges to have interim access to Linkage information to help such exchanges prepare to join the Plan.

The proposed amendment to the Plan was published in the **Federal Register** on December 26, 2002.[4] No comments were received on the proposed amendment. This order approves the proposed amendment to the Plan.

II. Description of the Proposed Amendment

Currently, the Plan allows a new exchange to join the Linkage by executing the Plan, filing an amendment to the Plan including themselves as a participant, and paying the then-applicable participation fee if that exchange is already a participant in The Options Clearing Corporation and is a party to the Plan for Reporting of Consolidated Options Last Sale Reports and Quotation Information ("OPRA Plan").[5] Proposed Amendment No. 5 will provide conditional interim access to Linkage information by permitting an applicant to have access to Linkage documentation, testing and other necessary Linkage facilities once the Commission has published for comment the applicant's proposed rules governing the trading of standardized options.

Proposed Amendment No. 5 also requires that the applicant affirm that it is seriously pursuing the establishment of an options market and pay a refundable deposit towards the participation fee. Once an applicant is granted interim access, such access will remain in effect for one year. If the applicant has not yet joined the Linkage after this time period, it can request an additional period of access, and the Linkage participants will not unreasonably deny such a request.

III. Discussion

After careful consideration, the Commission finds that the proposed amendment to the Plan is consistent with the requirements of the Act and the rules and regulations thereunder. Specifically, the Commission finds that the proposed amendment to the Plan is consistent with section 11A of the Act[6] and rule 11Aa3–2 thereunder,[7] in that it is appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets.

The current provisions of the Plan effectively require that an applicant exchange have rules for the trading of options approved by the Commission before it can become a participant in the Linkage. While the Commission believes that this is a reasonable requirement for full participation in the Linkage, this structure does not recognize that an entity proposing to develop an options market reasonably needs access to Linkage information, particularly technical information, in order to build its market and prepare for Linkage participation. The proposed Amendment will provide an applicant with conditional interim access to Linkage information before it is able to meet the requirements for full participation.

The Commission recognizes, however, that new entrants to the Linkage will require the existing Participants to expend time and resources working with an applicant on both technical and policy issues. Therefore, the Commission believes that it is reasonable to place requirements on applicants that act as a safeguard to limit access to serious applicants fully committed to pursuing the development of an options market.

To this end, Amendment No. 5 proposes that in order to be eligible for interim access to the Linkage, proposed rules governing the trading of standardized options of an applicant must be published for comment by the Commission and the applicant must affirm that it is seriously pursuing the establishment of an options market. An applicant also must pay a refundable

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[1] 15 U.S.C. 78k–1.

[2] 17 CFR 240.11Aa3–2.

[3] On July 28, 2000, the Commission approved a national market system plan for the purpose of creating and operating an intermarket options market linkage proposed by the Amex, CBOE, and ISE. *See* Securities Exchange Act Release No. 43086 (July 28, 2000), 65 FR 48023 (August 4, 2000). Subsequently, upon request by the Phlx and PCX, the Commission issued orders to permit these exchanges to participate in the Linkage Plan. *See* Securities Exchange Act Release Nos. 43573 (November 16, 2000), 65 FR 70850 (November 28, 2000) and 43574 (November 16, 2000), 65 FR 70851 (November 28, 2000).

[4] *See* Securities Exchange Act Release No. 47027 (December 18, 2002), 67 FR 78834.

[5] OPRA is a national market system plan approved by the Commission pursuant to section 11A of the Exchange Act, 15 U.S.C. 78k–1, and rule 11Aa3–2 thereunder, 17 CFR 240.11Aa3–2. *See* Securities Exchange Act Release No. 17638 (March 18, 1981). The OPRA Plan provides for the collection and dissemination of last sale and quotation information on options that are traded on the participant exchanges. The five signatories to the OPRA Plan that currently operate an options market are the AMEX, CBOE, ISE, PCX, and Phlx. The New York Stock Exchange is a signatory to the OPRA Plan, but sold its options business to the CBOE in 1997. *See* Securities Exchange Act Release No. 38542 (April 23, 1997), 62 FR 23521 (April 30, 1997).

[6] 15 U.S.C. 78k–1.

[7] 17 CFR 240.11Aa3–2.

deposit towards the participation fee. The Commission believes that these requirements are reasonably tailored to ensure that only serious applicants are given access to sensitive Linkage information before becoming a full participant.

Amendment No. 5 also proposes to limit the duration of interim access to one year. The Commission believes that this time frame is reasonable, and anticipates that one year will be sufficient for most applicants to be prepared to join the Linkage as full participants. The Commission notes that in the event that an applicant has not joined the Linkage after one year, Amendment No. 5 provides that it can request an additional period of access, and the Linkage participants will not unreasonably deny such a request.

In sum, the Commission believes that implementation of Amendment No. 5 will generally enhance competition by providing a potential new options market with earlier access to Linkage-related material and thus, facilitate its ability to prepare to join the Linkage.

IV. Conclusion

It is therefore ordered, pursuant to section 11A of the Act[8] and rule 11Aa3–2 thereunder,[9] that the proposed Linkage Plan amendment is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 03–2481 Filed 1–31–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[File No.500–1]

Sedona Software Solutions Inc.; Order of Suspension of Trading

January 29, 2003.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Sedona Software Solutions Inc. ("Sedona"), trading under the stock symbol SSSI. Questions have been raised regarding the accuracy and completeness of information about Sedona on Internet websites, in press releases, and in other sources publicly available to investors concerning, among other things, Sedona's planned merger with Renaissance Mining Corp. ("Renaissance"), a privately-held company; the assets and business operations of Renaissance; and trading in Sedona common stock in connection with the announced merger.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above listed company.

Therefore, it is ordered, pursuant to section 12(k) of the Securities Exchange Act of 1934, that trading in the above listed company is suspended for the period from 3 p.m. EST, January 29, 2003, through 11:59 p.m. EST, on February 11, 2003.

By the Commission.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 03–2479 Filed 1–30–03; 10:43 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47267; File No. SR–Amex–2002–113]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the American Stock Exchange LLC Regarding Listing Standards for Closed-End Management Investment Companies Registered Under the Investment Company Act of 1940

January 28, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and rule 19b–4 thereunder,[2] notice is hereby given that on December 23, 2002, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in items I, II, and III below, which items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and to grant accelerated approval to the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to make permanent its pilot regarding specific initial and continued listing standards applicable to closed-end management investment companies registered under the Investment Company Act of 1940 ("closed-end funds").[3] The Amex is also proposing to renumber section 101(e) of the *Amex Company Guide* to section 101(f).[4]

The text of the proposed rule change is available at the Office of the Secretary, Amex, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Amex included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to permanently amend sections 101 and 1003 of the *Amex Company Guide* to incorporate initial and continued listing standards specifically applicable to closed-end funds into the *Amex Company Guide*. The proposed listing standards were approved by the Commission on a five-month pilot basis on November 7, 2002.[5] Under the pilot, Amex permits the initial listing of a closed-end fund with a market value of publicly held shares or net assets of at least $20,000,000, which also satisfies the distribution criteria specified in

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[8] 15 U.S.C. 78k–1.

[9] 17 CFR 240.11Aa3–2.

[10] 17 CFR 200.30–3(a)(29).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The five-month pilot was approved by the Commission on November 7, 2002. *See* Securities and Exchange Act Release No. 46785, 67 FR 69578 (November 18, 2002) (approving File No. SR–Amex–2002–55).

[4] The Amex is renumbering the rule text to accommodate a proposed rule change submitted by the Amex on November 20, 2002. *See* Securities Exchange Act Release No. 47119 (January 3, 2003), 68 FR 1494 (January 10, 2003) (approving File No. SR–Amex–2002–97). Telephone conversation between Claudia Crowley, Assistant General Counsel, Amex, and Terri Evans, Assistant Director, Division of Market Regulation ("Division"), Commission, on January 27, 2003.

[5] *See* Securities and Exchange Act Release No. 46785 (November 7, 2002), 67 FR 69578 (November 18, 2002) (approving File No. SR–Amex–2002–55). Previously, closed-end funds were evaluated for listing pursuant to the general listing standards contained in section 101 of the *Amex Company Guide*, as well as specialized internal procedures applicable to closed-end funds.

section 102(a) of the *Amex Company Guide*.[6]

In addition, pursuant to the pilot, the Exchange permits the listing of a group of closed-end funds listed by a single "fund family" (*i.e.*, funds which have a common investment advisor or investment advisors who are "affiliated persons" as defined in section 2(a)(3) of the Investment Company Act of 1940, as amended),[7] subject to the following standards:

- The total group has a market value of publicly held shares or net assets of at least $75,000,000;
- The average market value of publicly held shares or net assets per fund of the group is at least $15,000,000; and
- No fund in the group has a market value of publicly held shares or net assets of less than $10,000,000.

The group standards would be applicable to any closed-end fund that is part of a "fund family" even if the closed-end fund is not listed concurrently with other funds in the family, as long as at the time of listing, the individual fund, the entire "fund family" is in compliance with the group standards. Therefore, all funds listed on the Amex which are part of the "fund family" will be evaluated in determining whether a fund applicant is eligible for listing. Each fund will also be individually subject to the distribution criteria specified in section 102(a) of the *Amex Company Guide*.[8] The Exchange will not have discretion to list a closed-end fund that does not satisfy the quantitative criteria set forth in section 101(e) of the *Amex Company Guide*, but will have discretion to exclude a closed-end fund that otherwise satisfies the criteria.

The Exchange represents that the "fund family" standards will enable the Exchange to accommodate the needs of fund sponsors, which often prefer to offer, issue, and list funds in groups. The Exchange believes that when a fund is part of a larger family, compliance with a $20,000,000 market value of publicly held shares or net asset requirement is not necessary for the fund to be suitable for listing, since the size of the fund family indicates that there is sufficient investor interest in the sponsor's funds.

The Exchange is also proposing to permanently amend section 1003 of the *Amex Company Guide* to specify that each closed-end fund (regardless of whether it is part of a "fund family") will be subject to delisting if its market value of publicly held shares and net assets are each less than $5,000,000 for more than 60 consecutive days, or it ceases to qualify as a closed-end fund (unless the resultant entity otherwise qualifies for listing).

The Exchange represents that the pilot program has enabled the Exchange to apply more objective and transparent listing criteria to closed-end funds without unnecessarily limiting the listing of specialized and smaller funds that are suitable for listing, and has provided greater clarity to listing applicants and investors as to the applicable Exchange listing standards. The Exchange represents that the pilot program has operated smoothly, and the Exchange is not aware of any problems or concerns that have developed since approval thereof. It should also be noted that the Exchange is aware of only one comment letter submitted with respect to the pilot program, which supports the proposed rule change.[9]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act,[10] in general, and furthers the objectives of section 6(b)(5),[11] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. Specifically, the Exchange believes that the proposed rule change will continue to provide greater transparency with respect to the listing of closed-end funds, and potentially provide a larger number of such funds and their investors with the benefits inherent in an Amex listing of comprehensive regulation, transparent price discovery and trade reporting to facilitate best execution, and increased depth and liquidity resulting from the confluence of order flow found in an auction market environment.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received any written comments with respect to the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the principal offices of the Amex. All submissions should refer to File No. SR–Amex–2002–113 and should be submitted by February 24, 2003.

IV. Comment Summary

As noted above, the Commission received one comment letter from the ICI regarding the five-month pilot program, which supported the pilot.[12] The ICI believed that the changes set forth in the five-month pilot program would facilitate the listing of closed-end funds on the Amex, particularly listings of closed-end funds from a single fund family. The ICI noted the adoption of listing eligibility criteria for closed-end funds should take into account that closed-end funds are structured and regulated differently from regular operating companies. Further, the ICI asserted that, in light of these

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[6] Section 102(a) of the *Amex Company Guide* requires a minimum public distribution of (i) 500,000 shares and 800 public shareholders; or (ii) 1,000,000 shares and 400 public shareholders; or (iii) 500,000 shares and 400 public shareholders and average daily trading volume of approximately 2,000 shares for the six months preceding the date of application.

[7] 19 U.S.C. 80a–2(a)(3).

[8] *See supra* note 6.

[9] *See* letter from Ari Burstein, Associate Counsel, Investment Company Institute ("ICI"), to Jonathan G. Katz, Secretary, Commission, dated December 6, 2002 ("ICI Letter").

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(5).

[12] *See* letter from Ari Burstein, Associate Counsel, Investment Company Institute, to Jonathan G. Katz, Secretary, Commission, dated December 6, 2002 ("ICI Letter").

differences, it is appropriate to apply different financial standards to closed-end funds as compared to regular operating companies.[13]

V. Commission Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[14] Specifically, the Commission believes the proposal is consistent with the requirements under section 6(b)(5) of the Act [15] that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Commission believes that the proposed rule change will continue to allow the Amex to provide greater transparency to its listing process for closed-end funds. In addition, the Commission believes that the proposed rule change will continue to allow the Amex to strike a reasonable balance between the Exchange's obligation to protect investors and their confidence in the market and the Exchange's obligation to perfect the mechanism of a free and open market by listing funds, including fund families, on the Exchange. Further, the Commission believes that providing an alternative method to list closed-end funds on the Exchange should continue to accommodate the desire of fund families to list groups of closed-end funds on one marketplace. Finally, the Commission notes that it has no knowledge of any problems or regulatory concerns that have developed since the approval of the five-month pilot program.[16]

The Commission finds good cause for approving the proposed rule change prior to the 30th day after publication in the **Federal Register**. The Amex has requested accelerated approval of the proposed rule change to ensure that the proposal is effective on a permanent basis prior to the expiration of the existing pilot program, and because it raises no new or novel issues and is conceptually similar to existing New York Stock Exchange closed-end fund listing standards.[17] The Commission believes that the proposed rule change does not raise any new or significant regulatory issues, and that accelerated approval should permit the Exchange to continue listing funds and accommodating the desire of fund families to list groups of closed-end funds on one marketplace. The Commission notes that it received only one comment letter, which supported File No. Amex–2002–55,[18] in which the Amex originally proposed the changes set forth in this proposal on a five-month pilot basis.[19]

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[20] that the proposed rule change (File No. SR–Amex–2002–113) is approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[21]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 03–2483 Filed 1–31–03; 8:45 am]

BILLING CODE 8010–01–P

[13] *Id.*

[14] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[15] 15 U.S.C. 78f(b)(5).

[16] Telephone conversation between Claudia Crowley, Assistant General Counsel, Amex, and Frank N. Genco, Attorney, Division, Commission, on January 17, 2003.

[17] *See* Securities Exchange Act Release No. 46163 (July 3, 2002), 67 FR 46559 (July 15, 2002) (File No. SR–NYSE–2001–45) (approving initial listing standards and allocation policy for closed-end funds).

[18] *See* ICI letter.

[19] *See* Securities Exchange Act Release No. 46785 (November 7, 2002) 67 FR 69578 (November 18, 2002) (approving File No. SR–Amex–2002–55).

[20] 15 U.S.C. 78s(b)(2).

[21] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47258; File No. SR–CSE–2003–01]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the Cincinnati Stock Exchange, Inc. To Amend Its Market Data Revenue Sharing Program for Tape B Securities

January 27, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b–4 thereunder, [2] notice is hereby given that on January 6, 2003, the Cincinnati Stock Exchange, Inc. ("CSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. On January 24, 2003 the CSE amended the proposal. [3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CSE proposes to modify the Exchange's schedule of transaction fees to amend its market data revenue sharing program for Tape B securities ("Program") traded on the Exchange. The text of the proposed rule change is below. Proposed new language is in italics; proposed deletions are in brackets.

Rule 11.10 National Securities Trading System Fees

A. Trading Fees

(a)–(j) (No change to text)

(k) Tape "B" Transactions. The CSE will not impose a transaction fee on Consolidated Tape "B" securities. In addition, Members will receive a 50 percent pro rata transaction credit of [Net]*gross* Tape "B" revenue; *provided that, however, calculation of the transaction credit will be based on net Tape "B" revenues in those fiscal quarters where the overall revenue retained by the Exchange does not offset actual expenses and working capital needs.* To the extent market data revenue from Tape "B" transactions is subject to year-end adjustment, credits provided under this program may be adjusted accordingly.

(l)–(r) (No change to text)

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II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

[3] *See* January 23, 2003 letter from Jennifer M. Lamie, Esquire, CSE, to Katherine England, Assistant Director, Division of Market Regulation, Commission ("Amendment No. 1"). In Amendment No. 1, the CSE changed the text of the proposed rule to address omissions that were made in the original rule filing.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Under Exchange Rule 11.10A(k), members have received a 50 percent pro rata transaction credit based on *net* Tape B revenue since July 2001.[4] Prior to that time, the Program was based on *gross* Tape B revenues. In keeping with recent trends in the securities industry, the Exchange is proposing to amend the Program so that the pro rata percentage is once again based on *gross* Tape B revenue, but only in those fiscal quarters where the Exchange's overall revenues (not just Tape B revenues) offset capital expenses and working capital needs. Otherwise, if capital expenses and working capital needs are not met, the calculation based on *net* Tape B revenues will continue to apply.

2. Statutory Basis

The proposed rule change is generally consistent with Section 6(b) of the Act.[5] The proposed rule also furthers the objectives of Section 6(b)(5) of the Act,[6] particularly, in that it is designed to promote just and equitable principles of trade and to remove impediments to and perfect the mechanism of a free and open market and a national market system and, generally, in that it protects investors and the public interest. The proposal also is consistent with Section 6(b)(4)[7] in that it is designed to provide for the equitable allocation of reasonable dues; fees, and other charges among Exchange members by crediting members on a pro rata basis.

B. Self-Regulatory Organization's Statement on Burden on Competition

The CSE does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

[4] *See* Securities Exchange Act Release No. 44579 (July 20, 2001), 66 FR 39068 (July 26, 2001) (SR–CSE–01–03) (among other things, added the word "Net" before the term "Tape 'B' revenue" to CSE Rule 11.10A(k)).

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

[7] 15 U.S.C. 78f(b)(4).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the CSE. All submissions should refer to file number SR–CSE–2003–01 and should be submitted by February 24, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–2405 Filed 1–31–03; 8:45 am]

BILLING CODE 8010–01–P

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47244; File No. SR–NASD–2002–166]

Self-Regulatory Organizations; Order Granting Approval of a Proposed Rule Change and Amendment No. 1 and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 2 to the Proposed Rule Change by the National Association of Securities Dealers, Inc. With Respect to Margin Rule Amendments for Security Futures Contracts on a Pilot Basis

January 24, 2003.

I. Introduction

On November 15, 2002, the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("SEC" or "Commission") a proposed rule change, pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and rule 19b–4 thereunder,[2] to amend NASD rule 2520 ("Margin Requirements") to establish margin rules for security futures contracts. On November 22, 2002, NASD filed Amendment No. 1 to the proposed rule change.[3] The proposal, as amended, was published in the **Federal Register** on December 24, 2002.[4] The Commission received one comment letter on the proposed rule change.[5] This commenter also submitted a comment letter on the NYSE's pilot to amend NYSE rule 431 to establish margin requirements for security futures contracts.[6] On January 15, 2003, NASD filed Amendment No.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Gary L. Goldsholle, Associate General Counsel, NASD to Katherine England, Assistant Director, Division of Market Regulation ("Division"), Commission, dated November 22, 2002 ("Amendment No. 1"). Amendment No. 1 makes technical changes to the proposed rule text.

[4] Securities Exchange Act Release No. 46995 (December 13, 2002), 67 FR 78543.

[5] *See* letter from Edward J. Joyce, President and Chief Operating Officer, Chicago Board Options Exchange ("CBOE"), to Jonathan G. Katz, Secretary, Commission, dated December 20, 2002.

[6] *See* letter from Edward J. Joyce, President and Chief Operating Officer, CBOE, to Jonathan G. Katz, Secretary, Commission, dated December 9, 2002. On November 7, 2002, the Commission approved, on a 60-day pilot basis, a proposed rule change by the New York Stock Exchange, Inc. ("NYSE") amending NYSE rule 431 ("Margin Requirements") to establish margin requirements for security futures contracts. *See* Securities Exchange Act Release No. 46782 (November 7, 2002), 67 FR 69052 (November 14, 2002) (SR–NYSE–2002–53). In January 2003, the NYSE pilot was extended for an additional 60 days, expiring on March 6, 2003. *See* Securities Exchange Act Release No. 47129 (January 6, 2002), 68 FR 2094 (January 15, 2003) (SR–NYSE–2003–01).

2 to the proposed rule change.[7] This order approves the proposed rule change, as amended, on a pilot basis until March 6, 2003.

II. Description of the Proposed Rule Change

NASD is proposing to amend NASD rule 2520 ("Margin Requirements") to establish margin requirements for security futures contracts ("SFCs"). The proposed rule change is being made to make NASD's margin rule consistent with the margin rules for security futures adopted by the SEC and the Commodity Futures Trading Commission ("CFTC"), and the rules adopted by the NYSE, Nasdaq-Liffe Markets, and One Chicago, LLC.

The CFTC and SEC adopted customer margin requirements for SFCs ("SEC/CFTC Margin Regulations")[8] pursuant to authority delegated to them by the Federal Reserve Board ("FRB") under section 7(c)(2)(B) of the Act.[9] These margin regulations became effective on September 13, 2002. NASD is proposing to conform its margin rules to these new requirements, and to be comparable to the NYSE's margin requirements under NYSE rule 431.

NASD rule 2520 prescribes specific margin requirements for members of NASD that must be maintained in all accounts of their customers, based on the type of securities product held in such accounts. As proposed, NASD rule 2520(b) and (c) would provide that the amount of initial and maintenance margin required for long and short SFCs held in a securities account shall be 20 percent of the current market value of such SFC.

NASD rule 2520(e)(6) ("Broker/Dealer Accounts") would permit introducing broker/dealers trading SFCs to deduct from their proprietary accounts the amount of any deficiency between the equity in the account and the haircut requirements pursuant to rule 15c3–1 under the Act ("Net Capital Rule")[10] in computing the net capital of the member, in lieu of collecting margin.

NASD rule 2520(f)(11) ("Customer Margin Rules Relating to Security Futures") would provide that transactions in SFCs in a securities account be subject to all other provisions of NASD rule 2520, including rule 2520(f)(8)(B) ("Day Trading"). Excluded from the margin requirements of the rule are arrangements between a creditor and a borrower, whereby the borrower is defined as an "Exempted Person" under rule 401(a)(9)[11] of the Act, and rule 41.43(a)(9)[12] under the Commodity Exchange Act. SFCs transacted in a futures account would not be subject to the requirements of NASD rule 2520.

NASD rule 2520(f)(11)(B)(iii) ("Permissible Offsets") would permit margin lower than the 20 percent general requirement, and thereby recognize the hedged nature of certain offsetting positions involving SFCs and related positions. In doing so, margin levels for offsetting positions involving SFCs and related positions would be lower than would be required if those positions were margined separately. Further, the proposed rule change makes NASD's rule consistent with the table of offsets included in the recently adopted SEC/CFTC Margin Regulations.

NASD rule 2520(f)(11)(D) ("Security Futures Dealers" Accounts"), NASD rule 2520(f)(11)(E) ("Approved Options Specialists" or Market Maker's Accounts"), and NASD rule 2520(f)(11)(F) ("Approved Specialists" Accounts'others") would permit "good faith" margin treatment for specified hedged offset positions carried in the accounts noted above.[13] NASD rule 2520(f)(11)(G)(i) would permit money market mutual funds as defined in rule 2a–7 under the Investment Company Act of 1940 to be used for satisfying margin requirements for securities transactions, provided that the requirements of rule 404(b)[14] under the Act and rule 41.46(b)(2)[15] under the CEA are satisfied.[16]

III. Summary of Comments

As noted above, the Commission received one comment letter on the proposed rule change.[17] This commenter also submitted a comment letter on NYSE's proposal regarding margin requirements for securities futures contracts.[18] First, the commenter believes that both the NYSE and NASD rules on margin requirements for security futures should not be approved by the Commission on a permanent basis until the rules provide an exemption from the existing day trading provisions of NYSE rule 431. The commenter believes that applying the margin restrictions on day trading to security futures will create a disparity between security futures contracts that are held in a securities account and contracts that are held in a futures account, which is inconsistent with the principles of the Commodity Futures Modernization Act.

Second, the commenter would like to delete references in the proposed rule language to "bona fide" market maker or specialist transactions. Specifically, the commenter believes that the NYSE and NASD intend to determine which transactions of a "*bona fide*" market maker/specialist would fit within this definition. The commenter is concerned that NYSE and NASD may not rely on the other self-regulatory organizations' ("SROs") rules regarding who is a market maker and that, therefore, the NYSE's and NASD's rules would not be consistent with the rules of these other SROs. This commenter believes that if the SEC approves an SRO rule regarding who as a market maker, the NYSE and NASD margin rules should defer to that SRO's rule in defining a market maker or specialist.

In response to these substantive concerns, NASD has requested that its proposal be approved as a pilot under

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[7] *See* letter from Gary L. Goldsholle, Associate General Counsel, NASD, to Katherine A. England, Assistant Director, Division, Commission, dated January 15, 2003 ("Amendment No. 2"). In Amendment No. 2, NASD requested that the Commission approve the proposed rule change on a pilot basis under the same terms as the NYSE's pilot, pending the resolution of the issues raised by commenters.

[8] 17 CFR 242.400 through 406; 17 CFR 41.42 through 41.48.

[9] 15 U.S.C. 78g(c)(2)(B). As noted in the adopting release, section 7(c)(2) of the Act provides that the customer margin requirements for SFCs must satisfy four requirements: (1) They must preserve the financial integrity of markets trading security futures contracts; (2) they must prevent systemic risk; (3) they must (a) be consistent with the margin requirements for comparable options traded on an exchange registered pursuant to section 6(a) of the Act (15 U.S.C. 78f) and (b) provide for initial and maintenance margin that are not lower than the lowest level of margin, exclusive of premium, required for comparable exchange traded options; and (4) they must be and remain consistent with the margin requirements established by the FRB under Regulation T. *See* Securities Exchange Act Release no. 46292 (August 1, 2002), 67 FR 53146 (August 14, 2002).

[10] 17 CFR 240.15c3–1.

[11] 17 CFR 242.401(a)(9).

[12] 17 CFR 41.43(a)(9).

[13] NASD noted that, unlike the amendments proposed by other SROs, on security futures, it believes that its proposed amendment will permit members to accord offset treatment in accounts carried for such specialists, market makers and security futures dealers only when their activity is limited to bona fide specialist or market making transactions. According to NASD, the limitations imposed are consistent with NASD's belief that market makers bear the primary responsibility and obligation to maintain fair and orderly markets, and provide liquidity to the marketplace. Were a revenue or other test substituted for the affirmative obligation standard here proposed, NASD believes that entities other than qualified market makers would be permitted to receive the more favorable market maker margin treatment. NASD believes that such was not the Commission's or CFTC's intent when adopting the SEC/CFTC Margin Regulations.

[14] 17 CFR 242.404(b).

[15] 17 CFR 41.46(b)(2).

[16] Presently, money market mutual funds may be used as collateral to satisfy margin requirements under Regulation T in a securities margin account. The amendments to NASD rule 2520 would now permit the use of such funds as collateral for SFCs as is required by the new SEC/CFTC Margin Regulations described above.

[17] *See supra* note .

[18] For further details on SR–NYSE–2002–53, *see id.*

the same terms as the NYSE's proposal.[19] Under a pilot program, NASD will have the opportunity to consider comments it received on the proposal, and facilitate the trading in securities futures in securities accounts for those NASD members, who are not also members of the NYSE.

IV. Discussion

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association.[20] In particular, the Commission believes that the proposed rule change is consistent with the requirements of section 15A(b)(6) of the Act,[21] which requires, among other things, to promote just and equitable principles of trade and, in general, to protect investors and the public interest. In addition, the Commission believes that the proposed rule change is consistent with section 7(c)(2)(B) of the Act,[22] which provides, among other things, that the margin requirements for security futures must preserve the financial integrity of markets trading security futures, prevent systemic risk, be consistent with the margin requirements for comparable exchange-traded options, and provides that the margin levels for security futures may be no lower than the lowest level of margin, exclusive of premium, required for any comparable exchange-traded option.

Moreover, the Commission believes that the proposed rule change is generally consistent with the customer margin rules for security futures adopted by the Commission and the CFTC. In particular, the Commission notes that, consistent with rule 403 under the Act, NASD's proposed rules provide a minimum margin level of 20% of current market value for all positions in security futures carried in a securities account. The Commission believes that 20% is the minimum margin level necessary to satisfy the requirements of section 7(c)(2)(B) of the Act. Rule 403 under the Act[23] also provides that a national securities association may set margin levels lower than 20% of the current market value of the security future for an offsetting position involving security futures and related positions, provided that an association's margin levels for offsetting positions meet the criteria set forth in section 7(c)(2)(B) of the Act. The offsets proposed by NASD are consistent with the strategy-based offsets permitted for comparable offset positions involving exchange-traded options and therefore consistent with section 7(c)(2)(B) of the Act.

The Commission also believes it is consistent with the Act for the NASD to exclude from its margin requirements positions in SFCs carried in a futures account. The Commission believes that by choosing to exclude such positions from the scope of rule 2520, the NASD's proposal will make compliance by members with the regulatory requirements of several SROs easier.

The NASD has asked the Commission in Amendment No. 2 to approve the proposed rule change on a pilot basis to accommodate the expeditious trading of security futures for NASD customers of broker-dealers who are subject to NASD margin rules. NASD also has requested that the Commission approve the proposed rule change on a pilot basis under the same terms as the NYSE's pilot, pending the resolution of the issues raised by commenters. The Commission believes that there is good cause to approve the proposed rule change, as amended, on a pilot basis until March 6, 2003. The Commission notes that NASD's proposed rule change is substantially the same as NYSE's filing on margin requirements for security futures. Thus, the Commission believes that it is appropriate to approve NASD's proposed rule change on a pilot basis to enable customers of broker-dealers who are subject to NASD margin rules to trade security futures in securities accounts without unnecessary delay. The Commission expects that, similar to the NYSE, NASD will file a proposed rule change to adopt its margin requirements for security futures on a permanent basis, and consider the comments it received on this proposal.

V. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 2, including whether the proposed amendment is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed amendments that are filed with the Commission, and all written communications relating to the amendments between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the NASD.

All submissions should refer to File No. SR–NASD–2002–166 and should be submitted by February 24, 2003.

VI. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[24] that the proposed rule change (SR–NASD–2002–166) is approved on a pilot basis until March 6, 2003.

For the Commission, by the Division of Market Regulation, pursuant to the delegated authority.[25]

Jill M. Peterson,

Assistant Secretary.

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[19] *See supra* note .

[20] In approving this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[21] 15 U.S.C. 78o–3(b)(6).

[22] 15 U.S.C. 78g(c)(2)(B).

[23] 17 CFR 240.403(b)(2).

[24] 15 U.S.C. 78s(b)(2).

[25] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47259; File No. SR–NASD–2001–47]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 1 Thereto Relating to Audit Trail and Trading Halt Requirements for Alternative Trading Systems That Trade Security Futures

January 27, 2003.

I. Introduction

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and rule 19b–4 thereunder,[2] notice is hereby given that on July 30, 2001, the National Association of Securities Dealers, Inc. ("NASD" or "Association"), through its subsidiary, NASD Regulation, Inc. ("NASD Regulation"), filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change relating to audit trail and trading halt requirements for Alternative Trading Systems ("ATSs") that trade security futures.[3] By letter dated August 14, 2002, the Association filed

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Release No. 44623 (July 30, 2001), 66 FR 41076 (August 6, 2001).

Amendment No. 1 to the proposed rule change.[4] The Commission received one comment letter.[5] The Commission approves the proposed rule change, as amended, and publishes this notice to solicit comments on Amendment No. 1. The Commission also approves Amendment No. 1 on an accelerated basis.

II. Description of the Proposed Rule Change

NASD Regulation proposes to add NASD rule 3115 to establish record-keeping requirements for ATSs that trade security futures[6] and to amend NASD rule 3340 to prohibit members and associated persons from publishing a quotation for a security future when there is a regulatory trade halt in effect for the underlying security.

Specifically, NASD Regulation proposes to establish audit trail requirements relating to ATSs for the trading of futures on single securities and narrow-based security indices consistent with the Commodity Futures Modernization Act of 2000 ("CFMA").[7] Under section 6(h)(5) of the Act,[8] as added by the CFMA, a person[9] other than a national securities association or national securities exchange member may not maintain or provide a marketplace or facilities for bringing together purchasers and sellers of security future products unless it is a member of a national securities association or national securities exchange that has: (1) Procedures for coordinated surveillance, (2) rules to require an audit trail necessary or appropriate to facilitate coordinated surveillance, and (3) rules to require such person to coordinate trading halts with markets trading the securities underlying the security futures products and other markets trading related securities. The NASD, as a national securities association, proposes to meet these CFMA requirements to prepare for the trading of security futures by ATSs.

a. Requirements for Alternative Trading Systems

With respect to audit trails necessary to facilitate coordinated surveillance, the proposed rule change would require ATSs to record and report audit trail information on a T+1 basis in such form as the NASD requires. The NASD has based the required elements of the audit trail rule on Regulation ATS rule 302, the Commission's recordkeeping rule for ATSs.[10] The form of the reports will be designed to facilitate the NASD's sharing the reports with members of the Intermarket Surveillance Group, an organization whose purpose is to coordinate surveillance among financial markets. The proposed rule change would require that ATSs preserve such records in accordance with rule 17a–4(b) under the Act,[11] which requires preservation of records for at least three years, the first two years in an easily accessible place.

b. Trading Halts

With respect to coordinated trading halts, the proposed rule change would amend the NASD's existing rule prohibiting trading during a halt. Currently, NASD rule 3340 broadly prohibits broker-dealers and associated persons from effecting a "transaction * * * in any security as to which a trading halt is currently in effect." The NASD proposes to amend this rule by adding a provision that prohibits member firms, including ATSs, from effecting any transaction or publishing a priced bid and/or unpriced indication of interest for: (a) A future on a single stock when the underlying stock is subject to a regulatory trading halt; and (b) a future on a narrow based securities index when one or more underlying securities that constitute 50 percent or more of the market capitalization of the index are subject to a regulatory trading halt.[12] Further, by limiting application of new NASD rule 3340(b) to regulatory trading halts, the NASD intends to exclude halts resulting from events such as an order imbalance or a systems failure.

III. Comments

The Commission received one comment letter from Island. Island recommended that the Commission require the NASD to: (1) More narrowly tailor the proposed recordkeeping requirements to be consistent with security futures and the regulatory framework governing security futures; and (2) conditionally exempt ATSs from certain aspects of the trading halt rule. Specifically, Island disputed that NASD rule 3115 governing recordkeeping requirements should mirror the existing audit trail rule in Regulation ATS designed for equity and debt securities. Island also noted its belief that the proposed recordkeeping requirements in NASD rule 3115 require far greater audit trail information than is necessary to perform coordinated surveillance to detect manipulation and insider trading as contemplated by the CFMA. In addition, Island did not believe it was appropriate to amend NASD rule 3340 to include ATSs trading security futures because the effective date of the rule had been delayed to clarify the NASD's interpretation of the rule. Island proposed that the rule be interpreted to exempt ATSs that: (1) Do not accept new orders in such security during a trading halt; and (2) have procedures in place reasonably designed to prevent the execution of orders during a trading halt.

In Amendment No. 1, the NASD responded to Island's comment letter. Specifically, the NASD stated that it reviewed the items required by NASD rule 3115 and the information provided by other markets that are expected to trade security futures products with respect to coordinated surveillance by the Intermarket Surveillance Group, and concluded that the NASD rule 3115 requirements are not unnecessarily broad or burdensome. Regarding the amendments to NASD rule 3340, the NASD noted that the rule has been in effect since October 9, 2001, and thus the proposed amendments, which supplement the rule to account for security futures, should be approved.

IV. Discussion

The Commission has reviewed carefully the proposed rule change, the comment letter, NASD's response to the comment letter, and the entire record herein, and finds that the proposed rule change, as amended, is consistent with the Act and the rules and regulations applicable to the Association.[13]

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[4] *See* letter from Gary Goldsholle, Associate General Counsel, NASD, to Katherine A. England, Assistant Director, Division of Market Regulation, Commission, dated August 13, 2002 ("Amendment No. 1"). In Amendment No. 1, the NASD responded to a comment letter from Island, added proposed NASD rule 3115(a)(15) to indicate that the ATS audit trail for security futures trading would include "an account identifier that relates the order back to the account owner(s)," and amended NASD rule 3340(b)(2) to increase the percentage of the market capitalization of underlying securities that trigger a trading halt in a narrow-based security index from 30% to 50%.

[5] *See* letter from Chris Concannon, Vice-President, Island, to Jonathan Katz, Secretary, Commission, dated August 20, 2001 ("Island Comment Letter").

[6] Section 3(a)(55) of the Act defines a "security future" as a contract of sale for future delivery of a single security or of a narrow-based security index. Security futures are defined as "securities" under the Act, thus making the federal securities laws generally applicable to them.

[7] The CFMA was signed into law on December 21, 2000. Pub. L. No. 106–554, 114 Stat. 2763 (2000).

[8] *See* 15 U.S.C. 78f(h)(5).

[9] The term "person" means a natural person, company, government, or political subdivision, agency or instrumentality of a government. *See* 15 U.S.C. 78c(a).

[10] 17 CFR 242.302(c).

[11] 17 CFR 240.17a–4(b).

[12] *See* Amendment No. 1, *supra* note 4.

[13] In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

The Commission finds that the proposed rule change, as amended, is consistent with section 15A.[14] Specifically, the Commission finds that the proposed rule change is consistent with section 15A(b)(6) of the Act which requires, among other things, that the Association's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principals of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.[15]

In addition, the Commission finds that the proposed rule change is consistent with section 15A(b)(11),[16] which requires that the rules of a registered national securities association be designed to produce fair and informative quotations, prevent fictitious or misleading quotations, and to promote orderly procedures for collecting, distributing, and publishing quotations.

The Commission also believes that proposed rule change, as amended, is consistent with subparagraphs (B) and (C) of section 6(h)(5) of the Act,[17] which sets forth the requirements that must be in place before ATSs provide a marketplace for trading security futures products. Island asserted that NASD rule 3115 requires that ATSs maintain more records than this statutory provision requires. In response, the NASD stated that the rule was not unnecessarily broad or burdensome. Pursuant to section 6(h)(5)(B) of the Act, the NASD, among other requirements, must have "rules to require audit trails necessary or appropriate to facilitate the coordinated surveillance required [under the Act]" before an ATS can trade security futures products.[18] The Commission believes that the proposed rule change satisfies this requirement and agrees with the NASD that it is not unnecessarily broad or burdensome.

The Commission also believes that the amendment to NASD rule 3340 meets the goals of section 6(h)(5)(C) of the Act,[19] which requires a national securities association to adopt rules to require its members "to coordinate trading halts with markets trading the securities underlying the security future products and other markets trading related securities."[20] Island suggested that the NASD exempt ATSs that: (1) Do not accept new orders in such security during a trading halt; and (2) have procedures in place reasonably designed to prevent the execution of orders during a trading halt. The Commission, however, does not believe that it is necessary for NASD Rule 3340 to provide for the suggested exemption in order for the rule to be consistent with the Act. The Commission also notes that to satisfy other regulatory requirements, some ATSs have been able to block the public dissemination of orders for individual securities on their limit order books. Accordingly, ATSs appear to have the technological capability to restrict the display or publication of orders on their books. Thus, in the Commission's view, the NASD's amendments to its trading halt rule to cover security futures are not overly burdensome or inappropriate.

Finally, the Commission believes that the proposed rule is consistent with the goals expressed in section 11A(a)(1)(C) of the Act,[21] which grants the Commission the authority to require rules designed to ensure appropriate protection of investors and the maintenance of fair and orderly markets to assure: (1) Economically efficient execution of securities transactions; (2) fair competition among brokers and dealers; (3) the availability to brokers, dealers and investors of information with respect to quotations and transactions in securities; (4) the practicability of brokers executing investors' orders in the best market; and (5) an opportunity for investors' orders to be executed without the participation of a dealer.

V. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

For the reasons discussed below, the Commission finds good cause for approving Amendment No. 1 to the proposed rule change prior to the 30th day after the date of publication of notice thereof in the **Federal Register**.

In Amendment No. 1, the NASD proposed NASD rule 3115(a)(15) to indicate that the ATS audit trail for security futures trading would include "an account identifier that relates the order back to the account owner(s)," and amended NASD rule 3340(b)(2) to increase the percentage of the market capitalization of underlying securities subject to a trading halt in a narrow-based security index from 30% to 50%. The NASD amended the rule to include the account identifier provision because the account identifier has traditionally been a key component of an audit trail. The percentage increase from 30% to 50% in the market capitalization of underlying securities that triggers a trading halt in futures on a narrow-based security index was also proposed to more closely mirror rules approved by the Commission and the Commodity Futures Trading Commission ("CFTC") with respect to trading halts in security futures products.[22] As Amendment No. 1, does not raise any novel regulatory issues, the Commission finds that granting accelerated approval to Amendment No. 1 is appropriate and consistent with section 19(b)(2) of the Act.[23]

VI. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendments No. 1 to NASD–2001–47, including whether the proposed amendment is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to Amendment No. 1 to File No. SR–NASD–2001–47 and should be submitted by February 24, 2003.

VII. Conclusion

For the foregoing reasons, the Commission finds that the proposal, as amended, is consistent with the requirements of the Act and rules and regulations hereunder.

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[14] 15 U.S.C. 78*o*–3.

[15] 15 U.S.C. 78*o*–3(b)(6).

[16] 15 U.S.C. 78*o*–3(b)(11).

[17] 15 U.S.C. 78f(h)(5)(B) and (C).

[18] *See* 15 U.S.C. 78f(h)(5)(B).

[19] *See* 15 U.S.C. 78f(h)(5)(C).

[20] *See* 15 U.S.C. 78f(h)(5)(c).

[21] 15 U.S.C. 78k–1(a)(1)(C).

[22] *See* Securities and Exchange Act Release No. 34–45956 (May 17, 2002), 67 FR 36741 (May 24, 2002) (Cash Settlement and Regulatory Halt Requirements for Security Futures Products, Joint Final Rule of CFTC and the Commission).

[23] 15 U.S.C. 78s(b)(2).

It is therefore ordered, pursuant to section 19(b)(2) of the Act, [24] that the proposed rule change (SR–NASD–2001–47), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[25]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 03–2485 Filed 1–31–03; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47253; File No. SR–NYSE–2001–27]

Self-Regulatory Organizations; Notice of Filing of a Proposed Rule Change and Amendment No. 1 Thereto by the New York Stock Exchange, Inc. Relating to Amendments to Section 804 of the Listed Company Manual and Rule 499 of the Exchange

January 24, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 17, 2001, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NYSE. On January 22, 2003, the NYSE filed Amendment No. 1 to the proposed rule change with the Commission.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NYSE proposes to amend Section 804 of the Listed Company Manual to specify that public directors will constitute a majority of the directors of the Committee for Review voting on final delisting determinations. The NYSE also proposes to codify this change in the parallel Exchange Rule 499, as well as make other minor conforming changes.

The text of the proposal is below. Proposed new language is in italics; proposed deletions are in brackets.

* * * * *

804.0 Procedure for Delisting

• If the Exchange staff should determine that a security be removed from the list, it will so notify the issuer in writing, describing the basis for such decision and the specific policy or criterion under which such action is to be taken. The Exchange will simultaneously (1) issue a press release disclosing the company's status and basis for the Exchange's determination and (2) begin daily dissemination of ticker and information notices identifying the security's status, and include similar information on the Exchange's web site.

• The notice to the issuer shall also inform the issuer of its right to a review of the determination by a Committee of the Board of Directors of the Exchange ([comprised of] a majority of *the members of such Committee voting on each determination must be* public Directors), provided a written request for such a review is filed with the Secretary of the Exchange within ten business days after receiving the aforementioned notice.

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If a review is requested, the review will be scheduled for the first Review Day which is at least 25 business days from the date the request for review is filed with the Secretary of the Exchange, unless the next subsequent Review Day must be selected to accommodate the Committee's schedule. *The chairman of the Committee will disclose to the company and the staff at the commencement of the review which of the industry Directors present will be voting on the matter, although all directors will be entitled to participate in the discussion.* The Committee's review *and final decision* shall be based on oral argument (if any) and the written briefs and accompanying materials submitted by the parties.

* * * * *

Delisting of Securities

Suspension from Dealings or Removal from List by Action of the Exchange

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Rule 499. Securities admitted to the list may be suspended from dealings or removed from the list at any time.

* * * Supplementary Material

* * * * *

.70 Procedure for Delisting

a. If the Exchange staff should determine that a security be removed from the list, it will so notify the issuer in writing, describing the basis for such decision and the specific policy or criterion under which such action is to be taken. The Exchange will simultaneously (1) issue a press release disclosing the company's status and basis for the Exchange's determination and (2) begin [appending a suffix to the security's ticker symbol identifying the security's status] *daily dissemination of ticker and information notices identifying the security's status, and include similar information on the Exchange's web site.* The notice to the issuer shall also inform the issuer of its right to a review of the determination by a Committee of the Board of Directors of the Exchange ([comprised of] a majority of *the members of such Committee voting on each determination must be* public Directors), provided a written request for such a review is filed with the Secretary of the Exchange within ten business days after receiving the aforementioned notice.

* * * * *

c. If a review is requested, the review will be scheduled for the first Review Day which is at least 25 business days from the date the request for review is filed with the Secretary of the Exchange, unless the next subsequent Review Day must be selected to accommodate the Committee's schedule. *The chairman of the Committee will disclose to the company and the staff at the commencement of the review which of the industry Directors present will be voting on the matter, although all directors will be entitled to participate in the discussion.* The Committee's review *and final decision* shall be based on oral argument (if any) and the written briefs and accompanying materials submitted by the parties.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NYSE included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NYSE has prepared summaries, set forth in

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[24] 15 U.S.C. 78s(b)(2).

[25] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Darla Stuckey, Corporate Secretary, NYSE, to Nancy Sanow, Assistant Director, Division of Market Regulation, Commission, dated January 17, 2003 ("Amendment No. 1"). In Amendment No. 1, the Exchange replaced its original proposal in its entirety. In part, the Exchange clarified its rotation system with respect to the industry directors voting on a particular matter, clarified the basis for a decision made by the Committee for Review, specified the quorum requirements for the Committee for Review, and made conforming changes to the Exchange's rule text.

Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Section 804 of the Listed Company Manual describes the procedures to be followed when the Exchange determines that a security should be removed from the list. It provides that the issuer has a right to request a review of the Exchange's determination by a Committee of the Board of Directors of the Exchange, and specifies that that committee is to be "comprised of a majority of public Directors." This requirement was added as part of a larger revision of these procedures that became effective in 2000.[4] The Exchange represents that the Committee for Review has long been the committee of the Board that has reviewed both disciplinary and delisting matters, and it has often been comprised of equal numbers of public and industry directors.[5] The Exchange represents that when the Exchange began to implement the new delisting review procedures in 2000, it became necessary to reconcile the Committee's traditional composition with the new requirement that delisting matters be reviewed by a committee comprised of a majority of public directors. The Exchange also wanted to ensure that non-voting industry directors were not precluded from participating in discussions regarding delisting determinations as a result of the new requirement. Consequently, the Committee required that the quorum for delisting matters be two public directors and one industry director, and established a rotation system[6] with respect to industry director voting on delisting matters so that those voting are comprised of a majority of public directors and at least one industry director.

To insure that the Exchange's procedures are adequately described in the Listed Company Manual, the NYSE proposes to amend Section 804 of the Listed Company Manual to specify that public directors will constitute a majority of the directors voting on the delisting matter. The Exchange is also proposing to codify this change in the parallel Exchange Rule 499. Proposed NYSE Rule 499 also reflects a previous amendment to Section 804 of the Listed Company Manual that was inadvertently not added to NYSE Rule 499.

In addition, pursuant to the proposed rule change, the Chairman of the Committee would also be required to disclose to the issuer and the staff at the commencement of each delisting hearing which of the industry directors will be voting on the delisting matter. Furthermore, the decision relating to the delisting appeal would be required to identify by name which directors participated only and which directors voted on the matter. The written decision issued by the Committee would also be required to clearly state that, in reaching its decision, the Committee considered only the oral arguments, written briefs and accompanying materials presented by the parties at the time of the hearing.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[7] in general, and furthers the objectives of Section 6(b)(5),[8] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the NYSE consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR–NYSE–2001–27 and should be submitted by February 24, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–2404 Filed 1–31–03; 8:45 am]

BILLING CODE 8010–01–P

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[4] See Securities Exchange Act Release No. 42863 (May 30, 2000); 65 FR 36488 (June 8, 2000).

[5] The Exchanges states that as is the composition of any other Board Committee, the composition of the Committee for Review is determined annually, based on availability and expertise of Board members.

[6] Pursuant to the rotation system, the Committee designates prior to each delisting hearing which industry director(s) shall vote. At all hearings, all public directors present shall vote. For example, at a Committee meeting attended by three (3) public directors and three (3) industry directors at which two delisting appeals are considered, all public directors present and industry directors 1 and 2 will vote on the first delisting matter and all public directors present and industry directors 3 and 1 will vote on the second delisting matter. If, on the Committee's next review date, the meeting is attended by two (2) public directors and three (3) industry directors and one delisting appeal is considered, all public directors present and industry director 2 will vote on the matter; industry directors 1 and 3 will not vote. If any of the industry directors designated to vote next is not present at a Committee meeting, the next succeeding industry director(s) will vote. The rotation system is subject to the composition of the Committee, which varies at each meeting as described above, depending upon each director's availability. As is the case with other procedures of the Committee, the rotation system may also be changed from time to time.

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47257; File No. SR–NYSE–2002–59]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Approving Proposed Rule Change Relating to Mediation and Administrative Conferences

January 27, 2003.

On November 4, 2002, the New York Stock Exchange, Inc. ("Exchange" or "NYSE") filed with the Securities and Exchange Commission ("Commission" or "SEC"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change. On December 18, 2002, the NYSE submitted Amendment No. 1 to the proposal.[3] On December 27, 2002, the Exchange's rule proposal was published for comment in the **Federal Register**, as amended.[4] No comments letters were received on the proposal. This order approves the proposed rule change.

The NYSE proposes to allow its current pilot rules to expire and adopt amended rules for mediation and administrative conferences.[5] In particular, the Exchange's proposal would: (i) Allow parties to agree to mediation at their own expense; (ii) provide for the scheduling of an administrative conference at the request of the parties or discretion of the arbitrator(s) or Director of Arbitration; (iii) permit the Director to appoint a staff member or arbitrator to preside at the administrative conference which is to be held via telephone conference call and limited to procedural matters. The proposal also would amend NYSE Rules 628 (Agreement to Arbitrate) and 630 (Uniform Arbitration Code) to reflect these changes.

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange[6] and, in particular, the requirements of Section 6 and the rules and regulations thereunder.[7] Specifically, the Commission believes the proposal is consistent with the Section 6(b)(5) requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, and, in general, to protect investors and the public interest. In particular, the Commission believes that the proposed rule change should help NYSE members, member organizations, and the public have a fair and impartial forum for the resolution of their disputes. Further, the Commission believes that the proposed rule is a reasonable effort by the Exchange to improve the efficiency of its dispute resolution arbitration process.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[8] that the proposed rule change (File No. SR–NYSE–2002–59) is hereby approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–2406 Filed 1–31–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47273; File No. SR–NYSE–2003–03]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the New York Stock Exchange, Inc. Relating to Transaction Fees for Certain Exchange Traded Funds

January 29, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and rule 19b–4 thereunder,[2] notice is hereby given that on January 21, 2003, the New York Stock Exchange, Inc. ("NYSE") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in items I and II below, which items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to charge transaction fees for shares of Fresco[SM] Dow Jones STOXX 50 [SM] Fund and Fresco[SM] Dow Jones EURO STOXX 50[SM] Fund, that are listed and traded on the Exchange. The fees will be the same transaction fees charged for other exchange traded funds listed and traded on the Exchange. Proposed new language is *italicized*; proposed deletions are in [brackets].

* * * * *

TRANSACTION FEES

Exchange Traded Funds	Amount
Exchange Traded Funds—Public Agency and Principal Transactions Broker/Dealer—price per round-lot	$0.60
Maximum price per trade	100
System Orders under 5,100 shares [1]	No Charge.
Specialists and other on-floor proprietary trading—price per round-lot	0.63
Maximum price per trade	300
Exchange Traded Funds admitted to dealings on an unlisted trading privileges (UTP) basis	No Charge. [2]
[Specific NYSE Listed Exchange Traded Funds:	
Fresco[SM] Dow Jones STOXX 50[SM]	No Charge. [2]
Fresco[SM] Dow Jones EURO STOXX 50[SM]	No Charge. [2]]

[1] Not inclusive of orders of a member or member organization trading as an agent for the account of a non-member competing market maker.

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter to Florence Harmon, Senior Special Counsel, SEC, from Darla Stuckey, Corporate Secretary, NYSE, dated December 17, 2002 ("Amendment No. 1").

[4] *See* Securities Exchange Act Release No. 47025 (December 18, 2002), 67 FR 79214.

[5] On November 19, 1998, the Commission approved a two-year pilot program for mediation and administrative conferences in the Exchange's arbitration facility. *See* Securities Exchange Act Release No. 34–40695 (November 19, 1998); 63 FR 65834 (November 30, 2000), (SR–NYSE–98–27). On December 29, 2000, the Commission approved amendments to the pilot rules and granted a two-year extension. *See* Securities Exchange Act Release No. 34–47076 (December 29, 2000); 66 FR 1710 (January 9, 2001), (SR–NYSE–00–39). The Commission extended this pilot for an additional thirty days until January 31, 2003. *See* Securities Exchange Act Release No. 34–43785 (December 20, 2002); 67 FR 79680 (December 30, 2002), (SR–NYSE–2002–65).

[6] In approving this rule, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[7] 15 U.S.C. 78f.

[8] 15 U.S.C. 78s(b)(2).

[9] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

Competing Market Maker: a specialist or market-maker registered as such on a registered stock exchange (other than the NYSE), or a market-maker bidding and offering over-the-counter, in a New York Stock Exchange-traded security.

[2] This "fee holiday" is intended to be temporary. The Exchange expects to file a specific schedule of transaction charges at a future date.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NYSE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Fresco℠ Dow Jones STOXX 50℠ Fund and Fresco℠ Dow Jones EURO STOXX 50℠ ("Fresco Funds") were listed and commenced trading on the Exchange on October 21, 2002.[3] At the time of listing, the Exchange implemented a temporary "fee holiday," constituting zero transaction charges, for Fresco Funds for trading them on the Exchange.[4] The Exchange now proposes that starting February 1, 2003, transaction fees will be charged for trading of Fresco Funds. The fees will be the same transaction fees charged for other exchange traded funds listed and traded on the Exchange.[5]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act[6] in general, and furthers the objectives of section 6(b)(4)[7] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has become effective pursuant to section 19(b)(3)(A) of the Act,[8] and rule 19b–4(f)(2) thereunder,[9] in that it establishes or changes a due, fee, or other charge imposed by the Exchange. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–NYSE–2003–03 and should be submitted by February 24, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 03–2482 Filed 1–31–03; 8:45 am]

BILLING CODE 8010–01–P

[3] Securities Exchange Act Release No. 46686 (October 18, 2002), 67 FR 65388 (October 24, 2002).

[4] Securities Exchange Act Release No. 46786 (November 7, 2002), 67 FR 69280 (November 15, 2002).

[5] 15 U.S.C. 78f(b)(4).

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(4).

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFT 240.19b–4(f)(2).

[10] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #P005]

Federated States of Micronesia

As a result of the President's major disaster declaration for Public Assistance on January 6, 2003, the U.S. Small Business Administration is activating its disaster loan program only for private non-profit businesses that provide essential services of a governmental nature. I find that the State of Chuuk within the Federated States of Micronesia constitutes a disaster area due to damages caused by Typhoon Pongsona occurring from December 5, 2002, and continuing through December 7, 2002. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on March 7, 2003 at the address listed below or other locally announced locations: Small Business Administration, Disaster Area 4 Office, P.O. Box 13795, Sacramento, CA 95853–4795.

The interest rates are:

	Percent
For Physical Damage:	
Non-Profit Organizations Without Credit Available Elsewhere	3.324
Non-Profit Organizations With Credit Available Elsewhere	5.500

The number assigned to this disaster for physical damage is P00508.

(Catalog of Federal Domestic Assistance Program Nos. 59008)

Dated: January 23, 2003.

Herbert L. Mitchell,

Associate Administrator For Disaster Assistance.

[FR Doc. 03–2400 Filed 1–31–03; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 4259]

Bureau of Political-Military Affairs: Defense Trade Controls; Notifications to the Congress of Proposed Commercial Export Licenses

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Department of State has forwarded the attached Notifications of Proposed Export Licenses to the Congress on the dates shown on the attachments pursuant to sections 36(c) and 36(d) and in compliance with section 36(f) of the Arms Export Control Act (22 U.S.C. 2776).

EFFECTIVE DATE: As shown on each of the three letters.

FOR FURTHER INFORMATION CONTACT: Mr. Robert W. Maggi, Deputy Assistant Secretary for Defense Trade Controls, Bureau of Political-Military Affairs, Department of State (202–663–2700).

SUPPLEMENTARY INFORMATION: Section 36(f) of the Arms Export Control Act mandates that notifications to the Congress pursuant to sections 36(c) and 36(d) must be published in the **Federal Register** when they are transmitted to Congress or as soon thereafter as practicable.

Dated: January 17, 2003.

Robert W. Maggi,

Deputy Assistant Secretary, Defense Trade Controls, Bureau of Political-Military Affairs, Department of State.

November 15, 2002.

The Honorable Henry J. Hyde,

Chairman, Committee on International Relations, House of Representatives.

Dear Mr. Chairman: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the temporary export of defense articles or defense services sold commercially under a contract in the amount $50,000,000 or more.

The transaction described in the attached certification involves the temporary export of one (1) 601 HP Commercial Communications Satellite (Galaxy XIII), spare parts/ground support equipment, and fuel to international waters in the Pacific Ocean for Sea Launch or to Kourou, French Guiana on an Ariane Launch Vehicle.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Paul V. Kelly,

Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 246–02.

November 15, 2002.

The Honorable J. Dennis Hastert,

Speaker of the House of Representatives.

Dear Mr. Speaker: I am transmitting, herewith, certification of a proposed issuance of an export license pursuant to Section 126.14 of the International Traffic in Arms Regulations concerning a major program authorization (MPA) and Section 36(c) of the Arms Export Control Act.

The transaction contained in the attached certification involves the export of electronic power generating systems to Germany, Italy, Spain and the United Kingdom in support of the Eurofighter program.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Paul V. Kelly,

Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 282–02.

November 18, 2002.

The Honorable Henry J. Hyde,

Chairman, Committee on International Relations, House of Representatives.

Dear Mr. Chairman: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed technical assistance agreement for the export of defense articles or defense services sold commercially under a contract in the amount $50,000,000 or more.

The transaction contained in the attached certification involves the export of technical data and assistance related to or involved with the sale of the TELEKOM–2 commercial communications satellite to Indonesia, jointly with Canada, and its launch from French Guiana.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification, which, though unclassified contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Paul V. Kelly,

Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 177–02.

[FR Doc. 03–2436 Filed 1–31–03; 8:45 am]

BILLING CODE 4710–25–P

DEPARTMENT OF STATE

[Public Notice 4258]

Culturally Significant Objects Imported for Exhibition; Determinations: "Art of the First Cities: The Third Millennium B.C. From the Mediterranean to the Indus"

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999 (64 FR 56014), and Delegation of Authority No. 236 of October 19, 1999 (64 FR 57920), as amended, I hereby determine that the objects to be included in the exhibition, "Art of the First Cities: The Third Millennium B.C. from the Mediterranean to the Indus," imported from abroad for temporary exhibition within the United States, are of cultural significance. These objects are imported pursuant to loan agreements with foreign lenders. I also determine that the exhibition or display of the exhibit objects at the Metropolitan Museum of Art, New York, New York, from on or about May 5, 2003, to on or about August 17, 2003, and at possible additional venues yet to be determined, is in the national interest. Public Notice of these determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of exhibit objects, contact Paul W. Manning, Attorney-Adviser, Office of the Legal Adviser, 202/619–5997, and the address is United States Department of State, SA–44, Room 700, 301 4th Street, SW., Washington, DC 20547–0001.

Dated: January 28, 2003.

Patricia S. Harrison,

Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 03–2437 Filed 1–31–03; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF STATE

[Public Notice 4222]

Advisory Committee on Historical Diplomatic Documentation; Notice of Meeting

The Advisory Committee on Historical Diplomatic Documentation will meet in the Department of State, 2201 "C" Street NW., Washington, DC, February 24–25, 2003, in Conference Room 1107. Prior notification and a valid photo are mandatory for entrance into the building. One week before the meeting, members of the public planning to attend must notify Gloria Walker, Office of the Historian (202–663–1124) to provide relevant dates of birth, Social Security numbers, and telephone numbers.

The Committee will meet in open session from 1:30 p.m. through 3 p.m. on Monday, February 24, 2003, to discuss declassification and transfer of Department of State electronic records to the National Archives and Records Administration and the status of the Foreign Relations series. The remainder of the Committee's sessions from 3:15 p.m. until 4:30 p.m. on Monday, February 24, 2003, and 9 a.m. until 1 p.m. on Tuesday, February 25, 2003, will be closed in accordance with section 10(d) of the Federal Advisory Committee Act (Pub. L. 92–463). The agenda calls for discussions of agency declassification decisions concerning the Foreign Relations series and other declassification issues. These are matters not subject to public disclosure under 5 U.S.C. 552b(c)(1) and the public interest requires that such activities be withheld from disclosure.

Questions concerning the meeting should be directed to Marc J. Susser, Executive Secretary, Advisory Committee on Historical Diplomatic Documentation, Department of State, Office of the Historian, Washington, DC, 20520, telephone (202) 663–1123, (e-mail *history@state.gov*).

Dated: January 21, 2003.

Marc J. Susser,

Executive Secretary, Advisory Committee on Historical Diplomatic Documentation, Department of State.

[FR Doc. 03–2438 Filed 1–31–03; 8:45 am]

BILLING CODE 4710–11–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Request for Comments on the Operation and Implementation of the World Trade Organization's Agreement on Technical Barriers to Trade

AGENCY: Office of the United States Trade Representative.

ACTION: Request for comments on the operation and implementation of the World Trade Organization's agreement on technical barriers to trade.

SUMMARY: The interagency Trade Policy Staff Committee (TPSC) is seeking public comment on the operation and implementation of the World Trade Organization's (WTO) Agreement on Technical Barriers to Trade (TBT). The WTO Committee on Technical Barriers to Trade, in which the United States is represented, is obliged to conclude a review of the Agreement no later than the end of 2003. The TBT Agreement disciplines the development and application of standards, technical regulations and conformity assessment procedures to prevent unnecessary obstacles to international trade. The text of the Agreement is available at *http://www.wto.org.*

DATES: Written comments are due by noon Friday, February 28.

ADDRESSES: *Submissions by electronic mail: FR0066@ustr.gov.*

Submissions by facsimile: Gloria Blue, Executive Secretary, Trade Policy Staff Committee, at 202/395–6143.

The public is strongly encouraged to submit documents electronically rather than by facsimile. (See requirements for submissions below.)

FOR FURTHER INFORMATION CONTACT: For procedural questions concerning written comments, contact Gloria Blue, (202) 395–3475. Further information on the World Trade Organization and the Agreement on Technical Barriers to Trade can be obtained via Internet at the WTO Web site *http://www.wto.org* and the Office of the U.S. Trade Representative at *http://www.ustr.gov.* Questions on the Agreement on Technical Barriers to Trade and its review should be directed to Suzanne Troje, Director for Technical Barriers to Trade, at the Office of the United States Trade Representative (202) 395–3063.

SUPPLEMENTARY INFORMATION:

1. Background

The TPSC is seeking public comment on the operation and implementation of the WTO TBT Agreement to inform the U.S. position and approach to the Third Triennial Review. Article 15.4 of the Agreement requires such a review and this will be the third conducted by the TBT Committee since the inception of the World Trade Organization in 1995. Article 15.4 requires the Committee to:

> review the operation and implementation of this Agreement, including the provisions relating to transparency, with a view to recommending an adjustment of the rights and obligations of this Agreement where necessary to ensure mutual economic advantage and balance of rights and obligations, without prejudice to the provisions of Article 12 (Special and Differential Treatment for Developing Country Members). Having regard, inter alia, to the experience gained in the implementation of the Agreement, the Committee shall, where appropriate, submit proposals for amendments to the text of this Agreement to the Council for Trade in Goods.

The results of the earlier reviews are available at *www.wto.org:* G/TBT/5 (19. November 1997), First Triennial Review of the Operation and Implementation of the Agreement on Technical Barriers to Trade, and G/TBT/9 (13 November 2000), for the Second Triennial Review.

Since the conclusion of the Second Triennial Review, the Committee has had follow-up discussions on technical assistance and labeling:

Technical Assistance: G/TBT/W/178, Questionnaire for a Survey to Assist Developing Country Members to Identify and Prioritize their Specific Needs in the TBT-Field was developed by the TBT Committee with a view to eliciting information on the priority needs of Members. To date, some 46 WTO members have provided a response. Although the responses are not publically available, the WTO Secretariat presented some information on them in G/TBT/W/186 (14 October 2002). In March 2003 the Committee will host a workshop on technical assistance to discuss issues arising from the survey results and Committee discussions. The Second Triennial Review requires the Committee to assess its progress in implementing its work program in the context of the Third Triennial Review.

Labeling: The Second Triennial Review, under "other elements" noted that many trade issues were raised at meetings of the Committee concerning labeling and reiterated the importance of compliance with the Agreement. The Committee has held informal discussions largely on the basis of submissions by Members: G/TBT/W/150 (European Commission), G/TBT/W/162 (Switzerland), G/TBT/W/165 (United States), G/TBT/W/174/Rev.1 (Canada), G/TBT/W/175 (European Commission), and G/TBT/W/176 (Japan). At the request of the Committee and to provide a factual background for its future

discussions, the Secretariat prepared two papers: one, identifying specific trade concerns related to labeling brought to the attention of the TBT Committee since 1995 (G/TBT/W/184); and, one compiling summary information on all of the notifications made under the Agreement since 1995 related to labeling (G/TBT/W/183). In follow-up to a proposal originating in the Canadian paper, the Committee is currently discussing possible topics for a workshop on labeling to be held in conjunction with its June 2003 meeting.

Comments are welcome related to these topics or any other relevant to the operation and implementation of the Agreement.

2. Requirements for Submissions

In order to facilitate prompt processing of submissions, the Office of the United States Trade Representative strongly urges and prefers electronic (e-mail) submissions in response to this notice. In the event that an e-mail submission is impossible, submissions should be made by facsimile.

Persons making submissions by e-mail should use the following subject line: "WTO TBT Review." Documents should be submitted as either WordPerfect, MSWord, or text (.TXT) files. For any document containing business confidential information submitted electronically, the file name of the business confidential version should begin with the characters "BC–", and the file name of the public version should begin with the characters "P–". The "P" or "BC–" should be followed by the name of the submitter. Persons who make submissions by e-mail should not provide separate cover letters; information that might appear in a cover letter should be included in the submission itself. To the extent possible, any attachments to the submission should be included in the same file as the submission itself, and not as separate files.

Written comments will be placed in a file open to public inspection pursuant to 15 CFR 2003.5, except business confidential information exempt from public inspection in accordance with 15 CFR 2003.6. Business confidential information submitted in accordance with 15 CFR 2003.6 must be clearly marked "BUSINESS CONFIDENTIAL" at the top of each page, including any cover letter or cover page, and must be accompanied by a nonconfidential summary of the confidential information. All public documents and nonconfidential summaries shall be available for public inspection in the USTR Reading Room. The USTR Reading Room is open to the public, by appointment only, from 10 a.m. to 12 noon and 1 p.m. to 4 p.m., Monday through Friday. An appointment to review the file may be made by calling (202) 395–6186. Appointments must be scheduled at least 48 hours in advance.

General information concerning the Office of the United States Trade Representative may be obtained by accessing its Internet server (*http://www.ustr.gov*).

Carmen Suro-Bredie,

Chairman, Trade Policy Staff Committee.

[FR Doc. 03–2356 Filed 1–31–03; 8:45 am]

BILLING CODE 3190–01–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG 2003–14360]

Collection of Information Under Review by Office of Management and Budget (OMB): OMB Control Number 2115–0614

AGENCY: Coast Guard, DOT.

ACTION: Request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Coast Guard intends to seek the approval of OMB for the renewal of one Information Collection Request (ICR). The ICR concerns Alteration of Unreasonably Obstructive Bridges. Before submitting the ICR to OMB, the Coast Guard is inviting comments on it.

DATES: Comments must reach the Coast Guard on or before April 4, 2003.

ADDRESSES: To make sure that your comments and related material do not enter the docket [USCG 2003–14360] more than once, please submit them by only one of the following means:

(1) By mail to the Docket Management Facility, U.S. Department of Transportation (DOT), room PL–401, 400 Seventh Street SW., Washington, DC 20590–0001. Caution: Because of recent delays in the delivery of mail, your comments may reach the Facility more quickly if you choose one of the other means described below.

(2) By delivery to room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(3) By fax to the Facility at 202–493–2251.

(4) Electronically through the Web site for the Docket Management System at *http://dms.dot.gov*.

The Facility maintains the public docket for this notice. Comments and material received from the public, as well as documents mentioned in this notice as being available in the docket, will become part of this docket and will be available for inspection or copying at room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at *http://dms.dot.gov*.

Copies of the complete ICR are available through this docket on the Internet at *http://dms.dot.gov*, and also from Commandant (G–CIM–2), U.S. Coast Guard Headquarters, room 6106 (Attn: Barbara Davis), 2100 Second Street SW., Washington, DC 20593–0001. The telephone number is 202–267–2326.

FOR FURTHER INFORMATION CONTACT: Barbara Davis, Office of Information Management, 202–267–2326, for questions on this document; or Dorothy Beard, Chief, Documentary Services Division, U.S. Department of Transportation, 202–366–5149, for questions on the docket.

Request for Comments

The Coast Guard encourages interested persons to submit comments. Persons submitting comments should include their names and addresses, identify this document [USCG 2003–14360], and give the reasons for the comments. Please submit all comments and attachments in an unbound format no larger than 8½ by 11 inches, suitable for copying and electronic filing. Persons wanting acknowledgment of receipt of comments should enclose stamped self-addressed postcards or envelopes.

Information Collection Request

Title: Alteration of Unreasonably Obstructive Bridges.

OMB Control Number: 2115–0614.

Summary: The collection of information requires the owner of a bridge whose bridge the Coast Guard has found to be an unreasonable obstruction to navigation to prepare, and submit to the Coast Guard, general plans and specifications of that bridge.

Need: Under 33 U.S.C. 494, 502, 511, and 513, the Coast Guard may determine whether a bridge is an unreasonable obstruction to navigation and may require the owner of the bridge to submit information to determine the apportionment of cost between the U.S. and the owner for alteration of that bridge.

Respondents: Owners of bridges.

Frequency: On occasion.

Burden: The estimated burden is 120 hours a year.

Dated: January 27, 2003.

C.I. Pearson,

Rear Admiral, Coast Guard, Director of Information and Technology.

[FR Doc. 03–2424 Filed 1–31–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2003–03]

Petition for Exemption; Summary of Petition Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petition for exemption received.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption part 11 of Title 14, Code of Federal Regulations (14 CFR), this notice contains a summary of a certain petition seeking relief from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before February 24, 2003.

ADDRESSES: Send comments on any petition to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2003–14212 at the beginning of your comments. If you wish to receive confirmation that FAA received your comments, include a self-addressed, stamped postcard.

You may also submit comments through the Internet to *http://dms.dot.gov.* You may review the public docket containing the petition, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Dockets Office (telephone 1–800–647–5527) is on the plaza level of the NASSIF Building at the Department of Transportation at the above address. Also, you may review public dockets on the Internet at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Mike Brown, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591. Tel. (202) 267–7653.

This notice is published pursuant to 14 CFR 11.85 and 11.91.

Issued in Washington, DC, on January 29, 2003.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petition for Exemption

Docket No.: FAA–2003–14212.

Petitioner: Honeywell Aerospace Electronic Systems.

Section of 14 CFR Affected: 14 CFR 21.621.

Description of Relief Sought: To allow for the continued production and support of Technical Standard Order Authorization (TSOA) products manufactured by Baker Electronics, Inc. Honeywell's immediate acquisition of Baker Electronics would allow Honeywell to make required changes on TSOA drawings and apply for approval of the name change to its current Quality Control System.

[FR Doc. 03–2417 Filed 1–31–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA Special Committee 198: Next-Generation Air/Ground Communications System (NEXCOM)

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Notice of RTCA Special Committee 198 meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of RTCA Special Committee 198: Next-Generation Air/Ground Communications System (NEXCOM).

DATES: The meeting will be held on February 18–19, 2003, starting at 9 a.m.

ADDRESSES: The meeting will be held at RTCA, 1828 L Street, Suite 805, Washington, DC, 20036.

FOR FURTHER INFORMATION CONTACT: RTCA Secretariat, 1828 L Street, NW., Suite 805, Washington, DC, 20036; telephone (202) 833–9339; fax (202) 833–9434; Wed site *http://www.rtca.org.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for a Special Committee 198 meeting. The agenda will include:

- February 18:
  - Opening Plenary Session (Welcome and Introductory Remarks, Review Agenda and Minutes of Previous Meeting)
  - Status of RTCA Program Management Committee (PMC) review of the NEXCOM Safety and Performance Requirements (SPR) Documents
  - Discussion of SPR comments for Change 1 and guidance from PMC regarding SPR
  - Status of Working Group-4 (WG), Very High Frequency Digital Link-3 Implementation
  - Status of WG–6, Interoperability of NEXCOM
  - Status of additional work for WG–5 for Plenary Approval
  - Presentation of draft WG–4 Transition Document to Plenary for approval
- February 19:
  - Continuation of Plenary, if needed, to conclude WG–4 review of final draft.
  - WG–4 to finalize document for submission for final review and comment (FRAC)
  - WG–5 continue to review and draft Change 1 to SPR
  - Closing Plenary Session (Date and Place of Next Meeting)

Attendance is open to the interested public but limited to space availability. With the approval of the chairmen, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on January 28, 2003.

Janice L. Peters,

FAA Special Assistant, RTCA Advisory Committee.

[FR Doc. 03–2420 Filed 1–31–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Dallas-Fort Worth International Airport, DFW Airport, Texas

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Dallas-Fort Worth International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before March 5, 2003.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate copies to the FAA at the following address: Mr. G. Thomas Wade, Federal Aviation Administration, Southwest Region, Airports Division, Planning and Programming Branch, ASW–611, Fort Worth, Texas 76193–0610.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Jeffrey P. Fegan, Airport Manager of Dallas-Fort Worth International Airport at the following address: Dallas-Fort Worth International Airport, P.O. Drawer 619428, 3200 East Airfield Drive, DFW Airport, Texas 75261–9428.

Air carriers and foreign air carriers may submit copies of the written comments previously provided to the Airport under § 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Mr. G. Thomas Wade, Federal Aviation Administration, Southwest Region, Airports Division, Planning and Programming Branch, ASW–611, Fort Worth, Texas 76193–0610, (817) 222–5613.

The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Dallas-Fort Worth International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On January 22, 2003, the FAA determined that the application to impose and use the revenue from a PFC submitted by the Airport was substantially complete within the requirements of § 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than April 22, 2003.

The following is a brief overview of the application.

Level of the proposed PFC: $3.00.

Proposed charge effective date: January 1, 2021.

Proposed charge expiration date: May 1, 2021.

Total estimated PFC revenue: $51,900,495.

PFC application number: 03–06–C–00–DFW.

Brief description of proposed project(s):

Projects To Impose and Use PfC's

1. Install Source Isolation Deicing System.

Proposed class or classes of air carriers to be exempted from collecting PFC's: Air Taxi/Commercial Operators under Part 135 filing FAA Form 1800–31.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA regional Airports office located at: Federal Aviation Administration, Southwest Region, Airports Division, Planning and Programming Branch, ASW–610, 2601 Meacham Blvd., Fort Worth, Texas 76137–4298.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at Dallas-Fort Worth International Airport.

Issued in Fort Worth, Texas on January 23, 2003.

William J. Flanagan,

Acting Manager, Airports Division.

[FR Doc. 03–2419 Filed 1–31–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Jackson International Airport, Jackson, MS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Jackson International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before March 5, 2003.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Jackson Airports District Office, 100 West Cross Street, Jackson, Mississippi 39208–2307.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Dirk Vanderleest, Executive Director of the Jackson Municipal Airport Authority at the following address: Post Office Box 98109, Jackson, MS 39298–8109.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Jackson Municipal Airport Authority under § 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: David Shumate, Program Manager, Jackson Airports District Office, 100 West Cross Street, Jackson, Mississippi, (601) 664–9882. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Jackson International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR part 158).

On January 7, 2003, the FAA determined that the application to impose and use the revenue from a PFC submitted by Jackson Municipal Airport Authority was substantially complete within the requirements of § 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than May 6, 2003.

The following is a brief overview of the application.

PFC Application No.: 03–04–C–00–JAN.

Level of the proposed PFC: $3.00.

Proposed charge effective date: February 1, 2007.

Proposed charge expiration date: June 1, 2010.

Total estimated net PFC revenue: $6,211,722.

Brief description of proposed project(s): Runway Sweeper; Tricherator; Local Share & Engineering West Parallel Lights; Local Share & Engineering West Taxiway Overlay; Local Share Air Cargo Road; Local Share Air Cargo Apron/Taxiway; H. F. Environmental Assessment; Metes & Bounds Survey; Surface Transportation System; Rehab International Drive

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: All air taxi/commercial operators (ATCO) are requested to be excluded from the collection of a PFC.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Jackson Municipal Airport Authority.

Issued in Jackson, Mississippi on January 27, 2003.

David Shumate,

Acting Manager, Jackson Airports District Office Southern Region.

[FR Doc. 03–2421 Filed 1–31–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice To Intend To Rule on Application 03–05–C–00–ISP To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Long Island MacArthur Airport, Ronkonkoma, NY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice to intend to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use a PFC at Long Island MacArthur Airport under the provisions of the Aviation Safety and Capacity Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before March 5, 2003.

ADDRESSES: Comments on this Application may be mailed or delivered in triplicate to the FAA at the following address: Mr. Dan Vornea, Project Manager, New York District Office, 600 Old Country Road, Suite 446, Garden City, N.Y. 11530.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Alfred Werner, Airport Manager, of the Long Island MacArthur Airport at the following address: Long Island MacArthur Airport, 100 Arrival Avenue, Ronkonkoma, N.Y. 11779.

Air carriers and foreign air carriers may submit copies of their written comments previously provided to Long Island MacArthur Airport under § 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Dan Vornea, Project Manager, New York Airports District Office, 600 Old Country Road, Suite 446, Garden City, N.Y. 11530, Telephone No. (516) 227–3812. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use a PFC at Long Island MacArthur Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On January 28, 2003 the FAA determined that the application to impose and use a PFC submitted by the Town of Islip was substantially completed within the requirements of section 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than May 28, 2003.

The following is a brief overview of the application:

Application Number: 03–05–C–00–ISP.

Level of Proposed PFC: $3.00.

Proposed Charge Effective Date: August 1, 2005.

Proposed Charge Expiration Date: October 1, 2005.

Total Estimated PFC Revenue: $493,001

Brief Description of Proposed Projects:

—Rehabilitation of Runway 6–24 (Impose and Use).
—Wildlife Hazard Management Assessment and Management Plan (Impose and Use).
—Acquire two (2) Snow Removal Brooms (Impose and Use).
—Purchase one (1) Passenger Boarding Assistance Device (Impose and Use).
—Airport Security Enhancement Items (Impose and Use).

Class or classes of air carriers which the public agency has requested not to be required to collect PFS's are: Non-Scheduled/On Demand Air Carriers filing FAA Form 1800–31.

Any person may inspect the Application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA Regional Office: 1 Aviation Plaza, Jamaica, N.Y. 11434–4809.

In addition, any person may, upon request, inspect the appliation notice and other documents germane to the application in person at the Long Island MacArthur Airport.

Issued in Garden City, New York on January 28, 2003.

Philip Brito,

Manager, NYADO Eastern Region.

[FR Doc. 03–2418 Filed 1–31–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[U.S. DOT Docket Number NHTSA–2002–14108]

Reports, Forms, and Recordkeeping Requirements

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Request for public comment on proposed collection of information.

SUMMARY: Before a Federal agency can collect certain information from the public, it must receive approval from the Office of Management and Budget (OMB). Under procedures established by the Paperwork Reduction Act of 1995, before seeking OMB approval, Federal agencies must solicit public comment on proposed collections of information, including extensions and reinstatement of previously approved collections.

This document describes one collection of information for which NHTSA intends to seek OMB approval.

DATES: Comments must be received on or before April 4, 2003.

ADDRESSES: Comments must refer to the docket notice numbers cited at the beginning of this notice and be submitted to Docket Management, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590. Please identify the proposed collection of information for which a comment is provided, by referencing its OMB clearance number. It is requested, but not required, that two copies of the comment be provided. The Docket Section is open on weekdays from 10 a.m. to 5 p.m.

FOR FURTHER INFORMATION CONTACT: Gary Toth, Office of Crash Investigation (NPO–122), Room 6115, 400 Seventh Street, SW., Washington, DC 20590. Mr. Toth's telephone number is (202) 366–5378. Please identify the relevant collection of information by referring to its OMB Control Number.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995, before an agency submits a proposed collection of information to OMB for approval, it must first publish a document in the **Federal Register**

providing a 60-day comment period and otherwise consult with members of the public and affected agencies concerning each proposed collection of information. The OMB has promulgated regulations describing what must be included in such a document. Under OMB's regulation (at 5 CFR 1320.8(d)), an agency must ask for public comment on the following:

(i) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) How to enhance the quality, utility, and clarity of the information to be collected;

(iv) How to minimize the burden of the collection of information on those who are to respond including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.* permitting electronic submission of responses.

In compliance with these requirements, NHTSA asks for public comments on the following proposed collections of information:

Title: National Automotive Sampling System (NASS).

Type of Request: Extension of a currently approved collection.

OMB Control Number: 2127–0021.

Affected Public: Passenger motor vehicle operators.

Abstract: The collection of crash data that support the establishment and enforcement of motor vehicle regulations that reduce the severity of injury and property damage caused by motor vehicle crashes is authorized under the National Traffic and Motor Vehicle Safety Act of 1966 (Pub. L. 89–563, title 1, sec. 106, 108, and 112). The National Automotive Sampling System (NASS) Crashworthiness Data System (CDS) of the National Highway Traffic Safety Administration investigates high severity crashes. Once a crash has been selected for investigation, researchers locate, visit, measure, and photograph the crash scene; locate, inspect, and photograph vehicles; conduct a telephone or personal interview with the involved individuals or surrogate; and obtain and record injury information received from various medical data sources. NASS CDS data are used to describe and analyze circumstances, mechanisms, and consequences of high severity motor vehicle crashes in the United States. The collection of interview data aids in this effort.

Estimated Annual Burden: 5,807 hours.

Number of respondents: 13,500.

Raymond P. Owings,

Associate Administrator for Advanced Research and Analysis.

[FR Doc. 03–2460 Filed 1–31–03; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket NHTSA–99–5087]

Rulemaking Program Meeting

AGENCY: National Highway Traffic Safety Administration (DOT).

ACTION: Notice of NHTSA rulemaking status meeting.

SUMMARY: This notice announces a public meeting at which NHTSA will answer questions from the public and the automobile industry regarding the agency's vehicle regulatory program.

DATES: The Agency's regular public meeting relating to its vehicle regulatory program will be held on Thursday, April 3, 2003, beginning at 9:45 a.m. and ending at approximately 12 p.m. at the Best Western Gateway International Hotel 9191 Wickham, Romulus, Michigan. Questions relating to the vehicle regulatory program must be submitted in writing with a diskette (Microsoft Word) by Wednesday, March 12, 2003, to the address shown below or by e-mail. If sufficient time is available, questions received after March 12, may be answered at the meeting. The individual, group or company submitting a questions(s) does not have to be present for the questions(s) to be answered. A consolidated list of the questions submitted by March 12, 2003, and the issues to be discussed will be posted on NHTSA's Web site (*www.nhtsa.dot.gov*) by Monday, April 1, 2003, and also will be available at the meeting. The agency will hold a second public meeting on April 3, devoted exclusively to a presentation of research and development programs. This meeting will begin at 1:30 p.m. and end at approximately 5 p.m. This meeting is described more fully in a separate announcement. The next NHTSA Public Meeting will take place on Thursday, July 17, 2003, at the Hyatt Regency in Baltimore, on the Inner Harbor, 300 Light Street Baltimore, MD 21202.

ADDRESSES: Questions for the April 3, NHTSA Rulemaking Status Meeting, relating to the agency's vehicle regulatory program, should be submitted to Delia Lopez, NVS–100, National Highway Traffic Safety Administration, Room 5401, 400 Seventh Street, SW., Washington, DC 20590, Fax Number 202–366–4329, e-mail *dlopez@nhtsa.dot.gov*. The meeting will be held at the Best Western Gateway International Hotel, Romulus, Michigan 48174, the telephone number is (734) 728–2800.

FOR FURTHER INFORMATION CONTACT: Delia Lopez, (202) 366–1810.

SUPPLEMENTARY INFORMATION: NHTSA holds regular public meetings to answer questions from the public and the regulated industries regarding the agency's vehicle regulatory program. Questions on aspects of the agency's research and development activities that relate directly to ongoing regulatory actions should be submitted, as in the past, to the agency's Rulemaking Office. Transcripts of these meetings will be available for public inspection in the DOT Docket in Washington, DC, within four weeks after the meeting. Copies of the transcript will then be available at ten cents a page, (length has varied from 80 to 150 pages) upon request to DOT Docket, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590. The DOT Docket is open to the public from 10 a.m. to 5 p.m. The transcript may also be accessed electronically at *http://dms.dot.gov*, at docket NHTSA–99–5087. Questions to be answered at the public meeting should be organized by categories to help us process the questions into an agenda form more efficiently.

Sample format:

I. Rulemaking
- A. Crash avoidance
- B. Crashworthiness
- C. Other Rulemakings

II. Consumer Information

III. Miscellaneous

NHTSA will provide auxiliary aids to participants as necessary. Any person desiring assistance of "auxiliary aids" (*e.g.*, sign-language interpreter, telecommunications devices for deaf persons (TDDs), readers, taped texts, brailled materials, or large print materials and/or a magnifying device), please contact Delia Lopez on (202) 366–1810, by COB Monday, April 1, 2003.

Issued: January 24, 2003.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. 03–2427 Filed 1–31–03; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–03–14395]

NHTSA's Activities under the United Nations Economic Commission for Europe 1998 Global Agreement

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Notice of activities under the 1998 Global Agreement and request for comments.

SUMMARY: NHTSA is publishing this notice to inform the public of the tentative schedule of meetings of the World Forum for the Harmonization of Vehicle Regulations (WP.29) and its working parties of experts for calendar year 2003. In addition, this notice informs the public about the 1998 Global Agreement program of work that was agreed to by the Executive Committee of the Agreement and adopted by WP.29. Finally, NHTSA is seeking comments regarding a draft U.S. proposal for the development of a global technical regulation on door locks and door retention components under the 1998 Global Agreement. Publication of this information is consistent with NHTSA's Statement of Policy regarding Agency Policy Goals and Public Participation in the Implementation of the 1998 Agreement on Global Technical Regulations.

DATES: Written comments may be submitted to this agency and must be received by March 5, 2003.

ADDRESSES: You may submit your comments in writing to: Docket Management, Room PL–401, 400 Seventh Street, SW., Washington, DC, 20590. Alternatively, you may submit your comments electronically by logging onto the Dockets Management System Web site at *http://dms.dot.gov*. Click on "Help & Information" or "Help/Info" to view instructions for filing your comments electronically. Regardless of how you submit your comments, you should mention the docket number of this document.

FOR FURTHER INFORMATION CONTACT: Ms. Julie Abraham, Director of the Office of International Policy and Harmonization (NPP–01), National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC, 20590; phone number (202) 366–2114, fax number (202) 366–2559.

SUPPLEMENTARY INFORMATION:

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I. Introduction
II. List of tentative meetings of WP.29 and its Working Parties of Experts
III. Program of Work of the 1998 Global Agreement
IV. Formal proposals for global technical regulations submitted by Contracting Parties
V. Request for comments on U.S. draft proposal for a GTR
VI. Appendix

I. Introduction

On August 23, 2000, NHTSA published in the **Federal Register** (65 FR 51236) a statement of policy indicating that the agency would provide each calendar year a list of scheduled meetings of WP.29 and the working parties of experts, as well as meetings of the Executive Committee of the 1998 Global Agreement. Further, in that policy statement, the agency stated that it would keep the public informed about a program of work under the Agreement (*i.e.*, the agreed subjects for which a global technical regulations should be developed) as well as a list of candidate global technical regulations that have been formally proposed by a contracting party and referred to a working party of experts. NHTSA also indicated that before submitting a draft U.S. proposal for the development of a global technical regulation to WP.29, NHTSA would publish a notice requesting public comments on the draft proposal.

On July 18, 2000, NHTSA published in the **Federal Register** (65 FR 44565) a notice seeking public comments on its preliminary recommendations for the first motor vehicle safety technical regulations to be considered for establishment under the Agreement. On January 18, 2001, the agency, after consideration of the comments, published in the **Federal Register** (66 FR 4893) a notice outlining its final recommendations. In that notice, the agency stated that it would present those recommendations to WP.29 and propose them for consideration by other contracting parties of the 1998 Global Agreement concerning the adoption of a program of work under the Agreement. The agency also stated that it would report to the public the final outcome of the deliberations.

II. List of Tentative Meetings of WP.29 and Its Working Parties of Experts

The following list contains meetings tentatively scheduled for calendar year 2003. The meeting dates are subject to confirmation by the Inland Transport Committee during its February 2003 session. The agency does not anticipate any changes to the schedule. In addition, working parties of experts may schedule, if necessary, informal meetings in addition to their regularly scheduled ones in order to address specific regulations.

Schedule of Meetings of WP.29 and Its Working Parties of Experts

January

13–17 Working Party on Pollution and Energy (GRPE) (45th session).

February

3–7 Working Party on Brakes and Running Gear (GRRF) (53rd session).

March

10 Administrative Committee for the Coordination of Work (WP.29/AC.2) (81st session).

11–14 World Forum for Harmonization of Vehicle Regulations (WP.29)—(129th session) and Administrative Committee to the 1958 Agreement (AC.1) (23rd session) and Executive Committee of the 1998 Agreement (AC.3) (seventh session).

April

7–11 Working Party on Lighting and Light-Signalling (GRE) (50th session).

May

5–9 Working Party on General Safety Provisions (GRSG) (84th session).

20–23 Working Party on Pollution and Energy (GRPE) (46th session).

June

2–6 Working Party on Passive Safety (GRSP) (33rd session).

23 Administrative Committee for the Coordination of Work (WP.29/AC.2) (82nd session).

24–27 World Forum for Harmonization of Vehicle Regulations (WP.29) (130th session) and AC.1 (24th session) and AC.3 (eighth session).

September

15–19 Working Party on Lighting and Light-Signalling (GRE) (51st session).

October

6–8 Working Party on Brakes and Running Gear (GRRF) (54th session).

9–10 Working Party on Noise (GRB) (38th session).

21–24 Working Party on General Safety Provisions (GRSG) (85th session).

November

10 Administrative Committee for the Coordination of Work (WP.29/AC.2) (83rd session).

11–14 World Forum for Harmonization of Vehicle Regulations (WP.29) (131st session) and AC.1 (25th session) and AC.3 (ninth session).

December

8–12 Working Party on Passive Safety (GRSP) (34th session).

III. Program of Work of the 1998 Global Agreement

In March 2001, NHTSA submitted to WP.29 and the Executive Committee of the 1998 Global Agreement its final recommendations for the first motor vehicle safety technical regulations to be considered for establishment under that Agreement. The Administrative Committee for the Coordination of Work of WP.29 (AC.2) reviewed the recommendations made by various contracting parties, including the United States, Canada, the European Union, Japan, and Russia, as well as those made by other interested parties and reached agreement on a Program of Work, taking into account the workload of the working parties of experts under WP.29. AC.2 then submitted the Program of Work to the Executive Committee of the 1998 Global Agreement (AC.3). The AC.3 approved the Program of Work and requested that contracting parties volunteer to sponsor each listed regulation by submitting a formal proposal as required by Article 6 of the 1998 Global Agreement. WP.29 formally adopted the Program of Work at its session in March 2002. During the June and November 2002 sessions of WP.29, several contracting parties stepped forward as sponsors for the individual work items. The following table lists the subjects and the sponsoring contracting party.

PROGRAM OF WORK OF THE 1998 GLOBAL AGREEMENT

Working party of experts	Subject	Sponsoring contracting party
GRE	Installation of Lighting and Light-Signalling Devices	Canada.
GRRF	Motorcycle Brakes	Canada.
	Passenger Vehicle Brakes	To be determined.
GRSG	Safety Glazing	Germany.
	Controls and Displays	Canada.
	Vehicle Classification, Masses and Dimensions	Japan.
GRSP	Pedestrian Safety	European Community.
	Lower Anchorages and Tethers for Child Safety Seats	TBD.
	Door Locks and Door Retention Components	U.S.A.
	Head Restraints	TBD.
GRPE	Worldwide Heavy-Duty Certification Procedure	European Community.
	Worldwide Motorcycle Emission Test Cycle	TBD.
	Heavy-Duty On-Board Diagnostics	U.S.A.
	Off-Cycle Emissions	U.S.A.
	Non-Road Mobile Machinery	European Community.

In addition, the contracting parties will begin exchanges of information in the following areas: tires, under the GRRF; field of vision (GRSG); side-impact dummy and compatibility (GRSP); fuel cells and worldwide light-duty vehicle test procedures (GRPE); and intelligent vehicle systems (WP.29).

IV. Formal Proposals for the Development of Global Technical Regulations Submitted by Contracting Parties

As of December 2002, pursuant to Article 6 of the 1998 Global Agreement, which sets forth the process and conditions under which a contracting party may make proposals for the establishment of global technical regulations, there had been two formal proposals for global technical regulations. One proposal addresses controls and displays, and the other one addresses on-board diagnostics for heavy-duty vehicles and machinery. A copy of the former, which was proposed by Canada, is available in the docket for this notice. Both proposals can be found on the UN/ECE Web site *http://www.unece.org/trans/main/wp29/wp29wgs/wp29gen/gen2002.html* as UNECE documents Trans/WP.29/2002/29 and Trans/WP.29/2002/26, respectively.

V. Request for Comments on U.S. Draft Proposal for a GTR

During the upcoming meeting of WP.29 and the Executive Committee of the 1998 Global Agreement in March 2003, NHTSA will formalize its sponsorship of the regulation on Door Locks and Door Retention Components, as identified in the Program of Work of the 1998 Global Agreement. The draft proposal describes the objective of the global technical regulation and identifies in general terms issues to be considered during the development of the regulation. Please provide public comments on the draft proposal set forth in the appendix to this notice. NHTSA will take all public comments into account before submitting the proposal to WP.29 during its March 2003 session.

Appendix—U.S. Proposal for the Development of a Global Technical Regulation on Door Locks and Door Retention Components, To be Submitted to the Executive Committee of the 1998 Global Agreement (AC.3), March 2003

A. Objective of the Proposal

In the U.S., between 1994 and 1999, complete and partial ejections resulted in approximately 9,864 fatalities and 9,767 serious injuries per year. Door ejections accounted for 1,668 of those fatalities (19%) and 1,976 of the serious injuries (22%). Hinged side door openings accounted for approximately 90% of all door ejection fatalities and 93% of all door ejection serious injuries. This situation is likely to be a problem elsewhere.

The objective of this proposal is to develop a global technical regulation regarding door locks and door retention components intended to reduce door latch system failures. In view of the 1998 Global Agreement, we now have an opportunity to develop an improved and harmonized door locks and door retention components regulation. Moreover, the work on the global regulation will provide an opportunity

to consider in the new regulation most, if not all, international safety concerns as well as available technological developments.

The U.S. is currently looking into upgrading its door locks and door retention components regulation to provide more stringent requirements. The current regulation was designed to test for door openings in vehicles that were built in the 1960s. Changes in vehicle latch designs common in the 1960s and 1970s have rendered the existing regulations largely obsolete. Likewise, the ECE regulation is now over 30 years old. Neither regulation has been amended significantly since their original adoption. Accordingly, the existing regulations have become less effective and likely do not provide many safety benefits at this time.

In light of the U.S. regulatory upgrade effort, we believe that this would be an excellent opportunity for the international community to develop a GTR concurrently with the U.S. Everyone could benefit from harmonization and new technology-based improvements of the door locks and door retention components regulation. The benefits to the governments would be the improvement of the door locks and door retention components adoption of the best safety practices, the leveraging of resources, and the harmonization of requirements. Manufacturers would benefit from reduction of the cost of development, testing and fabrication process of new models. Finally the consumer would benefit by having better choice of vehicles built to higher, globally recognized standards providing a better level of safety at a lower price.

B. Description of the Proposal to Develop a Regulation

The current requirements only test individual latch components without regard to how those components interact with each other, with other portions of the door, or with the directions of force loading conditions occurring in real world crashes. Door openings are frequently caused by a combination of longitudinal and lateral forces during the crash, which can subject the latch system to compressive longitudinal and tensile lateral forces. These forces often result in structural failures of the latch system as well as other non-latch systems such as hinge strike supports, door frame and door sheet metal. Hence, it would be beneficial to consider developing full system requirements. In addition, current requirements have no test procedure for evaluating the safety of sliding doors. Consideration of such requirements would be valuable.

The GTR will be applicable for passenger vehicles, multi-purpose vehicles as well as trucks. The performance and test requirements for the door latch, striker and hinges will be based on the stringency needed to attain reasonable safety benefits in a cost effective manner. The GTR will be developed based in part on existing national regulations, directives of contracting parties as well as the international standards and regulations listed below. The U.S. prepared a table to facilitate comparison of the present U.S. and ECE regulations, which are currently being widely used by many contracting parties. The table is available in the docket for this notice.

The results of additional research and testing conducted by any contracting parties since the existing regulations were promulgated will also be factored into the requirements of the draft GTR and may result in the proposal of new requirements.

Elements of the GTR, which cannot be resolved by the Working Party will be identified and dealt with in accordance with protocol established by AC.3 and WP.29. The proposed GTR will be drafted in the format adopted by WP.29 (TRANS/WP.29/882).

C. Existing Regulations and Directives

Though there are no regulations currently contained in the Compendium of Candidates, the following regulations and standards will be taken into account during development of the new global technical regulation regarding door locks and door retention components.

- UN/ECE Regulation 11—Uniform provisions concerning the approval of vehicles with regard to door latches and door retention components.
- U.S. Code of Federal Regulations (CFR) Title 49: Transportation; Part 571.206: Door locks and door retention components.
- EU Directive 70/387/EEC, concerning the doors of motor vehicles and their trailers.
- Canada Motor Vehicle Safety Regulation No. 206—Door locks and door retention components.
- Japan Safety Regulation for Road Vehicle Article 25—Entrance.
- Australian Design Rule 2/00—Side Door Latches and Hinges.

D. Existing International Voluntary Standards

The following international voluntary standards will be taken into account during development of the new global technical regulation regarding door locks and door retention components.

- SAE J839, September 1998—Passenger Car Side Door Latch Systems.
- SAE J934, September 1998—Vehicle Passenger Door Hinge Systems.

Issued on: January 29, 2003.

Rose A. McMurray,

Associate Administrator for Planning, Evaluation and Budget.

[FR Doc. 03–2367 Filed 1–31–03; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA 2002–13242; Notice 2]

Goodyear Tire & Rubber Company, Grant of Application for Decision That Noncompliance Is Inconsequential to Motor Vehicle Safety

Goodyear Tire & Rubber Company (Goodyear) has determined that approximately 2,400 of the 66,697 P275/55R20 Eagle LS and P245/70R16 Wrangler SRA tires manufactured and shipped during the period May 25, 2002 to June 16, 2002, do not meet the labeling requirements mandated by Federal Motor Vehicle Safety Standard (FMVSS) No. 109, "New pneumatic tires."

Pursuant to 49 U.S.C. 30118(d) and 30120(h), Goodyear has petitioned for a determination that this noncompliance is inconsequential to motor vehicle safety and has filed an appropriate report pursuant to 49 CFR part 573, "Defect and Noncompliance Reports." Notice of receipt of the application was published, with a 30-day comment period, on September 5, 2002, in the **Federal Register** (67 FR 56873). NHTSA received no comment on this application.

FMVSS No. 109 (S4.3(d)) requires that each tire shall have permanently molded the generic name of each cord material used in the plies (both sidewall and tread area) of the tire.

From May 25, 2002, to June 16, 2002, Goodyear produced and cured a maximum of 2,400 tires with an erroneous marking. These tires were marked with the cord material identified as polyester when it was actually nylon.

Goodyear states that the subject tires have been tested and the results indicate that all performance requirements of FMVSS No. 109 were met or exceeded. Goodyear considers this to be an isolated case. Goodyear has put into effect additional quality steps to ensure that only the correct fabric and its corresponding marking are used in the

future. Goodyear stated that the noncompliance is one solely of labeling.

The Transportation Recall, Enhancement, Accountability, and Documentation (TREAD) Act (Pub. L. 106–414) required, among other things, that the agency initiate rulemaking to improve tire label information. In response, the agency published an Advance Notice of Proposed Rulemaking (ANPRM) in the **Federal Register** on December 1, 2000. (65 FR 75222). The agency received more than 20 comments on the tire labeling information required by 49 CFR §§ 571.109 and 119; part 567, part 574, and part 575. With regard to the tire construction labeling requirements of FMVSS 109, S4.3(d), most commenters indicated that the information was of little or no safety value to consumers. However, according to the comments, when tires are processed for retreading or repairing, it is important for the retreader or repair technician to understand the make-up of the tires and the types of plies. This enables them to select the proper repair materials or procedures for retreading or repairing the tires. A steel cord radial tire can experience a circumferential or "zipper" rupture in the upper sidewall when it is operated underinflated or overloaded. If information regarding the number of plies and cord material is incorrect or removed from the sidewall, technicians cannot determine if the tire has a steel cord sidewall ply. This information is critical when determining if the tire is a candidate for a zipper rupture. In this case, since the tires are not of steel cord construction, but are actually nylon (though marked polyester), this potential safety concern does not exist.

In addition, the agency conducted a series of focus groups, as required by the Tread Act, to examine consumer perceptions and understanding of tire labeling. Few of the focus group participants had knowledge of tire labeling beyond the tire brand name, tire size, and tire pressure.

Based on the information obtained from comments to the ANPRM and the consumer focus groups, we have concluded that it is likely that few consumers have been influenced by the tire construction information (*e.g.*, cord material in the sidewall) provided on the tire sidewall when deciding to buy a motor vehicle or tire.

The agency believes that the true measure of inconsequentiality to motor vehicle safety in this case is the effect of the noncompliance on the operational safety of vehicles on which these tires are mounted. This labeling noncompliance has no effect on the performance of the subject tires.

In consideration of the foregoing, NHTSA has decided that the applicant has met its burden of persuasion that the noncompliance is inconsequential to motor vehicle safety. Accordingly, its application is granted and the applicant is exempted from providing the notification of the noncompliance as required by 49 U.S.C. 30118, and from remedying the noncompliance, as required by 49 U.S.C. 30120.

Authority: (49 U.S.C. 30118, 30120; delegations of authority at 49 CFR 1.50 and 501.8)

Issued on: January 28, 2003.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. 03–2425 Filed 1–31–03; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2003–14229]

Kawasaki Motors Corporation, U.S.A., Notice of Application for Decision of Inconsequential Noncompliance

Kawasaki Motors Corporation U.S.A. of Irvine, California ("KMC"), has determined that some 2002 and 2003 model year Kawasaki motorcycles produced for sale in the U.S. fail to comply with a requirement in Federal Motor Vehicle Safety Standards (FMVSS) No. 123, "Motorcycle Controls and Displays." The motorcycles in question have ignition switches which are not labeled with the word "ignition." Pursuant to 49 U.S.C. 30118(d) and 30120(h), KMC has petitioned for a determination that this noncompliance is inconsequential to motor vehicle safety so that KMC would be exempted from recall and remedy requirements.

KMC filed an appropriate report with the agency pursuant to 49 CFR part 573, "Defect and Noncompliance Reports." The report indicates that KMC produced 7,630 noncompliant motorcycles, all of which are Vulcan 1500 models. That includes 4,450 model VN1500–P1 (MY2002) and 3,180 model VN1500–P2 (MY2003) motorcycles with this noncompliance as of October 18, 2002.

We are publishing this notice of receipt of the KMC application as required by 49 U.S.C. 30118 and 30120. This action does not represent any agency decision or other exercise of judgment concerning the merits of the application.

FMVSS No. 123 standardizes motorcycle controls to minimize the risk of crashes resulting from operator errors in the use of controls. In FMVSS No. 123, paragraph S5.2.3 specifies that certain motorcycle components must be labeled as listed in Table 3 of the Standard. Table 3, Item no. 1, specifies that the ignition shall be labeled with the word "ignition" as well as the word "off" at the appropriate ignition switch position. Proper labeling of the ignition helps to ensure that a rider who needs to quickly turn off a motorcycle for safety reasons will be able to locate, identify, and operate the ignition control.

KMC described the operation of the motorcycles with the noncompliance as follows:

> The ignition switch is located in a pod positioned immediately in front of the operator, just ahead of the fuel filler opening on the top of the fuel tank. The switch is operated by an ignition key and has three positions, sequentially in a clockwise direction: "off" where the ignition is disabled; "on" where the ignition is enabled; and "park" where the ignition is disabled but minimal lighting functions are enabled. These ignition switch positions are labeled on a metal plate that surrounds the ignition switch and which also contains the turn signal indicator lamps, neutral and high beam indicators. Unlike standard automotive practice, the ignition switch does not operate the starter motor—the starter button is located on the handlebar. Starting the motorcycle involves insertion of the key into the switch and turning the ignition to the "on" position, then operating the separate starter button. An operator would not be able to start the engine inadvertently by using only the ignition switch.

KMC stated the following in support of its application for inconsequential noncompliance:

> No safety consequences attach to the omission of the "ignition" identification for the switch. Operators are familiar with the function and location of the ignition switch as well as the use of the ignition key to operate the switch. The location of the switch, in combination with frequently referenced displays such as turn signal, neutral, and high beam indicators means that the operator is quite familiar with the switch and its location, and experiences no adverse consequences from the lack of "ignition" identification for the switch. In fact, an operator unable to identify the ignition switch, due to the lack of labeling, would be unable to start or operate the motorcycle in the first place.

The other ignition switch labeling, *i.e.*, the word "off" at the appropriate switch position, is present as required, and the remainder of the vehicle controls and displays otherwise meet the requirements of FMVSS No. 123.

KMC is not aware of any accidents, injuries, owner complaints or field reports for the subject vehicles related to

this condition and has received no communications of any kind from owners, dealers, or anyone else indicating any awareness of the missing label.

Interested persons are invited to submit written data, views, and arguments on the application described above. Comments should refer to the docket number and be submitted to: U.S. Department of Transportation, Docket Management, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590. It is requested that two copies be submitted.

All comments received before the close of business on the closing date indicated below will be considered. The application and supporting materials, and all comments received after the closing date, will also be filed and will be considered to the extent possible. When the application is granted or denied, the notice will be published in the **Federal Register** pursuant to the authority indicated below. Comment closing date: March 5, 2003.

(49 U.S.C. 301118, 301120; delegations of authority at 49 CFR 1.50 and 501.8)

Issued on: January 27, 2003.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. 03–2426 Filed 1–31–03; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–03–14197; Notice 1]

Shelby American, Inc.; Application for Temporary Exemption From Federal Motor Vehicle Safety Standard No. 208

Shelby American, Inc., of Las Vegas, Nevada ("Shelby"), on behalf of its wholly-owned subsidiary Shelby Series One, Inc., has applied for a three-year exemption from the automatic restraint provisions of Federal Motor Vehicle Safety Standard No. 208 *Occupant Crash Protection* (S4.1.5.3). The basis of the application is that compliance would cause substantial economic hardship to a manufacturer that has tried in good faith to comply with the standard.

This notice of receipt of the petition is published in accordance with agency regulations on the subject and does not represent any judgment by the agency about the merits of the petition.

Shelby is a Texas corporation, privately held and owned by Carroll H. Shelby and Venture Holdings, Inc. Its current business activities are conducted by four wholly-owned subsidiaries. The first of these subsidiaries is Shelby Series One, Inc., the unit that produces the passenger cars which are the subject of this application for a temporary exemption. The current vehicle is designated Series 1 and its successor will be Series 2. The second Shelby subsidiary is Shelby CSX4000, Inc., which produces "component vehicles" sold without engine or transmission. The third subsidiary is Shelby Original 427 S/Cs, Inc., whose business is to assemble automobiles "from certain new old stock parts surviving from the original 1965 Shelby Cobra production run * * * supplemented by newly manufactured parts utilizing original tooling." The fourth subsidiary, Shelby Performance, Inc., does not assemble vehicles but offers aftermarket products.

Shelby informed us that, as of the date of its petition, July 29, 2002, it had produced a total of 256 Series 1 vehicles, and "one or two" vehicles annually assembled from 1965 stock parts. These vehicles "are sold for off-road (racing) or museum display purposes only, and under current regulatory restrictions may not be licensed for street use." Shelby has also produced something over 270 "component vehicles," without power trains, whose manufacture is completed by an entity other than Shelby. With respect to these vehicles, Shelby invites prospective purchasers to "call for the name of a Recognized Shelby American Dealer who can build one for you."

The Series 1 and Series 2 are two-passenger convertible passenger cars. The Series 2 "is a face lifted version of the Series 1, utilizing the same chassis components as the Series 1, with modified exterior body panels and trim details." It will enter production when the planned 500-unit production run of the Series 1 is completed. The company was previously granted NHTSA Temporary Exemption No. 99–1 from the automatic restraint provisions of Standard No. 208 for the Series 1, which expired on January 1, 2001 (64 FR 6736). Shelby had hoped to meet the standard by January 1, 2000, but anticipated sales did not materialize with the funds needed to sustain the air bag development project. In fact, only 256 of the planned 500 Series 1 vehicles had been sold as of the date of the petition. Since submitting its first petition in May 1998, Shelby stated that it has "spent an estimated total of 800 man-hours and $150,000 related to the installation of a passenger and driver's side airbag system on the Series 1." Its efforts are now devoted to development of an advanced air bag system which it hopes to implement at the end of 2005, well before September 1, 2006 when Standard No. 208 requires it to comply. The Series 1 is equipped with a three-point driver and passenger restraint system.

Based on quotations it has received, the "total projected cost for [a] subcontractor to develop a driver and passenger-side advanced airbag system for the Shelby Series 1 and 2 is $6,005,000." The unaudited balance sheet of Shelby American, Inc., shows cumulative net losses exceeding $23,000,000 for its last three fiscal years, almost $6,000,000 of which are those of Shelby Series 1, Inc. for its most recent fiscal year.

Shelby stated that "without a temporary exemption, which will enable the company to generate funds through the sale of vehicles, Shelby American will not be able to sustain the airbag development program and will have to discontinue the Shelby Series 1 and 2 programs, causing substantial hardship to the company." For fiscal/calendar 2003, the company projects a net income exceeding $15,000,000 if an exemption is granted, and a net loss of over $6,000,000 if it is not.

The applicant argues that "the production of the Shelby Series 1 is in the best interest of the public and the U.S. economy." The company opened a new 100,000 square foot facility in June 1998 in Las Vegas to produce the Series 1, and has employed "up to 103 individuals" there. The car will be sold through select dealers "* * * providing employment to many sales and service personnel at the dealership level." Most major components are produced in the United States, including the engine (Oldsmobile), tires (Goodyear), and transmission (ZF, from RBT, a U.S. company). The Series 1 is technically advanced, combining "an aluminum chassis with a carbon-fiber body, a new concept amongst production vehicles, which provides strength and durability while minimizing weight." Shelby believes that the reduced weight achieved with this vehicle will translate into a new standard for improved emissions and fuel efficiency. Aside from Standard No. 208, the car will be certified as conforming to all applicable Federal motor vehicle safety standards.

Interested persons are invited to submit comments on the application described above. Comments should refer to the docket and notice number, and be submitted to: Docket Management, National Highway Traffic Safety Administration, room PL–401, 400 Seventh Street, SW., Washington, DC 20590. It is requested that two copies be submitted.

All comments received before the close of business on the comment closing date below will be considered, and will be available for examination in the docket at the above address both before and after that date, between the hours of 10 a.m. and 5 p.m. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: March 5, 2003.

Authority: 49 U.S.C. 30113; delegations of authority at 49 CFR 1.50 and 501.4.

Issued on: January 27, 2003.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. 03-2357 Filed 1-31-03; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA 2002-13357; Notice 2]

Uniroyal Goodrich Tire Manufacturing, Grant of Application for Decision That Noncompliance Is Inconsequential to Motor Vehicle Safety

Uniroyal Goodrich Tire Manufacturing (Uniroyal) has determined that a total 11,262 P155/80R 13 79S Uniroyal Tiger Paw AWP tires do not meet the labeling requirements mandated by Federal Motor Vehicle Safety Standard (FMVSS) No. 109, "New Pneumatic Tires."

Pursuant to 49 U.S.C. 30118(d) and 30120(h), Uniroyal has petitioned for a determination that this noncompliance is inconsequential to motor vehicle safety and has filed an appropriate report pursuant to 49 CFR Part 573, "Defect and Noncompliance Reports."

Notice of receipt of the application was published, with a 30-day comment period, on October 1, 2002, in the **Federal Register** (67 FR 61724). NHTSA received no comment on this application.

During the period of the 5th through the 48th weeks of 2000, the Woodburn, Indiana plant of Uniroyal Goodrich Tire Manufacturing produced and cured a total of 11,262 tires with erroneous marking. Of this total, no more than 3,796 may have been delivered to end-users. The remaining tires have been isolated in Uniroyal warehouses and will be brought into compliance.

FMVSS No. 109 (S4.3(e)) requires that each tire shall have permanently molded into or onto both sidewalls the actual number of plies in the sidewall, and the actual number of plies in the tread area if different.

The noncompliance with S4.3(e) relates to the mold number. The tires were marked: SIDEWALL 2 Plies instead of the required marking of: SIDEWALL 1 Ply.

Uniroyal does not believe that this marking error will impact motor vehicle safety because the tires meet all applicable Federal Motor Vehicle Safety performance standards, and the noncompliance is one of labeling.

The Transportation Recall, Enhancement, Accountability, and Documentation (TREAD) Act (Pub. L. 106-414) required, among other things, that the agency initiate rulemaking to improve tire label information. In response, the agency published an Advance Notice of Proposed Rulemaking (ANPRM) in the **Federal Register** on December 1, 2000 (65 FR 75222). The agency received more than 20 comments on the tire labeling information required by 49 CFR Sections 571.109 and 119, Part 567, Part 574, and Part 575. With regard to the tire construction labeling requirements of FMVSS 109, S4.3(d) and (e), most commenters indicated that the information was of little or no safety value to consumers. However, according to the comments, when tires are processed for retreading or repairing, it is important for the retreader or repair technician to understand the make-up of the tires and the types of plies. This enables them to select the proper repair materials or procedures for retreading or repairing the tires. A steel cord radial tire can experience a circumferential or "zipper" rupture in the upper sidewall when it is operated underinflated or overloaded. If information regarding the number of plies and cord material is removed from the sidewall, technicians cannot determine if the tire has a steel cord sidewall ply. This information is critical when determining if the tire is a candidate for a zipper rupture. In this case, since the steel cord construction is properly identified on the sidewall, the technician will have sufficient notice.

In addition, the agency conducted a series of focus groups, as required by the TREAD Act, to examine consumer perceptions and understanding of tire labeling. Few of the focus group participants had knowledge of tire labeling beyond the tire brand name, tire size, and tire pressure.

Based on the information obtained from comments to the ANPRM and the consumer focus groups, we have concluded that it is likely that few consumers have been influenced by the tire construction information (number of plies and cord material in the sidewall and tread plies) provided on the tire sidewall when deciding to buy a motor vehicle or tire.

The agency believes that the true measure of inconsequentiality to motor vehicle safety in this case is the effect of the noncompliance on the operational safety of vehicles on which these tires are mounted. This labeling noncompliance has no effect on the performance of the subject tires.

In consideration of the foregoing, NHTSA has decided that the applicant has met its burden of persuasion that the noncompliance is inconsequential to motor vehicle safety. Accordingly, its application is granted and the applicant is exempted from providing the notification of the noncompliance as required by 49 U.S.C. 30118, and from remedying the noncompliance, as required by 49 U.S.C. 30120.

Authority: (49 U.S.C. 30118, 30120; delegations of authority at 49 CFR 1.50 and 501.8)

Issued on: January 28, 2003.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. 03-2428 Filed 1-31-03; 8:45 am]

BILLING CODE 4910-59-P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

Pipeline Safety: Required Submission of Data to the National Pipeline Mapping System Under the Pipeline Safety Improvement Act of 2002

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Notice; issuance of advisory bulletin.

SUMMARY: The Office of Pipeline Safety (OPS) is issuing this advisory bulletin to owners and operators of natural gas transmission and hazardous liquid pipeline systems. The purpose of this bulletin is to advise pipeline operators of their responsibilities in complying with the Pipeline Safety Improvement Act of 2002. Specifically, this bulletin indicates the process for making new submissions of geospatial and operator contact information, updating previous submissions to the National Pipeline Mapping System (NPMS), and providing future submissions.

FOR FURTHER INFORMATION CONTACT: Sam Hall, (202) 493-0591; or by email, *samuel.hall@rspa.dot.gov*. Steve Fischer, (202) 366-6267; or by email at *steven.fischer@rspa.dot.gov*. This document can be viewed at the OPS

home page at *http://ops.dot.gov/new.htm*. Additional information about the NPMS and the "National Pipeline Mapping System Standards for Pipeline and Liquefied Natural Gas Operator Submissions" can be found at *http://www.npms.rspa.dot.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

The National Pipeline Mapping System (NPMS) is a geographic information system (GIS) database that contains the locations and selected attributes of hazardous liquid and natural gas transmission pipelines, break-out tanks, and liquefied natural gas (LNG) facilities operating in onshore and DOT jurisdictional offshore territories of the United States. The NPMS was developed as a joint effort between the U.S. Department of Transportation, Research and Special Programs Administration's OPS, other Federal and State agencies, and the pipeline industry. The NPMS originally consisted of pipeline and LNG facility data voluntarily submitted by pipeline operators. The data collected for the NPMS is necessary for regulatory oversight and for monitoring the security of the pipelines. Therefore, public access to the data is limited.

The Pipeline Safety Improvement Act of 2002 (Pub. L. 107–355), 49 U.S.C. 60132, "National Pipeline Mapping System," enacted on December 17, 2002, requires the following:

(a) *Information to be Provided*—Not later than six months after the date of enactment of this section, the operator of a pipeline facility (except distribution lines and gathering lines) shall provide to the Secretary of Transportation the following information with respect to the facility:

(1) Geospatial data appropriate for use in the National Pipeline Mapping System or data in a format that can be readily converted to geospatial data.

(2) The name and address of the person with primary operational control to be identified as its operator for purposes of this chapter.

(3) A means for a member of the public to contact the operator for additional information about the pipeline facilities it operates.

(b) *Updates*—A person providing information under subsection (a) shall provide to the Secretary updates of the information to reflect changes in the pipeline facility owned or operated by the person and as otherwise required by the Secretary.

In complying with this statutory requirement, please do the following:

Subsection (a): *Information To Be Provided*—Submit all pipeline data and contact information in accordance with the guidelines set forth in the NPMS operator standards document entitled "National Pipeline Mapping System Standards for Pipeline and Liquefied Natural Gas Operator Submissions" dated 2003. A complete data submission includes the geospatial data, attribute data, and metadata for all liquefied natural gas (LNG) and hazardous liquid and natural gas transmission pipeline systems operated by a company. The standards document is available for download from the NPMS website at *http://www.npms.rspa.dot.gov/submissions/standards.htm*.

Subsection (a)(1): If a complete data submission was made to the NPMS prior to December 17, 2001, and any pipeline system modifications have occurred since the last submission, submit complete data to the NPMS by June 17, 2003. If a complete data submission was made to the NPMS prior to December 17, 2001, and no pipeline system modifications have occurred, send an email to *opsgis@rspa.dot.gov* stating that fact. If a complete data submission was made to the NPMS on or after December 17, 2001, and if pipeline system modifications representing more than 5% of the total system mileage to be submitted to the NPMS have occurred, submit new complete data by June 17, 2003. If changes to the data submitted on or after December 17, 2001, affect less than 5% of the total system mileage submitted to the NPMS, submit an email to *opsgis@rspa.dot.gov* stating that fact by June 17, 2003. If only a partial data submission was made to the NPMS, before or after December 17, 2001, submit complete data to the NPMS by June 17, 2003. For LNG facilities, if any modifications to previously submitted data have occurred, submit new complete data by June 17, 2003. System modifications include pipelines or LNG facilities added or removed from a pipeline system and changes to any of the NPMS attributes (*e.g.*, operator name, system name, commodity, status, etc.).

Pipeline operators may submit updated data in one of two ways depending on the format of their submission. For digital data, submit replacement data for an entire system. It is easier for pipeline operators submitting digital data to submit the entire pipeline system rather than making a partial update submission. In this case, all data that was previously submitted under the same operator ID will be updated with the new submission. For paper maps, submit replacement maps for those portions of a pipeline system that have changed. This option is available only for those pipeline operators who have to submit hard-copy maps.

Subsection (a)(2): Regardless of prior complete or partial data submissions to the NPMS, provide pipeline operator contact information for the pipelines submitted to the NPMS. The pipeline operator should identify and submit to the NPMS, contact information that the Office of Pipeline Safety will make available to the public for its' use in contacting the operator. The format and procedures for submitting this contact information is available on the NPMS website and in the NPMS operator standards document.

Subsection (a)(3): OPS is developing an Internet-based tool that will allow the public to identify pipeline operators within a specific geographic area. The information provided to the NPMS under subsection (a)(2) will allow the public to contact pipeline operators with questions regarding their pipelines. The Internet-based tool will display a list of operator contacts, within the geographic area specified by the user, but will not render a map of the pipelines.

Subsection (b): Updates—Once a submission is made to comply with the June 17, 2003, statutory deadline, operators are required to make update submissions every twelve (12) months if any system modifications have occurred. If no modifications have occurred since the last complete submission (including operator contact information), send an email to *opsgis@rspa.dot.gov* stating that fact. Include operator contact information with all updates. Pipeline operators may update previous NPMS submissions in one of two ways. For digital data, submit replacement data for an entire system. For paper maps, submit replacement maps for those portions of pipeline systems that have changed. This option is available only for those pipeline operators who have to submit paper maps.

II. Advisory Bulletin (ADB–03–02)

To: Owners and Operators of Natural Gas Transmission and Hazardous Liquid Pipeline Systems.

Subject: Required Submission of Data to the National Pipeline Mapping System Under the Pipeline Safety Improvement Act of 2002.

Purpose: To advise pipeline operators of their responsibilities in complying with the Pipeline Safety Improvement Act of 2002. This bulletin describes the process for making new submissions of geospatial and operator contact information and updating previous

submissions to the National Pipeline Mapping System (NPMS).

Advisory: Subsection (a): Submit geospatial and contact information in accordance with the guidelines set forth in the NPMS standards document entitled "National Pipeline Mapping System Standards for Pipeline and Liquefied Natural Gas Operator Submissions' dated 2003. The operators standards document is available for download from the NPMS website at *http://www.npms.rspa.dot.gov/submissions/standards.htm.*

Subsection (a)(1): If a complete data submission was made to the NPMS prior to December 17, 2001, and any pipeline system modifications have occurred since the last submission, submit complete data to the NPMS by June 17, 2003. If a complete data submission was made to the NPMS prior to December 17, 2001, and no pipeline system modifications have occurred, send an email to *opsgis@rspa.dot.gov* stating that fact. If a complete data submission was made to the NPMS on or after December 17, 2001, and if pipeline system modifications representing more than 5% of the total system mileage to be submitted to the NPMS have occurred, submit new complete data by June 17, 2003. If changes to the data submitted on or after December 17, 2001, affect less than 5% of the total system mileage submitted to the NPMS, submit an email to *opsgis@rspa.dot.gov* stating that fact by June 17, 2003. If only a partial data submission was made to the NPMS, before or after December 17, 2001, submit complete data to the NPMS by June 17, 2003. For LNG facilities, if any modifications since the last submission have occurred, submit new complete data by June 17, 2003.

Subsection (a)(2): Regardless of prior geospatial submissions to the NPMS, submit contact information for the pipelines represented in geospatial data submitted to the NPMS. The format for submitting this contact information is available in the NPMS operator standards document. This contact information will be in the public domain.

Subsection (a)(3): OPS is developing an Internet-based tool that will allow the public to identify pipeline operators within a specific geographic area. The information provided to the NPMS under subsection (a)(2) will allow the public to contact pipeline operators with questions regarding their pipelines. The Internet-based tool will display a list of operator contacts, within the geographic area specified by the user, but will not render a map of the pipelines.

Subsection (b): Once a submission is made to comply with the June 17, 2003, statutory deadline, operators are required to make update submissions every 12 months if any system modifications have occurred. If no modifications have occurred since the last complete submission (including operator contact information), send an email to *opsgis@rspa.dot.gov* stating that fact. Include operator contact information with all updates.

Issued in Washington, DC on January 24, 2003.

Stacey L. Gerard,

Associate Administrator for Pipeline Safety.

[FR Doc. 03–2449 Filed 1–31–03; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

January 23, 2003.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before March 5, 2003, to be assured of consideration.

Financial Crimes Enforcement Network (FinCEN)

OMB Number: 1506–0006.
Form Number: FinCEN 102.
Type of Review: Revision.
Title: Suspicious Activity Report by Casinos.
Description: Treasury is requiring casinos and card clubs with annual gaming revenue of more than $1,000,000 to report suspicious activities.
Respondents: Business or other for-profit, State, Local or Tribal Government.
Estimated Number of Respondents/Recordkeepers: 550.
Estimated Burden Hours Per Respondent/Recordkeeper: 45 minutes.
Estimated Total Reporting/Recordkeeping Burden: 1,550 hours.
Clearance Officer: Steve Rudzinski, Financial Crimes Enforcement Network, 2070 Chain Bridge Road, Suite 200, Vienna, VA 22182, (703) 905–3845.
OMB Reviewer: Joseph F. Lackey, Jr., Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, (202) 395–7316.

Lois K. Holland, Departmental Reports

Management Officer.

[FR Doc. 03–2407 Filed 1–31–03; 8:45 am]

BILLING CODE 4810–02–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

January 23, 2003.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before March 5, 2003, to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–1530.
Form Number: None.
Type of Review: Extension.
Title: Tip Rate Determination Agreement (Gaming Industry).
Description: Information is required by the Internal Revenue Service in its Compliance efforts to assist employers and their employees in understanding and complying with section 6053(a), which requires employees to report all their tips monthly to their employers.
Respondents: Business or other for-profit.
Estimated Number of Respondents/Recordkeepers: 100.
Estimated Burden Hours Per Respondent/Recordkeeper: 43 hours, 40 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting/Recordkeeping Burden: 4,367 hours.
OMB Number: 1545–1670.
Regulation Project Number: REG–105606–99 NPRM.
Type of Review: Extension.
Title: Credit for Increasing Research Activities.

Description: The proposed regulations address the computation of the credit for increasing research activities for members of a controlled group and the allocation of the credit under section 41(f) of the Internal Revenue Code.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 10.

Estimated Burden Hours Per Respondent: 20 hours.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 200 hours.

OMB Number: 1545–1676.

Regulation Project Number: REG–113572–99 Final.

Type of Review: Extension.

Title: Qualified Transportation Fringe Benefits.

Description: These regulations provide guidance to employers that provide qualified transportation fringe benefits under section 132(f), including guidance to employers that provide cash reimbursement for qualified transportation fringes and employers that offer qualified transportation fringes in lieu of compensation. Employers that provide cash reimbursement are required to keep records of documentation received from employees who receive reimbursement. Employers that offer qualified transportation fringes in lieu of compensation are required to keep records of employee compensation reduction elections.

Respondents: Business or other for-profit, individual or households, not-for-profit institutions, Federal Government, State, Local or Tribal Government.

Estimated Number of Respondents/Recordkeepers: 7,530,313.

Estimated Burden Hours Per Respondent/Recordkeeper: 8 hours.

Frequency of Response: Monthly.

Estimated Total Reporting/Recordkeeping Burden: 12,968,728 hours.

OMB Number: 1545–1678.

Regulation Project Number: REG–161424–01 Final and REG–105316–98 Final.

Type of Review: Extension.

Title: REG–161424–01 Final: Information Reporting for Qualified Tuition and Related Expenses; Magnetic Media Filing Requirements for Information Returns, and *REG–105316–98 Final:* Information Reporting for Payments of Interest on Qualified Education Loans; Magnetic Media Filing Requirements for Information Returns.

Description: These regulations related to the information reporting requirements in section 6050S of the Internal Revenue Code of the Internal Revenue code for payments of qualified tuition and related expenses and interest on qualified education loans. These regulations provide guidance to eligible education institutions, insurers, and payees required to file information returns and to furnish information statements under section 6050S.

Respondents: Not-for-profit, business or other for-profit.

Estimated Number of Respondents: 1.

Estimated Burden Hours Per Respondent: 1 hour.

Estimated Total Reporting Burden: 1 hour.

Clearance Officer: Glenn Kirkland, Internal Revenue Service, Room 6411–03, 1111 Constitution Avenue, NW., Washington, DC 20224, (202) 622–3428.

OMB Reviewer: Joseph F. Lackey, Jr., Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, (202) 395–7316.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 03–2408 Filed 1–31–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

January 21, 2003.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Pub. L. 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11100, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before March 5, 2003 to be assured of consideration.

Bureau of Alcohol, Tobacco and Firearms (BATF)

OMB Number: 1512–0096.

Form Number: ATF 5130.12 (1689).

Type of Review: Extension.

Title: Beer for Exportation.

Description: Untaxpaid beer may be removed from a brewery for exportation without payment of the excise tax normally due on removal. In order to ensure that exportation took place as claimed and that untaxpaid beer does not reach domestic market, ATF requires certification on Form 5130.12.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 392.

Estimated Burden Hours Per Respondent: 1 hour, 39 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 38,808 hours.

OMB Number: 1512–0298.

Recordkeeping Requirement ID Number: ATF REC 5120/1.

Type of Review: Extension.

Title: Usual and Customary Business Records Relating to Wine.

Description: ATF routinely inspects wineries' usual and customary business records to insure the proper payment of wine excise taxes due to the Federal government.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 3,131.

Estimated Burden Hours Per Respondent: 10 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 313 hours.

OMB Number: 1512–0536.

Form Number: None.

Type of Review: Extension.

Title: Notification of Fire Marshal and Chief, Law Enforcement Officer of Storage of Explosive Materials.

Description: Title 18 U.S.C., Chapter 40, gives the Secretary of Treasury authority to issue regulations intended to help prevent accidents involving explosives. The collection of information contained herein is necessary for the safety of emergency response personnel responding to fires at sites where explosives are stored.

Respondents: Business or other for-profit, individuals or households, farms, State, Local or Tribal Government.

Estimated Number of Respondents: 10,057.

Estimated Burden Hours Per Respondent: 90 minutes.

Frequency of Response: Semi-annually.

Estimated Total Reporting Burden: 60,342 hours.

OMB Number: 1512–0537.

Form Number: ATF F 5154.3.

Type of Review: Extension.

Title: Bond for Drawback Under 26 U.S.C. 5131.

Description: Business that use taxpaid alcohol to manufacture nonbeverage products may file a claim for drawback (refund or remittance). Claims may be filed monthly or quarterly. Monthly claimants must file a bond on ATF

5154.3 to protect the Government's interest.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 60.

Estimated Burden Hours Per Respondent: 12 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 12 hours.

Clearance Officer: Jacqueline White (202) 927–8930, Bureau of Alcohol, Tobacco and Firearms, Room 3200, 650 Massachusetts Avenue, NW.

OMB Reviewer: Joseph F. Lackey, Jr. (202) 396–7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Mary A. Able,

Department Reports Management Officer.

[FR Doc. 03–2409 Filed 1–31–03; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0205]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the Veterans Health Administration (VHA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before March 5, 2003.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Records Management Service (005E3), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–8030, FAX (202) 273–5981 or e-mail: *denise.mclamb@mail.va.gov*. Please refer to "OMB Control No. 2900–0205."

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to "OMB Control No. 2900–0205" in any correspondence.

SUPPLEMENTARY INFORMATION: *Titles:*

a. VA Form 10–2850, Application for Physicians, Dentists, Podiatrists and Optometrists.

b. VA Form 10–2850a, Application for Nurses and Nurse Anesthetists.

c. VA Form 10–2850b, Application for Residents.

d. VA Form 10–2850c, Application for Associated Health Occupations.

e. VA Form FL 10–341a, Appraisal of Applicant.

OMB Control Number: 2900–0205.

Type of Review: Extension of a currently approved collection.

Abstract: VA Forms 10–2850 and 10–2850a through c are applications designed specifically to elicit appropriate information about each candidate's qualifications for employment with VA. VHA officials use the information to evaluate education, professional experience and credentials and to determine suitability and grade level of applications of physicians, dentists, podiatrists, optometrists, nurses and nurse anesthetists, residents, and associated health occupations, and appraisal of applicants. The forms require disclosure of details about all licenses ever held, Drug Enforcement Administration certification, board certification, clinical privileges, revoked certification or registrations, liability insurance history, and involvement in malpractice proceedings. Form Letter 10–341a is a pre employment reference form used to elicit information concerning the prior education and/or performance of the Title 38 applicant.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on October 15, 2002, at pages 63733–63734.

Affected Public: Individuals or Households, Business or other for-profit, Not-for-profit institutions, Federal Government, State, Local or Tribal Government.

Estimated Annual Burden: 75,471 hours.

a. VA Form 10–2850, Application for Physicians, Dentists, Podiatrists and Optometrists—7,095 hours.

b. VA Form 10–2850a, Application for Nurses and Nurse Anesthetists—28,380 hours.

c. VA Form 10–2850b, Application for Residents—15,136 hours.

d. VA Form 10–2850c, Application for Associated Health Occupations—9,460 hours.

e. VA Form FL 10–341a, Appraisal of Applicant—15,400 hours.

Estimated Average Burden Per Respondent: 27 minutes.

a. VA Form 10–2850, Application for Physicians, Dentists, Podiatrists and Optometrists—30 minutes.

b. VA Form 10–2850a, Application for Nurses and Nurse Anesthetists—30 minutes.

c. VA Form 10–2850b, Application for Residents—30 minutes.

d. VA Form 10–2850c, Application for Associated Health Occupations—30 minutes.

e. VA Form FL 10–341a, Appraisal of Applicant—20 minutes.

Frequency of Response: On Occasion.

Estimated Number of Respondents: 166,342.

a. VA Form 10–2850, Application for Physicians, Dentists, Podiatrists and Optometrists—14,190.

b. VA Form 10–2850a, Application for Nurses and Nurse Anesthetists—56,760.

c. VA Form 10–2850b, Application for Residents—30,272.

d. VA Form 10–2850c, Application for Associated Health Occupations—18,920.

e. VA Form FL 10–341a, Appraisal of Applicant—46,200.

Dated: January 14, 2003.

By direction of the Secretary.

Loise A. Russell,

Acting Director, Records Management Service.

[FR Doc. 03–2353 Filed 1–31–03; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Cost-of-Living Adjustments and Headstone or Marker Allowance Rate

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: As required by law, the Department of Veterans Affairs (VA) is hereby giving notice of cost-of-living adjustments (COLAs) in certain benefit rates and income limitations. These COLAs affect the pension, parents' dependency and indemnity compensation (DIC), and spina bifida, and birth defects programs. These adjustments are based on the rise in the Consumer Price Index (CPI) during the one-year period ending September 30, 2002. VA is also giving notice of the maximum amount of reimbursement that may be paid for headstones or markers purchased in lieu of

Government-furnished headstones or markers in Fiscal Year 2003, which began on October 1, 2002.

DATES: These COLAs are effective December 1, 2002. The headstone or marker allowance rate is effective October 1, 2002.

FOR FURTHER INFORMATION CONTACT: Paul Trowbridge, Consultant, Compensation and Pension Service (212B), Veterans Benefit Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–7218.

SUPPLEMENTARY INFORMATION: Under 38 U.S.C. 2306(d), VA may provide reimbursement for the cost of non-government headstones or markers at a rate equal to the actual cost or the average actual cost of government-furnished headstones or markers during the fiscal year preceding the fiscal year in which the non-government headstone or marker was purchased, whichever is less.

Section 8041 of Public Law 101–508 amended 38 U.S.C. 2306(d) to eliminate the payment of the monetary allowance in lieu of VA-provided headstones or markers for deaths occurring on or after November 1, 1990. However, in a precedent opinion (O. G. C. Prec. 17–90), VA's General Counsel held that there is no limitation period applicable to claims for benefits under the provisions of 38 U.S.C. 2306(d).

The average actual cost of government-furnished headstones or markers during any fiscal year is determined by dividing the sum of VA costs during that fiscal year for procurement, transportation, and miscellaneous administration, inspection and support staff by the total number of headstones and markers procured by VA during that fiscal year and rounding to the nearest whole dollar amount.

The average actual cost of government-furnished headstones or markers for Fiscal Year 2002 under the above computation method was $101. Therefore, effective October 1, 2002, the maximum rate of reimbursement for non-government headstones or markers purchased during Fiscal Year 2003 is $101.

Cost of Living Adjustments

Under the provisions of 38 U.S.C. 5312 and section 306 of Pub. L. 95–588, VA is required to increase the benefit rates and income limitations in the pension and parents' DIC programs by the same percentage, and effective the same date, as increases in the benefit amounts payable under title II of the Social Security Act. The increased rates and income limitations are also required to be published in the **Federal Register**.

The Social Security Administration has announced that there will be a 1.4 percent cost-of-living increase in Social Security benefits effective December 1, 2002. Therefore, applying the same percentage and rounding up in accordance with 38 CFR 3.29, the following increased rates and income limitations for the VA pension and parents' DIC programs will be effective December 1, 2002:

TABLE 1.—IMPROVED PENSION

Maximum annual rates
(1) Veterans permanently and totally disabled (38 U.S.C. 1521):
Veteran with no dependents, $9,690
Veteran with one dependent, $12,692
For each additional dependent, $1,653
(2) Veterans in need of aid and attendance (38 U.S.C. 1521):
Veteran with no dependents, $16,169
Veteran with one dependent, $19,167
For each additional dependent, $1,653
(3) Veterans who are housebound (38 U.S.C. 1521):
Veteran with no dependents, $11,843
Veteran with one dependent, $14,844
For each additional dependent, $1,653
(4) Two veterans married to one another, combined rates (38 U.S.C. 1521):
Neither veteran in need of aid and attendance or housebound, $12,692
Either veteran in need of aid and attendance, $19,167
Both veterans in need of aid and attendance, $24,973
Either veteran housebound, $14,844
Both veterans housebound, $16,998
One veteran housebound and one veteran in need of aid and attendance, $21,317
For each dependent child, $1,653
(5) Surviving spouse alone and with a child or children of the deceased veteran in custody of the surviving spouse (38 U.S.C. 1541):
Surviving spouse alone, $6,497
Surviving spouse and one child in his or her custody, $8,507
For each additional child in his or her custody, $1,653
(6) Surviving spouses in need of aid and attendance (38 U.S.C. 1541):
Surviving spouse alone, $10,387
Surviving spouse with one child in custody, $12,393
Surviving Spouse of Spanish-American War veteran alone, $11,058
Surviving Spouse of Spanish-American War veteran with one child in custody, $13,063
For each additional child in his or her custody, $1,653
(7) Surviving spouses who are housebound (38 U.S.C. 1541):
Surviving spouse alone, $7,942
Surviving spouse and one child in his or her custody, $9,948
For each additional child in his or her custody, $1,653
(8) Surviving child alone (38 U.S.C. 1542), $1,653

Reduction for income. The rate payable is the applicable maximum rate minus the countable annual income of the eligible person. (38 U.S.C. 1521, 1541 and 1542).

Mexican border period and World War I veterans. The applicable maximum annual rate payable to a Mexican border period or World War I veteran under this table shall be increased by $2,197 (38 U.S.C. 1521(g)).

Parents' DIC

DIC shall be paid monthly to parents of a deceased veteran in the following amounts (38 U.S.C. 1315):

One parent. If there is only one parent, the monthly rate of DIC paid to such parent shall be $464 reduced on the basis of the parent's annual income according to the following formula:

TABLE 2

For each $1 of annual income		
The $464 monthly rate shall be reduced by	Which is more than	But not more than
$0.00	0	$800
.08	$800	11,024

No DIC is payable under this table if annual income exceeds $11,024.

One parent who has remarried. If there is only one parent and the parent has remarried and is living with the parent's spouse, DIC shall be paid under Table 2 or under Table 4, whichever shall result in the greater benefit being paid to the veteran's parent. In the case of remarriage, the total combined annual income of the parent and the parent's spouse shall be counted in determining the monthly rate of DIC.

Two parents not living together. The rates in Table 3 apply to (1) two parents who are not living together, or (2) an unmarried parent when both parents are living and the other parent has remarried. The monthly rate of DIC paid to each such parent shall be $334 reduced on the basis of each parent's annual income, according to the following formula:

TABLE 3

For each $1 of annual income		
The $334 monthly rate shall be reduced by	Which is more than	But not more than
$0.00	0	$800
.06	$800	900
.07	900	1,100
.08	1,100	11,024

No DIC is payable under this table if annual income exceeds $11,024.

Two parents living together or remarried parents living with spouses. The rates in Table 4 apply to each parent living with another parent; and each remarried parent, when both parents are alive. The monthly rate of DIC paid to such parents will be $314 reduced on the basis of the combined annual income of the two parents living together or the remarried parent or parents and spouse or spouses, as computed under the following formula:

TABLE 4

For each $1 of annual income		
The $314 monthly rate shall be reduced by	Which is more than	But not more than
$.00	0	$1,000
.03	$1,000	1,500
.04	1,500	1,900
.05	1,900	2,400
.06	2,400	2,900
.07	2,900	3,200
.08	3,200	14,817

No DIC is payable under this table if combined annual income exceeds $14,817.

The rates in this table are also applicable in the case of one surviving parent who has remarried, computed on the basis of the combined income of the parent and spouse, if this would be a greater benefit than that specified in Table 2 for one parent.

Aid and attendance. The monthly rate of DIC payable to a parent under Tables 2 through 4 shall be increased by $250 if such parent is (1) a patient in a nursing home, or (2) helpless or blind, or so nearly helpless or blind as to need or require the regular aid and attendance of another person.

Minimum rate. The monthly rate of DIC payable to any parent under Tables 2 through 4 shall not be less than $5.

TABLE 5.—SECTION 306 PENSION INCOME LIMITATIONS

(1) Veteran or surviving spouse with no dependents, $11,024 (Pub. L. 95–588, section 306(a)).

TABLE 5.—SECTION 306 PENSION INCOME LIMITATIONS—Continued

(2) Veteran with no dependents in need of aid and attendance, $11,524 (38 U.S.C. 1521(d) as in effect on December 31, 1978).
(3) Veteran or surviving spouse with one or more dependents, $14,817 (Pub. L. 95–588, section 306(a)).
(4) Veteran with one or more dependents in need of aid and attendance, $15,317 (38 U.S.C. 1521(d) as in effect on December 31, 1978).
(5) Child (no entitled veteran or surviving spouse), $9,011 (Pub. L. 95–588, section 306(a)).
(6) Spouse income exclusion (38 CFR 3.262), $3,517 (Pub. L. 95–588, section 306(a)(2)(B)).

TABLE 6.—OLD-LAW PENSION INCOME LIMITATIONS

(1) Veteran or surviving spouse without dependents or an entitled child, $9,650 (Pub. L. 95–588, section 306(b)).
(2) Veteran or surviving spouse with one or more dependents, $13,912 (Pub. L. 95–588, section 306(b)).

Spina Bifida Benefits

Section 421 of Public Law 104–204 added a new chapter 18 to title 38, United States Code, authorizing VA to provide certain benefits, including a monthly monetary allowance, to children born with spina bifida who are the natural children of veterans who served in the Republic of Vietnam during the Vietnam era. Pursuant to 38 U.S.C. 1805(b)(3), spina bifida rates are subject to adjustment under the provisions of 38 U.S.C. 5312, which provides for the adjustment of certain VA benefit rates whenever there is an increase in benefit amounts payable under title II of the Social Security Act (42 U.S.C. 401 *et seq.*). Effective December 1, 2002, spina bifida monthly rates are as follows:

Level I: $232
Level II: $804
Level III: $1,373

Birth Defects Benefits

Section 401 of Public Law 106–419 authorizes the payment of monetary benefits to, or on behalf of, children of female Vietnam veterans born with certain birth defects. Rates are subject to adjustment under the provisions of 38 U.S.C. 5312, which provides for the adjustment of certain VA benefit rates whenever there is an increase in benefit amounts payable under title II of the Social Security Act (42 U.S.C. 401 *et seq.*). Effective December 1, 2002, birth defects monthly rates are as follows:

Level I: $105
Level II: $232
Level III: $804
Level IV: $1,373

Dated: January 23, 2003.

Anthony J. Principi,

Secretary of Veterans Affairs.

[FR Doc. 03–2352 Filed 1–31–03; 8:45 am]
BILLING CODE 8320–01–P

Corrections

Federal Register

Vol. 68, No. 22

Monday, February 3, 2003

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories, elsewhere in the issue.

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9031]

RIN 1545–BB02

Reduced Maximum Exclusion of Gain From Sale or Exchange of Principal Residence

Correction

In rule document 02–32280 beginning on page 78367 in the issue of Tuesday, December 24, 2002 make the following correction:

On page 78369, in the second column, under the heading "*7. Effective Date*", in the third line, "December 24, 2003" should read, "December 24, 2002".

[FR Doc. C2–32280 Filed 1–31–03; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Monday,
February 3, 2003

Part II

Securities and Exchange Commission

17 CFR Parts 240, 249, et al.
Certification of Management Investment Company Shareholder Reports and Designation of Certified Shareholder Reports as Exchange Act Periodic Reporting Forms; Disclosure Required by Sections 406 and 407 of the Sarbanes-Oxley Act of 2002; Final Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 240, 249, 270 and 274

[Release Nos. 34–47262; IC–25914; File Nos. S7–33–02; S7–40–02]

RIN 3235–AI63; RIN 3235–AI66

Certification of Management Investment Company Shareholder Reports and Designation of Certified Shareholder Reports as Exchange Act Periodic Reporting Forms; Disclosure Required by Sections 406 and 407 of the Sarbanes-Oxley Act of 2002

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Securities and Exchange Commission is adopting rule and form amendments that require registered management investment companies to file certified shareholder reports on Form N–CSR with the Commission, and designating these certified reports as reports that are required under Sections 13(a) and 15(d) of the Securities Exchange Act of 1934 and Section 30 of the Investment Company Act of 1940. The amendments require each registered management investment company's principal executive and financial officers to certify the information contained in these reports in the manner specified by Section 302 of the Sarbanes-Oxley Act of 2002. We are providing that, for registered management investment companies other than small business investment companies, Form N–SAR will be filed under the Investment Company Act of 1940 only and not the Securities Exchange Act of 1934. We are also removing the requirement that Form N–SAR be certified by a registered investment company's principal executive and financial officers. We are also adopting a new rule to require registered management investment companies to maintain disclosure controls and procedures designed to ensure that the information required in reports on Form N–CSR is recorded, processed, summarized, and reported on a timely basis.

In addition, we are adopting forms and amendments that require registered management investment companies to include new disclosures on Form N–CSR or Form N–SAR in order to implement the requirements of Sections 406 and 407 of the Sarbanes-Oxley Act of 2002. First, the rules require a registered management investment company to disclose whether it has adopted a code of ethics that applies to the company's principal executive officer and senior financial officers. An investment company disclosing that it has not adopted such a code must disclose this fact and explain why it has not done so. An investment company also will be required to disclose amendments to, and waivers from, the code of ethics relating to any of those officers. Second, the rules require a registered management investment company to disclose whether it has at least one "audit committee financial expert" serving on its audit committee, and if so, the name of the expert and whether the expert is independent of management. An investment company that does not have an audit committee financial expert must disclose this fact and explain why it has no such expert.

DATES: *Effective Date:* March 1, 2003, except that the effective date of the removal of the certification requirement from Form N–SAR for registered management investment companies other than small business investment companies is May 1, 2003.

Compliance Date: See Section III of this release for information on Transition Provisions and Compliance Dates.

FOR FURTHER INFORMATION CONTACT: John M. Faust, Attorney, Katy Mobedshahi, Senior Counsel, Tara L. Royal, Attorney, or Paul G. Cellupica, Assistant Director, Office of Disclosure Regulation, Division of Investment Management, (202) 942–0721, at the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0506.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission ("Commission") is adopting new rules 30a–3 [17 CFR 270.30a–3] and 30d–1 [17 CFR 270.30d–1] under the Investment Company Act of 1940 [15 U.S.C. 80a–1 *et seq.*] ("Investment Company Act"); amendments to rules 8b–15 [17 CFR 270.8b–15], 30a–1 [17 CFR 270.30a–1], 30a–2 [17 CFR 270.30a–2], 30b1–1 [17 CFR 270.30b1–1], 30b1–3 [17 CFR 270.30b1–3], and 30b2–1 [17 CFR 270.30b2–1] under the Investment Company Act; and amendments to rules 12b–25 [17 CFR 240.12b–25], 13a–15 [17 CFR 240.13a–15], and 15d–15 [17 CFR 240.15d–15], and Form 12b–25 [17 CFR 249.322] under the Securities Exchange Act of 1934 [15 U.S.C. 78a *et seq.*] ("Exchange Act"). The Commission also is adopting amendments to Form N–SAR [17 CFR 249.330; 17 CFR 274.101] under the Exchange Act and the Investment Company Act. Finally, the Commission is adopting new Form N–CSR [17 CFR 249.331; 17 CFR 274.128] under the Exchange Act and the Investment Company Act.

I. Introduction and Background

On July 30, 2002, the Sarbanes-Oxley Act of 2002 ("Sarbanes-Oxley Act") was enacted.[1] Section 302 of the Sarbanes-Oxley Act, entitled "Corporate Responsibility for Financial Reports," required the Commission to adopt final rules to be effective by August 29, 2002, 30 days after the date of enactment, under which the principal executive officer or officers and the principal financial officer or officers, or persons performing similar functions, of an issuer each must certify the information contained in the issuer's quarterly and annual reports filed or submitted under Section 13(a) or 15(d) of the Exchange Act.[2] Form N–SAR currently is the form designated for registered investment companies to comply with their reporting requirements under Sections 13(a) and 15(d) of the Exchange Act, as well as periodic reporting requirements under Sections 30(a) and 30(b)(1) of the Investment Company Act.[3]

On August 28, 2002, the Commission implemented the certification requirement of Section 302 of the Sarbanes-Oxley Act with respect to registered investment companies by adopting new rule 30a–2 under the Investment Company Act and the Sarbanes-Oxley Act.[4] Rule 30a–2 requires a registered investment company that files periodic reports under Section 13(a) or 15(d) of the Exchange Act, *i.e.*, Form N–SAR, to

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[1]

[2] Section 13(a) of the Exchange Act requires every issuer of a security registered pursuant to Section 12 of the Exchange Act to file with the Commission such annual reports and such quarterly reports as the Commission may prescribe. 15 U.S.C. 78m(a). Section 15(d) of the Exchange Act requires each issuer that has filed a registration statement that has become effective pursuant to the Securities Act of 1933 ("Securities Act") to file such supplementary and periodic information, documents, and reports as may be required pursuant to Section 13 of the Exchange Act in respect of a security registered pursuant to Section 12. 15 U.S.C. 78o(d). The duty of an issuer to file under Section 15(d) is automatically suspended for any fiscal year, other than a fiscal year in which its registration statement becomes effective, if an issuer's securities are held of record by less than 300 persons. 15 U.S.C. 78o(d).

[3] General Instruction A to current Form N–SAR; current Rule 30a–1 under the Investment Company Act [17 CFR 270.30a–1]. See Investment Company Act Release No. 14299 (Jan. 4, 1985) [50 FR 1442 (Jan. 11, 1985)] (release adopting Form N–SAR). Face-amount certificate companies do not file reports on Form N–SAR, but rather file periodic reports on Forms 10–K and 10–Q. See Investment Company Act Release No. 14080 (Aug. 6, 1984) [49 FR 32370, 32372 (Aug. 14, 1984)] (face-amount certificate companies are required to file reports on other forms prescribed under the Exchange Act rather than Form N–SAR).

[4] Investment Company Act Release No. 25722 (Aug. 28, 2002) [67 FR 57276 (Sept. 9, 2002)].

include the certification specified by Section 302 in those periodic reports.

In a companion release, we also proposed to require registered management investment companies to file certified shareholder reports with the Commission on new Form N–CSR and to designate these certified shareholder reports as reports that are required under Sections 13(a) and 15(d) of the Exchange Act and Section 30 of the Investment Company Act.[5] As we noted in that release, we believe that the certification requirement of Section 302 of the Sarbanes-Oxley Act was intended to improve the quality of the disclosure that a company provides regarding its financial condition in its reports to investors.[6] For registered management investment companies, the required reports to shareholders, rather than reports on Form N–SAR, are the primary vehicle for providing financial information to investors. We believe that the information in these reports to shareholders should be certified, and today we are adopting amendments to our forms and rules to require this certification.

In October 2002, we proposed amendments to proposed Form N–CSR and Form N–SAR to implement Sections 406 and 407 of the Sarbanes-Oxley Act with respect to registered investment companies, similar to disclosure requirements that we proposed at the same time with respect to operating companies.[7] Section 406 directs the Commission to adopt rules requiring an issuer to disclose whether or not it has adopted a code of ethics for the issuer's senior financial officers, as well as any change to, or waiver of, that code of ethics. Section 407 directs the Commission to adopt rules: (1) Requiring an issuer to disclose whether or not its audit committee includes at least one member who is a financial expert; and (2) defining the term "financial expert." Earlier this month, we adopted disclosure requirements to implement these provisions with respect to operating companies.[8] Today, we adopt similar disclosure requirements for registered management investment companies.

In the same release in which we proposed to implement Sections 406 and 407, we also proposed amendments to implement Section 404 of the Sarbanes-Oxley Act, relating to internal control reports, with respect to operating companies, as well as certain technical amendments to our rules and forms implementing Section 302 of the Sarbanes-Oxley Act for registered investment companies.[9] We have deferred adoption of the final rules to implement Section 404 to a separate release to be issued at a later date,[10] and we will also consider the technical amendments to our rules and forms implementing Section 302 for registered investment companies at that time.

II. Discussion

The Commission today is adopting new rules, rule and form amendments, and new Form N–CSR under the Investment Company Act to better implement the certification requirement of Section 302 of the Sarbanes-Oxley Act for registered management investment companies, with modifications to address commenters' concerns.[11] Our amendments will require a registered management investment company to file semi-annual reports on Form N–CSR, and will require the certification specified by Section 302 of the Sarbanes-Oxley Act in these semi-annual reports. Further, our amendments will remove the certification requirement from Form N–SAR, with respect to all registered investment companies.[12] In addition, we are adopting rules to require registered management investment companies to maintain, and regularly evaluate the effectiveness of, controls and procedures designed to ensure that the information required in reports on Form N–CSR is recorded, processed, summarized, and reported on a timely basis. Finally, we are adopting amendments to Form N–CSR and Form N–SAR to implement Sections 406 and 407 of the Sarbanes-Oxley Act with respect to registered management investment companies, similar to amendments that we adopted earlier this month to implement these provisions with respect to operating companies.

A. Section 302 of the Sarbanes-Oxley Act—Certification Requirements

1. Certified Shareholder Reports

We are adopting, as proposed, an amendment to rule 30b2–1 under the Investment Company Act, which currently requires registered investment companies to file copies of reports transmitted to shareholders with the Commission within 10 days of their transmission to shareholders. The amendment will require a registered management investment company to file a report with the Commission on new Form N–CSR ("certified shareholder report") containing (i) a copy of any required shareholder report, (ii) additional information regarding disclosure controls and procedures, and (iii) the certification required by the Sarbanes-Oxley Act.[13] As adopted, new

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[5] *See* Investment Company Act Release No. 25723 (Aug. 30, 2002) [67 FR 57298 (Sept. 9, 2002)] ("Form N–CSR Proposing Release"). The Commission proposed amendments to Form N–CSR in Investment Company Act Release No. 25739 (Sept. 20, 2002) [67 FR 60828 (Sept. 26, 2002)] (proxy voting disclosure); Investment Company Act Release No. 25775 (Oct. 22, 2002) [67 FR 66208 (Oct. 30, 2002)] (code of ethics and financial expert disclosure) ("Section 406/407 Proposing Release"); Investment Company Act Release No. 25838 (Dec. 2, 2002) [67 FR 76780 (Dec. 13, 2002)] (auditor independence provisions of the Sarbanes-Oxley Act); Investment Company Act Release No. 25845 (Dec. 10, 2002) [67 FR 77593 (Dec. 18, 2002)] (revisions to rule 10b–18 under the Exchange Act); Investment Company Act Release No. 25870 (Dec. 18, 2002) [68 FR 160 (Jan. 2, 2003)] (shareholder reports and quarterly portfolio disclosure); and Investment Company Act Release No. 25885 (Jan. 8, 2003) [68 FR 2637 (Jan. 17, 2003)] (standards relating to listed company audit committees).

A management investment company is an investment company other than a unit investment trust or face-amount certificate company. *See* Section 4 of the Investment Company Act [15 U.S.C. 80a–4]. Management investment companies typically issue shares representing an undivided proportionate interest in a changing pool of securities, and include open-end and closed-end companies. *See* T. Lemke, G. Lins, A. Smith III, Regulation of Investment Companies, Vol. I, ch. 4, § 4.04, at 4–5 (2002).

[6] Form N–CSR Proposing Release, *supra* note , 67 FR at 57299.

[7] Section 406/407 Proposing Release, *supra* note 5, 67 FR at 66213–14 and 66217–18.

[8] Securities Act Release No. 8177 (January 23, 2003) ("Section 406/407 Adopting Release").

[9] Section 406/407 Proposing Release, *supra* note 5, 67 FR at 66222–23.

[10] Section 406/407 Adopting Release, *supra* note 8.

[11] We received 18 comment letters on the Form N–CSR Proposing Release from 17 commenters. The commenters included ten mutual funds, investment advisers, and financial advisers; one trade association; five law firms, law professors, attorneys, and bar associations; and one domestic government agency. These comment letters and a summary of the comments are available for public inspection and copying in our Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549, in File No. S7–33–02. Public comments submitted electronically and a summary of the comments are available on our Web site <*http://www.sec.gov*>.

We received over 200 comment letters on the Section 406/407 Proposing Release, including 23 comment letters on the proposed amendments applicable to investment companies. The commenters included 12 mutual funds and investment advisers; one trade association; four law firms, bar associations, and accounting firms; and six independent directors of investment companies. These comment letters are available for public inspection and copying in our Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549, in File No. S7–40–02. Public comments submitted electronically are available on our Web site <*http://www.sec.gov*>.

[12] Amendments to Item 133 and instructions to Items 77Q3, 102P3, and 133 of Form N–SAR.

[13] Rule 30b2–1(a) under the Investment Company Act [17 CFR 270.30b2–1(a)]; 17 CFR 249.331; 17 CFR 274.128; Items 1, 9, and 10(b) of Form N–CSR. In addition, we are amending rule 30a–2 under the Investment Company Act [17 CFR 270.30a–2] to require Form N–CSR to include the certification required by Section 302 of the Sarbanes-Oxley Act. No certified shareholder report on Form N–CSR

Continued

Form N–CSR requires certified shareholder reports to contain the exact form of the certification prescribed by the form. The certification is required of each principal executive officer and financial officer, and the form of this certification parallels the form of the certification we have prescribed for other Exchange Act reporting forms, such as Forms 10–K and 10–Q. The certification must be filed as an exhibit to a report on Form N–CSR.[14] In addition to the signature required on the certification, the report must be signed by the registrant, and on behalf of the registrant by its principal executive officer or officers and its principal financial officer or officers.[15] The certification requirement will also apply to amendments of certified shareholder reports on Form N–CSR.[16] In addition, we are adopting new rule 30d–1 under the Investment Company Act, designating reports on Form N–CSR as periodic reports filed with the Commission under Section 13(a) or 15(d) of the Exchange Act.[17]

The requirement to file certified shareholder reports will apply to registered management investment companies, regardless of whether they are subject to Section 13(a) or 15(d) of the Exchange Act.[18] By its terms, Section 302 of the Sarbanes-Oxley Act directs the Commission to adopt rules that will apply to companies filing periodic reports under Section 13(a) or 15(d) of the Exchange Act.[19] We believe, however, that it is important for the certification requirement, like our other reporting rules, to apply consistently to all registered investment companies, regardless of whether they fall within the periodic reporting requirements of the Exchange Act.[20]

In light of the adoption of Form N–CSR as an Exchange Act reporting form, we are amending our rules and forms to provide that, for registered management investment companies, Form N–SAR will be filed under the Investment Company Act only and not the Exchange Act.[21] We were persuaded by commenters who argued that certification of both Form N–SAR and shareholder reports would impose an unjustified burden on management investment companies. These commenters noted that Form N–SAR does not contain financial statements; that although Form N–SAR is publicly available, it was developed primarily to elicit information for use by the Commission in its compliance and inspections program; and that the information in Form N–SAR is not generally relied upon by investors.[22] In light of the fact that registered management investment companies will be filing Form N–CSR under the Exchange Act, we do not believe that it is necessary for these companies to continue to file Form N–SAR under the Exchange Act or to certify Form N–SAR under the Sarbanes-Oxley Act.[23] We believe that this is appropriate because, for registered management investment companies, the required reports to shareholders contained in Form N–CSR, rather than Form N–SAR, are the primary vehicle for providing financial statements and other information to investors.[24] The certification requirement was intended to improve the quality of the disclosure that a company provides about its financial condition in its periodic reports to investors.[25]

2. Scope of Certification Requirement

We are adopting, as proposed, the requirement that all of the information filed on Form N–CSR, including all of the information in a shareholder report filed as part of Form N–CSR, be certified. This would include information that is included voluntarily, as well as that required by Form N–CSR. In addition to financial statements, annual reports to shareholders of open-end management investment companies, or mutual funds, typically contain Management's Discussion of Fund Performance ("MDFP"), although, at present, they are not required to do so.[26] MDFP includes narrative disclosure of the factors that materially affected a fund's performance during the reporting period, a line graph comparing the fund's performance to that of an appropriate broad-based market index, and a table of average annual total returns for the fund. In addition, the annual report to shareholders of a management investment company must contain other information, including certain basic information about the investment company's directors.[27]

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would be required with respect to a report to shareholders that is not required under rule 30e–1 under the Investment Company Act [17 CFR 270.30e–1], *e.g.*, voluntary quarterly reports. These reports to shareholders would continue to be filed with the Commission as they are presently. Rule 30b2–1(b) under the Investment Company Act [17 CFR 270.30b2–1(b)].

[14] *See* Item 10(b) of Form N–CSR. The EDGAR document type must be EX–99.CERT for an exhibit filed in response to Item 10(b). All certifications in a filing on Form N–CSR should be included in a single EDGAR exhibit document.

[15] *See* General Instruction E to Form N–CSR.

[16] Rule 8b–15 under the Investment Company Act [17 CFR 270.8b–15].

[17] We are also adopting a technical conforming amendment that would delete the language in current rule 30a–1 [17 CFR 270.30a–1] stating that a registered management investment company required to file an annual report pursuant to Section 13(a) or 15(d) of the Exchange Act and Section 30(a) of the Investment Company Act shall be deemed to have satisfied its requirement to file an annual report by the filing of semi-annual reports on Form N–SAR. The amendments rename rule 30a–1 in order to specify that it relates to annual reports by registered unit investment trusts, and rename rule 30b1–1 [17 CFR 270.30b1–1] in order to specify that it relates to semi-annual reports of registered management investment companies.

[18] Rule 30b2–1(a) [17 CFR 270.30b2–1(a)].

[19] *See supra* note (description of Exchange Act reporting requirements).

[20] *Cf.* General Instruction A to Form N–SAR (Form N–SAR is to be used for semi-annual and annual reports by all registered investment companies that have filed a registration statement that has become effective pursuant to the Securities Act, with the exception of face amount certificate companies.).

[21] *See* Rule 30b1–1 under the Investment Company Act [17 CFR 270.30b1–1]; 17 CFR 249.330; 17 CFR 274.101; General Instruction A to Form N–SAR.

[22] *See* Investment Company Act Release No. 14299 (Jan. 4, 1985) [50 FR 1442 (Jan. 11, 1985)] (release adopting Form N–SAR); Investment Company Act Release No. 14080 (Aug. 6, 1984) [49 FR 32370 (Aug. 14, 1984)] (release proposing Form N–SAR).

[23] Instructions to item 77Q3 of Form N–SAR (amended to remove certification); rule 30b1–3 under the Investment Company Act [17 CFR 270.30b1–3] (removing the certification requirement from transition reports on Form N–SAR).

[24] Sections 30(e) and (f) of the Investment Company Act (15 U.S.C. 80a–29(e) and (f)) (requiring a registered investment company to transmit to its stockholders, at least semi-annually, reports containing financial statements and other information prescribed by the Commission).

[25] *See, e.g.*, S. Rep. No. 107–205, at 2 (2002) ("The bill also requires steps to enhance the direct responsibility of senior corporate management for financial reporting and for the quality of financial disclosures made by public companies."); 148 Cong. Rec. S7355 (July 25, 2002) (statement of Sen. Enzi) ("With respect to section 302, the conference recognizes that results presented in financial statements often necessarily require accompanying disclosures in order to apprise investors of the company's true financial condition and results of operations. The supplemental information contained in these additional disclosures increases transparency for investors. Accordingly, the relevant officers must certify that the financial statements together with the disclosures contained in the periodic report, taken as a whole, are appropriate and fairly represent, in all material respects, the operations and financial condition of the issuer."); 148 Cong. Rec. S6760 (July 15, 2002) (statement of Sen. Akaka) ("The legislation also requires additional corporate governance procedures to make Chief Executive Officers and Chief Financial Officers more directly responsible for the quality of financial reporting made to investors.").

[26] Item 5 of Form N–1A. Management's Discussion of Fund Performance must be included in a fund's prospectus unless the fund is a money market fund or the information in the MDFP is included in the fund's annual report to shareholders under rule 30e–1 [17FR 270.30e–1]. A fund that includes MDFP in its annual report must disclose in its prospectus that its annual report contains additional performance information that will be made available upon request and without charge. Item 1(b)(1) of Form N–1A. We recently proposed to require the MDFP to be included in a mutual fund's annual report to shareholders. Investment Company Act Release No. 25870 (Dec. 18, 2002) [68 FR 160, 170 (Jan. 2, 2003)].

[27] Items 13(a)(1) and 22(b)(5) of Form N–1A; Item 18.1 and Instruction 4.e. to Item 23 of Form N–2;

Many commenters objected to our proposal to require certification of all of the information contained in shareholder reports, and instead suggested that the certification should apply only to the financial statements and other financial information in shareholder reports. Commenters argued that the narrative disclosure commonly found in shareholder reports, including the narrative section of MDFP as well as a fund president's letter to shareholders, interviews with portfolio managers, and other similar information that is intended to assist investors in understanding fund performance and portfolio composition, is not analogous to Management's Discussion & Analysis (MD&A) in Form 10–K, and is not the type of objective financial information that the certification requirement of Section 302 was intended to cover.[28] The MD&A, commenters noted, is intended to provide a narrative explanation of an operating company's financial statements and to provide the context within which the financial statements should be analyzed, while the MDFP is simply a narrative explanation of an investment company's performance comparative to the market. These commenters argued that the narrative disclosure in the shareholder reports, including that in the MDFP, does not lend itself to meaningful personal certification by an investment company's principal executive and financial officers, and that requiring certification of the entire shareholder report could have the unintended consequence of encouraging investment companies to reduce the scope of the narrative discussion provided voluntarily in shareholder reports, or even ceasing to provide it altogether.

We are not persuaded by these comments. Section 302 of the Sarbanes-Oxley Act does not limit the scope of the certification to financial information filed by a registrant. The MDFP and other narrative disclosure is relied upon by investors to explain the investment operations and performance of a mutual fund, which is as significant for investors in the fund as management's discussion and analysis of financial condition and results of operations is for investors in an operating company. In its integrated reviews of mutual fund prospectuses and shareholder reports, the staff has identified instances where MDFP has provided insufficient substantive discussion of the factors that affected the fund's performance during the most recent fiscal year.[29] The Commission has asked the staff, in its review of a mutual fund's disclosure documents, to continue to focus on areas where funds' MDFP disclosure has been deficient.[30] We believe that a requirement that MDFP, if included in shareholder reports, must be certified by the mutual fund's principal executive and financial officers, would encourage funds to include a more complete and accurate discussion of the factors that affected fund performance in their MDFP. Further, we note that in the operating company context, reports on Form 10–K contain certain required non-financial information that must be certified.[31]

We also note that the only statement made in the certification with respect to this narrative information is that, based on the certifying officer's knowledge, the report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by the report.[32] This certification is consistent with the current obligation of registrants under the Exchange Act not to file reports that are materially misleading.[33] Therefore, we believe that it is appropriate for the certifying officers to provide assurances to investors that the reports a fund files under the Exchange Act meet this standard.

3. Application of Certification Requirements to Unit Investment Trusts and Small Business Investment Companies

To address commenters' concerns, we are amending Form N–SAR to eliminate the requirement that unit investment trusts ("UITs") and small business investment companies ("SBICs") certify their reports on Form N–SAR.[34] Commenters noted that Form N–SAR, which does not contain financial statements, contains little, if any, information regarding a UIT that is of relevance or interest to investors. We agree. Form N–SAR requires both UITs and SBICs to include only limited financial and other information.[35] Because Form N–SAR contains very limited information for UITs and SBICs and is not required to be sent to investors, certification of this information would not promote the intent of Section 302 of the Sarbanes-Oxley Act, which is to improve the quality of the disclosure that a company provides about its financial condition in its periodic reports to investors. We

Item 20(a) and Instruction 4(v) to Item 27(a) of Form N–3.

[28] *See* Item 303 of Regulation S–K [17 CFR 229.303] (Management's Discussion and Analysis).

[29] *See In the Matter of Davis Selected Advisers—NY, Inc.*, Investment Advisers Act Release No. 2055 (Sept. 4, 2002) (fund violated Section 34(b) of the Investment Company Act [15 U.S.C. 80a–34(b)] by failing to disclose the material impact that investments in initial public offerings had on its performance during its previous fiscal year in its MDFP); Tom Lauricella and Aaron Lucchetti, *What's Your Fund Doing? Some Managers Don't Say*, The Wall Street Journal, Oct. 7, 2002, at R23 (describing inadequate discussions in investment companies' MDFP).

[30] Investment Company Act Release No. 25870, *supra* note, 68 FR at 170.

[31] *See* Item 401 of Regulation S–K [17 CFR 229.401] (requiring background information about directors and officers); Section 406/407 Adopting Release, *supra* note (adopting Item 406 of Regulation S–K, which requires disclosure with respect to codes of ethics applicable to a registrant's principal executive officer, principal financial officer, principal accounting officer or controller, or persons performing similar functions, and Item 401(h) of Regulation S–K, which requires disclosure of whether a company has at least one audit committee financial expert serving on its audit committee, and if so, the name of the expert and whether the expert is independent of management).

[32] Paragraph 3 of certification exhibit in Item 10(b) of Form N–CSR.

[33] Rule 10b–5 under the Exchange Act [17 CFR 240.10b–5] provides that: "It shall be unlawful for any person, directly or indirectly, * * * to make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading * * *"

[34] Instruction 102P3 of Form N–SAR; Instruction to Item 133 of Form N–SAR.

A UIT is an unmanaged, fixed portfolio of securities that has no corporate management structure, and generally is not required to transmit reports to shareholders containing its financial statements. *See* Section 4(2) of the Investment Company Act [15 U.S.C. 80a–4(2)] (defining UIT). SBICs are management investment companies that are licensed as SBICs under the Small Business Investment Act of 1958. *See* General Instruction A of Form N–5 [17 CFR 239.24; 17 CFR 274.5] (describing SBIC).

[35] UITs report the following information on Form N–SAR: (i) Identifying information (Items 1–6); (ii) the names and addresses of the trust's depositors, sponsors, trustees, principal underwriters, and independent accountants (Items 111–115); (iii) whether the trust is part of a family of investment companies or an insurance company separate account (Items 116–117); (iv) the following numbers: Number of series, dollar amounts of deposits and prior series units, sales charges aggregated for all series, values of and income from various types of securities and expenses aggregated for all series (Items 118–127, 131); (v) information regarding insurance and guarantees (Items 128–130); and (vi) a list of any pre-1972 Investment Company Act file numbers (Item 132). SBICs report the following information on Form N–SAR: (i) Identifying information (Items 1–6); (ii) the names and addresses of the SBIC's advisers, transfer agents, independent accountants, and custodian (Items 89–92); (iii) whether the adviser has clients other than investment companies (Item 93); (iv) whether the SBIC is part of a family of investment companies (Item 94); (v) information on the sales, repurchase and redemptions of the SBIC's securities (Item 95); (vi) securities of the SBIC registered on an exchange (Item 96); (vii) certain financial information, including income, expenses, assets, liabilities, and shareholders' equity (Items 97–101); (viii) exhibits (Item 102); (ix) information on subsidiaries (Items 103–104); and (x) information on fidelity bonds and officers and directors insurance (Items 105–110).

have therefore concluded that requiring UITs and SBICs to certify their reports on Form N–SAR does not produce any meaningful benefit to investors.

While certification of Form N–SAR will no longer be required, UITs and SBICs will continue to file Form N–SAR under both the Exchange Act and the Investment Company Act.[36] UITs and SBICs generally are not required to transmit reports to shareholders containing their financial statements, and UITs and SBICs will not be required to file certified shareholder reports under the Exchange Act.[37] We do not believe that it would be appropriate to remove UITs and SBICs from Exchange Act reporting status by making Form N–SAR an Investment Company Act-only form.

4. Disclosure Controls and Procedures

We are adopting, with modifications to address commenters' concerns, new rule 30a–3, which requires registered management investment companies to maintain, and regularly evaluate the effectiveness of, controls and procedures designed to ensure that the information required in filings on Form N–CSR is recorded, processed, summarized, and reported on a timely basis.[38] Investment companies filing reports under Section 13(a) or 15(d) of the Exchange Act are currently required to maintain disclosure controls and procedures with respect to Exchange Act reports.[39] Rule 30a–3 applies this requirement uniformly to all registered management investment companies, regardless of whether they are subject to Section 13(a) or 15(d) of the Exchange Act.[40] We believe that registered management investment companies filing Form N–CSR should maintain effective disclosure controls and procedures, regardless of whether they fall within the periodic reporting requirements of the Exchange Act. We are also amending the definition of "disclosure controls and procedures" in rule 30a–2(c) to make clear that such controls and procedures apply to registered management investment companies regardless of whether they are subject to Section 13(a) or 15(d) of the Exchange Act, and that they do not apply to SBICs and UITs filing Exchange Act reports on Form N–SAR that are not required to be certified.[41]

We are also adopting, as proposed, the requirement of rule 30a–3(b) that a registered management investment company, under the supervision and with the participation of the principal executive and financial officers, conduct an evaluation of its disclosure controls and procedures within the 90-day period prior to the filing date of each Form N–CSR requiring certification under Investment Company Act rule 30a–2.[42] We expect that this evaluation will be carried out in a manner that will form the basis for the certification required by Section 302 of the Sarbanes-Oxley Act regarding disclosure controls and procedures required by Investment Company Act rule 30a–2(b)(4).[43]

As proposed, rule 30a–3 would have extended the requirement to maintain and evaluate disclosure controls and procedures to filings under the Securities Act of 1933 ("Securities Act") and the Investment Company Act.[44] Commenters argued that this extension would impose a larger burden on investment companies than on operating companies, which are only required to maintain disclosure controls and procedures with respect to their Exchange Act reports. Commenters pointed out that under the rule, as proposed, investment companies would have to establish and maintain, and conduct evaluations of the effectiveness of, disclosure controls and procedures on at least a semi-annual basis, with respect to all of the updates of their registration statements, as well as with respect to other filings required under the Securities Act and the Investment Company Act, including advertisements and sales literature.[45] According to commenters, these periodic evaluations would add substantially to the workload of fund officers, but would not result in a discernible benefit to fund shareholders or further the intent of the Sarbanes-Oxley Act.

Section 302 of the Sarbanes-Oxley Act does not require evaluations of disclosure controls and procedures with respect to non-Exchange Act filings, and we have determined that it would not be appropriate to extend this requirement to Securities Act and Investment Company Act filings at this time. We are concerned that the evaluation process could be unduly burdensome, relative to its benefits, when applied to these other filings. Therefore, we are limiting the requirement to maintain and evaluate disclosure controls and procedures to Form N–CSR, the Exchange Act document that will be subject to the Sarbanes-Oxley Act certification requirements.

We wish to emphasize that effective disclosure controls and procedures are essential for an investment company to meet its disclosure obligations under all of the securities laws, including the Securities Act and the Investment Company Act. Our limitation of the definition of disclosure controls and procedures to Form N–CSR in the rules we adopt today in no way diminishes the importance of disclosure controls and procedures designed to ensure that the information required in other filings made by an investment company, including prospectuses and prospectus amendments, advertisements and sales literature, and Form N–SAR, is recorded, processed, summarized, and reported on a timely basis. Our determination to limit the scope of disclosure controls and procedures in these rules rests on our concern that the burdens of the specific evaluation

[36] Rules 30a–1, 30b1–1, and 30d–1 under the Investment Company Act [17 CFR 270.30a–1; 17 CFR 270.30b1–1; 17 CFR 270.30d–1]; 17 CFR 249.330; 17 CFR 274.101; General Instruction A to Form N–SAR.

[37] Rules 30b2–1(a) and 30d–1 under the Investment Company Act [17 CFR 270.30b2–1(a); 17 CFR 270.30d–1] and General Instruction A to Form N–CSR [17 CFR 249.331; 17 CFR 274.128]. SBICs are not required under rule 30e–1(a) [17 CFR 270.30e–1(a)] to transmit reports to shareholders containing their financial statements, because Form N–5 [17 CFR 239.24; 17 CFR 274.5], the registration form for SBICs, does not prescribe requirements for reports to shareholders by SBICs.

[38] 17 CFR 270.30a–3. SBICs will not be required to maintain disclosure controls and procedures as required by rule 30a-3 because they do not file reports on Form N–CSR. *See supra* note 37.

[39] Rules 13a–15 and 15d–15 under the Exchange Act [17 CFR 240.13a–15; 17 CFR 15d–15].

[40] *See supra* note 2 (description of Exchange Act reporting requirements).

[41] Rule 30a–2(c) under the Investment Company Act [17 CFR 270.30a–2(c)]. We are also adopting conforming amendments to rules 13a–15 and 15d–15 under the Exchange Act [17 CFR 240.13a–15; 17 CFR 240.15d–15] to exclude SBICs and UITs from the requirements to maintain disclosure controls and procedures under those rules.

[42] 17 CFR 270.30a–3(b).

[43] We recognize that, in the case of a series fund or family of investment companies, the disclosure controls and procedures for each fund in the series or family may be the same. Therefore, for purposes of Rule 30a–2(b)(4)(ii) and (iii), a single evaluation of the effectiveness of the disclosure controls and procedures for the series or family could be used in multiple certifications for the funds in the series or family, as long as the evaluation has been performed within 90 days of the date of the report on Form N–CSR.

[44] Form N–CSR Proposing Release, *supra* note, 67 FR at 57306 (proposed rules 30a–2(c) and 30a–3 under the Investment Company Act).

[45] Section 24(b) of the Investment Company Act [15 U.S.C. 80a–24(b)] requires investment companies to file "any advertisement, pamphlet, circular, form letter, or other sales literature" with the Commission. Rule 24b–3 under the Investment Company Act [17 CFR 270.24b–3] permits investment companies to satisfy this requirement by filing sales literature with the National Association of Securities Dealers, Inc. ("NASD") or another national securities association registered under Section 15A of the Exchange Act [15 U.S.C. 78o]. Rule 497(a)(1) under the Securities Act [17 CFR 230.497(a)(1)] requires an investment company advertisement pursuant to rule 482 under the Securities Act [17 CFR 230.482] to be filed with the Commission, and rule 497(i) under the Securities Act [17 CFR 230.497(i)] permits a rule 482 advertisement to be considered filed with the Commission if it is filed with the NASD or another national securities association registered under Section 15A of the Exchange Act.

process mandated by the rules may outweigh its benefits when extended to these other filings.

5. Extension of Time for Filing Form N–CSR

We are also adopting amendments to require an investment company to file a Form 12b–25 if it will not be able to file a report on Form N–CSR in a timely manner.[46] Filing of a Form 12b–25 would provide the investment company with an automatic extension of time to file Form N–CSR of up to 15 calendar days following the prescribed due date. Form 12b–25 currently may be used for reports on Form N–SAR, and we note that the form will continue to be available to all filers on Form N–SAR, including registered management investment companies filing exclusively under the Investment Company Act.

B. Section 406 of the Sarbanes-Oxley Act—Code of Ethics

We are adopting, with modifications to address commenters' concerns, our proposed amendments that implement Section 406 of the Sarbanes-Oxley Act with respect to registered management investment companies. These requirements are similar to those we recently adopted for operating companies, and we direct investment companies to that release for information concerning these requirements.[47] The amendments we are adopting will require a registered management investment company to:

- Disclose annually whether the investment company has adopted a code of ethics that applies to the investment company's principal executive officer, principal financial officer, principal accounting officer or controller, or persons performing similar functions, regardless of whether these individuals are employed by the investment company or a third party;[48]
- If the investment company has not adopted a code of ethics, explain why it has not done so;[49]
- Describe briefly the nature of any amendment to, or waiver from a provision of, the investment company's code of ethics in its report on Form N–CSR or Form N–SAR, as applicable. In the alternative, the investment company may disclose this information on its Internet website within five business days following the date of the amendment or waiver, if the investment company has disclosed in its most recently filed report on Form N–CSR or Form N–SAR its intention to provide disclosure in this manner and its Internet address, it makes the information available on its website for a 12-month period, and it retains the information for a period of not less than six years following the end of the fiscal year in which the amendment or waiver occurred.[50]

The rules, as adopted, reflect modifications that are similar to those we recently made to the proposed code of ethics disclosure requirements for operating companies, for the reasons described in the release adopting these disclosure requirements for operating companies. These modifications include:

- Elimination of the component of the definition of a code of ethics requiring the code to promote the avoidance of conflicts of interest, including disclosure to an appropriate person or persons identified in the code of any material transaction or relationship that reasonably could be expected to give rise to such a conflict;[51]
- Addition of an instruction to indicate that a company may have separate codes of ethics for different types of officers and that the provisions of the company's code of ethics that address the elements listed in the definition and apply to those officers may be part of a broader code that addresses additional issues and applies to additional persons;[52]
- Allowing a company to choose among three alternative methods of making their ethics codes publicly available, including:

(i) Filing a copy of the code as an exhibit to its annual report on Form N–CSR or Form N–SAR;

(ii) Posting the text of the code on the company's Internet website and disclosing, in its most recent report on Form N–CSR or Form N–SAR, its Internet address and the fact that it has posted the code of ethics on its Internet website; or

(iii) Providing an undertaking in the company's most recent report on Form N–CSR or Form N–SAR to provide a copy of the code to any person without charge upon request, and explaining the manner in which such a request may be made;[53]

- Extension of the deadline for disclosing any amendments to, or waivers from, the company's code of ethics on its Internet website from two business days to five business days after the amendment or waiver;[54]
- Clarification that only amendments to, and waivers from, a company's code relating to specified elements of the code and specified officers must be disclosed;[55]
- Addition of a definition of the terms "waiver" and "implicit waiver";[56] and
- Clarification that a company does not need to disclose technical, administrative, or other non-substantive amendments to its code of ethics.[57]

These disclosure requirements will apply to all registered management investment companies, regardless of whether they are required to file reports pursuant to Section 13(a) or 15(d) of the Exchange Act. Management investment companies other than SBICs will provide the required disclosure in Item 2 of Form N–CSR, and SBICs will provide the required disclosure as an exhibit to Form N–SAR.[58]

Several commenters suggested that the code of ethics requirements should not apply to any registered investment companies. These commenters argued that the proposed amendments were unnecessary and potentially duplicative, noting that investment companies are already required to disclose whether they have a code of

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[46] Rule 12b–25(a) and (b)(2)(ii) under the Exchange Act [17 CFR 240.12b–25(a) and (b)(2)(ii)] and Exchange Act Form 12b–25 [17 CFR 249.322].

[47] *See* Section II.B., "Code of Ethics," in Section 406/407 Adopting Release, *supra* note 8.

[48] Item 2(a) of Form N–CSR; Instruction 102P3(a)(1) of Form N–SAR.

[49] *Id.*

[50] Items 2(c), 2(d), and 2(e), and Instruction 3 to Item 2, of Form N–CSR; Instructions 102P3(a)(3), (a)(4), (a)(5), and (a)(9) of Form N–SAR.

[51] Item 2(b) of Form N–CSR; Instruction 102P3(a)(2) of Form N–SAR; Section II.B.2.c., "Final Definition of 'Code of Ethics,'" in Section 406/407 Adopting Release, *supra* note.

[52] Instruction 1 to Item 2 of Form N–CSR; Instruction 102P3(a)(7) of Form N–SAR; Section II.B.2.c., "Final Definition of 'Code of Ethics,'" in Section 406/407 Adopting Release, *supra* note 8.

[53] Item 2(f) of Form N–CSR; Instruction 102P3(a)(6) of Form N–SAR; Section II.B.3, "Filing of Ethics Code as an Exhibit," in Section 406/407 Adopting Release, *supra* note 8. Because Forms N–CSR and N–SAR are filed semi-annually, unlike Forms 10–K and 10–KSB for operating companies, our rules require disclosure of the intention to provide Internet disclosure of the code of ethics, or the undertaking to provide a copy of the code of ethics to any person upon written request, in the investment company's most recently filed semi-annual report on Form N–CSR or N–SAR.

[54] Instruction 3 to Item 2 of Form N–CSR; Instruction 102P3(a)(9) of Form N–SAR; Section II.B.5, "Form 8–K or Internet Disclosure Regarding Changes to, or Waivers from, the Code of Ethics," in Section 406/407 Adopting Release, *supra* note 8.

[55] Items 2(c) and 2(d) of Form N–CSR; Instructions 102P3(a)(3) and (a)(4) of Form N–SAR; Section II.B.5, "Form 8–K or Internet Disclosure Regarding Changes to, or Waivers from, the Code of Ethics," in Section 406/407 Adopting Release, *supra* note.

[56] Instruction 5 to Item 2 of Form N–CSR; Instruction 102P3(a)(11) of Form N–SAR; Section II.B.5, "Form 8–K or Internet Disclosure Regarding Changes to, or Waivers from, the Code of Ethics," in Section 406/407 Adopting Release, *supra* note 8.

[57] Instruction 4 to Item 2 of Form N–CSR; Instruction 102P3(a)(10) of Form N–SAR; "Form 8–K or Internet Disclosure Regarding Changes to, or Waivers from, the Code of Ethics," in Section 406/407 Adopting Release, *supra* note 8.

[58] Item 2 of Form N–CSR; Instruction 102P3(a) of Form N–SAR.

ethics pursuant to rule 17j–1 under the Investment Company Act, and that in any event, investment companies are highly regulated under the Investment Company Act, which addresses the underlying ethical concerns substantively rather than simply through disclosure.[59]

We continue to believe, however, that the rule should apply with equal force to investment companies and operating companies, and we note that the Sarbanes-Oxley Act does not distinguish between them with respect to the code of ethics requirements. We recognize that rule 17j–1 currently requires investment companies, and their investment advisers and principal underwriters, to adopt codes of ethics designed to prevent fraud resulting from personal trading in securities by portfolio managers and other employees. The amendments we are adopting today, however, will address a broader range of conduct, including disclosure provided in filings with the Commission; compliance with governmental laws, rules, and regulations; and ethical conduct generally, including the ethical handling of actual or apparent conflicts of interest.[60]

The rules we are adopting will require disclosure of an investment company's code of ethics that applies to its principal executive officer, principal financial officer, principal accounting officer or controller, or persons performing similar functions, regardless of whether these individuals are employed by the investment company or a third party.[61] Our proposed rules would also have required disclosure of certain codes of ethics of an investment company's investment adviser and principal underwriter that apply to the adviser's and underwriter's principal executive officer and senior financial officers.[62]

We are persuaded by commenters that including codes of ethics of the investment adviser and principal underwriter goes beyond the intended scope of Section 406. In large financial services organizations, the principal executive officer and senior financial officers may have little to do with the operations or financial reporting of the investment company, but are instead responsible principally for the adviser's or underwriter's own operations and financial reporting.

In addition, we have determined to exclude UITs from the code of ethics disclosure requirements. Because UITs are unmanaged, passive investment companies, they typically do not have principal executive officers, principal financial officers, principal accounting officers or controllers, or persons performing similar functions. In light of the fact that we have limited the rules we are adopting to these persons, we believe that it is appropriate to exclude UITs from the disclosure requirements. We note that we have provided a similar exclusion to issuers of asset-backed securities.[63]

C. Section 407 of the Sarbanes-Oxley Act—Audit Committee Financial Experts

We are adopting, with modifications to address commenters' concerns, our proposals that implement Section 407 of the Sarbanes-Oxley Act with respect to registered management investment companies. These requirements are similar to those that we recently adopted for operating companies, and we direct investment companies to that release for guidance concerning these requirements.[64] Under the provisions that we are adopting, a registered management investment company must disclose annually that its board of directors has determined that the company either: (i) Has at least one "audit committee financial expert" serving on its audit committee, and if so, the name of the expert and whether the expert is "independent'; or (ii) does not have an audit committee-financial expert serving on its audit committee. An investment company disclosing that it does not have an audit committee financial expert must explain why it does not have such an expert.[65]

The rules, as adopted, reflect modifications that are similar to those that we recently made to the proposed financial expert disclosure requirements for operating companies, for the reasons described in the release adopting these disclosure requirements for operating companies. These modifications include:

- Use of the term "audit committee financial expert" rather than "financial expert;"[66]
- Modification of the proposals that would have required disclosure of the number and names of audit committee financial experts serving on a company's audit committee to more closely track the language used in Section 407 of the Sarbanes-Oxley Act, and to require a company to disclose that its board of directors has determined that the company either has at least one audit committee financial expert serving on its audit committee or does not have an audit committee financial expert serving on its audit committee;[67]
- Modification of the proposals to permit, but not require, an investment company to disclose that it has more than one audit committee financial expert on its audit committee. Therefore, once an investment company's board determines that a particular audit committee member qualifies as an audit committee financial expert, it may, but is not required to, determine whether additional audit committee members also qualify as experts. Every investment company subject to the audit committee disclosure requirements would, however, have to determine whether or not it has at least one audit committee financial expert; a company will not satisfy the new disclosure requirements by stating that it has decided not to make a determination or by simply disclosing the qualifications of all of its audit committee members. Furthermore, if the company's board determines that at least one of the audit committee members qualifies as an expert, the company must accurately disclose this fact. It will not be appropriate for a company to disclose that it does not have an audit committee financial expert if its board has determined that

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[59] 17 CFR 270.17j–1.

[60] General Instruction D to Form N–CSR permits a registered management investment company to incorporate its code of ethics by reference from another document, such as its registration statement. *See* Item 23(p) of Form N–1A; Item 24.2.r of Form N–2; Item 28(b)(17) of Form N–3 (requiring codes of ethics required by rule 17j–1 to be filed as exhibits to registration statements).

[61] Item 2 of Form N–CSR; Instruction 102P3(a) of Form N–SAR.

[62] Section 406/407 Proposing Release, *supra* note, 67 FR at 66217.

[63] *See* Instruction 3 to Item 406 of Regulation S–K [17 CFR 229.406]; Section II.D., "Asset-Backed Issuers," in Section 406/407 Adopting Release, *supra* note 8.

[64] *See* Section II.A, "Audit Committee Financial Experts," in Section 406/407 Adopting Release, *supra* note 8.

[65] Registered management investment companies other than SBICs will be required to provide the audit committee financial expert disclosure in Item 3 of Form N–CSR. SBICs will be required to provide this disclosure in an exhibit to Form N–SAR, pursuant to Instruction 102P3(b) of Form N–SAR (SBICs).

[66] Item 3 of Form N–CSR; Instruction 102P3(b) of Form N–SAR; Section II.A.1, "Title of the Expert," in Section 406/407 Adopting Release, *supra* note 8. Throughout this release, we refer to both "audit committee financial experts" and "financial experts" as appropriate in a particular context. For example, when discussing statutory provisions, we refer to "financial experts." For purposes of the discussions in this release, the meanings of these terms are identical.

[67] Item 3(a)(1) of Form N–CSR; Instruction 102P3(b)(1) of Form N–SAR; Section II.A.2, "Disclosure of the Number and Names of Audit Committee Financial Experts," in Section 406/407 Adopting Release, *supra* note 8.

such an expert serves on the audit committee;[69]

• Reorganization of the components of the definition of audit committee financial expert to make it easier to read and to emphasize, by including them in the first part of the definition, the attributes that an audit committee financial expert must possess;[69]

• Revision of the second attribute to state that the audit committee financial expert must have the ability to assess the general application of generally accepted accounting principles in connection with the accounting for estimates, accruals, and reserves, rather than stating that the expert must have experience applying these principles;[70]

• Broadening of the third attribute by requiring an audit committee financial expert to have experience "preparing, auditing, analyzing, or evaluating" financial statements that present a breadth and level of complexity of accounting issues that are generally comparable to the breadth and complexity of issues that can reasonably be expected to be raised by the registrant's financial statements, or experience actively supervising a person who prepares, audits, analyzes or evaluates financial statements;[71]

• Modification of the fourth attribute to require understanding of, rather than experience with, internal controls and procedures for financial reporting;[72]

• Modification of the definition to state that a person must have acquired the five necessary attributes through any one or more of the following: (i) Education and experience as a principal financial officer, principal accounting officer, controller, public accountant, or auditor or experience in one or more positions that involve the performance of similar functions; (ii) experience actively supervising a principal financial officer, principal accounting officer, controller, public accountant, auditor, or person performing similar functions; (iii) experience overseeing or assessing the performance of companies or public accountants with respect to the preparation, auditing, or evaluation of financial statements; or (iv) other relevant experience.[73]

• Elimination of the requirement that an audit committee financial expert must have gained the relevant expertise with a company that was required to file reports pursuant to Section 13(a) or 15(d) of the Exchange Act;[74]

• Addition of a requirement that if a person qualifies as an audit committee financial expert by virtue of possessing "other relevant experience," the company's disclosure briefly list that person's experience;[75]

• Elimination of the list of factors that a company's board of directors should consider in evaluating the education and experience of an audit committee financial expert candidate;[76] and

• Addition of a safe harbor in the audit committee disclosure requirements.[77]

We wish to emphasize that, as with an operating company, the board of an investment company must ensure that it names an audit committee financial expert who embodies the highest standards of personal and professional integrity. In this regard, a board should consider any disciplinary actions to which a potential expert is, or has been, subject in determining whether that person would be a suitable audit committee financial expert.[78]

The disclosure requirements that we are adopting will apply to all registered management investment companies, regardless of whether they are required to file reports under Section 13(a) or 15(d) of the Exchange Act. Several commenters objected to our proposal to require a registered management investment company to provide disclosure about audit committee financial experts serving on its audit committee. They argued that investment companies should be excluded entirely from any disclosure requirement relating to audit committee financial experts, because the nature of investment company accounting is such that investment company audit committees rarely are required to apply complex accounting principles. These commenters stated that the preparation of investment company financial statements is straightforward and does not present the types of circumstances that require the exercise of judgment, such as selection of accounting policies, that preparation of the financial statements of operating companies would.

We continue to believe, however, that the rule should apply with equal force to investment companies and operating companies, and we note that the Sarbanes-Oxley Act does not distinguish between them with respect to the financial expert disclosure requirements. In addition, while investment company financial statements may, in many cases, be simpler than those of some operating companies, the underlying financial systems, reporting mechanisms, and internal controls are sufficiently complex that an investment company's audit committee would benefit from having one or more members who meet the definition of audit committee financial expert. Finally, we note that the modifications that we have made to the definition of an audit committee financial expert should address the concerns of commenters that the definition was too narrowly drawn to apply in the context of investment companies. The commenters argued, in particular, that the second, third, and fourth required attributes were too restrictive, and that experience as a public accountant or auditor, or principal financial officer, controller, or public accounting officer of a company should not be the exclusive means for acquiring the attributes. As described above, we have made changes that are responsive to these concerns.

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[69] Instruction 2 to Item 3(a) of Form N–CSR; Instruction 102P3(b)(5) of Form N–SAR; Section II.A.2, "Disclosure of the Number and Names of Audit Committee Financial Experts," in Section 406/407 Adopting Release, *supra* note.

[70] Items 3(b) and 3(c) of Form N–CSR; Instructions 102P3(b)(6) and (b)(7) of Form N–SAR; Section II.A.4.d., "Discussion of Significant Modifications to the Proposed Definition of "Financial Expert,'" in Section 406/407 Adopting Release, *supra* note 8.

[71] Item 3(b)(2) of Form N–CSR; Instruction 102P3(b)(6)(ii) of Form N–SAR; Section II.A.4.d.(ii), "Discussion of Significant Modifications to the Proposed Definition of "Financial Expert,'" in Section 406/407 Adopting Release, *supra* note.

[72] Item 3(b)(3) of Form N–CSR; Instruction 102P3(b)(6)(iii) of Form N–SAR; Section II.A.4.d., "Discussion of Significant Modifications to the Proposed Definition of "Financial Expert,'" in Section 406/407 Adopting Release, *supra* note 8. By active supervision, we do not simply mean that a traditional hierarchical reporting relationship exists between supervisor and those being supervised. Rather, we mean that a person engaged in active supervision addresses, albeit at a supervisory level, the same general types of issues regarding preparation, auditing, analysis, or evaluation of financial statements as those addressed by the person or persons being supervised.

[73] Item 3(b)(4) of Form N–CSR; Instruction 102P3(b)(6)(iv) of Form N–SAR; Section II.A.4.d., "Discussion of Significant Modifications to the Proposed Definition of "Financial Expert,'" in Section 406/407 Adopting Release, *supra* note 8.

[73] Item 3(c) of Form N–CSR; Instruction 102P3(b)(7) of Form N–SAR; Section II.A.4.d., "Discussion of Significant Modifications to the Proposed Definition of "Financial Expert,'" in Section 406/407 Adopting Release, *supra* note 8.

[74] Item 3(c) of Form N–CSR; Instruction 102P3(b)(7) of Form N–SAR; Section II.A.4.d., "Discussion of Significant Modifications to the Proposed Definition of "Financial Expert,'" in Section 406/407 Adopting Release, *supra* note 8.

[75] Instruction to Item 3 of Form N–CSR; Instruction 102P3(b)(9) of Form N–SAR.

[76] Section II.A.4.d., "Discussion of Significant Modifications to the Proposed Definition of "Financial Expert,'" in Section 406/407 Adopting Release, *supra* note 8.

[77] Item 3(d) of Form N–CSR; Instruction 102P3(b)(8) of Form N–SAR; Section II.A.5, "Safe Harbor from Liability for Audit Committee Financial Experts," in Section 406/407 Adopting Release, *supra* note 8.

[78] Section II.A.4.d., "Discussion of Significant Modifications to the Proposed Definition of "Financial Expert,'" in Section 406/407 Adopting Release, *supra* note 8.

We are adopting, substantially as proposed, a test for whether an audit committee financial expert may be considered to be "independent" that differs from the test we have adopted for operating companies. The definition of "independence" adopted for operating companies refers to the definition of "independent" used in Item 7(d)(3)(iv) of Schedule 14A, which generally is not applicable to investment companies.[79] Under the rules we are adopting, in order to be considered "independent," a member of an audit committee of a registered management investment company may not, other than in his or her capacity as a member of the audit committee, the board of directors, or any other board committee: (i) Accept directly or indirectly any consulting, advisory, or other compensatory fee from the issuer; or (ii) be an "interested person" of the investment company, as defined in Section 2(a)(19) of the Investment Company Act.[80]

III. Transition Provisions and Compliance Dates

Except as provided in the following sentence, the effective date of the rules, rule and form amendments, and Form N–CSR is March 1, 2003. The effective date of the removal of the certification requirement from Form N–SAR for registered management investment companies other than SBICs is May 1, 2003.

A registered management investment company other than an SBIC that has a fiscal annual or semi-annual period ending on or before March 31, 2003, may choose either to file Form N–CSR or to continue to comply with the certification requirements of Form N–SAR. A registered management investment company that elects to file Form N–CSR for a fiscal annual or semi-annual period ending on or before March 31, 2003, is not required to comply with paragraphs (b)(4), (5), and (6) of Investment Company Act Rule 30a-2, Item 9(a) of Form N–CSR, or paragraph (b) of Exchange Act Rules 13a-15 and 15d-15 and Investment Company Act Rule 30a-3 with respect to that Form N–CSR. A registered management investment company that elects to certify Form N–SAR for a fiscal annual or semi-annual period ending on or before March 31, 2003, must file its report to shareholders for that period as currently required. This transition is designed so that each such registered management investment company other than an SBIC will be required to provide a certification of its financial statements and financial information, while providing the flexibility to each company to determine whether to certify Form N–SAR or Form N–CSR during the transition period and sufficient time to establish and evaluate disclosure controls and procedures for Form N–CSR. A registered management investment company other than an SBIC that has a fiscal annual or semi-annual period ending on or after April 1, 2003, is required to file Form N–CSR for that period. Beginning immediately, a unit investment trust or an SBIC may omit the certification from Form N–SAR.

Registered management investment companies must comply with the code of ethics disclosure requirements promulgated under Section 406 of the Sarbanes-Oxley Act in their annual reports on Form N–CSR or N–SAR for fiscal years ending on or after July 15, 2003. They also must comply with the requirements regarding disclosure of amendments to, and waivers from, their ethics codes on or after the date on which they file their first annual report on Form N–CSR or N–SAR in which disclosure of their code of ethics is required. Registered management investment companies similarly must comply with the audit committee financial expert disclosure requirements promulgated under Section 407 of the Sarbanes-Oxley Act in their annual reports on Form N–CSR or N–SAR for fiscal years ending on or after July 15, 2003.

IV. Paperwork Reduction Act

The new rules and rule and form amendments contain "collection of information" requirements within the meaning of the Paperwork Reduction Act of 1995 ("PRA").[81] We published notice requesting comment on the collection of information requirements in the release proposing Form N–CSR,[82] submitted these requirements to the Office of Management and Budget ("OMB") for review in accordance with the PRA,[83] and received approval by OMB for this collection of information. In addition, we published notice requesting comment on the collection of information requirements in the proposing release implementing Sections 406 and 407 of the Sarbanes-Oxley Act[84] and submitted these requirements to OMB for review. This request is pending before OMB.

The titles for the collection of information are "Form N–CSR under the Investment Company Act of 1940 and Securities Exchange Act of 1934, Certified Shareholder Report;" "Form N–SAR under the Investment Company Act of 1940, Semi-Annual Report for Registered Investment Companies;" and "Form 12b–25 under the Securities Exchange Act of 1934, Notification of Late Filing."

Form N–SAR (OMB Control No. 3235–0330) under the Exchange Act and the Investment Company Act [17 CFR 249.330; 17 CFR 274.101] is used by registered investment companies to file periodic reports with the Commission. Form N–CSR (OMB Control No. 3235–0570) under the Exchange Act and the Investment Company Act [17 CFR 249.331; 17 CFR 274.128] will be used by registered management investment companies to file certified shareholder reports. Form 12b–25 (OMB Control No. 3235–0058) under the Exchange Act [17 CFR 249.322] provides notice to the Commission and the marketplace that a company will be unable to file a required report in a timely manner.

Compliance with the new rules and rule and form amendments is mandatory and the information provided will not be kept confidential. Under our rules for retention of manual signatures, registered investment companies have to maintain the certifications for five years.[85] An agency may not conduct or sponsor, and a person is not required to respond to, an information collection unless it displays a currently valid OMB control number.

A. Summary of New Rules

On August 28, 2002, the Commission implemented the certification requirement of Section 302 of the Sarbanes-Oxley Act with respect to registered investment companies by adopting new rule 30a–2 under the Investment Company Act and the Sarbanes-Oxley Act.[86] Rule 30a–2 requires a registered investment company that files periodic reports under Section 13(a) or 15(d) of the Exchange Act, *i.e.*, Form N–SAR, to include the certification specified by Section 302 in those periodic reports.

In a companion release, we also proposed to require registered management investment companies to file certified shareholder reports with the Commission on new Form N–CSR

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[79] *See* Item 7(d)(3)(vii) of Schedule 14A [17 CFR 240.14a-101] (providing that a registered investment company, other than a closed-end investment company, need not provide the information required by Item 7(d)(3) about its audit committee).

[80] Item 3(a)(2) of Form N–CSR; Instruction 102P3(b)(2) of Form N–SAR.

[81] 44 U.S.C 3501 *et seq.*

[82] Form N–CSR Proposing Release, *supra* note 5.

[83] 44 U.S.C. 3507(d) and 5 CFR 1320.11.

[84] Investment Company Act Release No. 25775 (Oct. 22, 2002) [67 FR 66208 (Oct. 30, 2002)].

[85] *See* Rule 302(b) of Regulation S–T [17 CFR 232.302(b)].

[86] Investment Company Act Release No. 25722 (Aug. 28, 2002) [67 FR 57276 (Sept. 9, 2002)].

and to designate these certified shareholder reports as reports that are required under Sections 13(a) and 15(d) of the Exchange Act and Section 30 of the Investment Company Act.[87] As we noted in that release, we believe that the certification requirement of Section 302 of the Sarbanes-Oxley Act was intended to improve the quality of the disclosure that a company provides regarding its financial condition in its reports to investors.[88] For registered management investment companies, the required reports to shareholders, rather than reports on Form N–SAR, are the primary vehicle for providing financial information to investors. We believe that the information in these reports to shareholders should be certified, and we are adopting amendments to our forms and rules to require this certification.

We are adopting an amendment to rule 30b2–1 under the Investment Company Act, which will require a registered management investment company to file a report with the Commission on new Form N–CSR containing (i) a copy of any required shareholder report, (ii) additional information regarding disclosure controls and procedures, and (iii) the certification required by the Sarbanes-Oxley Act.[89] New rule 30d–1 designates certified shareholder reports on Form N–CSR as periodic reports under Section 13(a) or 15(d) of the Exchange Act.[90] New rule 30a–3 requires all registered management investment companies to maintain, and regularly evaluate the effectiveness of, disclosure controls and procedures designed to ensure that the information required in filings under the Exchange Act is recorded, processed, summarized, and reported on a timely basis. We are also amending the definition of "disclosure controls and procedures" in rule 30a–2(c) to make clear that such controls and procedures apply to all registered management investment companies regardless of whether they are required to file reports on Form N–CSR under the Exchange Act, and that they do not apply to SBICs and UITs filing Exchange Act reports on Form N–SAR.[91] Amendments to Exchange Act rules 13a–15 and 15d–15 will exclude SBICs and UITs from the requirements to maintain disclosure controls and procedures for purposes of the evaluation conducted as part of the required certification.[92] We are also removing the requirement that Form N–SAR be certified by a registered investment company's principal executive and financial officers. This shifts the information collection burden relating to the certification specified by Section 302 of the Sarbanes-Oxley Act, for registered management investment companies, from Form N–SAR to Form N–CSR.

Finally, we are requiring registered management investment companies to include new disclosures on Form N–CSR or Form N–SAR, as appropriate, in order to implement the requirements of Sections 406 and 407 of the Sarbanes-Oxley Act of 2002. First, the rules require a management investment company to disclose whether it has at least one "audit committee financial expert" serving on its audit committee, and if so, the name of the expert and whether the expert is independent of management. A management investment company that does not have an audit committee financial expert must disclose this fact and explain why it has no such expert. Second, the rules require a management investment company to disclose whether it has adopted a code of ethics that applies to the company's principal executive officer and senior financial officers, or persons performing similar functions, regardless of whether they are employed by the management investment company or a third party. A management investment company disclosing that it has not adopted such a code must disclose this fact and explain why it has not done so. A management investment company also will be required to disclose amendments to, and waivers from, the code of ethics relating to any of those officers.

All of these new rules and rule amendments are part of the collection of information of new Form N–CSR or Form N–SAR (in the case of SBICs) because Form N–CSR contains the requirement that each registered management investment company filing reports on this form has to certify the contents of the report, and Form N–CSR and Form N–SAR contain the requirement that management investment companies must provide the appropriate audit committee financial expert and code of ethics disclosures.

We are amending our rules and forms to provide that, for registered management investment companies other than small business investment companies, Form N–SAR will be filed under the Investment Company Act only and not the Exchange Act.[93] Also, we have amended Form N–SAR to eliminate the requirement that UITs and SBICs certify their reports on Form N–SAR.[94] We are also adopting amendments to require an investment company to file a Form 12b-25 if it will not be able to file a report on Form N–CSR in a timely manner.[95]

B. Reporting and Cost Burden Estimates

Certification of Form N–CSR

The reporting burden associated with the certification requirement requires the principal executive and financial officer to review and analyze each periodic report to be filed by an investment company in order to make the required certification. In the release proposing Form N–CSR, we estimated a total of five burden hours per respondent for the certification and asked for comment on this estimate.[96] We received three comment letters specifically discussing our estimate of the burden for filing and certifying Form

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[87] *See* Form N–CSR Proposing Release, *supra* note 5.

A management investment company is an investment company other than a unit investment trust or face-amount certificate company. *See* Section 4 of the Investment Company Act [15 U.S.C. 80a–4]. Management investment companies typically issue shares representing an undivided proportionate interest in a changing pool of securities, and include open-end and closed-end companies. *See* T. Lemke, G. Lins, A. Smith III, Regulation of Investment Companies, Vol. 1, ch. 4, § 4.04, at 4–5 (2002).

[88] Form N–CSR Proposing Release, *supra* note 5, 67 FR at 57299.

[89] Rule 30b2–1(a) under the Investment Company Act [17 CFR 270.30b2–1(a)]; Items 1, 9, and 10(b). In addition, we are amending rule 30a–2 under the Investment Company Act [17 CFR 270.30a–2] to require Form N–CSR to include the certification required by Section 302 of the Sarbanes-Oxley Act.

[90] We are also adopting a technical conforming amendment that would delete the language in current rule 30a–1 [17 CFR 270.30a–1] stating that a registered management investment company required to file an annual report pursuant to Section 13(a) or 15(d) of the Exchange Act and Section 30(a) of the Investment Company Act shall be deemed to have satisfied its requirement to file an annual report by the filing of semi-annual reports on Form N–SAR. The amendments rename rule 30a–1 in order to specify that it relates to annual reports by registered unit investment trusts, and rename rule 30b1–1 [17 CFR 270.30b1–1] in order to specify that it relates to semi-annual reports of registered management investment companies.

[91] Rule 30a–2(c) under the Investment Company Act [17 CFR 270.30a–2].

[92] 17 CFR 240.13a–15(a); 17 CFR 240.15d–15(a).

[93] *See* Rule 30b1–1 under the Investment Company Act [17 CFR 270.30b1–1]; and General Instruction A to Form N–SAR [17 CFR 274.101]. In addition, we are adopting technical conforming amendments to rule 30b1–3 [17 CFR 270.30b1–3] to remove the reference to Form N–SAR.

[94] Instruction 102P3 of Form N–SAR; Instruction to Item 133 of Form N–SAR.

[95] Rule 12b-25(a) and (b)(2)(ii) under the Exchange Act [17 CFR 240.12b-25(a) and (b)(2)(ii)] and Exchange Act Form 12b-25 [17 CFR 249.322]. There is no collection of information for the amendments to rule 12b-25 because they are attributed to Form 12b-25.

[96] This estimate is based on the estimate of the burden of certification with respect to operating companies. *See* Investment Company Act Release No. 25722, *supra* note, 67 FR at 57284 (estimating PRA burden of certification of Forms 10–K, 10–KSB, 10–Q, 10–QSB, 20–F, and 40–F at five hours per form).

N–CSR. Two commenters claimed that our estimate was too low, because it did not reflect the fact that investment companies often have multiple portfolios. We note that our estimate already takes into account that many registered management investment companies have multiple portfolios. Our estimate of the hour burden required for operating companies to certify their reporting forms, such as Form 10–K, is similar to our estimate of the burden for investment companies.[97] While reports on Form N–CSR will contain financial statements for multiple portfolios, investment company financial statements are generally much simpler than operating company financial statements, and operating company reporting forms, such as Form 10–K, contain much information (*i.e.*, Management's Discussion and Analysis) that Form N–CSR will not contain. Based on the comments, however, we have revised our estimate, to estimate that the certification requirement required by Section 302 of the Sarbanes-Oxley Act will result in an increase of five burden hours per registrant per filing and an additional 0.5 hours per additional portfolio in connection with the certification of annual and semi-annual reports on Form N–CSR.[98]

Audit Committee Financial Expert

The amendments will increase the burden of completing Form N–CSR and Form N–SAR by requiring a management investment company to disclose whether it has at least one "audit committee financial expert" serving on its audit committee, and if so, the name of the expert and whether the expert is independent of management. A management investment company that does not have an audit committee financial expert must disclose this fact and explain why it has no such expert. In the release proposing these amendments, we estimated that the disclosure regarding audit committee financial experts would increase the annual burden of completing Form N–CSR or Form N–SAR by 0.5 hours per registered management investment company. We received no comments on this estimate. We believe the additional burden of these amendments would be limited, because they will not require any investment company to add an "audit committee financial expert" to its board. We estimate that the disclosure requirements regarding audit committee financial experts will result in an incremental increase of 0.5 burden hours per registrant per year in connection with preparing each annual report on Form N–CSR or Form N–SAR.[99] Management investment companies (other than SBICs) will have to provide this disclosure on Form N–CSR; SBICs will have to provide this disclosure on Form N–SAR.

Codes of Ethics

The amendments will require a registered management investment company to disclose whether it has adopted a written code of ethics for its principal executive officer, principal financial officer, principal accounting officer or controller, or persons serving similar functions, and file the code as an exhibit to Form N–CSR or Form N–SAR. An investment company disclosing that it has not adopted such a code must disclose this fact and explain why it has not done so. In the release proposing these amendments, we estimated that the disclosure regarding code of ethics would increase the annual burden by 0.5 hours per registered management investment company. We believe that the additional burden of these amendments would be limited, because they will not require any company to adopt such a code of ethics. Management should be readily able to determine whether or not its company has adopted a code of ethics. In certain cases, the required disclosure would require minimal analysis regarding why the company does not have a code. In addition, in the first year, registrants must file a copy of the code with the Commission. We estimate that the disclosure requirements regarding codes of ethics will also result in an incremental increase of 0.5 burden hours per registrant in connection with each annual report on Form N–CSR or Form N–SAR.[100] Management investment companies (other than SBICs) will have to make this disclosure on Form N–CSR; SBICs will have to make this disclosure on Form N–SAR.

Form N–SAR

The amendments remove the certification requirement from Form N–SAR and shift the burden of this requirement, for PRA purposes, to Form N–CSR. We estimate that about 4,500 registrants, including 3,702 management investment companies (including 2 SBICs), and 798 UITs, currently file reports on Form N–SAR. Based on an increase of 2 burden hours relating to audit committee financial experts and codes of ethics disclosure[101] and a decrease of 41,010 burden hours relating to the removal of the certification of Form N–SAR,[102] we estimate that, in the aggregate, all respondents will have an incremental decrease of 41,008 burden hours associated with Form N–SAR to comply with the new rules and rule and form amendments.

Form N–CSR

We estimate that about 3,700 registrants will file Form N–CSR. Based on Commission experience with reporting forms in general and other related rules, we estimate that approximately 75% of the added burden hours will be expended by internal staff for internal review and the remaining 25% will be for outside legal costs associated with reviewing the new disclosures at a cost of $300 per hour.[103] Based on the burden hour estimate for the certification of Form N–CSR, the disclosure related to an audit committee financial expert, and the disclosure related to the code of ethics, we estimate that, in the aggregate, all respondents will incur an incremental increase of

[97] Investment Company Act Release No. 25722, *supra* note, 67 FR at 57284 (estimating PRA burden of certification of Forms 10–K, 10–KSB, 10–Q, 10–QSB, 20–F, and 40–F at five hours per form).

[98] Currently, the estimated total burden for the certification requirement of Form N–CSR is 37,000 hours, reflecting an estimate of 3,700 management investment companies filing twice a year and an estimate of five hours per filing. In response to comments, we are increasing this estimate by 6,150 hours to reflect the additional burden for certification of multiple portfolios. We calculate 6,150 hours as follows: We estimate that there are 9,850 total portfolios of registered management investment companies. This reflects 6,150 additional series (*i.e.*, series beyond the first series or the 3,700 series already accounted for in the burden estimate) of multiple series funds filing twice a year and 0.5 hours per additional series per filing. Based on our experience with reporting forms in general, we estimate that the incremental burden hours of reviewing financial statements for other series will be relatively limited because many series may be able to use the same certification process for many of the items (*i.e.*, disclosure controls and procedures). This new requirement will result in a new total of 43,150 burden hours for the certification requirement of Form N–CSR.

[99] We estimate the total new burden for this disclosure requirement to be 1,851 hours. ((0.5 hours × 3,700 management investment companies other than SBICs) + (0.5 hours × 2 SBICs) = 1,851 hours).

[100] We estimate the total new burden for this disclosure requirement to be 1,851 hours. (0.5 hours × 3,700 management investment companies other than SBICs) + (0.5 hours × 2 SBICs) = 1,851 hours.

[101] This estimate includes 1 hour for the audit committee financial expert disclosure (0.5 hours × 2 SBICs) and 1 hour for the code of ethics disclosure (0.5 hours × 2 SBICs).

[102] (3,702 management companies (including SBICs) × 10 hours annually) + (798 UITs × 5 hours annually) = 41,010 hours.

[103] These percentages are based on consultations with several issuers, law firms and other persons who regularly assist issuers in preparing and filing reports with the Commission. We have used an estimated hourly rate of $300.00 to determine the estimated cost to issuers of having the required disclosures reviewed by outside counsel. We arrived at this hourly rate estimate based on consultations with several private law firms.

35,139 burden hours [104] and $3,513,900 in outside legal costs [105] to comply with the new rules and rule and form amendments.

Form 12b–25

Form 12b–25 provides notice to the Commission and the marketplace that registrants will be unable to file a required report in a timely manner. If certain conditions are met, the registrant will be granted an automatic filing extension. The proposed amendments would permit investment companies to use Form 12b–25 for the purpose of obtaining extensions with respect to filing Form N–CSR. We estimate that an average of 168 investment companies per year use Form 12b–25 to obtain extensions of time for filing Form N–SAR spending, on average, approximately 2.5 hours completing the form. We estimate that the same number of investment companies, though not necessarily the same specific investment companies, will also use Form 12b–25 to obtain extensions of filing Form N–CSR annually, resulting in an incremental increase of 420 burden hours [106] to comply with the new rules and form and form and rule amendments.

V. Cost-Benefit Analysis

The Commission is sensitive to the costs and benefits imposed by its rules. Our rules and rule and form amendments more fully implement Section 302 of the Sarbanes-Oxley Act by requiring a registered management investment company, other than a small business investment company ("SBIC"), to file certified shareholder reports with the Commission on Form N–CSR containing (i) a copy of any required report to shareholders, (ii) additional information regarding disclosure controls and procedures, and (iii) the certification required by Section 302 of the Sarbanes-Oxley Act. These amendments also will designate certified shareholder reports on Form N–CSR, filed by management investment companies, as periodic reports filed with the Commission under the Exchange Act. Therefore, these amendments will require the certification of each management investment company's principal executive and financial officer to be included in its certified shareholder reports on Form N–CSR. We also are amending the instructions to Form N–SAR, the semi-annual reporting form for registered investment companies, to remove the certification requirement from the form and designate it as an Investment Company Act only filing for registered management investment companies other than SBICs. Further, we are amending Form 12b–25 to permit investment companies to use Form 12b–25 for the purpose of obtaining extensions with respect to filing Form N–CSR. In addition, the rules will require all registered management investment companies, other than SBICs, to maintain, and regularly evaluate the effectiveness of, disclosure controls and procedures designed to ensure that the information required in their filings on Form N–CSR is recorded, processed, summarized, and reported on a timely basis.

Finally, we are requiring registered management investment companies to include new disclosures on Form N–CSR or Form N–SAR, as appropriate, in order to implement the requirements of Sections 406 and 407 of the Sarbanes-Oxley Act of 2002. First, the rules require a management investment company to disclose whether it has at least one "audit committee financial expert" serving on its audit committee, and if so, the name of the expert and whether the expert is independent of management. A management investment company that does not have an audit committee financial expert must disclose this fact and explain why it has no such expert. Second, the rules require a management investment company to disclose whether it has adopted a code of ethics that applies to the company's principal executive officer and senior financial officers, or persons performing similar functions, regardless of whether they are employed by the management investment company or any third party. A management investment company disclosing that it has not adopted such a code must disclose this fact and explain why it has not done so. A management investment company also will be required to disclose amendments to, and waivers from, the code of ethics relating to any of those officers.

We received one comment letter specifically addressing this Section. The commenter urged the Commission to review its cost-benefit analysis with a view not only to the new rules but to the increased costs, such as legal and accounting fees, imposed on smaller investment companies associated with other recently adopted rules, such as anti-money laundering procedures. The purpose of this cost-benefit analysis is to focus on the costs associated only with the adoption of the rules requiring the filing of Form N–CSR. The costs associated with other recently adopted rules imposed on smaller investment companies should be discussed in the cost-benefit sections of those specific rulemakings.

A. Benefits

Certification of Form N–CSR

In adopting these new rules and rule and form amendments, we intend to more fully implement the intent of Section 302 of the Sarbanes-Oxley Act, by improving the quality of the disclosure that an investment company provides about its financial condition in its periodic reports to investors. Section 302 of the Sarbanes-Oxley Act requires the principal executive and financial officers of an issuer to certify the information contained in the issuer's quarterly or annual reports filed under Section 13(a) or 15(d) of the Exchange Act. Currently, Form N–SAR is the reporting form for registered investment companies that satisfies the filing requirement under Section 13(a) or 15(d) of the Exchange Act. Form N–SAR does not contain financial statements and is a regulatory compliance form that is not delivered to investors. Thus, the amendments will remove the certification requirement from Form N–SAR, a form that does not contain financial statements, and will impose the certification requirement on Form N–CSR, a form that contains financial statements. Requiring a registered investment company's principal executive and financial officers to file certified shareholder reports on Form N–CSR will require these officers to certify, in part, that the financial statements and other financial information contained in the report fairly present in all material respects the financial condition, results of operations, changes in net assets, and cash flows (if the financial statements are required to include a statement of cash flows) of the registered investment company.

The rules should help to ensure that registered investment companies maintain sufficient disclosure controls and procedures to provide reasonable assurance to investors that registered investment companies can record, process, summarize, and report on a timely basis information that is required on Form N–CSR, including information

[104] 43,150 hours for certification + 1,851 hours for audit committee financial expert disclosure + 1,851 hours for code of ethics disclosure = 46,852 hours x .75 = 35,139 hours.

[105] 43,150 hours for certification + 1,851 hours for audit committee financial expert disclosure + 1,851 hours for code of ethics disclosure = 46,852 hours × .25 for outside counsel × $300 per hour = $3,513,900.

[106] 168 registered investment companies × 2.5 hours = 420 burden hours.

contained in reports to shareholders.[107] To the extent that registered investment companies do not maintain adequate procedures, the rules should lead to the development, or enhancement and modernization, of these procedures. Further, the certification requirement in our rules will require an investment company under the supervision of its management to conduct an evaluation of these disclosure controls and procedures within the 90-day period prior to the filing date of each report requiring certification. This will help to ensure that registered investment companies devote adequate resources and attention to the maintenance of their reporting systems. Additionally, the required evaluation will help to ensure the continuous, orderly, and timely flow of information within the registered investment company and, ultimately, to investors.

By emphasizing the importance of the role of senior officers in the reporting process, the new rules and rule and form amendments will help to enhance investor confidence in the quality of the disclosure in registered investment companies' reports to shareholders. This, in turn, will help to encourage investor confidence in these investment companies. Even though the certification is consistent with the current obligation of officers and directors of a mutual fund not to make statements that are materially misleading, we believe that investors may benefit from the certification because the certifying officers provide additional assurance to investors that the reports that they file under the Exchange Act meet this standard. We requested comment on these benefits, but received none.

Audit Committee Financial Expert

A management investment company must disclose whether it has at least one "audit committee financial expert" serving on its audit committee, and if so, the name of the expert and whether the expert is independent of management. A management investment company that does not have an audit committee financial expert must disclose this fact and explain why it has no such expert. We believe that investors will benefit from this disclosure by being able to consider it when reviewing the disclosure currently required about the background and affiliations of the directors of the investment company. Investors will also benefit to the extent that having an audit committee financial expert on an audit committee of a company increases their confidence in the company. The modifications we are making to our proposal will not reduce the level of required expertise and thus will not mitigate the benefits to investor confidence of requiring this disclosure. We requested comment on these benefits, but received none.

Codes of Ethics

The requirement that investment companies file copies of their codes of ethics will allow investors to better understand the ethical principles that guide executives of companies in which they invest. Investors will also benefit to the extent that having disclosure of a code of ethics of a company increases their confidence in the company. We requested comment on these benefits, but received none.

B. Costs

While the new rules and rule and form amendments may lead to some additional costs for registered investment companies, we believe that these costs should be limited.

Certification of Form N–CSR

These amendments will require each registered management investment company's principal executive and financial officer to certify the information contained in its certified shareholder reports on Form N–CSR. In order to provide the required certification, each principal executive and financial officer will need to review these reports. We believe that these officers already review these reports, so there should be no additional burden imposed on these companies. To the extent that these officers would need to spend additional time critically reviewing the overall context of the disclosure provided in these reports, the company would incur costs which are difficult for us to quantify.

We believe that most registered management investment companies already maintain some form of disclosure controls and procedures for identifying and processing the information needed to satisfy their disclosure obligations to their shareholders. The amendments do not dictate that registered investment companies follow any particular procedure. Alternatively, we could have required specific controls and procedures for all investment companies. By allowing management investment companies to determine what procedures are necessary to meet the obligations of the new rules, the Commission is mitigating the costs associated with compliance. Some registered management investment companies may need to institute appropriate procedures while others may need to enhance existing informal or ad hoc procedures. These incremental costs are difficult to quantify. We do not have data to quantify the cost of implementing, or upgrading and strengthening existing, internal reporting procedures.

The requirement in the certification that disclosure controls and procedures be evaluated within 90 days of the filing of a report may result in costs for registered management investment companies. Many registered management investment companies may already regularly monitor and evaluate their procedures. However, the size and scope of these internal systems are likely to vary among registered management investment companies, and it is difficult to provide an accurate cost estimate.

Audit Committee Financial Experts

The added burden associated with the requirements to name the audit committee financial expert and disclose whether the audit committee financial expert is independent should be minimal. We have added a safe harbor provision to clarify that we do not intend to increase or decrease the current level of liability of audit committee members, or the audit committee member determined to be the expert, by requiring the disclosure as to whether an audit committee financial expert serves on the audit committee. We do not think that the requirement to name the audit committee financial expert should affect the expert's potential liability as an audit committee member. We requested comment on these costs, but received none.

Codes of Ethics

We also note that we are adopting rules that require a registered management investment company to provide disclosure of any codes of ethics applicable to its principal executive officer and senior financial officers, regardless of whether they are employees of the registrant or a third party and provide this disclosure on Form N–CSR or Form N–SAR (in the case of SBICs). This additional disclosure may impose certain costs such as retrieval, printing and copying costs. However, this information should be readily available to the board of directors and management of the investment company. Therefore, we estimate the additional costs to investment companies in complying with these provisions will be limited.

[107] *See* new rule 30a–3 under the Investment Company Act [17 CFR 270.30a–3].

We requested comment on these costs, but received none.

We note that we have modified our proposed rules to provide two alternatives to the code of ethics filing requirement. An investment company may either post its code of ethics on its website if it discloses that it intends to do so in its report on Form N–CSR or N–SAR, or undertake in its report on Form N–CSR or N–SAR to provide investors with a copy of its code of ethics upon request. These alternatives should allow registrants to choose the most cost-efficient method to meet the new requirements.

We believe that the additional audit committee financial expert and code of ethics requirements are necessary to implement the purposes of the Sarbanes-Oxley Act and will impose minimal additional burden on companies. For example, we expect that investment companies will incur added costs to disclose the name of the audit committee financial expert, to disclose whether that person is independent and to file or otherwise make available copies of their codes of ethics to investors. Investment companies electing to disclose their codes of ethics, and changes in and waivers from their codes of ethics, via their websites in lieu of publicly filing such disclosure on Form N–CSR or N–SAR must disclose this election in their reports on Form N–CSR or N–SAR. Such costs do not include the costs imposed on investment companies by the Sarbanes-Oxley Act itself. Rather, they reflect the costs of our requirements beyond the requirements of the Sarbanes-Oxley Act.

Total Cost Calculations

For purposes of the PRA,[108] with respect to Form N–SAR, we further estimate that the removal of the certification requirement will remove an incremental 41,010 hours from the current total burden hours or $6,151,500[109] and the disclosure of the code of ethics and audit committee financial experts will add an incremental 2 burden hours to the current total burden hours or $259.[110] With respect to Form N–CSR, all respondents will incur an incremental increase of 35,139 burden hours[111] or $5,152,782[112] and $3,513,900 in outside legal costs[113] to comply with the amendments. The current total burden hours of Form 12b–25 will incrementally increase by 420 hours or $15,468[114] to comply with the amendments.

VI. Consideration of Burden on Competition; Promotion of Efficiency, Competition, and Capital Formation

Section 23(a)(2) of the Exchange Act requires us, when adopting rules under the Exchange Act, to consider the impact that any new rule would have on competition. Section 23(a)(2) also prohibits us from adopting any rule that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.[115] In addition, Section 2(c) of the Investment Company Act,[116] Section 2(b) of the Securities Act[117] and Section 3(f) of the Exchange Act[118] require the Commission, when engaging in rulemaking that requires it to consider or determine whether an action is necessary or appropriate in the public interest, to consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation. We received no comments relating to this specific section.

The new rules and rule and form amendments are intended to more fully implement the intent of Section 302 of the Sarbanes-Oxley Act that we adopt rules requiring the principal executive and financial officers of investment companies to certify the accuracy of their periodic reports filed pursuant to Section 13(a) or 15(d) of the Exchange Act. Also, the amendments are intended, in part, to increase transparency regarding the competence of the audit committee and the application of codes of ethics to a company's principal executive officer and senior financial officers. We believe that the amendments will benefit investors by providing them with greater confidence in the accuracy and completeness of the disclosure contained in the annual and semi-annual reports that they receive from management investment companies, including the financial statements. However, the magnitude of the effect of the amendments on efficiency, competition, and capital formation is difficult to quantify, particularly given that most management investment companies currently are required to comply with the certification requirements in recently adopted amendments to Form N–SAR, which we are removing as part of the amendments we are adopting today.

VII. Final Regulatory Flexibility Analysis

This Final Regulatory Flexibility Analysis ("Analysis") has been prepared in accordance with 5 U.S.C. 604, and relates to the Commission's rules and rule and form amendments under the Exchange Act and the Investment Company Act that will require registered management investment companies to file certified shareholder reports on Form N–CSR with the Commission, will designate these certified reports as reports that are required under Sections 13(a) and 15(d) of the Exchange Act, and will implement Sections 406 and 407 of the Sarbanes-Oxley Act. Initial Regulatory Flexibility Analyses ("IRFAs"), which were prepared in accordance with 5 U.S.C. 603, were published in the release proposing Form N–CSR and in the release proposing rules to implement Sections 406 and 407 of the Sarbanes-Oxley Act.

The rule amendments require each registered management investment company's principal executive and financial officers to certify the information contained in these reports in the manner specified by Section 302

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[108] See Section IV above.

[109] 41,010 hours × $150 = $6,151,500. The estimate cost savings is derived from the estimated reduction in burden hours, and an estimated hourly wage rate for principal executive officers of $150.00. The hourly wage rates for principal executive and financial officers are not published. We arrived at $150.00 based on other hourly wage rates published and consultations with individuals who are familiar with the hourly wage rates. This wage rate includes 35% for overhead. *See* Securities Industry Association, *Report on Management & Professional Earnings in the Securities Industry 2001* (Oct. 2001).

[110] 2 hours × $129.81 = $259. The hourly wage rate of $129.81 is based on published hourly wage rates for the deputy general counsel. This wage rate includes 35% for overhead. *See* Securities Industry Association, *Report on Management & Professional Earnings in the Securities Industry 2001* (Oct. 2001).

[111] 43,150 hours for certification + 1,851 hours for audit committee financial expert disclosure + 1,851 hours for code of ethics disclosure = 46,852 hours × .75 = 35,139 hours.

[112] 35,139 hours × $146.64 = $5,152,782. This estimated wage rate of $146.64 is a blended rate, based on published hourly wage rates for a deputy general counsel outside of New York City ($129.81) and our estimated wage rate for principal executive and financial officers ($150.00). We estimate that principal executive and financial officers would spend 5 hours certifying the annual reports on Form N–CSR and a deputy general counsel would spend 1 hour completing the code of ethics and audit committee financial expert disclosures. This yields a weighted wage rate of $146.64 (($129.81 × ⅙) + ($150.00 × ⅚)) = $146.64. This weighted wage rate includes 35% for overhead. *See* Securities Industry Association, *Report on Management & Professional Earnings in the Securities Industry 2001* (Oct. 2001).

[113] 43,150 hours for certification + 1,851 hours for audit committee financial expert disclosure + 1,851 hours for code of ethics disclosure = 46,852 hours × .25 of outside counsel × $300 per hour = $3,513,900.

[114] 420 hours × $36.83 = $15,468. We estimate that an attorney with an hourly wage rate of $36.83 completes Form 12b–25. This wage rate includes 35% for overhead. *See* Securities Industry Association, *Report on Management & Professional Earnings in the Securities Industry 2001* (Oct. 2001).

[115] 15 U.S.C. 78w(a)(2).

[116] 15 U.S.C. 80a–2(c).

[117] 15 U.S.C. 77b(b).

[118] 15 U.S.C. 78c(f).

of the Sarbanes-Oxley Act of 2002. In addition, we are providing that, for registered management investment companies other than small business investment companies, Form N–SAR will be filed under the Investment Company Act of 1940 only and not the Securities Exchange Act of 1934. We are also removing the requirement that Form N–SAR be certified by a registered investment company's principal executive and financial officers. Furthermore, we are adopting a new rule to require every registered management investment company, other than small business investment companies, to maintain disclosure controls and procedures designed to ensure that the information required in reports on Form N–CSR is recorded, processed, summarized, and reported on a timely basis. Finally, we are requiring registered management investment companies to include new disclosures on Form N–CSR or Form N–SAR, as appropriate, in order to implement the requirements of Sections 406 and 407 of the Sarbanes-Oxley Act of 2002. First, the rules require a management investment company to disclose whether it has at least one "audit committee financial expert" serving on its audit committee, and if so, the name of the expert and whether the expert is independent of management. A management investment company that does not have an audit committee financial expert must disclose this fact and explain why it has no such expert. Second, the rules require a management investment company to disclose whether it has adopted a code of ethics that applies to the company's principal executive officer and senior financial officers, or persons performing similar functions, regardless of whether they are employed by the management investment company or a third party. A management investment company disclosing that it has not adopted such a code must disclose this fact and explain why it has not done so. A management investment company also will be required to disclose amendments to, and waivers from, the code of ethics relating to any of those officers.

A. Need for, and Objectives of, Amendments

The purpose of the new rules and rule and form amendments is to more fully implement the intent of Section 302 of the Sarbanes-Oxley Act that we adopt rules requiring the officers of investment companies to certify the accuracy of their periodic reports filed pursuant to Section 13(a) or 15(d) of the Exchange Act.

The amendments will require registered management investment companies to file with the Commission certified shareholder reports on Form N–CSR, and will designate these reports as filings which satisfy the reporting requirements of Sections 13(a) and 15(d) of the Exchange Act for management investment companies. We believe that by requiring the certification required by Section 302 of the Sarbanes-Oxley Act to be included in a management investment company's certified shareholder report on Form N–CSR, which contains financial statements, we are more fully implementing the intent of Section 302, which is to improve the quality of the disclosure that companies provide about their financial condition in their shareholder reports. In addition, we are adopting new disclosure requirements required to comply with Sections 406 and 407 of the Sarbanes-Oxley Act.

B. Significant Issues Raised by Public Comment

In both the IRFA for the release proposing Form N–CSR and the IRFA for the release proposing to implement Sections 406 and 407 of the Sarbanes-Oxley Act, we requested comment on any aspect of the IRFAs, including the number of small entities that would be affected by the proposal, the nature of the impact, how to quantify the numbers of small entities that would be affected, and how to quantify the impact of the proposals. We received one comment letter concerning the IRFA for the release proposing Form N–CSR. The commenter raised a concern that more flexible alternatives should have been considered for small investment companies (such as not mandating Form N–CSR or new reporting requirements at all) because a small amount of fraud is committed by such investment companies. We note that Congress' mandate for the Commission to require the certification specified by Section 302 of the Sarbanes-Oxley Act does not distinguish between small and large investment companies. Further, our disclosure rules generally do not distinguish between small and large investment companies. While we have the discretion to require that only larger investment companies file new Form N–CSR, it would not be appropriate to provide investors in larger investment companies with greater confidence in the accuracy and completeness of the disclosure contained in the annual and semi-annual reports that they receive from their investment companies, but not investors in small investment companies.

C. Small Entities Subject to the Rule

The new rules and rule and form amendments will affect registered investment companies that are small entities. For purposes of the Regulatory Flexibility Act ("RFA"), an investment company is a small entity if it, together with other investment companies in the same group of related investment companies, has net assets of $50 million or less as of the end of its most recent fiscal year.[119] We estimate that there are approximately 205 investment companies together with other investment companies in the same group of related investment companies that have net assets of $50 million or less as of the end of its most recent fiscal year.[120]

D. Reporting, Recordkeeping, and Other Compliance Requirements

The new rules and rule and form amendments will require management investment companies to file certified shareholder reports on Form N–CSR, containing (i) a copy of any required shareholder report, (ii) additional information regarding disclosure controls and procedures, and (iii) the certification required by Section 302 of the Sarbanes-Oxley Act. The form of the certification will parallel the form of the certification we adopted on Form N–SAR, and on Forms 10–K and 10–Q. The certification will require the management investment company's principal executive and financial officers to state, in part, that, based on their knowledge, the information in the certified shareholder report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made not misleading with respect to the period covered by the report, and that the financial statements, and other financial information included in the report, fairly present the financial condition, results of operations, changes in net assets, and cash flows (if the financial statements are required to include a statement of cash flows) of the registrant. The certification also will require the signing officers to certify that they have established and maintained disclosure controls and procedures to ensure that material

[119] 17 CFR 270.0–10.

[120] This estimate is based on figures compiled by the Commission staff regarding investment companies registered on Form N–1A, Form N–2, and Form N–3. In determining whether an insurance company separate account is a small entity for purposes of the Regulatory Flexibility Act, the assets of insurance company separate accounts are aggregated with the assets of their sponsoring insurance companies. Investment Company Act rule 0–10(b) [17 CFR 270.0–10(b)].

information relating to the registrant is made known to senior management, and also to certify that they have evaluated these procedures within 90 days of the filing date of the report. The amendments may increase the costs associated with compliance with investment companies' reporting obligations. However, this cost increase is expected to be limited, because most management investment companies are currently required to provide a similar certification with respect to their reports on Form N–SAR.

In addition, the amendments will require registered management investment companies to disclose information regarding whether an audit committee financial expert serves on the investment company's audit committee and whether the investment company has adopted a code of ethics that applies to the investment company's principal executive officer and senior financial officers. All registered management investment companies, including those that are not required to file reports pursuant to Section 13(a) or 15(d) of the Exchange Act, will be subject to these amendments. Because the disclosure requirements of these amendments will be new, management investment companies may need to hire outside counsel or other third parties to prepare the new disclosure. We expect that reporting information in response to these new disclosure items will increase costs incurred by small entities because the new disclosure items will require these entities to compile and report more information. For purposes of the PRA and our cost-benefit analysis,[121] with respect to Form N–SAR, we further estimate that the removal of the certification requirement will remove an incremental 41,010 hours from the current total burden hours, equivalent to a cost of $6,151,500§ [122] and the disclosure of the code of ethics and audit committee financial experts will add an incremental 2 burden hours to the current total burden hours, equivalent to a cost of $259.[123] With respect to Form N–CSR, all respondents will incur an incremental increase of 35,139 burden hours,[124] equivalent to internal costs of $5,152,782§ [125] and $3,513,900 in outside legal costs [126] to comply with the amendments. The current total burden hours of Form 12b-25 will incrementally increase by 420 hours or $15,468 [127] as a result of the amendments.

E. Agency Action to Minimize Effect on Small Entities

As required by Section 603 of the RFA, and with respect to Sections 302, 406, and 407 of the Sarbanes-Oxley Act, the Commission has considered the following alternatives to minimize the economic impact of the proposed rules and rule amendments on small entities: (i) The establishment of differing compliance or reporting requirements that take into account the resources available to small entities; (ii) the clarification, consolidation, or simplification of compliance and reporting requirements under the proposed amendments for small entities; and (iii) an exemption from coverage of the proposed amendments, or any part thereof, for small entities.

The rules we are adopting are intended to more fully implement the intent of Section 302 of the Sarbanes-Oxley Act, and should help ensure that information about an investment company's business and financial condition, specifically its financial statements, is adequately reviewed by an investment company's senior executives, thereby enhancing investor confidence in the quality of its disclosure. In addition, the rules we are adopting implement Sections 406 and 407 of the Sarbanes-Oxley Act by requiring disclosure with respect to codes of ethics and audit committee financial experts to provide investors better understanding of the ethical principles and background and affiliations of the executives and directors of the investment company.

The Commission believes at the present time that special compliance or reporting requirements for small entities, or an exemption from coverage for small entities, would not be appropriate or consistent with investor protection. The designation of certified shareholder reports on Form N–CSR as reporting forms that must contain the certification required by Section 302 of the Sarbanes-Oxley Act is intended to improve investor confidence in the quality of an investment company's disclosure to investors in its shareholder reports, particularly the financial statements contained in these reports. We believe it is important that the benefits resulting from the certification of shareholder reports as required by the new rules be provided to investors in all management investment companies, not just investors in management investment companies that are not considered small entities. The Commission also notes that Section 302 of the Sarbanes-Oxley Act does not distinguish between small entities and other investment companies. Similarly, Sections 406 and 407 of the Sarbanes-Oxley Act do not distinguish between small entities and other investment companies.

We believe that different compliance or reporting requirements or timetables for small entities would interfere with achieving the primary goal of increasing transparency of corporate activities and internal procedures. We generally believe that an exemption for small entities from coverage of the new rules is not appropriate and is inconsistent with the policies underlying the Sarbanes-Oxley Act. We also think that the disclosure requirements relating to the audit committee financial experts and codes of ethics are clear and straightforward. In addition, we are not aware of any way to clarify or simplify compliance for small entities.

VIII. Statutory Authority

The rules and rule and form amendments contained in this release are being adopted pursuant to Sections 10(b), 13, 15(d), 23(a), and 36 of the Exchange Act [15 U.S.C. 78j(b), 78m, 78o(d), 78w(a), and 78mm], Sections 6(c), 8, 24(a), 30, and 38 of the Investment Company Act [15 U.S.C. 80a–6(c), 80a–8, 80a–24(a), 80a–29, and 80a–37], and Sections 3(a), 302, 406, and 407 of the Sarbanes–Oxley Act of 2002 [Pub. L. 107–204, 116 Stat. 745].

List of Subjects

17 CFR Parts 240 and 249

Reporting and recordkeeping requirements, Securities.

17 CFR Parts 270 and 274

Investment companies, Reporting and recordkeeping requirements, Securities.

Text of Amendments

In accordance with the foregoing, Title 17, Chapter II, of the Code of Federal Regulations is amended as follows:

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[121] *See* Sections IV and V above.

[122] 41,010 hours × $150 = $6,151,500. *See supra* note 109 (explaining the wage rate).

[123] 2 hours × $129.81 = $259. *See supra* note (explaining the wage rate).

[124] 43,150 hours for certification + 1,851 hours for audit committee financial expert disclosure + 1,851 hours for code of ethics disclosure = 46,852 hours × .75 = 35,139 hours.

[125] 35,139 hours × $146.64 = $5,152,782. *See supra* note 112 (explaining the wage rate).

[126] 43,150 hours for certification + 1,851 hours for audit committee financial expert disclosure + 1,851 hours for code of ethics disclosure = 46,852 hours × .25 of outside counsel × $300 per hour = $3,513,900.

[127] 420 hours × $36.83 = $15,468. *See supra* note 114 (explaining the wage rate).

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

1. The authority citation for Part 240 is amended by adding the specific authority for "Section 240.12b–25" in numerical order to read as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77z–3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78e, 78f, 78g, 78i, 78j, 78j–1, 78k, 78k–1, 78*l*, 78m, 78n, 78o, 78p, 78q, 78s, 78u–5, 78w, 78x, 78*ll*, 78mm, 79q, 79t, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4 and 80b–11, unless otherwise noted.

* * * * *

Section 240.12b–25 is also issued under 15 U.S.C. 80a–8, 80a–24(a), 80a–29, and 80a–37.

* * * * *

2. Section 240.12b–25 is amended by revising the section heading and paragraphs (a) and (b)(2)(ii) to read as follows:

§ 240.12b–25 Notification of inability to timely file all or any required portion of a Form 10–K, 10–KSB, 20–F, 11–K, N–SAR, N–CSR, 10–Q or 10–QSB.

(a) If all or any required portion of an annual or transition report on Form 10–K, 10–KSB, 20–F or 11–K (17 CFR 249.310, 249.310b, 249.220f or 249.311), or a quarterly or transition report on Form 10–Q or 10–QSB (17 CFR 249.308a or 249.308b) required to be filed pursuant to sections 13 or 15(d) of the Act (15 U.S.C. 78m or 78o(d)) and rules thereunder, or if all or any required portion of a semi-annual, annual or transition report on Form N–CSR (17 CFR 249.331; 17 CFR 274.128) or Form N–SAR (17 CFR 249.330; 17 CFR 274.101) required to be filed pursuant to sections 13 or 15(d) of the Act or section 30 of the Investment Company Act of 1940 (15 U.S.C. 80a–29) and the rules thereunder, is not filed within the time period prescribed for such report, the registrant, no later than one business day after the due date for such report, shall file a Form 12b–25 (17 CFR 249.322) with the Commission which shall contain disclosure of its inability to file the report timely and the reasons therefor in reasonable detail.

(b) * * *

(2) * * *

(ii) The subject annual report, semi-annual report or transition report on Form 10–K, 10–KSB, 20–F, 11–K, N–SAR, or N–CSR, or portion thereof, will be filed no later than the fifteenth calendar day following the prescribed due date; or the subject quarterly report or transition report on Form 10–Q or 10–QSB, or portion thereof, will be filed no later than the fifth calendar day following the prescribed due date; and

* * * * *

3. Section 240.13a–15 is amended by revising paragraph (a) to read as follows:

§ 240.13a–15 Issuer's disclosure controls and procedures related to preparation of required reports.

(a) Every issuer that has a class of securities registered pursuant to section 12 of the Act (15 U.S.C. 78*l*), other than an Asset-Backed Issuer (as defined in § 240.13a–14(g) of this chapter), a small business investment company registered on Form N–5 (§§ 239.24 and 274.5 of this chapter), or a unit investment trust as defined by Section 4(2) of the Investment Company Act of 1940 (15 U.S.C. 80a–4(2)), must maintain disclosure controls and procedures (as defined in § 240.13a–14(c) of this chapter).

* * * * *

4. Section 240.15d–15 is amended by revising paragraph (a) to read as follows:

§ 240.15d–15 Issuer's disclosure controls and procedures related to preparation of required reports.

(a) Every issuer that files reports under section 15(d) of the Act (15 U.S.C. 78o(d)), other than an Asset-Backed Issuer (as defined in § 240.13a–14(g) of this chapter), a small business investment company registered on Form N–5 (§§ 239.24 and 274.5 of this chapter), or a unit investment trust as defined by Section 4(2) of the Investment Company Act of 1940 (15 U.S.C. 80a–4(2)), must maintain disclosure controls and procedures (as defined in § 240.15d–14(c) of this chapter).

* * * * *

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

5. The authority citation for Part 249 is amended by adding the following citations in numerical order to read as follows:

Authority: 15 U.S.C. 78a, *et seq.*, unless otherwise noted.

* * * * *

Section 249.330 is also issued under secs. 3(a), 406, and 407, Pub. L. No. 107–204, 116 Stat. 745.

Section 249.331 is also issued under secs. 3(a), 302, 406, and 407, Pub. L. 107–204, 116 Stat. 745.

6. Section 249.322 is amended by revising paragraph (a) to read as follows:

§ 249.322 Form 12b–25—Notification of late filing.

(a) This form shall be filed pursuant to § 240.12b–25 of this chapter by issuers who are unable to file timely all or any required portion of an annual or transition report on Form 10–K and Form 10–KSB, 20–F, or 11–K (§§ 249.310, 249.310b, 249.220f or 249.311) or a quarterly or transition report on Form 10–Q and Form 10–QSB (§§ 249.308a and 249.308b) pursuant to section 13 or 15(d) of the Act (15 U.S.C. 78m or 78o(d)) or a semi-annual, annual, or transition report on Form N–SAR (§§ 249.330; 274.101) or Form N–CSR (§§ 249.331; 274.128) pursuant to section 13 or 15(d) of the Act or section 30 of the Investment Company Act of 1940 (15 U.S.C. 80a–29). The filing shall consist of a signed original and three conformed copies, and shall be filed with the Commission at Washington, DC 20549, no later than one business day after the due date for the periodic report in question. Copies of this form may be obtained from "Publications," Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549 and at our Web site at *http://www.sec.gov*.

* * * * *

7. Form 12b–25 (referenced in § 249.322) is amended by:

a. Revising the preamble;

b. Revising paragraph (b) of Part II; and

c. Revising Part III to read as follows:

Note: The text of Form 12b–25 does not, and this amendment will not, appear in the Code of Federal Regulations.

Form 12b–25

Notification of Late Filing

(Check One): __ Form 10–K __ Form 20–F __ Form 11–K __ Form 10–Q __ Form N–SAR __ Form N–CSR

* * * * *

Part II—Rules 12b–25(b) and (c)

* * * * *

(b) The subject annual report, semi-annual report, transition report on Form 10–K, Form 20–F, Form 11–K, Form N–SAR or Form N–CSR, or portion thereof, will be filed on or before the fifteenth calendar day following the prescribed due date; or the subject quarterly report or transition report on Form 10–Q, or portion thereof, will be filed on or before the fifth calendar day following the prescribed due date; and

* * * * *

Part III—Narrative

State below in reasonable detail why Forms 10–K, 20–F, 11–K, 10–Q, N–SAR, N–CSR, or the transition report or portion thereof, could not be filed within the prescribed time period.

* * * * *

8. Section 249.330 is revised to read as follows:

§ 249.330 Form N–SAR, annual and semi-annual report of certain registered investment companies.

This form shall be used by registered unit investment trusts and small business investment companies for semi-annual or annual reports to be filed pursuant to § 270.30a–1 or § 270.30b1–1 of this chapter in satisfaction of the requirement of section 30(a) of the Investment Company Act of 1940 that every registered investment company must file annually with the Commission such information, documents, and reports as investment companies having securities registered on a national securities exchange are required to file annually pursuant to section 13(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78m) and the rules and regulations thereunder.

9. Section 249.331 is added to read as follows:

§ 249.331 Form N–CSR, certified shareholder report.

This form shall be used by registered management investment companies to file reports pursuant to § 270.30b2–1(a) of this chapter not later than 10 days after the transmission to stockholders of any report that is required to be transmitted to stockholders under § 270.30e–1 of this chapter.

PART 270—RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940

10. The authority citation for Part 270 is amended by revising the general authority citation and the specific authority for "Section 270.30a–2" and adding the following citations in numerical order to read as follows:

Authority: 15 U.S.C. 80a–1 *et seq.*, 80a–34(d), 80a–37, and 80a–39, unless otherwise noted.

* * * * *

Section 270.30a–1 is also issued under 15 U.S.C. 78m, 78o(d), 80a–8, and 80a–29.

Section 270.30a–2 is also issued under 15 U.S.C. 78m, 78o(d), 80a–8, and 80a–29, and secs. 3(a) and 302, Pub. L. 107–204, 116 Stat. 745.

Section 270.30a–3 is also issued under 15 U.S.C. 78m, 78o(d), 80a–8, and 80a–29, and secs. 3(a) and 302, Pub. L. 107–204, 116 Stat. 745.

Section 270.30b1–1 is also issued under 15 U.S.C. 78m, 78o(d), 80a–8, and 80a–29.

Section 270.30b2–1 is also issued under 15 U.S.C. 78m, 78o(d), 80a–8, and 80a–29, and secs. 3(a) and 302, Pub. L. 107–204, 116 Stat. 745.

Section 270.30d–1 is also issued under 15 U.S.C. 78m, 78o(d), 80a–8, and 80a–29, and secs. 3(a) and 302, Pub. L. 107–204, 116 Stat. 745.

* * * * *

11. Section 270.8b–15 is amended by adding a sentence at the end of the section to read as follows:

§ 270.8b–15 Amendments.

* * * An amendment to any report required to include the certification as specified in § 270.30a–2 must provide a new certification by each principal executive officer and principal financial officer of the registrant.

12. Section 270.30a–1 is revised to read as follows:

§ 270.30a–1 Annual reports for unit investment trusts.

Every registered unit investment trust shall file an annual report on Form N–SAR with respect to each calendar year not more than sixty calendar days after the close of each year. A registered unit investment trust that has filed a registration statement with the Commission registering its securities for the first time under the Securities Act of 1933 is relieved of this reporting obligation with respect to any reporting period or portion thereof prior to the date on which that registration statement becomes effective or is withdrawn.

13. Section 270.30a–2 is revised by:

a. Revising the section heading; and

b. Revising paragraphs (a) and (c) to read as follows:

§ 270.30a–2 Certification of Form N–CSR.

(a) Each report filed on Form N–CSR (§§ 249.331 and 274.128 of this chapter) by a registered management investment company must include a certification containing the information set forth in paragraph (b) of this section in the form specified in the report. Each principal executive officer or officers and principal financial officer or officers of the investment company, or persons performing similar functions, at the time of filing of the report must sign the certification.

* * * * *

(c) For purposes of this section and § 270.30a–3, the term "disclosure controls and procedures" means controls and other procedures of a registered management investment company that are designed to ensure that information required to be disclosed by the investment company on Form N–CSR is recorded, processed, summarized, and reported within the time periods specified in the Commission's rules and forms. Disclosure controls and procedures include, without limitation, controls and procedures designed to ensure that information required to be disclosed by an investment company in the reports that it files or submits on Form N–CSR is accumulated and communicated to the investment company's management, including its principal executive officer or officers and principal financial officer or officers, or persons performing similar functions, as appropriate to allow timely decisions regarding required disclosure.

* * * * *

14. Section 270.30a–3 is added to read as follows:

§ 270.30a–3 Disclosure controls and procedures related to preperation of required filings.

(a) Every registered management investment company, other than a small business investment company registered on Form N–5 (§§ 239.24 and 274.5 of this chapter), must maintain disclosure controls and procedures (as defined in § 270.30a–2(c)).

(b) Within the 90-day period prior to the filing date of each report requiring certification under § 270.30a–2, an evaluation must be carried out under the supervision, and with the participation of, the registered management investment company's management, including the registered management investment company's principal executive officer or officers and principal financial officer or officers, or persons performing similar functions, of the effectiveness of the design and operation of the registered management investment company's disclosure controls and procedures.

15. Section 270.30b1–1 is revised to read as follows:

§ 270.30b1–1 Semi-annual report for registered management investment companies.

Every registered management investment company shall file a semi-annual report on Form N–SAR (§ 274.101 of this chapter) not more than sixty calendar days after the close of each fiscal year and fiscal second quarter. A registered management investment company that has filed a registration statement with the Commission registering its securities for the first time under the Securities Act of 1933 is relieved of this reporting obligation with respect to any reporting period or portion thereof prior to the date on which that registration statement becomes effective or is withdrawn.

16. Section 270.30b1–3 is revised to read as follows:

§ 270.30b1–3 Transition reports.

Every registered management investment company filing reports on Form N–SAR that changes its fiscal year end shall file a report on Form N–SAR not more than 60 calendar days after the later of either the close of the transition period or the date of the determination to change the fiscal year end which report shall not cover a period longer than six months.

17. Section 270.30b2–1 is revised to read as follows:

§ 270.30b2–1 Filing of reports to stockholders.

(a) Every registered management investment company shall file a report on Form N–CSR (§§ 249.331 and 274.128 of this chapter) not later than 10 days after the transmission to stockholders of any report that is required to be transmitted to stockholders under § 270.30e–1.

(b) A registered investment company shall file with the Commission a copy of every periodic or interim report or similar communication containing financial statements that is transmitted by or on behalf of such registered investment company to any class of such company's security holders and that is not required to be filed with the Commission under paragraph (a) of this section. The filing shall be made not later than 10 days after the transmission to security holders.

18. Section 270.30d–1 is added to read as follows:

§ 270.30d–1 Designation of periodic reports under the Securities Exchange Act of 1934.

A registered management investment company, other than a small business investment company registered on Form N–5 (§§ 239.24 and 274.5 of this chapter), that is required to file annual and quarterly reports pursuant to section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a) or 78o(d)) shall satisfy its requirement to file such reports by the filing, in accordance with the rules and procedures specified therefor, of reports on Form N–CSR (§§ 249.331 and 274.128 of this chapter). A registered unit investment trust or a small business investment company registered on Form N–5 that is required to file annual and quarterly reports pursuant to section 13(a) or 15(d) of the Securities Exchange Act of 1934 shall satisfy its requirement to file such reports by the filing, in accordance with the rules and procedures specified therefor, of reports on Form N–SAR (§§ 249.330 and 274.101 of this chapter).

PART 274—FORMS PRESCRIBED UNDER THE INVESTMENT COMPANY ACT OF 1940

19. The authority citation for Part 274 is revised to read as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 78c(b), 78l, 78m, 78n, 78o(d), 80a–8, 80a–24, 80a–26, and 80a–29, unless otherwise noted.

Section 274.101 is also issued under secs. 3(a), 406, and 407, Pub. L. 107–204, 116 Stat. 745.

Section 274.128 is also issued under secs. 3(a), 302, 406, and 407, Pub. L. 107–204, 116 Stat. 745.

20. Section 274.101 is revised to read as follows:

§ 274.101 Form N–SAR, semi-annual report of registered investment companies.

This form shall be used by registered management investment companies for semi-annual or annual reports to be filed pursuant to rule 30b1–1 (17 CFR 270.30b1–1) and by registered unit investment trusts for annual reports to be filed pursuant to rule 30a–1 (17 CFR 270.30a–1).

21. Form N–SAR (referenced in §§ 249.330 and 274.101) is amended by:

a. Revising the reference "133" in item 6 to read "132";

b. Removing item 133;

c. Revising the first, fifth, and sixth paragraphs of General Instruction A;

d. Removing the reference "and item 133" at the end of paragraph (1) of General Instruction D;

e. Removing paragraph (5) of General Instruction G;

f. Revising the Instruction to sub-item 77Q3 in Instructions to Specific Items;

g. Revising the Instruction to sub-item 102P3 in Instructions to Specific Items;

h. Removing the Instruction to Item 133 in Instructions to Specific Items; and

i. Revising the reference "133" in the Signature Page section in Instructions to Specific Items to read "132".

These additions and revisions read as follows:

Note: The text of Form N–SAR does not, and this amendment will not, appear in the Code of Federal Regulations.

Form N–SAR

* * * * *

General Instructions

A. Rule as to Use of Form N–SAR

Form N–SAR is a reporting form that is to be used for semi-annual and annual reports by all registered investment companies that have filed a registration statement which has become effective pursuant to the Securities Act of 1933 ("1933 Act") with the exception of face amount certificate companies. Face amount certificate companies should continue to file periodic reports pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934 ("1934 Act"). Registered management investment companies, other than small business investment companies, are required to file semi-annual and annual reports on Form N–SAR under the Investment Company Act of 1940 (the "Act") and rule 30b1–1 (17 CFR 270.30b1–1) under the Act. Registered small business investment companies are required to file semi-annual and annual reports under the Act and rule 30b1–1 (17 CFR 270.30b1–1) under the Act, and, if applicable, Section 13 or 15(d) of the 1934 Act. Registered unit investment trusts ("UITs") are required to file annual reports on Form N–SAR under the Act and rule 30a–1 (17 CFR 270.30a–1) under the Act, and, if applicable, Section 13 or 15(d) of the 1934 Act.

* * * * *

Unit investment trusts: The fourth section of the form, which contains items 111 through 132, is to be completed only by all UITs. Each UIT is required to complete appropriate items in this section once a year for the 12-month period ending December 31 and to include information for all of its series.

Under Section 30 of the Act, Sections 13 and 15(d) of the 1934 Act, and the rules and regulations thereunder, the Commission is authorized to solicit the information required by Form N–SAR from registered investment companies. Disclosure of the information specified on Form N–SAR is mandatory. Information supplied on Form N–SAR will be included routinely in the public files of the Commission and will be available for inspection by any interested persons.

* * * * *

Instructions to Specific Items

* * * * *

Sub-Item 77Q3

Furnish any other information required to be included as an exhibit pursuant to such rules and regulations as the Commission may prescribe.

* * * * *

Sub-Item 102P3

(a)(1)Disclose whether, as of the end of the period covered by the report, the registrant has adopted a code of ethics that applies to the registrant's principal executive officer, principal financial officer, principal accounting officer or controller, or persons performing

similar functions, regardless of whether these individuals are employed by the registrant or a third party. If the registrant has not adopted such a code of ethics, explain why it has not done so. The information required by this paragraph (a)(1) is only required in an annual report on this Form N–SAR.

(2) For purposes of this Instruction 102P3(a), the term "code of ethics" means written standards that are reasonably designed to deter wrongdoing and to promote:

(i) Honest and ethical conduct, including the ethical handling of actual or apparent conflicts of interest between personal and professional relationships;

(ii) Full, fair, accurate, timely, and understandable disclosure in reports and documents that a registrant files with, or submits to, the Commission and in other public communications made by the registrant;

(iii) Compliance with applicable governmental laws, rules, and regulations;

(iv) The prompt internal reporting of violations of the code to an appropriate person or persons identified in the code; and

(v) Accountability for adherence to the code.

(3) The registrant must briefly describe the nature of any amendment, during the period covered by the report, to a provision of its code of ethics that applies to the registrant's principal executive officer, principal financial officer, principal accounting officer or controller, or persons performing similar functions, regardless of whether these individuals are employed by the registrant or a third party, and that relates to any element of the code of ethics definition enumerated in paragraph (a)(2) of this Instruction 102P3. The registrant must file a copy of any such amendment as an exhibit to this report on Form N–SAR, unless the registrant has elected to satisfy paragraph (a)(6) of this Instruction 102P3 by posting its code of ethics on its website pursuant to paragraph (a)(6)(ii) of this Instruction 102P3, or by undertaking to provide its code of ethics to any person without charge, upon request, pursuant to paragraph (a)(6)(iii) of this Instruction 102P3.

(4) If the registrant has, during the period covered by the report, granted a waiver, including an implicit waiver, from a provision of the code of ethics to the registrant's principal executive officer, principal financial officer, principal accounting officer or controller, or persons performing similar functions, regardless of whether these individuals are employed by the registrant or a third party, that relates to one or more of the items set forth in paragraph (a)(2) of this Instruction 102P3, the registrant must briefly describe the nature of the waiver, the name of the person to whom the waiver was granted, and the date of the waiver.

(5) If the registrant intends to satisfy the disclosure requirement under paragraph (a)(3) or (4) of this Instruction 102P3 regarding an amendment to, or a waiver from, a provision of its code of ethics that applies to the registrant's principal executive officer, principal financial officer, principal accounting officer or controller, or persons performing similar functions and that relates to any element of the code of ethics definition enumerated in paragraph (a)(2) of this Instruction 102P3 by posting such information on its Internet website, disclose the registrant's Internet address and such intention.

(6) The registrant must:

(i) File with the Commission a copy of its code of ethics that applies to the registrant's principal executive officer, principal financial officer, principal accounting officer or controller, or persons performing similar functions, as an exhibit to its annual report on this Form N–SAR;

(ii) Post the text of such code of ethics on its Internet website and disclose, in its most recent report on this Form N–SAR, its Internet address and the fact that it has posted such code of ethics on its Internet website; or

(iii) Undertake in its most recent report on this Form N–SAR to provide to any person without charge, upon request, a copy of such code of ethics and explain the manner in which such request may be made.

(7) A registrant may have separate codes of ethics for different types of officers. Furthermore, a "code of ethics" within the meaning of paragraph (a)(2) of this Instruction 102P3 may be a portion of a broader document that addresses additional topics or that applies to more persons than those specified in paragraph (a)(1). In satisfying the requirements of paragraph (a)(6), a registrant need only file, post, or provide the portions of a broader document that constitutes a "code of ethics" as defined in paragraph (a)(2) and that apply to the persons specified in paragraph (a)(1).

(8) If a registrant elects to satisfy paragraph (a)(6) of this Instruction 102P3 by posting its code of ethics on its website pursuant to paragraph (a)(6)(ii), the code of ethics must remain accessible on its website for as long as the registrant remains subject to the requirements of this Instruction 102P3 and chooses to comply with this Instruction 102P3 by posting its code on its website pursuant to paragraph (a)(6)(ii).

(9) The registrant does not need to provide any information pursuant to paragraphs (a)(3) and (4) of this Instruction 102P3 if it discloses the required information on its Internet website within five business days following the date of the amendment or waiver and the registrant has disclosed in its most recently filed report on this Form N–SAR its Internet address and intention to provide disclosure in this manner. If the amendment or waiver occurs on a Saturday, Sunday, or holiday on which the Commission is not open for business, then the five business day period shall begin to run on and include the first business day thereafter. If the registrant elects to disclose this information through its website, such information must remain available on the website for at least a 12-month period. The registrant must retain the information for a period of not less than six years following the end of the fiscal year in which the amendment or waiver occurred. Upon request, the registrant must furnish to the Commission or its staff a copy of any or all information retained pursuant to this requirement.

(10) The registrant does not need to disclose technical, administrative, or other non-substantive amendments to its code of ethics.

(11) For purposes of this Instruction 102P3(a):

(i) The term "waiver" means the approval by the registrant of a material departure from a provision of the code of ethics; and

(ii) The term "implicit waiver" means the registrant's failure to take action within a reasonable period of time regarding a material departure from a provision of the code of ethics that has been made known to an executive officer, as defined in rule 3b–7 under the 1934 Act (17 CFR 240.3b–7), of the registrant.

(b)(1) Disclose that the registrant's board of directors has determined that the registrant either:

(i) Has at least one audit committee financial expert serving on its audit committee; or

(ii) Does not have an audit committee financial expert serving on its audit committee.

(2) If the registrant provides the disclosure required by paragraph (b)(1)(i) of this Instruction 102P3, it must disclose the name of the audit committee financial expert and whether that person is "independent." In order to be considered "independent" for purposes of this Instruction 102P3(b), a member of an audit committee may not,

other than in his or her capacity as a member of the audit committee, the board of directors, or any other board committee:

(i) Accept directly or indirectly any consulting, advisory, or other compensatory fee from the issuer; or

(ii) Be an "interested person" of the investment company as defined in Section 2(a)(19) of the Act (15 U.S.C. 80a–2(a)(19)).

(3) If the registrant provides the disclosure required by paragraph (b)(1)(ii) of this Instruction 102P3, it must explain why it does not have an audit committee financial expert.

(4) The information required by paragraphs (b)(1) "–(3) of this Instruction 102P3 is only required in an annual report on Form N–SAR.

(5) If the registrant's board of directors has determined that the registrant has more than one audit committee financial expert serving on its audit committee, the registrant may, but is not required to, disclose the names of those additional persons. A registrant choosing to identify such persons must indicate whether they are independent pursuant to paragraph (b)(2) of this Instruction 102P3.

(6) For purposes of this Instruction 102P3, an "audit committee financial expert" means a person who has the following attributes:

(i) An understanding of generally accepted accounting principles and financial statements;

(ii) The ability to assess the general application of such principles in connection with the accounting for estimates, accruals, and reserves;

(iii) Experience preparing, auditing, analyzing, or evaluating financial statements that present a breadth and level of complexity of accounting issues that are generally comparable to the breadth and complexity of issues that can reasonably be expected to be raised by the registrant's financial statements, or experience actively supervising one or more persons engaged in such activities;

(iv) An understanding of internal controls and procedures for financial reporting; and

(v) An understanding of audit committee functions.

(7) A person shall have acquired such attributes through:

(i) Education and experience as a principal financial officer, principal accounting officer, controller, public accountant, or auditor or experience in one or more positions that involve the performance of similar functions;

(ii) Experience actively supervising a principal financial officer, principal accounting officer, controller, public accountant, auditor, or person performing similar functions;

(iii) Experience overseeing or assessing the performance of companies or public accountants with respect to the preparation, auditing, or evaluation of financial statements; or

(iv) Other relevant experience.

(8)(i) A person who is determined to be an audit committee financial expert will not be deemed an "expert" for any purpose, including without limitation for purposes of Section 11 of the 1933 Act (15 U.S.C. 77k), as a result of being designated or identified as an audit committee financial expert pursuant to this Instruction 102P3(b).

(ii) The designation or identification of a person as an audit committee financial expert pursuant to this Instruction 102P3(b) does not impose on such person any duties, obligations, or liability that are greater than the duties, obligations, and liability imposed on such person as a member of the audit committee and board of directors in the absence of such designation or identification.

(iii) The designation or identification of a person as an audit committee financial expert pursuant to this Instruction 102P3(b) does not affect the duties, obligations, or liability of any other member of the audit committee or board of directors.

(9) If a person qualifies as an audit committee financial expert by means of having held a position described in paragraph (b)(7)(iv) of this Instruction 102P3, the registrant shall provide a brief listing of that person's relevant experience.

(c) Furnish any other information required to be included as an exhibit pursuant to such rules and regulations as the Commission may prescribe.

* * * * *

22. Section 274.128 and Form N–CSR (referenced in §§ 249.331 and 274.128) are added to read as follows:

§ 274.128 Form N–CSR, certified shareholder report.

This form shall be used by registered management investment companies to file reports pursuant to § 270.30b2–1(a) of this chapter not later than 10 days after the transmission to stockholders of any report that is required to be transmitted to stockholders under § 270.30e–1 of this chapter.

* * * * *

Note: The text of Form N–CSR does not, and this amendment will not, appear in the *Code of Federal Regulations*.

FORM N–CSR

Certified Shareholder Report of Registered Management Investment Companies

Investment Company Act file number __

_____

(Exact name of registrant as specified in charter)

_____

(Address of principal executive offices) (Zip code)

_____

(Name and address of agent for service)

Registrant's telephone number, including area code: _____

Date of fiscal year end: _____

Date of reporting period: _____

Form N–CSR is to be used by management investment companies to file reports with the Commission not later than 10 days after the transmission to stockholders of any report that is required to be transmitted to stockholders under Rule 30e–1 under the Investment Company Act of 1940 (17 CFR 270.30e–1). The Commission may use the information provided on Form N–CSR in its regulatory, disclosure review, inspection, and policymaking roles.

A registrant is required to disclose the information specified by Form N–CSR, and the Commission will make this information public. A registrant is not required to respond to the collection of information contained in Form N–CSR unless the Form displays a currently valid Office of Management and Budget ("OMB") control number. Please direct comments concerning the accuracy of the information collection burden estimate and any suggestions for reducing the burden to Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. The OMB has reviewed this collection of information under the clearance requirements of 44 U.S.C. 3507.

General Instructions

A. Rule as to Use of Form N–CSR

Form N–CSR is a combined reporting form that is to be used for reports of registered management investment companies under Section 30(b)(2) of the Investment Company Act of 1940 (the "Act") and Section 13(a) or 15(d) of the Securities Exchange Act of 1934 (the "Exchange Act"), filed pursuant to Rule 30b2–1(a) under the Act (17 CFR 270.30b2–1(a)). A report on this Form shall be filed within 10 days after the transmission to stockholders of any annual or semi-annual report that is required to be transmitted to

stockholders pursuant to Rule 30e–1 under the Act (17 CFR 270.30e–1).

B. Application of General Rules and Regulations

The General Rules and Regulations under the Act and the Exchange Act contain certain general requirements that are applicable to reporting on any form under those Acts. These general requirements should be carefully read and observed in the preparation and filing of reports on this form, except that any provision in the form or in these instructions shall be controlling.

C. Preparation of Report

1. This Form is not to be used as a blank form to be filled in, but only as a guide in preparing the report in accordance with Rules 8b–11 (17 CFR 270.8b–11) and 8b–12 (17 CFR 270.8b–12) under the Act and Rules 12b–11 (17 CFR 240.12b–11) and 12b–12 (17 CFR 240.12b–12) under the Exchange Act. The Commission does not furnish blank copies of this Form to be filled in for filing.

2. These general instructions are not to be filed with the report.

3. Attention is directed to Rule 12b–20 under the Exchange Act (17 CFR 240.12b–20), which states: "In addition to the information expressly required to be included in a statement or report, there shall be added such further material information, if any, as may be necessary to make the required statements, in the light of the circumstances under which they are made not misleading."

D. Incorporation by Reference

A registrant may incorporate by reference information required by Item 10(a), but no other Items of the Form shall be answered by incorporating any information by reference. All incorporation by reference must comply with the requirements of this Form and the following rules on incorporation by reference: Rule 10(d) of Regulation S–K under the Securities Act of 1933 (17 CFR 229.10(d)) (general rules on incorporation by reference, which, among other things, prohibit, unless specifically required by this Form, incorporating by reference a document that includes incorporation by reference to another document, and limits incorporation to documents filed within the last 5 years, with certain exceptions); Rule 303 of Regulation S–T (17 CFR 232.303) (specific requirements for electronically filed documents); Rules 12b–23 and 12b–32 under the Exchange Act (17 CFR 240.12b–23 and 240.12b–32) (additional rules on incorporation by reference for reports filed pursuant to Sections 13 and 15(d) of the Exchange Act); and Rules 0–4, 8b–23, and 8b–32 under the Act (17 CFR 270.0–4, 270.8b–23, and 270.8b–32) (additional rules on incorporation by reference for investment companies).

E. Definitions

Unless the context clearly indicates the contrary, terms used in this Form N–CSR have meanings as defined in the Act and the rules and regulations thereunder. Unless otherwise indicated, all references in the Form to statutory sections or to rules are sections of the Act and the rules and regulations thereunder.

F. Signature and Filing of Report

1. If the report is filed in paper pursuant to a hardship exemption from electronic filing (see Item 201 *et seq.* of Regulation S–T (17 CFR 232.201 *et seq.*)), eight complete copies of the report shall be filed with the Commission. At least one complete copy of the report shall be filed with each exchange on which any class of securities of the registrant is registered. At least one complete copy of the report filed with the Commission and one such copy filed with each exchange must be manually signed. Copies not manually signed must bear typed or printed signatures.

2. (a) The report must be signed by the registrant, and on behalf of the registrant by its principal executive officer or officers (who also must provide the certification required by Rule 30a–2 under the Act (17 CFR 270.30a–2) exactly as specified in this Form) and its principal financial officer or officers (who also must provide the certification required by Rule 30a–2 under the Act (17 CFR 270.30a–2) exactly as specified in this Form).

(b) The name of each person who signs the report shall be typed or printed beneath his or her signature. Any person who occupies more than one of the specified positions shall indicate each capacity in which he or she signs the report. Attention is directed to Rule 12b–11 under the Exchange Act (17 CFR 240.12b–11) and Rule 8b–11 under the Act (17 CFR 270.8b–11) concerning manual signatures and signatures pursuant to powers of attorney.

Item 1. Reports to Stockholders

Include a copy of the report transmitted to stockholders pursuant to Rule 30e–1 under the Act (17 CFR 270.30e–1).

Item 2. Code of Ethics

(a) Disclose whether, as of the end of the period covered by the report, the registrant has adopted a code of ethics that applies to the registrant's principal executive officer, principal financial officer, principal accounting officer or controller, or persons performing similar functions, regardless of whether these individuals are employed by the registrant or a third party. If the registrant has not adopted such a code of ethics, explain why it has not done so.

Instruction to paragraph (a).

The information required by this Item is only required in an annual report on this Form N–CSR.

(b) For purposes of this Item, the term "code of ethics" means written standards that are reasonably designed to deter wrongdoing and to promote:

(1) Honest and ethical conduct, including the ethical handling of actual or apparent conflicts of interest between personal and professional relationships;

(2) Full, fair, accurate, timely, and understandable disclosure in reports and documents that a registrant files with, or submits to, the Commission and in other public communications made by the registrant;

(3) Compliance with applicable governmental laws, rules, and regulations;

(4) The prompt internal reporting of violations of the code to an appropriate person or persons identified in the code; and

(5) Accountability for adherence to the code.

(c) The registrant must briefly describe the nature of any amendment, during the period covered by the report, to a provision of its code of ethics that applies to the registrant's principal executive officer, principal financial officer, principal accounting officer or controller, or persons performing similar functions, regardless of whether these individuals are employed by the registrant or a third party, and that relates to any element of the code of ethics definition enumerated in paragraph (b) of this Item. The registrant must file a copy of any such amendment as an exhibit pursuant to Item 10(a), unless the registrant has elected to satisfy paragraph (f) of this Item by posting its code of ethics on its website pursuant to paragraph (f)(2) of this Item, or by undertaking to provide its code of ethics to any person without charge, upon request, pursuant to paragraph (f)(3) of this Item.

(d) If the registrant has, during the period covered by the report, granted a waiver, including an implicit waiver,

from a provision of the code of ethics to the registrant's principal executive officer, principal financial officer, principal accounting officer or controller, or persons performing similar functions, regardless of whether these individuals are employed by the registrant or a third party, that relates to one or more of the items set forth in paragraph (b) of this Item, the registrant must briefly describe the nature of the waiver, the name of the person to whom the waiver was granted, and the date of the waiver.

(e) If the registrant intends to satisfy the disclosure requirement under paragraph (c) or (d) of this Item regarding an amendment to, or a waiver from, a provision of its code of ethics that applies to the registrant's principal executive officer, principal financial officer, principal accounting officer or controller, or persons performing similar functions and that relates to any element of the code of ethics definition enumerated in paragraph (b) of this Item by posting such information on its Internet website, disclose the registrant's Internet address and such intention.

(f) The registrant must:

(1) File with the Commission, pursuant to Item 10(a), a copy of its code of ethics that applies to the registrant's principal executive officer, principal financial officer, principal accounting officer or controller, or persons performing similar functions, as an exhibit to its annual report on this Form N–CSR;

(2) Post the text of such code of ethics on its Internet website and disclose, in its most recent report on this Form N–CSR, its Internet address and the fact that it has posted such code of ethics on its Internet website; or

(3) Undertake in its most recent report on this Form N–CSR to provide to any person without charge, upon request, a copy of such code of ethics and explain the manner in which such request may be made.

Instructions to Item 2.

1. A registrant may have separate codes of ethics for different types of officers. Furthermore, a "code of ethics" within the meaning of paragraph (b) of this Item may be a portion of a broader document that addresses additional topics or that applies to more persons than those specified in paragraph (a). In satisfying the requirements of paragraph (f), a registrant need only file, post, or provide the portions of a broader document that constitutes a "code of ethics" as defined in paragraph (b) and that apply to the persons specified in paragraph (a).

2. If a registrant elects to satisfy paragraph (f) of this Item by posting its code of ethics on its website pursuant to paragraph (f)(2), the code of ethics must remain accessible on its website for as long as the registrant remains subject to the requirements of this Item and chooses to comply with this Item by posting its code on its website pursuant to paragraph (f)(2).

3. The registrant does not need to provide any information pursuant to paragraphs (c) and (d) of this Item if it discloses the required information on its Internet website within five business days following the date of the amendment or waiver and the registrant has disclosed in its most recently filed report on this Form N–CSR its Internet address and intention to provide disclosure in this manner. If the amendment or waiver occurs on a Saturday, Sunday, or holiday on which the Commission is not open for business, then the five business day period shall begin to run on and include the first business day thereafter. If the registrant elects to disclose this information through its website, such information must remain available on the website for at least a 12-month period. The registrant must retain the information for a period of not less than six years following the end of the fiscal year in which the amendment or waiver occurred. Upon request, the registrant must furnish to the Commission or its staff a copy of any or all information retained pursuant to this requirement.

4. The registrant does not need to disclose technical, administrative, or other non-substantive amendments to its code of ethics.

5. For purposes of this Item:

(a) The term "waiver" means the approval by the registrant of a material departure from a provision of the code of ethics; and

(b) The term "implicit waiver" means the registrant's failure to take action within a reasonable period of time regarding a material departure from a provision of the code of ethics that has been made known to an executive officer, as defined in Rule 3b–7 under the Exchange Act (17 CFR 240.3b–7), of the registrant.

Item 3. Audit Committee Financial Expert

(a)(1) Disclose that the registrant's board of directors has determined that the registrant either:

(i) Has at least one audit committee financial expert serving on its audit committee; or

(ii) Does not have an audit committee financial expert serving on its audit committee.

(2) If the registrant provides the disclosure required by paragraph (a)(1)(i) of this Item, it must disclose the name of the audit committee financial expert and whether that person is "independent." In order to be considered "independent" for purposes of this Item, a member of an audit committee may not, other than in his or her capacity as a member of the audit committee, the board of directors, or any other board committee:

(i) Accept directly or indirectly any consulting, advisory, or other compensatory fee from the issuer; or

(ii) Be an "interested person" of the investment company as defined in Section 2(a)(19) of the Act (15 U.S.C. 80a–2(a)(19)).

(3) If the registrant provides the disclosure required by paragraph (a)(1)(ii) of this Item, it must explain why it does not have an audit committee financial expert.

Instructions to paragraph (a).

1. The information required by this Item is only required in an annual report on Form N–CSR.

2. If the registrant's board of directors has determined that the registrant has more than one audit committee financial expert serving on its audit committee, the registrant may, but is not required to, disclose the names of those additional persons. A registrant choosing to identify such persons must indicate whether they are independent pursuant to paragraph (a)(2) of this Item.

(b) For purposes of this Item, an "audit committee financial expert" means a person who has the following attributes:

(1) An understanding of generally accepted accounting principles and financial statements;

(2) The ability to assess the general application of such principles in connection with the accounting for estimates, accruals, and reserves;

(3) Experience preparing, auditing, analyzing, or evaluating financial statements that present a breadth and level of complexity of accounting issues that are generally comparable to the breadth and complexity of issues that can reasonably be expected to be raised by the registrant's financial statements, or experience actively supervising one or more persons engaged in such activities;

(4) An understanding of internal controls and procedures for financial reporting; and

(5) An understanding of audit committee functions.

(c) A person shall have acquired such attributes through:

(1) Education and experience as a principal financial officer, principal

accounting officer, controller, public accountant, or auditor or experience in one or more positions that involve the performance of similar functions;

(2) Experience actively supervising a principal financial officer, principal accounting officer, controller, public accountant, auditor, or person performing similar functions;

(3) Experience overseeing or assessing the performance of companies or public accountants with respect to the preparation, auditing, or evaluation of financial statements; or

(4) Other relevant experience.

(d)(1) A person who is determined to be an audit committee financial expert will not be deemed an "expert" for any purpose, including without limitation for purposes of Section 11 of the Securities Act of 1933 (15 U.S.C. 77k), as a result of being designated or identified as an audit committee financial expert pursuant to this Item.

(2) The designation or identification of a person as an audit committee financial expert pursuant to this Item does not impose on such person any duties, obligations, or liability that are greater than the duties, obligations, and liability imposed on such person as a member of the audit committee and board of directors in the absence of such designation or identification.

(3) The designation or identification of a person as an audit committee financial expert pursuant to this Item does not affect the duties, obligations, or liability of any other member of the audit committee or board of directors.

Instruction to Item 3.

If a person qualifies as an audit committee financial expert by means of having held a position described in paragraph (c)(4) of this Item, the registrant shall provide a brief listing of that person's relevant experience.

Items 4–8. [Reserved]

Item 9. Controls and Procedures

(a) Disclose the conclusions of the registrant's principal executive officer or officers and principal financial officer or officers, or persons performing similar functions, about the effectiveness of the registrant's disclosure controls and procedures (as defined in Rule 30a–2(c) under the Act (17 CFR 270.30a–2(c))) based on their evaluation of these controls and procedures as of a date within 90 days of the filing date of the report that includes the disclosure required by this paragraph.

(b) Disclose whether or not there were significant changes in the registrant's internal controls or in other factors that could significantly affect these controls subsequent to the date of their evaluation, including any corrective actions with regard to significant deficiencies and material weaknesses.

Item 10. Exhibits

File the exhibits listed below as part of this Form. Letter or number the exhibits in the sequence indicated.

(a) Any code of ethics, or amendment thereto, that is the subject of the disclosure required by Item 2, to the extent that the registrant intends to satisfy the Item 2 requirements through filing of an exhibit.

(b) A separate certification for each principal executive officer and principal financial officer of the registrant as required by Rule 30a–2 under the Act (17 CFR 270.30a–2) in the exact form set forth below:

Certifications

I, [identify the certifying individual], certify that:

1. I have reviewed this report on Form N–CSR of [identify registrant];

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations, changes in net assets, and cash flows (if the financial statements are required to include a statement of cash flows) of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officers and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Rule 30a–2(c) under the Investment Company Act of 1940) for the registrant and have:

(a) Designed such disclosure controls and procedures to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

(b) evaluated the effectiveness of the registrant's disclosure controls and procedures as of a date within 90 days prior to the filing date of this report (the "Evaluation Date"); and

(c) presented in this report our conclusions about the effectiveness of the disclosure controls and procedures based on our evaluation as of the Evaluation Date;

5. The registrant's other certifying officers and I have disclosed, based on our most recent evaluation, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

(a) all significant deficiencies in the design or operation of internal controls which could adversely affect the registrant's ability to record, process, summarize, and report financial data and have identified for the registrant's auditors any material weaknesses in internal controls; and

(b) any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal controls; and

6. The registrant's other certifying officers and I have indicated in this report whether or not there were significant changes in internal controls or in other factors that could significantly affect internal controls subsequent to the date of our most recent evaluation, including any corrective actions with regard to significant deficiencies and material weaknesses.

Date: _____

_____

[Signature] [Title]

Signatures

[See General Instruction F]

Pursuant to the requirements of the Securities Exchange Act of 1934 and the Investment Company Act of 1940, the registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

(Registrant) _____

By (Signature and Title)* _____

Date _____

Pursuant to the requirements of the Securities Exchange Act of 1934 and the Investment Company Act of 1940, this report has been signed below by the following persons on behalf of the registrant and in the capacities and on the dates indicated.

By (Signature and Title)* _____

Date _____

By (Signature and Title)* _____

_____

Date

* Print the name and title of each signing officer under his or her signature.

Dated: January 27, 2003.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–2254 Filed 1–31–03; 8:45 am]

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Federal Register

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Part III

Department of Labor

Office of the Secretary

Delegation of Authority and Assignment of Responsibilities to the Employee Benefits Security Administration; Notice

DEPARTMENT OF LABOR

Office of the Secretary

[Secretary's Order 1–2003]

Delegation of Authority and Assignment of Responsibilities to the Employee Benefits Security Administration

1. *Purpose.* To delegate authority and assign responsibilities for the administration of the Department of Labor's responsibilities under the Employee Retirement Income Security Act of 1974 (ERISA), the Welfare and Pension Plans Disclosure Act (WPPDA) and the Federal Employees' Retirement System Act of 1986 (FERSA), and to change the name of the Office of the Assistant Secretary for Pension and Welfare Benefits and the Pension and Welfare Benefits Administration (PWBA).

2. *Authority and Directives Affected.* This Order is issued pursuant to 5 U.S.C. 301; 29 U.S.C. 551, *et seq.*; and 5 U.S.C. 5315. This order supersedes Secretary's Order 1–87, 52 FR 13139 (Apr. 21, 1987), and the memoranda to Meredith Miller, on Oct. 28, 1998, 63 FR 59339 (Nov. 3, 1998), and on Dec. 16, 1998, 63 FR 71506 (Dec. 28, 1998).

3. *Background.* ERISA places responsibility in the Department of Labor for the administration of a comprehensive program to protect the interests of participants and beneficiaries of private sector employee benefit plans.

Secretary's Order 1–87 delegated authority for this program to the Pension and Welfare Benefits Administration (PWBA), which was headed by the Assistant Secretary for Pension and Welfare Benefits who reported to the Secretary of Labor.

FERSA requires the Department of Labor to, among other things, administer and enforce the fiduciary responsibility, prohibited transaction, and bonding provisions of FERSA. Secretary's Order 1–87 also delegated these responsibilities to PWBA.

In more recent years, statutes such as the Health Insurance Portability and Accountability Act of 1996 (HIPAA), the Newborns' and Mothers' Health Protection Act of 1996, the Mental Health Parity Act of 1996, the Women's Health and Cancer Rights Act of 1998 and the Child Support Performance and Incentive Act of 1998 amended ERISA. Pursuant to Secretary's Order 1–87, PWBA has carried out the Department's additional responsibilities under these Acts.

Changing the agency's name to the Employee Benefits Security Administration (EBSA) will more clearly communicate the agency's mission of protecting private sector employee benefits. Restating the delegations contained in Secretary's Order 1–87, and including an additional delegation regarding claims of governmental privileges, previously published separately, will provide a single source for questions regarding the Assistant Secretary's current authority and responsibility.

4. *Re-Designation of the Assistant Secretary for Pension and Welfare Benefits and the Pension and Welfare Benefits Administration.* a. The title and position of Assistant Secretary for Pension and Welfare Benefits is re-designated Assistant Secretary for Employee Benefits Security. The Office of the Assistant Secretary for Pension and Welfare Benefits is re-designated the Office of the Assistant Secretary for Employee Benefits Security, and

b. The Pension and Welfare Benefits Administration is re-designated as the Employee Benefits Security Administration.

c. All offices, subdivisions and positions within the Department of Labor deriving their names in whole, or in part, from the Office of the Assistant Secretary for Pension and Welfare Benefits or the Pension and Welfare Benefits Administration shall accomplish an appropriate change of name pursuant to this order.

d. All employees of the Office of the Assistant Secretary for Pension and Welfare Benefits and the Pension and Welfare Benefits Administration are re-designated employees of the Office of the Assistant Secretary for Employee Benefits Security or the Employee Benefits Security Administration, respectively.

e. All programs, activities, functions, and responsibilities delegated to the Office of the Assistant Secretary for Pension and Welfare Benefits or the Pension and Welfare Benefits Administration are re-designated programs, activities, functions and responsibilities of the Office of the Assistant Secretary for Employee Benefits Security or the Employee Benefits Security Administration, respectively.

f. All currently effective delegations made by the Assistant Secretary for Pension and Welfare Benefits to employees of the Pension and Welfare Benefits Administration are deemed delegations by the Assistant Secretary for Employee Benefits Security to employees of the Employee Benefits Security Administration.

g. Other agencies within the Department of Labor shall make any appropriate re-designation in conformity with the spirit and purpose of this order.

5. *Delegation of Authority and Assignment of Responsibilities.* a. Except as hereinafter provided, the Assistant Secretary for Employee Benefits Security is delegated the authority (including the authority to re-delegate) and assigned the responsibilities of the Secretary of Labor:

(1) Under the following statutes, including any amendments:

(i) The Employee Retirement Income Security Act of 1974, as amended, except for subtitle C of title III and title IV (29 U.S.C. 1001–1232);

(ii) The Welfare and Pension Plans Disclosure Act of 1958, as amended Pub. L. 85–836, 72 Stat. 997; Pub. L. 86–624, 74 Stat. 417; Pub. L. 87–420, 76 Stat. 35.

(iii) The Federal Employees' Retirement System Act of 1986 (5 U.S.C. 8401–8479); and

(iv) As directed by the Secretary, such additional Federal acts similar to or related to those listed in paragraphs (i) through (iii), above, that from time to time may assign additional authority or responsibilities to the Secretary.

(2) To request information the Internal Revenue Service (IRS) possesses for use in connection with the administration of title I of ERISA of 1974.

(3) To invoke all appropriate governmental privileges, arising from the functions of the Employee Benefits Security Administration, following his/her personal consideration of the matter and in accordance with the following guidelines:

(i) Generally Applicable Guidelines. The Assistant Secretary may not re-delegate the authority to invoke a privilege. The privilege may be asserted only with respect to specifically described information and only where the Assistant Secretary determines the privilege is applicable. In asserting a privilege, the Assistant Secretary shall articulate in writing specific reasons for preserving the confidentiality of the information.

(ii) Informant's Privilege (to protect from disclosure the identity of any person who has provided information to the Employee Benefits Security Administration in cases arising under the statutory provisions listed in paragraph 5.a.(1) of this order that are delegated or assigned to the Employee Benefits Security Administration). To assert this privilege, the Assistant Secretary must first determine that disclosure of the privileged matter may: (A) Interfere with the Employee Benefits Security Administration's enforcement

of a particular statute for which it exercises investigative or enforcement authority; (B) adversely affect persons who have provided information to the Employee Benefits Security Administration; or (C) deter other persons from reporting violations of the statute.

(iii) Deliberative Process Privilege (to withhold information which may disclose pre-decisional intra-agency or inter-agency deliberations in cases arising under the statutory provisions listed in paragraph 5.a.(1) of this order including: The analysis and evaluation of facts; written summaries of factual evidence; and recommendations, opinions, or advice on legal or policy matters). To assert this privilege, the Assistant Secretary must first determine that: (A) The information is not purely factual and does not concern recommendations that the department expressly adopted or incorporated by reference in its ultimate decision; (B) the information was generated prior to and in contemplation of a decision by a part of the Department; and (C) disclosure of the information would have an inhibiting effect on the Department's decision-making processes.

(iv) Privilege for Investigative Files compiled for law enforcement purposes (to withhold information which may reveal the Employee Benefits Security Administration's confidential investigative techniques and procedures). To assert this privilege, the Assistant Secretary must first determine that disclosure of the privileged matter may have an adverse impact upon the Employee Benefits Security Administration's enforcement of the statutory provisions listed in paragraph 5.a.(1) of this order, by: (A) Disclosing investigative techniques and methodologies; (B) deterring persons from providing information to the Employee Benefits Security Administration; (C) prematurely revealing the facts of the Department's case; or (D) disclosing the identities of persons who have provided information under an express or implied promise of confidentiality.

(v) Prior to filing a formal claim of privilege, the Assistant Secretary shall personally review the information sought to be withheld, including all the documents sought to be withheld (or, in cases where the volume of information is so large all of it cannot be personally reviewed in a reasonable time, an adequate and representative sample of such information) and a description or summary of the litigation in which the disclosure is sought.

(vi) The Assistant Secretary may comply with any additional requirements imposed by local court rules or precedent in asserting a governmental privilege.

(vii) In asserting a governmental privilege, the Assistant Secretary may ask the Solicitor of Labor or the Solicitor's representative to prepare and file any necessary legal papers or documents.

b. The Solicitor of Labor is responsible for providing legal advice and assistance to all officials of the Department relating to the administration of the statutes listed in paragraph 5.a.(1) of this order, for bringing appropriate legal actions on behalf of the Secretary, and representing the Secretary in all civil proceedings. The Solicitor of Labor is also authorized to request information the IRS possesses for use in connection with the administration of title I of ERISA.

c. The Inspector General is authorized to request information the IRS possesses for use in connection with the administration of title I of ERISA.

6. *Reservation of Authority.* a. The submission of reports and recommendations to the President and the Congress concerning the administration of the statutes listed in paragraph 5.a.(1) of this order and responsibilities under subtitle C of title III of ERISA are reserved to the Secretary. The Pension Benefit Guaranty Corporation carries out responsibilities under title IV of ERISA.

b. This Secretary's Order does not affect the authorities and responsibilities of the Office of Inspector General under the Inspector General Act of 1978, as amended, or under Secretary's Order 2–90 (January 31, 1990).

7. *Effective Date.* This order is effective upon the date of publication in the **Federal Register**.

Dated: January 23, 2003.

Elaine L. Chao,

Secretary of Labor.

[FR Doc. 03–2163 Filed 1–31–03; 8:45 am]

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Part IV

Department of Health and Human Services

Food and Drug Administration

21 CFR Part 1

Registration of Food Facilities and Prior Notice of Imported Food Under the Public Health Security and Bioterrorism Preparedness and Response Act of 2002; Proposed Rules

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 1

[Docket No. 02N–0276]

RIN 0910–AC40

Registration of Food Facilities Under the Public Health Security and Bioterrorism Preparedness and Response Act of 2002

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Food and Drug Administration (FDA) is proposing a regulation that would require domestic and foreign facilities that manufacture, process, pack, or hold food for human or animal consumption in the United States to register with FDA by December 12, 2003. The proposed regulation would implement the Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (the Bioterrorism Act), which requires domestic and foreign facilities to register with FDA by December 12, 2003, even in the absence of final regulations. Registration is one of several tools that will enable FDA to act quickly in responding to a threatened or actual terrorist attack on the U.S. food supply by giving FDA information about all facilities that manufacture, process, pack, or hold food for consumption in the United States. In the event of an outbreak of food-borne illness, such information will help FDA and other authorities determine the source and cause of the event. In addition, the registration information will enable FDA to notify quickly the facilities that might be impacted by the outbreak.

DATES: Submit written or electronic comments by April 4, 2003. Written comments on the information collection provisions should be submitted by March 5, 2003.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to http://www.fda.gov/dockets/ecomments. Submit written comments on the information collection provisions to the Office of Information and Regulatory Affairs, the Office of Management and Budget (OMB), New Executive Office Bldg., 725 17th St. NW., rm. 10235, Washington, DC 20503, Attn: Stuart Shapiro, Desk Officer for FDA.

FOR FURTHER INFORMATION CONTACT: Leslye M. Fraser, Center for Food Safety and Applied Nutrition (HFS–4), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 301–436–2378.

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I. Background and Legal Authority

The events of September 11, 2001, highlighted the need to enhance the security of the U.S. food supply. Congress responded by passing the Public Health Security and Bioterrorism Preparedness and Response Act of 2002 ("the Bioterrorism Act") (Public Law 107–188), which was signed into law on June 12, 2002. The Bioterrorism Act includes a provision in title III (Protecting Safety and Security of Food and Drug Supply), Subtitle A—Protection of Food Supply, section 305, which requires the Secretary of Health and Human Services (the Secretary) to develop regulations mandating domestic and foreign facilities that manufacture, process, pack, or hold food for human or animal consumption in the United States to register with FDA by December 12, 2003. The provision creates section 415 and amends sections 301 and 801 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 331 *et seq.*).

The major components of section 305 of the Bioterrorism Act are as follows:

- The owner, operator, or agent in charge of a facility is responsible for submitting the registration form to FDA;
- The registration form must include the name and address of each facility at which, and all trade names under which, the registrant conducts business. Foreign facilities also must include the name of the U.S. agent for the facility;
- FDA also may require each facility to submit the general food category (as identified under § 170.3 (21 CFR 170.3)) of the food manufactured, processed, packed, or held at the facility, if FDA determines this submission necessary through guidance. FDA plans to issue such guidance;
- Foreign facilities exporting food to the United States are required to register unless the food undergoes further processing or packaging by another facility outside the United States;
- Other facilities excluded from the registration requirement are: farms, restaurants and other retail facilities, nonprofit food establishments in which food is prepared for or served directly to the consumer, and fishing vessels (except those engaged in processing as defined in § 123.3(k) (21 CFR 123.3(k)));
- FDA shall notify the registrant when it has received the registration and assign a unique registration number to each registered facility. This number is not subject to public disclosure under section 552 of title 5, United States Code (the Freedom of Information Act);
- FDA may encourage electronic registration; and
- Registered facilities must notify FDA in a timely manner of changes to their registration information.

In addition to section 305 of the Bioterrorism Act, FDA is relying on sections 701(a) and 701(b) of the act (21 U.S.C. 371(a) and (b)) in issuing this proposed rule. Section 701(a) authorizes the agency to issue regulations for the efficient enforcement of the act, while

section 701(b) of the act authorizes FDA and the Department of Treasury to jointly prescribe regulations for the efficient enforcement of section 801 of the act.

II. Preliminary Stakeholder Comments

On July 17, 2002, FDA sent a letter to members of the public interested in food issues outlining the four provisions in title III of the Bioterrorism Act that require FDA to issue regulations in an expedited time period, and FDA's plans for implementing them (see http://www.cfsan.fda.gov/~dms/sec-ltr.html). In the letter, FDA invited stakeholders to submit comments to FDA by August 30, 2002, for FDA's consideration as it developed this proposed rule. FDA also held several meetings with representatives of industry, consumer groups, other Federal agencies, and foreign embassies after sending out the July 17, 2002, letter, in order to solicit stakeholder comments. In response to these solicitations, FDA received numerous comments regarding section 305 of the Bioterrorism Act.

FDA has considered all the comments received by August 30, 2002. FDA will consider all comments received thus far along with the comments we receive during the public comment period on this proposed rule as we develop the final rule. Some of the significant comments FDA received on or before August 30, 2002, include:

- Defining farm to include typical post-harvesting operations, if all food is grown on the farm;
- Including food product categories in a format that satisfies both the requirements of the Bioterrorism Act and stakeholder concerns;
- Allowing facilities that handle most or all of the food categories listed to check "most/all" food product categories instead of requiring them to check every product category handled by the facility;
- Maintaining flexibility regarding qualifications for a U.S. agent;
- Including dates the facility is in operation, if its business is seasonal;
- Defining "facility" to include multiple buildings on a single site, or buildings within the same general physical location;
- Allowing a corporate headquarters or other central management to submit registrations for multiple facilities;
- Providing for both electronic and paper registration;
- Providing registration numbers instantaneously, if registration is done electronically;
- Requiring only trade names of facilities, as opposed to brand names of products the facility produces;
- Defining "food" consistent with the act's definition;
- Including a model of what the electronic registration screen would look like;
- Defining "timely updates" to mean within 30 calendar days of changes to information on the registration form; and
- Requiring facilities that begin to manufacture, process, pack, or hold food for consumption in the United States on or after December 12, 2003, to register before they begin such activities.

III. The Proposed Regulation

This proposed rule implements the food facility registration requirements in section 305 of the Bioterrorism Act. Together with the proposed rules implementing section 307 (prior notice), section 306 (recordkeeping), and section 303 (administrative detention) of the Bioterrorism Act, registration of food facilities will enable FDA to act quickly in responding to a threatened or actual bioterrorist attack on the U.S. food supply or to other food-related emergencies. Registration will provide FDA with information about facilities that manufacture, process, pack, or hold food for consumption in the United States. In the event of an outbreak of food-borne illness, such information will help FDA and other authorities determine the source and cause of the event. In addition, the registration information will enable FDA to notify quickly the facilities that might be impacted by the outbreak.

In establishing and implementing this proposed rule, FDA will comply fully with its international trade obligations, including the applicable World Trade Organization (WTO) agreements and the North American Free Trade Agreement (NAFTA). For example, FDA believes this proposed rule is not more trade-restrictive than necessary to meet the objectives of the Bioterrorism Act. FDA has endeavored to make the registration process as simple as possible for both domestic and foreign facilities.

A. Highlights of Proposed Rule

The key features of this proposed rule are as follows:

- Owners, operators, or agents in charge of facilities engaged in manufacturing, processing, packing, or holding food for consumption in the United States must register the facility with FDA;
- Facilities covered under this rule must be registered by December 12, 2003;
- Domestic facilities must register with FDA, whether or not food from the facility enters interstate commerce;
- A foreign facility may designate its U.S. agent as its agent in charge for purposes of registering the foreign facility;
- Foreign facilities are exempt from registering if food from these facilities undergoes further processing or packaging by another facility outside the United States. The facility is not exempted from registration if the processing or packaging activities of the subsequent facility are limited to the affixing of a label to a package or other de minimis activity. The facility that conducts the de minimis activity also must register.
- The following facilities are also exempt from registering: Farms; retail facilities; restaurants; nonprofit food facilities in which food is prepared for, or served directly to, the consumer; fishing vessels not engaged in processing, as defined in § 123.3(k); and facilities regulated exclusively, throughout the entire facility, by the U.S. Department of Agriculture (USDA) under the Federal Meat Inspection Act (21 U.S.C. 601 *et seq.*), the Poultry Products Inspection Act (21 U.S.C. 451 *et seq.*), or the Egg Products Inspection Act (21 U.S.C. 1031 *et seq.*);
- FDA strongly encourages electronic registration, which will be quicker and more convenient for both facilities and FDA than registration by mail.

B. General Provisions

1. Who Must Register Under This Subpart? (Proposed § 1.225)

As required by the Bioterrorism Act, the proposed rule applies to facilities engaged in the manufacturing/processing, packing, or holding of food for human or animal consumption in the United States. The proposed rule applies to both domestic and foreign food facilities. Individual homes are not subject to the regulation if the food that is manufactured/processed, packed, or held in the home does not enter commerce.

FDA is proposing in § 1.225(b) to require all domestic facilities that manufacture/process, pack, or hold food to register, whether or not the food from the facility enters interstate commerce. The Bioterrorism Act provides that "any facility engaged in manufacturing, processing, packing, or holding food for consumption in the United States" must register and defines "domestic facility" as "a facility located in any of the States or Territories." Therefore, FDA tentatively concludes that the statute requires all domestic facilities to

register, whether or not they engage in interstate commerce. Moreover, having a central database of all domestic facilities producing food would greatly assist FDA in limiting the effects of a food-related emergency covering several States. Nonetheless, because FDA recognizes that this is an important and controversial issue, the agency is seeking comment on whether the agency has authority to exempt domestic facilities engaged only in intrastate commerce from the registration requirement and, if so, whether FDA should use that authority. FDA also seeks comment on how many intrastate facilities are not covered by one of the exemptions from the registration requirement (e.g., the farm or retail exemption). Finally, FDA invites recommendations on what screening questions the agency could ask to enable the owner, operator, or agent in charge of a facility to easily determine whether the facility is an interstate or intrastate facility.

For both domestic and foreign facilities, FDA is proposing in § 1.225(a) and (b) that the owner, operator, or agent in charge, register the facility. FDA is also proposing in § 1.225(c) that the U.S. agent may register a foreign facility if the foreign facility has designated the U.S. agent as its agent in charge. If a foreign facility wants to designate its U.S. agent as its agent in charge for purposes of registering, FDA recommends that the facility and U.S. agent enter into a written agreement authorizing the U.S. agent to register the facility and specifying the U.S. agent's other responsibilities. There are other roles in the course of business that an agent in charge may fill. A formal written agreement between the facility and its U.S. agent would provide clarity for both. Because the proposed rule would require the U.S. agent to reside or maintain a place of business in the United States, allowing the U.S. agent to register the foreign facility will give foreign facilities reliable access to electronic registration that some facilities might not otherwise have. For example, within the United States, Internet access is readily available to members of the public at many local libraries and certain places of business (e.g., photocopying centers).

This process will allow a foreign facility to be registered much more quickly than requesting a paper registration form from FDA by mail, waiting to receive the registration form in the mail from FDA, completing the registration form and sending it to FDA by mail, waiting for FDA to enter the information manually into the electronic registration database—which could take several weeks to several months depending on the number of paper registrations FDA has received previously—and awaiting a response from FDA by mail that contains the confirmation of registration and the facility's registration number.

2. Who is Exempt From This Subpart? (Proposed § 1.226)

In § 1.226, FDA is proposing to exempt several types of facilities from the registration requirement. First, as noted previously, FDA is proposing in § 1.226(a) to exclude foreign facilities, "if food from these facilities undergoes further manufacturing/processing (including packaging) by another foreign facility outside the United States." In other words, foreign facilities involved in the initial stages of manufacturing/processing food are not required to register if another facility further manufactures/processes or packs the food produced at that facility outside the United States.

This exemption would not apply to facilities if the "further manufacturing/processing" at the subsequent facility is of a de minimis nature, such as adding labeling to a package or adding plastic rings to the outside of beverage bottles to hold them together. The facility conducting the de minimis activity would also be required to register. This proposal is based on FDA's tentative conclusion that the statute's exclusion of labeling and "similar activity of a de minimis nature" from the definition of "further processing and packaging" applies only for purposes of the definition of "foreign facility." FDA tentatively concludes that this limitation does not apply to the term "processing" as used elsewhere in the registration provision of the Bioterrorism Act. Accordingly, facilities that label food or engage in similar activities would be required to register as processors. FDA requests comment on this interpretation of the Bioterrorism Act.

The following are examples of which foreign facilities would be subject to, or exempt from, the registration requirement, based on the activities they perform:

(1) A foreign facility would be required to register if it prepares a finished food and places it into packages suitable for sale and distribution in the United States.

(2) A foreign facility distributing food to food processors outside the United States for further manufacturing/processing before the food is exported for consumption in the United States would not be required to register, unless the further manufacturing/processing entails adding labeling or other de minimis activity. If the further manufacturing/processing is of a de minimis nature, both the facility conducting the de minimis activity and the facility immediately prior to it would be required to register.

(3) The last foreign facility that manufactures/processes an article of food before it is exported to the United States would be required to register, even if the food subsequently is held or stored at a different facility outside of the United States. FDA is proposing to require these manufacturers/processors to register because the Bioterrorism Act exempts a foreign facility from registering only if another facility subsequently processes or packages the food.

(4) Facilities located outside the United States that take possession, custody or control of finished foods for holding, packing, and/or storage prior to export to the United States, would be required to register.

Even though the last processors and packagers of food are required to register under the proposed rule, the Bioterrorism Act also requires foreign facilities that pack and/or hold food subsequent to the processing and packaging process to register with FDA. Requiring registration of foreign facilities that conduct a significant activity with respect to the food, starting with the last manufacturer/processor involved, and ending with the last facility before the food is shipped to the United States, is consistent with the Bioterrorism Act, and ensures that FDA has contact information for foreign facilities whose operations would be expected to affect food exported for consumption in the United States. This requirement achieves a balance between protecting the U.S. food supply, and not unduly burdening foreign facilities.

Consistent with the Bioterrorism Act, FDA also is proposing in § 1.226(g) to exempt certain fishing vessels from the registration requirement. These vessels include "those that not only harvest and transport fish but also engage in practices such as heading, eviscerating, or freezing intended solely to prepare fish for holding on board a harvest vessel." However, consistent with the Bioterrorism Act's reference to § 123.3(k), the proposed rule provides that "those fishing vessels otherwise engaged in processing fish, which for purposes of this section means handling, storing, preparing, heading, eviscerating, shucking, freezing, changing into different market forms, manufacturing, preserving, packing, labeling, dockside unloading, or holding

are subject to all of the regulations in this subpart."

FDA also is proposing in § 1.226(h) to exempt facilities that are regulated exclusively, throughout the entire facility, by USDA under the Federal Meat Inspection Act (21 U.S.C. 601 *et seq.*), the Poultry Products Inspection Act (21 U.S.C. 451 *et seq.*), or the Egg Products Inspection Act (21 U.S.C. 1031 *et seq.*). Such facilities include meat and poultry slaughterhouses. This section complies with section 315 of the Bioterrorism Act entitled "Rule of Construction," which states that nothing in title III of the Bioterrorism Act, or an amendment made by title III, shall be construed to alter the jurisdiction between USDA and the U.S. Department of Health and Human Services under applicable statutes and regulations.

FDA is proposing in § 1.226 that facilities that are jointly regulated by FDA and USDA will be required to register under this rule because they are under FDA's jurisdiction as well as that of USDA. Examples of facilities jointly regulated by FDA and USDA include slaughter facilities that slaughter cattle and deer, and food processing facilities that process meat and nonmeat products, such as frozen T.V. dinners containing both meat, which is regulated by USDA, and fish, which is regulated by FDA.

As specified in the Bioterrorism Act, FDA also is proposing to exempt several other facilities from the registration requirement. These facilities, which are discussed in the definitions section, include farms (§ 1.226(b)); retail facilities (§ 1.226(c)); restaurants (§ 1.226(d)); and nonprofit food facilities in which food is prepared for, or served directly to, the consumer (§ 1.226(e)).

3. What Definitions Apply to This Subpart? (Proposed § 1.227)

As specified in proposed § 1.227, the following definitions are used throughout the proposed rule:

a. *The act.* The proposed rule (§ 1.227(a)) defines "the act" as the Federal Food, Drug, and Cosmetic Act. The proposed rule applies the definitions of terms in section 201 of the act (21 U.S.C. 321) to such terms in the proposed rule.

b. *Calendar day.* FDA is proposing in § 1.227(c)(1) to define "calendar day" as every day shown on the calendar. This term includes weekend days.

c. *Facility.* FDA is proposing in § 1.227(c)(2) to define a "facility" as "any establishment, structure, or structures under one management at one general physical location, or, in the case of a mobile facility, traveling to multiple locations, that manufactures/processes, packs, or holds food for consumption in the United States. Individual homes are not facilities if the food that is manufactured/processed, packed, or held in the home does not enter commerce." In response to comments that FDA received during its early outreach efforts, FDA is clarifying in the proposed rule that a facility is not limited to one building, but can consist of several contiguous structures.

The definition of "facility" also specifies that a facility must be under one management. This means that, for purposes of the proposed rule, a single building may house distinct facilities if they are under separate management. If a facility is under joint management of two or more companies, the joint management arrangement is considered one management.

A mixed-type facility performs activities of a facility that is ordinarily required to register and activities of a facility that is ordinarily exempt, such as a farm or retail facility. In order to determine whether a mixed-type facility must register, FDA will consider whether the activity that would require registration is merely incidental to the activities of an exempt facility. If these activities are merely incidental, the facility need not register. For further clarification, see the discussion of the definitions of "farm," "retail facility," and "restaurant" that follow.

i. *Domestic facility.* FDA is proposing in § 1.227(c)(2)(A) to define "domestic facility" consistent with the definition of "State" in section 201(a)(1) of the act (21 U.S.C. 321(a)(1)). That is, FDA is proposing to define a domestic facility as one that is located in any State or Territory of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.

ii. *Foreign facility.* FDA is proposing in § 1.227(c)(2)(ii) to define a foreign facility as a facility other than a domestic facility that manufactures, processes, packs, or holds food for consumption in the United States.

d. *Farm.* FDA is proposing in § 1.227(c)(3) to define "farm" in part as "a facility in one general physical location devoted to the growing of crops for food, the raising of animals for food (including seafood), or both." A farm may consist of contiguous parcels of land, ponds located on contiguous parcels of land, or, in the case of netted or penned areas located in large bodies of water, contiguous nets or pens. Some examples of farms include: Apple orchards, hog farms, dairy farms, feedlots, or aquaculture facilities.

The definition of "farm" includes: (i) Facilities that pack or hold food, provided that all of the food used in such activities is grown or raised on that farm or is consumed on that farm; and (ii) facilities that manufacture/process food, if all of the food used in such activities is consumed on that farm or another farm under the same ownership. "Farm" includes such facilities because they are activities incidental to farming that most farms engage in (e.g., holding and packing of harvested crops). Facilities that engage in manufacturing/processing, packing, or holding of food that is not described in the definition of "farm" must register because such activities are not activities that most farms engage in and are thus not included in the definition of "farm."

A farm that manufactures/processes, packs, or holds food is not required to register with FDA, if all of the food used in such activities is consumed on that farm or another farm under the same ownership. For example, a farm that manufactures/processes animal feed from ingredients obtained off the farm for consumption by animals on the farm would be exempt because most farms that raise animals engage in this activity.

This definition does not extend to facilities that grow crops and raise animals and also manufacture/process food that is sold for consumption off the facility because such activities are not incidental to farming. For example, a facility that grows oranges and manufactures/processes them into orange juice for sale to a distributor would be required to register as a manufacturing/processing facility.

A facility could meet the definition of "farm" if all of the activities on the farm meet the description in § 1.227(c)(3)(i), (c)(3)(ii), or both. For example, one farm could meet the description in § 1.227(c)(3)(i) if all of the food packed or held on the farm was grown on that farm. A second farm could meet the description in § 1.227(c)(3)(ii) if all of the food manufactured/processed on the farm is consumed on that farm, even if some of the food was not grown or raised on the farm (e.g., animal feed processed on the farm using materials obtained off the farm and fed to cattle on that farm).

It should be noted that the proposed retail exemption also may apply to facilities that grow crops and raise animals. Thus, a facility that grows crops and raises animals and that also manufactures/processes, packs, or holds food and sells it directly to consumers would be exempt from registering as a retail facility under § 1.226(e), whether or not the food was all grown or raised on that facility. Similarly, a facility would be exempt as both a farm and a retail facility if it sold crops grown on

the farm to consumers at a roadside stand.

FDA is proposing to require co-op facilities that manufacture/process, pack, or hold food, and that are not subject to the farm exemption, to register with FDA. Co-ops are organizations formed to perform activities, including manufacturing/processing or packing food, for their members. The product of these activities is distributed to the members or the public. A farm that grows wheat for distribution to co-op members would be exempt from registration, but a processing facility owned by the co-op would be required to register if it is not located on the farm and mills the wheat into flour for consumption by co-op members off the farm.

The definition of farm does not include facilities that contract with multiple farmers to grow crops or raise animals. These facilities may manufacture/process feed and distribute it to the contract farmers for feeding to animals being raised on the farm. FDA is proposing that the facilities that manufacture/process feed for the contract farmers would be required to register. The farms that grow the crops or raise the animals would be exempt from the registration requirement.

e. *Food.* FDA is proposing in § 1.227(c)(4) to define "food" as it is defined in section 201(f) of the act. That definition is: "* * * (1) articles used for food or drink for man or other animals, (2) chewing gum, and (3) articles used for components of any such article." FDA also is proposing to include some examples of products that are considered food under section 201(f) of the act. These examples include, but are not limited to: Fruits; vegetables; fish; dairy products; eggs; raw agricultural commodities for use as food or components of food; animal feed, including pet food; food and feed ingredients and additives, including substances that migrate into food from food packaging and other articles that contact food; dietary supplements and dietary ingredients; infant formula; beverages, including alcoholic beverages and bottled water; live food animals (such as hogs and elk); bakery goods; snack foods; candy; and canned foods. "Substances that migrate into food from food packaging" include immediate food packaging or components of immediate food packaging that are intended for food use. Outer food packaging is not considered a substance that migrates into food."

f. *Holding.* FDA is proposing in § 1.227(c)(5) to define holding as storage of food. The proposed rule gives examples of holding facilities as including, but not being limited to: Warehouses, cold storage facilities, storage silos, grain elevators, or liquid storage tanks.

g. *Manufacturing/processing.* FDA is proposing in § 1.227(c)(6) to define manufacturing/processing as "making food from one or more ingredients, or synthesizing, preparing, treating, modifying or manipulating food, including food crops or ingredients." Some examples of manufacturing/processing include, but are not limited to: Cutting, peeling, trimming, washing, waxing, eviscerating, rendering, cooking, baking, freezing, cooling, pasteurizing, homogenizing, mixing, formulating, bottling, milling, grinding, extracting juice, distilling, labeling, or packaging. FDA is defining manufacturing and processing together because the meanings of the terms overlap. For example, combining two materials into a finished product, such as macaroni and cheese, could be considered manufacturing, processing, or both. Since both manufacturers and processors are required to register with FDA, FDA does not believe it is necessary to distinguish between manufacturing and processing in the proposed rule.

h. *Nonprofit food facility.* FDA is proposing in § 1.227(c)(7) to define a nonprofit food facility as "a charitable entity that prepares, serves, or otherwise provides food to the public." Examples of these facilities include: food banks, soup kitchens, and nonprofit food delivery services. FDA is proposing that in order to qualify as a nonprofit food facility, the entity must be exempt from paying income tax under the U.S. Internal Revenue Code. This requirement serves to ensure that FDA's definition of a nonprofit facility is consistent with that of other agencies of the U.S. Government.

i. *Packing.* FDA is proposing in § 1.227(c)(8) to define packing as "placing, putting, or repacking a food into different containers without making any change to the form of the food." Facilities engaged in packing of food for consumption in the United States must register under the proposed rule, unless exempt.

j. *Port of entry.* For purposes of the proposed rule, FDA is defining "port of entry" as "the water, air, or land port at which the article of food is imported or offered for import into the United States, i.e., the port where food first arrives in the United States." FDA is proposing this definition because the port where the food arrives in the United States may be different than the port where the entry of the article of food is processed for U.S. Customs purposes, i.e., where the article is "entered." Under U.S. Customs Service statutes, products can be imported into one port, then transported to another port under a custodial bond before a consumption entry is filed. For example, food may be imported into the United States from Canada through Buffalo, NY, but not entered for consumption with U.S. Customs until it reaches St. Louis, MO, several days later. In this example, under FDA's proposed definition, the port of entry is Buffalo, NY.

The registration authority in the Bioterrorism Act is intended to give FDA better tools to deter, prepare for, and respond to bioterrorism. Given this purpose, "port of entry" must be defined as the port of arrival. Allowing food from a facility that has not registered and that is presented for importation into the United States to be shipped around the country and potentially lost to Government control simply is not consistent with the Bioterrorism Act's stated purpose. FDA believes that its ability to protect U.S. consumers from terrorism or other food-related emergencies will be strongest if food can be examined, and if necessary, held at the point where it first arrives in the United States. FDA requests comment on its proposal to define "port of entry" as the port of arrival.

k. *Restaurant.* FDA is proposing in § 1.227(c)(10) to define a restaurant as "a facility that prepares and sells food directly to consumers for immediate consumption." As defined in the rule, some examples of restaurants include, but are not limited to: Cafeterias, lunchrooms, cafes, bistros, fast food establishments, food stands, saloons, taverns, bars, lounges, catering facilities, hospital kitchens, day care kitchens, and nursing home kitchens. See section III.B.3.c of this document for a discussion of mixed-type facilities, which may include restaurants.

Due to possible ambiguity in the term, "catering facilities", FDA states in the proposed restaurant definition that facilities that provide food to interstate conveyances, such as airplanes, passenger trains, and cruise ships, rather than directly to consumers, are not restaurants. Facilities that provide food to interstate conveyances are not considered restaurants because they do not serve food directly to consumers for immediate consumption. For example, a facility that provides sandwiches to a passenger train for eventual sale to passengers would not be considered a restaurant. However, the snack bar on the train that sells the sandwiches to consumers would be considered a restaurant. FDA has historically

inspected these facilities that provide food to interstate conveyances and considers them processors, rather than restaurants.

Because the proposed rule also applies to facilities that manufacture/process, pack, or hold food for animal consumption in the United States, by analogy, the term "restaurants" also includes pet shelters, kennels, and veterinary facilities in which food is provided to animals.

l. *Retail facility.* In § 1.227(c)(11), the proposed rule defines a retail facility as "a facility that sells food products directly to consumers only. The term includes, but is not limited to, grocery and convenience stores, vending machine locations, and commissaries. The term includes facilities that not only sell food directly to consumers, but that also manufacture/process food in that facility solely for direct sale to consumers from that same facility."

The Bioterrorism Act does not limit the retail facility exemption to human food. However, the legislative history to the Bioterrorism Act states that the retail exemption applies to food for "human" consumption. Therefore, FDA is taking comments on whether the retail exemption should also be applied to food for animal consumption.

The proposed rule would also require facilities that sell both directly to consumers and to distributors and wholesalers to register. Examples of these facilities are warehouse clubs. Because such facilities do not sell food directly to consumers only, they do not meet the definition of a "retail facility."

m. *U.S. agent.* FDA is proposing in § 1.227(c)(12) to define a U.S. agent as "a person residing or maintaining a place of business in the United States whom a foreign facility designates as its agent." This definition is consistent with FDA's drug, biologics, and device registration regulations found in parts 207, 607, and 807 (21 CFR parts 207, 607, and 807), respectively. In order to ensure that the U.S. agent is available to assist FDA in contacting foreign facilities, the proposed definition of U.S. agent also specifies that the U.S. agent "cannot be in the form of a mailbox, answering machine, or service, or other place where an individual acting as the foreign facility's agent is not physically present." FDA also is proposing to have the U.S. agent's responsibilities include acting as a communications link between FDA and the facility, such that FDA will treat representations provided by the U.S. agent to FDA as those of the foreign facility, and will consider information FDA provides to the U.S. agent as the equivalent of providing the same information or documents directly to the foreign food facility. As noted previously, FDA also is proposing to allow the U.S. agent to register on behalf of the foreign facility. FDA recommends that the U.S. agent and facility enter into a written agreement specifying the U.S. agent's responsibilities. The facility does not need to submit a copy of the agreement to FDA as part of its registration. If the foreign agent registers a facility without authorization from the facility, FDA will consider the registration to be a materially false, fictitious, or fraudulent statement to the U.S. Government under 18 U.S.C. 1001.

n. *You or registrant.* FDA is proposing in § 1.227(c)(13) to define "you" or "registrant" as "the owner, operator, or agent in charge of a facility that manufactures/processes, packs, or holds food for consumption in the United States." FDA is proposing to use "you" or "registrant" throughout the proposed rule for easier readability.

C. Procedures for Registration of Food Facilities

1. When Must You Register? (Proposed § 1.230)

The Bioterrorism Act requires facilities subject to its requirements to be registered with FDA no later than December 12, 2003. Proposed § 1.230 would require facilities that currently manufacture/process, pack, or hold food for consumption in the United States to be registered by December 12, 2003. FDA is proposing that facilities that begin to manufacture/process, pack, or hold food for consumption in the United States on or after December 12, 2003, must be registered before they begin such activities. This also would apply to facilities engaged in seasonal activities that may not be operating in December, 2003. Before these facilities could begin to manufacture/process, pack, or hold food for consumption in the United States after December 12, 2003 (or resume operations after this date), they must be registered with FDA.

FDA is planning to have both its electronic and paper registration systems operational at least 2 months before the statutory deadline of December 12, 2003. FDA will announce the exact date these systems will be available for registration in the final rule. On or before October 12, 2003, FDA will publish in the **Federal Register** either a final rule setting forth the final registration requirements, or a notice providing an address to which paper registrations should be sent, if either the final rule or the electronic system for accepting registrations has not been completed by that date. Registrations should not be mailed to FDA before publication of that document in the **Federal Register**. Registrations mailed to FDA before the date announced in the **Federal Register** publication will not be accepted.

2. How and Where Do You Register? (Proposed § 1.231)

Although FDA is proposing to allow registration by either electronic or paper means, FDA is planning to devote most of its resources earmarked for registration to building and maintaining an electronic food facility registration system. The majority of facilities, both in the United States and abroad, have access to the Internet, either within their companies or through public libraries, copy centers, schools, or Internet cafes, as well as through a foreign facility's U.S. agent if the facility makes such arrangements. If the U.S. agent does not have Internet access onsite, the agent may register the facility electronically from a local library or other public facility that offers Internet access either free or for a relatively small fee. In this manner, all foreign facilities would be able to obtain an automatic electronic confirmation of registration and the facility's registration number similar to domestic facilities that register electronically.

Registering electronically will benefit both facilities and FDA. FDA will be able to accept electronic registrations from anywhere in the world 24 hours a day, 7 days a week through a link on FDA's Internet Web site. Electronic registration also will enable a facility to be registered more quickly than registering by mail, since obtaining confirmation of registration and the facility's registration number online should be instantaneous once a facility fills in all required fields on the registration screen. In contrast, registration by mail may take several weeks to several months, depending on the efficiency of the mail system and the number of paper registrations that FDA will need to enter manually into the system. Registrations received by mail will be processed in the order in which they are received.

Regarding the electronic Internet-accessible system, the registrant will be able to fill out the entire form online. In order to ensure that the form is filled out completely, the electronic system will not accept a registration submission until all of the mandatory fields are completed. Because FDA intends to allow companies the option of filing registration forms on behalf of one or more of their facilities, FDA will give the registrant the option of completing additional registration forms for other

facilities after the first registration form, and each subsequent registration form, is completed.

FDA is proposing in § 1.231(b) that a registrant may register by mail if none of the means of electronic access mentioned previously are reasonably available. In registering by mail, a registrant also may fill out one or more forms on behalf of one or more facilities. A registrant registering by mail must pick up a copy of the form from FDA headquarters, call FDA at a toll-free number (that will be provided in the final rule) to request a copy of the form, or send FDA a written request for the form. Once the registrant receives the mailed copy of the form, the form must be filled out completely and legibly, and mailed back to FDA at the address provided in the final rule. Once FDA receives the form, an agency employee will check to make sure all mandatory fields are filled out completely and legibly. If the form is not complete or is illegible, it will be returned to the registrant for completion, provided that the registrant's mailing address is legible and valid. If the form is complete and legible, FDA will manually enter the data on the form into the system as soon as practicable, which will depend on the number of other registration forms awaiting manual entry into the system.

The Bioterrorism Act requires FDA to notify the registrant that it has received the facility's registration and to assign the facility a unique registration number. Accordingly, FDA is proposing the following: If a facility registers electronically, FDA will provide the registrant with an automatic electronic confirmation of registration, along with the facility's registration number. This notification will be similar to an automatic electronic receipt many companies provide consumers when they purchase products online (i.e., via the Internet). If the facility registers by mail, FDA will be able to provide the registrant with confirmation of registration and the facility's registration number only after FDA manually enters the registration information into the system. Depending on the number of other paper registrations FDA receives, this entry process could take several weeks to several months. After the registration information is entered into the system, FDA will mail a copy of the information entered to the registrant, along with confirmation of registration and the registration number. If any of the information that was entered into the system is incorrect, the registrant must mail an update to correct the information within 30 calendar days.

For electronic registrations, FDA is proposing in § 1.231 to consider the facility registered when FDA electronically transmits the facility's registration number. If a registration is done by mail, the facility is registered once the data are entered into the registration system and the system generates a registration number. This means that the facility information will be entered into the registration system before the facility receives its registration number, if registration is done by mail. FDA strongly encourages all facilities, both foreign and domestic, to register electronically, as that minimizes the delay in having FDA mail the registrant a form, the registrant returning the completed form to FDA, FDA entering the facility's data manually into the registration system, and FDA subsequently mailing the registration number and receipt of registration to the facility. To the extent possible, all covered facilities should make every effort to register electronically or send in their registration form as far in advance as possible of the date they are intending to import their products into the United States (but not sooner than the announced date) since the Bioterrorism Act requires FDA to hold imported products of any unregistered facility at the U.S. port of entry until the facility is registered with FDA.

The Bioterrorism Act precludes FDA from requiring facilities to register electronically. Given FDA's preference for electronic registration and the ease of electronic registration for both registrants and FDA, FDA is requesting comments regarding what other means FDA should use to encourage electronic registration. FDA also is requesting comments from facilities that believe they will be unable to register electronically, as well as comments regarding data on the number of these facilities.

No registration fee is required for either the electronic or paper registration. FDA is proposing that registrants must submit all registration information in the English language. FDA is proposing to require submissions to be in English in order for FDA to understand the content of submissions and ensure that registration data are entered accurately.

3. What Information is Required in the Registration? (Proposed § 1.232)

FDA is proposing in § 1.232 that registrants must submit to FDA certain information, including: The name, full address, phone number, fax number, and e-mail address of the facility (paragraph (a)); the name and address of the parent company (paragraph (b)), if the facility is a subsidiary of the parent company; emergency contact information, including the contact's name, title, office phone, home phone, cell phone (if available), and e-mail address (if available) (paragraph (c)); all trade names the facility uses (paragraph (d)); and the name, address, phone number, fax number (if available), and e-mail address (if available) of the U.S. agent for foreign facilities (paragraph (f)). FDA is planning to include all of this information in the mandatory section of the registration form. At the end of the form, FDA is planning to provide a statement in which the registrant will certify that the information submitted is true and accurate, and that the individual submitting the registration is authorized by the facility to do so (paragraph (g)). This statement also will require the phone number, e-mail address (if available), and fax number (if available) of the person submitting the registration.

Section 305 of the Bioterrorism Act also states that FDA may require registrants to submit the general food categories of food produced at the facility, if FDA determines through guidance that such information is necessary. FDA plans to issue such guidance, and make it available for comment in accordance with good guidance practices (21 CFR 10.115). The guidance will address FDA's finding that such food categories are necessary. Section 305 of the Bioterrorism Act specifically provides that the food categories to be used are those provided in § 170.3. FDA tentatively concludes that information on the category of food manufactured, processed, packed, or held at each facility that must register is necessary for a quick, accurate, and focused response to a bioterrorist incident or other food-related emergency, because the categories will assist FDA in conducting investigations and surveillance operations in response to such an incident. These categories will also enable FDA to quickly alert facilities potentially affected by such an incident if FDA receives information indicating the type of food affected. For example, if FDA receives information indicating that soft drinks could be affected by a bioterrorist incident or other food related emergency, FDA would be able to alert soft drink manufacturers/processors, packers, and holders about this information. Additionally, the food categories, in conjunction with the prior notification requirements in 21 CFR part 1, subpart I, would aid FDA in verifying that

imported products are correctly identified by where and by when they were produced. For example, if the registration information identifies a facility as producing only dairy products and FDA receives a prior notice purportedly from the facility for the shipment indicating that the facility is shipping nuts, FDA can target that facility for verification based on the discrepancy. FDA believes, however, that information about a facility's food product categories is a key element for both FDA and industry to allow for rapid communications to facilities directly impacted by an actual or potential bioterrorist attack or other food-related emergency. FDA, therefore, is proposing in § 1.232(e) to include on the registration form as a mandatory field the categories from § 170.3. For ease of use, however, the more common categories found in FDA's product code builder at www.fda.gov/search/databases.html will be listed as the main categories on the form, followed by the food product categories in § 170.3 as references for each FDA product code category. For example, the registration form includes coffee and tea as a product category, which includes the products listed in § 170.3(n)(3) and (n)(7). Categories not in § 170.3 will be listed as optional selections.

FDA believes its proposed approach will both permit the agency to collect vital information regarding usable categories of products produced at the facility, and address industry's concern that the food product categories in § 170.3 are unworkable. FDA is interested in receiving comments on whether use of FDA's product code builder categories as the primary selection, with references immediately after each entry to the food product categories in § 170.3 that apply to each selection, addresses the comments' concerns regarding use of the categories in § 170.3, while complying with the requirements of the Bioterrorism Act.

FDA also is proposing to include several other fields that relate directly to the statutory requirements. The first of these is the name, address, phone number, facsimile number (if available), and e-mail address (if available) of the U.S. agent. Because the U.S. agent will act as a communications link between the facility and FDA, it is vital for FDA to have reliable contact information for the U.S. agent.

FDA also is proposing that a mandatory section of the form include, if applicable, the name and address of the parent company, if the facility is owned by a parent corporation. This information is important for FDA in understanding the relationship between a facility and its parent company regardless of the name under which a facility may be operating.

FDA also is proposing to include as a mandatory section the emergency contact information for a facility, which would include an individual's name, title, office phone, home phone, and cell phone (if available). If FDA receives information regarding a potential or actual threat to the nation's food supply, or other food-related emergency, it must be able to get in touch with an individual at each potentially affected facility who could respond immediately to the threat at any hour. The emergency contact person does not have to be physically located at the facility; however he or she must be accessible and able to respond in an emergency. Thus, for example, a parent corporation can list as the emergency contact the name of an individual at headquarters who has overall responsibility for responding to emergencies at any facility owned by the parent company.

FDA is planning to include at the end of the form a statement in which the person submitting the registration information will certify that the information submitted on the form is true and accurate and the person registering the facility is authorized to do so. If a person submits false information on the registration form, or if a person registers a facility without being authorized to do so, that registration will be considered a materially false, fictitious, or fraudulent statement to the U.S. Government under 18 U.S.C. 1001, which subjects the person to criminal penalties. FDA is including this language on the registration submission to deter individuals from either submitting false information, or registering a facility if they are not authorized by the facility to register it. This applies both to individuals who do not have any relationship with the owner, operator, or agent in charge of a facility, and to those who have a connection to the owner, operator, or agent in charge of a facility, such as the U.S. agent, but who do not have authorization from the facility to register on its behalf.

4. What Optional Items Are Included in the Registration Form? (Proposed § 1.233)

FDA also is proposing in § 1.233 to include several optional fields on the registration form. These items are consistent with the statutory directive, and will enable FDA to communicate more quickly with facilities that may be the target of a bioterrorist attack or other food-related emergency. These proposed fields include:

(a) a preferred mailing address, which would allow a facility's corporate headquarters to serve as the primary contact with FDA instead of the facility;

(b) the type(s) of activity conducted at the facility (e.g., manufacturing/processing, packing, or holding), which would allow FDA to target its communications in emergencies to those facilities potentially impacted based on the information FDA receives (e.g., a threat to a type of food product at manufacturing facilities);

(c) food categories not included in § 170.3 (e.g., dietary supplements, infant formula, and food for animal consumption), which would be helpful to FDA for responding to a terrorist incident or other food safety emergency involving these foods;

(d) the type of storage or manufacturing/processing facility, in the event that the facility is solely a warehouse/holding facility and stores multiple types of food;

(e) a food product category of "most/all food product categories", if the facility manufactures, processes, packs, or holds foods in most or all of the categories under § 170.3; and

(f) the approximate dates of operation, if the facility's business is seasonal.

FDA encourages all facilities to submit this optional information if it applies to the facility's operations.

5. How and When Do You Update Your Registration Information? (Proposed § 1.234)

FDA is proposing in § 1.234 that the owner, operator, or agent in charge must submit a timely update to FDA via the Internet (or by paper copy if no Internet access) within 30 calendar days of any change to any of the information previously submitted, including, but not limited to, the name of the owner, operator, or agent in charge. FDA is proposing 30 calendar days in order to balance the needs of both industry and FDA. In order for FDA to have accurate information for responding to terrorist threats or other food related emergencies, facilities must submit updates within an expedited timeframe. However, FDA also understands that the need to submit updates may coincide with transitions occurring at the facility in which the facility may not be able to provide updates immediately after such transitions occur. FDA believes that requiring updates within 30 calendar days of changes to the information on the initial registration submission is a reasonable balance between FDA's and industry's interests. FDA requests comments on this 30-day timeframe.

With respect to the content of the update, FDA is proposing that the

update must include any changes to any information the facility previously submitted, including, but not limited to, changes to information regarding food product categories. This information, including these categories, will assist FDA in conducting investigations and surveillance operations in response to a bioterrorist incident. If this information is outdated it will interfere with FDA's ability to quickly ascertain the nature and scope of the problem and to alert affected facilities and prevent further distribution of harmful food. Therefore, for efficient and effective implementation of the Bioterrorism Act, FDA is proposing to require registrants to update previously submitted information in both the mandatory and optional categories, if the registrant originally submitted information in both categories and that information changes. FDA requests comments on this proposed requirement and how it will affect the submission of optional information.

A facility canceling a registration must do so on a separate cancellation form electronically or by mail.

D. Additional Provisions

1. What Other Registration Requirements Apply? (Proposed § 1.240)

In proposed § 1.240, FDA has included a provision reminding registrants that they must comply with all other applicable registration requirements, including those found in part 108 (21 CFR part 108), related to emergency permit control. FDA wants to ensure that registrants subject to the registration regulation being proposed to implement the Bioterrorism Act are aware that this registration does not take the place of that required in part 108, or any other registration requirements.

FDA seeks to minimize the burden of this rule on covered facilities and the submission of duplicative information. FDA is aware that existing registrations required by FDA and other federal agencies ask for information that may be duplicative of some of the information FDA is proposing be submitted under this rule. The Bioterrorism Act requires that certain facilities register with FDA. The Bioterrorism Act also specifies that certain information must be contained in the facilities' registration submissions. FDA seeks comments on whether there are registration requirements under which facilities must submit duplicative information to more than one Federal agency. If so, FDA also seeks comments on whether there is any way, consistent with the requirements and purpose of the Bioterrorism Act, to minimize the duplication of information required to be submitted under these registration requirements. In particular, FDA is interested in comments on whether it has authority, under the Bioterrorism Act or another regulatory mandate, to grant a partial or full exemption from the FDA registration requirement to facilities that have already registered with another Federal agency. If such authority exists, FDA is also interested in whether the goals of the Bioterrorism Act could be met if FDA does not have complete registration information.

2. What Happens if You Fail to Register? (Proposed § 1.241)

As provided in the Bioterrorism Act, two consequences may occur if a facility covered under these regulations fails to register. Failure of either domestic or foreign facilities to register is considered a prohibited act under section 301 of the act (21 U.S.C. 331). Under section 302 of the act (21 U.S.C. 332), the United States can bring a civil action in Federal court to enjoin persons who commit a prohibited act and, under section 303 of the act (21 U.S.C. 333), can bring a criminal action in Federal court to prosecute persons who commit a prohibited act. Under section 305a of the Bioterrorism Act, FDA can seek debarment of any person who has been convicted of a felony relating to importation of food into the United States.

FDA seeks comment on circumstances under which a firm's registration should be considered null and void and on circumstances under which a firm's registration should be revoked. FDA also seeks comment on the process for such determinations.

For foreign facilities that fail to register and attempt to import food into the United States, the Bioterrorism Act requires the food be held at the port of entry unless FDA directs its removal to a secure facility. FDA is proposing in § 1.241(e) that if FDA determines that removal to a secure facility is appropriate (e.g., due to a concern with the security of the article of food or due to space limitations in the port of entry), FDA may direct that the article of food be removed to a bonded warehouse, container freight station, centralized examination station, or another appropriate secure facility that has been approved by FDA. Perishables, however, may not be stored in U.S. Customs Service's bonded warehouses; thus FDA may direct fresh produce or seafood that requires storage to another facility. FDA and the U.S. Customs Service plan to issue guidance for their field offices that will identify locations of secure storage.

In order to minimize confusion about who is responsible for making arrangements if food is held under section 801(l) of the act (21 U.S.C. 381(l)), FDA is proposing in § 1.241(f) that the owner, purchaser, importer, or consignee must arrange for storage of the article of food, in an FDA-designated secure facility and must promptly notify FDA of the location. Any movement of the article to the facility must be accomplished under bond. We note that when section 801(l) of the act requires that food be held, it does not appear to mandate that the Government take actual physical custody of the goods; instead it limits both the movement of the goods and the potential storage locations, thereby making Government oversight straightforward. As described previously, U.S. Customs Service has identified a well-established network of storage facilities that are secure. When these storage facilities are used, charges are borne by the private parties. We thus believe that although Congress intended strict controls over food refused admission under section 801(l) of the act, it did not intend to require FDA or U.S. Customs Service to take custody of or pay for the holding of such food. We seek comment on this issue.

The article of food must be held at the port of entry or in the secure facility until the owner, operator, or agent in charge of the foreign facility has submitted its registration information to FDA, FDA has registered the facility, and FDA has notified the U.S. Customs Service and the person who submitted the registration that the facility is registered and the article of food no longer is subject to a hold under section 801(l)(1) of the act. Notwithstanding section 801(b) of the act, while any article of food is held at its port of entry or in a secure facility under section 801(l) of the act, it may not be delivered to any of its importers, owners, or consignees.

The Bioterrorism Act does not provide specific procedures for the disposition of food under hold under section 801(l) of the act when no subsequent registration is submitted. FDA thus believes that the general requirements of Title 19 of the United States Code and the U.S. Customs implementing regulations that apply to imports for which entry has not been made apply in these circumstances. Under 19 U.S.C. 1448 and 1484, entry of merchandise must be made within the time period prescribed by regulation, which is 15 calendar days after the food arrives in the United States. (See 19 CFR 142.2.) If entry is not made within this timeframe, the carrier or other authorized party is required to

notify U.S. Customs Service and a general order warehouse. Generally, at that point the warehouse must arrange to take and store the food at the expense of the consignee. The disposition of this merchandise is governed by 19 U.S.C. 1491 and the implementing regulations at 19 CFR part 127.

Typically, after 6 months, unentered merchandise is deemed unclaimed and abandoned and can be disposed of by the United States. Before this 6 month period runs, however, such merchandise can be re-exported. FDA and U.S. Customs Service plan to develop additional guidance to explain how the agencies will handle food when it must be placed in general order warehouses due to failure to register.

Even though delivery is not allowed, FDA believes that importers, owners, and consignees of food that has been refused under section 801(l) of the act can make arrangements for food to be held; these arrangements can be made without taking possession of the food. FDA recognizes that food may be shipped in the same container or truck with nonfood items. Since articles that are not food are not subject to these regulations, when mixed or consolidated imported freight contains articles of food that must be held at the port of entry or moved to a secure facility, those articles under hold must be dealt with before the rest of the shipment proceeds.

FDA also is proposing in § 1.241(h) that determination that an article of food is no longer subject to hold under section 801(l) of the act is different than, and may come before, determinations of admissibiiity under other provisions of the act or other U.S. laws. A determination that an article of food is no longer subject to hold under section 801(l) of the act does not mean that it will be granted admission under other provisions of the act or other U.S. laws.

3. What Does Assignment of a Registration Number Mean? (Proposed § 1.242)

FDA is proposing in § 1.242 to state that assignment of a registration number to a facility means that the facility is registered with FDA. Assignment of a registration number does not in any way denote FDA's approval or endorsement of a facility or its products. Therefore, any representation in food labeling that creates an impression of official approval, endorsement, or apparent safety because a facility that manufactures/processes, packs, or holds the food is registered by FDA would be misleading and would misbrand the food under section 403(a)(1) of the act (21 U.S.C. 343(a)(1)).

4. Is Food Registration Information Available to the Public? (Proposed § 1.243)

The Bioterrorism Act provides that registration information and any information contained therein that would disclose the identity or location of a specific registered facility is not subject to disclosure under 5 U.S.C. 552 (the Freedom of Information Act). This provision does not apply to information obtained by other means or that has previously been disclosed to the public as defined in 21 CFR 20.81. FDA is proposing to codify this provision in § 1.243.

IV. Analysis of Economic Impacts

A. Benefit-Cost Analysis

FDA has examined the economic implications of this proposed rule as required by Executive Order 12866. Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). Executive Order 12866 classifies a rule as significant if it meets any one of a number of specified conditions, including: having an annual effect on the economy of $100 million, adversely affecting a sector of the economy in a material way, adversely affecting competition, or adversely affecting jobs. A regulation is also considered a significant regulatory action if it raises novel legal or policy issues. FDA has determined that this proposed rule is a significant regulatory action as defined by Executive Order 12866.

B. Need for the Regulation

The purpose of this regulation is to ensure FDA has knowledge of all domestic and foreign facilities that manufacture/process, pack, or hold food for consumption in the United States. In the event of an actual or threatened bioterrorist attack on the U.S. food supply or other food-related public health emergency, such information will help FDA and other authorities determine the source and cause of such an event, and allow FDA to communicate with potentially affected facilities. The benefits of this regulation would be realized by accomplishing this purpose, as well as other, related benefits. For example, FDA is developing a regulation, 21 CFR part 1, subpart I, to implement prior notice provisions in section 307 of the Bioterrorism Act. Information provided to FDA in a facility's registration would be helpful in FDA's assessment of whether a shipment may present a threat of serious adverse health consequences or death to humans or animals.

C. Reason for the Regulation

FDA is proposing three regulations that will work in harmony to improve food safety. Food safety is mostly a private good. Establishments have powerful incentives to ensure that the ingredients they purchase are not contaminated and that their production processes are protected from unintentional and intentional contamination. Deliberate (intentional) contamination of food linked to a particular product or facility—particularly if the facility is considered negligent—would be extraordinarily costly to a firm. Indeed, the private incentives to avoid deliberate contamination should be similar to the private incentives for food safety. Deliberate food contamination events nonetheless differ from ordinary outbreaks of foodborne illness in that they are more likely to be low probability events with severe public health consequences.

Although private incentives lead to private efforts to protect against deliberate contamination at the facility level, there are external effects associated with privately produced protection. Private incentives fail to provide the optimal amount of information about the food production and distribution system. Getting food from the farm or sea to the plate involves a complex system of production and distribution. The system works using local knowledge and information; each participant needs to know only as much about the overall system as is necessary for his or her business. Market prices convey most of the information necessary for the ordinary production and distribution of food. In the event of an actual or suspected contamination of the food supply, however, more complete information is needed where it can be centrally used. The suspect food must be traced backward and forward through the distribution chain, both to protect consumers and to find the source and cause of the event.

No individual firm or organization has sufficient financial incentive to establish a central information system relating to food safety for the entire economy. The nation's food processors and importers as a whole would benefit from such a system because it would be easier to uncover and solve problems, but the private costs to create the system

probably would be prohibitive for any single firm or third party organization.

We estimate that an effective system of information would require several hundred thousand participants to gather information and provide it to a central system. The private transactions costs to bring all the participants together voluntarily and get them to agree to create such a system would be extraordinarily high. No single organization could capture additional revenue sufficient to cover the cost. Also, because the provision of information by some participants makes it available for all, there would be a tendency for establishments to try to be free riders in the information system. But the more information and participation in the system, the more effective it is.

Another way of looking at the problem of participation is in terms of marginal private benefits and marginal social benefits. By gathering and providing the information used in a food safety system, an individual establishment receives additional private benefits from enhancing the safety of its own food. In addition, participating in the system increases the effectiveness of the entire information system. In other words, the more establishments participate in the system, the better it works. The individual establishment does not capture this additional social benefit. The marginal private benefit (enhanced safety for individual establishments) is less than the marginal social benefit (the marginal private benefit plus the increased effectiveness of the entire information system). The difference between private and social benefit reduces the incentive for establishments to participate in a voluntary private system.

The events of September 11, 2001, led Congress to conclude that public creation and provision of an information system is necessary. The Bioterrorism Act and its implementing regulations would establish an information system that would allow FDA to have a more integrated picture of the food distribution system. This particular regulation addresses one important aspect of this information system: The need to know what facilities manufacture/process, pack, or hold food for consumption in the United States, what types of food each facility handles, and how each facility can be contacted. However, as stated previously, FDA is proposing three regulations to address these needs, so the costs and benefits of any one regulation will be closely associated with related provisions in other proposed rules. With the regulations in place, the agency would have the additional tools necessary to help prevent and respond to threats to the nation's food supply as well as to other food safety problems.

D. Options

FDA analyzes the costs and benefits of eight regulatory options that address the goal of deterring or containing purposeful or accidental contamination of the U.S. food supply. Option 1 is the status quo and provides the baseline against which all the other options are measured. Option 2 has the most complete coverage of domestic and foreign facilities and required information in the registration. Options 3 through 5 are each less comprehensive than option 2. Options 6 and 7 use a different definition of mixed-type facilities and option 7 permits U.S. agents to register on behalf of the foreign facility they represent. Option 7 is the proposed option. Option 8 is a discussion of the costs and benefits of the Bioterrorism Act's registration provisions becoming requirements without FDA issuing a regulation (statutory default provision).

- Option 1 is to not impose any new regulatory or statutory requirements.
- Option 2 requires the registration of domestic and foreign facilities that manufacture/process, pack, or hold food for consumption in the United States, whether or not food from the facility enters interstate commerce. Farms, fishing vessels, nonprofit food facilities, facilities exclusively regulated by USDA, and retail facilities are exempted from the registration requirement. Mixed-type facilities that perform some activities of a farm or retail facility but that also manufacture/process food for consumption off that facility must register under this option. Foreign facilities are also required to have a U.S. agent to facilitate communication between the foreign facility and FDA.
- Option 3 has the same requirements and coverage as option 2, but excludes facilities that participate only in intrastate commerce. FDA tentatively concludes that this option is not legally viable, as the Bioterrorism Act does not seem to exempt facilities participating only in intrastate commerce.
- Option 4 has the same coverage and requirements as option 2, but excludes all mixed-type facilities, regardless of whether they also manufacture/process food for consumption off the facility or pack or hold food not grown or raised on that facility. As discussed in the following paragraphs, FDA does not believe this option is legally viable.
- Option 5 has the same requirements and coverage as option 2, but does not require that facilities include information about the types of products they manufacture/process, pack, or hold on their registration.
- Option 6 has the same requirements and coverage as option 2, but mixed-type facilities are required to register if they pack or hold food not harvested on that facility or manufacture/process food not for consumption on that facility. However, facilities that manufacture/process food are exempted as retail facilities if they sell the food directly to consumers from that facility.
- Option 7, the proposed option, requires the same coverage of facilities as option 6. Under this option, the U.S. agent can register on behalf of the foreign facility.
- Option 8 is to allow the registration requirement of the Bioterrorism Act to be implemented without issuing a regulation. The Bioterrorism Act requires facilities to register by December 12, 2003, regardless of whether FDA issues a regulation. Due to uncertainty about how this option would be implemented, FDA does not attempt to estimate costs or benefits for this option.

1. Option One: Do Not Require Facilities to Register

Option one is to maintain the status quo, i.e., no statutory or regulatory registration requirement. This option will serve as the baseline against which other options will be measured for assessing costs and benefits. OMB's cost-benefit analysis guidelines recommend discussing requirements that affect the selection of regulatory approaches. These guidelines also recommend analyzing the opportunity cost of legal constraints that prevent the selection of the regulatory action that best satisfies the philosophy and principles of Executive Order 12866.

The Bioterrorism Act requires that FDA implement through regulation registration for food facilities; therefore, this is not a legally viable option.

2. Option Two: Comprehensive Registration of Domestic and Foreign Manufacturers/Processors, Packers, and Holders of Food

Option two requires domestic facilities that manufacture/process, pack, or hold food for consumption in the United States to register with FDA, including facilities engaged in interstate and intrastate commerce. Farms, fishing vessels, nonprofit food facilities, facilities exclusively regulated by USDA, and retail facilities are exempted from the registration requirement. Mixed-type facilities that perform activities of a farm or retail facility but

that also manufacture/process food for consumption off that facility must register under this option. Registration may be electronic or by mail, although FDA strongly encourages all facilities to register electronically. The information required on the registration includes the facility's name, address, parent company name and address (if applicable), emergency contact information, trade names, general food product categories under § 170.3, and certification by the owner, operator, or agent in charge of the facility as to the accuracy of the information and the submitter's authority to register the facility.

Under the Bioterrorism Act, foreign establishments are required to register if they manufacture, process, pack, or hold food for consumption in the United States without the food undergoing further processing or packaging outside the United States. In addition to registering, the Bioterrorism Act requires foreign facilities to have a U.S. agent. The U.S. agent is a person residing in or maintaining a place of business in the United States, who the owner, operator, or agent in charge of a foreign establishment designates as its agent. Only one U.S. agent per foreign establishment is permitted and the U.S. agent must reside or maintain a place of business in the United States. The U.S. agent is responsible for acting as a communications link between FDA and the facility.

a. *Coverage*—i. *Domestic establishments.* Consistent with the Bioterrorism Act, this proposed regulation's legal requirements apply to facilities, as opposed to firms. A firm is composed of facilities under common ownership. As a result, changes in behavior may occur at the firm- or facility-level to comply with this proposed regulation. However, for ease of analysis, FDA will focus on the facility as the unit of analysis. For a count of domestic facilities, FDA used the 2000 County Business Patterns (CBP) (Ref. 1), 1999 Nonemployer Statistics (Ref. 2), the FDA Field Accomplishments and Compliance Tracking System (FACTS) (Ref. 3), and the Census of Agriculture (Ref. 4). The Census Bureau created the 2000 CBP by analyzing data from the Business Register, the Census Bureau's file of all known single and multi-facility companies. These data for single-location firms are obtained by the Census from the Economic Censuses, the Annual Survey of Manufacturers, Current Business Surveys, and administrative records from the Internal Revenue Service, Social Security Administration, and the Bureau of Labor Statistics.

Table 1 of this document provides a count of businesses in the relevant North American Industry Classification (NAICs) codes in the 2000 CBP. There are 103,125 affected facilities in the 2000 CBP under option two. Facilities not included in the CBP are counted in the Nonemployer Statistics, which is also from the Census Bureau (Ref. 2). Nonemployer businesses are companies with no paid employees. The Census Bureau primarily obtains data about nonemployer businesses from annual business income tax returns filed with the Internal Revenue Service. The Nonemployer Statistics dataset is less disaggregated than the CBP dataset. As a result, including entire counts of facilities in some NAICs codes in the Nonemployer Statistics would result in an overestimate of the number of facilities. For example, NAICs code 4931, warehousing and storage, includes warehouses and storage facilities that store nonfood products, and so is too aggregated for this analysis and includes facilities that would not be required to register. To estimate the number of affected warehouses in NAICs 4931, FDA assumed that the percentage of warehouses that are refrigerated and nonrefrigerated warehouses that store farm products is the same for both the 2000 CBP and the 1999 Nonemployer Statistics, and uses this as an adjustment factor for the 1999 Nonemployer Statistics. With this adjustment, there are 68,424 facilities in the relevant NAICs codes in the 1999 Nonemployer Statistics. Table 2 of this document provides a count of businesses in the relevant NAICs codes in the 1999 Nonemployer Statistics. Manufacturers/processors, packers, and holders of substances that migrate into food from food packaging or other articles that contact food do not correspond to any single NAICs code. Tables 3 and 4 of this document provide numbers of facilities in the 2000 CBP and 1999 Nonemployer Statistics, respectively. Broader NAICs codes, such as 322 and 326 that include facilities that deal only in nonfood products have only the number of facilities reported that could reasonably be expected to deal in substances that migrate into food from food packaging or other articles that contact food. For example, stationery manufacturers have been removed from the estimate. The Nonemployer Statistics have more aggregated counts than the 2000 CBP. To get a more accurate count of facilities in the Nonemployer Statistics, the count of facilities in each aggregated NAICs codes is reduced by the percentage of facilities believed to be dealing with substances that migrate into food from packaging in the 2000 CBP. However, this number may be an overestimate as for some NAICs codes, in which it was not clear if the facilities were producing substances for food or nonfood use. For example, plastic forms may be made into food packaging or may be used for other purposes. To further adjust the number of facilities to include only facilities that manufacture/process, pack, or hold substances that migrate into food from food packaging or other articles that contact food, the numbers in each category are adjusted by data reported in The Rauch Guide to the U.S. Packaging Industry (Ref. 5). The Rauch guide reports that the packaging of consumer products accounts for 78 percent of all packaging and that 55 percent of the total used for consumer products is used for food and beverages. This means 43 percent of packaging is used to package food and beverages. To reflect this data, the NAICs categories for end, or near-end use packaging were reduced by 57 percent. NAICs categories for explicit food use, such as kitchen utensils and cutlery were assumed to have 100 percent of facilities manufacturing/processing, packing, or holding food.

Basic chemicals or other components incorporated into packaging may be intended for food or nonfood uses. FDA was unable to determine how many of these components are intended for food use. FDA also was not able to distinguish between manufacturers/processors, packers, or holders of immediate food packaging, which would be considered "substances that migrate into food from food packaging or other articles that contact food," and manufacturers/processors, packers, or holders of outer food packaging, which would not. Therefore, FDA included for purposes of this analysis: (1) Facilities manufacturing/processing, packing, or holding basic chemicals or other components incorporated into packaging for both food and nonfood use, and (2) manufacturers/processors, packers, and holders of both immediate and outer food packaging. Because this approach results in an overestimation of the number of facilities subject to this proposed rule, FDA requests comments on the number of these types of facilities that would be required to register.

Also covered under this proposed rule are slaughterhouses that process FDA regulated meats and renderers. FDA requests comments on the number of these facilities.

The Census data sets do not identify facilities engaged only in intrastate

commerce (Refs. 1 and 2). To be considered a facility engaged only in intrastate commerce, a facility must obtain all its ingredients and sell all its products within a single State. FDA assumes that facilities that participate only in intrastate commerce will be very small and are unlikely to be warehouses or wholesalers. To determine which facilities are in interstate commerce, FDA compared the number of facilities in Census data sets with the number of facilities in the FACTS database. FACTS is a database of facilities regulated by FDA that includes data on operations accomplished by the field (e.g., inspections, investigations, sample collections, sample analyses, etc.) (Ref. 3). FACTS and FDA's Operation and Administration System for Import Support (OASIS) identify firms as workload and nonworkload obligations for FDA. FACTS uses different product categories for facilities than the Census datasets, making a direct comparison of the number of firms within categories with the Census datasets difficult. Table 5 of this document presents a count of facilities in the FACTS database by FDA categories. The FACTS database has some facilities that appear in more than one category, so a single facility may appear more than once in the database. This double counting is not corrected in the count of each type of facility, but is corrected in the total count of facilities. Because the FACTS database gives a count of facilities that FDA inspects, FDA assumes that all facilities in FACTS are in interstate commerce. If we take the total count of facilities from the CBP and Nonemployer Statistics, 171,549, and subtract the count of facilities in FACTS, 71,871, this gives a reasonable estimate of the number of facilities in intrastate commerce 99,678. This calculation is presented in table 6 of this document.

TABLE 1.—COUNT OF FACILITIES IN THE 2000 CBP

NAICs Code	Type of Industry	Number of Facilities
3111	Animal food manufacturing	1,710
3112	Grain and oilseed milling	913
3113	Sugar and confectionery product manufacturing	1,689
3114	Fruit and vegetable preserving and specialty food manufacturing	1,796
3115	Dairy product manufacturing	1,769
3117	Seafood product preparation and packaging	854
3118	Bakeries and tortilla manufacturing	10,644
3119	Other food manufacturing	2,994
3121	Beverage manufacturing	2,748
4224	Grocery and related product wholesale	39,721
4225	Farm product raw material wholesale	9,546
4228	Beer, wine, distilled alcoholic beverage wholesale	4,630
49312	Refrigerated warehousing and storage	945
49313	Farm product warehousing and storage	516
Subtotal		80,475
	Substances that contact food	22,650
Total		103,125

TABLE 2.—COUNT OF FACILITIES IN THE 1999 NONEMPLOYER STATISTICS

NAICs Code	Type of Industry	Number of Facilities
3111	Animal food manufacturing	642
3112	Grain and oilseed milling	287
3113	Sugar and confectionery product manufacturing	1,439
3114	Fruit and vegetable preserving and specialty food manufacturing	2,000
3115	Dairy product manufacturing	594
3117	Seafood product preparation and packaging	693
3118	Bakeries and tortilla manufacturing	6,271
3119	Other food manufacturing	4,725
3121	Beverage manufacturing	1,608
4224	Grocery and related product wholesale	32,050
4225	Farm product raw material wholesale	4,795
4228	Beer, wine, distilled alcoholic beverage wholesale	2,578
4931	Warehousing and storage	964
Subtotal		58,646
	Substances that contact food	9,778
Total		68,424

TABLE 3.—FACILITIES THAT MANUFACTURE/PROCESS, PACK, OR HOLD FOOD CONTACT SUBSTANCES IN THE NONEMPLOYER STATISTICS

NAICs		Total in NAICs	Adjusted by CBP	Percent Used in Food
322	Paper manufacturing	1,621	1,197	43
3251	Basic chemical manufacturing	534	385	100

TABLE 3.—FACILITIES THAT MANUFACTURE/PROCESS, PACK, OR HOLD FOOD CONTACT SUBSTANCES IN THE NONEMPLOYER STATISTICS—Continued

NAICs		Total in NAICs	Adjusted by CBP	Percent Used in Food
3252	Resin, synthetic rubber, artificial and synthetic fibers manufacturing	293	293	100
326	Plastics and rubber products manufacturing	5,528	1,203	43
3271	Clay product and refractory manufacturing	4,452	448	100
3272	Glass and glass product manufacturing	3,463	3,463	43
331	Primary metal manufacturing	3,447	335	100
332	Fabricated metal product manufacturing	33,202	393	100
4226	Chemical and allied products wholesale	5,403	5,403	100
Total				9,778

TABLE 4.—FACILITIES THAT MANUFACTURE/PROCESS, PACK, OR HOLD FOOD CONTACT SUBSTANCES IN THE 2000 CBP

NAICs		Total Number of Facilities	Percent Used in Food
322	Paper manufacturing	4,308	43
32513	Synthetic dye and pigment manufacturing	204	100
32518	Basic inorganic chemical manufacturing	730	100
32519	Basic organic chemical manufacturing	818	100
3252	Resin, synthetic rubber, artificial and synthetic fibers	863	100
326	Plastics and rubber products manufacturing	3,544	43
327112	Vitreous china and other pottery product manufacturing	185	100
3272	Glass and glass product manufacturing	2,340	43
3313	Alumina and aluminum production and processing	613	43
332211	Cutlery and flatware (except precious) manufacturing	166	100
332214	Kitchen utensil, pot and pan manufacturing	72	100
332431	Metal can manufacturing	242	100
332439	Other metal container manufacturing	437	100
4226	Chemical and allied products wholesale	15,293	100
Adjusted total			22,650

TABLE 5.—COUNT OF FACILITIES IN FACTS

Type of Facility	Number of Facilities
Manufacturers	34,437
Repackers/packer	6,204
Warehouses	34,760
Shippers	1,519
Caterers	664
Commissary	705
Subtotal	78,289
Collapsed to account for multiple firms.	71,871

TABLE 6.—NUMBER OF FACILITIES IN INTERSTATE AND INTRASTATE COMMERCE

2000 CBP	103,125
1999 Nonemployer statistics	68,424
Subtotal of facilities in inter and intrastate commerce.	171,549
FACTS (interstate commerce)	-71,871
Facilities only in intrastate commerce.	99,678

ii. *Mixed-type facilities.* Although farms and retail facilities are exempted from registration by the Bioterrorism Act, some mixed-type facilities perform activities of a farm or retail facility and activities of a facility that is required to register. Under this regulatory option, FDA would require mixed-type facilities that manufacture/process food that is not consumed at that facility to register. Examples of manufacturing/processing include canning, freezing, cooking, pasteurization, homogenization, irradiation, milling, grinding, chopping, slicing, cutting, coloring, waxing, shelling of nuts, peeling, labeling, and packaging. Farms that mix feed would be considered mixed-type facilities if they manufacture/process feed at the facility with ingredients obtained from

another source, and the feed is then sold or transferred for final use off-farm.

To estimate the number of mixed-type facilities that grow crops or raise animals and would be subject to the proposed requirements, FDA used the 1997 USDA NASS Census of Agriculture (Ref. 6), and data obtained from various county level Cooperative Extension Service (CES) offices (Ref. 7). The Census of Agriculture provides the total number of farms producing specific commodities. To estimate the number of farms that are mixed-type facilities, FDA used a sample of counties with information from their respective CES offices. CES offices from Clay County, KS; Monterey, Sonoma, Marin, and San Diego counties in CA; Jackson County, WI; Gillespie and San Saba counties in TX; Carol County, MD; and Berks County, PA provide data on the percentage of farms producing specific commodities to be considered mixed-type facilities (Ref. 7). FDA assumes that farms that produce other commodities, including vegetables (nonorganic), other fruits, and wheat, plus feed mixing on poultry and other livestock farms are not mixed-type facilities based on CES interviews (Ref. 7). Table 7 of this document lists the numbers and percent of farms that are mixed-type by commodities. Some commodities that are not processed on mixed-type facilities are not included in the table. The total estimate of affected mixed-type facilities is 25,365. FDA requests comments on these assumptions and estimates.

TABLE 7.—COUNT OF MIXED-TYPE FACILITIES THAT ENGAGE IN FARMING AND THAT WOULD BE REQUIRED TO REGISTER UNDER OPTION 2.

Commodity	Facility Number	Percent Mixed Use	Mixed Use Number
Pig farms (feed mixing)	46,353	0.5	232
Cattle (feed mixing)	785,672	0	0
Poultry (feed mixing)	36,944	0	0
Other animal production (feed mixing)	110,580	0	0
Dairy	86,022	0	43
Grain, rice, and beans	462,877	0	0
Apples	10,872	10	1,087
Oranges	9,321	10	932
Peaches	14,459	10	1,446
Cherries	8,423	10	842
Pears	8,062	10	806
Other fruit	29,413	10	806
Nuts	14,500	10	1,450
Berries	6,807	20	1,361
Grapes	11,043	20	2,209
Olives	1,363	3	41
Vegetables and melons	31,030	0	0
Organic vegetables	6,206	50	3,103
Honey	7,688	50	3,844
Syrup	4,850	100	4,850
Herbs	1,776	10	178
Total			25,365

Retail facilities that manufacture/process, pack, or hold food, and then transfer the food offsite also would be considered mixed-type facilities under this option. Because FDA lacks data on the number of retail facilities that manufacture/process food for distribution offsite, FDA estimated this number using the total number of grocery stores and specialty food stores in the 2000 CBP and the 1999 Nonemployer Statistics. FDA assumes that grocery and specialty food stores also may manufacture/process food, but that convenience stores do not manufacture/process food. The 1999 Nonemployer Statistics reports the combined number of grocery and convenience stores and, separately, the number of specialty food stores. To adjust for the grouping of grocery and convenience stores, we assume that the percentage of grocery stores out of the combined number of grocery stores and

convenience stores is the same in the 2000 CBP and the 1999 Nonemployer Statistics and reduce the number of grocery and convenience stores from the 1999 Nonemployer Statistics by the percentage in the 2000 CBP. FDA then assumes that 10 percent of these retail facilities manufacture/process, in addition to direct selling to consumers. This gives a total of 10,410 affected mixed-type retail facilities. Because the number of retail facilities is large, the number of facilities covered is highly sensitive to the percentage assumed to be in mixed-type facilities. FDA requests comments on the number of attached retail facilities under Option 2.

iii. *Foreign manufacturers.* FDA estimates the number of foreign manufacturers that would be affected by the regulation from a count in FDA's OASIS database (Ref. 4). OASIS is an automated FDA system for processing and making admissibility determinations for shipments of foreign-origin FDA-regulated products seeking to enter domestic commerce. There are 125,450 foreign manufacturers in the OASIS database. Table 8 presents the number of foreign manufacturers by the type of food they manufacture/process.

TABLE 8.—NUMBER OF FOREIGN FACILITIES EXPORTING FOOD TO THE UNITED STATES IN FISCAL YEAR 1999

Foods	110,392
Food additives	2,979
Color additives	378
Infant formula	235
Vitamins	7,986
Animal feeds	3,330
Medicated animal foods	150
Total	125,450

iv. *Foreign holders.* Also covered under this regulatory option are the final food holders in the foreign country prior to export of the product. FDA does not have any information on how many foreign facilities hold foods that are to be exported to the United States. FDA, therefore, assumed that the number of foreign final holders is equal to the number of consignees, brokers, and importers of food products in the United States. The OASIS data has a count of 77,427 U.S. importers, brokers, and consignees, so FDA assumed that there are also 77,427 foreign final holders (Ref. 4). FDA requests comments on this estimate.

v. *Foreign facilities that do de minimis processing or packaging.* Facilities that do de minimis processing or packaging of the food, such as affixing a label, are also required to register. Because their processing is minimal, these facilities are not included in the OASIS count of foreign manufacturers. To estimate the number of affected foreign facilities, FDA takes the number of packers/repackers in the FACTS database, 6,204, and adjusts it by the ratio of domestic manufacturers in FACTS to the number of foreign manufacturers in OASIS. This adjustment of 3.64, (125,450 foreign facilities divided by 34,437 domestic facilities), gives the total number of de minimis processing foreign facilities as 22,600. FDA requests comments on this estimate.

vi. *New and closing facilities.* In addition to the facilities currently in existence, in future years, new businesses will open and some existing businesses will close. These new businesses would have to register and closing businesses would have to notify FDA to cancel their registration. According to the Small Business Administration (SBA) Office of Advocacy, in 2001, about 10 percent of all businesses were new and 10 percent of businesses closed (Ref. 8). FDA assumes that the rate of new and closing businesses is the same in other countries as in the United States. Thus, in future years 10 percent of the total count of facilities will be new facilities and 10 percent of the total count of food facilities will go out of business and will need to cancel their registration.

b. *Costs*—i. *Market reaction.* It is expected that most firms will register correctly and on time. If most facilities do not register correctly and on time, then the costs will be higher than estimated. It is also likely that some manufacturers/processors will not register prior to attempting to introduce their products into U.S. interstate commerce, which would increase the amount of time their products are held at the port. In addition, some foreign facilities may determine that registration, in conjunction with prior notice, would make it no longer profitable to continue to manufacture/process and ship food to the United States. That is, if the expected profit from exports is projected to be less than the cost of a U.S. agent, the cost of registration, and the cost of prior notification, they would cease to export to the United States. The marginal costs and benefits that would result from these changes in manufacturer/processor behavior are estimated in the following paragraphs.

ii. *Wage rates.* FDA uses two hourly wage rates from the Bureau of Labor Statistics' National Compensation Survey (Ref. 9). These wage rates then are doubled to include overhead costs, such as office space, health insurance, and retirement benefits. For an administrative worker, the cost per hour is $25.10, and for a manager, who would be the owner, operator, or agent in charge, $56.74. FDA lacks wage data specific to food industry workers in each of the foreign countries that export to the United States and thus used the wage rate for an administrative worker in the United States for the foreign wage rate. We assume that the nature of the worker and the worker's wage would be about the same in foreign countries as in the United States. In open markets where trade takes place, real wage rates tend to be equal for similar work and productivity across countries. However, FDA tests this assumption in the sensitivity analysis and re-calculates the costs if the foreign wage rate is lower than the domestic wage rate.

iii. *First year costs incurred by domestic facilities.* Domestic facilities would incur administrative and form-associated costs to comply with the regulation. The administrative costs would be partially shared between the registration and recordkeeping rules. FDA estimates administrative costs for the recordkeeping regulation and this proposed rule separately, but this probably gives an overestimate of administrative costs. Although recordkeeping has different requirements than registration, it would affect many of the same facilities and FDA expects that the recordkeeping final rule will be published soon after the registration final rule. Individuals from facilities affected by both regulations would most likely search for information for both regulations at the same time and find information in the same places.

There are four steps associated with a domestic facility complying with the regulation. One, the facility becomes aware of the regulation; two, the facility learns what the requirements are; three, an administrative worker fills out the form; and four, the owner, operator, or agent in charge certifies the form.

First, the facility becomes aware of the regulation through normal business activities; reading trade press or industry news; FDA outreach; or conversations with other business operators. Because facility owners, operators, or agents-in-charge must be aware of the requirement to change their activity, FDA assumes that becoming aware of the regulations would occur as part of normal business practice and we thus have included no economic costs for the facility. There may be costs incurred, however, by FDA or trade organizations to undertake the outreach. FDA costs will be considered in a separate section. FDA does not quantify

the costs undertaken by trade organizations, but discusses these costs in the qualitative costs section.

Second, once a representative of the facility becomes aware of the regulations, he or she would need to research the requirements of the regulation. This would require finding a copy of the requirements and reading and understanding them. Representatives of the facility may find a copy of these requirements on the Internet, in the **Federal Register**, in trade association meetings or mailings, or at a library. Several comments stated that many businesses might not have access to the Internet. Administrative costs would be higher for facilities that do not have access to the Internet, and would have to write to FDA or find other sources of information. In the United States, 59.10 percent of the population has accessed the Internet at least once in the three months prior to being surveyed (Ref. 11). An SBA report (Ref. 12) cites two studies that report 40 and 47 percent of small businesses had Internet access in 1998. An updated report from Dun and Bradstreet in 2002 reports 71 percent of small businesses have Internet access (Ref. 13).

Electronic registration will allow facilities an immediate confirmation and registration number. FDA believes that most domestic facilities with Internet access will register electronically. However, some may register on paper forms they receive from trade organizations, newsletters, or other sources. However, FDA believes that this number of paper submissions will be offset by registrants that choose to register electronically who do not have Internet access at their place of business. These registrants may use computers with Internet access belonging to libraries, friends, or in an Internet café. Therefore, FDA assumes that 71 percent of domestic registrants will research and register electronically. FDA estimates it would take facilities with Internet access 1 hour to research the requirements and facilities without Internet access 2 hours. FDA requests comments on this assumption.

Third, once the requirements are understood, the form has to be filled out and sent to FDA, either by mail or electronically. FDA estimates it would take 45 minutes of an administrative worker's time to find the correct information and fill out the form.

Fourth, the owner, operator, or agent in charge must verify the form. This cost would be 15 minutes of the owner, operator, or agent in charge's time.

iv. *Domestic facilities updates, cancellations, and new registrations (annual costs).* Facilities are required to update their registration when a change occurs in any information previously submitted on the registration form. Several comments suggested the requirement to update registrations might be burdensome because some information such as product lines and facility names change frequently and, therefore, could require frequent changes to registrations. FDA does not have any data on how often changes in product lines or other information included in the registration submission would occur. However, given that 10 percent of facilities go out of business each year, FDA estimates that a higher percentage, 20 percent, of all facilities will have to update their registration each year. FDA requests comments on this assumption. FDA also considers an alternative option (option 5) where product codes are not included on the registration form.

To update a registration, a worker at the facility will have to find a copy of the form, look up the facility's registration number, fill out the form, and the owner, operator, or agent in charge will have to verify the form to update a submission. The cost to the facility of updating would be 45 minutes of an administrative worker's time and 15 minutes of a manager's time to certify the changed registration.

New facilities would incur the same costs to learn about the regulation and fill out the registration form in future years as existing facilities experience in the first year. FDA estimates the number of new facilities entering each year would be equal to 10 percent of the total current number of facilities. Thus, the annual cost for registering new facilities would equal 10 percent of the first year costs to existing facilities.

Facilities that go out of business would need to notify FDA of the cancellation of their registration. Similar to updating registration, a worker at the facility will have to find a copy of the form, look up their registration number, fill out the form, and the owner, operator, or agent in charge will have to verify the form to cancel a registration. The cost to the facility of canceling the registration would be 45 minutes of an administrative worker's time to find and fill out the form and 15 minutes of a manager's time to cancel the registration. FDA estimates that 10 percent of the total, current number of facilities would go out of business each year. Table 9 presents a summary of domestic facilities covered under option 2, and table 10 summarizes the data used to estimate the cost of complying with option 2.

TABLE 9.—NUMBER OF DOMESTIC FACILITIES COVERED UNDER OPTION 2

2000 CBP	103,125
1999 Nonemployer statistics	68,424
Mixed-type facilities that engage in farming	25,365
Retail processors	10,410
Total domestic	207,324

TABLE 10.—SUMMARY OF COSTS FOR DOMESTIC FACILITIES UNDER OPTION 2

Administrative worker wage (includes overhead)	25.1
Manager wage (includes overhead)	56.74
Percent with Internet access US	71%
Research time with Internet (hours)	1
Research time without Internet (hours)	2
Research cost with Internet	$3,695,000
Research cost without Internet	$3,018,000
Administrative time for form (hours)	0.75
Manager time for form (hours)	0.25
Form costs	$6,844,000
Percent of businesses going out of business	10%
Percent of businesses entering	10%
Percent of businesses with changes	20%
Annual facility costs	$3,409,000
Total domestic costs	$13,557,000

v. *Foreign facility first year costs.* FDA expects foreign facilities to go through the same four steps to comply with the regulation as domestic facilities: a worker must become aware of the regulation, learn the requirements, and fill out the form; the owner, operator, or agent in charge then must verify the form. There are additional fifth and sixth steps for foreign facilities to find, and then hire a U.S. agent. To estimate the cost of registration for foreign facilities, FDA assumes that they would incur the same per facility costs as

domestic facilities, plus additional costs.

Costs would be higher for many foreign facilities than for domestic facilities at each step due to distance, language difficulties, and lack of Internet access. For some foreign facilities, it may be so difficult to become informed about the regulation, that rather than become informed about the requirements before shipping, some are likely to learn about the requirements at the U.S. port. For these foreign facilities, the cost of learning about the registration requirement would be a possible loss of value to their product due to a delay at the port, storage costs, and transaction costs associated with the delay.

Foreign facilities may learn about the requirements through trade press, importers, U.S. business or trading partners, distributors, or their governments. Foreign facilities, like domestic facilities, then would have to find the requirements of the regulation, obtain the registration form either electronically or in hard copy, and fill out and verify the form. Costs for foreign facilities would vary depending on whether the worker entering the registration information or the owner, operator, or agent in charge of the foreign facility can read and write in English. Comments suggest that many foreign manufacturers are limited in their ability to read and write in English. Estimates of the number of people outside of countries where English is the primary language, who are able to speak English fluently vary widely, ranging from 300 to 750 million (Ref. 14).

To find the number of English speakers outside of the United States, FDA adds the number of English speakers in countries where English is the primary language, excluding the United States, 151 million, the number of English speakers in countries where English is a secondary language, 300 million, and the midpoint, 525 million, of the range of the estimate of the number of speakers of English as a foreign language. FDA then divides this total number of English speakers by the world population minus the U.S. population, 5.9 billion (Ref. 15). Therefore, FDA assumes that 16 percent of foreign manufacturers read and write English well enough to research the registration requirement and fill out the form. FDA requests comments on this assumption. Registrants who do not read and write English would have to hire a translator to aid them in registering and understanding the registration requirements. Alternatively, trade groups, distributors, or the Government may provide translation services. Regardless of whether the translation is paid for directly by the registrant or a third party, for ease of computation, we assume there is a cost per registration for translation for 84 percent of foreign facilities. FDA assumes it would take facility operators who do not understand English one additional hour to fill out the form, 5 additional hours to find an agent, and 5 additional hours to read and understand the registration requirements. FDA requests comments on these assumptions.

Whether a foreign facility has access to the Internet will determine, in part, the cost of learning about and complying with the registration requirements. Although 71 percent of the small businesses in the United States have Internet access, only 3 percent of the population of China, the country that has the largest number of manufacturers that export to the United States, has access to the Internet (Ref. 11). To get an idea of how many manufacturers that export to the United States have access to the Internet, FDA looked at Internet access for the 26 countries that represent 80 percent of the manufacturers that export to the United States (Ref. 4) and the percent of the population that has access to the Internet worldwide for the remaining 20 percent. A weighted average of these 26 countries by the number of manufacturers suggests that 26 percent of the population that exports to the United States has Internet access. FDA lacks data on the percent of businesses in other countries with Internet access. Because businesses are more likely to have Internet access than individuals, FDA adjusts the percent of the populations of other countries with Internet access upward by the percent difference in Internet access between individuals and small businesses in the United States. Seventy-one percent of small businesses in the United States have Internet access versus 59 percent of the population, or the percent of businesses with Internet access represents a 20 percent increase over the population. Applying this adjustment to Internet access in foreign countries increases the percent of businesses with Internet access from 26 to 31 percent. FDA therefore assumes that 31 percent of foreign manufacturers would register electronically. In option 7, FDA considers how many facilities will be registered electronically if the U.S. agent is able to register on behalf of the foreign facility. Table 11 provides a summary of the 26 countries and the percentage of their population with Internet access. The remaining 69 percent would either register by mail or would be aided in registering electronically.

Regardless of whether the cost of obtaining Internet access is borne by the facility, or by a third party, for ease of computation, FDA estimates the cost per facility. FDA expects it will be more difficult for foreign facilities that do not have Internet access at their place of business than domestic facilities to access the Internet elsewhere due to the overall lower level of Internet access in foreign countries. FDA assumes it would take facility operators that do not have access to the Internet, one additional hour to fill out the form, 5 additional hours to find an agent, and 5 additional hours to find, read, and understand the registration requirements. FDA requests comments on these assumptions.

TABLE 11.—PERCENT OF THE POPULATION WITH INTERNET ACCESS FOR THE 26 COUNTRIES THAT ARE HOME TO 80 PERCENT OF FOOD EXPORTERS TO THE UNITED STATES

Country	Percent of Total Manufacturers	Percent of Population With Internet Access
China (mainland) ..	9.05	2.92
France	8.61	28.39
Italy	7.96	33.37
Canada	7.78	52.79
Japan	7.69	40.43
Mexico	6.24	3.38
United Kingdom	3.80	59.88
Germany, Federal Republic of.	3.30	36.37
Taiwan, Republic Of China.	2.96	51.85
Korea, Republic Of (South).	2.95	46.40
India	2.76	0.67
Spain	2.56	19.69
Thailand	2.39	1.96
Netherlands	1.40	58.07
Australia	1.30	54.38
Philippines	1.29	2.46
Hong Kong	1.26	59.58
Chile	1.21	20.02
Poland	1.19	16.57
Brazil	1.18	7.74
Indonesia	1.06	1.93
Belgium	0.89	33.14
Switzerland	0.86	46.82
Portugal	0.85	34.37
Vietnam	0.83	0.49
Rest of the world ..	20.00	9.57
Weighted average		25.50
Business adjustment		20.34
Percent of foreign facilities with Internet access.		30.69

vi. *Foreign facility costs to hire a U.S. agent.* The U.S. agent is a person residing or maintaining a place of business in the United States, whom the owner, operator, or agent in charge of a foreign facility designates as its agent. Only one U.S. agent per foreign facility is permitted. The U.S. agent acts as a communications link between the FDA and the facility and FDA would consider providing information to the U.S. agent the same as providing information directly to the foreign facility.

In option 7, facilities can designate their U.S. agent as their agent in charge of the facility for purposes of registration and the agent can register in behalf of the facility. The costs and benefits of permitting the U.S. agent to register on behalf of the facility are considered in option 7.

FDA has little information on how many foreign facilities already have a U.S. agent. Comments stated that many exporters do not currently have a U.S. agent; they would have to hire an agent in response to the regulation. FDA expects, however, that some foreign facilities already have a U.S. representative that can function as a U.S. agent. The U.S. representative may be a business partner, broker, U.S. lawyer, or parent company. FDA assumes that the likelihood that a foreign facility has an existing U.S. agent is related directly to the quantity of product the foreign facility exports to the United States.

To estimate the number of foreign facilities that already have a U.S. agent, FDA assumes that manufacturers/processors that do more business in the United States are more likely to have an existing U.S. agent. To estimate the amount of product a foreign manufacturer/processor exports to the United States, FDA estimates the number of line entries exported to the United States by foreign manufacturers. The term "line entry" refers to a group of products that are subject to the same FDA admissibility decision because they have the same FDA product code, brand name, size or packaging, manufacturer/processor, shipper, consignee, importer's product description, and country of production. One shipment may contain multiple line entries.

FDA used data from OASIS on the average number of line entries and the average number of manufacturers/processors (listed in OASIS under the category "manufacturers") by country and product code to estimate the number of line entries for foreign manufacturers/processors. A shortcoming of these data is that entries are by product code; thus, manufacturers/processors that are exporting products in more than one product code are in the count of manufacturers/processors for every product code in which they export. A product code designates a category of product, such as cheese and cheese products. The OASIS data consequently have approximately twice as many manufacturers/processors as actually exist. To adjust for this double-counting, FDA assumed the average foreign manufacturer/processor exports in two product categories. To find an approximate number of line entries per manufacturer, FDA divided the total number of manufacturers/processors into the total number of line entries for each country and applied the average number of line entries per manufacturer/processor to all the manufacturers/processors from that country. This method will underestimate the number of very small and very large manufacturers/processors, because it removes the variation in number of line entries exported from countries with a large number of manufacturers/processors exporting to the United States.

To estimate the number of foreign facilities that would have to hire a U.S. agent, FDA assumed that foreign facilities that export more than 100 line entries each year into the United States, or 10 percent of foreign manufacturers/processors, already have a U.S. representative who can function as a U.S. agent. FDA also assumed that the 16 percent of manufacturers/processors that are exporting 10 or fewer line entries to the United States would stop exporting to the United States, rather than incur the expense of registering, hiring a U.S. agent, and providing prior notice under 21 CFR part 1, subpart I. FDA requests comments on these assumptions. Table 12 presents average numbers of line entries and the percent of foreign manufacturers/processors that export that number.

TABLE 12.—AVERAGE NUMBER OF LINE ENTRIES FROM FOREIGN MANUFACTURERS/PROCESSORS

Average Number of Line Entries	Percent of Total Number of Foreign Manufacturers/ Processors	Cumulative Percent of Manufacturers/ Processors
≤10	15.81	15.81
11–20	25.43	41.24
21–40	32.27	73.51

TABLE 12.—AVERAGE NUMBER OF LINE ENTRIES FROM FOREIGN MANUFACTURERS/PROCESSORS—Continued

Average Number of Line Entries	Percent of Total Number of Foreign Manufacturers/ Processors	Cumulative Percent of Manufacturers/ Processors
41–60	7.30	80.81
61–80	5.88	86.69
81–100	3.64	90.33
101–120	1.78	92.11
121–140	0.72	92.83
141–160	1.59	94.42
161–180	0.48	94.90
181–200	0.83	95.73
>200	4.27	100.00

FDA anticipates that foreign facilities would find U.S. agents through the Internet or business contacts. Finding and hiring an agent would result in labor costs for the facility. FDA requests comments on these assumptions.

FDA bases the estimated cost of hiring a U.S. agent on the fees charged by U.S. agents for foreign drug, biologic, and device manufacturers. The requirements for a U.S. agent for drugs, biologics, and devices (parts 207, 607, and 807, respectively) are very similar to the requirements for a U.S. agent for foods in this proposed regulation, and many of the U.S. agents began working as a response to the drug, biologic, and device foreign facility registration regulations. FDA contacted some active U.S. agents, whose annual cost estimates for their services ranged from $700 to $2,000 (Refs. 16 and 17).

vii. *Annual costs for foreign facilities.* Foreign facilities have to retain a U.S. agent. In the first year, the facility would incur costs to hire and retain an agent. In future years, the facility would have to pay an annual fee of approximately one thousand dollars to the agent.

Like domestic facilities, foreign facilities are required to update their registration when a change occurs in any of the information previously submitted. FDA estimates the frequency of registration updates for foreign facilities as 20 percent per year. FDA requests comments on this assumption. The cost to the facility of updating would be 1 hour to find and fill out the form, including translation if necessary, and to certify the changed registration.

New facilities would incur the same costs to learn about the regulation, hire a U.S. agent, and fill out the registration information in future years as existing facilities would incur in the first year.

FDA estimates the number of new facilities entering each year would be equal to 10 percent of the total current number of facilities. Thus, the annual cost for registration of new foreign facilities would equal 10 percent of the first year cost to facilities.

Facilities that go out of business would need to notify FDA of the cancellation of their registration. The cost to the facility of canceling the registration would be the wage rate times 1 hour to cancel the registration. FDA estimates that 10 percent of the total, current number of facilities would go out of business each year. Table 13 presents a summary of the data used to estimate the cost to foreign facilities to comply with option 2.

TABLE 13.—NUMBER OF FOREIGN FACILITIES COVERED UNDER OPTION 2

Foreign holders and packagers	100,027
Foreign manufacturers/processors	125,450
Stops exporting	16%
Total facilities	205,405

TABLE 14.—SUMMARY OF COSTS INCURRED BY FOREIGN FACILITIES UNDER OPTION 2

Speaks English	16%
Has Internet access	31%
Has U.S. agent	10%
Cost of U.S. agent (annual)	$1,000
Hourly wage rate	$25
Time to find agent (hours)	5
Additional time language (hours)	5
Additional time Internet (hours)	5
First year agent cost	$67,340,000
Agent fee (annual cost)	$194,868,000
Administrative time (hours)	1
Additional time language (hours)	5
Additional time Internet (hours)	5
First year administrative costs	$44,418,929
Time to fill out form (hours)	1
Additional time language (hours)	1
Additional time Internet (hours)	1
Percent of businesses going out of business	10%
Percent of businesses entering	10%
Percent of businesses with changes	20%
First year form cost	$12,992,000
Total first year costs	$319,619,000
Total annual costs	$228,370,000

viii. *Cost due to port delays.* FDA anticipates that some foreign facilities would not learn of the requirements before shipping their products to the United States. The administrative costs of learning about the registration requirements for these foreign facilities would be the cost of finding out at the port of entry. FDA requests comment on the percentage of foreign facilities that would become aware of the registration requirement at the U.S. port of entry. For these facilities, the cost of complying would be the possible one-time loss of value of their shipment and other costs of delay, in addition to the cost of registering and finding and hiring a U.S. agent. FDA estimates the cost to foreign facilities of becoming informed about the regulatory requirement is the number of foreign facilities multiplied by either the cost of information, re-exporting the shipment, or a delayed shipment at the U.S. port, whichever is lower.

FDA must hold shipments at the U.S. port for as long as it takes the foreign facility to register with FDA. To register, a foreign facility first must be informed of the delay at the port by the importer, consignee, owner, or transporter. This may happen very quickly via a phone call or e-mail message, or take hours if there is a large difference in time zones. Next, the foreign facility must find and hire a U.S. agent, if it does not already have one. If the foreign facility is open during U.S. business hours and has access to the Internet and a fax machine to find an agent and sign a contract, it may find an agent quickly. If the foreign facility is not in a time zone compatible with customary business hours in the United States or does not have easy access to the Internet or fax machine, finding and hiring an agent may take longer. The cost of the delay to the foreign facility is the cost of storing the shipment and loss of value of the shipment due to the delay. For perishable products, a delay may reduce the value of the shipment significantly, perhaps even to zero. For nonperishable products, there may be transaction costs due to cancellation of a contract and finding a new buyer. FDA expects that to the extent there are significant port delays, they typically will occur with food manufactured/processed, packed or held at facilities that ship infrequently to the United States. Delays also will be longer and more likely for shipments from facilities that are more distant from the United States or have difficulty communicating with the United States. Perishables, due to their short shelf life, are more likely to be shipped from countries that are geographically close to the United States. For these reasons, FDA expects that costs arising from delays for nonperishable products may be as high or higher than costs arising from perishable products. FDA requests comments on the length of delay for shipments held while waiting for the foreign facility to register and on the costs of the delay, such as loss of product value, storage costs, and transaction costs.

ix. *FDA costs.* FDA's costs include creating and maintaining a database, processing paper submissions, and sending annual mailings to registrants. Developing and maintaining a database includes automatically entering registrations into the database that arrive electronically and sending an electronic receipt and facility registration number back to the registrant. FDA estimates that four full time employees (FTEs) would be needed to oversee the database. An employee's wage is estimated to be equal to a GS–12, step one, in the Washington, DC metro area, which is $55,924 per year (Ref. 10). To get the cost of the labor to FDA, FDA doubles the wage rate to include overhead costs, such as health insurance, office space, and retirement benefits. Additionally, paper submissions would have to be entered manually, at an estimated cost of $10 per submission. FDA estimates that facilities that do not have access to the Internet would submit paper registrations. FDA also estimates a 10 percent error rate for paper submissions based on estimates of error rates for another FDA database (Ref. 18). Each paper submission with an error will result in an additional cost for mailing and re-processing. FDA intends to send an annual e-mail or mailing to all

registrants reminding them to keep their registrations up-to-date and verifying the mailing addresses of the registrants. FDA presents costs for the first 5 years in table 15 of this document. Wage rates and paper submission costs are increased by 3 percent each year to account for inflation. Annual costs are discounted at 7 percent.

TABLE 15.—YEARLY COST ESTIMATE FOR FDA UNDER OPTION 2

FDA Costs	2003	2004	2005	2006	2007
Development/modification/enhancement	$8,200,000	$3,000,000	$3,300,000	$2,300,000	$2,300,000
Maintenance/steady state	$1,560,000	$3,500,000	$4,300,000	$4,300,000	$4,300,000
Number of FTEs	4	4	4	2	2
Cost per FTE	$110,588	$110,588	$110,588	$110,588	$110,588
Cost per paper submission	$10	$10.00	$10.00	$10.00	$10.00
Number of domestic paper submissions	60,124	24,050	24,050	24,050	24,050
Number of foreign paper submissions	22,677	9,071	9,071	9,071	9,071
Total number of domestic registrations in database	207,324	207,324	207,324	207,324	207,324
Total number of foreign registrations in database	205,405	205,405	205,405	205,405	205,405
Mailings to domestic facilities	$1	$1.00	$1.00	$1.00	$1.00
Mailings to foreign facilities	$1	$1.00	$1.00	$1.00	$1.00
Error rate for paper submissions	10%	10%	10%	10%	10%
Number of errors	8,280	3,312	3,312	3,312	3,312
Cost per error	$15	$15.00	$15.00	$15.00	$15.00
Total costs	$11,279,000	$7,398,000	$8,498,000	$7,276,000	$7,276,000
Discounted total costs	$11,279,000	$6,914,000	$7,422,000	$5,939,000	$5,551,000

3. Option Three: Require Registration of Domestic and Foreign Facilities That Manufacture/Process, Pack, or Hold Food That Sell Their Products in Interstate Commerce, Including Mixed-Type Facilities

Option three has the same requirements as option two, but does not require domestic facilities that participate only in intrastate commerce to register. FDA tentatively concludes that this option is not legally viable. The Bioterrorism Act does not seem to limit the scope of the statute to facilities that engage only in interstate commerce. Tables 16, 17, 18, 19, and 20 of this document provide a summary of the data for cost estimates under option 3 for domestic facilities, foreign facilities, and FDA, respectively.

Excluding intrastate facilities would lower the number of affected, domestic facilities from 207,324 affected facilities under option two to 107,646. This would lower the first year cost for domestic facilities from $13.6 to $7.0 million dollars. The annual cost would be lowered from $3.4 to $1.8 million dollars. Total first year costs would be lowered from $344.5 to $337.6 million dollars.

TABLE 16.—NUMBER OF DOMESTIC FACILITIES COVERED UNDER OPTION 3

FACTS data	71,871
Mixed-type farms	25,365
Retail processors	10,410
Total domestic	107,646

TABLE 17.—SUMMARY OF COSTS INCURRED BY DOMESTIC FACILITIES UNDER OPTION 3

Administrative worker wage (includes overhead)	25.1
Manager wage (includes overhead)	56.74
Percent with Internet access US	71%
Research time with Internet (hours)	1
Research time without Internet (hours)	2
Research cost with Internet	$1,918,000
Research cost without Internet	$1,567,000
Administrative time for form (hours)	0.75
Manager time for form (hours)	0.25
Form costs	$3,553,000
Percent of businesses going out of business	10%
Percent of businesses entering	10%
Percent of businesses with changes	20%
Annual facility costs	$1,770,000
Total domestic costs	$7,038,000

TABLE 18.—NUMBER OF FOREIGN FACILITIES COVERED UNDER OPTION 3

Foreign holders and packagers	100,027
Foreign manufacturers/processors	125,450
Stops exporting	16%
Total facilities	205,405

TABLE 19.—SUMMARY OF COSTS INCURRED BY FOREIGN FACILITIES UNDER OPTION 3

Speaks English	16%
Has Internet access	31%
Has U.S. agent	10%
Cost of U.S. agent (annual)	$1,000
Hourly wage rate	$25

TABLE 19.—SUMMARY OF COSTS INCURRED BY FOREIGN FACILITIES UNDER OPTION 3—Continued

Time to find agent (hours)	5
Additional time language (hours)	5
Additional time Internet (hours)	5
First year agent cost	$67,340,000
Agent fee (annual cost)	$194,868,000
Administrative time (hours)	1
Additional time language (hours)	5
Additional time Internet (hours)	5
First year administrative costs	$44,418,929

TABLE 19.—SUMMARY OF COSTS INCURRED BY FOREIGN FACILITIES UNDER OPTION 3—Continued

Time to fill out form (hours)	1
Additional time language (hours)	1
Additional time Internet (hours)	1
Percent of businesses going out of business	10%
Percent of businesses entering	10%
Percent of businesses with changes	20%
First year form cost	$12,992,000
Total first year costs	$319,619,000
Total annual costs	$228,370,000

TABLE 20.—COSTS INCURRED BY FDA UNDER OPTION 3

FDA Costs	2003	2004	2005	2006	2007
Development/modification/enhancement	$8,200,000	$3,000,000	$3,300,000	$2,300,000	$2,300,000
Maintenance/steady state	$1,560,000	$3,500,000	$4,300,000	$4,300,000	$4,300,000
Number of FTEs	4	4	4	2	2
Cost per FTE	$110,588	$110,588	$110,588	$110,588	$110,588
Cost per paper submission	$10	$10	$10	$10	$10
Number of domestic paper submissions	31,217	12,487	12,487	12,487	12,487
Number of foreign paper submissions	22,677	9,071	9,071	9,071	9,071
Total number of domestic registrations in database	107,646	107,646	107,646	107,646	107,646
Total number of foreign registrations in database	205,405	205,405	205,405	205,405	205,405
Mailings to domestic facilities	$1	$1	$1	$1	$1
Mailings to foreign facilities	$1	$1	$1	$1	$1
Error rate for paper submissions	10%	10%	10%	10%	10%
Number of errors	5,389	2,156	2,156	2,156	2,156
Cost per error	$15	$15	$15	$15	$15
Total costs	$10,907,000	$7,243,000	$8,343,000	$7,122,000	$7,122,000
Discounted total costs	$10,907,000	$6,769,000	$7,287,000	$5,814,000	$5,433,000

4. Option Four: Require Registration of Domestic and Foreign Facilities That Manufacture/Process, Pack, or Hold Food That Sell Their Products in Interstate and Intrastate Commerce, Not Including Mixed-Type Facilities

Option four has the same registration and U.S. agent requirements as option two, but does not require mixed-type facilities to register. Tables 21, 22, 23, 24, and 25 provide a summary of the data for cost estimates under option 4 for domestic facilities, foreign facilities, and FDA, respectively.

FDA does not believe this option is legally viable, since some mixed-type facilities engage in activities (such as manufacturing/processing for commercial distribution) that are clearly within the scope of the registration requirement as enacted by Congress. Nevertheless, we are including a discussion of this option for comparison purposes.

Excluding mixed-type facilities lowers the number of affected domestic facilities, from 207,324 affected facilities under option 2 to 171,549. This would lower the first year cost for domestic facilities from $13.6 to $11.2 million dollars. The annual cost for domestic facilities would be lowered from $3.4 to $2.8 million. Total first year costs would be lowered from $344.5 to $342.0 million dollars.

TABLE 21.—NUMBER OF DOMESTIC FACILITIES COVERED UNDER OPTION 4

2000 CBP	103,125
1999 Nonemployer statistics	68,424
Total domestic	171,549

TABLE 22.—SUMMARY OF COSTS INCURRED BY DOMESTIC FACILITIES UNDER OPTION 4

Administrative worker wage (includes overhead)	25.1
Manager wage (includes overhead)	56.74
Percent with Internet access US	71%
Research time with Internet (hours)	1
Research time without Internet (hours)	2
Research cost with Internet	$3,057,000
Research cost without Internet	$2,497,000
Administrative time for form (hours)	0.75
Manager time for form (hours)	0.25
Form costs	$5,663,000
Percent of businesses going out of business	10%
Percent of businesses entering	10%
Percent of businesses with changes	20%
Annual facility costs	$2,821,000
Total domestic costs	$11,217,000

TABLE 23.—NUMBER OF FOREIGN FACILITIES COVERED UNDER OPTION 4

Foreign holders and packagers	100,027
Foreign manufacturers/processors	125,450
Stops exporting	16%
Total facilities	205,405

TABLE 24.—SUMMARY OF COSTS INCURRED BY FOREIGN FACILITIES UNDER OPTION 4

Speaks English	16%
Has Internet access	31%
Has U.S. agent	10%
Cost of U.S. agent (annual)	$1,000
Hourly wage rate	$25
Time to find agent (hours)	5
Additional time language (hours)	5
Additional time Internet (hours)	5
First year agent cost	$67,340,000
Agent fee (annual cost)	$194,868,000
Administrative time (hours)	1
Additional time language (hours)	5
Additional time Internet (hours)	5
First year administrative costs	$44,418,929
Time to fill out form (hours)	1
Additional time language (hours)	1
Additional time Internet (hours)	1
Percent of businesses going out of business	10%
Percent of businesses entering	10%
Percent of businesses with changes	20%
First year form cost	$12,992,000
Total first year costs	$319,619,000
Total annual costs	$228,370,000

TABLE 25.—COSTS INCURRED BY FDA UNDER OPTION 4

FDA Costs	2003	2004	2005	2006	2007
Development/modification/enhancement	$8,200,000	$3,000,000	$3,300,000	$2,300,000	$2,300,000
Maintenance/steady state	$1,560,000	$3,500,000	$4,300,000	$4,300,000	$4,300,000
Number of FTEs	4	4	4	2	2
Cost per FTE	$110,588	$110,588	$110,588	$110,588	$110,588
Cost per paper submission	$10	$10	$10	$10	$10
Number of domestic paper submissions	49,749	19,900	19,900	19,900	19,900

TABLE 25.—COSTS INCURRED BY FDA UNDER OPTION 4—Continued

FDA Costs	2003	2004	2005	2006	2007
Number of foreign paper submissions	22,677	9,071	9,071	9,071	9,071
Total number of domestic registrations in database	171,549	171,549	171,549	171,549	171,549
Total number of foreign registrations in database	205,405	205,405	205,405	205,405	205,405
Mailings to domestic facilities	$1	$1	$1	$1	$1
Mailings to foreign facilities	$1	$1	$1	$1	$1
Error rate for paper submissions	10%	10%	10%	10%	10%
Number of errors	7,243	2,897	2,897	2,897	2,897
Cost per error	$15	$15	$15	$15	$15
Total costs	$11,145,000	$7,342,000	$8,442,000	$7,221,000	$7,221,000
Discounted total costs	$11,145,000	$6,862,000	$7,374,000	$5,894,000	$5,509,000

5. Option Five: Require Registration of Domestic and Foreign Facilities That Manufacture/Process, Pack, or Hold Food That Sell Their Products in Interstate and Intrastate Commerce for Consumption in the United States, Including Mixed-Type Facilities as Defined in Option 2, but Not Including Product Categories on the Registration Form

Option five covers the same facilities as option two, but requires less information from the registrants. Registrants still would be required to submit the facility's name, address, emergency contact information, name and address of the parent company, trade names, U.S. agent information (if a foreign facility), and the name of the owner, operator, or agent in charge of the facility, but would not be required to submit the general food product categories under § 170.3. Tables 26, 27, 28, 29, and 30 of this document provide a summary of the data for cost estimates under option 5 for domestic facilities, foreign facilities, and FDA, respectively.

Removing the product categories from the registration would decrease the frequency with which facilities have to update their registrations and reduce the amount of time required to register by 15 minutes. FDA requests comment on this estimate. FDA estimates that removing the product categories would reduce the percentage of facilities that have to update their registration from 20 percent each year to 10 percent. First year costs would be lower for foreign and domestic facilities due to facilities needing less time to fill out the form. Total first year domestic costs would be lowered from $13.6 to $12.3 million. Annual costs for domestic firms would be lowered from $3.4 to $2.3 million due to less frequent updates. Total first year foreign costs would be lowered from $319.6 to $318.3 million and total costs would be raised from $334.5 to $341.9 million.

TABLE 26.—NUMBER OF DOMESTIC FACILITIES COVERED UNDER OPTION 5

2000 CBP	103,125
1999 Nonemployer statistics	68,424
Mixed-type facilities that engage in farming	25,365
Retail processors	10,410
Total domestic	207,324

TABLE 27.—SUMMARY OF COSTS INCURRED BY DOMESTIC FACILITIES UNDER OPTION 5

Administrative worker wage (includes overhead)	25.1
Manager wage (includes overhead)	56.74
Percent with Internet access US	71%
Research time with Internet (hours)	1
Research time without Internet (hours)	2
Research cost with Internet	$3,695,000
Research cost without Internet	$3,018,000

TABLE 27.—SUMMARY OF COSTS INCURRED BY DOMESTIC FACILITIES UNDER OPTION 5—Continued

Administrative time for form (hours)	0.5
Manager time for form (hours)	0.25
Form costs	$5,543,000
Percent of businesses going out of business	10%
Percent of businesses entering	10%
Percent of businesses with changes	10%
Annual facility costs	$2,334,000
Total domestic costs	$12,256,000

TABLE 28.—NUMBER OF FOREIGN FACILITIES COVERED UNDER OPTION 5

Foreign holders and packagers	100,027
Foreign manufacturers/processors	125,450
Stops exporting	16%
Total facilities	205,405

TABLE 29.—SUMMARY OF COSTS INCURRED BY FOREIGN FACILITIES

Speaks English	16%
Has Internet access	31%
Has U.S. agent	10%

TABLE 29.—SUMMARY OF COSTS INCURRED BY FOREIGN FACILITIES—Continued

Cost of U.S. agent (annual)	$1,000
Hourly wage rate	$25
Time to find agent (hours)	5
Additional time language (hours)	5
Additional time Internet (hours)	5
First year agent cost	$67,340,000
Agent fee (annual cost)	$194,868,000

TABLE 29.—SUMMARY OF COSTS INCURRED BY FOREIGN FACILITIES—Continued

Administrative time (hours)	1
Additional time language (hours)	5
Additional time Internet (hours)	5
First year administrative costs	$44,418,929
Time to fill out form (hours)	0.75
Additional time language (hours)	1

TABLE 29.—SUMMARY OF COSTS INCURRED BY FOREIGN FACILITIES—Continued

Additional time Internet (hours)	1
Percent of businesses going out of business	10%
Percent of businesses entering	10%
Percent of businesses with changes	10%
First year form cost	$11,708,000
Total first year costs	$318,335,000
Total annual costs	$227,729,000

TABLE 30.—COSTS INCURRED BY FDA UNDER OPTION 5

FDA Costs	2003	2004	2005	2006	2007
Development/modification/enhancement	$8,200,000	$3,000,000	$3,300,000	$2,300,000	$2,300,000
Maintenance/steady state	$1,560,000	$3,500,000	$4,300,000	$4,300,000	$4,300,000
Number of FTEs	4	4	4	2	2
Cost per FTE	$110,588	$110,588	$110,588	$110,588	$110,588
Cost per paper submission	$10	$10	$10	$10	$10
Number of domestic paper submissions	60,124	18,037	18,037	18,037	18,037
Number of foreign paper submissions	22,677	6,803	6,803	6,803	6,803
Total number of domestic registrations in database	207,324	207,324	207,324	207,324	207,324
Total number of foreign registrations in database	205,405	205,405	205,405	205,405	205,405
Mailings to domestic facilities	$1	$1	$1	$1	$1
Mailings to foreign facilities	$1	$1	$1	$1	$1
Error rate for paper submissions	10%	10%	10%	10%	10%
Number of errors	8,280	2,484	2,484	2,484	2,484
Cost per error	$15	$15	$15	$15	$15
Total costs	$11,279,000	$7,294,000	$8,394,000	$7,173,000	$7,173,000
Discounted total costs	$11,279,000	$6,817,000	$7,332,000	$5,855,000	$5,472,000

6. Option Six: Require Registration of Domestic and Foreign Facilities That Manufacture/Process, Pack, or Hold Food That Sell Their Products in Interstate and Intrastate Commerce, Including Mixed-Type Facilities.

Mixed-type facilities that engage in farming are covered if they pack or hold food not grown or raised on that facility or manufacture/process food not for consumption on that facility. However, facilities of these types that manufacture/process food solely for direct sale to consumers from that same facility are exempt.

A mixed-type facility performs activities of a facility that is ordinarily required to register and activities of a facility that is ordinarily exempt, such as a farm or retail facility. Mixed-type facilities that are required to register differ under options 2 and 6. In option 2, mixed-type facilities that manufacture/process food for consumption offsite, where offsite includes both distribution directly to consumers and distribution to nonconsumers, must register. In option 6, facilities that manufacture/process food and distribute it directly to consumers would not be included in the registration requirement. Option 6 requires registration for mixed-type facilities that pack or hold food that was not grown or raised at that facility; these facilities are not included in the option 2 definition. These changes in coverage raise the total number of affected mixed-

type facilities from 25,365 to 30,497. Facilities that engage in the activities of a retail facility but also manufacture/process food and distribute it to nonconsumers are considered as manufacturers/processors in the count of facilities in this analysis. FDA requests comment on this categorization. Table 31 of this document shows the number of affected mixed-type facilities by category of product.

TABLE 31.—NUMBER OF AFFECTED MIXED-TYPE FACILITIES UNDER OPTION 6

Type	Number of Farms	Percent Mixed Use	Percent Mixed Use
Pig farms (feed mixing)	46,353	1.5	695
Cattle (feed mixing)	785,672	1	7,857
Poultry (feed mixing)	36,944	1	369
Other animal production (feed mixing)	110,580	1	1,106
Dairy	86,022	1.1	903
Grain, rice, and beans	462,877	1	4,629
Apples	10,872	1.5	163
Oranges	9,321	1.5	140
Peaches	14,459	1.5	217
Cherries	8,423	1.5	126
Pears	8,062	1.5	121
Other fruit	29,413	1.5	441
Nuts	14,500	2	290
Berries	6,807	1.5	102
Grapes	11,043	10.5	1,160
Olives	1,363	3.5	48
Vegetables and melons	31,030	0.5	155
Organic vegetables	6,206	50	3,103
Honey	7,688	50	3,844
Syrup	4,850	100	4,850
Herbs	1,776	10	178
Total			30,497

Tables 32, 33, 34, 35, and 36 of this document provide a summary of the data for cost estimates under option 6 for domestic facilities, foreign facilities, and FDA, respectively. The total number of affected domestic facilities under this option is 202,046. The total first year cost for domestic facilities is reduced from $13.6 to $13.2 million, annual cost is reduced from $3.4 to $3.2 million. Total first year cost is reduced from $344.5 to $344.1 million. The greater total cost for foreign facilities is primarily attributable to the costs associated with hiring and retaining a U.S. agent.

TABLE 32.—NUMBER OF DOMESTIC FACILITIES COVERED UNDER OPTION 6

2000 CBP	103,125
1999 Nonemployer statistics	68,424
Mixed-type facilities that engage in farming	30,497
Total domestic	202,046

TABLE 33.—SUMMARY OF COSTS INCURRED BY DOMESTIC FACILITIES UNDER OPTION 6

Administrative worker wage (includes overhead)	25.1
Manager wage (includes overhead)	56.74
Percent with Internet access US	71
Research time with Internet (hours)	1
Research time without Internet (hours)	2
Research cost with Internet	$3,601,000

TABLE 33.—SUMMARY OF COSTS INCURRED BY DOMESTIC FACILITIES UNDER OPTION 6—Continued

Research cost without Internet	$2,941,000
Administrative time for form (hours)	0.75
Manager time for form (hours)	0.25
Form costs	$6,670,000
Percent of businesses going out of business	10%
Percent of businesses entering	10%
Percent of businesses with changes	20%
Annual facility costs	$3,322,000
Total domestic costs	$13,212,000

TABLE 34.—NUMBER OF FOREIGN FACILITIES COVERED UNDER OPTION 6

Foreign holders and packagers	100,027
Foreign manufacturers/processors	125,450

TABLE 34.—NUMBER OF FOREIGN FACILITIES COVERED UNDER OPTION 6—Continued

Stops exporting	16%
Total facilities	205,405

TABLE 35.—SUMMARY OF COSTS INCURRED BY FOREIGN FACILITIES UNDER OPTION 6

Speaks English	16%
Has Internet access	31%
Has U.S. agent	10%
Cost of U.S. agent (annual)	$1,000
Hourly wage rate	$25
Time to find agent (hours)	5
Additional time language (hours)	5
Additional time Internet (hours)	5
First year agent cost	$67,340,000
Agent fee (annual cost)	$194,868,000
Administrative time (hours)	1

TABLE 35.—SUMMARY OF COSTS INCURRED BY FOREIGN FACILITIES UNDER OPTION 6—Continued

Additional time language (hours)	5
Additional time Internet (hours)	5
First year administrative costs	$44,418,929
Time to fill out form (hours)	1
Additional time language (hours)	1
Additional time Internet (hours)	1
Percent of businesses going out of business	10%
Percent of businesses entering	10%
Percent of businesses with changes	20%
First year form cost	$12,992,000
Total first year costs	$319,619,000
Total annual costs	$228,370,000

TABLE 36.—COSTS INCURRED BY FDA UNDER OPTION 6

FDA Costs	2003	2004	2005	2006	2007
Development/modification/enhancement	$8,200,000	$3,000,000	$3,300,000	$2,300,000	$2,300,000
Maintenance/steady state	$1,560,000	$3,500,000	$4,300,000	$4,300,000	$4,300,000
Number of FTEs	4	4	4	2	2
Cost per FTE	$110,588	$110,588	$110,588	$110,588	$110,588
Cost per paper submission	$10	$10	$10	$10	$10
Number of domestic paper submissions	58,593	23,437	23,437	23,437	23,437
Number of foreign paper submissions	22,677	9,071	9,071	9,071	9,071
Total number of domestic registrations in database	202,046	202,046	202,046	202,046	202,046
Total number of foreign registrations in database	205,405	205,405	205,405	205,405	205,405
Mailings to domestic facilities	$1	$1	$1	$1	$1
Mailings to foreign facilities	$1	$1	$1	$1	$1
Error rate for paper submissions	10%	10%	10%	10%	10%
Number of errors	5,860	2,345	2,345	2,345	2,345
Cost per error	$15	$15	$15	$15	$15
Total costs	$11,225,000	$7,376,000	$8,476,000	$7,255,000	$7,255,000
Discounted total costs	$11,225,000	$6,893,000	$7,403,000	$5,922,000	$5,535,000

7. Option Seven: Require Registration of Domestic and Foreign Facilities That Manufacture/Process, Pack, or Hold Food That Sell Their Products in Intrastate and Interstate Commerce, Including Mixed-Type Facilities, as Defined in Option 6. Permits the U.S. Agent to Register on Behalf of the Foreign Facility

Permitting the U.S. agent to register on behalf of the foreign facility would reduce the number of paper registrations significantly. Foreign facilities still would have to go through administrative steps to learn about the regulation and to find and hire a U.S. agent. However, foreign facilities now would have a third option for registering. In addition to electronic and paper registration by a representative at the facility, the foreign facility can authorize its U.S. agent to register the facility. FDA assumes that U.S. agents who register on behalf of foreign facilities will register electronically. Characteristics of foreign facilities, such as access to the Internet, fluency in English, and whether they are informed about the registration requirement before their product reaches the U.S. port, determine whether foreign facilities would be registered by themselves electronically, registered by mail, or registered by their U.S. agent.

FDA assumes that foreign facilities with Internet access would register directly via the Internet. Registration via the Internet would be the fastest, most reliable method for these facilities, and they would receive their confirmation of registration and facility registration number automatically.

Foreign facilities that do not have Internet access or representatives who read or write in English would register through their U.S. agent. The inability to read and write in English increases the cost for foreign facilities that register directly. U.S. agents operating in response to FDA registration requirements for other FDA-regulated products market themselves to certain regions of the world. FDA anticipates these agents would speak the language of the representative of the foreign facility, as well as English, and so could register in English for the facility.

Foreign facilities that do not have Internet access and do not learn of the registration requirements until their product reaches the U.S. border also are likely to register through their U.S. agent. For electronic registrations, the facility is considered registered once FDA enters the registration data into the registration system and the system generates a registration number. For paper registrations, the facility is considered registered when FDA sends the registration number to the facility. For electronic registrations, confirmation should happen almost instantly. The electronic submission would be automatically entered into the database, undergo consistency checks, and if the information is entered correctly, the confirmation of registration and the facility's registration number would be sent out electronically.

Paper submissions are subject to longer lag times at several points. First, the facility may have to mail or phone in a request for a registration form. Second, the facility may have to wait to receive the form. Third, the registration takes time to travel through the mail from the facility to FDA. Fourth, FDA would require more time to process paper submissions, because the information has to be entered manually into the system. Fifth, FDA has to mail out a copy of the registration as entered, the registration confirmation, and the registration number if the facility's information is complete and legible. Sixth, the registration confirmation has to travel through the mail to the facility. At this time, the facility would know it is registered and have its registration number.

Because time will be important to foreign facilities bringing products into the United States, FDA assumes that they will choose to be registered by their U.S. agent, because the registration process will be much faster. Facilities that do not have Internet access, that have representatives who can read and write in English, and learn about the registration requirements before exporting their product to the United States are most likely to register by a paper submission. These facilities already would have invested the time to learn about the registration requirements and thus are likely to have a hard copy of the form. If time were not a major consideration, a facility is likely to prefer to fill out the registration form onsite. FDA plans to conduct extensive outreach efforts to communicate the registration requirements to affected facilities both domestically and abroad, both at the proposed rule stage and at the final rule stage to minimize the number of facilities that find out about the requirements at the port. FDA does not have the information to estimate how many foreign facilities would not learn about the registration requirements until their goods are at the port. FDA instead estimates the number of foreign paper submissions to FDA as the percent of foreign facilities that do not have Internet access and whose managers are able to read and write in English. FDA requests comments on this assumption.

Under this option, U.S. agents would have a larger role than under other options. U.S. agents may charge a higher fee if they register for the facility. A higher U.S. agent fee is considered in the sensitivity analysis.

Port delays would be shorter under this option than under alternative options. Foreign facilities still would have delays associated with communication and finding a U.S. agent, but the process would be shortened by allowing the U.S. agent to register on behalf of the foreign facility. This would shorten the time that the product sits in storage and lower the loss of value of the product.

Tables 37, 38, 39, 40, and 41 of this document provide a summary of the data for cost estimates under option 7 for domestic facilities, foreign facilities, and FDA, respectively. The first year costs to foreign facilities would be reduced from $319.6 to $311.8 million, annual costs would be reduced from $228.4 to $227.6 million. Total costs for the first year would be reduced from $344.5 to $336.2 million.

TABLE 37.—NUMBER OF DOMESTIC FACILITIES COVERED UNDER OPTION 7

2000 CBP	103,125
1999 Nonemployer statistics	68,424
Mixed-type facilities that engage in farming	30,497
Total domestic	202,046

TABLE 38.—SUMMARY OF COSTS INCURRED BY DOMESTIC FACILITIES UNDER OPTION 7

Administrative worker wage (includes overhead)	25.1
Manager wage (includes overhead)	56.74
Percent with Internet access US	71%
Research time with Internet (hours)	1
Research time without Internet (hours)	2
Research cost with Internet	$3,601,000
Research cost without Internet	$2,941,000
Administrative time for form (hours)	0.75

TABLE 38.—SUMMARY OF COSTS INCURRED BY DOMESTIC FACILITIES UNDER OPTION 7—Continued

Manager time for form (hours)	0.25
Form costs	$6,670,000
Percent of businesses going out of business	10%
Percent of businesses entering	10%
Percent of businesses with changes	20%
Annual facility costs	$3,322,000
Total domestic costs	$13,212,000

TABLE 39.—NUMBER OF FOREIGN FACILITIES COVERED UNDER OPTION 7

Foreign holders and packagers	100,027
Foreign manufacturers/processors	125,450
Stops exporting	16%
Total facilities	205,405

TABLE 40.—SUMMARY OF COSTS INCURRED BY FOREIGN FACILITIES

Speaks English	16%
Has Internet access	31%
Has U.S. agent	10%
Cost of U.S. agent (annual)	$1,000
Hourly wage rate	$25
Time to find agent (hours)	5
Additional time language (hours)	5
Additional time Internet (hours)	5
First year agent cost	$67,340,000
Agent fee (annual cost)	$194,868,000
Administrative time (hours)	1
Additional time language (hours)	5
Additional time Internet (hours)	5
First year administrative costs	$44,418,929

TABLE 40.—SUMMARY OF COSTS INCURRED BY FOREIGN FACILITIES—Continued

Time to fill out form (hours)	1
Additional time language (hours)	0
Additional time Internet (hours)	0
Percent of businesses going out of business	10%
Percent of businesses entering	10%
Percent of businesses with changes	20%
First year form cost	$5,135,000
Total first year costs	$311,762,000
Total annual costs	$227,585,000

TABLE 41.—COSTS INCURRED BY FDA UNDER OPTION 7

FDA Costs	2003	2004	2005	2006	2007
Development/modification/enhancement	$8,200,000	$3,000,000	$3,300,000	$2,300,000	$2,300,000
Maintenance/steady state	$1,560,000	$3,500,000	$4,300,000	$4,300,000	$4,300,000
Number of FTEs	4	4	4	2	2
Cost per FTE	$110,588	$110,588	$110,588	$110,588	$110,588
Cost per paper submission	$10	$10	$10	$10	$10
Number of domestic paper submissions	58,593	23,437	23,437	23,437	23,437
Number of foreign paper submissions	22,677	9,071	9,071	9,071	9,071
Total number of domestic registrations in database	202,046	202,046	202,046	202,046	202,046
Total number of foreign registrations in database	205,405	205,405	205,405	205,405	205,405
Mailings to domestic facilities	$1	$1	$1	$1	$1
Mailings to foreign facilities	$1	$1	$1	$1	$1
Error rate for paper submissions	10%	10%	10%	10%	10%
Number of errors	5,860	2,345	2,345	2,345	2,345
Cost per error	$15	$15	$15	$15	$15
Total costs	$11,225,000	$7,376,000	$8,476,000	$7,255,000	$7,255,000
Discounted total costs	$11,225,000	$6,893,000	$7,403,000	$5,922,000	$5,535,000

8. Option Eight: Issue No New Regulation and Allow the Bioterrorism Act's Default Registration Requirements to Take Effect

The Bioterrorism Act requires facilities to register with FDA by December 12, 2003, even if FDA has not issued final regulations by this date. Failure to do so for both foreign and domestic facilities is a prohibited act, and FDA must hold food from unregistered foreign facilities at the port of entry until they are registered. Thus, facilities have an incentive to register with FDA. Failure to issue a final regulation would result in an unworkable, chaotic system. The Bioterrorism Act also requires facilities that register in the absence of a final rule to re-register with FDA as specified in the final rule once it is issued.

It is not possible to predict the costs or benefits of this option because the statute is not specific enough to predict how it would be implemented. It seems likely that many facilities will attempt to register, given the penalties for failure to register. However, if FDA receives all paper, non-standardized registrations, it will be extremely difficult for FDA to process the registrations and to use the information provided. It would also be a slow process for FDA to issue registration numbers.

9. Summary of Costs

Table 42 of this document presents a summary of costs for options 2 through 7 for domestic facilities, foreign facilities, and FDA. Costs in future years are discounted at 7 percent.

TABLE 42.—TOTAL COST OF OPTIONS 2 THROUGH 7 FOR DOMESTIC FACILITIES, FOREIGN FACILITIES, AND FDA.

	Option 2	Option 3	Option 4	Option 5	Option 6	Option 7
Domestic first year costs	$13,557,000	$7,038,000	$11,217,000	$12,256,000	$13,212,000	$13,212,000
Foreign first year costs	$319,619,000	$319,619,000	$319,619,000	$318,335,000	$319,619,000	$311,762,000
FDA first year costs	$11,279,000	$10,907,000	$11,145,000	$11,279,000	$11,225,000	$11,225,000
Total first year costs	$344,455,000	$337,564,000	$341,981,000	$341,870,000	$344,056,000	$336,199,000
Domestic second year costs	$3,186,000	$1,654,000	$2,636,000	$2,181,000	$3,105,000	$3,105,000
Foreign second year costs	$213,430,000	$213,430,000	$213,430,000	$212,831,000	$213,430,000	$212,696,000
FDA second year costs	$6,914,000	$6,769,000	$6,862,000	$6,817,000	$6,893,000	$6,893,000
Total second year costs	$223,530,000	$221,853,000	$222,928,000	$221,829,000	$223,428,000	$222,694,000
Domestic third year costs	$2,978,000	$1,546,000	$2,464,000	$2,039,000	$2,902,000	$2,902,000
Foreign third year costs	$199,467,000	$199,467,000	$199,467,000	$198,907,000	$199,467,000	$198,782,000
FDA third year costs	$7,422,000	$7,287,000	$7,374,000	$7,332,000	$7,403,000	$7,403,000
Total third year costs	$209,867,000	$208,300,000	$209,305,000	$208,278,000	$209,772,000	$209,087,000
Domestic fourth year costs	$2,783,000	$1,445,000	$2,303,000	$1,905,000	$2,712,000	$2,712,000
Foreign fourth year costs	$186,418,000	$186,418,000	$186,418,000	$185,895,000	$186,418,000	$185,777,000
FDA fourth year costs	$5,939,000	$5,814,000	$5,894,000	$5,855,000	$5,922,000	$5,922,000
Total fourth year costs	$195,140,000	$193,677,000	$194,615,000	$193,655,000	$195,052,000	$194,411,000

a. *Sensitivity to assumptions.* A number of assumptions in the analysis significantly affect the cost estimates. To understand how these assumptions affect the cost estimates, FDA re-estimates the total costs under alternative assumptions. FDA uses option 7, the proposed option, to compare across assumptions. Table 43 summarizes the results of the sensitivity analysis.

FDA looked at the number of mixed-type facilities. In option 6, FDA estimated that there are approximately 30,497 mixed-type facilities that manufacture/process food for distribution to nonconsumers or pack or

hold food received from off the facility based on data from the Census of Agriculture and information from CES (Ref. 7). Because there are over 2 million farms in the United States, small changes in assumptions about the percentage of farms that are mixed-type facilities would result in a large change in the total number of affected farms. If the total number of farms that are mixed-type facilities were 100,000, the total, first year, domestic costs increase from $13.2 to $17.8 million.

Another significant source of uncertainty is the amount of time it would take facility employees to read and understand the requirements and for foreign facilities to find a U.S. agent. To test the time assumptions, FDA estimated the costs assuming all the time estimates for administrative activities were doubled. This increases the cost estimates for domestic facilities from $13.2 to $19.8 million and increases the cost estimates for foreign facilities from $311.8 to $423.5 million.

Hiring and retaining a U.S. agent is a significant cost for foreign facilities. FDA tested how this affects total cost estimates by doubling the percent of foreign manufacturers that have U.S. agents from 10 percent to 20 percent. This lowers the first year cost for foreign facilities from $311.8 to $297.3 million.

Also subject to a great deal of uncertainty is the number of foreign manufacturers/processors who can read and write in English. Research on the topic shows widely ranging estimates of the number of English speakers in countries where English is not the primary language. Even in countries where English is a primary or secondary language, many inhabitants may not be fluent in English (Ref. 14). However, more than one individual may work in a facility in an appropriate position to fill out the registration form. This increases the probability that an individual with English skills sufficient to fill out the registration form may be available. FDA estimated that 16 percent of foreign facilities had employees that were fluent in English. To test our assumption about the percentage of foreign facilities with employees who are fluent in English, FDA looked at the alternate assumption that 32 percent of foreign facilities would have a worker with the capability to research and fill out the form in English. This change decreases the total cost to foreign facilities from $311.8 to $303.4 million.

FDA assumed that the number of foreign facilities that hold food products before exporting them to the United States is equal to the number of domestic brokers and consignees, because of the lack of data about foreign facilities holding and doing de minimis processing of food. To test this assumption, FDA looked at the costs if the number of foreign holders and de minimis processors is 160,000. Changing this assumption has a large effect on the foreign and total cost, increasing the foreign cost from $311.8 to $405.2 million and the total cost from $336.2 to $429.7 million.

FDA tested the effect of changing the annual U.S. agent fee. If the average U.S. agent fee is $1,500, instead of $1,000, the costs to foreign facilities will be increased from $311.8 to $409.2 million.

Finally, FDA tested the assumption that the foreign wage rate is the same as the domestic wage rate and re-estimated the costs for a foreign wage rate of $15 per hour. The total cost to foreign facilities was reduced from $311.8 to $265.0 million under this assumption.

TABLE 43.—SENSITIVITY ANALYSIS (RELATIVE TO OPTION 7)

First Year Costs	Total Domestic Cost (dollars)	Total Foreign Cost (dollars)	Total FDA Cost (dollars)	Total Cost (dollars)
Under current assumptions[1]	13,212,000	311,762,000	11,225,000	336,199,000
Percentage change from baseline	0%	0%	0%	0%
100,000 mixed-type facilities that engage in farming	17,756,000	311,762,000	11,484,000	341,002,000
Percentage change from baseline	34%	0%	2%	1%
Time costs are doubled	19,754,000	423,521,000	11,225,000	454,500,000
Percentage change from baseline	50%	36%	0%	35%
20 percent of foreign manufacturers have U.S. agents	13,212,000	297,257,000	11,225,000	$321,694,000
Percentage change from baseline	0%	-5%	0%	-4%
32 percent of foreign facilities are fluent in English	13,212,000	303,395,000	11,474,000	$328,081,000
Percentage change from baseline	0%	-3%	2%	-2%
160,000 foreign holders	13,212,000	405,168,000	11,304,000	429,684,000
Percentage change from baseline	0%	30%	1%	28%
U.S. agent fee $1,500	13,212,000	409,195,000	11,225,000	433,632,000
Percentage change from baseline	0%	31%	0%	29%
Foreign wage rate $15	13,212,000	265,004,000	11,225,000	289,441,000

TABLE 43.—SENSITIVITY ANALYSIS (RELATIVE TO OPTION 7)—Continued

First Year Costs	Total Domestic Cost (dollars)	Total Foreign Cost (dollars)	Total FDA Cost (dollars)	Total Cost (dollars)
Percentage change from baseline	0%	-15%	0%	-14%

[1] 30,497 mixed-type facilities, time costs under option 7, 10 percent of foreign manufacturers/processors have U.S. agents, 16 percent of foreign facilities are fluent in English, 100,027 foreign holders and packagers, and U.S. agent fee of $1,000.

b. *Qualitative costs.* For all of the options, except option one, there are a number of costs that FDA was unable to quantify. Loss of products from small exporters who would choose to stop exporting to the United States due to the increased cost of business may represent significant costs. Earlier in the analysis, we estimated that about 16 percent of foreign manufacturers export 10 or fewer line entries per year, and that these manufacturers would cease exporting to the United States. This could result in the elimination of some specialty products that market to very small niche markets in the United States, which would represent a loss to consumers who use these products.

The cost of port delays for facilities that do not learn of the requirements before exporting is another cost FDA was unable to quantify. FDA is unable to estimate how many foreign facilities would not learn about the new requirements before exporting. For this analysis, we estimate the expected cost of learning about registration as the number of hours a worker in a foreign facility needs to learn about the requirements. However, we expect that for some facilities, the cost of learning about the requirements would be much higher than the expected cost. Facilities that do not learn about the registration requirements before reaching the United States port would still have their shipment held at the port. The loss of value may be as low as the cost of storage, or as high as the value of the shipment, if perishable.

Under option 7, FDA expects this cost to be lower. If the U.S. agent registers the foreign facility, this will speed up the registration process and the product would be released into U.S. commerce faster.

FDA also was unable to quantify the costs incurred by FDA, trade associations, and others for outreach about the registration requirements. FDA will undertake outreach to notify domestic and foreign facilities about registration through public meetings, satellite downlink to five continents, and providing help desk support. FDA also anticipates that trade organizations and others, such as brokers, foreign governments, and U.S. businesses, will undertake to notify facilities of the registration requirements. FDA requests comments on the size and the basis for estimating these costs.

10. Benefits

These provisions would improve FDA's ability to respond to outbreaks from accidental and deliberate contamination from food and deter deliberate contamination. Based on historical evidence, a strike on the food supply has a very low probability, but would be a potentially high cost event. FDA lacks data to estimate the likelihood and resulting costs of a strike occurring. Without knowing the likelihood or cost of an event, we cannot quantitatively measure the reduction in probability of an event occurring or the possible reduction in cost of an event, associated with each regulatory option. Further hindering any quantification of benefits is the interactive effect of the other regulations that are being developed to implement title III of the Bioterrorism Act. Prior notice for imported shipments (section 307 of the Bioterrorism Act) would aid in the enforcement of registration, and in turn, registration would aid in the verification of prior notice submissions. Registration and recordkeeping also would work cooperatively.

These regulations also improve FDA's ability to prevent and respond to accidental foodborne outbreaks. FDA lacks data on the number of accidental outbreaks that will be prevented or shortened from this proposed rule, as well as from registration working in conjunction with the other regulations being developed to implement title III of the Bioterrorism Act. To understand possible costs of inadvertent foodborne illness and from an intentional strike on the food supply, FDA presents five outbreaks resulting from accidental and deliberate contamination, involving both domestic and imported foods in table 44. Registration will aid FDA in preventing and shortening foodborne outbreaks, but we do not know how frequently an outbreak would occur or the size and severity of the outbreak in the absence of registration. These foodborne outbreaks also do not represent the form a terrorist attack might undertake, but merely illustrate the public health costs of foodborne disasters. It is possible that an intentional attack on the food supply that sought to disrupt the food supply and sicken many U.S. citizens would be much larger. However, the probability of an attack occurring and the exact reduction in risk resulting from registration is unknown. Therefore, FDA is unable to quantify the benefits of registration arising from preventing or lessening the impact of a foodborne outbreak. Instead, we examine four mechanisms through which each regulatory option might act and analyze how each of the options affects these mechanisms.

TABLE 44.—SUMMARY OF FIVE FOODBORNE OUTBREAKS

Pathogen	Location and Year	Vehicle	Confirmed or Reported Cases	Estimated Number of Cases	Total Illness Cost (dollars)
Salmonella enteritidis	Minnesota 1994	Ice cream	150 cases; 30 hospitalized	29,100 in MN; 224,00 nationwide	3,187,744,000 to 5,629,792,000
Shigella sonnei	Michigan 1988	Tofu salad	3,175 cases	Not available	45,183,000 to 79,797,000

TABLE 44.—SUMMARY OF FIVE FOODBORNE OUTBREAKS—Continued

Pathogen	Location and Year	Vehicle	Confirmed or Reported Cases	Estimated Number of Cases	Total Illness Cost (dollars)
Outbreaks resulting from deliberate contamination					
Salmonella Typhimurium	Dalles, Oregon 1984	Salad bars	751 cases; 45 hospitalized	Not available	10,687,000 to 18,875,000
Shigella dysentreriae type 2	Texas 1996	Muffins and doughnuts	12 cases; 4 hospitalized	All cases identified	83,000
Outbreaks resulting from imported foods					
Cyclospora cayaetanensis	United States and Canada 1996	Raspberries (probably imported from Guatemala)	1465 cases identified, less than 20 hospitalized	Not available	3,941,000

a. *Salmonella enteritidis in ice cream.* In 1994, approximately 224,000 people were sickened by ice cream contaminated with Salmonella enteritidis. The source of the contamination appeared to be pasteurized pre-mix that had been contaminated during transport in tanker trailers that carried nonpasteurized eggs. There were 150 confirmed cases of salmonellosis associated with the outbreak in Minnesota. However, ice cream produced during the contamination period was distributed to 48 States. To calculate the total number of illnesses associated with the outbreak, researchers calculated an attack rate of 6.6 percent. This attack rate was extrapolated to the population that consumed the ice cream, giving a total number sickened of 224,000 (Ref. 19).

Salmonellosis most commonly causes gastrointestinal symptoms. Almost 91 percent of cases are mild and cause 1 to 3 days of illness with symptoms including diarrhea, abdominal cramps, and fever. Moderate cases, defined as cases that require a trip to a physician, account for 8 percent of the cases. These cases typically have a duration of 2 to 12 days. Severe cases require hospitalization and last 11 to 21 days. In addition to causing gastroenteritis, salmonellosis also can cause reactive arthritis in a small percentage of cases. Reactive arthritis may be short or long term and is characterized by joint pain. Just over 1 percent of cases develop short-term reactive arthritis and 2 percent of cases develop chronic, reactive arthritis.

FDA estimated the costs associated with salmonellosis, including medical treatment costs and pain and suffering. Table 45 of this document provides a summary of these estimates. Pain and suffering is measured by lost quality adjusted life days (QALDs). QALDs measure the loss of utility associated with an illness. A QALD is measured between zero and one, with one being a day in perfect health. The total loss of a quality adjusted life year (QALY), or the loss of a year of life is valued at $100,000, based on economic studies of how consumers value risks to life (Ref. 20). Thus, an entire lost QALD would be valued at $274 and fractions of QALDs are a fraction of the day's value. FDA presents two estimates of values of pain and suffering associated with arthritis, one based on physician estimates (Ref. 21) and another based on a regression analysis approach (Ref. 22). This gives a range of costs for the average case of salmonellosis between $14,231 and $25,133.

TABLE 45.—THE COST OF A TYPICAL CASE OF SALMONELLOSIS

Severity	Case Breakdown (percent)	Total QALDs Lost per Illness	Health Loss (dollars) per Case (Discounted)	Medical Costs (dollars) per Case (Discounted)	Weighted Dollar Loss per Case
Illness					
Mild	90.7	1.05	660	0	599
Moderate	8.1	3.68	2,310	283	209
Severe	1.2	9.99	6,266	9,250	188
Arthritis					
Regression approach					
Short-term	1.26	5.41	3,391	100	44
Long-term	2.40	2,613.12	452,554	7,322	11,048
Direct survey approach					
Short-term	1.26	10.81	6,778	100	87
Long-term	2.40	5,223.15	904,573	7,322	21,906
Death	0.04		5,000,000		2,143
Total expected loss per case					
Regression approach					14,231
Direct survey approach					25,133

To estimate the economic cost due to illness associated with this outbreak, FDA used the range for the average cost per case. For 224,000 people, this is a total cost of between $3,187,744,000 and $5,629,792,000 from this accidental food disaster.

b. *Shigella sonnei in tofu salad.* In 1988, a tofu salad at an outdoor music festival was contaminated with Shigella sonnei and sickened an estimated 3,175 people. Over 2,000 volunteer food handlers served communal meals at the festival (Ref. 23). Shigellosis causes similar symptoms and is of similar duration to salmonellosis. It also is associated with short term and chronic reactive arthritis; thus FDA assumed the average case of shigellosis has the same cost as salmonellosis. This gives a total cost of $45,183,000 to $79,797,000.

c. *Salmonella typhimirium in salad bars.* During September and October of 1984, two outbreaks of *Salmonella typhimirium* occurred in association with salad bars in restaurants in The Dalles, OR. At least 751 people were affected. Members of the local Rajneeshpuram commune intentionally caused the outbreak by spraying *Salmonella typhimirium* on the salad bars in local restaurants. Their apparent motivation was to influence a local election by decreasing voter turnout. Intentional contamination was not suspected immediately and no charges were brought until a year after the attacks (Ref. 24).

The 751 people affected primarily were identified through passive surveillance; thus the true number of people actually sickened is undoubtedly much higher. The Dalles is located on Interstate 84 in Oregon and is a frequent stop for travelers who were unlikely to be identified by passive or active surveillance for salmonellosis. However, since we do not have any estimates of the true size of the outbreak, we estimated the costs associated with known cases, recognizing this is an underestimate of the true cost of the outbreak. We use the cost estimates for salmonellosis as ranging from $14,231 to $25,133. This gives an estimated cost of known cases for the outbreak of $10,687,000 to $18,875,000.

d. *Shigella dysenteriae type 2 among laboratory workers.* Twelve people working in a laboratory who consumed muffins left in the laboratory break room contracted shigellosis. Affected workers had diarrhea, nausea, and abdominal discomfort. Investigators concluded that the outbreak likely was the result of deliberate contamination. All twelve affected workers were treated by, or consulted with, a physician. Nine affected workers went to the emergency room, four of whom were hospitalized (Ref. 25).

To estimate the cost of this outbreak, FDA assumed that the eight cases requiring consultation with a doctor, but not requiring hospitalization, had the same cost as a moderate case of salmonellosis. The four cases requiring hospitalization were estimated to have the same cost as a severe case of gastroenteritis resulting from salmonellosis. This gives a cost of $83,000 for illnesses associated with the event. Table 46 summarizes the costs associated with this outbreak.

TABLE 46.—SUMMARY OF COSTS FOR CASES OF SHIGELLOSIS

Severity	Number of cases	Cost per case (dollars)	Total cost (dollars)
Mild	0	0	0
Moderate	8	2,593	21,000
Severe	4	15,516	62,000
Grand total			83,000

e. *Cyclospora cayatanensis in imported raspberries.* In 1996, 1,465 cases of cyclosporiasis were linked to consumption of raspberries imported from Guatemala. Nine hundred and seventy eight of these cases were laboratory confirmed. No deaths were confirmed and less than 20 hospitalizations were reported (Ref. 26). Case control studies indicated that raspberries imported from Guatemala were the source of the illnesses. Fifty-five clusters of cases were reported in 20 states, two Canadian provinces, and the District of Columbia (Ref. 27).

Cyclosporiasis typically causes watery diarrhea, loss of appetite, weight loss, and fatigue. Less common symptoms include fever, chills, nausea, and headache. The median duration of illness associated with the outbreak was more than 14 days and the median duration of diarrheal illness was 10 days (Ref. 27). We estimated the cost of a mild case of cyclosporiasis as two and a half times higher than the cost of a mild case of gastroenteritis from salmonellosis due to the longer duration. The reports of cyclosporiasis outbreaks did not include information on the number of physician visits. We assumed that the percentage of total cases that result in physician visits would be larger than the corresponding percentage for salmonellosis illnesses, due to the longer duration of illnesses. We assumed, therefore, that 40 percent of those infected with cyclosporiasis visited a physician. Less than 20 hospitalizations were reported from the cyclosporiasis outbreak (Ref. 26). No deaths were confirmed. Table 47 summarizes the costs associated with this outbreak.

TABLE 47.—SUMMARY OF COSTS FOR CASES OF CYCLOSPORIASIS

Severity	Number of cases	Cost per case (dollars)	Total cost (dollars)
Mild	879	1,650	1,450,000
Moderate	586	3,748	2,196,000
Severe	19	15,516	295,000
Grand total			$3,941,000

f. *Mechanisms.* Requiring registration of manufacturers/processors, packers, and holders of food would aid in deterring and limiting the effects of foodborne outbreaks in four ways: (1) By requiring registration, persons who might intentionally contaminate the food supply would be deterred from entering the food production chain; (2) if FDA is aware of a specific food threat, then it would be able to inform the facilities potentially affected by the threat; (3) FDA would be able to deploy more efficiently its domestic compliance and regulatory resources and better able to identify facilities affected by future FDA actions (including possible regulations); and (4) FDA inspectors, using prior notice and registration, can better identify shipments for inspection.

Registering with FDA creates a paper trail, which would, even if the information in the registration were falsified, provide evidence that could link the registration to the false registrant. By creating this paper trail, persons who might intentionally contaminate the food supply and are considering starting a business in the food supply chain would be deterred by the creation of additional evidence that might be used against them. Persons who might intentionally contaminate the food supply that refuse to register, if foreign, would risk having their product held at the port and, if foreign or domestic, would be subject to criminal sanctions.

With correct contact information and product categories, FDA can quickly contact domestic and foreign facilities that may be targeted by a specific food threat. This quick communication would allow facilities to respond quickly to a threat and possibly limit the effect of a deliberate strike on the food supply, as well as public health emergencies due to accidental contamination.

A complete list of facilities in the food supply chain would aid FDA in scheduling inspections and undertaking compliance activities. Domestically, a complete list of facilities with correct contact information would aid inspectors in contacting facilities, and with product information would aid in identifying facilities for inspections. Because of the turnover in the food industry and the ratio of inspectors to food facilities, FDA never has had a complete list of foreign or domestic facilities that provide food for consumption in the United States. Also, a complete list of facilities would aid FDA in understanding which facilities would be affected by future FDA actions (including possible regulations), which would result in targeting communication and outreach to these facilities.

In conjunction with the prior notification requirements in 21 CFR part 1, subpart I, FDA can better identify imported food shipments for inspection at the port. The registration would identify the country of the manufacturer, which may not be the same as the country from which the product has been shipped. This information would assist FDA in identifying specific shipments to inspect, if we have information that a particular type of food or shipments from a particular country may be adulterated. Additionally, the database of registrants and products also would aid FDA in verifying that a product is correctly identified by where and by whom it was produced. For example, if the registration information identifies a facility as producing only dairy products and FDA receives a prior notice purportedly from the facility for the shipment indicating that the facility is shipping nuts, FDA can target that shipment for verification based on the discrepancy.

Because we cannot quantify the benefits, we cannot differentiate the benefits of each option in dollar terms. Instead, we look at how effectively each of the mechanisms would operate under each of the options relative to no regulation (option one).

i. Registration would deter persons who might intentionally contaminate the food supply from entering the food production chain.

Option 1: No impact.
Option 2: This option is the most comprehensive in the registration requirements and thus would have the largest impact on deterring persons who might intentionally contaminate the food supply.
Option 3: If FDA does not require intrastate facilities to register, then persons who might intentionally contaminate the food supply might be more likely to choose an intrastate facility for carrying out an attack on the food supply. However, intrastate facilities are more likely to be small, and generally do not distribute product widely or in large quantities. These are all characteristics that would make intrastate facilities less attractive to a person who would intentionally contaminate the food supply. Therefore, FDA expects that excluding intrastate facilities would reduce the function of the first mechanism, but not to a great extent.
Option 4: Option four still would cover many of the same facilities as option 2. However, if mixed-type facilities are not required to register, then these types of facilities may be more vulnerable. However, many state and local agencies have registration requirements for mixed-type facilities. Some of these facilities would be covered under these State or local agencies. Persons who might intentionally contaminate the food supply might be more likely to choose a mixed-type facility that is not required to register for carrying out an attack on the food supply.
Option 5: This option provides the same coverage of facilities as option 2. It does not require the inclusion of food product categories on the registration form. FDA anticipates that excluding product categories, by reducing the amount of information required by the registrant, would reduce slightly this regulation's ability to deter persons who might intentionally contaminate the food supply.
Option 6: This option provides coverage of the food production chain similar to option two, and so will have a similar effect in deterring persons who might intentionally contaminate the food supply from entering the food production chain.
Option 7: Option 7 would provide the same coverage of the food production chain as option 6, and so would be equally as effective in preventing persons who might intentionally contaminate the food supply from entering the food production chain.

ii. FDA would be better able to inform facilities if they are affected by a threat.

Option 1: No impact.
Option 2: This option is the most comprehensive in its coverage and thus would have the largest effect.
Option 3: Excluding intrastate facilities from registering would reduce FDA's ability to inform intrastate facilities of a specific threat. However, intrastate facilities are less likely to be the focus of a threat because of their small size and small distribution range.
Option 4: FDA's ability to inform facilities would be better than without a registration system, but excluding mixed-type facilities from registering would reduce FDA's ability to inform mixed-type facilities of a specific threat.
Option 5: FDA's ability to inform facilities would be better than without a registration system, but not including product categories on the registration form would significantly limit FDA's ability to inform facilities of threats related to specific foods. For example, if FDA receives credible information that persons who might intentionally contaminate the food supply have threatened foreign or domestic cheeses,

inclusion of product categories would allow FDA to communicate quickly with only those facilities impacted by this threat.

Option 6: This option provides coverage of food production chain similar to option 2, and so would have a similar effect in aiding FDA in contacting facilities in response to a threat.

Option 7: Option 7 would provide the same coverage of the food production chain as option 6, and thus would be as effective in aiding FDA in contacting facilities in response to a threat.

iii. FDA would be more efficient in deploying its enforcement resources and better able to identify facilities affected by future FDA actions (including possible regulations).

Option 1: No impact.

Option 2: This option is the most comprehensive in its coverage and thus would have the largest beneficial effect of the options.

Option 3: Because FDA exercises less regulatory authority over facilities that operate only in intrastate commerce, and thus seldom inspects these facilities, not requiring facilities that operate only in intrastate commerce to register will have a small effect on FDA's ability to deploy enforcement resources and identify facilities that are affected by future regulations.

Option 4: FDA shares enforcement responsibilities for a number of mixed-type facilities with other Federal, State, and local agencies. Therefore, option 4 would aid FDA in its enforcement activities, though not as fully as option 2. However, FDA would be less able to identify mixed-type facilities that are affected by future regulations for outreach and other activities.

Option 5: Excluding product categories would limit FDA's ability to use the registration database to deploy its enforcement resources. Although FDA still would be aided by the registration requirements under option 5, our efforts would not be as efficient as under option 2. Information from registration makes enforcement more efficient; thus, the more information provided, the greater the increase in efficiency.

Option 6: This option provides similar coverage of the food production chain as option 2 and so will have a similar effect in aiding FDA in deploying enforcement resources and identifying facilities that are affected by future regulations.

Option 7: Option 7 would provide the same coverage of the food production chain as option 6, and thus would be as effective in aiding FDA in deploying resources as option 6.

iv. Registration, in conjunction with prior notice, would give FDA information that will aid FDA in determining which shipments to inspect.

Option 1: No impact.

Option 2: This option is the most comprehensive in its coverage and thus would have the largest effect.

Option 3: FDA's ability to target imported foods would be unaffected by excluding intrastate facilities. Option 3 would be as effective as option 2.

Option 4: FDA's ability to target imported foods would be lessened slightly by excluding mixed-type facilities.

Option 5: Not including food product categories would limit FDA's ability to target specific products and country product combinations at the ports. Excluding food categories also would limit FDA's ability to evaluate as thoroughly as possible prior notifications of food imports we receive under 21 CFR part 1, subpart I. For example, if a facility registers as manufacturing/processing only canned goods and we receive a prior notice purportedly from this facility for fresh seafood, FDA would have critical information indicating that the shipment may warrant examination.

Option 6: this option provides similar coverage of the food production chain as option 2, and so would have a similar effect in aiding FDA in determining which shipments to inspect.

Option 7: Option 7 would be as effective as option 2 in aiding FDA in targeting import inspections.

V. Initial Regulatory Flexibility Analysis

A. Introduction

FDA has examined the economic implications of this proposed rule as required by the Regulatory Flexibility Act (5 U.S.C. 601–612). If a rule has a significant economic impact on a substantial number of small entities, the Regulatory Flexibility Act requires agencies to analyze regulatory options that would lessen the economic effect of the rule on small entities. FDA is unsure whether or not this proposed rule would have a significant economic impact on a substantial number of small entities, but has analyzed various regulatory options to examine the impact on small entities. The following analysis, together with other relevant sections of this document, serves as the agency's initial regulatory flexibility analysis under the Regulatory Flexibility Act.

B. Economic Effect on Small Entities

Of the 202,046 domestic entities covered by option 7, the proposed option, 99 percent are small according to the definitions of the Small Business Administration. Because such a large percentage of the domestic entities are small, all options considered in the Benefit-Cost Analysis in section IV.A of this document are regulatory relief options. The expected burden for most small entities is low, between $58 and $83. However, over 200,000 entities are affected by this rule. If a small percentage of these entities incur costs significantly higher than the expected cost, then a substantial number of small entities may be significantly affected. FDA requests comment on the effect of this proposed rule on small entities.

C. Additional Flexibility Considered

Because of the requirements of the Bioterrorism Act, FDA is precluded from selecting some of the options that typically would be considered to lessen the economic effect of the rule on small entities, including granting an exemption to small entities. FDA tentatively concludes that it would be inconsistent with section 305 of the Bioterrorism Act to allow small entities more time to register, since the Bioterrorism Act established a registration deadline that applies to all covered facilities. Although the recordkeeping provision of the Bioterrorism Act directs FDA to take into account the size of a business when issuing implementing regulations, the registration provision contains no such language. Thus, it appears that Congress intended for all facilities to be subject to the deadline established in the Bioterrorism Act. Nonetheless, the agency recognizes that the registration requirement may cause an economic burden to some small businesses; therefore, we are seeking comment on whether it would be consistent with section 305 of the Bioterrorism Act for the agency to set staggered compliance dates that would give small businesses more time to comply.

However, the Bioterrorism Act does have considerable flexibility for small businesses built into the statute. First, retail facilities and farms are both exempt from registration. Many of these are small entities. Second, the economic impact on small entities is lessened by allowing entities to register either electronically or by mail. Small entities that do not have reasonable access to a computer or the Internet can submit their registration by mail.

VI. Unfunded Mandates

Title II of the Unfunded Mandates Reform Act of 1995 (Public Law 104–4) requires cost-benefit and other analyses before any rule making if the rule would include a "Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any 1 year." The current inflation-adjusted statutory threshold is $112.3 million. Because the total cost to the domestic private sector would be $13 million, FDA has determined that this proposed rule does not constitute a significant rule under the Unfunded Mandates Reform Act.

VII. Small Business Regulatory Enforcement Fairness Act Major Rule

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 (Public Law 104–121) defines a major rule for the purpose of congressional review as having caused or being likely to cause one or more of the following: an annual effect on the economy of $100 million; a major increase in costs or prices; significant adverse effects on competition, employment, productivity, or innovation; or significant adverse effects on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. In accordance with the Small Business Regulatory Enforcement Fairness Act, OMB has determined that this proposed rule, when final, will be a major rule for the purpose of congressional review.

VIII. Paperwork Reduction Act of 1995

This proposed rule contains information collection provisions that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). A description of these provisions is given in the following paragraphs with an estimate of the annual reporting burden. Included in the estimate is the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing each collection of information.

FDA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information would have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Title: Registration of food facilities

Description: The Bioterrorism Act contains a provision requiring the Secretary to issue a regulation requiring that domestic and foreign facilities that manufacture/process, pack, or hold food intended for consumption in the United States register with FDA by December 12, 2003. The Bioterrorism Act defines foreign facilities as those that manufacture/process, pack, or hold food for export to the United States without further processing or packaging outside the United States before export. Information FDA proposes to require on the form includes the name and full address of the facility; emergency contact information, including an individual's name, title, office phone, home phone, cell phone (if available) and e-mail address; all trade names the facility uses; general food product categories under § 170.3; and a certification statement that includes the name, title/position, and phone number (e-mail address and fax number if available) of the registrant. Additionally, under the proposed rule, facilities would be encouraged to submit their preferred mailing address; type of activity conducted at the facility; food categories not included under § 170.3, but which are helpful to FDA for responding to an incident; type of storage, if the facility is solely a warehouse/holding facility, and approximate dates of operation if the facility's business is seasonal. Under the proposed rule, facilities would also be required to submit timely updates when any information on their registration form changes, including cancellation of the registration on a separate form.

Description of Respondents: Domestic facilities that manufacture/process, pack, or hold food for consumption in the United States are required to register. This includes facilities engaged in both interstate and intrastate commerce and mixed-type facilities as described in option 6. Foreign facilities are required to register if they are manufacture/process, pack, or hold food that is not further processed or packaged outside the United States. The number of respondents is shown in table 48.

TABLE 48.—RESPONDENTS

Foreign	205,405
Domestic	202,046
Total	407,451

Burden:

Hour Burden Estimate

FDA estimates that initially it would take an administrative worker with Internet access one hour to read and understand the registration requirements; this time is doubled to two hours of an administrative worker's time for those facilities without Internet access. Foreign facilities' workers would need one hour to read and understand the registration requirements, if they have access to the Internet and can read and write in English. An additional 5 hours would be needed if they do not have Internet access, and an additional 5 hours would be needed if they do not read or understand English. In subsequent years, facilities that enter the industry would have to register, facilities that close would have to notify FDA of their closure, and facilities that have changes in the registration information would have to provide updates to FDA. FDA estimates that annually 10 percent of covered facilities would close, 10 percent would open (Ref. 9) and 20 percent of registered facilities would have changes to their registration information.

Next, FDA estimates that filling out a registration form would take a total of 1 hour: 45 minutes of an administrative worker's time and 15 minutes of a owner, operator, or agent in charge's time to certify the registration before submitting the form to FDA. Foreign facilities' workers would need 1 hour to fill out the form, if they have access to the Internet and can read and write in English. An additional 1 hour would be needed if they do not have Internet access and an additional 1 hour would be needed if they do not read or understand English. Table 49 of this document shows the burden by domestic and foreign facilities, availability of the Internet, and fluency in English. For foreign facilities, FDA only had data on the percentage of facilities with Internet access and percentage fluent in English, but no information on what percentages of facilities are both fluent in English and have Internet access. To calculate the total number of burden hours, FDA assigned the correct percentages of fluent facilities and facilities with Internet access to the total number of

facilities, but for ease of computation excluded a category of facilities that are not fluent in English and have Internet access. FDA requests comments on the number of facilities not fluent in English and without Internet access.

TABLE 49.—ESTIMATED ANNUAL REPORTING BURDEN—FIRST YEAR[1]

21 CFR Part	FDA Form Number	Number of Respondents	Annual Frequency per Respondent	Total Annual Responses	Hours per Response	Total Hours
1.241(a)[2]	FDA 3537	143,453	1	143,453	2	286,906
1.241(b)[3]	FDA 3537	58,593	1	58,593	3	175,779
1.241(a)[4]	FDA 3537	32,864	1	32,864	2	65,728
1.241(b)[5]	FDA 3537	30,811	1	30,811	7	215,677
1.241(b)[6]	FDA 3537	141,730	1	141,730	12	1,700,760
Total hours						2,444,850

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.
[2] Domestic facilities with Internet access
[3] Domestic facilities without Internet access
[4] Foreign facilities with Internet access and fluent in English
[5] Foreign facilities without Internet access and fluent in English
[6] Foreign facilities without Internet access and not fluent in English

In the following years, new facilities will have to register with FDA. These new facilities will bear the same burden to register that facilities incurred in the first year. Based on estimates by SBA that 10 percent of all businesses are new (Ref. 8), FDA estimates that the number of new facilities each year will be equal to 10 percent of the total number of facilities. Also, facilities that go out of business will have to notify FDA to cancel their registration. FDA estimates that 10 percent of the total number of facilities will go out of business each year, also based on SBA statistics. Facilities exiting the business will have to send FDA a cancellation of their registration. FDA estimates that it will take these facilities approximately 1 hour to locate the correct form, enter their information, and send it to FDA. Finally, facilities that have a material change of information submitted in their registration will have to notify FDA of the new information. FDA estimates 20 percent of facilities will have a material change in the information submitted in their registration each year. It will take these facilities approximately 1 hour to locate the correct form, enter their information, and send it to FDA. Table 50 presents an estimate of the burden hours for new facilities, and updates and cancellations for existing facilities in future years.

TABLE 50.—ESTIMATED ANNUAL REPORTING BURDEN—SUBSEQUENT YEARS[1]

21 CFR Part 1	FDA Form Number	Number of Respondents	Annual Frequency per Respondent	Total Annual Responses	Hours per Response	Total Hours
New facilities						
1.241(a)[2]	FDA 3537	14,345	1	14,345	2	28,690
1.241(b)[3]	FDA 3537	5,859	1	5,859	3	17,577
1.241(a)[4]	FDA 3537	3,286	1	3,286	2	6,572
1.241(b)[5]	FDA 3537	3,081	1	3,081	7	21,567
1.241(b)[6]	FDA 3537	14,173	1	14,173	12	170,076
Previously registered facilities						
1.244(a)[2]	FDA 3537/3537a	43,036	1	43,036	1	43,036
1.244(b)[3]	FDA 3537/3537a	17,578	1	17,578	1	17,578
1.244(a)[4]	FDA 3537/3537a	9,859	1	9,859	1	9,859
1.244(b)[5]	FDA 3537/3537a	9,243	1	9,243	1	9,243

TABLE 50.—ESTIMATED ANNUAL REPORTING BURDEN—SUBSEQUENT YEARS[1]—Continued

21 CFR Part 1	FDA Form Number	Number of Respondents	Annual Frequency per Respondent	Total Annual Responses	Hours per Response	Total Hours
1.244(b)[6]	FDA 3537/3537a	42,519	1	42,519	1	42,519
Grand total						366,717

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.
[2] Domestic facilities with Internet access
[3] Domestic facilities without Internet access
[4] Foreign facilities with Internet access and fluent in English
[5] Foreign facilities without Internet access and fluent in English
[6] Foreign facilities without Internet access and not fluent in English

In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the agency has submitted the information collection provisions of this proposed rule to OMB for review. Interested persons are requested to send comments regarding information collection to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW., rm. 10235, Washington, DC 20503, Attn: Stuart Shapiro, FDA Desk Officer.

IX. Analysis of Environmental Impact

The agency has carefully considered the potential environmental effects of this action. FDA has concluded under 21 CFR 25.30(h) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

X. Federalism

FDA has analyzed this proposed rule in accordance with the principles set forth in Executive Order 13132. FDA has determined that the proposed rule does not contain policies that have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the agency tentatively concludes that the proposed rule does not contain policies that have federalism implications as defined in the Executive order and, consequently, a federalism summary impact statement has not been prepared.

XI. Comments

Interested persons may submit to the Dockets Management Branch (see **ADDRESSES**) written or electronic comments regarding this document. Two copies of any mailed comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. FDA cannot be responsible for addressing comments submitted to the wrong docket or that do not contain a docket number. Received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

FDA notes that the comment period for this document is shorter than the 75-day period that the agency customarily provides for proposed rules that are technical or sanitary or phytosanitary (SPS) measures. FDA believes that a 60-day comment period is appropriate in this instance. Executive Order 12889, "Implementation of the North American Free Trade Agreement" (58 FR 69681, December 30, 1993), states that any agency subject to the Administrative Procedure Act must provide a 75-day comment period for any proposed Federal technical regulation or any Federal SPS measure of general application. Executive Order 12889 provides an exception to the 75-day comment period where the United States considers a technical regulation or SPS measures of general application necessary to address an urgent problem related to the protection of human, plant, or animal health or sanitary or phytosanitary protection. FDA has concluded that this proposed rule is subject to the exception in Executive Order 12889.

The Bioterrorism Act states that it is intended "[t]o improve the ability of the United States to prevent, prepare for, and respond to bioterrorism and other public health emergencies." In order to meet these objectives, section 305 of the Bioterrorism Act requires FDA to propose and issue final regulations requiring the registration of food facilities within 18 months of the Bioterrorism Act's enactment, which is by December 12, 2003. Section 305 of the Bioterrorism Act also provides that if FDA does not issue final regulations by this date, facilities still must register with FDA by December 12, 2003, subject to compliance with the final regulations when the final regulations are made effective. This expedited timeframe reflects the urgency of the U.S. Government's need to prepare to respond to bioterrorism and other food-related emergencies. In addition, section 801 of SBREFA (5 U.S.C. 801), states that a major final rule may not take effect until 60 days after the agency has published the rule and submitted it to Congress for review. A major rule for this purpose is defined in 5 U.S.C. 804 as one that the Administrator of the Office of Information and Regulatory Affairs of OMB has determined has resulted in or is likely to result in: (a) An annual effect on the economy of $100 million or more; or (b) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

OMB has determined that this proposed rule, when finalized, will be a major rule. Accordingly, FDA must publish the final registration rule no later than October 12, 2003, for it to be effective by the statutory deadline of December 12, 2003. For these reasons, FDA has concluded that the urgency of this matter is sufficient justification for shortening the public comment period for this proposal to 60 days, consistent with Executive Order 12889.

FDA will not consider any comments submitted after the 60-day comment period closes and does not intend to grant any requests for extension of the comment period due to the Bioterrorism Act's requirement to have a final regulation in effect by December 12, 2003, which requires publication on or before October 12, 2003.

XII. References

The following references have been placed on display in the Dockets Management Branch (see ADDRESSES) and may be seen by interested persons between 9 a.m. and 4 p.m. Monday through Friday. FDA has verified the Web site addresses in this document, but is not responsible for subsequent changes to the Web sites after this document publishes in the Federal Register.

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18. Pope, Angela, Memorandum to the file, 10/7/2002.
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23. Lee, L. A., S. M. Ostroff, H. B. McGee, et al., "An Outbreak of Shigellosis at an Outdoor Music Festival," *American Journal of Epidemiology*, 133:6:608–615.
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List of Subjects in 21 CFR Part 1

Cosmetics, Drugs, Exports, Food labeling, Imports, Labeling, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR part 1 be amended as follows:

PART 1—GENERAL ENFORCEMENT REGULATIONS

1. The authority citation for 21 CFR part 1 is revised to read as follows:

Authority: 15 U.S.C. 1453, 1454, 1455; 21 U.S.C. 304, 321, 331, 334, 343, 350c, 350d, 352, 355, 360b, 362, 371, 374, 381, 382, 393; 42 U.S.C. 216, 241, 243, 262, 264.

2. Subpart H is added to part 1 to read as follows (subparts F and G are reserved):

Subparts F–G [Reserved]

Subpart H—Registration of Food Facilities

General Provisions

Sec.

1.225 Who must register under this subpart?
1.226 Who is exempt from this subpart?
1.227 What definitions apply to this subpart?

Procedures for Registration of Food Facilities

1.230 When must you register?
1.231 How and where do you register?
1.232 What information is required in the registration?
1.233 What optional items are included in the registration form?
1.234 How and when do you update your registration information?

Additional Provisions

1.240 What other registration requirements apply?
1.241 What happens if you fail to register?
1.242 What does assignment of a registration number mean?
1.243 Is food registration information available to the public?

General Provisions

§ 1.225 Who must register under this subpart?

(a) You must register under this subpart if you are the owner, operator, or agent in charge of either a domestic or foreign facility, as defined in this subpart, and your facility is engaged in the manufacturing/processing, packing, or holding of food for consumption in the United States, unless you qualify for one of the exemptions in § 1.226.

(b) An owner, operator, or agent in charge of a domestic facility must register whether or not the food from the facility enters interstate commerce.

(c) An owner, operator, or agent in charge of a foreign facility must register the facility. A foreign facility may designate its U.S. agent as its agent in charge for purposes of registering the facility.

§ 1.226 Who is exempt from this subpart?

This subpart does not apply to the following facilities:

(a) Foreign facilities, if food from such facilities undergoes further manufacturing/processing (including packaging) by another foreign facility outside the United States. This exemption does not apply to a facility if the further manufacturing/processing (including packaging) conducted by the subsequent facility consists of adding labeling or any similar activity of a de minimis nature;

(b) Farms;

(c) Retail facilities;

(d) Restaurants;

(e) Nonprofit food facilities in which food is prepared for, or served directly to, the consumer;

(f) Fishing vessels, including those that not only harvest and transport fish but also engage in practices such as heading, eviscerating, or freezing

intended solely to prepare fish for holding on board a harvest vessel. However, those fishing vessels otherwise engaged in processing fish, which for purposes of this section means handling, storing, preparing, heading, eviscerating, shucking, freezing, changing into different market forms, manufacturing, preserving, packing, labeling, dockside unloading, or holding are subject to all of the regulations in this subpart; and

(g) Facilities that are regulated exclusively, throughout the entire facility, by the U.S. Department of Agriculture under the Federal Meat Inspection Act (21 U.S.C. 601 *et seq.*), the Poultry Products Inspection Act (21 U.S.C. 451 *et seq.*), or the Egg Products Inspection Act (21 U.S.C. 1031 *et seq.*).

§ 1.227 What definitions apply to this subpart?

(a) *The act* means the Federal Food, Drug, and Cosmetic Act.

(b) The definitions of terms in section 201 of the act (21 U.S.C. 321) apply to such terms when used in this subpart.

(c) In addition, for the purposes of this subpart:

(1) *Calendar day* means every day shown on the calendar.

(2) *Facility* means any establishment, structure or structures under one management at one general physical location or, in the case of a mobile facility traveling to multiple locations, that manufactures/processes, packs, or holds food for consumption in the United States. Individual homes are not facilities if the food that is manufactured/processed, packed, or held in the home does not enter commerce. A facility may consist of one or more contiguous structures. A single building may house distinct facilities if they are under separate management.

(i) *Domestic facility* means any facility located in any State or Territory of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.

(ii) *Foreign facility* means a facility other than a domestic facility that manufactures/processes, packs, or holds food for consumption in the United States.

(3) *Farm* means a facility in one general physical location devoted to the growing of crops for food, the raising of animals for food (including seafood), or, both. The term "farm" includes:

(i) Facilities that pack or hold food, provided that all food used in such activities is grown or raised on that farm or is consumed on that farm; and

(ii) Facilities that manufacture/process food, provided that all food used in such activities is consumed on that farm or another farm under the same ownership.

(4) *Food* has the meaning given in section 201(f) of the act. Examples of food include, but are not limited to, fruits, vegetables, fish, dairy products, eggs, raw agricultural commodities for use as food or components of food, animal feed, including pet food, food and feed ingredients and additives, including substances that migrate into food from food packaging and other articles that contact food, dietary supplements and dietary ingredients; infant formula, beverages, including alcoholic beverages and bottled water, live food animals, bakery goods, snack foods, candy, and canned foods.

(5) *Holding* means storage of food. Holding facilities include, but are not limited to, warehouses, cold storage facilities, storage silos, grain elevators, or liquid storage tanks.

(6) *Manufacturing/processing* means making food from one or more ingredients, or synthesizing, preparing, treating, modifying or manipulating food, including food crops or ingredients. Examples include, but are not limited to: Cutting, peeling, trimming, washing, waxing, eviscerating, rendering, cooking, baking, freezing, cooling, pasteurizing, homogenizing, mixing, formulating, bottling, milling, grinding, extracting juice, distilling, labeling, or packaging.

(7) *Nonprofit food facility* means a charitable entity that prepares, serves, or otherwise provides food to the public. The term includes, but is not limited to, food banks, soup kitchens, and nonprofit food delivery services. To qualify as a nonprofit food facility, the entity must be exempt from paying federal income tax under the U.S. Internal Revenue Code.

(8) *Packing* means placing, putting, or repacking food into different containers without making any change to the form of the food.

(9) *Port of entry* means the water, air, or land port at which the article of food is imported or offered for import into the United States, i.e., the port where food first arrives in the United States. This port may be different than the port where the article of food is entered for U.S. Customs Service purposes.

(10) *Restaurant* means a facility that prepares and sells food directly to consumers for immediate consumption. Restaurants include, but are not limited to, cafeterias, lunchrooms, cafes, bistros, fast food establishments, food stands, saloons, taverns, bars, lounges, catering facilities, hospital kitchens, day care kitchens, and nursing home kitchens. Facilities that provide food to interstate conveyances, rather than directly to consumers, are not restaurants.

(11) *Retail facility* means a facility that sells food products directly to consumers only. The term includes, but is not limited to, grocery and convenience stores, vending machine locations, and commissaries. The term includes facilities that not only sell food directly to consumers, but that also manufacture/process food in that facility solely for direct sale to consumers from that same facility.

(12) *U.S. agent* means a person residing or maintaining a place of business in the United States whom a foreign facility designates as its agent. A U.S. agent cannot be in the form of a mailbox, answering machine, or service, or other place where an individual acting as the foreign facility's agent is not physically present. The U.S. agent acts as a communications link between FDA and the facility. FDA will treat representations provided by the U.S. agent as those of the foreign facility, and consider information provided to the U.S. agent as the equivalent of providing the same information or documents to the foreign food facility.

(13) *You* or *registrant* means the owner, operator, or agent in charge of a facility that manufactures/processes, packs, or holds food for consumption in the United States.

Procedures for Registration of Food Facilities

§ 1.230 When must you register?

The owner, operator, or agent in charge of a facility that manufactures/processes, holds, or packs food for consumption in the United States must be registered no later than December 12, 2003. Facilities that begin to manufacture/process, pack, or hold food for consumption in the United States on or after December 12, 2003, must be registered before they begin such activities.

§ 1.231 How and where do you register?

(a) Electronic registration: To register electronically, you must register at [a Web site that will be provided in the final rule], which will be available for registration 24 hours a day, 7 days a week. This Web site will be available wherever the Internet is accessible, including libraries, copy centers, schools, and Internet cafes, as well as a foreign facility's U.S. agent if the facility makes such arrangements. FDA strongly encourages electronic registration for the benefit of both FDA and the registrant. Once you complete your registration, FDA will provide you with an automatic electronic confirmation of

registration and a permanent registration number. You will be considered registered once FDA electronically transmits your confirmation and registration number unless notified otherwise.

(b) Registration by mail: (1) If you do not have reasonable access to the Internet through any of the methods provided under paragraph (a) of this section, you must register by obtaining a copy of the registration from (Office name or mail code), the Center for Food Safety and Applied Nutrition, Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, or by phone at [toll-free number that will be provided in the final rule].

(2) When you receive the form in the mail, you must fill it out completely and legibly and mail it to the address in paragraph (b) of this section.

(3) If any required information on the form is incomplete or illegible when FDA receives it, FDA will send the form back to you for completion, provided that your mailing address is legible and valid.

(4) FDA will enter completed registration submissions into the system as soon as practicable, in the order received.

(5) FDA will then mail to the mailing address shown on the registration form a copy of the registration as entered, confirmation of registration, and your registration number.

(6) If any information you previously submitted is incorrect as entered into the system, you must update your registration as specified in § 1.234.

(7) You will be considered registered once FDA enters your registration data into the registration system and the system generates a registration number.

(c) No registration fee is required.

(d) You must submit all registration information in the English language.

§ 1.232 What information is required in the registration?

Each registrant must submit the following information through either of the methods described in § 1.231:

(a) The name, full address, phone number, fax number, and e-mail address of the facility;

(b) The name and address of the parent company, if the facility is a subsidiary of the parent company;

(c) Emergency contact information, including an individual's name, title, office phone, home phone, cell phone (if available), and e-mail address (if available);

(d) All trade names the facility uses;

(e) Product categories as identified in § 170.3 of this chapter;

(f) For a foreign facility, the name, address, phone number, fax number (if available), and e-mail address (if available) of its U.S. agent; and

(g) A statement certifying that the information submitted is true and accurate, and that the person submitting the registration is authorized by the facility to register on its behalf. The statement requires the name of the person registering the facility. This statement also requires the phone number, e-mail address (if available), and fax number (if available) of the person submitting the registration.

§ 1.233 What optional items are included in the registration form?

FDA encourages, but does not require, you to submit the following optional items in your registration. These data will enable FDA to communicate more quickly with facilities that may be the target of a terrorist threat or attack, or otherwise affected by, an outbreak of foodborne illness. This information includes:

(a) Preferred mailing address, if different from that of the facility;

(b) Type of activity conducted at the facility (e.g., manufacturing/processing or holding);

(c) Food categories not included under § 170.3 of this chapter, but which are helpful to FDA for responding to an incident (e.g., infant formula, dietary supplements, and food for animal consumption);

(d) Type of storage, if the facility is solely a holding facility;

(e) A food product category of "most/all food product categories", if the facility manufactures/processes, packs, or holds foods in most or all of the categories under § 170.3 of this chapter; and

(f) Approximate dates of operation, if the facility's business is seasonal.

§ 1.234 How and when do you update your registration information?

(a) The owner, operator, or agent in charge must submit an update to the registration within 30 calendar days of any change to any of the information previously submitted, including, but not limited to, the name of the owner, operator, or agent in charge of a facility.

(b) A facility canceling its registration must do so on the cancellation of registration form.

(c) The cancellation of a facility's registration must include the following information:

(1) The facility's registration number;

(2) Whether the facility is domestic or foreign;

(3) The facility name and address;

(4) The name, address, and e-mail address (if available) of the individual submitting the cancellation; and

(5) A statement in which the individual submitting the cancellation will certify that the information submitted is true and accurate and the submitter is authorized by the facility to cancel its registration.

Additional Provisions

§ 1.240 What other registration requirements apply?

In addition to these regulations, you must comply with the registration regulations found in part 108 of this chapter, related to emergency permit control, and any other registration requirements that apply to the facility.

§ 1.241 What happens if you fail to register?

(a) Failure of a domestic or foreign facility to register in accordance with this regulation is a prohibited act under section 301 of the act (21 U.S.C. 331).

(b) Any person who imports or offers for import an article of food without complying with the requirements of section 801(l) of the act (21 U.S.C. 381(l)) as set out in this subpart, or otherwise violates any requirement under section 801(l) of the act, or any person who causes such an act, commits a prohibited act within the meaning of section 301(dd) of the act.

(c) Under section 302 of the act (21 U.S.C. 332), the United States can bring a civil action in Federal court to enjoin persons who commit prohibited acts. Under section 303 of the act (21 U.S.C. 333), the United States can bring a criminal action in Federal court to prosecute persons who commit prohibited acts. Under section 306 of the act (21 U.S.C. 335a), FDA can seek debarment of any person who has been convicted of a felony relating to importation of food into the United States.

(d) If an article of food is imported or offered for import and a foreign facility that manufactured/processed, packed, or held that food has not registered in accordance with this subpart, the food must be held at the port of entry unless FDA directs its removal to a secure facility in accordance with paragraph (e) of this section.

(e) Under paragraph (d) of this section, if FDA determines that removal to a secure facility is appropriate (e.g., due to a concern with the security of the article of food or due to space limitations in the port of entry), FDA may direct that the article of food be removed to a bonded warehouse, container freight station, centralized examination station, or another appropriate secure facility approved by FDA.

(f) Under paragraph (d) of this section, the owner, purchaser, importer or consignee must arrange for storage of the article of food in an FDA-designated secure facility and must promptly notify FDA of the location. Any movement of the article to the facility must be accomplished under bond. Transportation and storage expenses shall be borne by the owner, purchaser, importer, or consignee.

(g)(1) Under paragraph (d) of this section, the article of food must be held at the port of entry or in the secure facility until the owner, operator, or agent in charge of the foreign facility has submitted its registration information to FDA, FDA has registered the facility in accordance with § 1.231, and FDA has notified the U.S. Customs Service and the person who submitted the registration that the article of food no longer is subject to a hold under section 801(l) of the act.

(2) Under paragraph (d) of this section, notwithstanding section 801(b) of the act (21 U.S.C. 381(b)), while any article of food is held at its port of entry or in a secure facility under section 801(l) of the act, it may not be delivered to any of its importers, owners, or consignees.

(h) Under paragraph (d) of this section, a determination that an article of food is no longer subject to hold under section 801(l) of the act is different than, and may come before, determinations of admissibility under other provisions of the act or other U.S. laws. A determination that an article of food is no longer subject to hold under section 801(l) does not mean that it will be granted admission under other provisions of the act or other U.S. laws.

§ 1.242 What does assignment of a registration number mean?

Assignment of a registration number to a facility means that the facility is registered with FDA. Assignment of a registration number does not in any way denote FDA's approval or endorsement of a facility or its products.

§ 1.243 Is food registration information available to the public?

(a) Registration forms submitted under this subpart, and any information contained in those forms that would disclose the identity or location of a specific registered person, is not subject to disclosure under 5 U.S.C. 552 (the Freedom of Information Act).

(b) Paragraph (a) does not apply to any information obtained by other means or that has previously been disclosed to the public as defined in § 20.81 of this chapter.

Dated: January 27, 2003.

Tommy G. Thompson,

Secretary of Health and Human Services.

Dated: January 27, 2003.

Kenneth W. Dam,

Acting Secretary of the Treasury.

Note: The following appendix will not appear in the Code of Federal Regulations.

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DHHS/FDA - DRAFT FOOD FACILITY REGISTRATION FORM

Date: _____ **(MONTH/DAY/YEAR)**

Section 1 - TYPE OF REGISTRATION

1a. ❑ **DOMESTIC REGISTRATION** ❑ **FOREIGN REGISTRATION**

1b. ❑ **INITIAL REGISTRATION**

❑ **UPDATE OF REGISTRATION INFORMATION**
Provide the facility registration number: _____

Check all that apply below and further identify changes in the applicable sections.

❑ **Facility Name/Address Change**	❑ **Seasonal Facility Dates of Operation Change**
❑ **Preferred Mailing Address Change**	❑ **Establishment Type Change**
❑ **Parent Company Change**	❑ **Warehouse Storage Type Change**
❑ **Emergency Contact Change**	❑ **Human Food Product Category Change**
❑ **Trade Name Change**	❑ **Animal Food Product Category Change**
❑ **United States Agent Change - Foreign Countries only**	❑ **Owner, Operator, or Agent In Charge Change**

Section 2 - FACILITY NAME / ADDRESS INFORMATION

FACILITY NAME:	
FACILITY STREET ADDRESS:	
CITY:	STATE:
ZIP CODE (POSTAL CODE):	PROVINCE/TERRITORY:
COUNTRY:	PHONE NUMBER (If a foreign facility, include Area & Country Codes):
FAX NUMBER (If available; if a foreign facility, include Area & Country Codes):	E-MAIL ADDRESS (if available):

Section 3 - OPTIONAL: PREFERRED MAILING ADDRESS INFORMATION
(only complete this section if different from Section 2, Facility Name/Address Information)

NAME:	
ADDRESS:	
CITY:	STATE:
ZIP CODE (POSTAL CODE):	PROVINCE/TERRITORY:
COUNTRY:	PHONE NUMBER (If a foreign facility, include Area & Country Codes):
FAX NUMBER (If available; if a foreign facility, include Area & Country Codes):	E-MAIL ADDRESS:

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Section 4 - PARENT COMPANY NAME / ADDRESS INFORMATION (IF APPLICABLE)	
NAME OF PARENT COMPANY:	
STREET ADDRESS OF PARENT COMPANY:	
CITY:	STATE:
ZIP CODE (POSTAL CODE):	PROVINCE/TERRITORY:
COUNTRY:	PHONE NUMBER (If a foreign facility, include Area & Country Codes):
FAX NUMBER (If available; if a foreign facility, include Area & Country Codes):	E-MAIL ADDRESS (If available):
Section 5 - FACILITY EMERGENCY CONTACT INFORMATION	
INDIVIDUAL'S NAME:	
TITLE:	OFFICE PHONE (If a foreign facility, include Area & Country Codes):
HOME PHONE (If a foreign facility, include Area & Country Codes):	CELL PHONE (if available; If a foreign facility, include Area & Country Codes):
E-MAIL ADDRESS (If available):	
Section 6 - TRADE NAMES (IF THIS FACILITY USES TRADE NAMES OTHER THAN THAT LISTED IN SECTION 2 ABOVE, LIST THEM BELOW (E.G., "ALSO DOING BUSINESS AS," "FACILITY ALSO KNOWN AS"):	
ALTERNATE TRADE NAME #1:	
ALTERNATE TRADE NAME #2:	
Section 7 - UNITED STATES AGENT (TO BE COMPLETED BY FACILITIES LOCATED OUTSIDE ANY STATE OR TERRITORY OF THE UNITED STATES, THE DISTRICT OF COLUMBIA, OR THE COMMONWEALTH OF PUERTO RICO.)	
NAME OF UNITED STATES AGENT:	
TITLE:	
ADDRESS:	
CITY:	STATE:
ZIP CODE:	COUNTRY:
PHONE NUMBER (include Area Code):	
FAX NUMBER (If available; include Area Code):	
E-MAIL ADDRESS (If available):	

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Section 8 - OPTIONAL: SEASONAL FACILITY DATES OF OPERATION
(GIVE THE APPROXIMATE DATES THAT YOUR FACILITY IS OPEN FOR BUSINESS, IF ITS OPERATIONS ARE ON A SEASONAL BASIS)

DATES OF OPERATION:

Section 9 - OPTIONAL: ESTABLISHMENT TYPES
(CHECK ALL TYPES OF OPERATIONS THAT ARE PERFORMED AT THIS FACILITY REGARDING THE MANUFACTURING, PROCESSING, PACKING OR HOLDING OF FOOD)

❑ Warehouse / Holding Facility (e.g., storage facilities, including storage tanks, grain elevators)
NOTE: If the facility is a warehouse / holding facility only, ***go to Section 10 (solely warehouse / holding facility) and check all that apply.***

❑ Acidified / Low Acid Food Processor	❑ Labeler / Relabeler
❑ Interstate Conveyance Caterer/Catering Point	❑ Manufacturer / Processor
❑ Molluscan Shellfish Establishment	❑ Repacker / Packer
❑ Commissary	❑ Salvage Operator (Reconditioner)
❑ Contract Sterilizer	❑ Animal food manufacturer / processor / holder

Section 10 - OPTIONAL: IF YOUR FACILITY IS *SOLELY* A WAREHOUSE / HOLDING FACILITY, COMPLETE THIS SECTION; ALL OTHER FACILITIES, COMPLETE SECTION 11 (human or animal product categories) INSTEAD OF THIS SECTION.

❑ Ambient Storage (including heated storage)	❑ Refrigerated Storage	❑ Frozen Storage

Section 11 - GENERAL PRODUCT CATEGORIES - FOOD FOR HUMAN CONSUMPTION
To be completed by all human food facilities except those that are solely warehouses.
[Note: Categories are derived from the Product Code Builder (www.fda.gov/search/databases.html), with cross-references to the categories found under 21 CFR 170.3. Please see instructions for further examples.]

❑ 1. ALCOHOLIC BEVERAGES [21 CFR 170.3 (n) (2)]

❑ 2. BABY (INFANT AND JUNIOR) FOOD PRODUCTS Including Infant Formula (Optional Selection)

❑ 3. BAKERY PRODUCTS, DOUGH MIXES, OR ICINGS [21 CFR 170.3 (n) (1), (9)]

❑ 4. BEVERAGE BASES [21 CFR 170.3 (n) (3), (16), (35)]

❑ 5. CANDY WITHOUT CHOCOLATE, CANDY SPECIALITIES & CHEWING GUM [21 CFR 170.3 (n) (6), (9), (25), (38)]

❑ 6. CEREAL PREPARATIONS, BREAKFAST FOODS, QUICK COOKING/INSTANT CEREALS [21 CFR 170.3 (n) (4)]

❑ 7. CHEESE AND CHEESE PRODUCTS [21 CFR 170.3 (n) (5)]

❑ 8. CHOCOLATE AND COCOA PRODUCTS [21 CFR 170.3 (n) (3), (9), (38), (43)]

❑ 9. COFFEE AND TEA [21 CFR 170.3 (n) (3), (7)]

❑ 10. COLOR ADDITIVES FOR FOODS [21 CFR 170.3 (o) (4)]

❑ 25. MULTIPLE FOOD DINNERS, GRAVIES, SAUCES AND SPECIALTIES [21 CFR 170.3 (n) (11), (14), (17), (18), (23), (24), (29), (34), (40)]

❑ 26. NUT AND EDIBLE SEED PRODUCTS [21 CFR 170.3 (n) (26), (32)]

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- ❑ 11. DIETARY CONVENTIONAL FOODS OR MEAL REPLACEMENTS (includes Medical Foods) [21 CFR 170.3 (n) (31)]

12. DIETARY SUPPLEMENTS

- ❑ Proteins, Amino Acids, Fats and Lipid Substances [21 CFR 170.3 (o) (20)]
- ❑ Vitamins and Minerals [21 CFR 170.3 (o) (20)]
- ❑ Animal By-Products and Extracts (Optional Selection)
- ❑ Herbals and Botanicals (Optional Selection)

- ❑ 13. DRESSINGS AND CONDIMENTS [21 CFR 170.3 (n) (8), (12)]
- ❑ 14. FISHERY/SEAFOOD PRODUCTS [21 CFR 170.3 (n) (13), (15), (39), (40)]
- ❑ 15. SUBSTANCES THAT MIGRATE INTO FOOD FROM FOOD PACKAGING AND OTHER ARTICLES THAT CONTACT FOOD (Optional Selection)
- ❑ 16. FOOD ADDITIVES, GENERALLY RECOGNIZED AS SAFE (GRAS) INGREDIENTS, OR OTHER INGREDIENTS USED FOR PROCESSING [21 CFR 170.3 (n) (42); 21 CFR 170.3 (o) (1), (2), (3), (5), (6), (7), (8), (9), (10), (11), (12), (13), (14), (15), (16), (17), (18), (19), (22), (23), (24), (25), (26), (27), (28), (29), (30), (31), (32)
- ❑ 17. FOOD SWEETENERS (NUTRITIVE) [21 CFR 170.3 (n) (9), (41), 21 CFR 170.3 (o) (21)]
- ❑ 18. FRUITS AND FRUIT PRODUCTS [21 CFR 170.3 (n) (16), (27), (28), (35), (43)]
- ❑ 19. GELATIN, RENNET, PUDDING MIXES, OR PIE FILLINGS [21 CFR 170.3 (n) (22)]
- ❑ 20. ICE CREAM AND RELATED PRODUCTS [21 CFR 170.3 (n) (20), (21)]
- ❑ 21. IMITATION MILK PRODUCTS [21 CFR 170.3 (n) (10)]
- ❑ 22. MACARONI OR NOODLE PRODUCTS [21 CFR 170.3 (n) (23)]
- ❑ 23. MEAT, MEAT PRODUCTS AND POULTRY (FDA REGULATED) [21 CFR 170.3 (n) (17), (18), (29), (34), (39), (40)]
- ❑ 24. MILK, BUTTER, OR DRIED MILK PRODUCTS [21 CFR 170.3 (n) (12), (30), (31)]

- ❑ 28. SHELL EGG AND EGG PRODUCTS [21 CFR 170.3 (n) (11), (14)]
- ❑ 29. SNACK FOOD ITEMS (FLOUR, MEAL OR VEGETABLE BASE) [21 CFR 170.3 (n) (37)]
- ❑ 30. SPICES, FLAVORS, AND SALTS [21 CFR 170.3 (n) (26)]
- ❑ 31. SOUPS [21 CFR 170.3 (n) (39), (40)]
- ❑ 32. SOFT DRINKS AND WATERS [21 CFR 170.3 (n) (3), (35)]
- ❑ 33. VEGETABLES AND VEGETABLE PRODUCTS [21 CFR 170.3 (n) (19), (36)]
- ❑ 34. VEGETABLE OILS (INCLUDES OLIVE OIL) [21 CFR 170.3 (n) (12)]
- ❑ 35. VEGETABLE PROTEIN PRODUCTS (SIMULATED MEATS) [21 CFR 170.3 (n) (33)]
- ❑ 36. WHOLE GRAINS, MILLER GRAIN PRODUCTS (FLOURS), OR STARCH [21 CFR 170.3 (n) (1), (23)]
- ❑ 37. MOST/ALL HUMAN FOOD PRODUCT CATEGORIES (Optional Selection)

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Section 11a - OPTIONAL GENERAL PRODUCT CATEGORIES – FOOD FOR ANIMAL CONSUMPTION

- ❑ 1. GRAIN PRODUCTS (E.G., BARLEY, GRAIN SORGHUMS, MAIZE, OAT, RICE, RYE AND WHEAT)
- ❑ 2. OILSEED PRODUCTS (E.G., COTTONSEED, SOYBEANS, OTHER OIL SEEDS)
- ❑ 3. ALFALFA AND LESPEDEZA PRODUCTS
- ❑ 4. AMINO ACIDS
- ❑ 5. ANIMAL-DERIVED PRODUCTS
- ❑ 6. BREWER PRODUCTS
- ❑ 7. CHEMICAL PRESERVATIVES
- ❑ 8. CITRUS PRODUCTS
- ❑ 9. DISTILLERY PRODUCTS
- ❑ 10. ENZYMES
- ❑ 11. FATS AND OILS
- ❑ 12. FERMENTATION PRODUCTS
- ❑ 13. MARINE PRODUCTS
- ❑ 14. MILK PRODUCTS
- ❑ 15. MINERALS
- ❑ 16. MISCELLANEOUS AND SPECIAL PURPOSE PRODUCTS
- ❑ 17. MOLASSES
- ❑ 18. NON-PROTEIN NITROGEN PRODUCTS
- ❑ 19. PEANUT PRODUCTS
- ❑ 20. RECYCLED ANIMAL WASTE PRODUCTS
- ❑ 21. SCREENINGS
- ❑ 22. VITAMINS
- ❑ 23. YEAST PRODUCTS
- ❑ 24. MIXED FEED (POULTRY, LIVESTOCK, AND EQUINE)
- ❑ 25. PET FOOD
- ❑ 26. MOST/ALL ANIMAL FOOD PRODUCT CATEGORIES

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DHHS/FDA - DRAFT FOOD FACILITY REGISTRATION FORM

Section 12 - CERTIFICATION STATEMENT		
The owner, operator, or agent in charge of the facility must submit this form. *By submitting this form to FDA, the owner, operator, or agent in charge certifies that the above information is true and accurate and that the facility has authorized the submitter to register on its behalf. Under 18 U.S.C. 1001, anyone who makes a materially false, fictitious, or fraudulent statement to the U.S. Government is subject to criminal penalties.*		
PRINT NAME OF PERSON SUBMITTING THE REGISTRATION FORM		
PHONE NUMBER (If a foreign facility, include Area & Country Codes):	FAX NUMBER ((If available; if a foreign facility, include Area & Country Codes):	E-MAIL ADDRESS (if available):

FDA USE ONLY	
DATE REGISTRATION FORM RECEIVED	DATE NOTIFICATION SENT TO FACILITY

Public reporting burden for this collection of information is estimated to average between 1 and 12 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to:

Department of Health and Human Services
Food and Drug Administration
CFSAN (HFS-024)
5100 Paint Branch Parkway
College Park, MD 20740

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

Form 3537 (1/03)

Form Approval: OMB No. 0910-xxxx
Expiration Date:
See OMB Statement at end of form

DHHS/FDA - CANCELLATION OF FOOD FACILITY REGISTRATION	
PROVIDE THE FACILITY REGISTRATION NUMBER:	
☐ DOMESTIC REGISTRATION	☐ FOREIGN REGISTRATION
FACILITY NAME / ADDRESS INFORMATION	
FACILITY NAME:	
FACILITY STREET ADDRESS:	
CITY:	STATE:
ZIP CODE (POSTAL CODE):	PROVINCE/TERRITORY:
COUNTRY:	
CERTIFICATION STATEMENT	
The owner, operator, or agent in charge of the facility must submit this form. *By submitting this form to FDA, the owner, operator, or agent in charge certifies that the above information is true and accurate and that the facility has authorized the submitter to cancel the registration on its behalf. Under 18 U.S.C. 1001, anyone who makes a materially false, fictitious, or fraudulent statement to the U.S. Government is subject to criminal penalties.*	
PRINT NAME OF PERSON SUBMITTING THE CANCELLATION FORM	
ADDRESS	E-MAIL ADDRESS (IF AVAILABLE)
FDA USE ONLY	
DATE CANCELLATION FORM RECEIVED	DATE CONFIRMATION SENT TO FACILITY

Public reporting burden for this collection of information is estimated to average 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to:

Department of Health and Human Services
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Form 3537a (1/03)

[FR Doc. 03–2443 Filed 1–29–03; 1:47 pm]
BILLING CODE 4160–01–C

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 1

[Docket No. 02N–0278]

RIN 0910–AC41

Prior Notice of Imported Food Under the Public Health Security and Bioterrorism Preparedness and Response Act of 2002

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Food and Drug Administration (FDA) is proposing a regulation that would require U.S. purchasers or U.S. importers or their agents to submit to FDA prior notice of the importation of food. The proposed regulation implements the Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (the Bioterrorism Act), which requires prior notification of imported food to begin by December 12, 2003. The Bioterrorism Act requires FDA to issue final regulations that specify the period of advance notice by this date or a statutory notice provision requiring not less than 8 hours prior notice and not more than 5 days prior notice will take effect until a final rule is issued.

DATES: Submit written or electronic comments by April 4, 2003. Submit written or electronic comments on the collection of information by March 5, 2003.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to http://www.fda.gov/dockets/ecomments. Submit written comments on the information collection provisions to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), New Executive Office Bldg., 725 17th St. NW., rm. 10235, Washington, DC 20503, ATTN: Stuart Shapiro, Desk Officer for FDA.

FOR FURTHER INFORMATION CONTACT: Mary Ayling, Center for Food Safety and Applied Nutrition (HFS–32), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 301–436–2428.

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I. Background and Legal Authority

The events of September 11, 2001, highlighted the need to enhance the security of the U.S. food supply. Congress responded by passing the Bioterrorism Act, which was signed into law on June 12, 2002. The Bioterrorism Act includes a provision in Title III (Protecting Safety and Security of Food and Drug Supply), Subtitle A—Protection of Food Supply, section 307, which amends the Federal Food, Drug, and Cosmetic Act (the act) by adding section 801(m) (21 U.S.C. 381(m)). This new provision changes when FDA will receive certain information about imported foods by requiring the Secretary of Health and Human Services (the Secretary), after consultation with the Secretary of the Treasury, to issue implementing regulations by December 12, 2003, mandating prior notification to FDA of food that is imported or offered for import into the United States. Functions of the U.S. Customs Service (U.S. Customs) will soon be a part of the Department of Homeland Security (DHS). Future consultations may be with DHS instead of, or in addition to, the Department of Treasury.

Section 801(a) of the act sets out procedures for imports under FDA's jurisdiction. When an FDA-regulated product is imported or offered for import, generally brokers submit entry information to the U.S. Customs on behalf of the importers of record. U.S. Customs then provides entry information and may deliver samples to FDA to enable admissibility decisions to be made. Under U.S. Customs authorities, entry of the merchandise must be made within 15 days after importation.

U.S. Customs regulations provide for different kinds of entries. Commonly, merchandise is the subject of an entry for consumption (i.e., unrestricted, general use) under a basic importation and entry bond at the first port of arrival, but U.S. Customs authorities also allow for the entry of merchandise for transportation under a custodial bond from the port of arrival to another port where the consumption entry will be made. If no entry of any kind is made within 15 days, the article cannot move and the carrier or other authorized party must notify U.S. Customs and a general order (i.e., bonded or secure) warehouse that the article remains unentered. Generally, at that point, the article is moved to the bonded warehouse (or

such other facility as the U.S. Customs port director might require) and held pending the filing of an entry or other action.

Accordingly, under current laws and regulations, there are times when FDA does not receive complete information about the food imports it regulates until days after the food has arrived in the U.S. and been moved from the port it arrived in.

FDA receives information about imported food through its Operational and Administrative System for Import Support (OASIS). Entry information is usually provided electronically to OASIS by U.S. Customs via its Automated Broker Interface (ABI) of the Automated Commercial System (ACS). The information that is currently supplied to FDA through this system includes: the entry type, the entry number (both ACS line number and FDA line identifier); the mode of transportation; the carrier code; the name and address of the manufacturer, shipper, importer, and ultimate consignee; the country of origin; the FDA product code; a written description of the product in common business terms; and the quantity. If neither FDA nor U.S. Customs wishes to examine or detain the entry, the product is allowed to proceed.

By adding section 801(m) to the act, Congress changed when information about FDA-regulated food imports must be provided to FDA. The major components of new section 801(m) of the act are:

- Requires prior notice of imported food shipments beginning on December 12, 2003;
- Provides that, if adequate notice is not provided, the food shall be refused admission and held until adequate notice is given;
- Amends section 301 of the act to make it a prohibited act to import or offer for import an article of food in violation of any requirements under section 801(m) of the act; and
- Mandates that prior notice be submitted no less than 8 hours and not more than 5 days before it is imported or offered for import, if final rules are not in effect on December 12, 2003, and until such rules become effective.

In addition to section 307 of the Bioterrorism Act, which establishes the requirement for prior notice for food imported or offered for import into the U.S., FDA is relying on sections 701(a) and 701(b) of the act (21 U.S.C. 371(a) and (b)) in issuing this proposed rule. Section 701(a) authorizes the agency to issue regulations for the efficient enforcement of the act, while section 701(b) of the act authorizes FDA and the Department of Treasury to jointly prescribe regulations for the efficient enforcement of section 801 of the act.

II. Preliminary Stakeholder Comments

On July 17, 2002, FDA sent an open letter to the members of the public interested in food issues outlining the four provisions in Title III of the Bioterrorism Act that require FDA to issue regulations in an expedited time period, and FDA's plans for implementing them (see http://www.cfsan.fda.gov/~dms/sec-ltr.html). In the letter, FDA invited stakeholders to submit comments to FDA by August 30, 2002, for FDA's consideration as it developed this proposed rule. FDA also held meetings with representatives of industry, consumer groups, other Federal agencies, and foreign embassies after sending out the July 17, 2002, letter, to solicit stakeholder comments. In response to these solicitations, FDA received 37 comments regarding section 307 of the Bioterrorism Act.

FDA has considered all the comments received by August 30, 2002. FDA will consider all comments we have received so far with the comments we receive during the public comment period on this proposed rule in developing the final rule. Several broad themes emerged from the comments FDA received on or before August 30, 2002, including:

- Maintaining flexibility when setting the minimum time required for prior notice and taking into account different modes of transportation, the nature of perishable food, and the needs of businesses which operate close to the U.S. border;
- Permitting the prior notice to be amended;
- Integrating with U.S. Customs and other agencies to avoid duplication of notification requirements;
- Allowing a qualified agent to submit prior notices for authorized submitters;
- Providing immediate acknowledgement of the submission, if prior notice is submitted electronically;
- Defining "food" consistent with the act's definition;
- Extending FDA's hours of operation;
- Complying with international trade obligations; and
- Including a model of the Prior Notice screen.

III. The Proposed Regulation

This rule would enhance FDA's ability to inspect imported food when it arrives in the U.S. This in turn would result in a significant improvement in FDA's ability to deter, prepare for, and respond effectively to bioterrorism and other public health emergencies that might result from imported food. Additionally, should an outbreak or a bioterrorism event occur, prior notice would enhance FDA's ability to respond to the event by enhancing FDA's ability to prevent entry of shipments that appear related and to facilitate product tracking for containment. This proposed rule would facilitate product tracking because we would know, at the time of receipt of prior notice, the name and address of the actual importer and consignee in the United States. We could then use the U.S. importer and consignee information to follow-up and trace the location of the goods. FDA thus would be better able to ensure that consumers in the United States do not eat food that is contaminated (whether intentionally or otherwise). This information would also assist FDA and other authorities in determining the source and cause of problems and in communicating with affected firms. Finally, we believe that the information provided by prior notice would help us use our foreign inspection resources more effectively.

In establishing and implementing this proposed rule, FDA will comply fully with its international trade obligations, including the applicable World Trade Organization (WTO) agreements and the North American Free Trade Agreement ("NAFTA"). For example, we believe this proposed rule is not more trade restrictive than necessary to meet the objectives of the Bioterrorism Act.

A. Highlights of This Rule

The key features of this proposed rule are:

- The purchaser or importer of an article of food (or their agent) who resides or maintains a place of business in the United States generally is responsible for submitting the notice.
- The notice must be submitted by noon of the calendar day before the day of arrival.
  - Amendments relating to product identity information are allowed under specified circumstances.
  - Updates about arrival information are required if plans change.
- The notice must be submitted electronically through the Prior Notice System unless the FDA system is not functioning. The FDA Prior Notice System will be designed to provide an automatic electronic acknowledgment of receipt of a complete prior notice submission, with a time and date "stamp." The notice must contain information that identifies:
  - The individual and firm submitting the prior notice;
  - The entry type and U.S. Customs

ACS entry number or other U.S. Customs identification number associated with the import;
- If the article of food is under hold under proposed § 1.278, the location where it is being held;
- The identity of the article of food being imported or offered for import:
  - The complete FDA product code;
  - The common or usual name or market name;
  - The trade or brand name, if different from the common or usual name or market name;
  - The quantity described from smallest package size to largest container; and
  - The lot or code numbers or other identifier of the food if applicable;
- The manufacturer;
- All growers, if known;
- The country from which the article originates;
- The shipper;
- The country from which the article of food was shipped;
- The anticipated arrival information;
- Information related to U.S. Customs entry process;
- The importer, owner, and consignee; and
- The carrier.
- Amendments relating to product identity are allowed if complete information about product identity does not exist by the deadline for prior notice for the planned shipment:
  - Information regarding identity of the article may be amended once;
  - Amendments may not be used to change the nature of the article of food;
  - Quantity may be amended; and
  - Any amendments must be submitted no later than 2 hours prior to arrival.
- If a change occurs in the anticipated port of entry or anticipated time of arrival stated in the prior notice, the information must be updated.
- The proposed rule does not apply to:
  - Food that is carried by an individual entering the United States in that individual's personal baggage for that individual's personal use; or
  - Meat food products, poultry products, and egg products that at the time of importation are subject to the exclusive jurisdiction of the U.S. Department of Agriculture (USDA).

B. General Provisions

1. What Imported Food is Subject to This Subpart? (Proposed § 1.276)

Under new section 801(m)(1) of the act, prior notice is required for all food "being imported or offered for import into the United States." Accordingly, prior notice requirements apply to all food that is brought across the U.S. border (with the following four exceptions) regardless of whether the food is intended for consumption in the United States. In other words, FDA believes that food that is brought into the United States to be put into foreign trade zones, or for transshipment or reexport immediate or otherwise, is "imported or offered for import" and thus must comply with the prior notice requirements.

The proposed rule establishes four categories of imported food that are not subject to the prior notice requirements. In each of these cases, FDA believes that the statutory language requires this result.

The first category is food that individual travelers carry in their personal baggage for their own personal enjoyment. Although we believe that this food is imported into the United States, the information that section 801(m)(1) of the act requires in a prior notice, in conjunction with the purpose of the provision, demonstrates that Congress did not intend prior notice to apply to food that travelers bring into the United States in their personal baggage for personal use (i.e., consumption by themselves, family or friends, not for sale to anyone). In particular, under section 801(m)(1) of the act, a prior notice must contain the identity of the shipper of the food. When travelers bring food back from their travels in their personal baggage for their own use, we do not believe that Congress intended for us to characterize such travelers as "shippers" for purposes of section 801(m) of the act. We seek comment on this reasoning. However, when travelers bring food into the United States in their personal baggage to sell or otherwise distribute in a broader fashion, the travelers would seem to be acting for or on behalf of other entities. Under these circumstances, these travelers would seem to be shippers and subject to the provisions of this proposed rule.

The remaining three categories of imported food not subject to the prior notice requirement are those foods within the exclusive jurisdiction of USDA. In accordance with section 801(m)(3)(B) of the act, FDA is proposing to exempt from the requirements of this regulation imported foods that, at the time of importation, are subject to USDA's exclusive jurisdiction under the Federal Meat Inspection Act (21 U.S.C. 601 *et seq.*), the Poultry Products Inspection Act (21 U.S.C. 451 *et seq.*), or the Egg Products Inspection Act (21 U.S.C. 1031 *et seq.*).

2. What Definitions Apply to This Subpart? (Proposed § 1.277)

The following definitions are used throughout the proposed rule:

a. *The act.* The proposed rule defines "the act" as the Federal Food, Drug, and Cosmetic Act. The proposed rule applies the definitions of terms in section 201 of the act to such terms as used in the proposed rule.

b. *Calendar day.* The proposed rule defines "calendar day" as "every day shown on the calendar."

c. *Country from which the article of food was shipped.* The proposed rule defines "country from which the article of food was shipped" as the country in which the article of food was loaded onto the conveyance that brings it to the United States. A conveyance is the means of transportation, e.g., ship, truck, car, van, plane, railcar, etc., not the shipping container that could be moved from a ship to a truck to a train bed.

FDA is requesting comment on whether this term should include the countries of intermediate destination.

d. *Food.* FDA is proposing to refer to the definition of "food" in section 201(f) of the act (21 U.S.C. 321(f)), which is: "(1) articles used for food or drink for man or other animals, (2) chewing gum, and (3) articles used for components of any such article." FDA also is proposing to include examples of products that are considered food under section 201(f) of the act. Examples listed in the proposed rule include: fruits; vegetables; fish; dairy products; eggs; raw agricultural commodities for use as food or components of food; animal feed, including pet food; food and feed ingredients and additives, including substances that migrate into food from food packaging and other articles that contact food; dietary supplements and dietary ingredients; infant formula; beverages, including alcoholic beverages and bottled water; live food animals (such as hogs and elk); bakery goods; snack foods; candy; and canned foods. FDA already receives entry information on all these articles of food as defined in section 201(f) of the Act.

With respect to articles that can be used for food and non-food uses, FDA believes that prior notice is required if the article is being imported for use as food.

e. *Originating country.* The proposed rule defines "originating country" as "the country from which the article of food originates." FDA is proposing this definition to be consistent with the language used in the Bioterrorism Act.

This proposed definition is also consistent with the definition that describes one of the critical data elements that brokers and other filers currently submit to FDA's OASIS via ACS when entry is made. The proposed definition refers to the country where the product that is shipped to the United States was grown or produced, depending on the kind of article. If the article is fresh produce, for example, the originating country is most likely to be the country where it is grown and harvested. If, on the other hand, the article is a processed food, e.g., canned vegetables, the originating country is likely to be the country in which the vegetables were canned. With respect to wild-caught fish or seafood that is harvested in the waters of the United States or by a U.S. flagged vessel or that is processed aboard a U.S. flagged vessel, FDA is proposing that the originating country be the United States. Otherwise, the originating country is the country under which the vessel is flagged. FDA aligned this aspect of the proposed definition of "originating country" with the principles proposed by USDA's Agricultural Marketing Service guidance published in the **Federal Register** on October 11, 2002, in response to the Farm Security and Rural Investment Act of 2002 (commonly known as the 2002 Farm Bill).

FDA recognizes that this proposed definition may not be identical in all respects to the meaning of the term "country of origin" traditionally used by U.S. Customs. However, FDA believes that using the U.S. Customs meaning would not serve the purpose of the Bioterrorism Act. The U.S. Customs term primarily serves tariff, quota, and other trade purposes; it does not provide information needed for the evaluations that Congress has directed FDA to make under the Bioterrorism Act and the act. We seek comment on this interpretation and our proposed definition of "originating country". FDA also seeks comment on whether its use of a different term will have any impact, and if so, what that impact will be.

f. *Port of entry.* For purposes of the proposed rule, FDA is defining "port of entry" as "the water, air, or land port at which the article of food is imported or offered for import into the United States, i.e., the port where food first arrives in the United States" FDA is proposing this definition because the port where the food arrives in the United States may be different than the port where the entry of the article of food is processed for U.S. Customs purposes, i.e., where the article is "entered." Under U.S. Customs statutes, products can be imported into one port and then transported to another port under a custodial bond before a consumption entry is filed. For example, food may be imported into the United States from Canada through Buffalo, NY, but not be entered for consumption with U.S. Customs until it reaches St. Louis, MO, several days later. In this example, under FDA's proposed definition, the port of entry is Buffalo, NY. If food is imported into the United States from Mexico through Otay Mesa, CA, for transport through the United States for exportation into Canada, the port of entry under FDA's proposed definition is Otay Mesa, CA.

The prior notice authority in the Bioterrorism Act is intended to give FDA better tools to deter, prepare for, and respond to bioterrorism and other food related problems. Given this purpose, "port of entry" must be defined as the port of arrival, that is, the location where the food first physically appeared in the United States. Allowing food that is presented for importation into the United States without prior notice to be shipped around the country and potentially lost to government oversight simply is not consistent with the Bioterrorism Act's stated purpose. FDA believes that its ability to protect U.S. consumers from terrorism or other food-related emergencies will be strongest if food can be examined, and if necessary, held at the point when it first arrives in the United States. FDA requests comments on the proposed definition of "port of entry."

g. *You.* The proposed definition of "you" is the description of the party responsible for submitting the prior notice in proposed § 1.285. FDA is proposing to define "you" in proposed § 1.277(f) as the "purchaser or importer of an article of food who resides or maintains a place of business in the United States, or an agent who resides or maintains a place of business in the United States acting on the behalf of the U.S. purchaser or importer" or, "if the article of food is imported with the intention of in-bond movement through the United States for export, i.e., Transportation for Exportation or Immediate Export entries, the arriving carrier or, if known, the in-bond carrier."

3. What Are the Consequences of Failing to Submit Adequate Prior Notice or Otherwise Failing to Comply With This Subpart? (Proposed § 1.278)

As set out in section 801(m)(1) of the act, proposed § 1.278(a) provides that, if an article of food is imported or offered for import with no prior notice or inadequate prior notice, the food shall be refused admission under section 801(m) of the act. Examples of inadequacy are untimely, inaccurate, or incomplete prior notice.

As set out in section 801(m)(2)(B)(i) of the act, proposed § 1.278(b) provides that if the food is refused admission under section 801(m), it must be held at the port of entry unless FDA directs its removal to a secure facility.

In accordance with section 801(m)(2)(B)(i), proposed § 1.278(c) provides that FDA may require that an article of food be held in a secure facility as appropriate. FDA may determine such storage is appropriate because of the condition of the product, circumstances of importation, or other information available to the government, e.g., a concern with the safety or security of the article of food or space limitations in the port of entry.

Examples of secure facilities include U.S. Customs Bonded Warehouses, Container Freight Stations, and Centralized Examinations Stations. Perishables, however, may not be stored in U.S. Customs Bonded Warehouses; thus, FDA may direct fresh produce or seafood that requires storage to another facility. FDA and U.S. Customs plan to issue guidance for their field offices that will identify locations of secure storage facilities that may be used for food required to be held for failure to provide adequate prior notice.

In order to minimize confusion about who is responsible for making arrangements if food is refused admission under section 801(m) of the act, proposed § 1.278(d) provides that if FDA requires the article of food to be held at the port of entry or in a secure facility, the carrier or the person who submitted the prior notice must arrange for the movement of the food under appropriate custodial bond and promptly notify FDA of the location. This provision also makes clear that the purchaser, owner, importer, or consignee is responsible for transportation and storage expenses. We note that when section 801(m) of the act requires that food be held, it does not appear to mandate that the government take actual physical custody of the goods; instead it limits both the movement of the goods and the potential storage locations, thereby making government oversight straightforward. As described previously, U.S. Customs has identified a well-established network of storage facilities that are secure. When these storage facilities are used, charges are borne by the private parties. We thus believe that although Congress intended strict controls over food refused admission under § 801(m), it did not intend to require FDA or U.S. Customs

to take custody of or pay for the holding of such food. We seek comment on this issue.

In accordance with section 801(m)(2)(B)(i) of the act, proposed § 1.278(e)(1) provides that the article of food must be held at the port of entry or in the secure facility until prior notice is submitted to FDA in accordance with this subpart, FDA has examined the prior notice, FDA has determined that the prior notice is adequate, and FDA has notified the U.S. Customs Service and the person who submitted the prior notice that the article of food no longer is subject to refusal of admission under section 801(m)(1) of the act.

FDA recognizes that food may be shipped in the same container or truck with non-food items. Since articles that are not food are not subject to this proposed rule, when mixed or consolidated imported freight contains articles of food that must be held at the port of entry or moved to a secure facility, those articles that have been refused must be dealt with before the rest of the shipment proceeds.

In accordance with section 801(m)(2)(B)(i) of the act, proposed § 1.278(e)(2) makes clear that food under a hold may not be delivered to the importer, owner, or consignee and that section 801(b) of the act does not apply. Therefore, delivery will not be allowed under a basic importation or entry bond. Even though delivery to them is not allowed, FDA believes that importers, owners, and consignees of food that has been refused under 801(m) of the act can make arrangements for food to be held: these arrangements can be made without taking possession of the food.

The proposed rule (proposed § 1.278(f)) differentiates between a refusal of admission under section 801(m)(1) of the act (prior notice) and refusal of admission under section 801(a) and other provisions of the act or other U.S. laws. The proposed rule makes clear that a determination that an article of food is no longer subject to refusal of admission under section 801(m)(1) of the act does not mean that it will be admitted to the United States. The other provisions of the act and other U.S. laws that currently apply to food imported or offered for import to the United States still apply and also govern admissibility.

Although FDA believes that information in a prior notice will help facilitate admissibility decisions under section 801(a), FDA is not proposing to specify in the rule that it will make an 801(a) admissibility decision at the time it receives a prior notice. A prior notice is a pre-entry submission to comply with requirements under section 801(m). FDA will make the 801(a) decision when the complete entry information is submitted to U.S. Customs and transmitted to FDA. Normally (in about 98 percent of the cases), this is accomplished by electronically filing certified entry information with U.S. Customs ACS, which electronically transmits it to FDA's OASIS System. FDA's 801(a) admissibility decisions are transmitted from OASIS to the filer.

In accordance with section 301(ee) of the act, the proposed rule (§ 1.278(g)) provides that it is a prohibited act to import or offer for import an article of food without complying with the requirements of section 801(m) of the act or otherwise violate any requirement under section 801(m). The proposed rule explains that, under section 302 of the act, the United States can bring a civil action in federal court to enjoin persons who commit a prohibited act and, under section 303 of the act, can bring a criminal action in Federal court to prosecute persons who commit a prohibited act. The proposed rule also explains that, under section 305a of the act, FDA can seek debarment of any person who has been convicted of a felony relating to importation of food into the United States.

FDA notes that there are several differences between refusal of admission under sections 801(a) and (b) of the act and refusal of admission under new section 801(m). First, in section 801(m) of the act, Congress did not provide for any kind of application, petition, or appeal of FDA's determination that an article shall be refused admission for failing to comply with prior notice requirements. Congress provided that an article that has been refused admission under section 801(m) of the act can be admitted only if the necessary information is subsequently submitted, examined by FDA, and found to be adequate. Second, food refused admission under section 801(m) cannot be delivered under bond pursuant to section 801(b) and, as we describe elsewhere, must be held at the U.S. port of entry. Finally, the Bioterrorism Act does not provide specific procedures for the disposition of food refused admission under section 801(m) when no subsequent adequate notice is submitted. Section 801(a) and (b) provide that food refused admission under section 801(a) must be destroyed or reexported. FDA thus believes that the general requirements of Title 19 of the United States Code and the U.S. Customs implementing regulations that apply to imports for which entry has not been made apply in these circumstances.

Under 19 U.S.C. 1448 and 1484, entry of merchandise must be made within the time period prescribed by regulation, which is 15 days after the food arrives in the United States. See 19 CFR Part 1422. If entry is not made within this timeframe, the carrier or other authorized party is required to notify U.S. Customs and a general order warehouse. Generally, at that point the warehouse must arrange to take and store the food at the expense of the consignee. The disposition of this merchandise is governed by 19 U.S.C. 1491 and the implementing regulations at 19 CFR Part 127. Typically, after 6 months, unentered merchandise is deemed unclaimed and abandoned and can be disposed of by the United States. Before this 6 month period runs, however, such merchandise can be reexported. FDA and U.S. Customs plan to develop additional guidance to explain how the agencies will handle food when it must be placed in general order warehouses due to refusal under section 801(m) of the act.

C. Requirements to Submit Prior Notice of Imported Food

1. Who is Authorized to Submit Prior Notice for an Article of Food That is Imported or Offered for Import Into the United States? (Proposed § 1.285)

FDA is proposing that a purchaser or importer of an article of food who resides or maintains a place of business in the United States is authorized to submit prior notice. FDA is also proposing that an agent who resides or maintains a place of business in the United States acting on the behalf of the U.S. purchaser or U.S. importer is authorized to submit prior notice. FDA believes that the customs broker/filer should be authorized to be a submitter if it is the U.S. agent of the U.S. importer or U.S. purchaser.

FDA is proposing that, if the article of food is imported for in-bond movement through the United States for export, the prior notice must be submitted by the arriving carrier or, if known, the in-bond carrier. The types of entries that cover these importations are known to FDA and U.S. Customs as Transportation for Exportation (T&E) and Immediate Export (IE).

FDA believes that the proposed rule should specify which parties are responsible for submitting prior notice and that this specificity will minimize confusion about who should or will submit prior notice among the several parties who can be involved in importing food. Less confusion will lead

to greater compliance. Less confusion will also mean that fewer imports will be delayed for lack of prior notice.

FDA chose the U.S. entities in proposed § 1.285(a) for several reasons. First, we do not believe that there is importation of food to the United States that does not involve one of the U.S. entities identified, except in those instances where the food is imported with the intention of in-bond movement through the United States for export (where the proposed rule authorizes submission by the arriving carrier or, if known, the in-bond carrier). We also believe that it is the U.S. importer or U.S. purchaser who orders or buys the article of food, thereby initiating its importation into the United States. These persons thus should possess, or have the ability to obtain, the information required to be submitted in the prior notice within the time period in proposed § 1.286. As U.S. businesses, these persons are also more likely to already have web access than some foreign businesses, which reduces potential costs and impacts on trade. Finally, placing responsibility on these U.S. entities will facilitate FDA's ability to conduct audits, investigations, and inspections, which will facilitate efficient enforcement of section 801(m).

FDA notes that the submitter is the entity responsible for ensuring the adequacy and accuracy of the prior notice. For the reasons described above, FDA believes that these entities are in the best position to do so.

FDA seeks comment on whether others should be authorized to provide prior notice and, if so, why.

2. When Must the Prior Notice be Submitted to FDA? (Proposed § 1.286)

Based on consideration of the factors set out in the statute, FDA is proposing that the prior notice must be submitted to FDA no later than noon of the calendar day before the day the article of food will arrive at the border crossing in the port of entry.

Section 801(m)(1) of the act makes clear that a primary purpose of prior notice is to enable inspections or other FDA action upon arrival of food in the United States to protect consumers in the United States from food imports that may be at risk of intentional adulteration or that may pose other risks. Section 801(m)(2)(A) of the act states that the deadline for prior notice "shall be no less than the minimum amount of time necessary for [FDA] to receive, review, and appropriately respond to such notification." In addition, section 801(m)(2)(A) provides that FDA may take other factors into consideration when deciding on the deadline for prior notice, specifically: its effect on commerce; the locations of various ports; various modes of transportation; types of food; and any other consideration. However, although the statute gives FDA some latitude in setting the deadline for prior notice, it nonetheless makes clear that we must establish a timeframe for prior notice that allows FDA to receive, review, and appropriately respond to all prior notices. Finally, section 801(m)(1) states, "Nothing in this section may be construed as a limitation on the port of entry for an article of food."

Reading section 801(m) as a whole and in conjunction with other provisions in the Bioterrorism Act, FDA believes that Congress intended that FDA assess the information in the prior notice to determine if inspection upon arrival or other action is appropriate. For FDA to inspect, upon arrival, food imports that may be at risk of intentional adulteration or that may pose other risks to U.S. consumers, FDA must be able to effectively deploy its staff. Although FDA inspectors are located throughout the United States, FDA does not have staff located at or near all of the 250 ports where over 4.7 million entry lines of food were entered in fiscal year (FY) 2001. Port locations are established by U.S. Customs and, under the statute, FDA cannot limit ports at which food may be imported or offered for import. Thus, FDA must have enough time, on a daily basis, to process the information in the approximately 20,000 prior notices we expect to receive and to send inspectors to any port in the United States if necessary. FDA believes that the minimum amount of time necessary to ensure it can plan and that its staff can travel to the arrival point is noon of the calendar day before the day the article arrives at the border crossing. FDA believes that this timeframe will give it the minimum time it needs to conduct its assessments and provide the information to its field offices so they can allocate their inspectional resources on a daily basis and plan any necessary travel.

Before proposing this deadline FDA also considered its potential effects on imported food. FDA believes that in most circumstances information regarding imports is generated when the article to be imported is ordered or purchased, not when it is shipped to the United States. FDA has examined a selection of imported food documents and compared dates of these documents with the dates of arrival in the United States and U.S. Customs entry. FDA asked several field offices to send entry documents with invoices covering imported foods. Sixty-four packages of entry documents were received in response to this request. The dates of the invoices were compared to the dates of arrival and receipt in OASIS. In 48 cases (75 percent), the invoice date or date of sale preceded the arrival date by least 1 day. In 31 cases (48 percent), the invoice or sale date preceded the arrival date by 2 or more days. In 16 cases (25 percent), the invoice date was the same as the arrival date. FDA invites comment on the representativeness of this sampling. Based on this examination, we believe that orders are normally placed a day or more prior to shipment. See the compilation of imported food documents that FDA has placed in the administrative record and the docket (Ref. 1). FDA believes that the information required for prior notice therefore generally does exist by noon of the calendar day before the day of arrival. FDA recognizes, however, that currently one person may not possess all of the information and that some practices regarding the flow of information about food imports will have to change to ensure that the submitter has all of the information needed to submit a prior notice for the food shipment by the deadline.

FDA believes that this proposed deadline will have the most impact on those who import food by truck and rail over the land borders, with less effect at airports, and almost no effect at water ports. However, even on the land borders, FDA believes that the information required by prior notice will be, in most cases, sufficiently fixed by noon of the calendar day before arrival to allow the U.S. importer or U.S. purchaser, or their U.S. agents, to submit prior notice to FDA that meets the proposed requirements without slowing down the shipment.

FDA is proposing to allow submitters to amend prior notices for that portion of the product identity information that cannot be completed, because it does not yet exist by noon of the calendar day prior to arrival. We believe this may be the case with product identity for fresh products imported from countries close to the United States (e.g., Canada or Mexico). For example, fresh seafood may be ordered as "catch-of-the-day" from Canada or Mexico; the importer intends to import the fish the day after the order is placed, but cannot find out what exact species and quantity will arrive by the deadline for prior notice because the boat is not due back until late afternoon on the day prior notice is due. Another example is an importer who orders fresh lettuce for import the day after the order but cannot find out the exact variety and quantity of lettuce

that will be shipped by the deadline for prior notice because the field has not been harvested or the supplier has not yet received the day's harvest by the time prior notice of the planned shipment is due. In these instances, the importer knows generally what kind of product has been ordered, but not the exact type (species for fish and variety for lettuce). The proposed amendment process would allow submitters who cannot report complete product identity information to FDA by the prior notice deadline because it does not yet exist to maintain current business practices. However, it would provide FDA some of the information that it needs to begin the assessment of whether a particular shipment of food should be investigated and if so, to ensure that FDA personnel can be available when the food arrives at the port. FDA does not intend this amendment process to apply when a shipper "tops off a container" by filling unused space in the container or truck bed with additional different food products.

FDA also recognizes that information concerning the anticipated arrival may change after the article is ordered due to unforeseen traffic or weather issues and has accommodated those potential changes by requiring updates of that information.

"Noon" means 12:00 p.m. in the time zone in which the FDA office with responsibility over the anticipated port of entry resides. For example, if the anticipated port of entry is the Peace Bridge in the Buffalo, NY, and the anticipated date of entry is January 9, 2004, the prior notice must be submitted to the FDA Prior Notice System before noon Eastern Standard Time (EST) on January 8, 2004.

FDA is proposing that prior notice may not be submitted until all of the information required by § 1.288 exists except as provided in § 1.288(e)(2) and § 1.290, both of which relate to product identity amendments. FDA is also proposing that the prior notice may not be submitted more than 5 days before the anticipated date of arrival of the food at the anticipated port of entry. For example, if the anticipated date of arrival is January 12, 2004, the prior notice may not be submitted before January 7, 2004. This 5 day limitation is consistent with the limitation set by Congress in section 307(a)(2)(A) of the Bioterrorism Act. Such limitations are necessary to ensure that FDA's Prior Notice System is not overburdened with premature information or submissions that may need to be cancelled and resubmitted.

3. How Must You Submit the Prior Notice? (Proposed § 1.287)

FDA is proposing that the prior notice, amendments, and updates must be submitted electronically to FDA through FDA's Prior Notice System. The web-based FDA Prior Notice System is under development with an anticipated completion date of no later than October 12, 2003. A "mock-up" of the Prior Notice Screen a submitter would see once he or she accessed this system is part of this proposed rule.

FDA has consulted with the U.S. Customs Service of the Department of the Treasury about this proposed rule. FDA and U.S. Customs considered modifying ACS to accommodate the new prior notice requirement. However, during these consultations, U.S. Customs determined that ACS could not be modified to accommodate the data requirements of the prior notice regulation by the December 12, 2003, statutory deadline. Currently, U.S. Customs is focusing its resources on developing the Automated Commercial Environment (ACE) as a replacement for ACS, and integrating its other electronic systems, such as the Automated Manifest System (AMS). FDA is participating in the development of ACE through the International Trade Data System (ITDS) Board and directly through integration of FDA and U.S. Customs business practices, policies, and border cooperation. FDA intends to allow prior notice to be submitted through ACE when it is fully operational. However, implementation of ACE is not expected before 2005. Given these circumstances, FDA and U.S. Customs agreed that to meet the statutory deadline, an FDA stand-alone, web-based electronic system to execute receipt of prior notice would be necessary until ACE is fully operational.

FDA seeks to minimize the submission of duplicative information. The Bioterrorism Act requires certain prior notice information to be submitted to FDA. FDA seeks comments on the extent to which these proposed prior notice requirements would result in persons submitting duplicative prior notice information to more than one federal agency. FDA also seeks comments on whether there is any way, consistent with the requirements and purpose of the Bioterrorism Act, to minimize the duplication of information required to be submitted to the federal government under these prior notice requirements. As discussed previously, FDA and U.S. Customs are working together on their systems to allow prior notice to be submitted to FDA through U.S. Customs System when ACE is fully operational.

FDA is proposing to require electronic submission of prior notice because we believe an electronic system will be the least burdensome and most efficient way to implement and enforce the requirement of section 801(m) of the act. Nationwide, in FY 2001 FDA received over 4.7 million food entry lines; therefore, we believe a paper system would be unmanageable for FDA, require a longer deadline, and could slow down imports for some food products. Moreover, we currently receive the majority of information we base admissibility decisions on electronically from U.S. Customs. Thus, we already have the electronic capability to process and screen the information. We also believe that an electronic system will mean fewer errors than a paper system. Another important benefit of electronic submission will be immediate and accurate communication between FDA offices and between FDA offices and U.S. Customs about arrivals and adequacy of the prior notice.

An electronic prior notice system will have several key features that will benefit firms that export to the United States, U.S. importers, and FDA. First, the volume of submissions on a daily basis is expected to be such that electronic submission and processing are the only practical way for FDA to manage prior notice—FDA expects, upon average, 20,000 submissions per day. Second, an electronic system will be able to provide instantaneous confirmation of receipt of the prior notice. Third, an electronic system will be able to ensure that the form is filled out completely (though not accurately) by being set to reject submissions until all of the mandatory fields are completed. Finally, an electronic system will make it more likely that information in the submissions is "legible" to FDA.

In contrast, prior notice by mail, fax, or e-mail would have several significant downsides for firms that export to the United States, U.S. importers, and FDA. All three of these methods would require FDA to input the data manually to process it, which means that FDA would need to set a longer deadline for submission or devote resources on data entry that are better spent on tasks like inspections. Those whose paper submissions were not legible or complete would not know until their shipments arrived at the port and were refused admission.

Moreover, FDA believes that almost all proposed submitters have access to the Internet, either within their companies or through public libraries, copy centers, schools, or Internet cafes, as well as through agents or brokers. FDA requests comments on this assumption. Because most of the

persons responsible for submitting the prior notice must reside or maintain a place of business in the United States, the FDA Prior Notice System will be in English. This will also allow for the information to be placed in standard data elements that can then be maintained in a database, screened against standard criteria, and used for communication among field offices.

In proposed § 1.287(b), FDA is proposing that if its Prior Notice System is unable to receive prior notice electronically, the prior notice, amendments, and updates must be submitted using a printed version of the Prior Notice Screen delivered in person, by fax, or by e-mail to the FDA field office with responsibility over the geographical area in which the anticipated port of entry is located. If the submitter does not receive electronic acknowledgement from the FDA Prior Notice System then it should check to see if its system is working. If it is, then the submitter should assume that the FDA system might be down and attempt to contact the appropriate FDA field office to confirm.

The Prior Notice System will not provide a response to the submitter of the agency's decision regarding the adequacy or timeliness of the prior notice as this assessment will turn on information that will not be available until the food arrives in the United States. FDA anticipates the system will date and time stamp an electronic confirmation of the system's receipt of each prior notice, amendment, and update, which the system will send to the submitter automatically.

FDA believes that the prior notice process under section 801(m) precedes the review process under section 801(a). Thus, FDA's response to the prior notice will not constitute entry review. The section 801(a) review process will be separate from, and subsequent to, the prior notice process. Therefore, the FDA Prior Notice System's electronic confirmation of a prior notice submission is not an 801(a) admissibility decision and should never be construed as an FDA "release" or "may proceed."

If a person wishing to submit prior notice to the FDA is unable to do so because his or her own system is not operating, FDA expects the submitter to use an alternative Internet system for submission (e.g., a local library or copy-center with Internet access). FDA is developing a web-based system to reduce the likelihood that intermittent system outages will impact prior notice submissions.

Although the system may be developed in a way that will allow for establishment of a personal account, users will not have to be licensed or otherwise pre-approved or have specialized software. FDA also plans to develop and provide guidance and training to potential submitters and their agents that will further describe the data elements and the submission process before December 12, 2003, which is when the requirement to provide prior notice begins. The Prior Notice Screen of FDA's Prior Notice System also identifies the information that must be submitted.

4. What Information Must be Submitted in a Prior Notice? (Proposed § 1.288)

Proposed § 1.288 lists the information or data elements that must be included in each prior notice. Much of this list is taken directly from section 801(m)(1) of the act. The remainder of the list, although not explicitly listed in section 801(m), is information that FDA believes is necessary for the efficient enforcement of section 801(m) of the act and is thus authorized under section 701(b) of the act. We explain below why each of these items is necessary for the efficient enforcement of section 801(m). Accordingly, as set out in proposed § 1.278(a), FDA is proposing that a prior notice that does not contain all of the information listed in proposed § 1.288 will be considered inadequate. FDA solicits comments on this approach.

Most of this information is already supplied by the filer to FDA through ACS as part of the U.S. Customs entry process, including the entry type; the entry number (both ACS line number and FDA line identifier); the FDA product code; a written description of the product in common business terms; brand name; the quantity; lot numbers; the manufacturer; country of origin; shipper; importer; ultimate consignee; and the carrier (the mode of transportation and the carrier code).

Before discussing each data element in the context of prior notice, we want to emphasize that the prior notice requirement does not apply to a whole shipment; for the purpose of section 801(m) of the act, it applies to "each article of food." FDA believes that in section 801(m) "each article of food" means each article of food produced by each manufacturer. Thus, any food product identified by a specific FDA product code and quantity description produced by a single manufacturer (or grower, if fresh) associated with a single entry line number (U.S. Customs entry number plus ACS line number plus OASIS/FDA line number) must be covered by a prior notice. Therefore, each article of food that is represented by an FDA line must be covered by a prior notice.

Thus, if a shipment consists of four different kinds of food products, e.g., 1,000 cases of 48/6 oz. cans each of Brand X tuna, 240 cases of 24/15.25 oz. cans each of yellow corn, 300 cases of 24/12 oz cans each of Brand X tuna, and 1,500 cases of 48/6 oz. cans each of Brand P tuna, four prior notices are required. These four prior notices may be contained in one submission. If the shipment consists of only one product, e.g., 2,400 cases of 24/15.25 oz. cans each of yellow corn, one prior notice is required. If this corn came from two different manufacturers, however, two prior notices would be needed. In its Prior Notice System FDA will give the submitter the option of completing additional prior notices for other articles after each notice is completed. We are working with the developers of the Prior Notice System to accept "header" information that will permit repeated information to be automatically entered. This "header" would contain information consistent across several articles of food within the same submission, i.e., U.S. Customs entry. This will reduce the amount of data entry and potentially reduce typing and transcription errors. FDA plans to develop its Prior Notice System to allow submitters to automatically repeat information already entered in the submission where appropriate (e.g., all information is the same except for the identity of the article or the manufacturer).

FDA is proposing to require the following information in the prior notice identifying the following details for each article of food:

2. *The submitter.* FDA is proposing to require the identity of the submitter and the associated submitting firm. This information is needed so that FDA may communicate the adequacy or non-adequacy of the prior notice to the responsible party and to follow up when audits, inspections, or enforcement are necessary.

Generally, for all firms that the proposed rule requires to be identified in a prior notice (submitter, importer, owner, consignee, manufacturer, growers (if known), shipper), FDA is proposing that the prior notice include the firm's name, address, phone number, fax number, and e-mail address, and if the firm is required to register a facility associated with the article of food, the facility's registration number. The registration requirement is contained in a separate provision of the Bioterrorism Act (section 305). FDA believes that it needs identifying information in addition to the

registration number (if one exists) to minimize the chance that typographical errors in registration numbers will lead to prior notices being considered incorrect and thus inadequate. We are considering designing the Prior Notice System to require at least one "confirmatory" data element (firm name or city or country) in addition to the registration number to allow for validation edits before automatically filling in the remaining data fields.

The phone and fax numbers and e-mail address are required (if they exist) so that FDA can communicate with the firm, if necessary. If the firm does not have a fax number or e-mail address, the prior notice submission should declare this. FDA plans to develop its Prior Notice System to allow submitters to repeat information already entered in the submission where appropriate (e.g., where the submitter is also the importer and consignee of the article).

b. *The U.S. Customs entry type.* FDA is proposing to require the submission of the U.S. Customs entry type associated with the article of food being imported or offered for import (proposed § 1.288(b)). Some examples of types of entries are Consumption entries, Warehouse entries, Temporary Importation Bond entries, Transportation for Exportation Bond entries, Trade Fair entries, mail entries, and baggage entries. Each of these types has a pre-designated U.S. Customs entry type code. That code must be submitted in the prior notice. This information will tell us if the article of food is intended for consumption in the U.S. or is intended for export or other uses. We need this information for proper screening of the information and identification of the appropriate articles for inspection. FDA also believes that submission of this information is critical for matching the prior notice to the corresponding U.S. Customs entry in order to assess the adequacy of the prior notice when shipments arrive and are presented for review.

c. *The U.S. Customs ACS entry line number or other U.S. Customs identification number.* FDA is proposing to require the submission of the U.S. Customs ACS entry line number, consisting of the entry number, the U.S. Customs ACS line number, and the FDA entry line number, which will be associated with the entry of the food for U.S. Customs purposes (proposed § 1.288(c)). For each entry number, there may be one or more U.S. Customs ACS lines and for each U.S. Customs ACS line there may be one or more FDA lines. For example, U.S. Customs entry number 0123456789–0 may identify an entry of peppers; the U.S. Customs ACS line 123456789–0–001 may identify fresh peppers; and the FDA entry line 0123456789–0–001–001 may identify fresh sweet peppers and FDA entry line 0123456789–0–001–002 may identify fresh hot peppers.

If the article of food is not intended for consumption entry, FDA is proposing to require submission of the U.S. Customs identification number associated with that type of entry. Some examples of other types of entries are Warehouse entries, Temporary Importation Bond entries, Transportation for Exportation Bond entries, and Trade Fair entries.

FDA believes that this information is necessary for proper screening of the information and identification of the appropriate articles for inspection. FDA also believes that submission of this information is critical for matching the prior notice to the corresponding U.S. Customs entry in order to assess the adequacy of the prior notice when shipments arrive and are presented for review. FDA believes that these numbers can be obtained by the proposed deadline for prior notice. We seek comment on this issue.

d. *The location where the food is being held under proposed § 1.278, if applicable.* FDA is proposing to require that, if the article of food has been refused admission due to inadequate prior notice and thus is required to be held at the port of entry or in a secure facility, the submitter of the prior notice must inform FDA both that the article is under hold, and the location where the shipment is being held (proposed § 1.288(d)). Additionally, FDA is proposing to require the date that the article will arrive at that location as well as the identification of a contact at that location. This information is necessary to ensure FDA can locate the food for inspection and to ensure that the hold requirement is being compiled with.

e. *The product identity.* Section 801(m)(1) states that a prior notice must contain the identity of the article of food being imported or offered for import. FDA is proposing the following data elements to ensure that each prior notice adequately and completely identifies the food being imported or offered for import.

i. *The complete FDA product code.* FDA is proposing to require the submission of the complete FDA product code as an element of the identity of the product (proposed § 1.288(e)(1)(i)). The FDA product code is a unique code currently used for classification and analysis of merchandise. The FDA product code is currently available via the Internet at www.accessdata.fda.gov/scripts/ora/pcb/pcb.htm as a "buildable" code which is used to describe the food by industry, industry class, subclass, container/packaging, process, and specific product. We will work with the developers of the FDA prior notice system to ensure that there is a link from that system to the product code builder. We are working with the developers to design the link to the product code builder which will allow the product code selected to be automatically pasted back to the Prior Notice Screen. We will also design the system so that if the submitter already knows the product code, it can be entered directly into the Prior Notice Screen.

The FDA product code for canned tuna fish is 16AEE45, which translates as 16= fishery/seafood products, A= fish, E= subclass metal (cans), E= commercially sterile, 45= tuna. The filer currently submits the FDA product code to U.S. Custom's ACS when entry is made; it subsequently is transmitted to FDA's OASIS for each entry line.

FDA is proposing that if all of the information concerning the product identity exists by noon of the calendar day before the article will arrive at the port of entry, it must be included in the prior notice and the prior notice may not be subsequently amended. (Proposed § 1.288(e)(2)). If any of the product identity information does not exist by the deadline, the information that does exist must be provided to FDA, and the submitter must indicate that it will amend the prior notice. FDA identifies the conditions appropriate for amendments related to product identity in proposed § 1.290. FDA notes that, in determining whether the information exists, the standard set out in the proposed rule is not whether the submitter knows the information when filing the prior notice, but whether the information could be known by the submitter by the noon deadline. In the discussion of proposed § 1.289, we describe under what circumstances we think complete product identity will not exist. FDA solicits comment on this standard and whether it is sufficiently flexible to achieve our goals.

ii. *The Common or usual or market name.* FDA is proposing to require the submission of the common or usual or market name of the article of food as an element of the identity of the product (proposed § 1.288(e)(1)(ii)). This is a description, in common terms, detailed enough to allow the kind of product to be identified. (See 21 CFR § 102.5 for additional information about common or usual names.) The filer currently submits the common or usual or market name to U.S. Custom's ACS when entry

is made, and it subsequently is transmitted to FDA's OASIS for each entry line. This information is necessary to confirm the accuracy of the product code.

iii. *The trade or brand name.* FDA is proposing to require the submission of the trade or brand name of the article of food, if it is different than the common or usual or market name, as an element of the identity of the product (proposed § 1.288(e)(1)(iii)). For example, the brand name of canned tuna would be XYZ brand tuna. This information is necessary to ensure that FDA knows the brand identity of the product, which is often a critical piece of information when making inspection decisions. The filer currently submits the trade or brand name to U.S. Custom's ACS when entry is made, and it subsequently is transmitted to FDA's OASIS for each entry line.

iv. *The quantity.* FDA is proposing to require the submission of the quantity of food described from smallest package size to largest container as an element of the identity of the product (proposed § 1.288(e)(1)(iv)). The number of container units and units of measure are to be submitted in decreasing size of packing unit (starting with the largest). Some examples of quantity descriptions are: 100 cartons of 48/6 oz. cans each of tuna; 100 pallets of 2/100 lb..totes each of frozen tuna loins for a total of 20,000 pounds; 100 pallets of 2/100 lbs. cartons each of dehydrated pig ears for a total of 20,000 lbs.; and 100 cartons of 20 lbs. of fresh watermelons each for a total of 2000 lbs. The filer currently submits the quantity of each line entry to U.S. Custom's ACS when entry is made, and it subsequently is transmitted to FDA's OASIS. FDA requests comment on whether changes in quantity will occur after the deadline for prior notice and, if so, how commonly changes occur and how significant the changes usually are.

v. *The lot or code numbers or other identifier.* FDA is proposing to require the submission of the lot or code numbers or other identifiers that are specific to the article of food, if applicable, as an element of the identity of the product (proposed § 1.288(f)(1)(v)). These numbers are the identification number or code of a production lot and are needed to more specifically identify a product. Currently, there may be more than one identifier represented in an entry line. The prior notice system will be developed to accept more than one lot identifier per article.

f. *The manufacturer.* As provided for in section 801(m)(1), FDA is proposing to require the submission of the identity of the manufacturer of each article of food (proposed § 1.288(f)). The filer currently submits the identity of the manufacturer to U.S. Custom's ACS when entry is made, and it subsequently is transmitted to FDA's OASIS.

g. *The growers, if known.* As required by section 801(m)(1), FDA is proposing to require the submission of the identity of all growers of each article and the growing location if different from the grower's business address, if known at the time of submission of the prior notice (proposed § 1.288(g)). If the submission is amended, the proposed rule provides that the identity of all growers must be provided if known at the time of the amendment (proposed § 1.290(d)). FDA wants to emphasize that section 801(m)(1) of the act states that grower information must be submitted if it is known. Thus, this information is not optional: if it is known, it must be submitted. If a product is sourced from more than one grower, the prior notice must provide the identification of all growers, if known. The FDA Prior Notice System will be developed to accommodate submission of up to three different growers.

FDA solicits comments on two particular aspects of the statutory requirement that the grower be identified. First, does the act give FDA any flexibility to exempt or otherwise treat differently so-called processed foods produced with products from more than one grower? Second, does the term "grower" include a harvester or collector of wild products, e.g., some fish and botanicals?

h. *The originating country.* As provided for in section 801(m)(1), FDA is proposing to require the submission of the identity of the originating country of the article of food (proposed § 1.288(h)). This term is defined in proposed § 1.277(c)(2).

i. *The shipper.* As provided for in section 801(m)(1), FDA is proposing to require the submission of the identity of the shipper of the article of food (proposed § 1.288(i)). FDA considers the shipper to be the person who arranges for a shipment to get to its first destination in the United States. The shipper typically is responsible for initiating the bill of lading or airbill covering the transportation of the article by the carrier. The shipper is usually a foreign firm that is located or maintains an address in the country from which the article was shipped. The shipper is typically not the carrier.

j. *The country of shipping.* As provided for in section 801(m)(1), FDA is proposing to require the submission of the identity of the country from which the article of food was shipped (proposed § 1.288(j)). This term is defined in proposed § 1.277(c)(3).

k. *Anticipated arrival information.*

i. *The anticipated port of entry.* As provided for in section 801(m)(1), FDA is proposing to require the submission of the anticipated port of entry at which the article of food will arrive in the United States (proposed § 1.288(k)(1)(i)). "Port of entry" is defined in proposed § 1.277(c)(5).

ii. *The anticipated date of arrival.* FDA is proposing to require the submission of the anticipated date when the article of food will arrive at the port of entry in the United States (proposed § 1.288(k)(1)(ii)). FDA believes that this information is necessary to plan inspections.

iii. *The anticipated time of arrival.* FDA is proposing to require the submission of the anticipated time when the article of food will arrive at the port of entry in the United States (proposed § 1.288(k)(1)(iii)). FDA believes that this information is necessary to plan inspections.

FDA is proposing to require the prior notice to be updated if any of the anticipated arrival information changes after the submission of the prior notice (proposed § 1.288(k)(2)). Updates are necessary so FDA can change its plan when anticipated arrival information changes. The conditions appropriate for updates are provided in proposed § 1.294.

l. *The port where entry will be made for U.S. Customs purposes.* FDA is proposing to require the submission of the identification of the port where entry will be made for U.S. Customs purposes (proposed § 1.288(l)). Often, this port will be different than the port where the article of food arrived in the United States. FDA believes that this information is necessary to facilitate communication with U.S. Customs and FDA field offices concerning the adequacy of the prior notice. It is also necessary to enable FDA to coordinate resources for inspections, examinations, or sampling.

m. *The anticipated date of U.S. Customs entry.* FDA is proposing to require the submission of the anticipated date of entry for U.S. Customs purposes (subpart 1.288(m)). FDA believes that this information is critical to enable it to allocate resources for inspecting imported food shipments and efficient communication with and between U.S. Customs and FDA field offices.

n. *The importer, owner, and consignee.* Under section 801(m)(2)(B)(i) and proposed § 1.278(e)(2), food that is offered for import with no or inadequate notice may not be delivered to the

importer, owner, or consignee. Thus, FDA is proposing to require their identities so that FDA knows who they are and can take steps to ensure that food refused admission under section 801(m) is not delivered to them illegally. FDA is proposing that only one importer, owner, and consignee can be identified for each prior notice. Under most circumstances, FDA believes the importer will be the importer of record for U.S. Customs Entry Summary purposes.

o. *The carrier.* FDA is proposing to require the identity of each carrier or transporter firm that transports the article of food from the country from which the article was shipped into the United States. This identification includes the submission of the Standard Carrier Abbreviation Code. Identification of the carrier is necessary to enable FDA and U.S. Customs to identify the appropriate article of food for inspection or holding when the food arrives in the United States. FDA notes that a carrier typically is a different firm than the shipper. The filer currently submits carrier information to U.S. Custom's ACS when entry is made, and it subsequently is transmitted to FDA's OASIS.

5. What Changes are Allowed to a Prior Notice After it Has Been Submitted to FDA? (Proposed § 1.289)

FDA is allowing additional information to be supplied once a prior notice is submitted in two situations. FDA believes that under the standards in section 801(m)(2)(A) for establishing the timeframes for submission of prior notice, amendments are appropriate when complete product identity will not exist by the deadline for the submission of a prior notice. As described in more detail elsewhere, FDA believes that these situations largely involve fresh produce and fish harvested in countries close to the United States, e.g., Mexico and Canada. Second, FDA believes that it must have accurate arrival information in order to ensure it can inspect an article or take other appropriate action. In the event that other information in the prior notice must be changed, no amendment or update is permitted. The submitter must cancel the initial prior notice and submit a new one.

6. Under What Circumstances Must You Submit a Product Identity Amendment to Your Prior Notice After You Have Submitted It to FDA? (Proposed § 1.290)

FDA is proposing that the prior notice must be amended if all information about the identity of the food required by proposed § 1.288(e)(1) does not exist by noon of the calendar day before the day of arrival. The submitter must indicate his or her intention to amend the information at the time the initial prior notice is submitted. FDA is proposing that the prior notice may be amended only once. FDA is limiting the number of times a prior notice may be amended because FDA believes that it would be an inefficient use of its review and planning resources to address intermediate, still incomplete submissions. FDA wants to encourage submissions that are as complete as possible to allow FDA to deploy its resources effectively. FDA requests comment on our proposal to restrict the number of amendments to one.

FDA is proposing that only the information required by proposed § 1.288(e)(1) and indicated in the initial prior notice as being subject to amendment may thereafter be amended. FDA is proposing to limit the information that may be amended in a prior notice to the product identification information required in proposed § 1.288(e)(1). As we explain elsewhere in this preamble, we believe that in most situations, complete product identity will exist by noon of the calendar day before the day of arrival. However, we recognize that in certain limited circumstances, such as wild-caught fresh fish and fresh produce with many varieties that are caught or harvested close to the time of shipment in locations close to the U.S. border, this specificity may not be known by noon of the calendar day before the day of arrival. FDA is proposing that the last two digits of the FDA product code and other product identity information that provides the specific identity of the article may be amended when this information does not exist by the prior notice deadline.

For example, there may be occasions when an entry of lettuce is ordered and prior notice is submitted by noon the calendar day prior to arrival, but the specific variety of lettuce that will be shipped does not exist because the growers that supply the shippers have not yet harvested their crops. At or before the time when the article is placed in the carrier for shipment, however, the complete identity of the article exists and the prior notice must be amended to identify the specific type of lettuce (e.g., romaine or leaf).

A prior notice may not be amended to change completely the identity of the article, e.g., a prior notice identifying the food as lettuce may not be amended to identify the food as pears.

If an article of food is not covered by a specific FDA product code, e.g., a root vegetable not more specifically described by numerical code in the FDA product code builder, then the last two numbers of the product code may be provided as "99" which means root vegetables, not elsewhere classified. However, this prior notice cannot be amended later to identify the product as carrots because, even though carrots are root vegetables, there is an FDA product code that is specific to carrots and thus it should have been used in the initial notice. We plan to design the prior notice system so that it will not acknowledge that a prior notice submission is completely filled out if it does not contain a seven-digit product code. The system will be designed to provide, where appropriate, a reminder about the need for amendment with the electronic message acknowledging receipt of the initial submission.

The information that may be amended also includes the common or usual or trade name, brand name, lot or code or identification numbers, and quantity.

FDA is proposing that, if the identity of the grower was not provided at the time the prior notice was submitted because it was not known at that time but the identity is known at the time of the amendment, the amendment must include information that identifies all known growers.

7. What is the Deadline for Product Identity Amendments Under § 1.290? (Proposed § 1.291)

FDA is proposing a 2 hour minimum deadline for amendments submitted under proposed § 1.291, or updates submitted under proposed § 1.294.

FDA believes that the deadline will allow submitters to provide FDA the information it needs in order to effectively assess whether a particular shipment of food needs to be investigated and if so, to ensure FDA personnel are present to do so when the food arrives at the port of entry, while allowing submitters to amend and/or update information that may not be known with exact certainty by noon of the prior calendar day. FDA considered the type of food in proposing the deadline for amendment to the product identity and updates to the anticipated arrival information.

FDA believes that product identity amendments are most likely to be needed to accommodate articles imported by land or air rather than water arrivals. FDA also recognizes that this limitation on amendments may also affect the practice of "topping off a container" by filling unused space in the container or truck bed with last-minute shipments of other food products not covered by prior notice.

FDA notes that under its amendment proposal "topping off" with the article of food that is already the subject of a prior notice would be allowed. To the extent "topping off" with non-food items occurs, this practice would not be affected. FDA believes, however, that this limitation is dictated by the Bioterrorism Act's requirements and moreover is necessary to ensure that FDA has adequate notice of all FDA-regulated food imports such that FDA can deploy its resources effectively. In this case, a separate prior notice would be required for these foods not already covered by a prior notice. FDA solicits comment how common "topping off" is and the quantities of food involved.

8. How Do You Submit a Product Identity Amendment or An Arrival Update to a Prior Notice? (Proposed § 1.292)

FDA is proposing to limit the way in which a prior notice may be amended or updated. FDA is proposing that a product identity amendment or an arrival update to a prior notice may be submitted only in the same manner as an initial prior notice; that is, electronically to FDA through FDA's Prior Notice System. Only the information concerning product identity and grower identity can be electronically amended under proposed § 1.290. Only the information concerning the anticipated location, date, and time of arrival and grower identity can be electronically updated under proposed § 1.294.

FDA proposes to design its Prior Notice System to require identification of the type of submission (Initial, Amended, Updated) and to be capable of differentiating amongst them. If FDA's Prior Notice System is unable to receive submissions electronically, amendments or updates may be communicated directly to FDA using a printed version of the Prior Notice Screen, and delivered either in person, by fax, or by e-mail to the FDA field office with responsibility over the geographical area in which the port of entry is located, as provided by proposed § 1.287(b). If the identification of the anticipated port of entry is being updated, and the FDA system is down, the updated printed version of the Prior Notice Screen should be delivered to the FDA field office with responsibility over the port covered by the initial submission. FDA intends to issue guidance for communication between the field office receiving the initial prior notice and the field office covering the updated port of entry.

9. What Are the Consequences If You Do Not Submit a Product Identity Amendment to Your Prior Notice? (Proposed § 1.293)

FDA is proposing that if a U.S. importer or U.S. purchaser, or their U.S. agent, informed FDA in a prior notice that the submission would be amended, but subsequently does not amend it appropriately and within the applicable timeframe, then the prior notice is inadequate for the purposes of proposed § 1.278(a). By telling FDA that the prior notice will be amended they are telling us that it is incomplete. We therefore will be waiting for complete information upon which to make our inspection decision. Without complete product identity, FDA cannot complete the assessment of whether to inspect or take other action when the food arrives in the United States. The consequences of inadequate prior notice are the same as the consequences for failing to provide prior notice; the food shall be refused admission and held at the port of entry unless FDA directs its removal to a secure facility. The consequences are more fully described previously in the discussion of proposed § 1.278.

10. What Must You Do If the Anticipated Arrival Information (Required Under § 1.288(k)(1)) Submitted in Your Prior Notice Changes? (Proposed § 1.294)

FDA is proposing to require the submitter to update anticipated arrival information submitted in a prior notice, if the anticipated information changes after the submission. The types of information FDA expects may change between submission of prior notice and actual importation are the date, time, and location of arrival. Although the statute requires only anticipated port of entry, accurate, up-to-date arrival information (if different) is necessary for FDA field offices to reschedule inspections. FDA thus believes that it has the authority to require this information.

If anticipated arrival information submitted in a prior notice changes, FDA is proposing that the submitter be required to provide the new port of entry (proposed § 1.294(a)(1)), and the new time of arrival in an update electronically filed in the Prior Notice System (proposed § 1.294(c)). FDA is proposing that if the time of arrival is expected to be more than 1 hour earlier (proposed § 1.294(a)(2)) or more than 3 hours later (proposed § 1.294(a)(3)) than the anticipated time of arrival, the time of arrival must be updated. FDA is proposing that, if the identity of the grower was not provided at the time the prior notice was submitted and that identity is known at the time of the update, the amendment must include information that identifies growers (proposed § 1.294(b)).

The FDA Prior Notice System will be designed to accommodate updates. As stated above, FDA is proposing to design its Prior Notice System to require identification of the type of submission (Initial, Amended, Updated) and to be capable of differentiating amongst them.

FDA is proposing to limit the time within which a prior notice may be updated. The proposed regulation would require updated information to be submitted in accordance with the deadline for amendments under proposed § 1.291, that is, an update to a prior notice must be submitted 2 hours prior to arrival.

IV. Analysis of Economic Impacts

A. Preliminary Regulatory Impact Analysis

FDA has examined the economic implications of this proposed rule as required by Executive Order 12866. Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). Executive Order 12866 classifies a rule as significant if it meets any one of a number of specified conditions, including: having an annual effect on the economy of $100 million, adversely affecting a sector of the economy in a material way, adversely affecting competition, or adversely affecting jobs. A regulation is also considered a significant regulatory action if it raises novel legal or policy issues. FDA has determined that this proposed rule is a significant regulatory action as defined by Executive Order 12866.

The Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121) defines a major rule for the purpose of congressional review as having caused or being likely to cause one or more of the following: An annual effect on the economy of $100 million; a major increase in costs or prices; significant adverse effects on competition, employment, productivity, or innovation; or significant adverse effects on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets. In accordance with the Small Business Regulatory Enforcement Fairness Act, OMB has determined that

this proposed rule, when final, will be a major rule for the purpose of congressional review.

1. Need for Regulation

Section 307 of the Bioterrorism Act (Public Law 107–188), requires advance notice of all food imported or offered for import into the United States. If FDA fails to issue a final regulation by December 12, 2003, section 307 of the Bioterrorism Act provides for a default minimum period of advance notice that is not fewer than 8 hours and not more than 5 days before an article of food is imported or offered for import into the United States. This regulation is needed to implement the statutory provisions.

2. The Reason for the Regulation

Getting food from the farm or sea to the plate involves a complex system of production and distribution. The system works using local knowledge and information; each participant needs to know only as much about the overall system as is necessary for his or her business. Market prices convey most of the information necessary for the ordinary production and distribution of food. In the event of an actual or suspected contamination of the food supply, however, more complete information is needed where it can be centrally used. The suspect food must be traced backward and forward through the distribution chain, both to protect consumers and to find the source and cause of the event.

No individual firm or organization has sufficient financial incentive to establish a central information system relating to food safety for the entire economy. The nation's food producers and importers as a whole would benefit from such a system because it would be easier to uncover and solve problems, but the private costs to create the system would probably be prohibitive for any single firm or third party organization.

The events of September 11, 2001, led Congress to conclude that public creation and provision of an information system is necessary. The Bioterrorism Act and its implementing regulations would establish an information system that would allow FDA to have a more integrated picture of the food distribution system. This particular regulation addresses one important aspect of this information system: the need to know what imported foods are entering the United States, where they came from, and when they will arrive. FDA is proposing three regulations to address these needs so the costs and benefits of any one regulation will be closely associated with related provisions in other proposed rules. With the regulations in place, the agency would have the additional tools necessary to help deter and respond to deliberate threats to the nation's food supply as well as to other food safety problems.

3. Proposed Rule Coverage

This proposed rule would apply to all FDA-regulated food for human and animal consumption imported or offered for import into the United States with the exception of food carried in a traveler's personal baggage for personal use. As required by the Bioterrorism Act, the notification must provide the identity of the article, the identity of importer, manufacturer, shipper, and grower (if known), the originating country, the country from which the article was shipped, and the anticipated port of entry. In addition, the notification must provide the identity of the person who submits the prior notice, the owner, the consignee, the carrier, the U.S. Customs entry number, anticipated time and date of arrival, and, if the food has already been refused admission and required to be held, the location where it is held.

A growing percentage of food consumed in the United States is imported; the value of food imports is now close to $50 billion per year. (Ref. 2) In the aftermath of the terrorist attacks on the United States on September 11, 2001, Congress determined that the existing requirements for the importation of FDA-regulated food products were insufficient to protect the safety of the U.S. food supply.

Before September 11, 2001, FDA had approximately 150 personnel in the field processing imported food entries based on FDA's programs and assignments, all using guidance documents, such as Import Alerts, Compliance Policy guides, and other manuals. After September 11, 2001, FDA hired three hundred additional counterterrorism Consumer Safety Officers primarily for food imports. This step alone is insufficient to ensure the safety of food imported or offered for import into the United States.

When deciding which imported food shipments to physically inspect and sample, FDA inspectors consider, among other things, compliance programs, assignments, import alerts, and whether the product is a low-risk or high-risk food. New requirements imposed by Section 307 of the Bioterrorism Act will require importers to give notice to FDA of incoming articles of food before the shipment reaches a U.S. border, rather than when the shipment arrives at the U.S. border or as part of the official U.S. Customs entry. Requiring prior notice of imported food shipments will allow FDA inspectors to have earlier information on foods that are coming into the United States, which will enable FDA to better deploy its inspection resources and to use this increased amount of information in cases where FDA action against the food is warranted, e.g., a credible threat to the food supply is suspected.

Number of Establishments Affected

Using 2001 FY information from FDA's OASIS system (industry codes 02 through 52, 54, and 70 through 72), FDA has determined that there are approximately 77,427 importers and consignees who receive imported food shipments. Under the proposed rule, the U.S. importers or U.S. purchasers (or their agents) of the products will be responsible for submitting a timely and accurate prior notice to FDA. Using information from the OASIS system, FDA was also able to determine that there are approximately 100,000 foreign manufacturers (of a finished product). Foreign manufacturers are not responsible for submitting prior notice, and therefore, while not unaffected by prior notice, foreign manufacturer costs associated with this proposed rule will be assumed to be spread across the supply chain and therefore are not directly addressed in this analysis.

FDA requests information on the size of establishments likely to be affected by this rule, including the foreign manufacturers of food products and the importers and consignees receiving the imported food shipments.

New and closing importer establishments

In addition to the U.S. importers currently in existence, in future years some new import businesses will open and some existing import businesses will close. According to the Small Business Administration Office of Advocacy, in 2001 about 10 percent of all businesses were new and 10 percent of all businesses closed. These new importers would have to become familiar with the FDA prior notice system, and some may need to obtain computer equipment and Internet access to comply with prior notice requirements.

Baseline

FDA considers the baseline for this analysis the current state of the world, pre-statute, and we assume this baseline has zero costs and benefits.

Current State of The World

The majority of the information that will be required by section 307 of the Bioterrorism Act now is currently supplied at the time of entry by a U.S. Customs broker or self-filer, and usually is submitted electronically. Although importers already must notify U.S. Customs of entries, the Bioterrorism Act requires notification to FDA prior to the food shipment reaching the U.S. border or point of crossing. This requirement will change the current practice of notifying U.S. Customs and then subsequently FDA upon arrival (and as long as 15 days past arrival based on the time the Consumption Entry may be filed with U.S. Customs) at a U.S. port of entry.

FDA's OASIS reporting system shows that approximately 2.5 million food entry lines were imported via sea and air transportation in FY 2001. Information on food-importing practices indicates that U.S. Customs and FDA are notified of imported food products traveling to the United States by vessel before the products' arrival. Vessels can notify U.S. Customs months before the actual shipping date, but U.S. Customs will not certify the entry until 5 days before the ship is expected to dock at a U.S. port. FDA is notified of the shipment then, through U.S. Customs, as early as 5 days before the vessel's arrival at a U.S. port.

Importers bringing food products in by airplane can notify U.S. Customs of their intent to import food into the United States no more than 24 hours before the scheduled flight departure time, but cannot certify their cargo manifests with U.S. Customs until the plane has taken off from the airport of the exporting country ("wheels-up"). FDA is then notified through U.S. Customs of the plane's scheduled arrival. U.S. Customs has informed FDA that they receive flight information for 87.6 percent of the flights at time of "wheels up."

FDA's OASIS reporting system shows that around 2.2 million entry lines of food were imported into the United States via ground transportation in FY 2001. The usual practice today for food brought in by truck or train (mainly products coming directly from Canada or Mexico) is not to notify U.S. Customs and FDA until their actual arrival at a U.S. border or point of entry. (Filers can certify their entry data up to 24 hours before arrival at the border, but U.S. Customs does not give a "screening response" to the entry until actual arrival.) Even though these importers most likely have the invoices and orders for these products in advance, they do not currently notify U.S. Customs and FDA until their arrival at the border.

4. Regulatory Options Considered

We analyzed five options for a prior notice regulation:

1. Current state of the world, pre-statute (baseline).

2. Prior notice time of 4 hours or less; electronic submission of information. This option would require the persons responsible for all food imported or offered for import into the United States to notify FDA of their intent to import articles of food through a United States based-importer or purchaser (or their U.S.-based agent). This option applies to all imported foods, except for food exclusively regulated by USDA and food imported with personal baggage for personal use, regardless of entry type or mode of transportation used for import. Submission of prior notice information (including addresses of all importers, owners, manufacturers, consignees, identity and quantity of food, originating country, country of shipping, date, expected time of arrival, expected port of entry, and grower if known) must be electronic.

3. Require all components of option 2, but lengthen the minimum prior notice time to 8 hours (statutory self-executing provision).

4. Require all components of option 2, but lengthen the prior notice time to noon of the calendar day prior to crossing the U.S. border.

5. Require all components of option 4, but allow some prior notice information to be revised prior to arrival at a U.S. port (proposed option).

Option one: Current state of the world, pre-statute.

Having no prior notice requirements is option 1 in our analysis. The statute requires that FDA issue prior notice regulations, so this is not a legally viable option. However, OMB cost-benefit analysis guidelines recommend discussing statutory requirements that affect the selection of regulatory approaches. These guidelines also recommend analyzing the opportunity cost of legal constraints that prevent the selection of the regulatory action that best satisfies the philosophy and principles of Executive Order 12866. This option will serve as the baseline against which other options will be measured for assessing costs and benefits.

Option two: Minimum prior notice timeframe of 4 hours or less; electronic submission of information; any change in information requires resubmission.

Costs: The party responsible for transmitting prior notice to FDA will incur administrative and notification costs to comply with this proposed regulation. The responsible party likely will become aware of the prior notice requirement through normal business activities: reading the trade press, reading industry news, FDA outreach, trade outreach, or conversation with other business operators who also must comply with prior notice. Once the U.S. importer or U.S. purchaser of the food becomes aware of the regulation, he or she will need to learn the requirements of the regulation, which will require finding a copy of the prior notice requirements and reading and understanding them.

To become familiar with the requirements for this rule, FDA estimates that it initially will take responsible parties with Internet access about 1 hour to research the prior notice requirements, and responsible parties without readily available Internet access about 2 hours to research the requirements. Comments from both the Produce Marketing Association (PMA) and the National Food Processors Association (NFPA) indicate that about 96 percent of the industry has readily available Internet access.

FDA used wage rates from the Bureau of Labor Statistics National Compensation Survey (Ref. 3), doubled to include overhead costs, to estimate the cost of the time to research the prior notice requirement. For an administrative worker, the cost per hour is $25.10: for a manager, $56.74. FDA assumes that only the administrative worker's time will be used to research the prior notice requirements. As shown in table 1, total costs of this research activity for firms with Internet access are $1,865,683; for firms without Internet access, the total research costs are $155,469.

Given the 10 percent turnover in business reported by the Small Business Administration, FDA expects 10 percent of the total search costs to be incurred in each subsequent year after prior notice is in effect as new firms enter the industry. This cost and the present value of this cost, using a 7 percent discount rate, are also shown in table 1.

TABLE 1.—COST TO RESEARCH PRIOR NOTICE

Cost to Research Prior Notice	With Internet Access	No Internet Access
Number of Firms	74,330	3,097
Administrative wage rate per hour (including overhead)	$25.10	$25.10

TABLE 1.—COST TO RESEARCH PRIOR NOTICE—Continued

Cost to Research Prior Notice	With Internet Access	No Internet Access
Total time to research regulation	1 hour	2 hours
First year one-time research costs	$1,865,683	$155,469
Annual one time research costs for new firms entering industry in subsequent years	$186,568	$15,547
Present value of cost of firms entering the industry	$2,665,257	$222,100
Total research cost burden	$4,530,940	$377,569

All prior notices must be submitted electronically, so we will assume that the 3,097 responsible parties without Internet access will have to purchase a computer and gain Internet access to actually transmit the information via a prior notice screen. This one-time computer cost and a recurring Internet access cost for these facilities of $7,559,777 are shown in table 2.

Again, given a 10 percent turnover rate for businesses in the import industry, we expect there to be new businesses in the future that may need to purchase electronic transmitting capabilities. However, it becomes more unlikely with the passage of time that persons will be purchasing this computer equipment solely to comply with prior notice. Therefore, a present value of this cost is not calculated.

TABLE 2.—FACILITIES AND RESPONSIBLE PARTIES WITHOUT INITIAL INTERNET ACCESS

Number of Facilities	3,097
Computer equipment cost per facility	$2,000
Annual cost of Internet access ($20 per month x 12)	$240
Search costs for equipment and access ($25.10 x 8 hours)	$201
Total first year one time cost of electronic transmitting capacity	$7,559,777

TABLE 2.—FACILITIES AND RESPONSIBLE PARTIES WITHOUT INITIAL INTERNET ACCESS—Continued

Annual one time cost of electronic transmitting capacity for firms entering industry in subsequent years	$755,978
Total electronic transmitting costs	$8,315,755

FDA used OASIS information to find out that 4.7 million entry lines for food were imported into the United States in FY 2001. An "entry line" is an FDA term used by the OASIS reporting system, which refers to a line on an invoice that reflects a certain article specific to manufacturer or packaging: e.g., 100 cases containing 48 six-ounce cans of tuna. This 4.7 million entry line total includes the 2.2 million entry lines for food that came into the United States in 2001 via ground transportation (trucks and trains) and the 2.5 million entry lines for food that came into the United States in 2001 via airplane and vessel.

The entry line totals for FY 2001 do not include food brought into the United States as personal baggage with the food intended for sale or other distribution, not for personal use. Under the proposed rule, persons bringing food into the United States in this manner, however, are required to submit prior notice to the FDA. FDA does not know how common the practice is of importing food for non-personal use as part of personal baggage. For FY 2002, there were only 18 entry lines associated with food imported as U.S. mail and 486 food entry lines imported by courier. FDA believes that entries of food imported as part of personal baggage but not for personal use will fall somewhere between mail and courier entries. Since any number of entries in this range is minimal as compared with the 4.7 million total OASIS entries, FDA likewise believes the costs associated with prior notice for food in personal baggage entries will be minimal and thus these costs are not included in this analysis. FDA requests comment on this assumption.

According to OASIS data, the average imported entry contains 2.6 lines, which means that there are typically more than two different articles of food per import entry: e.g., 100 cases of tuna and 50 cases of canned peaches in the same shipment. A prior notice must be filed for each of the lines in an entry.

U.S. Customs Form 3461, Entry and Immediate Delivery Application, OMB No. 1515–0069, is the entry document upon which information is provided to U.S. Customs by which it makes its decision to release the merchandise. The burden estimate on U.S. Customs Form 3461 for purposes of the Paperwork Reduction Act is 15.5 minutes. The FDA calculation of average time for completion of the prior notice includes verification of accuracy of the data and supervision time.

FDA estimates that it will take, on average, 1 hour to prepare a prior notice each time an import entry of 2.6 lines is submitted, including the time it takes to update or amend information for each entry line as necessary. This time is an average; some prior notices will take longer than 1 hour to complete and other prior notices will take less than 1 hour to complete. FDA requests comment on the time it will take to complete a prior notice form, including the time it will take for amendments and updates to the information.

This hour includes 45 minutes of an administrative worker's time to gather information to initially complete the screen and then update the information as necessary, and then 15 minutes of the manager's time to verify that the information is correct. Assuming that there is an average of 2.6 lines per entry, and each line requires a prior notice, then each line is estimated to take about 23 minutes to complete.

Using the OASIS information that the average imported entry contains 2.6 lines; we can then divide the 4.7 million OASIS lines by 2.6, which results in 1,807,692 expected import entries. Table 3 shows that the annual cost of prior notice submissions based on 1,807,692 entries would be $59,689,990.

TABLE 3.—COST TO FILL OUT PRIOR NOTICE SCREENS BY IMPORT ENTRY (MUST BE ELECTRONIC)

Administrative worker time at $25.10 wage rate	45 minutes
Manager time at $56.74 wage rate	15 minutes
Administrative worker costs per entry	$18.83
Manager costs per entry	$14.19
Total Cost per import entry	$33.02
FY 2001 OASIS entry total based on 4.7 million lines	1,807,692
Total Annual Costs of all prior notice screens based in lines, and including updates and amendments to the information	$59,689,990

FDA Costs: We assume that FDA's information technology (IT) costs for

this option and each option hereafter are the costs of developing a stand-alone, web-based, electronic system to receive prior notice information and then to respond electronically with an acknowledgement of the transmission to the submitting party. The stand-alone prior notice system will be used until U.S. Customs new automated system, ACE, becomes operational. FDA will coordinate with U.S. Customs to develop ACE to accommodate the information required by prior notice. Once ACE is operational, it will simplify prior notice transmissions. For now, building a stand-alone IT system to handle prior notice submissions will require design, development, implementation, maintenance, modernization, and upgrades. These costs include the labor hours, hardware, and software costs needed to make the prior notice system operational. Table 4 shows that FDA estimates the costs to the agency for setting up the prior notice system to be about $4.4 million. This total cost includes FDA personnel, contractor development of the hardware and software needed, industry outreach and training, and a computer firewall.

TABLE 4.—FDA PRIOR NOTICE SYSTEMS COSTS

Hardware	$500,000
Analysis, Design, Implementation	$3,000,000
Software licenses and Security	$500,000
Network Interface	$200,000
FTEs	2
Cost per FTE	$110,588
Total FTE costs	$221,176
Total Systems Cost	$4,421,176

Current operating practices affected: A 4-hour minimum prior notice requirement would be less likely to change current food importing practices than would a longer minimum time requirement for prior notice submission. Some comments received indicated that it would be preferable if the minimum prior notice time were set at 4 hours or less. Comments requested the shorter minimum prior notice time because the source of some food products often is close to the U.S. border, and some products are perishable. However, it is the U.S. importer or U.S. purchaser or their U.S. agent who is responsible for submitting the prior notice, and the information required in prior notice should be sufficiently fixed after the order is placed and will not depend on the location of the source of the food product.

How many business practices will be affected by prior notice requirements largely depends on how early the orders for the food products are placed compared to the time by which prior notice must be submitted. Most orders for products, even for those of a perishable nature, are often placed days or weeks if not months before the actual delivery date. Therefore, if the order for the product was sent a week, or even 1 day, before the delivery date, a minimum prior notice time of 4 hours should not cause any delay in the order. FDA requests comments on this assumption.

Also important in determining how business practices will be affected by the prior notice requirements is when the prior notice was submitted compared with when the shipment corresponding to that prior notice was loaded onto a vehicle. For example, if the prior notice was submitted as soon as the order was received, or even a few hours before loading the vehicle, there is a possibility that unforeseen factors, including composition of the actual shipment, may cause the prior notice information submitted to not match the actual shipment on the vehicle. However, if the prior notice is not submitted until the vehicle is actually loaded, the probability of submitting an incomplete prior notice is greatly reduced. Thus, when the order for the shipment is received, when the prior notice is submitted, and when the vehicle is loaded play large roles in how much the requirement for prior notice will affect operating practices for those importing some perishable products from Mexico and Canada. FDA requests specific information about how business practices for all operations could change as a result of the prior notice requirement.

If importers have orders for perishable products from Canada and Mexico filled more than 4 hours before scheduled arrival at a U.S. border point, then the only change in business practice that should occur is when they will submit their prior notice to FDA.

There will be those shipments by vehicle, however, for which the order was not received in advance of the shipping time, those shipments for which the quantity and composition of the product has changed since the time when the prior notice was submitted, and those shipments for which other changes to the information on the prior notice must be made. Importers, whose shipments fall into this "changed" category, must resubmit the prior notice or risk that their products will be refused admission into the United States and held if the notice is deemed inadequate.

FDA does not have information on the number of ground shipments that, under this option, would need to submit or resubmit prior notice information due to a late order or a change in the information provided on the original notice. We know that changes will occur for some percentage of all prior notices; until better information is available, we will assume that 20 percent of the fresh produce and seafood being imported to the United States from Canada and Mexico would have a reason for which their original prior notice submission must be changed and resubmitted less than 4 hours before entry.

FDA chooses 20 percent as the percent of prior notices that need to be submitted based on information that most orders for products are placed well in advance of the actual shipping date, most orders are filled with the exact product and quantity the customer requests, and the 4 hour prior notice entry time is minimal when compared to when the order was actually received. Depending on the entry point, 40 to 100 percent of shipments are loaded onto vehicles less than 4 hours before entry. We chose one-half of the lower percent as the percent of prior notices that would need to be resubmitted under this option.

The following paragraphs and tables outline how FDA calculated a loss in product value to account for the time that fresh produce and seafood being brought by ground transportation into the United States might have to wait to cross the border due to prior notice resubmission. This wait at the border occurs if prior notice is resubmitted with revised information regarding the shipment when the shipment is closer to the border than the 4 hours required; the transporter of the shipment must wait for the minimum prior notice time to elapse before crossing the border or risk being refused entry.

Table 5 of this document shows the volume of fresh, perishable produce imported into the United States from Mexico for the calendar year 2001 (Ref. 4). Produce was included in the count if it was considered 'highly or very highly perishable' (Ref. 5) and if the produce was not regulated under section 8e of the Agricultural Marketing Agreement Act of 1937 (AMAA). Importers of products currently regulated by the Agricultural Marketing Agreement Act, e.g., tomatoes, avocados, oranges, are required to notify USDA at least 1 day prior to U.S. entry to make arrangements for inspection

and certification of the product they are importing. These products therefore are not included in the count because they already have business practices in place that would accommodate the prior notice period. FDA requests comments on the perishability of the produce that is used in this count.

Multiplying the volume of Mexican produce that was imported into the United States in 2001 by the current U.S. border prices per pound (Ref. 6) for these products gives an estimate of wholesale revenue. Then we convert the wholesale revenue to retail revenue using the retail price mark-up on produce in the United States, which can range from 100 percent to 600 percent (Ref. 7). We will increase the wholesale revenue by 100 percent in these estimates to represent a reasonable retail price mark-up rate across produce commodities in the United States. We will reexamine our choice of the 100 percent mark-up rate in a sensitivity analysis presented later in the costs section.

Assuming that perishable produce has an average life span of 7 days, we can then estimate the value of the time lost (4 hours) for 20 percent of the imports waiting to cross the border as a 2.4 percent loss (4 hours out of 168 hours) in the product's value. Applying this percent loss in value to one-quarter of the total retail revenue of imported Mexican fresh produce results in a $16,600,920 loss in produce value.

TABLE 5.—FRESH PRODUCE IMPORTED FROM MEXICO

Perishable produce from Mexico	Total Volume for 2001 (100,000 lb units)	Current Wholesale Price per lb. (Sept. 2002)	Total Revenues Wholesale
Cucumbers	6491	0.29	188,239,000
Peppers (all varieties)	6088	0.53	322,664,000
Squash	4158	0.71	295,218,000
Mangoes	3461	0.57	197,277,000
Papaya	1587	0.45	71,415,000
Broccoli	1138	0.65	73,970,000
Eggplant	887	0.40	35,480,000
Asparagus	856	1.29	110,424,000
Sweet Corn	828	0.26	21,528,000
Strawberries	676	0.96	64,896,000
Beans	559	0.58	32,422,000
Radishes	516	0.31	15,996,000
Fruits-Other	426	2.04	86,904,000
Vegetables-other	365	2.80	102,200,000
Greens	298	0.48	14,304,000
Spinach	197	1.375	27,087,500
Green Peas	129	2.20	28,380,000
Okra	112	0.80	8,960,000
Berries-misc.	78	1.67	13,026,000
Raspberries	32	4.40	14,080,000
Artichokes	23	1.50	3,450,000
Mushrooms	7	1.60	1,120,000
Endive	4	0.37	148,000
Escarole	2	0.37	74,000
Wholesale Value			$1,729,262,500
Retail Value			$3,458,525,000
2.4% reduction in value for 20% of the products			$16,600,920

We repeat the exercise outlined above in table 5 for Canada, as shown in table 6. Again, until FDA acquires updated information, we will assume that Canadian produce growers use business practices that are similar to those used by Mexican growers. FDA solicits comments on this assumption. While FDA acknowledges that their business practices may be different in some ways, it is possible that Canadian produce growers will also have to adjust business practices so that submitters can comply with the prior notice requirement. We seek comment on this issue.

As with the Mexican produce, only Canadian produce that is highly or very highly perishable and did not fall under the purview of the Agricultural Marketing Agreement Act is included in table 6.

We again calculate the 2.4 percent loss in product value due to the importer having to resubmit prior notice for 20 percent of the Canadian imported fresh produce. This loss in product value due to the 4-hour wait time totals $1,928,765.

TABLE 6.—FRESH PRODUCE IMPORTED FROM CANADA

Perishable Produce from Canada	Total Volume for 2001 (100,000 lb units)	Current Wholesale Price per lb. (Sept. 2002)	Total Revenues Wholesale
Peppers	753	0.30	22,590,000
Cucumbers	627	0.145	9,091,500
Blueberries	401	1.42	56,942,000
Mushrooms	373	1.55	57,815,000
Lettuce-Other	243	0.50	12,150,000
Raspberries	89	2.78	24,742,000
Broccoli	88	0.72	6,336,000
Cherries	37	1.30	4,810,000
Sweet Corn	36	0.22	792,000
Squash	27	0.17	459,000
Spinach	24	1.30	3,120,000
Radishes	11	0.50	550,000
Endive	9	0.17	153,000
Beans	7	0.50	350,000
Strawberries	5	0.575	287,500
Pears	4	0.39	156,000
Green Peas	3	1.60	480,000
Greens	2	0.30	60,000
Eggplant	1	0.29	29,000
Wholesale Value			$200,913,000
Retail Value			$401,826,000
2.4% reduction in value for 20% of the products			$1,928,765

We used the same logic for seafood as we did for produce to account for the possibility of having to resubmit prior notice, i.e., a change in the quantity of seafood in the shipment made after the original notice was submitted, less than 4 hours before scheduled entry. We will use the reduction in the value of perishable imported seafood to account for the cost of a wait at the border while prior notice is resubmitted.

We used information from the annual imported seafood statistics published by the National Marine Fisheries Service (Ref. 8) to estimate the weight and wholesale value in dollars of all fresh, perishable seafood products imported from Mexico and Canada. As we did for fresh produce, we mark-up the wholesale price of the fresh seafood by 100 percent (Ref. 9) to represent the retail value of the products. Then, assuming that perishable seafood will keep for 2 days in a consumer's refrigerator, (Ref. 10) we find that an 4-hour delay in delivery time caused by the prior notice requirement for 20 percent of the products results in a 8.3 percent loss in that seafood's value (4 hours out of 48 hours). Table 7 shows that the lost time results in a $1,863,805 loss on the value of Mexican fresh seafood imports. FDA requests comment on the perishability of the seafood used in tables 7 and 8.

TABLE 7.—FRESH SEAFOOD IMPORTED FROM MEXICO

2001 Fresh Mexican Seafood Products	Pounds	Dollars
Atka Mackerel, fresh	1,995	2,200
Bass, fresh	1,362	2,218
Clam live, fresh	245,498	274,942
Crab live, fresh	405,621	489,856
Crabmeat, fresh	287,531	1,540,130
Flatfish flounder, fresh	1,518	2,199
Flatfish fillet, fresh	1,705	3,100
Flatfish, fresh	678,768	781,883
Groundfish cod, fresh	4,000	2,400
Grouper, fresh	4,056,054	7,399,434
Lobster, live	8,584	50,474
Rock lobster live, fresh	794,224	5,859,260
Mackerel, fresh	147,334	127,873
Marine fish fillet, fresh	2,120,250	7,395,902
Marine fish, fresh	5,448,771	6,681,485
Marine fish scaled, fresh	162,105	125,346
Mollusks live, fresh	2,147	15,272
Octopus live, fresh	31,680	24,214
Oysters live, fresh	39,930	25,040
Salmon Atlantic fillet farmed, fresh	405	2,552
Sardine, sardinella, brisling, sprat, fresh	71,163	7,591
Scallops live, fresh	472,384	1,418,302
Sea Urchin live, fresh	10,501	67,331
Sea Urchin roe, fresh	464,946	4,641,659
Shark, fresh	1,500,877	711,349
Shrimp, shell-on, fresh	452,714	861,897
Snapper, fresh	5,835,775	9,254,300
Squid live, fresh	88,042	39,952
Swordfish, fresh	1,615,546	3,759,096
Trout, fresh	82,958	131,353
Rainbow trout farmed, fresh	80,384	161,526
Bigeye tuna, fresh	9,819	12,200
Bluefin tuna, fresh	82,471	332,250
Tuna, fresh	78,747	155,069
Yellowfin tuna, fresh	2,012,848	3,771,488
Whitefish fillet, fresh	3,590	7,560
Total Wholesale Value	27,302,246	56,138,703

TABLE 7.—FRESH SEAFOOD IMPORTED FROM MEXICO—Continued

2001 Fresh Mexican Seafood Products	Pounds	Dollars
Total Retail Value		$112,277,406
8.3% reduction in value for 20% of products		$1,863,805

Table 8 shows the 4 hours of lost time due to prior notice resubmission for 20 percent of all imported Canadian fresh seafood causes a value loss of $30,929,417.

TABLE 8.—FRESH SEAFOOD IMPORTED FROM CANADA

2001 Fresh Canadian Seafood Products	Pounds	Dollars
Bass, fresh	727,830	740,152
Caviar	20,189	272,770
Clam geoduck live, fresh	155,927	1,097,902
Clam live, fresh	9,144,304	22,064,683
Crab live, fresh	9,479,765	24,066,021
Crabmeat, fresh	27,601	80,431
Crustaceans live, fresh	148,925	574,989
Fish liver and roe, fresh	51,154	229,569
Flatfish flounder fillet, fresh	750,468	1,238,031
Flatfish flounder, fresh	6,264,346	4,367,780
Flatfish halibut Atlantic, fresh	1,948,791	7,542,598
Flatfish halibut Pacific, fresh	12,553,266	39,850,556
Flatfish fillet, fresh	853,224	3,536,120
Flatfish, fresh	1,693,516	796,383
Flatfish sole fillet, fresh	1,099,430	2,968,610
Flatfish sole, fresh	1,062,030	1,096,079
Flatfish turbot Greenland fillet, fresh	700,456	2,069,006
Flatfish turbot Greenland, fresh	862,211	3,146,300
Freshwater fish fillet, fresh	2,824,811	4,970,127
Freshwater fish, fresh	549,956	1,008,302
Groundfish cod Atlantic fillet, fresh	1,646,363	4,489,788
Groundfish cod Atlantic, fresh	4,904,368	5,199,471
Groundfish cod fillet, fresh	107,994	288,644
Groundfish cod, fresh	239,987	249,991
Groundfish cusk, fresh	8,281	22,060
Groundfish cusk, pollock fillet, fresh	218,854	362,293
Groundfish haddock fillet, fresh	708,261	2,109,607
Groundfish haddock, fresh	17,391,202	19,469,582
Groundfish hake fillet, fresh	160,972	93,941
Groundfish hake, fresh	14,070,217	9,182,974

TABLE 8.—FRESH SEAFOOD IMPORTED FROM CANADA—Continued

2001 Fresh Canadian Seafood Products	Pounds	Dollars
Groundfish ocean perch fillet, fresh	5,415,106	10,029,520
Groundfish ocean perch, fresh	898,964	518,431
Groundfish pollock Atlantic, fresh	2,362,637	1,595,615
Groundfish pollock, fresh	161,121	130,308
Herring, fresh	4,009,469	671,338
Lingcod, fresh	612,093	812,597
Lobster, fresh	7,707	60,030
Lobster, live	49,200,925	244,567,173
Rock lobster live, fresh	196,858	1,133,246
Mackerel, fresh	943,155	595,937
Marine fish fillet, fresh	10,272,946	24,235,390
Marine fish, fresh	9,084,029	6,610,870
Mollusks live, fresh	809,461	907,048
Monkfish, fresh	89,861	154,267
Mussels live, fresh farmed	18,545,254	13,693,263
Mussels live, fresh wild	98,842	104,273
Oysters live, fresh farmed	2,918,098	4,378,548
Oysters live, fresh wild	579,011	1,236,868
Perch fillet, fresh	529,366	2,079,677
Perch, fresh	337,273	727,284
Pickerel fillet, fresh	850,256	3,715,248
Pickerel, fresh	1,682,743	3,500,552
Pike, fresh	214,390	395,706
Pike perch, yellow pike, fresh	125,114	197,396
Sablefish, fresh	21,648	48,845
Salmon Atlantic fillet, fresh farmed	28,972,418	97,270,694
Salmon Atlantic fillet, fresh wild	404,012	1,281,582
Atlantic Salmon, fresh farmed	107,101,696	248,809,617
Atlantic Salmon, fresh wild	68,732	84,035
Chinook Salmon, fresh farmed	5,752,197	10,614,163
Chinook Salmon, fresh wild	225,509	530,368
Salmon chum, fresh	1,651,221	1,133,029
Salmon coho, fresh farmed	1,382,572	1,963,499
Salmon coho, fresh wild	183,427	270,138
Salmon fillet, fresh	1,640,485	4,361,707
Salmon, fresh	2,820,957	5,430,272
Pink Salmon, fresh	79,981	60,403

TABLE 8.—FRESH SEAFOOD IMPORTED FROM CANADA—Continued

2001 Fresh Canadian Seafood Products	Pounds	Dollars
Sockeye salmon, fresh	265,505	457,427
Salmonidae, fresh	57,787	149,760
Scallops live, fresh	6,955,476	31,688,064
Sea urchin live, fresh	5,053,710	4,367,434
Sea urchin roe, fresh	11,414	94,706
Dogfish shark, fresh	3,300,398	1,003,294
Shark, fresh	223,788	206,838
Shrimp peeled, fresh	5,401	27,934
Shrimp shell-on, fresh	479,483	1,478,634
Smelts, fresh	509,586	606,463
Snail live, fresh	46,174	121,239
Snapper, fresh	37,316	94,366
Swordfish, fresh	1,809,654	6,488,992
Trout, fresh	1,574,672	2,891,806
Rainbow trout, fresh farmed	361,121 608,347	
Albacore tuna, fresh	25,859	70,076
Bigeye tuna, fresh	426,547	1,448,778
Bluefin tuna, fresh	288,361	2,464,619
Tuna, fresh	13,429	50,299
Yellowfin tuna, fresh	205,812	666,809
Whitefish fillet, fresh	988,816	1,864,542
Whitefish, fresh	8,224,484	11,262,979
Yellow perch fillet, fresh	1,174,798	6,401,844
Total Wholesale Value	382,663,829	931,608,947
Total Retail Value		$1,863,217,894
16.7% reduction in value for 20% of products		$30,929,417

Table 9 presents a summary of the costs associated with option 2. Also presented in table 9 is the present value of the costs associated with this option, calculated using the OMB-recommended discount rate of 7 percent.

TABLE 9.—SUMMARY OF COSTS FOR OPTION 2

Research costs	$4,908,509
Computer acquisition costs	$8,315,755

TABLE 9.—SUMMARY OF COSTS FOR OPTION 2—Continued

Annual costs to fill out prior notice screens (including updates and amendments)	$59,689,990
FDA prior notice system cost	$4,421,176
Lost value for Mexican produce	$16,600,920
Lost value for Canadian produce	$1,928,765

TABLE 9.—SUMMARY OF COSTS FOR OPTION 2—Continued

Lost value for Mexican seafood	$1,863,805
Lost value for Canadian seafood	$30,929,417
Total Costs for Option 2	$128,658,337
Present value of costs	$1,603,543,969

Option three: Minimum prior notice timeframe of 8 hours; electronic submission of information; any change in information requires resubmission.

Option three is to allow the minimum timeframe for prior notices, as dictated by the statute, to take effect. Comments indicated that Canadian and Mexican produce growers and seafood processors are concerned that the longer the minimum time required for the prior notice, the less fresh their products will be when they reach customers. Less-than-optimal fresh (i.e., lower quality) products would result in a lower price paid for the imported produce or seafood shipments, or possibly even the loss of a customer's business to a domestic producer. For importers of perishable products such as seafood and produce, the 8-hour minimum time for prior notice might change business practices in the industry. These changes in business practices would be in addition to the costs of learning about the proposed regulation, submitting forms, and the FDA IT costs outlined in option two.

How much importer, produce grower, and seafood processor business practices will be affected by prior notice requirements again will depend on how early the orders were received compared with how early prior notice must be submitted. If the order for the product was placed more than 8 hours before the truckload is scheduled to arrive at the border, then there should be no delay in the importation of the product.

What is more likely to cause a wait before crossing the border is if the information on the prior notice changes after the prior notice was submitted. For example, if the prior notice is submitted just a few hours before loading the truck, unforeseen factors, including composition of the actual shipment, may cause the prior notice information submitted to not match the actual shipment on the truck. This is just one example of how information on a prior notice submission might change after the prior notice has already been submitted to FDA, thus requiring a cancellation of the prior notice and a resubmission of the corrected information.

Having to resubmit a prior notice to FDA may not cause any delay of the shipment if the original submission was placed early enough. However, it is likely that the necessary corrected prior notice information will be resubmitted not long before the articles start heading for the border. Therefore it is likely that some shipments may have to wait several hours and possibly the full 8-hour minimum for the resubmitted prior notice to be accepted by FDA.

If the prior notice time for submission is 8 hours instead of 4 hours, the probability of having to adjust and resubmit prior notice information will be higher. Now, instead of 20 percent of the importers of perishable products from Canada and Mexico having to resubmit their notices, we will assume that the 8-hour submission timetable means that 25 percent will have to resubmit their notices. We do not expect the number of resubmissions to increase greatly as the minimum timeframe for prior notice is still minimal and FDA expects most orders to be placed well in advance of the 8-hour timeframe. We assume that as the minimum notice time increases, the likelihood of a resubmission also increases, but less than proportionally to the change in minimum notice time.

Carriers of these products may not be able to cross the border for 8 hours instead of 4 hours, which affects 4.8 percent of the produce life span (8 hours out of 168 hours) and 16.7 percent of the seafood life span (8 hours out of 48 hours).

Table 10 shows the loss in value caused by the resubmitted prior notice information for the 25 percent of imported Mexican and Canadian fresh seafood and produce affected.

TABLE 10.—LOSS IN VALUE CAUSED BY RESUBMITTED PRIOR NOTICE UNDER OPTION 3

Perishable Produce	
2001 Imported Mexican Produce Total Retail Value	$3,458,525,000
4.8% reduction in value for 25% of Mexican produce	$41,502,300
2001 Imported Canadian Produce Total Retail Value	$401,826,000
4.8% reduction in value for 25% of Canadian produce	$4,821,912
Perishable Seafood	
2001 Imported Mexican Seafood Total Retail Value	$112,277,406
16.7% reduction in value for 25% of Mexican seafood	$4,687,582
2001 Imported Canadian Seafood Total Retail Value	$1,863,217,894
16.7% reduction in value for 25% of Canadian seafood	$77,789,347

Table 11 presents a summary of the costs associated with option 3. Also presented in table 11 is the present value of the costs associated with this option using the OMB-recommended discount rate of 7 percent.

TABLE 11.—SUMMARY OF COSTS FOR OPTION 3

Research costs	$4,908,509
Computer acquisition costs	$8,315,755
Annual costs to fill out prior notice screens (including updates and amendments)	$59,689,990
FDA prior notice system cost	$4,421,176
Lost value for Mexican produce	$41,502,300
Lost value for Canadian produce	$4,821,912

TABLE 11.—SUMMARY OF COSTS FOR OPTION 3—Continued

Lost value for Mexican seafood	$4,687,582
Lost value for Canadian seafood	$77,789,347
Total Costs for Option 3	$206,136,571
Present value of costs	$2,710,375,883

Option four: prior notice received by noon of the calendar day prior to the day of crossing; electronic submission of information; any change in information requires resubmission.

This option requires that prior notification be submitted no later than noon of the calendar day prior to the expected day of crossing. Under this option, prior notice submitters will have to let FDA know of the incoming food shipment at least 12 hours before the shipment reaches a U.S. point of crossing. This fourth option would likely cause a change in importer business practices and the business practices of their clients in much the same way as option three, but the potential loss of product value is higher because the minimum prior notice time has increased.

Again, how business practices will be affected by prior notice requirements depends on how early the invoice orders are received, the timeframe in which the truck was loaded, and when prior notice is submitted. FDA requests comments on any additional costs that might result from changes in business practices as a result of this proposed rule.

As before, we assume that as the minimum notice time increases, the likelihood of a resubmission also increases, but less than proportionally to the change in minimum notice time. Thus, since the prior notice timeframe for submission is at least 12 hours instead of 8 hours, the probability of having to adjust and resubmit prior notice information is higher. Instead of 25 percent of the importers of perishable products from Canada and Mexico having to resubmit their notices, we will assume that the 12-hour submission timetable means that 40 percent will have to resubmit their notices.

We increase the percentage of resubmission this time by 15 percent because as the prior notice timeframe increases relative to the time of entry, it becomes more likely that the prior notice information will change after the notice is submitted to FDA, thus requiring resubmission. The transporters of products with resubmitted prior notices may then have to wait as long as 12 hours, which affects 7.1 percent of the produce life span (12 hours out of 168 hours) and 25 percent of the seafood life span (12 hours out of 48 hours).

Table 12 shows the loss in value caused by the resubmitted prior notice information for the 40 percent of imported Mexican and Canadian fresh seafood and produce that might be affected. As a result of having to give prior notice by noon the calendar day prior to entry, the Mexican fresh produce industry would lose $98,222,110 and the Canadian fresh produce industry would lose $11,411,858. The Mexican fresh seafood industry would lose $11,227,741 and the Canadian fresh seafood industry would lose $186,321,789 in value.

TABLE 12.—LOSS IN VALUE CAUSED BY RESUBMITTED PRIOR NOTICE UNDER OPTION FOUR

Perishable Produce	
2001 Imported Mexican Produce Total Retail Value	$3,458,525,000
7.1% reduction in value for 40% of Mexican produce	$98,222,110
2001 Imported Canadian Produce Total Retail Value	$401,826,000
7.1% reduction in value for 40% of Canadian produce	$11,411,858
Perishable Seafood	
2001 Imported Mexican Seafood Total Retail Value	$112,277,406
25% reduction in value for 40% of Mexican seafood	$11,227,741
2001 Imported Canadian Seafood Total Retail Value	$1,863,217,894
25% reduction in value for 40% of Canadian seafood	$186,321,789

Table 13 presents a summary of the costs associated with option 4. Also presented in table 13 is the present value of the costs associated with this option using the OMB-recommended discount rate of 7 percent.

TABLE 13.—SUMMARY OF COSTS FOR OPTION 4

Research costs	$4,908,509
Computer acquisition costs	$8,315,755
Annual costs to fill out prior notice screens (including updates and amendments)	$59,689,990
FDA prior notice system cost	$4,421,176
Lost value for Mexican produce	$98,222,110
Lost value for Canadian produce	$11,411,858
Lost value for Mexican seafood	$11,227,741
Lost value for Canadian seafood	$186,321,789
Total Costs for Option 4	$384,518,928
Present value of costs	$5,258,695,269

Option five: prior notice received by noon of the calendar day prior to the day of crossing; electronic submission of information; allow changes to the prior notice submission up to two hours prior to entry (proposed option).

We now take the estimates in option 4 and adjust them to account for the effects of allowing changes to the prior notice submission. Since prior notice must be submitted by noon on the calendar day prior to U.S. entry, it is reasonable to expect that not all the information required on a prior notice will be final. Allowing changes to the original submission, in the form of electronic product identity amendments and arrival updates, should improve the flow of import traffic by reducing the number of prior notice resubmissions and thereby reducing the loss of value for perishable foods, since they will not have to wait much extra time, if any at all, before crossing the U.S. border.

The prior notice screen will have required fields for the addresses of the submitter, importer, owner, and consignee, as well as transporter, manufacturer, and grower if known. Required information would also include the identity of the article of food, its originating country, the country from which the food was shipped, its U.S. Customs entry number, and the date, time, and expected port of entry.

Increasing the number of required fields that can be changed on the prior notice screen prior to entry reduces the likelihood that the information would have to be completely resubmitted by importers. This change would lessen the time burden, and therefore the cost, of having to submit prior notice. Allowing a 2 hour amendment and updates to prior notice would provide some flexibility for importers in industries where pieces of information, such as the quantity of the product being imported, time to port of arrival, and the anticipated port may change or is not known until just before shipping.

Assuming that prior notice can be amended and updated would reduce the number of resubmissions that would normally occur. For this option then, with amendment and updates, we will assume that the number of prior notice resubmissions necessitated by changes in information on the notice will be reduced from 40 percent (as in option 4) to 5 percent.

This option lowers the prior notice costs to importers (as compared to option 4) and therefore to Mexican and Canadian fresh produce growers and seafood processors, because they will not have to resubmit their prior notices when importing food to the United States as frequently. Instead they can amend or update the notices. Option 5 would save a minimum of 10 hours wait time per entry that can be amended or updated for the prior notice over the time used in option 4; the maximum time products would have to wait at the border would be 2 hours, or 1.2 percent of the fresh produce life span (2 hours out of 168 hours) and 4.2 percent of the fresh seafood life span (2 hours out of 48 hours). Table 14 shows the costs of submitting prior notice for a 12-hour minimum time, with a 2-hour amendment and updates, for Canadian and Mexican fresh produce and seafood.

TABLE 14.—LOSS IN VALUE CAUSED BY RESUBMITTED PRIOR NOTICE UNDER OPTION FIVE

Perishable Produce	
2001 Imported Mexican Produce Total Retail Value	$3,458,525,000
1.2% reduction in value for 25% of Mexican produce	$2,075,115
2001 Imported Canadian Produce Total Retail Value	$401,826,000
1.2% reduction in value for 25% of Canadian produce	$241,096
Perishable Seafood	
2001 Imported Mexican Seafood Total Retail Value	$112,277,406
4.2% reduction in value for 25% of Mexican seafood	$235,783
2001 Imported Canadian Seafood Total Retail Value	$1,863,217,894
4.2% reduction in value for 25% of Canadian seafood	$3,912,771

Table 15 compares the reduction in the costs of this rule if an amendment and update to prior notice is allowed (option 5) as opposed to the no-amendment option 4.

TABLE 15.—COMPARISON OF OPTION FOUR WITH OPTION FIVE

Perishable Mexican Produce Value loss	
Option 4–12 hour minimum notice	$98,222,110
Option 5–12 hour notice with changes	$2,075,115
Savings with amendment and update	$96,146,995
Perishable Canadian Produce Value loss	
Option 4–12 hour minimum notice	$11,411,858
Option 5–12 hour notice with changes	$241,096

TABLE 15.—COMPARISON OF OPTION FOUR WITH OPTION FIVE—Continued

Perishable Canadian Produce Value loss	
Savings with amendment and update	$11,170,762
Perishable Mexican Seafood Value loss	
Option 4–12 hour minimum notice	$11,227,741
Option 5–12 hour notice with changes	$235,783
Savings with amendment and update	$10,991,985
Perishable Canadian Seafood Value Loss	
Option 4–12 hour minimum notice	$186,321,789
Option 5–12 hour notice with changes	$3,912,758
Savings with amendment and update	$182,409,031

Table 16 presents a summary of the costs associated with option 5. Also presented in table 16 is the present value of the costs associated with this option using the OMB-recommended discount rate of 7 percent.

TABLE 16.—SUMMARY OF COSTS FOR OPTION 5

Research costs	$4,908,509
Computer acquisition costs	$8,315,755
Annual costs to fill out prior notice screens (including updates and amendments)	$59,689,990
FDA prior notice system cost	$4,421,176
Lost value for Mexican produce	$2,075,115
Lost value for Canadian produce	$241,096
Lost value for Mexican seafood	$235,783
Lost value for Canadian seafood	$3,912,758
Total Costs for Option 5	$83,800,182
Present value of costs	$962,713,183

Summary of Options

Table 17 gives a summary of the costs associated with the prior notice rule for each option presented.

TABLE 17.—SUMMARY OF COSTS ASSOCIATED WITH EACH OPTION

Costs	Option 1	Option 2	Option 3	Option 4	Option 5
Research Costs	$0	$4,908,509	$4,908,509	$4,908,509	$4,908,509
Costs of acquiring electronic capacity	$0	$8,315,755	$8,315,755	$8,315,755	$8,315,755
FDA prior notice system cost	$0	$4,421,176	$4,421,176	$4,421,176	$4,421,176
Total annual cost to submit prior notice forms	$0	$59,689,990	$59,689,990	$59,689,990	$59,689,990
Lost value for perishable foods	$0	$51,322,907	$128,801,141	$307,183,498	$6,464,752
First year cost of each option	$0	$128,658,000	$206,137,000	$384,519,000	$83,800,000
Annual cost of each option	$0	$114,656,000	$192,134,000	$370,517,000	$69,798,000
Present value total cost of each option	$0	$1,603,544,000	$2,710,376,000	$5,258,695,000	$962,713,000

Sensitivity Analysis

We estimate that the social costs of the proposed rule (option 5) would be about $84 million in the first year and $70 million in later years. At a 7 percent discount rate, the present value of the costs of the proposed rule, discounted indefinitely into the future, would be about $963 million. These estimates rely on several important assumptions:

- In option 4, forty percent of prior notices will need to be changed if the notice must be submitted by noon on the calendar day prior to entry. (Option 4 is the base for option 5 before amendment.)
- Five percent of prior notices will still need to be changed even when the amendment option is available.
- The amendment option will eliminate all but 1.2 percent of the lost value of imported fresh produce and all but 4.2 percent of the lost value of imported fresh seafood.
- The amendment or update time is two hours before entry.
- The retail value of imported fresh seafood and produce is 100 percent higher than its wholesale value.

• The number of import entries requiring prior notice will not increase over time.

• The discount rate for calculating present value is 7 percent.

We now show how our estimates of costs for the proposed option change under different assumptions. We substitute the following assumptions for those used above:

• In option 4, fifty percent of prior notices will need to be changed if the notice must be submitted by noon on the calendar day prior to entry. (Option 4 is the base for option 5 before amendment.)

• 15 percent of prior notices will still need to be changed even when the amendment option is available.

• The amendment option will eliminate all but 5 percent of the lost value of imported fresh produce and all but 12 percent of lost value of imported fresh seafood.

• The amendment or update time is 4 hours before entry.

• The retail value of imported fresh seafood and produce is 200 percent higher than its wholesale value.

• The number of import entries requiring prior notice will increase 3 percent per year over time.

• The discount rate for calculating present value is 3 percent.

Tables 18 and 19 show the results of the sensitivity analysis. The tables show that the estimated cost of the proposed rule is most sensitive to the assumed fraction of prior notices that will need to be changed. The present value of the proposed rule is most sensitive to the rate of discount.

TABLE 18.—SENSITIVITY ANALYSIS FOR ASSUMPTIONS MADE FOR OPTION 5 (PROPOSED OPTION)

Test	Annual Cost Under Base Assumption	Annual Cost Under Test Assumption	Change in Annual Cost (or Value)	Percent Change in Present Value
50% prior notices changed	$370,516,823	$447,312,699	$76,795,876	21
15% prior notices changed with amendment	$69,798,077	$71,727,578	$1,929,501	3
5% lost value for produce, 12% lost value for seafood	$69,798,077	$84,837,174	$15,039,097	22
Amendment time is 4 hours	$69,789,077	$123,843,623	$54,045,546	77
Retail value is 200% of wholesale value	$69,798,077	$73,030,451	$3,232,374	5
Prior notice entries increase 3% in second year	$69,798,077	$71,588,777	$1,790,700	3

TABLE 19.—PRESENT VALUES FOR SENSITIVITY ANALYSIS FOR ASSUMPTIONS MADE FOR OPTION 5 (PROPOSED OPTION)

Test	Present Value of Base Total Cost	Present Value of New Total Cost Under Test Assumption	Change in Present Value	Percent Change in Present Value
50% prior notices changed	$5,258,695,269	$6,355,779,211	$1,097,083,942	21
15% prior notices changed with amendment	$962,713,183	$1,042,325,126	$79,611,943	8
5% lost value for produce, 12% lost value for seafood	$962,713,183	$1,177,557,426	$214,844,243	22
Amendment time is 4 hours	$962,713,183	$1,786,840,054	$824,126,871	86
Retail value is 200% of wholesale value	$962,713,183	$1,008,889,954	$46,176,771	5
Prior notice entries increase 3% in second year	$962,713,183	$988,294,611	$25,581,428	3
3% Discount rate	$962,713,183	$2,222,803,507	$1,260,090,324	131

Benefits: Requiring prior notice of imported food shipments and defining the required data elements should improve FDA's ability to detect accidental and deliberate contamination of food and deter deliberate contamination. Having notice of an imported food shipment before it reaches a U.S. border would allow FDA personnel to be ready to respond to shipments that appear to be adulterated, whether through intentional or accidental means, as well as when FDA receives credible evidence that an entry represents a serious threat to human or animal health.

Historical evidence suggests that a terrorist or other intentional strike on the food supply is a low-probability, but potentially high-cost event. FDA lacks data to estimate the likelihood and resulting costs of a strike occurring. Without knowing the likelihood or cost of an event, we cannot quantitatively measure the reduction in probability of an event occurring, or the possible reduction in cost of an event associated with each regulatory option. Further hindering any quantification of benefits are the complementary effects of the other regulations that are being developed to implement Title III of the Bioterrorism Act.

To understand possible costs of an intentional strike on the food supply, FDA examined five outbreaks resulting from accidental and deliberate contamination, and from both domestic and imported foods. An intentional attack on the food supply that sought to disrupt the food supply and sicken many U.S. citizens could be much larger than the examples given.

TABLE 20.—SUMMARY OF FIVE FOODBORNE OUTBREAKS

Pathogen	Location and year	Vehicle	Confirmed or reported cases	Estimated number of cases	Total illness cost
Salmonella enteritidis	Minnesota, 1994	Ice cream	150 cases; 30 hospitalizations	29,100 in MN 224,00 Nationwide	$3,187,744,000 to $5,629,792,000
Shigella sonnei	Michigan, 1988	Tofu salad	3,175 cases	Not available	$45,183,000 to $79,795,000

TABLE 20.—SUMMARY OF FIVE FOODBORNE OUTBREAKS—Continued

Pathogen	Location and year	Vehicle	Confirmed or reported cases	Estimated number of cases	Total illness cost
Outbreaks resulting from deliberate contamination					
Salmonella Typhimurium	Dalles, Oregon 1984	Salad bars	751 cases; 45 hospitalizations	Not available	$10,687,000 to $18,875,000
Shigella dysentreriae type 2	Texas, 1996	Muffins and doughnuts	12 cases; 4 hospitalizations	All cases identified	$83,000
Outbreaks resulting from imported foods					
Cyclospora cayaetanensis	United States and Canada, 1996	Raspberries (probably imported from Guatemala)	1465 cases identified, less than 20 hospitalization	Not available	$3,941,000

Salmonella enteritidis in ice cream

In 1994, approximately 224,000 people were sickened by ice cream contaminated with Salmonella enteritidis. The source of the contamination appeared to be pasteurized pre-mix that had been contaminated during transport in tanker trailers that previously had carried non-pasteurized eggs. There were 150 confirmed cases of salmonellosis associated with the outbreak in Minnesota. However, ice cream produced during the contamination period was distributed to 48 states. To calculate the total number of illnesses associated with the outbreak, researchers calculated an attack rate of 6.6 percent. This attack rate was extrapolated to the population that consumed the ice cream, giving a total number sickened of 224,000 (Ref. 11).

Salmonellosis most commonly causes gastrointestinal symptoms. Almost 91 percent of cases are mild and cause one to three days of illness with symptoms including diarrhea, abdominal cramps, and fever. Moderate cases, defined as requiring a trip to a physician, account for 8 percent of the cases. These cases typically have duration of two to 12 days. Severe cases require hospitalization and last 11 to 21 days. In addition to causing gastroenteritis, salmonellosis also can cause reactive arthritis in a small percentage of cases. Reactive arthritis may be short or long term and is characterized by joint pain. Just over one percent of cases develop short-term reactive arthritis and two percent of cases develop chronic, reactive arthritis.

In table 21, FDA estimated the costs associated with salmonellosis, including medical treatment costs and pain and suffering. Pain and suffering is measured by lost quality adjusted life days (QALDs). QALDs measure the loss of utility associated with an illness. A QALD is measured between zero and one, with one being a day in perfect health. The total loss of a Quality Adjusted Life Year (QALY), or the loss of a year of life is valued at $100,000, based on economic studies of how consumers value risks to life (Ref. 12). Thus, an entire lost QALD would be valued at $274 and fractions of QALDs are a fraction of the day's value. FDA presents two estimates of values of pain and suffering associated with arthritis, one based on physician estimates (Ref. 13) and another based on a regression analysis approach (Ref. 14). This gives a range of costs for the average case of salmonellosis between $14,231 and $25,133.

TABLE 21.—THE COST OF AN AVERAGE CASE OF SALMONELLOSIS

Severity	Case Breakdown	Total QALDs Lost per Illness	Health Loss per Case (Discounted)	Medical Costs per Case (Discounted)	Weighted Dollar Loss per Case
Illness					
Mild	90.7%	1.05	$660	$0	$599
Moderate	8.1%	3.68	$2,310	$283	$209
Severe	1.2%	9.99	$6,266	$9,250	$188
Arthritis *Regression Approach*					
Short-Term	1.26%	5.41	$3,391	$100	$44
Long-Term	2.40%	2,613.12	$452,554	$7,322	$11,048
Direct Survey Approach					
Short-Term	1.26%	10.81	$6,778	$100 $87	
Long-Term	2.40%	5,223.15	$904,573	$7,322	$21,906
Death	0.04%		$5,000,000		$2,143
Total Expected Loss per Case				Regression Approach	$14,231
				Direct Survey Approach	$25,133

To estimate the economic cost due to illness associated with this outbreak, FDA used the range for the average cost per case. For 224,000 people, this is a total cost of between $3,187,744,000 and $5,629,792,000 from this accidental food disaster.

Shigella sonnei in tofu salad

In 1988, a tofu salad at an outdoor music festival was contaminated with Shigella sonnei and sickened an estimated 3,175 people. Over 2,000 volunteer food handlers served communal meals at the festival. (Ref. 15) Shigellosis causes similar symptoms and is of similar duration to salmonellosis. It also is associated with short term and chronic reactive arthritis; thus, FDA assumed the average case of shigellosis has the same cost as salmonellosis. This gives a total cost of $45,183,000 to $79,797,000.

Salmonella typhimirium in salad bars

During September and October of 1984, two outbreaks of Salmonella typhimirium occurred in association with salad bars in restaurants in The Dalles, Oregon. At least 751 people were affected. Members of the local Rajneeshpuram commune intentionally caused the outbreak by spraying Salmonella typhimirium on the salad bars in local restaurants. Their apparent motivation was to influence a local election by decreasing voter turnout. Intentional contamination was not suspected immediately and no charges were brought until a year after the attacks (Ref. 16).

The 751 people affected primarily were identified through passive surveillance: thus the true number of people actually sickened is undoubtedly much higher. The Dalles is located on Interstate 84 in Oregon and is a frequent stop for travelers who were unlikely to be identified by passive or active surveillance for salmonellosis. However, since we do not have any estimates of the true size of the outbreak, we estimated the costs associated with known cases, recognizing this is an underestimate of the true cost of the outbreak. We use the cost estimates for salmonellosis as ranging from $14,231 to $25,133. This gives an estimated cost of known cases for the outbreak of $10,687,000 to $18,875,000.

Shigella dysenteriae type 2 among laboratory workers

Twelve people working in a laboratory who consumed muffins left in the laboratory break room contracted shigellosis in Texas in 1996. Affected workers had diarrhea, nausea, and abdominal discomfort. Investigators concluded that the outbreak likely was the result of deliberate contamination. All twelve affected workers were treated by, or consulted with, a physician. Nine affected workers went to the emergency room, four of whom were hospitalized (Ref. 17).

To estimate the cost of this outbreak, FDA assumed that the eight cases that required consultation with a doctor, but did not require hospitalization, had the same cost as a moderate case of salmonellosis. The four cases requiring hospitalization were estimated to have the same cost as a severe case of gastroenteritis resulting from salmonellosis. This gives a cost of $82,808 for illnesses associated with the event.

TABLE 22.—SUMMARY OF COSTS FOR AN OUTBREAK OF SHIGELLOSIS

Severity	Number of cases	Cost per case	Total cost
Mild	0	$0	$0
Moderate	8	$2,593	$20,744
Severe	4	$15,516	$62,064
Total	12		$82,808

Cyclospora cayatanensis in imported raspberries

In 1996, 1,465 cases of cyclosporiasis were linked to consumption of raspberries imported from Guatemala. Nine hundred and seventy eight of these cases were laboratory confirmed. No deaths were confirmed and less than 20 hospitalizations were reported (Ref. 18). Case control studies indicated that raspberries imported from Guatemala were the source of the illnesses. Fifty-five clusters of cases were reported in 20 states, two Canadian provinces, and the District of Columbia (Ref. 19).

Cyclosporiasis typically causes watery diarrhea, loss of appetite, weight loss, and fatigue. Less common symptoms include fever, chills, nausea, and headache. The median duration of illness associated with the outbreak was more than 14 days and the median duration of diarrheal illness was 10 days (Ref. 20). We estimated the cost of a mild case of cyclosporiasis as two and one half times higher than the cost of a mild case of gastroenteritis from salmonellosis due to the longer duration. The reports of cyclosporiasis outbreaks did not include information on the number of physician visits. We assumed that the percentage of total cases that result in physician visits would be larger than the corresponding percentage for salmonellosis illnesses, due to the longer duration of illnesses. We assumed, therefore, that 40 percent of those infected with cyclosporiasis visited a physician. Less than 20 hospitalizations were reported from the cyclosporiasis outbreak. No deaths were confirmed.

TABLE 23.—SUMMARY OF COSTS OF AN OUTBREAK OF CYCLOSPORIASIS

Severity	Number of cases	Cost per case	Total cost
Mild	879	$1,650	$1,450,000
Moderate	586	$3,748	$2,196,000
Severe	19	$15,516	$294,000
Total	1,465		$3,941,000

B. Small Entity Analysis (or Initial Regulatory Flexibility Analysis)

FDA has examined the economic implications of this proposed rule as required by the Regulatory Flexibility Act (5 U.S.C. 601–612). If a rule has a significant economic impact on a substantial number of small entities, the Regulatory Flexibility Act requires agencies to analyze regulatory options that would lessen the economic effect of the rule on small entities consistent with statutory objectives. The analysis below, together with other relevant sections of this document, serves as the agency's initial regulatory flexibility analysis under the Regulatory Flexibility Act.

1. Number of Establishments Affected

FDA finds that this proposed rule would affect the 77,427 U.S. importers. Most of these importers have fewer than 500 employees, thus making them small businesses according to the definitions of the Small Business Administration. Because most of the importers affected are small, all options considered in the Benefit-Cost Analysis in section IV.A above are regulatory relief options.

2. Costs Per Entity

Small businesses will be affected by this proposed rule in a couple of ways. First, this proposed rule requires importers to notify FDA of incoming products electronically before the food arrives at the U.S. border. The annual cost of doing so is about $770 per importer (see tables 1, 2, and 17 of this document). As discussed above and shown in tables 1 and 2, about 3,100 U.S. importers do not have electronic transmitting capacity and will have to obtain computer equipment (at a cost of about $2,000 per importer) and Internet access (at a cost of about $240 annually) in order to comply with this proposed rule. FDA could not provide flexibility for those importers who do not have electronic transmitting capacity, as paper notices could not be submitted and processed in the proposed prior notice timeframe and would therefore actually be more burdensome to importers because paper notices would need to be submitted earlier.

Second, this proposed rule will potentially cause some loss of product value if the prior notice requirement causes perishable products to have to wait any length of time before crossing the U.S. border. The costs of lost product value vary with the required notice timeframe. We discuss the various costs associated with this possibility in the options previously outlined. FDA requests comments on the effect of this proposed rule on small entities.

3. Additional Flexibility Considered

Because of the requirements of the Bioterrorism Act, FDA is precluded from selecting some of the options that typically would be considered to lessen the economic effect of the rule on small entities, including granting an exemption to small entities. FDA tentatively concludes that it would be inconsistent with section 307 of the Bioterrorism Act to allow small entities a later effective date, since the Bioterrorism Act established a deadline for beginning prior notice that applies to all FDA-regulated imported food. Although the recordkeeping provision of the Bioterrorism Act directs FDA to take into account the size of a business when issuing implementing regulations, the prior notice provision contains no such language. Thus, it appears that Congress intended for all entities to be subject to the effective date established in the Bioterrorism Act. Nonetheless, the agency recognizes that the prior notice requirement will cause an economic burden on small businesses; therefore, we are seeking comment on whether it would be consistent with section 307 for the agency to set staggered effective dates that would give small businesses more time to comply. FDA also seeks comment on how FDA could effectively distinguish between large and small businesses if it considered staggered effective dates.

C. Unfunded Mandates

Title II of the Unfunded Mandates Reform Act of 1995 (Public Law 104–4) requires cost-benefit and other analyses before any rule making if the rule would include a "Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any 1 year." The current inflation-adjusted statutory threshold is $112 million. FDA has determined that this proposed rule does not constitute a significant rule under the Unfunded Mandates Reform Act. See table 17 for the total costs.

V. Paperwork Reduction Act of 1995

This proposed rule contains information collection provisions that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). A description of these provisions is given below with an estimate of the annual reporting burden. Included in the estimate is the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing each collection of information.

FDA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Title: Prior Notice of Imported Food

Description: Section 801(m) of the Federal Food, Drug, and Cosmetic Act (the Act) (21 U.S.C. 381(m)) requires prior notification to the Secretary of Health and Human Services of an article of food that is being imported or offered for import into the United States. The purpose of this notification is to enable the food to be inspected at ports of entry into the United States.

Section 801(m) of the Act states that the Secretary shall by regulation identify the parties responsible for providing the notice and explain the information that the prior notice is required to contain, the method of submission of the notice, and the minimum and maximum period of advance notice required. Section 801(m)(1) of the Act states that the Secretary shall require submission of notice providing the identity of each of the following: the article of food; the manufacturer; the shipper; the grower, if known at the time of notification; the originating country; the shipping country; and the anticipated port of entry. Section 801(m)(2)(A) of the Act states that the Secretary shall by regulation prescribe the time of submission of the notification in advance of importation or the offering of the food for import, which period shall be no less than the minimum amount of time necessary for the Secretary to receive, review, and appropriately respond to such notification, but may not exceed five days. FDA's prior notification of imported food shipments proposed regulation would implement these statutory provisions.

FDA estimates the burden for this information collection as follows:

TABLE 24.—ESTIMATED ANNUAL REPORTING BURDEN

21 CFR Part 1, Subpart I	No. Of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Capital Costs	Operating and Maintenance Costs	Total Hours
1.285–1.290, 1.294[1]	77,427	23.3	1,807,692	1–2	$6,194,000	$743,280	1,888,216
1.278(d)[1]	90,385	1	90,385	0.5	$0	$0	45,193
1.278(d), 1.285–1.290, 1.294[2]	77,427	23.8	1,844,116	0.5–1	$620,000	$817,680	1,833,822
Total hours for first year							1,888,216
Total recurring hours							1,833,822

[1] First year burden.
[2] Recurring burden.

Burden Estimate

Number of Establishments Affected

Using 2001 FY information from FDA's OASIS system (industry codes 02 through 52, 54, and 70 through 72), FDA has determined that there are approximately 77,427 importers and consignees who receive shipments of food for human and animal consumption into the United States. It is these 77,427 U.S. importers or U.S. purchasers (or their agents) that will be primarily responsible for submitting the prior notice information.

New and Closing Importers

In addition to the U.S. importers currently in existence, in future years, new import businesses will open and some existing import businesses will close. These new importers would have to become familiar with the FDA prior notice system and possibly obtain computer equipment and Internet access to comply with prior notice requirements.

According to the Small Business Administration Office of Advocacy, in 2001, about 10 percent of all businesses were new and 10 percent of businesses closed. Using the 10 percent opening and closing business statistic, and given that there are currently 77,427 U.S. importers, FDA will assume, then, that on a yearly basis 7,743 importers will leave the market and 7,743 importers will enter the market.

Hour Burden Estimate Researching the Prior Notice Requirement

To become familiar with the requirements for this rule, FDA estimates it will initially take responsible parties with Internet access (74,330 importers) about one hour to research the prior notice requirements and responsible parties without readily available Internet access (3,097 importers) about 2 hours to research the requirements. This one-time search burden for the existing importers is 80,524 hours.

In the years that follow the start-up year for prior notice, it is reasonable to expect a certain percentage of importing firms to enter and leave the market. Thus, in addition to the first year burden to research prior notice, it is expected that 8,053 hours will be spent annually researching the prior notice requirement by the anticipated 7,743 new importers entering the market annually that must learn about prior notice, 7,433 of whom are estimated to have Internet access and 310 of whom do not.

Submitting Prior Notice

To estimate the repetitive effort of submitting a prior notice, and updating and amending the information, as needed, FDA will assume the activity takes one hour each time an entry (based on an average of 2.6 lines, and therefore notices, per entry) must be submitted. This includes 45 minutes of an administrative worker's time to fill out the screen, including updating, and then 15 minutes of the manager's time to verify the information. FDA does not have information on how many prior notices will come from each of the 77,427 importers. However, we assume that 1,807,692 prior notices will be submitted annually (based on FY 2001 OASIS information); we can take this number and divide by the 77,427 importers to get an average response frequency per importer of 23.3 notices.

Secure Storage and Notifying FDA

If an article of food is imported or offered for import with no prior notice or inadequate (e.g. untimely, inaccurate, or incomplete) prior notice, the food must be held at the port of entry or in a secure facility. In these cases, the submitter or carrier must promptly notify FDA of the location where the goods are held.

It is quite likely that more imported products will be held during the first year that the prior notice is required than in subsequent years as importers will learn from experience. Therefore, FDA estimates that imported products with insufficient prior notice will be held or sent to secure storage about 5 percent of the time during the first year and 2 percent of the time thereafter. This means that of the 1,807,692 prior notice entries received annually, in the first year prior notice is in effect we would expect 90,385 of the entries to be held or sent to secure storage; 36,154 entries would be held or sent to secure storage in subsequent years.

Most port storage facilities and secure storage facilities located at or near ports are probably familiar to submitters or carriers; therefore it should only take one-half hour per entry to notify FDA of the shipment's location. Thus, in the first year of the regulation, submitters or carriers will spend 45,193 hours notifying FDA of secure storage locations; 18,077 hours in subsequent years.

Capital Cost and Operating and Maintenance Cost Burden

Since all prior notices must be submitted electronically, we will assume that the 3,097 responsible parties without Internet access will have to purchase the appropriate IT equipment and gain Internet access to actually transmit the information. Assuming computer equipment costs each firm $2,000 and yearly Internet access costs each firm $240 ($20 per month for 12 months), this results in a one-time computer cost for these facilities of $6,194,000 and a recurring Internet access cost of $743,280. For the 7,743 new firms that enter the import market each year, we can expect 310 of them to need to purchase computer equipment and obtain Internet access. Thus, on an annual basis we can expect

new importers to spend $620,000 on computers and $74,400 on Internet access to be able to submit prior notice information.

In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the agency has submitted the information collection provisions of this proposed rule to OMB for review. Interested persons are requested to send comments regarding information collection to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW., rm. 10235, Washington, DC 20503, Attn: Stuart Shapiro, FDA Desk Officer.

VI. Analysis of Environmental Impact

The agency has carefully considered the potential environmental effects of this action. FDA has concluded under 21 CFR 25.30(h) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

VII. Federalism

FDA has analyzed this proposed rule in accordance with the principles set forth in Executive Order 13132. FDA has determined that the proposed rule does not contain policies that have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the agency tentatively concludes that the proposed rule does not contain policies that have federalism implications as defined in the Executive Order and, consequently, a federalism summary impact statement has not been prepared.

VIII. Comments

Interested persons may submit to the Dockets Management Branch (see **ADDRESSES**) written or electronic comments regarding this document. Submit a single copy of electronic comments to http://www.fda.gov/dockets/ecomments or two hard copies of any written comments, except that individuals may submit one hard copy. Comments are to be identified with the docket number found in brackets in the heading of this document. FDA cannot be responsible for addressing comments submitted to the wrong docket or that do not contain a docket number. Received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

FDA notes that the comment period for this document is shorter than the 75-day period that the agency customarily provides for proposed rules that are technical or sanitary or phytosanitary (SPS) measures. FDA believes that a 60-day comment period is appropriate in this instance. Executive Order 12889, "Implementation of the North American Free Trade Agreement" (58 FR 69681, December 30, 1993), states that any agency subject to the Administrative Procedure Act must provide a 75-day comment period for any proposed Federal technical regulation or any Federal SPS measure of general application. Executive Order 12889 provides an exception to the 75-day comment period where the United States considers a technical regulation or SPS measure of general application necessary to address an urgent problem related to the protection of human, plant, or animal health or sanitary or phytosanitary protection. FDA has concluded that this proposed rule is subject to the exception in Executive Order 12889.

The Bioterrorism Act states that it is intended "[t]o improve the ability of the United States to prevent, prepare for, and respond to bioterrorism and other public health emergencies." In order to meet these objectives, section 307 of the Act requires the FDA to propose and issue final regulations requiring prior notice of food imported or offered for import into the United States within 18 months of the Bioterrorism Act's enactment, which is by December 12, 2003. Section 307 also provides that if FDA does not issue final regulations by this date, FDA still must receive prior notice of food imported or offered for import into the United States by December 12, 2002, of no less than 8 hours and no more than 5 days, subject to compliance with the final regulations when the final regulations are made effective. This expedited timeframe reflects the urgency of the United States government's need to prepare to respond to bioterrorism and other food-related emergencies and FDA's need to have the final rule in place, tested, and fully operational by December 12, 2003. This means that the final rule must publish in early October 2003.

FDA will not consider any comments submitted after the 60-day comment period closes and does not intend to grant any requests for extension of the comment period due to the Bioterrorism Act's requirement to have a final regulation in effect by December 12, 2003, which requires publication on or before October 12, 2003.

IX. References

The following references have been placed on display in the Dockets Management Branch (see **ADDRESSES**) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday. (FDA has verified the Web site address, but FDA is not responsible for any subsequent changes to the nonFDA Web sites after this document publishes in the **Federal Register**.)

1. Compilation of food entry documents, with corresponding invoices and screens, taken from FDA's Operational and Administrative System for Import Support (OASIS).

2. Bureau of Economic Analysis, http://www.bea.doc.gov

3. United States Department of Labor, Bureau of Labor Statistics, National Compensation Survey: Occupation Wages in the United States, 2000, Summary 01–04. Available at http://www.bls.gov/ncs/ocs/sp/ncbl0354.pdf.

4. USDA Agricultural Marketing Service (March 2002) Fresh Fruits and Vegetable Shipments. www.ams.usda.gov

5. Kasmire, Dr. Robert F. Vegetable Marketing Specialist, www.thepacker.com/rbcs/handbookarticles/properis.htm Accessed on September 16, 2002.

6. USDA Agricultural Marketing Service produce point price reports for various border crossings for the dates September 12, 2002 and September 16, 2002. www.ams.usda.gov

7. Florida Department of Agriculture and Consumer Services (FDACS) www.ffva.com/rps.htm.

8. National Marine Fisheries Service, Fisheries Statistics and Economics Division, www.st.nmfs.gov accessed September 2002.

9. Florida Department of Agriculture and Consumer Services, http://doacs.state.fl.us/press/1999/090999.html and www.ffva.com/rps.htm

10. Center for Food Safety and Applied Nutrition, http://www.cfsan.fda.gov/~dms/qa-sto8.html

11. Hennessy T.W., C.W. Hedberg, L. Slutsker, K.E. White, J.M. Besser-Wiek, M.E. Moen, J. Feldman, W.W. Coleman, L.M. Edmonson, K.L. MacDonald, M.T. Osterholm, and the Investigation Team, "A National Outbreak of Salmonella Enteritidis Infections From Ice Cream," *The New England Journal of Medicine*, May 16, 1996, pp. 1281–1286.

12. Cutler, D., E. Richardson, 1999, "Your Money and Your Life: The Value of Health and What Affects It," Working Paper 6895, National Bureau of Economic Research.

13. Zorn, D., K. Klontz, 1998, "Appendix: The Value of Consumer Loss to Foodborne Reactive Arthritis," **Federal Register**, 63 FR 24292–24299, May 1, 1998.

14. Scharff, R., and A. Jessup, "Valuing Chronic Disease for Heterogenous Populations: the Case of Arthritis," 2002, Mimeo.

15. Lee, L.A., S.M. Ostroff, H.B. McGee, D.R. Johns, F.P. Downes, D.N. Cameron, N.H. Bean, and P.M. Griffin, "An Outbreak of Shigellosis at an Outdoor Music Festival,"

American Journal of Epidemiology, 133:6:608–615.

16. Trook, T.J., R.V. Tauxe, R.P. Wise, J.R. Livengood, R. Sokolow, S. Mauvais, K.A. Birkness, M.R. Skeels, J.M. Horan, and L.R. Foster, "A Large Community Outbreak of Salmonellosis Caused by Intentional Contamination of Restaurant Salad Bars," *The Journal of the American Medical Association*, 278:5:389–397.

17. Kolavic, S.A., A. Kimura, S.L. Simons, L. Slusker, S. Barth, and C.E. Haley, "An Outbreak of Shigella Dysenteriae Type 2 Among Laboratory Workers Due to Intentional Food Contamination," *The Journal of the American Medical Association*, 278:5:396–403.

18. Colley, D.G., Widespread Foodborne Cyclosporiasis Outbreaks Present Major Challenges (letter), Emerging Infectious Diseases, 2:4:354–356.

19. Herwaldt, B.L., M.L. Ackers, and Cyclospora Working Group, "An Outbreak in 1996 of Cyclosporiasis Associated with Imported Raspberries," *New England Journal of Medicine*, May 29, 1997, 1548–1556.

20. Small Business Administration Office of Advocacy, "Small Business By the Numbers," May 2002, http://www.sba.gov/advo/.

List of Subjects in 21 CFR Part 1

Cosmetics, Drugs, Exports, Food labeling, Imports, Labeling, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR part 1 be amended as follows:

PART 1—GENERAL ENFORCEMENT REGULATIONS

1. The authority citation for 21 CFR part 1 continues to read as follows:

Authority: 15 U.S.C. 1453, 1454, 1455; 21 U.S.C. 304, 321, 331, 334, 343, 350c, 350d, 352, 355, 360b, 362, 371, 374, 381, 382, 393; 42 U.S.C. 216, 241, 243, 262, 264.

2. Subpart I is added to part 1 to read as follows:

Subpart I—PRIOR NOTICE OF IMPORTED FOOD

General Provisions

Sec.

1.276 What imported food is subject to this subpart?
1.277 What definitions apply to this subpart?
1.278 What are the consequences of failing to submit adequate prior notice or otherwise failing to comply with this subpart?

Requirements to Submit Prior Notice of Imported Food

Sec.

1.285 Who is authorized to submit prior notice for an article of food that is imported or offered for import into the United States?
1.286 When must the prior notice be submitted to FDA?
1.287 How must you submit the prior notice?
1.288 What information must be submitted in the prior notice?
1.289 What changes are allowed to a prior notice after it has been submitted to FDA?
1.290 Under what circumstances must you submit a product identity amendment to your prior notice after you have submitted it to FDA?
1.291 What is the deadline for product identity amendments under § 1.290?
1.292 How do you submit a product identity amendment to a prior notice?
1.293 What are the consequences if you do not submit a product identity amendment to your prior notice?
1.294 What must you do if the anticipated arrival information (required under § 1.288(k)(1)) submitted in your prior notice changes?

General Provisions

§ 1.276 What imported food is subject to this subpart?

(a) This subpart applies to food for humans and other animals that is imported or offered for import into the United States (U.S.), including U.S. foreign trade zones, for consumption, storage, immediate export from the port of entry, transshipment through the United States to another country, or import for export.

(b) This subpart does not apply to:

(1) Food that is carried by an individual entering the United States in that individual's personal baggage for that individual's personal use;

(2) Meat food products that at the time of importation are subject to the exclusive jurisdiction of the U.S. Department of Agriculture (USDA) under the Federal Meat Inspection Act (21 U.S.C. 601 *et seq.*);

(3) Poultry products that at the time of importation are subject to the exclusive jurisdiction of USDA under the Poultry Products Inspection Act (21 U.S.C. 451 *et seq.*); and

(4) Egg products that at the time of importation are subject to the exclusive jurisdiction of USDA under the Egg Products Inspection Act (21 U.S.C. 1031 *et seq.*).

§ 1.277 What definitions apply to this subpart?

(a) The act means the Federal Food, Drug, and Cosmetic Act.

(b) The definitions of terms in section 201 of the act (21 U.S.C. 321) apply when the terms are used in this subpart.

(c) In addition, for the purposes of this subpart:

(1) *Calendar day* means every day shown on the calendar.

(2) *Country from which the article of food was shipped* means the country in which the article of food was loaded onto the conveyance that brings it to the United States.

(3) *Food* has the meaning given in section 201(f) of the act. Examples of food include, but are not limited to, fruits, vegetables, fish, dairy products, eggs, raw agricultural commodities for use as food or components of food, animal feed, including pet food, food and feed ingredients and additives, including substances that migrate into food from food packaging and other articles that contact food, dietary supplements and dietary ingredients, infant formula, beverages, including alcoholic beverages and bottled water, live food animals, bakery goods, snack foods, candy, and canned foods.

(4) *Originating country* means the country from which the article of food originates. If the article of food is fresh produce or fresh aquacultured fish or seafood, the originating country is the country in which it is grown and harvested. If the article of food is wild-caught fish or seafood and it is harvested in the waters of the United States or by a U.S. flagged vessel or processed aboard a U.S. flagged vessel, the originating country is the United States. Otherwise, the originating country is the country in which the article of food is produced.

(5) *Port of entry* means the water, air, or land port at which the article of food is imported or offered for import into the United States, i.e., the port where food first arrives in the United States. This port may be different than the port where the article of food is entered for U.S. Customs Service purposes.

(6) *You* means the purchaser or importer of an article of food who resides or maintains a place of business in the United States, or an agent who resides or maintains a place of business in the United States acting on the behalf of the U.S. purchaser or importer or, if the article of food is imported with the intention of in-bond movement through the United States for export, i.e., Transportation for Exportation or Immediate Export entries, the arriving carrier or, if known, the in-bond carrier.

§ 1.278 What are the consequences of failing to submit adequate prior notice or otherwise failing to comply with this subpart?

(a) If an article of food is imported or offered for import with no prior notice or inadequate (e.g., untimely, inaccurate, or incomplete) prior notice, the food shall be refused admission

under section 801(m)(1) of the act (21 U.S.C. 381(m)(1)).

(b) If an article of food is refused admission under section 801(m)(1), it must be held at the port of entry unless FDA directs its removal to a secure facility in accordance with § 1.278(c).

(c) If FDA determines that removal to a secure facility is appropriate (e.g., due to a concern with the security of the article of food or due to space limitations in the port of entry), FDA may direct that the article of food be removed to a Bonded Warehouse, Container Freight Station, Centralized Examination Station, or another appropriate secure facility that has been approved by FDA.

(d) The person submitting the prior notice or the carrier must arrange for movement of the article of food, under appropriate custodial bond, within the port of entry or to the secure facility and must promptly notify FDA of the location. Transportation and storage expenses shall be borne by the owner, purchaser, importer, or consignee.

(e) (1) The article of food must be held at the port of entry or in the secure facility until prior notice is submitted to FDA in accordance with this subpart, FDA has examined the prior notice, FDA has determined that the prior notice is adequate, and FDA has notified the U.S. Customs Service and the person who submitted the prior notice that the article of food no longer is subject to refusal of admission under section 801(m)(1) of the act.

(2) Notwithstanding section 801(b) of the act (21 U.S.C. 381(b)), while any article of food that has been refused admission under section 801(m)(1) of the act is held at its port of entry or in a secure facility, it may not be delivered to any of its importers, owners, or consignees.

(f) A determination that an article of food is no longer subject to refusal under section 801(m)(1) is different than, and may come before, determinations of admissibility under other provisions of the act or other U.S. laws. A determination that an article of food is no longer subject to refusal under section 801(m)(1) does not mean that it will be granted admission under other provisions of the act or other U.S. laws.

(g) Any person who imports or offers for import an article of food without complying with the requirements of 21 U.S.C. 381(m) as set out in this subpart, or otherwise violates any requirement under 21 U.S.C. 381(m), or any person who causes such an act, commits a prohibited act within the meaning of 21 U.S.C. 331 (ee). Under 21 U.S.C. section 332, the United States can bring a civil action in Federal court to enjoin persons who commit prohibited acts. Under 21 U.S.C. section 333, the United States can bring a criminal action in Federal court to prosecute persons who commit prohibited acts. Under 21 U.S.C. 335a, FDA can seek debarment of any person who has been convicted of a felony relating to importation of food into the United States.

Requirements to Submit Prior Notice of Imported Food

§ 1.285 Who is authorized to submit prior notice for an article of food that is imported or offered for import into the United States?

(a) A purchaser or importer of an article of food who resides or maintains a place of business in the United States, or an agent who resides or maintains a place of business in the United States acting on the behalf of the U.S. purchaser or importer, is authorized to submit to FDA prior notice of the article of food being imported or offered for import into the United States, except as specified in paragraph (b) of this section.

(b) If the article of food is imported for in-bond movement through the United States for export, i.e., Transportation for Exportation or Immediate Export entries, the arriving carrier or, if known, the in-bond carrier is authorized to submit prior notice to FDA.

§ 1.286 When must the prior notice be submitted to FDA?

(a) You must submit the prior notice to FDA no later than noon of the calendar day before the day the article of food will arrive at the border crossing in the port of entry.

(b) You may not submit the prior notice until all of the information required by § 1.288 exists, except as provided in § § 1.288(e)(2) and 1.290, which both relate to product identity amendments. You may not submit prior notice more than 5 days before the anticipated date of arrival of the food at the anticipated port of entry.

§ 1.287 How must you submit the prior notice?

(a) You must submit prior notice, product identity amendments, and arrival updates electronically to FDA through FDA's Prior Notice System at [a Website that will be provided in the final rule], except as provided in paragraph (b) of this section.

(b) If FDA's Prior Notice System is unable to receive prior notice . . electronically, you must submit prior notice, product identity amendments, and arrival updates using a printed version of the Prior Notice Screen from FDA's Prior Notice System delivered in person, by e-mail, or fax to the FDA field office with responsibility over the geographical area in which the anticipated port of entry identified in your initial prior notice is located.

§ 1.288 What information must be submitted in the prior notice?

For each article of food that is imported or offered for import into the United States, you must submit the information listed in this section. (The Prior Notice Screen of FDA's Prior Notice System also identifies the information that you must submit to FDA.)

(a) The name of the individual submitting the prior notice, the submitting firm's name, address, phone number, fax number, and e-mail address, and, if the firm is required to register for a facility associated with the article of food under 21 CFR part 1, subpart H, the registration number assigned to that facility;

(b) The entry type as designated by the U.S. Customs Service;

(c) The U.S. Customs Service's Automated Commercial System (ACS) entry number, or if the article of food is an import that is not subject to ACS, the other U.S. Customs Service identification number associated with the importation;

(d) If the article of food is under hold under § 1.278, the location where it is being held, the date the article will arrive at that location, and identification of a contact at that location.

(e)(1) The identity of the article of food being imported or offered for import, as follows:

(i) The complete FDA product code;

(ii) The common or usual name or market name;

(iii) The trade or brand name, if different from the common or usual name or market name;

(iv) The quantity of food described from smallest package size to largest container; and

(v) The lot or code numbers or other identifier of the food if applicable.

(2) If all of the information required by this subsection exists by noon of the calendar day before the day the article of food will arrive at the border crossing in the port of entry, you must include it in your prior notice and you may not amend the prior notice under § 1.290. If any of this information does not exist by noon of the calendar day before the day the article of food will arrive at the border crossing in the port of entry, you must give FDA as much information as does exist at that time and tell FDA that you will amend the prior notice as required under § 1.290.

(f) The name, address, phone number, fax number, and e-mail address of the

manufacturer, and if it is required to register for a facility associated with the article of food under 21 CFR part 1, subpart H, the registration number assigned to that facility;

(g) The name, address, phone number, fax number, and e-mail of all growers, and the growing location if different from business address, if known at time of submission of your prior notice;

(h) The originating country of the article of food;

(i) The name, address, phone number, fax number, and e-mail address of the shipper and, if it is required to register under 21 CFR part 1, subpart H, for a facility associated with the article of food, the registration number assigned to that facility;

(j) The country from which the article of food was shipped;

(k) (1) Anticipated arrival information about the article of food being imported or offered for import, as follows:

(i) The anticipated port of entry and, if the anticipated port of entry has more than one border crossing, the specific anticipated border crossing where the food will be brought into the United States;

(ii) The anticipated date on which the article of food will arrive at the anticipated port of entry; and

(iii) The anticipated time of that arrival;

(2) If any of the anticipated arrival information required under this paragraph changes after you submit your prior notice, you must update your notice in accordance with § 1.294.

(l) The port where entry of the article of food will be made for purposes of the U.S. Customs Service;

(m) The anticipated date of entry for purposes of the U.S. Customs Service; and

(n) The name, address, phone number, fax number, and e-mail address of the importer, and, if the importer is required to register for a facility associated with the article of food under 21 CFR part 1, subpart H, the registration number assigned to that facility;

(o) The name, address, phone number, fax number, and e-mail address of the owner, and if the owner is required to register for a facility associated with the article of food under 21 CFR part 1, subpart H, the registration number assigned to that facility;

(p) The name, address, phone number, fax number, and e-mail address of the consignee, and if the consignee is required to register for a facility associated with the article of food under 21 CFR part 1, subpart H, the registration number assigned to that facility; and

(q) The names, addresses, phone numbers, fax numbers and e-mail addresses of all the carriers which are or will be carrying the article of the food from the country from which the article of food was shipped to the United States, and the carriers' Standard Carrier Abbreviation Codes (SCAC) if appropriate.

§ 1.289 What changes are allowed to a prior notice after it has been submitted to FDA?

After a prior notice has been submitted to FDA, it may only be changed as set out in § 1.290 which relates to product identity amendments or § 1.294 which relates to arrival updates. If other information provided in the prior notice changes, you must cancel the prior notice in the FDA Prior Notice System and submit a new prior notice to FDA.

§ 1.290 Under what circumstances must you submit a product identity amendment to your prior notice after you have submitted it to FDA?

(a) If any of the information required by § 1.288(e)(1) did not exist at the time you submitted your prior notice and the prior notice you submitted was therefore incomplete, you must amend your prior notice with complete product identity information by the deadline specified in § 1.291.

(b) You may only amend your prior notice once.

(c) You may not change the general identity of the article of food that is the subject of the prior notice by amendment. However, if the article is fresh produce or fresh, wild-caught fish, you may amend the last two digits of the product code when you do not know the specific identity of the article at the time of initial prior notice. If your initial prior notice submission identifies the product by the FDA product code for "fresh peppers, refrigerated," when you amend your submission, you must give the product code that identifies with specificity the type of pepper—"fresh green bell peppers, refrigerated." You may also include more than one article in your amendment if the industry and class and process (of the FDA product code) are the same. A prior notice for "refrigerated fresh fish" may be amended as "refrigerated fresh cod" and "refrigerated fresh salmon," but not "refrigerated fresh cod" and "canned shrimp." You may not amend the product identity to refer to another food, e.g., apples, or another process, e.g., canned.

(d) If you did not provide grower identity at the time you submitted your prior notice under this subpart, but you know the identity of the grower when you submit a product identity amendment to your prior notice, you must include in your amendment: the name, address, phone number, fax number, and e-mail of all growers, and growing location if different from business address.

§ 1.291 What is the deadline for product identity amendments under § 1.290?

Your product identity amendment must be submitted no later than 2 hours prior to the time of arrival.

§ 1.292 How do you submit a product identity amendment to a prior notice?

You must submit product identity amendments in accordance with § 1.287.

§ 1.293 What are the consequences if you do not submit a product identity amendment to your prior notice?

(a) If you informed FDA in your prior notice that you would be submitting a product identity amendment but you do not amend your prior notice completely, the prior notice is inadequate for the purposes of § 1.278(a).

(b) If you informed FDA in your prior notice that you would be submitting a product identity amendment and you submit your amendment after the deadline provided in section 1.291, the prior notice is inadequate for the purpose of § 1.278(a).

§ 1.294 What must you do if the anticipated arrival information (required under § 1.288(k)(1)) submitted in your prior notice changes?

(a) If any of the anticipated arrival information required under § 1.288(k)(1) changes after you submit a prior notice to FDA, you must submit an arrival update updating the information in your prior notice in accordance with § 1.287. Your arrival update must provide the following information:

(1) If the anticipated port of entry changes, provide the updated port of entry;

(2) If the time of arrival is expected to be more than 3 hours later than the anticipated time of arrival, provide the updated time of arrival;

(3) If the time of arrival is expected to be more than 1 hour earlier than the anticipated time of arrival, provide the updated time of arrival.

(b) If you did not provide grower identity at the time you submitted your prior notice under this subpart, but you know the identity of the grower when you update your prior notice, you must include in your update: the name, address, phone number, fax number, and e-mail of all growers, and growing location if different from business address.

(c) You must update the information in accordance with the requirements of §§ 1.291 and 1.292.

(d) If you do not submit an arrival update when one is required by paragraph (a) of this section, the prior notice is inadequate for the purposes of § 1.278(a).

Dated: January 27, 2003.

Tommy G. Thompson,

Secretary of Health and Human Services.

Dated: January 27, 2003.

Kenneth W. Dam,

Acting Secretary of the Treasury.

Note: The following form is an appendix that will not appear in the Code of Federal Regulations.

BILLING CODE 4160-01-S

DEPARTMENT OF HEALTH AND HUMAN SERVICES
Food and Drug Administration

PRIOR NOTICE SUBMISSION

Form Approved: OMB No. 0910-____
Expiration Date: _____

Paperwork Reduction Act Statement

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. Public reporting burden for this collection of information is estimated to average 0.5-1.0 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the necessary data, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information to the address to the right:

Food and Drug Administration
Center for Food Safety and Applied Nutrition
Office to be Determined
5100 Paint Branch Parkway
College Park, MD 20740-3835

☐ Initial	☐ Held	☐ Amendment Product Identity	☐ Update Arrival Info	☐ Cancel

Mandatory Information	Mandatory if applicable

Submitter

First Name	
Last Name	

Submitting Firm

☐ U.S. Purchaser	☐ U.S. Importer
☐ U.S. Agent of Purchaser	☐ U.S. Agent of Importer
☐ Carrier	☐ In-bond Carrier

Name of Firm		
FDA Registration Number	☐ N/A	#
Street Address		
City		
State		
Zip		
Phone		
FAX		
E-mail address		

Entry Type

☐ Consumption	☐ T & E	☐ IE	☐ Mail	☐ Trade Fair
☐ Warehouse	☐ TIB		☐ Baggage	☐ Other

Entry Type Customs Code | | |

Customs Entry Number/Customs Line Number/FDA Line Number

Article held under FDA direction ☐ No ☐ Yes

Name of Location			
Street Address			
City			
State		Zip	
Contact Name		Phone	

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Date available at Location mm/dd/yy													
Product Identity													
FDA Product Code													
Common/usual/market name													
Trade/brand name													
Quantity	Number					Measure							
Identifiers			☐ Lot number			☐ Production Code							
1													
2													
3													
4													
Manufacturer													
Name of Firm													
FDA Registration Number			☐ N/A	#									
Street Address													
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Grower													
Name of Firm													
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FAX													
E-mail address													
Growing Location street													
Growing Location City													
Growing Location State/Province													
Growing Location Country													
Growing Location Zip/Mail code													
ADDITIONAL GROWERS	☐ No	☐ Yes	How Many?										
GROWER 2													
Name of Firm													
Street Address													
City													

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State/Province	
Country	
Zip/Mail code	
Phone	
FAX	
E-mail address	
Growing Location street	
Growing Location City	
Growing Location State/Province	
Growing Location Country	
Growing Location Zip/Mail code	
GROWER 3	
Name of Firm	
Street Address	
City	
State/Province	
Country	
Zip/Mail code	
Phone	
FAX	
E-mail address	
Growing Location street	
Growing Location City	
Growing Location State/Province	
Growing Location Country	
Growing Location Zip/Mail code	
Originating Country	ISO code
Shipper	
Name of Firm	
FDA Registration Number	☐ N/A #
Street Address	
City	
State/Province	
Country	
Zip/Mail code	
Phone	
FAX	
E-mail address	
Country from which the article was shipped	ISO code
Anticipated Arrival Information	
Name of Crossing	

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City of Crossing			
State of Crossing		Port of Entry Code	
Anticipated Date of Crossing mm/dd/yy			
Anticipated Time of Crossing		☐ am	☐ pm
Port of Entry for Customs Purposes (port code)			
Date of Entry for Customs Purposes mm/dd/yy			
Importer			
Name of Firm			
FDA Registration Number	☐ N/A	#	
Street Address			
City			
State			
Zip			
Phone			
FAX			
E-mail address			
Owner			
Name of Firm			
FDA Registration Number	☐ N/A	#	
Street Address			
City			
State			
Zip			
Phone			
FAX			
E-mail address			
Consignee			
Name of Firm			
FDA Registration Number	☐ N/A	#	
Street Address			
City			
State			
Zip			
Phone			
FAX			
E-mail address			
Carrier 1			
Standard Carrier Abbreviation Code			
Name of Firm			
Street Address			

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City				
State/Province				
Zip/mail code				
Country				
Phone				
FAX				
E-mail address				
Additional Carriers	❑ No	❑ Yes	How Many?	
Carrier 2				
Standard Carrier Abbreviation Code				
Name of Firm				
Street Address				
City				
State/Province				
Country				
Zip/Mail code				
Phone				
FAX				
E-mail address				
Carrier 3				
Standard Carrier Abbreviation Code				
Name of Firm				
Street Address				
City				
State/Province				
Country				
Zip/Mail code				
Phone				
FAX				
E-mail address				
Amendment to follow	❑ Yes	❑ No		
Cancel this submission	❑ Yes	❑ No		
This form must be submitted by the U.S. Importer or U.S. Purchaser, or U.S. Agent of the importer or purchaser, of the article of food being imported or offered for import. Under 18 U.S.C. 1001, anyone who makes a materially false, fictitious, or fraudulent statement to the U.S. Government is subject to criminal penalties.				

FORM FDA 3540 (01/03)

[FR Doc. 03–2444 Filed 1–29–03; 1:47 pm]
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Federal Register

Monday,
February 3, 2003

Part V

Office of Personnel Management

5 CFR Part 890

Debarments and Suspensions of Health Care Providers From the Federal Employees Health Benefits Program; Final Rule

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 890

RIN 3206–AD76

Debarments and Suspensions of Health Care Providers From the Federal Employees Health Benefits Program

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is amending its regulations regarding administrative sanctions of health care providers participating in the Federal Employees Health Benefits Program (FEHBP). These regulations implement the suspension and debarment provisions of section 2 of the Federal Employees Health Care Protection Act of 1998 (Pub. L. 105–266). That statute modified both the substantive and procedural requirements for FEHBP administrative sanctions. These regulations supersede interim final regulations issued in 1989 to implement the earlier sanctions legislation that was amended by Public Law 105–266. They will promote quicker, more uniform decisionmaking for suspensions and debarments, and will enhance protection against unfit providers for both the FEHBP and the individuals who receive health insurance coverage through the Program.

DATES: Effective February 3, 2003.

FOR FURTHER INFORMATION CONTACT: David Cope, by telephone at 202–606–2851; by FAX at 202–606–2153; or by e-mail at *debar@opm.gov*.

SUPPLEMENTARY INFORMATION:

Background

This rule was issued as a notice of proposed rulemaking in the December 12, 2001, **Federal Register** (66 FR 64160). During the 60-day public comment period, OPM received written comments from two professional organizations representing health care providers, an industry association of health insurance plans, and an FEHBP carrier. Oral comments were received from an FEHBP carrier and from OPM employees. This regulatory preamble addresses all of the comments from each source, many of which were incorporated into the final rule.

After the public comment period closed, we rewrote the proposed rule to improve its clarity and to reduce what we, as well as some of the commenters, believed to be the unnecessary wordiness associated with the "question and answer" format. This resulted in wording, formatting, and structural changes in virtually every section of the regulatory text. However, in no case has the meaning or effect of any regulatory material changed simply as a function of our rewriting. Because they do not reflect substantive modifications to the proposed rule, we have not identified each individual wording or format change. However, all such changes fall into one or more of the following categories:

(1) The proposed rule was written in a "question and answer" format in which the title of each section was phrased as a question and the body of the section constituted a response to that question. However, because the regulation is intended to apply to four different groups with divergent interests—the debarring official, the presiding official, health care providers, and health insurance carriers participating in FEHBP—in many passages the format created uncertainty as to the group or groups to which the regulatory material pertained. Therefore, we converted the regulation from "question and answer" to a third-person narrative format.

(2) In the proposed rule, the pronouns "we" or "us" were frequently used to denote the U.S. Office of Personnel Management, within the context of the "question and answer" regulatory format. We have since concluded that such references were not appropriate to denote a Federal agency, and may have created uncertainty among some readers about their meaning. As rewritten, the final rule refers to the agency solely as "OPM," except in a very few instances where the context and antecedent unambiguously support use of the pronoun "it."

(3) As part of the "question and answer" format, the proposed rule used the pronoun "you" to denote a health care provider(s). In narrative format of the final rule, we replaced those references with "health care provider" or "provider."

(4) We have uniformly rendered references to the United States Code as (title number) U.S.C. (section number) and references to the Code of Federal Regulations as (title number) CFR (part number and/or letter designating subpart) (section number).

(5) In the definitions section (890.1003), we deleted subsection designations ((a), (b), *etc.*). The defined terms continue to be listed in alphabetic order.

(6) We replaced every passage that consisted of a direct restatement of a statutory provision with a citation to the applicable statutory provision. In most cases, this eliminated an appreciable amount of text and substantially shortened the regulatory provision. Because such sections had been intended simply to restate a statutory passage, there was no change of regulatory effect. Further, this type of rewriting improved the precision of the regulatory content by making it clear that the regulation intends to apply the cited statutory language exactly as written.

(7) Several sections or passages in the proposed rule contained citations to other regulatory sections as an authority for taking regulatory action. In every case where the cited regulatory passage had a direct underlying statutory authority, we have replaced the regulatory citation with a citation to the applicable statutory provision as the authority for regulatory action.

(8) In addition to rewriting the proposed rule from "question and answer" to narrative format, we attempted to simplify and shorten both the language and structure of the regulation wherever possible. We made wording changes throughout the regulation to introduce nontechnical terminology, and we sought to insure that each paragraph addresses only a single concept. In this process, we noted that the proposed § 890.1009(b) contained two distinctly separate concepts (contesting the length of a proposed debarment and requesting a personal appearance before the debarring official). Therefore, we created a new § 890.1009(c) to address the personal appearance, leaving § 890.1009(b) to address only contests of proposed debarments. Similarly, we noted that §§ 890.1013(a) and 1016(a) and (b) contained both a list of decisional factors and a statement as to how the absence of a decisional factor would be treated. Therefore, we created new §§ 890.1013(b) and 1016(c) to address the impact of an absence of decisional factors, leaving §§ 890.1013(a) and 1016(a) and (b) to contain solely a list of factors. To accommodate pre-existing sections, we renumbered the former § 890.1013(b) as 1013(c).

Purpose and Effect of Administrative Sanctions

Before analyzing the public comments that focused on specific sections of the proposed rule, we want to address several generalized concerns expressed by the professional organizations regarding the overall intent and possible effect of the FEHBP administrative sanctions program. Both of the organizations indicated that their

membership would consider administrative sanctions as "punitive" measures. They further commented that the statutory sanctions authority would "perpetuate a gotcha [sic] mentality" on OPM's part toward health care providers, leading to severe penalties for essentially innocent matters such as inadvertent billing errors or similar mistakes resulting from lack of knowledge of FEHBP program requirements.

We understand that health care providers may inevitably view administrative sanctions with some level of concern. However, there is simply no factual basis for the belief that OPM will operate any aspect of the sanctions program in a manner that would be confrontational or hostile toward providers. OPM has conducted an administrative sanctions program under the authority of the Governmentwide Nonprocurement Debarment and Suspension Common Rule ("common rule") since May 1993. During these 9 years, OPM has debarred over 21,000 health care providers, and has maintained a professional and impartial approach to sanctions operations.

While the statutory sanctions authority being implemented by these regulations is broader than the common rule, the actual approach to sanctions decisionmaking is more objective and offers greater procedural protections to the affected health care providers. The FEHBP administrative sanctions law contains 18 bases for debarment, each involving either a previously adjudicated violation, an association between a provider and a previously-sanctioned person or entity, or specific actionable conduct by a provider. Sanctions based on conduct that has not been previously adjudicated carry a statutory requirement that the provider knew or should have known the wrongfulness of his or her actions. In this context, we believe it is clear that OPM cannot impose sanctions for *bona fide* errors or mistakes.

The sanctions that may be imposed under these regulations do not constitute punishment as that term is recognized by the law. A line of Supreme Court cases has definitively established that administrative sanctions such as debarment and civil monetary penalties are not "punitive" for Eighth Amendment or double jeopardy purposes unless the legislature intended them to be criminal measures. The leading current case in this line, *Hudson* v. *United States,* 522 U.S. 93 (1997), notes that even sanctions that might, "in common parlance, be described as punishment," are appropriately characterized as administrative in nature if Congress enacted them to be civil, rather than criminal, remedies. There is no question that the FEHBP administrative sanctions law was intended to be a civil statute, and in fact the administrative sanctions it authorizes are no more severe—and in some contexts are less stringent—than the corresponding health care provider sanctions under Medicare law.

Further, OPM's responsibility is to implement the statute consistent with the legislative intent and purpose. In this context, OPM's principal operating challenge—as is the case for other Federal agencies using sanctions authorities—will be to focus its efforts so as to afford an optimal level of protection to FEHBP in the most efficient manner possible. Hostile, antagonistic, or confrontational activities aimed at providers would clearly be improper, incompatible with the statute and these regulations, and detrimental to the intended protective purposes of the sanctions themselves. We expect that our implementation of these regulations will demonstrate that administrative sanctions in fact support high standards of professional conduct and ethical business practices by holding those who commit violations accountable for their actions.

Suggestions Regarding Unrelated Legislation

One of the professional organizations suggested that we rewrite the proposed regulations to incorporate the principles of the Medicare Education and Regulatory Fairness Act of 2001 (MERPA), introduced in the 107th Congress as H.R. 868 and S. 452, and reissue the resultant product as a proposed regulation for further comment. As characterized by the professional organization, MERPA would require the Department of Health and Human Services (DHHS) to emphasize educating health care providers about program requirements and to simplify "complex legal and regulatory requirements" rather than imposing "punitive enforcement actions" against providers. MERPA's preamble indicates that many physicians are leaving the Medicare program, due to the risks of "aggressive government investigation," thus compromising the availability of health care for Medicare patients.

We believe the professional organization's suggestion is inappropriate in the context of these regulations. Congress enacted the administrative sanctions provisions of Pub. L. 105–266 to meet the needs of the FEHBP for an effective and efficient means of addressing integrity issues associated with certain types of provider-related violations. We note that MERPA's stated objectives do not appear to be germane to FEHBP operations. For example, Medicare's regulatory and billing practices do not apply to FEHBP, and FEHBP has not experienced declining provider participation. In this context, we do not believe that MERPA's principal "instructional" feature—a system of binding advisory opinions on the allowability of specific claims—would be necessary or relevant to providers' relationships with the FEHBP claims system.

The remainder of the comments we received dealt with specific regulatory provisions or issues. We address each of them in the following sections of this preamble.

Informing Providers of Sanctions Action

The health care provider professional organizations suggested that the proposed § 890.1006(c)(2) and (3), authorizing OPM to issue notices of proposed debarment via facsimile transmission (fax) or e-mail, were not in compliance with the terms of 5 U.S.C. 8902a. The same commenters also remarked that the provisions of the proposed § 890.1006(e), authorizing OPM to presume that providers have received a notice 5 days after it was sent, are "irresponsible" and deprive providers of their due process entitlement to adequate notice. The commenters recommended that § 890.1006(e) be changed to require OPM to obtain actual proof that a provider has received notice before taking debarment action.

The intent of the proposed § 890.1006(c)(2) and (3) was to make communication with persons affected by sanctions actions faster and more reliable, especially as heightened security measures have slowed the delivery of postal mail to many Federal agencies. Similar electronic notification provisions appear in the proposed revision to the common rule, which was issued as a notice of proposed rulemaking in the January 23, 2002, **Federal Register** (67 FR 3266). The common rule revision was developed by the Interagency Suspension and Debarment Committee at the request of the Office of Management and Budget. However, as reflected by the commenter's concerns, questions remain as to the acceptability of electronic media for communicating official notices. After consultation with the Interagency Suspension and Debarment Committee, we concluded

that this issue would be more appropriately determined in the Governmentwide forum of the proposed common rule. Therefore, we modified the proposed § 890.1006(c) to delete any mention of electronic transmission of notice, and we have specifically reserved a new section § 890.1006(g) to address the "e-notices" if they are ultimately adopted in the final version of the revised common rule. In the interim, we intend to continue our practice of using electronic means to communicate material other than official debarment notices when providers furnish us a fax number or e-mail address.

In regard to the comments on the proposed § 890.1006(e), presumption of receipt of official notice is a well-established aspect of Federal regulatory practice. For example, the common rule has contained such a provision since it was first issued in 1988. In addition, the Department of Health and Human Services (DHHS) relies upon 5-day presumption of receipt provisions for its official notices of provider exclusions in the Medicare program (see 42 CFR 1001.2001). Further, the burden of operating an "actual notice" system, in terms of cost, staff time, and prolonged processing timeframes for debarments, is highly problematic. Given these factors, we believe that a notice system based on regular first class mail with a regulatory presumption of receipt represents a reasonable model for transmitting debarment notices to providers. We would also point out that § 890.1006(e) should be read in conjunction with § 890.1006(f), which requires OPM to make appropriate followup efforts to secure delivery of notice if it learns that a notice cannot be delivered as originally addressed. Taken together, these provisions offer a high level of assurance that providers will receive notices in a timely manner, while permitting OPM the flexibility to implement debarments promptly.

Effective Date of Debarment Orders

The health care provider professional associations expressed concern that the proposed § 890.1009 specified that debarments taken under mandatory debarment authorities would go into effect when issued by OPM, and remain in effect during the pendency of judicial appeals. They characterized this provision as "a severe penalty" for health care providers whose debarments may be reversed on appeal, and suggested that OPM defer the effective date of debarments until after all administrative and judicial appeals have been completed.

The commenters' concerns touch upon two separate but related issues that we believe are essential to effective implementation of the statutory debarment authorities. The first of these involves OPM's ability to effectuate debarments in a timely manner. As noted in the "Background" section of the Supplementary Information accompanying the proposed rule (66 FR 64160), Pub. L. 105–266 amended an earlier (1988) FEHBP sanctions statute that had proved to be "costly and unworkable," primarily because of its requirement that OPM debarment orders not go into effect until all administrative and judicial appeal avenues to challenge those debarments had been exhausted. This deprived OPM's sanctions decisions of meaningful finality and invited delay and expense through protracted litigation. Pub. L. 105–266 addressed the problem by providing OPM with regulatory authority to establish effective dates of debarments. In implementing this authority (§ 890.1009 for mandatory debarments and § 890.1026 for permissive debarments), OPM decided to make debarments effective immediately upon completion of the administrative appeals process, or, if a provider does not file an administrative appeal, immediately upon expiration of the 30-day notice period for a proposed debarment. OPM will keep debarments in effect while providers exercise their statutory right of appeal to U.S. district court. OPM would, of course, stay the implementation of a debarment during a judicial appeal if ordered to do so by the court.

The other issue raised by this comment is whether a basis for debarment that involves a conviction is affected by a provider's appeal of the conviction. The FEHBP debarment statute addresses this in 5 U.S.C. 8902a(a)(1)(C), which specifies that a "conviction" exists "without regard to the pendency or outcome of any appeal (other than a judgment of acquittal based on innocence) or request for relief." The purpose of this provision is to keep a mandatory debarment continuously in effect during subsequent litigation unless a final appellate ruling reverses or vacates the conviction and there is no longer a possibility of a retrial.

As part of our overall rewriting of the regulation, we replaced the definition of "conviction" in § 890.1003, which was a direct restatement of the statutory language of 5 U.S.C. 8902a(a)(1)(C), with a citation to the statutory provision. This means that a conviction, as a basis for a mandatory debarment, comes into effect immediately upon adjudication and remains in effect during all subsequent litigation. To reflect the impact of 5 U.S.C. 8902a(a)(1)(C) on reinstatement of a provider, we have also added a citation to this provision in § 890.1052(a).

Inasmuch as the regulatory provisions criticized by the commenters directly implement the provisions of Public Law 105—266 that authorize OPM to effectuate debarments, notwithstanding the pendency of judicial appeals, we are not adopting the commenters' recommendations.

Aggravating and Mitigating Factors

One of the professional associations observed that a serious inequity appears to exist between the respective lists of aggravating and mitigating factors in the proposed §§ 890.1008 and 1016. The commenter stated that the aggravating factors are "open-ended," while the mitigating factors are strictly limited to the items listed. Further, the commenter noted that neither the aggravating nor mitigating factors recognize restitution a provider may have made for incorrect, improper, or wrongful receipt of Federal funds.

The proposed § 890.1008 identifies the aggravating and mitigating factors that the debarring official must consider in determining the proposed length of a mandatory debarment. The proposed § 890.1016 contains an essentially identical list for permissive debarments. We believe the aggravating and mitigating factors identified in the regulation are equitable and appropriately recognize matters relevant to the violation for which a sanction is being proposed. In our estimation, a reasonable reading of §§ 890.1008 and 1016 simply does not support the commenter's interpretation that the aggravating factors are broad and ambiguous while the mitigating factors are narrowly drawn. The lists of factors in each regulatory provision represent the factors that the debarring official may consider as aggravating and mitigating, respectively, in determining the proposed length of a proposed debarment. Neither list contains a "catch-all" provision to authorize consideration of other factors on an *ad hoc* basis.

It should be noted, moreover, that the final length of a debarment is not based solely on these factors. After being notified of a proposed debarment and its proposed length, the provider has the opportunity to challenge them in an administrative proceeding under the provisions of §§ 890.1022—1029. Decisions regarding the length of debarments are discretionary with the debarring official in every case, and a

provider's ability to contest the proposed length of his or her debarment is not limited in any way by the aggravating and mitigating factors listed in §§ 890.1008 and 1016.

In regard to the treatment of restitution by these regulations, the professional organization posed a hypothetical example involving restitution of amounts received by a provider because of a "billing error." This example reflects an inaccurate premise. In fact, receipt of an incorrect payment of FEHBP funds due to a *bona fide* billing error is not a sanctionable violation, and these regulations would not apply in such a situation. However, if a provider receives payments of FEHBP funds because of false, fraudulent, deceptive, or otherwise wrongful claims that form the basis for a debarment, §§ 890.1008 and 1016 authorize the debarring official to consider the resultant financial loss to the Government as an aggravating factor. Because the actual amount of the improper payments reflects the seriousness of the provider's violation, the regulations do not provide for crediting any post-violation restitution in calculating the amount of the financial loss. However, it is appropriate to recognize restitution made as part of a provider's post-violation cooperation with law enforcement authorities under the mitigating factors in §§ 890.1008(b)(3) and 1016(b)(1). To the extent that the proposed regulation may not have clearly conveyed this meaning, we have reworded both §§ 890.1008 and 1016 to reflect unambiguously that restitution is an aspect of cooperation with law enforcement authorities that may be considered mitigating for purposes of computing a proposed period of debarment.

Length of Permissive Debarments

One of the professional organizations commented that the wording of the proposed 890.1015 was inconsistent with the underlying statutory provisions, to the extent that it could restrict the discretion of the debarring official in setting the length of debarments under permissive debarment authorities. In every case based on a permissive debarment authority, Public Law 105–266 allows the debarring official full discretion to debar or not debar, and, if he elects to debar, to set the period of the debarment without limitations as to length.

While we did not intend the proposed § 890.1015 to establish a mandatory minimum debarment period for permissive debarments, nor to limit the debarring official's discretion in any other way, we agree with the commenter's observation that the proposed wording invited such an interpretation. Accordingly, we have revised § 890.1015 to clarify that the debarring official possesses full discretionary decisionmaking authority to establish the length of permissive debarments in every case.

Matters To Be Treated as Prior Adjudications

The proposed § 890.1025 sets forth the criteria which the debarring official will use to determine if OPM must conduct a fact-finding hearing to resolve a provider's administrative appeal of a debarment. Public Law 105–266 requires that every material fact on which a debarment is based be adjudicated in an appropriate administrative proceeding. However, OPM will not readjudicate facts determined in prior due process proceedings, such as criminal or civil actions or professional licensure actions, or facts to which the provider stipulated. Both professional associations objected to the wording of the proposed § 890.1025(a)(4), which would treat settlement agreements entered into by a provider to resolve civil or administrative actions as tantamount to adjudications, even if they contain no factual stipulations or admissions. Although the commenters did not so indicate, identical language also appeared in the proposed § 890.1037(a), regarding prior adjudications in the context of administrative appeals of suspensions. We agree with the commenters that these passages are inconsistent with the current state of the law. Therefore, we have modified the final text of both § § 890.1025(a)(4) and 890.1037(a) to indicate that settlement agreements may be deemed to be waivers of adjudication only if they contain stipulations of facts establishing that a sanctionable violation occurred.

Informing FEHBP Enrollees about Provider Debarments

The proposed § 890.1045 required FEHBP carriers to notify their enrollees who have previously obtained items or services from a debarred provider of the provider's debarment, and specified certain items of information that must be included in the notification. An FEHBP carrier and the health insurance industry association both suggested that this section be modified to require debarred providers to notify the FEHBP enrollees with whom they deal of their debarment. This would relieve the carriers of the effort and cost associated with the notification responsibility.

OPM does not have statutory authority to directly regulate provider conduct in this manner. In fact, the proposed § 890.1045 was drawn directly from 5 U.S.C. 8902a(j), which requires OPM to issue regulations placing responsibility on the FEHBP carriers for informing enrollees of provider debarments. Therefore, we are not adopting this recommendation.

As an alternate suggestion, the health insurance industry association recommended that, if carriers must inform enrollees of provider debarments, the proposed § 890.1045 be modified to permit carriers to target their notifications in some manner. The literal wording of § 890.1045 would have required carriers to notify all enrollees who had ever received items or services from a debarred provider, but the commenter suggested that such a practice would involve excessive time and expense. Instead, the industry association suggested targeting notices to enrollees who have (1) incurred claims with providers that OPM deemed to present a risk to FEHBP members or (2) recently received services from debarred providers.

We believe this comment is well-founded. Our experience under the common rule has revealed that early enrollee notification is absolutely vital to carrying out the purpose of debarments. This is even more clearly the case under these regulations; because 5 U.S.C. 8902a(j) requires enrollee claims for items or services furnished by a debarred provider to be paid by FEHBP carriers if the enrollee was unaware of the provider's debarment. Since FEHBP enrollees generally need no prior approval or clearance to obtain covered services from a health care provider, they create an obligation on the part of their FEHBP carrier to pay claims simply by receiving such services. Well-targeted notice to potential patients regarding the debarment of a provider appears to be the most efficient means of reducing the incidence of enrollee contact with debarred providers.

Of the targeting criteria suggested by the industry association, we do not believe that we would consistently have sufficient information to reliably designate certain providers as "high risk." Further, such a practice could be perceived by providers as carrying a potentially stigmatizing effect beyond the reasonable needs of the sanctions process. In contrast, notifying enrollees who have recently obtained items and services from debarred providers appears to offer a reasonable approach to diminishing FEHBP payments to those providers, without the risk of

prejudicially labeling them. Accordingly, we have accepted this aspect of the industry association's suggestion—including the one year recency criterion—and have reworded § 890.1045 to require FEHBP carriers to notify enrollees who have obtained items or services from a debarred provider within one year prior to the provider's debarment.

The insurance industry association further suggested that we create a website to provide FEHBP carriers and enrollees with up-to-date information on provider debarments, and that we reflect this action in the proposed § 890.1044. For nearly 2 years, OPM's Office of the Inspector General has used a secure Internet webpage to make debarment data available to FEHBP carriers. We update the page regularly, according to a schedule known to the carriers. Because of the extensive amount of Privacy Act-protected information about providers that we furnish to carriers, this webpage cannot be publicly accessible. However, the function of making debarment information from all agencies available to the public in an automated, searchable format is met by the General Services Administration's Governmentwide debarment list ("GSA List"), which is on the Internet at www.epls.com. There are links directly to the GSA List from OPM's website (www.opm.gov). In its present form, § 890.1044 accurately reflects OPM's responsibilities to make debarment-related information available both to carriers and to the GSA List. Therefore, while we will not be adopting this suggestion, information about OPM debarments is readily available online for both FEHBP carriers and the public.

Authority to Issue Suspensions

One of the professional associations commented that Public Law 105–266 did not appear to provide OPM the authority to suspend health care providers. Therefore, the commenter recommended that all of the proposed provisions regarding suspension (proposed §§ 890.1030–1041) be removed from the final rule.

While Public Law 105–266 does not contain the term "suspension," it does provide authority for OPM to issue the type of sanctions that are characterized as suspensions in the proposed 890.1030–1041. We designated these actions "suspensions" because that terminology is widely used among Federal agencies—including OPM under the common rule authority—to connote sanctions with certain effects. As used in these regulations, "suspension" connotes a short-term action with the force of a debarment that is (1) effective immediately upon issuance of notice by OPM, (2) predicated on one or more of the bases for debarment identified in Public Law 105–266, and (3) necessitated by the existence of a sufficiently serious risk to warrant removing a provider from participating in FEHBP in the most expeditious manner possible. OPM's ability to regulate in this area is based on 5 U.S.C. 8902a(g)(1)(A), authorizing the agency to set reasonable conditions regarding notice to providers and effective dates of debarments, and 5 U.S.C. 8902a(g)(1)(B), authorizing OPM to establish effective dates in advance of process if warranted by the "health or safety of individuals receiving health care services."

In drafting the sections of these regulations implementing the provider suspension authority, we attempted to incorporate existing Governmentwide practices as extensively as possible. The two most frequently used suspension models are represented by the Federal Acquisition Regulation (FAR) and the common rule. However, the FAR approach, providing for automatic and immediate suspension upon issuance of every notice of proposed debarment, is clearly beyond the scope of the authority granted by 5 U.S.C. 8902a. In contrast, the common rule approach, selectively limiting suspension to situations where there is a tangible need to protect a program or program participants, closely tracks the provisions of the FEHBP sanctions statute that authorize suspension. Therefore, §§ 890.1030 through 1041 set forth procedures which generally mirror the corresponding common rule practices for suspensions. The administrative appeal provisions of §§ 890.1035–1041 offer greater procedural protections to affected providers than those contained in the common rule. Their purpose is to assure that all suspended providers have the right to contest the suspension promptly, as required by 5 U.S.C. 8902a(h)(1), including a personal appearance before the suspending official and a separate hearing on any facts material to the suspension that have not previously been adjudicated.

Based on the commenter's observations, we have also revised the wording of § 890.1031(c) to conform more closely to the terms of 5 U.S.C. 8902a(g)(1)(B), limiting suspensions to cases of risk to the health or safety of FEHBP enrollees. However, we will construe such risk to include not only physical harm resulting from a provider's maltreatment or abuse, but also the more generalized risks inherent in receiving health care from a provider who has committed any sort of sanctionable violations that reflect on his or her trustworthiness.

Miscellaneous Provisions Addressed by Outside Commenters

The health care provider professional associations expressed concerns that several provisions of the proposed regulations broadened the reach of OPM's administrative sanctions authority in a manner that was unfair to health care providers. The commenters suggested that these provisions be deleted from the proposed regulations.

In fact, each of the proposed regulatory sections identified by the commenters is based directly on a provision of the FEHBP sanctions statute. Collectively, their placement in these regulations is necessary to assure full implementation of the statute. Therefore, we are retaining all of these sections in the final regulation. However, our overall rewriting of the regulatory text has substantially altered their wording and format. As they appeared in the proposed rule, each of the regulatory sections cited by the commenters comprised a restatement of a statutory provision. As rewritten in the final rule, each section simply provides a citation to the corresponding section of the statute. The regulatory provisions in question are as follows:

(1) Proposed § 890.1003(e)(4), defining "conviction" to include an individual's participation in first offender, pre-trial diversion, or other programs under which a formal adjudication of an offense is withheld. The commenters considered this definition to be "overly broad," so as to include any infraction, including an inadvertent billing error. As we have previously noted in this preamble, we intended the regulatory definition of "conviction" to correspond precisely to the statutory definition of that term set forth in 5 U.S.C. 8902a(a)(1)(C). As now rewritten, the definition of "conviction" appearing in § 890.1003 of the final rule simply cites to 5 U.S.C. 8902a(a)(1)(C). The exact wording identified as objectionable by the commenter is contained in 8902a(a)(1)(C)(iv). Further, as we have stated elsewhere in this preamble, we do not believe that a reasonable reading of the statutory definition of "conviction," or indeed any other provision of the FEHBP sanctions statute, would support the conclusion that a truly inadvertent provider error could be the basis of a sanctions action.

(2) Proposed § 890.1011(b)(1)(iii), authorizing permissive debarment of an entity based on an ownership or control interest by a provider who has been

assessed a civil monetary penalty under the FEHBP sanctions statute. One commenter expressed the belief that this provision "creates serious opportunities for abuse." However, this proposed regulatory section directly restated the provisions of 5 U.S.C. 8902a(c)(2). The rewritten § 890.1011(b) simply cites the statutory provisions authorizing debarment based on ownership or control interests—5 U.S.C. 8902a(c)(2) and (3)—thus removing a substantial amount of unnecessary text without altering the intent or effect of the provision.

(3) Proposed § 890.1011(b)(2), authorizing permissive debarment of an individual provider who holds an ownership or control interest in an entity that has been debarred, convicted of a sanctionable offense, or assessed a civil monetary penalty under the FEHBP provider sanctions statute, if the individual knew or should have known of the entity's violations. One commenter characterized this provision as "even more offensive" than the proposed § 890.1011(b)(1). In fact, this regulatory provision directly restates the provisions of 5 U.S.C. 8902a(c)(3). As noted in the preceding paragraph, we have revised the proposed § 890.1011(b) to consist simply of a reference to the statutory provisions authorizing debarment based on ownership and control interests, without restating the rather lengthy statutory text.

(4) Proposed § 890.1011(c), authorizing permissive debarment for certain enumerated claims-related violations. One commenter suggested that this provision would permit debarment based on "a single billing error." In the proposed rule, § 890.1011(c) restated the statutory wording of the seven bases for permissive debarment established by 5 U.S.C. 8902a(c)(4) and (5) and (d)(1) and (2). As reworded in the final rule, § 890.1011(c) consists simply of a citation to those sections of the statute. Once again, we would note that a careful reading of these regulations and FEHBP sanctions law does not support the conclusion that a good faith error could be the basis for a sanctions action.

(5) Proposed § 890.1011(d), authorizing permissive debarment for a provider's failure to furnish claims-related information requested by OPM or an FEHBP carrier. While the commenter did not indicate the precise nature of its objection to this provision, in fact the cited passage in the proposed rule directly restated 5 U.S.C. 8902a(d)(3). As it appears in the final rule, § 890.1011(d) consists only of a citation to that statutory provision.

Miscellaneous Revisions Identified by OPM Comments

As the result of comments from OPM sources, we have slightly modified the following sections of the regulatory package.

(1) The proposed §§ 890.1005 and 1012 address implementation of the 6-year statutory limitations period for mandatory and permissive debarments, respectively. In each section, we have replaced every instance of the phrase "issue * * * a notice of proposed debarment" with "send * * * a notice of proposed debarment." The term "send" is used uniformly in proposed § 890.1006 to denote transmission of official notice, and its corresponding use in §§ 890.1005 and 1012 clarifies that the limitations period is tolled when OPM places a notice of proposed debarment into the transmission channels authorized by § 890.1006.

(2) The proposed § 890.1028(d) describes the manner in which OPM will create an official record of fact-finding hearings associated with permissive debarments. In preparing the regulatory text for the proposed rule, we inadvertently omitted from this section a phrase requiring OPM to furnish the provider with a free copy of an audio recording of the hearing. We have restored that intended wording in the final rule. Further, we have changed the final sentence of § 890.1028(d) to indicate that OPM will arrange for transcription of the recording if the provider requests it, but that the provider must pay the cost of the transcription.

(3) The proposed § 890.1052(a) addressed the procedures for reinstating providers whose debarments were based on convictions that have been reversed on appeal. An OPM reviewer noted that the proposed wording of this section did not account for the full statutory definition of "conviction" in 5 U.S.C. 8902a(a)(1)(C), which indicates that a provider is considered to have been convicted "without regard to the pendency or outcome of any appeal." Upon a literal reading, this passage would seem to support the interpretation that a provider remains convicted—and thus debarred—even if an appeals court reverses or vacates the conviction on which the debarment is based. However, such an interpretation would clearly produce anomalous results.

The actual intent of the statutory wording is to permit a mandatory debarment to remain in effect until the appeals process, including possible retrials, has concluded. This avoids the possibility of sequential retractions and reinstatements of debarments which could result from differing appeals court rulings as a case progresses through the appeals process. Therefore, as noted elsewhere in this preamble, we have expanded the wording of § 890.1052(a) to reflect that OPM will reinstate a provider on the basis of a reversed conviction only if a final appeals ruling has been issued and there is no further possibility of a retrial or if an appeals court enters a judgment of acquittal based on the provider's innocence.

(4) We added a definition of "days" in § 890.1003 to support the distinction between the "calendar day" timeframes applied to most deadlines established by the regulation and the "business day" timeframe associated with presumed receipt of notices of proposed sanctions under § 890.1006(e)(2).

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities, because it affects only health care providers' transactions with the Federal Employees Health Benefits Program.

Executive Order 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with Executive Order 12866.

List of Subjects in 5 CFR Part 890

Administrative practice and procedure, Government employees, Health facilities, Health insurance, Health professions, Hostages, Iraq, Kuwait, Lebanon.

Office of Personnel Management.

Kay Coles James,

Director.

Accordingly, OPM is amending part 890 of title 5, Code of Federal Regulations as follows:

PART 890—FEDERAL EMPLOYEES HEALTH BENEFITS PROGRAM

1. The authority citation for part 890 is revised to read as follows:

Authority: 5 U.S.C. 8913; § 890.803 also issued under 50 U.S.C. 403(p), 22 U.S.C. 4069c and 4069c–1; subpart L also issued under sec. 599C of Pub. L. 101–513, 104 Stat. 2064, as amended; § 890.102 also issued under sections 11202(f), 11232(e), 11246(b) and (c) of Pub. L. 105–33, 111 Stat. 251; and section 721 of Pub. L. 105–261, 112 Stat. 2061, unless otherwise noted.

2. Subpart J of part 890 is revised to read as follows:

Subpart J—Administrative Sanctions Imposed Against Health Care Providers

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[Reserved]

Subpart J—Administrative Sanctions Imposed Against Health Care Providers

Authority: 5 U.S.C. 8902a.

General Provisions and Definitions

§ 890.1001 Scope and purpose.

(a) *Scope.* This subpart implements 5 U.S.C. 8902a, as amended by Public Law 105–266 (October 19, 1998). It establishes a system of administrative sanctions that OPM may, or in some cases, must apply to health care providers who have committed certain violations. The sanctions include debarment, suspension, civil monetary penalties, and financial assessments.

(b) *Purpose.* OPM uses the authorities in this subpart to protect the health and safety of the persons who obtain their health insurance coverage through the FEHBP and to assure the financial and programmatic integrity of FEHBP transactions.

§ 890.1002 Use of terminology.

Unless otherwise indicated, within this subpart the words "health care provider," "provider," and "he" mean a health care provider(s) of either gender or as a business entity, in either the singular or plural. The acronym "OPM" and the pronoun "it" connote the U.S. Office of Personnel Management.

§ 890.1003 Definitions.

In this subpart:

Carrier means an entity responsible for operating a health benefits plan described by 5 U.S.C. 8903 or 8903a.

Community means a geographically-defined area in which a provider furnishes health care services or supplies and for which he may request a limited waiver of debarment in accordance with this subpart. *Defined service area* has the same meaning as community.

Contest means a health care provider's request for the debarring or suspending official to reconsider a proposed sanction or the length or amount of a proposed sanction.

Control interest means that a health care provider:

(1) Has a direct and/or indirect ownership interest of 5 percent or more in an entity;

(2) Owns a whole or part interest in a mortgage, deed of trust, note, or other obligation secured by the entity or the entity's property or assets, equating to a direct interest of 5 percent or more of the total property or assets of the entity;

(3) Serves as an officer or director of the entity, if the entity is organized as a corporation;

(4) Is a partner in the entity, if the entity is organized as a partnership;

(5) Serves as a managing employee of the entity, including but not limited to employment as a general manager, business manager, administrator, or other position exercising, either directly or through other employees, operational or managerial control over the activities of the entity or any portion of the entity;

(6) Exercises substantive control over an entity or a critical influence over the activities of the entity or some portion of thereof, whether or not employed by the entity; or

(7) Acts as an agent of the entity.

Conviction or *convicted* has the meaning set forth in 5 U.S.C. 8902a(a)(1)(C).

Covered individual means an employee, annuitant, family member, or former spouse covered by a health benefits plan described by 5 U.S.C. 8903 or 8903a or an individual eligible to be covered by such a plan under 5 U.S.C. 8905(d).

Days means calendar days, unless specifically indicated otherwise.

Debarment means a decision by OPM's debarring official to prohibit payment of FEHBP funds to a health care provider, based on 5 U.S.C. 8902a (b), (c), or (d) and this subpart.

Debarring official means an OPM employee authorized to issue debarments and financial sanctions under this subpart.

FEHBP means the Federal Employees Health Benefits Program.

Health care services or supplies means health care or services and supplies such as diagnosis and treatment; drugs and biologicals; supplies, appliances and equipment; and hospitals, clinics, or other institutional entities that furnish supplies and services.

Incarceration means imprisonment, or any type of confinement with or without supervised release, including but not limited to home detention, community confinement, house arrest, or similar arrangements.

Limited waiver means an approval by the debarring official of a health care provider's request to receive payments of FEHBP funds for items or services rendered in a defined geographical area, notwithstanding debarment, because the provider is the sole community provider or sole source of essential specialized services in a community.

Mandatory debarment means a debarment based on 5 U.S.C. 8902a(b).

Office or *OPM* means the United States Office of Personnel Management or the component thereof responsible for conducting the administrative sanctions program described by this subpart.

Permissive debarment means a debarment based on 5 U.S.C. 8902a(c) or (d).

Provider or *provider of health care services or supplies* means a physician, hospital, clinic, or other individual or entity that, directly or indirectly, furnishes health care services or supplies.

Reinstatement means a decision by OPM to terminate a health care provider's debarment and to restore his eligibility to receive payment of FEHBP funds.

Sanction or *administrative sanction* means any administrative action authorized by 5 U.S.C. 8902a or this subpart, including debarment, suspension, civil monetary penalties, and financial assessments.

Should know or *should have known* has the meaning set forth in 5 U.S.C. 8902a(a)(1)(D).

Sole community provider means a provider who is the only source of primary medical care within a defined service area.

Sole source of essential specialized services in a community means a health care provider who is the only source of specialized health care items or services in a defined service area and that items or services furnished by a non-specialist cannot be substituted without jeopardizing the health or safety of covered individuals.

Suspending official means an OPM employee authorized to issue suspensions under 5 U.S.C. 8902a and this subpart.

Mandatory Debarments

§ 890.1004 Bases for mandatory debarments.

(a) *Debarment required.* OPM shall debar a provider who is described by any category of offense set forth in 5 U.S.C. 8902a(b).

(b) *Direct involvement with an OPM program unnecessary.* The conduct underlying the basis for a provider's mandatory debarment need not have involved an FEHBP covered individual or transaction, or any other OPM program.

§ 890.1005 Time limits for OPM to initiate mandatory debarments.

OPM shall send a provider a written notice of a proposed mandatory debarment within 6 years of the event that forms the basis for the debarment. If the basis for the proposed debarment is a conviction, the notice shall be sent within 6 years of the date of the conviction. If the basis is another agency's suspension, debarment, or exclusion, the OPM notice shall be sent within 6 years of the effective date of the other agency's action.

§ 890.1006 Notice of proposed mandatory debarment.

(a) *Written notice.* OPM shall inform a provider of his proposed debarment by written notice sent not less than 30 days prior to the proposed effective date.

(b) *Contents of the notice.* The notice shall contain information indicating the:

(1) Effective date of the debarment;

(2) Minimum length of the debarment;

(3) Basis for the debarment;

(4) Provisions of law and regulation authorizing the debarment;

(5) Effect of the debarment;

(6) Provider's right to contest the debarment to the debarring official;

(7) Provider's right to request OPM to reduce the length of debarment, if it exceeds the minimum period required by law or this subpart; and

(8) Procedures the provider shall be required to follow to apply for reinstatement at the end of his period of debarment, and to seek a waiver of the debarment on the basis that he is the sole health care provider or the sole source of essential specialized services in a community.

(c) *Methods of sending notice.* OPM shall send the notice of proposed debarment and the final decision notice (if a contest is filed) to the provider's last known address by first class mail, or, at OPM's option, by express delivery service.

(d) *Delivery to attorney, agent, or representatives.* (1) If OPM proposes to debar an individual health care provider, it may send the notice of proposed debarment directly to the provider or to any other person designated by the provider to act as a representative in debarment proceedings.

(2) In the case of a health care provider that is an entity, OPM shall deem notice sent to any owner, partner, director, officer, registered agent for service of process, attorney, or managing employee as constituting notice to the entity.

(e) *Presumed timeframes for receipt of notice.* OPM computes timeframes associated with the delivery notices described in paragraph (c) of this section so that:

(1) When OPM sends notice by a method that provides a confirmation of receipt, OPM deems that the provider received the notice at the time indicated in the confirmation; and

(2) When OPM sends notice by a method that does not provide a confirmation of receipt, OPM deems that the provider received the notice 5 business days after it was sent.

(f) *Procedures if notice cannot be delivered.* (1) If OPM learns that a notice was undeliverable as addressed or routed, OPM shall make reasonable efforts to obtain a current and accurate address, and to resend the notice to that address, or it shall use alternative methods of sending the notice, in accordance with paragraph (c) of this section.

(2) If a notice cannot be delivered after reasonable followup efforts as described in paragraph (f)(1) of this section, OPM shall presume that the provider received notice 5 days after the latest date on which a notice was sent.

(g) *Use of electronic means to transmit notice.* [Reserved]

§ 890.1007 Minimum length of mandatory debarments.

(a) *Debarment based on a conviction.* The statutory minimum period of debarment for a mandatory debarment based on a conviction is 3 years.

(b) *Debarment based on another agency's action.* A debarment based on another Federal agency's debarment, suspension, or exclusion remains in effect until the originating agency terminates its sanction.

§ 890.1008 Mandatory debarment for longer than the minimum length.

(a) *Aggravating factors.* OPM may debar a provider for longer than the 3-year minimum period for mandatory debarments if aggravating factors are associated with the basis for the debarment. The factors OPM considers to be aggravating are:

(1) Whether the FEHBP incurred a financial loss as the result of the acts underlying the conviction, or similar acts that were not adjudicated, and the level of such loss. In determining the amount of financial loss, OPM shall not consider any amounts of restitution that a provider may have paid;

(2) Whether the sentence imposed by the court included incarceration;

(3) Whether the underlying offense(s), or similar acts not adjudicated, occurred repeatedly over a period of time, and whether there is evidence that the offense(s) was planned in advance;

(4) Whether the provider has a prior record of criminal, civil, or administrative adjudication of related offenses or similar acts; or

(5) Whether the actions underlying the conviction, or similar acts that were not adjudicated, adversely affected the physical, mental, or financial well-being of one or more covered individuals or other persons.

(b) *Mitigating factors.* If the aggravating factors justify a debarment longer than the 3 year minimum period for mandatory debarments, OPM shall also consider whether mitigating factors may justify reducing the debarment period to not less than 3 years. The factors that OPM considers to be mitigating are:

(1) Whether the conviction(s) on which the debarment is based consist entirely or primarily of misdemeanor offenses;

(2) Whether court records, including associated sentencing reports, contain an official determination that the provider had a physical, mental, or emotional condition before or during the commission of the offenses underlying the conviction that reduced his level of culpability; or

(3) Whether the provider's cooperation with Federal and/or State investigative officials resulted in criminal convictions, civil recoveries, or administrative actions against other individuals, or served as the basis for identifying program weaknesses. Restitution made by the provider for funds wrongfully, improperly, or illegally received from Federal or State programs may also be considered as a mitigating circumstance.

(c) *Maximum period of debarment.* There is no limit on the maximum period of a mandatory debarment based on a conviction.

§ 890.1009 Contesting proposed mandatory debarments.

(a) *Contesting the debarment.* Within 30 days after receiving OPM's notice of proposed mandatory debarment, a provider may submit information, documents, and written arguments in opposition to the proposed debarment. OPM's notice shall contain specific information about where and how to submit this material. If a timely contest is not filed, the proposed debarment shall become effective as stated in the notice, without further action by OPM.

(b) *Requesting a reduction of the debarment period.* If OPM proposes a mandatory debarment for a period longer than the 3-year minimum required by 5 U.S.C. 8902a(g)(3), the provider may request a reduction of the debarment period to not less than 3 years, without contesting the debarment itself.

(c) *Personal appearance before the debarring official.* In addition to providing written material, the provider may appear before the debarring official personally or through a representative to present oral arguments in support of his contest. OPM's notice shall contain specific information about arranging an in-person presentation.

§ 890.1010 Debarring official's decision of contest.

(a) *Prior adjudication is dispositive.* Evidence indicating that a provider was formally adjudicated for a violation of any type set forth in 5 U.S.C. 8902a(b) fully satisfies the standard of proof for a mandatory debarment.

(b) *Debarring official's decision.* The debarring official shall issue a written decision, based on the entire administrative record, within 30 days after the record closes to receipt of information. The debarring official may extend this decision period for good cause.

(c) *No further administrative proceedings.* The debarring official's decisions regarding mandatory debarment and the period of debarment are final and are not subject to further administrative review.

Permissive Debarments

§ 890.1011 Bases for permissive debarments.

(a) *Licensure actions.* OPM may debar a health care provider to whom the provisions of 5 U.S.C. 8902a(c)(1) apply. OPM may take this action even if the provider retains current and valid professional licensure in another State(s).

(b) *Ownership or control interests.* OPM may debar a health care provider based on ownership or control of or by a debarred provider, as set forth in 5 U.S.C. 8902a(c)(2) and (3).

(c) *False, deceptive, or wrongful claims practices.* OPM may debar a provider who commits claims-related violations as set forth in 5 U.S.C. 8902a(c)(4) and (5) and 5 U.S.C. 8902a(d)(1) and (2).

(d) *Failure to furnish required information.* OPM may debar a provider who knowingly fails to provide information requested by an FEHBP carrier or OPM, as set forth in 5 U.S.C. 8902a(d)(3).

§ 890.1012 Time limits for OPM to initiate permissive debarments.

(a) *Licensure cases.* If the basis for the proposed debarment is a licensure action, OPM shall send the provider a notice of proposed debarment within 6 years of the effective date of the State licensing authority's revocation, suspension, restriction, or nonrenewal action, or the date on which the provider surrendered his license to the State authority.

(b) *Ownership or control.* If the basis for the proposed debarment is ownership or control of an entity by a sanctioned person, or ownership or control of a sanctioned entity by a person who knew or should have known of the basis for the entity's sanction, OPM shall send a notice of proposed debarment within 6 years of the effective date of the sanction on which the proposed debarment is based.

(c) *False, deceptive, or wrongful claims practices.* If the basis for the proposed debarment involves a claim filed with a FEHBP carrier, OPM shall send the provider a notice of proposed debarment within 6 years of the date he presented the claim for payment to the covered person's FEHBP carrier.

(d) *Failure to furnish requested information.* If the basis for the proposed debarment involves a provider's failure to furnish information requested by OPM or an FEHBP carrier,

OPM shall send the notice of proposed debarment within 6 years of the date on which the carrier or OPM requested the provider to furnish the information in question.

§ 890.1013 Deciding whether to propose a permissive debarment.

(a) *Review factors.* The factors OPM shall consider in deciding whether to propose a provider's debarment under a permissive debarment authority are:

(1) The nature of any claims involved in the basis for the proposed debarment and the circumstances under which they were presented to FEHBP carriers;

(2) The improper conduct involved in the basis for the proposed debarment, and the provider's degree of culpability and history of prior offenses;

(3) The extent to which the provider poses or may pose a risk to the health and safety of FEHBP-covered individuals or to the integrity of FEHBP transactions; and

(4) Other factors specifically relevant to the provider's debarment that shall be considered in the interests of fairness.

(b) *Absence of a factor.* The absence of a factor shall be considered neutral, and shall have no effect on OPM's decision.

(c) *Specialized review in certain cases.* In determining whether to propose debarment under 5 U.S.C 8902a(c)(4) for providing items or services substantially in excess of the needs of a covered individual or for providing items or services that fail to meet professionally-recognized quality standards, OPM shall obtain the input of trained reviewers, based on written medical protocols developed by physicians. If OPM cannot reach a decision on this basis, it shall consult with a physician in an appropriate specialty area.

§ 890.1014 Notice of proposed permissive debarment.

Notice of a proposed permissive debarment shall contain the information set forth in § 890.1006.

§ 890.1015 Minimum and maximum length of permissive debarments.

(a) *No mandatory minimum or upper limit on length of permissive debarment.* There is neither a mandatory minimum debarment period nor a limitation on the maximum length of a debarment under any permissive debarment authority.

(b) *Debarring official's process in setting period of permissive debarment.* The debarring official shall set the period of each debarment issued under a permissive debarment authority after considering the factors set forth in § 890.1016 and the factors set forth in the applicable section from among §§ 890.1017 through 890.1021.

§ 890.1016 Aggravating and mitigating factors used to determine the length of permissive debarments.

(a) *Aggravating factors.* The presence of aggravating circumstances may support an OPM determination to increase the length of a debarment beyond the nominal periods set forth in §§ 890.1017 through 890.1021. The factors that OPM considers as aggravating are:

(1) Whether the provider's actions underlying the basis for the debarment, or similar acts, had an adverse impact on the physical or mental health or well-being of one or more FEHBP-covered individuals or other persons.

(2) Whether the provider has a documented history of prior criminal wrongdoing; civil violations related to health care items or services; improper conduct; or administrative violations addressed by a Federal or State agency. OPM may consider matters involving violence, patient abuse, drug abuse, or controlled substances convictions or violations to be particularly serious.

(3) Whether the provider's actions underlying the basis for the debarment, or similar acts, resulted in financial loss to the FEHBP, FEHBP-covered individuals, or other persons. In determining whether, or to what extent, a financial loss occurred, OPM shall not consider any amounts of restitution that the provider may have paid.

(4) Whether the provider's false, wrongful, or improper claims to FEHBP carriers were numerous, submitted over a prolonged period of time, or part of an on-going pattern of wrongful acts.

(5) Whether the provider was specifically aware of or directly responsible for the acts constituting the basis for the debarment.

(6) Whether the provider attempted to obstruct, hinder, or impede official inquiries into the wrongful conduct underlying the debarment.

(b) *Mitigating factors.* The presence of mitigating circumstances may support an OPM determination to shorten the length of a debarment below the nominal periods set forth in §§ 890.1017 through 890.1021, respectively. The factors that OPM considers as mitigating are:

(1) Whether the provider's cooperation with Federal, State, or local authorities resulted in criminal convictions, civil recoveries, or administrative actions against other violators, or served as the basis for official determinations of program weaknesses or vulnerabilities. Restitution that the provider made for funds wrongfully, improperly, or illegally received from Federal or State programs may also be considered as a mitigating factor.

(2) Whether official records of judicial proceedings or the proceedings of State licensing authorities contain a formal determination that the provider had a physical, mental, or emotional condition that reduced his level of culpability before or during the period in which he committed the violations in question.

(c) *Absence of factors.* The absence of aggravating or mitigating factors shall have no effect to either increase or lower the nominal period of debarment.

§ 890.1017 Determining length of debarment based on revocation or suspension of a provider's professional licensure.

(a) *Indefinite term of debarment.* Subject to the exceptions set forth in paragraph (b) of this section, debarment under 5 U.S.C. 8902a(c)(1) shall be for an indefinite period coinciding with the period during which the provider's license is revoked, suspended, restricted, surrendered, or otherwise not in effect in the State whose action formed the basis for OPM's debarment.

(b) *Aggravating circumstances.* If any of the aggravating circumstances set forth in § 890.1016 apply, OPM may debar the provider for an additional period beyond the duration of the licensure revocation or suspension.

§ 890.1018 Determining length of debarment for an entity owned or controlled by a sanctioned provider.

OPM shall determine the length of debarments of entities under 5 U.S.C. 8902a(c)(2) based on the type of violation committed by the person with an ownership or control interest. The types of violations actionable under this provision are:

(a) *Owner/controller's debarment.* The debarment of an entity based on debarment of an individual with an ownership or control interest shall be for a period concurrent with the individual's debarment. If any aggravating or mitigating circumstances set forth in § 890.1016 apply solely to the entity and were not considered in setting the period of the individual's debarment, OPM may debar the entity for a period longer or shorter than the individual's debarment.

(b) *Owner/controller's conviction.* The debarment of an entity based on the criminal conviction of a person with an ownership or control interest for an offense listed in 5 U.S.C. 8902a(b)(1)–(4) shall be for a period of not less than 3 years, subject to adjustment for any aggravating or mitigating circumstances

set forth in § 890.1016 applying solely to the entity.

(c) *Owner/controller's civil monetary penalty.* The debarment of an entity based on a civil monetary penalty imposed on a person with an ownership or control interest, shall be for a period of not less than 3 years, subject to adjustment for any aggravating or mitigating circumstances set forth in § 890.1016 applying solely to the entity.

§ 890.1019 Determining length of debarment based on ownership or control of a sanctioned entity.

OPM shall determine the length of debarments of individual providers under 5 U.S.C. 8902a(c)(3) based on the type of violation committed by the sanctioned entity owned or controlled by the person with an ownership or control interest. The types of violations actionable under this provision are:

(a) *Entity's debarment.* If a provider's debarment is based on his ownership or control of a debarred entity, the debarment shall be concurrent with the entity's debarment. If any of the aggravating or mitigating circumstances identified in § 890.1016 applies directly to the provider that owns or controls the debarred entity and was not considered in setting the period of the entity's debarment, OPM may debar the provider for a period longer or shorter, respectively, than the entity's debarment.

(b) *Entity's conviction.* If a provider's debarment is based on the criminal conviction of an entity he owns or controls for an offense listed in 5 U.S.C. 8902a(b)(1)–(4), OPM shall debar the provider for a period of no less than 3 years, subject to adjustment for any aggravating or mitigating circumstances identified in § 890.1016 that apply to the provider as an individual.

(c) *Entity's civil monetary penalty.* If a provider's debarment is based on a civil monetary penalty imposed on an entity he owns or controls, OPM shall debar him for 3 years, subject to adjustment on the basis of the aggravating and mitigating circumstances listed in § 890.1016 that apply to the provider as an individual.

§ 890.1020 Determining length of debarment based on false, wrongful, or deceptive claims.

Debarments under 5 U.S.C. 8902a(c)(4) and (5) and 5 U.S.C. 8902a(d)(1) and (2) shall be for a period of 3 years, subject to adjustment based on the aggravating and mitigating factors listed in § 890.1016.

§ 890.1021 Determining length of debarment based on failure to furnish information needed to resolve claims.

Debarments under 5 U.S.C. 8902a(d)(3) shall be for a period of 3 years, subject to adjustment based on the aggravating and mitigating factors listed in § 890.1016.

§ 890.1022 Contesting proposed permissive debarments.

(a) *Right to contest a proposed debarment.* A provider proposed for debarment under a permissive debarment authority may challenge the debarment by filing a written contest with the debarring official during the 30-day notice period indicated in the notice of proposed debarment. In the absence of a timely contest, the debarment shall become effective as stated in the notice, without further action by OPM.

(b) *Challenging the length of a proposed debarment.* A provider may contest the length of the proposed debarment, while not challenging the debarment itself, or may contest both the length of a debarment and the debarment itself in the same contest.

§ 890.1023 Information considered in deciding a contest.

(a) *Documents and oral and written arguments.* A provider may submit documents and written arguments in opposition to the proposed debarment and/or the length of the proposed debarment, and may appear personally or through a representative before the debarring official to provide other relevant information.

(b) *Specific factual basis for contesting the proposed debarment.* A provider's oral and written arguments shall identify the specific facts that contradict the basis for the proposed debarment as stated in the notice of proposed debarment. A general or unsupported denial of the basis for debarment does not raise a genuine dispute over facts material to the debarment, and the debarring official shall not give such a denial any probative weight.

(c) *Mandatory disclosures.* Regardless of the basis for the contest, providers are required to disclose certain types of background information, in addition to any other information submitted during the contest. Failure to provide such information completely and accurately may be a basis for OPM to initiate further legal or administrative action against the provider. The specific items of information that shall be furnished to OPM are:

(1) Any existing, proposed, or prior exclusion, debarment, penalty, or other sanction imposed on the provider by a Federal, State, or local government agency, including any administrative agreement that purports to affect only a single agency;

(2) Any criminal or civil legal proceeding not referenced in the notice of proposed debarment that arose from facts relevant to the basis for debarment stated in the notice; and

(3) Any entity in which the provider has a control interest, as that term is defined in § 890.1003.

§ 890.1024 Standard and burden of proof for deciding contests.

OPM shall demonstrate, by a preponderance of the evidence in the administrative record as a whole, that a provider has committed a sanctionable violation.

§ 890.1025 Cases where additional fact-finding is not required.

In each contest, the debarring official shall determine whether a further fact-finding proceeding is required in addition to presentation of arguments, documents, and information. An additional fact-finding proceeding is not required when:

(a) *Prior adjudication.* The proposed debarment is based on facts determined in a prior due process adjudication. Examples of prior due process proceedings include, but are not limited to, the adjudication procedures associated with:

(1) Licensure revocation, suspension, restriction, or nonrenewal by a State licensing authority;

(2) Debarment, exclusion, suspension, civil monetary penalties, or similar legal or administrative adjudications by Federal, State, or local agencies;

(3) A criminal conviction or civil judgment; or

(4) An action by a provider that constitutes a waiver of his right to a due process adjudication, such as surrender of professional license during the pendency of a disciplinary hearing, entering a guilty plea or confession of judgment in a judicial proceeding, or signing a settlement agreement stipulating facts that constitute a sanctionable violation.

(b) *Material facts not in dispute.* The provider's contest does not identify a bona fide dispute concerning facts material to the basis for the proposed debarment.

§ 890.1026 Procedures if a fact-finding proceeding is not required.

(a) *Debarring official's procedures.* If a fact-finding proceeding is not required, the debarring official shall issue a final decision of a provider's contest within 30 days after the record

closes for submitting evidence, arguments, and information as part of the contest. The debarring official may extend this timeframe for good cause.

(b) *No further administrative review available.* There are no further OPM administrative proceedings after the presiding official's final decision. A provider adversely affected by the decision may appeal under 5 U.S.C. 8902a(h)(2) to the appropriate U.S. district court.

§ 890.1027 Cases where an additional fact-finding proceeding is required.

(a) *Criteria for holding fact-finding proceeding.* The debarring official shall request another OPM official ("presiding official") to hold an additional fact-finding proceeding if:

(1) Facts material to the proposed debarment have not been adjudicated in a prior due process proceeding; and

(2) These facts are genuinely in dispute, based on the entire administrative record available to the debarring official.

(b) *Qualification to serve as presiding official.* The presiding official is designated by the OPM Director or another OPM official authorized by the Director to make such designations. The presiding official shall be a senior official who is qualified to conduct informal adjudicative proceedings and who has had no previous contact with the proposed debarment or the contest.

(c) *Effect on contest.* The debarring official shall defer a final decision on the contest pending the results of the fact-finding proceeding.

§ 890.1028 Conducting a fact-finding proceeding.

(a) *Informal proceeding.* The presiding official may conduct the fact-finding proceedings as informally as practicable, consistent with principles of fundamental fairness. Formal rules of evidence or procedure do not apply to these proceedings.

(b) *Proceeding limited to disputed material facts.* The presiding official shall consider only the genuinely disputed facts identified by the debarring official as material to the basis for the debarment. Matters that have been previously adjudicated or that are not in bona fide dispute within the administrative record shall not be considered by presiding official.

(c) *Provider's right to present information, evidence, and arguments.* A provider may appear before the presiding official with counsel, submit oral and written arguments and documentary evidence, present witnesses on his own behalf, question any witnesses testifying in support of the debarment, and challenge the accuracy of any other evidence that the agency offers as a basis for the debarment.

(d) *Record of proceedings.* The presiding official shall make an audio recording of the proceedings and shall provide a copy to the provider at no charge. If the provider wishes to have a transcribed record, OPM shall arrange for production of one which may be purchased at cost.

(e) *Presiding official's findings.* The presiding official shall resolve all of the disputed facts identified by the debarring official, on the basis of a preponderance of the evidence contained within the entire administrative record. The presiding official shall issue a written report of all findings of fact to the debarring official within 30 days after the record of the fact-finding proceeding closes.

§ 890.1029 Deciding a contest after a fact-finding proceeding.

(a) *Findings shall be accepted.* The debarring official shall accept the presiding official's findings of fact, unless they are arbitrary, capricious, or clearly erroneous. If the debarring official concludes that the factual findings are not acceptable, they may be remanded to the presiding official for additional proceedings in accordance with § 890.1028.

(b) *Timeframe for final decision.* The debarring official shall issue a final written decision on a contest within 30 days after receiving the presiding official's findings. The debarring official may extend this decision period for good cause.

(c) *Debarring official's final decision.* (1)The debarring official shall observe the evidentiary standards and burdens of proof stated in § 890.1024 in reaching a final decision.

(2) In any case where a final decision is made to debar a provider, the debarring official has the discretion to set the period of debarment, subject to the factors identified in §§ 890.1016 through 1021.

(3) The debarring official has the discretion to decide not to impose debarment in any case involving a permissive debarment authority.

(d) *No further administrative proceedings.* No further administrative proceedings shall be conducted after the debarring official's final decision in a contest involving an additional fact-finding hearing. A provider adversely affected by the debarring official's final decision in a contested case may appeal under 5 U.S.C. 8902a(h)(2) to the appropriate U. S. district court.

Suspension

§ 890.1030 Effect of a suspension.

(a) *Temporary action pending formal proceedings.* Suspension is a temporary action pending completion of an investigation or ensuing criminal, civil, or administrative proceedings.

(b) *Immediate effect.* Suspension is effective immediately upon the suspending official's decision, without prior notice to the provider.

(c) *Effect equivalent to debarment.* The effect of a suspension is the same as the effect of a debarment. A suspended provider may not receive payment from FEHBP funds for items or services furnished to FEHBP-covered persons while suspended.

§ 890.1031 Grounds for suspension.

(a) *Basis for suspension.* OPM may suspend a provider if:

(1) OPM obtains reliable evidence indicating that one of the grounds for suspension listed in paragraph (b) of this section applies to the provider; and

(2) The suspending official determines under paragraph (c) of this section that immediate action to suspend the provider is necessary to protect the health and safety of persons covered by FEHBP.

(b) *Grounds for suspension.* Evidence constituting grounds for a suspension may include, but is not limited to:

(1) Indictment or conviction of a provider for a criminal offense that is a basis for mandatory debarment under this subpart;

(2) Indictment or conviction of a provider for a criminal offense that reflects a risk to the health, safety, or well-being of FEHBP-covered individuals;

(3) Other credible evidence indicating, in the judgment of the suspending official, that a provider has committed a violation that would warrant debarment under this subpart. This may include, but is not limited to:

(i) Civil judgments;

(ii) Notice that a Federal, State, or local government agency has debarred, suspended, or excluded a provider from participating in a program or revoked or declined to renew a professional license; or

(iii) Other official findings by Federal, State, or local bodies that determine factual or legal matters.

(c) *Determining need for immediate action.* Suspension is intended to protect the public interest, including the health and safety of covered individuals or the integrity of FEHBP funds. The suspending official has wide discretion to decide whether to suspend a provider. A specific finding of

immediacy or necessity is not required to issue a suspension. The suspending official may draw reasonable inferences from the nature of the alleged misconduct and from a provider's actual or potential transactions with the FEHBP.

§ 890.1032 Length of suspension.

(a) *Initial period.* The initial term of all suspensions shall be an indefinite period not to exceed 12 months.

(b) *Formal legal proceedings not initiated.* If formal legal or administrative proceedings have not begun against a provider within 12 months after the effective date of his suspension, the suspending official may:

(1) Terminate the suspension; or

(2) If requested by the Department of Justice, the cognizant United States Attorney's Office, or other responsible Federal, State, or local prosecuting official, extend the suspension for an additional period, not to exceed 6 months.

(c) *Formal proceedings initiated.* If formal criminal, civil, or administrative proceedings are initiated against a suspended provider, the suspension may continue indefinitely, pending the outcome of those proceedings.

(d) *Terminating the suspension.* The suspending official may terminate a suspension at any time, and shall terminate it after 18 months, unless formal proceedings have begun within that period.

§ 890.1033 Notice of suspension.

(a) *Written notice.* OPM shall send written notice of suspension according to the procedures and methods described in § 890.1006(c)–(f).

(b) *Contents of notice.* The suspension notice shall contain information indicating that:

(1) The provider has been suspended, effective on the date of the notice;

(2) The initial period of the suspension;

(3) The basis for the suspension;

(4) The provisions of law and regulation authorizing the suspension;

(5) The effect of the suspension; and

(6) The provider's rights to contest the suspension.

§ 890.1034 Counting a period of suspension as part of a subsequent debarment.

The debarring official may consider the provider's contiguous period of suspension when determining the length of a debarment.

§ 890.1035 Provider contests of suspensions.

(a) *Filing a contest of the suspension.* A provider may challenge a suspension by filing a contest, in writing, with the suspending official not later than 30 days after receiving notice of suspension. The suspension shall remain in effect during the contest, unless rescinded by the suspending official.

(b) *Informal proceeding.* The suspending official shall use informal, flexible procedures to conduct the contest. Formal rules of evidence and procedure do not apply to this proceeding.

§ 890.1036 Information considered in deciding a contest.

(a) *Presenting information and arguments to the suspending official.* A provider may submit documents and written arguments in opposition to the suspension, and may appear personally, or through a representative, before the suspending official to provide any other relevant information.

(b) *Specific factual basis for contesting the suspension.* The provider shall identify specific facts that contradict the basis for the suspension as stated in the suspension notice. A general denial of the basis for suspension does not raise a genuine dispute over facts material to the suspension, and the suspending official shall not give such a denial any probative weight.

(c) *Mandatory disclosures.* Any provider contesting a suspension shall disclose the items of information set forth in § 890.1023(c). Failure to provide such information completely and accurately may be a basis for OPM to initiate further legal or administrative action against the provider.

§ 890.1037 Cases where additional fact-finding is not required.

The suspending official may decide a contest without an additional fact-finding process if:

(a) *Previously adjudicated facts.* The suspension is based on an indictment or on facts determined by a prior adjudication in which the provider was afforded due process rights. Examples of due process proceedings include, but are not limited to, the adjudication procedures associated with licensure revocation, suspension, restriction, or nonrenewal by a State licensing authority; similar administrative adjudications by Federal, State, or local agencies; a criminal conviction or civil judgment; or an action by the provider that constitutes a waiver of his right to a due process adjudication, such as surrender of professional licensure during the pendency of a disciplinary hearing, entering a guilty plea or confession of judgment in a judicial proceeding, or signing a settlement agreement stipulating facts that constitute a sanctionable violation. Neither the existence of the prior adjudication nor any of the underlying circumstances are considered to be subject to genuine factual dispute as part of the suspension proceeding.

(b) *Advisory by law enforcement officials.* OPM is advised by the Department of Justice, the appropriate U.S. Attorney's Office, a State attorney general's office, or a State or local prosecutor's office that proceedings before a presiding official would prejudice the substantial interests of the Government in pending or contemplated legal proceedings based on the same facts as the suspension.

(c) *No bona fide dispute of material facts.* The information, arguments, and documents submitted to the suspending official do not establish that there is a *bona fide* factual dispute regarding facts material to the suspension.

§ 890.1038 Deciding a contest without additional fact-finding.

(a) *Written decision.* The suspending official shall issue a written decision on the contest within 30 days after the record closes for submitting evidence, arguments, and information. The suspending official may extend this timeframe for good cause.

(b) *No further administrative review available.* The suspending official's decision is final and is not subject to further administrative review.

§ 890.1039 Cases where additional fact-finding is required.

(a) *Criteria for holding fact-finding proceeding.* The debarring official shall request another OPM official ("presiding official") to hold an additional fact-finding proceeding if:

(1) Facts material to the suspension have not been adjudicated in a prior due process proceeding; and

(2) These facts are genuinely in dispute, based on the entire administrative record available to the debarring official.

(b) *Qualification to serve as presiding official.* The presiding official is designated by the OPM Director or another OPM official authorized by the Director to make such designations. The presiding official shall be a senior official who is qualified to conduct informal adjudicative proceedings and who has had no previous contact with the suspension or the contest.

(c) *Effect on contest.* The suspending official shall defer a final decision on the contest pending the results of the fact-finding proceeding.

§ 890.1040 Conducting a fact-finding proceeding.

(a) *Informal proceeding.* The presiding official may conduct the fact-finding proceedings as informally as practicable, consistent with principles of fundamental fairness. Specific rules of evidence or procedure do not apply to these proceedings.

(b) *Proceeding limited to disputed material facts.* The presiding official shall consider only the genuinely disputed facts identified by the suspending official as relevant to the basis for the suspension. Matters that have been previously adjudicated or which are not in bona fide dispute within the record shall not be considered by the presiding official.

(c) *Right to present information, evidence, and arguments.* A provider may appear before the presiding official with counsel, submit oral and written arguments and documentary evidence, present witnesses, question any witnesses testifying in support of the suspension, and challenge the accuracy of any other evidence that the agency offers as a basis for the suspension.

(d) *Record of proceedings.* The presiding official shall make an audio recording of the proceedings and shall provide a copy to the provider at no charge. If the provider wishes to have a transcribed record, OPM shall arrange for production of one which may be purchased at cost.

(e) *Presiding official's findings.* The presiding official shall resolve all of the disputed facts identified by the suspending official, on the basis of a preponderance of the evidence in the entire administrative record. Within 30 days after the record of the proceeding closes, the presiding official shall issue a written report of all findings of fact to the suspending official.

§ 890.1041 Deciding a contest after a fact-finding proceeding.

(a) *Presiding official's findings shall be accepted.* The suspending official shall accept the presiding official's findings, unless they are arbitrary, capricious, or clearly erroneous.

(b) *Suspending official's decision.* Within 30 days after receiving the presiding official's report, the suspending official shall issue a final written decision that either sustains, modifies, or terminates the suspension. The suspending official may extend this period for good cause.

(c) *Effect on subsequent debarment or suspension proceedings.* A decision by the suspending official to modify or terminate a suspension shall not prevent OPM from subsequently debarring the same provider, or any other Federal agency from either suspending or debarring the provider, based on the same facts.

Effect of Debarment

§ 890.1042 Effective dates of debarments.

(a) *Minimum notice period.* A debarment shall take effect not sooner than 30 days after the date of OPM's notice of proposed debarment, unless the debarring official specifically determines that the health or safety of covered individuals or the integrity of the FEHBP warrants an earlier effective date. In such a situation, the notice shall specifically inform the provider that the debarring official decided to shorten or eliminate the 30-day notice period.

(b) *Uncontested debarments.* If a provider does not file a contest within the 30-day notice period, the proposed debarment shall take effect on the date stated in the notice of proposed debarment, without further procedures, actions, or notice by OPM.

(c) *Contested debarments and requests for reducing the period of debarment.* If a provider files a contest within the 30-day notice period, the proposed debarment shall not go into effect until the debarring official issues a final written decision, unless the health or safety of covered individuals or the integrity of the FEHBP requires the debarment to be effective while the contest is pending.

§ 890.1043 Effect of debarment on a provider.

(a) *FEHBP payments prohibited.* A debarred provider is not eligible to receive payment, directly or indirectly, from FEHBP funds for items or services furnished to a covered individual on or after the effective date of the debarment. Also, a provider shall not accept an assignment of a claim for items or services furnished to a covered individual during the period of debarment. These restrictions shall remain in effect until the provider is reinstated by OPM.

(b) *Governmentwide effect.* Debarment precludes a provider from participating in all other Federal agencies' procurement and nonprocurement programs and activities, as required by section 2455 of the Federal Acquisition Streamlining Act of 1994 (Pub. L. 103—355). Other agencies may grant a waiver or exception under their own regulations, to permit a provider to participate in their programs, notwithstanding the OPM debarment.

(c) *Civil or criminal liability.* A provider may be subject to civil monetary penalties under this subpart or criminal liability under other Federal statutes for knowingly filing claims, causing claims to be filed, or accepting payment from FEHBP carriers for items or services furnished to a covered individual during a period of debarment.

Notifying Outside Parties About Debarment and Suspension Actions

§ 890.1044 Entities notified of OPM-issued debarments and suspensions.

When OPM debars or suspends a provider under this subpart, OPM shall notify:

(a) All FEHBP carriers;

(b) The General Services Administration, for publication in the comprehensive Governmentwide list of Federal agency exclusions;

(c) Other Federal agencies that administer health care or health benefits programs; and

(d) State and local agencies, authorities, boards, or other organizations with health care licensing or certification responsibilities.

§ 890.1045 Informing persons covered by FEHBP about debarment or suspension of their provider.

FEHBP carriers are required to notify covered individuals who have obtained items or services from a debarred or suspended provider within one year of the date of the debarment or suspension of:

(a) The existence of the provider's debarment or suspension;

(b) The minimum period remaining in the provider's period of debarment; and

(c) The requirement that OPM terminate the debarment or suspension before FEHBP funds can be paid for items or services the provider furnishes to covered individuals.

Exceptions to the Effect of Debarments

§ 890.1046 Effect of debarment on payments for services furnished in emergency situations.

A debarred health care provider may receive FEHBP funds paid for items or services furnished on an emergency basis if the FEHBP carrier serving the covered individual determines that:

(a) The provider's treatment was essential to the health and safety of the covered individual; and

(b) No other source of equivalent treatment was reasonably available.

§ 890.1047 Special rules for institutional providers.

(a) *Covered individual admitted before debarment.* If a covered person is admitted as an impatient before the effective date of an institutional provider's debarment, that provider may continue to receive payment of FEHBP funds for inpatient institutional services

until the covered person is released or transferred, unless the debarring official terminates payments under paragraph (b) of this section.

(b) *Health and safety of covered individuals.* If the debarring official determines that the health and safety of covered persons would be at risk if they remain in a debarred institution, OPM may terminate FEHBP payments at any time.

(c) *Notice of payment limitations.* If OPM limits any payment under paragraph (b) of this section, it shall immediately send written notice of its action to the institutional provider.

(d) *Finality of debarring official's decision.* The debarring official's decision to limit or deny payments under paragraph (b) of this section is not subject to further administrative review or reconsideration.

§ 890.1048 Waiver of debarment for a provider that is the sole source of health care services in a community.

(a) *Application required.* A provider may apply for a limited waiver of debarment at any time after receiving OPM's notice of proposed debarment. Suspended providers are not eligible to request a waiver of suspension.

(b) *Criteria for granting waiver.* To receive a waiver, a provider shall clearly demonstrate that:

(1) The provider is the *sole community provider* or the *sole source of essential specialized services in a community;*

(2) A limited waiver of debarment would be in the best interests of covered individuals in the defined service area;

(3) There are reasonable assurances that the actions which formed the basis for the debarment shall not recur; and

(4) There is no basis under this subpart for continuing the debarment.

(c) *Waiver applies only in the defined service area.* A limited waiver applies only to items or services provided within the defined service area where a provider is the *sole community provider* or *sole source of essential specialized services.*

(d) *Governmentwide effect continues.* A limited waiver applies only to a provider's FEHBP transactions. Even if OPM waives a debarment for FEHBP purposes, the governmentwide effect under section 2455 of the Federal Acquisition Streamlining Act of 1994 (Pub. L. 103–355) continues for all other Federal agencies' procurement and nonprocurement programs and activities.

(e) *Waiver rescinded if circumstances change.* OPM shall rescind the limited waiver when any of its underlying bases no longer apply. If OPM rescinds the limited waiver, the provider's debarment shall resume full effect for all FEHBP transactions. Events warranting rescission include, but are not limited to:

(1) The provider ceases to furnish items or services in the defined service area;

(2) Another provider begins to furnish equivalent items or services in the defined service area, so that the provider who received a waiver is no longer the sole provider or sole source; or

(3) The actions that formed the basis for the provider's debarment, or similar acts, recur.

(f) *Effect on period of debarment.* The minimum period of debarment is established when the debarment is initially imposed. A subsequent decision to grant, deny, or rescind a limited waiver shall not change that period.

(g) *Application is necessary for reinstatement.* A provider who has received a limited waiver shall apply for reinstatement at the end of the debarment period, even if a limited waiver is in effect when the debarment expires.

(h) *Finality of debarring official's decision.* The debarring official's decision to grant or deny a limited waiver is final and not subject to further administrative review or reconsideration.

Special Exceptions to Protect Covered Persons

§ 890.1049 Claims for non-emergency items or services furnished by a debarred provider.

(a) *Covered individual unaware of debarment.* FEHBP funds may be paid for items and services furnished by a debarred provider if, at the time the items or services were furnished, the covered individual did not know, and could not reasonably be expected to know, that the provider was debarred. This provision is intended solely to protect the interests of FEHBP covered persons who obtain services from a debarred or suspended provider in good faith and without knowledge that the provider has been sanctioned. It does not authorize debarred or suspended providers to submit claims for payment to FEHBP carriers.

(b) *Notice sent by carrier.* When paying a claim under the authority of paragraph (a) of this section, an FEHBP carrier shall send a written notice to the covered individual, stating that:

(1) The provider is debarred and prohibited from receiving payment of FEHBP funds for items or services furnished after the debarment date;

(2) Claims shall not be paid for items or services furnished by the debarred provider after the covered individual receives notice of the debarment;

(3) The current claim is being paid as a legally-authorized exception to the effect of the debarment in order to protect covered individuals who obtain items or services without knowledge of the provider's debarment;

(4) FEHBP carriers are required to deny payment of any claim for items or services rendered by a debarred provider 15 days or longer after the date of the notice described in paragraph (b) of this section, unless the covered individual had no knowledge of the provider's debarment when the items or services were rendered;

(5) The minimum period remaining in the provider's debarment; and

(6) FEHBP funds cannot be paid to the provider until OPM terminates the debarment.

§ 890.1050 Exception to a provider's debarment for an individual enrollee.

(a) *Request by a covered individual.* Any individual enrolled in FEHBP may submit a request through their FEHBP carrier for continued payment of items or services furnished by a debarred provider to any person covered under the enrollment. Requests shall not be accepted for continued payments to suspended providers.

(b) *OPM action on the request.* OPM shall consider the recommendation of the FEHBP carrier before acting on the request. To be approved, the request shall demonstrate that:

(1) Interrupting an existing, ongoing course of treatment by the provider would have a detrimental effect on the covered individual's health or safety; or

(2) The covered individual does not have access to an alternative source of the same or equivalent health care items or services within a reasonably accessible service area.

(c) *Scope of the exception.* An approved exception applies only to the covered individual(s) who requested it, or on whose behalf it was requested. The governmentwide effect of the provider's debarment under section 2455 of the Federal Acquisition Streamlining Act (Pub. L. 103–355) is not altered by an exception.

(d) *Provider requests not allowed.* OPM shall not consider an exception request submitted by a provider on behalf of a covered individual.

(e) *Debarring official's decision is final.* The debarring official's decision on an exception request is not subject to further administrative review or reconsideration.

Reinstatement

§ 890.1051 Applying for reinstatement when period of debarment expires.

(a) *Application required.* Reinstatement is not automatic when the minimum period of a provider's debarment expires. The provider shall apply in writing to OPM, supplying specific information about the reinstatement criteria outlined in paragraph (c) of this section.

(b) *Reinstatement date.* A debarred provider may submit a reinstatement application not earlier than 60 days before the nominal expiration date of the debarment. However, in no case shall OPM reinstate a provider before the minimum period of debarment expires.

(c) *Reinstatement criteria.* To be approved, the provider's reinstatement application shall clearly demonstrate that:

(1) There are reasonable assurances that the actions resulting in the provider's debarment have not recurred and will not recur;

(2) There is no basis under this subpart for continuing the provider's debarment; and

(3) There is no pending criminal, civil, or administrative action that would subject the provider to debarment by OPM.

(d) *Written notice of OPM action.* OPM shall inform the provider in writing of its decision regarding the reinstatement application.

(e) *Limitation on reapplication.* If OPM denies a provider's reinstatement application, the provider is not eligible to reapply for 1 year after the date of the denial.

§ 890.1052 Reinstatements without application.

OPM shall reinstate a provider without a reinstatement application if:

(a) *Conviction reversed.* The conviction on which the provider's debarment was based is reversed or vacated by a final decision of the highest appeals court with jurisdiction over the case; and the prosecutorial authority with jurisdiction over the case has declined to retry it, or the deadline for retrial has expired without action by the prosecutor.

(b) *Sanction terminated.* A sanction imposed by another Federal agency, on which the debarment was based, is terminated by that agency.

(c) *Court order.* A Federal court orders OPM to stay, rescind, or terminate a provider's debarment.

(d) *Written notice.* When reinstating a provider without an application, OPM shall send the provider written notice of the basis and effective date of his reinstatement.

§ 890.1053 Table of procedures and effective dates for reinstatements.

The procedures and effective dates for reinstatements under this subpart are:

Basis for debarment	Application required?	Effective date
Period of debarment expires	Yes	After debarment expires.
Conviction reversed on final appeal/no retrial possible.	No	Retroactive (start of debarment).
Other agency sanction ends	No	Ending date of sanction.
Court orders reinstatement	No	Retroactive (start of debarment).

§ 890.1054 Agencies and entities to be notified of reinstatements.

OPM shall inform the FEHBP carriers, Government agencies and other organizations that were originally notified of a provider's debarment when a provider is reinstated under § 890.1051 or § 890.1052.

§ 890.1055 Contesting a denial of reinstatement.

(a) *Obtaining reconsideration of the initial decision.* A provider may contest OPM's decision to deny a reinstatement application by submitting documents and written arguments to the debarring official within 30 days of receiving the notice described in § 890.1051(d). In addition, the provider may request to appear in person to present oral arguments to the debarring official. The provider may be accompanied by counsel when making a personal appearance.

(b) *Debarring official's final decision on reinstatement.* The debarring official shall issue a final written decision, based on the entire administrative record, within 30 days after the record closes to receipt of information. The debarring official may extend the decision period for good cause.

(c) *Finality of debarring official's decision.* The debarring official's final decision regarding a provider's reinstatement is not subject to further administrative review or reconsideration.

Civil Monetary Penalties and Financial Assessments [Reserved]

[FR Doc. 03–2398 Filed 1–31–03; 8:45 am]

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Federal Register

Monday,
February 3, 2003

Part VI

Department of Transportation

Federal Aviation Administration

14 CFR Parts 125 and 135
Notice of Regulatory Review; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 125 and 135

Notice of Regulatory Review

AGENCY: Federal Aviation Administration.

ACTION: Notice and request for comments.

SUMMARY: By this document, the Federal Aviation Administration (FAA) announces a comprehensive regulatory review of 14 CFR parts 135 and 125. This review will also encompass related portions of parts 91, 119, 121, and other regulations, as appropriate. The FAA will establish a part 135/125 Aviation Rulemaking Committee to conduct this review and provide advice and recommendations to:

a. Resolve current issues affecting this part of the industry.

b. Enable new aircraft types, size and design and new technologies in air transportation operations.

c. Provide safety and applicability standards that reflect the current industry, industry trends and emerging technologies and operations.

d. Address international harmonization and ICAO standards.

e. Potentially, rescind part 125 from 14 Code of Federal Regulations.

The FAA invites persons interested in serving on this committee or work groups to request membership in accordance with this document. The FAA will select members to provide a balance of viewpoints, interests, and expertise. Membership on the committee may be limited to facilitate discussions and to maintain a balance of interests.

In addition, the FAA invites interested persons to submit specific, detailed written comments, or provide input on the affected regulatory sections. These comments will be considered in the committee discussions and will assist in determining future regulatory action.

DATES: *Membership:* Persons interested in participating on committees or work groups should submit their request on or before March 5, 2003. Selected members will be advised in writing of their participation and meeting details. In addition meeting information will be posted on the Office of Rulemaking's web site under the heading of "Advisory Committees."

Comments: The FAA will consider all comments on this regulatory review filed on or before June 3, 2003. We will consider comments filed late if it is possible to do so without incurring expense or delay.

ADDRESSES: *Membership:* Persons requesting membership or participation on the part 135/125 Aviation Rulemaking Committee and/or associated work groups should make the request in writing to the person listed below under **FOR FURTHER INFORMATION CONTACT**.

Comments: Address your comments to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW. Washington, DC 20590–0001. You must identify docket number FAA–2002–13923 at the beginning of your comments, and you should submit two copies of your comments. If you wish to receive confirmation that FAA received your comments, include a self-addressed, stamped postcard on which the docket number appears. We will stamp the date on the postcard and mail it to you.

You may also submit comments through the Internet to *http://dms.dot.gov*. You may review the public docket containing comments to these proposed regulations in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Dockets Office is on the plaza level of the NASSIF Building at the Department of Transportation at the above address. Also, you may review comments made to this public docket on the Internet at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Katherine Perfetti, AFS–200, 800 Independence Ave. SW., Washington, DC 20591 (202) 267–3760, facsimile at (202) 267–5229, or by email: *Katherine.Perfetti@faa.gov*

SUPPLEMENTARY INFORMATION:

Background

Industry dynamics, new technologies, new aircraft types and configurations, and current operating issues and environment mandate a comprehensive review and rewrite of parts 135 and 125. This review will also include related portions of parts 91, 119, 121, and other regulations. Issues under review include:

a. Design and manufacture of new aircraft that current regulations do not address adequately (for example, large airships, powered lift aircraft).

b. Certain large airplanes with modifications to payload capacity and passenger seat configuration operating under part 91 or 135.

c. New equipment and technologies not adequately addressed in current regulations.

d. International harmonization, ICAO commercial standards, and increased international operations.

Public Participation in the Regulatory Review Process

Membership. The FAA invites members of the public to serve on the part 135/125 Aviation Rulemaking Committee and/or work groups. The committee will provide advice and recommendations to the FAA to assist the agency in establishing a regulatory framework that will address industry trends and dynamics and issues, and to enhance safety in this segment of the industry. The committee acts solely in an advisory capacity. The committee will discuss and present whatever input, guidance, and recommendations considered relevant to the ultimate disposition of issues.

Because of the diversity and complexities of the part 135/125 industry and issues, the committee will be structured with a steering committee and specialized work groups. The steering committee will consist of approximately 25 members selected by the FAA representing aviation associations, industry representatives, employee groups, FAA and other government entities, and other participants to provide a balance of views, interests, and expertise. Membership on the steering committee will be limited to facilitate discussions. Priority will be given to those applicants representing an identified part of the aviation community who are empowered to speak for those interests.

Additional participation is provided through the specialized work groups. At this time, the FAA is considering the establishment of work groups comprised of subject matter experts, in the following subject areas:

—Operations
—Maintenance
—International operations
—Training
—Part 119 Applicability and Definitions
—Equipment and New Technologies
—Rotorcraft
—New aircraft (*e.g.*, powered lift aircraft, airships)
—Other work groups may be established if required.

All non-government representatives serve without government compensation and bear all costs related to their participation on the steering committee or work groups. Members and participants should be available to attend all scheduled committee or work group meetings for the duration of the review.

It is anticipated that this committee will meet approximately 3–5 times a

year, for 2–3 days for each meeting. Work groups will be scheduled as determined by the steering committee and work group members to provide information and meet schedule requirements.

Make your request to participate on the steering committee or specialized work groups in writing on or before March 5, 2003. Your request should provide the following information:

—Contact information (name, company and position, address, phone, facsimile, and email)
—Segment(s) of the industry or organization/association you represent
—Experience, subject expertise or other background information

The FAA will notify all selected members and participants in writing in advance of the first meeting. Additional information on the committee, membership, dates, and other information may be obtained on the Office of Rulemaking web site under the heading "Advisory Committees".

Comments. As noted above, persons wishing to comment on this review may do so until June 3, 2003. In order to proceed with rulemaking, the FAA requests that commenters be timely in their comments.

Commenters should be as specific as possible and provide as much detail in comments as necessary to facilitate regulatory decision making. Comments should address the specific section of the regulation at issue, a detailed explanation of what needs to be changed and why, and the proposed regulatory change. Information on costs and benefits of the proposed change are particularly helpful.

Comments provided in response to this review will assist the FAA and committee in their review and deliberation.

Issued in Washington, DC on January 27, 2003.

Louis C. Cusimano,

Acting Director, Flight Standards Service.

[FR Doc. 03–2416 Filed 1–31–03; 8:45 am]

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Federal Register

Monday,
February 3, 2003

Part VII

Office of Management and Budget

Draft 2003 Report to Congress on the Costs and Benefits of Federal Regulations; Notice

OFFICE OF MANAGEMENT AND BUDGET

Draft 2003 Report to Congress on the Costs and Benefits of Federal Regulations

AGENCY: Office of Management and Budget, Executive Office of the President.

ACTION: Notice and request for comments.

SUMMARY: OMB requests comments on the attached Draft Report to Congress on the Costs and Benefits of Federal Regulation. The Draft Report is divided into two chapters. Chapter I presents estimates of the costs and benefits of Federal regulation and paperwork with an emphasis on the major regulations issued between October 1, 2001 and September 31, 2002. Chapter II requests comments from the public in three areas: (1) Guidelines for regulatory analysis; (2) Analysis and management of emerging risks; and (3) Improving analysis of regulations to homeland security.

DATES: To ensure consideration of comments as OMB prepares this Draft Report for submission to Congress, comments must be in writing and received by OMB no later than April 3, 2003.

ADDRESSES: We are still experiencing delays in the regular mail, including first class and express mail. To ensure that your comments are received, we recommend that comments on this draft report be electronically mailed to *OIRA_BC_RPT@omb.eop.gov*, or faxed to (202) 395–7245. Comments on the OMB Draft Guidelines for the Conduct of Regulatory Analysis and the Format of Accounting Statements (Appendix C) should be e-mailed to *OIRA_ECON_GUIDE@omb.eop.gov*, or faxed, with the title "Comments on Draft Guidelines" identified in the transmittal page, to (202) 395–7245.

You may also submit comments to Lorraine Hunt, Office of Information and Regulatory Affairs, Office of Management and Budget, NEOB, Room 10202, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Lorraine Hunt, Office of Information and Regulatory Affairs, Office of Management and Budget, NEOB, Room 10202, 725 17th Street, NW., Washington, DC 20503. Telephone: (202) 395–3084.

SUPPLEMENTARY INFORMATION: Congress directed the Office of Management and Budget (OMB) to prepare an annual Report to Congress on the Costs and Benefits of Federal Regulations. Specifically, Section 624 of the FY2001 Treasury and General Government Appropriations Act, also know as the "Regulatory Right-to-Know Act," (the Act) requires OMB to submit a report on the costs and benefits of Federal regulations together with recommendation for reform. The Act says that the report should contain estimates of the costs and benefits of regulations in the aggregate, by agency and agency program, and by major rule, as well as an analysis of impacts of Federal regulation on State, local, and tribal government, small business, wages, and economic growth. The Act also states that the report should go through notice and comment and peer review.

John D. Graham,

Administrator, Office of Information and Regulatory Affairs.

Draft 2003 Report to Congress on the Costs and Benefits of Federal Regulation

Executive Summary

This Draft Report to Congress on regulatory policy was prepared pursuant to the Regulatory Right-to-Know Act (Section 624 of the Treasury and General Government Appropriations Act, 2001), which requires such an account each year. It provides a statement of the costs and benefits of federal regulations and recommendations for regulatory reforms. The report will be published in its final form after revisions to this draft are made based on public comment, external peer review, and interagency review.

The major feature of this report is the estimates of the total costs and benefits of regulations reviewed by OMB. Major federal regulations reviewed by OMB from October 1, 1992 to September 30, 2002 were examined to determine their quantifiable benefits and costs. The estimated annual benefits range from $135 billion to $218 billion while the estimated annual costs range from $38 billion to $44 billion.

OMB seeks public comment on all aspects of this Draft Report. OMB is specifically interested in public comment in the following three areas:

- Guidelines for regulatory analysis. In order to make continued improvements in the quality of the regulatory analyses prepared by agencies, OIRA initiated in 2002 a process to refine the OMB guidelines for regulatory analysis. The OIRA Administrator and a member of the Council of Economic Advisers (CEA) are serving as co-chairs of this effort. OMB and CEA staff have drafted proposed revised guidelines which are presented in Appendix C of this report. We are requesting comment on these draft guidelines for regulatory analysis.
- Analysis and management of emerging risks. An Interagency Work Group on Risk Management, co-chaired by the OIRA Administrator and the Chairman of the White House Council on Environmental Quality has been formed to foster Administration-wide dialogue and coordination on the management of emerging risks to public health, safety and the environment. To assist in the Work Group's efforts, OMB requests comments on current U.S. approaches to analysis and management of emerging risks.
- Improving analysis of regulations related to homeland security. In light of the significant interest in regulations related to homeland security, OMB is seeking public comment on how to more effectively evaluate the benefits and costs of these proposals, including how agencies might better forecast the anti-terrorism benefits and the direct and indirect costs of such rules, including time, convenience, privacy, and economic productivity.

Chapter I: The Costs and Benefits of Federal Regulations

Section 624 of the FY 2001 Treasury and General Government Appropriations Act, the "Regulatory Right-to-Know Act," [1] requires OMB to submit "an accounting statement and associated report" including:

(1) An estimate of the total annual costs and benefits (including quantifiable and nonquantifiable effects) of Federal rules and paperwork, to the extent feasible:

(A) In the aggregate;

(B) By agency and agency program; and

(C) By major rule;

(2) An analysis of impacts of Federal regulation on State, local, and tribal government, small business, wages, and economic growth; and

(3) Recommendations for reform.[2]

This chapter presents the accounting statement. It revises the benefit-cost estimates in last year's report by updating the estimates to the end of fiscal year 2002 (September 30, 2002) and including new estimates from Ocotober 1, 1992 to March 31, 1995. Our new estimates are now based on the major regulations reviewed by OMB over the last ten years. All of the

[1] 31 U.S.C. 1105 note, Pub. L. 106–554, Section 1(a)(3) [Title VI, section 624], Dec. 21, 2000, 114 Stat. 2763, 2763A–161 (see Appendix F).

[2] Recommendations for reform are discussed in Chapter II.

estimates presented in this chapter are based on agency information or transparent modifications of agency information performed by OIRA. We have not provided new information on the impacts of Federal regulation on State, local, and tribal government, small businesses, wages, and economic growth in this draft report. The 2002 Report issued in December 2002 includes discussions of these issues (see pages 41 to 46). We request public comment and any additional information on these impacts for this year's final report.

We also include in this chapter a discussion of major rules issued by independent regulatory agencies, although OMB does not review these rules under Executive Order 12866. This discussion is based on data provided by these agencies to the General Accounting Office (GAO) under the Congressional Review Act.

A. Estimates of the Total Benefits and Costs of Regulations Reviewed by OMB[3]

Table 1 presents estimates by agency of the costs and benefits of major rules reviewed by OMB over the period October 1, 2001 to September 30, 2002. We reviewed 31 final major rules over that period. These 31 rules represent less than ten percent of the 330 final rules reviewed by OMB and less than one percent of the 4,153 final rules documents published in the **Federal Register** during this 12-month period. However, OIRA believes that the costs and benefits of major rules are quantitatively more important than all other rules combined.

Of the 31 rules, 25 implemented Federal budgetary programs, which caused income transfers from one group to another. The remaining six regulations were "social regulations", requiring substantial additional private expenditures and/or providing new social benefits.[4] Four of these six "social regulations" imposed mandates on State and local entities or the private sector. The other two "social regulations" were enabling regulations that did not impose mandates.

Of the six "social regulations," we are able to present estimates of both monetized costs and benefits for three rules.[5] We did not include the 3 other rules that did not have monetized estimates for either costs or benefits or both. Three agencies, DOE, DOT, and EPA issued 3 major regulations adding a combined $2.0 billion to $6.5 billion in annual benefits and $1.6 billion to $2.0 billion in annual costs.

TABLE 1.—ESTIMATES OF THE ANNUAL BENEFITS AND COSTS OF MAJOR FEDERAL RULES, OCTOBER 1, 2001 TO SEPTEMBER 30, 2002

[Millions of 2001 dollars]

Agency	Benefits	Costs
Energy	710	636.
Transportation	409 to 944	749 to 1,206.
Environmental Protection Agency	913 to 4,818	192.
Total	2,032 to 6,472	1,577 to 2,034.

Table 2 presents an estimate of the total costs and benefits of all regulations reviewed by OMB over the ten-year period from October 1, 1992 to September 30, 2002 that met two conditions.[6] Each rule generated costs or benefits of at least $100 million annually, and a substantial portion of its costs and benefits were quantified and monetized by the agency or, in some cases, monetized by OMB. The estimates are therefore not a complete accounting of all the costs and benefits of all regulations issued by the Federal government during this period. We have expanded the number of years covered by our estimates to ten from the six and half years presented in last year's report. We provide estimates of the cost and benefits of social regulation (health, safety and environmental regulation) for each rule for the periods covering October 1, 1992 to March 31, 1995 and October 1, 2001 to September 30, 2002 in Appendix A.[7] OMB has chosen a 10-year period for aggregation because pre-regulation estimates prepared for rules adopted more than ten years ago are of questionable relevance today. The estimates of the costs and benefits of Federal regulations over the period October 1, 1992 to September 30, 2002 are based on agency analyses subject to public notice and comments and OMB review under E.O. 12866.

In last year's report, the aggregate costs of regulations fell within the range of the estimated benefits—albeit at the lower end of the range. The aggregate benefits reported in Table 2, however, are roughly three to five times the aggregate costs and are substantially larger than the aggregate benefits reported in our 2002 report. There are two reasons for this. First, the additional rules added to cover a 10-year period included EPA's rule implementing the sulfur dioxide limits of the acid rain provisions in the 1990 Amendments to the Clean Air Act. This rule adds calculated benefits of over $70 billion per year to the aggregate benefits estimate. Second, in reviewing our estimates, we inadvertently subtracted incorrect cost estimates for EPA's rules establishing National Ambient Air Quality Standards for Ozone and Particulate Matter. This correction reduces the aggregate cost of the rules covered over the 10-year period by roughly $20 billion per year.

It is important to note that four EPA rules—two rules limiting particulate matter and NO_X emissions from heavy duty highway engines, the Tier 2 rule limiting the emissions from light duty vehicles, and the Acid Rain rule cited above—account for a substantial fraction of the aggregate benefits reported in Table 2. These four EPA rules have estimated benefits of $96 to $113 billion per year and costs of $8 to

[3] In previous reports, we presented detailed discussions about the difficulty of estimating and aggregating the costs and benefits of different regulations over long time periods and across many agencies. We do not repeat those discussions here. Our previous reports are on our Web site at <*http://www.whitehouse.gov/omb/inforeg/regpol.html*>.

[4] Rules that transfer Federal dollars among parties are not included because transfers are not social costs or benefits. If included, they would add equal amounts to benefits and costs.

[5] We used agency estimates where available. If an agency quantified estimates but did not monetize, we used standard assumptions to monetize as explained in Appendix A.

[6] We calculated Table 2 estimates by adding the estimates in Table 1 above and the estimates from Table 6 in Appendix A to Table 8 of the 2002 OMB report.

[7] Agency estimates of the cost and benefits of major regulations for October 1, 1992 to March 31, 1995 are provided in Appendix B. Appendix A contains revised estimates.

$8.8 billion per year.[6] The aggregate benefits and costs for the other 103 rules are $38 to $104 billion and $30 to $35 billion, respectively. Table 3 provides additional information on aggregate benefits and costs for select agency programs.

Based on the information released in previous reports, the total costs and benefits of all Federal rules now in effect (major and non-major, including those adopted more than 10 years ago) could easily be a factor of ten or more larger than the sum of the costs and benefits reported in Table 2. More research is necessary to provide a stronger analytic foundation for comprehensive estimates of total costs and benefits by agency and program. OMB's examination of the benefits and costs of Federal regulation supports the need for a common-sense approach to modernizing Federal regulation that involves the expansion, modification, and rescission of regulatory programs as appropriate.

TABLE 2.—ESTIMATES OF THE ANNUAL BENEFITS AND COSTS OF MAJOR FEDERAL RULES, OCTOBER 1, 1992 TO SEPTEMBER 30, 2002

[Millions of 2001 dollars]

Agency	Benefits	Costs
Agriculture	3,108 to 6,203	1,649 to 1,679.
Education	658 to 816	363 to 612.
Energy	4,704 to 4,722	2,473.
Health & Human Services	8,733 to 11,724	3,168 to 3,337.
Housing & Urban Development	527 to 601	796.
Labor	1,808 to 4,200	1,057.
Transportation	6,150 to 9,465	4,313 to 6,812.
Environmental Protection Agency	108,858 to 179,757	23,867 to 27,028.
Total	134,547 to 217,539	37,686 to 43,794.

TABLE 3.—ESTIMATES OF ANNUAL BENEFITS AND COSTS OF MAJOR FEDERAL RULES: SELECT PROGRAMS AND AGENCIES, OCTOBER 1, 1992–SEPTEMBER 30, 2002

[Millions of 2001 dollars]

Agency	Benefits	Costs
Energy: Energy Efficiency and Renewable Energy	4,704 to 4,772	2,473.
Health & Human Services: Food and Drug Administration	2,021 to 4,558	482 to 651.
Labor: Occupational Safety and Health Administration	1,808 to 4,200	1,057.
Transportation:		
National Highway Traffic Safety Administration	4,330 to 7,645	2,795 to 5,295.
Coast Guard	68	1,282.
Environmental Protection Agency:		
Office of Air	106,010 to 163,893	18,362 to 20,978.
Office of Water	891 to 8,103	2,424 to 2,937.

In order for comparisons or aggregation to be meaningful, benefit and cost estimates should correctly account for all substantial effects of regulatory actions, including potentially offsetting effects, which may or may not be reflected in the available data. We have not made any changes to agency monetized estimates other than connecting them to annual equivalents. Any comparison or aggregation across rules should also consider a number of factors which our presentation does not address. To the extent that agencies have adopted different methodologies—for example, different monetized values for effects, different baselines in terms of the regulations and controls already in place, different treatments of uncertainty—these differences remain embedded in the table 2. While we have relied in many instances on agency practices in monetizing costs and benefits, our citation of or reliance on agency data in this report should not be taken as an endorsement of all the

[6] These four EPA rules will reduce ambient levels of fine particulate matter by reducing direct PM emissions and/or the emissions of precursor pollutants like SO_2 and NO_X that contribute to the formation of fine PM. Many studies show an association between both short- and long-term exposure to fine PM and a variety of adverse health effects ranging from increases in the frequency of hospital admissions to premature mortality. There are, however, important uncertainties associated with these benefit estimates. For example key assumptions underlying the benefit estimates associated with premature mortality include the following: (1) The benefits analysis assumes there is a causal association between inhalation of fine particles and such health effects as premature mortality at exposure levels near those experienced by most Americans on a daily basis. While the biological mechanisms for this effect have not yet been definitively established, EPA has concluded that the weight of the available epidemiological and toxicological evidence supports an assumption of causality; (2) The benefits analysis assumes that all fine particles, regardless of their chemical composition, are equally toxic. This is an important assumption because fine particles from power plant emissions are chemically different from those emitted from both mobile sources and other industrial facilities. However, no clear scientific grounds exist for supporting differential effects estimates by particle type; (3) The benefits analysis assumes that the concentration-response function for fine particles is approximately linear within the range of ambient concentrations under consideration. Thus, the estimates include health benefits from reducing fine particles in areas that are in attainment with the fine particle standard and those that do not meet the standard; (4) The benefits analysis assumes that the forecasts for future emissions and associated air quality modeling are valid. The EPA's analyses are based on peer-reviewed scientific literature and up-to-date assessment tools. However such models are themselves based on an evolving understanding and research continues to provide the data necessary for model evaluation; and (5) The valuation of estimated reduction in mortality risk is largely taken from studies of the tradeoff associated with the willingness to accept risk in labor markets. Alternative estimates may, however, be more relevant for rules addressing air pollution. Further information on these benefits estimates can be found at *http://www.epa.gov/air/clearskies/tech_adden.pdf, http://www.whitehouse.gov/omb/inforeg/costbenefitreport1998.pdf, http://www.whitehouse.gov/omb/inforeg/2000fedreg-report.pdf.*

varied methodologies used to derive benefits and cost estimates.

B. Estimates of Benefits and Costs of This Year's "Major" Rules

In this section, we examine in detail the benefits and costs of each "major" rule, as required by section 624(a)(1)(C). We have included in our review those final regulations on which OMB concluded review during the 12-month period October 1, 2001 through September 30, 2002.

The statutory language that categorizes the rules we consider for this report differs from the definition of "economically significant" in Executive Order 12866 (section 3(f)(1)). It also differs from similar statutory definitions in the Unfunded Mandates Reform Act and subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996—Congressional Review of Agency Rulemaking. Given these varying definitions, we interpreted section 624(a)(1)(C) broadly to include all final rules promulgated by an Executive branch agency that meet any one of the following three measures:

- Rules designated as "economically significant" under section 3(f)(1) of Executive Order 12866;
- Rules designated as "major" under 5 U.S.C. 804(2) (Congressional Review Act); and
- Rules designated as meeting the threshold under Title II of the Unfunded Mandates Reform Act (2 U.S.C. 1531–1538)

Of the 31 rules received by OMB, USDA submitted four; the Veterans Administration, DOE, EPA, OMB, the Social Security Administration, and SBA each submitted one; HHS eight; The Departments of Interior, Justice, Defense, and FEMA each submitted two; and DOT five.

Social Regulation

Of the 31 economically significant rules reviewed by OMB, six are regulations requiring substantial additional private expenditures and/or providing new social benefits. Table 4 summarizes the costs and benefits of these rules and provides other information taken from rule preambles and agency RIAs. Of the six regulations received by OMB, EPA and DOE each submitted one, and DOI and DOT each submitted two. Agency estimates and discussion are presented in a variety of ways, ranging from a mostly qualitative discussion—for example, the NHTSA light truck corporate average fuel economy (CAFE) standard—to a more complete benefit-cost analysis, such as DOE's central air conditioner rule.

1. Benefits Analysis

Agencies monetized at least some benefit estimates for five of the six rules. In the case of EPA's recreational engines rule, the agency provides some monetized benefit estimates, but discusses other benefits qualitatively. In one case—NHTSA's tire pressure monitoring systems (TPMS) rule—the agency did not monetize all of the quantified benefits. In another case—NHTSA's CAFE rule—the agency did not report any quantified or monetized benefit estimates.

2. Cost Analysis

For three of the six rules, agencies provided monetized cost estimates. These include DOE's air conditioner rule, NHTSA's TPMS rule and EPA's recreational vehicle rule. For the remaining three rules, both DOI migratory bird hunting rules and NHTSA's CAFE rule, the agencies did not estimate costs.

3. Net Monetized Benefits

Three of the six rules provided at least some monetized estimates of both benefits and costs. Of these, the estimated monetized benefits of both the DOE air conditioner rule and the EPA recreational engine rule exceed the estimated monetized costs. The magnitude of the net benefits varies from $75 million per year for the air conditioner rule to as much as $4.6 billion for the recreational engine rule. One rule, NHTSA's TPMS rule, has negative net monetized benefits ranging from approximately $706 to $862 million per year.

4. Rules Without Quantified Effects

One rule, NHTSA's CAFE rule, is classified as economically significant even though the agency did not provide any quantified estimates of their effects.

TABLE 4.—SUMMARY OF AGENCY ESTIMATES FOR FINAL RULES 10/01/2001–9/30/02

[As of Date of Completion of OMB Review]

Agency	Rule	Benefits	Costs	Other Information
DOE	Energy Conservation Standards for Central Air Conditions and Heat Pumps.	$9.1 billion (present value) in energy savings between 2006 and 2030.	$7.3 billion (present value) for purchases between 2006 and 2030.	Monetized benefit and cost values are obtained from the "National Energy Savings/Net Present Value/Shipments" spreadsheet, available on DOE's web site: *http://www.eren.doe.gov/buildings/codes_standards/applbrf/central_air_conditioner_3.html* DOE projects a cumulative reduction in nitrogen oxide emissions of 119.3 thousand metric tons (undiscounted) over the period 2006–2030 and a cumulative reduction in carbon dioxide equivalent emissions of 53.8 million metric tons (undiscounted) over the period 2006–2030 [DOE Technical Support Document Appendix M, Table M.9].
DOI	Early Season Migratory Bird Hunting Regulations 2002–2003.	$50 million to $192 million/yr.	Not estimated	The analysis was based on the 1996 National Hunting and Fishing Survey and the U.S. Department of Commerce's County Business Patterns, from which it was estimated that migratory bird hunters would spend between $429 million and $1,084 million at small businesses [67 FR 54704]. The listed benefits represent estimated consumer.
DOI	Late-Season Migratory Bird Hunting Regulations 2002–2003.	$50 million to $192 million/yr.	Not estimated	The analysis was based on the 1996 National Hunting and Fishing Survey and the U.S. Department of Commerce's County Business Patterns, from which it was estimated that migratory bird hunters would spend between $429 million and $1,084 million at small businesses [67 FR 54704]. The listed benefits represent estimated consumer.

TABLE 4.—SUMMARY OF AGENCY ESTIMATES FOR FINAL RULES 10/01/2001–9/30/02—Continued

[As of Date of Completion of OMB Review]

Agency	Rule	Benefits	Costs	Other Information
DOT	Light Truck Average Fuel Economy Standard, Model Year 2004.	Not estimated	Not estimated	"* * * [T]he agency has been operating under a restriction on the use of appropriations for the last six fiscal years. The restriction has prevented the agency from gathering and analyzing data relating to fuel economy capabilities and the costs and benefits of improving the level of fuel economy. Particularly since that restriction was lifted only on December 18, 2001, the agency has been unable to prepare a separate economic analysis for this rulemaking. The agency notes, however, that the standard it is setting for the 2004 model year will not make it necessary for the manufacturers with a substantial share of the market to change their product plans." [67 FR 16059]
DOT	Tire Pressure Monitoring Systems (TPMS).	79–124 fatalities and 5,176– 8,722 injuries prevented per year; $43–$344 million per year in fuel savings and reduced tire wear.	$749–$1,206 million/yr	Unquantified Benefits: "The agency cannot quantify the benefits from a reduction in crashes associated with hydroplaning and overloading vehicles. The primary reason that the agency has been unable to quantify these benefits is the lack of crash data indicating tire pressure and how often these conditions are the cause or contributing factors in a crash. The agency does not collect tire pressure in its crash investigations. NHTSA also has not been able to quantify the benefits associated with reductions in property damage and travel delays that will result from fewer crashes or reductions in the severity of crashes." [67 FR 38739] Unquantified Costs: "The agency anticipates that there may be other maintenance costs for both direct and indirect TPMS. For example, with indirect TPMSs, there may be problems with wheel speed sensors and component failures. With direct TPMSs, the pressure sensors may be broken off when tires are changed. The agency requested comments on this issue in the NPRM, but received none. Without estimates of these maintenance problems and costs, the agency is unable to quantify their impact. The agency also notes that in order to benefit from the TPMS, drivers must respond to a warning by re-inflating their tires. To accomplish this, most drivers will either make a separate trip to a service station or take additional time to inflate their tires when they are at a service station for fuel. The process of checking and re-inflating tires is relatively simple, and probably would take from three to five minutes. The time it would take to make a separate trip to a service station would vary depending on the driver's proximity to a station at the time he or she was notified." 67 FR 38741]
EPA	Control of Emissions From Nonroad Large Spark-Ignition Engines, and Recreational Engines.	$410 million/yr. in reduced engine operation costs; $900 million to $7.88 billion in air quality benefits in calendar year 2030.	$192 million/yr	EPA also lists a variety of other benefit categories which it was not able to quantify or monetize, ranging from infant mortality to damage to urban ornamental plants. [67 FR 68328].

Transfer Regulations

Of the 31 economically significant rules reviewed by OMB, Table 5 lists the 25 that implement Federal budgetary programs. The budget outlays associated with these rules are "transfers" to program beneficiaries. Of the transfer rules, HHS promulgated eight rules, most of which implement Medicare and Medicaid policy. Four are USDA rules. Of the four, three are crop assistance and disaster aids for farmers and one is a food stamp program rule. The Department of Transportation issued three transfer rules. The Departments of Defense, Justice, and the Federal Emergency Management Administration issued two each. The Social Security Administration, Veterans Administration, Small Business Administration and Office of Management and Budget each promulgated one rule.

TABLE 5.—AGENCY TRANSFER RULES: 10/01/01 TO 9/30/02

[As of date of completion of OMB review]

Office of Management and Budget (OMB)

Regulation for Air Carrier Guaranteed Loan Program.

Dept. of Agriculture (USDA)

2000 Crop Agricultural Disaster and Market Assistance.
2002 Farm Bill Regulations: Sugar Program.
Peanut Quota Buyout Program.
Work Provisions of the PRWORA of 1996 and the Food Stamp Provisions of the Balance Budget Act of 1997.

Dept. of Defense

CHAMPUS/TRICARE: Partial Implementation of Pharmacy Benefits Programs; NDAA for FY 2001.
TRICARE: Sub-Acute Care Program; Uniform Skilled Nursing Benefit; Home Healthcare Benefit; Medicare Payment Methods for Skilled Nursing Facilities.

Dept. of Health and Human Services (HHS)

Contraception and Infertility Research Loan Repayment Program.
Medicare Program: Revisions to Payment Policies and 5-Year Review and Adjustments to the Relative Value Units Under the Physician Fee Schedule for CY 2002.
Medicare Program: Prospective Payment System for Hospital Outpatient Services for CY 2002 and Pro Rata Reduction on Transitional Pass-Through Payments.
Medicaid Program: Modification of the Medicaid Upper Payment Limit for Non-State, Government-Owned or Operated Hospitals.
Medicare Program: Modifications to Managed Care Rules Based on Payment Provisions in BIPA and Technical Corrections.
Medicare Program: Notice of Modification of Beneficiary Assessment Requirements for Skilled Nursing Facilities.
Changes to Hospital Inpatient Prospective Payment Systems and FY 2003 Rate.
Medicaid Managed Care; New Provisions.

Social Security Administration

Revised Medical Criteria for Determination of Disability Musculoskeletal System and Related Criteria.

Department of Justice

Claims Under the Radiation Exposure Compensation Act Amendments of 2000.
September 11 Victim Compensation Fund of 2001.

Dept. of Transportation

Procedures for Compensation of Air Carriers.
Imposition and Collection of Passenger Civil Aviation Security Fees in the Wake of September 11.
Aviation Security Infrastructure Fees.

Veterans Administration

Diseases Specific to Radiation-Exposed Veterans.

Federal Emergency Management Administration

Assistance to Firefighters Grant Program.
Disaster Assistance; Federal Assistance to Individuals and Households.

Small Business Administration

Disaster Loan Program.

Major Rules for Independent Agencies

The congressional review provisions of the Small Business Regulatory Enforcement Fairness Act (SBREFA) require the General Accounting Office (GAO) to submit reports on major rules to the committees of jurisdiction, including rules issued by agencies not subject to Executive Order 12866 (the "independent" agencies). We reviewed the information on the costs and benefits of major rules contained in GAO reports for the period of October 1, 2001 to September 30, 2002. GAO reported that three independent agencies issued eight major rules during this period. Two agencies did not conduct benefit-cost analyses. One agency considered benefits and costs of the rules. OIRA lists the agencies and the type of information provided by them (as summarized by GAO) in Table 6. The Securities and Exchange Commission consistently considered benefits and costs in their rulemaking processes while the Federal Communications Commission and the Nuclear Regulatory Commission did not prepare benefit-cost analyses.

In comparison to the agencies subject to E.O. 12866, the independent agencies provided relatively little quantitative information on the costs and benefits of the major rules. As Table 6 indicates, three of the eight rules included some discussion of benefits and costs. Three of the eight regulations had monetized cost information; one regulation monetized benefits. It is difficult to discern, however, whether the rigor and the extent of the analyses conducted by the independent agencies are similar to those of the analyses performed by agencies subject to the Executive Order.

TABLE 6.—RULES FOR INDEPENDENT AGENCIES (OCTOBER, 2001–SEPTEMBER, 2002)

Agency	Rule	Information on benefits or costs	Monetized benefits	Monetized Costs
FCC	Broadcast Services; Digital Television	No	No	No.

TABLE 6.—RULES FOR INDEPENDENT AGENCIES (OCTOBER, 2001–SEPTEMBER, 2002)—Continued

Agency	Rule	Information on benefits or costs	Monetized benefits	Monetized Costs
FCC	Ultra-Wideband Transmission Systems	No	No	No.
FCC	Assessment and Collection of Regulatory Fees for Fiscal Year 2002	No	No	No.
FCC	Order to Permit Operation of NGSO FSS Systems Co-Frequency with GSO and Terrestrial Systems in the Ku-Band Frequency Range; Authorize Subsidiary Terrestrial Use of the 12.2–12.7 GHz Band by Direct Broadcast Satellite Licensees and Their Affiliates; and in Re-Applications of Broadwave USA, PDC Broadband Corporation, and Satellite Receivers, Ltd. in the 12.2–12.7 GHz Band.	No	No	No.
NRC	Revision of Fee Schedules; Fee Recovery for FY 2002	No	No	No.
SEC	Books and Records Requirements for Brokers and Dealers Under the Securities Exchange Act of 1934.	Yes	Yes	Yes.
SEC	Certification of Disclosure in Companies' Quarterly and Annual Reports	Yes	No	Yes.
SEC	Acceleration of Periodic Report Filing Dates and Disclosure Concerning Web Site Access to Reports.	Yes	No	Yes.

Chapter II. Developing Better Regulation

In addition to estimates of the cost and benefits of Federal rules and paperwork, the Regulatory Right-to-Know Act requires OMB to publish "recommendations for reform." In response to this requirement, OMB seeks public comment in the following three areas.

A. Guidelines for Regulatory Analysis

The evaluation of both the benefits and costs of alternative options through regulatory analysis helps agency policymakers arrive at sound regulatory decisions and also helps the public, Congress, and the courts understand those decisions. Although the preparation of such an analysis may require significant investments of agency staff and resources, carefully completed analyses will result in well-designed regulations and larger net benefits to society as a whole. To help support the development of better analysis, OMB has provided guidance to the agencies since the 1980s on how to conduct regulatory analysis. The current OMB guidelines were issued in 1996 as a "best practices" document and were revised and issued as guidance in 2000.

In order to make continued improvements in the quality of the regulatory analyses prepared by agencies, OIRA initiated in 2002 a process to refine these guidance documents. The OIRA Administrator and a member of the Council of Economic Advisers (CEA) are serving as co-chairs of this effort. OMB and CEA staff have drafted proposed revised guidelines which are presented in Appendix C. Through these proposed guidelines, we seek to establish more uniform analytic guidance for the agencies to follow in preparing their regulatory analysis. We will also incorporate new insights and recent innovations in what constitutes a good analysis. Finally, we expect the guidelines to increase the transparency of the analysis of prospective regulations to both technical and nontechnical readers.

While these proposed guidelines include some additional requirements on the agencies in performing RIAs, we believe that adherence to the proposed revisions will yield improvements in the information provided by these analyses. Improved analyses will strengthen the regulatory development process, resulting in better designed regulations and potentially large net benefits to society as a whole.

The key changes in the proposed guidelines include the following:

- The proposal encourages agencies to perform both cost-effectiveness analysis and benefit-cost analysis of major rules because the two techniques offer regulators somewhat different but useful perspectives. In addition, however, we recognize that cost-effectiveness analysis will be feasible in certain situations where a benefit-cost analysis may not be feasible.
- The proposal recommends that agencies report analytic results based on two discount rates—3 percent and 7 percent—for major rules whose effects will be felt primarily within this generation (*i.e.*, the next 20 or 30 years). If benefits and costs are expected to last beyond the current generation, the proposal permits additional sensitivity analysis with discount rates as low as 1 percent.
- The proposal requires agencies to support rulemakings with formal probabilistic analysis of the key scientific and economic uncertainties regarding costs and benefits for rules with economic effects that exceed more than $1 billion per year. In particular, the analysis must present a probability distribution for the estimated benefits and costs, unless the benefits and costs are known with a high degree of certainty.

The draft guidelines are being released today for a 60-day public comment period as well as independent peer review by leading academic experts in the field of regulatory analysis. We also plan to conduct an interagency review of the draft guidelines following public and peer review comments.

We will continue to use our current guidance until we complete this review process and publish revised guidelines.

B. Request for Comment on U.S. Approaches to Analysis and Management of Emerging Risks

Regulators often must decide on an appropriate course of action to protect public health, safety or the environment before science has resolved all the key factual questions about a potential hazard. The appropriate level of precaution in risk assessment and management is complicated by the need to balance efforts to mitigate these potential risks with countervailing risks that may arise from other sources. For example, policies to facilitate the growth of the diesel-engine market may be desirable from a global environmental and energy security perspective since diesel offers significant fuel efficiency advantages over gasoline-powered vehicles, and would likely lead to less reliance on importation of foreign oil and reduce the emission of greenhouse gases. However, diesel fuels pose greater risk to public health and environment from smog and soot caused by relatively higher emission of particles and nitrogen dioxide than conventional gasoline.

U.S. regulators rely on various science-based precautionary approaches in assessing potential hazards and taking protective actions. These

approaches have evolved over time and reflect statutory requirements, agency specific policy decisions, and advancements in scientific understanding. For purposes of collecting and analyzing current risk assessment and management practices in federal agencies, with an emphasis on the role of precaution in risk policy and regulation, the Administration has formed an Interagency Work Group on Risk Management co-chaired by James L. Connaughton, Chairman of the White House Council on Environmental Quality and John D. Graham, Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget. The Work Group includes representatives from the Department of Agriculture, the Department of Commerce, the Department of Health and Human Services, the Department of Interior, the Environmental Protection Agency, and the Office of Science and Technology Policy.

To assist in the Work Groups efforts, OMB requests comments for the next 60 days on current U.S. approaches to analysis and management of emerging risks. Specifically, we seek public input on:

- Ways in which "precaution" is embedded in current risk assessment procedures through "conservative" assumptions in estimation of risk, or through explicit "protective" measures in management decisions as required by statutory requirements as well as agency judgments.
- Examples of approaches in human and ecological risk assessment and management methods addressed by U.S. regulatory agencies (*e.g.*, consumer product safety, drug approval, pesticide registration, protection of endangered species) which appear unbalanced.
- How the U.S. balances precautionary approaches to health, safety and environmental risks with other interests such as economic growth and technological innovation.

C. Request for Comment on Improving the Analysis of Regulations Related to Homeland Security

In last year's final Report to Congress, OMB noted that 58 significant new federal regulations had been enacted in the aftermath of September 11th to protect national security and provide post-attack assistance. As an integral part of the expedited issuance of these rules, OIRA conducted its full regulatory review and coordination function under Executive Order 12866. These efforts made sure that all the rules related to September 11th received priority attention from the appropriate reviewers, and that the Administration's best solutions to respond to potential terrorist attacks were implemented.

Looking to the future, OMB expects additional homeland-security proposals from federal agencies covering concerns ranging from airline safety and immigration to food safety. For example, USDA and HHS will propose new regulations required to implement the Bioterrorism Preparedness and Control Act of 2002. Similarly, the Department of Homeland Security will face major challenges in developing sensible regulations covering many facets of American society. In light of the significant interest in these regulations, OMB is seeking public comment for the next 60 days on how to more effectively evaluate the benefits and costs of these proposals. OMB seeks comment on how agencies might assess the probability of future terrorist attacks and the likely damages, and the resulting effectiveness of new federal regulations in preventing future attacks, reducing America's vulnerability, or mitigating the damage of attacks which do occur. OMB seeks comment on how agencies might better identify, quantify and weigh the direct and indirect costs of such rules, including impacts on time, convenience, privacy and economic productivity. OMB also seeks comment on how evaluation of such regulation could include auxiliary benefits not directly related to the homeland security purpose of the regulation. OMB's request for comment is concerned with these issues as they apply to future rulemakings and is not intended to address a specific rulemaking.

Appendix A.—Calculations of Benefits and Costs: Explanation

Chapter I presents estimates of the annual costs and benefits of selected final major regulations reviewed by OMB between October 1, 1992 and September 30, 2002. The explanation of the calculations for the major rules reviewed by OMB between April 1, 1995 and March 31, 1999 can be found in Chapter IV of our 2000 report (OMB 2000). Table 19, Appendix E, of the 2002 Report presents OIRA's estimates of the benefits and costs of the 20 individual rules reviewed between April 1, 1999 and September 30, 2001. All benefit and cost estimates were adjusted to 2001 dollars.

In assembling estimates of benefits and costs, OIRA has:

(1) Applied a uniform format for the presentation of benefit and cost estimates in order to make agency estimates more closely comparable with each other (for example, annualizing benefit and cost estimates); and

(2) Monetized quantitative estimates where the agency has not done so (for example, converting Agency projections of quantified benefits, such as, estimated injuries avoided per year or tons of pollutant reductions per year to dollars using the valuation estimates discussed below).

The adoption of a uniform format for annualizing agency estimates allows, at least for purposes of illustration, the aggregation of benefit and cost estimates across rules. While OIRA has attempted to be faithful to the respective agency approaches, the reader should be cautioned that agencies have used different methodologies and valuations in quantifying and monetizing effects. Thus, this aggregation involves the assemblage of benefit and cost estimates that are not comparable.

TABLE 7.—ESTIMATE OF BENEFITS AND COSTS OF 47 MAJOR RULES OCTOBER 1, 1992 TO MARCH 31, 1995

[Millions of 2001 dollars]

Regulation	Agency	Benefits	Costs	Explanation
Nutrition Labeling of Meat and Poultry Products.	USDA—FSIS	205	25–32	Present value estimates amortized over 20 years.
Food Labeling (combined analysis of 23 individual rules).	HHS—FDA	438–2,637	159–249	Present value estimates amortized over 20 years.
Real Estate Settlement Procedures	HUD	258–332	135	
Manufactured Housing Wind Standards ...	HUD	79	511	
Confined Spaces	DOL–OSHA	540	250	We valued each fatality at $5 million and each lost-workday injury at $50,000. We did not value non-lost-workday injuries.

TABLE 7.—ESTIMATE OF BENEFITS AND COSTS OF 47 MAJOR RULES OCTOBER 1, 1992 TO MARCH 31, 1995—Continued

[Millions of 2001 dollars]

Regulation	Agency	Benefits	Costs	Explanation
Occupational Exposure to Asbestos	DOL–OSHA	92	448	We assumed a 20-year latency period between exposure and the onset of cancer or asbestosis and valued each death and each case of asbestosis at $5 million.
Vessel Response Plans	DOT–Coast Guard.	8	324	Present values amortized over 30 years. We valued each barrel of oil not spilled at $2,000.
Double-Hull Standards	DOT–Coast Guard.	15	641	Present values amortized over 30 years. We valued each barrel of oil not spilled at $2,000.
Controlled Substances and Alcohol Use and Testing.	DOT–FHWA	1,539	114	
Prevention of Prohibited Drug Use in Transit Operations.	DOT	107	37	Present values amortized over 10 years.
Stability Control of Medium and Heavy Vehicles During Braking.	DOT–NHTSA	1,650–2,539	694	We valued each "equivalent fatality" at $3 million.
Oil and Gas Extraction	EPA	35–129	35	First-year costs amortized costs over 15 years and added to annual (15th year) costs.
Acid Rain Permits Regulations	EPA	76,854–77,206	1,109–1,871	We valued SO_2 reductions at $7,300 per ton.
Vehicle Inspection and Maintenance (I/M)	EPA	219–992	671	We used the estimates of and cost and emission reductions of the new I/M program compared to the baseline of no I/M program. We valued VOC reductions at $520–$2360 per ton. We did not assign a value to CO reductions.
Evaporative Emissions from Light-Duty Vehicles, Light-Duty Trucks, and Heavy-Duty Vehicles..	EPA	243–1,104	161–248	We assumed the VOC emission reductions began in 1995 and rise linearly until 2020, after which point they remain at the 2020 level. Annualizing this stream results in an average of 468,000 tons per year. We valued these tons at $520–$2360 per ton.
Onboard Diagnostic Systems	EPA	421–2,383	226	Emission reductions and costs amortized over 15 years. We valued VOC reductions at $520–$2360 per ton and NO_X reductions at $700–$4900 per ton.
Phase II Land Disposal Restrictions	EPA	26	240–272	We valued each cancer case at $5 million.
Phase-out of Ozone-Depleting Chemicals and Listing of Methyl Bromide.	EPA	1,260–3,993	1,681	Present values amortized over 16 years.
Reformulated Gasoline	EPA	184–637	1,085–1,395	Estimates are for Phase II, which include Phase I benefits and costs. We used the benefit estimates that assume the enhanced I/M program is in place. We valued VOC reductions at $520–$2360 per ton and NO_X reductions at $700–$4900 per ton. We valued each cancer case at $5 million. We assumed the phase II aggregate costs are an additional 25 percent of the Phase I costs based on EPA's reported per-gallon cost estimates.
Acid Rain NO_X Title IV CAAA	EPA	661–4,725	372	Values are for Phase II. We valued NO_X reductions at $350–$2500 per ton.
Hazardous Organic NESHAP	EPA	520–2,360	292–333	We valued VOC emissions at $520–$2360 per ton and NO_X emissions (which are a cost in this instance) at $350–$2500 per ton. We did not value changes in CO emissions.
Refueling Emissions from Light-Duty Vehicles.	EPA	148–673	33	We assumed Stage II controls will remain in place and valued VOC emissions at $520–$2360 per ton.

TABLE 7.—ESTIMATE OF BENEFITS AND COSTS OF 47 MAJOR RULES OCTOBER 1, 1992 TO MARCH 31, 1995—Continued

[Millions of 2001 dollars]

Regulation	Agency	Benefits	Costs	Explanation
Non-Road Compression Ignition Engines	EPA	412–2,881	29–70	We annualized the NO_X emissions which yielded an average annual emission reduction of 588,000 tons beginning in 2000. We valued NO_X emissions at $700–$4900 per ton.
Bay/Delta Water Quality Standards	EPA	2–26	37–248	
Deposit Control Gasoline	EPA	374–1,480	197	We valued estimates of combined emission reductions at $520–$2360 per ton. Present value cost estimates amortized over 5 years.
Total		86,290–106,708	9,506–11,087	

TABLE 8.—ESTIMATE OF BENEFITS AND COSTS OF 3 MAJOR RULES, OCTOBER 1, 2001 TO SEPTEMBER 30, 2002

[Millions of 2001 dollars]

Regulation	Agency	Benefits	Costs	Explanation
Energy Conservation Standards for Central Air Conditioners and Heat Pumps.	DOE	710	636	Present value estimates amortized over 24 years. We valued NO_X emission reductions at $350–$2500 per ton.
Tire Pressure Monitoring Systems (TPMS)	DOT	409–944	749–1,206	We valued each equivalent fatality (see p. iv of the Executive Summary of the Final Economic Assessment) at $3 million.
Control of Emissions From Nonroad Large Spark-Ignition Engines, and Recreational Engines.	EPA	913–4,818	192	We amortized the benefit estimates in proportion to the estimated NO_X emission reductions. The lower end of the range reflects the alternative approach to valuing benefits of EPA rules discussed elsewhere.
Total		2,032–6,472	1,577–2,034	

Assumptions: 7 percent discount rate unless another rate explicitly identified by the agency. For DOL: $5 million VSL assumed for deaths averted when not already quantified. Injuries averted valued at $50,000 from Viscusi.[9] All values converted to 2001 dollars. All costs and benefits stated on a yearly basis.

[9] W. Kip Viscusi, Fatal Tradeoffs: Public & Private Responsibilities for Risk. New York, NY, Oxford University Press, 1992, p. 65.

Valuation Estimates for Regulatory Consequences [10]

Agencies continue to take different approaches to monetizing benefits for rules that affect small risks of premature death. As a general matter, we continue to defer to the individual agencies' judgment in this area. In cases where the agency both quantified and monetized fatality risks, we have made no adjustments to the agency's estimate. In cases where the agency provided a quantified estimate of fatality risk, but did not monetize it, we have monetized these estimates in order to convert these effects into a common unit.

The following is a brief discussion of OIRA's valuation estimates for other types of effects that agencies identified and quantified, but did not monetize. As a practical matter, the aggregate benefit and cost estimates are relatively insensitive to the values we have assigned for these rules because the aggregate benefit estimates are dominated by those rules where EPA provided quantified and monetized benefit and cost estimates.

Injury. For NHTSA's rules, we adopted NHTSA's approach of converting nonfatal injuries to "equivalent fatalities." These ratios are based on NHTSA's estimates of the value individuals place on reducing the risk of injury of varying severity relative to that of reducing risk of death.[11] For the OSHA rules, we monetized only lost workday injuries using a value of $50,000 per injury averted.

I. Change in Gasoline Fuel Consumption. We valued reduced gasoline consumption at $.80 per gallon pre-tax. This equates to retail (at-the-pump) prices in the $1.10–$1.30 per gallon range.

II. Reduction in Barrels of Crude Oil Spilled. OIRA valued each barrel prevented from being spilled at $2,000. This is double the sum of the most likely estimates of environmental damages plus cleanup costs contained in a published journal article [Brown and Savage, "The Economics of Double-Hulled Tankers," Maritime Policy and Management, Volume 23(2), 1996, pages 167–175].

III. Change in Emissions of Air Pollutants. We used estimates of the benefits per ton for reductions in hydrocarbon and nitrogen oxide emissions derived from recent EPA regulatory analyses, as follows (1996$):

Hydrocarbon: $520 and $2360 per ton
Nitrogen Oxide (stationary): $350 and $2500 per ton
Nitrogen Oxide (mobile): $700 and $4900 per ton
Sulfur Dioxide: $7300 per ton

The estimates for reductions in hydrocarbon emissions were obtained from EPA's RIA for the 1997 rule revising the primary NAAQS for ozone and fine PM. OIRA has revised the estimates for reductions in NO_X emissions to reflect a range of estimates from recent EPA analyses for several rules and for proposed legislation. In particular, OIRA has adopted different benefit transfer estimates for NO_X reductions from stationary sources (*e.g.*, electric utilities) and from mobile sources. EPA believes that there are a number of reasons to expect that reductions in NO_X emissions from utility sources achieve different air quality

[10] The following discussion updates the monetization approach used in previous reports and draws on examples from this and previous years.

[11] National Highway Traffic Safety Administration, *The Economic Cost of Motor Vehicle Crashes, 1994*, Table A–1. *http://www.nhtsa.dot.gov/people/economic/ecomvc1994.html*,

improvements relative to reductions from ground-level mobile sources. For example, mobile source tailpipe emissions are located in urban areas at ground level (with limited dispersal) while electric utilities emit NO_X from "tall stacks" located in rural (remote) locations with substantial geographic dispersal (Letter to Don Arbuckle, Deputy Administrator, OIRA from Tom Gibson, Associate Administrator, Office of Policy, Economics and Innovation, EPA, May 16, 2002.) There remain considerable uncertainties with the development of these estimates. The discussion below outlines the various EPA analyses serving as the basis for the NO_X benefit transfer values presented above and discusses the uncertainties that attend these estimates.

Analysis of recent EPA rules yield several estimates for the NO_X benefits per ton from electric utility sources. (See the Regulatory Impact Analyses for the "NO_X SIP Call" and the Section 126 rules, available on the Web at *http://www.epa.gov/ttn/ecas/econguid.html*. In addition, see Memo to NSR Docket from Bryan Hubbell, Senior Economist, Innovative Strategies and Economics Group, EPA.) Based on these studies, the upper end of the range for the benefits of NO_X reductions from stationary sources (electric utilities) is $2500 per ton. These studies also developed estimates for the benefits associated with reductions in SO_2 from electric utilities. Based on an analysis outlined in a June 20, 2001 EPA memo to the file, "Benefits Associated with Electricity Generating Emissions Reductions Realized Under the NSR Program," we used $7300 per ton SO_2 emissions for the 1992 EPA Acid Rain rule.

For mobile sources, EPA recently published the final Tier 2/Gasoline Sulfur rule RIA (EPA, 1999) and Heavy Duty Engine/Diesel Fuel RIA (EPA, 2000). For the Tier 2 rule, which affects light-duty vehicles, NO_X reductions account for around 90 percent of PM precursor emissions and 86 percent of ozone precursor emissions. Based on the final Tier 2/Gasoline Sulfur RIA, EPA estimates that NO_X reductions will yield benefits of $4,900/ton (1996$). EPA believes this analysis provides a more appropriate source for the NO_X benefit transfer value for mobile sources. (Letter from Tom Gibson, pp. B2 and B3, May 16, 2002.) Additional details on the Tier 2 benefits analysis are available in the Tier 2/Sulfur Final Rulemaking RIA, available on the Web at *http://www.epa.gov/oms/fuels.htm*.

The Heavy Duty Engine/Diesel Fuel benefits analysis examined the impacts in 2030 of reducing SO_2 emissions by 141,000 tons and NO_X emissions by 2,750 thousand tons, as well as a 109,000 ton reduction in direct PM emissions. Based on this analysis, EPA estimates a value for NO_X reductions of $10,200/ton in 2030. (Letter from Tom Gibson, p. B3, May 16, 2002.) Complete details of the emissions, air quality, and benefits modeling conducted for the HD Engine/Diesel Fuel Rule can be found at *http://www.epa.gov/otaq/diesel.htm* and *http://www.epa.gov/ttn/ecas/regdata/tsdhddv8.pdf*. Because the Heavy Duty Engine/Diesel Fuel estimate includes an adjustment for income growth out to 2030 and involves reductions in several PM-related pollutants, OIRA has adopted a value of $4900 per ton from EPA's analysis of the Tier 2 rule as a benefits transfer value for reductions in NO_X emissions from mobile sources.

Reductions in the risk of premature mortality dominate the benefits estimates in all of these analyses. The size of the mortality risk estimates from the underlying epidemiological studies, the serious nature of the effect itself, and the high monetary value ascribed to prolonging life make mortality risk reduction the most important health endpoint quantified in these analyses.[12] Because of the importance of this endpoint and the considerable uncertainty among economists and policymakers as to the appropriate way to value reductions in mortality risks, EPA has developed alternative estimates for its "Clear Skies" legislation that show the potential importance of some of the underlying assumptions. (See "Human Health and Environmental Benefit Achieved by the Clear Skies Initiative" at *http://www.epa.gov/clearskies*.) OIRA has used this analysis to identify an alternative estimate of the benefits from NO_X reductions. In its Clear Skies analysis, EPA presented alternative benefits estimates of $14 billion and $96 billion per year in 2020, or a difference in the estimates of roughly a factor of seven.[13] Using this ratio, an alternative estimate of the benefits of NO_X reductions from stationary sources would be $350 per ton from stationary sources and $700 per ton from mobile sources.

OIRA recognizes that there are potential problems and significant uncertainties that are inherent in any benefits analysis based on $/ton benefit transfer techniques. The extent of these problems and the degree of uncertainty depends on the divergence between the policy situation being studied and the basic scenario providing the benefits transfer estimate. Examples of other factors include sources of emissions, meteorology, transport of emissions, initial pollutant concentrations, population density, and population demographics, such as the proportion of elderly and children and baseline incidence rates for health effects. Because of the uncertainties associated with benefits transfer, OIRA decided not to include three mobile source rules that are projected to achieve substantial reductions in SO_2 and PM emissions that OIRA included in previous years in the monetized estimates presented in Tables 5 and 6 of the 2002 Report.[14]

Adjustment for Differences in Time Frame Across These Analyses

Agency estimates of benefits and costs cover widely varying time periods. The differences in the time frames used for the various rules evaluated generally reflect the specific characteristics of individual rules such as expected capital depreciation periods or time to full realization of benefits. In order to allow us to provide an aggregate estimate of benefits and costs, we developed benefit and cost time streams for each of the rules. Where agency analyses provide annual or annualized estimates of benefits and costs, we used these estimates in developing streams of benefits and costs over time. Where the agency estimate provided only annual benefits and costs for specific years, we used a linear interpolation to represent benefits and costs in the intervening years.[15]

Further Caveats

In order for comparisons or aggregation to be meaningful, benefit and cost estimates should correctly account for all substantial effects of regulatory actions, including potentially offsetting effects, which may or may not be reflected in the available data. We have not made any changes to agency monetized estimates. To the extent that agencies have adopted different monetized values for effects—for example, different values for a statistical life or different discounting methods—these differences remain embedded in the tables. Any comparison or aggregation across rules should also consider a number of factors which our presentation does not address. For example, these analyses may adopt different baselines in terms of the regulations and controls already in place. In addition, the analyses for these rules may well treat uncertainty in different ways. In some cases,

[12] There are several key assumptions underlying the benefit estimates for reductions in NO_X emissions, including:

1. Inhalation of fine particles is causally associated with premature death at concentrations near those experienced by most Americans on a daily basis. While no definitive studies have yet established any of several potential biological mechanisms for such effects, the weight of the available epidemiological evidence supports an assumption of causality.

2. All fine particles, regardless of their chemical composition, are equally potent in causing premature mortality. This is an important assumption, because fine particles from power plant emissions are chemically different from directly emitted fine particles from both mobile sources and other industrial facilities, but no clear scientific grounds exist for supporting differential effects estimates by particle type.

3. The concentration-response function for fine particles is approximately linear within the range of outdoor concentrations under policy consideration. Thus, the estimates include health benefits from reducing fine particles in both attainment and non-attainment regions.

4. The forecasts for future emissions and associated air quality modeling are valid.

5. The valuation of the estimated reduction in mortality risk is largely taken from studies of the tradeoff associated with the willingness to accept risk in the labor market.

[13] The difference between the estimates reflects several assumptions, including differences in the estimation and valuation of mortality risk and the valuation of a reduction in the incidence of chronic bronchitis.

[14] These are: Municipal Waste Combustors (1995), Emission Standards for New Locomotives (1997) and Emission Standards for Non-Road Diesel Engines (1998).

[15] In other words, if hypothetically we had costs of $200 million in 2000 and $400 million in 2020, we would assume costs would be $250 million in 2005, $300 million in 2010, and so forth. For example, for the Regional Haze rule, EPA provided only an estimate of benefits and costs in 2015. To develop benefit and cost streams, we used a linear extrapolation of benefits and costs beginning in 2009 and scaling up to the reported 2015 estimates.

agencies may have developed alternative estimates reflecting upper- and lower-bound estimates. In other cases, the agencies may offer a midpoint estimate of benefits and costs. In still other cases the agency estimates may reflect only upper-bound estimates of the likely benefits and costs. While we have relied in many instances on agency practices in monetizing costs and benefits, our citation of or reliance on agency data in this report should not be taken as an OIRA endorsement of all the varied methodologies used to derive benefits and cost estimates.

Appendix B. Agency Estimates of Benefits and Costs

TABLE 9.—AGENCY ESTIMATES OF BENEFITS AND COSTS OF MAJOR RULES

[October 1, 1992 to September 30, 1993]

Rule	Agency	Benefits	Costs	Other information
Nutrition labeling of meat and poultry products.	USDA–FSIS	$1.75 billion (NPV)	$218–272 million (NPV) ..	20-year NPV discounted at 7%.
Food Labeling: Use of Nutrient Content Claims for Butter.	HHS–FDA	$4.4–$26.5 billion	$1.4–$2.3 billion plus $163 million in costs to Federal government.	HHS–FDA performed one analysis for the food labeling requirements imposed by this rule and the other 22 HHS–FDA rules in this table related to food labeling.
Food Labeling: Declaration of Ingredients.	HHS–FDA	$4.4–$26.5 billion	$1.4–$2.3 billion plus $163 million in costs to Federal government.	HHS–FDA performed one analysis for the food labeling requirements imposed by this rule and the other 22 HHS–FDA rules in this table related to food labeling.
Food Labeling, Declaration of Ingredients: Common or Usual Name Declaration for Protein Hydrolysates and Vegetable Broth in Canned Tuna "and/or" Labeling for Soft Drinks.	HHS–FDA	$4.4–$26.5 billion	$1.4–$2.3 billion plus $163 million in costs to Federal government.	HHS–FDA performed one analysis for the food labeling requirements imposed by this rule and the other 22 HHS–FDA rules in this table related to food labeling.
Food Labeling: Declaration of Ingredients for Dairy Products and Maple Syrup.	HHS–FDA	$4.4–$26.5 billion	$1.4–$2.3 billion plus $163 million in costs to Federal government.	HHS–FDA performed one analysis for the food labeling requirements imposed by this rule and the other 22 HHS–FDA rules in this table related to food labeling.
Food Labeling: Nutrient Content Claims, Definition of Term Healthy.	HHS–FDA	$4.4–$26.5 billion	$1.4–$2.3 billion plus $163 million in costs to Federal government.	HHS–FDA performed one analysis for the food labeling requirements imposed by this rule and the other 22 HHS–FDA rules in this table related to food labeling.
Food Labeling: Label Statements on Foods for Special Dietary Use.	HHS–FDA	$4.4–$26.5 billion	$1.4–$2.3 billion plus $163 million in costs to Federal government.	HHS–FDA performed one analysis for the food labeling requirements imposed by this rule and the other 22 HHS–FDA rules in this table related to food labeling.
Food Labeling: Health Claims, Zinc and Immune Function in the Elderly.	HHS–FDA	$4.4–$26.5 billion	$1.4–$2.3 billion plus $163 million in costs to Federal government.	HHS–FDA performed one analysis for the food labeling requirements imposed by this rule and the other 22 HHS–FDA rules in this table related to food labeling.
Food Labeling, Reference Daily Intakes and Daily Reference Values (Decision).	HHS–FDA	$4.4–$26.5 billion	$1.4–$2.3 billion plus $163 million in costs to Federal government.	HHS–FDA performed one analysis for the food labeling requirements imposed by this rule and the other 22 HHS–FDA rules in this table related to food labeling.
Food Labeling: Health Claims and Label Statements, Sodium and Hypertension.	HHS–FDA	$4.4–$26.5 billion	$1.4–$2.3 billion plus $163 million in costs to Federal government.	HHS–FDA performed one analysis for the food labeling requirements imposed by this rule and the other 22 HHS–FDA rules in this table related to food labeling.
Food Labeling: Health Claims and Label Statements: Omega-3 Fatty Acids and Coronary Heart Disease.	HHS–FDA	$4.4–$26.5 billion	$1.4–$2.3 billion plus $163 million in costs to Federal government.	HHS–FDA performed one analysis for the food labeling requirements imposed by this rule and the other 22 HHS–FDA rules in this table related to food labeling.
Food Labeling: Health Claims and Label Statements, Dietary Fat and Cancer.	HHS–FDA	$4.4–$26.5 billion	$1.4–$2.3 billion plus $163 million in costs to Federal government.	HHS–FDA performed one analysis for the food labeling requirements imposed by this rule and the other 22 HHS–FDA rules in this table related to food labeling.
Food Labeling: Health Claims, Calcium and Osteoporosis.	HHS–FDA	$4.4–$26.5 billion	$1.4–$2.3 billion plus $163 million in costs to Federal government.	HHS–FDA performed one analysis for the food labeling requirements imposed by this rule and the other 22 HHS–FDA rules in this table related to food labeling.
Food Labeling: Health Claims and Label Statement, Antioxidant Vitamins and Cancer.	HHS–FDA	$4.4–$26.5 billion	$1.4–$2.3 billion plus $163 million in costs to Federal government.	HHS–FDA performed one analysis for the food labeling requirements imposed by this rule and the other 22 HHS–FDA rules in this table related to food labeling.

TABLE 9.—AGENCY ESTIMATES OF BENEFITS AND COSTS OF MAJOR RULES—Continued

[October 1, 1992 to September 30, 1993]

Rule	Agency	Benefits	Costs	Other information
Food Labeling: Health Claims and Label Statements, Dietary Saturated Fat and Cholesterol and Coronary Heart Disease.	HHS–FDA	$4.4–$26.5 billion	$1.4–$2.3 billion plus $163 million in costs to Federal government.	HHS–FDA performed one analysis for the food labeling requirements imposed by this rule and the other 22 HHS–FDA rules in this table related to food labeling.
Regulation Impact Analysis of the Final Rules to Amend the Food Labeling Regulations.	HHS–FDA	$4.4–$26.5 billion	$1.4–$2.3 billion plus $163 million in costs to Federal government.	HHS-FDA performed one analysis for the food labeling requirements imposed by this rule and the other 22 HHS-FDA rules in this table related to food labeling.
Food Labeling: Health Claims and Label Statements, Folic Acid and Neural Tube Defects.	HHS–FDA	$4.4–$26.5 billion	$1.4–$2.3 billion plus $163 million in costs to Federal government.	HHS–FDA performed one analysis for the food labeling requirements. imposed by this rule and the other 22 HHS–FDA rules in this table related to food labeling.
Food Labeling: Health Claims and Label Statements, Dietary Fiber and Cardiovascular Disease.	HHS–FDA	$4.4–$26.5 billion	$1.4–$2.3 billion plus $163 million in costs to Federal government.	HHS-FDA performed one analysis for the food labeling requirements imposed by this rule and the other 22 HHS-FDA rules in this table related to food labeling.
Food Labeling: Health Claims and Label Statements, Dietary Fiber and Cancer.	HHS–FDA	$4.4–$26.5 billion	$1.4–$2.3 billion plus $163 million in costs to Federal government.	HHS-FDA performed one analysis for the food labeling requirements imposed by this rule and the other 22 HHS-FDA rules in this table related to food labeling.
Food Labeling, General Requirements for Health Claims for Food.	HHS–FDA	$4.4–$26.5 billion	$1.4–$2.3 billion plus $163 million in costs to Federal government.	HHS-FDA performed one analysis for the food labeling requirements imposed by this rule and the other 22 HHS-FDA rules in this table related to food labeling.
Food Labeling, Mandatory Status of Nutrition Labeling and Nutrient Content Revision, Form for Nutrition Label.	HHS–FDA	$4.4–$26.5 billion	$1.4–$2.3 billion plus $163 million in costs to Federal government.	HHS-FDA performed one analysis for the food labeling requirements imposed by this rule and the other 22 HHS-FDA rules in this table related to food labeling.
Food Labeling, Nutrient Content Claims, General Principles, Petitions, Definition of Terms, Definitions of Nutrient Content Claims for the Fat, Fatty Acid, and Cholesterol.	HHS–FDA	$4.4–$26.5 billion	$1.4–$2.3 billion plus $163 million in costs to Federal government.	HHS-FDA performed one analysis for the food labeling requirements imposed by this rule and the other 22 HHS-FDA rules in this table related to food labeling.
Food Labeling Regulation Implementing the Nutrition Labeling and Education Act of 1990, Opportunity for Comments.	HHS–FDA	$4.4–$26.5 billion	$1.4–$2.3 billion plus $163 million in costs to Federal government.	HHS-FDA performed one analysis for the food labeling requirements imposed by this rule and the other 22 HHS-FDA rules in this table related to food labeling.
Food Labeling—Metric Labeling Requirements.	HHS–FDA	$4.4–$26.5 billion	$1.4–$2.3 billion plus $163 million in costs to Federal government.	HHS-FDA performed one analysis for the food labeling requirements imposed by this rule and the other 22 HHS-FDA rules in this table related to food labeling.
Real Estate Settlement Procedures Act (Regulation X), FR–1942.	HUD	$119,014,950 annually in greater competition in title insurance business; $89.1–148.5 million net benefit annually in reducing transaction costs by packaging services with affiliated services.	Cost of duplicate good-faith estimates: $56,824,627 per year; Cost of new disclosure for controlled business arrangements: $48,147,000 per year; Cost of computerized loan originations: $3,607,890 per year; Cost of two additional years for storage (discount rate = 6%): $24,305.	
Manufactured Housing Construction and Safety Standards.	HUD	Net Benefit: $300 million per year present value in energy savings; $50–160 million per year present value in reduced NO_X, SO_X, and PM emission.		

TABLE 9.—AGENCY ESTIMATES OF BENEFITS AND COSTS OF MAJOR RULES—Continued

[October 1, 1992 to September 30, 1993]

Rule	Agency	Benefits	Costs	Other information
Final frameworks for early-season migratory bird hunting regulations.	DOI	Not Estimated	Not Estimated.	
Migratory bird hunting, final frameworks for late-season migratory bird hunting regulations.	DOI	Not Estimated	Not Estimated.	
The Family and Medical Leave Act of 1993.	DOL-ESA	Not Estimated	$674 million annually	Estimate provided by U.S. General Accounting Office (Parental Leave: Estimated Costs of H.R. 925, the Family and Medical Leave Act of 1987—GAO/HRD–88–34, Nov. 10, 1987).
Permit Required Confined Spaces.	DOL–OSHA	Reduced annually: 54 fatalities; 5,931 lost-workday injury and illness cases; 5,908 non-lost-workday cases.	$202.4 million annually	"OSHA anticipates that improved worker productivity as a result of the standard will help to lower production costs and contribute to higher quality output. Although OSHA did not quantify these cost offsets, the Agency believes they will be substantial" (RIA, pp. I–10, I–13). "OSHA anticipates that greater use of mechanical ventilation to reduce atmospheric hazard in permit spaces may result in additional release of hazardous substances to the air. Incremental release quantities related to the permit space standard are not determinable at present, but are expected to be minor relative to current overall releases" (RIA, pp. I–17—I–18).
Lead Exposure in Construction.	DOL–OSHA	Near-term avoided annual health effects; Reduced nerve conduction velocity: 16,199–22,831 cases; Reduced blood ALA–D levels: 130,056–164,044 cases; Increased urinary ALA: 60,389–78,676 cases; Gastrointestinal disturbances: 1,135–4,413 cases; Detected blood-lead levels above MRP trigger: 24,262–35,163 cases. Long-term avoided health effects over 10 years; Fatal/nonfatal infractions: 2,164–2,322 cases; Fatal/nonfatal stroke: 644–698 cases; Renal disease: 1,258–2,157 cases.	$365–445 million annually plus one-time start-up costs of $150–$183 million.	
Response Plans for Marine Transportation-Related Facilities.	DOT-USCG	58,838 barrels of oil not spilled (NPV).	$176,105,666 (NPV)	Timeline of the analysis: 1996–2025 Discount Rate: 7%; $1996.
Vessel Response Plans ...	DOT–USCG	50,312 barrels of oil not spilled (NPV).	$3,245,869,985 (NPV)	Timeline of the analysis: 1996–2025 Discount Rate: 7%; $1996.
Light Truck Average Fuel Economy Standard for Model Year 1995.	DOT	Not Estimated	Not Estimated.	

TABLE 9.—AGENCY ESTIMATES OF BENEFITS AND COSTS OF MAJOR RULES—Continued

[October 1, 1992 to September 30, 1993]

Rule	Agency	Benefits	Costs	Other information
Water quality standards regulation: Compliance with CWA Section 303(C)(2)(B) Amendments.	EPA	Not Estimated	Not Estimated	"The analysis performed was limited to assessing only the potential reduction in cancer risk; no assessment of potential reductions in risks due to reproductive, developmental, or other chronic and subchronic toxic effects was conducted. However, given the number of pollutants, there could be: (1) Decreased incidence of systemic toxicity to vital organs such as liver and kidney; (2) decreased extent of learning disability and intellectual impairment due to the exposure to such pollutants as lead; and (3) decreased risk of adverse reproductive effects and genotoxity." (57 FR 60848–). "The ecological benefits that can be expected from today's rule include protection of both fresh and salt water organisms, as well as wildlife that consume aquatic organisms * * * In addition, the rule would result in the propagation and productivity of fish and other organisms, maintaining fisheries for both commercial and recreational purposes. Recreational activities such as boating, water skiing, and swimming would also be preserved along with the maintenance of an aesthetically pleasing environment" (57 FR 60848–). "EPA acknowledges that there will be a cost to some dischargers for complying with new water quality standards as those standards are translated into specific NPDES permit limits * * * Revised wasteload allocations may result in adjustments to individual NPDES permit limits for point source dischargers, and these adjustments could result in increased wastewater treatment costs or other pollution control activities such as recycling or process changes. The magnitude of these costs depends on the types of treatment or other pollution control, the number and type of pollutants being treated, and the level of control that can be achieved by technology-based effluent limits for each industry. Similar sources of costs and the variables affecting costs may also apply to indirect industrial dischargers to the extent that the industrial discharger is a source of toxic pollutants discharged by the POTW * * * Nonpoint sources of toxic pollutants may also incur increased costs to the extent that best management practices need to be modified or applied to more sources to reflect the revised water quality standards. Although there is no Federal permit program for nonpoint sources comparable to that for point sources, there are State regulatory programs to control nonpoint source discharges. Monitoring programs are another source of potential incremental costs to dischargers and States." (57 FR 60848–).

TABLE 9.—AGENCY ESTIMATES OF BENEFITS AND COSTS OF MAJOR RULES—Continued

[October 1, 1992 to September 30, 1993]

Rule	Agency	Benefits	Costs	Other information
Coastal nonpoint pollution control program development and approval guidance (EPA, NOAA), guidance specifying management measures for sources of nonpoint * * * Section 6217.	EPA	Not Estimated	$389,940,000–$590,640,000 (annualized).	The RIA identified generally the types of "off-site benefits" that could be related to water quality improvements, including 4 use benefits (in-stream, near stream, option value, and diversionary) and 3 non-use (intrinsic) benefits (aesthetic, bequest, and existence).
Oil and Gas Extraction Point Source Category, Offshore Subcategory, Effluent Limitations Guidelines and New Source Performance Standards (Final Rule).	EPA	$28.2–103.9 million per year.	Total annualized BAT and NSPS costs: 1st year = $122 million, 15th year = $32 million.	"Other benefits that are quantified, to the extent possible, but not monetized due to lack of appropriate data, include: (1) Human health risk reductions associated with systemics other than lead, pH-dependent leach rates, carcinogens for which there are no risk factors available, exposure to pollutants via sediment or food chair; (2) ecological risk reductions; (3) fishery benefits; and (4) intrinsic benefits * * * The non-quantified, non-monetized benefits assessed in this RIA include increased recreational fishing, increased commercial fishing, improved aesthetic quality of waters near the platform, and benefits to threatened or endangered species [the Kemp's Ridley Turtle and the Brown Pelican] in the Gulf of Mexico." (58 FR 12454–).
Acid Rain Permits, Allowance System, Emissions Monitoring, Excess Emissions and Appeals Regulations Under Title IV of the Clean Air Act Amendments of 1990.	EPA	10 million tons/year reduction in SO_2 emission (mandated by Title IV); Cost savings: $689–973 million (annualized).	$894–1,509 million (annualized).	SO_2 emission reductions are expected to: (1) reduce acidification of surface waters, thereby increasing the presence and diversity of aquatic species; (2) improve visibility by reducing haze; (3) may improve human health as lower SO_2 emissions reduce air concentrations of acid sulfate aerosols and thus acute and chronic exposure to the acid aerosols that adversely affect human health may even affect even mortality; (4) eliminate damage to forest soils and foliage, especially of high-elevation spruce trees in the eastern U.S. and allow recovery of previously damaged tree populations; (5) may reduce damage to auto paint, reduce soiling of buildings and monuments, and thus the life of some materials and structures may be extended and the costs of maintenance or repair reduced (RIA, pp. 1–5 to 1–6, and 6–1 to 6–3). Engineering costs associated with CEM retrofit were not analyzed (RIA, pp. 4–18). "The annualized costs of the implementation regulations are estimated to increase the annual costs of generating electricity by 0.5 to 1.2 percent." (58 FR 3590–).

TABLE 9.—AGENCY ESTIMATES OF BENEFITS AND COSTS OF MAJOR RULES—Continued

[October 1, 1992 to September 30, 1993]

Rule	Agency	Benefits	Costs	Other information
Vehicle Inspection and Maintenance Requirements for State Implementation Plan (Final Rule).	EPA	Emission reductions from continuing current I/M program unchanged (baseline = no I/M program) in 2000: 116016 tons VOC, 1566395 tons CO (annual tons in 2000); Emission reductions from new I/M program in 2000 (baseline = no I/M program): 420415 tons VOC, 2845754 tons CO (annual tons in 2000).	Continuing current I/M program: NET COST = $894 million ($2000); New I/M program: NET COST = $541 million ($2000).	"These repairs have been found to produce fuel economy benefits that will at least partially offset the cost of repairs. Fuel economy improvements of 6.1% for repair of pressure test failures and 5.7% for repair of purge test failures were observed. Vehicles that failed the transient short test at the established cutpoints were found to enjoy a fuel economy improvement of 12.6% as a result of repairs." (57 FR 52950–). "In conclusion, today's action may cause significant shifts in business opportunities. Small businesses that currently do both inspections and repairs in decentralized I/M programs may have to choose between the two. Significant new opportunities will exist in these areas for small businesses to continue to participate in the inspection and repair industry. This will mean shifts in jobs but an overall increase in jobs in the repair sector and a small to potentially large increase in the inspection sector, depending on state choices." (57 FR 52950–).
Evaporative emission regulations for gasoline-fueled and methanol-fueled light duty vehicles, light-duty trucks, and heavy-duty vehicles—SAN 2969.	EPA	Total VOC Reduction in 2020: 1,120,000 metric tons.	Annual total program cost without fuel savings: $130–200 million ($1992, NPV to the year of the sale).	"[Emission] projections are made for the year 2020 in order to provide benefit predictions for a fully turned-over fleet and to factor in other known trends, such as the effects of other new Clean Air Act programs. These new programs include high-technology inspection and maintenance and reformulated gasoline. Reformulated gasoline achieving a 25 percent overall VOC emission reduction standard is assumed to be used in 40 percent of the nation." (58 FR 16002–). "[The cost] estimate does not include the offsetting fuel savings." (58 FR 16002–).
Control of air pollution from new motor vehicles and new motor vehicle engines, regulations requiring on-board diagnostic systems on 1994 and later model year light-duty vehicles.	EPA	4.0 million tons HC, 30.8 million tons CO, 2.5 million tons NO_X (NPV).	$16.6 billion (NPV) ($1993).	Discount rate: 7% (58 FR 9468–) Timeline: 2005–2020 (58 FR 9468–)."EPA has not been able to adequately quantify some potential cost savings not included in these estimates. Potential cost savings can accrue due to early repairs of malfunction which, if left undetected and unrepaired, could result in the need for even more costly repairs in the future. Also, improved repair effectiveness should reduce the potential for a part to be unnecessarily replaced in attempting to fix a problem. Repair facilities should also benefit from the availability of generic tools for accessing and using the OBD system in problem diagnosis and repair. These service facility benefits could be passed along to the consumer in the form of lower repair costs." (58 FR 9468–).

TABLE 10.—AGENCY ESTIMATES OF BENEFITS AND COSTS OF MAJOR RULES

[October 1, 1993 to September 30, 1994]

Rule	Agency	Benefits	Costs	Other information
Manufactured Home Construction and Safety Standards on Wind Standards.	HUD	$63,726,314 annually ...	$412,106,180 annually	The cost estimates do not include costs associated with "out of pocket expenses related to deductibles or non-covered losses" (RIA, pp. 1–2). Non-quantified benefits include: "purchasers will experience less dislocation caused by damage to or destruction of their manufactured homes. Fourth, residents who choose to remain in their units during storms will suffer fewer injuries and deaths" (RIA, p. 1) Discount rate used = 6.64 percent (RIA, p. 8) Basis for public benefit assessment: Hurricane Andrew (RIA, p. 9).
Designate critical habitat for four endangered Colorado River fishes.	DOI	Net benefit: $7.92 million.	.....	Increase employment by 710 jobs, increase earnings by $6.62 million, increase government revenue by $3.20 million from 1995–2020 (59 FR 13374–).
Occupational Exposure to Asbestos.	DOL–OSHA	Reduction in annual cancer risk: 2.12 cancer deaths in general industry, 40.48 cancer deaths in construction industry, 14.2 cancers among building occupants. Reduction in asbestosis: 14 cases annually.	$361.4 million annually	Non-quantified benefits include: avoided cases of asbestosis for building occupants and others secondarily exposed, reduced risks of cancer and fires (from rages contaminated with solvent), more rapid building reoccupation, reduced probability of asbestos-related lawsuits (RIA, pp 52–57).
Financial Responsibility for Water Pollution (Vessels).	DOT–USCG	525,316 barrels of oil not spilled (NPV).	$451,440,918 (NPV)	Timeline of the analysis: 1996–2025; Discount Rate: 7%; $1996.
Antidrug Program for Personnel Engaged in Specified Aviation Activities.	DOT–FAA	$206.64 million (NPV) ..	$138.13 million (NPV) ..	Timeline of the analysis: 1994–2003 (RIA, p. 12); $1992 (RIA, p. 12); Discount rate = 7% (RIA, p. 20).
Controlled Substances and Alcohol Use and Testing.	DOT–FHWA	Reduced fatal accidents: $680 million in 1st year, $952 million per year in 2nd and subsequent years. Reduced injury cost: $152.4 million in 1st year, $213.4 million per year in 2nd and subsequent years assuming the highest deterrence scenario. Reduced property damage: $47.5 million in 1993, $66.5 million per year from 1994–2002. Reduced traffic delays: $3.5 million in 1993, $4.9 million per year thereafter assuming highest deterrence rate; Reduced other costs of freeway accidents: $1.9 million in 1995 and $2.7 million thereafter.	$93,947,750 in 1995, and $92,453,950 per year in 1996 and thereafter.	
Light Truck Average Fuel Economy standards, Model Years 1996–1997.	DOT	Not Estimated	Not Estimated.	
Prevention of Prohibited Drug Use in Transit Operations.	DOT	$608,520,643 (NPV)	$208,970,087 (NPV)	Timeline: 1995–2004; Discount rate: 7%; $1991.

TABLE 10.—AGENCY ESTIMATES OF BENEFITS AND COSTS OF MAJOR RULES—Continued

[October 1, 1993 to September 30, 1994]

Rule	Agency	Benefits	Costs	Other information
Land disposal restrictions phase II, universal treatment standards and treatment standards for organic toxicity, characteristic wastes, and newly listed wastes.	EPA	0.22 cancer cases per year avoided from groundwater, 0.037 cancer cases per year avoided from air; $20 million avoided property value damage (annualized).	$194–219 million (annualized).	"The timeframe to which these benefits are attributable begins 30 years following promulgation of the rule." (59 FR 47982–). "However, there are some benefits which the Agency has not attempted to quantify which are potentially attributable to today's rule. For example, the agency has not attempted to quantify any potential non-use-value benefits from protection of resources through treatment of hazardous wastes. Furthermore, the risk analysis performed by the Agency for today's rule does not account for many other potential benefits from today's rule. Ecological risk reduction from treatment of wastes under today's rule has not been quantified. Nor do the Agency's air and groundwater benefit estimates account for karst terrain, complex flow situations, or other factors which could contribute to underestimates of benefits." (59 FR 47982–).
Accelerated phase-out of ozone depleting chemicals and listing and phase-out of methyl bromide.	EPA	Ozone depleting chemicals: $8–24 billion (NPV) Methyl Bromide: $1.6–6.4 billion (NPV).	Ozone depleting chemicals: $12 billion (NPV); Methyl Bromide: $0.8 billion (NPV).	Discount rate: 7% (58 FR 65018–). Timeline for methyl bromide cost: 1994–2010 (58 FR 65018–). Timeline for methyl bromide benefits: 1994–2001 (58 FR 65018–).
Fuel and fuel additives: standards for reformulated gasoline.	EPA	Phase I—Summertime VOC emission reduction: 90–140 thousand tons per year; Reduction in cancer incidence: 16 per year (assuming enhanced I/M in place) or 24 per year (assuming basic I/M in place). Phase II—(incremental to Phase I): Summertime VOC emission reduction: approximately 42,000 tons Summer time NO_x emission reduction: approximately 22,000 tons Number of cancer avoided: 3–4 fewer cancer incidence per year.	Phase I—Annual costs: $700–940 million. Phase II—(incremental to Phase I): Increase gasoline production cost by 1.2 cents/gallon during the VOC control period, since only the toxics standard changes, and there is not expected to be a cost for year-round toxics control above that required for Phase I; EPA doesn't expect non-production related costs, such as distribution costs, recordkeeping and reporting costs, etc., to increase isgnificantly relative to Phase I.	"Reductions in mobile source emissions of the air toxics addressed in the reformulated gasoline program (benzene, 1,3-butadiene, formaldehyde, acetaldehyde and POM) may result in fewer cancer incidences. A number of adverse noncancer health effects have also been associated with exposures experience in particular microenvironments such as parking garages and refueling stations. These other health effects include blood disorders, heart and lung diseases, and eye, nose and throat irritation. Some of the toxics may also be developmental and reproductive toxicants, while very high exposure can cause effects on the brain leading to respiratory paralysis and even death. The uses of reformulated gasoline meeting the Phase II standards will likely help to reduce some of these health effects as well." (59 FR 7716–). Phase I: The cost of producing reformulated gasoline is expected to increase by approximately 3–5 cents per gallon in 1995. (59 FR 7716–). The cost of testing, enforcement, and recordkeeping not reflected in the annual cost estimate. (59 FR 7716–).

TABLE 10.—AGENCY ESTIMATES OF BENEFITS AND COSTS OF MAJOR RULES—Continued

[October 1, 1993 to September 30, 1994]

Rule	Agency	Benefits	Costs	Other information
Acid Rain NO_X Regulations under Title IV of the Clean Air Act Amendments of 1990.	EPA	Phase I: 400,000 tons NO_X reduced Phase II: 1.89 million tons NO_X reduced.	Phase I: $77 million/year Phase II: $300 million/year.	Qualitative human health benefits: Lower ambient levels of NO_X (and associated lower PM and lower ozone levels) may mean fewer lost school days, fewer disability days for children; for all, less eye irritation and its associated acute and chronic health effects; for exercising asthmatics, improved pulmonary function. Also ambient concentrations of nitrates will be lower and fewer toxic nitrogenous compounds will be formed. (RIA, pp. 9–1 to 9–4) Qualitative welfare effects: reduced materials damage, increased visibility that is associated with enhanced enjoyment of vistas and fewer aircraft and motor vehicle accidents. The potential ecological effect include minimizing the adverse effects of excess nitrogen deposition in forest soils and surface waters, including the "acid pulses" that precede fish kills and consequently, reduced biodiversity. (RIA, pp. 9–1 to 9–4) "Moreover, EPA expects that most or all utility expenses from meeting NO_X requirements will be passed along to ratepayers * * * Under today's rule the cost to ratepayers is very small, relative to their current expenditures on electricity. The average increase in electric rates across the United States is estimated to be only 0.03 and 0.13 percent under Phases I and II respectively." (59 FR 13538–).
Hazardous Organic NESHAP (HON) for the Synthetic Organic Chemical Manufacturing Industry (SOCMI) and Other Processes Subject to the Negotiated Regulation for Equipment Leaks.	EPA	HAP reduction: 510,000 tons/year; VOC reduction: 1,000,000 tons/year.	Total nationwide annual cost: $230 million/year ($1989); CO emission increase: 1,900 tons/year; NO_x emission increase: 19,000 tons/year.	"Thus, the estimates represent annual impacts occurring in the fifth year." (59 FR 19402–). "As discussed in section III.B.3 of this preamble, the EPA has deferred the final decision regarding control of medium-sized storage vessels at existing sources. Therefore, emission reductions for storage vessels shown in Table 1, and consequently the total, may be slightly overstated." (59 FR 19402–). "Because of the EPA's deferral of a final decision on control of medium-sized storage vessels at existing sources, as discussed in section III.B.3 of this preamble, the cost impacts for storage vessels, and consequently the total cost impact, may be slightly overstated." (59 FR 19402–). "Market analyses for a subset of 21 of the chemicals estimated price increases from 0.1 percent to 3.9 percent and quantity decreases from 0.1 percent to 4 percent." (59 FR 19402–).
Control of air pollution from new motor vehicles and new motor vehicle engines, refueling emission regulations for light-duty vehicles and trucks and heavy-duty vehicles.	EPA	Without Stage II controls, average VOC annual emission reductions: over 420,000 tons per year; With Stage II phase-out when ORVR and Stage II would cover the same percent of fuel, average annual emission reduction: 378,000 tons; If retain Stage H controls, an incremental emission reduction: 285,000 tons.	Without Stage II controls, the average annual cost: −$6 million (1998–2020); With Stage II and phasing out at 2010, the average annual cost: $2 million (1998–2020); With Stage II and no phase out, the average annual cost: $27 million (1998–2020); In 1998 NPV, costs are $102 million, $264 million and $435 million respectively.	"It should be noted that the RIA was completed prior to EPA's decision to delay the requirements for LDTs and to exclude HDVs. These controls were included in the analysis and were assumed to begin in 1998. EPA expects that inclusion of these items in the analysis has no significant effect on the results and does not affect the conclusions which are based on the analysis." (59 FR 16262–). "In the cases where costs are negative, it is because the value of the recovery credits exceeds the hardware and R, D, & T costs." (59 FR 16262–).

TABLE 10.—AGENCY ESTIMATES OF BENEFITS AND COSTS OF MAJOR RULES—Continued

[October 1, 1993 to September 30, 1994]

Rule	Agency	Benefits	Costs	Other information
Determination of significance for nonroad sources and emission standards for new nonroad compression ignition engines at or above 37 kilowatts, control of air pollution * * *—SAN 3112.	EPA	NO_X annual reduction in 2010: 800,000 tons; NO_x annual reduction in 2025: over 1,200,000 tons.	Average annual cost: $29–70 million (59 FR 31306).	"EPA maintains that the impact of this rule on fleet average fuel consumption will be minimal." (59 FR 31306–).

TABLE 11.—AGENCY ESTIMATES OF BENEFITS AND COSTS OF MAJOR RULES

Rule	Agency	Benefits	Costs	Other information
The Family and Medical Leave Act of 1993.	DOL–ESA	Not Estimated	$674 million annually	Estimate provided by U.S. General Accounting Office (Parental Leave: Estimated Costs of H.R. 925, the Family and Medical Leave Act of 1987—GAO/HRD–88–34, Nov. 10, 1987).
Double Hull Standards for Vessels Carring Oil in bulk.	DOT–USCG	94,172 barrels of oil not spilled (NPV).	$6,413,027,637 (NPV)	Timeline of the analysis: 1996–2025.
FMVSS: Stablity and Control of Medium and Heavy Vehicles During Braking.	DOT–NHTSA	Equivalent fatalities forgone: 415–683 per year; Forgone property damage: $327–394.9 million annually.	Total consumer cost = $560.5 million annually.	Discount rate: 7%.
Bay/Delta water quality standards.	EPA	$2.1–21.5 million annually in economic benefits to commercial and recretional fisheries and have associated employment gains of an estimated 145–1585 full-time equivalent jobs annually (RIA ES–7).	For the urban sector, $4.3 million/yr on average and $15.8 million/yr during dry years; $28.3 million/yr on average gains $165.3 million/yr during dry years without water transfers or waterbanks. For agriculture sector, $27 million/yr on average, $43 million/year in the driest 10% of years (RIA ES–5) If using sharing approach (spread water supply impacts to entities diverting water from the Sacramento and San Joaquin River systems), −$0.5 million/yr average years, −$5.5 million/yr for dry years for agricultural sector, −$10.5 million/yr for average years and −$54 million/yr for day years (RIA ES–6).	"Important benefits of the water quality regulations include the following: Biological productivity and health for many estuarine species are expected to increase. The decline of species is expected to be reversed and the existence of species unique to the Bay/Delta, such as Delta smelt, winter-run Chinook salmon, long fin smelt, and Sacramento splittail, will be protected. Populations of a variety of estuarine species are expected to increase; although the extent of the population increases has not been determined for all species, the increases are anticipated to benefit the recreational and commercial fisheries." (60 FR 4703–)

TABLE 11.—AGENCY ESTIMATES OF BENEFITS AND COSTS OF MAJOR RULES—Continued

Rule	Agency	Benefits	Costs	Other information
Water quality guidance for Great Lakes system.	EPA	Given the site-specific nature of water quality benefits and the unavailability of site-specific data across the Great Lakes Basin, only case study monetized benefits are estimated in the RIA. Average monetized benefits across the three case studies evaluated are $0.3 million per year to $6.2 million per year, with a midpoint of $2.9 million per year (in 1996 dollars); average annual costs across case studies are also $2.8 million per year (1996 dollars)..	$64.0–394.6 million ($1996, annualized).	"The benefit analysis is based on a case study approach, suing benefits transfer applied sources to three case studies . . . The case studies include: (1) the lower Fox River drainage, including Green Bay, located on Lake Michigan in northeastern Wisconsin; (2) the Saginaw River and Saginaw Bay, located on Lake Huron in Northeastern Michigan; and (3) the Black River, located on Lake Erie in north-central Ohio . . . EPA did attempt to calculate longer-term benefits to human health, wildlife, and aquatic life once the final Guidance provisions are fully implemented by nonpoint sources as well as point sources and the minimum protection levels are attained in the ambient water." (60 FR 15382). "The three case studies combine to account for nearly 14 percent of the total cost of the final Guidance, nearly 17 percent of the loadings reductions, and from four percent to 10 percent of the benefits proxies (i.e.,. basin-wide population, recreational angling, nonconsumptive recreation, and commercial fishery harvest." (60 FR 15382). "In addition to the cost estimates described above, EPA estimated the cost to comply with requirements consistent with the antidegradation provisions of the final Guidance. This potential future cost is expressed as a 'lost opportunity' cost for facilities impacted by the antigradation requirements. This cost could result in the addition of about $22 million each year." (60 FR 15381).
Interim Requirements for Deposit Control Gasoline Additives, Regulations of Fuels and Fuel Additives.	EPA	HC, CO and NO_X reduction during the 18-month interim period: 700,000 tons (59 FR 54678–); HC, CO and NO_X reduction after the interim period: 600,000 tons per year (59 FR 54678–) Fuel economy savings: 390 million gallons in 1995–2000 (59 FR 54678–).	$650 million (NPV, discount rate = 7%, 1995–2000 (59 FR 54678–)).	

Appendix C. OMB Draft Guidelines for the Conduct of Regulatory Analysis and the Format of Accounting Statements

Preface

This Circular provides OMB's guidance to federal agencies on the development of regulatory analysis as required under Executive Order No. 12866 and a variety of related authorities. The Circular also provides guidance to agencies on the regulatory accounting statements that are required under the Regulatory Right-to-Know Act.

This draft Circular refines OMB's "best practices" document of 1996 *http://www.whitehouse.gov/omb/inforeg/riaguide.html*, which was issued as a guidance in 2000 *http://www.whitehouse.gov/omb/memoranda/m00-08.pdf*, and reaffirmed in 2001 *http://www.whitehouse.gov/omb/memoranda/m01-23.html*. It will replace both the 1996 "best practices" and the 2000 guidance. Before issuing the Circular, this draft will go through a process of peer review, public comment and interagency review.

Introduction

These guidelines are designed to help analysts in the regulatory agencies by encouraging good regulatory impact analysis—called either "regulatory analysis" or "analysis" for brevity—and standardizing the way benefits and costs of Federal regulatory actions are measured and reported.

Why Analysis of Proposed[16] Regulatory Actions Is Needed

Regulatory analysis is a tool regulatory agencies use to anticipate and evaluate the likely consequences of their actions. It provides a formal way of organizing the evidence on the key effects—good and bad—of the various alternatives that should be considered in developing regulations. The motivation is to (1) learn if the benefits of an action are likely to justify the costs or (2) discover which of various possible alternatives would be the most cost-effective. By choosing actions that maximize net

[16] We use the term "proposed" to refer to any regulatory actions under consideration regardless of the stage of the regulatory process.

benefits, agencies direct resources to their most efficient use.

A good regulatory analysis informs the public and other parts of the Government as well as the agency conducting the analysis of the effects of alternative actions. Regulatory analysis will sometimes show that a proposed action is misguided, but it can also demonstrate that well-conceived actions are reasonable and justified.

Where all significant benefits and costs can be quantified and expressed in monetary units, benefit-cost analysis provides decisionmakers with a clear indication of the most efficient alternative, that is, the alternative that generates the largest net benefits to society ignoring distributional effects. This is useful information for the public to receive, even when economic efficiency is not the only or the overriding public policy objective.

It will not always be possible to assign monetary values to all of the important benefits and costs, and when it is not, the most efficient alternative will not necessarily be the one with the largest net-benefit estimate. In such cases, you should exercise professional judgment in determining how important the non-quantifiable benefits or costs may be in tipping the analysis one way or the other, but you should not use non-quantifiables as "trump cards," especially in cases where the measured net benefits overwhelmingly favor a particular alternative. When there are other competing public policy objectives, as there often are, they must be balanced with efficiency objectives.

What Should Go Into a Regulatory Analysis?

A good regulatory analysis should include the following three basic elements:

(1) A statement of the need for the proposed action.

(2) An examination of alternative approaches.

(3) An evaluation of the benefits and costs of the proposed action and the main alternatives identified by the analysis.

To properly evaluate the benefits and costs of regulations and their alternatives, you will need to do the following:

- Explain how the actions required by the rule are linked to the expected benefits. For example, indicate how additional safety equipment will reduce safety risks. A similar analysis should be done for each of the alternatives.
- Identify a baseline. Benefits and costs are defined in comparison with a clearly stated alternative. This is normally a "no action" baseline, what the world would be like if the proposed rule was not adopted.
- Identify the expected undesirable side-effects and ancillary benefits of the proposed regulatory action and the alternatives. These should be added to the direct costs and benefits as appropriate.

With this information, you should be able to assess quantitatively the benefits and costs of the proposed rule and its alternatives. When your analysis is complete, you should present a summary of the benefit and cost estimates for each alternative, sometimes called a "regulatory accounting statement," so that readers can evaluate them.

As you proceed through your regulatory analysis, you should seek out the opinions of those who will be directly affected by the regulation you are considering as well as the views of those individuals and organizations with special knowledge or insight into the regulatory issues. Consultation can be useful in making sure your analysis addresses all of the relevant issues and that you have access to all the pertinent data. Early consultation can be especially helpful. You should not limit consultation to the final stages of your analytical efforts.

A good analysis is transparent. It should be possible for anyone reading the report to see clearly how you arrived at your estimates and conclusions. For transparency's sake, you should state in your report what assumptions were used, such as the discount rates or the monetary value of a statistical life. It is usually helpful to provide a sensitivity analysis to reveal whether, and to what extent, the results of the analysis are influenced by plausible changes in the main assumptions.

You will find that you cannot conduct a good regulatory analysis according to a formula. The conduct of high-quality analysis requires competent professional judgment. Different regulations may call for different emphases in the analysis, depending on the nature and complexity of the regulatory issues and the sensitivity of the benefit and cost estimates to the key assumptions.

I. Why Regulatory Action is Needed

Before proceeding with a regulatory action, you must demonstrate that the proposed action is necessary. Executive Order 12866 states that "Each agency shall identify the problem that it intends to address (including, where applicable, the failures of private markets or public institutions that warrant new agency action) as well as assess the significance of that problem." This means that you should try to explain whether the action is intended to address a significant market failure or to meet some other compelling public need such as improving governmental processes or promoting distributional fairness, privacy, or personal freedom. If you are trying to correct a significant market failure, the failure should be described both qualitatively and (where feasible) quantitatively, and you should show that a government intervention is likely to do more good than harm. For other interventions, you should also provide a demonstration of compelling social purpose and the likelihood of effective action.

If your regulatory intervention results from a statutory or judicial directive, you should describe the specific authority for your action, the extent of discretion available to you, and the regulatory instruments you might use.

A. There Is a Market Failure or Other Social Purpose To Address

The major types of market failure include: externality, market power, and inadequate or asymmetric information. Correcting market failures is a reason for regulation, but it is not the only reason. Other possible justifications include improving the functioning of government, removing distributional unfairness, or promoting privacy and personal freedom.

1. Externality

An externality occurs when one party's actions impose uncompensated benefits or costs on another. Environmental problems are a classic case of externality—for example, the smoke from a factory may adversely affect the health of local residents while soiling the property in nearby neighborhoods. Common property resources that may become congested or overused, such as fisheries or the broadcast spectrum, represent a second example. "Public goods," such as defense or basic scientific research, provide a positive externality, where provision of the good to some individuals cannot occur without providing the same benefits free of charge to other individuals.

2. Market Power

Firms exercise market power when they reduce output below what would be offered in a competitive industry. They may exercise market power collectively or unilaterally. Government action can be a source of market power, for example, if regulatory actions exclude low-cost imports. Generally, regulations that increase market power should be avoided. However, there are some circumstances in which government may choose to validate a monopoly. If a market can be served at lowest cost only when production is limited to a single producer—local gas and electricity distribution services, for example—a natural monopoly is said to exist. In such cases, the government may choose to approve the monopoly and to regulate its prices and production decisions.

3. Inadequate or Asymmetric Information

Market failures may also result from inadequate or asymmetric information. The market will often supply less than the appropriate level of information because it is infeasible to exclude people from reaping the benefits from the information others have provided even though they have not paid for the information. The providers will not willingly supply the socially optimal quantity of information, unless they are paid for it, and that may not be possible.

Because information, like other goods, is costly, your evaluation will need to do more than demonstrate the possible existence of less than optimal or asymmetric information. Even though the market may supply a less than an optimal amount of information, the amount it does supply may be reasonably adequate and therefore not require government regulation. Sellers do have an incentive to provide information through advertising that can increase sales by highlighting distinctive characteristics of their products. Buyers may also obtain reasonably adequate information about product characteristics through other channels, for example, if a buyer's search costs are low (as when the quality of a good can be determined by inspection at the point of sale), if a buyer has previously used the product, if the seller offers a warranty, or if adequate information is provided by third parties.

In the case of uncertain information about low-probability high-consequence events,

markets may underreact or overreact depending on the rules-of-thumb and other mental assumptions that people use to cope with difficult issues. Regulators should be aware of such mental quirks and not adopt policies based on a misunderstanding of the underlying reality.

4. Other Social Purposes

There are justifications for regulations in addition to correcting market failures. A regulation may be appropriate when you have a clearly identified measure that can make government operate more efficiently. In other cases, regulation may be used to reduce unfairness. Regulatory action may also be appropriate to protect privacy or to promote civil rights or permit more personal freedom.

B. Showing That Regulation at the Federal Level Is the Best Way To Solve the Problem

Even where a market failure clearly exists, you should consider other means of dealing with the failure before turning to regulation. Alternatives to regulation include the courts acting through the product liability system, antitrust enforcement, consumer-initiated litigation, or workers' compensation systems.

In assessing whether Federal regulation is the best solution, you should also consider the possibility of regulation at the State or local level. In some cases, the nature of the market failure may itself suggest the most appropriate governmental level of regulation. For example, problems that spill across State lines (such as acid rain whose precursors are transported widely in the atmosphere) are probably best addressed by Federal regulation. More localized problems, including those that are common to many areas, may be more efficiently addressed locally.

A diversity of regulation may generate gains for the public as governmental units compete with each other to serve the public, but duplicative regulations can also be costly. Where Federal regulation is clearly appropriate, for example, to address interstate commerce issues, you should try to examine whether it would be more efficient to reduce State and local regulation. For example, the burdens on interstate commerce arising from different State and local regulations such as compliance costs for firms operating in several States, may exceed any advantages associated with the diversity of State and local regulation. Your analysis should consider the possibility of reducing as well as expanding State and local rulemaking.

The role of federal regulation in facilitating U.S. participation in global markets should also be considered. Harmonization of U.S. and international rules may require a strong Federal regulatory role. Concerns that new U.S. rules could act as non-tariff barriers to imported goods should be evaluated carefully.

C. The Presumption Against Economic Regulation

Government actions can be unintentionally harmful, and even useful regulations can impede the efficiency with which markets function. For this reason, there is a presumption against certain types of regulatory action. In light of both economic theory and actual experience, a particularly demanding burden of proof is required to demonstrate the need for any of the following types of regulations:

- Price controls in competitive markets;
- Production or sales quotas in competitive markets;
- Mandatory uniform quality standards for goods or services if the potential problem can be adequately dealt with through voluntary standards or by disclosing information of the hazard to buyers or users; or
- Controls on entry into employment or production, except (a) where indispensable to protect health and safety (*e.g.*, FAA tests for commercial pilots) or (b) to manage the use of common property resources (*e.g.*, fisheries, airwaves, Federal lands, and offshore areas).

II. Alternative Approaches To Consider

Once you have determined that Federal regulatory action is appropriate, you will need to consider alternative regulatory approaches. Ordinarily, it will be possible to eliminate some alternatives through a preliminary analysis, leaving a manageable number of alternatives to be evaluated according to the formal principles of the Executive Order. The number and choice of alternatives selected for detailed analysis is a matter of judgment. There must be some balance between thoroughness and the practical limits on your analytical capacity. With this qualification in mind, you should nevertheless explore modifications of some or all of a regulation's attributes or provisions to identify appropriate alternatives. The following is a list of alternative regulatory actions that you should consider:

A. Different Choices Defined by Statute

When a statute establishes a specific regulatory requirement and the agency plans to exercise its discretion to adopt a more stringent standard, you should examine the benefits and costs of reasonable alternatives that reflect the range of the agency's statutory discretion, including the specific statutory requirement.

B. Different Compliance Dates

The timing of a regulation may also have an important effect on its net benefits. For example, costs of a regulation may vary substantially with different compliance dates for an industry that requires a year or more to plan its production runs efficiently. In this instance, a regulation that provides sufficient lead time is likely to achieve its goals at a much lower overall cost than a regulation that is effective immediately, although delay would also typically lower the value of the benefits.

C. Different Enforcement Methods

Compliance alternatives for Federal, State, or local enforcement include on-site inspections, periodic reporting, and compliance penalties structured to provide the most appropriate incentives. When alternative monitoring and reporting methods vary in their costs and benefits, you should consider promising alternatives in identifying the most appropriate enforcement framework. For example, in some circumstances random monitoring or parametric monitoring will be less expensive and nearly as effective as continuous monitoring in achieving compliance.

D. Different Degrees of Stringency

In general, both the benefits and costs associated with a regulation will increase with the level of stringency (although marginal costs generally increase with stringency, whereas marginal benefits may decrease). You should study alternative levels of stringency to understand more fully the relationship between stringency and the size and distribution of benefits and costs among different groups.

E. Different Requirements for Different Sized Firms

You should consider setting different requirements for large and small firms basing any difference in the standards on perceptible differences in the costs of compliance or in the expected benefits. The balance of costs and benefits can shift depending on the size of the firms being regulated. Small firms may find it more costly to comply with regulation, especially if there are large fixed costs required for regulatory compliance. On the other hand, it is not efficient to place a heavier burden on one segment of a regulated industry solely because it can better afford the higher cost; this has the potential to load costs on the most productive firms, costs that are disproportionate to the damages they create.

You should also remember that a rule with a significant impact on a substantial number of small entities will trigger the requirements set forth in the Regulatory Flexibility Act.

F. Different Requirements for Different Geographic Regions

Rarely do all regions of the country benefit uniformly from government regulation and it is also unlikely that costs will be uniformly distributed across the country. Where there are significant regional variations in costs and/or benefits, you should consider the possibility of setting different requirements for the different regions.

G. Performance Standards Rather Than Design Standards

Performance standards are generally superior to engineering or design standards because performance standards give the regulated parties the flexibility to achieve regulatory objectives in the most cost-effective way. This is only possible, of course, if there is more than one feasible way to meet the performance standard. In general, you should consider setting a performance standard if performance can be measured or reasonably imputed and where controlling performance provides a scope appropriate to the problem the regulation seeks to address. For example, compliance with air emission standards can be allowed on a plant-wide, firm-wide, or region-wide basis rather than vent by vent, provided this does not produce unacceptable local air quality outcomes (such as "hot spots" from local pollution concentration).

H. Market-Oriented Approaches Rather Than Direct Controls

Market-oriented approaches that use economic incentives should be explored. These alternatives include fees, penalties, subsidies, marketable permits or offsets, changes in liability or property rights (including policies that alter the incentives of insurers and insured parties), and required bonds, insurance or warranties.

I. Informational Measures Rather Than Regulation

If intervention is contemplated to address a market failure that arises from inadequate or asymmetric information, informational remedies will often be the preferred approach. Measures to improve the availability of information include government establishment of a standardized testing and rating system (the use of which could be made mandatory or left voluntary), mandatory disclosure requirements (*e.g.*, by advertising, labeling, or enclosures), and government provision of information (*e.g.*, by government publications, telephone hotlines, or public interest broadcast announcements). A regulatory measure to improve the availability of information (particularly about the concealed characteristics of products) provides consumers a greater choice, than a mandatory product standard or ban.

Specific informational measures should be evaluated in terms of their benefits and with a comprehensive view of their costs. Some effects of informational measures are easily overlooked. For example, the costs of a mandatory disclosure requirement for a consumer product will include not only the cost of gathering and communicating the required information, but also the loss of net benefits of any information displaced by the mandated information, the effect of providing too much information that is ignored or information that is misinterpreted, and inefficiencies arising from the incentive that mandatory disclosure may give to overinvest in a particular characteristic of a product or service.

Where information on the benefits and costs of alternative informational measures is insufficient to provide a clear choice between them, you should consider the least intrusive informational alternative sufficient to accomplish the regulatory objective. For example, to correct an informational market failure it may be sufficient for government to establish a standardized testing and rating system without mandating its use, because competing firms that score well according to the system should thereby have an incentive to publicize the fact.

III. Analytical Approaches

Both benefit-cost analysis (BCA) and cost-effectiveness analysis (CEA) provide a systematic framework for identifying and evaluating the likely outcomes of alternative regulatory choices. A major rulemaking should be supported by both types of analysis wherever possible. Specifically, you should prepare a CEA for all major rulemakings for which the primary benefits are improved public health and safety. You should also perform a BCA for major health and safety rulemakings to the extent that valid monetary values can be assigned to the expected health and safety outcomes. For all other major rulemakings, you should carry out a BCA. If some of the primary benefit categories cannot be expressed in monetary units, you should also conduct a CEA.

A. Benefit-Cost Analysis

The distinctive feature of BCA is that both benefits and costs are expressed in monetary units, which allows you to evaluate different regulatory options with a variety of attributes using a common measure. This can be especially helpful in choosing the appropriate scope for your regulatory intervention. By measuring incremental benefits and costs of successively more stringent regulatory alternatives, you can identify the alternative that maximizes societal net benefits.

The size of net benefits, the absolute difference between total benefits and total costs, is the key to determining whether one policy is more efficient than another. That will be achieved at the point where the cost of a marginal increment in regulatory stringency is just matched by the marginal benefit. The ratio of total benefits to total costs is not a meaningful indicator of net benefits and should not be used for that purpose. It is well known that considering such ratios alone can yield misleading results.

Even when a benefit or cost cannot be expressed in monetary units, you should still try to measure it in terms of its physical units, and if it is not possible to measure the physical units, you should still describe the benefit or cost qualitatively. When important benefits and costs cannot be expressed in monetary units, BCA is less useful, and it can even be misleading, because the calculation of net benefits in such cases does not provide a full evaluation of all relevant benefits and costs.

You should exercise professional judgment in identifying the importance of non-quantifiable factors, where they exist, and assess as best you can how they might change the ranking of alternatives based on estimated net benefits. Non-quantifiable benefits or costs may be important in tipping an analysis one way or the other, but you should not use non-quantifiables as "trump cards," especially in cases where the measured net benefits overwhelmingly favor a particular alternative.

B. Cost-Effectiveness Analysis (CEA)

Cost-effectiveness analysis provides a rigorous way to identify options that achieve the most effective use of the resources available without requiring you to monetize all of the relevant benefits or costs. Generally, cost-effectiveness analysis is most helpful for comparing a set of regulatory actions with the same primary outcome (*e.g.*, an increase in the acres of wetlands protected) or multiple outcomes that can be integrated into a single numerical index (*e.g.*, units of health improvement).

Cost-effectiveness results based on averages need to be treated with great care. They suffer from the same drawbacks as benefit-cost ratios. The alternative that exhibits the smallest cost-effectiveness ratio may not be the one that maximizes net benefits, just as the alternative with the highest benefit-cost ratio is not always the one that maximizes net benefits. Incremental cost-effectiveness analysis (discussed below) can help to avoid mistakes that can occur when policy choices are based on average cost-effectiveness.

CEA can also be misleading when the "effectiveness" measure does not weight appropriately the consequences of each of the alternatives. For example, when effectiveness is measured in tons of reduced pollutant emissions, cost-effectiveness estimates will be misleading unless the reduced emissions of diverse pollutants result in the same health and environmental benefits.

When you have identified a range of alternatives (*e.g.*, different levels of stringency), you should determine the cost-effectiveness of each option compared with the baseline as well as its incremental cost-effectiveness compared with successively more stringent requirements. Ideally, your CEA would present an array of cost-effectiveness estimates that would allow comparison across different alternatives. However, analyzing all possible combinations is not practical where there are many options (including possible interaction effects). In these cases, you should use your judgment to choose reasonable alternatives for careful consideration.

Accuracy of CEA depends on the consistency of analysis across a diverse set of possible regulatory actions. To achieve consistency, you need to construct very carefully the two key components of any CEA: The cost and the "effectiveness" or performance measures for the alternative policy options.

With regard to measuring costs, you should be sure to include all the relevant costs to society—whether public or private. Rulemakings may also yield cost savings (*e.g.*, energy savings associated with new technologies). The numerator in the cost-effectiveness ratio should reflect net costs, defined as the gross cost incurred in meeting the requirements (sometimes called "total" costs) minus any cost savings.

Where regulation may yield several different beneficial outcomes, a cost-effectiveness comparison becomes more difficult to interpret because there is more than one measure of effectiveness to incorporate in the analysis. To arrive at a single measure you will need to weigh the value of disparate benefit categories, but this computation raises some of the same difficulties you will encounter in BCA. If you can assign a reasonable monetary value to all of the regulation's different benefits, then you should do so, but in that case you will be doing BCA not CEA.

When you can estimate the monetary value of some but not all of the ancillary benefits of a regulation, but cannot assign a monetary value to the primary measure of effectiveness, you should subtract the monetary estimate of the ancillary benefits from the gross cost estimate to yield an estimated net cost. This net cost estimate for the rule may turn out to be negative—that is, the other benefits exceed the cost of the rule. If you are unable to estimate the value of

some of the ancillary benefits, the cost-effectiveness ratio will be overstated, and this should be acknowledged in your analysis. CEA does not yield an unambiguous choice when there are benefits that have not been incorporated in the net cost estimates.

You also may use CEA to compare regulatory alternatives in cases where the statute specifies the level of benefits to be achieved.

C. The Effectiveness Metric for Public Health and Safety Rulemakings

The validity of cost-effectiveness analysis depends on the application of appropriate "effectiveness" or performance measures that permit comparison of the regulatory options being considered. Agencies currently use a variety of methods for determining effectiveness, including number of lives saved, number of equivalent lives saved, and number of quality-adjusted life years saved. It is difficult for OMB to draw meaningful cost-effectiveness comparisons between rulemakings that employ different cost-effectiveness measurements. As a result, agencies should provide OMB with the underlying data, including mortality and morbidity data, the age distribution of the affected population, and the severity and duration of disease conditions or trauma, so that OMB can make apples-to-apples comparisons between rulemakings that employ different measures.

D. Evaluating Distributional Effects

Both benefit-cost analysis and cost-effectiveness analysis tend to focus on economic efficiency. Decision-makers may desire (or be required) to consider other values as well such as fairness. Your regulatory analysis should provide a separate description of distributional effects (*i.e.*, how both benefits and costs are distributed among sub-populations of particular concern) so that decisionmakers can properly consider them along with the effects on economic efficiency. E.O. 12866 authorizes this approach. The presentation of distributional effects is especially important when you have reason to believe that there will be significant disparities in how your regulatory actions may affect different groups of people. Effects that fall most heavily on those least able to bear the cost should be highlighted for policymakers' attention. Actions that benefit small groups at the expense of the larger public also deserve special scrutiny.

IV. Identifying and Measuring Benefits and Costs

This Section provides guidelines for your preparation of the benefit and cost estimates required by Executive Order No. 12866 and the "Regulatory Right-to-Know Act." The preliminary analysis described in Sections I, II and III will help you identify a workable number of alternatives for consideration in your analysis and an appropriate analytical approach to use.

A. How To Develop a Baseline

1. General Issues

You need to measure the benefits and costs of a rule against a baseline. This baseline should be the best assessment of the way the world would look absent the proposed action. The choice of a proper baseline may require consideration of a wide range of potential factors, including:

- Evolution of the market,
- Changes in external factors affecting expected benefits and costs,
- Changes in regulations promulgated by the agency or other government entities, and the degree of compliance by regulated entities with other regulations.

You may often find it reasonable to forecast that the world absent the regulation will resemble the present. If this is the case, however, your baseline should reflect the future effect of current programs and policies. For review of an existing regulation, a baseline assuming "no change" in the regulatory program generally provides an appropriate basis for evaluating reasonable regulatory alternatives. When more than one baseline is reasonable and the choice of baseline will significantly affect estimated benefits and costs, you should consider measuring benefits and costs against alternative baselines. In doing so you can analyze the effects on benefits and costs of making different assumptions about other agencies' regulations, or the degree of compliance with your own existing rules. In all cases, you must evaluate benefits and costs against the same baseline. You should also discuss the reasonableness of the baselines used in these sensitivity analyses.

EPA's 1998 final PCB disposal rule provides a good example. EPA used several alternative baselines, each reflecting a different interpretation of existing regulatory requirements. In particular, one baseline reflected a literal interpretation of EPA's 1979 rule and another the actual implementation of that rule in the year immediately preceding the 1998 revision. The use of multiple baselines illustrated the substantial effect changes in EPA's implementation policy could have on the cost of a regulatory program. In the years after EPA adopted the 1979 PCB disposal rule, changes in EPA policy—especially allowing the disposal of automobile "shredder fluff" in municipal landfills—reduced the cost of the program by more than $500 million per year.

In some cases, substantial portions of a rule may simply restate statutory requirements that would be self-implementing even in the absence of the regulatory action. In these cases, you should use a pre-statute baseline. If you are able to separate out those areas where the agency has discretion, you may also use a post-statute baseline to evaluate the discretionary elements of the action.

2. Evaluation of Alternatives

You should decide on and describe the number and choice of alternatives available to you and discuss the reasons for your choice. Alternatives that rely on incentives and offer increased flexibility are often more cost-effective than more prescriptive approaches. For example, user fees and information dissemination may be good alternatives to direct command-and-control regulation. Within a command-and-control regulatory program, performance-based standards generally offer advantages over standards specifying design, behavior, or manner of compliance.

You should carefully consider all appropriate alternatives for the key attributes or provisions of the rule. Section II above outlines examples of appropriate alternatives.

Where there is a "continuum" of alternatives for a standard (for example, the level of stringency), you should generally analyze at least three options:

- The option serving as a focus for the Agency or program office regulatory initiative;
- A more stringent option that achieves additional benefits (and presumably costs more) beyond those realized by the preferred option; and
- A less stringent option that costs less (and presumably generates fewer benefits) than the preferred option.

You should choose options that are reasonable alternatives deserving careful consideration. In some cases, the regulatory program will focus on an option that is near or at the limit of technical feasibility or that fully achieves the objectives of the regulation. In these cases, the analysis would not need to examine a more stringent option. For each of the options analyzed, you should compare the anticipated benefits to the corresponding costs. It is not adequate to simply compare the Agency's preferred option to a "do nothing" or "status quo" option.

Whenever you can compare the benefits and costs of alternative options, you should present them in terms of both total and incremental benefits and costs. You must measure total benefits and costs against the same baseline. By contrast, you should present incremental benefits and costs as differences from the corresponding estimates associated with the next less-stringent alternative.[17] It is important to emphasize incremental effects are simply differences between successively more stringent alternatives.

In some cases, you may decide to analyze a wide array of options. For example, DOE's 1998 rule setting new energy efficiency standards for refrigerators and freezers analyzed a large number of options and produced a rich amount of information on their relative effects. This analysis—examining more than 20 alternative performance standards for one class of refrigerators with top-mounted freezers—enabled DOE to select an option that produced $200 more in net benefits per refrigerator than the least attractive option.

You should analyze the benefits and costs of different regulatory provisions separately when a rule includes a number of distinct provisions. If the existence of one provision affects the benefits or costs arising from another provision, the analysis becomes more complicated, but the need to examine provisions separately remains. In this case, you should evaluate each specific provision by determining the net benefits of the proposed regulation with and without it.

[17] For the least stringent alternative, you should estimate the incremental benefits and costs relative to the baseline. Thus, for this alternative, the incremental effects would be the same as the corresponding totals.

Analyzing all possible combinations of provisions in this way is impractical if their number is large and interaction effects are widespread. You need to use judgment to select the most significant or relevant provisions for such analysis.

You should also discuss the statutory requirements that affect the selection of regulatory approaches. If legal constraints prevent the selection of a regulatory action that best satisfies the philosophy and principles of Executive Order No. 12866, you should identify these constraints and estimate their opportunity cost.

B. How To Develop Benefit and Cost Estimates

1. Some General Considerations

You should discuss the expected benefits and costs of the selected regulatory option and any reasonable alternatives for each rule. How is the proposed action expected to provide the anticipated benefits and costs? What are the monetized values of the potential real incremental benefits and costs to society? To present your results, you should:

- Include separate schedules of the monetized benefits and costs that show the type and timing of benefits and costs and express the estimates in this table in constant, undiscounted dollars (for more on discounting see part C below).
- List the benefits and costs you can quantify, but cannot monetize, including their timing.
- Describe benefits and costs you cannot quantify.
- Identify or cross-reference the data or studies on which you base the benefit and cost estimates.

Similarly, you should discuss the expected cost of the selected regulatory option and any reasonable alternatives.

When benefit and cost estimates are uncertain (for more on this see part D below):

- You should calculate benefits (including benefits of risk reductions) and costs that reflect the full probability distribution of potential consequences. Where possible, present probability distributions of benefits and include the upper and lower bound estimates as complements to central tendency and other estimates.
- If fundamental scientific disagreement or lack of knowledge prevents construction of a scientifically defensible probability distribution, you should describe benefits under plausible assumptions and characterize the evidence underlying each alternative.

2. The Key Concepts Needed To Estimate Benefits and Costs

"Opportunity cost" is the appropriate concept for valuing both benefits and costs. The principle of "willingness-to-pay" (WTP) captures the notion of opportunity cost by measuring what individuals are willing to forgo to enjoy a particular benefit. In general, economists tend to view WTP as the most appropriate measure of opportunity cost, but an individual's "willingness-to-accept" (WTA) compensation for not receiving the improvement can also provide a valid measure of opportunity cost. WTP and WTA are comparable measures when the change being evaluated is small and especially where there are reasonably close substitutes available. WTP is generally considered to be more readily measurable and to provide a more conservative measure of benefits. Adoption of WTP as the measure of value implies that individual preferences of the affected population should be a guiding factor in the regulatory decision and that the existing distribution of income is acceptable.

Market prices provide the richest data for estimating benefits based on willingness-to-pay if the goods and services affected by the regulation trade in well-functioning free markets. The opportunity cost of an alternative includes the value of the benefits forgone as a result of choosing that alternative. The opportunity cost of banning a product—a drug, food additive, or hazardous chemical—is the forgone net benefit (*i.e.*, lost consumer and producer surplus [18]) of that product, taking into account the mitigating effects of potential substitutes. The use of any resource has an opportunity cost regardless of whether the resource is already owned or has to be purchased. That opportunity cost is equal to the net benefit the resource would have provided in the absence of the requirement. For example, if regulation of an industrial plant affects the use of additional land or buildings within the existing plant boundary, the cost analysis should include the opportunity cost of using the additional land or facilities. To the extent possible, you should monetize any such forgone benefits and add them to the other costs of that alternative. You should also try to monetize any costs averted as a result of an alternative and either add it to the benefits or subtract it from the costs of that alternative.

Estimating benefits and costs when market prices are hard to measure or markets do not exist is more difficult. In these cases, regulatory analysts need to develop appropriate proxies that simulate market exchange. Estimates of willingness-to-pay based on observable and replicable behavior generally are the most reliable. As one example, analysts sometimes use "hedonic price equations" based on multiple regression analysis of market behavior to simulate market prices for the commodity of interest.[19] Going through the analytical process of deriving benefit estimates by simulating markets may also suggest alternative regulatory strategies that create such markets.

Other approaches may be necessary when a commodity is not directly or indirectly traded in markets. Valuation estimates developed using these approaches are less certain than estimates derived from market transactions or based on behavior that is observable and replicable. While innovative estimation methods are sometimes necessary, they increase the need for quality control to ensure that estimates conform closely to what would be observed if markets did exist.

Ultimately, the method selected to develop a monetized estimate should focus on a value for the specific attribute or end-point of interest (for example, lost school-days). As a cautionary note, the transfer of a valuation estimate from an unrelated context (say, for example, the valuation of lost work-days from labor market studies) as a measure of the value of the attribute (lost school-days) may yield an incorrect benefits estimate.

You also need to guard against double-counting, since some attributes are embedded in other broader measures. For example, when a regulation improves the quality of the environment in a community, the value of real estate in the community generally rises to reflect the greater attractiveness of living in a better environment. Simply adding the increase in property values to the estimated value of improved public health would be double counting if the increase in property values reflects the improvement in public health. To avoid this problem you should separate the embedded effects on the value of property arising from improved public health. At the same time, of course, valuation estimates that fail to incorporate the consequence of land use changes will not capture the full effects of regulation.

3. How To Use Market Data Directly

Economists ordinarily consider market prices as the most accurate measure of the value of goods and services to society. In some instances, however, market prices may not reflect the true value of goods and services. If a regulation involves changes to goods or services where the market price is not a good measure of the value to society, you should use an estimate that reflects the true value to society (often called the "shadow price"). For example, suppose a particular air pollutant damages crops. One of the benefits of controlling that pollutant is the value of the increase in crop yield as a result of the controls. That value is typically measured by the price of the crop. If the price is held above the market price by a government program that affects supply, however, a value estimate based on this price would overstate the true benefits of controlling the pollutant. In this case, you should calculate the value to society of the increase in crop yields by estimating the

[18] Consumers' surplus is the difference between what a consumer pays for a unit of a good and the maximum amount the consumer would be willing to pay for that unit. It is measured by the area between the price and the demand curve for that unit. Producers' surplus is the difference between the amount a producer is paid for a unit of a good and the minimum amount the producer would accept to supply that unit. It is measured by the area between the price and the supply curve for that unit.

[19] The hedonic technique allows analysts to develop an estimate of the price for specific attributes associated with a product. For example, houses are a product characterized by a variety of attributes including the number of rooms, total floor area, and type of heating and cooling. If there are enough data on transactions in the housing market, it is possible to develop an estimate of the implicit price for specific attributes, such as the implicit price of an additional bathroom or for central air conditioning. This technique can be extended, as well, to develop an estimate for the implicit price of public goods that are not directly traded in markets. For example, the analyst can develop implicit price estimates for public goods like air quality and access to public parks by adding measures for these attributes to the hedonic price equation for housing.

shadow price, which reflects the value to society of the marginal use of the crop. If the marginal use is for exports, you should use the world price. If the marginal use is to add to very large surplus stockpiles, you should use the value of the last units released from storage minus storage cost. If stockpiles are large and growing, the shadow price may be low or even negative.

4. Indirect Uses of Market Data

Some benefits or costs correspond to goods or services that are indirectly traded in the marketplace. Their value is reflected in the prices of related goods that are directly traded. Examples include reductions in health and safety risks, the use-values of environmental amenities (for example, recreational fishing or hiking and camping), and the value of improved scenic visibility. You should use willingness-to-pay measures as the basis for estimating the monetary value of such indirectly traded goods. When practical obstacles prevent the use of direct "revealed preference" methods based on actual market behavior to measure willingness-to-pay, you may consider the use of alternative "stated preference" methods based on survey techniques. As discussed below, you may use alternative methods where there are practical obstacles to the accurate application of direct willingness-to-pay methodologies.

A variety of methods have been developed for estimating indirectly traded goods or services. Examples include estimates of the value of environmental amenities derived from travel-cost studies, hedonic price models that measure differences or changes in the value of land, and statistical studies of occupational-risk premiums in wage rates. Under each of these methods, care is needed in designing protocols for reliably estimating the value of these attributes. For example, the use of occupational-risk premiums can be a source of bias because the risks, when recognized, may be voluntarily rather than involuntarily assumed,[20] and the sample of individuals upon which premium estimates are based may be skewed toward more risk-tolerant people.

Many goods that are affected by regulation—such as preserving environmental or cultural amenities—are not traded directly in markets. These "non-market" values arise both from use and non-use. Estimation of these values is difficult because of the absence of an organized market. However, overlooking or ignoring these values in your regulatory analysis may significantly understate the benefits of regulatory actions.

a. Use Values—the value an individual derives from directly using the resource now (or in the future). Use values are associated with activities such as swimming, hunting, and hiking where the individual comes into direct contact with the environment. These values also include commercial uses of natural resources, such as fishing, and consumptive uses, such as clean air and drinking water.

[20] Distinctions between "voluntary" and "involuntary" are arbitrary and should be treated with care. These terms are merely a proxy for differences in the cost of avoiding risks.

b. Nonuse Values—the value an individual places on an environmental resource even though the individual will not use the resources now or in the future. Non-use value includes bequest, existence and option values.

Use values are typically estimated through "revealed" preference models, which rely on observed behavior. It is important that you utilize revealed preference models that adhere to economic criteria that are consistent with utility maximizing behavior [example of RUM study]. Examining averting or defensive expenditures (as distinct from avoided cost of compliance with other regulatory requirements) is another way to estimate use values. This approach may reveal a minimum willingness to pay, particularly if there is reason to believe the market for averting behavior is not in equilibrium.

5. Contingent Valuation

Contingent valuation (CV) methods have become increasingly common for estimating indirectly traded benefits. However, the reliance of these methods on stated preferences regarding hypothetical scenarios and the complexities of the goods being valued by this technique raise issues about its accuracy in estimating willingness to pay compared to methods based on (indirect) revealed preferences. Accordingly, value estimates derived from contingent-valuation studies require greater analytical care than studies based on observable behavior. For example, the contingent valuation instrument must portray a realistic choice situation for respondents—where the hypothetical choice situation corresponds closely with the policy context to which the estimates will be applied. Below we provide a more complete list of important criteria that affect the reliability of results from contingent valuation surveys. The practice of contingent valuation is rapidly evolving, and agencies relying upon this tool for valuation should judge the reliability of their estimates using this technique in light of advances in the state of the art.

Some types of goods, such as preserving environmental or cultural amenities apart from their use and direct enjoyment by people, are not traded directly or indirectly in markets. The practical obstacles to accurate measurement are similar to (but generally more severe than) those arising with respect to indirectly traded goods and services, principally because there are no related market transactions to provide data for willingness-to-pay estimates.

For many of these goods, particularly goods providing a substantial "nonuse" component of value, contingent-valuation methods may provide the only analytical approaches currently available for estimating values. The absence of observable and replicable behavior with respect to the good or service, combined with the complex and often unfamiliar nature of the goods being valued, argues for great care in the design and execution of surveys, rigorous analysis of the results, and a full characterization of the uncertainties in the estimates to meet best practices in the use of this method. Current "best practices" for CV surveys include the following:

Sampling, etc.

- Probability sampling: this usually requires the guidance of a professional sampling statistician;
- Low non-response rate: high non-response rates would make the results unreliable;
- Personal interview: face-to-face and telephone interviews may elicit more reliable information.

Survey Instrument Design

- Accurate description: adequate information must be provided to respondents about the good or amenity they are being asked to value;
- Reminder of substitute commodities: respondents must be reminded of substitute commodities, and this reminder should be introduced forcefully and directly prior to the main valuation question;
- Reminder of alternative expenditure possibilities: respondents must be reminded that their willingness to pay would reduce their expenditures for other goods;
- Deflection of transaction value: the survey should be designed to deflect the general "warm glow" of giving or a particular dislike of the source of the problem being addressed.

Transparency and Replicability of Results

- Reporting: CV studies should make clear the definition of population sampled, sampling frame used, overall sample non-response rate, and item non-response rate on all important questions; the report should also include the exact wording and sequence of questionnaire and other communications to respondents;
- Data quality: special care should be taken to ensure compliance with OMB's "Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by Federal Agencies' ("data quality guidelines") *http://www.whitehouse.gov/omb/fedreg/reproducible.html;*
- Since there is no economic theory that can describe hypothetical behavior, it is important to assure the respondents that their decisions are consequential and may influence policy.

As with all other estimates of benefits and costs, your CV results should be consistent with economic theory. First, as price increases and the amount of the good is held constant, the number of respondents willing to pay a particular price should fall. This is akin to negative own-price elasticity for a marketed good. Second, respondents should be willing to pay more for a larger amount (or higher quality) of the good. This is often referred to as being sensitive to scope. If your only test of consistency with economic theory is a scope test, it should be an external (split sample) test rather than an internal (within sample) test.

6. Benefit Transfer Methods

In many cases, conducting an original study may not be possible due to the time and expense involved. The alternative to an original study is the use of benefit transfer methods. Benefit transfer is defined as the practice of transferring existing estimates of

non-market values from the context of study to a new context.

Although benefit transfer offers a quick, low cost approach for establishing values for goods and attributes of goods, you should consider it as a last resort option. Several studies have documented difficulties in applying benefit transfer methods. If a benefit transfer approach is necessary, you should adopt the approach of transferring the entire demand function (referred to as benefit function transfer) rather than adopting a single point estimate (referred to as benefit point transfer). The former approach has been shown to yield more precise estimates than the latter approach.

In conducting benefit transfer, the first step is to specify the value to be estimated at the policy site. The analyst should identify the relevant measure of the policy change at this initial stage. For instance, you can derive the relevant willingness-to-pay measure by specifying an indirect utility function. This identification allows an analyst to "zero in" on key aspects of the benefit transfer.

The next step is to identify appropriate studies to conduct benefit transfer. In selecting transfer studies for either point transfers or function transfers, you should base your choices on the following criteria:

a. The selected studies should be based on adequate data, sound empirical methods and defensible empirical techniques.

b. The selected studies should document parameter estimates of the valuation function.

c. The study context and policy context should have similar populations (*e.g.*, demographic characteristics, target population size).

d. The good, and the magnitude of change in that good, should be similar in the study and policy contexts.

e. The relevant characteristics of the study and the policy contexts should be similar. For example, are they similar in the following respects?

- The reversibility of the policy change
- The degree of embedding of other values
- The order in which the good is supplied
- The functional relationship between the consumer surplus and its determinants.

f. The distribution of property rights should be similar so that the analysis uses the same welfare measure. If the property rights in the study context support the use of willingness-to-accept (WTA) measures while the rights in the policy context support the use of willingness-to-pay (WTP) measures, benefit transfer is not appropriate.

g. The availability of substitutes across study and policy contexts should be similar.

Clearly, all of these criteria are difficult to meet. However, you should attempt to satisfy as many as possible when choosing studies from the existing economic literature. In addition to the above criteria, an analyst should keep in mind some of the difficulties in transferring benefit estimates or functions from one context to another:

- Is the policy change irreversible?
- Does the order in which the good is supplied affect valuation?
- Is the embedding problem significant?
- Is the assumed functional relationship between the consumer surplus measure and its determinants explicit and appropriate?

Finally, you should not use benefit transfer in estimating benefits if:

- Resources are unique or have unique attributes.
- If the study examines a resource that is unique or has unique attributes, you should not transfer benefit estimates or functions to value a different resource and vice versa. For example, if a study values visibility improvements at the Grand Canyons, these results should not be used to value visibility improvements in urban areas.
- There are significant problems with applying an ex ante valuation estimate to an ex post policy context. If a policy yields a significant change in the attributes of the good, you should not use the study estimates to value the change using a benefit transfer approach.
- You also should not use a value developed from a study involving, small marginal changes in a policy context involving large changes in the quantity of the good.

7. Methods for Treating Nonmonetized Benefits and Costs

Sound quantitative estimates of benefits and costs are preferable to qualitative descriptions of benefits and costs to help decision-makers understand the full effects of alternative actions. Although we prefer that agencies use acceptable monetized benefit and cost estimates, we recognize that monetizing some of the effects of regulations is difficult, and even quantifying some effects may not be feasible.

a. What To Do With Benefits and Costs That Are Difficult To Monetize?

You should monetize quantitative estimates whenever possible. Use sound and defensible values or procedures to monetize costs and benefits, and ensure that key analytical assumptions are defensible. If monetization is impossible, explain why and present all available quantitative information. For example, if you can quantify, but cannot monetize, improvements in water quality and increases in fish populations resulting from water quality regulation, you can describe benefits in terms of stream miles of improved water quality for boaters and increases in game fish populations for anglers, You should describe the timing and likelihood of such effects and avoid double-counting of benefits when estimates of monetized and physical effects are mixed in the same analysis. You should also apply the discounting procedures described above to all quantified effects, whether or not you are able to monetize them.

b. What To Do With Benefits and Costs That Are Difficult To Quantify?

If you are not even able to quantify the effects, you should present any relevant quantitative information along with a description of the unquantifiable effects. Such descriptions could include ecological gains, improvements in quality of life, and aesthetic beauty. For cases in which the presence of unquantifiable benefits or costs affects a policy choice, you should provide a clear explanation of the rationale behind the choice. Such an explanation could include detailed information on the nature, timing, likelihood, location, and distribution of the unquantified benefits and costs. Also, please include a summary table that lists all the unquantifiable benefits and costs, ordered by expected magnitude, if possible.

8. Monetizing Health and Safety Benefits and Costs

We expect you to provide a benefit and cost analysis of major health and safety rulemakings in addition to a CEA. The BCA provides additional insight because (a) it provides some indication of what the public is willing to pay for improvements in health and safety and (b) it offers additional information on preferences for health using a different research design than is used in CEA. Since the health-preference methods used to support CEA and BCA have some different strengths and drawbacks, it is important that you provide decision makers with both perspectives.

In monetizing health benefits, a willingness-to-pay measure is the conceptually appropriate measure as compared to other alternatives (*e.g.*, cost of illness or lifetime earnings), in part because it attempts to capture pain and suffering and other quality-of-life effects. Using the willingness-to-pay measure for health and safety allows you to directly compare your results to the other costs and benefits in your analysis, which will also typically be based on willingness to pay.

If well-conducted, revealed-preference studies of relevant health and safety risks are available, you should consider using them in developing your monetary estimates. If appropriate revealed-preference data are not available, you may consider whether valid and relevant data from stated-preference studies are available. You will need to use your professional judgement when you are faced with limited information on revealed preference and substantial information based on stated preference studies.

A key advantage of stated-preference and health-utility methods (compared to revealed preference) is that they can be tailored in their design to address ranges of probabilities, types of health risks and specific populations affected by your rule. In many rulemakings there will be no relevant information from revealed-preference studies. In this situation you should consider commissioning a stated-preference study or using values from published stated-preference studies. For the reasons discussed in the section above IVB5, you should be cautious about using values from stated-preference studies and describe in the analysis some of the inherent drawbacks of this approach.

a. Nonfatal Health and Safety Risks

With regard to nonfatal health and safety risks, there is enormous diversity in the nature and severity of impaired health states. A minor traumatic injury that can be treated effectively in the emergency room without hospitalization or long-term care is different from a traumatic injury resulting in paraplegia. Severity differences also are important in evaluation of chronic diseases. A severe bout of bronchitis, though perhaps less frequent, is far more painful and debilitating than the more frequent bouts of

mild bronchitis. The duration of an impaired health state, which can range from a day or two to several years or even a lifetime (*e.g.*, birth defects inducing mental retardation), need to be considered carefully. Information on both the severity and duration of an impaired health state are necessary before the task of monetization can be performed.

When monetizing nonfatal health effects, it is important to consider two components: (1) The private demand for prevention of the nonfatal health effect, to be represented by the preferences of the target population at risk, and (2) the net financial externalities associated with poor health such as net changes in public medical costs and any net changes in economic production. Revealed-preference or stated-preference studies are necessary to estimate the private demand; health economics data from published sources can typically be used to estimate the financial externalities of poor health. If you use literature values to monetize nonfatal health and safety risks, it is important to make sure that the values you have selected are appropriate for the severity and duration of health effects to be addressed by your rule.

If data are not available to support monetization, you might consider an alternative approach that makes use of health-utility studies. Although the economics literature on the monetary valuation of impaired health states is growing, there is a much larger clinical literature on how patients, providers and community residents value diverse health states. This literature typically measures health utilities based on the standard gamble, the time tradeoff or the rating scale methods. This health utility information may be combined with known monetary values for well-defined health states to estimate monetary values for a wide range of health states of different severity and duration. If you use this approach, you should be careful to acknowledge your assumptions and the limitations of your estimates.

b. Premature Mortality Risks

The adoption of a monetary value for projected reductions in premature mortality is the subject of continuing research and discussion within the economics and policy analysis communities. Although there is a substantial academic literature on this topic, the methods used and resulting estimates vary substantially. The two most widely used measures consider the number of statistical lives saved and the number of expected years of life saved and their associated monetary values. Both of these measures are applicable to settings where a rule changes small probabilities of death faced by the public.

The phrase "statistical life" is widely used in the technical literature but it can be misleading and easily misinterpreted. Unlike an identified life, whose name and background are known (*e.g.*, a trapped coal miner or patient dying of kidney failure), a statistical life refers to the sum of risks experienced by a population. For example, if 10,000 people each face a risk of 1 in 10,000 of immediate death, one statistical life is expected to be lost. Statistical lives that are lost are real people but, given the background rate of fatal events in the population, it is not feasible to determine which actual lives will be saved or lost by a specific rule.

The monetary value of saving a statistical life (VSL) is derived by assessing the public's willingness to pay to avert one statistical fatality. The bulk of the studies in the literature, which address wage premiums for hazardous jobs, are based on revealed preference. A small but growing number of stated-preference studies have also been used to derive VSLs. The estimates of VSL in the literature vary considerably but this is not surprising because VSL is not expected to be a universal constant. Economic theory predicts that VSLs may vary in different lifesaving contexts depending upon factors such as the magnitude of the probabilities and the health preferences of the target population.

You should not use a VSL estimate without considering whether it is appropriate for the size and type of risks addressed by your rule. Studies aimed at deriving VSL values for middle-aged populations are not necessarily applicable to rules that address lifesaving among children or the elderly. Moreover, VSL values based on fatal cancers or heart attacks are not necessarily relevant to a rule that prevents fatal causes of trauma, violence, or infectious disease. If you choose to apply a VSL derived in one setting to a different setting, you should disclose the salient differences in the lifesaving contexts and, where feasible, make appropriate quantitative adjustments to the VSL value.

Since everyone is expected to die sooner or later, it has been suggested that the VSL be replaced or augmented by the monetary value of a statistical life year (VSLY). The assumption is that the public is willing to pay more money for a rule that saves an average of 10 life years per person than a rule that saves one life year per person. A key assumption implicit in this approach is that public willingness to pay for risk reduction is strictly proportional to the number of life years at risk. This may not always be the case. For example, the elderly may have substantial willingness to pay for reductions in their mortality risk precisely because they have relatively few life years remaining. Where there is good reason to believe that these values are not strictly proportional, you should attempt to develop appropriate estimates. In all instances, whether or not you are able to develop ideal estimates, agencies should consider providing estimates of both VSL and VSLY, while recognizing the developing states of knowledge in this area.

In summary, you should use valid, relevant data and methods to assign monetary values to changes in the risk of premature death, illness or injury. Some of the key issues include:

- Whether the monetary valuations have been shown to be appropriately sensitive to the scope of the health change, considering probability, severity and longevity.
- Whether the specific data and methods used for monetization are relevant to the specific health change induced by a proposed regulation.

The valuation of fatal and nonfatal risk reduction is an evolving area in terms of research design, methods and results. You should utilize valuation methods that you consider appropriate for the regulatory circumstances. You should present estimates based on alternative approaches, and if you monetize mortality risk reduction, you should do so on a consistent basis to the extent feasible. You should clearly indicate your methodology and document your choice of a particular methodology. If you use different methodologies in different rules, you should clearly disclose the fact and explain your reasons.

C. What Discount Rate To Use

Benefits and their associated costs do not always take place in the same time period, and when they do not, it is usually incorrect simply to add up all of the expected benefits or costs without taking account of when they actually occur. If benefits or costs are delayed or otherwise separated in time from each other, the difference in timing should be reflected in your analysis.

As a first step, you should present the annual time stream of benefits and costs expected to result from the rule, clearly identifying when the benefits and costs are expected to occur. The beginning point for your stream of estimates should be the year in which the final rule will begin to have effects, even if that is expected to be some time in the future. In presenting the stream of benefits and costs, it is important to measure them in constant dollars. That way you avoid the misleading effects of inflation on your estimates. If the benefits or costs are initially measured in prices reflecting expected future inflation, you can convert them to constant dollars by dividing through by an appropriate inflation index, one that corresponds to the inflation rate underlying the initial estimates of benefits or costs.

Once these preliminaries are out of the way, you can begin to adjust your estimates for differences in timing. This is a separate calculation from the adjustment needed to remove the effects of future inflation. Whether or not inflation is expected, it is generally true that the sooner benefits occur the more valuable they are. Resources that are invested will normally earn a positive return, so current consumption is more expensive than future consumption, because you are giving up that expected return when you consume today. Looking at it another way, postponed benefits have a cost because people are impatient and generally prefer present to future consumption. Also, if consumption continues to increase over time, as it has for most of U.S. history, an increment of consumption will be less valuable in the future than it would be today, because as total consumption increases, its marginal value tends to decline. These are all reasons for valuing future costs and benefits less than those occurring in the present.

A discount factor should be used to adjust the estimated costs and benefits for differences in timing . The further in the future the costs and benefits are expected to occur, the larger is this discount factor. The discount factor can be calculated given a discount rate. The formula is $1/(1+\text{the discount rate})^t$ where "t" measures the number of years in the future that the benefits or costs are expected to occur. Benefits or costs that have been adjusted in

this way are called discounted present values. Once the estimated benefits and costs have been discounted, they can be combined to determine the overall value of net benefits.

OMB's basic guidance on the discount rate is provided in OMB Circular A–94. This Circular states that a real discount rate of 7 percent should be used as a base-case for regulatory analysis. The 7 percent rate is an estimate of the average before-tax rate of return to private capital in the U.S. economy. It is a broad measure that reflects the returns to real estate and small business capital as well as corporate capital. It approximates the opportunity cost of capital and is the appropriate discount rate whenever the main effect of a regulation is to displace or alter the use of capital in the private sector. OMB revised Circular A–94 in 1992 after extensive internal review and following public comment. The average rate of return to capital remains near the 7 percent rate estimated in 1992. Circular A–94 also recommends using other discount rates to show the sensitivity of the estimates to the discount rate assumption.

The effects of regulation do not always fall exclusively on the allocation of capital. When regulation primarily affects private consumption (*e.g.*, through higher consumer prices for goods and services), a lower discount rate may be appropriate. The alternative most often used is called the "social rate of time preference." This simply means the rate at which "society" discounts future consumption flows to their present value. Economic distortions, including taxes on capital, create a divergence between this social rate and the private rate of return to capital. If we take the rate that the average saver uses to discount future consumption as our measure of the social rate of time preference, then the real rate of return on long-term government debt may provide a fair approximation. This rate has averaged around 3 percent since the mid-1950s.

For regulatory analysis, you should provide estimates of net benefits using both 7 percent and 3 percent. An example of this approach is EPA's analysis of its 1998 rule setting both effluent limits for wastewater discharges and air toxic emission limits for pulp and paper mills. In this analysis, EPA developed its present discounted value estimates using real discount rates of 3 and 7 percent applied to benefit and cost streams that extended forward for 30 years. (*See* EPA, Economic Analysis, October 1997, pages 10–3 and 10–4.) You should present a similar sensitivity analysis in your own work.

In some instances, if there is reason to expect that the regulation will cause resources to be reallocated away from private investment in the corporate sector, then the opportunity cost may be appreciably greater than the 3 to 7 percent discount rate. For example, Tresch suggests that rates in the range of 10 to 25 percent may be appropriate to reflect this opportunity cost, depending on the sector affected by the regulation. If you are uncertain about the nature of the opportunity cost, then you should present benefit and cost estimates using a higher discount rate as a sensitivity analysis as well as using 3 percent and 7 percent.

Circular A–94 points out that the analytically preferred method of handling timing differences between benefits and costs would be to adjust all the benefits and costs to reflect their value in equivalent units of consumption.[21] Due to distortions in the economy such calculations require you to value the costs and benefits using shadow prices, especially for capital goods. If all costs and benefits are measured in terms of consumption equivalents, it is appropriate to discount them using the social rate of discount. Any agency that wishes to tackle this challenging analytical task should check with OMB before proceeding.

When future benefits or costs are health-related, some have questioned whether discounting is appropriate. Although some of the rationales for discounting money may not seem to be applicable to health (*e.g.*, lives saved today cannot be invested in the bank to save more lives in the future, although the resources that would have been used to save those lives can often be saved with a higher pay-off in future lives saved). However, people do prefer health gains that occur immediately to identical health gains that occur only in the future, which would justify discounting the future gains. Also, if future health gains are not discounted while future costs are, then the following perverse result occurs: an attractive investment today in future health improvement can always be made more attractive by delaying the investment. For such reasons, there is a professional consensus that future health effects, including both benefits and costs, should be discounted at the same rate as generally used in both BCA and CEA.

A common challenge in health-related analyses is to quantify the time lag between when a rule takes effect and when the resulting physical improvements in health status will be observed in the target population. In such situations, you must carefully consider the timing of health benefits before present-value calculations are performed. It is not reasonable to assume that all of the benefits of reducing chronic diseases such as cancer and cardiovascular disease will occur immediately when the rule takes effect. For rules addressing traumatic injury, this lag period may be short while for chronic diseases it may take years or even decades for a rule to induce its full beneficial effects in the target population. When a time period between exposure to a toxin and increased probability of disease is likely (*e.g.*, a so-called latency period), it is also likely that there will be a lag between exposure reduction and reduced probability of disease. This latter period has sometimes been referred to as a "cessation lag" and it may or may not be the same as the latency period. As a general matter, cessation lags will apply only to populations with at least some higher-level exposure (*i.e.*, before the rule takes effect). For populations with no such prior exposure, such as those born after the rule takes effect, only the latency period will be relevant.

Ideally, your exposure-risk model would allow calculation of reduced risk for each year following exposure cessation, perhaps incorporating total cumulative exposure and age at the time of exposure reduction into the calculation as well. The present value calculation of benefits could then reflect an appropriate discount factor for each year's risk reduction. Recent analyses of the cancer benefits of reducing public exposure to radon in drinking water have adopted this approach, supported by formal risk-assessment models that allow estimates of how the timing of lung cancer incidence and mortality are affected by different radon exposure levels. In many cases, you will not have the benefit of such detailed risk assessment modeling. You will need to use your professional judgement as to the average cessation lag for the chronic diseases affected by your rule. In situations where information exists on latency but not on cessation lags, it may be reasonable to use latency as a proxy for the cessation lag, unless there is reason to believe, based on data, modeling, or knowledge of the mechanism of action, that the two are different. When the average lag time between exposures and disease is unknown, a range of alternative yet plausible values for the time lag should be used in your analysis.

Special ethical considerations arise when comparing benefits and costs across generations. Although most people demonstrate in their own consumption behavior a preference for consumption now rather than in the future, it may not be appropriate for society to demonstrate a similar preference when deciding between the well-being of current and future generations. Future citizens who are affected by such choices cannot take part in making them, and today's society must act in their interest. One way to do this would be to follow the same discounting techniques described above, but to supplement the analysis with an explicit discussion of the intergenerational concerns and how they will be affected by the regulatory decision. Policymakers would be provided with additional information when the analysis covers many generations, but without changing the general approach to discounting.

Some have argued, however, that it is ethically impermissible to discount the utility of future generations. On this view, government should treat all generations equally. Even under this approach, it would still be correct to discount future costs and consumption benefits, although perhaps at a lower rate than for intragenerational analysis. There are two reasons for thinking that a nonzero discount rate is the appropriate assumption for intergenerational analysis, even when all generations are to be treated equally. First, future generations are likely to be wealthier than those currently living, so a marginal dollar of benefits or costs will be worth less to them than it would be to those alive today, at least on average. If that holds true, it is appropriate to discount future benefits and costs relative to currently consumed benefits and costs even if the welfare of future generations is not being discounted. Estimates of the discount rate

[21] A thorough discussion of this approach to discounting is provided in Robert C. Lind (ed.), Discounting for Time and Risk in Energy Policy, Baltimore: The Johns Hopkins University Press for Resources for the Future, 1982.

appropriate in this case made in the 1990s ranged from 1 to 3 percent per annum.[22]

A second reason for discounting the benefits and costs accruing to future generations at a lower rate is increased uncertainty about the appropriate value of the discount rate, the longer the horizon for the analysis. Aversion to uncertainty discourages any such long-term investments. Private market rates provide a reliable reference for determining how society values time within a generation, but for extremely long time periods no comparable private rates exist. Symmetric uncertainty would have the effect of lowering the discount factor applied to future costs and benefits. Again the reasonable range might be expanded to include rates as low as 1 percent per annum.

If you choose to use a lower discount rate for intergenerational analysis, you should still be sure to show the calculated net benefits using discount rates of 3 and 7 percent as well. Discounting is appropriate whether you are doing a BCA or a CEA. Even costs and benefits that are not expressed in monetary units should be discounted if they are separated in time. This also includes health benefits for reasons discussed above. For example, in its 1998 rule, "Control of Emissions from Nonroad Diesel Engines," EPA estimated cost-effectiveness by discounting both the monetary costs and the emission reduction benefits over the useful expected life of the engines at the 7 percent real rate recommended in OMB Circular A–94.

It may be possible in some cases to avoid discounting non-monetized benefits, if the expected flow of benefits begins as soon as the cost is incurred and if it is expected to be constant over time. In such cases, annualizing the cost stream is sufficient, and further discounting of benefits is unnecessary. As an example, such an analysis might produce an estimate of the annualized cost per ton of reducing emissions of a pollutant.

D. Treatment of Uncertainty

The precise consequences (benefits and/or costs) of regulatory options are not always known for certain, but the probability of their occurrence can often be predicted. The important uncertainties connected with your regulatory decisions need to be analyzed and presented as part of the overall regulatory analysis. Your analysis of uncertainty should consider both the quantifiable risk associated with the potential outcomes of alternative regulatory actions (for example, the expected change in the distribution of automobile accidents that might result from a change in automobile safety standards) and the incomplete knowledge or uncertainty about the relevant relationships (for example, the uncertain science of how some economic activities might affect future climate change).

The treatment of uncertainty must be guided by the same principles of full disclosure and transparency that apply to other elements of your regulatory analysis. Any data and models that you use to analyze uncertainty should be fully identified. Inferences and assumptions used in your analysis should also be identified, and your analytical choices should be explicitly evaluated and adequately justified. Your presentation should explain how your analytical choices have affected your analysis.

Uncertainty arises from various and fundamentally different sources. These include the fundamental unpredictability of various natural and social phenomena, but they also include lack of data and the lack of knowledge about key relationships resulting from limitations in fundamental scientific knowledge (both social and natural). The different sources of uncertainty suggest different approaches for dealing with it. For example, when the uncertainty is due to a lack of data, you might consider deferring the decision, as an explicit regulatory alternative, pending further study to obtain sufficient data. We recognize that delaying a decision will also have costs, as will further efforts at data gathering and analysis. You will need to weigh the benefits of delay against these costs in making your decision. Formal tools for assessing the value of additional information are now well developed in the applied decision sciences and can be used to help resolve this type of complex regulatory question.

In some cases, the level of scientific uncertainty may be so large that you can only present discrete alternative scenarios without assessing the relative likelihood of each scenario quantitatively. For example, in assessing the potential outcomes of an environmental effect, there may be a limited number of scientific studies with strongly divergent results. In such cases, you might present results from a range of plausible scenarios, together with any available information that might help in qualitatively determining which scenario is most plausible.

Your analysis should include two fundamental components: A quantitative analysis characterizing the probabilities of the relevant outcomes and an assignment of economic value to the projected outcomes. It is essential that both parts be conceptually consistent. In particular, the quantitative analysis should be conducted in a way that permits it to be applied within a more general analytical framework, such as BCA. Similarly, the general framework needs to be flexible enough to incorporate the quantitative analysis without oversimplifying the results. For example, you should address explicitly the implications for benefits and costs of any probability distributions developed in your analysis.

1. Quantitative Analysis of Uncertainty

Examples of quantitative analysis, broadly defined, would include formal estimates of the probabilities of environmental damage to soil or water, the possible loss of habitat, or risks to endangered species as well as probabilities of harm to human health and safety. There are also uncertainties associated with estimates of economic benefits and costs, *e.g.*, the cost savings associated with increased energy efficiency. Your analysis should be credible, objective, realistic, and scientifically balanced. In your presentation, you should delineate its strengths along with any lingering uncertainties about its conclusions. You should describe the assumptions and the models you used and their impact on the overall analysis. You should also discuss the quality of the available data used.

As with other elements of regulatory analysis, you will need to balance thoroughness with the practical limits on your analytical capabilities. Your analysis does not have to be exhaustive, nor is it necessary to evaluate each alternative at every step. In the absence of adequate data, you will need to make assumptions. These should be clearly identified and consistent with the relevant science. Your analysis should provide sufficient information for decision-makers to grasp the degree of scientific uncertainty and the robustness of estimated probabilities, benefits, and costs to changes in key assumptions. For major rules involving threshold costs of $1 billion, you should present a formal quantitative analysis of the relevant uncertainties.

In your analysis, you should try to provide some estimate of the probability distribution of risks with and without the regulation, and you must do this for rules that exceed the $1 billion threshold. In characterizing the probability distributions quantitatively, you should provide some estimate of the central tendency (*e.g.*, mean and median) along with any other information you think will be useful such as ranges, variances, specified low-end and high-end percentile estimates, and other characteristics of the distribution.

Your estimates cannot be more precise than their most uncertain component. Thus, your analysis should report estimates in a way that reflects the degree of uncertainty and not create a false sense of precision. Your analysis should not reflect any unstated or unsupported preferences, even for such worthy objectives as protecting public health or the environment. Unstated assumptions can affect the analysis in unsuspected ways, making it difficult for decision-makers to evaluate the true magnitude of the uncertainties involved.

Acceptable Analytical Approaches: Whenever possible, you should use appropriate statistical techniques to determine a probability distribution of the relevant outcomes, and for rules that exceed the $1 billion threshold a formal quantitative analysis is required.

You may consider the following analytical approaches. They entail increasing levels of complexity:

- Disclose qualitatively the main uncertainties in each important input to the calculation of benefits and costs. These disclosures should address the uncertainties in the data as well as in the analytical results. However, major rules above the $1 billion threshold require a formal treatment.
- Use a numerical sensitivity analysis to examine how the results of your analysis vary with plausible changes in assumptions, choices of input data, and alternative analytical approaches. Sensitivity analysis is especially valuable when the information is

[22] Approaches to discounting across generations are discussed in a recent symposium volume published by Resources for the Future. Paul R. Portney and John P. Weyant (eds.), Discounting and Intergenerational Equity, Washington, DC: Resources for the Future, 1999.

lacking to carry out a formal probabilistic simulation. Sensitivity analysis can be used to find "switch points"—critical parameter values at which estimated net benefits change sign or the low cost alternative switches. Sensitivity analysis usually proceeds by changing one variable or assumption at a time, but it can also be done by varying a combination of variables simultaneously to learn more about the robustness of your results to widespread changes. Again, however, major rules above the $1 billion threshold require a formal treatment.

• Apply a formal probabilistic analysis of the relevant uncertainties—possibly using simulation models and/or expert judgment as revealed, for example, through Delphi methods. Such a formal analytical approach is appropriate for complex rules where there are large multiple uncertainties whose analysis raises technical challenges, or where the effects cascade, and it is required for rules that exceed the $1 billion threshold. For example, in the analysis of regulations addressing air pollution, there is uncertainty about the effects of the rule on future emissions, uncertainty about how the change in emissions will affect air quality, uncertainty about how changes in air quality will affect health, and finally uncertainty about the economic and social value of the change in health outcomes. You should make a special effort to portray the probabilistic results—in graphs and/or tables—clearly and meaningfully.

• New methods may become available in the future. This document is not intended to discourage or inhibit their use, but rather to encourage and stimulate their development.

2. Assigning Economic Values to Uncertain Outcomes

Uncertainty affects the values that you assign to the costs and benefits of regulatory actions. Because the outcome of regulatory action is not certain, but is instead best represented by a probability distribution of potential outcomes, the value assigned to the expected outcome from this probability distribution may be different from that for an expected outcome of the same magnitude that is certain to occur. In the financial world, for example, riskier instruments must generally earn a higher rate of return, and investors receive a higher expected reward for bearing uncertainty. This principle can carry over to the analysis of regulations depending on who bears the uncertainties from regulatory decisions.

When reporting benefit and cost estimates, where there is a distribution of outcomes, you will often find it useful to emphasize summary statistics or figures that can be readily understood and compared to achieve the broadest public understanding of your findings. It is a common practice to compare the "best estimates" of both benefits and costs with those of competing alternatives. These "best estimates" are usually the average or the expected value of benefits and costs. Emphasis on these expected values is appropriate as long as society is "risk neutral" with respect to the regulatory alternatives. This, however, may not always be the case. For a risk-averse individual, the certainty equivalent of an uncertain net benefit stream is less than its expected cash value, because the uncertainty itself is valued negatively.

E. Other Key Considerations

1. Other Cost Considerations

You should include these effects in your analysis and provide estimates of their monetary values wherever possible.

- Private-sector compliance costs;
- Government administrative costs;
- Losses in consumers' or producers' surpluses;
- Discomfort or inconvenience; and
- Loss of time.

Estimates of costs should be based on credible changes in technology over time. For example, a slowing in the rate of innovation or of adoption of new technology because of delays in the regulatory approval process or the setting of more stringent standards for new facilities than existing ones may entail significant costs. On the other hand, a shift to regulatory performance standards and incentive-based policies may lead to cost-saving innovations that should be taken into account. The weight you give to a study of past rates of cost savings resulting from innovation (including "learning curve" effects) should depend on both their timeliness and their direct relevance to the processes affected by the regulatory alternative under consideration. In some cases agencies are limited under statute to considering only technologies that have been demonstrated to be feasible. In these situations, it may also be useful to estimate costs and cost savings assuming a wider range of technical possibilities.

Occasionally, one or more components of the analysis address cost savings to one of the parties directly affected by the rule. For example, a requirement that manufacturers reduce emissions from engines they produce may lead to technologies that improve fuel economy. These fuel savings will normally accrue to the purchasers of the engines. There is no apparent market failure with regard to the market value of fuel saved because one would expect that consumers would be willing to pay for increased fuel economy that exceeded the cost of providing it. When these cost savings are substantial, and particularly when you estimate them to be greater than the cost associated with achieving them, it is incumbent on you to demonstrate convincingly why the market has not already captured these gains. As a general matter, any costs that are averted as a result of an alternative should be monetized wherever possible and either added to the benefits or subtracted from the costs of that alternative.

2. The Difference Between Costs (or Benefits) and Transfer Payments

Distinguishing between real costs and transfer payments is an important, but sometimes difficult, problem in cost estimation. Cost and benefit estimates should reflect real resource use. Transfer payments are monetary payments from one group to another that do not affect total resources available to society. For example, a regulation that restricts the supply of a good, causing its price to rise, produces a transfer of income from buyers to sellers. The reduction in the total value of the supply of the good is a real cost to society, but the transfer of income from buyers to sellers resulting from the higher price is not. You should not include transfers in the estimates of the benefits and costs of a regulation.[23] Instead, address them in a separate discussion of the regulation's distributional effects.

Examples of transfer payments include the following:

- Scarcity rents and monopoly profits.
- Insurance payments.
- Indirect taxes and subsidies.
- Distribution expenses.

3. Alternative Assumptions

If benefit or cost estimates depend heavily on certain assumptions, you should make those assumptions explicit and carry out sensitivity analyses using plausible alternative assumptions. If the value of net benefits changes from positive to negative (or vice versa) or if the relative ranking of regulatory options changes with alternative plausible assumptions, you should conduct further analysis to determine which of the alternative assumptions is more appropriate. Because different estimation methods may have hidden assumptions, you should analyze estimation methods carefully to make any hidden assumptions explicit.

V. Specialized Analytical Requirements

In preparing analytical support for your rulemaking, you should be aware that there are a variety of analytic requirements imposed by law and Executive order. In addition to the regulatory impact analysis requirements of E.O. 12866, you should also consider whether your rule will need specialized analysis of any of the following issues.

A. Impact on Small Businesses and Other Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. chapter 6), agencies must prepare a proposed and final "regulatory flexibility analysis" (RFA) if the rulemaking could "have a significant impact on a substantial number of small entities." Your agency should have guidelines on how to prepare an RFA and you are encouraged to consult with the Chief Counsel for Advocacy of the Small Business Administration on expectations concerning what is an adequate RFA. Executive Order 13272 (67 FR 53461, August 16, 2002) requires you to notify the Chief Counsel for Advocacy of any draft rules that might have a significant economic impact on a substantial number of small entities. E.O. 13272 also directs agencies to give every appropriate consideration to any comments provided by the Advocacy Office.

B. Analysis of Unfunded Mandates

Under the Unfunded Mandates Act (2 U.S.C. 1532), you must prepare a written statement about costs and benefits prior to issuing a proposed or final rule (for which

[23] However, transfers from the United States to other nations should be included as costs, and transfers from other nations to the United States as benefits.

your agency published a proposed rule) that may result in expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more in any one year (adjusted annually for inflation). Your analytical requirements under Executive Order 12866 are similar to the analytical requirements under this Act, and thus the same analysis may permit you to comply with both analytical requirements.

C. Information Collection, Paperwork and Recordkeeping Burdens

Under the Paperwork Reduction Act (44 U.S.C. chapter 35), you will need to consider whether your rulemaking (or other actions) will create any additional information collection, paperwork or recordkeeping burdens. These burdens are permissible only if you can justify the practical utility of the information for the implementation of your rule. OMB approval will be required of any new requirements for a collection of information imposed on 10 or more persons and a valid OMB control number must be obtained for any covered paperwork. Your agency's CIO should be able to assist you in complying with the Paperwork Reduction Act.

D. Information Quality Guidelines

Under the Information Quality Law, agency guidelines, in conformance with the OMB government-wide guidelines (67 FR 8452, February 22, 2002), have established basic quality performance goals for all information disseminated by agencies, including information disseminated in support of proposed and final rules. The data and analysis that you use to support your rule must meet these agency and OMB quality standards. Your agency's CIO should be able to assist you in assessing information quality. The Statistical and Science Policy Branch of OMB's Office of Information and Regulatory Affairs can provide you assistance.

E. Environmental Impact Statements

The National Environmental Policy Act (42 U.S.C. 4321–4347) and related statutes and executive orders require agencies to consider the environmental impacts of agency decisions, including rulemakings. An environmental impact statement must be prepared for "major federal actions significantly affecting the quality of the human environment." You must complete NEPA documentation before issuing a final rule. The White House Council on Environmental Quality has issued regulations (40 CFR 1500–1508) and associated guidance for implementation of NEPA, available through CEQ's Web site (see NEPANet).

F. Impacts on Children

Under Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks," each agency must, with respect to its rules, "to the extent permitted by law and appropriate, and consistent with the agency's mission," each agency must "address disproportionate risks to children that result from environmental health risks or safety risks." For any substantive rulemaking action that "is likely to result in" an economically significant rule that concerns "an environmental health risk or safety risk that an agency has reason to believe may disproportionately affect children," the agency must provide OMB/OIRA "an evaluation of the environmental health or safety effects of the planned regulation on children," as well as "an explanation of why the planned regulation is preferable to other potentially and reasonably feasible alternatives considered by the agency."

G. Energy Impacts

Under Executive Order 13211 (66 FR 28355, May 22, 2001), agencies are required to prepare and submit to OMB a Statement of Energy Effects for significant energy actions, to the extent permitted by law. This Statement is to include a detailed statement of "any adverse effects on energy supply, distribution, or use (including a shortfall in supply, price increases, and increased use of foreign supplies)" for the action and reasonable alternatives and their effects. You need to publish the Statement or a summary in the related NPRM and final rule. For further "Guidance on Implementing E.O. 13211," see OMB Memorandum 01–27 (July 13, 2001), available on OMB's Web site.

VI. Accounting Statement

You need to provide an accounting statement with tables reporting benefit and cost estimates for each major final rule for your agency. You should use the guidance outlined above to report these estimates. We have included a suggested format for your consideration.

Categories of Benefits and Costs

To the extent feasible, you should quantify all potential incremental benefits and costs. You should report benefit and cost estimates within the following three categories:

- Monetized
- Quantified, but not monetized; and
- Qualitative, but not quantified.

These categories are mutually exclusive and exhaustive. Throughout the process of listing preliminary estimates of costs and benefits, agencies should avoid double-counting. This problem may arise if more than one way exists to express the same change in social welfare.

Quantifying and Monetizing Benefits and Costs

Yes, you should develop quantitative estimate and covert them to dollar amounts if possible. In many cases, quantified estimates are readily convertible, with a little effort, into dollar equivalents.

Treatment of Benefits and Costs Over Time

You should monetize and quantify effects as real, undiscounted streams of estimates for each year over the entire period for which you have estimated them. You should also annualize these same effects using real discount rates of 3 and 7 percent. The stream of annualized estimates should begin in the year the final rule is published even if the rule does not take effect immediately. Please report all monetized effects in 2000 dollars. You may convert dollars expressed in different years to 2000 dollars using the GDP deflator.

Treatment of Risk and Uncertainty

You should provide central tendency or primary estimates as well as distributions about the estimates, where such information exists. When you provide only upper and lower bounds (in addition to best estimates), you should, if possible, use the 95 and 5 percent confidence bounds. Although we encourage you to develop estimates that capture the distribution of plausible outcomes for a particular alternative, detailed reporting of such distributions is not required.

The principles of full disclosure and transparency apply to the treatment of uncertainty. Where there is significant uncertainty and the resulting inferences and/or assumptions have a critical effect on the benefit and cost estimates, you should describe the benefits and costs under plausible alternative assumptions. You may add footnotes to the table as needed to provide documentation and references, or to express important warnings.

In our discussion in Section I above, we identified some of the issues associated with developing estimates of the value of reductions in premature mortality risk. Based on this discussion, you should present alternative primary estimates where you use alternative estimates for valuing reductions in premature mortality risk.

Precision of Estimates

Reported estimates should reflect, to the extent feasible, the precision in the analysis. For example, an estimate of $220 million implies rounding to the nearest $10 million and thus a precision of ±$5 million; similarly, an estimate of $222 million implies rounding to the nearest $1 million and thus, a precision of ±$0.5 million.

Separate Reporting of Transfers

You should report transfers separately and avoid the misclassification of transfer payments as costs or benefits. Transfers occur when wealth or income is redistributed without any direct change in aggregate social welfare. To the extent that regulatory outputs reflects transfers rather than welfare gains to society, you should identify them as transfers rather than costs or benefits. You should also distinguish transfers caused by Federal budget actions—such as those stemming from a rule affecting Social Security payments—from those that involve transfers between non-governmental parties—such as monopoly rents a rule may confer on a private party. You should use as many categories as necessary to describe the major redistributive effects of a regulatory action. If transfers have significant effects in addition to distributional effects, you should evaluate them also.

Effects on State, Local, and Tribal Governments, Small Business, Wages and Economic Growth

You need to identity the portions of benefits, cost, and transfers received by State, local, and tribal governments. To the extent feasible, you also should identify the effects of the rule or program on small businesses, wages, and economic growth. Note that rules with annual costs that are less than one

billion dollars are likely to have minimal effect on economic growth.

OMB #: *Agency/Program Office:*
Rule Title:
RIN #: *Date:*

Category	*Primary Estimate*	*Minimum Est.*	*Maximum Est.*	*Source Citation (RIA, preamble, etc.)*
BENEFITS				
Annualized monetized benefits				
Annualized quantified, but unmonetized benefits				
Qualitative (unquantified) benefits				
COSTS				
Annualized monetized costs				
Annualized quantified, but unmonetized costs				
Qualitative (unquantified) costs				
TRANSFERS				
Annualized monetized transfers: "on budget"				
from whom to whom?				
Annualized monetized transfers: "off budget"				
from whom to whom?				

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REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

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[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period January 1, 2001, through January 1, 2002. The CFR volume issued as of January 1, 2001 should be retained.

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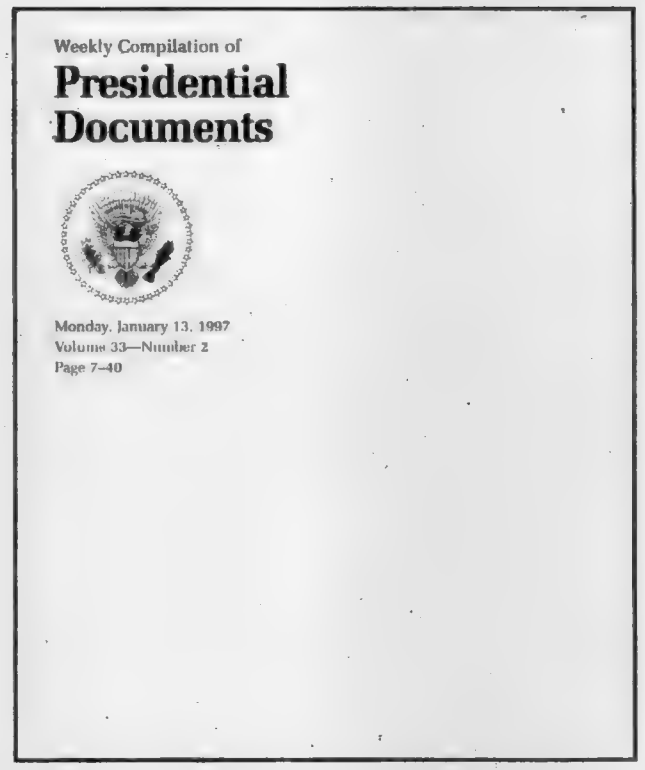

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Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.

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Rules and Regulations

Federal Register
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Tuesday, February 4, 2003

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 576

RIN 3206–AJ76

Voluntary Separation Incentive Payments

AGENCY: Office of Personnel Management.

ACTION: Interim rulemaking.

SUMMARY: The Office of Personnel Management (OPM) is issuing interim regulations on voluntary separation incentive payments (*i.e.*, "buyouts"). These regulations implement the voluntary separation incentive payment provisions of the Homeland Security Act of 2002, Public Law 107–296, which apply to most executive branch agencies.

These interim regulations explain how an agency requests authority from OPM to offer voluntary separation incentive payments. They also explain how in exceptional circumstances an agency that is hiring a former employee who previously received a voluntary separation incentive payment may request that OPM waive the general requirement that the individual repay the incentive.

DATES: These regulations are effective February 4, 2003. OPM will consider written comments if received no later than April 7, 2003.

ADDRESSES: Send written comments to Ellen E. Tunstall, Assistant Director for Employment Policy, Office of Personnel Management, Room 6500, 1900 E Street, NW., Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Charles W. Gray at 202–606–0960, FAX at 202–606–2329, TDDY at 202–418–3134, or e-mail at *cwgray@opm.gov*.

SUPPLEMENTARY INFORMATION: Section 1313(a) of the "Homeland Security Act of 2002" (Public Law 107–296, 116 Stat. 2135) amends chapter 35 of title 5, United States Code, to allow executive branch agencies, at their option, to offer voluntary separation incentive payments to surplus or displaced employees who separate by voluntary retirement or by resignation. To offer buyouts, an agency must submit a plan for OPM approval. The plan must describe how the agency will use voluntary separation incentive payments as a tool to facilitate its restructuring goals. OPM will review each agency's plan and, in consultation with the Director of the Office of Management and Budget, may make any appropriate modifications to the agency's plan for voluntary separation incentive payments. The agency must have OPM approval before using this flexibility.

New subpart A of 5 CFR part 576 implements these new voluntary separation incentive payment provisions, which are codified in sections 3521 through 3523 of title 5, United States Code.

A former employee who accepts any employment with the Government of the United States for compensation within 5 years after the date of separating for a voluntary separation incentive payment must repay the entire amount of the incentive payment before the first day of reemployment in the Federal service. Under exceptional circumstances, the OPM Director may, at the request of the hiring agency, waive the repayment requirement for former executive branch employees.

New subpart B of 5 CFR part 576 covers both the general repayment requirement and the limited waiver provision of the Act, which are codified in section 3524 of title 5, United States Code.

OPM is continuing to collect data related to this program, both for oversight purposes and to evaluate the effectiveness of the program.

These regulations are published in response to the amendment of chapter 35 of title 5, United States Code, which relates to voluntary separation incentive payments. They are effective on January 24, 2003, as provided in section 1313(a)(4) of Public Law 107–296.

Waiver of Notice of Proposed Rulemaking and Delay in Effective Date

Pursuant to section 553(b)(3)(B) of title 5, United States Code, I find that good cause exists for waiving the general notice of proposed rulemaking because it would be contrary to the public interest to delay implementing management flexibilities which are provided by law. Section 1313(a)(4) of Public Law 107–296 provides that all of the provisions in the Department of Homeland Security Act of 2002 relating to voluntary separation incentive payments are effective 60 days from the date of enactment of the law. The law was enacted November 25, 2002.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because it affects only certain Federal employees.

Executive Order 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with Executive Order 12866.

List of Subjects in 5 CFR Part 576

Government employees, wages.

Office of Personnel Management.

Kay Coles James,

Director.

Accordingly, OPM is revising part 576 of title 5, Code of Federal Regulations, to read as follows:

PART 576—VOLUNTARY SEPARATION INCENTIVE PAYMENTS

Subpart A—Voluntary Separation Incentive Payments

Sec.

576.101 Definitions.
576.102 Voluntary separation incentive payment implementation plans.
576.103 Offering voluntary separation incentive payments to employees.
576.104 Additional agency requirements.
576.105 Existing voluntary separation incentive payment authorities.

Subpart B—Waiver of Repayment of Voluntary Separation Incentive Payments

Sec.

576.201 Definitions.
576.202 Repayment requirement.
576.203 Waivers of the voluntary separation incentive repayment requirement.

Authority: 5 U.S.C. 3521, 3522, 3523, 3524, and 3525.

Subpart A—Voluntary Separation Incentive Payments.

§ 576.101 Definitions.

Section 3521(1) of title 5, United States Code, contains the definition of *Agency,* and section 3521(2) of title 5, United States Code, contains the definition of *Employee,* as used in this subpart.

§ 576.102 Voluntary separation incentive payment implementation plans.

(a) Section 3522 of title 5, United States Code, specifies the information that the head of an agency must submit to the Office of Personnel Management (OPM). OPM will consult with the Office of Management and Budget (OMB) regarding the plan and will notify the agency head in writing when the plan is approved. The agency must have OPM approval before offering incentives under this authority.

(b) In submitting a plan to OPM under section 3522(a) of title 5, United States Code, the head of an agency may submit:

(1) A specific voluntary separation incentive payment implementation plan outlining the intended use of the incentive payments, or

(2) The agency's human capital plan, which outlines the intended use of the incentive payments and the expected changes in the agency's organizational structure after the agency has completed the incentive payments.

(c) In either case, the plan must include:

(1) Identification of the specific positions and functions to be reduced or eliminated, identified by organizational unit, geographic location, occupational category, grade level and any other factors related to the position, such as skills and knowledge;

(2) A description of the categories of employees who will be offered incentives identified by organizational unit, geographic location, occupational category, grade level and any other factors, such as skills, knowledge, or retirement eligibility;

(3) The time period during which incentives may be paid;

(4) The number and maximum amounts of voluntary separation incentive payments to be offered;

(5) A description of how the agency will operate without the eliminated or restructured positions and functions;

(6) A proposed organizational chart displaying the expected changes in the agency's organizational structure after the agency has completed the incentive payments; and

(7) If the agency has requested, or will request Voluntary Early Retirement Authority, a description of how that authority will be used in conjunction with separation incentives;

(8) If the agency is offering separation incentives under any other statutory authority, a description of how that authority is being used.

§ 576.103 Offering voluntary separation incentive payments to employees.

Section 3523 of title 5, United States Code, covers:

(a) The basis for an agency to offer a voluntary separation incentive payment;

(b) The computation of a voluntary separation incentive payment; and

(c) The appropriations or funds that the agency uses to pay the voluntary separation incentive payment.

§ 576.104 Additional agency requirements.

(a) After OPM approves an agency's plan for voluntary separation incentive payments, the agency is required to immediately notify OPM of any subsequent changes in the conditions that served as the basis for the approval of the voluntary separation incentive payments. OPM will consult with OMB and notify the agency in writing if there are changes in the OPM approval of the agency plan.

(b) Agencies are required to provide OPM with interim and final voluntary separation incentive payment reports, as covered in OPM's approval letter to the agency. OPM may suspend or cancel a voluntary separation incentive payment authority if the agency is not in compliance with the reporting requirements or reporting schedule specified in OPM's letter approving that authority.

§ 576.105 Existing voluntary separation incentive payment authorities.

As provided in section 1313(a)(3) of Public Law 107–296, any agency exercising voluntary separation incentive authority in effect on January 24, 2003, may continue to offer voluntary separation incentives consistent with that authority until that authority expires. An agency that is eligible to offer voluntary separation incentive payments under this authority and under any other statutory authority may choose which authority it wishes to use, or offer incentives under both.

Subpart B—Waiver of Repayment of Voluntary Separation Incentive Payments

§ 576.201 Definitions.

Section 3524(a) of title 5, United States Code, contains the definition of *Employment* as used in this subpart.

§ 576.202 Repayment requirement.

(a) Section 3524(b) of title 5, United States Code, contains the repayment requirement that applies if an executive branch employee who received a voluntary separation incentive payment as described in subpart A of this part, and accepts any employment for compensation with the Government of the United States within 5 years after the date of the separation on which the payment is based. The individual must repay the entire amount of the voluntary separation incentive payment to the agency that paid the voluntary separation incentive payment before the individual's first day of reemployment.

(b) An executive branch employee who received a voluntary separation incentive payment on or after March 30, 1994, under statutory authority other than subpart A of this part, and who accepts any employment for compensation with the Government of the United States within 5 years after the date of the separation on which the payment is based, may be required by the authorizing statute to repay the entire amount.

§ 576.203 Waivers of the voluntary separation incentive repayment requirement.

(a)(1) Section 3524(c)(1) of title 5, United States Code, covers the conditions under which the Director of OPM may, at the request of the head of the hiring agency, waive the repayment required in § 576.202.

(2) Section 3524(a)(2) of title 5, United States Code, provides that the waiver provision under section 3524(c)(1) of title 5, United States Code, does not extend to a repayment obligation resulting from employment under a personal services contract or other direct contract.

(b) For a voluntary separation incentive payment made under statutory authority other than subpart A of this part, the agency should review the authorizing statute and, if a waiver is permitted, submit a request as specified by that statute.

[FR Doc. 03–2766 Filed 1–31–03; 2:50 pm]
BILLING CODE 6325–38–P

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 875

RIN 3206–AJ71

Federal Long Term Care Insurance Regulation

AGENCY: Office of Personnel Management.

ACTION: Interim rule with request for comments.

SUMMARY: In compliance with the Long-Term Care Security Act, the Office of Personnel Management (OPM) is issuing interim regulations that set forth rules for the administration of the Federal Long Term Care Insurance Program (FLTCIP).

DATES: *Effective Date:* February 4, 2003.

Comment Date: Comments due on or before April 7, 2003.

ADDRESSES: Send or deliver written comments to Frank D. Titus, Assistant Director for Long Term Care, Office of Personnel Management, Room 2H24, 1900 E Street NW., Washington DC 20415, or by fax to (202) 606–2023. You may send comments electronically to *ltc@opm.gov,* using the subject line "Comments on Proposed Regulations."

FOR FURTHER INFORMATION CONTACT: Terry Schleicher, (202) 606–0417, or *tlschlei@opm.gov.*

SUPPLEMENTARY INFORMATION: On September 19, 2000, the Long-Term Care Security Act (Pub. L. 106–265) became law. The Act directs OPM to prescribe regulations necessary to carry out the law.

In new part 875, subpart A provides definitions, methods for contract and claims dispute resolution, and the authority for OPM to order correction of errors. It also sets out agency and OPM responsibilities under this Program.

The Act provides preemption of State insurance laws that relate to the nature, provision, or extent of coverage or benefits under FLTCIP. The regulations specify OPM's authority to act as the regulator for FLTCIP in accordance with the Act and the consumer protection provisions of the Health Insurance Portability and Accountability Act of 1996.

OPM has determined that the enrollee's proof of insurance will consist of a benefit booklet prepared by OPM and the Carrier, together with the schedule of benefits. The enrollee will also receive a copy of the approved application for coverage. The booklet will provide general FLTCIP provisions, definitions, exclusions, and limitations. The schedule of benefits will specify the coverage purchased (*e.g.*, waiting period, daily benefit amount, benefit period, type of inflation protection, and either a comprehensive package or a facilities only package). The approved application will show the specific information that provided the basis for issuing the coverage. This will help to reduce Program costs by eliminating the expense of preparing a customized certificate of insurance for each enrollee.

Subpart B specifies eligibility requirements for, and exclusions from, participation in the FLTCIP for Federal civilian employees, Postal employees, members of the uniformed services, civilian annuitants, retired members of the uniformed services, and their qualified relatives.

The FLTCIP law defines an eligible Federal or Postal employee as someone also eligible for Federal Employees Health Benefits (FEHB) participation. Therefore, Federal civilian and Postal eligibility for and exclusions from coverage are tied to FEHB regulations found in part 890 of this chapter. There are 2 exceptions, however. The FLTCIP law specifically excludes all District of Columbia employees from participation, even though some are eligible for FEHB coverage. The regulations make this exclusion clear. Also, Tennessee Valley Authority employees are eligible for FLTCIP participation, even though by law they may not be eligible for FEHB.

Civilian annuitants eligible to apply for coverage under the FLTCIP law include those who have retired on an immediate annuity, deferred annuitants when they begin to receive an annuity, and survivor annuitants.

The regulations specify that if an employee has separated from service under the Federal Employees Retirement System (FERS) Minimum Retirement Age (MRA) + 10 provision (5 U.S.C. 8412(g)), but has not begun drawing an annuity, he or she can apply for coverage under the FLTCIP. He or she will be considered an annuitant for underwriting purposes.

A retired member of the uniformed services is eligible to apply for coverage if he or she is entitled to retired or retainer pay, even if that member is receiving disability retirement pay. However, the FLTCIP law specifies that a former member of the uniformed services retired under chapter 1223 of title 10, United States Code, (a "gray reservist") is not eligible to apply for coverage until he or she starts receiving retirement pay at age 60.

If an individual applies as a qualified relative, the regulations specify that the workforce member (Federal civilian or Postal employee, Federal annuitant, member of the uniformed services, or retired member of the uniformed services) on whom the applicant bases the qualified relative status must be alive at the time the applicant applies for coverage. There is 1 exception to this rule. If the applicant is receiving an annuity as the spouse of a deceased workforce member, then he or she may apply for coverage.

A new employee or member of the uniformed services and his or her spouse will have a 60-day period after becoming eligible to apply for coverage with the same underwriting requirements provided to that eligible group during the most recent open season.

If a Federal civilian or Postal employee or member of the uniformed services held a position that did not convey eligibility for FLTCIP coverage, and then enters into a position that conveys eligibility, he or she also has a 60-day period to apply for coverage with the same underwriting requirements provided to that eligible group during the most recent open season, as well as his or her spouse, if any. For example, if an employee was not eligible because he or she was a temporary employee who had worked less than 1 year, and then took a permanent position, he or she would now be eligible to apply for FLTCIP coverage.

If a Federal civilian or Postal employee or member of the uniformed services is returning from a break in service of 180 days or more, he or she may apply for coverage with the same underwriting requirements provided to that eligible group during the most recent open season, as may his or her spouse, if any.

Other qualified relatives may apply for enrollment at any time with full underwriting.

If a Federal civilian or Postal employee or member of the uniformed services returns from nonpay status during an open season, he or she can apply for coverage within 60 days from return to pay status, or by the end of the open season, whichever provides more time. For example, if the open season runs from July 1 through December 31, and an individual returns on October 15, he or she still gets until December 31 to apply with the open season underwriting requirements for his or her eligibility group. If he or she returns on November 15, he or she will have until January 14 to apply. If he or she returns after the open season has ended, he or she can apply with the open season underwriting requirements of his or her eligibility group within 60 days from his or her return. This section only applies when the applicant is in nonpay status for more than one-half of the scheduled open season, unless he or she went into nonpay status for a reason beyond his or her control. If the applicant has been actively at work for at least one-half of the open season, he or she has already had ample opportunity to get information and apply for coverage without the need for the special provisions of this section.

The regulations prescribe that an applicant must state his or her employment/retirement status or relationship as a qualified relative when applying for coverage. If the applicant misrepresents his or her eligibility, he or she may lose his or her coverage or it may never become effective.

The applicant must remain a member of an eligible group for coverage to take effect. If he or she becomes ineligible between the date that the application is submitted and the coverage effective date, he or she will no longer be eligible for coverage. This may happen when the applicant separates from service without retiring or when he or she loses qualified relative status, such as through divorce. There are 2 exceptions to this rule, explained below.

If the separation from service is involuntary, such as through a reduction in force, the application (and the application of any qualified relatives) will proceed. If the application is approved, the applicant will be enrolled for coverage. However, if the individual had not applied for coverage before separation, he or she is no longer eligible at separation. Qualified relatives also lose their eligibility at the same time.

If an applicant's involuntary separation is due to misconduct or a dishonorable discharge, then he or she immediately becomes ineligible, regardless of whether the applicant had applied for coverage prior to separation. This is consistent with temporary continuation of coverage requirements under the FEHB Program, which do not allow for continued enrollment if the separation is due to misconduct.

The second exception is when an applicant loses qualified relative status through the death of a workforce member. If the person through whom the applicant is qualified for coverage dies after the applicant has submitted an application but before the application is approved, he or she does not lose eligibility. If the application is approved, he or she will be enrolled for coverage.

Eligibility status may change between the time of application for coverage and the coverage effective date. The applicant may have retired or separated from service under FERS MRA +10 provisions. Or, the applicant may have separated from service but still may be eligible because he or she is the qualified relative of an employee or annuitant. The applicant must reapply for coverage in these instances, submitting to the underwriting requirements specified for the eligible group of which he or she is now a part. For example, if an applicant separates from active service, but is also the spouse of an employee, he or she remains eligible for coverage. But, he or she will have to resubmit the application with the additional underwriting required of employees' spouses.

Subpart C addresses payment issues under the FLTCIP. As specified in the FLTCIP law, there is no Government contribution toward premiums for long term care insurance. The enrollee pays the entire cost.

If the enrollee underpays premiums, he or she must pay retroactive premiums to the Carrier. If he or she does not repay such premiums, the Carrier may cancel coverage. Conversely, if the enrollee has overpaid premiums, the Carrier will either reimburse the enrollee or apply the overpayment toward future premium payments due.

The regulations specify that an enrollee will not receive a refund of premiums if he or she decreases coverage, cancels coverage, or dies. The enrollee must pay for the coverage agreed to for the period that it was in effect. The enrollee is not entitled to a refund just because coverage was not used. This is consistent with Federal Employees' Group Life Insurance (FEGLI) Program rules, where there is no provision for the refund of premiums when an enrollee decides to reduce or cancel coverage. There are some exceptions for FLTCIP. Premiums paid in advance for the period beyond the date of death or for any period following the effective date of cancellation will be refunded. Any premiums paid will be returned if the enrollee cancels coverage within the "free look" period specified in the benefit booklet.

A requirement of the FLTCIP law is for the Carrier to account for FLTCIP funds separately from all other funds. This requirement, which is also found in FEHB and FEGLI regulations, ensures that Program funds can be traced and examined for accounting and audit purposes. The Carrier is also required to only use FLTCIP funds for purposes related specifically to the FLTCIP, such as administering the Program and paying claims.

Subpart D describes coverage requirements. Before the first open season for enrollment, OPM will determine the ways in which applicants can apply for coverage. OPM may allow enrollment on paper and various electronic formats. However, OPM does not believe it necessary to specify in regulation the different formats of enrollment applications. OPM believes FLTCIP is best served by using the most current technology available at any time without going through a regulatory process to do so.

It is not necessary for the workforce member to apply for coverage in order for his or her qualified relatives to be able to apply for coverage. For example, the parents of an employee may submit applications even if the employee decides not to apply. OPM wants each qualified relative to have maximum flexibility and unrestricted opportunity to apply for and select the coverage or cost that works best for him or her.

OPM does not plan to have regularly scheduled open seasons. There may be open seasons with abbreviated underwriting requirements for some eligible groups when OPM determines it is in the best interest of the FLTCIP. OPM will specify open season beginning and ending dates, as well as the requirements for applicants during the open season, in **Federal Register** Notices.

The FLTCIP Carrier will accept applications for coverage at any time. Any workforce member or qualified relative may apply, subject to full underwriting requirements. (OPM may or may not reduce underwriting requirements during an open season.)

In order to prevent adverse selection and thus keep the FLTCIP viable, OPM must require full underwriting outside of an open season even for Federal civilian and Postal employees and members of the uniformed services. Adverse selection occurs when someone enrolls only when it is apparent that he or she will need access to benefits. By deferring enrollment until benefits are needed, such individuals likely would not pay their fair share of overall premiums.

OPM will announce effective dates of coverage for open season enrollments in a **Federal Register** Notice. The effective date will be different for each open season. At any time outside of an open season, an applicant's coverage effective date is the first day of the month after the approval date of the application. For example, if an application is approved on November 1, then the coverage effective date is the first day of the next month, December 1.

There are some situations in addition to open season in which Federal civilian and Postal employees and members of the uniformed services will be eligible for abbreviated underwriting, such as when they become newly eligible for FLTCIP (see § 875.206). In such situations, the applicant must also be actively at work on the coverage effective date for coverage to actually go into effect. This requirement protects FLTCIP's stability. With abbreviated underwriting, only a few questions are

asked about the applicant's health status. If an employee is actively at work, he or she is less likely to go into claims status shortly. As discussed previously, it is important to protect the FLTCIP against adverse selection.

If an applicant is not actively at work on the coverage effective date, he or she must inform the Carrier. He or she will get a revised coverage effective date, which will be the first day of the month after his or her return to active work. But, he or she must also be actively at work on the revised coverage effective date for coverage to take effect. If that is not the case, then the applicant must inform the Carrier, and the process of issuing a revised effective date will begin again.

A newly married spouse of a Federal civilian or Postal employee or member of the uniformed services may apply for coverage within 60 days of marriage with the same underwriting requirements provided to this group during the most recent open season. However, if the employee or member of the uniformed services is not already enrolled, and wants to apply for coverage at the same time, then he or she must apply with full underwriting. This person already had the opportunity to apply with abbreviated underwriting and does not get another opportunity outside of an open season.

The regulations specify that an enrollee may upgrade coverage at any time, with full underwriting. An enrollee may also upgrade coverage during an open season with the underwriting requirements and coverage rules specified for that open season.

If an enrollee upgrades coverage by adding to the daily benefit amount other than through the automatic compound inflation option, he or she will then pay a "blended" premium, where the premium for that amount of increased daily benefit is based on his or her age and premium rates at the time of the purchase of the increased benefit (also called the attained age), while the premium for the base insurance purchased is still based on the enrollee's age and rates when the base insurance was purchased. For example, if an enrollee chose at age 55 a $125 daily benefit amount, he or she can decide at age 65 to increase that coverage to $150. He or she will pay age 65-based premiums for the additional $25 in coverage, but will continue to pay age 55-based premiums for the initial $125 coverage. For other types of coverage upgrades, premiums will be based on the enrollee's attained age and the prevailing rate at the time of purchase.

An enrollee may also decrease or cancel coverage at any time. There will be no refund of premiums paid for the portion of insurance cancelled, unless he or she cancels during the "free look" period specified in the benefit booklet. Any increase or decrease is subject to the Program options available at the time of the change.

The Carrier will make insurability decisions for all applicants, and these decisions are not appealable to OPM. This rule is identical to the FEGLI Program rule, which vests all insurability decisions with the Carrier. This requirement has worked very well for many years in the FEGLI Program, and OPM expects the same outcome for the FLTCIP.

A standard feature of life and long term care insurance policies is an incontestability clause, which allows for erroneous enrollments to remain in effect under certain conditions. The FEGLI Program regulations contain such a clause, and OPM is providing similar protections under the FLTCIP.

However, it will be important for each applicant to complete the enrollment application accurately and thoroughly. If the Carrier finds that the applicant omitted, misstated, or misrepresented information on the application, the Carrier may rescind coverage. This provision is meant to protect the integrity of the FLTCIP, in terms of both premium sufficiency and fairness to all applicants.

An enrollee must authorize the release of his or her medical information within 3 weeks of the Carrier's request (4 weeks if he or she is outside the United States). It is in an enrollee's best interest to get the authorization to the Carrier as quickly as possible. Without access to medical records, the Carrier cannot determine whether an enrollee is eligible for benefits. If the enrollee does not provide the authorization within this time period, the Carrier has the right to deny claims for benefits or, as a last resort, void coverage.

The FLTCIP law provides for portability of coverage. Federal civilian or Postal employees and members of the uniformed services and their qualified relatives may maintain coverage if the employee or member of the uniformed services transfers, retires, or separates from service, so long as the Carrier continues to receive the premiums. The premiums do not change because of these events. Once the employee or member of the uniformed services leaves active service, however, he or she is no longer eligible for any abbreviated underwriting provided during an open season or other qualifying event. The portability feature of the FLTCIP also extends to other individuals who separate under the FERS MRA+10 provision. Enrolled qualified relatives may also keep FLTCIP coverage when they lose qualified relative status, such as upon divorce.

Coverage will terminate when the enrollee exhausts the benefits available, does not timely pay the required premiums, or dies. If an enrollee does not pay a premium on time, he or she will have a grace period of 30 days in which he or she can bring payments up to date before the Carrier may terminate coverage.

If an enrollee's coverage ends because he or she did not pay the required premium, the Carrier will reinstate coverage if the Carrier receives proof within 6 months of the date coverage ended that the enrollee suffered a cognitive impairment such as Alzheimer's disease or loss of functional capacity before the premium payment grace period ended. In such an instance, the enrollee does not need to submit to any further underwriting to restore the earlier coverage.

The Carrier may reinstate an enrollee's coverage for other reasons within 12 months from the date coverage terminated. This provision applies when an enrollee voluntarily cancels coverage or does not pay the required premium. However, the enrollee must submit to full underwriting and the Carrier will determine whether he or she is still insurable. Coverage will be reinstated retroactively to the termination date and he or she must pay back premiums for that period. The enrollee's premium will be the same as it was prior to termination.

Lastly, FLTCIP benefits will be coordinated, according to National Association of Insurance Commissioners (NAIC) guidelines, with other government programs, group medical benefits, and other employer-sponsored long term care insurance coverage so that benefit payments are not duplicated. Coordination of benefits is a standard feature of health and long term care insurance policies, and helps to keep costs down by ensuring that payments do not exceed 100 percent of charges.

E.O. 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with Executive Order 12866.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because it affects only Federal employees, annuitants, members of the uniformed services, retired members of

the uniformed services, their qualified relatives, and the FLTCIP Carrier(s).

List of Subjects in 5 CFR Part 875

Administrative practices and procedures, Government contracts, Government employees, Employee benefit plans, Health insurance, Military personnel, Organization and functions, Retirement.

Office of Personnel Management.

Kay Coles James,

Director.

For the reasons stated in the preamble, the Office of Personnel Management amends title 5, Code of Federal Regulations, by adding part 875 as follows:

PART 875—FEDERAL LONG TERM CARE INSURANCE PROGRAM

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Authority: 5 U.S.C. 9008.

Subpart A—Administration and General Provisions

§ 875.101 Definitions.

This part is written as if the reader were an applicant or enrollee. Accordingly, the terms "you," "your," etc., refer, as appropriate, to the applicant or enrollee.

In this part, the terms *annuitant, employee, member of the uniformed services, retired member of the uniformed services,* and *qualified relative* have the meanings set forth in section 9001 of title 5, United States Code, and supplement the following definitions:

Abbreviated underwriting is a type of underwriting that asks fewer questions about your health status than with full underwriting to enable the Carrier to determine whether your application for coverage will be approved. The Carrier may also require review of your medical records, a phone interview, or an in-home interview.

Actively at work means:

(1) For a Federal civilian or Postal employee, that you meet all of the following conditions:

(i) You are reporting for work at your usual place of employment or other location to which Government business requires you to travel;

(ii) You are able to perform all the usual and customary duties of your employment on your regular work-schedule; and

(iii) You are not absent from work due to sickness, injury, annual leave, sick leave or any other leave. (You are not considered to be on leave on your alternate work schedule's scheduled day off.)

(2) For a member of the uniformed services, that you are on active duty and are physically able to perform the duties of your position.

Carrier means a qualified carrier as defined in section 9001 of title 5, United States Code, with which OPM has contracted to provide long term care insurance coverage under this section. A Carrier may designate 1 or more administrators to perform some of its obligations.

Eligible individual means an annuitant, Federal civilian or Postal employee, member of the uniformed services, retired member of the uniformed services or qualified relative, as defined in section 9001 of title 5, United States Code.

Enrollee means an eligible individual whose application for coverage the Carrier has approved and whose coverage is in effect.

FLTCIP means the Federal Long Term Care Insurance Program.

Free look means that within 30 days after you receive the Benefit Booklet, you may cancel your coverage if you are not satisfied with it and receive a refund of any premium you paid. It will be as if the coverage was never issued.

Full underwriting is the more comprehensive type of underwriting under the FLTCIP, which requires that you answer many questions about your health status to enable the Carrier to determine whether your application for coverage will be approved. The Carrier may also require review of your medical records, a phone interview, or an in-home interview.

Stepparent means any person, other than your mother or father, who is currently married to one of your parents, or, if one of your parents is dead, a person who was married to that parent at the time of that parent's death.

Underwriting requirements means the information about your current health status and history and other information that you must provide to the Carrier with your application for coverage to enable the Carrier to determine your insurability.

Workforce member means a Federal civilian or Postal employee, member of the uniformed services, Federal annuitant, or a retired member of the uniformed services, as defined in

section 9001 of title 5, United States Code.

§ 875.102 Where do I send benefit claims?

You must submit your benefit claims to the FLTCIP Carrier or its designee.

§ 875.103 Do I need to authorize release of my medical records when I file a claim?

Yes, if you file a claim for benefits, the Carrier needs to have a valid authorization from you to release your medical records.

§ 875.104 What are the steps required to resolve a dispute involving benefit eligibility or payment of a claim?

(a) If you dispute the Carrier's denial of your eligibility for benefits or your claim for payment of benefits, you must first send a written request for reconsideration to the Carrier no later than 60 days from the date of its decision.

(b) The Carrier must provide you with written notice of its review decision no later than 60 days after the date it receives your reconsideration request.

(c) If the Carrier upholds its denial (or does not respond within 60 days), you have the right to appeal its reconsideration decision. You must make this appeal in writing within 60 days from the date of the Carrier's notice upholding its decision. You will be notified of the decision on your appeal in writing no later than 60 days from receipt of your appeal request.

(d) If a denial of your eligibility for benefits or a denial of your claim is upheld upon appeal due to the evaluation of your medical condition/functional capacity, the Carrier will inform you that you may request that an independent third party, mutually agreed to by OPM and the Carrier, review the decision. You must make this request in writing within 60 days from the date of the notice informing you of the appeal decision. The independent third party must notify you in writing of its decision no later than 60 days from the Carrier's or its designee's receipt of your request for appeal to the third party. This is the final administrative remedy available to you. The decision of the independent third party is final and binding on the Carrier.

(e) You may seek judicial review of the final administrative denial of a claim. Such action may not be brought prior to exhaustion of the administrative process provided in this section. To pursue such judicial review, you must bring legal action against the Carrier in an appropriate United States district court within 2 years from the date of the final decision. You may not sue OPM, the independent reviewer, or any other entity. If you prevail in court, your recovery is limited to the amount of benefits payable under your benefit booklet and schedule of benefits.

§ 875.105 May OPM correct errors?

OPM may order correction of administrative errors after reviewing evidence and finding that it would be against equity and good conscience not to do so.

§ 875.106 What responsibilities do agencies have under this Program?

Federal agencies and uniformed services establishments are responsible for:

(a) Providing access to information about the FLTCIP to eligible individuals;

(b) Responding to questions from the Carrier, including questions on the employment status of an applicant or enrollee;

(c) Providing reports as OPM requires;

(d) Complying with Benefits Administration Letters and other OPM issuances/instructions; and

(e) Deducting premiums as authorized by a workforce member and as requested by the Carrier, when possible.

§ 875.107 What are OPM's responsibilities as regulator under this Program?

Consistent with the authority and discretion given to OPM by the FLTCIP law, OPM's responsibilities include those functions typically associated with, and preemptive of, State insurance regulatory authorities such as:

(a) Reviewing and approving the content and format of materials associated with the FLTCIP pursuant to section 9008(d) of title 5, United States Code;

(b) Reviewing and approving rates, forms, and marketing materials; and

(c) Determining the qualifications of enrollment personnel and the Program administrator(s).

§ 875.108 If the Carrier approves my application, will I get a certificate of insurance?

If the Carrier approves your application for coverage, OPM and/or the Carrier will make available to you a benefit booklet and schedule of benefits with complete coverage information, which will serve as your proof of insurance. You will also get a copy of your approved application for coverage.

§ 875.109 Is there a delegation of authority for resolving contract disputes between OPM and the Carrier?

For the purpose of making findings of fact and to the extent that conclusions of law may be required under any proceeding conducted in accordance with the provisions of the disputes clause included in the FLTCIP master contract, OPM delegates this function to the Armed Services Board of Contract Appeals.

Subpart B—Eligibility

§ 875.201 Am I eligible as a Federal civilian or Postal employee?

(a) If you are a Federal civilian or Postal employee whose current position conveys eligibility for Federal Employees Health Benefits under part 890 of this chapter, you are also eligible to apply for coverage, with the following exceptions:

(1) If you are a District of Columbia employee or retiree, you are not eligible to apply for coverage, regardless of whether you are eligible for Federal Employees Health Benefits coverage.

(2) If you are a Tennessee Valley Authority employee or retiree, you are eligible to apply for coverage, even though you may not be eligible for Federal Employees Health Benefits coverage.

(b) If you are a Federal civilian or Postal employee whose current position is excluded from Federal Employees Health Benefits eligibility under § 890.102 of this chapter, you are excluded from applying for coverage unless paragraph (a)(2) of this section applies.

(c) If you are an annuitant reemployed by the Federal Government, you may apply for coverage as an employee.

§ 875.202 Am I eligible as a Federal annuitant?

If you are a Federal annuitant, including a survivor annuitant, a deferred annuitant, or a compensationer, you are eligible to apply for coverage. If you are a deferred annuitant, you may apply for coverage only after you begin receiving your annuity.

§ 875.203 Am I eligible if I separated under the FERS MRA+10 provision?

If you have separated from service under the FERS Minimum Retirement Age and 10 years of service (MRA+10) provision of 5 U.S.C. 8412(g), and have postponed receiving an annuity under that provision, you are eligible to apply for coverage under this part. For underwriting purposes, you will be considered an annuitant.

§ 875.204 Am I eligible as a member of the uniformed services?

(a) You are eligible to apply for coverage if you are on active duty or full-time National Guard duty for more than a 30-day period.

(b) You are eligible to apply for coverage if you are a member of the Selected Reserve, which consists of:

(1) Drilling Reservists and Guardsmembers assigned to Reserve Component Units;

(2) Individual Mobilization Augmentees who are Reservists assigned to Reserve Component billets in Active Component units (you may be performing duty in a pay or non-pay status); and

(3) Active Guard and Reserve members who are full-time Reserve members on full-time National Guard duty or active duty in support of the National Guard or Reserves.

(c) You are not eligible to apply for coverage if you belong to the Individual Ready Reserve. The Individual Ready Reserves includes Reservists who are assigned to a Voluntary Training Unit in the Naval Reserve and Category E in the Air Force Reserve.

§ 875.205 Am I eligible as a retired member of the uniformed services?

(a) You are eligible to apply for coverage if you are a retired member of the uniformed services entitled to retired or retainer pay (including disability retirement pay).

(b) You are eligible to apply for coverage if you are a retired reservist who is currently receiving retirement pay.

§ 875.206 As a new Federal civilian or Postal employee or member of the uniformed services, when may I apply?

(a) As a new, newly eligible, or returning Federal civilian or Postal employee or member of the uniformed services, you may apply as follows:

(1) If you are a new Federal civilian or Postal employee or member of the uniformed services entering a position that conveys eligibility, you may apply for coverage within 60 days after becoming eligible.

(2) If you are entering a position that conveys eligibility as a Federal civilian or Postal employee or member of the uniformed services from a position that did not convey eligibility, you may apply for coverage within 60 days after becoming eligible.

(3) If you return to Federal civilian or Postal service or the uniformed services after a break in service of 180 days or more to a position that conveys eligibility, you may apply for coverage within 60 days after becoming eligible.

(b) Your spouse may also apply during that 60-day period after you become eligible.

(c) The underwriting requirements that will be applicable will be those required of Federal civilian and Postal employees and members of the uniformed services and their spouses during the last open season for enrollment before the date of your application.

(d) After the 60-day period ends, you may still apply for coverage, as may your spouse, but full underwriting requirements will apply.

(e) If your employing office determines that you were unable, for a cause beyond your control, to submit an application during the initial 60-day period, you may submit an application within 60 days after your employing office advises you of that determination. Similarly, your employing office may make this determination if your spouse is unable to submit an application during the same time period for a cause beyond his/her control. This employing office authority only applies within 6 months after the beginning date of the initial eligibility period. The underwriting requirements will be as specified in paragraph (c) of this section.

(f) Your other qualified relatives may apply for coverage at any time. They will be subject to full underwriting requirements.

§ 875.207 What happens if I am in nonpay status during an open season?

(a) If you return to a pay status from nonpay status during the open season, you have 60 days from the date of your return, or until the end of the open season, whichever gives you more time, to apply for coverage pursuant to the open season underwriting requirements for Federal civilian or Postal employees and members of the uniformed services.

(b) If you return to pay status from nonpay status after the open season, you have 60 days from the date of your return to apply for coverage pursuant to the underwriting requirements specified for Federal civilian or Postal employees and members of the uniformed services in the immediately preceding open season.

(c) Paragraphs (a) and (b) of this section apply only when you have been in nonpay status for more than one-half of an open season, unless you went into nonpay status for a reason beyond your control.

§ 875.208 May I apply as a qualified relative if the person on whom I am basing my eligibility status has died?

You may not apply as a qualified relative if the workforce member on whom you are basing your qualified relative status died prior to the time you apply for coverage, unless you are receiving a survivor annuity as the spouse of a deceased workforce member.

§ 875.209 How do I demonstrate that I am eligible to apply for coverage?

(a) When you submit your application for coverage, you must make known your status as a member of an eligible group.

(b) If the Carrier finds that you misrepresented your eligibility status, the Carrier has the right to void your coverage and return to you any premiums you paid, without interest. The incontestability provisions in § 875.409 do not apply to this section.

§ 875.210 What happens if I become ineligible after I submit an application?

(a) You must be eligible at the time of your application and at the time your coverage is scheduled to go into effect. Except as noted in paragraph (b) of this section, if you lose your status as part of an eligible group before your coverage goes into effect, you are no longer eligible for FLTCIP coverage. You are required to inform the Carrier that you are no longer eligible.

(b) In two instances, you will continue to be eligible for coverage even if you lose your status as part of an eligible group after you submit an application for coverage, but before your coverage becomes effective. The two instances are:

(1) When you are involuntarily separated from Federal civilian service (except for misconduct) or from the uniformed services (except for a dishonorable discharge). In either of these events, your qualified relatives will continue to be eligible.

(2) When you are the qualified relative of a workforce member who dies.

§ 875.211 What happens if my eligibility status changes after I submit an application?

(a) If you applied as a Federal civilian or Postal employee or member of the uniformed services, and separate from service under the MRA+10 provisions of 5 U.S.C. 8412(g), or retire after you submit an application for coverage, but before your coverage becomes effective, you must reapply as an annuitant and submit to full underwriting requirements.

(b) If you applied as a Federal civilian or Postal employee or member of the uniformed services, and otherwise separate from service, but you are a qualified relative of another workforce member, you must reapply based on the additional underwriting requirements specified for that type of qualified relative.

§ 875.212 Is there a minimum application age?

Yes, there is a minimum application age. You must be at least 18 years old at the time you submit an application for coverage.

Subpart C—Cost

§ 875.301 Is there a Government contribution toward premiums?

There is no Government premium contribution toward the cost of long term care insurance.

§ 875.302 What are the options for making premium payments?

(a) Premium payments may be made by Federal payroll or annuity deduction, uniformed services retirement pay deduction, by pre-authorized debit, or by direct billing.

(b) You must continue to make premium payments when they are due for your coverage to stay in effect.

§ 875.303 How are premium payment errors corrected?

(a) If the Carrier finds that you have underpaid the premium rate for your age and/or level of coverage, you must pay retroactive premiums to the Carrier for the amount due. If you fail to pay back premiums within the time provided by the Carrier to correct the error, the Carrier may terminate your coverage.

(b) If the Carrier finds that you have overpaid premiums, the Carrier will either reimburse you or reduce a future premium payment(s) by the amount of the overpayment.

(c) If you die while you have coverage, any premiums paid for the period beyond the date of your death will be refunded to your estate or to an alternate payee. If there is no estate, the Carrier will determine whether to pay the refund to an alternate payee. If you cancel your coverage, any premiums paid in advance for the period following the effective date of your cancellation will be refunded to you.

(d) Any premiums you paid will be returned if you cancel coverage within the "free look" period specified in the benefit booklet.

§ 875.304 How does the Carrier account for FLTCIP funds?

The Carrier must keep account of all funds received under this section separate from all other funds. The Carrier may use FLTCIP funds only for purposes specifically related to the FLTCIP.

Subpart D—Coverage

§ 875.401 How do I apply for coverage?

(a) To apply for coverage, you must complete the application in a form appropriate for your eligibility status as prescribed by the Carrier and approved by OPM.

(b) If you are the qualified relative of a workforce member, you may apply for coverage even if the workforce member does not apply for coverage.

§ 875.402 When will open seasons be held?

(a) The first open season for enrollment under this section began July 1, 2002, as described in a **Federal Register** Notice (67 FR 43691, June 28, 2002), including the open season ending date(s) and which eligible individuals may apply based on abbreviated underwriting.

(b) There are no regularly scheduled open seasons for long term care insurance. OPM will announce any subsequent open seasons via a **Federal Register** Notice. The Notice will include the requirements for applicants during the open season.

§ 875.403 May I apply for coverage outside of an open season?

If you are eligible for coverage, you may submit an application at any time outside of an open season. You will be subject to full underwriting requirements.

§ 875.404 What is the effective date of coverage?

(a) The effective dates of coverage under open season enrollments will be announced in a **Federal Register** Notice that announces open season dates.

(b)(1) If you enroll at any time outside of an open season, your coverage effective date is the 1st day of the month after the date your application is approved.

(2) If you are a Federal civilian or Postal employee or member of the uniformed services and you are applying for coverage under abbreviated underwriting, you also must be actively at work on your coverage effective date for your coverage to become effective. If your coverage effective date falls on a weekend or holiday, you must be actively at work on the last workday before that date for coverage to become effective. You must inform the Carrier if you are not actively at work on your coverage effective date. In that event, the Carrier will issue you a revised effective date, which will be the 1st day of the month after the date you return to being actively at work. You also must be actively at work on any revised effective date for coverage to become effective, or you will be issued another revised effective date in the same manner.

§ 875.405 If I marry, may my new spouse apply for coverage?

(a)(1) If you are a Federal civilian or Postal employee or member of the uniformed services and you have married, your spouse is eligible to submit an application for coverage under this section within 60 days from the date of your marriage, and will be subject to the underwriting requirements in force for the spouses of civilian employees and members of the uniformed services during the most recent open season. You, however, are not eligible for abbreviated underwriting because of your marriage. You may apply for coverage along with your spouse, but full underwriting will be required for you.

(2) After 60 days, your spouse may still apply for coverage but will be subject to full underwriting. Your new qualified relatives (such as parents-in-law) may apply for coverage with full underwriting at any time following the marriage.

(b) The new spouse and other qualified relatives of an annuitant or retired member of the uniformed services may apply for coverage with full underwriting at any time following the marriage.

§ 875.406 May I change my coverage?

(a) You may make the following changes to your coverage:

(1) You may apply to increase your coverage at any time. Full underwriting is required, except when an open season allows abbreviated underwriting.

(2) If you increase your coverage by adding to your daily benefit amount, the premiums for the additional coverage will be based on your age, prevailing premium rates, and coverage rules in effect at the time you purchase the additional coverage.

(3) For other types of coverage increases, your entire premium will be based on your age, prevailing premium rates, and coverage rules in effect at the time you purchase the increased coverage. Any increase in coverage will take effect on the 1st day of the month following the date the Carrier approves your request for an increase.

(b) You may decrease your coverage at any time, although any decrease will be subject to coverage rules at the time of the decrease. Decreased coverage takes effect on the 1st day of the month after the Carrier receives your request. You will not receive any refund of premiums paid for coverage you held before the decrease; however, your subsequent

premiums will be reduced based on your new, lower level of coverage. The Carrier will refund or credit any portion of premium paid in advance for the period following the date on which you decrease your coverage.

(c) You may cancel your coverage at any time.

(1) If you cancel during the free look period, your premiums will be refunded to you.

(2) If you cancel your coverage at any time other than during the free look period, cancellation will take effect on your requested cancellation date or at the end of the period covered by your last premium payment, whichever occurs first. You will not receive any refund of premiums paid, other than any premiums paid in advance for the period following the effective date of your cancellation of coverage, and you will not have to pay any more premiums unless you owed retroactive premiums.

§ 875.407 Who makes insurability decisions?

The Carrier determines the insurability of all applicants. The Carrier's decision may not be appealed to OPM.

§ 875.408 What is the significance of incontestability?

(a) *Incontestability* means coverage issued based on an erroneous application may remain in effect. Such coverage will not remain in effect, and your claim may be denied, under any of the following conditions:

(1) If your coverage has been in force for less than 6 months, the Carrier may void your coverage or deny a claim upon a showing that information on your signed application that was material to your approval for coverage is different than what is shown in your medical records.

(2) If your coverage has been in force for at least 6 months but less than 2 years, the Carrier may void your coverage or deny a claim upon a showing that information on your signed application that was material to your approval for coverage is different than what is shown in your medical records, and pertains to the condition for which benefits are sought.

(3) After your coverage has been in effect for 2 years, the Carrier may void your coverage only upon a showing that you knowingly and intentionally made a false or misleading statement or omitted information in your signed application for coverage regarding your health status.

(b) Your coverage can be contested at any time when the Carrier finds that you were not an eligible individual at the time you applied and were approved for coverage.

(c) If the Carrier voids coverage after it has paid benefits, it cannot recover the benefits already paid.

(d) Incontestability does not apply when you have not paid your premiums on a timely basis.

§ 875.409 Must I provide an authorization to release medical information?

You must provide the Carrier with an authorization to release medical information when requested. The Carrier may deny a claim for benefits or void your coverage if the Carrier does not receive an authorization to release medical information within 3 weeks after its request (4 weeks for those outside the United States).

§ 875.410 May I continue my coverage when I leave Federal or military service?

If you are a Federal civilian or Postal employee or member of the uniformed services, your coverage will automatically continue when you leave active service, as long as the Carrier continues to receive the required premium when due. However, once you leave active service, you are no longer eligible for any abbreviated underwriting provided during any future open season.

§ 875.411 May I continue my coverage when I am no longer a qualified relative?

If you are already enrolled as a qualified relative, you may continue your FLTCIP coverage if you subsequently lose qualified relative status (such as upon divorce), as long as the Carrier receives the required premium when due.

§ 875.412 When will my coverage terminate?

Your coverage will terminate on the earliest of the following dates:

(a) The date you specify to the Carrier that you wish your coverage to end;

(b) The date of your death;

(c) The end of the period covered by your last premium payment if you do not pay the required premiums when due, after a grace period of 30 days; or

(d) The date you have exhausted your maximum lifetime benefit. (However, in this event, care coordination services will continue.)

§ 875.413 Is it possible to have coverage reinstated?

(a) Under certain circumstances, your coverage can be reinstated. The Carrier will reinstate your coverage if it receives proof satisfactory to it, within 6 months from the termination date, that you suffered from a cognitive impairment or loss of functional capacity, before the grace period ended, that caused you to miss making premium payments. In that event, you will not be required to submit to underwriting. Your coverage will be reinstated retroactively to the termination date but you must pay back premiums for that period. The premium will be the same as it was prior to termination.

(b) If your coverage has terminated because you did not pay premiums or because you requested cancellation, the Carrier may reinstate your coverage within 12 months from the termination date at your request. You will be required to reapply based on full underwriting, and the Carrier will determine whether you are still insurable. If you are insurable, your coverage will be reinstated retroactively to the termination date and you must pay back premiums for that period. The premium will be the same as it was prior to termination.

§ 875.414 Will benefits be coordinated with other coverage?

Yes, benefits will be coordinated with other plans, following the coordination of benefits (COB) guidelines set by the National Association of Insurance Commissioners. The total benefits from all plans that pay a long term care benefit to you should not exceed the actual costs you incur. The other plans that are considered for COB purposes include government programs, group medical benefits, and other employer-sponsored long term care insurance plans. Medicaid, individual insurance policies, and association group insurance policies are not taken into consideration under this provision.

[FR Doc. 03–2463 Filed 2–3–03; 8:45 am]

BILLING CODE 6325–50–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 23

[Docket No. CE194, Special Condition 23–134–SC]

Special Conditions; Cirrus Design Corporation SR22; Protection of Systems for High Intensity Radiated Fields (HIRF)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued to Cirrus Design Corporation, 4515 Taylor Circle, Duluth, Minnesota 55811, for a Type Design Change for the

Cirrus Design Corporation Model SR22 airplane. This airplane will have novel and unusual design features when compared to the state of technology envisaged in the applicable airworthiness standards. These novel and unusual design features include the installation of electronic flight instrument system (EFIS) displays Model 700–00006–XXX–( ) manufactured by Avidyne Corporation for which the applicable regulations do not contain adequate or appropriate airworthiness standards for the protection of these systems from the effects of high intensity radiated fields (HIRF). These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to the airworthiness standards applicable to these airplanes.

DATES: The effective date of these special conditions is January 24, 2003. Comments must be received on or before March 6, 2003.

ADDRESSES: Comments may be mailed in duplicate to: Federal Aviation Administration, Regional Counsel, ACE–7, Attention: Rules Docket Clerk, Docket No. CE194, Room 506, 901 Locust, Kansas City, Missouri 64106. All comments must be marked: Docket No. CE194. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Wes Ryan, Aerospace Engineer, Standards Office (ACE–110), Small Airplane Directorate, Aircraft Certification Service, Federal Aviation Administration, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone (816) 329–4127.

SUPPLEMENTARY INFORMATION: The FAA has determined that notice and opportunity for prior public comment hereon are impracticable because these procedures would significantly delay issuance of the design approval and thus delivery of the affected aircraft. In addition, the substance of these special conditions has been subject to the public comment process in several prior instances with no substantive comments received. The FAA, therefore, finds that good cause exists for making these special conditions effective upon issuance.

Comments Invited

Interested persons are invited to submit such written data, views, or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Administrator. The special conditions may be changed in light of the comments received. All comments received will be available in the Rules Docket for examination by interested persons, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must include a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. CE194." The postcard will be date stamped and returned to the commenter.

Background

On July 8, 2002, Cirrus Design Corporation , 4515 Taylor Circle, Duluth, Minnesota 55811, made an application to the FAA for a Type Design Change for the Cirrus Design Corporation Model SR22 airplane. The Model SR22 is currently approved under TC No. A00009CH. The proposed modification incorporates a novel or unusual design feature, such as digital avionics consisting of an EFIS, that is vulnerable to HIRF external to the airplane.

Type Certification Basis

Under the provisions of 14 CFR part 21, § 21.101, Cirrus Design Corporation must show that the Cirrus Design Corporation Model SR22 aircraft meets the following provisions, or the applicable regulations in effect on the date of application for the change to the Cirrus Design Corporation Model SR22: Part 23 of the Federal Aviation Regulations effective February 1, 1965, as amended by 23–1 through 23–53, except as follows: § 23.301 through Amendment 47; §§ 23.855, 23.1326, 23.1359, not applicable. 14 CFR 36 dated December 1, 1969, as amended by current amendment as of the date of type Certification.

Equivalent Levels of Safety finding (ACE–96–5) made per the provisions of 14 CFR part 23, § 23.221; Refer to FAA ELOS letter dated June 10, 1998 for models SR20, SR22. Equivalent Levels Of Safety finding (ACE–00–09) made per the provisions of 14 CFR part 23, §§ 23.1143(g) and 23.1147(b); Refer to FAA ELOS letter dated September 11, 2000 for model SR22.

Special Condition (23–ACE–88) for ballistic parachute; Refer to FAA letter November 25, 1997 for models SR20, SR22.

Discussion

If the Administrator finds that the applicable airworthiness standards do not contain adequate or appropriate safety standards because of novel or unusual design features of an airplane, special conditions are prescribed under the provisions of § 21.16.

Special conditions, as appropriate, as defined in § 11.19, are issued in accordance with § 11.38 after public notice and become part of the type certification basis in accordance with § 21.101 (b)(2).

Special conditions are initially applicable to the model for which they are issued. Should the applicant apply for a supplemental type certificate to modify any other model already included on the same type certificate to incorporate the same novel or unusual design feature, the special conditions would also apply to the other model under the provisions of § 21.101.

Novel or Unusual Design Features

Cirrus Design Corporation plans to incorporate certain novel and unusual design features into an airplane for which the airworthiness standards do not contain adequate or appropriate safety standards for protection from the effects of HIRF. These features include EFIS, which are susceptible to the HIRF environment, that were not envisaged by the existing regulations for this type of airplane.

Protection of Systems From High Intensity Radiated Fields (HIRF)

Recent advances in technology have given rise to the application in aircraft designs of advanced electrical and electronic systems that perform functions required for continued safe flight and landing. Due to the use of sensitive solid state advanced components in analog and digital electronics circuits, these advanced systems are readily responsive to the transient effects of induced electrical current and voltage caused by the HIRF. The HIRF can degrade electronic systems performance by damaging components or upsetting system functions.

Furthermore, the HIRF environment has undergone a transformation that was not foreseen when the current requirements were developed. Higher energy levels are radiated from transmitters that are used for radar, radio, and television. Also, the number of transmitters has increased significantly. There is also uncertainty concerning the effectiveness of airframe

shielding for HIRF. Furthermore, coupling to cockpit-installed equipment through the cockpit window apertures is undefined.

The combined effect of the technological advances in airplane design and the changing environment has resulted in an increased level of vulnerability of electrical and electronic systems required for the continued safe flight and landing of the airplane. Effective measures against the effects of exposure to HIRF must be provided by the design and installation of these systems. The accepted maximum energy levels in which civilian airplane system installations must be capable of operating safely are based on surveys and analysis of existing radio frequency emitters. These special conditions require that the airplane be evaluated under these energy levels for the protection of the electronic system and its associated wiring harness. These external threat levels, which are lower than previous required values, are believed to represent the worst case to which an airplane would be exposed in the operating environment.

These special conditions require qualification of systems that perform critical functions, as installed in aircraft, to the defined HIRF environment in paragraph 1 or, as an option to a fixed value using laboratory tests, in paragraph 2, as follows:

(1) The applicant may demonstrate that the operation and operational capability of the installed electrical and electronic systems that perform critical functions are not adversely affected when the aircraft is exposed to the HIRF environment defined below:

Frequency	Field strength (volts per meter)	
	Peak	Average
10 kHz–100 kHz	50	50
100 kHz–500 kHz	50	50
500 kHz–2 MHz	50	50
2 MHz–30 MHz	100	100
30 MHz–70 MHz	50	50
70 MHz–100 MHz	50	50
100 MHz–200 MHz	100	100
200 MHz–400 MHz	100	100
400 MHz– 700 MHz	700	50
700 MHz–1 GHz	700	100
1 GHz–2 GHz	2000	200
2 GHz–4 GHz	3000	200
4 GHz–6 GHz	3000	200
6 GHz–8 GHz	1000	200
8 GHz–12 GHz	3000	300
12 GHz–18 GHz	2000	200
18 GHz–40 GHz	600	200

Note.—The field strengths are expressed in terms of peak root-mean-square (rms) values.

or,

(2) The applicant may demonstrate by a system test and analysis that the electrical and electronic systems that perform critical functions can withstand a minimum threat of 100 volts per meter, electrical field strength, from 10 kHz to 18 GHz. When using this test to show compliance with the HIRF requirements, no credit is given for signal attenuation due to installation.

A preliminary hazard analysis must be performed by the applicant, for approval by the FAA, to identify either electrical or electronic systems that perform critical functions. The term "critical" means those functions whose failure would contribute to, or cause, a failure condition that would prevent the continued safe flight and landing of the airplane. The systems identified by the hazard analysis that perform critical functions are candidates for the application of HIRF requirements. A system may perform both critical and non-critical functions. Primary electronic flight display systems, and their associated components, perform critical functions such as attitude, altitude, and airspeed indication. The HIRF requirements apply only to critical functions.

Compliance with HIRF requirements may be demonstrated by tests, analysis, models, similarity with existing systems, or any combination of these. Service experience alone is not acceptable since normal flight operations may not include an exposure to the HIRF environment. Reliance on a system with similar design features for redundancy as a means of protection against the effects of external HIRF is generally insufficient since all elements of a redundant system are likely to be exposed to the fields concurrently.

Applicability

As discussed above, these special conditions are applicable to Cirrus Design Corporation Model SR22 airplane. Should Cirrus Design Corporation apply at a later date for a type design change to modify any other model on the same type certificate to incorporate the same novel or unusual design feature, the special conditions would apply to that model as well under the provisions of § 21.101.

Conclusion

This action affects only certain novel or unusual design features on one model of airplane. It is not a rule of general applicability and affects only the applicant who applied to the FAA for approval of these features on the airplane.

The substance of these special conditions has been subjected to the notice and comment period in several prior instances and has been derived without substantive change from those previously issued. It is unlikely that prior public comment would result in a significant change from the substance contained herein. For this reason, and because a delay would significantly affect the certification of the airplane, which is imminent, the FAA has determined that prior public notice and comment are unnecessary and impracticable, and good cause exists for adopting these special conditions upon issuance. The FAA is requesting comments to allow interested persons to submit views that may not have been submitted in response to the prior

opportunities for comment described above.

List of Subjects in 14 CFR Part 23

Aircraft, Aviation safety, Signs and symbols.

Citation

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113 and 44701; 14 CFR 21.16 and 21.101; and 14 CFR 11.38 and 11.19.

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for Cirrus Design Corporation SR22 airplane modified by Cirrus Design Corporation to add an EFIS.

1. *Protection of Electrical and Electronic Systems from High Intensity Radiated Fields (HIRF).* Each system that performs critical functions must be designed and installed to ensure that the operations, and operational capabilities of these systems to perform critical functions, are not adversely affected when the airplane is exposed to high intensity radiated electromagnetic fields external to the airplane.

2. For the purpose of these special conditions, the following definition applies:

Critical Functions: Functions whose failure would contribute to, or cause, a failure condition that would prevent the continued safe flight and landing of the airplane.

Issued in Kansas City, Missouri, on January 24, 2003.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–2524 Filed 2–3–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NE–48–AD; Amendment 39–13045; AD 2003–03–20]

RIN 2120–AA64

Airworthiness Directives; Hartzell Propeller Inc., Model HC–C2YR–4CF Propellers

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), that is applicable to Hartzell Propeller Inc. model HC–C2YR–4CF propellers. This amendment requires the reduction of the original hub and blades certified service (fatigue) life from unlimited hours to 2,000 hours. This amendment is prompted by a reevaluation by Hartzell Propeller Inc. of the original hub and blades service life certification calculations. The actions specified by this AD are intended to prevent fatigue failure of the original propeller hub and blades which may result in loss of airplane control.

DATES: Effective March 11, 2003.

ADDRESSES: Information regarding this action may be examined, by appointment, at the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: Tomaso DiPaolo, Aerospace Engineer, Chicago Aircraft Certification Office, FAA, Small Airplane Directorate, 2300 East Devon Avenue, Des Plaines, IL 60018, telephone (847) 294–7031; fax (847) 294–7834.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that is applicable to Hartzell Propeller Inc. model HC–C2YR–4CF propellers was published in the **Federal Register** on September 19, 2002 (67 FR 59026). That action proposed to require the reduction of the propeller hubs part number (P/N) D–6522–1 or D–2201–16 and blades P/N FC8477A–4 certified service (fatigue) life from unlimited hours to 2,000 hours. The FAA and Hartzell Propeller Inc. have received reports of several engine crankshaft failures on Sky International Inc. (Pitts) S–2S and S–2B airplanes, which are manufactured by Aviat Aircraft Inc. of Afton, WY. Hartzell Propeller Inc. reevaluated the service (fatigue) life of the original propeller hubs P/N D–6522–1 or D–2201–16 and blades P/N FC8477A–4 installed in the model HC–C2YR–4CF propellers. Hartzell has reduced the certified service (fatigue) life of these original propeller hubs and blades from unlimited hours to 2,000 hours. Exceeding these life limits could result in fatigue failure of the hubs or blades which may result in loss of airplane control. The 2,000-hour life limit is documented in the Airworthiness Limitations section of Hartzell Manual 113B.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comment received.

Risk if Life of a Component Is Not Known

One commenter states that the proposal introduces a life limit where there was none previously required. The commenter also states that there is a risk that operators or maintenance organizations may not know the current life of the applicable parts, and that the NPRM does not include any proposal to estimate usage or factoring where the life of a component is not known.

The FAA does not agree. Under 14 CFR 91.417(a)(2)(i), each registered owner or operator must keep records of the total time in service of each propeller. The propellers affected by this AD are flown on aircraft used in part 91 operations. Moreover, 14 CFR 91.417(b)(2) requires that the records must denote the total time, must be retained for an unlimited time, and must be transferred with the aircraft. Therefore, if a propeller's total time is unknown, then the propeller and the registered owner or operator are not in compliance with the regulations. Presently, the FAA will not pursue policy to approve a general formula for calculating total time on propellers with unknown total times. Please note that the final rule allows for the submittal of data to request and to justify an alternate method of compliance to the AD or an adjustment of the compliance time in the AD.

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Economic Analysis

There are approximately 377 propellers of the affected design in the worldwide fleet. The FAA estimates that 300 propellers installed on airplanes of U.S. registry would be affected by this AD, that it would take approximately 6 work hours per propeller to do the actions, and that the average labor rate is $60 per work hour. The approximate cost of a new hub and blades is $9,000. Based on these figures, the total cost of the AD to U.S. operators is estimated to be $2,808,000.

Regulatory Analysis

This final rule does not have federalism implications, as defined in Executive Order 13132, because it would not have a substantial direct

effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the FAA has not consulted with state authorities prior to publication of this final rule.

For the reasons discussed above, I certify that this action (1) Is not a "significant regulatory action" under Executive Order 12866; (2) Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

2003–03–20 Hartzell Propeller Inc.: Amendment 39–13045. Docket No. 2001–NE–48–AD.

Applicability: This airworthiness directive (AD) is applicable to Hartzell Propeller Inc. model HC–C2YR–4CF propellers with propeller hubs part number (P/N) D–6522–1 or D–2201–16 and propeller blades P/N FC8477A–4, installed on Sky International Inc. (Pitts) S–2S and S–2B airplanes with Textron Lycoming model AEIO–540–D4A5 engines.

Note 1: This AD applies to each propeller identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For propellers that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Compliance with this AD is required as indicated, unless already done.

To prevent fatigue failure of Hartzell propeller hubs P/N D–6522–1 or D–2201–16 and blades P/N FC8477A–4 which may result in loss of airplane control, do the following:

(a) Remove from service Hartzell propeller hubs P/N D–6522–1 or D–2201–16 and blades P/N FC8477A–4 before exceeding 2,000 flight hours and replace with serviceable hubs and blades.

(b) After the effective date of this AD, do not install any Hartzell propeller hubs P/N D–6522–1 or D–2201–16 and blades P/N FC8477A–4 that have accumulated 2,000 hours.

(c) A propeller hub or blade from an airplane that is identified in the applicability section of this AD may not be removed and reused on an airplane for which this AD is not applicable.

Alternative Methods of Compliance

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Chicago Aircraft Certification Office (ACO). Operators must submit their request through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Chicago ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Chicago ACO.

Special Flight Permits

(e) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be done.

Effective Date

(f) This amendment becomes effective on March 11, 2003.

Issued in Burlington, Massachusetts, on January 28, 2003.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 03–2464 Filed 2–3–03; 8:45 am]

BILLING CODE 4910–13–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

15 CFR Part 2016

Establishment of a Petition Process To Review Eligibility of Countries for the Benefits of the Andean Trade Preference Act, as Amended by the Andean Trade Promotion and Drug Eradication Act

AGENCY: Office of the United States Trade Representative.

ACTION: Interim rule with request for comments.

SUMMARY: This rule, on an interim final and emergency basis, provides for the establishment of a petition process to review the eligibility of countries for the benefits of the Andean Trade Preference Act, as amended by the Andean Trade Promotion and Drug Eradication Act.

ADDRESSES: Submit written comments to Bennett M. Harman, Office of the Americas, Office of the United States Trade Representative, 600 17th Street, NW., Room 523, Washington DC 20508.

DATES: Interim rule effective February 4, 2003. Comments must be received on or before April 7, 2003.

FOR FURTHER INFORMATION CONTACT: Bennett M. Harman, Office of the Americas, Office of the United States Trade Representative. The telephone number is (202) 395–5190.

SUPPLEMENTARY INFORMATION: Signed into law on August 6, 2002, the Trade Act of 2002 (Pub. L. 107–210) contains, in title XXXI, provisions for enhanced trade benefits for eligible Andean countries. Titled the "Andean Trade Promotion and Drug Eradication Act" (ATPDEA), title XXXI renews and amends the Andean Trade Preference Act (ATPA) (19 U.S.C. 3201, *et seq.*). Section 3103(d) of the ATPDEA requires the President to promulgate regulations regarding the review of eligibility of countries for benefits of the ATPA, consistent with section 203(e) of the ATPA, amended by the ATPDEA, not later than 180 days after the date of enactment of the Trade Act of 2002. This authority was delegated to the U.S. Trade Representative (USTR) pursuant to Executive Order 13277 on November 19, 2002.

Section 203(e) of the ATPA, as amended, gives the President the authority to withdraw or suspend the designation of any ATPA or ATPDEA beneficiary country, or withdraw, suspend, or limit the application of preferential treatment under the ATPA, as amended by the ATPDEA, to any article of any such country, if the President determines that, as a result of

changed circumstances, the country is not meeting the respective eligibility criteria of the ATPA and ATPDEA. Section 203(e) also establishes certain procedural guidelines for taking any of the actions described above. Presidential Proclamation 7616 of October 31, 2002, delegated to the USTR the functions of the President under section 203(e)(2)(A) of the ATPA with respect to publishing notice of an action he proposes to take under section 203(e).

In accordance with section 3103(d)(2) of the ATPDEA, the interim rule is similar to the regulations governing the annual review used to modify the U.S. Generalized System of Preferences, which is authorized by title V of the Trade Act of 1974 (19 U.S.C. 2461, *et seq.*), as amended. The interim rule establishes an annual review that allows for public input, and includes procedures for requesting the withdrawal, suspension, or limitation of preferential duty treatment under the ATPA, as amended, and for reviewing such requests and implementing granted requests.

Emergency Action

This rulemaking is necessary on an emergency basis to meet the statutory deadline. Under these circumstances, USTR has determined that prior notice and opportunity for public comment are contrary to the public interest and that there is good cause under 5 U.S.C. 553 for making this rule effective less than 30 days after publication in the **Federal Register**.

Comments

Before adopting this interim regulation as a final rule, consideration will be given to any written comments that are timely submitted to USTR. Each person submitting a comment should include his or her name and address, and give reasons for any recommendation. After the comment period closes, USTR will publish in the **Federal Register** a final rule on this subject, together with a discussion of comments received and any amendments made to the interim rule as a result of the comments.

In order to facilitate prompt consideration of submissions, USTR strongly urges and prefers electronic e-mail submissions in response to this notice. The e-mail address is *FR0065@ustr.gov*. It is strongly recommended that comments submitted by mail or express delivery service to the address for Mr. Harman listed above also be sent by e-mail. Persons making submissions by e-mail should use the following subject line: "ATPA Petition Process." Documents should be submitted as either WordPerfect, MSWord, or text (.TXT) files. Supporting documentation submitted as spreadsheets are acceptable as Quattro Pro or Excel. For any document containing business confidential information submitted electronically, the file name of the business confidential versions should begin with the characters "BC-", and the file name of the public version should begin with the characters "P-". The "P-" or "BC-" should be followed by the name of the submitter. Persons who make submissions by e-mail should not provide separate cover letters; information that might appear in a cover letter should be included in the submission itself. Similarly, to the extent possible, any attachments to the submission should be included in the same file as the submission itself, and not as separate files. Persons submitting written comments by mail or express delivery service should provide 20 copies. All submissions should be in English.

Written comments will be placed in a file open to public inspection pursuant to 15 CFR 2003.5, except confidential business information exempt from public inspection in accordance with 15 CFR 2003.6. Confidential business information submitted in accordance with 15 CFR 2003.6 must be clearly marked "BUSINESS CONFIDENTIAL" at the top of each page, including any cover letter or cover page, and must be accompanied by a nonconfidential summary of the confidential information. All public documents and nonconfidential summaries shall be available for public inspection in the USTR Reading Room. The USTR Reading Room is open to the public, by appointment only, from 10 a.m. to 12 noon and 1 p.m. to 4 p.m., Monday through Friday. An appointment to review the file may be made by calling (202) 395–6186.

The Regulatory Flexibility Act and Executive Order 12866

Under the Regulatory Flexibility Act, a Regulatory Flexibility Analysis is not required under sections 603 or 604 because USTR is not publishing a Notice of Proposed Rulemaking. This interim rule is significant under Executive Order 12866 of September 30, 1993, and has been reviewed by the Office of Management and Budget.

List of Subjects in 15 CFR Part 2016

Administrative practice and procedure, Confidential business information, Foreign trade.

For the reasons set out in the "Supplementary Information" section of this notice, 15 CFR is amended by adding the following new part 2016 to read as follows:

PART 2016—ESTABLISHMENT OF A PETITION PROCESS TO REVIEW ELIGIBILITY OF COUNTRIES FOR THE BENEFITS OF THE ANDEAN TRADE PREFERENCE ACT (ATPA), AS AMENDED BY THE ANDEAN TRADE PROMOTION AND DRUG ERADICATION ACT (ATPDEA)

Sec.

2016.0 Requests for reviews.
2016.1 Action following receipt of petitions.
2016.2 Timetable for reviews.
2016.3 Publication regarding requests.
2016.4 Information open to public inspection.
2016.5 Information exempt from public inspection.

Authority: 19 U.S.C. 3201, *et seq.*; Sec. 3103(d), Pub. L. 107–210, 116 Stat. 933 E.O. 13277, 67 FR 70303.

§ 2016.0 Requests for reviews.

(a) Any person may submit a request (hereinafter "petition") that the designation of a country as an Andean Trade Preference Act (ATPA) beneficiary country be withdrawn or suspended, or the application of preferential treatment under the ATPA to any article of any ATPA beneficiary country be withdrawn, suspended, or limited. Such petitions must specify the name of the person or the group requesting the review. The Office of the United States Trade Representative (USTR) suggests that, in addition, such petitions identify the ATPA beneficiary country that would be subject to the review; if the petition is requesting that the preferential treatment of an article or articles be withdrawn, suspended, or limited, identify such article or articles with particularity and explain why such article or articles were selected; indicate the specific section 203(e) or (d) (19 U.S.C. 3202(c), (d)) eligibility criterion or criteria that the petitioner believes warrants review; and include all available supporting information. The Andean Subcommittee of the Trade Policy Staff Committee (TPSC) may also request other information. If the subject matter of the petition was reviewed pursuant to a previous petition, the Andean Subcommittee would be interested in any new information related to the issue provided by the petitioner.

(b) Any party may submit a petition that the designation of a country as an Andean Trade Promotion and Drug Eradication Act (ATPDEA) beneficiary

country be withdrawn or suspended, or the application of preferential treatment to any article of any ATPDEA beneficiary country under section 204(b)(1), (3), or (4) (19 U.S.C. 3202(b)(1), (3) or (4)) be withdrawn, suspended, or limited. Such petitions must specify the name of the person or the group requesting the review. USTR suggests that, in addition, such petitions: Identify the ATPDEA beneficiary country that would be subject to the review; if the petition is requesting that the preferential treatment of an article or articles be withdrawn, suspended, or limited, identify such article or articles with particularity and explain why such article or articles were selected; indicate the specific section 204(b)(6)(B) (19 U.S.C. 3203(b)(6)(B)) eligibility criterion or criteria that the petitioner believes warrants review; and include all available supporting information. The Andean Subcommittee may also request other information. If the subject matter of the petition was reviewed pursuant to a previous petition, the Andean Subcommittee would be interested in any new information related to the issue provided by the petitioner.

(c) All petitions and other submissions should be submitted in accordance with the schedule (*see* § 2016.2) and requirements for submission that will be published annually in the **Federal Register** in advance of each review. Foreign governments may make submissions in the form of diplomatic correspondence and should observe the deadlines for each annual review published in the **Federal Register**.

(d) The TPSC may at any time, on its own motion, initiate a review to determine whether the designation of a country as an ATPA beneficiary country should be withdrawn or suspended; the application of preferential treatment under the ATPA to any article of any ATPA beneficiary country should be withdrawn, suspended, or limited; the designation of a country as an ATPDEA beneficiary country should be withdrawn or suspended; or the application of preferential treatment to any article of any ATPDEA beneficiary country under section 204(b)(1), (3), or (4) (19 U.S.C. 3202(b)(1), (3), or (4)) should be withdrawn, suspended, or limited.

(e) Petitions requesting the actions described in paragraph (a) or (b) of this section that indicate the existence of exceptional circumstances warranting an immediate review may be considered outside of the schedule for the annual review announced in the **Federal Register**. Requests for such urgent consideration should contain a statement of reasons indicating why an expedited review is warranted.

§ 2016.1 Action following receipt of petitions.

(a) USTR shall publish in the **Federal Register** a list of petitions filed in response to the announcement of the annual review, including the subject matter of the request and, where appropriate, the description of the article or articles covered by the request.

(b) Thereafter, the Andean Subcommittee shall conduct a preliminary review of the petitions, and shall submit the results of its preliminary review to the TPSC. The TPSC shall review the work of the Andean Subcommittee and shall conduct further review as necessary. The TPSC shall prepare recommendations for the USTR on any proposed action to modify the ATPA. The Chairman of the TPSC shall report the results of the TPSC's review to the USTR, who may convene the Trade Policy Review Group (TPRG), or refer the matter to the National Security Council (NSC) committee process for further review of recommendations and decisions as necessary.

(c) The USTR, after receiving the advice of the TPSC, TPRG or the NSC committee process, shall announce in the **Federal Register** notice of the results of the preliminary review, together with proposed action or actions and a schedule for receiving public input consistent with section 203(e) of the ATPA, as amended (19 U.S.C. 3202(e)).

(1) The schedule shall include the deadline and guidelines for any party to submit written comments supporting, opposing or otherwise commencing on any proposed action.

(2) The schedule shall also include the time and place of the public hearing, as well as the deadline and guidelines for submitting requests to present oral testimony.

(d) After receiving and considering public input, the Andean Subcommittee shall submit the results of the final review to the TPSC. The TPSC shall review the work of the Andean Subcommittee and shall conduct further review as necessary. The TPSC shall prepare recommendations for the President on any proposed action to modify the ATPA. The Chairman of the TPSC shall report the results of the TPSC's review to the USTR, who may convene the TPRG, or refer the matter to the NSC committee process for further review of recommendations and decisions as necessary. The USTR, after receiving the advice of the TPSC, TPRG or the NSC committee process, shall make recommendations to the President on any proposed action to modify the ATPA, including recommendations that no action be taken. The USTR shall also forward to the President any documentation necessary to implement the recommended proposed action or actions to modify the ATPA.

(e) In considering whether to recommend any proposed action to modify the ATPA, the Andean Subcommittee, on behalf of the TPSC, TPRG, or the NSC committee process, shall review all relevant information submitted in connection with a petition or otherwise available.

§ 2016.2 Timetable for reviews.

Beginning in calendar year 2003, reviews of pending petitions shall be conducted at least once each year, according to the following schedule, unless otherwise specified by **Federal Register** notice:

(a) September 15: Deadline for submission of petitions for review;

(b) On or about December 1: **Federal Register** announcement of the results of the preliminary review;

(c) December/January: Written comments submitted and a public hearing held on any proposed actions;

(d) February/March: Preparation of recommendations to the President, Presidential decision, and implementation of Presidential decision.

§ 2016.3 Publication regarding requests.

Following the Presidential decision and, where required, the publication of a Presidential proclamation modifying the ATPA in the **Federal Register**, USTR will publish a summary of the decisions made in the **Federal Register**, including:

(a) For petitions upon which decisions were made, a description of the outcome of the review; and

(b) A list of petitions upon which no decision was made, and thus which are pending further review.

§ 2016.4 Information open to public inspection.

With the exception of information subject to § 2016.5, any person may, upon request, inspect in the USTR Reading Room:

(a) Any written petition, comments, or similar submission of information made pursuant to this part; and

(b) Any stenographic record of any public hearings held pursuant to this part.

§ 2016.5 Information exempt from public inspection.

(a) Information submitted in confidence shall be exempt from public inspection if it is determined that the

disclosure of such information is not required by law.

(b) A party requesting an exemption from public inspection for information submitted in writing shall clearly mark each page "BUSINESS CONFIDENTIAL" at the top, and shall submit a non-confidential summary of the confidential information. Such person shall also provide a written explanation of why the material should be so protected.

(c) A request for exemption of any particular information may be denied if it is determined that such information is not entitled to exemption under law. In the event of such a denial, the information will be returned to the person who submitted it, with a statement of the reasons for the denial.

Bennett M. Harman,

Acting Assistant United States Trade Representative for the Americas.

[FR Doc. 03–2705 Filed 2–3–03; 8:45 am]

BILLING CODE 3190–01–M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Parts 1, 30, and 190

RIN 3038–AB31

Denomination of Customer Funds and Location of Depositories

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rule.

SUMMARY: The Commodity Futures Trading Commission ("Commission" or "CFTC") is adopting a new Rule 1.49 that permits futures commission merchants and derivatives clearing organizations, under certain conditions, to deposit customer funds in foreign depositories and in certain currencies other than United States dollars. The Commission is also adopting an amendment to Appendix B of its bankruptcy rules that governs the distribution of property where the bankrupt futures commission merchant or derivatives clearing organization maintains customer property in depositories outside the United States or in a foreign currency. This new distributional framework is intended to assure that customers whose funds are held in a United States depository will not be adversely affected by a shortfall in the pool of funds held in a depository outside the United States that is due to the sovereign action of a foreign government or court. The rule replaces Financial and Segregation Interpretation No. 12.

EFFECTIVE DATE: March 6, 2003.

FOR FURTHER INFORMATION CONTACT: Lawrence B. Patent, Deputy Director, Compliance and Registration Section, or Michael A. Piracci, Attorney-Advisor, Division of Clearing and Intermediary Oversight, and for further information regarding amendments to appendix B of part 190, contact Robert B. Wasserman, Associate Director, Division of Clearing and Intermediary Oversight, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581. Telephone: (202) 418–5430.

SUPPLEMENTARY INFORMATION:

I. Background

One of the most important functions of the Commodity Exchange Act (the "Act")[1] and the rules thereunder is the protection of customer funds. Section 4d(a)(2) of the Act requires that every futures commission merchant ("FCM"):

> Treat and deal with all money, securities, and property received by such person to margin, guarantee, or secure the trades or contracts of any customer of such person, or accruing to such customer as the result of such trades or contracts, as belonging to such customer. Such money, securities, and property shall be separately accounted for and shall not be commingled with the funds of such commission merchant or be used to margin or guarantee the trades or contracts, or to secure or extend the credit, of any customer or person other than the one for whom the same are held.

Prior to 1988, the Commission, and its predecessor agency, the Commodity Exchange Authority, had construed this provision to require that customer funds deposited with an FCM relating to trading on a domestic exchange be held in the United States ("U.S."), unless the funds were being held for a foreign-domiciled customer.[2] In light of the growing internationalization of the futures and options markets, the Commission in 1988 issued Financial and Segregation Interpretation No. 12 ("Interp. 12"),[3] which provided that, under certain conditions, an FCM may deposit segregated funds of customers domiciled in the U.S. in foreign depositories.

As stated above, when the Commission issued Interp. 12, it noted that the change in the Commission's interpretation concerning appropriate depositories for segregated customer funds was appropriate "in light of the growing internationalization of the futures and option markets."[4] In the more than 14 years since Interp. 12 was issued, the futures and options markets, along with almost all other segments of the business world, have seen greater internationalization. As a result, there is an increased need and desire of certain customers to be able to more easily conduct business in currencies other than the U.S. dollar.

In the Commodity Futures Modernization Act of 2000 (the "CFMA"),[5] Congress noted that "regulatory impediments to the operation of global interests can compromise the competitiveness of [U.S.] business" and that regulatory policy should be "flexible to account for rapidly changing derivatives industry practices."[6] Due to restrictions placed on holding segregated funds offshore, U.S. markets and futures professionals may find themselves at a disadvantage to their foreign competitors. One of the purposes of the CFMA is to "enhance the competitive position of [U.S.] financial institutions and financial markets."[7]

Based upon the foregoing, on August 7, 2002, the Commission proposed the rule being adopted herein.[8] The Commission received two comment letters on the proposed rule. The commenters were the National Futures Association ("NFA"), a registered futures association, and the Futures Industry Association ("FIA"), an industry trade association. Both commenters stated that they supported the proposed rule and amendments, but each suggested certain changes and clarifications that they believed would be appropriate. These suggestions, along with the Commission's assessment of these suggestions, are discussed more fully in conjunction with the discussion of the appropriate section of the rule and amendments.

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[1] 7 U.S.C. 1 *et seq* (2000).

[2] *See* Commodity Exchange Authority Administrative Determination No. 238 (Sep. 4, 1974); *see also* Foreign Options and Foreign Futures Transactions, 51 FR 12104, note 36 (Apr. 8, 1986); Leverage Transactions, [1982–1984 Transfer Binder] Comm. Fut. L. Rep. ¶ 21,742 at p. 26,952, note 52 (May 25, 1983).

[3] Financial and Segregation Interpretation No. 12—Deposit of Customer Funds in Foreign Depositories, 53 FR 46911 (Nov. 21, 1988). The document was published in the **Federal Register** as a Statement of Agency Interpretation. It was also published in the Commodity Futures Law Reporter at ¶ 7122 together with a series of Financial and Segregation Interpretations issued by the Commission's Division of Trading and Markets.

[4] *Id.* at 46912.

[5] Appendix E of Pub. L. 106–554, 114 Stat. 2763 (2000).

[6] Section 126(a) of the CFMA.

[7] Section 2(8) of the CFMA.

[8] 67 FR 52641 (Aug. 13, 2002).

II. The New Rule and Amendments

A. New Rule 1.49

1. Definitions

In the proposed rule, the Commission had defined the terms "non-money center country" and "non-money center currency." These terms, however, were not used elsewhere in Rule 1.49. Accordingly, the Commission is not including these definitions in the final rule.

2. Permissible Currencies

The Commission is adopting Rule 1.49 to provide that FCM obligations owed to customers shall be held in: (1) U.S. dollars; (2) a currency in which funds were deposited by the customer, or converted to at the request of the customer, to the extent of such deposits and conversions; or (3) a currency in which funds have accrued to the customer as a result of trading on a designated contract market or registered derivatives transaction execution facility ("DTF"). Any customer may deposit foreign currency with an FCM if the FCM permits it, not just those customers trading contracts priced and settled in a foreign currency.

As noted above, the internationalization of the futures markets has resulted in customers who, for many different reasons, want funds denominated in currencies other than the U.S. dollar. If a customer or prospective customer of an FCM prefers to deposit funds with an FCM in a currency other than the U.S. dollar, or to convert funds from one currency to another, the FCM should not be prevented from accepting or holding funds in the preferred currency of the customer or prospective customer.

An FCM may not convert customer funds from one currency to another without customer authorization. An account agreement could provide, however, that by placing an order in a contract settled in a particular currency, a customer agrees to convert to the appropriate currency funds sufficient to meet the applicable margin requirement. Under Rule 1.49(b)(2), an FCM is required to prepare and maintain a written record each time customer funds are converted from one currency to another. The record must include the date the transaction was executed, the currencies converted, the amount converted, and the resulting amount. The FCM is also required to make the information contained in this record available to the customer upon the customer's request. Additionally, the Commission noted in the proposing release that, pursuant to Rule 1.33(a), the FCM must include this information in the monthly statements provided to the customer.

FIA noted that FCMs frequently execute multiple transactions on behalf of a customer throughout a trading day. NFA noted that FCMs will often execute foreign currency transactions using bunched orders that combine orders involving multiple customers, multiple counterparties, and multiple transactions. To provide detailed information regarding each transaction on the customer's monthly statement would impose a significant burden on the FCM. FIA asked that the Commission confirm its view that providing the required information on the monthly statement in the aggregate rather than with respect to each transaction would be sufficient to meet the FCM's obligation under Rule 1.33. The Commission concurs that such a procedure would fulfill the FCM's obligation under Rule 1.33. As noted in the FIA comment letter, to be in compliance with Rule 1.49(b)(2), an FCM must be able to prepare a report that provides the details of individual transactions upon a customer's request.

Another aspect of the internationalization of the futures and options markets is the increasing number of contracts offered on foreign financial instruments and indices. These contracts are priced and settled in the currency of the underlying instrument or index. Accordingly, accruals resulting from trading in such instruments will be in currency other than U.S. dollars. Under the rule, such accruals may be held in the applicable currency. A customer, of course, may request that such accruals be converted to U.S. dollars.

Pursuant to Interp. 12, customers had to authorize the deposit of foreign currency funds into foreign depositories as part of a subordination agreement. The Commission is eliminating this written authorization requirement. If a customer deposits funds with an FCM in a currency other than U.S. dollars, or requests a conversion of funds to a non-U.S. dollar currency, the customer will be aware of the fact that the funds are being held in a currency other than U.S. dollars. With regard to funds other than U.S. dollars that are held for margin or have accrued to the customer as a result of trading in contracts priced and settled in a non-U.S. currency, the Commission notes that the specifications for contracts traded on designated contract markets are widely known and generally available.[9] Accordingly, when a customer trades in a futures or options contract that is priced and settled in a currency other than U.S. dollars, a customer should be aware that the margin for and accruals from such trading may be held in the applicable currency.

In the proposing release, the Commission noted "that if a customer has previously not traded in contracts that are priced and settled in a currency other than U.S. dollars, a firm *should* inform the customer if the accruals from the trades will be held in a currency other than U.S. dollars."[10] NFA and FIA both objected to this statement, as they believed it seemed to impose disclosure obligations beyond those under Commission Rule 1.55.[11] It was not the Commission's intention to impose a disclosure obligation with respect to such customers and such contracts. Rather, as suggested by FIA in its letter, the Commission "intended solely to caution FCMs to consider whether they should make such disclosure" by taking into consideration the facts and circumstances of the particular customer.

3. Location of Depositories

The rule permits an FCM or derivatives clearing organization ("DCO") to hold customer funds of any denomination in the U.S. or in any money center country (Canada, France, Italy, Germany, Japan, and the United Kingdom). Hence, customer funds of any denomination could be held in any of the Group of Seven ("G7") countries. The G7 countries represent the world's largest industrial democracies. Representatives from these countries meet several times a year to coordinate their cooperation on issues of economic policy. In this regard, the U.S. and its financial regulatory agencies have had successful cooperation with the respective financial regulatory agencies of these countries.

Both NFA and FIA indicated a desire to have the definition of a money center country expanded. NFA suggested that the definition include "other locations with stable currencies and other indicia that customer funds will be relatively secure." The Commission has decided not to expand the definition in this manner. The Commission believes that the establishment of a broad and

[9] Section 5(b)(7) of the Act and Section 5a(d)(4) of the Act require contract markets and derivatives transaction execution facilities, respectively, to make contract specifications publicly available. For example, the specifications for contracts traded on the Chicago Mercantile Exchange are available on its Web site at: *http://www.cme.com.*

[10] 67 FR at 52643. (Emphasis added).

[11] Rule 1.55 permits FCMs to open an account for an "institutional customer" without first furnishing the customer with a disclosure statement.

subjective standard, as suggested by NFA, would be unwieldy in practice and could require the Commission to expend significant resources. To make a determination as suggested by NFA would require the Commission to conduct a broad evaluation of, among other things, a country's banking, monetary, and economic policies and systems.

FIA suggested that the Commission expand the definition to include any country with which the Commission has an information sharing arrangement. When the Commission enters into an information sharing arrangement with another country, it does not undertake a complete analysis of the country's laws, policies, and systems, as they would pertain to the holding of customer funds. Moreover, a country may deny sharing information with the Commission under these arrangements if, among other things, it would constitute a violation of applicable laws. Accordingly, the Commission has decided not to extend the definition of money center country as suggested by FIA.

In addition to the money center countries, an FCM or DCO also could hold any particular currency in the country of origin of that currency,[12] except that customer funds may not be held in any of the restricted countries subject to sanctions by the Office of Foreign Assets Control ("OFAC") of the U.S. Department of Treasury.[13]

Proposed Rule 1.49(c)(3) provided that funds could be held outside the U.S. only to the extent specifically authorized by the customer. It further required the FCM to make and maintain a written record detailing the terms and conditions of any such authorization. For the reasons explained below, the Commission has significantly revised paragraph (c). As revised, paragraph (c) makes clear that customer consent will be required only when customer funds are held outside of the U.S. in a jurisdiction other than a money center country or the country of origin of the currency.

As discussed above, an FCM or DCO may hold customer segregated funds in the following denominations: (1) In U.S. dollars; (2) in the currency deposited by the customer or converted at the customer's request; or (3) in the currency in which funds have accrued to the customer as the result of trading on a U.S. contract market or registered DTF. In the absence of customer instructions to the contrary, the Commission believes that a customer that deposits funds with an FCM or DCO in a foreign currency or requests that the funds on deposit be converted to a foreign currency should assume that the currency will be held in an account outside of the U.S. in the currency's country of origin. Similarly, accruals in a foreign currency should also be deemed to be held in the country of origin.[14] Consequently, the Commission has concluded that requiring an FCM or DCO to obtain a customer's consent to hold a foreign currency in the currency's country of origin is unnecessary.

With respect to money center countries, the Commission has previously determined that customer segregated funds denominated in a foreign currency may be held in a money center country. As the Commission noted in proposing Rule 1.49:

> The G7 countries represent the world's largest industrial democracies. Furthermore, representatives from these countries meet several times a year to coordinate their cooperation on issues of economic policy. In this regard, the United States and its financial regulatory agencies have had successful cooperation with the respective financial regulatory agencies of these countries.

In these circumstances and in the absence of customer instructions to the contrary, the Commission believes that it would be appropriate for an FCM or DCO to hold customer funds denominated in a foreign currency in a money center country without receiving the customer's prior consent.

Because funds held outside of the U.S. other than in the currency's country of origin or a money center country might pose different risks and different operational costs and benefits, the Commission believes that the customer must be able to choose whether, and to what extent, to incur such risks and costs. The Commission, however, is not establishing a particular format that a customer authorization must follow. A customer may authorize the holding of funds outside the U.S., a money center country, or in a country other than the currency's country of origin, in writing or orally.[15] Authorization may be satisfied where a customer fails to object when informed that the customer's funds will be held outside the U.S., a money center country, or in a country other than the currency's country of origin. Moreover, the Commission notes that, just as under Rule 1.49(b)(1)(ii) regarding the conversion of customer funds, authorization may be obtained as part of the account agreement.

The rule does not require that a separate customer signature be obtained. Rule 1.49(c) simply requires that an FCM make and maintain a contemporaneous written record of any customer authorization to hold funds outside the U.S. in a country other than the currency's country of origin or a money center country. An FCM may choose to comply with this requirement in whatever manner it finds easiest. An FCM, if it chooses, may comply with this requirement as part of the account opening documents or, if done orally, by making a written memorandum or notation to be placed in the customer's file. The confirmation statement required pursuant to Commission Rule 1.33(b) may serve the purpose of meeting the requirement of a written record under Rule 1.49(c). If, after receiving the confirmation statement, the customer objects to the transaction, the FCM must, of course, take steps to address the customer's concerns.

FCMs and DCOs should also be aware that the Financial Action Task Force ("FATF") of the Organization for Economic Co-Operation and Development maintains a list of non-cooperative countries or territories with respect to anti-money laundering programs and that the Secretary of the Treasury may designate, in accordance with Section 311 of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism ("USA PATRIOT") Act of 2001,[16] certain countries as areas of primary money laundering concern.[17] Before holding any customer funds in a depository in any of these countries or territories, FCMs and DCOs should undertake due diligence to assure themselves that the depository is reputable, has appropriate operational systems to safeguard customer funds, and has an adequate program to deter money laundering.[18]

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[12] For the Euro, the country of origin includes any country that is a member of the European Union and has recognized the Euro as its official currency.

[13] The list of restricted countries may be viewed on OFAC's Web site at *http://www.ustreas.gov/ofac.*

[14] As noted earlier, a customer may request that any such accruals be converted to U.S. dollars.

[15] *See Peltz* v. *SHB Commodities, Inc.*, 115 F.3d 1082 (2d Cir. 1997); [1996–1998 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 27,052.

[16] Pub. L. 107–56; 115 Stat. 272 (2001).

[17] The list of non-cooperative countries and territories may be viewed on FATF's Web site at: *http://www1.oecd.org/fatf/*. Countries that have been designated by the Secretary of the Treasury as being of primary money laundering concern may be viewed on the Department of Treasury Web site at: *http://www.ustreas.gov*.

[18] On April 23, 2002, the Commission approved NFA Compliance Rule 2–9(c) and a related Interpretive Notice that set forth minimum standards for anti-money laundering programs of NFA FCM members.

4. Qualifications of Depositories

The Commission proposed that, if the depository is located in the U.S., it must be: (1) A bank or trust company; (2) an FCM registered with the Commission; or (3) a DCO. The Commission also proposed that, if the depository is located outside the U.S., it must be: (1) A bank or trust company that has (a) in excess of $1 billion in regulatory capital, or (b) commercial paper or long-term debt rated in the highest rating category by at least one nationally recognized statistical rating organization (where the bank or trust company is part of a holding company system, the holding company may satisfy the rating criterion); (2) an FCM registered with the Commission; or (3) a DCO.

Both NFA and FIA noted that, under Commission Rule 30.7, a bank located outside the U.S. is recognized as a permitted depository if its commercial paper or long-term debt is rated in one of the two highest rating categories.[19] NFA and FIA urged the Commission to make Rule 1.49 consistent with Rule 30.7. The Commission has determined that this is appropriate. Accordingly, the final rule will permit the use of a bank outside the U.S. whose commercial paper or long-term debt is rated in one of the two highest rating categories of a nationally recognized statistical rating organization. The term "nationally recognized statistical rating organization" as used in this release refers to those rating organizations designated as such by the Securities and Exchange Commission ("SEC").[20] Although the Commission did not receive any comments on this point, in order to avoid any possible confusion, the Commission wishes to make clear that when using the term "nationally recognized statistical rating organization" in Rules 1.49 and 30.7, it refers to a rating organization designated as a "nationally recognized statistical rating organization" by the SEC.

NFA asked the Commission to confirm that, under Rule 1.49, funds for the trading of security futures could be deposited with an FCM registered pursuant to Section 4f(a)(2) of the Act.[21] The Commission confirms that an FCM registered pursuant to Section 4f(a)(2) would be a qualified depository for security futures funds under Rule 1.49.[22]

Only depositories that provide the FCM or DCO with the written acknowledgment required under Commission Rules 1.20 or 1.26 may hold customer funds required to be segregated.[23] However, a DCO acting as a depository does not need to provide an acknowledgment letter to an FCM where the DCO's rules provide for the segregation of funds held on behalf of customers.[24]

5. Segregation Requirements

As noted above, protection of customer funds is one of the most important purposes of the Act and the Commission's regulations. Customer funds must be segregated so as to assure that the obligations owed to customers will be met. Through segregation, customer funds are readily identifiable in the event that a registrant becomes insolvent. Accordingly, Rule 1.49 requires that the FCM or DCO, at the close of each business day, have in segregated accounts on behalf of its customers sufficient U.S. dollars held in the U.S. to meet all U.S. dollar obligations and sufficient funds in each other currency to meet obligations in such currency with certain permitted substitutions. The segregation requirements of the rule are meant to ensure that FCMs and DCOs maintain enough funds, and in the appropriate currency, to meet the obligations owed to customers.

As noted, the rule permits limited substitutions among currencies. U.S. dollars held in the U.S. may be used to meet obligations denominated in any other currency. Money center currencies and U.S. dollars held in money center countries may be held to meet obligations denominated in currencies other than the U.S. dollar. In essence, three tiers of currencies have been established, U.S. dollars held in the U.S. ("Tier I"), U.S. dollars and money center currencies held in money center countries or money center currencies held in the U.S. ("Tier II"), and currencies other than U.S. dollars and money-center currencies ("Tier III"). Tier I currency could be used for any obligation. For U.S. dollar obligations to customers, only Tier I currency could be used. Tier II currencies could be used for any obligation except U.S. dollars. Tier III currencies could only be used for obligations denominated in that particular currency.

B. Recordkeeping

The Commission is also amending Rule 1.32 to require FCMs to compute segregated funds on a currency-by-currency basis if they are held in other than U.S. dollars, in accordance with new Rule 1.49. Under Rule 1.49, customer funds may be held in the U.S., a money center country, or the country of origin of the currency. Rule 1.49 also would require FCMs and DCOs that hold funds in foreign currency or offshore to maintain records sufficient to demonstrate compliance with the additional segregation requirements set forth in Rule 1.49(e).

C. Bankruptcy

In Interp. 12, the Commission noted two types of risk associated with holding funds offshore that might result in customers failing to fully recover segregated funds, either upon demand or in a bankruptcy or receivership, (1) currency risk and (2) location risk.[25]

Currency risk is the risk of currency exchange rate fluctuations. This can be a concern where an FCM is in bankruptcy or receivership and it holds deposits denominated in currencies other than U.S. dollars. Due to changes in currency exchange rates, the size of the pool of funds available for distribution to customers and the size of claims against the funds may vary from day to day while the bankruptcy is pending, thereby exposing customers with U.S. dollar-denominated claims to currency risk.[26]

Location risk is the risk that funds held in a foreign depository might not be fully recoverable by a customer upon demand or in the event of bankruptcy or receivership. It includes the risk that foreign depositories may not be cooperative with the Commission concerning questions of compliance with segregation requirements, or that a foreign court might refuse to enforce

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[19] *See* CFTC Advisory 87–5, [1987–1990 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 23,997 (Dec. 3, 1987).

[20] *See, e.g.*, 17 CFR 240.15c3–1; *see also* 17 CFR § 270.2a–7(a)(17).

[21] Section 4f(a)(2) of the Act provides for notice-registration of securities broker-dealers whose only futures-related activity involves security futures products. *See also*, 66 FR 43080 (Aug. 17, 2001).

[22] The Commission notes that FCMs registered pursuant to Section 4f(a)(2) may only accept such funds in accordance with any applicable rules promulgated by the SEC.

[23] Commission Rule 1.20 provides that, when an FCM or DCO deposits customer funds with a depository, the FCM or DCO must obtain and retain a written acknowledgement from the depository that it was informed that the funds are subject to the provisions of the Act and Commission regulations. Rule 1.26 requires an FCM or DCO to obtain such an acknowledgment in regard to the deposit of instruments purchased with customer funds as described under Rule 1.25.

[24] See 65 FR 77993, 78009–13 (Dec. 13, 2000) (amending, among other things, Rules 1.20 and 1.26 to provide that a DCO acting as a depository does not need to provide an acknowledgement letter where the DCO's rules provide for the segregation of funds held on behalf of customers); 65 FR 82270 (Dec. 28, 2000) (moving forward the effective date of the amendments to Rule 1.20 and 1.26 to December 28, 2000).

[25] 53 FR at 46912.

[26] *See* 53 FR at 46915 (providing an example of currency risk).

provisions of the Commission's rules that prohibit a foreign depository from offsetting obligations of an FCM against customer funds. There is also a risk that, in the event of an FCM becoming insolvent, deposits at a foreign depository might be subject to an insolvency regime that is different from U.S. bankruptcy law. Additionally, a foreign government might limit the availability of funds by freezing or confiscating assets held within its jurisdiction or taking actions that affect its currency, even if the assets are located in the U.S.[27]

Pursuant to Interp. 12, before placing a customer's funds offshore, an FCM had to obtain from the customer a subordination agreement. In the agreement, the customer consented to the subordination of claims concerning funds held offshore or in a foreign currency to the claims of customers whose funds are held in U.S. dollars or in other currencies in the event the FCM was placed in bankruptcy or receivership and there were insufficient funds available for distribution from the funds held in that particular currency to satisfy customer claims against those funds. The subordination agreement was meant to protect customers whose funds were held in the U.S. and denominated in U.S. dollars from both currency and location risk that might result in customers receiving less than their pro-rata share of funds.

In Interp. 12, the Commission stated that "currency risk is similar to the price risk which can occur in cases where an FCM becomes insolvent while holding customer deposits in forms which fluctuate in value," using the example of Treasury securities.[28] The Commission noted, however, that there were distinctions between price risk and currency risk, such that it was more equitable to spread the price risk among all customers in the event of a bankruptcy than it was the currency risk. First, the Commission indicated that all customers had the opportunity to post Treasury securities as margin, but under Interp. 12 only customers trading certain contracts could post foreign currency. Second, shortfalls in foreign currency accounts were more likely because of sovereign or location risk. Third, it would be easier and quicker for a trustee or receiver to convert Treasury securities held in the U.S. to cash than to convert foreign currency held offshore into U.S. dollars.

Under Rule 1.49, subject to exchange margin rules, any customer may deposit foreign currency with an FCM, not just those trading certain contracts, provided the FCM is willing to accept foreign currency. In effect, such deposits would be similar to a customer depositing U.S. Treasury securities, which is currently permitted. In the case of a customer who deposits U.S. Treasury securities with an FCM to satisfy margin, there exists a price and liquidity risk related to the time it would take to convert those securities into U.S. dollars. Similarly, customer funds held in a foreign currency create an exposure during the time in which it takes to convert those currencies into U.S. dollars. As with converting U.S. Treasury securities, converting foreign currency into U.S. dollars, particularly those involving money center countries, is not extremely difficult. As a result, the Commission believes spreading currency risk among all customers is no less equitable than spreading price risk among all customers. Additionally, as discussed below, the rule and the amendment to Appendix B of the Commission's bankruptcy rules limit sovereign risk and protect customers who deposit U.S. dollars from being adversely affected due to the sovereign action of a foreign government or court, including the effect of a non-U.S. insolvency regime. As a result, the Commission believes spreading currency risk among all customers is no less equitable than spreading price risk among all customers.

In adopting the new rule, the Commission has sought to address many aspects of currency and location risks through the safeguards discussed above. One aspect of location risk that remains, however, is sovereign risk. This is the risk that the actions of a foreign government or court might result in a shortfall in segregated funds.

To address sovereign risk, the Commission is amending Framework 2 of Appendix B of its bankruptcy rules to govern the distribution of customer funds segregated pursuant to the Act and Commission rules thereunder, held by an FCM or DCO in a depository outside the U.S. or in a foreign currency.[29] The maintenance of customer funds in a depository outside the U.S. or denominated in a foreign currency would result, in certain circumstances, in the reduction of customer claims for such funds. For purposes of the bankruptcy convention, sovereign action of a foreign government or court would include, but not be limited to, the application or enforcement of statutes, rules, regulations, interpretations, advisories, decisions, or orders, formal or informal, by a federal, state, or provincial executive, legislature, judiciary, or government agency. Commission staff was asked whether the devaluation of a currency by government decree would be considered a sovereign action. The Commission believes such a decree would be a sovereign action for purposes of this bankruptcy convention. The Commission recognizes that it is impossible to envision every possible sovereign action. The Commission has purposely defined sovereign risk broadly so as to afford the bankruptcy trustee the ability to exercise its discretion and judgment to fully effectuate the purpose of this bankruptcy convention.

If an FCM filed, or had filed against it, a petition in bankruptcy and maintained customer funds in a depository located in the U.S. in a currency other than U.S. dollars, or in a depository outside the U.S., the following allocation procedure will be used to calculate the claim of each customer. After reducing each customer's claim by the percentage of the shortfall that is not attributable to sovereign action, certain customer claims will be further reduced based upon their exposure to loss attributable to sovereign action. This framework is designed to prevent a shortfall in funds held outside the U.S. or in a currency other than U.S. dollars resulting from the sovereign action of a foreign government or court from adversely affecting customers whose funds are held in U.S. dollars or in the U.S. or in a currency or a country other than the one undertaking the sovereign action resulting in the shortfall.

NFA, in its comment letter, asked what would happen if a bankruptcy proceeding is commenced while a firm is in the process of converting customer funds between currencies. As noted in the framework, the first step to be taken in the event of a bankruptcy is to convert each customer's claim in each currency to U.S. Dollars at the exchange rate in effect on the Final Net Equity Determination Date as defined in

[27] Presumably, certain sovereign action of a foreign government could affect foreign currency even if held in the U.S. Any discussion of sovereign risk herein pertains to non-U.S. currency, wherever held.

[28] 53 FR at 46915, note 22.

[29] The current Framework 2 sets forth a plan for distribution in the case of trades made on the Chicago Board of Trade-London International Financial Futures and Options Exchange Link ("Link"). Since the Link ceased operations in 1997, there is no need to maintain the existing Framework 2. Accordingly, the Commission is replacing the existing Framework 2 related to the Link with a new Framework 2 that addresses U.S. held segregated funds and non-U.S. held segregated funds.

Commission Rule 190.01(s). Customer funds will be converted to U.S. Dollars from whatever currency in which the customer's funds are denominated as of the close of business on the Final Net Equity Determination Date.

The Commission has drafted the bankruptcy convention as a means to give prospective bankruptcy trustees a certain amount of direction in the event of a bankruptcy involving customer funds denominated in currencies other than U.S. Dollars and held in depositories located throughout the world. Such a bankruptcy, however, is likely to be extremely complicated and it is impossible to anticipate every factual variant. Accordingly, the Commission, in adopting this bankruptcy convention, has endeavored to avoid undermining the ability of the trustee to use his or her own discretion and judgment as required by the particular facts of each bankruptcy.

The rule and the framework to the bankruptcy appendix address the risks associated with holding customer funds outside the U.S. or in currencies other than U.S. dollars. Accordingly, the requirement that each customer who seeks to have funds held outside the U.S. must execute a separate subordination agreement has been eliminated.

III. Comments Regarding the Location of Foreign Futures or Foreign Options Secured Amount

In the proposal, the Commission asked for comments as to whether, in light of the proposed rules, Rule 30.7 should also be amended to expand the types of depositories at which an FCM may hold the funds of foreign futures or options customers. Only NFA provided comments as to the expansion of Rule 30.7. NFA indicated its belief that Rule 30.7 should be expanded to include all depositories permitted under Rule 1.49(d)(3), as well as those already permitted under Rule 30.7. The Commission agrees. Accordingly, Rule 30.7 will be amended to provide that the funds of foreign futures or options customers may, in addition to those depositories already enumerated, be held at a bank or trust company outside the U.S. that has in excess of $1 billion of regulatory capital or whose commercial paper or long-term debt instrument, or if part of a holding company system, its holding company's commercial paper or long-term debt instrument, is rated in one of the two highest rating categories by at least one nationally recognized statistical rating organization.

IV. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA")[30] requires that agencies, in proposing rules, consider the impact of those rules on small businesses. The Commission has previously established certain definitions of "small entities" to be used by the Commission in evaluating the impact of its rules on such entities in accordance with the RFA.[31] The Commission has previously determined that FCMs are not small entities for the purpose of the RFA.[32] Additionally, the Commission has determined that DCOs are not small entities for purposes of the RFA.[33] The Commission notes that no comments were received from the public on the RFA and its relation to the new rule and rule amendments.

B. Paperwork Reduction Act

This rulemaking contains information collection requirements. As required by the Paperwork Reduction Act of 1995, 44 U.S.C. 3507(d), the Commission has submitted a copy of the new rule and rule amendments to the Office of Management and Budget (OMB) for its review. No comments were received in response to the Commission's invitation in the proposed rules to comment on any potential paperwork burden associated with this regulation.

C. Cost-Benefit Analysis

Section 15(a) of the Act, as amended by Section 119 of the CFMA, requires the Commission to consider the costs and benefits of its action before issuing a new regulation under the Act. By its terms, Section 15(a) as amended does not require the Commission to quantify the costs and benefits of a new regulation or to determine whether the benefits of the regulation outweigh its costs. Rather, Section 15(a) simply requires the Commission to "consider the costs and benefits" of its action.

Section 15(a) of the Act further specifies that costs and benefits shall be evaluated in light of five broad areas of market and public concern: protection of market participants and the public; efficiency, competitiveness, and financial integrity of futures markets; price discovery; sound risk management practices; and other public interest considerations. Accordingly, the Commission could in its discretion give greater weight to any one of the five enumerated areas and could in its discretion determine that, notwithstanding its costs, a particular rule was necessary or appropriate to protect the public interest or to effectuate any of the provisions or to accomplish any of the purposes of the Act.

The new rule and rule amendments are intended to provide greater flexibility for FCMs, DCOs, and their customers in their methods of doing business. The Commission is considering the costs and benefits of these rules in light of the specific provisions of Section 15(a) of the Act:

1. *Protection of market participants and the public.* To protect market participants and the public, the rule requires that depositories used to hold customer funds meet certain requirements to assure that customer funds are dealt with properly. Additionally, the rule includes a new framework to the bankruptcy appendix to protect customer funds held in U.S. dollars in the U.S. from being diluted if there is an insufficiency in the funds held outside the U.S. or in a currency other than U.S. dollars due to the sovereign action of a foreign government or court.

2. *Efficiency and competition.* The rules are expected to benefit competition and market efficiency. The rule will help to facilitate continued international growth of the futures industry by permitting customer funds to be denominated in currencies other than U.S. dollars and to be held in offshore depositories.

3. *Financial integrity of futures markets and price discovery.* The rule should have no effect, from the standpoint of imposing costs or creating benefits, on the financial integrity or price discovery function of the futures and options markets.

4. *Sound risk management practices.* The Commission in adopting the rule and amendments has included risk-limiting features, such as requiring FCMs and DCOs to maintain sufficient funds to meet obligations in each currency, and requiring depositories to meet certain criteria, including signing an acknowledgment regarding the segregation requirements under the Act and Commission rules, to minimize the risks to customer funds.

5. *Other public interest considerations.* The rule and amendments contained herein offer greater opportunity for taking full advantage of contracts being offered by domestic designated contract markets and registered DTFs and the ever increasing internationalization of the futures industry, while establishing safeguards for customer funds.

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[30] 5 U.S.C. 601 *et seq.*

[31] 47 FR 18618 (April 30, 1982).

[32] 47 FR at 18619.

[33] 66 FR 45604, 45609 (Aug. 29, 2001).

After considering these factors, the Commission has determined to adopt the rule and amendments discussed above. The Commission invited public comment on its application of the cost-benefit provision. The Commission did not receive any comments regarding the application of the cost-benefit provision.

List of Subjects

17 CFR Part 1

Brokers, Commodity Futures, Consumer protection.

17 CFR Part 30

Commodity Futures, Consumer Protection

17 CFR Part 190

Bankruptcy, Reporting and recordkeeping requirements.

In consideration of the foregoing and pursuant to the authority contained in the Commodity Exchange Act and, in particular, Sections 2(a)(1)(A), 4d, 8a(5), and 20, 7 U.S.C. 2(a)(1)(A), 6d, 12a(5), and 24, and 11 U.S.C. 362, 546, 548, 556 and 761–766, the Commission hereby amends Chapter I of Title 17 of the Code of Federal Regulations as follows:

PART 1—GENERAL REGULATIONS UNDER THE COMMODITY EXCHANGE ACT

1. The authority citation for Part 1 continues to read as follows:

Authority: 7 U.S.C. 1a, 2, 5, 6, 6a, 6b, 6c, 6d, 6e, 6f, 6g, 6h, 6i, 6j, 6k, 6l, 6m, 6n, 6o, 6p, 7, 7a, 7b, 8, 9, 12, 12a, 12c, 13a, 13a–1, 16, 16a, 19, 21, 23, and 24, as amended by the Commodity Futures Modernization Act of 2000, Appendix E of Pub. L. 106–554, 114 Stat. 2763 (2000).

2. Section 1.32 is amended by revising paragraph (a) introductory text to read as follows:

§ 1.32 Segregated account; daily computation and record.

(a) Each futures commission merchant must compute as of the close of each business day, on a currency-by-currency basis:

* * * * *

3. Section 1.49 is added to read as follows:

§ 1.49 Denomination of customer funds and location of depositories.

(a) *Definitions.* For purposes of this section:

(1) *Money center country.* This term means Canada, France, Italy, Germany, Japan, and the United Kingdom.

(2) *Money center currency.* This term means the currency of any money center country and the Euro.

(b) *Permissible denominations of obligations.* (1) Subject to the terms and conditions set forth in this section, a futures commission merchant's obligations to a customer shall be denominated:

(i) In the United States dollar;

(ii) In a currency in which funds were deposited by the customer or were converted at the request of the customer, to the extent of such deposits and conversions; or

(iii) In a currency in which funds have accrued to the customer as a result of trading conducted on a designated contract market or registered derivatives transaction execution facility, to the extent of such accruals.

(2)(i) A futures commission merchant shall prepare and maintain a written record of each transaction converting customer funds from one currency to another.

(ii) A written record prepared under paragraph (b)(2)(i) of this section must include the date the transaction was executed, the currencies converted, the amount converted, and the resulting amount.

(iii) The information required under paragraph (b)(2)(ii) of this section must be provided to the customer upon the customer's request.

(c) *Permissible locations of depositories.* (1) Unless a customer provides instructions to the contrary, a futures commission merchant or a derivatives clearing organization may hold customer funds:

(i) In the United States;

(ii) In a money center country; or

(iii) In the country of origin of the currency.

(2) A futures commission merchant or derivatives clearing organization may hold customer funds outside the United States, in a jurisdiction that is not a money center country, or the country of origin of the currency only to the extent authorized by the customer, *provided,* that the futures commission merchant or derivatives clearing organization must make and maintain a written record of such authorization. Notwithstanding the foregoing, in no event shall a futures commission merchant or a derivatives clearing organization hold customer funds in a restricted country subject to sanctions by the Office of Foreign Assets Control of the U.S. Department of Treasury.

(d) *Qualifications for depositories.* (1) To hold customer funds required to be segregated pursuant to the Act and §§ 1.20 through 1.30, 1.32 and 1.36, a depository must provide the depositing futures commission merchant or derivatives clearing organization with the appropriate written acknowledgment as required under §§ 1.20 and 1.26.

(2) A depository, if located in the United States, must be:

(i) A bank or trust company;

(ii) A futures commission merchant registered as such with the Commission; or

(iii) A derivatives clearing organization.

(3) A depository, if located outside the United States, must be:

(i) A bank or trust company:

(A) That has in excess of $1 billion of regulatory capital; or

(B) Whose commercial paper or long-term debt instrument or, if a part of a holding company system, its holding company's commercial paper or long-term debt instrument, is rated in one of the two highest rating categories by at least one nationally recognized statistical rating organization;

(ii) A futures commission merchant that is registered as such with the Commission; or

(iii) A derivatives clearing organization.

(e) *Segregation requirements.* (1) Each futures commission merchant and each derivatives clearing organization must, as of the close of each business day, hold in segregated accounts on behalf of commodity or option customers:

(i) Sufficient United States dollars, held in the United States, to meet all United States dollar obligations; and

(ii) Sufficient funds in each other currency to meet obligations in such currency.

(2) Notwithstanding paragraph (e)(1)(ii) of this section, assets denominated in one currency may be held to meet obligations denominated in another currency as follows:

(i) United States dollars may be held in the United States or in money center countries to meet obligations denominated in any other currency; and

(ii) Funds in money center currencies may be held in the United States or in money center countries to meet obligations denominated in currencies other than the United States dollar.

(3) Each futures commission merchant and each derivatives clearing organization shall make and maintain records sufficient to demonstrate compliance with this paragraph (e).

PART 30—FOREIGN FUTURES AND FOREIGN OPTIONS TRANSACTIONS

4. The authority citation for Part 30 continues to read as follows:

Authority: 7 U.S.C. 1a, 2, 4, 6, 6c and 12a, unless otherwise noted.

5. Section 30.7 is amended by revising paragraph (c) to read as follows:

§ 30.7 Treatment of foreign futures or foreign options secured amount.

* * * * *

(c)(1) The separate account or accounts referred to in paragraph (a) of this section must be maintained under an account name that clearly identifies them as such, with any of the following depositories:

(i) A bank or trust company located in the United States;

(ii) A bank or trust company located outside the United States:

(A) That has in excess of $1 billion of regulatory capital; or

(B) Whose commercial paper or long-term debt instrument or, if a part of a holding company system, its holding company's commercial paper or long-term debt instrument, is rated in one of the two highest rating categories by at least one nationally recognized statistical rating organization; or

(C) As designated;

(iii) A futures commission merchant registered as such with the Commission;

(iv) A derivatives clearing organization;

(v) A member of any foreign board of trade; or

(vi) Such member or clearing organization's designated depositories.

(2) Each futures commission merchant must obtain and retain in its files for the period provided in § 1.31 of this chapter an acknowledgment from such depository that it was informed that such money, securities or property are held for or on behalf of foreign futures and foreign options customers and are being held in accordance with the provisions of these regulations.

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PART 190—BANKRUPTCY

6. The authority citation for Part 190 continues to read as follows:

Authority: 7 U.S.C. 1a, 2, 4a, 6c, 6d, 6g, 7, 7a, 12, 19, 23, and 24, and 11 U.S.C. 362, 546, 548, 556 and 761–766, unless otherwise noted.

7. Part 190 is amended by revising at the end of Appendix B, Framework 2 to read as follows:

Appendix B to Part 190—Special Bankruptcy Distributions

* * * * *

Framework 2—Special Allocation of Shortfall to Customer Claims When Customer Funds are Held in a Depository Outside of the United States or in a Foreign Currency

The Commission has established the following allocation convention with respect to customer funds segregated pursuant to the Act and Commission rules thereunder held by a futures commission merchant ("FCM") or derivatives clearing organization ("DCO") in a depository outside the United States ("U.S.") or in a foreign currency. The maintenance of customer funds in a depository outside the U.S. or denominated in a foreign currency will result, in certain circumstances, in the reduction of customer claims for such funds. For purposes of this proposed bankruptcy convention, sovereign action of a foreign government or court would include, but not be limited to, the application or enforcement of statutes, rules, regulations, interpretations, advisories, decisions, or orders, formal or informal, by a federal, state, or provincial executive, legislature, judiciary, or government agency. If an FCM enters into bankruptcy and maintains customer funds in a depository located in the U.S. in a currency other than U.S. dollars or in a depository outside the U.S., the following allocation procedures shall be used to calculate the claim of each customer.

I. Reduction in Claims for General Shortfall

A. Determination of losses not attributable to sovereign action

1. Convert each customer's claim in each currency to U.S. Dollars at the exchange rate in effect on the Final Net Equity Determination Date, as defined in § 190.01(s) (the "Exchange Rate").

2. Determine the amount of assets available for distribution to customers. In making this calculation, *include* customer funds that would be available for distribution but for the sovereign action.

3. Convert the amount of assets available for distribution to U.S. Dollars at the Exchange Rate.

4. Determine the Shortfall Percentage that is *not* attributable to sovereign action, as follows:

$$\text{Shortfall Percentage} = \left(1 - \left[\frac{\text{Total Customer Assets}}{\text{Total Customer Claims}}\right]\right)$$

B. Allocation of Losses Not Attributable to Sovereign Action

1. Reduce each customer's claim by the Shortfall Percentage.

II. Reduction in Claims for Sovereign Loss

A. Determination of Losses Attributable to Sovereign Action ("Sovereign Loss")

1. If any portion of a customer's claim is required to be kept in U.S. dollars in the U.S., that portion of the customer's claim is not exposed to Sovereign Loss.

2. If any portion of a customer's claim is authorized to be kept in only one location and that location is:

a. The U.S. or a location in which there is no Sovereign Loss, then that portion of the customer's claim is not exposed to Sovereign Loss.

b. A location in which there is Sovereign Loss, then that entire portion of the customer's claim is exposed to Sovereign Loss.

3. If any portion of a customer's claim is authorized to be kept in only one currency and that currency is:

a. U.S. dollars or a currency in which there is no Sovereign Loss, then that portion of the customer's claim is not exposed to Sovereign Loss.

b. A currency in which there is Sovereign Loss, then that entire portion of the customer's claim is exposed to Sovereign Loss.

4. If any portion of a customer's claim is authorized to be kept in more than one location and:

a. There is no Sovereign Loss in any of those locations, then that portion of the customer's claim is not exposed to Sovereign Loss.

b. There is Sovereign Loss in one of those locations, then that entire portion of the customer's claim is exposed to Sovereign Loss.

c. There is Sovereign Loss in more than one of those locations, then an equal share of that portion of the customer's claim will be exposed to Sovereign Loss in each such location.

5. If any portion of a customer's claim is authorized to be kept in more than one currency and:

a. There is no Sovereign Loss in any of those currencies, then that portion of the customer's claim is not exposed to Sovereign Loss.

b. There is Sovereign Loss in one of those currencies, then that entire portion of the customer's claim is exposed to Sovereign Loss.

c. There is Sovereign Loss in more than one of those currencies, then an equal share of that portion of the customer's claim will be exposed to Sovereign Loss.

B. Calculation of Sovereign Loss

1. The total Sovereign Loss for each location is the difference between:

a. The total customer funds deposited in depositories in that location and

b. The amount of funds in that location that are available to be distributed to customers, after taking into account any sovereign action.

2. The total Sovereign Loss for each currency is the difference between:

a. The value, in U.S. dollars, of the funds held in that currency on the day before the sovereign action took place and

b. The value, in U.S. dollars, of the funds held in that currency on the Final Net Equity Determination Date.

C. Allocation of Sovereign Loss

1. Each portion of a customer's claim exposed to Sovereign Loss in a location will be reduced by:

$$\text{Total Sovereign Loss} \times \frac{\text{Portion of the customer's claim exposed to loss in that location}}{\text{All portions of customer claims exposed to loss in that location}}$$

2. Each portion of a customer's claim exposed to Sovereign Loss in a currency will be reduced by:

$$\text{Total Sovereign Loss} \times \frac{\text{Portion of the customer's claim exposed to loss in that currency}}{\text{All portions of customer claims exposed to loss in that currency}}$$

3. A portion of a customer's claim exposed to Sovereign Loss in a location or currency will not be reduced below zero. (The above calculations might yield a result below zero where the FCM kept more customer funds in a location or currency than it was authorized to keep.)

4. Any amount of Sovereign Loss from a location or currency in excess of the total amount of funds authorized to be kept in that location or currency (calculated in accord with Section II.1 above) ("Total Excess Sovereign Loss") will be divided among all customers who have authorized funds to be kept outside the U.S., or in currencies other than U.S. dollars, with each such customer claim reduced by the following amount:

$$\text{Total Excess Sovereign Loss} \times \left[\frac{\left(\text{This customer's total claim} - \text{The portion of this Customer's claim required to be kept in U.S. dollars, in the U.S.} \right)}{\text{Total customer claims} - \text{Total of all customer claims required to be kept in U.S. dollars, in the U.S.}} \right]$$

The following examples illustrate the operation of this convention.

Example 1. No shortfall in any location.

Customer	Claim	Location(s) customer has consented to having funds held
A	$50	U.S.
B	€50	U.K.
C	€50	Germany
D	£300	U.K.

Location	Actual asset balance
U.S.	$50
U.K.	£300
U.K.	€50
Germany	€50

Note: Conversion Rates: €1 = $1; £1=$1.5.

Convert each customer's claim in each currency to U.S. Dollars:

Customer	Claim	Conversion rate	Claim in U.S. dollars
A	$50	1.0	$50
B	€50	1.0	50
C	€50	1.0	50
D	£300	1.5	450
Total			600.00

Determine assets available for distribution to customers, converting to U.S. dollars:

Location	Assets	Conversion rate	Assets in U.S. dollars	Shortfall due to sovereign action percentage	Actual shortfall due to sovereign action	Amount actually available
U.S.	$50	1.0	$50			$50
U.K.	£300	1.5	450			450
U.K.	€50	1.0	50			50
Germany	€50	1.0	50			50
Total			600.00		0	600.00

There are no shortfalls in funds held in any location. Accordingly, there will be no reduction of customer claims.

Claims:

Customer	Claim in U.S. dollars after allocated non-sovereign shortfall	Allocation of shortfall due to sovereign action	Claim after all reductions
A	$50	$0	$50

Customer	Claim in U.S. dollars after allocated non-sovereign shortfall	Allocation of shortfall due to sovereign action	Claim after all reductions
B	50	0	50
C	50	0	50
D	450	0	450
Total	600.00	0.00	600.00

Example 2. Shortfall in funds held in the U.S.

Customer	Claim	Location(s) customer has consented to having funds held
A	$100	U.S.
B	€50	U.K.
C	€100	U.K., Germany, or Japan

Location	Actual asset balance
U.S.	$50
U.K.	€100
Germany	€50

Note: Conversion Rates: €1=$1.

Reduction in Claims for General Shortfall

There is a shortfall in the funds held in the U.S. such that only ½ of the funds are available. Convert each customer's claim in each currency to U.S. Dollars:

Customer	Claim	Conversion rate	Claim in US$
A	$100	1.0	$100
B	€50	1.0	50
C	€100	1.0	100
Total			250.00

Determine assets available for distribution to customers, converting to U.S. dollars:

Location	Assets	Conversion rate	Assets in U.S. dollars	Shortfall due to sovereign action percentage	Actual shortfall due to sovereign action	Amount actually available
U.S.	$50	1.0	$50.00			$50
U.K.	€100	1.0	100			100
Germany	€50	1.0	50			$50
Total			200.00			200.00

Determine the percentage of shortfall that is not attributable to sovereign action: Shortfall Percentage = (1 − 200/250) = (1 − 80%) = 20%. Reduce each customer's claim by the Shortfall Percentage:

Customer	Claim in US$	Allocated shortfall (non-sovereign)	Claim in U.S. dollars after allocated shortfall
A	$100	$20.00	$80.00
B	50	10.00	40.00
C	100	20.00	80.00
Total	250.00	50.00	200.00

Reduction in Claims for Shortfall Due to Sovereign Action

There is no shortfall due to sovereign action. Accordingly, the customer claims will not be further reduced.

Claims After Reductions

Customer	Claim in U.S. dollars after allocated non-sovereign shortfall	Allocation of shortfall due to sovereign action	Claim after all reductions
A	$80		$80.00
B	40		40.00
C	80		80.00
Total	200.00	0	200.00

Example 3. Shortfall in funds held outside the U.S., or in a currency other than U.S. dollars, not due to sovereign action.

Customer	Claim	Location(s) customer has consented to having funds held
A	$150	U.S.
B	€100	U.K.
C	€50	Germany
D	$100	U.S.
D	€100	U.K. or Germany

Location	Actual asset balance
U.S.	$250
U.K.	€50
Germany	€100

Note: Conversion Rates: €1=$1.

Reduction in Claims for General Shortfall

Convert each customer's claim in each currency to U.S. Dollars:

Customer	Claim	Conversion rate	Claim in US$
A	$150	1.0	$150
B	€100	1.0	100
C	€50	1.0	50
D	$100	1.0	100
D	€100	1.0	100
Total			500.00

Determine assets available for distribution to customers, converting to U.S. dollars:

Location	Assets	Conversion rate	Assets in U.S. dollars	Shortfall due to sovereign action percentage	Actual shortfall due to sovereign action	Amount actually available
U.S.	$250	1.0	$250			$250
U.K.	€50	1.0	50			50
Germany	€100	1.0	100			100
Total			400.00		0	400.00

Determine the percentage of shortfall that is not attributable to sovereign action: Shortfall Percentage = (1 − 400/500) = (1 − 80%) = 20%.
Reduce each customer's claim by the shortfall percentage:

Customer	Claim in US$	Allocated shortfall (non-sovereign)	Claim in U.S. dollars after allocated shortfall
A	$150	$30.00	120.00
B	100	20.00	80.00
C	50	10.00	40.00
D	200	40.00	160.00
Total	500.00	100.00	400.00

Reduction in Claims for Shortfall Due to Sovereign Action

There is no shortfall due to sovereign action. Accordingly, the claims will not be further reduced.

Claims After Reductions

Customer	Claim in U.S. dollars after allocated non-sovereign shortfall	Allocation of shortfall due to sovereign action	Claim after all reductions
A	$120.00		$120
B	80.00		80
C	40.00		40
D	160.00	0	160
Total	400.00	0	400

Example 4. Shortfall in funds held outside the U.S., or in a currency other than U.S. dollars, due to sovereign action.

Customer	Claim	Location(s) where customer has consented to have funds held
A	$50	U.S.
B	€50	U.K.
C	€50	Germany
D	$100.	U.S.
D	€100	U.K. or Germany

Location	Actual asset balance
U.S.	$150
U.K.	€100
Germany	€100

Notice: Conversion Rates: €1 = $1; ¥1= $0.01, £1= $1.5.

Reduction in Claims for General Shortfall

Convert each customer's claim in each currency to U.S. Dollars:

Customer	Claim	Conversion rate	Claim in US$
A	$50	1.0	$50
B	€50	1.0	50
C	€50	1.0	50
D	$100	1.0	100
D	€100	1.0	100
Total			350.00

Determine assets available for distribution to customers, converting to U.S. dollars:

Location	Assets	Conversion rate	Assets in U.S. dollars	Shortfall due to sovereign action percentage	Actual shortfall due to sovereign action	Amount actually available
U.S.	$150	1.0	$150			$150
U.K.	€100	1.0	100			100
Germany	€100	1.0	100	50%	50	50
Total			350.00		50.00	300.00

Determine the percentage of shortfall that is not attributable to sovereign action: Shortfall Percentage = (1 − 350/350) = (1 − 100%) = 0%.
Reduce each customer's claim by the shortfall percentage:

Customer	Claim in US$	Allocated shortfall (non-sovereign)	Claim in U.S. dollars after allocated shortfall
A	$50	0	$50.00
B	50	0	50.00
C	50	0	50.00

Customer	Claim in US$	Allocated shortfall (non-sovereign)	Claim in U.S. dollars after allocated shortfall
D	200	0	200.00
Total	350.00	0.00	350.00

Reduction in Claims for Shortfall Due to Sovereign Action

Due to sovereign action, only ½ of the funds in Germany are available.

Customer	Presumed location of funds		
	U.S.	U.K.	Germany
A	$50		
B		$50	
C			$50
D	100		100
Total	150.00	50.00	150.00

Calculation of the allocation of the shortfall due to sovereign action—Germany ($50 shortfall to be allocated):

Customer	Allocation share	Allocation share of actual shortfall	Actual shortfall allocated
C	$50/$150	33.3% of $50	$16.67
D	100/$150	66.7% of $50	33.33
Total			50.00

Claims After Reductions:

Customer	Claim in U.S. dollars after allocated non-sovereign shortfall	Allocation of shortfall due to sovereign action from Germany	Claim after all reductions
A	$50		$50
B	50		50
C	50	$16.67	33.33
D	200	33.33	166.67
Total	350.00	50.00	300.00

Example 5. Shortfall in funds held outside the U.S., or in a currency other than U.S. dollars, due to sovereign action and a shortfall in funds held in the U.S.

Customer	Claim	Location(s) customer has consented to having funds held
A	$100	U.S.
B	€50	U.K.
C	€150	Germany
D	$100	U.S.
D	£300	U.K.
D	€150	U.K. or Germany

Location	Actual asset balance
U.S.	$100
U.K.	£300
U.K.	€200
Germany	€150

Conversion Rates: €1=$1; £1=$1.5.

Reduction in Claims for General Shortfall

Convert each customer's claim in each currency to U.S. Dollars:

Customer	Claim	Conversion rate	Claim in US$
A	$100	1.0	$100

Customer	Claim	Conversion rate	Claim in US$
B	€50	1.0	50
C	€150	1.0	150
D	$100	1.0	100
D	£300	1.5	450
D	€150	1.0	150
Total			1000.00

Determine assets available for distribution to customers, converting to U.S. dollars:

Location	Assets	Conversion rate	Assets in U.S. dollars	Shortfall due to sovereign action percentage	Actual shortfall due to sovereign action	Amount actually available
U.S.	$100	1.0	$100			$100
U.K.	£300	1.5	450			450
U.K.	€200	1.0	200			200
Germany	€150	1.0	150	100%	$150	0
Total			900.00		150.00	750.00

Determine the percentage of shortfall that is not attributable to sovereign action: Shortfall Percentage = (1–900/1000)= (1—90%) = 10%. Reduce each customer's claim by the shortfall percentage:

Customer	Claim in US$	Allocated shortfall (non-sovereign)	Claim in U.S. dollars after allocated shortfall
A	$100	$10.00	$90.00
B	50	5.00	45.00
C	150	15.00	135.00
D	700	70.00	63.00
Total	1000.00	100.00	900.00

Reduction in Claims for Shortfall Due to Sovereign Action

Due to sovereign action, none of the money in Germany is available.

Customer	Presumed location of funds		
	U.S.	U.K.	Germany
A	$100		
B		$50	
C			$150
D	100	450	150
Total	200.00	500.00	300.00

Calculation of the allocation of the shortfall due to sovereign action Germany ($150 shortfall to be allocated):

Customer	Allocation share	Allocation Share of actual shortfall	Actual shortfall allocated
C	$150/$300	50% of $150	$75
D	150/$300	50% of $150	75
Total			150.00

Claims After Reductions

Customer	Claim in U.S. dollars after allocated non-sovereign shortfall	Allocation of shortfall due to sovereign action from Germany	Claim after all reductions
A	$90		$90
B	45		45
C	135	$75	60
D	630	75	555

Customer	Claim in U.S. dollars after allocated non-sovereign shortfall	Allocation of shortfall due to sovereign action from Germany	Claim after all reductions
Total	900.00	150.00	750.00

Example 6. Shortfall in funds held outside the U.S., or in a currency other than U.S. dollars, due to sovereign action, shortfall in funds held outside the U.S., or in a currency other than U.S. dollars, not due to sovereign action, and a shortfall in funds held in the U.S.

Customer	Claim	Location(s) customer has consented to having funds held
A	$50	U.S.
B	€50	U.K.
C	$20	U.S.
C	€50	Germany
D	$100.	U.S.
D	£300	U.K.
D	€100	U.K., Germany, or Japan
E	$80	U.S.
E	¥10,000	Japan

Location	Actual asset balance
U.S.	$200
U.K.	£200
U.K.	€100
Germany	€50
Japan	¥10,000

Conversion Rates: £1 = $1; ¥1=$0.01, £1=$1.5.

Reduction in Claims for General Shortfall

Convert each customer s claim in each currency to U.S. Dollars:

Customer	Claim	Conversion rate	Claim in US$
A	$50	1.0	$50
B	€50	1.0	50
C	$20	1.0	20
C	€50	1.0	50
D	$100.	1.0	100
D	€300	1.5	450
D	£100	1.0	100
E	$80	1.0	80
E	¥10,000	0.01	100
Total			1000.00

Determine assets available for distribution to customers, converting to U.S. dollars:

Location	Assets	Conversion rate	Assets in U.S. dollars	Shortfall due to sovereign action percentage	Actual shortfall due to sovereign action	Amount actually available
U.S.	$200	1.0	$200			$200
U.K.	£200	1.5	300			300
U.K.	€100	1.0	100			100
Germany	€50	1.0	50	100%	$50	0
Japan	¥10,000	0.01	100	50%	50	50
Total			750		100.00	650.00

Determine the percentage of shortfall that is not attributable to sovereign action:
Shortfall Percentage = (1–750/1000) = (1–75%) = 25%.
Reduce each customer's claim by the shortfall percentage:

Customer	Claim in U.S.$	Allocated shortfall (non-sovereign)	Claim in U.S. dollars after allocated shortfall
A	$50	$12.50	$37.50

Customer	Claim in U.S.$	Allocated shortfall (non-sovereign)	Claim in U.S. dollars after allocated shortfall
B	50	12.50	37.50
C	70	17.50	52.50
D	650	162.50	487.50
E	180	45.00	135.00
Total	1000.00	250.00	750.00

Reduction in Claims for Shortfall Due to Sovereign Action

Due to sovereign action, none of the money in Germany and only ½ of the funds in Japan are available.

Customer	Presumed location of funds			
	U.S.	U.K.	Germany	Japan
A	$50			
B		$50		
C	20		$50	
D	100	450	50	$50
E	80			100
Total	250.00	500.00	100.00	150.00

Calculation of the allocation of the shortfall due to sovereign action—Germany ($50 shortfall to be allocated):

Customer allocation	Allocation share	Allocation share of actual shortfall	Actual shortfall allocated
C	$50/$100	50% of $50	$25
D	50/100	50% of 50	25
Total			50

Japan ($50 shortfall to be allocated):

Customer	Allocation share	Allocation share of actual shortfall	Actual shortfall allocated
D	$50/$150	33.3% of $50	$16.67
E	100/150	66.6% of 50	33.33
Total			50.00

Claims After Reductions

Customer	Claim in US dollars after allocated non-sovereign shortfall	Allocation of shortfall due to soverign action from Germany	Allocation of shortfall due to sovereign action from Japan	Claim after all reductions
A	$37.50			37.50
B	37.50			37.50
C	52.50	$25		27.50
D	487.50	25	16.67	445.83
E	135.00		33.33	101.67
Total	750.00	50.00	50.00	650.00

Example 7. Shortfall in funds held outside the U.S., or in a currency other than U.S. dollars, due to sovereign action, where the FCM kept more funds than permitted in such location or currency.

Customer	Claim	Location(s) customer has consented to having funds held
A	$50	U.S.
B	50	U.S.
B	€50	U.K.
C	€50	Germany.
D	100.	U.S.
D	€100	U.K. or Germany.
E	50	U.S.
E	€50	U.K.

Location	Actual asset balance
U.S.	$250
U.K.	€50
Germany	€200

Conversion Rates: €1 = $1.

Reduction in Claims for General Shortfall

Convert each customer's claim in each currency to U.S. Dollars:

Customer	Claim	Conversion rate	Claim in US$
A	$50	1.0	$50
B	50	1.0	50
B	€50	1.0	50
C	€50	1.0	50
D	€100.	1.0	100
D	€100	1.0	100
E	50	1.0	50
E	€50	1.0	50
Total			500.00

Determine assets available for distribution to customers, converting to U.S. dollars:

Location	Assets	Conversion rate	Assets in U.S. dollars	Shortfall due to sovereign action percentage	Actual shortfall due to sovereign action	Amount actually available
U.S.	$250	1.0	$250			$250
U.K.	€50	1.0	50			50
Germany	€200	1.0	200	100%	200	0
Total			500.00		200	300.00

Determine the percentage of shortfall that is not attributable to sovereign
Shortfall Percentage = (1–500/500) = (1–100%) = 0%.

Reduce each customer's claim by the shortfall percentage:

Customer	Claim in US$	Allocated shortfall (non-sovereign)	Claim in U.S. dollars after allocated shortfall
A	$50	$0	$50.00
B	100	0	100.00
C	50	0	50.00
D	200	0	200.00
E	100	0	100.00
Total	500.00	0.00	500.00

Reduction in Claims for Shortfall Due to Sovereign Action

Due to sovereign action, none of the money in Germany is available.

Customer	Presumed location of funds		
	U.S.	U.K.	Germany
A	$50		
B	50	50	
C			50
D	100		100
E	50	50	
Total	250.00	100.00	150.00

Calculation of the allocation of the shortfall due to sovereign action—Germany ($200 shortfall to be allocated):

Customer	Allocation share	Allocation share of actual shortfall	Actual shortfall allocated
C	$50/$150	33.3% of $200	$66.67
D	$100/$150	66.7% of $200	$133.33
Total			$200.000

This would result in the claims of customers C and D being reduced below zero.

Accordingly, the claims of customer C and D will only be reduced to zero, or $50 for C and $100 for D. This results in a Total Excess Shortfall of $50.

Actual shortfall	Allocation of shortfall for customer C	Allocation of shortfall for customer D	Total excess shortfall
$200	$50	$100	$50

This shortfall will be divided among the remaining customers who have authorized funds to be held outside the U.S. or in a currency other than U.S. dollars.

Customer	Total claims of customers permitting funds to be held outside the U.S.	Portion of claim required to be int the U.S.	Allocation share (column B–C/column B Total—all customer claims in U.S.)	Allocation share of actual total excess shortfall	Actual total excess shortfall allocated
B	$100	$50	$50/$200	25% of $50	$12.50
C	50	0	[1]		0
D	200	100	$100/200	50% of $50	25
E	100	50	50/100	25% of $50	12.50
Total	450.00				50.00

[1] Claim already reduced to $0.

Claims After Reductions

Customer	Claim in U.S. dollars after allocated non-sovereign shortfall	Allocation of shortfall due to sovereign action Germany	Allocation of total excess shortfall	Claim after all reductions
A	$50			$50.00
B	100		12.50	87.50
C	50	50		0
D	200	100	25	75.00
E	100		12.50	87.50
Total	500.00	150.00	50.00	300.00

Issued in Washington, DC on January 29, 2003, by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 03–2508 Filed 2–3–03; 8:45 am]

BILLING CODE 6351–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 529

Certain Other Dosage Form New Animal Drugs; Formalin Solution

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; technical amendment.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Natchez Animal Supply Co. The supplemental NADA provides for use of formalin in a water bath for the control of certain external parasites on finfish and shrimp and for the control of certain fungi on finfish eggs. Minor corrections to the regulations are also being made.

DATES: This rule is effective February 4, 2003.

FOR FURTHER INFORMATION CONTACT: Joan C. Gotthardt, Center for Veterinary Medicine (HFV–131), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–7571, e-mail: *jgotthar@cvm.fda.gov.*

SUPPLEMENTARY INFORMATION: Natchez Animal Supply Co., 201 John R. Junkin Dr., Natchez, MS 39120, filed a supplement to NADA 137–687 that provides for use of formalin in a water bath for the control of certain external parasites on finfish and shrimp and for the control of certain fungi on finfish eggs. The supplemental NADA is approved as of November 25, 2002, and the regulations are amended in 21 CFR 529.1030 to reflect the approval. The basis of approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of 21 CFR part

20 and 21 CFR 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.33(a)(1) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

This rule does not meet the definition of "rule" in 5 U.S.C. 804(3)(A) because it is a rule of "particular applicability." Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects in 21 CFR Part 529

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 529 is amended as follows:

PART 529—CERTAIN OTHER DOSAGE FORM NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 529 continues to read as follows:

Authority: 21 U.S.C. 360b.

§ 529.1030 [Amended]

2. Section 529.1030 *Formalin solution* is amended as follows:

(a) In the section heading and in paragraph (a) by removing the word "solution" following the word "Formalin";

(b) By revising the introductory text of paragraph (b);

(c) In paragraph (b)(1) by removing "No. 050378" and by adding in its place "Nos. 049968 and 050378";

(d) In paragraph (b)(2) by removing "Nos. 049968 and" and by adding in its place "No.";

(e) In paragraph (d)(2)(i), in the table, in the heading to the second column, by adding "daily" after "1 hour"; and

(f) In paragraph (d)(2)(iv), in the first column in the table by removing "1F" each time it occurs and by adding in its place ""F".

The revision is to read as follows:

§ 529.1030 Formalin.

* * * * *

(b) *Sponsors.* See sponsors in § 510.600(c) of this chapter for uses as in paragraph (d) of this section.

* * * * *

Dated: January 21, 2003.

Steven D. Vaughn,

Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 03–2601 Filed 2–3–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF JUSTICE

Bureau of Prisons

28 CFR Part 522

[BOP–1110–I]

RIN 1120–AB08

Admission and Orientation Program: Removal From Rules

AGENCY: Bureau of Prisons, Justice.

ACTION: Interim final rule.

SUMMARY: In this document, the Bureau of Prisons (Bureau) removes its rules on the Admission and Orientation Program from the CFR. We intend this amendment to streamline our regulations by removing internal agency management procedures that need not be stated in regulation.

DATES: This rule is effective February 4, 2003. Please send comments on this rulemaking by April 7, 2003.

ADDRESSES: Rules Unit, Office of General Counsel, Bureau of Prisons, HOLC Room 754, 320 First Street, NW., Washington, DC 20534.

FOR FURTHER INFORMATION CONTACT: Sarah Qureshi, Office of General Counsel, Bureau of Prisons, phone (202) 307–2105.

SUPPLEMENTARY INFORMATION: In this document, the Bureau of Prisons (Bureau) removes its rules on the Admission and Orientation Program by reserving 28 CFR subpart E. Although we are removing these rules from the CFR, they will remain in Bureau policy statements on the Admission and Orientation Program.

Why Are We Making This Change?

We intend this change to streamline our regulations by removing internal agency management procedures that need not be stated in regulation. In doing this, we will be able to adjust our Admission and Orientation program, through policy instead of rules, to allow us to provide more current information more quickly to new inmates. Bureau policy is a more appropriate vehicle through which to provide instruction and guidance to staff.

Admission and Orientation Program Rules

The three rules in 28 CFR subpart E, §§ 522.40, 522.41, and 522.43 contained descriptions of the Bureau's Admission and Orientation Program. Although we are removing these rules from the CFR, we retain the language of these rules in our Admission and Orientation policy, which is an instructional document for Bureau employees and institutional staff.

Section 522.40 required institutions and staff to "offer each newly committed inmate an orientation to the institution" which includes information on the inmate's rights, responsibilities, obligations, and the institution's programs and disciplinary system.

Section 522.41 delineated Warden and staff responsibility for conducting the Admission and Orientation (A&O) program. This section required staff involved in the A&O program to develop an outline of information to present during A&O and develop written orientation materials. This section also instructed staff to monitor inmates with significant emotional stress during A&O, so that the institution could provide them with appropriate assistance.

Section 522.42 contained guidelines for institutions' A&O programs, including such details as location, activities, and length of the program.

All of these rules consist of our instruction and guidance to Bureau staff. These rules relate solely to internal agency management and practice, and do not impose obligations or confer any benefits upon our regulated entities (the inmates) or the public.

Administrative Procedure Act

Because procedures relating to agency management are exempt from the rulemaking provisions of the Administrative Procedure Act (5 U.S.C. 553), we are publishing this change as an interim final rule.

The Administrative Procedure Act (5 U.S.C. 553) allows exceptions to notice-and-comment rulemaking for "(A) interpretive rules, general statements of policy, or rules of agency organization, procedure, or practice; or (B) when the agency for good cause finds * * * that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest."

This rulemaking is exempt from normal notice-and-comment procedures because these rules are general statements of policy and relate only to internal agency procedure and practice.

The procedures that were in these regulations will continue to exist, unchanged, in our policy statement on the Admission and Orientation Program. Any requirement imposed on our staff in these rules will remain a Bureau-wide requirement in our policy.

Because this change maintains current Bureau policy and practice while eliminating rule text from the CFR, we find that normal notice-and-comment rulemaking is unnecessary. We are, however, allowing the public to comment on this rule change by publishing it as an interim final rule.

Where To Send Comments

You can send written comments on this rule to the Rules Unit, Office of General Counsel, Bureau of Prisons, 320 First Street, NW., HOLC Room 754, Washington, DC 20534.

We will consider comments received during the comment period before taking final action. We will try to consider comments received after the end of the comment period. In light of comments received, we may change the rule.

We do not plan to have oral hearings on this rule. All the comments received remain on file for public inspection at the above address.

Executive Order 12866

This rule falls within a category of actions that the Office of Management and Budget (OMB) has determined not to constitute "significant regulatory actions" under section 3(f) of Executive Order 12866 and, accordingly, it was not reviewed by OMB.

Executive Order 13132

This regulation will not have substantial direct effects on the States, on the relationship between the national government and the States, or on distribution of power and responsibilities among the various levels of government. Therefore, under Executive Order 13132, we determine that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Regulatory Flexibility Act

The Director of the Bureau of Prisons, under the Regulatory Flexibility Act (5 U.S.C. 605(b)), reviewed this regulation and by approving it certifies that it will not have a significant economic impact upon a substantial number of small entities for the following reasons: This rule pertains to the correctional management of offenders committed to the custody of the Attorney General or the Director of the Bureau of Prisons, and its economic impact is limited to the Bureau's appropriated funds.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by § 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Plain Language Instructions

We want to make Bureau documents easier to read and understand. If you can suggest how to improve the clarity of these regulations, call or write Sarah Qureshi at the telephone number or address listed above.

List of Subjects in 28 CFR Part 522

Prisoners.

Kathleen Hawk Sawyer,
Director, Bureau of Prisons.

Under the rulemaking authority vested in the Attorney General in 5 U.S.C. 552(a) and delegated to the Director, Bureau of Prisons, we are amending 28 CFR part 522, chapter V, subchapter B, as follows:

SUBCHAPTER B—INMATE ADMISSION, CLASSIFICATION, AND TRANSFER

PART 522—ADMISSION TO INSTITUTION

1. Revise the authority citation for 28 CFR part 522 to read as follows:

Authority: 5 U.S.C. 301; 18 U.S.C. 3621, 3622, 3624, 4001, 4042, 4081, 4082 (Repealed in part as to offenses committed on or after November 1, 1987), 4161–4166 (Repealed in part as to offenses committed on or after November 1, 1987), 5006–5024 (Repealed October 12, 1984, as to offenses committed after that date), 5039; 28 U.S.C. 509, 510.

Subpart E—[Reserved]

2. Remove §§ 522.40 through 522.42 and reserve Subpart E.

[FR Doc. 03–2517 Filed 2–3–03; 8:45 am]
BILLING CODE 4410–25–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

46 CFR Part 356

[Docket No. MARAD–2002–11984]

RIN 2133–AB46

Requirements to Document U.S. Flag Fishing Industry Vessels of 100 Feet or Greater in Registered Length and To Hold a Preferred Mortgage on Such Vessels

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Final rule.

SUMMARY: The Maritime Administration ("MARAD, we, our, or us") is amending its regulations that implement the U.S. citizenship requirements and mortgage requirements set forth in the American Fisheries Act of 1998 ("AFA") for vessels of 100 feet or greater in registered length for which a fishery endorsement to the vessel's documentation is sought.

Section 2202 of the Supplemental Appropriations Act, 2001, amended the AFA on July 24, 2001. This rule implements the new statutory requirements for the owners of fishing vessels, fish processing vessels and fish tender vessels of 100 feet or greater in registered length (collectively referred to as "fishing industry vessels"), amends the requirements to hold a preferred mortgage on such fishing industry vessels, and makes other minor amendments to the regulations to address issues that arose during the early stages of MARAD's implementation of the new AFA regulations.

DATES: *Effective Date:* March 6, 2003. *Compliance Date:* Mortgagees and mortgage trustees will not be required to comply with the new requirements of this final rule until April 1, 2003.

ADDRESSES: The complete file for this rule is available for inspection with the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001, between 10 a.m. and 5 p.m., e.t., Monday through Friday, except federal holidays. You may also view the comments submitted to the

docket via the Internet at *http://dms.dot.gov* by using the search function and entering the docket number 11984.

FOR FURTHER INFORMATION CONTACT: John T. Marquez, Jr. of the Office of Chief Counsel at (202) 366–5320. You may send mail to John T. Marquez, Jr., Maritime Administration, Office of Chief Counsel, Room 7228, MAR–222, 400 Seventh St., SW., Washington, DC 20590–0001, or you may send e-mail to *John.Marquez@marad.dot.gov*.

SUPPLEMENTARY INFORMATION:

Background

The AFA imposed new citizenship requirements for both the owners of fishing industry vessels of 100 feet or greater in registered length as well as entities that hold a preferred mortgage on such vessels. The AFA raised the U.S. citizen ownership and control standard for U.S. flag fishing industry vessels operating in U.S. waters from a controlling interest standard (greater than 50%) to a 75 percent interest requirement as set forth in section 2(c) of the Shipping Act, 1916, as amended ("1916 Act"). In addition to the requirements of section 2(c) of the 1916 Act, the AFA specifically delineated certain criteria for purposes of determining whether "control" of the owner of a fishing industry vessel is vested in citizens of the United States.

Section 202(b) of the AFA also imposed new requirements to hold a preferred mortgage on fishing industry vessels of 100 feet or greater by amending the definition of "preferred mortgage" at 46 U.S.C. 31322(a)(4) with respect to such vessels. Section 31322(a)(4) of title 46, United States Code, as amended by the AFA on October 21, 1998, defined a preferred mortgage with respect to a fishing industry vessel of 100 feet or greater as one that is held by a mortgagee that: (1) Is a person that meets the 75% U.S. citizen ownership and control standard for fishing industry vessels under 46 U.S.C. 12102(c); (2) is a State or Federally chartered financial institution that satisfies the controlling interest criteria of section 2(b) of the Shipping Act, 1916, 46 U.S.C. 802(b); or (c) is a person that complies with the mortgage trustee provisions of 46 U.S.C. 12102(c)(4).

As the October 1, 2001, effective date of the AFA approached, it became apparent that many traditional lenders in the fishing industry were having difficulty either complying with or demonstrating that they complied with the new standards to hold a preferred mortgage. Therefore, Congress amended the requirements to broaden the category of lenders that will qualify to hold a preferred mortgage on fishing industry vessels of 100 feet or greater and to limit the extent to which a demonstration of U.S. citizenship would be required.

Section 2202(b) of the Supplemental Appropriations Act, 2001, Pub. L. 107–20, amended the definition of "preferred mortgage" at 46 U.S.C. 31322(a)(4) with respect to fishing industry vessels of 100 feet or greater. As amended, 46 U.S.C. 31322(a)(4), defines a preferred mortgage with respect to such vessels as a mortgage that has as its mortgagee:

(1) A person eligible to own a vessel with a fishery endorsement under 46 U.S.C. 12102(c);

(2) A State or Federally chartered financial institution that is insured by the Federal Deposit Insurance Corporation;

(3) A farm credit lender established under title 12, chapter 23, of the United States Code (12 U.S.C. 2001 *et seq.*);

(4) A commercial fishing and agriculture bank established pursuant to State law;

(5) A commercial lender organized under the laws of the United States or of a State and eligible to own a vessel under 46 U.S.C. 12102(a) of this title; or

(6) A mortgage trustee that complies with the requirements of 46 U.S.C. 31322(f).

In addition, the amendments to the AFA defined the terms "commercial lender" and "lending syndicate" and relocated the mortgage trustee provisions from 46 U.S.C. 12102(c)(4) to 46 U.S.C. 31322(f).

In order to ensure that MARAD would have time to implement new regulations related to the eligibility of lenders to hold a preferred mortgage on fishing industry vessels, Congress delayed the effective date of 46 U.S.C. 31322(a), as amended by section 202(b) of the AFA and section 2202 of the Supplemental Appropriations Act, 2001, until April 1, 2003. MARAD was also directed not to consider the citizenship status of a lender, in its capacity as a lender, when determining whether a vessel's owner complies with the requirements of 46 U.S.C. 12102(c) prior to April 1, 2003. Accordingly, we suspended our review of loan transactions in determining whether a vessel owner qualifies as a U.S. citizen until April 1, 2003, when the new requirements become effective.

Finally, section 2202(e) of the Supplemental Appropriations Act, 2001, included changes to section 213(g) of the AFA. As originally enacted, section 213(g) of the AFA stated that if the requirements of 46 U.S.C. 12102(c) or 46 U.S.C. 31322(a), as amended by the AFA, were determined to be inconsistent with the provisions of an international investment agreement to which the United States was a party with respect to the owner or mortgagee of a fishing industry vessel on October 1, 2001, the requirements of the AFA would not apply to the owner or mortgagee of that specific vessel to the extent of the inconsistency. Congress amended section 213(g) of the AFA to change the date upon which an ownership or mortgage interest was required to be in place in order for an owner or mortgagee to claim the protection of an international investment agreement. The date was changed from October 1, 2001, to July 24, 2001.

We issued a notice of proposed rulemaking on April 16, 2002, 67 FR 18547, that proposed amendments to our regulations at 46 CFR part 356 and requested comments from the public. Seven commenters responded to the NPRM.

Comments on the Proposed Rule

Subpart A—General Provisions

Section 356.3 Definitions

Section 356.3 has been amended by adding several new terms to the definitions, amending several existing definitions and renumbering the definitions accordingly. The three new terms that have been added to the definitions are "commercial lender," "fishing industry vessel," and "lender syndicate." The term "fishing industry vessel" is a new term that is being added to the regulation to refer to a fishing vessel, fish tender vessel or fish processing vessel as defined in § 356.3. In the NPRM, we proposed to replace the phrase *"fishing vessel, fish processing vessel, or fish tender vessel"* with the term "fishing industry vessel" in sections and paragraphs that we were amending. One commenter suggested that we make this change throughout part 356 in order to avoid confusion. We agree with the commenter that use of the term "fishing industry vessel" throughout part 356 would be preferred; therefore, we have amended part 356 to replace the phrases "fishing vessel, fish processing vessel, or fish tender vessel" and "fishing vessel, fish tender vessel, or fish processing vessel" in each place that either phrase appears with the term "fishing industry vessel".

The proposed definitions of "commercial lender" and "lender syndicate" mirrored the definitions provided by Congress in sections 2202(g) and (h), respectively, of the Supplemental Appropriations Act, 2001. Although the proposed definition

of lender syndicate tracked the language of the statute, two commenters urged that we provide some amplification in the definition to indicate what powers may be exercised under a trust arrangement without the concurrence of more than one beneficiary. The definition of lender syndicate states that it must be made up of four or more entities with a beneficial interest, held through an agent, under a trust arrangement, established pursuant to 46 U.S.C. 31322(f), "no one of which may exercise powers thereunder without the concurrence of at least one other unaffiliated beneficiary." The commenters suggested that the definition be amended to clarify that an agent can exercise routine administrative functions associated with the day-to-day administration of the loan without the consent of multiple beneficiaries, and that consent of more than one beneficiary should only be required to exercise substantive powers such as decisions on how to proceed in the event of default or bankruptcy, release of collateral or guarantors, and amendment or removal of loan covenants.

We agree with the commenter that the purpose of an agent is to handle routine administrative matters for the lender syndicate associated with the extension of credit. Therefore, we have amended the regulatory definition of lender syndicate to clarify that "other than the exercise by the agent of powers related to routine administrative matters, none of the entities in a lender syndicate may exercise powers related to the lender syndicate's extension of credit without the concurrence of at lease one other unaffiliated beneficiary." In addition, we have stated in the definition that the routine administrative powers include those matters concerning the day-to-day management of the extension of credit such as monitoring compliance with loan covenants, collateral inspections and similar matters; however, more substantive powers such as amending loan and mortgage documents, releasing guarantors or collateral, or administering the loan in the event of a default are not considered routine.

The definition of lender syndicate does not define who may qualify as a beneficiary; however, entities that plan to form a lender syndicate are advised that if they are engaged in the fishing industry and have contractual relationships with the vessel owner, such as to purchase, process or market the vessel's catch, they may not use the formation of a lender syndicate as a means of avoiding MARAD review of the mortgage trustee transaction and the loan and mortgage covenants. Therefore, if the beneficiaries of a lender syndicate have such contractual relationships with the vessel owner, we will review the mortgage trustee arrangement, including the loan and mortgage covenants, to determine whether it constitutes an impermissible transfer of control.

Paragraph (3) under the definition of "controlling interest" has been deleted because a State or Federally chartered financial institution no longer has to qualify as a U.S. citizen under the controlling interest standard in order to hold a preferred mortgage on a fishing industry vessel.

The definition of the term "mortgage trustee" has been amended by removing the requirement in paragraph (2) that a mortgage trustee qualify as a U.S. citizen and replacing that paragraph with language requiring the mortgage trustee to be eligible to hold a preferred mortgage pursuant to 46 CFR 356.19(a)(1)–(4). This change expands the definition of mortgage trustee to encompass the broader range of parties that are now eligible to serve as a mortgage trustee.

The term "preferred mortgage" is amended to track the definition of 46 U.S.C. 31322(a)(4), as amended. Part of the definition states that a preferred mortgage is one where the mortgagee is a mortgage trustee that qualifies under 46 U.S.C. 31322(f) and 46 CFR 356.27–31. One commenter suggested that this definition could cause uncertainty with respect to the use of mortgage trustees because a violation of the regulations by the mortgage trustee could endanger the preferred status of the mortgage. The commenter suggested that we amend the definition to eliminate reference to the statute and regulations and simply state that a preferred mortgage is one where the mortgagee is an approved mortgage trustee. We intend for the preferred status of the mortgage to be at risk if a mortgage trustee fails to be in compliance with the regulations; however, we have addressed the concerns of the commenter by clarifying in § 356.27 that a mortgage trustee will have an opportunity to cure a defect in its approved status and by including a provision for MARAD notification of beneficiaries where there is a problem with the mortgage trustee's approved status. The preferred status of the mortgage will not be at risk until 30 days after notification of the beneficiary that there is a problem with the mortgage trustee's approval.

The second sentence in the definition of "non-citizen" has been deleted because there is no longer any special citizenship status for a State or Federally chartered financial institution that satisfies the controlling interest requirements of section 2(b) of the Shipping Act, 1916. Finally, the definition of "trust" is amended to conform the definition of a mortgage trust to the new requirements for mortgage trustees.

Section 356.5 Affidavit of U.S. Citizenship

Paragraph 356.5(d) provides the form of the affidavit of U.S. citizenship to be used by a corporation. The form is amended to add a new paragraph 6 which indicates that the vessel owner has submitted the documents required by 46 CFR 356.13 of MARAD's regulations. The existing paragraph 6 is renumbered as paragraph 7. The inclusion of this new paragraph in the affidavit of U.S. citizenship was deemed to be necessary to help ensure that vessel owners have reviewed the requirements and have submitted the required documentation.

Section 356.7 Methods of Establishing Ownership by United States Citizens

Paragraph 356.7(c)(1)(ii) has been amended by removing the language that applies the fair inference method to a State or Federally chartered financial institution that is acting as a preferred mortgagee. The amendments to the AFA deleted this standard for qualification as a preferred mortgagee, so it was not longer needed in the regulation.

Section 356.11 Impermissible Control by a Non-Citizen

The NPRM proposed an amendment to paragraph 356.11(a)(7) to clarify that we would not consider impermissible control to exist if the sale of a vessel is caused through the exercise of loan or mortgage covenants that are exercised either (i) by an entity that has not been approved as a U.S. citizen, but which is otherwise eligible to hold a preferred mortgage pursuant to 46 CFR 356.19(a)(2) through (5) or (ii) by an approved mortgage trustee that is exercising the loan or mortgage covenants for a non-citizen or an entity that does not qualify under § 356.19(a)(2) through (5), provided that the Citizenship Approval Officer has approved the use of such loan or mortgage covenants. Several commenters noted that this amendment implies that review of loan documents would be required in a mortgage trustee arrangement where the beneficiary is a commercial lender or lender syndicate, contrary to the intent of the statutory amendments to 46 U.S.C. 31322(f). We did not intend to require mortgage and loan documents related to loans from lender syndicates and commercial

lenders to be subject to MARAD review where a mortgage trustee is being utilized; therefore, we have specifically excluded such review in other parts of the regulations. We have also amended paragraph 356.11(a)(7) to clarify that loan and mortgage documents will not be subject to review where a mortgage trustee is holding a preferred mortgage for the benefit of a commercial lender or lender syndicate.

Section 356.13 Information Required To Be Submitted by Vessel Owners

The NPRM proposed an amendment to § 356.13(a) by clarifying in paragraph (5) that financing documents will only be required from entities that have not been approved to hold a preferred mortgage on fishing industry vessels or that have not received general approval for their loan documents pursuant to § 356.21. Several commenters noted that this section implies that review of loan documents may be required from commercial lenders or lender syndicates that are using an approved mortgage trustee. Again, we did not intend to include a review of financing documents where a mortgage trustee is holding a preferred mortgage for the benefit of a commercial lender or lender syndicate. Accordingly, we have added language to paragraph 356.13(a)(5) to specify that financing documents are not required to be submitted if the transaction is specifically exempted under paragraph 356.19(d), which specifically sets forth those preferred mortgage transactions for which no review of the loan or mortgage documents is required.

A new element has also been added to the list of material that vessel owners are required to submit with their affidavit of U.S. citizenship. For vessels that exceed 165 feet in registered length, 750 gross registered tons (as measured under 46 U.S.C. chapter 145) or 1900 gross registered tons (as measured under the International Tonnage Convention, 46 U.S.C. chapter 143) or that have engines capable of producing more than 3,000 horsepower, the vessel owner is required to provide a statement indicating whether the vessel meets certain requirements set forth in § 356.47 in order to be eligible for documentation with a fishery endorsement. While this information can be obtained by researching Coast Guard files on specific vessels, it was determined that we would not be able to research the information in a timely manner for all of the vessels that are subject to these new restrictions.

Section 356.15 Filing of Affidavit of U.S. Citizenship

Section 356.15 has been amended by deleting paragraphs 356.15(a), (b), and (c) that dealt with filing requirements prior to October 1, 2001. It is no longer necessary to maintain these requirements in the regulations now that the October 1, 2001, date has passed. The remaining paragraphs have been reordered in order to present the requirements for filing an affidavit of U.S. citizenship in a logical order.

A more significant amendment to § 356.15 is the addition of a new paragraph (d) that allows vessel owners or prospective vessel owners to request a letter ruling to determine whether a proposed ownership structure will meet the requirements of the regulations and allow the owner to document a vessel with a fishery endorsement. In the preamble to the final regulations (65 FR 44860, 44865–66 (July 19, 2000)), we stated that we would issue letter rulings for vessel owners prior to June 1, 2001, but that we did not plan to issue letter rulings after October 1, 2001, because letter rulings necessarily involve hypothetical transactions and can absorb an inordinate amount of time and resources. While we continue to be concerned about the burden on limited resources that may be presented by requests for letter rulings, we recognize that the ability to obtain a letter ruling before a transaction is finalized is extremely useful to vessel owners and other parties that are required to qualify as U.S. citizens. Therefore, we have amended the regulations to indicate that we will continue to issue letter rulings after October 1, 2001, to vessel owners and other entities that are required to qualify as U.S. citizens under these regulations. If the process of issuing letter rulings becomes too burdensome, it may be necessary to reconsider this position in the future.

Section 356.17 Annual Requirements for Vessel Owners

The NPRM included a proposed amendment to § 356.17 that would delete the requirement for owners of multiple fishing industry vessels to file a certification prior to the renewal date for the certificate of documentation for each vessel. Therefore, a vessel owner would be allowed to file one consolidated affidavit of U.S. citizenship on an annual basis for all of its fishing industry vessels. One commenter supported this amendment, but suggested that we broaden the language to clarify that if vessel owners have the same ultimate common ownership they may file a consolidated affidavit. The commenter noted that such an amendment would better address the common practice in the maritime industry where companies set up separate subsidiaries to own individual vessels. We agree with the commenter and have amended paragraph 356.17(b) to clarify that one affidavit may be filed for multiple vessels that have the same owner or where the owners ultimately have the same common ownership.

Section 356.19 Requirements To Hold a Preferred Mortgage

Section 2202(b) of the Supplemental Appropriations Act, 2001, amended 46 U.S.C. 31322(a)(4) by deleting from the definition of a preferred mortgage for fishing industry vessels of 100 feet or greater a mortgage that is held by a mortgagee that is a State or Federally chartered financial institution that meets the controlling interest requirement of the 1916 Act. Section 2202(b) of the Supplemental Appropriations Act also expanded the definition of preferred mortgage for fishing industry vessels by increasing the universe of entities that can act as the mortgagee. Accordingly, § 356.19 has been amended by deleting the requirements to hold a preferred mortgage in §§ 356.19(a)(2) through (d) and by adding new language to incorporate the new entities that will qualify to hold a preferred mortgage. The list of entities that will now qualify to hold a preferred mortgage includes: (1) Citizens of the United States who are eligible under 46 U.S.C. 12102(c) to own a vessel with a fishery endorsement; (2) State or Federally chartered financial institutions that are insured by the Federal Deposit Insurance Corporation; (3) farm credit lenders established under title 12, chapter 23, of the United States Code (12 U.S.C. 2001 *et seq.*); (4) commercial fishing and agriculture banks established pursuant to State law; (5) commercial lenders organized under the laws of the United States or of a State and eligible to own a vessel under 46 U.S.C. 12102(a); and (6) mortgage trustees that comply with the requirements of 46 U.S.C. 31322(f) and 46 CFR 356.27–356.31.

A new paragraph (b) has been added to the section to describe the information that the various entities must submit to the Citizenship Approval Officer so that a determination can be made as to whether the entities are qualified to hold a preferred mortgage on a fishing industry vessel. Several commenters suggested that the proposed paragraph (b)(5) be amended to clarify that there are different requirements for a commercial lender to

hold a preferred mortgage depending on whether it is holding the mortgage directly as a mortgagee or through a mortgage trustee. We agree with the commenters and have amended paragraph (b) to clarify that a commercial lender must demonstrate that it is in the business of financing and that it has a loan portfolio in excess of $100 million, not more than 50 percent of which is to borrowers in the commercial fishing industry. This requirement applies whether the commercial lender is holding the preferred mortgage directly or is using a mortgage trustee to hold the preferred mortgage for its benefit. If a commercial lender is holding a preferred mortgage directly, it must also file an affidavit of U.S. citizenship to demonstrate that it qualifies as a documentation citizen pursuant to 46 U.S.C. 12102(a).

We have also amended proposed paragraph 356.19(b) to address the required timing of submissions for a mortgagee. A mortgagee, including a mortgage trustee, that is holding a preferred mortgage on a fishing industry vessel prior to April 1, 2003, will be required to demonstrate that it meets the requirements of § 356.19(a) before the next renewal date after April 1, 2003, for the vessel's certificate of documentation. However, if a mortgagee wishes to confirm that it is in compliance with the requirements to hold a preferred mortgage before the certificate of documentation renewal date for the vessel, the mortgagee may request a letter ruling from the Citizenship Approval Officer pursuant to paragraph 356.19(e) at any time after the publication of this regulation. A mortgagee that wishes to enter into a new preferred mortgage after April 1, 2003, will be required to demonstrate that it meets the requirements of § 356.19(a) before it will be eligible to obtain a preferred mortgage on a fishing industry vessel.

Finally, several commenters noted that more guidance is needed regarding the form in which information must be submitted in order for a mortgagee to demonstrate that it is qualified to hold a preferred mortgage directly and for a lender syndicate or commercial lender to demonstrate that it qualifies as such an entity when it is using a mortgage trustee to hold a preferred mortgage for its benefit. We have set forth the requirements in the regulations that each entity must meet, and we have amended paragraph 356.19(b) to state that we will provide sample formats on MARAD's website the can be used for the various entities to submit the required information.

One commenter argued that the requirements of proposed § 356.19(b) are inconsistent with the Ship Mortgage Act because the regulation requires MARAD approval before a mortgage will qualify as a preferred mortgage. The commenter stated that the Ship Mortgage Act, 46 U.S.C. 31322(a)(4) does not require a mortgagee to demonstrate its eligibility to hold a preferred mortgage; therefore, the requirements of § 356.19(b) are inconsistent with the statute. Further, the commenter stated that the mortgagee has the most to lose by the loss of the preferred status of its mortgage. Consequently, the commenter believes that self regulation by mortgagees would be sufficient to ensure compliance with the statute.

We do not agree with the commenter. Requiring mortgagees to demonstrate that they meet the requirements of the statute is not inconsistent with statutory requirements. The certification that mortgagees would be required to submit under § 356.19 is not complicated and should not present a substantive or administrative burden that would hinder the ability of vessel owners to obtain financing or that would restrict the ability of a lender to obtain adequate security for its loans. Therefore, we are finalizing our proposed amendments to § 356.19 to require mortgagees to submit certain information to the Citizenship Approval Officer before they may obtain a new preferred mortgage or in order to maintain an existing preferred mortgage on a fishing industry vessel.

A new paragraph (c) has also been added to the regulations to require the certification from paragraph (b) to be submitted for each entity on an annual basis for as long as the entity holds a preferred mortgage on a fishing industry vessel. The annual certification must be filed at least 30 days prior to the annual anniversary date of the original approval. In order to address concerns of some commenters regarding the loss of the preferred status of a mortgage if the mortgagee fails to file the annual certification, we have amended paragraph (c) to require the Citizenship Approval Officer to notify a mortgagee if it fails to submit the required annual certification. The preferred status of the mortgage will be maintained for 30 days following the mailing date of the delinquency notice.

A new paragraph (d) was also proposed in the NPRM to make clear that an entity, other than a mortgage trustee, that is eligible to hold a preferred mortgage on a fishing industry vessel may exercise rights and covenants under loan or mortgage agreements and is not required to obtain approval from MARAD. Several commenters noted that this paragraph was too narrow because it did not state that a mortgage trustee may exercise loan or mortgage covenants without obtaining prior MARAD approval when it is holding a preferred mortgage for the benefit of an entity that is otherwise qualified to hold a preferred mortgage or for the benefit of a commercial lender or lender syndicate. We agree with the commenter and have revised paragraph (d) to specifically set forth which entities may exercise rights under loan or mortgage covenants without obtaining MARAD approval.

Several commenters suggested that lenders should be allowed to request a letter ruling in the same way that vessel owners may request a letter ruling from the Citizenship Approval Officer under § 356.15. We agree with the commenter that letter rulings should be available to lenders and mortgage trustees and have added a new paragraph 356.19(e) that will allow entities to request a letter ruling from the Citizenship Approval Officer to determine whether a mortgage or mortgage trust arrangement will comply with the requirements of 46 CFR part 356. If a letter ruling is issued, the date of the letter ruling may be deemed to be the approval date of the transaction and to be the required date for the annual approval.

Section 356.21 General Approval of Non-Citizen Lender's Standard Loan or Mortgage Agreements

Section 356.21 allowed non-citizen lenders that were using a mortgage trustee to get MARAD approval of their standard loan or mortgage covenants. The amendments to the AFA expanded the class of lenders that may hold a preferred mortgage directly to allow various entities that do not qualify as U.S. citizens to hold a preferred mortgage directly. If the beneficiary under a mortgage trust arrangement is allowed to hold a preferred mortgage directly, or qualifies as a commercial lender or lender syndicate, no review of the loan or mortgage covenants is required, notwithstanding the fact that the beneficiary may not qualify as a U.S. citizen. Accordingly, the term "non-citizen lender" is replaced with the term "lender" throughout the section.

Several commenters noted that paragraph 356.21(a) could be interpreted to require review of standard loan or mortgage agreements involving a mortgage trustee and a beneficiary that is either a commercial lender or lender syndicate. We did not intend to imply that MARAD review of such loan or mortgage documents would be mandated; therefore, we have amended

paragraph 356.21(a) to clarify that the approval of standard loan and mortgage covenants is available for entities that are not eligible to hold a preferred mortgage directly and that do not otherwise qualify as a commercial lender or lender syndicate.

Finally, we amended paragraph (d) by deleting the penalty imposed on the owner of a fishing industry vessel if a lender uses loan or mortgage covenants that were not approved by the Citizenship Approval Officer. Instead, we have added language to indicate that the Citizenship Approval Officer may determine that the transaction results in an impermissible transfer of control to a non-citizen and that therefore, the arrangement does not satisfy the requirements to qualify as a preferred mortgage. Furthermore, the lender will lose its general approval and will be required to obtain approval of its loan and mortgage covenants on a case-by-case basis in the future.

Section 356.23 Restrictive Loan Covenants Approved for Use by Lenders

Section 356.23 has been amended by deleting the term "non-citizen lender" in the title and the body of the section and substituting the term "lenders" in its place. As noted above, the amendments to the AFA have created a class of lenders that may or may not qualify as U.S. citizens, but who are nevertheless eligible to hold a preferred mortgage directly and to exercise restrictive loan and mortgage covenants without requiring approval from MARAD. Accordingly, the term "lender" has been substituted for "non-citizen lender" throughout the section because the approval of these restrictive loan covenants is not required for all "non-citizen lenders" but rather only for those who do not meet the requirements to hold a preferred mortgage directly.

Several commenters noted that as proposed in the NPRM, the amendments to paragraph 356.23(a) could be interpreted to require MARAD review of loan or mortgage covenants where a commercial lender or lender syndicate is using a mortgage trustee to hold the preferred mortgage for its benefit. We have therefore amended paragraph 356.23(a) to clarify that this section is intended to apply to lenders that are not otherwise exempt from MARAD review of their loan or mortgage covenants pursuant to paragraph 356.19(d).

Section 356.25 Operation of Fishing Industry Vessels by Mortgagees

Paragraph 356.25(c) provides that a mortgagee that is not eligible to own a fishing industry vessel may operate the vessel for a non-commercial purpose to the extent necessary for the immediate safety of the vessel or for repairs, drydocking or berthing changes; provided, that the vessel is operated under the command of a citizen of the United States and for no longer than 15 calendar days. One commenter suggested that there is no need for an iron-clad 15 day limit and that the regulations should be amended to allow a non-citizen mortgage trustee to operate a vessel for longer than 15 days if the Citizenship Approval Officer grants approval. There is no need to amend paragraph 356.25(c) because paragraph 356.25(b) already provides leeway for the Citizenship Approval Officer to grant written authorization for operation of a vessel beyond what is specifically allowed in paragraph 356.25(c). Paragraph 356.25(b) states that, except as provided in paragraph 356.25(c), the vessel may not be operated for any purpose without the prior written approval of the Citizenship Approval Officer. Therefore, if a mortgagee that is not eligible to own a fishing industry vessel wishes to operate such a vessel for the purposes enumerated in 356.25(c) for a period in excess of 15 days, it may do so with written authorization of the Citizenship Approval Officer.

Section 356.27 Mortgage Trustee Requirements

The mortgage trustee requirements were amended to delete references to a requirement that the mortgage trustee demonstrate that it qualifies as a U.S. citizen because mortgage trustees are no longer required to qualify as a U.S. citizen if they otherwise meet one of the requirements of 46 U.S.C. 31322(a)(4)(A)–(E). Where references to proving citizenship were included in § 356.27, we have substituted a requirement that the mortgage trustee supply the appropriate information to demonstrate that it complies with the requirements of 46 CFR 356.19(b)(1)–(5) to be eligible to hold a preferred mortgage on fishing industry vessels.

A new paragraph (4) was also added to the trustee application which requires the mortgage trustee to agree to furnish the Citizenship Approval Officer with copies of the trust agreement as well as any other issuance, assignment or transfer of an interest related to the transaction if the beneficiary under the trust arrangement is not a commercial lender, a lender syndicate or an entity eligible to hold a preferred mortgage under 46 CFR 356.19(a)(1)–(5). This submission is necessary so that the Citizenship Approval Officer can make a determination that the trust arrangement does not result in an impermissible transfer of control.

Several commenters noted that some entities may be reluctant to qualify as a mortgage trustee because of the risk of liability that is imposed by paragraph (d) of the mortgage trustee application, which states that a mortgage trustee "shall not assume any fiduciary duty in favor of non-citizen beneficiaries that is in conflict with any restrictions as requirements of the regulation." The commenters suggested that paragraph (d) be deleted. However, paragraph 356.27(e) provides for review by the Citizenship Approval Officer of the form of trust agreement to be used, and the Citizenship Approval Officer will review and approve the loan and mortgage documents where the beneficiary is not a commercial lender, a lender syndicate or an entity otherwise qualified to hold a preferred mortgage. This review should limit the liability exposure of a mortgage trustee; therefore, we have decided to retain paragraph (d) in the mortgage trustee application.

One commenter suggested that the requirement in paragraphs 356.27(c)(3) and (g) to submit a copy of the mortgage trustee's articles of incorporation and bylaws should be deleted as there is no need to examine these documents unless the mortgage trustee is seeking to qualify as a U.S. citizen. The requirement for a mortgage trustee that is seeking to qualify as a U.S. citizen to submit its articles of incorporation and bylaws is addressed by reference to the need to comply with § 356.19; therefore, we have deleted paragraph 356.27(c)(3) and paragraphs (a)(2) and (a)(3)(ii) of the mortgage trustee application in § 356.27(g).

Several commenters remarked that the beneficiaries under a trust agreement have the most to lose if a mortgage trustee fails to continue to qualify as a mortgage trustee. Consequently, the beneficiaries should be notified of the mortgage trustee's failure to qualify. We agree with the commenters and have added a new paragraph (a)(3)(iv) to the mortgage trustee application at § 356.27(g). The new paragraph requires mortgage trustees to provide the identity and address of all beneficiaries for which it is acting as mortgage trustee, so that the Citizenship Approval Officer can notify the beneficiaries if the mortgage trustee fails to qualify under the regulations.

Finally, one commenter suggested that the proposed requirements of § 356.27 serve no apparent purpose and that the requirements of the statute should be self executing. The commenter stated that there should be

no requirement for MARAD approval of mortgage trustees except in cases where the mortgage trustee is holding a preferred mortgage for the benefit of a lender that is not qualified to hold a preferred mortgage directly or that does not qualify as a commercial lender or lender syndicate. We disagree with the commenter that the statutory requirements for an entity to qualify as a mortgage trustee must be self executing. The AFA placed restrictions on the entities that can hold a preferred mortgage on fishing industry vessels in order to insure that non-citizen entities cannot use loan or mortgage covenants to control fishing industry vessels that they are otherwise not eligible to own. While the amendments to the Ship Mortgage Act were intended to broaden the universe of entities that could hold a preferred mortgage directly and that could act as a mortgage trustee, the statute does not restrict MARAD from determining whether or not an entity is eligible to qualify as a mortgage trustee. In fact, the statute sets forth specific criteria that must be met and states that a mortgage trustee must also satisfy any other requirements that the Secretary of Transportation may require. Therefore, we do not agree with the commenter, and we will continue to require mortgage trustees to demonstrate that they meet certain requirements.

Section 356.31 Maintenance of Mortgage Trustee Approval

Section 356.31 was amended by deleting the requirement in paragraph (a)(1) that a mortgage trustee provide an affidavit of U.S. citizenship on an annual basis. A mortgage trustee is no longer required to qualify as a U.S. citizen, provided that it is otherwise qualified to hold a preferred mortgage on a fishing industry vessel. Accordingly, mortgage trustees will be required to submit the appropriate documentation required under § 356.19(b)(1)–(5) to demonstrate that they are qualified to hold a preferred mortgage on fishing industry vessels.

One commenter suggested that the requirement in paragraph 356.31(a)(2) to submit a copy of the mortgage trustee's articles of incorporation and bylaws on an annual basis should also be deleted as there is no need to examine these documents unless the mortgage trustee is seeking to qualify as a U.S. citizen. We agree with the commenter since the requirement for U.S. citizens to submit any changes to these documents is covered under the § 356.19; therefore, paragraph 356.31(a)(2) has been deleted and the section has been renumbered accordingly.

Paragraph 356.31(b) has also been amended by deleting any reference to the requirement for a mortgage trustee to make an annual filing within 30 days of its annual stockholders meeting. Several commenters noted that the correlation of the filing date to the annual stockholders meeting is a carryover from when the mortgage trustee was required to file an affidavit of U.S. citizenship. Accordingly, the annual filing date will be tied to the date of the mortgage trustee approval by the Citizenship Approval Officer.

Several commenters stated that paragraph 356.31(c) should be amended to provide a mortgage trustee with an opportunity to cure a deficiency in its approval within 30 days and to require the Citizenship Approval Officer to notify the beneficiaries when a mortgage trustee fails to comply with the regulations and is no longer qualified to act as a mortgage trustee. The commenters also suggested that the preferred status of the mortgage remain intact until 30 days after the beneficiaries are notified, rather than 30 days after publication of the disapproval of the mortgage trustee in the **Federal Register**.

We agree with the commenter that the beneficiaries should be notified because the beneficiaries under a mortgage trust arrangement are the entities that would suffer the greatest harm from the loss of the preferred status of a mortgage held by a mortgage trustee. Therefore, we have added a new paragraph 356.31(a)(4) that requires a mortgage trustee to provide the identity and address of all beneficiaries for which it is acting as mortgage trustee. We have also amended paragraph 356.31(c) to require the Citizenship Approval Officer to notify the beneficiaries if the mortgage trustee fails to qualify under the regulations. Such notice will be provided by mailing a copy of the **Federal Register** notice through standard U.S. mail to the beneficiary at the address provided by the mortgage trustee. During the 30 day period following publication of the disapproval notice in the **Federal Register**, the mortgage trustee must either transfer its responsibilities to an approved mortgage trustee or cure the defect in its approval or the mortgage will no longer be qualified as a preferred mortgage. While we have amended paragraph 356.31(c) to require the Citizenship Approval Officer to notify the beneficiary of a mortgage trustee's failure to qualify, we will continue to use the date that the disapproval notice is published in the **Federal Register** as the date from which the 30 day period for the mortgage trustee to cure the defect or transfer its responsibilities will begin to run in order to minimize confusion over multiple compliance dates and to provide an absolute date with which to work.

Section 356.37 Operation of a Fishing Industry Vessel by a Mortgage Trustee

Section 356.37 provides that a mortgage trustee may only operate a fishing industry vessel where such operation is necessary for the immediate safety of the vessel. One commenter suggested that section 356.37 should be amended to provide mortgage trustees with the same flexibility to operate a fishing industry vessel as that which is granted to preferred mortgagees in paragraph 356.25(c). We agree with the commenter that these sections could be more closely aligned; therefore, we have amended section 356.37 to clarify that a mortgage trustee may operate a fishing industry vessel where non-commercial operation is necessary for the immediate safety of the vessel, as well as for repairs, drydocking or berthing changes; provided, that the vessel is operated under the command of a citizen of the United States for a period of no more than 15 calendar days.

Section 356.45 Advance of Funds

Section 356.45(a)(2)(iv) does not currently allow non-citizens to advance funds to a vessel owner and to obtain a security interest in property of the vessel owner in order to secure the debt. Because non-citizens will now be allowed to utilize a mortgage trustee to hold a preferred mortgage on a vessel for the benefit of the non-citizen lender, we propose to amend paragraph 356.45(a)(2)(iv) by inserting language at the end that would allow a non-citizen to advance funds to a vessel owner and to have a security interest in the vessel or other collateral, provided that the non-citizen uses a qualified mortgage trustee to hold the mortgage and debt instrument for the benefit of the non-citizen.

Section 356.47 Special Requirements for Large Vessels

Section 356.47 implements special requirements for certain large vessels. Vessels that exceed 165 feet in registered length, 750 gross registered tons or that have engines capable of producing in excess of 3000 horsepower are ineligible for documentation with a fishery endorsement pursuant to 46 U.S.C. 12102(c)(5), as redesignated by section 2202(a)(2) of the Supplemental Appropriations Act, 2001. A vessel that meets any of the above criteria can be exempted from the prohibition on obtaining a fishery endorsement if it

meets all of the following requirements: (1) A certificate of documentation was issued for the vessel and endorsed with a fishery endorsement that was effective on September 25, 1997; (2) the vessel is not placed under foreign registry after October 21, 1998; and (3) in the event of the invalidation of the fishery endorsement after October 21, 1998, application is made for a new fishery endorsement within 15 business days of the invalidation.

There are a number of events that can render a vessel's documentation and fishery endorsement immediately invalid under Coast Guard regulations. If one of these events occurs, such as the death of one of the owners in a tenancy by the entirety ownership arrangement, and the remaining owners do not apply for a new fishery endorsement within 15 business days, the vessel could potentially suffer a permanent loss of its eligibility to be documented with a fishery endorsement. Because of the harsh result that could occur if one of these events occurred and the vessel owner did not address the issue within the prescribed time period, MARAD's regulations state that the 15 day period will not begin to run until the vessel owner receives written notification from MARAD or the Coast Guard identifying the reason for such invalidation. In other words, the vessel's fishery endorsement will not be deemed invalid for purposes of complying with paragraph 356.47(b)(3) until notice is given. This requirement ensures that a vessel owner is aware of the consequences of failing to apply for a new fishery endorsement within the specified period of time in the event of an invalidation.

We believe that the sale in bankruptcy of a fishing industry vessel that meets the criteria of paragraph 356.47(a) can also lead to an unintended and harsh result if the vessel is purchased by a mortgagee that is not qualified to own a vessel with a fishery endorsement. A mortgagee is permitted under 46 U.S.C. 31329 to purchase a vessel on which it holds a preferred mortgage, even though the mortgagee may not be qualified to own a documented vessel. The Coast Guard's regulations at 46 CFR 67.161 provide that such a sale to a mortgagee is not deemed to be a foreign sale or to invalidate the vessel's documentation for purposes of complying with certain specified statutory provisions; however, the endorsement on the vessel is not deemed to remain valid. Therefore, as a practical matter, a mortgagee that is not qualified to own a fishing industry vessel is restricted from purchasing such a vessel on which it holds a mortgage and subsequently holding the vessel for resale to a qualified buyer, as permitted by 46 U.S.C. 31329(b), because the vessel would lose its eligibility to be documented with a fishery endorsement if an application for a new fishery endorsement is not submitted within 15 business days by a qualified owner. Consequently, a mortgagee would be deprived of using a statutorily permitted means of protecting the value of its collateral by purchasing the vessel and subsequently selling the vessel to a qualified buyer. Furthermore, this could adversely impact the ability of vessel owners to obtain financing from entities that are eligible to hold a preferred mortgage on fishing industry vessels, but which are not eligible to own fishing industry vessels. Accordingly, we have amended paragraph 356.47(b)(3) to clarify that a fishing industry vessel's fishery endorsement will not be deemed invalid for purposes of complying with this paragraph, if the vessel is purchased pursuant to 46 U.S.C. 31329 by a mortgagee that is not eligible to own a vessel with a fishery endorsement, provided that the mortgagee is eligible to hold a preferred mortgage on such vessel at the time of the purchase.

Following the publication of the NPRM, the AFA was amended by section 1103 of Public Law 107–206 by striking the phrase "of more than 750 gross registered tons" in each place it appears, and inserting in lieu thereof, "of more than 750 gross registered tons (as measured under chapter 145 of title 46) or 1,900 gross registered tons (as measured under chapter 143 of that title)". This change was deemed to be necessary because newly constructed fishing industry vessels would not be eligible for documentation with a fishery endorsement if the vessel was over approximately 60 feet in registered length. Newly constructed fishing industry vessels are required to be measured pursuant to 46 U.S.C. chapter 143 for purposes of complying with the AFA. The tonnage measurement of a vessel measured under chapter 145 is much higher than that which would be obtained for a vessel of comparable length that was measured under chapter 143; therefore, newly constructed vessels that are much smaller than 165 feet would not be eligible for documentation with a fishery endorsement prior to the amendment to the AFA. The amendment allows vessels of up to 165 feet to be eligible for documentation if the vessel meets the corresponding tonnage threshold under the tonnage measurement system that applies to the particular vessel. We have amended § 356.47 to incorporate this technical change.

We are also amending § 356.47 by adding a new paragraph (e) that will require the owners of vessels that are greater than 165 feet in registered length, 750 gross tons (as measured under 46 U.S.C. chapter 145) or 1,900 gross registered tons (as measured under the International Tonnage Convention, 46 U.S.C. chapter 143), or that have engines capable of producing in excess of 3,000 shaft horsepower to submit with their annual affidavit of U.S. citizenship a certification that the vessel is eligible to be documented with a fishery endorsement because it complies with § 356.47(b), (c) or (d) of these regulations. While this information can be obtained by researching Coast Guard files on specific vessels, we have determined that we would not be able to research the information in a timely manner for all of the vessels that are subject to these new restrictions. Therefore, the vessel owner will be required to certify that the vessel is eligible for documentation pursuant to one of the exceptions in § 356.47.

Section 356.51 Exemptions for Specific Vessels

Paragraph (a) states that certain vessels will be exempt from the requirements of 46 U.S.C. 12102(c) "until such time as 50% of the interest owned and controlled in the vessel changes." We added the phrase "after October 1, 2001," after "such time" in paragraph (a) in order to clarify that the ownership structure on October 1, 2001, is the baseline from which we will measure any change in ownership of a vessel that is exempt from the requirements of 46 U.S.C. 12102(c) pursuant to this section.

In addition, there were several technical amendments to § 356.51 to correct typographical errors in the regulation. The official number for the vessel EXCELLENCE was corrected in paragraphs 356.51(a)(1) and (c). Paragraph 356.51(e) was deleted and a reworded version of the paragraph was inserted as a new paragraph (d).

The current paragraph (d) relates to the exemption from the ownership and control requirements for fishing industry vessels engaged in fisheries in the exclusive economic zone under the authority of the Western Pacific Fishery Management Council and for purse seine vessels that are engaged in tuna fishing in the Pacific Ocean outside of the exclusive economic zone of the United States or pursuant to the South Pacific Regional Fisheries Treaty. Such vessels are exempted, pursuant to 46 U.S.C. 12102(c)(4), as redesignated by

section 2202 of the Supplemental Appropriations Act, 2001, from complying with the new ownership and control requirements of the AFA. Our current regulations exempt the vessels from the requirement to meet the higher ownership and control standard of the AFA; however, the regulations require the owners of such vessels to file an affidavit of U.S. citizenship with MARAD to demonstrate that the vessel complies with the ownership and control standard that existed prior to the passage of the AFA. Because many of these vessels and the vessel owners are located in remote areas, the requirement to file an affidavit of U.S. citizenship with MARAD has proven to be a difficult requirement for many vessel owners to satisfy. After further consideration, we have determined that the intent of the statutory exemption was to allow the owners of such vessels to forgo the requirement to file an affidavit of U.S. citizenship with MARAD. Accordingly, we have deleted the requirement to file an affidavit of U.S. citizenship with MARAD, and we are adding a new paragraph (f) that will require the vessel owner to notify both MARAD's Citizenship Approval Officer and the Coast Guard's National Vessel Documentation Center that it is claiming the exemption available to the vessel under 46 CFR 356.51(e). Vessel owners will then be required to follow the Coast Guard's regulatory procedures that were in effect prior to the passage of the AFA to document the vessel with a fishery endorsement. Furthermore, vessels covered by 46 CFR 356.51(e) are not subject to the restrictions of § 356.47 during the time that the vessel is engaged in the fisheries as outlined in paragraph 356.51(e).

Only one party provided comments on the amendments to § 356.51. The commenter supported the proposed changes and noted that the changes would relieve an administrative burden that has complicated efforts for the owners of such vessels to raise capital for their operations.

Section 356.53 Conflicts with International Agreements

Section 213(g) of the AFA states that if the requirements of 46 U.S.C. 12102(c) or 46 U.S.C. 31322(a), as amended by the AFA, are determined to be inconsistent with the provisions of an international investment agreement to which the United States was a party with respect to the owner or mortgagee of a fishing industry vessel on October 1, 2001, the requirements of the AFA will not apply to the owner or mortgagee of that specific vessel to the extent of the inconsistency. Section 2202(e) of the Supplemental Appropriations Act, 2001, amends section 213(g) of the AFA to change the date upon which an ownership or mortgage interest must be in place in order for an owner or mortgagee to claim the protection of an international investment agreement. The date was changed from October 1, 2001, to July 24, 2001. Accordingly, we have amended § 356.53 by substituting the July 24, 2001 date for "October 1, 2001" and "September 30, 2001" where those dates appear in the section.

We have also amended paragraph (d) to give the Chief Counsel the discretion as to whether a petition under this section should be published in the **Federal Register**. The decision as to whether a petition should be published in the **Federal Register** will hinge on whether the petition contains new and unique arguments on which the Chief Counsel believes that the public should be given an opportunity to comment. Because of the expense and time involved in publishing these petitions in the **Federal Register** and the fact that no comments were received in response to any of the petitions that were published in the last year, we determined that it would be best to provide discretion to the Chief Counsel to determine whether a petition warrants publication and public comment.

Paragraph (b)(5), which addresses the timing of submissions prior to October 1, 2001, has also been removed. This section is no longer necessary now that October 1, 2001, has passed.

Finally, section 213(g) of the AFA provides that a vessel owner is not subject to the requirements of the AFA with respect to a particular vessel to the extent that those requirements are found to be inconsistent with an international agreement relating to foreign investment to which the United States is a party. However, section 213(g) also states that the requirements of the AFA shall apply to the owner if any ownership interest in the vessel owner is transferred to or otherwise acquired by a foreign individual or entity after the effective date of the AFA. Section 2002(e) of the Supplemental Appropriations Act, 2001, further amended section 213(g) to require that the provisions of 46 U.S.C. 12102(c) and 46 U.S.C. 31322, as amended by the AFA, shall apply to a vessel owner or mortgagee that is subject to an exemption under section 213(g) if the percentage of foreign ownership in the vessel is increased after the effective date of this subsection.

Section 356.53(g) sets forth the requirement that the provisions of the AFA will apply to all owners and mortgagees that acquire an interest after the effective date of the AFA in a fishing industry vessel that is subject to a section 213(g) exemption. Paragraph 356.53(g)(2) states that the requirements of the AFA will apply to all owners and mortgagees in a fishing industry vessel that is subject to a section 213(g) exemption if any ownership interest in that vessel owner is transferred to or otherwise acquired by a non-citizen after the effective date of the AFA. The existing paragraph 356.53(g)(2) provides that an ownership interest in a vessel would be considered to be transferred under this subsection when an interest in the primary vessel owner is transferred. However, we stated that we would not consider a transfer in the primary vessel owner to occur where: (1) The transfer is of disparately held shares of a publicly traded company that equal less than 5 percent of the shares in any class of stock; (2) the transfer is between subsidiary companies under one parent; or (3) the transfer is pursuant to a divorce or death.

We proposed several changes to paragraph 356.53(g) in the NPRM in order to incorporate the new statutory amendments that dictate that the requirements of the AFA should be applied to a vessel owner or mortgagee if the percentage of foreign ownership in the vessel is increased after the effective date of section 213(g), as amended. We also proposed an amendment to tighten our interpretation of what constitutes a change in ownership interest. Specifically, we proposed to add a new paragraph (g)(3) to clarify that an ownership interest is deemed to be transferred if: (1) There is a transfer of direct ownership interest in the primary vessel owning entity or the parent of the primary vessel owning entity where the primary vessel owning entity is a wholly owned subsidiary; or (2) there is a transfer of ownership at any tier that results in a transfer of five percent or more of the ownership interest in the primary entity. A new paragraph (g)(4) was also proposed and the provisions of paragraph (g)(2) relating to transfers of disparately held shares in a publicly traded vessel owning entity and transfers made pursuant to divorce or death were moved there.

One party submitted comments on the proposed changes to § 356.53. The commenter objected to our proposed amendments in paragraph 356.53(g)(3)(ii) to further restrict our interpretation of what constitutes a transfer of ownership. The commenter stated that transfers of ownership should be limited to transfers of the

primary vessel owning entity and that we should not and could not restrict transfers of ownership in entities that are farther up the ownership chain. The commenter objected to our proposal for the following reasons: (1) That the plain language of section 213(g) provides that the treaty exemption will be lost only if there is a transfer of interest in the primary vessel owning entity; (2) that section 213(g) provides that the treaty exemption will be lost if there is a transfer of "any" interest in the vessel owner; (3) that the proposed rule would adopt an insupportable interpretation of the words "foreign individual or entity;" (4) that the 2001 amendment to section 213(g) does not provide support for proposed paragraph 356.53(g)(3)(ii); and (5) that MARAD proposes to take inconsistent positions in evaluating the percentage of "foreign ownership" under 46 U.S.C. 12102(c) and AFA section 213(g).

We disagree with the commenter regarding our authority to regulate transfers of ownership beyond the first tier of vessel ownership. The increase in U.S. citizen ownership and control of fishing industry vessels that is mandated by the AFA was intended to increase the U.S. citizen ownership and control of fishing industry vessels and to address a loophole that was created in 1987 by the Commercial Fishing Industry Vessel Anti Reflagging Act of 1987 ("Anti-Reflagging Act"), Pub. L. 100–239. The Anti-Reflagging Act raised the U.S. citizen ownership and control requirement for fishing industry vessels from a "documentation citizen" standard to a "controlling interest" standard. However, section 7(b) of the Anti-Reflagging Act provided a savings clause for the owners of vessels that were documented with a fishery endorsement prior to the passage of the Anti-Reflagging Act. The savings clause allowed the vessel owner to continue to document a particular vessel with a fishery endorsement if the vessel had been documented with a fishery endorsement prior to the passage of the Act. This grandfather provision was subsequently determined in *Southeast Shipyard Ass'n* v. *United States,* 979 F.2d 1541 (D.C. Cir. 1992), to run with the vessel rather than the vessel owner. Therefore, the increased U.S. ownership and control in these vessels could not be assured as U.S. entities continued to buy into the grandfathered vessels over time because a grandfathered vessel could always be sold back to an entity that could be wholly owned by non-citizens, provided that the entity qualified as a documentation citizen.

Section 204 of the AFA repealed the ownership savings clause of the Anti-Reflagging Act and required vessel owners to comply with the new 75 percent U.S. citizen ownership and control standard imposed by the AFA. Vessel owners and mortgagees are exempted from complying with the new requirements of the AFA if the requirements are inconsistent with the provisions of an international investment agreement to which the United States is a party. However, the exemption provided for in section 213(g) is limited in several ways. First, the exemption is limited to the ownership or mortgage interest of a particular owner or mortgagee with respect to a particular vessel, and it applies only to the extent of the inconsistency with the international agreement. Secondly, the exemption will be lost if any ownership interest in the vessel owner is transferred to or otherwise acquired by a foreign individual or entity or if the percentage of foreign ownership in the vessel is increased after July 24, 2001, the effective date of section 213(g), as amended.

The purpose of the exemption under section 213(g) is twofold. First, the exemption for specific vessels ensures that the AFA cannot be deemed unenforceable in its entirety because it is in conflict with U.S. obligations under an international investment agreement. Secondly, it provides an exemption for the owners and mortgagees of vessels that do not meet the new ownership and control requirements, provided that when any interest is sold or transferred, it is sold or transferred to U.S. citizens so that, over time the U.S. citizen ownership and control of the vessel comes into compliance with the requirements of the AFA.

The commenter states that the plain language of section 213(g) provides that the treaty exemption will be lost only if there is a transfer of an interest in the primary vessel owning entity. Furthermore, the commenter asserts that section 213(g) does not provide statutory authority for MARAD to regulate transfers of ownership interest above the first tier of vessel ownership. We disagree with the commenter.

Section 213(g) refers to the "vessel owner" and in no way specifically addresses the primary vessel owner or limits our authority to govern transfers of ownership at various levels of the ownership structure. The term "owner" as used in the context of the AFA implicitly applies to the complete ownership structure and therefore covers the owners at each tier. The fact that section 213(g) does not explicitly refer to the owner "at each tier and in the aggregate" as is done in 46 U.S.C. 12102(c) does not mean that we are prohibited from looking beyond the first tier owner in evaluating the ownership structure of a vessel subject to a section 213(g) exemption. Acceptance of the commenter's interpretation that the term "owner" applies only to the first tier vessel owner would allow a vessel owner to easily circumvent the restrictions in section 213(g) on transfers of interest to foreign individuals or entities by simply having a tiered ownership structure and selling an interest in the vessel ownership structure above the first tier. For example, a vessel that is subject to a 213(g) exemption and that was grandfathered under the Anti-Reflagging Act could be owned by a U.S. corporation that is wholly owned by a foreign entity, provided that the U.S. corporation qualifies as a documentation citizen. Under the commenter's interpretation, all or part of the interest in the non-citizen parent of the documentation citizen could be freely transferred to another non-citizen entity because the non-citizen parent is not the primary vessel owner. The restrictions on transfers of sale in section 213(g) were designed to ensure that any transfers of ownership in a vessel subject to a section 213(g) exemption would be to U.S. citizens until such time as the entire ownership structure came into compliance with the new ownership and control requirements of the AFA. The commenter's interpretation would completely frustrate this intended result.

The commenter also argues that the proposed regulation would adopt an insupportable interpretation of the words "foreign individual or entity." Section 213(g) provides that the exemption will be lost if there is a transfer of an ownership interest in the vessel owner "to a foreign individual or entity." The commenter suggests that our proposed regulations essentially substitute the term non-citizen for the terms "foreign individual or entity" and that this cannot be supported by the statute. The commenter states that a corporation or partnership formed under the laws of the United States does not become a "foreign * * * entity" because more than 25 percent of the ownership of the entity is owned by persons who do not meet the AFA test of citizenship. Therefore, the commenter suggests that we are incorrect in determining that a transfer of an ownership interest in a vessel to an entity that does not qualify as a U.S. citizen under the AFA should be treated

in the same manner as a transfer to a foreign entity.

We disagree with the commenter on this interpretation of what is covered by the term "foreign individual or entity" as used in section 213(g). As noted above, section 213(g) clearly contemplates that transfers of ownership in a vessel subject to a section 213(g) exemption must be to U.S. citizens that comply with the AFA citizenship standard until such time as the entire vessel ownership structure complies with the new ownership and control standard of the AFA. Following the commenter's reading of the statute could lead to results that would actually increase the foreign participation in the ownership structure. For example, an entity within the ownership structure that has 100 percent U.S. citizen ownership and control would be permitted to sell its interest under the commenter's interpretation to a documentation citizen that is wholly owned by a foreign corporation. Although the documentation citizen is a U.S. company with U.S. management, it is a foreign-owned entity and should be treated accordingly for purposes of complying with section 213(g). The commenter's suggested interpretation is inconsistent with the objective of section 213(g) to ratchet up the U.S. citizen participation in the ownership structure when a vessel owner transfers its ownership interests.

The commenter also suggests that proposed paragraph 356.53(g)(3)(ii) should not become part of the final rule because it is inconsistent with the standard that is applied to determining the aggregate U.S. citizen ownership when applying 46 U.S.C. 12102(c). The commenter notes that when we determine the percentage of non-citizen ownership in applying 46 U.S.C. 12102(c), we determine that any entity that does not qualify as a U.S. citizen under the AFA is a non-citizen. We do not look into the percentage of non-citizen ownership within that entity in order to determine the aggregate non-citizen participation. For example, an entity that is owned 74 percent by U.S. citizens and 26 percent by non-citizens would be deemed to be a non-citizen and would be treated the same as an entity that was owned 100% by a non-citizen for purposes of determining the aggregate U.S. citizen participation. In other words, no credit would be given for the U.S. ownership in an entity that does not qualify independently as a U.S. citizen. However, when applying section 213(g), we do not treat all non-citizen entities in the ownership chain equally because we continue to monitor the transfer of ownership in those non-citizen entities. The commenter argues that we should treat non-citizens the same way in determining the amount of non-citizen ownership under section 213(g) and that once an entity is determined to be a non-citizen we should not be concerned with transfers of ownership in that entity.

We do not agree with the commenter that there is a requirement to apply the same standard when determining the level of non-citizen participation under section 213(g) as when we determine the level of aggregate non-citizen participation under 46 U.S.C. 12102(c). As noted above, the purpose of the restrictions on transfer of ownership interest in section 213(g) is to ensure that U.S. participation in the ownership structure is increased at any time that a non-citizen participant decides to exit the ownership structure and transfer its interest. Consequently, we believe that it is appropriate to apply a different standard under section 213(g) with respect to transfers of ownership interest.

Finally, the commenter states that the standard that we have applied in paragraph 356.53(g)(3)(ii) regarding transfers of indirect ownership is too liberal and exceeds the scope of our authority. The commenter notes that we have stated in proposed paragraph 356.53(g)(3)(ii) that we will deem a transfer of ownership interest to occur where there is a transfer of indirect ownership at any tier that results in a transfer of five percent or more of the interest in the primary vessel owning entity. The commenter points out that section 213(g) provides that the exemption will be lost if "any ownership interest in [the vessel] owner" is transferred to or otherwise acquired by a foreign individual or entity." Therefore, the commenter contends that if a transfer of an indirect ownership interest is deemed to be a constructive transfer of an ownership interest in the vessel owner, MARAD's proposal to permit transfers of less than five percent is flatly inconsistent with the statute. The only instance in which the commenter believes that the use of a five percent threshold is supportable is where a publicly traded entity holds an interest in the vessel, as currently provided for in the regulations.

We attempted to build some flexibility into the regulations regarding transfers of indirect interests, so that every transfer of an interest in the ownership chain, regardless of how small the interest is or how far removed it is from the primary vessel owner, would not potentially result in a loss of the exemption. However, we agree with the commenter's assertion that section 213(g) is intended to cover all transfers of ownership interest to another party. Therefore, we are amending our proposed language in paragraphs 356.53(g)(3)(i) and (ii) to address the commenter's objection and to clarify that an ownership interest is deemed to be transferred if: (i) There is a transfer of direct ownership interest in the primary vessel owning entity; or (ii) there is a transfer of indirect ownership interest at any tier. We will, however, continue to implement our policy with regard to transfers of disparately held shares in publicly traded companies as outlined in paragraph 356.53(g)(4).

Rulemaking Analyses and Notices

Executive Order 12866 and DOT Regulatory Policies and Procedures

We have reviewed this rule under Executive Order 12866 and have determined that this is not a significant regulatory action. Additionally, this rule is not likely to result in an annual effect on the economy of $100 million or more. The purpose of this rule is: To implement amendments to the requirements to hold a preferred mortgage on fishing industry vessels of 100 feet or greater in registered length; to implement statutory changes to section 213(g) of the AFA, which allows vessel owners and mortgagees to petition MARAD for a determination that the AFA does not apply to them because it is inconsistent with an international investment agreement; and to make other technical changes and revisions to MARAD's regulations regarding the ownership and control of fishing industry vessels by U.S. citizens.

This rule is also not significant under the regulatory policies and procedures of the Department of Transportation (44 FR 11034, February 26, 1979). The costs and benefits associated with this rulemaking are so minimal that no further analysis is necessary. Because the economic impact should be minimal, further regulatory evaluation is not necessary.

Federalism

We analyzed this rulemaking in accordance with the principles and criteria contained in E.O. 13132 ("Federalism") and have determined that it does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement. The regulations have no substantial effects on the States, or on the current Federal-State relationship, or on the current distribution of power and responsibilities among the various local officials. Therefore, consultation with

State and local officials was not necessary.

Regulatory Flexibility Act

This rulemaking will not have a significant economic impact on a substantial number of small entities. The amendments to the regulations relating to vessel owners are of a technical nature that will not result in a significant economic impact. Furthermore, this rule will make it easier for owners of fishing industry vessels to obtain financing for their vessels by expanding the universe of lenders that are eligible to hold a preferred mortgage on a fishing industry vessel as security for a loan. Therefore, we certify that this rule will not have a significant economic impact on a substantial number of small business entities.

Environmental Impact Statement

We have analyzed this rule for purposes of compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and have concluded that under the categorical exclusions provision in section 4.05 of Maritime Administrative Order ("MAO") 600–1, "Procedures for Considering Environmental Impacts," 50 FR 11606 (March 22, 1985), the preparation of an Environmental Assessment, and an Environmental Impact Statement, or a Finding of No Significant Impact for this rulemaking is not required. This rulemaking involves administrative and procedural regulations which clearly have no environmental impact.

Paperwork Reduction Act

The Office of Management and Budget ("OMB") previously reviewed the information collection requirements under 46 CFR part 356 and assigned OMB control number 2133–0530. This rule establishes a new requirement for the collection of information. OMB has been requested to review and approve the information collection requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501, *et seq.*). We request that commenters address in their comments whether the information collection in this proposal is necessary for the agency to properly perform its functions and will have practical utility, the accuracy of the burden estimates, ways to minimize this burden, and ways to enhance quality, utility, and clarity of the information to be collected. Comments should be sent not later than 30 days following publication of this notice in the **Federal Register**. Comments should refer to the docket number that appears at the top of this document. Written comments may be submitted to the Docket Clerk, U.S. DOT Dockets, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590. Comments may also be submitted by electronic means via the Internet at *http://dmses.dot.gov/gov/submit.* All comments received will be available for examination at the above referenced address between 10 a.m. and 5 p.m. e.d.t. (or e.s.t.), Monday through Friday, except Federal holidays. An electronic version of this document is available on the World Wide Web at *http://dms.dot.gov.*

In accordance with the Paperwork Reduction Act, this notice announces MARAD's intentions to request an amendment to its approval for the subject information collection to allow processing of applications to determine the eligibility of owners of vessels of 100 feet or greater in registered length to obtain a fishery endorsement to the vessel's documentation, to determine the eligibility of lending institutions to hold a preferred mortgage on a fishing vessel, a fish processing vessel, or a fish tender vessel of 100 feet or greater in registered length and to determine the eligibility of mortgage trustees to hold a preferred mortgage on such vessels for the benefit of a non-citizen lender. Copies of this request may be obtained from the Office of Chief Counsel at the address given above under **ADDRESSES**.

Title of Collection: (Eligibility of U.S.-Flag Vessels of 100 Feet or Greater In Registered Length to Obtain a Fishery Endorsement to the Vessel's Documentation) 46 CFR part 356.

Type of Request: Modification of existing information collection.

OMB Control Number: 2133–0530.

Form Number: None.

Expiration Date of Approval: Three years following approval by OMB.

Summary of the Collection of Information: Owners of vessels of 100 feet or greater in registered length who wish to obtain a fishery endorsement to the vessel's documentation are currently required to file an affidavit of United States citizenship demonstrating that they comply with the requirements of section 2(c) of the 1916 Act, 46 App. U.S.C. 802(c) and with the requirements of 46 U.S.C. 12102(c). Other documentation that must be submitted with the affidavit includes a copy of the articles of incorporation, bylaws or other comparable documents, a description of any management agreements entered into with non-citizens, a certification that any management contracts with non-citizens do not convey control in a fishing industry vessel to a non-citizen, and a copy of any time charters or voyage charters with non-citizens.

Mortgagees who plan to finance vessels of 100 feet or greater in registered length that have a fishery endorsement or for which a fishery endorsement to the vessel's documentation is sought must submit a certification to demonstrate that they meet the statutory definition of a "preferred mortgagee" at 46 U.S.C. 31322(a)(4). Prior to this rulemaking a preferred mortgagee was required to submit an affidavit of United States citizenship to demonstrate that it complies with the United States citizen ownership and control requirements of section 2(c) of the 1916 Act, 46 App. U.S.C. 802(c), or in the case of a State or Federally chartered financial institution, the controlling interest requirements of section 2(b) of the 1916 Act. If a mortgagee does not comply with the definition of a "preferred mortgagee," it must use a mortgage trustee that qualifies as a citizen of the United States to hold the preferred mortgage for the benefit of the non-citizen lender. The mortgage trustee must file an application for approval as a mortgage trustee that includes evidence that it is eligible to hold a preferred mortgage and that it complies with the requirements of 46 U.S.C. 31322. In addition to the affidavit of United States citizenship, corporations and other entities must submit documents which demonstrate that the entity is organized and existing under the laws of the United States, such as articles of incorporation and bylaws, or other comparable documents. Annually, owners of vessels, mortgagees and applicable mortgage trustees must submit prescribed citizenship or other qualifying information to MARAD's Citizenship Approval Officer.

Need and Use of the Information: The information collection will be used to verify statutory compliance with the United States citizen ownership and control requirements under section 2(b) and section 2(c) of the 1916 Act and 46 U.S.C. 12102(c) for owners, charterers, mortgagees, and mortgage trustees of vessels of 100 feet or greater in registered length for which a fishery endorsement to the vessel's documentation is being sought. The information collection is being modified to require owners of vessels that are greater than 165 feet or 750 gross tons or that have engines capable of producing more than 3000 horsepower to submit a certification indicating that the vessel was documented with a fishery endorsement on September 25, 1997 and that the fishery endorsement has remained valid, therefore the vessel

is eligible for continued documentation with a fishery endorsement. In addition, rather than demonstrate that they meet specific U.S. citizenship standards, most preferred mortgagees will now be required to submit information to demonstrate that they comply with the new statutory definition of a preferred mortgagee at 46 U.S.C. 31322(a)(4). Without the information it would be impossible to know whether certain vessels are eligible for documentation with a fishery endorsement and whether a preferred mortgagee is eligible to hold a preferred mortgage on a fishing industry vessel. This amendment to the collection of information does not result in an increased burden, but it does result in a change in the type of information that is being collected.

One commenter suggested that the requirements under section 356.19 are inconsistent with the Paperwork Reduction Act and the Ship Mortgage Act. The regulations require a lender to file a certification with MARAD to demonstrate that the lender complies with the statutory requirements to hold a preferred mortgage on a fishing industry vessel before the mortgage will qualify as a preferred mortgage. The commenter states that a lender has the most to lose if it does not comply with the statutory requirements: therefore, self regulation by the industry should be sufficient. In addition, the commenter states that the Ship Mortgage Act, as amended, does not give MARAD specific authority to require such a certification from preferred mortgagees, so the certification requirement is inconsistent with the requirements of both the Ship Mortgage Act and the Paperwork Reduction Act.

While we agree with the commenter that a lender has the most to lose if a determination is made that it does not qualify as a preferred mortgagee, self regulation of preferred mortgagees is not adequate to satisfy the spirit of the law and MARAD's mandate to ensure that non-citizens do not acquire impermissible control of fishing industry vessels. Because a preferred mortgagee can exercise control over a fishing industry vessel, it is important that MARAD establish that the mortgagee complies with the requirements of the statute and that it is not an entity that is prohibited from exercising control over the vessel. There is no language in the statute to indicate that MARAD is limited in any way regarding the information that it can or should require from preferred mortgagees. Furthermore, as discussed in the preamble to section 356.19, we have created a simple certification that should not be burdensome to lenders that wish to file a preferred mortgage.

Description of Respondents: Owners, bareboat charterers, mortgagees, and mortgage trustees of vessels of 100 feet or greater in registered length for which a fishery endorsement to the vessel's documentation is being sought.

Annual Responses: Responses will be required on an occasional and an annual basis. Updates will be required during the year if there are changes to the ownership or financing of the vessel. There are approximately 550 vessels and 400 vessel owners that are subject to this regulation. Approximately 450 responses are expected from owners and bareboat charterers and less than 50 responses are expected from mortgagees and mortgage trustees.

Annual Burden: 2950 hours.

Unfunded Mandates Reform Act of 1995

This rule would not impose an unfunded mandate under the Unfunded Mandates Reform Act of 1995. It would not result in costs of $100 million or more, in the aggregate, to any of the following: State, local, or Native American tribal governments, or the private sector. This rule is the least burdensome alternative that achieves the objective of the rule.

Regulatory Identification Number (RIN)

The Department of Transportation assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number is contained in the heading of this document to cross-reference this action with the Unified Agenda.

List of Subjects in 46 CFR Part 356

Citizenship and naturalization, Fishery endorsement, Fishing vessels, International investment agreements, Mortgages, Penalties, Reporting and recordkeeping requirements.

Accordingly, 46 CFR part 356 is amended as follows:

PART 356—REQUIREMENTS FOR VESSELS OF 100 FEET OR GREATER IN REGISTERED LENGTH TO OBTAIN A FISHERY ENDORSEMENT TO THE VESSEL'S DOCUMENTATION

1. The authority citation for part 356 is revised to read as follows:

Authority: 46 U.S.C. 12102; 46 U.S.C. 31322; Pub. L. 105–277, division C, title II, subtitle I, section 203 (46 U.S.C. 12102 note), section 210(e), and section 213(g), 112 Stat. 2681; Pub. L. 107–20, section 2202, 115 Stat. 168–170; 49 CFR 1.66.

2. Part 356 is amended by revising the phrases "Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel" and "Fishing Vessel, Fish Tender Vessel, or Fish Processing Vessel" to read "Fishing Industry Vessel" in every place that either phrase appears in part 356 except as used in newly added § 356.3(j).

Subpart A—General Provisions

356.3 [Amended]

3. Section 356.3 is amended as follows:

a. Paragraphs (l) through (x) are redesignated as paragraphs (o) through (aa).

b. Paragraphs (i) through (k) are redesignated as paragraphs (k) thorugh (m).

c. Paragraphs (g) and (h) are redesignated as paragraphs (h) and (i).

d. New paragraphs (g), (j) amd (n) are added.

e. Paragraph (e)(2) and newly designated paragraphs (h)(2), (u) and (y)(2) are revised.

f. In newly designated paragraph (q), paragraph (q)(2) is removed, paragraph (q)(3) is redesignated as paragraph (q)(2), and new paragraph (q)(3) is added.

g. In newly designated paragraphs (p) and (q), add the word "Industry" following the word "Fishing".

h. Newly designated paragraph (s) is revised.

The additions and revisions read as follows:

356.3 Definitions

* * * * *

(e) *Citizen of the United States, Citizen or U.S. Citizen:*

* * * * *

(2) Other criteria that must be met by entities other than individuals include:

(i) In the case of a corporation:

(A) The chief executive officer, by whatever title, and chairman of the board of directors and all officers authorized to act in the absence or disability of such persons must be Citizens of the United States; and

(B) No more of its directors than a minority of the number necessary to constitute a quorum are Non-Citizens;

(ii) In the case of a partnership all general partners are Citizens of the United States;

(iii) In the case of an association:

(A) All of the members are Citizens of the United States;

(B) The chief executive officer, by whatever title, and the chairman of the board of directors (or equivalent committee or body) and all officers authorized to act in their absence or

disability are Citizens of the United States; and,

(C) No more than a minority of the number of its directors, or equivalent, necessary to constitute a quorum are Non-Citizens;

(iv) In the case of a joint venture:

(A) It is not determined by the Citizenship Approval Officer to be in effect an association or a partnership; and,

(B) Each co-venturer is a Citizen of the United States;

(v) In the case of a Trust that owns a Fishing Industry Vessel:

(A) The Trust is domiciled in the United States or a State;

(B) The Trustee is a Citizen of the United States; and

(C) All beneficiaries of the trust are persons eligible to document vessels pursuant to the requirements of 46 U.S.C. 12102(c);

(vi) In the case of a Limited Liability Company (LLC) that is not found to be in effect a general partnership requiring all of the general partners to be Citizens of the United States:

(A) Any Person elected to manage the LLC or who is authorized to bind the LLC, and any Person who holds a position equivalent to a Chief Executive Officer, by whatever title, and the Chairman of the Board of Directors in a corporation are Citizens of the United States; and,

(B) Non-Citizens do not have authority within a management group, whether through veto power, combined voting, or otherwise, to exercise control over the LLC.

* * * * *

(g) *Commercial Lender* means an entity that is primarily engaged in the business of lending and other financing transactions and that has a loan portfolio in excess of $100,000,000, of which not more than 50 per centum in dollar amount consists of loans to borrowers in the commercial fishing industry, as certified by the Commercial Lender to the Citizenship Approval Officer.

* * * * *

(h) *Controlling Interest:*

* * * * *

(2) Other criteria that must be met by entities other than an individual include:

(i) In the case of a corporation:

(A) The Chief Executive Officer, by whatever title, and the Chairman of the Board of Directors (or equivalent committee or body) and all officers authorized to act in their absence or disability are Citizens of the United States; and,

(B) No more than a minority of the number of its directors, or equivalent, necessary to constitute a quorum are Non-Citizens;

(ii) In the case of a partnership all general partners are Citizens of the United States;

(iii) In the case of an association:

(A) The Chief Executive Officer, by whatever title, and the Chairman of the Board of Directors (or equivalent committee or body) and all officers authorized to act in their absence or disability are Citizens of the United States; and,

(B) No more than a minority of the number of its directors, or equivalent, necessary to constitute a quorum are Non-Citizens;

(iv) In the case of a joint venture:

(A) It is not determined by the Citizenship Approval Officer to be in effect an association or partnership; and

(B) A majority of the equity is owned by and vested in Citizens of the United States free and clear of any trust or fiduciary obligation in favor of any Non-Citizen;

(v) In the case of a Limited Liability Company (LLC) that is not found to be in effect a general partnership requiring all of the general partners to be Citizens of the United States:

(A) Any Person elected to manage the LLC or who is authorized to bind the LLC, and any Person who holds a position equivalent to the Chief Executive Officer, by whatever title, and the Chairman of the Board of Directors in a corporation and any Persons authorized to act in their absence are Citizens of the United States; and,

(B) Non-Citizens do not have authority within a management group, whether through veto power, combined voting, or otherwise, to exercise control over the LLC;

* * * * *

(j) *Fishing Industry Vessel* means a Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel;

* * * * *

(n) *Lender Syndicate* means an arrangement established for the combined extension of credit of not less than $20,000,000 made up of four or more entities that each have a beneficial interest, held through an agent, under a trust arrangement established pursuant to 46 U.S.C. 31322(f). Other than the exercise by the agent of powers related to routine administrative matters, none of the entities in a Lender Syndicate may exercise powers related to the Lender Syndicate's extension of credit without the concurrence of at least one other unaffiliated beneficiary. Powers related to routine administrative matters include those concerning the day-to-day management of the extension of credit such as monitoring compliance with loan covenants, collateral inspections and similar matters; however, more substantive powers such as amending loan and mortgage documents, releasing guarantors or collateral, or administering the loan in the event of a default are not considered routine.

* * * * *

(q) *Mortgage Trustee,* * * *

* * * * *

(2) Is authorized under those laws to exercise corporate trust powers;

(3) Is eligible to hold a Preferred Mortgage under 46 U.S.C. 31322(a)(4)(A)-(E);

* * * * *

(s) *Non-Citizen Lender* means a lender that does not qualify as a Citizen of the United States.

* * * * *

(u) *Preferred Mortgage* means a mortgage on a Fishing Industry Vessel that has as the Mortgagee:

(1) A person eligible to own a vessel with a fishery endorsement under 46 U.S.C. 12102(c);

(2) A state or federally chartered financial institution that is insured by the Federal Deposit Insurance Corporation;

(3) A farm credit lender established under title 12, chapter 23, of the United States Code [12 U.S.C. 2001 *et seq.*];

(4) A commercial fishing and agriculture bank established pursuant to State law;

(5) A commercial lender organized under the laws of the United States or of a State and eligible to own a vessel under 46 U.S.C. 12102(a); or

(6) A Mortgage Trustee that complies with the requirements of 46 U.S.C. 31322(f) and 46 CFR 356.27 through 356.31.

* * * * *

(y) *Trust* means:

* * * * *

(2) In the case of a mortgage trust, a trust that is domiciled in and existing under the laws of the United States, or of a State, that has as its trustee a Mortgage Trustee as defined in this section, and that is authorized to act on behalf of a beneficiary in accordance with the requirements of §§ 356.27 through 356.31.

* * * * *

Subpart B—Ownership and Control

4. In § 356.5, revise paragraph (d) to read as follows:

§ 356.5 Affidavit of U.S. Citizenship.

* * * * *

(d) The prescribed form of the Affidavit of U.S. Citizenship is as follows:

State of _____ County of _____ Social Security Number: _____I, _____, (Name) of _____, (Residence address) being duly sworn, depose and say:

1. That I am the _____ (Title of office(s) held) of _____, (Name of corporation) a corporation organized and existing under the laws of the State of_____ (hereinafter called the "Corporation"), with offices at _____, (Business address) in evidence of which incorporation a certified copy of the Articles or Certificate of Incorporation (or Association) is filed herewith (or has been filed) together with a certified copy of the corporate Bylaws. [Evidence of continuing U.S. citizenship status, including amendments to said Articles or Certificate and Bylaws, should be filed within 45 days of the annual documentation renewal date for vessel owners. Other parties required to provide evidence of U.S. citizenship status must file within 30 days after the annual meeting of the stockholders or annually, within 30 days after the original affidavit if there has been no meeting of the stockholders prior to that time.];

2. That I am authorized by and in behalf of the Corporation to execute and deliver this Affidavit of U.S. Citizenship;

3. That the names of the Chief Executive Officer, by whatever title, the Chairman of the Board of Directors, all Vice Presidents or other individuals who are authorized to act in the absence or disability of the Chief Executive Officer or Chairman of the Board of Directors, and the Directors of the Corporation are as follows:[1]

_____

Name Title

_____

Date and Place of Birth

_____

_____

(The foregoing list should include the officers, whether or not they are also directors, and all directors, whether or not they are also officers.) Each of said individuals is a Citizen of the United States by virtue of birth in the United States, birth abroad of U.S. citizen parents, by naturalization, by naturalization during minority through the naturalization of a parent, by marriage (if a woman) to a U.S. citizen prior to September 22, 1922, or as otherwise authorized by law, except (give name and nationality of all Non-Citizen officers and directors, if any). The By-laws of the Corporation provide that ____ (Number) of the directors are necessary to constitute a quorum; therefore, the Non-Citizen directors named represent no more than a minority of the number necessary to constitute a quorum.

4. Information as to stock, where Corporation has 30 or more stockholders:

_____

That I have access to the stock books and records of the Corporation; that said stock books and records have been examined and disclose (a) that, as of ____, (Date) the Corporation had issued and outstanding _____ (Number) shares of _____, (Class) the only class of stock of the Corporation issued and outstanding [if such is the case], owned of record by _____ (Number) stockholders, said number of stockholders representing the ownership of the entire issued and outstanding stock of the Corporation, and (b) that no stockholder owned of record as of said date five per centum (5%) or more of the issued and outstanding stock of the Corporation of any class. [If different classes of stock exist, give the same information for each class issued and outstanding, showing the monetary value and voting rights per share in each class. If there is an exception to the statement in clause (b), the name, address, and citizenship of the stockholder and the amount and class of stock owned should be stated and the required citizenship information on such stockholder must be submitted.] That the registered addresses of _____ owners of record of _____ shares of the issued and outstanding _____ (Class) stock of the Corporation are shown on the stock books and records of the Corporation as being within the United States, said _____ shares being _____ per centum ____(%) of the total number of shares of said stock (each class). [The exact figure as disclosed by the stock books of the corporation must be given and the per centum figure must not be less than 65 per centum for a corporation that must satisfy the controlling interest requirements of section 2(b) of the Shipping Act, 1916, 46 App. U.S.C. § 802(b), or not less than 95 per centum for an entity that is demonstrating ownership in a vessel for which a fishery endorsement is sought. These per centum figures apply to corporate stockholders as well as to the primary corporation.] [The same statement should be made with reference to each class of stock, if there is more than one class.)

or

[**Note:** An entity that has less than 30 stockholders should use the following alternate paragraph (4) and strike the inapplicable paragraph (4).]

4. Information as to stock, where Corporation has less than 30 stockholders: That the information as to stock ownership, upon which the Corporation relies to establish that 75% of the stock ownership is vested in Citizens of the United States, is as follows:

Name of stockholder	Date and place of birth	Number of shares owned (each class)	Percentage of shares owned (each class)

and that each of said individual stockholders is a Citizen of the United States by virtue of birth in the United States, birth abroad of U.S. citizen parents, by naturalization during minority through the naturalization of a parent, by marriage (if a woman) to a U.S. citizen prior to September 22, 1922, or as otherwise authorized by law. **NOTE:** If a corporate stockholder, give information with respect to State of incorporation, the names of the officers, directors, and stockholders and the appropriate percentage of shares held, with statement that they are all U.S. citizens. Nominee holders of record of 5% or more of any class of stock and the beneficial owners thereof should be named and their U.S. citizenship information submitted to MARAD.

5. That 75% of the interest in (each) said Corporation, as established by the information hereinbefore set forth, is owned by Citizens of the United States; that the title to 75% of the stock of (each) class of the stock of (each) said Corporation is vested in Citizens of the United States free from any trust or fiduciary obligation in favor of any person not a Citizen of the United States; that such proportion of the voting power of (each) said Corporation is vested in Citizens of the United States; that through no contract or understanding is it so arranged that more than 25% the voting power of (each) said Corporation may be exercised, directly or indirectly, in behalf of any person who is not a Citizen of the United States; and that by no means whatsoever, is any interest in said Corporation in excess of 25% conferred upon or permitted to be exercised by any person who is not a Citizen of the United States; and

or

[**Note:** An entity that is required to comply with the controlling interest requirements of section 2(b) of the Shipping Act, 1916, 46 App. U.S.C. § 802(b), should use the following alternate paragraph (5) and strike the inapplicable paragraph (5).]

5. That the Controlling Interest in (each) said Corporation, as established by the information hereinbefore set forth, is owned by Citizens of the United States; that the title to a majority of the stock of (each) said Corporation is vested in Citizens of the United States free from any trust or fiduciary obligation in favor of any person not a Citizen of the United States; that such proportion of the voting power of (each) said Corporation is vested in Citizens of the United States; that through no contract or understanding is it so arranged that the majority of the voting power of (each) said Corporation may be exercised, directly or indirectly, in behalf of any person who is not a Citizen of the United States; and that by no means whatsoever, is control of (each) said Corporation conferred upon or permitted to

[1] Offices that are currently vacant should be noted when listing Ofifcers and Directors in the Affidavit.

be exercised by any person who is not a Citizen of the United States; and

6. That the affiant has submitted all of the necessary documentation required under 46 CFR § 356.13 in connection with this Affidavit of U.S. Citizenship for the vessels herein identified.

	Vessel Name	Official Number
1.	.....	
2.	.....	

[**Note:** Paragraph 6 should be included in the Affidavit of U.S. Citizenship submitted by an entity that owns a Fishing Industry Vessel.]

7. That affiant has carefully examined this affidavit and asserts that all of the statements and representations contained therein are true to the best of his knowledge, information, and belief.

_____

(Name and title of affiant)

_____

(Signature of affiant)

_____

Date

Penalty for False Statement: A fine or imprisonment, or both, are provided for violation of the proscriptions contained in 18 U.S.C. § 1001 (see also, 18 U.S.C. §§ 286, 287).

* * * * *

§ 356.7 [Amended]

5. Section 356.7(c)(1)(ii) is revised to read as follows:

§ 356.7 Methods of establishing ownership by United States Citizens.

* * * * *

(c) * * *

(1)(i) * * *

(ii) At least 65% of the stock (each class) of the corporation be held by Persons having a registered U.S. address in order to infer at least 51% ownership by U.S. Citizens; and

* * * * *

§ 356.11 [Amended]

6. Section 356.11(a)(7) is revised to read as follows:

§ 356.11 Impermissible control by a Non-Citizen.

(a) * * *

(7) Has the right to cause the sale of a Fishing Industry Vessel other than:

(i) By an entity that is eligible to hold a Preferred Mortgage on the vessel pursuant to § 356.19(a)(2) through (a)(5);

(ii) By an approved Mortgage Trustee that is exercising loan and mortgage covenants on behalf of a beneficiary that qualifies as a Commercial Lender, a Lender Syndicate or an entity eligible to hold a Preferred Mortgage under § 356.19(a)(2) through (a)(5);

(iii) By an approved Mortgage Trustee that is exercising loan or mortgage covenants for a beneficiary that is not qualified to hold a Preferred Mortgage, provided that the loan or mortgage covenants have been approved by the Citizenship Approval Officer; or

(iv) Where it is necessary in order to allow a Non-Citizen to dissolve its interest in the entity;

* * * * *

Subpart C—Requirements for Vessel Owners

§ 356.13 [Amended]

7. Section 356.13 is amended as follows:

a. By removing the word "and" at the end of paragraph (a)(11);

b. By removing the period at the end of paragraph (a)(12) and inserting in lieu thereof a semicolon followed by the word "and";

c. By revising paragraph (a)(5); and

d. By adding a new paragraph (a)(13).

The additions read as follows:

§ 356.13 Information required to be submitted by vessel owners.

(a) * * *

(5) Any loan agreements or other financing documents applicable to a Fishing Industry Vessel where the lender has not been approved by MARAD to hold a Preferred Mortgage on Fishing Industry Vessels, excepting financing documents that are exempted from review pursuant to § 356.19(d) and loan documents that have received general approval from the Citizenship Approval Officer pursuant to § 356.21 for use with an approved Mortgage Trustee.

* * * * *

(13) A copy of the Large Vessel Certification required by § 356.47.

* * * * *

§ 356.15 [Amended]

8. Section 356.15 is amended as follows:

a. By removing paragraphs (a), (b), and (c);

b. By redesignating paragraphs (e) and (f) as paragraphs (a) and (b);

c. By redesignating paragraph (d) as paragraph (c) and by removing the words "will necessarily" from the third sentence and inserting in lieu thereof the word "may"; and

d. By adding a new paragraph (d) to read as follows:

§ 356.15 Filing of Affidavit of U.S. Citizenship.

* * * * *

(d) The owner of a Fishing Industry Vessel or a prospective owner of such a vessel may request a letter ruling from the Citizenship Approval Officer in order to determine whether the owner under a proposed ownership structure will qualify as a U.S. Citizen that is eligible to document the vessel with a fishery endorsement. A complete request for a letter ruling must be accompanied by an Affidavit of U.S. Citizenship and all other documentation required by " 356.13. The Citizenship Approval Officer will issue a letter ruling based on the ownership structure that is proposed; however, the Citizenship Approval Officer reserves the right to reverse the determination if any of the elements of the ownership structure, contractual arrangements, or other material relationships are altered when the vessel owner submits the executed Affidavits and supporting documentation.

§ 356.17 [Amended]

9. Section 356.17(b) is revised to read as follows:

§ 356.17 Annual requirements for vessel owners.

* * * * *

(b) The annual certification required by paragraph (a) of this section must be filed at least 45 days prior to the renewal date for the vessel's documentation and fishery endorsement. Where multiple Fishing Industry Vessels are owned by the same entity or by entities that ultimately have common ownership; an Affidavit of U.S. Citizenship and supporting documentation may be filed for all of the vessels in conjunction with the first vessel documentation renewal during each calendar year. Any information or supporting documentation unique to a particular vessel that would normally be required to be submitted under § 356.13 or any other provision of this part 356 such as charters, management agreements, loans or financing agreements, sales, purchase or marketing agreements, or exemptions claimed under this part must be submitted with the annual filing for that vessel if the documents are not already on file with the Citizenship Approval Officer.

* * * * *

Subpart D—Mortgages

10. Section 356.19 is revised to read as follows:

§ 356.19 Requirements to hold a Preferred Mortgage.

(a) In order for a Mortgagee to be eligible to obtain a Preferred Mortgage on a Fishing Industry Vessel, it must be:

(1) A Citizen of the United States;

(2) A state or federally chartered financial institution that is insured by

the Federal Deposit Insurance Corporation;

(3) A farm credit lender established under title 12, chapter 23, of the United States Code (12 U.S.C. 2001 *et seq.*);

(4) A commercial fishing and agriculture bank established pursuant to State law;

(5) A Commercial Lender organized under the laws of the United States or of a State and eligible to own a vessel under 46 U.S.C. 12102(a); or

(6) A Mortgage Trustee that complies with the requirements of 46 U.S.C. 31322(f) and 46 CFR 356.27 through 356.37.

(b) A Mortgagee must demonstrate to the Citizenship Approval Officer that it satisfies one of the requirements set forth in paragraph (a) of this section before it will be qualified to obtain a Preferred Mortgage on a Fishing Industry Vessel after April 1, 2003. A Mortgagee that has an existing Preferred Mortgage on a Fishing Industry Vessel prior to April 1, 2003, will be required to demonstrate that it satisfies one of the requirements set forth in paragraph (a) of this section before the vessel's next certificate of documentation renewal date after April 1, 2003. Failure to submit the required information may result in the loss of the preferred status for the mortgage. A sample format that may be used to submit the required information for Mortgagees, Commercial Lenders and Lender Syndicates is available on the MARAD website at *http://www.marad.dot.gov/afa.html*. The required information that must be submitted in order to make such a demonstration for each category in paragraph (a) is as follows:

(1) If a Mortgagee plans to qualify as a United States Citizen under paragraph (a)(1) of this section, the Mortgagee must file an Affidavit of United States Citizenship demonstrating that it complies with the citizenship requirements of 46 U.S.C. 12102(c) and section 2(c) of the 1916 Act, which require that 75% of the ownership and control in the Mortgagee be vested in U.S. Citizens at each tier and in the aggregate. In addition to the Affidavit of U.S. Citizenship, a certified copy of the Articles of Incorporation and Bylaws, or other comparable corporate documents must be submitted to the Citizenship Approval Officer.

(2) A state or federally chartered financial institution must provide a certification that indicates whether it is a state chartered or federally chartered financial institution and that certifies that it is insured by the Federal Deposit Insurance Corporation ("FDIC"). The certification must include the FDIC Certification Number assigned to the institution.

(3) A farm credit lender must provide a certification indicating that it qualifies as a farm credit lender established under title 12, chapter 23, of the United States Code (12 U.S.C. 2001 *et seq.*);

(4) A commercial fishing and agriculture bank must provide a certification indicating that it has been lawfully established as a commercial fishing and agriculture bank pursuant to State law and that it is in good standing;

(5) A Commercial Lender that seeks to be qualified to hold a Preferred Mortgage directly or through a Mortgage Trustee must provide evidence that it is engaged primarily in the business of lending and other financing transactions and a certification that it has a loan portfolio in excess of $100 million, of which no more than 50 percent of the dollar amount of the loan portfolio consists of loans to borrowers in the commercial fishing industry. The certification must include information regarding the approximate size of the loan portfolio and the percentage of the portfolio that consists of loans to borrowers in the commercial fishing industry. A Commercial Lender that seeks to be qualified to hold a Preferred Mortgage directly must also submit an Affidavit of U.S. Citizenship to the Citizenship Approval Officer to demonstrate that it qualifies as one of the following:

(i) An individual who is a citizen of the United States;

(ii) An association, trust, joint venture, or other entity—

(A) All of whose members are citizens of the United States; and

(B) That is capable of holding title to a vessel under the laws of the United States or of a State;

(iii) A partnership whose general partners are citizens of the United States, and the controlling interest in the partnership is owned by citizens of the United States;

(iv) A corporation established under the laws of the United States or of a State, whose chief executive officer, by whatever title, and chairman of its board of directors are citizens of the United States and no more of its directors are Non-citizens than a minority of the number necessary to constitute a quorum;

(v) The United States Government; or

(vi) The government of a State.

(6) A Mortgage Trustee must submit the Mortgage Trustee Application and other documents required in § 356.27. If the beneficiary under the trust arrangement has not demonstrated to the Citizenship Approval Officer that it qualifies as a Commercial Lender, a Lender Syndicate or an entity eligible to hold a preferred mortgage under paragraphs (a)(1) through (5) of this section, the Mortgage Trustee must submit to the Citizenship Approval Officer copies of the trust agreement, security agreement, loan documents, preferred mortgage, and any issuance, assignment or transfer of interest so that a determination can be made as to whether any of the arrangements results in an impermissible transfer of control of the vessel to a person not eligible to own a vessel with a fishery endorsement under 46 U.S.C. 12102(c).

(c) A Mortgagee is required to provide the certification required by paragraph (b) of this section to the Citizenship Approval Officer on an annual basis during the time in which it holds a preferred mortgage on a Fishing Industry Vessel. The annual certification must be submitted at least 30 calendar days prior to the annual anniversary date of the original approval. The Citizenship Approval Officer will notify a Mortgagee if the Mortgagee fails to submit the required annual certification. If the Mortgagee does not provide the certification within 30 calendar days of the mailing date of the delinquency notice, the mortgage will no longer qualify as a Preferred Mortgage.

(d) The following entities may exercise rights under loan or mortgage covenants with respect to a Fishing Industry Vessel without obtaining MARAD approval:

(1) An entity that is deemed qualified to hold a Preferred Mortgage under paragraphs (a)(1) through (5) of this section and that has submitted the appropriate certification to the Citizenship Approval Officer under paragraph (b) of this section; and

(2) An approved Mortgage Trustee that is holding a Preferred Mortgage for a beneficiary that is qualified to hold a Preferred Mortgage under paragraphs (a)(1) through (a)(5) of this section or for a beneficiary that qualifies as a Commercial Lender or a Lender Syndicate and that has made an appropriate certification to the Citizenship Approval Officer that it meets the requirements of either § 356.3(g) or § 356.3(n).

(e) An entity that holds a Preferred Mortgage on a Fishing Industry Vessel or that is using a Mortgage Trustee to hold a Preferred Mortgage for its benefit may request a letter ruling from the Citizenship Approval Officer in order to determine whether a mortgage or mortgage trust arrangement is in compliance with the regulations in this part. The Citizenship Approval Officer reserves the right to reverse any advice

given under a letter ruling if any of the elements of the proposed loan or mortgage are materially altered or if the entity requesting the letter ruling has failed to fully disclose all relevant information.

§ 356.21 [Amended]

11. Section 356.21 is amended as follows:

a. By revising the heading of the section;

b. By removing the term "Non-Citizen Lender" everywhere that it appears in the section and adding in its place the term "lender"; and

c. By revising paragraphs (a) introductory text and (e) to read as follows:

§ 356.21 General approval of standard loan or mortgage agreements.

(a) A lender that is engaged in the business of financing Fishing Industry Vessels and that is not a Commercial Lender or Lender Syndicate using a Mortgage Trustee to hold a Preferred Mortgage for its benefit or an entity that is otherwise qualified to hold a Preferred Mortgage on Fishing Industry Vessels pursuant to § 356.19(a)(2) through (a)(5), may apply to the Citizenship Approval Officer for general approval of its standard loan and mortgage agreements for such vessels. In order to obtain general approval for its standard loan and mortgage agreements, a lender using an approved Mortgage Trustee must submit to the Citizenship Approval Officer:

* * * * *

(e) A lender that has received general approval for its lending program and that uses covenants in a loan or mortgage on a Fishing Industry Vessel that have not been approved by the Citizenship Approval Officer will be subject to loss of its general approval and the Citizenship Approval Officer may review and approve all of the lender's mortgage and loan covenants on a case-by-case basis. The Citizenship Approval Officer may also determine that the arrangement results in an impermissible transfer of control to a Non-Citizen and therefore does not meet the requirements to qualify as a Preferred Mortgage. If the lender knowingly files a false certification with the Citizenship Approval Officer or has used covenants in a loan or mortgage on a Fishing Industry Vessel that are materially different from the approved covenants, it may also be subject to civil and criminal penalties pursuant to 18 U.S.C. 1001.

§ 356.23 [Amended]

12. Section 356.23 is amended as follows:

a. By revising the section heading; and

b. By revising paragraph (a) introductory text to read as follows:

§ 356.23 Restrictive loan covenants approved for use by lenders.

(a) We approve the following standard loan covenants, which may restrict the activities of the borrower without the lender's consent and which may be included in loan agreements or other documents between an owner of a Fishing Industry Vessel and an unrelated lender that is using an approved Mortgage Trustee to hold the mortgage and debt instrument for the benefit of the lender and that is not exempted under § 356.19(d) from MARAD review of its loan and mortgage covenants, so long as the lender's consent is not unreasonably withheld:

* * * * *

Subpart E—Mortgage Trustees

§ 356.27 [Amended]

13. Section 356.27 is amended by revising paragraphs (a), (b)(1), (c)(2), (c)(3), (c)(4) and (g) to read as follows:

§ 356.27 Mortgage Trustee requirements.

(a) A lender who is not qualified under § 356.19(a)(1) through (5) to hold a Preferred Mortgage directly on a Fishing Industry Vessel may use a qualified Mortgage Trustee to hold, for the benefit of the lender, the Preferred Mortgage and the debt instrument for which the Preferred Mortgage is providing security.

(b) * * *

(1) Be eligible to hold a Preferred Mortgage on a Fishing Industry Vessel under § 356.19(a)(1) through (a)(5);

* * * * *

(c) * * *

(2) The appropriate certification and documentation required under § 356.19(b)(1) through (5) to demonstrate that it is qualified to hold a Preferred Mortgage on Fishing Industry Vessels;

(3) A copy of the most recent published report of condition of the Mortgage Trustee; and,

(4) A certification that the Mortgage Trustee is authorized under the laws of the United States or of a State to exercise corporate trust powers and is subject to supervision or examination by an official of the United States or of a State;

* * * * *

(g) An application to be approved as a Mortgage Trustee should include the following:

The undersigned (the "Mortgage Trustee") hereby applies for approval as Mortgage Trustee pursuant to 46 U.S.C. 31322(f) and the Regulation (46 CFR part 356), prescribed by the Maritime Administration ("MARAD"). All terms used in this application have the meaning given in the Regulation. In support of this application, the Mortgage Trustee certifies to and agrees with MARAD as hereinafter set forth:

The Mortgage Trustee certifies:

(a) That it is acting or proposing to act as Mortgage Trustee on a Fishing Industry Vessel documented, or to be documented under the U.S. registry;

(b) That it—

(1) Is organized as a corporation under the laws of the United States or of a State and is doing business in the United States;

(2) Is authorized under those laws to exercise corporate trust powers;

(3) Is qualified to hold a Preferred Mortgage on Fishing Industry Vessels pursuant to 46 CFR 356.19(a);

(4) Is subject to supervision or examination by an official of the United States Government or a State; and

(5) Has a combined capital and surplus of at least $3,000,000 as set forth in its most recent published report of condition, a copy of which, dated _____, is attached.

The Mortgage Trustee agrees:

(a) That it will, so long as it shall continue to be on the List of Approved Mortgage Trustees referred to in the Regulation:

(1) Notify the Citizenship Approval Officer in writing, within 20 days, if it shall cease to be a corporation which:

(i) Is organized under the laws of the United States or of a State, and is doing business under the laws of the United States or of a State;

(ii) Is authorized under those laws to exercise corporate trust powers;

(iii) Is qualified under 46 CFR. 356.19(a) to hold a Preferred Mortgage on Fishing Industry Vessels;

(iv) Is subject to supervision or examination by an authority of the U.S. Government or of a State; and

(v) Has a combined capital and surplus (as set forth in its most recent published report of condition) of at least $3,000,000.

(2) Furnish to the Citizenship Approval Officer on an annual basis:

(i) The appropriate certification and documentation required under § 356.19(b)(1)–(5) to demonstrate that it is qualified to hold a Preferred Mortgage on Fishing Industry Vessels;

(ii) A copy of the most recent published report of condition of the Mortgage Trustee;

(iii) A list of the Fishing Industry Vessels for which it is acting as Mortgage Trustee; and,

(iv) The identity and address of all beneficiaries for which it is acting as a Mortgage Trustee.

(3) Furnish to the Citizenship Approval Officer copies of each Trust Agreement as well as any other issuance, assignment or transfer of an interest related to each transaction where the beneficiary under a trust arrangement is not a Commercial Lender, a Lender Syndicate or an entity that is eligible to hold a Preferred Mortgage under 46 CFR 356.19(a)(1)–(5);

(4) Furnish to the Citizenship Approval Officer any further relevant and material information concerning its qualifications as Mortgage Trustee under which it is acting or proposing to act as Mortgage Trustee, as the Citizenship Approval Officer may from time to time request; and,

(5) Permit representatives of the Maritime Administration, upon request, to examine its books and records relating to the matters referred to herein;

(b) That it will not issue, assign, or in any manner transfer to a person not eligible to own a documented vessel, any right under a mortgage of a Fishing Industry Vessel, or operate such vessel without the approval of the Citizenship Approval Officer; except that it may operate the vessel to the extent necessary for the immediate safety of the vessel, for its direct return to the United States or for its movement within the United States for repairs, drydocking or berthing changes, but only under the command of a Citizen of the United States for a period not to exceed 15 calendar days;

(c) That after a responsible official of such Mortgage Trustee obtains knowledge of a foreclosure proceeding, including a proceeding in a foreign jurisdiction, that involves a documented Fishing Industry Vessel on which it holds a mortgage pursuant to approval under the Regulation and to which 46 App. U.S.C. 802(c), 46 U.S.C. 31322(a)(4) or 46 U.S.C. 12102(c) is applicable, it shall promptly notify the Citizenship Approval Officer with respect thereto, and shall ensure that the court or other tribunal has proper notice of those provisions; and

(d) That it shall not assume any fiduciary obligation in favor of Non-Citizen beneficiaries that is in conflict with any restrictions or requirements of the Regulation.

This application is made in order to induce the Maritime Administration to grant approval of the undersigned as Mortgage Trustee pursuant to 46 U.S.C. 31322 and the Regulation, and may be relied on by the Citizenship Approval Officer for such purposes. False statements in this application may subject the applicant to fine or imprisonment, or both, as provided for violation of the proscriptions contained in 18 U.S.C. 286, 287, and 1001.

Dated this _____ day of _____, 20___.

ATTEST:

_____

(Print or type name below)

(SEAL)

MORTGAGE TRUSTEE'S NAME & ADDRESS

_____

By:

(Print or type name below)

TITLE

§ 356.31 [Amended]

14. Section 356.31 is revised to read as follows:

§ 356.31 Maintenance of Mortgage Trustee approval.

(a) A Mortgage Trustee that holds a Preferred Mortgage on a Fishing Industry Vessel must submit the following information to the Citizenship Approval Officer during each calendar year that it is acting as a Mortgage Trustee:

(1) The appropriate certification and documentation required under § 356.19(b)(1) through (b)(5) to demonstrate that it is qualified to hold a Preferred Mortgage on Fishing Industry Vessels;

(2) A copy of the most recent published report of condition of the Mortgage Trustee;

(3) A list of the Fishing Industry Vessels for which it is acting as Mortgage Trustee; and

(4) The identity and address of all beneficiaries for which it is acting as a Mortgage Trustee.

(b) The Mortgage Trustee must file the documents required in paragraph (a) of this section within 30 calendar days prior to the anniversary date of the original approval from the Citizenship Approval Officer.

(c) If at any time the Mortgage Trustee fails to meet the statutory requirements set forth in the AFA, the Mortgage Trustee must notify the Citizenship Approval Officer of such failure to qualify as a Mortgage Trustee not later than 20 calendar days after the event causing such failure. Upon learning that a Mortgage Trustee fails to meet the statutory or regulatory requirements to qualify as a Mortgage Trustee, we will publish a disapproval notice in the **Federal Register** and will notify the U.S. Coast Guard, the Mortgage Trustee, and the beneficiary of each Preferred Mortgage of such disapproval by providing them a copy of the disapproval notice. The notice to beneficiaries will be provided by standard U.S. mail to the address supplied to the Citizenship Approval Officer by the Mortgage Trustee. Within 30 calendar days of publication in the **Federal Register** of the disapproval notice, the disapproved Mortgage Trustee must either transfer its fiduciary responsibilities to a successor Mortgage Trustee that has been approved by the Citizenship Approval Officer or cure the defect in its approval. The preferred status of the mortgage will be maintained during the 30 day period following publication of the notice in the **Federal Register** and pending transfer of the Mortgage Trustee's fiduciary responsibilities to a successor Mortgage Trustee or cure of the defect.

§ 356.37 [Amended]

15. Section 356.31 is revised to read as follows:

§ 356.37 Operation of a Fishing Industry Vessel by a Mortgage Trustee.

An approved Mortgage Trustee cannot operate a Fishing Industry Vessel without the approval of the Citizenship Approval Officer, except where non-commercial operation is necessary for the immediate safety of the vessel, or for repairs, drydocking or berthing changes; provided, that the vessel is operated under the command of a Citizen of the United States for a period of no more than 15 calendar days.

Subpart F—Charters, Management Agreements and Exclusive or Long-Term Contracts

§ 356.45 [Amended]

16. Section 356.45(a)(2)(iv) is amended by adding the following after the word "funds": ", unless a qualified Mortgage Trustee is used to hold the debt instrument for the benefit of the Non-Citizen".

Subpart G—Special Requirements for Certain Vessels

§ 356.47 [Amended]

17. Section 356.47 is amended by revising paragraphs (a)(2) and (b)(3) and by adding a new paragraph (e) to read as follows:

§ 356.47 Special requirements for large vessels.

(a) * * *

(2) It is more than 750 gross registered tons (as measured pursuant to 46 U.S.C. Chapter 145) or 1900 gross registered tons (as measured pursuant to 46 U.S.C. Chapter 143); or

* * * * *

(b) * * *

(3) In the event of the invalidation of the fishery endorsement after October 21, 1998, application is made for a new fishery endorsement within 15 business days of the receipt of written notification from MARAD or the Coast Guard identifying the reason for such invalidation. The fishery endorsement of a Fishing Industry Vessel that meets the criteria of paragraph (a) of this section is not deemed to be invalid for purposes of complying with this paragraph (a)(3), if the vessel is purchased pursuant to 46 U.S.C. 31329 by a Mortgagee that is not eligible to own a vessel with a fishery endorsement, provided that the Mortgagee is eligible to hold a preferred mortgage on such vessel at the time of the purchase;

* * * * *

(e) The owner of a vessel that meets any of the criteria in paragraph (a) of this section is required to submit a

certification each year in conjunction with its Affidavit of U.S. Citizenship in order to document that the vessel is eligible for documentation with a fishery endorsement. The certification should indicate that the vessel meets the criteria of paragraph (a) of this section; however, it is eligible to be documented with a fishery endorsement because it complies with the requirements of either paragraph (b), (c), or (d) of this section. A sample form for the certification is available on the MARAD Web site at *http://www.marad.dot.gov/afa.html* or may be obtained by contacting the Citizenship Approval Officer.

§ 356.51 [Amended]

18. Section 356.51 is amended as follows:

a. By adding "after October 1, 2001," after "such time" in paragraph (a) introductory text;

b. By removing the number "296779" following the vessel name "EXCELLENCE" in paragraphs (a)(1) and (c) and adding in its place the number "967502";

c. By removing paragraph (e).

d. By redesignating paragraph (d) as paragraphs (e);

e. By adding paragraphs (d) and (f); and

f. By removing the phrase "Fishing Vessels, Fish Processing Vessels, or Fish Tender Vessels" from newly designated paragraphs (e) introductory text and (e)(1) and adding in its place the term "Fishing Industry Vessels".

The additions read as follows:

§ 356.51 Exemptions for specific vessels.

* * * * *

(d) Owners of vessels that are exempt from the new ownership and control requirements of the AFA and this part 356 pursuant to paragraph (a) of this section must still comply with the requirements for a fishery endorsement under the federal law that was in effect on October 21, 1998. The owners must submit to the Citizenship Approval Officer on an annual basis:

(1) An Affidavit of United States Citizenship in accordance with § 356.15 demonstrating that they comply with the Controlling Interest requirements of section 2(b) of the 1916 Act. The Affidavit must note that the owner is claiming an exemption from the requirements of this part 356 pursuant to paragraph (e) of this section; and

(2) A description of the current ownership structure, a list of any changes in the ownership structure that have occurred since the filing of the last Affidavit, and a chronology of all changes in the ownership structure that have occurred since October 21, 1998.

* * * * *

(f) Fishing Industry Vessels that are claiming the exemption provided for in paragraph (e) of this section must certify to the Citizenship Approval Officer that the vessel is exempt from the ownership and control requirements of this part 356 pursuant to the exemption in paragraph (e) of this section. The vessel owner will be required to follow the U.S. Coast Guard's procedures for documenting a vessel with a fishery endorsement, as in effect prior to the passage of the AFA. The vessel owner must also notify the Coast Guard's National Vessel Documentation Center that it is claiming an exemption from the ownership and control requirements of this part 356 pursuant to paragraph (e) of this section.

Subpart H—International Agreements

§ 356.53 [Amended]

19. Section 356.53 is amended as follows:

a. By revising "October 1, 2001" to read "July 24, 2001" in both places where it appears in paragraph (a) and by removing the last sentence of paragraph (a);

b. By revising "October 1, 2001" to read "July 24, 2001" in both places where it appears in paragraph (b)(1);

c. By adding the word "and" at the end of paragraph (b)(3);

d. By revising "October 1, 2001" and "September 30, 2001" to read "July 24, 2001" in paragraph (b)(4);

e. By removing the semicolon and the word "and," at the end of paragraph (b)(4) and adding a period in its place;

f. By removing paragraph (b)(5);

g. By removing the word "will" in the first sentence of paragraph (d) and adding the word "may" in lieu thereof; by adding "if the petition presents unique issues that have not been addressed in previous determinations" after the word "comment" in the first sentence of paragraph (d); and by inserting ",if any," after the word "comments" in the third sentence of paragraph (d);

h. By revising "September 30, 2001" to read "July 24, 2001" in paragraph (f)(4);

i. By revising "October 1, 2001" to read "July 24, 2001" in paragraph (g)(1);

j. By revising paragraph (g)(2); and

k. By adding new paragraphs (g)(3) and (g)(4).

The revisions and additions read as follows:

§ 356.53 Conflicts with international agreements.

* * * * *

(g) * * *

(2) To the owner of a Fishing Industry Vessel on July 24, 2001, if any ownership interest in that owner is transferred to or otherwise acquired by a Non-Citizen or if the percentage of foreign ownership in the vessel is increased after such date.

(3) An ownership interest is deemed to be transferred under this paragraph (g) if:

(i) There is a transfer of direct ownership interest in the primary vessel owning entity. If the primary vessel owning entity is wholly owned by another entity, the parent entity will be considered the primary vessel owning entity; or

(ii) There is a transfer of indirect ownership at any tier.

(4) A transfer of interest in a vessel owner does not include:

(i) Transfers of disparately held shares of a vessel-owning entity if it is a publicly traded company and the total of the shares transferred in a particular transaction equals less than 5% of the shares in that class. An interest in a vessel owning entity that exceeds 5% of the shares in a class can not be sold to the same Non-Citizen through multiple transactions involving less than 5% of the shares of that class of stock in order to maintain the exemption for the vessel owner; or

(ii) Transfers pursuant to a divorce or death.

Dated: January 28, 2003.

By Order of the Maritime Administrator

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 03–2312 Filed 2–3–03; 8:45 am]

BILLING CODE 4910–81–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–03–153; MB Docket No. 02–287, RM–10569]

Radio Broadcasting Services; Stuart, OK

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Audio Division, at the request of Robert Fabian, allots Channel 228A to Stuart, Oklahoma, as the community's first commerical FM transmission service. *See* 67 FR 63875, October 16, 2002. Channel 228A can be allotted to Stuart in compliance with the Commission's minimum distance separation requirements at the city

reference coordinates without a site restriction. The reference coordinates for Channel 228A at Stuart are 34–54–18 North Latitude and 96–06–00 West Longitude. A filing window for Channel 228A at Stuart, Oklahoma, will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent order.

DATES: Effective March 3, 2003.

ADDRESSES: Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Rolanda F. Smith, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MB Docket Nos. 02–287, adopted January 15, 2003, and released January 17, 2003. The full text of this Commission decision is available for inspection and copying during regular business hours at the FCC's Reference Information Center, Portals II, 445 Twelfth Street, SW., Room CY–A257, Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com*.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding. Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all ex parte contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Oklahoma, is amended by adding Stuart, Channel 228A.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 03–2471 Filed 2–3–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA No. 03–144; MM Docket No. 99–331; RM–9728, RM–9847 and RM–9848]

Radio Broadcasting Services, Bay City, College Station, Columbus, Edna, Garwood, Giddings, Madisonville, Palacios and Sheridan, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In response to a petition filed by Sunburst Media, LP proposing the reallotment of Channel 241C2 from Madisonville, Texas, to College Station, Texas, and modification of the license for Station KAAG accordingly, the Commission issued a *Notice of Proposed Rule Making. See* 64 FR 68662, December 8, 1999. The proposal for Madisonville and College Station has been withdrawn. Two counterproposals were filed in response to the Notice. The counterproposal filed by Garwood Broadcasting Company of Texas which involved the communities of Bay City, Columbus, Edna, Garwood, Palacios and Sheridan, Texas, has been denied. In response to a counterproposal filed by Giddings Community Broadcasting Company we shall allot Channel 240A to Giddings, Texas. Channel 240A can be allotted to Giddings, Texas, with a site restriction 12.1 kilometers (7.5 miles) north of the community at coordinates 30–10–54 and 96–56–12. The issue of opening a filing window for this channel will be addressed by the Commission in a subsequent Order. With this action, this proceeding is terminated.

DATES: Effective March 7, 2003.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 99–331, adopted January 15, 2003, and released January 21, 2003. The full text of this Commission decision is available for inspection and copying during regular business hours in the Commission's Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com*.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Texas, is amended by adding Giddings, Channel 240A.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 03–2472 Filed 2–3–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 03–152; MB Docket No. 02–261, RM–10503, RM–10607]

Radio Broadcasting Services; Iraan and Ozona, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Audio Division, at the request of Robert Fabian requests the allotment of Channel 289C1 to Ozona, Texas, as the community's second local FM transmission service. *See* 67 FR 57781, September 12, 2002. Channel 289C1 can be allotted to Ozona, Texas in compliance with the Commission's minimum distance separation requirements with a site restriction 39.8 kilometers (24.7 miles) southwest to avoid short-spacing to the application site of a New FM station, Channel 289C2, Mason, Texas. Since Ozona is located within 320 kilometers (199 miles) of the U.S.-Mexican border, Mexican concurrence was requested and received. The reference coordinates for Channel 289C1 at Ozona are 30–25–54 North Latitude and 101–27–42 West Longitude. In response to a

counterproposal filed by Iraan Broadcasting, the Audio Division allots Channel 269C2 to Iraan, Texas, as that community's first local FM transmission service. Filing windows for Channel 289C1 at Ozona, Texas and Channel 269C2 at Iraan, Texas, will not be opened at this time. Instead, the issue of opening a filing window for these channels will be addressed by the Commission in a subsequent order. *See* **SUPPLEMENTARY INFORMATION**.

DATES: Effective March 3, 2003.

ADDRESSES: Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Rolanda F. Smith, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MB Docket No. 02–261, adopted January 15, 2003, and released January 17, 2003. The full text of this Commission decision is available for inspection and copying during regular business hours at the FCC's Reference Information Center, Portals II, 445 Twelfth Street, SW., Room CY–A257, Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com*.

Channel 269C2 can be allotted to Iraan in compliance with the Commission's minimum distance separation requirements with a site restriction of 4.8 kilometers (3.0 miles) west to avoid a short-spacing to the license site of Station KWFR, Channel 270C1, San Angelo, Texas. The reference coordinates for Channel 269C2 at Iraan are 30–53–44 North Latitude and 101–56–34 West Longitude. Since Iraan is located within 320 kilometers (199 miles) of the U.S.-Mexican border, Mexican concurrence has been requested, but not yet received. Therefore, if a construction permit is granted prior to the receipt of formal concurrence in the allotment by the Mexican government, the construction permit will include the following condition: "Operation with the facilities specified for Iraan herein is subject to modification, suspension, or termination without right to a hearing, if found by the Commission to be necessary in order to conform to the 1992 USA–Mexico FM Broadcast Agreement."

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Texas, is amended by adding Iraan, Channel 269C2 and by adding Channel 289C1 at Ozona.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 03–2473 Filed 2–3–03; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 021212306–2306–01; I.D. 012903G]

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod by Vessels Catching Pacific Cod for Processing by the Offshore Component in the Central Regulatory Area of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for Pacific cod by vessels catching Pacific cod for processing by the offshore component in the Central Regulatory Area of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the interim 2003 total allowable catch (TAC) of Pacific cod apportioned to vessels catching Pacific cod for processing by the offshore component of the Central Regulatory Area of the GOA.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), February 1, 2003, until superseded by the notice of Final 2003 Harvest Specifications of Groundfish for the GOA, which will be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The interim 2003 TAC of Pacific cod apportioned to vessels catching Pacific cod for processing by the offshore component in the Central Regulatory Area is 1,302 metric tons (mt) as established by the interim 2003 harvest specifications of groundfish for the GOA (67 FR 78733, December 26, 2002).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the interim 2003 TAC of Pacific cod apportioned to vessels catching Pacific cod for processing by the offshore component of the Central Regulatory Area of the GOA will be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 1,252 mt, and is setting aside the remaining 50 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance will soon be reached. Consequently, NMFS is prohibiting directed fishing for Pacific cod by vessels catching Pacific cod for processing by the offshore component in the Central Regulatory Area of the GOA.

Maximum retainable bycatch amounts may be found in the regulations at § 679.20(e) and (f).

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is contrary to the public interest. This requirement is contrary to the public interest as it would delay the closure of the fishery, lead to exceeding the interim TAC, and therefore reduce the public's ability to use and enjoy the fishery resource.

The Assistant Administrator for Fisheries, NOAA, also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for

waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: January 30, 2003.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 03–2569 Filed 1–30–03; 2:55 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 68, No. 23
Tuesday, February 4, 2003

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

FARM CREDIT ADMINISTRATION

12 CFR Parts 611, 612, 614, and 617

RIN 3052–AC04

Organization; Standards of Conduct and Referral of Known or Suspected Criminal Violations; Loan Policies and Operations; Borrower Rights; Effective Interest Rate Disclosure

AGENCY: Farm Credit Administration (FCA).

ACTION: Proposed rule.

SUMMARY: The FCA (agency, we, or our) proposes to amend its regulations governing disclosure of effective interest rates (EIR) and related information on loans. The proposed rule clarifies the current rule as to when and how qualified lenders must disclose the EIR and other loan information to borrowers; when and how the cost of Farm Credit System (FCS or System) borrower stock must be disclosed to borrowers; and how loan origination charges and other loan information must be disclosed to borrowers. The proposal requires lenders to use a discounted cash flow method in determining the EIR to provide meaningful disclosures to borrowers. However, it does not prescribe detailed calculation procedures. To make the regulations easier to understand and use by borrowers, lenders, and other users, we have rewritten the existing regulations in part 614, subpart K, Disclosure of Loan Information, in a question-and-answer format and moved them to a new part 617.

DATES: Please send your comments to the FCA by March 6, 2003.

ADDRESSES: You may send comments by electronic mail to "*reg-comm@fca.gov*" or through the Pending Regulations section of FCA's Web site, "*http://www.fca.gov*." You may also send comments to Thomas G. McKenzie, Director, Regulation and Policy Division, Office of Policy and Analysis, Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090 or by facsimile to (703) 734–5784. You may review copies of all comments we receive at our office in McLean, Virginia.

FOR FURTHER INFORMATION CONTACT:

Tong-Ching Chang, Senior Policy Analyst, Office of Policy and Analysis, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4498; TTY (703) 883–4434;

or

Howard Rubin, Senior Attorney, Office of General Counsel, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4020, TTY (703) 883–2020.

SUPPLEMENTARY INFORMATION:

I. Objectives

The objectives of our proposal are to:

- Ensure that borrowers receive meaningful and timely disclosure of the EIR and related information on loans;
- Promote consistency in the method used to determine the EIR; and
- Make the regulations easy to understand and use by borrowers, lenders, and other users.

II. Background

Section 4.13(a) of the Farm Credit Act of 1971, as amended (Act), requires the FCA to enact regulations requiring "qualified lenders" [1] to provide borrowers, not later than the time of loan closing, with meaningful and timely disclosure of:

- The current rate of interest on the loan;
- The amount and frequency of interest rate adjustments and the factors that the lender may take into account in adjusting rates for adjustable or variable rate loans;
- The effect of any loan origination charges or purchases of stock or participation certificates on the rate of interest on the loan;
- A statement indicating that stock purchased is at risk; and
- A statement indicating the various types of loan options available to borrowers.

The requirements of section 4.13 of the Act are applicable to all loans made by "qualified lenders" not subject to the Truth in Lending Act (TILA).[2]

Under section 4.13(a) of the Act, qualified lenders must give borrowers notice of any change in the interest rate applicable to a borrower's loan within a "reasonable time" after the change. In addition, section 4.13(b) of the Act requires qualified lenders that offer more than one rate of interest to borrowers to: (1) Provide, upon borrower request, a review of the loan to determine if the proper rate has been established; (2) explain to the borrower, in writing, the basis for the rate charged; and (3) explain to the borrower, in writing, how the credit status of the borrower may be improved to receive a lower interest rate on the loan.

Current FCA regulations implement the disclosure requirements of the Act, but contain limited guidance on several key issues. Additionally, when the statute on EIR disclosure went into effect in the 1980s, borrower stock requirements were generally 5 to 10 percent of the loan amount. Disclosure has varied more in recent years because FCS institutions have established a variety of stockholder capitalization and stock retirement policies. Current System borrower stock purchase requirements range from the minimum (the lesser of 2 percent or $1,000) to various higher amounts. Perhaps more significantly, the capitalization requirements are applied not only on a per loan basis, but also on a per borrower basis. With the multiple stock purchase requirements, new loan programs, and varied methodologies for calculation of effective interest rates, compliance with current EIR disclosure regulations has become more challenging and has led to inconsistent disclosure among qualified lenders.

In August 1998, FCA issued a notice soliciting comments from the public to identify regulations and policies that are ineffective or impose a burden on the System.[3] We received comments requesting that changes be made to our regulations on the EIR disclosure. In a letter to the FCA dated May 17, 2000, the Farm Credit Council (FCC) consolidated input from each Farm Credit district and requested that more changes to our borrower rights regulations be made. We considered all

[1] "Qualified lenders" include System lenders (except for a bank for cooperatives) and non-System lenders (other financing institutions (OFIs)) for loans made with funding from a Farm Credit bank. *See* 12 U.S.C. 2202a(a)(6).

[2] 15 U.S.C. 1601 *et seq.* TILA applies to consumer loans and specifically exempts agricultural loans.

[3] *See* 63 FR 44176, August 18, 1998.

comments received on EIR disclosure in developing these proposed amendments and will address changes to other borrower rights regulations in a separate rulemaking.

This proposed rule, however, does not address comments on electronic or Web-based compliance with borrower rights regulations. These issues are subject to FCA's E-commerce rule.[4] System institutions should interpret the terms used in this part broadly to permit electronic transmission, communications, records, and submissions in business, consumer, or commercial transactions, unless otherwise prohibited.

III. Section-by-Section Analysis

To make our regulations easier to understand and use by borrowers, lenders, and other users, we have rewritten the existing regulations in part 614, subpart K, Disclosure of Loan Information, in a question-and-answer format and moved them to a new part 617. The existing part 617, Referral of Known or Suspected Criminal Violations, will be moved to part 612, Standards of Conduct, in a new subpart B, and redesignated as §§ 612.2300 through 612.2303.

In the section-by-section analysis below, we explain our proposed amendments to the current EIR disclosure regulations. We also address comments received pertinent to loan information and EIR disclosures.

Subpart A—General

Section 617.7000—Definitions

Proposed § 617.7000 defines "effective interest rate" generally as a measure of the cost of credit that, expressed as an annual percentage rate, shows the effect of borrower stock or participation certificates purchased and loan origination charges on the stated interest rate of a loan. The new definition would replace the current definition of EIR in § 614.4366(b). Proposed § 617.7125 explains how a qualified lender should determine the effective interest rate.

In addition, the proposed amendments reword the definitions of "adjustable rate loan" and "interest rate" in plain language. We also propose to eliminate the existing definitions of "fixed rate loan," "loan origination charges," and "standard adjustments factors" because: (1) The term "fixed rate loan" is not used in the proposed rule; (2) the term "loan origination charges" is addressed separately in proposed § 617.7115; and (3) a qualified lender would disclose "the specific factors that the qualified lender may take into account in making adjustments to the interest rate on the loan" under proposed § 617.7130(b)(5); thus, eliminating the need for these definitions. The two existing definitions for "loan" and "qualified lender" are reworded slightly but we did not intend to make any substantive change.

Subpart B—Disclosure of Effective Interest Rates

Section 617.7100—Who Must Make and Who Is Entitled To Receive an Effective Interest Rate Disclosure?

Proposed § 617.7100(a) states a basic requirement of section 4.13 of the Act, that a qualified lender is required to provide an effective interest rate disclosure to borrowers for all loans not subject to TILA. Paragraph (a) would replace current § 614.4365.

In its letter requesting regulatory relief, the FCC generally recommended that we amend the current rule to allow a single notice be sent when a borrower has multiple loans that close on the same day. The FCC also suggested that amendments allow a lender to apply a notice given in connection with a loan closing to any future indebtedness by the borrower. The Act requires that an EIR disclosure be made for "all" loans. Because each loan is a separate legal obligation and carries its own interest rate and specific terms and conditions, we believe that each loan requires a separate disclosure. However, separate disclosures of multiple loans closed simultaneously may be included in the same notice to the borrower.

Paragraph (b) provides what a lender must do when there is more than one borrower obligated on a loan. Current § 614.4367(d) allows the lender to satisfy the disclosure requirements by providing the disclosure to any one of the primary obligors on the loan. The proposed rule will give borrowers the opportunity to designate, in writing, the person they wish to receive the disclosures. If the borrowers do not designate a particular recipient, the lender must provide the disclosures to at least one borrower primarily liable for repayment of the loan. FCA believes that allowing borrowers, and not just the lender, to designate who will receive the disclosures is more in keeping with the intent of the "borrower rights" provisions of the Act and will not be burdensome to the lender.

Section 617.7105—When Must a Qualified Lender Disclose the Effective Interest Rate to a Borrower?

Section 4.13 of the Act requires EIR disclosure not later than the time of loan closing for all covered loans. This rule is easy to apply for new customers, and proposed paragraph (a) contains this general directive for prospective borrowers.

However, the question of when a new EIR disclosure is required to be made to an existing borrower—for example when the borrower "renews" or "refinances" a loan—has met with varied interpretations under FCA's current regulations. FCC suggests amending the regulatory definition of "loan" to include "any renewal or refinancing of such a loan, but not including any interest rate conversion, reamortization, or other loan servicing action that does not result in a new obligation between a borrower and a qualified lender." In general, FCA agrees with the substance of this suggestion. However, rather than change our definition of "loan" (which is taken directly from the Act), we instead propose revising the criteria that establish the circumstances in which EIR disclosure is necessary. Paragraph (b), therefore, provides that a qualified lender must make a new EIR disclosure to existing borrowers on or before the date the borrower:

(1) Executes a new promissory note or other comparable evidence of indebtedness;

(2) Purchases additional stock as a condition of obtaining new funds from the qualified lender; or

(3) Pays an additional loan origination charge to the qualified lender as a condition of obtaining new funds.

As the FCC points out, a new note (or other comparable document)—ordinarily executed for a renewal or a refinancing—creates a new, binding legal obligation and therefore must be treated as a new "loan" for disclosure purposes. While "reamortization" may not require a new disclosure if none of the above conditions is met, any new interest rate on the reamortized loan must be disclosed under the subsequent disclosure requirements of proposed § 617.7135.

Section 4.13(a)(3) of the Act also requires qualified lenders to disclose the effect of "any" purchases of stock or participation certificates or loan origination charges. As a result, new disclosure must be made any time a borrower is required to buy stock or pay additional loan origination charges in connection with a lending transaction,

[4] *See* 67 FR 16627, April 8, 2002.

whether under an existing or new promissory note.

Paragraph (b)(2) of proposed § 617.7105 is intended to clarify that no new disclosure is required for additional advances made under an open-end line of credit or similar preexisting arrangement unless one of the three aforementioned conditions occurs. For these types of loans, normally only one EIR disclosure—at the time of loan closing—is required.

Section 617.7110—How Should a Qualified Lender Disclose the Cost of Borrower Stock or Participation Certificates?

The Act and current FCA regulations require a qualified lender to disclose the effect of any purchases of stock or participation certificates on the effective rate of interest on a loan. Where the lender has a per loan stock purchase requirement, this rule is straightforward to apply. However, many System lenders have adopted per member, rather than per loan, stock purchase requirements. This raises the issue of whether previously purchased stock must be included in the EIR for new loans to existing borrowers/stockholders.

Historically, we have advised institutions that stock must be included in the EIR disclosure because stock was generally issued on a per loan basis. After reviewing current stock issuance practices, we have concluded that the Act does not require a qualified lender to include the cost of previously purchased stock in the EIR calculation for new loans. Amounts previously paid to a lender in connection with an earlier, separate loan transaction are not properly included in the EIR calculation as "interest" on a subsequent loan because the borrower is not paying that amount to the lender and the lender is not receiving that amount from the borrower in connection with the new "loan."

Furthermore, shares of stock in a corporation, such as an FCS lending institution, are personal property, constituting an asset of the owner. Therefore, we believe FCS borrower stock should not be treated as a continuing liability or cost to a borrower. Section 4.13(a)(5) of the Act requires that borrowers be informed that they are purchasing an at-risk equity investment in the System institution. We believe that treating the stock purchase as a continuing cost to the borrower (by continuing to include it in EIR calculations) is at odds with the nature of an at-risk equity investment and confuses the meaning of the section 4.13(a)(5) required disclosure.

We have incorporated this new guidance into the proposed rule by providing that the cost of borrower stock must be included in the EIR calculation only at the time the stock is purchased in connection with a loan transaction, whether purchased with cash, included in a promissory note, or otherwise paid. For subsequent loans made to existing borrowers, only the cost of new stock, if any, purchased in connection with the transaction must be included in the EIR calculation.

Section 617.7115—How Should a Qualified Lender Disclose Loan Origination and Other Charges?

The Act and current FCA regulations require qualified lenders to disclose the effect of "any loan origination charges" on the "effective rate of interest" on a loan. However, the Act does not define "loan origination charges," and FCA's current regulatory definition (in § 614.4366(f)) does not clearly state which charges should and which should not be included in the EIR calculation. In adopting the current definition of "loan origination charges," FCA looked, in part, to similar terms used in Federal Reserve Board regulations implementing TILA (Regulation Z).

The FCC commented that it did not seem likely that Congress intended System institutions to consider or include in their EIR calculations all or most of the charges listed in Regulation Z and that FCA has not explicitly incorporated Regulation Z's "Charges excluded from the finance charge" (12 CFR 226.4(c)). The FCC suggests that since TILA, by its terms, does not apply to agricultural loans, FCA should not look to Regulation Z for guidance in determining what constitutes "loan origination charges" under the Act. FCC recommends defining loan origination charges to include "stock, participation certificates, and fees paid in lieu of interest (points, origination fees, etc.)." The FCC further states that this would be "a clearer, more concise, less burdensome definition that would comport with the relevant requirements of the Act, especially in view of the fact that no other lender is required to give an effective interest rate disclosure when it makes an agricultural loan."

We generally agree with FCC's comments. First, Congress provided, in section 4.13 of the Act, that the EIR disclosure is for loans not subject to TILA. Congress also specifically excluded agricultural loans from TILA requirements because it believed that consumer disclosures were not appropriate.[5] Therefore, while Regulation Z may provide some background guidance, we believe it is not appropriate to graft TILA and Regulation Z definitions or requirements onto Farm Credit Act EIR disclosure requirements.

Second, we agree that only origination fees, points, and similar charges paid to a lender by the borrower should be considered "interest" charges and be included in the EIR calculation. However, we also believe that all costs a borrower is required to pay in order to obtain a loan from a qualified lender should be disclosed in some fashion in order to satisfy the intent of section 4.13 of the Act. Therefore, proposed § 617.7115 provides guidance on which loan charges must be included in the EIR calculation and which charges must be disclosed separately.

Paragraph (a) is intended to replace and clarify the current definition of "loan origination charges" found in § 614.4366(f). It requires that any one-time charge paid by a borrower to a qualified lender in consideration for making a loan be included in the EIR calculation as a loan origination charge. Loan origination charges include, but are not limited to, loan origination fees, application fees, and conversion fees charged by the lender. Loan origination charges also include any payments made by a borrower to a qualified lender to reduce the interest rate that would otherwise be charged, including any charges designated as "points."

Ordinarily, any general administrative or processing fee charged by a lender to recover the lender's operating costs constitutes added lending costs to borrowers that must be included in the loan origination charges under paragraph (a). However, loan origination charges should not include any general fee collected by a lender on behalf of third parties or other fees charged by the lender for specific services rendered to borrowers.

We added paragraph (b) to provide that all other payments that a borrower is required to make to obtain a loan, but not included in the loan origination charges described in paragraph (a) in the EIR calculation, must be disclosed separately at the time of loan closing. These include, but are not limited to, real or personal property taxes, guarantee fees, or insurance premiums paid by borrowers to third parties, and appraisal fees paid either to the lender or to a third party.

We believe only charges that could reasonably be defined as "interest"

[5] *See* S. Rep. 96–338, at 24 (1980), reprinted in 1980 U.S.C.C.A.N. 259

received by the lender in exchange for making the loan should be included in the EIR calculation. Having fewer items included in the EIR more clearly demonstrates the effect of stock and origination charges paid to the qualified lender and reduces artificial inflation of the EIR. We also believe that separate disclosure of charges not included in the EIR calculation, consisting of a list of the actual cost of other items, is more meaningful to borrowers than including them in the EIR calculation.

Section 617.7120—How Should a Qualified Lender Present the Disclosures to a Borrower?

Paragraph (a) requires a qualified lender to disclose the effective interest rate and other required information clearly and conspicuously in writing, in a form that is easy to read and understand and that may be kept by the borrower. Paragraph (b) further provides that the required disclosures cannot be combined with any information not directly related to the information required by proposed §§ 617.7130 and 617.7135. These standards are intended to provide reasonable assurance that qualified lenders provide user-friendly, meaningful disclosures to borrowers. We also propose to eliminate the model forms contained in the Appendix to 12 CFR 614.4367 of the current regulations to permit lenders to tailor their disclosures to a variety of loan types.

Section 617.7125—How Should a Qualified Lender Determine the Effective Interest Rate?

Current FCA regulations provide direction as to the general requirements of EIR disclosures; they do not, however, prescribe a specific formula or methodology for calculation of an effective interest rate. The absence of a definitive methodology for calculating an effective interest rate has led to the use of different approaches—ranging from simplistic to a more complex discounted cash flow method.

Proposed § 617.7125 provides that a qualified lender must calculate the effective interest rate on a loan using a discounted cash flow method showing the effect of the time value of money in determining the EIR. Further, the proposed rule provides that, for all loans, the cash flow stream used for calculating the effective interest rate of a loan must include: (1) Principal and interest; (2) the cost of stock or participation certificates that a borrower is required to purchase in connection with the loan; and (3) loan origination charges described in § 617.7115(a).

The discounted cash flow method required by proposed § 617.7125 is conceptually similar to the formula prescribed in Regulation Z for determination of the annual percentage rate (APR) on loans subject to TILA. While loan charge components differ between the EIR required by the Act and the APR required by Regulation Z, we believe requiring the disclosure of an EIR determined under a widely used method for analyzing the cost of credit would provide more meaningful information to borrowers.

As discussed earlier, we believe it is not appropriate to graft TILA or Regulation Z requirements onto the Act's EIR disclosure requirements. Consequently, the proposed rule does not impose, on qualified lenders, a formula or specific procedures for calculating the EIR. Instead, we propose that all qualified lenders establish policies and procedures for calculating the EIR and use a standard methodology (the discounted cash flow method) for determining required EIR disclosures to borrowers.

Paragraph (c) requires lenders to establish policies and procedures for disclosing the effect of the cost of borrower stock and loan origination charges on the interest rate of a loan. Qualified lenders will also be required to establish policies and procedures for determining the major assumptions used in calculating the EIR, such as for calculating the EIR for adjustable rate loans, revolving or open-end lines of credit, or other loans where key terms may vary or may not be fixed. Qualified lenders may not, however, assume retirement of stock in calculating the EIR disclosed to borrowers because the Act provides that borrower stock is "at risk" and a qualified lender cannot guarantee stock retirement. Qualified lenders, may, however, provide supplemental disclosures to borrowers to demonstrate the effect of potential stock retirements so long as the additional disclosures are not misleading.

In considering the best way to achieve consistent, accurate, and meaningful EIR disclosures, the FCA considered common practices in the financial services industry for similar disclosures. Regulation Z for consumer credit provides detailed requirements for uniform APR calculations that essentially use a discounted cash flow method. Because the discounted cash flow method for calculating an EIR explicitly and routinely weighs the time value of money, we believe it produces the most accurate reflection of a loan's cost.

Although the discounted cash flow method involves somewhat complex mathematical computations, the FCA does not believe a requirement to use this method would cause undue burden to lenders. A survey of System-lender disclosures we conducted in the spring of 2002 indicated that a substantial majority (more than 80 percent) of FCS lenders have already incorporated discounted cash flows in their EIR calculations. In addition, a variety of computer-based tools for calculating effective interest rates are readily available in the market place at a reasonable cost.

FCA believes that the complexity of agricultural lending requires a more flexible disclosure approach than provided for under Regulation Z. Therefore, rather than prescribing the exact form and content of disclosure, the proposed rule requires qualified lenders to disclose the EIR and other loan information to borrowers in a form that is easy to read and understand and that the borrower may keep, as long as disclosures are made clearly and conspicuously in writing. However, as discussed above, qualified lenders must establish written policies and procedures regarding disclosure of the EIR and loan information to borrowers and apply the policies and procedures consistently. Each qualified lender must also maintain adequate documentation showing how the lender calculated and disclosed the EIR on each loan.

When a single borrower closes on multiple loans simultaneously and the borrower is required to purchase stock and pay loan origination charges on a per borrower basis, a qualified lender must retain documentation evidencing specific procedures used for assigning costs among the loans in determining the EIR for each particular loan.

To illustrate the determination of an EIR based on discounted cash flows, we have included two examples in Part IV of this preamble.

Section 617.7130—What Initial Disclosures Must a Qualified Lender Make to a Borrower?

(a) *Required disclosures-in general*—To ensure that all essential elements of a loan are disclosed, the information required by existing § 614.4367(a)(1), (3), (4), and (5) are incorporated in proposed § 617.7130(a). Qualified lenders must disclose the following in writing:

(1) The interest rate on the loan;

(2) The effective interest rate of the loan;

(3) The amount of stock or participation certificates that a borrower is required to purchase in connection with the loan and included in the calculation of the effective interest rate of the loan;

(4) All loan origination charges included in the effective interest rate;

(5) All other charges not included as loan origination charges in the effective interest rate calculation that borrowers are required to pay to obtain a loan;

(6) That stock or participation certificates that borrowers are required to purchase are at risk and may only be retired at the discretion of the board of the institution; and

(7) The various types of loan options available to borrowers, with an explanation of the terms and borrower rights that apply to each type of loan.

The information required above is intended to reflect the actual loan for which the disclosure is being provided. The qualified lender may, at its discretion, include additional disclosures or examples—including illustrations of the impact on the effective interest rate of any change in borrower stock ownership—so long as such disclosures are not misleading.

The FCC contended in its comment letter that existing § 614.4367(a)(3), which requires the computation of EIR to be made on a transaction-specific basis, goes beyond the requirement of section 4.13(a)(3) of the Act. The FCC believes that the statutory requirement could be satisfied by using a representative example based on a generic transaction and recommended that FCA allow disclosure through the use of a standard example.

As indicated in prior rulemakings, we disagree with this approach and believe that in order for borrower disclosure to be "meaningful," as is required by statute, the disclosure should take into account the specific loan for which the disclosure is being provided. The EIR disclosed should be derived from the interest rate and related charges applicable to the loan being made to the borrower. However, for adjustable or revolving loans where the terms and conditions are not fixed or are subject to change, a disclosure of the EIR based on the terms and conditions known at the inception of the loan, coupled with representative examples showing the effect of changes in any of the cost elements of the loan, *e.g.*, borrower stock, loan origination charges, or interest rate, on the EIR would be appropriate under the circumstances.

(b) *Adjustable rate loans*—Information required by current § 614.4367(a)(2) is incorporated in proposed § 617.7130. Qualified lenders must disclose to borrowers at the inception of adjustable rate loans:

(1) The circumstances under which the rate can be adjusted;

(2) How much the rate can be adjusted at any one time and how much the rate can be adjusted during the term of the loan;

(3) How often the rate can be adjusted;

(4) Any limitations on the amount or frequency of adjustments; and

(5) The specific factors that the qualified lender may take into account in making adjustments to the interest rate on the loan.

Paragraph (b)(5) was added to replace the current definition of "standard adjustments factors" in § 614.4366(h), which includes those factors typically taken into consideration by a qualified lender in adjusting the interest rate on loans, such as a lender's cost of funds, operating expenses, provision for loan losses, changes in retained earnings, etc.

Section 617.7135—What Subsequent Disclosures Must a Qualified Lender Make to a Borrower?

(a) *Notice of interest rate change*—Section 4.13(a)(4) of the Act requires qualified lenders to provide notice to borrowers of "any change in the interest rate applicable to the borrower's loan" within a "reasonable time after" the effective date of increase or decrease. Current § 614.4367(b)(3) requires notice to be made within 10 days after the effective date of the rate change. For loans with interest rates directly tied to a widely publicized external index, the notice may be made within 30 days after the effective date of the rate change.

The FCC recommends that the period in which disclosure must be made should be the same for all loans, regardless of any tie to an external index, in order to "simplify the disclosure process for System institutions." However, under the current regulation, a System lender may choose to make disclosure for all adjustable rate loans within 10 days of the effective date of a change. Therefore, no regulatory change is necessary to achieve this recommendation. Additionally, when we adopted the 10- and 30-day rule in 1996, we said that the "need to provide timely information to borrowers outweighed the regulatory burden that a 10-day post-notice may entail." We continue to believe that a longer notice period is not appropriate for "administered rate loans" (adjustable rate loans not tied to a widely published external index), thus we retain the 10-day requirement in the proposed rule at § 617.7135(a)(3).

The FCC also recommends that "where an interest rate is based on a widely publicized external index plus a spread, disclosure of a change of rate should not be required merely when the index changes but should be required only when the change in rate is caused by a change in the spread." In support, FCC notes that: (1) Borrowers receive notice in their original contract of what the index is and when the rate can change; (2) borrowers can easily find changes in the index through readily available sources; (3) anticipated changes in an external index (as opposed to unanticipated changes in the spread) would not have much impact on a borrower's decision to refinance with another lender; and (4) when an external index changes, there is no change to the borrower's contract rate of interest (index plus spread).

However, we believe eliminating the notice of interest changes for index rate loans is not appropriate. The Act requires notice of "any change in the interest rate applicable to the borrower's loan." While the contract rate (index plus spread) may not have changed, it is clear that when the index changes, the rate of interest the borrower pays on the loan has changed. There is nothing in the legislative history of the Act to suggest that Congress intended to exempt index rate loans from the disclosure requirement. Furthermore, we believe it is important to remind borrowers that interest rate changes will affect their payment amounts.

We propose to extend the deadline to provide notice on loans directly tied to a widely publicized index from 30 to 45 days. This would allow lenders that provide monthly billing or account statements sufficient time to include the notice of change with the regular mailing. The notice could also be satisfied by providing the required disclosure to borrowers in any form of correspondence, such as a newsletter.

We considered revising the rule to allow qualified lenders to send notice with the borrower's next regularly scheduled billing or account statement. However, for annual, semiannual, or quarterly payment loans, it could result in some borrowers not receiving notice of interest rate change for a considerable time period. We did not believe that would constitute "reasonable" notice for those borrowers and would result in significantly disparate treatment for borrowers depending on their payment schedule.

We consider the nationally published commercial bank Prime Rate and the London Interbank Offered Rate (LIBOR) to be the primary examples of widely publicized external indexes. Other rates may also qualify, but the qualified lender must ensure that the rate is published in a source readily available to its borrowers. The 45-day rule applies only for changes in the index itself; if the lender changes the spread, a 10-day post-notice is required.

We do not propose to materially alter the required content of the notice. Current and proposed rules require notice of the new interest rate and the effective date of the new rate. In the only change, we eliminated the reference to "standard adjustments factors" and now propose that lenders directly disclose "the factors used to adjust the interest rate on the loan," *e.g.*, spread, index averages, etc., in the notice.

(b) *Notice of increase in stock purchase requirement*—Current § 614.4367(c) requires that each qualified lender "that takes any action which changes the amount of stock or participation certificates which borrowers are required to own and that modifies the effective interest rate" send a notice to borrowers at least 10 days before the effective date of the action. The FCC recommends that the 10-day prior notice be changed to a 30-day post-notice, stating that when there is a stock reduction, the requirement is burdensome to the lender (requiring two mailings, one notice and one forwarding the stock retirement proceeds) and does not materially benefit the borrower (who would not normally decide to refinance because of a stock and effective interest rate reduction).

We agree with FCC that prior notice of a decrease in required stock ownership does not provide any meaningful benefit to borrowers. We also believe that the Act does not require a notice for a decrease in stock ownership requirement. Therefore, the proposed rule does not require any notice for a decrease in stock ownership.

However, we believe that the Act requires a lender to make a new EIR disclosure if it increases a borrower's stock purchase requirement because of the need to show the effect of any "purchases" of stock on the EIR. Ten-day (10-day) prior notice of such a change is necessary to give a borrower the opportunity to refinance using a meaningful comparison of interest rates. Therefore, the proposed rule retains the 10-day prior notice requirement for any required increase in stock ownership and includes the same basic information requirements as the current regulation. This obligation should not create a burden on System lenders since a stock increase is typically applicable to borrowers of new loans rather than applied retroactively to existing borrowers.

Subpart C—Disclosure of Differential Interest Rates

Section 617.7200—What Disclosures Must a Qualified Lender Make to a Borrower on Loans Offered With More Than One Rate of Interest?

Under the Act, qualified lenders that offer loans with differential interest rates must disclose additional information to borrowers at the request of a borrower of a loan. This requirement was implemented by existing § 614.4368, which requires a lender to inform borrowers of their rights when the lender offers more than one rate of interest to borrowers. We rearranged the existing regulation and moved it to the proposed § 617.7200 without changes in substance.

IV. Calculation of the Effective Interest Rate Using a Discounted Cash Flow Method

To illustrate how discounted cash flows can be used in determining a loan's effective interest rate, we developed the following examples using computer spreadsheet software based on a given set of assumptions to determine the cash flow stream in the calculation.

We assumed that the borrower's stock is not retired either as the loan is paid down or at maturity. We also assumed the future cash flow stream consists of a series of annual equal payments for calculation of the effective interest rate.

The amount of a lender's loan disbursement to the borrower is the loan amount reduced by the borrower's payments for borrower stock and loan origination charges, regardless of the form of the payments. However, depending on how the borrower stock and loan origination charges are paid by the borrower in a loan transaction, the amount of the promissory note to be used for calculation of the EIR may be different.

The following examples demonstrate a loan transaction with two different loan disbursement scenarios: Consider a 10-year, $100,000 loan with a stated interest rate of 9 percent and equal annual payments until maturity. The loan has a $1,000 stock purchase requirement (the lesser of $1,000 or 2 percent of the loan amount) and a $200 loan origination charge. In Example A, we have assumed that the borrower has paid for the stock and fees at the time the loan is disbursed. As a result, the borrower takes a $100,000 loan but only receives loan proceeds of $98,800 ($100,000 loan minus $1,200 stock and loan origination fee). In example B, we have assumed the borrower has rolled the cost of the stock and loan origination fee into the promissory note. In order to receive loan proceeds of $100,000, the borrower needs to take $101,200 loan.

EXAMPLE A.—LOAN PROCEEDS OF $98,800 TO BORROWER WITH A PROMISSORY NOTE OF $100,000

Loan proceeds to borrower	$98,800
Stock purchase	$1,000
Origination fee	$200
Promissory note	$100,000
Interest rate	9.00%
Term of loan	10 years
Annual payment	$15,582
Effective interest rate	9.2752%

The initial cash flow we used in determining the EIR includes: (1) The principal of the loan; (2) the amount of stock a borrower is required to purchase; and (3) the amount of loan origination charges a borrower is required to pay.

In computing the effective interest rate, the first step is to determine the cash flow stream for the loan to maturity. The first in the series of cash flows is the loan disbursement or the loan proceeds to the borrower. In Example A, the amount of loan disbursement to the borrower is determined by taking the gross loan amount of $100,000 minus the stock purchase of $1,000 and the loan origination fee of $200 for a total of $98,800. Thus, the borrower's legal obligation is $100,000, but the borrower only has the use of $98,800—this is the present value from which the effective interest rate on the loan is derived.

The remainder of the cash flow stream consists of the annual payments on the loan to maturity. Microsoft Excel's [6] Payment (PMT) function was used to calculate the constant payment based on the amount of loan to be repaid (*i.e.*, $100,000), the interest rate (9 percent), and the number of payments in the loan term (10). The amount of annual level payments derived from these given factors is $15,582.

Once the cash flow stream has been determined, Excel's Internal Rate of Return (IRR) function is used to calculate the loan's effective interest rate. The effective interest rate for the loan derived from the IRR function is 9.2752 percent [7] (based on the initial cash outflow of $98,800 and a future cash inflow stream consisting of 10 level

[6] We used Microsoft Excel application software to develop these examples. However, the same results can be achieved using other commercially available software.

[7] For illustration purposes, the EIR is expressed in four decimal points in our examples. However, the EIR may be expressed with two or more decimal points based on the size, term, and common industry practice for similar loans.

payments in the amount of $15,582 each year). The IRR reflects the effective interest rate of a loan consisting of disbursements (negative values for cash outflows) and loan payments of principal and interest (positive values for cash inflows) that occur at regular intervals.

EXAMPLE B.—LOAN PROCEEDS OF $100,000 TO BORROWER WITH A PROMISSORY NOTE OF $101,200

Loan proceeds to borrower	$100,000
Stock purchase	1,000
Origination fee	200
Promissory note	101,200
Interest rate	9.00%
Term of loan	10 years
Annual payment	$15,769
Effective interest rate	9.2719%

In Example B, the initial cash flow of the loan to be used in the IRR function for calculating the effective interest rate is the $100,000 loan proceeds to the borrower. The amount of total loan obligation used for determination of the annual payment and the amount of annual payments derived from the PMT function are $101,200 ($100,000 + $1,000 + $200) and $15,769, respectively. The effective interest rate in this case is 9.2719 percent.

In addition to the EIR disclosure, a qualified lender may include supplemental disclosures of the effective interest rate using the assumption that borrower stock will be retired upon repayment of the loan or as the loan is paid down. The qualified lender must explain the purpose of the supplemental disclosure and that stock or participation certificates that borrowers are required to purchase are at risk and may only be retired at the discretion of the board of the institution.

V. Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the FCA hereby certifies that the proposed rule will not have a significant economic impact on a substantial number of small entities. Each of the banks in the System, considered together with its affiliated associations, has assets and annual income in excess of the amounts that would qualify them as small entities. Therefore, System institutions are not "small entities" as defined in the Regulatory Flexibility Act.

List of Subjects

12 CFR Part 611

Agriculture, Banks, banking, Rural areas.

12 CFR Part 612

Agriculture, Banks, banking, Conflict of interests, Rural areas.

12 CFR Part 614

Agriculture, Banks, banking, Flood insurance, Foreign trade, Reporting and recordkeeping requirements, Rural areas.

12 CFR Part 617

Banks, banking, Criminal referrals, Criminal transactions, Embezzlement, Insider abuse, Investigations, Money laundering, Theft.

For the reasons stated in the preamble, parts 611, 612, 614 and 617 of chapter VI, title 12 of the Code of Federal Regulations are proposed to be amended as follows:

PART 611—ORGANIZATION

1. The authority citation for part 611 continues to read as follows:

Authority: Secs. 1.3, 1.13, 2.0, 2.10, 3.0, 3.21, 4.12, 4.15, 4.20, 4.21, 5.9, 5.10, 5.17, 6.9, 6.26, 7.0–7.13, 8.5(e) of the Farm Credit Act (12 U.S.C. 2011, 2021, 2071, 2091, 2121, 2142, 2183, 2203, 2208, 2209, 2243, 2244, 2252, 2278a–9, 2278b–6, 2279a–2279f–1, 2279aa–5(e)); secs. 411 and 412 of Pub. L. 100–233, 101 Stat. 1568, 1638; secs. 409 and 414 of Pub. L. 100–399, 102 Stat. 989, 1003, and 1004.

Subpart P—Termination of System Institution Status

2. Amend § 611.1223(d)(6) by revising the second sentence to read as follows:

§ 611.1223 Information statement—contents.

* * * * *

(d) * * *

(6) * * * You must explain the effect termination will have on borrower rights granted in the Act and part 617 of this chapter.

* * * * *

3. Amend § 611.1290 by revising the second sentence to read as follows:

§ 611.1290 Continuation of borrower rights.

* * * Institutions that become other financing institutions on termination must comply with the applicable borrower rights provisions in the Act and part 617 of this chapter.

PART 612—STANDARDS OF CONDUCT AND REFERRAL OF KNOWN OR SUSPECTED CRIMINAL VIOLATIONS

4. The authority citation for part 612 continues to read as follows:

Authority: Secs. 5.9, 5.17, 5.19 of the Farm Credit Act (12 U.S.C. 2243, 2252, 2254).

5. Revise the heading of part 612 to read as set forth above.

6. Redesignate §§ 612.2130 through 612.2270 as subpart A and add a heading for subpart A to read as follows:

Subpart A—Standards of Conduct

PART 614—LOAN POLICIES AND OPERATIONS

7. The authority citation for part 614 is revised to read as follows:

Authority: 42 U.S.C. 4012a, 4104a, 4104b, 4106, and 4128; secs. 1.3, 1.5, 1.6, 1.7, 1.9, 1.10, 1.11, 2.0, 2.2, 2.3, 2.4, 2.10, 2.12, 2.13, 2.15, 3.0, 3.1, 3.3, 3.7, 3.8, 3.10, 3.20, 3.28, 4.12, 4.12A, 4.13B, 4.14, 4.14A, 4.14C, 4.14D, 4.14E, 4.18, 4.18A, 4.19, 4.25, 4.26, 4.27, 4.28, 4.36, 4.37, 5.9, 5.10, 5.17, 7.0, 7.2, 7.6, 7.8, 7.12, 7.13, 8.0, 8.5 of the Farm Credit Act (12 U.S.C. 2011, 2013, 2014, 2015, 2017, 2018, 2019, 2071, 2073, 2074, 2075, 2091, 2093, 2094, 2097, 2121, 2122, 2124, 2128, 2129, 2131, 2141, 2149, 2183, 2184, 2201, 2202, 2202a, 2202c, 2202d, 2202e, 2206, 2206a, 2207, 2211, 2212, 2213, 2214, 2219a, 2219b, 2243, 2244, 2252, 2279a, 2279a–2, 2279b, 2279c–1, 2279f, 2279f–1, 2279aa, 2279aa–5); sec. 413 of Pub. L. 100–233, 101 Stat. 1568, 1639.

Subpart K—[Removed]

8. Remove subpart K, consisting of §§ 614.4365 through 614.4368.

Subpart P—Farm Credit Bank and Agricultural Credit Bank Financing of Other Financing Institutions

9. Revise § 614.4560(d) to read as follows:

§ 614.4560 Requirements for OFI funding relationships.

* * * * *

(d) The borrower rights requirements in part C of title IV of the Act, and section 4.36 of the Act, and the regulations in part 617 of this chapter shall apply to all loans that an OFI funds or discounts through a Farm Credit Bank or agricultural credit bank, unless such loans are subject to the Truth in Lending Act, 15 U.S.C. 1601 *et seq.*

* * * * *

PART 617—REFERRAL OF KNOWN OR SUSPECTED CRIMINAL VIOLATIONS

10. The authority citation for part 617 continues to read as follows:

Authority: Secs. 5.9, 5.17 of the Farm Credit Act (12 U.S.C. 2243, 2252).

PART 617—[REMOVED]

§§ 617.1—617.4 [Redesignated as §§ 612.2300—612.2303]

11. Redesignate §§ 617.1 through 617.4 as new *§§ 612.2300 through 612.2303.*

12. Remove part 617.

13. Redesignate newly designated §§ 612.2300—612.2303 as subpart B and add a heading for subpart B to read as follows:

Subpart B—Referral of Known or Suspected Criminal Violations

§ 612.2300 [Amended]

14. Amend newly designated § 612.2300 by removing the reference "§ 617.2" each place it appears and add in its place, the reference "§ 612.2301" in paragraphs (a), (c), and (e).

15. Add a new part 617 to read as follows:

PART 617—BORROWER RIGHTS

Subpart A—General

Sec.

617.7000 Definitions.

Subpart B—Disclosure of Effective Interest Rates

617.7100 Who must make and who is entitled to receive an effective interest rate disclosure?
617.7105 When must a qualified lender disclose the effective interest rate to a borrower?
617.7110 How should a qualified lender disclose the cost of borrower stock or participation certificates?
617.7115 How should a qualified lender disclose loan origination and other charges?
617.7120 How should a qualified lender present the disclosures to a borrower?
617.7125 How should a qualified lender determine the effective interest rate?
617.7130 What initial disclosures must a qualified lender make to a borrower?
617.7135 What subsequent disclosures must a qualified lender make to a borrower?

Subpart C—Disclosure of Differential Interest Rates

617.7200 What disclosures must a qualified lender make to a borrower on loans offered with more than one rate of interest?

Authority: Secs. 4.13, 5.9, 5.17 of the Farm Credit Act (12 U.S.C. 2199, 2243, 2252(a)(9)).

Subpart A—General

§ 617.7000 Definitions.

For purposes of this part, the following terms apply:

Adjustable rate loan means a loan where the interest rate payable over the term of the loan may change. This includes adjustable rate, variable rate or other similarly designated loans.

Effective interest rate means a measure of the cost of credit, expressed as an annual percentage rate, that shows the effect of the following costs, if any, on the interest rate on a loan charged by a qualified lender to a borrower:

(1) The amount of any stock or participation certificates that a borrower is required to buy to obtain the loan; and

(2) Any loan origination charges paid by a borrower to a qualified lender to obtain the loan.

Interest rate means the stated contract rate of interest.

Loan means an extension of credit made to a farmer, rancher, or producer or harvester of aquatic products, for any agricultural or aquatic purpose and other credit needs of the borrower, including financing for basic processing and marketing that directly relates to the borrower's operations and those of other eligible farmers, ranchers, and producers or harvesters of aquatic products.

Qualified lender means:

(1) A System institution, except a bank for cooperatives, that makes loans as defined in this section; and

(2) Each bank, institution, corporation, company, credit union, and association described in section 1.7(b)(1)(B) of the Act (commonly referred to as an other financing institution), but only with respect to loans discounted or pledged under section 1.7(b)(1).

Subpart B—Disclosure of Effective Interest Rates

§ 617.7100 Who must make and who is entitled to receive an effective interest rate disclosure?

(a) A qualified lender must make the disclosures required by subparts B and C of this part to borrowers for all loans not subject to the Truth in Lending Act.

(b) For a single loan involving more than one borrower, a qualified lender is required to provide only one set of disclosures to borrowers. All borrowers may designate, in writing, one person who will receive the effective interest rate disclosure. If the borrowers do not designate a particular recipient, the lender may provide the disclosure to at least one of the borrowers who is primarily liable for repayment of the loan.

§ 617.7105 When must a qualified lender disclose the effective interest rate to a borrower?

(a) *Disclosure to prospective borrowers.* A qualified lender must provide written effective interest rate disclosure for each loan no later than the time of loan closing.

(b) *Disclosure to existing borrowers.* (1) A qualified lender must provide a new effective interest rate disclosure to an existing borrower on or before the date:

(i) The borrower executes a new promissory note or other comparable evidence of indebtedness;

(ii) The borrower purchases additional stock as a condition of obtaining new funds from the qualified lender; or

(iii) The borrower pays an additional loan origination charge to the qualified lender as a condition of obtaining new funds.

(2) A qualified lender is not required to provide a new effective interest rate disclosure when it advances new funds to an existing borrower if none of the conditions of paragraph (b)(1) of this section apply and the advance is made pursuant to a preexisting contract that specifically provides for future advances.

§ 617.7110 How should a qualified lender disclose the cost of borrower stock or participation certificates?

The cost of borrower stock must be included in the effective interest rate calculation at the time the stock is purchased in connection with a loan transaction. For subsequent loans to existing borrowers, only the cost of new stock, if any, purchased in connection with a new loan or advance of new funds must be included in the effective interest rate calculation for the transaction.

§ 617.7115 How should a qualified lender disclose loan origination and other charges?

(a) Any one-time charge paid by a borrower to a qualified lender in consideration for making a loan must be included in the effective interest rate as a loan origination charge. These include, but are not limited to, loan origination fees, application fees, and conversion fees. Loan origination charges also include any payments made by a borrower to a qualified lender to reduce the interest rate that would otherwise be charged, including any charges designated as "points."

(b) All other payments of fees not included in the loan origination charges described in paragraph (a) of this section that borrowers are required to make to obtain a loan must be disclosed separately at the time of loan closing. These include, but are not limited to, fees paid to the lender or a third party to obtain an appraisal, and any taxes, guarantee fees, or insurance premiums paid by borrowers to third parties.

§ 617.7120 How should a qualified lender present the disclosures to a borrower?

A qualified lender must:

(a) Disclose the effective interest rate and other information required by subparts B and C of this part clearly and conspicuously in writing, in a form that is easy to read and understand and that the borrower may keep; and

(b) Not combine the disclosures with any information not directly related to the information required by §§ 617.7130 and 617.7135.

§ 617.7125 How should a qualified lender determine the effective interest rate?

(a) A qualified lender must calculate the effective interest rate on a loan using the discounted cash flow method showing the effect of the time value of money.

(b) For all loans, the cash flow stream used for calculating the effective interest rate of a loan must include:

(1) Principal and interest;

(2) The cost of stock or participation certificates that a borrower is required to purchase in connection with the loan; and

(3) Loan origination charges described in § 617.7115(a).

(c) A qualified lender must establish policies and procedures for EIR disclosures that clearly show the effect of the cost of borrower stock and loan origination charges on the interest rate of a loan. A qualified lender must also establish policies and procedures for determining major assumptions used in calculating the effective interest rate, *e.g.*, criteria on how the cost of borrower stock and loan origination charges are assigned or allocated among multiple loans obtained by a borrower simultaneously.

§ 617.7130 What initial disclosures must a qualified lender make to a borrower?

(a) *Required disclosures—in general.* A qualified lender must disclose in writing:

(1) The interest rate on the loan;

(2) The effective interest rate of the loan;

(3) The amount of stock or participation certificates that a borrower is required to purchase in connection with the loan and included in the calculation of the effective interest rate of the loan;

(4) All loan origination charges included in the effective interest rate;

(5) All other charges not included as loan origination charges in the effective interest rate calculation that borrowers are required to pay to obtain a loan;

(6) That stock or participation certificates that borrowers are required to purchase are at risk and may only be retired at the discretion of the board of the institution; and

(7) The various types of loan options available to borrowers, with an explanation of the terms and borrower rights that apply to each type of loan.

(b) *Adjustable rate loans.* A lender must provide the following information for adjustable rate loans in addition to the requirements of paragraph (a) of this section:

(1) The circumstances under which the rate can be adjusted;

(2) How much the rate can be adjusted at any one time and how much the rate can be adjusted during the term of the loan;

(3) How often the rate can be adjusted;

(4) Any limitations on the amount or frequency of adjustments; and

(5) The specific factors that the qualified lender may take into account in making adjustments to the interest rate on the loan.

§ 617.7135 What subsequent disclosures must a qualified lender make to a borrower?

(a) *Notice of interest rate change.* (1) A qualified lender must provide written notice to a borrower of any change in interest rate on the borrower's existing loan, containing the following information:

(i) The new interest rate on the loan;

(ii) The date on which the new rate is effective; and

(iii) The factors used to adjust the interest rate on the loan.

(2) If the borrower's interest rate is directly tied to a widely publicized external index, a qualified lender must provide written notice to the borrower of the rate change within forty-five (45) days after the effective date of the change.

(3) If the borrower's interest rate is not directly tied to a widely publicized external index, a qualified lender must send written notice to the borrower of the rate change within ten (10) days after the effective date of the change.

(b) *Notice of increase in stock purchase requirement.* If a qualified lender increases the amount of stock or participation certificates a borrower must own during the term of a loan, the lender must send a written notice to borrower at least ten (10) days prior to the effective date of the increase. The notice must state:

(1) The new effective interest rate on the outstanding balance for the remaining term of the borrower's loan;

(2) The date on which the new rate is effective; and

(3) The reason for the increase in the borrower stock purchase requirement.

Subpart C—Disclosure of Differential Interest Rates

§ 617.7200 What disclosures must a qualified lender make to a borrower on loans offered with more than one rate of interest?

A qualified lender that offers more than one rate of interest to borrowers must notify each borrower of the right to request a review of the interest rate charged on his or her loan no later than the time of loan closing. At the request of a borrower, the lender must:

(a) Provide a review of the loan to determine if the proper interest rate has been established;

(b) Explain to the borrower in writing the basis for the interest rate charged; and

(c) Explain to the borrower in writing how the credit status of the borrower may be improved to receive a lower interest rate on the loan.

Dated: January 29, 2003.

Jeanette C. Brinkley,

Secretary, Farm Credit Administration Board.

[FR Doc. 03–2401 Filed 2–3–03; 8:45 am]

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FARM CREDIT ADMINISTRATION

12 CFR Parts 609, 614, 615, and 617

RIN 3052–AB69

Electronic Commerce; Loan Policies and Operations; Funding and Fiscal Affairs, Loan Policies and Operations, and Funding Operations; Borrower Rights

AGENCY: Farm Credit Administration (FCA).

ACTION: Proposed rule.

SUMMARY: These proposed rules clarify existing provisions, respond to comments, and reorganize the rules into a separate section of FCA (agency, we, or our) regulations. This update will help agricultural borrowers and institutions of the Farm Credit System (FCS or System) better understand the rights Congress afforded applicants and borrowers of the System. We intend for the proposal to clarify how FCS institutions should apply these rights to applicants and borrowers.

DATES: Written comments should be received on or before April 7, 2003.

ADDRESSES: You may submit comments by electronic mail to *"reg–comm@fca.gov"* or through the Pending Regulations section of our Web site at *"http://www.fca.gov."* You may also mail or deliver written comments to Thomas G. McKenzie, Director,

Regulation and Policy Division, Office of Policy and Analysis, Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090 or send them by facsimile transmission to (703) 734–5784. You may review copies of all comments we receive at our office in McLean, Virginia.

FOR FURTHER INFORMATION CONTACT: Mark L. Johansen, Policy Analyst, Office of Policy Analysis, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4479, TTY (703) 883–4434;

Or

Joy Strickland, Senior Counsel, Office of General Counsel, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4020, TTY (703) 883–2020.

SUPPLEMENTARY INFORMATION:

I. Objectives

The objectives of these proposed rules are to:

- Ensure that the borrower rights regulations provide the protection to applicants and distressed borrowers as mandated by the Farm Credit Act of 1971, as amended (Act).[1]
- Avoid placing unnecessary burdens on FCS institutions.
- Use plain language and a question and answer format.

II. Background

In the Farm Credit Amendments of 1985[2] and the Agricultural Credit Act of 1987,[3] Congress gave certain rights to borrowers of System institutions that operate under titles I and II of the Act. These rights include the right of review of certain loan decisions, the right to receive a notice when a loan becomes distressed, the opportunity to request a restructuring of a distressed loan, and the opportunity for the right of first refusal to repurchase or lease acquired agricultural real estate following foreclosure or voluntary conveyance. Collectively, these rights are referred to as borrower rights. On September 14, 1988, we published final borrower rights rules.[4] Since then we have observed differences in how System institutions apply these regulations and reviewed complaints from borrowers and applicants regarding their rights. To ensure that our expectations for borrower rights are clear, we propose these updated regulations.

[1] Pub. L. 92–181, 85 Stat. 583.
[2] Pub. L. 99–205, 99 Stat. 1678.
[3] Pub. L. 100–233, 101 Stat. 1568.
[4] 53 FR 35427 (September 14, 1988).

III. Comments Received

We received comments on our existing regulations prior to developing these proposed rules. The comments were in response to a June 23, 1993, regulatory burden solicitation[5] and a May 17, 2000, letter from the Farm Credit Council (FCC) on behalf of its member banks and associations.

IV. Redesignate Portions of Part 614 to Part 617

We propose redesignating the regulations from existing subparts H, L, and N of part 614 to part 617 of the regulations. This move will make the borrower rights rules more readily identifiable. We also propose conforming changes in §§ 609.910(c), 615.5280(h), and 615.5290(a) and (b) to part 617.

V. General Issues

We received comments on general issues of borrower rights applicability and relationship to other laws. We will address those first and then proceed to comments concerning specific issues.

A. Family Farmers [§ 617.7000]

The term "loan," defined in section 4.14A(a)(5) of the Act and existing §§ 614.4440(g) and 614.4512(f), means an extension of credit made to a farmer, rancher, or producer or harvester of aquatic products, for any agricultural or aquatic purpose and other credit needs of the borrower, including financing for basic processing and marketing directly related to the borrower's operations and those of other eligible farmers, ranchers, and producers or harvesters of aquatic products. The FCC commented that we should restrict application of borrower rights to "family farmers," which FCC defined to mean farmers with agricultural sales equal to or less than $500,000. The FCC's interpretation of the legislative history of the borrower rights legislation is that Congress intended to narrow the bargaining position between borrowers and the System institutions. The FCC believes that, with increased consolidation and sophistication of farming operations, the need for a level-bargaining position has decreased.

We recognize that the consolidation among agricultural producers has resulted in more sophisticated operators, but we do not believe Congress intended that the borrower rights legislation apply only to family farmers. The statutory definition of loans covered by borrower rights is clear, unambiguous, and does not distinguish between types of farmers, nor does it contain any sales or income limitations. Although Congress considered limiting borrower rights to only family farmers when this legislation was being debated, it ultimately chose not to do so. The Senate bill limited borrower rights and provided a definition of family farmers.[6] Once the Senate and House bills were reconciled in conference, limiting borrower rights to family farmers was abandoned. Congress did not adopt the Senate's definition of family farmer. Instead, it adopted a definition of loan that includes all agricultural loans.[7]

We do not believe it is appropriate to restrict borrower rights to family farmers or farmers with agricultural sales of equal to or less than $500,000 as the FCC requested. Thus, we make no changes to the existing rules.

B. How Do Borrower Rights Apply to Loans That Are Sold to, Participated With, or Subordinated in Favor of Non-qualified Lenders? [§ 617.7015]

Section 4.14A(a)(5)(B) of the Act provides that borrower rights do not apply to loans sold into the secondary market. The FCC recommended defining loans sold into the secondary market to include participations, subordinated debt transactions, and other sales transactions that include non-qualified lenders. The FCC asserted that non-qualified lenders are hesitant to participate in such transactions with the System because of borrower rights requirements.

Loan sales to other lenders, participations, and subordinated debt transactions are not secondary market activities. We found no evidence that Congress intended the secondary market sales exemption to apply to other types of loan transactions.

We propose moving § 614.4336 from part 614, subpart H to § 617.7015 in part 617, subpart A.

C. Are Borrowers With Trade Credit Loans Excluded From Borrower Rights? [§ 617.7000]

The FCC commented that borrower rights are an impediment to an effective trade credit program. They suggested that borrowers purchase participation certificates instead of stock with trade credit loans in order to exempt such loans from borrower rights.

We do not agree with this comment and do not propose such a change. Existing § 614.4525(a) allows a qualified lender to "enter into agreements with agents, dealers, cooperatives, other lenders, and individuals to facilitate its

[5] 58 FR 34003 (June 23, 1993).

[6] See S. Rep. No. 100–230 at 34, 109 (1987).
[7] See H.R. Conf. Rep. 100–490 at 164–165 (1987).

making of loans" to eligible borrowers. For the purpose of applying borrower rights, a loan that is facilitated by a third-party dealer or other agent is no different from any other loan made by a qualified lender. As a direct loan, trade credit loans require that the borrower buy stock pursuant to section 4.3A of the Act. Further, trade credit loans meet the definition contained in part C of title IV of the Act and are subject to borrower rights.

VI. Specific Issues

A. Definitions [§ 617.7000]

We propose moving the existing definition sections in §§ 614.4440 and 614.4512 to proposed § 617.7000. The definitions of applicant (§ 614.4440(b)), foreclosure proceeding (§ 614.4512(e)), independent evaluator (§ 614.4440(f)), and qualified lender (§§ 614.4440(h) and 614.4512(g)) remain unchanged. We propose the following definitional changes.

1. Adverse Credit Decision [§ 614.4440(a) to Proposed § 617.7000]

The FCC and a System institution requested that we revise the definition of "adverse credit decision" in existing § 614.4440(a) to clarify its intent. According to the commenters, the definition has been incorrectly construed to mean a denial of a loan and all the loan terms requested by the applicant.

We agree with this comment and propose clarifying this definition by deleting the phrase "deny the credit applied for, or approve an extension of credit in an amount less than the amount applied for" and replacing it with the following: (a) The lender decides not to make a loan to an applicant; (b) makes the loan in an amount less than the applicant requested; or (c) denies an application for restructuring. Making a loan in the amount requested, but with different terms, is not considered an adverse credit decision.

2. Application for Restructuring [§§ 614.4440(c) and 614.4512(a) to Proposed § 617.7000]

In response to a comment from the FCC, we propose to amend this definition to allow a borrower's plan of reorganization submitted in a bankruptcy proceeding to serve as the application for restructuring. We propose this change because the application for restructuring and the bankruptcy plan of reorganization contain similar information.

3. Distressed Loan [§§ 614.4440(e) and 614.4512(d) to proposed § 617.7000]

The FCC asked us to change our definition of a distressed loan to include all the loans from the qualified lender that the borrower is obligated to repay. We decline to change our definition because each loan separately must meet the definition of distressed.

4. Loan Application [§ 614.4440(d) to Proposed § 617.7000]

The FCC commented that we should clarify when a loan application is sufficiently complete to begin deliberations. FCC commented that qualified lenders need to distinguish between an inquiry and an application because an adverse decision on an application triggers borrower rights, but an inquiry does not. The FCC also suggested that we adopt the Regulation B definition of an application.[8]

We agree with the comment and propose changing the definition of a loan application to one similar to Regulation B. We propose adding language specifically describing a loan application as a package that provides the qualified lender with enough information to make a credit decision. Lenders should be mindful of the distinction between an application and an inquiry for purposes of borrower rights and Regulation B. Informal inquiries may rise to the level of applications if the lender evaluates information about the inquirer, decides to decline the request, and communicates this to the inquirer. Whether or not an inquiry is an application depends on the particular circumstances and a qualified lender needs to focus on how it responds to an applicant, rather than on what the applicant asks, in order to make the determination.

We propose to change the title of "Application for a Loan or Loan Application" in § 614.4440(d) to "Loan Application" in proposed § 617.7000.

5. Restructure [§§ 614.4440(i) and 614.4512(h) to Proposed § 617.7000]

We propose modifying the definition of restructure to recognize that not all restructurings will result in viability. For more discussion, see Part E.2. of this preamble.

6. Delete Reference to the Certified Lender and Special Asset Group [§ 614.4512(b)]

We propose deleting the definition of a certified lender in existing § 614.4512(b) and the reference to special asset group in § 614.4519(c) because the requirements for them are obsolete.

7. Redesignate Existing § 614.4512(c)—Cost of Foreclosure—to Proposed § 617.7415(b) [§ 617.7415(b)]

We propose redesignating the content of existing § 614.4512(c) to proposed § 617.7415(b) to locate the criteria for the cost of foreclosure near the rules on evaluating applications for restructuring.

B. May Qualified Lenders Use Electronic Communications to Comply with Borrower Rights? [§ 617.7005]

The FCC asked that we amend our existing rules to authorize electronic communications for borrower rights disclosures. As part of our initiative to implement the Electronic Signatures in Global and National Commerce Act, Pub. L. No. 106–229, codified at 15 U.S.C. 7001 *et seq.* (E–SIGN) and our electronic commerce (E–commerce) rule,[9] we propose adding § 617.7005 to permit electronic communications as allowed for by law.

The preamble to the final E–commerce rule states that E–SIGN preempts (with some exceptions) provisions in most state or federal statutes or regulations, including the Act and its implementing regulations, which require contracts or other records to be written, signed, or to be in non-electronic form. With the parties' agreement, qualified lenders may now use E–commerce and electronic communications in many situations.

Qualified lenders should interpret this part broadly to allow electronic transmission, communications, records, and submissions, as provided by E–SIGN. Qualified lenders may interpret the terms used in this part to permit electronic transmission, communications, records, and submissions in business, consumer, or commercial transactions, unless otherwise prohibited. E–SIGN does not, however, allow electronic communications for a notice of default, acceleration, repossession, foreclosure, eviction, or the right to cure when an individual's primary residence secures the loan.[10] In these instances, a qualified lender must use the paper communications required by the Act and borrower rights regulations. E–SIGN also requires paper notification to cancel or terminate life insurance.

In addition to the primary residence provision, E–SIGN established different standards for business and consumers

[8] 12 CFR 202.2(f).

[9] 67 FR 16627 (April 7, 2002).

[10] This exception is found in section 103(b)(2)(B) of E–SIGN and 12 CFR 609.950(c).

using E–commerce. While both businesses and consumers must agree to E–commerce, E–SIGN provides certain protections and compulsory procedures when a statute or regulation, such as the Equal Credit Opportunity Act, requires that information be provided to a consumer. These same protections are not afforded to businesses. Under E–SIGN, "consumer" means an individual who obtains, through a transaction, products or services used primarily for personal, family, or household purposes. Some loans under E–SIGN qualify as consumer transactions, while others are business transactions. A qualified lender must distinguish between the two types of transactions to comply with E–SIGN.

We have summarized the pertinent consumer consent provisions below. For a complete list, please see the preamble to the proposed E–commerce rule.[11] You may also view the proposed rule and other E–commerce information under the "Resources for the FCS" section of our Web site at *http://www.fca.gov*.

• Consumer consent may apply to a particular transaction and/or category of records. Consumers may decide when they want electronic records and notices.

• Consumers who choose to receive documents electronically must show the technological capacity to do so prior to consenting to E–commerce. For example, to show technological capacity, the lender may ask the consumer to communicate with the lender by sending an e-mail to the lender through an Internet provider or by logging onto the lender's Internet Web site.

We direct qualified lenders to E–SIGN and part 609 of our regulations to determine how to apply E–commerce and use electronic communications. Qualified lenders should also consult legal counsel before engaging in E–commerce and using electronic communications.

C. May a Borrower Waive All or a Portion of the Borrower Rights? [§ 617.7010]

Questions about whether a borrower may waive the rights granted in the Act and FCA regulations have arisen since these laws were enacted. We have consistently taken the position that, as a general rule, an institution may not obtain a waiver of borrower rights. These rights have a public policy purpose and should only be waived in limited circumstances, such as when the parties are in a reasonably equal bargaining position or when other federal rights provide protections similar to borrower rights. We propose adding this position in proposed § 617.7010(a).

1. May a Borrower Who Has a Loan Guaranteed by the Small Business Administration (SBA) Waive Borrower Rights? [§ 617.7010(b)]

In FCA Bookletter BL–028, issued April 1, 1996, we permitted borrowers to waive certain borrower rights in connection with receiving a loan guarantee from the SBA. A borrower with an SBA guaranteed loan may waive the right of distressed loan restructuring, the right to appear before the credit review committee (CRC or committee), and the right of first refusal. We believe such a waiver is appropriate because the laws governing SBA guaranteed loans provide for servicing actions similar to the borrower rights provided in the Act. We propose incorporating this waiver in proposed § 617.7010(b)(1). Any waivers that are obtained pursuant to this regulation must be given voluntarily by the borrower and must be in writing. The qualified lender would be required to provide written explanation of the rights being waived by the borrower.

2. May a Borrower Waive Borrower Rights in Connection With a Subordinated Debt Transaction? [§ 617.7010(a)]

The FCC commented that a borrower should be able to waive borrower rights in subordinated debt transactions in the same manner as in loan sale transactions. We do not agree and are not proposing any regulatory changes. Subordinated debt transactions are direct loans made by a qualified lender. In these transactions, the lender is merely allowing another lender to have a priority lien on the collateral. The loan remains unchanged and borrower rights continue to apply.

3. How Does a Waiver Apply in a Loan Sale Transaction? [§ 617.7015(c)]

Existing § 614.4336(c) describes the procedures that a qualified lender must follow when selling a loan to a non-qualified lender. The qualified lender must either: (1) Include, with the borrower's consent, a provision in the original loan contract or modify it so that the purchasing lender will continue to provide the borrower rights granted by part C of title IV of the Act; or (2) obtain a waiver of borrower rights from the borrower. The FCC commented that we should allow, without borrower consent, the prospective buyer of a loan to execute an agreement with the qualified lender in which the buyer will provide all borrower rights that a qualified lender is obligated to provide. We do not propose adding this alternative. Under the Act, borrower rights belong to the borrower and may only be modified by the borrower. Absent a provision in the loan contract, non-qualified lenders are not obligated to provide borrower rights and we do not have enforcement authority over them.

The FCC alternatively asked if the buyer of a loan may directly obtain a waiver of borrower rights from the borrower, rather than requiring the qualified lender to obtain the waiver. We do not agree with this comment. Implementing all borrower rights provisions, including waivers, are the responsibility of the qualified lender. Therefore, we are proposing no changes to the waiver provisions of existing § 614.4336(c) and redesignating it as proposed § 617.7015(c).

D. What Is the Review Process for Adverse Credit Decisions? [§ 617.7300 et seq.]

Section 4.14 of the Act requires a qualified lender to establish a CRC to review adverse credit decisions made by the qualified lender on loan applications and denials of applications for restructuring.

1. Whom Should the Qualified Lender Notify? [§§ 617.7300, 617.7410(d), and 617.7420(b)]

Existing §§ 614.4441, 614.4516(a)(2), and 614.4518 allow a lender to notify one designated primary obligor or applicant in situations where there are multiple borrowers or applicants. The FCC recommended a single notice provision as a way of eliminating multiple notices and claims of a wrong party receiving notice. Although we recognize the efficiencies gained in sending disclosures to only one of the obligors, we also recognize the value of keeping all obligors informed. As a result, we propose in §§ 617.7300, 617.7410(d), and 617.7420(b) to require that qualified lenders notify all applicants or all parties listed on the promissory note as primarily obligated to repay the debt. The applicants or borrowers may designate one person to be the primary contact and the lender may then send the original notice to that person. However, the lender must send copies of the notice to the other applicants or borrowers.

[11] 66 FR 53348 (October 22, 2001).

2. When Should a Qualified Lender Notify a Borrower That the Application for Restructuring Has Been Denied and What Information May the Borrower Use in the CRC Review? [§ 617.7310(c)]

Confusion has arisen over the years as to when in the restructuring process the qualified lender must offer the right of CRC review. In addition, an FCS institution asked if a borrower may present the original application for restructuring to the CRC even if the original application was not the basis for the ultimate restructuring decision. In the preamble to § 614.4443,[12] we expressed the intent for the lender and borrower to engage in "* * * a cooperative effort to attempt to find solutions before the CRC process began." We believe Congress expected borrowers and lender to negotiate applications for restructuring. The negotiations, which may include plan modifications, must reach a conclusion. Once negotiations are concluded and the lender denies the borrower's request, the borrower is then given the opportunity to appear before the CRC. The borrower may present the initial application for restructuring or any subsequent modifications that resulted in denial by the qualified lender.

We propose moving § 614.4443(b) to § 617.7310(c).

3. Who Serves on the CRC? [§ 617.7305]

Section 4.14(a) of the Act requires the membership of the CRC to include at least one farmer-member of the qualified lender's board of directors. In the preamble to the existing regulations,[13] we explained farmer board representation means a farmer, rancher, or producer or harvester of aquatic products. We are clarifying that farmer board representation also means an elected board member, as opposed to an appointed board member.

Section 4.14(a) of the Act also requires farmer board representation and prohibits the loan officer involved in the original credit decision from serving on the CRC. The Act does not prohibit delegations. However, existing § 614.4442 provides that the board member serving on the CRC may designate an alternate to serve on the committee as long as the alternate is also an elected farmer board member, but prohibits non-board members of the CRC from delegating committee duties. The FCC requested that the restriction prohibiting delegations be removed. We agree and propose removing the restriction in proposed § 617.7305. As long as the replacement members of the CRC are experienced and capable of rendering thoughtful and careful review of adverse credit decision, we believe the delegation restriction is unnecessary.

4. Must a Qualified Lender Notify an Applicant or Borrower of a CRC Meeting? [§ 617.7310(a)]

The existing rule at § 614.4443 does not require a qualified lender to notify an applicant or borrower of the CRC meeting date where the applicant or borrower's request for review will be discussed. Although we do not believe that this has been a problem in the past, we wish to correct this oversight. Proposed § 617.7310(a) requires a qualified lender to inform the applicant or borrower of the CRC meeting date at least 15 days in advance of when the request for review will be discussed.

5. What Information May Not Be Submitted to the CRC? [§ 617.7310(c)]

The FCC commented that the CRC is not a substitute for the normal credit process and the committee should not act on new information or negotiate a new proposal. The FCC requested that we emphasize that the CRC review is of the denied loan or restructuring request and is not an opportunity for the applicant or borrower to introduce new information. We believe the existing rule clearly indicates that the CRC function is one of review and the CRC meetings are not forums for new issues. Existing § 614.4443(b) allows an applicant or borrower to submit "any documents or other evidence" to the CRC that supports the application under review. The purpose of the review is to provide the opportunity for the applicant or borrower to demonstrate that the loan or restructuring request satisfies the credit standards of the qualified lender. The Act makes no provision for presenting a new application to the CRC.

We propose moving § 614.4443(b) to § 617.7310(c).

6. Who Has the Right to an Independent Collateral Evaluation? [§ 617.7310(d)]

A System institution and the FCC suggested that the right to an independent collateral evaluation only applies to those applicants or borrowers whose applications were denied because of insufficient real estate collateral. We disagree. The Act does not place conditions on the right to an independent collateral evaluation. Section 4.14(d) provides applicants and borrowers the right to have the CRC review independent collateral evaluations, whether or not insufficient collateral was the reason for the loan or restructure denial. However, we believe that if qualified lenders provide complete disclosure to the applicant or borrower of the reasons for the loan or restructure denial, unnecessary independent collateral evaluations will not occur.

We propose moving § 614.4443(c) to § 617.7310(d).

7. How Long Does an Applicant or Borrower Have To Obtain an Independent Collateral Evaluation? [§ 617.7310(d)(2)]

The FCC and one System institution suggested we establish a 60-day limit to seek an independent collateral evaluation. Section 4.14(d) of the Act provides that an applicant or borrower who receives an adverse credit decision may request an independent collateral evaluation in connection with an appeal to the CRC. Existing § 614.4443(c)(2) requires the collateral evaluation to be completed within a reasonable period of time. The Act does not provide a more definitive time limit for completing an independent evaluation, although the legislative history of section 4.14(d)(2) of the Act indicates that Congress was concerned with potential delays in this process. We do not believe a regulatory time limit to obtain an independent evaluation is appropriate. We recognize that in some cases the applicant or borrower legitimately may need longer than the 60-day limit recommended by the commenters, particularly if there are no authorized independent evaluators in the local area. We have instead proposed in § 617.7310(d)(2) a 30-day limit for applicants or borrowers to enter into a contract for evaluation services. We believe this time limit will help ensure that the review process is not unnecessarily delayed.

As a result of this change, we propose removing that portion of existing § 614.4443(c)(3) stating "* * * provided the applicant's or borrower's evaluator has provided a copy of the evaluation report to the lender not less than 15 days prior to any scheduled meeting of the credit review committee." We originally adopted this requirement to assist a qualified lender in the situation where a borrower is attempting to delay the CRC review process. In re-evaluating our entire borrower rights regulations, however, we believe the better approach is to require the borrower to contract with an independent evaluator within 30 days. By removing this portion of the existing rule, we do not intend an applicant or borrower to delay submitting an independent collateral evaluation to the qualified lender. An applicant or borrower should make every effort to provide the independent

[12] *Id.* at note 4.
[13] *Id.* at note 4.

evaluation well in advance of the CRC meeting to ensure it is given full consideration. Although ultimately, the CRC must consider any independent collateral evaluation obtained, pursuant to section 4.14(d)(2) of the Act.

8. What Copies of Independent Collateral Evaluations Must a Qualified Lender Provide an Applicant or Borrower? [§ 617.7310(c)]

The FCC suggested that a borrower's right to receive a copy of the independent collateral evaluations used in a credit decision should be limited to the most recent independent collateral evaluation. We disagree. Section 4.14(d)(3) of the Act states that a borrower may obtain a copy of *each* independent collateral evaluation made and we reiterate this provision in proposed § 617.7310(c).

9. How Long May the CRC Take To Reach a Decision? [§ 617.7310(e)]

Existing § 614.4443(d) does not provide any time limit for the CRC to reach a decision. We propose in § 617.7310(e) a time limit of no more than 30 days for the CRC to reach a decision. Decisions should be made as expeditiously as possible to prevent undue delay and increased costs to the qualified lender and applicant or borrower. We believe this time limit will ensure an expedited decision-making process.

10. What Records Must the CRC Maintain? [§ 617.7315]

Existing § 614.4444 requires the CRC to maintain records of a request for review, the meeting minutes, and the decision of the committee. We believe the second sentence in the section that refers to keeping records for FCA review is redundant and therefore, we propose its deletion in § 617.7315.

E. What Are the Distressed Loan Restructuring Notice Options? [§ 617.7410]

1. What Notices May a Qualified Lender Send to a Distressed Borrower? [§ 617.7410(a) and (b)]

Once a qualified lender determines a loan is distressed, the lender must notify the borrower that: (1) The loan is distressed; (2) the borrower has the right to request a restructure of the loan and what to include in the application for restructuring; and (3) an alternative to restructure may be foreclosure. In 1993, we clarified that qualified lenders had the option of sending two distinctly different notices.[14] One notice, the "non-foreclosure notice," would include items (1) and (2) above, while the other notice, the "45-day notice," would include all three items. A qualified lender may send the non-foreclosure notice when it is not considering foreclosure. The 45-day notice must be sent when foreclosure is a consideration. To initiate foreclosure, the qualified lender must have sent the 45-day notice.

A System institution commented that the 45-day notice requirement does not provide enough time for a qualified lender to consider an application for restructuring and to make a sound decision. We believe the commenter has misinterpreted the 45-day requirement. There is no requirement that a qualified lender complete a restructuring or make a restructuring decision in 45 days. The qualified lender should take the time necessary to thoroughly consider the application and work with the borrower.

We are consolidating the notice requirements in §§ 614.4516(a) and 614.4519(a) into proposed § 617.7410(a) and (b).

2. What Is the Purpose of Each Notice? [§ 617.7410(a) and (b)]

The non-foreclosure notice informs the borrower that a loan is distressed and may be suitable for restructuring. The 45-day notice puts the borrower on notice that if a loan is not restructured, the qualified lender may initiate foreclosure.

The FCC commented that the lender should not have to send another notice if the borrower defaults within 12 months of the original notice. As we understand the comment, the FCC is concerned about sending more than one distressed loan notice before the qualified lender can begin foreclosure proceedings. In response, we clarify that a qualified lender need only send a second notice if the initial notice did not mention that the alternative to restructuring may be foreclosure. If the qualified lender sends the 45-day notice and the borrower does not apply, or is not granted, a restructuring, the lender may proceed with foreclosure. However, we expect lenders to comply with the spirit of borrower rights and have ongoing communications with the borrower so that a foreclosure proceeding is not a surprise.

3. What Notice Should Be Sent to a Borrower Who Is a Debtor in a Bankruptcy Proceeding? [§ 617.7410(c) and (d)]

Section 4.14A(b) of the Act requires a qualified lender to notify a borrower that a loan may be suitable for restructuring. If the borrower is in bankruptcy, the required notice may be construed as a demand for payment, which is prohibited by the automatic stay provision of the Bankruptcy Code. We are proposing in § 617.7410(c) and (d) to change the notice requirements in existing §§ 614.4516(a) and 614.4519(a). A qualified lender should use alternative language for a borrower who is a debtor in a bankruptcy proceeding by restating language from the automatic stay provision. The qualified lender should send the notice to the borrower's counsel.

4. What Notices Are Required if a Borrower's Loan Becomes Distressed Following a Restructuring? [§ 617.7410(e)]

The Act is silent on what notices are required when a borrower's loan is restructured, but the loan remains, or again becomes, distressed. The FCC and several System institutions requested that we provide additional regulatory guidance on how many times a qualified lender must provide a distressed loan restructuring notice to a borrower who has defaulted on a previously restructured loan. The comments varied from requesting limits on the number of times a loan could be restructured to giving a distressed borrower only one opportunity to restructure the loan in a calendar year or operating cycle.

We agree that additional guidance appropriate to assist a qualified lender in determining when another distressed loan notice must be sent after the loan has been restructured. We considered what distinguishing event would differentiate whether another restructuring opportunity should be offered. We believe that a borrower's performance under the current restructuring agreement is key in a qualified lender's determination of whether the restructure cured the reason(s) the loan was originally distressed. We propose in § 617.7410(e) to define performance as 6 consecutive monthly payments, 4 consecutive quarterly payments, 3 consecutive semiannual payments, or 2 consecutive annual payments, depending on the payment scheduled in the current restructuring agreement. For purposes of judging performance, the borrower may be considered in default if payment is not received within 30 days of the date the payment is due. We reasoned that if the borrower is not able to perform under the restructured loan agreement, the loan remains distressed and the qualified lender may proceed directly to foreclosure without further notice, provided the qualified lender sent the 45-day notice to the borrower. If, however, the borrower performs under the restructure agreement, the reason for

[14] 58 FR 62513 (November 29, 1993).

the original distress is cured. Any subsequent problem with the loan that causes the loan to meet the definition of a distressed loan requires the qualified lender to provide the borrower with a new distressed loan notice and opportunity to restructure, regardless of the number of times the loan was previously restructured.

The current notice requirement in existing § 614.4519(a) provides only two options, restructure or possible foreclosure. We propose in § 617.7425(b) to modify the 45-day notice to ensure that borrowers are informed that if they do not perform under the restructure, the qualified lender could proceed with foreclosure without further notification.

5. May a Qualified Lender Propose Restructuring if the Borrower Did Not Submit an Application? [§ 617.7410(g)]

It is the borrower's responsibility to respond to the distressed loan notice by submitting an application for restructuring. Section 4.14A(d)(2) of the Act provides that nothing shall prevent a qualified lender from proposing an application for restructuring for an individual borrower in the absence of an application for restructuring from the borrower. We reaffirm that the qualified lender may submit a restructuring proposal for consideration if the borrower fails to do so. We believe that Congress provided this option as a means of ensuring that all borrowers are considered for a loan restructuring regardless of whether the borrower provides an application for restructuring.

We are proposing to move § 614.4516(c) into § 617.7410(g).

What Is a Qualified Lender's Process When Determining Whether to Restructure or Foreclosure? [§ 617.7415]

Section 4.14A(e) of the Act and existing §§ 614.4517(a) and 614.4512(c) provide that certain factors should be taken into consideration when a qualified lender determines whether the cost of restructuring is equal to or less than the cost of foreclosure. The FCC commented that in calculating the cost of restructuring, a borrower's ability to perform under a restructuring plan is an integral, but not necessarily calculable, part of the analysis. The FCC went on to state that unrealistic borrower projections make calculating the cost of restructuring difficult, particularly when the regulations do not permit much analysis or questioning of the financial inputs provided by the borrower. We agree and propose in § 617.7415 regulatory amendments identified below to address the responsibilities of both the borrower and the qualified lender in developing the restructuring plan.

1. What Is the Process for Considering the Restructuring Application? [§ 617.7415(c)]

To develop the application for restructuring, the qualified lender and borrower should work together to determine the most realistic financial inputs. These inputs are the backbone of the application for restructuring. Because the Act requires a qualified lender to restructure the loan if the cost of restructuring is equal to or less than the cost to foreclose, it is imperative that the lender work with the most reliable inputs to determine the cost of restructuring. As such, we propose in § 617.7415(c) that when developing and negotiating the application for restructuring, the qualified lender may use benchmarks to determine the financial input costs and chattel security values if the borrower and lender are unable to reach agreement. Benchmarks may include the borrower's 5-year production average, averages in the county where the farming operation is located, or other such support. We expect the qualified lender and borrower to engage in good faith negotiations with the intended purpose of determining reasonable financial input costs for the borrower's operation. It is only when the borrower and lender are unable to agree on reasonable financial input values that the lender should look to benchmarks.

2. What Criteria Does the Qualified Lender Use When Determining Whether To Restructure or Foreclose? [§ 617.7415]

Through our examination process and review of borrower complaints, questions have arisen about how qualified lenders apply the criteria in section 4.14A(d) and (e) of the Act. Specifically, many qualified lenders apply the criteria in paragraph (d) that the borrower must return to viability, as the controlling criterion. As a result, an application for restructuring may have been denied when the cost of restructuring was less than the cost of foreclosure. Although we believe a rule change is unnecessary, we are clarifying in § 617.7415(d) that section 4.14A(e) of the Act specifically requires the qualified lender to restructure the loan if the cost of restructuring is less than or equal to the cost of foreclosure.

This approach gives full meaning to section 4.14A and allows consideration of all relevant factors in evaluating a restructuring. We recognize this interpretation may result in approval of an application for restructuring because it is the least cost option but unlikely to ultimately reestablish viability.

3. May a Qualified Lender Include the Borrower's Performance Under a Previous Restructuring When Determining the Cost of Restructuring the Loan Again? [§ 671.7415(a)]

Section 4.14A(d)(1) of the Act provides criteria to consider when the qualified lender determines whether or not to restructure a loan. One of the criteria is the borrower's ability to work out of the existing financial difficulties. The Act balances Congress's desire for the System to assist borrowers and not cause financial harm to the qualified lender. The qualified lender should carefully consider the reasons why a prior restructuring was not successful when it analyzes whether a subsequent restructuring would make it probable that the borrower will become financially viable. If the qualified lender determines that deficient management by the borrower contributed to the current problem, then this deficiency should weigh heavily in the qualified lender's evaluation of the future viability of the borrower's operation. However, if the borrower's inability to perform under a prior restructuring was the result of a natural disaster, for example, and not management deficiencies, the qualified lender should take this into consideration when determining the likelihood that a new restructuring would be successful.

Although it is permissible for the qualified lender to analyze and quantify why prior restructuring efforts were not successful, the qualified lender is not permitted to include the costs of prior restructuring efforts in the cost of subsequent restructure requests.

4. What Type of Foreclosure Action Should Be Used in Calculating the Cost of Foreclosure? [§ 617.7415(b)]

The FCC commented that we should specify whether the cost of foreclosure should be calculated based on a contested or uncontested foreclosure proceeding. We do not agree that we need to add this level of specificity. The cost of foreclosure varies on a case-by-case basis and, when calculating the cost of foreclosure, qualified lenders should have the flexibility to adjust the costs according to each situation.

G. How Would a Decision on an Application for Restructuring Be Issued? [§§ 617.7420 to 617.7425]

1. When Must a Decision on an Application of Restructuring Be Issued? [§ 617.7420(a)]

Existing § 614.4518 requires a qualified lender to issue a restructuring decision in an expeditious manner. We believe a specific timeframe is necessary and propose in § 617.7420(a) that restructuring decisions be issued within 15 days from the conclusion of negotiations between the qualified lender and borrower on the application for restructuring.

2. What Should the Notice Include When the Restructuring Request Is Denied? [§ 617.7420(c)]

Section 4.13B(b) of the Act requires qualified lenders to send written notice of actions taken to restructure distressed loans. The Act requires the notice to include the reasons for any denial of restructuring and to inform the borrower of the right to have the decision reviewed. Existing § 614.4518 explains that the notice denying restructuring must include the critical assumptions and relevant information behind the decision. Although we do not propose in § 617.7420(c) to amend existing § 614.4518, we wish to provide clarification.

We expect the notice to contain sufficient information for the borrower to understand the exact reasons for the denial, so that the borrower can decide whether or not to request a review of the decision. This includes providing every reason for a denial, not just one. For example, when a lender denies a restructuring application based on financial and managerial weaknesses, and inadequate collateral, all of these reasons should be provided in the notice. Otherwise, the qualified lender is depriving the borrower of the opportunity to know the full reason for the denial.

H. How Are Borrower Rights Applied for Chronically Delinquent Borrowers? [§ 617.7425]

Section 4.14D(c) prohibits a qualified lender from enforcing acceleration of the borrower's repayment schedule because the borrower did not timely make one or more principal or interest payments. This prohibition has resulted in some borrowers abusing the process by repeatedly defaulting on loans and paying the amounts due at the last minute to avoid foreclosure. We refer to borrowers who repeatedly default as chronically delinquent. Two institutions requested that we modify our rules to address chronically delinquent borrowers. Another suggested that our rules not require a qualified lender to send out distressed loan notices every time a chronically delinquent borrower defaults before foreclosure proceedings are commenced, so long as borrowers are given an opportunity to seek restructuring once during a year or operating cycle. Finally, a fourth System institution requested we revise the rules so that borrowers cannot abuse borrower rights protections with repeated delinquencies after bringing accounts current.

We do not propose in § 617.7425 to change existing § 614.4514 in this area. The Act requires notice to be sent to a borrower 45 days or more before foreclosure proceedings begin. No exceptions are provided in the Act for borrowers who are chronically delinquent or are believed to have the funds to pay on time. A qualified lender is required to send a notice each time a borrower's loan is identified as distressed, notwithstanding previous restructuring opportunities, as long as the borrower had been current before that payment was due.[15]

I. When May a Qualified Lender Foreclose on a Loan Without Providing Borrower Rights? [§ 617.7425(a)]

Section 4.14A(j) of the Act provides that a qualified lender may foreclose on a loan if the lender has reasonable grounds to believe that the loan collateral will be destroyed, dissipated, consumed, concealed, or permanently removed from the state in which the collateral is located. Some institutions are concerned that restructuring notices must be given prior to starting foreclosure proceedings initiated due to a threat to collateral. If a qualified lender believes that collateral is at risk of being destroyed, the qualified lender may proceed with foreclosure without providing a restructuring notice to the borrower. The lender should, however, carefully document the reasons the collateral is at risk.

We propose moving the language on this issue in existing § 614.4519(b) to § 617.7425(c).

J. May Borrower Rights Be Waived When Using State Mediation Programs? [§ 617.7430]

The FCC commented that we should consider authorizing a waiver of borrower rights when the borrower pursues available state mediation rights (including mandatory mediation situations). The FCC commented that many borrowers elect to pursue state mediation over borrower rights, and those borrowers should be able to elect mediation over borrower rights through a waiver. The Act clearly provides for federal borrower rights and the borrower's right to pursue state mediation. We are proposing no substantive changes to existing § 614.4521. We propose to redesignate it at § 617.7430 and reword it slightly to emphasize that state mediation may proceed concurrently with borrower rights.

K. Are Borrower Rights Set Aside as a Result of Arbitration?

The FCC commented that if the lender and the borrower agree to arbitration, the arbitrator should be free to reach a final decision that negates borrower rights. We encourage qualified lenders and borrowers to consider alternative methods for settling disputes, such as arbitration. However, we do not believe that borrower rights may be set aside as a result of the arbitration process. We believe that Congress could have chosen arbitration as the means for resolving disputes between borrowers and lenders. Because Congress instead adopted a very specific process for dealings between borrowers and lenders in a distressed loan situation, we do not believe it is appropriate for the arbitration process to take the place of borrower rights or for an arbitrator to have the authority to make a binding decision that contravenes the Act and regulations.

L. What Is a Borrower Rights Directive? [§ 617.7500 et seq.]

Section 4.14A(i) of the Act authorizes us to enforce compliance with section 4.14A of the Act by issuing a borrower rights directive. Directives provide another supervisory tool to us to take action when an institution violates the law. Violations of a directive may result in civil money penalties or a court order enforcing the directive. We are proposing in part 617, subpart F, regulatory procedures to issue directives to ensure that a qualified lender fully complies with the terms of section 4.14A of the Act.

These procedures are similar to our existing capital directive regulations found in part 615, subpart M. The procedures require notice to the qualified lender of the specific noncompliance, providing a 30-day period for the qualified lender to respond to the notice, evaluation of the qualified lender's response, and finally a decision on whether or not to issue the directive as proposed or modified.

[15] See the discussion in section E.4. of this preamble to determine when a previously restructured loan is current.

M. How Is the Right of First Refusal Applied? [§ 617.7600 et seq.]

Section 4.36 of the Act provides a previous owner the right of first refusal to repurchase property when a System institution forecloses or a borrower voluntarily conveys agricultural real estate because the borrower did not have the financial resources to avoid foreclosure.

1. Does the Right of First Refusal Apply When the System Institution Acquires Agricultural Real Estate Through a Bankruptcy Liquidation? [§ 617.7600]

The right of first refusal does apply to agricultural real estate acquired through a bankruptcy proceeding. When a System institution gets relief from the automatic stay, or the borrower conveys the property as part of a bankruptcy plan, the right of first refusal applies because the System institution gains possession of the property through foreclosure or voluntary conveyance.

2. Who Is the Previous Owner? [§ 617.7600]

Existing § 614.4522(a)(2) defines a previous owner as a prior record holder who was a borrower or whose land was used as collateral for a loan to a System borrower. The FCC commented that we should clarify that a previous owner does not include a mortgagor or grantor of an equivalent interest in agricultural real estate unless such person is also the borrower. As previously stated, the term refers to the legal title holder of the agricultural real estate used as collateral for the loan. The right of first refusal is not transferable and belongs only to the legal title holder. We invite the FCC to comment further if we have not adequately responded to the comment.

3. May the Previous Owner Waive the Right of First Refusal as a Part of a Debt Settlement?

Borrower rights, which include the right of first refusal, were enacted by Congress to address an unequal bargaining position that exists between a borrower and a qualified lender. In most debt settlement situations, the borrower is in an unequal bargaining position. Thus, permitting waivers for this borrower would contradict Congress's intent.

4. Must a System Institution Document Whether the Previous Owner Had the Financial Resources To Avoid Foreclosure or Voluntary Conveyance? [§ 617.7605]

Whether the borrower had the financial resources to avoid either foreclosure or voluntarily conveying the agricultural real estate is a condition in the Act that must be met before the right of first refusal may be offered. We continue to require each System institution to document whether the borrower did or did not have the financial resources to avoid foreclosure or voluntary conveyance.

We propose moving existing § 615.4522(b) to § 617.7605.

5. May a System Institution Require a Previous Owner To Pay an Escrow Deposit When Buying the Property at a Public Auction? [§ 617.7620]

If an escrow deposit is an advertised requirement of the successful bidder in a public auction, then the previous owner, as the successful bidder, must also provide this escrow payment. The previous owner must be given an equal opportunity to repurchase the property in a public auction and should be subject to the same conditions as any other successful bidder.

VII. Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the FCA hereby certifies that the proposed rule will not have a significant economic impact on a substantial number of small entities. Each of the banks in the System, considered together with its affiliated associations, has assets and annual income in excess of the amounts that would qualify them as small entities. Therefore, System institutions are not "small entities" as defined in the Regulatory Flexibility Act.

List of Subjects

12 CFR Part 609

Agriculture, Banks, banking, Electronic commerce, Reporting and recordkeeping requirements, Rural areas.

12 CFR Part 614

Agriculture, Banks, banking, Flood insurance, Foreign trade, Reporting and recordkeeping requirements, Rural areas.

12 CFR Part 615

Accounting, Agriculture, Banks, banking, Government Securities, Investments, Rural areas.

12 CFR Part 617

Banks, banking, Criminal referrals, Criminal transactions, Embezzlement, Insider abuse, Investigations, Money laundering, Theft.

For the reasons stated in the preamble, parts 609, 614, 615, and 617, chapter VI, title 12 of the Code of Federal Regulations are proposed to be amended as follows:

PART 609—ELECTRONIC COMMERCE

1. The authority citation for part 609 continues to read as follows:

Authority: Sec. 5.9 of the Farm Credit Act (12 U.S.C. 2243); 5 U.S.C. 301; Pub L. 106–229 (114 Stat. 464).

Subpart A—General Rules

2. Amend § 609.910(c) by revising the fourth sentence to read as follows:

§ 609.910 Compliance with the Electronic Signatures in Global and National Commerce Act (Public Law 106–229) (E–SIGN).

* * * * *

(c) * * * Thus, System institutions cannot use electronic notification to deliver some notices that must be provided under part 617, subparts A, D, E, and G of this chapter. * * *

* * * * *

PART 614—LOAN POLICIES AND OPERATIONS

3. The authority citation for part 614 continues to read as follows:

Authority: 42 U.S.C. 4012a, 4104a, 4104b, 4106, and 4128; secs. 1.3, 1.5, 1.6, 1.7, 1.9, 1.10, 1.11, 2.0, 2.2, 2.3, 2.4, 2.10, 2.12, 2.13, 2.15, 3.0, 3.1, 3.3, 3.7, 3.8, 3.10, 3.20, 3.28, 4.12, 4.12A, 4.13B, 4.14, 4.14A, 4.14C, 4.14D, 4.14E, 4.18, 4.18A, 4.19, 4.25, 4.26, 4.27, 4.28, 4.36, 4.37, 5.9, 5.10, 5.17, 7.0, 7.2, 7.6, 7.8, 7.12, 7.13, 8.0, 8.5 of the Farm Credit Act (12 U.S.C. 2011, 2013, 2014, 2015, 2017, 2018, 2019, 2071, 2073, 2074, 2075, 2091, 2093, 2094, 2097, 2121, 2122, 2124, 2128, 2129, 2131, 2141, 2149, 2183, 2184, 2201, 2202, 2202a, 2202c, 2202d, 2202e, 2206, 2206a, 2207, 2211, 2212, 2213, 2214, 2219a, 2219b, 2243, 2244, 2252, 2279a, 2279a–2, 2279b, 2279c–1, 2279f, 2279f–1, 2279aa, 2279aa–5); sec. 413 of Pub. L. 100–233, 101 Stat. 1568, 1639.

Subpart H—Loan Purchases and Sales

§ 614.4336 [Removed]

4. Remove § 614.4336.

Subpart L—Actions on Applications; Review Credit Decisions

Subpart L [Removed]

5. Remove subpart L, consisting of §§ 614.4440 through 614.4444.

Subpart N—Loan Servicing Requirements; State Agricultural Loan Mediation Programs; Right of First Refusal

§§ 614.4514–614.4522 [Removed]

6. Remove §§ 614.4514 through 614.4522 in subpart N.

PART 615—FUNDING AND FISCAL AFFAIRS, LOAN POLICIES AND OPERATIONS, AND FUNDING OPERATIONS

7. The authority citation for part 615 continues to read as follows:

Authority: Secs. 1.5, 1.7, 1.10, 1.11, 1.12, 2.2, 2.3, 2.4, 2.5, 2.12, 3.1, 3.7, 3.11, 3.25, 4.3, 4.3A, 4.9, 4.14B, 4.25, 5.9, 5.17, 6.20, 6.26, 8.0, 8.3, 8.4, 8.6, 8.7, 8.8, 8.10, 8.12 of the Farm Credit Act (12 U.S.C. 2013, 2015, 2018, 2019, 2020, 2073, 2074, 2075, 2076, 2093, 2122, 2128, 2132, 2146, 2154, 2154a, 2160, 2202b, 2211, 2243, 2252, 2278b, 2278b–6, 2279aa, 2279aa–3, 2279aa–4, 2279aa–6, 2279aa–7, 2279aa–8, 2279aa–10, 2279aa–12); sec. 301(a) of Pub. L. 100–233, 101 Stat. 1568, 1608.

Subpart J—Retirement of Equities

8. Section 615.5280(h) is revised to read as follows:

§ 615.5280 Retirement in event of default.

* * * * *

(h) The requirements of this section may be satisfied by notices given pursuant to §§ 617.7405, 614.7410, 617.7420, and 617.7425 of this chapter that contain the information required by this section.

9. Amend § 615.5290 by revising paragraphs (a) and (b) to read as follows:

§ 615.5290 Retirement of capital stock and participation certificates in event of restructuring.

(a) If a Farm Credit Bank or agricultural credit bank forgives and writes off, under § 617.7415, any of the principal outstanding on a loan made to any borrower, where appropriate the Federal land bank association of which the borrower is a member and stockholder shall cancel the same dollar amount of borrower stock held by the borrower in respect of the loan, up to the total amount of such stock, and to the extent provided for in the bylaws of the Bank relating to its capitalization, the Farm Credit Bank or agricultural credit bank shall retire an equal amount of stock owned by the Federal land bank association.

(b) If a production credit association or merged association forgives and writes off, under § 617.7415, any of the principal outstanding on a loan made to any borrower, the association shall cancel the same dollar amount of borrower stock held by the borrower in respect of the loan, up to the total amount of such loan.

* * * * *

PART 617—BORROWER RIGHTS

10. The authority citation for part 617 continues to read as follows:

Authority: Secs. 4.13, 5.9, 5.17 of the Farm Credit Act (12 U.S.C. 2199, 2243, 2252(a)(9)).

Subpart A—General

11. Amend § 617.7000 by adding the following definitions alphabetically to read as follows:

§ 617.7000 Definitions.

* * * * *

Adverse credit decision means a credit decision where a qualified lender:

(1) Decides not to make a loan to an applicant;

(2) Makes a loan in an amount less than the applicant requested; or

(3) Denies an application for restructuring.

Applicant means any person who completes and executes a loan application from a qualified lender.

Application for restructuring means a written request from a borrower to restructure a distressed loan. The request must be:

(1) Submitted on the appropriate forms prescribed by the qualified lender and accompanied by sufficient financial information and repayment projections, where appropriate, as required by the qualified lender to support a sound credit decision; or

(2) A borrower's bankruptcy plan of reorganization.

Distressed loan means a loan that the borrower does not have the financial capacity to pay according to its terms, as determined by the qualified lender, and exhibits one or more of the following characteristics:

(1) The borrower is demonstrating adverse financial and repayment trends.

(2) The loan is delinquent or past due under the terms of the loan contract.

(3) One or both of the factors listed in paragraphs (1) and (2) of this section, together with inadequate collateralization, present a high probability of loss to the qualified lender.

* * * * *

Foreclosure proceeding means:

(1) A foreclosure or similar legal proceeding to enforce a lien on property, whether real or personal, that secures a noninterest-earning asset or distressed loan; or

(2) The seizing of and realizing on non-real property collateral, other than collateral subject to a statutory lien arising under title I and II of the Act, to effect collection of a nonaccrual or distressed loan.

Independent evaluator means an individual who is a qualified evaluator and who satisfies the standards of § 614.4260, subpart F of this chapter, and the standards set by the qualified lender for the type of property to be evaluated. The independent evaluator may not be an employee or agent of a qualified lender or have a relationship with the lender or any of its officers or directors in contravention of part 612 of this chapter.

* * * * *

Loan application means a complete oral or written request for an extension of credit made in accordance with a qualified lender's procedures for the type of credit requested. An application is complete when the qualified lender receives all the information normally obtained and used in evaluating applications for credit. This information may include credit reports, supporting information for the credit requested, and reports by governmental agencies or other persons necessary to guarantee, insure, or provide security for the credit or collateral.

* * * * *

Restructure and restructuring of a loan means a reamortization, renewal, deferral of principal or interest, monetary concessions, or the taking of any other action to modify the terms of, or forebear on, a loan in any way that will provide the best opportunity for the borrower to have a reasonable probability of retiring debts and returning to a viable operation.

* * * * *

12. Amend subpart A by adding new §§ 617.7005, 617.7010, and 617.7015 to read as follows:

§ 617.7005 When may electronic communications be used in the borrower rights process?

Qualified lenders may use, with the parties' agreement, electronic commerce (E-commerce) including electronic communications for borrower rights disclosures. Part 609 of this chapter addresses when a qualified lender may use E-commerce. Consistent with these rules, a qualified lender should interpret part 617 broadly to allow electronic transmissions, communications, records, and submissions. However, electronic communications may not be used for a notice of default, acceleration, repossession, foreclosure, eviction, or the right to cure when an applicant's or borrower's primary residence secures the loan. In these instances, a qualified lender must use paper disclosures.

§ 617.7010 May borrower rights be waived?

(a) A qualified lender may not obtain a waiver of borrower rights, except as indicated in paragraph (b) of this section.

(b) A borrower may waive the following rights:

(1) Rights relating to distressed loan restructuring, credit reviews, and the right of first refusal when a loan is guaranteed by the Small Business Administration.

(2) In connection with a loan sale as provided in § 617.7015.

(c) All waivers must be voluntary and in writing. The qualified lender must first clearly explain the rights the borrower is being asked to waive and provide a written explanation of such rights.

§ 617.7015 What happens to borrower rights when a loan is sold?

(a) A loan made by a qualified lender and subsequently sold, in whole or in part, to another qualified lender is subject to the borrower rights provisions of title IV of the Act.

(b) What happens when a qualified lender sells a loan into the secondary market?

(1) Except as provided in paragraph (b)(2) of this section, the borrower rights provisions of sections 4.14, 4.14A, 4.14B, 4.14C, 4.14D, and 4.36 of the Act do not apply to a loan made on or after February 10, 1996, and designated for sale into a secondary market at the time the loan was made.

(2) Borrower rights apply to a loan designated for sale under paragraph (b)(1) of this section but not sold into a secondary market during the 180-day period that begins on the date of designation. The provisions of paragraph (b)(1) of this section will subsequently apply on the date of sale if the loan is later sold into a secondary market.

(c) What happens when a qualified lender sells a loan to a non-qualified lender?

(1) Except for loans sold to another qualified lender or designated for sale into a secondary market, a qualified lender must comply with one of the following requirements before selling a loan or interest in a loan subject to borrower rights:

(i) The qualified lender and borrower must agree to include provisions in the loan contract with the borrower, or a written modification thereto, that ensure that the buyer of the loan will be obligated to provide the borrower the same rights a qualified lender must provide; or

(ii) The qualified lender must obtain from the borrower a signed written consent to the sale, which clearly states the borrower waives statutory borrower rights.

(2) Before the qualified lender obtains the borrower's consent to the sale of the loan and the waiver of borrower rights under paragraph (c)(1)(ii) of this section, the qualified lender must disclose in writing to the borrower:

(i) A complete description of the statutory rights the borrower will waive;

(ii) Any changes in the loan terms or conditions that will occur if the qualified lender does not sell the loan;

(iii) That waiving borrower rights will not become effective unless the qualified lender sells the loan; and

(iv) That borrower rights will become effective again if any qualified lender repurchases the loan or any interest in the loan.

(3) The consent to the loan sale and waiver of borrower rights shall have no effect until the qualified lender sells the loan. Borrower rights become effective again if any qualified lender repurchases the loan or any interest in the loan.

(4) A qualified lender may not make a loan conditioned on the borrower consenting to the loan's sale and a waiver of borrower rights.

13. Amend part 617 by adding new subparts D, E, F, and G to read as follows:

Subpart D—Actions on Applications; Review of Credit Decisions

Sec.

617.7300 When acting on a loan application, what are the notice requirements and review rights?
617.7305 What is a CRC and who are the members?
617.7310 What is the review process of the CRC?
617.7315 What records must the qualified lender maintain on behalf of the CRC?

Subpart D—Actions on Applications; Review of Credit Decisions

§ 617.7300 When acting on a loan application, what are the notice requirements and review rights?

Each qualified lender must make its decision on a loan application as quickly as possible. The qualified lender must provide prompt written notice of its decision to the applicant. The qualified lender is required to notify all primary applicants. If a loan application has more than one primary applicant, the qualified lender may send the original notice to the applicant designated to receive notices and may send copies to all other applicants. If the qualified lender makes an adverse credit decision on a loan application, the notice must include:

(a) The specific reasons for the qualified lender's decision;

(b) A statement that the applicant may request a review of the decision;

(c) A statement that a written request for review must be made within 30 days after the applicant receives the qualified lender's notice; and

(d) A brief explanation of the process for seeking review of the decision, including the independent collateral evaluation review process, whom to contact for access to information, and the applicant's right to appear in person before the credit review committee (CRC).

§ 617.7305 What is a CRC and who are the members?

The board of directors of each qualified lender must establish one or more CRCs to review adverse credit decisions made by a qualified lender. The CRC may only review adverse credit decisions at the request of the applicant or borrower. The CRC has the ultimate decision making authority on the loan or application under review. CRC members are selected by the board of directors of each qualified lender and must include at least one of the qualified lender's farmer-elected board members. The loan officer involved in the adverse credit decision being reviewed may not serve on the CRC when it reviews that loan.

§ 617.7310 What is the review process of the CRC?

(a) *How will an applicant or borrower know when the CRC will consider the review request?* The qualified lender must inform the applicant or borrower 15 days in advance of the CRC meeting where the applicant or borrower's request will be reviewed.

(b) *Who may make a personal appearance before the CRC?* Each applicant or borrower who has requested a review may appear in person before the CRC. The applicant or borrower may be accompanied by counsel or other representative when seeking a reversal of a decision on a loan or an application for restructuring.

(c) *What documents may the CRC consider?* An applicant or borrower may submit any documents or other evidence to support the information contained in the loan or application for restructuring. The documents should demonstrate that the application for a loan or restructuring satisfies the credit standards of the qualified lender and is an eligible loan or application for restructuring. Additionally, the applicant or borrower is entitled to a copy of each independent collateral evaluation used by the qualified lender.

(d) *May an applicant obtain a new collateral evaluation even if collateral was not a reason for the adverse credit decision?* As part of a CRC review, an applicant may request an independent collateral evaluation of the agricultural real estate securing the loan or being offered as security, regardless of

whether collateral was an identified reason for the adverse credit decision. The independent collateral evaluation may be for any interest(s) in the property securing the loan, except stock or participation certificates issued by the qualified lender and held by the applicant or borrower.

(1) *Who may conduct an independent collateral evaluation?* The independent collateral evaluation must be conducted by an independent evaluator. The CRC must provide the applicant or borrower with a list of three independent evaluators approved by the qualified lender within 30 days of the request for an independent collateral evaluation. The applicant or borrower must select and engage the services of an evaluator from the list. The evaluation must comply with the collateral evaluation requirements of part 614, subpart F, of this chapter. The qualified lender must provide the applicant or borrower a copy of part 614, subpart F, for presentation to the selected independent evaluator. A copy of part 614, subpart F, signed by the evaluator is a required exhibit in the subsequent evaluation report.

(2) *When must an applicant or borrower obtain the independent collateral evaluation and who pays for the evaluation?* The applicant or borrower must enter into a contractual arrangement for evaluation services within 30 days of receiving the names of three approved independent evaluators. The evaluation must be completed within a reasonable period of time, taking into consideration any extenuating circumstance. The applicant or borrower must pay for the independent evaluation.

(3) *How does the CRC use an independent collateral evaluation when making a decision?* The CRC will consider the results of any independent collateral evaluation before making a final determination with respect to the loan or restructuring, except the CRC is not required to consider a collateral evaluation that does not conform to the collateral evaluation standards described in section 614, subpart F, of this chapter.

(e) *When must the CRC issue a decision?* The CRC shall reach a decision, and it shall be the final decision of the qualified lender, not later than 30 days after the meeting on the request under review. The CRC must make every reasonable effort to conduct reviews and render decisions in as expeditious a manner as possible. After making its decision, the committee must promptly notify the applicant or borrower in writing of the decision and the reasons for the decision.

§ 617.7315 What records must the qualified lender maintain on behalf of the CRC?

A qualified lender must maintain a complete file of all requests for CRC reviews, including participation in state mediation programs, the minutes of each CRC meeting, and the disposition of each review by the committee.

Subpart E—Distressed Loan Restructuring; State Agricultural Loan Mediation Programs

Sec.

617.7400 What protections exist for borrowers who meet all loan obligations?
617.7405 On what policies are loan restructurings based?
617.7410 When and how does a qualified lender notify a borrower of the right to seek loan restructuring?
617.7415 How does a qualified lender decide to restructure a loan?
617.7420 How will a decision on an application for restructuring be issued?
617.7425 What type of notice should be given to a borrower before foreclosure?
617.7430 Are institutions required to participate in state agricultural loan mediation programs?

Subpart E—Distressed Loan Restructuring; State Agricultural Loan Mediation Programs

§ 617.7400 What protections exist for borrowers who meet all loan obligations?

(a) A qualified lender may not foreclose on a loan because the borrower failed to post additional collateral when the borrower has made all accrued payments of principal, interest, and penalties on the loan.

(b) A qualified lender may not require a borrower to reduce the outstanding principal balance of a loan by any amount that exceeds the regularly scheduled principal installment when due and payable, unless:

(1) The borrower sells or otherwise disposes of part, or all, of the collateral without the prior approval of the qualified lender and the proceeds from the sale or disposition are not applied to the loan; or

(2) The parties agree otherwise in a written agreement.

(c) After a borrower has made all accrued payments of principal, interest, and penalties on a loan, the qualified lender may not enforce acceleration of the borrower's repayment schedule due to the borrower's untimely payment of those principal or interest payments.

(d) If a qualified lender places a loan in noninterest-earning status and this results in an adverse action being taken against the borrower, such as revoking any undisbursed loan commitment, the lender must document the change of status and promptly notify the borrower in writing of the action and the reasons for taking it. If the borrower was not delinquent on any principal or interest payment at the time of such action and the borrower's request to have the loan placed back into accrual status is denied, the borrower may obtain a review of the denial before the CRC pursuant to § 617.7310 of this part. The borrower must request this review within 30 days after receiving the lender's notice.

§ 617.7405 On what policies are loan restructurings based?

Loan restructurings must be made in accordance with the policy adopted by the supervising bank board of directors under section 4.14A(g) of the Act.

§ 617.7410 When and how does a qualified lender notify a borrower of the right to seek loan restructuring?

(a) When a qualified lender determines that a loan is, or has become, distressed, the lender must provide one of the following written notices to the borrower stating that the loan may be suitable for restructuring.

(1) A notice stating that the loan has been identified as distressed and that the borrower has the right to request a restructure of the loan (non-foreclosure notice).

(2) A notice that the loan has been identified as distressed, that the borrower has the right to request a restructure of the loan, and that the alternative to restructuring may be foreclosure (45-day notice). The qualified lender must provide this notice to the borrower no later than 45 days before the qualified lender begins foreclosure proceedings with respect to any loan outstanding to the borrower. This notice must specifically state that if the loan is restructured and the borrower does not perform under the restructuring agreement (as described in § 617.7410(e)), the qualified lender may initiate foreclosure proceedings without further notice.

(b) *What should each notice include?*

(1) A copy of the policy the qualified lender established governing the treatment of distressed loans; and

(2) All materials necessary for the borrower to submit an application for restructuring.

(c) *What notice should a qualified lender send to a borrower who is a debtor in a bankruptcy proceeding?* The qualified lender should send a notice that identifies the loan as distressed and the statutory right to file an application for a restructuring. The notice may also restate the language from the automatic stay provision to emphasize that the notice is not intended as an attempt to collect, assess, or recover a claim.

(d) *Whom should the qualified lender notify?* The qualified lender is required to notify all primary obligors. If the obligors identify one party to receive notices, the qualified lender should send the original notice to that person and send copies to the other obligors. For borrowers in a bankruptcy proceeding, the qualified lender should send the notice to the borrower's counsel.

(e) *When is a qualified lender required to send another restructure notice to a borrower whose loan was previously restructured?* A qualified lender should notify a borrower of the right to file another application to restructure the loan only if the borrower has performed on the previous restructure agreement. Performance means by 6 consecutive monthly payments, 4 consecutive quarterly payments, 3 consecutive semiannual payments, or 2 consecutive annual payments. Notice is also required when the borrower has not performed and the qualified lender did not initially send the borrower the 45-day notice.

(f) *Does the borrower have the opportunity to meet with the qualified lender after sending the restructure notice?* The qualified lender must provide any borrower to whom a notice has been sent with a reasonable opportunity to meet personally with a representative of the lender. The borrower and lender may meet to review the status of the loan, the financial condition of the borrower, and the suitability of the loan for restructuring. A meeting to discuss a loan that is in a noninterest-earning status may also involve developing a plan for restructuring, if the qualified lender determines the loan is suitable for restructuring.

(g) *May the qualified lender voluntarily consider restructuring for a borrower who did not submit one?* A qualified lender may, in the absence of an application for restructuring from a borrower, propose restructuring to an individual borrower.

§ 617.7415 How does a qualified lender decide to restructure a loan?

(a) *What criteria does a qualified lender use to evaluate an application for restructuring?* The qualified lender should consider the following:

(1) Whether the cost to the lender of restructuring the loan is equal to or less than the cost of foreclosure, considering all relevant criteria. These criteria include:

(i) The present value of interest and principal foregone by the lender in carrying out the application for restructuring;

(ii) Reasonable and necessary administrative expenses involved in working with the borrower to finalize and implement the application for restructuring;

(iii) Whether the borrower's application for restructuring included a preliminary restructuring plan and cashflow analysis, taking into account income from all sources to be applied to the debt and all assets to be pledged, that show a reasonable probability that orderly debt retirement will occur as a result of the proposed restructuring; and

(iv) Whether the borrower has furnished, or is willing to furnish, complete and current financial statements in a form acceptable to the qualified lender.

(2) Whether the borrower is applying all income over and above necessary and reasonable living and operating expenses to the payment of primary obligations;

(3) Whether the borrower has the financial capacity and the management skills to protect the collateral from diversion, dissipation, or deterioration;

(4) Whether the borrower is capable of working out existing financial difficulties, taking into consideration any prior restructuring of the loan, re-establishing a viable operation, and repaying the loan on a rescheduled basis; and

(5) In the case of a distressed loan that is not delinquent, whether restructuring consistent with sound lending practices may be taken to reasonably ensure that the loan will not have to be placed into noninterest-earning status in the future.

(b) *What should be included in determining the cost of foreclosure?*

(1) The difference between the outstanding balance due, as provided by the loan documents, and the liquidation value of the loan, taking into consideration the borrower's repayment capacity and the liquidation value of the collateral used to secure the loan;

(2) The estimated cost of maintaining a loan classified as a high-risk asset;

(3) The estimated cost of administrative and legal actions necessary to foreclose a loan and dispose of property acquired as the result of the foreclosure, including attorneys' fees and court costs;

(4) The estimated cost of value changes in collateral used to secure a loan during the period beginning on the date of the initiation of an action to foreclose or liquidate the loan and ending on the date of the disposition of the collateral; and

(5) All other costs incurred as the result of the foreclosure or liquidation of a loan.

(c) *What should the qualified lender do if the borrower and the qualified lender cannot agree on the financial inputs used in the application for restructuring?* If the borrower and lender are not able to agree on supportable or realistic financial inputs, the lender may use benchmarks to determine the operational input costs and chattel security values. These benchmarks may include, but are not limited to, the borrower's 5-year production average; averages in the county where the farming operation is located based on data from United States Department of Agriculture offices, local colleges or universities, or other recognized authority; and other such reasonable sources.

(d) *How does the qualified lender decide whether to restructure or foreclose?* If a qualified lender determines the potential cost to the lender of restructuring the loan as proposed in the application for restructuring is less than or equal to the potential cost of foreclosure, the qualified lender must restructure the loan. If two or more restructuring alternatives are available, the qualified lender must restructure the loan using the alternative that results in the least cost to the lender.

(e) *What documentation should the qualified lender retain?* In the event that an application for restructuring is denied, a qualified lender must maintain sufficient documentation to demonstrate compliance with paragraphs (a), (b), and (c) of this section, as applicable.

§ 617.7420 How will a decision on an application for restructuring be issued?

(a) *When must a qualified lender make a decision on an application for restructuring?* Each qualified lender must provide a written decision on an application for restructuring and provide this decision to the borrower within 15 days from the conclusion of the negotiations used to develop the application for restructuring.

(b) *How does a qualified lender notify the borrower of the decision?* On reaching a decision on an application for restructuring, the qualified lender must provide written notice in any manner that requires a primary obligor to acknowledge receipt of the lender's decision. In the case of a loan involving one or more primary obligors, the original notice may be provided to the primary obligor identified to receive such notice, with copies provided by regular mail to the other obligors.

(c) *What notice is required if the restructuring request is denied?* When

an application for restructuring is denied, the notice must include:

(1) The reason(s) for the denial and any critical assumptions and relevant information on which the reasons are based, except that any confidential information shall not be disclosed;

(2) A statement that the borrower may request a review of the denial;

(3) A statement that any request for review must be made in writing within 7 days after receiving such notice.

(4) A brief explanation of the process for seeking review of the denial, including the appraisal review process and the right to appear before the CRC, pursuant to § 617.7310 of this part, accompanied by counsel or any other representative, if the borrower so chooses.

§ 617.7425 What type of notice should be given to a borrower before foreclosure?

Not later than 45 days before any qualified lender begins foreclosure proceedings, the qualified lender must notify the borrower in writing that the loan may be suitable for restructuring. The notice must inform the borrower that the qualified lender will review any suitable loan for possible restructuring and must include a copy of the policy and the materials described in § 617.7410(b). The notice must also state that if the loan is restructured, the borrower must perform under this restructured loan agreement. If the borrower does not perform, the qualified lender may initiate foreclosure.

(a) *Does the notice have to inform the borrower that foreclosure is possible?* The notice must inform the borrower that the alternative to restructuring may be foreclosure. If the notice does not inform the borrower of potential foreclosure, then the qualified lender must send a second notice at least 45 days before foreclosure is initiated.

(b) *How are borrowers who are debtors in a bankruptcy proceeding notified?* A qualified lender must restate the language from the automatic stay provision to emphasize that the notice is not intended to be an attempt to collect, assess, or recover a claim. The qualified lender should send the notice to the borrower's counsel.

(c) *May a qualified lender foreclose on a loan when there is a restructuring application on file?* No qualified lender may foreclose or continue any foreclosure proceeding with respect to a distressed loan before the lender has completed consideration of any pending application for restructuring and CRC consideration, if applicable. This section does not prevent a lender from taking any action necessary to avoid the dissipation of assets or the destruction, diversion, or deterioration of collateral if the lender has reasonable grounds to believe that such dissipation, destruction, diversion, or deterioration may occur.

§ 617.7430 Are institutions required to participate in state agricultural loan mediation programs?

(a) If initiated by a borrower, System institutions must participate in state mediation programs certified under section 501 of the Agricultural Credit Act of 1987, and present and explore debt restructuring proposals advanced in the course of such mediation. If provided in the certified program, System institutions may initiate mediation at any time.

(b) System institutions must cooperate in good faith with requests for information or analysis of information made in the course of mediation under any loan mediation program.

(c) No System institution may make a loan secured by a mortgage or lien on agricultural property to a borrower on the condition that the borrower waive any right under the agricultural loan mediation program of any state.

(d) A state mediation may proceed at the same time as the loan restructuring process of § 617.7415 or at any other appropriate time.

Subpart F—Distressed Loan Restructuring Directive

Sec.

617.7500 What is a directive used for and what may it require?
617.7505 How will the qualified lender know when FCA is considering issuing a distressed loan restructuring directive?
617.7510 What should the qualified lender do when it receives notice of a distressed loan restructuring directive?
617.7515 How does the FCA decide whether to issue a directive?
617.7520 How does the FCA issue a directive and when will it be effective?
617.7525SUBJECT≤May FCA use other enforcement actions?

Subpart F—Distressed Loan Restructuring Directive

§ 617.7500 What is a directive used for and what may it require?

(a) A distressed loan restructuring directive is an order issued to a qualified lender when FCA has determined that the lender has violated section 4.14A of the Act.

(b) A distressed loan restructuring directive requires the qualified lender to comply with the specific distressed loan restructuring requirements in the Act.

(c) A distressed loan restructuring directive is enforceable in the same manner and to the same extent as an effective and outstanding cease and desist order that has become final. Any violation of a distressed loan restructuring directive may result in FCA assessing civil money penalties or seeking a court order pursuant to section 5.31 or 5.32 of the Act.

§ 617.7505 How will the qualified lender know when FCA is considering issuing a distressed loan restructuring directive?

When FCA intends to issue a distressed loan restructuring directive, it will notify the qualified lender in writing. The notice will state:

(a) The reasons FCA intends to issue a distressed loan restructuring directive;

(b) The proposed contents of the distressed loan restructuring directive; and

(c) Any other relevant information.

§ 617.7510 What should the qualified lender do when it receives notice of a distressed loan restructuring directive?

(a) A qualified lender should respond to the notice by stating why FCA should not issue a distressed loan restructuring directive, by proposing changes to the directive, or by seeking other suitable relief. The response must include any information, documentation, or other relevant evidence that supports the qualified lender's position. The response may include a plan for achieving compliance with the distressed loan restructuring requirements of the Act. The response must be in writing and delivered to FCA within 30 days after the date on which the qualified lender received the notice. In its discretion, FCA may extend the time period for good cause. FCA may shorten the 30-day period with the consent of the qualified lender or when FCA determines that providing the full 30 days would result in a borrower not receiving distressed loan restructuring rights.

(b) If the qualified lender fails to respond within 30 days or such other time period specified by FCA, this failure shall constitute a waiver of any objections to the proposed distressed loan restructuring directive.

§ 617.7515 How does the FCA decide whether to issue a directive?

After the closing date of the qualified lender's response period, or following receipt of the qualified lender's response, FCA must decide if there is sufficient information to support the issuance of a directive or if additional information is necessary. Once FCA has received sufficient information, it must decide whether to issue a directive as originally proposed or as modified.

§ 617.7520 How does the FCA issue a directive and when will it be effective?

A distressed loan restructuring directive is effective immediately on receipt by the qualified lender, or on such later date as may be specified by FCA, and shall remain effective and enforceable until it is stayed, modified, or terminated by FCA.

§ 617.7525 May FCA use other enforcement actions?

FCA may issue a distressed loan restructuring directive in addition to, or instead of, any other action allowed by law, including cease and desist proceedings, civil money penalties, or the granting or conditioning of any application or other requests by the System institution.

Subpart G—Right of First Refusal

Sec.

617.7600 What are the definitions used in this subpart?
617.7605 How should System institutions document whether the borrower had the financial resources to avoid foreclosure?
617.7610 What should the System institution do when it decides to sell acquired agricultural real estate?
617.7615 What should the System institution do when it decides to lease acquired agricultural real estate?
617.7620 What should the System institution do when it decides to sell acquired agricultural real estate at a public auction?
617.7625 Whom should the System institution notify?
617.7630 Does this Federal requirement affect any state property laws?

Subpart G—Right of First Refusal

§ 617.7600 What are the definitions used in this subpart?

In addition to the definitions in § 617.7000, the following definitions apply to this subpart.

Acquired agricultural real estate or property means agricultural real estate acquired by a System institution as a result of a loan foreclosure or a voluntary conveyance by a borrower who, as determined by the institution, does not have the financial resources to avoid foreclosure.

Previous owner means:

(1) The prior record owner who was a borrower from a System institution and did not have the financial resources, as determined by the institution, to avoid foreclosure on acquired agricultural real estate; or

(2) The prior record owner who is not a borrower and whose acquired agricultural real estate was used as collateral for a loan to a System borrower.

System institution means a System institution, except a bank for cooperatives, that makes loans as defined in § 617.7000.

§ 617.7605 How should System institutions document whether the borrower had the financial resources to avoid foreclosure?

The right of first refusal applies only to borrowers who did not have the financial resources to avoid foreclosure or voluntary conveyance. A System institution must clearly document in its files whether the borrower had the resources to avoid foreclosure or voluntary conveyance.

§ 617.7610 What should the System institution do when it decides to sell acquired agricultural real estate?

(a) Notify the previous owner,

(1) By certified mail and within 15 days of the System institution's decision to sell acquired agricultural real estate, the institution must notify the previous owner, of the property's appraised fair market value as established by an accredited appraiser and of the previous owner's right to:

(i) Buy the property at the appraised fair market value, or

(ii) Offer to buy the property at a price less than the appraised value.

(2) That any offer must be received within 30 days of receipt of the notice.

(b) Act on an offer to buy the acquired agricultural real estate at the appraised value. Within 15 days after the receipt of the previous owner's offer to buy the acquired agricultural real estate at the appraised value, the System institution must accept the offer and sell the property to the previous owner, if the offer was received within 30 days of the notice required in paragraph (a)(2) of this section.

(c) Act on an offer to buy the acquired agricultural real estate at less than the appraised value.

(1) The System institution must consider the offer if it was received within 30 days of the notice required in paragraph (a) of this section.

(2) If the System institution accepts this offer, it must notify the previous owner of the decision and sell the acquired agricultural real estate to the previous owner within 15 days of receiving the offer to buy the acquired agricultural real estate at a value less than the appraised value.

(3) If the System institution rejects this offer, it must notify the previous owner of the decision within 15 days of receiving the offer to buy the acquired agricultural real estate at a value less than the appraised value. The previous owner has 15 days from receipt of the notice to submit an offer to buy at such price or under such terms and conditions. The System institution may not sell the acquired agricultural real estate to any other person:

(i) At a price equal to, or less than, that offered by the previous owner; or

(ii) On different terms or conditions than those extended to the previous owner without first notifying the previous owner by certified mail and providing an opportunity to buy the property at such price or under such terms and conditions.

(d) For purposes of this section, financing by the System institution is not a term or condition of the sale of acquired agricultural real estate. A System institution is not required to provide financing to the previous owner for purchase of acquired agricultural real estate.

§ 617.7615 What should the System institution do when it decides to lease acquired agricultural real estate?

(a) Notify the previous owner,

(1) Within 15 days of the System institution's decision to lease, it must notify the previous owner, by certified mail, of the property's appraised rental value, as established by an accredited appraiser, and of the previous owner's right to:

(i) Lease the property at a rate equivalent to the appraised rental value of the property, or

(ii) To offer to lease the property at rate that is less than the appraised rental value of the property.

(2) The notice must inform the previous owner that any offer must be received within 15 days of receipt of the notice.

(b) Act on an offer to lease the acquired agricultural real estate at a rate equivalent to the appraised rental value of the property.

(1) Within 15 days after receipt of such offer, the System institution may accept the offer to lease the property at the appraised rental value and lease the property to the previous owner, or

(2) Within 15 days after receipt of such offer, the System institution may reject the offer to lease the property at the appraised rental value when the institution determines that the previous owner:

(i) Does not have the resources available to conduct a successful farming or ranching operation; or

(ii) Cannot meet all the payments, terms, and conditions of such lease.

(c) Act on an offer to lease the acquired agricultural real estate at a rate that is less than the appraised rental value of the property.

(1) The System institution must consider the offer to lease the property at a rate that is less than the appraised rental value of the property. Notice of

the decision to accept or reject such offer must be provided to the previous owner within 15 days of receipt of the offer.

(2) If the System institution accepts the offer to lease the property at less than the appraised rental value, it must notify the previous owner and lease the property to the previous owner.

(3) If the institution rejects the offer, the System institution must notify the previous owner of this decision. The previous owner has 15 days after receipt of the notice in which to agree to lease the property at such rate or under such terms and conditions. The System institution may not lease the property to any other person:

(i) At a rate equal to or less than that offered by the previous owner; or

(ii) On different terms and conditions than those that were extended to the previous owner without first informing the previous owner by certified mail and providing an opportunity to lease the property at such rate or under such terms and conditions.

§ 617.7620 What should the System institution do when it decides to sell acquired agricultural real estate at a public auction?

System institutions electing to sell or lease acquired agricultural real estate or a portion of it through a public auction, competitive bidding process, or other similar public offering:

(a) Must notify the previous owner, by certified mail, of the availability of such property. The notice must contain the minimum amount, if any, required to qualify a bid as acceptable to the institution and any terms or conditions to which such sale or lease will be subject;

(b) If the System institution receives two or more qualified bids in the same amount, the bids are the highest received, and one of the qualified bids is from the previous owner, the institution must accept the offer by the previous owner; and

(c) The System institution must not discriminate against a previous owner in these proceedings.

§ 617.7625 Whom should the System institution notify?

Each certified mail notice requirement in this section is fully satisfied by mailing one certified mail notice to the last known address of the previous owner or owners.

§ 617.7630 Does this Federal requirement affect any state property laws?

The rights provided under section 4.36 of the Act and this section do not affect any right of first refusal under the law of the state in which the property is located.

Dated: January 29, 2003.

Jeanette C. Brinkley,

Secretary, Farm Credit Administration Board.

[FR Doc. 03–2506 Filed 2–3–03; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–178–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747–100, 747SP, and 747SR Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Boeing Model 747–100, 747SP, and 747SR series airplanes. This proposal would require repetitive inspections to find fatigue cracking between the seal ribs of the front spar web of the wing, and repair of cracked structure. This proposal also provides for an optional modification of a certain area. This action is necessary to find and fix such fatigue cracking, which could result in fuel leakage into the area of the inboard engines, and consequent increased risk of a fire. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by March 21, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–178–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2001–NM–178–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, PO Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Tamara L. Anderson, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6421; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2001–NM–178–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–178–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received a report indicating that an operator found a 24-inch crack in the front spar web of the right wing between front spar station inboard (FSSI) 637 through 662 on a Boeing Model 747–100 series airplane having accumulated 14,830 total flight cycles and 85,116 total flight hours. Metallurgical analysis of the cracked section of the web revealed three cracks originating from a hole common to a rib post located on the front spar at FSSI 656 (wing station 642). The cracks were initiated by fatigue at the hole and were spread by fatigue for a short distance; then the cracks separated by a combination of fatigue and ductile separation. The cracks resulted in a fuel leak which was found after post-flight inspection revealed fire damage to the exhaust sleeve of the inboard engine turbine. Another operator reported finding a crack in the web at approximately FSSI 694, just outboard of a web section recently replaced per AD 99–10–09, amendment 39–11162 (64 FR 25194, June 15, 1999). Such fatigue cracking, if not found and fixed, could result in fuel leakage into the area of the inboard engines and consequent increased risk of a fire.

Related Rulemaking

This AD is related to the following rulemaking actions, which require the actions in the related service bulletins specified in Boeing Special Attention Service Bulletin 747–57–2313, Revision 1, including Appendices A and B, dated February 21, 2002:

- AD 95–10–16, amendment 39–9233 (60 FR 27008, June 21, 1995). That AD references Boeing Alert Service Bulletin 747–54A2159, dated November 3, 1994, as the appropriate source of service information for accomplishment of the modification of the nacelle strut and wing structure. That AD is applicable to certain Boeing Model 747 series airplanes equipped with Pratt & Whitney Model JT9D series engines (excluding Model JT9D–70 engines). The AD requires modification of the nacelle strut and wing structure, inspections and checks to detect discrepancies, and correction of discrepancies. The modification specified in the AD also constitutes terminating action for the repetitive inspections required by certain other ADs, including AD 98–15–21, amendment 39–10672 (63 FR 39487, July 23, 1998), which references Boeing Service Bulletin 747–57A2266 as the appropriate source of service information for accomplishment of the specified actions; and AD 90–17–18, amendment 39–6702 (55 FR 33279, August 15, 1990), which references Boeing Service Bulletin 747–57A2259 as the appropriate source of service information for accomplishment of the specified actions.
- AD 99–10–09, amendment 39–11162. That AD references Boeing Service Bulletin 747–57A2303, Revision 1, dated September 25, 1997, as the appropriate source of service information for accomplishment of the actions specified. That AD is applicable to certain Boeing Model 747–100, –200, and 747–SP series airplanes and military type E–4B airplanes, and requires repetitive inspections to detect cracking of the wing front spar web, and repair of cracked structure. That AD also provides for optional terminating action for the repetitive inspections.

Explanation of Relevant Service Information

We have reviewed and approved Boeing Special Attention Service Bulletin 747–57–2313, Revision 1, including Appendices A and B, dated February 21, 2002. The service bulletin describes procedures for repetitive inspections to find fatigue cracking of the front spar web of the wing, and repair of cracked structure, as follows:

- For airplanes on which the optional modification specified in AD 99–10–09 has not been done, the affected area is divided into two zones (A and B). Zone A is the area previously modified per the requirements specified in AD 95–10–16 for the wing front spar; and Zone B is the remaining area between FSSI 628 and 711.
- For airplanes on which the optional modification specified in AD 99–10–09 has been done, the affected area is divided into three zones (A, B, and C). Zone A is the area previously modified per the requirements specified in AD 95–10–16 for the wing front spar, and is not affected by the requirements specified in AD 99–10–09; Zone C is the area affected by AD 99–10–09; and Zone B is the remaining area between FSSI 628 and 711.
- The inspection specified in Part 1 of the service bulletin is for Zone A, B, or C, as applicable. If no cracking is found, the inspections are repeated at the intervals specified in Figure 1 of the service bulletin. If cracking is found, the inspections are also repeated at the intervals specified in Figure 1 after the cracking is repaired.
- The modification specified in Part 2 of the service bulletin is for Zone B only. The modification includes removing the existing fasteners of the web to chord, web to rib post, and web to stiffener; straightening the holes; and doing an open-hole rotating probe high frequency eddy current inspection for cracking in the web. If no cracking is found, the service bulletin directs oversizing the holes and installing tension type fasteners in the holes; if any cracking is found, the service bulletin specifies contacting the manufacturer for repair instructions.

The service bulletin recommends prior or concurrent accomplishment of Boeing Service Bulletins 747–57A2259, 747–57A2266, and 747–54A2159. Those service bulletins are referenced in the related rulemaking described previously.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the service bulletin described above, except as discussed below.

Difference Between Service Information and Proposed Rule

Although the service bulletin specifies that the manufacturer may be contacted for disposition of certain repair conditions, this proposal would require the repair of those conditions to be done per a method approved by the FAA, or per data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative who has been authorized by the FAA to make such findings.

Cost Impact

There are approximately 109 airplanes of the affected design in the worldwide fleet. The FAA estimates that 59 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 25 work hours per airplane to accomplish the proposed inspections, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $88,500, or $1,500 per airplane, per inspection cycle.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD

action, and that no operator would accomplish those actions in the future if this proposed AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Should an operator elect to do the optional modification of Zone B, it would take approximately 480 work hours to accomplish at an average labor rate of $60 per work hour. Parts cost would be approximately $16,652. Based on these figures, the cost impact of the proposed modification is estimated to be $45,452 per airplane.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

BOEING: Docket 2001–NM–178–AD.

Applicability: Model 747–100, 747SP, and 747SR series airplanes, as listed in Boeing Special Attention Service Bulletin 747–57–2313, Revision 1, including Appendices A and B, dated February 21, 2002; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (f) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To find and fix fatigue cracking between the seal ribs of the front spar web of the wing, which could result in fuel leakage into the area of the inboard engines, and consequent increased risk of a fire; accomplish the following:

Compliance Times

(a) Where the compliance times in the service bulletin specify a compliance time interval calculated "after the release of this service bulletin," this AD requires compliance within the interval specified in the service bulletin "after the effective date of this AD." In addition, where the compliance time for the initial inspection in Tables 1 through 3 of Figure 1 of the service bulletin specifies "flight hours," this AD requires a compliance time of "total flight hours."

Initial and Repetitive Inspections

(b) Do detailed, high frequency eddy current and ultrasonic inspections to find cracking of the front spar web of the wing as specified in paragraphs (b)(1) and (b)(2) of this AD, per the Accomplishment Instructions of Boeing Special Attention Service Bulletin 747–57–2313, Revision 1, including Appendices A and B, dated February 21, 2002.

(1) Do the applicable initial or post-modification inspection at the times specified for the inspections in Tables 1 through 3 of Figure 1 of the Accomplishment Instructions or Appendix A of the service bulletin.

(2) After doing the applicable initial or post-modification inspection specified in paragraph (b)(1) of this AD: Repeat that inspection within the applicable intervals specified in Tables 1 through 3 of Figure 1 of the Accomplishment Instructions or Appendix A of the service bulletin.

Repair

(c) If any cracking is found during any inspection required by this AD: Before further flight, repair per a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA; or per data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative who has been authorized by the Manager, Seattle ACO, to make such findings. For a repair method to be approved, the approval must specifically reference this AD.

Optional Modification

(d) Accomplishment of the modification of Zone B per Part 2 of the Accomplishment Instructions of Boeing Special Attention Service Bulletin 747–57–2313, Revision 1, including Appendices A and B, dated February 21, 2002, would extend the threshold recommended in Tables 1 through 3 of Figure 1 of the Accomplishment Instructions or Appendix A of the service bulletin for the repetitive inspections of Zone B, to the new threshold specified in Tables 1 through 3 of Figure 1 of the service bulletin.

Previously Accomplished Inspections and Modifications

(e) Inspections and modifications done before the effective date of this AD per Boeing Special Attention Service Bulletin 747–57–2313, including Appendices A and B, dated April 19, 2001, are considered acceptable for compliance with the applicable actions specified in this AD.

Note 2: Boeing Special Attention Service Bulletin 747–57–2313, Revision 1, including Appendices A and B, dated February 21, 2002, recommends prior or concurrent accomplishment of Boeing Service Bulletins 747–57A2259; 747–57A2266; and 747–54A2159. The modifications in those service bulletins are required by AD 95–10–16, amendment 39–9233.

Alternative Methods of Compliance

(f) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permit

(g) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on January 29, 2003.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–2495 Filed 2–3–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–AWA–2]

RIN 2120–AA66

Proposed Modification of the Tampa Class B Airspace Area; FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Proposed rule; withdrawal.

SUMMARY: This action withdraws a notice of proposed rulemaking (NPRM) published in the **Federal Register** on November 18, 1998. In that action, the FAA proposed to modify the Tampa, FL, Class B airspace area by renaming two existing subareas, configure the boundaries of three subareas, and create an additional subarea. However, the conditions that prompted the development of the proposal did not fully materialize. Therefore, the FAA has determined that withdrawal of the proposed rule is warranted in order to best serve aviation safety and the efficient management of aircraft operations in the Tampa terminal area.

DATES: This withdrawal is made as of February 4, 2003.

FOR FURTHER INFORMATION CONTACT: Paul Gallant, Airspace and Rules Division, ATA–400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Background

The basis for the proposed modification of the Tampa Class B airspace area was a 1991 recommendation by the Defense Base Realignment and Closure Commission that MacDill Air Force Base (AFB) be closed and the 56th Tactical Fighter Wing located there be deactivated. That action prompted the FAA to conduct a staff study of the Tampa terminal area to determine if any modifications to the Tampa Class B airspace area were warranted. The staff study resulted in a recommendation to raise the floor of Class B airspace over Tampa Bay south of MacDill AFB to the boundary of Sarasota-Brandenton Class C airspace area from the current 1,200 feet mean sea level (MSL) to 3,000 feet MSL. The airspace floor in that area was established at 1,200 feet MSL in 1990 as an additional safety measure between civil aircraft operating in the vicinity of Tampa International Airport and the F–16 fighter aircraft based at MacDill AFB.

In 1995, however, the Commission amended its findings and recommended that MacDill AFB remain open and continue to host an active flying mission. The F–16 unit, formerly assigned to the base, was replaced by an air refueling wing comprised of KC–135 heavy jet aircraft.

The decision that MacDill AFB would remain open with a continuing flying mission was acknowledged in the NPRM. The FAA elected to proceed with the proposal to modify the Class B airspace area because it was anticipated that the termination of the fighter mission would lead to fewer operations at MacDill AFB, as well as less high-speed, low-altitude military aircraft operations over Tampa Bay.

It is with this in mind that, on November 18, 1998, the FAA published an NPRM in the **Federal Register** (63 FR 64016) proposing to amend 14 CFR part 71 to modify the Tampa, Florida Class B airspace area. Interested parties were invited to participate in the rulemaking process by submitting written data, views, or arguments regarding the proposal.

The FAA received a total of nine comments on the proposal. The Aircraft Owners and Pilots Association (AOPA) wrote in support of the proposal stating that the elimination of Class B airspace below 3,000 feet MSL as proposed would result in more efficient use of the airspace by segments of the general aviation community. The United States Air Force (USAF) submitted two comments opposing the proposal. The USAF was concerned that the proposal to raise the floor of Class B airspace area, from 1,200 feet MSL to 3,000 feet MSL, south of MacDill AFB would pose a hazard to flight operations in the area. Another commenter also opposed the proposal stating that the existing 1,200-foot floor is necessary based on the amount of aircraft operations in the area, the number of airports located within a few miles of each other, and weather conditions over Tampa Bay that reduce long-range visibility much of the time. Five other commenters supported the proposal stating that the changes would benefit general aviation.

As a result of the NPRM, however, questions arose regarding the impacts of the change on the efficiency and safety of operations in the Tampa terminal area if the floor of Class B airspace area was raised from the current 1,200 feet MSL to 3,000 feet MSL, as proposed. These concerns were based on the fact that MacDill AFB did not close and that the airspace over Tampa Bay encompasses high density traffic operating to and from six airports in the vicinity.

Airspace Study

In January 2002, the FAA conducted a thorough review of the proposed Tampa, FL, Class B airspace area modifications to better evaluate these concerns. The review included an analysis of traffic flows within the Tampa Approach Control airspace, with special emphasis given to that segment of Class B airspace from MacDill AFB south to the boundary of the Sarasota-Bradenton Class C airspace area. In its review, the FAA considered the following information: MacDill AFB remains open and hosts a variety of aircraft operations including KC–135 heavy jets, aviation elements of the National Oceanic and Atmospheric Administration and the Department of Agriculture, and routine transient aircraft. In addition, fighter aircraft from other locations frequently deploy to, and operate from, MacDill AFB to conduct training in the nearby off-shore and over-land military special use airspace areas. The MacDill AFB aircraft operations count for the year 2001 totaled more than 30,000 operations, contributing to the overall complexity of airspace in the Tampa terminal area.

The Tampa Class B airspace area was configured to provide Class B airspace protection for air carrier aircraft serving the Tampa International Airport (the primary airport) and to enhance the management of air traffic operations in this high-density terminal area. Air traffic control makes extensive use of the Class B airspace segment over Tampa Bay to ensure the safe and efficient management of aircraft operations in the terminal area. Raising the floor of Class B airspace to 3,000 feet MSL, as proposed, would place a significant portion of traffic in the Tampa terminal area outside of Class B airspace during critical phases of flight. For example, arrivals to Runways 36L/36R at Tampa International Airport are descended to 2,600 feet MSL to be at the approach intercept altitude. This altitude is 1,000 feet above the approach intercept altitude of 1,600 feet MSL used for Runway 04 at MacDill AFB. This altitude difference provides the required instrument flight rules separation between Tampa and MacDill arrivals. Aircraft departing Runway 22

at MacDill AFB are initially stopped at 1,600 feet MSL, southbound, in order to provide separation from Tampa arrivals and departures. When multiple aircraft are being vectored in the radar pattern for Runway 04 at MacDill AFB, the pattern often extends to the southwest of MacDill AFB as far as the Skyway Bridge and beyond.

In addition to the Tampa International Airport and MacDill AFB operations described above, the same general airspace is used by other aircraft descending into, or departing from, the Albert Whitted (SPG), St. Petersburg-Clearwater International (PIE), Peter O. Knight (TPF), and Sarasota-Bradenton International (SRQ) Airports. Arrivals to these airports are normally descended to 2,000 feet MSL to intercept the approach. The final approach paths for these airports lie within 10 nautical miles of each other.

The airspace segment from MacDill AFB southward to the Sarasota-Bradenton Class C airspace boundary contains a high volume of aircraft operations and a widely varied mix of instrument flight rules and visual flight rules aircraft operations.

Decision

Based on this latest study, the FAA has concluded that the current configuration of the Tampa Class B airspace area best provides for the safety and efficiency of operations within the Tampa terminal area.

In light of these considerations, the FAA has reexamined the proposed modification of the Tampa Class B airspace area and has decided to withdraw the proposal.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Withdrawal

In consideration of the foregoing, the Notice of Proposed Rulemaking, Airspace Docket No. 97–AWA–2, as published in the **Federal Register** on November 18, 1998 (63 FR 64016), is hereby withdrawn.

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854; 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

Issued in Washington, DC, on January 29, 2003.

Reginald C. Matthews,

Manager, Airspace and Rules Division.

[FR Doc. 03–2526 Filed 2–3–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD14–03–001]

RIN 2115–AA97

Security Zones; Oahu, Maui, Hawaii, and Kauai, HI

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish permanent security zones in designated waters adjacent to the islands of Oahu, Maui, Hawaii, and Kauai, HI. These security zones and a related amendment to regulations for anchorage grounds in Mamala Bay are necessary to protect personnel, vessels, and facilities from acts of sabotage or other subversive acts, accidents, or other causes of a similar nature during operations and will extend from the surface of the water to the ocean floor. Entry into the proposed zones would be prohibited unless authorized by the Coast Guard Captain of the Port Honolulu, HI.

DATES: Comments and related material must reach the Coast Guard on or before April 7, 2003.

ADDRESSES: You may mail comments and related material to Commanding Officer, U.S. Coast Guard Marine Safety Office Honolulu, 433 Ala Moana Blvd., Honolulu, Hawaii 96813. Marine Safety Office Honolulu maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at Marine Safety Office Honolulu between 7 a.m. and 3:30 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: LTJG E. G. Cantwell, U.S. Coast Guard Marine Safety Office Honolulu, Hawaii at (808) 522–8260.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (CGD14–03–001), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know your submission reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

To provide additional notice, we will place a notice of our proposed rule in the local notice to mariners. You may request a copy of this notice via facsimile by calling (808) 522–8260.

In our final rule, we will include a concise general statement of comments received and identify any changes from the proposed rule based on the comments. If, as we expect, we will make the final rule effective in less than 30 days after publication in the **Federal Register**, we will explain our good cause for doing so as required by 5 U.S.C. 553(d)(3).

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to Marine Safety Office Honolulu at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a separate notice in the **Federal Register**.

Background and Purpose

Terrorist attacks in New York City, New York and on the Pentagon Building in Arlington, Virginia, on September 11, 2001, have called for the implementation of additional measures to protect national security. National security and intelligence officials warn that future terrorist attacks against civilian targets may be anticipated. This proposed rule is similar to a temporary rule published October 30, 2002, creating security zones in these areas until April 19, 2003.

Discussion of Proposed Rule

The Coast Guard proposes designated security zones in the waters adjacent to the islands of Oahu, Maui, Hawaii, and Kauai, HI. These security zones are necessary to protect personnel, vessels, and facilities from acts of sabotage or other subversive acts, accidents, or other causes of a similar nature during operations. In addition to creating security zones, this proposed rule would also amend an anchorage grounds regulation by adding the requirement that permission of the Captain of the Port be obtained before entering anchorage grounds in Mamala Bay.

These proposed security zones extend from the surface of the water to the ocean floor.

Entry into these zones is prohibited unless authorized by the Coast Guard Captain of the Port Honolulu, HI. Representatives of the Captain of the Port Honolulu will enforce these security zones. The Captain of the Port may be assisted by other federal or state agencies. Periodically, by Broadcast Notice to Mariners, the Coast Guard will announce the existence or status of the security zones in this proposed rule.

These proposed security zones are intended to provide for the safety and security of the public, maritime commerce, and transportation, by creating security zones in designated harbors, anchorages, facilities, and adjacent navigable waters of the United States.

Regulatory Evaluation

This proposed rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979).

The Coast Guard expects the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. This expectation is based on the fact that vessels will be able to freely transit the areas outside of any security zones. In addition, the COTP can allow vessels to transit the security zones on a case-by-case basis.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. No small business impacts are anticipated due to the small size of the zones.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Because we did not anticipate any small business impacts, we did not offer assistance to small entities in understanding the rule.

Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this proposed rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this proposed rule would not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This proposed rule would not affect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. We invite your comments on how this proposed rule might impact tribal governments, even if that impact may not constitute a "tribal implication" under the Order.

Energy Effects

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have considered the environmental impact of this proposed rule and concluded that, under figure 2–1, paragraph (34)(g), of Commandant Instruction M16475.lD, this rule is categorically excluded from further environmental documentation. A "Categorical Exclusion Determination" is available in the docket where indicated under **ADDRESSES**.

List of Subjects

33 CFR Part 110

Anchorage grounds.

33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reports and recordkeeping requirements, Security measures, Waterways.

For the reasons set out in the preamble, the Coast Guard proposes to

amend 33 CFR parts 110 and 165 as follows:

PART 110—ANCHORAGE REGULATIONS

1. The authority citation for part 110 continues to read as follows:

Authority: 33 U.S.C. 471, 1221 through 1236, 2030, 2035, 2071; 49 CFR 1.46 and 33 CFR 1.05–1(g).

2. In § 110.235 add a new paragraph (c) to read as follows:

§ 110.235 Pacific Ocean (Mamala Bay), Honolulu Harbor, Hawaii (Datus: NAD 83)

* * * * *

(c) Before entering into the anchorage grounds in this section you must first obtain permission from the Captain of the Port Honolulu.

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

3. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191, 33 CFR 1.05–1(g), 6.04–1, 6.04–6, 160.5; 49 CFR 1.46.

4. A new § 165.1407 is added to read as follows:

§ 165.1407 Security Zones; Oahu, Maui, Hawaii, and Kauai, HI

(a) *Location.* The following areas, from the surface of the water to the ocean floor, are security zones:

(1) All waters of Honolulu Harbor and entrance channel, Keehi Lagoon, and General Anchorages A, B, C, and D as defined in 33 CFR 110.235 that are shoreward of the following coordinates: The shoreline at 21°–17.68′N/157°–52.0′W; thence due south to 21°–16.0′N/157–52.0′W, thence due west to 21°–16.0′N/157°–55.58′W, thence due north to Honolulu International Airport Reef Runway at 21°–18.25′N/157°–55.58′W.

(2) The waters around the Tesoro Single Point and the Chevron Conventional Buoy Moorings beginning at 21°–16.43′N/158°–6.03′W thence northeast to 21°–17.35′N/158°–3.95′W thence southeast to 21°–16.47′N/158°–3.5′W thence southwest to 12°–15.53′N/158°–5.56′W thence north to the beginning point.

(3) The Kahului Harbor and Entrance Channel, Maui, HI consisting of all waters shoreward of the COLREGS DEMARCATION line. (See 33 CFR 80.1460).

(4) All waters within the Nawiliwili Harbor, Kauai, HI shoreward of the COLREGS DEMARCATION line (See 33 CFR 80.1450).

(5) All waters of Port Allen Harbor, Kauai, HI shoreward of the COLREGS DEMARCATION line (See 33 CFR 80.1440).

(6) The waters within a 100-yard radius centered on each cruise ship in Hilo Harbor, Hawaii, HI and Entrance Channel shoreward of the COLREGS DEMARCATION (See 33 CFR 80.1480). This is a moving security zone when the cruise ship is in transit and becomes a fixed zone when the cruise ship is anchored or moored.

(7) The waters extending out 500 yards in all directions from cruise ships anchored or position keeping within 3 miles of:

(i) Lahaina Harbor, Maui, between Makila Point and Puunoa Pont.

(ii) Kailua-Kona Harbor, Hawaii, between Keahulolu Point and Puapuaa Point.

(8) All waters contained within the Barbers Point Harbor, Oahu, enclosed by a line drawn between Harbor Entrance Channel Light 6 and the jetty point day beacon at 21°–19.5′N/158°–07.3′W.

(b) *Designated Representative:* A designated representative of the Captain of the Port is any Coast Guard commissioned officer, warrant or petty officer that has been authorized by the Captain of the Port Honolulu to act on his behalf.

(c) *Cruise ship:* For the purposes of this section, the term "cruise ship" is defined as a passenger vessel over 100 gross tons, carrying more than 12 passengers for hire, making a voyage lasting more than 24 hours, any part of which is on the high seas, and for which passengers are embarked or disembarked in the United States or its territories. A "voyage" in this section means the cruise ship's entire course of travel, from the first port at which the cruise ship embarks passengers until its return to that port or another port where the majority of passengers are disembarked and terminate their voyage.

(d) *Regulations.* (1) In accordance with § 165.33, entry into these zones is prohibited unless authorized by the Coast Guard Captain of the Port, Honolulu or his designated representatives. Section 165.33 also contains other general requirements.

(2) The existence or status of the security zones in this section will be announced periodically by Broadcast Notice to Mariners.

(3) Persons desiring to transit the areas of the security zones may contact the Captain of the Port at command center telephone number (808) 541–2477 or on VHF channel 16 (156.8 Mhz) to seek permission to transit the area. If permission is granted, all persons and vessels shall comply with the instructions of the Captain of the Port or his designated representatives.

Authority: In addition to 33 U.S.C. 1231, the authority for this section includes 33 U.S.C. 1226.

Dated: January 17, 2003.

G.A. Wiltshire,

Captain, U.S. Coast Guard, Commander, Fourteenth Coast Guard District (Acting).

[FR Doc. 03–2523 Filed 2–3–03; 8:45 am]

BILLING CODE 4910–15–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 03–151; MB Docket No. 02–263; RM–10498, RM–10606]

Radio Broadcasting Services; Eagar and Safford, AZ

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; dismissal.

SUMMARY: This document dismisses the petition for rule making filed by Graham County FM Associates, requesting the allotment of Channel 246C3 to Safford, Arizona, as that community's second local aural transmission service. No expression of interest was filed requesting the allotment of Channel 246C3 at Safford, Arizona. It is Commission's policy to refrain from making a new allotment to a community absent an expression of interest. A counterproposal was filed by Eagar Broadcasting proposing the allotment of Channel 246C at Eagar, Arizona, as that community's first local aural transmission service. On December 30, 2002, Eagar Broadcasting filed a Request for Approval of Withdrawal for its counterproposal filed in this proceeding. This document grants the Request for Approval of Withdrawal and dismisses the counterproposal filed by Eagar Broadcasting proposing the allotment of Channel 246C at Eagar, Arizona, as that community's first local aural transmission service.

ADDRESSES: Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Rolanda F. Smith, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MB Docket Nos. 02–263, adopted January 15, 2003, and released January 21, 2003. The full text of this Commission decision is available for inspection and copying during regular business hours at the FCC's Reference

Information Center, Portals II, 445 Twelfth Street, SW., Room CY–A257, Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC, 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com*.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 03–2474 Filed 2–3–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 03–142; MB Docket No. 02–330, RM–10588]

Radio Broadcasting Services; Jasper, AR

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; dismissal.

SUMMARY: The Audio Division dismisses a petition for rule making filed by JEM Broadcasting Company, Inc., requesting the allotment of Channel 245A to Jasper, Arkansas, as that community's first local aural transmission service. *See* 67 FR 69703, November 19, 2002. JEM Broadcasting Company, Inc, or no other party, filed comments in support of the allotment of Channel 245A to Jasper, Arkansas. It is the Commission's policy to refrain from making a new allotment to a community absent an expression of interest.

ADDRESSES: Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Rolanda F. Smith, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MB Docket No. 02–330, adopted January 15, 2003, and released January 17, 2003. The full text of this Commission decision is available for inspection and copying during regular business hours at the FCC's Reference Information Center, Portals II, 445 Twelfth Street, SW., Room CY–A257, Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC, 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com*.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 03–2475 Filed 2–3–03; 8:45 am]

BILLING CODE 6712–01–P

Notices

Federal Register
Vol. 68, No. 23
Tuesday, February 4, 2003

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Resource Advisory Committee Meeting

AGENCY: Crook County Resource Advisory Committee, Sundance, Wyoming, USDA, Forest Service.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committee Act (Public Law 92–463) and under the Secure Rural Schools and Community Self-Determination Act of 2000 (Public Law 106–393) the Black Hills National Forests' Crook County Resource Advisory Committee will meet Tuesday February 18, 2003 in Sundance, Wyoming for a business meeting. The meeting is open to the public.

SUPPLEMENTARY INFORMATION: The business meeting on February 18, begins at 6:30 PM, at US Forest Service, Bearlodge Ranger District Office, 121 South 21st Street, Sundance, Wyoming. Agenda topics will include reviewing NEPA requirements and project proposals. A public forum will begin at 8:30 PM (MT).

FOR FURTHER INFORMATION CONTACT: Steve Kozel, Bearlodge District Ranger and Designated Federal Office, at (307) 283–1361.

Dated: January 28, 2003.

Steve Kozel,

Bearlodge District Ranger.

[FR Doc. 03–2631 Filed 2–3–03; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Economic Development Administration

Notice of Petitions by Producing Firms for Determination of Eligibility To Apply for Trade Adjustment Assistance

AGENCY: Economic Development Administration (EDA), Commerce.

ACTION: To give all interested parties an opportunity to comment.

Petitions have been accepted for filing on the dates indicated from the firms listed below.

LIST OF PETITION ACTION BY TRADE ADJUSTMENT ASSISTANCE FOR PERIOD DECEMBER 20, 2002—JANUARY 22, 2003

Firm name	Address	Date petition accepted	Product
Mauston Tool Corporation	1015 Parker Drive, Mauston, WI 53948.	12/20/02	Injection molds for plastics.
Nu-Way Industries, Inc.	555 Howard Avenue, Des Plaines, Il 60018.	12/20/02	Outdoor metal enclosures used to house cellular telecommunications equipment.
ChipBlaster, Inc.	P. O. Box 1057, Meadville, PA 16335.	01/02/03	High pressure coolant machinery.
Dan River, Inc.	P. O. Box 261, Danville, VA 24543.	01/08/03	Fabric for the apparel, home fashion and automobile industries.
Fielding Manufacturing	780 Wellington Avenue, Cranston, RI 02910.	01/08/03	Miniature zinc die castings, and plastic injection molded parts.
Moldmaster Engineering, Inc.	187 Newell Street, Pittsburgh, MA 01202.	01/15/03	Injection molds for plastic and plastic parts.
Harbor Furniture Manufacturing, Inc, dba Table Topics.	27418 Highway 98E, Elberta, AL 36530.	01/15/03	Table tops for institutional and restaurant furniture.
Lisa Marie, Inc.	P. O. Box 48001, Chignik, AK 99548.	01/21/03	Salmon.
Wainwright Industries, Inc.	17 Cermak Boulevard, St. Peters, MO 63376.	01/21/03	Metal stampings, fixtures for tools and custom machining.
Bethel Furniture Stock, Inc.	515 West Bethel Road	01/22/03	Wooden furniture parts-seats, panels, *etc.*

The petitions were submitted pursuant to section 251 of the Trade Act of 1974 (19 U.S.C. 2341). Consequently, the United States Department of Commerce has initiated separate investigations to determine whether increased imports into the United States of articles like or directly competitive with those produced by each firm contributed importantly to total or partial separation of the firm's workers, or threat thereof, and to a decrease in sales or production of each petitioning firm. Any party having a substantial interest in the proceedings may request a public hearing on the matter. A request for a hearing must be received by Trade Adjustment Assistance, Room 7315, Economic Development Administration, U.S. Department of Commerce, Washington, D.C. 20230, no later than the close of business of the tenth calendar day following the publication of this notice.

The Catalog of Federal Domestic Assistance official program number and title of the program under which these petitions are submitted is 11.313, Trade Adjustment Assistance.

Dated: January 27, 2003.

Anthony J. Meyer,

Coordinator, Trade Adjustment and Technical Assistance.

[FR Doc. 03–2486 Filed 2–3–03; 8:45 am]

BILLING CODE 3510–24–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-570-827]

Certain Cased Pencils From the People's Republic of China: Initiation of Antidumping New Shipper Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Initiation of Antidumping New Shipper Review.

SUMMARY: The Department of Commerce (the Department) has received a request from Beijing Dixon Ticonderoga Stationery Company, Ltd. (Beijing Dixon) to conduct a new shipper review of the antidumping duty order on certain cased pencils from the People's Republic of China (PRC). In accordance with 19 CFR 351.214(d) of the Department's regulations, we are initiating this new shipper review.

EFFECTIVE DATE: February 4, 2003.

FOR FURTHER INFORMATION CONTACT: Crystal Scherr Crittenden or Howard Smith, AD/CVD Enforcement, Office 4, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, DC 20230; telephone: (202) 482–0989 or (202) 482–5193 respectively.

SUPPLEMENTARY INFORMATION:

Background

On December 30, 2002 the Department received a request, in accordance with section 751(a)(2)(B) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.214(c), for a new shipper review of the antidumping duty order on certain cased pencils (cased pencils) from the PRC.

Pursuant to 19 CFR 351.214(b)(2)(i) and 19 CFR 351.214(b)(2)(iii)(A), Beijing Dixon's December 30, 2002 request for review certified that it did not export the subject merchandise to the United States during the period of investigation (POI) and that, since the initiation of the cased pencils investigation, it has never been affiliated with any exporter or producer which did export subject merchandise to the United States during the POI. Pursuant to 19 CFR 351.214(b)(2)(iii)(B), Beijing Dixon's request certified that its export activities are not controlled by the central government of the PRC.

In addition, pursuant to 19 CFR 351.214(b)(2)(iv), Beijing Dixon's request contained documentation establishing : the date on which the subject merchandise first entered the United States; the volume of that and other shipments; and, the date of the first sale to an unaffiliated customer in the United States.

It is the Department's usual practice in cases involving non-market economies to require that a company seeking to establish eligibility for an antidumping duty rate separate from the country-wide rate provide *de jure* and *de facto* evidence of an absence of government control over the company's export activities. *See Certain Preserved Mushrooms from the People's Republic of China: Initiation of New Shipper Antidumping Duty Review*, 65 FR 17257 (March 31, 2000). Accordingly, we will issue a separate-rates questionnaire to the above-named respondent. If the respondent provides sufficient evidence that it is not subject to either *de jure* or *de facto* government control with respect to its exports of cased pencils, this review will proceed. If, on the other hand, Beijing Dixon does not demonstrate its eligibility for a separate rate, then Beijing Dixon will be deemed to be affiliated with other companies that exported cased pencils during the POI. This review will then be terminated due to failure of the exporter or producer to meet the requirements of section 751(a)(2)(B)(i)(II) of the Act and 19 CFR 351.214(b)(2)(iii)(B).

Initiation of Review

The antidumping duty order on cased pencils from the PRC has a December anniversary month. *See Antidumping Duty Order: Certain Cased Pencils From the People's Republic of China*, 59 FR 66909 (December 28, 1994). The Department received Beijing Dixon's request for review on December 30, 2002. The Department's regulations provide that it will initiate a new shipper review in the calendar month immediately following the anniversary month if the request for the review is made during the six-month period ending with the end of the anniversary month. *See* 19 CFR 351.214(d)(1).

In accordance with section 751(a)(2)(B) of the Act and 19 CFR 351.214(d), we are initiating a new shipper review of the antidumping duty order on cased pencils from the PRC. We intend to issue the preliminary results of this review not later than 180 days after the date on which the review is initiated.

Pursuant to 19 CFR 351.214(g)(1)(i)(A), the period of review (POR) for a new shipper review initiated in the month immediately following the anniversary month will be the twelve-month period immediately preceding the anniversary month. Therefore, the POR for this new shipper is:

Antidumping duty proceeding	Period to be reviewed
Certain Cased Pencils from the PRC, A-570–827:.	
Beijing Dixon Ticonderoga Stationery Company, Ltd.	12/1/01–11/30/02

We will instruct the U.S. Customs Service to allow, at the option of the importer, the posting, until the completion of the review, of a bond or security in lieu of a cash deposit for each entry of the subject merchandise from Beijing Dixon in accordance with 19 CFR 351.214(e). Because Beijing Dixon certified that it both produces and exports the subject merchandise, the sale of which is the basis for this new shipper review request, we will apply the bonding privilege only to subject merchandise for which Beijing Dixon is both the producer and the exporter.

Interested parties must submit applications for disclosure under administrative protective order in accordance with 19 CFR 351.305 and 351.306.

This initiation and notice are in accordance with section 751(a) of the Act (19 U.S.C. 1675(a)) and 19 CFR 351.214.

Dated: January 28, 2003.

Holly A. Kuga,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. 03–2595 Filed 2–3–03; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

Overseas Trade Missions

AGENCY: International Trade Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce invites U.S. companies to participate in the below listed overseas trade missions. For a more complete description, obtain a copy of the mission statement from the Project Officer indicated below.

Explore BC

Vancouver, Canada
February 25–26, 2003

Recruitment closes on February 14, 2003.

FOR FURTHER INFORMATION CONTACT: Ms. Cheryl Schell, U.S. Department of Commerce, telephone 604–642–6679, or e-mail to *Cheryl.Schell@mail.doc.gov*.

Explore BC

Vancouver, Canada
June 10–11, 2003

Recruitment closes on May 2, 2003.

FOR FURTHER INFORMATION CONTACT: Cheryl Schell, U.S. Department of Commerce, telephone 604–642–6679, or e-mail to *Cheryl.Schell@mail.doc.gov*.

Tourism Infrastructure and Development Exhibition and Conference

Athens, Greece
October 17–20, 2003

Recruitment closes on March 12, 2003.

FOR FURTHER INFORMATION CONTACT: Ms. Phyllis Bradley, U.S. Department of Commerce, telephone 202–482–2085, or e-mail to *Phyllis.Bradley@mail.doc.gov*—or, in Greece, Ms. Irene Ralli, U.S. Embassy, Athens, telephone 30–1–720–2224 or e-mail to *Irene.Ralli@mail.doc.gov*.

Explore BC

Vancouver, Canada
November 18–19, 2003

Recruitment closes on October 10, 2003.

FOR FURTHER INFORMATION CONTACT: Ms. Cheryl Schell, U.S. Department of Commerce, telephone 604–642–6679, or e-mail to *Cheryl.Schell@mail.doc.gov*.

Recruitment and selection of private sector participants for these trade missions will be conducted according to the Statement of Policy Governing Department of Commerce Overseas Trade Missions dated March 3, 1997.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas Nisbet, U.S. Department of Commerce, telephone 202–482–5657, or e-mail *Tom_Nisbet@ita.doc.gov*.

Dated: January 30, 2003.

Thomas H. Nisbet,

Director, Export Promotion Coordination, Office of Planning, Coordination and Management.

[FR Doc. 03–2605 Filed 2–3–03; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Federal Consistency Appeal by Islander East Pipeline Company From an Objection by the Connecticut Department of Environmental Protection

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (Commerce).

ACTION: Notice of public hearing.

SUMMARY: This notice provides information concerning a public hearing to be held by the National Oceanic and Atmospheric Administration in Connecticut. The hearing involves an administrative appeal filed with the Department of Commerce by the Islander East Pipeline Company (Consistency Appeal of islander East Pipeline Company, L.L.C.).

DATES: NOAA will conduct the hearing during the public comment period for the appeal which runs through May 8, 2003. A specific date has not yet been confirmed. Additional information concerning the hearing will be available within approximately 30 days from the publication of this announcement.

ADDRESSES: A public hearing for the Islander East administrative appeal will take place in the State of Connecticut, at a site to be determined. The location will be announced in a subsequent **Federal Register** notice. Comments on issues relevant to the Secretary's decision of this appeal may be submitted by e-mail to *IslanderEast.comments@noaa.gov*. Comments may also be sent by mail to the Office of the General Counsel for Ocean Services, National Oceanic and Atmospheric Administration, U.S. Department of Commerce, 1305 East-West Highway, Silver Spring, MD 20910. Materials from the appeal record will be available at the Internet site *www.ogc.doc.gov/czma.htm* and at the Office of the General Counsel for Ocean Services. Also, public filings made by the parties to the appeal will be available at the Connecticut Department of Environmental Protection, 79 Elm Street, Hartford, CT.

FOR ADDITIONAL INFORMATION CONTACT: Branden Blum, Senior Counselor, NOAA Office of the General Counsel, via email at *gcos.inquiries@noaa.gov*, or at (301) 713–2967, extension 186.

SUPPLEMENTARY INFORMATION: Islander East Pipeline Company, L.L.C. (Islander East) filed a notice of appeal with the Secretary of Commerce (Secretary) pursuant to the Coastal Zone Management Act of 1972 (CZMA), as amended, 16 U.S.C. 1451 *et seq.*, asking that the Secretary override the State of Connecticut's objection to Islander East's proposed natural gas pipeline. The project would extend from an interconnection with an existing pipeline near North Haven, Connecticut, to a terminus on Long Island, New York, affecting the natural resources or land and water uses of Connecticut's coastal zone.

The National Oceanic and Atmospheric Administration, on behalf of the Secretary of Commerce, will conduct a public hearing for the Islander East appeal, at a location in the State of Connecticut. The purpose of the hearing is to obtain information relevant to issues to be decided by the Secretary in the appeal. A summary of relevant issues, as well as additional background information concerning the appeal, appears in a January 24, 2003, **Federal Register** announcement. *See* 68 FR 3513. A copy of the announcement also can be found on the Department of Commerce CZMA Consistency Appeals Web site located at *http://www.ogc.doc.gov/czma.htm*.

The public hearing is expected to be held during the Spring of 2003. Initial details concerning the hearing, such as the date and a specific locale, should be available within approximately 30 days from the publication of this announcement, via the Internet at the Web site address listed above and through a subsequent **Federal Register** notice.

Questions concerning the hearing may be sent via e-mail to *gcos.inquires@noaa.gov* or made by telephone to (301) 713–2967, extension 186.

[Federal Domestic Assistance Catalog No. 11.419 Coastal Zone Management Program Assistance.]

Dated: January 29, 2003.

James R. Walpole,

General Counsel.

[FR Doc. 03–2468 Filed 2–3–03; 8:45 am]

BILLING CODE 3510–08–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in Cambodia

January 29, 2003.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: February 4, 2003.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.gov. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel website at http://www.otexa.ita.doc.gov.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being adjusted for swing, carryover, and carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 68 FR 1599, published on January 13, 2003). Also see 67 FR 72921, published on December 9, 2002.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

January 29, 2003.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 4, 2002, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textile products, produced or manufactured in Cambodia and exported during the twelve-month period which began on January 1, 2003 and extends through December 31, 2003.

Effective on February 4, 2003, you are directed to adjust the limits for the following categories, as provided for in the agreement between the Governments of the United States and Cambodia:

Category	Adjusted twelve-month limit [1]
331/631	547,912 dozen pairs.
334/634	253,253 dozen.
335/635	105,859 dozen.
338/339	4,187,637 dozen.
340/640	1,221,446 dozen.
345	113,967 dozen.
347/348/647/648	4,696,415 dozen.
352/652	939,283 dozen.
435	23,976 dozen.
438	115,194 dozen.
445/446	140,793 dozen.
638/639	1,465,735 dozen.
645/646	343,465 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 2002.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,
James C. Leonard III,
Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 03–2519 Filed 2–3–03; 8:45 a.m.

BILLING CODE 3510–DR–S

COMMODITY FUTURES TRADING COMMISSION

In the Matter of the New York Mercantile Exchange, Inc. Petition for Interpretation Pursuant to Section 1a(12)(C) of the Commodity Exchange Act

AGENCY: Commodity Futures Trading Commission.

ACTION: Order.

SUMMARY: In response to a petition from the New York Mercantile Exchange, Inc. (NYMEX or Exchange) the Commodity Futures Trading Commission (Commission), pursuant to section 1a(12)(C) of the Commodity Exchange Act (Act), is issuing an order that deems, subject to certain conditions, Exchange floor brokers and floor traders who are registered with the Commission, when acting in a proprietary trading capacity, to be "eligible contract participants" as that term is defined in section 1a(12) of the Act. Accordingly, subject to certain conditions as set forth in the Commission's order, NYMEX floor brokers and floor traders (collectively referred to hereafter as floor members), when acting for their own accounts, are permitted to enter into certain specified over-the-counter (OTC) transactions in exempt commodities pursuant to section 2(h)(1) of the Act. In order to participate, the floor member must have its OTC trades guaranteed by, and cleared at NYMEX by, an Exchange clearing member that is registered with the Commission as a futures commission merchant (FCM) and that meets certain minimum working capital requirements. The order is effective for a two-year period.

DATES: This order is effective February 4, 2003.

FOR FURTHER INFORMATION CONTACT: Duane C. Andresen, Special Counsel, Division of Market Oversight, Commodity Futures Trading Commission, Three Lafayette Center, 1155 21st Street, NW., Washington, DC 20581. Telephone: 202–418–5492. E-mail: *dandreseri@cftc.gov.*

SUPPLEMENTARY INFORMATION:

I. Statutory Background

Section 1a(12) of the Act, as amended by the Commodity Futures Modernization Act of 2000 (CFMA), Pub. L. 106–554, which was signed into law on December 21, 2000, defines the term "eligible contract participant" (ECP) by listing those entities and individuals considered to be ECPs.[1] Under sections 2(d)(1), 2(g), and 2(h)(1) of the Act, OTC transactions [2] entered

[1] Included generally in Section 1a(12) as ECPs are financial institutions; insurance companies and investment companies subject to regulation; commodity pools and employee benefit plans subject to regulation and asset requirements; other entities subject to asset requirements or whose obligations are guaranteed by an ECP that meets a net worth requirement; governmental entities; brokers, dealers, and futures commission merchants (FCM) subject to regulation and organized as other than natural persons or proprietorships; brokers, dealers, and FCMs subject to regulation and organized as natural persons or proprietorships subject to total asset requirements or whose obligations are guaranteed by an ECP that meets a net worth requirement; floor brokers or floor traders subject to regulation in connection with transactions that take place on or through the facilities of a registered entity or an exempt board of trade; individuals subject to total asset requirements; an investment adviser or commodity trading advisor acting as an investment manager or fiduciary for another ECP, and any other person that the Commission deems eligible in light of the financial or other qualifications of the person.

[2] OTC transactions are transactions that are not executed on a trading facility. As defined in Section 1a(33)(A) of the Act, the term "trading facility" generally means "a person or group of persons that constitutes, maintains, or provides a physical or electronic facility or system in which multiple participants have the ability to execute or trade agreements, contracts, or transactions by accepting bids and offers made by other participants that are open to multiple participants in the facility or system."

into by ECPs in an "excluded commodity" or an "exempt commodity," as those terms are defined by the Act,[3] are exempt from all but certain requirements of the Act.[4] Floor brokers and floor traders are explicitly included in the ECP definition only to the extent that the floor broker or floor trader acts "in connection with any transaction that takes place on or through the facilities of a registered entity or an exempt board of trade, or any affiliate thereof, on which such person regularly trades."[5]

The Act, however, gives the Commission discretion to expand the ECP category as it deems appropriate. Specifically, section 1a(12)(C) provides that the list of entities defined as ECPs shall include "any other person that the Commission determines to be eligible in light of the financial or other qualifications of the person."

II. The NYMEX Petition

A. Introduction

By letter dated May 23, 2002, NYMEX submitted a petition for a Commission interpretation pursuant to section 1a(12)(C) of the Act.[6] Specifically, NYMEX, acting on behalf of Exchange floor members and member clearing firms, requested that the Commission make a determination pursuant to section 1a(12)(C) of the Act that floor members, when acting in a proprietary capacity, may enter into certain specified OTC transactions in exempt commodities pursuant to section 2(h)(1) of the Act if such Commission registrants have obtained a financial guarantee for such transactions from an Exchange clearing member that is registered with the Commission as an FCM.[7] NYMEX suggested that the permissible OTC transactions be limited to trading in a commodity that either (1) is listed only for clearing at the Exchange,[8] or (2) is listed for trading and clearing at the Exchange and where Exchange rules provide for the exchange of futures for swaps (EFS) in that contract.[9] NYMEX further proposed that such transactions would be subject to additional conditions and restrictions detailed in the petition and described below.[10]

The NYMEX petition was published in the **Federal Register** for public comment on June 19, 2002.[11] The Commission received comments from NYMEX and from the Intercontinental Exchange, an ECM. In its comment letter of July 17, 2002, NYMEX reaffirmed its strong interest in the determination requested in the petition and its strong belief that such a determination would have numerous pro-competitive results.[12]

B. Public Interest Considerations

In its petition, NYMEX stated that the requested determination is best considered against the overall context of the connection between the OTC and exchange markets, and that it is good public policy for the Commission to permit the strengthening of these ties when it is possible to do so. The petition stated that NYMEX has concluded that the ability of its floor members to trade OTC transactions pursuant to an FCM guarantee, particularly OTC swaps involving NYMEX or NYMEX "look-alike" products, is a pivotal component, for the four reasons described below, of the Exchange's business strategy to better serve its customers.

First, NYMEX stated that permitting its floor members to enter into OTC swaps would enhance their ability to provide liquidity to the Exchange's markets. Second, NYMEX stated that access to OTC markets would enhance floor members' ability to make tight markets in new Exchange products that would compete against the standardized look-alike contracts traded in the OTC markets.[13] Third, NYMEX stated that permitting its floor members to enter into EFS transactions with OTC counterparties would expand the pool of potential counterparties for OTC market participants and facilitate liquidity in the OTC marketplace. Finally, with respect to the clearing of OTC transactions, the Exchange intends that the open positions in futures

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[3] Section 1a(14) defines the term "exempt commodity" to mean a commodity that is not an excluded commodity or an agricultural commodity. Section 1a(13) defines the term "excluded commodity" to mean, among other things, an interest rate, exchange rate, currency, credit risk or measure, debt instrument, measure of inflation, or other macroeconomic index or measure. Although the term "agricultural commodity" is not defined in the Act, Section 1a(4) enumerates a non-exclusive list of several agricultural-based commodities and products. The broadest types of commodities that fall into the exempt category are energy and metals products.

[4] OTC transactions in excluded commodities entered into by ECPs pursuant to Section 2(d)(1) are generally not subject to any provision of the Act. OTC transactions in exempt or excluded commodities that are individually negotiated by ECPs pursuant to section 2(g) are generally not subject to any provision of the Act. OTC transactions in exempt commodities entered into by ECPs pursuant to section 2(h)(1) are generally not subject to any provision of the Act other than anti-manipulation provisions and anti-fraud provisions in certain situations.

[5] Section 1a(12)(A)(x) of the Act.

[6] In its petition, NYMEX also requested that the Commission make a determination pursuant to section 1a(11)(C) of the Act that floor members, when acting in a proprietary capacity, may also be considered to be eligible commercial entities (ECE) when they enter into certain specified transactions. Such a determination would permit NYMEX floor members to enter into transactions in exempt commodities on exempt commercial markets (ECM) pursuant to Section 2(h)(3) of the Act. On January 9, 2003, the Commission issued an order that deems, subject to certain conditions, floor brokers and floor traders who are registered with the Commission, when acting in a proprietary trading capacity, to be ECEs as that term is defined in Section 1a(11) of the Act. That order was published in the **Federal Register** on January 16, 2003. 68 FR 2319 (January 16, 2003).

[7] To qualify for the Section 2(h)(1) exemption, the transaction must: (1) Be in an exempt commodity, (2) be entered into by ECPs, and (3) not be entered into on a trading facility.

[8] By letter dated May 24, 2002, NYMEX filed rule changes that would implement an initiative to provide clearing services for specified energy contracts executed in the OTC markets. NYMEX certified that the rules comply with the Act and the Commission's regulations. Under the provision, NYMEX initially listed 25 contracts that are entered into OTC and accepted for clearing by NYMEX, but are not listed for trading on the Exchange. In connection with the NYMEX initiative, on May 30, 2002, the Commission issued an order pursuant to section 4d of the Act. The order provides that, subject to certain terms and conditions, the NYMEX Clearing House and FCMs clearing through the NYMEX Clearing House may commingle customer funds used to margin, secure, or guarantee transactions in futures contracts executed in the OTC markets and cleared by the NYMEX Clearing House with other funds held in segregated accounts maintained in accordance with section 4d of the Act and Commission Regulations thereunder.

[9] EFS transactions are permitted at the Exchange pursuant to NYMEX Rule 6.21A, Exchange of Futures for, or in Connection with, Swap Transactions. The swap component of the transaction must involve the commodity underlying a related NYMEX futures contract, or a derivative, by-product, or related product of such a commodity. In furtherance of its effort to permit OTC clearing at the Exchange, NYMEX amended the rule to include as eligible EFS transactions "any contract executed off the Exchange that the Exchange has designated as eligible for clearing at the Exchange."

[10] NYMEX also suggested a further limitation on floor members' permissible transactions by not permitting, initially, any transactions in electricity commodities.

[11] 67 FR 41698 (June 19, 2002). In that same **Federal Register** release, the Commission also requested comments with respect to NYMEX's request that the Commission make a determination pursuant to section 1a(11)(C) of the Act that floor members, when acting in a proprietary capacity, may also be considered to be ECEs when they enter into certain specified transactions, as well as a petition filed by the Intercontinental Exchange, Inc., requesting that the Commission issue an order pursuant to section 1a(11) that would expand the ECE category to include floor brokers and floor traders registered as such in the U.S. or with the U.K. Financial Services Authority. As previously noted, on January 9, 2003, the Commission issued an order that deems, subject to certain conditions, floor brokers and floor traders who are registered with the Commission, when acting in a proprietary trading capacity, to be ECEs as that term is defined in section 1a(11) of the Act.

[12] The Commission also received a comment letter, dated September 27, 2002, from the Managing Member of Hudson Capital Group, L.L.C., an options trading group. The commenter strongly supported the petition to allow NYMEX members to trade OTC energy products.

[13] In this regard, the petition states that 80 to 90 percent of energy swaps transactions involve standardized economic terms.

contracts created by the exchange of an OTC swap for a NYMEX future would be offset by an opposite transaction in the OTC market, thus providing a larger pool of market participants who would enter into a transaction initiating or liquidating a position on the Exchange.

With respect to the economic impact on OTC markets, the petition stated that permitting floor members to trade OTC transactions would increase competition and efficiency, enhance price discovery, and reduce the liquidity risk and the resultant increased market risk that arises from artificial barriers to entry in the markets. NYMEX stated that floor members participating in the OTC markets would perform the same functions they perform in the Exchange market including, among others, enhancing price discovery through the speed and efficiency of market adjustment to new fundamentals and facilitating adjustment of the market price to new information.

C. NYMEX's Analysis of the ECP Definition

In its petition, NYMEX contended that section 1a(12) of the Act supports its requested treatment of floor members as ECPs for a number of reasons. First, NYMEX stated that the treatment of floor members under the section 1a(12) ECP definition appears to be inconsistent in that it treats floor members differently based upon how they organize their businesses. Specifically, floor members who operate as natural persons are only considered ECPs if they satisfy a total asset standard.[14] By comparison, floor members that are organized as partnerships or proprietorships are considered ECPs if they are guaranteed by a specified entity and are not required to meet any total asset requirement.[15] The Exchange represented that floor trader registrations are generally made in the name of the individual and that exchange membership or seat ownership historically has been held in the name of one individual.[16]

Second, the petition stated that the treatment of floor members under Section 1a(12) is inconsistent with the treatment of brokers or dealers or foreign persons (performing similar roles or functions subject to foreign regulation) who are natural persons or proprietorships. Under section 1a(12)(viii), these persons may be considered to be ECPs by meeting either the total assets test of section 1a(12)(xi) or satisfying one of the provisions of 1a(12)(v). Thus, under section 1a(12)(v) a broker or dealer or foreign person operating as a natural person, but not a floor member similarly operating, is permitted to trade OTC products with a guarantee from one of the specified entities and without meeting any total asset requirements.

Third, NYMEX contended that floor members with FCM guarantees should be considered ECPs because the Act permits other entities to use guarantees as a substitute for meeting a total assets requirement. Specifically, NYMEX stated that section 1a(12)(v) of the Act permits a corporation, partnership, proprietorship, organization, trust, or other entity to obtain a guarantee or support via a letter of credit from a financial institution, insurance company, investment company, commodity pool, or governmental entity.

Finally, NYMEX argued that it is reasonable for floor members to rely on FCMs as guarantors.[17] Under section 1a(12)(A)(v), "a corporation, partnership, proprietorship, organization, trust, or other entity" may be considered an ECP if it is guaranteed by a commodity pool with more than $5 million in total assets. NYMEX pointed out that commodity pools generally are not in the business of conducting risk management for or providing guarantees in connection with trading in the OTC markets. NYMEX stated that if commodity pools are allowed to provide guarantees, then FCMs, who are in the business of monitoring trading by the Exchange members that they guarantee, should be permitted to provide such guarantees for floor members. NYMEX stated that its rules provide that each Exchange clearing member registered as an FCM must maintain minimum working capital of at least $5 million.[18]

D. Trading Restrictions and Exchange Oversight

In its petition, NYMEX represented that it would have appropriate compliance systems in place to monitor OTC trading by Exchange floor members. Because all the permissible OTC trading subsequently would be cleared at the Exchange, NYMEX would be able to obtain information concerning the OTC transactions as part of a review of the exchange of futures for physicals (EFP) or the EFS transaction bringing the transaction to the Exchange for clearing. Failure to comply with a request to provide such information pursuant to the Exchange's EFP or EFS rules would result in a referral to the Exchange's Business Conduct Committee for further action.

NYMEX also suggested that, consistent with the standards which already apply to floor members with respect to their trading on the Exchange, the Commission should provide that floor members' transactions in the permissible contracts that are not executed on a trading facility be executed only pursuant to the section 2(h)(1) exemption. As indicated above, all section 2(h)(1) transactions would be subject to the Commission's anti-manipulation provisions and, in certain situations, anti-fraud provisions.[19] Finally, the Exchange represented that it would agree, as a condition for its members participating in the OTC markets, to limit OTC trading by floor members such that the counterparties to their trades must not be floor members

[14] Section 1a(12)(A)(xi) provides that an individual who meets either of two total asset tests is an ECP. An individual must either have total assets in an amount in excess of $10,000,000, or of $5,000,000 and enter "into the agreement, contract, or transaction in order to manage the risk associated with an asset owned or liability incurred, or reasonably likely to be owned or incurred, by the individual."

[15] Section 1a(12)(A)(v) provides that a corporation, partnership, proprietorship, organization, trust, or other entity that meets one of three tests is an ECP. The entity must either (1) have total assets exceeding $10,000,000; (2) have its obligations guaranteed or otherwise supported by (subject to total assets or other requirements) a financial institution, insurance company, investment company, commodity pool, or governmental entity; or (3) have a net worth exceeding $1,000,000 and enter "into an agreement, contract, or transaction in connection with the conduct of the entity's business or to manage the risk associated with an asset owned or liability incurred or reasonably likely to be owned or incurred by the entity in the conduct of the entity's business."

[16] NYMEX's argument on this point is premised on the assumption that floor brokers and floor traders may alternatively qualify as ECPs under provisions of the ECP definition that specifically refer to "a corporation, partnership, proprietorship, organization, trust, or other entity" (section 1a(12)(A)(v)) and to "an individual" (section 1a(12)(A)(xi)). At present, the Commission is neither accepting nor rejecting the Exchange's interpretation of the ECP definition, but is exercising the authority granted under section 1a(12)(C). As previously noted, the only provision of the ECP definition that specifically refers to floor brokers or floor traders is section 1a(12)(A)(x), which includes within the definition of ECP a floor broker or floor trader to the extent that the floor broker or floor trader acts in connection with any transaction that takes place on or through the facilities of a registered entity or an exempt board of trade, or any affiliate thereof, on which such person regularly trades.

[17] The Commission believes that the FCM guaranteeing the OTC transactions should also have the obligation to clear the transactions at NYMEX.

[18] Pursuant to NYMEX Rule 9.21(B), each clearing member registered with the Commission as an FCM must have and maintain minimum working capital equal to or in excess of the greater of $5 million or the amount prescribed in Commission Regulation 1.17. As an additional safeguard for the clearing system, the Commission believes that a higher capitalization standard would be appropriate where the clearing member FCM is guaranteeing the OTC transactions of a floor member.

[19] *See supra* note 4.

for contracts that are listed for trading on the Exchange. Thus, for example, floor members could not be counterparties in connection with an OTC natural gas swap to be exchanged for a futures position in the NYMEX Natural Gas futures contract. NYMEX floor members could be counterparties in connection with a Chicago Basis swap that is subsequently cleared at NYMEX through EFS procedures because that contract is listed only for clearing at the Exchange.

IV. Conclusion

After consideration of the NYMEX petition and review of the comments, the Commission has determined that NYMEX floor members, subject to certain conditions and for a two-year period commencing on the date of publication of the order in the **Federal Register**, are eligible to be ECPs as that term is defined in section 1a(12) of the Act.[20] The floor members meet the financial qualifications of an ECP by having a financial guarantee for the OTC transactions from a NYMEX clearing member that is registered as an FCM and must satisfy certain minimum working capital requirements.

The Commission is aware that the execution and clearing of such transactions has financial implications for the clearing system.[21] Thus, the Commission is adding the following safeguards to limit the possibility of a trader entering into OTC transactions that could create financial difficulty for the guarantor FCM, the clearing entity or other clearing firms. First, the guarantor FCM must clear, at NYMEX, every OTC transaction for which it provides such a guarantee. Second, in order to assure that the guarantor FCM is adequately capitalized, the guarantor FCM must have and maintain at all times minimum working capital of at least $20 million; provided that, however, during the first 18 months following publication of the order a clearing member must have and maintain minimum working capital of at least:

(a) $5 million during the first twelve months of the two-year period; and

(b) $10 million during the thirteenth through eighteenth months of the two-year period.

If, during the 18-month period, a clearing member does not maintain working capital of at least $20 million, it must further reduce its working capital, to determine if it is in compliance with paragraphs (a) or (b) above, by 100 percent of the NYMEX margin requirements for the OTC contracts, agreements or transactions of floor brokers and floor traders that it is guaranteeing pursuant to the order. A clearing member must compute its working capital in accordance with exchange rules and generally accepted accounting principles consistently applied.[22]

Another qualification of floor members that the Commission finds significant with respect to the eligibility of floor members to be ECPs is trading expertise. The Commission believes that the participation of floor members in the OTC markets under the circumstances described here potentially could, among other things, increase liquidity on the Exchange and in the OTC marketplace, increase competition and efficiency, and expand the pool of counterparties for OTC market participants.

The Commission has determined to make the order effective for a two-year period in order to provide the opportunity to evaluate the impact of the OTC trading on both the OTC market and on NYMEX. Thus, the Commission is requiring that NYMEX submit a report reviewing its experiences and the experiences of its floor brokers, floor traders and clearing members with respect to OTC trading, including the levels of OTC trading and related clearing activity; the number of floor brokers, floor traders and clearing members who participated in these activities; and an evaluation of whether the Commission should extend this Order and, if so, whether any modifications should be made thereto. This report would address the first eighteen months of the two-year period, and must be submitted to the Commission no later than 30 days after the conclusion of eighteen months.

Accordingly, the Commission has determined, consistent with the NYMEX petition, that it is appropriate to issue an order, pursuant to section 1a(12)(C) of the Act, that includes, subject to certain conditions and for a two-year period commencing on the date of publication of the order in the **Federal Register**, NYMEX floor brokers and floor traders within the definition of ECPs who can enter into OTC transactions pursuant to section 2(h)(1) of the Act. Although this order applies only to NYMEX and NYMEX members, the Commission would welcome, in response to a petition so requesting, providing substantially similar relief to other designated contract markets and members of designated contract markets.

IV. Cost Benefit Analysis

Section 15 of the Act, as amended by section 119 of the CFMA, requires the Commission to consider the costs and benefits of its action before issuing a new regulation or order under the Act. By its terms, section 15 does not require the Commission to quantify the costs and benefits of its action or to determine whether the benefits of the action outweigh its costs. Rather, section 15 simply requires the Commission to "consider the costs and benefits" of the subject rule or order.

Section 15(a) further specifies that the costs and benefits of the proposed rule or order shall be evaluated in light of five broad areas of market and public concern: (1) Protection of market participants and the public; (2) efficiency, competitiveness, and financial integrity of futures markets; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations. The Commission may, in its discretion, give greater weight to any one of the five enumerated areas of concern and may, in its discretion, determine that, notwithstanding its costs, a particular rule or order is necessary or appropriate to protect the public interest or to effectuate any of the provisions or to accomplish any of the purposes of the Act.

The order is intended to reduce regulatory barriers to permit NYMEX members registered with the Commission as floor brokers or floor traders, when acting in a proprietary capacity, to enter into OTC transactions in exempt commodities pursuant to section 2(h)(1) of the Act if such floor members have obtained a financial guarantee for such transactions from an Exchange clearing member that is registered with the Commission as an FCM. The Commission has considered

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[20] A NYMEX floor member who is determined to be an ECP based upon compliance with the provisions set forth in the Commission's order is an ECP only for the purpose of entering into transactions executed pursuant to Section 2(h)(1) of the Act and as described in the order.

[21] The Commission notes that the guarantor FCM could restrict or otherwise condition the trading for which the guarantee is provided. The guarantor could, for instance, limit trading to certain commodities, place financial limits on overall or daily positions, or restrict trading by number or size of acceptable transactions.

[22] The Commission believes that the guarantor FCM should ultimately have and maintain minimum working capital of $20 million, but is providing less-capitalized FCMs that wish to guarantee OTC transactions with the opportunity to do so during the 18-month transition period in which they increase their working capital. The Commission notes that the $20 million requirement is somewhat analogous to the eligible trader requirements for trading on a registered derivatives transaction execution facility (DTEF). Pursuant to section 5a(b)(3) of the Act, to trade on a DTEF, a person must either be an ECP or trade through an FCM that, among other things, has net capital of at least $20 million.

the costs and benefits of the order in light of the specific provisions of section 15(a) of the Act.

A. Protection of Market Participants and the Public

The order would permit, for a two-year period commencing on the date of its publication in the **Federal Register**, a registered floor broker or floor trader to participate in the OTC markets, subject to a guarantee from an Exchange clearing member registered as an FCM, as well as to Exchange oversight and certain trading restrictions. Accordingly, there should be no effect on the Commission's ability to protect market participants and the public.

B. Efficiency and Competition

The order is expected to benefit efficiency and competition by, among other things, increasing the flow of trading information to the Exchange, enhancing the ability of floor members to make tight markets in products that compete against standardized look-alike contracts traded in the OTC markets, and increasing the pool of potential counterparties for OTC market participants.

C. Financial Integrity of Futures Markets and Price Discovery

The order should have no effect, from the standpoint of imposing costs or creating benefits, on the financial integrity of the futures and options markets. The order may have a favorable effect in creating benefits with respect to the price discovery function of such markets.

D. Sound Risk Management Practices

The order should have no effect, from the standpoint of imposing costs, on the risk management practices of the futures and options industry. Clearing member FCMs that would, on a case-by-case basis, be extending guarantees to floor members for OTC trading have developed risk management practices in connection with extending similar guarantees to floor members for trading executed at the Exchange. Because the scope of permissible trading would be limited to OTC transactions that subsequently are cleared at the Exchange, clearing member FCMs could apply existing risk management practices and procedures. The order would enhance the ability of floor members to manage the risks associated with the positions they establish in Exchange contracts.

E. Other Public Interest Considerations

The order is consistent with one of the purposes of the Act as articulated in Section 3 in that it would promote responsible innovation and fair competition among boards of trade, other markets and market participants.

V. Order

Upon due consideration, and pursuant to its authority under section 1a(12)(C) of the Act, the Commission hereby determines that a NYMEX member who is registered with the Commission as a floor broker or a floor trader, when acting in a proprietary trading capacity, is deemed to be an eligible contract participant and may enter into Exchange-specified OTC contracts, agreements or transactions in an exempt commodity under the following conditions:

1. This Order is effective for two years commencing on the date of its publication in the **Federal Register**.

2. The contracts, agreements or transactions must be executed pursuant to section 2(h)(1) of the Act.

3. The floor broker or floor trader must have obtained a financial guarantee for the contracts, agreements or transactions from a NYMEX clearing member that:

(a) Is registered with the Commission as an FCM; and,

(b) Clears the OTC contracts, agreements or transactions thus guaranteed.

4. Permissible contracts, agreements or transactions must be limited to trading in a commodity that either:

(a) Is listed only for clearing at NYMEX or

(b) Is listed for trading and clearing at NYMEX and NYMEX's rules provide for exchanges of futures for swaps in that contract, and each OTC contract, agreement or transaction executed pursuant to the order must be cleared at NYMEX.

5. The floor broker or floor trader may not enter into OTC contracts, agreements or transactions with another floor broker or floor trader as the counterparty for contracts that are listed for trading on the Exchange.

6. NYMEX must have appropriate compliance systems in place to monitor the OTC contracts, agreements or transactions of its floor brokers and floor traders.

7. Clearing members that guarantee and clear OTC contracts, agreements or transactions pursuant to this Order must have and maintain at all times minimum working capital of at least $20 million; provided, however, that during the first 18 months following publication of the order a clearing member must have and maintain minimum working capital of at least:

(a) $5 million during the first twelve months of the two-year period; and

(b) $10 million during the thirteenth through eighteenth months of the two-year period.

If, during the 18-month period, a clearing member does not maintain working capital of at least $20 million, it must further reduce its working capital, to determine if it is in compliance with paragraphs 7(a) or 7(b) of the order, by 100 percent of the NYMEX margin requirements for the OTC contracts, agreements or transactions of floor brokers and floor traders that it is guaranteeing pursuant to the order. A clearing member must compute its working capital in accordance with exchange rules and generally accepted accounting principles consistently applied.

8. NYMEX will submit a report to the Commission reviewing its experiences and the experiences of its floor brokers, floor traders and clearing members under this Order, including the levels of OTC trading and related clearing activity; the number of floor brokers, floor traders and clearing members who participated in these activities; and an evaluation of whether the Commission should extend this Order and, if so, whether any modifications should be made thereto. This report will address the first eighteen months of this Order's two-year period, and must be submitted to the Commission no later than 30 days after the conclusion of those eighteen months.

This Order is based upon the representations made and supporting material provided to the Commission by NYMEX. Any material changes or omissions in the facts and circumstances pursuant to which this Order is granted might require the Commission to reconsider its finding that the provisions set forth herein are appropriate. Further, if experience demonstrates that the continued effectiveness of this Order would be contrary to the public interest, the Commission may condition, modify, suspend, terminate or otherwise restrict the provisions of this Order, as appropriate, on its own motion.

Issued in Washington, DC, on January 29, 2003, by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 03–2507 Filed 2–3–03; 8:45 am]

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DEPARTMENT OF EDUCATION

Arbitration Panel Decision Under the Randolph-Sheppard Act

AGENCY: Department of Education.

ACTION: Notice of arbitration panel decision under the Randolph-Sheppard Act.

SUMMARY: The Department gives notice that on February 20, 2002, an arbitration panel rendered a decision in the matter of *Arthur Stevenson* v. *Oregon Commission for the Blind (Docket No. R–S/01–08)*. This panel was convened by the U.S. Department of Education under 20 U.S.C. 107d–1(a), after the Department received a complaint filed by petitioner, Arthur Stevenson.

SUPPLEMENTARY INFORMATION: Under section 6(c) of the Randolph-Sheppard Act (the Act), 20 U.S.C. 107d–2(c), the Secretary publishes in the **Federal Register** a synopsis of each arbitration panel decision affecting the administration of vending facilities on Federal and other property.

Background

This dispute alleged that the Oregon Commission for the Blind, the State licensing agency (SLA), denied Mr. Arthur Stevenson, complainant, due process by refusing to grant him a State fair hearing concerning the operation and administration of the Oregon Randolph-Sheppard vending facility program in violation of the Act (20 U.S.C. 107 *et seq.*) and the implementing regulations in 34 CFR part 395.

A summary of the facts is as follows: Since 1986, complainant operated vending facilities in the Oregon Randolph-Sheppard vending facility program. In 1998, he was selected to operate a vending facility route in Multnomah County, Oregon. The vending route was comprised of vending machines that dispensed sodas and other beverages located in county buildings.

Later, after complainant began managing the Multnomah County vending route, he requested that the SLA place snack machines in the county buildings on his route. The complainant alleged that the SLA denied his request due to lack of funds to purchase the snack machines. Then, complainant alleged that he asked for, and the SLA agreed to pay him, a monthly amount as "fair minimum return" to assist in increasing his income. The SLA denied his request when complainant asked that the monthly amount be retroactive to April 1998, the date of his initial request for a "fair minimum return."

Next, the complainant asked that the SLA add vending machines at the Sheridan Federal Prison to his vending route. This request was also denied. On August 9, 1999, the complainant requested that the SLA provide him with a State fair hearing on the denial of adding vending machines at the Sheridan Federal Prison. On June 13, 2000, the SLA responded to the complainant by denying his request for a fair hearing on the basis that the issue of facility assignment was the sole discretion of the SLA.

In November 2000, the SLA added the snack machines to complainant's vending route, and, in December 2000, the SLA submitted the complainant's August 1999 complaint to the State's hearing office. The hearing officer ruled that, according to Oregon Law, a nonattorney could not represent complainant at the State fair hearing.

Subsequently, complainant filed for a Federal arbitration hearing alleging that the SLA failed to provide due process to him regarding his grievance as provided by the Act and implementing regulations. A hearing on this matter was held on December 3, 4, and 5, 2001.

Arbitration Panel Decision

The issues heard by the panel were—(1) whether the SLA prevented the complainant from exercising his right to administrative remedy by refusing to proceed with a State fair hearing; and (2) whether the SLA failed to administer properly the Randolph-Sheppard vending facility program by denying the complainant's request to add vending machines from the Sheridan Federal Prison and other locations to his vending route. For his remedy, the complainant requested $59,800 in damages for loss of income and an additional $2000 per month for every month a resolution of his grievance was not attained.

Following the December 2001 Federal arbitration hearings, the parties entered into discussions on possible settlement options. Subsequently, both the complainant and the SLA signed a settlement agreement in January 2002.

The terms of the settlement agreement were— (1) the SLA would pay the complainant a money settlement in the amount of $22,500 for damages and costs; (2) the SLA agreed to secure additional vending routes for complainant; and (3) the SLA agreed to make all reasonable and diligent efforts to formalize existing permit agreements or secure new permit agreements for additional vending machines to be operated by complainant.

After reviewing all of the evidence and hearing testimony, the panel found that the SLA had acknowledged financial responsibility to complainant for not securing additional vending routes for him. Also, the panel found that the SLA failed to exercise its best efforts to obtain additional permits for the operation of vending machines by complainant.

Concerning the settlement agreement, the panel determined that two of the original issues brought by the complainant were moot as the result of both parties signing the settlement agreement. The issues were—(1) the adding of vending machines at the Sheridan Federal Prison to complainant's vending route; and (2) the complainant's allegation that the SLA had prevented him from exercising his right to administrative remedy by refusing him a State fair hearing because he was represented by a nonattorney.

Finally, the panel ruled that the settlement agreement was reasonable and fair and that both parties had entered into the settlement agreement in good faith. Therefore, the panel adopted the settlement agreement as the panel's final opinion and award.

The views and opinions expressed by the panel do not necessarily represent the views and opinions of the U.S. Department of Education.

FOR FURTHER INFORMATION CONTACT: You may obtain a copy of the full text of the arbitration panel decision from Suzette E. Haynes, U.S. Department of Education, 400 Maryland Avenue, SW., room 3232, Mary E. Switzer Building, Washington, DC 20202–2738. Telephone: (202) 205–8536. If you use a telecommunications device for the deaf (TDD), you may call the TDD number at (202) 205–8298.

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Dated: January 29, 2003.

Loretta Petty Chittum,

Acting Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 03–2476 Filed 2–3–03; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Arbitration Panel Decision Under the Randolph-Sheppard Act

AGENCY: Department of Education.

ACTION: Notice of arbitration panel decision under the Randolph-Sheppard Act.

SUMMARY: The Department gives notice that on January 23, 2002, an arbitration panel rendered a decision in the matter of *J. Allen Tharp* v. *Texas Commission for the Blind Docket No. R–S/99–9).* This panel was convened by the U.S. Department of Education, under 20 U.S.C. 107d–1(a), after the Department received a complaint filed by petitioner, J. Allen Tharp.

SUPPLEMENTARY INFORMATION: Under section 6(c) of the Randolph-Sheppard Act (the Act), 20 U.S.C. 107d–2(c), the Secretary publishes in the **Federal Register** a synopsis of each arbitration panel decision affecting the administration of vending facilities on Federal and other property.

Background

This dispute concerns the alleged failure of the Texas Commission for the Blind, the State licensing agency (SLA), to properly administer the Randolph-Sheppard vending facility program in violation of the Act (20 U.S.C. 107 *et seq.*) and the implementing regulations in 34 CFR part 395.

A summary of the facts is as follows: Complainant, J. Allen Tharp, is a contract manager for a large cafeteria food service operated by the SLA and Food Service, Inc., under a teaming agreement at Lackland Air Force Base in San Antonio, Texas.

On October 13, 1998, complainant filed a complaint with the SLA asserting his dissatisfaction with actions taken by the SLA in the operation of the cafeteria. Complainant requested a State fair hearing, which was denied by the SLA. In denying complainant's request for a hearing, the SLA determined that the complainant did not identify the actions taken by the SLA to which he objected, nor had the complainant indicated the timeframe in which they occurred. Therefore, in finding that the complaint did not comply with State regulations, the SLA refused to refer the complaint to the Texas State Office of Administrative Hearings (SOAH).

On November 4, 1998, the complainant filed a second demand for a hearing. Again, the SLA determined that the complaint did not comply with State regulations. On November 10, 1998, the SLA requested that SOAH rule on whether it could request complainant to identify the facts of his complaint and the timeframe in which they occurred before the SLA referred the complaint to SOAH.

On February 10, 1999, the Administrative Law Judge (ALJ) affirmed the SLA's decision. The SLA dismissed the case without prejudice and adopted the hearing officer's decision as final agency action. On March 2, 1999, the complainant filed a request for arbitration with the Secretary of Education. Following the previous events, telephone conference calls occurred among attorneys for the complainant, the SLA, and representatives and counsel for the U.S. Department of Education (ED). The complainant and the SLA agreed that the complainant would submit a detailed grievance to SOAH, which the complainant filed on January 28, 2000. In a ruling dated August 16, 2000, the ALJ held that the statute of limitations required that a blind vendor file a grievance within 15 days following the occurrence of the action that is being grieved.

Subsequently, complainant filed an amended complaint for Federal arbitration, which was received by ED on November 16, 2000. The amended complaint incorporated by reference the issues stated in the original complaint filed on March 2, 1999, and also included an appeal of the ALJ's August 16, 2000, ruling on his grievance.

A hearing on this matter was held on November 29, 2001, and was limited to the only issue that was decided at the State fair hearing level.

Arbitration Panel Decision

The issue heard by the panel was whether the 15-working-day limitation period established by the Texas Commission for the Blind for blind vendors to file a grievance when they are dissatisfied with an action arising from the operation or administration of the Randolph-Sheppard vending facility program as provided by the Act and implementing regulations constituted a denial of due process to complainant, J. Allen Tharp.

After reviewing all of the record, the arbitration panel concluded that—(1) the 15-working-day limitation period is part of an administrative process, not part of a judicial process; (2) it is important that grievances be processed and resolved in a timely manner; and (3) the submission of a request for a State fair hearing is a simple and straightforward action. The hearing itself is held at a later time, giving ample time to prepare witnesses and to sort out legal issues. Finally, the panel ruled that the 15-working-day limitation period was mandatory.

The views and opinions expressed by the panel do not necessarily represent the views and opinions of the U.S. Department of Education.

FOR FURTHER INFORMATION CONTACT: You may obtain a copy of the full text of the arbitration panel decision from Suzette E. Haynes, U.S. Department of Education, 400 Maryland Avenue, SW., room 3232, Mary E. Switzer Building, Washington, DC 20202–2738. Telephone: (202) 205–8536. If you use a telecommunications device for the deaf (TDD), you may call the TDD number at (202) 205–8298.

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Dated: January 29, 2003.

Loretta Petty Chittum,

Acting Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 03–2477 Filed 2–3–03; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Energy Information Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Energy Information Administration (EIA), Department of Energy (DOE).

ACTION: Agency information collection activities: Submission for OMB review; comment request.

SUMMARY: The EIA has submitted the energy information collections listed at the end of this notice to the Office of Management and Budget (OMB) for review and a three-year extension under section 3507(h)(1) of the Paperwork Reduction Act of 1995 (Pub. L. 104–13) (44 U.S.C. 3501 et seq).

DATES: Comments must be filed on or before March 6, 2003. If you anticipate that you will be submitting comments but find it difficult to do so within that period, you should contact the OMB Desk Officer for DOE listed below as soon as possible.

ADDRESSES: Send comments to the OMB Desk Officer for DOE, Office of Information and Regulatory Affairs, Office of Management and Budget, 726 Jackson Place NW., Washington, DC 20503. The OMB DOE Desk Officer may be telephoned at (202) 395–3084. (A copy of your comments should also be provided to EIA's Statistics and Methods Group at the address below.)

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Grace Sutherland, Statistics and Methods Group, (EI–70), Forrestal Building, U.S. Department of Energy, Washington, DC 20585–0670. Ms. Sutherland may be contacted by telephone at (202) 426–1068, FAX at (202) 426–1081, or e-mail at *Grace.Sutherland@eia.doe.gov*.

SUPPLEMENTARY INFORMATION: This section contains the following information about the energy information collections submitted to OMB for review: (1) The collection numbers and title; (2) the sponsor (*i.e.*, the Department of Energy component); (3) the current OMB docket number (if applicable); (4) the type of request (i.e, new, revision, extension, or reinstatement); (5) response obligation (*i.e.*, mandatory, voluntary, or required to obtain or retain benefits); (6) a description of the need for and proposed use of the information; (7) a categorical description of the likely respondents; and (8) an estimate of the total annual reporting burden (*i.e.*, the estimated number of likely respondents times the proposed frequency of response per year times the average hours per response).

1. Forms EIA–846 A/B/C, "Manufacturing Energy Consumption Survey".
2. Energy Information Administration.
3. OMB Number 1905–0169.
4. Three-year extension.
5. Mandatory.
6. EIA–846 (A), (B), and (C) will be used to collect data on energy consumption and related subjects for the manufacturing sector of the U.S. economy. In addition to being used for the National Energy Modeling System, the MECS is used to augment a database on the manufacturing sector. Respondents are manufacturing establishments. In addition to the changes proposed in an earlier August 26, 2002 **Federal Register** notice (67 FR 54797) soliciting public comments on MECS, EIA is proposing to add questions to the MECS regarding the production of steam and other thermal output. The first two items will be located in what was Section 3 of 1998 MECS questionnaires. The first question will ask for the amount of steam produced within onsite combined-heat-power/cogeneration units and the second question will ask for the amount of steam produced in steam only (or hot water only) boilers. These changes mirror what is currently asked on Section 2, Electricity. The MECS has always asked for the amount of steam and hot water produced from renewable energy, such as from solar and geothermal means, and will continue to do so.

Another related change is a modification to the end-use matrix. EIA proposes to subdivide the current end-use category "boiler fuel" into consumption used for "boiler fuel in a combined-heat-power/cogeneration process" and "any boiler fuel not included (in the previous category). Please note that in those questions and others, no end-use categorization of steam and hot-water is required.

These additional changes are proposed because of the increasing focus on issues related to combined heat and power and the need for information on this topic. As steam and electricity production leave the direct control of the manufacturing plant, EIA needs a better understanding of the effects on energy consumption.

7. Business or other for-profit.
8. 55,291 (18,000 respondents X 1 response per year X 9.22 hours) With a 3-year approval, the burden is prorated over the three-year period and averaged from a total of 165,873 hours.

Authority: Section 3507(h)(1) of the Paperwork Reduction Act of 1995 (Pub. L. No. 104–13).

Issued in Washington, DC, January 21, 2003.

Jay H. Casselberry,

Agency Clearance Officer, Statistics and Methods Group, Energy Information Administration.

[FR Doc. 03–2509 Filed 2–3–03; 8:45 am]

BILLING CODE 5450–01–P

DEPARTMENT OF ENERGY

Record of Decision, Kentucky Pioneer Integrated Gasification Combined Cycle Demonstration Project, Trapp, Clark County, KY

AGENCY: Department of Energy.

ACTION: Record of Decision.

SUMMARY: The Department of Energy (DOE) has prepared an environmental impact statement (EIS) (DOE/EIS–0318) to assess the environmental impacts associated with a proposed project that would be cost-shared by DOE and Kentucky Pioneer Energy, LLC (KPE) under DOE's Clean Coal Technology (CCT) Program. The project would provide a commercial scale application of a modified version of the British Gas Lurgi (BGL) integrated gasification combined cycle (IGCC) technology utilizing a co-feed of coal and Refuse Derived Fuel (RDF). The proposed project location is a previously disturbed site owned by East Kentucky Power Cooperative (EKPC) approximately 3.2 kilometers (2.0 miles) west of Trapp, Kentucky. After careful consideration of the potential environmental impacts, along with program goals and objectives, DOE has decided that it will provide approximately $60 million in Federal funding support (about 15% of the total cost of approximately $414 million) to design, construct, and demonstrate the commercial scale operation of the technology proposed by KPE.

FOR FURTHER INFORMATION CONTACT: To obtain additional information about the project or the EIS, contact Mr. Roy Spears, National Environmental Policy Act (NEPA) Document Manager, U.S. Department of Energy, National Energy Technology Laboratory, 3610 Collins Ferry Road, Morgantown, WV 26507; telephone: (304) 285–5460; fax: (304) 285–4403; or e-mail: *rspear@netl.doe.gov*. For general information on the DOE NEPA process, contact Ms. Carol M. Borgstrom, Director, Office of NEPA Policy and Compliance (EH–42), U.S. Department of Energy, 1000 Independence Avenue,

SW., Washington, DC 20585; telephone: (202) 586–4600; leave a message at (800) 472–2756; or fax: (202) 586–7031.

SUPPLEMENTARY INFORMATION: DOE has prepared this Record of Decision pursuant to Council on Environmental Quality (CEQ) regulations for implementing the procedural provisions of NEPA (40 Code of Federal Regulations [CFR] parts 1500–1508) and DOE NEPA regulations (10 CFR part 1021). This Record of Decision is based on DOE's Final EIS for the Kentucky Pioneer Integrated Gasification Combined Cycle Demonstration Project (DOE/EIS–0318, December 2002).

NEPA Strategy for the Clean Coal Technology Program

DOE developed a strategy for the CCT Program that includes consideration of both programmatic and project-specific environmental impacts during and after the process of selecting a proposed project. This strategy, called tiering (40 CFR 1508.28), refers to the consideration of general issues in a broader EIS (*e.g.*, for the CCT Program), followed by more focused environmental impact statements or other environmental analyses that incorporate by reference the general issues and concentrate on those issues specific to the proposals under consideration.

As part of the NEPA strategy, the EIS for the Kentucky Pioneer IGCC Demonstration Project tiers from the Clean Coal Technology Programmatic Environmental Impact Statement (CCT PEIS) that DOE issued in November 1989 (DOE/EIS–0146). The CCT PEIS evaluated two alternatives, the No Action Alternative, and the Proposed Action. The No Action Alternative assumed the CCT Program would not continue and that conventional coal-fired technologies with flue gas desulfurization and nitrogen oxide controls that met New Source Performance Standards (NSPS) would continue to be used. The NSPS (40 CFR part 60) were established under the 1970 amendments to the Clean Air Act (CAA) to adopt emission standards for major new industrial facilities. The Proposed Action assumed that the clean coal projects would be selected and funded, and that successfully demonstrated technologies would undergo widespread commercialization by the year 2010.

The CCT Program began in 1986 as a collaborative effort among the federal government, state governments, and industry representatives to develop environmentally friendly solutions for using the Nation's abundant coal resources. The Program's goal is to demonstrate innovative technologies emerging from global engineering laboratories at a scale large enough to demonstrate the commercial merit of the new processes. Originally, the CCT Program was a response to concerns over acid rain, which is formed by reaction of water with oxides of sulfur and nitrogen emitted by coal-burning power plants. Industry-proposed projects were selected for further consideration through a series of five national competitions aimed at attracting promising technologies that had not yet been proven commercially.

The Kentucky Pioneer IGCC Demonstration Project was selected for further consideration under the fifth solicitation (CCT–V) authorized under Pub. L. 102–154. The CCT Program relies on substantial funding from sources other than the federal government, as the participant supports the majority of the project cost. The Department of the Interior and Related Agencies Appropriations Act of 1986, a section of Pub. L. 99–190, introduced and defined cost-sharing for the program. The participant must agree to repay the government's financial contribution, with the basis for the repayment negotiated between the participant and the government, to ensure that taxpayers benefit from a successful project. Congress has directed that projects in the CCT Program should be industry projects assisted by the government and not government-directed demonstrations.

EIS Process

On April 14, 2000, DOE published in the **Federal Register** (65 FR 20142) a Notice of Intent (NOI) and Notice of Floodplain Involvement for the Kentucky Pioneer IGCC Demonstration Project. The NOI announced a public scooping meeting and invited comments and suggestions on the proposed scope of the EIS. DOE held a public scoping meeting in Trapp, Kentucky, on May 4, 2000, at which 36 individuals signed in and five participants provided a total of 19 oral comments. Three individuals submitted eight written comments during the public comment period, which ended May 31, 2000. The comments helped DOE to establish the issues to be analyzed in the EIS and the level of analysis warranted for each issue.

On November 16, 2001, DOE published a Notice of Availability for the Kentucky Pioneer IGCC Demonstration Project Draft EIS in the **Federal Register** (66 FR 57717). The original comment period for the Draft EIS began on November 16, 2001, and would have ended on January 4, 2002. To accommodate requests from the public, DOE extended the public comment period on the Draft EIS to January 25, 2002. The total comment period was 71 days. Public meetings were held on December 10, 2001, in Lexington, Kentucky, and on December 11, 2001, in Trapp, Kentucky. DOE received 118 oral comments and 255 written comments, which helped to improve the quality and usefulness of the EIS.

In December 2002, DOE issued the Final EIS and the Environmental Protection Agency published a Notice of Availability of the Final EIS in the **Federal Register** on December 13, 2002 (67 FR 76740). In the Final EIS, DOE considered and, as appropriate, responded to public comments on the Draft EIS. Among the issues raised in the comments were concerns about (1) The applicability of and compliance with state and local solid waste statutes; (2) the need for more details of the facility and BGL process; (3) the potential of the vitreous frit (a solid waste stream) to be hazardous; (4) the need for power in central Kentucky; (5) the impacts of the related transmission line; (6) impacts to the Kentucky River; (7) impacts of plant operation on air resources, including acid rain and greenhouse gases; (8) impacts of facility discharges on local drinking water; (9) potential impacts from spills; (10) impacts to the aesthetic and scenic resources of the area; (11) impacts to Kentucky Highway 89 and local traffic levels; and (12) cumulative impacts of the proposed project and other potential local developments.

Project Location and Description

The Kentucky Pioneer IGCC Demonstration Project facility will be located in Clark County, Kentucky on a 121-hectare (300-acre) site within the 1,263-hectare (3,120-acre) J.K. Smith Site, owned by EKPC. The J.K. Smith Site is 34 kilometers (21 miles) southeast of the city of Lexington, 13 kilometers (8 miles) southeast of the city of Winchester, and 1.6 kilometers (1 mile) west of the community of Trapp, Kentucky. The plant will be located approximately 1.6 kilometers (1 mile) west of the J.K. Smith Site boundary closest to the community of Trapp. The 121-hectare (300-acre) project site was previously disturbed by preliminary construction activities in the mid-1980s, when EKPC began construction of the J.K. Smith Power Station. EKPC had completed preliminary grading, primary foundations, fire protection piping, and rail spur access infrastructure installation before the project was canceled in the early 1990s, when the

projected demand for electricity in the area failed to materialize. The Kentucky Pioneer IGCC Demonstration Project will be built on the portion of the site that was previously cleared and graded. The site is reached by Kentucky Highway 89 and accessed through a gated perimeter fence and access road. The access road is approximately 1.6 kilometers (1 mile) long from Kentucky Highway 89 to the project site. Plant access by rail would be from a freight rail line owned by CSX Transportation, Inc., which crosses the eastern side of the station. An existing railroad loop approximately 5 kilometers (3.1 miles) long will be used for raw material delivery and product transportation around the 121-hectare (300-acre) project site.

To support the project, EKPC plans to construct a new 138-kilovolt (kV) electric transmission line. The proposed line would extend northeasterly from the project site to the Spencer Road Terminal in Montgomery County, Kentucky, where it would interconnect with the existing local power grid. This transmission line would provide additional capacity adequate to accommodate the addition of the Kentucky Pioneer IGCC Demonstration Project and is consistent with the master plan for transmission outlets required for existing and future generation at EKPC's J.K. Smith Site. The proposed new transmission line would be approximately 27 kilometers (17 miles) in length, though the specific route for the line has yet to be determined. However, in the FEIS, DOE has examined, as appropriate, the general impacts that would be expected from this type of line.

The U.S. Department of Agriculture, Rural Utility Service (RUS), has approval authority for the capacity upgrade of the transmission line. Under RUS NEPA policies and procedures (7 CFR part 1794), RUS will prepare appropriate NEPA analysis of the impacts associated with the transmission line.

The proposed project will be comprised of two parts: the "power island" and the "gasification island." The power island will be comprised of two combined cycle turbine units that would generate most of the electricity at the site. These units could run on a natural gas feed or a synthesis gas (syngas) feed generated from Refuse Derived Fuel (RDF) pellets and coal in BGL gasifier units. The gasification island will consist of the following major facility components: (1) RDF pellet and coal receipt and storage sheds; (2) gasification plant; (3) sulfur removal and recovery facility; and (4) air separation plant. The production of syngas in the BGL process occurs in the gasification plant and utilizes the sulfur removal and recovery facility and air separation plant.

The syngas firing process consists of the following four steps: (1) Generation of syngas from RDF pellets and coal reacting with steam and oxygen in a high temperature chemically reducing atmosphere; (2) removal of contaminants, including particulates and sulfur in the sulfur removal and recovery facility; (3) clean syngas combustion in a gas turbine generator to produce electricity; and (4) recovery of residual heat in the hot exhaust gas produced by the gas turbine. The residual heat will be used to generate steam in a heat recovery steam generator that produces additional electricity in a steam turbine, which is the combined cycle aspect of the plant.

The solid fuel source for the Kentucky Pioneer IGCC Demonstration Project will be high sulfur coal and RDF pellets. RDF pellets will be procured from a RDF pellet manufacturer. The two fuel sources will be shipped by rail directly to on-site storage. At a minimum, 50 percent of the feed will consist of high-sulfur coal from the Kentucky region during the one-year demonstration period.

KPE intends to use high sulfur coal for direct delivery to the project site. Western Kentucky coal is generally considered the high-sulfur coal region; however, Eastern Kentucky may also provide high-sulfur coal supplies. Project economics will determine the supplier and the type of coal supplied. The facility will require approximately 1,125 kilograms (2,500 tons) per day of coal, which equates to about 25 railcars per day. Compared to entirely coal-fired electric generation technologies, this project will require less coal consumption to generate 540 MW.

RDF is manufactured in a process that includes controlled steps for the processing of municipal solid waste (MSW) or common household waste. RDF pellets are stable and durable because they are made with relatively low moisture content. The process results in pellets with a relatively uniform size and shape and generally uniform energy content. RDF pellets also have a relatively low ash content and good handling and storage life before use. The RDF pellets will be procured from an existing manufacturer. RDF pellets are typically extruded into a uniform dense shape that makes them well suited to transportation and storage. The Kentucky Natural Resources and Environmental Protection Cabinet has determined that the pellets to be used in this facility qualify as RDF.

The production of syngas in the Kentucky Pioneer IGCC Demonstration Project facility will occur in a carefully controlled environment. Gasification technology is known to produce a very consistent syngas product, regardless of the variability of the feed. Though the RDF pellet composition is expected to be relatively constant, slight variations in the composition would have no effect on the composition of the syngas produced. The resulting syngas is expected to be 55 percent carbon monoxide (CO), 30 percent hydrogen gas, 10 percent carbon dioxide, 5 percent methane and ethane, with a relatively small amount of sulfur in the form of hydrogen sulfide.

Alternatives

Congress directed DOE to pursue the goals of the CCT Program by means of partial funding of projects owned and controlled by non-federal sponsors. This statutory requirement places DOE in a much more limited role than if the federal government were the owner and operator of the project. In the latter situation, DOE would be responsible for a comprehensive review of reasonable alternatives for siting the project. However, in dealing with an applicant, the scope of alternatives is necessarily more restricted because DOE must focus on alternative ways to accomplish its purpose that reflect both the application before it and the role DOE plays in the decisional process. It is appropriate in such cases for DOE to give substantial weight to the applicant's needs in establishing a project's reasonable alternatives.

Based on the foregoing principles, the only reasonable alternative to the proposed action is the no-action alternative. The EIS includes two no-action alternative scenarios, which are discussed below. Other alternatives that did not meet the goals and objectives of the CCT Program, or the applicant, were dismissed from further consideration.

Proposed Action

Under the Proposed Action, DOE will provide, through a Cooperative Agreement with KPE, financial assistance for the design, construction, and operation of the proposed Kentucky Pioneer IGCC Demonstration Project. All associated facilities for the power and gasification islands, including fuel storage, rail car unloading sites, and air emissions control equipment, will be constructed under the Proposed Action. In addition, EKPC plans to construct an electric transmission line. The proposed project would be designed for at least 20

years of commercial operation, beginning with a one-year CCT Program demonstration period. The proposed project would cost $414 million, of which DOE's share would be approximately $60 million, or 15 percent.

The proposed project includes the design, construction, and operation of BGL gasification technology and associated facilities to provide a fuel source for the two planned turbines. Under the Proposed Action, the turbines would be fired using the syngas product generated by the gasification technology. The Proposed Action would demonstrate the following innovative technologies: (1) Gasification of RDF pellets and coal; and (2) use of a syngas product as a clean fuel in combined cycle turbine generator sets. This project would be the first commercial scale application of this modified co-feed version of the BGL gasification technology in the United States. The facility is expected to be operational for 20 years, with the first year committed to the demonstration of these technologies.

No Action Alternative.

An analysis of the No Action Alternative is included in the EIS, as required under NEPA. Under No Action Alternative 1, DOE would not provide $60 million in cost-shared funding for the project and no plant would be constructed as a result. DOE believes that this scenario is unlikely to occur but it is presented in the EIS because it serves as an analytical baseline for comparison of the environmental effects of the project.

Under No Action Alternative 2, DOE would not provide $60 million cost-shared funding for the project; however, KPE would construct a natural gas-fired combined cycle plant, the power island portion of the overall project without the gasification component, at the proposed project location. This alternative includes all associated facilities required for the operation of the power island, including administrative offices, on-site utilities, steam-generating units, required air emissions control equipment, and wastewater treatment equipment. All water for the plant would be supplied from existing EKPC intake structures at the J.K. Smith Site. The EKPC transmission line would also be required to support this action.

Major Environmental Impacts and Mitigation Measures

No Action Alternative 1 would not result in any adverse environmental impacts because no construction or change in activities would occur. Under No Action Alternative 1, however, beneficial socioeconomic impacts (jobs and revenue) would not be created and needs for electric power capacity in the region would not be supplied. This alternative would not meet CCT Program goals.

This section summarizes the expected environmental impacts of the Proposed Action and No Action Alternative 2 on potentially affected environmental resource areas and discusses mitigation measures. The resource areas include: land use, socioeconomics, cultural resources, aesthetic and scenic resources, geology, air quality, water resources and water quality, ecological resources, noise, traffic and transportation, occupational and public health and safety, and waste management.

Land Use

No Action Alternative 2 would disturb approximately 5 to 8 hectares (12 to 20 acres) of previously disturbed land for project construction activities. The foundation of the power island would occupy approximately 4.8 hectares (12 acres). All land use impacts from No Action Alternative 2 would also occur under the Proposed Action. In addition, the Proposed Action would disturb a maximum of 2.8 hectares (7 acres) of previously disturbed land for storage and rail car loading and unloading facilities. No effects are expected on surrounding land uses or local land use plans and policies under either alternative.

Socioeconomics

No Action Alternative 2 would employ an average of 120 workers, with a maximum of 200, during construction. This would indirectly lead to the creation of another 138 to 230 jobs depending on the duration of peak construction levels. The facility operation would require 24 employees for the 20-year life cycle of the plant; an additional 54 jobs would be created indirectly as a result.

The Proposed Action would employ an average of 600 workers, with a maximum of 1,000 during construction. This would indirectly lead to the creation of another 690 to 1,150 jobs depending on the duration of peak construction levels. The 20-year demonstration and operation period would require 120 employees; an additional 270 jobs would be created indirectly as a result. Property values for land tracts in the viewshed of the gasifier units may decrease.

Cultural Resources

The J.K. Smith Site has been previously disturbed and cultural resources were identified and excavated during the initial development of the discontinued J.K. Smith Power Station in the early 1980s. The Kentucky State Historic Preservation Office (SHPO) has confirmed that the Section 106 Review process was completed for the Kentucky Pioneer IGCC Demonstration Project's Area of Potential Effect in December of 1980. The terms of the Memorandum of Agreement drawn up in conjunction with the Advisory Council on Historic Preservation for the J.K. Smith Station have been met under the Kentucky Pioneer IGCC Demonstration Project and no further identification, evaluation, mitigation, and consultation activities are required. In accordance with 36 CFR 800.4(d), the SHPO finds that there is no effect on historic properties from No Action Alternative 2 or the Proposed Action.

Deeply buried archaeological resources, including human remains, could be discovered during construction activities. To minimize the potential adverse effects to unanticipated discoveries during construction, basic information will be provided to workers involved in ground disturbing activities regarding the recognition of archaeological resources and Native American cultural items and the procedures to be followed upon discovery. The construction contractor will be required to assure that discovery procedures are implemented in all applicable cases.

Aesthetic and Scenic Resources

The combined-cycle units that would be constructed under No Action Alternative 2 and the Proposed Action would not be visible from outside the site area and would have no visible plumes associated with them. The gasifier facility stacks installed under the Proposed Action would be approximately 65 meters (213 feet) tall and would be visible from as far away as Winchester, located 13.3 kilometers (8.3 miles) northwest of the project site. Fugitive dust emissions may temporarily affect visibility during construction at the site and would be mitigated with standard dust control measures. The visibility of the plumes associated with the Proposed Action would be dependent on weather and wind pattern; however, they would likely be visible from up to 12.8 kilometers (8 miles) from the facility location.

Geology

Minor impacts on the geologic resources, notably loss of prime farmland soils, are expected from the construction and operation of the No Action Alternative 2 and the Proposed Action. However, the impacts are expected to be minor, because the site has been previously graded and disturbed. The Proposed Action would have a slightly greater impact on geologic resources due to the additional support facilities required for operation. Disturbances associated with construction would be mitigated with runoff, erosion, and dust controls. Geologic hazards are not expected to have any effects on either No Action Alternative 2 or the Proposed Action.

Air Resources

Air emissions would be similar in quantity under No Action Alternative 2 and the Proposed Action. Increases would occur in annual air emissions of nitrogen oxides (NO_X), carbon monoxide (CO), sulfur oxides (SO_X), particulate matter, and reactive organic gases. Under the Proposed Action, the greatest quantity of emissions would be from NO_X (approximately 1,100 tons per year [TPY]), CO (approximately 800 TPY), and SO_X (approximately 500 TPY). The Proposed Action would also result in increases in hazardous air pollutant emissions of approximately 9 TPY for all hazardous pollutants combined. More than half of this figure is attributable to the increase in nickel emissions; however, the overall increase would present little risk to human health and the environment (see Occupational and Public Health and Safety section, below). Pollutant emissions would be well within applicable standards; however, annual average emissions for NO_X and particulate matter would approach the Prevention of Significant Deterioration (PSD) Rule for Significant Impact Level Limits. The levels of particulate matter would also approach the 24-hour PSD limits.

Emission control requirements (equipment design requirements and operational procedures requirements) for the proposed project have been established by the Kentucky Division for Air Quality and the EPA as part of the PSD permit approval process. Emission controls included as part of the PSD permit include enclosed storage of raw materials; fabric filters on limestone storage silos; covered conveyors for raw material transfer; drift eliminators on the cooling tower; and steam injection or other combustion controls on the gas turbines. During construction activities, fugitive dust will be minimized using standard dust control measures such as watering. Railcars will be covered to minimize fugitive dust from coal and RDF pellet transport to the site.

Water Resources

No Action Alternative 2 would require 3.8 million liters per day (MLD) (1 million gallons per day [MGD]) of surface water from the Kentucky River for facility operations and would generate less than 1.5 MLD (0.4 MGD) of wastewater. The Proposed Action would require 15.1 MLD (4 MGD) of surface water from the Kentucky River for facility operations and would generate 1.5 MLD (0.4 MGD) of wastewater. Treated wastewater would be discharged into the Kentucky River. The remaining 13.6 MLD (3.6 MGD) would be used during the operation of the gasifier, turbine condensers, and fuel gas saturation process, as well as for other miscellaneous uses. It is expected that no significant impacts would occur to water levels as the amount of the intake required for the Proposed Action represents approximately 0.1 percent of the average calculated daily flow and 4 percent of the low flow conditions of the Kentucky River near the site. Coal and RDF pellets would be unloaded, stored, and conveyed in enclosed structures with concrete floors and would not impact water resources. No use of or discharge to groundwater resources is expected to occur during construction and operation of either facility.

Potential water resources and water quality impacts for facility discharges will be minimized by pretreatment in a new wastewater treatment facility. Federal and state-issued permits regulating water usage and wastewater discharge would specify site-specific criteria to minimize potential impacts. The facility will be designed to minimize water usage, and any discharges would comply with federal and state wastewater and stormwater discharge permits.

During low flow conditions, potential conflicts could exist between competing users of the river. To help minimize such conflicts, KPE will cease water withdrawals if drought conditions warrant or if requested by the state.

Under the proposed action, minor activity to extend the water intake structure would be required alongside the river channel, however, no impacts to the floodplain would result. No wetlands have been identified in the project area and no impacts to wetlands would result.

Ecological Resources

The construction of the facilities for No Action Alternative 2 would result in the loss of approximately 4.8 hectares (12 acres) while the Proposed Action would result in a loss of 7.6 hectares (19 acres) of old-field vegetation and its respective habitat. No federal- or state-listed protected, sensitive, rare, or unique species have been identified at the project site location and suitable habitat for the federally-endangered running buffalo clover is not present. Therefore, there would be no impacts to any federal- or state-listed protected or endangered species from either No Action Alternative 2 or the Proposed Action. The thermal plume from wastewater discharge into the Kentucky River would likely not have an impact on aquatic organisms.

Post construction mitigation landscaping will consist of a control program for non-native invasive plant species such as non-native thistles, fescue, and mustard. The site will be revegetated with a blend of native grasses and forbs. Due to the height of the emissions stacks, the Federal Aviation Administration requires stack lighting. To minimize bird strike mortality, the U.S. Fish and Wildlife Service (USFWS) has developed a set of voluntary recommendations for tower siting, construction, operation, and decommissioning. The gasifier stacks lighting system will be designed in consideration of the USFWS recommendations.

Noise

The construction and operation of both No Action Alternative 2 and the Proposed Action would result in minor noise increases over existing background noise levels beyond the borders of the J.K. Smith Site. Vehicle and rail traffic associated with both alternatives would cause minor noise increases of less than 2 decibels over background noise levels in the nearby community of Trapp.

Mitigation measures necessary to minimize noise impacts will be implemented for the proposed action. Buildings housing the gas turbine units will be designed to ensure a substantial reduction in noise transmitted to the outside. A reduction of gas turbine noise to 95 dBA or less, adjacent to the outside of the building, is a basic design requirement. In addition, the building housing the gasifiers will be designed to ensure a significant reduction in noise transmitted to the outside. A reduction of gasifier noise to 65 dBA or less, adjacent to the outside of the building, is a basic design requirement.

Traffic and Transportation

Under No Action Alternative 2, approximately 100 to 200 vehicle trips, depending on the level of construction activity, would be made per shift change during facility construction. An additional 40 to 60 heavy-duty truck trips per day would be made to and from the project site and rail cars would move heavy equipment to and from the site as needed. Approximately 48 vehicle trips per day would be made during facility operation, all utilizing Kentucky Highway 89. Since the existing traffic near the project site is light, this would result in little impact to local traffic. No rail cars are expected to be required for facility operation under No Action Alternative 2.

Under the Proposed Action, approximately 500 to 1,000 vehicle trips, depending on the level of construction activity, would be made per shift change during facility construction. An additional 40 to 60 heavy-duty truck trips per day would be made to and from the project site and rail cars would move heavy equipment to and from the site as needed. Traffic congestion may be heavy during afternoons when school buses operate along Kentucky Highway 89. Approximately 160 to 240 vehicle trips per day would be made during facility operation, all utilizing Kentucky Highway 89. This would have a greater impact on local traffic than No Action Alternative 2 and mitigation measures, discussed below, will be implemented to ease the impact. KPE will be responsible for repairing any damage to local roads due to excessive use or overweight vehicles. Approximately one unit train (100 rail cars) would move in or out of the site each day during operation. Existing rail infrastructure onsite is sufficient to accommodate a full unit train, thus removing it from the mainline track. KPE will design and implement an Emergency Response Plan and a Spill Prevention, Control, and Countermeasure Plan that would detail response and clean up measures for any accidents resulting from fuel or waste transportation.

The addition of turning lanes and a traffic signal will assist in regulating traffic flows at the intersection of the site access road and Kentucky Highway 89. Any changes to Kentucky Highway 89 will be made in conjunction with the 7th District of the Kentucky Transportation Cabinet. To facilitate traffic in and out of the project site, the access road would be widened to four lanes, or directional controls would be implemented. Directional controls refer to having both lanes travel in the same direction during peak usage of the road. Appropriate warning signs will be put in place if this method is adopted. Aside from scheduling rail deliveries in coordination with other main rail line traffic, no mitigation is required for rail transportation.

Occupational and Public Health and Safety

Typical worker impacts present in the construction industry would be associated with facility construction under both No Action Alternative 2 and the Proposed Action. All noise and health impacts would be mitigated using standard industry safety measures. The Proposed Action would present a small increase in cancer risks to workers and the public due to hazardous air pollutant emissions associated with operation of the combustion turbines of the power island component. The estimated cumulative lifetime cancer risk, assuming continuous exposure for a 70-year period at the location of maximum annual average exposure which is within the J.K. Smith Site, is 5E–05 (*i.e.*, 50 per one million individuals) or a 0.005 percent increase in cancer risk per person. However, this cumulative lifetime cancer risk is a very conservative estimate due to assumptions and extrapolation procedures used in the analysis.

Waste Management

Facility construction and operation would generate small quantities of hazardous and non-hazardous wastes and wastewater under No Action Alternative 2. The construction of the Proposed Action would generate proportionately more wastes than No Action Alternative 2, as it would take four times as long to build. Operation of the Proposed Action would generate more wastewater and hazardous wastes than No Action Alternative 2. All wastewater will be treated before release into the Kentucky River. The gasifiers would generate vitrified frit and elemental sulfur, which DOE expects would be marketed. KPE will conduct appropriate tests to confirm the expectations that the frit is not hazardous. Ultimately, if the frit is found to be hazardous, KPE could decide to use a 100 percent coal feed, the impacts from which would be essentially the same as the impacts examined under the Proposed Action. Standard industry practices will be used to minimize the wastes produced during construction and operation of either facility. Hazardous wastes will be disposed of in approved hazardous waste landfills.

Environmentally Preferred Alternative

No Action Alternative 1 is environmentally preferable because it would result in no impacts on any of the resource areas in the vicinity of the project site. Under No Action Alternative 1, however, the need for expanded electric power capacity in the region would not be met and beneficial socioeconomic impacts (jobs and revenue) would not be created, nor would the goals of the CCT Program concerning the demonstration of this co-feed BGL technology be achieved. The primary impacts from No Action Alternative 2 and the Proposed Action would be to land use, socioeconomics, visual and aesthetic resources, air resources, and traffic and transportation. The impacts from the Proposed Action generally would be small, and would be relatively greater to socioeconomics (beneficial), visual and aesthetic resources, air resources, and traffic and transportation in comparison to No Action Alternative 2. Unavoidable adverse impacts from No Action Alternative 2 and the Proposed Action would occur to aesthetic and scenic resources (the presence of a new facility and additional transmission line), water resources (withdrawals from the Kentucky River), ecological resources (habitat removal), and traffic and transportation (increase in local vehicle trips taken). No environmental justice impacts are expected under any of the alternatives.

Comments on the Final EIS

The only comments that DOE received on the Final EIS were from the U.S. Environmental Protection Agency (EPA). EPA stated that, in the Final EIS, DOE had resolved in a satisfactory manner EPA's comments on the Draft EIS regarding wetlands, transmission lines and towers, cooling tower discharge, air permitting, wind direction data, and other regulatory matters. However EPA expressed continued concerns about some potential impacts, including water, waste, ecological, and noise components of the project. DOE believes that mitigation measures for the proposed action adequately address EPA's concerns. For example, KPE has agreed to work with the State of Kentucky during extremely low river flow conditions and cease operations if requested. KPE also will test the vitrified frit to determine whether it is a hazardous waste, and will ensure that noise levels are acceptable. DOE will ask RUS to share their NEPA document(s) regarding the electric transmission line with EPA. Further, DOE will prepare a Mitigation Action

Plan in accordance with its NEPA regulations (10 CFR 1021.331(a)), which will serve as a tool for monitoring mitigation commitments.

Decision

DOE will implement the Proposed Action of providing approximately $60 million in cost-shared federal funding support to design, construct, and demonstrate the co-feed BGL technology proposed by KPE. The project is intended to demonstrate the combined removal of SO_2, NQ_X, and particulate matter in a BGL co-feed technology at a size (540 MW) approximately 40 to 50 percent larger than other currently operating, 100 percent coal-fed gasifier systems. The project is expected to generate sufficient data from design, construction, and operation to allow private industry to assess the potential for commercial application of the larger scale co-feed BGL technology. This decision to provide cost-shared funding for the proposed project was made after careful review of the potential environmental impacts, as analyzed in the EIS.

DOE's decision incorporates all practicable means to avoid or minimize environmental harm. In accordance with Section 1021.331(a) of the DOE NEPA regulations, DOE will prepare a Mitigation Action Plan that addresses mitigation commitments expressed in this ROD. Copies of the Mitigation Action Plan may be obtained from Roy Spears, NEPA Document Manager, U.S. Department of Energy, National Energy Technology Laboratory, 3610 Collins Ferry Road, Morgantown, WV 26507; telephone: (304) 285–5460.

Issued in Washington, DC on, this 29th day of January 2003.

Carl Michael Smith,

Assistant Secretary for Fossil Energy.

[FR Doc. 03–2512 Filed 2–3–03; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Fernald

AGENCY: Department of Energy, DOE.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Fernald. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Saturday, February 13, 2003; 6—9 p.m.

ADDRESSES: Crosby Senior Center, 8910 Willey Road, Harrison, OH.

FOR FURTHER INFORMATION CONTACT: Doug Sarno, The Perspectives Group, Inc., 1055. North Fairfax Street, Suite 204, Alexandria, VA 22314, at (703) 837–1197, or e-mail; *djsarno@theperspectivesgroup.com.*

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda:

6 p.m. Call to Order
6:30—6:40 p.m. Chair's Remarks and Ex Officio Announcements
6:40—6:50 p.m. Feedback from SSAB Workshop
6:50—7:15 p.m. General Updates
7:15—7:30 p.m. Follow-up on Silos Roundtable
7:30—8 p.m. Long Term Stewardship Expectations
8—8:30 p.m. Purpose for Natural Resource Damages Roundtable Discussion
8:30—8:45 p.m. Next Steps for Stewardship
8:45—9 p.m. Public Comment

Public Participation: The meeting is open to the public. Written statements may be filed with the Board chair either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact the Board chair at the address or telephone number listed below. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer, Gary Stegner, Public Affairs Office, Ohio Field Office, U.S. Department of Energy, is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of five minutes to present their comments. This **Federal Register** notice is being published less than 15 days prior to the meeting date due to programmatic issues that had to be resolved prior to the meeting date.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, 20585 between 9 a.m. and 4 p.m., Monday-Friday, except Federal holidays. Minutes will also be available by writing to the Fernald Citizens' Advisory Board, % Phoenix Environmental Corporation, MS–76, Post Office Box 538704, Cincinnati, OH 43253–8704, or by calling the Advisory Board at (513) 648–6478.

Issued at Washington, DC, on January 30, 2003.

Rachel Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 03–2510 Filed 2–3–03; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Science

High Energy Physics Advisory Panel

AGENCY: Department of Energy, DOE.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the High Energy Physics Advisory Panel (HEPAP). Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Thursday, March 6, 2003; 9 a.m. to 6 p.m. and Friday, March 7, 2003; 8:30 a.m. to 4 p.m.

ADDRESSES: Lawrence Berkeley National Laboratory, 1 Cyclotron Rd. Bldg. 54, Perserverance Hall, Berkeley, CA 94720.

FOR FURTHER INFORMATION CONTACT: Bruce Strauss, Executive Secretary; High Energy Physics Advisory Panel; U.S. Department of Energy; 19901 Germantown Road; Germantown, Maryland 20874–1290; Telephone: 301–903–3705

SUPPLEMENTARY INFORMATION:

Purpose of Meeting: To provide advice and guidance on a continuing basis with respect to the high energy physics research program.

Tentative Agenda: Agenda will include discussions of the following:

Thursday, March 6, 2003, and Friday, March 7, 2003

- Discussion of Department of Energy High Energy Physics Programs
- Discussion of National Science Foundation Elementary Particle Physics Program
- Discussion of the DOE/NSF High Energy Physics Advisory Panel, Subpanel on Long Range Planning for U.S. High Energy Physics
- Discussion of High Energy Physics University Programs
- Reports on and Discussion of U.S. Large Hadron Collider Activities
- Reports on and Discussions of Topics of General Interest in High Energy Physics
- Public Comment (10-minute rule)

Public Participation: The meeting is open to the public. If you would like to

file a written statement with the Panel, you may do so either before or after the meeting. If you would like to make oral statements regarding any of these items on the agenda, you should contact Bruce Strauss, 301–903–3705 or *Bruce.Strauss@science.doe.gov* (e-mail). You must make your request for an oral statement at least 5 business days before the meeting. Reasonable provision will be made to include the scheduled oral statements on the agenda. The Chairperson of the Panel will conduct the meeting to facilitate the orderly conduct of business. Public comment will follow the 10-minute rule.

Minutes: The minutes of the meeting will be available for public review and copying within 30 days at the Freedom of Information Public Reading Room; Room 1E–190; Forrestal Building; 1000 Independence Avenue, SW., Washington, DC, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC, on January 30, 2003.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 03–2511 Filed 2–3–03; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[OECA–2002–0018; FRL–7447–2]

Agency Information Collection Activities; Submission of EPA ICR No. 0658.08, OMB Number 2060–0004 to OMB for Review and Approval; Comment Request

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: NSPS for Pressure Sensitive Tape and Label Surface Coating (40 CFR part 60, subpart RR), (OMB Control No. 2060–0004, EPA ICR No. 0658.08). The ICR, which is abstracted below, describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before March 6, 2003.

ADDRESSES: Follow the detailed instructions in the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Leonard Lazarus, Compliance Assessment and Media Programs Division, Office of Enforcement and Compliance, Mailcode 2223A, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 564–6369; fax number: (202) 564–0050; e-mail address: *lazarus.leonard@epa.gov*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On June 20, 2002 (67 FR 41981), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments.

EPA has established a public docket for this ICR under Docket ID No. OECA–2002–0018, which is available for public viewing at the Enforcement and Compliance Docket and Information Center (ECDIC) in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the ECDIC is (202) 566–1514. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket*. Use EDOCKET to submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA and OMB within 30 days of this notice, and according to the following detailed instructions: (1) Submit your comments to EPA online using EDOCKET (our preferred method), by e-mail to *docket.oeca@epa.gov*, or by mail to: EPA Docket Center, Environmental Protection Agency, Mailcode: 2201T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, and (2) Mail your comments to OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, *see* EPA's **Federal Register** notice describing the electronic docket at 67 FR 38102 (May 31, 2002), or go to *http://www.epa.gov./edocket.*

Title: NSPS for Pressure Sensitive Tape and Label Surface Coating (40 CFR part 60, subpart RR) (OMB Control No. 2060–0004, EPA ICR Number 0658.08). This is a request of an existing approved collection expiring January 31, 2003. Under the OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB.

Abstract: The New Source Performance Standards (NSPS) for Pressure Sensitive Tape and Label Surface Coating, published at 40 CFR part 60, subpart RR were proposed on December 30, 1980, and promulgated on October 18, 1983. These regulations apply to each coating line used in the manufacture of pressure sensitive tape and label materials, and on which construction or reconstruction commenced after December 30, 1980. This information is being collected to assure compliance with 40 CFR part 60, subpart RR. Facilities that input 45 Mg of volatile organic compounds (VOC) or less per 12 month period are not subject to the emission limit established by the subpart. This information is being collected to assure compliance with 40 CFR part 60, subpart RR.

Owners and operators of the affected facilities must make the following one-time-only reports: notification of the date of construction or reconstruction; notification of the anticipated and actual dates of initial startup; notification of any physical change to an existing facility that may increase the regulated pollutant emission rate; notification of initial performance test and the results of the initial performance test. Owners or operators are also required to maintain records of the occurrence and duration of any startup, shutdown or malfunction in the operation of an affected facility, or any period during which the monitoring

system is inoperative. The recordkeeping requirements consist of the occurrence and duration of any start up and malfunctions as described. They include the initial performance test results including information necessary to determine conditions of the performance test; performance test measurements and results including, for affected facilities complying with the standard without the use of add-on controls, a weighted average of the mass of solvent used per mass of coating solids applied; the weighted average mass of VOC per mass of coating solids applied at facilities controlled by a solvent recovery device; the weighted average mass of VOC per mass of coating solids applied being used at a facility controlled by a solvent destruction device; and the results of the monthly performance and records of operating parameters.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15, and are identified on the form and/or instrument, if applicable.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 35 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Owners/Operators of coating lines used in the manufacture of pressure sensitive tape and label materials.

Estimated Number of Respondents: 37.

Frequency of Response: Semiannual for all, every other year for excess emission report.

Estimated Total Annual Hour Burden: 3,179 hours.

Estimated Total Annual Labor Cost: $71,800.

Changes in the Estimates: There is a decrease of 35,925 hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens. This decrease is the result of a search of the Agency's AFS database which identified a significantly lower number of respondents than was used in previous ICR burden estimates.

Dated: January 28, 2003.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 03–2537 Filed 2–3–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OECA–2002–0023; FRL–7447–3]

Agency Information Collection Activities; Submission of EPA ICR No. 0997.07 (OMB No. 2060–0079) to OMB for Review and Approval; Comment Request

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: NSPS for Petroleum Dry Cleaners (40 CFR part 60, subpart JJJ) (OMB Control No. 2060–0079, EPA ICR No. 0997.07) The ICR, which is abstracted below, describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before March 6, 2003.

ADDRESSES: Follow the detailed instructions in the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Joyce Chandler, Compliance Assistance and Sector Programs Divisions, Mailcode 2224A, Environmental Protection Agency, 1200 Pennsylvania Ave., NW, Washington, DC 20460; telephone number: 202–564–7073; fax number: 202–564–0009; e-mail address: *chandler.joyce@epa.gov.*

SUPPLEMENTARY INFORMATION:

EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On June 20, 2002 (67 FR 41981), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments.

EPA has established a public docket for this ICR under Docket ID No. OECA–2002–0023, which is available for public viewing at the Enforcement and Compliance Docket and Information Center (ECDIC) in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW, Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Enforcement and Compliance Docket and Information Center is (202) 566–1514. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket.* Use EDOCKET to submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA and OMB within 30 days of this notice, and according to the following detailed instructions: (1) Submit your comments to EPA online using EDOCKET (our preferred method), by e-mail to *docket.oeca@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Mailcode: 2201T, 1200 Pennsylvania Ave., NW, Washington, DC 20460, and (2) Mail your comments to OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW, Washington, DC 20503.

EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, see EPA's **Federal Register** notice describing the electronic docket at 67 FR 38102 (May

31, 2002), or go to *http://www.epa.gov/edocket.*

Title: NSPS for Petroleum Dry Cleaners (40 CFR part 60, subpart JJJ) (OMB Control No. 2060–0079, EPA ICR Number 0997.07). This is a request to renew an existing approved collection that is scheduled to expire on January 31, 2003. Under the OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB.

Abstract: The New Source Performance Standards (NSPS) for the Petroleum Dry Cleaning industry (subpart JJJ) were proposed on December 14, 1982 and promulgated on September 21, 1984. These standards apply to the owners or operators of petroleum dry cleaning facilities constructed, reconstructed, or modified after December 14, 1982 whose total manufacturer's rated dryer capacity is equal to or greater than 38 kilograms (84 pounds). This information is being collected to assure compliance with 40 CFR part 60, subpart JJJ.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15, and are identified on the form and/or instrument, if applicable.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 16 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Petroleum Dry Cleaners.

Estimated Number of Respondents: 18.

Frequency of Response: initial.

Estimated Total Annual Hour Burden: 1,483 hours.

Estimated Total Annual Cost: $84,720, includes $0 annualized capital or O&M costs.

Changes in the Estimates: There is no change of 1,483 hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens.

Dated: January 28, 2003.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 03–2538 Filed 2–3–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OECA–2002–0020; FRL–7447–4]

Agency Information Collection Activities; Submission of EPA ICR No. 0659.09 (OMB No. 2060–0108) to OMB for Review and Approval; Comment Request

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: NSPS for Surface Coating of Large Appliances (40 CFR part 60, subpart SS), (OMB Control No. 2060–0108, EPA ICR No. 0659.09) The ICR, which is abstracted below, describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before March 6, 2003.

ADDRESSES: Follow the detailed instructions in the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Leonard Lazarus, Compliance Assessment and Media Programs Division, Office of Enforcement and Compliance, Milked 2223A, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 564–6369; fax number: (202) 564–0050; e-mail address: *lazarus.leonard@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On June 20, 2002 (67 FR 41981), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments.

EPA has established a public docket for this ICR under Docket ID No. OECA–2002–0020, which is available for public viewing at the Enforcement and Compliance Docket and Information Center (ECDIC) in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the NSPS for Surface Coating of Large Appliance (40 CFR part 60, subpart SS) Docket is (202) 566–1514). An electronic version of the public docket is available through EPA Dockets (DOCKET) at *http://www.epa.gov/edocket.* Use DOCKET to submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA and OMB within 30 days of this notice, and according to the following detailed instructions: (1) Submit your comments to EPA online using DOCKET (our preferred method), by e-mail to *docket.oeca@epa.gov*, or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code; 2201T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, and (2) Mail your comments to OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *Attention:* Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in DOCKET as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in DOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in DOCKET. For further information about the electronic docket, see EPA's **Federal**

Register notice describing the electronic docket at 67 FR 38102 (May 31, 2002), or go to *http://www.epa.gov./edocket.*

Title: NSPS for Surface Coating of Large Appliances (40 CFR part 60, subpart SS) (OMB Control No. 2060–0108, EPA ICR Number 0659.09). This is a request to renew an existing approved collection that is scheduled to expire on January 31, 2003. Under the OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB.

Abstract: The New Source Performance Standards (NSPS) for Surface Coating of Large Appliances, published at 40 CFR part 60, subpart SS were proposed on December 24, 1980 and promulgated on October 27, 1982. These standards apply to each large appliance surface coating operation in which organic coatings are applied that commenced construction, modification or reconstruction after December 24, 1980. Approximately 72 sources are currently subject to the standards, and it is estimated that zero sources per year will become subject to the standard while an equal number will go off-line during this time period. Volatile Organic Compounds (VOCs) are the pollutants regulated under this subpart, and this information is being collected to assure compliance with 40 CFR part 60, subpart SS.

Owners or operators of the affected facilities described must make initial reports when a source becomes subject; conduct and report on a performance test; demonstrate and report on continuous monitor performance; and maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility. Semiannual reports of excess emissions are required. These notifications, reports, and records are essential in determining compliance; and are required, in general, of all sources subject to NSPS.

Any owner or operator subject to the provisions of this part shall maintain a file of these measurements, and retain the file for at least 2 years following the date of such measurements, maintenance reports, and records. The estimated total cost of this ICR will be $1,093,710 over the next three years (including labor hours, operating & maintenance costs, and start up costs; $365,570 per year x 3 years). All reports are sent to the delegated State or Local authority. In the event that there is no such delegated authority, the reports are sent directly to the EPA Regional Office.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15, and are identified on the form and/or instrument, if applicable.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 6 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Owners/Operators of facilities manufacturing large appliances in which organic surface coatings are applied.

Estimated Number of Respondents: 72.

Frequency of Response: Semiannual/ quarterly, every other year for excess emission report.

Estimated Total Annual Hour Burden: 6,288 hours.

Estimated Total Annual Cost: $365,570, which includes $5,400 annualized capital or O&M costs.

Changes in the Estimates: There is a decrease of 23,276 hours and $613,000 in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens. This decrease is caused by several factors. The wage estimates were revised based on the current prevailing rates for both the Agency and the sources. This included the appropriate calculation of wage overhead in both categories. The number respondents were based on date collected for these same source categories for the development of a Maximum Achievable Control Technology (MACT) emission standard for hazardous air pollutants. This date showed a much smaller universe of sources and also revealed that a very small percentage of these respondents use thermal control devises (less than 5 percent). The total number of sources covered by this ICR has decreased greatly since the last renewal was prepared and no growth is occurring in the industry. These factors significantly reduced the burden on the facilities and the Agency.

Dated: January 28, 2003.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 03–2539 Filed 2–4–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[CO–001–0073; FRL–7447–9]

Adequacy Status of the Fort Collins, Colorado Carbon Monoxide Maintenance Plan for Transportation Conformity Purposes

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of adequacy.

SUMMARY: In this document, EPA is notifying the public that we have found that the motor vehicle emissions budgets in the Fort Collins, Colorado carbon monoxide (CO) maintenance plan, that was submitted by the Governor on August 9, 2002, are adequate for conformity purposes. On March 2, 1999, the DC Circuit Court ruled that budgets in submitted State Implementation Plans (SIPs) cannot be used for conformity determinations until EPA has affirmatively found them adequate. As a result of our finding, the North Front Range Transportation & Air Quality Planning Council, the City of Fort Collins, the Colorado Department of Transportation and the U.S. Department of Transportation are required to use the motor vehicle emissions budgets from this submitted maintenance plan for future conformity determinations.

DATES: This finding is effective February 19, 2003.

FOR FURTHER INFORMATION CONTACT: Kerri Fiedler, Air & Radiation Program (8P–AR), United States Environmental Protection Agency, Region 8, 999 18th Street, Suite 300, Denver, Colorado 80202–2466, (303) 312–6493. The letter documenting our finding is available at EPA's conformity Web site: *http://www.epa.gov/otaq/transp/conform/adequacy.htm.*

SUPPLEMENTARY INFORMATION: Throughout this document wherever "we", "us", or "our" are used we mean EPA.

This action is simply an announcement of a finding that we have already made. We sent a letter to the Colorado Air Pollution Control Division

on January 15, 2003, stating that the motor vehicle emissions budgets in the submitted Fort Collins CO maintenance plan are adequate. This finding has also been announced on our conformity Web site at *http://www.epa.gov/otaq/transp/conform/adequacy.htm*.

Transportation conformity is required by section 176(c) of the Clean Air Act. Our conformity rule requires that transportation plans, programs, and projects conform to SIPs and establishes the criteria and procedures for determining whether or not they do. Conformity to a SIP means that transportation activities will not produce new air quality violations, worsen existing violations, or delay timely attainment of the national ambient air quality standards.

The criteria by which we determine whether a SIP's motor vehicle emission budgets are adequate for conformity purposes are outlined in 40 CFR 93.118(e)(4). Please note that an adequacy review is separate from our completeness review, and it also should not be used to prejudge our ultimate approval of the SIP. Even if we find a budget adequate, the SIP could later be disapproved, and vice versa.

We've described our process for determining the adequacy of submitted SIP budgets in a memo entitled, "Conformity Guidance on Implementation of March 2, 1999 Conformity Court Decision," dated May 14, 1999. We followed this guidance in making our adequacy determination.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: January 23, 2003.

Robert E. Roberts,

Regional Administrator, Region VIII.

[FR Doc. 03–2535 Filed 2–3–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7447–1]

Notice of Availability for Draft Guidance on the Technical Support Document (TSD) for Title V Permitting of Printing Facilities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Extension of comment period for notice of availability.

SUMMARY: We are making available for an additional 30 days of public review a draft of our pending guidance on the design of air permits for the printing sector. The public comment period will now be extended until March 6, 2003. This extension is in response to multiple requests for additional time to review the draft TSD.

A draft of this guidance is available for public review for downloading off the internet (see **ADDRESSES**). As before, we do not intend to respond to individual comments, but rather to consider comments and information from the public in the preparation of a final guidance document.

DATES: The review period for this document will close on March 6, 2003. Any comments on the draft guidance must be submitted to EPA by that date.

ADDRESSES: The draft guidance can be accessed at *http://www.epa.gov/ttn/oarpg/*. Comments should be sent to Michael Trutna, Information Transfer and Program Integration Division (C304–03), U.S. EPA, Research Triangle Park, NC 27711, (919) 541–5345, fax (919) 541–4028, or *trutna.mike@epa.gov*.

FOR FURTHER INFORMATION CONTACT: Michael Trutna at the above address or Gary Rust, Information Transfer and Program Integration Division (C304–04), U.S. EPA, Research Triangle Park, NC 27711, (919) 541–0358, fax (919) 541–4028, or *rust.gary@epa.gov*. For further information on monitoring or testing issues, please contact Barrett Parker at (919) 541–5635 or *parker.barrett@epa.gov*.

Dated: January 15, 2003.

William Harnett,

Director, Information Transfer and , Program Integration Division.

[FR Doc. 03–2536 Filed 2–3–03; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than February 19, 2003.

A. Federal Reserve Bank of Atlanta (Sue Costello, Vice President) 1000 Peachtree Street, NE., Atlanta, Georgia 30303:

1. Jeanie Kicklighter Beck, Glennville, Georgia; to acquire additional voting shares of First Citizens Bankshares, Inc., Glennville, Georgia, and thereby indirectly acquire additional voting shares of First Citizens Bank, Glennville, Georgia.

Board of Governors of the Federal Reserve System, January 23, 2003.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 03–2469 Filed 2–3–03; 8:45 am]

BILLING CODE 6210–01–M

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et. seq.*) (BHC Act), Regulation Y (12 CFR part 225) and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center Web site at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 3, 2003.

A. Federal Reserve Bank of Cleveland (Stephen J. Ong, Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101–2566:

1. Wayne Bancorp, Inc., Wooster, Ohio; to merge with Banc Services Corp., Orrville, Ohio, and thereby indirectly acquire voting shares of Savings Bank & Trust Company, Orrville, Ohio.

In addition Applicant has applied to acquire Banc Services Corp. Access Financial Corporation, Massillon, Ohio, and thereby engage in extending credit and servicing loans pursuant to sections 225.25(b)(1) and (2) of Regulation Y.

B. Federal Reserve Bank of Atlanta (Sue Costello, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30303:

1. Morton Bancorp, Inc., Morton, Mississippi; to become a bank holding company by acquiring 100 percent of the voting shares of Bank of Morton, Morton, Mississippi.

C. Federal Reserve Bank of Chicago (Phillip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. Standard Bancshares, Inc., Hickory Hills, Illinois; to acquire 100 percent of the voting shares of East Side Bancorporation, Inc., Chicago, Illinois, and thereby indirectly acquire BankChicago, Chicago, Illinois.

D. Federal Reserve Bank of San Francisco (Maria Villanueva, Consumer Regulation Group) 101 Market Street, San Francisco, California 94105–1579:

1. The Wakashio Bank, Ltd.; to become a bank holding company by merging with Sumitomo Mitsui Banking Corporation, both of Tokyo, Japan, and thereby indirectly acquire 100 percent of the voting shares of Manufacturers Bank, Los Angeles, California.

Board of Governors of the Federal Reserve System, January 23, 2003.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 03–2470 Filed 2–3–03; 8:45 am]

BILLING CODE 6210–01–M

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY: Board of Governors of the Federal Reserve System.

TIME AND DATE: 9 a.m., Friday, February 7, 2003.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

FOR FURTHER INFORMATION CONTACT: Michelle A. Smith, Assistant to the Board; 202–452–2955.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at *http://www.federalreserve.gov* for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: January 31, 2003.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 03–2678 Filed 1–31–03; 11:52 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 11 a.m., Monday, February 10, 2003.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

FOR FURTHER INFORMATION CONTACT: Michelle A. Smith, Assistant to the Board; 202–452–2955.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at *http://www.federalreserve.gov* for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: January 31, 2003.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 03–2797 Filed 1–31–03; 3:30 pm]

BILLING CODE 6210–01–P

FEDERAL TRADE COMMISSION

[File No. 022 3249]

Educational Research Center of America, Inc., et al.; Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before February 28, 2003.

ADDRESSES: Comments filed in paper form should be directed to: FTC/Office of the Secretary, Room 159–H, 600 Pennsylvania Avenue, NW., Washington, DC 20580. Comments filed in electronic form should be directed to: *consentagreement@ftc.gov*, as prescribed below.

FOR FURTHER INFORMATION CONTACT: Laura Mazzarella or Jessica Rich, FTC, Bureau of Consumer Protection, 600 Pennsylvania Avenue, NW., Washington, DC 20580, (202) 326–3224.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46(f), and Section 2.34 of the Commission's Rules of Practice, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for January 29, 2003), on the World Wide Web, at "*http://www.ftc.gov/os/2003/01/index.htm.*" A paper copy can be obtained from the FTC Public Reference Room, Room 130–H, 600 Pennsylvania Avenue, NW., Washington, DC 20580, either in person or by calling (202) 326–2222.

Public comments are invited, and may be filed with the Commission in either paper or electronic form. Comments filed in paper form should be directed

to: FTC/Office of the Secretary, Room 159–H, 600 Pennsylvania Avenue, NW., Washington, DC 20580. If a comment contains nonpublic information, it must be filed in paper form, and the first page of the document must be clearly labeled "confidential." Comments that do not contain any nonpublic information may instead be filed in electronic form (in ASCII format, WordPerfect, or Microsoft Word) as part of or as an attachment to email messages directed to the following e-mail box: *consentagreement@ftc.gov*. Such comments will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice, 16 CFR 4.9(b)(6)(ii)).

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted an agreement, subject to final approval, to a proposed consent order from Educational Research Center of America, Inc., ("ERCA") and its officer Marian Sanjana ("Sanjana"), and Student Marketing Group, Inc., ("SMG") and its officer Jan Stumacher ("Stumacher"). ERCA is a student survey company that provides student data, through SMG, to colleges and universities and other entities for recruitment and marketing purposes. SMG is a commercial list broker that supplies names for youth marketing campaigns.

The proposed consent order has been placed on the public record for thirty (30) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement and take other appropriate action or make final the agreement's proposed order.

This matter concerns representations about how detailed, personal information collected from middle, junior high, and high school students through a survey would be used. The proposed respondents distribute a survey to middle, junior high, and high school teachers and guidance counselors with the request that they have their students complete the survey. The survey collects from students personal information including name, address, age, race, religious affiliation, and academic, career, and athletic interests. ERCA compiles personal information collected from high school students into a survey report that it provides to colleges and universities. It also provides personal information collected through the survey to SMG. SMG provides the survey information to colleges and universities, and also creates lists of students that it provides to commercial entities for use in marketing. Such entities include, but are not limited to, banks, insurance companies, consumer goods and services providers, and list brokers.

The Commission's complaint charges that the proposed respondents falsely represented that information collected from students through the survey is shared only with colleges, universities, and other entities providing education-related services when, in fact, such information is also shared with commercial entities for marketing purposes. The complaint also alleges that the proposed respondents falsely represented that information collected from middle and junior high school students through the survey is compiled into survey reports when, in fact, little if any such information is compiled into survey reports; instead it is primarily shared with commercial entities for marketing purposes.

Part I of the consent order prohibits the proposed respondents, in connection with the collection of personally identifiable information from an individual, from misrepresenting how such information is collected or will be used or disclosed. Part II of the order prohibits the proposed respondents, in connection with the collection of personally identifiable information from students for any "noneducational-related marketing purpose," from using or disclosing such information unless they disclose (1) the existence and nature of such noneducational-related marketing purpose, (2) the types or categories of any entities to which the information will be disclosed, and (3) that the information used or disclosed is personally identifiable.

The proposed order defines "noneducational-related marketing purpose" to mean for the purpose of marketing products or services, or selling personally identifiable information from or about an individual for use in marketing products or services to individuals. The definition specifically excludes the use of personal information in connection with certain activities determined to be "educational products or services" under the No Child Left Behind Act of 2001, namely (a) college or postsecondary education recruitment, or military recruitment; (b) book clubs, magazines, and programs providing access to low-cost literary products; (c) curriculum and instructional materials used by elementary schools and secondary schools; (d) student recognition programs; or (e) any other activity expressly determined under the No Child Left Behind Act or its implementing regulations to be an "educational product or service." In addition, the proposed order provides that when determining whether any specific activity is an "educational product or service," any official, written, publicly-disseminated interpretation by the Department of Education regarding such activity shall be controlling.

Part III of the order prohibits the proposed respondents from using or disclosing for any noneducational-related marketing purpose any personally identifiable information that was collected through surveys distributed prior to July 30, 2002. In addition to the educational purposes excepted from the definition of "noneducational-related marketing purpose," Part III also permits the proposed respondents to use such information for the purpose of (a) job recruitment, (b) the provision of student loans, or (c) the provision of standardized test preparation services.

To address respondents' collection of information from younger children, Part IV of the order requires the proposed respondents to delete all personally identifiable information collected through surveys from any student who was under the age of thirteen at the time of collection.

The remainder of the proposed order contains standard requirements that the proposed respondents maintain copies of privacy statements and other documents relating to the collection, use or disclosure of personally identifiable information; distribute copies of the order to certain company officials and employees; notify the Commission of any change in the corporation that may affect compliance obligations under the order; and file one or more reports detailing their compliance with the order. Part X of the proposed order is a provision whereby the order, absent certain circumstances, terminates twenty years from the date of issuance.

The purpose of this analysis is to facilitate public comment on the proposed order, and is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

This proposed order, if issued in final form, will resolve the claims alleged in the complaint against the named respondents. It is not the Commission's intent that acceptance of this consent agreement and issuance of a final decision and order will release any claims against any unnamed persons or

entities associated with the conduct described in the complaint.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 03–2531 Filed 2–3–03; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration on Aging

Agency Information Collection Activities; Proposed Collection; Comment Request; Extension of the Expiration Date of the Title VI Program Performance Report

AGENCY: Administration on Aging, HHS.

ACTION: Notice.

SUMMARY: The Administration on Aging (AoA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the information collection requirements relating to the Title VI Program Performance Report.

DATES: Submit written or electronic comments on the collection of information by April 7, 2003.

ADDRESSES: Submit electronic comments on the collection of information to: *Yvonne.Jackson@aoa.gov.* Submit written comments on the collection of information to Administration on Aging, Washington, DC 20201.

FOR FURTHER INFORMATION CONTACT: Yvonne Jackson; Director; Office for American Indian, Alaskan Native and Native Hawaiian Programs; Administration on Aging, Washington, DC; (202) 357–3501; *Yvonne.Jackson@aoa.gov.*

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency request or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, AoA is publishing notice of the proposed collection of information set forth in this document. With respect to the following collection of information, AoA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of AoA's functions, including whether the information will have practical utility; (2) the accuracy of AoA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques when appropriate, and other forms of information technology.

The purpose is to continue an existing information collection, Title VI Program Performance Report, from Title VI grantees to use in reporting information on programs funded by Title VI as required under section 202(a)(19), section 614(a)(2), and section 614(a)(3) of the Older Americans Act, as amended.

AoA estimates the burden of this collection of information as follows:

Frequency: Semi-Annually.
Respondents: Tribal Organizations.
Estimated Number of Responses: 486.
Estimated Burden Hours: 729.

Dated: January 30, 2003.

Josefina G. Carbonell,

Assistant Secretary for Aging.

[FR Doc. 03–2499 Filed 2–3–03; 8:45 am]

BILLING CODE 4154–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Healthcare Infection Control Practices Advisory Committee: Notice of Charter Renewal

This gives notice under the Federal Advisory Committee Act (Pub. L. 92–463) of October 6, 1972, that the Healthcare Infection Control Practices Advisory Committee, Centers for Disease Control and Prevention, of the Department of Health and Human Services, has been renewed for a 2-year period extending through January 19, 2005.

FOR FURTHER INFORMATION CONTACT: Michele Pearson, M.D., Executive Secretary, Healthcare Infection Control Practices Advisory Committee, Centers for Disease Control and Prevention, of the Department of Health and Human Services, 1600 Clifton Road, NE, M/S E–68, Atlanta, Georgia 30333, telephone 404/6498–1266 or fax 404/498–1244.

The Director, Management and Analysis and Services office has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: January 29, 2003.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 03–2487 Filed 2–3–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Board of Scientific Counselors, National Center for Health Statistics: Notice of Charter Renewal

This gives notice under the Federal Advisory Committee Act (Pub. L. 92–463) of October 6, 1972, that the Board of Scientific Counselors, National Center Health Statistics, Center for Diseases Control and Provention, of the Department of Health and Human Services, has been renewed for a 2-year period through January 19, 2005.

For information, contact Linda Blankenbaker, Executive Secretary, Board of Scientific Counselors, National Center for Health Statistics, Centers for Disease Control and Prevention, of the Department of Health and Human Services, Metro III, Presidential Building, 6525 Belcrest Road, Hyaattsville, Maryland 20782, telephone 301/458–4612 or fax 301/458–4020.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: January 29, 2003.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 03–2494 Filed 2–3–03; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Advisory Committee on Immunization Practices: Conference Call Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following Federal advisory committee conference call meeting.

Name: Advisory Committee on Immunization Practices (ACIP).

Time and Date: 2 p.m.–2:30 p.m., Eastern Time, January 29, 2003.

Place: The conference call will originate at the National Immunization Program (NIP), in Atlanta, Georgia. Please see "Supplementary Information" for details on accessing the conference call.

Status: Open to the public, limited only by the availability of telephone ports.

Purpose: The Committee is charged with advising the Director, CDC, on the appropriate uses of immunizing agents. In addition, under 42 U.S.C. 1396s, the Committee is mandated to establish and periodically review and, as appropriate, revise the list of vaccines for administration to vaccine-eligible children through the Vaccines for Children (VFC) program, along with schedules regarding the appropriate periodicity, dosage, and contraindications applicable to the vaccines.

Matters to be Discussed: The Advisory Committee on Immunization Practices will convene by conference call to discuss the number of needle pricks to use when administering the smallpox vaccine.

SUPPLEMENTARY INFORMATION: This conference call is scheduled to begin at 2 p.m., Eastern Standard Time. To participate in the conference call, please dial 1–800–497–1934 and reference conference code 2978861. You will then be automatically connected to the call.

As provided under 41 CFR 102–3.150(b), the public health urgency of this agency business requires that the meeting be held prior to the first available date for publication of this notice in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Demetria Gardner, Epidemiology and Surveillance Division, National Immunization Program, CDC, 1600 Clifton Road, NE, (E–61), Atlanta, Georgia 30333, telephone 404/639–8096, fax 404/639–8616.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both the CDC and ATSDR.

Dated: January 29, 2003.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 03–2491 Filed 2–3–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 02N–0355]

Agency Information Collection Activities; Announcement of OMB Approval; Medical Device Recall Authority

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled "Medical Device Recall Authority" has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Peggy Robbins, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of November 13, 2002 (67 FR 68876), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0432. The approval expires on January 31, 2006. A copy of the supporting statement for this information collection is available on the Internet at *http://www.fda.gov/ohrms/dockets.*

Dated: January 28, 2003.

Margaret M. Dotzel,

Assistant Commissioner for Policy.

[FR Doc. 03–2600 Filed 2–3–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 02N–0534]

Medical Device User Fee and Modernization Act of 2002; Establishment of a Public Docket

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is establishing a public docket to obtain input on implementation of the Medical Device User Fee and Modernization Act of 2002 (MDUFMA). FDA is establishing this docket in order to provide an opportunity for all interested persons to provide information and share views on the implementation of MDUFMA.

DATES: Submit written or electronic comments at any time.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Comments should be identified with the docket number found in brackets in the heading of this document. Submit electronic comments to *http://www.fda.gov/dockets/ecomments.*

FOR FURTHER INFORMATION CONTACT: Joseph M. Sheehan, Center for Devices and Radiological Health (HFZ–215), Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850, 301–827–2974.

SUPPLEMENTARY INFORMATION: MDUFMA (Public Law 107–250) amends the Federal Food, Drug, and Cosmetic Act to provide FDA important new responsibilities, resources, and challenges. MDUFMA was signed into law October 26, 2002. MDUFMA has three particularly significant provisions:

• User fees for premarket reviews. Premarket approval applications (PMAs), product development protocols (PDPs), biologics license application (BLAs), premarket reports, certain supplements, and 510(k)s are now subject to fees. The revenues from these fees, and from additional appropriations for infrastructure, will allow FDA to pursue a set of ambitious performance goals that will provide patients earlier

access to safe and effective technology, and will provide more interactive and rapid review to the medical device industry. A small business (sales and receipts of $30 million or less) may pay a reduced fee.

• Establishment inspections may be conducted by accredited persons (third-parties) under carefully prescribed conditions.

• New regulatory requirements for reprocessed single-use devices, including provisions establishing a new category of premarket submission, the premarket report, and provisions requiring the submission of additional data on devices now being reprocessed.

MDUFMA makes several other significant changes that are less complex or have a narrower scope than the major changes discussed previously. These include the following:

• The review of combination products (products that combine elements of devices, drugs, or biologics) will be coordinated by a new office in the Office of the Commissioner of Food and Drugs.

• Electronic labeling is authorized for prescription devices intended to be used in health care facilities.

• FDA may require electronic registration of device establishments, when feasible.

• The law now explicitly provides for modular review of PMAs.

• New provisions concerning devices intended for pediatric use, including provisions for pediatric experts on advisory panels and the development of guidance for clinical trials involving pediatric populations.

• The manufacturer of a device must be identified on the device itself, with certain exceptions.

A letter from the Secretary of Health and Human Services that accompanies the user fee legislation sets forth the performance goals the agency has pledged to meet over the next 5 years. These goals represent the improvements FDA's device review program can achieve, monitor, and meet with industry cooperation. To help meet these performance goals, FDA will need to develop clear definitions of terms such as "panel-track supplement," "180-day supplement," and "real-time supplement." The agency will also need to develop a policy to define when bundling multiple devices, device modifications, or indications for use into a single submission is appropriate versus when separate applications should be submitted.

FDA invites interested persons to submit comments on any or all of the previous issues, as well as other provisions of the new law. (A copy of the statute is available on the agency's MDUFMA Web site at *http://www.fda.gov/cdrh/mdufma/index.html*). FDA hopes this docket will become an important tool for receiving information from interested parties and for public availability of that information. In the future, FDA expects to use its MDUFMA Web site to request input to the docket from stakeholders on a variety of specific questions and issues related to MDUFMA.

At this time, the agency is particularly interested in receiving comments from stakeholders about several provisions that must be immediately implemented to track and monitor the performance goals FDA has pledged to meet over the next few years. Specifically, the agency is seeking input on the following: (1) Defining the various types of PMA supplements; (2) implementing the modular review program for PMAs; (3) establishing a bundling policy to determine when it is appropriate to bundle multiple devices, device modifications, or indications for use into a single submission; and (4) gathering information for the pediatric device guidance document.

On a related matter, MDUFMA also provides for the education and training of stakeholders to assist the agency in developing training programs. FDA invites comments on: (1) Possible subject matter or areas to be included in training programs for FDA employees or industry and (2) subject matter or courses that industry would be willing to provide to FDA employees. Past examples would include sterilization.

FDA will consider all information and views that it receives during the implementation process. FDA will continue to work with interested parties through a variety of means to obtain as much information as possible to assist in the implementation process.

Interested persons may submit to the Dockets Management Branch (see **ADDRESSES**) written or electronic comments. Submit a single copy of electronic comments to *http://www.fda.gov/dockets/ecomments* or two copies of any written comments, except that individuals may submit one hard copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: January 29, 2003.

Margaret M. Dotzel,

Assistant Commissioner for Policy.

[FR Doc. 03–2604 Filed 2–3–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Food and Drug Administration/Small Business Town Meeting for Pharmaceutical Industry

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public town meeting.

SUMMARY: The Food and Drug Administration (FDA) (Center for Drug Evaluation and Research and the Central Region and Philadelphia District) is announcing a town meeting for small businesses on FDA requirements for approval and marketing of drug products. Topics for discussion include: Over-the-counter (OTC) monographs, labeling, registration, listing, FDA meetings process, imports and exports, financial incentives, and navigating the FDA Web site. This half day meeting targets small pharmaceutical concerns.

Date and Time: The town meeting will be held on Wednesday, March 5, 2003, from 12 noon to 4 p.m.

Location: The town meeting will be held at the William J. Green Federal Bldg., conference rooms A and B, 2d floor, Sixth and Arch St., Philadelphia, PA.

Contact: Marie Falcone, Industry and Small Business Representative, Food and Drug Administration, Central Region, room 900 U.S. Customhouse, 200 Chestnut St., Philadelphia, PA 19106, 215–597–2120, ext. 4003, FAX 215–597–5798, or e-mail: *mfalcone@ora.fda.gov*.

Registration: To access registration form, see *http://www.fda.gov/cder/meeting/pharmbus2003/default.html*. Send registration information (including name, title, firm name, address, telephone, and fax number) to Marie Falcone by February 14, 2003.

There is no registration fee, however, space is limited, therefore interested parties are encouraged to register early. Registration will close after the meeting slots are filled. Those accepted into the course will receive written confirmation. Registration at the site will be done on a space available basis on the day of the town meeting, beginning at 11 a.m. Please arrive early to ensure prompt registration. Bring photo identification for security check at building entrance. If you need special accommodations due to a disability, please contact Marie Falcone at least 7 days in advance of the workshop.

SUPPLEMENTARY INFORMATION: The "FDA Small Business Town Meeting for Pharmaceutical Industry" town meeting

helps fulfill the Department of Health and Human Services' and FDA's important mission to protect the public health by educating regulated industry on FDA requirements to produce safe and effective drug products. FDA has made assurance of safe and effective drug products a high priority.

The workshop helps to implement the objectives of section 406 of the FDA Modernization Act (21 U.S.C. 393) and the FDA Plan for Statutory Compliance, which includes working more closely with stakeholders and ensuring access to needed scientific and technical expertise. The workshop also furthers the goals of the Small Business Regulatory Enforcement Fairness Act (Public Law 104–121) by providing outreach activities by Government agencies directed to small businesses.

Dated: January 28, 2003.

Margaret M. Dotzel,

Assistant Commissioner for Policy.

[FR Doc. 03–2603 Filed 2–3–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 00D–1540]

Withdrawal of Draft Guidance for Industry on Electronic Records; Electronic Signatures, Electronic Copies of Electronic Records

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; withdrawal.

SUMMARY: The Food and Drug Administration (FDA) is announcing the withdrawal of a draft guidance entitled "Guidance for Industry, 21 CFR Part 11; Electronic Records; Electronic Signatures, Electronic Copies of Electronic Records."

DATES: February 4, 2003.

FOR FURTHER INFORMATION CONTACT: Randall L. Woods, Center for Drug Evaluation and Research (HFD–324), Food and Drug Administration, Metro Park North I, 7520 Standish Pl., rm. 265, Rockville, MD 20855, 301–827–0065.

SUPPLEMENTARY INFORMATION:

I. Background

On August 21, 2002, FDA announced that it was undertaking a new initiative to enhance FDA's current good manufacturing practice program (the CGMP initiative). This new initiative will focus FDA's resources and regulatory attention on those aspects of manufacturing that pose the greatest risk, ensure that FDA's work does not impede innovation, and enhance the consistency of FDA's regulatory approach among the various components. More information on FDA's announcement of this new initiative can be found on FDA's Web site at *www.fda.gov/bbs/topics/NEWS/2002/NEW00829.html*, or a copy of the press release (Ref. 1) may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Please reference the docket number found in brackets in the heading of this document.

Under the new initiative, primary responsibility for implementing part 11 (21 CFR Part 11); Electronic Records; Electronic Signatures has shifted to the Center for Drug Evaluation and Research, with continued involvement from other Centers and the Office of Regulatory Affairs.

On November 12, 2002 (67 FR 68674), the agency issued a draft guidance for industry entitled "Guidance for Industry, 21 CFR Part 11; Electronic Records; Electronic Signatures, Electronic Copies of Electronic Records." The agency wishes to limit the time spent by industry reviewing and commenting on the guidance, which may no longer represent FDA's approach under the CGMP initiative. The agency may decide to reissue the draft guidance once it has reviewed it under the CGMP initiative.

II. Reference

The following reference is on display at the Dockets Management Branch (see section I of this document) and may be seen by interested parties between 9 a.m. and 4 p.m., Monday through Friday.

1. U.S. Food and Drug Administration press release, "FDA Unveils New Initiative To Enhance Pharmaceutical Good Manufacturing Practices," August 21, 2002.

Dated: January 28, 2003.

Margaret M. Dotzel,

Assistant Commissioner for Policy.

[FR Doc. 03–2602 Filed 2–3–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 03D–0023]

Guidance for Industry on Prussian Blue for Treatment of Internal Contamination With Thallium or Radioactive Cesium; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that we have concluded that prussian blue, when produced under conditions specified in approved new drug applications (NDAs), can be found to be safe and effective for the treatment of internal contamination with radioactive thallium, nonradioactive thallium, or radioactive cesium. We encourage the submission of NDAs for prussian blue drug products. We are also announcing the availability of a guidance for industry entitled "Prussian Blue Drug Products—Submitting a New Drug Application." This guidance is intended to assist manufacturers who plan to submit NDAs for prussian blue.

DATES: Submit written or electronic comments on agency guidances at any time.

ADDRESSES: Submit NDAs to the Food and Drug Administration, Center for Drug Evaluation and Research, Central Document Room, 12229 Wilkins Ave., Rockville, MD 20852. Submit requests for copies of draft labeling to the Division of Medical Imaging and Radiopharmaceutical Drug Products, (HFD–160), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–7510. Copies of the reports referred to in this document will be on display at the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit written requests for single copies of the guidance to the Division of Drug Information (HFD–240), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Send one self-addressed adhesive label to assist that office in processing your requests. Submit written comments on the guidance to the Dockets Management Branch (address provided in third sentence of this paragraph). Submit electronic comments to http://www.fda.gov/dockets/ecomments. See

the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

FOR FURTHER INFORMATION CONTACT: Kyong Kang, Center for Drug Evaluation and Research (HFD–160), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–7510.

SUPPLEMENTARY INFORMATION:

I. Background

A. Cesium

Cesium-137, a radioactive isotope of cesium, was discovered in 1941 by Glenn T. Seaborg and Margaret Melhase. Cesium-137 is a product of fusion and is found in the fallout from the detonation of nuclear weapons and the waste from nuclear power plants. Cesium-137 is one of the most common radioisotopes used in industry. It is used in various measuring devices, such as moisture-density gauges. Cesium-137 is also widely used as a source of gamma radiation for treatment of various forms of cancer. Cesium-137 has a half-life of 30.07 years.

Contamination with cesium-137 can cause serious illness or death, depending upon the dose, and has been associated with the development of cancer long after exposure. In addition to concerns about exposure to cesium-137 in industrial and medical environments, cesium-137 contamination is of particular concern because it has been mentioned as a potential component of a radiological dispersal device (RDD), commonly called a "dirty bomb." An RDD is a conventional explosive or bomb containing radioactive material. The conventional bomb is used as a means to spread radioactive material, such as cesium-137. An RDD is not a nuclear bomb and does not involve a nuclear explosion.

B. Thallium

Thallium occurs naturally in several minerals and ores. It was discovered independently by both William Crookes and Claude Auguste Lamy in the early 1860s. Thallium is very toxic, and thallium sulfate has been used as a rat and ant poison in the past. Other thallium compounds are used in the manufacture of semiconductors, photocells, optical glass, and other items. Thallium-201, a radioactive isotope of thallium, is widely used in very small doses as an approved radioimaging drug. Thallium-201 has a half-life of 72.912 hours.

Acute exposure to high dose radioactive or nonradioactive thallium is generally characterized by severe gastrointestinal symptoms followed by neurological symptoms, which may lead to death. The toxicity resulting from chronic exposure to thallium is characterized by various neurological symptoms. Thallium-201 has also been mentioned as a potential component of a dirty bomb.

There are no approved treatments for internal contamination with thallium or radioactive cesium.

C. Prussian Blue

Prussian blue was first synthesized in 1704 by a Berlin color maker named Diesbach. It has been used as an industrial and artists' pigment ever since. The chemical name for prussian blue is ferric hexacyanoferrate(II).

Since the 1960s, prussian blue has been used investigationally as an orally ingested drug to enhance the excretion of isotopes of cesium and thallium from the body by means of ion exchange. However, there is currently no approved NDA for prussian blue. Prussian blue has a very high affinity for cesium and thallium. Cesium and thallium ions are ordinarily excreted into the intestine, reabsorbed from there into the bile, and then excreted again into the gastrointestinal tract. Orally administered prussian blue traps thallium or cesium in the intestine, interrupts its reabsorption from the gastrointestinal tract, and thereby increases fecal excretion of thallium and cesium. Prussian blue itself is not absorbed across the intestinal wall in significant amounts.

Prussian blue, in 500-milligram (mg) capsules, has been distributed by the Radiation Emergency Assistance Center/Training Site (REAC/TS) under investigational new drug application (IND) number 51,700. REAC/TS is part of the Oak Ridge Associated Universities (ORAU). ORAU operates the Oak Ridge Institute for Science and Education (ORISE) under a contract with the Department of Energy. ORISE owns the IND for prussian blue. The 500-mg capsules used under the IND are manufactured by HEYL Chemisch-pharmazeutische Fabrik GmbH & Co. KG (HEYL). HEYL uses the trade name Radiogardase-Cs for its 500-mg capsules of prussian blue.

II. Safety and Effectiveness of Prussian Blue Drug Products

We have concluded that prussian blue, when produced under conditions specified in approved NDAs, can be found to be safe and effective for the treatment of internal contamination with radioactive thallium, nonradioactive thallium, or radioactive cesium. As described in the following paragraphs, our conclusion is based upon our review of published information.

We encourage the submission of NDAs for prussian blue drug products. If you are interested in submitting an NDA for this product, please contact us. We also recommend that you consult the guidance "Prussian Blue Drug Products—Submitting a New Drug Application," which is being made available with this notice.

A. Basis for Finding of Safety and Effectiveness

We have reviewed the published literature and have determined that 500–mg prussian blue capsules, when produced under conditions specified in an approved NDA, can be found to be safe and effective for the treatment of patients with known or suspected internal contamination with radioactive thallium, nonradioactive thallium, or radioactive cesium. Prussian blue increases the rate of elimination of thallium or radioactive cesium. Administration of prussian blue decreases the risk of death and major morbidity after exposure to radioactive thallium, nonradioactive thallium, or radioactive cesium.

In reaching our determination on the effectiveness of prussian blue, we evaluated published reports of a 1987 incident in Goiânia, Brazil, where approximately 250 people were contaminated with cesium-137 that had been abandoned after use in a cancer clinic (see International Atomic Energy Agency, 1998). Forty-six patients with heavy internal contamination were treated with prussian blue. Data on the whole-body effective half-life of cesium-137 during treatment and after treatment with prussian blue was completed on 33 of the 46 patients. The untreated mean whole-body effective half-life of cesium-137 is 80 days in adults, 62 days in adolescents, and 42 days in children. Prussian blue reduced the mean whole-body effective half-life of cesium-137 by 69 per cent in adults, by 46 per cent in adolescents, and by 43 per cent in children (see International Atomic Energy Agency, 1998). Data from additional literature articles, including a study of 7 human volunteers contaminated with trace doses of cesium-137 and reports on 19 patients contaminated with cesium-137 in other incidents, show a similar reduction in whole-body effective half-life after administration of prussian blue (see Madhus, 1968 and National Council on Radiation Protection and Measurement, 1979).

We also evaluated reports in the literature that describe 33 patients who

were treated with prussian blue for nonradioactive thallium poisoning. Prussian blue treatment reduced the mean serum biologic half-life of thallium from 8 days to 3 days (see Barbier, 1974; De Groot, 1985; Van Kesteren, 1980; and Vrij, 1995).

The primary adverse effects of prussian blue are constipation and nonspecific gastrointestinal distress. These side effects are more troublesome at high doses and respond to treatment with orally administered fiber (see Farina, 1991). Other rare adverse events are discussed in the published literature and in the draft labeling we have prepared.

B. Labeling for Prussian Blue

We have prepared draft labeling for orally administered drug products containing 500-mg prussian blue capsules. You can submit this draft labeling as part of an application for 500-mg prussian blue capsules that relies on our findings of safety and effectiveness. The draft labeling reflects our conclusion on the potential safety and effectiveness of 500-mg prussian blue drug products for the treatment of internal contamination with radioactive thallium, nonradioactive thallium, or radioactive cesium. If you wish to change the labeling to include a different or broader indication, different dosage, or make any other significant changes to the draft labeling, you should provide, as part of your application, additional literature or other studies to support your requested changes. If you submit an application for a prussian blue drug product that is not based on FDA's findings of safety and effectiveness of prussian blue, you may not use the draft labeling because it is based on our review of the published literature. If you submit such an application, your labeling must be based on the safety and effectiveness data contained in your NDA.

The draft labeling for applications based on this finding of safety and effectiveness is available on the Internet at http://www.fda.gov/cder/foi/label/2003/ind51700lbl.pdf. You may also contact the Center for Drug Evaluation and Research's Division of Medical Imaging and Radiopharmaceutical Drug Products for a copy of the draft labeling (see **ADDRESSES**).

III. Conclusions

We have determined that 500-mg prussian blue capsules can be safe and effective for the treatment of patients with known or suspected internal contamination with radioactive thallium, nonradioactive thallium, or radioactive cesium. We encourage the submission of NDAs for prussian blue drug products. The requirement under 21 U.S.C. 355(b)(1) for full reports of investigations to support these NDAs may be met by citing the published literature we relied on in preparing this notice. A list of the published literature and reprints of the reports will be available for public inspection in the Dockets Management Branch (see **ADDRESSES**). It is unnecessary to submit copies and reprints of the reports from the listed published literature. We invite applicants to submit any other pertinent studies and literature of which they are aware.

IV. Availability of a Guidance

A. Notice of Availability

In this notice, we are also announcing the availability of a guidance for industry entitled, "Prussian Blue Drug Products—Submitting a New Drug Application." The guidance is intended to assist manufacturers who plan to submit NDAs for prussian blue.

This guidance is being issued as a level 1 guidance consistent with FDA's good guidance practices regulation (21 CFR 10.115). It is being implemented immediately without prior public comment because the agency believes it is in the interest of the public health to communicate this information to the public as quickly as possible. However, the agency welcomes comments on the guidance and, if comments are submitted, the agency will review them and revise the guidance if appropriate. The guidance represents the agency's current thinking on issues associated with the submission of NDAs for prussian blue. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

B. Comments

Interested persons may, at any time, submit written or electronic comments on the guidance to the Dockets Management Branch (see **ADDRESSSES**). Two copies of any mailed comments are to be submitted except that individuals may submit one copy. Comments are to be identified with the docket number found in the brackets in the heading of this document. The document and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

C. Electronic Access

Persons with access to the Internet may obtain the guidance at either http://www.fda.gov/cder/guidance/index.htm or http://www.fda.gov/ohrms/dockets/default.htm.

V. Published Literature on the Safety and Effectiveness of Prussion Blue

The published literature we have relied on in making the determinations regarding prussian blue contained in this notice is listed in this section of this document. Copies of the published literature will be on display in the Dockets Management Branch (see **ADDRESSES**) and can be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Atsmon, J. et al., "Thallium Poisoning in Israel," *American Journal of the Medical Sciences*, 320:327–330, 2000.
2. Barbier, F., "Treatment of Thallium Poisoning," *Lancet*, 7886(II):965, 1974.
3. British Industrial Biological Research Association, "Short-Term Feeding Study of Sodium Ferrocyanide in Rats," *Food and Cosmetics Toxicology*, 7:409–410, 1969.
4. Brandao-Mello, C. E. et al., "Clinical Hematological Aspects of ^{137}Cs: The Goiania Radiation Accident," *Health Physics*, 60:31–39, 1991.
5. Buser, H. J. et al., "The Crystal Structure of Prussian Blue: Fe4[Fe(CN)6]3•xH2o," *Inorganic Chemistry*, 16:2704–2709, 1977.
6. Dresow, B. et al., "In Vivo Binding of Radiocesium by Two Forms of Prussian Blue and by Ammonium Iron Hexacyanoferrate (II)," *Clinical Toxicology*, 31:563–569, 1993.
7. De Groot, G. et al., "An Evaluation of the Efficacy of Charcoal Haemoperfusion in the Treatment of Three Cases of Acute Thallium Poisoning," *Archives of Toxicology*, 57:61–66, 1985.
8. De Groot, G., and A. N. P. Van Heijst, "Toxicokinetic Aspects of Thallium Poisoning. Methods of Treatment by Toxin Elimination," *The Science of the Total Environment*, 71:411–418, 1988.
9. Farina, R., C. E. Brandao-Mello, and A. R. Oliveira, "Medical Aspects of 137Cs Decorporation: The Goiania Radiological Accident," *Health Physics*, 60:63–66, 1991.
10. Giambarresi, L., "Radioprotectants," in *Military Radiobiology*, Orlando, Academic Press, 1987.
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Dated: January 28, 2003.

Margaret M. Dotzel,

Assistant Commissioner for Policy.

[FR Doc. 03–2597 Filed 1–31–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 concerning opportunity for public comment on proposed collections of information, the Substance Abuse and Mental Health Services Administration will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the information collection plans, call the SAMHSA Reports Clearance Officer on (301) 443–7978.

Comments are invited on: (a) Whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: Opioid Treatment Program Accreditation Evaluation—New—The Substance Abuse and Mental Health Services Administration (SAMHSA), Center for Substance Abuse Treatment (CSAT), Division of Pharmacologic Therapies (DPT), is evaluating the new system of opioid treatment program (OTP) regulation, which relies on accreditation by independent organizations approved by CSAT. This replaces the former system of regulation by the Food and Drug Administration (FDA). Effective May 18, 2001, SAMHSA and CSAT, in conjunction with the FDA and other Federal agencies, issued "final regulations for the use of narcotic drugs in maintenance and detoxification treatment of opioid addiction," 42 CFR part 8. To date, SAMHSA has approved four organizations to provide accreditation to or conduct accreditation surveys of programs that use methadone and other approved medications to treat opioid addiction: (1) The Commission on Accreditation of Rehabilitation Facilities (CARF), (2) the Joint Commission on Accreditation of Healthcare Organizations (JCAHO), (3)

the Council on Accreditation for Children and Family Services (COA), and (4) the State of Washington Department of Health and Human Services, Division of Alcohol and Substance Abuse. The shift to an accreditation approach is expected to improve the quality of, and access to, OTPs.

An earlier, related study, conducted prior to accreditation, examined the experience of a pilot group of OTPs undergoing the accreditation process with extensive technical assistance provided through CSAT. Now that accreditation has become mandatory, the current study will assess its impact on OTPs, and the field of substance abuse treatment at a critical beginning phase.

The primary purposes of the proposed OTP Accreditation Evaluation are to assess the accreditation process and its cost and impact, and to provide input to CSAT concerning how the process might be improved. Specifically, the OTP Accreditation Evaluation will examine: (1) Processes, barriers, and costs associated with accreditation, (2) administrative and clinical impacts, (3) cost to the federal government for national implementation of the new regulations, and (4) potential policy changes affecting the accreditation-based oversight system.

The evaluation will be accomplished by secondary analysis of existing data as well as by collecting data before and after accreditation, from different sources and using several different data collection methods. Given the great diversity of this relatively small body of programs, the first data collection effort involves administering a questionnaire to all OTPs. The questionnaire is intended to elicit information about the resources programs need to prepare for accreditation and undergo the accreditation survey; services provided; the costs of providing these services; and staff perceptions of the accreditation process. Three vesions of the questionnaire will be used to accommodate OTPs' accreditation survey schedules: a pre-accreditation questionnaire, a post-accreditation questionnaire, and a post-only accreditation questionnaire. All OTPs will receive one or two questionnaires, depending on their accreditation survey status. OTPs that have not undergone an accreditation survey at the start of data collection will receive a pre-accreditation questionnaire. These OTPs will also receive a post-accreditation questionnaire six months after their accreditation survey. OTPs that have been accredited for less than four months at the start of data collection will receive a post-only questionnaire and a post-accreditation questionnaire at six months after their accreditation survey. OTPs that have been accredited for more than four months at the start of data collection will receive a post-only questionnaire.

In addition to the OTP survey, data will be obtained from existing sources including SAMHSA surveys such as the National Survey of Substance Abuse Treatment Services (N–SSATS) and the Treatment Episode Data Set (TEDS). These will provide an historical perspective on opioid treatment services and insight regarding the extent of opioid addiction service episodes. Information from the questionnaire administered to all OTPs will be supplemented and validated by more intensive data collection to be conducted with a small sample of OTPs that have not yet undergone accreditation, stratifying on factors determined by the earlier study to be related to OTPs' accreditation experience. Data will be collected from the smaller sample of OTPs through several means over the course of one year per program (six months before and six months after an accreditation survey): (1) A questionnaire administered on-site to patients to obtain patient perceptions about accreditation and level of satisfaction (2) chart abstraction by contractor staff of limited patient outcomes data, (3) activity logs to capture the amount of OTP staff time spent by OTP staff in various broad activities, and (4) interviews with OTP staff and related community organizations concerning their perceptions and experience.

The estimated response burden for the proposed OTP accreditation evaluation over a period of two years is summarized below.

Form	Number of respondents	Responses/respondent	Total responses	Hours/response	Total hour burden
Self-administered pre-accreditation questionnaire	600	1	600	.1	600
Self-administered post-accreditation questionnaire	700	1	700	1	700
Self-administered post-accreditation-only questionnaire	500	1	500	1	500
Activity logs	240	312	74,880	.1	7,488
Activity summary worksheet	60	26	1,560	1	1,560
Chart abstraction (OTP staff spent pulling charts *etc.*)	60	2	120	1	120
Patient questionnaire	6,000	1	6,000	.3	1,800
OTP/CBO staff interview	300	2	600	.7	420
Total	7,700		84,960		13,188
2-year Annual Average	3,850		42,480		6,594

Send comments to Nancy Pearce, SAMHSA Reports Clearance Officer, Room 16–105, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: January 28, 2003.

Richard Kopanda,

Executive Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 03–2489 Filed 2–3–03; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Invasive Species Advisory Committee

AGENCY: Office of the Secretary, Interior.

ACTION: Notice of public meetings of the Invasive Species Advisory Committee.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act, notice is hereby given of meetings of the Invasive Species Advisory Committee.

The purpose of the Advisory Committee is to provide advice to the National Invasive Species Council, as authorized by Executive Order 13112, on a broad array of issues related to preventing the introduction of invasive species and providing for their control and minimizing the economic, ecological, and human health impacts that invasive species cause. The Council is Co-chaired by the Secretary of the Interior, the Secretary of Agriculture, and the Secretary of Commerce. The duty of the

Council is to provide national leadership regarding invasive species issues. The purpose of a meeting on March 4–5, 2003 is to convene the full Advisory Committee (appointed by Secretary Norton on April 1, 2002); and to discuss implementation of action items outlined in the National Invasive Species Management Plan, which was finalized on January 18, 2001.

DATES: Meeting of Invasive Species Advisory Committee: 8:30 a.m., Tuesday, March 4, 2003; and 8:30 a.m., Wednesday, March 5, 2003.

ADDRESSES: Washington Plaza Hotel, 10 Thomas Circle, NW., Washington, DC 20005. Meetings on both days will be held in the State Suite.

FOR FURTHER INFORMATION CONTACT: Kelsey Passé, National Invasive Species Council Program Analyst; Phone: (202) 513–7243; Fax: (202) 371–1751.

Dated: January 30, 2003.

Lori Williams,

Executive Director, National Invasive Species Council.

[FR Doc. 03–2532 Filed 2–3–03; 8:45 am]

BILLING CODE 4310–RK–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability of the Final Recovery Plan for the Plant Holy Ghost Ipomopsis

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces the availability of the Final Recovery Plan for the Holy Ghost Ipomopsis (*Ipomopsis sancti-spiritus*). This plant is known from only one site in the southern Sangre de Cristo Mountains on the Santa Fe National Forest in San Miguel County, New Mexico.

ADDRESSES: Recovery plans that have been approved by the U.S. Fish and Wildlife Service are available on the World Wide Web at *http://southwest.fws.gov*. Recovery Plans may also be obtained from the Field Supervisor, New Mexico Ecological Services Field Office, U.S. Fish and Wildlife Service, 2105 Osuna NE., Albuquerque, New Mexico 87113 (Telephone (505) 346–2525)

FOR FURTHER INFORMATION CONTACT: Anna Marie Munoz, Fish and Wildlife Biologist, New Mexico Ecological Services Field Office, 2105 Osuna NE., Albuquerque, New Mexico 87113, (phone 505/346–2525).

SUPPLEMENTARY INFORMATION:

Background

A primary goal of the endangered species program is to restore endangered or threatened animals and plants to the point where they are again secure, self-sustaining members of their ecosystems. To help guide recovery, we prepare recovery plans for most endangered or threatened species native to the United States. Recovery plans describe needed conservation actions for the species, time and cost estimates for the actions, and recovery goals for downlisting or delisting.

The Endangered Species Act of 1973 (Act), as amended, (16 U.S.C. 1531 *et seq.*) requires that each endangered or threatened species be included in a recovery plan unless a plan would not promote a species' conservation. Section 4(f) of the Act as amended in 1988 requires that public notice and an opportunity for public review and comment be provided during recovery plan development. Information presented during the public comment period has been considered in the preparation of the final recovery plan, and is summarized in the appendix to the recovery plan. We will forward substantive comments regarding recovery plan implementation to appropriate Federal or other entities so that they can take these comments into account during the course of implementing recovery actions.

Holy Ghost ipomopsis was given endangered status under the Act on March 23, 1994 (59 FR 13840). It is known from a single canyon in the Santa Fe National Forest in northwestern San Miguel County, New Mexico. An estimated 2,500 plants occupy about 80 hectares (200 acres) along a U.S. Forest Service road. Impacts from road maintenance, recreation, and catastrophic forest fire are immediate management concerns. In the long term, present land uses influence management away from frequent disturbances that produce the preferred habitat for this species.

Recovery will focus on protecting and enhancing the existing population. Additional recovery work will include research to determine the biological and ecological requirements of the species, establishment of a botanical garden population and a seed bank, establishment of a management plan, and reintroduction into suitable habitat in the upper Pecos River Basin.

Authority

The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: October 11, 2002.

Geoffrey L. Haskett,

Acting Regional Director, Southwest Region, Fish and Wildlife Service.

[FR Doc. 03–2488 Filed 2–3–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Meeting of the Trinity Adaptive Management Working Group

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of meeting.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App. I), this notice announces a meeting of the Trinity Adaptive Management Working Group (TAMWG). The TAMWG affords stakeholders the opportunity to give policy, management, and technical input concerning Trinity River restoration efforts to the Trinity Management Council. Primary objectives of the meeting will include: overall orientation to the restoration program, selection of officers, establishment of technical advisory committees, development of operating guidelines, and setting future meeting dates. Background information will be presented on the Trinity River Flow Evaluation, Final Environmental Impact Statement, Implementation Plan, Record of Decision, fiscal year 2003 program of work, approved budget, and status of major planning and construction projects. The meeting is open to the public.

DATES: The Trinity Adaptive Management Working Group will meet from 9 a.m. to 5 p.m. on Thursday, February 20, 2003, and from 8 a.m. to 5 p.m. on Friday, February 21, 2003.

ADDRESSES: The meeting will be held at the Victorian Restaurant, 1709 Main Street, Weaverville, CA 96093.

FOR FURTHER INFORMATION CONTACT: Dr. Mary Ellen Mueller of the U.S. Fish and Wildlife Service, California/Nevada Operations Office, 2800 Cottage Way, W–2606, Sacramento, California 95825, (916) 414–6464. Dr. Mary Ellen Mueller is the designee of the committee's Federal Official—Steve Thompson, Manager of the U.S. Fish and Wildlife Service, California/Nevada Operations Office.

SUPPLEMENTARY INFORMATION: For background information and questions regarding the Trinity River Restoration Program, please contact Douglas Schleusner, Executive Director, Trinity

River Restoration Program, PO Box 1300, 1313 South Main Street, Weaverville, California 96093, (530) 623–1800.

For logistical questions related to the February 20–21, 2003 meeting contact Charlie Chamberlain, U.S. Fish and Wildlife Service, Arcata Fish and Wildlife Office, 1655 Heindon Road, Arcata, CA 95521, (707) 822–7201.

Dated: January 27, 2003.

Dan Walsworth,

Manager, California/Nevada Operations Office, Sacramento, CA.

[FR Doc. 03–2478 Filed 2–3–03; 8:45 am]

BILLING CODE 4310–55–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 332–450]

Commercial Availability of Apparel Inputs (2003): Effect of Providing Preferential Treatment to Apparel From Sub-Saharan African, Caribbean Basin, and Andean Countries

AGENCY: United States International Trade Commission.

ACTION: Institution of investigation.

EFFECTIVE DATE: January 28, 2003.

SUMMARY: Following receipt of a request from the United States Trade Representative (USTR) on December 30, 2002, the Commission instituted investigation No. 332–450, Commercial Availability of Apparel Inputs (2003): Effect of Providing Preferential Treatment to Apparel from Sub-Saharan African, Caribbean Basin, and Andean Countries. The Commission instituted the investigation under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)) to provide advice regarding the probable economic effect of granting preferential treatment for apparel made from fabrics or yarns that are the subject of petitions filed in 2003 with the Committee for the Implementation of Textile Agreements (CITA) under the "commercial availability" (previously informally known as "short supply") provisions of the African Growth and Opportunity Act (AGOA), the United States-Caribbean Basin Trade Partnership Act (CBTPA), and the Andean Trade Promotion and Drug Eradication Act (ATPDEA, Division D of the Trade Act of 2002). The Commission conducted similar investigations in 2001 and 2002 to provide advice with respect to requests filed those years under the AGOA and the CBTPA. The recently enacted ATPDEA contains a similar commercial availability mechanism.

FOR FURTHER INFORMATION CONTACT: For general information, contact Jackie W. Jones (202–205–3466, *jones@usitc.gov* of the Office of Industries; for information on legal aspects, contact William Gearhart (202–205–3091, *wgearhart@usitc.gov)* of the Office of the General Counsel. The media should contact Margaret O'Laughlin, Public Affairs Officer (202–205–1819). Hearing impaired individuals may obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information about the Commission may be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) *http://edis.usitc.gov.*

The Commission will follow procedures similar to those in the "short supply" reviews in 2001 and 2002 under investigation Nos. 332–428 and 332–436, respectively. Thus, during 2003, the Commission will provide advice for each commercial availability review under one investigation number. However, the Commission will be adjusting its procedure for notifying interested parties and the public on the initiation of commercial availability reviews. The Commission will not publish notices of the initiation of the reviews in the **Federal Register** and will no longer issue news releases as it has in the past. Instead, the Commission will post a notification letter announcing the initiation of each review on its Internet site (*http://www.usitc.gov*). The Commission also has developed a group list of facsimile addresses of interested parties or individuals who wish to be automatically notified via facsimile about any requests for which the Commission initiated analysis. Interested parties may be added to this list by notifying Jackie W. Jones (202–205–3466, *jones@usitc.gov*). The notification letter will specify the article(s) under consideration, the deadline for submission of public comments on the proposed preferential treatment, and the name, telephone number, and Internet e-mail address of a staff contact for additional information. CITA publishes a summary of each request from interested parties in the **Federal Register** and posts them on its Internet site (U.S. Department of Commerce, Office of Textiles and Apparel (OTEXA), at *http://otexa.ita.doc.gov/fr.htm*). The Commission has developed a special area on its Internet site (*http://www.usitc.gov/332s/shortsup/shortsupintro.htm*) to provide the public with information on the status of each request for which the Commission initiated analysis.

The Commission will submit its reports to the USTR not later than the 42nd day *after receiving a request for advice.* The Commission will issue a public version of each report as soon thereafter as possible, with any confidential business information deleted.

Written Submissions

Because of time constraints, the Commission will not hold public hearings in connection with the advice provided under this investigation number. However, interested parties will be invited to submit written statements (original and 3 copies) concerning the matters to be addressed by the Commission in this investigation. The Commission is particularly interested in receiving input from the private sector on the likely effect of any proposed preferential treatment on affected segments of the U.S. textile and apparel industries, their workers, and consumers. Commercial or financial information that a person desires the Commission to treat as confidential must be submitted in accordance with section 201.6 of the Commission's rules of practice and procedure (19 CFR 201.6). The Commission's Rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (Nov. 8, 2002). All written submissions, except for confidential business information, will be made available in the Office of the Secretary to the Commission for inspection by interested parties. The Commission may include confidential business information submitted in the course of this investigation in the reports to the USTR. In the public version of these reports, however, the Commission will not publish confidential business information in a manner that could reveal the individual operations of the firms supplying the information. All submissions should be addressed to the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436.

List of Subjects: Caribbean, African, Andean, tariffs, imports, yarn, fabric, and apparel.

By order of the Commission.

Issued: January 29, 2003.

Marilyn R. Abbott,

Secretary.

[FR Doc. 03–2513 Filed 2–3–03; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 332–449]

U.S. Market Conditions for Certain Wool Articles in 2002–04

AGENCY: International Trade Commission.

ACTION: Institution of investigation and request for public comments.

EFFECTIVE DATE: January 24, 2003.

SUMMARY: Following receipt of a request from the United States Trade Representative (USTR) on December 30, 2002, the Commission instituted Investigation No. 332–449, U.S. Market Conditions for Certain Wool Articles in 2002–04, under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)).

FOR FURTHER INFORMATION CONTACT: For general information, contact Lisa Ferens (202) 205–3486; *lferens@usitc.gov)*; of the Office of Industries; for information on legal aspects, contact William Gearhart (202) 205–3091; *wgearhart@usitc.gov*; of the Office of the General Counsel. The media should contact Margaret O'Laughlin, Public Affairs Officer (202–205–1819). Hearing impaired individuals may obtain information on this matter by contacting the Commission's TDD terminal on (202) 205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at (202) 205–2000. General information about the Commission may be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) *http://edis.usitc.gov*.

Background

As requested by the USTR, the Commission will provide information on U.S. market conditions, including domestic demand, supply, and increases in domestic production for men's and boys' worsted wool suits, suit-type jackets, and trousers; worsted wool fabric and yarn used in the manufacture of such clothing; and wool fibers used to make such fabrics and yarn. As requested, the Commission will also provide, to the extent practicable, data on:

(1) Increases or decreases in sales and production of the subject domestically-produced worsted wool fabrics;

(2) Increases or decreases in domestic production and consumption of the subject apparel items;

(3) The ability of domestic producers of the subject worsted wool fabrics to meet the needs of domestic manufacturers of the subject apparel items in terms of quantity and ability to meet market demands for the apparel items;

(4) Sales of the subject worsted wool fabrics lost by domestic manufacturers to imports benefitting from the temporary duty reductions on certain worsted wool fabrics under HTS headings 9902.51.11 and 9902.51.12;

(5) Loss of sales by domestic manufacturers of the subject apparel items related to the inability to purchase adequate supplies of the subject worsted wool fabrics on a cost competitive basis; and

(6) The price per square meter of imports and domestic sales of the subject worsted wool fabrics. The USTR requested that the Commission provide two confidential reports. The first report will provide, to the extent information is publicly available or is available from discussions with representatives of trade and industry, an update on market conditions for the subject wool products and a summary of any major changes with respect to the above factors, for the year 2002 and year-to-date 2002–03. The Commission will transmit this report to the USTR by October 27, 2003. The Commission will transmit the second report, providing data for 2003 and year-to-date 2003–04, by October 25, 2004. The USTR requested that the Commission issue public versions of the reports as soon as possible thereafter, with any business confidential information deleted.

In the request letter, the USTR noted that section 5102 of the Trade Act of 2002, signed by the President on August 6, 2002, amends headings 9902.51.21 and 9902.51.12 of the Harmonized Tariff Schedule of the United States (HTS) to extend, through December 31, 2005, the temporary reductions of tariffs and the tariff-rate quotas (TRQs) in those headings for imports of certain worsted wool fabric, certified by the importer as suitable for use in men's or boys' suits, suit-type jackets, and trousers. The USTR also noted that, under section 504 of the Trade and Development Act of 2000, the President is required to monitor U.S. market conditions, including domestic demand, domestic supply, and increases in domestic production for men's and boys' worsted wool suits, suit-type jackets, and trousers; worsted wool fabric and yarn used in the manufacture of such clothing; and wool fibers used in the manufacture of such fabrics and yarn. He noted that the President, in Proclamation 7383 (December 1, 2000), delegated to the USTR the authority to monitor these market conditions.

Written Submissions

The Commission intends to hold a public hearing in connection with the second report under this investigation, but not the first report. However, interested parties are invited to submit written statements (original and 14 copies) concerning the matters to be addressed by the Commission in its first report on this investigation at the earliest practical date, and such statements should be received no later than the close of business on June 9, 2003. Commercial or financial information that a person desires the Commission to treat as confidential must be submitted on separate sheets of paper, each marked "Confidential Business Information" at the top. All submissions requesting confidential treatment must conform with the requirements of section 201.6 of the Commission's Rules of Practice and Procedure (19 CFR 201.6). The Commission's Rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extend permitted by section 201.8 of the Commission's Rules, as amended, 67 FR 68036 (November 8, 2002). All written submissions, except for confidential business information, will be made available in the Office of the Secretary to the Commission for inspection by interested parties. The Commission may include confidential business information submitted in the course of this investigation in its reports to the USTR. In the public version of these reports, however, the Commission will not publish confidential business information in a manner that would reveal the individual operations of the firm supplying the information. All submissions should be addressed to the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436.

List of Subjects: Tariffs, imports, wool, fabric, and suits.

By order of the Commission.

Issued: January 29, 2003.

Marilyn R. Abbott,

Secretary.

[FR Doc. 03–2515 Filed 2–3–03; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[USITC SE–03–003]

Sunshine Act Meeting

Agency Holding the Meeting: International Trade Commission.

Time and Date: February 12, 2003 at 11 a.m.

Place: Room 101, 500 E Street, SW., Washington, DC 20436. Telephone: (202) 205–2000.

Status: Open to the public.

Matters to be Considered:

1. Agenda for future meetings: none.
2. Minutes.
3. Ratification list.
4. Inv. No. 731–TA–745 (review)(Steel Concrete Reinforcing Bar from Turkey)—briefing and vote. (The Commission is currently scheduled to transmit its determination and Commissioners' opinions to the Secretary of Commerce on or before February 24, 2003.)
5. Outstanding action jackets: none.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

Issued: January 31, 2003.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 03–2796 Filed 1–31–03; 3:12 pm]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

National Institute of Corrections

Advisory Board Meeting

Time and Date: 8:30 a.m. to 5 p.m. on Monday, March 31, 2003 and 8:30 a.m. to 12 noon on Tuesday, April 1, 2003.

Place: The Churchill Hotel, 1914 Connecticut Avenue NW., Washington, DC 20009.

Status: Open.

Matters To Be Considered: Division reports concerning Fiscal Year 2004 Service Plan and Fiscal Year 2005 Budget Recommendations; Report by the Department of Health and Human Services; NIC Information Center update; Discussion concerning executive training programs; Quarterly Report by Office of Justice Programs; and updates on NIC's strategic planning and Interstate Compact activities.

Contact Person for More Information: Larry Solomon, Deputy Director, 202–307–3106, ext. 44254.

Morris L. Thigpen,

Director.

[FR Doc. 03–2505 Filed 2–3–03; 8:45 am]

BILLING CODE 4410–35–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–41,183 and NAFTA–05987]

Alcoa Lebanon Works, A Division of Alcoa, Inc.; Lebanon, PA; Notice of Negative Determination Regarding Application for Reconsideration

By application of August 9, 2002 and August 10, 2002 (postmark dates), the petitioners requested administrative reconsideration of the Department's negative determination regarding eligibility for workers and former workers of the subject firm to apply for Trade Adjustment Assistance (TAA) under petition TA–W–41,183 and North American Free Trade Agreement-Transitional Adjustment Assistance (NAFTA–TAA) under petition NAFTA–5987. The TAA and NAFTA–TAA denial notices applicable to workers of Alcoa Lebanon Works, A Division of Alcoa, Inc., Lebanon, Pennsylvania were signed on July 5, 2002 and published in the **Federal Register** on July 22, 2002 (67 FR 47861 and 47682, respectively).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a mis-interpretation of facts or of the law justified reconsideration of the decision.

The TAA petition, filed on behalf of workers at Alcoa Lebanon Works, A Division of Alcoa, Inc., Lebanon, Pennsylvania, was denied because the "contributed importantly" group eligibility requirement of Section 222(3) of the Trade Act of 1974, as amended, was not met. The "contributed importantly" test is generally demonstrated through a survey of the workers' firm's customers. The survey revealed that the customers did not increase their imports of light gauge steel products and foil products, while decreasing their purchases from the subject firm during the relevant period. The workers produced light gauge steel products and foil products.

The NAFTA–TAA petition for the same worker group was denied because criteria (3) and (4) of the group eligibility requirements in paragraph (a)(1) of Section 250 of the Trade Act, as amended, were not met. There was no shift in production from the workers' firm to Mexico or Canada during the relevant period. Imports from Canada or Mexico did not contribute importantly to worker separations.

The petitioners believe that the Department of Labor examined the incorrect product(s) produced by the subject firm. The petitioner states that they did not produce light gauge steel, but produced aluminum products.

A review of the data supplied by the company indicates that the firm produced light gauge aluminum sheet and foil products. The Department of Labor erred in the initial decision by referring to the products produced by the subject plant as light gauge steel and foil products. A review of the initial data supplied by the company and further analysis of the customer survey show that the Department investigated the correct products (light gauge aluminum sheet and foil products) produced by the Alcoa Lebanon Works plant.

The petitioner's also believe that the decisions should be based on steel production, exports and imports.

Imported steel into the United States is not relevant to the TAA and NAFTA investigations that were filed on behalf of workers producing light gauge aluminum sheet products and foil products. The product imported must be "like or directly" competitive with what the subject firm produced and the imports must "contribute importantly" to the layoffs at the subject plant to meet the eligibility requirements for adjustment assistance under Section 223 of the Trade Act of 1974.

Conclusion

After review of the application and investigative findings, I conclude that there has been no misinterpretation of the law or of the facts which would justify reconsideration of the Department of labor's prior decisions. Accordingly, the application is denied.

Signed at Washington, DC, this 9th day of January, 2003.

Edward a. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 03–2545 Filed 2–3–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance and NAFTA Transitional Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974, as amended, the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) issued during the period of January 2003.

In order for an affirmative determination to be made and a certification of eligibility to apply for worker adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated, or are threatened to become totally or partially separated; and

(2) That sales or production, or both, of the firm or sub-division have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production of such firm or subdivision.

Negative Determinations for Worker Adjustment Assistance

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA–W–42,108; Harvard Industries, Inc., Jackson, MI.

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

The investigation revealed that criterion (a)(2)(A) (I.A.) (No employment declines) and (a) (2)(B) (II.B) (No shift in production to a foreign country) have not been met.

TA–W–50,320; American Bag Corp., Stearns Plant, Stearns, KY.

The investigation revealed that criterion (a)(2)(A) (I.B.) (No Sales or Production declines) and (a) (2)(B) (II.B) (No shift in production to a foreign country) have not been met.

TA–W–50,274; Neenah Foundry Co., Neenah, WI.

The investigation revealed that criterion (a)(2)(A) (I.C.) (Increased imports) and (a) (2)(B) (II.B) (No shift in production to a foreign country) have not been met.

TA–W–50,237; Pass and Seymour Legrand, a Subsidiary of Legrand, Dallas, NC.

TA–W–50,254; Precision Tool and Design, Inc., Erie, PA.

TA–W–50,221; Ericsson Wireless Communications, San Diego, CA.

TA–W–50,019 & A; Domtar A.W., Wisconsin Operations, Port Edwards, WI and Nekoosa, WI.

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–50,319; Affiliated Computer Services, Libertyville, KY.

TA–W–50,399; Computer Horizons Corp., Irving, TX.

The investigation revealed that criteria (2) has not been met. The workers' firm (or subdivision) is not a supplier or downstream producer for trade-affected companies.

TA–W–50,333; The Rockford Co., Custom Metal Products Div., Rockford, IL.

The investigation revealed that criteria (2) has not been met. The workers' firm (or subdivision) is not an upstream supplier of components for trade-affected companies.

TA–W–50,328; Crane Manufacturing and Services Corp., Cudahy, WI.

Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued; the date following the company name and location of each determination references the impact date for all workers of such determination.

TA–W–42,268; Frazer and Jones Co., a Division of The Eastern Co., Soway, NY: October 2, 2001.

TA–W–42,330; Alcoa, Inc., Cleveland, OH: November 1, 2001.

TA–W–42,331; PHB Die Casting, a Subsidiary of PHB, Inc., Fairview, PA: October 15, 2001.

The following certifications have been issued. The requirements of (a)(2)(A) (increased imports) of section 222 have been met.

TA–W–50,310; Mossberg Reel LLC, a Wholly Owned Subsidiary of Boxy S.P.A., Cumberland, RI: December 6, 2001.

TA–W–50,154; Aurafin-OroAmerica LLC, Burbank, CA: November 12, 2001.

TA–W–50,290; Sipex Corp., Billerica, MA: November 6, 2001.

TA–W–50,289; Metolius Mountain Products, Inc., Bend, OR: November 22, 2001.

TA–W–50,272; Hitachi Magnetics Corp., Edmore, MI: December 3, 2003.

TA–W–50,257; Electric Steel Castings Co.; Indianapolis, IN: December 5, 2001.

TA–W–50,230; Mount Vernon Mills, Inc., Johnston, SC: December 2, 2001.

TA–W–50,193; Dan River, Inc., Greenville, SC: November 6, 2001.

TA–W–50,187; Crown Castings, Inc., Midland Park, NJ: November 19, 2001.

TA–W–50,166; L. Chessler, In, Philadelphia, PA: November 21, 2001.

TA–W–50,152; Kennecott Rawhide Mining Co., Denton Rawhide Mine, Fallon, NE: November 20, 2001.

TA–W–50,004 & A; Spang and Company, Magnetics Div., East Butler, PA and Booneville, AR: November 4, 2001.

TA–W–50,038; Hitachi Metals America, LTD, HI Specialty America, Irwin, PA: November 5, 2001.

The following certifications have been issued. The requirements of (a)(2)(B) (shift in production) of section 222 have been met.

TA–W–50,346; Square D Company, Including Leased Workers of Adecco, Columbia, MO: December 10, 2001.

TA–W–50,124; Thomson, Inc., Research and Development, Lancaster, PA: November 8, 2001.

TA–W–50,200; Wabash Alloys, L.L.C., Benton, AR: November 25, 2001.

TA–W–50,377; Trans World Connection, LTD, Lynchburg, VA: December 12, 2001.

TA–W–50,189; Temco Fireplace Products, Manchester, TN: November 21, 2001.

I hereby certify that the aforementioned determinations were issued during the month of January 2003. Copies of these determinations are available for inspection in Room C–5311, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: January 10, 2003.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 03–2560 Filed 2–3–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–40,275 & NAFTA–05163]

Tyco Electronics, Fiber Optics Division; Glen Rock, PA; Notice of Negative Determination on Reconsideration on Remand

The United States Court of International Trade (USCIT) granted the Secretary of Labor's motion for a voluntary remand for further investigation in *Former Employees of Tyco Electronics, Fiber Optics Division* v. *U.S. Secretary of Labor*, No. 01–00152.

The Department's initial denial of Trade Adjustment Assistance (TA–W–40,275) for the workers of Tyco Electronics, Fiber Optics Division, Glen Rock, Pennsylvania was issued on January 14, 2002, and published in the **Federal Register** on January 31, 2002 (67 FR 4749), was based on the finding that the "contributed importantly" criterion of the group eligibility requirements of Section 222 of the Trade Act of 1974, as amended, was not met. The subject company did not import fiber optic cable connectors during the relevant period. The predominant cause of the work separations was related to a domestic transfer of production to an affiliated facility in Harrisburg, Pennsylvania.

The Department's initial denial of NAFTA-Transitional Adjustment Assistance (NAFTA–5163) for the workers of Tyco Electronics, Fiber Optics Division, Glen Rock, Pennsylvania was issued on September 28, 2001, and published in the **Federal Register** on October 19, 2001 (66 FR 53252), was based on the finding that the criteria (3) and (4) were not met. Imports from Canada or Mexico did not contribute importantly to workers' separations. The predominant cause of the worker separations was related to a domestic transfer of production to an affiliated facility in Harrisburg, Pennsylvania.

On January 22, 2002 Department of Labor issued a Notice of Negative Determination Regarding Application for Reconsideration for NAFTA–5163 and published in the **Federal Register** on February 5, 2002 (67 FR 5299). The petitioner alleged that plant production was shifted to an affiliated plant located in Mexico. Information provided by the company show that any plant production shifted to Mexico was negligible during the relevant period. The overwhelming (over 98%) portion of subject plant production was transferred to Harrisburg, Pennsylvania during the relevant period.

The petitioners on reconsideration also supplied a list of products that they indicated transferred to Mexico. The overwhelming majority of these products were transferred prior to the relevant time frame of the investigation. Some of these products were produced at the subject firm only when orders required quick turn around time. The majority of these products were produced at a sister facility located in Harrisburg when quick turn around time was required. The quick turn around products equivalent to what the Mexican plant produced were produced at the subject plant

Also, on reconsideration the petitioner also claimed that the plant workers trained workers from an affiliated Mexican plant. The workers did train workers from the Mexican plant during the relevant time frame. However, the training related to only a negligible portion of production performed at the subject plant.

On remand, the Department contacted a company official requesting company-wide sales figures of the article(s) produced at the subject firm plant and a list of the major declining customers of the subject plant.

The company supplied sales figures for the Fiber Optics Division showing increases in sales from 1999 to 2000 and sales declines from the January through September 2001 period over the corresponding 2000 period.

Since the company reported declining sales at the Fiber Optics Division during the relevant period, the Department conducted a survey of the major declining customers of the subject firm regarding their purchases of fiber optic cable assemblies, components and value added enclosures during 1999, 2000 and January through September 2001 over the corresponding 2000 period.

The survey revealed that one respondent did not increase their imports of products like or directly competitive with what the subject plant produced, while decreasing their purchases from the subject firm. Another major customer reported no direct import purchases during 1999, 2000 and January through September 2001. However, this customer reported that a small percentage of the products purchased were indirect imports (products purchased from a domestic source that were wholly manufactured in a foreign country) during September 2001, well after the decision by the subject firm to transfer production to Harrisburg, Pennsylvania and during the time of the completion of the domestic transfer. The amount of the customer's reported indirect imports was relatively low in relation to the customer's total domestic purchases.

Conclusion

After reconsideration on remand, I affirm the original notice of negative determination of eligibility to apply for adjustment assistance for workers and former workers of Tyco Electronics, Fiber Optics Division, Glen Rock, Pennsylvania.

Signed at Washington, DC this 15th day of January 2003.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 03–2544 Filed 2–3–03; 8:45 am]

BILLING CODE 4510–30–U

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–39,926]

Anvil Knitwear, Inc.; Kings Mountain, North Carolina; Notice of Revised Determination On Remand

The United States Court of International Trade (USCIT) granted the Secretary of Labor's motion for voluntary remand for further investigation of the negative determination in *Former Employees of Anvil Knitwear, Inc.* v. *U.S. Secretary of Labor* (Court No. 02–00153).

The Department's initial denial of the petition for employees of Anvil Knitwear, Inc., Kings Mountain, North Carolina was issued on December 4, 2001, and published in the **Federal Register** on December 26, 2001 (66 FR 66428). The denial was based on the fact that criterion (3) of the Group Eligibility Requirements of section 222 of the Trade Act of 1974, as amended, was not met. Imports did not contribute importantly to worker separations at the subject firm.

On remand, the Department obtained new information and clarification from the company regarding the internal flow of the fabrics produced by the subject plant.

New data supplied by the company show that the overwhelming majority of the fabric produced by the subject plant was shipped to an affiliated plant, Anvil

Knitwear, Mullins, South Carolina. The Mullins plant incorporated the subject plant's fabric into knit tops and was certified for Trade Adjustment Assistance on April 13, 2001, under TA–W–38,829. The subject plant's fabrics were an integral part of Mullins knit top production.

Conclusion

After careful review of the additional facts obtained on remand, I conclude that there were increased imports of articles like or directly competitive with those produced by the subject firm that contributed importantly to the worker separations and sales or production declines at the subject facility. In accordance with the provisions of the Trade Act, I make the following certification:

All workers of Anvil Knitwear, Inc., Kings Mountain, North Carolina who became totally or partially separated from employment on or after August 3, 2000, through two years from the issuance of this revised determination, are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed in Washington, DC this 14th day of January, 2003.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 03–2559 Filed 2–3–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–50,455]

Anvil Knitwear, Inc.; Kings Mountain, NC; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on January 3, 2003, in response to a petition that was filed on December 5, 2002, by a company official on behalf of workers at Anvil Knitwear, Inc., Kings Mountain, North Carolina.

The petitioning group of workers is covered by an active certification issued on January 14, 2003, which remains in effect (TA–39,926). Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 15th day of January, 2003.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–2567 Filed 2–3–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–50,375]

Carlisle Foodservice Products; Erie, PA; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on December 18, 2002, in response to a worker petition filed by a company official on behalf of workers at Carlisle FoodService Products, Erie, Pennsylvania.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation would serve no useful purpose and the investigation has been terminated.

Signed in Washington, DC this 16th day of January, 2003.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–2565 Filed 2–3–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–50,132]

Ceramic Cooling Technologies, Fort Worth, Texas; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on November 19, 2002 in response to a worker petition that was filed by the company on behalf of workers at Ceramic Cooling Technologies, Fort Worth, Texas.

The company has requested that the petition for Trade Adjustment Assistance be withdrawn. Consequently, further investigation would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 8th day of January, 2003.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–2551 Filed 2–3–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–50,049]

Cooper Industries, Inc., Cooper Power Systems Division; Waukesha, WI; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on November 12, 2002, in response to a worker petition filed on behalf of workers at Cooper Industries, Inc., Cooper Power Systems Division, Waukesha, Wisconsin.

The petitioning group of workers is covered by an earlier petition filed on November 12, 2002 (TA–W–50,048), that is the subject of an ongoing investigation for which a determination has not yet been issued. Further investigation in this case would duplicate efforts and serve no purpose; therefore the investigation under this petition has been terminated.

Signed in Washington, DC, this 15th day of January, 2003.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–2561 Filed 2–3–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–50,109]

Creative Mold Co. LLC, Auburn, ME; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on November 18, 2002, in response to a worker petition filed by a company official on behalf of workers at Creative Mold Co. LLC, Auburn, Maine.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 14th day of January 2003.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–2550 Filed 2–3–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–50,564]

Dana Corporation, Engine and Fluid Management Group; Crenshaw, Mississippi; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on January 15, 2003, in response to a worker petition filed by a company official on behalf of workers at Dana Corporation, Engine and Fluid Management Group, Crenshaw, Mississippi.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed in Washington, DC this 17th day of January, 2003.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–2568 Filed 2–3–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–50,383]

Employment Control, Inc.; Easton, Maryland; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on December 18, 2002, in response to a worker petition which was filed on behalf of workers at Employment Control, Inc., Easton, Maryland.

An active certification covering the petitioning group of workers is already in effect (TA–W–41,976, as amended). Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 13th day of January, 2003.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–2566 Filed 2–3–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–50,285]

Fiber-Line, Inc.; Hickory, North Carolina; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on December 10, 2002, in response to a worker petition filed by a company official on behalf of workers at Fiber-Line, Inc. Hickory, North Carolina.

The company has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 15th day of January, 2003.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–2553 Filed 2–3–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–50,294]

Gates Rubber Company, Air Springs Division; Denver, CO; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on December 10, 2002, in response to a worker petition filed a company official on behalf of workers at Gates Rubber Company, Air Springs Division, Denver, Colorado.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation would serve no purpose and the investigation under this petition has been terminated.

Signed in Washington, DC this 16th day of January, 2003.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–2562 Filed 2–3–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–50,248]

Howmet Casting, Dover, New Jersey; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on December 4, 2002, in response to a petition filed by a State agency representative on behalf of workers at Howmet Casting, Dover, New Jersey.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation would serve no purpose and the investigation has been terminated.

Signed in Washington, DC this 13th day of January, 2003.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–2552 Filed 2–3–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–50,358]

Jore Corporation; Edgerton, Wisconsin; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on December 16, 2002, in response to a worker petition filed by a company official on behalf of workers at Jore Corporation, Edgerton, Wisconsin.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed in Washington, DC this 15th day of January, 2003.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–2564 Filed 2–3–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–50,101]

Magna Powertech, Grand Rapids, MI; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on November 15, 2003 in response to a worker petition filed on behalf of workers at Magna Powertech, Grand Rapids, Michigan.

The petition was signed and submitted in advance of the inception of the Trade Adjustment Assistance Reform Act of 2002 on November 4, 2002. The petition has therefore been deemed invalid. Consequently, the investigation has been terminated.

Signed in Washington, DC this 14th day of January 2003.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–2549 Filed 2–3–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–50,462]

Micro Component Technology; St. Paul, MN; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on January 6, 2003, in response to a worker petition filed by a community representative on behalf of workers at Micro Component Technology, St. Paul, Minnesota.

The petitioning group of workers is covered by an active certification issued on January 10, 2003, and which remains in effect (TA–W–50,394). Consequently, further investigation in this case would serve no purpose and the investigation has been terminated.

Signed in Washington, DC this 14th day of January, 2003.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–2558 Filed 2–3–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–50,437]

Reliant Bolt, Inc.; Bedford Park, Illinois; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on January 3, 2003, in response to a worker petition filed by the United Steelworkers of America on behalf of workers at Reliant Bolt, Inc., Bedford Park, Illinois.

The petitioning group of workers is covered by an active certification issued on December 10, 2002 (TA–W–50,001). Consequently, further investigation in this case would serve no purpose and the investigation has been terminated.

Signed in Washington, DC this 9th day of January, 2003.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–2554 Filed 2–3–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–50,349]

Simmons Foods; Siloam Springs, AR; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on December 16, 2003, in response to a worker petition filed on behalf of workers at Simmons Foods, Siloam Springs, Arkansas.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed in Washington, DC this 14th day of January, 2003.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–2555 Filed 2–3–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–50,334]

Sumco Phoenix Corporation; Fremont, CA; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on December 13, 2002, in response to a petition filed by a company official on behalf of workers at Sumco Phoenix Corporation, Fremont, California.

The company official submitting the petition has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose and the investigation has been terminated.

Signed in Washington, DC this 17th day of January, 2003.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–2563 Filed 2–3–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than February 14, 2003.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than February 14, 2003.

The petitions filed in this case are available for inspection at the Office of the Director, Division of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room C–5311, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC, this 17th day of January 2003.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

APPENDIX

[Petitions instituted between 01/02/2003 and 01/10/2003]

TA–W	Subject firm (Petitioners)	Location	Date of institution	Date of petition
50,404	Vernay Laboratories, Inc. (Comp)	Yellow Springs, OH	01/02/2003	12/11/2002
50,405	Dorr-Oliver Eimco USA (Comp)	Salt Lake City, UT	01/02/2003	12/20/2002
50,406	Walkers Auto Electric (Comp)	Vancouver, WA	01/02/2003	12/09/2002
50,407	Eaton, (Comp)	Everett, WA	01/02/2003	12/23/2002
50,408	Best Manufacturing (Comp)	Johnson City, TN	01/02/2003	12/22/2002
50,409	International Comfort Products (IBB)	Lewisburg, TN	01/02/2003	12/05/2002
50,410	Precision Diversified Ind., LLC (Wkrs)	Plymouth, MN	01/02/2003	12/19/2002
50,411	Holmes Group (The) (Comp)	Flowood, MS	01/02/2003	12/11/2002
50,412	Hayes Lemmerz International (Wkrs)	Bowling Green, KY	01/02/2003	12/20/2002
50,413	American Tack and Hardware (Comp)	Monsey, NY	01/02/2003	12/05/2002
50,414	Pacon Corporation (Wkrs)	Neenah, WI	01/02/2003	12/20/2002
50,415	Times Fiber Communication Inc. (USWA)	Chatham, VA	01/02/2003	12/16/2002
50,416	Sprague Industries (Comp)	Providence, RI	01/02/2003	12/17/2002
50,417	ABM (Comp)	Greenville, SC	01/02/2003	12/09/2002
50,418	Plastic World (Wkrs)	Wharton, NJ	01/02/2003	12/17/2002
50,419	Armstrong World Industries, Inc. (USWA)	Lancaster, PA	01/02/2003	12/20/2002
50,420	Waldo Engine Management, LLC (UAW)	Cass Ciry, MI	01/02/2003	12/17/2002
50,421	Alpine Molding, Inc. (Wkrs)	Gaylord, MI	01/02/2003	12/20/2002
50,422	Altx, Inc. (USWA)	Watervaliet, NY	01/02/2003	12/30/2002
50,423	L.A. Darling Co. (AR)	Pocahontas, AR	01/02/2003	12/30/2002
50,424	Wolverine Worldwide Inc. (MI)	Rockford, MI	01/02/2003	12/11/2002
50,425	Willing B. Wire (NJ)	Willingboro, NJ	01/02/2003	12/11/2002
50,426	B.I. Transportation Inc. (Comp)	Burlington, NC	01/02/2003	12/27/2002
50,427	Boxboard Packaging Inc. (Wkrs)	Norwalk, OH	01/02/2003	12/18/2002
50,428	South Bend Acquisition Corporation (Comp)	South Bend, IN	01/02/2003	12/26/2002
50,429	Universal Electronics, Inc. (Comp)	Menomonee Falls, WI	01/02/2003	12/27/2002
50,430	L'Art De La Mode, Inc. (NJ)	Carlstadt, NJ	01/02/2003	12/27/2002
50,431	General Electric (Wkrs)	Bucyrus, OH	01/02/2003	12/26/2002
50,432	Angus Consulting Management (Wkrs)	Columbus, OH	01/03/2003	12/19/2002
50,433	Fun Tees, Inc. (Wkrs)	Andrews, SC	01/03/2003	12/20/2002
50,434	Sanmina-SCI (Comp)	Watsonville, CA	01/03/2003	12/19/2002
50,435	Foster Wheeler Energy Corporation (Comp)	Buffalo, NY	01/03/2003	12/20/2002
50,436	Amcor White Cap (USWA)	Chicago, IL	01/03/2003	12/17/2002
50,437	Reliant Bolt, Inc. (USWA)	Bedford Park, IL	01/03/2003	12/17/2002
50,438	Computer Sciences Corporation (Wkrs)	Somerset, NJ	01/03/2003	12/21/2002
50,439	Tresco Tool, Inc. (Comp)	Guys Mills, PA	01/03/2003	12/23/2002
50,440	Tranex (Comp)	Colo. Springs, CO	01/03/2003	12/19/2002
50,441	Slipstream (Comp)	Dillingham, AK	01/03/2003	12/19/2002
50,442	Dynamik Tool and Die (Wkrs)	Dandridge, TN	01/03/2003	12/06/2002
50,443	Flexcel (Wkrs)	Danville, KY	01/03/2003	12/23/2002
50,444	Tyson Foods (Comp)	Stilwell, OK	01/03/2003	12/16/2002
50,445	Coe Manufacturing (USWA)	Painesville, OH	01/03/2003	12/18/2002
50,446	Ericsson, Inc. (Comp)	Woodbury, NY	01/03/2003	12/18/2002
50,447	Fulton Bellows and Components (Comp)	Knoxville, TN	01/03/2003	12/16/2002
50,448	Universal Instruments (Wkrs)	Binghamton, NY	01/03/2003	12/17/2002
50,449	PTC/Alliance (USWA)	Darlington, PA	01/03/2003	12/26/2002
50,450	A.M. Promotions, Inc. (Wkrs)	Ebensburg, PA	01/03/2003	12/19/2002
50,451	Berendsen Fluid Power (Wkrs)	Houston, TX	01/03/2003	12/16/2002
50,452	Spectrum Field Services (Wkrs)	Tulsa, OK	01/03/2003	12/01/2002
50,453	Atlas Copco Wagner, Inc. (IBT)	Portland, OR	01/03/2003	12/23/2002
50,454	WI Pattern Co. (WI)	Racine, WI	01/03/2003	12/18/2002
50,455	Anvil Knitwear, Inc. (Comp)	Kings Mountain, NC	01/03/2003	12/05/2002
50,456	J and A Industrial Sheet Metal (OR)	Bend, OR	01/03/2003	12/23/2002
50,457	TLC Polyform (Wkrs)	Beaverton, MI	01/03/2003	12/23/2002
50,458	Smurfit-Stone Container Corporation (Comp)	Spartanburg, SC	01/03/2003	12/23/2002
50,459	Suss Microtec, Inc. (VT)	Waterbury Cente, VT	01/03/2003	12/23/2002
50,460	VF Jeanswear Limited Partnership (Comp)	Luray, VA	01/03/2003	11/06/2002
50,461	VF Jeanswear Limited Partnership (Comp)	Lebanon, MO	01/03/2003	11/06/2002
50,462	Micro Component Technology (Comp)	St. Paul, MN	01/06/2003	12/18/2002
50,463	McCormick Enterprises, Inc. (Comp)	Delton, MI	01/06/2003	12/04/2002
50,464	Central Chair Company (Comp)	Asheboro, NC	01/06/2003	12/19/2002

APPENDIX—Continued

[Petitions instituted between 01/02/2003 and 01/10/2003]

TA–W	Subject firm (Petitioners)	Location	Date of institution	Date of petition
50,465	J B Tool and Machine, Inc. (Wkrs)	Wapakoneta, OH	01/06/2003	12/31/2002
50,466	Makita Corporation of America (Wkrs)	Buford, GA	01/06/2003	12/26/2002
50,467	F/V K2 (Comp)	Homer, AK	01/06/2003	12/28/2002
50,468	Textron (PACE)	Lincoln, NE	01/06/2003	12/30/2002
50,469	Supra Telcom (Wkrs)	Quincy, IL	01/06/2003	12/20/2002
50,470	Hitachi High Technologies America, Inc. (Comp)	San Jose, CA	01/06/2003	12/19/2002
50,471	MGM Transport Corp. (NJ)	Totowa, NJ	01/06/2003	12/31/2002
50,472	Sharon Tube Company (USWA)	Sharon, PA	01/06/2003	12/31/2002
50,473	Georgia Headwear and Apparel (Comp)	Waycross, GA	01/06/2003	12/23/2002
50,474	Store Kraft Manufacturing Company (AR)	Greenwood, AR	01/06/2003	01/02/2003
50,475	Dynamatic Corporation (WI)	Kenosha, WI	01/06/2003	12/23/2002
50,476	Honeywell International (MN)	Coon Rapids, MN	01/06/2003	12/30/2002
50,477	Fleming Companies, Inc. (Wkrs)	Altoona, PA	01/06/2003	12/24/2002
50,478	Maysteel (Comp)	Mayville, WI	01/06/2003	12/27/2002
50,479	Eastman Kodak Company (NY)	Rochester, NY	01/06/2003	12/20/2002
50,480	Miller Bag Company (Comp)	Minneapolis, MN	01/06/2003	12/23/2002
50,481	Nautilus HPS, Inc. (Comp)	Independence, VA	01/06/2003	12/17/2002
50,482	Black and Decker (Comp)	Easton, MD	01/06/2003	11/15/2002
50,483	CNH (UAW)	Burlington, IA	01/06/2003	01/02/2003
50,484	Hewlett Packard Company (Wkrs)	Vancouver, WA	01/06/2003	12/30/2002
50,485	Oshkosh B'Gosh Inc. (Comp)	Medley, FL	01/06/2003	12/26/2002
50,486	Electronic Data Systems Corp (Wkrs)	Fairborn, OH	01/06/2003	12/27/2002
50,487	NexPak (Wkrs)	El Dorado Hills, CA	01/06/2003	12/09/2002
50,488	Sanmina—SCI (Comp)	Lewisburg, PA	01/06/2003	01/03/2003
50,489	Corning, Inc. (Comp)	Painted Post, NY	01/06/2003	12/20/2002
50,490	CCL Container (Wkrs)	Harrisonburg, VA	01/06/2003	01/02/2003
50,491	KNS (Comp)	Austin, TX	01/06/2003	12/20/2002
50,492	Adventure Travel (MI)	Iron Mountain, MI	01/06/2003	01/01/2003
50,493	Moltech Power Systems (Comp)	Gainesville, FL	01/06/2003	01/03/2003
50,494	Manufacturers Services Limited (MN)	Arden Hills, MN	01/06/2003	01/03/2003
50,495	Massillon Stainless, Inc. (USWA)	Massillon, OH	01/06/2003	01/03/2003
50,496	US Manufacturing Corp. (MI)	Fraser, MI	01/06/2003	01/06/2002
50,497	C-Cor.Net (Wkrs)	Manlius, NY	01/07/2003	01/02/2003
50,498	Ram Tool, Inc. (Wkrs)	Conneaut Lake, PA	01/07/2003	01/03/2003
50,499	Marion County Shirt Company (AR)	Marshall, AR	01/07/2003	01/06/2003
50,500	Creative Die Mold (Wkrs)	Glendale Hgts., IL	01/07/2003	01/03/2003
50,501	HG Winter and Sons, Inc. (Comp)	Kingfield, ME	01/07/2003	01/03/2003
50,502	Cable Warehouse (CO)	Denver, CO	01/07/2003	12/02/2002
50,503	F/V Kirsten Marie (Comp)	Port Heiden, AK	01/07/2003	11/23/2002
50,504	Hamilton Sundstrand (Comp)	Denver, CO	01/07/2003	12/02/2002
50,505	Newport Steel Corporation (USWA)	Newport, KY	01/07/2003	12/28/2002
50,506	Con Met (Wkrs)	Clackamas, OR	01/07/2003	12/10/2002
50,507	Nortel Networks (Comp)	RTP, NC	01/07/2003	12/16/2002
50,508	Nortel Networks (Wkrs)	Richardson, TX	01/07/2003	01/06/2003
50,509	Sensient Colors, Inc. (USWA)	Birdsboro, PA	01/07/2003	12/20/2002
50,510	Goodrich Corporation (GMP)	Spencer, WV	01/07/2003	12/30/2002
50,511	Johns Manville (USWA)	Vienna, WV	01/07/2003	12/31/2002
50,512	F/V Millie Jo (Comp)	Chignik Lagoon, AK	01/07/2003	01/04/2002
50,513	Sherwood Harsco Corporation (Comp)	Washington, PA	01/07/2003	01/06/2003
50,514	General Electric Co. (Comp)	Mebane, NC	01/07/2003	01/07/2002
50,515	PPC Macomb, Inc. (Comp)	Macomb, IL	01/07/2003	01/07/2003
50,516	Gina's Inc. (Wkrs)	Brooklyn, NY	01/07/2003	12/11/2002
50,517	Carl Zeiss IMT Corporation (Wkrs)	Minneapolis, MN	01/08/2003	01/06/2003
50,518	Bangor and Aroostook Railroad (IBMWE)	Hermon, ME	01/08/2003	01/07/2003
50,519	Tyson Foods (Comp)	Jacksonville, FL	01/08/2003	01/07/2002
50,520	Omnitronics, LLC (Comp)	Conneaut, OH	01/08/2003	12/29/2002
50,521	Gorecki Manufacturing, Inc. (Wkrs)	Milaca, MN	01/08/2003	01/03/2003
50,522	Louisiana Pacific Corporation (Comp)	Saratoga, WY	01/08/2003	12/27/2002
50,523	Computer Sciences Corporation (Wkrs)	Newark, DE	01/08/2003	01/07/2003
50,524	F/V Jessica (Comp)	Anchorage, AK	01/08/2003	01/07/2003
50,525	Cincinnati Machine (Wkrs)	Cincinnati, OH	01/08/2003	01/07/2003
50,526	Sanmina-SCI (Comp)	West Liberty, KY	01/08/2003	01/03/2003
50,527	Generation 2 Worldwide, LLC (Comp)	Dothan, AL	01/09/2003	01/08/2003
50,528	Celestica Corporation (Wkrs)	Rochester, MN	01/09/2003	01/07/2003
50,529	Enterasys Networks, Inc. (Wkrs)	Salt Lake City, UT	01/09/2003	01/08/2003
50,530	PHB Tool and Die (Comp)	Girard, PA	01/09/2003	01/08/2003
50,531	Hankins Lumber Company (MS)	Grenada, MS	01/09/2003	01/08/2003
50,532	Western Digital Corporation (Wkrs)	Rochester, MN	01/09/2003	01/08/2003
50,533	Mastercraft Fabrics, LLC (Comp)	Spindale, NC	01/09/2003	01/02/2003
50,534	Corning Cable Systems, LLC (Wkrs)	Hickory, NC	01/09/2003	11/25/2003

APPENDIX—Continued

[Petitions instituted between 01/02/2003 and 01/10/2003]

TA–W	Subject firm (Petitioners)	Location	Date of institution	Date of petition
50,535	North American Container (WI)	Fond Du Lac, WI	01/09/2003	01/08/2003
50,536	Lacers Sport, Inc. (Wkrs)	Opa Locka, FL	01/10/2003	12/31/2002
50,537	Brillion Iron Works, Inc. (Comp)	Brillion, WI	01/10/2003	01/07/2003
50,538	Dana Corporation (UAW)	Richmond, IN	01/10/2003	01/08/2003
50,539	Arden Companies (Wkrs)	Kendallville, IN	01/10/2003	01/07/2003
50,540	Gaylord Container Corp. (AWPPW)	Antioch, CA	01/10/2003	12/03/2002
50,541	Prudential Insurance Co. (MN)	Plymouth, MN	01/10/2003	01/09/2003

[FR Doc. 03–2543 Filed 2–3–03; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–50,460]

VF Jeanswear, Limited Partnership, a Subsidiary of VF Corporation (Hawksbill Road Facility); Luray, VA; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on January 3, 2003, in response to a worker petition filed by a company official on behalf of workers at VF Jeanswear Limited Partnership, a subsidiary of VF Corporation, Hawksville Road Facility, Luray, Virginia.

The petitioning group of workers is covered by an active certification issued on February 15, 2002, for all workers of the subject firm in Luray, Virginia, which remains in effect (TA–W–40,736B). Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 10th day of January, 2003.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–2556 Filed 2–3–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–50,461]

VF Jeanswear Limited Partnership, a Subsidiary of VF Corporation Sewing Facility (1900 Industrial Drive); Lebanon, MO; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on January 3, 2003, in response to a worker petition filed by a company official on behalf of workers VF Jeanswear Limited Partnership, a subsidiary of VF Corporation, Sewing Facility (1900 Industrial Drive), Lebanon, Missouri.

The petitioning group of workers is covered by an active certification issued on December 20, 2002, and which remains in effect (TA–W–50,061A). Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 10th day of January, 2003.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance..

[FR Doc. 03–2557 Filed 2–3–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6678]

State of Alaska Commercial Fisheries Entry Commission Permit #64936J, Dillingham, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), subchapter D, chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit #64936J, Dillingham, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 29th day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–2570 Filed 2–3–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6680]

State of Alaska Commercial Fisheries Entry Commission Permit #60630I, Dillingham, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), subchapter D, chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit #60630I, Dillingham, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would

serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 29th day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–2571 Filed 2–3–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6682]

State of Alaska Commercial Fisheries Entry Commission Permit #66298R, Dillingham, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), subchapter d, chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit #66298R, Dillingham, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 29th day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–2572 Filed 2–3–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6683]

State of Alaska Commercial Fisheries Entry Commission Permit #62722B; Dillingham, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit #62722B, Dillingham, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 29th day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–2573 Filed 2–3–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6693]

State of Alaska Commercial Fisheries Entry Commission Permit #61298X; Dillingham, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit #61298X, Dillingham, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 29th day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–2574 Filed 2–3–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6694]

State of Alaska Commercial Fisheries Entry Commission Permit #61994O; Dillingham, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit #61994O, Dillingham, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 29th day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–2575 Filed 2–3–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6695]

State of Alaska Commercial Fisheries Entry Commission Permit #58530L; Dillingham, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit #58530L, Dillingham, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 29th day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–2576 Filed 2–3–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6696]

State of Alaska Commercial Fisheries Entry Commission Permit #59635G; Dillingham, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit #59635G, . Dillingham, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 29th day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–2577 Filed 2–3–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6697]

State of Alaska Commercial Fisheries Entry Commission Permit #55500V; Dillingham, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit #55500V, Dillingham, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 29th day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–2578 Filed 2–3–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6698]

State of Alaska Commercial Fisheries Entry Commission Permit #59071A; Dillingham, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit #59071A, Dillingham, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 29th day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–2579 Filed 2–3–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–7585]

J & A Industrial Sheetmetal Company, Bend, OR; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act and in accordance with Section 250(a), Subchapter D, Chapter 2, Title II of the Trade Act of 1974, as amended (19 U.S.C. 2331), an investigation was initiated on September 25, 2002, in response to a worker petition which was filed by the company on behalf of its workers at J & A Industrial Sheetmetal Company, Bend, Oregon. The subject firm was engaged primarily in fabricating sheet metal parts.

The petitioner has requested that the petition be withdrawn. Consequently further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 3rd day of January, 2003.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–2547 Filed 2–3–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA—7603]

Midwest Electric Products, Mankato, MN; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub.L. 103–182) concerning transitional adjustment assistance, hereinafter called (NAFTA–TAA), and in accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on August 19, 2002, in response to a petition filed by the company on behalf of workers at Midwest Electric Products, Inc., Mankato, Minnesota.

The petitioner requested that the petition for NAFTA–TAA be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 16th day of January, 2003.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–2548 Filed 2–3–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA—7562]

Tritex Sportswear, Inc.; Altoona, PA; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called (NAFTA–TAA), and in accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 16, 2002, in response to a petition filed by the company on behalf of workers at Tritex Sportswear, Inc., Altoona, Pennsylvania.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 22nd day of January, 2003.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–2546 Filed 2–3–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Petitions for Modification

The following parties have filed petitions to modify the application of existing safety standards under section 101(c) of the Federal Mine Safety and Health Act of 1977.

1. Freeman United Coal Mining Company

[Docket No. M–2002–125–C]

Freeman United Coal Mining Company, P.O. Box 4630, Springfield, Illinois 62708 has filed a petition to modify the application of 30 CFR 75.1101–8(a) (Water sprinkler system; arrangement of sprinklers) at its Crown III Mine (MSHA I.D. No. 11–02632) located in Montgomery County, Illinois. The petitioner proposes to provide a fireproof electrical enclosure and fire detection system in lieu of a sprinkler over the electrical control. The petitioner states that the Crown III Mine is a large underground mine employing three operating sections to develop entrees and rooms with remote control continuous miners and the belt system utilizes ten belt drives. The petitioner further states that: (i) The belt drives and electrical controls are ventilated with isolated intake air; (ii) the electrical control boxes do not contain flammable fluids or other flammable products and are fully enclosed with fireproof construction and are located at least two-feet from coal or other combustible material; and (iii) the electrical cables will conform with the requirements of part 18, and a heat sensor or CO monitor will be installed near the electrical control box. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

2. Remington Coal Company, Inc.

[Docket No. M–2003–004–C]

Remington Coal Company, Inc., 430 Harper Park Drive, Beckley, West Virginia 25801 has filed a petition to modify the application of 30 CFR 75.1002–1 (Location of other electric equipment; requirements for permissibility) at its Stockburg No. 1 Mine (MSHA I.D. No. 46–08634) located in Kanawha County, West Virginia. The petitioner requests a modification of the existing standard to permit the use a 2,400 volt Joy 14CM27 continuous mining machine instead of the 2,400 volt Joy 12CM27 continuous mining machine currently being used at the Stockburg No. 1 Mine. The petitioner has listed in this petition specific procedures that would be followed when implementing this alternative method. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

3. Dakota Westmoreland Corporation

[Docket No. M–2003–005–C]

Dakota Westmoreland Corporation, P.O. Box 39, Beulah, North Dakota 58523–0039 has filed a petition to modify the application of 30 CFR 77.405(b) (Performing work from a raised position; safeguards) at its Beulah Mine (MSHA I.D. No. 32–00043) located in Mercer County, North Dakota. The petitioner requests a modification of the existing standard to allow an alternative method to permit its boom/mast machine to be raised or lowered during initial dragline assembly or disassembly at construction sites. The petitioner proposes to raise or lower the boom/mast into position by using the on-board motor generator sets during assembly or disassembly of the draglines. The petitioner states that during construction, the machine will not move under its own power and will not perform mining operations. The procedure would be applicable only in instances of disassembly or major maintenance which require the boom to be raised or lowered and a written procedure would be developed and implemented by the mine operator or contractor, and the affected persons who have been trained on the requirements of the procedure. The petitioner also states that this procedure would only address installing/removing the booms on draglines utilizing the machines electrical on-board motor generator sets. The petitioner further states that this procedure does not replace other mechanical precautions or the requirements of the existing standard that is necessary to safely secure booms/masts during construction or maintenance procedures. The petitioner asserts that its proposed alternative method would not result in a diminution of safety to the miners but would provide at least the same measure of protection as the existing standard.

Request for Comments

Persons interested in these petitions are encouraged to submit comments via e-mail to *comments@msha.gov*, or on a computer disk along with an original hard copy to the Office of Standards, Regulations, and Variances, Mine Safety and Health Administration, 1100 Wilson Boulevard, Room 2352, Arlington, Virginia 22209. All comments must be postmarked or received in that office on or before March 6, 2003. Copies of these petitions are available for inspection at that address.

Dated at Arlington, Virginia, this 30th day of January, 2003.

Marvin W. Nichols, Jr.,

Director, Office of Standards, Regulations, and Variances.

[FR Doc. 03–2598 Filed 2–3–03; 8:45 am]

BILLING CODE 4510–43–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts; Partnerships Advisory Panel

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub.

L. 92–463), as amended, notice is hereby given that a meeting of the Partnerships Advisory Panel (State Partnership Agreements), to the National Council on the Arts will be held on February 13–14, 2003. The panel will meet from 9 a.m. to 6 p.m. on February 13th and from 8:30 a.m. to 3 p.m. on February 14th in Room 716 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

This meeting will be open to the public on a space available basis. Topics will include review of the State Partnership Agreement and Regional Partnership Agreement applications, review of proposals for Challenge America Partnership funds, and discussion of guidelines and policy issues.

Any person may observe meetings, or portions thereof, of advisory panels that are open to the public, and, if time allows, may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of AccessAbility, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, (202) 682–5532, TDY–TDD (202) 682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Kathy Plowitz-Worden, Office of Guidelines & Panel Operations, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5691.

Dated: January 29, 2003.

Kathy Plowitz-Worden,

Panel Coordinator, Panel Operations, National Endowment for the Arts.

[FR Doc. 03–2514 Filed 2–3–03; 8:45 am]

BILLING CODE 7537–01–P

NATIONAL SCIENCE FOUNDATION

Committee on Equal Opportunities in Science and Engineering; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Committee on Equal Opportunities in Science and Engineering (1173).

Dates/Time: February 20, 2003, 8:30 a.m.–5 p.m. and February 21, 2003, 8:30 a.m.–1:30 p.m.

Place: National Science Foundation, 4201 Wilson Blvd., Arlington, VA, Room 1235S.

Type of Meeting: Open.

Contact Person: Dr. Margaret Tolbert, Executive Liaison, CEOSE, Office of Integrative Activities, 4201 Wilson Blvd., Arlington, VA 22230, Telephone: (703) 292–8040.

Minutes: May be obtained from the Executive Liaison at the above address.

Purpose of Meeting: To provide advice and recommendations concerning broadening participation in science and engineering.

Agenda:

Thursday, February 20, 2003

8:30 a.m.
- Welcome and approval of the June 2002 Minutes
- Statement of Executive Liaison
- Action on New Committee Members
- Discussion of Committee Agenda and Future Meeting Dates
- Presentation and Discussion of the Math Science Partnerships Program
- Discussion of Increasing the Number of Doctoral Degrees in STEM Awarded to Persons from Underrepresented Groups

10:30 a.m.
- Congressional Discussion

12 Noon
- CEOSE Report for 2004

2:45 p.m.
- Report on Mentoring Conference
- Report on BEST in Relationship to NSF
- Sampling Designs for the 2003 Surveys of Scientists and Engineers
- Plans for the 2004 Report on Women, Minorities, and Persons with Disabilities in Science and Engineering

5 p.m.
- Adjourn

Friday, February 21, 2003

8:30 a.m.
- Unfinished Business

9 a.m.
- Meeting with Dr. Rita Colwell, Director of NSF

10 a.m.
- Continuation of Unfinished Business

1:30 p.m.
- Adjourn

Dated: January 29, 2003.

Susanne Bolton,

Committee Management Officer.

[FR Doc. 03–2465 Filed 2–3–03; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

NSB Public Service Award Committee; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: NSB Public Service Award Committee (5195).

Date and Time: Friday, February 28, 2003, 2 p.m.–3 p.m. EST.

Place: Teleconference meeting.

Type of Meeting: Closed.

Contact Person: Mrs. Susan E. Fannoney, Executive Secretary, Room 1220, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: 703/292–8096.

Purpose of Meeting: To provide advice and recommendations in the selection of the NSB Public Service Award recipients.

Agenda: To review and evaluate nominations as part of the selection process for awards.

Reason for Closing: The nominations being reviewed include information of a personal nature where disclosure would constitute unwarranted invasions of personal privacy. These matters are exempt under 5 U.S.C. 552b(c)(6) of the Government in the Sunshine Act.

Dated: January 29, 2003.

Susanne Bolton,

Committee Management Officer.

[FR Doc. 03–2466 Filed 2–3–03; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Proposal Review; Notice of Meetings

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation (NSF) announces its intent to hold proposal review meetings throughout the year. The purpose of these meetings is to provide advice and recommendations concerning proposals submitted to the NSF for financial support. The agenda for each of these meetings is to review and evaluate proposals as part of the selection process for awards. The majority of these meetings will take place at NSF, 4201 Wilson Blvd., Arlington, Virginia 22230.

All of these meetings will be closed to the public. The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act. NSF will continue to review the agenda and merits of each meeting for overall compliance of the Federal Advisory Committee Act.

These closed proposal review meetings will no longer be announced on an individual basis in the **Federal Register**. NSF intends to publish a notice similar to this on a quarterly basis. For an advance listing of the closed proposal review meetings that include the names of the proposal review panel and the time, date, place, and any information on changes, corrections, or cancellations, please visit the NSF Web site: *http://www.nsf.gov/*

home/pubinfo/advisory.htm. This information may also be requested by telephoning 703/292–8182.

Dated: January 29, 2003.

Susanne Bolton,

Committee Management Officer.

[FR Doc. 03–2467 Filed 2–3–03; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL TRANSPORTATION SAFETY BOARD

Sunshine Act Meeting

Agenda

TIME AND DATE: 9:30 a.m., Tuesday, February 11, 2003.

PLACE: NTSB Conference Center, 429 L'Enfant Plaza, SW., Washington, DC 20594.

STATUS: The one item is open to the public.

MATTER TO BE CONSIDERED:

7310A Pipeline accident report—Natural Gas Pipeline Rupture and Fire Near Carlsbad, New Mexico, August 19, 2000.

News Media Contact: Telephone: (202) 314–6100.

Individuals requesting specific accommodations should contact Ms. Carolyn Dargan at (202) 314–6305 by Friday, February 7, 2003.

FOR FURTHER INFORMATION CONTACT: Vicky D'Onofrio, (202) 314–6410.

Dated: January 31, 2003.

Vicky D'Onofrio,

Federal Register Liaison Officer.

[FR Doc. 03–2712 Filed 1–31–03; 2:10 pm]

BILLING CODE 7533–01–M

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of pending NRC action to submit an information collection request to OMB and solicitation of public comment.

SUMMARY: The NRC is preparing a submittal to OMB for review of continued approval of information collections under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Information pertaining to the requirement submitted:

1. *The title of the information collection:* Generic Customer Satisfaction Surveys.

2. *Current OMB approval number:* OMB No. 3150–0197.

3. *How often the collection is required:* On occasion.

4. *Who is required or asked to report:* Voluntary reporting by the public and NRC licensees.

5. *The number of annual respondents:* 1,727.

6. *The number of hours needed annually to complete the requirement or request:* 386 hours.

7. *Abstract:* Voluntary customer satisfaction surveys will be used to contact users of NRC services and products to determine their needs, and how the Commission can improve its services and products to better meet those needs. In addition, focus groups will be contacted to discuss questions concerning those services and products. Results from the surveys will give insight into how NRC can make its services and products cost effective, efficient, and responsive to its customer needs. Each survey will be submitted to OMB for its review.

Submit, by April 7, 2003, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the burden accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the draft supporting statement may be viewed free of charge at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room O–1 F23, Rockville, MD 20852. OMB clearance requests are available at the NRC worldwide Web site (*http://www.nrc.gov/NRC/PUBLIC/OMB/index.html*). The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions about the information collection requirements may be directed to the NRC Clearance Officer, Brenda Jo. Shelton, U.S. Nuclear Regulatory Commission, T–6 E6, Washington, DC, 20555–0001, by telephone at 301–415–7233, or by Internet electronic mail at *INFOCOLLECTS@NRC.GOV*.

Dated at Rockville, Maryland, this 29th day of January 2003.

For the Nuclear Regulatory Commission.

Brenda Jo Shelton,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 03–2504 Filed 2–3–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Meeting of the ACRS Subcommittees on Materials and Metallurgy and on Plant Operations

The ACRS Subcommittees on Materials and Metallurgy and on Plant Operations will hold a joint meeting on February 18 and 19, 2003, Room T–2B3, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Tuesday, February 18, 2003—1:30 p.m. and Wednesday, February 19, 2003—8:30 a.m. Until the Conclusion of Business

The Subcommittees will discuss industry responses to Bulletin 2002–02, "Reactor Pressure Vessel Head Degradation and Reactor Coolant Pressure Boundary Integrity," the status of NRC wastage research, and the Materials and Reliability Program (MRP) and industry efforts related to vessel head penetration (VHP) cracking and reactor pressure vessel (RPV) head degradation. The purpose of this meeting is to gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Electronic recordings will be permitted only during those portions of the meeting that are open to the public. Persons desiring to make oral statements should notify the Designated Federal Official named below five days prior to the meeting, if possible, so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittees, along with any of their consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittees will then hear presentations by and hold discussions

with representatives of the NRC staff, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, and the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor, can be obtained by contacting the Designated Federal Official, Ms. Maggalean W. Weston (telephone 301–415–3151) between 7:30 a.m. and 5:30 p.m. (EST). Persons planning to attend this meeting are urged to contact the above named individual at least two working days prior to the meeting to be advised of any potential changes to the agenda that may have occurred.

Dated: January 29, 2003.

Sher Bahadur,

Associate Director for Technical Support, ACRS/ACNW.

[FR Doc. 03–2501 Filed 2–3–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards, Meeting of the Subcommittee on Reactor Fuels; Notice of Meeting

The ACRS Subcommittee on Reactor Fuels will hold a meeting on February 20, 2003, Room T–2B3, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Thursday, February 20, 2003—8:30 a.m. Until the Conclusion of Business

The Subcommittee will discuss the Duke Cogema Stone & Webster construction application request resubmittal for a mixed oxide (MOX) fuel fabrication facility. The purpose of this meeting is to gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Electronic recordings will be permitted only during those portions of the meeting that are open to the public. Persons desiring to make oral statements should notify the Designated Federal Official named below five days prior to the meeting, if possible, so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC staff, its consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by contacting the Designated Federal Official, Ms. Maggalean W. Weston (telephone 301/415–3151) between 7:30 a.m. and 5:30 p.m. (EST). Persons planning to attend this meeting are urged to contact the above named individual at least two working days prior to the meeting to be advised of any potential changes to the agenda that may have occurred.

Dated: January 29, 2003.

Sher Bahadur,

Associate Director for Technical Support, ACRS/ACNW.

[FR Doc. 03–2502 Filed 2–3–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards, Subcommittee Meeting on Safeguards and Security; Notice of Meeting

The ACRS Subcommittee on Safeguards and Security will hold a closed meeting on February 21, 2003, NRC Auditorium, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be closed to public attendance to protect information classified as national security information pursuant to 5 U.S.C. 552b(c)(1).

The agenda for the subject meeting shall be as follows:

Friday, February 21, 2003—1 p.m. Until the Conclusion of Business

The Subcommittee will hear presentations from the NRC staff and gather information on the NRC staff's proposed guidance for performing risk-informed vulnerability assessments. The purpose of this meeting is to gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

FOR FURTHER INFORMATION CONTACT: Dr. Richard P. Savio (telephone 301/415–7363) between 7:30 a.m. and 4:15 p.m. (EST).

Dated: January 29, 2003.

Sher Bahadur,

Associate Director for Technical Support, ACRS/ACNW.

[FR Doc. 03–2503 Filed 2–3–03; 8:45 am]

BILLING CODE 7590–01–U

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meetings

AGENCY HOLDING THE MEETING: Nuclear Regulatory Commission.

DATE: Weeks of February 3, 10, 17, 24, March 3, 10, 2003.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and closed.

MATTERS TO BE CONSIDERED:

Week of February 3, 2003

Tuesday, February 4, 2003

2 p.m. Briefing on lessons learned: Davis-Besse Reactor Vessel Head (RVH) Degradation (public meeting) (contact: Stacey Rosenberg, 301–415–1733)

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

Wednesday, February 5, 2003

1 p.m. Discussion of governmental issues (closed—Ex. 1)

Week of February 10, 2003—Tenure

Monday, February 10, 2003

10 a.m. Briefing on status of Office of Nuclear Reactor Regulation (NRR) programs, performance, and plans (public meeting) (contact: Michael Case, 301–415–1275)

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

Tuesday, February 11, 2003

10 a.m. Briefing on status of Office of the Chief Financial Officer (OGFO) programs, performance, and plans (public meeting) (contact: Patrice Williams-Johnson, 301–415–5732)

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

Week of February 17, 2003—Tentative

There are no meetings scheduled for the week of February 17, 2003.

Week of February 24, 2003—Tentative

Monday, February 24, 2003

2 p.m. Meeting with National Association of Regulatory Utility Commissioners (NARUC) (public meeting)

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

Week of March 3, 2003—Tentative

Monday, March 3, 2003

10 a.m. Briefing on status of Office of Nuclear Material Safety and Safeguards (NMSS) programs—Waste Safety (public meeting) (contact: Claudia Seelig, 301–415–7243)

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

2 p.m. Discussion of security issues (closed—Ex. 1)

Week of March 10, 2003—Tentative

There are no meetings scheduled for the week of March 10, 2003.

The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415–1292. Contact person for more information: David Louis Gamberoni (301) 415–1651.

The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/what-we-do/policy-making-schedule.html.*

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to *dkw@nrc.gov.*

Dated: January 30, 2003.

David Louis Gamberoni,

Technical Coordinator, Office of the Secretary.

[FR Doc. 03–2713 Filed 1–31–03; 2:18 pm]

BILLING CODE 7590–01–M

NUCLEAR REGULATORY COMMISSION

Biweekly Notice; Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Public Law 97–415, the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. Public Law 97–415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from, January 10, 2003, through January 23, 2003. The last biweekly notice was published on January 21, 2003 (68 FR 2796).

Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. The filing of requests for a hearing and petitions for leave to intervene is discussed below.

By March 6, 2003, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714,[1] which is available at the Commission's PDR, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/doc-collections/cfr/.* If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the

[1] The most recent version of title 10 of the Code of Federal Regulations, published January 1, 2002, inadvertently omitted the last sentence of 10 CFR 2.714(d) and paragraphs (d)(1) and (d)(2) regarding petitions to intervene and contentions. For the complete, corrected text of 10 CFR 2.714(d), please see 67 FR 20884; April 29, 2002.

designated Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff, or may be delivered to the Commission's PDR, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland, by the above date. Because of continuing disruptions in delivery of mail to United States Government offices, it is requested that petitions for leave to intervene and requests for hearing be transmitted to the Secretary of the Commission either by means of facsimile transmission to 301–415–1101 or by e-mail to *hearingdocket@nrc.gov*. A copy of the request for hearing and petition for leave to intervene should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and because of continuing disruptions in delivery of mail to United States Government offices, it is requested that copies be transmitted either by means of facsimile transmission to 301–415–3725 or by e-mail to *OGCMailCenter@nrc.gov*. A copy of the request for hearing and petition for leave to intervene should also be sent to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for a hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's PDR, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html*. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC PDR Reference staff at 1–800–397–4209, 301–415–4737 or by e-mail to *pdr@nrc.gov*.

AmerGen Energy Company, LLC, Docket No. 50–461, Clinton Power Station, Unit 1, DeWitt County, Illinois; Docket No. 50–219, Oyster Creek Nuclear Generating Station, Ocean County, New Jersey

Exelon Generation Company, LLC, Docket Nos. 50–237 and 50–249, Dresden Nuclear Power Station, Units 2 and 3, Grundy County, Illinois; Docket Nos. 50–373 and 50–374, LaSalle County Station, Units 1 and 2, LaSalle County, Illinois; Docket Nos. 50–254 and 50–265, Quad Cities Nuclear Power Station, Units 1 and 2, Rock Island County, Illinois; Docket Nos. 50–277 and 50–278, Peach Bottom Atomic Power Station, Units 2 and 3, York County, Pennsylvania; Docket Nos. 50–352 and 50–353, Limerick Generating Station, Units 1 and 2, Montgomery County, Pennsylvania

Date of amendment request: December 20, 2002.

Description of amendment request: Nuclear Regulatory Commission (NRC) Regulatory Issue Summary 2002–05: "NRC Approval of Boiling Water Reactor Pressure Vessel Integrated Surveillance Program," provides guidance on implementing the boiling water reactor (BWR) reactor pressure vessel integrated surveillance program (ISP). The amendment will modify the Updated Safety Analysis Reports (USARs) by removing the current facility reactor material surveillance capsule removal schedules from the facility USARs and specifying that these facilities will participate in an ISP developed by the BWR Vessel and Internals Project (BWRVIP). In addition, the Limerick Station will remove the current facility reactor material

specimen surveillance schedule from the Technical Specifications.

With the exception of Oyster Creek, the USARs of each of the listed facilities contain a withdrawal schedule for the reactor pressure vessel material specimens. For those facilities which are not scheduled to remove a material specimen as part of the ISP (*i.e.*, Clinton, Quad Cities, and Limerick), the proposed amendment would remove these plant-specific schedules from the facility USARs and substitute a description of the facility's participation in the ISP. For those facilities which are scheduled to remove a capsule as part of the ISP (*i.e.*, Dresden, LaSalle, and Peach Bottom), the proposed amendment would revise the material specimen withdrawal schedule in accordance with the ISP. Finally, for Oyster Creek, which is not scheduled to remove any further material specimens, the proposed amendment would revise the USAR to state that Oyster Creek will participate in the ISP.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change adopts an integrated surveillance program (ISP) for reactor material specimen surveillances. The ISP ensures that the reactor pressure vessel (RPV) will continue to meet all applicable fracture toughness requirements. No physical changes to the facilities will result from the proposed change. The initial conditions and methodologies used in accident analyses remain unchanged. The proposed change does not revise or alter the design assumptions for systems or components used to mitigate the consequences of accidents. Thus, accident analyses results are not affected by this proposed change.

Therefore, the proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change adopts an ISP for reactor material specimen surveillances. The ISP ensures that the RPV will continue to meet all applicable fracture toughness requirements. No physical changes to the facilities will result from the proposed change.

The proposed change does not affect the design or operation of any system, structure, or component (SSC) in the plant. The safety functions of the related SSCs are not changed in any manner, nor is the reliability of any SSC reduced. The change does not affect the manner by which the facility is operated and does not change any facility, structure, system, or component.

No new or different type of equipment will be installed by this proposed change.

Therefore, the proposed amendment does not create the possibility of a new or different kind of accident from any previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The proposed change has no impact on the margin of safety of any Technical Specification. There is no impact on safety limits or limiting safety system settings. The change does not affect any plant safety parameters or setpoints. No physical or operational changes to the facility will result from the proposed changes. Therefore, the proposed change does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Edward J. Cullen, Deputy General Counsel Exelon BSC—Legal, 2301 Market Street, Philadelphia, PA 19101.

NRC Section Chief: Anthony J. Mendiola.

Entergy Operations Inc., Docket No. 50–382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Date of amendment request: August 19, 2002, as supplemented by letter dated December 19, 2002.

Description of amendment request: The proposed amendment would revise the Technical Specifications (TSs) by: (1) Modifying the wording of the current Surveillance Requirements (SRs) 4.0.1 and 4.0.3 to be consistent with NUREG–1431, Revision 2, Improved Standard Technical Specifications (ISTS) wording for SR 3.0.1 and SR 3.0.3; and (2) modifying the ISTS wording, adopted in item 1 above, to allow a delay period of 24 hours or up to the surveillance frequency interval, whichever is greater, and to require a risk analysis to be performed for any surveillance greater than 24 hours consistent with Technical Specification Task Force (TSTF)–358 for missed surveillances.

The NRC staff issued a notice of opportunity for comment in the **Federal Register** on June 14, 2001 (66 FR 32400), on possible amendments concerning missed surveillances, including a model safety evaluation and model no significant hazards consideration (NSHC) determination, using the Consolidated Line Item Improvement Process (CLIIP). The NRC staff subsequently issued a notice of availability of the models for referencing in license amendment applications in the **Federal Register** on September 28, 2001 (66 FR 49714). Entergy Operations Inc. reviewed the following proposed NSHC determination published in the **Federal Register** as part of the CLIIP for TSTF–358, and concluded in its application of August 19, 2002, that the proposed NSHC determination applied to Waterford Steam Electric Station, Unit 3.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), an analysis of the issue of no significant hazards consideration is presented below:

Adoption of TSTF–358, Revision 6—Missed Surveillances

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change relaxes the time allowed to perform a missed surveillance. The time between surveillances is not an initiator of any accident previously evaluated. Consequently, the probability of an accident previously evaluated is not significantly increased. The equipment being tested is still required to be operable and capable of performing the accident mitigation functions assumed in the accident analysis. As a result, the consequences of any accident previously evaluated are not significantly affected. Any reduction in confidence that a standby system might fail to perform its safety function due to a missed surveillance is small and would not, in the absence of other unrelated failures, lead to an increase in consequences beyond those estimated by existing analyses. The addition of a requirement to assess and manage the risk introduced by the missed surveillance will further minimize possible concerns. Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

The proposed change does not involve a physical alteration of the plant (no new or different type of equipment will be installed) or a change in the methods governing normal plant operation. A missed surveillance will not, in and of itself, introduce new failure modes or effects and any increased chance that a standby system might fail to perform its safety function due to a missed surveillance would not, in the absence of other unrelated failures, lead to an accident beyond those previously evaluated. The addition of a requirement to assess and manage the risk introduced by the missed surveillance will further minimize possible concerns. Thus, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in the margin of safety.

The extended time allowed to perform a missed surveillance does not result in a significant reduction in the margin of safety. As supported by the historical data, the likely outcome of any surveillance is verification that the LCO [Limiting Condition for Operation] is met. Failure to perform a surveillance within the prescribed frequency does not cause equipment to become inoperable. The only effect of the additional time allowed to perform a missed surveillance on the margin of safety is the extension of the time until inoperable equipment is discovered to be inoperable by the missed surveillance. However, given the rare occurrence of inoperable equipment, and the rare occurrence of a missed surveillance, a missed surveillance on inoperable equipment would be very unlikely. This must be balanced against the real risk of manipulating the plant equipment or condition to perform the missed surveillance. In addition, parallel trains and alternate equipment are typically available to perform the safety function of the equipment not tested. Thus, there is confidence that the equipment can perform its assumed safety function. Therefore, this change does not involve a significant reduction in a margin of safety.

Proposed Changes to SR 4.0.1 and 4.0.3

As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration for the adoption of NUREG–1431, Revision 2, for the revised SR 4.0.1 and 4.0.3 wording. The NRC staff has reviewed the licensee's analysis against the standards of 10 CFR 50.92(c). The NRC staff's review is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change involves rewording of the existing SRs 4.0.1 and 4.0.3 to be consistent with NUREG–1431, Revision 2. These modifications involve no technical changes to the existing TS. This change is administrative in nature and does not affect initiators of analyzed events or assumed mitigation of accident or transient events. Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

The proposed change involves the rewording of the existing SR 4.0.1 and 4.0.3 to be consistent with NUREG–1431, Revision 2. The change does not involve a physical alteration of the plant (no new or different type of equipment installed) or changes in the methods governing normal plant operation. The change will not impose any new or different requirements or eliminate any existing requirements. Therefore, the proposed change does not create the probability of a new or different kind of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in the margin of safety.

The proposed change involves rewording of the existing SRs 4.0.1 and 4.0.3 to be consistent with NUREG–1431, Revision 2. The change is administrative in nature and will not involve any technical changes. The change will not reduce a margin of safety because it has no impact on any safety analysis assumptions. Since this change is administrative in nature, no question of safety is involved. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: N. S. Reynolds, Esquire, Winston & Strawn 1400 L Street, NW., Washington, DC 20005–3502.

NRC Section Chief: Robert A. Gramm.

Entergy Operations Inc., Docket No. 50–382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Date of amendment request: December 16, 2002.

Description of amendment request: The proposed amendment will revise the current main steam isolation valve (MSIV) Technical Specification (TS) 3/4 7.1.5 to more closely reflect TS 3.7.2 contained in NUREG–1432, Revision 2. In addition, this change will remove the MSIVs from the scope of containment isolation valve (CIV) TS 3/4 6.3 such that only TS 3/4.7.1.5 will apply to the MSIVs. These changes will provide increased flexibility and clarity regarding the implementation of the TSs regarding MSIVs.

Basis for proposed no significant hazard consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change to the applicability for the main steam line isolation valves will not require operability when all MSIVs are closed in Modes 2, 3, and 4. Analyzed events are assumed to be initiated by the failure of plant structures, systems or components. In the closed position the MSIVs are already in their safety function position. In this position, there can be no increase in the probability or consequences of an accident.

The consequences of previously analyzed events are dependent on the initial conditions assumed for the analysis, and the availability and successful functioning of the equipment assumed to operate in response to the analyzed event. When the MSIVs are closed in Modes 2, 3, and 4 they are performing their design function for containment isolation and for main steam line isolation on the secondary side of the plant. The proposed change does not alter the initial conditions assumed in the safety analyses. The plant parameters assumed for the analyses are maintained within assumed limits through compliance with the Technical Specifications and plant procedures. Additionally, the proposed change does not impose any new safety analyses limits. Therefore, the proposed change does not involve a significant increase in the consequences of an accident previously evaluated.

The proposed change increases the allowed outage time for an inoperable MSIV from 4 hours to 8 hours in Mode 1 and for Modes 2, 3, and 4; will allow both MSIVs to be inoperable, will allow separate action entry for the inoperable valves, and will allow 8 hours to close each inoperable valve. Analyzed events are assumed to be initiated by the failure of plant structures, systems or components. Extending the time available to complete repairs of an inoperable component does not have a detrimental impact on the integrity of plant components nor does it increase the probability that these components will fail. The proposed changes are not related in any way to the probability of failure of a plant structure, system or component which would result in the occurrence of an analyzed event. Because the probability of failure of plant equipment is not affected, there is no impact on the probability of occurrence of a previously analyzed accident.

The consequences of previously analyzed events are dependent on the initial conditions assumed for the analysis, and the availability and successful functioning of the equipment assumed to operate in response to the analyzed event. The steam line break analysis in FSAR [Final Safety Analysis Report] Section 15.1.3 assumes a failure of one MSIV to close. For the containment isolation function, in the event of an inoperable MSIV coincident with a LOCA [loss-of-coolant accident], the closed system (*i.e.*, the steam generator tubes and main steam line piping) remains intact. The closed system is subjected to a Type A containment leakage test, is missile protected, and [has] seismic category I piping, and typically has flow through it during normal operation such

that any loss of integrity could be continually observed through leakage detection systems within containment and system walkdowns outside containment. Therefore, with an inoperable MSIV the safety analysis (both LOCA and steam line break) remains valid assuming no additional failures. The increase in core damage frequency and large early release fraction, resulting from the increased restoration time, is negligible. The proposed 8 hour Allowed Outage Time is sufficiently short to ensure that the MSIVs are operable when required to perform their design function. Even though both MSIVs will be allowed under separate condition entry, to be inoperable in Modes 2, 3, and 4 the inoperable valves are still required to be closed. The 8 hour Allowed Outage Time to close an inoperable valve is based on the small likelihood of an accident occurring that will need the MSIV isolation function during this time period and the fact that the valves are located on a closed system with respect to containment integrity. The proposed change does not alter the initial conditions assumed in the safety analyses. The plant parameters assumed for the analyses are maintained within assumed limits through compliance with the Technical Specifications and plant procedures. Additionally, the proposed change does not impose any new safety analyses limits. Therefore, the proposed change does not involve a significant increase in the consequences of an accident previously evaluated.

The proposed change will add a Note to the MSIV surveillance to allow entry into Mode 3 for testing at hot conditions. Analyzed events are assumed to be initiated by the failure of plant structures, systems or components. The addition of this allowance for testing is not related in any way to the probability of failure of a plant structure, system or component which would result in the occurrence of an analyzed event. Because the probability of failure of plant equipment is not affected, there is no impact on the probability of occurrence of a previously analyzed accident.

The consequences of previously analyzed events are dependent on the initial conditions assumed for the analysis, and the availability and successful functioning of the equipment assumed to operate in response to the analyzed event. The proposed change will allow entry into Mode 3 in order to perform MSIV testing at hot conditions. However, prior to this testing, the MSIVs are not known to be inoperable from any other cause other than not having performed the Surveillance Requirement to demonstrate closure times at hot plant conditions, which they are expected to pass. The proposed change will allow entry into Mode 3 for the condition where both MSIVs may require closure time testing. This testing allowance is limited to Mode 3, and must be completed prior to entry into Modes 1 or 2. The proposed change does not alter the initial conditions assumed in the safety analyses. The plant parameters assumed for the analyses are maintained within assumed limits through compliance with the Technical Specifications and plant procedures. Additionally, the proposed change does not impose any new safety analyses limits. Therefore, the proposed change does not involve a significant increase in the consequences of an accident previously evaluated.

The proposed change will require MSIVs, that are closed in accordance with the Mode 2, 3, and 4 Action, be verified closed once per seven days. Analyzed events are assumed to be initiated by the failure of plant structures, systems or components. The addition of this requirement is not related in any way to the probability of failure of a plant structure, system or component which would result in the occurrence of an analyzed event. Because the probability of failure of plant equipment is not affected, there is no impact on the probability of occurrence of a previously analyzed accident.

The consequences of previously analyzed events are dependent on the initial conditions assumed for the analysis, and the availability and successful functioning of the equipment assumed to operate in response to the analyzed event. The proposed change adds a Surveillance Requirement to Technical Specification 3/4.7.1.5 to verify proper MSIV isolation on an actuation signal. This is not a new Surveillance Requirement for the Technical Specifications. Technical Specification 3.3.2, Engineering Safety Features Actuation System Instrumentation, Surveillance Requirement 4.3.2.1 (Table 4.3–2 Item 4.d) requires a functional test of the actuation relay (K305) once per 18 months which verifies automatic closure of the MSIVs on a simulated main steam isolation signal. The proposed change does not alter the initial conditions assumed in the safety analyses. The plant parameters assumed for the analyses are maintained within assumed limits through compliance with the Technical Specifications and plant procedures. Additionally, the proposed change does not impose any new safety analyses limits. Therefore, the proposed change does not involve a significant increase in the consequences of an accident previously evaluated.

Therefore, none of the proposed change[s] described above involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change does not involve a physical alteration of the plant. No new equipment is being introduced, and installed equipment is not being operated in a new or different manner. There is no change being made to the parameters within which the plant is operated, or to the setpoints at which protective or mitigative actions are initiated. No alteration in the procedures which ensure the plant remains within analyzed limits is being proposed, and no change is being made to the procedures relied upon to respond to an off-normal event. As such, no new failure modes are being introduced.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The margin of safety is established through equipment design, limitations on operating parameters, and the setpoints at which automatic actions are initiated. No equipment design features are impacted by this change, no operating parameters are revised, and no changes to the actuation setpoints are involved.

The design safety function of the MSIVs is to close upon receipt of a main steam isolation signal. With the MSIVs already closed in Modes 2, 3 or 4, the design function is satisfied.

The proposed change will increase the allowed outage time from 4 hours to 8 hours in Mode 1, for an inoperable MSIV. The proposed change will also relax current allowances for MSIVs in Modes 2, 3, and 4; however, the relaxations are in lower modes of operation where the potential for an accident that would require the MSIV isolation function is reduced. The proposed changes will still ensure that the inoperable MSIV(s) are restored or closed in a reasonable time of 8 hours. Once closed, the MSIVs meet their design safety function.

The proposed change will add a note indicating the Surveillance Requirements must be performed prior to entry into Modes 1 or 2. The MSIVs are expected to pass the Surveillance Requirement and are not known to be inoperable for any other reason than not having performed the valve closure test at hot conditions. The testing is limited to Mode 3, when the reactor is subcritical, thus verifying the MSIV closure times prior to power operation.

The proposed change will require MSIVs, which are closed in accordance with the Mode 2, 3, and 4 Action, be verified closed once per seven days. This requirement provides additional assurance that the MSIVs perform their design safety function to close.

The proposed change adds a Surveillance Requirement to Technical Specification 3/4.7.1.5 to verify proper MSIV isolation on an actuation signal. This, however, is not a new Surveillance Requirement for the Technical Specifications. Technical Specification 3.3.2, Engineering Safety Features Actuation System Instrumentation, Surveillance Requirement 4.3.2.1 (Table 4.3–2 Item 4.d) requires a functional test of the actuation relay (K305) once per 18 months which verifies automatic closure of the MSIVs on a simulated main steam isolation signal.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: N. S. Reynolds, Esquire, Winston & Strawn 1400 L Street, NW., Washington, DC 20005–3502.

NRC Section Chief: Robert A. Gramm.

Entergy Operations Inc., Docket No. 50–382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Date of amendment request: December 16, 2002.

Description of amendment request: The proposed amendment will add the topical report entitled "Fuel Rod Maximum Allowable Gas Pressure," CEN–372–P–A, to the list of analytical methods in Technical Specification (TS) 6.9.1.11.1 used to determine the Waterford Steam Electric Station, Unit 3 (Waterford 3) core operating limits.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously analyzed?

Response: No.

The proposed change does not involve any change to the configuration or method of operation of any plant equipment that is used to mitigate the consequences of an accident. The proposed change adds an NRC [Nuclear Regulatory Commission]-approved topical report to the list of analytical methods used to determine the core operating limits. The effect of the addition of this new reference is to revise the fuel design criterion for internal rod pressure to accept rod pressures that may exceed nominal Reactor Coolant System operating pressure. The use of this revised criterion continues to ensure that the consequences of an accident remain within acceptable limits. The change also proposes the administrative deletion of report date and revision levels in the list of references. These changes do not alter any of the assumptions or bounding conditions currently in the Final Safety Analysis Report.

Waterford 3 performed a large break loss-of-coolant accident (LOCA) analysis using bounding fuel performance data as described in CEN–372–P–A. This analysis concluded that the peak cladding temperature remained within 10 CFR 50.46 limits.

In addition to the LOCA analysis, an evaluation of the potential for departure from nucleate boiling (DNB) propagation was performed as described in CEN–372–P–A. The results confirmed that Waterford 3 is bounded by the results evaluated in the topical report and that DNB propagation will not occur.

Based on these analyses, there is no increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change does not involve any change to the configuration or method of operation of any plant equipment that is used to mitigate the consequences of an accident. Accordingly, no new failure modes have been defined for any plant system or component important to safety nor has any new limiting failure been identified as a result of the proposed change. The intent of the proposed change is to reference an NRC-approved topical report in the Technical Specifications. The topical report justifies an acceptance criterion that allows fuel rod internal pressure to exceed RCS [reactor coolant system] pressure. There are no new accidents created by this change. An administrative aspect of this change, the deletion of date and revision levels, was also considered and does not create a new or different accident.

The impact of fuel rod internal pressure exceeding reactor coolant system (RCS) pressure was considered in both an emergency core cooling system (ECCS) performance analysis and in a DNB propagation evaluation performed for Waterford 3. These two aspects were required considerations based on the NRC Safety Evaluation review of the topical report. The results demonstrated that Waterford 3 continues to meet 10 CFR 50.46 and that there is no potential for DNB propagation.

Based on these analyses, there is no possibility of the creation of a new or different kind of accident from those previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed change adds an NRC-approved topical report to the list of analytical methods used to determine core operating limits. It also deletes the revision number and dates associated with each of the topical reports listed. The effect of the addition of the new reference is to revise the fuel design criterion for fuel rod internal pressure to accept rod pressures that may exceed nominal RCS operating pressure. The use of this revised criterion continues to ensure that the consequences of an accident remain within acceptable limits. Since the core operating limits will continue to be established by an NRC-approved methodology and the results will be verified to meet the established acceptance criteria of 10 CFR 50.46, the change will provide adequate core protection. Thus, the proposed amendment does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: N. S. Reynolds, Esquire, Winston & Strawn 1400 L Street, NW., Washington, DC 20005–3502.

NRC Section Chief: Robert A. Gramm.

Entergy Operations Inc., Docket No. 50–382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Date of amendment request: December 20, 2002.

Description of amendment request: The proposed amendment makes several administrative changes to the Waterford Steam Electric Station, Unit 3, Technical Specifications (TSs) to revise, delete, correct, or clarify certain titles, page numbers, and heading information. The proposed amendment also revises personnel and committee titles that have been changed, revises administrative reporting requirements to conform to 10 CFR 50.4, and deletes redundant or unnecessary requirements from TSs 5.4, 6.6, and 6.7.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed changes are primarily to correct titles, page numbering errors, and otherwise make the TS index pages consistent with other NRC [U. S. Nuclear Regulatory Commission] approved pages. These changes are all of an administrative nature and have no effect on any plant equipment or structures. Therefore, these changes do not increase the probability or consequences of an accident previously evaluated.

The proposed amendment also deletes TS 5.4.1 and 5.4.2. Values for RCS [Reactor Coolant System] design pressure, temperature, and volume are contained in the Final Safety Analysis Report. Any changes to these are controlled by 10 CFR 50.59. Therefore, removing the section from the TS will not increase the probability or consequences of previously evaluated accidents.

The proposed amendment also deletes TS 6.6 and 6.7, and revises TS 6.9.1 and TS 6.9.2 to administratively conform reporting requirements to those in 10 CFR [part] 50. Therefore, removing these sections from the TS will not increase the probability or consequences of previously evaluated accidents.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed changes are administrative in nature and do not involve a physical alteration of the plant. No new or different equipment or modes of operation are being introduced by this proposed change. Thus, the changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

Margin of safety is related to the confidence in the ability of the fission product barriers to perform their design functions during and following an accident situation. These barriers include the fuel cladding, the reactor coolant system, and the containment system. The proposed changes are primarily administrative in nature and can not affect any safety barriers. The proposed change to TS 5.4 only deletes unnecessary information. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: N. S. Reynolds, Esquire, Winston & Strawn 1400 L Street, NW., Washington, DC 20005–3502.

NRC Section Chief: Robert A. Gramm.

Entergy Nuclear Operations, Inc., Docket No. 50–333, James A. FitzPatrick Nuclear Power Plant, Oswego County, New York

Date of amendment request: December 6, 2002.

Description of amendment request: The proposed amendment would increase the surveillance interval of the Local Power Range Monitor (LPRM) calibrations from 1000 megawatt-days/ton to 2000 megawatt-days/ton.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Operation of the JAF [James A. FitzPatrick] plant in accordance with the proposed amendment would not involve a significant hazards consideration as defined in 10 CFR 50.92 since it would not:

1. Involve an increase in the probability or consequences of an accident previously evaluated. The revised surveillance interval continues to ensure that the LPRM signal is adequately calibrated. The proposed change results in no change in radiological consequences of the design basis LOCA [loss-of-coolant accident] as currently analyzed for JAF. This change will not alter the basic operation of process variables, structures, systems, or components as described in the JAF UFSAR [Updated Final Safety Analysis Report], and no new equipment is introduced by the change in LPRM surveillance interval. The performance of the APRM [Average Power Range Monitor] and RBM [Rod Block Monitor] systems are not significantly affected by the proposed LPRM surveillance interval increase. Therefore, the probability of accidents previously evaluated is unchanged.

The consequences of an accident can be affected by the thermal limits existing at the time of the postulated accident, but LPRM chamber exposure has no significant effect on the calculated thermal limits because LPRM accuracy does not significantly deviate with exposure. For the extended calibration interval, the total nodal power uncertainty remains less than the uncertainty assumed in the thermal analysis basis safety limit, maintaining the accuracy of the thermal limit calculation. Therefore, the thermal limit calculation is not significantly affected by LPRM calibration frequency, and the consequences of an accident previously evaluated are unchanged.

The change does not affect the initiation of any event, nor does it negatively impact the mitigation of any event. Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated. The proposed change will not physically alter the plant or its mode of operation. The performance of the APRM and RBM systems are not significantly affected by the proposed LPRM surveillance interval increase. As such, no new or different types of equipment will be installed, and the basic operation of installed equipment is unchanged. The methods governing plant operation and testing are consistent with current safety analysis assumptions. Therefore, the proposed change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Involve a significant reduction in a margin of safety. The proposed change has no impact on equipment design or fundamental operation, and there are no changes being made to safety limits or safety system allowable values that would adversely affect plant safety as a result of the proposed change. The performance of the APRM and RBM systems are not significantly affected by the proposed LPRM surveillance interval increase. The margin of safety can be affected by the thermal limits existing prior to an accident; however, uncertainties associated with LPRM chamber exposure have no significant effect on the calculated thermal limits. The thermal limit calculation is not significantly affected because LPRM sensitivity with exposure is well defined. LPRM accuracy remains within the total nodal power uncertainty assumed in the thermal analysis basis, thus maintaining thermal limits and the safety margin.

Since the proposed change does not affect safety analysis assumptions or initial conditions, the margin of safety in the safety analyses are maintained. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. David E. Blabey, 1633 Broadway, New York, New York 10019.

NRC Section Chief: Richard J. Laufer.

Entergy Nuclear Vermont Yankee, LLC and Entergy Nuclear Operations, Inc., Docket No. 50–271, Vermont Yankee Nuclear Power Station, Vernon, Vermont

Date of amendment request: January 9, 2003.

Description of amendment request: The proposed Technical Specification (TS) amendment request changes the definition of a Logic System Functional Test, deletes the definition of a Simulated Automatic Actuation, clarifies Surveillance Requirement 4.5.G.1.a regarding simulated automatic actuation testing, and revises associated TS Bases.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change involves surveillance requirements and definitions of surveillance tests. As such, the proposed change does not involve any plant physical changes, change any Technical Specification instrumentation setpoints, or introduce any new mode of plant operation. The proposed change to surveillance requirements and definitions does not result in any significant change in the availability of logic systems or safety-related systems themselves. Protective functions will be maintained. The proposed change does not degrade plant design, operation, or the performance of any safety system assumed to function in the accident analysis.

Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Create the possibility for a new or different kind of accident from any previously evaluated.

The proposed change does not: introduce any new accident initiators or failure mechanisms because the changes do not introduce any new modes of plant operation, make any physical changes (no new or different type of equipment will be installed); or change any Technical Specification instrumentation setpoints or methods of plant operation. The proposed changes will not substantially impose new requirements or eliminate any existing requirements.

Therefore, the changes to the surveillance requirements and testing definitions that encompass this proposed change do not

create the possibility of a new or different kind of accident than those previously evaluated.

3. Involve a significant reduction in a margin of safety.

The proposed change does not alter the manner in which safety limits, limiting safety system settings, or limiting conditions for operation are determined. There is no change or impact on any safety analysis assumptions. The proposed change does not involve any increase in calculated off-site dose consequences. Operability of protective instrumentation and the associated systems is unaffected, and performance of equipment will not be significantly affected. Since the proposed change is consistent with the BWR/4 Standard Technical Specifications, NUREG–1433, Revision 2, approved by the NRC [Nuclear Regulatory Commission] staff, revising the Technical Specifications in a manner which clarifies and reflects the approved level of detail ensures that safety margins are acceptable. Therefore, there is no significant reduction in the margin of safety as a result of this Technical Specification change.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. David R. Lewis, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037–1128.

NRC Section Chief: James W. Clifford.

FirstEnergy Nuclear Operating Company, Docket No. 50–440, Perry Nuclear Power Plant, Unit 1, Lake County, Ohio

Date of amendment request: March 14, 2002.

Description of amendment request: The proposed license amendment request (LAR) will allow exercising and testing the Inclined Fuel Transfer System (IFTS) prior to the beginning of the refueling outage, thus increasing system reliability and refuel outage efficiency. The proposed LAR does not provide for the movement of fuel. The proposed LAR supplements Amendment No. 100 by including a time limit on the removal of the IFTS blind flange, providing a requirement to install the upper pool IFTS gate prior to IFTS blind flange removal, and limiting the unbolted configuration on the IFTS blind flange when it is rotated.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change permits removal of the Inclined Fuel Transfer System (IFTS) blind flange for a maximum duration of 60 days per cycle when primary Containment operability is required in MODES 1 (Power Operation), 2 (Startup), or 3 (Hot Shutdown). The proposed change also limits the duration the IFTS blind flange may be unbolted when in MODES 1, 2, or 3. The proposed change does not involve modifications to plant systems or design parameters that could contribute to the initiation of any accidents previously evaluated.

Regarding the probability and consequences of design basis and beyond design basis accidents, a comprehensive technical evaluation was completed in accordance with Regulatory Guide (RG) 1.174, "An Approach for Using Probabilistic Risk Assessment In Risk-Informed Decisions On Plant-Specific Changes to the Licensing Basis" and RG 1.177, "An Approach for Plant-Specific, Risk-Informed Decision Making: Technical Specifications." This evaluation determined that the proposed change is technically justified and the associated risk is insignificant.

The proposed change permits alteration of the containment boundary for the IFTS penetration. Regarding the consequences of accidents, the proposed change has been determined via a probabilistic risk assessment to be acceptable regarding its overall impact to the plant's risk, consistent with the Nuclear Regulatory Commission's Safety Goal Policy Statement. The resulting pressures and temperatures from a design basis Loss Of Coolant Accident (LOCA) are considered the primary challenge to the integrity of the containment. Pursuant to Amendment 100, the existing Technical Specifications require maintaining an adequate water seal to prevent leakage from the bottom of the IFTS transfer tube and isolating the drain piping. This water seal is adequate to mitigate the effects of the design basis peak post-accident pressures and temperatures. The proposed change requires the installation of the upper IFTS pool gate to provide protection of the Suppression Pool Make Up system water inventory. A time limit for IFTS blind flange removal of 60 days per cycle and a 20 hour limit for the unbolted configuration of the IFTS flange have been established as conservative measures to limit the associated risk to the containment boundary for all accident conditions. The proposed change has been found to be acceptable regarding flooding and seismic design issues.

Therefore, the function of the containment to provide an adequate boundary in the event of a design basis LOCA is not compromised with the proposed change and the proposed change does not result in a significant increase in the probability of the consequences of previously evaluated accidents.

2. The proposed changes would not create the possibility of a new or different kind of accident from any previously analyzed.

The proposed change consists of the removal of the IFTS blind flange when in MODES 1, 2, or 3. The IFTS blind flange is a passive component that is not part of the primary reactor coolant pressure boundary and is not involved in the operation or shutdown of the reactor. Being passive, its presence or absence does not affect any of the parameters or conditions that could contribute to the initiation of any incidents or accidents that are created from a loss of coolant or positive reactivity incident. Re-aligning the boundary of the primary containment to include portions of the IFTS is passive in nature and therefore has no influence on the possibility of creating a new or different kind of accident. Furthermore, operation of the IFTS is unrelated to the operation of the reactor and there is no mishap in the process that can lead or contribute to the possibility of losing any coolant in the reactor or introducing the chance for positive or negative reactivity or other accidents different from and not bounded by those previously evaluated.

Therefore, the proposed change does not result in creating the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed changes do not involve a significant reduction in a margin of safety.

The proposed change involves the re-alignment of the primary containment boundary by removing the IFTS blind flange, which is a passive component. The margin of safety that has the potential of being impacted by the proposed change involves the dose consequences of postulated accidents, which are directly related to potential leakage through the primary containment boundary. The potential leakage pathways due to the proposed change have been reviewed, and leakage can only occur from the administratively controlled IFTS transfer tube drain piping. Pursuant to Amendment 100, an individual is currently designated to provide timely isolation of this drain piping when this proposed change is in effect. The conservatively calculated dose, which might be received by the designated individual while isolating the drain piping, is well within the guidelines of General Design Criterion 19. Furthermore, the drain piping isolation valve is included in the Primary Containment Leakage Rate Testing Program to ensure that leakage from the piping and components located outboard of the blind flange will be maintained consistent with the leakage rate assumptions of the accident analysis. It has been determined that the proposed change would not have a substantial impact on the ultimate pressure capacity of the containment as it relates to the Large Early Release Frequency (LERF) nor would it have a substantial impact on LERF from seismic events. Therefore, the dose consequences of an event would be unchanged, and the associated margin of safety would also be unchanged.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff

proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mary E. O'Reilly, Attorney, FirstEnergy Corporation, 76 South Main Street, Akron, OH 44308.

NRC Section Chief: Anthony J. Mendiola.

FirstEnergy Nuclear Operating Company, Docket No. 50–440, Perry Nuclear Power Plant, Unit 1, Lake County, Ohio

Date of amendment request: March 14, 2002.

Description of amendment request: The amendment request proposes a one-time exception to the requirement in Nuclear Energy Institute (NEI) 94–01 to perform an integrated leak rate test (ILRT) at a frequency of 10 years. The exception is to allow ILRT testing within 15 years from the last ILRT, completed July 1, 1994. The proposed amendment is considered risk-informed, therefore Regulatory Guide 1.174, "An approach for Using Probabilistic Risk Assessment in Risk-Informed Decisions on Plant-Specific Changes to the Licensing Basis," has been followed, while using the methodology of Electric Power Research Institute (EPRI) report, "Risk Impact Assessment of Revised Containment Leak Rate Testing Intervals," (EPRI TR–104285).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

1. This proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed extension to Type A testing cannot increase the probability of an accident previously evaluated since extension of the containment Type A testing is not a physical plant modification that could alter the probability of accident occurence, nor is it an activity or modification that could lead to equipment failure or accident initiation.

The proposed extension to Type A testing does not result in a significant increase in the consequences of an accident as documented in NUREG–1493. The NUREG notes that very few potential containment leakage paths are not identified by Type B and C tests. It concludes that reducing Type A (ILRT) testing frequency to once per twenty years leads to an imperceptible increase in risk.

Other testing and inspections provide a high degree of assurance that the containment will not degrade in a manner detectable only by Type A testing. The last three Type A tests performed at PPNP identified containment leakage within the acceptable criteria, indicating a very leak-tight containment. Inspections required by the ASME Code are performed in order to identify indications of containment degradation that could affect leak-tightness. Containment pressure is monitored each shift during plant operation and would identify containment vessel shell leakage into the annulus by a decrease in containment pressure. Type B and C testing, required by Technical Specifications, identifies any containment leakage from designed penetrations, such as from valves, that would otherwise be detected by a Type A test. These factors establish that an extension to the PPNP Type A test interval will not represent a significant increase in the consequences of an accident.

Thus, the proposed amendment does not involve a significant increase in the probability or consequences of a previously evaluated accident.

2. This proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed revision to the Technical Specifications adds a one-time extension to the current interval for Type A testing for PPNP. The current test interval of ten years, based on past performance, would be extended on a one-time basis to fifteen years from the last Type A test. The proposed extension to Type A testing does not create the possibility of a new or different type of accident since there are no physical changes to the plant or changes to the operation of the plant that could introduce a new failure.

Thus, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. This proposed amendment does not involve a significant reduction in a margin of safety.

The proposed revision to the PPNP Technical Specifications adds a one-time extension to the current interval for Type A testing. The current test interval of ten years, based on past performance, would be extended on a one-time basis to fifteen years from the last Type A test. The proposed extension to Type A testing will not significantly reduce the margin of safety. The NUREG–1493 generic study of the effects of extending containment leakage testing found that a 20-year interval in Type A testing resulted in an imperceptible increase in risk to the public. NUREG–1493 found that, generically, the design containment leakage rate contributes only about 0.1 percent of the overall risk and that decreasing the Type A testing frequency would have a minimal effect on this risk since 95% of the Type A detectable leakage paths would already be detected by Type B and C testing. Furthermore, for PPNP, monitoring containment vessel pressure each shift during operation further reduces the risk of any containment leakage path going undetected. The PPNP test and inspection performance has satisfactorily demonstrated that the containment remains very leak tight. The proposed change has no effect on Core Damage Frequency (CDF). The change in Large Early Release Frequency (LERF) was computed and found to be a "very small" change in accordance with the guidelines of Regulatory Guide 1.174. The computed change in Conditional Containment Failure Probability (CCFP) and offsite dose have also been evaluated and are considered to be insignificant.

Therefore, the change does not involve a significant reduction in a margin of safety.

Based on the above considerations, it is concluded that a significant hazard would not be introduced as a result of this proposed change.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mary E. O'Reilly, Attorney, FirstEnergy Corporation, 76 South Main Street, Akron, OH 44308.

NRC Section Chief: Anthony J. Mendiola.

Florida Power Corporation, et al., Docket No. 50–302, Crystal River Unit No. 3 Nuclear Generating Plant, Citrus County, Florida

Date of amendment request: October 11, 2002.

Description of amendment request: The proposed amendment would revise Crystal River Unit 3 Improved Technical Specifications (ITS) 3.3.15 "Reactor Building Purge Isolation-High Radiation;" ITS Bases 3.7.15 "Spent Fuel Assembly Storage;" ITS 3.9.3 "Containment Penetrations;" and ITS 3.9.6 "Refueling Canal Water Level" to account for handling irradiated fuel within containment that has not occupied part of a critical reactor core within the previous 72 hours.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Crystal River Unit 3 (CR–3) proposes to revise Improved Technical Specifications (ITS) 3.3.15, 3.9.3, 3.9.6, and Bases 3.7.15.

Florida Power Corporation (FPC) has determined that this license amendment request does not involve a significant hazards consideration as defined in 10 CFR 50.92 based on the following:

(1) Does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change does not increase the probability of a fuel handling accident in that the proposed change deals with the results of such an accident, not the cause of such an accident. The proposed change does not increase the consequences of an accident previously evaluated in that the CR–3 Alternate Source Term (AST) has been

approved by the NRC, and this proposed change implements that NRC approval. The AST for the Fuel Handling Accident (FHA) takes no credit for containment isolation nor for a filtered release.

(2) Does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes to the ITS do not affect nor create a different type of fuel handling accident. The fuel handling accident analyses assume that all of the iodine and noble gases that become airborne, escape, and reach the exclusion area boundary and low population zone with no credit taken for filtration, containment of the source term, or for decay or deposition in the containment. The proposed changes do not involve the addition or modification of equipment nor do they alter the design of plant systems. The revised operations are consistent with the fuel handling accident analyses. Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) Does not involve a significant reduction in margin of safety.

The calculated doses to both the public and control room operators are well within the limits given in 10 CFR 50.67. The proposed changes do not alter the bases for assurance that safety-related activities are performed correctly or the basis for any ITS that is related to the establishment of or maintenance of a safety margin.

The systems that have been included in the proposed change will have administrative controls in place to assure that the systems are available and can be promptly returned to operation to further reduce dose consequences. These administrative controls will include a single normal or contingency method to promptly close the equipment hatch opening. This prompt method need not completely block the hatch opening nor be capable of resisting pressure, but is to enable the ventilation systems to draw the release from the postulated FHA in the proper direction such that it can be monitored. Therefore, operations of the facility in accordance with the proposed amendment would not involve a significant reduction in margin of safety.

Based on the above, FPC concludes that the proposed license amendment presents no significant hazards consideration under the standards set forth in 10 CFR 50.92(c), and accordingly, a finding of "no significant hazards consideration" is justified.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: R. Alexander Glenn, Associate General Counsel (MAC-BT15A), Florida Power Corporation, P.O. Box 14042, St. Petersburg, Florida 33733–4042.

NRC Section Chief: Allen G. Howe.

Florida Power Corporation, et al., Docket No. 50–302, Crystal River Unit No. 3 Nuclear Generating Plant, Citrus County, Florida

Date of amendment request: December 19, 2002.

Description of amendment request: The proposed amendment would revise Crystal River Unit 3 Improved Technical Specification 2.1.1, "Reactor Core Safety Limits." The proposed change will permit the use of the BHTP correlation, which is needed to utilize the Framatome ANP high thermal performance (HTP) spacer grid design.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

FPC [Florida Power Corporation] has evaluated the proposed License Amendment Request (LAR), which consists of the identified Improved Technical Specification (ITS) change, against the criteria of 10 CFR 50.92(c). The ITS change allows the use of the BHTP Correlation for departure from nucleate boiling (DNB) calculations of reload cores containing the Mark-B/HTP fuel design.

FPC has concluded that this proposed LAR does not involve a significant hazards consideration. The following is a discussion of how each of the criteria is satisfied.

(1) [Does not] [i]nvolve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed safety limit value ensures that fuel integrity will be maintained during normal operations and anticipated operational occurrences (AOOs), and that the design requirements will continue to be met. The proposed methodology for the BHTP departure from nucleate boiling (DNB) correlation will be generically reviewed and approved by the NRC prior to its use by Crystal River Unit 3 (CR–3) in mixed core reload analyses. The core operating limits will be developed in accordance with the new methodology and any limitations established by the NRC in its safety evaluation of the new methodology. The proposed safety limit value does not affect the performance of any equipment used to mitigate the consequences of an analyzed accident. There is no impact on the source term or pathways assumed in accidents previously evaluated. No analysis assumptions are violated and there are no adverse effects on the factors that contribute to offsite or onsite dose as the result of an accident. Therefore, the safety limit value for the BHTP correlation will not involve a significant increase in the probability or consequences of an accident previously evaluated.

(2) [Does not] [c]reate the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed safety limit value does not change the methods governing normal plant operation, nor are the methods utilized to respond to plant transients altered. The BHTP correlation is not an accident/event initiator. No new initiating events or transients result from the use of the BHTP correlation and the related safety limit changes. Therefore, the safety limit value for the BHTP correlation will not involve the possibility of a new or different kind of accident from any previously evaluated.

(3) [Does not] [i]nvolve a significant reduction in a margin of safety.

The proposed safety limit value has been established in accordance with the methodology for the BHTP correlation, to ensure that the applicable margin of safety is maintained (*i.e.*, there is at least 95% probability at a 95% confidence level that the hot fuel rod in the core does not experience departure from nucleate boiling (DNB)). The proposed methodology for the BHTP DNB correlation will be generically reviewed and approved by the NRC prior to its use by CR–3. The other reactor core safety limits will continue to be met by analyzing the reload for the mixed core using NRC approved methods, and incorporation of resultant operating limits into the Core Operating Limits Report (COLR). Therefore, the safety limit value for the BHTP correlation will not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: R. Alexander Glenn, Associate General Counsel (MAC-BT15A), Florida Power Corporation, P.O. Box 14042, St. Petersburg, Florida 33733–4042.

NRC Section Chief: Allen G. Howe.

Florida Power and Light Company, Docket Nos. 50–250 and 50–251, Turkey Point Plant, Units 3 and 4, Miami-Dade County, Florida

Date of amendment request: December 20, 2002.

Description of amendment request: This proposed amendment provides editorial and administrative changes to the Technical Specifications. The changes correct typographical, spelling, numbering syntax, page break, and font consistency errors as well as removing blank pages and associated references. There are no substantive changes made in the proposed amendment.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Will operation of the facility in accordance with this proposed change

involve a significant increase in the probability or consequences of an accident previously evaluated?

No. The proposed amendments do not involve a significant increase in the probability or consequences of an accident previously evaluated because the proposed amendments are purely administrative or editorial in nature. These amendments make no substantive Technical Specification changes and do not affect any assumptions contained in plant safety analyses, the physical design and/or operation of the plant; and they do not affect Technical Specifications that preserve safety analysis assumptions. Therefore, the proposed changes do not affect the probability or consequences of accidents previously analyzed.

2. Will operation of the facility in accordance with this proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

No. The use of the administratively changed Technical Specifications does not create the possibility of a new or different kind of accident from any previously evaluated, since the proposed amendments will not change the physical plant or the modes of plant operation defined in the facility operating license. No new failure mode is introduced due to the administrative changes and clarifications, since the proposed changes do not involve the addition or modification of equipment, nor do they alter the design or operation of affected plant systems, structures, or components.

3. Will operation of the facility in accordance with this proposed change involve a significant reduction in a margin of safety?

No. The operating limits and functional capabilities of the affected systems, structures, and components are unchanged by the proposed amendments. The changed Technical Specifications, which correct administrative and editorial errors, and clarify existing Technical Specification requirements, do not reduce any of the margins of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: M.S. Ross, Attorney, Florida Power & Light, P.O. Box 14000, Juno Beach, Florida 33408–0420.

NRC Section Chief: Allen G. Howe.

Nebraska Public Power District, Docket No. 50–298, Cooper Nuclear Station, Nemaha County, Nebraska

Date of amendment request: December 31, 2002.

Description of amendment request: The proposed amendment would change the reactor vessel material surveillance program to incorporate the Boiling Water Reactor Vessel and Internals Project (BWRVIP) Integrated Surveillance Program (ISP) into the licensing basis.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

Pressure-temperature (P/T) limits (CNS [Cooper Nuclear Station] Technical Specifications Figures 3.4.9–1, 2, and 3) are imposed on the reactor coolant system to ensure that adequate safety margins against non-ductile or brittle fracture exist during normal operation, anticipated operational occurrences, and system hydrostatic tests. The P/T limits are based on the nil-ductility reference temperature, RT_{NDT}, as described in ASME Section XI, Appendix G. Changes in the fracture toughness properties of RPV [reactor pressure vessel] beltline materials, resulting from the neutron irradiation and the thermal environment, are monitored by a surveillance program in compliance with the requirements of 10 CFR 50 [title 10 of the Code of Federal Regulations part 50] Appendix H. The effect of neutron fluence on the shift in the RT_{NDT} of RPV materials is predicted by methods given in RG [Regulatory Guide] 1.99, Revision 2.

This change is not related to any accidents previously evaluated. Rather, the reactor vessel surveillance program, corresponding material evaluations, and adjustment of a plant's P/T limits, as necessary, protect against the possibility of reactor vessel brittle fracture. Monitoring, evaluation, and adjustment of CNS P/T limits to ensure adequate margin exists to brittle fracture will continue. This change only replaces a plant-specific monitoring and evaluation pfogram with an integrated industry program, the BWRVIP ISP. The NRC has reviewed this program and approved it for implementation in a Safety Evaluation, dated February 1, 2002.

CNS's current P/T limits were established based on adjusted reference temperatures developed in accordance with the procedures described in RG 1.99, Revision 2. Calculation of adjusted reference temperature by these procedures includes a margin term to ensure conservative, upper-bound values are used for the calculation of the P/T limits. This change does not affect the existing P/T limits in the CNS Technical Specifications Figures 3.4.9–1, 2, and 3. This change will not affect any plant safety limits or limiting conditions of operation. The proposed change will not affect reactor pressure vessel performance as no physical changes are involved aside from changes related to surveillance capsule withdrawal, and CNS vessel P/T limits will remain conservative in accordance with RG 1.99, Revision 2 criteria. The proposed change will not cause the reactor pressure vessel or interfacing systems to be operated outside of their design or testing limits. Also, the proposed change will not alter any assumptions previously made in evaluating the radiological consequences of accidents. Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change revises the CNS license basis to reflect participation in the BWRVIP ISP. Participation in the BWRVIP ISP will continue to ensure that the CNS reactor vessel materials are monitored and evaluated as necessary to protect against brittle fracture. This proposed change does not involve a modification of the design of plant structures, systems, or components. The proposed change will not impact the manner in which the plant is operated as plant operating and testing procedures will not be affected by the change. The proposed change will not degrade the reliability of structures, systems, or components important to safety as equipment protection features will not be deleted or modified, equipment redundancy or independence will not be reduced, supporting system performance will not be downgraded, the frequency of operation of equipment will not be increased, and increased or more severe testing of equipment will not be imposed. No new accident types or failure modes will be introduced as a result of the proposed change. Therefore, the proposed changes do not create the possibility of a new or different kind of accident from that previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

Conformance with 10 CFR [part] 50 Appendix G defines the accepted safety margin for Reactor Coolant Pressure Boundary fracture toughness. The P/T limits are not derived from Design Basis Accident (DBA) analyses. They are prescribed during normal operation to avoid encountering pressure, temperature, and temperature rate of change conditions that might cause undetected flaws to propagate and cause nonductile failure of the reactor pressure vessel, a condition that is unanalyzed. Since the P/T limits are not derived from any DBA, there are no acceptance limits related to the P/T limits. Rather the P/T limits are acceptance limits themselves since they preclude operation in an unanalyzed condition.

This proposed change will not alter the required margins as defined in 10 CFR [part] 50, Appendix G. This proposed change will not affect any safety limits, limiting safety system settings, or limiting conditions of operation. The proposed change does not represent a change in initial conditions, or in a system response time, or in any other parameter affecting the course of an accident analysis supporting the Bases of any Technical Specification. The proposed

change does not involve revision of the P/T limits. Rather, this change involves a revision to the surveillance capsule withdrawal schedule, a revision to the reactor vessel fluence calculational methodology to achieve consistency within the BWRVIP ISP, and participation in future BWRVIP ISP developments. The current P/T limits were established based on adjusted reference temperatures for vessel beltline materials calculated in accordance with RG 1.99, Revision 2 which will continue to conform to 10 CFR [part] 50 Appendix G. Therefore, the proposed change does not involve a significant reduction in any safety margins.

In summary, it is concluded that this License Amendment Request does not involve significant hazards consideration results. NPPD has researched the existing regulatory precedent and has identified five BWR licensees with similar License Amendment Requests currently under NRC staff review:

- Browns Ferry Units 2 and 3—Submittal date November 6, 2002.
- Monticello Generating Station—Submittal date September 19, 2002.
- River Bend—Submittal date August 15, 2002.
- Fermi Unit 2—Submittal date August 8, 2002.
- Susquehanna Units 1 and 2—Submittal date July 25, 2002.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. John R. McPhail, Nebraska Public Power District, Post Office Box 499, Columbus, NE 68602–0499.

NRC Section Chief: Robert A. Gramm.

Nuclear Management Company, LLC, Docket No. 50–305, Kewaunee Nuclear Power Plant, Kewaunee County, Wisconsin

Date of amendment request: January 13, 2003.

Description of amendment request: The proposed amendment would revise the Kewaunee Nuclear Power Plant (KNPP) operating license and Technical Specifications to increase the licensed rated power by 1.4 percent to 1673 megawatts thermal (MWt) using measurement uncertainty recapture.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Operation of the Kewaunee Nuclear Plant in accordance with the proposed amendments does not result in a significant increase in the probability or consequences of any accident previously evaluated.

There are no changes as a result of the measurement uncertainty recapture (MUR) power uprate to the design or operation of the plant that could affect system, component, or accident mitigative functions. All systems and components will function as designed and the applicable performance requirements have been evaluated and found to be acceptable.

The reduction in power measurement uncertainty allows for some of the safety analyses to continue to be used without modification. This is because the safety analyses were performed or evaluated at either 102 percent of 1650 MWt or higher. Analyses at these power levels support a core power level of 1673 MWt with a measurement uncertainty of 0.6 percent. Radiological consequences of USAR [updated safety analysis report] chapter 14 accidents were assessed previously using the alternate source term (AST) methodology (reference 7.1, TAC [technical assignment control] No. MB4596). These analyses were performed at 102 percent of 1650 MWt and continue to be bounding. The USAR chapter 14 analyses and accident analyses submitted to the NRC [Nuclear Regulatory Commission] with the fuel transition (reference 7.3, TAC No. MB5718) continue to demonstrate compliance with the relevant accident analyses acceptance criteria. Therefore, there is no significant increase in the consequences of any accident previously evaluated.

The primary loop components (reactor vessel, reactor internals, control rod drive mechanisms, loop piping and supports, reactor coolant pumps, steam generators, and pressurizer) were evaluated at an uprated core power level of 1772 MWt and continue to comply with their applicable structural limits. These analyses also demonstrate the components will continue to perform their intended design functions. Changing the applicability of the heatup and cooldown curves is based on uprated fluence values. This does not have a significant effect on the reactor vessel integrity. Thus, there is no significant increase in the probability of a structural failure of the primary loop components.

All of the NSSS [Nuclear Steam Supply System] systems will continue to perform their intended design functions during normal and accident conditions. The auxiliary systems and components continue to comply with the applicable structural limits and will continue to perform their intended functions. The NSSS/BOP [balance of plant] interface systems were evaluated at 1772 MWt and will continue to perform their intended design functions. Plant electrical equipment was also evaluated and will continue to perform their intended functions. Therefore, there is no significant increase in the probability or consequences of an accident previously evaluated.

2. Operation of the Kewaunee Nuclear Power Plant in accordance with the proposed amendments does not result in a new or different kind of accident from any accident previously evaluated.

No new accident scenarios, failure mechanisms, or single failures are introduced as a result of the proposed change. All systems, structures, and components previously required for the mitigation of an event remain capable of fulfilling their intended design function at the uprated power level. The proposed change has no adverse effects on any safety-related systems or component and does not challenge the performance or integrity of any safety-related system. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Operation of the Kewaunee Nuclear Power Plant in accordance with the proposed amendments does not result in a significant reduction in a margin of safety.

Operation at the 1673 MWt core power does not involve a significant reduction in the margin of safety. The current accident analyses have been previously performed with a two percent power measurement uncertainty or at uprated core powers that exceed the MUR uprated core power. System and component analyses have been completed at a core power in excess of the MUR uprated core power. Analyses of the primary fission product barriers at uprated core powers have concluded that all relevant design basis criteria remain satisfied in regard to integrity and compliance with the regulatory acceptance criteria. As appropriate, all evaluations have been either reviewed and approved by the NRC, are in the process of being approved by the NRC, or are in compliance with applicable regulatory review guidance and standards. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: John H. O'Neill, Jr., Esq., Shaw Pittman, Potts & Trowbridge, 2300 N. Street, NW., Washington, DC 20037–1128.

NRC Section Chief: L. Raghavan.

Nuclear Management Company, LLC, Docket Nos. 50–266 and 50–301, Point Beach Nuclear Plant, Units 1 and 2, Town of Two Creeks, Manitowoc County, Wisconsin

Date of amendment request: September 12, 2002.

Description of amendment request: The proposed amendment would revise Technical Specification (TS) 3.5.2, "ECCS [Emergency Core Cooling System]—Operating," and TS 3.5.3, "ECCS-Shutdown," to add a surveillance requirement to verify every 31 days that the ECCS piping is full of water; consistent with NUREG–1431, Standard Technical Specifications, Westinghouse Plants, Revision 2.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

1. Operation of the Point Beach Nuclear Plant in accordance with the proposed amendments does not result in a significant increase in the probability or consequences of any accident previously evaluated.

Operation of this facility under the proposed Technical Specifications will not create a significant increase in the probability or consequences of an accident previously evaluated.

This license amendment request proposes to add a surveillance requirement to verify the ECCS is full of water every 31 days while operating in Modes 1, 2, 3 and 4.

This proposed change does not cause an increase in the probabilities of any accidents previously evaluated, because the change will not cause an increase in the probability of any initiating events for accidents previously evaluated. In particular, the change affects the ECCS, which serves to mitigate rather than initiate accidents.

The consequences of the accidents previously evaluated in the PBNP [Point Beach Nuclear Plant] Final Safety Analysis Report (FSAR) are determined by the results of analyses that are based on initial conditions of the plant, the type of accident, transient response of the plant, and the operation and failure of equipment and systems. The change proposed in this license amendment request provides an appropriate surveillance requirement for the ECCS, and thus does not increase the probability of failure of this equipment or its ability to operate as required for the accidents previously evaluated in the PBNP FSAR.

Therefore, the consequences of an accident previously evaluated in the PBNP FSAR will not be significantly increased as a result of the proposed change, because the factors that are used to determine the consequences of accidents are not being changed.

2. Operation of the Point Beach Nuclear Plant in accordance with the proposed amendments does not result in a new or different kind of accident from any accident previously evaluated.

Equipment important to safety will continue to operate as designed. The proposed change does not result in any event previously deemed incredible being made credible. The change does not result in more adverse conditions or result in any increase in the challenges to safety systems. Therefore, operation of the Point Beach Nuclear Plant in accordance with the proposed amendment will not create the possibility of a new or different type of accident from any accident previously evaluated.

3. Operation of the Point Beach Nuclear Plant in accordance with the proposed amendments does not result in a significant reduction in a margin of safety.

There are no new or significant changes to the initial conditions contributing to accident severity or consequences. The proposed amendment will not otherwise affect the plant protective boundaries and will not cause a release of fission products to the public. Venting the piping associated with a train of ECCS will render that ECCS train inoperable while it is being vented. Performance of this surveillance will therefore affect the availability of the associated ECCS train, but performance of the surveillance requirement at the specified frequency is consistent with the requirements of NUREG–1431, Standard Technical Specifications for Westinghouse Plants, Revision 2. Additionally, verifying the ECCS piping is full of water ensures that the system will perform properly, injecting its full capacity into the RCS [reactor coolant system], upon demand. Therefore, adopting a surveillance requirement to verify the ECCS piping is full of water, will not result in more than a minimal reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: John H. O'Neill, Jr., Shaw, Pittman, Potts, and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Section Chief: L. Raghavan.

PSEG Nuclear LLC, Docket Nos. 50–272 and 50–311, Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

Date of amendment request: September 26, 2002.

Description of amendment request: The proposed change would revise the Steam Generator low-low level trip setpoint and allowable values provided in the Salem Nuclear Generating Station, Unit Nos. 1 and 2, Technical Specifications Table 2.2–1, "Reactor Trip System Instrumentation Trip Setpoints," and Table 3.3–4, "Engineered Safety Feature Actuation System Instrumentation Trip Setpoints." The changes are necessary based on PSEG Nuclear's evaluation of a loss of feedwater transient at Diablo Canyon. During the event, Diablo Canyon personnel observed a flow induced pressure drop in the steam generator mid-deck area. The proposed change accounts for a level measurement bias resulting from the pressure drop that was not considered in the previous Westinghouse analysis. This bias has the effect of providing nonconservative level readings and setpoints.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change to Tables 2.2–1 and 3.3–4 changes both the allowable trip setpoint and allowable value for the Steam Generator Water Level-Low-Low from ≥9.0% to ≥14.0% and from ≥8.0% to ≥13% respectively. The Steam Generator Water Level Low-Low trip provides core protection by preventing operation with the steam generator water level below the minimum volume required for adequate heat removal capacity. The signal is used as a primary protection signal for the design basis loss of normal feedwater, loss of offsite power and feedwater line break safety analysis. The specified setpoint provides allowance that there will be sufficient water inventory in the steam generators at the time of trip to allow for starting delays of the auxiliary feedwater system. The change in the setpoint and allowable value allows the trip to function as originally designed accounting for the differential pressure created by steam flow past the mid-deck plate in the moisture separator section of the steam generator.

Therefore, the proposed changes will not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes to the Steam Generator Water Level-Low-Low trip setpoint and allowable values allow the trip to function as originally designed. They do not alter the plant configuration in any way, and do not replace or modify existing plant equipment, or affect any plant operations. No additional failure mechanisms are introduced as a result of the changes to the setpoints and allowable values.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed amendment would not involve a significant reduction in the margin of safety.

The proposed changes to the allowable trip setpoint and allowable value for the Steam Generator Water Level-Low-Low trip maintains core protection by preventing operation with the steam generator water level below the minimum volume required for adequate heat removal capacity.

Therefore, it is concluded that the proposed changes to the steam generator low low level trip setpoint and allowable value[s] do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the

amendment request involves no significant hazards consideration.

Attorney for licensee: Jeffrie J. Keenan, Esquire, Nuclear Business Unit—N21, P.O. Box 236, Hancocks Bridge, NJ 08038.

NRC Section Chief: James W. Clifford.

PSEG Nuclear LLC, Docket Nos. 50–272 and 50–311, Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

Date of amendment request: October 23, 2002.

Description of amendment request: The proposed change would revise the Salem Nuclear Generating Station (Salem), Unit Nos. 1 and 2, Technical Specification (TS) 6.12, "High Radiation Area" to be consistent with the Standard TSs for Westinghouse Plants (NUREG–1431, Revision 2) by updating the current reference to title 10 of the Code of Federal Regulations (10 CFR), section 20.203 with the corresponding reference to 10 CFR 20.1601.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes do not affect accident initiators or precursors and do not alter the design assumptions, conditions, configuration of the facility, or manner in which the plant is operated. The proposed changes do not alter or prevent the ability of structures, systems, or components to perform their intended safety function to mitigate the consequences of an initiating event within the acceptance limits assumed in the UFSAR. The proposed changes are administrative in nature. Technical Specification (TS) 6.12 will be updated to include the new 10 CFR 20 (effective 06/20/91) requirements. The proposed changes do not alter the conditions or assumptions in any of the previous accident analyses, and as a result, the radiological consequences associated with these analyses remain unchanged.

Therefore, the proposed changes will not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes do not alter the design assumptions, conditions, configuration of the facility, or the manner in which the plant is operated.

The proposed changes are administrative in nature and the relocated procedural details do not change the level of programmatic controls and procedural details. Accordingly, the proposed changes do not create any new failure modes or limiting single failures associated with a plant structure, system, or component important to safety. Also, there will be no change in the types or increase in the amounts of any effluents released offsite.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed amendment would not involve a significant reduction in the margin of safety.

The proposed changes do not impact equipment design or operation, nor do the changes affect any TS safety limits or safety system settings that could adversely affect plant safety. The proposed changes are administrative in nature. Technical Specification (TS) 6.12 will be updated to include the new 10CFR20 requirements (effective 06/20/91) and are in conformance with NUREG–1431. Furthermore, the proposed changes do not result in a change in the types or an increase in the amounts of any effluents released offsite.

Therefore, it is concluded that the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Jeffrie J. Keenan, Esquire, Nuclear Business Unit—N21, P.O. Box 236, Hancocks Bridge, NJ 08038.

NRC Section Chief: James W. Clifford.

Tennessee Valley Authority (TVA), Docket Nos. 50–327 and 50–328, Sequoyah Nuclear Plant (SQN), Units 1 and 2, Hamilton County, Tennessee

Date of amendment request: October 4, 2002 (TS 02–07).

Description of amendment request: The proposed amendment would revise Technical Specification 6.8.4.h, "Containment Leakage Rate Testing Program," to allow a one-time, 5-year extension to the current 10-year test interval for the performance-based leakage rate test program for 10 CFR 50, Appendix J, Type A tests.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed change for extending Type A test frequency does not significantly increase the probability of an accident previously evaluated since the change is not a modification to plant systems, nor a change to plant operation that could initiate an accident. TVA performed an evaluation of the risk significance for the proposed increase to the SQN Units 1 and 2 Type A test frequency. The results of the TVA risk evaluation indicates that the increase in Large Early Release Frequency (LERF) remains below the level of risk significance defined in NRC Regulatory Guide (RG) 1.174, "An Approach for Using Risk Assessment In Risk-Informed Decisions On Plant-Specific Changes to the Licensing Basis." TVA's evaluation indicates that the increase in frequency for all releases (small, large, early and late) and the increase in radiation dose to the population is also non-risk significant. The proposed test interval extension does not involve a significant increase in the consequences of an accident. Research documented in NUREG–1493 determined that generically, very few potential containment leakage paths fail to be identified by Type A tests. An analysis of 144 Type A test results, including 23 failures, found that no failures were due to containment liner breach. The NUREG concluded that reducing the Type A test frequency to once per 20 years would lead to an imperceptible increase in risk. Furthermore, the NUREG concluded that Type B and C testing provides assurance that containment leakage from penetration leak paths (*i.e.*, valves, flanges, containment air-locks) identify any leakage that would otherwise be detected by the Type A tests. In addition to the NUREG conclusions, TVA's American Society of Mechanical Engineers (ASME) IWE program performs containment inspections in order to detect evidence of degradation that may affect either the containment structural integrity or leak tightness. In addition to the IWE examinations, TVA will perform additional nondestructive examinations of the steel containment vessel in the ice condenser region (inaccessible areas) at various elevations. These additional non-destructive examinations will provide added assurance of containment integrity during the 5-year extended interval. Accordingly, TVA's proposed extension of the Type A test interval does not increase the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed change to extend the Type A test interval does not create the possibility of a new or different type of accident because there are no physical changes made to the plant or plant equipment governing normal plant operation. There are no changes to the operation of the plant that would introduce a new failure mode creating the possibility of a new or different kind of accident. TVA will perform additional non-destructive examinations of the steel containment vessel in the ice condenser region (inaccessible areas) at various elevations. These additional non-destructive examinations will provide added assurance of containment integrity during the 5 year extended interval.

3. Does the proposed change not involve a significant reduction in a margin of safety?

The proposed change to extend the Type A test interval will not significantly reduce the margin of safety. A generic study documented in NUREG–1493 indicates that extending the Type A leak test interval to 20 years would result in an imperceptible increase in risk to the public. The NUREG also found that, generically, the containment leakage rate contributes a very small amount to the individual risk and that the decrease in the Type A test frequency would have a minimal affect on risk because most potential leakage paths are detected by Type C testing. Previous Type A leakage tests conducted on SQN Units 1 and 2 indicate that leakage from containment have been less than the 10 CFR 50, Appendix J leakage limit of 1.0 L_a. A review of the previous Type A test results indicate a stable trend with a 10 percent margin below the 1.0 L_a leakage limit. Accordingly, these test results, in conjunction with the research findings from NUREG–1493, provide assurance that the proposed extension to the Type A test interval would not significantly reduce the margin of safety. Based on the above, TVA concludes that the proposed amendment presents no significant hazards consideration under the standards set forth in 10 CFR 50.92(c), and accordingly, a finding of "no significant hazards consideration" is justified.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, ET 11A Knoxville, Tennessee 37902.

NRC Section Chief: Allen G. Howe.

Tennessee Valley Authority, Docket Nos. 50–327 and 50–328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of application for amendments: November 15, 2002 (TS 02–06).

Brief description of amendments: The proposed amendments would revise the Technical Specification (TS) 3.7.1.3, "Condensate Storage Water," limiting Condition for Operation by increasing the required minimum amount of stored water from 190,000 gallons to 240,000 gallons. This change is being made to support the replacement steam generator requirements.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), Tennessee Valley Authority (TVA), the licensee, has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed change does not change the physical design and construction of the condensate storage tank (CST). The purpose of the increased water volume is to ensure that the required volume of water, preserved by the technical specification (TS), is sufficient to meet Sequoyah Nuclear Plant (SQN) Licensing and Design Basis after installation of the replacement steam generators. The change in the administratively controlled inventory of the CST will not increase the probability of an accident. Therefore, the proposed change does not involve a significant increase in the probability of consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

This change increases the minimum required volume of water in the CST, thus ensuring that the auxiliary feedwater (AFW) system can perform its required safety function, using a preferred water source for plant transient mitigation. The maximum and normal water levels in the CST are not being changed. Additionally, increasing the minimum water volume requirement will not initiate any accident. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

This change does not reduce any margin associated with the CST inventory available to AFW. The requirement for sufficient CST volume to maintain hot standby and subsequent cooldown to hot shutdown continues to be met by the minimum volume increase. Additionally, the essential raw cooling water (ERCW) system still provides the long-term supply of safety grade cooling water to the AFW in the event that all inventory of the CST is lost. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, ET 11A, Knoxville, Tennessee 37902.

NRC Section Chief: Allen G. Howe.

Tennessee Valley Authority (TVA), Docket Nos. 50–327 and 50–328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of amendment request: November 15, 2002 (TS 02–01).

Description of amendment request: The proposed amendment would change the Technical Specifications (TSs) to revise the trip setpoint column of the Reactor Protection System and Engineered Safety Features (ESF) instrumentation tables to utilize a nominal setpoint value and revise the associated Bases discussions.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

A. The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed revisions for the nominal trip setpoint representation are administrative changes that will not impact the application of the reactor trip or ESF actuation system instrumentation requirements. This is based on the setpoint requirements being applied without change, as well as the Avs [allowable values], in accordance with the setpoint methodology. The removal of the inequalities associated with the trip setpoint values will be more appropriate for the use of nominal setpoint values but will not differ in application from the setpoint methodology utilized by TVA. The revision of the radiation monitoring instrumentation table to use an Av will continue to provide appropriate operability limits. Deletion of the nominal terminology associated with overtemperature delta temperature average temperature at rated thermal power (T') and reactor coolant system power operated relief valve (PORV) lift settings provides a better representation of the limits associated with these values. In addition, this change will not alter plant equipment or operating practices. Therefore, the implementation of these changes will not increase the probability or consequences of an accident.

The revision of the reactor coolant pump (RCP) underfrequency trip setpoint and the Avs for the RCP underfrequeny and undervoltage and the containment purge radiation high has been evaluated and the results are documented in approved calculations. These calculations verify that the revised values are acceptable in accordance with appropriate calculation methodologies and that they will continue to support the accident analysis. This is based on margin being available in the accuracy determinations that could be used without impacting the intended functions of this instrumentation and maintains the established safety limits. These revisions will not require changes to the instrumentation settings currently being used or the methods for maintaining them. The offsite dose potential will not be impacted because this instrumentation will continue to adequately provide the designed safety functions to limit the release of radioactivity. Therefore, the proposed revision of these values will not significantly increase the probability or consequences of an accident.

The relocation and enhancement of current radiation monitoring and loss of voltage

functions to new LCOs [limiting condition for operations] does not alter the intended functions of these systems or physically alter these systems. While some requirements have change[d] from current limitations, these changes have provided more appropriate criteria to ensure that the accident mitigation functions are maintained properly and are available. Changes to Avs have been evaluated in accordance with TVA setpoint methodology and have been verified to acceptably protect the associated safety limits. Format changes provide a clearer representation of the requirements and provide more consistency with the standard TSs in NUREG–1431. These changes continue to support or improve the required safety functions and therefore, will not increase the possibility or consequence of an accident.

B. The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The revision of the nominal trip setpoint representation and elimination of the nominal nomenclature, as well as the revised setpoint value and Avs, and the relocated LCOs will not alter the plant configuration or functions. The revised setpoint and the proposed operability limits will continue to provide acceptable initiation of safety functions for the mitigation of postulated accidents as required by the design basis. The primary function of the reactor protection system, the ESF actuation system, and the new actuation function LCOs is to initiate accident mitigation functions. These functions are not considered to be initiators of postulated accidents. The PORVs provide accident mitigation functions and could be the source of a loss of coolant accident. However, a clarification of how to apply the actuation setpoints without a change to the setpoints will not impact accident generation. The proposed changes do not create the possibility of a new or different kind of accident because the design functions are not altered and the proposed values meet the accident analysis requirements for accident mitigation.

C. The proposed amendment does not involve a significant reduction in a margin of safety.

The setpoint and Av revisions proposed in this request were evaluated and found to be acceptable based on operating margin available in the accuracy determinations. The reassignment of this excess margin to the setpoint and Av will not impact the safety limits required for the associated functions. The nominal trip setpoint representation change and the elimination of inappropriate nominal indications does not alter the TS functions or their application and will not require changes to design settings. The relocated requirements to new LCOs provide appropriate limits and enhancements to the actuation functions. Plant systems will continue to be actuated for those plant conditions that require the initiation of accident mitigation functions. The margin of safety is not significantly reduced because the proposed changes to the Av and setpoint representations will not change design functions and the initiation of accident mitigation functions for appropriate plant conditions will not be adversely impacted.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, ET 11A, Knoxville, Tennessee 37902.

NRC Section Chief: Allen G. Howe.

Virginia Electric and Power Company, Docket Nos. 50–280 and 50–281, Surry Power Station, Unit Nos. 1 and 2, Surry County, Virginia

Date of amendment request: November 5, 2002.

Description of amendment request: The proposed changes would delete the monthly analog rod position test for the control rod bottom bistables currently required by Technical Specification (TS) Table 4.1–1, Item 9.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed change deletes the monthly analog rod position test that verifies the operation of the rod bottom bistables. However, the TSs still require bistable action to be functionally verified to ensure operability on an 18-month frequency as part of the overall analog rod position indication system calibration. Furthermore, the TS-required monthly rod bottom bistable action test was being performed to address instrument drift in the rod bottom setpoint, which will essentially be eliminated by the design of new digital-based IRPI [Individual Rod Position Indication] electronics being installed. Consequently, elimination of the monthly rod bottom bistable action test will not result in the failure of any plant structures, systems, or components and does not have a detrimental impact on the integrity of any plant structure, system, or component that initiates an analyzed event. The proposed change will not alter the operation of or otherwise increase the failure probability of any plant equipment that initiates an analyzed accident. As a result, the probability of any accident previously evaluated is not significantly increased.

Consequences of analyzed events are the result of the plant being operated within assumed parameters at the onset of any event, and the successful functioning of at least one train or division of the equipment credited with mitigating the event. These changes do not impact the capability of the credited equipment to perform, nor is there any change in the likelihood that credited equipment will fail to perform. Deletion of the monthly rod bottom bistable action test does not affect the ability of the control rods to perform their function. Surveillance tests to verify the operability of the IRPI System are still being performed. Furthermore, the Rod Position Demand Counter System provides redundant control rod position indication. As a result, the consequences of any accident previously evaluated are not significantly affected by the proposed change.

2. Does the proposed license amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed change deletes the monthly surveillance of rod bottom bistable action in the Individual Rod Position Indication system. This change does not alter the methods governing normal plant operation. The IRPI provides indication of rod position, is one of two independent systems that are provided to detect a rod drop and is the backup to detection by rapid reduction of ex-core neutron flux. The dropping of a rod assembly can occur when the rod drive mechanism is de-energized from the Rod Control System. This accident has been evaluated in the UFSAR and in all cases the DNB design bases is met by demonstration that the DNBR is greater than the limiting value. Thus, this change deleting the monthly analog rod position test does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

The digital-based IRPI system continues to meet the design function of providing reliable control rod position indication. The proposed change and associated replacements with digital-based IRPI system electronics provides enhanced testing through the automatic self-testing diagnostic features. Consequently, the overall ability to detect failures is not degraded. Therefore, the change deleting the monthly analog rod position test does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Ms. Lillian M. Cuoco, Esq., Senior Nuclear Counsel, Dominion Nuclear Connecticut, Inc., Millstone Power Station, Building 475, 5th Floor, Rope Ferry Road, Rt. 156, Waterford, Connecticut 06385.

NRC Section Chief: John A. Nakoski.

Virginia Electric and Power Company, Docket Nos. 50–280 and 50–281, Surry Power Station, Unit Nos. 1 and 2, Surry County, Virginia

Date of amendments request: December 19, 2002.

Description of amendments request: The proposed changes would revise the Technical Specifications (TS) to Facility Operating License Nos. DRP–32 and DRP–37 for Surry Power Station, Units 1 and 2, respectively, to reflect changes in regulations, correct typographical and editorial errors made in previous TS revisions, and to revise TS cross-references to Updated Final Safety Analysis Report sections.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Dominion has reviewed the requirements of 10 CFR 50.92 as they relate to the proposed administrative change to the Surry Power Station Units 1 and 2 Technical Specifications (TS) and Bases. The proposed change to the Surry TS makes administrative revisions to reflect changes in regulations, corrects editorial and typographical errors from previous TS revisions, and revises TS cross-references to Updated Final Safety Analysis Report (UFSAR) sections. Due to the strictly administrative nature of the proposed TS change, we have determined that a significant hazards consideration does not exist. The basis for this determination is provided as follows:

1. Does the proposed license amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed change is administrative in nature and as such does not impact the condition or performance of any plant structure, system or component. The proposed administrative change does not affect the initiators of any previously analyzed event nor the assumed mitigation of accident or transient events. As a result, the proposed change to the Surry Technical Specifications does not involve any increase in the probability [nor] the consequences of any accident or malfunction of equipment important to safety previously evaluated since neither accident probabilities or consequences are being affected by this proposed administrative change.

2. Does the proposed license amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed change is administrative in nature, and therefore does not involve any changes in station operation or physical modifications to the plant. In addition, no changes are being made in the methods used to respond to plant transients that have been previously analyzed. No changes are being made to plant parameters within which the plant is normally operated or in the setpoints, which initiate protective or mitigative actions and no new failure modes are being introduced. Therefore, the proposed administrative change to the Surry Technical Specifications does not create the possibility of a new or different kind of accident or malfunction of equipment important to safety from any previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

The proposed change is administrative in nature, and does not impact station operation or any plant structure, system or component that is relied upon for accident mitigation. Furthermore, the margin of safety assumed in the plant safety analysis is not affected in any way by the administrative "cleanup" of the Surry Technical Specifications. Therefore, the proposed administrative change to the Surry Technical Specifications does not involve a reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Ms. Lillian M. Cuoco, Esq., Senior Nuclear Counsel, Dominion Nuclear Connecticut, Inc., Millstone Power Station, Building 475, 5th Floor, Rope Ferry Road, Rt. 156, Waterford, Connecticut 06385.

NRC Section Chief: John A. Nakoski.

Notice of Issuance of Amendments to Facility Operating Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for A Hearing in connection with these actions was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's PDR, located at One White Flint North, Public File Area O1F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html*. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737 or by email to *pdr@nrc.gov*.

AmerGen Energy Company, LLC, Docket No. 50–289, Three Mile Island Nuclear Station, Unit 1, Dauphin County, Pennsylvania

Date of application for amendment: December 19, 2001, as supplemented July 30, 2002, and November 14, 2002.

Brief description of amendment: The amendment includes a revision of the Technical Specification (TS) Limiting Conditions for Operation 3.4, "Decay Heat Removal Capability," conforming changes to TS Table 3.5–2, "Accident Monitoring Instruments," and TS 4.9.1.2, "Decay Heat Removal—Periodic Testing," and numerous editorial changes.

Date of issuance: January 16, 2003.

Effective date: As of the date of issuance and shall be implemented within 60 days.

Amendment No.: 242.

Facility Operating License No. DPR–50: Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** March 19, 2002 (67 FR 12598).

The supplements dated July 30, and November 14, 2002, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the NRC staff's original proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a

Safety Evaluation dated January 16, 2003.

No significant hazards consideration comments received: No.

Carolina Power & Light Company, Docket Nos. 50–325 and 50–324, Brunswick Steam Electric Plant, Units 1 and 2, Brunswick County, North Carolina

Date of application for amendments: July 2, 2002.

Brief description of amendments: These amendments change the administrative controls in Technical Specification 5.7, "High Radiation Area."

Date of issuance: January 13, 2003.

Effective date: January 13, 2003.

Amendment Nos.: 225 and 252.

Facility Operating License Nos. DPR–71 and DPR–62: Amendments change the Technical Specifications.

Date of initial notice in ***Federal Register:*** August 6, 2002 (67 FR 50950).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated January 13, 2003.

No significant hazards consideration comments received: No.

Entergy Gulf States, Inc., and Entergy Operations, Inc., Docket No. 50–458, River Bend Station, Unit 1, West Feliciana Parish, Louisiana

Date of amendment request: May 14, 2002, as supplemented by letter dated December 17, 2002.

Brief description of amendment: The amendment revised Technical Specification Table 3.3.8.1–1, "Loss of Power Instrumentation," by changing the degraded voltage—voltage basis and loss-of-coolant accident time delay allowable values to reflect the results of new calculations performed in association with a design basis reconstitution.

Date of issuance: January 16, 2003.

Effective date: As of the date of issuance and shall be implemented no later than November 30, 2003.

Amendment No.: 128.

Facility Operating License No. NPF–47: The amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** June 25, 2002 (67 FR 42823).

The December 17, 2002, supplemental letter provided clarifying information that did not change the scope of the original **Federal Register** notice or the original no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 16, 2003.

No significant hazards consideration comments received: No.

Energy Northwest, Docket No. 50–397, Columbia Generating Station, Benton County, Washington Date of application for amendment: October 22, 2002.

Brief description of amendment: The amendment revises the Technical Specifications (TS) to change TS section 5.0, "Administrative Controls," and adopt Technical Specification Task Force (TSTF) -258, Revision 4. The change revises: (1) Section 5.2.2, "Unit Staff," to delete details of staffing requirements and delete requirements for the Shift Technical Advisor (STA) as a separate position while retaining the function, (2) section 5:5.4, "Radioactive Effluent Controls Program," to be consistent with the intent of 10 CFR part 20, (3) section 5.6.4, "Monthly Operating Reports," to delete periodic reporting requirements for main steam safety/relief valve challenges to be consistent with Generic Letter 97–02, "Revised Contents of the Monthly Operating Report," and (4) section 5.7, "High Radiation Area," in accordance with 10 CFR 20.1601(c). TS section 5.3.2 is added to incorporate regulatory definitions for the senior reactor operator (SRO) and reactor operator (RO) positions.

Date of issuance: January 9, 2003.

Effective date: January 9, 2003, and shall be implemented within 60 days from the date of issuance.

Amendment No.: 182.

Facility Operating License No. NPF–21: The amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** December 10, 2002 (67 FR 75870).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 9, 2003.

No significant hazards consideration comments received: No.

Entergy Nuclear Operations, Docket No. 50–247, Indian Point Nuclear Generating Unit No. 2, Westchester County, New York

Date of application for amendment: March 28, 2002.

Brief description of amendment: The amendment revised Technical Specification (TS) sections 3.7, "Auxiliary Electrical Systems," and 4.6, "Emergency Power System Periodic Tests," to relocate the requirements for the gas turbine generators to the Updated Final Safety Analysis Report (UFSAR) and the plans, programs and procedures that document and control the credited functions of these systems, structures, and components. The amendments also deleted TS 3.7.B.2.b. to remove the option that allows power operation for up to 72 hours with a gas turbine as the only available 13.8 kilovolt power source.

Date of issuance: January 17, 2003.

Effective date: This license amendment is effective as of the date of its issuance and shall be implemented within 60 days and only after incorporation of the required changes into the UFSAR and completion of the necessary implementation and procedural changes.

Amendment No.: 236.

Facility Operating License No. DPR–26: Amendment revised the Technical Specifications and Updated Final Safety Analysis Report.

Date of initial notice in ***Federal Register:*** May 14, 2002 (67 FR 34484).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 17, 2003.

No significant hazards consideration comments received: No.

Entergy Nuclear Operations, Inc., Docket No. 50–293, Pilgrim Nuclear Power Station, Plymouth County, Massachusetts

Date of application for amendment: July 5, 2002.

Brief description of amendment: The amendment relocates Technical Specification (TS) 3/4.6.I to the Pilgrim Nuclear Power Station Updated Final Safety Analysis Report. The affected TS contains snubber operability and surveillance requirements. The associated Bases section will also be relocated.

Date of issuance: January 14, 2003.

Effective date: As of the date of issuance, and shall be implemented within 60 days.

Amendment No.: 195.

Facility Operating License No. DPR–35: Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** November 12, 2002 (67 FR 68735).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 14, 2003.

No significant hazards consideration comments received: No.

Exelon Generation Company, LLC, Docket Nos. 50–254 and 50–265, Quad Cities Nuclear Power Station, Units 1 and 2, Rock Island County, Illinois

Date of application for amendments: September 27, 2002.

Brief description of amendments: The amendments revise Appendix B,

"Environmental Protection Plan (Non-Radiological)," of the licenses to remove a parenthetical reference to a superseded section of 10 CFR part 51.

Date of issuance: January 21, 2003.

Effective date: As of the date of issuance and shall be implemented within 60 days.

Amendment Nos.: 211 & 205.

Facility Operating License Nos. DPR–29 and DPR–30: The amendments revised Appendix B of the licenses.

Date of initial notice in ***Federal Register:*** October 29, 2002 (67 FR 66009).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated January 21, 2003.

No significant hazards consideration comments received: No.

Omaha Public Power District, Docket No. 50–285, Fort Calhoun Station, Unit No. 1, Washington County, Nebraska

Date of amendment request: October 8, 2002.

Brief description of amendment: The amendment relocates Technical Specification 2.13, "Nuclear Detector Cooling System," and its associated Bases to the Fort Calhoun Station Updated Safety Analysis Report.

Date of issuance: January 16, 2003.

Effective date: January 16, 2003, and shall be implemented within 120 days of the date of issuance. Implementation includes the incorporation of changes to the Fort Calhoun Station Updated Safety Analysis Report as described in the licensee's application dated October 8, 2002.

Amendment No.: 214.

Facility Operating License No. DPR–40: Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** November 12, 2002 (67 FR 68741).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 16, 2003.

No significant hazards consideration comments received: No.

Omaha Public Power District, Docket No. 50–285, Fort Calhoun Station, Unit No. 1, Washington County, Nebraska

Date of amendment request: July 22, 2002, as supplemented by letter dated October 8, 2002.

Brief description of amendment: The amendment revises Technical Specification (TS) 5.19, Surveillance Requirement (SR) 3.0.4 and adds TS 5.20 and SR 3.0.5 to extend the delay period before entering a limiting condition for operation following a missed surveillance.

Date of issuance: January 16, 2003.

Effective date: January 16, 2003, and shall be implemented with 120 days from the date of issuance, including the incorporation of changes to the technical specification Bases as described in the licensee's application dated July 22, 2002, as supplemented by letter dated October 8, 2002.

Amendment No.: 215.

Facility Operating License No. DPR–40: Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** September 3, 2002 (67 FR 56326).

The supplemental letter of October 8, 2002, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the NRC staff's original proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 16, 2003.

No significant hazards consideration comments received: No.

PPL Susquehanna, LLC, Docket Nos. 50–387 and 50–388, Susquehanna Steam Electric Station, Units 1 and 2, Luzerne County, Pennsylvania

Date of application for amendments: September 23, 2002.

Brief description of amendments: These amendments revised Technical Specification (TS) section 2.6.2.4, "Residual Heat Removal [RHR] Suppression Pool Cooling," to adopt TS Task Force (TF) change 230, Revision 1 (TSTF–230, Revision 1). This change to Required Action B of Limiting Condition for Operation 3.6.2.3 allows two RHR suppression pool cooling subsystems to be inoperable for up to 8 hours.

Date of issuance: January 16, 2003.

Effective date: As of the date of issuance and shall be implemented within 60 days.

Amendment Nos.: 207, 181.

Facility Operating License Nos. NPF–14 and NPF–22: The amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** October 29, 2002 (67 FR 66012). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated January 16, 2003.

No significant hazards consideration comments received: No.

PSEG Nuclear LLC, Docket No. 50–354, Hope Creek Generating Station, Salem County, New Jersey

Date of application for amendment: December 17, 2002, as supplemented December 31, 2002.

Brief description of amendment: The amendment provides a one-time change to Technical Specification (TS) 4.8.1.1.2.h.14 to allow the testing of Hope Creek's emergency diesel generator (EDG) lockout relays to be performed at power until startup from its eleventh refueling outage (spring 2003). The current TS surveillance requirement only allows the EDG lockout relays to be tested during shutdown conditions. PSEG requested that the TS change be issued on an exigent basis in accordance with title 10 of the Code of Federal Regulations (10 CFR), part 50, section 50.91(a)(6). Approval and implementation of the TS change allows the testing that has been completed to be used to comply with TS 4.8.1.1.2.h.14.

Date of issuance: January 10, 2003.

Effective date: As of the date of issuance and shall be implemented within 30 days.

Amendment No.: 141.

Facility Operating License No. NPF–57: This amendment revised the Technical Specifications.

Public Comments Requested as to Proposed No Significant Hazards Consideration: Yes (67 FR 79163) December 27, 2002. That notice provided an opportunity to submit comments on the Commission's proposed no significant hazards consideration determination. No comments have been received. The notice also provided for an opportunity to request a hearing by January 27, 2003, but indicated that if the Commission makes a final no significant hazards consideration determination, any such hearing would take place after the issuance of the amendment. The Commission's related evaluation of the amendment, finding of exigent circumstances, final determination of no significant hazards consideration, and state consultation are contained in a safety evaluation dated January 10, 2003.

NRC Section Chief: James W. Clifford.

STP Nuclear Operating Company, Docket Nos. 50–498 and 50–499, South Texas Project, Units 1 and 2, Matagorda County, Texas

Date of amendments request: February 18, 2002, as supplemented in letter dated July 23, 2002.

Brief description of amendments: The proposed amendments revised

Technical Specification 3/4.6.1.7, "Containment Ventilation System," to extend the intervals between operability tests of the normal and supplementary containment purge valves.

Date of issuance: January 7, 2003.

Effective date: As of the date of issuance to be implemented within 30 days from the date of issuance.

Amendment Nos.: Unit 1–147; Unit 2–135.

Facility Operating License Nos. NPF–76 and NPF–80: The amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** March 19, 2002 (67 FR 12608). The July 23, 2002, supplemental letter provided clarifying information that was within the scope of the original **Federal Register** notice (67 FR 12608) and did not change the initial no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated January 7, 2003.

No significant hazards consideration comments received: No.

STP Nuclear Operating Company, Docket Nos. 50–498 and 50–499, South Texas Project. Units 1 and 2, Matagorda County, Texas

Date of amendment request: May 22, 2002.

Brief description of amendments: The proposed amendments revised Technical Specification 3/4.3.5, allowing the automatic operation of the atmospheric steam relief valves during Mode 2 to maintain secondary side pressure at or below an indicated steam generator pressure of 1225 psig during startup and shutdown of the reactors.

Date of issuance: January 13, 2003.

Effective date: As of the date of issuance to be implemented within 30 days from the date of issuance.

Amendment Nos.: Unit 1–148; Unit 2–136.

Facility Operating License Nos. NPF–76 and NPF–80: Amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** July 9, 2002 (67 FR 45571).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated January 13, 2003.

No significant hazards consideration comments received: No.

Dated in Rockville, Maryland, this 28th day of January 2003.

For the Nuclear Regulatory Commission.

John A. Zwolinski,

Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 03–2415 Filed 2–3–03; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

Excepted Service

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: This gives notice of OPM decisions, granting authority to make appointments under Schedule C in the excepted service as required by 5 CFR 6.1 and 213.103.

FOR FURTHER INFORMATION CONTACT: Pam Shivery, Director, Washington Service Center, Employment Service (202) 606–1015.

SUPPLEMENTARY INFORMATION: Appearing in the listing below are one Schedule A authority and the individual authorities established under Schedule C between between December 01, 2002 and December 31, 2002. Future notices will be published on the fourth Tuesday of each month, or as soon as possible thereafter. A consolidated listing of all authorities as of June 30 is published each year.

Schedule A

U.S. Chemical and Hazard Investigation Board

Up to 37 positions established to create the Chemical Safety Hazard Investigation Board. No new appointments may be made under this authority after December 31, 2000. Effective December 31, 2002.

Schedule C

Department of Agriculture

Special Assistant to the Administrator, Farm Service Agency. Effective December 10, 2002.

Special Assistant to the Chief of Staff. Effective December 12, 2002.

Assistant to the Chief for Environment and Natural Resources. Effective December 20, 2002.

Director of Marketing and Public Relations to the Chief Natural Resource and Conservation Service. Effective December 20, 2002.

Confidential Assistant to the Assistant Secretary for Congressional Relations. Effective December 20, 2002.

Department of Commerce

Senior Policy Advisor to the Assistant to the Secretary and Director, Office of Policy and Strategic Planning. Effective December 9, 2002.

Special Assistant to the Director of External Affairs. Effective December 30, 2002.

Special Assistant to the Director of External Affairs. Effective December 30, 2002.

Special Assistant to the Director of External Affairs. Effective December 30, 2002.

Department of Defense

Staff Assistant to the Deputy Assistant Secretary of Defense (Eurasia). Effective December 4, 2002.

Protocol Officer to the Director of Protocol. Effective December 9, 2002.

Confidential Assistant to the Assistant Secretary of Defense Command, Control, Communications and Intelligence. Effective December 30, 2002.

Special Assistant to the Assistant Secretary of Defense (Legislative Affairs). Effective December 30, 2002.

Special Assistant to the Assistant Secretary of Defense (Legislative Affairs). Effective December 30, 2002.

Defense Short to the Special Assistant to the Secretary of Defense for White House Liaison. Effective December 31, 2002.

Department of Education

Special Assistant to the Assistant Secretary for Management. Effective December 19, 2002.

Deputy Secretary's Regional Representative, Region IX to the Deputy Assistant Secretary for Regional Services. Effective December 20, 2002.

Confidential Assistant to the Special Assistant. Effective December 31, 2002.

Department of Energy

Special Assistant for Communications to the Director, Office of Civilian Radioactive Waste Management. Effective December 4, 2002.

Deputy Chief of Staff to the Deputy Secretary of Energy. Effective December 13, 2002.

Department of Health and Human Services

Special Assistant to the Assistant Secretary for Public Affairs. Effective December 2, 2002.

Director of Speechwriting to the Deputy Assistant Secretary for Public Affairs (Media). Effective December 10, 2002.

Assistant to the Commissioner for Presidential Initiatives. Effective December 12, 2002.

Department of Housing and Urban Development

Staff Assistant to the Assistant Secretary for Public Affairs. Effective December 3, 2002.

Staff Assistant to the Senior Advisor to the Deputy Secretary. Effective December 4, 2002.

Special Assistant to the Assistant Secretary for Public and Indian Housing. Effective December 4, 2002.

Special Assistant to the Assistant Secretary for Public and Indian Housing. Effective December 4, 2002.

Deputy Assistant Secretary for Policy Management to the Assistant Secretary for Policy Development and Research. Effective December 11, 2002.

Staff Assistant to the Assistant Secretary for Community Planning and Development. Effective December 11, 2002.

Staff Assistant to the Assistant Secretary for Congressional and Intergovernmental Relations. Effective December 13, 2002.

Staff Assistant to the Assistant Secretary for Public and Indian Housing. Effective December 13, 2002.

Special Assistant to the Assistant Deputy Secretary for Field Policy and Management. Effective December 19, 2002.

Deputy Assistant Secretary for Public Housing and Voucher Proof to the Assistant Secretary for Public and Indian Housing. Effective December 20, 2002.

Special Assistant to the Assistant Secretary for Housing, Federal Housing Commission. Effective December 30, 2002.

Staff Assistant to the Assistant Secretary for Congressional and Intergovernmental Relations. Effective December 31, 2002.

Special Assistant to the Assistant Deputy Secretary for Field Policy and Management. Effective December 31, 2002.

Department of the Interior

Special Assistant to the Director, Minerals Management Service. Effective December 13, 2002.

Special Assistant—Lewis and Clark to the Director, External and Intergovernmental Affairs. Effective December 30, 2002.

Department of Justice

Special Assistant to the Deputy Attorney General. Effective December 19, 2002.

Senior Counsel to the Assistant Attorney General. Effective December 20, 2002.

Research Assistant to the Director, Office of Public Affairs. Effective December 20, 2002.

Confidential Assistant to the Director, Office of Public Affairs. Effective December 23, 2002.

Department of Labor

Special Assistant to the Director, Office of Public Liaison. Effective December 3, 2002.

Chief of Staff to the Assistant Secretary for Employment Standards. Effective December 13, 2002.

Research Assistant to the Assistant Secretary for Congressional and Intergovernmental Affairs. Effective December 17, 2002.

Department of State

Legislative Management Officer to the Assistant Secretary for Legislative and Intergovernmental Affairs. Effective December 10, 2002.

Foreign Affairs Officer to the Assistant Secretary, Bureau of Political Affairs. Effective December 10, 2002.

Foreign Affairs Officer to the Deputy Assistant Secretary for Public Affairs/ Chief Speechwriter. Effective December 13, 2002.

Special Assistant to the Assistant Secretary for Political-Military Affairs. Effective December 18, 2002.

Legislative Management Officer to the Assistant Secretary for Legislative and Governmental Affairs. Effective December 19, 2002.

Special Assistant to the Under Secretary for Arms Control and Security Affairs. Effective December 19, 2002.

Department of Transportation

Senior Policy Advisor to the Administrator, Federal Motor Carrier Safety Administration. Effective December 20, 2002.

Department of the Treasury

Senior Advisor to the Assistant Secretary (Economic Policy). Effective December 19, 2002.

Farm Credit Administration

Congressional and Public Affairs Specialist to the Director, Office of Congressional and Public Affairs. Effective December 9, 2002.

Federal Emergency Management Agency

Staff Assistant to the Director, Mount Weather Enterpise Operations Division to the Executive Administrator, Emergency Management Center. Effective December 3, 2002.

General Services Administration

Special Assistant to the Regional Administrator, New England Region. Effective December 31, 2002.

Office of Management and Budget

Legislative Analyst to the Associate Director for Legislative Affairs. Effective December 13, 2002.

Confidential Assistant to the Executive Associate Director. Effective December 20, 2002.

Office of National Drug Control Policy

Program Analyst (Program and Fiscal Management) to the Director, Counter-Drug Control Policy. Effective December 10, 2002.

Office of Personnel Management

Special Assistant to the Director, Office of Communications. Effective December 3, 2002.

Coordinator, Public Liaison and Hispanic Outreach to the Director, Office of Communications. Effective December 3, 2002.

Deputy Director to the Director, Office of Congressional Relations. Effective December 3, 2002.

Attorney Advisor to the General Counsel. Effective December 18, 2002.

Overseas Private Investment Corporation

Confidential Assistant to the Vice President for External Affairs. Effective December 19, 2002.

Small Business Administration

Senior Advisor to the Associate Administrator for Investments. Effective December 3, 2002.

Speech Writer to the Associate Director for Communications (Public Liaison). Effective December 20, 2002.

Authority: 5 U.S.C. 3301 and 3302; E.O. 10577, 3 CFR 1954–1958 Comp., P.218

Office of Personnel Management.

Kay Coles James,

Director.

[FR Doc. 03–2462 Filed 2–3–03; 8:45 am]

BILLING CODE 6325–38–P

SOCIAL SECURITY ADMINISTRATION

Ticket to Work and Work Incentives Advisory Panel Meeting

AGENCY: Social Security Administration (SSA).

ACTION: Notice; correction.

SUMMARY: The Social Security Administration published a document in the **Federal Register** of January 17, 2003, concerning a meeting of the Ticket to Work and Work Incentives Advisory Panel. The document contained an error for the meeting beginning time on February 11, 2003.

FOR FURTHER INFORMATION CONTACT: Kristen M. Breland, 202–358–6423.

Correction:

In the **Federal Register** of January 17, 2003, in FR Doc. 03–1084, on page 2628, in the second column, correct the "DATE" to read:

DATES:
January 10, 2003, 10 a.m.–3 p.m.*
January 11, 2003, 9 a.m.–5 p.m.
January 12, 2003, 9 a.m.–1 p.m.

Dated: January 29, 2003.

Deborah M. Morrison,

Designated Federal Officer.

[FR Doc. 03–2500 Filed 2–3–03; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF STATE

[Public Notice 4225]

Notice of Meetings: United States International Telecommunication Advisory Committee Preparations for Various Telecommunication Standardization Meetings, First Half of 2003

The Department of State announces meetings of the U.S. International Telecommunication Advisory Committee (ITAC). The purpose of the Committee is to advise the Department on policy, technical and operational issues with respect to international telecommunications standardization bodies such as the International Telecommunication Union (ITU).

The ITAC will meet periodically throughout the first half of 2003 to prepare for various ITU Telecommunication Standardization Study Group meetings. Times and locations of these meetings will be announced via the email reflectors (list servers) identified below. People may join these reflectors by sending a message identifying the list to *itac@state.gov*.

TSAG Preparations: The ITAC will meet January 22 and February 5, 2003 to prepare for the February meeting of the ITU–T Telecommunication Sector Advisory Group (TSAG), and on the afternoon of April 22 to debrief the results of TSAG and initiate preparations for the next TSAG meeting. Preparations for the next TSAG will continue at a meeting in the afternoon of May 28. Location and times for these meetings will be announced on the reflector list "*itac-t@almsntsa.lmlist.state.gov*".

ITU–T Study Group 2 preparations: The ITAC will meet April 8 to prepare for ITU–T Study Group 2. Location and times for this meeting will be announced on the reflector list "*sganumberingadhoc@almsntsa.lmlist.state.gov*".

ITU–T Study Group 3 preparations: The ITAC will meet on January 23 from 9:30 to 11 to debrief the December 2002 SG3 meeting, and on March 5 and April 16 from 2 to 4 to prepare for the next ITU–T Study Group 3. Locations for these meetings will be announced on the reflector list "*sag@almsntsa.lmlist.state.gov*".

ITU–T Study Group 9 preparations: The ITAC will meet March 12 to prepare for ITU–T Study Group 9. Location and times for this meeting will be announced on the reflector list "*sgd@almsntsa.lmlist.state.gov*".

ITU–T Study Group 13 preparations: The ITAC will meet June 26 to prepare for ITU–T Study Group 13. Location and times for this meeting will be announced on the reflector list "*sgb@almsntsa.lmlist.state.gov*".

ITU–T Study Group 16 preparations: The ITAC will meet April 30 to prepare for ITU–T Study Group 16. Location and times for this meeting will be announced on the reflector list "*sgd@almsntsa.lmlist.state.gov*".

ITU–T Special Study Group preparations: The ITAC will meet May 19–28, 2003 via email to prepare for ITU–T Special Study Group (IMT2000 and beyond) on the reflector list "*sgd-ssg@almsntsa.lmlist.state.gov*". Originators must post their documents to the reflector by May 19; comments on the documents posted to the same address by May 23, originators' responses posted by May 27, and final action will be posted by the Department of State on May 28. If necessary, this meeting may be continued through a later date via email or conference call, as announced on the reflector.

CITEL PCC I Group Preparations: The ITAC will meet on February 13, 2003 from 2–4, and March 12, 2003 from 2–4 to prepare for the next CITEL PCC I meeting. Location for these meetings will be announced on the reflector list *PCCI–CITEL@almsntsa.lmlist.state.gov*.

This meeting announcement does not meet the official deadline due to constraints imposed by the travel of senior officials.

Members of the public will be admitted to the extent that seating is available, and may join in the discussions, subject to the instructions of the Chair. Entrance to the Department of State is controlled; people intending to attend a meeting at the Department of State should send their clearance data by fax to (202) 647–7407 or email to *worsleydm@state.gov* not later than 24 hours before the meeting. Please include the name of the meeting, your name, social security number, date of birth and organizational affiliation. One of the following valid photo identifications will be required for admittance: U.S. driver's license with your picture on it, U.S. passport, or U.S. Government identification. Directions to the meeting location may be obtained by calling the ITAC Secretariat at (202) 647–2592 or email to *worsleydm@state.gov*.

Dated: January 27, 2003.

Marian Gordon,

Director, Telecommunication & Information Standardization, Department of State.

[FR Doc. 03–2533 Filed 2–3–03; 8:45 am]

BILLING CODE 4710–45–P

DEPARTMENT OF STATE

[Public Notice 4227]

United States International Telecommunication Advisory Committee Information Meeting on the World Summit on the Information Society and the U.S. Preparatory Process; Notice of Meetings

The Department of State announces meetings of the U.S. International Telecommunication Advisory Committee (ITAC). The purpose of the Committee is to advise the Department on matters related to telecommunication and information policy matters in preparation for international meetings pertaining to telecommunication and information issues.

The ITAC will meet to discuss the matters related to the World Summit on the Information Society (WSIS), which will take place in December 2003, including U.S. preparations for the WSIS. The meeting will take place on February 10, 2003, from 3 p.m. to 5 p.m. at the Historic National Academy of Science Building. The National Academy of Sciences is located at 2100 C St. NW., Washington, DC. This meeting announcement does not meet the official deadline due to constraints imposed by the travel of senior officials who will brief on WSIS.

Members of the public are welcome to participate and may join in the discussions, subject to the discretion of the Chair. People intending to attend a meeting at the Department of State should send the following data by fax to (202) 647–7407 or e-mail to *worsleydm@state.gov* not later than 24 hours before the meeting: (1) Name of the meeting, (2) your name, and (3) organizational affiliation. A valid photo ID must be presented to gain entrance to the National Academy of Sciences Building. Directions to the meeting location may be obtained by calling the ITAC Secretariat at (202) 647–2592 or e-mail to *worsleydm@state.gov*.

Dated: January 28, 2003.

Anne D. Jillson,

Foreign Affairs Officer, Telecommunication Policy, Department of State.

[FR Doc. 03–2534 Filed 2–3–03; 8:45 am]

BILLING CODE 4710–45–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings, Agreements Filed the Week Ending January 24, 2003

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. Sections 412 and 414. Answers may be filed within 21 days after the filing of the application.

Docket Number: OST–2003–14365.
Date Filed: January 23, 2003.
Parties: Members of the International Air Transport Association.
Subject:
PTC23 EUR–SEA 0158 dated 17 December 2002.
TC23/TC123 Europe-South East Asia Resolutions r1–r19.
PTC23 EUR–SEA 0159 dated 10 January 2003
(Technical Correction).
Minutes—PTC23 EUR–SEA 0161 dated 21 January 2003.
Tables—PTC23 EUR–SEA FARES 0039 dated 3 January 2003.
Intended effective date: 1 April 2003.

Dorothy Y. Beard,

Chief, Docket Operations & Media Management, Federal Register Liaison.

[FR Doc. 03–2527 Filed 2–3–03; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart B (Formerly Subpart Q) During the Week Ending January 24, 2003

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart B (formerly Subpart Q) of the Department of Transportation's Procedural Regulations (*See* 14 CFR 301.201 *et. seq.*). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST–2003–14320.
Date Filed: January 21, 2003.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: February 11, 2003.
Description: Application of Murray Air, Inc., pursuant to 49 U.S.C. Section 41102 and Subpart B, requesting a certificate of public convenience and necessity authorizing it to conduct foreign all-cargo air transportation on a charter basis.

Docket Number: OST–2003–14321.
Date Filed: January 21, 2003.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: February 11, 2003.
Description: Application of Murray Air, Inc., pursuant to 49 U.S.C. Section 41102 and Subpart B, requesting a certificate of public convenience and necessity authorizing it to conduct interstate all-cargo air transportation on a charter basis.

Docket Number: OST–2003–14337.
Date Filed: January 22, 2003.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: February 12, 2003.
Description: Application of Delta Air Transport N.V. S.A. d/b/a SN Brussels Airlines, pursuant to 49 U.S.C. Section 41302 and Subpart B, requesting an initial foreign air carrier permit to provide scheduled foreign air transportation of persons, property, and mail between a point or points behind Belgium, via Belgium and intermediate points, to a point or points in the United States and beyond.

Dorothy Y. Beard,

Chief, Docket Operations & Media Management, Federal Register Liaison.

[FR Doc. 03–2528 Filed 2–3–03; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG–2003–14378]

Towing Safety Advisory Committee

AGENCY: Coast Guard, DOT.

ACTION: Notice of meeting.

SUMMARY: The Towing Safety Advisory Committee's (TSAC) Working Group on Maritime Security will meet to discuss various issues relating to current U.S. Coast Guard regulations as they pertain to towing vessels. The meeting will be open to the public.

DATES: The TSAC Working Group will meet on Tuesday, February 18, 2003, from 10 a.m. to 4 p.m. and on the following day, Wednesday, February 19, 2003, from 10 a.m. to 4 p.m. The meeting may close early if all business is finished. Written material and requests to make oral presentations should reach the Coast Guard on or before February 12, 2003. Requests to have a copy of your material distributed to each member of the Working Group should reach the Coast Guard on or before February 7, 2003.

ADDRESSES: The Working Group will meet in room 1303, U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC. Send written material and requests to make oral presentations to Mr. Gerald P. Miante, Commandant (G–MSO–1), Room 1210, U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001. This notice is available on the Internet at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Mr. Gerald P. Miante, Assistant Executive Director of TSAC, telephone (202) 267–0214, or fax 202–267–4570, or e-mail at: *gmiante@comdt.uscg.mil.*

SUPPLEMENTARY INFORMATION: Notice of the meeting is given under the Federal Advisory Committee Act, 5 U.S.C. App. 2.

Agenda of Meeting

The agenda tentatively includes the following:

1. Ways the towing community can assist the Coast Guard to increase security awareness in our ports and other domestic waterways;
2. Measures the Coast Guard can take to increase operational security in these areas;
3. Anticipated threats on towing vessels with barges and how should those threats be addressed;
4. Relevant topics, *e.g.* Vessel Traffic Systems (VTS); Automatic Identification Systems (AIS); the size of vessels, and special Security Zones; and
5. Criteria for acceptance of Industry Standards for Security.

Procedural

The meeting is open to the public. All attendees must have photo identification to be admitted into Coast Guard Headquarters. Please note that the meeting may close early if all business is finished. At the Chair's discretion, members of the public may make oral presentations during the meeting. If you would like to make an oral presentation at the meeting, please notify the Assistant Executive Director no later than February 12, 2003. Written

material for distribution at the meeting should reach the Coast Guard no later than February 7, 2003. If you would like a copy of your material distributed to each member of the Working Group in advance of the meeting, please submit 15 copies to Mr. Miante at the address in **ADDRESSES**, or an electronic version to the e-mail address in **FOR FURTHER INFORMATION CONTACT**, no later than February 7, 2003.

Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact the Assistant Executive Director as soon as possible.

Dated: January 28, 2003.

Joseph J. Angelo,

Director of Standards, Marine Safety, Security & Environmental Protection.

[FR Doc. 03–2522 Filed 2–3–03; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Proposed Advisory Circular: Type Certification of an Airplane Originally Certificated to Joint Aviation Regulations—Very Light Airplane (JAR–VLA) Standards

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of availability; request for comments.

SUMMARY: This notice announces the availability of and requests comments on a proposed AC, which provides information and guidance concerning type certification of a Joint Aviation Regulations—Very Light Airplane. This notice is necessary to give all interested persons an opportunity to present their views on the proposed AC.

DATES: Comments must be received on or before April 7, 2003.

ADDRESSES: Send all comments on the proposed AC to: Mr. Pat Mullen, Federal Aviation Administration, Small Airplane Directorate, Aircraft Certification Service, Standards Office (ACE–110), 901 Locust, Room 301, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Mr. Pat Mullen, telephone (816) 329–4128 or fax (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to comment on the proposed AC by submitting such written data, views, or arguments as they may desire. Commenters should identify AC 23–11A and submit comments, in duplicate, to the address specified above. All communications received on or before the closing date for comments will be considered by the Small Airplane Directorate before issuing the final AC. The proposed AC can be found and downloaded from the Internet at *http://www.airweb.faa.gov/DraftAC* by taking the following steps: Under "Search Help" click on "Open for Comment." A paper copy of the proposed AC may be obtained by contacting the person named above under the caption **FOR FURTHER INFORMATION CONTACT.**

Discussion

The subject advisory circular describes one way to show compliance to Title 14 of the Code of Federal Regulations part 23 for type certification of Joint Aviation Regulations—Very Light Airplanes if the type certification will be for either a part 23 Normal or Utility Category Type Certificate or a "special class" airplane, following § 21.17(b).

Material in the AC is neither mandatory nor regulatory in nature and does not constitute a regulation. In addition, the material is not to be construed as having any legal status and should be treated accordingly.

Issued in Kansas City, Missouri on January 28, 2003.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–2525 Filed 2–3–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Financial Management Service

Privacy Act of 1974, as Amended; System of Records

AGENCY: Financial Management Service, Treasury.

ACTION: Notice of proposed new system of records.

SUMMARY: In accordance with the Privacy Act of 1974, as amended, the Financial Management Service gives notice of a proposed new Privacy Act system of records entitled "Treasury/FMS .017—Collections Records."

DATES: Comments must be received no later than March 6, 2003. The proposed new system of records will become effective March 17, 2003 unless comments are received which would result in a contrary determination.

ADDRESSES: You should send your comments to Robert Spiegel, Disclosure Officer, Financial Management Service, 401 14th Street, SW., Washington, DC 20227. Comments received will be available for inspection at the same address between the hours of 9 a.m. and 4 p.m. Monday through Friday. You may send your comments by electronic mail to robert.spiegel@fms.treas.gov.

FOR FURTHER INFORMATION CONTACT: Robert Spiegel, Disclosure Officer, (202) 874–6837.

SUPPLEMENTARY INFORMATION: Pursuant to the Privacy Act of 1974, as amended, 5 U.S.C. 552a, the Financial Management Service (FMS) is proposing to establish a new system of records entitled "Collection Records —Treasury/FMS .017." FMS collects more than $2 trillion in Federal receipts through a network of more than 10,000 financial institutions. It manages the collection of Federal receipts such as taxes, customs duties, loan repayments, fines, fees, and lease payments. Citizens and others make payments to the Federal government in a variety of ways. Many people mail a check to a post office box, known as a "lockbox," which is managed by a financial institution as the financial agent of the Department of the Treasury. Some people pay over-the-counter for goods and services at the time of receipt of those goods or services. Others make payments electronically by credit card, debit card, or by authorizing the government to debit their bank account. FMS offers a variety of cost-efficient ways by which Federal agencies may collect receipts due from the public to the government while ensuring that information pertaining to such collections remains secure and confidential.

FMS continually seeks to modernize the government collections program. Through its electronic money program, FMS is initiating new collection mechanisms using the Internet or other communications networks to help Federal agencies modernize their collection activities. For example, through an Internet site known as "Pay.gov," a person can authorize a payment to the government via the Internet. Electronic Federal Tax Payment System, or "EFTPS," allows taxpayers to authorize the payment of certain types of taxes on-line. In both cases, the payor submits information to a government Web site, which allows the government to debit the person's bank account or charge the person's credit card. The process used by the government and the information collected from payors is similar to how the private sector handles commercial

transactions over the Internet. Another type of electronic collection mechanism known as "paper check conversion" allows the government to convert a paper check to an Automated Clearing House (ACH) debit, that is, to an electronic debit of the payor's checking account, as is done in the private sector. With better technology, FMS expects to develop new collections vehicles in the future.

FMS's electronic money programs are developed to efficiently facilitate the collection and reporting of receipts from the public in accordance with legal authorities. Simultaneously, FMS seeks to protect the government and the public from risks such as the unauthorized use of electronic payment methods, identity theft, and inadvertent disclosure of confidential information. The records covered by the proposed system are necessary not only to process financial transactions, but to authenticate the identity of someone electronically authorizing a payment to the government and to verify the payor's ability to make the payment authorized.

Thus, the records are collected and maintained for three primary reasons. First, in order to process a payment electronically, a payor needs to submit his or her name and bank account or credit card account information. Without such information, FMS would not be able to process the payment as requested by the individual authorizing the payment.

Second, to authenticate the identity of the person initiating the electronic transaction (*i.e.*, user claiming to be "John Doe" is, in fact, "John Doe"), FMS may, in some instances, require some or all of the following additional information from an individual: date of birth; driver's license number; employer's name, address and telephone number (currently, employer information is not mandatory); user name, password, and/or unique question and answer chosen by the person using the Internet to initiate the electronic transaction. The information collected and maintained for a particular transaction will depend upon the level of risk associated with the transaction. FMS will work with the Federal agency for which collections are being made to determine the financial risk associated with a transaction, as well as the risk of identity theft. For example, if an individual is paying an obligation, such as a student loan, an agency may need less information than in the case of someone purchasing goods from the government. The agency may determine there is a lower likelihood that someone would pay a bill fraudulently than there is that someone would purchase goods in a one-time non-recurring transaction with the government. This is not to minimize the amount of security associated with an electronic loan repayment process, which in any event will be stringent, but to note that less personal information may be needed in order to provide the degree of security required for a particular transaction type. FMS recognizes that security needs must always be balanced with privacy concerns, and therefore, seeks to limit personal information requirements to only what is needed to securely process transactions.

Third, to verify the financial and other information provided by the person initiating the electronic transaction and to evaluate the payor's ability to make the payment authorized (for example, to verify the validity of the payor's credit card account information), FMS may compare information submitted with information available in FMS's electronic transaction historical database or commercial databases used for verification purposes, much like a store clerk determines whether someone paying by paper check has a history of writing bad checks. The ability to research historical transaction information will help eliminate the risk of fraudulent activity, such as the purchase of government products using an account with insufficient funds or using a stolen identity. By collecting and maintaining a certain amount of unique personal information about an individual who purchases goods from the government, FMS can help ensure that the individual's sensitive financial information will not be fraudulently accessed or used by anyone other than the individual.

The authentication of identity and verification of account information is required under FMS's regulation governing Federal agencies' use of the ACH system (*see* 31 CFR part 210). Part 210, which incorporates the private sector rules governing ACH transactions, requires a debit to a consumer's account to be authorized in writing and signed or similarly authenticated. For the "similarly authenticated" standard to be met, the process of obtaining a consumer's authorization electronically must provide evidence of both the consumer's identity and his or her assent to the transaction. In addition, the rules governing ACH debits initiated over the Internet require that an agency employ a "commercially reasonable fraudulent transaction detection system to screen each entry" and use "commercially reasonable procedures to verify that (bank account) routing numbers are valid." An agency is required to retain a copy of each authorization for two years. The information collected and maintained for authentication and verification purposes is intended to assist agencies in meeting the requirements of part 210.

In addition to the purposes cited above, the information contained in the covered records will be used for collateral purposes related to the processing of financial transactions, such as collection of statistical information on operations, development of computer systems, investigation of unauthorized or fraudulent activity related to electronic transactions, and the collection of debts arising out of such activity.

Thus, the information contained in the records covered by FMS's proposed system of records and FMS's use of the information is necessary to process financial transactions while protecting the government and the public from financial risks that could be associated with electronic transactions. It is noted that the proposed system covers records obtained in connection with various mechanisms that are either used currently or may be used in the future for electronic financial transactions. Not every transaction will require the collection or disclosure of all of the information listed under "Categories of records in the system." The categories of records cover the broad spectrum of information that might be connected to various types of transactions. FMS has attempted to cover the information needed for the types of transactions processed in today's technological environment, as well as some or all of the information that might be required in connection with future yet-to-be developed collections mechanisms or future security needs. Security needs are constantly changing with the evolution of technology. FMS is aware that the information used today to authenticate an individual and verify a transaction may need to be upgraded in the future.

FMS recognizes the sensitive nature of the confidential information it obtains when collecting receipts from the public and has many safeguards in place to protect the information from theft or inadvertent disclosure. When appropriate, FMS's contractual arrangements with commercial database vendors include provisions that preclude the vendors from retaining, disclosing, and using for other purposes the information provided by FMS to the vendor. In addition to various procedural and physical safeguards, access to computerized records is limited, through the use of encryption,

access codes, and other internal mechanisms, to those whose official duties require access solely for the purposes outlined in the proposed system. Access to the system is granted only as authorized by a security manager after security background checks. The information in the Collections Records system will allow the public to enjoy the benefits of electronic payment authorization while minimizing the risks of identity theft, fraudulent transactions, and the loss of public funds.

The new system of records report, as required by 5 U.S.C. 552a(r) of the Privacy Act, has been submitted to the Committee on Government Reform of the House of Representatives, the Committee on Governmental Affairs of the Senate, and the Office of Management and Budget, pursuant to Appendix I to OMB Circular A–130, "Federal Agency Responsibilities for Maintaining Records About Individuals," dated November 30, 2000.

For the reasons set forth in the preamble, FMS proposes a new system of records Treasury/FMS .017–Collections Records which is published in its entirety below.

Dated: January 29, 2003.

W. Earl Wright, Jr.,

Chief Management and Administrative Programs Officer.

Treasury/FMS .017

SYSTEM NAME:

Collections Records—Treasury/Financial Management Service.

SYSTEM LOCATION:

Records are located at the Financial Management Service, U.S. Department of the Treasury, Liberty Center Building (Headquarters), 401 14th Street, SW., Washington, DC 20227. Records are also located throughout the United States at various Federal Reserve Banks and financial institutions, which act as Treasury's fiscal and financial agents. The address(es) of the fiscal and financial agents may be obtained from the system manager below.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who electronically authorize payments to the Federal government through the use of communication networks, such as the Internet, via means such as Automated Clearing House (ACH), check conversion, credit card, and/or stored value card.

CATEGORIES OF RECORDS IN THE SYSTEM:

Collections records containing information about individuals who electronically authorize payments to the Federal government to the extent such records are covered by the Privacy Act of 1974. The records may contain identifying information, such as an individual's name(s), taxpayer identifying number (*i.e.*, social security number or employer identification number), home address, home telephone number, and personal e-mail address (home and work); an individual's employer's name, address, telephone number, and e-mail address; an individual's date of birth and driver's license number; information about an individual's bank account(s) and other types of accounts from which payments are made, such as financial institution routing and account number; credit card numbers; information about an individual's payments made to or from the United States (or to other entities such as private contractors for the Federal government), including the amount, date, status of payments, payment settlement history, and tracking numbers used to locate payment information; user name and password assigned to an individual; other information used to identify and/or authenticate the user of an electronic system to authorize and make payments, such as a unique question and answer chosen by an individual; information concerning the authority of an individual to use an electronic system (access status) and the individual's historical use of the electronic system. The records also may contain information about the governmental agency to which payment is made and information required by such agency as authorized or required by law.

The information contained in the records covered by FMS's proposed system of records is necessary to process financial transactions while protecting the government and the public from financial risks that could be associated with electronic transactions. It is noted that the proposed system covers records obtained in connection with various mechanisms that are either used currently or may be used in the future for electronic financial transactions. Not every transaction will require the maintenance of all of the information listed in this section. The categories of records cover the broad spectrum of information that might be connected to various types of transactions.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 31 U.S.C. 321; 31 U.S.C. chapter 33; 31 U.S.C. 3720

PURPOSE(S):

The purpose of this system is to maintain records about individuals who electronically authorize payments to the Federal government. The information contained in the records is maintained for the purpose of facilitating the collection and reporting of receipts from the public to the Federal government and to minimize the financial risk to the Government and the public of unauthorized use of electronic payment methods. Examples of payment mechanisms authorized electronically include ACH, check conversion, credit card, or stored value cards. Individuals may authorize payments using paper check conversion or Internet-based systems through programs such as "*Pay.gov*" and "Electronic Federal Taxpayer Payment System (EFTPS)." The information also is maintained to:

(a) Provide collections information to the Federal agency collecting the public receipts;

(b) Authenticate the identity of individuals who electronically authorize payments to the Federal government;

(c) Verify the payment history and eligibility of individuals to electronically authorize payments to the Federal government;

(d) Provide statistical information on collections operations;

(e) Test and develop enhancements to the computer systems that contain the records; and

(f) Collect debts owed to the Federal government from individuals when the debt arises from the unauthorized use of electronic payment methods.

FMS's use of the information contained in the records is necessary to process financial transactions while protecting the government and the public from financial risks that could be associated with electronic transactions. The records are collected and maintained for three primary reasons. First, in order to process a payment electronically, a payor needs to submit his or her name and bank account or credit card account information. Without such information, FMS would not be able to process the payment as requested by the individual authorizing the payment. Second, to authenticate the identity of the person initiating the electronic transaction, FMS may, in some instances, require some or all of the information described in "Categories of records in the system," above, depending upon the level of risk associated with a particular type of transaction. Third, to verify the financial and other information provided by the person initiating the electronic transaction and to evaluate the payor's ability to make the payment authorized, FMS may compare information submitted with information

available in FMS's electronic transaction historical database or commercial databases used for verification purposes, much like a store clerk determines whether someone paying by paper check has a history of writing bad checks. The ability to research historical transaction information will help eliminate the risk of fraudulent activity, such as the purchase of government products using an account with insufficient funds or using a stolen identity. By collecting and maintaining a certain amount of unique personal information about an individual who purchases goods from the government, FMS can help ensure that the individual's sensitive financial information will not be fraudulently accessed or used by anyone other than the individual.

In addition, the information contained in the covered records will be used for collateral purposes related to the processing of financial transactions, such as collection of statistical information on operations, development of computer systems, investigation of unauthorized or fraudulent activity related to electronic transactions, and the collection of debts arising out of such activity.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records may be used to disclose information to:

(1) Appropriate Federal, state, local or foreign agencies responsible for investigating or prosecuting the violation of, or for enforcing or implementing, a statute, rule, regulation, order, or license, but only if the investigation, prosecution, enforcement or implementation concerns a transaction(s) or other event(s) that involved (or contemplates involvement of), in whole or part, an electronic method of collecting receipts for the Federal government. The records and information may also be disclosed to commercial database vendors to the extent necessary to obtain information pertinent to such an investigation, prosecution, enforcement or implementation.

(2) Commercial database vendors for the purposes of authenticating the identity of individuals who electronically authorize payments to the Federal government, to obtain information on such individuals' payment or check writing history, and for administrative purposes, such as resolving a question about a transaction. For purposes of this notice, the term "commercial database vendors" means vendors who maintain and disclose information from consumer credit, check verification, and address databases.

(3) A court, magistrate, or administrative tribunal, in the course of presenting evidence, including disclosures to opposing counsel or witnesses, for the purpose of civil discovery, litigation, or settlement negotiations or in response to a subpoena, where arguably relevant to the litigation, or in connection with criminal law proceedings.

(4) A congressional office in response to an inquiry made at the request of the individual to whom the record pertains.

(5) Fiscal agents, financial agents, financial institutions, and contractors for the purpose of performing financial management services, including, but not limited to, processing payments, investigating and rectifying possible erroneous reporting information, creating and reviewing statistics to improve the quality of services provided, conducting debt collection services, or developing, testing and enhancing computer systems.

(6) Federal agencies, their agents and contractors for the purposes of facilitating the collection of receipts, determining the acceptable method of collection, the accounting of such receipts, and the implementation of programs related to the receipts being collected.

(7) Federal agencies, their agents and contractors, credit bureaus, and employers of individuals who owe delinquent debt for the purpose of garnishing wages only when the debt arises from the unauthorized use of electronic payment methods. The information will be used for the purpose of collecting such debt through offset, administrative wage garnishment, referral to private collection agencies, litigation, reporting the debt to credit bureaus, or for any other authorized debt collection purpose.

(8) Financial institutions, including banks and credit unions, and credit card companies for the purpose of collections and/or investigating the accuracy of information required to complete transactions using electronic methods and for administrative purposes, such as resolving questions about a transaction.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Debt information concerning a government claim against a debtor when the debt arises from the unauthorized use of electronic payment methods is also furnished, in accordance with 5 U.S.C. 552a(b)(12) and 31 U.S.C. 3711(e), to consumer reporting agencies, as defined by the Fair Credit Reporting Act, 5 U.S.C. 1681(f), to encourage repayment of a delinquent debt.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM: STORAGE:

Records are maintained in electronic media.

RETRIEVABILITY:

Records are retrieved by account number (such as financial institution account number or credit card account number), name (including an authentication credential, *e.g.*, a user name), social security number, transaction identification number, or other alpha/numeric identifying information.

SAFEGUARDS:

All officials access the system of records on a need-to-know basis only, as authorized by the system manager after security background checks. Procedural and physical safeguards, such as personal accountability, audit logs, and specialized communications security, are utilized. Accountability and audit logs allow systems managers to track the actions of every user of the system. Each user has an individual password (as opposed to a group password) for which he or she is responsible. Thus, a system manager can identify access to the records by user. Access to computerized records is limited, through use of encryption, access codes, and other internal mechanisms, to those whose official duties require access. Storage facilities are secured by various means such as security guards, locked doors with key entry, and limited virtual access requiring a physical token.

RETENTION AND DISPOSAL:

Records for payments and associated transactions will be retained for seven (7) years or as otherwise required by statute or court order. Audit logs of transactions will be retained for a period of six (6) months or as otherwise required by statute or court order. Records in electronic media are electronically erased using industry-accepted techniques.

SYSTEM MANAGER(S) AND ADDRESS:

Chief Architect, Electronic Commerce, Federal Finance, Financial Management Service, 401 14th Street, SW., Washington, DC 20227.

NOTIFICATION PROCEDURE:

Inquiries under the Privacy Act of 1974, as amended, shall be addressed to the Disclosure Officer, Financial Management Service, 401 14th Street, SW., Washington, DC 20227. All

individuals making inquiries should provide with their request as much descriptive matter as is possible to identify the particular record desired. The system manager will advise as to whether FMS maintains the records requested by the individual.

RECORD ACCESS PROCEDURES:

Individuals requesting information under the Privacy Act of 1974, as amended, concerning procedures for gaining access to or contesting records should write to the Disclosure Officer. All individuals are urged to examine the rules of the U.S. Department of the Treasury published in 31 CFR part 1, subpart C, and appendix G, concerning requirements of this Department with respect to the Privacy Act of 1974, as amended.

CONTESTING RECORD PROCEDURES:

See "Record access procedures" above.

RECORD SOURCE CATEGORIES:

Information in this system is provided by the individual on whom the record is maintained (or by his or her authorized representative), other persons who electronically authorize payments to the Federal government, Federal agencies responsible for collecting receipts, Federal agencies responsible for disbursing and issuing Federal payments, Treasury fiscal and financial agents that process collections, and commercial database vendors.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 03–2521 Filed 2–3–03; 8:45 am]

BILLING CODE 4810–35–P

DEPARTMENT OF THE TREASURY

Customs Service

Proposed Collection; Comment Request; Declaration of Person Who Performed Repairs

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, Customs invites the general public and other Federal agencies to comment on an information collection requirement concerning the Declaration of a Person Who Performed Repairs. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before April 7, 2003, to be assured of consideration.

ADDRESSES: Direct all written comments to U.S. Customs Service, Information Services Group, Attn.: Tracey Denning, 1300 Pennsylvania Avenue, NW, Room 3.2C, Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to U.S. Customs Service, Attn.: Tracey Denning, 1300 Pennsylvania Avenue NW., Room 3.2C, Washington, DC 20229, Tel. (202) 927–1429.

SUPPLEMENTARY INFORMATION: Customs invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: (1) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency=s estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) estimates of capital or start-up costs and costs of operations, maintenance, and purchase of services to provide information. The comments that are submitted will be summarized and included in the Customs request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document Customs is soliciting comments concerning the following information collection:

Title: Declaration of Person Who Performed Repairs.

OMB Number: 1515–0137.

Form Number: None.

Abstract: The Declaration of Person Who Performed Repairs is used by Customs to ensure duty-free status for entries covering articles repaired aboard. It must be filed by importers claiming duty-free status.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Businesses or other for-profit.

Estimated Number of Respondents: 20,472.

Estimated Time Per Respondent: 30 minutes.

Estimated Total Annual Burden Hours: 10,236.

Estimated Total Annualized Cost on the Public: N/A.

Dated: January 27, 2003.

Tracey Denning,

Agency Clearance Officer, Information Services Branch.

[FR Doc. 03–2589 Filed 2–3–03; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Customs Service

Proposed Collection; Comment Request Deferral of Duty on Large Yachts Imported for Sale

AGENCY: U.S. Customs, Department of the Treasury.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, Customs invites the general public and other Federal agencies to comment on an information collection requirement concerning the Deferral of Duty on Large Yachts Imported for Sale. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before April 7, 2003, to be assured of consideration.

ADDRESSES: Direct all written comments to Tracey Denning, Customs Service, Information Services Group, Room 3.2.C, 1300 Pennsylvania Avenue, NW., Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to U.S. Customs Service, Attn.: Tracey Denning, Room 3.2.C, 1300 Pennsylvania Avenue NW., Washington, DC 20229, Tel. (202) 927–1429.

SUPPLEMENTARY INFORMATION: Customs invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: (1) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to

enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) the annual costs burden to respondents or record keepers from the collection of information (a total capital/startup costs and operations and maintenance costs). The comments that are submitted will be summarized and included in the Customs request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document Customs is soliciting comments concerning the following information collection:

Title: Deferral of Duty on Large Yachts Imported for Sale.

OMB Number: 1515–0223.

Form Number: N/A.

Abstract: Section 2406(a) of the Miscellaneous Trade and Technical Corrections Act of 1999 provides that an otherwise dutiable "large yacht" may be imported without the payment of duty if the yacht is imported with the intention to offer for sale at a boat show in the U.S.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Business or other for-profit institutions, and non-profit institutions.

Estimated Number of Respondents: 2.

Estimated Time Per Respondent: 30 minutes.

Estimated Total Annual Burden Hours: 1.

Estimated Total Annualized Cost on the Public: $50.00.

Dated: January 27, 2003.

Tracey Denning,

Agency Clearance Officer, Information Services Branch.

[FR Doc. 03–2583 Filed 2–3–03; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Customs Service

Proposed Collection; Comment Request, Application for Extension of Bond for Temporary Importation

AGENCY: U.S. Customs, Department of the Treasury.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, Customs invites the general public and other Federal agencies to comment on an information collection requirement concerning the Application for Extension of Bond for Temporary Importation. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before April 7, 2003, to be assured of consideration.

ADDRESSES: Direct all written comments to Tracey Denning, Customs Service, Information Services Group, Room 3.2.C, 1300 Pennsylvania Avenue, NW., Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to U.S. Customs Service, Attn.: Tracey Denning, Room 3.2.C, 1300 Pennsylvania Avenue NW., Washington, DC 20229, Tel. (202) 927–1429.

SUPPLEMENTARY INFORMATION: Customs invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Publ. L. 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: (1) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) the annual costs burden to respondents or record keepers from the collection of information (a total capital/startup costs and operations and maintenance costs). The comments that are submitted will be summarized and included in the Customs request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document Customs is soliciting comments concerning the following information collection:

Title: Application for Extension of Bond for Temporary Importation.

OMB Number: 1515–0054.

Form Number: Customs Form 3173.

Abstract: Imported merchandise which is to remain in the U.S. Customs territory for 1-year or less without duty payment is entered as a temporary importation. The importer may apply for an extension of this period on Customs Form 3173.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Business or other for-profit institutions.

Estimated Number of Respondents: 1,200.

Estimated Time Per Respondent: 14 minutes.

Estimated Total Annual Burden Hours: 348.

Estimated Total Annualized Cost on the Public: $5,568.

Dated: January 27, 2003.

Tracey Denning,

Agency Clearance Officer, Information Services Branch.

[FR Doc. 03–2584 Filed 2–3–03; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Customs Service

Proposed Collection; Comment Request; Proof of the Use for Rates of Duty Dependent on Actual Use

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, Customs invites the general public and other Federal agencies to comment on an information collection requirement concerning the Proof of the Use for Rates of Duty Dependent on Actual Use. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before April 7, 2003, to be assured of consideration.

ADDRESSES: Direct all written comments to U.S. Customs Service, Information Services Group, Attn.: Tracey Denning, 1300 Pennsylvania Avenue, NW., Room 3.2C, Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to U.S. Customs Service, Attn.: Tracey Denning, 1300 Pennsylvania Avenue NW., Room 3.2C, Washington, DC 20229, Tel. (202) 927–1429.

SUPPLEMENTARY INFORMATION: Customs invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork

Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: (1) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) estimates of capital or start-up costs and costs of operations, maintenance, and purchase of services to provide information. The comments that are submitted will be summarized and included in the Customs request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document Customs is soliciting comments concerning the following information collection:

Title: Proof of the Use for Rates of Duty Dependent on Actual Use.

OMB Number: 1515–0109.

Form Number: None.

Abstract: The Proof of the Use for Rates of Duty Dependent on Actual Use declaration is needed to ensure Customs control over merchandise which is duty-free. The declaration shows proof of use and must be submitted within 3 years of the date of entry or withdrawal for consumption.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Individuals, Businesses.

Estimated Number of Respondents: 10,500.

Estimated Time Per Respondent: 20 minutes.

Estimated Total Annual Burden Hours: 3,500.

Estimated Total Annualized Cost on the Public: N/A.

Dated: January 27, 2003.

Tracey Denning,

Agency Clearance Officer, Information Services Branch.

[FR Doc. 03–2585 Filed 2–3–03; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Customs Service

Proposed Collection; Comment Request; Bonded Warehouse Proprietor's Submission

AGENCY: U.S. Customs, Department of the Treasury.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, Customs invites the general public and other Federal agencies to comment on an information collection requirement concerning the Bonded Warehouse Proprietor's Submission. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before April 7, 2003, to be assured of consideration.

ADDRESSES: Direct all written comments to Tracey Denning, U.S. Customs Service, Information Services Group, Room 3.2.C, 1300 Pennsylvania Avenue, NW., Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to U.S. Customs Service, Attn.: Tracey Denning, Information Services Group, Room 3.2.C.,1300 Pennsylvania Avenue NW., Washington, DC 20229, Tel. (202) 927–1429.

SUPPLEMENTARY INFORMATION: Customs invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) the annual costs burden to respondents or record keepers from the collection of information (a total capital/startup costs and operations and maintenance costs). The comments that are submitted will be summarized and included in the Customs request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document Customs is soliciting comments concerning the following information collection:

Title: Bonded Warehouse Proprietor's Submission.

OMB Number: 1515–0093.

Form Number: Customs Form 300.

Abstract: Customs Form 300 is prepared by Bonded Warehouse Proprietor's and submitted to the Customs Service annually. The document reflects all bonded merchandise entered, released, and manipulated, and includes beginning and ending inventories.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Business or other for-profit institutions.

Estimated Number of Respondents: 1,800.

Estimated Time Per Respondent: 20 hours.

Estimated Total Annual Burden Hours: 36,000.

Estimated Total Annualized Cost on the Public: $1,671,813.

Dated: January 27, 2003.

Tracey Denning,

Agency Clearance Officer, Information Services Branch.

[FR Doc. 03–2586 Filed 2–3–03; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Customs Service

Proposed Collection; Comment Request; Application and Approval To Manipulate, Examine, Sample, or Transfer Goods

AGENCY: U.S. Customs, Department of the Treasury.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, Customs invites the general public and other Federal agencies to comment on an information collection requirement concerning the Application and Approval to Manipulate, Examine, Sample, or Transfer Goods. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before April 7, 2003, to be assured of consideration.

ADDRESSES: Direct all written comments to Tracey Denning, U.S. Customs Service, Information Services Group, Room 3.2.C, 1300 Pennsylvania Avenue, NW., Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to U.S. Customs Service, Attn.: Tracey Denning, Room 3.2.C, 1300 Pennsylvania Avenue NW., Washington, DC 20229, Tel. (202) 927–1429.

SUPPLEMENTARY INFORMATION: Customs invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: (1) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) the annual costs burden to respondents or record keepers from the collection of information (a total capital/startup costs and operations and maintenance costs). The comments that are submitted will be summarized and included in the Customs request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document Customs is soliciting comments concerning the following information collection:

Title: Application & Approval to Manipulate, Examine, Sample, or Transfer Goods.

OMB Number: 1515–0021.

Form Number: Customs Form 3499.

Abstract: Customs Form 3499 is prepared by importers or consignees as an application to request examination, sampling, or transfer of merchandise under Customs supervision. This form is also an application for the manipulation of merchandise in a bonded warehouse and abandonment or destruction of merchandise.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Business or other for-profit institutions and individuals.

Estimated Number of Respondents: 137,400.

Estimated Time Per Respondent: 6 minutes.

Estimated Total Annual Burden Hours: 13,740.

Estimated Total Annualized Cost on the Public: $109,920.

Dated: January 27, 2003.

Tracey Denning,

Agency Clearance Officer, , Information Services Branch.

[FR Doc. 03–2587 Filed 2–3–03; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Customs Service

Proposed Collection; Comment Request; Required Records for Smelting and Refining Warehouses

AGENCY: U.S. Customs, Department of the Treasury.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, Customs invites the general public and other Federal agencies to comment on an information collection requirement concerning the Required Records for Smelting and Refining Warehouses. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before April 7, 2003, to be assured of consideration.

ADDRESSES: Direct all written comments to U.S. Customs Service, Information Services Group, Attn.: Tracey Denning, 1300 Pennsylvania Avenue, NW., Room 3.2.C, Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to U.S. Customs Service, Attn.: Tracey Denning, 1300 Pennsylvania Avenue NW., Room 3.2C, Washington, DC 20229, Tel. (202) 927–1429.

SUPPLEMENTARY INFORMATION: Customs invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) the annual costs burden to respondents or record keepers from the collection of information (a total capital/startup costs and operations and maintenance costs). The comments that are submitted will be summarized and included in the Customs request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document Customs is soliciting comments concerning the following information collection:

Title: Required Records for Smelting and Refining Warehouses.

OMB Number: 1515–0135.

Form Number: N/A.

Abstract: Each manufacturer engaged in smelting or refining must file an annual statement showing any material change in the character of the metal-bearing materials used or changes in the method of smelting or refining. Also the records must show the receipt and disposition of each shipment.

Current Actions: There are no changes to the information collection.

Type of Review: Extension (without change).

Affected Public: Business or other for-profit institutions.

Estimated Number of Respondents: 15.

Estimated Time Per Respondent: 10.4.

Estimated Total Annual Burden Hours: 156 hours.

Estimated Total Annualized Cost on the Public: $1,872.00.

Dated: January 27, 2003.

Tracey Denning,

Agency Clearance Officer, Information Services Branch.

[FR Doc. 03–2588 Filed 2–3–03; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Customs Service

Proposed Collection; Comment Request; Customs Modernization Act Recordkeeping Requirements

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, Customs invites the general public and other Federal agencies to

comment on an information collection requirement concerning the Customs Modernization Act Recordkeeping Requirements. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before April 7, 2003, to be assured of consideration.

ADDRESSES: Direct all written comments to U.S. Customs Service, Information Services Group, Attn.: Tracey Denning, 1300 Pennsylvania Avenue, NW., Room 3.2C, Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to U.S. Customs Service, Attn.: Tracey Denning, 1300 Pennsylvania Avenue NW, Room 3.2C, Washington, DC 20229, Tel. (202) 927–1429.

SUPPLEMENTARY INFORMATION: Customs invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) estimates of capital or start-up costs and costs of operations, maintenance, and purchase of services to provide information. The comments that are submitted will be summarized and included in the Customs request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document Customs is soliciting comments concerning the following information collection:

Title: Customs Modernization Act Recordkeeping Requirements.

OMB Number: 1515–0214.

Form Number: N/A.

Abstract: This information and records keeping requirement is required to allow Customs to verify the accuracy of the claims made on the entry documents regarding the tariff status of imported merchandise, admissibility, classification/nomenclature, value and rate of duty applicable to the entered goods.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Businesses, Individuals, Institutions.

Estimated Number of Respondents: 9,114.

Estimated Time Per Respondent: 875 hours.

Estimated Total Annual Burden Hours: 7,977,600.

Estimated Total Annualized Cost on the Public: N/A.

Dated: January 27, 2003.

Tracey Denning,

Agency Clearance Officer, , Information Services Branch.

[FR Doc. 03–2590 Filed 2–3–03; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Customs Service

Proposed Collection; Comment Request; Country of Origin Marking Requirements for Containers or Holders

AGENCY: U.S. Customs, Department of the Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, Customs invites the general public and other Federal agencies to comment on an information collection requirement concerning the Country of Origin Marking Requirements for Containers or Holders. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before April 7, 2003, to be assured of consideration.

ADDRESSES: Direct all written comments to U.S. Customs Service, Information Services Group, Room 3.2.C, 1300 Pennsylvania Avenue, NW., Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to U.S. Customs Service, Attn.: Tracey Denning, Room 3.2.C, 1300 Pennsylvania Avenue NW., Washington, DC 20229, Tel. (202) 927–1429.

SUPPLEMENTARY INFORMATION: Customs invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: (1) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) the annual costs burden to respondents or record keepers from the collection of information (a total capital/startup costs and operations and maintenance costs). The comments that are submitted will be summarized and included in the Customs request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document Customs is soliciting comments concerning the following information collection:

Title: Country of Origin Marking Requirements for Containers or Holders.

OMB Number: 1515–0163.

Form Number: N/A.

Abstract: Containers or Holders imported into the United States destined for an ultimate purchaser must be marked with the English name of the country of origin at the time of importation into Customs territory.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Business or other for-profit institutions.

Estimated Number of Respondents: 250.

Estimated Time Per Respondent: 15 seconds.

Estimated Total Annual Burden Hours: 41.

Estimated Total Annualized Cost on the Public: $533.00.

Dated: January 27, 2003.

Tracey Denning,

Agency Clearance Officer, Information Services Branch.

[FR Doc. 03–2591 Filed 2–3–03; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Customs Service

Proposed Collection; Comment Request; Lien Notice (Customs Form 3485)

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, Customs invites the general public and other Federal agencies to comment on an information collection requirement concerning the Lien Notice (Customs Form 3485). This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before April 7, 2003, to be assured of consideration.

ADDRESSES: Direct all written comments to U.S. Customs Service, Information Services Group, Attn.: Tracey Denning, 1300 Pennsylvania Avenue, NW, Room 3.2C, Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to U.S. Customs Service, Attn.: Tracey Dennng, 1300 Pennsylvania Avenue NW, Room 3.2C, Washington, DC 20229, Tel. (202) 927–1429.

SUPPLEMENTARY INFORMATION: Customs invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: (1) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) estimates of capital or start-up costs and costs of operations, maintenance, and purchase of services to provide information. The comments that are submitted will be summarized and included in the Customs request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document Customs is soliciting comments concerning the following information collection:

Title: Lien Notice.

OMB Number: 1515–0046.

Form Number: Customs Form 3485.

Abstract: The Lien Notice, Customs Form 3485, enable the carriers, cartmen, and similar businesses to notify Customs that a lien exists against an individual/business for non-payment of freight charges, etc., so that Customs will not permit delivery of the merchandise from public stores or a bonded warehouse until the lien is satisfied or discharged.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Individuals, businesses.

Estimated Number of Respondents: 2,000.

Estimated Time Per Respondent: 5 minutes.

Estimated Total Annual Burden Hours: 8,497.

Estimated Total Annualized Cost on the Public: N/A.

Dated: January 27, 2003.

Tracey Denning,

Agency Clearance Officer, Information Services Group.

[FR Doc. 03–2592 Filed 2–3–03; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Customs Service

Proposed Collection; Comment Request; Importers of Merchandise Subject to Actual Use Provisions

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, Customs invites the general public and other Federal agencies to comment on an information collection requirement concerning Importer's of Merchandise Subject to Actual Use Provisions. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before April 7, 2003, to be assured of consideration.

ADDRESSES: Direct all written comments to U.S. Customs Service, Information Services Group, Attn.: Tracey Denning, 1300 Pennsylvania Avenue, NW, Room 3.2.C, Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to U.S. Customs Service, Attn.: Tracey Denning, 1300 Pennsylvania Avenue NW, Room 3.2C, Washington, DC 20229, Tel. (202) 927–1429.

SUPPLEMENTARY INFORMATION: Customs invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: (1) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) estimates of capital or start-up costs and costs of operations, maintenance, and purchase of services to provide information. The comments that are submitted will be summarized and included in the Customs request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document Customs is soliciting comments concerning the following information collection:

Title: Importers of Merchandise Subject to Actual Use Provisions.

OMB Number: 1515–0091.

Form Number: None.

Abstract: The Importers of Merchandise Subject to Actual Use Provision is part of the regulation which provides that certain items may be admitted duty-free such as farming implements, seed, potatoes etc., providing the importer can prove these items were actually used as contemplated by law. The importer must maintain detailed records and furnish a statement of use.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Individuals, Businesses.

Estimated Number of Respondents: 12,000.

Estimated Time Per Respondent: 60 minutes.

Estimated Total Annual Burden Hours: 12,000.

Estimated Total Annualized Cost on the Public: N/A.

Dated: January 27, 2003.

Tracey Denning,

Agency Clearance Officer, Information Services Group.

[FR Doc. 03–2593 Filed 2–3–03; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Customs Service

Proposed Collection; Comment Request; General Declaration (Outward/Inward)

AGENCY: U.S. Customs, Department of the Treasury.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, Customs invites the general public and other Federal agencies to comment on an information collection requirement concerning the General Declaration (Outward/Inward). This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before April 7, 2003, to be assured of consideration.

ADDRESSES: Direct all written comments to U.S. Customs Service, Information Services Group, Room 3.2.C, 1300 Pennsylvania Avenue, NW., Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to U.S. Customs Service, Attn.: Tracey Denning, Room 3.2.C, 1300 Pennsylvania Avenue NW., Washington, DC 20229, Tel. (202) 927–1429.

SUPPLEMENTARY INFORMATION: Customs invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: (1) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) estimates of capital or start-up costs and costs of operations, maintenance, and purchase of services to provide information. The comments that are submitted will be summarized and included in the Customs request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document Customs is soliciting comments concerning the following information collection:

Title: General Declaration (Outward/Inward).

OMB Number: 1515–0002.

Form Number: Customs Form 7507.

Abstract: Customs Form 7507 allows the agent or pilot to make entry or exit of the aircraft, as required by statute. The form is used to document clearance by the arriving aircraft at the required inspectional facilities and inspections by appropriate regulatory agency staffs.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Business or other for-profit institutions.

Estimated Number of Respondents: 500.

Estimated Time Per Respondent: 90 minutes.

Estimated Total Annual Burden Hours: 49,950.

Estimated Total Annualized Cost on the Public: $1,874,250.

Dated: January 27, 2003.

Tracey Denning,

Agency Clearance Officer, Information Services Branch.

[FR Doc. 03–2594 Filed 2–3–03; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Federal Law Enforcement Training Center

Advisory Committee to the National Center for State and Local Law Enforcement Training; Meeting

AGENCY: Federal Law Enforcement Training Center, Department of the Treasury.

ACTION: Notice of Meeting.

SUMMARY: The Advisory Committee to the National Center for State and Local Law Enforcement Training (National Center) at the Federal Law Enforcement Training Center will meet on February 26, 2003, beginning at 9 a.m. The agenda for this meeting includes remarks by the Committee Co-Chairs, Kenneth Lawson, Assistant Secretary (LE), Department of the Treasury, and Deborah Daniels, Assistant Attorney General, Office of Justice Programs, Department of Justice; update on the transition of the FLETC and the National Center from Department of the Treasury to Department of Homeland Security. This meeting is open to the public. Anyone desiring to attend the meeting must contact Reba Fischer, the Designated Federal Officer, no later than February 19, 2003, at (912) 267–2343, to arrange clearance.

ADDRESSES: Sea Palms Hotel and Resort, 5445 Frederica Road, St. Simons Island, GA.

FOR FURTHER INFORMATION CONTACT: Bruce P. Brown, Director, National Center for State and Local Law Enforcement Training, Federal Law Enforcement Training Center, Glynco, GA 31524, 912–267–2322.

Dated: January 23, 2003.

Bruce P. Brown,

Director, National Center for State and Local Law Enforcement Training.

[FR Doc. 03–2492 Filed 2–3–03; 8:45 am]

BILLING CODE 4810–32–P

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Federal Register

Tuesday,
February 4, 2003

Part II

Department of the Treasury

Community Development Financial Institutions Fund

12 CFR Parts 1805 and 1806

Community Development Financial Institutions and Bank Enterprise Award Programs and Notice of Funds Availability (NOFA) Inviting Applications for the Bank Enterprise Program and for the Community Development Financial Institutions Program; Interim Rules and Notices

DEPARTMENT OF THE TREASURY

Community Development Financial Institutions Fund

12 CFR Part 1805

RIN 1505–AA92

Community Development Financial Institutions Program

AGENCY: Community Development Financial Institutions Fund, Department of the Treasury.

ACTION: Revised interim rule with request for comment.

SUMMARY: The Department of the Treasury is issuing a revised interim rule implementing the Community Development Financial Institutions Program (CDFI Program) administered by the Community Development Financial Institutions Fund (Fund). The mission of the CDFI Fund is to increase the capacity of financial institutions to provide capital, credit and financial services in underserved markets. Its long-term vision is an America in which all people have access to affordable credit, capital and financial services. The purpose of the CDFI Program is to promote economic revitalization and community development through investment in and assistance to Community Development Financial Institutions (CDFIs). Under the CDFI Program, the Fund provides financial and technical assistance in the form of grants, loans, equity investments and deposits to CDFIs selected through a merit-based application process. The Fund provides such assistance to CDFIs to enhance their ability to make loans and investments, and to provide related services for the benefit of designated investment areas, targeted populations, or both. In order for an organization to qualify as a CDFI, the organization must meet specific eligibility criteria. One such criterion is that the organization shall have a primary mission of promoting community development. This revised interim rule: Revises the primary mission eligibility test to comply with the plain meaning of the Community Development Banking and Financial Institutions Act of 1994 (the Act); reduces the frequency of previously approved collections of information by replacing semi-annual reporting requirements with annual reporting requirements; clarifies the terms and conditions underlying an award of assistance prior to the execution of an assistance agreement; achieves regulatory economy and efficiency by deleting references to application content requirements and other matters that have been and will continue to be thoroughly addressed in the various applications and in the Notices of Funds Availability (NOFA); and makes other technical and clarifying changes that the Fund believes will generally inure to the benefit of CDFIs and entities proposing to become CDFIs.

DATES: Revised interim rule effective February 4, 2003; comments must be received in the offices of the Fund on or before April 7, 2003.

ADDRESSES: You may send hard copy comments concerning this interim rule to the Deputy Director for Policy and Programs, Community Development Financial Institutions Fund, Department of the Treasury, 601 13th Street, NW., Suite 200 South, Washington, DC 20005. You may also send us comments by e-mail at *reg_comments@cdfi.treas.gov*. When sending comments by e-mail, please use an ASCII file format and provide your full name and mailing address. Comments may be inspected at the above address weekdays between 9:30 a.m. and 4:30 p.m. Other information regarding the Fund and its programs may be obtained through the Fund's Web site at *http://www.cdfifund.gov*.

FOR FURTHER INFORMATION CONTACT: Fredric C. Cooper, Deputy Director for Policy and Programs, Community Development Financial Institutions Fund, at (202) 622–6355. (This is not a toll free number.)

SUPPLEMENTARY INFORMATION:

I. Background

The Community Development Financial Institutions Fund (Fund) was established as a wholly owned government corporation by the Act. Subsequent legislation placed the Fund within the Department of the Treasury and gave the Secretary of the Treasury all powers and rights of the Administrator of the Fund as set forth in the authorizing statute.

The mission of the Fund is to increase the capacity of financial institutions to provide capital, credit and financial services in underserved markets. Its long-term vision is an America in which all people have access to affordable credit, capital and financial services. The Fund's programs are designed to facilitate the flow of lending and investment capital to distressed communities and to individuals who have been unable to take full advantage of the financial services industry. Access to credit, investment capital, and financial services are essential ingredients for creating and retaining jobs, developing affordable housing, revitalizing neighborhoods, unleashing the economic potential of small businesses, and empowering people.

The Fund was established to promote economic revitalization and community development through, among other things, investment in and assistance to CDFIs, which specialize in serving underserved markets and the people who live there. CDFIs—while highly effective—are typically small in scale and often have difficulty raising the capital needed to meet the demands for their products and services. Under the CDFI Program, the Fund provides CDFIs with financial and technical assistance in the form of grants, loans, equity investments, and deposits in order to enhance their ability to make loans and investments, and provide services for the benefit of designated investment areas, targeted populations or both. Additionally, CDFIs are in formation or in the early stages of development in many markets underserved by traditional financial institutions, including rural and Native American communities. The CDFI Program assists such entities in acquiring technical assistance to build their capacity to serve such markets. Applicants participate in the CDFI Program through a merit-based qualitative application and selection process in which the Fund makes funding decisions based on pre-established evaluation criteria. Program participants generally receive monies from the Fund only after being certified as a CDFI and entering into an assistance agreement with the Fund. These assistance agreements include performance goals, matching funds requirements and reporting requirements.

On August 14, 2000, the Fund published in the **Federal Register** a revised interim rule (65 FR 49642) implementing the CDFI Program (the current rule). The deadline for the submission of comments was October 13, 2000.

II. Comments on the August 14, 2000 Interim Rule

By the close of the October 13, 2000 comment period, the Fund received no comments on the August 14, 2000 interim rule.

III. Summary of Changes

Purpose

Section 1805.100 of the current rule contains a description of the purpose of the CDFI Program. This interim rule revises such purpose to conform to the purpose set forth in Section 102 of the Act (12 U.S.C. 4701(b)).

Summary

Section 1805.101 of the current rule provides that the Fund will select Awardees to receive financial and technical assistance through a competitive application process. The Fund is considering evaluating applications, particularly those for technical assistance, through a merit-based qualitative application process in which the Fund may evaluate applications on a stand-alone basis in lieu of a larger competitive process in order to expedite funding decisions. Accordingly, § 1805.101 of this interim rule provides that the Fund will select Awardees to receive financial and technical assistance through a merit-based qualitative application process. This interim rule contains similar conforming changes to §§ 1805.303(d) and 1805.700(a).

Definitions

Section 1805.104 of the current rule contains a list of definitions. This interim rule revises § 1805.104 by adding definitions of the following two terms: "Control" and "Voting Securities." The two new definitions are intended to clarify the meaning of the term "Affiliate," which is defined in § 1805.104(b) of the current rule. Section 1805.104(b) of the current rule defines "Affiliate" as any company or entity that controls, is controlled by, or is under common control with another company. The definition of "Affiliate" is derived from Section 103 of the Act (12 U.S.C. 4702(3)), which incorporates the definition of "Affiliate" contained in the Bank Holding Company Act (BHCA) (12 U.S.C. 1841(k)). Because the definition of "Affiliate" is derived from the BHCA, the Fund's definition of "Control" in this interim rule is likewise derived from the BHCA (12 U.S.C. 1841(a)(2)) and the BHCA implementing regulations (12 CFR 225.2(e)(1)). The definition of "Voting Securities," which is referenced in the definition of "Control," is derived from the definition contained in the BHCA implementing regulations (12 CFR 225.2(q)). The addition of these two definitions in this interim rule does not reflect a change in Fund policy or procedure, because the Fund has consistently looked to such BHCA definitions to guide it in determining whether one company is an Affiliate of another company.

Applicant Eligibility

Section 1805.200(a)(2) of the current rule provides that an entity that proposes to become a CDFI is eligible to apply for assistance if its application materials provide a realistic course of action to ensure that it will meet the CDFI eligibility tests within 24 months from September 30 of the calendar year in which the applicable application deadline falls or such other period as may be set forth in an applicable NOFA. The current interim rule reflects the Fund's practice of allowing entities to apply for certification and funding at the same time. The Fund intends to change such practice by requiring the submission of an application for certification in advance of the submission of an application for funding for some CDFI Program components. The policy goal of this bifurcated process is to facilitate the allocation of Fund staff resources for purposes of making eligibility and award decisions on a timelier basis. In furtherance of this same policy goal, the Fund also seeks the ability to require an entity to be certified as a CDFI prior to such entity's submission of an application for funding under some CDFI Program components. Accordingly, § 1805.200(a)(2) of this interim rule provides that an entity that proposes to become a CDFI is eligible to apply for assistance if the Fund receives an application for certification from the entity within the time period set forth in an applicable NOFA, and the Fund determines that such application materials provide a realistic course of action to ensure that it will meet the CDFI eligibility tests within the period set forth in an applicable NOFA. Section 1805.200(a)(2) of this interim rule also provides that the Fund reserves the right to require an entity to have been certified as a CDFI prior to its submission of an application for assistance under the CDFI Program, as set forth in an applicable NOFA.

Primary Mission Eligibility Test

Section 1805.201(b)(1) of the current rule provides that in order for an entity to qualify as a CDFI, such entity shall have a primary mission of promoting community development. Section 1805.201(b)(1) of the current rule also provides that in determining whether an entity has such a primary mission, the Fund will consider whether the activities of such entity individually and such entity and its Affiliates, when viewed collectively (as a whole), are purposefully directed toward improving the social and/or economic conditions of underserved people and/or residents of distressed communities. The Fund believes that the primary mission eligibility test in the current rule does not comply with the plain meaning of the definition of "CDFI" contained in Section 103 of the Act. Section 103 of the Act (12 U.S.C. 4702(5)(A)(i)) provides, in pertinent part, that the term "CDFI" means a person (other than an individual) that has a primary mission of promoting community development. The Fund believes that if Congress had intended that the primary mission eligibility test to apply to an entity on a collective basis with the entity's Affiliates, Congress would have so specified as it did elsewhere in Section 103 of the Act (12 U.S.C. 4702(5)(B) and (C)) with regard to entities that are Depository Institution Holding Companies, Subsidiaries or Affiliates of Depository Institution Holding Companies, and Subsidiaries of Insured Depository Institutions. Moreover, the Fund believes that this interim rule reflects a sound policy approach in that it will facilitate the ability of venture capital companies to qualify as CDFIs. Under the current rule, venture capital companies, which might meet all of the other CDFI eligibility tests, might not meet the primary mission eligibility test if their Affiliate portfolio companies do not have a primary mission of promoting community development. Accordingly, under § 1805.201(b)(1) of this interim rule, in determining whether an entity has a primary mission of promoting community development, the Fund will only consider the activities of the entity individually, and no longer take into account, except where required by the Act, the activities of an entity's Affiliates.

Certification As A CDFI

Section 1805.201 of the current rule describes, among other things, the application content requirements for an entity to be certified by the Fund as a CDFI. This interim rule deletes such application content requirements for purposes of regulatory economy and efficiency, because they are already contained in and will continue to be contained in the certification application.

Target Market—Investment Area

Section 1805.201(b)(3)(ii)(A)(*3*) of the current rule provides that a geographic area will be considered an eligible Investment Area if it encompasses or is located in an Empowerment Zone or Enterprise Community designated under Section 1391 of the Internal Revenue Code of 1986 (26 U.S.C. 1391). The Fund has decided to clarify this Investment Area eligibility requirement for purposes of accurately reflecting the Fund's longstanding interpretation of such requirement. Accordingly, § 1805.201(b)(3)(ii)(A)(*3*) of this interim rule clarifies that a geographic area will be considered an eligible Investment

Area if it wholly consists of or is wholly located within an Empowerment Zone or Enterprise Community.

Section 1805.201(b)(3)(ii)(A)(*2*) of the current rule provides that in order for a geographic area to qualify as an Investment Area, it must generally meet one of the objective criteria of economic distress set forth in § 1805.201(b)(3)(ii)(D) of the current rule. Section 1805.201(b)(3)(ii)(D) of the current rule contains a list of five economic distress criteria. In § 1805.201(b)(3)(ii)(D)(*4*) of the current rule, one criterion is that the percentage of occupied distressed housing (as indicated by lack of complete plumbing and occupancy of more than one person per room) in the geographic area is at least 20 percent. The Fund has determined that such criterion is no longer necessary, because the Fund has found that geographic areas that meet the occupied distressed housing criterion also meet one or more of the other economic distress criteria. The Fund thus believes that the deletion of the occupied distressed housing criterion will have no substantive adverse effect on a geographic area qualifying as an Investment Area. Accordingly, this interim rule deletes the occupied distressed housing criterion for purposes of regulatory economy and efficiency.

Section 1805.201(b)(3)(ii)(D)(*5*)(*i*) of the current rule contains an Investment Area distress criterion that for areas located outside of a Metropolitan Area, the county population loss in the period between the most recent decennial census and the previous decennial census is at least 10 percent. The Fund has determined that this 10 percent threshold figure is no longer applicable in light of the fact that the most recent decennial census indicates that only a small fraction of such counties experienced such a loss between 1990 and 2000.

In addition, § 1805.201(b)(3)(ii)(D)(*5*)(*ii*) of the current rule contains an Investment Area distress criterion that for areas located outside of a Metropolitan Area, the county net migration loss over the five year period preceding the most recent decennial census is at least five percent. In light of the most recent decennial census data, the Fund believes that this distressed criterion is no longer an accurate measure of an area's economic distress. Accordingly, this interim rule deletes the county population loss and county net migration loss distress criteria for purposes of regulatory economy and efficiency.

Matching Funds—Retained Earnings

Section 1805.504(d)(4)(i)(A) of the current rule provides that an Assistance Agreement with insured credit union Awardees that seek to use as matching funds retained earnings in the form of their net capital accumulated since inception shall require that such Awardees increase their member and/or nonmember shares by an amount that is at least equal to four times the amount of retained earnings that is committed as matching funds. The Fund believes that this four-fold increase is excessive and unduly burdensome for many small insured credit union Awardees that face incremental, rather than large-scale growth. In previous NOFAs under the Small and Emerging CDFI Assistance Component, the Fund waived the four-fold requirement and in its place held "small and emerging" insured credit union Awardees to a two-fold requirement. However, the Fund believes that the flexibility to vary the amount of such increases should be codified in this interim rule. Accordingly, § 1805.504(d)(4)(i)(A) of this interim rule is revised to require insured credit union Awardees, which seek to use net capital accumulated since their inception as matching funds, to increase their member and/or nonmember shares by an amount set forth in an applicable NOFA.

Section 1805.504(d)(4)(i)(B) of the current rule requires the increase in member and/or nonmember shares to be achieved within 24 months from September 30 of the calendar year in which the applicable application deadline falls. The Fund believes that this time frame needs to be shortened by three months so that if an Awardee fails to timely achieve the increase, the Fund can make a corresponding reduction in the award amount and then utilize the freed up funds to make additional awards on or before September 30, which is the last date that such funds will generally be available to make awards. Accordingly, § 1805.504(d)(4)(i)(B) of this interim rule is revised to require insured credit union awardees, which seek to use net capital accumulated since inception, to increase their member and/or nonmember shares within 24 months from June 30 of the calendar year in which the applicable application deadline falls.

Application Contents

Section 1805.601 of the current rule describes the Application content requirements for entities seeking financial and/or technical assistance. This interim rule deletes § 1805.601 for purposes of regulatory economy and efficiency, because such requirements are already contained in and will continue to be contained in the applicable applications.

Evaluation of Applications

Section 1805.701(b) of the current rule describes the criteria that the Fund will consider in evaluating applications for assistance. Section 1805.701(b)(9) of the current rule provides that the Fund will consider on the one hand the extent of need for the Fund's assistance, and on the other hand, in the case of an Applicant that has previously received assistance under the CDFI Program, the Applicant's level of success in meeting, among other things, its performance goals and whether it will expand its activities. The latter is derived from Section 105 of the Act (12 U.S.C. 4704(b)(4)). The Fund has decided to bifurcate these two criteria for purposes of clarity. Accordingly, § 1805.701(b)(10) of this interim rule contains the criterion by which the Fund will evaluate, in the case of an Applicant that has previously received assistance under the CDFI Program, its level of success and whether it will expand its activities.

Notice of Award—Terms and Conditions of Assistance

Section 1805.801 of the current rule provides that prior to providing any assistance, the Fund and an Awardee shall enter into an Assistance Agreement. Section 1805.801 of the current rule also describes the terms and conditions of an Assistance Agreement. However, there is a gap in the current rule between the evaluation and selection of an Applicant and the Applicant's entering into an Assistance Agreement with the Fund. To fill this gap, the Fund is adding a new section to this interim rule that essentially codifies the terms and conditions contained in the Notices of Award executed by the Fund and each Awardee under the CDFI Program. Specifically, § 1805.801 of this interim rule provides that once an Applicant has been selected to receive assistance, the Fund and the Awardee will generally execute a Notice of Award. Section 1805.801 of this interim rule also provides that the Notice of Award will contain the general terms and conditions underlying the Fund's provision of assistance, and that the Fund may terminate the Notice of Award or take other actions in the event of, among other things, Awardee fraud, Awardee mismanagement, or Awardee noncompliance with the terms of any

previous Assistance Agreement entered into with the Fund.

Assistance Agreement; Sanctions

Section 1805.801(b) of the current rule provides that an Awardee shall comply with mutually negotiated performance goals. However, § 1805.801(b) does not describe the types of performance goals to which an Awardee and the Fund may mutually agree. Accordingly, § 1805.802(b) of this interim rule adds an illustrative list of the types of performance goals that may be mutually agreed to.

Section 1805.801(c) of the current rule states that an Assistance Agreement shall provide that, in the event of fraud, mismanagement, noncompliance with the Fund's regulations, or noncompliance with the Assistance Agreement on the part of an Awardee, the Fund, in its discretion, may impose one or more sanctions. Section 1805.801(c)(7) of the current rule contains a catch-all sanction in that it authorizes the Fund to take any other action as permitted by the terms of the Assistance Agreement. The enumerated sanctions in § 1805.801(c) of the current rule are derived from Section 109 of the Act (12 U.S.C. 4707(f)(2)(C)), which commits to the Fund's discretion the ability to impose sanctions on an Awardee in the case of fraud, mismanagement or noncompliance. Section 109 of the Act (12 U.S.C. 4707(f)(2)(C)(vii)) also contains a catch-all sanction in that it confers upon the Fund the discretion to "take such other actions as the Fund deems appropriate." The Fund has decided to revise the catch-all sanction contained in the current rule to conform to the plain language of the Act. Accordingly, § 1805.802(c)(7) of this interim rule is revised to authorize the Fund to take such other actions, as the Fund deems appropriate.

Section 1805.801(d) of the current rule provides that in the case of an Insured Depository Institution, the Assistance Agreement shall provide that the Act, the implementing regulations and the Assistance Agreement shall be enforceable under 12 U.S.C. 1818 by the Appropriate Federal Banking Agency. Section 1805.801(d) of the current rule is derived from Section 119 of the Act (12 U.S.C. 4717(b)), which provides that the Act, the implementing regulations, and agreements entered into under the Act are enforceable by the Appropriate Federal Banking Agency in the case of an Insured CDFI. The Fund seeks to revise § 1805.801(d) of the current rule to conform to the plain meaning of the Act. Accordingly, § 1805.802(d) of this interim rule is revised by replacing "Insured Depository Institution" with "Insured CDFI."

Reporting

Section 1805.803(e)(2) of the current rule requires each Awardee to submit semi-annual reports consisting of internal financial statements and information on its compliance with its financial soundness covenants. The Fund believes that these semi-annual reporting requirements are unduly burdensome, and has decided to reduce the frequency of such reporting from semi-annually to annually. Accordingly, § 1805.804(e)(2) of this interim rule requires each Awardee to submit to the Fund its fiscal year end unaudited statements of financial condition on an annual basis.

IV. Rulemaking Analysis

Executive Order (E.O.) 12866

It has been determined that this regulation is not a significant regulatory action as defined in Executive Order 12866. Therefore, a Regulatory Assessment is not required.

Regulatory Flexibility Act

Because no notice of proposed rule making is required for this revised interim rule, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply.

Paperwork Reduction Act

The collections of information contained in this interim rule have been previously reviewed and approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act of 1995 and assigned OMB Control Number 1559–0006. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB. This document restates the collections of information without substantive change.

Comments concerning suggestions for reducing the burden of collections of information should be directed to the Deputy Director for Policy and Programs, Community Development Financial Institutions Fund, 601 13th Street, NW., Suite 200 South, Washington, DC 20005 and to the Office of Management and Budget, Attention: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

National Environmental Policy Act

Pursuant to Treasury Directive 75–02 (Department of the Treasury Environmental Quality Program), the Department has determined that these interim regulations are categorically excluded from the National Environmental Policy Act and do not require an environmental review.

Administrative Procedure Act

Because the revisions to this interim rule relate to loans and grants, notice and public procedure and a delayed effective date are not required pursuant to the Administrative Procedure Act found at 5 U.S.C. 553(a)(2).

Comment

Public comment is solicited on all aspects of this interim regulation. The Fund will consider all comments made on the substance of this interim regulation, but does not intend to hold hearings.

Catalog of Federal Domestic Assistance Number

Community Development Financial Institutions Program—21.020.

List of Subjects in 12 CFR Part 1805

Community development, Grant programs—housing and community development, Loan programs—housing and community development, Reporting and recordkeeping requirements, Small businesses.

For the reasons set forth in the preamble, 12 CFR part 1805 is revised to read as follows:

PART 1805—COMMUNITY DEVELOPMENT FINANCIAL INSTITUTIONS PROGRAM

Subpart A—General Provisions

Sec.

1805.100 Purpose.
1805.101 Summary.
1805.102 Relationship to other Fund programs.
1805.103 Awardee not instrumentality.
1805.104 Definitions.
1805.105 Waiver authority.
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Subpart B—Eligibility

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1805.201 Certification as a Community Development Financial Institution.

Subpart C—Use of Funds/Eligible Activities

1805.300 Purposes of financial assistance.
1805.301 Eligible activities.
1805.302 Restrictions on use of assistance.
1805.303 Technical assistance.

Subpart D—Investment Instruments

1805.400 Investment instruments—general.
1805.401 Forms of investment instruments.
1805.402 Assistance limits.
1805.403 Authority to sell.

Subpart E—Matching Funds Requirements

1805.500 Matching funds—general.

1805.501 Comparability of form and value.
1805.502 Severe constraints waiver.
1805.503 Time frame for raising match.
1805.504 Retained earnings.

Subpart F—Applications for Assistance

1805.600 Notice of Funds Availability.

Subpart G—Evaluation and Selection of Applications

1805.700 Evaluation and selection—general.
1805.701 Evaluation of Applications.

Subpart H—Terms and Conditions of Assistance

1805.800 Safety and soundness.
1805.801 Notice of Award
1805.802 Assistance Agreement; sanctions.
1805.803 Disbursement of funds.
1805.804 Data collection and reporting.
1805.805 Information.
1805.806 Compliance with government requirements.
1805.807 Conflict of interest requirements.
1805.808 Lobbying restrictions.
1805.809 Criminal provisions.
1805.810 Fund deemed not to control.
1805.811 Limitation on liability.
1805.812 Fraud, waste, and abuse.

Authority: 12 U.S.C. 4703, 4703 note, 4710, 4717; and 31 U.S.C. 321.

Subpart A—General Provisions

§ 1805.100 Purpose.

The purpose of the Community Development Financial Institutions Program is to promote economic revitalization and community development through investment in and assistance to Community Development Financial Institutions.

§ 1805.101 Summary.

Under the Community Development Financial Institutions Program, the Fund will provide financial and technical assistance to Applicants selected by the Fund in order to enhance their ability to make loans and investments and provide services. An Awardee must serve an Investment Area(s), Targeted Population(s), or both. The Fund will select Awardees to receive financial and technical assistance through a merit-based qualitative application process. Each Awardee will enter into an Assistance Agreement which will require it to achieve performance goals negotiated between the Fund and the Awardee and abide by other terms and conditions pertinent to any assistance received under this part.

§ 1805.102 Relationship to other Fund programs.

(a) *Bank Enterprise Award Program.* (1) No Community Development Financial Institution may receive a Bank Enterprise Award under the Bank Enterprise Award Program (part 1806 of this chapter) if it has:

(i) An application pending for assistance under the Community Development Financial Institutions Program;

(ii) Directly received assistance in the form of a disbursement under the Community Development Financial Institutions Program within the preceding 12-month period; or

(iii) Ever directly received assistance under the Community Development Financial Institutions Program for the same activities for which it is seeking a Bank Enterprise Award.

(2) An equity investment (as defined in part 1806 of this chapter) in, or a loan to, a Community Development Financial Institution, or deposits in an Insured Community Development Financial Institution, made by a Bank Enterprise Award Program Awardee may be used to meet the matching funds requirements described in subpart E of this part. Receipt of such equity investment, loan, or deposit does not disqualify a Community Development Financial Institution from receiving assistance under this part.

(b) *Liquidity enhancement program.* No entity that receives assistance through the liquidity enhancement program authorized under section 113 (12 U.S.C. 4712) of the Act may receive assistance under the Community Development Financial Institutions Program.

§ 1805.103 Awardee not instrumentality.

No Awardee (or its Community Partner) shall be deemed to be an agency, department, or instrumentality of the United States.

§ 1805.104 Definitions.

For the purpose of this part:

(a) *Act* means the Community Development Banking and Financial Institutions Act of 1994, as amended (12 U.S.C. 4701 *et seq.*);

(b) *Affiliate* means any company or entity that Controls, is Controlled by, or is under common Control with another company;

(c) *Applicant* means any entity submitting an application for assistance under this part;

(d) *Appropriate Federal Banking Agency* has the same meaning as in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813(q)), and also includes the National Credit Union Administration with respect to Insured Credit Unions;

(e) *Assistance Agreement* means a formal agreement between the Fund and an Awardee which specifies the terms and conditions of assistance under this part;

(f) *Awardee* means an Applicant selected by the Fund to receive assistance pursuant to this part;

(g) *Community Development Financial Institution* (or *CDFI*) means an entity currently meeting the eligibility requirements described in § 1805.200;

(h) *Community Development Financial Institution Intermediary* (or *CDFI Intermediary*) means an entity that meets the CDFI Program eligibility requirements described in § 1805.200 and whose primary business activity is the provision of Financial Products to CDFIs and/or emerging CDFIs;

(i) *Community Development Financial Institutions Program* (or *CDFI Program*) means the program authorized by sections 105–108 of the Act (12 U.S.C. 4704–4707) and implemented under this part;

(j) *Community Facility* means a facility where health care, childcare, educational, cultural, or social services are provided;

(k) *Community-Governed* means an entity in which the residents of an Investment Area(s) or members of a Targeted Population(s) represent greater than 50 percent of the governing body;

(l) *Community-Owned* means an entity in which the residents of an Investment Area(s) or members of a Targeted Population(s) have an ownership interest of greater than 50 percent;

(m) *Community Partner* means a person (other than an individual) that provides loans, Equity Investments, or Development Services and enters into a Community Partnership with an Applicant. A Community Partner may include a Depository Institution Holding Company, an Insured Depository Institution, an Insured Credit Union, a not-for-profit or for-profit organization, a State or local government entity, a quasi-government entity, or an investment company authorized pursuant to the Small Business Investment Act of 1958 (15 U.S.C. 661 *et seq.*);

(n) *Community Partnership* means an agreement between an Applicant and a Community Partner to collaboratively provide loans, Equity Investments, or Development Services to an Investment Area(s) or a Targeted Population(s);

(o) *Comprehensive Business Plan* means a document covering not less than the next five years which meets the requirements described in an applicable Notice of Funds Availability (NOFA);

(p) *Control* means: (1) Ownership, control, or power to vote 25 percent or more of the outstanding shares of any class of Voting Securities of any company, directly or indirectly or acting through one or more other persons; (2)

Control in any manner over the election of a majority of the directors, trustees, or general partners (or individuals exercising similar functions) of any company; or (3) The power to exercise, directly or indirectly, a controlling influence over the management, credit or investment decisions, or policies of any company.

(q) *Depository Institution Holding Company* means a bank holding company or a savings and loan holding company as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813(w)(1));

(r) *Development Services* means activities that promote community development and are integral to the Applicant's provision of Financial Products. Such services shall prepare or assist current or potential borrowers or investees to utilize the Financial Products of the Applicant. Such services include, for example: financial or credit counseling to individuals for the purpose of facilitating home ownership, promoting self-employment, or enhancing consumer financial management skills; or technical assistance to borrowers or investees for the purpose of enhancing business planning, marketing, management, and financial management skills;

(s) *Equity Investment* means an investment made by an Applicant that, in the judgment of the Fund, directly supports or enhances activities that serve an Investment Area(s) or a Targeted Population(s). Such investments must be made through an arms-length transaction with a third party that does not have a relationship with the Applicant as an Affiliate. Equity Investments comprise a stock purchase, a purchase of a partnership interest, a purchase of a limited liability company membership interest, a loan made on such terms that it has sufficient characteristics of equity (and is considered as such by the Fund), or any other investment deemed to be an Equity Investment by the Fund;

(t) *Financial Products* means: loans, Equity Investments and similar financing activities (as determined by the Fund) including the purchase of loans originated by certified CDFIs and the provision of loan guarantees; in the case of CDFI Intermediaries, grants to CDFIs and/or emerging CDFIs and deposits in insured credit union CDFIs and/or emerging insured credit union CDFIs.

(u) *Financial Services* means checking, savings accounts, check cashing, money orders, certified checks, automated teller machines, deposit taking, and safe deposit box services;

(v) *Fund* means the Community Development Financial Institutions Fund established under section 104(a) (12 U.S.C. 4703(a)) of the Act;

(w) *Indian Reservation* means any geographic area that meets the requirements of section 4(10) of the Indian Child Welfare Act of 1978 (25 U.S.C. 1903(10)), and shall include land held by incorporated Native groups, regional corporations, and village corporations, as defined in and pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1602), public domain Indian allotments, and former Indian reservations in the State of Oklahoma;

(x) *Indian Tribe* means any Indian Tribe, band, pueblo, nation, or other organized group or community, including any Alaska Native village or regional or village corporation, as defined in or established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 *et seq.*), which is recognized as eligible for special programs and services provided by the United States to Indians because of their status as Indians;

(y) *Insider* means any director, officer, employee, principal shareholder (owning, individually or in combination with family members, five percent or more of any class of stock), or agent (or any family member or business partner of any of the above) of any Applicant, Affiliate or Community Partner;

(z) *Insured CDFI* means a CDFI that is an Insured Depository Institution or an Insured Credit Union;

(aa) *Insured Credit Union* means any credit union, the member accounts of which are insured by the National Credit Union Share Insurance Fund;

(bb) *Insured Depository Institution* means any bank or thrift, the deposits of which are insured by the Federal Deposit Insurance Corporation;

(cc) *Investment Area* means a geographic area meeting the requirements of § 1805.201(b)(3);

(dd) *Low-Income* means an income, adjusted for family size, of not more than:

(1) For Metropolitan Areas, 80 percent of the area median family income; and

(2) For non-Metropolitan Areas, the greater of:

(i) 80 percent of the area median family income; or

(ii) 80 percent of the statewide non-Metropolitan Area median family income;

(ee) *Metropolitan Area* means an area designated as such by the Office of Management and Budget pursuant to 44 U.S.C. 3504(e) and 31 U.S.C. 1104(d) and Executive Order 10253 (3 CFR, 1949–1953 Comp., p. 758), as amended;

(ff) *Non-Regulated CDFI* means any entity meeting the eligibility requirements described in § 1805.200 which is not a Depository Institution Holding Company, Insured Depository Institution, or Insured Credit Union;

(gg) *State* means any State of the United States, the District of Columbia or any territory of the United States, Puerto Rico, Guam, American Samoa, the Trust Territories of the Pacific Islands, the Virgin Islands, and the Northern Mariana Islands;

(hh) *Subsidiary* means any company which is owned or controlled directly or indirectly by another company and includes any service corporation owned in whole or part by an Insured Depository Institution or any Subsidiary of such a service corporation, except as provided in § 1805.200(b)(4);

(ii) *Targeted Population* means individuals or an identifiable group meeting the requirements of § 1805.201(b)(3); and

(jj) *Target Market* means an Investment Area(s) and/or a Targeted Population(s).

(kk)(1) *Voting Securities* means shares of common or preferred stock, general or limited partnership shares or interests, or similar interests if the shares or interest, by statute, charter, or in any manner, entitle the holder:

(i) To vote for or select directors, trustees, or partners (or persons exercising similar functions of the issuing company); or

(ii) To vote on or to direct the conduct of the operations or other significant policies of the issuing company.

(2) *Nonvoting shares.* Preferred shares, limited partnership shares or interests, or similar interests are not Voting Securities if:

(i) Any voting rights associated with the shares or interest are limited solely to the type customarily provided by statute with regard to matters that would significantly and adversely affect the rights or preference of the security or other interest, such as the issuance of additional amounts or classes of senior securities, the modification of the terms of the security or interest, the dissolution of the issuing company, or the payment of dividends by the issuing company when preferred dividends are in arrears;

(ii) The shares or interest represent an essentially passive investment or financing device and do not otherwise provide the holder with control over the issuing company; and

(iii) The shares or interest do not entitle the holder, by statute, charter, or in any manner, to select or to vote for the selection of directors, trustees, or

partners (or persons exercising similar functions) of the issuing company.

§ 1805.105 Waiver authority.

The Fund may waive any requirement of this part that is not required by law upon a determination of good cause. Each such waiver shall be in writing and supported by a statement of the facts and the grounds forming the basis of the waiver. For a waiver in an individual case, the Fund must determine that application of the requirement to be waived would adversely affect the achievement of the purposes of the Act. For waivers of general applicability, the Fund will publish notification of granted waivers in the **Federal Register.**

§ 1805.106 OMB control number.

The collection of information requirements in this part have been approved by the Office of Management and Budget and assigned OMB control number 1559–0006.

Subpart B—Eligibility

§ 1805.200 Applicant eligibility.

(a) *General requirements.* (1) An entity that meets the requirements described in § 1805.201(b) and paragraph (b) of this section will be considered a CDFI and, subject to paragraph (a)(3) of this section, will be eligible to apply for assistance under this part.

(2) An entity that proposes to become a CDFI is eligible to apply for assistance under this part if the Fund:

(i) Receives a complete application for certification from the entity within the time period set forth in an applicable NOFA; and

(ii) Determines that such entity's application materials provide a realistic course of action to ensure that it will meet the requirements described in § 1805.201(b) and paragraph (b) of this section within the period set forth in an applicable NOFA. The Fund will not, however, disburse any financial assistance to such an entity before it meets the requirements described in this section. Moreover, notwithstanding paragraphs (a)(1) and (a)(2)(ii) of this section, the Fund reserves the right to require an entity to have been certified as described in § 1805.201(a) prior to its submission of an application for assistance, as set forth in an applicable NOFA.

(3) The Fund shall require an entity to meet any additional eligibility requirements that the Fund deems appropriate.

(4) The Fund, in its sole discretion, shall determine whether an Applicant fulfills the requirements set forth in this section and § 1805.201(b).

(b) *Provisions applicable to Depository Institution Holding Companies and Insured Depository Institutions.* (1) A Depository Institution Holding Company may qualify as a CDFI only if it and its Affiliates collectively satisfy the requirements described in this section.

(2) No Affiliate of a Depository Institution Holding Company may qualify as a CDFI unless the holding company and all of its Affiliates collectively meet the requirements described in this section.

(3) No Subsidiary of an Insured Depository Institution may qualify as a CDFI if the Insured Depository Institution and its Subsidiaries do not collectively meet the requirements described in this section.

(4) For the purposes of paragraphs (b)(1), (2) and (3) of this section, an Applicant will be considered to be a Subsidiary of any Insured Depository Institution or Depository Institution Holding Company that controls 25 percent or more of any class of the Applicant's voting shares, or otherwise controls, in any manner, the election of a majority of directors of the Applicant.

§ 1805.201 Certification as a Community Development Financial Institution.

(a) *General.* An entity may apply to the Fund for certification that it meets the CDFI eligibility requirements regardless of whether it is seeking financial or technical assistance from the Fund. Entities seeking such certification shall provide the information set forth in the application for certification. Certification by the Fund will verify that the entity meets the CDFI eligibility requirements. However, such certification shall not constitute an opinion by the Fund as to the financial viability of the CDFI or that the CDFI will be selected to receive an award from the Fund. The Fund, in its sole discretion, shall have the right to decertify a certified entity after a determination that the eligibility requirements of paragraph (b) of this section, § 1805.200(b) or (a)(3) (if applicable) are no longer met.

(b) *Eligibility verification.* An Applicant shall demonstrate whether it meets the eligibility requirements described in this paragraph (b) of this section and § 1805.200 by providing the information described in the application for certification demonstrating that the Applicant meets the eligibility requirements described in paragraphs (b)(1) through (b)(6) of this section. The Fund, in its sole discretion, shall determine whether an Applicant has satisfied the requirements of this paragraph (b) and § 1805.200.

(1) *Primary mission.* A CDFI shall have a primary mission of promoting community development. In determining whether an Applicant has such a primary mission, the Fund will consider whether the activities of the Applicant are purposefully directed toward improving the social and/or economic conditions of underserved people (which may include Low-Income persons and persons who lack adequate access to capital and/or Financial Services) and/or residents of distressed communities (which may include Investment Areas).

(2) *Financing entity.* A CDFI shall be an entity whose predominant business activity is the provision, in arms-length transactions, of Financial Products, Development Services, and/or other similar financing. An Applicant may demonstrate that it is such an entity if it is a(n):

(i) Depository Institution Holding Company;

(ii) Insured Depository Institution or Insured Credit Union; or

(iii) Organization that is deemed by the Fund to have such a predominant business activity as a result of analysis of its financial statements, organizing documents, and any other information required to be submitted as part of its application. In conducting such analysis, the Fund may take into consideration an Applicant's total assets and its use of personnel.

(3) *Target Market.* (i) *General.* An Applicant may be found to serve a Target Market by virtue of serving one or more Investment Areas and/or Targeted Populations. An Investment Area shall meet specific geographic and other criteria described in paragraph (b)(3)(ii) of this section, and a Targeted Population shall meet the criteria described in paragraph (b)(3)(iii) in this section.

(ii) *Investment Area.* (A) *General.* A geographic area will be considered eligible for designation as an Investment Area if it:

(1) Is entirely located within the geographic boundaries of the United States (which shall encompass any State of the United States, the District of Columbia or any territory of the United States, Puerto Rico, Guam, American Samoa, the Trust Territories of the Pacific Islands, the Virgin Islands, and the Northern Mariana Islands); and either

(2) Meets at least one of the objective criteria of economic distress as set forth in paragraph (b)(3)(ii)(D) of this section and has significant unmet needs for loans, Equity Investments, or Financial

Services as described in paragraph (b)(3)(ii)(E) of this section; or

(3) Encompasses (*i.e.* wholly consists of) or is wholly located within an Empowerment Zone or Enterprise Community designated under section 1391 of the Internal Revenue Code of 1986 (26 U.S.C. 1391).

(B) *Geographic units.* Subject to the remainder of this paragraph (B), an Investment Area shall consist of a geographic unit(s) that is a county (or equivalent area), minor civil division that is a unit of local government, incorporated place, census tract, block numbering area, block group, or American Indian or Alaska Native area (as such units are defined or reported by the U.S. Bureau of the Census). However, geographic units in Metropolitan Areas that are used to comprise an Investment Area shall be limited to census tracts, block groups and American Indian or Alaskan Native areas. An Applicant may designate one or more Investment Areas as part of a single application.

(C) *Designation.* An Applicant may designate an Investment Area by selecting:

(1) A geographic unit(s) which individually meets one of the criteria in paragraph (b)(3)(ii)(D) of this section; or

(2) A group of contiguous geographic units which together meet one of the criteria in paragraph (b)(3)(ii)(D) of this section, provided that the combined population residing within individual geographic units not meeting any such criteria does not exceed 15 percent of the total population of the entire Investment Area.

(D) *Distress criteria.* An Investment Area (or the units that comprise an area) must meet at least one of the following objective criteria of economic distress (as reported in the most recently completed decennial census published by the U.S. Bureau of the Census):

(1) The percentage of the population living in poverty is at least 20 percent;

(2) In the case of an Investment Area located:

(i) Within a Metropolitan Area, the median family income shall be at or below 80 percent of the Metropolitan Area median family income or the national Metropolitan Area median family income, whichever is greater; or

(ii) Outside of a Metropolitan Area, the median family income shall be at or below 80 percent of the statewide non-Metropolitan Area median family income or the national non-Metropolitan Area median family income, whichever is greater; or

(3) The unemployment rate is at least 1.5 times the national average.

(E) *Unmet needs.* An Investment Area will be deemed to have significant unmet needs for loans or Equity Investments if a narrative analysis provided by the Applicant adequately demonstrate a pattern of unmet needs for loans, Equity Investments, or Financial Services within such area(s).

(F) *Serving Investment Areas.* An Applicant may serve an Investment Area directly or through borrowers or investees that serve the Investment Area or provide significant benefits to its residents.

(iii) *Targeted Population.* (A) *General.* Targeted Population shall mean individuals, or an identifiable group of individuals, who are Low-Income persons or lack adequate access to loans, Equity Investments, or Financial Services in the Applicant's service area. The members of a Targeted Population shall reside within the boundaries of the United States (which shall encompass any State of the United States, the District of Columbia or any territory of the United States, Puerto Rico, Guam, American Samoa, the Trust Territories of the Pacific Islands, the Virgin Islands, and the Northern Mariana Islands).

(B) *Serving A Targeted Population.* An Applicant may serve the members of a Targeted Population directly or indirectly or through borrowers or investees that directly serve or provide significant benefits to such members.

(4) *Development Services.* A CDFI directly, through an Affiliate, or through a contract with another provider, shall provide Development Services in conjunction with its Financial Products.

(5) *Accountability.* A CDFI must maintain accountability to residents of its Investment Area(s) or Targeted Population(s) through representation on its governing board or otherwise.

(6) *Non-government.* A CDFI shall not be an agency or instrumentality of the United States, or any State or political subdivision thereof. An entity that is created by, or that receives substantial assistance from, one or more government entities may be a CDFI provided it is not controlled by such entities and maintains independent decision-making power over its activities.

Subpart C—Use of Funds/Eligible Activities

§ 1805.300 Purposes of financial assistance.

The Fund may provide financial assistance through investment instruments described under subpart D of this part. Such financial assistance is intended to strengthen the capital position and enhance the ability of an Awardee to provide Financial Products and Financial Services.

§ 1805.301 Eligible activities.

Financial assistance provided under this part may be used by an Awardee to serve Investment Area(s) or Targeted Population(s) by developing or supporting, through lending, investing, enhancing liquidity, or other means of finance:

(a) Commercial facilities that promote revitalization, community stability or job creation or retention;

(b) Businesses that:

(1) Provide jobs for Low-Income persons;

(2) Are owned by Low-Income persons; or

(3) Enhance the availability of products and services to Low-Income persons;

(c) Community Facilities;

(d) The provision of Financial Services;

(e) Housing that is principally affordable to Low-Income persons, except that assistance used to facilitate home ownership shall only be used for services and lending products that serve Low-Income persons and that:

(1) Are not provided by other lenders in the area; or

(2) Complement the services and lending products provided by other lenders that serve the Investment Area(s) or Targeted Population(s);

(f) The provision of Consumer Loans (a loan to one or more individuals for household, family, or other personal expenditures); or

(g) Other businesses or activities as requested by the Applicant and deemed appropriate by the Fund.

§ 1805.302 Restrictions on use of assistance.

(a) An Awardee shall use assistance provided by the Fund and its corresponding matching funds only for the eligible activities approved by the Fund and described in the Assistance Agreement.

(b) An Awardee may not distribute assistance to an Affiliate without the Fund's consent.

(c) Assistance provided upon approval of an application involving a Community Partnership shall only be distributed to the Awardee and shall not be used to fund any activities carried out by a Community Partner or an Affiliate of a Community Partner.

§ 1805.303 Technical assistance.

(a) *General.* The Fund may provide technical assistance to build the capacity of a CDFI or an entity that proposes to become a CDFI. Such

technical assistance may include training for management and other personnel; development of programs, products and services; improving financial management and internal operations; enhancing a CDFI's community impact; or other activities deemed appropriate by the Fund. The Fund, in its sole discretion, may provide technical assistance in amounts, or under terms and conditions that are different from those requested by an Applicant. The Fund may not provide any technical assistance to an Applicant for the purpose of assisting in the preparation of an application. The Fund may provide technical assistance to a CDFI directly, through grants, or by contracting with organizations that possess the appropriate expertise.

(b) The Fund may provide technical assistance regardless of whether the recipient also receives financial assistance under this part. Technical assistance provided pursuant to this part is subject to the assistance limits described in § 1805.402.

(c) An Applicant seeking technical assistance must meet the eligibility requirements described in § 1805.200 and submit an application as described in § 1805.600.

(d) Applicants for technical assistance pursuant to this part will be evaluated pursuant to the merit-based qualitative review criteria in subpart G of this part, except as otherwise may be provided in the applicable NOFA. In addition, the requirements for matching funds are not applicable to technical assistance requests.

Subpart D—Investment Instruments

§ 1805.400 Investment instruments—general.

The Fund will provide financial assistance to an Awardee through one or more of the investment instruments described in § 1805.401, and under such terms and conditions as described in this subpart D. The Fund, in its sole discretion, may provide financial assistance in amounts, through investment instruments, or under rates, terms and conditions that are different from those requested by an Applicant.

§ 1805.401 Forms of investment instruments.

(a) *Equity.* The Fund may make nonvoting equity investments in an Awardee, including, without limitation, the purchase of nonvoting stock. Such stock shall be transferable and, in the discretion of the Fund, may provide for convertibility to voting stock upon transfer. The Fund shall not own more than 50 percent of the equity of an Awardee and shall not control its operations.

(b) *Grants.* The Fund may award grants.

(c) *Loans.* The Fund may make loans, if permitted by applicable law.

(d) *Deposits and credit union shares.* The Fund may make deposits (which shall include credit union shares) in Insured CDFIs. Deposits in an Insured CDFI shall not be subject to any requirement for collateral or security.

§ 1805.402 Assistance limits.

(a) *General.* Except as provided in paragraph (b) of this section, the Fund may not provide, pursuant to this part, more than $5 million, in the aggregate, in financial and technical assistance to an Awardee and its Affiliates during any three-year period.

(b) *Additional amounts.* If an Awardee proposes to establish a new Affiliate to serve an Investment Area(s) or Targeted Population(s) outside of any State, and outside of any Metropolitan Area, currently served by the Awardee or its Affiliates, the Awardee may receive additional assistance pursuant to this part up to a maximum of $3.75 million during the same three-year period. Such additional assistance:

(1) Shall be used only to finance activities in the new or expanded Investment Area(s) or Targeted Population(s); and

(2) Must be distributed to a new Affiliate that meets the eligibility requirements described in § 1805.200 and is selected for assistance pursuant to subpart G of this part.

(c) An Awardee may receive the assistance described in paragraph (b) of this section only if no other application to serve substantially the same Investment Area(s) or Targeted Population(s) that meets the requirements of § 1805.701(a) was submitted to the Fund prior to the receipt of the application of said Awardee and within the current funding round.

§ 1805.403 Authority to sell.

The Fund may, at any time, sell its equity investments and loans, provided the Fund shall retain the authority to enforce the provisions of the Assistance Agreement until the performance goals specified therein have been met.

Subpart E—Matching Funds Requirements

§ 1805.500 Matching funds—general.

All financial assistance awarded under this part shall be matched with funds from sources other than the Federal government. Except as provided in § 1805.502, such matching funds shall be provided on the basis of not less than one dollar for each dollar provided by the Fund. Funds that have been used to satisfy a legal requirement for obtaining funds under either the CDFI Program or another Federal grant or award program may not be used to satisfy the matching requirements described in this section. Community Development Block Grant Program and other funds provided pursuant to the Housing and Community Development Act of 1974, as amended (42 U.S.C. 5301 *et seq.*), shall be considered Federal government funds and shall not be used to meet the matching requirements. Matching funds shall be used as provided in the Assistance Agreement. Funds that are used prior to the execution of the Assistance Agreement may nevertheless qualify as matching funds provided the Fund determines in its reasonable discretion that such use promoted the purpose of the Comprehensive Business Plan that the Fund is supporting through its assistance.

§ 1805.501 Comparability of form and value.

(a) Matching funds shall be at least comparable in form (*e.g.*, equity investments, deposits, credit union shares, loans and grants) and value to financial assistance provided by the Fund (except as provided in § 1805.502). The Fund shall have the discretion to determine whether matching funds pledged are comparable in form and value to the financial assistance requested.

(b) In the case of an Awardee that raises matching funds from more than one source, through different investment instruments, or under varying terms and conditions, the Fund may provide financial assistance in a manner that represents the combined characteristics of such instruments.

(c) An Awardee may meet all or part of its matching requirements by committing available earnings retained from its operations.

§ 1805.502 Severe constraints waiver.

(a) In the case of an Applicant with severe constraints on available sources of matching funds, the Fund, in its sole discretion, may permit such Applicant to comply with the matching requirements by:

(1) Reducing such requirements by up to 50 percent; or

(2) Permitting an Applicant to provide matching funds in a form to be determined at the discretion of the Fund, if such an Applicant:

(i) Has total assets of less than $100,000;

(ii) Serves an area that is not a Metropolitan Area; and

(iii) Is not requesting more than $25,000 in assistance.

(b) Not more than 25 percent of the total funds available for obligation under this part in any fiscal year may be matched as described in paragraph (a) of this section. Additionally, not more than 25 percent of the total funds disbursed under this part in any fiscal year may be matched as described in paragraph (a) of this section.

(c) An Applicant may request a "severe constraints waiver" as part of its application for assistance. An Applicant shall provide a narrative justification for its request, indicating:

(1) The cause and extent of the constraints on raising matching funds;

(2) Efforts to date, results, and projections for raising matching funds;

(3) A description of the matching funds expected to be raised; and

(4) Any additional information requested by the Fund.

(d) The Fund will grant a "severe constraints waiver" only in exceptional circumstances when it has been demonstrated, to the satisfaction of the Fund, that an Investment Area(s) or Targeted Population(s) would not be adequately served without the waiver.

§ 1805.503 Time frame for raising match.

Applicants shall satisfy matching funds requirements within the period set forth in the applicable NOFA.

§ 1805.504 Retained earnings.

(a) An Applicant that proposes to meet all or a portion of its matching funds requirements as set forth in this part by committing available earnings retained from its operations pursuant to § 1805.501(c) shall be subject to the restrictions described in this section.

(b)(1) In the case of a for-profit Applicant, retained earnings that may be used for matching funds purposes shall consist of:

(i) The increase in retained earnings (excluding the after-tax value to an Applicant of any grants and other donated assets) that has occurred over the Applicant's most recent fiscal year (*e.g.*, retained earnings at the end of fiscal year 2001 less retained earnings at the end of fiscal year 2000); or

(ii) The annual average of such increases that have occurred over the Applicant's three most recent fiscal years.

(2) Such retained earnings may be used to match a request for an equity investment. The terms and conditions of financial assistance will be determined by the Fund.

(c)(1) In the case of a non-profit Applicant (other than a Credit Union), retained earnings that may be used for matching funds purposes shall consist of:

(i) The increase in an Applicant's net assets (excluding the amount of any grants and value of other donated assets) that has occurred over the Applicant's most recent fiscal year; or

(ii) The annual average of such increases that has occurred over the Applicant's three most recent fiscal years.

(2) Such retained earnings may be used to match a request for a grant. The terms and conditions of financial assistance will be determined by the Fund.

(d)(1) In the case of an insured credit union Applicant, retained earnings that may be used for matching funds purposes shall consist of:

(i) The increase in retained earnings that have occurred over the Applicant's most recent fiscal year;

(ii) The annual average of such increases that has occurred over the Applicant's three most recent fiscal years; or

(iii) The entire retained earnings that have been accumulated since the inception of the Applicant provided that the conditions described in paragraph (d)(4) of this section are satisfied.

(2) For the purpose of paragraph (d)(4) of this section, retained earnings shall be comprised of "Regular Reserves", "Other Reserves" (excluding reserves specifically dedicated for losses), and "Undivided Earnings" as such terms are used in the National Credit Union Administration's accounting manual.

(3) Such retained earnings may be used to match a request for a grant. The terms and conditions of financial assistance will be determined by the Fund.

(4) If the option described in paragraph (d)(1)(iii) of this section is used:

(i) The Assistance Agreement shall require that:

(A) An Awardee increase its member and/or non-member shares by an amount that is set forth in an applicable NOFA; and

(B) Such increase be achieved within 24 months from June 30 of the calendar year in which the applicable application deadline falls (or such other date as set forth in the applicable NOFA);

(ii) The Applicant's Comprehensive Business Plan shall discuss its strategy for raising the required shares and the activities associated with such increased shares;

(iii) The level from which the increases in shares described in paragraph (d)(4)(i) of this section will be measured will be as of June 30 of the calendar year in which the applicable application deadline falls; and

(iv) Financial assistance shall be disbursed by the Fund only as the amount of increased shares described in paragraph (d)(4)(i)(A) of this section is achieved.

(5) The Fund will allow an Applicant to utilize the option described in paragraph (d)(1)(iii) of this section for matching funds only if it determines, in its sole discretion, that the Applicant will have a high probability of success in increasing its shares to the specified amounts.

(e) Retained earnings accumulated after the end of the Applicant's most recent fiscal year ending prior to the appropriate application deadline may not be used as matching funds.

Subpart F—Applications for Assistance

§ 1805.600 Notice of Funds Availability.

Each Applicant shall submit an application for financial or technical assistance under this part in accordance with the applicable NOFA published in the **Federal Register**. The NOFA will advise potential Applicants on how to obtain an application packet and will establish deadlines and other requirements. The NOFA may specify any limitations, special rules, procedures, and restrictions for a particular funding round. After receipt of an application, the Fund may request clarifying or technical information on the materials submitted as part of such application.

Subpart G—Evaluation and Selection of Applications

§ 1805.700 Evaluation and selection—general.

Applicants will be evaluated and selected, at the sole discretion of the Fund, to receive assistance based on a review process, that could include an interview(s) and/or site visit(s), that is intended to:

(a) Ensure that Applicants are evaluated on a merit basis and in a fair and consistent manner;

(b) Take into consideration the unique characteristics of Applicants that vary by institution type, total asset size, stage of organizational development, markets served, products and services provided, and location;

(c) Ensure that each Awardee can successfully meet the goals of its Comprehensive Business Plan and achieve community development impact;

(d) Ensure that Awardees represent a geographically diverse group of Applicants serving Metropolitan Areas, non-Metropolitan Areas, and Indian Reservations from different regions of the United States; and

(e) Take into consideration other factors as described in the applicable NOFA.

§ 1805.701 Evaluation of applications.

(a) *Eligibility and completeness.* An Applicant will not be eligible to receive assistance pursuant to this part if it fails to meet the eligibility requirements described in § 1805.200 or if it has not submitted complete application materials. For the purposes of this paragraph (a), the Fund reserves the right to request additional information from the Applicant, if the Fund deems it appropriate.

(b) *Substantive review.* In evaluating and selecting applications to receive assistance, the Fund will evaluate the Applicant's likelihood of success in meeting the goals of the Comprehensive Business Plan and achieving community development impact, by considering factors such as:

(1) Community development track record (*e.g.*, in the case of an Applicant with a prior history of serving a Target Market, the extent of success in serving such Target Market);

(2) Operational capacity and risk mitigation strategies;

(3) Financial track record and strength;

(4) Capacity, skills and experience of the management team;

(5) Understanding of its market context, including its analysis of current and prospective customers, the extent of economic distress within the designated Investment Area(s) or the extent of need within the designated Targeted Population(s), as those factors are measured by objective criteria, the extent of need for Equity Investments, loans, Development Services, and Financial Services within the designated Target Market, and the extent of demand within the Target Market for the Applicant's products and services;

(6) Program design and implementation plan, including an assessment of its products and services, marketing and outreach efforts, delivery strategy, and coordination with other institutions and/or a Community Partner, or participation in a secondary market for purposes of increasing the Applicant's resources. In the case of an Applicant submitting an application with a Community Partner, the Fund will evaluate the extent to which the Community Partner will participate in carrying out the activities of the Community Partnership; the extent to which the Community Partner will enhance the likelihood of success of the Comprehensive Business Plan; and the extent to which service to the designated Target Market will be better performed by a Community Partnership than by the Applicant alone;

(7) Projections for financial performance, capitalization and raising needed external resources, including the amount of firm commitments and matching funds in hand to meet or exceed the matching funds requirements and, if applicable, the likely success of the plan for raising the balance of the matching funds in a timely manner, the extent to which the matching funds are, or will be, derived from private sources, and whether an Applicant is, or will become, an Insured CDFI;

(8) Projections for community development impact, including the extent to which an Applicant will concentrate its activities on serving its Target Market(s), the extent of support from the designated Target Market, the extent to which an Applicant is, or will be, Community-Owned or Community-Governed, and the extent to which the activities proposed in the Comprehensive Business Plan will expand economic opportunities or promote community development within the designated Target Market;

(9) The extent of need for the Fund's assistance, as demonstrated by the extent of economic distress in the Applicant's Target Market and the extent to which the Applicant needs the Fund's assistance to carry out its Comprehensive Business Plan;

(10) In the case of an Applicant that has previously received assistance under the CDFI Program, the Fund also will consider the Applicant's level of success in meeting its performance goals, financial soundness covenants (if applicable), and other requirements contained in the previously negotiated and executed Assistance Agreement(s) with the Fund, the undisbursed balance of assistance, and whether the Applicant will, with additional assistance from the Fund, expand its operations into a new Target Market, offer more products or services, and/or increase the volume of its activities; and

(11) The Fund may consider any other factors, as it deems appropriate, in reviewing an application as set forth in an applicable NOFA.

(c) *Consultation with Appropriate Federal Banking Agencies.* The Fund will consult with, and consider the views of, the Appropriate Federal Banking Agency prior to providing assistance to:

(1) An Insured CDFI;

(2) A CDFI that is examined by or subject to the reporting requirements of an Appropriate Federal Banking Agency; or

(3) A CDFI that has as its Community Partner an institution that is examined by, or subject to, the reporting requirements of an Appropriate Federal Banking Agency.

(d) *Awardee selection.* The Fund will select Awardees based on the criteria described in paragraph (b) of this section and any other criteria set forth in this part or the applicable NOFA.

Subpart H—Terms and Conditions of Assistance

§ 1805.800 Safety and soundness.

(a) *Regulated institutions.* Nothing in this part, or in an Assistance Agreement, shall affect any authority of an Appropriate Federal Banking Agency to supervise and regulate any institution or company.

(b) *Non-Regulated CDFIs.* The Fund will, to the maximum extent practicable, ensure that Awardees that are Non-Regulated CDFIs are financially and managerially sound and maintain appropriate internal controls.

§ 1805.801 Notice of award.

(a) The Fund will generally signify its selection of an Applicant as an Awardee by delivering a signed notice of award to the Applicant. The notice of award will contain the general terms and conditions underlying the Fund's provision of assistance to an Awardee including, but not limited to, the requirement that an Awardee and the Fund enter into an Assistance Agreement.

(b) To become an Awardee under paragraph (a) of this section, an Applicant shall execute the notice of award and return it to the Fund.

(c) By executing a notice of award, an Awardee agrees that, if prior to entering into an Assistance Agreement with the Fund, information comes to the attention of the Fund that either adversely affects the Awardee's eligibility for funding, or adversely affects the Fund's evaluation of the Awardee's application, or indicates fraud or mismanagement on the part of the Awardee, the Fund may, in its discretion and without advance notice to the Awardee, terminate the notice of award or take such other actions as it deems appropriate. Moreover, by executing a notice of award, an Awardee also agrees that, if prior to entering into an Assistance Agreement with the Fund, the Fund determines that the Awardee is not in compliance with the terms of

any previous Assistance Agreement entered into with the Fund, the Fund may, in its discretion and without advance notice to the Awardee, either terminate the notice of award or take such other actions as it deems appropriate. An Awardee shall notify the Fund of information that an Awardee may reasonably believe may affect its eligibility or ability to achieve the objectives of its Comprehensive Business Plan as submitted to the Fund (such as changes in management).

(d) The Fund will notify an Awardee of either the Fund's termination of a notice of award or such other action(s) taken by the Fund under paragraph (c) of this section.

§ 1805.802 Assistance Agreement; sanctions.

(a) Prior to providing any assistance, the Fund and an Awardee shall execute an Assistance Agreement that requires an Awardee to comply with performance goals and abide by other terms and conditions of assistance. Such performance goals may be modified at any time by mutual consent of the Fund and an Awardee or as provided in paragraph (c) of this section. If a Community Partner is part of an application that is selected for assistance, such partner must be a party to the Assistance Agreement if deemed appropriate by the Fund.

(b) An Awardee shall comply with performance goals that have been negotiated with the Fund and which are based upon the Comprehensive Business Plan submitted as part of the Awardee's application. Such performance goals may include measures that require an Awardee to:

(1) Be financially sound;

(2) Be managerially sound;

(3) Maintain appropriate internal controls; and/or

(4) Achieve specific lending, investment, and development service objectives. Performance goals for Insured CDFIs shall be determined in consultation with the Appropriate Federal Banking Agency. Such goals shall be incorporated in, and enforced under, the Awardee's Assistance Agreement.

(c) The Assistance Agreement shall provide that, in the event of fraud, mismanagement, noncompliance with the Act and the Fund's regulations, or noncompliance with the terms and conditions of the Assistance Agreement on the part of the Awardee (or the Community Partner, if applicable), the Fund, in its discretion, may:

(1) Require changes in the performance goals set forth in the Assistance Agreement;

(2) Require changes in the Awardee's Comprehensive Business Plan;

(3) Revoke approval of the Awardee's application;

(4) Reduce or terminate the Awardee's assistance;

(5) Require repayment of any assistance that has been distributed to the Awardee;

(6) Bar the Awardee (and the Community Partner, if applicable) from reapplying for any assistance from the Fund; or

(7) Take such other actions as the Fund deems appropriate.

(d) In the case of an Insured CDFI, the Assistance Agreement shall provide that the provisions of the Act, this part, and the Assistance Agreement shall be enforceable under 12 U.S.C. 1818 of the Federal Deposit Insurance Act by the Appropriate Federal Banking Agency and that any violation of such provisions shall be treated as a violation of the Federal Deposit Insurance Act. Nothing in this paragraph (d) precludes the Fund from directly enforcing the Assistance Agreement as provided for under the terms of the Act.

(e) The Fund shall notify the Appropriate Federal Banking Agency before imposing any sanctions on an Insured CDFI or other institution that is examined by or subject to the reporting requirements of that agency. The Fund shall not impose a sanction described in paragraph (c) of this section if the Appropriate Federal Banking Agency, in writing, not later than 30 calendar days after receiving notice from the Fund:

(1) Objects to the proposed sanction;

(2) Determines that the sanction would:

(i) Have a material adverse effect on the safety and soundness of the institution; or

(ii) Impede or interfere with an enforcement action against that institution by that agency;

(3) Proposes a comparable alternative action; and

(4) Specifically explains:

(i) The basis for the determination under paragraph (e)(2) of this section and, if appropriate, provides documentation to support the determination; and

(ii) How the alternative action suggested pursuant to paragraph (e)(3) of this section would be as effective as the sanction proposed by the Fund in securing compliance and deterring future noncompliance.

(f) In reviewing the performance of an Awardee in which its Investment Area(s) includes an Indian Reservation or Targeted Population(s) includes an Indian Tribe, the Fund shall consult with, and seek input from, the appropriate tribal government.

(g) Prior to imposing any sanctions pursuant to this section or an Assistance Agreement, the Fund shall, to the maximum extent practicable, provide the Awardee (or the Community Partner, if applicable) with written notice of the proposed sanction and an opportunity to comment. Nothing in this section, however, shall provide an Awardee or Community Partner with the right to any formal or informal hearing or comparable proceeding not otherwise required by law.

§ 1805.803 Disbursement of funds.

Assistance provided pursuant to this part may be provided in a lump sum or over a period of time, as determined appropriate by the Fund. The Fund shall not provide any assistance (other than technical assistance) under this part until an Awardee has satisfied any conditions set forth in its Assistance Agreement and has secured firm commitments for the matching funds required for such assistance. At a minimum, a firm commitment must consist of a written agreement between an Awardee and the source of the matching funds that is conditioned only upon the availability of the Fund's assistance and such other conditions as the Fund, in its sole discretion, may deem appropriate. Such agreement must provide for disbursal of the matching funds to an Awardee prior to, or simultaneously with, receipt by an Awardee of the Federal funds.

§ 1805.804 Data collection and reporting.

(a) *Data—General.* An Awardee (and a Community Partner, if appropriate) shall maintain such records as may be prescribed by the Fund which are necessary to:

(1) Disclose the manner in which Fund assistance is used;

(2) Demonstrate compliance with the requirements of this part and an Assistance Agreement; and

(3) Evaluate the impact of the CDFI Program.

(b) *Customer profiles.* An Awardee (and a Community Partner, if appropriate) shall compile such data on the gender, race, ethnicity, national origin, or other information on individuals that utilize its products and services as the Fund shall prescribe in an Assistance Agreement. Such data will be used to determine whether residents of Investment Area(s) or members of Targeted Population(s) are adequately served and to evaluate the impact of the CDFI Program.

(c) *Access to records.* An Awardee (and a Community Partner, if appropriate) must submit such financial and activity reports, records, statements,

and documents at such times, in such forms, and accompanied by such reporting data, as required by the Fund or the U.S. Department of Treasury to ensure compliance with the requirements of this part and to evaluate the impact of the CDFI Program. The United States Government, including the U.S. Department of Treasury, the Comptroller General, and their duly authorized representatives, shall have full and free access to the Awardee's offices and facilities and all books, documents, records, and financial statements relating to use of Federal funds and may copy such documents as they deem appropriate. The Fund, if it deems appropriate, may prescribe access to record requirements for entities that are borrowers of, or that receive investments from, an Awardee.

(d) *Retention of records.* An Awardee shall comply with all record retention requirements as set forth in OMB Circular A–110 (as applicable).

(e) *Review.* (1) General. At least annually, the Fund will review the progress of an Awardee (and a Community Partner, if appropriate) in implementing its Comprehensive Business Plan and satisfying the terms and conditions of its Assistance Agreement. The Fund's review will generally be based on the following:

(i) The annual report described in paragraph (e)(2) of this section;

(ii) The audited statements of financial condition described in paragraph (e)(3) of this section; and

(iii) The annual survey described in paragraph (e)(4) of this section.

(2) *Annual Report.* An Awardee shall submit a report within 60 days after the end of its fiscal year, or by such alternative deadline as may be agreed to in the Assistance Agreement containing, unless otherwise determined by mutual agreement between the Awardee and the Fund, the following:

(i) A description of an Awardee's activities in support of its Comprehensive Business Plan;

(ii) Qualitative and quantitative information on an Awardee's compliance with its performance goals and (if appropriate) an analysis of factors contributing to any failure to meet such goals; and

(iii) Information describing the manner in which Fund assistance and any corresponding matching funds were used;

(iv) A certification that an Awardee continues to meet the eligibility requirements described in § 1805.200; and

(v) Fiscal year end unaudited statements of financial condition.

(3) *Audited Financial Statements.* An Awardee shall submit within 120 days after the end of its fiscal year, or within some other period as may be agreed to in the Assistance Agreement, fiscal year end statements of financial condition audited by an independent certified public accountant. The audit shall be conducted in accordance with generally accepted Government Auditing Standards set forth in the General Accounting Offices Government Auditing Standards (1994 Revision) issued by the Comptroller General and OMB Circular A–133 (Audits of States, Local Governments, and Non-Profit Organizations), as applicable.

(4) *Annual Survey.* An Awardee shall submit a report within 120 days after the end of its fiscal year, or by such alternative deadline as may be agreed to in the Assistance Agreement containing, unless otherwise determined by mutual agreement between the Awardee and the Fund, the following information:

(i) The Awardee's customer profile;

(ii) Awardee activities including Financial Products and Development Services;

(iii) Awardee portfolio quality;

(iv) The Awardee's financial condition; and

(v) The Awardee's community development impact (which may include loan-level data).

(5) The Fund shall make reports described in paragraph (e)(2) of this section available for public inspection after deleting any materials necessary to protect privacy or proprietary interests.

(f) *Exchange of information with Appropriate Federal Banking Agencies.* (1) Except as provided in paragraph (f)(4) of this section, prior to directly requesting information from or imposing reporting or record keeping requirements on an Insured CDFI or other institution that is examined by or subject to the reporting requirements of an Appropriate Federal Banking Agency, the Fund shall consult with the Appropriate Federal Banking Agency to determine if the information requested is available from or may be obtained by such agency in the form, format, and detail required by the Fund.

(2) If the information, reports, or records requested by the Fund pursuant to paragraph (f)(1) of this section are not provided by the Appropriate Federal Banking Agency within 15 calendar days after the date on which the material is requested, the Fund may request the information from or impose the record keeping or reporting requirements directly on such institutions with notice to the Appropriate Federal Banking Agency.

(3) The Fund shall use any information provided by the Appropriate Federal Banking Agency under this section to the extent practicable to eliminate duplicative requests for information and reports from, and record keeping by, an Insured CDFI or other institution that is examined by or subject to the reporting requirements of an Appropriate Federal Banking Agency.

(4) Notwithstanding paragraphs (f)(1) and (2) of this section, the Fund may require an Insured CDFI or other institution that is examined by or subject to the reporting requirements of an Appropriate Federal Banking Agency to provide information with respect to the institutions implementation of its Comprehensive Business Plan or compliance with the terms of its Assistance Agreement, after providing notice to the Appropriate Federal Banking Agency.

(5) Nothing in this part shall be construed to permit the Fund to require an Insured CDFI or other institution that is examined by or subject to the reporting requirements of an Appropriate Federal Banking Agency to obtain, maintain, or furnish an examination report of any Appropriate Federal Banking Agency or records contained in or related to such report.

(6) The Fund and the Appropriate Federal Banking Agency shall promptly notify each other of material concerns about an Awardee that is an Insured CDFI or that is examined by or subject to the reporting requirements of an Appropriate Federal Banking Agency, and share appropriate information relating to such concerns.

(7) Neither the Fund nor the Appropriate Federal Banking Agency shall disclose confidential information obtained pursuant to this section from any party without the written consent of that party.

(8) The Fund, the Appropriate Federal Banking Agency, and any other party providing information under this paragraph (f) shall not be deemed to have waived any privilege applicable to the information or data, or any portion thereof, by providing such information or data to the other party or by permitting such data or information, or any copies or portions thereof, to be used by the other party.

(g) *Availability of referenced publications.* The publications referenced in this section are available as follows:

(1) OMB Circulars may be obtained from the Office of Administration, Publications Office, 725 17th Street, NW., Room 2200, New Executive Office Building, Washington, DC 20503 or on

the Internet (*http://www.whitehouse.gov/OMB/grants/index.html*); and

(2) General Accounting Office materials may be obtained from GAO Distribution, 700 4th Street, NW., Suite 1100, Washington, DC 20548.

§ 1805.805 Information.

The Fund and each Appropriate Federal Banking Agency shall cooperate and respond to requests from each other and from other Appropriate Federal Banking Agencies in a manner that ensures the safety and soundness of the Insured CDFIs or other institution that is examined by or subject to the reporting requirements of an Appropriate Federal Banking Agency.

§ 1805.806 Compliance with government requirements.

In carrying out its responsibilities pursuant to an Assistance Agreement, the Awardee shall comply with all applicable Federal, State, and local laws, regulations, and ordinances, OMB Circulars, and Executive Orders.

§ 1805.807 Conflict of interest requirements.

(a) *Provision of credit to Insiders.* (1) An Awardee that is a Non-Regulated CDFI may not use any monies provided to it by the Fund to make any credit (including loans and Equity Investments) available to an Insider unless it meets the following restrictions:

(i) The credit must be provided pursuant to standard underwriting procedures, terms and conditions;

(ii) The Insider receiving the credit, and any family member or business partner thereof, shall not participate in any way in the decision making regarding such credit;

(iii) The Board of Directors or other governing body of the Awardee shall approve the extension of the credit; and

(iv) The credit must be provided in accordance with a policy regarding credit to Insiders that has been approved in advance by the Fund.

(2) An Awardee that is an Insured CDFI or a Depository Institution Holding Company shall comply with the restrictions on Insider activities and any comparable restrictions established by its Appropriate Federal Banking Agency.

(b) *Awardee standards of conduct.* An Awardee that is a Non-Regulated CDFI shall maintain a code or standards of conduct acceptable to the Fund that shall govern the performance of its Insiders engaged in the awarding and administration of any credit (including loans and Equity Investments) and contracts using monies from the Fund. No Insider of an Awardee shall solicit or accept gratuities, favors or anything of monetary value from any actual or potential borrowers, owners or contractors for such credit or contracts. Such policies shall provide for disciplinary actions to be applied for violation of the standards by the Awardee's Insiders.

§ 1805.808 Lobbying restrictions.

No assistance made available under this part may be expended by an Awardee to pay any person to influence or attempt to influence any agency, elected official, officer or employee of a State or local government in connection with the making, award, extension, continuation, renewal, amendment, or modification of any State or local government contract, grant, loan or cooperative agreement as such terms are defined in 31 U.S.C. 1352.

§ 1805.809 Criminal provisions.

The criminal provisions of 18 U.S.C. 657 regarding embezzlement or misappropriation of funds is applicable to all Awardees and Insiders.

§ 1805.810 Fund deemed not to control.

The Fund shall not be deemed to control an Awardee by reason of any assistance provided under the Act for the purpose of any applicable law.

§ 1805.811 Limitation on liability.

The liability of the Fund and the United States Government arising out of any assistance to a CDFI in accordance with this part shall be limited to the amount of the investment in the CDFI. The Fund shall be exempt from any assessments and other liabilities that may be imposed on controlling or principal shareholders by any Federal law or the law of any State. Nothing in this section shall affect the application of any Federal tax law.

§ 1805.812 Fraud, waste, and abuse.

Any person who becomes aware of the existence or apparent existence of fraud, waste or abuse of assistance provided under this part should report such incidences to the Office of Inspector General of the U.S. Department of the Treasury.

Dated: January 27, 2003.

Tony T. Brown,

Director, Community Development Financial Institutions Fund.

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DEPARTMENT OF THE TREASURY

Community Development Financial Institutions Fund

12 CFR Part 1806

RIN 1505–AA91

Bank Enterprise Award Program

AGENCY: Community Development Financial Institutions Fund, Department of the Treasury.

ACTION: Revised interim rule with request for comment.

SUMMARY: The Department of the Treasury is issuing a revised interim rule implementing the Bank Enterprise Award (BEA) Program administered by the Community Development Financial Institutions Fund (Fund). The mission of the CDFI Fund is to increase the capacity of financial institutions to provide capital, credit and financial services in underserved markets. Its long-term vision is an America in which all people have access to affordable credit, capital and financial services. The purpose of the BEA Program is to provide an incentive to insured depository institutions to increase their activities in the form of loans, investments, services, and technical assistance, within Distressed Communities and provide financial assistance to Community Development Financial Institutions (CDFIs) through grants, stock purchases, loans, deposits, and other forms of financial and technical assistance. This revised interim rule: improves programmatic operating efficiencies; targets program incentives to encourage the provision of investment, credit and financial services in Distressed Communities that demonstrate the most extreme need, to CDFIs that serve such Distressed Communities, and to smaller, less well capitalized CDFIs; reduces applicants' documentary and reporting burdens; clarifies and redefines the requirements of certain Qualified Activities; redefines and adds new categories of Qualified Activities; changes some methodologies for calculating BEA Program awards, including the application of caps to such awards; and simplifies some reporting and documentation requirements.

DATES: Interim rule effective February 4, 2003; comments must be received on or before April 7, 2003.

ADDRESSES: You may send hard copy comments concerning this interim rule to the Deputy Director for Policy and Programs, Community Development Financial Institutions Fund, Department

of the Treasury, 601 13th Street, NW., Suite 200 South, Washington, DC 20005. You may also send us comments by e-mail at *reg_comments@cdfit.treas.gov*. When sending comments by e-mail, please use an ASCII file format and provide your full name and mailing address. Comments may be inspected at the above address weekdays between 9:30 a.m. and 4:30 p.m. Other information regarding the Fund and its programs may be obtained through the Fund's Web site at *http://www.cdfifund.gov*.

FOR FURTHER INFORMATION CONTACT: Margaret Nilson, Depository Institutions Manager, the Community Development Financial Institutions Fund, at (202) 622–6355. (This is not a toll free number.)

SUPPLEMENTARY INFORMATION:

I. Background

The Community Development Financial Institutions Fund (Fund) was established as a wholly owned government corporation by the Community Development Banking and Financial Institutions Act of 1994. Subsequent legislation placed the Fund within the Department of the Treasury and gave the Secretary of the Treasury all powers and rights of the Administrator of the Fund as set forth in the authorizing statute.

The mission of the Fund is to increase the capacity of financial institutions to provide capital, credit and financial services in underserved markets. Its long-term vision is an America in which all people have access to affordable credit, capital and financial services. The Fund's programs are designed to facilitate the flow of lending and investment capital to distressed communities and to individuals who have been unable to take full advantage of the financial services industry. Access to credit, investment capital, and financial services are essential ingredients for creating and retaining jobs, developing affordable housing, revitalizing neighborhoods, unleashing the economic potential of small businesses, and empowering people.

Through the BEA Program, the Fund seeks to: strengthen and expand the financial and organizational capacity of CDFIs; provide financial incentives to insured depository institutions to increase their lending and services in Distressed Communities; and increase the flow of private capital into Low- and Moderate-Income areas. Applicants participate in the BEA Program through a competitive process, which evaluates applications based on the value of their increases in certain Qualified Activities. Program participants receive BEA Program award proceeds only after successful completion of the specified Qualified Activities.

On December 5, 1997, the Fund published in the **Federal Register** an interim regulation (62 FR 64439) implementing the BEA Program (the current rule). The deadline for the submission of comments was April 6, 1998.

II. Comments on the December 5, 1997 Interim Rule

By the close of the April 6, 1998 comment period, the Fund received no comments on the December 5, 1997 interim rule.

III. Summary of Changes

(1) *Purpose:* Section 1806.100 of the current rule contains a description of the purpose of the BEA Program. This interim rule revises such purpose to more accurately describe the purpose of the BEA Program.

(2) *New Definitions:* Section 1806.103 of the revised interim rule contains a number of new definitions: Community Development Entity (§ 1806.103(m)) which includes entities certified through the New Markets Tax Credit Program; CDFI Partner (§ 1806.103(o)) which includes CDFIs to which Applicants have provided assistance; and Deposit Liabilities (§ 1806.103(s)) includes savings and other deposit accounts. In addition, the revised interim rule defines Electronic Transfer Account (ETA) (§ 1806.103(w)), First Account (§ 1806.103(aa)), and Individual Development Account (IDA) (§ 1806.103(ff)) (such terms were defined in Notices of Funds Availability for certain prior BEA Program funding rounds).

(3) *Definitions for New Categories of Qualified Activities:* The revised interim rule creates Service Activities (§ 1806.103(oo)), a new category of Qualified Activities (§ 1806.103(mm)). The Service Activities category includes: Community Services (§ 1806.103(r)); Deposit Liabilities (§ 1806.103(s)); Financial Services (§ 1806.103(z)); Targeted Financial Services (§ 1806.103(rr)); and Targeted Retail Savings/Investment Products (§ 1806.103(ss)). Targeted Financial Services is a new category that includes ETAs, First Accounts, and IDAs. Targeted Retail Savings/Investment Products is a new sub-category that includes savings and other investment products targeted to Low- and Moderate-Income Residents of Distressed Communities.

The revised interim rule eliminates Development Activities (§ 1806.201(b)(4) of the current rule), re-designating Development Activities as Distressed Community Financing Activities (§ 1806.103(u)). Distressed Community Financing Activities include: Affordable Housing Development Loans (§ 1806.103(b)); Affordable Housing Loans (§ 1806.103(c)), Home Improvement Loans (§ 1806.103(dd)); Education Loans (§ 1806.103(v)); Commercial Real Estate Loans (§ 1806.103(l)); and Small Business Loans (§ 1806.103(pp)). Affordable Housing Development Loan activities comprise loans related to the development of residential real property that is affordable to Low- and Moderate-Income households. Affordable Housing Loan means origination of a loan to finance the purchase or improvement of the borrower's primary residence, and that is secured by such property, where such borrower is a Low- and Moderate-Income individual (included in the Single Family Loans category of the current rule). Correspondingly, Single Family Loans have been re-designated as Home Improvement Loans and mean advances of funds, either unsecured or secured by a one-to-four family residential property, the proceeds of which are used to improve the borrower's primary residence. Education Loan means an advance of funds to a Resident of a Distressed Community for the purpose of financing a college or vocational education. Small Business Loan has been modified from focusing on the size of the loan to the size of the business and means an origination of a loan used for commercial or industrial activities (other than an Affordable Housing Finance Loan, Affordable Housing Development Loan, Commercial Real Estate Loan, Home Improvement Loan) to a business or farm that meets the size eligibility standards of the Small Business Administration's Development Company or Small Business Investment Company programs (13 CFR 121.301) or have gross annual revenues of $1 million or less.

(4) *Definitions Related to Certain Qualified Activities:* Consistent with the Fund's objective of ensuring that BEA Program awards are targeted to institutions that provide capital and services to CDFIs and other enterprises that have significant impact in their communities, the revised interim rule provides that certain types of CDFI Support Activities (§ 1806.103(q)), Community Services (§ 1806.103(r)), and Financial Services (§ 1806.103(z)), must be, among other requirements, provided to CDFIs or other enterprises, as applicable, that are Integrally

Involved in a Distressed Community (§ 1806.200). The revised interim rule defines Integrally Involved (§ 1806.103(gg)) as meaning

(a) for a CDFI Partner, having provided at least five percent of financial transactions or dollars transacted (*e.g.*, loans or equity investments as defined in 12 CFR 1805.104(s)), or five percent of Development Service activities, in the Distressed Community identified by the Applicant or the CDFI Partner, as applicable, in each of the three calendar years preceding the date of the applicable NOFA, or having transacted at least ten percent of financial transactions (*e.g.*, loans or equity investments) in said Distressed Community in at least one of the three calendar years preceding the date of the applicable NOFA, or demonstrating that it has attained at least five percent of market share for a particular product in said Distressed Community (such as at least five percent of home mortgages originated in said Distressed Community) in at least one of the three calendar years preceding the date of the applicable NOFA; or

(b) for a non-CDFI, having directed at least five percent of its business activities (*e.g.*, investments, revenues, expenses, or other appropriate measures) to serving the Distressed Community identified by the Applicant in each of the three calendar years preceding the date of the applicable NOFA, or having provided at least ten percent of its business activities in said Distressed Community in at least one of the three calendar years preceding the date of the applicable NOFA.

The revised interim rule also provides that the Fund may qualify further certain Qualified Activities, for example, through the application of dollar amount caps, in the applicable NOFA.

(5) *Measuring and Reporting Qualified Activities:* Much of the information contained in § 1806.201 of the current rule has been consolidated in the revised interim rule to remove repetitive material and to improve readability. In addition, sections concerning the measurement of Qualified Activities (§ 1806.202(a)–(e) of the current rule) have been incorporated in § 1806.201 of the revised interim rule. The revised interim rule omits the Priority Factors (see § 1806.201(b)(3) of the current rule), and provides in § 1806.103(kk) that such Priority Factors shall be set forth in the applicable NOFA.

(6) *Low-Income Housing Tax Credits; New Markets Tax Credits:* Sections 1806.201(d)(1) and (2) of the revised interim rule provide that activity by an Applicant shall not be considered a Qualified Activity if, with respect to such activity, the Applicant has received an allocation of Low-Income Housing Tax Credits or New Markets Tax Credits.

(7) *Treatment of Renewed/Refinanced Loans:* Section 1806.201(e)(1) of the revised interim rule clarifies the Fund's treatment of renewed and refinanced loans. The Fund will continue to value refinanced loans based upon the increase in principal over the original loan. However, financial assistance provided by an Applicant shall not constitute a Qualified Activity, as defined in this part, for the purposes of calculating or receiving an award if, such activity has matured and is then renewed. This treatment of renewed and refinanced loans is consistent with the Fund's objective of creating incentives for providing new capital. The Fund recognizes that while there is value to borrowers in having loan maturities extended and other terms renegotiated, such activities, strictly speaking, do not create an additional flow of funds.

(8) *Estimated award amounts:* Section 1806.202 of the revised interim rule provides that the estimated award amounts for all Qualified Activities (not solely for Development and Service as is the case under § 1806.203(c) of the current rule) shall be determined by applying the appropriate:

(a) award percentage (§ 1806.202(b)), as such percentages are set forth in the applicable NOFA, and

(b) Priority Factor, where applicable, as set forth in the applicable NOFA (§ 1806.202(c)).

(9) *Selection Process, actual award amounts:* Section 1806.203 of the revised interim rule sets forth the statutorily prescribed first priority for BEA Program awards for activities that have supported CDFIs. However, the revised interim rule omits the rankings of particular Qualified Activities within priority categories (§ 1806.204(b) of the current rule). Rather, the revised interim rule provides that the Fund will set forth the applicable rankings of particular Qualified Activities within a priority category in the applicable NOFA. In addition, the interim revised rule incorporates most of § 1806.205 of the current rule into § 1806.203, and deletes the "75 percent rule" (§ 1806.205(b) of the current rule).

(10) *Applications for Bank Enterprise Awards:* Section 1806.204 of the revised interim rule is substantially the same as § 1806.206 of the current rule. The revised interim rule omits the requirements that the Applicant submit: a copy of its certificate of insurance (§ 1806.206(b)(1) of the current rule); a narrative description of its Qualified Activities (§ 1806.206(b)(3) of the current rule); a report of its asset size (§ 1806.206(b)(4) of the current rule); and a copy of its most recent annual report (§ 1806.206(b)(7) of the current rule). The Fund believes that this information duplicates other information that is available to the Fund via other sources, including appropriate banking agencies.

(11) *Award Agreement; Sanctions:* Section 1806.300(c) of the revised interim rule provides that if a BEA Program award recipient, or its Subsidiary or Affiliate, fails to comply with the terms and conditions of its BEA Program award agreement, or the terms and conditions of any other assistance agreement under the CDFI Program, then the Fund may reject such Applicant's application or withhold any disbursement of such award funds.

(12) *Clarification on Measuring Certificates of Deposits:* Section 1806.103(q) of the revised interim rule provides that any certificate of deposit placed by an Applicant in a CDFI that is a bank, thrift, or credit union may be either:

(i) Uninsured and committed for a term of at least three years; or

(ii) insured and committed for a term of at least three years, if it earns a rate of interest that is determined by the Fund to be materially below market, as set forth in the applicable NOFA.

IV. Rulemaking Analysis

(1) Executive Order (E.O.) 12866

It has been determined that this regulation is not a significant regulatory action as defined in Executive Order 12866. Therefore, a Regulatory Assessment is not required.

(2) Regulatory Flexibility Act

Because no notice of proposed rulemaking is required for this revised interim rule, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply.

(3) Paperwork Reduction Act

The collections of information contained in this interim rule have been previously reviewed and approved by OMB in accordance with the Paperwork Reduction Act of 1995 and assigned OMB Control Number 1559–0005. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB. This document restates the collections of information without substantive change.

Comments concerning suggestions for reducing the burden of collections of information should be directed to the Deputy Director for Policy and Programs, Community Development Financial Institutions Fund, 601 13th Street, NW., Suite 200 South, Washington, DC 20005, and to the Office of Management and Budget, Attention: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, D.C. 20503.

(4) National Environmental Policy Act

Pursuant to Treasury Directive 75–02 (Department of the Treasury Environmental Quality Program), the Department has determined that these revised interim regulations are categorically excluded from the National Environmental Policy Act and do not require an environmental review.

(5) Administrative Procedure Act

The Fund is promulgating this revised interim rule without opportunity for prior public comment pursuant to the Administrative Procedure Act (APA), 5 U.S.C. 553, because the BEA Program involves grants and is thereby exempt from the procedural requirements of the APA pursuant to 5 U.S.C. 553(a)(2). The Fund also believes that an immediate effective date is necessary for the convenience of the persons affected. Specifically, an immediate effective date will minimize the risk of confusion on the affected community by ensuring that there will be a single and uniform regulation in effect during the Assessment Period that, as stated in the NOFA published elsewhere in this issue of the **Federal Register**, will begin on January 1, 2003.

(6) Comment

Public comment is solicited on all aspects of this interim regulation. The Fund will consider all comments made on the substance of this interim regulation, but does not intend to hold hearings.

(7) Catalog of Federal Financial Assistance Number

Bank Enterprise Award Program—21.021.

(8) List of Subjects in 12 CFR Part 1806

Banks, banking, Community development, Grant programs—housing and community development, Reporting and recordkeeping requirements, Savings associations.

For the reasons set forth in the preamble, 12 CFR Part 1806 is revised to read as follows:

PART 1806—BANK ENTERPRISE AWARD PROGRAM

Subpart A—General Provisions

Sec.
1806.100 Purpose.
1806.101 Summary.
1806.102 Relationship to the Community Development Financial Institutions Program.
1806.103 Definitions.
1806.104 Waiver authority.
1806.105 OMB control number.

Subpart B—Awards

1806.200 Community eligibility and designation.
1806.201 Measuring and Reporting Qualified Activities.
1806.202 Estimated award amounts.
1806.203 Selection process, actual award amounts.
1806.204 Applications for Bank Enterprise Awards.

Subpart C—Terms and Conditions of Assistance

1806.300 Award Agreement; sanctions.
1806.301 Records, reports and audits of Awardees.
1806.302 Compliance with government requirements.
1806.303 Fraud, waste and abuse.
1806.304 Books of account, records and government access.
1806.305 Retention of records.

Authority: 12 U.S.C. 1834a, 4703, 4703 note, 4713, 4717; 31 U.S.C. 321.

Subpart A—General Provisions

§ 1806.100 Purpose.

The purpose of the Bank Enterprise Award Program is to provide an incentive for insured depository institutions to increase their activities in Distressed Communities, and provide financial assistance to Community Development Financial Institutions.

§ 1806.101 Summary.

(a) Under the Bank Enterprise Award Program, the Fund makes awards to selected Applicants that:

(1) Increase their investments in or other support of Community Development Financial Institutions;

(2) Increase lending and investment activities within Distressed Communities; or

(3) Increase the provision of certain services and assistance.

(b) Distressed Communities must meet minimum poverty and unemployment criteria.

(c) Applicants are selected to participate in the program through a competitive application process. Awards are based on increases in Qualified Activities that are carried out by the Applicant during an Assessment Period. Bank Enterprise Awards are distributed after successful completion of projected Qualified Activities. All awards shall be made subject to the availability of funding.

§ 1806.102 Relationship to the Community Development Financial Institutions Program.

(a) *Prohibition against double funding.* No CDFI may receive a Bank Enterprise Award if it has:

(1) An application pending for assistance under the Community Development Financial Institutions Program (part 1805 of this chapter);

(2) Directly received assistance from the Fund under the Community Development Financial Institutions Program within the 12-month period prior to the date the Fund selected the Applicant to receive a Bank Enterprise Award; or

(3) Ever received assistance under the Community Development Financial Institutions Program for the same activities for which it is seeking a Bank Enterprise Award.

(b) *Matching funds.* Equity Investments and CDFI Support Activities (except technical assistance) provided to a CDFI under this part can be used by the CDFI to meet the matching funds requirements of the Community Development Financial Institutions Program.

§ 1806.103 Definitions.

For purposes of this part the following terms shall have the following definitions:

(a) *Act* means the Community Development Banking and Financial Institutions Act of 1994, as amended (12 U.S.C. 4701 *et seq.*);

(b) *Affordable Housing Development Loan* means origination of a loan to finance the acquisition, construction, and/or development of single-or multi-family residential real property, where at least sixty percent of the units in such property are affordable, as may be defined in the applicable NOFA, to Low- and Moderate-Income individuals.

(c) *Affordable Housing Loan* means origination of a loan to finance the purchase or improvement of the borrower's primary residence, and that is secured by such property, where such borrower is a Low- and Moderate-Income individual. Affordable Housing Loan may also refer to second (or otherwise subordinated) liens or "soft second" mortgages, and other similar types of downpayment assistance loans but may not necessarily be secured by such property originated for the purpose of facilitating the purchase or improvement of the borrower's primary residence, where such borrower is a Low- and Moderate-Income individual.

(d) *Applicant* means any insured depository institution (as defined in section 3(c)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1813)) that is applying for a Bank Enterprise Award;

(e) *Appropriate Federal Banking Agency* has the same meaning as in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813);

(f) *Assessment Period* means an annual or semi-annual period specified in the applicable Notice of Funds Availability in which an Applicant will carry out, or has carried out, Qualified Activities;

(g) *Award Agreement* means a formal agreement between the Fund and an Awardee pursuant to § 1806.300;

(h) *Awardee* means an Applicant selected by the Fund to receive a Bank Enterprise Award;

(i) *Bank Enterprise Award (or BEA Program Award)* means an award made to an Applicant pursuant to this part;

(j) *Bank Enterprise Award (or BEA) Program* means the program authorized by section 114 of the Act and implemented under this part;

(k) *Baseline Period* means an annual or semi-annual period specified in the applicable NOFA in which an Applicant has previously carried out Qualified Activities;

(l) *Commercial Real Estate Loan* means an origination of a loan (other than an Affordable Housing Loan) that is secured by real estate and used to finance the acquisition or rehabilitation of a building, or the acquisition, construction and or development of property, used for commercial purposes;

(m) *Community Development Entity (or CDE)* means any Qualified Community Development Entity that meets the requirements set forth at Internal Revenue Code (IRC) § 45D(c) and that has been certified as such by the Fund;

(n) *Community Development Financial Institution (or CDFI)* means an entity whose certification as a CDFI under § 1805.201 of this chapter is in effect as of the end of the applicable Assessment Period (the Assessment Period in which the Qualified Activity takes place) and that meets the requirements of § 1805.200 of this chapter at the time of the Qualified Activity, subject to the rest of this paragraph (n). If an Applicant is proposing to engage in CDFI Related Activities with an uncertified CDFI, the uncertified CDFI may apply for certification by submitting the information described in § 1805.201(b) of this chapter. In order for the Applicant to be eligible to receive a Bank Enterprise Award for its CDFI Related Activities, the required information with respect to the uncertified CDFI shall be submitted to the Fund as specified in the applicable NOFA, and certification must be completed by the end of the applicable Assessment Period as specified in the applicable NOFA. Notwithstanding anything in this paragraph (n) to the contrary, an Applicant may receive an award pursuant to this part for assistance provided to an uncertified CDFI that, at the time of the Qualified Activity, does not meet the requirements of § 1805.200 of this chapter if the uncertified CDFI is certified by the end of the applicable Assessment Period.

(o) *CDFI Partner* means a CDFI that has been provided assistance in the form of CDFI Related Activities by an Applicant;

(p) *CDFI Related Activities* means Equity Investments, Equity-Like Loans and CDFI Support Activities;

(q) *CDFI Support Activity* means assistance provided by an Applicant or its Subsidiary to a CDFI that meets criteria set forth by the Fund in the applicable NOFA, that is Integrally Involved in a Distressed Community, in the form of the origination of a loan, technical assistance, or deposits if such deposits are:

(1) Uninsured and committed for a term of at least three years; or

(2) Insured, committed for a term of at least three years, and provided at an interest rate that is materially (in the determination of the Fund) below market rates;

(r) *Community Services* means the following forms of assistance provided by officers, employees or agents (contractual or otherwise) of the Applicant:

(1) Provision of technical assistance, through consumer education programs, to Residents regarding managing their personal finances;

(2) Provision of technical assistance and consulting services to newly formed small businesses located in the Distressed Community;

(3) Provision of technical assistance to, or servicing the loans of, Low- or Moderate-Income homeowners and homeowners located in the Distressed Community; and

(4) Other services provided to Low- and Moderate-Income individuals in a Distressed Community or enterprises Integrally Involved in a Distressed Community, as deemed appropriate by the Fund;

(s) *Deposit Liabilities* means time or savings deposits or demand deposits, accepted from Residents at offices of the Applicant, or a Subsidiary of the Applicant, located within the Distressed Community. Depository Liabilities may only include deposits held by individuals in transaction accounts (*i.e.*, demand deposits, NOW accounts, automated transfer service accounts and telephone or preauthorized transfer accounts) or nontransaction accounts (*i.e.*, money market deposit accounts, other savings deposits and all time deposits), as defined by the Appropriate Federal Banking Agency;

(t) *Distressed Community* means a geographic community which meets the minimum area eligibility requirements specified in § 1806.200, and such additional criteria as may be set forth in the applicable NOFA;

(u) *Distressed Community Financing Activities* means Affordable Housing Loans, Affordable Housing Development Loans and related Project Investments; Education Loans; Commercial Real Estate Loans and related Project Investments; Home Improvement Loans; and Small Business Loans and related Project Investments;

(v) *Education Loan* means an advance of funds to a student, who is a Resident of a Distressed Community, for the purpose of financing a college or vocational education.

(w) *Electronic Transfer Account (or ETA)* means an account meeting the requirements, and with respect to which the Applicant has satisfied the requirements, set forth in the **Federal Register** on July 16, 1999 at 64 FR 38510, as such requirements may be amended from time to time;

(x) *Equity Investment* means financial assistance provided by an Applicant or its Subsidiary to a CDFI, which CDFI meets such criteria as set forth in the applicable NOFA, in the form of a grant, a stock purchase, a purchase of a partnership interest, a purchase of a limited liability company membership interest, or any other investment deemed to be an Equity Investment by the Fund;

(y) *Equity-Like Loan* means a loan provided by an Applicant or its Subsidiary to a CDFI, and made on such terms that it has characteristics of an Equity Investment (consistent with requirements of the Appropriate Federal Banking Agency), as such characteristics may be specified by the Fund in the applicable NOFA;

(z) *Financial Services* means check-cashing, providing money orders and certified checks, automated teller machines, safe deposit boxes, new branches, and other comparable services as may be specified by the Fund in the applicable NOFA, that are provided by the Applicant to Low- and Moderate-Income individuals in the Distressed

Community or enterprises Integrally Involved in the Distressed Community;

(aa) *First Account* means a low-cost account and such other services designed to expand access to financial services for Low- and Moderate-Income individuals, provided pursuant to grants made under the Consolidated Appropriations Act, 2001 (Public Law 106–554, 114 Stat. 2763, 2763A–126), and the Department of Transportation and Related Agencies Appropriations Act, 2001 (Public Law 106–346, 114 Stat. 1356, 1356A–44);

(bb) *Fund* means the Community Development Financial Institutions Fund, established under section 104(a) of the Act (12 U.S.C. 4703(a));

(cc) *Geographic Units* means counties (or equivalent areas), incorporated places, minor civil divisions that are units of local government, census tracts, block numbering areas, block groups, and American Indian or Alaska Native areas (as each is defined by the U.S. Bureau of the Census) or other areas deemed appropriate by the Fund;

(dd) *Home Improvement Loan* means an advance of funds, either unsecured or secured by a one-to-four family residential property, the proceeds of which are used to improve the borrower's primary residence;

(ee) *Indian Reservation* means a geographic area that meets the requirements of section 4(10) of the Indian Child Welfare Act of 1978 (25 U.S.C. 1903(10)), and shall include land held by incorporated Native groups, regional corporations, and village corporations, as defined in and pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 *et seq.*), public domain Indian allotments, and former Indian Reservations in the State of Oklahoma;

(ff) *Individual Development Account (or IDA)* means an account that meets the requirements, and with respect to the provision of which Applicant has satisfied the requirements, set forth in the U.S. Department of Health and Human Services Program Announcement OCS–2000–04, published on December 14, 1999 in the **Federal Register** at 64 FR 69824, as such requirements may be amended from time to time;

(gg) *Integrally Involved* means (i) for a CDFI Partner, having provided at least five percent of financial transactions or dollars transacted (*e.g.*, loans or equity investments as defined in 12 CFR 1805.104(s)), or five percent of Development Service activities, in the Distressed Community identified by the Applicant or the CDFI Partner, as applicable, in each of the three calendar years preceding the date of the applicable NOFA, or having transacted at least ten percent of financial transactions (*e.g.*, loans or equity investments) in said Distressed Community in at least one of the three calendar years preceding the date of the applicable NOFA, or demonstrating that it has attained at least five percent of market share for a particular product in said Distressed Community (such as at least five percent of home mortgages originated in said Distressed Community) in at least one of the three calendar years preceding the date of the applicable NOFA; or (ii) for a non-CDFI, having directed at least five percent of its business activities (*e.g.*, investments, revenues, expenses, or other appropriate measures) to serving the Distressed Community identified by the Applicant in each of the three calendar years preceding the date of the applicable NOFA, or having provided at least ten percent of its business activities in said Distressed Community in at least one of the three calendar years preceding the date of the applicable NOFA.

(hh) *Low- and Moderate-Income* means income that does not exceed 80 percent of the median income of the area involved, as determined by the Secretary of Housing and Urban Development, with adjustments for smaller and larger families pursuant to section 102(a)(20) of the Housing and Community Development Act of 1974 (42 U.S.C. 5302(a)(20));

(ii) *Metropolitan Area* means an area designated as such (as of the date of the application) by the Office of Management and Budget pursuant to 44 U.S.C. 3504(d)(3), 31 U.S.C. 1104(d), and Executive Order 10253 (3 CFR, 1949–1953 Comp., p. 758), as amended;

(jj) *Notice of Funds Availability (or NOFA)* means the public notice, published by the Fund in the **Federal Register**, that announces the availability of BEA Program funds for a particular funding round and that advises Applicants with respect to obtaining application materials, establishes application submission deadlines, and establishes other requirements or restrictions applicable for the particular funding round including, for example, application contents, further qualifications of Qualified Activities, Priority Factors, related policy directives, and any restrictions on Bank Enterprise Award amounts;

(kk) *Priority Factor* means a numeric value assigned to each type of activity within each category of Qualified Activity, as may be established by the Fund in the applicable NOFA. A priority factor represents the Fund's assessment of the degree of difficulty, the extent of innovation, and the extent of benefits accruing to the Distressed Community for each type of activity;

(ll) *Project Investment* means providing financial assistance in the form of a purchase of stock, limited partnership interest, other ownership instrument, or a grant to an entity that is Integrally Involved in a Distressed Community and formed for the sole purpose of engaging in a project or activity, approved by the Fund, including Affordable Housing Development Loans, Affordable Housing Loans, Commercial Real Estate Loans, and Small Business Loans (as defined in this part);

(mm) *Qualified Activities* means CDFI Related Activities, Distressed Community Financing Activities, and Service Activities;

(nn) *Resident* means an individual domiciled in a Distressed Community;

(oo) *Service Activities* means the following activities that are carried out by the Applicant: Deposit Liabilities; Financial Services; Community Services; Targeted Financial Services; and Targeted Retail Savings/Investment Products;

(pp) *Small Business Loan* means an origination of a loan used for commercial or industrial activities (other than an Affordable Housing Loan, Affordable Housing Development Loan, Commercial Real Estate Loan, Home Improvement Loan) to a business or farm that meets the size eligibility standards of the Small Business Administration's Development Company or Small Business Investment Company programs (13 CFR 121.301) or have gross annual revenues of $1 million or less;

(qq) *Subsidiary* has the same meaning as in section 3 of the Federal Deposit Insurance Act, except that a CDFI shall not be considered a subsidiary of any insured depository institution or any depository institution holding company that controls less than 25 percent of any class of the voting shares of such corporation and does not otherwise control, in any manner, the election of a majority of directors of the corporation;

(rr) *Targeted Financial Services* means ETAs, First Accounts, IDAs, and such other similar banking products as maybe specified by the Fund in the applicable NOFA;

(ss) *Targeted Retail Savings/ Investment Products* means certificates of deposit, mutual funds, life insurance and other similar savings or investment vehicles targeted to Low- and Moderate-Income Residents, as may be specified by the Fund in the applicable NOFA; and

(tt) *Unit of General Local Government* means any city, county town, township, parish, village or other general-purpose political subdivision of a State or Commonwealth of the United States, or general-purpose subdivision thereof, and the District of Columbia.

§ 1806.104 Waiver authority.

The Fund may waive any requirement of this part that is not required by law, upon a determination of good cause. Each such waiver will be in writing and supported by a statement of the facts and grounds forming the basis of the waiver. For a waiver in any individual case, the Fund must determine that application of the requirement to be waived would adversely affect the achievement of the purposes of the Act. For waivers of general applicability, the Fund will publish notification of granted waivers in the **Federal Register**.

§ 1806.105 OMB control number.

The collection of information requirements in this part have been approved by the Office of Management and Budget and assigned OMB control number 1559–0005.

Subpart B—Awards

§ 1806.200 Community eligibility and designation.

(a) *General.* If an Applicant proposes to carry out Service Activities, or Distressed Community Financing Activities, the Applicant shall designate one or more Distressed Communities in which it proposes to carry out those activities. If an Applicant proposes to carry out CDFI Support Activities, the Applicant shall provide evidence that the CDFI it is proposing to support is Integrally Involved in a Distressed Community. If an Applicant proposes to carry out CDFI Support Activities, Service Activities, or Distressed Community Financing Activities, the Applicant may designate different Distressed Communities for each category of activity.

(b) *Minimum area eligibility requirements.* A Distressed Community must meet the following minimum area eligibility requirements:

(1) *Geographic requirements.* A Distressed Community must be a geographic area:

(i) That is located within the boundaries of a Unit of General Local Government;

(ii) The boundaries of which are contiguous; and

(A) The population of which must be at least 4,000 if any portion of the area is located within a Metropolitan Area with a population of 50,000 or greater;

(B) The population must be at least 1,000 if no portion of the area is located within such a Metropolitan Area; or

(C) The area is located entirely within an Indian Reservation.

(2) *Distress requirements.* A Distressed Community must be a geographic area where:

(i) At least 30 percent of the Residents have incomes which are less than the national poverty level, as published by the U.S. Bureau of the Census in the most recent decennial census for which data is available;

(ii) The unemployment rate is at least 1.5 times greater than the national average, as determined by the U.S. Bureau of Labor Statistics' most recent data, including estimates of unemployment developed using the U.S. Bureau of Labor Statistics' Census Share calculation method; and

(iii) Such additional requirements as may be specified by the Fund in the applicable NOFA.

(c) *Area designation.* An Applicant shall designate an area as a Distressed Community by:

(1) Selecting Geographic Units which individually meet the minimum area eligibility requirements set forth in paragraph (b) of this section; or

(2) Selecting two or more Geographic Units which, in the aggregate, meet the minimum area eligibility requirements set forth in paragraph (b) of this section, provided that no Geographic Unit selected by the Applicant within the area has a poverty rate of less than 20 percent.

(d) *Designation and notification process.* The Fund will provide a prospective Applicant with data and other information to help it identify areas eligible to be designated as a Distressed Community. Applicants shall submit designation materials as instructed in the applicable NOFA.

§ 1806.201 Measuring and Reporting Qualified Activities.

(a) *General.* An Applicant may receive a Bank Enterprise Award for engaging in any of the following categories of Qualified Activities during an Assessment Period: CDFI Related Activities, Distressed Community Financing Activities, or Service Activities. The Fund may further qualify such Qualified Activities in the applicable NOFA, including such additional geographic and transaction size limitations as the Fund deems appropriate.

(b) *Reporting Qualified Activities.* An Applicant should report only its Qualified Activities for the category in which it is seeking a Bank Enterprise Award. For example, if an Applicant is seeking a Bank Enterprise Award for Distressed Community Financing Activities only, it should report only its activities for the Distressed Community Financing Activities category.

(1) If an Applicant elects to apply for an award in a either the CDFI Related Activities category or the Distressed Community Financing Activities category, it must report on all types of activity within that category except if an Applicant can provide a reasonable explanation, acceptable to the Fund in its sole discretion, as to why it cannot report on such category.

(2) Exception. An Applicant may elect not to report each type of activity within the Service Activities category.

(c) *Area served.* Service Activities and Distressed Community Financing Activities must serve a Distressed Community. An activity is considered to serve a Distressed Community if it is:

(1) Undertaken in the Distressed Community; or

(2) Provided to Low- and Moderate-Income Residents or enterprises Integrally Involved in the Distressed Community.

(d) *Limitations.*

(1) Low-Income Housing Tax Credits. Financial assistance provided by an Applicant for which the Applicant receives benefits through Low-Income Housing Tax Credits, authorized pursuant to Section 42 of the Internal Revenue Code, as amended (26 U.S.C. 42), shall not constitute an Equity Investment, Project Investment, or other Qualified Activity, for the purposes of calculating or receiving a Bank Enterprise Award.

(2) New Markets Tax Credits. Financial assistance provided by an Applicant for which the Applicant receives benefits as an investor in a Community Development Entity that has received an allocation of New Markets Tax Credits, authorized pursuant to Section 45D of the Internal Revenue Code, as amended (26 U.S.C. 45D), shall not constitute an Equity Investment, Project Investment, or other Qualified Activity, for the purposes of calculating or receiving a Bank Enterprise Award.

(3) Loan Renewals. Financial assistance provided by an Applicant shall not constitute a Qualified Activity, as defined in this part, for the purposes of calculating or receiving an award if, such activity has matured and is then renewed.

(e) *Measuring the Value of Qualified Activities.* Subject to such additional or alternative valuations as the Fund may specify in the applicable NOFA, the Fund will assess the value of:

(1) Equity Investments, Equity-Like Loans, loans, grants and certificates of deposits, at the original amount of such Equity Investments, Equity-Like Loans, loans, grants or certificates of deposits. Where a certificate of deposit matures and is then rolled over during the Baseline Period or the Assessment Period, as applicable, the Fund will assess the value of the full amount of the rolled over deposit. Where an existing loan is refinanced (a new loan is originated to pay off an existing loan, whether or not there is a change in the applicable loan terms), the Fund will only assess the value of any increase in the principal amount of the refinanced loan;

(2) Project Investments at the original amount of the purchase of stock, limited partnership interest, other ownership interest, or grant;

(3) Deposit Liabilities at the dollar amount deposited as measured by comparing (i) the net change in the amount of applicable funds on deposit at the Applicant during the Baseline Period with (ii) the net change in the amount of applicable funds on deposit at the Applicant during the Assessment Period, as described below:

(i) The Applicant shall calculate the net change in deposits during the Baseline Period, by comparing the amount of applicable funds on deposit at the close of business the day before the beginning of the Baseline Period and at the close of business on the last day of the Baseline Period; and

(ii) The Applicant shall calculate the net change in such deposits during the Assessment Period, by comparing the amount of applicable funds on deposit at the close of business the day before the beginning of the Assessment Period and at the close of business on the last day of the Assessment Period;

(4) Financial Services and Targeted Financial Services based on the predetermined amounts as may be set forth by the Fund in the applicable NOFA; and

(5) Financial Services (other than those for which the Fund has established a predetermined value), Community Services, and CDFI Support Activities consisting of technical assistance based on the administrative costs of providing such services.

(f) *Closed Transactions.* A transaction shall be considered to have been carried out during the Baseline Period or the Assessment Period if the documentation evidencing the transaction:

(1) Is executed on a date within the applicable Baseline Period or Assessment Period, respectively; and

(2) Constitutes a legally binding agreement between the Applicant and a borrower or investee which specifies the final terms and conditions of the transaction, except that any contingencies included in the final agreement must be typical of such transaction and acceptable (both in the judgment of the Fund); and

(3) An initial cash disbursement of loan or investment proceeds has occurred in a manner that is consistent with customary business practices and is reasonable given the nature of the transaction (as determined by the Fund) unless it is normal business practice to make no initial disbursement at closing and the Applicant demonstrates that the borrower has access to the proceeds, subject to reasonable conditions as may be determined by the Fund.

(g) *Reporting Period.* An Applicant may only measure the amount of a Qualified Activity that it reasonably expects to disburse to an investee, borrower, or other recipient within one year of the end of the applicable Assessment Period, or such other period as may be set forth by the Fund in the applicable NOFA.

§ 1806.202 Estimated award amounts.

(a) *General.* An Applicant shall calculate an estimated award amount that it shall submit to the Fund for consideration for a Bank Enterprise Award.

(b) *Award Percentages.* The Fund will establish the award percentage for each category of Qualified Activities in the applicable NOFA. Applicable award percentages for activities undertaken by Applicants that are CDFIs will be equal to three times the award percentages for activities undertaken by Applicants that are not CDFIs.

(c) *Calculating the estimated award amount.* The estimated award amount for each category of Qualified Activities will be equal to the applicable award percentage of the increase in the weighted value of such Qualified Activities between the Baseline Period and Assessment Period. The weighted value of the applicable Qualified Activities shall be calculated by:

(1) subtracting the Baseline Period value of such Qualified Activity from the Assessment Period value of such Qualified Activity to yield a remainder; and

(2) multiplying the remainder by the applicable Priority Factor (as set forth in the applicable NOFA).

(d) *Estimated Award Eligibility Review.* The Fund will determine the eligibility of each transaction for which an Applicant has applied for a Bank Enterprise Award. Based upon this review, the Fund will calculate the actual award amount for which such Applicant is eligible.

§ 1806.203 Selection Process, actual award amounts.

(a) *Sufficient Funds Available to Cover Estimated Awards.* All Bank Enterprise Awards are subject to the availability of funds. If the amount of funds available during a funding round is sufficient to cover all estimated award amounts for which Applicants are eligible, in the Fund's determination, and an Applicant meets all of the program requirements specified in this part, then such Applicant shall receive an actual award amount that is calculated by the Fund in the manner specified in Section 1806.202.

(b) *Insufficient Funds Available to Cover Estimated Awards.* If the amount of funds available during a funding round is insufficient to cover all estimated award amounts for which Applicants are eligible, in the Fund's determination, then the Fund will select Awardees and determine actual award amounts based on the process described in this section.

(c) *Priority of Awards.* The Fund will rank Applicants in each category of Qualified Activity according to the priorities described in this paragraph (c). All Applicants in the first priority category will be selected for Bank Enterprise Awards before Applicants in the second priority category. All Applicants in the first and second priority categories will be selected for Bank Enterprise Awards before Applicants in the third priority category. Selections within each priority category will be based on the Applicants' relative rankings within each such category, subject to the availability of funds.

(1) *First priority.* If the amount of funds available during a funding round is insufficient for all estimated award amounts, first priority will be given to Applicants that propose to engage in CDFI Related Activities, ranked in the order set forth in the applicable NOFA.

(2) *Second priority.* If the amount of funds available during a funding round is sufficient for all CDFI Related Activities but insufficient for all estimated award amounts, second priority will be given to Applicants that propose to engage in Distressed Community Financing Activities, ranked in the order set forth in the applicable NOFA.

(3) *Third Priority.* If the amount of funds available during a funding round is sufficient for all CDFI Related Activities and all Distressed Community Financing Activities, but insufficient for all remaining estimated award amounts,

third priority will be given to Applicants that propose to engage in Service Activities, ranked in the order set forth in the applicable NOFA.

(d) *Calculating actual award amounts.* The Fund will determine actual award amounts based upon the availability of funds, increases in Qualified Activities from the Baseline to the Assessment Period, and an Applicant's priority ranking. If an Applicant receives an award for more than one priority category described in this section, the Fund will combine the award amounts into a single Bank Enterprise Award.

(e) *Unobligated or deobligated funds.* The Fund, in its sole discretion, may use any deobligated funds or funds not obligated during a funding round:

(1) To select Applicants not previously selected, using the calculation and selection process contained in this part;

(2) To make additional monies available for a subsequent funding round; or

(3) As otherwise authorized by the Act.

(f) *Limitation.* The Fund, in its sole discretion, may deny or limit the amount of an award for any reason.

§ 1806.204 Applications for Bank Enterprise Awards.

(a) *Notice of Funds Availability; Applications.* Applicants shall submit applications for Bank Enterprise Awards in accordance with this section and the applicable NOFA. After receipt of an application, the Fund may request clarifying or technical information related to materials submitted as part of such application or to verify that Qualified Activities were carried out in the manner prescribed in this part.

(b) *Application contents.* An application for a Bank Enterprise Award shall contain:

(1) A completed worksheet that reports the increases in Qualified Activities actually carried out during the Baseline and Assessment Period. If an Applicant has merged with another institution during the Assessment Period, it shall submit a separate Baseline Period worksheet for each subject institution and one Assessment Period worksheet that reports the activities of the merged institutions. If such a merger is unexpectedly delayed beyond the Assessment Period, the Fund reserves the right to withhold distribution of an award until the merger has been completed;

(2) A report of Qualified Activities that were closed during the Assessment Period. Such report shall describe the original amount, census tract served, and the dates of execution, initial disbursement, and final disbursement of the instrument;.

(3) With respect to:

(i) All CDFI Related Activities; and

(ii) Distressed Community Financing Activities where the original amount of the value of the activity is $250,000 or greater, documentation that meets the conditions described in § 1806.201(f);

(4) Information necessary for the Fund to complete its environmental review requirements pursuant to part 1815 of this chapter;

(5) Certifications that the information provided to the Fund is true and accurately reflects the Qualified Activities carried out during an Assessment Period; and that the Applicant will comply with all relevant provisions of this chapter and all applicable Federal, State, and local laws, ordinances, regulations, policies, guidelines, and requirements;

(6) In the case of an Applicant proposing to engage in Service Activities, Distressed Community Financing Activities, a completed Distressed Community Designation worksheet, and a map and narrative description of the Distressed Community;

(7) Information that indicates that each CDFI to which an Applicant has provided CDFI Support Activities is Integrally Involved in a Distressed Community, a completed Distressed Community Designation worksheet, and a map and narrative description of the Distressed Community; and

(8) Any other information requested by the Fund, or specified by the Fund in the applicable NOFA or the Bank Enterprise Award application, in order to document or otherwise assess the validity of information provided by the Applicant to the Fund.

Subpart C—Terms and Conditions of Assistance

§ 1806.300 Award Agreement; Sanctions.

(a) *General.* After the Fund selects an Awardee, the Fund and the Awardee will enter into an Award Agreement. The Award Agreement shall provide that an Awardee shall:

(1) Carry out its Qualified Activities in accordance with applicable law, the approved application, and all other applicable requirements;

(2) Comply with such other terms and conditions (including recordkeeping and reporting requirements) that the Fund may establish; and

(3) Not receive any monies until the Fund has determined that the Awardee has fulfilled all applicable requirements.

(b) *Sanctions.* In the event of any fraud, misrepresentation, or noncompliance with the terms of the Award Agreement by the Awardee, the Fund may terminate, reduce, or recapture the award, bar the Awardee and/or its Affiliates from applying for an award from the Fund for a period to be decided by the Fund in its sole discretion, and pursue any other available legal remedies.

(c) *Compliance with Other CDFI Fund Awards.* In the event that an Awardee or its Subsidiary or Affiliate is not in compliance, as determined by the Fund, with the terms and conditions of any other award under the Bank Enterprise Award Program or any component of the Community Development Financial Institutions Program, the Fund may, in its sole discretion, reject an application for or withhold disbursement (either initial or subsequent) on a Bank Enterprise Award.

(d) *Notice.* Prior to imposing any sanctions pursuant to this section or an Award Agreement, the Fund will provide the Awardee with written notice of the proposed sanction and an opportunity to comment. Nothing in this section, however, will provide an Awardee with the right to any formal or informal hearing or comparable proceeding not otherwise required by law.

§ 1806.302 Compliance with government requirements.

In carrying out its responsibilities pursuant to an Award Agreement, the Awardee shall comply with all applicable Federal, State, and local laws, regulations and ordinances, OMB Circulars, and Executive Orders.

§ 1806.303 Fraud, waste and abuse.

Any person who becomes aware of the existence or apparent existence of fraud, waste, or abuse of assistance provided under this part should report such incidences to the Office of Inspector General of the U.S. Department of the Treasury.

§ 1806.304 Books of account, records and government access.

An Awardee shall submit such financial and activity reports, records, statements, and documents at such times, in such forms, and accompanied by such supporting data, as required by the Fund and the U.S. Department of the Treasury to ensure compliance with the requirements of this part. The United States Government, including the U.S. Department of the Treasury, the Comptroller General, and its duly authorized representatives, shall have full and free access to the Awardee's offices and facilities, and all books, documents, records, and financial

statements relevant to the award of the Federal funds and may copy such documents as they deem appropriate.

§ 1806.305 Retention of records.

An Awardee shall comply with all record retention requirements as set forth in OMB Circular A–110 (as applicable). This circular may be obtained from Office of Administration, Publications Office, 725 17th Street, NW., Room 2200, New Executive Office Building, Washington, DC 20503.

Dated: January 27, 2003.

Tony T. Brown,

Director, Community Development Financial Institutions Fund.

[FR Doc. 03–2336 Filed 2–3–03; 8:45 am]

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DEPARTMENT OF THE TREASURY

Community Development Financial Institutions Fund

Notice of Funds Availability (NOFA) Inviting Applications for the Bank Enterprise Award Program

AGENCY: Community Development Financial Institutions Fund, Department of the Treasury.

ACTION: Notice of Funds Availability (NOFA) inviting applications for the FY 2003 and 2004 funding rounds of the Bank Enterprise Award (BEA) Program.

SUMMARY: This NOFA is issued in connection with the Fiscal Year 2003 and 2004 funding rounds of the BEA Program. Through the BEA Program, the Community Development Financial Institutions Fund (the Fund) encourages insured depository institutions to increase their levels of loans, investments, services, and technical assistance within distressed communities and financial assistance to Community Development Financial Institutions (CDFIs) through grants, stock purchases, loans, deposits, and other forms of financial and technical assistance.

Subject to funding availability, the Fund expects that it may award approximately $17 million for FY 2003 awards, and approximately $8 million for FY 2004 awards, in appropriated funds under this BEA Program combined FY 2003–2004 NOFA. The Fund reserves the right to award in excess of said funds under this NOFA, provided that the appropriated funds are available and the Fund deems it appropriate. Under this NOFA, the Fund anticipates a maximum award amount of $1.5 million per applicant. However, the Fund, in its sole discretion, reserves the right to award amounts in excess of the anticipated maximum award amount if the Fund deems it appropriate. Further, the Fund reserves the right to fund, in whole or in part, any, all, or none of the applications submitted in response to this NOFA. The Fund reserves the right to re-allocate funds from the amount that is anticipated to be available under this NOFA to other Fund programs, particularly if the Fund determines that the number of awards made under this NOFA is fewer than projected.

The interim rule governing the BEA Program (12 CFR part 1806), revised and published in this issue of the **Federal Register**, provides guidance on evaluation criteria and other requirements of the BEA Program. Detailed application content requirements are found in the application related to this NOFA. The Preamble to the Fund's NOFAs, published in this issue of the **Federal Register** also specifies other program information, including eligibility requirements, for each of the Fund's programs. The Fund encourages applicants to review the revised interim rule and the Preamble to the NOFAs; in addition, all of the application content requirements and the evaluation criteria set forth in the revised interim rule are set forth in the application.

DATES: Following the publication of this NOFA, the Fund will make the FY 2003–2004 BEA Program application materials available on its Web site at *http://www.cdfifund.gov*. The Fund will send application materials to applicants that are unable to download them from the Web site. To have application materials sent to you, contact the Fund by telephone at (202) 622–6350; by e-mail at *cdfihelp@cdfi.treas.gov*; or by facsimile at (202) 622–7754. These are not toll free numbers.

BEA Program awards are based on increases in Qualified Activities from a Baseline Period to an Assessment Period. For the FY 2003–2004 funding round, applicants may elect to apply for an award based on a 6-month Baseline and Assessment Period or a 12-month Baseline and Assessment Period. The deadline for receipt of all application materials for the 6-month option is 5 p.m. ET on July 17, 2003. The deadline for receipt of all application materials for the 12-month option is 5 p.m. ET on February 25, 2004. Applicants may only submit an application for either the 6-month option or the 12-month option, but not both. Applications received after 5 p.m. ET on the applicable date will be rejected and returned to the sender.

In order to expedite application review, applicants must submit a specific section of the application, the Report of Transactions form, electronically (via e-mail) per the instructions provided on the Fund's website, by 5 p.m. ET on July 17, 2003 (for the 6-month option) or by 5 p.m. ET on February 25, 2004 (for the 12-month option). Reports of Transactions that are submitted after said date and time will not be accepted for consideration and will be returned to the sender. If an applicant is unable to submit the Report of Transactions via e-mail, it must notify the Fund by 5 p.m. ET April 30, 2003 (for the 6-month option) or 5 p.m. ET on October 31, 2003 (for the 12-month option) to make alternative arrangements. Applications sent by facsimile or e-mail will not be accepted (except as provided above).

Any entity that is planning to participate in the BEA Program either as an applicant or as a CDFI Partner, and that is seeking certification as a CDFI (as described in 12 CFR 1805.200), is strongly encouraged to submit the Application for Certification (the contents of which are described in 12 CFR 1805.201(b)(1) through (6)), no later than the following dates prior to the end of the applicable Assessment Period: April 15, 2003 for the 6-month option and October 15, 2003 for the 12-month option. If an entity fails to submit such application by the applicable deadline, the Fund may not have sufficient time to timely complete a certification review for the purpose of the current funding round of the BEA Program. With respect to all requests for certification, the Fund reserves the right to request clarifying or technical information after reviewing certification materials submitted as described in 12 CFR 1805.201(b)(1) through (6). If the entity seeking certification does not respond to such requests in a timely manner, the Fund may not have sufficient time to complete a certification review for the purposes of the current funding round of the BEA Program.

For the 6-month option, any CDFI whose certification is due to expire between January 1, 2003 and June 30, 2003 must submit a re-certification application by May 30, 2003 in order to continue to qualify as a CDFI Partner. For the 12-month option, any CDFI whose certification is due to expire between July 1, 2003 and December 31, 2003 must submit a re-certification application by November 28, 2003 in order to continue to qualify as a CDFI Partner.

ADDRESSES: Applications in paper form must be sent to: CDFI Fund Awards Manager, Bureau of Public Debt—Franchising, 200 Third Street, Room 211, Parkersburg, WV 26101. The telephone number to be used in conjunction with overnight mailings to this address is (304) 480–5450. Applications will not be accepted in the Fund's offices in Washington, DC. Applications received in the Fund's offices will be rejected and returned to the sender. Applicants must submit completed Reports of Transactions either:

(i) online to *bea@cdfi.treas.gov*; or

(ii) in paper form to the address stated above, by the applicable deadline.

FOR FURTHER INFORMATION CONTACT: If you have any questions about the programmatic requirements for the BEA Program, or if you have questions or problems with the e-mail submission of the Report of Transactions form, contact

the Fund's Depository Institutions Manager. If you have questions regarding administrative requirements, contact the Fund's Awards Manager. The Depository Institutions Manager and the Awards Manager may be reached by e-mail at *cdfihelp@cdfi.treas.gov*, by telephone at (202) 622–6355, by facsimile at (202) 622–7754, or by mail at CDFI Fund, 601 13th Street, NW., Suite 200 South, Washington, DC 20005. These are not toll free numbers. Allow at least one to two weeks from the date the Fund receives a request for receipt of the application. Applications and other information regarding the Fund and its programs may be downloaded and printed from the Fund's Web site at *http://www.cdfifund.gov*.

SUPPLEMENTARY INFORMATION:

I. Eligibility

The legislation that authorizes the BEA Program specifies that eligible applicants for the BEA Program must be Insured Depository Institutions, as defined in 12 U.S.C. 1813(c)(2). An applicant must be FDIC-insured by June 30, 2003 for the 6-month option and by December 31, 2003 for the 12-month option to be eligible for consideration for a BEA Program award under this NOFA.

For the purposes of this NOFA, an eligible CDFI Partner is:

(a) a CDFI that is not an insured credit union, insured depository institution, or depository institution holding company, and that has up to $25 million in total assets as of its most recently completed fiscal year;

(b) a CDFI that is an insured credit union that has up to $25 million in total assets for its most recently completed fiscal year;

(c) a CDFI that is an insured depository institution or depository institution holding company and that has up to $500 million in total assets for its most recently completed fiscal year, or

(d) a CDFI proposing a new level or type of activity in a CDFI Program-qualified Hot Zone (for further information on the CDFI Program's Hot Zones, please refer to the NOFA for the Financial Assistance Component of the CDFI Program published in this issue of the **Federal Register**, and the Fund's Web site at *http://www.cdfifund.gov/programs/hotzones*.

For purposes of CDFI Support Activities, the CDFI Partner must demonstrate that it is Integrally Involved in an eligible Distressed Community. The revised interim rule (at 12 CFR § 1806.103(gg)) provides the following definition of Integrally Involved: (a) For a CDFI Partner, having provided at least five percent of financial transactions or dollars transacted (*e.g.*, loans or equity investments as defined in 12 CFR 1805.104(s)), or five percent of Development Service activities, in the Distressed Community identified by the applicant or the CDFI Partner, as applicable, in each of the three calendar years preceding the date of the applicable NOFA, or having transacted at least ten percent of financial transactions (*e.g.*, loans or equity investments) in said Distressed Community in at least one of the three calendar years preceding the date of the applicable NOFA, or demonstrating that it has attained at least five percent of market share for a particular product in said Distressed Community (such as at least five percent of home mortgages originated in said Distressed Community) in at least one of the three calendar years preceding the date of the applicable NOFA; or (b) for a non-CDFI, having directed at least five percent of its business activities (*e.g.*, investments, revenues, expenses, or other appropriate measures) to serving the Distressed Community identified by the applicant in each of the three calendar years preceding the date of the applicable NOFA, or having provided at least ten percent of its business activities in said Distressed Community in at least one of the three calendar years preceding the date of the applicable NOFA.

II. Designation of Distressed Community

A Distressed Community, defined in the revised interim rule at 12 CFR § 1806.103(t), and as more fully described in 12 CFR § 1806.200, must meet the following minimum geographic, population, poverty, and unemployment requirements:

(1) *Geographic requirements.* A Distressed Community must be a geographic area:

(a) That is located within the boundaries of a Unit of General Local Government;

(b) the boundaries of which are contiguous; and

(c) the population of which is at least 4,000 if any portion of the area is located within a Metropolitan Area with a population of 50,000 or greater; or

(d) the population must be at least 1,000 if no portion of the area is located within such a Metropolitan Area. If an area is located entirely within an Indian Reservation, there is no minimum population requirement.

(2) *Economic Distress requirements.* A Distressed Community must be a geographic area where:

(a) at least 30 percent of the Residents have incomes that are less than the national poverty level, as published by the U.S. Bureau of the Census in the most recent decennial census; and

(b) the unemployment rate is at least 1.5 times greater than the national average, as determined by the U.S. Bureau of Labor Statistics' most recent data (including estimates of unemployment developed using the U.S. Bureau of Labor Statistics' Census Share calculation method).

An applicant applying for a BEA Program Award for carrying out Distressed Community Financing Activities, Services Activities, and CDFI Support Activities shall designate one or more Distressed Communities. Each CDFI Partner that is the recipient of CDFI Support Activities from an applicant shall also designate a Distressed Community. The CDFI Partner can identify a different Distressed Community than the applicant. Applicants providing Equity Investments to a CDFI, and CDFI Partners that receive Equity Investments, are not required to designate Distressed Communities. Please note that the CDFI Partner's designated Distressed Community must meet the requirements of the BEA Program; a Distressed Community as defined by the BEA Program is not the same as an Investment Area as defined by the CDFI Program or a Low-Income Community, as defined by the NMTC Program.

An applicant or CDFI Partner (as appropriate) shall designate an area as a Distressed Community by:

(a) Selecting geographic units which individually meet the minimum area eligibility requirements; or

(b) selecting two or more geographic units which, in the aggregate, meet the minimum area eligibility requirements set forth in paragraph (1) of this section provided that no geographic unit selected by the applicant within the area has a poverty rate of less than 20 percent. An applicant engaging in Distressed Community Financing Activities or Service Activities designates a Distressed Community by submitting:

(i) a List of Eligible Census Tracts; and

(ii) a Map of the Distressed Community.

An applicant that engaged in CDFI Support Activities only (or CDFI Support Activities and CDFI Equity Investments) may designate the same Distressed Community as any one of its CDFI Partners by signing and submitting with its application, a certification (included in the application materials) that it is designating the same Distressed

Community as its CDFI Partner. A CDFI Partner designates a Distressed Community by submitting:

(a) a List of Eligible Census Tracts;

(b) a Map of the Distressed Community; and

(c) a narrative describing how the CDFI Partner is Integrally Involved (see definition above, section I "Eligibility") in the Distressed Community.

Applicants and CDFI Partners must use the Fund's online Help Desk at *http://www.cdfifundhelp.gov* to designate Distressed Communities. The online Help Desk contains step-by-step instructions on how to create and print the aforementioned List of Eligible Census Tracts and Map of the Distressed Community.

III. Baseline Period and Assessment Period Dates

In NOFAs for prior funding rounds, the Fund established the Baseline Period and Assessment Period as the first 6-months of corresponding years. For this NOFA only, applicants may elect to apply for an award based on a 6-month Baseline and Assessment Period or a 12-month Baseline and Assessment Period. The Fund believes that a 12-month Baseline and Assessment Period will be more in keeping with the natural business cycle of applicants. For purposes of this NOFA, applicants electing the 6-month option will report on all Qualified Activities carried out during the Baseline Period of January 1, 2002 to June 30, 2002 as well as those carried out during the Assessment Period of January 1, 2003 to June 30, 2003. Applicants electing the 12-month option will report on Qualified Activities carried out during the Baseline Period of January 1, 2002 to December 31, 2002 as well as those carried out during the Assessment Period of January 1, 2003 to December 31, 2003. Applicants may apply to either the 6-month option or the 12-month option, but not both.

IV. CDFI Related Activities

For purposes of determining the award amount attributed to deposits in a CDFI that is an insured depository institution, the Fund will count only the first $1,000,000 deposited by any applicant in said CDFI. Furthermore, an applicant that is also a CDFI cannot receive credit for any financial assistance or Qualified Activities provided to a CDFI Partner that is also an FDIC-insured depository institution or depository institution holding company.

Section 1806.103(q) of the revised interim rule states that any certificate of deposit placed by an applicant in a CDFI that is bank, thrift, or credit union must be:

(a) Uninsured and committed for at least three years; or

(b) Insured, committed for at least three years, and earn a rate of interest that is determined by the Fund to be materially below market rates. The Fund has interpreted a "materially below market" interest rate to be an annual percentage rate that does not exceed 80 percent of the rate on a U.S. Treasury bill of comparable maturity as of the date the deposit is placed. For a three-year deposit, use the three-year rate posted for U.S. Government securities, Treasury Constant Maturity on the Federal Reserve Web site at *http://www.federalreserve.gov/releases/H15/update.*

The rate on the website is updated daily at approximately 4 p.m. ET. Certificates of deposit closed prior to that time may use the rate posted for the previous day. The annual percentage rate on a certificate of deposit should be compounded quarterly, semi-annually, or annually. In addition, applicants should determine whether a certificate of deposit is insured based on the total amount the applicant has on deposit on the day the certificate of deposit is placed. For example, if an applicant purchased a $100,000 certificate of deposit from a CDFI in April, 2001 and purchases another $100,000 certificate of deposit from the same CDFI in May, 2003, then the second certificate of deposit should be treated as uninsured for purposes of calculating the annual percentage rate. The applicant must make note, in its BEA Program Application, of whether the certificate of deposit is insured or uninsured.

V. Commercial Real Estate Loans and Related Project Investments

For purposes of this NOFA, eligible Commercial Real Estate Loans and related Project Investments (see revised interim rule at 12 CFR § 1806.103(l) and (ll)) are generally limited to transactions with a total principal value of up to and including $1 million used to finance "community assets" such as the purchase, construction, or renovation of real estate where over 50 percent of the leasable (or occupable) square footage is for the provision of one or more of the following: health care facilities, charter schools, job training, day care, elder care centers, homeless services, or retail facilities. The Fund will calculate award amounts in accordance with Section VIII, below. Not withstanding the foregoing, the Fund may in its discretion, consider transactions with a principal value of over $1 million subject to review and approval of a "community benefit statement." The application must demonstrate that the proposed project offers, or significantly enhances the quality of, a facility or service not currently provided to the Distressed Community. The application contains additional information on fulfilling this requirement.

VI. Equity-Like Loans

In January 2001, the Fund issued policy guidance specifying its BEA Program definition of Equity-Like Loans (*i.e.*, loans with characteristics of equity). On further review, the CDFI Fund realized that the previously defined characteristics presented certain barriers for CDFI Partners to the point where there was a disincentive to engage in the activity. The Fund hopes that reducing the requirements for Equity-Like Loans will make this product more accessible to CDFIs that can only access the BEA Program through the Equity Investment category—especially CDFIs located in rural areas. For purposes of this NOFA, Equity-Like Loans (see revised interim rule at 12 CFR 1806.103(y)) must meet the following characteristics:

(1) At the end of the initial term, the loan must have a definite rolling maturity date that is automatically extended on an annual basis if the borrower continues to be financially sound and carrying out a community development mission;

(2) Periodic payments of interest and/or principal may only be made out of the CDFI borrower's available cash flow after satisfying all other obligations;

(3) Failure to pay principal or interest (except at maturity) will not automatically result in a default under the loan agreement; and

(4) The loan must be subordinated to all other debt except for other Equity-Like Loans. Notwithstanding the foregoing, the Fund reserves the right to determine, on a case-by-case basis, if an instrument evidences an Equity-Like Loan.

As specified in the January 2001 guidance, the Fund requests that applicants submit to the Fund for review, not later than 45 days prior to the end of the applicable Assessment Period, all documents evidencing loans that they wish to be considered as Equity-Like Loans. The purpose for this request is to enhance the Fund's ability to provide feedback to applicants as to whether a transaction meets the Equity-Like Loan requirements prior to the end of the applicable Assessment Period. The Fund will not redraft instruments or provide language for applicants. However, the Fund may comment as to the consistency of a proposed

instrument with the above-stated policy requirements. Such information will allow applicants, if they so choose, to modify the instruments to conform to the program requirements prior to the end of the Assessment Period. This process is intended to prevent circumstances in which an applicant executes loan documents without review by the Fund only to learn after the close of the Assessment Period that the transaction is ineligible for purposes of a Bank Enterprise Award. The Fund cannot guarantee timely feedback to applicants that submit the aforementioned documentation less than 45 days prior to the end of the applicable Assessment Period.

VII. Reporting Financial Services Activities

In an effort to simplify the reporting requirements and reduce paperwork burden, the Fund is providing a new method for reporting Financial Services activities. The Fund will value the administrative cost of providing certain Financial Services at specified per unit values. The per unit values of specific types of Financial Services are as follows:

(a) $25.00 per account for non-ETA, non-IDA and non-First Account savings accounts;

(b) $40.00 per account for checking accounts;

(c) $5.00 per check cashing transaction times the total number of check cashing transactions;

(d) $25,000 per new ATM installed at a location in a Distressed Community;

(e) $2,500 per ATM operated at a location in a Distressed Community;

(f) $250,000 per new retail bank branch office opened in a Distressed Community; and

(g) in the case of applicants engaging in Financial Services activities not described above, the Fund will determine the account or unit value of such services. In the case of opening a new retail bank branch office, the applicant must certify that it has not operated a retail branch in the same census tract in which the new retail branch office is being opened in the past three years, and that such new branch will remain in operation for at least the next five years.

An applicant may derive the total percentage of Low- and Moderate-Income individuals who are recipients of Financial Services by either:

(a) Collecting income data on its Financial Services customers;

(b) certifying that the applicant reasonably believes that such customers are Low- and Moderate-Income individuals and providing a brief analytical narrative with information describing how the applicant made this determination; or

(c) using the Fund's methodology described below.

The Fund has developed a methodology for estimating the number of Low- and Moderate-Income Financial Services customers rather than requiring applicants to collect data on the actual income levels of its Financial Services customers. For both the Baseline Period and the Assessment Period, the value of Financial Services shall be derived based on the total number of new accounts, transactions or other eligible services multiplied by a per unit value of such services. This number shall be multiplied by the total percentage of Low- and Moderate-Income individuals who are residents of the census tracts where the Financial Services were provided (*e.g.*, bank branch, ATM location). Such census tracts must be part of a Distressed Community. The Help Desk includes a component that will provide the needed census tract data.

VIII. Cap on Qualified Activity Amount

In calculating award amounts, the Fund will count only the amount an applicant reasonably expects to disburse on a transaction within 12 months from the end of the Assessment Period. Subject to the exception outlined in Section V, above, in no event shall the value of a Qualified Activity for purposes of determining a Bank Enterprise Award exceed $1 million in the case of Commercial Real Estate Loans or any CDFI Related Activities (*i.e.*, the total principal amount of the transaction must be $1 million, or less to be considered a Qualified Activity).

IX. Priority Factors

For the purposes of this NOFA, Qualified Activities shall have the following Priority Factors:

Qualified activities	Priority factor
Personal Wealth Building, which includes: Affordable Housing Loans; Home Improvement Loans; Small Business Loans and related Project Investments; Education Loans; and Targeted Financial Services, IDAs	3.0
Community Wealth Building, which includes: Affordable Housing Development Loans and related Project Investments; and Select Commercial Real Estate Loans and related Project Investments	2.0

X. Award Percentages, Award Amounts, Selection Process

The revised interim rule published in this issue of the **Federal Register** describes the process for selecting applicants to receive assistance and for determining award amounts. A multiple step procedure is outlined in the regulations that will be used to calculate the estimated award amounts. The Fund will calculate Actual Award Amounts based on increases in Qualified Activities (called the "Score") that occur during a 6-month or a 12-month Assessment Period in excess of activities that occurred during a 6-month or a 12-month Baseline Period. In calculating said award amounts, the Fund will count only the amount an applicant reasonably expects to disburse on a transaction within 12 months from the end of the Assessment Period, subject to applicable caps on Qualified Activity amounts set forth in this NOFA.

In the CDFI Related Activities category (except for Equity Investments in CDFIs), if an applicant is a CDFI, such estimated award amount will be equal to 18 percent of the total score calculated in the multiple step procedure. If an applicant is not a CDFI, such estimated award amount will be equal to 6 percent of the total score calculated in the multiple step procedure. Notwithstanding the foregoing, the award percentage applicable to an Equity Investment in a CDFI shall be 15 percent if the applicant is a CDFI, and 5 percent if the applicant is not a CDFI. For the Distressed Community Financing Activities and Service Activities categories, if an applicant is a CDFI, such estimated award amount will be equal to 9 percent of the total score calculated in the multiple step procedure. If an applicant is not a CDFI, such estimated award amount will be equal to 3 percent of the total score calculated in the multiple step procedure.

If the amount of funds available during the funding round is insufficient for all estimated award amounts, awardees will be selected based on the process described in the revised interim rule at 12 CFR 1806.203. This process gives priority to applicants in the following order:

(a) CDFI Related Activities;

(b) Distressed Community Financing Activities, and

(c) Service Activities.

Within each category, applicants will be ranked according to the ratio of the Actual Award Amount calculated by the Fund for the category to the total assets of the applicant. Within the Distressed Community Financing category as well as the Service Activities category, Applicants that are certified CDFIs will be ranked first, and then applicants that have carried out such Distressed Community Financing and Service Activities in a Distressed Community that encompasses an Indian Reservation.

The Fund, in its sole discretion:

(a) May adjust the Estimated Award Amount that an applicant may receive;

(b) may establish a maximum amount that may be awarded to an applicant; and

(c) reserves the right to limit the amount of an award to any applicant if the Fund deems it appropriate.

For purposes of calculating award disbursement amounts, the Fund will treat Qualified Activities with a total principal amount of less than $250,000 as fully disbursed. Awardees will have 12 months from the end of the Assessment Period to disburse on Qualified Activities and 18 months to request the corresponding portion of their awards.

XI. Award Decision Appeal Process

Each applicant will be informed of the Fund's award decision either through a Notice of Award if selected for an award, or a declination letter, if not selected for an award, which may be for reasons of application incompleteness, ineligibility or substantive issues. Any applicant that is not selected for an award due to application incompleteness or ineligibility, and that believes that such decision was made in error, may appeal said decision by notifying the Fund's Awards Manager in writing or by e-mail (at *cdfihelp@cdfi.treas.gov*, Attention: Awards Manager); such appeals must be received by the Fund within five business days of the date of the declination letter. Such appeal requests will be reviewed by the Fund's Deputy Director for Management and the Deputy Director for Policy and Programs, as appropriate, whose decision will be final. All Applicants that are not selected for awards based on substantive issues, will be given the opportunity to request feedback on the strengths and weaknesses of their applications. This feedback will be provided in a format and within a timeframe to be determined by the Fund, based on available resources.

The Fund reserves the right to change these evaluation procedures, if the Fund deems it appropriate; if said procedural changes materially affect the Fund's award decisions, the Fund will provide information regarding the procedural changes through the Fund's Web site.

XII. Information Sessions

In connection with the Fiscal Year 2003 funding rounds of its programs, the Fund may conduct Information Sessions to disseminate information to organizations contemplating applying to, and other organizations interested in learning about, the Technical Assistance and Financial Assistance Components of the CDFI Program, the Native American CDFI Development Program, and the BEA Program. For further information on the Fund's Information Sessions, dates and locations, or to register online to attend an Information Session, please visit the Fund's Web site at *http://www.cdfifund.gov* or call the Fund at (202) 622–8401.

Catalog of Federal Domestic Assistance: 21.021.

Authority: 12 U.S.C. 1834a, 4703, 4703 note, 4713; 12 CFR part 1806.

Dated: January 27, 2003.

Tony T. Brown,

Director, Community Development Financial Institutions Fund.

[FR Doc. 03–2337 Filed 2–3–03; 8:45 am]

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DEPARTMENT OF THE TREASURY

Community Development Financial Institutions Fund

Notice of Funds Availability (NOFA) Inviting Applications for the Community Development Financial Institutions Program—Native American CDFI Development Program

AGENCY: Community Development Financial Institutions Fund, Department of the Treasury.

ACTION: Notice of funds availability ("NOFA") inviting applications for the FY 2003 and FY 2004 funding rounds of the Native American CDFI Development ("NACD") Program.

SUMMARY: This NOFA is issued in connection with the FY 2003 and FY 2004 funding rounds of the NACD Program. Through the NACD Program and subject to appropriation of funding for the purposes enumerated in this NOFA, the Community Development Financial Institutions Fund (the "Fund") will provide technical assistance ("TA") grants to organizations that plan to create community development financial institutions (CDFIs) to serve Native American, Alaska Native and/or Native Hawaiian communities.

Interested parties should be aware that implementation of the FY 2003/04 NOFA for the NACD Program is contingent on the appropriation of funds for the purposes enumerated in this NOFA; as of the date of this NOFA, said appropriation is pending with Congress. The Fund will issue a notice on its Web site, at *http://www.cdfifund.gov*, at such time that the Fund has the authority to implement the FY 2003/04 NOFA for the NACD Program. Applicants may submit applications pursuant to this NOFA as set forth herein; however, the Fund will not review applications or make awards unless and until funds are appropriated for the purposes and uses set forth in this NOFA.

The Preamble to the Fund's NOFAs, published in this issue of the **Federal Register** also specifies other program information, including eligibility requirements, for each of the Fund's programs. The Fund encourages applicants to review the revised interim rule and the Preamble to the NOFAs.

The FY 2003 and FY 2004 Technical Assistance Component and the NACD Program together replace the Native American CDFI Technical Assistance ("NACTA") Component that was made available in FY 2002.

Subject to funding availability, the Fund expects that it may award approximately $3 million for FY 2003 awards, and approximately $1.5 million for FY 2004 awards, in appropriated funds under this NACD Program NOFA. The Fund reserves the right to award in excess of said funds under this NOFA provided that the appropriated funds are available and the Fund deems it appropriate. The Fund intends to make information available on its website about the level of dollars remaining available on a regular basis.

Applicants should note that the Fund expects that the funding round for this NOFA (and the NOFA for the Technical Assistance Component of the CDFI Program, also published in the **Federal Register** on this date) will extend over a two year funding round, subject to funding availability and Fiscal Year 2004 appropriations.

Under this NOFA, the Fund anticipates making TA grants up to $100,000 per awardee. The Fund, in its sole discretion, reserves the right to award amounts in excess of the anticipated maximum award if the Fund deems it appropriate. The Fund reserves

the right to fund, in whole or in part, any, all, or none of the applications submitted in response to this NOFA.

DATES: Shortly following the publication of this NOFA, the Fund will make available the FY 2003 funding application on its Web site at *http://www.cdfifund.gov*. Applicants may download the application from the Fund's Web site or request application packages by contacting the Fund, as described below.

The Fund will accept and review applications under this NACD Program NOFA as they are submitted and in the order in which they are submitted. Applications may be submitted at any time, commencing with the date of the publication of this NOFA. Applications must be received in the specific Bureau of the Public Debt—Franchise Services (BPD) office designated below not later than 5:00 p.m. ET on May 31, 2004. Any applicant whose application is declined may submit a new application before May 31, 2004. Applications received in the specific BPD office designated below after that date and time will be rejected and returned to the sender.

Applications sent by facsimile or e-mail will not be accepted; however, an electronic application may be made available for this NOFA at a later date and, if so, its availability and related guidance will be announced on the Fund's Web site.

ADDRESSES: Applications must be sent to: CDFI Fund Awards Manager, NACD Program, Bureau of Public Debt—Franchising, 200 Third Street, Room 211, Parkersburg, WV 26101. The telephone number to be used in conjunction with overnight mailings to this address is (304) 480–5450. Applications will not be accepted at the Fund's offices. Applications received in the Fund's offices will be rejected and returned to the sender.

FOR FURTHER INFORMATION CONTACT: If you have any questions about the programmatic requirements for this program, contact the Fund's Program Operations Manager. If you have questions regarding administrative requirements, contact the Fund's Awards Manager. The Program Operations Manager and the Awards Manager may be reached by e-mail at *cdfihelp@cdfi.treas.gov*, by telephone at (202) 622–6355, by facsimile at (202) 622–7754, or by mail at CDFI Fund, 601 13th Street, NW., Suite 200 South, Washington, DC 20005. These are not toll free numbers. Applications and other information regarding the Fund and its programs may be downloaded and printed from the Fund's Web site at *http://www.cdfifund.gov* or requested by contacting the Fund, as described above. Allow at least one to two weeks from the date the Fund receives the request for receipt of the application.

SUPPLEMENTARY INFORMATION:

I. Eligibility

The NACD Program application specifies the eligibility requirements that each applicant must meet in order to be eligible to apply for assistance under this NOFA. The following sets forth some additional detail and certain additional dates that relate to the submission of applications under this NOFA:

(1) *Eligible Applicants:* Eligible applicants for the NACD Program consist of:

(a) Category I, meaning Tribes, Tribal entities and nonprofit organizations that primarily (at least 50 percent of activities directed toward) serve Native American, Alaska Native and/or Native Hawaiian populations including:

(i) Tribes, Tribal entities, Alaska Native Villages, Village Corporations, Regional Corporations, Non-Profit Regional Corporations/Associations, or Inter-Tribal or Inter-Village organizations; and

(ii) non-profit community organizations engaged in related activities, including, but not limited to: Community development corporations (CDCs), training or educational organizations, Tribally-Controlled Community Colleges, Chambers of Commerce, or Urban Indian Centers that serve primarily a Native American, Alaska Native or Native Hawaiian Community (such entities were referred to as Category II applicants under the FY 2002 NACTA Component); and

(b) Category II, meaning TA providers or other suitable providers, including:

(i) TA providers such as firms that provide training or TA in community development finance or that specialize in economic development in Native American, Alaska Native and/or Native Hawaiian communities, and

(ii) other suitable providers, as defined by the Fund, that include, but are not limited to: CDCs, certified CDFIs, or organizations with experience and expertise in banking and lending in Native American, Alaska Native and/or Native Hawaiian communities) (such entities were referred to as Category III applicants under the FY 2002 NACTA Component).

Any applicant, under Category II above, including CDFIs, that does not serve primarily a Native American, Alaska Native and/or Native Hawaiian community must identify a Native American Partner that serves primarily a Native American, Alaska Native and/or Native Hawaiian community and with which the applicant will work with to establish a CDFI in the Native American Partner's community or service area that in turn will serve primarily a Native American, Alaska Native and/or Native Hawaiian community. The Native American Partner must be a party to both the application for funding and the Assistance Agreement, if the applicant is selected for funding. Category II applicants may propose to serve more than one Native American, Alaska Native and/or Native Hawaiian community. If more than one such communities are to be served, then more than one Native American Partner may be a party to the application and the Assistance Agreement, as long as such Native American Partner(s) is representative of the predominance (plurality) of the market to be served by the proposed CDFI. If not, the Fund may require that the applicant obtain additional Native American Partner(s).

(2) *Certification:* For purposes of this NACD Program NOFA, eligible applicants must establish entities that will become Fund-certified CDFIs by January 31, 2006 (for applications received by May 31, 2003) or by January 31, 2007 (for applications received between June 1, 2003 and May 31, 2004). Applicants may obtain CDFI certification applications through the Fund's Web site at *http://www.cdfifund.gov*.

(3) *Designation of Targeted Population:* For purposes of this NOFA, the Fund will use the following definitions, set forth in the Office of Management and Budget (OMB) Notice, Revisions to the Standards for the Classification of Federal Data on Race and Ethnicity (October 30, 1997):

(a) American Indian, Native American or Alaska Native: a person having origins in any of the original peoples of North and South America (including Central America) and who maintains tribal affiliation or community attachment; and

(b) Native Hawaiian: a person having origins in any of the original peoples of Hawaii.

(4) *Previous Awardees:* Applicants must be aware that success in a previous round of the CDFI Program or the NACTA Program is not indicative of success under this NOFA. Previous awardees are eligible to apply under this NOFA, except as follows:

(a) the Fund is generally prohibited from obligating more than $5 million in assistance, in the aggregate, to any one CDFI and its Subsidiaries and Affiliates during any three-year period (further guidance on the calculation of the $5

million cap is available on the Fund's Web site at *http://www.cdfifund.gov*);

(b) the Fund will not consider an application submitted by an applicant that is a previous Fund awardee under any Fund program or component of the CDFI Program if the applicant has failed to meet its reporting requirements, set forth in the previously executed assistance or award agreement(s), as of the date an application for funding under this NOFA is received by the CDFI Fund; and

(c) the Fund will not consider an application submitted by an applicant that is a previous Fund awardee under any Fund program or component of the CDFI Program that has a balance of undisbursed funds under said previous award, as of the date an application for funding under this NOFA is received by the CDFI Fund. Accordingly, applicants that are previous awardees are advised to:

(i) submit all required reports by the deadlines specified in the assistance or award agreements governing said prior awards and to comply with all requirements found therein, and

(ii) contact the appropriate Program Operations representative of the Fund to ensure that actions are underway for the disbursement of any outstanding balance of said prior award.

II. Types of Assistance

An applicant may only submit an application for a TA grant under this NOFA. The Fund reserves the right, in its sole discretion, to provide a TA grant for uses other than that which is requested by an applicant.

Applicants for TA grants under this NOFA shall describe the type(s) of TA requested, when the TA will be acquired, the provider(s) of the TA, the cost of the TA, and a narrative description of how the TA will enhance their community development impact by creating a CDFI. Eligible types of TA grant uses include, but are not limited to, the following:

(1) Acquiring consulting services;

(2) Paying staff salary for the limited purposes of completing tasks and/or fulfilling functions that are otherwise eligible TA grant uses under this NOFA;

(3) Acquiring/enhancing technology items; and

(4) Acquiring training for staff or management (under Category I only).

The Fund will generally not consider requests for TA grants under this NOFA for expenses that, in the determination of the Fund, are deemed to be ongoing operating expenses rather than non-recurring expenses. The Fund will consider requests for the use of TA to pay for staff salary only when the applicant demonstrates to the satisfaction of the Fund that:

(a) The staff salary relates directly to building the applicant's capacity to serve its target market;

(b) The proposed staff time to be paid for by the TA grant will be used for a non-recurring activity or the staff salary will build the applicant's capacity to achieve its objectives as set forth in its application;

(c) The proposed activity would otherwise be contracted to a consultant or not be undertaken; and

(d) The staff person assigned to the proposed task has the competence to successfully complete the activity. Further guidance on the limited uses of TA grants for staff salary expenditures is available on the Fund's Web site at *http://www.cdfifund.gov*.

III. Application Packet

Applicants under this NOFA must submit all materials described in the applicable application. An application must include a valid and current Employer Identification Number, issued by the Internal Revenue Service, or the application will be rejected as incomplete and returned to the sender.

IV. Evaluation

For purposes of this NACD Program NOFA, the Fund will evaluate applications through a merit-based, qualitative application process, in the order in which they are submitted, until such point as all appropriated funds allocated for this NOFA are obligated or May 31, 2004, whichever occurs first. Applications submitted after that point will not be considered for funding; said applications will be rejected and returned to the sender.

All applications will be reviewed for eligibility and completeness. If determined to be eligible and complete, the Fund will conduct the substantive review of each application in accordance with the criteria and procedures described in the interim regulations, this NOFA and the application. In the first part of the substantive review, the Fund will evaluate each application on a 100-point scale, comprising the four criteria categories set forth below, and assign numeric scores. Applicants whose applications are assigned 60 points or more will be considered for TA awards.

(1) *Market Need and CDFI Strategy:* including a review of the applicant's understanding of the market context, the prospective customers, the extent of economic distress within the likely Investment Area(s) or the extent of need within the likely Targeted Population(s), the extent of need for the proposed CDFI, the level of support from the Target Market, and the appropriateness of the proposed products and services to meet the needs in the market of the proposed CDFI, appropriateness of the proposed organizational structure. For any entity that has already received an award from the Fund, the applicant also will be evaluated on the extent to which it proposes to create greater community development impact than to be achieved through the prior award and its track record in meeting previous performance goals and other Assistance Agreement requirements (maximum 25 points; minimum of 12 points required to be considered for an award);

(2) *Management:* including a review of the applicant's current and proposed management team, governing board, and key staff, its policies and procedures for financial management, and its track record in underwriting and portfolio management, if applicable, and its ability to create the proposed CDFI and to successfully use the requested TA. For any applicant that has received one or more prior awards through the CDFI Program, the Fund will consider the extent to which the applicant has submitted required reports in a timely manner and otherwise complied with the Fund's requirements (maximum 25 points; minimum of 12 points required to be considered for an award);

(3) *Financial Health and Resources:* including a review of the applicant's financial strength, its liquidity, and the likelihood of obtaining resources to initiate and sustain operations of the proposed CDFI, and a clear indication that the proposed CDFI will not be fiscally dependent on the Fund (maximum 10 points; minimum of 5 points required to be considered for an award);

(4) *Community Development Performance and Effective Use of TA:* including the projected level of activity within the Target Market of the proposed CDFI; the extent to which the applicant needs the Fund's assistance to achieve the objectives set forth in its application; and the likelihood that the Fund's assistance will enhance the applicant's ability to effectively serve its Target Market by creating a CDFI and achieve community development impact (maximum 40 points; minimum of 20 points required to be considered for an award).

Fund reviewers will evaluate and score each application and make recommendations for funding to the Fund's selecting official. As part of the substantive review process, applicants may receive a telephone interview or an on-site visit by Fund reviewers for the purpose of obtaining, clarifying, or

confirming application information. During the review process, the applicant may be required to submit additional information about its application in order to assist the Fund in its final evaluation process. Such requests must be responded to within the time parameters set by the Fund.

In the case of an applicant that has previously received funding from the Fund under the Bank Enterprise Award (BEA) Program, the CDFI Program or the NACTA Component, the Fund will consider, as appropriate:

(a) The applicant's level of success and extent of compliance in meeting its performance goals, financial soundness covenants (if applicable) and other requirements set forth in the assistance or award agreement(s) with the Fund;

(b) The benefits that will be created with new Fund assistance over and above benefits created by previous Fund assistance; and

(c) The extent and effectiveness to which the applicant has used previous assistance from the Fund.

The Fund's selecting official will make a final funding determination based on the applicant's file, reviewer scores and recommendations, and the amount of funds available. In the case of regulated CDFIs, the selecting official will take into consideration the views of the appropriate Federal banking agencies.

Each applicant will be informed of the Fund's award decision either through a Notice of Award if selected for an award (see Notice of Award section, below) or a declination letter, if not selected for an award, which may be for reasons of application incompleteness, ineligibility or substantive issues. Any applicant that is not selected for an award due to application incompleteness or ineligibility, and that believes that such decision was made in error, may appeal said decision by notifying the Fund's Awards Manager in writing or by e-mail (at *cdfihelp@cdfi.treas.gov,* Attention: Awards Manager); such appeals must be received by the Fund within five business days of the date of the declination letter. Such appeal requests will be reviewed by the Fund's Deputy Director for Management and the Deputy Director for Policy and Programs, as appropriate, whose decision will be final. All applicants that are not selected for awards based on substantive issues, will be given the opportunity to request feedback on the strengths and weaknesses of their applications. This feedback will be provided in a format and within a timeframe to be determined by the Fund.

The Fund reserves the right to change these evaluation procedures if the Fund deems it appropriate; if said procedural changes materially affect the Fund's award decisions, the Fund will provide information regarding the procedural changes through the Fund's Web site.

V. Notice of Award

The Fund will signify its selection of an applicant as an awardee by delivering a signed Notice of Award to the applicant. The Notice of Award will contain the general terms and conditions underlying the Fund's provision of assistance including, but not limited to, the requirement that an awardee and the Fund enter into an Assistance Agreement. The applicant shall execute the Notice of Award and return it to the Fund. By executing a Notice of Award, the awardee agrees that, if prior to entering into an Assistance Agreement with the Fund, information comes to the attention of the Fund that either adversely affects the awardee's eligibility for an award, or adversely affects the Fund's evaluation of the awardee's application, or indicates fraud or mismanagement on the part of the awardee, the Fund may, in its discretion and without advance notice to the awardee, terminate the Notice of Award or take such other actions as it deems appropriate. Moreover, by executing a Notice of Award, an awardee agrees that, if prior to entering into an Assistance Agreement with the Fund, the Fund determines that the awardee is not in compliance with the terms of any previous Assistance Agreement entered into with the Fund, the Fund may, in its discretion and without advance notice to the awardee, either terminate the Notice of Award or take such other actions as it deems appropriate. The Fund reserves the right, in its sole discretion, to rescind its award if the awardee fails to return the Notice of Award, signed by the authorized representative of the awardee, along with any other requested documentation, within the deadline set by the Fund.

VI. Assistance Agreement

Each applicant that is selected to receive an award under this NOFA must enter into an Assistance Agreement with the Fund. The Assistance Agreement will set forth certain required terms and conditions of the award, which may include, but not be limited to:

(a) The amount of the award;

(b) The approved uses of the award;

(c) The approved Target Market to which the award must be targeted;

(d) Performance goals and measures; and

(e) Reporting requirements for all awardees.

Assistance Agreements under this NOFA will generally have three-year performance periods. The Fund reserves the right, in its sole discretion, to rescind its award if the awardee fails to return the Assistance Agreement, signed by the authorized representative of the awardee, along with any other requested documentation, within the deadline set by the Fund.

VII. Reporting and Monitoring

The Fund will collect information, on at least an annual basis, from NACD Program awardees, including:

(a) Annual reports related to, among other matters, awardee compliance with the performance goals and measures set forth in the Assistance Agreement; and

(b) Such other information as the Fund may require. The Fund will use such information to monitor each awardee's compliance with the requirements set forth in the Assistance Agreement. The Fund will also use such information to assess the impact of the NACD Program. The Fund reserves the right, in its sole discretion, to modify these reporting requirements if it determines it to be appropriate and necessary; however, such reporting requirements will be modified only after due notice to the awardee.

The Fund reserves the right, in accordance with applicable Federal law and if authorized, to charge award reservation and/or compliance monitoring fees to all entities receiving NACD Program awards. Prior to imposing any such fee, the Fund will publish additional information concerning the nature and amount of the fee.

VIII. Information Sessions

In connection with the Fiscal Year 2003 funding rounds of its programs, the Fund may conduct Information Sessions to disseminate information to organizations contemplating applying to, and other organizations interested in learning about, the Technical Assistance and Financial Assistance Components of the CDFI Program, the NACD Program, and the BEA Program. For further information on the Fund's Information Sessions, dates and locations, or to register online to attend an Information Session, please visit the Fund's Web site at *http://www.cdfifund.gov* or call the Fund at (202) 622–8401.

(Catalog of Federal Domestic Assistance: 21.020)

Authority: 12 U.S.C. 4703, 4703 note, 4704, 4706, 4707, 4717; 12 CFR part 1805.

Dated: January 27, 2003.

Tony T. Brown,

Director, Community Development Financial Institutions Fund.

[FR Doc. 03–2338 Filed 2–3–03; 8:45 am]

BILLING CODE 4810–70–P

DEPARTMENT OF THE TREASURY

Community Development Financial Institutions Fund

Notice of Funds Availability (NOFA) Inviting Applications for the Community Development Financial Institutions Program—Technical Assistance Component (incorporating Native American Technical Assistance)

AGENCY: Community Development Financial Institutions Fund, Department of the Treasury.

ACTION: Notice of funds availability ("NOFA") inviting applications for the FY 2003 and FY 2004 funding rounds of the Technical Assistance Component of the Community Development Financial Institutions ("CDFI") Program.

SUMMARY: This NOFA is issued in connection with the FY 2003 and FY 2004 funding rounds of the Technical Assistance Component of the CDFI Program. Through the Technical Assistance Component of the CDFI Program, the Community Development Financial Institutions Fund (the "Fund") provides technical assistance ("TA") grants to CDFIs, and entities proposing to become CDFIs, in order to build their capacity to better address the community development and capital access needs of their particular target markets, including Native American, Alaska Native, and Native Hawaiian communities.

Subject to funding availability, the Fund expects that it may award approximately $13 million for FY 2003 awards, and approximately $4.5 million for FY 2004 awards, in appropriated funds under this Technical Assistance Component NOFA. The Fund expects that, within the FY 2003 amount, it will award up to $3 million to CDFIs, and entities proposing to become CDFIs, that principally serve Native American, Alaska Native and/or Native Hawaiian communities. The Fund reserves the right to award in excess of said funds under this NOFA provided that the appropriated funds are available and the Fund deems it appropriate. The Fund reserves the right to re-allocate funds from the amount that is anticipated to be available under this NOFA to other Fund programs, particularly if the Fund determines that the number of awards made under this NOFA is fewer than projected. The Fund intends to make information available on its Web site about the level of dollars remaining available on a regular basis.

Applicants should note that the Fund expects that the funding round for this NOFA (and the NOFA for the NACD Program, also published in the **Federal Register** on this date) will extend over a two-year funding round, subject to funding availability and Fiscal Year 2004 appropriations.

Under this NOFA, the Fund anticipates making TA grants up to $50,000 per Technical Assistance Component awardee and up to $100,000 per awardee principally serving Native American, Alaska Native, or Native Hawaiian communities. The Fund, in its sole discretion, reserves the right to award amounts in excess of the anticipated maximum award amount if the Fund deems it appropriate. The Fund reserves the right to fund, in whole or in part, any, all, or none of the applications submitted in response to this NOFA.

The interim rule (12 CFR part 1805), also published in this issue of the **Federal Register**, provides guidance on evaluation criteria and other requirements of the CDFI Program. Detailed application content requirements are found in the application related to this NOFA. The Preamble to the Fund's NOFAs, published in this issue of the **Federal Register** also specifies other program information, including eligibility requirements, for each of the Fund's programs. While the Fund encourages applicants to review the interim rule and the Preamble to the NOFAs, all of the application content requirements and the evaluation criteria set forth in the interim rule are set forth in the application.

DATES: Simultaneously with or shortly following the publication of this NOFA, the Fund will make available the FY 2003 funding application on its Web site at *http://www.cdfifund.gov*. Applicants may download the application from the Fund's Web site or request application packages by contacting the Fund, as described below.

The Fund will accept and review applications under this Technical Assistance Component NOFA as they are submitted and in the order in which they are submitted. Applications may be submitted at any time, commencing with the date of the publication of this NOFA. Applications must be received in the specific Bureau of the Public Debt—Franchise Services (BPD) office designated below not later than 5 p.m. ET on May 31, 2004. Any applicant whose application is declined may submit a new application before May 31, 2004. Applications received in the specific BPD office designated below after that date and time will be rejected and returned to the sender.

Applications sent by facsimile or e-mail will not be accepted; however, an electronic application may be made available for this NOFA at a later date and, if so, its availability and related guidance will be announced on the Fund's Web site.

ADDRESSES: Applications must be sent to: CDFI Fund Awards Manager, TA Component, Bureau of Public Debt—Franchising, 200 Third Street, Room 211, Parkersburg, WV 26101. The telephone number to be used in conjunction with overnight mailings to this address is (304) 480–5450. Applications will not be accepted at the Fund's offices. Applications received in the Fund's offices will be rejected and returned to the sender.

FOR FURTHER INFORMATION CONTACT: If you have any questions about the programmatic requirements for this program, contact the Fund's Program Operations Manager. If you have questions regarding administrative requirements, contact the Fund's Awards Manager. The Program Operations Manager and the Awards Manager may be reached by e-mail at *cdfihelp@cdfi.treas.gov*, by telephone at (202) 622–6355, by facsimile at (202) 622–7754, or by mail at CDFI Fund, 601 13th Street, NW., Suite 200 South, Washington, DC 20005. These are not toll free numbers. Applications and other information regarding the Fund and its programs may be downloaded and printed from the Fund's Web site at *http://www.cdfifund.gov* or requested by contacting the Fund, as described above. Allow at least one to two weeks from the date the Fund receives the request for receipt of the application.

SUPPLEMENTARY INFORMATION:

I. Eligibility

The Act and the interim rule specify the eligibility requirements that each applicant must meet in order to be eligible to apply for assistance under this NOFA. The following sets forth additional details and certain additional dates that relate to the submission of applications under this NOFA:

(1) *Eligible Applicants:* Eligible applicants for the Technical Assistance Component of the CDFI Program consist of CDFIs and entities proposing to become CDFIs.

(2) *Certification:* For purposes of this Technical Assistance Component NOFA, eligible applicants consist of:

(i) Certified CDFIs whose certifications expire after June 30, 2003;

(ii) Entities that submit complete applications evidencing CDFI certification prior to or simultaneous with applications under this NOFA; or

(iii) Entities that demonstrate in their certification applications that, in the judgment of the Fund, they have reasonable plans to become certified CDFIs by January 31, 2005 (for applications received by May 31, 2003) or by January 31, 2006 (for applications received between June 1, 2003 and May 31, 2004). Applicants must be certified by the applicable date. Applicants may obtain CDFI certification applications through the Fund's Web site at *http://www.cdfifund.gov*.

(3) *Previous Awardees:* Applicants must be aware that success in a previous round of the CDFI Program or the Native American CDFI Technical Assistance ("NACTA") Program is not indicative of success under this NOFA. Previous awardees are eligible to apply under this NOFA, except as follows:

(a) Any entity that has received a Notice of Award from the Fund for a previous CDFI Program or NACTA Program funding round, but that has not submitted a CDFI certification application nor been certified as a CDFI, is not eligible to receive funding under this NOFA (see Certification section, above);

(b) The Fund is generally prohibited from obligating more than $5 million in assistance, in the aggregate, to any one organization and its Subsidiaries and Affiliates during any three-year period (further guidance on the calculation of the $5 million cap is available on the Fund's Web site at *http://www.cdfifund.gov*);

(c) The Fund will not consider an application submitted by an applicant that is a previous Fund awardee under any Fund program or component of the CDFI Program if the applicant has failed to meet its reporting requirements, set forth in a previously executed assistance or award agreement(s), as of the date an application for funding under this NOFA is received by the Fund; and

(d) The Fund will not consider an application submitted by an applicant that is a previous Fund awardee under any Fund program or component of the CDFI Program that has a balance of undisbursed funds under said previous award, as of the date an application for funding under this NOFA is received by the CDFI Fund. Accordingly, applicants that are previous awardees are advised to:

(i) Submit all required reports by the deadlines specified in the assistance or award agreements governing said prior awards and to comply with all requirements found therein, and

(ii) Contact the appropriate Program Operations representative of the Fund to ensure that all necessary actions are underway for the disbursement of any outstanding balance of said prior award. In addition, in order to focus its resources on applicants that are most in need of TA awards, the Fund does not expect to make awards under this NOFA to any entity that has received Fund awards under the CDFI Program or the NACTA Program in excess of $250,000, in the aggregate.

(4) *Serving a Native American, Alaska Native, or Native Hawaiian community:* For the purposes of this NOFA, the Fund will determine, in its sole discretion, that an applicant serves a Native American, Alaska Native, or Native Hawaiian community if greater than 50 percent of its historic and projected activities benefit Native American, Alaska Native, or Native Hawaiian individuals.

(5) *Designation of Targeted Population:* For purposes of this NOFA, the Fund will use the following definitions, set forth in the Office of Management and Budget (OMB) Notice, Revisions to the Standards for the Classification of Federal Data on Race and Ethnicity (October 30, 1997):

(a) American Indian, Native American or Alaska Native: a person having origins in any of the original peoples of North and South America (including Central America) and who maintains tribal affiliation or community attachment; and

(b) Native Hawaiian: a person having origins in any of the original peoples of Hawaii.

II. Types of Assistance

An applicant may only submit an application for a TA grant under this NOFA. The Fund reserves the right, in its sole discretion, to provide a TA grant for uses other than that which is requested by an applicant.

Applicants for TA grants under this NOFA shall describe the type(s) of TA requested, when the TA will be acquired, the provider(s) of the TA, the cost of the TA, and a narrative description of how the TA will enhance their community development impact. Eligible types of TA grant uses include, but are not limited to, the following:

(1) Acquiring consulting services;

(2) Paying staff salary for the limited purposes of completing tasks and/or fulfilling functions that are otherwise eligible TA grant uses under this NOFA;

(3) Acquiring/enhancing technology items; and

(4) Acquiring training for staff or management.

The Fund will generally not consider requests for TA grants under this NOFA for expenses that, in the determination of the Fund, are deemed to be ongoing operating expenses rather than non-recurring expenses. The Fund will consider requests for use of TA to pay for staff salary only when the applicant demonstrates, to the Fund's satisfaction, that:

(i) The staff salary relates directly to building the applicant's capacity to serve its target market;

(ii) The proposed staff time to be paid for by the TA grant will be used for a non-recurring activity that will build the applicant's capacity to achieve its objectives as set forth in its application;

(iii) The proposed capacity-building activity would otherwise be contracted to a consultant or not be undertaken; and

(iv) The staff person assigned to the proposed task has the competence to successfully complete the activity. The Fund may consider funding requests for other staff salary uses, deemed appropriate by the Fund in its sole discretion, particularly for applicants that have been in operation 24 months or less as of the date of application. Further guidance on the limited uses of TA grants for staff salary expenditures is available on the Fund's Web site at *http://www.cdfifund.gov*.

III. Application

Applicants under this NOFA must submit all materials described in the applicable application form. An application must include a valid and current Employer Identification Number, issued by the Internal Revenue Service, or the application will be rejected as incomplete and returned to the sender.

IV. Evaluation

For purposes of this NOFA, the Fund will evaluate applications through a merit-based, qualitative application process, as they are submitted and in the order in which they are submitted, until such point as all appropriated funds allocated for this NOFA are obligated or May 31, 2004, whichever occurs first. Applications submitted after that point will not be considered for funding; said applications will be rejected and returned to the sender.

All applications will be reviewed for eligibility and completeness. If determined to be eligible and complete, the Fund will conduct the substantive review of each application in

accordance with the criteria and procedures described in the interim regulations, this NOFA and the application. In the first part of the substantive review, the Fund will evaluate each application on a 100-point scale, comprising the four criteria categories set forth below, and assign numeric scores. Applicants must score at least 10 points for each of criteria 1, 2, and 3; and at least 20 points for criteria 4. Applicants whose applications are assigned 60 points or more will be considered for TA awards.

(1) *Market Need and CDFI Strategy:* including a review of the applicant's understanding of its market context, its current and prospective customers, the extent of economic distress within the designated Investment Area(s) or the extent of need within the designated Targeted Population(s), the extent of need for the CDFI, the level of support for the Target Market, and the appropriateness of the proposed products, services and delivery strategy to meet the needs in the market. For any entity that has already received an award from the Fund, the applicant also will be evaluated on the extent to which it proposes to create greater community development impact than to be achieved through the prior award and its track record in meeting previous performance goals and other Assistance Agreement requirements (maximum 20 points);

(2) *Management:* including a review of the applicant's current and proposed management team, governing board, and key staff, its policies and procedures for financial management, and its track record in underwriting and portfolio management and ability to achieve the objectives set forth in its application and to successfully use the requested TA. For any applicant that has received one or more prior awards through the CDFI Program, the Fund will consider the extent to which the applicant has submitted required reports in a timely manner and otherwise complied with the Fund's requirements (maximum 20 points);

(3) *Financial Health and Resources:* including a review of the applicant's financial strength, its liquidity, and the likelihood of obtaining resources to sustain operations, and a clear indication that the CDFI will not be fiscally dependent on the Fund (maximum 20 points); and

(4) *Community Development Performance and Effective Use of TA:* including the projected level of activity within the Target Market; the extent to which the proposed activities are expected to promote homeownership, affordable housing development, economic development, provision of affordable financial services, and other community development objectives; the extent to which the applicant needs the Fund's assistance to achieve the objectives set forth in its application; and the likelihood that the Fund's assistance will enhance the applicant's ability to effectively serve its Target Market and achieve community development impact (maximum 40 points).

Fund reviewers will evaluate and score each application and make recommendations for funding to the Fund's selecting official. As part of the substantive review process, applicants may receive a telephone interview or an on-site visit by Fund reviewers for the purpose of obtaining, clarifying, or confirming information. During the review process, the applicant may be required to submit additional information about its application in order to assist the Fund in its final evaluation process. Such requests must be responded to within the time parameters set by the Fund.

In the case of an applicant that has previously received funding from the Fund under the Bank Enterprise Award (BEA) Program, CDFI Program or the Native American CDFI Technical Assistance (NACTA) Program, the Fund will consider, as appropriate:

(a) The applicant's level of success and extent of compliance in meeting its performance goals, financial soundness covenants (if applicable), reporting requirements and other requirements set forth in the assistance or award agreement(s) with the Fund;

(b) The benefits that will be created with new Fund assistance over and above benefits created by previous Fund assistance; and

(c) The extent and effectiveness to which the applicant has used previous assistance from the Fund.

The Fund's selecting official will make a final funding determination based on the applicant's file, reviewer scores and recommendations, and the amount of funds available. In the case of regulated CDFIs, the selecting official will also take into consideration the views of the appropriate Federal banking agencies.

Each applicant will be informed of the Fund's award decision either through a Notice of Award if selected for an award (see Notice of Award section, below) or a declination letter, if not selected for an award, which may be for reasons of application incompleteness, ineligibility or substantive issues. Any applicant that is not selected for an award due to application incompleteness or ineligibility, and that believes that such decision was made in error, may appeal said decision by notifying the Fund's Awards Manager in writing or by e-mail (at *cdfihelp@cdfi.treas.gov*, Attention: Awards Manager); such appeals must be received by the Fund within five business days of the date of the declination letter. Such appeal requests will be reviewed by the Fund's Deputy Director for Management and the Deputy Director for Policy and Programs, as appropriate, whose decision will be final. All applicants that are not selected for awards based on substantive issues, will be given the opportunity to request feedback on the strengths and weaknesses of their applications. This feedback will be provided in a format and within a timeframe to be determined by the Fund, based on available resources.

The Fund reserves the right to change these evaluation procedures if the Fund deems it appropriate; if said procedural changes materially affect the Fund's award decisions, the Fund will provide information regarding the procedural changes through the Fund's Web site.

VI. Notice of Award

The Fund will signify its selection of an applicant as an awardee by delivering a signed Notice of Award to the applicant. The Notice of Award will contain the general terms and conditions underlying the Fund's provision of assistance including, but not limited to, the requirement that an awardee and the Fund enter into an Assistance Agreement. The applicant must execute the Notice of Award and return it to the Fund. By executing a Notice of Award, the awardee agrees that, if prior to entering into an Assistance Agreement with the Fund, information comes to the attention of the Fund that either adversely affects the awardee's eligibility for an award, or adversely affects the Fund's evaluation of the awardee's application, or indicates fraud or mismanagement on the part of the awardee, the Fund may, in its discretion and without advance notice to the awardee, terminate the Notice of Award or take such other actions as it deems appropriate. Moreover, by executing a Notice of Award, an awardee agrees that, if prior to entering into an Assistance Agreement with the Fund, the Fund determines that the awardee is not in compliance with the terms of any previous Assistance Agreement entered into with the Fund, the Fund may, in its discretion and without advance notice to the awardee, either terminate the Notice of Award or take such other actions as it deems appropriate. The Fund reserves the right, in its sole discretion, to rescind its award if the

awardee fails to return the Notice of Award, signed by the authorized representative of the awardee, along with any other requested documentation, within the deadline set by the Fund.

VII. Assistance Agreement

Each applicant that is selected to receive an award under this NOFA must enter into an Assistance Agreement with the Fund. The Assistance Agreement will set forth certain required terms and conditions of the award, which will include, but not be limited to:

(a) The amount of the award;

(b) The approved uses of the award;

(c) The approved Target Market to which the award must be targeted;

(d) Performance goals and measures; and

(e) Reporting requirements for all awardees.

Assistance Agreements under this NOFA will generally have two-year performance periods. The Fund reserves the right, in its sole discretion, to rescind its award if the awardee fails to return the Assistance Agreement, signed by the authorized representative of the awardee, along with any other requested documentation, within the deadline set by the Fund.

VIII. Reporting and Monitoring

The Fund will collect information, on at least an annual basis, from all CDFI Program awardees, including:

(a) Annual reports related to, among other matters, awardee compliance with the performance goals and measures set forth in the Assistance Agreement;

(b) Audited financial statements;

(c) Annual surveys; and

(d) Such other information as the Fund may require, including loan level data.

The Fund will use such information to monitor each awardee's compliance with the requirements set forth in the Assistance Agreement. The Fund will also use such information to assess the impact of the CDFI Program. The Fund reserves the right, in its sole discretion, to modify these reporting requirements if it determines it to be appropriate and necessary; however, such reporting requirements will be modified only after due notice to the awardee.

The Fund reserves the right, in accordance with applicable Federal law and if authorized, to charge award reservation and/or compliance monitoring fees to all entities receiving CDFI Program awards. Prior to imposing any such fee, the Fund will publish additional information concerning the nature and amount of the fee.

IX. Information Sessions

In connection with the Fiscal Year 2003 funding rounds of its programs, the Fund may conduct Information Sessions to disseminate information to organizations contemplating applying to, and other organizations interested in learning about, the Technical Assistance and Financial Assistance Components of the CDFI Program, the NACD Program, and the BEA Program. For further information on the Fund's Information Sessions, dates and locations, or to register online to attend an Information Session, please visit the Fund's Web site at *http://www.cdfifund.gov* or call the Fund at (202) 622–8401.

(Catalog of Federal Domestic Assistance: 21.020)

Authority: 12 U.S.C. 4703, 4703 note, 4704, 4706, 4707, 4717; 12 CFR part 1805.

Dated: January 27, 2003.

Tony T. Brown,

Director, Community Development Financial Institutions Fund.

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BILLING CODE 4810–70–P

DEPARTMENT OF THE TREASURY

Community Development Financial Institutions Fund

Notice of Funds Availability (NOFA) Inviting Applications for the Community Development Financial Institutions Program—Financial Assistance Component

AGENCY: Community Development Financial Institutions Fund, Department of the Treasury.

ACTION: Notice of Funds Availability ("NOFA") inviting applications for the FY 2003 funding round of the Financial Assistance Component of the Community Development Financial Institutions ("CDFI") Program.

SUMMARY: This NOFA is issued in connection with the FY 2003 round of the Financial Assistance Component of the CDFI Program. Through the Financial Assistance Component, the Community Development Financial Institutions Fund (the "Fund") makes financial investments in and may provide Technical Assistance ("TA") grants to CDFIs that have comprehensive business plans for creating demonstrable community development impact through the deployment of capital within their respective target markets for community development finance purposes.

The Financial Assistance Component is designed to address capitalization needs of two types of CDFIs: (i) Category I includes CDFIs that have capitalization needs up to and including $1,000,000 and total assets as of December 31, 2002 that range up to $250 million (for insured depository institutions and depository institution holding companies), up to $25 million (for insured credit unions), or up to $15 million for other CDFIs, and (ii) Category II includes CDFIs with assets above those ranges and/or that can effectively deploy funding in an amount in excess of $1,000,000, either to leverage greater private sector resources in support of their lending and investing activities (such as through funding a loan loss reserve or credit enhancement), or to develop and effectively provide innovative financial products and services that address the capital needs of particularly underserved markets.

Through this NOFA, the Fund intends to target its resources and provide financial assistance awards to CDFIs that will use award proceeds to:

(a) Serve *Hot Zones,* meaning geographic areas designated by the Fund as having greater levels of economic distress, and/or

(b) Achieve the Fund's FY 2003 *Programmatic Priorities,* which are:

(i) To increase homeownership opportunities that are affordable to Low-Income households, and

(ii) To increase homeownership opportunities for Other Targeted Populations (as described below). For purposes of the FY 2003 NOFA for the Financial Assistance Component, the Hot Zones (and the Fund's methodology for Hot Zone designation) are identified through the Fund's Web site at *http://www.cdfifundhelp.gov.*

Subject to funding availability, the Fund expects that it may award approximately $30 million in appropriated funds under this Financial Assistance Component NOFA. The Fund reserves the right to award in excess of $30 million in appropriated funds under this NOFA provided that the funds are available and the Fund deems it appropriate. Under this NOFA, the Fund anticipates making awards up to $1,000,000 per award for Category I CDFIs and up to $2,000,000 per award for Category II CDFIs. However, the Fund, in its sole discretion, reserves the right to award amounts in excess of the anticipated maximum award amount if the Fund deems it appropriate. Further, the Fund reserves the right to fund, in whole or in part, any, all, or none of the applications submitted in response to this NOFA. The Fund reserves the right

to re-allocate funds from the amount that is anticipated to be available under this NOFA to other Fund programs, particularly if the Fund determines that the number of awards made under this NOFA is fewer than projected.

While the Financial Assistance Component offers TA grants in conjunction with financial investments, entities seeking TA awards only should apply for funds through the Technical Assistance Component.

The interim rule governing the CDFI Program (12 CFR part 1805), revised and published in this issue of the **Federal Register**, provides guidance on evaluation criteria and other requirements of the CDFI Program. Detailed application content requirements are found in the application related to this NOFA. The Preamble to the Fund's NOFAs, published in this issue of the **Federal Register** also specifies other program information, including eligibility requirements, for each of the Fund's programs. The Fund encourages applicants to review the revised interim rule and the Preamble to the NOFAs; in addition, all of the application content requirements and the evaluation criteria set forth in the revised interim rule are set forth in the application.

DATES: Applicants may submit applications under this Financial Assistance Component NOFA either electronically or in paper form. In order to expedite application review, however, the Fund expects applicants to submit Financial Assistance Component applications electronically (via an Internet-based application) per the instructions provided on the Fund's Web site. Submission of an electronic application will facilitate the processing and review of applications and the selection of awardees.

Shortly following the publication of this NOFA, the Fund will make available the FY 2003 Financial Assistance Component funding electronic application on its Web site at *http://www.cdfifund.gov*. If an applicant is unable to submit an electronic application, it must submit to the Fund a request for a paper application and the request must be received by the Fund by February 21, 2003. The request must contain the applicant's name; the name and phone number of a contact person; a mailing address (provide a physical address for overnight deliveries) for delivery of the paper application; and an explanation of why the applicant cannot complete the electronic application. The request for a paper application should be directed to the Fund's Program Operations Manager and must be sent by e-mail to *paper_request@cdfi.treas.gov* or by facsimile to (202) 622–6453 .

Applicants will need access to Internet Explorer 5.5 or higher or Netscape Navigator 6.0 or higher and at least a 56Kbps Internet connection in order to meet the electronic application submission requirements. Electronic applications must be submitted solely by using the format made available at the Fund's Web site for the Financial Assistance Component. Additional information, including instructions relating to the submission of signature forms and supporting information, is set forth in further detail in the electronic application.

The Fund will provide program and technical support for the Financial Assistance Component application between the hours of 9 a.m. and 5 p.m. starting Monday, February 3, 2003, through Friday, March 7, 2003. The Fund will not respond to phone calls or e-mails concerning the application that are received after 5 p.m. on March 7, 2003, until after the Financial Assistance Component application deadline of March 10, 2003. Program support can be obtained by calling (202) 622–6355. Technical support can be obtained by calling (202) 622–2455 and selecting option 1, then option 2, and then option 9. Program or technical support can also be obtained by e-mail at *cdfihelp@cdfi.treas.gov*.

The deadline for receipt of either paper or electronic applications is 5 p.m. ET on March 10, 2003. Paper applications must be received in their entirety by this time and date, including attachments. Electronic applications timely submitted may submit an original signature page not later than 5 p.m. ET on March 12, 2003. See application instructions, provided in the electronic application, for further detail. Applications received after this date and time will be rejected and returned to the sender.

Applications sent by facsimile or by e-mail will not be accepted.

ADDRESSES: Paper applications must be sent to: CDFI Fund Awards Manager, Financial Assistance Component, Bureau of Public Debt " Franchising, 200 Third Street, Room 211, Parkersburg, WV 26101. The telephone number to be used in conjunction with overnight mailings to this address is (304) 480–5450. Applications will not be accepted at the Fund's offices in Washington, DC. Applications received in the Fund's offices will be rejected and returned to the sender. Electronic applications must be submitted solely by using the Fund's Web site and must be sent in accordance with the submission instructions provided in the electronic application form.

FOR FURTHER INFORMATION CONTACT: If you have any questions about the programmatic requirements for this program, contact the Fund's Program Operations Manager. If you have questions regarding administrative requirements, contact the Fund's Awards Manager. The Program Operations Manager and the Awards Manager may be reached by e-mail at cdfihelp@cdfi.treas.gov, by telephone at (202) 622–6355, by facsimile at (202) 622–7754, or by mail at CDFI Fund, 601 13th Street, NW., Suite 200 South, Washington, DC 20005. These are not toll free numbers.

SUPPLEMENTARY INFORMATION:

I. Eligibility

The Act and the interim rule specify the eligibility requirements that each applicant must meet in order to be eligible to apply for assistance under this NOFA. The following sets forth additional detail and certain additional dates that relate to the submission of applications under this NOFA:

(1) *Certification:* For purposes of this Financial Assistance Component NOFA, an application for an award will not be considered unless:

(a) An applicant is already certified as a CDFI with a certification expiration date after June 30, 2003; or

(b) The Fund receives from an applicant a complete CDFI certification application no later than February 14, 2003, evidencing that the applicant can be certified as a CDFI. With respect to any CDFI that is currently certified by the Fund and whose certification expiration date is on or before June 30, 2003, the Fund must receive an application for re-certification no later than February 14, 2003, evidencing that the applicant can be re-certified as a CDFI. Applicants may obtain CDFI certification applications through the Fund's Web site at *http://www.cdfifund.gov*. Applications for certification and re-certification must be submitted as instructed in the application form.

(2) *Previous Awardees:* Applicants must be aware that success in a previous round of the CDFI Program or the Native American CDFI Technical Assistance ("NACTA") Program is not indicative of success under this NOFA. Previous awardees are eligible to apply under this NOFA, except as follows:

(a) Any entity that has received a Notice of Award from the Fund for a previous CDFI Program or NACTA Program funding round, but that has not

submitted a CDFI certification application nor been certified as a CDFI, is not eligible to receive funding under this NOFA (see Certification section, above);

(b) The Fund is generally prohibited from obligating more than $5 million in assistance, in the aggregate, to any one organization and its Subsidiaries and Affiliates during any three-year period (further guidance on the calculation of the $5 million cap is available on the Fund's Web site at *http://www.cdfifund.gov);*

(c) The Fund will not consider an application submitted by an applicant that is a previous Fund awardee under any Fund program or component of the CDFI Program if the applicant has failed to meet its reporting requirements, set forth in the previously executed assistance or award agreement(s), as of the application deadline of this NOFA; and

(d) The Fund will not consider an application submitted by an applicant that is a previous Fund awardee under any Fund program or component of the CDFI Program that has a balance of undisbursed funds under said previous award, as of the application deadline of this NOFA. Accordingly, applicants that are previous awardees are advised to:

(i) Submit all required reports by the deadlines specified in the assistance or award agreements governing said prior awards and to comply with all requirements found therein and

(ii) Contact the appropriate Program Operations representative of the Fund to ensure that all necessary actions are underway for the disbursement of any outstanding balance of said prior award.

(3) *Other Targeted Populations:* Other Targeted Populations are defined as identifiable groups of individuals in the applicant's service area for which there exists a strong basis in evidence that they lack access to loans, Equity Investments and/or Financial Services. The Fund has determined that there is strong basis in evidence that the following groups of individuals lack access to loans, Equity Investments and/or Financial Services on a national level: Blacks or African Americans, Native Americans or American Indians, and Hispanics or Latinos. In addition, for purposes of this NOFA, the Fund has determined that there is a strong basis in evidence that Alaska Natives residing in Alaska and Native Hawaiians or Other Pacific Islanders residing in Hawaii or other Pacific Islands lack adequate access to loans, Equity Investments or Financial Services. An applicant designating any of the above-cited Other Targeted Populations is not required to provide additional narrative explaining the Other Targeted Population's lack of adequate access to loans, Equity Investments or Financial Services. Additionally, the Fund recognizes that there may be other such groups for which there is strong basis in evidence that they lack access to loans, Equity Investments and/or Financial Services. Such groups may be identified, and evidence of such lack of access may be provided, in the Market Need section of the application associated with this NOFA, and the application for CDFI certification (if not identified in the Target Market of a currently certified CDFI).

For purposes of this NOFA, the Fund will use the following definitions, set forth in the Office of Management and Budget (OMB) Notice, Revisions to the Standards for the Classification of Federal Data on Race and Ethnicity (October 30, 1997):

(a) American Indian, Native American or Alaska Native: a person having origins in any of the original peoples of North and South America (including Central America) and who maintains tribal affiliation or community attachment;

(b) Black or African American: a person having origins in any of the black racial groups of Africa (terms such as "Haitian" or "Negro" can be used in addition to "Black or African American");

(c) Hispanic or Latino: a person of Cuban, Mexican, or Puerto Rican, South or Central American or other Spanish culture or origin, regardless of race (the term "Spanish origin" can be used in addition to "Hispanic or Latino"); and

(d) Native Hawaiian or Other Pacific Islander: a person having origins in any of the original peoples of Hawaii, Guam, Samoa or other Pacific Islands.

For further detail, please visit the Fund's Web site at *http://www.cdfifund.gov,* under Certification\Supplemental Information.

II. Types of Assistance

An applicant may submit an application either for financial assistance ("FA") only or for FA and a TA grant, under this NOFA. FA may be provided by the Fund through an equity investment (including, in the case of certain insured credit unions, secondary capital accounts), a grant, loan, deposit, credit union shares, or any combination thereof. The Fund reserves the right, in its sole discretion, to provide FA in a form other than that which is requested by an applicant, or a TA grant for uses other than that which are requested by an applicant.

Applicants for TA grants under this NOFA shall describe the type(s) of TA requested, when the TA will be acquired, the provider(s) of the TA, the cost of the TA, and a narrative description of how the TA will enhance their community development impact. Eligible types of TA grant uses include, but are not limited to, the following:

(1) Acquiring consulting services;

(2) Paying staff salary for the limited purposes of completing tasks and/or fulfilling functions that are otherwise eligible TA grant uses under this NOFA (use of TA for this purpose is limited to applicants with total assets not exceeding $5 million as of December 31, 2002);

(3) Acquiring/enhancing technology items; and

(4) Acquiring training for staff or management.

The Fund will not consider requests for TA grants under this NOFA for expenses that, in the determination of the Fund, are deemed to be ongoing operating expenses rather than non-recurring expenses. The Fund will consider requests for use of TA to pay for staff salary only when the applicant demonstrates, to the Fund's satisfaction, that:

(i) The staff salary relates directly to building the applicant's capacity to serve its target market;

(ii) The proposed staff time to be paid for by the TA grant will be used for a non-recurring activity that will build the applicant's capacity to achieve its objectives as set forth in its Comprehensive Business Plan;

(iii) The proposed capacity-building activity would otherwise be contracted to a consultant or not be undertaken; and

(iv) The staff person assigned to the proposed task has the competence to successfully complete the activity. Further guidance on the limited uses of TA grants for staff salary expenditures is available on the Fund's Web site at *http://www.cdfifund.gov.*

III. Application

An applicant under this NOFA must submit all materials described in the application. An application must include a valid and current Employer Identification Number, issued by the Internal Revenue Service, or the application will be rejected as incomplete and returned to the sender.

IV. Matching Funds

Applicants responding to this NOFA must obtain non-Federal matching funds from sources other than the Federal government on the basis of not less than one dollar for each dollar of

FA provided by the Fund (matching funds are not required for TA grants). Matching funds must be at least comparable in form and value to the FA provided by the Fund (for example, if an applicant seeks a FA grant from the Fund, the applicant must obtain matching funds through grant(s) from non-Federal sources that are at least equal to the amount requested from the Fund).

Due to funding constraints and the desire to quickly deploy CDFI Fund dollars, the Fund will not consider for funding any applicant that does not have at least the following level of matching funds committed or in-hand: 25 percent of requested FA in-hand and 50 percent of requested FA firmly committed. Matching funds in-hand (received), or firm commitments for matching funds made, on or after January 1, 2002, and before April 30, 2004, will be considered when determining matching funds eligibility. The Fund reserves the right to recapture and reprogram an award if an applicant fails to raise the required matching funds by April 30, 2004 (with documentation of such receipt received by the CDFI Fund not later than May 15, 2004), or to grant an extension of such matching funds deadline for specific applicants selected to receive FA, if the Fund deems it appropriate. For purposes of this NOFA, "matching funds in-hand" means that the applicant has actually received the matching funds and has documentation (such as a copy of a check) to evidence such receipt; "firm commitment for matching funds" means that the applicant has entered into or received a legally binding commitment from the matching funds source that the matching funds have been committed to be disbursed to the applicant and the applicant has documentation (such as a copy of a loan agreement, promissory note or grant agreement) to evidence such firm commitment.

Funds used by an applicant as matching funds for a previous award under the CDFI Program or under another Federal grant or award program cannot be used to satisfy the matching funds requirement. If an applicant seeks to use as matching funds monies received from an organization that was a previous awardee under the CDFI Program, the Fund will deem such funds to be Federal funds, unless the funding entity establishes to the reasonable satisfaction of the Fund that such funds do not consist, in whole or in part, of CDFI Program funds or other Federal funds.

V. Evaluation

All applications will be reviewed for eligibility and completeness. If determined to be eligible and complete, the Fund will conduct the substantive review of each application in accordance with the criteria and procedures described in the interim regulations, this NOFA and the application. First, the Fund will determine whether the applicant has a need for capital, based on the applicant's projections of capital available and activities projected. Applicants not projecting a need for capital will not be considered. Next, the Fund will determine whether the applicant has a minimum of 25 percent of the requested FA in matching funds in-hand and 50 percent of the matching funds for the requested assistance firmly committed. If this level of matching funds is not documented as in-hand or firmly committed, the applicant will not be considered for funding. Following these determinations, the Fund will evaluate each application on a 100-point scale, comprising the four criteria categories set forth below; each applicant must obtain a minimum score in each section to be considered for funding. Numeric scores will be related to:

(1) *Market Need and Community Development Performance:* including an evaluation of:

(a) The applicant's understanding of its market context and its current and prospective customers, the extent of economic distress within the designated Investment Area(s) (including serving Hot Zones) or the extent of need within the designated Targeted Population(s), the extent of need for Equity Investments, loans, Development Services, and Financial Services within the designated Target Market, and the extent of demand within the Target Market for the applicant's products and services;

(b) The extent to which the applicant demonstrates that it will target its activities to Hot Zones and/or the Fund's Programmatic Priorities;

(c) The applicant's realistic projections for community development impact, including the extent to which the applicant will concentrate its activities on serving its Target Market, and the extent to which the activities proposed in the Comprehensive Business Plan will expand economic opportunities or promote community development within the designated Target Market (including achieving the Fund's Programmatic Priorities);

(d) Product design and strategy, including an assessment of the applicant's products and services, marketing and outreach efforts, and delivery strategy (including the applicant's track record in community development and serving the target market);

(e) The extent to which the applicant will provide products that meet key community development needs (such as low-down-payment mortgage products for Low-Income homebuyers and provision of financial services to individuals previously lacking such services); and

(f) The degree to which the applicant's strategy is integral to Federal community development initiatives (for example, Empowerment Zones) particularly targeted to benefit Low-Income people or underserved communities. For any entity that has already received an award from the Fund, the applicant also will be evaluated on the extent to which it proposes to create greater community development impact than to be achieved through the prior award and its track record in meeting previous performance goals and other Assistance Agreement requirements (maximum of 40 points; minimum of 20 points required to be considered for an award);

(2) *Management and Underwriting:* including an evaluation of:

(a) The applicant's underwriting and portfolio quality;

(b) Risk mitigation strategies; and

(c) The capacity, skills and experience of the applicant's management team as appropriate to deliver the proposed products and services (maximum of 20 points; minimum of 10 points required to be considered for an award);

(3) *Financial Health:* including an evaluation of the applicant's liquidity and other elements of financial strength, including earnings, capital adequacy, and deployment of resources (maximum of 20 points; minimum of 10 points required to be considered for an award); and

(4) *Financial Sustainability and Matching Funds:* including an evaluation of:

(a) The applicant's projected financial health, including its ability to raise operating support from sources other than the Fund and its capitalization strategy (including participation in a secondary market); and

(b) Extent to which the applicant has matching funds in-hand or firmly committed, as described above. Applicants must demonstrate 100 percent of the requested FA can be matched with matching funds in-hand or fully committed in order to receive more than 15 out of 20 points in this section. Under this category, applicants

are expected to have strategies for ensuring financial viability (of both financing capital and operating funds) and reasonable amounts of matching funds in-hand, committed or likely to be raised (maximum of 20 points; minimum of 10 points required to be considered for an award).

The Fund will consider the institutional and geographic diversity of applicants in making its funding determinations.

Fund reviewers will evaluate and score each application and make recommendations for funding to the Fund's selecting official. A minimum of 50 points total, and the required minimum number of points in each section (with points allotted per evaluation criterion, as set forth above), is required for an application to be further considered for an award. As part of the substantive review process, applicants may receive a telephone interview or an on-site visit by Fund reviewers for the purpose of obtaining, clarifying, or confirming application information. During the review process, the applicant may be required to submit additional information about its application in order to assist the Fund in its final evaluation process. Such requests must be responded to within the time parameters set by the Fund.

In the case of an applicant that has previously received funding from the Fund through the Bank Enterprise Award (BEA) Program, CDFI Program or the NACTA Program, the Fund will consider, as appropriate:

(a) The applicant's level of success and extent of compliance in meeting its performance goals, financial soundness covenants (if applicable) and other requirements set forth in the assistance or award agreement(s) with the Fund, including submission of required reports on time;

(b) The benefits that will be created with new Fund assistance over and above benefits created by previous Fund assistance; and

(c) The extent and effectiveness to which the applicant has used previous assistance from the Fund.

The Fund's selecting official will make a final funding determination based on the applicant's file, reviewer scores and recommendations, and the amount of funds available. In the case of regulated CDFIs, the selecting official will take into consideration the views of the appropriate Federal banking agencies.

Each applicant will be informed of the Fund's award decision either through a Notice of Award if selected for an award (*see* Notice of Award section, below) or a declination letter, if not selected for an award, which may be for reasons of application incompleteness, ineligibility or substantive issues. Any applicant that is not selected for an award due to application incompleteness or ineligibility, and that believes that such decision was made in error, may appeal said decision by notifying the Fund's Awards Manager in writing or by e-mail (at *cdfihelp@cdfi.treas.gov*, Attention: Awards Manager); such appeals must be received by the Fund within five business days of the date of the declination letter. Such appeal requests will be reviewed by the Fund's Deputy Director for Management and the Deputy Director for Policy and Programs, as appropriate, whose decision will be final. All applicants that are not selected for awards based on substantive issues, will be given the opportunity to request feedback on the strengths and weaknesses of their applications. This feedback will be provided in a format and within a timeframe to be determined by the Fund, based on available resources.

The Fund reserves the right to change these evaluation procedures, if the Fund deems it appropriate; if said procedural changes materially affect the Fund's award decisions, the Fund will provide information regarding the procedural changes through the Fund's Web site.

VI. Notice of Award

The Fund will signify its selection of an applicant as an awardee by delivering a signed Notice of Award to the applicant. The Notice of Award will contain the general terms and conditions underlying the Fund's provision of assistance including, but not limited to, the requirement that an awardee and the Fund enter into an Assistance Agreement. The applicant must execute the Notice of Award and return it to the Fund. By executing a Notice of Award, the awardee agrees that, if prior to entering into an Assistance Agreement with the Fund, information comes to the attention of the Fund that either adversely affects the awardee's eligibility for an award, or adversely affects the Fund's evaluation of the awardee's application, or indicates fraud or mismanagement on the part of the awardee, the Fund may, in its discretion and without advance notice to the awardee, terminate the Notice of Award or take such other actions as it deems appropriate. Moreover, by executing a Notice of Award, an awardee agrees that, if prior to entering into an Assistance Agreement with the Fund, the Fund determines that the awardee is not in compliance with the terms of any previous Assistance Agreement entered into with the Fund, the Fund may, in its discretion and without advance notice to the awardee, either terminate the Notice of Award or take such other actions as it deems appropriate. The Fund reserves the right, in its sole discretion, to rescind its award if the awardee fails to return the Notice of Award, signed by the authorized representative of the awardee, along with any other requested documentation, within the deadline set by the Fund.

VII. Assistance Agreement

Each applicant that is selected to receive an award under this NOFA must enter into an Assistance Agreement with the Fund. The Assistance Agreement will set forth certain required terms and conditions of the award, which will include, but not be limited to,

(a) The amount of the award;

(b) The type of award;

(c) The approved uses of the award;

(d) The approved Target Market to which the award must be targeted;

(e) Performance goals and measures; and

(f) reporting requirements for all awardees. Assistance Agreements under this NOFA will generally have three-year performance periods. The Fund reserves the right, in its sole discretion, to rescind its award if the awardee fails to return the Assistance Agreement, signed by the authorized representative of the awardee, along with any other requested documentation, within the deadline set by the Fund.

In addition to entering into an Assistance Agreement, each awardee that receives an award either:

(a) In the form of a loan, equity investment, credit union shares/deposits, or secondary capital, in any amount, or

(b) A FA grant in an amount greater than $500,000, must furnish to the Fund an opinion from its legal counsel, the content of which will be specified in the Assistance Agreement, to include, among other matters, an opinion that the awardee:

(i) Is duly formed and in good standing in the jurisdiction in which it was formed and/or operates;

(ii) Has the authority to enter into the Assistance Agreement and undertake the activities that are specified therein; and

(iii) Has no pending or threatened litigation that would materially affect its ability to enter into and carry out the activities specified in the Assistance Agreement.

VIII. Performance Rating: PLUM

In order to better manage its portfolio of awards, the Fund is developing a

performance rating system, entitled "PLUM," that will grade each CDFI according to its overall financial strength and potential for creating community development impact. Initially, PLUM will serve as the Fund's portfolio risk rating tool. PLUM will cover four areas: Performance effectiveness/community development impact; Leverage, liquidity and solvency; Underwriting (including portfolio quality); and Management. The Fund will analyze and grade several indicators under each of those areas, and aggregate them into an overall rating. The Fund is currently conducting the analyses needed to identify appropriate peer groups and target ranges for each indicator. Based on this information; the Fund will conduct targeted analyses of its portfolio, highlight "best practices" that can be shared with the CDFI field, and better assess CDFIs' ability to expand or stabilize underserved market areas. In order that additional data can be collected for the Fund's analyses, indicators within the above four areas have been incorporated into the FY 2003 Financial Assistance Component application.

VIII. Reporting and Monitoring

The Fund will collect information, on at least an annual basis, from all CDFI Program awardees, including:

(a) Annual reports related to, among other matters, awardee compliance with the performance goals and measures set forth in the Assistance Agreement;

(b) Audited financial statements;

(c) Annual surveys; and

(d) Such other information that the Fund may require, including loan level data. The Fund will use such information to monitor each awardee's compliance with the requirements set forth in the Assistance Agreement. The Fund will also use such information to assess the impact of the CDFI Program.

The Fund reserves the right, in its sole discretion, to modify these reporting requirements if it determines it to be appropriate and necessary; however, such reporting requirements will be modified only after due notice to the awardee.

The Fund reserves the right, in accordance with applicable Federal law and if authorized, to charge award reservation and/or compliance monitoring fees to all entities receiving CDFI Program awards. Prior to imposing any such fee, the Fund will publish additional information concerning the nature and amount of the fee.

X. Accounting

The Fund will require each awardee that receives FA and TA under this NOFA to account for and track the use of said FA and TA awards. This means that for every dollar of FA and TA received from the Fund, the awardee will be required to inform the Fund of its specific uses. This may require awardees to establish separate administrative and accounting controls, subject to the applicable OMB Circulars. OMB Circular A–110 (Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals and Other Non-Profit Organizations) states that, as applicable, recipients of Federal funds "must be able to account for the receipt, obligation, and expenditure of funds." Further, OMB Circular A–110 states that "Recipients shall maintain advances of Federal funds in interest bearing accounts unless (1), (2), or (3) apply:

(1) The recipient receives less than $120,000 in Federal awards per year;

(2) The best reasonably available interest bearing account would not be expected to earn interest in excess of $250 per year on Federal cash advances; or

(3) The depository would require an average or minimum balance so high that it would not be feasible within the expected Federal and non-Federal cash resources." The Fund will provide guidance to awardees outlining the format and content of the information to be provided on an annual basis, outlining and describing how the funds were used.

XI. Information Sessions

In connection with the Fiscal Year 2003 funding rounds of its programs, the Fund may conduct Information Sessions to disseminate information to organizations contemplating applying to, and other organizations interested in learning about, the Technical Assistance and Financial Assistance Components of the CDFI Program, the NACD Program, and the BEA Program. For further information on the Fund's Information Sessions, dates and locations, or to register online to attend an Information Session, please visit the Fund's Web site at *http://www.cdfifund.gov* or call the Fund at (202) 622–8401.

Catalog of Federal Domestic Assistance: 21.020.

Authority: 12 U.S.C. 4703, 4703 note, 4704, 4706, 4707, 4717; 12 CFR part 1805.

Dated: January 27, 2003.

Tony T. Brown,

Director, Community Development Financial Institutions Fund.

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DEPARTMENT OF THE TREASURY

Community Development Financial Institutions Fund

Notice of Funds Availability (NOFA) Inviting Applications for the Community Development Financial Institutions Program, the Native American CDFI Development Program, and the Bank Enterprise Award Program

AGENCY: Community Development Financial Institutions Fund, Department of the Treasury.

ACTION: Preamble for Notices of Funds Availability ("NOFA") inviting applications for the FY 2003 funding round of the Technical Assistance Component and Financial Assistance Component of the Community Development Financial Institutions ("CDFI") Program, the Native American CDFI Development ("NACD") Program, and the Bank Enterprise Award ("BEA") Program.

SUMMARY:

I. Legislative Background

The Community Development Banking and Financial Institutions Act of 1994 (12 U.S.C. 4701 *et seq.*) (the "Act") authorizes the Community Development Financial Institutions Fund (the "Fund") of the U.S. Department of the Treasury to promote economic revitalization and community development through investment in and assistance to Fund-certified community development financial institutions ("CDFIs") through the CDFI Program. The Act also authorizes the Fund to provide incentives, through the BEA Program, to insured depository institutions for the purposes of promoting investments in or other support to CDFIs and facilitating increased lending and provision of financial and other services in economically distressed communities. In addition, the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 2002 (Pub. L. No. 107–73) authorizes the Fund to provide technical assistance grants to promote economic development in Native American, Alaska Native and Native Hawaiian communities by building the capacity of

CDFIs that serve Native American, Alaska Native and Native Hawaiian populations. Further, Title I, subtitle C, section 121 of the Community Renewal Tax Relief Act of 2000, as enacted by section 1(a)(7) of the Consolidated Appropriations Act, 2001 (Pub. L. No. 106–554, December 21, 2000), established the New Markets Tax Credit ("NMTC") Program which will provide an incentive to investors in the form of a tax credit over seven years, which is expected to stimulate the provision of private investment capital that, in turn, will facilitate economic and community development in low-income communities.

II. The CDFI Fund's Programs: A Continuum of Capital, Investment and Incentive Opportunities

Credit and investment capital are essential ingredients for developing affordable housing, promoting homeownership, starting or expanding businesses, meeting unmet market needs, and stimulating economic growth. Access to financial services is critical to helping bring more Americans into the economic mainstream. Provision of counseling and technical assistance is needed for Americans to effectively use the nation's financial system and avoid "predatory" financial products.

Through the CDFI Program, the BEA Program and the NMTC Program, the Fund supports financial institutions around the country that are specifically dedicated to financing and supporting community and economic development activities. This strategy builds strong institutions that make loans and investments and provide financial services in markets (including economically distressed investment areas and disadvantaged targeted populations) whose needs for loans, investments, and financial services have not been fully met by traditional financial institutions, particularly in the areas of promoting homeownership, developing affordable housing, and stimulating small business development, as well as providing financial services to those that have not previously accessed financial institutions. The Fund's programs are designed to address the unique capitalization and/or technical capacity needs of CDFIs and other community development entities, so that they may better meet the needs of their particular target markets through loans, investments, financial services and other related activities.

Pursuant to the Act, in 2001, the Fund completed and published the Native American Lending Study ("the Study"), which identifies significant barriers to lending and investment in Native American, Alaska Native and Native Hawaiian communities and strategies for overcoming those barriers. One of the barriers identified by the Study is the small number of CDFIs and other financial institutions in Native American, Alaska Native and Native Hawaiian communities. Since CDFIs are important tools for developing self-sustaining economies in many underserved communities, the Fund seeks to assist Native American, Alaska Native and Native Hawaiian communities to create and develop CDFIs that serve such communities.

In Fiscal Year 2003, the components of the CDFI Program, the NACD Program, the New Markets Tax Credit ("NMTC") Program, and the BEA Program (each described below), together constitute a continuum of programmatic and investment alternatives to support financial institutions in their efforts to provide capital and financial services to underserved communities. These program alternatives range from capacity-building and technical assistance grants to emerging entities, to financial investments to capitalize CDFIs, to community development investment incentives for insured depository institutions, to Federal tax credit incentives for community development investors:

(1) *Technical Assistance Component (CDFI Program):* Through the Technical Assistance Component of the CDFI Program, the Fund provides technical assistance ("TA") grants to CDFIs, and entities proposing to become CDFIs, in order to build their capacity to better address the community development and capital access needs of their particular target markets including, but not limited to, entities specifically serving or proposing to serve Native American, Alaska Native and/or Native Hawaiian communities. The FY 2003 and 2004 NOFA for the Technical Assistance Component is published in this issue of the **Federal Register**.

(2) *Native American CDFI Development Program:* Through the NACD Program, the Fund may provide TA grants to entities in order to create CDFIs designed to address the community development and capital access needs of Native American, Alaska Native and/or Native Hawaiian communities. The FY 2003 and 2004 NOFA for the NACD Program is published in this issue of the **Federal Register**. Interested parties should be aware that implementation of the FY 2003/04 NOFA for the NACD Program is contingent on the appropriation of funds for the purposes enumerated in the NOFA; as of the date of this NOFA, said appropriation is pending with Congress. The Fund will issue a notice on its Web site, at *http://www.cdfifund.gov*, at such time that the Fund has the authority to implement the FY 2003/04 NOFA for the NACD Program.

(3) *Financial Assistance Component (CDFI Program):* Through the Financial Assistance Component of the CDFI Program the Fund makes financial investments in, and provides TA grants to, CDFIs that have comprehensive business plans for creating demonstrable community development impact through the deployment of capital within their respective target markets and CDFIs that demonstrate the ability to effectively leverage private sector sources of capital. The FY 2003 NOFA for the Financial Assistance Component is published in this issue of the **Federal Register**.

(4) *New Markets Tax Credit Program:* Through the NMTC Program, the Fund provides an incentive to investors in the form of a tax credit over seven years, which is expected to stimulate investment in private capital that, in turn, will facilitate economic and community development in low-income communities. The calendar year 2003 Notice of Allocation Availability for the NMTC Program will be published in the **Federal Register** at a later date.

(5) *Bank Enterprise Award Program:* Through the BEA Program, the Fund provides financial incentives to insured depository institutions for the purpose of promoting investments in, or other support to, CDFIs and facilitating increased lending and provision of financial and other services in economically distressed communities. The FY 2003 NOFA for the BEA Program is published in this issue of the **Federal Register**.

The revised interim rule for the CDFI Program (12 CFR 1805) and the revised interim rule for the BEA Program (12 CFR 1806) are also published in this issue of the **Federal Register**. Please refer to the program regulations for an in-depth understanding of the respective programs.

The following table provides a brief summary of certain aspects found in each NOFA for the Fund's components or programs for FY 2003 and is intended to offer guidance to potential applicants as to which components or programs they might be eligible to apply. Please refer to each individual NOFA for specific application, eligibility, and evaluation information for the particular component or program for FY 2003.

Component or program	Purpose; types and amounts of assistance available	Eligible applicants	Application deadlines
Technical Assistance Component (CDFI Program).	TA grants to build capacity to share target markets; up to $50,000 per award; up to $100,000 per award for entities principally serving or proposing to serve Native American, Alaska Native, or Native Hawaiian communities.	CDFIs and other entities proposing to become CDFIs; except those that have been previously selected to receive in aggregate over $250,000 in TA or FA from the Fund.	Applications will be accepted and evaluated on a first-come, first-reviewed basis, beginning with the date of this NOFA, through May 31, 2004 (subject to FY 2004 funding availability).
Native American CDFI Development ("NACD") Program.	TA grants to build capacity to create CDFIs to serve target markets; up to $100,000 per award.	Entities that are not, or will not become certified CDFIs but instead plan to create CDFIs to principally serve Native American, Alaska Native and/or Native Hawaiian communities.	Applications will be accepted and evaluated on a first-come, first-reviewed basis, beginning with the date of this NOFA, through May 31, 2004 (subject to FY 2003 and 2004 funding availability).
Financial Assistance Component (CDFI Program).	To (i) address community development finance needs in "Hot Zones," and/or (ii) increase affordable homeownership opportunities, increase homeownership opportunities for Other Targeted Populations, generate employment opportunities, and/or expand the availability of financial services to people who have not previously had a banking relationship with a financial institution. FA investments (grants, loans, equity investments, secondary capital accounts, deposits, credit union shares) and TA grants; up to $1,000,000 per award for Category I CDFIs and up to $2,000,000 per award for Category II CDFIs.	*Category I* includes CDFIs that have capitalization needs up to and including $1,000,000 and total assets as of December 31, 2002 that range up to $250 million (for insured depository institutions and depository institution holding companies), up to $25 million (for insured credit unions), or up to $15 million for other CDFIs; *Category II* includes CDFIs with assets above those ranges and/or that can effectively deploy funding in an amount in excess of $1,000,000, either to leverage greater private sector resources in support of their lending and investing activities (through funding a loan loss reserve or credit enhancement), or to develop and effectively provide innovative financial products and services that address the capital needs of particularly underserved markets.	March 10, 2003.
Bank Enterprise Award ("BEA") Program.	Grants	FDIC insured depository institutions.	July 17, 2003 for six month assessment period and February 25, 2004 for twelve month assessment period.
New Markets Tax Credit ("NMTC") Program.	Federal tax credits for investors	Community Development Entities, certified by the Fund.	To be determined.

An applicant may only apply for an award through one of the CDFI Program Components or the NACD Program, with the sole exception of a certified CDFI that applies for funds through the NACD Program in collaboration with a Native American Partner (such a CDFI may also apply for the CDFI Program, provided that the applications seek funding for different activities). While an applicant may receive only one award through the CDFI Program, an applicant, its Subsidiaries or Affiliates may apply for and receive both a tax credit allocation through the NMTC Program and an award through the CDFI Program or the NACD Program.

III. Hot Zones and Programmatic Priorities

Through the FY 2003 NOFA for the Financial Assistance Component of the CDFI Program, the Fund intends to target its resources and provide financial assistance awards to CDFIs that will use award proceeds to:

(a) Serve *Hot Zones*, meaning geographic areas designated by the Fund as having greater levels of economic distress, and/or

(b) Achieve the Fund's FY 2003 *Programmatic Priorities*, which are:

(i) To increase homeownership opportunities that are affordable to Low-Income households, and

(ii) To increase homeownership opportunities for Other Targeted Populations (as said term is defined in the FY 2003 NOFA for the Financial Assistance Component).

For purposes of the FY 2003 NOFA for the Financial Assistance Component, the Hot Zones (and the Fund's methodology for Hot Zone designation) are identified through the Fund's Web site at *http://www.cdfifundhelp.gov* and the Financial Assistance Component application.

IV. Funding Availability

Subject to funding availability, and provided that the Fund deems it appropriate, the Fund expects to make funds available for Fiscal Year 2003 awards (and FY 2004 awards, as the case may be) as follows:

(a) *Technical Assistance Component:* approximately $13 million (including approximately $3 million for entities

serving or proposing to serve Native American, Alaska Native, or Native Hawaiian communities) for FY 2003 awards, and approximately $4.5 million for FY 2004 awards, in appropriated funds;

(b) *NACD Program:* approximately $3 million for FY 2003 awards, and approximately $1.5 million for FY 2004 awards, in appropriated funds;

(c) *Financial Assistance Component:* approximately $30 million for FY 203 awards, in appropriated funds; and

(d) *BEA Program:* approximately $17 million for FY 2003 awards, and approximately $8 million for FY 2004 awards, in appropriated funds.

The Fund reserves the right to re-allocate funds from the amount that is anticipated to be available under any particular NOFA, to other Fund programs, particularly if the Fund determines that the number of awards made under a particular NOFA(s) is/are fewer than projected based on the applications received. The Fund, in its sole discretion, reserves the right to award amounts in excess of the anticipated maximum award if the Fund deems it appropriate. Further, the Fund reserves the right to fund, in whole or in part, any, all, or none of the applications submitted in response to any of the NOFAs.

FOR FURTHER INFORMATION CONTACT: If you have any questions about the programmatic requirements for the CDFI Program or the NACD Program, contact the Fund's Program Operations Manager. If you have any questions about the programmatic requirements for the BEA Program, contact the Fund's Depository Institutions Manager. If you have any questions about the programmatic requirements for the NMTC Program, contact the Fund's Financial Equity Manager. If you wish to request an application or have questions regarding administrative requirements for any of the Fund's programs, contact the Fund's Awards Manager. The Program Operations Manager, the Depository Institutions Manager, the Financial Equity Manager and the Awards Manager may be reached by e-mail at *cdfihelp@cdfi.treas.gov,* by telephone at (202) 622–6355, by facsimile at (202) 622–7754, or by mail to CDFI Fund, 601 13th Street, NW., Suite 200 South, Washington, DC 20005. These are not toll free numbers. Allow at least one to two weeks from the date the Fund receives a request for receipt of the application. Applications and other information regarding the Fund and its programs may be accessed and/or downloaded from the Fund's Web site at *http://www.cdfifund.gov.*

Information Sessions

In connection with the Fiscal Year 2003 funding rounds of its programs, the Fund may conduct Information Sessions to disseminate information to organizations contemplating applying to, and other organizations interested in learning about, the Technical Assistance and the Financial Assistance Components of the CDFI Program, the NACD Program, and the BEA Program. For further information on the Fund's Information Sessions, dates and locations, or to register online to attend an Information Session, please visit the Fund's Web site at *http://www.cdfifund.gov.* If you do not have Internet access, you may register by calling the Fund at (202) 622–8401.

(Catalog of Federal Domestic Assistance: 21.020, 21.021)

Authority: 12 U.S.C. 1834a; 4703, 4703 note, 4704, 4706, 4707, 4713, 4717; 31 U.S.C. 321; 12 CFR part 1805; 12 CFR part 1806; 26 U.S.C. 45D.

Dated: January 27, 2003.

Tony T. Brown,

Director, Community Development Financial Institutions Fund.

[FR Doc. 03–2341 Filed 2–3–03; 8:45 am]

BILLING CODE 4810–70–P

Federal Register

Tuesday,
February 4, 2003

Part III

Department of Labor

Employment and Training Administration

Labor Surplus Area Classification Under Executive Orders 12073 and 10582; Notice

DEPARTMENT OF LABOR

Employment and Training Administration

Labor Surplus Area Classification Under Executive Orders 12073 and 10582

ACTION: Notice.

EFFECTIVE DATE: The annual list of labor surplus areas is effective October 1, 2002 for all States.

SUMMARY: The purpose of this notice is to announce the annual list of labor surplus areas for Fiscal Year 2003.

FOR FURTHER INFORMATION CONTACT: Gay Gilbert, Division Chief, U.S. Employment Service, Employment and Training Administration, 200 Constitution Avenue, NW., Room C 4512, Washington, DC 20210. Telephone: (202) 693–3046.

SUPPLEMENTARY INFORMATION: The Department of Labor regulations implementing Executive Orders 12073 and 10582 are set forth at 20 CFR part 654, subparts A and B. These regulations require the Assistant Secretary of Labor to classify jurisdictions as labor surplus areas pursuant to the criteria specified in the regulations and to publish annually a list of labor surplus areas. Pursuant to those regulations the Assistant Secretary of Labor is hereby publishing the annual list of labor surplus areas.

In addition, the regulations provide an exceptional circumstance criteria for classifying labor surplus areas when catastrophic events, such as natural disasters, plant closings, and contract cancellations are expected to have a long-term impact on labor market area conditions, discounting temporary or seasonal factors.

Dated: January 16, 2003.

Emily Stover DeRocco,

Assistant Secretary of Labor.

Eligible Labor Surplus Areas

Procedures for Classifying Labor Surplus Areas

Labor surplus areas are classified on the basis of civil jurisdictions. Civil jurisdictions are now defined as all cities with a population of at least 25,000 and all counties. Townships of 25,000 or more population are also considered as civil jurisdictions in 4 states (Michigan, New Jersey, New York, and Pennsylvania). In Connecticut, Massachusetts, Puerto Rico, and Rhode Island where counties have very limited or no government functions, the classifications are done for individual towns.

A civil jurisdiction is classified as a labor surplus area when its average unemployment rate was at least 20 percent above the average unemployment rate for all states (including the District of Columbia and Puerto Rico) during the previous two calendar years. During periods of high national unemployment, the 20 percent ratio is disregarded and an area is classified as a labor surplus area if its unemployment rate during the previous two calendar years was ten percent or more. This ten percent ceiling concept comes into operation whenever the two-year average unemployment rate for all states was 8.3 percent or above (*i.e.*, 8.3 percent times the 1.20 ratio equals ten percent). Similarly, a "floor" concept of six percent is used during periods of low national unemployment for an area to be classified as a labor surplus area. The six percent "floor" comes into effect whenever the average unemployment rate for all states during the two-year reference period was five percent or less.

The classification procedures also provide for the designation of labor surplus areas under exceptional circumstance criteria. The exceptional circumstance procedures permit the regular classification criteria to be waived when an area experiences a significant increase in unemployment which is not temporary or seasonal and which was not adequately reflected in the data for the two-year reference period. In order for an area to be classified as a labor surplus area under the exceptional circumstance criteria, the State Workforce Agency must submit a petition requesting such classification to the U.S. Department of Labor's Employment and Training Administration (ETA). The current conditions for exceptional circumstance classification are: an area unemployment rate of at least six percent for each of the three most recent months; projected unemployment rate of at least six percent for each of the next twelve months; and documented information that the exceptional circumstance event has already occurred. The State Workforce Agency may file petitions on behalf of civil jurisdictions, as well as Metropolitan Statistical Areas or Primary Metropolitan Statistical Areas, as defined by the Office of Management and Budget. The addresses of State Workforce Agencies are available at the end of this description.

The Department of Labor issues the labor surplus area listing on a fiscal year basis. The listing becomes effective each October 1 and remains in effect through the following September 30. The reference period used in preparing the current list was January 2000 through December 2001. The national average unemployment rate during this period (including data for Puerto Rico) fell below five percent. As a result, the six percent "floor" rate explained in the second paragraph, went into effect for the Fiscal Year 2003 labor surplus area classifications. Therefore, areas are included on the current annual labor surplus area listing because their average unemployment rate during the reference period was six percent or above. During the course of the fiscal year, the annual listing is updated on the basis of exceptional circumstances petitions submitted by State Workforce Agencies and approved by the Employment and Training Administration. The Fiscal Year 2003 classifications will be in effect from October 1, 2002, through September 30, 2003.

State Workforce Agencies

Alabama	Department of Industrial Relations, 649 Monroe St., Montgomery 36130.
Alaska	Department of Labor & Workforce Development, PO Box 25509, Juneau, 99802.
Arizona	Arizona Department of Economic Security, PO Box 6123, Phoenix 85005.
Arkansas	Employment Security Department, Department of Labor, PO Box 2981, Little Rock 72203.
California	Employment Development Department, 800 Capitol Mall, Sacramento 95814.
Colorado	Department Of Labor and Employment, 1515 Arapahoe Street, Denver 80233–2117.
Connecticut	Connecticut Labor Dept., Office of Workforce Competitiveness, 805 Brook Street, Building #4, Rocky Hill CT 06067.
Delaware	Delaware Department of Labor, Division of Employment & Training, 4425 North Market Street, Wilmington, 19802.
District of Columbia	Department of Employment Services, 609 H Street, NE Washington, DC 20002.
Florida	Agency for Workforce Innovation, Atkins Building, 1320 Executive Center Drive, Tallahassee 32399–0667.

Georgia	Georgia Department of Labor, 148 International Blvd, NE, Atlanta 30303.
Guam	Department of Labor, Government of Guam, PO Box 23548 GMF, Agana 96921.
Hawaii	Department of Labor and Industrial Relations, 830 Punchbowl St., Honolulu 96813.
Idaho	Department of Labor, 317 Main St., PO Box 35, Boise 83735.
Illinois	Department of Employment Security, 401 South State St., Chicago 60605–1289.
Indiana	Department of Employment and Training Services, 10 North Senate Ave., Indianapolis 46204.
Iowa	Iowa Workforce Development, 1000 Grand Ave., Des Moines 50319.
Kansas	Dept of Human Resources, Division of Employment, 401 Topeka Ave., Topeka 66612.
Kentucky	Department of Employment Services, 275 East Main St., Frankfort 40621.
Louisiana	Department of Labor, PO Box 94094, Baton Rouge 70804–9094.
Maine	Department of Labor, Bureau of Employment Services, 55 State Street Station House, Augusta 04330–0055.
Maryland	Department of Economic and Employment Development, 1100 N. Eutaw St., Baltimore 21201.
Massachusetts	Division of Employment and Training, 19 Stanford St., Charles F. Hurley Bldg., Boston, 02114.
Michigan	Department of Career Development, Employment Service Agency, Victor Office Center, 201 N. Washington Square, 5th Floor, Lansing 48913.
Minnesota	Department of Economic Security, 390 North Robert St., St. Paul 55101.
Mississippi	Employment Security Commission, 1520 W. Capital St., PO Box 1699, Jackson 39215.
Missouri	Department of Labor & Industrial Relations, 3315 West Truman Boulevard, PO Box 504, Jefferson City 65102.
Montana	Dept. of Labor & Industry, Employment Security Division of Montana, PO Box 1728, Helena 59624.
Nebraska	Dept. of Labor, Div of Employment, 550 South 16th St., PO Box 94600, State House Station, Lincoln 68509.
Nevada	Nevada Department of Employment, Training and Rehabilitation; 500 East 3rd St., Carson City 89713.
New Hampshire	Department of Employment Security, 32 S. Main St., Room 204, Concord 03301.
New Jersey	Department of Labor, John Fitch Plaza, Trenton 08625.
New Mexico	Department of Labor, 401 Broadway, NE., PO Box 1928, Albuquerque 87103.
New York	Department of Labor, State Campus, Building 12, Albany 12240.
North Carolina	Employment Security Commission of North Carolina, 700 Wade Ave., PO Box 25903, Raleigh 27611.
North Dakota	Job Service North Dakota, 1000 E. Divide Ave., PO Box 5507, Bismarck, 58506–5507.
Ohio	Bureau of Employment Services, 145 South Front St., PO Box 1618, Columbus 43216.
Oklahoma	Employment Security Commission, 200 Will Rogers Memorial Office Bldg., Oklahoma City 73105.
Oregon	Employment Department, Dept of Human Resources, 875 Union St., N.E., Salem 97311.
Pennsylvania	Department of Labor & Industry, 1720 Labor & Industry Bldg. Harrisburg 17121.
Puerto Rico	Employment Services Division, Right To Employment Administration, PO Box 364452, San Juan, PR 00936.
Rhode Island	Department of Labor & Training, 1511 Pontiac Avenue, Cranston, 02920–4407.
South Carolina	Employment & Training, Employment Security Commission, PO Box 1406, Columbia 29202.
South Dakota	Department of Labor, 700 Governors Drive, Pierre 57501–2291.
Tennessee	TN Department of Labor & Workforce Development, Division of Employment Security, 500 James Robertson Parkway 12th Floor, Davy Crockett Tower, Nashville 37245–1700.
Texas	Employment Services, Texas Workforce Commission, 101 East 15th Street 440T, Austin, 78778.
Utah	Department of Workforce Services, 140 East 300 South, PO Box 45249, Salt Lake City 84111.
Vermont	Department of Employment & Training, PO Box 488, 5 Green Mountain Drive, Montpelier 05601–0488.
Virgin Islands	Department of Labor, 53A & 54B Kronprindsen Gade, Charlotte Amalie, 00802.
Virginia	Virginia Employment Commission, 703 East Main Street, Richmond 23219.
Washington	Employment Security Department, PO Box 9046, Olympia 98507–9046.
West Virginia	Bureau of Employment Programs, 112 California Ave., Charleston 25305–0112.
Wisconsin	Division of Workforce Solutions, Department of Workforce Development, 201 East Washington Avenue, Room A200, Madison 53703.
Wyoming	Division of Employment Resources, Department of Employment, PO Box 2760, Casper 82602.

LABOR SURPLUS AREAS—OCTOBER 1, 2002 THROUGH SEPTEMBER 30, 2003

Eligible labor surplus areas	Civil jurisdictions included
ALABAMA	
ANNISTON CITY	ANNISTON CITY IN CALHOUN COUNTY
BARBOUR COUNTY	BARBOUR COUNTY
BESSEMER CITY	BESSEMER CITY IN JEFFERSON COUNTY
BIBB COUNTY	BIBB COUNTY
BULLOCK COUNTY	BULLOCK COUNTY
BUTLER COUNTY	BUTLER COUNTY
CHOCTAW COUNTY	CHOCTAW COUNTY
CLARKE COUNTY	CLARKE COUNTY
CLAY COUNTY	CLAY COUNTY
COFFEE COUNTY	COFFEE COUNTY
COLBERT COUNTY	COLBERT COUNTY
CONECUH COUNTY	CONECUH COUNTY
COOSA COUNTY	COOSA COUNTY
COVINGTON COUNTY	COVINGTON COUNTY
CRENSHAW COUNTY	CRENSHAW COUNTY
DALLAS COUNTY	DALLAS COUNTY
FAYETTE COUNTY	FAYETTE COUNTY
FLORENCE CITY	FLORENCE CITY IN LAUDERDALE COUNTY
FRANKLIN COUNTY	FRANKLIN COUNTY
GADSDEN CITY	GADSDEN CITY IN

LABOR SURPLUS AREAS—OCTOBER 1, 2002 THROUGH SEPTEMBER 30, 2003—Continued

Eligible labor surplus areas	Civil jurisdictions included
	ETOWAH COUNTY
GENEVA COUNTY	GENEVA COUNTY
GREENE COUNTY	GREENE COUNTY
HALE COUNTY	HALE COUNTY
HENRY COUNTY	HENRY COUNTY
JACKSON COUNTY	JACKSON COUNTY
LAMAR COUNTY	LAMAR COUNTY
LAWRENCE COUNTY	LAWRENCE COUNTY
LOWNDES COUNTY	LOWNDES COUNTY
MACON COUNTY	MACON COUNTY
MARION COUNTY	MARION COUNTY
MOBILE CITY	MOBILE CITY IN
	MOBILE COUNTY
MONROE COUNTY	MONROE COUNTY
PERRY COUNTY	PERRY COUNTY
PICKENS COUNTY	PICKENS COUNTY
PIKE COUNTY	PIKE COUNTY
PRICHARD CITY	PRICHARD CITY IN
	MOBILE COUNTY
RANDOLPH COUNTY	RANDOLPH COUNTY
SUMTER COUNTY	SUMTER COUNTY
TALLADEGA COUNTY	TALLADEGA COUNTY
WALKER COUNTY	WALKER COUNTY
WASHINGTON COUNTY	WASHINGTON COUNTY
WILCOX COUNTY	WILCOX COUNTY
WINSTON COUNTY	WINSTON COUNTY
ALASKA	
ALEUTIAN ISLAND WEST CENSUS AREA	ALEUTIAN ISLAND WEST CENSUS AREA
BETHEL CENSUS AREA	BETHEL CENSUS AREA
BRISTOL BAY BOROUGH DIV	BRISTOL BAY BOROUGH DIV
DENALI BOROUGH	DENALI BOROUGH
DILLINGHAM CENSUS AREA	DILLINGHAM CENSUS AREA
FAIRBANKS CITY	FAIRBANKS CITY IN
	FAIRBANKS NORTH STAR BOROUGH
HAINES BOROUGH	HAINES BOROUGH
KENAI PENINSULA BOROUGH	KENAI PENINSULA BOROUGH
KETCHIKAN GATEWAY BOROUGH	KETCHIKAN GATEWAY BOROUGH
KODIAK ISLAND BOROUGH	KODIAK ISLAND BOROUGH
LAKE AND PENINSULA BOROUGH	LAKE AND PENINSULA BOROUGH
MATANUSKA-SUSITNA BOROUGH	MATANUSKA-SUSITNA BOROUGH
NOME CENSUS AREA	NOME CENSUS AREA
NORTH SLOPE BOROUGH	NORTH SLOPE BOROUGH
NORTHWEST ARCTIC BOROUGH	NORTHWEST ARCTIC BOROUGH
PRINCE OF WALES OUTER KETCHIKAN	PRINCE OF WALES OUTER KETCHIKAN
SKAGWAY-HOONAH-ANGOON CEN AREA	SKAGWAY-HOONAH-ANGOON CEN AREA
SOUTHEAST FAIRBANKS CENSUS AREA	SOUTHEAST FAIRBANKS CENSUS AREA
VALDEZ CORDOVA CENSUS AREA	VALDEZ CORDOVA CENSUS AREA
WADE HAMPTON CENSUS AREA	WADE HAMPTON CENSUS AREA
WRANGELL-PETERSBURG CENSUS AREA	WRANGELL-PETERSBURG CENSUS AREA
YAKUTAT BOROUGH	YAKUTAT BOROUGH
YUKON-KOYUKUK CENSUS AREA	YUKON-KOYUKUK CENSUS AREA
ARIZONA	
APACHE COUNTY	APACHE COUNTY
AVONDALE CITY	AVONDALE CITY
	MARICOPA COUNTY
BALANCE OF COCONINO COUNTY	COCONINO COUNTY LESS
	FLAGSTAFF CITY
GRAHAM COUNTY	GRAHAM COUNTY
GREENLEE COUNTY	GREENLEE COUNTY
LA PAZ COUNTY	LA PAZ COUNTY
NAVAJO COUNTY	NAVAJO COUNTY
SANTA CRUZ COUNTY	SANTA CRUZ COUNTY
YUMA CITY	YUMA CITY IN
	YUMA COUNTY
BALANCE OF YUMA COUNTY	YUMA COUNTY LESS
	YUMA CITY
ARKANSAS	
ASHLEY COUNTY	ASHLEY COUNTY
BRADLEY COUNTY	BRADLEY COUNTY
CALHOUN COUNTY	CALHOUN COUNTY
CHICOT COUNTY	CHICOT COUNTY

LABOR SURPLUS AREAS—OCTOBER 1, 2002 THROUGH SEPTEMBER 30, 2003—Continued

Eligible labor surplus areas	Civil jurisdictions included
CLAY COUNTY	CLAY COUNTY
CLEVELAND COUNTY	CLEVELAND COUNTY
CONWAY COUNTY	CONWAY COUNTY
BALANCE OF CRITTENDEN COUNTY	CRITTENDEN COUNTY LESS WEST MEMPHIS CITY
CROSS COUNTY	CROSS COUNTY
DALLAS COUNTY	DALLAS COUNTY
DESHA COUNTY	DESHA COUNTY
DREW COUNTY	DREW COUNTY
GREENE COUNTY	GREENE COUNTY
JACKSON COUNTY	JACKSON COUNTY
LAFAYETTE COUNTY	LAFAYETTE COUNTY
LAWRENCE COUNTY	LAWRENCE COUNTY
LEE COUNTY	LEE COUNTY
MISSISSIPPI COUNTY	MISSISSIPPI COUNTY
MONROE COUNTY	MONROE COUNTY
OUACHITA COUNTY	OUACHITA COUNTY
PERRY COUNTY	PERRY COUNTY
PHILLIPS COUNTY	PHILLIPS COUNTY
PINE BLUFF CITY	PINE BLUFF CITY JEFFERSON COUNTY
POINSETT COUNTY	POINSETT COUNTY
RANDOLPH COUNTY	RANDOLPH COUNTY
SHARP COUNTY	SHARP COUNTY
ST. FRANCIS COUNTY	ST. FRANCIS COUNTY
VAN BUREN COUNTY	VAN BUREN COUNTY
WOODRUFF COUNTY	WOODRUFF COUNTY
CALIFORNIA	
ALPINE COUNTY	ALPINE COUNTRY
AZUSA CITY	AZUSA CITY IN LOS ANGELES COUNTY
BAKERSFIELD CITY	BAKERSFIELD CITY IN KERN COUNTY
BALDWIN PARK CITY	BALDWIN PARK CITY IN LOS ANGELES COUNTY
BANNING CITY	BANNING CITY IN RIVERSIDE COUNTY
BELL CITY	BELL CITY IN LOS ANGELES COUNTY
BELL GARDENS CITY	BELL GARDENS CITY IN LOS ANGELES COUNTY
BALANCE OF BUTTE COUNTY	BUTTE COUNTY LESS CHICO CITY PARADISE CITY
CALAVERAS COUNTY	CALAVERAS COUNTY
CALEXICO CITY	CALEXICO CITY IN IMPERIAL COUNTY
CERES CITY	CERES CITY IN STANISLAUS COUNTY
CHICO CITY	CHICO CITY IN BUTTE COUNTY
CLOVIS CITY	CLOVIS CITY IN FRESNO COUNTY
COLTON CITY	COLTON CITY IN SAN BERNARDINO COUNTY
COLUSA COUNTY	COLUSA COUNTY
COMPTON CITY	COMPTON CITY IN LOS ANGELES COUNTY
DEL NORTE COUNTY	DEL NORTE COUNTY
DELANO CITY	DELANO CITY IN KERN COUNTY
EL CENTRO CITY	EL CENTRO CITY IN IMPERIAL COUNTY
EL MONTE CITY	EL MONTE CITY IN LOS ANGELES COUNTY
EUREKA CITY	EUREKA CITY IN HUMBOLDT COUNTY
FRESNO CITY	FRESNO CITY IN FRESNO COUNTY
BALANCE OF FRESNO COUNTY	FRESNO COUNTY LESS CLOVIS CITY FRESNO CITY

LABOR SURPLUS AREAS—OCTOBER 1, 2002 THROUGH SEPTEMBER 30, 2003—Continued

Eligible labor surplus areas	Civil jurisdictions included
GLENN COUNTY	GLENN COUNTY
HANFORD CITY	HANFORD CITY IN KINGS COUNTY
HEMET CITY	HEMET CITY IN RIVERSIDE COUNTY
HOLISTER CITY	HOLISTER CITY IN SAN BENITO COUNTY
BALANCE OF HUMBOLDT COUNTY	HUMBOLDT COUNTY LESS EUREKA CITY
HUNTINGTON PARK CITY	HUNTINGTON PARK CITY IN LOS ANGELES COUNTY
BALANCE OF IMPERIAL COUNTY	IMPERIAL COUNTY LESS CALEXICO CITY EL CENTRO CITY
INDIO CITY	INDIO CITY IN RIVERSIDE COUNTY
INGLEWOOD CITY	INGLEWOOD CITY IN LOS ANGELES COUNTY
BALANCE OF KERN COUNTY	KERN COUNTY LESS BAKERSFIELD CITY DELANO CITY RIDGECREST CITY
BALANCE OF KINGS COUNTY	KINGS COUNTY LESS HANFORD CITY
LA PUENTE CITY	LA PUENTE CITY IN LOS ANGELES COUNTY
LAKE COUNTY	LAKE COUNTY
LAKE ELSINORE CITY	LAKE ELSINORE CITY IN RIVERSIDE COUNTY
LASSEN COUNTY	LASSEN COUNTY
LODI CITY	LODI CITY IN SAN JOAQUIN COUNTY
LOS ANGELES CITY	LOS ANGELES CITY IN LOS ANGELES COUNTY
LOS BANOS CITY	LOS BANOS CITY IN MERCED COUNTY
LYNWOOD CITY	LYNWOOD CITY IN LOS ANGELES COUNTY
MADERA CITY	MADERA CITY IN MADERA COUNTY
BALANCE OF MADERA COUNTY	MADERA COUNTY LESS MADERA CITY
MANTECA CITY	MANTECA CITY IN SAN JOAQUIN COUNTY
MARINA CITY	MARINA CITY IN MONTEREY COUNTY
MARIPOSA COUNTY	MARIPOSA COUNTY
MAYWOOD CITY	MAYWOOD CITY IN LOS ANGELES COUNTY
MENDOCINO COUNTY	MENDOCINO COUNTY
MERCED CITY	MERCED CITY IN MERCED COUNTY
BALANCE OF MERCED COUNTY	MERCED COUNTY LESS LOS BANOS CITY MERCED CITY
MODESTO CITY	MODESTO CITY IN STANISLAUS COUNTY
MODOC COUNTY	MODOC COUNTY
BALANCE OF MONTEREY COUNTY	MONTEREY COUNTY LESS MARINA CITY MONTEREY CITY SALINAS CITY SEASIDE CITY
OXNARD CITY	OXNARD CITY IN VENTURA COUNTY
PARAMOUNT CITY	PARAMOUNT CITY IN LOS ANGELES COUNTY
PERRIS CITY	PERRIS CITY IN RIVERSIDE COUNTY
PICO RIVERA CITY	PICO RIVERA CITY IN LOS ANGELES COUNTY
PLUMAS COUNTY	PLUMAS COUNTY

LABOR SURPLUS AREAS—OCTOBER 1, 2002 THROUGH SEPTEMBER 30, 2003—Continued

Eligible labor surplus areas	Civil jurisdictions included
POMONA CITY	POMONA CITY IN LOS ANGELES COUNTY
PORTERVILLE CITY	PORTERVILLE CITY IN TULARE COUNTY
REDDING CITY	REDDING CITY IN SHASTA COUNTY
ROSEMEAD CITY	ROSEMEAD CITY IN LOS ANGELES COUNTY
SALINAS CITY	SALINAS CITY IN MONTEREY COUNTY
SAN BERNARDINO CITY	SAN BERNARDINO CITY IN SAN BERNARDINO COUNTY
SAN JACINTO CITY	SAN JACINTO CITY IN RIVERSIDE COUNTY
BALANCE OF SAN JOAQUIN COUNTY	SAN JOAQUIN COUNTY LESS LODI CITY MANTECA CITY STOCKTON CITY TRACEY CITY
SAN PABLO CITY	SAN PABLO CITY IN CONTRA COSTA COUNTY
SANTA PAULA CITY	SANTA PAULA CITY IN VENTURA COUNTY
SEASIDE CITY	SEASIDE CITY IN MONTEREY COUNTY
BALANCE OF SHASTA COUNTY	SHASTA COUNTY LESS REDDING CITY
SIERRA COUNTY	SIERRA COUNTY
SISKIYOU COUNTY	SISKIYOU COUNTY
SOUTH GATE CITY	SOUTH GATE CITY IN LOS ANGELES COUNTY
BALANCE OF STANISLAUS COUNTY	STANISLAUS COUNTY LESS CERES CITY MODESTO CITY TURLOCK CITY
STOCKTON CITY	STOCKTON CITY IN SAN JOAQUIN COUNTY
BALANCE OF SUTTER COUNTY	SUTTER COUNTY LESS YUBA CITY
TEHAMA COUNTY	TEHAMA COUNTY
TRACEY CITY	TRACEY CITY IN SAN JOAQUIN COUNTY
TRINITY COUNTY	TRINITY COUNTY
TULARE CITY	TULARE CITY IN TULARE COUNTY
BALANCE OF TULARE COUNTY	TULARE COUNTY LESS PORTERVILLE CITY TULARE CITY VISALIA CITY
TURLOCK CITY	TURLOCK CITY IN STANISLAUS COUNTY
VICTORVILLE CITY	VICTORVILLE CITY IN SAN BERNARDINO COUNTY
VISALIA CITY	VISALIA CITY IN TULARE COUNTY
WATSONVILLE CITY	WATSONVILLE CITY IN SANTA CRUZ COUNTY
YUBA CITY	YUBA CITY IN SUTTER COUNTY
YUBA COUNTY	YUBA COUNTY
COLORADO	
CONEJOS COUNTY	CONEJOS COUNTY
COSTILLA COUNTY	COSTILLA COUNTY
DOLORES COUNTY	DOLORES COUNTY
RIO GRANDE COUNTY	RIO GRANDE COUNTY
SAGUACHE COUNTY	SAGUACHE COUNTY
SAN JUAN COUNTY	SAN JUAN COUNTY
DISTRICT OF COLUMBIA	
WASHINGTON DC CITY	WASHINGTON DC CITY IN DISTRICT OF COLUMBIA
FLORIDA	
DELRAY BEACH CITY	DELRAY BEACH CITY IN

LABOR SURPLUS AREAS—OCTOBER 1, 2002 THROUGH SEPTEMBER 30, 2003—Continued

Eligible labor surplus areas	Civil jurisdictions included
	PALM BEACH COUNTY
FORT PIERCE CITY	FORT PIERCE CITY IN ST. LUCIE COUNTY
GLADES COUNTY	GLADES COUNTY
GULF COUNTY	GULF COUNTY
HAMILTON COUNTY	HAMILTON COUNTY
HARDEE COUNTY	HARDEE COUNTY
HENDRY COUNTY	HENDRY COUNTY
HIALEAH CITY	HIALEAH CITY IN MIAMI-DADE COUNTY
HOLMES COUNTY	HOLMES COUNTY
INDIAN RIVER COUNTY	INDIAN RIVER COUNTY
LAUDERDALE LAKES CITY	LAUDERDALE LAKES CITY IN BROWARD COUNTY
MIAMI BEACH CITY	MIAMI BEACH CITY IN MIAMI-DADE COUNTY
MIAMI CITY	MIAMI CITY IN MIAMI-DADE COUNTY
NORTH MIAMI CITY	NORTH MIAMI CITY IN MIAMI-DADE COUNTY
OKEECHOBEE COUNTY	OKEECHOBEE COUNTY
PANAMA CITY	PANAMA CITY IN BAY COUNTY
PORT ST. LUCIE CITY	PORT ST. LUCIE CITY IN ST. LUCIE COUNTY
RIVIERA BEACH CITY	RIVIERA BEACH CITY IN PALM BEACH COUNTY
BALANCE OF ST. LUCIE COUNTY	ST. LUCIE COUNTY LESS FORT PIERCE CITY PORT ST. LUCIE CITY
TAYLOR COUNTY	TAYLOR COUNTY
WEST PALM BEACH CITY	WEST PALM BEACH CITY IN PALM BEACH COUNTY
GEORGIA	
ALBANY CITY	ALBANY CITY IN DOUGHERTY COUNTY
APPLING COUNTY	APPLING COUNTY
ATKINSON COUNTY	ATKINSON COUNTY
BACON COUNTY	BACON COUNTY
BURKE COUNTY	BURKE COUNTY
CALHOUN COUNTY	CALHOUN COUNTY
CHATTAHOOCHEE COUNTY	CHATTAHOOCHEE COUNTY
CLAY COUNTY	CLAY COUNTY
CLINCH COUNTY	CLINCH COUNTY
COLQUITT COUNTY	COLQUITT COUNTY
CRISP COUNTY	CRISP COUNTY
DECATUR COUNTY	DECATUR COUNTY
DOOLY COUNTY	DOOLY COUNTY
EARLY COUNTY	EARLY COUNTY
ELBERT COUNTY	ELBERT COUNTY
EMANUEL COUNTY	EMANUEL COUNTY
GREENE COUNTY	GREENE COUNTY
HANCOCK COUNTY	HANCOCK COUNTY
JEFF DAVIS COUNTY	JEFF DAVIS COUNTY
JEFFERSON COUNTY	JEFFERSON COUNTY
JENKINS COUNTY	JENKINS COUNTY
JOHNSON COUNTY	JOHNSON COUNTY
LA GRANGE CITY	LA GRANGE CITY IN TROUP COUNTY
LAMAR COUNTY	LAMAR COUNTY
LINCOLN COUNTY	LINCOLN COUNTY
MACON COUNTY	MACON COUNTY
MC,DUFFIE COUNTY	MC DUFFIE COUNTY
MERIWETHER COUNTY	MERIWETHER COUNTY
MONTGOMERY COUNTY	MONTGOMERY COUNTY
QUITMAN COUNTY	QUITMAN COUNTY
RANDOLPH COUNTY	RANDOLPH COUNTY
SCREVEN COUNTY	SCREVEN COUNTY
STEWART COUNTY	STEWART COUNTY
TALBOT COUNTY	TALBOT COUNTY
TALIAFERRO COUNTY	TALIAFERRO COUNTY
TATTNALL COUNTY	TATTNALL COUNTY

LABOR SURPLUS AREAS—OCTOBER 1, 2002 THROUGH SEPTEMBER 30, 2003—Continued

Eligible labor surplus areas	Civil jurisdictions included
TELFAIR COUNTY	TELFAIR COUNTY
TERRELL COUNTY	TERRELL COUNTY
TOOMBS COUNTY	TOOMBS COUNTY
TREUTLEN COUNTY	TREUTLEN COUNTY
TURNER COUNTY	TURNER COUNTY
UPSON COUNTY	UPSON COUNTY
WARREN COUNTY	WARREN COUNTY
WHEELER COUNTY	WHEELER COUNTY
WILKES COUNTY	WILKES COUNTY
WORTH COUNTY	WORTH COUNTY
HAWAII	
HAWAII COUNTY	HAWAII COUNTY
KAUAI COUNTY	KAUAI COUNTY
IDAHO	
ADAMS COUNTY	ADAMS COUNTY
BENEWAH COUNTY	BENEWAH COUNTY
BOISE COUNTY	BOISE COUNTY
BONNER COUNTY	BONNER COUNTY
BOUNDARY COUNTY	BOUNDARY COUNTY
CLEARWATER COUNTY	CLEARWATER COUNTY
CUSTER COUNTY	CUSTER COUNTY
ELMORE COUNTY	ELMORE COUNTY
FREMONT COUNTY	FREMONT COUNTY
GEM COUNTY	GEM COUNTY
IDAHO COUNTY	IDAHO COUNTY
BALANCE OF KOOTENAI COUNTY	KOOTENAI COUNTY LESS COEUR D ALENE CITY
LEMHI COUNTY	LEMHI COUNTY
LEWIS COUNTY	LEWIS COUNTY
MINIDOKA COUNTY	MINIDOKA COUNTY
BALANCE OF NEZ PERCE COUNTY	NEZ PERCE COUNTY LESS LEWISTON CITY
PAYETTE COUNTY	PAYETTE COUNTY
POWER COUNTY	POWER COUNTY
SHOSHONE COUNTY	SHOSHONE COUNTY
VALLEY COUNTY	VALLEY COUNTY
WASHINGTON COUNTY	WASHINGTON COUNTY
ILLINOIS	
ALEXANDER COUNTY	ALEXANDER COUNTY
ALTON CITY	ALTON CITY IN MADISON COUNTY
BELLEVILLE CITY	BELLEVILLE CITY IN ST. CLAIR COUNTY
BOONE COUNTY	BOONE COUNTY
CALUMET CITY	CALUMET CITY IN COOK COUNTY
CARPENTERSVILLE CITY	CARPENTERSVILLE CITY IN KANE COUNTY
CARROLL COUNTY	CARROLL COUNTY
CHICAGO CITY	CHICAGO CITY IN COOK COUNTY
CHICAGO HEIGHTS CITY	CHICAGO HEIGHTS CITY IN COOK COUNTY
CICERO CITY	CICERO CITY IN COOK COUNTY
CLAY COUNTY	CLAY COUNTY
CRAWFORD COUNTY	CRAWFORD COUNTY
CUMBERLAND COUNTY	CUMBERLAND COUNTY
DANVILLE CITY	DANVILLE CITY IN VERMILION COUNTY
DE WITT COUNTY	DE WITT COUNTY
DECATUR CITY	DECATUR CITY IN MACON COUNTY
DOLTON VILLAGE	DOLTON VILLAGE IN COOK COUNTY
EAST ST. LOUIS CITY	EAST ST. LOUIS CITY IN ST. CLAIR COUNTY
ELGIN CITY	ELGIN CITY IN COOK COUNTY KANE COUNTY
FAYETTE COUNTY	FAYETTE COUNTY

LABOR SURPLUS AREAS—OCTOBER 1, 2002 THROUGH SEPTEMBER 30, 2003—Continued

Eligible labor surplus areas	Civil jurisdictions included
FRANKLIN COUNTY	FRANKLIN COUNTY
FREEPORT CITY	FREEPORT CITY IN STEPHENSON COUNTY
FULTON COUNTY	FULTON COUNTY
GALLATIN COUNTY	GALLATIN COUNTY
GRANITE CITY	GRANITE CITY IN MADISON COUNTY
GRUNDY COUNTY	GRUNDY COUNTY
HAMILTON COUNTY	HAMILTON COUNTY
HARDIN COUNTY	HARDIN COUNTY
HARVEY CITY	HARVEY CITY IN COOK COUNTY
JASPER COUNTY	JASPER COUNTY
JEFFERSON COUNTY	JEFFERSON COUNTY
JOLIET CITY	JOLIET CITY IN WILL COUNTY
KANKAKEE CITY	KANKAKEE CITY IN KANKAKEE COUNTY
LA SALLE COUNTY	LA SALLE COUNTY
LAWRENCE COUNTY	LAWRENCE COUNTY
MARION COUNTY	MARION COUNTY
MASON COUNTY	MASON COUNTY
MAYWOOD VILLAGE	MAYWOOD VILLAGE IN COOK COUNTY
MERCER COUNTY	MERCER COUNTY
MONTGOMERY COUNTY	MONTGOMERY COUNTY
NORTH CHICAGO CITY	NORTH CHICAGO CITY IN LAKE COUNTY
PERRY COUNTY	PERRY COUNTY
POPE COUNTY	POPE COUNTY
PULASKI COUNTY	PULASKI COUNTY
RICHLAND COUNTY	RICHLAND COUNTY
ROCKFORD CITY	ROCKFORD CITY IN WINNEBAGO COUNTY
ROUND LAKE BEACH VILLAGE	ROUND LAKE BEACH VILLAGE IN LAKE COUNTY
SALINE COUNTY	SALINE COUNTY
STARK COUNTY	STARK COUNTY
UNION COUNTY	UNION COUNTY
WABASH COUNTY	WABASH COUNTY
WAUKEGAN CITY	WAUKEGAN CITY IN LAKE COUNTY
WAYNE COUNTY	WAYNE COUNTY
WILLIAMSON COUNTY	WILLIAMSON COUNTY
INDIANA	
BLACKFORD COUNTY	BLACKFORD COUNTY
EAST CHICAGO CITY	EAST CHICAGO CITY IN LAKE COUNTY
FAYETTE COUNTY	FAYETTE COUNTY
FULTON COUNTY	FULTON COUNTY
GARY CITY	GARY CITY IN LAKE COUNTY
GREENE COUNTY	GREENE COUNTY
LAWRENCE COUNTY	LAWRENCE COUNTY
MARION CITY	MARION CITY IN GRANT COUNTY
MICHIGAN CITY	MICHIGAN CITY IN LA PORTE COUNTY
ORANGE COUNTY	ORANGE COUNTY
PERRY COUNTY	PERRY COUNTY
PULASKI COUNTY	PULASKI COUNTY
STARKE COUNTY	STARKE COUNTY
SULLIVAN COUNTY	SULLIVAN COUNTY
SWITZERLAND COUNTY	SWITZERLAND COUNTY
TERRE HAUTE CITY	TERRE HAUTE CITY IN VIGO COUNTY
IOWA	
CHICKASAW COUNTY	CHICKASAW COUNTY
KANSAS	
ALLEN COUNTY	ALLEN COUNTY
BROWN COUNTY	BROWN COUNTY

LABOR SURPLUS AREAS—OCTOBER 1, 2002 THROUGH SEPTEMBER 30, 2003—Continued

Eligible labor surplus areas	Civil jurisdictions included
CHEROKEE COUNTY	CHEROKEE COUNTY
DONIPHAN COUNTY	DONIPHAN COUNTY
GARDEN CITY	GARDEN CITY IN
	FINNEY COUNTY
GEARY COUNTY	GEARY COUNTY
KANSAS CITY KN	KANSAS CITY KN IN
	WYANDOTTE COUNTY
LINN COUNTY	LINN COUNTY
WOODSON COUNTY	WOODSON COUNTY
KENTUCKY	
ALLEN COUNTY	ALLEN COUNTY
BALLARD COUNTY	BALLARD COUNTY
BATH COUNTY	BATH COUNTY
BELL COUNTY	BELL COUNTY
BREATHITT COUNTY	BREATHITT COUNTY
BRECKINRIDGE COUNTY	BRECKINRIDGE COUNTY
CARTER COUNTY	CARTER COUNTY
CASEY COUNTY	CASEY COUNTY
BALANCE OF CHRISTIAN COUNTY	CHRISTIAN COUNTY LESS
	HOPKINSVILLE CITY
CLAY COUNTY	CLAY COUNTY
CRITTENDEN COUNTY	CRITTENDEN COUNTY
CUMBERLAND COUNTY	CUMBERLAND COUNTY
ELLIOTT COUNTY	ELLIOTT COUNTY
FLOYD COUNTY	FLOYD COUNTY
FULTON COUNTY	FULTON COUNTY
GRAVES COUNTY	GRAVES COUNTY
GRAYSON COUNTY	GRAYSON COUNTY
GREEN COUNTY	GREEN COUNTY
HANCOCK COUNTY	HANCOCK COUNTY
HARLAN COUNTY	HARLAN COUNTY
HOPKINS COUNTY	HOPKINS COUNTY
JOHNSON COUNTY	JOHNSON COUNTY
KNOTT COUNTY	KNOTT COUNTY
LAWRENCE COUNTY	LAWRENCE COUNTY
LEE COUNTY	LEE COUNTY
LETCHER COUNTY	LETCHER COUNTY
LEWIS COUNTY	LEWIS COUNTY
LIVINGSTON COUNTY	LIVINGSTON COUNTY
LOGAN COUNTY	LOGAN COUNTY
MAGOFFIN COUNTY	MAGOFFIN COUNTY
MARSHALL COUNTY	MARSHALL COUNTY
MARTIN COUNTY	MARTIN COUNTY
MC CREARY COUNTY	MC CREARY COUNTY
MC LEAN COUNTY	MC LEAN COUNTY
MENIFEE COUNTY	MENIFEE COUNTY
MONROE COUNTY	MONROE COUNTY
MORGAN COUNTY	MORGAN COUNTY
MUHLENBERG COUNTY	MUHLENBERG COUNTY
NELSON COUNTY	NELSON COUNTY
NICHOLAS COUNTY	NICHOLAS COUNTY
OHIO COUNTY	OHIO COUNTY
PERRY COUNTY	PERRY COUNTY
POWELL COUNTY	POWELL COUNTY
ROCKCASTLE COUNTY	ROCKCASTLE COUNTY
RUSSELL COUNTY	RUSSELL COUNTY
TAYLOR COUNTY	TAYLOR COUNTY
TODD COUNTY	TODD COUNTY
TRIMBLE COUNTY	TRIMBLE COUNTY
UNION COUNTY	UNION COUNTY
BALANCE OF WARREN COUNTY	WARREN COUNTY LESS
	BOWLING GREEN
WAYNE COUNTY	WAYNE COUNTY
WEBSTER COUNTY	WEBSTER COUNTY
WOLFE COUNTY	WOLFE COUNTY
LOUISIANA	
ACADIA PARISH	ACADIA PARISH
ALEXANDRIA CITY	ALEXANDRIA CITY IN
	RAPIDES PARISH
ALLEN PARISH	ALLEN PARISH
ASCENSION PARISH	ASCENSION PARISH

LABOR SURPLUS AREAS—OCTOBER 1, 2002 THROUGH SEPTEMBER 30, 2003—Continued

Eligible labor surplus areas	Civil jurisdictions included
ASSUMPTION PARISH	ASSUMPTION PARISH
AVOYELLES PARISH	AVOYELLES PARISH
BEAUREGARD PARISH	BEAUREGARD PARISH
BIENVILLE PARISH	BIENVILLE PARISH
CALDWELL PARISH	CALDWELL PARISH
CAMERON PARISH	CAMERON PARISH
CATAHOULA PARISH	CATAHOULA PARISH
CLAIBORNE PARISH	CLAIBORNE PARISH
CONCORDIA PARISH	CONCORDIA PARISH
DE SOTO PARISH	DE SOTO PARISH
EAST CARROLL PARISH	EAST CARROLL PARISH
EAST FELICIANA PARISH	EAST FELICIANA PARISH
EVANGELINE PARISH	EVANGELINE PARISH
FRANKLIN PARISH	FRANKLIN PARISH
GRANT PARISH	GRANT PARISH
IBERVILLE PARISH	IBERVILLE PARISH
JACKSON PARISH	JACKSON PARISH
JEFFERSON DAVIS PARISH	JEFFERSON DAVIS PARISH
LA SALLE PARISH	LA SALLE PARISH
LAKE CHARLES CITY	LAKE CHARLES CITY IN CALCASIEU PARISH
LIVINGSTON PARISH	LIVINGSTON PARISH
MADISON PARISH	MADISON PARISH
MONROE CITY	MONROE CITY IN OUACHITA PARISH
MOREHOUSE PARISH	MOREHOUSE PARISH
NATCHITOCHES PARISH	NATCHITOCHES PARISH
NEW IBERIA CITY	NEW IBERIA CITY IN IBERIA PARISH
POINTE COUPEE PARISH	POINTE COUPEE PARISH
RED RIVER PARISH	RED RIVER PARISH
RICHLAND PARISH	RICHLAND PARISH
SABINE PARISH	SABINE PARISH
SHREVEPORT CITY	SHREVEPORT CITY IN BOSSIER PARISH CADDO PARISH
ST. HELENA PARISH	ST. HELENA PARISH
ST. JAMES PARISH	ST. JAMES PARISH
ST. JOHN BAPTIST PARISH	ST. JOHN BAPTIST PARISH
ST. LANDRY PARISH	ST. LANDRY PARISH
ST. MARTIN PARISH	ST. MARTIN PARISH
ST. MARY PARISH	ST. MARY PARISH
TANGIPAHOA PARISH	TANGIPAHOA PARISH
TENSAS PARISH	TENSAS PARISH
VERMILION PARISH	VERMILION PARISH
WASHINGTON PARISH	WASHINGTON PARISH
WEBSTER PARISH	WEBSTER PARISH
WEST CARROLL PARISH	WEST CARROLL PARISH
WINN PARISH	WINN PARISH
MAINE	
FRANKLIN COUNTY	FRANKLIN COUNTY
PISCATAQUIS COUNTY	PISCATAQUIS COUNTY
SOMERSET COUNTY	SOMERSET COUNTY
WASHINGTON COUNTY	WASHINGTON COUNTY
MARYLAND	
ALLEGANY COUNTY	ALLEGANY COUNTY
BALTIMORE CITY	BALTIMORE CITY
DORCHESTER COUNTY	DORCHESTER COUNTY
GARRETT COUNTY	GARRETT COUNTY
SOMERSET COUNTY	SOMERSET COUNTY
WORCESTER COUNTY	WORCESTER COUNTY
MASSACHUSETTS	
LAWRENCE CITY	LAWRENCE CITY IN ESSEX COUNTY
NEW BEDFORD CITY	NEW BEDFORD CITY IN BRISTOL COUNTY
PHILLIPSTON TOWN	PHILLIPSTON TOWN IN WORCESTER COUNTY
PROVINCETOWN TOWN	PROVINCETOWN TOWN IN BARNSTABLE COUNTY
TRURO TOWN	TRURO TOWN IN

LABOR SURPLUS AREAS—OCTOBER 1, 2002 THROUGH SEPTEMBER 30, 2003—Continued

Eligible labor surplus areas	Civil jurisdictions included
	BARNSTABLE COUNTY
MICHIGAN	
ALCONA COUNTY	ALCONA COUNTY
ALPENA COUNTY	ALPENA COUNTY
ANTRIM COUNTY	ANTRIM COUNTY
ARENAC COUNTY	ARENAC COUNTY
BARAGA COUNTY	BARAGA COUNTY
BAY CITY	BAY CITY IN
	BAY COUNTY
BENZIE COUNTY	BENZIE COUNTY
BURTON CITY	BURTON CITY IN
	GENESEE COUNTY
CHEBOYGAN COUNTY	CHEBOYGAN COUNTY
CHIPPEWA COUNTY	CHIPPEWA COUNTY
CLARE COUNTY	CLARE COUNTY
CRAWFORD COUNTY	CRAWFORD COUNTY
DELTA COUNTY	DELTA COUNTY
DETROIT CITY	DETROIT CITY IN
	WAYNE COUNTY
EMMET COUNTY	EMMET COUNTY
FLINT CITY	FLINT CITY IN
	GENESEE COUNTY
GLADWIN COUNTY	GLADWIN COUNTY
	GOGEBIC COUNTY
	HIGHLAND PARK CITY IN
	WAYNE COUNTY
HURON COUNTY	HURON COUNTY
IOSCO COUNTY	IOSCO COUNTY
IRON COUNTY	IRON COUNTY
JACKSON CITY	JACKSON CITY IN
	JACKSON COUNTY
KALKASKA COUNTY	KALKASKA COUNTY
KEWEENAW COUNTY	KEWEENAW COUNTY
LAKE COUNTY	LAKE COUNTY
LUCE COUNTY	LUCE COUNTY
MACKINAC COUNTY	MACKINAC COUNTY
MANISTEE COUNTY	MANISTEE COUNTY
MASON COUNTY	MASON COUNTY
MONTCALM COUNTY	MONTCALM COUNTY
MONTMORENCY COUNTY	MONTMORENCY COUNTY
MOUNT MORRIS TOWNSHIP	MOUNT MORRIS TOWNSHIP IN
	GENESEE COUNTY
MUSKEGON CITY	MUSKEGON CITY IN
	MUSKEGON COUNTY
NEWAYGO COUNTY	NEWAYGO COUNTY
OCEANA COUNTY	OCEANA COUNTY
OGEMAW COUNTY	OGEMAW COUNTY
ONTONAGON COUNTY	ONTONAGON COUNTY
OSCEOLA COUNTY	OSCEOLA COUNTY
OSCODA COUNTY	OSCODA COUNTY
PONTIAC CITY	PONTIAC CITY IN
	OAKLAND COUNTY
PORT HURON CITY	PORT HURON CITY IN
	ST. CLAIR COUNTY
PRESQUE ISLE COUNTY	PRESQUE ISLE COUNTY
ROSCOMMON COUNTY	ROSCOMMON COUNTY
SAGINAW CITY	SAGINAW CITY IN
	SAGINAW COUNTY
SANILAC COUNTY	SANILAC COUNTY
SCHOOLCRAFT COUNTY	SCHOOLCRAFT COUNTY
TUSCOLA COUNTY	TUSCOLA COUNTY
WEXFORD COUNTY	WEXFORD COUNTY
MINNESOTA	
AITKIN COUNTY	AITKIN COUNTY
BECKER COUNTY	BECKER COUNTY
CASS COUNTY	CASS COUNTY
CHIPPEWA COUNTY	CHIPPEWA COUNTY
CLEARWATER COUNTY	CLEARWATER COUNTY
GRANT COUNTY	GRANT COUNTY
ITASCA COUNTY	ITASCA COUNTY

LABOR SURPLUS AREAS—OCTOBER 1, 2002 THROUGH SEPTEMBER 30, 2003—Continued

Eligible labor surplus areas	Civil jurisdictions included
KANABEC COUNTY	KANABEC COUNTY
KITTSON COUNTY	KITTSON COUNTY
KOOCHICHING COUNTY	KOOCHICHING COUNTY
MAHNOMEN COUNTY	MAHNOMEN COUNTY
MARSHALL COUNTY	MARSHALL COUNTY
MEEKER COUNTY	MEEKER COUNTY
MILLE LACS COUNTY	MILLE LACS COUNTY
MORRISON COUNTY	MORRISON COUNTY
PENNINGTON COUNTY	PENNINGTON COUNTY
PINE COUNTY	PINE COUNTY
RED LAKE COUNTY	RED LAKE COUNTY
MISSISSIPPI	
ADAMS COUNTY	ADAMS COUNTY
ATTALA COUNTY	ATTALA COUNTY
BENTON COUNTY	BENTON COUNTY
BOLIVAR COUNTY	BOLIVAR COUNTY
CALHOUN COUNTY	CALHOUN COUNTY
CARROLL COUNTY	CARROLL COUNTY
CHICKASAW COUNTY	CHICKASAW COUNTY
CHOCTAW COUNTY	CHOCTAW COUNTY
CLAIBORNE COUNTY	CLAIBORNE COUNTY
CLARKE COUNTY	CLARKE COUNTY
CLAY COUNTY	CLAY COUNTY
COAHOMA COUNTY	COAHOMA COUNTY
COLUMBUS CITY	COLUMBUS CITY IN LOWNDES COUNTY
COPIAH COUNTY	COPIAH COUNTY
FRANKLIN COUNTY	FRANKLIN COUNTY
GEORGE COUNTY	GEORGE COUNTY
GREENE COUNTY	GREENE COUNTY
GREENVILLE CITY	GREENVILLE CITY IN WASHINGTON COUNTY
GRENADA COUNTY	GRENADA COUNTY
HOLMES COUNTY	HOLMES COUNTY
HUMPHREYS COUNTY	HUMPHREYS COUNTY
ISSAQUENA COUNTY	ISSAQUENA COUNTY
JEFFERSON COUNTY	JEFFERSON COUNTY
JEFFERSON DAVIS COUNTY	JEFFERSON DAVIS COUNTY
KEMPER COUNTY	KEMPER COUNTY
LAWRENCE COUNTY	LAWRENCE COUNTY
LEFLORE COUNTY	LEFLORE COUNTY
MARSHALL COUNTY	MARSHALL COUNTY
MERIDIAN CITY	MERIDIAN CITY IN LAUDERDALE COUNTY
MONROE COUNTY	MONROE COUNTY
MONTGOMERY COUNTY	MONTGOMERY COUNTY
NOXUBEE COUNTY	NOXUBEE COUNTY
PANOLA COUNTY	PANOLA COUNTY
PASCAGOULA CITY	PASCAGOULA CITY IN JACKSON COUNTY
PERRY COUNTY	PERRY COUNTY
PIKE COUNTY	PIKE COUNTY
QUITMAN COUNTY	QUITMAN COUNTY
SHARKEY COUNTY	SHARKEY COUNTY
STONE COUNTY	STONE COUNTY
SUNFLOWER COUNTY	SUNFLOWER COUNTY
TALLAHATCHIE COUNTY	TALLAHATCHIE COUNTY
TISHOMINGO COUNTY	TISHOMINGO COUNTY
TUNICA COUNTY	TUNICA COUNTY
WALTHALL COUNTY	WALTHALL COUNTY
BALANCE OF WASHINGTON COUNTY	WASHINGTON COUNTY LESS GREENVILLE CITY
WAYNE COUNTY	WAYNE COUNTY
WEBSTER COUNTY	WEBSTER COUNTY
WILKINSON COUNTY	WILKINSON COUNTY
WINSTON COUNTY	WINSTON COUNTY
YALOBUSHA COUNTY	YALOBUSHA COUNTY
YAZOO COUNTY	YAZOO COUNTY
MISSOURI	
BENTON COUNTY	BENTON COUNTY
BOLLINGER COUNTY	BOLLINGER COUNTY

LABOR SURPLUS AREAS—OCTOBER 1, 2002 THROUGH SEPTEMBER 30, 2003—Continued

Eligible labor surplus areas	Civil jurisdictions included
CARTER COUNTY	CARTER COUNTY
CLARK COUNTY	CLARK COUNTY
CRAWFORD COUNTY	CRAWFORD COUNTY
DALLAS COUNTY	DALLAS COUNTY
DENT COUNTY	DENT COUNTY
DOUGLAS COUNTY	DOUGLAS COUNTY
DUNKLIN COUNTY	DUNKLIN COUNTY
HICKORY COUNTY	HICKORY COUNTY
IRON COUNTY	IRON COUNTY
LINN COUNTY	LINN COUNTY
MACON COUNTY	MACON COUNTY
MADISON COUNTY	MADISON COUNTY
MISSISSIPPI COUNTY	MISSISSIPPI COUNTY
MONROE COUNTY	MONROE COUNTY
NEW MADRID COUNTY	NEW MADRID COUNTY
PEMISCOT COUNTY	PEMISCOT COUNTY
PULASKI COUNTY	PULASKI COUNTY
REYNOLDS COUNTY	REYNOLDS COUNTY
RIPLEY COUNTY	RIPLEY COUNTY
SHANNON COUNTY	SHANNON COUNTY
SHELBY COUNTY	SHELBY COUNTY
ST LOUIS CITY	ST LOUIS CITY
ST. FRANCOIS COUNTY	ST. FRANCOIS COUNTY
STODDARD COUNTY	STODDARD COUNTY
STONE COUNTY	STONE COUNTY
TANEY COUNTY	TANEY COUNTY
TEXAS COUNTY	TEXAS COUNTY
WASHINGTON COUNTY	WASHINGTON COUNTY
WAYNE COUNTY	WAYNE COUNTY
WRIGHT COUNTY	WRIGHT COUNTY
MONTANA	
ANACONDA-DEER LODGE COUNTY	ANACONDA-DEER LODGE COUNTY
BIG HORN COUNTY	BIG HORN COUNTY
BLAINE COUNTY	BLAINE COUNTY
FLATHEAD COUNTY	FLATHEAD COUNTY
GLACIER COUNTY	GLACIER COUNTY
GRANITE COUNTY	GRANITE COUNTY
LAKE COUNTY	LAKE COUNTY
LINCOLN COUNTY	LINCOLN COUNTY
MEAGHER COUNTY	MEAGHER COUNTY
MINERAL COUNTY	MINERAL COUNTY
MUSSELSHELL COUNTY	MUSSELSHELL COUNTY
ROOSEVELT COUNTY	ROOSEVELT COUNTY
ROSEBUD COUNTY	ROSEBUD COUNTY
SANDERS COUNTY	SANDERS COUNTY
NEBRASKA	
JOHNSON COUNTY	JOHNSON COUNTY
THURSTON COUNTY	THURSTON COUNTY
NEVADA	
CHURCHILL COUNTY	CHURCHILL COUNTY
ESMERALDA COUNTY	ESMERALDA COUNTY
LANDER COUNTY	LANDER COUNTY
LINCOLN COUNTY	LINCOLN COUNTY
LYON COUNTY	LYON COUNTY
MINERAL COUNTY	MINERAL COUNTY
NORTH LAS VEGAS CITY	NORTH LAS VEGAS CITY IN CLARK COUNTY
NYE COUNTY	NYE COUNTY
NEW JERSEY	
ATLANTIC CITY	ATLANTIC CITY IN ATLANTIC COUNTY
CAMDEN CITY	CAMDEN CITY IN CAMDEN COUNTY
CAPE MAY COUNTY	CAPE MAY COUNTY
BALANCE OF CUMBERLAND COUNTY	BALANCE OF CUMBERLAND LESS MILLVILLE CITY VINELAND CITY
EAST ORANGE CITY	EAST ORANGE CITY IN ESSEX COUNTY
ELIZABETH CITY	ELIZABETH CITY IN

LABOR SURPLUS AREAS—OCTOBER 1, 2002 THROUGH SEPTEMBER 30, 2003—Continued

Eligible labor surplus areas	Civil jurisdictions included
JERSEY CITY	UNION COUNTY JERSEY CITY IN
MILLVILLE CITY	HUDSON COUNTY MILLVILLE CITY IN
NEW BRUNSWICK CITY	CUMBERLAND COUNTY NEW BRUNSWICK CITY IN
NEWARK CITY	MIDDLESEX COUNTY NEWARK CITY
PASSAIC CITY	ESSEX COUNTY PASSAIC CITY IN
PATERSON CITY	PASSAIC COUNTY PATERSON CITY IN
PERTH AMBOY CITY	PASSAIC COUNTY PERTH AMBOY CITY IN
PLAINFIELD CITY	MIDDLESEX COUNTY PLAINFIELD CITY IN
TRENTON CITY	UNION COUNTY TRENTON CITY
UNION CITY	MERCER COUNTY UNION CITY IN
VINELAND CITY	HUDSON COUNTY VINELAND CITY IN
	CUMBERLAND COUNTY
NEW MEXICO	
CARLSBAD CITY	CARLSBAD CITY IN
CATRON COUNTY	EDDY COUNTY CATRON COUNTY
CIBOLA COUNTY	CIBOLA COUNTY
BALANCE OF DONA ANA COUNTY	DONA ANA COUNTY LESS LAS CRUCES CITY
GRANT COUNTY	GRANT COUNTY
GUADALUPE COUNTY	GUADALUPE COUNTY
HIDALGO COUNTY	HIDALGO COUNTY
LAS CRUCES CITY	LAS CRUCES CITY IN DONA ANA COUNTY
LUNA COUNTY	LUNA COUNTY
MC KINLEY COUNTY	MC KINLEY COUNTY
MORA COUNTY	MORA COUNTY
BALANCE OF OTERO COUNTY	OTERO COUNTY LESS ALAMOGORDO CITY
RIO ARRIBA COUNTY	RIO ARRIBA COUNTY
ROSWELL CITY	ROSWELL CITY CHAVES COUNTY
BALANCE OF SAN JUAN COUNTY	SAN JUAN COUNTY LESS FARMINGTON CITY
SAN MIGUEL COUNTY	SAN MIGUEL COUNTY
TAOS COUNTY	TAOS COUNTY
NEW YORK	
ALLEGANY COUNTY	ALLEGANY COUNTY
BRONX COUNTY	BRONX COUNTY
BUFFALO CITY	BUFFALO CITY ERIE COUNTY
CATTARAUGUS COUNTY	CATTARAUGUS COUNTY
ELMIRA CITY	ELMIRA CITY IN CHEMUNG COUNTY
ESSEX COUNTY	ESSEX COUNTY
FRANKLIN COUNTY	FRANKLIN COUNTY
HAMILTON COUNTY	HAMILTON COUNTY
BALANCE OF JEFFERSON COUNTY	JEFFERSON COUNTY LESS WATERTOWN CITY
KINGS COUNTY	KINGS COUNTY
LEWIS COUNTY	LEWIS COUNTY
LOCKPORT CITY	LOCKPORT CITY IN NIAGARA COUNTY
NEWBURGH CITY	NEWBURGH CITY IN ORANGE COUNTY
NIAGARA FALLS CITY	NIAGARA FALLS CITY IN NIAGARA COUNTY
OSWEGO COUNTY	OSWEGO COUNTY
ROCHESTER CITY	ROCHESTER CITY MONROE COUNTY

LABOR SURPLUS AREAS—OCTOBER 1, 2002 THROUGH SEPTEMBER 30, 2003—Continued

Eligible labor surplus areas	Civil jurisdictions included
SCHUYLER COUNTY	SCHUYLER COUNTY
ST. LAWRENCE COUNTY	ST. LAWRENCE COUNTY
SYRACUSE CITY	SYRACUSE CITY IN ONONDAGA COUNTY
UTICA CITY	UTICA CITY IN ONEIDA COUNTY
WATERTOWN CITY	WATERTOWN CITY IN JEFFERSON COUNTY
NORTH CAROLINA	
ALLEGHANY COUNTY	ALLEGHANY COUNTY
ANSON COUNTY	ANSON COUNTY
ASHE COUNTY	ASHE COUNTY
BEAUFORT COUNTY	BEAUFORT COUNTY
BERTIE COUNTY	BERTIE COUNTY
BLADEN COUNTY	BLADEN COUNTY
CHEROKEE COUNTY	CHEROKEE COUNTY
CLEVELAND COUNTY	CLEVELAND COUNTY
COLUMBUS COUNTY	COLUMBUS COUNTY
BALANCE OF EDGECOMBE COUNTY	EDGECOMBE COUNTY LESS ROCKY MOUNT CITY
BALANCE OF GASTON COUNTY N.C.	GASTON COUNTY N.C. LESS GASTONIA CITY N.C.
GASTONIA CITY	GASTON COUNTY N.C. GASTONIA CITY N.C. IN
GOLDSBORO CITY	GOLDSBORO CITY IN WAYNE COUNTY
GRAHAM COUNTY	GRAHAM COUNTY
GREENVILLE CITY	GREENVILLE CITY IN PITT COUNTY
HALIFAX COUNTY	HALIFAX COUNTY
HERTFORD COUNTY	HERTFORD COUNTY
HICKORY CITY	HICKORY CITY IN BURKE COUNTY CATAWBA COUNTY
HOKE COUNTY	HOKE COUNTY
HYDE COUNTY	HYDE COUNTY
KANNAPOLIS CITY	KANNAPOLIS CITY IN CABARRUS COUNTY N.C. ROWAN COUNTY N.C.
KINSTON CITY	KINSTON CITY IN LENOIR COUNTY
MARTIN COUNTY	MARTIN COUNTY
MC DOWELL COUNTY	MC DOWELL COUNTY
MITCHELL COUNTY	MITCHELL COUNTY
MONROE CITY	MONROE CITY UNION COUNTY
NORTHAMPTON COUNTY	NORTHAMPTON COUNTY
PERSON COUNTY	PERSON COUNTY
RICHMOND COUNTY	RICHMOND COUNTY
ROBESON COUNTY	ROBESON COUNTY
ROCKINGHAM COUNTY	ROCKINGHAM COUNTY
ROCKY MOUNT CITY	ROCKY MOUNT CITY IN EDGECOMBE COUNTY NASH COUNTY
RUTHERFORD COUNTY	RUTHERFORD COUNTY
SALISBURY CITY	SALISBURY CITY IN ROWAN COUNTY N.C.
SCOTLAND COUNTY	SCOTLAND COUNTY
STANLY COUNTY	STANLY COUNTY
SWAIN COUNTY	SWAIN COUNTY
TYRRELL COUNTY	TYRRELL COUNTY
VANCE COUNTY	VANCE COUNTY
WARREN COUNTY	WARREN COUNTY
WASHINGTON COUNTY	WASHINGTON COUNTY
WILSON CITY	WILSON CITY IN WILSON COUNTY
YANCEY COUNTY	YANCEY COUNTY
NORTH DAKOTA	
BENSON COUNTY	BENSON COUNTY
ROLETTE COUNTY	ROLETTE COUNTY
SHERIDAN COUNTY	SHERIDAN COUNTY

LABOR SURPLUS AREAS—OCTOBER 1, 2002 THROUGH SEPTEMBER 30, 2003—Continued

Eligible labor surplus areas	Civil jurisdictions included
OHIO	
ADAMS COUNTY	ADAMS COUNTY
ASHTABULA COUNTY	ASHTABULA COUNTY
BROWN COUNTY	BROWN COUNTY
CANTON CITY	CANTON CITY STARK COUNTY
CLEVELAND CITY	CLEVELAND CITY CUYAHOGA COUNTY
CRAWFORD COUNTY	CRAWFORD COUNTY
DAYTON CITY	DAYTON CITY IN MONTGOMERY COUNTY
EAST CLEVELAND CITY	EAST CLEVELAND CITY IN CUYAHOGA COUNTY
GALLIA COUNTY	GALLIA COUNTY
GUERNSEY COUNTY	GUERNSEY COUNTY
HOCKING COUNTY	HOCKING COUNTY
HURON COUNTY	HURON COUNTY
JACKSON COUNTY	JACKSON COUNTY
LAWRENCE COUNTY	LAWRENCE COUNTY
LIMA CITY	LIMA CITY IN ALLEN COUNTY
LORAIN CITY	LORAIN CITY IN LORAIN COUNTY
MANSFIELD CITY	MANSFIELD CITY IN RICHLAND COUNTY
MEIGS COUNTY	MEIGS COUNTY
MONROE COUNTY	MONROE COUNTY
MORGAN COUNTY	MORGAN COUNTY
NOBLE COUNTY	NOBLE COUNTY
PERRY COUNTY	PERRY COUNTY
PIKE COUNTY	PIKE COUNTY
SANDUSKY CITY	SANDUSKY CITY IN ERIE COUNTY
SCIOTO COUNTY	SCIOTO COUNTY
SPRINGFIELD CITY	SPRINGFIELD CITY IN CLARK COUNTY
VINTON COUNTY	VINTON COUNTY
WARREN CITY	WARREN CITY TRUMBULL COUNTY
YOUNGSTOWN CITY	YOUNGSTOWN CITY IN MAHONING COUNTY
ZANESVILLE CITY	ZANESVILLE CITY IN MUSKINGUM COUNTY
OKLAHOMA	
CHOTAW COUNTY	CHOTAW COUNTY
COAL COUNTY	COAL COUNTY
MC CURTAIN COUNTY	MC CURTAIN COUNTY
OKMULGEE COUNTY	OKMULGEE COUNTY
OTTAWA COUNTY	OTTAWA COUNTY
OREGON	
ALBANY CITY	ALBANAY CITY IN LINN COUNTY
BAKER COUNTY	BAKER COUNTY
COLUMBIA COUNTY	COLUMBIA COUNTY
COOS COUNTY	COOS COUNTY
CROOK COUNTY	CROOK COUNTY
CURRY COUNTY	CURRY COUNTY
BALANCE OF DESCHUTES COUNTY	DESCHUTES COUNTY LESS BEND CITY
DOUGLAS COUNTY	DOUGLAS COUNTY
GRANT COUNTY	GRANT COUNTY
HARNEY COUNTY	HARNEY COUNTY
HOOD RIVER COUNTY	HOOD RIVER COUNTY
JEFFERSON COUNTY	JEFFERSON COUNTY
JOSEPHINE COUNTY	JOSEPHINE COUNTY
KLAMATH COUNTY	KLAMATH COUNTY
LAKE COUNTY	LAKE COUNTY
BALANCE OF LANE COUNTY	LANE COUNTY LESS EUGENE CITY SPRINGFIELD CITY
LINCOLN COUNTY	LINCOLN COUNTY

LABOR SURPLUS AREAS—OCTOBER 1, 2002 THROUGH SEPTEMBER 30, 2003—Continued

Eligible labor surplus areas	Civil jurisdictions included
BALANCE OF LINN COUNTY	LINN COUNTY LESS ALBANY CITY
MALHEUR COUNTY	MALHEUR COUNTY
MORROW COUNTY	MORROW COUNTY
SALEM CITY	SALEM CITY IN MARION COUNTY POLK COUNTY
SHERMAN COUNTY	SHERMAN COUNTY
SPRINGFIELD CITY	SPRINGFIELD CITY IN LANE COUNTY
UMATILLA COUNTY	UMATILLA COUNTY
WALLOWA COUNTY	WALLOWA COUNTY
WASCO COUNTY	WASCO COUNTY
WHEELER COUNTY	WHEELER COUNTY
PENNSYLVANIA	
ARMSTRONG COUNTY	ARMSTRONG COUNTY
BEDFORD COUNTY	BEDFORD COUNTY
BALANCE OF CAMBRIA COUNTY	CAMBRIA COUNTY LESS JOHNSTOWN CITY
CAMERON COUNT	CAMERON COUNTY
CHESTER CITY	CHESTER CITY IN DELAWARE COUNTY
CLEARFIELD COUNTY	CLEARFIELD COUNTY
CLINTON COUNTY	CLINTON COUNTY
CRAWFORD COUNTY	CRAWFORD COUNTY
ELK COUNTY	ELK COUNTY
ERIE CITY	ERIE CITY IN ERIE COUNTY
FAYETTE COUNTY	FAYETTE COUNTY
FOREST COUNTY	FOREST COUNTY
GREENE COUNTY	GREENE COUNTY
HAZLETON CITY	HAZLETON COUNTY LUZERNE COUNTY
HUNTINGDON COUNTY	HUNTINGDON COUNTY
INDIANA COUNTY	INDIANA COUNTY
JEFFERSON COUNTY	JEFFERSON COUNTY
JOHNSTOWN CITY	JOHNSTOWN CITY IN CAMBRIA COUNTY
NEW CASTLE CITY	NEW CASTLE CITY IN LAWRENCE COUNTY
PHILADELPHIA CITY	PHILADELPHIA CITY IN PHILADELPHIA COUNTY
READING CITY	READING CITY IN BERKS COUNTY
SCHUYLKILL COUNTY	SCHUYLYKILL COUNTY
SOMERSET COUNTY	SOMERSET COUNTY
WILLIAMSPORT CITY	WILLIAMSPORT CITY IN LYCOMING COUNTY
YORK CITY	YORK CITY IN YORK COUNTY
PUERTO RICO	
ADJUNTAS MUNICIPIO	ADJUNTAS MUNICIPIO
AGUADA MUNICIPIO	AGUADA MUNICIPIO
AGUADILLA MUNICIPIO	AGUADILLA MUNICIPIO
AGUAS BUENAS MUNICIPIO	AGUAS BUENAS MUNICIPIO
AIBONITO MUNICIPIO	AIBONITO MUNICIPIO
ANASCO MUNICIPIO	ANASCO MUNICIPIO
ARECIBO MUNICIPIO	ARECIBO MUNICIPIO
ARROYO MUNICIPIO	ARROYO MUNICIPIO
BARCELONETA MUNICIPIO	BARCELONETA MUNICIPIO
BARRANQUITAS MUNICIPIO	BARRANQUITAS MUNICIPIO
BAYAMON MUNICIPIO	BAYAMON MUNICIPIO
CABO ROJO MUNICIPIO	CABO ROJO MUNICIPIO
CAGUAS MUNICIPIO	CAGUAS MUNICIPIO
CAMUY MUNICIPIO	CAMUY MUNICIPIO
CANOVANAS MUNICIPIO	CANOVANAS MUNICIPIO
CAROLINA MUNICIPIO	CAROLINA MUNICIPIO
CATANO MUNICIPIO	CATANO MUNICIPIO
CAYEY MUNICIPIO	CAYEY MUNICIPIO
CEIBA MUNICIPIO	CEIBA MUNICIPIO
CIALES MUNICIPIO	CIALES MUNICIPIO

LABOR SURPLUS AREAS—OCTOBER 1, 2002 THROUGH SEPTEMBER 30, 2003—Continued

Eligible labor surplus areas	Civil jurisdictions included
CIDRA MUNICIPIO	CIDRA MUNICIPIO
COAMO MUNICIPIO	COAMO MUNICIPIO
COMERIO MUNICIPIO	COMERIO MUNICIPIO
COROZAL MUNICIPIO	COROZAL MUNICIPIO
DORADO MUNICIPIO	DORADO MUNICIPIO
FAJARDO MUNICIPIO	FAJARDO MUNICIPIO
FLORIDA MUNICIPIO	FLORIDA MUNICIPIO
GUANICA MUNICIPIO	GUANICA MUNICIPIO
GUAYAMA MUNICIPIO	GUAYAMA MUNICIPIO
GUAYANILLA MUNICIPIO	GUAYANILLA MUNICIPIO
GURABO MUNICIPIO	GURABO MUNICIPIO
HATILLO MUNICIPIO	HATILLO MUNICIPIO
HORMIGUEROS MUNICIPIO	HORMIGUEROS MUNICIPIO
HUMACAO MUNICIPIO	HUMACAO MUNICIPIO
ISABELA MUNICIPIO	ISABELA MUNICIPIO
JAYUYA MUNICIPIO	JAYUYA MUNICIPIO
JUANA DIAZ MUNICIPIO	JUANA DIAZ MUNICIPIO
JUNCOS MUNICIPIO	JUNCOS MUNICIPIO
LAJAS MUNICIPIO	LAJAS MUNICIPIO
LARES MUNICIPIO	LARES MUNICIPIO
LAS MARIAS MUNICIPIO	LAS MARIAS MUNICIPIO
LAS PIEDRAS MUNICIPIO	LAS PIEDRAS MUNICIPIO
LOIZA MUNICIPIO	LOIZA MUNICIPIO
LUQUILLO MUNICIPIO	LUQUILLO MUNICIPIO
MANATI MUNICIPIO	MANATI MUNICIPIO
MARICAO MUNICIPIO	MARICAO MUNICIPIO
MAUNABO MUNICIPIO	MAUNABO MUNICIPIO
MAYAGUEZ MUNICIPIO	MAYAGUEZ MUNICIPIO
MOCA MUNICIPIO	MOCA MUNICIPIO
MOROVIS MUNICIPIO	MOROVIS MUNICIPIO
NAGUABO MUNICIPIO	NAGUABO MUNICIPIO
NARANJITO MUNICIPIO	NARANJITO MUNICIPIO
OROCOVIS MUNICIPIO	OROCOVIS MUNICIPIO
PATILLAS MUNICIPIO	PATILLAS MUNICIPIO
PENUELAS MUNICIPIO	PENUELAS MUNICIPIO
PONCE MUNICIPIO	PONCE MUNICIPIO
QUEBRADILLAS MUNICIPIO	QUEBRADILLAS MUNICIPIO
RINCON MUNICIPIO	RINCON MUNICIPIO
RIO GRANDE MUNICIPIO	RIO GRANDE MUNICIPIO
SABANA GRANDE MUNICIPIO	SABANA GRANDE MUNICIPIO
SALINAS MUNICIPIO	SALINAS MUNICIPIO
SAN GERMAN MUNICIPIO	SAN GERMAN MUNICIPIO
SAN JUAN MUNICIPIO	SAN JUAN MUNICIPIO
SAN LORENZO MUNICIPIO	SAN LORENZO MUNICIPIO
SAN SEBASTIAN MUNICIPIO	SAN SEBASTIAN MUNICIPIO
SANTA ISABEL MUNICIPIO	SANTA ISABEL MUNICIPIO
TOA ALTA MUNICIPIO	TOA ALTA MUNICIPIO
TOA BAJA MUNICIPIO	TOA BAJA MUNICIPIO
UTUADO MUNICIPIO	UTUADO MUNICIPIO
VEGA ALTA MUNICIPIO	VEGA ALTA MUNICIPIO
VEGA BAJA MUNICIPIO	VEGA BAJA MUNICIPIO
VIEQUES MUNICIPIO	VIEQUES MUNICIPIO
VILLALBA MUNICIPIO	VILLALBA MUNICIPIO
YABUCOA MUNICIPIO	YABUCOA MUNICIPIO
YAUCO MUNICIPIO	YAUCO MUNICIPIO
RHODE ISLAND	
CENTRAL FALLS CITY	CENTRAL FALLS CITY
NEW SHOREHAM TOWN	NEW SHOREHAM TOWN
PROVIDENCE CITY	PROVIDENCE CITY
SOUTH CAROLINA	
ABBEVILLE COUNTY	ABBEVILLE COUNTY
ANDERSON CITY	ANDERSON CITY IN ANDERSON COUNTY
BARNWELL COUNTY	BARNWELL COUNTY
CHEROKEE COUNTY	CHEROKEE COUNTY
CHESTER COUNTY	CHESTER COUNTY
CHESTERFIELD COUNTY	CHESTERFIELD COUNTY
CLARENDON COUNTY	CLARENDON COUNTY
DARLINGTON COUNTY	DARLINGTON COUNTY
DILLON COUNTY	DILLON COUNTY
FAIRFIELD COUNTY	FAIRFIELD COUNTY

LABOR SURPLUS AREAS—OCTOBER 1, 2002 THROUGH SEPTEMBER 30, 2003—Continued

Eligible labor surplus areas	Civil jurisdictions included
FLORENCE CITY	FLORENCE CITY IN FLORENCE COUNTY
GEORGETOWN COUNTY	GEORGETOWN COUNTY
GREENWOOD COUNTY	GREENWOOD COUNTY
LEE COUNTY	LEE COUNTY
MARION COUNTY	MARION COUNTY
MARLBORO COUNTY	MARLBORO COUNTY
MC CORMICK COUNTY	MC CORMICK COUNTY
ORANGEBURG COUNTY	ORANGEBURG COUNTY
SUMTER CITY	SUMTER CITY IN SUMTER COUNTY
UNION COUNTY	UNION COUNTY
WILLIAMSBURG COUNTY	WILLIAMSBURG COUNTY
SOUTH DAKOTA	
BUFFALO COUNTY	BUFFALO COUNTY
CAMPBELL COUNTY	CAMPBELL COUNTY
CLARK COUNTY	CLARK COUNTY
CORSON COUNTY	CORSON COUNTY
DEWEY COUNTY	DEWEY COUNTY
JACKSON COUNTY	JACKSON COUNTY
MELLETTE COUNTY	MELLETTE COUNTY
SHANNON COUNTY	SHANNON COUNTY
TODD COUNTY	TODD COUNTY
ZIEBACH COUNTY	ZIEBACH COUNTY
TENNESSEE	
BENTON COUNTY	BENTON COUNTY
CAMPBELL COUNTY	CAMPBELL COUNTY
CARROLL COUNTY	CARROLL COUNTY
CLAY COUNTY	CLAY COUNTY
COCKE COUNTY	COCKE COUNTY
DECATUR COUNTY	DECATUR COUNTY
DYER COUNTY	DYER COUNTY
FENTRESS COUNTY	FENTRESS COUNTY
GIBSON COUNTY	GIBSON COUNTY
GREENE COUNTY	GREENE COUNTY
HANCOCK COUNTY	HANCOCK COUNTY
HARDEMAN COUNTY	HARDEMAN COUNTY
HAYWOOD COUNTY	HAYWOOD COUNTY
HENDERSON COUNTY	HENDERSON COUNTY
HOUSTON COUNTY	HOUSTON COUNTY
HUMPHREYS COUNTY	HUMPHREYS COUNTY
JACKSON COUNTY	JACKSON COUNTY
JOHNSON COUNTY	JOHNSON COUNTY*
LAUDERDALE COUNTY	LAUDERDALE COUNTY
LAWRENCE COUNTY	LAWRENCE COUNTY
LEWIS COUNTY	LEWIS COUNTY
MC MINN COUNTY	MC MINN COUNTY
MEIGS COUNTY	MEIGS COUNTY
MONROE COUNTY	MONROE COUNTY
OVERTON COUNTY	OVERTON COUNTY
PERRY COUNTY	PERRY COUNTY
PICKETT COUNTY	PICKETT COUNTY
SCOTT COUNTY	SCOTT COUNTY
SEVIER COUNTY	SEVIER COUNTY
STEWART COUNTY	STEWART COUNTY
TROUSDALE COUNTY	TROUSDALE COUNTY
UNICOI COUNTY	UNICOI COUNTY
VAN BUREN COUNTY	VAN BUREN COUNTY
WAYNE COUNTY	WAYNE COUNTY
TEXAS	
BEAUMONT CITY	BEAUMONT CITY IN JEFFERSON COUNTY
BALANCE OF BRAZORIA COUNTY	BRAZORIA COUNTY LESS LAKE JACKSON CITY PEARLAND CITY
BROOKS COUNTY	BROOKS COUNTY
BROWNSVILLE CITY	BROWNSVILLE CITY IN CAMERON COUNTY
CALHOUN COUNTY	CALHOUN COUNTY
BALANCE OF CAMERON COUNTY	CAMERON COUNTY LESS BROWNSVILLE CITY

LABOR SURPLUS AREAS—OCTOBER 1, 2002 THROUGH SEPTEMBER 30, 2003—Continued

Eligible labor surplus areas	Civil jurisdictions included
	HARLINGEN CITY
COCHRAN COUNTY	COCHRAN COUNTY
CULBERSON COUNTY	CULBERSON COUNTY
DEL RIO CITY	DEL RIO CITY IN
	VAL VERDE COUNTY
DIMMIT COUNTY	DIMMIT COUNTY
DUVAL COUNTY	DUVAL COUNTY
EAGLE PASS CITY	EAGLE PASS CITY IN
	MAVERICK COUNTY
BALANCE OF ECTOR COUNTY	ECTOR COUNTY LESS
	ODESSA CITY
EDINBURG CITY	EDINBURG CITY IN
	HIDALGO COUNTY
EL PASO CITY	EL PASO CITY IN
	EL PASO COUNTY
BALANCE OF EL PASO COUNTY	EL PASO COUNTY LESS
	EL PASO CITY
	SOCORRO CITY
FLOYD COUNTY	FLOYD COUNTY
FRIO COUNTY	FRIO COUNTY
GALVESTON CITY	GALVESTON CITY IN
	GALVESTON COUNTY
BALANCE OF GALVESTON COUNTY	GALVESTON COUNTY LESS
	FRIENDSWOOD CITY
	GALVESTON CITY
	LEAGUE CITY
	TEXAS CITY
HARDIN COUNTY	HARDIN COUNTY
HARLINGEN CITY	HARLINGEN CITY IN
	CAMERON COUNTY
BALANCE OF HIDALGO COUNTY	HIDALGO COUNTY LESS
	EDINBURG CITY
	MC ALLEN CITY
	MISSION CITY
	PHARR CITY
	SAN JUAN CITY
	WESLACO CITY
JASPER COUNTY	JASPER COUNTY
JIM HOGG COUNTY	JIM HOGG COUNTY
JIM WELLS COUNTY	JIM WELLS COUNTY
KILLEEN CITY	KILLEEN CITY IN
	BELL COUNTY
KINNEY COUNTY	KINNEY COUNTY
LA SALLE COUNTY	LA SALLE COUNTY
LAMB COUNTY	LAMB COUNTY
LAREDO CITY	LAREDO CITY IN
	WEBB COUNTY
LIBERTY COUNTY	LIBERTY COUNTY
LOVING COUNTY	LOVING COUNTY
MARION COUNTY	MARION COUNTY
MATAGORDA COUNTY	MATAGORDA COUNTY
BALANCE OF MAVERICK COUNTY	MAVERICK COUNTY LESS
	EAGLE PASS CITY
MC ALLEN CITY	MC ALLEN CITY IN
	HIDALGO COUNTY
MISSION CITY	MISSION CITY IN
	HIDALGO COUNTY
MORRIS COUNTY	MORRIS COUNTY
NEWTON COUNTY	NEWTON COUNTY
BALANCE OF NUECES COUNTY	NUECES COUNTY LESS
	CORPUS CHRISTI CITY
ORANGE COUNTY	ORANGE COUNTY
PANOLA COUNTY	PANOLA COUNTY
PARIS CITY	PARIS CITY IN
	LAMAR COUNTY
PHARR CITY	PHARR CITY IN
	HIDALGO COUNTY
PORT ARTHUR CITY	PORT ARTHUR CITY IN
	JEFFERSON COUNTY
PRESIDIO COUNTY	PRESIDIO COUNTY
RED RIVER COUNTY	RED RIVER COUNTY
REEVES COUNTY	REEVES COUNTY

LABOR SURPLUS AREAS—OCTOBER 1, 2002 THROUGH SEPTEMBER 30, 2003—Continued

Eligible labor surplus areas	Civil jurisdictions included
SABINE COUNTY	SABINE COUNTY
SAN JUAN CITY	SAN JUAN CITY IN HIDALGO COUNTY
SAN PATRICIO COUNTY	SAN PATRICIO COUNTY
SHELBY COUNTY	SHELBY COUNTY
SOCORRO CITY	SOCORRO CITY IN EL PASO COUNTY
SOMERVELL COUNTY	SOMERVELL COUNTY
STARR COUNTY	STARR COUNTY
TEXAS CITY	TEXAS CITY IN GALVESTON COUNTY
TYLER COUNTY	TYLER COUNTY
UVALDE COUNTY	UVALDE COUNTY
WARD COUNTY	WARD COUNTY
BALANCE OF WEBB COUNTY	WEBB COUNTY LESS LAREDO CITY
WESLACO CITY	WESLACO CITY IN HIDALGO COUNTY
WILLACY COUNTY	WILLACY COUNTY
WINKLER COUNTY	WINKLER COUNTY
ZAPATA COUNTY	ZAPATA COUNTY
ZAVALA COUNTY	ZAVALA COUNTY
UTAH	
CARBON COUNTY	CARBON COUNTY
DUCHESNE	DUCHESNE COUNTY
EMERGY COUNTY	EMERGY COUNTY
GARFIELD COUNTY	GARFIELD COUNTY
GRAND COUNTY	GRAND COUNTY
OGDEN CITY	OGDEN CITY IN WEBER COUNTY
PIUTE COUNTY	PIUTEY COUNTY
SAN JUAN COUNTY	SAN JUAN COUNTY
TOOELE COUNTY	TOOELE COUNTY
VERMONT	
ESSEX	ESSEX COUNTY
KILLINGTON TOWN	KILLINGTON TOWN IN RUTLAND COUNTY
ORELANS COUNTY	ORLEANS COUNTY
VIRGINIA	
BUCHANAN COUNTY	BUCHANAN COUNTY
CARROLL COUNTY	CARROLL COUNTY
DANVILLE COUNTY	DANVILLE COUNTY
	DICKERSON COUNTY
GALAX CITY	GALAX CITY
GILES COUNTY	GILES COUNTY
GRAYSON COUNTY	GRAYSON COUNTY
HALIFAX COUNTY	HALIFAX COUNTY
HENRY COUNTY	HENRY COUNTY
LANCASTER COUNTY	LANCASTER COUNTY
MARTINSVILLE CITY	MARTINSVILLE CITY
NORTHUMBERLAND COUNTY	NORTHUMBERLAND COUNTY
PATRICK COUNTY	PATRICK COUNTY
PITTSYLVANIA COUNTY	PITTSYLVANIA COUNTY
PULASKI COUNTY	PULASKI COUNTY
RUSSELL COUNTY	RUSSELL COUNTY
SMYTH COUNTY	SMYTH COUNTY
WYTHE COUNTY	WYTHE COUNTY
WASHINGTON	
ADAMS COUNTY	ADAMS COUNTY
BELLINGHAM CITY	BELLINGHAM CITY WHATCOM COUNTY
BALANCE OF BENTON COUNTY	BENTON COUNTY LESS KENNEWICK CITY RICHLAND CITY
BREMERTON CITY	BREMERTON CITY IN KITSAP COUNTY
BALANCE OF CHELAN COUNTY	CHELAN COUNTY LESS WENATCHEE CITY
CLALLAM COUNTY	CLALLAHAM COUNTY
COLUMBIA COUNTY	COLUMBIA COUNTY

LABOR SURPLUS AREAS—OCTOBER 1, 2002 THROUGH SEPTEMBER 30, 2003—Continued

Eligible labor surplus areas	Civil jurisdictions included
BALANCE OF COWLITZ COUNTY	COWLITZ COUNTY LESS LONGVIEW CITY
DOUGLAS COUNTY	DOUGLAS COUNTY
EVERETT CITY	EVERETT CITY IN SNOHOMISH COUNTY
FERRY COUNTY	FERRY COUNTY
GRANT COUNTY	GRANT COUNTY
GRAYS HARBOR COUNTY	GRAYS HARBOR COUNTY
KENNEWICK CITY	KENNEWICK CITY IN BENTON COUNTY
KITTITAS COUNTY	KITTITAS COUNTY
KLICKITAT COUNTY	KLICKITAT COUNTY
LAKEWOOD CITY	LAKEWOOD CITY IN PIERCE COUNTY
LEWIS COUNTY	LEWIS COUNTY
LONGVIEW CITY	LONGVIEW CITY IN COWLITZ COUNTY
MASON COUNTY	MASON COUNTY
MOUNT VERNON CITY	MOUNT VERNON CITY IN THURSTON COUNTY
OKANOGAN COUNTY	OKANOGAN COUNTY
PACIFIC COUNTY	PACIFIC COUNTY
PASCO CITY	PASCO CITY IN FRANKLIN COUNTY
PEND OREILLE COUNTY	PEND OREILLE COUNTY
SKAGIT COUNTY	SKAGIT COUNTY
SKAMANIA COUNTY	SKAMANIA COUNTY
SPOKANE CITY	SPOKANE CITY IN SPOKANE COUNTY
STEVENS COUNTY	STEVENS COUNTY
TACOMA CITY	TACOMA CITY IN PIERCE COUNTY
VANCOUVER CITY	VANCOUVER CITY IN CLARK COUNTY
WAHKIAKUM COUNTY	WAHKIAKUM COUNTY
WALLA WALLA CITY	WALLA WALLA CITY IN WALLA WALLA COUNTY
WENATCHEE CITY	WENATCHEE CITY IN CHELAN COUNTY
BALANCE OF WHATCOM COUNTY	WHATCOM COUNTY LESS BELLINGHAM CITY
YAKIMA CITY	YAKIMA CITY IN YAKIMA COUNTY
BALANCE OF YAKIMA COUNTY	YAKIMA COUNTY LESS YAKIMA CITY
WEST VIRGINIA	
BARBOUR COUNTY	BARBOUR COUNTY
BOONE COUNTY	BOONE COUNTY
BRAXTON COUNTY	BRAXTON COUNTY
CALHOUN COUNTY	CALHOUN COUNTY
CLAY COUNTY	CLAY COUNTY
FAYETTE COUNTY	FAYETTE COUNTY
GILMER COUNTY	GILMER COUNTY
GRANT COUNTY	GRANT COUNTY
GREENBRIER COUNTY	GREENBRIER COUNTY
JACKSON COUNTY	JACKSON COUNTY
LEWIS COUNTY	LEWIS COUNTY
LINCOLN COUNTY	LINCOLN COUNTY
LOGAN COUNTY	LOGAN COUNTY
BALANCE OF MARSHALL COUNTY	MARSHALL COUNTY LESS WHEELING CITY
MASON COUNTY	MASON COUNTY
MC DOWELL COUNTY	MC DOWELL COUNTY
MINERAL COUNTY	MINERAL COUNTY
MINGO COUNTY	MINGO COUNTY
NICHOLAS COUNTY	NICHOLAS COUNTY
PENDLETON COUNTY	PENDLETON COUNTY
PLEASANTS COUNTY	PLEASANTS COUNTY
POCAHONTAS COUNTY	POCAHONTAS COUNTY
RANDOLPH COUNTY	RANDOLPH COUNTY
RITCHIE COUNTY	RITCHIE COUNTY
ROANE COUNTY	ROANE COUNTY

LABOR SURPLUS AREAS—OCTOBER 1, 2002 THROUGH SEPTEMBER 30, 2003—Continued

Eligible labor surplus areas	Civil jurisdictions included
SUMMERS COUNTY	SUMMERS COUNTY
TUCKER COUNTY	TUCKER COUNTY
WEBSTER COUNTY	WEBSTER COUNTY
WETZEL COUNTY	WETZEL COUNTY
WIRT COUNTY	WIRT COUNTY
WYOMING COUNTY	WYOMING COUNTY
WISCONSIN	
ASHLAND COUNTY	ASHLAND COUNTY
BAYFIELD COUNTY	BAYFIELD COUNTY
BELOIT CITY	BELOIT CITY
	ROCK COUNTY
CLARK COUNTY	CLARK COUNTY
FLORENCE COUNTY	FLORENCE COUNTY
FOREST COUNTY	FOREST COUNTY
IRON COUNTY	IRON COUNTY
JUNEAU COUNTY	JUNEAU COUNTY
LANGLADE COUNTY	LANGLADE COUNTY
MARQUETTE COUNTY	MARQUETTE COUNTY
MENOMINEE COUNTY	MENOMINEE COUNTY
MILWAUKEE CITY	MILWAUKEE CITY IN
	MILWAUKEE COUNTY
PRICE COUNTY	PRICE COUNTY
RACINE CITY	RACINE CITY IN
	RACINE COUNTY
RUSK COUNTY	RUSK COUNTY
WASHBURN COUNTY	WASHBURN COUNTY
WYOMING	
FREMONT COUNTY	FREMONT COUNTY

[FR Doc. 03–2461 Filed 2–3–03; 8:45 am]

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Federal Register

Tuesday,
February 4, 2003

Part IV

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Parts 2 and 31
Federal Acquisition Regulation; General Provisions of the Cost Principles; Proposed Rule

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 2 and 31

[FAR Case 2001–034]

RIN 9000–AJ60

Federal Acquisition Regulation; General Provisions of the Cost Principles

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) are proposing to amend the general provisions of the cost principles contained in the Federal Acquisition Regulation (FAR).

DATES: Interested parties should submit comments in writing on or before April 7, 2003 to be considered in the formulation of a final rule.

ADDRESSES: Submit written comments to—General Services Administration, FAR Secretariat (MVA), 1800 F Street, NW., Room 4035, ATTN: Laurie Duarte, Washington, DC 20405.

Submit electronic comments via the Internet to—*farcase.2001–034@gsa.gov*. Please submit comments only and cite FAR case 2001–034 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, at (202) 501–4755 for information pertaining to status or publication schedules. For clarification of content, contact Mr. Ralph De Stefano at (202) 501–1758. Please cite FAR case 2001–034.

SUPPLEMENTARY INFORMATION:

A. Background

The Councils have performed an analysis of the general provisions at FAR 31.106–2, Exceptions to general rule on allowability and allocability; FAR 31.201–1, Composition of total cost; FAR 31.201–2, Determining allowability; FAR 31.202, Direct costs; and FAR 31.203, Indirect costs, and propose the following revisions:

1. *FAR 31.106–2.* When the contractor's usual method of allocating indirect costs to a facilities contract will yield inequitable results, the current language at paragraph (b) requires a contractor to vary its usual method and make appropriate adjustments to the indirect cost pool and base. This requirement is intended to provide the special treatment needed to produce an equitable allocation of cost to applicable facilities contracts. Although FAR 31.106–2 requires appropriate adjustments to the indirect cost pool and base, this subsection does not provide sufficient detail as to how the contractor must make the adjustment.

Therefore, the Councils propose to amend this subsection to explicitly recognize the concept of special allocations for application to facilities contracts that are not subject to full Cost Accounting Standards (CAS) coverage. The CAS provide for special allocations in 48 CFR 9904.403—Allocation of Home Office Expenses in Segments (CAS 403), 48 CFR 9904.410—Allocation of Business Unit General and Administrative Expenses to Final Cost Objectives (CAS 410), 48 CFR 9904.418—Allocation of Direct and Indirect costs (CAS 418), and 48 CFR 9904.420—Accounting for Independent Research and Development Costs and Bid and Proposal Costs (CAS 420). The proposed special allocation provisions provide the treatment that the contractor must use to produce an equitable allocation to applicable facilities contracts.

In addition, proposed language has been added to provide the specific methodology to be used when employing the concept of a special allocation. In conjunction with these changes, the Councils propose a new title, "Special allocations," which is more descriptive of the revised subsection.

2. *FAR 31.201–1.* This subsection was revised to delete unnecessary language that is adequately addressed elsewhere in the FAR, CAS, or generally accepted accounting principles (GAAP).

3. *FAR 31.201–2.* The rule revises paragraph (a) to clarify that costs must meet all five requirements in order to be reimbursable by the Government.

4. *FAR 31.202.* The rule adds a definition in FAR Part 2 for direct costs that is virtually identical to the definition at 48 CFR 9904.418–30(a)(2). Consequently, language in FAR Part 31 that duplicates the language in the new definition has been removed from paragraph 31.203(a).

5. *FAR 31.203.* The proposed rule removes the reference to CAS and GAAP since the subject matter is adequately addressed in FAR 31.201–2. The rule revises paragraph (e) of 31.203 to recognize that a transition period longer or shorter than 12 months may be appropriate in special circumstances. The rule revises paragraphs (c) and (f) to include the concept of a special allocation contained in CAS 403, 410, 418, and 420, since the Councils recognize there are other special situations, in addition to Government-owned contractor-operated facilities, in which the contractor's established accounting practices may not yield an equitable allocation to a particular intermediate or final cost objective. The proposed special allocation provisions provide the treatment that the contractor must use to produce an equitable allocation in these special situations, including the specific methodology for adjusting the indirect cost pool and its applicable allocation base.

6. *Other editorial changes.* The rule makes other editorial changes, including revising the definition of "indirect cost" in FAR 2.101, changing the term "distributing" to "allocating," and changing the phrase "several cost objectives" to "intermediate or final cost objectives" to be consistent with the terminology used in CAS and FAR Part 31.

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The Councils do not expect this proposed rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because most contracts awarded to small entities use simplified acquisition procedures or are awarded on a competitive, fixed-price basis, and do not require application of the general provisions relating to cost principles that are discussed in this rule. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. We invite comments from small businesses and other interested parties. The Councils will consider comments from small entities concerning the affected FAR Parts 2 and 31 in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 601, *et seq.* (FAR case 2001–034), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed changes to the FAR do not impose information collection requirements that require the

approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 2 and 31

Government procurement.

Dated: January 30, 2003.

Ralph De Stefano,

Acting Director, Acquisition Policy Division.

Therefore, DoD, GSA, and NASA propose amending 48 CFR parts 2 and 31 as set forth below:

1. The authority citation for 48 CFR parts 2 and 31 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 2—DEFINITIONS OF WORDS AND TERMS

2. Amend section 2.101(b) by adding, in alphabetical order, the definition "Direct cost"; and by revising the definition "Indirect cost" to read as follows:

2.101 Definitions.

* * * * *

(b) * * *

Direct cost means any cost that is identified specifically with a particular final cost objective. Direct costs are not limited to items that are incorporated in the end product as material or labor. Costs identified specifically with a contract are direct costs of that contract. All costs identified specifically with other final cost objectives of the contractor are direct costs of those cost objectives.

* * * * *

Indirect cost means any cost not directly identified with a single final cost objective, but identified with two or more final cost objectives or with at least one intermediate cost objective.

* * * * *

PART 31—CONTRACT COST PRINCIPLES AND PROCEDURES

3. Amend section 31.106–2 by revising the section heading and paragraphs (b) through (e) to read as follows:

31.106–2 Special allocations.

* * * * *

(b) When a facilities contract in relation to other cost objectives receives significantly more or less benefit from an indirect cost pool than would be reflected by an allocation of such costs using the contractor's normal methods, the contractor shall—

(1) Use a special allocation from that indirect cost pool to the facilities contract commensurate with the benefits received;

(2) Exclude the amount of the special allocation from the indirect cost pool; and

(3) Exclude the allocation base data for the facilities contract from the base used to allocate the pool.

(c) The cognizant Federal agency is responsible for determining whether the conditions necessitating a special allocation exist and negotiating the terms of an advance agreement (see 31.109) implementing an appropriate special allocation.

(d) A special allocation is appropriate for—

(1) The purchase of completed facilities (or services in connection with the facilities) from outside sources. Since such purchases do not involve the contractor's direct labor or indirect plant maintenance personnel, a special allocation is appropriate for indirect manufacturing and plant overhead costs that are primarily incurred or generated by reason of direct labor or maintenance labor operations; and

(2) Contracts providing for the installation of new facilities or the rehabilitation of existing facilities that involve the use of the contractor's plant maintenance labor, as distinguished from direct labor engaged in the production of the company's normal products. A special allocation to a facilities contract that involves the use of plant maintenance labor only should recognize that such a contract receives less benefit from such cost items as direct productive labor supervision, depreciation, and maintenance expense applicable to productive machinery and equipment, or raw material and finished goods storage costs.

(e) A special allocation is not appropriate for a facilities contract that calls for the construction, production, or rehabilitation of equipment or other items that are involved in the regular course of the contractor's business using the contractor's direct labor and manufacturing processes.

4. Amend section 31.201–1 by revising paragraph (a); and by removing the word "which" from paragraph (b) and adding "that" in its place. The revised text reads as follows:

31.201–1 Composition of total cost.

(a) The total cost, including standard costs properly adjusted for applicable variances, of a contract is the sum of the direct and indirect costs allocable to the contract, incurred or to be incurred, plus any allocable cost of money pursuant to 31.205–10, less any allocable credits. In ascertaining what constitutes a cost, any generally accepted method of determining or estimating costs that is equitable and is consistently applied may be used, including standard costs properly adjusted for applicable variances.

* * * * *

5. Amend section 31.201–2 by—

a. Revising the introductory text of paragraph (a);

b. Revising paragraph (c); and

c. Removing the word "which" from the last sentence of paragraph (d) and adding "that" in its place. The revised text reads as follows:

31.201–2 Determining allowability.

(a) A cost is allowable only when all of the following requirements are met:

* * * * *

(c) When contractor accounting practices are inconsistent with this Subpart 31.2, costs resulting from such inconsistent practices in excess of the amount that would have resulted from using practices consistent with this subpart are unallowable.

* * * * *

6. Amend section 31.202 by revising paragraph (a) and the introductory text of paragraph (b) to read as follows:

31.202 Direct costs.

(a) No final cost objective shall have allocated to it as a direct cost any cost, if other costs incurred for the same purpose, in like circumstances, have been included in any indirect cost pool to be allocated to that or any other final cost objective. Direct costs of the contract shall be charged directly to the contract. All costs specifically identified with other final cost objectives of the contractor are direct costs of those cost objectives and are not to be charged to the contract directly or indirectly.

(b) For reasons of practicality, the contractor may treat any direct cost of a minor dollar amount as an indirect cost if the accounting treatment—

* * * * *

7. Revise section 31.203 to read as follows:

31.203 Indirect costs.

(a) After direct costs have been determined and charged directly to the contract or other work, indirect costs are those remaining to be allocated to intermediate or final cost objectives. No final cost objective shall have allocated to it as an indirect cost any cost, if other costs incurred for the same purpose, in like circumstances, have been included as a direct cost of that or any other final cost objective.

(b) The contractor shall accumulate indirect costs by logical cost groupings with due consideration of the reasons

for incurring such costs. The contractor shall determine each grouping so as to permit use of an allocation base that is common to all cost objectives to which the grouping is to be allocated. The base selected must allocate the grouping on the basis of the benefits accruing to intermediate and final cost objectives. When substantially the same results can be achieved through less precise methods, the number and composition of cost groupings should be governed by practical considerations and should not unduly complicate the allocation.

(c) Once an appropriate base for allocating indirect costs has been accepted, the contractor shall not fragment the base by removing individual elements. All items properly includable in an indirect cost base must bear a pro rata share of indirect costs irrespective of their acceptance as Government contract costs. For example, when a cost input base is used for the allocation of G&A costs, the contractor must include in the base all items that would properly be part of the cost input base, whether allowable or unallowable, and these items must bear their pro rata share of G&A costs.

(d) The method of allocating indirect costs may require revision when significant changes occur in the nature of the business, the extent of subcontracting, fixed-asset improvement programs, inventories, the volume of sales and production, manufacturing processes, the contractor's products, or other relevant circumstances.

(e) Separate indirect cost groupings for costs allocable to offsite locations may be necessary to permit equitable distribution of costs on the basis of the benefits accruing to the several cost objectives.

(f)(1) Where a particular cost objective in relation to other cost objectives receives significantly more or less benefit from an indirect cost pool than would be reflected by the allocation of such costs using the provisions in this section (*e.g.*, Government-owned contractor operated plants), the contractor shall—

(i) Use a special allocation from that indirect cost pool to the particular intermediate or final cost objective commensurate with the benefits received;

(ii) Exclude the amount of the special allocation to any such intermediate or final cost objective from the indirect cost pool; and

(iii) Exclude the particular intermediate or final cost objective's allocation base data from the base used to allocate the pool.

(2) The cognizant Federal agency is responsible for determining whether the conditions necessitating a special allocation exist and negotiating the terms of an advance agreement (see 31.109) implementing an appropriate special allocation.

(g) A base period for allocating indirect costs is the cost accounting period during which such costs are incurred and accumulated for allocation to work performed in that period.

(1) For contracts subject to full or modified CAS coverage, the contractor must follow the criteria and guidance in 48 CFR 9904.406 for selecting the cost accounting periods to be used in allocating indirect costs.

(2) For contracts other than those subject to paragraph (g)(1) of this section, the base period for allocating indirect costs shall be the contractor's fiscal year used for financial reporting purposes in accordance with generally accepted accounting principles. The fiscal year will normally be 12 months, but a different period may be appropriate (*e.g.*, when a change in fiscal year occurs due to a business combination or other circumstances).

[FR Doc. 03–2581 Filed 2–3–03; 8:45 am]
BILLING CODE 6820–EP–P

Federal Register

Tuesday,
February 4, 2003

Part V

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Part 52
Federal Acquisition Regulation; Debriefing—Competitive Acquisition; Proposed Rule

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 52

[FAR Case 2002–014]

RIN 9000–AJ59

Federal Acquisition Regulation; Debriefing—Competitive Acquisition

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) are proposing to amend the Federal Acquisition Regulation (FAR) to implement Sections 1014 and 1064 of the Federal Acquisition Streamlining Act of 1994 on requirements for debriefing unsuccessful offerors under competitive proposals.

DATES: Interested parties should submit comments in writing on or before April 7, 2003 to be considered in the formulation of a final rule.

ADDRESSES: Submit written comments to—General Services Administration, FAR Secretariat (MVA), 1800 F Street, NW., Room 4035, ATTN: Laurie Duarte, Washington, DC 20405.

Submit electronic comments via the Internet to—*farcase.2002–014@gsa.gov*. Please submit comments only and cite FAR case 2002–014 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, at (202) 501–4755 for information pertaining to status or publication schedules. For clarification of content, contact Mr. Ralph De Stefano, Procurement Analyst, at (202) 501–1758. Please cite FAR case 2002–014.

SUPPLEMENTARY INFORMATION:

A. Background

Sections 1014 and 1064 of the Federal Acquisition Streamlining Act of 1994 amended 10 U.S.C. 2305(b) and 41 U.S.C. 253b, respectively, to include requirements for debriefing unsuccessful offerors under competitive proposals. Specifically, 10 U.S.C. 2305(b)(5)(D) and 41 U.S.C. 253b(e)(4) require each solicitation for competitive proposals to include a statement that prescribes minimal information that shall be disclosed in postaward debriefings. In addition to the aforementioned minimal statutory disclosure information requirement, FAR 15.506(d) added the following required disclosure information:

1. Unit price information, if applicable, of the successful and debriefed offerors as an element of the statutory requirement to disclose the overall evaluated cost or price; and

2. Past performance information on the debriefed offeror.

Some of the requirements were incorporated into the clause at FAR 52.215–1, Instructions to Offerors—Competitive Acquisitions, but the notification for debriefings was overlooked during the drafting of the clause at 52.212–1, Instruction to Offerors—Commercial Items. The rule amends FAR 52.212–1 and 52.215–1 to implement the statutory requirement and the additional FAR past performance requirement by listing all the prescribed minimal information that shall be disclosed in postaward debriefings.

The unit price information, if applicable, on the debriefed and successful offerors was intentionally not included. As a result of recent court cases, especially *MCI WorldCom* v. *GSA*, 163 F. Supp. 2d 28, the treatment of unit prices under exemption no. 4 of the Freedom of Information Act (5 U.S.C. 552(b)(3)) is in a state of flux which may cause a revision to FAR 15.503(b)(1)(iv) to clarify the release of unit prices. The requirements are addressed in FAR 15.506(d) and FAR 12.203.

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The Councils do not expect this proposed rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule primarily clarifies language pertaining to disclosure of information in postaward debriefings currently authorized by statute and does not change existing policy. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. We invite comments from small businesses and other interested parties. The Councils will consider comments from small entities concerning the affected FAR part 52 in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 601, *et seq.* (FAR case 2002–014), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 52

Government procurement.

Dated: January 30, 2003.

Ralph De Stefano,

Acting Director, Acquisition Policy Division.

Therefore, DOD, GSA, and NASA propose amending 48 CFR part 52 as set forth below:

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

1. The authority citation for 48 CFR part 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

2. Amend section 52.212–1 by revising the date of the provision; and adding paragraph (k) to read as follows:

52.212–1 Instructions to Offerors—Commercial Items.

* * * * *

Instructions To Offerors—Commercial Items (Date)

* * * * *

(k) *Debriefing.* If a postaward debriefing is given to requesting offerors, the Government shall disclose the following information, if applicable:

(1) The agency's evaluation of the significant weak or deficient factors in the debriefed offeror's offer;

(2) The overall evaluated cost or price and technical rating of the successful and the debriefed offeror and past performance information on the debriefed offeror;

(3) The overall ranking of all offerors, when any ranking was developed by the agency during source selection;

(4) A summary of the rationale for award;

(5) For acquisitions of commercial items, the make and model of the item to be delivered by the successful offeror; and

(6) Reasonable responses to relevant questions posed by the debriefed offeror as to whether source-selection procedures set forth in the solicitation, applicable regulations, and other applicable authorities were followed by the agency.

(End of provision)

3. Amend section 52.215–1 by revising the date of the provision and paragraph (f)(11) to read as follows:

52.215–1 Instructions to Offerors—Competitive Acquisition.

* * * * *

Instructions To Offerors—Competitive Acquisition (Date)

* * * * *

(f) * * *

(11) If a postaward debriefing is given to requesting offerors, the Government shall disclose the following information, if applicable:

(i) The agency's evaluation of the significant weak or deficient factors in the debriefed offeror's offer;

(ii) The overall evaluated cost or price and technical rating of the successful and the debriefed offeror and past performance information on the debriefed offeror;

(iii) The overall ranking of all offerors, when any ranking was developed by the agency during source selection;

(iv) A summary of the rationale for award;

(v) For acquisitions of commercial items, the make and model of the item to be delivered by the successful offeror; and

(vi) Reasonable responses to relevant questions posed by the debriefed offeror as to whether source-selection procedures set forth in the solicitation, applicable regulations, and other applicable authorities were followed by the agency.

(End of provision)

* * * * *

[FR Doc. 03–2580 Filed 2–3–03; 8:45 am]

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Federal Register

Tuesday,
February 4, 2003

Part VI

Department of Transportation

Federal Aviation Administration

14 CFR Parts 119, 121 et al.
Aging Airplane Safety; Advisory Circulars, Extension of Comment Period to Notices of Availability; Interim Rule and Notice

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 119, 121, 129, 135, and 183

[Dkt. No. FAA–1999–5401; Amdt. Nos. 119–6, 121–284, 129–34, 135–81, and 183–11]

RIN 2120–AE42

Aging Airplane Safety

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Interim final rule; extension of comment period.

SUMMARY: This action extends the comment period for the interim final rule, Aging Airplane Safety, issued on December 6, 2002. In that final rule, the FAA requires airplanes operated under Title 14, Code of Federal Regulations (14 CFR) part 121, U.S.-registered multiengine airplanes operated under 14 CFR part 129, and multiengine airplanes used in scheduled operations under 14 CFR part 135 to undergo inspections and records reviews by the Administrator or a designated representative. This is to occur after the airplane's 14th year in service and at named intervals thereafter.

This extension results from a joint request made by the Air Transport Association (ATA) and the Regional Airline Association (RAA).

DATES: This interim final rule is effective December 8, 2003. The FAA must receive comments by May 5, 2003.

ADDRESSES: Address your comments to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–1999–5401 at the beginning of your comments, and you should send two copies of your comments. If you wish to receive confirmation that FAA received your comments, include a self-addressed, stamped postcard.

You may also send comments and review public dockets through the Internet at *http://dms.dot.gov*. The public docket containing comments to this interim final rule may be viewed in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Dockets Office is located on the plaza level of the Nassif Building at the Department of Transportation.

Do not send comments you consider to be of a sensitive nature to the docket management system. Instead, send those comments to the FAA, Office of Rulemaking, ARM–1, 800 Independence Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Frederick Sobeck, Airplane Maintenance Division, AFS–304, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267–7355; facsimile (202) 267–5115.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites anyone with an interest to take part in this rulemaking by filing written comments, data, or views. The most helpful comments reference a specific portion of the rule, explain the reason for any recommended change, and include supporting data. We ask that you send us two copies of written comments.

We will file all comments received in the docket, including a report summarizing each substantive public contact with FAA personnel concerning this rulemaking. The docket is available for public inspection before and after the comment closing date. If you wish to review the docket in person, go to the address in the **ADDRESSES** section of this preamble between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Before acting on this rulemaking, we will consider all comments we receive by the closing date for comments. We will consider comments filed late if it is possible to do so without incurring expense or delay. We may change this interim final rule because of the comments we receive.

If you want the FAA to acknowledge receipt of your comments on this interim final rule, include with your comments a preaddressed, stamped postcard on which the docket number appears. We will stamp the date on the postcard and mail it to you.

Background

On December 6, 2002, the FAA issued Docket No. FAA–1999–5401, Aging Airplane Safety (67 FR 72726, December 6, 2002). Comments to that document were to be received by February 4, 2003.

By letter dated January 9, 2003, ATA and RAA asked the FAA to extend the comment period for this docket an extra three months. In their joint petition, ATA and RAA state that industry needs more time to address the undefined, complex, and far-reaching maintenance and inspection issues.

ATA and RAA also sought a one-year extension of the rule's effective and related compliance dates. To justify this extension, the petitioners cite the time needed by the FAA to review and act upon comments from industry. While the FAA strives to work with industry to ensure this rule is effectively implemented, we do not believe more time is needed. In addition, the compliance dates within this rule offer industry adequate time to prepare and carry out all necessary actions. As a result, the effective and compliance dates for this rule will remain unchanged.

Extension of Comment Period

In accordance with § 11.47(c) of Title 14, Code of Federal Regulations, the FAA has reviewed the petitions made by ATA and RAA for extension of the comment period to Docket No. FAA–1999–5401. The FAA finds that extension of the comment period is consistent with the public interest, and that good cause exists for taking this action. These petitioners have a substantive interest in the interim final rule and good cause for the extension.

Therefore, the FAA has extended the comment period for Docket No. FAA–1999–5401 until May 5, 2003.

Issued in Washington, DC, January 31, 2003.

Louis C. Cusimano,

Acting Director, Flight Standards Service.

[FR Doc. 03–2679 Filed 1–31–03; 1:58 pm]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Advisory Circulars (AC) 91–60A, 120–XX, and 91–56B; Extension of Comment Period to Notices of Availability

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of availability and request for comments; extension of comment period.

SUMMARY: This action extends the comment period for proposed advisory circulars 91–60A, 120–XX, and 91–56B. The extension is a result of a joint request received from the Air Transport Association (ATA) and the Regional Airline Association (RAA). The FAA published previous notices of availability in the **Federal Register** on December 6, 2002.

DATES: Comments must be received by May 5, 2003.

ADDRESSEES: Send all comments on the proposed ACs to: Frederick Sobeck, AFS–304, Aging Airplane Program Manager, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone number: (202) 267–7355.

FOR FURTHER INFORMATION CONTACT: Frederick Sobeck, AFS–304, Aging Airplane Program Manager, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone number: (202) 267–7355.

SUPPLEMENTARY INFORMATION:

Comments Invited

Anyone with an interest may obtain a copy of these draft ACs by accessing the FAA's Web page at *http://www.faa.gov/avr/arm/nprm.* cfm? nav=nprm or *http://faa.gov/avr/afs/acs/ac-idx.htm.* The FAA invites interested parties to present comments on the proposed ACs. Those sending comments must specifically identify the AC to which the comments apply (*i.e.*, AC 91–60A, 120–XX, or 91–56B). Comments should be sent to the address given above. The FAA will consider all communications received by the closing date for comments before issuing the final ACs.

Discussion

By letter dated January 9, 2003, ATA and RAA asked for a 3-month extension of the comment period for the interim final rule, Aging Airplane Safety, Docket No. FAA–1999–5401. They also requested the same consideration be given to the associated ACs.

In that final rule, the FAA requires airplanes operated under Title 14, Code of Federal Regulations (14 CFR) part 121, U.S.-registered multiengine airplanes operated under 14 CFR part 129, and multiengine airplanes used in scheduled operations under 14 CFR part 135 to undergo inspections and records reviews by the Administrator or a designated representative. This is to occur after the airplane's 14th year in service and at named intervals thereafter. The three ACs cited provide the industry with valuable compliance information.

In their joint petition, ATA and RAA state that industry needs more time to address the undefined, complex, and far-reaching maintenance and inspection issues.

Extension of Comment Period

In accordance with § 11.47(c) of Title 14, Code of Federal Regulations, the FAA has reviewed the petition filed by ATA and RAA for extension of the comment period. The FAA finds that extension of the comment period is consistent with the public interest, and that good cause exists for taking this action. These petitioners have a substantive interest in proposed ACs 91–60A, 120–XX, and 91–56B and have good cause for the extension.

Therefore, the FAA has extended the comment period for the referenced ACs until May 5, 2003.

Issued in Washington, DC on January 31, 2003.

Louis C. Cusimano,

Deputy Director, Flight Standards Service,

[FR Doc. 03–2680 Filed 1–31–03; 1:58 pm]

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The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

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H.J. Res. 13/P.L. 108–4

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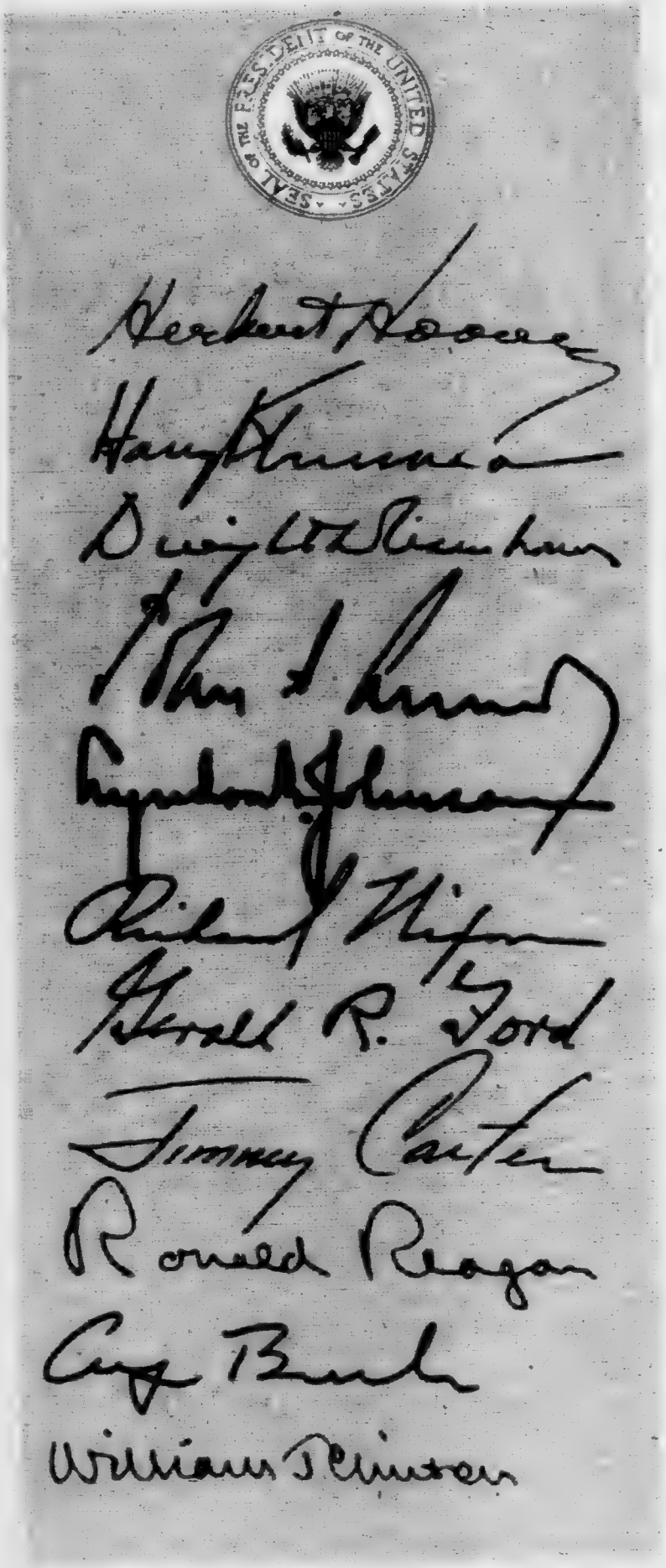

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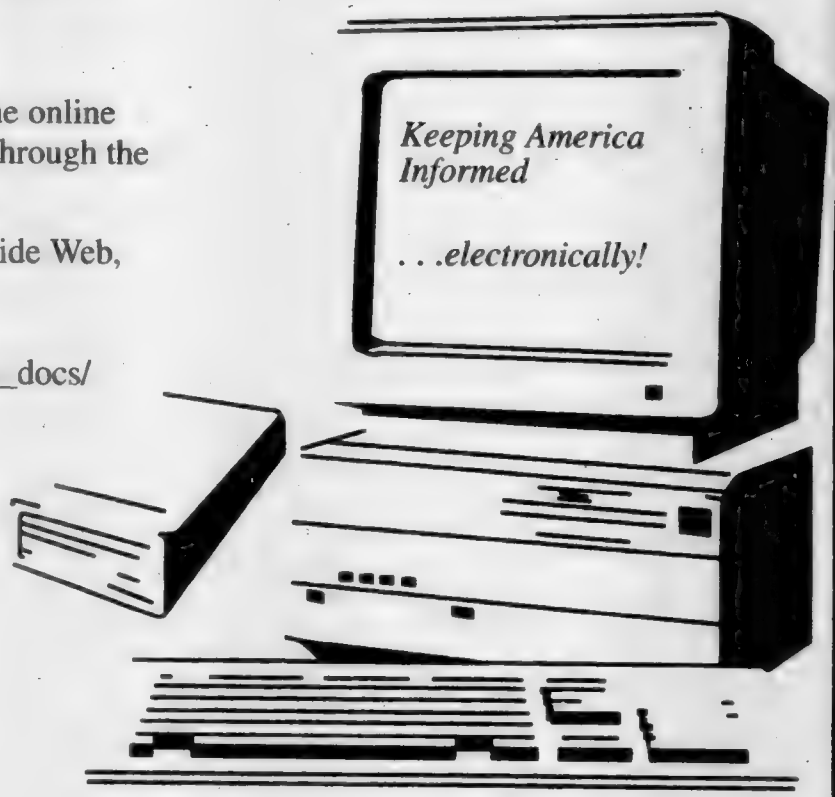

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Presidential Documents

Title 3—

The President

Presidential Determination No. 2003–13 of January 29, 2003

Presidential Determination Pursuant to Section 2(c)(1) of the Migration and Refugee Assistance Act of 1962, as Amended

Memorandum for the Secretary of State

Pursuant to section (2)(c)(1) of the Migration and Refugee Assistance Act of 1962, as amended, 22 U.S.C. 2601(c)(1), I hereby determine that it is important to the national interest that up to $15 million be made available from the U.S. Emergency Refugee and Migration Assistance Fund to meet unexpected urgent refugee and migration needs that would be anticipated in the event of a future humanitarian emergency in the Middle East, to include contingency planning for such needs. Such an emergency may arise if it becomes necessary for the United States and other nations to use military force to disarm the Iraqi regime of its weapons of mass destruction. These funds may be used, as appropriate, to provide contributions to international, governmental, and nongovernmental organizations, as well as for administrative expenses to manage contingency planning by the Department of State's Bureau of Population, Refugees, and Migration.

You are authorized and directed to inform the appropriate committees of the Congress of this determination and the obligation of funds under this authority, and to arrange for the publication of this memorandum in the **Federal Register**.

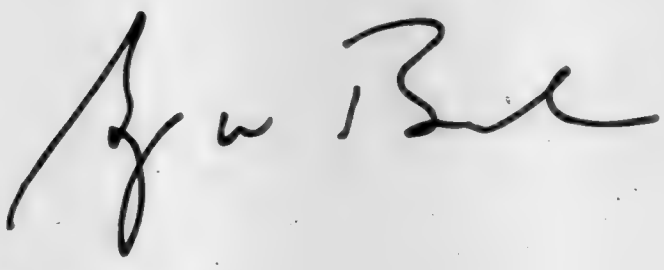

THE WHITE HOUSE,
Washington, January 29, 2003.

[FR Doc. 03–2959
Filed 2–4–03; 8:45 am]
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Presidential Documents

Presidential Determination No. 2003–14 of January 30, 2003

Presidential Determination on Major Drug Transit or Major Illicit Drug Producing Countries for 2003

Memorandum for the Secretary of State

Pursuant to section 706(1) of the Foreign Relations Authorization Act, Fiscal Year 2003 (Public Law 107–228) (FRAA), which was enacted on September 30, 2002, I hereby identify the following countries as major drug transit or major illicit drug producing countries: Afghanistan, The Bahamas, Bolivia, Brazil, Burma, China, Colombia, Dominican Republic, Ecuador, Guatemala, Haiti, India, Jamaica, Laos, Mexico, Nigeria, Pakistan, Panama, Paraguay, Peru, Thailand, Venezuela, and Vietnam.

The Majors List applies by its terms to countries. The United States Government interprets the term broadly to include entities that exercise autonomy over actions or omissions that could lead to a decision to place them on the list and, subsequently, to determine their eligibility for certification. A country's presence on the Majors List is not necessarily an adverse reflection of its government's counternarcotics efforts or level of cooperation with the United States. Consistent with the statutory definition of a major drug transit or drug producing country set forth in section 481(e)(5) of the Foreign Assistance Act of 1961, as amended (FAA), one of the reasons that major drug transit or drug producing countries are placed on the list is the combination of geographical, commercial, and economic factors that allow drugs to transit or be produced despite the concerned government's most assiduous enforcement measures.

Pursuant to section 706(2)(A) of the FRAA, I hereby designate Burma, Guatemala, and Haiti as countries that have failed demonstrably during the previous 12 months to adhere to their obligations under international counternarcotics agreements and take the measures set forth in section 489(a)(1) of the FAA. Attached to this memorandum are justifications for each of the countries so designated, as required by section 706(2)(B).

I have also determined, in accordance with provisions of section 706(3)(A) of the FRAA, that provision of United States assistance to Guatemala and Haiti in FY 2003 is vital to the national interests of the United States.

Additionally, the alarming increase in the quantity of illegal synthetic drugs entering the United States, especially ecstasy from Europe, is of particular concern. A significant amount of the ecstasy consumed in the United States is manufactured clandestinely in The Netherlands (in 2001, a total of 9.5 million ecstasy tablets were seized in the United States, and the Drug Enforcement Administration believes that the majority of tablets originated in The Netherlands). We are working closely with Dutch authorities to stop the production and export of ecstasy, which we both regard as a serious threat to our citizens. We expect Dutch authorities to move effectively and measurably in the coming year against the production and export of this drug, including dismantling labs and proceeding against trafficking organizations. Early in the year, we plan to discuss specific steps we can take together to reduce drug trafficking.

Although the United States enjoys an excellent level of bilateral cooperation with Canada, the United States Government is concerned that Canada is a primary source of pseudoephedrine and an increasing source of high potency marijuana, which are exported to the United States. Over the past

few years there has been an alarming increase in the amount of pseudoephedrine diverted from Canadian sources to clandestine drug laboratories in the United States, where it is used to make methamphetamine. The Government of Canada, for the most part, has not regulated the sale and distribution of precursor chemicals. The regulations to restrict the availability of pseudoephedrine, which the Government of Canada has just promulgated, should be stronger. Notwithstanding Canada's inadequate control of illicit diversion of precursor chemicals, I commend Canadian law enforcement agencies, which continue to work energetically to support our joint law enforcement efforts.

Under section 706 of the FRAA, you are hereby authorized and directed to submit this memorandum to the Congress, and to publish it in the **Federal Register**.

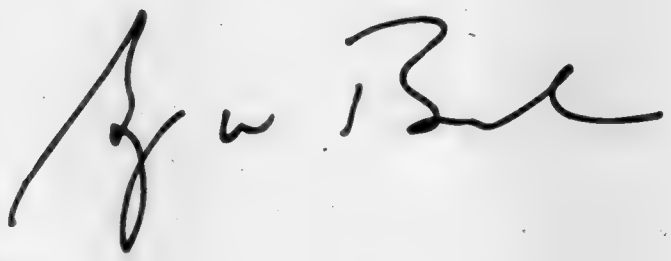

THE WHITE HOUSE,
Washington, January 30, 2003.

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Statement of Explanation

Burma

The United States has determined that Burma failed demonstrably to make sufficient efforts during the last 12 months to meet its obligations under international counternarcotics agreements and the counternarcotics requirements set forth in section 489(a)(1) of the Foreign Assistance Act of 1961, as amended.

Burma remains the world's number one producer and trafficker of methamphetamine and the world's second largest producer and trafficker of heroin. Judging from the situation in neighboring countries, production and trafficking of methamphetamine from Burma continues to be one of the most serious problems facing Southeast Asia. Drug gangs operate freely within Burma along its borders with China and Thailand, producing several hundred million methamphetamine tablets annually by using precursors imported from neighboring states.

Although Burma banned the import, sale, and use of 25 precursor chemicals and related substances used in the production of methamphetamine in 2002, Burma has yet to take effective measures against methamphetamine production and trafficking or the importation of precursor chemicals from neighboring states used in the production of methamphetamine. Hundreds of millions of methamphetamine tablets flooded the region, and seizures of methamphetamine went down significantly in 2002 (about 9 million tablets compared to 32 million in 2001), representing only a tiny fraction of the estimated production. In addition, the government destroyed a smaller number of methamphetamine and heroin labs in 2002 compared to the previous year.

Burma has also yet to curb involvement in illicit narcotics by the largest, most powerful, and most important trafficking organization within its borders, the United Wa State Army (UWSA). Although the government claims it has increased pressure on the UWSA to end opium production, major UWSA traffickers continue to operate with apparent impunity and UWSA involvement in methamphetamine production and trafficking remains a serious concern.

While the United States gives Burma a failing grade due to the magnitude of the above issues, we do note some progress on several counternarcotics fronts. Although Burma remains the world's second largest producer of illicit opium, opium production in Burma declined 26 percent in the past year, seizures of heroin and opium increased, and the government has initiated several cases against accused money-launders under new anti-money laundering laws.

The Government of Burma (GOB) also continued to cooperate with regional and international counternarcotics agencies and organizations, resulting in several cases against traffickers and their organizations in cooperation with the United States, Australia, Thailand, China, and others. Increased cooperation with China, in particular, resulted in the rendering of several narcotraffickers to China in 2002.

We urge the GOB to redouble efforts in those areas where it is making progress and to address those major gaps where it has made no serious efforts to date.

Guatemala

Despite improvements towards the end of the year, Guatemala failed demonstrably during the last 12 months to make substantial efforts to adhere to its obligations under international counternarcotics agreements and to take the counternarcotics measures set forth in section 489(a)(1) of the Foreign Assistance Act of 1961, as amended. Guatemala remains a major transshipment point for drugs, primarily cocaine, moving from South America

to the United States. However, the vital national interests of the United States require the United States to continue providing assistance to Guatemala under the Foreign Operations, Export Financing, and Related Programs Act, 2002 (P.L. 107–115).

During 2002, Guatemala's overall counterdrug commitment deteriorated. The Government of Guatemala's (GOG) counternarcotics efforts traditionally have been limited by a lack of resources for police, prosecutors, and judges. However, in 2002, a heightened level of corruption also impeded significant progress in the battle against narcotrafficking. Seizures of illegal narcotics and narcotics-related prosecutions in Guatemala were dramatically lower than in years past, despite evidence that the flow of illegal drugs had not diminished. Efforts to pass and implement anti-corruption and transparency legislation floundered. Few high-level figures were formally investigated or indicted, and the Anti-Narcotics Police was disbanded after several attempts at reform and the firing or reassignment of 75% of all personnel. The majority of Anti-Narcotics Prosecutors were also removed or transferred in the last year due to poor performance. During 2002, police stole an amount of drugs estimated at double the amount officially seized, and were identified as responsible for drug-related extra-judicial executions of both narcotraffickers and civilians.

Toward the end of 2002, at the request of the United States the GOG took some positive counternarcotics steps. The GOG promulgated regulations to implement the modern money laundering legislation passed in 2001 (though there have been no convictions to date). A number of police officers were arrested and others removed from office in connection with a gun battle over a drug shipment in the town of Chocon. The GOG recently began regularly destroying newly confiscated drugs not needed for evidence, and, in December, destroyed a modest amount of drugs stored from older cases.

Despite Guatemala's demonstrable failure on counternarcotics efforts, U.S. vital national interests require that U.S. assistance to Guatemala continue. Social and political problems underlying the country's 36-year civil conflict remain, and many Peace Accord commitments have not been met. There is a need for continued assistance to programs that diversify the rural economy, increase access to education and medical services, strengthen judicial and human rights institutions, foster the development of civil society, and address environmental concerns. These programs create an environment conducive to building democracy and reducing illegal migration. They also address social injustice, poverty, and distrust of civil authority in Guatemala, which are contributing factors behind Guatemalan involvement in the drug trade. The upcoming Central American Free Trade Agreement negotiations will also require significant U.S. involvement and assistance in projects linked to further economic liberalization. Additionally, suspension of assistance to Guatemala would result in the further deterioration of Guatemalan institutions essential to combating the ever-growing influence of organized crime in Guatemala.

Haiti

Haiti failed demonstrably during the last 12 months to make substantial efforts to adhere to its obligations under international counternarcotics agreements and take the counternarcotics measures set forth in section 489(a)(1) of the Foreign Assistance Act of 1961, as amended. Haiti remains a significant transshipment point for drugs, primarily cocaine, moving through the Caribbean from South America to the United States. However, the vital national interests of the United States require the United States to continue to provide assistance to Haiti under the Foreign Operations, Export, Financing, and Related Programs Act, 2002 (P.L. 107–115) Haiti's overall counterdrug commitment has remained weak, in part due to political instability and low levels of assistance. Such instability, coupled with economic degradation, has led to an increase in criminal and political violence and compromised

internal security. Corruption is rife; including reported police involvement in kidnapping-for-ransom, car theft, and coercion of junior police officers either to assist in or to ignore drug trafficking activities. President Aristide has attempted to shore up his personal and political security by politicizing the Haitian National Police (HNP). This, in contravention to one of President Aristide's commitments to the United States Government, bodes ill for an effective counternarcotics effort.

With two exceptions (putting into force a 1997 U.S.-Haiti bilateral maritime counternarcotics interdiction agreement and establishing a Financial Intelligence Unit), the Government of Haiti (GOH) has taken no action on its own initiative in the past year either to cooperate with the United States to interdict the flow of drugs destined for the United States or to honor its commitments as a party to the 1988 U.N. Drug Convention.

Other than signing a bilateral counternarcotics Letter of Agreement, permitting the polygraph examination of 40 HNP anti-drug unit officers, and removing those with questionable results, Haiti failed to take significant counterdrug actions requested by the United States Government. In summary, the GOH did not:

1) Deposit an instrument of ratification of the OAS Inter-American Convention Against Corruption;

2) introduce anti-corruption legislation;

3) prosecute drug-related public (including police) corruption;

4) implement fully the anti-money laundering law passed in January 2001;

5) enforce existing anti-money laundering guidelines issued by the Central Bank;

6) require cross-border currency declarations and provide penalties for noncompliance;

7) increase the number of arrests of major traffickers;

8) establish a permanent BLTS (French acronym for the HNP anti-drug unit) office outside Port-au-Prince; or

9) provide training to judges, prosecutors, and law enforcement officials.

Despite Haiti's demonstrable failure on counternarcotics issues, U.S. vital national interests require that U.S. assistance to Haiti continue. Haiti is the hemisphere's poorest country. There is a continued need for assistance to programs that increase access to education, combat environmental degradation, fight the spread of HIV/AIDS, and foster the creation of legitimate business and employment opportunities. These programs can create an atmosphere conducive to building democracy and reducing illegal migration. They will also address root causes of poverty and hopelessness in Haiti, contributing factors behind Haitian involvement in the international drug trade. Suspension of assistance to Haiti would result in the further deterioration of Haitian institutions. Additionally, suspension would hamper U.S. efforts to ensure implementation of OAS Resolution 822, which commits Haiti to hold legislative elections in 2003.

[FR Doc. 03–2960
Filed 2–4–03; 8:45 am]
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Rules and Regulations

Federal Register
Vol. 68, No. 24
Wednesday, February 5, 2003

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 01–118–2]

Karnal Bunt; Restrictions on the Use of Grain Originating in a Regulated Area

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule as final rule.

SUMMARY: We are adopting as a final rule, without change, an interim rule that amended the Karnal bunt regulations by prohibiting grain grown in a regulated area from being used as seed outside the regulated areas and by removing the requirement that wheat seed, durum wheat seed, and triticale seed that originates within a regulated area be treated with a fungicide before it may be planted within a regulated area. The interim rule was necessary to help to prevent the artificial spread of Karnal bunt to fields outside the regulated area and to remove a treatment requirement that we determined to be unnecessary.

EFFECTIVE DATE: The interim rule became effective on April 25, 2002.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Spaide, Director, Surveillance and Emergency Programs Planning and Coordination, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737–1236; (301) 734–7819.

SUPPLEMENTARY INFORMATION:

Background

Karnal bunt is a fungal disease of wheat (*Triticum aestivum*), durum wheat (*Triticum durum*), and triticale (*Triticum aestivum* X *Secale cereale*), a hybrid of wheat and rye. Karnal bunt is caused by the smut fungus *Tilletia indica* (Mitra) Mundkur and is spread by spores, primarily through the movement of infected seed. In the absence of measures taken by the U.S. Department of Agriculture (USDA) to prevent its spread, the establishment of Karnal bunt in the United States could have significant consequences with regard to the export of wheat to international markets.

The domestic quarantine and regulations regarding Karnal bunt are set forth in "Subpart—Karnal Bunt" (7 CFR 301.89–1 through 301.89–16, referred to below as the regulations). Among other things, the regulations define areas regulated for Karnal bunt and restrict the movement of regulated articles, including wheat seed and grain, from the regulated areas. Those movement restrictions are designed to prevent the artificial spread of Karnal bunt.

In an interim rule effective April 25, 2002, and published in the **Federal Register** on April 30, 2002 (67 FR 21159–21161, Docket No. 01–118–1), we amended the regulations by prohibiting grain grown in a regulated area from being used as seed outside the regulated areas and by removing the requirement that wheat seed, durum wheat seed, and triticale seed that originates within a regulated area be treated with a fungicide before it may be planted within a regulated area. The interim rule was necessary to prevent the artificial spread of Karnal bunt to fields outside the regulated area by prohibiting the use of potentially spore-positive grain as seed in those fields and to remove a treatment requirement that we determined to be unnecessary.

Comments on the interim rule were required to be received on or before July 1, 2002. We received three comments by that date. The comments were from a State agricultural agency and two industry organizations. All three commenters supported the interim rule. One commenter did, however, state that the regulations should provide growers and seed companies in nonregulated areas with the ability to voluntarily test their seed for Karnal bunt without the possibility of regulatory restrictions being imposed on their farms or businesses if the seed is found positive.

The regulations are intended to prevent the artificial spread of Karnal bunt into noninfected areas, so their focus is on the movement of regulated articles from and through regulated areas. The seed testing provisions of § 301.89–4 are limited to seed that originates within a regulated area; those provisions do not place any limitations or reporting requirements on the voluntary testing of seed by growers or seed companies located outside the regulated areas. It is not, therefore, necessary to amend the regulations to provide for the voluntary seed testing discussed by the commenter.

Therefore, for the reasons given in the interim rule and in this document, we are adopting the interim rule as a final rule without change.

This action also affirms the information contained in the interim rule concerning Executive Order 12866 and the Regulatory Flexibility Act, Executive Order 12988, and the Paperwork Reduction Act.

Further, this action has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

PART 301—DOMESTIC QUARANTINE NOTICES

Accordingly, we are adopting as a final rule, without change, the interim rule that amended 7 CFR part 301 and that was published at 67 FR 21159–21161 on April 30, 2002.

Authority: 7 U.S.C. 7711, 7712, 7714, 7731, 7735, 7751, 7752, 7753, 7754, and 7760; 7 CFR 2.22, 2.80, and 371.3.

Section 301.75–15 also issued under Sec. 204, Title II, Pub. L. 106–113, 113 Stat. 1501A–293; sections 301.75–15 and 301.75–16 also issued under Sec. 203, Title II, Pub. L. 106–224, 114 Stat. 400 (7 U.S.C. 1421 note).

Done in Washington, DC, this 30th day of January 2003.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 03–2684 Filed 2–4–03; 8:45 am]

BILLING CODE 3410–34–U

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 02–114–1]

Imported Fire Ant; Additions to Quarantined Areas

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the imported fire ant regulations by designating as quarantined areas all or portions of six counties in South Carolina and nine counties in Tennessee. As a result of this action, the interstate movement of regulated articles from those areas will be restricted. This action is necessary to prevent the artificial spread of the imported fire ant to noninfested areas of the United States.

DATES: This interim rule was effective January 30, 2003. We will consider all comments that we receive on or before April 7, 2003.

ADDRESSES: You may submit comments by postal mail/commercial delivery or by e-mail. If you use postal mail/commercial delivery, please send four copies of your comment (an original and three copies) to: Docket No. 02–114–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 02–114–1. If you use e-mail, address your comment to *regulations@aphis.usda.gov*. Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and "Docket No. 02–114–1" on the subject line.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at *http://www.aphis.usda.gov/ppd/rad/webrepor.html*.

FOR FURTHER INFORMATION CONTACT: Mr. Charles L. Brown, Imported Fire Ant Program Manager, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737–1236; (301) 734–8247.

SUPPLEMENTARY INFORMATION:

Background

The imported fire ant regulations (contained in 7 CFR 301.81 through 301.81–10 and referred to below as the regulations) quarantine infested States or infested areas within States and restrict the interstate movement of regulated articles to prevent the artificial spread of the imported fire ant.

The imported fire ant (*Solenopsis invicta* Buren and *Solenopsis richteri* Forel) is an aggressive, stinging insect that, in large numbers, can seriously injure and even kill livestock, pets, and humans. The imported fire ant, which is not native to the United States, feeds on crops and builds large, hard mounds that damage farm and field machinery. The regulations are intended to prevent the imported fire ant from spreading throughout its ecological range within the country.

The regulations in § 301.81–3 provide that the Administrator of the Animal and Plant Health Inspection Service (APHIS) will list as a quarantined area each State, or each portion of a State, that is infested with the imported fire ant. The Administrator will designate less than an entire State as a quarantined area only under the following conditions: (1) The State has adopted and is enforcing restrictions on the intrastate movement of the regulated articles listed in § 301.81–2 that are equivalent to the interstate movement restrictions imposed by the regulations; and (2) designating less than the entire State will prevent the spread of the imported fire ant. The Administrator may include uninfested acreage within a quarantined area due to its proximity to an infestation or its inseparability from an infested locality for quarantine purposes.

In § 301.81–3, paragraph (e) lists quarantined areas. We are amending § 301.81–3(e) by:

- Revising the boundaries of the quarantined areas in Cherokee, Greenville, and Spartanburg Counties, SC, and changing the status of Anderson, Oconee, and Pickens Counties, SC, from partially to completely infested.
- Revising the boundaries of the quarantined areas in Maury County, TN, changing the status of Decatur, Franklin, and Monroe Counties, TN, from partially to completely infested, and adding portions of Bedford, Blount, Coffee, Grundy, and Loudon Counties, TN, to the list of quarantined areas.

We are taking these actions because recent surveys conducted by APHIS and State and county agencies revealed that the imported fire ant has spread to these areas. See the rule portion of this document for specific descriptions of the new and revised quarantined areas.

Emergency Action

This rulemaking is necessary on an emergency basis to prevent the spread of imported fire ant into noninfested areas of the United States. Under these circumstances, the Administrator has determined that prior notice and opportunity for public comment are contrary to the public interest and that there is good cause under 5 U.S.C. 553 for making this rule effective less than 30 days after publication in the **Federal Register**.

We will consider comments we receive during the comment period for this interim rule (*see* **DATES** above). After the comment period closes, we will publish another document in the **Federal Register**. The document will include a discussion of any comments we receive and any amendments we are making to the rule.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review under Executive Order 12866.

This interim rule is necessary because infestations of imported fire ant have been discovered in additional areas of South Carolina and Tennessee. This action will establish quarantined areas in 5 new counties and revise the boundaries of the quarantined areas in 10 other counties in those States. As a result of this action, the interstate movement of regulated articles from those areas is restricted. This action is necessary to prevent the artificial spread of the imported fire ant into noninfested areas of the United States.

The following analysis addresses the economic effects of this rule and the impact on small entities as required by the Regulatory Flexibility Act.

The market value of the agricultural products sold in the 15 counties affected by this rule was more than $445 million, according to the 1997 Agricultural Census. This represents 12 percent of the combined total value of agricultural sales for both States.

Potential damage by imported fire ant presents a risk to the agricultural economies in these 15 counties. During 1997, the value of sales from nursery

and greenhouse crops in these 15 counties were at minimum $54 million. Those entities potentially affected by this action include nurseries, greenhouses, farm equipment dealers, construction companies, and those entities that sell, process, or move regulated articles interstate from and through quarantined areas. These economic entities are now required to treat and certify their regulated articles before moving them interstate.

According to the Small Business Administration (SBA) definition, a small agricultural producer is one having less than $750,000 in annual sales, and a small equipment dealer or a small agricultural service company is one generating less than $5 million in annual sales.

According to this definition, all of the estimated 433 potentially affected entities in the counties affected by this rule are considered small by SBA standards. However, both the number of affected entities and the scope of the economic effects resulting from this action are dependent on any given entity's proportion of sales outside the quarantined area.

The adverse economic effect on these entities can be substantially minimized by the availability of various treatment options that will allow for the movement of regulated articles from the quarantined area with only a small additional cost. The treatment cost for a standard shipment of nursery plants is estimated to be between $116 and $200, which represents, at most, 2 percent of the value of a standard tractor-trailer load of nursery plants ($10,000 to $250,000). The benefits of this action are substantial, both ensuring continued agricultural sales from the affected counties and preventing human-assisted spread of imported fire ant.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This interim rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

Accordingly, we are amending 7 CFR part 301 as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

1. The authority citation for part 301 continues to read as follows:

Authority: 7 U.S.C. 7711, 7712, 7714, 7731, 7735, 7751, 7752, 7753, 7754, and 7760; 7 CFR 2.22, 2.80, and 371.3.

Section 301.75–15 also issued under Sec. 204, Title II, Pub. L. 106–113, 113 Stat. 1501A–293; sections 301.75–15 and 301.75–16 also issued under Sec. 203, Title II, Pub. L. 106–224, 114 Stat. 400 (7 U.S.C. 1421 note).

2. In § 301.81–3, paragraph (e) is amended as follows:

a. Under the heading South Carolina, by revising the entries for Anderson, Cherokee, Greenville, Oconee, Pickens, and Spartanburg Counties.

b. Under the heading Tennessee, by adding, in alphabetical order, new entries for Bedford, Blount, Coffee, Grundy, and Loudon Counties and by revising the entries for Decatur, Franklin, Maury, and Monroe Counties.

§ 301.81–3 Quarantined areas.

* * * * *

(e) * * *

South Carolina

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Anderson County. The entire county.

* * * * *

Cherokee County. That portion of the county bordered by a line beginning at the intersection of the Spartanburg/Cherokee County line and State Secondary Highway 36; then northeast on State Secondary Highway 36 to the South Carolina/North Carolina State line; then east along the State line to the Cherokee/York County line; then south along the Cherokee/York County line to the Cherokee/Union County line; then northwest on the Cherokee/Union County line to the point of beginning.

* * * * *

Greenville County. That portion of the county bordered by a line beginning at the intersection of the Greenville/Spartanburg County line and State Secondary Highway 277; then northwest on State Secondary Highway 277 to State Secondary Highway 560; then east on State Highway 11 to the unpaved county road—then north on the unpaved county road to secondary system road—unpaved 118; then northeast on secondary system road-unpaved 118 to the South Carolina/North Carolina State line; then west along the South Carolina/North Carolina State line to the Greenville/Pickens County line; then south along the Greenville/Pickens County line to the Greenville/Laurens County line; then northeast along the Greenville/Laurens County line to the point of beginning.

* * * * *

Oconee County. The entire county.

* * * * *

Pickens County. The entire county.

* * * * *

Spartanburg County. That portion of the county bordered by a line beginning at the intersection of the Spartanburg/Greenville County line and State Secondary Highway 75; then northeast on State Secondary Highway 75 to State Secondary Highway 127 in the town of Gramling; then northeast on State Secondary Highway 127 to State Secondary Highway 37; then north on State Secondary Highway 37 to State Highway 11; then east on State Highway 11 to State Secondary Highway 943; then east on paved county road to State Secondary Highway 42; then southeast on State Secondary Highway 42 to State Secondary Highway 132; then northeast on State Secondary Highway 132 to State Secondary Highway 58; then south on State Secondary Highway 58 to State Secondary Highway 187; then east on State Highway 11 to the Spartanburg/Cherokee County line; then south along the Spartanburg/Cherokee County line to the Spartanburg/Laurens County line; then north along the Spartanburg/Laurens County line to the point of beginning.

* * * * *

Tennessee

Bedford County. That portion of the county lying south of a line beginning at the intersection of the Marshall/Bedford County line and Bills Road; then east on Bills Road to Falcon Road; then north on Falcon Road to Bethlehem Church Road; then east on Bethlehem Church Road to Uselton Road; then east on Uselton Road to Dixon Road; then southeast on Dixon Road to Tennessee Highway 130; then northeast on

Tennessee Highway 130 to Snell Road; then southeast on Snell Road to U.S. Highway 231; then south on U.S. Highway 231 to the Lincoln/Moore/Bedford County line.

Blount County. That portion of the county lying south of a line beginning at the intersection of the Loudon/Blount County line and U.S. Highway 321; then east on U.S. Highway 321 to Marble Hill Road; then southeast on Marble Hill Road to Gulf Hollow Road; then south on Gulf Hollow Road to Kirk Road; then east on Kirk Road to Meadow Road; then northeast on Meadow Road to Lambert Road; then southeast on Lambert Road to Salem Road; then south on Salem Road to Morgantown Road; then northeast on Morgantown Road to Springview Road; then southeast on Springview Road to Old Niles Ferry Road; then southwest on Old Niles Ferry Road to Gillen Water Road; then southeast on Gillen Water Road to U.S. Highway 129; then south on U.S. Highway 129 to Baumgardner Road; then east on Baumgardner Road to Mint Road; then northeast on Mint Road to Knob Road; then southeast on Knob Road to Sixmile Road; then south along an imaginary line to U.S. Highway 129; then southeast on U.S. Highway 129 to the Tennessee/North Carolina State line.

* * * * *

Coffee County. That portion of the county lying south of a line beginning at the intersection of the Bedford/Coffee County line and the line of latitude 35° 25′ North; then east on the line of latitude 35° 25′ North to Arnold Center Road; then south on Arnold Center Road to Miller Crossroad Road; then southeast on Miller Crossroad Road to Prairie Plains Road; then north on Prairie Plains Road to Lonnie Bush Road; then northeast on Lonnie Bush Road to U.S. Highway 41; then southeast on U.S. Highway 41 to the Coffee/Grundy County line; also the entire city limits of Tullahoma, TN.

Decatur County. The entire county.

* * * * *

Franklin County. The entire county.

* * * * *

Grundy County. That portion of the county lying south of a line beginning at the intersection of the Coffee/Grundy County line and U.S. Highway 41; then southeast on U.S. Highway 41 to Tennessee Highway 50; then east on Tennessee Highway 50 to Homer White Road; then north on Homer White Road to Tennessee Highway 50; then northeast on Tennessee Highway 50 to Tennessee Highway 108; then east on Tennessee Highway 108 to Tennessee Highway 399; then northeast on Tennessee Highway 399 to Bryant Road; then southeast on Bryant Road to the Grundy/Sequatchie County line.

* * * * *

Loudon County. That portion of the county lying south of a line beginning at the intersection of the Roane/Loudon County line and the Tennessee River; then east along the Tennessee River to the Fort Loudon Dam (U.S. Highway 321); then northwest on U.S. Highway 321 to Martel Road; then northeast on Martel Road to the Loudon/Knox County line.

* * * * *

Maury County. That portion of the county lying south of a line beginning at the intersection of the Lewis/Maury County line and U.S. Highway 412; then east on U.S. Highway 412 to Cecil Farm Road; then east on Cecil Farm Road to South Cross Bridges Road; then south on South Cross Bridges Road to Mt. Pleasant Road; then south on Mt. Pleasant Road to Tennessee Highway 166; then southeast on Tennessee Highway 166 to Tennessee Highway 243; then south on Tennessee Highway 243 to Dry Creek Road; then south on Dry Creek Road to the Maury/Lawrence County Line.

* * * * *

Monroe County. The entire county.

* * * * *

Done in Washington, DC, this 30th day of January 2003.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 03–2685 Filed 2–4–03; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 318

[Docket No. 00–052–2]

Fruits and Vegetables From Hawaii

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the regulations to allow bell peppers, eggplant, mangoes, pineapple (other than smooth Cayenne), Italian squash, and tomatoes to be moved interstate from Hawaii if the fruits and vegetables undergo irradiation treatment at an approved facility. Treatment may be conducted either in Hawaii or in areas of the mainland United States where tropical fruit flies are not likely to become established. The fruits and vegetables will also have to meet certain additional requirements, including packaging requirements. This action relieves restrictions on the movement of these fruits and vegetables from Hawaii while continuing to provide protection against the spread of plant pests from Hawaii to other parts of the United States.

EFFECTIVE DATE: February 5, 2003.

FOR FURTHER INFORMATION CONTACT: Mr. Hesham A. Abuelnaga, Import Specialist, Phytosanitary Issues Management Team, PPQ, APHIS, 4700 River Road Unit 140, Riverdale, MD 20737–1236; (301) 734–5334.

SUPPLEMENTARY INFORMATION:

Background

The Hawaiian Fruits and Vegetables regulations, contained in 7 CFR 318.13 through 318.13–17 (referred to below as the regulations), govern, among other things, the interstate movement of fruits and vegetables from Hawaii. Regulation is necessary to prevent the spread of dangerous plant diseases and pests that occur in Hawaii.

The regulations in § 318.13–4f allow abiu, atemoya, carambola, litchi, longan, papaya, rambutan, and sapodilla to be moved interstate from Hawaii if, among other things, the fruits and vegetables undergo irradiation treatment in accordance with that section.

On May 22, 2002, we published in the **Federal Register** (67 FR 35932–35936, Docket No. 00–052–1) a proposal to amend the regulations to allow bell peppers, eggplant, mangoes, pineapple (other than smooth Cayenne), Italian squash, and tomatoes to be moved interstate from Hawaii if treated with irradiation in accordance with the requirements in § 318.13–4f. The proposal was prompted by research by the Department's Agricultural Research Service (ARS) that showed that this irradiation treatment could eliminate infestations of fruit flies and other pests in those commodities. In that same document, we also proposed to amend the irradiation regulations to require cartons of fruits and vegetables that are being moved interstate in accordance with the regulations to be marked with irradiation indicators.

We solicited comments concerning our proposal for 60 days ending July 22, 2002. We received six comments by that date. The comments were from researchers, a manufacturer of irradiation equipment, and representatives of a State government. The commenters generally supported the proposal. However, four commenters expressed concern over the proposed requirement for the use of

irradiation indicators. Also, another commenter raised concerns about including mangoes on the list of fruits approved for movement from Hawaii if treated with irradiation. These comments are discussed below by topic.

Irradiation Indicators

We proposed to amend the irradiation provisions in § 318.13–4f to require cartons of fruits and vegetables being moved interstate in accordance with the regulations to be marked with irradiation indicators. Specifically, we had proposed to add a new § 318.13–4f(b)(7) to read as follows: "*Indicators.* Each carton of fruits and vegetables must bear an indicator device, securely attached prior to irradiation, that changes color or provides another clear visual change when it is exposed to radiation in the dose range required by this section for the pests for which the articles are being treated." Four commenters opposed this proposed requirement for numerous technical, operational, and cost-benefit reasons.

One commenter referred to several studies that deal with the limitations of available radiation-sensitive indicators.[1] Specifically, the commenter stated that dose fluctuations resulting from density variations caused by the arrangement, size, and weight of individual fruit within the subunits of a pallet would make irradiation indicators impractical and unreliable.

Another commenter stated that the indicators that are currently available have not undergone adequate testing and standard development, and, therefore, their reliability is questionable. In addition, the commenter suggested that the added labor costs for the additional handling must be taken into account, offsetting the low cost of the production of the indicators themselves.

One comment, which was reviewed and submitted by several researchers, offered detailed discussion of several issues related to the use of irradiation indicators. The comment referred to American Society for Testing and Materials (ASTM) Standard E 1539–98, "Standard Guide for the Use of Radiation-Sensitive Indicators." Section 7.3 of that document states: "Some irradiation or storage conditions may result in false positive or negative observations. For these reasons, indicators should not be used as a criterion for product release. Also, external environmental influences may make the interpretation of the indicators meaningless outside the irradiation facility unless appropriate controls are used." The commenter indicated that, for several technical reasons, irradiation indicators can only be used effectively to show that products have been exposed to "some" radiation, and not to show the exact dose of radiation that a product has received.

We have carefully analyzed all the data and opinions submitted recommending against the proposed indicator requirement and have decided to omit that requirement from this final rule. While we believe that an indicator could be employed as a useful "cross check" when Animal and Plant Health Inspection Service (APHIS) inspectors are correlating the required interstate movement certificates with the cartons referred to in those documents to offer additional protection against the introduction of plant pests into the mainland United States from Hawaii, apparently there is no such indicator that is: (1) Currently available at low cost; (2) validated to be sensitive and reliable in the appropriate dose ranges; and (3) validated to be resistant to false positives and false negatives caused by environmental effects. Therefore, we have omitted proposed § 318.13–4f(b)(7) from this final rule.

Dosage Recommendations

One commenter noted that there are only two studies to date that examine the relationship between radiation dose and fertility in the adult mango seed weevil (*Sternochetus mangiferae* (Fabricus), formerly known as *Cryptorhynchus mangiferae*). The commenter stated that these studies do not provide adequate support for the proposed dose of 100 Gy (10 krad), which was recommended by ARS research findings as a sufficient quarantine treatment for mango seed weevil. The commenter suggested that, based on the limited amount of research that has been done, Hawaiian mangoes should be subjected to higher doses of radiation than 100 Gy (10 krad). We had proposed a minimum ionizing irradiation dose of 250 Gy (25 krad) for mangoes, which we indicated would be effective in eliminating both fruit flies and the mango seed weevil.

We have carefully analyzed the data and conducted a review of the available literature on this topic and have determined that a higher dose of irradiation for mango seed weevil is appropriate. Based on research by ARS (Follett, 1999) and by the International Consultative Group on Food Irradiation of the Food and Agriculture Organization of the United Nations,[2] we are setting an irradiation dose level of 300 Gy (30 krad) for mango seed weevil in this final rule. We believe that there is enough research and evidence to support this dose level as an effective quarantine treatment for mango seed weevil.

The same commenter also stated that a dose of 250 Gy is excessive for fruit flies. He indicated that "recent research and analyses have demonstrated that studies finding that doses >150 Gy were needed most likely are in error," but did not identify specific studies or analyses. He asked when APHIS would consider lower doses.

The research supporting this comment may have merit, but such research must be carefully evaluated and verified before we lower doses below the proposed level, which we know is effective. APHIS, in cooperation with ARS and others, will evaluate the lower doses recommended by this commenter. If we determine that lower doses are effective for fruit flies, we will initiate rulemaking in the future to reduce the doses. However, this evaluation process will take time, so in this final rule we are utilizing the dose of 250 Gy for fruit flies so that irradiation treatments may occur while this evaluation is underway.

The same commenter also stated that there should be a range of time given for irradiation treatment the way that a time range is given for vapor heat treatment in the comparison table (*see* Table 3) in the proposed rule. The commenter also asked if the comparison table compared values for the same amount of fruit in both treatments.

The comparison table was offered in the proposed rule's economic analysis to illustrate the relative cost and time-saving benefits of irradiation treatments when compared to the presently available vapor heat treatment, not to set specific values for the two treatments. Although the same amount of fruit was used in both treatments, it was not possible to give a time range for irradiation treatment comparable to the time range given for the heat vapor treatment because of the number of

[1] Ehlermann, D.A.E. (Federal Research Centre for Nutrition, Karlsruhe (Germany). Inst. of Process Engineering). "Validation of a label dosimeter for food irradiation applications by subjective and objective means," Appl. Radiat. Isot.; v. 48(9), p. 1197–1201; 1997.

International Atomic Energy Agency, "Standardized methods to verify absorbed dose in irradiated food for insect control," IAEA, Vienna, 2001, IAEA–TECDOC–1201.

Razem, D. (Ruder Boskovic Inst., Zagreb (Croatia)), "Dosimetric performance of and environmental effects on sterin irradiation indicator labels," Radiat. Phys. Chem.; v.49(4), p. 491–495.

[2] "Irradiation as a Quarantine Treatment of Fresh Fruits and Vegetables," ICGFI, 1991. This publication also cited two other studies, (Heather and Corcoran, 1990) and (Jessup and Rigney, 1990), that supported an irradiation dose level of 300 Gy (30 krad) for mango seed weevil.

variables involved in the irradiation process. The irradiation exposure times that are necessary to ensure that the specified dose has been delivered and absorbed vary widely by commodity and by equipment, which is available from several different manufacturers of irradiation equipment. The Plant Protection and Quarantine Treatment Manual, which is incorporated by reference in 7 CFR § 300.1, states that irradiation facilities must use ASTM Standard E 1261, "Guide for Selection and Calibration of Dosimetry Systems for Radiation" (or an equivalent international standard) as a guide for selection and calibration of an appropriate dosimetry system that matches the dosimeter requirements specific to their needs, and that irradiation exposure times must be evaluated for each commodity. The necessary dosage levels vary from 150 Gy (15 krad) to 300 Gy (30 krad) based on commodity, and each piece of equipment varies in the amount of time it takes to ensure that these dosage levels have been delivered and absorbed. Any time range given would not be able to take into account all of these possibilities and would therefore be inaccurate. We are not making any changes to the rule based on this comment.

Miscellaneous

The regulations in § 318.13–4f currently specify 250 Gy (25 krad) as the minimum absorbed dose for all treated commodities. Because, as noted above, we are setting the minimum absorbed dose for mangoes at 300 Gy (30 krad), we have amended several paragraphs in § 318.13–4f so that they refer to "the specified dose" rather than to 250 Gy (25 krad).

Therefore, for the reasons given in the proposed rule and in this document, we are adopting the proposed rule as a final rule, with the changes discussed in this document.

Effective Date

This is a substantive rule that relieves restrictions and, pursuant to the provisions of 5 U.S.C. 553, may be made effective less than 30 days after publication in the **Federal Register**.

This rule relieves restrictions on the interstate movement of bell peppers, eggplant, mangoes, pineapple (other than smooth Cayenne), Italian squash, and tomatoes from Hawaii to the mainland United States. Making this rule effective immediately will allow interested producers, as well as manufacturers of the irradiation equipment that will be used to treat these articles, to benefit from trade as soon as possible. Therefore, the Administrator of the Animal and Plant Health Inspection Service has determined that this rule should be effective upon publication in the **Federal Register**.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

We are amending the Hawaiian Fruits and Vegetables regulations to allow bell peppers, eggplant, mangoes, pineapple (other than smooth Cayenne), Italian squash, and tomatoes to be moved interstate from Hawaii if they are treated with irradiation in accordance with the regulations in § 318.13–4f. Irradiation at certain dosages eliminates infestations of pests in fruits and vegetables. Irradiation also eliminates bacterial or fungal growth that can otherwise cause accelerated spoilage and result in illness. Bacterial contamination can come from soil, insects, bird or rodent droppings, or the water used in processing.

Effects on Producers and Shippers of Fruits and Vegetables

Since 1995, the amount of land used for commercial production of mangoes in Hawaii has nearly tripled, and more than 7,500 new mango trees have been planted. However, producers in Hawaii have not been able to ship mangoes to the mainland United States due to the presence of the mango seed weevil in Hawaii (the mango seed weevil is not present in the mainland United States).[3] The irradiation treatment in this final rule provides an effective quarantine treatment for the mango seed weevil that will protect against the introduction and dissemination of this pest into the mainland United States from Hawaii. This final rule opens the mainland U.S. mango market to Hawaiian mangoes.

U.S. production of mangoes has primarily been in southern Florida, with a smaller quantity grown in Hawaii and a negligible amount produced in California. According to the 1997 Census of Agriculture, there were 218 mango farms in Florida, 171 in Hawaii, and 2 in California. The total domestic harvest that year was about 2,829 metric tons, of which about 97 percent was produced in Florida and about 3 percent (approximately 85 metric tons) produced in Hawaii. According to National Agricultural Statistics Service data, Hawaii produced approximately 72 metric tons of mangoes in 1999. It is unlikely that this final rule will result in a significant amount of mangoes being moved from Hawaii to the mainland United States because it is expected that nearly all mangoes produced in Hawaii will continue to be consumed within the State. Further, given that the United States imported 219,000 metric tons of mangoes between September 1998 and August 1999, any movements of Hawaii-grown mangoes to the mainland United States will be insignificant in contrast to the volume of annual imports.

Bell peppers, eggplant, pineapple (other than smooth Cayenne), Italian squash, and tomatoes are currently allowed to move interstate from Hawaii if they are first treated for Mediterranean fruit fly, oriental fruit fly, and melon fly with vapor heat in accordance with § 318.13–4b. Tomatoes may also be moved interstate from Hawaii if they are treated with methyl bromide in accordance with § 318.13–4c. This rule provides for an alternative means of treating bell peppers, eggplant, pineapple (other than smooth Cayenne), Italian squash, and tomatoes from Hawaii for fruit flies and other pests.

Since 1995, Hawaii's production of bell peppers, eggplant, Italian squash, and tomatoes has increased in value and volume (*see* tables 1 and 2). Hawaii's production of pineapples (other than smooth Cayenne) has decreased by 4 percent, but its value has increased by 6 percent.

[3] The mango seed weevil attacks mango seeds, but rarely the fruit, and may cause slight fruit drop in production areas. The mango seed weevil poses no threat to other crops or flora. It is strictly monophagous.

TABLE 1.—PRODUCTION OF SELECTED VEGETABLES IN HAWAII

	Year			
	1995	1996	1997	1998
Bell Peppers				
Volume (fresh weight in lbs.)	2,400,000	2,600,000	2,000,000	3,000,000
Value	$1,392,000	$1,248,000	$980,000	$1,500,000
Eggplant				
Volume (fresh weight in lbs.)	1,200,000	1,300,000	1,500,000	1,300,000
Value	$984,000	$949,000	$1,185,000	$1,053,000
Pineapples (other than smooth Cayenne)				
Volume (fresh weight in lbs.)	760,594,590	765,003,834	714,297,528	731,934,504
Value	$87,360,000	$95,914,000	$91,721,000	$92,776,000
Italian Squash				
Volume (fresh weight in lbs.)	620,000	700,000	1,400,000	1,500,000
Value	$316,000	$336,000	$700,000	$735,000
Tomatoes				
Volume (fresh weight in lbs.)	6,000,000	7,000,000	10,200,000	10,200,000
Value	$2,910,000	$3,710,000	$5,508,000	$5,610,000

TABLE 2.—CHANGE IN PRODUCTION OF SELECTED VEGETABLES IN HAWAII BETWEEN 1995 AND 1998

	Volume (percent)	Value (percent)
Bell peppers	−4	+6
Eggplant	+70	+93
Pineapples (other than smooth Cayenne)	+25	+8
Italian squash	+8	+7
Tomatoes	+142	+96

According to the Hawaii Agricultural Census, there were 27 farms growing pineapples for commercial sale in 1997. Twenty-two (or 82 percent) of those farms harvested between 1 and 14 acres of pineapple. During the same year, 74 farms produced tomatoes for commercial sale (a total of 388 acres harvested). There are no official data with respect to the number of farms in Hawaii producing bell peppers, eggplant, and Italian squash during the same year. However, considering that in 1997 there were 657 farms in Hawaii that harvested fruits and vegetables for sale (90 percent of which had less than 14 acres of crops planted), we believe that the majority of farms producing bell peppers, eggplant, and Italian squash for sale were small according to Small Business Administration (SBA) criteria. It is also likely that the majority of firms shipping bell peppers, eggplant, and Italian squash interstate from Hawaii are small according to SBA criteria.

Regardless of their size, Hawaii's fruit and vegetable producers and shippers who move fruits and vegetables interstate from Hawaii will benefit from the availability of an additional treatment alternative, especially since this treatment is less time-consuming than the presently available vapor heat treatment (*see* Table 3).

TABLE 3.—COMPARISON OF IRRADIATION AND VAPOR HEAT TREATMENTS

	Irradiation	Vapor heat
Cost	$0.22 to $0.33/kg (treatment cost)	$0.20 to $0.50/kg
Treatment Time	40 minutes	1.5 to 7 hours

Effects on Treatment Facilities

The irradiation treatments for bell peppers, eggplants, mangoes, pineapples (other than smooth Cayenne), Italian squash, and tomatoes will take place mostly at a new facility that was recently built in Hawaii. However, it is possible that some of these fruits and vegetables could be shipped to the mainland United States and treated with irradiation at facilities in Illinois or New Jersey. At present, various other tropical fruits, such as papaya, litchi, rambutan, carambola, and atemoya are shipped from Hawaii to a facility in Illinois for cobalt irradiation treatment.

On August 1, 2000, a new x-ray irradiation facility in Hawaii began treating papayas, which, after their x-ray treatment, are commercially shipped to the mainland United States. This facility treats between 500 to 1,000 boxes of papayas per day, 4 days per week.

This facility will be the primary irradiation facility to treat Hawaii-grown

bell peppers, eggplants, mangoes, pineapples (other than smooth Cayenne), Italian squash, and tomatoes before they are moved interstate. However, if there is not enough capacity at the Hawaiian plant for the fruits to be irradiated, the fruits can be sent for treatment to any of the three irradiation treatment facilities on the mainland United States.

According to SBA criteria, the facility in Hawaii mentioned in the previous paragraphs is a small entity (*i.e.*, an entity with annual sales of less than $5 million). Another firm that provides irradiation treatments for fruits and vegetables owns two irradiation facilities in Illinois and one facility in New Jersey. This other firm, which primarily provides irradiation treatment to sanitize medical devices, is not a small entity according to SBA criteria.

This final rule benefits the Hawaiian treatment facility, and may benefit the mainland facilities if the Hawaiian facility cannot keep up with demand for treatment of fruits and vegetables moving interstate from Hawaii. The final rule could also potentially benefit U.S. mainland consumers by increasing the mainland's supply of those fruits and vegetables that will now be eligible for interstate movement with irradiation treatment.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (*See* 7 CFR part 3015, subpart V.)

Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this rule have been approved by the Office of Management and Budget (OMB) under OMB control number 0579–0198. Government Paperwork Elimination Act Compliance

The Animal and Plant Health Inspection Service is committed to compliance with the Government Paperwork Elimination Act (GPEA), which requires Government agencies in general to provide the public the option of submitting information or transacting business electronically to the maximum extent possible. For information pertinent to GPEA compliance related to this rule, please contact Mrs. Celeste Sickles, APHIS'' Information Collection Coordinator, at (301) 734–7477.

List of Subjects in 7 CFR Part 318

Cotton, Cottonseeds, Fruits, Guam, Hawaii, Plant diseases and pests, Puerto Rico, Quarantine, Transportation, Vegetables, Virgin Islands.

Accordingly, we are amending 7 CFR part 318 as follows:

PART 318—HAWAIIAN AND TERRITORIAL QUARANTINE NOTICES

1. The authority citation for part 318 continues to read as follows:

Authority: 7 U.S.C. 7711, 7712, 7714, 7731, 7754, and 7756; 7 CFR 2.22, 2.80, and 371.3.

2. Section 318.13–4f is amended as follows:

a. By revising paragraphs (a), (b)(2)(i), (b)(5), and (b)(6)(ii) to read as set forth below.

b. By adding, at the end of the section, the following: "(Approved by the Office of Management and Budget under control number 0579–0198)".

§ 318.13–4f Administrative instructions prescribing methods for irradiation treatment of certain fruits and vegetables from Hawaii.

(a) *Approved irradiation treatment.* Irradiation, carried out in accordance with the provisions of this section, is approved as a treatment for the following fruits and vegetables at the specified dose levels:

IRRADIATION FOR FRUIT FLIES AND SEED WEEVILS IN HAWAIIAN FRUITS AND VEGETABLES

Fruit	Dose (gray)
Abiu	250
Atemoya	250
Bell pepper	250
Carambola	250
Eggplant	250
Litchi	250
Longan	250
Mango	300
Papaya	250
Pineapple (other than smooth Cayenne)	250
Rambutan	250
Sapodilla	250
Italian squash	250
Tomato	250

IRRADIATION FOR FRUIT FLIES AND SEED WEEVILS IN HAWAIIAN FRUITS AND VEGETABLES—Continued

* * * * *

(b) * * *

(2) * * *

(i) Be capable of administering the minimum absorbed ionizing radiation doses specified in paragraph (a) of this section to the fruits and vegetables; [2]

* * * * *

(5) *Dosage.* The fruits and vegetables must receive the minimum absorbed ionizing radiation dose specified in paragraph (a) of this section.[5]

(6) * * *

(ii) Absorbed dose must be measured using a dosimeter that can accurately measure the absorbed doses specified in paragraph (a) of this section.

* * * * *

Done in Washington, DC this 30th day of January 2003.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 03–2681 Filed 2–4–03; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 318

[Docket No. 01–042–2]

Interstate Movement of Gardenia From Hawaii

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the Hawaiian fruits and vegetables regulations to provide for the movement of cut blooms of gardenia from Hawaii. We have determined that specific growing and inspection protocols can effectively mitigate the plant pest risks associated with gardenia grown in Hawaii. This action provides for the interstate movement of gardenia from

[2] The maximum absorbed ionizing radiation dose and the irradiation of food is regulated by the Food and Drug Administration under 21 CFR part 179.

[5] *See* footnote 2.

Hawaii while continuing to prevent the spread of plant pests within the United States.

EFFECTIVE DATE: March 7, 2003.

FOR FURTHER INFORMATION CONTACT: Hesham A. Abuelnaga, Import/Export Specialist, Phytosanitary Issues Management, PPQ, APHIS, 4700 River Road Unit 140, Riverdale, MD 20737–1236; (301) 734–5334.

SUPPLEMENTARY INFORMATION:

Background

The regulations in "Subpart—Hawaiian Fruits and Vegetables" (7 CFR 318.13 through 318.13–17, referred to below as the regulations) govern, among other things, the interstate movement of fruits, vegetables, and other products, including cut flowers, from Hawaii. Regulation is necessary to prevent the spread of plant pests that exist in Hawaii.

The regulations in § 318.13–3(b)(1) provide that cut flowers (except cut blooms of gardenia, mauna loa, and jade vine, and leis thereof) may be moved interstate under certain conditions and if accompanied by a limited permit. The movement of cut blooms of gardenia has been prohibited due to gardenia's status as a host of green scale (*Coccus viridus*), also known as green coffee scale.

On May 15, 2002, we published in the **Federal Register** (67 FR 34626–34630, Docket No. 01–042–1) a proposal to amend the regulations to provide for the interstate movement of gardenia from Hawaii. As described in the proposed rule, cut blooms of gardenia from Hawaii would be eligible for movement to other parts of the United States if they were treated with irradiation in Hawaii or grown in accordance with certain prescribed conditions.

We solicited comments concerning our proposal for 60 days ending July 15, 2002. We received a total of four comments by that date. They were from growers, researchers, and private citizens. Three commenters strongly supported the proposal, agreeing that specific growing and inspection protocols or irradiation treatment will effectively mitigate the plant pest risks associated with green scale and facilitate interstate movement of gardenia blooms from Hawaii.

The remaining commenter stated that existing data concerning irradiation dosage rates for the treatment of gardenias for green scale are insufficient to support the effectiveness of the treatment described in the proposed rule. As a result of that comment, we reevaluated the proposed irradiation treatment option and found that the recommended 250 gray dosage likely is insufficient, since the data indicate that complete mortality of all green scales on gardenia treated at the proposed 250 gray dosage only occurs after 20 weeks. A higher dosage would be preferable, but testing has demonstrated that gardenias do not tolerate such a dose without unacceptable decline in quality. Consequently, we have concluded that the irradiation treatment described in the proposed rule would be an unacceptable treatment for quarantine purposes. Based on that conclusion, we have omitted treatment with irradiation from this final rule as an option for qualifying cut blooms of gardenia for interstate movement from Hawaii. We will continue to examine the irradiation treatment option and, if appropriate, amend the provisions for interstate movement of gardenias in the future.

Therefore, for the reasons given in the proposed rule and in this document, we are adopting the proposed rule as a final rule, with the changes discussed in this document.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

In this document, we are amending the regulations to provide for the movement of cut blooms of gardenia from Hawaii. We have determined that specific growing and inspection protocols can effectively mitigate the plant pest risks associated with gardenia grown in Hawaii. This action provides for the interstate movement of gardenias from Hawaii while continuing to prevent the spread of plant pests within the United States.

Under this rule, gardenia growers in Hawaii who wish to move cut blooms of gardenia interstate from Hawaii would be able to do so if the gardenias were produced in a growing area determined by an inspector to be free of green scale and to meet other requirements and if the cut blooms were inspected and found free of green scale prior to interstate movement.

According to the USDA's Pacific Basin Agricultural Research Center in Hawaii, the total planted area of gardenias in Hawaii is 26.6 acres. Of the 26.6 acres of gardenias, only 3.6 acres belong to commercial farms: 2 acres in Kona, on the island of Hawaii; 1.1 acres in the Manoa Valley (Oahu); and 0.5 acres in Waipahu (Oahu). The remaining 23 acres of planted gardenias in Hawaii are owned by approximately 100 growers, each having an average of 20 to 25 bushes or about 10,000 square feet of production area. These gardenias are grown in "backyard" type production conditions.

The largest commercial gardenia production area in Hawaii consists of 2 acres of planted gardenia bushes that produce about 69,200 flowers per year, with annual gross receipts from sales of just under $13,000. While sales figures are not available for the two smaller commercial producers, we presume that their annual sales are less than those of the largest producer.

According to Small Business Administration size standards, an entity involved in floriculture production (NAICS code 111422) is considered a small entity if it has annual sales of less than $750,000. Under this definition, all commercial gardenia growers in Hawaii would be considered small entities.

Impact on Small Entities

Under the Regulatory Flexibility Act, agencies are required to specifically consider the economic effects of their rules on small entities. The entities most likely to be affected by this rule are the commercial producers of gardenias discussed previously in this analysis; the producers are all considered to be small entities.

We expect that commercial gardenia producers will benefit from the ability to move their products interstate to markets in the continental United States while incurring the costs associated with establishing and maintaining a green-scale-free growing area. While we cannot estimate the amount of additional sales that might be enjoyed by commercial gardenia producers as a result of this rule, we do not expect that amount will be substantial, given the limited scale of commercial gardenia production in Hawaii. The costs associated with the production area requirements are likely to be negligible and limited to the maintenance of a 20-foot-host-plant-free buffer zone around the production area, as the required inspections will be provided free of charge.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalogue of Federal Domestic Assistance under No. 10.025 and is subject to Executive order 12372, which requires intergovernmental consultation with State and local officials. (*See* 7 CFR part 3015, subpart V.)

Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this rule have been approved by the Office of Management and Budget (OMB) under OMB control number 0579–0197.

Government Paperwork Elimination Act Compliance

The Animal and Plant Health Inspection Service is committed to compliance with the Government Paperwork Elimination Act (GPEA), which requires Government agencies in general to provide the public the option of submitting information or transacting business electronically to the maximum extent possible. For information pertinent to GPEA compliance related to this rule, please contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734–7477.

List of Subjects in 7 CFR Part 318

Cotton, Cottonseeds, Fruits, Guam, Hawaii, Plant diseases and pests, Puerto Rico, Quarantine, Transportation, Vegetables, Virgin Islands.

Accordingly, we are amending 7 CFR part 318 as follows:

PART 318—HAWAIIAN AND TERRITORIAL QUARANTINE NOTICES

1. The authority citation for part 318 continues to read as follows:

Authority: 7 U.S.C. 7711, 7712, 7714, 7731, 7754, and 7756; 7 CFR 2.22, 2.80, and 371.3.

Subpart—Hawaiian Fruits, Vegetables, and Flowers

2. The heading for the subpart is revised to read as set forth above.

§ 318.13–1 [Amended]

3. In § 318.13–1, in the definition of *fruits and vegetables*, the word "mellons" is corrected to read "melons".

§ 318.13–2 [Amended]

4. In § 318.13–2, paragraph (b) is amended as follows:

a. In the introductory text, by removing the words "fruits and vegetables" and adding the word "articles" in their place.

b. In the list of regulated articles, by adding, in alphabetical order, an entry for "Gardenia (cut blooms)".

c. At the end of the section, in the sentence following the list, by removing the words "and vegetables" and adding the words ", vegetables, or other products" in their place and by removing the words "fruits or vegetables" and adding the words "articles" in their place.

§ 318.13–3 [Amended]

5. In § 318.13–3, paragraph (b)(1) is amended by removing the words "gardenia, mauna loa," and adding the words "mauna loa" in their place and by adding the words ", and except any cut blooms of gardenia not grown in accordance with § 318.13–4j" after the word "thereof".

§ 318.13–4 [Amended]

6. Section 318.13–4 is amended as follows:

a. In paragraph (a), by removing the words "Fruits and vegetables" and adding the words "Regulated articles" in their place.

b. In paragraph (c)(2), by removing the words "fruits and vegetables" and adding the words "fruits, vegetables, or other products" in their place.

7. A new § 318.13–4j is added to read as follows:

§ 318.13–4j Administrative instructions governing the interstate movement of cut blooms of gardenia from Hawaii.

Cut blooms of gardenia may be moved interstate from Hawaii if grown and inspected in accordance with the provisions of this section.

(a) The grower's production area must be inspected annually by an inspector and found free of green scale. If green scale is found during an inspection, a 2-month ban will be placed on the interstate movement of cut blooms of gardenia from that production area. Near the end of the 2 months, an inspector will reinspect the grower's production area to determine whether green scale is present. If reinspection determines that the production area is free of green scale, shipping may resume. If reinspection determines that green scale is still present in the production area, another 2-month ban on shipping will be placed on the interstate movement of gardenia from that production area. Each ban will be followed by reinspection in the manner specified, and the production area must be found free of green scale prior to interstate movement.

(b) The grower must establish a buffer area surrounding gardenia production areas. The buffer area must extend 20 feet from the edge of the production area. Within the buffer area, the growing of gardenias and the following green scale host plants is prohibited: Ixora, ginger *(Alpina purpurata),* plumeria, coffee, rambutan, litchi, guava, citrus, anthurium, avocado, banana, cocoa, macadamia, celery, *Pluto indicia* (a weed introduced into Hawaii), mango, orchids, and annona.

(c) An inspector must visually inspect the cut blooms of gardenias in each shipment prior to interstate movement from Hawaii to the mainland United States. If the inspector does not detect green scale in the shipment, the inspector would issue a certificate for the shipment in accordance with § 318.13–4(a). If the inspector finds green scale in a shipment, that shipment will be ineligible for interstate movement from Hawaii.

(Approved by the Office of Management and Budget under control number 0579–0197)

Done in Washington, DC this 30th day of January 2003.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 03–2683 Filed 2–4–03; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 94

[Docket No. 01–037–2]

Importation of Used Farm Equipment From Regions Affected With Foot-and-Mouth Disease

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule as final rule.

SUMMARY: We are adopting as a final rule, without change, an interim rule that amended the regulations concerning foot-and-mouth disease to prohibit the importation of used farm equipment from regions affected with foot-and-mouth disease unless the equipment has been steam-cleaned prior to export to the United States so that it is free of exposed dirt and other particulate matter. The interim rule also provided that cleaned equipment that arrives at the port of arrival with a minimal amount of exposed dirt may, under certain conditions, be cleaned at

the port of arrival. The interim rule was necessary to help prevent the introduction of foot-and-mouth disease into the United States.

EFFECTIVE DATE: The interim rule became effective on March 31, 2001.

FOR FURTHER INFORMATION CONTACT: Dr. Karen James-Preston, Assistant Director, Technical Trade Services Team, National Center for Import and Export, VS, APHIS, 4700 River Road Unit 40, Riverdale, MD 20737–1231; (301) 734–8364.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 94 (referred to below as the regulations) govern the importation of specified animals and animal products into the United States in order to prevent the introduction of various animal diseases, including foot-and-mouth disease (FMD). Because of the highly communicable nature of FMD, it is necessary to protect livestock that are free of the disease from any animals, animal products, or other articles that might be contaminated with the FMD virus.

In an interim rule effective March 31, 2001, and published in the **Federal Register** on May 13, 2002 (67 FR 31935–31938, Docket No. 01–037–1), we amended the regulations to prohibit the importation of used farm equipment from regions affected with FMD unless the equipment was steam-cleaned prior to export to the United States so that it is free of exposed dirt and other particulate matter. Such equipment must also be accompanied by an original certificate signed by an authorized official of the national animal health service of the country of origin stating that such cleaning was . done. We also provided that cleaned equipment that arrives at a U.S. port with the required certification from the exporting region but is found upon Animal and Plant Health Inspection Service (APHIS) inspection to contain a minimal amount of exposed dirt or other particulate matter may be cleaned at the port of arrival should the APHIS inspector determine that there are adequate facilities and personnel at the port to conduct such cleaning without the risk of disease contamination.

Comments on the interim rule were required to be received on or before July 12, 2002. We received two comments by that date, from a farmer and a representative of a dairy industry organization. Both commenters supported the interim rule but requested that additional steps be taken to prevent the introduction of FMD into the United States. One commenter asked APHIS to ensure that dirt or other particulate matter trapped in large tires on farm equipment would be adequately cleaned. We believe that the cleaning and inspection requirements established by the interim rule will be adequate to ensure that any such residue will be eliminated.

The second commenter supported the requirement for pre-export steam cleaning, but suggested that if an APHIS inspector notes exposed dirt on the equipment at the port of arrival and determines that the equipment can be cleaned, APHIS should require not only that the equipment be steam-cleaned but disinfected as well, using an approved disinfectant. The interim rule provides that all used farm equipment imported into the United States must be steam-cleaned free of all exposed dirt and other particulate matter. If such equipment were to arrive at the port of entry with more than a minimal amount of exposed soil present, it would be clear to an inspector that the required cleaning was not properly conducted and the equipment would be denied entry. The inspector may only allow cleaning at the port of entry if the amount of exposed soil is minimal enough to allow cleaning and there are adequate facilities and personnel at the port to accomplish the cleaning. Thus any cleaning that might take place at a port of entry would be necessary to address the presence of only minimal amounts of exposed soil. Steam-cleaning, whether conducted in the equipment's country of origin or at a U.S. port, is sufficient to disinfect the equipment. Therefore, we do not believe that it is necessary to prescribe the use of a disinfectant in addition to the cleaning that would be conducted.

Therefore, for the reasons given in the interim rule and in this document, we are adopting the interim rule as a final rule without change.

This action also affirms the information contained in the interim rule concerning Executive Orders 12866 and 12988 and the Paperwork Reduction Act.

Further, this action has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

Regulatory Flexibility Act

This rule affirms an interim rule that amended the regulations by prohibiting the importation of used farm equipment from regions affected with FMD unless the equipment is steam-cleaned prior to export to the United States so that it is free of exposed dirt and other particulate matter and the equipment is accompanied by an original certificate from an authorized official of the national animal health service of the region of origin stating that such cleaning was done. The interim rule also provided that cleaned equipment that arrives at the port of arrival with a minimal amount of exposed dirt may, under certain conditions, be cleaned at the port of arrival.

The following analysis addresses the economic effect of the interim rule on small entities, as required by the Regulatory Flexibility Act.

While the term "farm equipment," as defined in § 94.0 of the regulations, refers to a variety of vehicles and machinery used in agriculture, tractors are the one category of farm equipment for which trade data are maintained on previously used items.[1] Between 1996 and 2001, U.S. imports of used tractors were valued at about $62 million annually, and comprised about 4 percent of the value of all U.S. agricultural tractor imports (table 1). U.S. exports of used tractors were worth a little more than half that amount, about $34 million per year. Net imports of used tractors were thus worth about $28 million per year, about 10 percent of the value of net imports of tractors.[2]

[1] Harmonized tariff code 8701901090: Tractors, suitable for agricultural use, used, except track-laying type.

[2] The term "net imports" refers to the total value of tractor imports minus the total value of tractor exports.

TABLE 1.—VALUE OF U.S. IMPORTS AND EXPORTS OF TRACTORS AND USED TRACTORS SUITABLE FOR AGRICULTURAL USE, 6-YEAR AVERAGES (1996–2001)

[Tractor values are in millions of dollars]

	New and used tractors [1]	Used tractors [2]	Percent used tractors, by value
Imports	$1,483.12	$62.01	4.2
Exports	1,190.79	33.79	2.8
Net imports	292.33	28.22	9.7

Source: U.S. Department of Commerce, Bureau of the Census, as reported by the World Trade Atlas.
[1] Harmonized tariff code 870190: Tractors, not elsewhere specified or included.
[2] Harmonized tariff code 8701901090: Tractors, suitable for agricultural use, used, except track-laying type.

The United Kingdom is the largest supplier of used tractors to the United States, followed by Japan and Germany (table 2). These three countries have, on average, supplied nearly three-fourths of annual used tractor imports by the United States over the past 6 years. Canada, Netherlands, France, and Belgium supplied about 20 percent of imports combined.

TABLE 2.—VALUE OF USED TRACTOR IMPORTS[1] FROM THE LEADING SOURCES, 6-YEAR AVERAGES (1996–2001)

[Tractor values are in millions of dollars]

Country	Average value	Percentage of total
United Kingdom	$18.766	30.3
Japan	13.875	22.4
Germany	13.524	21.8
Canada	5.481	8.8
Netherlands	3.411	5.5
France	1.960	3.2
Belgium	1.509	2.4
Total from above sources	58.526	94.3
Total from all sources	62.014	–

Source: U.S. Department of Commerce, Bureau of the Census, as reported by the World Trade Atlas.
[1] Harmonized tariff code 8701901090: Tractors, suitable for agricultural use, used, except track-laying type.

Imports of used farm equipment from several of these countries have already been restricted by the interim rule because of FMD outbreaks in those countries after the rule became effective on March 31, 2001. However, import levels suggest that the interim rule has had little impact on trade volumes. For example, the value of used tractor imports from the United Kingdom (Great Britain and Northern Ireland) during 2001—throughout which its FMD-free status was revoked, except for the first 14 days of January—totaled $18.025 million. This amount compares closely with its 1996–2001 annual average of $18.766 million. Used tractor imports in the same year from Netherlands and France, both of which had their FMD-free status revoked at different times during 2001, were valued at $2.977 million and $1.800 million, respectively, amounts not very different from their 1996–2001 annual averages of $3.411 million and $1.960 million. Finally, used tractor imports from Japan in 2001, which had its FMD-free status revoked throughout the year, were valued at $15.071 million, an amount larger than its 1996–2001 annual average of $13.875 million.

Used tractors entering the United States from regions affected with FMD must be certified by the national animal health service of their region of origin as having been steam-cleaned before being exported. APHIS does not have information on steam-cleaning costs overseas, but costs at U.S. ports provide a basis for assessing the impact of the interim rule. The cost for steam-cleaning all the tractors shipped in a 40-foot container holding approximately 16 tractors with rotary tillers is roughly $2,000.[3] We expect the cost of certification would likely be less than $50. The average price of imported used tractors is about $4,940 each.[4] Thus, the value of the tractors in a container would total about $79,040, of which the $2,050 cost of cleaning and certification represents about 2.6 percent.

The principal cost component in both cleaning and certification is labor. It is expected, therefore, that cleaning and certification costs would not be any higher overseas, and could well be lower, depending on relative labor costs. The 2.6 percent may represent an upper bound of the additional import expenses that would be attributable to the interim rule.

The two groups that can be expected to incur some costs as a result of the interim rule are importers of used farm equipment and farmers; if passed along by the exporter, importers and farmers will likely split the additional cost of the required cleaning and certification depending on the demand elasticity in the market for used farm equipment. Most importers likely employ fewer than 100 people, the threshold the Small Business Administration has set for such firms to be called small entities. Most farms earn $750,000 or less in annual receipts, the corresponding threshold for agricultural operations to be called small entities. Therefore, most businesses likely to be affected by the interim rule are small entities. However, the data on used tractors, currently the only data available on used farm equipment, indicate that the effects will

[3] APHIS cost estimates for the port of Long Beach, CA.

[4] Six-year average, 1996–2001. U.S. Department of Commerce, Bureau of the Census, as reported by the World Trade Atlas.

not be large; cleaning and certification expenses will add less than 3 percent to the cost of imported used tractors.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this rule will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 9 CFR Part 94

Animal diseases, Imports, Livestock, Meat and meat products, Milk, Poultry and poultry products, Reporting and recordkeeping requirements.

PART 94—RINDERPEST, FOOT-AND-MOUTH DISEASE, FOWL PEST (FOWL PLAGUE), EXOTIC NEWCASTLE DISEASE, AFRICAN SWINE FEVER, HOG CHOLERA, AND BOVINE SPONGIFORM ENCEPHALOPATHY: PROHIBITED AND RESTRICTED IMPORTATIONS

Accordingly, we are adopting as a final rule, without change, the interim rule that amended 9 CFR part 94 and that was published at 67 FR 31935–31938 on May 13, 2002.

Authority: 7 U.S.C. 450, 7711–7714, 7751, 7754, 8303, 8306, 8308, 8310, 8311, and 8315; 21 U.S.C. 136 and 136a; 31 U.S.C. 9701; 42 U.S.C. 4331 and 4332; 7 CFR 2.22, 2.80, and 371.4.

Done in Washington, DC, this 30th day of January 2003.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 03–2682 Filed 2–4–03; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–316–AD; Amendment 39–13044; AD 2003–03–19]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to all Boeing Model 747 series airplanes. This action requires a one-time inspection of the fuselage skin of the aft lower body for certain repair doublers, and follow-on inspections and corrective actions if such doublers are installed. For certain airplanes, this action includes optional repetitive inspections of the fuselage skin for scratches or cracking. This action is necessary to find and fix possible fatigue cracking of the fuselage skin concealed under certain repair doublers, which could result in rapid decompression of the airplane. This action is intended to address the identified unsafe condition.

DATES: Effective February 20, 2003.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of February 20, 2003.

Comments for inclusion in the Rules Docket must be received on or before April 7, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–316–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-iarcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2002–NM–316–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, PO Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Rick Kawaguchi, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1153; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: In May 2002, a Boeing Model 747–200 series airplane was involved in an in-flight breakup. A portion of the fuselage skin with a repair doubler attached was recovered, and investigation revealed that the repair doubler was installed after a tail strike that occurred in 1980 and caused scratches to the skin. Examination of the skin underneath the doubler revealed longitudinal scratches, which could have been caused by the tail strike event, and a 15-inch crack found underneath the repair doubler that originated from and extended along these scratches. Further investigation of the affected area revealed that certain damage (scratches) may not have been found and removed after the tail strike, which led to fatigue cracking over time. The probable cause of the accident has not yet been determined.

The FAA recently received a second report indicating that scratches were found under a repair doubler on a Model 747–200 series airplane during an inspection requested by the manufacturer. It has been determined that the aft "belly" portion of the section 46 fuselage on Model 747 series airplanes is susceptible to tail strike damage during landing and takeoff. Repair procedures in the Boeing 747 structural repair manual describe blending out such damage on the skin and installing a repair doubler over the affected area. Any unremoved damage could result in fatigue cracking of the fuselage skin concealed under certain repair doublers, and consequent rapid decompression of the airplane.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Alert Service Bulletin 747–53A2489, dated November 26, 2002, which describes procedures for a one-time external visual inspection of the fuselage skin at body stations 1961 through 2360 inclusive, between stringers S–46L and S–46R, for repair doublers. If a repair doubler is installed, and the repair doubler meets all four criteria (external repair doubler, at least 8 inches long longitudinally (in the forward and aft direction), has fasteners common to a frame, and was installed due to a tail strike or for unknown reasons) specified in Figure 2 of the service bulletin, the service bulletin describes procedures for follow-on inspections and corrective actions.

The follow-on inspections and corrective actions include removal of the doubler, a one-time assessment (inspection) of the skin under the doubler for damage (scratches, cracking), and repair of any damage found. For certain airplanes, as an alternative to removal of the doubler and assessment of the skin underneath, the service bulletin describes procedures for repetitive inspections of the fuselage skin for damage. These inspections are either internal mid-frequency eddy current, or external

detailed visual, depending on the length of the doubler. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

The service bulletin also specifies contacting Boeing for disposition of certain repair conditions.

Explanation of the Requirements of the Rule

Since an unsafe condition has been identified that is likely to exist or develop on other 747 series airplanes of the same type design, this AD is being issued to find and fix possible fatigue cracking of the fuselage skin concealed under certain repair doublers, which could result in rapid decompression of the airplane. This AD requires a one-time inspection of the fuselage skin of the aft lower body for repair doublers, and follow-on inspections and corrective actions if repair doublers are installed. This AD also includes optional repetitive inspections of the fuselage skin for scratches or cracking. The actions are required to be accomplished in accordance with the service bulletin described previously, except as discussed below.

Differences Between Service Bulletin and This AD

The service bulletin specifies an inspection of the fuselage skin between stringers S–46L and S–46R for the presence of doublers. However, the FAA has determined that repairs common to the S–46 lap splice that do not extend inboard more than 4 inches from the S–46 center line do not require the inspection. Tail strike damage would more likely occur towards the "belly" portion of the section 46 fuselage. Repairs limited to the S–46 lap splice area are probably due to corrosion findings. The manufacturer agrees with this determination and will incorporate this change into the next revision of Boeing Alert Service Bulletin 747–53A2489.

The service bulletin also specifies that the manufacturer may be contacted for disposition of certain repair conditions, but this AD would require the repair of those conditions to be accomplished in accordance with a method approved by the FAA, or in accordance with data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative who has been authorized by the FAA to make such findings.

Interim Action

This is considered to be interim action. The FAA is currently considering further rulemaking action to revise the compliance time of this AD to include airplanes that have accumulated more than 10,000 total flight cycles, but less than 15,000 total flight cycles; however, the planned compliance time for the additional airplanes is sufficiently long so that notice and opportunity for prior public comment will be practicable.

Determination of Rule's Effective Date

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2002–NM–316–AD." The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2003–03–19 Boeing: Amendment 39–13044. Docket 2002–NM–316–AD.

Applicability: All Model 747 series airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (i) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To find and fix possible fatigue cracking of the fuselage skin concealed under certain repair doublers, which could result in rapid decompression of the airplane, accomplish the following:

One-Time Inspection

(a) Before the accumulation of 15,000 total flight cycles or within 90 days after the effective date of this AD, whichever is later, do a general visual inspection for repair doublers on the fuselage skin at body stations 1961 through 2360 inclusive, between stringers S–46L and S–46R. The inspection is only for doublers that meet all of the following four criteria: External repair doublers, doublers at least 8 inches long longitudinally (in the forward and aft direction), doublers that have fasteners common to a frame, doublers installed due to a tail strike or for unknown reasons. Do the inspection per Part 1 and Figure 2 of the Accomplishment Instructions of Boeing Alert Service Bulletin 747–53A2489, dated November 26, 2002.

Note 2: For the purposes of this AD, a general visual inspection is defined as: "A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made from within touching distance unless otherwise specified. A mirror may be necessary to enhance visual access to all exposed surfaces in the inspection area. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked."

Follow-on Inspections

(b) Except as provided by paragraph (c) of this AD, for any repair doubler subject to the requirements of paragraph (a) of this AD: Remove the repair doubler and do the inspections/assessment (includes external detailed, external visual, and external high frequency eddy current (HFEC) inspections) of the fuselage skin for damage (cracking or scratches) per Part 2 and Figure 3 of the Accomplishment Instructions of Boeing Alert Service Bulletin 747–53A2489, dated November 26, 2002. Do the inspections at the applicable time specified in paragraph (b)(1) or (b)(2) of this AD. If any crack or scratch is found, before further flight, do the corrective actions specified in paragraph (f) of this AD.

Note 3: For the purposes of this AD, a detailed inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

(1) If the date of installation of the repair doubler is unknown, or 10,000 or more flight cycles have accumulated since the date of installation of the repair doubler, do the inspections before further flight.

(2) If less than 10,000 flight cycles have accumulated since the date of installation of the repair doubler, do the inspections within 10,000 flight cycles after the date of installation of the repair doubler.

(c) For any repair doubler that meets either of the conditions specified in paragraphs (c)(1) and (c)(2) of this AD: No action is required by this AD for that doubler only.

(1) The repair doubler is common to the S–46 lap splice and does not extend inboard more than 4 inches from the center line.

(2) A skin assessment was done before installing the repair doubler per Figure 6 of Boeing Alert Service Bulletin 747–53A2489, dated November 26, 2002.

Optional Repetitive Inspections

(d) For airplanes that meet the conditions specified in paragraph (d)(1) or (d)(2) of this AD, as alternative to the inspections required by paragraph (b) of this AD: Do the applicable inspections required by either paragraph (d)(1) or (d)(2) of this AD per Boeing Alert Service Bulletin 747–53A2489, dated November 26, 2002; at the applicable time specified in paragraph (b)(1) or (b)(2) of this AD.

(1) If the edge of the doubler does not end on a stringer center line: Do an internal mid-frequency eddy current (MFEC) inspection of the fuselage skin for cracking (if the edge of the doubler ends on a stringer center line it is not possible to do the MFEC inspection) per Part 3 and Figure 4 of the Accomplishment Instructions of the service bulletin. If no crack is found, before further flight, do an external detailed inspection for scratches per Part 3 and Figure 4, of the Accomplishment Instructions of the service bulletin. If any scratch is found, before further flight, do an external HFEC inspection of the scratched area for cracking. If no scratch is found during the external detailed inspection or if no crack is found during the external HFEC inspection; repeat the MFEC inspection at least every 250 flight cycles.

(2) If the doubler is 20 inches in length or less, do an external detailed inspection of the fuselage skin for damage (cracking or scratches) per Part 4 and Figure 5 of the Accomplishment Instructions of the service bulletin. If any scratch is found, before further flight, do an external HFEC inspection of the scratched area for cracking. If no scratch is found during the external detailed inspection or if no crack is found during the external HFEC inspection, repeat the external detailed inspection per paragraph (d)(2)(i) or (d)(2)(ii) of this AD, as applicable.

(i) If the doubler is 8–15 inches in length, repeat the inspection at least every 200 flight cycles.

(ii) If the doubler is 15–20 inches in length, repeat the inspection at least every 50 flight cycles.

(e) If, during any inspection required by paragraph (d)(1) or (d)(2) of this AD, any scratch is found, but no crack: Within 1,000 flight cycles or 18 months after doing the inspection required by paragraph (a) of this AD, whichever is first, do the inspections required by paragraph (b) of this AD. Accomplishment of this paragraph ends the repetitive inspections required by paragraph (d)(1) or (d)(2) of this AD, as applicable.

Corrective Actions

(f) If any crack is found during any inspection required by this AD, or if any scratch is found during any inspection required by paragraph (b) of this AD: Before further flight, repair per the Accomplishment Instructions of Boeing Alert Service Bulletin 747–53A2489, dated November 26, 2002. Where the service bulletin specifies to contact Boeing for appropriate action: Before further flight, repair per a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA; or per data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative who has been authorized by the Manager, Seattle ACO, to make such findings. For a repair method to be approved, the approval must specifically reference this AD.

Adjustments to Compliance Time: Cabin Differential Pressure

(g) For the purposes of calculating the compliance threshold and repetitive interval for the actions required by this AD: The number of flight cycles in which cabin differential pressure is at 2.0 pounds per square inch (psi) or less need not be counted when determining the number of flight cycles that have occurred on the airplane, provided that flight cycles with momentary spikes in cabin differential pressure above 2.0 psi are included as full pressure cycles. For this provision to apply, all cabin pressure records must be maintained for each airplane: No fleet-averaging of cabin pressure is allowed.

Reporting Requirement

(h) Within 30 days after doing the initial inspections required by paragraphs (b) and (d) of this AD: Submit a report of inspection findings of cracking or scratches of the fuselage skin to the Manager, Seattle Aircraft Certification Office (ACO), FAA, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; fax (425) 227–1181. The report must include the inspection results (airplane line number, size and location of damage, and type of discrepancy found). Information collection requirements contained in this AD have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of

1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

Alternative Methods of Compliance

(i) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

(j) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(k) Unless otherwise specified in this AD: The actions shall be done in accordance with Boeing Alert Service Bulletin 747–53A2489, dated November 26, 2002. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(l) This amendment becomes effective on February 20, 2003.

Issued in Renton, Washington, on January 24, 2003.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–2210 Filed 2–4–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–NM–20–AD; Amendment 39–13041; AD 2003–02–51]

RIN 2120–AA64

Airworthiness Directives; Bombardier Model CL–600–2C10 (Regional Jet Series 700 and 701) Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This document publishes in the **Federal Register** an amendment adopting airworthiness directive (AD) 2003–02–51 that was sent previously to all known U.S. owners and operators of Bombardier Model CL–600–2C10 (Regional Jet Series 700 and 701) series airplanes by individual notices. This AD requires an airplane flight manual (AFM) revision to introduce new quantity limitations for the center fuel tank and associated procedures; to limit flight to within 30 minutes of a suitable alternative airport; and to limit the center tank fuel quantity to 1,500 lbs. (680 kgs.) maximum at takeoff. This action is prompted by issuance of mandatory continuing airworthiness information by a civil airworthiness authority. The actions specified by this AD are intended to detect and correct discrepancies in the fuel distribution system, which could cause the center tank to overfill and fuel to leak from the center tank vent system or to become inaccessible, and could result in engine fuel starvation.

DATES: Effective February 10, 2003, to all persons except those persons to whom it was made immediately effective by emergency AD 2003–02–51, issued January 16, 2003, which contained the requirements of this amendment.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of February 10, 2003.

Comments for inclusion in the Rules Docket must be received on or before March 7, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2003–NM–20–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-iarcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2003–NM–20–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The applicable service information may be obtained from Bombardier, Inc., Canadair, Aerospace Group, PO Box 6087, Station Centre-ville, Montreal, Quebec H3C 3G9, Canada. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Rodrigo J. Huete, Flight Test Pilot, Systems and Flight Test Branch, ANE–172, FAA, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York 11581; telephone (516) 256–7518; fax (516) 568–2716.

SUPPLEMENTARY INFORMATION: On January 16, 2003, the FAA issued emergency AD 2003–02–51, which is applicable to all Bombardier Model CL–600–2C10 (Regional Jet Series 700 and 701) series airplanes.

Background

Transport Canada Civil Aviation (TCCA), which is the airworthiness authority for Canada, advises that vibration and fuel line misalignment in the center tank has resulted in damage to fuel line couplings and cracks in the fuel feed lines. TCCA also advises that more recently four incidents have been reported of cracked fuel feed lines near the welded boss for the transfer ejector motive flow lines within the center fuel tank. The airplanes landed without incident. As a result of the fuel leakage into the center tank, an imbalance of fuel could occur within the fuel system and a significant amount of fuel may not be usable during flight. Discrepancies in the fuel distribution system, if not detected and corrected, could cause the center tank to overfill and fuel to leak from the center tank vent system or to become inaccessible, and could result in engine fuel starvation.

Explanation of Relevant Service Information

Bombardier has issued Canadair Temporary Revision (TR) RJ 700/42, dated January 14, 2003, which describes procedures for revising the Limitations, Normal Procedures, and Abnormal Procedures sections of the Airplane Flight Manual (AFM) to introduce new quantity limitations for the center fuel tank and associated procedures. TCCA classified this TR as mandatory and issued Canadian airworthiness directive CF–2003–01, dated January 15, 2003, in order to ensure the continued airworthiness of these airplanes in Canada.

FAA's Conclusions

This airplane model is manufactured in Canada and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, TCCA has kept the FAA informed of the situation described above. The FAA has examined the findings of TCCA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Other Relevant Rulemaking

On May 7, 2002, the FAA issued AD 2002–08–19, amendment 39–12731 (67 FR 31939, May 13, 2002), applicable to all Bombardier Model CL–600–2C10 (Regional Jet Series 700 and 701) series airplanes. That AD requires revising the AFM to address uncommanded transfer of fuel between the wing fuel tanks and the center fuel tank; revising the Minimum Equipment List (MEL); limiting airplane operation; and increasing normal mission fuel requirements by 3,000 pounds. That AD also requires modification of the fuel distribution system for the center tank; an inspection of the system for discrepancies; and corrective actions if necessary.

This AD, however, addresses a newly identified failure mode in the fuel transfer system involving fuel leaks in the aft section of the center fuel tank, while the failure mode discussed in AD 2002–08–19 involves fuel leaks in the forward section of the center fuel tank.

Explanation of the Requirements of the Rule

Since the unsafe condition described is likely to exist or develop on other airplanes of the same type design registered in the United States, the FAA issued emergency AD 2003–02–51 to detect and correct discrepancies in the fuel distribution system, which could cause the center tank to overfill and fuel to leak from the center tank vent system or to become inaccessible, and could result in engine fuel starvation. The AD requires an AFM revision to introduce new quantity limitations for the center fuel tank and associated procedures; to limit flight to within 30 minutes of a suitable alternative airport; and to limit the center tank fuel quantity to 1,500 lbs. (680 kgs.) maximum at takeoff. This AD terminates certain requirements of AD 2002–08–19.

Since it was found that immediate corrective action was required, notice and opportunity for prior public comment thereon were impracticable and contrary to the public interest, and good cause existed to make the AD effective immediately by individual notices issued on January 16, 2003, to all known U.S. owners and operators of Bombardier Model CL–600–2C10 (Regional Jet Series 700 and 701) series airplanes. These conditions still exist, and the AD is hereby published in the **Federal Register** as an amendment to section 39.13 of the Federal Aviation Regulations (14 CFR 39.13) to make it effective as to all persons.

Interim Action

This is considered to be interim action until final action is identified, at which time the FAA may consider further rulemaking.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2003–NM–20–AD." The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2003–02–51 Bombardier, Inc. (Formerly Canadair): Amendment 39–13041. Docket 2003–NM–20–AD.

Applicability: Model CL–600–2C10 (Regional Jet Series 700 and 701) series airplanes, serial numbers (S/N) 10005 and subsequent; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or

repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct discrepancies in the fuel distribution system, which could cause the center tank to overfill and fuel to leak from the center tank vent system or to 2 become inaccessible, and could result in engine fuel starvation, accomplish the following:

Revision of Airplane Flight Manual (AFM)

(a) Within 2 days after the effective date of this AD, revise the applicable Limitations, Normal Procedures, and Abnormal Procedures sections of Canadair Regional Jet Series 700 AFM CSP B–012 by incorporating Canadair Temporary Revision (TR) RJ 700/42, dated January 14, 2003, and operate the airplane in accordance with those limitations and procedures.

(b) When the information incorporating Canadair Temporary Revision RJ 700/42, dated January 14, 2003, has been incorporated into the general revisions of the AFM, the general revisions may be incorporated into the AFM, and these TRs may be removed from the AFM.

(c) Within 2 days after the effective date of this AD, revise the Limitations section of Canadair Regional Jet Series 700 AFM CSP B–012 to limit operation of the airplane to flight within 30 minutes of a suitable alternative airport. This action may be accomplished by inserting a copy of this AD into the Limitations section of the AFM. Accomplishment of this action constitutes terminating action for the AFM revision required by paragraphs (c) and (g) of AD 2002–08–19, amendment 12731.

(d) Within 2 days after the effective date of this AD, revise the Limitations section of Canadair Regional Jet Series 700 of AFM CSP B–012 to specify that, prior to each further flight, the center fuel quantity must be limited to 1,500 lbs. maximum at takeoff. This action may be accomplished by inserting a copy of this AD into the Limitations section of the AFM.

Alternative Methods of Compliance

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, New York Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, New York ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the New York ACO.

Special Flight Permits

(f) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished, provided the limitations provided in paragraphs (f)(1), (f)(2), and (f)(3) of this AD are provided in the special flight permit:

(1) Normal mission fuel requirements must be increased by 3000 lbs.

(2) Operations must be within thirty (30) minutes of a suitable alternate airport.

(3) Center fuel tank limited to 1,500 lbs at takeoff.

Incorporation by Reference

(g) The AFM revision required by paragraph (a) of this AD shall be done in accordance with Canadair Temporary Revision RJ 700/42, dated January 14, 2003. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Bombardier, Inc., Canadair, Aerospace Group, PO Box 6087, Station Centre-ville, Montreal, Quebec H3C 3G9, Canada. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in Canadian airworthiness directive CF–2003–01, dated January 15, 2003.

Effective Date

(h) This amendment becomes effective on February 10, 2003, to all persons except those persons to whom it was made immediately effective by emergency AD 2003–02–51, issued January 16, 2003, which contained the requirements of this amendment.

Issued in Renton, Washington, on January 24, 2003.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–2151 Filed 2–4–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–140–AD; Amendment 39–13042; AD 2003–03–17]

RIN 2120–AA64

Airworthiness Directives; Dornier Model 328–100 and –300 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Dornier Model 328–100 and –300 series airplanes, that requires replacement of the screws in the aileron, rudder, and elevator trim tabs with new screws; and removal and re-installation of screws in the aileron, elevator, and rudder trim tabs and the rudder spring tab; as applicable. This action is necessary to prevent reduced structural integrity of the screws in the aileron, elevator, and rudder trim tabs and the rudder spring tab, due to countersinks that were not manufactured correctly, which could result in reduced controllability of the airplane. This action is intended to address the identified unsafe condition.

DATES: Effective March 12, 2003.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 12, 2003.

ADDRESSES: The service information referenced in this AD may be obtained from FAIRCHILD DORNIER, DORNIER Luftfahrt GmbH, PO Box 1103, D–82230 Wessling, Germany. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2125; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Dornier Model 328–100 and –300 series airplanes was published in the **Federal Register** on September 25, 2002 (67 FR 60193). That action proposed to require replacement of the screws in the aileron, rudder, and elevator trim tabs with new screws; and removal and re-installation of screws in the aileron, elevator, and rudder trim tabs and the rudder spring tab; as applicable.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response

to the proposal or the FAA's determination of the cost to the public.

Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

The FAA estimates that 53 Model 328–100 series airplanes and 48 Model 328–300 series airplanes of U.S. registry will be affected by this AD, that it will take approximately 3 work hours per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Required parts will be supplied by the manufacturer at no cost to operators. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $18,180, or $180 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2003–03–17 Dornier Luftfahrt GMBH: Amendment 39–13042. Docket 2002–NM–140–AD.

Applicability: Airplanes listed in Table 1 of this AD, certificated in any category. Table 1 follows:

TABLE 1.—APPLICABILITY

Model	Serial numbers
328–100 series airplanes	3005 through 3119 inclusive.
328–300 series airplanes	3105 through 3196, excluding 3192 through 3194, inclusive.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent reduced structural integrity of the screws in the aileron, elevator, and rudder trim tabs and the rudder spring tab, due to countersinks that were not manufactured correctly, which could result in reduced controllability of the airplane, accomplish the following:

Screw Replacement or Removal and Re-Installation

(a) For Model 328–100 series airplanes: Within 2 months after the effective date of this AD, do the actions specified in paragraphs (a)(1), (a)(2), and (a)(3) of this AD; as applicable.

(1) Replace the screws in the aileron trim tab with new screws (including applying zinc-chromate putty, torquing the screws, and removing the squeezed zinc-chromate putty), per Dornier Service Bulletin SB–328–57–350, Revision 2, dated January 16, 2002.

(2) Replace the screws in the rudder and elevator trim tabs with new screws (including applying zinc-chromate putty, torquing the screws, and removing the squeezed zinc-chromate putty), per Dornier Service Bulletin SB–328–55–368, Revision 1, dated December 11, 2001.

(3) Except as provided by paragraph (b) of this AD, do the actions specified in paragraphs (a)(3)(i), (a)(3)(ii), and (a)(3)(iii) of this AD, per Dornier Service Bulletin SB–328–55–422, dated February 8, 2002.

(i) Remove and re-install the screws in the elevator trim tab (including applying zinc-chromate putty, torquing the screws, and removing the squeezed zinc-chromate putty).

(ii) Remove and re-install the screws in the rudder trim tab (including applying zinc-chromate putty, torquing the screws, and removing the squeezed zinc-chromate putty).

(iii) Remove and re-install the screws in the rudder spring tab (including applying zinc-chromate putty, torquing the screws, and removing the squeezed zinc-chromate putty).

(b) For Model 328–100 series airplanes on which the actions specified in Dornier Service Bulletin SB–328–55–368, Revision 1, dated December 11, 2001, have been accomplished, the requirements specified in paragraphs (a)(3)(i) and (a)(3)(ii) of this AD do not need to be accomplished.

(c) For Model 328–300 series airplanes: Within 2 months after the effective date of this AD, do the actions specified in paragraphs (c)(1), (c)(2), (c)(3), and (c)(4) of this AD; as applicable.

(1) For airplanes having serial numbers 3105 through 3174 inclusive: Replace the screws in the aileron trim tab with new screws (including applying zinc-chromate putty, torquing the screws, and removing the squeezed zinc-chromate putty), per Dornier Service Bulletin SB–328J–57–057, Revision 2, dated January 16, 2002.

(2) For airplanes having serial numbers 3105 through 3174 inclusive: Replace the screws in the rudder and elevator trim tabs with new screws (including applying zinc-chromate putty, torquing the screws, and removing the squeezed zinc-chromate putty), per Dornier Service Bulletin SB–328J–55–074, Revision 1, dated December 11, 2001.

(3) For airplanes having serial numbers 3105 through 3196, excluding serial numbers 3192 through 3194 inclusive: Except as provided by paragraph (d) of this AD, do the actions specified in paragraphs (c)(3)(i), (c)(3)(ii), and (c)(3)(iii) of this AD, per Dornier Service Bulletin SB–328J–55–153, dated February 8, 2002.

(i) Remove and re-install the screws in the elevator trim tab (including applying zinc-chromate putty, torquing the screws, and removing the squeezed zinc-chromate putty).

(ii) Remove and re-install the screws in the rudder trim tab (including applying zinc-chromate putty, torquing the screws, and removing the squeezed zinc-chromate putty).

(iii) Remove and re-install the screws in the rudder spring tab (including applying zinc-chromate putty, torquing the screws, and removing the squeezed zinc-chromate putty).

(4) For airplanes having serial numbers 3175 through 3196, excluding serial numbers 3192 through 3194 inclusive: Remove and re-install the screws in the aileron trim tab (including applying zinc-chromate putty, torquing the screws, and removing the squeezed zinc-chromate putty), per Dornier Service Bulletin SB–328J–57–152, dated February 8, 2002.

(d) For Model 328–300 airplanes on which the actions specified in Dornier Service Bulletin SB–328J–55–074, Revision 1, dated December 11, 2001, have been accomplished, the requirements specified in paragraphs (c)(3)(i) and (c)(3)(ii) of this AD do not need to be accomplished.

Alternative Methods of Compliance

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(f) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(g) The actions shall be done in accordance with the Dornier service bulletins listed in Table 2 of this AD as follows:

TABLE 2.—SERVICE BULLETINS

Dornier service bulletin	Revision	Date
SB–328–57–350	2	January 16, 2002
SB–328–55–368	1	December 11, 2001
SB–328–55–422	Original	February 8, 2002
SB–328J–57–057	2	January 16, 2002
SB–328J–55–074	1	December 11, 2001
SB–328J–55–153	Original	February 8, 2002
SB–328J–57–152	Original	February 8, 2002

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from FAIRCHILD DORNIER, DORNIER Luftfahrt GmbH, PO Box 1103, D–82230 Wessling, Germany. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in German airworthiness directives 2002–126/2 and 2002–127/2, both dated June 27, 2002.

Effective Date

(h) This amendment becomes effective on March 12, 2003.

Issued in Renton, Washington, on January 24, 2003.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–2152 Filed 2–4–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–102–AD; Amendment 39–13040; AD 2003–03–16]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A330–223, –321, –322, and –323 Series Airplanes Equipped With Pratt & Whitney Model PW4164, PW4168, or PW4168A Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain Airbus Model A330–223, –321, –322, and –323 series airplanes equipped with Pratt & Whitney Model PW4164, PW4168, or PW4168A engines. This action requires modification of the primary structure of the engine pylons, and replacement of the thrust reverser locking actuators with new, improved locking actuators. This action is necessary to prevent reduced structural integrity of the primary structure of the engine pylons, and uncommanded deployment of the thrust reversers, which could result in reduced controllability of the airplane. This action is intended to address the identified unsafe condition.

DATES: Effective February 20, 2003.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of February 20, 2003.

Comments for inclusion in the Rules Docket must be received on or before March 7, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–102–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-iarcomment@faa.gov*. Comments sent via fax or the Internet must contain

"Docket No. 2002–NM–102–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in this AD may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2125; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified the FAA that an unsafe condition may exist on certain Airbus Model A330–223, –321, –322, and –323 series airplanes equipped with Pratt & Whitney Model PW4164, PW4168, or PW4168A engines. The DGAC advises that engine fan blade-out tests performed by the engine manufacturer, Pratt &Whitney, have shown that the loads used for certification of the engines were underestimated. In the event of an engine fan blade-out, the induced loads could lead to reduced structural integrity of the primary structure of the engine pylons, and uncommanded deployment of the thrust reversers. This condition, if not corrected, could result in reduced controllability of the airplane.

Explanation of Relevant Service Information

Airbus has issued Service Bulletin A330–54–3016, Revision 01, dated August 7, 2000, which describes procedures for the modification of the primary structure of the engine pylons. The modification includes, among other actions, replacing the stainless steel screws at rib 8B and rib 12 with Inconel screws, and replacing the stainless steel screws located on the lateral panel seam of the lower spar between rib 8C and rib 10 with stainless steel screws of the next-higher-nominal diameter.

Airbus has also issued Service Bulletin A330–78–3011, dated December 14, 1999, which describes procedures for the replacement of the thrust reverser locking actuators with new, improved locking actuators.

Accomplishment of the actions specified in these service bulletins is intended to adequately address the identified unsafe condition. The DGAC classified these service bulletins as mandatory and issued French airworthiness directive 2000–237–123(B) R1, dated December 12, 2001, in order to assure the continued airworthiness of these airplanes in France.

Airbus Service Bulletin A330–78–3011, dated December 14, 1999, references Pratt & Whitney Service Bulletin PW4G–100–78–71, dated September 24, 1999, as an additional source of service information for accomplishment of the replacement of the thrust reverser locking actuators.

FAA's Conclusions

This airplane model is manufactured in France and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.19) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of the Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design that may be registered in the United States at some time in the future, this AD is being issued to prevent the reduced structural integrity of the primary structure of the engine pylons, and uncommanded deployment of the thrust reversers, which could result in reduced controllability of the airplane. This AD requires accomplishment of the actions specified in the service bulletins described previously, except as discussed below.

Differences Between this AD and the French Airworthiness Directive

This AD differs from the parallel French airworthiness directive in that it will not require repetitive visual inspections of the fan blades at intervals not to exceed 500 engine hours, or an ultrasonic inspection of the attachment area of the fan blade root before the accumulation of 5,000 parts cycles since new, or within 500 parts cycles after the effective date of the French airworthiness directive. These inspections are not associated with any known unsafe condition. The DGAC required these inspections to minimize the possibility of a fan blade-off event, pending the retrofit of the modifications in paragraph 3 of the French airworthiness directive. All Airbus Model A330–223, –321, –322, and –323 series airplanes of U.S. registry were delivered with the modifications installed.

The French airworthiness directive defers implementation of the mandatory actions (*i.e.*, modification of the engine pylon and replacement of the thrust reverser locking actuators) for a period of time by requiring the inspections described in the preceding paragraph. The compliance time for accomplishment of the mandatory actions is before the accumulation of 8,000 flight cycles since new, or before August 1, 2004, whichever occurs first. The DGAC advises that if the inspections in the preceding paragraph are not mandated, the modifications must be accomplished in a timeframe comparable to that of the inspections. Therefore, this AD requires accomplishment of the mandatory actions within 500 engine hours or six months after the effective date of this AD, whichever occurs later.

Operators should note that, unlike the French airworthiness directive, this AD will not require the replacement of the pylon aft mount nuts and bolts since the manufacturer has confirmed to the FAA that all pylon aft mount nuts and bolts made of MP159 material have already been replaced. Additionally, the French airworthiness directive requires replacement of the pylon front mount bolts made of MP159 material. The FAA has determined through review of data provided by the engine manufacturer that repetitive inspection of front mount bolts made of MP159 material addresses the unsafe condition. As discussed below, the FAA previously issued two other ADs that require these actions.

These differences have been coordinated with and acknowledged by the DGAC.

Other Relevant Rulemaking

The FAA has previously issued two other ADs that concern the pylon aft and forward mount nuts and bolts on Airbus airplanes:

1. AD 2000–25–53, amendment 39–12051 (65 FR 82259, December 28, 2000), requires repetitive inspections for cracks or other damage of pylon aft mount nuts and bolts made of MP159 material.

2. AD 2000–16–02, amendment 39–11856 (65 FR 49730, August 15, 2000), requires repetitive inspections and

torque checks for loose or broken pylon forward mount bolts made from INCO 718 material and establishes a new life limit for these bolts. The AD also requires repetitive inspections of pylon forward mount bolts made from MP159 material.

However, this AD will not affect the current requirements of either of those previously issued ADs.

Cost Impact

The FAA estimates that 9 airplanes of U.S. registry will be affected by this AD. The FAA has been advised that the 9 affected airplanes have been modified in accordance with the requirements of this AD. Therefore, currently, this AD action imposes no additional economic burden on any U.S. operator.

However, should an unmodified airplane be imported and placed on the U.S. Register in the future, it will take approximately 51 work hours per airplane to accomplish the actions, at an average labor rate of $60 per work hour. Required parts will be supplied by the manufacturer to the operators at no cost. Based on these figures, the cost impact of the AD is estimated to be $3,060 per airplane.

Determination of Rule's Effective Date

Since this AD action does not affect any airplane that is currently on the U.S. registry, it has no adverse economic impact and imposes no additional burden on any person. Therefore, prior notice and public procedures hereon are unnecessary and the amendment may be made effective in less than 30 days after publication in the **Federal Register**.

Comments Invited

Although this action is in the form of a final rule and was not preceded by notice and opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2002–NM–102–AD." The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2003–03–16 Airbus: Amendment 39–13040. Docket 2002–NM–102–AD.

Applicability: Airbus Model A330–223, –321, –322, and –323 series airplanes, certificated in any category, equipped with Pratt & Whitney Model PW4164, PW4168, or PW4168A engines; except those airplanes on which all of the following modifications have been installed:

—Modification 46147 (reference Airbus Service Bulletin A330–54–3016, Revision 01, dated August 7, 2000);
—Modification 46948 (reference Airbus Service Bulletin A330–71–3012, Revision 01, dated August 25, 2000), or Modification 49419 (reference Airbus Service Bulletin A330–71–3015, Revision 01, dated March 19, 2002);
—Modification 46383 (reference Airbus Service Bulletin A330–71–3009, Revision 02, dated August 31, 2001); and
—Modification 47341 (reference Airbus Service Bulletin A330–78–3011, dated December 14, 1999).

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent reduced structural integrity of the primary structure of the engine pylons, and uncommanded deployment of the thrust reversers, which could result in reduced controllability of the airplane, accomplish the following:

Modification of the Engine Pylon Primary Structure

(a) Prior to the accumulation of 500 flight cycles on the engine or 6 months after the effective date of this AD, whichever occurs later, modify the primary structure of the engine pylon by accomplishing all of the actions specified in the Accomplishment

Instructions of Airbus Service Bulletin A330–54–3016, Revision 01, dated August 7, 2000, per the service bulletin.

(b) Modifications accomplished before the effective date of this AD, per Airbus Service Bulletin A330–54–3016, dated July 15, 1999, are considered acceptable for compliance with the applicable modification required by this AD.

Replacement of Thrust Reverser Locking Actuators

(c) Within 500 hours on the engine or 6 months after the effective date of this AD, whichever occurs later, replace the thrust reverser locking actuators on engine 1 and engine 2 with new and improved actuators, per Airbus Service Bulletin A330–78–3011, dated December 14, 1999.

Note 2: Airbus Service Bulletin A330–78–3011, dated December 14, 1999, references. Pratt & Whitney Service Bulletin PW4G–100–78–71, dated September 24, 1999, as an additional source of service information for accomplishment of the replacement of the thrust reverser locking actuators.

Parts Installation

(d) As of the effective date of this AD, no person may install a locking actuator having part number 1610000–11 or –13, on any airplane.

Alternative Methods of Compliance

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(f) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(g) Unless otherwise specified in this AD, the actions shall be done in accordance with Airbus Service Bulletin A330–54–3016, Revision 01, dated August 7, 2000; and Airbus Service Bulletin A330–78–3011, dated December 14, 1999; as applicable. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 4: The subject of this AD is addressed in French airworthiness directive 2000–237–123(B) R1, dated December 12, 2001.

Effective Date

(h) This amendment becomes effective on February 20, 2003.

Issued in Renton, Washington, on January 24, 2003.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–2146 Filed 2–4–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–CE–46–AD; Amendment 39–13038; AD 2003–03–14]

RIN 2120–AA64

Airworthiness Directives; Piaggio Aero Industries S.p.A. Model P–180 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to all Piaggio Aero Industries S.p.A. (Piaggio) Model P–180 airplanes. This AD requires you to inspect and determine whether any firewall shutoff or crossfeed valve with a serial number in a certain range is installed and requires you to replace any valve that has a serial number within this range. This AD allows the pilot to check the logbook and does not require the inspection and replacement requirement if the check shows that one of these valves is definitely not installed. This AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Italy. The actions specified by this AD are intended to prevent a faulty firewall shutoff or crossfeed valve from developing cracks and leaking fuel. This could result in an engine fire.

DATES: This AD becomes effective on March 8, 2003.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulations as of March 8, 2003.

ADDRESSES: You may get the service information referenced in this AD from Piaggio Aero Industries S.p.A, Via Cibrario 4, 16154 Genoa, Italy; telephone: +39 010 6481 856; facsimile: +39 010 6481 374. You may view this information at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2002–CE–46–AD, 901 Locust, Room 506, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4059; facsimile: (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Discussion

What events have caused this AD? The Ente Nazionale per l' Aviazione Civile (ENAC), which is the airworthiness authority for Italy, recently notified FAA that an unsafe condition may exist on all Piaggio Model P–180 airplanes. The ENAC reports an incident of a ground fire on the left-hand engine nacelle of one of the affected airplanes. Investigation revealed that the fire was caused by a cracked crossfeed valve that had leaked fuel.

Further analysis led the ENAC to determine that the part number (P/N) EM484–3 valve was part of a manufacturing batch of nonconforming valves. This batch incorporates serial numbers 148 through 302 of these P/N EM484–3 valves. These valves can be utilized as either firewall shutoff or crossfeed valves.

What is the potential impact if FAA took no action? If these valves are not removed from service, they could develop cracks and leak fuel. This could result in an engine fire.

Has FAA taken any action to this point? We issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to all Piaggio Model P–180 airplanes. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on November 13, 2002 (67 FR 68782). The NPRM proposed to require you to inspect and determine whether any firewall shutoff or crossfeed valve with a serial number in a certain range is installed and would require you to replace any valve that has a serial number within this range. The NPRM would allow the pilot to check the logbook and would not require the inspection and replacement requirements if the check showed that one of these valves was definitely not installed.

Was the public invited to comment? The FAA encouraged interested persons

to participate in the making of this amendment. We did not receive any comments on the proposed rule or on our determination of the cost to the public.

FAA's Determination

What is FAA's final determination on this issue? After careful review of all available information related to the subject presented above, we have determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. We have determined that these minor corrections:

- Provide the intent that was proposed in the NPRM for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM.

Cost Impact

How many airplanes does this AD impact? We estimate that this AD affects 22 airplanes in the U.S. registry.

What is the cost impact of this AD on owners/operators of the affected airplanes? We estimate the following costs to accomplish the inspection:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
2 workhours × $60 per hour = $120	Not applicable	$120	$2,640.

We estimate the following costs to accomplish the replacement/modification:

Labor cost	Parts cost	Total cost per airplane
8 workhours × $60 per hour = $480	Manufacturer will provide free of charge	$480.

Compliance Time of this AD

What will be the compliance time of this AD? The inspection compliance time of this AD is "within the next 30 days after the effective date of the AD."

Why is the compliance time presented in calendar time instead of hours time-in-service (TIS)? The compliance of this AD is presented in calendar time instead of hours TIS because the affected shutoff and crossfeed valves are unsafe as a result of a quality control problem. The problem has the same chance of existing on an airplane with 50 hours TIS as it would for an airplane with 1,000 hours TIS. Therefore, we believe that a compliance time of 30 days will:

- Ensure that the unsafe condition does not go undetected for a long period of time on the affected airplanes; and
- Not inadvertently ground any of the affected airplanes.

Regulatory Impact

Does this AD impact various entities? The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

Does this AD involve a significant rule or regulatory action? For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. FAA amends § 39.13 by adding a new AD to read as follows:

2003–03–14 Piaggio Aero Industries S.p.A.: Amendment 39–13038; Docket No. 2002–CE–46–AD.

(a) *What airplanes are affected by this AD?* This AD affects Model P–180 airplanes, all serial numbers, that are certificated in any category.

(b) *Who must comply with this AD?* Anyone who wishes to operate any of the airplanes identified in paragraph (a) of this AD must comply with this AD.

(c) *What problem does this AD address?* The actions specified by this AD are intended to prevent a faulty firewall shutoff or crossfeed valve from developing cracks and leaking fuel. This could result in an engine fire.

(d) *What actions must I accomplish to address this problem?* To address this problem, you must accomplish the following:

Actions	Compliance	Procedures
(1) Maintenance Records Check:		

Actions	Compliance	Procedures
(i) Check the maintenance records to determine whether an Electro Mech part number (P/N) EM484–3 firewall shutoff or crossfeed valve with a serial number in the range of 148 through 302 is installed. The owner/operator holding at least a private pilot certificate as authorized by section 43.7 of the Federal Aviation Regulations (14 CFR 43.7) may perform this check. (ii) If, by checking the maintenance records, the owner/operator can definitely show that no Electro Mech P/N EM484–3 firewall shutoff or crossfeed valves with a serial number in the range of 148 through 302 are installed, then the inspection requirement of paragraph (d)(2) and the replacement requirement of paragraph (d)(3) of this AD do not apply. You must make an entry into the aircraft records that shows compliance with these portions of the AD in accordance with section 43.9 of the Federal Aviation Regulations (14 CFR 43.9). (iii) If the pilot cannot definitely show that no affected firewall shutoff or crossfeed valves are installed through the maintenance records check, then the Inspection and Replacement requirements of paragraphs (d)(2) and (d)(3) of this AD must be accomplished by an appropriately-rated mechanic.	Within the next 30 days after March 8, 2003 (the effective date of this AD), unless already accomplished.	No special procedures required to check the maintenance records.
(2) Inspection: Inspect all Electro Mech P/N EM484–3 firewall shutoff and crossfeed valves to determine whether they incorporate a serial number in the range of 148 through 302.	Within the next 30 days after March 8, 2003 (the effective date of this AD), unless already accomplished.	In accordance with the Accomplishment Instructions in PIAGGIO Aero Industries S.p.A. Alert Service Bulletin: 80–0173, Original Issue: February 8, 2002.
(3) Replacement: If any Electro Mech P/N EM484–3 firewall shutoff or crossfeed valve is found that incorporates a serial number in the range of 148 through 302, accomplish one of the following:. (i) Install valve(s) that does not (do not) incorporate a serial number in the range of 148 through 302; or. (ii) Modify any valve(s) that incorporates (incorporate) a serial number in the range of 148 through 302. The valve will be re-identified with an "A" at the end of the serial number.	Accomplish any necessary replacements or modifications prior to further flight after the inspection required by paragraph (d)(2) of this AD, unless already accomplished.	Replace in accordance with applicable maintenance manual. Modify in accordance with the Accomplishment Instructions in Piaggio Aero Industries S.p.A. Service Bulletin: 80–0174, Original Issue: February 20, 2002.
(4) Spares: Do not install, on any airplane, any Electro Mech P/N EM484–3 firewall shutoff or crossfeed valve that incorporates a serial number in the range of 148 through 302, unless it has been modified as specified in paragraph (d)(3)(ii) of this AD.	As of March 8, 2003 (the effective date of this AD).	Not applicable.

(e) *Can I comply with this AD in any other way?* You may use an alternative method of compliance or adjust the compliance time if:

(1) Your alternative method of compliance provides an equivalent level of safety; and

(2) The Manager, Standards Office, Small Airplane Directorate, approves your alternative. Submit your request through an FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standards Office, Small Airplane Directorate.

Note 1: This AD applies to each airplane identified in paragraph (a) of this AD, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if you have not eliminated the unsafe condition, specific actions you propose to address it.

(f) *Where can I get information about any already-approved alternative methods of compliance?* Contact Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4059; facsimile: (816) 329–4090.

(g) *What if I need to fly the airplane to another location to comply with this AD?* The FAA can issue a special flight permit under sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate your airplane to a location where you can accomplish the requirements of this AD.

(h) *Are any service bulletins incorporated into this AD by reference?* Actions required by this AD must be done in accordance with Piaggio Aero Industries S.p.A. Alert Service Bulletin: 80–0173, Original Issue: February 8, 2002; and Piaggio Aero Industries S.p.A. Service Bulletin: 80–0174, Original Issue: February 20, 2002. The Director of the Federal Register approved this incorporation by reference under 5 U.S.C. 552(a) and 1 CFR part 51. You may get copies from Piaggio Aero Industries S.p.A, Via Cibrario 4, 16154 Genoa, Italy; telephone: +39 010 6481 856; facsimile: +39 010 6481 374. You may view copies at the FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 2: The subject of this AD is addressed in Italian RAI-AD 2002–442, dated February 21, 2002.

(i) *When does this amendment become effective?* This amendment becomes effective on March 8, 2003.

Issued in Kansas City, Missouri, on January 22, 2003.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–2149 Filed 2–4–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NE–45–AD; Amendment 39–13046; AD 2003–03–21]

RIN 2120–AA64

Airworthiness Directives; Pratt & Whitney Canada PW500 Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to Pratt & Whitney Canada (PWC) PW500 series turbofan engines. This action requires a one-time visual inspection and re-marking, or in lieu of inspection, replacement of certain part numbers (P/N's) of the flexible fuel tube located between the fuel/oil heat exchanger and the integral fuel control unit-fuel pump. This amendment is prompted by reports of fuel found dripping from engine nacelles caused by leaking flexible fuel tubes. The actions specified in this AD are intended to prevent a fire in the engine nacelle.

DATES: Effective February 20, 2003. The incorporation by reference of certain publications listed in the rule is approved by the Director of the Federal Register as of February 20, 2003.

Comments for inclusion in the Rules Docket must be received on or before April 7, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 2002–NE–45–AD, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may be inspected at this location, by appointment, between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. Comments may also be sent via the Internet using the following address: *9-ane-adcomment@faa.gov*. Comments sent via the Internet must contain the docket number in the subject line.

The service information referenced in this AD may be obtained from Pratt & Whitney Canada, 1000 Marie-Victorin, Longueuil, Quebec, Canada J4G1A1. This information may be examined, by appointment, at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Antonio Cancelliere, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7751; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: Transport Canada, which is the airworthiness authority for Canada, recently notified the FAA that an unsafe condition may exist on PWC PW530A, PW535A, and PW545A turbofan engines. Transport Canada has advised the FAA that there have been five reports of fuel dripping from the engine nacelle. It was found that the dripping fuel was the result of leaking flexible fuel tubes. Transport Canada advises that certain P/N's of the flexible fuel tube, located between the fuel/oil heat exchanger and the integral fuel control unit-fuel pump, may leak due to possible manufacturing defects in the tube.

Manufacturer's Service Information

PWC has issued Service Bulletin (SB) PW500–72–30217, Revision 1, dated July 29, 2002, that specifies procedures for performing a one-time visual inspection of flexible fuel tubes P/N's 30J2285–01 (PW530A engines), 3054416–01 (PW535A engines), and 30J2323–01 (PW545A engines). The tubes must be inspected externally for leaks, local swelling, sponginess of the red silicone rubber, gashes, gouges, and tears, and internally for kinks, gouging, or loose material in the tube bore. Tubes that pass inspection are then re-marked with a new P/N. In lieu of the tube inspection, the SB also allows for replacement of the flexible fuel tube with a different P/N tube. Transport Canada issued AD CF–2002–42, dated September 30, 2002, in order to assure the airworthiness of these PWC PW500 series turbofan engines in Canada.

Bilateral Airworthiness Agreement

This engine model is manufactured in Canada and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, Transport Canada has kept the FAA informed of the situation described above. The FAA has examined the findings of Transport Canada, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

FAA's Determination of an Unsafe Condition and Required Actions

Since an unsafe condition has been identified that is likely to exist or develop on other Pratt & Whitney Canada PW530A, PW535A, and PW545A turbofan engines of the same type design, this AD is being issued to prevent a fire in the engine nacelle. This AD requires the following within 50 flight hours, but no later than 60 days after the effective date of this AD, whichever occurs first:

- Replacement of flexible fuel tubes P/N's 30J2285–01 (PW530A engines), 3054416–01 (PW535A engines), and 30J2323–01 (PW545A engines) with flexible fuel tubes P/N's 30J2578–01, 3058704–01, and 30J2579–01 respectively; or
- A one-time visual external and internal inspection of flexible fuel tubes P/N's 30J2285–01, 3054416–01, and 30J2323–01; and
- Part number re-marking of flexible fuel tubes that pass inspection. The actions must be done in accordance with the service bulletin described previously.

Immediate Adoption of This AD

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic,

environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2002–NE–45–AD." The postcard will be date stamped and returned to the commenter.

Regulatory Analysis

This final rule does not have federalism implications, as defined in Executive Order 13132, because it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the FAA has not consulted with state authorities prior to publication of this final rule.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2003–03–21 Pratt & Whitney Canada: Amendment 39–13046. Docket No. 2002–NE–45–AD.

Applicability: This airworthiness directive (AD) is applicable to Pratt & Whitney Canada (PWC) PW530A, PW535A, and PW545A turbofan engines with flexible fuel tubes part numbers (P/N's) 30J2285–01, 3054416–01, and 30J2323–01 installed. These engines are installed on, but not limited to Cessna Citation model 550 "Bravo", model 560XL "Excel", and model 560 "Encore" airplanes.

Note 1: This AD applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Compliance with this AD is required within 50 flight hours, but no later than 60 days after the effective date of this AD, whichever occurs first, unless already done.

To prevent a fire in the engine nacelle, do the following:

(a) Replace flexible fuel tubes P/N's 30J2285–01 (PW530A engines), 3054416–01 (PW535A engines), and 30J2323–01 (PW545A engines) with flexible fuel tubes P/N's 30J2578–01, 3058704–01, and 30J2579–01 respectively; or

(b) Perform a one-time visual external and internal inspection of flexible fuel tubes P/N's 30J2285–01 (PW530A engines), 3054416–01 (PW535A engines), and 30J2323–01 (PW545A engines), and fuel tube part number re-marking, in accordance with paragraphs 3.A.(1) through 3.A.(8) of the Accomplishment Instructions of PWC SB PW500–72–30217, Revision 1, dated July 29, 2002.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office. Operators must submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Engine Certification Office.

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Engine Certification Office.

Special Flight Permits

(d) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be done.

Documents That Have Been Incorporated by Reference

(e) The tube inspection or replacement must be done in accordance with Pratt & Whitney Canada Service Bulletin PW500–72–30217, Revision 1, dated July 29, 2002. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Pratt & Whitney Canada, 1000 Marie-Victorin, Longueuil, Quebec, Canada J4G1A1. Copies may be inspected at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in Transport Canada airworthiness directive CF–2002–42, dated September 30, 2002.

Effective Date

(f) This amendment becomes effective on February 20, 2003.

Issued in Burlington, Massachusetts, on January 29, 2003.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 03–2632 Filed 2–4–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–240–AD; Amendment 39–13047; AD 2003–03–22]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737–600, –700, –700C, –800, and –900 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 737–600, –700, –700C, –800, and –900 series airplanes, that requires installing speedbrake limitation placards in the

flight compartment, and revising the Limitations Section of the Airplane Flight Manual to ensure the flightcrew is advised not to extend the speedbrake lever beyond the flight detent. For certain airplanes, this AD requires modifying the elevator and elevator tab assembly. This action is necessary to prevent severe vibration of the elevator and elevator tab assembly, which could result in severe damage to the horizontal stabilizer followed by possible loss of the elevator tab and consequent loss of controllability of the airplane. This action is intended to address the identified unsafe condition.

DATES: Effective March 12, 2003.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 12, 2003.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Nancy H. Marsh, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6440; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Boeing Model 737–600, –700, –700C, –800, and –900 series airplanes was published in the **Federal Register** on November 15, 2002 (67 FR 69157). That action proposed to require installing speedbrake limitation placards in the flight compartment, and revising the Limitations Section of the Airplane Flight Manual (AFM) to ensure the flightcrew is advised not to extend the speedbrake lever beyond the flight detent. For certain airplanes, that action also proposed to require modifying the elevator and elevator tab assembly.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received. One commenter concurs with the proposed AD. Two commenters state that they have no comments on the proposed AD.

Request To Clarify Certain Language in Paragraph (a)(2)

One commenter asks that certain language, as specified in paragraph (a)(2) of the proposed AD, be clarified. The commenter notes that the current language, which is to be included in the AFM, states the following: "Do not extend the speedbrake lever beyond the flight detent in flight." That statement, as written, does not match the language specified in the existing AFM. The language should be changed, for clarification, to match the AFM language and should state: "In flight, do not extend the speedbrake lever beyond the FLIGHT detent."

The FAA agrees with the commenter in that the language used in paragraph (a)(2) of the AD should be clarified to match the AFM language. We have changed paragraph (a)(2) of this final rule accordingly.

Request To Change Discussion Section

The same commenter asks that the Discussion section of the proposed AD be changed to remove the reference to Boeing Model 737–900 series airplanes from the first sentence. That sentence states, "The FAA has received several reports of excessive in-flight vibrations of the elevator and elevator tab on certain Boeing Model 737–600, –700, –700C, –800, and –900 series airplanes." The commenter notes that no excessive in-flight vibrations of the elevator and elevator tab have occurred on Model 737–900 series airplanes.

The same commenter asks that certain terminology in the Discussion section of the proposed AD be changed. That section reads, in part, "[t]he elevator and elevator tab are susceptible to excessive vibration and, under certain conditions, limit-cycle flutter. These vibration events have been attributed to loose or missing components, excessive wear, or excessive freeplay of the tab." The commenter requests that it be changed to, "[t]he elevator and elevator tab are susceptible to excessive vibration and, under certain conditions, limit-cycle oscillation (LCO). These vibration events have been attributed to lack of torsional rigidity (in the case of LCO); or missing components, excessive wear, or excessive freeplay of the tab." The commenter states that LCO is the accepted and proper term to use when referring to the severe vibrations associated with lack of torsional stiffness.

We acknowledge that no excessive in-flight vibrations of the elevator and elevator tab have been reported on Model 737–900 series airplanes in-service. The intent of the Discussion section is to provide the background and events that prompted the proposed AD, and to specify that vibrations did occur on Model 737–600, –700, –700C, and –800 series airplanes in-service.

We acknowledge that the term "lack of torsional rigidity" is a valid term and could be used to describe a design deficiency that also contributes to excessive in-flight vibration. However, the terms "LCO" and "LCF" are not commonly used terms in the airline industry; these terms are used primarily by airplane manufacturers. We have concluded that the term "high amplitude oscillations of the elevator tab" best describes the condition in a manner understood by the airline industry.

Since the Discussion section of a proposed AD is not restated in a final rule, no change to this final rule is necessary to address the issues raised by the commenters.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the change previously described. The FAA has determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

There are approximately 1,174 airplanes of the affected design in the worldwide fleet. We estimate that 550 airplanes of U.S. registry will be affected by this AD.

It will take approximately 1 work hour per airplane to accomplish the required placard installation, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the required installation on U.S. operators is estimated to be $33,000, or $60 per airplane.

It will take approximately 1 work hour per airplane to accomplish the required AFM revision, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the required revision on U.S. operators is estimated to be $33,000, or $60 per airplane.

It will take approximately 88 work hours per airplane to accomplish the required modification of the elevator and elevator tab assembly, at an average labor rate of $60 per work hour. The FAA has been advised by Boeing that the manufacturer will provide parts for the elevator/tab retrofit, including

shipping, at no cost to operators. The manufacturer will have operators "exchange" their existing parts for new parts to support the retrofit program. Based on this information, the cost impact of the required modification on U.S. operators is estimated to be $2,904,000, or $5,280 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2003–03–22 Boeing: Amendment 39–13047. Docket 2002–NM–240–AD.

Applicability: Model 737–600, –700, –700C, –800, and –900 series airplanes; line numbers 1 through 1174 inclusive; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent severe vibration of the elevator and elevator tab assembly, which could result in severe damage to the horizontal stabilizer followed by possible loss of the elevator tab and consequent loss of controllability of the airplane, accomplish the following:

Airplane Flight Manual (AFM) Revision/ Placard Installation

(a) For Model 737–600, –700, –700C, –800, and –900 series airplanes having line numbers 1 through 1043 inclusive: Within 90 days after the effective date of this AD, do the actions specified in paragraphs (a)(1) and (a)(2) of this AD.

(1) Install a speedbrake limitation placard on the P1–1 and P3–3 panel assemblies per Figure 1 or Figure 2, as applicable, of paragraph 3.B., "Work Instructions," of the Accomplishment Instructions of Boeing Alert Service Bulletin 737–11A1109, dated March 28, 2002.

(2) Revise the Limitations Section of the FAA-approved AFM to include the following statement (this may be accomplished by inserting a copy of this AD in the AFM): "In flight, do not extend the speedbrake lever beyond the FLIGHT detent."

Modification

(b) For Model 737–600, –700, –700C, and –800 series airplanes having line numbers 1 through 1174 inclusive: Before the accumulation of 18,000 total flight cycles, or within 2 years after the effective date of this AD, whichever occurs first, modify the elevator and elevator tab assemblies (including installation of a new clevis fitting and a new tab mechanism on the horizontal stabilizer and, for certain airplanes, examination of the hinge plates on the stabilizer trailing edge to make sure the specified hinges are installed; changes to the seals in the balance bays; and installation of new elevators and tab assemblies, followed by adjustments and tests of the new installation), per the Accomplishment Instructions of Boeing Alert Service Bulletin 737–55A1080, dated September 19, 2002.

(c) Accomplishment of the modification required by paragraph (b) of this AD terminates the actions required by the ADs specified in the following table:

AD Number	Amendment Number
AD 99–15–09	39–11229
AD 99–18–01	39–11267
AD 2001–08–09	39–12186
AD 2001–09–51	39–12251
AD 2001–12–51	39–12294
AD 2001–14–05	39–12315
AD 2002–08–20	39–12732
AD 2002–08–52	39–12727

Operator's Equivalent Procedure

(d) If the Accomplishment Instructions of Boeing Alert Service Bulletin 737–55A1080, dated September 19, 2002, specify that the actions may be accomplished in accordance with an operator's "equivalent procedure:" The actions must be accomplished per the applicable chapter of the Boeing 737 Airplane Maintenance Manual specified in the alert service bulletin.

Alternative Methods of Compliance

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permit

(f) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(g) Unless otherwise specified in this AD, the actions shall be done in accordance with Boeing Alert Service Bulletin 737–11A1109, dated March 28, 2002; and Boeing Alert Service Bulletin 737–55A1080, dated September 19, 2002; as applicable. This incorporation by reference was approved by the Director of the **FEDERAL REGISTER** in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane

Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(h) This amendment becomes effective on March 12, 2003.

Issued in Renton, Washington, on January 29, 2003.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–2496 Filed 2–4–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–CE–07–AD; Amendment 39–13043; AD 2003–03–18]

RIN 2120–AA64

Airworthiness Directives; Raytheon Aircraft Company Beech Models 1900, 1900C, and 1900D Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to all Raytheon Aircraft Company (Raytheon) Beech Models 1900, 1900C, and 1900D airplanes. This AD requires you to perform control column sweep and stop bolt inspections to verify full elevator travel to the primary up and down stops and that the stop bolt length is not excessive, re-rig the elevator control system if the airplane does not pass the control column sweep and stop inspections, and do a more detailed inspection at a later time if the airplane does pass the inspection. This AD also requires you to report the results of certain inspections. This AD is the result of recent ground testing and a review of the rigging procedures of a Raytheon Beech Model 1900D airplane, which reveals that the elevator control system could be mis-rigged to restrict elevator travel if current maintenance procedures are not properly followed. In these instances, it may appear to the crew that they have full elevator control column movement. However, the elevator may not have full travel. Such restricted travel may remain undetected until the airplane is operated in a loading condition that requires full elevator authority to control the pitch. The actions specified by this AD are intended to detect and correct any mis-rigged elevator control system, which could lead to insufficient elevator control authority and loss of control of the airplane.

DATES: The AD becomes effective February 5, 2003, to all affected persons who did not receive emergency AD 2003–03–18, issued January 27, 2003. Emergency AD 2003–03–18 contained the requirements of this amendment and became effective immediately upon receipt and required the actions 4 days after issuance (January 31, 2003).

The Federal Aviation Administration (FAA) must receive any comments on this rule on or before March 7, 2003.

ADDRESSES: Submit comments to FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2003–CE–07–AD, 901 Locust, Room 506, Kansas City, Missouri 64106. You may view any comments at this location between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays. You may also send comments electronically to the following address: *9-ACE-7-Docket@faa.gov*. Comments sent electronically must contain "Docket No. 2003–CE–07–AD" in the subject line. If you send comments electronically as attached electronic files, the files must be formatted in Microsoft Word 97 for Windows or ASCII text.

You may view information related to this AD at FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2003–CE–07–AD, 901 Locust, Room 506, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Paul DeVore, Aerospace Engineer, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone: (316) 946–4142; facsimile: (316) 946–4407.

SUPPLEMENTARY INFORMATION:

Discussion

What Has Happened so Far?

Recent ground testing and a review of the rigging procedures of a Raytheon Beech Model 1900D airplane reveals that the elevator control system could be mis-rigged to restrict elevator travel if current maintenance procedures are not properly followed. In these instances, it may appear to the crew that they have full elevator control column movement. However, the elevator may not have full travel. Such restricted travel may remain undetected until the airplane is operated in a loading condition that requires full elevator authority to control the pitch.

The Raytheon Beech Models 1900 and 1900C airplanes incorporate the same elevator control system design and are affected by this condition.

In certain loading conditions, a mis-rigged elevator control system, if not detected and corrected, could lead to insufficient elevator control authority and loss of control of the airplane.

Raytheon has not issued service information regarding this subject. Rigging procedures are included in the applicable Raytheon 1900/1900C or 1900D maintenance manual.

On January 27, 2003, FAA issued emergency AD 2003–03–18 to require you to:

—Perform control column sweep and stop bolt inspections to verify full elevator travel to the primary up and down stops and to verify that the stop bolt length is not excessive;

—If the airplane does not pass the initial control column sweep and stop bolt inspections, re-rig and/or do a more detailed inspection of the elevator control system;

—If the airplane does pass the initial control column sweep and stop bolt length inspections, do a more detailed inspection within 100 hours time-in-service (TIS); and

—Report the results of the initial inspection and the 100-hour TIS inspection (if applicable).

Why Is it Important to Publish This AD?

The FAA found that immediate corrective action was required, that notice and opportunity for prior public comment were impracticable and contrary to the public interest, and that good cause existed to make the AD effective immediately by individual letters issued on January 27, 2003, to all known U.S. operators of Raytheon Beech Models 1900, 1900C, and 1900D airplanes. These conditions still exist, and the AD is published in the **Federal Register** as an amendment to section 39.13 of the Federal Aviation Regulations (14 CFR 39.13) to make it effective to all persons.

Comments Invited

How Do I Comment on This AD?

Although this action is in the form of a final rule and was not preceded by notice and opportunity for public comment, FAA invites your comments on the rule. You may submit whatever written data, views, or arguments you choose. You need to include the rule's docket number and submit your comments to the address specified under the caption **ADDRESSES.** We will consider all comments received on or before the closing date specified above.

We may amend this rule in light of comments received. Factual information that supports your ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether we need to take additional rulemaking action.

Are There any Specific Portions of the AD I Should pay Attention to?

We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. You may view all comments we receive before and after the closing date of the rule in the Rules Docket. We will file a report in the Rules Docket that summarizes each FAA contact with the public that concerns the substantive parts of this AD.

How Can I Be Sure FAA Receives my Comment?

If you want us to acknowledge the receipt of your written comments, you must include a self-addressed, stamped postcard. On the postcard, write "Comments to Docket No. 2003–CE–07–AD." We will date stamp and mail the postcard back to you.

Regulatory Impact

Does This AD Impact Various Entities?

These regulations will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, FAA has determined that this final rule does not have federalism implications under Executive Order 13132.

Does This AD Involve a Significant Rule or Regulatory Action?

We have determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and is not a significant regulatory action under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket (otherwise, an evaluation is not required). A copy of it, if filed, may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. FAA amends § 39.13 by adding a new airworthiness directive (AD) to read as follows:

2003–03–18 Raytheon Aircraft Company: Amendment 39–13043; Docket No. 2003–CE–07–AD.

(a) *What airplanes are affected by this AD?* This AD applies to Beech Models 1900, 1900C, and 1900D airplanes, all serial numbers, that are certificated in any category.

(b) *Who must comply with this AD?* Anyone who operates any of the airplanes identified in paragraph (a) of this AD must comply with this AD.

(c) *What problem does this AD address?* The actions specified by this AD are intended to detect and correct any mis-rigged elevator control system, which could lead to insufficient elevator control authority and loss of control of the airplane.

(d) *What must I do to address this problem?* To address this problem, you must accomplish the following actions:

Actions	Compliance	Procedures
(1) Perform a control column sweep inspection to verify full elevator travel to the primary up and down stops. Accomplish this inspection using the following procedures: (i) Remove the aft fairing from the vertical stabilizer to gain visual access to surface stop bolts on the elevator control horn support using the applicable Raytheon Aircraft Company 1900/1900C or 1900D maintenance manual. (ii) Have another appropriately-rated maintenance person perform a full pitch-down to full pitch-up control column sweep. Visually ensure that the elevator control horns contact the surface stop bolts for both the full pitch-down and full pitch-up control column positions. (iii) Measure the length of both elevator down stop bolts from the crown of the bolt head to the face of the elevator lower stop bolt support. (A) If the dimension of each stop bolt is equal to or less than 1.00 inch, the bolts are acceptable for the purposes of this inspection. (B) If the dimension of either stop bolt is greater than 1.00 inch, accomplish (prior to further flight) the travel board inspection procedures as specified in paragraph (d)(3)(i) of this AD. If it passes the procedure specified in paragraph (d)(3)(i), the bolt is acceptable even though it exceeds 1.00 inch.	Initially inspect within 4 days after February 5, 2003 (the effective date of this AD), except that this action was required no later than January 31, 2003, for those who received emergency AD 2003–03–18. If necessary, accomplish the travel board inspection prior to further flight after the inspection required by paragraph (d)(1)(iii)(B) of this AC.	In accordance with the applicable Raytheon Aircraft Company 1900/1900C or 1900D maintenance manual.

Actions	Compliance	Procedures
(2) If the airplane does not pass the control column sweep inspection or bolt length requirements of paragraphs (d)(1)(ii), (d)(1)(iii), or (d)(3)(i) of this AD. (i) Accomplish the elevator control system rigging procedure in accordance with the applicable Raytheon Aircraft Company 1900/1900C or 1900D maintenance manual. Do not reinstall the aft fairing because access to the surface stop bolts is still necessary; (ii) Perform a control column sweep inspection by accomplishing the actions in paragraphs (d)(1)(ii), (d)(3)(i), and (d)(3)(ii) of this AD. These actions are also referenced in paragraph (d)(4) of this AD; and (iii) When the airplane passes the requirements of the above inspection, replace the aft fairing.	Prior to further flight after the applicable inspection required by paragraphs (d)(1), (d)(3), and (d)(4) of this AD.	In accordance with the applicable Raytheon Aircraft Company 1900/1900C or 1900D maintenance manual.
(3) If the airplane passes the inspection of paragraph (d)(1) of this AD, replace (prior to further flight) the aft fairing; and accomplish (d)(3)(i) of this AD within 100 hours TIS and any necessary actions prior to further flight after that as specified in paragraphs (d)(3)(ii) of this AD: (i) Utilizing elevator travel boards, inspect to ensure that the surface stops on the control horn support allow the following: (A) Up elevator travel of 20 degrees, +1 degree −0 degree; and (B) Down elevator travel of 14 degrees, +1 degree −0 degree. (ii) If the airplane does not pass the inspection required by paragraph (d)(3)(i) of this AD, accomplish (prior to further flight) the elevator control system rigging procedures as specified in paragraphs (d)(2)(i), (d)(2)(ii), and (d)(3)(i) of this AD.	Replace the aft fairing prior to further flight after the applicable inspection required by paragraphs (d)(1), (d)(3), and (d)(4) of this AD. Unless accomplished per paragraph (d)(1)(iii)(B) of this AD, accomplish the travel board inspection within 100 hours TIS after the initial inspection required by paragraph (d)(1) of this AD. Accomplish any necessary re-rigging prior to further flight after the inspection required by this AD.	In accordance with the applicable Raytheon Aircraft Company 1900/1900C or 1900D maintenance manual.
(4) Perform a control column sweep inspection by accomplishing the actions of paragraphs (d)(1)(i), (d)(1)(ii), (d)(2), (d)(3)(i), and (d)(3)(ii) of this AD. If the aft fairing is already removed, the actions of paragraphs (d)(1)(i) are not required.	Prior to further flight after each time the elevator control system is re-rigged. Examples of items that require re-rigging include, but are not limited to, changing the tension on the elevator primary control cables and replacing the elevator control system components such as cables, pulleys, push-pull tubes, and bellcranks.	In accordance with the applicable Raytheon Aircraft Company 1900/1900C or 1900D maintenance manual.
(5) Report the results of the initial inspection required by paragraph (d)(1) of this AD and the initial travel board inspection required by paragraph (d)(3)(i) of this AD. Break out the results of the control column sweep inspection, bolt length measurement, and the travel board inspection. Along with the results, include the airplane model, serial number, and the number of hours TIS at the time of inspection. Label the document "Inspection results of AD 2003–03–18".	Within 10 days after the initial inspections required by paragraph (d)(1) or (d)(3)(i) of this AD.	Submit the results to the Raytheon Aircraft Company, 9709 E. Central, Wichita Kansas 67201–0085; telephone: (800) 429–5372 or (316) 676–3140; facsimile; (316) 676–8051; e-mail: *tom_peay@raytheon.com.*

(e) *Can I comply with this AD in any other way?* You may use an alternative method of compliance or adjust the compliance time if:

(1) Your alternative method of compliance provides an equivalent level of safety; and

(2) The Manager, Wichita ACO, approves your alternative. Submit your request through an FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Wichita ACO.

Note: This AD applies to each airplane identified in paragraph (a) of this AD, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if you have not eliminated the unsafe condition, specific actions you propose to address it.

(f) *Where can I get information about any already-approved alternative methods of compliance?* Contact Paul DeVore, Aerospace Engineer, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone: (316) 946–4142; facsimile: (316) 946–4407.

(g) *What if I need to fly the airplane to another location to comply with this AD?* The FAA can issue a special flight permit under sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate your airplane to a location where you can accomplish the requirements

of this AD provided the following is adhered to:

(1) When re-rigging is required, operate the airplane with crew only and no cargo.

(2) All special flight permits must be coordinated with the Wichita ACO at the address, phone number, and facsimile number specified in paragraph (f) of this AD.

(h) *Where can I view information related to this AD?* You may view information related to this AD at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106.

(i) *When does this AD become effective?* This AD becomes effective February 5, 2003, to all affected persons who did not receive emergency AD 2003–03–18, issued January 27, 2003. Emergency AD 2003–03–18 contained the requirements of this amendment and became effective immediately upon receipt and required the actions no later than January 31, 2003 (4 days after distribution).

Issued in Kansas City, Missouri, on January 30, 2003.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–2784 Filed 2–4–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 866

[Docket No. 97P–0313]

Medical Devices; Reclassification and Codification of Fully Automated Short-Term Incubation Cycle Antimicrobial Susceptibility Devices From Class III to Class II

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is reclassifying the fully automated short-term incubation cycle antimicrobial susceptibility device for use in determining in vitro susceptibility of bacterial pathogens isolated from clinical specimens from class III to class II (special controls). The special control that will apply to this device is a guidance document entitled "Class II Special Controls Guidance Document: Antimicrobial Susceptibility Test (AST) Systems; Guidance for Industry and FDA." The agency is also announcing that it has issued an order in the form of a letter to BioMerieux Vitek, Inc., reclassifying the device. The agency is classifying this device into class II because special controls, in addition to the general controls, will provide reasonable assurance of the safety and effectiveness of the device and there is sufficient information to establish special controls.

DATES: This rule is effective May 6, 2003.

FOR FURTHER INFORMATION CONTACT: Freddie M. Poole, Center for Devices and Radiological Health (HFZ–440), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–2096.

SUPPLEMENTARY INFORMATION:

I. Background (Regulatory Authorities)

The Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 301 *et seq.*), as amended by the Medical Device Amendments of 1976 (the 1976 amendments) (Public Law 94–295), the Safe Medical Devices Act of 1990 (the SMDA) (Public Law 101–629), and the Food and Drug Administration Modernization Act of 1997 (the FDAMA) (Public Law 105–115), established a comprehensive system for the regulation of medical devices intended for human use. Section 513 of the act (21 U.S.C. 360c) established three categories (classes) of devices, depending on the regulatory controls needed to provide reasonable assurance of their safety and effectiveness. The three categories of devices are class I (general controls), class II (special controls), and class III (premarket approval).

Under the 1976 amendments, class II devices were defined as devices for which there is insufficient information to show that general controls themselves will assure safety and effectiveness, but for which there is sufficient information to establish performance standards to provide such assurance. The SMDA broadened the definition of class II devices to mean devices for which there is insufficient information to show that general controls themselves will assure safety and effectiveness, but for which there is sufficient information to establish special controls to provide such assurance, including performance standards, postmarket surveillance, patient registries, development and dissemination of guidance, recommendations, and any other appropriate actions the agency deems necessary (section 513(a)(1)(B) of the act).

Under section 513 of the act, devices that were in commercial distribution before May 28, 1976 (the date of enactment of the 1976 amendments), generally referred to as preamendments devices, are classified after FDA has: (1) Received a recommendation from a device classification panel (an FDA advisory committee); (2) published the panel's recommendation for comment, along with a proposed regulation classifying the device; and (3) published a final regulation classifying the device. FDA has classified most preamendments devices under these procedures.

Devices that were not in commercial distribution prior to May 28, 1976, generally referred to as postamendments devices, are classified automatically by statute (section 513(f) of the act) into class III without any FDA rulemaking process. Those devices remain in class III and require premarket approval, unless and until: (1) The device is reclassified into class I or II; (2) FDA issues an order classifying the device into class I or II in accordance with new section 513(f)(2) of the act, as amended by the FDAMA; or (3) FDA issues an order finding the device to be substantially equivalent, under section 513(i) of the act, to a predicate device that does not require premarket approval. The agency determines whether new devices are substantially equivalent to previously offered devices by means of premarket notification procedures in section 510(k) of the act (21 U.S.C. 360(k)) and part 807 of the regulations (21 CFR part 807).

A preamendments device that has been classified into class III may be marketed, by means of premarket notification procedures, without submission of a premarket approval application (PMA) until FDA issues a final regulation under section 515(b) of the act (21 U.S.C. 360e(b)) requiring premarket approval.

Reclassification of postamendments devices is governed by section 513(f)(3) of the act, formerly section 513(f)(2) of the act. This section provides that FDA may initiate the reclassification of a device classified into class III under section 513(f)(1) of the act, or the manufacturer or importer of a device may petition the Secretary of Health and Human Services (the Secretary) for the issuance of an order classifying the device in class I or class II. FDA's regulations in § 860.134 (21 CFR 860.134) set forth the procedures for the filing and review of a petition for reclassification of such class III devices. In order to change the classification of the device, it is necessary that the proposed new class have sufficient regulatory controls to provide reasonable assurance of the safety and effectiveness of the device for its intended use.

The FDAMA added a new section 513(f)(2) to the act which addresses classification of postamendments devices. New section 513(f)(2) of the act

provides that, upon receipt of a "not substantially equivalent" determination, a 510(k) applicant may request FDA to classify a postamendments device into class I or class II. Within 60 days from the date of such a written request, FDA must classify the device by written order. If FDA classifies the device into class I or II, the applicant has then received clearance to market the device and it can be used as a predicate device for other 510(k)s. It is expected that this process will be used for low risk devices. This process does not apply to devices that have been classified by regulation into class III, i.e., preamendments class III devices, or class III devices for which a PMA is appropriate.

Under section 513(f)(3)(B)(i) of the act, formerly section 513(f)(2)(B)(i) of the act, the Secretary may, for good cause shown, refer a petition to a device classification panel. If a petition is referred to a panel, the panel shall make a recommendation to the Secretary respecting approval or denial of the petition. Any such recommendation shall contain: (1) A summary of the reasons for the recommendation, (2) a summary of the data upon which the recommendation is based, and (3) an identification of the risks to health (if any) presented by the device with respect to which the petition was filed.

II. Recommendation of the Panel

On July 2, 1997, FDA filed the reclassification petition submitted by BioMerieux Vitek, Inc., requesting reclassification of the fully automated short-term incubation cycle antimicrobial susceptibility devices from class III to class II. FDA consulted with the Microbiology Devices Panel (the panel). During an open public meeting on February 13, 1998, the panel unanimously recommended that FDA reclassify the fully automated short-term incubation cycle antimicrobial susceptibility device for use in determining in vitro susceptibility of bacterial pathogens isolated from clinical specimens from class III to class II. The panel identified the risks to health regarding use of this device as the reporting of erroneous results, citing that insufficient testing of each unique antimicrobial agent with an inappropriate clinical and challenge organism, the use of an uncalibrated inoculum, or a nonstandardized acceptable error endpoint can result in such erroneous reports.

FDA considered the panel's recommendations and tentatively agreed that the generic type of device, the fully automated short-term incubation cycle antimicrobial susceptibility device for use in determining in vitro susceptibility of bacterial pathogens isolated from clinical specimens, be reclassified from class III to class II. Subsequently, in the **Federal Register** of March 8, 2000 (65 FR 12268), FDA issued a notice of the panel's recommendation for public comment.

After reviewing the information in the petition and presenting it before the panel, and after considering the panel's recommendation and the comments received in response to the notice of panel recommendation, FDA issued an order to the petitioner on December 28, 2001, reclassifying the fully automated short-term incubation cycle antimicrobial susceptibility device and substantially equivalent devices of this generic type, from class III to class II with the implementation of special controls. The special control applicable to this generic type of device is a guidance document entitled "Class II Special Controls Guidance Document: Antimicrobial Susceptibility Test (AST) Systems; Guidance for Industry and FDA." FDA has identified the administration of an inappropriate antimicrobial agent to the patient as the risk to health associated with use of this device. The guidance document contains sections that discuss the use of appropriate challenge strains; standardized preparation of inoculum; the application of "acceptable error" as a range with confidence intervals; and appropriate clinical performance testing. In this way, the guidance will minimize the sources of erroneous reporting associated with the fully automated short-term incubation cycle antimicrobial susceptibility device. Testing and labeling recommendations are also discussed in the guidance document and also help manufacturers address the risk to health. Following the effective date of this final classification rule, any firm submitting a 510(k) premarket notification for a fully automated short-term incubation cycle antimicrobial susceptibility device will need to address the issues covered in the special control guidance. However, the firm need only show that its device meets the recommendations of the guidance or in some other way provides equivalent assurances of safety and effectiveness.

Accordingly, as required by § 860.134(b)(6) and (b)(7) of the regulations, FDA is announcing the reclassification of the fully automated short-term incubation cycle antimicrobial susceptibility device from class III into class II. FDA is codifying the reclassification and the special control guidance by adding new § 866.1645. For the convenience of the reader, FDA is also adding a new § 866.1(e) to inform the reader where to find guidance documents referenced in 21 CFR part 866.

III. Environmental Impact

The agency has determined under 21 CFR 25.34(b) that this reclassification is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

IV. Analysis of Impacts

FDA has examined the impacts of the notice under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (Public Law 104–4)). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety and other advantages, distributive impacts, and equity). The agency believes that this final rule is consistent with the regulatory philosophy and principles identified in the Executive order. In addition, the final rule is not a significant regulatory action as defined by the Executive order and so is not subject to review under the Executive order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Reclassification of the device from class III to class II will relieve all manufacturers of the device of the cost of complying with the premarket approval requirements in section 515 of the act. Because reclassification will reduce regulatory costs with respect to this device, it will impose no significant economic impact on any small entities, and it may permit small potential competitors to enter the marketplace by lowering their costs. The agency therefore certifies that this rule will not have a significant economic impact on a substantial number of small entities. In addition, this rule will not impose costs of $110 million or more on either the private sector or State, local, and tribal governments in the aggregate, and therefore a summary statement or analysis pursuant to section 202(a) of the Unfunded Mandates Reform Act of 1995 is not required.

V. Federalism

FDA has analyzed this final rule in accordance with the principles set forth

in Executive Order 13132. FDA has determined that the rule does not contain policies that have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the agency has concluded that the rule does not contain policies that have federalism implications as defined in the order and, consequently, a federalism summary impact statement is not required.

VI. Paperwork Reduction Act of 1995

This final rule contains no collections of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

List of Subjects in 21 CFR Part 866

Biologics, Laboratories, Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act, and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 866 is amended as follows:

PART 866—IMMUNOLOGY AND MICROBIOLOGY DEVICES

1. The authority citation for 21 CFR part 866 continues to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 371.

2. Section 866.1 is amended by adding paragraph (e) to read as follows:

§ 866.1 Scope.

* * * * *

(e) Guidance documents referenced in this part are available on the Internet at *http:www.fda.gov/cdrh.guidance.html.*

3. Section 866.1645 is added to subpart B to read as follows:

§ 866.1645 Fully automated short-term incubation cycle antimicrobial susceptibility system.

(a) *Identification.* A fully automated short-term incubation cycle antimicrobial susceptibility system is a device that incorporates concentrations of antimicrobial agents into a system for the purpose of determining in vitro susceptibility of bacterial pathogens isolated from clinical specimens. Test results obtained from short-term (less than 16 hours) incubation are used to determine the antimicrobial agent of choice to treat bacterial diseases.

(b) *Classification.* Class II (special controls). The special control for this device is FDA's guidance document entitled "Class II Special Controls Guidance Document: Antimicrobial Susceptibility Test (AST) Systems; Guidance for Industry and FDA."

Dated: January 9, 2003.

Linda S. Kahan,

Deputy Director, Center for Devices and Radiological Health.

[FR Doc. 03–2656 Filed 2–4–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972

AGENCY: Department of the Navy, DOD.

ACTION: Final rule.

SUMMARY: The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Deputy Assistant Judge Advocate General (Admiralty and Maritime Law) has determined that USS HOWARD (DDG 83) is a vessel of the Navy which, due to its special construction and purpose, cannot fully comply with certain provisions of the 72 COLREGS without interfering with its special function as a naval ship. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

EFFECTIVE DATE: August 8, 2002.

FOR FURTHER INFORMATION CONTACT: Captain Richard T. Evans, JAGC, U.S. Navy, Deputy Assistant Judge Advocate General (Admiralty and Maritime Law), Office of the Judge Advocate General, Department of the Navy, 1322 Patterson Ave., SE., Suite 3000, Washington Navy Yard, DC 20374–5066, Telephone number: (202) 685–5040.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C. 1605, the Department of the Navy amends 32 CFR Part 706. This amendment provides notice that the Deputy Assistant Judge Advocate General (Admiralty and Maritime Law), under authority delegated by the Secretary of the Navy, has certified that USS HOWARD (DDG 83) is a vessel of the Navy which, due to its special construction and purpose, cannot fully comply with the following specific provisions of 72 COLREGS without interfering with its special function as a naval ship: Annex I, paragraph 3(a) pertaining to the location of the forward masthead light in the forward quarter of the vessel, and the horizontal distance between the forward and after masthead lights; and Annex I, paragraph 2(f)(i), pertaining to the placement of the masthead light or lights above and clear of all other lights and obstructions. The Deputy Assistant Judge Advocate General (Admiralty and Maritime Law) has also certified that the lights involved are located in closest possible compliance with the applicable 72 COLREGS requirements.

Moreover, it has been determined, in accordance with 32 CFR Parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on this vessel in a manner differently from that prescribed herein will adversely affect the vessel's ability to perform its military functions.

List of Subjects in 32 CFR Part 706

Marine safety, Navigation (water), and Vessels.

Accordingly, 32 CFR part 706 is amended as follows:

PART 706—[AMENDED]

1. The authority citation for 32 CFR part 706 continues to read as follows:

Authority: 33 U.S.C. 1605.

2. Table Four, Paragraph 16 of § 706.2 is amended by revising the following entry for USS HOWARD:

§ 706.2 Certifications of the Secretary of the Navy Under Executive Order 11964 and 33 U.S.C. 1605.

* * * * *

Vessel	Number	Obstruction angle relative ship's headings
* * * * *	*	*
USS HOWARD	DDG 83	109.11 thru 112.50°
* * * * *	*	*

3. Table Five of § 706.2 is amended by revising the following entry for USS HOWARD:

§ 706.2 Certifications of the Secretary of the Navy Under Executive Order 11964 and 33 U.S.C. 1605.

* * * * *

TABLE FIVE

Vessel	No.	Masthead lights not over all other lights and obstructions. annex I, sec. 2(f)	Forward masthead light not in forward quarter of ship. annex I, sec. 3(a)	After masthead light less than 1/2 ship's length aft of forward masthead light. Annex I, sec. 3(a)	Percentage horizontal separation attained
* * *	*	*	*	*	*
USS HOWARD	DDG 83	X	X	X	14.6
* * *	*	*	*	*	*

Dated: August 8, 2002.

Richard T. Evans,

Captain, JAGC, U.S. Navy, Deputy Assistant Judge Advocate General (Admiralty and Maritime Law).

[FR Doc. 03–2636 Filed 2–4–03; 8:45 am]

BILLING CODE 3810–FF–U

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972

AGENCY: Department of the Navy, DOD.

ACTION: Final rule.

SUMMARY: The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Deputy Assistant Judge Advocate General (Admiralty and Maritime Law) has determined that USS PREBLE (DDG 88) is a vessel of the Navy which, due to its special construction and purpose, cannot fully comply with certain provisions of the 72 COLREGS without interfering with its special function as a naval ship. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

EFFECTIVE DATE: May 31, 2002.

FOR FURTHER INFORMATION CONTACT: Captain Richard T. Evans, JAGC, U.S. Navy, Deputy Assistant Judge Advocate General (Admiralty and Maritime Law), Office of the Judge Advocate General, Department of the Navy, 1322 Patterson Ave., SE., Suite 3000, Washington Navy Yard, DC 20374–5066, Telephone number: (202) 685–5040.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C. 1605, the Department of the Navy amends 32 CFR Part 706. This amendment provides notice that the Deputy Assistant Judge Advocate General (Admiralty and Maritime Law), under authority delegated by the Secretary of the Navy, has certified that USS PREBLE (DDG 88) is a vessel of the Navy which, due to its special construction and purpose, cannot fully comply with the following specific provisions of 72 COLREGS without interfering with its special function as a naval ship: Annex I, paragraph 3(a) pertaining to the location of the forward masthead light in the forward quarter of the vessel, and the horizontal distance between the forward and after masthead lights; Annex I, paragraph 3(c), pertaining to placement of task lights not less than two meters from the fore and aft centerline of the ship in the athwartship direction; Annex I, paragraph 2(f)(i), pertaining to the placement of the masthead light or lights above and clear of all other lights and obstructions; and Annex I, paragraph 2(f)(ii), pertaining to the vertical placement of task lights. The Deputy Assistant Judge Advocate General (Admiralty and Maritime Law) has also certified that the lights involved are located in closest possible compliance with the applicable 72 COLREGS requirements.

Moreover, it has been determined, in accordance with 32 CFR Parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on this vessel in a manner differently from that prescribed herein will adversely affect the vessel's ability to perform its military functions.

List of Subjects in 32 CFR Part 706

Marine safety, Navigation (water), and Vessels.

Accordingly, 32 CFR Part 706 is amended as follows:

PART 706—[AMENDED]

1. The authority citation for 32 CFR Part 706 continues to read as follows:

Authority: 33 U.S.C. 1605.

2. Table Four, Paragraph 15 of § 706.2 is amended by adding, in numerical order, the following entry for USS PREBLE:

§ 706.2 Certifications of the Secretary of the Navy Under Executive Order 11964 and 33 U.S.C. 1605.

* * * * *

Vessel	Number	Horizontal distance from the fore and aft centerline of the vessel in the athwartship direction
* * *	*	*
USS PREBLE	DDG 88	1.93 meters
* * *	*	*

3. Table Four, Paragraph 16 of § 706.2 is amended by adding, in numerical order, the following entry for USS PREBLE:

§ 706.2 Certifications of the Secretary of the Navy Under Executive Order 11964 and 33 U.S.C. 1605.

* * * * *

Vessel	Number	Obstruction angle relative ship's headings
* * * * *		
USS PREBLE	DDG 88	109.20 thru 112.50°
* * * * *		

4. Table Five of § 706.2 is amended by adding, in numerical order, the following entry for USS PREBLE:

§ 706.2 Certifications of the Secretary of the Navy Under Executive Order 11964 and 33 U.S.C. 1605.

* * * * *

TABLE FIVE

Vessel	No.	Masthead lights not over all other lights and obstructions. Annex I, sec. 2(f)	Forward masthead light not in forward quarter of ship. Annex I, sec. 3(a)	After masthead light less than ½ ship's length aft of forward masthead light. Annex I, sec. 3(a)	Percentage horizontal separation attained
* * * * *					
USS PREBLE	DDG 88	X	X	X	14.7
* * * * *					

Dated: May 31, 2002.

Richard T. Evans,

Captain, JAGC, U.S. Navy, Deputy Assistant Judge Advocate General (Admiralty and Maritime Law).

[FR Doc. 03–2637 Filed 2–4–03; 8:45 am]

BILLING CODE 3810–FF–U

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972

AGENCY: Department of the Navy, DOD.

ACTION: Final rule.

SUMMARY: The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Deputy Assistant Judge Advocate General (Admiralty and Maritime Law) has determined that USS MUSTIN (DDG 89) is a vessel of the Navy which, due to its special construction and purpose, cannot fully comply with certain provisions of the 72 COLREGS without interfering with its special function as a naval ship. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

EFFECTIVE DATE: December 17, 2002.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander Dominick G. Yacono, JAGC, U.S. Navy, Deputy Assistant Judge Advocate General (Admiralty and Maritime Law), Office of the Judge Advocate General, Department of the Navy, 1322 Patterson Ave., SE., Suite 3000, Washington Navy Yard, DC 20374–5066. Telephone number: (202) 685–5040.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C. 1605, the Department of the Navy amends 32 CFR part 706. This amendment provides notice that the Deputy Assistant Judge Advocate General (Admiralty and Maritime Law), under authority delegated by the Secretary of the Navy, has certified that USS MUSTIN (DDG 89) is a vessel of the Navy which, due to its special construction and purpose, cannot fully comply with the following specific provisions of 72 COLREGS without interfering with its special function as a naval ship: Annex I, paragraph 3(a) pertaining to the location of the forward masthead light in the forward quarter of the vessel, and the horizontal distance between the forward and after masthead lights; Annex I, paragraph 3(c), pertaining to placement of task lights not less than two meters from the fore and aft centerline of the ship in the athwartship direction; Annex I, paragraph 2(f)(i), pertaining to the placement of the masthead light or lights above and clear of all other lights and obstructions; and Annex I, paragraph 2(f)(ii), pertaining to the vertical placement of task lights. The Deputy Assistant Judge Advocate General (Admiralty and Maritime Law) has also certified that the lights involved are located in closest possible compliance with the applicable 72 COLREGS requirements.

Moreover, it has been determined, in accordance with 32 CFR parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on this vessel in a manner differently from that prescribed herein will adversely affect the vessel's ability to perform its military functions.

List of Subjects in 32 CFR Part 706

Marine safety, Navigation (water), and Vessels.

Accordingly, 32 CFR part 706 is amended as follows:

PART 706—[AMENDED]

1. The authority citation for 32 CFR part 706 continues to read as follows:

Authority: 33 U.S.C. 1605.

2. Table Four, paragraph 15 of § 706.2 is amended by adding, in numerical

order, the following entry for USS MUSTIN:

§ 706.2 Certifications of the Secretary of the Navy Under Executive Order 11964 and 33 U.S.C. 1605.

* * * * *

Vessel	Number	Horizontal distance from the fore and aft centerline of the vessel in the athwartship direction
* * * * *	*	*
USS MUSTIN	DDG 89	1.93 meters
* * * * *	*	*

3. Table Four, paragraph 16 of § 706.2 is amended by adding, in numerical order, the following entry for USS MUSTIN:

§ 706.2 Certifications of the Secretary of the Navy Under Executive Order 11964 and 33 U.S.C. 1605.

* * * * *

Vessel	Number	Obstruction angle relative ship's headings
* * * * *	*	*
USS MUSTIN	DDG 89	107.83 thru 112.50°
* * * * *	*	*

4. Table Five of § 706.2 is amended by adding, in numerical order, the following entry for USS MUSTIN:

§ 706.2 Certifications of the Secretary of the Navy Under Executive Order 11964 and 33 U.S.C. 1605.

* * * * *

TABLE FIVE

Vessel	No.	Masthead lights not over all other lights and obstructions. Annex I, sec. 2(f)	Forward masthead light not in forward quarter of ship. Annex I, sec. 3(a)	After masthead light less than ½ ship's length aft of forward masthead light. Annex I, sec. 3(a)	Percentage horizontal separation attained
* * *	*	*	*	*	*
USS MUSTIN	DDG 89	X	X	X	14.4
* * *	*	*	*	*	*

Dated: December 17, 2002.

D.G. Yacono,

Lieutenant Commander, JAGC, U.S. Navy, Deputy Assistant Judge Advocate General (Admiralty and Maritime Law).

[FR Doc. 03–2638 Filed 2–4–03; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972

AGENCY: Department of the Navy, DOD.

ACTION: Final rule.

SUMMARY: The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Deputy Assistant Judge Advocate General (Admiralty and Maritime Law) has determined that USS BULKELEY (DDG 84) is a vessel of the Navy which, due to its special construction and purpose, cannot fully comply with certain provisions of the 72 COLREGS without interfering with its special function as a naval ship. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

EFFECTIVE DATE: June 13, 2002.

FOR FURTHER INFORMATION CONTACT: Captain Richard T. Evans, JAGC, U.S. Navy, Deputy Assistant Judge Advocate General (Admiralty and Maritime Law), Office of the Judge Advocate General, Department of the Navy, 1322 Patterson Ave., SE., Suite 3000, Washington Navy Yard, DC 20374–5066. Telephone number: (202) 685–5040.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C. 1605, the Department of the Navy amends 32 CFR part 706. This amendment provides notice that the Deputy Assistant Judge Advocate General (Admiralty and Maritime Law), under authority delegated by the Secretary of the Navy, has certified that USS BULKELEY (DDG 84) is a vessel of the Navy which, due to its special construction and purpose, cannot fully comply with the following specific provisions of 72 COLREGS without interfering with its special function as a naval ship: Annex I, paragraph 3(a) pertaining to the location of the forward masthead light in the forward quarter of the vessel, and the horizontal distance between the forward and after masthead

lights; and Annex I, paragraph 2(f)(i), pertaining to the placement of the masthead light or lights above and clear of all other lights and obstructions. The Deputy Assistant Judge Advocate General (Admiralty and Maritime Law) has also certified that the lights involved are located in closest possible compliance with the applicable 72 COLREGS requirements.

Moreover, it has been determined, in accordance with 32 CFR parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on this vessel in a manner differently from that prescribed herein will adversely affect the vessel's ability to perform its military functions.

List of Subjects in 32 CFR Part 706

Marine safety, Navigation (water), and Vessels.

Accordingly, 32 CFR part 706 is amended as follows:

PART 706—[AMENDED]

1. The authority citation for 32 CFR part 706 continues to read as follows:

Authority: 33 U.S.C. 1605.

2. Table Four, paragraph 16 of § 706.2 is amended by revising the following entry for USS BULKELEY:

§ 706.2 Certifications of the Secretary of the Navy Under Executive Order 11964 and 33 U.S.C. 1605.

* * * * *

Vessel	Number	Obstruction angle relative ship's headings
* * * * *		
USS BULKELEY	DDG 84	109.60 thru 112.50°
* * * * *		

3. Table Five of § 706.2 is amended by revising the following entry for USS BULKELEY:

§ 706.2 Certifications of the Secretary of the Navy Under Executive Order 11964 and 33 U.S.C. 1605.

* * * * *

TABLE FIVE

Vessel	No.	Masthead lights not over all other lights and obstructions. annex I, sec 2(f)	Forward masthead light not in forward quarter of ship. annex I, sec. 3(a)	After masthead light less than ½ ship's length aft of forward masthead light. annex I, sec. 3(a)	Percentage horizontal separation attained
* * * *					
USS BULKELEY	DDG 84	X	X	X	14.7
* * * *					

Dated: June 13, 2002.

Richard T. Evans,

Captain, JAGC, U.S. Navy, Deputy Assistant Judge Advocate General (Admiralty and Maritime Law).

[FR Doc. 03–2639 Filed 2–4–03; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972

AGENCY: Department of the Navy, DOD.

ACTION: Final rule.

SUMMARY: The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Deputy Assistant Judge Advocate General of the Navy (Admiralty and Maritime Law) has determined that USS MASON (DDG 87) is a vessel of the Navy which, due to its special construction and purpose, cannot fully comply with certain provisions of the 72 COLREGS without interfering with its special function as a naval ship. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

EFFECTIVE DATE: October 11, 2002

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander, Dominick G. Yacono, JAGC, U.S. Navy Deputy Assistant Judge Advocate General (Admiralty and Maritime Law), Office of the Judge Advocate General, Department of the Navy, 1322 Patterson Ave., SE., Suite 3000, Washington Navy Yard, DC 20374–5066, Telephone number: (202) 685–5040.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C. 1605, the Department of the Navy amends 32 CFR Part 706. This amendment provides notice that the Deputy Assistant Judge Advocate General of the Navy (Admiralty and Maritime Law), under authority delegated by the Secretary of the Navy, has certified that USS MASON (DDG 87) is a vessel of the Navy which, due to its special construction and purpose, cannot fully comply with the following specific provisions of 72 COLREGS without interfering with its special function as a naval ship: Annex I, paragraph 2(f)(i) pertaining to placement of the masthead light or lights above and clear of all other lights and obstructions, Annex I paragraph 2(f)(ii) pertaining to the vertical placement of the task lights, Annex I paragraph 3(a) pertaining to the location of the forward masthead light in the forward quarter of the vessel, and the horizontal distance between the forward and after masthead lights, and Annex I paragraph 3(c) pertaining to the horizontal placement of the task lights. The Deputy Assistant Judge Advocate General of the Navy (Admiralty and Maritime Law) has also certified that the

lights involved are located in closest possible compliance with the applicable 72 COLREGS requirements.

Moreover, it has been determined, in accordance with 32 CFR Parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on this vessel in a manner differently from that prescribed herein will adversely affect the vessel's ability to perform its military functions.

List of Subjects in 32 CFR Part 706

Marine safety, Navigation (water), and Vessels.

Accordingly, 32 CFR Part 706 is amended as follows:

PART 706—[AMENDED]

1. The authority citation for 32 CFR Part 706 continues to read as follows:

Authority: 33 U.S.C. 1605.

2. Table Four, Paragraph 15 of § 706.2 is amended by adding, in numerical order, the following entry for USS MASON:

§ 706.2 Certifications of the Secretary of the Navy Under Executive Order 11964 and 33 U.S.C. 1605.

* * * * *

Vessel	Number	Horizontal distance from the fore and aft centerline of the vessel in the athwartship direction
* * *	*	* * *
USS MASON	DDG 87	1.87 meters
* * *	*	* * *

3. Table Four, Paragraph 16 of § 706.2 is amended by adding, in numerical order, the following entry for USS MASON:

§ 706.2 Certifications of the Secretary of the Navy Under Executive Order 11964 and 33 U.S.C. 1605.

* * * * *

Vessel	Number	Obstruction angle relative ship's headings
* * *	*	* * *
USS MASON	DDG 87	108.03 thru 112.50°
* * *	*	* * *

4. Table Five of § 706.2 is amended by adding, in numerical order, the following entry for USS MASON:

§ 706.2 Certifications of the Secretary of the Navy Under Executive Order 11964 and 33 U.S.C. 1605.

* * * * *

TABLE FIVE

Vessel	No.	Masthead lights not over all other lights and obstructions. annex I, sec. 2(f)	Forward masthead light not in forward quarter of ship. annex I, sec. 3(a)	After masthead light less than ½ ship's length aft of forward masthead light. annex I, sec. 3(a)	Percentage horizontal separation attained
* * * *	*	*	*	*	*
USS Mason	DDG 87	X	X	X	14.5
* * * *	*	*	*	*	*

Dated: October 11, 2002.

Dominick G. Yacono,

Lieutenant Commander, JAGC, U.S. Navy, Deputy Assistant Judge Advocate General (Admiralty and Maritime Law).

[FR Doc. 03–2635 Filed 2–4–03; 8:45 am]

BILLING CODE 3810–FF–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD01–03–003]

Drawbridge Operation Regulations: Cheesequake Creek, NJ

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, First Coast Guard District, has issued a temporary deviation from the drawbridge operation regulations for the New Jersey Transit Rail Operations (NJTRO) railroad bridge, mile 0.2, across Cheesequake Creek, at Morgan, South Amboy, New Jersey. Under this temporary deviation the

bridge may remain closed to vessel traffic from February 3, 2003, through February 16, 2003. This temporary deviation is necessary to facilitate repairs at the bridge.

DATES: This deviation is effective from February 3, 2003, through February 16, 2003.

FOR FURTHER INFORMATION CONTACT: Joe Arca, Project Officer, First Coast Guard District, at (212) 668–7165.

SUPPLEMENTARY INFORMATION: The NJTRO railroad bridge has a vertical clearance in the closed position of 3 feet at mean high water and 8 feet at mean low water. The existing drawbridge operation regulations are listed at 33 CFR 117.709(b).

The bridge owner, New Jersey Transit Rail Operations, requested a temporary deviation from the drawbridge operation regulations to facilitate necessary maintenance, the refurbishment of the electrical controls, at the bridge. The bridge must remain in the closed position to perform these repairs. Vessels that can pass under the bridge without a bridge opening may do so at all times.

The waterway users who normally navigate Cheesequake Creek are predominantly recreational vessels. The proposed time period is historically the time period during which the fewest requests are made to open the bridge. The Coast Guard coordinated this closure with the mariners who normally use this waterway to help facilitate this necessary bridge repair and to minimize any disruption to the marine transportation system.

Under this temporary deviation the NJTRO railroad bridge may remain closed to vessel traffic from 8 a.m. on February 3, 2003, through 4 p.m. on February 16, 2003. The bridge shall open upon a four-hour advance notice for emergency situations.

This deviation from the operating regulations is authorized under 33 CFR 117.35, and will be performed with all due speed in order to return the bridge to normal operation as soon as possible.

Dated: January 24, 2003.

Vivien S. Crea,

Rear Admiral, U.S. Coast Guard, Commander, First Coast Guard District.

[FR Doc. 03–2697 Filed 2–4–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD05–03–007]

RIN 2115–AA97

Security Zone: Chesapeake Bay, Elizabeth River, Port of Hampton Roads, Virginia

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a security zone encompassing the grounds, piers and waterside of Norfolk International Terminals, Norfolk, Virginia. This zone is needed to prevent destruction, loss, or injury to military equipment and supplies while military operations are being carried out at Norfolk International Terminals. The Captain of the Port, Hampton Roads, Virginia will enforce a security zone consisting of the Norfolk International Terminals property enclosed within the perimeter fence and extending westerly from the shoreline at position 36° – 56.001′ North latitude, 76° – 19.726′ West longitude to a point at 36° – 55.996′ North latitude, 76° – 20.152′ West longitude, thence southerly to a point at 36° – 54.762′ North latitude, 76° – 20.244′ West longitude, then southeasterly to a point at 36° – 53.854′ North latitude, 76° – 20.093′ West longitude, then to the shoreline at position 36° – 54.216′ North latitude, 76° – 19.481′ West longitude. Individuals or vessels will not be allowed to enter the security zone at Norfolk International Terminals, except as permitted by the Captain of the Port or his designated representative. Movement of individuals and vehicles within Norfolk International Terminals may be restricted or prohibited.

DATES: This section is effective from 5 a.m. January 28, 2003 to 11:59 p.m. February 4, 2003.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket CGD05–03–007 and are available for inspection or copying at USCG Marine Safety Office Hampton Roads, 200 Granby Street, Suite 700, Norfolk, Virginia, 23510, between 9:30 a.m. and 2 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: LT Mike Dolan, project officer, USCG Marine Safety Office Hampton Roads, telephone number (757) 668–5590.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b) (B), the Coast Guard finds that good cause exists for not publishing an NPRM. Publishing an NPRM, which would incorporate a comment period before a final rule was issued, would be contrary to the public interest since immediate action is needed to prevent destruction, loss or injury to resources involved in the military operations taking place in the vicinity of the Norfolk International Terminals.

Discussion of Rule

A security zone is being established encompassing the grounds, piers and waterside of Norfolk International Terminals, Norfolk, Virginia from 5 a.m. January 28, 2003 until 11:59 p.m. February 4, 2003. This zone is needed to safeguard materials and persons in the vicinity from sabotage or other subversive acts, accidents, or other causes of a similar nature while military operations are being conducted. This security zone will encompass the Virginia Port Authority property known as Norfolk International Terminals, at 7737 Hampton Blvd, Norfolk, Virginia, 23505, including all property that is enclosed by the perimeter fence. The security zone will also include the waters of the Elizabeth River in proximity to Norfolk International Terminals, as bounded by a line extending westerly from the shoreline at position 36° – 56.001′ North latitude, 76° – 19.726′ West longitude to a point at 36° – 55.996′ North latitude, 76° – 20.152′ West longitude, thence southerly to a point at 36° – 54.762′ North latitude, 76° – 20.244′ West longitude, then southeasterly to a point at 36° – 53.854′ North latitude, 76° – 20.093′ West longitude, then to the shoreline at position 36° – 54.216′ North latitude, 76° – 19.481′ West longitude. The security zone will be enforced from 5 a.m. January 28, 2003 until 11:59 p.m. February 4, 2003. U.S. Coast Guard personnel will be on scene at all times while the security zone is in effect. U.S. Coast Guard vessels will enforce the security zone over the water whenever a vessel involved in the military operation is inside the security zone. Commercial and recreational boats will not be permitted to enter the security zone, except as permitted by the Captain of the Port.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory

Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979).

Although this regulation restricts access to the regulated area, the effect of this regulation will not be significant because: (i) The COTP may authorize access to the security zone; (ii) the security zone will be in effect for a limited duration; and (iii) the Coast Guard will make notifications via maritime advisories so mariners can adjust their plans accordingly.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), the Coast Guard considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. section 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule will affect the following entities, some of which may be small entities: the owners and operators of vessels intending to transit or anchor within the security zone established at Norfolk International Terminals, from 5 a.m. January 28, 2003 until 11:59 p.m. February 4, 2003.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we offered to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking process. If the rule will affect your small business, organization, or government jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** for assistance in understanding this rule.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not affect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have considered the environmental impact of this rule and concluded that under Figure 2–1, Paragraph (34)(g), of Commandant Instruction M16475.lD, this rule is categorically excluded from further environmental documentation. This rule is less than one week in duration.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and Record Keeping Requirements, Security measures, Vessels, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR Part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6 and 160.5; 49 CFR 1.46.

2. Add temporary § 165.T05–007, to read as follows:

§ 165.T05–007 Security Zone: Chesapeake Bay, Elizabeth River, Port of Hampton Roads, Virginia.

(a) Location: The following area is a security zone: The grounds of the Norfolk International Terminals, Norfolk, Virginia, enclosed by a fence surrounding the perimeter, and the waters of the Elizabeth River in proximity to Norfolk International Terminals, as encompassed by a line

drawn westerly from the shoreline at position 36° – 56.001′ North latitude, 76° – 19.726′ West longitude to a point at 36° – 55.996′ North latitude, 76° – 20.152′ West longitude, thence southerly to a point at 36° – 54.762′ North latitude, 76° – 20.244′ West longitude, then southeasterly to a point at 36° – 53.854′ North latitude, 76° – 20.093′ West longitude, then to the shoreline at position 36° – 54.216′ North latitude, 76° – 19.481′ West longitude.

(b) Definitions: The designated representative of the Captain of the Port is any U.S. Coast Guard commissioned, warrant or petty officer who has been authorized by the Captain of the Port, Hampton Roads, Virginia to act on his behalf.

(1) The Captain of the Port, Hampton Roads and the Command Duty Officer at the Marine Safety Office, Norfolk, Virginia can be contacted at telephone Number (757) 668–5555.

(2) The Coast Guard vessels enforcing the security zone can be contacted on VHF—FM channels 13 and 16.

(c) Regulation: (1) In accordance with the general regulations in 165.33 of this part, entry into this zone is prohibited unless authorized by the Captain of the Port, Hampton Roads, Virginia, or his designated representatives.

(2) The operator of any vessel in the immediate vicinity of this security zone shall:

(i) Stop the vessel immediately upon being directed to do so by any commissioned, warrant or petty officer on board a vessel displaying a U.S. Coast Guard Ensign.

(ii) Proceed as directed by any commissioned, warrant or petty officer on board a vessel displaying a U.S. Coast Guard Ensign.

(d) Effective date: This section is effective from 5 a.m. January 28, 2003 until 11:59 p.m. February 4, 2003.

Dated: January 28, 2003.

Lawrence M. Brooks,

Captain, U.S. Coast Guard, Captain of the Port, Hampton Roads.

[FR Doc. 03–2695 Filed 2–4–03; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2002–0308; FRL–7287–2]

6-Benzyladenine; Temporary Exemption From the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a temporary exemption from the requirement of a tolerance for residues of the biochemical pesticide 6-benzyladenine on apples and pistachios when applied/used in accordance with the Experimental Use Permit 73049-EUP-2. Valent BioSciences Corporation submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA), requesting the temporary tolerance exemption. This regulation eliminates the need to establish a maximum permissible level for residues of 6-benzyladenine. The temporary tolerance exemption will expire on January 31, 2005.

DATES: This regulation is effective February 5, 2003. Objections and requests for hearings, identified by docket ID number OPP–2002–0308, must be received by EPA on or before April 7, 2003.

ADDRESSES: Written objections and hearing requests may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit VIII. of the **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Denise Greenway, Biopesticides and Pollution Prevention Division (7511C), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8263; e-mail address: greenway.denise@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS 111)
- Animal production (NAICS 112)
- Food manufacturing (NAICS 311)
- Pesticide manufacturing (NAICS 32532)
- Antimicrobial pesticides (NAICS 32561)

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPP–2002–0308. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at http://www.epa.gov/fedrgstr/. A frequently updated electronic version of 40 CFR part 180 is available at http://www.access.gpo.gov/nara/cfr/cfrhtml_00/Title_40/40cfr180_00.html, a beta site currently under development.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at http://www.epa.gov/edocket/ to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select "search," then key in the appropriate docket ID number.

II. Background and Statutory Findings

In the **Federal Register** of March 28, 2002 (67 FR 14948) (FRL–6828–9), EPA issued a notice pursuant to section 408 of the FFDCA, 21 U.S.C. 346a, as amended by FQPA (Public Law 104–170), announcing the filing of a pesticide tolerance petition (PP 2G6378)

by Valent BioSciences Corporation, 870 Technology Way, Suite 100, Libertyville, IL 60048. This notice included a summary of the petition prepared by the petitioner Valent BioSciences Corporation. There were no comments received in response to the notice of filing.

The petition requested that 40 CFR part 180 be amended to expand the existing tolerance exemption by establishing a temporary exemption from the requirement of a tolerance for residues of 6-benzyladenine.

Section 408(c)(2)(A)(i) of the FFDCA allows EPA to establish an exemption from the requirement for a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the exemption is "safe." Section 408(c)(2)(A)(ii) of the FFDCA defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of the FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue...." Additionally, section 408(b)(2)(D) of the FFDCA requires that the Agency consider available information concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity."

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. First, EPA determines the toxicity of pesticides. Second, EPA examines exposure to the pesticide through food, drinking water, and through other exposures that occur as a result of pesticide use in residential settings.

III. Toxicological Profile

Consistent with section 408(b)(2)(D) of the FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action and considered its validity, completeness and reliability and the relationship of this information to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children.

The toxicological profile for 6-benzyladenine has been previously published by the Agency in the N6-Benzyladenine (synonymous with the subject active ingredient, 6-benzyladenine) Reregistration Eligibility Decision (RED) document of June 1994 (Ref. 1). The summarized values and categories for the various studies for the technical active ingredient are presented here.

1. *Acute toxicity.* Toxicity Category III was assigned to the acute oral toxicity study in the rat (LD_{50} = 1.3 grams/kilogram (g/kg)), and in the eye irritation study in the rabbit (moderate irritant). Toxicity Category IV was assigned to the acute dermal toxicity study in the rabbit (LD_{50} > 5 g/kg), the acute inhalation toxicity study in the rat (LC_{50} = 5.2 milligrams/liter (mg/L)), and in the dermal irritation study in the rabbit (slight irritant). Additionally, from a dermal sensitization study in the guinea pig, it was determined that N6-benzyladenine is not a dermal sensitizer.

2. *Genotoxicity.* From three mutagenicity studies (Ames test, mouse micronucleus assay, and unscheduled DNA synthesis assay in the rat), it was determined that N6-benzyladenine is not mutagenic.

3. *Developmental toxicity.* The no observed adverse effect levels (NOAEL) and the lowest observed adverse effect levels (LOAEL) for maternal and developmental toxicity in rats, respectively, were found to be 50 and 175 mg/kg of body weight (bwt)/day, respectively.

4. *Subchronic toxicity.* For rats of both sexes, the NOAEL was approximately 111 mg/kg of bwt/day and the LOAEL was approximately 304 mg/kg of bwt/day.

IV. Aggregate Exposures

In examining aggregate exposure, section 408 of the FFDCA directs EPA to consider available information concerning exposures from the pesticide residue in food and all other non-occupational exposures, including drinking water from ground water or surface water and exposure through pesticide use in gardens, lawns, or buildings (residential and other indoor uses).

A. Dietary Exposure

1. *Food.* Apple and pistachio field trials performed in support of the temporary tolerance exemption request and the associated experimental use permit yielded acceptable magnitude of the residue data (Ref. 2). Residues were below the limit of quantitation (LOQ) for pistachios treated with a total of 60 g of active ingredient (a.i.) per acre. In apples, residues of 6-benzyladenine were consistently near the LOQ. However, residues did not increase in processed commodities (relative to the levels on the raw commodity), and were below the LOQ. Thus, the apple field data are adequate to support the temporary tolerance exemption petition and experimental program to apply ≤182 grams of active ingredient per acre per season. Also, because application precedes harvest by 2 months for pistachio and by approximately 2.5 months for apple, the potential for dietary exposure is reduced.

Due to the low anticipated dietary intake of 6-benzyladenine residues relative to the chronic and acute population adjusted doses (see Unit VI, below), and the fact that actual exposure will probably be considerably less because the dietary exposure analysis was based on worst-case assumptions, it is highly unlikely that the proposed new uses of 6-benzyladenine on apples and pistachios will result in adverse effects to human health.

2. *Drinking water exposure.* The proposed uses on apples and pistachios are not expected to add potential exposure to drinking water. Soil leaching studies have suggested that 6-benzyladenine is relatively immobile (Ref. 3), absorbing to sediment. Residues reaching surface waters from field runoff should quickly absorb to sediment particles and be partitioned from the water column. 6-Benzyladenine also has low solubility in water, 76 ± 2 mg/L at 20° C (Ref. 2), and detections in ground water are not expected. Together, these data indicate that residues are not expected in drinking water.

B. Other Non-Occupational Exposure

The potential for non-dietary exposure to 6-benzyladenine residues for the general population, including infants and children, is unlikely because the uses are limited to experimental applications in apple and pistachio orchards. Because 6-benzyladenine is a naturally occurring cytokinin plant regulator (Ref. 4, 5, 6, 7, and 8), it is a normal part of the human diet. The proposed experimental use rates are well below the toxicity NOAELs. The residues indicate dietary exposures that are 0.03% and 0.01% of the chronic and acute population adjusted doses, respectively. Therefore, while there exists a great likelihood of prior exposure for most, if not all, individuals to 6-benzyladenine, any increased exposure due to the proposed

experimental product would be negligible due to the lack of residue in comparison with the toxicity NOAELs.

V. Cumulative Effects

The Agency has considered the cumulative effects of 6-benzyladenine and other substances in relation to a common mechanism of toxicity. These considerations include the possible cumulative effects of such residues on infants and children. Based on the available information and data for 6-benzyladenine, no mammalian toxicity is expected at the proposed experimental use rates. Therefore, no cumulative effects are expected.

VI. Determination of Safety for U.S. Population, Infants and Children

1. *U. S. population.* The analysis estimated that the chronic exposures for the overall U.S. population was 0.000014 mg/kg/day (0.03% of the chronic population adjusted dose (cPAD)). The acute dietary estimated exposure was 0.000069 mg/kg/day (0.01% of the acute population adjusted dose (aPAD)) for the overall U.S. population. Critical exposure commodity analysis showed that apple juice contributed the most to dietary exposure for the overall population. Due to the low anticipated dietary intake of 6-benzyladenine residues relative to the chronic and acute population adjusted doses, and the fact that actual exposure will probably be considerably less because the dietary exposure analysis was made based on worst-case assumptions, it is likely that the proposed new uses of 6-benzyladenine on apples and pistachios will not result in adverse effects to human health.

2. *Infants and children.* The analysis estimated that the chronic exposures for the most highly exposed subgroup, non-nursing infants, was 0.000085 mg/kg/day (0.2% of the cPAD). The acute dietary estimated exposure was 0.000361 mg/kg/day (0.07% of aPAD) for the most highly exposed subgroup, non-nursing infants. Critical exposure commodity analysis showed that apple juice contributed the most to dietary exposure for all infants. Due to the low anticipated dietary intake of 6-benzyladenine residues relative to the chronic and acute PAD, and the fact that actual exposure will probably be considerably less because the dietary exposure analysis was made based on worst-case assumptions, it is likely that the proposed new uses of 6-benzyladenine on apples and pistachios will not result in adverse effects to human health.

VII. Other Considerations

A. Endocrine Disruptors

EPA is required under the FFDCA as amended by FQPA to develop a screening program to determine whether certain substances (including all pesticide active and other ingredients) "may have an effect in humans that is similar to an effect produced by a naturally occurring estrogen, or other such endocrine effects as the Administrator may designate." Following the recommendations of its Endocrine Disruptor Screening and Testing Advisory Committee (EDSTAC), EPA determined that there is no scientific basis for including, as part of the program, the androgen and thyroid hormone systems in addition to the estrogen hormone system. EPA also adopted EDSTAC's recommendation that the program include evaluations of potential effects in wildlife. For pesticide chemicals, EPA will use FIFRA and, to the extent that effects in wildlife may help determine whether a substance may have an effect in humans, FFDCA authority to require wildlife evaluations. As the science develops and resources allow, screening of additional hormone systems may be added to the Endocrine Disruptor Screening Program (EDSP). When the appropriate screening and/or testing protocols being considered under the Agency's EDSP have been developed, 6-benzyladenine may be subjected to additional screening and/or testing to better characterize effects related to endocrine disruption.

Based on available data, no endocrine system-related effects have been identified with consumption of 6-benzyladenine. To date, there is no evidence to suggest that 6-benzyladenine affects the immune system, functions in a manner similar to any known hormone, or that it acts as an endocrine disruptor.

B. Analytical Method

The Agency is establishing a temporary exemption from the requirement of a tolerance for the reasons stated above. For the same reasons, the Agency has concluded that an analytical method is not required for enforcement purposes for 6-benzyladenine.

C. Codex Maximum Residue Level

Currently, there are no Codex, Canadian or Mexican maximum residue levels for residues of 6-benzyladenine in/on apples or pistachios.

VIII. Conclusions

Based on the toxicology information submitted and reviewed previously, and summarized in the June 1994 N6-Benzyladenine RED (Ref. 1), there is a reasonable certainty that no harm will result from aggregate exposure of residues of 6-benzyladenine to the U.S. population, including infants and children, under reasonably foreseeable circumstances, when the biochemical pesticide is used in accordance with good agricultural practices under the conditions of the 2–year experimental program. This includes all anticipated dietary exposures and all other exposures for which there is reliable information. The Agency has arrived at this conclusion based on the data submitted previously and summarized in the RED, as well as that data submitted to support the temporary tolerance exemption and Experimental Use Permit applications, demonstrating negligible dietary exposure in comparison with the toxicity NOAELs. As a result, EPA establishes a temporary exemption from the tolerance requirements pursuant to FFDCA 408(c) and (d) for residues of 6-benzyladenine in or on apples and pistachios.

IX. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to the FFDCA by the FQPA, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) of the FFDCA provides essentially the same process for persons to "object" to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d), as was provided in the old sections 408 and 409 of the FFDCA. However, the period for filing objections is now 60 days, rather than 30 days.

A. What Do I Need to Do to File an Objection or Request a Hearing?

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number OPP–2002–0308 in the subject line on the first page of your submission. All

requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before April 7, 2003.

1. *Filing the request.* Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900C), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. You may also deliver your request to the Office of the Hearing Clerk in Rm.104, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (703) 603–0061.

2. *Tolerance fee payment.* If you file an objection or request a hearing, you must also pay the fee prescribed by 40 CFR 180.33(i) or request a waiver of that fee pursuant to 40 CFR 180.33(m). You must mail the fee to: EPA Headquarters Accounting Operations Branch, Office of Pesticide Programs, P.O. Box 360277M, Pittsburgh, PA 15251. Please identify the fee submission by labeling it "Tolerance Petition Fees."

EPA is authorized to waive any fee requirement "when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection." For additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305–5697, by e-mail at tompkins.jim@epa.gov, or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

3. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit VIII.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.1. Mail your copies, identified by docket ID number OPP–2002–0308, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.1. You may also send an electronic copy of your request via e-mail to: opp-docket@epa.gov. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

B. When Will the Agency Grant a Request for a Hearing?

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

X. References

1. U.S. EPA, Reregistration Eligibility Decision (RED) N6-Benzyladenine, June 1994.

2. U.S. EPA; Memorandum; R. S. Jones to D. Greenway; October 2, 2002.

3. Weigand, R., *et al*, Metabolism and Movement of N-[Phenylmethyl]-1H-Purin-6-Amine in Soils, 1976. Unpublished study received January 13, 1977 for EPA Registration Number 275-32; submitted by Abbott Laboratories, North Chicago, IL; CDL:095728-C.

4. Nandi, S. K., *et al*, Identification of cytokinins in primary crown gall tumours of tomato, *Plant Cell and Environment* (1989) 12:273-283.

5. Pechova, D., *et al*, Identification of new aromatic cytokinins in plants, 17th International Conference on Plant Growth Substances, July 1-6, 2001.

6. Strnad, M., *et al*, Immunodectection and identification of N^6-(o-hydroxybenzylamino) purine as a naturally occurring cytokinin in *Populus x canadensis* Moench cv *Robusta* leaves, *Plant Physiol.* (1992) 99:74-80.

7. Strnad, M., Enzyme immunoassays of N^6-benzyladenine and N^6-(meta-hydroxybenzyl)adenine cytokinins, *J Plant Growth Regul.* (1996) 15:179-188.

8. Van Staden, J. and N. R. Crouch, Benzyladenine and derivatives-their significance and interconversion in plants, *Plant Growth Regulation* (1996) 19:153-175.

XI. Statuatory and Executive Order Review

This final rule establishes an exemption from the tolerance requirement under section 408(d) of the FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section

12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a petition under section 408(d) of the FFDCA, such as the exemption in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism*(64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of the FFDCA. For these same reasons, the Agency has determined that this rule does not have any "tribal implications" as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes." This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

XII. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a "major rule " as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: January 16, 2003.

Janet L. Andersen,

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346(a) and 374.

2. Section 180.1150 of subpart D is revised to read as follows:

§ 180.1150 6-Benzyladenine; exemption from the requirement of a tolerance.

(a) The plant growth regulator 6-benzyladenine is exempt from the requirement of a tolerance when used as a fruit-thinning agent at an application rate not to exceed 30 grams of active ingredient per acre in or on apples.

(b) 6-Benzyladenine is temporarily exempt from the requirement of a tolerance in or on apples at ≤182 grams of active ingredient per acre per season, and in or on pistachio at ≤60 grams of active ingredient per acre per season when used in accordance with the Experimental Use Permit 73049–EUP–2. The temporary exemption from a tolerance will expire on January 31, 2005.

[FR Doc. 03–2431 Filed 2–4–03; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2002–0344; FRL–7289–7]

Cyprodinil; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of cyprodinil in or on the bushberry subgroup, caneberry subgroup, juneberry, lingonberry, pistachio, salal and watercress. The Interregional Research Project Number 4 (IR-4) requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA) , as amended by the Food Quality Protection Act of 1996 (FQPA).

DATES: This regulation is effective February 5, 2003. Objections and requests for hearings, identified by docket ID number OPP–2002–0344, must be received on or before April 7, 2003.

ADDRESSES: Written objections and hearing requests may besubmitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit VI. of the **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Hoyt Jamerson, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW.,Washington, DC 20460–0001; telephone number: (703) 308–9368; e-mail address; *jamerson.hoyt@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS Code 111)
- Animal production (NAICS Code 112)
- Food manufacturing (NAICS Code 311)
- Pesticide manufacturing (NAICS Code 32532)

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be

affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPP–2002–0344. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/*. A frequently updated electronic version of 40 CFR part 180 is available at *http://www.access.gpo.gov/nara/cfr/cfrhtml_00/Title_40/40cfr180_00.html*, a beta site currently under development. To access the OPPTS Harmonized Guidelines referenced in this document, go directly to the guidelines at *http://www.epa.gov/opptsfrs/home/guidelin.htm*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select "search," then key in the appropriate docket ID number.

II. Background and Statutory Findings

In the **Federal Register** of May 1, 2002 (67 FR 21671)(FRL–6833–4), EPA issued a notice pursuant to section 408 of FFDCA, 21 U.S.C. 346a, as amended by FQPA (Public Law 104–170), announcing the filing of pesticide petitions (PP 2E6359, 2E6365, 2E6377 and 2E6393) by IR-4, 681 U.S. Highway #1 South, North Brunswick, NJ 08902–3390. That notice included a summary of the petitions prepared by Syngenta Crop Protection, Inc., the registrant. There were no comments received in response to the notice of filing.

The petitions requested that 40 CFR 180.532 be amended by establishing tolerances for residues of the fungicide cyprodinil, 4-cyclopropyl- 6-methyl- *N*-phenyl-2-pyrimidinamine, in or on the caneberry subgroup at 10.0 parts per million (ppm) (2E6393), watercress at 20 ppm (2E6365), pistachio at 0.07 ppm (2E6377) and the bushberry subgroup, lingonberry, juneberry, and salal, at 3.0 ppm (2E6359). IR-4 subsequently revised the petition to propose the following tolerances for cyprodinil residues in or on the caneberry subgroup at 10.0 parts per million (ppm), watercress at 20 ppm, pistachio at 0.10 ppm and the bushberry subgroup, lingonberry, juneberry, and salal, at 3.0 ppm.

Section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) of the FFDCA defines "safe" to mean that"there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of the FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue...."

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 of the FFDCA and a complete description of the risk assessment process, see the final rule on Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997) (FRL–5754–7).

III. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D) of the FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure, consistent with section 408(b)(2) of the FFDCA, for a tolerance for residues of cyprodinil on the caneberry subgroup at 10.0 parts per million (ppm), watercress at 20 ppm, pistachio at 0.10 ppm and the bushberry subgroup, lingonberry, juneberry, and salal, at 3.0 ppm. EPA's assessment of exposures and risks associated with establishing the tolerance follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by cyprodinil are discussed in Table 1 of this unit as well as the no observed adverse effect level (NOAEL) and the lowest observed adverse effectlevel (LOAEL) from the toxicity studies reviewed.

TABLE 1.—SUBCHRONIC, CHRONIC, AND OTHER TOXICITY

Guideline No.	Study Type	Results
870.3100	90–Day oral toxicity mouse	NOAEL = 73.3/103 (male/female (m/f)) milligram/kilogram/day (mg/kg/day) LOAEL = 257/349 (m/f) mg/kg/day based on histopathological changes in the liver (m/f)
870.3100	90–Day oral toxicity rat	NOAEL = 3.14 (mg/kg/day) LOAEL = 19 mg/kg/day based on increasedtubular kidney lesions in males
870.3150	90–Day oral-toxicity - dog	NOAEL = 210/232 (m/f) mg/kg/day LOAEL = 560/581 mg/kg/day based on lowerbody-weight gains and decreased food consumption inboth sexes
870.3200	Carcinogenicity - mice	NOAEL = 16.1 mg/kg/day LOAEL = 212.4 mg/kg/day based on a dose-related increase in the incidence of focal and multifocal hyperplasia of the exocrine pancreas in males No evidence of carcinogenicity
870.3700	Prenatal developmental - rat	Maternal NOAEL = 200 mg/kg/day LOAEL = 1,000 mg/kg/day based on lower body-weight/body-weight gain and reduced food consumption Developmental NOAEL = 200 mg/kg/day LOAEL = 1,000 mg/kg/day based on lowermean fetal weights and increased incidence of delayedossification
870.3700	Prenatal developmental - rabbit	Maternal NOAEL = 150 mg/kg/day LOAEL = 400 mg/kg/day based on decreasedbody-weight gain Developmental NOAEL = 150 mg/kg/day LOAEL = 400 mg/kg/day based on slight increase of litters showing extra (13th) ribs
870.3800	Reproduction and fertility effects - rat	Parental/Systemic NOAEL = 81 mg/kg/day LOAEL = 326 mg/kg/day based on lowerbody-weights in the F_0 females during the pre-matingperiod. Reproductive/Developmental NOAEL = 81mg/kg/day LOAEL = 326 mg/kg/day based on decreasedpup weights (F_1 and F_2)
870.4100	Chronic toxicity dogs	NOAEL = 65.63/67.99 (m/f) mg/kg/day LOAEL = 449.25/446.3 (m/f) mg/kg/day based on lower body-weight gains and decreased food consumption and food efficiency
870.4300	Chronic toxicity/Carcinogenicity(feeding) - rat	NOAEL = 2.7 mg/kg/day LOAEL = 35.6 mg/kg/day based on degenerative liver lesions (spongiosis hepatis) in males No evidence of carcinogenicity
870.5265 and 870.5100	Gene Mutation	In a reverse gene mutation assay with *Salmonella typhimurium/Escherichia coli*, cyprodinil was negative up to concentrations (≥1,250 µg/plate +/-S9) that produced reproducible cytotoxicity for the majority of strains. Compound insolubility was reported at ≥313 µg/plate.
870.5300	Gene Mutation	In a Chinese hamster V79 cell HGPRT forward gene mutation assay, cyprodinil was negative up to cytotoxic concentrations (≥96.0 µg/mL with S9) (≥24 µg/mL without S9).
870.5375	Cytogenetics/*In vitro* Chromosomal Aberration	In an *in vitro* assay for chromosome aberrations in Chinese hamster ovary (CHO) cells, cyprodinil gave negative results up tocytotoxic concentrations (≥50 µg/mL without S9, 18– or 42–hour cell harvest or ≥25 µg/mL with S9, 18–hour cell harvest) or to the highest subcytotoxic concentration (50 µg/mL with S9, 42–hour cell harvest).

TABLE 1.—SUBCHRONIC, CHRONIC, AND OTHER TOXICITY—Continued

Guideline No.	Study Type	Results
870.5395	Cytogenetics/*In vivo* bone marrow micronucleus	In an *in vivo* bone marrow micronucleus assay, cyprodinil was negative when administered orally (gavage) at 5,000 mg/kg(HDT) to both sexes of Tif:MAGF mice. No signs of overt toxicity or clear evidence of cytotoxicity for the target organ were noted at any dose or sacrifice time.
870.5550	Unscheduled DNA Synthesis	In an Unscheduled DNA Synthesis(UDS) assay in primary rat hepatocytes, cyprodinil was negative up to a cytotoxic concentration (80µg/mL).
870.7485	Metabolism and pharmacokinetics	Single oral doses (0.5 or 100 mg/kg bw) of phenyl or pyrimidyl-radiolabelled cyprodinil (purity ≥98%) were administered toTif:RAIf(SPF) rats, with one low-dose group receiving unlabelled cyprodinil (purity ≥99%) for 2 weeks prior to treatment with radiolabelled compound. Absorption was very rapid (tcmax= 0.3 hours) with rapid clearance (tcmax/2=1.2 hours). A minimum of 75% of the administered dose was absorbed. Excretion was rapid and almost complete, with urine as the principle route of excretion (48–68%), and >90%of the administered dose detected in the urine and feces within 48 hours. Excretion, distribution and metabolite profiles were essentially independent of dose level, pretreatment, and type of label, although there were some quantitative differences sex-dependent qualitative differences in two urinary metabolite fractions.
870.7485	Metabolism and pharmacokinetics	Excreta (Group D1 and D2) and bile (Group G1) from radiolabelled cyprodinil-treated Tif:RAIf(SPF) rats were used to characterize, isolateand identify cyprodinil metabolites. Eleven metabolites were isolated from urine, feces and bile, and the metabolic pathways in the rat were proposed. All urinary and biliary metabolites (with the exception of 7U) were conjugated with glucuronic acid or sulfonated, and excreted. Cyprodinil was almostcompletely metabolized by hydroxylation of the phenyl ring (position 4) or pyrimidine ring (position 5), followed by conjugation. An alternative pathwayinvolved oxidation of the phenyl ring followed by glucuronic acid conjugation. A quantitative sex difference was observed with respect to sulfonation ofthe major metabolite that formed 6U. The monosulfate metabolite (1U) was predominant in females, whereas equal amounts of mono- and disulfate (6U) conjugates were noted in males. Most of the significant metabolites in feces were exocons of biliary metabolites (2U, 3U, 1G). These were assumed to be deconjugated in the intestines, partially reabsorbed into the generalcirculation, conjugated again, and eliminated renally. The major metabolic pathways of cyprodinil were not significantly influenced by the dose, treatment regimen, or sex of the animal.

B. Toxicological Endpoints

The dose at which no adverse effects are observed (the NOAEL) from the toxicology study identified as appropriate for use in risk assessment is used to estimate the toxicological level of concern (LOC). However, the lowest dose at which adverse effects of concern are identified (the LOAEL) is sometimes used for risk assessment if no NOAEL was achieved in the toxicology study selected. An uncertainty factor (UF) is applied to reflect uncertainties inherent in the extrapolation from laboratory animal data to humans and in the variations in sensitivity among members of the human population as well as other unknowns. An UF of 100 is routinely used, 10X to account for interspecies differences and 10X for intraspecies differences.

For dietary risk assessment (other than cancer) the Agency uses the UF to calculate an acute or chronic reference dose (acute RfD or chronic RfD) where the RfD is equal to the NOAEL divided by the appropriate UF (RfD = NOAEL/UF). Where an additional safety factor (SF) is retained due to concerns unique to the FQPA, this additional factor is applied to the RfD by dividing the RfD by such additional factor. The acute or chronic Population Adjusted Dose (aPAD or cPAD) is a modification of the RfD to accommodate this type of FQPA SF.

For non-dietary risk assessments (other than cancer) the UF is used to determine the LOC. For example, when 100 is the appropriate UF (10X to account for interspecies differences and 10X for intraspecies differences) the

LOC is 100. To estimate risk, a ratio of the NOAEL to exposures (margin of exposure (MOE) = NOAEL/exposure) is calculated and compared to the LOC.

The linear default risk methodology (Q*) is the primary method currently used by the Agency to quantify carcinogenic risk. The Q* approach assumes that any amount of exposure will lead to some degree of cancer risk. A Q* is calculated and used to estimate risk which represents a probability of occurrence of additional cancer cases (e.g., risk is expressed as 1 x 10^{-6} or one in a million). Under certain specific circumstances, MOE calculations will be used for the carcinogenic risk assessment. In this non-linear approach, a "point of departure" is identified below which carcinogenic effects are not expected. The point of departure is typically a NOAEL based on an endpoint related to cancer effects though it may be a different value derived from the dose response curve. To estimate risk, a ratio of the point of departure to exposure (MOE_{cancer} = point of departure/exposures) is calculated. A summary of the toxicological endpoints for cyprodinil used for human risk assessment is shown in Table 2 of this unit:

TABLE 2.—SUMMARY OF TOXICOLOGICAL DOSE AND ENDPOINTS FOR CYPRODINIL FOR USE IN HUMAN RISK ASSESSMENT

Exposure Scenario	Dose Used in Risk Assessment, UF	FQPA SF and Endpoint for Risk Assessment	Study and Toxicological Effects
Acute Dietary females 13–50years of age	Developmental NOAEL = 150 mg/kg/day UF = 100 Acute RfD = 1.5 mg/kg/day	FQPA SF = 1X aPAD = acute RfD + FQPA SF = 1.5 mg/kg/day	Developmental Toxicity - rabbit Developmental LOAEL = 400 mg/kg/day based on slight increase of litters showing extra ribs (13th).
Chronic Dietary all populations	NOAEL= 2.7 UF = 100 Chronic RfD = 0.03 mg/kg/day	FQPA SF = 1X cPAD = chronic RfD + FQPA SF = 0.03 mg/kg/day	2–Year Chronic Toxicity/Carcinogenicity-rat LOAEL = 35.6 mg/kg/day based on degenerative liver lesions (spongiosis hepatis) in males.
Cancer (oral, dermal, inhalation)	Classification: "not likely to be carcinogenic tohumans"		

* The reference to the FQPA SF refers to any additional SF retained due to concerns unique tothe FQPA.

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* Tolerances have been established (40 CFR 180.352) for the residues of cyprodinil, in or on a variety of raw agricultural commodities. Risk assessments were conducted by EPA to assess dietary exposures from cyprodinil in food as follows:

i. *Acute exposure.* Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a one day or single exposure. The Dietary Exposure Evaluation Model (DEEM®) analysis evaluated the individual food consumption as reported by respondents in the USDA insert 1989–1992 nationwide Continuing Surveys of Food Intake by Individuals (CSFII) and accumulated exposure to the chemical for each commodity. The following assumptions were made for the acute exposure assessments: 100% crop treated (PCT) and tolerance-level residues for cyprodinil on all treated crops. This assessment was a Tier I analysis. However, the only acute endpoint identified was for the population subgroup females 13–50 years old based on a slight increase of litters showing extra ribs (13th). No effects that could be attributed to a single exposure were observed (no end point was chosen) for any other population subgroup, including the general U.S. population; therefore, an acute dietary assessment for the general U.S. population or other subgroups was not conducted.

ii. *Chronic exposure.* In conducting this chronic dietary risk assessment the Dietary Exposure Evaluation Model (DEEM®) analysis evaluated the individual food consumption as reported by respondents in the USDA 1989–1992 nationwide Continuing Surveys of Food Intake by Individuals (CSFII) and accumulated exposure to the chemical for each commodity. The following assumptions were made for the chronic exposure assessments: 100% crop treated (PCT) and tolerance-level residues for cyprodinil on all treated crops. This assessment was a Tier I analysis.

2. *Dietary exposure from drinking water.* The Agency lacks sufficient monitoring exposure data to complete a comprehensive dietary exposure analysis and risk assessment for cyprodinil in drinking water. Because the Agency does not have comprehensive monitoring data, drinking water concentration estimates are made by reliance on simulation or modeling taking into account data on the physical characteristics of cyprodinil.

The Agency uses the Generic Estimated Environmental Concentration (GENEEC) or the Pesticide Root Zone/Exposure Analysis Modeling System (PRZM/EXAMS) to estimate pesticide concentrations in surface water and SCI-GROW, which predicts pesticide concentrations in groundwater. In general, EPA will use GENEEC (a tier 1 model) before using PRZM/EXAMS (a tier 2 model) for a screening-level assessment for surface water. The GENEEC model is a subset of the PRZM/EXAMS model that uses a specific high-end runoff scenario for pesticides. GENEEC incorporates a farm pond scenario, while PRZM/EXAMS incorporate an index reservoir environment in place of the previous pond scenario. The PRZM/EXAMS model includes a percent crop area factor as an adjustment to account for the maximum percent crop coverage within a watershed or drainage basin.

None of these models include consideration of the impact processing (mixing, dilution, or treatment) of raw water for distribution as drinking water would likely have on the removal of pesticides from the source water. The primary use of these models by the Agency at this stage is to provide a coarse screen for sorting out pesticides for which it is highly unlikely that drinking water concentrations would ever exceed human health levels of concern.

Since the models used are considered to be screening tools in the risk assessment process, the Agency does not use estimated environmental concentrations (EECs) from these models to quantify drinking water exposure and risk as a percent of reference dose or percent of population adjusted dose. Instead, drinking water levels of comparison (DWLOCs) are calculated and used as a point of comparison against the model estimates of a pesticide's concentration in water. DWLOCs are theoretical upper limits on a pesticide's concentration in drinking water in light of total aggregate exposure to a pesticide in food, and from residential uses. Since DWLOCs address total aggregate exposure to cyprodinil they are further discussed in the aggregate risk sections below.

Based on the PRZM/EXAMS and SCI-GROW models the estimated environmental concentrations (EECs) of cyprodinil for acute exposures are estimated to be 32 parts per billion (ppb) for surface water and 0.04 ppb for ground water. The EECs for chronic exposures are estimated to be 6 ppb for surface water and 0.04 ppb for ground water.

3. *From non-dietary exposure.* The term "residential exposure" is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets).

Cyprodinil is not registered for use on any sites that would result in residential exposure.

4. *Cumulative exposure to substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) of the FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity."

EPA does not have, at this time, available data to determine whether cyprodinil has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, cyprodinil does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that cyprodinil has a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the final rule for Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997).

D. Safety Factor for Infants and Children

1. *In general.* Section 408 of the FFDCA provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base on toxicity and exposure unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a MOE analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans.

2. *Prenatal and postnatal sensitivity.* There is no evidence of increased susceptibility of rat or rabbit fetuses following *in utero* exposure in the developmental studies with cyprodinil. There is no evidence of increased susceptibility of young rats in the reproduction study with cyprodinil.

3. *Conclusion.* With the exception of missing 21/28–day dermal- toxicity and 28–day inhalation-toxicity studies in rats, there is a complete toxicity data base for cyprodinil and exposure data are complete or are estimated based on data that reasonably accounts for potential exposures. Since there are no residential uses for cyprodinil the only exposure route to infants and children is the oral route, for which the toxicity and exposure data base is complete. Therefore dermal and inhalation-toxicity studies, are not needed to assess risk to infants and children and EPA determined that the 10X safety factor to protect infants and children should be reduced to 1X.

The FQPA 10X safety factor is removed because:

- i. There are currently no registered or proposed residential(non-occupational) uses of cyprodinil.
- ii. There was no evidence (qualitative or quantitative) of increased susceptibility in the developmental rat or rabbit study following *in utero* exposure or in the two-generation reproduction study following pre- or post-natal exposure.
- iii. There was also no evidence of a neurodevelopmental effect in the rat or rabbit developmental toxicity studies or in the rat two-generation reproductive-toxicity study.
- iv. There are no data deficiencies for pre- and/or post-natal exposure and hence there are no residual uncertainties.
- v. Food and drinking water exposure assessments will notunderestimate the potential exposure for all populations, including infants and children.

E. Aggregate Risks and Determination of Safety

To estimate total aggregate exposure to a pesticide from food, drinking water, and residential uses, the Agency calculates DWLOCs which are used as a point of comparison against the model estimates of a pesticide's concentration in water (EECs). DWLOC values are not regulatory standards for drinking water. DWLOCs are theoretical upper limits on a pesticide's concentration in drinking water in light of total aggregate exposure to a pesticide in food and residential uses. In calculating a DWLOC, the Agency determines how much of the acceptable exposure (i.e., the PAD) is available for exposure through drinking water [e.g., allowable chronic water exposure (mg/kg/day) = cPAD - (average food + residential exposure)]. This allowable exposure through drinking water is used to calculate a DWLOC.

A DWLOC will vary depending on the toxic endpoint, drinking water consumption, and body weights. Default body weights and consumption values as used by the USEPA are used to calculate DWLOCs: 2 liter (L)/70 kg (adult male), 2L/60 kg (adult female), and 1L/10 kg (child). Default body weights and drinking water consumption values vary on an individual basis. This variation will be taken into account in more refined screening-level and quantitative drinking water exposure assessments. Different populations will have different DWLOCs. Generally, a DWLOC is calculated for each type of risk assessment used: Acute, short-term, intermediate-term, chronic, and cancer.

When EECs for surface water and groundwater are less than the calculated DWLOCs, EPA concludes with reasonable certainty that exposures to the pesticide in drinking water (when considered along with other sources of exposure for which EPA has reliable data) would not result in unacceptable levels of aggregate human health risk at this time. Because EPA considers the aggregate risk resulting from multiple exposure pathways associated with a pesticide's uses, levels of comparison in drinking water may vary as those uses change. If new uses are added in the future, EPA will reassess the potential impacts of residues of the pesticide in

drinking water as a part of the aggregate risk assessment process.

1. *Acute risk.* Using the exposure assumptions discussed in this unit for acute exposure, the acute dietary exposure from food to cyprodinil will occupy <1% of the aPAD for the subpopulation females 13–50 years old, the only population for whom an effect attributable to an acute exposure could be observed. In addition, there is potential for acute dietary exposure to cyprodinil in drinking water. After calculating DWLOCs and comparing them to the EECs for surface and ground water, EPA does not expect the aggregate exposure to exceed 100% of the aPAD, as shown in Table 3 of this unit:

TABLE 3.—AGGREGATE RISK ASSESSMENT FOR ACUTE EXPOSURE TO CYPRODINIL

Population Subgroup	aPAD (mg/kg)	% aPAD (Food)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Acute DWLOC (ppb)
Females 13–50 years old	1.5	<1.0	32	0.04	44,000

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that exposure to cyprodinil from food will utilize 7.4% of the cPAD for the U.S. population, 24% of the cPAD for all infants (< 1 year old) and 22% of the cPAD for children 1–6 years old. There are no residential uses for cyprodinil that result in chronic residential exposure to cyprodinil. Based the use pattern, chronic residential exposure to residues of cyprodinil is not expected. In addition, there is potential for chronic dietary exposure to cyprodinil in drinking water. After calculating DWLOCs and comparing them to the EECs for surface and ground water, EPA does not expect the aggregate exposure to exceed 100% of the cPAD, as shown in Table 4 of this unit:

TABLE 4.— AGGREGATE RISK ASSESSMENT FOR CHRONIC (NON-CANCER) EXPOSURE TO CYPRODINIL

Population Subgroup	cPAD mg/kg/day	% cPAD (Food)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Chronic DWLOC (ppb)
U.S. Population	0.03	7.4	6	0.04	970
All Infants (< 1 year old)	0.03	24	6	0.04	230
Children 1–6 years old	0.03	22	6	0.04	230
Children 7–12 years old	0.03	9.1	6	0.04	270
Females 13–50years old	0.03	5.3	6	0.04	1,000

3. *Short- and intermediate-term risk.* Short- and intermediate-term aggregate exposure take into account residential exposure plus chronic exposure to food and water (considered to be a background exposure level).

Cyprodinil is not registered for use on any sites that would result in residential exposure. Therefore, the aggregate risk is the sum of the risk from food and water, which do not exceed the Agency's level of concern.

5. *Aggregate cancer risk for U.S. population.* Cyprodinil has been classified as "not likely to be carcinogenic in humans" based on the results of a carcinogenicity study in mice and the combined chronic toxicity and carcinogenicity study in rats. Therefore, cyprodinil is not expected to pose a cancer risk to humans.

6. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, and to infants and children from aggregate exposure to cyprodinil residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

The results of Multiresidue Method testing of cyprodinil and its metabolite CGA–232449 have been forwarded to the Food and Drug Administration (FDA). Cyprodinil was tested according to the FDA Multiresidue protocols (Protocols C, D, and E), and acceptable recoveries were obtained for cyprodinil fortified in apples at 0.50 ppm using Protocol D. The petitioner is proposing the Method AG–631A as a tolerance enforcement method for residues of cyprodinil in/on the subject crops. This method, entitled "Analytical Method for the Determination of Residues of CGA–219417 in Crops by High Performance Liquid Chromatography With Column Switching," is a reissue of Methods AG–631 and REM 141.01. The method includes confirmatory procedures using gas chromatography/nitrogen/phosphorus detector (GC/NPD). The method has successfully undergone radiovalidation using ^{14}C-labeled tomato samples and independent laboratory validation. In addition, the method has been the subject of acceptable Agency petition method validations on stone fruits and almond nutmeat and hulls.

B. International Residue Limits

There are no Mexican, Canadian or Codex maximum residue limits established for cyprodinil in/on caneberries, bushberries, pistachios and watercress, and thus no compatibility issues to be reconciled.

C. Conditions

The Agency is requiring as conditions for registration the following:An acceptable 21/28–day dermal-toxicity study in rats (GLN 870.3200). A 28–day inhalation-toxicity study in rats (GLN 870.3465)

V. Conclusion

Therefore, the tolerance is established for residues of cyprodinil on the caneberry subgroup at 10.0 ppm, watercress at 20 ppm, pistachio at 0.10 ppm and the bushberry subgroup, lingonberry, juneberry, and salal, at 3.0 ppm.

VI. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to the FFDCA by the FQPA, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) of the FFDCA provides essentially the same process for persons to "object" to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d) of FFDCA, as was provided in the old sections 408 and 409 of the FFDCA. However, the period for filing objections is now 60 days, rather than 30 days.

A. What Do I Need to Do to File an Objection or Request a Hearing?

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number –OPP–2002–0344 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before April 7, 2003.

1. *Filing the request.* Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900C), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. You may also deliver your request to the Office of the Hearing Clerk in Rm.104, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (703) 603–0061.

2. *Tolerance fee payment.* If you file an objection or request a hearing, you must also pay the fee prescribed by 40 CFR 180.33(i) or request a waiver of that fee pursuant to 40 CFR 180.33(m). You must mail the fee to: EPA Headquarters Accounting Operations Branch, Office of Pesticide Programs, P.O. Box 360277M, Pittsburgh, PA 15251. Please identify the fee submission by labeling it "Tolerance Petition Fees."

EPA is authorized to waive any fee requirement "when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection." For additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305–5697, by e-mail at *tompkins.jim@epa.gov*, or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

3. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit VI.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.1. Mail your copies, identified by docket ID number OPP–2002–0344, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.1. You may also send an electronic copy of your request via e-mail to: *opp-docket@epa.gov*. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

B. When Will the Agency Grant a Request for a Hearing?

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

VII. Statutory and Executive Order Reviews

This final rule establishes a tolerance under section 408(d) of the FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since

tolerances and exemptions that are established on the basis of a petition under section 408(d) of the FFDCA, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of the FFDCA. For these same reasons, the Agency has determined that this rule does not have any "tribal implications" as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes." This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

VIII. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: January 24, 2003.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346(a) and 371.

2. Section 180.532 is amended by adding alphabetically the following commodities to the table in paragraph (a)(1) to read as follows:

§ 180.532 Cyprodinil; tolerances forresidues.

(a) * * *

(1) * * *

Commodity	Parts per million
* * *	* *
Bushberry subgroup 13B	3.0
Caneberry subgroup 13A	10
* * *	* *
Juneberry	3.0
Lingonberry	3.0
Pistachio	0.10
* * *	* *
Salal	3.0
Watercress	20

* * * * *

[FR Doc. 03–2771 Filed 2–4–03; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2002–0355; FRL–7285–9]

Thiophanate Methyl; Pesticide Tolerance for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a time-limited tolerance for residues of thiophanate methyl and its metabolite (methyl 2-benzimidazoyl carbamate (MBC)) in or on mushrooms. This action is in response to EPA's granting of an emergency exemption under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) authorizing use of the pesticide on mushroom spawn. This regulation establishes a maximum permissible level for residues of thiophanate methyl in this food commodity. The tolerance will expire and is revoked on December 31, 2004.

DATES: This regulation is effective February 5, 2003. Objections and requests for hearings, identified by docket ID number OPP–2002–0355, must be received on or before April 7, 2003.

ADDRESSES: Written objections and hearing requests may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit VII. of the **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Andrea Conrath, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–9356; e-mail address: conrath.andrea@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop producers (NAICS 111)
- Animal producers (NAICS 112)
- Food manufacturing (NAICS 311)

- Pesticide manufacturing (NAICS 32532)

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPP–2002–0355. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at http://www.epa.gov/fedrgstr/. A frequently updated electronic version of 40 CFR part 180 is available at http://www.access.gpo.gov/nara/cfr/cfrhtml_00/Title_40/40cfr180_00.html, a beta site currently under development.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at http://www.epa.gov/edocket/ to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select "search," then key in the appropriate docket ID number.

II. Background and Statutory Findings

EPA, on its own initiative, in accordance with sections 408(e) and 408 (l)(6) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, is establishing a tolerance for residues of the fungicide thiophanate methyl and its metabolite (methyl 2-benzimidazoyl carbamate (MBC)), in or on mushroom at 0.01 parts per million (ppm). This tolerance will expire and is revoked on December 31, 2004. EPA will publish a document in the **Federal Register** to remove the revoked tolerance from the Code of Federal Regulations.

Section 408(l)(6) of the FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of FIFRA. Such tolerances can be established without providing notice or period for public comment. EPA does not intend for its actions on section 18-related tolerances to set binding precedents for the application of section 408 of the FFDCA and the new safety standard to other tolerances and exemptions. Section 408(e) of the FFDCA allows EPA to establish a tolerance or an exemption from the requirement of a tolerance on its own initiative, i.e., without having received any petition from an outside party.

Section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) of the FFDCA defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of the FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . ."

Section 18 of FIFRA authorizes EPA to exempt any Federal or State agency from any provision of FIFRA, if EPA determines that "emergency conditions exist which require such exemption." This provision was not amended by the Food Quality Protection Act of 1996 (FQPA). EPA has established regulations governing such emergency exemptions in 40 CFR part 166.

III. Emergency Exemptions for Thiophanate Methyl on Mushroom and FFDCA Tolerances

Benomyl has historically been used in mushroom production to control fungal pathogens, including one of the most serious, green mold (*Trichoderma aggresivum*). The registrant's recent cancellation of benomyl has left mushroom growers in Delaware, Maryland, and Pennsylvania without sufficient means to control this disease, as there are no available alternatives. Significant economic losses are expected without the requested use of thiophanate methyl. EPA has authorized under FIFRA section 18 the use of thiophanate methyl on mushroom spawn for control of green mold in Delaware, Maryland, and Pennsylvania. After having reviewed their submissions, EPA concurs that emergency conditions exist for these States.

As part of its assessment of this emergency exemption, EPA assessed the potential risks presented by residues of thiophanate methyl in or on mushroom. In doing so, EPA considered the safety standard in section 408(b)(2) of the FFDCA, and EPA decided that the necessary tolerance under section 408(l)(6) of the FFDCA would be consistent with the safety standard and with FIFRA section 18. Consistent with the need to move quickly on the emergency exemption in order to address an urgent non-routine situation and to ensure that the resulting food is safe and lawful, EPA is issuing this tolerance without notice and opportunity for public comment as provided in section 408(l)(6) of the FFDCA. Although this tolerance will expire and is revoked on December 31, 2004, under section 408(l)(5) of the FFDCA, residues of the pesticide not in excess of the amounts specified in the tolerance remaining in or on mushroom after that date will not be unlawful, provided the pesticide is applied in a manner that was lawful under FIFRA, and the residues do not exceed a level that was authorized by this tolerance at the time of that application. EPA will take action to revoke this tolerance earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

Because this tolerance is being approved under emergency conditions,

EPA has not made any decisions about whether thiophanate methyl meets EPA's registration requirements for use on mushroom or whether a permanent tolerance for this use would be appropriate. Under these circumstances, EPA does not believe that this tolerance serves as a basis for registration of thiophanate methyl by a State for special local needs under FIFRA section 24(c). Nor does this tolerance serve as the basis for any State other than Delaware, Maryland, and Pennsylvania to use this pesticide on this crop under section 18 of FIFRA without following all provisions of EPA's regulations implementing FIFRA section 18 as identified in 40 CFR part 166. For additional information regarding the emergency exemptions for thiophanate methyl, contact the Agency's Registration Division at the address provided under **FOR FURTHER INFORMATION CONTACT**.

IV. Aggregate Risk Assessment and Determination of Safety

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 of the FFDCA and a complete description of the risk assessment process, see the final rule on Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997) (FRL–5754–7).

Consistent with section 408(b)(2)(D) of the FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of thiophanate methyl and to make a determination on aggregate exposure, consistent with section 408(b)(2) of the FFDCA, for a time-limited tolerance for residues of thiophanate methyl in or on mushroom at 0.01 ppm.

The most recent estimated aggregate risks resulting from the use of thiophanate methyl, are discussed in the **Federal Register** for August 28, 2002 (67 FR 55137) (FRL–7192–1), final rule establishing tolerances for residues of thiophanate methyl in/on grapes, pears, potatoes, canola, and pistachios. Available residue data did not indicate that this use pattern will result in residues of thiophanate methyl in mushrooms over the limit of quantitation (LOQ), 0.01 ppm. Therefore, a tolerance is being established for mushroom at this level. Incremental addition of mushrooms at this level to dietary exposure, from existing food/feed uses, is negligible. Additionally, the results for this section 18 use do not alter the current aggregate exposure assessments with respect to drinking water or residential exposure. Refer to the August 28, 2002 **Federal Register** document for a detailed discussion of the aggregate risk assessments and determination of safety. EPA relies upon that risk assessment and the findings made in the **Federal Register** document in support of this action. Below is a brief summary of the aggregate risk assessment.

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. A summary of the toxicological dose and endpoints for thiophanate methyl for use in human risk assessment is discussed in the final rule mentioned above, published in the **Federal Register** of August 28, 2002 (67 FR 55137).

For thiophanate methyl, the Agency recently modified the tolerance expression, so that the residues to be regulated in plant and animal commodities for purposes of tolerance enforcement will consist of the residues of thiophanate methyl and its metabolite (methyl 2-benzimidazolyl carbamate (MBC)), expressed as thiophanate methyl.

Exposure from the use of benomyl, another pesticide which degrades under environmental conditions to MBC was not included in this assessment because the only basic registrant of benomyl requested voluntary cancellation of all benomyl-containing products in April 2001. Product cancellations were effective in early 2001 with sales and distribution of benomyl-containing products ending by December 31, 2001. However, the Agency conducted a dietary assessment using USDA Pesticide Data Program (PDP) monitoring data for benomyl, measured as MBC to estimate residues of thiophanate methyl because MBC is a common metabolite of both benomyl and thiophanate methyl. PDP data were available for apples, bananas, beans, cucurbits, peaches, and strawberries. The PDP analytical method employs a hydrolysis step that converts any benomyl present to MBC. MBC is then quantitated and corrected for molecular weight, and results are measured as the sum of benomyl and MBC. Therefore, using MBC data to estimate thiophanate methyl residues may be a conservative approach in that it may over estimate thiophanate methyl residues.

EPA assessed risk scenarios for thiophanate methyl under acute, chronic, and short- and intermediate-term exposures.

The Dietary Exposure Evaluation Model (DEEM™) analysis evaluated the individual food consumption as reported by respondents in the USDA 1989–1992 nationwide Continuing Surveys of Food Intake by Individuals (CSFII) and accumulated exposure to the chemical for each commodity.

For the acute exposure assessments, maximum percent crop treated estimates and anticipated residue estimates were used.

Using these exposure assumptions, EPA concluded that acute dietary exposure to thiophanate methyl uses 10% of the acute Population Adjusted Dose (aPAD) for the general U.S. population and 25% of the aPAD for the most highly exposed population subgroup of concern, infants (< 1 year). For MBC, the acute dietary risk estimate uses 4% of the aPAD for the general U.S. population and 89% of the aPAD for the population subgroup of concern, infants (< 1 year). The total thiophanate methyl plus MBC acute dietary risk estimate for the population subgroup of concern, females (13-50 years) uses 51% of the aPAD. The drinking water assessment, based on simultaneous dietary exposure to both MBC and thiophanate methyl (which was converted to MBC equivalents) resulted in the following Drinking Water Levels of Concern (DWLOCs): Infants (< 1 year) 18 ppb; children (1-6 years) 57 ppb; females (13-50 years) 150 - 170 ppb; and general U.S. population 5,700 ppb. The lowest DWLOC for the population subgroup, infants (< 1 year) does not exceed the Estimated Environmental Concentration (EEC) for ground water (0.033 ppb); however, the DWLOC does exceed the EEC for surface water (25 ppb). Although the EEC is exceeded, the DWLOC is greatly inflated because 50% of the aPAD percentage is consumed by citrus which is a 1–year emergency use only. When citrus is removed from the DWLOC estimation, the DWLOC becomes 94 ppb which is well above the EEC of 25 ppb. The DWLOC is significantly lowered by the addition of citrus because field trial data was used which results in an overly conservative estimation.

Another indication that the addition of citrus based on field trial data results in an over estimation is the fact that benomyl PDP data available for citrus indicated that there were zero hits out of 689 Florida samples of orange juice. These data were not used to refine the DWLOC estimation because the benomyl application rate is somewhat

lower than the rate approved for thiophanate methyl in this year's emergency exemption. However, the Agency believes that most growers used the benomyl rate, because the emergency exemption was approved later in the use season and thus fewer applications than were authorized were actually used. Furthermore, if the higher rate were used, the impact would be lessened by the fact that juice is a blended commodity. Therefore, although the DWLOC is exceeded, the acute dietary risk from food and water does not exceed the Agency's level of concern.

For the chronic exposure assessments, average residues from field trial data and average percent crop treated estimates were used.

Using these exposure assumptions, EPA has concluded that exposure to thiophanate methyl and MBC will utilize the following percentages of the chronic Population Adjusted Dose (cPAD) for the U.S. population: Thiophanate methyl - 0.7%; MBC - 1.0% and total thiophanate methyl plus MBC - 1.7%. The major identifiable subgroup with the highest aggregate exposure is children (1-6 years) and EPA has concluded that aggregate dietary exposure to thiophanate methyl and MBC will utilize the following percentages of the cPAD: Thiophanate methyl - 2.3%; MBC - 26% and total thiophanate methyl plus MBC -28%. EPA generally has no concern for exposures below 100% of the cPAD because the cPAD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. The aggregate chronic DWLOC's are as follows: 858 ppb for the general U.S. population; 69 ppb for females (13-50 years); 22 ppb for infants (< 1 year); and 18 ppb for children (1-6 years). The aggregate surface water EECs for thiophanate methyl is 0.7 ppb; 14 ppb for MBC and 14.7 ppb for thiophanate methyl plus MBC. Therefore, the chronic aggregate risks do not exceed the Agency's level of concern.

Short-term aggregate exposure takes into account residential exposure plus chronic exposure to food and water (considered to be a background exposure level). Thiophanate methyl and MBC are currently registered for use that could result in short-term residential exposure and the Agency has determined that it is appropriate to aggregate chronic food and water and short-term exposures for thiophanate methyl and MBC.

All residential exposures are considered to be short-term. The Margins of Exposure (MOEs) (converted to MBC equivalents) for aggregate short-term exposure to thiophanate methyl are as follows: Oral exposure of children (1-6 years) is 670; dermal exposure of children (1-6 years) is 1,000; and dermal exposure of females (13-50 years) is 1,315. The MOEs for aggregate exposure to MBC from the use of MBC as an in-can preservative are 670 for dermal exposure and 770 for exposure via inhalation. The MOEs (converted to MBC equivalents) for the total thiophanate methyl and MBC aggregate exposure are as follows: 630 for oral and dermal exposure of children (1-6 years); 770 for exposure via inhalation for females (13-50 years); and 620 for oral and dermal exposure for females (13-50 years). Although the MOEs below 1,000 exceed the Agency's level of concern, when considering the conservative method of exposure estimation previously discussed, and the negotiated risk mitigation whereby the registrant has agreed to conduct hand-press studies to help refine this assessment, the risks do not exceed the Agency's level of concern.

Aggregate cancer risk for U.S. population. The total thiophanate methyl and MBC dietary cancer risk is 8.5×10^{-7} for existing and new uses. The cancer risk from non-occupational residential exposure is 3.7×10^{-7}. The aggregate cancer risk is 1.2×10^{-6}. This risk estimate includes cancer risk from both thiophanate methyl and MBC on food including all pending uses and section 18 uses, thiophanate methyl exposure from treating ornamentals, thiophanate methyl exposure from performing post-application lawn activities, and exposure from applying paint containing MBC. This is considered to be a high-end risk scenario since it is not expected that someone would treat ornamentals, perform high exposure post-application activities, and apply paint containing MBC every year for 70 years. Therefore, this estimate is considered to be a conservative estimate. Additionally, the cancer risk estimate based on the highest EEC (thiophanate methyl plus MBC EEC) is 9.6×10^{-7}. This is also a very high-end risk estimate since it is based on the maximum rate being applied every season for 70 years. Thus, food plus water (assuming that the modeled surface water EEC is equivalent to concentrations in finished drinking water) plus non-occupational residential cancer risk is 2.2×10^{-6} which is still within the range considered as negligible. In addition, the cancer risk estimates using benomyl/MBC PDP monitoring data to estimate thiophanate methyl residues are below 1×10^{-6} for thiophanate methyl existing uses, new uses, and the amortized section 18 use on citrus and blueberry. Therefore, the risks do not exceed the Agency's level of concern.

Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, and to infants and children from aggregate exposure to thiophanate methyl and MBC residues.

V. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodology is available to enforce the tolerance expression. The method may be requested from: Calvin Furlow, PIRIB, IRSD (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW, Washington, DC 20460–0001; telephone number: (703) 305–5229; e-mail address: furlow.calvin@epa.gov.

B. International Residue Limits

The Codex Alimentarius Commission has established maximum residue limits (MRLs) for thiophanate methyl residues in/on various plant and animal commodities. Codex MRLs for thiophanate methyl are currently expressed as MBC. The Codex MRL residue definition and the U.S. tolerance definition, previously expressed as only thiophanate methyl, have been incompatible and will remain incompatible even with the recent revision of the U.S. tolerance definition, since the revised tolerance definition includes both thiophanate methyl and MBC. Additionally, there is a 1.0 ppm Codex MRL for thiophanate methyl on mushroom. The 0.01 ppm tolerance being established by this document will not harmonize with Codex.

C. Conditions

The pesticide, thiophanate methyl, is to be mixed at 1.4 lbs. active ingredient (a.i.) (2 lbs. product) with 80 to 100 lbs. of gypsum, limestone, or chalk. This mixture will then be used to coat spawn grains (approximately 1,600 units) before mixing the spawn into the mushroom growing substrate. The substrate will then be applied to bed surface before spawning.

VI. Conclusion

Therefore, the tolerance is established for residues of thiophanate methyl and its metabolite, (methyl 2-benzimidazoyl carbamate (MBC), expressed as thiophanate methyl, in or on mushroom at 0.01 ppm.

VII. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to the FFDCA by the FQPA, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) of the FFDCA provides essentially the same process for persons to "object" to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d) of the FFDCA, as was provided in the old sections 408 and 409 of the FFDCA. However, the period for filing objections is now 60 days, rather than 30 days.

A. What Do I Need to Do to File an Objection or Request a Hearing?

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number OPP–2002–0355 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before April 7, 2003.

1. *Filing the request.* Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900C), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. You may also deliver your request to the Office of the Hearing Clerk in Rm.104, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (703) 603–0061.

2. *Tolerance fee payment.* If you file an objection or request a hearing, you must also pay the fee prescribed by 40 CFR 180.33(i) or request a waiver of that fee pursuant to 40 CFR 180.33(m). You must mail the fee to: EPA Headquarters Accounting Operations Branch, Office of Pesticide Programs, P.O. Box 360277M, Pittsburgh, PA 15251. Please identify the fee submission by labeling it "Tolerance Petition Fees."

EPA is authorized to waive any fee requirement "when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection." For additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305–5697, by e-mail at tompkins.jim@epa.gov, or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

3. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit VII.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.1. Mail your copies, identified by the docket ID number OPP–2002–0355, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.1. You may also send an electronic copy of your request via e-mail to: opp-docket@epa.gov. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

B. When Will the Agency Grant a Request for a Hearing?

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

VIII. Regulatory Assessment Requirements

This final rule establishes a time-limited tolerance under section 408 of the FFDCA. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are

established on the basis of a FIFRA section 18 exemption under section 408 of the FFDCA, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." This final rule directly regulates growers, food processors, food handlers, and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of the FFDCA. For these same reasons, the Agency has determined that this rule does not have any "tribal implications" as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes." This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

IX. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: January 17, 2003.

Debra Edwards,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346(a) and 371.

2. Section 180.371 is amended by alphabetically adding the entry for mushroom to the table in paragraph (b) to read as follows:

§ 180.371 Thiophanate methyl; tolerances for residues.

* * * * *

(b) * * *

Commodity	Parts per million	Expiration/revocation date
* * * * * * *		
Mushroom	0.01	12/31/04

* * * * *

[FR Doc. 03–2770 Filed 2–4–03; 8:45 am]

BILLING CODE 6560–50–S

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA–7801]

Suspension of Community Eligibility

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Final rule.

SUMMARY: This rule identifies communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are suspended on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If the Federal Emergency Management Agency (FEMA) receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will be withdrawn by publication in the **Federal Register**.

EFFECTIVE DATES: The effective date of each community's suspension is the third date ("Susp.") listed in the third column of the following tables.

ADDRESSES: If you wish to determine whether a particular community was suspended on the suspension date, contact the appropriate FEMA Regional Office or the NFIP servicing contractor.

FOR FURTHER INFORMATION CONTACT: Edward Pasterick, Division Director, Risk Communication Division, Federal Insurance and Mitigation Administration, 500 C Street, SW., Room 435, Washington, DC 20472, (202) 646–3443.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase flood insurance which is generally not otherwise available. In return, communities agree to adopt and administer local floodplain management aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance

coverage as authorized under the National Flood Insurance Program, 42 U.S.C. 4001 *et seq.*; unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed in this document no longer meet that statutory requirement for compliance with program regulations, 44 CFR part 59 *et seq.* Accordingly, the communities will be suspended on the effective date in the third column. As of that date, flood insurance will no longer be available in the community. However, some of these communities may adopt and submit the required documentation of legally enforceable floodplain management measures after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue their eligibility for the sale of insurance. A notice withdrawing the suspension of the communities will be published in the **Federal Register**.

In addition, the Federal Emergency Management Agency has identified the special flood hazard areas in these communities by publishing a Flood Insurance Rate Map (FIRM). The date of the FIRM if one has been published, is indicated in the fourth column of the table. No direct Federal financial assistance (except assistance pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act not in connection with a flood) may legally be provided for construction or acquisition of buildings in the identified special flood hazard area of communities not participating in the NFIP and identified for more than a year, on the Federal Emergency Management Agency's initial flood insurance map of the community as having flood-prone areas (section 202(a) of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4106(a), as amended). This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column. The Administrator finds that notice and public comment under 5 U.S.C. 553(b) are impracticable and unnecessary because communities listed in this final rule have been adequately notified.

Each community receives a 6-month, 90-day, and 30-day notification addressed to the Chief Executive Officer that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. Since these notifications have been made, this final rule may take effect within less than 30 days.

National Environmental Policy Act. This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Considerations. No environmental impact assessment has been prepared.

Regulatory Flexibility Act. The Administrator has determined that this rule is exempt from the requirements of the Regulatory Flexibility Act because the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed no longer comply with the statutory requirements, and after the effective date, flood insurance will no longer be available in the communities unless they take remedial action.

Regulatory Classification. This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Paperwork Reduction Act. This rule does not involve any collection of information for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

Executive Order 12612, Federalism. This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, October 26, 1987, 3 CFR, 1987 Comp.; p. 252.

Executive Order 12778, Civil Justice Reform. This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778, October 25, 1991, 56 FR 55195, 3 CFR, 1991 Comp.; p. 309.

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

Accordingly, 44 CFR part 64 is amended as follows:

PART 64—[AMENDED]

1. The authority citation for Part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp.; p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp.; p. 376.

§ 64.6 [Amended]

2. The tables published under the authority of § 64.6 are amended as follows:

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain federal assistance no longer available in special flood hazard areas
Region VI				
Arkansas: Conway, City of, Faulkner County.	050078	October 29, 1974, Emerg.; March 18, 1980, Reg.; February 5, 2003, Susp.	2/5/2003	2/5/2003
Faulkner County, Faulkner County.	050431	September 24, 1990, Emerg.; September 27, 1991, Reg.; February 5, 2003, Susp.	2/5/2003	2/5/2003
Greenbrier, City of, Faulkner County.	050328	November 19, 1975, Emerg.; July 13, 1982, Reg.; February 5, 2003, Susp.	2/5/2003	2/5/2003
Region III				
Virginia: Fairfax, City of, Independent City.	515524	May 8, 1970, Emerg.; December 17, 1971, Reg.; February 19, 2003, Susp.	2/19/2003	2/19/2003
Region IV				
Mississippi: D'iberville, City of, Harrison County.	280336	November 14, 1988, Emerg.; November 14, 1988, Reg.; February 19, 2003, Susp.	2/19/2003	2/19/2003

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain federal assistance no longer available in special flood hazard areas
Region V				
Indiana: Arcadia, Town of, Hamilton County.	180496	December 9, 1988, Reg.; February 19, 2003, Susp	2/19/2003	2/19/2003
Carmel, City of, Hamilton County.	180081	August 7, 1975, Emerg.; May 19, 1981, Reg.; February 19, 2003, Susp.	2/19/2003	2/19/2003
Cicero, Town of, Hamilton County.	180320	March 24, 1975, Emerg.; January 2, 1980, Reg.; February 19, 2003, Susp.	2/19/2003	2/19/2003
Fishers, Town of, Hamilton County.	180423	August 1, 1975, Emerg.; June 30, 1976, Reg.; February 19, 2003, Susp.	2/19/2003	2/19/2003
Hamilton County, Unincorporated Areas.	180080	December 15, 1988, Emerg.; December 16, 1988, Reg.; February 19, 2003, Susp.	2/19/2003	2/19/2003
Noblesville, City of, Hamilton County.	180082	June 12, 1975, Emerg.; March 2, 1981, Reg.; February 19, 2003, Susp.	2/19/2003	2/19/2003
Westfield, Town of, Hamilton County.	180083	August 15, 1975, Emerg.; March 16, 1981, Reg.; February 19, 2003, Susp.	2/19/2003	2/19/2003
Region X				
Idaho: Boise, City of, Ada County.	160002	April 14, 1975, Emerg.; April 17, 1984, Reg.; February 19, 2003, Susp.	2/19/2003	2/19/2003

Code for reading third column: Emerg.—Emergency; Reg.—Regular; Susp.—Suspension.

Dated: January 29, 2003.

Anthony S. Lowe,

Administrator, Federal Insurance and Mitigation Administration.

[FR Doc. 03–2786 Filed 2–4–03; 8:45 am]

BILLING CODE 6718–05–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–2612; MM Docket No. 00–31; RM–9815, RM–10014, RM–10095]

Radio Broadcasting Services; Nogales, Patagonia, and Vail, AZ

AGENCY: Federal Communications Commission.

ACTION: Final rule, correction.

SUMMARY: The Federal Communications Commission published in the **Federal Register** of October 31, 2002, a document dismissing an Application for Review filed by Big Broadcast of Arizona, LLC directed to the *Report and Order* in this proceeding. The amendatory language was omitted from the document. This document adds the amendatory language.

DATES: Effective on February 5, 2003.

FURTHER INFORMATION CONTACT: Robert Hayne, Media Bureau, (202) 418–2177.

SUPPLEMENTARY INFORMATION: The FCC published a document in the **Federal Register** of October 31, 2002 (67 FR 66340), dismissing an Application for Review filed by Big Broadcast of Arizona, LLC directed to the *Report and Order* in this proceeding. *See* 65 FR 11540, March 3, 2000. In FR Doc. 02–27693, the amendatory language was omitted. This correction adds the amendatory language to the document.

In rule FR Doc. 02–27693 published on October 31, 2002 (67 FR 66340), make the following correction. On page 66341, in the first column, after line 15, add the following amendatory language:

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Arizona, is amended by removing Channel 283A at Vail.

Dated: January 29, 2003.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 03–2671 Filed 2–4–03; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 03–48; MM Docket No. 01–131, RM–10148, MM Docket No. 01–133, 10143, RM–10150]

Radio Broadcasting Services; Benjamin and Mason, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule; denial of petition for reconsideration.

SUMMARY: This document denies a Petition for Reconsideration filed by Charles Crawford directed to both the *Report and Order* in MM Docket No. 01–131 and the *Report and Order* in MM Docket No. 01–133 which his respective proposals for a Channel 257C2 allotment at Benjamin, Texas, and a Channel 249C3 allotment at Mason, Texas. *See* 67 FR 42198, June 21, 2002. With this action, the proceeding is terminated.

FOR FURTHER INFORMATION CONTACT: Robert Hayne, Mass Media Bureau (202) 418–2177.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Memorandum Opinion and Order* in MM Docket No. 01–131, and MM Docket No. 01–133 adopted January 2, 2003, and released January 3, 2003. The full text of this decision is available for inspection and copying during normal business hours in the FCC Reference

Information Center at Portals II, CY–A257, 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Qualex International, Portals II, 445 12th Street, SW, Room CY–B402, Washington, DC 20554, telephone (202) 863–2893, facsimile (202) 863–2898, or via e-mail *qualixint@aol.com*.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 03–2670 Filed 2–4–03; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 03–155; MB Docket No. 02–351 RM–10601]

Radio Broadcasting Services; Blanket, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Commission allots Channel 284A at Blanket, Texas, as the community's first local FM transmission service in response to a petition filed by Robert Fabian. *See* 67 FR 71926 (December 3, 2002). Channel 284A can be allotted at Goliad, Texas, without a site restriction at coordinates 31–49–24 and 98–47–12. With this action, this proceeding is terminated. A filing window for channel 284A at Blanket will not be opened at this time. Instead, the issue of opening this allotment for auction will be addressed by the Commission in a subsequent order.

DATES: Effective March 3, 2003.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MB Docket No. 02–351, adopted January 15, 2003, and released January 17, 2003. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center, 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Qualex International, Portals II, 445 12th Street, SW, Room CY–B402, Washington, DC 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com*.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Texas, is amended by adding Blanket, Channel 284A.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 03–2668 Filed 2–4–03; 8:45 am]

BILLING CODE 6712–01–P

Proposed Rules

Federal Register
Vol. 68, No. 24
Wednesday, February 5, 2003

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NE–39–AD]

RIN 2120–AA64

Airworthiness Directives; Turbomeca S.A. Arrius-2F Turboshaft Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The Federal Aviation Administration (FAA) proposes to adopt a new airworthiness directive (AD) that is applicable to Turbomeca S.A. Arrius-2F turboshaft engines with certain serial number (SN) Fuel Control Units (FCU's). This proposal would require adjusting the FCU maximum fuel flow mechanical stop position to a higher fuel flow setting. This proposal is prompted by an FCU discovered to have a maximum fuel flow limit adjusted below the maximum required setting. The actions specified by the proposed AD are intended to prevent reduced maximum available power during takeoff, landing, or an emergency, which could significantly affect helicopter performance and result in loss of the helicopter.

DATES: Comments must be received by April 7, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 2002–NE–39–AD, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may be inspected at this location, by appointment, between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. Comments may also be sent via the Internet using the following address: *9-ane-adcomment@faa.gov*. Comments sent via the Internet must contain the docket number in the subject line.

The service information referenced in the proposed rule may be obtained from Turbomeca S.A., Turbomeca S.A., 64511 Bordes Cedex, France; telephone 33 05 59 64 40 00, fax 33 05 59 64 60 80. This information may be examined, by appointment, at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: Antonio Cancelliere, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7751; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2002–NE–39–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRM's

Any person may obtain a copy of this NPRM by submitting a request to the FAA, New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 2002–NE–39–AD, 12 New England Executive Park, Burlington, MA 01803–5299.

Discussion

The Direction Generale de L'Aviation Civile (DGAC), which is the airworthiness authority for France, recently notified the FAA that an unsafe condition may exist on Turbomeca S.A. Arrius-2F turboshaft engines. The DGAC advises that during shop visit for repair, an FCU was discovered to have a maximum fuel flow limit adjusted below the maximum required setting. Upon investigation, the manufacturer has identified 67 Fuel Control Units by serial number as having maximum fuel flow mechanical stops set too low.

Manufacturer's Service Information

Turbomeca S.A has issued Alert Service Bulletin (ASB) No. A319 73 4808, dated September 1, 2000, that specifies for FCU's part numbers (P/N's) 0 319 92 832 0, 0 319 92 830 0, and 0 319 92 825 0, with the SN's listed in the SB, adjustment of the FCU maximum fuel flow mechanical stop position to the correct fuel flow setting.

The DGAC classified this alert service bulletin as mandatory and issued AD 2000–482(A), dated November 29, 2000, in order to assure the airworthiness of these Turbomeca S.A. Arrius-2F turboshaft engines in France.

Bilateral Agreement Information

This engine model is manufactured in France and is type certificated for operation in the United States under the provisions of Section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Proposed Requirements of this AD

Since an unsafe condition has been identified that is likely to exist or develop on other Turbomeca S.A. Arrius-2F turboshaft engines of the same type design that are used on helicopters registered in the United States, the proposed AD would require within 120

days after the effective date of the proposal, on the serial number FCU's listed in the proposal, adjusting the maximum fuel flow mechanical stop position to the correct fuel flow setting which, if not adjusted could significantly affect helicopter performance. The actions would be required to be done in accordance with the alert service bulletin described previously.

Economic Analysis

There are approximately 334 engines of the affected design in the worldwide fleet. The FAA estimates that of the 63 engines installed on aircraft of U.S. registry, four engines would be affected by this proposed AD. The FAA also estimates that it would take approximately 3 work hours per engine to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Required tooling would cost approximately $300 per engine. Based on these figures, the total cost of the proposed AD to U.S. operators is estimated to be $1,920. The manufacturer has advised the FAA and DGAC that the operator may be provided with material and tooling at no cost to the operator, thereby substantially reducing the cost of the proposed rule.

Regulatory Analysis

This proposed rule does not have federalism implications, as defined in Executive Order 13132, because it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the FAA has not consulted with state authorities prior to publication of this proposed rule.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Turbomeca S.A.: Docket No. 2002–NE–39–AD.

Applicability: This airworthiness directive (AD) is applicable to Turbomeca S.A. Arrius -2F turboshaft engines with Fuel Control Units (FCU's) part numbers (P/N's) 0 319 92 832 0, 0 319 92 830 0, and 0 319 92 825 0, with FCU serial numbers (SN's) in the following Table 1:

TABLE 1.—AFFECTED FCU SERIAL NUMBERS

102B	135B	166B
103B	136B	167B
104B	137B	168B
105B	138B	169B
106B	139B	171B
107B	140B	173B
108B	141B	174B
110B	142B	175B
111B	143B	176B
112B	144B	177B
113B	145B	178B
114B	146B	180B
115B	148B	181B
116B	149B	182B
118B	150B	183B
120B	153B	185B
122B	155B	186B
123B	156B	190B
124B	158B	191B
126B	159B	193B
129B	161B	199B
132B	164B	N/A
133B	165B	N/A

These engines are installed on, but not limited to Eurocopter 120B "Colibri" helicopters.

Note 1: This airworthiness directive (AD) applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Compliance with this AD is required within 120 days after the effective date of this AD, unless already done.

To prevent reduced maximum available power during takeoff, landing, or an emergency, which could significantly affect helicopter performance, and result in loss of the helicopter, do the following:

(a) For FCU's listed in the applicability of this AD, adjust the maximum fuel flow mechanical stop position to a higher fuel flow setting, in accordance with paragraphs 2.A.(1) and 2.B.(1) of Turbomeca S.A Alert Service Bulletin (ASB) No. A319 73 4808, dated September 1, 2000.

(b) Perform a ground run check and a check flight in accordance with paragraph 2.C.(1) of Turbomeca S.A ASB No. A319 73 4808, dated September 1, 2000.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office (ECO). Operators must submit their request through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, ECO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the ECO.

Special Flight Permits

(d) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the helicopter to a location where the requirements of this AD can be done.

Note 3: The subject of this AD is addressed in Direction Generale de L'Aviation Civile AD 2000–482(A), dated November 29, 2000.

Issued in Burlington, Massachusetts, on January 29, 2003.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 03–2633 Filed 2–4–03; 8:45 am]

BILLING CODE 4910–13–P

PEACE CORPS

22 CFR Part 307

Peace Corps Standards of Conduct

AGENCY: Peace Corps.

ACTION: Proposed rule.

SUMMARY: The Peace Corps is proposing to remove regulations that set out the

ethical conduct and other responsibilities applicable to Peace Corps employees. These regulations have been superseded, in significant part, by government-wide regulations.

DATES: Comments must be received by March 7, 2003.

ADDRESSES: Comments should be submitted to the Office of the General Counsel, 8th Floor, 1111 20th Street, NW., Washington, DC 20526.

FOR FURTHER INFORMATION CONTACT: Carl R. Sosebee, Designated Agency Ethics Official, 202–692–2150.

SUPPLEMENTARY INFORMATION:

I. Background

Part 307, which sets out Peace Corps' regulations regarding the ethical conduct and other responsibilities of Peace Corps employees was last revised in 1987, *see* 52 FR 30151, Aug. 13, 1987; 22 CFR part 307. The conduct and responsibilities covered in this part have been superseded by the Office of Government Ethics' (OGE) executive branch ethical standards and requirements codified at 5 CFR parts 2634, 2635, 2636, 2637, 2638 and 2640. Further, rules governing partisan political activity by executive branch employees and rules governing gambling, betting and lotteries on government owned or leased property or while on duty are set forth at 5 CFR parts 734 and 735. Government-wide rules on procurement integrity are set forth in the Procurement Integrity Act, 41 U.S.C. 423, and the Federal Acquisition Regulations, 48 CFR 3.104. Because Peace Corps employees are already subject to these various rules, the Peace Corps proposes to remove part 307 from the Code of Federal Regulations. Remaining portions of the Peace Corps' existing standards pertaining to economic and financial activities of employees abroad, information, and speeches and participation in conferences set forth in Sections 307.735, 308, 309 and 310, respectively, may be reissued as Agency internal regulations pursuant to the authority of the Director in 22 U.S.C. 2503. Also, to the extent part 307 covers organizational conflicts of interest in procurement and procurement related matters, the Peace Corps is considering whether to incorporate them into the Peace Corps' internal rules.

II. Matters of Regulatory Procedure

Executive Order 12866. The Peace Corps has determined that this proposed rule does not constitute a "significant regulatory action" for the purposes of Executive Order 12866.

Regulatory Flexibility Act. Pursuant to section 605(b) of the Regulatory Flexibility Act, the Peace Corps certifies that this rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Accordingly, no regulatory flexibility analysis is required.

Unfunded Mandates Reform Act of 1995. Section 202 of the Unfunded Mandates Reform Act of 1995 (Unfunded Mandates Act) (2 U.S.C. Chs. 17A and 25) requires that an agency prepare a budgetary impact statement before promulgating a rule that includes a federal mandate that may result in expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. If a budgetary impact statement is required, agencies must also identify and consider a reasonable number of regulatory alternatives before promulgating a rule. The Peace Corps has determined that this rule will not result in expenditures by State, local, or tribal governments or by the private sector of $100 million or more. Accordingly, the Peace Corps has not prepared a budgetary impact statement or specifically addressed the regulatory alternatives considered.

List of Subjects in 22 CFR Part 307

Political activities; Government employees; Ethical conduct; Financial disclosure, Conflicts of interest.

For the reasons set forth in the preamble, the Peace Corps proposes to amend Title 22 of the CFR by removing part 307.

Dated: January 31, 2003.

Tyler S. Posey,

General Counsel.

[FR Doc. 03–2703 Filed 2–4–03; 8:45 am]

BILLING CODE 6015–01–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD01–03–002]

RIN 2115–AE47

Drawbridge Operation Regulations; Shrewsbury River, NJ

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to change the drawbridge operating regulations governing the operation of the Route 36 Bridge, mile 1.8, across the Shrewsbury River at Highlands, New Jersey. This proposed change to the drawbridge operation regulations would synchronize the drawbridge opening schedules for the two moveable bridges across the Shrewsbury River during the boating season. This action is necessary to meet the present needs of navigation.

DATES: Comments must reach the Coast Guard on or before April 7, 2003.

ADDRESSES: You may mail comments to Commander (obr), First Coast Guard District Bridge Branch, One South Street, Battery Park Building, New York, New York 10004, or deliver them to the same address between 7 a.m. and 3 p.m., Monday through Friday, except, Federal holidays. The telephone number is (212) 668–7165. The First Coast Guard District, Bridge Branch, maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at the First Coast Guard District, Bridge Branch, 7 a.m. to 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Joe Arca, Project Officer, First Coast Guard District, (212) 668–7165.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments or related material. If you do so, please include your name and address, identify the docket number for this rulemaking (CGD01–03–002), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know if they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to the First Coast Guard District, Bridge Branch, at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background

The Route 36 Bridge, mile 1.8, across the Shrewsbury River at Highlands, New Jersey, has a vertical clearance of 35 feet at mean high water and 39 feet at mean low water.

The existing regulations listed at 33 CFR 117.755, require the Route 36 Bridge to open on signal; except that, from May 15 through October 15, 7 a.m. to 8 p.m., the draw need open only at quarter before the hour and quarter after the hour.

The Coast Guard received requests from mariners to change the drawbridge operation regulations that govern the Route 36 Bridge. Presently the two moveable bridges across the Shrewsbury River, the Route 36 Bridge, and the Monmouth County highway bridge, have staggered opening schedules during the boating season. The mariners have asked the Coast Guard to change the opening schedule for the Route 36 Bridge in order to synchronize the bridge opening times for the two moveable bridges during the boating season to help reduce vessel transit delays and enhance boating safety.

The second moveable bridge across the Shrewsbury River, the Monmouth County highway bridge, at mile 4.0, is required to open on signal; except that, from May 15 through September 30, on Saturdays, Sundays, and holidays, from 9 a.m. to 7 p.m., the draw need open only on the hour and half hour.

This proposed rule if adopted would synchronize the bridge opening times at the two bridges by requiring the Route 36 Bridge to open on signal from May 15 through October 15, 7 a.m. to 8 p.m., on the hour and half hour only.

This proposed change is expected to better meet the present needs of navigation.

Discussion of Proposal

This proposed change would amend 33 CFR 117.755 by revising paragraph (a), which lists the Route 36 Bridge drawbridge operation regulations. This proposed change would allow the Route 36 Bridge to open on signal; except that, from May 15 through October 15, from 7 a.m. to 8 p.m., the draw need open only on the hour and half hour.

Regulatory Evaluation

This proposed rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, Feb. 26, 1979).

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation, under paragraph 10e of the regulatory policies and procedures of DOT, is unnecessary.

This conclusion is based on the fact that the synchronization of the opening times for the moveable bridges across the Shrewsbury River will better meet the present needs of navigation.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under section 5 U.S.C. 605(b), that this proposed rule would not have a significant economic impact on a substantial number of small entities.

This conclusion is based on the fact that the synchronization of the opening times for the moveable bridges across the Shrewsbury River will better meet the present needs of navigation.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (*see* **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520.).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this proposed rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This proposed rule would not effect a taking of private property or otherwise have taking implications under E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

To help the Coast Guard establish regular and meaningful consultation and collaboration with Indian and Alaskan Native tribes, we published a notice in the **Federal Register** (66 FR 36361, July 11, 2001) requesting comments on how to best carry out the Order. We invite your comments on how this proposed rule might impact tribal governments, even if that impact may not constitute a "tribal implication" under the Order.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply,

Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We considered the environmental impact of this proposed rule and concluded that, under figure 2–1, paragraph (32)(e), of Commandant Instruction M16475.1d, this proposed rule is categorically excluded from further environmental documentation because promulgation of drawbridge regulations have been found not to have a significant effect on the environment. A written "Categorical Exclusion Determination" is not required for this rule.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

For the reasons set out in the preamble, the Coast Guard proposes to amend 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

2. Section 117.755 is amended by revising paragraph (a) to read as follows:

§ 117.755 Shrewsbury River.

(a) The Route 36 Bridge, mile 1.8, at Highlands, New Jersey, shall open on signal; except that, from May 15 through October 15, 7 a.m. to 8 p.m., the draw need open on the hour and half hour only. The owners of the bridge shall provide and keep in good legible condition, two clearance gauges, with figures not less than eight inches high, designed, installed, and maintained according to the provisions of § 118.160 of this chapter.

* * * * *

Dated: January 23, 2003.

Vivien S. Crea,

Rear Admiral, U.S. Coast Guard, Commander, First Coast Guard District.

[FR Doc. 03–2696 Filed 2–4–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

33 CFR Part 385

RIN 0710–AA49

Programmatic Regulations for the Comprehensive Everglades Restoration Plan

AGENCY: Army Corps of Engineers, DOD.

ACTION: Notice of public meeting.

SUMMARY: The Council on Environmental Quality will host a public meeting for stakeholders to clarify and respond to comments filed on the proposed rule to establish programmatic regulations for the Comprehensive Everglades Restoration Plan. Congress approved the Comprehensive Everglades Restoration Plan in section 601 of the Water Resources Development Act of 2000, Public Law 106–541, 114 Stat. 2680, which was enacted into law on December 11, 2000. The Act requires the Secretary of the Army to promulgate programmatic regulations, with the concurrence of the Secretary of the Interior and the Governor of Florida, to ensure that the goals and purposes of the Comprehensive Everglades Restoration Plan are achieved.

DATES: The public meeting will take place on February 6, 2003, from 1 to 5 pm.

ADDRESSES: The meeting will be held at the Council on Environmental Quality, White House Conference Center, Truman Room, 3rd Floor, 726 Jackson Place, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Stu Appelbaum, Corps of Engineers, Jacksonville District, P.O. Box 4970, Jacksonville, Florida 32232–0019, phone (904) 232–1877; fax (904) 232–1434.

SUPPLEMENTARY INFORMATION: On August 2, 2002 the Army published the proposed rule to establish the programmatic regulations in the **Federal Register** (67 FR 50540). The public comment period on the proposed rule closed on October 1, 2002. The proposed regulations establish processes and procedures that will guide the Army Corps of Engineers and its partners in the implementation of the Comprehensive Everglades Restoration Plan. The purpose of the public meeting is to provide an opportunity for stakeholders to clarify and respond to comments filed on the proposed rule. Representatives of the Army (the rule writing agency), the Department of the Interior and State of Florida (from whom concurrence on the final rule is required by statute) and other Federal agencies who will likely participate in the interagency review of the rule under Executive Order 12866 will be in attendance to listen to stakeholder views. The meeting will be facilitated by the Council on Environmental Quality.

Authority: Section 601, Public Law 106–541, 114 Stat. 2680; 10 U.S.C. 3013(g)(3); 33 U.S.C. 1 and 701; and 5 U.S.C. 301.

Dated: January 31, 2003.

George S. Dunlop,

Deputy Assistant Secretary of the Army, Department of the Army.

[FR Doc. 03–2776 Filed 2–4–03; 8:45 am]

BILLING CODE 3710–92–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 03–154; MB Docket No. 03–12, RM–10627; MB Docket No. 03–13, RM–10628; and MB Docket No. 03–14, RM–10629]

Radio Broadcasting Services: Johnston City and Marion, Illinois; Fredericksburg and Mason, Texas; Charles Town, West Virginia and Stephens City, Virginia

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on proposals in three separately docketed proceedings in a multiple docket *Notice of Proposed Rule Making*. The first, filed by Cleveland Radio Licenses, LLC, proposes to change Station WXVA–FM's community of license from Charles Town, West Virginia, to Stephens City, Virginia, and provide Stephens City with its first local aural transmission service. The coordinates for requested Channel 252A at Stephens City, Virginia are 39–07–30 NL and 78–04–26 WL, with a site restriction of 13.3 kilometers (8.3 miles) east of Stephens City, Virginia. The second, filed by Clear Channel Broadcasting Licenses, Inc., proposes to change Station WDDD–FM's community of license from Marion, Illinois to Johnston City, Illinois, and provide Johnston City with its first local FM transmission station. The coordinates for requested Channel 297B at Johnston City, Illinois, are 37–45–15 NL and 88–56–05 WL, with a site restriction of 7.4 kilometers (4.6 miles) south of Johnston City, Illinois. The third proposal was filed by Jayson and Janice Fritz. They hold a construction permit to operate a

new FM broadcast station on Channel 289C2 at Mason, Texas. They request that the Commission downgrade Channel 289C2 to Channel 289C3, and reallot that channel to Fredericksburg, Texas, to provide Fredericksburg with its first local commercial FM transmission service. The coordinates for requested Channel 289C3 at Fredericksburg, Texas are 30–23–37 NL and 99–01–05 WL, with a site restriction of 19.3 kilometers (12 miles) northwest of Fredericksburg.

The foregoing reallotment proposals comply with the provisions of Section 1.420(i) of the Commission's Rules, and therefore, the Commission will not accept competing expressions of interest in the use of Channel 252A at Stephens City, Virginia, Channel 297B at Johnston City, Illinois, or Channel 289C3 at Fredericksburg, Texas, or require the rulemaking proponents to demonstrate the availability of any additional equivalent class channels.

DATES: Comments must be filed on or before March 10, 2003, and reply comments on or before March 25, 2003.

ADDRESSES: Secretary, Federal Communications Commission, 445 12th Street, SW., Room TW–A325, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve counsel for the rulemaking proponents, as follows: Mark N. Lipp, Esq. and J. Thomas Nolan, Esq., Shook, Hardy & Bacon; 600 14th Street, NW., Suite 800; Washington, DC 20005–2004 (Counsel for Cleveland Radio Licenses, LLC and Clear Channel Broadcasting Licenses, Inc.); and Vincent J. Curtis, Jr., Esq., Anne Goodwin Crump, Esq., and Alison J. Shapiro, Esq., Fletcher Heald & Hildreth, P.L.C.; 1300 North 17th Street, 11th Floor; Arlington, Virginia 22209 (Counsel for Jayson and Janice Fritz).

FOR FURTHER INFORMATION CONTACT: R. Barthen Gorman, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket No. 03–12; MB Docket No. 03–13; and MB Docket No. 03–14, adopted January 15, 2003, and released January 17, 2003. The full text of this Commission decision is available for inspection and copying during regular business hours in the FCC's Reference Information Center at Portals II, 445 12th Street, SW., CY–A257, Washington, DC 20554. This document may also be purchased from the Commission's duplicating contractors, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com*.

The provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as these proceedings, which involve channel allotments. *See* 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR Part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Illinois, is amended by adding Johnston City, Channel 297B, and removing Channel 297B at Marion.

3. Section 73.202(b), the Table of FM Allotments under Texas, is amended by adding Fredericksburg, Channel 289C3, and removing Channel 289C2 at Mason.

4. Section 73.202(b), the Table of FM Allotments under Virginia, is amended by adding Stephens City, Channel 252A.

5. Section 73.202(b), the Table of FM allotments under West Virginia, is amended by removing Charles Town, Channel 252A.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 03–2669 Filed 2–4–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 03–50; MB Docket Nos. 03–6, 03–7; RM–RM–10595, RM–10596]

Radio Broadcasting Services; Garysburg, Roanoke Rapids, North Carolina; Caledonia, Upper Sandusky, OH

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission seeks comment on proposals in two separate docketed proceedings in a multiple docket *Notice of Proposed Rule Making*. The first, filed by MainQuad Communications, Inc., proposes to reallot Channel 272A from Roanoke Rapids, North Carolina, to Garysburg, North Carolina, as the community's second local aural transmission service, and modify the license for Station WPTM(FM) to reflect the change of community. Channel 272A can be reallotted from Roanoke Rapids, to Garysburg, North Carolina at MainQuad's requested existing transmitter site 9.4 kilometers (5.8 miles) northwest of the community at coordinates 40–35–43 NL and 93–02–59 WL. The second, filed by Clear Channel Broadcasting Licenses, Inc. proposes to reallot Channel 240A from Upper Sandusky, Ohio to Caledonia, Ohio, as the community's first local aural transmission service, and modify the license for Station WYNT(FM) to reflect the change of community. Channel 240A can be reallotted from Upper Sandusky to Caledonia, Ohio, at Clear Channel's requested site 8.2 kilometers (5.1 miles) southwest of the community at coordinates 40–35–43 NL and 93–02–59 WL.

DATES: Comments must be filed on or before March 10, 2003, and reply comments must be filed on or before March 25, 2003.

ADDRESSES: Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, his counsel, or consultant, as follows: MainQuad Communications, Inc., c/o John M. Pelkey, Esq., Garvey, Schuber & Barer, 5th Floor, 1000 Potomac Street, NW., Washington, DC 20007; and Clear Channel Broadcasting Licenses, Inc., c/o Marissa G. Repp, Esq., F. William LeBeau, Esq., Hogan & Hartson, LLP, 555 13th Street, NW., Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT: Victoria M. McCauley, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket Nos. 03–6 and 03–7, adopted January 15, 2003, and released January 17, 2003. The full text of this document is available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com*.

The Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding. Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. *See* 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, *see* 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR Part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

2. Section 73.202(b), the Table of FM Allotments under North Carolina is amended by adding Channel 272A at Garysburg and by removing Roanoke Rapids, Channel 272A.

3. Section 73.202(b), the Table of FM Allotments under Ohio, is amended by adding Caledonia, Channel 240A and by removing Upper Sandusky, Channel 240A.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division Media Bureau.

[FR Doc. 03–2667 Filed 2–4–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 03–52; MB Docket No. 03–8; RM–10625]

Radio Broadcasting Services; Saluda and Irmo, South Carolina

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed by Breckenridge Communications, Inc. ("Petitioner"), licensee of Station WJES–FM, Channel 221A, Saluda, South Carolina. Petitioner proposes to upgrade Station WJES–FM from Channel 221A to 221C3, change Station WJES–FM's community of license from Saluda to Irmo, South Carolina, and provide Irmo with its first local aural transmission service. Petitioner has submitted a preclusion study demonstrating that upgrading Station WJES–FM from Channel 221A to 221C3 and reallotting the station to Irmo, South Carolina, would not preclude the establishment of any new or upgraded noncommercial educational station on Channels 218, 219, or 220. The coordinates for requested Channel 221C3 at Irmo, South Carolina, are 34–09–00 NL and 81–13–00 WL, with a site restriction of 7.8 kilometers (4.9 miles) northwest of Irmo.

Petitioner's reallotment proposal complies with the provisions of section 1.420(i) of the Commission's rules, and therefore, the Commission will not accept competing expressions of interest in the use of Channel 221C3 at Irmo, South Carolina, or require the petitioner to demonstrate the availability of an additional equivalent class channel.

DATES: Comments must be filed on or before March 10, 2003, and reply comments on or before March 25, 2003.

ADDRESSES: Secretary, Federal Communications Commission, 445 12th Street, SW., Room TW–A325, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Matthew H. McCormick, Esq, Reddy, Begley & McCormick, LLP; 2175 K Street, NW., Suite 350; Washington, DC 20037–1845.

FOR FURTHER INFORMATION CONTACT: R. Barthen Gorman, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's notice of proposed rule making, MB Docket No. 03–8, adopted January 15, 2003, and released January 17, 2003. The full text of this Commission decision is available for inspection and copying during regular business hours in the FCC's Reference Information Center at Portals II, 445 12th Street, SW., CY–A257, Washington, DC 20554. This document may also be purchased from the Commission's duplicating contractors, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com*.

The provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a notice of proposed rule making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. *See* 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, *see* 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under South Carolina, is amended by adding Irmo, Channel 221C3, and removing Saluda, Channel 221A.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 03–2666 Filed 2–4–03; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

Denial of Petition for Rulemaking; Federal Motor Vehicle Safety Standards

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Denial of petition for rulemaking.

SUMMARY: This document denies the petition submitted by Sierra Products, Inc. (Sierra), to amend Federal Motor Vehicle Safety Standard (FMVSS) No. 108, "Lamps, Reflective Devices, and Associated Equipment," to allow center high-mounted stop lamps (CHMSLs) to be combined with identification lamps, and to require that identification lamps be lowered to eye height on heavy trucks.

FOR FURTHER INFORMATION CONTACT: Mr. Chris Flanigan, Office of Rulemaking, NHTSA, 400 Seventh Street, SW., Washington, DC 20590. Mr. Flanigan's telephone number is: (202) 366–4918. His facsimile number is (202) 366–4329.

SUPPLEMENTARY INFORMATION: By a letter dated September 19, 2001, Sierra petitioned the agency to amend FMVSS No. 108 to allow vehicles with a width of 2032 millimeters (mm) or greater to have their CHMSLs physically and optically combined with their three identification lamps and that this combination of lamps be required to be lowered to eye height. Sierra found that an industry standard was being changed to allow the combination of these lamps.

Background: FMVSS No. 108 requires CHMSLs to be on all motor vehicles, except trailers and motorcycles, that are less than 2032 mm wide. It does not require CHMSLs on any other vehicle. CHMSLs on vehicles not required to have these lamps are considered by the agency to be auxiliary lamps that are not specifically regulated. Manufacturers may voluntarily install CHMSLs on vehicles on which CHMSLs are not required provided that the voluntary CHMSL does not impair the effectiveness of required lamps.

FMVSS No. 108 requires that identification lamps (a cluster of three lamps) be mounted on the centerline and as high as practicable on vehicles whose overall width is 2032 mm or more. The purpose of identification lamps is to uniquely identify large vehicles and do so with the longest possible sight preview of the lamps.

The industry standard Sierra referred to in its petition is Society of Automotive Engineers (SAE) J1432, "High-Mounted Stop Lamps for Use on Vehicles 2032 mm or More in Overall Width (March 2000)." This standard specifies requirements for CHMSLs on heavy trucks. This standard was amended to allow combination of the CHMSL and three identification lamps. This change to J1432 first appeared in the 2001 version of the "SAE Ground Vehicle Lighting Standards Manual." To maintain the conspicuity of each signal, J1432 specifies that the CHMSL must emit at least three to five times (depending on lamp position) the amount of light that the identification lamps emit.

Petitioner's Rationale: Sierra believes that, because SAE J1432 has been amended to allow the combination of CHMSLs and identification lamps on heavy trucks, FMVSS No. 108 should be changed as well. It states that if the agency were to amend the standard to allow the combination of the signal lamp configurations and also to require this combination to be moved downward to "eye level," the CHMSLs would be located in a more effective position. It also believes that this would provide an economic incentive for manufacturers of heavy trucks to include CHMSLs on these vehicles.

Regarding the agency's current requirement that identification lamps be mounted "as high as practicable," Sierra believes it is outdated. It states that the original reasons for this requirement were for "visually checking a vehicle's height in order to avoid hitting a bridge or overhang" and "for following traffic to spot *slow moving* trucks cresting steep hills." Sierra states that, today, neither of these reasons makes sense. It believes that heavy trucks routinely travel as fast as regular traffic and they no longer need identification lamps to visually clear bridges and overhangs. Also, it states that "steep hill crests have been leveled." No information was supplied by Sierra to support these assertions.

Agency Analysis: The agency believes there are no recommendations in Sierra's petition that would improve motor vehicle safety. Sierra has made a number of assumptions that are not based in fact. The petition references a change made to SAE J1432 that allows combination of the CHMSL and identification lamps on vehicles with a width that is 2032 mm or greater. Sierra further stated that it is aware that the agency has been adamant about not allowing any other lamps to be mounted in the same housing with a CHMSL, and that it was not aware that NHTSA had removed this prohibition. Sierra is confused as to when and how this combination (in the SAE standard) had come to be allowed.

As stated above, the CHMSLs of which Sierra speaks are auxiliary lamps under FMVSS No. 108, and as such, are not specifically regulated for vehicles that are 2032 mm or wider. The only specific criterion applicable to such supplemental stop lamps is that they not impair the effectiveness of any required lamps. Conceptually, auxiliary stop lamps should not impair the effectiveness of the required identification lamps if they perform identically to required stop lamps. One means for assuring this is for the lamps to meet SAE J1432 or the requirements in FMVSS No. 108 that apply to stop lamps. The SAE document, among other things, states that "[t]he purpose of the high-mounted stop lamp or lamps is to provide a signal over intervening vehicles to the driver of following vehicles." As such, it has the same purpose as the identification lamps in that they, too, are required to be located to provide a preview over intervening vehicles.

Sierra is confused about the CHMSLs required by FMVSS No. 108 and the stop lamps that are described in SAE J1432. While the FMVSS No. 108 CHMSLs, which are required on some vehicles, are prohibited from being combined with any lamp (whether required or auxiliary, except for cargo lamps), the SAE J1432 CHMSLs are not regulated in any manner. Thus, contrary to Sierra's statement, there has never been such a rescission for the CHMSL regulated by FMVSS No. 108. More importantly, there has never been a prohibition on combining supplementary stop lamps with identification lamps.

In fact, this interpretation has been expressly stated in at least three letters issued by the agency to persons asking about such auxiliary stop lamps. The most recent was a June 1999 letter to an anonymous author which stated that:

> You have also asked whether this product [a light bar containing three identification lamps] can also incorporate "a set of brake lights to act as a 'third eye' brake light, similar to those required for automobiles." In other words, the identification lamp bar would act as a supplementary stop lamp when the brakes are applied.
>
> Standard No. 108 permits supplementary lamps as long as they do not impair the effectiveness of the lighting equipment required by the standard (S5.1.3). The function of the identification lamps is to indicate the presence of a large vehicle in the roadway. This effectiveness of this function would not be impaired by an increase in intensity of the lamps when the brake pedal

is applied. Therefore, your product can incorporate a supplementary stop lamp function.

Sierra argued further that, if acceptable, it would make "economic and safety sense" to allow this signal combination to be used on vehicles with a width of 2032 mm or greater and to be lowered to "eye height." Sierra's economic argument is that installing a CHMSL separately from the identification lamps costs more. Now that the agency has allowed the combination of supplementary stop lamps and identification lamps, Sierra asserts that the CHMSL must be in the wrong location, thus forcing the installation of a separate lamp anyway. To eliminate the need for an extra lamp, Sierra wants the combination of lamps to be lowered.

In the second part of the petition, Sierra requests that the identification lamps, as well as all signal and marker lamps mounted on the rear, be required to be mounted at eye level. Sierra indicated that "numerous Public and Federally Financed Tests performed prove that the 'Centered, Eye Level' Location is where following Drivers focus most of their Conscience and/or Subconscious Attention, and therefore is the most 'Conspicuous' and the most effective place to locate all rear Signal Vehicle Lights, except 'Clearance' Lights * * * which should represent 'Extreme Width' * * * while also located at Eye Level." However, Sierra provided no specific test data to support its assertions that the aforementioned research is applicable to its suggested amendment.

While putting all lamps at eye level may seem plausible, there is no evidence that this is the most effective location. Sierra did not specify what the height should be. Eye height is different for drivers of sports cars, passenger cars, light duty trucks, large trucks, and buses. Also, a significant reason for higher mounting heights for lamps that provide signals of driver intent (stop and turn lamps) is to inform following drivers, not just the most immediately rearward one, of the vehicle's intent to stop. The agency is not prepared to initiate rulemaking to require CHMSLs on heavy trucks. If identification lamps were lowered, the purpose of uniquely identifying large vehicles with the longest possible sight preview of the lamps would be compromised. As the mounting height of identification lamps is lowered, the time that nearby drivers will have to identify the vehicle, as a heavy truck will lessen. This is contrary to the intent of the requirement.

On the other hand, the mounting height of identification lamps has been long established to be "as high as practicable." This is to make nearby drivers aware of the vehicle's size. If these lamps were lowered to eye level, approaching drivers may not be able to distinguish large commercial vehicles from passenger vehicles.

Sierra has provided no convincing rationale that Standard No. 108 should be amended in the manner in which it petitioned and, in accordance with 49 CFR part 552, after review of the petition, the agency has concluded that it should not be granted. Accordingly, it denies Sierra's petition.

(49 U.S.C. 30118(d) and 30120(h); delegations of authority at 49 CFR 1.50 and 501.8)

Issued on: January 30, 2003.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. 03–2700 Filed 2–4–03; 8:45 am]

BILLING CODE 4910–59–P

Notices

Federal Register
Vol. 68, No. 24
Wednesday, February 5, 2003

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. 03–004N]

Notice of Request for Extension and Revision of a Currently Approved Information Collection

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 and the Office of Management and Budget (OMB) regulations, this notice announces the Food Safety and Inspection Service's (FSIS) intention to request an extension for and revision to a currently approved information collection package regarding exportation, transportation, and importation of meat and poultry products.

DATES: Comments on this notice must be received on or before March 31, 2003.

ADDITIONAL INFORMATION OR COMMENTS: Contact John O'Connell, Paperwork Specialist, Food Safety and Inspection Service, USDA, 300 12th Street, SW., Room 112, Washington, DC 20250–3700, (202) 720–0345.

SUPPLEMENTARY INFORMATION:

Title: Exportation, Transportation, and Importation of Meat and Poultry Products.

OMB Number: 0583–0094.

Expiration Date of Approval: 1/31/03.

Type of Request: Extension and revision of a currently approved information collection.

Abstract: FSIS has been delegated the authority to exercise the functions of the Secretary as provided in the Federal Meat Inspection Act (FMIA) (21 U.S.C. 601 *et seq.*) and the Poultry Products Inspection Act (PPIA) (21 U.S.C. 451 *et seq.*). These statutes mandate that FSIS protect the public by ensuring that meat and poultry products are safe, wholesome, unadulterated, and properly labeled and packaged.

FSIS is requesting an extension and revision to the information collection package addressing meat and poultry paperwork and recordkeeping requirements regarding exportation, transportation, and importation of meat and poultry products. FSIS requires that meat and poultry establishments exporting product to foreign countries complete an export certificate. Establishments must supply the type, amount, and destination of product being exported. The information required on this form does not duplicate any information required by other Federal agencies. The form is necessary to certify to the importing countries that FSIS inspectors have inspected the product and have found it sound and wholesome. Additionally, FSIS uses the information from the form in its annual Report to Congress as required by sections 301(c)(4) and 20(e) of the FMIA and sections 27 and 5(c)(4) of the PPIA.

Meat and poultry products not marked with the mark of inspection and shipped from one official establishment to another for further processing must be transported under FSIS seal to prevent such unmarked product from entering into commerce. To track product shipped under seal, FSIS requires shipping establishments to complete a form that identifies the type, amount, and weight of the product.

A foreign country exporting meat or poultry products to the U.S. must establish eligibility for importation of product into the U.S. and annually certify that its inspection systems are "at least equal to" the U.S. inspection system. To maintain eligibility, a written report must be prepared monthly by a representative of the foreign inspection system for each establishment listed in the certification. Additionally, meat and poultry products intended for import into the U.S. must be accompanied by a health certificate, signed by an official of the foreign government, stating that the products have been produced by certified foreign establishments. Establishments or brokers wishing to import product into the United States must complete a form that specifies the type, amount, originating country and destination of the meat and poultry product. The amount of meat and poultry product imported into the United States is included in FSIS's annual Report to Congress. Additionally, FSIS has established procedures allowing establishments importing product to stamp such product with the inspection legend prior to FSIS inspection, if they receive FSIS prior approval.

Estimate of Burden: The public reporting burden for this collection of information is estimated to average .0773501 hours per response.

Respondents: Meat and poultry establishments, and importers and exporters.

Estimated Number of Respondents: 7,374.

Estimated Number of Responses per Respondent: 295.88866.

Estimated Total Annual Burden on Respondents: 168,769 hours.

Copies of this information collection assessment can be obtained from John O'Connell, Paperwork Specialist, Food Safety and Inspection Service, USDA, 300 12th Street, SW., Room 112, Washington, DC 20250–3700, (202) 720–5276.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of FSIS' functions, including whether the information will have practical utility; (b) the accuracy of FSIS' estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through use of appropriate automated, electronic, mechanical, or other technological collection techniques, or other forms of information technology. Comments may be sent to both John O'Connell, Paperwork Specialist, at the address provided above, and the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20253.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Additional Public Notification

This notice is designed to provide information to the public and request their comments on FSIS' information collection requirements regarding

Exportation, Transportation, and Importation of Meat and Poultry Products. Public involvement is important. Consequently, in an effort to better ensure that minorities, women, and persons with disabilities are made aware of this request for the extension and revision of the currently approved information collection request 0583–0094 and are informed about the mechanism for providing their comments, FSIS will announce it and provide copies of this **Federal Register** publication in the FSIS Constituent Update.

FSIS provides a weekly FSIS Constituent Update, which is communicated via fax to over 300 organizations and individuals. In addition, the update is available on line through the FSIS Web page located at *http://www.fsis.usda.gov*. The update is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** Notices, FSIS public meetings, recalls, and any other types of information that could affect or would be of interest to our constituents/stakeholders. The constituent fax list consists of industry, trade, and farm groups, consumer interest groups, allied health professionals, scientific professionals and other individuals that have requested to be included. Through these various channels, FSIS is able to provide information with a much broader, more diverse audience.

For more information and to be added to the constituent fax list, fax your request to the Office of Congressional and Public Affairs, at (202) 720–5704.

Linda M. Swacina,

Associate Administrator.

[FR Doc. 03–2607 Filed 1–30–03; 5:01 pm]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Forest Service

North Belts Travel Plan Projects, Helena National Forest, Lewis & Clark and Broadwater Counties, Montana

AGENCY: Forest Service, USDA.

ACTION: Cancellation notice.

SUMMARY: On May 8, 2001, a Notice of Intent (NOI) to prepare an environmental impact statement for the North Belts Travel Plan Project on the Helena and Townsend Ranger Districts of the Helena National Forest, was published in the **Federal Register** (66 FR 23230). The NOI is hereby rescinded due to changed resource conditions.

FOR FURTHER INFORMATION CONTACT: Beth Ihle, Project Leader, 415 S. Front, Townsend, MT 59644, phone 406–266–3425.

Dated: January 30, 2003.

Dwight Chambers,

Acting Forest Supervisor.

[FR Doc. 03–2653 Filed 2–4–03; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Medicine Bow-Routt National Forests and Thunder Basin National Grassland Jackson County, Colorado; Green Ridge Mountain Pine Beetle Analysis; Correction

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an Environmental Impact Statement; correction.

SUMMARY: The Forest Service published a notice of intent to prepare an environmental impact statement for the Green Ridge Mountain Pine Beetle Analysis in the **Federal Register** of August 22, 2002. The original notice designated the Regional Forester as the Responsible Official. This correction will designate the Forest Supervisor as the Responsible Official.

FOR FURTHER INFORMATION CONTACT: Terry DeLay, Brush Creek/Hayden Ranger District, PO Box 249, Saratoga, WY 82331, 307–326–2518.

Correction

In the **Federal Register** of August 22, 2002, in FR Doc. 02–21452, on page 54405, in the third column, correct the "Responsible Official" caption to read:

Responsible Official

Mary H. Peterson, Forest Supervisor, Medicine Bow-Routt National Forests and Thunder Basin National Grassland, 2468 Jackson Street, Laramie, Wyoming 82070, is the official responsible for making the decision on this action. She will document her decision and rationale in a record of decision.

Dated: January 29, 2003.

Richard N. Rine,

Acting Forest Supervisor.

[FR Doc. 03–2777 Filed 2–4–03; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Notice of Timeframe for the Section 514 Farm Labor Housing Loans and Section 516 Farm Labor Housing Grants for Off-Farm Housing for Fiscal Year 2003; Correction

AGENCY: Rural Housing Service, USDA.

ACTION: Notice; correction.

SUMMARY: The Rural Housing Service (RHS) corrects a notice published December 27, 2002 (67 FR 79030—79033). This action is taken to correct the address of the New Jersey State Office.

Accordingly, the notice published December 27, 2002, (67 FR 79030—79033), is corrected as follows:

On page 79031 in the third column, "New Jersey State Office, Tarnsfield Plaza, Suite 22, 790 Woodland Road, Mt. Holly, NJ 08060" should read "New Jersey State Office, 5th Floor North Suite 500, 8000 Midlantic Dr., Mt. Laurel, NJ 08054".

Dated: January 28, 2003.

Arthur A. Garcia,

Administrator, Rural Housing Service.

[FR Doc. 03–2660 Filed 2–4–03; 8:45 am]

BILLING CODE 3410–XV–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce (DOC) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of Industry and Security (BIS).

Title: Commercial Encryption Items Under the Jurisdiction of the Department of Commerce.

Agency Form Number: BXA–748P.

OMB Approval Number: 0694–0104.

Type of Request: Renewal of an existing collection.

Burden: 2,830 hours.

Average Time Per Response: 5 minutes to 7 hours per response.

Number of Respondents: 680 respondents.

Needs and Uses: This collection is authorized by section 5(h) of the Export Administration Act of 1979, as amended (EAA) and section 203(a)(2) of the International Emergency Economic Powers Act (IEEPA), and authorized under section 15(b) of the EAA and

section 203(a)(1) of the IEEPA. The Export Administration Act authorizes the President to control exports of U.S. goods and technology to all foreign destinations, as necessary for the purposes of national security, foreign policy and short supply. The International Emergency Economic Powers Act authorizes the President to take actions to deal with any unusual and extraordinary threat, which has its source in whole or substantial part outside of the United States, to the national security, foreign policy, or economy of the United States. This policy has since been implemented and updated in the Export Administration Regulations (EAR) (*see* December 30, 1996 (61 FR 68572); September 22, 1998 (63 FR 50516); December 31, 1998 (63 FR 72156); January 14, 2000 (65 FR 2492); October 19, 2000 (65 FR 62600), and June 6, 2002 (67 FR 38855)). As described in these regulations, the U.S. encryption export control policy rests on three principles: review of encryption products prior to sale, streamlined post-export reporting, and license review of certain exports of strong encryption to foreign government end-users. Consistent with these principles, national security requires that information be collected from the public as described both in this collection and in collection 0694–0088. The regulations developed by the Bureau of Industry and Security in consultation with other Federal agencies, implements the U.S. encryption export policy last revised in regulations published on June 6, 2002. This notice updates and revises the paperwork burden on the public imposed by these regulations.

Affected Public: Individuals, businesses or other for-profit institutions.

Respondent's Obligation: Mandatory.

OMB Desk Officer: David Rostker.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, 202–482–0266, Office of the Chief Information Officer, Department of Commerce, Room 6625, 14th Street and Constitution Avenue, NW., Washington DC 20230.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20230.

Dated: January 30, 2003.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 03–2644 Filed 2–4–03; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–846]

Notice of Amended Preliminary Results of the Seventh New Shipper Review: Brake Rotors from the People's Republic of China

AGENCY: Import Administration, International Trade Administration, U.S. Department of Commerce.

ACTION: Notice of Amended Preliminary Results of the Seventh New Shipper Review.

EFFECTIVE DATE: February 5, 2003.

FOR FURTHER INFORMATION CONTACT: Terre Keaton or Brian Smith, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–1280 or (202) 482–1766, respectively.

SUPPLEMENTARY INFORMATION:

Amended Preliminary Results

We are amending the preliminary results of the seventh new shipper review of the antidumping duty order on brake rotors from the People's Republic of China ("PRC") to reflect a revision to the cash deposit requirements for the two companies subject to this review.

Case History

On January 8, 2003, the Department published the preliminary results of the seventh new shipper review of brake rotors from the PRC (68 FR 1031) ("preliminary results")[1]. In the preliminary results, we failed to state accurately the cash deposit requirements for Zibo Golden Harvest Machinery Limited Company ("Golden Harvest") and Shanxi Fengkun Metallurgical Ltd. Co. ("Shanxi Fengkun"), the two respondents in the seventh new shipper review, as explained further below.

[1] The preliminary results for the seventh new shipper review of the antidumping duty order on brake rotors from the PRC were issued concurrently with those of the fifth administrative review of the order.

Amendment of Preliminary Results

We are amending the preliminary results of the seventh new shipper review of brake rotors from the PRC to reflect a revision to the cash deposit requirements for new shippers in accordance with our recent practice. *See Final Results of the Antidumping Duty New Shipper Review in Fresh Garlic From the People's Republic of China*, 67 FR 72139 (December 4, 2002); *Final Results of Antidumping Duty New Shipper Review in Certain Forged Stainless Steel Flanges From India*, 68 FR 351 (January 3, 2003); and *Final Results of the Antidumping Duty New Shipper Review in Certain In-Shell Raw Pistachios From Iran*, 68 FR 353 (January 3, 2003). Specifically, bonding will no longer be permitted to fulfill security requirements for shipments from Golden Harvest or Shanxi Fengkun of brake rotors from the PRC entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of the new shipper review. Furthermore, the following cash deposit requirements will be effective upon publication of the final results of the new shipper review for all shipments from Golden Harvest or Shanxi Fengkun of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date: (1) for subject merchandise manufactured and exported by Golden Harvest, and for subject merchandise manufactured and exported by Shanxi Fengkun, no cash deposit will be required; (2) for subject merchandise exported by either Golden Harvest or Shanxi Fengkun but not manufactured by them the cash deposit will be the PRC countrywide rate (*i.e.*, 43.32 percent). All other cash deposit requirements noted in the preliminary results remain unchanged. We are issuing and publishing these amended preliminary results and this notice in accordance with section 751(a)(2)(B) of the Tariff Act of 1930, as amended.

Dated: January 29, 2003.

Bernard T. Carreau,

Acting Assistant Secretary for Import Administration.

[FR Doc. 03–2793 Filed 2–4–03; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–863]

Honey From the People's Republic of China: Initiation of New Shipper Antidumping Duty Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Initiation of new shipper antidumping duty reviews.

EFFECTIVE DATE: February 5, 2003.

FOR FURTHER INFORMATION CONTACT: Angelica Mendoza or Donna Kinsella at (202) 482–3019 or (202) 482–0194, respectively; Antidumping and Countervailing Duty Enforcement Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

The Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930, as amended (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are references to the provisions codified at 19 CFR Part 351 (2002).

Background

The Department received timely requests from Shanghai Xiuwei International Trading Co., Ltd. (Shanghai Xiuwei) and Sichuan-Dujiangyan Dubao Bee Industrial Co., Ltd. (Sichuan Dubao),[1] in accordance with 19 CFR 351.214(c), for new shipper reviews of the antidumping duty order on honey from the People's Republic of China (PRC), which has a December annual anniversary month. See Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order; Honey from the People's Republic of China, 66 FR 63670 (December 10, 2001). Shanghai Xiuwei identified itself as an exporter of honey produced by its supplier, Henan Oriental Bee Products Co., Ltd. (Henan Oriental). Sichuan Dubao identified itself as the producer of the honey it exports. As required by 19 CFR 351.214(b)(2)(i), (ii), and (iii)(A), each company identified above has certified that it did not export honey to the United States during the period of investigation (POI), and that it has never been affiliated with any exporter or producer which did export honey during the POI. Each company has further certified that its export activities are not controlled by the central government of the PRC, satisfying the requirements of 19 CFR 351.214(b)(2)(iii)(B). Pursuant to the Department's regulations at 19 CFR 351.214(b)(2)(iv), Shanghai Xiuwei and Sichuan Dubao submitted documentation establishing the date on which they first shipped the subject merchandise to the United States, the volume of that first shipment, and the date of the first sale to an unaffiliated customer in the United States.

In accordance with section 751(a)(2)(B) of the Act, as amended, and 19 CFR 351.214(d)(1), and based on information on the record, we are initiating new shipper reviews for Shanghai Xiuwei and Sichuan Dubao. It is the Department's usual practice in cases involving non-market economies to require that a company seeking to establish eligibility for an antidumping duty rate separate from the country-wide rate provide evidence of *de jure* and *de facto* absence of government control over the company's export activities. Accordingly, we will issue questionnaires to Shanghai Xiuwei and Sichuan Dubao, including a separate rates section. If the responses provide sufficient indication that Shanghai Xiuwei and Sichuan Dubao are not subject to either *de jure* or *de facto* government control with respect to their exports of honey, the review will proceed. If, on the other hand, Shanghai Xiuwei and Sichuan Dubao do not demonstrate their eligibility for a separate rate, then they will be deemed not separate from other companies that exported during the POI and the review of that respondent will be rescinded.[2]

Scope

The merchandise under review is honey from the PRC. The merchandise under review is currently classifiable under item 0409.00.00, 1707.90.90 and 2106.90.99 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the merchandise under review is dispositive.

Initiation of Review

In accordance with section 751(a)(2)(B)(ii) of the Act and 19 CFR 351.214(d)(1), we are initiating new shipper reviews of the antidumping duty order on honey from the PRC. Therefore, we intend to issue the preliminary results of these reviews not later than 180 days after the date on which these reviews were initiated. We intend to issue the final results of these reviews within 90 days after the date on which the preliminary results were issued.

Pursuant to 19 CFR 351.214(g)(1)(ii)(A) of the Department's regulations, the period of review (POR) for a new shipper review initiated in the month immediately following the first anniversary month will be the period from the date of suspension of liquidation to the end of the month immediately preceding the first anniversary month.[3] Therefore, the POR for these new shipper reviews is:

Antidumping duty proceeding	Period to be reviewed
Shanghai Xiuwei International Trading Co., Ltd.	2/10/01—11/30/02
Sichuan-Dujiangyan Dubao Bee Industrial Co., Ltd.	2/10/01—11/30/02

[1] On January 23, 2003, the Department rescinded a previous new shipper review of Sichuan Dubao initiated on July 31, 2002 because Sichuan Dubao's certifications failed to identify the correct name of the exporter and producer of the subject merchandise. Sichuan Dubao therefore submitted the instant new shipper review request, which correctly identifies the exporter and producer of the subject merchandise.

[2] We note that petitioners separately requested administrative reviews of Shanghai Xiuwei and Sichuan Dubao. If for any reason the Department rescinds the new shipper reviews of Shanghai Xiuwei and/or Sichuan Dubao, we will then include Shanghai Xiuwei and/or Sichuan Dubao in the normal administrative review.

[3] The review period for Shanghai Xiuwei and Sichuan Dubao is February 10, 2001, through November 30, 2002 because the Department found critical circumstances in the underlying investigation, and liquidation was suspended beginning 90 days prior to the publication of the preliminary less than fair value determination, which occurred on May 11, 2001.

We will instruct the Customs Service to allow, at the option of the importer, the posting, until the completion of the review, of a single entry bond or security in lieu of a cash deposit for certain entries of the merchandise exported by the above-listed companies. This action is in accordance with 19 CFR 351.214(e). As Sichuan Dubao has certified that it both produced and exported the subject merchandise, we will instruct Customs to limit Sichuan Dubao's bonding option only to such merchandise for which it is both the producer and exporter. For Shanghai Xiuwei, which has identified Henan Oriental as the producer of subject merchandise for the sale under review, we will instruct Customs to limit the bonding option only to entries of subject merchandise from Shanghai Xiuwei that were produced by Henan Oriental.

Interested parties that need access to proprietary information in these new shipper reviews should submit applications for disclosure under administrative protective orders in accordance with 19 CFR 351.305 and 351.306. This initiation and notice are in accordance with section 751(a) of the Act (19 U.S.C. 1675(a)) and 19 CFR 351.214(d).

Dated: January 30, 2003.

Joseph A. Spetrini,

Deputy Assistant Secretary for Import Administration, Group III.

[FR Doc. 03–2794 Filed 2–4–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–583–830]

Stainless Steel Plate in Coils from Taiwan: Extension of Time Limit for the Preliminary Results of the Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Extension of Time Limit for the Preliminary Results of Antidumping Duty Administrative Review.

EFFECTIVE DATE: February 5, 2003.

FOR FURTHER INFORMATION CONTACT: Catherine Bertrand, AD/CVD Enforcement, Group III, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington DC 20230; telephone: (202) 482–3207.

SUPPLEMENTARY INFORMATION:

Background

On May 6, 2002, the Department of Commerce ("Department") published a notice of opportunity to request an administrative review of the Antidumping Duty Order on Stainless Steel Plate in Coils from Taiwan for the period May 1, 2001 through April 30, 2002. *See Notice of Opportunity to Request Administrative Review of Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation*, 67 FR 30356 (May 6, 2002). On June 25, 2002, in accordance with section 751(a) of the Tariff Act of 1930, as amended ("the Act"), the Department published in the Federal Register a notice of initiation of this antidumping duty administrative review of sales by Yieh United Steel Corporation ("YUSCO") and Ta Chen Stainless Pipe Company, Ltd. ("Ta Chen") for the period May 1, 2001 through April 30, 2002. *See Notice of Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation In Part*, 67 FR 42753 (June 25, 2002). The preliminary results are currently due no later than January 31, 2003.

Extension of Time Limit for Preliminary Results

The Department conducted a customs inquiry in this case. As a result of this preliminary communication with the Customs Service, the Department was recently made aware of certain information that was not previously on the record. The Department needs time to analyze this information and solicit additional information from the parties. *See* Department's January 15, 2003 letter to YUSCO. Therefore, it is not practicable to complete this review within the initial time limits mandated by section 751(a)(3)(A) of the Act, and we are extending the due date for the preliminary results by 60 days until April 1, 2003. The final results continue to be due 120 days after the publication of the preliminary results.

Dated: January 30, 2003.

Joseph A. Spetrini,

Deputy Assistant Secretary for Import Administration, Group III.

[FR Doc. 03–2792 Filed 2–4–03; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF DEFENSE

Department of the Air Force

Global Positioning System Joint Program Office

AGENCY: Department of the Air Force, DoD.

ACTION: Notice of meeting.

SUMMARY: This notice informs the public that the Global Positioning System (GPS) Joint Program Office (JPO) will be hosting a technical working group meeting to discuss the new Improved Clock and Ephemeris (ICE) message. ICE message is the new GPS navigation data that will replace the current clock and ephemeris data as indicated in section 30.3.2 of previously released PIRN–200C–007B. The meeting will be a technical working group discussion that will address all aspects of ICE including specific data format, data requirements, data application and related equations, message format, user receiver needs/implications, and any issues or concerns with ICE. In order to better prepare for the meeting, the GPS JPO requests email notification from all those planning to participate in the meeting. Please submit your name, organization, and contact information to *smc.czerc@losqngeles.af.mil* and include the words, "ICE Working Group Attendee" in the subject line of your email. More information will be posted on the GPS JPO public web site: *http://gps.losangeles.af.mil*. Click on "Public Interface Control Working Group (ICWG)."

DATES: February 12, 2003, 0800–1700.

ADDRESSES: Los Angeles AFB, Bldg 120, Daedalian Room (in "The Club").

FOR FURTHER INFORMATION CONTACT: CZERC, GPS JPO System Engineering Division via email at *smc.czerc@losangeles.af.mil* or at 1–310–363–6329.

SUPPLEMENTARY INFORMATION: The civilian and military communities use the Global Positioning System, which employs a constellation of 24 satellites to provide continuously transmitted signals to enable appropriately configured GPS user equipment to produce accurate position, navigation and time information.

Pamela D. Fitzgerald,

Air Force Federal Register Liaison Officer.

[FR Doc. 03–2634 Filed 2–4–03; 8:45 am]

BILLING CODE 5001–S–P

DEPARTMENT OF EDUCATION

[CFDA No.: 84.305M]

Institute of Education Sciences; Correction

ACTION: Notice inviting applications for grants to support education research for fiscal years 2003; Correction.

On January 6, 2003, a notice inviting applications for grants to support education research was published in the **Federal Register** (68 FR 656). On page 656, in the table, the column *Due Date for Optional Letter of Intent* states that the deadline for transmittal of the letter of intent is "March 26, 2003" for the Teacher Quality Research program (84.305M). The *Due Date for Optional Letter of Intent* is corrected to read "March 6, 2003."

FOR FURTHER INFORMATION CONTACT: Harold Himmelfarb, U.S. Department of Education, 555 New Jersey Avenue, NW., room 510f, Washington, DC 20208. Telephone: (202) 219–2031 or via the Internet: *harold.himmelfarb@ed.gov*.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

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Program Authority: 20 U.S.C. 9501 *et seq.* (the "Education Sciences Reform Act of 2002", Title 1 of Public Law 107–279, November 5, 2002).

Dated: January 30, 2003.

Grover J. Whitehurst,

Director, Institute of Education Sciences.

[FR Doc. 03–2663 Filed 2–4–03; 8:45 am]

BILLING CODE 4000–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7448–2]

Integrated Risk Information System (IRIS); Announcement of 2003 Program; Request for Information and Announcement of Workshop

AGENCY: Environmental Protection Agency.

ACTION: Notice; announcement of the IRIS 2003 program and request for scientific information on health effects that may result from exposure to chemical substances; announcement of the stakeholder workshop on priority-setting criteria for the assessment of chemical substances.

SUMMARY: IRIS is an Environmental Protection Agency (EPA) data base that contains EPA scientific consensus positions on human health effects that may result from chronic exposure to chemical substances in the environment. On January 9, 2002, EPA announced the 2002 IRIS agenda and solicited scientific information from the public for consideration in assessing health effects from specific chemical substances. Most of the health assessments listed in the notice are in progress or near completion. Today, EPA is adding some additional health assessments to the IRIS agenda. This notice describes the Agency's plans and solicits scientific data and evaluations for consideration in EPA's new assessments. Additional new assessments may be announced in the **Federal Register** later this year. This notice also announces a stakeholder workshop on the criteria that EPA's IRIS program uses to establish annual priorities for assessing chemical substances and provides information for observer registration.

DATES: Please submit scientific information in response to this notice in the form of an initial "submission inventory" in accordance with the instructions in this notice by April 7, 2003.

The stakeholder workshop on criteria for establishing priorities for assessing chemical substances for IRIS will be held March 4, 2003. This notice includes instructions for observer registration.

ADDRESSES: A "submission inventory" should be sent to the IRIS Submission Desk in accordance with the instructions provided under "Submission of Information" in this notice.

FOR FURTHER INFORMATION CONTACT: For information on the IRIS program, contact Amy Mills, Program Director, National Center for Environmental Assessment, (mail code 8601D), U.S. Environmental Protection Agency, Washington, DC 20460, or call (202) 564–3204, or send electronic mail inquiries to *mills.amy@epa.gov*. For general questions about access to IRIS or the content of IRIS, please call the IRIS Hotline at (301) 345–2870 or send electronic mail inquiries to *hotline.iris@epa.gov*.

SUPPLEMENTARY INFORMATION:

Background

IRIS is an EPA data base containing Agency consensus scientific positions on potential adverse human health effects that may result from exposure to chemical substances found in the environment. IRIS currently provides information on health effects associated with chronic exposure to over 500 specific chemical substances.

IRIS contains chemical-specific summaries of qualitative and quantitative health information in support of the first two steps of the risk assessment process, *i.e.*, hazard identification and dose-response evaluation. IRIS information includes the reference dose for noncancer health effects resulting from oral exposure, the reference concentration for non-cancer health effects resulting from inhalation exposure, and the carcinogen assessment for both oral and inhalation exposure. Combined with specific situational exposure assessment information, the summary health hazard information in IRIS may be used as a source in evaluating potential public health risks from environmental contaminants.

The IRIS Program

EPA's process for developing IRIS consists of: (1) An annual **Federal Register** announcement of EPA's IRIS agenda and call for scientific information from the public on the selected chemical substances, (2) a search of the current literature, (3) development of health assessments and draft IRIS summaries, (4) peer review within EPA, (5) peer review outside EPA, (6) EPA consensus review and management approval, (7) preparation of final IRIS summaries and supporting documents, and (8) entry of summaries

and supporting documents into the IRIS data base.

This notice provides: (1) A list of the IRIS assessments completed in FY 2002 and early FY 2003, (2) a list of the IRIS assessments in progress that the Agency expects to complete in FY 2003–2005, (3) an update on EPA's IRIS "needs assessment" report, (4) an announcement of a stakeholder workshop on EPA's criteria for selecting chemical substances for the annual agenda, (5) a list of the new assessments beginning in FY 2003, and (6) instructions to the public for submitting scientific information to EPA pertinent to the development of IRIS assessments.

Assessments Completed in FY 2002 and Early FY 2003

The following assessments were completed and entered into IRIS in FY 2002 and early FY 2003. These assessments were listed in the **Federal Register** of January 9, 2002 (67 FR 1212). All health endpoints were assessed. Where information was available, both qualitative and quantitative assessments were developed.

Substance name	CAS No.
1,3-Butadiene	106–99–0
Chloroform (oral route)	67–66–3
1,1-Dichloroethylene	75–35–4
Phenol	108–95–2

Assessments in Progress

The following assessments are underway or generally complete and are planned for entry into IRIS in FY 2003 or FY 2004. Those that are likely to be delayed to FY 2005 are indicated by an asterisk (*). All of the assessments below were listed in the January 9, 2002, **Federal Register**. All health endpoints, cancer and noncancer, are being assessed unless otherwise noted. For all endpoints assessed, both qualitative and quantitative assessments are being developed where information is available. Pesticides denoted with a double asterisk (**) are having only oral reference dose and carcinogenicity endpoints assessed.

Substances denoted with a triple asterisk (***) are being evaluated for effects from acute and/or subchronic exposure, in addition to chronic exposure. These substances are part of a pilot test to evaluate the application of methods, procedures, and resource needs for adding less-than-lifetime exposure duration information to IRIS. For some substances listed, the less-than-lifetime evaluation is being initiated in FY 2003, and may therefore be completed and made available on IRIS sometime after the chronic exposure evaluation.

Substance name	CAS No.
Acetaldehyde	75–07–0
Acetone	67–64–1
Acrolein***	107–02–8
Acrylamide	79–06–1
Alachlor**	15972–60–8
Ammonium perchlorate (and other perchlorate salts).	7790–98–9
Antimony and compounds.	7440–36–0
Asbestos*	1332–21–4
Atrazine**	1912–24–9
Azinphos methyl**	86–50–0
Benzene***	71–43–2
Benzo(a)pyrene	50–32–8
Bromoxynil**	1689–84–5
Boron	7440–42–8
Cadmium	7440–43–9
Captan**	133–06–2
Carbon tetrachloride	56–23–5
Chloroethane	75–00–3
Chloroform (inhalation route).	67–66–3
Chloroprene	126–99–8
Chlorothalonil**	1897–45–6
Chlorpyrifos**	2921–88–2
Copper	7440–50–8
Cyclohexane	110–82–7
Diazinon**	333–41–5
Dibutyl phthalate***	84–74–2
Dichloroacetic acid	79–43–6
1,2-Dichlorobenzene	95–50–1
1,3-Dichlorobenzene	541–73–1
1,4-Dichlorobenzene	106–46–7
Diesel exhaust	[N.A.]
Di(2-ethylhexyl)adipate (DEHA).	103–23–1
Di(2-ethylhexyl)phthalate	117–81–7
Diflubenzuron	35367–38–5
Ethalfluralin**	55283–68–6
Ethanol	64–17–5
Ethion**	563–12–2
Ethylbenzene	100–41–4
Ethylene dibromide	106–93–4
Ethylene dichloride	107–06–2
Ethylene oxide***	75–21–8
Formaldehyde	50–00–0
Glyphosate**	1071–83–6
Hexachlorobutadiene	87–68–3
gamma-Hexachlorocyclohexane (Lindane)**.	58–89–9
Hexahydro-1,3,5-trinitrotriazine (RDX).	121–82–4
Hydrogen cyanide*	74–90–8
Hydrogen sulfide***	7783–06–4
Isopropanol	67–63–0
Methanol	67–56–1
Methidathion**	950–37–8
Methomyl**	16752–77–5
Methyl ethyl ketone	78–93–3
Methyl isobutyl ketone (MIBK).	108–10–1
Methyl parathion**	298–00–0
Methyl tert-butyl ether (MTBE).	1634–04–4
2-Methylnaphthalene	91–57–6
Metolachlor**	51218–45–2
Mirex	2385–85–5
Naphthalene (cancer effects; inh. route).	91–20–3
Nickel (soluble salts)	[N.A.—various]
Nitrobenzene	98–95–3
PAH mixtures*	[N.A.—various]
Pendimethalin**	40487–42–1
Pebulate**	1114–71–2
Pentachlorophenol	87–86–5
Perfluorooctanoic acid—ammonium salt.	3825–26–1
Perfluorooctane sulfonate—potassium salt.	2795–39–3
Phosgene***	75–44–5
Polychlorinated biphenyls (PCBs-noncancer endpoints).	1336–36–3
Propachlor**	1918–16–7
Refractory ceramic fibers	[N.A.]
Silica (crystalline)	14808–60–7
Styrene	100–42–5
2,3,7,8-TCDD (dioxin)	1746–01–6
Tetrachloroethylene (perchloroethylene).	127–18–4
Tetrahydrofuran	109–99–9
Thallium*	7440–28–0
Toluene	108–88–3
Triallate**	2303–17–5
Trichlopyr**	55335–06–3
1,1,1-Trichloroethane***	71–55–6
Trichloroethylene	79–01–6
Uranium (natural)	7440–61–1
Vinyl acetate	108–05–4
Xylenes	1330–20–7
Zinc and compounds	7440–66–6

IRIS summaries and support documents for all substances listed above will be provided on the IRIS Web site at *http://www.epa.gov/iris* as they are completed. This publicly available web site is EPA's primary location for IRIS documents. In addition, external peer review drafts of IRIS documents can be found during their peer review periods via the "What's New" page of the IRIS web site. Interested parties should check the "What's New" page frequently for the availability of these drafts.

IRIS "Needs Assessment"

On July 20, 2001, EPA published a **Federal Register** notice (66 FR 37958) requesting public input to compile a "needs assessment" for planning the IRIS program. This notice requested that the public identify those chemical substances for which assessments either need to be added to IRIS or updated. The responses were considered along with EPA program priorities in the development of new starts for the FY 2003 agenda below. The notice also requested input on whether other types of evaluations are needed on IRIS such as toxicological evaluations for health effects associated with less-than-lifetime (*i.e.*, acute or subchronic) exposure durations. The notice also requested input on what priority any new type of evaluation should have compared to

evaluation of health effects associated with chronic exposures. Further, the notice asked whether or how EPA should work with external parties such as other government agencies, industries, or other organizations to develop health assessments that may be used as supporting documents for IRIS. The final "IRIS Needs Assessment" report will be made available on the IRIS web site when it is completed.

Stakeholder Workshop on Priority-Setting Criteria

EPA will be sponsoring a stakeholder workshop on the priority-setting criteria for selecting chemical substances for IRIS assessment. The purpose of the workshop is to get input from individuals and organizations outside of EPA on the criteria EPA uses to determine the annual IRIS agenda. Invited participants will include individuals or organizations that have previously expressed interest in the IRIS agenda through the IRIS Needs Assessment, the IRIS Submission Desk, other correspondence, or related activities. The workshop will be held March 4, 2003, from 1–5 pm at the Crystal City Marriott Hotel, 1999 Jefferson Davis Highway, Arlington, VA 22202. Versar, Inc., an EPA contractor, will convene and facilitate the workshop. To register to attend the workshop as an observer, contact Ms. Traci Bludis, Versar, Inc.; telephone: (703) 750–3000, extension 449; facsimile: (703) 642–6954; or e-mail: *bluditra@versar.com*. Space for observers may be limited, therefore, registration will be accepted on a first-come, first-served basis.

Information Requested on New Assessments for FY 2003

EPA will continue building and updating the IRIS data base. The Agency recognizes that a number of the assessments on IRIS need updating to incorporate new scientific information and methodologies. Further, many additional substances are candidates to be added to the IRIS data base. However, due to limited resources in the Agency to address the spectrum of needs, EPA developed a list of priority substances for attention beginning in FY 2003. The substances listed below are priorities for IRIS due to one or more reasons: (1) Agency statutory, regulatory, or program implementation needs; (2) new scientific information or methodology is available that might significantly change current IRIS information; (3) interest to other levels of government or the public, including interest expressed via responses to 66 FR 37958; and (4) most of the scientific assessment work has been completed while meeting other Agency requirements, and only a modest additional effort will be needed to complete the review and documentation for IRIS. Additional criteria for prioritizing chemical substances are currently under consideration for developing future IRIS agendas.

EPA may add resources to the IRIS program this year, and if so, may publish a supplement to this FY 2003 agenda with additional priority substances selected for assessment. EPA also plans to publish a solicitation later in the year for public nominations for substances to consider for assessment beginning in FY 2004.

The following IRIS health assessments have recently begun or will be started in FY 2003, with completion expected in FY 2004 or FY 2005. It is for these substances that the Agency is primarily requesting information from the public for consideration in the assessments. Unless otherwise noted, noncancer and cancer endpoints will be assessed for each substance. For all endpoints assessed, both qualitative and quantitative assessments are being developed where information is available. Substances denoted with a double asterisk (**) are being evaluated for effects from acute and/or subchronic exposure, in addition to chronic exposure. These substances, along with those similarly indicated on the previous list of assessments in progress, are part of a pilot test to evaluate the application of methods, procedures, and resource needs for adding less-than-lifetime exposure duration information to IRIS.

Substance name	CAS No.
Aldicarb/Aldicarb sulfoxide	116–06–3/1646–87–3
Aldicarb sulfone	1646–88–4
Arsenic, inorganic	7440–38–2
Bromobenzene	108–86–1
Bromodichloromethane	75–27–4
Bromoform	75–25–2
Cobalt	7440–48–4
Cryptosporidium	[N.A.]
Dibromochloromethane	124–48–1
Hexachlorocyclopentadiene*** (acute exposure only)	77–47–4
Kepone	143–50–0
Polybrominated diphenyl ethers (PBDEs):	
Decabromodiphenyl ether (deBDE)	1163–19–5
Hexabromodiphenyl ether (hxBDE)	36483–60–0
Pentabromodiphenyl ether (PeBDE)	32534–81–9
Tetrabromodiphenyl ether (TeBDE)	40088–47–9
Propionaldehyde	123–38–6
2,2,4-Trimethylpentane	540–84–1

Submission of Information

As in previous **Federal Register** notices announcing the annual IRIS agenda, EPA is soliciting public involvement in new assessments starting in FY 2003. While EPA conducts a thorough literature search for each chemical substance, there may be unpublished studies or other primary technical sources that we may not otherwise obtain through open literature searches. We would greatly appreciate receiving scientific information from the public during the information gathering stage for the list of "new assessments" listed above. Interested persons should provide scientific analyses, studies, and other pertinent scientific information. Also note that if you have submitted certain information previously to the IRIS Submission Desk, then there is no need to resubmit that information. While EPA is primarily soliciting information on new assessments announced in this notice, the public may submit information on any chemical substance at any time.

Procedures for Submission

Similar to the process described in the January 9, 2002, **Federal Register**, submissions will be handled in a three-step process:

1. Submission Inventory: First, you should simply provide a list within 60 days of this notice briefly identifying all the information (studies, reports, articles, etc.) you wish to submit. The list should specify by name and CASRN (Chemical Abstract Service Registry Number) the chemical substance(s) to which the information pertains, state the type of assessment that is being addressed (e.g., carcinogenicity), and a brief description of information to be submitted for consideration. Where possible, documents should be listed in scientific citation format, that is, author(s), title, journal, and date. Your cover letter should state that the correspondence is an IRIS submission. Describe in general terms the purpose of the submission and include names, addresses, and telephone numbers of person(s) to contact for additional information. Mail two copies of the submission inventory to the IRIS Submission Desk, c/o ASRC, 6301 Ivy Lane, Suite 300, Greenbelt, MD 20770.

Alternatively, you may submit the submission inventory and cover letter electronically to IRIS.desk@epa.gov. Electronic information must be submitted in WordPerfect format or as an ASCII file. Information also will be accepted on 3.5" floppy disks. All information in electronic form must be identified as an IRIS submission.

2. EPA Replies to Submission Inventory: In the second step, EPA will compare the submission inventory to existing files and identify the information that should be submitted. This step will help prevent an influx of duplicative information. You will receive notification of whether full submission of the information is requested.

3. Full Submission of Selected Material: In the third step, you should submit the information indicated by EPA within 30 days of EPA's reply. Prompt response to EPA will ensure that your material can be considered in the assessment in a timely fashion. Submissions should include a cover letter addressing all of the points in Item 1 above. In addition, when you submit results of new health effects studies concerning existing substances on IRIS, you should include a specific explanation of how and why the study results could change the information in IRIS.

Please send two copies, at least one of which should be unbound, to the IRIS Submission Desk, as described in Item 1. The IRIS Submission Desk will acknowledge receipt of your information.

Confidential Business Information (CBI) should not be submitted to the IRIS Submission Desk. CBI material must be submitted to the appropriate EPA office via established procedures (see 40 CFR part 2, subpart B). If you believe that a CBI submission contains information with implications for IRIS, please note that in the cover letter accompanying the submission to the appropriate office.

You may also request to augment your submission with a scientific briefing to EPA staff. Such requests should be made directly to Amy Mills, IRIS Program Director (*see* **FOR FURTHER INFORMATION CONTACT**).

Dated: January 30, 2003.

George W. Alapas,

Acting Director, National Center for Environmental Assessment.

[FR Doc. 03–2768 Filed 2–4–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7445–7]

Peer Consultation Workshop on a Proposed Asbestos Cancer Risk Assessment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public meetings.

SUMMARY: This notice announces a peer consultation workshop on a proposed asbestos cancer risk assessment methodology. The purpose of the workshop is to discuss the scientific merit of the proposed methodology developed for EPA by Dr. Wayne Berman and Dr. Kenny Crump. The proposed methodology distinguishes carcinogenic potency by asbestos fiber size and asbestos fiber type and advocates use of a new exposure index to characterize carcinogenic risk. Expert panelists will discuss many relevant technical issues at the workshop, and observers also will be invited to comment. A contractor will prepare a summary report documenting the discussions of the peer consultation workshop, and this report will be publicly available and become part of EPA's administrative record for IRIS. This meeting is being sponsored by EPA's Office of Solid Waste and Emergency Response and by EPA's Office of Research and Development.

DATES: The workshop will be held on February 25–27, 2003. The workshop hours will be from 9 a.m. to 5:30 p.m. on Tuesday, February 25; from 8:30 a.m. to 5 p.m. on Wednesday, February 26; and from 8 a.m. to 12 noon on Thursday, February 27. Observer comment periods are currently scheduled on Tuesday and Wednesday.

ADDRESSES: The peer consultation workshop will be held at the Westin St. Francis Hotel, 335 Powell Street, San Francisco, California. To attend the workshop as an observer, contact Eastern Research Group (ERG) either in writing, by electronic mail, or by telephone. ERG's contact information for this workshop is: Eastern Research Group, Conference Registration, 110 Hartwell Avenue, Lexington, MA 02421–3136; phone, 781–674–7374; fax: 781–674–2906; *meetings@erg.com*.

There is no charge for attending this workshop as an observer, but observers are encouraged to register early as the number of seats will be limited. Each registrant will receive a confirmation notice, a preliminary agenda, and a logistical fact sheet that contains directions to the meeting location. Copies of the proposed asbestos cancer risk assessment methodology can be obtained prior to the meeting from the EPA, OERR web page (*www.epa.gov.superfund*).

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA/CERCLA Call Center at 800–424–9346 or TDD 800–553–7672 (hearing impaired). In the Washington, DC metropolitan area, call 703–412–9810 or TDD 703–412–3323. For more detailed technical information on this conference call Richard Troast (703–603–9019) Office of Emergency and Remedial Response, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, D.C. 20460–0002, Mail Code 5204G.

SUPPLEMENTARY INFORMATION: EPA's current assessment of asbestos toxicity is based primarily on an asbestos assessment completed in 1986, and EPA's assessment has not changed substantially since that time. The 1986 assessment considers all mineral forms of asbestos and all asbestos fiber sizes (*i.e.*, all fibers longer than 5 micrometers) to be of equal carcinogenic potency. However, since 1986, there have been substantial improvements in asbestos measurement techniques and in the understanding of how asbestos exposure contributes to disease. To incorporate the knowledge gained over the last 17 years into the agency's toxicity assessment for asbestos, EPA oversaw the development of a revised

methodology for conducting risk assessments of asbestos. The proposed risk assessment methodology distinguishes between fiber sizes and fiber types in estimating potential health risks related to asbestos exposure. EPA is convening this peer consultation workshop to seek input from a panel of experts on the scientific merit of the proposed methodology. The experts will include scientists with extensive expertise in relevant fields, such as biostatistics, fiber identification, inhalation toxicology, and carcinogenic mechanisms. The panelists will be asked to respond to several charge questions that address key issues in the proposed methodology, including interpretations of epidemiology and toxicology literature, the proposed exposure index, and general topics. The product of the peer consultation workshop will be a report that summarizes the panelists' and observers' comments, conclusions, and recommendations on the proposed methodology.

David Lopez,

Director, Region 3/8 Support Center, OERR.

[FR Doc. 03–2767 Filed 2–4–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2003–0012; FRL–7288–1]

Organophosphate Pesticide; Availability of Dicrotophos Interim Risk Management Decision Document

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the availability of the interim risk management decision document for the organophosphate pesticide dicrotophos. This decision document has been developed as part of the public participation process that EPA and U.S. Department of Agriculture (USDA) are now using for involving the public in the reassessment of pesticide tolerances under the Food Quality Protection Act (FQPA), and the reregistration of individual organophosphate pesticides under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).

FOR FURTHER INFORMATION CONTACT: Laura Parsons, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–5776; e-mail address: *parsons.laura@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, nevertheless, a wide range of stakeholders will be interested in obtaining the interim risk management decision document for dicrotophos, including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the use of pesticides on food. Since other entities also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPP–2003–0012. The official public docket consists of the document specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/.* An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select "search," then key in the appropriate docket ID number.

For questions on the IRED in this document, contact the Chemical Review Manager listed under **FOR FURTHER INFORMATION CONTACT**.

II. What Action is the Agency Taking?

EPA has assessed the risks of dicrotophos and reached an Interim Reregistration Eligibility Decision (IRED) for this organophosphate pesticide. Provided that risk mitigation measures are adopted, dicrotophos fits into its own risk cup — its individual, aggregate risks are within acceptable levels. A restricted use chemical used mainly to control insects on cotton, dicrotophos residues in food and drinking water do not pose risk concerns. There are no residential uses and therefore dicrotophos fits into its own risk cup. To reduce worker and ecological risks, dicrotophos may no longer be applied by aerial equipment, closed mixing/loading systems and closed cabs are required, and total seasonal maximum application is limited to 0.83 lb active ingredient and only 0.5 lb of this can be applied prior to August 1 of any year. Additionally, to ensure that dicrotophos use does not increase dramatically in the future, a production cap is required to limit production to an average of the annual amount produced in 1999, 2000 and 2001. These mitigation measures are expected to reduce, but not eliminate worker and ecological risks. These risks are offset by the benefit of dicrotophos to control certain insects in cotton.

The interim risk management decision document for dicrotophos was made through the organophosphate pesticide pilot public participation process, which increases transparency and maximizes stakeholder involvement in EPA's development of risk assessments and risk management decisions. The pilot public participation process was developed as part of the EPA-USDA Tolerance Reassessment Advisory Committee (TRAC), which was established in April 1998, as a subcommittee under the auspices of EPA's National Advisory Council for Environmental Policy and Technology. A goal of the pilot public participation process is to find a more effective way for the public to participate at critical junctures in the Agency's development of organophosphate pesticide risk assessments and risk management decisions. EPA and USDA began implementing this pilot process in August 1998, to increase transparency

and opportunities for stakeholder consultation.

EPA worked extensively with affected parties to reach the decisions presented in the interim risk management decision document, which conclude the pilot public participation process for dicrotophos. As part of the pilot public participation process, numerous opportunities for public comment were offered as the interim risk management decision document was being developed. The dicrotophos interim risk management decision document therefore is issued without a formal public comment period concluding review of the individual organophosphate pesticide. The docket remains open, however, and any comments submitted in the future will be placed in the public docket.

The risk assessments for dicrotophos were released to the public through notices published in the **Federal Register** on November 10, 1999 (64 FR 61332) (FRL–6393–9), and June 14, 2000 (65 FR 37371) (FRL–6593–4).

EPA's next step under FQPA is to complete a cumulative risk assessment and risk management decision for the organophosphate pesticides, which share a common mechanism of toxicity. The interim risk management decision document on dicrotophos cannot be considered final until this cumulative assessment is complete.

When the cumulative risk assessment for the organophosphate pesticides has been completed, EPA will issue its final tolerance reassessment decision for dicrotophos and further risk mitigation measures may be needed.

List of Subjects

Environmental protection, Chemicals, Pesticides and pests.

Dated: January 22, 2003.

Lois A Rossi,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 03–2775 Filed 2–4–03; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2003–0030; FRL–7290–6]

Notice of Receipt of Requests for Amendments to Delete Uses in Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with section 6(f)(1) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), as amended, EPA is issuing a notice of receipt of request for amendments by registrants to delete uses in certain pesticide registrations. Section 6(f)(1) of FIFRA provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be amended to delete one or more uses. FIFRA further provides that, before acting on the request, EPA must publish a notice of receipt of any request on the **Federal Register**.

DATES: The deletions are effective on August 4, 2003, unless the Agency receives a withdrawal request on or before August 4, 2003. The Agency will consider withdrawal requests postmarked August 4, 2003.

Users of these products who desire continued use on crops or sites being deleted should contact the applicable registrant on or before August 4, 2003.

ADDRESSES: Withdrawal requests may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, it is imperative that you identify docket ID number OPP–2003–0030 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: James A. Hollins, Office of Pesticide Programs (7502C), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–5761; e-mail address: *hollins.james@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. Although this action may be of particular interest to persons who produce or use pesticides, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the information in this notice, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of This Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPP–2003–0030. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select "search," then key in the appropriate docket ID number.

II. What Action is the Agency Taking?

This notice announces receipt by the Agency of applications from registrants to delete uses in certain pesticide registrations. These registrations are listed in the following Table 1 by registration number, product name/active ingredient, and specific uses deleted:

TABLE 1.—REGISTRATIONS WITH REQUESTS FOR AMENDMENTS TO DELETE USES IN CERTAIN PESTICIDE REGISTRATIONS

Registration no.	Product Name	Active Ingredient	Delete From Label
000264–00328	SEVIN Brand 80% Dust Base Carbaryl Insecticide	Carbaryl	Poultry
000264–00335	SEVIN Brand RP4 Carbaryl Insecticide	Carbaryl	Poultry
001812–00353	Trilin 5	Trifluralin	Eggplant, onion uses
002749–00106	Phorate Technical	Phorate	Wheat
008119–00008	Hinder Deer & Rabbit Repellent Ready-to-Use	Ammonium salts of C8-18 & C18′ fatty acids	Soybeans and peanuts
062719–00306	Starane+Salvo	Acetic acid; fluroxpyr 1-methylheptyl ester	Oats
062719–00333	Starane+Saber	Dimethylamine 2,4D; Fluroxypyr 1-methylheptyl ester	Oats

Users of these products who desire continued use on crops or sites being deleted should contact the applicable registrant before August 4, 2003 to discuss withdrawal of the application for amendment. This 180–day period will also permit interested members of the public to intercede with registrants prior to the Agency's approval of the deletion.

Table 2 includes the names and addresses of record for all registrants of the products in Table 1, in sequence by EPA company number.

TABLE 2.—REGISTRANTS REQUESTING VOLUNTARY CANCELLATION

EPA Company no.	Company Name and Address
000264	Bayer CropScience LP, 2 T.W. Alexander Drive, Research Triangle Park, NC 27709.
001812	Griffin L.L.C., Box 1847, Valdosta, GA 31603.
002749	Aceto Agriculture Chemicals Corp., One Hollow Lane, Lake Success, NY 11042.
008119	Regulatory Services Inc., Agent For: E.M. Matson Jr., .Co., 17220 Westview Rd., Lake Oswego, OR 97034.
062719	Dow AgroSciences LLC, 9330 Zionsville Rd 308/2E225, Indianapolis, IN 46268.

III. What is the Agency Authority for Taking This Action?

Section 6(f)(1) of FIFRA provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be amended to delete one or more uses. The Act further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register**. Thereafter, the Administrator may approve such a request.

IV. Procedures for Withdrawal of Request

Registrants who choose to withdraw a request for use deletion must submit such withdrawal in writing to James A. Hollins, at the address under **FOR FURTHER INFORMATION CONTACT**, postmarked on or before August 4, 2003.

V. Provisions for Disposition of Existing Stocks

The Agency has authorized the registrants to sell or distribute product under the previously approved labeling for a period of 18 months after approval of the revision, unless other restrictions have been imposed, as in special review actions.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: January 23, 2003.

Linda Vlier Moos,

Acting Director, Information Resources and Services Division.

[FR Doc. 03–2774 Filed 2–4–03 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2003–0019; FRL–7288–8]

Notice of Receipt of Requests to Voluntarily Cancel Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, EPA is issuing a notice of receipt of request by registrants to voluntarily cancel certain pesticide registrations.

DATES: Unless a request is withdrawn by August 4, 2003, or March 7, 2003, for EPA Registration Numbers: 001812–00420; 001812–00424; 006218–00069, orders will be issued canceling these registrations.

FOR FURTHER INFORMATION CONTACT: James A. Hollins, Information Resources Services Division 7502C, Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–5761; e-mail address: *hollins.james@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. Although this action may be of particular interest to persons who produce or use pesticides, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions

regarding the information in this notice, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPP–2003–0019. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select "search," then key in the appropriate docket ID number.

II. What Action is the Agency Taking?

This notice announces receipt by the Agency of applications from registrants to cancel 33 pesticide products registered under section 3 or 24(c) of FIFRA. These registrations are listed in sequence by registration number (or company number and 24(c) number) in Table 1 of this unit:

TABLE 1.—REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION

Registration Number	Product Name	Chemical Name
000100 ID–02–0018	Cyclone concentrate/gramoxone max	1,1'-Dimethyl-4,4'-bipyridinium dichloride
000241 ID–99–0006	Raptor herbicide	(+-)-2-(4,5-Dihydro-4-methyl-4-(1-methylethyl)-5-oxo-1H-imidazol-2-
000264–00456	Ethoprop (technical grade)	O-Ethyl S,S-dipropyl phosphorodithioate
000264–00465	Mocap 10% granular nematicide insecticide	O-Ethyl S,S-dipropyl phosphorodithioate
000264–00644	Whip 1 EC herbicide	2-(4-((6-Chloro-2-benzoxazolyl)oxy)phenoxy)propionic acid, ethyl ester, (+-)
000264 FL–85–0001	Mocap nematacide - insecticide 10% granular	O-ethyl S,S-dipropyl phosphorodithioate
000264 ME–93–0003	Mocap 10% granular nematicide - insecticide	O-ethyl S,S-dipropyl phosphorodithioate
000400 NE–02–0005	Dimilin 2L	1-(4-Chlorophenyl)-3-(2,6-difluorobenzoyl)urea
000400 OR–02–0008	Dimilin 2L	1-(4-Chlorophenyl)-3-(2,6-difluorobenzoyl)urea
000400 WA–02–0006	Dimilin 2L	1-(4-Chlorophenyl)-3-(2,6-difluorobenzoyl)urea
001812–00420	Griffin boa herbicide	1,1'-Dimethyl-4,4'-bipyridinium dichloride
001812–00424	Griffin boa concentrate	1,1'-Dimethyl-4,4'-bipyridinium dichloride
006218–00069	Summit Permacide	O,O-Diethyl O-(2-isopropyl-6-methyl-4-pyrimidinyl) phosphorothioate
		(Butylcarbityl)(6-propylpiperonyl) ether 80% and related compounds 20%
		Pyrethrins
028293–00086	Unicorn dairy spray for milk houses and animals	(Butylcarbityl)(6-propylpiperonyl) ether 80% and related compounds 20%
		Pyrethrins
028293–00094	Unicorn automatic sequential insecticide	(Butylcarbityl)(6-propylpiperonyl) ether 80% and related compounds 20%
		Pyrethrins
028293–00156	Unicorn pet shampoo III	Cyclopropanecarboxylic acid, 3-(2,2-dichloroethenyl)-2,2-dimethyl
028293–00157	Unicorn pyfen fogger	N-Octyl bicycloheptene dicarboximide
		(Butylcarbityl)(6-propylpiperonyl) ether 80% and related compounds 20%
		Pyrethrins

TABLE 1.—REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION—Continued

Registration Number	Product Name	Chemical Name
		4-Chloro-alpha-(1-methylethyl) benzeneacetic acid, cyano(3-phenoxyphenyl)methyl
028293–00168	Unicorn 7900	Iodine
028293–00170	Unicorn 7920	Alkyl* dimethyl benzyl ammonium chloride *(50%C14, 40%C12, 10%C16)
		Didecyl dimethyl ammonium chloride
		Octyl decyl dimethyl ammonium chloride
		Dioctyl dimethyl ammonium chloride
028293–00171	Unicorn 7930	Alkyl* dimethyl benzyl ammonium chloride *(50%C14, 40%C12, 10%C16)
		Didecyl dimethyl ammonium chloride
		Octyl decyl dimethyl ammonium chloride
		Dioctyl dimethyl ammonium chloride
028293–00172	Unicorn flea and tick shampoo	(Butylcarbityl)(6-propylpiperonyl) ether and related compounds 20%
		Pyrethrins
028293–00184	Unicorn liquid plant spray #2	Pyrethrins
		Cyclopropanecarboxylic acid, 3-(2,2-dichloroethenyl)-2,2-dimethyl
028293–00186	Unicorn (vegetable and ornamental) spray #2	(S-(R*,R*))-4-Chloro-alpha-(1-methylethyl)benzeneacetic acid,
028293–00187	Unicorn vegetable spray concentrate	(S-(R*,R*))-4-Chloro-alpha-(1-methylethyl)benzeneacetic acid,
028293–00189	Unicorn fogger #7	*N*-Octyl bicycloheptene dicarboximide
		(Butylcarbityl)(6-propylpiperonyl) ether 80% and related compounds 20%
		Pyrethrins
		(S-(R*,R*))-4-Chloro-alpha-(1-methylethyl)benzeneacetic acid
028293–00193	Unicorn fogger #5	2-Methyl-4-oxo-3-(2-propenyl)-2-cyclopenten-1-yl d-trans-2,2-dimethyl
		(S-(R*,R*))-4-Chloro-alpha-(1-methylethyl)benzeneacetic acid
028293–00262	Unicorn ear miticide IV	(Butylcarbityl)(6-propylpiperonyl) ether 80% and related compounds 20%
		Pyrethrins
046813–00020	CCL wasp and hornet killer	(1-Cyclohexene-1,2-dicarboximido)methyl 2,2-dimethyl-3-(2-methylpropenyl)cycloprop
		(3-Phenoxyphenyl)methyl d-cis and trans* 2,2-dimethyl-3-(2-methylpropenyl)cyclopro
049403–00004	Nipa BCP disinfectant	2-Benzyl-4-chlorophenol
049403–00005	Sanco-phene	2-Benzyl-4-chlorophenol
		4-Tert-amylphenol
		O-phenylphenol
062719–00245	Lorsban 4E–SG	O,O-diethyl O-(3,5,6-trichloro-2-pyridyl) phosphorothioate
062719 ID–95–0018	Transline	3,6-Dichloro-2-pyridinecarboxylic acid alkanolamine salts (of ethanol

Unless a request is withdrawn by the registrant within 180 days of publication of this notice, or 30 days where indicated, orders will be issued canceling all of these registrations. Users of these pesticides or anyone else desiring the retention of a registration should contact the applicable registrant directly during the indicated comment period.

In accordance with the December 2000, Diazinon Memorandum of Agreement, the cancellation order shall become effective 30 days after the date of this **Federal Register** and the distribution or sale of existing stocks by the registrant of EPA registration number 006218–0069, which bears instructions for indoor use, shall not be lawful under FIFRA as of the effective date of the cancellation order, except for the purposes of shipping such stocks for export consistent with Section 17 of FIFRA or for proper disposal. The distribution or sale of existing stocks of EPA registration number 006218–0069 by any person other than the registrant will not be lawful under FIFRA after December 31, 2002, except for the purpose of shipping such stocks for export consistent with Section 17 of FIFRA or for proper disposal.

Table 2 of this unit includes the names and addresses of record for all registrants of the products in Table 1 of this unit, in sequence by EPA company number:

TABLE 2.—REGISTRANTS REQUESTING VOLUNTARY CANCELLATION

EPA Company Number	Company Name and Address
000100	Syngenta Crop Protection, Inc., Box 18300, Greensboro, NC 27419
000241	BASF Corp., Box 13528, Research Triangle Park, NC 27709
000264	Bayer CropScience LP, 2 T.W. Alexander Drive, Research Triangle Park, NC 27709
000400	Crompton MFG. Co., Inc., 74 Amity Rd, Bethany, CT 06524
001812	Griffin L.L C., Box 1847, Valdosta, GA 31603
006218	Summit Chemical Co, Summit Responsible Solutions, 7657 Canton Center Drive, Baltimore, MD 21224
028293	Unicorn Laboratories, 12385 Automobile Blvd., Clearwater, FL 33762
046813	John Roach, Agent For: K-G Packaging, Inc., 24931 Winoa, Dearborn, MI 48124
049403	Lewis and Harrison, Agent For: Clariant Corp., 122 C St NW Ste 740, Washington, DC 20001
062719	Dow AgroSciences LLC, 9330 Zionsville Rd 308/2E225, Indianapolis, IN 46268

III. What is the Agency's Authority for Taking this Action?

Section 6(f)(1) of FIFRA provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be canceled. FIFRA further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register**. Thereafter, the Administrator may approve such a request.

IV. Procedures for Withdrawal of Request

Registrants who choose to withdraw a request for cancellation must submit such withdrawal in writing to the person listed under **FOR FURTHER INFORMATION CONTACT**, postmarked before August 4, 2003, or March 7, 2003 for EPA Registration Numbers: 001812–00420; 001812–00424; 006218–00069.

This written withdrawal of the request for cancellation will apply only to the applicable FIFRA section 6(f)(1) request listed in this notice. If the product(s) have been subject of a previous cancellation action, the effective date of cancellation and all other provisions of any earlier cancellation action are controlling. The withdrawal request must also include a commitment to pay any reregistration fees due, and to fulfill any applicable unsatisfied data requirements.

V. Provisions for Disposition of Existing Stocks

The effective date of cancellation will be the date of the cancellation order. The orders effecting these requested cancellations will generally permit a registrant to sell or distribute existing stocks for 1–year after the date the cancellation request was received. This policy is in accordance with the Agency's statement of policy as prescribed in the **Federal Register** of June 26, 1991 (56 FR 29362) (FRL–3846–4). Exceptions to this general rule will be made if a product poses a risk concern, or is in noncompliance with reregistration requirements, or is subject to a data call-in. In all cases, product-specific disposition dates will be given in the cancellation orders.

Existing stocks are those stocks of registered pesticide products which are currently in the United States and which have been packaged, labeled, and released for shipment prior to the effective date of the cancellation action. Unless the provisions of an earlier order apply, existing stocks already in the hands of dealers or users can be distributed, sold, or used legally until they are exhausted, provided that such further sale and use comply with the EPA approved label and labeling of the affected product. Exception to these general rules will be made in specific cases when more stringent restrictions on sale, distribution, or use of the products or their ingredients have already been imposed, as in a Special Review action, or where the Agency has identified significant potential risk concerns associated with a particular chemical.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: January 22, 2003.

Linda Vlier Moos,

Acting Director, Information Resources Services Division, Office of Pesticide Programs.

[FR Doc. 03–2772 Filed 2–4–03; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2002–0081; FRL–7287–5]

Imidacloprid; Notice of Filing Pesticide Petitions to Establish Tolerances for a Certain Pesticide Chemical in or on Food

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of pesticide petitions proposing the establishment of regulations for residues of a certain pesticide chemical in or on various food commodities.

DATES: Comments, identified by docket ID number OPP–2002–0081, must be received on or before March 7, 2003.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Sidney Jackson, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–7610; e-mail address: *jackson.sidney@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

- Crop production (NAICS 111)
- Animal production (NAICS 112)
- Food manufacturing (NAICS 311)
- Pesticide manufacturing (NAICS 32532)

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. To determine whether you or your business may be affected by this action, you should carefully examine the applicability provisions in OPP–2002–0081. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPP–2002–0081. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/.*

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I. B.1. Once in the system, select "search," then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and To Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments. If you wish to submit CBI or information that

is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically.* If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket*, and follow the online instructions for submitting comments. Once in the system, select "search," and then key in docket ID number OPP–2002–0081. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by e-mail to *opp-docket@epa.gov*, Attention: Docket ID Number OPP–2002–0081. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail.* Send your comments to: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID Number OPP–2002–0081.

3. *By hand delivery or courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, Attention: Docket ID Number OPP–2002–0081. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

D. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Offer alternative ways to improve the notice or collection activity.

7. Make sure to submit your comments by the deadline in this notice.

8. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

EPA has received pesticide petitions as follows proposing the establishment and/or amendment of regulations for residues of certain pesticide chemical in or on various food commodities under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that these petitions contain data or information regarding the elements set forth in FFDCA section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: January 24, 2003.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

Summaries of Petitions

The petitioner's summaries of the pesticide petitions are printed below as required by FFDCA section 408(d)(3). The summaries of the petitions were prepared by Bayer Corporation and represents the view of the company. The petitions summaries announce the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed. The Interregional Research Project No. 4 (IR–4) assembled and submitted the petitions to EPA on behave of the Bayer Corporation.

Interregional Research Project Number 4 and Bayer Corporation

PP 1E6268, PP 1E6254, PP 1E6237, PP 1E6225, PP 0E6203, PP 2E6403, PP 2E6406, PP 2E6409, PP 2E6417, PP 2E6421, PP 2E6435, PP 2E6414, PP 2E6458, and PP 2E6506

EPA has received pesticide petitions from the Interregional Research Project Number 4 (IR–4), Technology Centre and Rutgers State University of New Jersey, 681 U.S. Highway #1 South, North Brunswick, NJ 08902–3390 proposing, pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), to amend 40 CFR part 180.472 by establishing tolerances for the combined residues of imidacloprid, 1-(6-chloro-3-pyridinyl)methyl-*N*-nitro-2-imidazolidinimine, and its metabolites containing the 6-chloropyridinyl moiety, all expressed as imidacloprid in or on the raw agricultural commodities as follows:

1. PP 1E6268 proposes tolerances for bushberry subgroup 13B and lingonberry, juneberry, and salal at 3.5 parts per million (ppm).

2. PP 1E6254 proposes a tolerance for okra at 1.0 ppm.

3. PP 1E6237 proposes a tolerance for watercress at 3.5 ppm.

4. PP 1E6225 proposes a tolerance for artichoke at 2.5 ppm.

5. PP 0E6203 proposes a tolerance for cranberry at 0.05 ppm.

6. PP 2E6403 proposes a tolerance for vegetable, legume, except soybean, group 6 at 4.0 ppm.

7. PP 2E6406 proposes tolerances for avocado, papaya, star apple, black sapote, mango, sapodilla, canistel, and mamey sapote at 1.0 ppm, and lychee, longan, Spanish lime, rambutan, pulasan, and persimmon at 3.0 ppm.

8. PP 2E6409 proposes a tolerance for vegetable, leaves of root and tuber, group 2 at 4.0 ppm.

9. PP 2E6417 proposes a tolerance for strawberry at 0.5 ppm.

10. PP 2E6421 proposes a tolerance for fruit, stone, group 12 at 3.0 ppm.

11. PP 2E6435 proposes tolerances for guava, feijoa, jaboticaba, wax jambu, starfruit, passionfruit, and acerola at 1.0 ppm.

12. PP 2E6414 proposes tolerances for corn, pop, grain at 0.05 ppm and corn, pop, stover at 0.2 ppm.

13. PP 2E6458 proposes a tolerance for mustard seed at 0.05 ppm.

14. PP 2E6506 proposes a tolerance for vegetable, root, and tuber, except sugar beet, group 1 at 0.4 ppm.

EPA has determined that the petitions contain data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petitions. Additional data may be needed before EPA rules on the petitions. Bayer Corporation, Crop Protection, Kansas City, MO 64120–0013 produces the imidacloprid product(s) of concern for these pending tolerances.

A. Residue Chemistry

1. *Plant metabolism.* The nature of the imidacloprid residue in plants and livestock is adequately understood. The residues of concern are combined residues of imidacloprid and it metabolites containing the 6-chloropyridinyl moiety, all calculated as imidacloprid.

2. *Analytical method.* The analytical method is a common moiety method for imidacloprid and its metabolites containing the 6-chloropyridinyl moiety using a permanganate oxidation, silyl derivatization, and capillary gas chromatography/mass spectrometry (GC/MS) selective ion monitoring. This method has successfully passed a petition method validation in EPA labs. There is a confirmatory method specifically for imidacloprid and several metabolites utilizing GC/MS and high performance liquid chromotography/ using ultra-violet detection (HPLC/UV) which has been validated by EPA as well. Imidacloprid and its metabolites are stable for at least 24 months in the commodities when frozen.

3. *Magnitude of residues.* Bushberry subgroup, lingonberry, juneberry, and salal. IR–4 has received requests from Maine for imidacloprid use on lowbush blueberries and from New Jersey, Delaware, Michigan, and South Carolina for use on high bush blueberries. Two field trials were performed on lowbush blueberries and nine trials on highbush blueberries to support the requested tolerance of 3.5 ppm.

- *Okra.* No data was submitted in support of this tolerance petition; rather, IR–4 proposes that EPA, utilizes the registrant's fruiting vegetable data (peppers and tomatoes). IR–4 believes this approach is justified based upon the similarities of okra to members of the fruiting vegetable crop group. It is noteworthy that okra is classified as a fruiting vegetable under CODEX.
- *Watercress.* IR–4 received a request from the Florida Agricultural Experiment Station for the registration of imidacloprid on watercress. No watercress data were presented in support of this petition; rather, IR–4 requests that EPA utilizes the registrant's head and leaf lettuce data to support the proposed watercress tolerance of 3.5 ppm.
- *Artichoke.* IR–4 has received requests from California for the use of imidacloprid on artichoke. To support this request and the proposed tolerance of 2.5 ppm, magnitude of residue data were collected from three field trials in California.
- *Cranberry.* IR–4 received a request from Massachusetts for the use of imidacloprid on cranberries. To support this request and the proposed tolerance for strawberry at 0.05 ppm. IR–4 conducted five field trials in the states of Massachusetts, New Jersey, Wisconsin, and Oregon.
- *Peas.* IR–4 received a request from Washington, Oregon, and Delaware for the use of imidacloprid on peas. In support of this request, field trials were conducted in Wisconsin, Ohio, Washington, Maryland, New Jersey, and California.
- *Mamey sapote.* IR–4 received a request from Florida for the use of imidacloprid on mamey sapote. In support of this request, two field trials were conducted in southern Florida.
- *Leaves of root and tuber crop group.* IR–4 received a request from Oregon and California for the use of imidacloprid on beets. In support of this request, magnitude of residue data were collected from field trials conducted in Texas, Ohio, New Jersey, Oregon, and Indiana. Data from beet tops were combined with the previously submitted petition for turnip tops to support a tolerance for leaves of root and tuber vegetables.
- *Stone fruit.* IR–4 received requests from Utah, Washington, Michigan, and Oregon for the use of imidacloprid on cherries, Michigan and Washington for the use of imidacloprid on peaches, and Michigan for the use of imidacloprid on plums. Magnitude of residue data were collected on these crops to support a stone fruit crop group tolerance.
- *Strawberry.* IR–4 received requests from Oregon, Mississippi, Michigan, Wisconsin, and North Carolina for the use of imidacloprid on strawberries. In support of this requested tolerance, magnitude of residue trials were conducted in Florida, California, New Jersey, Wisconsin, and Oregon.
- *Dry beans.* IR–4 received requests from New York, Washington, Wisconsin, Georgia, California, and Idaho for the use of imidacloprid on dry beans. In support of this request, magnitude of residue trials were conducted in Washington, North Dakota, New York, Wisconsin, and California.
- *Guava and related crops (feijoa, jaboticaba, wax jambu, starfruit,*

passion fruit, and acerola). IR–4 received a request from Florida for the use of imidacloprid on guava. Magnitude of the residue data were collected from Florida on guava to support a tolerance on guava and related crops.

• *Corn, pop.* No crop-specific data were submitted with the petition proposing imidacloprid tolerances on popcorn. IR–4 proposes that EPA translates residue data from field corn to popcorn in order to establish the requested tolerances.

• *Mustard seed.* No crop-specific data are being submitted with this petition proposing an imidacloprid tolerance on mustard seed. IR–4 proposes that EPA translates residue data from canola to mustard seed in order to establish the tolerance based upon the botanical and cultural similarities of the crops. Additionally, Canada has a crop group for oil seeds (crop group 20) which contains mustard seed and has canola as one of the representative commodities.

B. Toxicological Profile

EPA has evaluated the available imidacloprid toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the reliability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by imidacloprid is discussed in Unit II.A. of the final rule on imidacloprid pesticide tolerances published in the **Federal Register** of September 18, 1998 (63 FR 49837) (FRL–6027–1). Please refer to this document should you desire detailed toxicological information on imidacloprid.

1. *Animal metabolism.* The metabolism of NTN 33893 (imidacloprid) in rats was reported in seven studies. The data show that imidacloprid was rapidly absorbed and eliminated in the excreta (90% of the dose within 24 hours), demonstrating no biologically significant differences between sexes, dose levels, or route of administration. Elimination was mainly renal (70–80% of the dose) and fecal (17–25%). The major part of the fecal activity originated in the bile. Total body accumulation after 48 hours consisted of 0.5% of the radioactivity with the liver, kidney, lung, skin, and plasma being the major sites of accumulation. Therefore, bioaccumulation of imidacloprid is low in rats. Maximum plasma concentration was reached between 1.1 and 2.5 hours. Two major routes of biotransformation were proposed for imidacloprid. The first route included an oxidative cleavage of the parent compound rendering 6-chloronicotinic acid and its glycine conjugate. Dechlorination of this metabolite formed the 6-hydroxynicotinic acid and its mercapturic acid derivative. The second route included the hydroxylation followed by elimination of water of the parent compound rendering NTN 35884. A comparison between [methylene-^{14}C-]imidacloprid and [imidazolidine-4,5-^{14}C]imidacloprid showed that while the rate of excretion was similar, the renal portion was higher with the imidazolidine-labeled compound. In addition, accumulation in tissues was generally higher with the imidazolidine-labeled compound.

A comparison between imidacloprid and one of its metabolites, WAK 3839, showed that the total elimination was the same for both compounds. The proposed metabolic pathways for these two compounds were different. WAK 3839 was formed following pretreatment (repeated dosing) of imidacloprid.

2. *Endocrine disruption.* The toxicology data base for imidacloprid is current and complete. Studies in this data base include evaluation of the potential effects on reproduction and development, and an evaluation of the pathology of the endocrine organs following short- or long-term exposure. These studies revealed no primary endocrine effects due to imidacloprid.

C. Aggregate Exposure

1. *Dietary exposure.* Assessments were conducted to evaluate potential risks due to chronic and acute dietary exposure of the U.S. population and selected population subgroups to residues of imidacloprid. These analyses cover all registered crops including rotational crops; uses pending with EPA Registration Division's 2002 work plan including dry beans, peas, bushberries, lingonberry, juneberries, salal, carrots, turnips, okra, cranberries, artichoke (globe), watercress, beet roots, leaves of root and tuber vegetables, stone fruit, mamey sapote, guava, feijoa, jaboticaba, wax jambu, starfruit, passion fruit, acerola, strawberry, cucumber (greenhouse), and tomato (greenhouse), and an import tolerance petition on bananas, active and proposed section 18 uses on blueberries, cranberries, table beets, strawberries and turnips.

Novigen sciences, Inc.'s Dietary Exposure Evaluation Model (DEEM™), which is licensed to Bayer Corporation, was used to estimate the chronic and acute dietary exposure. This software uses the food consumption data from the 1994–1998 United States Department of Agriculture (USDA) Continuing Surveys of Food Intake by Individuals (CSFII).

The endpoint for acute dietary risk assessments is based on neurotoxicity characterized by decreases in motor or locomotor activity in female rats at 42 milligrams/kilogram body weight/day (mg/kg bwt/day) (the lowest observed adverse effect level (LOAEL) from an acute neurotoxicity study). Based on an uncertainty factor (UF) of 10x for interspecies and 10x for intraspecies, the acute reference dose (RfD) = 0.42 mg/kg bwt/day. EPA has determined that an additional UF for FQPA (reduced to 3x) applies to all population subgroups for acute risk. Application of the additional 3x safety factor results in an acute population adjusted dose (aPAD) 0.14 mg/kg bwt/day or a margin of exposure (MOE) of 300.

For chronic dietary analyses, EPA has established the RfD for imidacloprid at 0.057 mg/kg/day based on a no-observed adverse effect level (NOAEL) of 5.7 mg/kg bwt/day from a rat chronic toxicity carcinogenicity study and UF of 10x for interspecies and 10x for intraspecies. EPA has determined that an additional UF for FQPA (reduced to 3x) applies to all population subgroups for chronic risk. Application of the additional 3x safety factor results in a chronic population adjusted dose (cPAD) of 0.019 mg/kg bwt/day.

The registrant believes that results from the acute and chronic dietary exposure analyses described below demonstrate a reasonable certainty that no harm to the overall U.S. population or any population subgroup will result from the use of imidacloprid on currently registered and pending uses.

i. *Food.* Acute and chronic (Tier 3) risk assessments were made using the results of field trials conducted at maximum label application rates and the shortest pre-harvest intervals. For some of the vegetable crops, the residue data were collected at 1.5x or greater than the maximum label rate of 0.5 lb active ingredient/acre per season. In addition, no adjustments were made to account for dissipation of residues during storage, transportation from the field to the consumer, washing or peeling. Therefore, the actual dietary exposure will be less than that presented here.

For the chronic analysis, mean field trial residues were calculated. For the acute Monte Carlo analysis, the entire distribution of residue field trial data were used for the "non-blended" and "partially blended" foods as determined by EPA's standard operating procedure (SOP) 99.6. For the foods considered as

"blended" by EPA's Health Effects Division (HED) SOP 99.6, mean field trial residue data were used. As allowed in EPA's draft guidance for submission of probabilistic human health exposure assessments one half limit of detection limit of detection (LOD) limit of quantitation (LOQ) values were used for all non-detected values (values below the sensitivity of the method).

ii. *Acute.* Bayer Corporation's acute Monte Carlo dietary exposure assessment estimated percent of the aPAD and corresponding MOE for the overall U.S. population (all seasons) and various subpopulations. In this analysis, the exposure for the total U.S. population was equal to 7.73% of the aPAD at the 99.9th percentile. The most highly exposed population subgroup, children (1 to 6 yrs), had an exposure equal to 16.42% of the aPAD at the 99.9th percentile. Therefore, the acute dietary exposure estimates are below EPA's level of concern (LOC) for the overall U.S. population as well as the various subpopulations.

iii. *Chronic.* The Bayer Corporation chronic dietary exposure estimated the percent of the cPAD for the overall U.S. population (all seasons) and various subpopulations. In this analysis, the exposure for the total U.S. population was equal to 1.4% of the cPAD. The most highly exposed population subgroup, children (1 to 6 yrs), had an exposure equal to 3.0% of the cPAD. Therefore, the chronic exposure estimates are below EPA's LOC for the overall U.S. population as well as the various subpopulations.

iv. *Drinking water.* EPA, as published in the **Federal Register** of April 10, 2001 (69 FR 18554) (FRL–6777–6), calculated acute and chronic drinking water levels of concern (DWLOC) and compared them with the estimated environmental concentrations (EECs) for surface water and ground water. Based on this comparison, they determined that acute exposure and chronic exposure would not be expected to exceed the aPAD and cPAD, respectively. It is not expected that the additional exposure from the minor crops pending in EPA's 2002 work plan would significantly change EPA's water assessment.

2. *Non-dietary exposure*—i. *Residential turf.* Bayer Corporation has conducted an exposure study to address the potential exposures of adults and children from contact with imidacloprid treated turf. The population considered to have the greatest potential exposure from contact with pesticide treated turf soon after pesticides are applied are young children. Margins of safety (MOS) of 7,587–41,546 for 10–year old children and 6,859–45,249 for 5–year old children were estimated by comparing dermal exposure doses to the imidacloprid no-observable effect level of 1,000 mg/kg/day established in a 15–day dermal toxicity study in rabbits. The estimated safe residue levels of imidacloprid on treated turf for 10–year old children ranged from 5.6 - 38.2 grams/centimeters (g/cm^2) and for 5–year old children from 5.1 - 33.5 g/cm^2. This compares with the average imidacloprid transferable residue level of 0.080 g/cm^2 present immediately after the sprays have dried. The data indicate that children can safely contact imidacloprid-treated turf as soon after application as the spray has dried.

ii. *Termiticide.* Imidacloprid is registered as a termiticide. Due to the nature of the treatment for termites, exposure would be limited to that from inhalation and was evaluated by EPA and the Bayer Corporation. Data indicate that the MOS for the worst case exposures for adults and infants occupying a treated building who are exposed continuously (24 hours/day) are 8.0 x 10^7 and 2.4 x 10^8, respectively - and exposure can thus be considered negligible.

iii. *Tobacco smoke.* Studies have been conducted to determine residues in tobacco and the resulting smoke following treatment. Residues of imidacloprid in cured tobacco following treatment were a maximum of 31 ppm (7 ppm in fresh leaves). When this tobacco was burned in a pyrolysis study only 2% of the initial residue was recovered in the resulting smoke (main stream plus side stream). This would result in an inhalation exposure to imidacloprid from smoking of approximately 0.0005 mg per cigarette. Using the measured subacute rat inhalation NOAEL of 5.5 milligrams/meters (mg/m^3), it is apparent that exposure to imidacloprid from smoking (direct exposure and/or indirect exposure) would not be significant.

iv. *Pet treatment.* Human exposure from the use of imidacloprid to treat dogs and cats for fleas has been addressed by EPA. Bayer Corporation believes, that due to the fact that imidacloprid is not an inhalation or dermal toxicant and that while dermal absorption data are not available, imidacloprid is not considered to present a hazard via the dermal route.

D. Cumulative Effects

Imidacloprid is a chloronicotinyl insecticide. At this time, EPA has not made a determination that imidacloprid and other substances that may have a common mechanism of toxicity would have cumulative effects. Therefore, for these tolerance petitions, Bayer Corporation assumes that imidacloprid does not have a common mechanism of toxicity with other substances and only the potential risks of imidacloprid in its aggregate exposure are considered.

E. Safety Determination

1. *U.S. population.* EPA has considered data from developmental toxicity studies in the rat and rabbit and a 2–generation reproduction study in the rat. These studies are discussed in the toxicological profile section of Unit II. of the **Federal Register** dated September 18, 1998 (63 FR 49837). The developmental toxicity data demonstrated no increased sensitivity of rats or rabbits to *in utero* exposure to imidacloprid. In addition, the multi-generation reproductive toxicity study did not identify any increased sensitivity of rats to *in utero* or postnatal exposure. Parental NOAELs were lower or equivalent to developmental or offspring NOAELs. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism resulting from maternal pesticide exposure during gestation. Reproduction studies provide information relating to effects from exposure to the pesticide on the reproductive capability of mating animals and data on systemic toxicity.

FFDCA section 408 provides that EPA shall apply an additional ten-fold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base unless EPA determines that a different margin of safety will be safe for infants and children. Margin of safety are incorporated into EPA risk assessments either directly through use of a MOE analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans. EPA believes that reliable data support using the standard UF (usually 100 for combined interspecies and intraspecies variability) and not the additional ten-fold MOE/UF when EPA has a complete data base under existing guidelines and when the severity of the effect in infants or children or the potency or unusual toxic properties of a compound do not raise concerns regarding the adequacy of the standard MOE/SF.

Although developmental toxicity studies showed no increased sensitivity in fetuses as compared to maternal animals following *in utero* exposures in rats and rabbits, no increased sensitivity in pups as compared to adults was seen in the 2–generation reproduction toxicity study in rats, and the toxicology data base is complete as to core

requirements, EPA has determined that the additional SF for the protection of infants and children will be retained but reduced to 3x based on the following weight-of-the-evidence considerations relating to potential sensitivity and completeness of the data:

- There is concern for structure activity relationship. Imidacloprid, a chloronicotinyl compound, is an analog to nicotine and studies in the published literature suggest that nicotine, when administered causes developmental toxicity, including functional deficits, in animals and/or humans that are exposed *in utero*.
- There is evidence that imidacloprid administration causes neurotoxicity following a single oral dose in the acute study and alterations in brain weight in rats in the 2–year carcinogenicity study.
- The concern for structure activity relationship along with the evidence of neurotoxicity dictates the need of a developmental neurotoxicity study for assessment of potential alterations on functional development.

Because a developmental neurotoxicity study potentially relates to both acute and chronic effects in both the mother and the fetus, EPA has applied the additional UF for FQPA for all population subgroups, and in both acute and chronic risk assessments.

Based on the exposure assessments described above and on the completeness and reliability of the toxicity data, Bayer Corporation has concluded that the dietary exposure estimates from all label and pending uses of imidacloprid are 7.73% of the aPAD at the 99.9th percentile and 1.4% of the cPAD for the U.S. population. Thus, Bayer Corporation has concluded that there is a reasonable certainty that no harm will result from aggregate exposure to imidacloprid residues.

2. *Infants and children.* Based on the exposure assessments described above for the safety determination of the U.S. population and on the completeness and reliability of the toxicity data, Bayer Corporation has concluded that the dietary exposure estimates from all label and pending uses of imidacloprid are 16.42% of the aPAD at the 99.9th percentile and 3.0% of the cPAD for the most sensitive population subgroup, children 1 to 6 years. Thus, Bayer Corportion has concluded that there is a reasonable certainty that no harm will result from aggregate exposure to imidacloprid residues.

F. International Tolerances

No Codex maximum residue levels have been established for residues of imidacloprid on any crops currently pending at EPA.

FR Doc. 03–2773 Filed 2–4–03; 8:45 a m]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7448–3]

Jack Goins Waste Oil Superfund Site/ Cleveland,Tennessee; Notice of Proposed Settlement

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed settlement.

SUMMARY: Under section 122(h)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), the Environmental Protection Agency (EPA) has proposed to settle claims for response costs at the Jack Goins Waste Oil Superfund Site (Site) located in Cleveland, Tennessee, with Jack L. Goins, Susie T. Goins, Jack Goins Waste Oil Pumping Service, and Frances L. Lockmiller. EPA will consider public comments on the proposed settlement for thirty days. EPA may withdraw from or modify the proposed settlement should such comments disclose facts or considerations which indicate the proposed settlement is inappropriate, improper, or inadequate. Copies of the proposed settlement are available from: Ms. Paula V. Batchelor, U.S. Environmental Protection Agency, Region IV, Waste Management Division, 61 Forsyth Street, SW., Atlanta, Georgia 30303, (404) 562–8887.

Written comment may be submitted to Mr. Greg Armstrong at the above address within 30 days of the date of publication.

Dated: January 15, 2003.

Anita L. Davis,

Acting Chief, CERCLA Program Services Branch, Waste Management Division.

[FR Doc. 03–2769 Filed 2–4–03; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984. Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, NW., Room 940. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register**.

Agreement No.: 011510–017.

Title: West African Discussion Agreement.

Parties: Atlantic Bulk Carriers, Ltd., HUAL AS, A.P. Moller Maersk Sealand, Mediterranean Shipping Company, P&O Nedlloyd Limited, Safmarine Container Lines NV, Zim Israel Navigation Company Ltd.

Synopsis: The amendment adds Safmarine Container Lines as a party to the agreement effective February 1, 2003.

Agreement No.: 011802–001.

Title: Evergreen/Lloyd Triestino/ Hatsu Marine Alliance-WTSA Bridging Agreement.

Parties: The Evergreen/Lloyd Triestino/Hatsu Marine Alliance Agreement, Westbound Transpacific Stabilization Agreement.

Synopsis: The amendment updates the membership of the Westbound Transpacific Stabilization Agreement.

Agreement No.: 011839.

Title: Med-Gulf Space Charter Agreement.

Parties: Compania Chilena de Navegacion Interoceanica, Compania Sud-Americana de Vapores S.A., Lykes Lines Limited LLC.

Synopsis: The proposed agreement authorizes Lykes to charter space to the other parties in the trade between U.S. Gulf ports, including Miami, Florida, and San Juan, Puerto Rico, on the one hand, and ports in Spain, Italy, and Mexico, on the other hand.

Agreement No.: 201026–002.

Title: Port of New Orleans/P&O Ports Lease.

Parties: Port of New Orleans, P&O Ports Louisiana, Inc.

Synopsis: The modification expands the leased premises under the basic lease. The additional space may be used on an as-needed basis.

By Order of the Federal Maritime Commission.

Dated: January 31, 2003.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 03–2791 Filed 2–4–03; 8:45 am]

BILLING CODE 6730–01–P

GENERAL SERVICES ADMINISTRATION

Office of Management Services

Paper Requirement for Office of Personnel Management (OPM) Standard Forms

AGENCY: Office of Management Services, GSA.

ACTION: Notice.

SUMMARY: Currently the Office of Personnel Management (OPM) requires that certain OPM promulgated Standard Forms, when electronically generated, be reproduced on specified color paper. Although OPM prefers to receive the forms on colored paper, they are waiving this requirement on electronically generated forms. The following statement however, must appear on these forms: "This is the electronic version of the form."

For duplicated forms, individuals should try to reproduce on the specified colored paper. This will increase processing time, but forms duplicated on white paper will still be accepted.

FOR FURTHER INFORMATION CONTACT: Ms. Barbara Williams, General Services Administration, (202) 501–0581.

DATES: Effective February 5, 2003.

Dated: January 27, 2003.

Barbara M. Williams,

Deputy Standard and Optional Forms Management Officer, General Services Administration.

[FR Doc. 03–2809 Filed 2–4–03; 8:45 am]

BILLING CODE 6820–34–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60 Day–03–41]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 498–1210.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Send comments to Anne O'Connor, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Project: Development of an Assistive Technology and Environmental Assessment Instrument for National Surveys—New—National Center for Health Statistics (NCHS), Centers for Disease Control and Prevention (CDC). Recent Federal policy initiatives have targeted the removal of environmental barriers and increased access to assistive and universally designed technologies in order to increase participation in major life activities by persons of all ages with disabilities. Yet, few statistics are available to quantify the potential demand for assistive technologies and no criteria exist to evaluate the potential impact of broadened access.

CDC is seeking OMB approval to cognitively test and pilot a survey instrument that collects information on disabled persons' access to, and use of, assistive technologies and environmental modifications that can be implemented in national health surveys. This information will help policy makers and scientists understand the interface among disability, assistive devices, and environmental modifications. Through a cooperative agreement with the National Institute on Aging, the Office of the Assistant Secretary for Planning and Evaluation has funded researchers at the Polisher Research Institute and Johns Hopkins University to develop the new measures to be tested. The testing will be conducted by the National Center for Health Statistics with funding from the Office of the Assistant Secretary for Planning and Evaluation, DHHS.

Approximately 300 interviews will be conducted with adults with disabilities living in the community. These interviews will be 45 minutes in length. To the extent possible, different modes of administration will be utilized (*e.g.* in-person, telephone, or mixed) and racially diverse samples of persons with disabilities in both rural and urban settings will be selected to maximize the sensitivity of the instrument across diverse populations. There is no cost to the respondents other than their time.

Respondents	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden (in hours)
Adult with Disabilities	300	1	45/60	225
Total				225

Dated: January 30, 2003.

Thomas Bartenfeld,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention.

[FR Doc. 03–2781 Filed 2–4–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–03–40]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 498–1210.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Send comments to Anne O'Connor , CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Project: Examining the Effectiveness of HIV Prevention Messages—New—National Center for HIV, STD, and TB Prevention (NCHSTP), Centers for Disease Control and Prevention (CDC). This project involves the development and cognitive testing of HIV prevention messages in the format of computerized brochures. The efficacy of various types of prevention messages will be evaluated in three experimental studies with populations at risk of acquiring or transmitting HIV. The studies will test different ways of communicating, framing and presenting HIV prevention messages. Outcomes to be examined include the extent to which the message is considered acceptable, comprehensible, and credible by the intended audience, as well as the extent to which the message influences knowledge, attitudes, and readiness or intentions to reduce or eliminate risk behaviors. Data will be collected using audio-computer assisted self-interviews. The results will be used by CDC, and other organizations and researchers to inform prevention activities. There is no cost to the respondents.

Form	No. of respondents	No. of responses per respondent	Average burden per response (in hours)	Total burden (in hours)
Eligibility Screener	1600	1	15/60	400
Message Complexity Study Questionnaire	200	1	1	200
Message Framing Study Questionnaire	600	1	1	600
Message Presentation Study Questionnaire	450	1	1	450
Total				1650

Dated: January 30, 2003.

Thomas Bartenfeld,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention.

[FR Doc. 03–2782 Filed 2–4–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

National Advisory Committee on Children and Terrorism, Department of Health and Human Services, Centers for Disease Control and Prevention: Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following Advisory Committee meeting.

Name: National Advisory Committee on Children and Terrorism, HHS, CDC.

Time and Date: 9 a.m.–5 p.m., March 6, 2003.

Place: Centers for Disease Control and Prevention, Roybal Campus; 1600 Clifton Road, NE., Building 2, Auditorium A, Atlanta, Georgia 30333.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 50 people.

Purpose: The committee will make recommendations to the Secretary of HHS on matters related to bioterrorism and its impact on children.

Matters to be Discussed: Agenda items will include an introduction of committee members and discussion of the Secretary's priorities, with discussions of recommendations regarding: (a) The preparedness of the health care system to respond to bioterrorism as it relates to children; (b) needed changes to the health care and emergency medical service systems and emergency medical services protocols to meet the special needs of children; and (c) changes, if necessary, to the National Strategic Stockpile under section 121 of the Public Health Security and Bioterrorism Preparedness and Response Act of 2002 to meet the emergency health security of children.

Agenda items are subject to change as priorities dictate.

For Further Information Contact: Joseph M. Henderson, Executive Secretary, National Advisory Committee on Children and Terrorism, DHHS, CDC, 1600 Clifton Road, NE. M/S D–44, Atlanta, Georgia 30333. Telephone 404/639–7405.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: January 30, 2003.

Joseph E. Salter,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 03–2651 Filed 2–4–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

The National Center for Environmental Health (NCEH); Meeting

The National Center for Environmental Health (NCEH) of the Centers for Disease Control and Prevention (CDC) announces the following meeting.

Name: Current Status of the Vessel Sanitation Program (VSP) and Experience-to-Date with Program Operations—Public meeting between CDC and the cruise ship industry, private sanitation consultants, and other interested parties.

Time and Date: 9 a.m.-4 p.m., Tuesday, March 11, 2003.

Place: Auditorium, Port Everglades Administration Building, 1850 Eller Drive, Ft. Lauderdale, Florida 33316.

Status: Open to the public, limited by the space available. The meeting room accommodates approximately 100 people.

Purpose: During the past 15 years, as part of the restructured VSP, CDC has conducted a series of public meetings with members of the cruise ship industry, private sanitation consultants, and other interested parties.

This meeting is a continuation of that series of public meetings to discuss the current status of the VSP and experience-to-date with program operations.

Matters to be Discussed: Agenda items will include a VSP update, 2002 program review, update on the implementation of the VSP Operations Manual 2000, update on disease surveillance and 2002 outbreak investigations, and VSP training seminars.

For a period of 15 days following the meeting, through March 26, 2003, the official record of the meeting will remain open so that additional materials or comments may be submitted to be made part of the record of the meeting.

Advanced registration for the meeting is encouraged. Please provide the following information: Name, title, company name, mailing address, telephone number, facsimile number, and E-mail address to Angela Storms (770) 488–3141, or e-mail: *Astorms@cdc.gov.*

FOR FURTHER INFORMATION CONTACT: David Forney, Chief, VSP, NCEH, CDC, 4770 Buford Highway, NE, M/S F–16, Atlanta, Georgia 30341–3724, telephone (770) 488–7333, e-mail: *Dforney@cdc.gov.*

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: January 30, 2003.

Joseph E. Salter,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 03–2650 Filed 2–4–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Citizens Advisory Committee on Public Health Service Activities and Research at Department of Energy (DOE) Sites: Savannah River Site Health Effects Subcommittee (SRSHES)

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC), and the Agency for Toxic Substances and Disease Registry (ATSDR) announce the following meeting.

Name: Citizens Advisory Committee on Public Health Service Activities and Research at Department of Energy (DOE) Sites: Savannah River Site Health Effects Subcommittee (SRSHES).

Times and Dates: 8 a.m.—5 p.m., March 13, 2003.

8 a.m.—12:30 p.m, March 14, 2003.

Place: DoubleTree Guest Suites, 181 Church Street, Charleston, South Carolina 29403, telephone: (843) 577–2644, fax: (843) 577–2697.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 50 people.

Background: Under a Memorandum of Understanding (MOU) signed in December 1990 with DOE, and replaced by MOUs signed in 1996 and 2000, the Department of Health and Human Services (HHS) was given the responsibility and resources for conducting analytic epidemiologic investigations of residents of communities in the vicinity of DOE facilities, workers at DOE facilities, and other persons potentially exposed to radiation or to potential hazards from non-nuclear energy production use. HHS delegated program responsibility to CDC.

In addition, a memo was signed in October 1990 and renewed in November 1992, 1996, and in 2000, between ATSDR and DOE. The MOU delineates the responsibilities and procedures for ATSDR's public health activities at DOE sites required under sections 104, 105, 107, and 120 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or "Superfund"). These activities include health consultations and public health assessments at DOE sites listed on, or proposed for, the Superfund National Priorities List and at sites that are the subject of petitions from the public; and other health-related activities such as epidemiologic studies, health surveillance, exposure and disease registries, health education, substance-specific applied research, emergency response, and preparation of toxicological profiles.

Purpose: This subcommittee is charged with providing advice and recommendations to the Director, CDC, and the Administrator ATSDR, regarding community concerns pertaining to CDC's and ATSDR's public health activities and research at this DOE site. The purpose of this meeting is to provide a forum for community interaction and serve as a vehicle for community concerns to be expressed as advice and recommendations to CDC and ATSDR.

Matters to be Discussed: Agenda items include a Review of the History of the Savannah River Site; an Advanced Technology Laboratory (ATL) Research Update; a Presentation on Radiological Monitoring by the Georgia Environmental Protection Division; an update on the National Institute of Occupational Safety and Health's (NIOSH) Occupational Illness Compensation Program and a NIOSH Health-Related Energy Research Branch Program Update.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Phillip Green, Executive Secretary, Savannah River Site Health Effects Subcommittee, Radiation Studies Branch, Division of Environmental Hazards and Health Effects, National Center for Environmental Health, CDC, 1600 Clifton Road, NE. (E–39), Atlanta, GA 30333, telephone: (404) 498–1800, fax: (404) 498–1811.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both CDC and ATSDR.

Dated: January 30, 2003.

Joseph E. Salter,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 03–2647 Filed 2–4–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Advisory Board on Radiation and Worker Health (ABRWH); Meeting

ACTION: Publication of closed meeting summary of the Advisory Board on Radiation and Worker Health (ABRWH), National Institute for Occupational Safety and Health (NIOSH).

Committee Purpose: This board is charged with (a) providing advice to the Secretary, HHS on the development of guidelines under Executive Order 13179; (b) providing advice to the Secretary, HHS on the scientific validity and quality of dose reconstruction

efforts performed for this Program; and (c) upon request by the Secretary, HHS, advise the Secretary on whether there is a class of employees at any Department of Energy facility who were exposed to radiation but for whom it is not feasible to estimate their radiation dose, and on whether there is reasonable likelihood that such radiation doses may have endangered the health of members of this class.

Background: The Advisory Board on Radiation and Worker Health met on January 8, 2003, in closed session to discuss the Proposed Independent Government Cost Estimate (IGCE) for a contract. This contract, once awarded, will provide technical support to assist the Board in fulfilling its statutory duty to advise the Secretary of Health and Human Services regarding the dose reconstruction efforts under the Energy Employees Occupational Illness Compensation Program Act. A Determination to Close the meeting was approved and published, as required by the Federal Advisory Committee Act.

Summary of the Meeting: Attendance was as follows:

Board Members:

Paul L. Ziemer, Ph.D., Chair
Larry J. Elliott, Executive Secretary
Henry A. Anderson, M.D., Member
Antonio Andrade, Ph.D., Member
Roy L. DeHart, M.D., M.P.H., Member
Richard L. Espinosa, Member
Michael H. Gibson, Member
Mark A. Griffon, Member
James M. Melius, M.D., Dr.P.H., Member
Robert W. Presley, Member
Genevieve S. Roessler, Ph.D., Member

NIOSH Staff:

Jim Neton
David Naimon
Liz Homoki-Titus
Martha DiMuzio
Cori Homer

Ray S. Green, Court Recorder.

Summary/Minutes

Dr. Ziemer called to order the Advisory Board on Radiation and Worker Health (ABRWH) in closed session on January 8, 2003 at 9:45 a.m. The purpose of the closed meeting was to develop the Independent Government Cost Estimate for a contract to provide technical support to the ABRWH review of completed dose reconstructions.

Dr. Ziemer noted that Ms. Wanda Munn and Mr. Leon Owens were not available to attend and could not be connected via conference call due to telephone line security issues.

General topics discussed:

- Closed session procedures.
- Independent Government Cost Estimate.
- Member of Board to be appointed to the Technical Review Panel for this procurement.

Dr. Paul Ziemer adjourned the closed session of the ABRWH meeting at 11:18 a.m. with no further business being conducted by the ABRWH.

SUPPLEMENTARY INFORMATION: The Advisory Board on Radiation and Worker Health ("the Board") was established under the Energy Employees Occupational Illness Compensation Program Act (EEOICPA) of 2000 to advise the President, through the Secretary of Health and Human Services (HHS), on a variety of policy and technical functions required to implement and effectively manage the new compensation program. Key functions of the Board include providing advice on the development of probability of causation guidelines which have been promulgated by HHS as a final rule, advice on methods of dose reconstruction which have also been promulgated by HHS as a final rule, evaluation of the scientific validity and quality of dose reconstructions conducted by the National Institute for Occupational Safety and Health (NIOSH) for qualified cancer claimants, and advice on the addition of classes of workers to the Special Exposure Cohort.

In December 2000 the President delegated responsibility for funding, staffing, and operating the Board to HHS, which subsequently delegated this authority to the CDC. NIOSH implements this responsibility for CDC. The charter was signed on August 3, 2001 and in November, 2001, the President completed the appointment of an initial roster of 10 Board members. In April, and again in August 2002, the President appointed additional members to ensure more balanced representation on the Board.

FOR FURTHER INFORMATION CONTACT: Larry Elliott, Executive Secretary, ABRWH, NIOSH, CDC, 4676 Columbia Parkway, Cincinnati, Ohio 45226, telephone 513/841–4498, fax 513/458–7125.

The Director, Management Analysis and Services Office, has been delegated the authority to sign Federal Register notices pertaining to announcements of meetings and other committee management activities for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: January 30, 2003.

Joseph E. Slater,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 03–2652 Filed 2–4–03; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare and Medicaid Services

[Document Identifier: CMS–10083]

Emergency Clearance: Public Information Collection Requirements Submitted to the Office of Management and Budget (OMB)

AGENCY: Centers for Medicare and Medicaid Services.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare and Medicaid Services (CMS) (formerly known as the Health Care Financing Administration (HCFA)), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

We are, however, requesting an emergency review of the information collection referenced below. In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, we have submitted to the Office of Management and Budget (OMB) the following requirements for emergency review. We are requesting an emergency review because the collection of this information is needed before the expiration of the normal time limits under OMB's regulations at 5 CFR part 1320. This is necessary to ensure compliance with the Trade Act of 2002. We cannot reasonably comply with the normal clearance procedures because President of an unanticipated event and public harm.

We are requesting emergency clearance of a pilot study designed to elicit information from discharged patients concerning their hospital/acute care experience. Given the current momentum, enthusiasm and support expressed by hospitals and the hospital associations for public reporting of hospital quality information, it is important to provide the tools needed for reliable and valid data collection as soon as possible. CMS would like to take advantage of the opportunity of testing the H–CAHPS instrument in the Hospital State Pilots that has just started. It is important to provide hospitals a standard tool and data collection methodology by July/August 2003 to support this joint initiative. We are interested in receiving comments on the pilot during the course of the pilot, as well as during the comment period mentioned below. However, those received after the close of the comment period will not be included in the materials that OMB reviews in determining whether to approve the collection.

CMS is requesting OMB review and approval of this collection by February 21, 2003, with a 180-day approval period. Written comments and recommendations will be accepted from the public if received by the individuals designated below by February 20, 2003. During this 180-day period, we will publish a separate **Federal Register** notice announcing the initiation of an extensive 60-day agency review and public comment period on these requirements. We will submit the requirements for OMB review and an extension of this emergency approval.

Type of Information Collection Request: New collection; *Title of Information Collection:* Pilot Test of Hospital CAHPS Survey; *Form No.:* CMS–10083 (OMB #0938–XXXX); *Use:* CMS has requested a hospital survey as a way of providing comparison information for consumers who need to select a hospital and as a way of encouraging accountability of hospitals for the care they provide. With a standardized instrument consumers will be able to make "apples to apples" comparisons among hospitals, allow hospitals and hospital chains to self compare, and provide state oversight officials with useful data. A standardized instrument, developed under the CAHPS umbrella, will produce a reliable and valid instrument that any organization can use at no cost to obtain patient data about hospital experiences. This tool will be adopted by the National Hospital Voluntary Initiative; *Frequency:* Once; *Affected Public:* Individuals or households; *Number of Respondents:* 16,500; *Total Annual Responses:* 16,500; *Total Annual Hours:* 5,500.

We have submitted a copy of this notice to OMB for its review of these information collections. A notice will be published in the **Federal Register** when approval is obtained.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS' Web Site address at *http://cms.hhs.gov/regulations/pra/default.asp* or E-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@hcfa.gov*, or call the Reports Clearance Office on (410) 786–1326.

Interested persons are invited to send comments regarding the burden or any other aspect of these collections of information requirements. However, as noted above, in order to be considered in the OMB approval process, comments on these information collection and recordkeeping requirements must be mailed and/or faxed to the designees referenced below, by February 20, 2003.

Centers for Medicare and Medicaid Services, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development and Issuances, Attn: Reports Clearance Officer, Room C5–16–03, 7500 Security Boulevard, Baltimore, MD 21244–1850. Fax Number: (410) 786–3064. Attn: Julie Brown; and

Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, Fax Number: (202) 395–6974 or (202) 395–5167, Attn: Brenda Aguilar, CMS Desk Officer.

Dated: January 30, 2003.

John P. Burke, III,

CMS Reports Clearance Officer, CMS, Office of Information Services, Security and Standards Group, Division of CMS Enterprise Standards.

[FR Doc. 03–2788 Filed 2–4–03; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 00D–0109]

Medical Devices: Class II Special Controls Guidance Document: Antimicrobial Susceptibility Test Systems; Guidance for Industry and FDA; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of the guidance entitled "Class II Special Controls Guidance Document: Antimicrobial Susceptibility Test (AST) Systems; Guidance for Industry and FDA." This guidance document was developed as a special control guidance to support the reclassification of the fully automated short-term incubation cycle antimicrobial susceptibility device from class III to class II. Elsewhere in this issue of the **Federal Register**, FDA is publishing a final rule reclassifying the fully automated short-term incubation cycle antimicrobial susceptibility device from class III to class II.

DATES: Submit written or electronic comments on agency guidances at any time.

ADDRESSES: Submit written requests for single copies on a 3.5″ diskette of the guidance entitled "Class II Special Controls Guidance Document: Antimicrobial Susceptibility Test (AST) Systems; Guidance for Industry and FDA" to the Division of Small Manufacturers, International, and Consumer Assistance (HFZ–220), Center for Devices and Radiological Health (CDRH), Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850. Send two self-addressed adhesive labels to assist that office in processing your request, or fax your request to 301–443–8818. Submit written comments concerning this guidance to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Comments should be identified with the docket number found in brackets in the heading of this document. Submit electronic comments to *http://www.fda.gov//dockets/ecomments*. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance.

FOR FURTHER INFORMATION CONTACT: Freddie M. Poole, Center for Devices and Radiological Health (HFZ–440), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–2096.

SUPPLEMENTARY INFORMATION:

I. Background

This guidance document was developed as a special control guidance to support the reclassification of the fully automated short-term incubation cycle antimicrobial susceptibility device from class III to class II. Elsewhere in this issue of the **Federal Register**, FDA is publishing a final rule to reclassify

this type of device from class III to class II. This guidance serves to update the information provided in the draft guidance entitled "Guidance on Review Criteria for Assessment of Antimicrobial Susceptibility Devices" (65 FR 12271, March 8, 2000). FDA considered the comments it received and made changes to the guidance as a result, including the revised document title to identify this guidance as a special control. FDA believes that special controls, when combined with the general controls, will be sufficient to provide reasonable assurance of the safety and effectiveness of the fully automated short-term incubation cycle antimicrobial susceptibility device. After the device is reclassified, a manufacturer who intends to market a device of this generic type must: (1) Comply with the general controls of the Federal Food, Drug, and Cosmetic Act, including the 510(k) requirements described in 21 CFR 807.81, (2) address the specific risks to health associated with the antimicrobial susceptibility test system, and (3) receive a substantial equivalence determination from FDA prior to marketing the device.

This guidance document identifies the classification, product code, and classification definition for fully automated short-term incubation cycle antimicrobial susceptibility devices. In addition, it identifies the risks to health and serves as a special control that, when followed and combined with the general controls of the act, will be sufficient to address the risks associated with this generic device type and lead to a timely review and clearance of a premarket notification under section 510(k) of the act (21 U.S.C. 360(k)).

II. Significance of Guidance

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). This guidance represents the agency's current thinking on AST systems. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the applicable statutes and regulations. Following the effective date of the final classification rule (published elsewhere in this issue of the **Federal Register**), any firm submitting a 510(k) premarket notification for a fully automated short-term incubation cycle antimicrobial susceptibility device will need to address the issues covered in the special control guidance. However, the firm need only show that its device meets the recommendations of the guidance or in some other way provides equivalent assurances of safety and effectiveness.

III. Electronic Access

In order to receive "Class II Special Controls Guidance Document: Antimicrobial Susceptibility Test (AST) Systems; Guidance for Industry and FDA," you may either send a fax request to 301–443–8818 to receive a hard copy of the document, or send an e-mail to *GWA@CDRH.FDA.GOV* to request a hard copy or electronic copy. Please use the document number (631) to identify the guidance you are requesting.

Persons interested in obtaining a copy of the guidance may also do so using the Internet. CDRH maintains an entry on the Internet for easy access to information including text, graphics, and files that may be downloaded to a personal computer with Internet access. Updated on a regular basis, the CDRH home page includes the civil money penalty guidance documents package, device safety alerts, **Federal Register** reprints, information on premarket submissions (including lists of approved applications and manufacturers' addresses), small manufacturers' assistance, information on video conferencing and electronic submissions, Mammography Matters, and other device-oriented information. The CDRH home page may be accessed at *http://www.fda.gov/cdrh*. Guidance documents are also available on the Dockets Management Branch Internet site at *http://www.fda.gov/ohrms/dockets*.

IV. Comments

Interested persons may submit to Dockets Management Branch (see **ADDRESSESS**) written or comments regarding this guidance. Two copies of any mailed comments, are to be submitted except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Electronic comments may be submitted at *http://www.fda.gov/opacom/backgrounders/voice.html*. The guidance document and received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: January 9, 2003.

Linda S. Kahan,

Deputy Director, Center for Devices and Radiological Health.

[FR Doc. 03–2657 Filed 2–4–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

National Advisory Committee on Rural Health and Human Services; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given that the following committee will convene its forty-third meeting. The meeting will be open to the public.

Name: National Advisory Committee on Rural Health and Human Services.

Date and Time: March 2, 2003, 2 p.m.–5 p.m.; March 3, 2003, 8:30 a.m.–5 p.m.; March 4, 2003, 8:30 a.m.–3 p.m.

Place: Grand Hyatt Washington, 1000 H Street, NW., Washington, DC 20001–4520.

Purpose: The National Advisory Committee on Rural Health and Human Services provides advice and recommendations to the Secretary with respect to the delivery, research, development and administration of health and human services in rural areas.

Agenda: Sunday afternoon, March 2, at 2 p.m., the Chairperson, the Honorable David Beasley, will open the meeting and welcome the Committee. The first session will open with a discussion of the Meeting Agenda and Goals by the Office of Rural Health Policy (ORHP) Acting Deputy Director, Mr. Tom Morris. This will be followed by a discussion of the Committee's role in the Department, administrative business, and the Committee's 2003 Agenda.

Monday morning, March 3, at 8:30 a.m. the session will open with a presentation by the Deputy Administrator, Health Resources and Services Administration, and an update by ORHP. After the break, the Committee will discuss and approve the 2002 projects, the report on rural health care quality and the white paper on the rural workforce. After lunch, there will be presentations on three topics relating to the Committee's 2003 workplan.

The final session will be convened Tuesday morning, March 4, at 8:30 a.m. The Committee will discuss the strategic plan, future agenda, and the selection of a Steering Committee. The strategic planning will continue after lunch. The meeting will conclude with a discussion of the June and September meetings. The meeting will be adjourned at 3 p.m.

FOR FURTHER INFORMATION CONTACT: Anyone requiring information regarding the Committee should contact Tom Morris, MPA, Executive Secretary, National Advisory Committee on Rural Health and Human Services, Health Resources and Services Administration, Parklawn Building, Room 9A–55, 5600 Fishers Lane, Rockville, MD 20857, telephone (301) 443–0835, Fax (301) 443–2803.

Persons interested in attending any portion of the meeting should contact Michele Pray-Gibson, Office of Rural Health Policy (ORHP), telephone (301) 443–0835. The Committee meeting agenda will be posted on ORHP's Web site *http://www.ruralhealth.hrsa.gov*.

Dated: January 29, 2003.

Jane M. Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 03–2659 Filed 2–4–03; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

National Vaccine Injury Compensation Program; List of Petitions Received

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice.

SUMMARY: The Health Resources and Services Administration (HRSA) is publishing this notice of petitions received under the National Vaccine Injury Compensation Program ("the Program"), as required by Section 2112(b)(2) of the Public Health Service (PHS) Act, as amended. While the Secretary of Health and Human Services is named as the respondent in all proceedings brought by the filing of petitions for compensation under the Program, the United States Court of Federal Claims is charged by statute with responsibility for considering and acting upon the petitions.

FOR FURTHER INFORMATION CONTACT: For information about requirements for filing petitions, and the Program in general, contact the Clerk, United States Court of Federal Claims, 717 Madison Place, NW., Washington, DC 20005; (202) 219–9657. For information on HRSA's role in the Program, contact the Director, National Vaccine Injury Compensation Program, 5600 Fishers Lane, Room 16C–17, Rockville, MD 20857; (301) 443–6593.

SUPPLEMENTARY INFORMATION: The Program provides a system of no-fault compensation for certain individuals who have been injured by specified childhood vaccines. Subtitle 2 of Title XXI of the PHS Act, 42 U.S.C. 300aa–10 *et seq.*, provides that those seeking compensation are to file a petition with the U.S. Court of Federal Claims and to serve a copy of the petition on the Secretary of Health and Human Services, who is named as the respondent in each proceeding. The Secretary has delegated his responsibility under the Program to HRSA. The Court is directed by statute to appoint special masters who take evidence, conduct hearings as appropriate, and make initial decisions as to eligibility for, and amount of, compensation.

A petition may be filed with respect to injuries, disabilities, illnesses, conditions, and deaths resulting from vaccines described in the Vaccine Injury Table (the Table) set forth at Section 2114 of the PHS Act or as set forth at 42 CFR 100.3, as applicable. This Table lists for each covered childhood vaccine the conditions which will lead to compensation and, for each condition, the time period for occurrence of the first symptom or manifestation of onset or of significant aggravation after vaccine administration. Compensation may also be awarded for conditions not listed in the Table and for conditions that are manifested after the time periods specified in the Table, but only if the petitioner shows that the condition was caused by one of the listed vaccines.

Section 2112(b)(2) of the PHS Act, 42 U.S.C. 300aa–12(b)(2), requires that the Secretary publish in the **Federal Register** a notice of each petition filed. Set forth below is a list of petitions received by HRSA on July 1, 2002, through September 30, 2002.

Section 2112(b)(2) also provides that the special master "shall afford all interested persons an opportunity to submit relevant, written information" relating to the following:

1. The existence of evidence "that there is not a preponderance of the evidence that the illness, disability, injury, condition, or death described in the petition is due to factors unrelated to the administration of the vaccine described in the petition," and

2. Any allegation in a petition that the petitioner either:

(a) "Sustained, or had significantly aggravated, any illness, disability, injury, or condition not set forth in the Table but which was caused by" one of the vaccines referred to in the Table, or

(b) "Sustained, or had significantly aggravated, any illness, disability, injury, or condition set forth in the Table the first symptom or manifestation of the onset or significant aggravation of which did not occur within the time period set forth in the Table but which was caused by a vaccine" referred to in the Table.

This notice will also serve as the special master's invitation to all interested persons to submit written information relevant to the issues described above in the case of the petitions listed below. Any person choosing to do so should file an original and three (3) copies of the information with the Clerk of the U.S. Court of Federal Claims at the address listed above (under the heading "For Further Information Contact"), with a copy to HRSA addressed to Director, Division of Vaccine Injury Compensation Program, Office of Special Programs, 5600 Fishers Lane, Room 16C–17, Rockville, MD 20857. The Court's caption (Petitioner's Name v. Secretary of Health and Human Services) and the docket number assigned to the petition should be used as the caption for the written submission.

Chapter 35 of title 44, United States Code, related to paperwork reduction, does not apply to information required for purposes of carrying out the Program.

List of Petitions

1. Carla Lowry on behalf of Tyler Lowry; Boston, Massachusetts; Court of Federal Claims Number 02–0753V
2. Scott Bagby on behalf of Trenton Bagby; Adrian, Missouri; Court of Federal Claims Number 02–0754V
3. Allison and Kenneth Byrd on behalf of Noah Byrd; California, Maryland; Court of Federal Claims Number 02–0755V
4. Barbara and William Whitman on behalf of Christian Whitman; Taylor, Pennsylvania; Court of Federal Claims Number 02–0763V
5. Kimberly Brox on behalf of Mary Kate Brox; Boston, Massachusetts; Court of Federal Claims Number 02–0765V
6. Kathy Maynard on behalf of Mikayla Maynard; Lecanto, Florida; Court of Federal Claims Number 02–0766V
7. Sandra Friedman; Shorewood, Wisconsin; Court of Federal Claims Number 02–0770V
8. Rhonda and Robert Evans on behalf of Kimberly Ann Evans; Fayetteville, North Carolina; Court of Federal Claims Number 02–0771V
9. Lisa and John Hedin on behalf of Jason Hedin; Austell, Georgia; Court of Federal Claims Number 02–0774V
10. AnnMarie and H. Dean Moore on behalf of Kathryn Moore; Philadelphia, Pennsylvania; Court of Federal Claims Number 02–0777V
11. Susan Iannuzzi on behalf of Peter Iannuzzi; Boston, Massachusetts; Court of Federal Claims Number 02–0780V
12. Alyson Feinberg on behalf of Jacob Feinberg; Boston, Massachusetts; Court of Federal Claims Number 02–0781V
13. Charles Wall on behalf of Christopher Wall; Boston,

Massachusetts; Court of Federal Claims Number 02–0782V
14. Charles Wall on behalf of Brandon Wall; Boston, Massachusetts; Court of Federal Claims Number 02–0783V
15. Joanella Cannell on behalf of Margaret Cannell; Vienna, Virginia; Court of Federal Claims Number 02–0785V
16. Sha and Jason Hurst on behalf of Sarah Lynn Hurst; Montgomery, Alabama; Court of Federal Claims Number 02–0786V
17. Elizabeth and John Setnes on behalf of Austin J. Setnes; Shakopee, Minnesota; Court of Federal Claims Number 02–0791V
18. Peyton Kotz on behalf of Jennifer Kotz; LeGrande, Oregon; Court of Federal Claims Number 02–0798V
19. Jane Lutz; Pittsburgh, Pennsylvania; Court of Federal Claims Number 02–0799V
20. Michelle Iddings on behalf of Carson Iddings; Boston, Massachusetts; Court of Federal Claims Number 02–0801V
21. Jennifer Hillman on behalf of Emmanuel Hillman; Boston, Massachusetts; Court of Federal Claims Number 02–0802V
22. Christina Hamilton on behalf of Michael Hamilton; Boston, Massachusetts; Court of Federal Claims Number 02–0803V
23. Melanie Gorneault on behalf of Ryan Gorneault; Boston, Massachusetts; Court of Federal Claims Number 02–0804V
24. Tiffany Fleming on behalf of Connor Fleming; Boston, Massachusetts; Court of Federal Claims Number 02–0805V
25. Nancy Flaherty on behalf of Kaitlin Flaherty; Boston, Massachusetts; Court of Federal Claims Number 02–0806V
26. Heather Flaherty on behalf of Aidan Flaherty; Boston, Massachusetts; Court of Federal Claims Number 02–0807V
27. Alice Fitzmorris on behalf of Andrew Fitzmorris; Boston, Massachusetts; Court of Federal Claims Number 02–0808V
28. Katherine Fontanez on behalf of Matteo Figueroa; Boston, Massachusetts; Court of Federal Claims Number 02–0809V
29. Denise English on behalf of Jack English; Boston, Massachusetts; Court of Federal Claims Number 02–0810V
30. Carmen Beniquez on behalf of Kyle Downs; Boston, Massachusetts; Court of Federal Claims Number 02–0811V
31. Heather Dillon on behalf of David Dillon; Boston, Massachusetts; Court of Federal Claims Number 02–0812V
32. Stacy Daniel on behalf of Christopher Daniel; Boston, Massachusetts; Court of Federal Claims Number 02–0813V
33. Kimberlene Cuttler on behalf of Sarah Cuttler; Boston, Massachusetts; Court of Federal Claims Number 02–0814V
34. Margaret Bowman on behalf of Joshua Bowman; Boston, Massachusetts; Court of Federal Claims Number 02–0815V
35. Wendy Barry on behalf of Max Barry; Boston, Massachusetts; Court of Federal Claims Number 02–0816V
36. Amy Thames on behalf of Moses Thames; Boston, Massachusetts; Court of Federal Claims Number 02–0817V
37. Cassie Stoner on behalf of Carson Stoner; Boston, Massachusetts; Court of Federal Claims Number 02–0818V
38. Kim Stewart on behalf of Heath Stewart; Boston, Massachusetts; Court of Federal Claims Number 02–0819V
39. Kerri Speights on behalf of Brandon Speights; Boston, Massachusetts; Court of Federal Claims Number 02–0820V
40. Lynn Sparling on behalf of Deanna Sparling; Boston, Massachusetts; Court of Federal Claims Number 02–0821V
41. Jennifer Shearer on behalf of Dean Shearer; Boston, Massachusetts; Court of Federal Claims Number 02–0822V
42. Richard Schultz on behalf of Andreas Schultz; Boston, Massachusetts; Court of Federal Claims Number 02–0823V
43. Christina Schack on behalf of Dylan Schack; Boston, Massachusetts; Court of Federal Claims Number 02–0824V
44. Laura Santos on behalf of Phillip Santos; Boston, Massachusetts; Court of Federal Claims Number 02–0825V
45. Elsie Russell on behalf of Clay Russell; Boston, Massachusetts; Court of Federal Claims Number 02–0826V
46. Sherry Putz on behalf of Brent Putz; Boston, Massachusetts; Court of Federal Claims Number 02–0827V
47. Jess Pawlak on behalf of Trevor Pawlak; Boston, Massachusetts; Court of Federal Claims Number 02–0828V
48. Ginger McGrady on behalf of Ethan McGrady; Boston, Massachusetts; Court of Federal Claims Number 02–0829V
49. Susan McGlone on behalf of Ty McGlone; Boston, Massachusetts; Court of Federal Claims Number 02–0830V
50. Julie Maryjanowski on behalf of William Maryjanowski; Boston, Massachusetts; Court of Federal Claims Number 02–0831V
51. Wendie Mancuso on behalf of Daniel Mancuso; Boston, Massachusetts; Court of Federal Claims Number 02–0832V
52. Jennifer Larson on behalf of Caden Larson; Boston, Massachusetts; Court of Federal Claims Number 02–0833V
53. Julie Johnston on behalf of Hannah Johnston; Boston, Massachusetts; Court of Federal Claims Number 02–0834V
54. Bryan Jaeger on behalf of Brandon Jaeger; Boston, Massachusetts; Court of Federal Claims Number 02–0835V
55. Kathleen Billete-Saul on behalf of Patrick Billete; Boston, Massachusetts; Court of Federal Claims Number 02–0836V
56. Bryan Jaeger on behalf of Cameron Jaeger; Boston, Massachusetts; Court of Federal Claims Number 02–0837V
57. Doug Hamilton and Amy Currie on behalf of Edgar Hamilton; Melbourne, Florida; Court of Federal Claims Number 02–0838V
58. Lucine and George Hawn on behalf of Samantha Hawn; Alexandria, Virginia; Court of Federal Claims Number 02–0841V
59. Nancy and John Decharinte on behalf of Alex Decharinte; Houston, Texas; Court of Federal Claims Number 02–0842V
60. Nancy and John Decharinte on behalf of Kevin Decharinte; Houston, Texas; Court of Federal Claims Number 02–0843V
61. Maryann and Juan Garcia on behalf of Jared Adam Garcia; Houston, Texas; Court of Federal Claims Number 02–0844V
62. Patti and Gary Journey on behalf of Drew Journey; Houston, Texas; Court of Federal Claims Number 02–0845V
63. Lela Elizabeth Lansaw on behalf of Eric Gage Lansaw; Houston, Texas; Court of Federal Claims Number 02–0846V
64. Maria and Antonio Longoria on behalf of Brian Longoria; Houston, Texas; Court of Federal Claims Number 02–0847V
65. Sandi and Gregory Peerman on behalf of Bret Peerman; Houston, Texas; Court of Federal Claims Number 02–0848V
66. Mary and Curtis Richards on behalf of Leah Richards; Houston, Texas; Court of Federal Claims Number 02–0849V
67. Diane and Shawn Sullivan on behalf of Dylan Sullivan; Houston, Texas; Court of Federal Claims Number 02–0850V
68. Amy McCabe and Charles Tucker, Jr. on behalf of Charles Tucker, III; Houston, Texas; Court of Federal Claims Number 02–0851V
69. Joann and Johnny Vega on behalf of Amber Vega; Houston, Texas; Court of Federal Claims Number 02–0852V
70. Laurie Ann Caballerio on behalf of Michael A. Zendejas-Lanpher;

Houston, Texas; Court of Federal Claims Number 02–0853V
71. Andrea Garbutt and Clifford Ellison on behalf of Kendal Ellison; Houston, Texas; Court of Federal Claims Number 02–0854V
72. Delana Dee and Cary Paul Wilson on behalf of Robert Wilson; Houston, Texas; Court of Federal Claims Number 02–0855V
73. Janet Abruzzo on behalf of Anna Rose Abruzzo; Boston, Massachusetts; Court of Federal Claims Number 02–0857V
74. Kelly Todd on behalf of Kyle Todd; Boston, Massachusetts; Court of Federal Claims Number 02–0858V
75. Angela Jones on behalf of Langston Jones; Boston, Massachusetts; Court of Federal Claims Number 02–0859V
76. Nancy Galgano on behalf of Carmen Galgano; Boston, Massachusetts; Court of Federal Claims Number 02–0860V
77. Tricia Hasbrook on behalf of Arnold John Hasbrook; Boston, Massachusetts; Court of Federal Claims Number 02–0861V
78. Marc Gamberdella on behalf of Genaro Gamberdella; Boston, Massachusetts; Court of Federal Claims Number 02–0862V
79. Lawrence Smith on behalf of Logan Smith; Boston, Massachusetts; Court of Federal Claims Number 02–0863V
80. Malkah Pessel-Berger and Aryeh Berger on behalf of Chana Rochel Berger; Brooklyn, New York; Court of Federal Claims Number 02–0865V
81. Karen Meenan on behalf of Chelsea Meenan; Acton, Massachusetts; Court of Federal Claims Number 02–0866V
82. Shari and Jeffrey Willingham on behalf of Zachary Willingham; Hiram, Georgia; Court of Federal Claims Number 02–0867V
83. Robin and Michael Wilson on behalf of Destiny Wilson; Savannah, Georgia; Court of Federal Claims Number 02–0868V
84. Joann and John Bowes on behalf of Andrew Bowes; Raleigh, North Carolina; Court of Federal Claims Number 02–0869V
85. Tracy and Wayne Hill on behalf of Wayne Hill, Jr.; Goldsboro, North Carolina; Court of Federal Claims Number 02–0870V
86. Ying and Va Yang on behalf of Ryan Yang; Hickory, North Carolina; Court of Federal Claims Number 02–0871V
87. Willie Bell and Gwendolyn Williams on behalf of Travis Bell; Rocky Mount, North Carolina; Court of Federal Claims Number 02–0872V
88. Amy and Stacy Carson on behalf of Kit Carson; Asheville, North Carolina; Court of Federal Claims Number 02–0873V
89. Broderick Leonard and Tamara Tolbert on behalf of Broderick Tyren Leonard; Montgomery, Alabama; Court of Federal Claims Number 02–0874V
90. Melissa and James Gray on behalf of Tanner Gray; Fayetteville, North Carolina; Court of Federal Claims Number 02–0875V
91. Sharmaine and David Brown on behalf of Marcus Brown; Watertown, New York; Court of Federal Claims Number 02–0876V
92. Virginia Hall and Thurman Richard on behalf of Joshua Dahles Hall; Salisbury, North Carolina; Court of Federal Claims Number 02–0877V
93. Amy and Timothy Blankenbeckler on behalf of Tanner Lee Blankenbeckler; Salisbury, North Carolina; Court of Federal Claims Number 02–0878V
94. Tara Bullard on behalf of Nicole Taylor Smith; Senatobia, Mississippi; Court of Federal Claims Number 02–0881V
95. Annie Wiggins on behalf of Aristotle Tellis; Alexandria, Virginia; Court of Federal Claims Number 02–0882V
96. Namuliza and Bofotola Akemba on behalf of Esha Akemba; Alexandria, Virginia; Court of Federal Claims Number 02–0883V
97. Pamela and Daniel Korpal on behalf of William Palmer Korpal; Alexandria, Virginia; Court of Federal Claims Number 02–0884V
98. Ernest Pugh and Linda Davis on behalf of Ernest Pugh, IV; Gretna, Louisiana; Court of Federal Claims Number 02–0885V
99. Sheri and Cary Steffens on behalf of Donovan Steffens; Philadelphia, Pennsylvania; Court of Federal Claims Number 02–0886V
100. Donna Zittrouer on behalf of Andrew Zittrouer; Vienna, Virginia; Court of Federal Claims Number 02–0887V
101. Mathew Snyder on behalf of John Snyder; Vienna, Virginia; Court of Federal Claims Number 02–0888V
102. Douglas Cooper on behalf of Justin Cooper; Vienna, Virginia; Court of Federal Claims Number 02–0889V
103. Robert Blackwell on behalf of Timothy Blackwell; Vienna, Virginia; Court of Federal Claims Number 02–0890V
104. Maria Corrales on behalf of Dean James Kivotidis; Vienna, Virginia; Court of Federal Claims Number 02–0891V
105. Rose Lunsford on behalf of Matthew Lunsford; Vienna, Virginia; Court of Federal Claims Number 02–0892V
106. Arlisha Ross on behalf of Sarabian Ross; Jackson, Mississippi; Court of Federal Claims Number 02–0896V
107. Judy and Gary Johnson on behalf of Stefan Ray Johnson; Hayward, California; Court of Federal Claims Number 02–0897V
108. Connie and Peter Koehn on behalf of Joseph Koehn; Minneapolis, Minnesota; Court of Federal Claims Number 02–0899V
109. Laneen and Cornelius Graham on behalf of Cornelius Stefon Graham; Rockingham, North Carolina; Court of Federal Claims Number 02–0900V
110. Jennifer Reno on behalf of Matthew Reno; Boston, Massachusetts; Court of Federal Claims Number 02–0901V
111. Deborah Martin on behalf of Ryan Soper; Boston, Massachusetts; Court of Federal Claims Number 02–0902V
112. Isaak Tiske on behalf of Clarence Tiske; Boston, Massachusetts; Court of Federal Claims Number 02–0903V
113. Rebecca Grimes on behalf of Joshua Grimes; Boston, Massachusetts; Court of Federal Claims Number 02–0904V
114. Rebecca Grimes on behalf of Nathan Grimes; Boston, Massachusetts; Court of Federal Claims Number 02–0905V
115. Fern Henderson on behalf of William Henderson; Boston, Massachusetts; Court of Federal Claims Number 02–0906V
116. Edward Sollinger on behalf of Julia Sollinger; Boston, Massachusetts; Court of Federal Claims Number 02–0907V
117. Jennifer McKean on behalf of Ryan McKean; Boston, Massachusetts; Court of Federal Claims Number 02–0908V
118. Michelle Kwiatkowski on behalf of Jonathan Kwiatkowski; Boston, Massachusetts; Court of Federal Claims Number 02–0909V
119. Tawnya Allen on behalf of Jordan Allen; Temecula, California; Court of Federal Claims Number 02–0913V
120. Cindy and Jeffrey Mays on behalf of Kyle Mays; Temecula, California; Court of Federal Claims Number 02–0914V
121. Anna and Brent Clawson on behalf of Cameron James Clawson; Temecula, California; Court of Federal Claims Number 02–0915V
122. Lesa and Kenneth Booth on behalf of Jeffrey T. Booth; Houston, Texas; Court of Federal Claims Number 02–0916V
123. Gary Bell and Christina Messick on behalf of Chase T. Bell; Houston, Texas; Court of Federal Claims Number 02–0917V
124. Arthur Gonyea and Norma Jean Fowler on behalf of Jeffrey Gonyea; Houston, Texas; Court of Federal Claims Number 02–0918V
125. Lilia and David Rosell on behalf of Katie B. Rosell; Houston, Texas; Court of Federal Claims Number 02–0919V

126. Linda and Kerry Weinmaster on behalf of Adam Weinmaster; Houston, Texas; Court of Federal Claims Number 02–0920V
127. Carolyn and Robert Clarke on behalf of Christopher Ryan Clarke; Logan, West Virginia; Court of Federal Claims Number 02–0921V
128. Tina and Brian Flanagan on behalf of Patrick James Joseph Flanagan; Flushing, New York; Court of Federal Claims Number 02–0922V
129. Christine and Norman Eisengart on behalf of Nicholas Connor Eisengart; Ashtabula, Ohio; Court of Federal Claims Number 02–0923V
130. Charles Mensah; Bronx, New York; Court of Federal Claims Number 02–0924V
131. Melissa and Frank Kudasik on behalf of Hunter Frank Kudasik; Aberdeen, Washington; Court of Federal Claims Number 02–0925V
132. John Aaron Nagel on behalf of Clay Harris Nagel; Boston, Massachusetts; Court of Federal Claims Number 02–0927V
133. Mary Browning on behalf of Mauve Brynildson; Boston, Massachusetts; Court of Federal Claims Number 02–0928V
134. Mary Browning on behalf of Katherine Brynildson; Boston, Massachusetts; Court of Federal Claims Number 02–0929V
135. Lory and Calvin Shaw on behalf of Jason Shaw; Smithfield, North Carolina; Court of Federal Claims Number 02–0930V
136. Victor Heidelberg on behalf of Destiny Heidelberg; Laurel, Mississippi; Court of Federal Claims Number 02–0931V
137. Barbara Winnicki on behalf of Matthew Winnicki; Boston, Massachusetts; Court of Federal Claims Number 02–0935V
138. Murray Richelson on behalf of Elisheva Richelson; Boston, Massachusetts; Court of Federal Claims Number 02–0936V
139. Mohammad Saadatzadeh and Sholeh Bijang on behalf of Tirajeh Saadatzadeh; Indianapolis, Indiana; Court of Federal Claims Number 02–0937V
140. Judith and Michael Ruggiero on behalf of Nicholas A. Ruggiero; Indianapolis, Indiana; Court of Federal Claims Number 02–0938V
141. Theresa Abel on behalf of Brittany Dollins; Peoria, Illinois; Court of Federal Claims Number 02–0947V
142. Kita Hughes on behalf of Marlin Noel Hughes; Detroit, Michigan; Court of Federal Claims Number 02–0949V
143. Sharon and Scott Blair on behalf of Aubreianna Blair; Vienna, Virginia; Court of Federal Claims Number 02–0952V
144. Marie and David Bennett on behalf of Austin Rowe Bennett; Seattle, Washington; Court of Federal Claims Number 02–0954V
145. Elizabeth and Thomas Duggan on behalf of Justine Duggan; Rockville Center, New York; Court of Federal Claims Number 02–0955V
146. Lori and Edward Bailey on behalf of Kaylin Ruth Bailey; Logan, West Virginia; Court of Federal Claims Number 02–0956V
147. Cynthia McCullough on behalf of Kearney Rose McCullough; Worcester, Massachusetts; Court of Federal Claims Number 02–0957V
148. Dave Mackelprang and Mildred Floyd on behalf of Devin Michael Mackelprang; Denver, Colorado; Court of Federal Claims Number 02–0958V
149. Laura and Aaron Misenhelter on behalf of Aaron Misenhelter; Charleston, South Carolina; Court of Federal Claims Number 02–0960V
150. Samara Brown on behalf of Dorian Herriott; Sumter, South Carolina; Court of Federal Claims Number 02–0961V
151. Dawn and Robert Thomas on behalf of Robert C. Thomas; Lexington, South Carolina; Court of Federal Claims Number 02–0962V
152. Diane Dininno and Charles Wilson on behalf of Trystan Wilson Graham; Fayetteville, North Carolina; Court of Federal Claims Number 02–0963V
153. Carolyn and Jose Nogal on behalf of Mirella Nogal; Newton Grove, North Carolina; Court of Federal Claims Number 02–0964V
154. Leslie and Robert Weed on behalf of Lanier Rose Weed; Melbourne, Florida; Court of Federal Claims Number 02–0965V
155. Katherine and David Souers on behalf of Benjamin Thomas Souers; Melbourne, Florida; Court of Federal Claims Number 02–0966V
156. Sharon Lang; Chicago, Illinois; Court of Federal Claims Number 02–0968V
157. Tammy Jo Dettman on behalf of Brandon Edward Barton; Houston, Texas; Court of Federal Claims Number 02–0973V
158. Aja Richardson on behalf of Kylie Mae Cotton-Richardson; Houston, Texas; Court of Federal Claims Number 02–0974V
159. Maggie and Leif Taubenberger on behalf of Max Friedrich Taubenberger; Houston, Texas; Court of Federal Claims Number 02–0975V
160. Leticia Garcia on behalf of Jacob Matthew Garcia; San Jose, California; Court of Federal Claims Number 02–0976V
161. Ora Robinson on behalf of James Marcus Robinson; Denver, Colorado; Court of Federal Claims Number 02–0977V
162. Michelle and Mark Dunham on behalf of Nicholas Ryan Dunham; Melbourne, Florida; Court of Federal Claims Number 02–0980V
163. Alicia and Blane Meeks on behalf of Madison L. Meeks; Melbourne, Florida; Court of Federal Claims Number 02–0981V
164. Jennifer Mullen on behalf of Sean Mullen; Boston, Massachusetts; Court of Federal Claims Number 02–0983V
165. Michelle Avery on behalf of Justin Avery; Boston, Massachusetts; Court of Federal Claims Number 02–0984V
166. Jessica Ozment on behalf of Victoria Ozment; Boston, Massachusetts; Court of Federal Claims Number 02–0985V
167. Robin Cline on behalf of Ryan Rothrock; Boston, Massachusetts; Court of Federal Claims Number 02–0986V
168. Victoria Miller on behalf of Zachery Miller; Boston, Massachusetts; Court of Federal Claims Number 02–0987V
169. Kimberly Melvin on behalf of Najee Melvin; Boston, Massachusetts; Court of Federal Claims Number 02–0988V
170. Charlene Russell on behalf of Joseph Russell; Boston, Massachusetts; Court of Federal Claims Number 02–0989V
171. Myra McKeever on behalf of Cyrish McKeever; Boston, Massachusetts; Court of Federal Claims Number 02–0990V
172. Dawn Roark on behalf of Noah Roark; Boston, Massachusetts; Court of Federal Claims Number 02–0991V
173. Monika Steinborn on behalf of Trevor Rose; Boston, Massachusetts; Court of Federal Claims Number 02–0992V
174. Sharon and Tim Scott on behalf of Colby Brennan Scott; Houston, Texas; Court of Federal Claims Number 02–0993V
175. Felica and David Ward on behalf of Morgan Elizabeth Ward; Lewisville, Texas; Court of Federal Claims Number 02–0994V
176. Cynthia and Kenneth Brown on behalf of Zachary Taylor Brown; Lewisville, Texas; Court of Federal Claims Number 02–0995V
177. Melissa and Norman Kuehn on behalf of Brandon Hilton Kuehn; Houston, Texas; Court of Federal Claims Number 02–0996V
178. Eileen and Michael O'Connell on behalf of Michael Joseph O'Connell; Webster, Texas; Court of Federal Claims Number 02–0997V
179. Jessica Owens on behalf of Jarrett Ross Schafer; Corsicana, Texas; Court of Federal Claims Number 02–0998V

180. Kendal and Jay Blackmon on behalf of Todd Christopher Blackmon; Fort Worth, Texas; Court of Federal Claims Number 02–0999V
181. Jacqueline and Mark Redding on behalf of Case Redding; New Orleans, Louisiana; Court of Federal Claims Number 02–1000V
182. Eugenia Collins on behalf of JaCora Nesbitt; Charleston, South Carolina; Court of Federal Claims Number 02–1002V
183. Jacqueline Degree on behalf of Keanna Degree; Charleston, South Carolina; Court of Federal Claims Number 02–1003V
184. Andrea Jordan on behalf of Alvarez Boyd; Charleston, South Carolina; Court of Federal Claims Number 02–1004V
185. Cynthia Sells on behalf of Marlesha Sells; Charleston, South Carolina; Court of Federal Claims Number 02–1005V
186. Keri Stevenson on behalf of Baylee Stevenson; Charleston, South Carolina; Court of Federal Claims Number 02–1006V
187. Tammy and Paul Lessick on behalf of Dean Lessick; Charleston, South Carolina; Court of Federal Claims Number 02–1007V
188. Christina Masters on behalf of Allison Butcher; Charleston, South Carolina; Court of Federal Claims Number 02–1008V
189. Lajaune and George Graves on behalf of Nyla Graves; Charleston, South Carolina; Court of Federal Claims Number 02–1009V
190. Radiah and Christopher Stewart on behalf of Elijah Stewart; Charleston, South Carolina; Court of Federal Claims Number 02–1010V
191. Beth Tobin on behalf of Lauren Tobin; Vienna, Virginia; Court of Federal Claims Number 02–1012V
192. Janeen and Joseph Herskovitz on behalf of Benjamin Herskovitz; Melbourne, Florida; Court of Federal Claims Number 02–1013V
193. Janine Pandolfino on behalf of Gianna Pandolfino; Framingham, Massachusetts; Court of Federal Claims Number 02–1014V
194. Julie and Craig Yanz on behalf of Zachary Yanz; Minneapolis, Minnesota; Court of Federal Claims Number 02–1015V
195. Lynette and Max Lambert on behalf of Abbigail Lambert, Deceased; Denton, Texas; Court of Federal Claims Number 02–1016V
196. Kellie and Anthony Korder on behalf of Courtney River Korder; Minneapolis, Minnesota; Court of Federal Claims Number 02–1017V
197. Stephanie and Daniel Bakke on behalf of Benjamin Bakke; Minneapolis, Minnesota; Court of Federal Claims Number 02–1018V
198. Sue and Ron Carey on behalf of Matthew Carey; Minneapolis, Minnesota; Court of Federal Claims Number 02–1019V
199. Gail and Mark Foreman on behalf of Christopher Foreman; Minneapolis, Minnesota; Court of Federal Claims Number 02–1020V
200. Judy and Luke Yurkovich on behalf of Brenden Yurkovich; Minneapolis, Minnesota; Court of Federal Claims Number 02–1021V
201. Kimberly Lambert; Covington, Louisiana; Court of Federal Claims Number 02–1022V
202. Kathleen Rose Murphy on behalf of Adam Joseph Rusch; Houston, Texas; Court of Federal Claims Number 02–1023V
203. Amanda Jo Wroblewski on behalf of Shane O'Connell, Jr.; Houston, Texas; Court of Federal Claims Number 02–1024V
204. Jamie and Alan Harshfield on behalf of Adison Harshfield; Houston, Texas; Court of Federal Claims Number 02–1025V
205. Nikki Leigh Horstmeyer on behalf of Tyler B. Germann; Houston, Texas; Court of Federal Claims Number 02–1026V
206. Pamela and Craig Corley on behalf of James Corley; Houston, Texas; Court of Federal Claims Number 02–1027V
207. Dionne Carter on behalf of Logan Carter; Houston, Texas; Court of Federal Claims Number 02–1028V
208. Linda and Jeffrey Brown on behalf of Terrell C. Brown; Houston, Texas; Court of Federal Claims Number 02–1029V
209. Mary Fields on behalf of Triniti Fields; Charleston, South Carolina; Court of Federal Claims Number 02–1034V
210. Gina Busolin on behalf of Christopher Busolin; Charleston, South Carolina; Court of Federal Claims Number 02–1035V
211. James McKenzie on behalf of Jahiya McKenzie; Charleston, South Carolina; Court of Federal Claims Number 02–1036V
212. Patricia and Bryan Easter on behalf of Patrick Easter; Charleston, South Carolina; Court of Federal Claims Number 02–1037V
213. Cheryl Kennedy on behalf of Darriaus Kennedy; Charleston, South Carolina; Court of Federal Claims Number 02–1038V
214. Amber and Bryan Trimpe on behalf of Gabriel Trimpe; Charleston, South Carolina; Court of Federal Claims Number 02–1039V
215. Leslie and Joe Davis on behalf of Joel Davis; Charleston, South Carolina; Court of Federal Claims Number 02–1040V
216. Janina and Leszek Olsen on behalf of Jan Olsen; Temecula, Florida; Court of Federal Claims Number 02–1043V
217. Delya Johnson on behalf of Quran Johnson; Salisbury, North Carolina; Court of Federal Claims Number 02–1044V
218. Beverly Watson on behalf of Keith Bernard Harris; Chicago, Illinois; Court of Federal Claims Number 02–1045V
219. Malka and Brian Asch on behalf of Ariel Michael Asch; Cedarhurst, New York; Court of Federal Claims Number 02–1046V
220. Leah Dow Standley on behalf of Addison Morris Standley; Winter Park, Florida; Court of Federal Claims Number 02–1047V
221. Angelia McCoy Allison on behalf of Robbiana La'Shae Harris; Demopolis, Alabama; Court of Federal Claims Number 02–1048V
222. Charles Jones and Tammy Roberson on behalf of Travis William Jones; Anniston, Alabama; Court of Federal Claims Number 02–1049V
223. Cori Katherine Harris on behalf of Raymond Ryan Harris; Quincy, Massachusetts; Court of Federal Claims Number 02–1050V
224. Dana Butler on behalf of Reagan Alicia Butler; Brooklyn, New York; Court of Federal Claims Number 02–1051V
225. Esther Hall; Thornton, Colorado; Court of Federal Claims Number 02–1052V
226. Ernesto Reyes on behalf of Isamar Reyes; Temecula, California; Court of Federal Claims Number 02–1053V
227. Sheri and Jeffrey Denbaugh on behalf of Julia Denbaugh; Temecula, California; Court of Federal Claims Number 02–1054V
228. Abigail and Christopher Smith on behalf of Kirsten Nicole Smith; Temecula, California; Court of Federal Claims Number 02–1055V
229. Elizabeth Collet on behalf of William Collet; Boston, Massachusetts; Court of Federal Claims Number 02–1056V
230. Golda Zafrani on behalf of Isaac Zafrani; Boston, Massachusetts; Court of Federal Claims Number 02–1057V
231. Makayla Zarker on behalf of Wendy Lynn; Boston, Massachusetts; Court of Federal Claims Number 02–1058V
232. Theresa and Steven Meadows on behalf of Tyler Steven Meadows; Melbourne, Florida; Court of Federal Claims Number 02–1059V
233. Jean and Frank Krumenacker on behalf of Frank Krumenacker; New York, New York; Court of Federal Claims Number 02–1060V

234. Vivian Leites on behalf of Addison Nicholas Leites; New York, New York; Court of Federal Claims Number 02–1061V
235. Stacey and Lawrence Wolff on behalf of Jordan Wolff; New York, New York; Court of Federal Claims Number 02–1062V
236. Marie and John Tonini on behalf of Nicholas Tonini; New York, New York; Court of Federal Claims Number 02–1063V
237. Michele and Jeffrey Horvath on behalf of Joshua Horvath; New York, New York; Court of Federal Claims Number 02–1064V
238. Cynthia Gowins on behalf of Brandon Gowins; Vienna, Virginia; Court of Federal Claims Number 02–1065V
239. Erica Egan on behalf of Bryan Mueller; Vienna, Virginia; Court of Federal Claims Number 02–1066V
240. Quentin Smith and Victoria Peay on behalf of Antoinette Y. Smith; Baltimore, Maryland; Court of Federal Claims Number 02–1067V
241. Sabina and Phillip Degaetano on behalf of Nicholas Degaetano; Great Neck, New York; Court of Federal Claims Number 02–1068V
242. Terry and Thomas Thackeray on behalf of Lauren Thackeray; Great Neck, New York; Court of Federal Claims Number 02–1069V
243. Margaret King on behalf of Marquell Johnson; Great Neck, New York; Court of Federal Claims Number 02–1070V
244. Troy Soper and Marie Martin on behalf of Ryan Soper; Great Neck, New York; Court of Federal Claims Number 02–1071V
245. Laura Thomas on behalf of Samantha Thomas; Great Neck, New York; Court of Federal Claims Number 02–1072V
246. Victoria and Luke Brunson on behalf of Zachary Boggs Brunson; Chamblee, Georgia; Court of Federal Claims Number 02–1073V
247. Gary Champagne on behalf of Kevin Champagne; Culloden, Georgia; Court of Federal Claims Number 02–1074V
248. Suzanne and Richard Harvey on behalf of Bryceson Harvey; Lake Park, Georgia; Court of Federal Claims Number 02–1075V
249. Laura and Ricky Driver on behalf of Ricky Elbert Davis, Jr.; Salisbury, North Carolina; Court of Federal Claims Number 02–1081V
250. Cynthia Davis on behalf of Layne Patrick Davis; Salisbury, North Carolina; Court of Federal Claims Number 02–1082V
251. Carolyn Crowsom Hollar on behalf of Beau Harris Crowsom; Salisbury, North Carolina; Court of Federal Claims Number 02–1083V
252. Robin and Mark Arnold on behalf of Jonathan Arnold; Salisbury, North Carolina; Court of Federal Claims Number 02–1084V
253. Laura and Scott Bono on behalf of Jackson Bono; Salisbury, North Carolina; Court of Federal Claims Number 02–1085V
254. Leeann and Michael Calkins on behalf of Patricia Calkins; Charleston, South Carolina; Court of Federal Claims Number 02–1086V
255. Leeann and Michael Calkins on behalf of Jessica Calkins; Charleston, South Carolina; Court of Federal Claims Number 02–1087V
256. Trenesha McClary on behalf of Nakira Atkinson; Charleston, South Carolina; Court of Federal Claims Number 02–1088V
257. Drakoulis and Athanasios Petsos on behalf of Drakoulis Christodoulos Petsos; Hamilton, New Jersey; Court of Federal Claims Number 02–1089V
258. Katherine and Robert Green on behalf of Alan Chandler Green; Erie, Pennsylvania; Court of Federal Claims Number 02–1090V
259. Kerriann and Jeffrey Adler on behalf of Jeffrey Raymond Adler, II; Fullerton, California; Court of Federal Claims Number 02–1091V
260. Christie Lynn Haggard and Edgar Paul Conner on behalf of Sean Patrick Conner; Nashville, Tennessee; Court of Federal Claims Number 02–1092V
261. Patricia and Michael Harvan on behalf of Luke Alexander Harvan; Montgomeryville, Pennsylvania; Court of Federal Claims Number 02–1093V
262. Horacio Correa on behalf of Juliana Correa; Vienna, Virginia; Court of Federal Claims Number 02–1097V
263. Cynthia Darling on behalf of Garrett Darling; Vienna, Virginia; Court of Federal Claims Number 02–1098V
264. John Jodsaas on behalf of Johleen Jodsaas; Vienna, Virginia; Court of Federal Claims Number 02–1099V
265. Tammy Henschel on behalf of Noah Wade Henschel; Boston, Massachusetts; Court of Federal Claims Number 02–1100V
266. Nancy and Troy Morris on behalf of Tiston Levi Morris; Vidalia, Georgia; Court of Federal Claims Number 02–1101V
267. Tashia and Robert Smalls on behalf of Quentin Josef Smalls; Flushing, New York; Court of Federal Claims Number 02–1102V
268. Christine and Clark Parr on behalf of Blake Christopher Parr; Denver, Colorado; Court of Federal Claims Number 02–1103V
269. Lori and Jeffrey Yanuchi on behalf of Brooks Jordan Yanuchi; Fairbanks, Alaska; Court of Federal Claims Number 02–1104V
270. Joan and Thomas Lutz on behalf of Thomas Lutz; Libertyville, Illinois; Court of Federal Claims Number 02–1105V
271. Leila and Michael Voss on behalf of Jacob Michael Voss; Eureka, California; Court of Federal Claims Number 02–1106V
272. Stacy and Michael Vivona on behalf of Nicholas George Vivona; Levittown, New York; Court of Federal Claims Number 02–1107V
273. David Diconza; Boston, Massachusetts; Court of Federal Claims Number 02–1109V
274. William D. Fichera; Boston, Massachusetts; Court of Federal Claims Number 02–1110V
275. Mark Tremblay on behalf of Oliver Tremblay; Boston, Massachusetts; Court of Federal Claims Number 02–1111V
276. Nadine Fitzgerald on behalf of Nya Fitzgerald; Boston, Massachusetts; Court of Federal Claims Number 02–1112V
277. Carolyn Brown on behalf of Paige Brown; Boston, Massachusetts; Court of Federal Claims Number 02–1113V
278. Elaine Williams on behalf of Nicholas Lemon; Boston, Massachusetts; Court of Federal Claims Number 02–1114V
279. Raymond Laspada on behalf of Tyler Laspada; Boston, Massachusetts; Court of Federal Claims Number 02–1115V
280. Donna Cooper on behalf of Jonathan Cooper; Boston, Massachusetts; Court of Federal Claims Number 02–1116V
281. David Schacter on behalf of Jacob Schacter; Boston, Massachusetts; Court of Federal Claims Number 02–1117V
282. Thomas Hoxie on behalf of Kyle Hoxie; Boston, Massachusetts; Court of Federal Claims Number 02–1118V
283. Sharon Ackerman on behalf of Frederick M. Ackerman, III; Morganville, New Jersey; Court of Federal Claims Number 02–1119V
284. Lynn and Michael Bollish on behalf of Brandon Michael Bollish; Dallas, Texas; Court of Federal Claims Number 02–1120V
285. Roberta Barton-Patino on behalf of George Patino; New Orleans, Louisiana; Court of Federal Claims Number 02–1121V
286. Jane and Kenneth Lang on behalf of Robert Michael Lang; Salisbury, North Carolina; Court of Federal Claims Number 02–1124V
287. Patricia and John Hamilton on behalf of Evan Hamilton; Salisbury, North Carolina; Court of Federal Claims Number 02–1125V

288. Valerie and Brent Koeval on behalf of Helen Koeval; Salisbury, North Carolina; Court of Federal Claims Number 02–1126V
289. Theresa and Tom Vollmer on behalf of Julia Madison Vollmer; Salisbury, North Carolina; Court of Federal Claims Number 02–1127V
290. O.C. and Teryl Dorham on behalf of Alexis Dorham; Aledo, Texas; Court of Federal Claims Number 02–1130V
291. Enrique Rodriguez on behalf of Jeremiah Rodriguez; Boston, Massachusetts; Court of Federal Claims Number 02–1131V
292. Victoria Cummings on behalf of Deanna Cummings; Vienna, Virginia; Court of Federal Claims Number 02–1132V
293. Nan Conlon; New Brunswick, New Jersey; Court of Federal Claims Number 02–1133V
294. Kelly Kerns on behalf of Andrew Kerns; Boston, Massachusetts; Court of Federal Claims Number 02–1137V
295. Elizabeth Pabey on behalf of Brandon Garcia; Boston, Massachusetts; Court of Federal Claims Number 02–1138V
296. Kimberly Gayon on behalf of Rafael Gayon; Boston, Massachusetts; Court of Federal Claims Number 02–1139V
297. Linda Chen on behalf of Jason Chen; Boston, Massachusetts; Court of Federal Claims Number 02–1140V
298. Tiffany Brassard on behalf of Kayden Brassard; Boston, Massachusetts; Court of Federal Claims Number 02–1141V
299. Jamie Blockinger on behalf of Aaron Blockinger; Boston, Massachusetts; Court of Federal Claims Number 02–1142V
300. Maria Cerrato on behalf of Brandon Cerrato; Boston, Massachusetts; Court of Federal Claims Number 02–1143V
301. Lavanda Palmer on behalf of Marcus Palmer; Boston, Massachusetts; Court of Federal Claims Number 02–1144V
302. Anthony Thompson on behalf of James Thompson; Boston, Massachusetts; Court of Federal Claims Number 02–1145V
303. Sherone Sader on behalf of Shaun Sader; Boston, Massachusetts; Court of Federal Claims Number 02–1146V
304. Hillari O'Brien on behalf of Nicholas O'Brien; Boston, Massachusetts; Court of Federal Claims Number 02–1147V
305. Pamela Nichol on behalf of Anthony Nichol; Boston, Massachusetts; Court of Federal Claims Number 02–1148V
306. Steven Miller on behalf of Danielle Miller; Boston, Massachusetts; Court of Federal Claims Number 02–1149V
307. Cynda Mayfield on behalf of Jayson Mayfield; Boston, Massachusetts; Court of Federal Claims Number 02–1150V
308. Kelly Kerns on behalf of Daniel Kerns; Boston, Massachusetts; Court of Federal Claims Number 02–1151V
309. Jodi Vanmeter on behalf of Ryan Vanmeter; Boston, Massachusetts; Court of Federal Claims Number 02–1152V
310. Veronica Lynch on behalf of Yancey James Lynch; Great Neck, New York; Court of Federal Claims Number 02–1153V
311. Yolanda and Alex Orozco on behalf of Alex Christopher Orozco, Jr.; Phoenix, Arizona; Court of Federal Claims Number 02–1154V
312. Antoinette and Timothy Leonard on behalf of Tyler Leonard; New Orleans, Louisiana; Court of Federal Claims Number 02–1155V
313. Brandy and Clint Guyban on behalf of Matthew Guyban; New Orleans, Louisiana; Court of Federal Claims Number 02–1156V
314. Dawn and Daryl Sam on behalf of Daryl Sam, Jr.; New Orleans, Louisiana; Court of Federal Claims Number 02–1157V
315. Quotisha Sharper on behalf of Emile Clay; New Orleans, Louisiana; Court of Federal Claims Number 02–1158V
316. Addie M. Ryman on behalf of Anthony Marcelle; New Orleans, Louisiana; Court of Federal Claims Number 02–1159V
317. Andrea Chertkow on behalf of Tyler Chertkow; San Diego, California; Court of Federal Claims Number 02–1161V
318. Cori Padilla and Julio Marquez on behalf of Antonio C. Marquez, Deceased; Aurora, Colorado; Court of Federal Claims Number 02–1162V
319. Deborah Laughter on behalf of Caleb Jamison Adams; Salisbury, North Carolina; Court of Federal Claims Number 02–1164V
320. Julie Ann Teat on behalf of John Christian Arney; Salisbury, North Carolina; Court of Federal Claims Number 02–1165V
321. Debra and Carlos Owens on behalf of Sean Owens; Salisbury, North Carolina; Court of Federal Claims Number 02–1166V
322. Tracey and Alton Parker on behalf of Alton P. Parker, Jr.; Salisbury, North Carolina; Court of Federal Claims Number 02–1167V
323. Amy and David Long on behalf of Walker Long; Salisbury, North Carolina; Court of Federal Claims Number 02–1168V
324. Shelley and Frederick Kraft on behalf of Alexander James Kraft; Salisbury, North Carolina; Court of Federal Claims Number 02–1169V
325. Lucinda McKinnon on behalf of Verontina McKinnon; Salisbury, North Carolina; Court of Federal Claims Number 02–1170V
326. Kimberly and Charles Kuhn on behalf of Ethan Kuhn; Houston, Texas; Court of Federal Claims Number 02–1171V
327. Alberto Puebla and Juanita Flores on behalf of Jared Allen Puebla; Houston, Texas; Court of Federal Claims Number 02–1172V
328. Samuel Briseno on behalf of Brandon Briseno; Houston, Texas; Court of Federal Claims Number 02–1173V
329. Lisa and Stephen Salbato on behalf of Nicholas Salbato; Houston, Texas; Court of Federal Claims Number 02–1174V
330. Donna and Jeff Popp on behalf of Joshua Michael Popp; Cincinnati, Ohio; Court of Federal Claims Number 02–1175V
331. Wendy and James Akers on behalf of James Cole Akers; Dobson, North Carolina; Court of Federal Claims Number 02–1176V
332. Brigitte and Larry Atkinson on behalf of Jake Alex Atkinson; North Virginia, Minnesota; Court of Federal Claims Number 02–1177V
333. Nancy and Nicholas Sierchio on behalf of David Cole Sierchio; Denville, New Jersey; Court of Federal Claims Number 02–1178V
334. Margaret and Eric Heitz on behalf of Christopher Thaddeus Pustelak; Berwyn, Illinois; Court of Federal Claims Number 02–1179V
335. Donna and Jeff Popp on behalf of Justin Dean Popp; Cincinnati, Ohio; Court of Federal Claims Number 02–1180V
336. Betzaida and Moises Colon on behalf of Gabriel Moises Colon; Fort Campbell, Kentucky; Court of Federal Claims Number 02–1181V
337. Jennifer and Aaron Donatella on behalf of Bradly Steven Donatella; Youngstown, Ohio; Court of Federal Claims Number 02–1182V
338. Frances and Danile Aull on behalf of William Daniel Blake Aull, Deceased; Owensboro, Kentucky; Court of Federal Claims Number 02–1183V
339. Theresa (McDohough) Alwuhush on behalf of Adam A. Alwuhush; Alexandria, Virginia; Court of Federal Claims Number 02–1187V
340. Senait Hagos on behalf of Muna Awlaki; Alexandria, Virginia; Court of Federal Claims Number 02–1188V
341. Tracey Coleman on behalf of Abigail M. Coleman; Alexandria, Virginia; Court of Federal Claims Number 02–1189V

342. Judith Nicosia on behalf of Michael J. Nicosia; Alexandria, Virginia; Court of Federal Claims Number 02–1190V
343. Angela M. Green on behalf of Geoffrey H. Baskerville; Alexandria, Virginia; Court of Federal Claims Number 02–1191V
344. Deborah J. Fuller on behalf of Christopher A. Brooks, Jr.; Alexandria, Virginia; Court of Federal Claims Number 02–1192V
345. Trena M. Fisher on behalf of Cody R. Fisher; Alexandria, Virginia; Court of Federal Claims Number 02–1193V
346. Shanice (Holmes) Golden on behalf of Shamont (Holmes) Golden; Alexandria, Virginia; Court of Federal Claims Number 02–1194V
347. Libra Orange on behalf of Daron J. Lightfoot; Alexandria, Virginia; Court of Federal Claims Number 02–1195V
348. Althea and James McIver on behalf of James E. McIver, III; Alexandria, Virginia; Court of Federal Claims Number 02–1196V
349. Brenda Randolph on behalf of Decarol L. Randolph; Alexandria, Virginia; Court of Federal Claims Number 02–1197V
350. Zabrina Ward on behalf of Meiko G. Ward; Alexandria, Virginia; Court of Federal Claims Number 02–1198V
351. Sandra and James Waters on behalf of Sean P. Waters; Vienna, Virginia; Court of Federal Claims Number 02–1200V
352. Trisha Cuce on behalf of Lindsay Cuce; Vienna, Virginia; Court of Federal Claims Number 02–1201V
353. Sherry Williford on behalf of Kyle Williford; Vienna, Virginia; Court of Federal Claims Number 02–1202V
354. Ted Jones, III; Vienna, Virginia; Court of Federal Claims Number 02–1203V
355. Cindy Zortman; Vienna, Virginia; Court of Federal Claims Number 02–1204V
356. Nancy and Charles Nucciarone on behalf of Anthony M. Nucciarone; Alexandria, Virginia; Court of Federal Claims Number 02–1208V
357. Julie Reber Duffield on behalf of Jessica A. Duffield; Alexandria, Virginia; Court of Federal Claims Number 02–1209V
358. Richard Green; Sicklerville, New Jersey; Court of Federal Claims Number 02–1210V
359. Lisa and Walter Graves on behalf of Hayley Nicole Graves, Deceased; Grapevine, Texas; Court of Federal Claims Number 02–1211V
360. Tracy and Scott Sugg on behalf of Lulianna Sugg; El Dorado, Arkansas; Court of Federal Claims Number 02–1213V
361. Kelly and Michael Vickers on behalf of Michael Zachary Vickers; Gonzales, Louisiana; Court of Federal Claims Number 02–1214V
362. Leslie and Jason Swink on behalf of Mark Swink; Melbourne, Florida; Court of Federal Claims Number 02–1215V
363. Rani Stevens on behalf of Corinthia Shalise Watkins, Deceased; Longview, Texas; Court of Federal Claims Number 02–1223V
364. Heather and James Turner on behalf of Taylor B. Ivy; Melbourne, Florida; Court of Federal Claims Number 02–1224V
365. Jacqueline and Scott Miller on behalf of Joel S. Miller; Melbourne, Florida; Court of Federal Claims Number 02–1225V
366. Wilmer Price on behalf of Joshua Price; Vienna, Virginia; Court of Federal Claims Number 02–1226V
367. Meagan O'Brien on behalf of Kelly O'Brien; Vienna, Virginia; Court of Federal Claims Number 02–1227V
368. Janie and Nathan Custer on behalf of Ethan Custer; Kansas City, Missouri; Court of Federal Claims Number 02–1229V
369. Meredith and Terry Hughes on behalf of Terri M. Hughes; Houston, Texas; Court of Federal Claims Number 02–1230V
370. Christine Taylor on behalf of Samuel Taylor; Houston, Texas; Court of Federal Claims Number 02–1231V
371. Lynn and Walter Kellogg on behalf of Krista Kellogg; Houston, Texas; Court of Federal Claims Number 02–1232V
372. Onna Elder on behalf of Jordan Elder; Boston, Massachusetts; Court of Federal Claims Number 02–1233V
373. Kimberly Wallace on behalf of Hunter Wood; Boston, Massachusetts; Court of Federal Claims Number 02–1234V
374. Delos Larson on behalf of Alexis Larson; Boston, Massachusetts; Court of Federal Claims Number 02–1235V
375. William Bullington on behalf of Ethan Bullington; Boston, Massachusetts; Court of Federal Claims Number 02–1236V
376. Colleen Allen on behalf of Alexa Allen; Boston, Massachusetts; Court of Federal Claims Number 02–1237V
377. Patricia Byers on behalf of Cole Byers; Boston, Massachusetts; Court of Federal Claims Number 02–1238V
378. Michelle Galliano on behalf of Brennyn Galliano; Boston, Massachusetts; Court of Federal Claims Number 02–1239V
379. Betsy Tipps on behalf of Dustin Hardebeck; Boston, Massachusetts; Court of Federal Claims Number 02–1240V
380. Arlene Marshall on behalf of Clyde L. Curtis; Alexandria, Virginia; Court of Federal Claims Number 02–1241V
381. Janie L. Davis on behalf of Caleb A. Davis; Alexandria, Virginia; Court of Federal Claims Number 02–1242V
382. Lou Edna Stevens on behalf of Tyrone Stevens, Jr.; Alexandria, Virginia; Court of Federal Claims Number 02–1243V
383. Regina Vance on behalf of Korey D. Vance; Alexandria, Virginia; Court of Federal Claims Number 02–1244V
384. Carmen K. Harris on behalf of Antonyus R. Harris; Alexandria, Virginia; Court of Federal Claims Number 02–1245V
385. Nichol Riley on behalf of Nicholas P. Riley; Alexandria, Virginia; Court of Federal Claims Number 02–1246V
386. Aujorae Lance on behalf of Tamiji Lance; Alexandria, Virginia; Court of Federal Claims Number 02–1247V
387. Mona Moody-Watson and Louis Watson on behalf of Sarina Watson; Alexandria, Virginia; Court of Federal Claims Number 02–1248V
388. Kimberly and Matthew O'Malley on behalf of Mark Joseph O'Malley; Morristown, New Jersey; Court of Federal Claims Number 02–1258V
389. Todd Altschul on behalf of April Altschul; Beaumont, Texas; Court of Federal Claims Number 02–1260V
390. Gabrielle and Sergio Nanez on behalf of Karina Isabel Nanez; El Paso, Texas; Court of Federal Claims Number 02–1261V
391. Debbie L. Hadden on behalf of Lessia Lynn Hadden; Hephzibah, Georgia; Court of Federal Claims Number 02–1262V
392. Michelle Mitchell on behalf of Daulton Mitchell; Boston, Massachusetts; Court of Federal Claims Number 02–1264V
393. Gwynne Cotter on behalf of Caleb Cotter; Boston, Massachusetts; Court of Federal Claims Number 02–1265V
394. Lori and James Cowan on behalf of Matthew Cowan; Vienna, Virginia; Court of Federal Claims Number 02–1266V
395. Cheryl Pangborn on behalf of Mason Pangborn; Vienna, Virginia; Court of Federal Claims Number 02–1267V
396. Leslie Byler on behalf of Trevor McCabe; Vienna, Virginia; Court of Federal Claims Number 02–1268V
397. Marcy Kelly on behalf of Dylan Kelly; Vienna, Virginia; Court of Federal Claims Number 02–1269V
398. Annette Cvengros on behalf of Aaron Cvengros; Vienna, Virginia; Court of Federal Claims Number 02–1270V
399. Michael Simmons on behalf of Stephen Simmons; Vienna, Virginia; Court of Federal Claims Number 02–1271V
400. Rebecca and Jack Sytsema on behalf of Nicholas Sytsema; Dallas,

Texas; Court of Federal Claims Number 02–1279V

401. Jeanne and Brian Rippentrop on behalf of Anthony Thomas Rippentrop; Dallas, Texas; Court of Federal Claims Number 02–1280V

402. Dana and Lee Halvorson on behalf of Robyn Leigh Halvorson; Dallas, Texas; Court of Federal Claims Number 02–1281V

403. Margaret Springer on behalf of Jonah Springer; Boston, Massachusetts; Court of Federal Claims Number 02–1284V

404. Vera A. Easter on behalf of Jordan Delaney Easter; Dallas, Texas; Court of Federal Claims Number 02–1285V

Dated: January 28, 2003.

Elizabeth M. Duke,

Administrator.

[FR Doc. 03–2658 Filed 2–4–03; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by agencies of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7057; fax: 301/402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

Fibroblast Growth Factor 3 (FGFR3) Receptor Knockin Mice

Dr. Chuxia Deng (NIDDK), DHHS Reference No. E–060–2003/0—Research Tool.

Licensing Contact: Marlene Shinn-Astor; 301/435–4426; *shinnm@od.nih.gov.*

Missense mutations in Fibroblast Growth Factor Receptor 3 (FGFR3) result in several human skeletal dysplasias, including the most common form of dwarfism, achondroplasia.

The NIH announces the generation of FGFR3 knockin mice, which have a Gly369Cys mutation, inserted into the mouse genome. Phenotypic analysis of the mice reveals that the FGF/FGFR3 signals affect both chondrogenesis and osteogenesis by regulating Stat proteins and cell-cycle inhibitors, and the activities of chondrocytes, osteoclasts, and osteoblasts during endochondral ossification. These mice provide a new animal model to study functions of FGF/FGFR3 signals in achondroplasia patients, which could lead to new drug discovery and therapeutic treatments.

Compositions and Methods for Inhibiting Group B Streptococcal-Induced Pulmonary Hypertension in Neonates

Rodney L. Levine et al. (NHLBI), DHHS Reference No. E–259–2002/0 filed Oct. 15, 2002.

Licensing Contact: Susan Ano; 301/435–5515; *anos@od.nih.gov.*

Group B streptococcus (GBS), the most common cause of sepsis and meningitis in human newborns, often results in respiratory distress. The underlying cause of this distress is pulmonary hypertension, historically believed to be induced by increased production of thromboxane A2 as stimulated by GBS. The technology described here reveals that the phospholipids cardiolipin and phosphotidylglycerol are causative agents of GBS-induced pulmonary hypertension. Furthermore, the technology describes administration of these phospholipids or immunogenic fragments thereof in an appropriate fashion to elicit an immune response, including administration as conjugates to hapten to enhance the binding selectivity of the resulting antibodies. Additionally, administration of antibodies to these phospholipids for the same purpose is related. The phospholipids or immunogenic fragments can also be administered in a dose-dependent manner to increase blood pressure in pulmonary arteries. Kits for administration of these phospholipids and/or anti-phospholipid antibodies are also described. The standard treatment for GBS infection is the penicillin class of antibiotics, which increases the synthesis and excretion of the two phospholipids revealed in this technology to cause pulmonary hypertension. Thus, the current technology offers a potential improvement over existing treatments. In the course of the research that led to the above discovery, a method of separating recombinantly expressed membrane-bound proteins and membrane-associated endotoxin in gram-negative prokaryote expression systems was also developed.

p-Toluemesulfonhydrazide Derivatization for Separation and Measurement of Endogenous Estrogen Metabolites by High-Pressure Liquid Chromatography-Electrospray-Mass Spectrometry

Dr. Xia Xu (NCI), U.S. Provisional Patent Application 60/372,848 filed Apr. 15, 2002.

Licensing Contact: Brenda Hefti; 301/435–4632; *heftib@od.nih.gov.*

The current invention relates to a method for measuring endogenous estrogen levels, and this technology may be generalizable to all endogenous ketolic steroids, including estrogens, androgens, and phytoestrogens.

Specifically, the current invention is a derivatization technique that forms estrogen-p-toluenesulfonhydrazones, which can be separated and then measured using high-pressure liquid chromatography-electrospray-mass spectrometry (HPLC–ESI–MS). This method offers a number of improvements over current methods. It is more sensitive, it is faster, it is more accurate, and it requires a smaller sample size.

FXR/BAR Knockout Mouse Model

Frank Gonzalez (NCI), DHHS Reference No. E–323–2001/0—Research Tool.

Licensing Contact: Marlene Shinn-Astor; 301/435–4426; *shinnm@od.nih.gov.*

Cholesterol lowering drugs are being prescribed more and more as a way to combat high cholesterol levels associated as a precursor to heart disease. The NIH announces a new knockout mouse model that lacks the nuclear receptor FXR/BAR (bile acid receptor). The receptor controls the synthesis and transport of bile salts, which are degradation products of cholesterol. These mice could, therefore, be used to test new targets for cholesterol lowering drugs that use a new mechanism which is distinct from the current statin drugs that control HMG CoA reductase.

Telomerase Immortalized Hepatocyte Cell Lines

Xin W. Wang and Curtis Harris (NCI), DHHS Reference No. E–251–2000/0–US–01 filed Dec. 14, 2000.

Licensing Contact: Catherine Joyce; 301/435–5031; *joycec@od.nih.gov.*

This technology relates to the development of new immortalized human liver cell lines that may be used for experimental, toxicological, physiological and gene therapeutic purposes. The cell lines were immortalized using a human telomerase reverse transcriptase (hTERT) gene via a retroviral vector and were derived from human hepatocytes.

A PCT patent application corresponding to this technology (PCT/US01/47755) was published on June 20, 2002 with publication number WO 02/48319.

The above-mentioned invention is available for licensing on a non-exclusive basis.

Dated: January 28, 2003.

Jack Spiegel,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 03–2626 Filed 2–4–03; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Fogarty International Center; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting of the Fogarty International Center Board.

The meeting will be opened to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Fogarty International Center Advisory Board.

Date: February 11, 2003.

Open: 8:30 a.m. to 12 p.m.

Agenda: A Report of the FIC Director on updates and overviews of new FIC initiatives and presentations from Dr. Elias Zerhouni, Director, NIH; Dr. Julie Greenberg, Director, DCD; and Dr. Miriam Stewart, Scientific Director of the Canadian Institutes of Health Institute of Gender and Health.

Place: National Institutes of Health, Lawton Chiles International House, Bethesda, MD 20892.

Closed: 1 p.m. to Adjournment.

Agenda: To review and evaluate grant applications and/or proposals.

Place: National Institutes of Health, Lawton Chiles International House, Bethesda, MD 20892.

Contact Person: Irene W. Edwards, Information Officer, Fogarty International Center, National Institutes Of Health, Building 31, Room B2C08, 31 Center Drive MSC 2220, Bethesda, MD 20892, 301–496–2075.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Information is also available on the Institute's/Center's home page: *http://www.nih.gov/fic/about/advisory.html*, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.106, Minority International Research Training Grant in the Biomedical and Behavioral Sciences; 93.154, Special International Postdoctoral Research Program in Acquired Immunodeficiency Syndrome: 93.168, International Cooperative Biodiversity Groups Program; 93.934, Fogarty International Research Collaboration Award; 93.989, Senior International Fellowship Awards Program, National Institutes of Health, HHS)

Dated: January 27, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–2622 Filed 2–4–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Cancer Institute Board of Scientific Advisors.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: National Cancer Institute Board of Scientific Advisors.

Date: March 3–4, 2003.

Time: March 3, 2003, 8 a.m. to 10:15 p.m.

Agenda: Joint meeting of the NCI Board of Scientific Advisors and NCI Board of Scientific Counselors; Report of the Director, NCI; Legislative Update; and Ethics Overview.

Place: National Cancer Institute, Building 31, C Wing, 6 Floor, 9000 Rockville Pike, Conference Room 10, Bethesda, MD 20892.

Time: March 3, 2003, 10:15 a.m. to 6 p.m.

Agenda: Ongoing and New Business; Reports of Program Review Group(s); and Budget Presentation; Reports of Special Initiatives; RFA and RFP Concept Reviews; and Scientific Presentations.

Place: National Cancer Institute, Building 31, C Wing, 6 Floor, 9000 Rockville Pike, Conference Room 10, Bethesda, MD 20892.

Time: March 4, 2003, 8:30 a.m. to 1 p.m.

Agenda: Reports of Special Initiatives; RFA and RFP Concept Reviews; and Scientific Presentations.

Place: National Cancer Institute, Building 31, C Wing, 6 Floor, 9000 Rockville Pike, Conference Room 10, Bethesda, MD 20892.

Contact Person: Paulette S. Gray, PhD, Executive Secretary, Deputy Director, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, 8th Floor, Rm. 8141, Bethesda, MD 20892, 301–496–4218.

In the interest of security, NIH has instituted stringent procedures for entrance into the building by non-government employees. Persons without a government I.D. will need to show a photo I.D. and sign-in at the security desk upon entering the building.

Information is also available on the Institute's/Center's home page: *http://deainfo.nci.nih.gov/advisory/bsa.htm*, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: January 27, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–2621 Filed 2–4–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center on Minority Health and Health Disparities; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as

amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Advisory Council on Minority Health and Health Disparities.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Council on Minority Health and Health Disparities.

Date: February 24, 2003.

Open: 8:30 a.m. to 1:30 p.m.

Agenda: The agenda will include Opening Remarks, Administrative Matters, Director's Report, NCMHD, and other business of the Council.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

Closed: 1:30 p.m. to Adjournment.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Tommy L. Broadwater, PhD., Senior Advisor to the Director, National Center on Minority Health, and Health Disparities, 6707 Democracy Plaza, Room 800, Bethesda, MD 20892, 301–402–1366.

Dated: January 28, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–2610 Filed 2–4–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel. Review of Program Project (P01s) Applications.

Date: February 25, 2003.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: Raddison Governors Inn, I–40 at Davis Drive, Exit 280, Research Triangle Park, NC 27709.

Contact Person: Sally Eckert-Tilotta, PhD, National Inst. of Environmental Health Sciences, Office of Program Operations, Scientific Review Branch, PO Box 12233, MD EC–30, Research Triangle Park, NC 27709, 919/541–1446, *eckertt1@niehs.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing; 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences, National Institutes of Health, HHS)

Dated: January 28, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–2611 Filed 2–4–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel, NIMH Schizophrenia Conte Centers.

Date: March 3–4, 2003.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Houmam H Araj, PhD., Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6148, MSC 9608, Bethesda, MD 20892–9608, 301–443–1340, *haraj@mail.nih.gov.*

Name of Committee: National Institute of Mental Health Special Emphasis Panel, Conte Centers For Mechanisms of Synaptic Signaling, Circadian Rhythms and Sexual Dimorphic Brain Injury.

Date: March 6–7, 2003.

Time: 9 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Peter J. Sheridan, PhD., Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6148, MSC 9606, Bethesda, MD 20892–9606, 301–443–1513, *psherida@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: January 28, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–2612 Filed 2–4–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C.,

as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel, Translational Research.

Date: February 21, 2003.

Time: 10:30 a.m. to 11:15 a.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave, Bethesda, MD 20814.

Contact Person: Peter J. Sheridan, PhD., Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6142, MSC 9606, Bethesda, MD 20892–9606, 301–443–1513, *psherida@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Mental Health Special Emphasis Panel, Translational Research in Behavioral Science.

Date: February 21, 2003.

Time: 11:15 a.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave, Bethesda, MD 20814.

Contact Person: Peter J. Sheridan, PhD., Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6142, MSC 9606, Bethesda, MD 20892–9606, 301–443–1513, *psherida@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Mental Health Special Emphasis Panel, ACISR & DCISR Center—Services.

Date: March 5, 2003.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave, Bethesda, MD 20814.

Contact Person: Henry J. Haigler, Ph.D., Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6150, MSC 9608, Bethesda, MD 20892–9608, 301–443–7216, *hhaigler@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: January 28, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–2613 Filed 2–4–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel, Comprehensive International Program of Research on AIDS (CIPRA).

Date: February 24, 2003.

Time: 10 a.m. to 12:30 p.m.

Agenda: To review and evaluate grant applications.

Place: 6700 B Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Robert C. Goldman, PhD., Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIAID, NIH, Room 3124, 6700–B Rockledge Drive, MSC 7616, Bethesda, MD 20892–7616, 301–496–8424, *rg159w@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: January 28, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–2614 Filed 2–4–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel, ZAA1 BB (14) Review Meeting (1 R01 Application).

Date: February 20, 2003.

Time: 8 a.m. to 9 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH/NIAAA, Willco Building, 6000 Executive Blvd., 409, Bethesda, MD 20892–7003, (Telephone Conference Call).

Contact Person: Elsie D. Taylor, Scientific Review Administrator, Extramural Project Review Branch, National Institute on Alcohol Abuse and Alcoholism, National Institutes of Health, Suite 409, 6000 Executive Blvd., Bethesda, MD 20892–7003, 301–443–9897, etaylor@niaaa.nih.gov.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel, ZAA1 FF (16)—R21 & K23 Special Emphasis Panel Review.

Date: February 24, 2003.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Willco Building, 6000 Executive Blvd., Room 409, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Sean O'Rourke, Scientific Review Administrator, Extramural Project Review Branch, National Institute on Alcohol Abuse and Alcoholism, National Institutes of Health, Suite 409, 6000 Executive Blvd., Bethesda, MD 20892–7003, 301–443–2861.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel, Prevention and Epidemiology Alcohol Review Committee—ZAA1 FF (10).

Date: February 28, 2003.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The River Inn Hotel, 924 Twenty-Fifth Street, NW., Washington, DC 20037.

Contact Person: Sean N. O'Rourke, Scientific Review Administrator, Extramural Project Review Branch, National Institute on Alcohol Abuse and Alcoholism, National Institutes of Health, Suite 409, 6000 Executive Blvd., Bethesda, MD 20892–7003, 301–443–2861.

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants, National Institutes of Health, HHS)

Dated: January 28, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–2615 Filed 2–4–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel. Food and Waterborne Diseases Integrated Research Network.

Date: February 26–28, 2003.

Time: 8:30 a.m. to 6 p.m.

Agenda: To review and evaluate contract proposals.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Gerald L. McLaughlin, PhD, Scientific Review Administrator, Scientific Review Program, National Institute of Allergy and Infectious Diseases, DEA/NIH/DHHS, 6700–B Rockledge Drive, MSC 7616, Room 2212, Bethesda, MD 20892–7616, 301–436–7465, *gm145a@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: January 29, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–2616 Filed 2–4–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Institute of Environmental Health Sciences Special Emphasis Panel, February 12, 2003, 9:30 a.m. to February 12, 2003, 10:30 a.m., which was published in the **Federal Register** on January 16, 2003, FR68: 2343.

The time of this meeting has change from 9:30 a.m. as previously advertised, to 1 p.m. The meeting is closed to the public

Dated: January 29, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–2617 Filed 2–4–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Institute of Environmental Health Sciences Special Emphasis Panel, February 19, 2003, 10 a.m. to February 19, 2003, 1 p.m., which was published in the **Federal Register** on January 16, 2003, FR68: 2344.

The time of this meeting has changed from 10 a.m., as previously advertised, to 11 a.m. The meeting is closed to the public.

Dated: January 29, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–2618 Filed 2–4–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Deafness and Other Communication Disorders; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Deafness and Other Communications Disorders Special Emphasis Panel. NIDCD Training and Conference Grants.

Date: March 4, 2003.

Time: 1 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, National Institutes of Health, 6120 Executive Blvd., Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Ali A. Azadegan, DVM, PHD, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research, NIDCD, NIH, EPS–400C, 6120 Executive Blvd MSC 7180, Bethesda, MD 20892–7180, (301) 496–8683, *azadegan@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.173, Biological Research Related to Deafness and Communicative Disorders, National Institutes of Health, HHS)

Dated: January 29, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–2619 Filed 2–4–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Special Emphasis Panel, Clinical Trial R01'S.

Date: February 20, 2003.

Time: 2 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Scientific Review Office, National Institute on Aging, 7201 Wisconsin Avenue, 2C212 Gateway Building, Bethesda, MD 20814 (Telephone Conference Call).

Contact Person: Ramesh Vemuri, PhD, National Institute on Aging, The Bethesda Gateway Building, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, MD 20892, (301) 496–9666.

Name of Committee: National Institute on Aging Special Emphasis Panel, Determinants of Retirement Behavior.

Date: February 20–21, 2003.

Time: 7 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Sheraton Gateway Hotel, 6101 West Century Blvd., Los Angeles, CA 90045.

Contact Person: Alfonso R. Latoni, PhD, Health Scientist Administrator, Scientific Review Office, National Institute on Aging, National Institutes of Health, 7201 Wisconsin Avenue, Room 2C212, Bethesda, MD 20892, 301/496–9666, *latoniq@mail.nih.gov*.

Name of Committee: National Institute on Aging Special Emphasis Panel, Alzheimer's Disease Models.

Date: February 24–25, 2003.

Time: 6 a.m. to 8 p.m.

Agenda: To review and evaluate grant applications.

Place: Sheraton University City, 36th Chestnut Streets, Philadelphia, PA 19104.

Contact Person: Louise L. Hsu, PhD, The Bethesda Gateway Building, 7201 Wisconsin Avenue/Suite 2C212, Bethesda, MD 20892, (301) 496–7705.

Name of Committee: National Institute on Aging Special Emphasis Panel, Aging Immune System.

Date: February 25, 2003.

Time: 11 a.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Room 2C212, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: James P. Harwood, PhD, Deputy Chief, Scientific Review Office, Gateway Building 2C212, 7201 Wisconsin Avenue, Bethesda, MD 20814, (301) 496–9666, *harwoodj@mail.nih.gov*.

Name of Committee: National Institute on Aging Special Emphasis Panel, The Effects of Lipid Oxidation in Alzheimer's Disease.

Date: February 25–26, 2003.

Time: 6 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Renaissance Madison Hotel, 515 Madison Street, Seattle, WA 98104.

Contact Person: Arthur D. Schaerdel, DVM, The Bethesda Gateway Building, 7201 Wisconsin Avenue/Suite 2C212, Bethesda, MD 20892, (301) 496–9666.

Name of Committee: National Institute on Aging Initial Review Group, Behavior and Social Science of Aging Review Committee, NIA–S.

Date: March 13–14, 2003.

Time: 4 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Georgetown, 2101 Wisconsin Avenue, NW., Washington, DC 20007.

Contact Person: Alfonso R. LaToni, PhD, Health Scientist Administrator, Scientific Review Office, National Institute on Aging, Gateway Building 2C212, 7201 Wisconsin Avenue, Bethesda, MD 20892, 301/496–9666, *latonia@mail.nih.gov*.

Dated: January 27, 2003.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–2623 Filed 2–4–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Office of the Director, National Institutes of Health; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Recombinant DNA Advisory Committee.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should inform the contact person listed below in advance of the meeting.

Name of Committee: Recombinant DNA Advisory Committee (RAC).

Date: February 10, 2003.

Time: 8:30 am to 4:30 pm.

Agenda: The Committee will review new data from a retroviral-mediated gene transfer clinical trial in Severe Combined Immunodeficiency (SCID) that could be important to the safety of participants in gene transfer clinical trials that use retroviral vectors. The discussion of this new information may lead to changes in the recommendations on the safety of the clinical gene transfer trials in SCID formulated by the RAC at its December 2002 meeting. In addition, the RAC may make recommendations pertaining to the safety and conduct of gene transfer clinical trials using retroviral vectors.

The RAC is meeting due to the potential significance of this new data and the need for expeditious deliberation and public discussion of its potential implications for the safety and conduct of clinical gene transfer trials using retroviral vectors.

Place: National Institutes of Health, 9000 Rockville Pike, Building 45, Main Auditorium, Bethesda, Maryland 20892.

Contact: Stephen Rose, Ph.D., Executive Secretary, Recombinant DNA Advisory Committee, Office of Biotechnology Activities, Rockledge 1, Room 750, Bethesda MD 20892, (301) 496–9839.

This notice is being published less than 15 days before the meeting due to the emergency nature of the actions involved.

Information is also available on the Institute's/Center's home page: *http://www4.od.nih.gov/oba/*, where an agenda and any additional information for the meeting will be posted when available.

OMB's "Mandatory Information Requirements for Federal Assistance Program Announcements" (45 FR 39592, June 11, 1980) requires a statement concerning the official government programs contained in the Catalog of Federal Domestic Assistance. Normally NIH in its announcements the number and title of affected individual programs for the guidance of the public. Because the guidance in this notice covers virtually every NIH and Federal research program in which DNA recombinant molecules techniques could be used, it has been determined not to be cost effective or in the public interest to attempt to list these programs. Such a list would likely require several additional pages. In addition, NIH could not be certain that every Federal program would be included as many Federal agencies, as well as private organizations, both and national and international, have elected to follow the NIH Guidelines. In lieu of the individual programs listed in the Catalog of Federal Domestic Assistance are affected.

(Catalogue of Federal Domestic Assistance Program Nos. 93.14, Intramural Research Training Award; 93.187, Undergraduate Scholarship Program for Individuals from Disadvantaged Backgrounds; 93.22, Clinical Research Loan Repayment Program for Individuals from Disadvantaged Backgrounds; 93.232, Loan Repayment Program for Research Generally, 93.39, Academic Research Enhancement Award; 93.936, NIH Acquired Immunodeficiency Syndrome Research Loan Repayment Program, National Institutes of Health, HHS)

Dated: January 27, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–2620 Filed 2–4–03; 8:45 am]

BILLING CODE 4140–0–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Small Business: GMB.

Date: February 11, 2003.

Time: 12 p.m. to 1 p.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: Holiday Inn Georgetown, 2101 Wisconsin Avenue, NW., Washington, DC 20007.

Contact Person: Shirley Hilden, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4218, MSC 7814, Bethesda, MD 20892. (301) 435–1198.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Radioimmunotherapy.

Date: February 18, 2003.

Time: 3 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone conference call.)

Contact Person: Paul K. Strudler, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6186, MSC 7804, Bethesda, MD 20892. (301) 435–1716. *strudlep@csr.nih.gov.*

Name of Committee: Integrative, Functional and Cognitive Neuroscience Integrated Review Group, Integrative, Functional and Cognitive Neuroscience 1.

Date: February 19–20, 2003.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Gamil C Debbas, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5170, MSC 7844, Bethesda, MD 20892. (301) 435–1018.

Name of Committee: Molecular, Cellular and Developmental Neuroscience Integrated Review Group, Molecular, Cellular and Developmental Neurosciences 5.

Date: February 19–20, 2003.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Jurys Washington Hotel, 1500 New Hampshire Avenue, NW., Washington, DC 20036.

Contact Person: Syed Husain, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5216, MSC 7850, Bethesda, MD 20892. (301) 435–1224. *husains@csr.nih.gov.*

Name of Committee: Pathophysiological Sciences Integrated Review Group, Alcohol and Toxicology Subcommittee 1.

Date: February 19–20, 2003.

Time 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Washington Monarch Hotel, 2401 M Street, NW. Washington, DC 20037.

Contact Person: Patricia Greenwel, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2175, MSC 7818, Bethesda, MD 20892. (301)– 435–1169. *greenwelp@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 SSS W 01M:SAT Member Conflict.

Date: February 19, 2003.

Time 8 a.m. to 9:30 a.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Georgetown, 2101 Wisconsin Avenue, NW., Washington, DC 2007.

Contact Person: Dharam S. Dhindsa, DVM, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5126, MSC 7854, Bethesda, MD 20892. (301) 435–1174. *dhindsad@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Molecular, Cellular and Developmental Neurosciences 4.

Date: February 19–20, 2003.

Time 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Ritz-Carlton Hotel at Pentagon City, 1250 South Hayes Street, Arlington, VA 22202.

Contact Person: Peter B. Guthrie, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5214, MSC 7850, Bethesda, MD 20892. (301) 435–1239. *guthriep@csr.nih.gov.*

Name of Committee: Infectious Diseases and Microbiology Integrated Review Group, Bacteriology and Mycology Subcommittee 2.

Date: February 19–20, 2003.

Time 8:30 a.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: One Washington Circle Hotel, One Washington Circle, Washington, DC 20037.

Contact Person: Melody Mills, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, MSC 7808, Room 4190, Bethesda, MD 20892. (301)–435–0903.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 SSS W. 03M:SAT Member Conflict.

Date: February 19, 2003.

Time 9:30 a.m. to 10:30 a.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Georgetown, 2101 Wisconsin Avenue, NW., Washington, DC 20007.

Contact Person: Dharam S. Dhindsa, DVM, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5126, MSC 7854, Bethesda, MD 20892. (301) 435–1174. *dhindsad@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Mycoplasma Respiratory Disease.

Date: February 19, 2003.

Time: 9:30 a.m. to 11:30 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone conference call.)

Contact Person: Marian Wachtel, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3208, MSC 7858, Bethesda, MD 20892. (301) 435–1148. *wachtelm@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 SSS W 04M:SAT Member Conflict.

Date: February 19, 2003.

Time: 10:30 a.m. to 11 a.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Georgetown, 2101 Wisconsin Avenue, NW., Washington, DC 20007.

Contact Person: Dharam S. Dhindsa, DVM, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5126, MSC 7854, Bethesda, MD 20892. (301) 435–1174. *dhindsad@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Fellowship Review: Sensory and Motor Systems Physiology.

Date: February 19, 2003.

Time: 10:30 a.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Governor's House Hotel, 1615 Rhode Island Avenue, NW., Washington, DC 20036.
Contact Person: John Bishop, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5180, MSC 7844, Bethesda, MD 20892.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Q-Microbial Genetics:Quorum.
Date: February 20–21, 2003.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: St. Gregory Hotel, 2033 M Street, NW., Washington, DC 20036.
Contact Person: Alexander D. Politis, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4204, MSC 7812, Bethesda, MD 20892. (301) 435–1225. *politisa@csr.nih.gov.*

Name of Committee: Integrative, Functional and Cognitive Neuroscience Integrated Review Group, Alcohol and Toxicology Subcommittee 3.
Date: February 20–21, 2003.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Wyndham Washington, DC., 1400 M Street, NW., Washington, DC 20005.
Contact Person: Christine Melchior, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4102, MSC 7816, Bethesda, MD 20892. (301) 435–1713.

Name of Committee: Biochemical Sciences Integrated Review Group, Medical Biochemistry Study Section.
Date: February 20–21, 2003.
Time: 8 a.m. to 3:30 p.m.
Agenda: To review and evaluate grant applications.
Place: The Monarch Hotel, 2401 M Street, NW., Washington, DC 20037.
Contact Person: Camilla E. Day, PhD, Scientific Review Administrator, Genetic Sciences IRG, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2208, MSC 7890, Bethesda, MD 20892. (301) 435–1037. *dayc@csr.nih.gov.*

Name of Committee: Cardiovascular Sciences Integrated Review Group, Hematology Subcommittee 1.
Date: February 20–21, 2003.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814.
Contact Person: Robert Su, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4134, MSC 7802, Bethesda, MD 20892. (301) 435–1195.

Name of Committee: Biophysical and Chemical Sciences Integrated Review Group, Molecular and Cellular Biophysics Study Section.
Date: February 20–21, 2003.
Time: 8 a.m. to 6 p.m.
Agenda: To review and evaluate grant applications.
Place: Churchill Hotel, 1914 Connecticut Avenue, NW., Washington, DC 20009.
Contact Person: Nancy Lamontagne, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4170, MSC 7806, Bethesda, MD 20892. (301) 435–1726. *lamontan@csr.nih.gov.*

Name of Committee: Molecular, Cellular and Developmental Neuroscience Integrated Review Group, Molecular, Cellular and Developmental Neurosciences 2.
Date: February 20–21, 2003.
Time: 8 a.m. to 4 p.m.
Agenda: To review and evaluate grant applications.
Place: The Westin Embassy Row, 2100 Massachusetts Avenue, NW., Washington, DC 20008.
Contact Person: Gillian Einstein, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5198, MSC 7850, Bethesda, MD 20892. (301) 435–4433.

Name of Committee: Cell Development and Function Integrated Review Group, Cell Development and Function 3.
Date: February 20–21, 2003.
Time: 8 a.m. to 2 p.m.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave., Bethesda, MD 20814.
Contact Person: Gerhard Ehrenspeck, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5138, MSC 7840, Bethesda, MD 20892. (301) 435–1022. *ehrenspg@csr.nih.gov.*

Name of Committee: Nutritional and Metabolic Sciences Integrated Review Group, Metabolism Study Section.
Date: February 20–21, 2003.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.
Contact Person: Ann A. Jerkins, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6154, MSC 7892, Bethesda, MD 20892. (301) 435–4514. *jerkinsa@csr.nih.gov.*

Name of Committee: Biochemical Sciences Integrated Review Group, Pathobiochemistry Study Section.
Date: February 20–21, 2003.
Time: 8 a.m. to 1 p.m.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn Georgetown, 2101 Wisconsin Avenue, NW., Washington, DC 20007.
Contact Person: Zakir Bengali, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5150, MSC 7842, Bethesda, MD 20892. (301) 435–1742.

Name of Committee: Biochemical Sciences Integrated Review Group, Biochemistry Study Section.
Date: February 20–21, 2003.
Time: 8 a.m. to 2:30 p.m.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.
Contact Person: Michael M. Sveda, PhD, Scientific Review Administrator, Biochemistry Study Section, Biochemical Sciences IRG, 6701 Rockledge Drive, Room 5152, MSC 7842, Bethesda, MD 20892. (301) 435–3565. *svedam@csr.nih.gov.*

Name of Committee: Oncological Sciences Integrated Review Group, Experimental Therapeutics Subcommittee 1.
Date: February 20–21, 2003.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Hyatt Arlington, 1325 Wilson Boulevard, Arlington, VA 22209.
Contact Person: Philip Perkins, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4148, MSC 7804, Bethesda, MD 20892. (301) 435–1718. *perkins@csr.nih.gov.*

Name of Committee: Immunological Sciences Integrated Review Group, Immunobiology Study Section.
Date: February 20–21, 2003.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Residence Inn, Conference Room, 7335 Wisconsin Avenue, Bethesda, MD 20814.
Contact Person: Betty Hayden, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4206, MSC 7812, Bethesda, MD 20892. (301) 435–1223.

Name of Committee: Biophysical and Chemical Sciences Integrated Review Group, Biophysical Chemistry Study Section.
Date: February 20–21, 2003.
Time: 8:30 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Governor's House Hotel, 1615 Rhode Island Avenue, NW., Washington, DC.
Contact Person: Arnold Revzin, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4184, MSC 7824, Bethesda, MD 20892. (301) 435–1153.

Name of Committee: Center for Scientific Review Emphasis Panel, Social Psychology, Personality and Interpersonal Processes.
Date: February 20–21, 2003.
Time: 8:30 a.m. to 6 p.m.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn Chevy Chase, Somerset Conference Room, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.
Contact Person: Michael Micklin, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3178, MSC 7848, Bethesda, MD 20892. (301) 435–1258. *micklinm@csr.nih.gov.*

Name of Committee: Biobehavioral and Behavioral Process Initial Review Group,

Biobehavioral and Behavioral Processes 3. Language and Communication (LCOM).

Date: February 20–21, 2003.

Time: 8:30 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Georgetown, 2101 Wisconsin Avenue, NW., Washington, DC 20007.

Contact Person: Weijia Ni, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3190, MSC 7848, (for overnight mail use room # and 20817 zip), Bethesda, MD 20892. (301) 435–1507. *niw@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Behavioral Medicine: Interventions and Outcomes.

Date: February 20–21, 2003.

Time: 8:30 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: George Washington University Inn, 824 New Hampshire Ave., NW., Washington, DC 20037.

Contact Person: Lee S. Mann, PhD, JD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3186, MSC 7848, Bethesda, MD 20892. (301) 435–0677.

Name of Committee: Cell Development and Function Integrated Review Group, International and Cooperative Projects Study Section.

Date: February 20–21, 2003.

Time: 8:30 a.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: The Fairmont, 2401 M Street, Washington, DC 20037.

Contact Person: Sandy Warren, DMD, MPH, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5134, MDC 7840, Bethesda, MD 20892. (301) 435–1019.

Name of Committee: Biophysical and Chemical Sciences Integrated Review Group, Bio-Organic and Natural Products Chemistry Study Section.

Date: February 20–21, 2003.

Time : 8:30 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Georgetown, 2101 Wisconsin Avenue, NW., Washington, DC 20007.

Contact Person: Mike Radtke, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4176, MSC 7806, Bethesda, MD 20892. (301) 435–1728, *radtkem@csr.nih.gov.*

Name of Committee: Integrative, Functional and Cognitive Neuroscience Integrated Review Group, Integrative, Functional and Cognitive Neuroscience 7.

Date: February 20–21, 2003.

Time : 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: One Washington Circle, 1 Washington Circle, NW.,Washington, DC 20037.

Contact Person: Bernard F. Driscoll, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5158, MSC 7844, Bethesda, MD 20892. (301) 435–1242.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Epidemiology of Clinical Disorders and Aging.

Date: February 20–21, 2003.

Time : 8:30 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Mary Ann Guadagno. PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 1104, MSC 7780, Bethesda, MD 20892. (301) 435–8011.

Name of Committee: Cell Development and Function Integrated Review Group, Cell Development and Function 1.

Date: February 20–21, 2003.

Time : 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Washington Embassy Row, 2015 Massachusetts Ave., NW., Washington, DC 20036.

Contact Person: Michael H. Sayre, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5128, MSC 7840, Bethesda, MD 20892. (301) 435–1219 *sayrem@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Complement and SLE.

Date: February 20, 2003.

Time : 12:15 p.m. to 1:15 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone conference call.)

Contact Person: George W. Chacko, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6707 Rockledge Drive, Room: 4202, MSC: 7812, Bethesda, MD 20892, (301) 435–1220. *chackoge@csr.nih.gov.*

Name of Committee: Social Sciences, Nursing, Epidemiology and Methods Integrated Review Group, Social Sciences, Nursing, Epidemiology and Methods 5.

Date: February 21, 2003.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Washington Embassy Row, 2015 Massachusetts Avenue, NW., Washington, DC 20036.

Contact Person: Ann Hardy, DRPH, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3158, MSC 7770, Bethesda, MD 20892. (301) 435–0695. *hardyan@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Innate Immunity/Host Defense.

Date: February 21, 2003.

Time: 8:30 a.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: The River Inn, 924 Twenty-Fifth Street, NW., Washington, DC 20037.

Contact Person: Calbert A. Laing, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4210, MSC 7812, Bethesda, MD 20892. (301) 435–0695. *laingc@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: January 29, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–2609 Filed 2–4–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of Exclusive License: "Interleukin-2 Receptor and Applications Thereof"

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: This is notice, in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i), that the National Institutes of Health, Department of Health and Human Services, is contemplating the grant of an exclusive license to practice the inventions embodied in U.S. Patent No. 5,833,983, entitled "Interleukin-2 Receptor and Applications Thereof," to Celltech R&D Ltd., a non-U.S. company with headquarters in the United Kingdom.

The prospective exclusive license territory may be worldwide and the field of use may be therapeutics for the treatment of inflammatory diseases.

DATES: Only written comments and/or license applications which are received by the National Institutes of Health on or before April 7, 2003 will be considered.

ADDRESSES: Requests for copies of the patent, inquiries, comments and other materials relating to the contemplated exclusive license should be directed to: Matthew B. Kiser, Technology Licensing Specialist, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, MD 20852–3804. Telephone:

(301) 435–5236; Facsimile (301) 402–0220; E-mail *kiserm@od.nih.gov*.

SUPPLEMENTARY INFORMATION: U.S. Patent No. 5,833,983 relates to the field of receptor molecules. Specifically, the technology is related to a new polypeptide receptor for interleukin-2, which is a component of the high affinity IL–2 receptor, antibodies against this new polypeptide and recombinant interleukins capable of binding to the new receptor.

The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless within sixty (60) days from the date of this published notice, the NIH receives written evidence and argument that establish that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Applications for a license in the field of use filed in response to this notice will be treated as objections to the grant of the contemplated exclusive license. Comments and objections submitted to this notice will not be made available for public inspection and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

Dated: January 28, 2003.

Jack Spiegel,

Director, Division of Technology Development and Transfer, Office of Technology Transfer.

[FR Doc. 03–2625 Filed 2–4–03; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of Exclusive License: "Spatially and Temporal Control of Gene Expression Protein Promoter in Combination with Local Heat"

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: This is notice, in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i), that the National Institutes of Health, Department of Health and Human Services, is contemplating the grant of an exclusive license to practice the inventions embodied in International Patent Application No. PCT/US97/15270, entitled "Spatially and Temporal Control of Gene Expression Protein Promoter in Combination with Local Heat," to Celsion Corporation, a US company with headquarters in Maryland.

The prospective exclusive license territory may be worldwide and the field of use may be limited to gene-based therapeutics for the treatment of cancer.

DATES: Only written comments and/or license applications which are received by the National Institutes of Health on or before April 7, 2003 will be considered.

ADDRESSES: Requests for copies of the patent, inquiries, comments and other materials relating to the contemplated exclusive license should be directed to: Matthew B. Kiser, Technology Licensing Specialist, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, MD 20852–3804. Telephone: (301) 435–5236; Facsimile (301) 402–0220; E-mail *kiserm@od.nih.gov*.

SUPPLEMENTARY INFORMATION: International Patent Application No. PCT/US97/15270 relates to the spatial and temporal control of exogenous gene expression in genetically engineered cells and organisms. In particular, it discloses the use of heat inducible promoters, such as the promoter of heat shock genes to control the expression of exogenous genes. It further relates to the use of focused ultrasound to heat cells that contain therapeutic genes under the control of heat shock promoters, thereby inducing the expression of therapeutic genes.

The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless within sixty (60) days from the date of this published notice, the NIH receives written evidence and argument that establish that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Applications for a license in the field of use filed in response to this notice will be treated as objections to the grant of the contemplated exclusive license. Comments and objections submitted to this notice will not be made available for public inspection and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

Dated: January 28, 2003.

Jack Spiegel,

Director, Division of Technology Development and Transfer, Office of Technology Transfer.

[FR Doc. 03–2624 Filed 2–4–03; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4572–D–31]

Order of Succession for the Office of Housing

AGENCY: Office of the Assistant Secretary for Housing, HUD.

ACTION: Notice of Order of Succession.

SUMMARY: In this notice, the Assistant Secretary for Housing designates the Order of Succession for the Office of Housing. This Order of Succession supersedes the Order of Succession for the Assistant Secretary for Housing, published on August 22, 2000 (65 FR 51015).

EFFECTIVE DATE: January 27, 2003.

FOR FURTHER INFORMATION CONTACT: Eliot C. Horowitz, Senior Advisor to the Assistant Secretary for Housing—Federal Housing Commissioner, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 9110, Washington, DC 20410–0500. Telephone (202) 708–1490 (this is not a toll-free number). A telecommunications device for hearing- and speech-impaired persons (TTY) is available at 1–800–877–9339 (Federal Information relay Service) (this is a toll-free number).

SUPPLEMENTARY INFORMATION: The Assistant Secretary for Housing is issuing this Order of Succession of officials authorized to perform the functions and duties of the Office of the Assistant Secretary for Housing when, by reason of absence, disability, or vacancy in office, the Assistant Secretary is not available to exercise the powers or perform the duties of the office. This Order of Succession is subject to the provisions of the Vacancy Reform Act of 1998, 5 U.S.C. 3345–3349d. This publication supersedes the Order of Succession notice published on August 22, 2000, at 65 FR 51015.

Accordingly, the Assistant Secretary for Housing designates the following Order of Succession:

Section A. Order of Succession

Subject to the provisions of the Vacancy Reform Act of 1998, during any period when, by reason of absence, disability, or vacancy in office, the Assistant Secretary for Housing is not available to exercise the powers or perform the duties of the Office of Assistant Secretary for Housing, the following officials within the Office of Housing are hereby designated to exercise the powers and perform the duties of the Office:

(1) General Deputy Assistant Secretary for Housing;

(2) Deputy Assistant Secretary for Finance and Budget;

(3) Deputy Assistant Secretary for Operations;

(4) Deputy Assistant Secretary for Regulatory Affairs and Manufactured Housing;

(5) Director of the Office of Multifamily Housing Assistance Restructuring (OMHAR);

(6) Deputy Assistant Secretary for Multifamily Housing;

(7) Deputy Assistant Secretary for Single Family Housing.

These officials shall perform the functions and duties of the Office in the order specified herein, and no official shall serve unless all the other officials, whose position titles precede his/hers in this order, are unable to act by reason of absence, disability, or vacancy in office.

Section B. Authority Superseded

This Order of Succession supersedes the Order of Succession for the Assistant Secretary for Housing, published on August 22, 2000, at 65 FR 51015.

Authority: Section 7(d), Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: January 27, 2003.

John C. Weicher,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 03–2628 Filed 2–4–03; 8:45 am]

BILLING CODE 4210–27–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4572–D–30]

Redelegation of Authority to the Deputy Assistant Secretary for Public Housing Investments

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice of redelegation of authority.

SUMMARY: In this notice, the Assistant Secretary for Public and Indian Housing redelegates to the Deputy Assistant Secretary for the Office of Public Housing Investments authority to monitor and enforce implementation by public housing agencies (PHAs) of section 33 of the United States Housing Act of 1937, with respect to the review of their inventory of public housing units. The purpose of the review is to identify developments (or parts of developments) that must be removed from the stock of public housing operated under Annual Contributions Contracts (ACC) with HUD, and to carry out plans to convert the developments identified into tenant-based assistance or other forms of housing assistance. Authority also is hereby redelegated to the Deputy Assistant Secretary for the Office of Public Housing Investments to review and approve or disapprove plans submitted by PHAs to HUD for the voluntary conversion of public housing units into tenant-based (or other) housing assistance under section 22 of the United States Housing Act of 1937. The review process also will determine whether the plans are consistent with assessments PHAs are required to make for public housing general occupancy developments and with other data available to the Secretary, and whether the plans meet the requirements under 24 CFR 972.230.

EFFECTIVE DATE: January 23, 2003.

FOR FURTHER INFORMATION CONTACT: Ainars Rodins, Office of Public and Indian Housing, Department of Housing and Urban Development, Special Applications Center, Chicago, IL (312) 353–6236. (This is not a toll-free number.) This number may be accessed via TTY by calling the Federal Information Relay Service at 1–800–877–8339.) Comments or questions can be submitted through the Internet to *Beverly B Hardy@hud.gov.*

SUPPLEMENTARY INFORMATION: Section 537 of the Quality Housing and Work Responsibility Act of 1998 (QHWRA) (Title V of Pub. L. 105–276, approved October 21, 1998) added a new section 33 to the United States Housing Act of 1937 (Act) (42 U.S.C. 1437 *et seq.*). Section 33 of the Act governs the required conversion of developments from the public housing stock. Section 533 of QHWRA also amended section 22 of the Act. Section 22 of the Act governs voluntary conversion of developments from the public housing stock. The term conversion in this context means the removal of public housing units from the inventory of a PHA, and the provision of tenant-based, or project-based assistance for the residents of the public housing being removed.

In addition to the PHA Agency Plan requirements, HUD will review separately plans for mandatory or voluntary conversion of public housing stock. With respect to required conversions, HUD may (1) Identify developments that PHAs have failed properly to include as falling within the statutory criteria, (2) ensure conversions are carried out in cases where PHAs have failed to develop or implement conversion plans, (3) prohibit or revise conversions erroneously identified as subject to section 33 of the Act, (4) direct the cessation of spending in connection with developments that are likely to be subject to the statutory criteria, and (5) authorize the direct transfer of capital or operating funds associated with a development that must be removed from the public housing stock for use instead for tenant-based assistance or site revitalization. HUD will approve plans for voluntary conversions (after checking to see if they are complete and include the information required under 24 CFR 972.230), if they are consistent with the initial assessments PHAs are required to submit under section 22 of the Act, unless HUD has reliable information that conflicts with the PHA's assessment.

The Secretary elsewhere has delegated to the Assistant Secretary for Public and Indian Housing (PIH) the authority to administer the Department's programs relating to public housing (see the delegation of authority published in the **Federal Register** at 48 FR 41097, September 13, 1983).

Accordingly, the Assistant Secretary for PIH redelegates that authority, as follows:

Section A. Authority Redelegated

The Assistant Secretary for PIH redelegates the following authority to the Deputy Assistant Secretary for Public Housing Investments:

1. To review and approve or disapprove actions taken and plans submitted by PHAs in connection with the required removal of certain units from the public housing stock and provision of tenant-based or project-based assistance to the residents of such developments pursuant to section 33 of the United States Housing Act of 1937 and the implementing regulations at 24 CFR part 972, and to conduct all activities related to such review, and approval or disapproval of such conversions.

2. To review and approve or disapprove plans submitted by PHAs for the voluntary conversion of units from the public housing stock into tenant-based or project-based assistance for the tenants living in the units pursuant to section 22 of the United States Housing Act of 1937 and implementing regulations at 24 CFR part 972.

Within the Office of Public Housing Investments, the review of mandatory and voluntary conversions will be handled by the Special Applications Center.

Section B. Authority to Further Redelegate

The authority redelegated to the Deputy Assistant Secretary under this notice may be redelegated within the Office of Public Housing Investments.

Dated: January 23, 2003.

Michael Liu,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 03–2629 Filed 2–4–03; 8:45 am]

BILLING CODE 4210–33–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Notice of Availability of the Alternative Fueled Vehicle (AFV) Reports for Fiscal Year 1996 through Fiscal Year 2001

AGENCY: Office of the Secretary, Department of the Interior.

ACTION: Notice of Availability of the Alternative Fueled Vehicle (AFV) Reports for Fiscal Year 1996 through Fiscal Year 2001.

SUMMARY: The U.S. Department of the Interior, Office of the Secretary, is issuing this notice in order to comply with the Energy Policy Act of 1992, 42 U.S.C. 13201 *et seq.* and the United States District Court for the Northern District of California's order, in case number C 02–0027 WHA, Center for Biological Diversity, Bluewater Network and the Sierra Club v. Spencer Abraham, *et al.*, that Federal agencies must place all alternative fueled vehicle data for Fiscal Years 1996–2001 on a publicly accessible Web site. The purpose of this notice is to announce the public availability of the Department of the Interior's AFV reports for Fiscal Year 1996 through Fiscal Year 2001 at the following Web site: *http://www.doi.gov/pam*

FOR FURTHER INFORMATION CONTACT: Questions regarding the reports of the AFV report Web site should be addressed to the Office of Acquisition and Property Management [Attn: Willie Davis] 1849 C Street NW., Mail Stop 5512, Washington, DC 20240, phone: 202–208–6352.

SUPPLEMENTARY INFORMATION: The Earthjustice Environmental Law Clinic filed suit in federal court in California on January 2, 2002 on behalf of the Center for Biological Diversity, Bluewater Network and the Sierra Club against the Department of the Interior and 16 other Federal agencies for failing to comply with the alternative fueled vehicle (AFV) acquisition and reporting requirements for federal fleets imposed by the Energy Policy Act of 1992 (EPAct). The lawsuit requested the Court to order Interior and the other federal agencies to comply with EPAct requirements and offset future vehicle purchases with the number of AFVs necessary to bring them into compliance with the requirements of the EPAct.

Dated: January 27, 2003.

P. Lynn Scarlett,

Assistant Secretary—Policy, Management and Budget.

[FR Doc. 03–2707 Filed 2–4–03; 8:45 am]

BILLING CODE 4310–RF–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability of the Draft Restoration Plan and Environmental Assessment for the Lone Mountain Processing, Inc.; Coal Slurry Spill Natural Resource Damage Assessment in Lee County, VA

AGENCY: Fish and Wildlife Service, Department of the Interior.

ACTION: Notice of availability.

SUMMARY: The U.S. Fish and Wildlife Service (Service), on behalf of the Department of the Interior (DOI), announces the release for public review of the Draft Restoration Plan and Environmental Assessment (RP/EA) for the Lone Mountain Processing, Inc. (LMPI) Coal Slurry Spill Natural Resource Damage Assessment in Lee County, Virginia. The RP/EA describes the trustee's proposal to restore natural resources injured as a result of a release of hazardous substances.

DATES: Written comments must be submitted on or before March 15, 2002.

ADDRESSES: Requests for copies of the RP/EA may be made to: U.S. Fish and Wildlife Service, Virginia Field Office, 6669 Short Lane, Gloucester, Virginia 23061. Written comments or materials regarding the Restoration and Compensation Determination Plan should be sent to the same address.

FOR FURTHER INFORMATION CONTACT: John Schmerfeld, U.S. Fish and Wildlife Service, 6669 Short Lane, Gloucester, Virginia 23061. Interested parties may also call 804–693–6694, extension 107, for further information.

SUPPLEMENTARY INFORMATION: On October 24, 1996, a failure in a coal slurry impoundment associated with a coal processing plant owned by LMPI in Lee County, Virginia, resulted in the release of six million gallons of coal slurry to the Powell River watershed. The spill occurred when subsidence in the coal slurry impoundment caused the coal slurry to enter a system of abandoned underground coal mine-works. The coal slurry exited through a mine-works surface portal at Gin Creek, causing the release of the coal slurry into a series of tributaries to the Powell River. "Blackwater," a mix of water, coal fines, and clay, and associated contaminants, extended far downstream. The coal slurry spill impacted fish, endangered freshwater mussels, other benthic organisms, supporting aquatic habitat, and designated critical habitat for two federally listed fish. Federally listed bats and migratory birds may have also been affected acutely due to a loss of a food supply, and chronically due to possible accumulation of contaminants through the food chain.

Under the authority of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980 as amended, 42 U.S.C. 9601 *et. seq.*, "natural resource trustees may assess damages to natural resources resulting from a discharge of oil or a release of a hazardous substance * * * and may seek to recover those damages." Natural resource damage assessments (NRDA) are separate from the cleanup actions undertaken at a hazardous waste or spill site, and provide a process whereby the natural resource trustees can determine the proper compensation to the public for injury to natural resources. The natural resource damage assessment process seeks to: (1) Determine whether injury to, or loss of, trust resources has occurred; (2) ascertain the magnitude of the injury or loss; (3) calculate the appropriate compensation for the injury, including the cost of restoration; and (4) develop a restoration plan that will restore, rehabilitate, replace, and/or acquire equivalent resources for those resources that were injured or lost. The judicial consent decree dated March 5, 2001, requires that the DOI utilize natural resource damages for reimbursement of past natural resource damage assessment costs, and restoration, replacement or acquisition of endangered and threatened fishes and mussels located in the Powell River and its watershed or restoration, replacement or acquisition of their habitats or ecosystems which support them, or restoration planning, implementation, oversight and monitoring.

The DOI is the sole acting Federal natural resource trustee for this case. The DOI has designated the Northeast Regional Director of the Service to act as its authorized official with regard to this

case. This RP/EA has been developed by the Service in order to address and evaluate restoration alternatives related to natural resource injuries within the Powell River watershed. The purpose of this RP/EA is to design and evaluate possible alternatives that will restore, rehabilitate, replace, or acquire natural resources and the services provided by those resources that approximate those injured as a result of the spill using funds collected as natural resource damages for injuries, pursuant to the CERCLA. This RP/EA describes the affected environment, identifies potential restoration alternatives and their plausible environmental consequences, and describes the proposed preferred alternative.

Interested members of the public are invited to review and comment on the RP/EA. Copies of the RP/EA are available for review at the Service's Virginia Field Office in Gloucester, Virginia and at the Service's Southwestern Virginia Field Office located at 330 Cummings Street, Suite A, Abingdon, Virginia 24210. Written comments will be considered and addressed in the final RP/EA.

Author: The primary author of this notice is John Schmerfeld, U.S. Fish & Wildlife Service, Virginia Field Office, 6669 Short Lane, Gloucester, Virginia 23061.

Authority: The authority for this action is the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) of 1980 as amended, commonly known as Superfund (42 U.S.C. 9601 *et seq.*), and the Natural Resource Damage Assessment Regulations found at 43 CFR part 11.

Dated: January 17, 2003.

Mamie A. Parker,

Regional Director, Region 5, Fish and Wildlife Service, Department of the Interior, Designated Authorized Official.

[FR Doc. 03–2649 Filed 2–4–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of approved Tribal-State Compacts.

SUMMARY: Under Section 11 of the Indian Gaming Regulatory Act of 1988 (IGRA), Public Law 100–497, 25 U.S.C. 2710, the Secretary of the Interior shall publish, in the **Federal Register**, notice of approved Tribal-State Compacts for the purpose of engaging in Class III gaming activities on Indian lands. The Assistant Secretary—Indian Affairs, Department of the Interior, through her delegated authority, has approved the Tribal-State Compacts between the Ak-Chin Community, Cocopah Indian Tribe, Fort McDowell Yavapai Nation, Fort Mojave Indian Tribe, Gila River Indian Community, Hualapai Indian Tribe, Havasupai Indian Tribe, Kaibab Band of Paiute Indians, Navajo Nation, Pascua Yacqui Tribe, Quechan Indian Tribe, Salt River Prima-Maricopa Indian Community, San Carlos Apache Tribe, Tohono O'odham Nation, Tonto Apache Tribe, White Mountain Apache Tribe, and Yavapai-Apache Nation and the State of Arizona.

EFFECTIVE DATE: February 5, 2003.

FOR FURTHER INFORMATION CONTACT: George T. Skibine, Director, Office of Indian Gaming Management, Bureau of Indian Affairs, Washington, DC 20240, (202) 219–4066.

Dated: January 24, 2003.

Aurene M. Martin,

Acting Assistant Secretary—Indian Affairs.

[FR Doc. 03–2787 Filed 2–4–03; 8:45 am]

BILLING CODE 4310–4N–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–350–1430–PF–24 1A]

Extension of Approved Information Collection, OMB Control Number 1004–0009

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Bureau of Land Management (BLM) is requesting the Office of Management and Budget (OMB) to extend an existing approval to collect certain information from applicants who wish to acquire a Land Use Authorization (From 2920–1) on public lands under the Federal Land Policy and Management Act (FLPMA) of 1976. The regulations at 43 CFR part 2920 provide for non-Federal use of bureau administered land via lease or permit. Uses include agriculture, trade, or manufacturing concerns and business uses such as outdoor recreation concession. BLM will determine the validity of uses proposed by private individuals and other qualified proponents from information provided on the Land Use Application and Permit Form.

DATES: You must submit your comments to BLM at the appropriate address below on or before April 7, 2003. BLM will not necessarily consider any comments received after the above date.

ADDRESSES: You may mail comments to: Bureau of Land Management (WO–630), Eastern States Office, 7450 Boston Blvd., Springfield, Virginia 22153.

You may send comments via Internet to: *WOComment@blm.gov*. Please include "ATTN: 1004–0009" and your name and return address in your Internet message.

You may deliver comments to the Bureau of Land Management, Administrative Record, Room 401, 1620 L Street, NW., Washington, DC.

All comments will be available for public review at the L Street address during regular business hours (7:45 a.m. to 4:15 p.m.), Monday through Friday.

FOR FURTHER INFORMATION CONTACT: You may contact Alzata L. Ransom, Realty Use Group, on (202) 452–7772 (Commercial or FTS). Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8330, 24 hours a day, seven days a week, to contact Ms. Ransom.

SUPPLEMENTARY INFORMATION: 5 CFR 1320.12(a) requires BLM to provide 60-day notice in the **Federal Register** concerning a collection of information contained in regulations found in 43 CFR 2920 to solicit comments on:

(a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(b) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(d) Ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

The FLPMA of 1976 (43 U.S.C. 1732, 1740), provides for issuing land use authorizations which may include leases, permits, or easements to eligible proponents. The BLM implements the provisions of this requirement under 43 CFR 2922.2–1 which require submitting the "Land Use Application and Permit," Form 2920–1. BLM uses the information collected on the application to:

(1) Identify the proposed land use and activities;

(2) Describe all facilities for which authorization is sought;

(3) Identify the location; and

(4) Determine a schedule for construction and to identify access requirements.

Since the information collected is unique to each application, no other suitable means of information collection is identified which could gather the information at a lesser burden. If the applicant fails to provide the required information, BLM must reject the application.

Based on our experience administering the activities described above, we estimate the public reporting burden of each provision for the information collection. We estimate the number of responses per year is 641 and a total annual burden of 3,140 hours. The table below summaries our estimates:

Requirement	Hours per response	No. of respondents	Burden hours
Permits	1	619	619
Leases	120	21	2,520
Easements	1	1	1
Totals	.....	641	3,140

BLM will summarize all responses to this notice and include them in the request for OMB approval. All comments will become a matter of public record.

Dated: January 31, 2003.

Michael H. Schwartz,

Bureau of Land Management, Information Collection Clearance Officer.

[FR Doc. 03–2689 Filed 2–4–03; 8:45 am]

BILLING CODE 4310–84–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–230–1020–PB–24 1A]

Extension of Approved Information Collection, OMB Control Number 1004–0001

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Bureau of Land Management (BLM) is requesting the Office of Management and Budget (OMB) to extend an existing approval to collect information from the general public interested in obtaining free vegetative or mineral material from public lands. BLM uses Form 5510–1, Free Use Application and Permit (Vegetative or Mineral Materials) to collect this information. This information allows BLM to properly manage and accurately track the disposal of these materials.

DATES: You must submit your comments to BLM at the address below on or before April 7, 2003. BLM will not necessarily consider any comments received after the above date.

ADDRESSES: You may mail comments to: Bureau of Land Management, (WO–630), Eastern States Office, 7450 Boston Blvd., Springfield, Virginia 22153.

You may send comments via Internet to: *WOComment@blm.gov*. Please include "ATTN: 1004–0001" and your name and return address in your Internet message.

You may deliver comments to the Bureau of Land Management, Administrative Record, Room 401, 1620 L Street, NW., Washington, DC.

All comments will be available for public review at the L Street address during regular business hours (7:45 a.m. to 4:15 p.m.) Monday through Friday.

FOR FURTHER INFORMATION CONTACT: You may contact John C. Stewart, WO–230, on (202) 452–7759 (Commercial or FTS). Persons who use a telecommunication device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) on 1–800–877–8330, 24 hours a day, seven days a week, to contact Mr. Stewart.

SUPPLEMENTARY INFORMATION: 5 CFR 1320.12(a) requires that we provide a 60-day notice in the **Federal Register** concerning a collection of information to solicit comments on:

(a) Whether the collection of information is necessary for the proper functioning of the agency, including whether the information will have practical utility;

(b) The accuracy of our estimates of the information collection burden, including the validity of the methodology and assumptions we use;

(c) Ways to enhance the quality, utility, and clarity of the information collected; and

(d) Ways to minimize the information collection burden on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

BLM uses Form 5510–1, Free Use Application and Permit (Vegetative or Mineral Material), under 43 CFR 5510 to collect this information. The PL–167, Surface Resources Act of July 23, 1955, gives the Secretary the discretion to permit the free use of vegetative or mineral materials for use other than commercial or industrial purposes or resale. The Secretary of the Interior may also permit claimants the free use of vegetative or mineral materials.

BLM uses the information provided by the applicant(s) to:

(1) Maintain an inventory of vegetative and mineral information; and

(2) Adjudicate your rights to vegetative and mineral resources.

An applicant must file an application for a permit before removing any vegetative or mineral resources from the public lands. If BLM did not collect this information, we could not process applications.

Based upon BLM experience administering the activities described above, we process approximately 450 applications each year. The public reporting information collection burden takes 30 minutes. We estimate 450 responses per year and a total annual burden of 225 hours.

BLM will summarize all responses to this notice and include them in the request for OMB renewal of this form. All comments will become a matter of public record.

Dated: January 31, 2003.

Michael H. Schwartz,

Bureau of Land Management, Information Collection Clearance Officer.

[FR Doc. 03–2690 Filed 2–4–03; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–310–1310–PB–24 1A]

Extension of Approved Information Collection, OMB Control Number 1004–0137

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Bureau of Land Management (BLM) is requesting the Office of Management and Budget (OMB) to extend an existing approval to collect certain information from oil and gas well operators concerning operations performed on each well, using the Well Completion or Recompletion Report and Log (Form 3160–4). We use the information to ensure recording of an accurate, up-to-date, and detailed description of well completion or recompletion operations and compliance with approved plans for conservation of the resources and protection of the environment.

DATES: You must submit your comments to BLM at the address below on or before April 7, 2003. BLM will not necessarily consider and comments received after the above date.

ADDRESSES: You may mail comments to: Bureau of Land Management, (WO–630), Eastern States Office, 7450 Boston Blvd., Springfield, Virginia 22153.

You may send comments via Internet to: *WOComment@blm.gov*. Please include "ATTN: 1004–0137" and your name and return address in your Internet message.

You may deliver comments to the Bureau of Land Management, Administrative Record, Room 401, 1620 L Street, NW., Washington, DC.

All comments will be available for public review at the L Street address during regular business hours (7:45 a.m. to 4:15 p.m.), Monday through Friday.

FOR FURTHER INFORMATION CONTACT: You may contact Barbara Gamble, Fluid Minerals Group, on (202) 452–0338 (Commercial or FTS). Persons who use a telecommunication device for the deaf (TDD) may call the Federal Information Relay Service on 1–800–877–8330, 24 hours a day, seven days a week, to contact Ms. Gamble.

SUPPLEMENTARY INFORMATION: 5 CFR 1320.12(a) requires that we provide a 60-day notice in the **Federal Register** concerning a collection of information to solicit comments on:

(a) Whether the collection of information is necessary for the proper functioning of the agency, including whether the information has practical utility;

(b) The accuracy of our estimates of the information collection burden, including the validity of the methodology and assumptions we use;

(c) Ways to enhance the quality, utility, and clarity of the information collected; and

(d) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

The Mineral Leasing Act of 1920 (30 U.S.C. 181 *et seq.*), as amended; the Mineral Leasing Act for Acquired Lands of 1947 (30 U.S.C. 351–359), as amended; the various Indian leasing acts; the National Environmental Policy Act of 1969 (42 U.S.C. 4321, *et seq.*), as amended; and other environmental laws govern onshore oil and gas operations. BLM's implementing regulations are at 43 CFR part 3160. The regulation 43 CFR 3162.4–1(b) requires an oil and gas well operator to submit a Well Completion or Recompletion Report and Log (Form 3160–4) within 30 days after well completion. The information that the operator submits to us includes the type of work, surface and subsurface location, start and completion dates, producing interval, casing, date of first production, and initial well potential. The operator certifies the accuracy and completeness of the information by signature and date.

BLM uses the information for inspection and reservoir management purposes. Technical data provide means to evaluate the appropriateness of specific drilling and completion techniques. The data enable us to monitor the engineering aspects of oil and gas production. The form documents that operations were carried out under the terms and provisions of the lease in a technically and environmentally safe manner. We would lack the necessary information to monitor compliance of well activity and operations that were performed on wells if we did not collect this information.

Based on our experience administering the onshore oil and gas program, we estimate the public reporting burden for the information collected is 1 hour per response. The information collected is already maintained by respondents for their own recordkeeping purposes and must only be entered on the form. Respondents are operators of oil and gas wells. The frequency of response varies depending on the type of activity conducted at oil and gas wells. We estimate the number of responses per year is 2,200 and the total annual burden is 2,200 hours.

BLM will summarize all responses to this notice and include them in the request for OMB approval. All comments will become a matter of public record.

Dated: January 31, 2003.

Michael H. Schwartz,

Bureau of Land Management, Information Collection Clearance Officer.

[FR Doc. 03–2691 Filed 2–4–03; 8:45 am]

BILLING CODE 4310–84–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–310–1310–PB–24–1A]

Extension of Approved Information Collection, OMB Control Number 1004–0136

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Bureau of Land Management (BLM) is requesting the Office of Management and Budget (OMB) to extend an existing approval to collect certain information from oil and gas operators who submit an Application for Permit to Drill (Form 3160–3). We use the information to review technical and environmental factors in the process of approving proposed oil and gas drilling operations.

DATES: You must submit your comments to BLM at the address below on or before April 7, 2003. BLM will not necessarily consider any comments received after the above date.

ADDRESSES: You may mail comments to: Bureau of Land Management, (WO–630), Eastern States Office, 7450 Boston Blvd., Springfield, Virginia 22153.

You may send comments via Internet to: *WOComment@blm.gov*. Please include "ATTN: 1004–0136" and your name and return address in your Internet message.

You may deliver comments to the Bureau of Land Management, Administrative Record, Room 401, 1620 L Street, NW., Washington, DC.

All comments will be available for public review at the L Street address during regular business hours (7:45 a.m. to 4:15 p.m.), Monday through Friday.

FOR FURTHER INFORMATION CONTACT: You may contact Barbara Gamble, Fluid Minerals Group, on (202) 452–0338 (Commercial or FTS). Persons who use a telecommunication device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) on 1–800–877–8330, 24 hours a day, seven days a week, to contact Ms. Gamble.

SUPPLEMENTARY INFORMATION: 5 CFR 1320.12(a) requires that we provide a 60-day notice in the **Federal Register**

concerning a collection of information to solicit comments on:

(a) Whether the proposed collection of information is necessary for the proper functioning of the agency, including whether the information will have practical utility;

(b) The accuracy of our estimates of the information collection burden, including the validity of the methodology and assumptions we use;

(c) Ways to enhance the quality, utility, and clarity of the information collected; and

(d) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

The Mineral Leasing Act of 1920 (30 U.S.C. 181 *et seq.*), as amended; the Mineral Leasing Act for Acquired Lands of 1947 (30 U.S.C. 351–359), as amended; the various Indian leasing acts; the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), as amended, and other environmental laws govern onshore oil and gas operations. BLM's implementing regulations are at 43 CFR part 3160. The regulation 43 CFR 3162.3–1 requires an oil and gas well operator to submit an Application for Permit to Drill (Form 3160–3) for each well at least 30 days before any drilling operations or surface disturbances are commenced. On the form, we request respondents to provide information describing the proposed activities, including the type of well and work anticipated, the operator's identity and address, surface and bottom-hole location of the proposed action, and various kinds of technical data, depending on the type of activity proposed.

We use the data for review and approval of proposed drilling operations. The review ensures that all actions are in compliance with policies and regulations and conducted in a technically and environmentally sound manner. We use technical data about the drilling for both permit approval and subsequent on-the-ground review and inspection after actual drilling begins. We gather information on prospective production of resources so that all potential impacts can be evaluated during the approval process.

If we did not collect this information, BLM would not have proper assurance that drilling and associated activities are technically and environmentally feasible to ensure proper conservation of the resources. We also require operators to prepare certain items such as drilling plans, diagrams and maps, and contingency plans. Operators generally submit these items as attachments to Form 3160–3. We include the burden hours for such attachments under OMB control number 1004–0134, which covers all nonform requirements of 43 CFR part 3160.

Based on our experience administering the onshore oil and gas program, we estimate the public reporting burden for the information collected is 30 minutes per response. Respondents are operators of oil and gas wells. The frequency of response varies depending on the operations. We estimate the number of responses per year is 4,000 and the total annual burden is 2,000 hours.

BLM will summarize all responses to this notice and include them in the request for OMB approval. All comments will become a matter of public record.

Dated: January 31, 2003.

Michael H. Schwartz,

Bureau of Land Management, Information Collection Clearance Officer.

[FR Doc. 03–2692 Filed 2–3–03; 8:45 am]

BILLING CODE 4310–84–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–310–1310–PB–24 1A]

Extension of Approved Information Collection, OMB Control Number 1004–0135

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Bureau of Land Management (BLM) is requesting the Office of Management and Budget (OMB) to extend an existing approval to collect information from those persons who submit a Form 3160–5, Sundry Notices and Reports on Wells. We use the information to approve proposed operations and ensure compliance with terms and conditions of existing approvals.

DATES: You must submit your comments to BLM at the address below on or before April 7, 2003. BLM will not necessarily consider any comments received after the above date.

ADDRESSES: You may mail comments to: Bureau of Land Management, (WO–630), Eastern States Office, 7450 Boston Blvd., Springfield, Virginia 22153.

You may send comments via Internet to: *WOComment@blm.gov*. Please include "ATTN: 1004–0135" and your name and return address in your Internet message.

You may deliver comments to the Bureau of Land Management, Administrative Record, Room 401, 1620 L Street, NW., Washington, DC.

All comments will be available for public review at the L Street address during regular business hours (7:45 a.m. to 4:15 p.m.), Monday through Friday.

FOR FURTHER INFORMATION CONTACT: You may contact Barbara Gamble, Fluid Minerals Group, on (202) 452–0338 (Commercial or FTS). Persons who use a telecommunication device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) on 1–800–877–8330, 24 hours a day, seven days a week, to contact Ms. Gamble.

SUPPLEMENTARY INFORMATION: 5 CFR 1320.12(a) requires that we provide a 60-day notice in the **Federal Register** concerning a collection of information to solicit comments on:

(a) Whether the proposed collection of information is necessary for the proper functioning of the agency, including whether the information will have practical utility;

(b) The accuracy of our estimates of the information collection burden, including the validity of the methodology and assumptions we use;

(c) Ways to enhance the quality, utility, and clarity of the information collected; and

(d) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

The Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1701 *et seq.*); the Mineral Leasing Act of 1920, as amended (30 U.S.C. 181 *et seq.*); the Mineral Leasing Act for Acquired Lands of 1947, as amended (30 U.S.C. 351–359); the various Indian leasing acts; and the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*), and regulation 43 CFR 3162.3–2 require oil and gas operators on Federal and restricted Indian lands to submit Form 3160–5, Sundry Notices and Reports on Wells, in order to obtain authority to perform specific additional operations on a well and to report the completion of such work. In addition, 43 CFR 3162.5–1 requires the operator to exercise diligence when disposing of produced waters. We require specific data concerning modifications to existing wells or construction requirements of produced water

disposal pits. The regulation 43 CFR 3162.3–2 divides the proposed actions into three categories:

(1) Actions that require submitting the form for approval prior to beginning work and again after completion of operations;

(2) Actions that require submitting the form only after completion; and

(3) Actions that do not require reporting.

The operator or its agent must submit the data to us. The data pertains to modifying operations conducted under the terms and provisions of an oil and gas lease (a contractual agreement between a lessee and the United States) for Federal or restricted Indian lands. In the case of a produced water disposal pit approval, the data provides the technical aspects of pit design to allow for sufficient water containment, which prevents unnecessary releases of produced water into the environment.

Based on our experience managing the activities described above, we estimate the public reporting burden for the information is 25 minutes per response. Respondents are operators and operating rights owners of Federal and Indian (except Osage) oil and gas leases. The frequency of response varies depending on the type of activities conducted at oil and gas wells and on the operations. We estimate 34,000 notices filed annually and a total annual burden of 14,167 hours.

BLM will summarize all responses to this notice and include them in the request for OMB approval. All comments will become a matter of public record.

Dated: January 31, 2003.

Michael H. Schwartz,

Bureau of Land Management Information Collection Clearance Officer.

[FR Doc. 03–2693 Filed 2–4–03; 8:45 am]

BILLING CODE 4310–84–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–610–02–1220–AA]

Notice of Relocation of the Bureau of Land Management's California Desert District Office in Riverside, CA

SUMMARY: Notice is hereby given that the Bureau of Land Management's (BLM) California Desert District Office is moving from its current location at 6221 Box Springs Boulevard in Riverside to a new building located at 22835 Calle San Juan De Los Lagos in Moreno Valley, California the week of February 3. The BLM will officially close the Riverside office 4:30 p.m., Thursday, February 6 and reopen at the new office on Monday, February 10.

The BLM encourages the public to arrange any work with BLM before February 6 or after February 10. The telephone numbers will remain the same and are scheduled to be back on line on Monday.

Directions to the new BLM office: from I–215 take the Alessandro exit and go east two miles, turn right on Frederick, right on Calle San Juan De Los Lagos, and the BLM office will be on the left; or from I–60 take the Pigeon Pass exit, which becomes Frederick, go south three miles, and turn right on Calle San Juan De Los Lagos. The new address is Bureau of Land Management, California Desert District Office, 22835 Calle San Juan De Los Lagos, Moreno Valley, 92553.

FOR MORE INFORMATION CONTACT: Doran Sanchez, BLM California Desert District External Affairs, at (909) 697–5220.

Dated: January 30, 2003.

Linda Hansen,

District Manager.

[FR Doc. 03–2648 Filed 2–4–03; 8:45 am]

BILLING CODE 4310–40–U

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Agency Information Collection Activities: Submitted for Office of Management and Budget (OMB) Review; Comment Request

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of an extension of a currently approved information collection (OMB Control Number 1010–0103).

SUMMARY: To comply with the Paperwork Reduction Act of 1995 (PRA), we are notifying the public that we have submitted to OMB an information collection request (ICR) to renew approval of the paperwork requirements in the regulations under 30 CFR Part 206, Subpart E—Indian Gas. This notice also provides the public a second opportunity to comment on the paperwork burden of these regulatory requirements. The ICR is titled "30 CFR Part 206, Subpart E—Indian Gas (Form MMS–4411, Safety Net Report)".

DATES: Submit written comments on or before March 7, 2003.

ADDRESSES: Submit written comments directly to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for the Department of the Interior (OMB Control Number 1010–0103), 725 17th Street, NW., Washington, DC 20503. Mail or hand-carry a copy of your comments to Sharron L. Gebhardt, Regulatory Specialist, Minerals Management Service, Minerals Revenue Management, P.O. Box 25165, MS 320B2, Denver, Colorado 80225. If you use an overnight courier service, our courier address is Building 85, Room A–614, Denver Federal Center, Denver, Colorado 80225. You may also email your comments to us at *mrm.comments@mms.gov*. Include the title of the information collection and the OMB Control Number in the "Attention" line of your comment. Also include your name and return address. Submit electronic comments as an ASCII file avoiding the use of special characters and any form of encryption. If you do not receive a confirmation that we have received your e-mail, contact Ms. Gebhardt at (303) 231–3211.

FOR FURTHER INFORMATION CONTACT: Sharron L. Gebhardt, telephone (303) 231–3211, FAX (303) 231–3385, email *Sharron.Gebhardt@mms.gov*. You may also contact Sharron Gebhardt to obtain a copy at no cost of the form and regulations that require the subject collection of information.

SUPPLEMENTARY INFORMATION:

Title: 30 CFR Part 206, Subpart E—Indian Gas (Form MMS–4411, Safety Net Report).

OMB Control Number: 1010–0103.

Bureau Form Number: Form MMS–4411.

Abstract: The Department of the Interior (DOI) is responsible for matters relevant to mineral resource development on Federal and Indian lands and the Outer Continental Shelf (OCS). The Secretary of the Interior (Secretary) is responsible for managing the production of minerals from Federal and Indian lands and the OCS, collecting royalties from lessees who produce minerals, and distributing the funds collected in accordance with applicable laws. The Secretary has an Indian trust responsibility to manage Indian lands and seek advice and information from Indian beneficiaries. MMS performs the royalty management functions and assists the Secretary in carrying out DOI's Indian trust responsibility.

On August 10, 1999, MMS published in the **Federal Register** (64 FR 43506) a final rulemaking titled "Amendments to Gas Valuation Regulations for Indian Leases," with an effective date of January 1, 2000. These regulations are codified at 30 CFR Part 206, Subpart E. Form MMS–4411, Safety Net Report, governs the valuation for royalty

purposes of natural gas produced from Indian leases. In 30 CFR 206.172(e), MMS requires that lessees submit Form MMS–4411 when gas production from an Indian lease is sold beyond the first index pricing point. The gas regulations apply to all gas production from Indian (tribal or allotted) oil and gas leases (except leases on the Osage Indian Reservation).

Form MMS–4411 ensures Indian mineral lessors receive the maximum revenues from mineral resources on their land consistent with the Secretary's trust responsibility and lease terms. It permits lessees to comply with the regulatory requirements at the time that royalties are due.

The safety net calculation establishes the minimum value, for royalty purposes, of natural gas production from Indian leases. This reporting requirement will assist the Indian lessor in receiving all the royalties that are due and aid MMS in its compliance efforts. The safety net price is calculated using prices received for gas sold downstream of the first index pricing point. It will include only the lessee's or the lessee's affiliate's arm's-length sales price, and it will not require detailed calculations for the costs of transportation. By June 30 following any calendar year, the lessee calculates a safety net price for each month of the previous calendar year. Lessees must calculate the safety net prices for each index zone where the lessee has an Indian lease and the gas is sold beyond the first index pricing point. The safety net price will capture the significantly higher values for sales occurring beyond the index point. The lessee will submit its safety net prices to MMS annually (by June 30) using Form MMS–4411.

We are also revising this ICR to include reporting requirements that were inadvertently overlooked when the final rule was published. See the chart below for these requirements and associated burden hours. These reporting requirements are rare and unusual circumstances where the standard valuation procedures set out in the Indian gas valuation rule are not appropriate.

MMS is requesting OMB's approval to continue to collect this information. Not collecting this information would limit the Secretary's ability to discharge his/her duties and may also result in loss of royalty payments to the Indian lessor due to royalties not being collected on prices received under higher priced long-term sales contracts. Proprietary information submitted is protected, and there are no questions of a sensitive nature included in this information collection.

We have also changed the title of this ICR from "Safety Net Report" to "30 CFR part 206, subpart E—Indian Gas (Form MMS–4411, Safety Net Report)," to clarify the regulatory language we are covering under 30 CFR Part 206.

Frequency: Annually.

Estimated Number and Description of Respondents: 29 Indian lessees/lessors.

Estimated Annual Reporting and Recordkeeping "Hour" Burden: 1,012 hours.

The following chart details the individual components and estimated hour burdens. In calculating the burdens, we assumed that respondents perform certain requirements in the normal course of their activities. Therefore, we consider these to be usual and customary and took that into account in estimating the burden.

30 CFR section	Reporting requirement	Burden hours per response	Annual number of responses	Annual burden hours
206.172(e)(6)(i) and (iii) ...	You must report the safety net price for each index zone to MMS on Form MMS–4411, Safety Net Report, no later than June 30 following each calendar year * * * MMS may order you to amend your safety net price within one year from the date your Form MMS–4411 is due or is filed, whichever is later.	25	24	600
206.172(f)(1)(ii), (2), and (3).	An Indian tribe may ask MMS to exclude some or all of its leases from valuation under this section * * * If an Indian tribe requests exclusion from an index zone for less than all of its leases, MMS will approve the request only if the excluded leases may be segregated into one or more groups based on separate fields within the reservation * * * An Indian tribe may ask MMS to terminate exclusion of its leases from valuation under this section * * * The Indian tribe's request to MMS under either paragraph (f)(1) or (2) of this section must be in the form of a tribal resolution.	40	1	40
206.174(f)	You may ask MMS for guidance in determining value. You may propose a valuation method to MMS. Submit all available data related to your proposal and any additional information MMS deems necessary.	40	1	40
206.175(d)(4)	You may request MMS approval of other methods for determining the quantity of residue gas and gas plant products allocable to each lease.	20	1	20
	Transportation Allowances			
206.178(a)(1)(i)	You are required to submit to MMS a copy of your arm's-length transportation contract(s) and all subsequent amendments to the contract(s) within 2 months of the date MMS receives your report which claims the allowance on the Form MMS–2014.	8	2	16
206.178(a)(2)(i) and (ii)	* * * you cannot take an allowance for the costs of transporting lease production that is not royalty bearing without MMS approval, or without lessor approval on tribal leases. * * * As an alternative to paragraph (a)(2)(i), * * * you may propose to MMS a cost allocation method based on the values of the products transported.	20	1	20

30 CFR section	Reporting requirement	Burden hours per response	Annual number of responses	Annual burden hours
206.178(a)(3)(i) and (ii)	If your arm's-length transportation contract includes both gaseous and liquid products and the transportation costs attributable to each cannot be determined from the contract, you must propose an allocation procedure to MMS. You are required to submit all relevant data to support your allocation proposal.	40	1	40
206.178(b)(2)(iv)	* * * you may not later elect to change to the other alternative without MMS approval.	20	1	20
206.178(b)(2)(iv)(A)	Once you make an election * * * you may not change methods without MMS approval.	20	1	20
206.178(b)(3)(i)	Except as provided in this paragraph, you may not take an allowance for transporting a product that is not royalty bearing without MMS approval.	40	1	40
206.178(b)(3)(ii)	As an alternative to the requirements of paragraph (b)(3)(i) of this section, you may propose to MMS a cost allocation method based on the values of the products transported.	*See* 206.178(a)(2)(ii).		
206.178(b)(5)	If you transport both gaseous and liquid products through the same transportation system, you must propose a cost allocation procedure to MMS. . . . You are required to submit all relevant data to support your proposal.	*See* 206.178(a)(3)(i) & (ii).		
	Processing Allowances			
206.180(a)(1)(i)	You are required to submit to MMS a copy of your arm's-length processing contract(s) and all subsequent amendments to the contract(s) within 2 months of the date MMS receives your first report that deducts the allowance on the Form MMS–2014.	8	2	16
206.180(a)(3)	If your arm's-length processing contract includes more than one gas plant product and the processing costs attributable to each product cannot be determined from the contract, you must propose an allocation procedure to MMS * * * You are required to submit all relevant data to support your proposal.	40	1	40
206.180(b)(2)(iv)	After you elect to use either method [depreciation with a return on undepreciable capital investment or a return on depreciable capital investment] for a processing plant, you may not later elect to change to the other alternative without MMS approval.	20	1	20
206.180(b)(2)(iv)(A)	Once you make an election, you may not change [depreciation or unit of production] methods without MMS approval.	20	1	20
206.180(b)(3)	Your processing allowance under this paragraph (b) must be determined based upon a calendar year or other period if you and MMS agree to an alternative.	20	1	20
206.181(c)	A proposed comparable processing fee submitted to either the Tribe and MMS (for tribal leases) or MMS (for allotted leases) with your supporting documentation submitted to MMS. If MMS does not take action on your proposal within 120 days, the proposal will be deemed to be denied and subject to appeal to the MMS Director under 30 CFR part 290.	40	1	40
Total	.....	.....	41	1,012

Estimated Annual Reporting and Recordkeeping "Non-hour Cost" Burden: We have identified no "non-hour" cost burdens.

Public Disclosure Statement: The PRA (44 U.S.C. 3501, *et seq.*) provides that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB Control Number.

Comments: Section 3506(c)(2)(A) of the PRA requires each agency "* * * to provide notice * * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information * * *." Agencies must specifically solicit comments to: (a) Evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

To comply with the public consultation process, we published a **Federal Register** Notice (67 FR 66658) on November 1, 2002, announcing that we would submit this ICR to OMB for approval. The notice provided the required 60-day comment period. We received no comments in response to the notice.

If you wish to comment in response to this notice, you may send your comments to the offices listed under the **ADDRESSES** section of this notice. OMB has up to 60 days to approve or disapprove the information collection but may respond after 30 days. Therefore, to ensure maximum consideration, OMB should receive public comments by March 7, 2003.

Public Comment Policy. We will post all comments in response to this notice on our Web site at *http://www.mrm.mms.gov/Laws_R_D/InfoColl/InfoColCom.htm.* We will also make copies of the comments available for public review, including names and addresses of respondents, during regular business hours at our offices in Lakewood, Colorado. Individual respondents may request that we withhold their home address from the public record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you request that we withhold your name and/or address, state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

MMS Information Collection Clearance Officer: Jo Ann Lauterbach, (202) 208–7744.

Dated: January 28, 2003.

Lucy Querques Denett,

Associate Director for Minerals Revenue Management.

[FR Doc. 03–2646 Filed 2–4–03; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

National Park Service

Cuyahoga Valley National Park EIS Availability

AGENCY: National Park Service.

ACTION: Notice of availability of the draft rural landscape management program Environmental Impact Statement for Cuyahoga Valley National Park, Ohio.

SUMMARY: Pursuant to section 102(2) of the National Environmental Policy Act of 1969, the National Park Service (NPS) announces the availability of the draft rural landscape management program Environmental Impact Statement (DEIS) for Cuyahoga Valley National Park, Ohio (hereafter "the Park").

DATES: There will be a 60-day public review period for comments on this document. Comments on the DEIS must be received no later than 60-days after the Environmental Protection Agency publishes its notice of availability in the **Federal Register**. Public open houses for information about, or to make comment on, the DEIS will be announced in the local media and the Park's web site when they are scheduled. Information about meeting time and place will be available by contacting the Park's communications center at 440–526–5256 or visiting the Park's web site at: *http://www.nps.gov/cuva/management/rmprojects/ruraleis/.*

ADDRESSES: Copies of the DEIS are available by request by writing to Superintendent, Cuyahoga Valley National Park, 15610 Vaughn Road, Brecksville, OH 44141, by phone 440–546–5903, or by e-mail *cuva_superintendent@nps.gov.* A downloadable on-line version of the document is available at: *http://www.nps.gov/cuva/management/rmprojects/ruraleis/.*

FOR FURTHER INFORMATION CONTACT: Superintendent, Cuyahoga Valley National Park, 15610 Vaughn Road, Brecksville, OH 44141, or by phone 440–546–5903.

SUPPLEMENTARY INFORMATION: The preservation of the rural landscape is central to the Park's legislative mandate. The law, that established the Park, mandates the "preservation of the historic, scenic, natural, and recreational values of the Cuyahoga Valley" (Public Law 93–555, 1974). One component of the historic and scenic values of the Park is the rural landscape—lands and structures modified by humans for agricultural use. Throughout the Park's history, efforts to preserve the rural landscape have been sporadic; there has never been a comprehensive program to manage the rural landscape. As a result, many of the Park's rural landscape resources have been lost. Therefore, the Park is proposing to better protect and revitalize this cultural resource by implementing an integrated rural landscape management program, with the goal of more effectively and systematically preserving and protecting the rural landscape resources in the Park. The DEIS describes and analyzes the environmental impacts of alternatives and their associated impacts. In the Park's preferred alternative (alternative 2—Countryside Initiative), the rural landscape would be managed largely by issuing long-term leases to private individuals for the purpose of conducting sustainable agricultural activities. Two additional action alternatives and a no action alternative are evaluated in this EIS.

Persons wishing to comment may do so by any one of several methods. They may attend the open houses noted above. They may mail comments to Superintendent, Cuyahoga Valley National Park, 15610 Vaughn Road, Brecksville, OH 44141. They also may comment via e-mail to *cuav_superintendent@nps.gov* (include name and return address in the e-mail message). Finally, they may hand-deliver comments to Park Headquarters, Cuyahoga Valley National Park, 15610 Vaughn Road, Brecksville, OH 44141.

The NPS' practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request we withhold their home address from the record, which we will honor to the extent allowable by law. There also may be circumstances, in which we would withhold from the record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses available for public inspection in their entirety.

The responsible official is Mr. William Schenk, Midwest Regional Director.

Dated: December 17, 2002.

William W. Schenk,

Regional Director, Midwest Region.

[FR Doc. 03–2716 Filed 2–4–03; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

General Management Plan for San Juan Island National Historical Park, San Juan County, WA; Notice of Intent To Prepare an Environmental Impact Statement

Summary: In accordance with § 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4321 *et. seq.*), the National Park Service is undertaking a conservation planning and environmental impact analysis process for a new General Management Plan for San Juan Island National

Historical Park. The purpose of the scoping process is to elicit early public comment regarding the full spectrum of public issues and concerns, including a suitable range of alternatives, appropriate boundaries, and the nature and extent of potential environmental impacts and appropriate mitigation strategies which should be addressed in preparing the draft Environmental Impact Statement (EIS).

Background: A general management plan (GMP) sets forth the basic management philosophy for a unit of the National Park System and provides the strategies for addressing issues and achieving identified management objectives for that unit. In the forthcoming EIS\GMP effort and its integral public review process, the National Park Service (NPS) will formulate a range of alternatives to address distinct management strategies for the park, including resource protection and visitor use. The EIS will identify and evaluate potential environmental impacts. The GMP will guide the management of natural and cultural resources and visitor use of those resources, serving as blueprint for park managers over the next 10–15 years. Development concept plans for selected facilities may be included with the GMP.

Scoping and Comment Process: Scoping activities involving a wide range of park stakeholders is of critical importance for early identification of issues and concerns which should be addressed in the forthcoming EIS\GMP. Representatives of Federal, State, and local agencies, American Indian tribes, private organizations and individuals from the general public who may be interested in or affected by the proposed GMP are encouraged to participate in the scoping process by responding with written comments, or by providing any relevant information.

At this time, major issues anticipated to be addressed in the San Juan Island National Historical Park EIS\GMP include: (1) Substantial growth pressures on cultural and natural resources of the park; (2) future protection of water quality and quantity; (3) natural erosion of portions of the shoreline; (4) proliferation of exotic plant and animal species; and (4) lack of adequate administrative and visitor facilities and services in terms of location and scale. Comments on these or other concerns deemed relevant to the conservation planning and environmental impact analysis process, as well as suggested management alternatives suitable for addressing these factors, are encouraged and are particularly helpful as this early phase in the overall EIS\GMP process.

Several public scoping meetings are planned for spring 2003. Confirmed dates, times, and locations will be timely announced via local and regional press releases, in a park scoping newsletter, and on the park website *http://www.nps.gov/sajh/gmp_sajh.html.*

All interested individuals, organizations, and agencies wishing to provide comments, suggestions, or relevant information (or those wishing to be included in the project mailing list) should contact the Superintendent at San Juan Island National Historical Park, P.O. Box 429, Friday Harbor, Washington 98250, or via telephone at (360) 378–2240. All written comments must be postmarked not later than June 1, 2003.

If individuals submitting comments request that their name or/and address be withheld from public disclosure, it will be honored to the extent allowable by law. Such requests must be stated prominently in the beginning of the comments. There also may be circumstances wherein the NPS will withhold a respondent's identity as allowable by law. As always, NPS will make available to public inspection all submissions from organizations or businesses and from persons identifying themselves as representatives or officials of organizations and businesses; and, anonymous comments may not be considered.

Decision Process: The draft EIS\GMP is expected to be available for public review by summer 2004, with the final version of the document completed by winter 2005. As a delegated EIS, the official responsible for approval of the EIS\GMP is the Regional Director, Pacific West Region, National Park Service. Subsequently, the official responsible for implementation of the approved GMP will be the Superintendent, San Juan Island National Historical Park.

Dated: December 18, 2002.

Jonathan B. Jarvis,

Regional Director, Pacific West Region.

[FR Doc. 03–2717 Filed 2–4–03; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Aniakachak National Monument Subsistence Resource Commission Meeting

AGENCY: National Park Service, Interior.

ACTION: Announcement of Subsistence Resource Commission meeting.

SUMMARY: Notice is hereby given in accordance with the Federal Advisory Committee Act that a meeting of the Aniakchak National Monument Park Subsistence Resource Commission will be held at Chignik Lake, Alaska. The purpose of the meeting will be to continue work on National Park Service subsistence hunting program recommendations including other related subsistence management issues. The meeting will be open to the public. Any person may file with the Commission a written statement concerning the matters to be discussed.

The Subsistence Resource Commissions are authorized under title VIII, section 808, of the Alaska National Interest Lands Conservation Act, Pub. L. 96–487, and operation in accordance with the provisions of the Federal Advisory Committee Act.

DATES: The meeting will be on February 19, 2003, 9 a.m. to 4 p.m. at the Subsistence Hall in Chignik Lake, Alaska. In accordance with 41 CFR 102–3.150, we may provide less than 15 days notice in the **Federal Register** to convene the Commission prior to the February 27, 2003, Bristol Bay Regional Council meeting.

FOR FURTHER INFORMATION CONTACT: Mary McBurney, Subsistence Manager at (907) 257–2633.

SUPPLEMENTARY INFORMATION: Notice of this meeting will be published in local newspapers and announced on local radio stations prior to the meeting dates. Locations and dates may need to be changed based on weather or local circumstances.

The following agenda items will be discussed:

1. Call to order (SRC Chair).
2. Roll call and confirmation of quorum.
3. SRC Chair and Superintendent's welcome and introductions.
4. Review Commission purpose and status of membership.
5. Review and adopt agenda.
6. Review and adopt minutes from last meeting.
7. Superintendent's report.
8. Review SRC Chair's workshop notes.
9. Update—Review Federal Subsistence Board Actions on Wildlife Proposals.
10. Update—Review Federal Subsistence Board Actions on Fisheries Proposals.
11. Develop comments for Federal Subsistence Board Proposals.
12. Review Status of Subsistence Hunting Program Recommendations.

13. Public and agency comments.
14. Set time and place of next SRC meeting.
15. Adjournment.

Draft minutes of the meeting will be available for public inspection approximately six weeks after the meeting from: Superintendent, Aniakchak National Monument and Preserve, P.O. Box 4230, University Drive #311, Anchorage, AK 99508. Telephone (907) 271–3751.

Dated: January 9, 2003.

Robert L. Arnberger,

Regional Director, Alaska.

[FR Doc. 03–2714 Filed 2–4–03; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Announcement of Denali National Park Subsistence Resource Commission Meeting

AGENCY: National Park Service, Interior.

ACTION: Announcement of Denali National Park Subsistence Resource Commission meeting.

SUMMARY: Notice is hereby given in accordance with the Federal Advisory Committee Act that a meeting of the Denali National Park Subsistence Resource Commission will be held February 21, 2003, at Healy, Alaska. The purpose of the meeting will be to continue work on National Park Service subsistence hunting program recommendations including other related subsistence management issues. The meeting will be open to the public. Any person may file with the Commission a written statement concerning the matters to be discussed.

The Subsistence Resource Commission is authorized under title VIII, section 808, of the Alaska National Interest Lands Conservation Act, Pub. L. 96–487, and operates in accordance with the provisions of the Federal Advisory Committee Act.

DATES: The meeting will on February 21, 2003, 9 a.m. to 5 p.m., at the Nord Haven Motel in Healy, Alaska. In accordance with 41 CFR 102–3.150, we may provide less than 15 days notice in the **Federal Register** to convene the Commission prior to the March 4, 2003, Southcentral Federal Subsistence Regional Council meeting.

FOR FURTHER INFORMATION CONTACT: Hollis Twitchell, Subsistence and Cultural Resources Manager at (907) 683–9544 or (907) 455–0673.

SUPPLEMENTARY INFORMATION: Notice of this meeting will be published in local newspapers and announced on local radio stations prior to the meeting dates. Locations and dates may need to be changed based on weather or local circumstances.

The following agenda items will be discussed:

1. Call to order (SRC Chair).
2. Roll call and confirmation of quorum.
3. SRC Chair and Superintendent's welcome and introductions.
4. Review and adopt minutes from last meeting.
5. Additions and corrections to draft agenda.
6. Public and other agency comments.
7. Denali Backcountry Management Plan.
8. Cantwell Resident Zone Hunting Plan Recommendation.
9. North Access Studies.
10. Federal Subsistence Wildlife Proposals for 2003.
11. Cultural and Subsistence Interpretation.
12. Bear and Wolf management issues in Wildlife Units 13 and 16.
13. Customary Trade Proposed Rule.
14. NPS reports and updates.
15. Subsistence Community Use Profiles and Traditional Knowledge studies.
16. Federal Subsistence Board actions 2002.
17. Alaska Board of Game actions 2002.
18. Closing public and agency comments.
19. Set time and place of next Denali National Park SRC meeting.
20. Adjournment.

Draft minutes of the meeting will be available for public inspection approximately six weeks after the meeting from: Superintendent, Denali National Park and Preserve, P.O. Box 9, Denali Park, AK 99755.

Robert L. Arnberger,

Regional Director, Alaska.

[FR Doc. 03–2715 Filed 2–4–03; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Lake Clark National Park Subsistence Resource Commission Meeting

AGENCY: National Park Service, Interior.

ACTION: Announcement of Lake Clark National Park Subsistence Resource Commission meeting.

SUMMARY: Notice is hereby given in accordance with the Federal Advisory Committee Act that a meeting of the Lake Clark National Park Subsistence Resource Commission will be held February 24, 2003 at Port Alsworth, Alaska. The purpose of the meeting will be to continue work on National Park Service subsistence hunting program recommendations including other related subsistence management issues. The meeting will be open to the public. Any person may file with the Commission a written statement concerning the matters to be discussed.

The Subsistence Resource Commission is authorized under Title VIII, Section 808, of the Alaska National Interest Lands Conservation Act, Pub. L. 96–487, and operates in accordance with the provisions of the Federal Advisory Committee Act.

DATES: The meeting will on February 24, 2003, 10 a.m. to 4 p.m., at the National Park Service hangar in Port Alsworth, Alaska. In accordance with 41 CFR 102–3.150, we may provide less than 15 days notice in the **Federal Register** to convene the Commission prior to the February 27, 2003, Bristol Bay Regional Council meeting.

FOR FURTHER INFORMATION CONTACT: Mary McBurney, Subsistence Manager at (907) 257–2633.

SUPPLEMENTARY INFORMATION: Notice of this meeting will be published in local newspapers and announced on local radio stations prior to the meeting dates. Locations and dates may need to be changed based on weather or local circumstances.

The following agenda items will be discussed:

1. Call to order (SRC Chair).
2. Roll Call and Confirmation of Quorum.
3. SRC Chair and Superintendent's Welcome and Introductions.
4. Review Commission Purpose and Status of Membership.
5. Review and Adopt Agenda.
6. Review and adopt minutes from last meeting.
7. Superintendent's Report.
8. Review SRC Chairs Workshop Notes
9. Update—Review Federal Subsistence Board Actions on Wildlife Proposals.
10. Update—Review Federal Subsistence Board Actions on Fisheries Proposals.
11. Develop Subsistence Hunting Program Recommendations
12. Public and agency comments.
13. Set time and place of next SRC meeting.
14. Adjournment.

Draft minutes of the meeting will be available for public inspection approximately six weeks after the

meeting from: Superintendent, Lake Clark National Park and Preserve, P.O. Box 4230, University Drive #311, Anchorage, AK 99508.

Robert L. Arnberger,

Regional Director, Alaska.

[FR Doc. 03–2719 Filed 2–4–03; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Landmarks Committee; Meeting

AGENCY: National Park Service, U.S. Department of the Interior.

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given in accordance with the Federal Advisory Commission Act that a meeting of the National Landmarks Committee of the National Park System Advisory Board will be held beginning at 9 a.m. on the following date and at the following location.

DATES: April 8, 2003.

LOCATION: The Lyceum: Alexandria's History Museum, 201 South Washington Street, Alexandria, Virginia 22314.

FOR FURTHER INFORMATION CONTACT: Patricia Henry, National Historic Landmarks Survey, National Register, History, and Education, National Park Service; 1849 C Street, NW (2280), Washington, DC 20240. Telephone (202) 354–2216.

SUPPLEMENTARY INFORMATION: The purpose of the meeting of the National Landmarks Committee of the National Park System Advisory Board is to evaluate the nomination of a historic property in order to advise the full National Park System Advisory Board of the qualifications of the property being proposed for National Historic Landmark (NHL) designation, and to recommend to the National Park System Advisory Board if the Landmarks Committee finds that this property meets the criteria for designation as a National Historic Landmark. The members of the National Landmarks Committee are:

Dr. Janet Snyder Matthews, Chair
Dr. Allyson Brooks
Dr. Ian W. Brown
Mr. S. Allen Chambers, Jr.
Dr. Elizabeth Clark-Lewis
Dr. Bernard L. Herman
Professor E.L. Roy Hunt
Ms. Paula J. Johnson
Mr. Jerry L. Rogers
Dr. Richard Guy Wilson

From 9 to 10:30 a.m. the meeting will include a presentation and discussion on the national historic significance and the historic integrity of one property being nominated for National Historic Landmark designation. In addition, one National Historic Trail Study will also be considered at that time. After that time the committee will engage in a general discussion on the procedures of the National Historic Landmarks Program. The meeting will be open to the public. Any member of the public may file for consideration by the committee written comments concerning the one National Historic Landmarks nomination and matters to be discussed pursuant to 36 CFR Part 65, or the trail study.

Comments should be submitted to Carol D. Shull, Chief, National Historic Landmarks Survey and Keeper of the National Register of Historic Places; National Register, History, and Education; National Park Service; 1849 C Street, NW (2280); Washington, DC 20240.

The committee will consider the following nomination:

Florida

Fort King

The committee will also consider the recommendations presented in the Washington-Rochambeau Revolutionary War Route National Historic Trail Study, prepared under the auspices of Public Law 106–473.

Dated: January 29, 2003.

Carol D. Shull,

Chief, National Historic Landmarks Survey and Keeper of the National Register of Historic Places; National Park Service, Washington, DC.

[FR Doc. 03–2661 Filed 2–4–03; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Wrangell-St. Elias National Park Subsistence Resource Commission Meeting

AGENCY: National Park Service, Interior.

ACTION: Announcement of Wrangell-St. Elias National Park Subsistence Resource Commission (SRC) meeting.

SUMMARY: Notice is hereby given in accordance with the Federal Advisory Committee Act that a meeting of the Wrangell-St. Elias National Park Subsistence Resource Commissions will be held at Tazlina, Alaska. The purpose of the meeting will be to continue work on currently authorized and proposed National Park Service subsistence hunting program recommendations including other related subsistence management issues. The meeting will be open to the public. Any person may file with the Commission a written statement concerning the matters to be discussed.

The Subsistence Resource Commission is authorized under Title VIII, Section 808, of the Alaska National Interest Lands Conservation Act, Pub. L. 96–487, and operates in accordance with the provisions of the Federal Advisory Committee Act.

DATES: The meeting dates are:

1. February 19, 2003, 9 a.m. to 5 p.m., Tazlina Community Hall, Tazlina, Alaska.

2. February 20, 2003, 9 a.m. to 5 p.m., Tazlina Community Hall, Tazlina, Alaska.

In accordance with 41 CFR 102–3.150, we may provide less than 15 days notice in the **Federal Register** to convene the Commission prior to the March 4, 2003, Southcentral Regional Council meeting.

FOR FURTHER INFORMATION CONTACT: Gary Candelaria or Barbara Cellarius, Subsistence, at Wrangell-St. Elias National Park and Preserve, P.O. Box 439, Copper Center, AK 99573, telephone (907) 822–5234.

SUPPLEMENTARY INFORMATION: Notice of this meeting will be published in local newspapers and announced on local radio stations prior to the meeting dates. Locations and dates may need to be changed based on weather or local circumstances.

The agenda for the meeting is as follows:

1. Call to order (SRC Chair).
2. SRC Roll Call and Confirmation of Quorum.
3. SRC Chair and Superintendent's Welcome and Introductions.
4. Review and Adopt Agenda.
5. Review and adopt minutes September 25–26, 2002 meeting.
6. Review Commission Purpose.
7. Status of Membership.
8. Superintendent's Report.
9. Wrangell-St. Elias NP&P Staff Report.
10. Review new proposals to change Wildlife Regulations.
11. Public and Agency Comments.
12. Work Session (comment on issues, develop new recommendations, prepare letters).
13. Set time and place of next SRC meeting.
14. Adjournment.

Draft minutes of the meeting will be available for public inspection approximately six weeks after the meeting from the Superintendent,

Wrangell-St. Elias National Park, at the above address.

Robert L. Arnberger,

Regional Director, Alaska.

[FR Doc. 03–2718 Filed 2–4–03; 8:45 am]

BILLING CODE 4310–70–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. TA–421–2]

Certain Steel Wire Garment Hangers From China

Determination

On the basis of information developed in the subject investigation, the United States International Trade Commission determines, pursuant to section 421(b)(1) of the Trade Act of 1974,[1] that certain steel wire garment hangers[2] from the People's Republic of China are being imported into the United States in such increased quantities or under such conditions as to cause market disruption to the domestic producers of like or directly competitive products.

Background

Following receipt of a petition filed on November 27, 2002, on behalf of CHC Industries, Inc.; M&B Metal Products Co., Inc.; and United Wire Hanger Corp., the Commission instituted investigation No. TA–421–2, Certain Steel Wire Garment Hangers From China, under section 421 of the Trade Act of 1974 to determine whether certain steel wire garment hangers from China are being imported into the United States in such increased quantities or under such conditions as to cause or threaten to cause market disruption to the domestic producers of like or directly competitive products.

Notice of the institution of the Commission's investigation and of the scheduling of a public hearing to be held in connection therewith was given by posting a copy of the notice on the Commission's website (*http://www.usitc.gov*) and by publishing the notice in the **Federal Register** of December 6, 2002 (67 FR 72700). The hearing was held on January 9, 2003, in Washington, DC; all persons who requested the opportunity were permitted to appear in person or by counsel.

By order of the Commission.

Issued: January 31, 2003.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 03–2778 Filed 2–4–03; 8:45 am]

BILLING CODE 7020–02–P

[1] 19 U.S.C. 2451(b)(1).

[2] For purposes of this investigation, certain steel wire garment hangers consist of garment hangers, fabricated from steel wire in gauges from 9 to 17, inclusive (3.77 to 1.37 millimeters, inclusive), whether or not galvanized or painted, whether or not coated with latex or epoxy or other similar gripping materials, and whether or not fashioned with paper covers or capes (with or without printing) and/or nonslip features such as saddles, tubes, or struts. After fabrication, such hangers are in lengths from 7 to 20 inches, inclusive (177.8 to 508 millimeters, inclusive), and the hanger's length or bottom bar is composed of steel wire and/or saddles, tubes or struts. The product may also be identified by its commercial designation, referring to the shape and/or style of the hanger or the garment for which it is intended, including but not limited to shirt, suit, strut, and caped hangers. Specifically excluded are wooden, plastic, aluminum, and other garment hangers that are covered under separate subheadings of the HTS. The products subject to this investigation are classified in subheading 7326.20.00 of the HTS and reported under statistical reporting number 7326.20.0020. Although the HTS subheading is provided for convenience and Customs purposes, the written description of the merchandise is dispositive.

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

Agency Information Collection Activities; Proposed Collection, Comments Requested

ACTION: 60-Day Emergency Notice of Information Collection Under Review: Revision of a Currently Approved Collection, Application for Explosives License or Permit.

The Department of Justice, Bureau of Alcohol, Tobacco, Firearms and Explosives has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with emergency review procedures of the Paperwork Reduction Act of 1995. OMB approval has been requested by February 18, 2003. The proposed information collection is published to obtain comments from the public and affected agencies. If granted, the emergency approval is only valid for 180 days. Comments should be directed to OMB, Office of Information and Regulatory Affairs, Attention: Department of Justice Desk Officer (202) 395–6466, Washington, DC 20503.

During the first 60 days of this same review period, a regular review of this information collection is also being undertaken. All comments and suggestions, or questions regarding additional information, to include obtaining a copy of the proposed information collection instrument with instructions, should be directed to US Department of Justice, Bureau of Alcohol, Tobacco, Firearms, and Explosives ATTN: Gail Davis, Chief, Public Safety Branch, 800 K Street, NW., Suite 710, Washington, DC 20001.

Request written comments and suggestions from the public and affected agencies concerning the proposed collection of information. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected, and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of this information:

(1) *Type of information collection:* Revision of a currently approved collection.

(2) *The title of the form/collection:* Application For Explosives License or Permit.

(3) *The agency form number, if any, and the applicable component of the department sponsoring the collection:* Form Number: ATF F5400.13/5400.16.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Business, Individuals Abstract: The purpose of this collection is to enable ATF to ensure that persons seeking to obtain a license or permit under 18 USC, Chapter 40, and responsible person of such companies are not prohibited from shipping, transporting, receiving, or possessiong explosives.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* There are approximately 10,000 respondents who will each require an average of 1 hour and 30 minutes to respond.

(6) *An estimate of the total public burden (in hours) associated with the colection:* The total annual public burden hours for this information collection is estimated to be 15,000 hours.

In additional information is required contact: Robert B. Briggs, Department Clearance Officer, Information Management and Security Staff, Justice Management Division, United States Department of Justice, 601 D Street NW., Patrick Henry Building, Suite 1600, Washington, DC 20530.

Dated: January 29, 2003.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 03–2497 Filed 2–04–03; 8:45 am]

BILLING CODE 4410–FB–M

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 60-Day Emergency Notice of Information Collection Under Review: Revision of a Currently Approved Collection, Employee Possessor Questionnaire.

The Department of Justice, Bureau of Alcohol, Tobacco, Firearms and Explosives has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with emergency review procedures of the Paperwork Reduction Act of 1995. OMB approval has been requested by February 18, 2003. The proposed information collection is published to obtain comments from the public and affected agencies. If granted, the emergency approval is only valid for 180 days. Comments should be directed to OMB, Office of Information and Regulatory Affairs, Attention: Department of Justice Desk Officer (202) 395–6466, Washington, DC 20503.

During the first 60 days of this same review period, a regular review of this information collection is also being undertaken. All comments and suggestions, or questions regarding additional information, to include obtaining a copy of the proposed information collection instrument with instructions, should be directed to United States Department of Justice, Bureau of Alcohol, Tobacco, Firearms, and Explosive ATTN: Gail Davis, Chief, Public Safety Branch, 800 K Street, NW., Suite 710, Washington, DC 20001.

Request written comments and suggestions from the public and affected agencies concerning the proposed collection of information. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

Overview of this information:

(1) *Type of information collection:* Revision of a currently approved collection.

(2) *The title of the form/collection:* Employee Possessor Questionnaire.

(3) *The agency form number, if any, and the applicable component of the department sponsoring the collection:* Form Number: ATF F5400.28 Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals. Other: Business. Abstract: Each employee possessor in the explosives business or operations is required to ship, transport, receive, or possess (actual or constructive), explosive materials must submit this form. ATF F5400.28 will determine the eligibility of the employee possessor to possess explosives.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* There are approximately 10,000 respondents who will each require an average of 20 minutes to respond.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total annual public burden hours for this information collection is estimated to be 3,334 hours.

If additional information is required contact: Robert B. Briggs, Department Clearance Officer, Information Management and Security Staff, Justice Management Division, United States Department of Justice, 601 D Street NW., Patrick Henry Building, Suite 1600, Washington, DC 20530.

Dated: January 29, 2003.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 03–2498 Filed 2–4–03; 8:45 am]

BILLING CODE 4410–FB–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: 30-Day Notice of Information Collection Under Review: Notice to Student or Exchange Visitor; Form I–515.

The Department of Justice, Immigration and Naturalization Service (INS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on November 21, 2002 at 67 FR 70242, allowing for a 60-day public comment period. No public comment was received on this information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until March 7, 2003. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Justice Desk Officer, 725—17th Street, NW., Room 10235, Washington, DC 20530.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Revision of a currently approved information collection.

(2) *Title of the Form/Collection:* Notice to Student or Exchange Visitor.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form I–515, Immigration Services Division, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or Households. This form will be used by the INS to notify students or exchange visitors admitted to the United States as nonimmigrant that they have been admitted without required forms and that they have 30 days to present the required forms and themselves to the appropriate office for correct processing.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 3,000 responses at 5 minutes (.083 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 249 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Regulations and Forms Services Division, Immigration and Naturalization Service, U.S. Department of Justice, Room 4034, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Patrick Henry Building, 601 D Street, NW., Ste. 1600, Washington, DC 20530.

Dated: January 30, 2003.

Richard A. Sloan,

Department Clearance Officer, United States Department of Justice, Immigration and Naturalization Service.

[FR Doc. 03–2686 Filed 2–4–03; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: 30-Day Notice of Information Collection Under Review: Visa Waiver Program Passenger Arrival and Departure Data (File No. OMB–32).

The Department of Justice, Immigration and Naturalization Service (INS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The INS published an interim rule containing the proposed information collection in the **Federal Register** on October 11, 2002 at 67 FR 63246. The interim rule also solicited public review and comments on the information collection for a period of 60 days. The INS has not received any comments on the proposed information collection.

The purpose of this notice is to allow an additional 30 days for public comments to satisfy the requirements of the Paperwork Reduction Act and to extend the use of this information collection. Comments are encouraged and will be accepted until March 7, 2003. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Justice Desk Officer, 725—17th Street, NW., Room 10235, Washington, DC 20530.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimated of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of a previously approved information collection.

(2) *Title of the Form/Collection:* Visa Waiver program passenger Arrival and Departure Data.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* No Agency Form Number (File No. OMB–32); Inspections Division, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Business or other for-profit. Section 217(h) of the INA requires an automated entry and exit control system by specifying those passenger data elements that must be electronically transmitted to the INS by carriers seeking to transport Visa Waiver program passengers into and out of the U.S. on or after October 1, 2002.

(5) *An estimate of the total number of respondents and the amounts of time estimated for an average respondent to respond:* 600 responses at 5 minutes (.083 hours) per response. Frequency of response is 365.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 36,500 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Regulations and Forms Services Division, Immigration and Naturalization Service, U.S. Department of Justice, Room 4034, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Patrick Henry Building 601 D Street, NW., Ste. 1600, Washington, DC 20530.

Dated: January 30, 2003.

Richard A. Sloan,

Department Clearance Officer, United States Department of Justice, Immigration and Naturalization Service.

[FR Doc. 03–2687 Filed 2–4–03; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Comment Request

ACTION: 30-Day Notice of Information Collection Under Review; Application for Replacement Naturalization/ Citizenship Document; Form N–565.

The Office of Management and Budget (OMB) approval is being sought for the information collection listed below. This proposed information collection was previously published by the Immigration and Naturalization Service (INS) in the **Federal Register** on September 27, 2002 at 67 FR 61153, allowing for a 60-day public review and comment period. The INS received no public comments. The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted for thirty days until March 7, 2003. This process is conducted in accordance with 5 CFR Part 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Justice Desk Officer, 725—17th Street, NW., Room 10235, Washington, DC 20530. Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of a previously approved collection.

(2) *Title of the Form/Collection:* Application for Replacement Naturalization/Citizenship Document.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form N–565. Adjudications Division, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or households. This form is used by the INS to determine the applicant's eligibility for a replacement of a Declaration of Intention, Naturalization Certificate, Certificate of Citizenship or Repatriation Certificate that was lost, mutilated or destroyed, or if the applicant's name was changed by marriage or by court order after issuance of original document. This form may also be used to apply for special certificate of naturalization as a U.S. citizen to be recognized by a foreign country.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 22,567 responses at 55 minutes (0.916) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 20,671 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Regulations and Forms Services Division, Immigration and Naturalization Service, U.S. Department of Justice, Room 4304, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If addition information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Patrick Henry Building, 601 D Street, NW., Suite 1600, Washington, DC 20530.

Dated: January 30, 2003.

Richard A. Sloan,

Department Clearance Officer, United States Department of Justice, Immigration and Naturalization Service.

[FR Doc. 03–2688 Filed 2–4–03; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

January 27, 2003.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of this ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation contact Darrin King on (202) 693–4129 or e-mail: *King-Darrin@dol.gov.*

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for OSHA, Office of Management and Budget, Room 10235, Washington, DC 20503, ((202) 395–7316), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated,

electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Agency: Occupational Safety and Health Administration (OSHA).

Type of Review: Extension of a currently approved collection.

Title: OSHA Data Initiative (ODI).

OMB Number: 1218–0209.

Affected Public: Business or other for-profit; Farms; and State, Local, or Tribal Government.

Frequency: Annually.

Type of Response: Reporting.

Number of Respondents: 96,675.

Number of Annual Responses: 96,675.

Estimated Time Per Response: 10 minutes.

Total Burden Hours: 15,468.

Total Annualized Capital/Startup Costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $0.

Description: In accordance with 29 CFR 1904.41, OSHA is proposing to continue collecting occupational injury and illness data. These data allow OSHA to calculate occupational injury and illness rates and to focus its efforts on individual workplaces with ongoing series safety and health problems. This data collection initiative is critical to OSHA's outreach and enforcement efforts and the data requirements tied to the Government Performance and Results Act.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 03–2721 Filed 2–4–03; 8:45 am]

BILLING CODE 4510–26–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

January 28, 2003.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of this ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation contact Darrin King at (202) 693–4129 or e-mail *King-Darrin@dol.gov.*

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL, Office of Management and Budget, Room 10235, Washington, DC 20503 (202) 395–7316), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical-utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Agency: Office of the Assistant Secretary for Administration and Management (OASAM).

Type of Review: New collection.

Title: Survey on Ensuring Equal Opportunity for Applicants.

OMB Number: 1225–0NEW.

Affected Public: Not-for-profit-institutions.

Frequency: On occasion.

Type of Response: Reporting.

Number of Respondents: 1,000.

Number of Annual Responses: 1,000.

Estimated Time Per Response: 5 minutes.

Total Burden Hours: 80.

Total Annualized Capital/Startup Costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $0.

Description: This data collection is necessary to fulfill the mandate of Executive Orders 13198 and 13199 dated January 29, 2001. These Executive Orders require the removal of barriers to the full participation of faith-based and community organizations in federal social service programs. This data collection will provide the data to determine the level of faith-based and community participation in the DOL grant programs. The data collected on this form is identical to that collected on OMB number 1890–0014 which has been approved by the Office of Management and Budget for use government-wide.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 03–2722 Filed 2–4–03; 8:45 am]

BILLING CODE 4510–23–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

January 30, 2003.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13), 44 U.S.C. Chapter 35). A copy of each individual ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation contact Darrin King (202 693–4129 or by e-mail to *King-Darrin@dol.gov*).

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Office, Office of Management and Budget, room 10235, Washington, DC 20503 (202 395–7316), within 30 days from date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology; e.g., permitting electronic submission of responses.

Agency: Occupational Safety and Health Administration (OSHA).

Title: Process Safety Management of Highly Hazardous Chemicals (PSM) (29 CFR 1910.119).

OMB Number: 1218–0200.

Frequency: Annually (on occasion).

Affected Public: Business or other for-profit; Federal Government; State, Local or Tribal Government.

Number of Respondents: 38,717.

Estimated Time Per respondent: Varies from five minutes (.08) to generate, maintain and disclose training documentation to 2,454.4 hours to establish and implement a management of change program.

Total Burden Hours: 50,980,689.

Total annualized capital/startup cost: -0-.

Total annual cost (operating/maintaining systems or purchasing services): -0-.

Description: The collection of information in the standard is necessary for implementation of the requirements of the standards. The information is used by employers to assure that processes using highly hazardous chemical with the potential of a castrophic release are operated as safely as possible. The employer must thoroughly consider all facets of a process, as well as the involvement of employees in that process. Processes are analyzed by employers so that they identify and control problems that could lead to a major release, fire or explosion. The failure of employers to collect the information will significantly impact OSHA's effort to control and reduce injuries and fatalities in workplaces, which have the potential for highly hazardous chemical catastrophes.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 03–2723 Filed 2–4–03; 8:45 am]

BILLING CODE 4510–26–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

January 27, 2003.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of this ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation contact Darrin King on 202–693–4129 or e-mail: *King-Darrin@dol.gov.*

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for ETA, Office of Management and Budget, Room 10235, Washington, DC 20503 (202–395–7316), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility.
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Agency: Employment and Training Administration (ETA).

Type of Review: Revision of a currently approved collection.

Title: Quarterly Determinations, Allowance Activities, and Employability Services Under the Trade Act; Training Waivers Issued and Revoked.

OMB Number: 1205–0016.

Affected Public: State, Local, or Tribal Government.

Type of Response: Reporting.

Number of Respondents: 52.

Frequency: Quarterly.

Requirement	Annual responses	Average response time (hours)	Annual burden hours
ETA 563	17,100	.13	2,223
ETA 9027	180	.17	31
Total	17,280		2,254

Total Annualized Capital/Startup Costs: $100,000.

Total Annual Costs (operating/maintaining systems or purchasing services): $0.

Description: Quarterly data on Trade Adjustment Assistance activity is needed for timely program evaluation, for competent administration, and for providing legally mandated reports to Congress. Section 231(c) of the Trade Act of 1974 as amended by the Trade Adjustment Assistance Reform Act of 2002, requires the states to submit reports to the Secretary on training waivers issued and revoked.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 03–2724 Filed 2–4–03; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6664]

State of Alaska Commercial Fisheries Entry Commission Permit No. 60068N, Dillingham, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended

(19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit No. 60068N, Dillingham, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 29th day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–2725 Filed 2–4–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6665]

State of Alaska Commercial Fisheries Entry Commission Permit No. 60688L, Dillingham, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit No. 60688L, Dillingham, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 29th day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–2726 Filed 2–4–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6666]

State of Alaska Commercial Fisheries Entry Commission Permit No. 67569Q, Dillingham, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit No. 67569Q, Dillingham, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 29th day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–2727 Filed 2–4–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6668]

State of Alaska Commercial Fisheries Entry Commission Permit No. 58672V, Dillingham, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit No. 58672V, Dillingham, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 29th day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–2728 Filed 2–4–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6669]

State of Alaska Commercial Fisheries Entry Commission Permit No. 61482N, Dillingham, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit No. 61482N, Dillingham, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 29th day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–2729 Filed 2–4–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6670]

State of Alaska Commercial Fisheries Entry Commission Permit No. 56847J, Dillingham, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement

Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit No. 56847J, Dillingham, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 29th day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–2730 Filed 2–4–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6671]

State of Alaska Commercial Fisheries Entry Commission Permit No. 59293X, Dillingham, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit No. 59293X, Dillingham, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 29th day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–2731 Filed 2–4–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6675]

State of Alaska Commercial Fisheries Entry Commission Permit No. 64122W, Dillingham, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit No. 64122W, Dillingham, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 29th day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–2732 Filed 2–4–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6676]

State of Alaska Commercial Fisheries Entry Commission Permit No. 61314F, Dillingham, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit No. 61314F, Dillingham, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 29th day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–2733 Filed 2–4–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6677]

State of Alaska Commercial Fisheries Entry Commission Permit No. 67325N, Dillingham, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit No. 67325N, Dillingham, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 29th day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–2734 Filed 2–4–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6786]

State of Alaska Commercial Fisheries Entry Commission Permit No. 60136S, King Salmon, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement

Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit No. 60136S, King Salmon, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 29th day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–2735 Filed 2–4–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6787]

State of Alaska Commercial Fisheries Entry Commission Permit No. 58196R, King Salmon, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit No. 58196R, King Salmon, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 29th day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–2736 Filed 2–4–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6789]

State of Alaska Commercial Fisheries Entry Commission Permit No. 58662X, King Salmon, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit No. 58662X, King Salmon, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 29th day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–2737 Filed 2–4–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6790]

State of Alaska Commercial Fisheries Entry Commission Permit No. 55574A, King Salmon, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit No. 55574A, King Salmon, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 29th day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–2738 Filed 2–4–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6792]

State of Alaska Commercial Fisheries Entry Commission Permit No. 66997L, King Salmon, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA-TAA and in accordance with section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit No. 66997L, King Salmon, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 29th day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–2739 Filed 2–4–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6793]

State of Alaska Commercial Fisheries Entry Commission Permit No. 60215O, King Salmon, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement

Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit No. 60215O, King Salmon, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 29th day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–2740 Filed 2–4–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6795]

State of Alaska Commercial Fisheries Entry Commission Permit No. 50167A, King Salmon, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit No. 50167A, King Salmon, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 29th day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–2741 Filed 2–4–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6796]

State of Alaska Commercial Fisheries Entry Commission Permit No. 50073U, King Salmon, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit No. 50073U, King Salmon, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 29th day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–2742 Filed 2–4–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6797]

State of Alaska Commercial Fisheries Entry Commission Permit No. 50075F, King Salmon, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit No. 50075F, King Salmon, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 29th day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–2743 Filed 2–4–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6798]

State of Alaska Commercial Fisheries Entry Commission Permit No. 50075F, King Salmon, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit No. 50075F, King Salmon, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 29th day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–2744 Filed 2–4–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6799]

State of Alaska Commercial Fisheries Entry Commission Permit No. 55933B, Kokhanok, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement

Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit No. 55933B, Kokhanok, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 29th day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–2745 Filed 2–4–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–7412]

State of Alaska Commercial Fisheries Entry Commission Permit No. 58233O, Newhalen, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit No. 58233O, Newhalen, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 29th day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–2747 Filed 2–4–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–7413]

State of Alaska Commercial Fisheries Entry Commission Permit No. 66587G, Nondalton, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit No. 66587G, Nondalton, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 29th day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–2748 Filed 2–4–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–7415]

State of Alaska Commercial Fisheries Entry Commission Permit No. 65175O, Nondalton, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit No. 65175O, Nondalton, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 29th day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–2749 Filed 2–4–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–7416]

State of Alaska Commercial Fisheries Entry Commission Permit No. 65886P, Nondalton, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit No. 65886P, Nondalton, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 29th day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–2750 Filed 2–4–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–7417]

State of Alaska Commercial Fisheries Entry Commission Permit No. 64782N, Nondalton, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement

Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit No. 64782N, Nondalton, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 29th day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–2751 Filed 2–4–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–7418]

State of Alaska Commercial Fisheries Entry Commission Permit No. 64951U, Nondalton, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit No. 64951U, Nondalton, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 29th day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–2752 Filed 2–4–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–7419]

State of Alaska Commercial Fisheries Entry Commission Permit No. 64670W, Nondalton, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit No. 64670W, Nondalton, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 29th day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–2753 Filed 2–4–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–7420]

State of Alaska Commercial Fisheries Entry Commission Permit No. 65111I, Nondalton, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit No. 65111I, Nondalton, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 29th day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–2754 Filed 2–4–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–7421]

State of Alaska Commercial Fisheries Entry Commission Permit No. 58779E, Pedro Bay, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit No. 58779E, Pedro Bay, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 29th day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–2755 Filed 2–4–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–7422]

State of Alaska Commercial Fisheries Entry Commission Permit No. 59935J, Pedro Bay, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement

Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit No. 59935J, Pedro Bay, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 29th day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–2756 Filed 2–4–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–7423]

State of Alaska Commercial Fisheries Entry Commission Permit No. 59954M, Pilot Point, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit No. 59954M, Pilot Point, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 29th day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–2757 Filed 2–4–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–7425]

State of Alaska Commercial Fisheries Entry Commission Permit No. 58352B, Pilot Point, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit No. 58352B, Pilot Point, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 29th day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–2758 Filed 2–4–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–7426]

State of Alaska Commercial Fisheries Entry Commission Permit No. 65050X, Pilot Point, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit No. 65050X, Pilot Point, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 29th day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–2759 Filed 2–4–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–7427]

State of Alaska Commercial Fisheries Entry Commission Permit No. 59641L, Pilot Point, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit No. 59641L, Pilot Point, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 26th day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–2760 Filed 2–4–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–7428]

State of Alaska Commercial Fisheries Entry Commission Permit No. 65907J, Pilot Point, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement

Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit No. 65907J, Pilot Point, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 29th day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–2761 Filed 2–4–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–7430]

State of Alaska Commercial Fisheries Entry Commission Permit No. 58139K, Port Alsworth, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit No. 58139K, Port Alsworth, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 29th day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–2762 Filed 2–4–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–7431]

State of Alaska Commercial Fisheries Entry Commission Permit No. 58140B, Port Alsworth, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit # 58140B, Port Alsworth, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 29th day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–2763 Filed 2–4–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–7432]

State of Alaska Commercial Fisheries Entry Commission Permit No. 65423Q, Port Heiden, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit # 65423Q, Port Heiden, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 29th day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–2764 Filed 2–4–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–7433]

State of Alaska Commercial Fisheries Entry Commission Permit No. 59894U, Port Heiden, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit # 59894U, Port Heiden, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 29th day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–2765 Filed 2–4–03; 8:45 am]

BILLING CODE 4510–30–P

NATIONAL COUNCIL ON DISABILITY

Youth Advisory Committee Meetings (Teleconferences)

Times and Dates: 12 p.m., EST March 21, 2003, and 12 p.m., EDT May 23, 2003.

Place: National Council on Disability, 1331 F Street, NW., Suite 850, Washington, DC.

Agency: National Council on Disability (NCD).

Status: All parts of this meeting will be open to the public. Those interested in participating in these meetings (teleconferences) should contact the appropriate staff member listed below. Due to limited resources, only a few telephone lines will be available for these conference calls.

Agenda: Roll call, announcements, reports, new business, adjournment.

FOR FURTHER INFORMATION CONTACT: Geraldine Drake Hawkins, Ph.D., Program Specialist, National Council on Disability, 1331 F Street NW., Suite 850, Washington, DC 20004; 202–272–2004 (voice), 202–272–2074 (TTY), 202–272–2022 (fax), *ghawkins@ncd.gov* (e-mail).

Youth Advisory Committee Mission: The purpose of NCD's Youth Advisory Committee is to provide input into NCD activities consistent with the values and goals of the Americans with Disabilities Act.

Dated: January 31, 2003.

Ethel D. Briggs,

Executive Director.

[FR Doc. 03–2795 Filed 2–4–03; 8:45 am]

BILLING CODE 6820–MA–P

NATIONAL COUNCIL ON THE HUMANITIES

Meeting

January 31, 2003.

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, as amended) notice is hereby given the National Council on the Humanities will meet in Washington, DC on February 27–28, 2003.

The purpose of the meeting is to advise the Chairman of the National Endowment for the Humanities with respect to policies, programs, and procedures for carrying out his functions, and to review applications for financial support from and gifts offered to the Endowment and to make recommendations thereon to the Chairman.

The meeting will be held in the Old Post Office Building, 1100 Pennsylvania Avenue, NW., Washington, DC. A portion of the morning and afternoon sessions on February 27–28, 2003, will not be open to the public pursuant to subsections (c)(4),(c)(6) and (c)(9)(B) of section 552b of title 5, United States Code because the Council will consider information that may disclose: Trade secrets and commercial or financial information obtained from a person and privileged or confidential; information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy; and information the premature disclosure of which would be likely to significantly frustrate implementation of proposed agency action. I have made this determination under the authority granted me by the Chairman's Delegation of Authority dated July 19, 1993.

The agenda for the session on February 27, 2003, will be as follows:

Committee Meetings (Open to the public) Policy discussion.

9—10:30 a.m.

Education Programs—Room 714
Federal/State Partnership—Room 507
Preservation and Access—Room 415
Public Programs—Room 420
Research Programs—Room 315

(Closed to the public) Discussion of specific grant applications and programs before the Council.

10:30 a.m. until adjourned

Education Programs—Room 714
Federal/State Partnership—Room 507
Preservation and Access—Room 415
Public Programs—Room 420
Research Programs—Room 315
Jefferson Lecture—Room 527

The morning session on February 28, 2003, will convene at 9 a.m., in the 1st Floor Council Room M–09, and will be open to the public, as set out below. The agenda for the morning session will be as follows:

A. Minutes of the previous meeting.
B. Reports
1. Introductory remarks
2. Staff report
3. Congressional report
4. Budget report
5. Reports on policy and general matters
a. Overview
b. Research programs
c. Education programs
d. Preservation and access
e. Public programs
f. Federal/State partnership
g. Jefferson lecture

The remainder of the proposed meeting will be given to the consideration of specific applications and closed to the public for the reasons stated above.

Further information about this meeting can be obtained from Mr. Daniel C. Schneider, Advisory Committee Management Officer, National Endowment for the Humanities, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, or by calling (202) 606–8322, TDD (202) 606–8282. Advance notice of any special needs or accommodations is appreciated.

Daniel C. Schneider,

Advisory Committee, Management Officer.

[FR Doc. 03–2779 Filed 2–4–03; 8:45 am]

BILLING CODE 7536–01–P

NATIONAL SCIENCE FOUNDATION

Notice of Intent to Extend an Information Collection

AGENCY: National Science Foundation.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the National Science Foundation (NSF) will publish periodic summaries of proposed projects.

Comments are invited on (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Written comments on this notice must be received by April 7, 2003 to be assured of consideration. Comments received after that date will be considered to the extent practicable.

FOR ADDITIONAL INFORMATION OR COMMENTS: Contact Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 4201 Wilson Boulevard, Suite 295, Arlington, Virginia 22230; telephone (703) 292–7556; or send email to splimpto@nsf.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday. You also may obtain a copy of the data collection instrument and instructions from Ms. Plimpton.

SUPPLEMENTARY INFORMATION:

Title of Collection: Request for Proposals.

OMB Approval Number: 3145–0080.

Expiration Date of Approval: July 31, 2003.

Type of Request: Intent to seek approval to extend an information collection for three years.

Proposed Project: The Federal Acquisition Regulations (FAR) Subpart 15.2—"Solicitation and Receipt of Proposals and Information" prescribes policies and procedures for preparing

and issuing Requests for Proposals. The FAR System has been developed in accordance with the requirement of the Office of Federal Procurement Policy Act of 1974, as amended. The NSF Act of 1950, as amended, 42 U.S.C. 1870, Sec. II, states that NSF has the authority to:

(c) Enter into contracts or other arrangements, or modifications thereof, for the carrying on, by organizations or individuals in the United States and foreign countries, including other government agencies of the United States and of foreign countries, of such scientific or engineering activities as the Foundation deems necessary to carry out the purposes of this Act, and, at the request of the Secretary of Defense, specific scientific or engineering activities in connection with matters relating to international cooperation or national security, and, when deemed appropriate by the Foundation, such contracts or other arrangements or modifications thereof, may be entered into without legal consideration, without performance or other bonds and without regard to section 5 of title 41, U.S.C.

Use of the Information: Request for Proposals (RFP) is used to competitively solicit proposals in response to NSF need for services. Impact will be on those individuals or organizations who elect to submit proposals in response to the RFP. Information gathered will be evaluated in light of NSF procurement requirements to determine who will be awarded a contract.

Estimate of Burden: The Foundation estimates that, on average, 558 hours per respondent will be required to complete the RFP.

Respondents: Individuals; business or other for-profit; not-for-profit institutions; Federal government; state, local, or tribal governments.

Estimated Number of Responses: 75.

Estimated Total Annual Burden of Respondents: 41,850 hours.

Dated: January 30, 2003.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 03–2640 Filed 2–4–03; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Tennessee Valley Authority; Sequoyah Nuclear Plant, Unit 2

[Docket No. 50–328]

Notice of Withdrawal of Application for Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of Tennessee Valley Authority (the licensee) to withdraw its July 10, 2002, application for proposed amendment to Facility Operating License No. DPR–79 for the Sequoyah Nuclear Plant, Unit No. 2, located in Hamilton County, Tennessee.

The proposed one-time technical specification (TS) change would have revised the Sequoyah Unit 2 Limiting Condition for Operation for TS Section 3.7.4, "Essential Raw Cooling Water System," to include provisions for maintaining operability of this system during performance of heavy load lifts associated with the Unit 1 steam generator replacement (SGR) project. The provisions were intended to ensure safe operation of Unit 2 during heavy load lift activities. In addition, compensatory measures proposed would have ensured safe shutdown capability of Unit 2 in the unlikely event a heavy load drop occurs over Essential Raw Cooling Water system piping.

The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on August 6, 2002 (67 FR 50960). However, by letter dated November 15, 2002, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated July 10, 2002, and the licensee's letter dated November 15, 2002, which withdrew the application for license amendment. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike, Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams/html.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, or 301–415–4737 or by e-mail to *pdr@nrc.gov.*

Dated at Rockville, Maryland, this 30th day of January 2003.

For the Nuclear Regulatory Commission.

Raj K. Anand,

Project Manager, Section 2, Project Directorate II, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 03–2711 Filed 2–4–03; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

Submission for OMB Emergency Clearance and Review; Comment Request for New Information Collection: Scholarship for Service Program Internet Web Site

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Public Law 104–13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) submitted a request to the Office of Management and Budget for emergency clearance and review of a new information collection for a Scholarship For Service Program internet website. Approval of the Scholarship For Service Program internet website is necessary to facilitate the timely registration, selection and placement of program-enrolled students in Federal agencies.

The SFS Program was established by the National Science Foundation in accordance with the Federal Cyber Service Training and Education Initiative as described in the President's National Plan for Information Systems Protection. This program seeks to increase the number of qualified students entering the fields of information assurance and computer security in an effort to respond to threats to the Federal Government's information technology infrastructure. The program provides capacity building grants to selected 4-year colleges and universities to develop or improve their capacity to train information assurance professionals. It also provides selected 4-year colleges and universities scholarship grants to attract students to the information assurance field. Participating students who receive scholarships from this program are required to serve a 10-week internship during their studies and complete a post-graduation employment commitment equivalent to the length of the scholarship or one year, whichever is longer.

In anticipation of the fall 2002 graduating classes of participating institutions, OPM projects an additional 30 students to be placed, with up to 200 students presently needing placement. This is a new collection of information. Based on other programs that collect similar information, we estimate the collection of information for registering and creating an online resume to be 45 minutes to 1-hour in length of time to

answer questions. We estimate the total number of hours to be 200.

Comments are particularly invited on: whether this information is necessary for the proper performance of functions of the Office of Personnel Management, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

For copies of this proposal, contact Mary Beth Smith-Toomey at (202) 606–8358, fax (202) 418–3251 or e-mail to *mbtoomey@opm.gov*. Please include your complete mailing address with your request.

DATES: Comments on this proposal should be received within five (5) calendar days from the date of this publication. We are requesting OMB to take action within ten (10) calendar days from the close of this **Federal Register** Notice.

ADDRESSES: Send or deliver comments to: U.S. Office of Personnel Management, Employment Service, ATTN: Rob Timmins, 1900 E Street, NW., Room 1425, Washington, DC 20415–9820, E-mail: *ratimmin@opm.gov*; and Stuart Shapiro, OPM Desk Officer, Office of Management and Budget, Office of Information and Regulatory Affairs, New Executive Office Building, NW., Room 10235, Washington, DC 20503.

Office of Personnel Management.

Kay Coles James,

Director.

[FR Doc. 03–2704 Filed 2–4–03; 8:45 am]

BILLING CODE 6325–38–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon written request, copies available from: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension: Rule 31a–1, SEC File No. 270–173, OMB Control No. 3235–0178;
rule 18f–3, SEC File No. 270–385, OMB Control No. 3235–0441;
rule 498, SEC File No. 270–435, OMB Control No. 3235–0488;
rule 34b–1, SEC File No. 270–305, OMB Control No. 3235–0346.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget ("OMB") a request for extension on the previously approved collections of information discussed below.

Rule 31a–1 (17 CFR 270.31a–1) under the Investment Company Act of 1940 (the "Act") is entitled "Records to be maintained by registered investment companies, certain majority-owned subsidiaries thereof, and other persons having transactions with registered investment companies." Rule 31a–1 requires registered investment companies ("funds"), and every underwriter, broker, dealer, or investment adviser that is a majority-owned subsidiary of a fund, to maintain and keep current accounts, books, and other documents which constitute the record forming the basis for financial statements required to be filed pursuant to section 30 of the Act (15 U.S.C. 80a–30) and of the auditor's certificates relating thereto. The rule lists specific records to be maintained by funds. The rule also requires certain underwriters, brokers, dealers, depositors, and investment advisers to maintain the records that they are required to maintain under federal securities laws. The Commission periodically inspects the operations of funds to insure their compliance with the provisions of the Act and the rules thereunder. The books and records required to be maintained by rule 31a–1 constitute a major focus of the Commission's inspection program.

There are approximately 4,500 investment companies registered with the Commission, all of which are required to comply with rule 31a–1. For purposes of determining the burden imposed by rule 31a–1, the Commission staff estimates that each registered investment company is divided into approximately four series, on average, and that each series is required to comply with the recordkeeping requirements of rule 31a–1. Based on conversations with fund representatives, it is estimated that rule 31a–1 imposes an average burden of approximately 1,400 hours annually per series for a total of 5,600 annual hours per investment company. The estimated total annual burden for all 4,500 investment companies subject to the rule therefore is approximately 25,200,000 hours. Based on conversations with fund representatives, however, the Commission staff estimates that even absent the requirements of rule 31a–1, most of the records created pursuant to the rule are the type that generally would be created as a matter of normal business custom and to prepare financial statements.

The collection of information required by rule 31a–1 is mandatory. Responses will not be kept confidential. The records required by rule 31a–1 are required to be preserved pursuant to rule 31a–2 under the Investment Company Act (17 CFR 270.31a–2). Rule 31a–2 requires that certain of these records be preserved permanently, and that others be preserved six years from the end of the fiscal year in which any transaction occurred. In both cases, the records should be kept in an easily accessible place for the first two years.

Section 18(f)(1)[1] of the Act[2] prohibits registered open-end management investment companies from issuing any senior security. Rule 18f–3 under the Act[3] exempts from section 18(f)(1) a fund that issues multiple classes of shares representing interests in the same portfolio of securities (a "multiple class fund") if the fund satisfies the conditions of the rule. In general, each class must differ in its arrangement for shareholder services or distribution or both, and must pay the related expenses of that different arrangement.

The rule includes one requirement for the collection of information. A multiple class fund must prepare and fund directors must approve a written plan setting forth the separate arrangement and expense allocation of each class, and any related conversion features or exchange privileges ("rule 18f–3 plan").[4] Approval of the plan must occur before the fund issues any shares of multiple classes, and whenever the fund materially amends the plan. In approving the plan, a majority of the fund board, including a majority of the fund's independent directors, must determine that the plan is in the best interests of each class and the fund as a whole.

The requirement that the fund prepare and directors approve a written rule 18f–3 plan is intended to ensure that the fund compiles information relevant to the fairness of the separate arrangement and expense allocation for each class, and that directors review and approve the information. Without a blueprint that highlights material differences among classes, directors might not perceive potential conflicts of interests when they determine whether the plan is in the best interests of each class and

[1] 15 U.S.C. 80a–18(f)(1).
[2] 15 U.S.C. 80a.
[3] 17 CFR 270.18f–3.
[4] Rule 18f–3(d).

the fund. In addition, the plan may be useful to Commission staff in reviewing the fund's compliance with the rule.

There are approximately 516 multiple class funds.[5] Based on a review of typical rule 18f–3 plans, the Commission's staff estimates that the 516 funds together make an average of 258 responses each year to prepare and approve a written rule 18f–3 plan, requiring approximately 18.5 hours per response, and a total of 4,773 burden hours per year in the aggregate.[6] Preparation of the rule 18f–3 plan may require 11 hours of the services of an attorney or accountant, at a cost of approximately $130 per hour for professional time, and approval of the plan may require 1.5 hours of the attention of each of 5 directors, at a cost of approximately $500 per hour per director. The staff therefore estimates that the aggregate annual cost of complying with the paperwork requirements of the rule is approximately $1,336,440 ((11 hours × 1 professional × 258 responses × $130) + (1.5 hours × 5 directors × 258 responses × $500)).

The estimated annual burden of 4,773 hours represents an increase of 3,260.5 hours over the prior estimate of 1,512.5 hours. The increase in burden hours is attributable to more accurate estimates of the burden hours that reflect additional time spent by professionals and time spent by directors. The estimated number of multiple class funds has decreased, however, from 550 to 516.

Complying with this collection of information requirement is necessary to obtain the benefit of relying on rule 18f–3. Responses will not be kept confidential.

Rule 498 of the Securities Act of 1933 (17 CFR 230.498) permits open-end management investment companies (or a series of an investment company organized as a series company, which offers one or more series of shares representing interests in separate investment portfolios) ("funds") to provide investors with a "profile" that contains a summary of key information about a fund, including the fund's investment objectives, strategies, risks and performance, and fees, in a standardized format. The profile provides investors the option of buying fund shares based on the information in the profile or reviewing the fund's prospectus before making an investment decision. Investors purchasing shares based on a profile receive the fund's prospectus prior to or with confirmation of their investment in the fund.

Consistent with the filing requirement of a fund's prospectus, a profile must be filed with the Commission 30 days before first use. Such a filing allows the Commission to review the profile for compliance with rule 498. Compliance with the rule's standardized format assists investors in evaluating and comparing funds.

It is estimated that approximately 16 initial profiles and 316 updated profiles are filed with the Commission annually. The Commission estimates that each profile contains on average 1.25 portfolios, resulting in 20 portfolios filed annually on initial profiles and 395 portfolios filed annually on updated profiles. The number of burden hours for preparing and filing an initial profile per portfolio is 25. The number of burden hours for preparing and filing an updated profile per portfolio is 10. The total burden hours for preparing and filing initial and updated profiles under rule 498 is 4,450, representing a decrease of 2,660 hours from the prior estimate of 7,110. The reduction in burden hours is attributable to the lower number of profiles actually prepared and filed as compared to the previous estimates.

The collection of information under rule 498 is voluntary. The information provided by rule 498 is not kept confidential.

Rule 34b–1 under the Investment Company Act (17 CFR 270.34b–1) governs sales material that accompanies or follows the delivery of a statutory prospectus ("sales literature"). Rule 34b–1 deems to be materially misleading any investment company sales literature, required to be filed with the Commission by section 24(b) of the Investment Company Act (15 U.S.C. 80a–24(b)),[7] that includes performance data unless it also includes the appropriate uniformly computed data and the legend disclosure required in advertisements by rule 482 under the Securities Act of 1933 (17 CFR 230.482). Requiring the inclusion of such standardized performance data in sales literature is designed to prevent misleading performance claims by funds and to enable investors to make meaningful comparisons among fund performance claims.

The Commission estimates that respondents file approximately 37,000 responses with the Commission, which include the information required by rule 34b–1. The burden from rule 34b–1 requires slightly more than 2.4 hours per response resulting from creating the information required under rule 34b–1.[8] The total burden hours for rule 34b–1 is 89,143 per year in the aggregate (37,000 responses × 2.4092702 hours per response).

The collection of information under rule 34b–1 is mandatory. The information provided under rule 34b–1 is not kept confidential.

The estimates of average burden hours are made solely for the purposes of the Act and are not derived from a comprehensive or even representative survey or study of the cost of Commission rules and forms. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Please direct general comments regarding the above information to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503; and (ii) Kenneth A. Fogash, Acting Associate Executive Director/CIO, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: January 28, 2003.

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 03–2645 Filed 2–4–03; 8:45 am]

BILLING CODE 8010–01–P

[5] This estimate is based on data from form N–SAR, the semi-annual report that funds file with the Commission.

[6] The estimate reflects the assumption that each multiple class fund prepares and approves a rule 18f–3 plan every two years when issuing a new class or amending a plan (or that 258 of all 516 funds prepare and approve a plan each year). The estimate assumes that the time required to prepare a plan is 11 hours per plan (or 2,838 hours for 258 funds annually), and the time required to approve a plan is an additional 1.5 hours per director per plan (or 1,935 hours for 258 funds annually (assuming five directors per fund)).

[7] Sales literature addressed to or intended for distribution to prospective investors shall be deemed filed with the Commission for purposes of section 24(b) of the Investment Company Act upon filing with a national securities association registered under section 15A of the Securities Exchange Act of 1934 that has adopted rules providing standards for the investment company advertising practices of its members and has established and implemented procedures to review that advertising. *See* rule 24b–3 under the Investment Company Act (17 CFR 270.24b–3).

[8] The estimated burden per response is 2.9 hours for 686 responses and 2.4 hours for the remaining, giving a more exact weighted average burden per response of approximately 2.4092702.

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: (68 FR 5058, January 31, 2003).

STATUS: Open meeting.

PLACE: 450 Fifth Street, NW., Room 1C30, the William O. Douglas Room, Washington, DC.

DATE AND TIME OF PREVIOUSLY ANNOUNCED MEETING: Tuesday, February 4, 2003, at 10 a.m.

CHANGE IN THE MEETING: Time change.

The open meeting scheduled for Tuesday, February 4, 2003, at 10 a.m. has been changed to Tuesday, February 4, 2003, at noon.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 942–7070.

Dated: January 31, 2003.

Jonathan G. Katz,

Secretary.

[FR Doc. 03–2828 Filed 1–31–03; 4:43 pm]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47281; File No. SR–Amex–2002–48]

Self-Regulatory Organizations; Notice of Filing of a Proposed Rule Change and Amendment No. 1 Thereto by the American Stock Exchange LLC Relating to its Marketing Performance Standards for Exchange Specialists

January 29, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 30, 2002, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. On January 27, 2003, the Exchange filed an amendment to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from William Floyd-Jones, Assistant General Counsel, Amex, to Katherine England, Assistant Director, Division of Market Regulation, Commission, dated January 14, 2003 ("Amendment No. 1"). Amendment No. 1 clarifies in the proposed rule text that contacts by exchange specialists to issuers or representatives of member organizations will be conducted either off the Exchange floor or, if on the Exchange floor, outside of normal auction market business hours.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to adopt Commentary .08 to Amex Rule 26 ("Performance Committee") to establish marketing performance standards for Exchange specialists. The text of the proposed rule change is available at the Office of the Secretary, Amex, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Committee on Floor Member Performance ("Performance Committee") reviews specialist performance and may take remedial action, including terminating a specialist's registration or reallocating securities, when it identifies inadequate performance. The Exchange believes that the Performance Committee protects both the interests of investors, by taking remedial actions to correct poor performance, and the institutional interests of the Exchange, by ensuring that the Amex is as competitive as possible with other markets.[4]

The Exchange recently amended its rules to include "competition with other markets" and "administrative factors" among the standards by which the Performance Committee may evaluate specialist performance.[5] Pursuant to these standards, the Exchange is proposing to adopt objective requirements regarding specialist communications with listed companies and order flow providers.[6] The Exchange believes that the purpose of the proposed rule change is to enhance the specialist's communication function by requiring that the specialist maintain frequent and personal contact with the listed companies and member firm customers that he or she serves.

Under the proposal, specialists would be required to contact off the Floor or, if on the Trading Floor, outside of the Exchange's regular auction market business hours, listed companies and the sponsors or issuers of Exchange Traded Funds, structured products, Trust Issued Receipts, and other equity derivatives on a quarterly basis. These quarterly "issuer" contacts are expected to help foster an understanding of the specialist function, the operations of the

[4] *See In the Matter of the Application of Pacific Stock Exchange's Options Floor Post X–17*, Admin. Proc. File No. 3–7285, Securities Exchange Act Release No. 31666 (December 29, 1992), 51 SEC Dkt. 261. The Commission determined that performance evaluation processes fulfill a combination of business and regulatory interests at exchanges and are not disciplinary in nature. The Commission states in the *Post X–17* case:

> We believe that the reallocation of a market maker's (or a specialist's) security due to poor performance is neither an action responding to a violation of an exchange rule nor an action where a sanction is sought or intended. Instead, we believe that performance-based security reallocations are instituted by exchanges to improve market maker performance and to ensure quality of markets. Accordingly, in approving rules for performance-based reallocations, we historically have taken the position that the reallocation of a specialist's or a market maker's security due to inadequate performance does not constitute a disciplinary sanction.
>
> We believe that an SRO's need to evaluate market maker and specialist performance arises from both business and regulatory interests in ensuring adequate market making performance by its market makers and specialists that are distinct from the SRO's enforcement interests in disciplining members who violate SRO or Commission Rules. An exchange has an obligation to ensure that its market makers or specialists are contributing to the maintenance of fair and orderly markets in its securities. In addition, an exchange has an interest in ensuring that the services provided by its members attract buyers and sellers to the exchange. To effectuate both purposes, an SRO needs to be able to evaluate the performance of its market makers or specialists and transfer securities from poor performing units to the better performing units. This type of action is very different from a disciplinary proceeding where a sanction is meted out to remedy a specific rule violation. (Footnotes omitted.)

See also In re James Niehoff and Company, Administrative Proceeding File No. 3–6757, (November 30, 1986), and the other authorities cited in the Commission's *Post X–17* decision.

[5] *See* Amex Rule 26(b), and Securities Exchange Act Release No. 45260 (January 9, 2002), 67 FR 2255 (January 16, 2002) (order approving SR–Amex–2001–19).

[6] The Exchange notes that specialist communications with issuers, and, in particular, the scope of permissible disclosure between specialists and issuers, are discussed in further detail in Section 910 of the Amex *Company Guide*. ?≤

Exchange market, and the markets that are maintained in the issuers' stocks. Specialists also would be required to contact (quarterly) off the Floor or, if on the Trading Floor, outside of the Exchange's regular auction market business hours, major order flow providers to maintain open communications with these important customers of the Exchange. The purpose of these contacts with order flow providers is to discuss the service, operational and competitive requirements of the member firms. In addition, specialists would be required to maintain records of these contacts, which would be reviewed by Amex staff.

The Exchange notes that the purpose of requiring contacts to be made by specialists off the Floor or, if on the Floor, outside of regular auction market business hours, is to ensure that the contacts can occur without the distractions of a normal business day. The Performance Committee would be responsible for taking appropriate remedial action in the event that a specialist fails to meet the objective marketing standards.

A review by the Performance Committee can result in a variety of possible actions, ranging from recommendations for performance improvement, a determination not to permit a firm to seek new allocations, to a reallocation of one or more securities from a specialist. The Performance Committee is not precluded from reallocating securities based on a single quarter of deficient performance. Conversely, the Performance Committee is not required to take such actions. Rather, the Exchange believes that the purpose of these standards is to identify circumstances that warrant review by the Performance Committee. The nature of the appropriate remedial action is necessarily an issue that involves the professional judgment of the Performance Committee members and is dependent on such matters as the securities being traded, competition on other exchanges, personnel and systems changes, and other factors. Accordingly, such determinations are left to the expertise, discretion and judgment of the Performance Committee.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act[7] in general, and further the objectives of Section 6(b)(5) of the Act[8] in particular, in that the Exchange's procedures are designed to promote just and equitable principles of trade and protect investors and the public interest by encouraging good performance and competition among specialists.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change will impose no burden on competition; rather, it will enhance and encourage competition within the Exchange, and, more significantly, among the Exchange and other exchanges and markets by establishing incentives for superior performance and thereby ensuring the maintenance of quality markets at the Exchange. In this respect, the Exchange believes that it is critical to recognize that the most important level of competition occurs not among specialists of the same exchange to obtain a particular listing (although this, too, is important), but rather among specialists of different exchanges trading in the same security and actively competing for the business of the investing public. The Exchange also believes the Commission has expressly recognized that the types of procedures set forth in the proposed rule change for reviewing the performance of specialists and taking remedial action where appropriate, are necessary to ensure quality markets.[9]

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(A) By order approve such proposed rule change or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange.

All submissions should refer to File No. SR–Amex–2002–48 and should be submitted by February 26, 2003.

For the Commission, by the Division of Market Regulation, pursuant to the delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–2676 Filed 2–4–03; 8:45 am]

BILLING CODE 8010–01–P

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] *See* Securities Exhange Act Release No. 45260 (January 9, 2002), 67 FR 2255 (January 16, 2002) (order approving Amex–2001–19).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47287; File No. SR–CBOE–2002–40]

Self-Regulatory Organizations; Notice of Filing of a Proposed Rule Change and Amendment No. 1 Thereto by the Chicago Board Options Exchange, Inc. Relating to Options on the CBOE Asian 25 Index and Options on the CBOE Euro 25 Index

January 30, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 22, 2003, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the CBOE. On January 13, 2003, CBOE filed an amendment to the proposed rule change.[3] The Commission is publishing

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from James Flynn, Legal Division, CBOE, to Nancy Sanow, Assistant Director, Division

this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

CBOE proposes to provide for the listing and trading of options on the CBOE Euro 25 Index and the CBOE Asian 25 Index, both broad-based indexes. Options on the CBOE Euro 25 Index and the CBOE Asian 25 Index would be cash-settled and would have European-style exercise provisions. The text of the proposed rule change is available at the Office of the Secretary, CBOE, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, CBOE included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below and is set forth in Sections A, B, and C below.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to permit the Exchange to list and trade cash-settled, European-style stock index options on the CBOE Euro 25 Index and the CBOE Asian 25 Index. Both the CBOE Euro 25 Index and the CBOE Asian 25 Index are capitalization-weighted indexes of twenty-five (25) American Depository Receipts ("ADR"), New York Registered Shares ("NYS"), or NYSE Global Shares" ("NGS"), which are traded on the New York Stock Exchange, Inc. ("NYSE"), the American Stock Exchange LLC ("AMEX"), or the NASDAQ.

Index Design

The CBOE Euro 25 Index and the CBOE Asian 25 Index have each been designed to measure the performance of large market capitalization companies in their respective regions. Both are market-capitalization weighted indices composed of twenty-five ADRs, NYSs or NGSs, which are traded on the NYSE, NASDAQ or the AMEX.[4] Options on both indexes shall be A.M. settled.

The component securities included in each index are based on market capitalization and the trading volume on the NYSE, NASDAQ, or AMEX over the past six months. Specifically, each component security must have a minimum market capitalization of $250 million and a trading volume of at least 500,000 shares in each of the previous six months to be included in the index. In the case of depository receipts, the market capitalization is determined based on the shares outstanding in the "home" market and the price in U.S. Dollars of the ADRs, NYSs, and NGSs.

Unless otherwise specified herein, both indexes shall satisfy the following general initial and maintenance criteria. (1) At least 75% of the index, in terms of market capitalization weighting, must meet CBOE's listing criteria for equity options as set forth in CBOE Rule 5.3. (2) Any non-U.S. component security (common stock or ADR) that is not subject to a comprehensive surveillance agreement shall not in the aggregate represent more than 20% weight of the index's aggregate market capitalization, unless those non-U.S. components satisfy the alternative criteria under Interpretation and Policy .03 to Rule 5.3, as further discussed below. (3) No single component security will represent more than 30% of the weight of the index. (4) Finally, the five highest weighted component security, in the aggregate, shall not account for more than 60% of the total weight of the index.

CBOE represents that it will review each index quarterly following the expiration of the respective index option contract to ensure that the above criteria are satisfied, and to make quarterly share changes as appropriate.

CBOE Euro 25 Index

According to CBOE, the pool of index components from which CBOE may choose consists of 161 ADRs, NYSs, and NGSs that are traded on the NYSE or NASDAQ, and issued on behalf of companies domiciled in one of eleven member nations of the European Union.[5] Exhibit B to the proposed rule change[6] illustrates the capitalization and weighting of the 25 component securities that constitute the current CBOE Euro 25 index, as well as the listed shares outstanding and prices for each respective security as of December 20, 2002. On that date, the twenty-five components ranged in capitalization from $5.37 billion to $97.208 billion. The largest component accounted for 11.64% of the total weighting of the index, while the smallest accounted for 0.64%. The mean capitalization of the firms in the index was $30.326 billion.

CBOE believes that the CBOE Euro 25 Index satisfies the index criteria provided above. (1) 23 of the 25 stocks in the CBOE Euro 25 Index meet CBOE's listing criteria for equity options as set forth in CBOE Rule 5.3. This represents 92.59% of the index by market capitalization weight and 92% by number. (2) 23 of the 24 ADR or NYS components that underlie the index are subject to comprehensive surveillance agreements.[7] (3) No single component represents greater than 30% of the aggregate weight of the CBOE Euro 25 Index. (4) Finally, the five highest weighted component securities in the aggregate do not account for more than 60% of the weight of the Index.[8] Exhibit C to the proposed rule change specifically illustrates the manner by which each respective index component satisfies, or fails to satisfy, the underlying component listing criteria.

CBOE Asian 25 Index

The pool of index components from which CBOE may choose consists of 107 ADRs, NYSs, and NGSs that are traded on the NYSE, NASDAQ, or AMEX and are issued on behalf of companies domiciled in one of eight Asian-Pacific countries.[9] Exhibit D to the proposed rule change illustrates the capitalization and weighting of the CBOE Asian 25 Index component securities, as well as listed shares outstanding and prices on

of Market Regulation, Commission, dated January 10, 2003 ("Amendment No. 1") (replacing the original filing in its entirety). Amendment No. 1, among other things: (1) Clarifies the initial and maintenance criteria for the underlying component securities of the indices, including further detail on the component securities that are ADRs and not subject to comprehensive surveillance agreements; (2) clarifies that options on both indices will be A.M. settled; (3) provides more recent market capitalization and weighting figures; and (4) specifies that CBOE's surveillance procedures are adequate to monitor the trading of these products.

[4] The Exchange will make an updated list of the components underlying each index available to the public on the internet by accessing the following URL: *http://www.cboe.com/optprod/index/indexoptions.asp.*

[5] The components that make up the CBOE Euro 25 Index include securities of companies domiciled in France, Finland, Ireland, Italy, Germany, the Netherlands, Spain, Belgium, Portugal, Greece, and Austria.

[6] Exhibits to the proposed rule change discussed herein are available at the Office of the Secretary, CBOE, and at the Commission.

[7] 24 of the 25 Euro 25 Index components are either ADRs or NYSs and all are subject to comprehensive surveillance agreements or memoranda of understanding. One of the components, DaimlerChrysler, is a common stock. There is only one ADR in the Euro 25 Index, Nokia OYJ, in which the CBOE does not have in place a comprehensive surveillance agreement.

[8] The top five components of the CBOE Euro 25 Index represent 39.68% of the Index in terms of market capitalization.

[9] The components that make up the CBOE Asian 25 Index include securities of companies domiciled in Australia, China, India, Indonesia, Philippines, Singapore, South Korea and Taiwan.

December 20, 2002. On that date, the 25 components ranged in capitalization from $382.722 million to $49.140 billion. The largest component accounted for 18.38% of the total weighting of the index, while the smallest accounted for 0.14%. The mean capitalization of the firms in the index was $10.696 billion.

CBOE believes that the CBOE Asian 25 Index satisfies the index criteria noted above. (1) 18 of the 25 stocks in the CBOE Asia Index meet CBOE's listing criteria for equity options as set forth in CBOE Rule 5.3. This represents 77.73% of the index by market capitalization weight and 72% by number. (2) 13 of the 25 stocks, representing 68.71% of the index by market capitalization weight, in the CBOE Asia Index are either subject to comprehensive surveillance agreements or are common stocks that are not required to have comprehensive surveillance agreements. Although this seemingly would mean that greater than 20% of the aggregate index capitalization is comprised of components without comprehensive surveillance agreements, CBOE notes that the Commission has specified in the past that a non-U.S. security need not be considered in calculating the 20% threshold if at least 50% of the worldwide trading volume in that particular security occurs within the U.S. market.[10] CBOE notes that this is consistent with Interpretation and Policy .03(ii) to CBOE Rule 5.3. Thus, CBOE plans to apply Interpretation and Policy .03 to CBOE Rule 5.3 to any non-U.S. component that exceeds the 20% threshold for non-U.S. components that are not subject to comprehensive surveillance sharing agreements.

Thus, as provided in Interpretation and Policy .03(iii) to CBOE Rule 5.3, an individual ADR without a comprehensive surveillance agreement is deemed to satisfy CBOE's listing criteria if: (a) At least 20% of the worldwide trading volume in that foreign security occurs within the U.S. market and a market for which CBOE has a comprehensive surveillance agreement; (b) the average daily trading volume of the ADR over the past 3 months is 100,000 shares or more; and, (c) the trading volume is at least 60,000 shares per day in U.S. markets on a majority of trading days during the past months. As of December 20, 2002, CBOE represent that the applicable component securities meet these criteria. In light of these standards, 21 of the 25 stocks, or 89.39% of the aggregate index market capitalization do satisfy acceptable listing standards. (3) No single component represents greater than 30% of the aggregate weight of the CBOE Asian 25 Index. (4) Finally, the five highest weighted component securities, in the aggregate, do not account for more than 60% of the total weight of the Index.[11] Exhibit E to the proposed rule change illustrates the manner by which each respective index component satisfies, or fails to satisfy, the underlying component criteria.

Calculation

The methodology used to calculate the value of the indices is similar to the methodology used to calculate the value of other well-known broad-based indices. The level of each index reflects the total market value of the component stocks relative to a particular base period. The indices base date is January 2, 2002, when the respective index values were set to 100. On April 16, 2002, the CBOE Euro 25 Index had a closing value of 95.99 and the CBOE Asian 25 Index had a closing value of 95.64. The daily calculation of each index is computed by dividing the total market value of the companies in the respective Index by the index divisor. The divisor is adjusted periodically to maintain consistent measurement of the index. The values of each Index will be calculated by CBOE and disseminated at 15-second intervals during regular CBOE trading hours to market information vendors via Options Price Reporting Authority.

Index Option Trading

In addition to regular Index options, CBOE proposes to provide for the listing of long-term index option series ("LEAPS®") in accordance with CBOE Rule 24.9.

For options on each index, strike prices will be set to bracket the respective index in 2 ½ point increments for strikes below 200 and 5 point increments above 200. The minimum tick size for series trading below $3 will be 0.05 and for series trading above $3 the minimum tick will be 0.10. The trading hours for options on both indexes will be from 8:30 a.m. to 3:02 p.m. Chicago time. Exhibits F and G to proposed rule change present proposed contract specifications for CBOE Euro 25 Index options and CBOE Asian 25 Index options.

Maintenance

Both the CBOE Euro 25 Index and the CBOE Asian 25 Index will be monitored and maintained by CBOE. The CBOE will make all necessary adjustments to the indexes to reflect component additions and deletions, share changes, stock splits, stock dividends (other than an ordinary cash dividend), and stock price adjustments due to restructuring, mergers, or spin-offs involving the underlying components. Some corporate actions, such as stock splits and stock dividends, require simple changes to the common shares outstanding and the stock prices of the underlying components. Other corporate actions, such as share issuances, change the market value of the Index and require the use of an index divisor to effect adjustments. Over time the number of component securities in the Index may change, but at no time will the number of underlying components drop to less than twenty. In the event of a stock replacement, the divisor will be adjusted accordingly to provide continuity in index values.[12]

Absent prior Commission approval, the component securities in either index will not exceed 40 nor be lower than 20 and shall satisfy the criteria as provided above. If the Index fails at any time to satisfy the maintenance criteria, CBOE will immediately notify the Commission of that fact and will not open for trading any additional series of options on the Index unless such failure is determined by the Exchange not to be significant and the Commission concurs in that determination, or unless the continued listing of options on each respective Index has been approved by the Commission under Section 19(b)(2) of the Exchange Act.

Surveillance

CBOE will use the same surveillance procedures currently utilized for each of the Exchange's other index options to monitor trading in options and LEAPS. For surveillance purposes, CBOE will make all reasonable efforts to monitor the trading activity and other pertinent information relating to the underlying components. CBOE represents that its surveillance procedures are adequate to monitor the trading of these products.

[10] For further details, *see* CBOE Mexico Index filing, Securities Exchange Act Release No. 34241 (June 22, 1994), 59 FR 33557 (June 29, 1994) (SR-CBOE–94–18), *citing* Securities Exchange Act Release No. 33554, 59 FR 5622 (January 31, 1994) (stating by reference to the proposal that it is appropriate to permit the listing of options on an ADR without the existence of a comprehensive surveillance agreement with the foreign market where the underlying trades, as long as the U.S. market for the underlying ADR is at least 50% or more of the worldwide trading volume).

[11] The top five components of the CBOE Asian 25 Index represent 55.20% of the weight of the index in terms of market capitalization.

[12] As noted in the section regarding "Index Design," each index will be re-balanced quarterly following the expiration of the index option contract.

Exercise and Settlement

The proposed options on the Index will expire on the Saturday following the third Friday of the expiration month. Trading in the expiring contract month will normally cease at 3:02 p.m. (Chicago time) on the business day preceding the last day of trading in the component securities of the Index (ordinarily the Thursday before expiration Saturday, unless there is an intervening holiday). The exercise settlement value of the Index at option expiration will be calculated by CBOE based on the opening prices of the component securities on the business day prior to expiration. If a component security fails to open for trading, the last available price on the security will be used in the calculation of the index, as is done for currently listed indices. When the last trading day is moved because of Exchange holidays (such as when CBOE is closed on the Friday before expiration), the last trading day for expiring options will be Wednesday and the exercise settlement value of index options at expiration will be determined at the opening of regular Thursday trading.

Position Limits

CBOE proposes to establish position limits for options on the CBOE Euro 25 Index and the CBOE Asian 25 Index at 50,000 contracts on either side of the market, and no more than 30,000 of such contracts may be in the series in the nearest expiration month. These limits are roughly equivalent to the limits applicable to options on other broad-based indices under CBOE Rule 24.4(a).[13]

Exchange Rules Applicable

Except as modified herein, the Rules in Chapter XXIV will be applicable to both CBOE Euro 25 Index options and CBOE Asian 25 Index options. Index option contracts based on both the CBOE Euro 25 Index and the CBOE Asian 25 Index will be subject to the position limit requirements of CBOE Rule 24.4(a).

Additionally, CBOE affirms that it possesses the necessary systems capacity to support new series that would result from the introduction of both CBOE Euro 25 Index options and CBOE Asian 25 Index options. CBOE has also been informed that OPRA has the capacity to support such new series (see Exhibit H to the proposed rule change).

[13] Specifically, CBOE Rule 24.4(a) imposes a standard position limit of 50,000 contracts on the same side of the market for CBOE's Mexico 30 Index and CBOE's Germany 25 Index.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act[14] in general and furthers the objectives of Section 6(b)(5) of the Act[15] in particular in that it will permit trading in options based on the Internet Index pursuant to rules designed to prevent fraudulent and manipulative acts and practices and to promote just and equitable principles of trade, and thereby will provide investors with the ability to invest in options based on an additional index.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(A) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of CBOE. All submissions should refer to the File No. SR–CBOE–2002–40 and should be submitted by February 26, 2003.

[14] 15 U.S.C. 78f(b).

[15] 15 U.S.C. 78f(b)(5).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[16]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–2672 Filed 2–4–03; 8:45 am]

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[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47290; File No. SR–CBOE–2003–02]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Board Options Exchange, Inc., Relating to the Reporting of Other Affiliations of Associated Persons to the Exchange

January 30, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 9, 2003, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange"), filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the CBOE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 3.6A—"Qualification and Registration of Certain Associated Persons," and Rule 9.4—"Other Affiliations of Registered Representatives," to (i) eliminate the need for member organizations to seek prior Exchange approval for Registered Representatives, employed in a non-supervisory capacity, to engage in business practices during business

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

hours for other than the business of the member organization with which the person is associated; and (ii) to require prompt notice, but not Exchange approval, of persons registered as Registered Options Principals, Sales Supervisors or Financial and Operations Principals with member organizations for which the CBOE is the firm's Designated Examining Authority who are acting as a part-time employee or independent contractor of the member or engaged in outside business activities. Below is the text of the proposed rule change. Proposed new language is *italicized*. Proposed deletions are in [brackets].

* * * * *

Chicago Board Options Exchange, Inc. Rules

* * * * *

Rule 3.6A. Qualification and Registration of Certain Associated Persons

(a) Financial/Operations Principal. Each individual member or member organization subject to Exchange Act Rule 15c3–1 shall designate a Financial/Operations Principal. The duties of a Financial/Operations Principal shall include taking appropriate actions to assure that the member complies with applicable financial and operational requirements under the Rules and the Exchange Act, including but not limited to those requirements relating to the submission of financial reports and the maintenance of books and records. Each Financial/Operations Principal is required to have successfully completed the Financial and Operations Principal Examination (Series 27 Exam). Each Financial/Operations Principal designated by a member shall be registered in that capacity with the Exchange in a form and manner prescribed by the Exchange. A Financial/Operations Principal of a member may be a full-time employee [of the member], [or with the prior written approval of the Exchange, may be] a part-time employee or independent contractor of the member. *Member firms for which the Exchange is the Designated Examining Authority ("DEA") must provide prompt written notice to the Exchange's Department of Financial and Sales Practice Compliance for each person designated as a Financial/Operations Principal reporting whether such person is a full-time employee, part-time employee, independent contractor or has any outside business affiliations.*

(b) No change.

* * * Interpretations and Policies:

.01–.03 No change.

* * * * *

Chapter IX

* * * * *

Doing Business With the Public

Rule 9.4. Other Affiliations of Registered [Representatives] *Associated Persons*

(a) No person associated with a member in any registered capacity shall be employed by, or accept compensation from, any other person or entity as a result of any business activity, other than a passive investment, outside the scope of his/her relationship with his/her employer firm, unless the person has provided prompt written notice to the member and has received prior written consent of the member.

(b) Except with the *prior written consent of the member and* [express] *prompt* written *notice to* [permission of] the Exchange, every Registered Options Principal, *Sales Supervisor, and Financial/Operations Principal registered with a member for which the Exchange is the Designated Examining Authority ("DEA")* and Registered Representative shall devote his/*her* entire time during business hours to the business of the member organization employing [him] *or compensating him/her*. [or to the business of its affiliates which are engaged in the transaction of business as a broker or dealer in securities or commodities or in such other businesses as have been approved by the Exchange.]

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this proposed rule is to bring the outside business affiliation reporting requirements of registered persons of CBOE members in line with those of the other major securities exchanges. Current National Association of Securities Dealers ("NASD"), New York Stock Exchange ("NYSE"), American Stock Exchange ("AMEX"), Pacific Exchange ("PCX"), and Philadelphia Stock Exchange ("PHLX") rules do not require SRO approval for the outside business activities of registered persons operating in a non-supervisory capacity but rather require such notification be made to and receive the approval from the member organization employing or compensating the registered person.[3] PHLX Rule 793 requires such member organization approvals be filed with their Office of the Secretary.

CBOE Rule 9.4 is proposed to be amended to reduce the current reporting burden of member organizations by eliminating the need for member organizations to seek prior Exchange approval for Registered Representatives, employed in a non-supervisory capacity, to engage in business practices during business hours for other than the business of the member organization with which the person is associated. Proposed Rule 9.4(a) instead would require that each associated person in any registered capacity with a member organization provide written notification to the member organization and receive written approval from the member organization prior to becoming employed by, or accepting compensation from, any other person or entity as a result of business activity, other than a passive investment, outside the scope of his/her relationship with the member organization.

Proposed Rule 9.4(b) would specifically require the prior written consent of the member and prompt written notice to the Exchange for outside affiliations of persons registered with a member, for which the CBOE is the DEA, in the capacity of a Registered Options Principal, Sales Supervisor, or Financial and Operations Principal. This proposed amendment to Rule 9.4 would also require a corresponding amendment to Exchange Rule 3.6A(a) to require prompt notice to the Exchange, rather than prior written approval of the Exchange, of a Financial and Operations Principal acting as a part-time employee or independent contractor or engaged in outside business activities. NYSE and AMEX rules require Exchange approval for registered persons delegated supervisory responsibilities and performing such duties on a part-time basis, however, the NASD does not have a comparable rule.[4] Therefore, the

[3] *See* AMEX Rule 342(b), NASD Rule 3030, NYSE Rule 346(b), PCX Rule 1.26(d) and PHLX Rule 793.

[4] *See* NYSE Rule 346(e) and AMEX Rule 342(a).

Exchange believes that it is appropriate to replace the current Exchange approval process with a notice requirement only where the employing member is designated to the CBOE for financial oversight.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act[5] in general and furthers the objectives of Section 6(b)(5)[6] in particular, in that it is designed to promote just and equitable principles of trade and to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of CBOE. All submissions should refer to File No. CBOE–2003–02 and should be submitted by February 26, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–2674 Filed 2–4–03; 8:45 am]

BILLING CODE 8010–01–P

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47289; File No. SR–ISE–2002–28]

Self-Regulatory Organizations; International Securities Exchange LLC; Order Granting Approval to Proposed Rule Change To Increase the Number of Authorized Shares of Class B Common Stock, Series B–2 From 100 to 130

January 30, 2003.

On November 21, 2002, the International Securities Exchange LLC ("Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to increase the number of authorized shares of Class B Common Stock, Series B–2 from 100 to 130. This increase would result in the creation of 30 additional Competitive Market Maker ("CMM") Memberships.[3] The proposed rule change was published for comment in the **Federal Register** on December 27, 2002.[4] The Commission received no comments on the proposal. This order approves the proposed rule change.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange,[5] and in particular, the requirements of Section 6 of the Act[6] and the rules and regulations thereunder. The Commission finds that the proposal to increase the number of authorized shares of Class B Common Stock, Series B–2 from 100 to 130, resulting in the creation of 30 additional CMM Memberships, is consistent with Section 6(b)(5) of the Act[7] because it is designed to promote just and equitable principals of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

Specifically, the Commission believes that the sale of 30 additional CMM Memberships may increase the depth and liquidity of the Exchange's market. It may also provide more broker-dealers with an opportunity to participate on the Exchange. The Exchange also represented that it has carefully evaluated its systems capacity and believes that it has more than sufficient capacity to handle the increased number of CMM Members without any adverse effects. Furthermore, the Exchange noted that it would require a purchaser of one of these new Memberships that is not already a CMM to meet all Exchange requirements currently applicable to CMM Members.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[8] that the proposed rule change (File No. SR–ISE–2002–28) be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–2673 Filed 2–4–03; 8:45 am]

BILLING CODE 8010–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] CMMs are market makers that compete with a Primary Market Maker and other CMMs to provide liquidity on the Exchange.

[4] *See* Securities Exchange Act Release No. 47035 (December 19, 2002), 67 FR 79202.

[5] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[6] 15 U.S.C. 78f.

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78s(b)(2).

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47285; File No. SR–NYSE–2002–44]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the New York Stock Exchange, Inc. Relating to Amendments to the Exchange's Automatic Execution Facility (NYSE Direct+)

January 29, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 9, 2002 the New York Stock Exchange, Inc. ("NYSE") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the NYSE. The Exchange submitted an amendment to the proposed rule change on January 27, 2003.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of an amendment to Exchange Rule 1000 governing NYSE Direct+® ("Direct +"). The proposed rule amendment provides that (i) Direct+ executions will not be available if the resulting trade would be more than five cents from the last sale; and (ii) during the process for completing certain NYSE Rule 127[4] transactions, the specialist should publish a bid and/or offer that is more than five cents away from the last reported transaction price in the subject security on the Exchange. The text of the proposed rule change is set forth below. Additions are in italics; deletion are in brackets.

* * * * *

Rule 1000: Automatic Execution of Limit Orders Against Orders Reflected in NYSE Published Quotation

Only straight limit orders without tick restrictions are eligible for entry as auto ex orders. Auto ex orders to buy shall be priced at or above the price of the published NYSE offer. Auto ex orders to sell shall be priced at or below the price of the NYSE bid. An auto ex order shall receive an immediate, automatic execution against orders reflected in the Exchange's published quotation and shall be immediately reported as NYSE transactions, unless:

(i) The NYSE's published quotation is in the non-firm quote mode;

(ii) [The NYSE's published quotation has been gapped for a brief period because of an influx of orders on one side of the market, and the NYSE's published quotation size is one hundred shares at the bid and/or offer;] *the execution price would be more than five cents away from the last reported transaction price in the subject security on the Exchange;*

(iii) With respect to a single-sided auto ex order, a better price exists in another ITS participating market center;

(iv) With respect to a single-sided auto ex order, the NYSE's published bid or offer is 100 shares;

(v) A transaction outside the NYSE's published bid or offer pursuant to Rule 127 is in the process of being completed, in which case the specialist should publish a [100-share] bid and/or offer[;] *that is more than five cents away from the last reported transaction price in the subject security on the Exchange;*

(vi) Trading in the subject security has been halted.

Auto ex orders that cannot be immediately executed shall be displayed as limit orders in the auction market.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NYSE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below and is set forth in Sections A, B, and C below.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

NYSE Rules 1000–1005 provide for the automatic execution of limit orders of 1099 shares or less against the Exchange's disseminated bid or offer.[5] These executions of Direct+ orders are not available under unusual market conditions, or in situations when the Exchange's bid or offer is only 100 shares.

Direct+ executions automatically decrease the size of the NYSE bid or offer, which can result in a "default" bid or offer of 100 shares if the Direct+ executions have traded with all trading interest reflected in the Exchange's published bid or offer. This has the effect of rendering the automatic execution feature unavailable until the specialist can requote the market. In other very active trading situations, however, the specialist may quote a 100 share market because of transactions being priced in the auction, which also has the effect of making Direct+ unavailable and results in the Exchange's disseminated quotation not reflecting the actual depth of the NYSE market.

NYSE Rule 1000(ii)

The Exchange is proposing to amend Rule 1000(ii) to replace this provision with one that provides that Direct+ executions will not be available if the resulting trade would be more than five cents from the last sale. This would apply to any trade whether an auto-ex trade or a trade in the regular auction market. Any auto-ex order sent that would result in an execution more than five cents away from the last trade would be routed to the specialist as a SuperDOT limit order. The specialist would then represent that order as he or she would represent any other limit order received via the SuperDOT system.

For example, if the last sale in a stock is $20.10, and the current quote is $20.09 bid for 300 shares and 900 shares offered at $20.16, an auto-ex order to buy 500 shares (which would be executed at the offer price) would not be

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Letter from Darla C. Stuckey, Corporate Secretary, NYSE, to Nancy J. Sanow, Assistant Director, Division of Market Regulation, Commission, dated January 23, 2003 ("Amendment No. 1"). Amendment No. 1 clarifies, and provides examples of, how the five cent standard would work; clarifies how limit orders received while a block transaction is pending would be handled; and explains how the Exchange determined that five cents is the appropriate level at which to disengage Direct+.

[4] Exchange Rule 127(b) describes the procedures for a member to follow who has a block of stock which he or she intends to cross at a specific clean-up price outside the current quotation.

[5] NYSE Direct+ was originally filed as a one-year pilot in SR–NYSE–2000–18, which was approved on December 22, 2000. *See* Securities Exchange Act Release No. 43767 (December 22, 2000), 66 FR 834 (January 4, 2001). The pilot was subsequently extended by SR–NYSE–2001–50 and SR–NYSE–2002–47. *See* Securities Exchange Act Release Nos. 45331 (January 24, 2002), 67 FR 5024 (February 1, 2002); 46906 (November 25, 2002), 67 FR 72260 (December 4, 2002), respectively. The pilot is currently due to expire on December 24, 2003.

automatically executed at $20.16 since it is more than five cents from the last trade at $20.10. It would be routed to the specialist as a limit order to buy at $20.16. The specialist would then bid on behalf of that order at $20.15 and execute it at $20.16 against the prevailing offer, or a broker in the crowd could offer to trade with the order at $20.15, offering price improvement to that order in the auction market.

Under the current provisions of Rule 1000, if the published quotation in a stock is gapped for a brief period of time, usually with one side or both of the quotation being set at 100 shares because of an influx of orders on one side of the market, or if the bid and/or offer size of the prevailing quotation is set at 100 shares, the Direct+ facility is not available. Under very active market conditions, the specialist may quote 100 shares bid or offered in order to allow trades in the auction market to be consummated without the last sale price being changed due to Direct+ executions. This, however, could result in the Exchange's disseminated quotation temporarily not reflecting the actual depth of the market for a stock as reflected by the dynamics of trading interest in the Crowd. If the Direct+ facility is not available in instances where the actual spread in a stock's quotation is greater than five cents, the specialist will be able to show the actual depth in the market. Of course, if the actual spread resulting from bids and offers on the specialist's book, or resulting from trading crowd interest results in a spread of less than five cents from the price of the last trade, the specialist must display these, and Direct+ orders will remain eligible for automatic execution.[6]

NYSE Rule 1000(v)

NYSE Rule 127 establishes procedures for executions outside the NYSE's published bid or offer. It requires a member seeking to cross block orders outside the prevailing quotation to inform the specialist of his or her intention to execute the transaction at a pre-determined, specific price (the "clean-up" price), either a premium or discount from the prevailing bid/offer. In this situation, the executing broker will be bidding and offering on behalf of the cross away from the prevailing quotation, to reflect the discount or premium from the current market.[7] Currently, Rule 1000(v) provides that auto ex orders will not be executed when an auction market transaction under Exchange Rule 127 is being completed, and in that instance, the specialist must publish a 100-share bid and/or offer.

The Exchange proposes to amend Rule 1000(v) to provide that the specialist (during the process for completing a Rule 127 transaction) should publish a bid and/or offer that is more than five cents away from the last reported transaction price (instead of a 100-share bid and/or offer) in the subject security on the Exchange. Any limit order that is received as the Rule 127 trade is being effected that would better the market represented by the broker's bid or offer on behalf of the NYSE Rule 127 cross trade would be included in the Rule 127 trade.[8] For example, assume that the last sale in XYZ is $10.27, and the current quote is $10.25 bid for 5000 shares and 5000 shares offered at $10.35. A proposed block transaction (Rule 127 trade) is about to be effected at the "clean-up" (discount price) of $10.15 for 50,000 shares. Under amended Rule 1000(v), the specialist would publish a bid that is more than five cents away from the last reported transaction price in order to turn off Direct+. The Rule 127 trade would be completed by the broker bidding $10.15 on behalf of the cross, and offering at $10.16. If, prior to the completion of the Rule 127 trade, a limit order to buy 500 shares at $10.20 was received by the specialist, he or she would represent that order to participate in the Rule 127 cross and receive an improved price. (Under Exchange Rule 79A.15, the requirement to display limit orders received by specialists does not apply to any customer limit order that is executed upon receipt of the order.)[9]

The five cent price parameter will give the specialist additional flexibility in disseminating the actual depth of the NYSE auction market, while still ensuring that Direct+ is available when there is sufficient liquidity at prices closely related to the last sale.[10]

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5)of the Act [11] that an Exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. The proposed rule change also is designed to support the principles of Section 11A(a)(1) of the Act [12] in that it seeks to assure economically efficient execution of securities transactions, make it practicable for brokers to execute investors' orders in the best market, and provide an opportunity for investors' orders to be executed without the participation of a dealer.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change, as amended, will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the NYSE consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposal, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in

[6] *See* Amendment No. 1, *supra* note 3.

[7] *Id.*

[8] *Id.*

[9] *Id.*

[10] According to the Exchange, a high percentage of executions in Direct+ occur within five cents of the last sale. *See* Amendment No. 1, *supra* note 3.

[11] 15 U.S.C. 78f(b)(5).

[12] 15 U.S.C. 78k–1(a)(1).

the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE organization.

All submissions should refer to File No. NYSE–2002–44 and should be submitted by February 26, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–2675 Filed 2–4–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47275; File No. SR–NYSE–2003–02]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the New York Stock Exchange, Inc. Relating to Amendment to Rule 111

January 29, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and rule 19b-4 thereunder,[2] notice is hereby given that on January 8, 2003, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in items I, II, and III below, which items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to amend rule 111(a) to correct internal rule references. The references to other rules in rule 111 were not updated at the time rule 111 was reorganized.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in item IV below. The NYSE has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange recently codified in the NYSE rule book several policies which had been previously filed with, and approved by, the Commission pursuant to rule 19b-4 and reorganized several other rules.[3]

When rule 111 was reorganized, three internal rule references were not updated to refer to the correct corresponding rule. The Exchange proposes to correct these references in rule 111(a) as follows.

- In rule 111(a), the reference that reports must include all transactions executed on orders initiated or originated for such accounts by a member while on the Floor and all transactions which are considered on-Floor trading is found under the provisions of rule 112(c), not 112(b) as stated.
- A competitive trader desiring to exempt neutral transactions for an account in which he or his member organization has an interest from consideration in the computation of his monthly stabilizing percentage is provided for under the provisions of rule 110(g)(2), not 112(d)(2); he must report the trade date, number of shares, and price of stock upon acquisition.
- In addition, rule 110(g)(1), not 112(d)(1), provides that a competitive trader must note with the symbol "NL" that the transaction was effected as part of the initial sale of a newly listed security.

2. Statutory Basis

The Exchange's basis under the Act for this proposed rule change is the requirement under section 6(b)(5) of the Act[4] that an Exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanisms of a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has become effective pursuant to section 19(b)(3)(A)(iii) of the Act[5] and subparagraph (f)(3) of rule 19b–4 thereunder,[6] because it is concerned solely with the administration of the Exchange. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange.

All submissions should refer to the File No. SR–NYSE–2003–02 and should be submitted by February 26, 2003.

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[13] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 46579 (October 1, 2002), 67 FR 63004 (October 9, 2002) (SR–NYSE–2002–31).

[4] 15 U.S.C. 78f(b)(5).

[5] 15 U.S.C. 78s(b)(3)(A)(iii).

[6] 17 CFR 240.19b–4(f)(3).

[7] 17 CFR 200.30–(a)(12).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–2677 Filed 2–4–03; 8:45 am]

BILLING CODE 8010–01–P

SMALL BUSINESS ADMINISTRATION

Region 4—Georgia District Advisory Council Public Meeting

The Georgia District Advisory Council (Georgia DAC) of the U.S. Small Business Administration will be conducting a meeting on Friday, February 7, 2002, 8:30–11:30 a.m. at the Hyatt Regency Savannah, 2 West Bay Street, Savannah, GA. The meeting is open to the public. Seating is limited and is available on a first come, first serve basis. The focus of the meeting will be on the future goals, activities, and operations of the Georgia DAC.

Anyone wishing further information concerning the meeting or who wishes to submit oral or written comments should contact Terri L. Denison, Designated Federal Official for the SBA's Georgia District Advisory Council, by phone at (404) 331–0100, ext. 212 or by e-mail at *terri.denison@sba.gov*. Requests for oral comments must be in writing to Ms. Denison and received no later than January 31, 2003.

The public is invited.

Candace Stoltz,

Director Advisory Councils.

[FR Doc. 03–2627 Filed 2–4–03; 8:45 am]

BILLING CODE 8025–01–P

SOCIAL SECURITY ADMINISTRATON

Statement of Organization, Functions and Delegations of Authority; Correction

AGENCY: Social Security Administration.

ACTION: Notice; correction.

SUMMARY: The Social Security Administration published a document in the **Federal Register** of January 15, 2003, amending Part S of the Statement of Organization, Functions and Delegations of Authority for the Social Security Administration. There are three additional changes that are needed.

Corrections

In the **Federal Register** of January 15, 2003, in FR Doc. 03–764, on page 2100, second column under Section S7C.10 The Office of Labor-Management and Employee Relations—(Organization), add the following:

The Office of Labor-Management and Employee Relations under the leadership of the Associate Commissioner, Office of Labor-Management and Employee Relations includes:

Retitle E. to The Center for Negotiations (S7CG).

Under Section S7C.20 The Office of Labor-Management and Employee Relations—(Functions) should read as follows:

Delete:

C., line 5, starting with "The functions of the office include the following:" and items 1 through 12.

Dated: January 30, 2003.

Don Putman,

Director, Center for Classification and Organization Management.

[FR Doc. 03–2662 Filed 2–4–03; 8:45 am]

BILLING CODE 4191–X–P

DEPARTMENT OF STATE

[Public Notice 4224]

Extension of Deadline for Nominations for the General Advisory Committee and the Scientific Advisory Subcommittee to the United States Section to the Inter-American Tropical Tuna Commission

SUMMARY: The Department of State is extending for a period of 60 days the deadline for applications and nominations for the renewal of the General Advisory Committee to the Inter-American Tropical Tuna Commission (IATTC), as well as to a Scientific Advisory Subcommittee of the General Advisory Committee, originally published November 12, 2002, in Department of State Public Notice number 4204, Volume 67, Number 218, Pages 68714–68716. The new deadline is March 14, 2003. The purpose of the General Advisory Committee and the Scientific Advisory Subcommittee is to provide public input and advice to the United States Section to the IATTC in the formulation of U.S. policy and positions at meetings of the IATTC and its subsidiary bodies. The Scientific Advisory Subcommittee shall also function as the National Scientific Advisory Committee (NATSAC) provided for in the Agreement on the International Dolphin Conservation Program (AIDCP). The United States Section to the IATTC is composed of the Commissioners to the IATTC and the Deputy Assistant Secretary of State for Ocean and Fisheries or his or her designated representative. Authority to establish the General Advisory Committee and Scientific Advisory Subcommittee is provided under the Tuna Conventions Act of 1950, as amended by the International Dolphin Conservation Program Act (IDCPA) of 1997.

DATES: Nominations must be submitted on or before March 14, 2003.

ADDRESSES: Nominations should be submitted to Mary Beth West, Deputy Assistant Secretary for Oceans and Fisheries, Bureau of Oceans and International Environmental and Scientific Affairs, Room 7831, Department of State, Washington, DC 20520–7818; or by fax to 202–736–7350.

FOR FURTHER INFORMATION CONTACT: David Hogan, Office of Marine Conservation, Department of State: 202–647–2335.

SUPPLEMENTARY INFORMATION:

General Advisory Committee

The Tuna Conventions Act (16 U.S.C. 951, *et seq.*), as amended by the IDCPA (Pub. L. 105–42) provides that the Secretary of State, in consultation with the U.S. Commissioners to the IATTC, shall appoint a General Advisory Committee (the Committee) to the U.S. Section to the IATTC (U.S. Section). The Committee shall be composed of not less than 5 nor more than 15 persons, with balanced representation from the various groups participating in the fisheries included under the IATTC Convention, and from non-governmental conservation organizations. The Committee shall be invited to have representatives attend all non-executive meetings of the U.S. Section, and shall be given full opportunity to examine and to be heard on all proposed programs of investigations, reports, recommendations, and regulations adopted by the Commission. Representatives of the Committee may attend meetings of the IATTC and the AIDCP as members of the U.S. delegation or otherwise in accordance with the rules of those bodies governing such participation. Participation as a member of the U.S. delegation shall be subject to such limits as may be placed on the size of the delegation.

Scientific Advisory Committee

The Act, as amended, also provides that the Secretary of State, in consultation with the U.S. Commissioners to the IATTC, shall appoint a Scientific Advisory Subcommittee (the Subcommittee) of the General Advisory Committee. The Subcommittee shall be composed of not less than 5 and not more than 15

qualified scientists with balanced representation from the public and private sectors, including non-governmental conservation organizations. The Subcommittee shall advise the Committee and the U.S. Section on matters including: The conservation of ecosystems; the sustainable uses of living marine resources related to the tuna fishery in the eastern Pacific Ocean; and the long-term conservation and management of stocks of living marine resources in the eastern tropical Pacific Ocean.

In addition, at the request of the Committee, the U.S. Commissioners or the Secretary of State, the Subcommittee shall perform such functions and provide such assistance as may be required by formal agreements entered into by the United States for the eastern Pacific tuna fishery, including the AIDCP. The functions may include: The review of data from the International Dolphin Conservation Program (IDCP), including data received from the IATTC staff; recommendations on research needs and the coordination and facilitation of such research; recommendations on scientific reviews and assessments required under the IDCP; recommendations with respect to measures to assure the regular and timely full exchange of data among the Parties to the AIDCP and each nation's NATSAC (or its equivalent); and consulting with other experts as needed.

The Subcommittee shall be invited to have representatives attend all non-executive meetings of the U.S. Section and the General Advisory Committee and shall be given full opportunity to examine and to be heard on all proposed programs of scientific investigation, scientific reports, and scientific recommendations of the Commission. Representatives of the Subcommittee may attend meetings of the IATTC and the AIDCP as members of the U.S. delegation or otherwise in accordance with the rules of those bodies governing such participation. Participation as a member of the U.S. delegation shall be subject to such limits as may be placed on the size of the delegation.

National Scientific Advisory Committee

The Scientific Advisory Subcommittee shall also function as the NATSAC established pursuant to Article IX of the AIDCP. In this regard, the Subcommittee shall perform the functions of the NATSAC as specified in Annex VI of the AIDCP including, but not limited to: Receiving and reviewing relevant data, including data provided to the National Marine Fisheries Service (NMFS) by the IATTC Staff; advising and recommending to the U.S. government measures and actions that should be undertaken to conserve and manage stocks of living marine resources in the AIDCP Area; making recommendations to the U.S. government regarding research needs related to the eastern Pacific Ocean tuna purse seine fishery; promoting the regular and timely full exchange of data among the Parties on a variety of matters related to the implementation of the AIDCP; and consulting with other experts as necessary in order to achieve the objectives of the Agreement.

General Provisions

Each appointed member of the Committee and the Subcommittee/NATSAC shall be appointed for a term of 3 years and may be reappointed.

Logistical and administrative support for the operation of the Committee and the Subcommittee will be provided by the Department of State, Bureau of Oceans and International Environmental and Scientific Affairs, and by the Department of Commerce, National Marine Fisheries Service. Members shall receive no compensation for their service on either the Committee or the Subcommittee/NATSAC, nor will members be compensated for travel or other expenses associated with their participation.

Procedures for Submitting Applications/Nominations

Applications/nominations for the General Advisory Committee and the Scientific Advisory Subcommittee/NATSAC should be submitted to the Department of State (See **ADDRESSES**). Such applications/nominations should include the following information:

(1) Full name/address/phone/fax and e-mail of applicant/nominee;

(2) Whether applying/nominating for the General Advisory Committee or the Scientific Advisory Committee/NATSAC (applicants may specify both);

(3) Applicant/nominee's organization or professional affiliation serving as the basis for the application/nomination;

(4) Background statement describing the applicant/nominee's qualifications and experience, especially as related to the tuna purse seine fishery in the eastern Pacific Ocean or other factors relevant to the implementation of the Convention Establishing the IATTC or the Agreement on the International Dolphin Conservation Program;

(5) A written statement from the applicant/nominee of intent to participate actively and in good faith in the meetings and activities of the General Advisory Committee and/or the Scientific Advisory Subcommittee/NATSAC.

Dated: January 30, 2003.

David A. Balton,

Acting Deputy Assistant Secretary for Oceans and Fisheries, Department of State.

[FR Doc. 03–2709 Filed 2–4–03; 8:45 am]

BILLING CODE 4710–09–P

DEPARTMENT OF STATE

[Public Notice 4260]

Determination Pursuant to Section 1(b) of Executive Order 13224 Relating to Lashkar i Jhangvi

Acting under the authority of section 1(b) of Executive Order 13224 of September 23, 2001, and in consultation with the Secretary of the Treasury and the Attorney General, I hereby determine that Lashkar i Jhangvi (also spelled Lashkar e Jhangvi) has committed, or poses a significant risk of committing, acts of terrorism that threaten the security of U.S. nationals or the national security, foreign policy, or economy of the United States.

Consistent with the determination in section 10 of Executive Order 13224 that "prior notice to persons determined to be subject to the Order who might have a constitutional presence in the United States would render ineffectual the blocking and other measures authorized in the Order because of the ability to transfer funds instantaneously," I determine that no prior notice need be provided to any person subject to this determination who might have a constitutional presence in the United States because to do so would render ineffectual the measures authorized in the Order.

This notice shall be published in the **Federal Register**.

Dated: January 21, 2003.

Colin L. Powell,

Secretary of State, Department of State.

[FR Doc. 03–2710 Filed 2–4–03; 8:45 am]

BILLING CODE 4710–10–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Generalized System of Preferences; Import Statistics Relating to Competitive Need Limitations; Invitation for Public Comment

AGENCY: Office of the United States Trade Representative.

ACTION: Notice.

SUMMARY: This notice is to inform the public of interim 2002 import statistics

relating to Competitive Need Limitations (CNL) under the Generalized System of Preferences (GSP) program. Public comments are invited by 5 p.m., February 21, 2003, regarding possible *de minimis* CNL waivers with respect to particular articles, and possible redesignations under the GSP program of articles currently subject to CNLs.

FOR FURTHER INFORMATION CONTACT: Contact the GSP Subcommittee, Office of the United States Trade Representative (USTR), 1724 F Street, NW., Room F–220, Washington, DC 20508. The telephone number is (202) 395–6971 and the facsimile number is (202) 395–9481.

SUPPLEMENTARY INFORMATION:

I. Competitive Need Limitations

The GSP program provides for the duty-free importation of designated articles when imported from designated beneficiary developing countries. The GSP program is authorized by title V of the Trade Act of 1974 (19 U.S.C. 2461, *et seq.*), as amended (the "1974 Act"), and is implemented in accordance with Executive Order 11888 of November 24, 1975, as modified by subsequent Executive Orders and Presidential Proclamations. Section 503(c)(2)(A) of the 1974 Act, as amended (19 U.S.C. 2463(c)(2)(A)), provides for CNLs on duty-free treatment under the GSP program. When the President determines that a beneficiary developing country exported to the United States during a calendar year either (1) a quantity of a GSP-eligible article having a value in excess of the applicable amount for that year ($105 million for 2002), or (2) a quantity of a GSP-eligible article having a value equal to or greater than 50 percent of the value of total U.S. imports of the article from all countries (the "50 percent" CNL), the President shall terminate GSP duty-free treatment for that article from that beneficiary developing country by no later than July 1 of the next calendar year.

II. Discretionary Decisions

A. De Minimis Waivers

Section 503(c)(2)(F) of the 1974 Act (19 U.S.C. 2463(c)(2)(F)) provides the President with discretion to waive the 50 percent CNL with respect to an eligible article imported from a beneficiary developing country if the value of total imports of that article from all countries during the calendar year did not exceed the applicable amount for that year ($16 million for 2002).

B. Redesignation of Eligible Articles

Where imports of an eligible article from a beneficiary developing country ceased to receive duty-free treatment due to exceeding the CNL in a prior year, section 503(c)(2)(C) of the 1974 Act (19 U.S.C. 2463(c)(2)(C)) provides the President with discretion to redesignate such an article for duty-free treatment if imports in the most recently completed calendar year did not exceed the CNLs.

III. Implementation of Competitive Need Limitations, Waivers, and Redesignations

Exclusions from GSP duty-free treatment where CNLs have been exceeded will be effective July 1, 2003. Decisions on these matters, as well as decisions with respect to *de minimis* waivers and redesignations, will be based on full 2002 calendar year import statistics.

IV. Interim 2002 Import Statistics

In order to provide advance notice of articles that may exceed the CNLs for 2002, and to afford an earlier opportunity for comment regarding possible *de minimis* waivers and redesignations, interim import statistics covering the first 10 months of 2002 are included with this notice.

The following lists contain, for each article, the Harmonized Tariff Schedule of the United States (HTS) number and beneficiary country of origin, the value of imports of such article for the first ten months of 2002, and the percentage of total imports of that product from all countries. The flags indicate the status of GSP eligibility. Articles marked with an "*" are those that have been excluded from GSP eligibility for the entire past calendar year. Articles marked with a "D" are those that, based on interim 2002 data, may be eligible for a *de minimis* waiver of the 50 percent CNL.

List I shows GSP-eligible articles from beneficiary developing countries that have already exceeded the CNL of $105 million in 2002. Those articles without a flag are articles that were GSP-eligible during 2002 but stand to lose GSP duty-free treatment on July 1, 2003, unless a waiver is granted. Such waivers are required to have been requested in the 2002 GSP Annual Review.

List II shows GSP-eligible articles from beneficiary developing countries that (1) have not yet exceeded, but are approaching, the $105 million CNL for the period from January through October 2002, or (2) are close to or above the 50 percent CNL. Depending on final calendar year 2002 import data, these products also stand to lose GSP duty-free treatment on July 1, 2003, unless a waiver is granted. Such waivers are required to have been requested in the 2002 GSP Annual Review.

List III is a subset of List II. List III identifies GSP-eligible articles from beneficiary developing countries that are near or above the 50 percent CNL, but that may be eligible for a *de minimis* waiver of the 50 percent CNL. Actual eligibility for *de minimis* waivers will depend on final calendar year 2002 import data. Each year, *de minimis* waivers are considered automatically and public comments are accepted.

List IV shows GSP-eligible articles that are currently not receiving GSP duty-free treatment, but that have import levels (based on interim 2002 data) below the CNLs and thus may be eligible for redesignation pursuant to the President's discretionary authority. Articles with a "D" exceed the 50 percent CNL and would require both a *de minimis* waiver and redesignation to receive GSP duty-free treatment. The list may contain articles that may not be redesignated until certain conditions are fulfilled, as where, for example, GSP eligibility for an article was administratively suspended because of deficiencies in a country's protection of worker or intellectual property rights. Redesignation requests are normally made in the annual review, unless made in conjunction with remedying the deficiencies.

The lists appended to this notice are provided for informational purposes only. The attached lists are computer-generated and based on interim 2002 data, and may not include all articles that may be affected by the GSP CNLs. Regardless of whether or not an article is included on the lists, all determinations and decisions regarding the CNLs of the GSP program will be based on full calendar year 2002 import data with respect to each GSP-eligible article. Each interested party is advised to conduct its own review of 2002 import data with regard to the possible application of GSP CNLs.

IV. Public Comments

Requirements for Submissions

All submissions must conform to the GSP regulations set forth at 15 CFR Part 2007, except as modified below. These regulations are also included in "A Guide to the U.S. Generalized System of Preferences (GSP)" (May 1999) ("GSP Guidebook"), available at *www.ustr.gov*. Furthermore, each party providing comments should indicate on the first page of the submission its name, the relevant HTS subheading(s), the

beneficiary country or territory of interest, and the type of action (*e.g.*, the use of the President's *de minimis* waiver authority, etc.) in which the party is interested.

Comments must be submitted, in English, to the Chairman of the GSP Subcommittee of the Trade Policy Committee (TPSC) as soon as possible but not later than 5 p.m on February 21, 2003. Comments submitted after this date may be considered at the discretion of the GSP Subcommittee until the time its advice is provided to the TPSC.

Submissions in response to this notice will be subject to public inspection by appointment with the staff of the USTR Public Reading Room, except for information granted "business confidential" status pursuant to 15 CFR 2003.6.

If the submission contains business confidential information, a non-confidential version of the submission must also be submitted that indicates where confidential information was redacted by inserting asterisks where material was deleted. In addition, the confidential submission must be clearly marked "BUSINESS CONFIDENTIAL" at the top and bottom of each and every page of the document. The public version which does not contain business confidential information must also be clearly marked at the top and bottom of each and every page (either "PUBLIC VERSION" or "NON-CONFIDENTIAL").

In order to facilitate prompt consideration of submissions, USTR strongly urges and prefers electronic e-mail submissions in response to this notice. In the event that an e-mail submission is impossible, submissions should be made by facsimile. These submissions should be single copy transmissions in English with the total submission not to exceed 50 single-spaced pages and 3 megabytes as a digital file attached to an e-mail transmission. Persons making submissions by e-mail should use the following subject line: "Comments on 2002 CNL Review" Documents must be submitted as either WordPerfect (".WPD"), MSWord (".DOC"), or text (".TXT") files. Documents should not be submitted as electronic image files or contain imbedded images (for example, ".JPG", "PDF", ".BMP", or ".GIF") as such files are generally excessively large. E-mail submissions containing such files may not be accepted. Supporting documentation submitted as spreadsheets are acceptable as Quattro Pro or Excel, pre-formatted for printing on 8½ x 11 inch paper. To the extent possible, any data attachments to the submission should be included in the same file as the submission itself, and not as separate files. Facsimile submissions should include, among other identifying information specified in the regulations, the following information at the top of the first page: "Comments on 2002 CNL Review."

For any document containing business confidential information submitted as an electronic attached file to an e-mail transmission, the file name of the business confidential version should begin with the characters "BC-", and the file name of the public version should begin with the characters "P-". The "P-" or "BC-" should be followed by the name of the party (government, company, union, association, etc.) which is submitting the petition.

Parties who make submissions by e-mail should not provide separate cover letters or messages in the message area of the e-mail; information that might appear in any cover letter should be included directly in the attached file containing the submission itself. The e-mail address for these submissions is *FR0052@ustr.gov*.

Public versions of all documents relating to this review will be available for review approximately three weeks after the due date by appointment in the USTR Public Reading Room, 1724 F Street NW., Washington, DC. Availability of documents may be ascertained, and appointments may be made from 9:30 a.m. to noon and 1 p.m. to 4 p.m., Monday through Friday, by calling (202) 395–6186.

Steven Falken,

Executive Director for GSP, Chairman, GSP Subcommittee.

BILLING CODE 3190–01–P

LIST I : ITEMS GRADUATED OR EXCEEDING COMPETITIVE NEED LIMITS
2002 U.S. IMPORTS - JANUARY THROUGH OCTOBER

FLAGS	HTSUS	PARTNER	IMPORTS	SHARE	DESCRIPTION
*	2402.10.80	Dominican Republic..	136,330,379	67.9%	Cigars, cheroots and cigarillos containing tobacco, each valued 23 cen
*	2905.11.20	Trinidad and Tobago.	181,829,834	37.0%	Methanol (Methyl alcohol), other than imported only for use in produci
*	7113.11.50	Thailand.....	123,706,633	25.5%	Silver articles of jewelry and parts thereof, nesoi, valued over $18 p
*	7113.19.50	Dominican Republic..	156,501,565	4.5%	Precious metal (o/than silver) articles of jewelry and parts thereo, w
*	7403.11.00	Peru.....	363,029,717	31.7%	Refined copper cathodes and sections of cathodes
*	7403.11.00	Chile.....	286,073,382	25.0%	Refined copper cathodes and sections of cathodes
*	8408.20.20	Brazil.....	135,681,692	42.8%	Compression-ignition internal-combustion piston engines to be installe
	8525.40.80	Indonesia.....	144,150,434	7.8%	Still image video cameras (other than digital) and other video camera
	8528.12.28	Thailand.....	137,959,286	35.9%	Non-high definition color television reception app., nonprojection, w/
*	8544.30.00	Thailand.....	140,325,097	3.1%	Insulated ignition wiring sets and other wiring sets of a kind used in

FLAGS: '*'=Excluded full yr; '1'=Excluded January/June; '2'=Excluded July/December

LIST II : ITEMS APPROACHING COMPETITIVE NEED LIMITS
2002 U.S. IMPORTS - JANUARY THROUGH OCTOBER

FLAGS	HTSUS	PARTNER	IMPORTS	SHARE	DESCRIPTION
D	0305.69.60	Philippines	297,625	60.1%	Fish, nesi, in brine or salted but not dried or smoked, other than in
D	0306.14.20	Chile	4,031,340	47.2%	Crabmeat, frozen
D	0405.20.80	Poland	25,180	72.7%	Other dairy spreads, not butter substitutes or of a type provided for
D	0410.00.00	Indonesia	7,557,586	65.2%	Edible products of animal origin, nesi
D	0705.29.00	Chile	1,674,771	48.2%	Chicory, other than witloof chicory, fresh or chilled
D	0710.22.10	India	89,543	43.5%	Lima beans, uncooked or cooked by steaming or boiling in water, frozen
D	0710.22.15	India	48,463	43.2%	Lima beans, frozen, entered June 1 - October 31
D	0710.29.15	India	115,036	96.7%	Lentils, uncooked or cooked by steaming or boiling in water, frozen
D	0710.80.50	Ecuador	7,965	55.6%	Tomatoes, uncooked or cooked by steaming or boiling in water, frozen,
D	0711.40.00	India	2,525,545	71.8%	Cucumbers including gherkins, provisionally preserved but unsuitable i
D	0712.90.70	Egypt	379,410	75.6%	Dried fennel, marjoram, savory and tarragon nesi, whole, cut, sliced,
D	0714.20.10	India	38,422	57.2%	Sweet potatoes, frozen, whether or not sliced or in the form of pellet
	0714.90.20	Jamaica	8,241,607	42.3%	Fresh or chilled yams, whether or not sliced or in the form of pellets
D	0802.31.00	Turkey	19,947	65.9%	Walnuts, fresh or dried, in shell
D	0802.50.20	Turkey	445,235	72.4%	Pistachios, fresh or dried, in shell
D	0802.50.40	Turkey	93,388	42.9%	Pistachios, fresh or dried, shelled
D	0802.90.20	Pakistan	25,425	100.0%	Pignolias, fresh or dried, in shell
D	0804.50.80	Philippines	4,754,661	52.6%	Guavas, mangoes, and mangosteens, dried
D	0810.60.00	Thailand	389,166	100.0%	Durians, fresh
D	0811.20.40	Chile	506,101	42.5%	Blackberries, mulberries and white or red currants, frozen, in water o
D	0813.30.00	Chile	5,443,082	77.4%	Apples, dried
D	0813.40.10	Thailand	1,548,773	97.1%	Papayas, dried
	0813.40.20	Poland	10,146,768	50.3%	Berries except barberries, dried
	0904.20.76	India	7,445,917	45.8%	Fruits of the genus capsicum, ground, nesoi
D	1007.00.00	Chile	4,739	48.6%	Grain sorghum
D	1102.30.00	Thailand	2,089,733	46.6%	Rice flour
D	1104.23.00	El Salvador	79,883	43.6%	Grains of corn (maize), hulled, pearled, clipped, sliced, kibbled or o
D	1212.99.10	Brazil	31,928	51.3%	Sugar cane, fresh, chilled, frozen or dried, whether or not ground
D	1301.90.40	Brazil	42,800	82.3%	Turpentine gum (oleoresinous exudate from living trees)
	1602.50.09	Brazil	17,235,088	74.3%	Prepared or preserved meat of bovine animals, cured or pickled, not co
D	1604.15.00	Chile	5,595,698	53.4%	Prepared or preserved mackerel, whole or in pieces, but not minced
D	1605.90.10	Thailand	3,475,376	62.2%	Boiled clams in immediate airtight containers, the contents of which d
D	1605.90.55	Indonesia	1,097,532	54.2%	Prepared or preserved snails, other than sea snails
D	1702.90.35	Brazil	2,676,599	58.2%	Invert molasses
D	1703.90.30	India	32,600	46.9%	Molasses, other than cane, imported for (a) the commercial extraction
	1703.90.50	Dominican Republic	10,605,134	64.2%	Molasses nesi
D	1806.10.22	Indonesia	3,266	100.0%	Cocoa powder, o/65% but less than 90% by dry wt of sugar, subject to g
D	1806.10.43	Brazil	2,005	46.3%	Cocoa powder, o/90% by dry wt of sugar, subject to gen. note 15 of the
D	1806.32.55	Dominican Republic	74,964	68.0%	Cocoa preps, not filled, in blocks, slabs or bars weighing 2 kg or les
D	1901.20.02	Colombia	4,464	100.0%	Mixes for bakers wares, o/25% butterfat, not retail, subject to gen. n
D	1901.20.45	Argentina	2,565	100.0%	Mixes for bakers wares (dairy prod. of Ch4 US note 1), n/o 25% bf, not
D	1901.90.28	Poland	333,006	66.7%	Dry mix. w/less than 31% bf & 17.5% or more sodium caseinate, bf, whey
D	2007.99.40	Poland	66,866	42.8%	Pineapple jam
D	2008.99.35	Thailand	2,803,235	85.4%	Lychees and longans, otherwise prepared or preserved, nesi
D	2008.99.45	Philippines	119,224	82.1%	Papaya pulp, otherwise prepared or preserved, nesi
D	2008.99.50	Thailand	1,228,926	50.0%	Papayas, other than pulp, otherwise prepared or preserved, nesi
D	2208.90.80	Guyana	619,812	43.3%	Undenatured ethyl alcohol of an alcoholic strength by volume of less t
D	2306.30.00	Argentina	2,152,625	100.0%	Oilcake and other solid residues, resulting from the extraction of veg
D	2403.91.20	Dominican Republic	7,922	100.0%	"Homogenized" or "reconstituted" tobacco suitable for use as wrapper t
D	2515.12.20	Turkey	1,903,190	64.5%	Travertine, merely cut into blocks or slabs of a rectangular (includin
D	2804.29.00	Russia	7,989,520	66.9%	Rare gases, other than argon

FLAGS: '1'=Excluded January/June; 'D'=De minimis;

LIST II : ITEMS APPROACHING COMPETITIVE NEED LIMITS

LIST II : ITEMS APPROACHING COMPETITIVE NEED LIMITS
2002 U.S. IMPORTS - JANUARY THROUGH OCTOBER

FLAGS	HTSUS	PARTNER	IMPORTS	SHARE	DESCRIPTION
D	2825.70.00	Chile	2,288,649	42.3%	Molybdenum oxides and hydroxides
D	2840.11.00	Turkey	93,572	100.0%	Anhydrous disodium tetraborate (refined borax)
D	2840.19.00	Turkey	1,459,551	99.1%	Disodium tetraborate (refined borax) except anhydrous
D	2841.61.00	Czech Republic	1,118,614	49.1%	Potassium permanganate
D	2841.90.20	Kazakhstan	1,403,528	49.3%	Ammonium perrhenate
D	2903.51.00	Romania	450,575	100.0%	1,2,3,4,5,6-Hexachlorocyclohexane
	2905.11.20	Chile	100,525,623	20.4%	Methanol (Methyl alcohol), other than imported only for use in produci
D	2908.10.15	Hungary	763,716	100.0%	3-Hydroxy-alpha,alpha,alpha-trifluorotoluene
D	2909.50.40	Indonesia	2,463,454	52.1%	Odoriferous or flavoring compounds of ether-phenols, ether-alcohol-phe
D	2915.35.00	Russia	11,818	52.1%	2-Ethoxyethyl acetate (Ethylene glycol, monoethyl ether acetate)
D	2917.19.10	Hungary	1,575,502	77.6%	Ferrous fumarate
D	2917.32.00	Indonesia	5,266,004	71.1%	Dioctyl orthophthalates
D	2918.21.10	Brazil	4,850,932	76.1%	Salicylic acid and its salts, suitable for medicinal use
D	2931.00.25	Brazil	1,065,539	100.0%	Pesticides of aromatic organo-inorganic (except organo-sulfur) compoun
D	2933.49.30	Brazil	3,910,468	70.3%	Pesticides of heterocyclic compounds with nitrogen hetero-atom(s) only
D	2934.20.05	Brazil	97,750	53.5%	N-tert-Butyl-2-benzothiazolesulfenamide
D	2938.10.00	Brazil	1,014,465	74.2%	Rutoside (Rutin) and its derivatives
D	3815.90.10	Panama	180,740	88.6%	Reaction initiators, reaction accelerators and catalytic preparations,
	3823.19.20	Philippines	13,369,892	56.3%	Industrial monocarboxylic fatty acids or acid oils from refining deriv
D	3926.90.56	India	12,103	50.6%	Belting and belts (except V-belts) for machinery, of plastics, contain
D	4010.12.10	Hungary	1,696,574	78.3%	Conveyor belts or belting of vulcanized rubber reinforced only with te
D	4012.11.80	India	503,699	59.6%	Retreaded pnuematic tires (nonradials), of rubber, of a kind used on m
D	4101.90.35	Brazil	791	100.0%	Raw buffalo hides and skins (other than whole), pretanned but not furt
D	4104.19.30	Brazil	202,139	66.0%	Buffalo hides and skins nesoi, w/o hair on, unit surface area ov 2.6 m
D	4106.21.10	Peru	37,202	77.1%	Hides and skins of goats or kids, without hair on, tanned but not furt
D	4106.21.90	India	935,258	43.6%	Hides and skins of goats or kids, without hair on, tanned but not furt
D	4107.11.60	Brazil	689,711	47.9%	Full grain unsplit upper & sole leather of bovines (not buffalo) nesoi
D	4107.12.60	Colombia	235,855	53.8%	Grain split whole upper & sole leather of bovines (not buffalo) nesoi
D	4107.19.40	India	13,088	97.3%	Whole buffalo skin leather (not full grain unsplits/grain splits), w/o
D	4107.91.40	India	107,221	81.9%	Full grain unsplit buffalo leather (not whole), w/o hair on, prepared
D	4107.92.40	Pakistan	1,260	100.0%	Grain splits buffalo leather (not whole), without hair on, prepared af
D	4107.99.60	Colombia	219,937	51.6%	Upper & sole leather of bovines (not buffalo) or equines, not whole, n
D	4202.22.35	Philippines	27,758	50.3%	Handbags with or without shoulder strap or without handle, with outer
D	4302.20.90	Argentina	559,986	46.0%	Heads, tails, paws and other pieces or cuttings of dressed or tanned f
D	4412.13.25	Brazil	2,549,346	92.4%	Plywood sheet n/o 6 mm thick,tropical hard wood outer ply, face ply of
D	4412.14.25	Brazil	3,892,132	90.0%	Plywood sheet n/o 6 mm thick,outer ply of nontropical hardwood,face pl
D	4412.19.30	Russia	159,491	74.4%	Plywood of wood sheets, n/o 6 mm thick each, with outer plies of conif
D	4412.99.46	Chile	509,660	45.8%	Plywood nesoi, softwood outer plies, no trop. hard wood ply, no partic
D	4602.10.23	Indonesia	5,611	43.6%	Articles of a kind normally carried in the pocket or in the handbag, o
D	4802.54.10	Brazil	2,664,576	63.2%	Writing paper, weigh < 40 g/m2, cont. n/o 10% total fiber content by a
D	4802.54.20	Indonesia	3,708,356	84.3%	India & bible paper, weigh < 40 g/m2, n/o 10% total fiber content by a
D	4802.55.20	Indonesia	1,792,678	46.2%	Drawing paper, wt 40 g/m2 -150 g/m2, n/o 10% total fiber content by me
D	4802.56.60	Colombia	74,618	68.6%	Other basic paper be sensitized use in photography, wt. 40g/m2-150g/m2
D	4802.57.10	Brazil	3,949,648	50.5%	Writing/cover paper, wt 40 g/m2-150 g/m2, cont. n/o 10% by weight tota
D	4802.57.20	Indonesia	172,566	95.5%	Drawing paper, wt 40 g/m2 to 150 g/m2, cont. n/o 10% by weight total f
D	4810.14.11	Thailand	524,176	43.9%	Basic paper be sensitized for photography, coated w/inorganic, n/o 150
	4816.20.00	Indonesia	15,186,310	88.9%	Self-copy paper, nesi
D	5007.10.30	India	884,828	44.8%	Woven fabrics of noil silk, containing 85 percent or more by weight of
D	5007.90.30	India	2,235,198	42.6%	Woven silk fabrics, containing 85 percent or more by weight of silk or
D	5208.31.20	India	236,557	83.2%	Dyed plain weave certified hand-loomed fabrics of cotton, containing 8
D	5208.32.10	India	99,509	93.5%	Dyed plain weave certified hand-loomed fabrics of cotton, cont. 85% or

FLAGS: '1'=Excluded January/June; 'D'=De minimis;

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LIST II : ITEMS APPROACHING COMPETITIVE NEED LIMITS
2002 U.S. IMPORTS - JANUARY THROUGH OCTOBER

FLAGS	HTSUS	PARTNER	IMPORTS	SHARE	DESCRIPTION
D	5208.41.20	India	376,067	96.8%	Plain weave certified hand-loomed fabrics of cotton, 85% or more cotto
D	5208.42.10	India	276,718	87.6%	Plain weave certified hand-loomed fabrics of cotton, 85% or more cotto
D	5209.31.30	India	2,066,486	99.3%	Dyed, plain weave certified hand-loomed fabrics of cotton, containing
D	5209.41.30	India	1,761,502	97.0%	Plain weave certified hand-loomed fabrics of cotton, cont. 85% or more
D	5607.10.00	Thailand	751,237	44.6%	Twine, cordage, rope and cables, of jute or other textile bast fibers
D	5607.90.35	Philippines	2,090,669	56.7%	Twine, cordage, rope & cables of abaca or other hard (leaf) fibers, ot
D	5702.39.10	India	620,470	90.4%	Carpets and other textile floor coverings of pile construction, woven,
D	5702.49.15	India	1,051,845	57.8%	Carpets and other textile floor coverings of pile construction, woven,
D	5702.99.20	India	12,466,738	87.8%	Carpets & other textile floor coverings, not of pile construction, wov
D	6116.99.35	Philippines	306,209	64.9%	Gloves, mittens & mitts specially designed for sports, including ski a
D	6406.10.85	India	11,000	96.3%	Uppers for footwear, nesoi, of materials nesoi, w/external surface are
D	6501.00.60	Ecuador	20,251	85.7%	Hat forms, hat bodies and hoods, not blocked to shape or with made bri
	6802.91.25	Turkey	60,265,096	44.9%	Monumental or building stone & arts. thereof, of travertine, further w
	6802.93.00	Brazil	90,812,046	22.2%	Monumental or building stone & arts. thereof, of granite, further work
	7106.92.50	Brazil	19,298,434	61.3%	Silver (including silver plated with gold or platinum), in semimanufac
	7113.19.25	Turkey	47,187,298	60.4%	Gold mixed link necklaces and neck chains
D	7113.20.25	India	105,962	42.0%	Base metal clad w/gold mixed link necklaces and neck chains
D	7114.19.00	India	794,215	50.6%	Precious metal (o/than silver) articles, nesoi, whether or not plated
	7202.41.00	Kazakhstan	31,382,439	48.0%	Ferrochromium containing by weight more than 4 percent of carbon
	7202.49.50	Russia	9,465,269	42.3%	Ferrochromium containing by weight 3 percent or less of carbon
D	7202.50.00	Kazakhstan	8,107,096	97.2%	Ferrosilicon chromium
D	7505.11.50	Zimbabwe (Rhodesia)	2,970	100.0%	Nickel (o/than alloy), profiles
	7604.10.30	Russia	21,017,969	50.5%	Aluminum (o/than alloy), bar and rods, with a round cross section
D	7614.10.50	Ecuador	153,956	76.9%	Aluminum, stranded wire, cables & the like w/steel core, not electrica
	7906.00.00	India	10,662,113	45.0%	Zinc, tubes or pipes and fittings for tubes or pipes
D	8112.92.50	Chile	8,590,778	97.8%	Rhenium, unwrought; rhenium powders
D	8459.10.00	Turkey	500,000	79.1%	Way-type unit head machines for drilling, boring, milling, threading o
D	8514.20.40	Thailand	1,543,158	60.2%	Industrial or laboratory microwave ovens for making hot drinks or for
	8543.90.68	Brazil	23,246,075	45.9%	Printed circuit assemblies of electrical machines and apparatus, havin
D	8546.10.00	Brazil	407,784	63.7%	Electrical insulators of glass
	9001.30.00	Indonesia	101,087,389	46.2%	Contact lenses
D	9305.10.40	Peru	15,265	100.0%	Parts and accessories nesoi, for revolvers or pistols designed to fire
D	9614.20.60	Turkey	32,143	53.2%	Smoking pipes and bowls, wholly of clay, and other smoking pipes w/bow

FLAGS: '1'=Excluded January/June; 'D'=De minimis;

LIST III : POSSIBLE de MINIMIS ITEMS
2002 U.S. IMPORTS - JANUARY THROUGH OCTOBER

FLAGS	HTSUS	PARTNER	IMPORTS	SHARE	DESCRIPTION
D	0305.69.60	Philippines	297,625	60.1%	Fish, nesi, in brine or salted but not dried or smoked, other than in
D	0306.14.20	Chile	4,031,340	47.2%	Crabmeat, frozen
D	0405.20.80	Poland	25,180	72.7%	Other dairy spreads, not butter substitutes or of a type provided for
D	0410.00.00	Indonesia	7,557,586	65.2%	Edible products of animal origin, nesi
D	0705.29.00	Chile	1,674,771	48.2%	Chicory, other than witloof chicory, fresh or chilled
D	0710.22.10	India	89,543	43.5%	Lima beans, uncooked or cooked by steaming or boiling in water, frozen
D	0710.22.15	India	48,463	43.2%	Lima beans, frozen, entered June 1 - October 31
D	0710.29.15	India	115,036	96.7%	Lentils, uncooked or cooked by steaming or boiling in water, frozen
D	0710.80.50	Ecuador	7,965	55.6%	Tomatoes, uncooked or cooked by steaming or boiling in water, frozen,
D	0711.40.00	India	2,525,545	71.8%	Cucumbers including gherkins, provisionally preserved but unsuitable i
D	0712.90.70	Egypt	379,410	75.6%	Dried fennel, marjoram, savory and tarragon nesi, whole, cut, sliced,
D	0714.20.10	India	38,422	57.2%	Sweet potatoes, frozen, whether or not sliced or in the form of pellet
D	0802.31.00	Turkey	19,947	65.9%	Walnuts, fresh or dried, in shell
D	0802.50.20	Turkey	445,235	72.4%	Pistachios, fresh or dried, in shell
D	0802.50.40	Turkey	93,388	42.9%	Pistachios, fresh or dried, shelled
D	0802.90.20	Pakistan	25,425	100.0%	Pignolias, fresh or dried, in shell
D	0804.50.80	Philippines	4,754,661	52.6%	Guavas, mangoes, and mangosteens, dried
D	0810.60.00	Thailand	389,166	100.0%	Durians, fresh
D	0811.20.40	Chile	506,101	42.5%	Blackberries, mulberries and white or red currants, frozen, in water o
D	0813.30.00	Chile	5,443,082	77.4%	Apples, dried
D	0813.40.10	Thailand	1,548,773	97.1%	Papayas, dried
D	1007.00.00	Chile	4,739	48.6%	Grain sorghum
D	1102.30.00	Thailand	2,089,733	46.6%	Rice flour
D	1104.23.00	El Salvador	79,883	43.6%	Grains of corn (maize), hulled, pearled, clipped, sliced, kibbled or o
D	1212.99.10	Brazil	31,928	51.3%	Sugar cane, fresh, chilled, frozen or dried, whether or not ground
D	1301.90.40	Brazil	42,800	82.3%	Turpentine gum (oleoresinous exudate from living trees)
D	1604.15.00	Chile	5,595,698	53.4%	Prepared or preserved mackerel, whole or in pieces, but not minced
D	1605.90.10	Thailand	3,475,376	62.2%	Boiled clams in immediate airtight containers, the contents of which d
D	1605.90.55	Indonesia	1,097,532	54.2%	Prepared or preserved snails, other than sea snails
D	1702.90.35	Brazil	2,676,599	58.2%	Invert molasses
D	1703.90.30	India	32,600	46.9%	Molasses, other than cane, imported for (a) the commercial extraction
D	1806.10.22	Indonesia	3,266	100.0%	Cocoa powder, o/65% but less than 90% by dry wt of sugar, subject to g
D	1806.10.43	Brazil	2,005	46.3%	Cocoa powder, o/90% by dry wt of sugar, subject to gen. note 15 of the
D	1806.32.55	Dominican Republic	74,964	68.0%	Cocoa preps, not filled, in blocks, slabs or bars weighing 2 kg or les
D	1901.20.02	Colombia	4,464	100.0%	Mixes for bakers wares, o/25% butterfat, not retail, subject to gen. n
D	1901.20.45	Argentina	2,565	100.0%	Mixes for bakers wares (dairy prod. of Ch4 US note 1), n/o 25% bf, not
D	1901.90.28	Poland	333,006	66.7%	Dry mix. w/less than 31% bf & 17.5% or more sodium caseinate, bf, whey
D	2007.99.40	Poland	66,866	42.8%	Pineapple jam
D	2008.99.35	Thailand	2,803,235	85.4%	Lychees and longans, otherwise prepared or preserved, nesi
D	2008.99.45	Philippines	119,224	82.1%	Papaya pulp, otherwise prepared or preserved, nesi
D	2008.99.50	Thailand	1,228,926	50.0%	Papayas, other than pulp, otherwise prepared or preserved, nesi
D	2208.90.80	Guyana	619,812	43.3%	Undenatured ethyl alcohol of an alcoholic strength by volume of less t
D	2306.30.00	Argentina	2,152,625	100.0%	Oilcake and other solid residues, resulting from the extraction of veg
D	2403.91.20	Dominican Republic	7,922	100.0%	"Homogenized" or "reconstituted" tobacco suitable for use as wrapper t
D	2515.12.20	Turkey	1,903,190	64.5%	Travertine, merely cut into blocks or slabs of a rectangular (includin
D	2804.29.00	Russia	7,989,520	66.9%	Rare gases, other than argon
D	2825.70.00	Chile	2,288,649	42.3%	Molybdenum oxides and hydroxides
D	2840.11.00	Turkey	93,572	100.0%	Anhydrous disodium tetraborate (refined borax)
D	2840.19.00	Turkey	1,459,551	99.1%	Disodium tetraborate (refined borax) except anhydrous
D	2841.61.00	Czech Republic	1,118,614	49.1%	Potassium permanganate
D	2841.90.20	Kazakhstan	1,403,528	49.3%	Ammonium perrhenate

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LIST III : POSSIBLE de MINIMIS ITEMS
2002 U.S. IMPORTS - JANUARY THROUGH OCTOBER

FLAGS	HTSUS	PARTNER	IMPORTS	SHARE	DESCRIPTION
D	2903.51.00	Romania	450,575	100.0%	1,2,3,4,5,6-Hexachlorocyclohexane
D	2908.10.15	Hungary	763,716	100.0%	3-Hydroxy-alpha,alpha,alpha-trifluorotoluene
D	2909.50.40	Indonesia	2,463,454	52.1%	Odoriferous or flavoring compounds of ether-phenols, ether-alcohol-phe
D	2915.35.00	Russia	11,818	52.1%	2-Ethoxyethyl acetate (Ethylene glycol, monoethyl ether acetate)
D	2917.19.10	Hungary	1,575,502	77.6%	Ferrous fumarate
D	2917.32.00	Indonesia	5,266,004	71.1%	Dioctyl orthophthalates
D	2918.21.10	Brazil	4,850,932	76.1%	Salicylic acid and its salts, suitable for medicinal use
D	2931.00.25	Brazil	1,065,539	100.0%	Pesticides of aromatic organo-inorganic (except organo-sulfur) compoun
D	2933.49.30	Brazil	3,910,468	70.3%	Pesticides of heterocyclic compounds with nitrogen hetero-atom(s) only
D	2934.20.05	Brazil	97,750	53.5%	N-tert-Butyl-2-benzothiazolesulfenamide
D	2938.10.00	Brazil	1,014,465	74.2%	Rutoside (Rutin) and its derivatives
D	3815.90.10	Panama	180,740	88.6%	Reaction initiators, reaction accelerators and catalytic preparations,
D	3926.90.56	India	12,103	50.6%	Belting and belts (except V-belts) for machinery, of plastics, contain
D	4010.12.10	Hungary	1,696,574	78.3%	Conveyor belts or belting of vulcanized rubber reinforced only with te
D	4012.11.80	India	503,699	59.6%	Retreaded pnuematic tires (nonradials), of rubber, of a kind used on m
D	4101.90.35	Brazil	791	100.0%	Raw buffalo hides and skins (other than whole), pretanned but not furt
D	4104.19.30	Brazil	202,139	66.0%	Buffalo hides and skins nesoi, w/o hair on, unit surface area ov 2.6 m
D	4106.21.10	Peru	37,202	77.1%	Hides and skins of goats or kids, without hair on, tanned but not furt
D	4106.21.90	India	935,258	43.6%	Hides and skins of goats or kids, without hair on, tanned but not furt
D	4107.11.60	Brazil	689,711	47.9%	Full grain unsplit upper & sole leather of bovines (not buffalo) nesoi
D	4107.12.60	Colombia	235,855	53.8%	Grain split whole upper & sole leather of bovines (not buffalo) nesoi
D	4107.19.40	India	13,088	97.3%	Whole buffalo skin leather (not full grain unsplits/grain splits), w/o
D	4107.91.40	India	107,221	81.9%	Full grain unsplit buffalo leather (not whole), w/o hair on, prepared
D	4107.92.40	Pakistan	1,260	100.0%	Grain splits buffalo leather (not whole), without hair on, prepared af
D	4107.99.60	Colombia	219,937	51.6%	Upper & sole leather of bovines (not buffalo) or equines, not whole, n
D	4202.22.35	Philippines	27,758	50.3%	Handbags with or without shoulder strap or without handle, with outer
D	4302.20.90	Argentina	559,986	46.0%	Heads, tails, paws and other pieces or cuttings of dressed or tanned f
D	4412.13.25	Brazil	2,549,346	92.4%	Plywood sheet n/o 6 mm thick,tropical hard wood outer ply, face ply of
D	4412.14.25	Brazil	3,892,132	90.0%	Plywood sheet n/o 6 mm thick,outer ply of nontropical hardwood,face pl
D	4412.19.30	Russia	159,491	74.4%	Plywood of wood sheets, n/o 6 mm thick each, with outer plies of conif
D	4412.99.46	Chile	509,660	45.8%	Plywood nesoi, softwood outer plies, no trop. hard wood ply, no partic
D	4602.10.23	Indonesia	5,611	43.6%	Articles of a kind normally carried in the pocket or in the handbag, o
D	4802.54.10	Brazil	2,664,576	63.2%	Writing paper, weigh < 40 g/m2, cont. n/o 10% total fiber content by a
D	4802.54.20	Indonesia	3,708,356	84.3%	India & bible paper, weigh < 40 g/m2, n/o 10% total fiber content by a
D	4802.55.20	Indonesia	1,792,678	46.2%	Drawing paper, wt 40 g/m2 -150 g/m2, n/o 10% total fiber content by me
D	4802.56.60	Colombia	74,618	68.6%	Other basic paper be sensitized use in photography, wt. 40g/m2-150g/m2
D	4802.57.10	Brazil	3,949,648	50.5%	Writing/cover paper, wt 40 g/m2-150 g/m2, cont. n/o 10% by weight tota
D	4802.57.20	Indonesia	172,566	95.5%	Drawing paper, wt 40 g/m2 to 150 g/m2, cont. n/o 10% by weight total f
D	4810.14.11	Thailand	524,176	43.9%	Basic paper be sensitized for photography, coated w/inorganic, n/o 150
D	5007.10.30	India	884,828	44.8%	Woven fabrics of noil silk, containing 85 percent or more by weight of
D	5007.90.30	India	2,235,198	42.6%	Woven silk fabrics, containing 85 percent or more by weight of silk or
D	5208.31.20	India	236,557	83.2%	Dyed plain weave certified hand-loomed fabrics of cotton, containing 8
D	5208.32.10	India	99,509	93.5%	Dyed plain weave certified hand-loomed fabrics of cotton, cont. 85% or
D	5208.41.20	India	376,067	96.8%	Plain weave certified hand-loomed fabrics of cotton, 85% or more cotto
D	5208.42.10	India	276,718	87.6%	Plain weave certified hand-loomed fabrics of cotton, 85% or more cotto
D	5209.31.30	India	2,066,486	99.3%	Dyed, plain weave certified hand-loomed fabrics of cotton, containing
D	5209.41.30	India	1,761,502	97.0%	Plain weave certified hand-loomed fabrics of cotton, cont. 85% or more
D	5607.10.00	Thailand	751,237	44.6%	Twine, cordage, rope and cables, of jute or other textile bast fibers
D	5607.90.35	Philippines	2,090,669	56.7%	Twine, cordage, rope & cables of abaca or other hard (leaf) fibers, ot
D	5702.39.10	India	620,470	90.4%	Carpets and other textile floor coverings of pile construction, woven,
D	5702.49.15	India	1,051,845	57.8%	Carpets and other textile floor coverings of pile construction, woven,

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LIST III : POSSIBLE de MINIMIS ITEMS
2002 U.S. IMPORTS - JANUARY THROUGH OCTOBER

FLAGS	HTSUS	PARTNER	IMPORTS	SHARE	DESCRIPTION
D	5702.99.20	India.....	12,466,738	87.8%	Carpets & other textile floor coverings, not of pile construction, wov
D	6116.99.35	Philippines.....	306,209	64.9%	Gloves, mittens & mitts specially designed for sports, including ski a
D	6406.10.85	India.....	11,000	96.3%	Uppers for footwear, nesoi, of materials nesoi, w/external surface are
D	6501.00.60	Ecuador.....	20,251	85.7%	Hat forms, hat bodies and hoods, not blocked to shape or with made bri
D	7113.20.25	India.....	105,962	42.0%	Base metal clad w/gold mixed link necklaces and neck chains
D	7114.19.00	India.....	794,215	50.6%	Precious metal (o/than silver) articles, nesoi, whether or not plated
D	7202.50.00	Kazakhstan.....	8,107,096	97.2%	Ferrosilicon chromium
D	7505.11.50	Zimbabwe (Rhodesia).	2,970	100.0%	Nickel (o/than alloy), profiles
D	7614.10.50	Ecuador.....	153,956	76.9%	Aluminum, stranded wire, cables & the like w/steel core, not electrica
D	8112.92.50	Chile.....	8,590,778	97.8%	Rhenium, unwrought; rhenium powders
D	8459.10.00	Turkey.....	500,000	79.1%	Way-type unit head machines for drilling, boring, milling, threading o
D	8514.20.40	Thailand.....	1,543,158	60.2%	Industrial or laboratory microwave ovens for making hot drinks or for
D	8546.10.00	Brazil.....	407,784	63.7%	Electrical insulators of glass
D	9305.10.40	Peru.....	15,265	100.0%	Parts and accessories nesoi, for revolvers or pistols designed to fire
D	9614.20.60	Turkey.....	32,143	53.2%	Smoking pipes and bowls, wholly of clay, and other smoking pipes w/bow

FLAGS: '1'=Excluded January/June; 'D'=De minimis;

LIST IV : POSSIBLE REDESIGNATION ITEMS
2002 U.S. IMPORTS - JANUARY THROUGH OCTOBER

FLAGS	HTSUS	PARTNER	IMPORTS	SHARE	DESCRIPTION
*	0202.30.10	Argentina	0	0.0%	High-qual. beef cuts, boneless, processed, frozen, descr in add. US no
*	0404.90.10	Argentina	0	0.0%	Milk protein concentrates
*	0603.10.70	Colombia	70,480,836	87.8%	Chrysanthemums, standard carnations, anthuriums and orchids, fresh cut
*	0703.10.20	Chile	19,943	1.2%	Onion sets, fresh or chilled
*	0703.20.00	Argentina	6,217,542	12.3%	Garlic, fresh or chilled
* D	0708.10.20	Guatemala	1,392,193	48.4%	Peas, fresh or chilled, shelled or unshelled, if entered July 1 to Sep
*	0708.20.10	Peru	0	0.0%	Lima beans, fresh or chilled, shelled or unshelled, if entered Novembe
* D	0708.90.30	Ecuador	110,515	67.2%	Pigeon peas, fresh or chilled, shelled or unshelled, if entered Oct. 1
*	0709.10.00	Chile	11,976	0.6%	Globe artichokes, fresh or chilled
* D	0709.20.10	Peru	13,438,299	93.8%	Asparagus, fresh or chilled, not reduced in size, if entered September
* D	0710.29.30	Ecuador	810,941	65.6%	Pigeon peas, uncooked or cooked by steaming or boiling in water, froze
*	0710.29.30	Dominican Republic	0	0.0%	Pigeon peas, uncooked or cooked by steaming or boiling in water, froze
*	0710.80.65	Guatemala	474,253	13.2%	Brussels sprouts, uncooked or cooked by steaming or boiling in water,
*	0710.80.70	Guatemala	757,167	6.4%	Vegetables nesi, uncooked or cooked by steaming or boiling in water, f
* D	0710.80.93	Guatemala	2,305,771	64.6%	Okra, reduced in size, frozen
*	0711.30.00	Turkey	217,888	32.7%	Capers, provisionally preserved but unsuitable in that state for immed
* D	0712.90.30	Peru	46,670	51.4%	Dried potatoes, whether or not cut or sliced but not further prepared
*	0712.90.74	Turkey	148,348	0.6%	Dried tomatoes in powder, but not further prepared
*	0713.33.20	El Salvador	404,652	5.7%	Dried kidney beans, including white pea beans, shelled, if entered May
*	0713.90.10	Peru	0	0.0%	Seeds of leguminous vegetables nesi, of a kind used for sowing
* D	0714.10.10	Costa Rica	5,667,439	84.2%	Cassava (manioc), frozen, whether or not sliced or in the form of pell
* D	0714.10.20	Costa Rica	10,407,801	97.6%	Cassava (manioc), fresh, chilled or dried, whether or not sliced or in
*	0714.20.10	Dominican Republic	4,288	6.3%	Sweet potatoes, frozen, whether or not sliced or in the form of pellet
*	0714.20.10	Colombia	0	0.0%	Sweet potatoes, frozen, whether or not sliced or in the form of pellet
* D	0714.20.20	Dominican Republic	2,982,759	95.0%	Sweet potatoes, fresh, chilled or dried, whether or not sliced or in t
*	0714.90.45	Costa Rica	254,480	36.5%	Frozen dasheens, yams, arrowroot, salep, Jerusalem artichokes and simi
*	0802.90.80	Guatemala	36,796	2.9%	Nuts nesi, fresh or dried, in shell
*	0805.50.30	Jamaica	0	0.0%	Tahitian limes, Persian limes and other limes of the Citrus latifolia
*	0805.50.30	Turkey	0	0.0%	Tahitian limes, Persian limes and other limes of the Citrus latifolia
* D	0805.90.01	Jamaica	1,184,190	46.3%	Citrus fruit, nesi, fresh or dried, including kumquats, citrons and be
*	0805.90.01	Turkey	0	0.0%	Citrus fruit, nesi, fresh or dried, including kumquats, citrons and be
* D	0811.90.10	Costa Rica	3,724,235	56.8%	Bananas and plantains, frozen, in water or containing added sweetening
* D	0811.90.50	Costa Rica	1,809,306	70.3%	Pineapples, frozen, in water or containing added sweetening
*	0813.10.00	Turkey	23,159,490	96.0%	Apricots, dried
*	0813.30.00	Argentina	575,062	8.1%	Apples, dried
*	1005.90.20	Argentina	706,860	5.4%	Yellow dent corn
*	1005.90.40	Argentina	298,361	4.7%	Corn (maize), other than seed and yellow dent corn
*	1007.00.00	Argentina	0	0.0%	Grain sorghum
*	1102.90.30	El Salvador	0	0.0%	Cereal flours nesi, mixed together
* D	1106.30.20	Ecuador	114,704	88.5%	Flour, meal and powder of banana and plantain
*	1602.50.09	Argentina	5,349,270	23.0%	Prepared or preserved meat of bovine animals, cured or pickled, not co
*	1602.50.20	Brazil	37,324,570	60.4%	Prepared or preserved beef in airtight containers, other than corned b
*	1602.50.20	Argentina	19,743,966	31.9%	Prepared or preserved beef in airtight containers, other than corned b
*	1604.14.50	Colombia	47,272	17.4%	Tunas and skipjack, not in airtight containers, not in bulk or in imme
*	1604.14.50	Thailand	0	0.0%	Tunas and skipjack, not in airtight containers, not in bulk or in imme
*	1701.11.05	Colombia	0	0.0%	Cane sugar, raw, in solid form, w/o added flavoring or coloring, subje
*	1701.11.05	Brazil	0	0.0%	Cane sugar, raw, in solid form, w/o added flavoring or coloring, subje
*	1701.11.10	Dominican Republic	69,248,856	19.6%	Cane sugar, raw, in solid form, w/o added flavoring or coloring, subje
*	1701.11.10	Brazil	34,625,048	9.8%	Cane sugar, raw, in solid form, w/o added flavoring or coloring, subje
*	1701.11.10	Argentina	17,532,367	4.9%	Cane sugar, raw, in solid form, w/o added flavoring or coloring, subje
*	1701.11.20	Guatemala	5,433,632	15.5%	Cane sugar, raw, in solid form, to be used for certain polyhydric alco

FLAGS: '*'=Excluded full year; '2'=Excluded July/December; 'D'=De minimis;

LIST IV : POSSIBLE REDESIGNATION ITEMS

FLAGS: '*'=Excluded full year; '2'=Excluded July/December; 'D'=De minimis; A-8

LIST IV : POSSIBLE REDESIGNATION ITEMS
2002 U.S. IMPORTS - JANUARY THROUGH OCTOBER

FLAGS	HTSUS	PARTNER	IMPORTS	SHARE	DESCRIPTION
*	1701.11.20	Brazil	12,301,796	35.3%	Cane sugar, raw, in solid form, to be used for certain polyhydric alco
*	1701.12.10	Brazil	0	0.0%	Beet sugar, raw, in solid form, w/o added flavoring or coloring, subje
*	1701.99.05	Brazil	0	0.0%	Cane/beet sugar & pure sucrose, refined, solid, w/o added coloring or
*	1701.99.10	Brazil	851,886	2.7%	Cane/beet sugar & pure sucrose, refined, solid, w/o added coloring or
* D	1702.30.22	Jamaica	38,761	75.4%	Glucose & glucose syrup nt containing or containing in dry state less
*	1702.30.22	Argentina	0	0.0%	Glucose & glucose syrup nt containing or containing in dry state less
*	1702.60.22	Argentina	0	0.0%	Oth fructose & fruc. syrup contng in dry state >50% by wt. of fructose
*	1702.90.35	Belize	0	0.0%	Invert molasses
*	1702.90.40	Dominican Republic	0	0.0%	Other cane/beet syrups nesi
*	1702.90.40	Brazil	0	0.0%	Other cane/beet syrups nesi
*	1703.10.30	Dominican Republic	0	0.0%	Cane molasses imported for (a) the commercial extraction of sugar or (
*	1703.90.50	Poland	0	0.0%	Molasses nesi
*	1806.10.22	Colombia	0	0.0%	Cocoa powder, o/65% but less than 90% by dry wt of sugar, subject to g
* D	1806.10.34	Colombia	318,756	100.0%	Cocoa powder, sweetened, neosi, subject to add US note 1 to Ch. 18
*	1806.32.55	Colombia	35,200	31.9%	Cocoa preps, not filled, in blocks, slabs or bars weighing 2 kg or les
*	2002.90.40	Turkey	0	0.0%	Tomatoes in powder, prepared or preserved otherwise than by vinegar or
* D	2004.10.40	Colombia	28,880	62.8%	Yellow (Solano) potatoes, prepared or preserved otherwise than by vine
*	2004.10.40	Peru	8,530	18.5%	Yellow (Solano) potatoes, prepared or preserved otherwise than by vine
*	2005.10.00	Turkey	0	0.0%	Homogenized vegetables, prepared or preserved otherwise than by vinega
*	2007.99.48	Argentina	22,378	4.5%	Apple, quince and pear pastes and purees, being cooked preparations
*	2007.99.50	Brazil	700,657	8.3%	Guava and mango pastes and purees, being cooked preparations
*	2008.19.25	Peru	0	0.0%	Pecans, otherwise prepared or preserved, nesi
* D	2008.19.30	Turkey	332,549	60.4%	Pignolia and pistachio nuts, otherwise prepared or preserved, nesi
*	2008.19.30	Pakistan	0	0.0%	Pignolia and pistachio nuts, otherwise prepared or preserved, nesi
*	2008.30.10	Dominican Republic	6,199	2.6%	Peel of oranges, mandarins, clementines, wilkings and similar citrus h
* D	2008.50.20	Argentina	82,155	67.9%	Apricot pulp, otherwise prepared or preserved, nesi
*	2008.50.20	Turkey	2,460	2.0%	Apricot pulp, otherwise prepared or preserved, nesi
* D	2008.99.13	Costa Rica	8,952,958	75.0%	Banana pulp, otherwise prepared or preserved, nesi
* D	2008.99.23	Dominican Republic	449,377	89.1%	Cashew apples, mameyes colorados, sapodillas, soursops and sweetsops,
*	2008.99.45	Dominican Republic	0	0.0%	Papaya pulp, otherwise prepared or preserved, nesi
*	2009.31.10	Honduras	0	0.0%	Lime juice, Brix value not exceeding 20, unfit for beverage purposes
*	2009.39.10	Honduras	0	0.0%	Lime juice, Brix value exceeding 20, unfit for beverage purposes
*	2106.90.12	Dominican Republic	0	0.0%	Compound alcoholic preparations of a kind used for the manufacture of
* D	2202.90.36	Dominican Republic	556,765	70.2%	Single fruit or vegetable juice (other than orange), fortified with vi
*	2207.10.30	Barbados	1,690,554	12.3%	Undenatured ethyl alcohol of 80 percent vol. alcohol or higher, for be
* D	2305.00.00	Argentina	619,321	100.0%	Oilcake and other solid residues, resulting from the extraction of pea
*	2401.20.57	Indonesia	0	0.0%	Tobacco, partly or wholly stemmed/stripped, n/threshed or similarly pr
*	2603.00.00	Chile	71,304,242	75.2%	Copper ores and concentrates
*	2607.00.00	Peru	0	0.0%	Lead ores and concentrates
*	2804.69.10	Brazil	39,140,895	37.7%	Silicon, containing by weight less than 99.99 percent but not less tha
*	2805.40.00	Argentina	0	0.0%	Mercury
*	2813.90.50	Argentina	0	0.0%	Sulfides of nonmetals, excluding carbon disulfide and sulfides of arse
*	2832.30.10	Argentina	0	0.0%	Sodium thiosulfate
*	2839.90.00	Argentina	0	0.0%	Silicates and commercial alkali metal silicates, excluding those of so
*	2841.30.00	Argentina	15,275	0.1%	Sodium dichromate
*	2841.50.90	Argentina	0	0.0%	Chromates except of zinc or lead and dichromates except of sodium or p
*	2843.30.00	Colombia	0	0.0%	Gold compounds
*	2843.30.00	Chile	0	0.0%	Gold compounds
*	2843.30.00	Argentina	0	0.0%	Gold compounds
*	2849.10.00	Argentina	64,425	16.2%	Calcium carbide
*	2850.00.50	Argentina	65,553	0.4%	Hydrides, nitrides, azides, silicides and borides other than of calciu

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LIST IV : POSSIBLE REDESIGNATION ITEMS
2002 U.S. IMPORTS - JANUARY THROUGH OCTOBER

FLAGS	HTSUS	PARTNER	IMPORTS	SHARE	DESCRIPTION
*	2902.11.00	Argentina.....	7,406,126	21.7%	Cyclohexane
*	2904.90.15	Brazil.....	0	0.0%	4-Chloro-3-nitro-alpha,alpha,alpha-trifluorotoluene; and other specifi
*	2905.12.00	Argentina.....	2,495,944	5.5%	Propan-1-ol (Propyl alcohol) and Propan-2-ol (isopropyl alcohol)
*	2905.13.00	Argentina.....	0	0.0%	Butan-1-ol (n-Butyl alcohol)
*	2905.22.50	Argentina.....	0	0.0%	Acyclic terpene alcohols, other than geraniol and isophytol
*	2906.11.00	Brazil.....	1,183,500	5.6%	Menthol
*	2906.14.00	Argentina.....	0	0.0%	Terpineols
*	2907.23.00	Brazil.....	132,140	7.8%	4,4'-Isopropylidenediphenol (Bisphenol A, Diphenylolpropane) and its s
*	2909.19.14	Brazil.....	74,450,434	7.8%	Methyl tertiay-butyl ether. (MTBE)
*	2912.13.00	Colombia.....	0	0.0%	Butanal (Butyraldehyde, normal isomer)
*	2914.12.00	Argentina.....	599,542	10.5%	Butanone (Methyl ethyl ketone)
*	2914.13.00	Argentina.....	124,328	1.4%	4-Methylpentan-2-one (Methyl isobutyl ketone)
*	2915.31.00	Brazil.....	891,333	10.8%	Ethyl acetate
*	2915.70.00	Argentina.....	17,643	0.0%	Palmitic acid, stearic acid, their salts and esters
*	2917.14.50	Argentina.....	82,275	1.2%	Maleic anhydride, except derived in whole or in part from benzene or o
*	2918.21.50	Argentina.....	74,770	8.4%	Salicylic acid and its salts, not suitable for medicinal use
*	2918.22.10	Argentina.....	0	0.0%	O-Acetylsalicylic acid (Aspirin)
*	2918.22.10	Turkey.....	0	0.0%	O-Acetylsalicylic acid (Aspirin)
*	2918.22.50	Argentina.....	0	0.0%	Salts and esters Of O-acetylsalicylic acid
*	2921.42.23	Guatemala.....	0	0.0%	3,4-Dichloroaniline
*	2924.21.16	Brazil.....	8,155,448	39.8%	Aromatic ureines and their derivatives pesticides, nesoi
* D	2928.00.10	Colombia.....	188,831	49.7%	Methyl ethyl ketoxime
*	2929.10.15	Argentina.....	27,400	1.1%	Mixtures of 2,4- and 2,6-toluenediisocyanates
*	2932.99.90	Argentina.....	0	0.0%	Nonaromatic heterocyclic compounds with oxygen hetero-atom(s) only, ne
* D	2933.39.23	Guatemala.....	148,800	100.0%	o-Paraquat dichloride
*	2933.49.30	Argentina.....	0	0.0%	Pesticides of heterocyclic compounds with nitrogen hetero-atom(s) only
*	2933.99.55	Argentina.....	0	0.0%	Aromatic or modified aromatic analgesics, etc., affecting the CNS, of
*	2934.99.15	Brazil.....	0	0.0%	Aromatic or modified aromatic herbicides of other heterocyclic compoun
*	3204.12.20	Argentina.....	304,728	2.8%	Acid black 61 and other specified acid and mordant dyes and preparatio
*	3204.12.30	Argentina.....	0	0.0%	Mordant black 75, blue 1, brown 79, red 81, 84 and preparations based
*	3204.12.45	Argentina.....	143,860	0.7%	Acid dyes, whether or not premetallized, and preparations based thereo
*	3204.12.50	Argentina.....	9,072	0.0%	Synthetic acid and mordant dyes and preparations based thereon, nesoi
*	3209.90.00	Argentina.....	72,060	0.1%	Paints and varnishes based on synthetic polymers or chemically modifie
*	3212.90.00	Colombia.....	31,860,417	35.4%	Pigments dispersed in nonaqueous media, in liquid or paste form, used
*	3301.12.00	Brazil.....	11,783,013	52.3%	Essential oils of orange
*	3301.19.10	Argentina.....	291,562	12.0%	Essential oils of grapefruit
*	3301.90.10	Argentina.....	0	0.0%	Extracted oleoresins consisting essentially of nonvolatile components
*	3307.20.00	Argentina.....	31,776	0.0%	Personal deodorants and antiperspirants
*	3307.49.00	Argentina.....	0	0.0%	Preparations for perfuming or deodorizing rooms, including odoriferous
*	3501.90.20	Dominican Republic..	0	0.0%	Casein glues
*	3504.00.50	Argentina.....	0	0.0%	Peptones and their derivatives; protein substances and their derivativ
*	3506.99.00	Argentina.....	0	0.0%	Prepared glues and other prepared adhesives, excluding adhesives based
*	3701.10.00	Argentina.....	0	0.0%	Photographic plates and film in the flat, sensitized, unexposed, of an
*	3702.10.00	Argentina.....	0	0.0%	Photographic film in rolls, sensitized, unexposed, for X-ray use; of a
*	3706.10.30	Argentina.....	0	0.0%	Sound recordings on motion-picture film of a width of 35 mm or more, s
*	3707.90.32	Argentina.....	0	0.0%	Chemical preparations for photographic uses, nesoi
*	3806.30.00	Argentina.....	0	0.0%	Ester gums
*	3824.90.40	Brazil.....	527,893	0.7%	Fatty substances of animal or vegetable origin and mixtures thereof, n
*	3901.90.90	Argentina.....	5,063	0.0%	Polymers of ethylene, nesoi, in primary forms, other than elastomeric
*	3902.10.00	Argentina.....	2,001	0.0%	Polypropylene, in primary forms
*	3902.20.50	Argentina.....	1,892,205	29.4%	Polyisobutylene, other than elastomeric, in primary forms

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LIST IV : POSSIBLE REDESIGNATION ITEMS

FLAGS: '*'=Excluded full year; '2'=Excluded July/December; 'D'=De minimis; A-10

LIST IV : POSSIBLE REDESIGNATION ITEMS
2002 U.S. IMPORTS - JANUARY THROUGH OCTOBER

FLAGS	HTSUS	PARTNER	IMPORTS	SHARE	DESCRIPTION
*	3902.90.00	Argentina.....	0	0.0%	Polymers of propylene or of other olefins, nesoi, in primary forms
*	3903.90.50	Argentina.....	7,041	0.0%	Polymers of styrene, nesoi, in primary forms
*	3904.21.00	Brazil.....	0	0.0%	Polyvinyl chloride, mixed with other substances, nonplasticized, in pr
*	3904.40.00	Argentina.....	0	0.0%	Vinyl chloride copolymers nesoi, in primary forms
*	3906.10.00	Argentina.....	0	0.0%	Polymethyl methacrylate, in primary forms
*	3906.90.50	Argentina.....	0	0.0%	Acrylic polymers (except plastics or elastomers), in primary forms, ne
*	3907.30.00	Argentina.....	0	0.0%	Epoxide resins in primary forms
*	3907.60.00	Argentina.....	519,458	0.1%	Polyethylene terephthalate in primary forms
*	3907.99.00	Argentina.....	0	0.0%	Polyesters nesoi, saturated, in primary forms
*	3909.10.00	Argentina.....	0	0.0%	Urea resins; thiourea resins
*	3909.50.50	Argentina.....	3,515	0.0%	Polyurethanes, other than elastomeric or cements, in primary forms
*	3913.90.20	Argentina.....	1,680,759	1.0%	Polysaccharides and their derivatives, nesoi, in primary forms
*	3920.59.80	Dominican Republic..	117,024	5.9%	Plates, sheets, film, etc, noncellular, not reinforced, laminated, com
*	3921.90.50	Argentina.....	11,778	0.0%	Nonadhesive plates, sheets, film, foil and strip, nonflexible, nesoi,
*	3923.90.00	Argentina.....	712,429	0.1%	Articles nesoi, for the conveyance or packing of goods, of plastics
*	3926.20.30	Pakistan.....	1,218,559	16.0%	Gloves specially designed for use in sports, nesoi, of plastics
*	4006.10.00	Brazil.....	26,072	1.2%	"Camel-back" strips of unvulcanized rubber, for retreading rubber tire
*	4010.19.50	Brazil.....	1,371	0.2%	Conveyor belts/belting of vulcanized rubber, nesoi, combined w/textile
*	4011.10.10	Brazil.....	48,963,748	2.7%	New pneumatic radial tires, of rubber, of a kind used on motor cars (i
*	4011.10.10	Argentina.....	14,225,154	0.8%	New pneumatic radial tires, of rubber, of a kind used on motor cars (i
*	4011.10.50	Brazil.....	17,685	0.0%	New pneumatic tires excluding radials, of rubber, of a kind used on mo
*	4011.20.10	Brazil.....	49,804,118	3.6%	New pneumatic radial tires, of rubber, of a kind used on buses or truc
*	4011.20.50	Brazil.....	3,919,633	3.0%	New pneumatic tires excluding radials, of rubber, of a kind used on bu
*	4012.90.45	Sri Lanka (Ceylon)..	0	0.0%	Interchangeable tire treads and tire flaps, of natural rubber, nesoi
*	4101.20.40	Argentina.....	0	0.0%	Whole bovine hides/skins (not buffalo) (n/o 8 kg dried, 10 kg dry salt
*	4101.20.50	Brazil.....	6,461	13.2%	Whole bovine hide/skin (not buffalo) (n/o 8 kg dried, 10 kg dry salted
*	4101.20.50	Argentina.....	415	0.8%	Whole bovine hide/skin (not buffalo) (n/o 8 kg dried, 10 kg dry salted
*	4101.20.70	Argentina.....	0	0.0%	Whole equine hides and skins (n/o 8 kg when dried, 10 kg when dry salt
*	4101.50.40	Argentina.....	0	0.0%	Whole raw bovine hides and skins (not buffalo), weight over 16 kg, sur
*	4101.50.50	Brazil.....	252	0.3%	Whole raw bovine hides/skins (not buffalo), weight over 16 kg, surface
*	4101.50.50	Argentina.....	1,909	2.6%	Whole raw bovine hides/skins (not buffalo), weight over 16 kg, surface
*	4101.50.70	Argentina.....	0	0.0%	Whole raw equine hides and skins, of a weight exceeding 16 kg, pretann
*	4101.90.40	Argentina.....	177,168	31.3%	Raw bovine hides and skins (other than whole), vegetable pretanned but
* D	4101.90.50	Brazil.....	92,885	52.4%	Raw bovine hides and skins (other than whole), pretanned (other than v
*	4101.90.50	Argentina.....	2,720	1.5%	Raw bovine hides and skins (other than whole), pretanned (other than v
*	4101.90.70	Argentina.....	1,051	1.0%	Raw equine hides and skins (other than whole), pretanned but further p
*	4103.10.30	Pakistan.....	810	5.3%	Raw hides and skins of goat or kid (not excluded by note 1(c) to chapt
*	4103.20.20	Argentina.....	0	0.0%	Raw hides and skins of reptiles, vegetable pretanned but not further p
*	4104.11.40	Argentina.....	0	0.0%	Full grain unsplit/grain split bovine nesoi and equine upper & sole hi
*	4104.11.50	Argentina.....	0	0.0%	Full grain unsplit/grain split bovine (except buffalo) nesoi and equin
*	4104.19.40	Argentina.....	5,622	3.7%	Upper and sole bovine (except buffalo) and equine hides and skins, nes
*	4104.19.50	Argentina.....	36,990	0.9%	Bovine (except buffalo) and equine hides and skins (not upper/sole) ne
*	4104.41.40	Argentina.....	11,861	0.5%	Crust full grain unsplit/grain split bovine (ex. buffalo) nesoi/equine
*	4104.41.50	Argentina.....	286,146	3.1%	Crust full grain unsplit/grain split bovine (except buffalo) nesoi and
*	4104.49.40	Argentina.....	19,301	1.4%	Crust upper and sole equine and bovine (except buffalo) nesoi hides an
*	4104.49.50	Argentina.....	59,164	0.8%	Crust bovine (except buffalo) nesoi and equine hides and skins, nesoi,
*	4106.21.90	Pakistan.....	336,138	15.6%	Hides and skins of goats or kids, without hair on, tanned but not furt
*	4106.22.00	Pakistan.....	345,491	23.0%	Hides and skins of goats or kids, without hair on, tanned but not furt
*	4107.11.50	Argentina.....	43,615,572	22.6%	Full grain unsplit upholstery leather of bovines (not buffalo) nesoi a
*	4107.11.60	Argentina.....	249,293	17.3%	Full grain unsplit upper & sole leather of bovines (not buffalo) nesoi
*	4107.11.70	Argentina.....	10,783	0.2%	Full grain unsplit whole bovine (not buffalo) nesoi and equine leather

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LIST IV : POSSIBLE REDESIGNATION ITEMS
2002 U.S. IMPORTS - JANUARY THROUGH OCTOBER

FLAGS	HTSUS	PARTNER	IMPORTS	SHARE	DESCRIPTION
*	4107.11.80	Argentina	20,247,452	74.7%	Full grain unsplit whole bovine (not buffalo) nesoi and equine leather
*	4107.12.50	Argentina	17,627,379	46.2%	Grain split whole upholstery leather of bovines (not buffalo) nesoi an
*	4107.12.60	Argentina	0	0.0%	Grain split whole upper & sole leather of bovines (not buffalo) nesoi
*	4107.12.70	Argentina	433	0.0%	Grain split whole bovine (not buffalo) nesoi and equine nesoi leathers
*	4107.12.80	Argentina	214,803	2.8%	Grain split whole bovine (not buffalo) nesoi and equine nesoi leathers
*	4107.19.50	Argentina	19,920,222	39.9%	Whole upholstery leather of bovines (not buffalo) nesoi and equines ne
*	4107.19.60	Argentina	0	0.0%	Whole upper & sole leather of bovines (not buffalo) nesoi or equines n
*	4107.19.70	Argentina	2,373	0.2%	Whole bovine (not buffalo) and equine leather, nesoi, without hair on,
*	4107.19.80	Argentina	233,922	3.1%	Whole bovine (not buffalo) and equine leather, nesoi, without hair on,
*	4107.91.50	Argentina	26,966	0.2%	Full grain unsplit upholstery leather of bovines (not buffalo) & equin
*	4107.91.60	Argentina	42,192	2.7%	Full grain unsplit upper & sole leather of bovines (not buffalo) or eq
*	4107.91.70	Argentina	202,114	5.5%	Full grain unsplit bovine (not buffalo) & equine leather, not whole, w
*	4107.91.80	Argentina	325,188	2.5%	Full grain unsplit bovine (not buffalo) & equine leather, not whole, w
*	4107.92.50	Argentina	664,699	6.4%	Grain splits upholstery leather of bovines (not buffalo) and equines,
*	4107.92.60	Argentina	126,277	2.5%	Grain splits upper & sole leather of bovines (not buffalo) or equines,
*	4107.92.70	Argentina	0	0.0%	Grain splits bovine (not buffalo) and equine leather, not whole, w/o h
*	4107.92.80	Argentina	6,092,591	30.6%	Grain splits bovine (not buffalo) and equine leather, not whole, witho
*	4107.99.50	Argentina	4,535,767	6.7%	Upholstery leather of bovines (not buffalo) or equines, not whole, nes
*	4107.99.60	Argentina	0	0.0%	Upper & sole leather of bovines (not buffalo) or equines, not whole, n
*	4107.99.70	Argentina	182,053	1.6%	Bovine (not buffalo) and equine leather, not whole, nesoi, without hai
*	4107.99.80	Argentina	28,478	0.3%	Bovine (not buffalo) and equine leather, not whole, nesoi, without hai
*	4112.00.60	Argentina	0	0.0%	Sheep or lamb skin leather, without wool on, fancy, further prepared a
*	4113.10.30	Pakistan	458,076	27.5%	Goat or kidskin leather, without hair on, not fancy, further prepared
*	4113.10.60	Pakistan	104,616	8.4%	Goat or kidskin leather, without hair on, fancy, further prepared afte
*	4113.90.60	Argentina	1,700	0.0%	Leather of animals nesoi, without hair on, fancy, further prepared aft
*	4114.20.70	Argentina	0	0.0%	Patent laminated leather or metallized leather, other than calf or kip
*	4201.00.60	Argentina	2,260,129	2.5%	Saddlery and harnesses for animals nesi, (incl. traces, leads, knee pa
*	4203.21.20	Pakistan	447,420	2.2%	Batting gloves, of leather or of composition leather
*	4203.21.55	Pakistan	184,985	9.0%	Cross-country ski gloves, mittens and mitts, of leather or of composit
*	4203.21.60	Pakistan	323,544	6.4%	Ski or snowmobile gloves, mittens and mitts, nesi, of leather or of co
*	4203.21.80	Pakistan	8,078,479	10.5%	Gloves, mittens and mitts specially designed for use in sports, nesi,
*	4205.00.60	Argentina	0	0.0%	Articles of reptile leather, nesi
*	4303.10.00	Argentina	982,849	0.6%	Articles of apparel and clothing accessories, of furskins
*	4411.29.90	Brazil	0	0.0%	Fiberboard nesi, density between 0.5 g/cm3 and 0.8 g/cm3
*	4412.13.51	Brazil	1,592,120	5.3%	Plywood sheets n/o 6 mm thick, tropical wood nesoi outer ply, with fac
*	4412.13.51	Indonesia	13,161,553	44.2%	Plywood sheets n/o 6 mm thick, tropical wood nesoi outer ply, with fac
*	4412.13.91	Brazil	109,748	2.8%	Plywood sheets n/o 6 mm thick, tropical wood nesoi outer ply, surface
* D	4412.13.91	Indonesia	2,246,808	58.3%	Plywood sheets n/o 6 mm thick, tropical wood nesoi outer ply, surface
*	4412.14.31	Brazil	38,239,403	24.1%	Plywood sheets n/o 6 mm thick, outer ply of nontropical hardwood, with
*	4412.14.56	Brazil	459,969	5.4%	Plywood sheets n/o 6 mm thick, outer ply of nonconiferous wood, surfac
*	4412.22.31	Brazil	896,597	8.7%	Plywood nesoi, least one hardwood outer ply, w/tropical hardwood ply,
*	4412.22.31	Indonesia	2,731,624	26.7%	Plywood nesoi, least one hardwood outer ply, w/tropical hardwood ply,
* D	4412.22.41	Indonesia	768,548	52.0%	Plywood nesoi, at least one hardwood outer ply, w/tropical hardwood pl
*	4412.22.41	Colombia	0	0.0%	Plywood nesoi, at least one hardwood outer ply, w/tropical hardwood pl
*	4412.22.41	Brazil	0	0.0%	Plywood nesoi, at least one hardwood outer ply, w/tropical hardwood pl
*	4412.29.36	Brazil	514,869	1.5%	Plywood nesoi, at least one hardwood outer ply nesoi, no particle boar
*	4412.29.36	Indonesia	5,388,238	16.2%	Plywood nesoi, at least one hardwood outer ply nesoi, no particle boar
* D	4412.29.46	Ecuador	647,781	44.6%	Plywood nesoi, at least one hardwood outer ply nesoi, no particle boar
*	4412.29.46	Brazil	13,733	0.9%	Plywood nesoi, at least one hardwood outer ply nesoi, no particle boar
*	4412.29.46	Indonesia	0	0.0%	Plywood nesoi, at least one hardwood outer ply nesoi, no particle boar
*	4412.92.41	Ecuador	0	0.0%	Plywood nesoi,softwood outer plies,least 1 ply trop. hardwood,no parti

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LIST IV : POSSIBLE REDESIGNATION ITEMS
2002 U.S. IMPORTS - JANUARY THROUGH OCTOBER

FLAGS	HTSUS	PARTNER	IMPORTS	SHARE	DESCRIPTION
* D	4412.92.51	Guyana	187,510	53.3%	Plywood nesoi,softwood outer plies, at least 1 ply trop. hardwood, no
*	4412.99.56	Colombia	0	0.0%	Plywood nesoi, softwood outer plies, no trop. hard wood ply, no partic
*	4421.90.60	Brazil	0	0.0%	Wooden skewers, candy sticks, ice cream sticks, tongue depressors, dri
*	4802.55.10	Argentina	15,706	0.0%	Writing/cover paper, wt 40 g/m2-150 g/m2, n/o 10% total fiber by mecha
*	4802.56.10	Argentina	0	0.0%	Writing & cover paper, wt 40 g/m2-150 g/m2, n/o 10% by weight total fi
*	4802.57.10	Argentina	0	0.0%	Writing/cover paper, wt 40 g/m2-150 g/m2, cont. n/o 10% by weight tota
*	4809.10.20	Guatemala	0	0.0%	Carbon or similar copying paper, in rolls over 36 cm wide or rectangul
*	4823.20.10	Brazil	0	0.0%	Paint filters and strainers of paper or paperboard
*	4823.90.20	Philippines	2,997,764	31.0%	Articles of papier-mache, nesi
*	5701.10.13	Pakistan	38,862	8.2%	Carpet & other textile floor covering,hand-knotted/hand-inserted,w/ov
*	5702.10.10	Pakistan	278	0.0%	Certified hand-loomed and folklore products being "Kelem", "Schumacks"
*	5702.91.20	Pakistan	1,175	0.7%	Certified hand-loomed & folklore floor covering, woven not on power-dr
*	5805.00.20	Pakistan	1,240	1.8%	Certified hand-loomed and folklore hand-woven tapestries nesoi and nee
*	5904.90.90	Guatemala	0	0.0%	Floor coverings consisting of a coating applied on a textile backing,
*	6304.99.10	Pakistan	0	0.0%	Wall hangings, not knitted or crocheted, of wool or fine animal hair,
*	6304.99.40	Pakistan	348	9.7%	Certified hand-loomed and folklore pillow covers of wool or fine anima
*	6501.00.60	Colombia	0	0.0%	Hat forms, hat bodies and hoods, not blocked to shape or with made bri
*	6908.10.20	Thailand	326,291	4.5%	Glazed ceramic tiles, cubes & similar arts. w/largest area enclosable
*	6910.10.00	Brazil	9,403,696	6.9%	Porcelain or china ceramic sinks, washbasins, baths, bidets, water clo
*	6910.90.00	Brazil	1,952,451	0.9%	Ceramic (o/than porcelain or china) sinks, washbasins, baths, bidets,
*	6910.90.00	Argentina	0	0.0%	Ceramic (o/than porcelain or china) sinks, washbasins, baths, bidets,
*	6911.90.00	Brazil	0	0.0%	Porcelain or china (o/than bone china) household and toilet articles (
*	6912.00.44	Brazil	716,462	1.0%	Ceramic (o/than porcelain or china) household mugs and steins w/o atta
*	7007.11.00	Argentina	85,829	0.0%	Toughened (tempered) safety glass, of size and shape suitable for inco
*	7106.92.50	Chile	0	0.0%	Silver (including silver plated with gold or platinum), in semimanufac
*	7109.00.00	Peru	0	0.0%	Base metals or silver clad with gold, but not further worked than semi
*	7113.19.21	Peru	13,746,688	41.1%	Gold rope necklaces and neck chains
*	7113.19.29	Turkey	11,410,758	1.7%	Gold necklaces and neck chains (o/than of rope or mixed links)
*	7113.19.50	Turkey	93,990,325	2.7%	Precious metal (o/than silver) articles of jewelry and parts thereo, w
*	7114.11.60	Argentina	7,750	0.4%	Articles of silver nesoi, for household, table or kitchen use, toilet
*	7114.19.00	Peru	0	0.0%	Precious metal (o/than silver) articles, nesoi, whether or not plated
*	7115.90.30	Colombia	3,213	0.0%	Gold (including metal clad with gold) articles (o/than jewellry or gol
*	7115.90.30	Argentina	2,281	0.0%	Gold (including metal clad with gold) articles (o/than jewellry or gol
*	7115.90.40	Argentina	0	0.0%	Silver (including metal clad with silver) articles (o/than jewellry or
*	7116.10.10	Thailand	0	0.0%	Natural pearl articles
*	7116.20.05	Thailand	6,386,378	12.3%	Jewelry articles of precious or semiprecious stones, valued not over $
*	7116.20.15	Thailand	1,622,995	9.3%	Jewelry articles of precious or semiprecious stones, valued over $40 p
*	7117.90.55	Peru	0	0.0%	Imitation jewelry nesoi, not of base metal, n/o 20 cents/doz. pcs or p
*	7202.21.50	Argentina	0	0.0%	Ferrosilicon containing by weight more than 55% but not more than 80%
*	7202.30.00	Argentina	0	0.0%	Ferrosilicon manganese
*	7307.91.30	Brazil	0	0.0%	Alloy steel (o/than stainless), not cast, flanges for tubes/pipes, for
*	7308.90.95	Argentina	607,665	0.1%	Iron or steel, structures (excluding prefab structures of 9406) and pa
*	7315.90.00	Argentina	96,729	0.6%	Iron or steel, parts of chain (other than articulated link chain)
*	7403.11.00	Russia	35,384,875	3.0%	Refined copper cathodes and sections of cathodes
*	7403.11.00	Kazakhstan	4,479,153	0.3%	Refined copper cathodes and sections of cathodes
*	7403.21.00	Chile	50,407	0.7%	Copper-zinc base alloys (brass), unwrought nesoi
*	7403.22.00	Chile	0	0.0%	Copper-tin base alloys (bronze), unwrought nesoi
*	7403.23.00	Chile	0	0.0%	Copper-nickel base alloys (cupro-nickel) or copper-nickel-zinc base al
*	7403.29.00	Chile	0	0.0%	Copper alloys (o/than copper-zinc, copper-tin, copper-nickel(cupro-nic
*	7407.21.90	Brazil	22,045	0.0%	Copper-zinc base alloys (brass), bars & rods nesoi, not having a recta
*	7407.22.30	Russia	0	0.0%	Copper-nickel base alloys (cupro-nickel) or copper-nickel-zinc base al

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LIST IV : POSSIBLE REDESIGNATION ITEMS
2002 U.S. IMPORTS - JANUARY THROUGH OCTOBER

FLAGS	HTSUS	PARTNER	IMPORTS	SHARE	DESCRIPTION
*	7409.11.50	Argentina.....	0	0.0%	Refined copper, plates, sheets and strip, in coils, with a thickness o
*	7409.21.00	Argentina.....	0	0.0%	Copper-zinc base alloys (brass), plates, sheets and strip, in coils
*	7409.39.50	Hungary.....	102,355	33.6%	Copper-tin base alloys (bronze), plates, sheets and strip, with a thic
*	7411.21.50	Trinidad and Tobago.	0	0.0%	Copper-zinc base alloys (brass), tubes and pipes, other than seamless
*	7604.10.30	Venezuela.....	0	0.0%	Aluminum (o/than alloy), bar and rods, with a round cross section
*	7604.10.50	Russia.....	19,853	0.3%	Aluminum (o/than alloy), bar and rods, other than with a round cross s
*	7605.11.00	Venezuela.....	0	0.0%	Aluminum (o/than alloy), wire, with a maximum cross-sectional dimensio
*	7605.21.00	Venezuela.....	0	0.0%	Aluminum alloy, wire, with a maximum cross-sectional dimension over 7
*	7614.90.20	Venezuela.....	58,777	4.6%	Aluminum, elect. conductors of stranded wire, cables & the like (o/tha
*	7614.90.50	Venezuela.....	0	0.0%	Aluminum, stranded wire, cables and the like (o/than w/steel core), no
*	7901.11.00	Argentina.....	3,939,878	0.9%	Zinc (o/than alloy), unwrought, containing o/99.99% by weight of zinc
*	7901.12.50	Argentina.....	0	0.0%	Zinc (o/than alloy), unwrought, o/than casting-grade zinc, containing
*	7905.00.00	Peru.....	87,352	2.1%	Zinc, plates, sheets, strip and foil
*	8104.11.00	Russia.....	20,313,559	38.0%	Magnesium, unwrought, containing at least 99.8 percent by weight of ma
*	8112.30.60	Russia.....	288,870	20.3%	Germanium, unwrought
*	8207.20.00	Argentina.....	0	0.0%	Interchangeable dies for drawing or extruding metal, and base metal pa
* D	8211.92.60	Pakistan.....	1,105,921	49.0%	Hunting knives w/fixed blades, with wood handles
*	8211.95.50	Pakistan.....	0	0.0%	Base metal handles for knives (o/than table knivies) w/fixed blades
*	8408.20.90	Brazil.....	65,793	0.3%	Compression-ignition internal-combustion piston engines used for propu
*	8409.91.50	Brazil.....	58,582,717	3.1%	Parts nesi, used solely or principally with spark-ignition internal-co
*	8409.91.50	Argentina.....	4,884,307	0.2%	Parts nesi, used solely or principally with spark-ignition internal-co
*	8409.91.99	Argentina.....	3,005,514	0.7%	Parts nesi, used solely or principally with spark-ignition internal-co
*	8409.99.91	Argentina.....	2,507,157	0.5%	Parts nesi, used solely or principally with the engines of heading 840
*	8413.30.10	Brazil.....	12,714,280	6.5%	Fuel-injection pumps for compression-ignition engines, not fitted with
*	8414.51.00	Thailand.....	93,743,085	12.4%	Table, floor, wall, window, ceiling or roof fans, with a self-containe
*	8450.90.20	Ecuador.....	0	0.0%	Tubs and tub assemblies for household- or laundry-type washing machine
*	8477.51.00	Argentina.....	0	0.0%	Machinery for molding or retreading pneumatic tires or for molding or
*	8480.30.00	Argentina.....	0	0.0%	Molding patterns
*	8481.30.20	Argentina.....	61,276	0.1%	Check valves of iron or steel for pipes, boiler shells, tanks, vats or
*	8481.80.30	Argentina.....	274,552	0.0%	Taps, cocks, valves & similar appliances for pipes, boiler shells, tan
*	8481.80.90	Argentina.....	761,064	0.0%	Taps, cocks, valves & similar appliances for pipes, boiler shells, tan
*	8481.90.30	Argentina.....	128,153	0.1%	Parts of hand operated and check appliances for pipes, boiler shells,
*	8503.00.65	Argentina.....	0	0.0%	Stators and rotors for electric motors & generators of heading 8501, n
*	8516.50.00	Thailand.....	89,653,197	11.3%	Microwave ovens of a kind used for domestic purposes
*	8524.52.10	Argentina.....	0	0.0%	Pre-recorded magnetic video tape recordings of a width exceeding 4 mm
*	8528.12.16	Thailand.....	1,084,425	21.6%	Non-high def. color television reception app., nonprojection, w/CRT, d
*	8535.40.00	Dominican Republic..	0	0.0%	Lightning arrestors, voltage limiters and surge suppressors, for a vol
*	8536.90.80	Argentina.....	46,294	0.0%	Electrical apparatus nesi, for switching or making connections to or i
*	8538.90.80	Argentina.....	13,190	0.0%	Other parts nesi, suitable for use solely or principally with the appa
*	8708.40.50	Brazil.....	61,564	0.1%	Pts. & access. of mtr. vehic. of 8701, nesoi, and of 8705, gear boxes
*	8708.60.80	Argentina.....	0	0.0%	Pts. & access. of mtr. vehic. of 8701, nesoi, of 8702, and of 8704-870
*	8708.70.60	Argentina.....	118,413	0.0%	Pts. & access. of mtr. vehicc of 8701, nesoi, and of 8702-8705, pts. &
*	8708.99.67	Brazil.....	48,974,885	2.3%	Pts. & access. of motor vehicles of 8701, nesoi, and 8702-8705, pts. f
*	8708.99.80	Argentina.....	2,386,461	0.0%	Pts. & access., nesoi, of motor vehicles of 8701, nesoi, and 8702-8705
*	8716.90.50	Argentina.....	409,941	0.2%	Parts of trailers and semi-trailers and vehicles, not mechanically pro
*	9003.90.00	Argentina.....	0	0.0%	Parts of frames and mountings for spectacles, goggles or the like
*	9009.12.00	Thailand.....	93,356,040	66.2%	Electrostatic photocopying apparatus, operating by reproducing the ori
*	9105.19.10	Brazil.....	0	0.0%	Alarm clocks nesoi, not electrically operated, movement measuring not
*	9105.19.40	Brazil.....	0	0.0%	Alarm clocks nesoi, not electrically operated, movement measuring ove
*	9113.10.00	Argentina.....	0	0.0%	Watch straps, watch bands and watch bracelets, of precious metal or of
*	9113.20.60	Argentina.....	0	0.0%	Parts of watch bracelet of base metal, whether or not gold- or silver-

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2002 U.S. IMPORTS - JANUARY THROUGH OCTOBER

FLAGS	HTSUS	PARTNER	IMPORTS	SHARE	DESCRIPTION
*	9405.30.00	Thailand.....	92,207	0.0%	Lighting sets of a kind used for Christmas trees
*	9506.62.80	Pakistan.....	445,939	0.5%	Inflatable balls (o/than footballs and soccer balls) nesoi
*	9506.91.00	Pakistan.....	656,186	0.1%	Arts. and equip. for general physical exercise, gymnastics or athletic

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[FR Doc. 03–2746 Filed 2–4–03; 8:45 am]
BILLING CODE 3190–01–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. WTO/DS–275]

WTO Consultations Regarding Venezuela—Import Licensing Measures on Certain Agricultural Products

AGENCY: Office of the United States Trade Representative.

ACTION: Notice; request for comments.

SUMMARY: The Office of the United States Trade Representative (USTR) is providing notice that on November 7, 2002, the United States requested consultations with Venezuela under the Marrakesh Agreement Establishing the World Trade Organization (WTO), regarding Venezuela's import licensing measures on certain agricultural products. These measures appear to be inconsistent with the Venezuela's obligations under the provisions of the GATT 1994, of the WTO Agreement on Agriculture, the TRIMs Agreement and the Import Licensing Agreement and, in particular, Articles III, X, XI, and XII of the GATT 1994, Article 4.2 of the Agreement on Agriculture, Article 2.1 of the TRIMs Agreement, and Articles 1.4, 3.2, 3.5, 5.1, 5.2, and 5.3 of the Import Licensing Agreement. Pursuant to Article 4.3 of the WTO Dispute Settlement Understanding (DSU), Venezuela met with the United States within a period of 30 days from the date of the request, on November 26, 2002. USTR invites written comments from the public concerning the issues raised in this dispute.

DATES: Although the USTR will accept any comments received during the course of the dispute settlement proceedings, comments should be submitted on or before March 21, 2002, to be assured of timely consideration by USTR.

ADDRESSES: Submit comments to *FR0057@ustr.gov*, or to Sandy McKinzy, Monitoring and Enforcement Unit, Office of the General Counsel, fax (202) 395–3640. For assistance, contact Ms. McKinzy at (202) 395–3581.

FOR FURTHER INFORMATION CONTACT: Katharine J. Mueller, Assistant General Counsel, Office of the United States Trade Representative, at (202) 395–3581.

SUPPLEMENTARY INFORMATION: Section 127(b) of the Uruguay Round Agreements Act (URAA) (19 U.S.C. 3537(b)(1)) requires that notice and opportunity for comment be provided after the United States submits or receives a request for the establishment of a WTO dispute settlement panel. Consistent with this obligation, but in an effort to provide additional opportunity for comment, USTR is providing notice that consultations have been requested pursuant to the WTO Dispute Settlement Understanding. If such consultations should fail to resolve the matter and a dispute settlement panel is established pursuant to the DSU, such panel, which would hold its meetings in Geneva, Switzerland, would be expected to issue a report on its findings and recommendations within six to nine months after it is established.

Major Issues Raised by the United States

Venezuela has established import licensing requirements for numerous agricultural products, including corn, sorghum, dairy products (for example, cheese, whey, whole milk powder, and non-fat dry milk), grapes, yellow grease, poultry, beef, pork, and soybean meal. Thus, to import any of these products, an importer must obtain a license in accordance with Venezuelan procedures. Venezuela maintains these import licensing systems and practices through numerous measures.

Venezuela requires import licenses for other agricultural products, including poultry, beef, pork, and grapes (Decreto No. 989, Gaceta Official No. 5,039 Extraordinaria (February 9, 1996)), but does not appear to have published any resolutions, decrees, official notices, or any other measures establishing applicable import licensing procedures.

Venezuela's import licensing system for all of these agricultural products appears to establish a discretionary import licensing regime. Through its import licensing practices, Venezuela has also failed to establish a transparent and predictable system for issuing import licenses and has severely restricted and distorted trade in these goods. Such practices include Venezuela's failure to publish rules and information concerning its licensing procedures, its failure to process applications in a timely fashion, its failure to make licenses valid for a period of reasonable duration, and its administration of tariff-rate quotas so as to discourage their full utilization. In addition, in several cases Venezuela has tied the issuance of licenses to the purchase, consumption, or use of domestic products or investment in domestic production. At least twice Venezuela has explicitly banned the importation of corn by suspending the granting of import license until domestic production has been removed from the market.

Venezuela's import licensing systems and practices thus appear to be inconsistent with numerous WTO obligations. Specifically, Venezuela's measures appear inconsistent with Article 4.2 of the Agreement on Agriculture, Articles II, X, XI, and XIII of GATT 1994, Article 2.1 of the TRIMs Agreement, and Articles 1.4, 3.2, 3.5, 5.1, 5.2, and 5.3 of the Import Licensing Agreement. Venezuela's measures also appear to nullify or impair the benefits accruing to the United States directly under the cited agreements.

Public Comment: Requirements for Submissions

Interested persons are invited to submit written comments concerning the issues raised in the dispute. Comments must be in English. In order to facilitate prompt consideration of submissions, USTR strongly urges and prefers electronic e-mail submissions to the address *vzimportlicensing@ustr.gov*, in response to this notice. In the event that an e-mail submission is impossible, submissions should be made by facsimile to Sandy McKinzy at the number given above. It is preferred that documents be submitted as either WordPerfect (".WPD"), MSWord (".DOC"), or text (".TXT") files. To the extent possible, any data attachments to the submission should be included in the same file as the submission itself, and not as separate files. Facsimile submissions should include the following information at the top of the first page, and e-mail submissions should include the following information in the subject line: "Venezuela Import Licensing Dispute."

A person requesting that information contained in a comment submitted by that person be treated as confidential business information must certify that such information is business confidential and would not customarily be released to the public by the commenter. Confidential business information must be clearly marked "BUSINESS CONFIDENTIAL" (if possible in a contrasting color ink) at the top of each page of each copy. For any document containing business confidential information submitted by electronic transmission, the file name of the business confidential version should begin with the characters "BC", and the file name of the public version should begin with the characters "P". The "P" or "BC" should be followed by the name of the commenter. Interested persons who make submissions by electronic mail should not provide separate cover letters; information that might appear in

a cover letter should be included in the submission itself. Similarly, to the extent possible, any attachments to the submission should be included in the same file as the submission itself, and not as separate files.

Information or advice contained in a comment submitted, other than business confidential information, may be determined by USTR to be confidential in accordance with section 135(g)(2) of the Trade Act of 1974 (19 U.S.C. 2155(g)(2)). If the submitter believes that information or advice may qualify as such, the submitter—

(1) Must so designate the information or advice;

(2) Must clearly mark the material as "SUBMITTED IN CONFIDENCE" in a contrasting color ink at the top of each page of each copy, or appropriately name the electronic file submitted containing such material; and

(3) Is encouraged to provide a non-confidential summary of the information or advice.

Pursuant to section 127(e) of the URAA (19 U.S.C. 3537(e)), USTR will maintain a file on this dispute settlement proceeding, accessible to the public, in the USTR Reading Room, which is located at 1724 F Street, NW., Washington, DC 20508. The public file will include non-confidential comments received by USTR from the public with respect to the dispute; if a dispute settlement panel is convened, the U.S. submissions to that panel, the submissions, or non-confidential summaries of submissions, to the panel received from other participants in the dispute, as well as the report of the panel; and, if applicable, the report of the Appellate Body. An appointment to review the public file (Docket WTO/DS–275, Venezuela Import Licensing Dispute) may be made by calling the USTR Reading Room at (202) 395–6186. The USTR Reading Room is open to the public from 9:30 a.m. to 12 noon and 1 p.m. to 4 p.m., Monday through Friday.

Daniel Brinza,

Assistant United States Trade Representative for Monitoring and Enforcement.

[FR Doc. 03–2706 Filed 2–4–03; 8:45 am]

BILLING CODE 3190–01–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Peoria, Fulton, and McDonough Counties, Illinois

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement (EIS) will be prepared for the construction of a proposed four-lane highway in west central Illinois through portions of Peoria, Fulton, and McDonough Counties. The proposed highway, Illinois 336 (FAP 315), will extend from Peoria to Macomb, Illinois.

FOR FURTHER INFORMATION CONTACT: Norman R. Stoner, P.E., Division Administrator, Federal Highway Administration, 3250 Executive Park Drive, Springfield, Illinois 62703, Phone: (217) 492–4600.

Joseph E. Crowe, P.E., District Engineer, Illinois Department of Transportation, 401 Main Street, Peoria, Illinois 61602–1111, Phone: (309) 671–3333.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Illinois Department of Transportation will prepare an Environmental Impact Statement (EIS) on a proposal to develop a four-lane highway between Peoria and Macomb Illinois. Three feasible corridors previously identified by Illinois DOT will be re-evaluated and one corridor will be selected for further study. The selected corridor will be presented at a public hearing. Alternate alignments will be studied within the selected corridor once it has been identified. Alternates studied will address engineering and environmental concerns in order to determine an alignment location that meets the transportation needs of the region and minimizes the impacts to the environment. Alignment studies will determined one preferred alignment location and address types of facility, preliminary interchange geometrics and engineering, and identify environmental impacts. Preliminary measures to minimize harm, probable construction cost estimates, and estimated right-of-way requirements will be developed. A second hearing will beheld to present the final preferred alignment.

The proposed action will enhance travel efficiency within the study area, improve transportation continuity, improve rural access, and help reduce further economic and population decline in the counties served by this highway. Several alignment alternatives, including the no-action alternative, will be evaluated for the proposed project. Intersections/interchanges will be provided at all major high-volume roadways. Primary resources that may be affected are agricultural and, property tax income, wetlands, and woodlands.

The scoping process undertaken as part of this project will include the distribution of a scoping informational packet, coordination with appropriate Federal, State, and local agencies, and review sessions, as needed. A study group comprised of local officials will be established to provide input during development and refinement of alternatives. A scoping packet may be obtained from one of the contact people listed above.

To ensure that the full range of issues related to this proposed action are addressed, and all substantive issues are identified, public involvement activities will be conducted as part of this study. Public informational meetings, public hearings, newsletters and interest group meetings will provide opportunities for public involvement. The project's Draft EIS will be available for public and agency review prior to the public hearing. The time and location of the public hearings will be announced in local newspapers. Comments or questions concerning this proposed action and the Draft EIS should be directed to FHWA or the Illinois Department of Transportation at the addresses provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Dated: January 30, 2003.

J.D. Stevenson,

(FHWA Signature Line).

[FR Doc. 03–2785 Filed 2–4–03; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA 2002–14181]

Insurance Cost Information Regulation

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of availability.

SUMMARY: This notice announces publication by NHTSA of the 2003 text and data for the annual insurance cost information booklet that all car dealers must make available to prospective purchasers, pursuant to 49 CFR 582.4. This information is intended to assist prospective purchasers in comparing differences in passenger vehicle collision loss experience that could affect auto insurance costs.

ADDRESSES: Interested persons may obtain a copy of this booklet by contacting the U.S. Department of Transportation, Docket Management, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590. [Docket hours are from 10 am to 5 pm].

FOR FURTHER INFORMATION CONTACT: Ms. Rosalind Proctor, Chief, Consumer Standards Division, NHTSA, 400 Seventh Street SW., Washington, DC 20590 (202–366–0846).

SUPPLEMENTARY INFORMATION: Pursuant to section 201(e) of the Motor Vehicle Information and Cost Savings Act, 15 U.S.C. 1941(e), on March 5, 1993, 58 FR 12545, the National Highway Traffic Safety Administration (NHTSA) amended 49 CFR part 582, *Insurance Cost Information Regulation*, to require all dealers of automobiles to distribute to prospective customers information that compares differences in insurance costs of different makes and models of passenger cars based on differences in damage susceptibility. On March 17, 1994, NHTSA denied a petition submitted by the National Automobile Dealers Association (NADA) for NHTSA to reconsider part 582 insofar as it requires all automobile dealers to prepare the requisite number of copies for distribution of the insurance cost information to prospective purchasers. 59 FR 13630.

On March 24, 1995, NHTSA published a Final Rule to amend part 582 in a number of respects. 60 FR 15509. These changes included wording clarifications and a change in the availability date of the booklet.

Pursuant to 49 CFR 582.4, all automobile dealers are required to make available to prospective purchasers booklets that include this comparative information as well as certain mandatory explanatory text that is set out in section 582.5. Early each year, NHTSA publishes the annual **Federal Register** document updating the Highway Loss Data Institute's (HLDI) December Insurance Collision Report. Booklets reflecting the updated data must be available for distribution to prospective purchasers without charge within 30 days from the date of the **Federal Register**.

NHTSA is mailing a copy of the 2003 booklet to each dealer on the mailing list that the Department of Energy uses to distribute the "Gas Mileage Guide." Dealers will have the responsibility of reproducing a sufficient number of copies of the booklet to assure that they are available for retention by prospective purchasers by March 7, 2003. Dealers who do not receive a copy of the booklet within 15 days of the date of this notice should contact Ms. Rosalind Proctor of NHTSA's Office of Planning and Consumer Standards (202) 366–0846 to receive a copy of the booklet and to be added to the mailing list. Dealers may also obtain a copy of the booklet through the NHTSA web page at: *www.nhtsa.dot.gov/cars/problems/studies/InsCost.*

(49 U.S.C. 32302; delegation of authority at 49 CFR 1.50(f).)

Issued on: January 30, 2003.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. 03–2699 Filed 2–4–03; 8:45 am]

BILLING CODE 4910–59–U

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA 2003–14371; Notice 1]

Cooper Tire & Rubber Company; Receipt of Application for Decision of Inconsequential Noncompliance

Cooper Tire & Rubber Company (Cooper) has determined that certain Mastercraft Avenger GT brand tires in the P275/60R15 size do not meet the labeling requirements mandated by Federal Motor Vehicle Safety Standard (FMVSS) No. 109, "New Pneumatic Tires." Pursuant to 49 U.S.C. 30118(d) and 30120(h), Cooper has petitioned for a determination that this noncompliance is inconsequential to motor vehicle safety and has filed an appropriate report pursuant to 49 CFR Part 573, "Defect and Noncompliance Reports."

This notice of receipt of an application is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or other exercise of judgment concerning the merits of the application.

The noncompliance with S4.3(e) relates to the mold number. The Findlay, Ohio tire manufacturing facility had one (1) Mold involved in production during the twenty-third and thirty-second production weeks of 2002 in which one size designation was incorrectly stated. The subject tires were molded with the correct size designation P275/60R15 on both upper sidewalls and on the lower sidewall area on the DOT serial number side. However, on the side opposite the DOT serial number, they were stamped with an incorrect size designation of P275/80R15 in the lower sidewall area.

The incorrect size designation was removed from the mold and the correct side designation inserted; however, prior to the mold being correctly stamped, 5,706 tires were inadvertently shipped marked with the one incorrect size designation.

Cooper states that the incorrect size designation on each tire does not present a safety-related defect. The incorrect marking is the series designation. In the two most prominent locations and the serial side of the tire, the series designation is correct. Additionally, there is not a P275/15 manufactured in an 80 series. The noncompliant tires produced from the involved mold during the aforementioned production periods comply with all other requirements of 49 CFR 571.109.

Interested persons are invited to submit written data, views, and arguments on the application described above. Comments should refer to the docket number and be submitted to: U.S. Department of Transportation, Docket Management, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590. It is requested that two copies be submitted.

All comments received before the close of business on the closing date indicated below will be considered. The application and supporting materials, and all comments received after the closing date, will also be filed and will be considered to the extent possible. When the application is granted or denied, the notice will be published in the **Federal Register** pursuant to the authority indicated below. Comment closing date: March 7, 2003.

(49 U.S.C. 301118, 301120; delegations of authority at 49 CFR 1.50 and 501.8)

Issued on: January 30, 2003.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. 03–2701 Filed 2–4–03; 8:45 am]

BILLING CODE 4910–59–U

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

[Docket No. RSPA–2003–14307 (Notice No. 03–1)]

Information Collection Activities

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, RSPA invites comments on certain information collections pertaining to hazardous materials transportation for which RSPA intends to request approval

from the Office of Management and Budget (OMB).

DATES: Interested persons are invited to submit comments on or before April 7, 2003.

ADDRESSES: Submit written comments to the Dockets Management System, U.S. Department of Transportation, 400 Seventh Street, SW, Washington, DC 20590–0001. Comments should identify the Docket Number RSPA–2003–14307 and be submitted in two copies. Persons wishing to receive confirmation of receipt of their comments should include a self-addressed stamped postcard. Comments may also be submitted to the docket electronically by logging onto the Dockets Management System Web site at *http://dms.dot.gov*. Click on "Help & Information" to obtain instructions for filing the document electronically. In every case, the comment should refer to the Docket number "RSPA–2003–14307."

The Dockets Management System is located on the Plaza Level of the Nassif Building, at the above address. Public dockets may be reviewed between the hours of 9 a.m. to 5 p.m., Monday through Friday, excluding Federal holidays. In addition, the Notice and all comments can be reviewed on the Internet by accessing the Hazmat Safety Homepage at *http://hazmat.dot.gov*.

Anyone is able to search the electronic form of all comments received into any of our documents by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov*.

Requests for a copy of an information collection should be directed to Deborah Boothe or T. Glenn Foster, Office of Hazardous Materials Standards (DHM–10), at the address and telephone number listed below.

FOR FURTHER INFORMATION CONTACT: Deborah Boothe or T. Glenn Foster, Office of Hazardous Materials Standards (DHM–10), Research and Special Programs Administration, Room 8422, 400 Seventh Street, SW, Washington, DC 20590–0001, Telephone (202) 366–8553.

SUPPLEMENTARY INFORMATION: Section 1320.8(d), Title 5, Code of Federal Regulations requires that RSPA (we) provide interested members of the public and affected agencies an opportunity to comment on information collection and recordkeeping requests. This notice identifies information collections that we are submitting to OMB for extension. The information collections are contained in the Hazardous Materials Regulations (HMR; 49 CFR parts 171–180). We have revised burden estimates, where appropriate, to reflect current reporting levels based on changes in proposed or final rules published since the information collections were last approved. The following information is provided for each information collection: (1) Title of the information collection, including former title if a change is being made; (2) OMB control number; (3) summary of the information collection activity; (4) description of affected public; (5) estimate of total annual reporting and recordkeeping burden; and (6) frequency of information collection. We will request a three-year term of approval for each information collection activity and, when approved by OMB, publish notice of the approval in the **Federal Register**. We request comments on the following information collection requests:

Title: Rail Carriers and Tank Car Tanks Requirements.

OMB Control Number: 2137–0559.

Summary: This information collection consolidates and describes the information collection provisions in parts 172, 173, 174, 179, and 180 of the HMR on the transportation of hazardous materials by rail and the manufacture, qualification, maintenance and use of tank cars. The interested reader should refer to the table in 49 CFR 171.6 for a complete listing of sections covered by this information collection. The types of information collected include:

(1) *Approvals of the Association of American Railroads (AAR) Tank Car Committee:* An approval is required from the AAR Tank Car Committee for a tank car to be used for a commodity other than those specified in part 173 and on the certificate of construction. This information is used to ascertain whether a commodity is suitable for transportation in a tank car. AAR approval also is required for an application for approval of designs, materials and construction, conversion or alteration of tank car tanks constructed to a specification in part 179 or an application for construction of tank cars to any new specification. This information is used to ensure that the design, construction or modification of a tank car or the construction of a tank car to a new specification is performed in accordance with the applicable requirements.

(2) *Progress reports:* Each owner of a tank car subject to the requirements of § 173.31(b) shall submit a progress report to the Federal Railroad Administration (FRA). This information is used by FRA to ensure that all affected tank cars are modified before the regulatory compliance date.

(3) *FRA approvals:* An approval is required from FRA to transport a bulk packaging (such as a portable tank, IM portable tank, intermediate bulk container, cargo tank, or multi-unit tank car tank) containing a hazardous material in container-on-flat-car or trailer-on-flat-car service other than as authorized by § 174.63. FRA uses this information to ensure that the bulk package is properly secured using an adequate restraint system during transportation. FRA approval is also required for the movement of any tank car that does not conform to the applicable requirements in the HMR. We proposed (September 30 1999; 64 FR 53169) to broaden this provision to include the movement of covered hopper cars, gondola cars, and other types of railroad equipment when they no longer conform to Federal law but may safely be moved to a repair location. These latter movements are currently being reported under the information collection for exemption applications.

(4) *Manufacturer reports and certificate of construction:* These documents are prepared by tank car manufacturers and are used by owners, users and FRA personnel to verify that rail tank cars conform to the applicable specification.

(5) *Quality Assurance Program:* Facilities that build, repair and ensure the structural integrity of tank cars are required to develop and implement a quality assurance program. This information is used by the facility and DOT compliance personnel to ensure that each tank car is constructed or repaired in accordance with the applicable requirements.

(6) *Inspection reports:* A written report must be prepared and retained for each tank car that is inspected and tested in accordance with § 180.509 of the HMR. Rail carriers, users, and the FRA use this information to ensure that rail tank cars are properly maintained and in safe condition for transporting hazardous materials.

Affected Public: Manufacturers; owners and rail carriers of tank cars.

Annual Reporting and Recordkeeping: 2,759.

Number of Respondents: 260.

Total Annual Responses: 16,640.

Total Annual Burden Hours: 2,759.

Frequency of Collection: Annually.

Title: Rulemaking, Exemption, and Preemption Requirements.

OMB Control Number: 2137–0051.

Summary: This collection of information applies to rulemaking procedures regarding the Hazardous Materials Regulations (HMR). Specific areas covered in this information collection include Part 105, Subpart B and Subpart C, "Hazardous Materials Program Definitions and General Procedures," Part 106, Subpart B, "Participating in the Rulemaking Process," Part 107, Subpart B, "Exemptions," Part 107, Subpart C, "Preemption." The Federal hazardous materials transportation law directs the Secretary of Transportation to prescribe regulations for the safe transportation of hazardous materials in commerce. We are authorized to accept petitions for rulemaking and appeals, as well as applications for exemptions, preemption determinations and waivers of preemption. The types of information collected include:

(1) *Petitions for Rulemaking:* Any person may petition the Office of Hazardous Materials Standards to add, amend, or delete a regulation in Parts 110, 130, 171 through 180, or may petition the Office of the Chief Counsel to add, amend, or delete a regulation in Parts 105, 106 or 107.

(2) *Appeals:* Except as provided in § 106.40(e), any person may submit an appeal to our actions in accordance with the Appeals procedures found in §§ 106.110 through 106.130.

(3) *Application for Exemption:* Any person applying for an exemption must include the citation of the specific regulation from which the applicant seeks relief; specification of the proposed mode or modes of transportation; detailed description of the proposed exemption (*e.g.*, alternative packaging, test procedure or activity), including as appropriate, written descriptions, drawings, flow charts, plans and other supporting documents, etc.

(4) *Application for Preemption Determination:* Any person directly affected by any requirement of a State, political subdivision, or Indian tribe may apply to the Associate Administrator for a determination whether that requirement is preempted under 49 U.S.C. 5125, or regulations issued thereunder. The application must include the text of the State or political subdivision or Indian tribe requirement for which the determination is sought; specify each requirement of the Federal hazardous material transportation law or the regulations issued thereunder with which the applicant seeks the State, political subdivision or Indian tribe requirement to be compared; explanation of why the applicant believes the State or political subdivision or Indian tribe requirement should or should not be preempted under the standards of § 5125 (*see also* 49 CFR 107.202); and how the applicant is affected by the State or political subdivision or Indian tribe requirements.

(5) *Waivers of Preemption:* With the exception of requirements preempted under 49 U.S.C. 5125(c), any person may apply to the Associate Administrator for a waiver of preemption with respect to any requirement that: (1) The State or political subdivision thereof or an Indian tribe acknowledges is preempted under the Federal hazardous material transportation law or the regulations issued thereunder, or (2) that has been determined by a court of competent jurisdiction to be so preempted. The Associate Administrator may waive preemption with respect to such requirement upon a determination that such requirement affords an equal or greater level of protection to the public than is afforded by the requirement of the Federal hazardous material transportation law or the regulations issued thereunder and does not unreasonably burden commerce.

The information collected under these application procedures is used in the review process by RSPA in determining the merits of the petitions for rulemakings and for reconsideration of rulemakings, as well as applications for exemptions, preemption determinations and waivers of preemption to the HMR. The procedures governing these petitions for rulemaking and for reconsideration of rulemakings are covered in subpart B of part 106. Applications for exemptions, preemption determinations and waivers of preemption are covered under subparts B and C of part 107. Rulemaking procedures enable RSPA to determine if a rule change is necessary, is consistent with public interest, and maintains a level of safety equal to or superior to that of current regulations. Exemption procedures provide the information required for analytical purposes to determine if the requested relief provides for a comparable level of safety as provided by the HMR. Preemption procedures provide information for RSPA to determine whether a requirement of a State, political subdivision, or Indian tribe is preempted under 49 U.S.C. 5125, or regulations issued thereunder, or whether a waiver of preemption should be issued.

Affected Public: Shippers, carriers, packaging manufacturers, and other affected entities.

Total Reporting and Recordkeeping Burden: 4,219.

Number of Respondents: 3,304.

Total Annual Responses: 4,294.

Total Annual Burden Hours: 4,219.

Frequency of Collection: Periodically.

Issued in Washington, DC, on January 30, 2003.

Edward T. Mazzullo,

Director, Office of Hazardous Materials Standards.

[FR Doc. 03–2698 Filed 2–4–03; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Transportation Security Administration

[Docket No. TSA–2002–11604]

Security Programs For Aircraft 12,500 Pounds Or More

AGENCY: Transportation Security Administration (TSA), DOT.

ACTION: Notice.

SUMMARY: This notice announces an extension of time for compliance with the final security program for operators of aircraft with a maximum certificated takeoff weight of 12,500 or more pounds. TSA is extending the time from February 1 to April 1, 2003.

DATES: Security program compliance date: April 1, 2003.

FOR FURTHER INFORMATION CONTACT: Lon Siro or Gail Richards by telephone: (571) 227–2217 or (571) 271–2216 respectively; or by e-mail *lon.siro@tsa.dot.gov* or *gail.richards@tsa.dot.gov*. You may also mail any comments or questions concerning this action to Lon Siro or Gail Richards, Aviation Operations, Room 11080S, East Tower, Transportation Security Administration, 400 Seventh Street, SW., Washington, DC 20591.

SUPPLEMENTARY INFORMATION: On February 22, 2002, TSA published a final rule in the **Federal Register** (67 FR 8205), known as the "Twelve-Five Rule," that, in part, required new security measures for operators of aircraft with a maximum certificated takeoff weight of 12,500 pounds or more. Under the rule, these operators must adopt and carry out certain security measures approved by TSA, generally known as the "Twelve-Five Security Program."

As published, the effective date of the Twelve-Five Rule was June 24, 2002. This document does not alter that date. On August 28, 2002 (67 FR 55308), TSA issued a notice that established a schedule for comments on the proposed

security program and a date for compliance with the final security program. Security programs constitute sensitive security information (SSI), which are disclosed only to persons with a need to know, in accordance with 49 CFR part 1520. Therefore, the Twelve-Five Security Program may be distributed only to affected operators. In that notice, TSA required all affected aircraft operators to be in compliance with the final security program by February 1, 2003.

TSA provided the proposed Twelve-Five Security Program to affected operators and analyzed all comments received concerning the program. TSA prepared a final security program and has forwarded it to all twelve-five operators. TSA has prepared a training program to ensure that all operators receive the training required by the final security program. In addition, TSA has developed a fingerprint collection process that will enable all affected operators to complete the fingerprint-based criminal history records checks of their flightcrew members, as required by the Twelve-Five Rule.

However, TSA must provide the industry with sufficient time to train employees and fingerprint crew members, and completion of these tasks is not possible by February 1, 2003. Therefore, TSA is extending the security program compliance date to April 1, 2003.

Issued in Washington, DC, on January 30, 2003.

Stephen J. McHale,

Deputy Administrator.

[FR Doc. 03–2800 Filed 1–31–03; 3:51 pm]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Transportation Security Administration

[Docket No. TSA–2002–12394]

Aviation Security: Security Program for Certain Private Charter Operations

AGENCY: Transportation Security Administration (TSA), DOT.

ACTION: Notice.

SUMMARY: This notice extends the date on which aircraft operators engaged in non-governmental private charter passenger operations on large aircraft must be in compliance with the final private charter security program, from February 1 to April 1, 2003.

DATES: Security program compliance date: April 1, 2003.

FOR FURTHER INFORMATION CONTACT: Lon Siro or Gail Richards by telephone: (571) 227–2217 or (571) 227–2216 respectively; by e-mail *lon.siro@tsa.dot.gov* or *gail.richards@tsa.dot.gov*. You may also mail any comments or questions concerning this action to Lon Siro or Gail Richards, Aviation Operations, Room 11080S, East Tower, Transportation Security Administration, 400 Seventh Street, SW., Washington, DC 20591.

SUPPLEMENTARY INFORMATION: On June 19, 2002, TSA published a final rule in the **Federal Register** (67 FR 41635) that, in part, requires new security measures for non-governmental private charter passenger operations in certain large aircraft. Under the rule, these operators must adopt and carry out a security program approved by TSA to ensure that passengers and their accessible property are screened prior to boarding. The effective date of the rule was August 19, 2002, and this document does not change that effective date.

On August 28, 2002, TSA published a notice (67 FR 55309) that established a schedule for affected operators to comment on the proposed security program and a date on which affected operators would have to be in compliance with the final approved security program. The compliance date for the final security program was set for February 1, 2003.

In addition, on December 31, 2002 (67 FR 79881), TSA published an amendment to the final rule in response to comments received, which altered the aircraft subject to the rule. The private charter security standards now apply to non-governmental private charter operations in aircraft with a maximum certificated takeoff weight greater than 45,500 kg or a seating configuration of 61 or more.

Security programs constitute sensitive security information (SSI), which can be disclosed only to persons with a need to know, in accordance with 49 CFR part 1520. Therefore, the proposed private charter security program was distributed for comment only to the operators subject to the rule. TSA received comments on the proposed security program and has amended the program, where appropriate, to accommodate the comments received. TSA is in the process of providing the final security program to affected entities, and has completed a training program for the operators to use to ensure that they operate in accordance with the security program. However, the affected operators have not had sufficient time to complete the training and establish a compliant security program. Therefore, TSA is extending the date for compliance to April 1, 2003.

Issued in Washington, DC, on January 30, 2003.

Stephen J. McHale,

Deputy Administrator.

[FR Doc. 03–2799 Filed 1–31–03; 3:51 pm]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Transportation Security Administration

Intercity Bus Security Grant Program; Notice Modifying the Closing Date for Receipt of Applications Under the Intercity Bus Security Grant Program

AGENCY: Transportation Security Administration, Department of Transportation.

Authority: Authority for this program is contained in the fiscal year 2002 Supplemental Appropriations Act for Further Recovery From and Response to Terrorist Attacks on the United States, Pub. L. 107–206, 116 Stat. 820.

ACTION: Notice modifying deadline for receipt of applications.

SUMMARY: This notice extends the closing date previously established for receipt of applications under the Intercity Bus Security Grant Program (Program Announcement #02MLPA0002) in 68 FR 2634, Jan. 17, 2003. Applications must be received on or before 4 p.m. EST, March 19, 2003.

ADDRESSES: Program Announcement #02MLPA002 and application forms for the Intercity Bus Security Grant Program are available through the TSA Internet at *http://www.tsa.dot.gov* under Business Opportunities and Industry Partners.

FOR FURTHER INFORMATION CONTACT: Ms. Mary Heying, Transportation Security Administration, Office of Maritime and Land Security, 400 7th Street, SW., TSA–8, Washington, DC 20590, (phone: 571–227–1252, e-mail: *Mary.Heying@tsa.dot.gov*), or Mr. Tony Corio (phone: 571–227–1233, e-mail: *Tony.Corio@tsa.dot.gov*).

Dated: January 30, 2003.

Richard E. Bennis,

Assistant Administrator, Office of Maritime and Land Security.

[FR Doc. 03–2654 Filed 2–4–03; 8:45 am]

BILLING CODE 4110–62–M

DEPARTMENT OF THE TREASURY

President's Commission on the United States Postal Service

AGENCY: Department of the Treasury, Departmental Offices.

ACTION: Notice of meeting.

SUMMARY: Notice is given of a meeting of the President's Commission on the United States Postal Service.

DATES: The meeting will be held on Thursday, February 20, 2003 from 8:30 a.m. to approximately 4 p.m.

ADDRESSES: The meeting will be held at The Hotel Washington, 15th Street and Pennsylvania Avenue, NW., Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT: Roger Kodat, Designated Federal Official, (202) 622–7073.

SUPPLEMENTARY INFORMATION: At the public meeting, the Commission will examine some of the issues that help define the United States Postal Service's business model. These issues include the Postal Service's universal service obligation, the price-regulation system, and the Postal Service's corporate governance structure. Witnesses will testify at the invitation of the Commission. Seating is limited to a maximum of 300 on a first-come, first-served basis.

Dated: January 31, 2003.

Roger Kodat,

Designated Federal Official.

[FR Doc. 03–2708 Filed 2–4–03; 8:45 am]

BILLING CODE 4811–16–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

[Docket No. 03–03]

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

FEDERAL DEPOSIT INSURANCE CORPORATION

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

[No. 2003–03]

Joint Report: Differences in Accounting Standards Among the Federal Banking and Thrift Agencies; Report to Congressional Committees

AGENCIES: Office of the Comptroller of the Currency (OCC), Treasury; Board of Governors of the Federal Reserve System (Board); Federal Deposit Insurance Corporation (FDIC); and Office of Thrift Supervision (OTS), Treasury.

ACTION: Report to the Committee on Financial Services of the United States House of Representatives and to the Committee on Banking, Housing, and Urban Affairs of the United States Senate regarding differences in capital and accounting standards among the federal banking and thrift agencies.

SUMMARY: The OCC, Board, FDIC, and OTS (the agencies) have prepared this report pursuant to section 37(c) of the Federal Deposit Insurance Act (12 U.S.C. 1831n(c)). Section 37(c) requires the Agencies to jointly submit an annual report to the Committee on Financial Services of the House of Representatives and to the Committee on Banking, Housing, and Urban Affairs of the Senate describing differences between the accounting and capital standards used by the agencies. The report must be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT:

OCC: Nancy Hunt, Risk Expert (202–874–4923), Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

Board: John Connolly, Supervisory Financial Analyst (202–452–3621), Division of Banking Supervision and Regulation, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551.

FDIC: Robert F. Storch, Chief, Accounting and Securities Disclosure Section (202–898–8906), Division of Supervision and Consumer Protection, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

OTS: Michael D. Solomon, Senior Program Manager for Capital Policy (202–906–5654), Supervision Policy, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: The text of the report follows:

Report to the Committee on Financial Services of the United States House of Representatives and to the Committee on Banking, Housing, and Urban Affairs of the United States Senate Regarding Differences in Accounting and Capital Standards Among the Federal Banking Agencies

Introduction

The Office of the Comptroller of the Currency (OCC), the Board of Governors of the Federal Reserve System (FRB), the Federal Deposit Insurance Corporation (FDIC), and the Office of Thrift Supervision (OTS) (the Federal banking agencies or the agencies) must jointly submit an annual report to the Committee on Financial Services of the U.S. House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the U.S. Senate describing differences between the accounting and capital standards used by and among the agencies. The report must be published in the **Federal Register**. This report covers differences existing as of December 31, 2002.

This is the first joint annual report on differences in accounting and capital standards to be submitted pursuant to Section 37(c) of the Federal Deposit Insurance Act (12 U.S.C. 1831n(c)), as amended. Prior to this report, each agency reported separately.

Section 303 of the Riegle Community Development and Regulatory Improvement Act of 1994 (12 U.S.C. 4803) in part directs the agencies to work jointly to make uniform all regulations and guidelines implementing common statutory or supervisory policies. The results of these efforts must be "consistent with the principles of safety and soundness, statutory law and policy, and the public interest."

Since the agencies filed their first reports under this reporting requirement in 1991, the agencies have acted in concert on numerous occasions to modify their accounting and capital standards and to harmonize the four sets of standards so as to eliminate as many differences as possible. In particular, the agencies have revised their capital standards to address changes in credit and certain other risk exposures within the banking system, thereby rendering the amount of capital institutions are required to hold generally more commensurate with the credit risk and certain other risks to which they are exposed. Some of the few remaining capital differences are statutorily mandated. Some were significant historically but now no longer affect in a measurable way, either individually or in the aggregate, institutions supervised by the Federal banking agencies.

As a result, the Federal banking agencies now have substantially similar leverage and risk-based capital standards. These standards employ a common regulatory framework that establishes minimum capital adequacy ratios for all banking organizations (banks, bank holding companies and savings associations). In 1989, all four agencies adopted risk-based capital frameworks that were based upon the international capital accord (the Basel Accord) developed by the Basel Committee on Banking Regulations and Supervisory Practices (Basel

Supervisors' Committee) and endorsed by the central bank governors of the G–10 countries. The agencies view the risk-based capital and leverage requirements as minimum standards, and most institutions are expected to operate with capital levels well above the minimums, particularly those institutions that are expanding or experiencing unusual or high levels of risk.

The OCC, the FRB, and the FDIC, under the auspices of the Federal Financial Institutions Examination Council (FFIEC), have developed uniform Reports of Condition and Income (Call Reports) for all insured commercial banks and FDIC-supervised savings banks. The OTS requires each OTS-supervised savings association to file the Thrift Financial Report (TFR). The reporting standards for recognition and measurement in the Call Report and the TFR are consistent with generally accepted accounting principles (GAAP). Thus, there are no significant differences in regulatory accounting standards for regulatory reports filed with the Federal banking agencies. Only one minor difference remains between the accounting standards of the OTS and those of the other Federal banking agencies, and that difference relates to push-down accounting, as more fully explained below.

Differences in Capital Standards Among the Federal Banking Agencies

Subordinate Organizations Other Than Financial Subsidiaries

Banks supervised by the OCC, the FRB, and the FDIC generally consolidate all significant majority-owned subsidiaries, including banking and finance subsidiaries, of the parent banking organization for regulatory capital purposes. This practice assures that capital requirements are related to the risks to which the banking organization is exposed. When banking and finance subsidiaries are not consolidated for financial reporting purposes under GAAP, the aggregate amount of investments in such subsidiaries is deducted from a bank's total capital.

For other subsidiaries that are not consolidated on a line-for-line basis for financial reporting purposes, joint ventures, and associated companies, the parent banking organization's investment in each such entity may be treated in any of three ways for risk-based capital purposes, depending upon the circumstances: the entity's balance sheet may be consolidated on a *pro-rata* basis, the banking organization's investment in the entity may be deducted entirely from capital, or the banking organization's investment in the entity may be assigned to the 100 percent risk-weight category. These options for handling unconsolidated subsidiaries, joint ventures, and associated companies for purposes of determining the capital adequacy of the parent banking organization provide the agencies with the flexibility necessary to ensure that institutions maintain capital levels that are commensurate with the actual risks involved.

Under the OTS' capital regulations, a statutorily mandated distinction is drawn between subsidiaries (majority-owned) engaged in activities that are permissible for national banks and subsidiaries engaged in "impermissible" activities for national banks. Where subsidiaries engage in activities that are impermissible for national banks, the OTS requires the deduction of the parent's investment in these subsidiaries from the parent's assets and capital. If a subsidiary's activities are permissible for a national bank, that subsidiary's assets are generally consolidated with those of the parent on a line-for-line basis. If a subordinate organization, other than a subsidiary, engages in impermissible activities, the OTS will generally deduct investments in and loans to such organization. If a subordinate organization, other than a subsidiary, engages solely in permissible activities, the OTS may, depending upon the nature and risk of the activity, either assign investments in and loans to such organizations to the 100 percent risk-weight category or require full deduction of the investments and loans.

Financial Subsidiaries

The Gramm-Leach-Bliley Act (GLBA) amends the National Banking Act to permit national banks to conduct certain expanded financial activities through financial subsidiaries. Section 121(a) of the GLBA (12 U.S.C. 24a) imposes a number of conditions and requirements upon national banks that have financial subsidiaries, including specifying the treatment that applies for regulatory capital purposes. The statute requires that a national bank deduct from assets and tangible equity the aggregate amount of its equity investments in financial subsidiaries. The statute further requires that the financial subsidiary's assets and liabilities not be consolidated with those of the parent national bank for applicable capital purposes.

GLBA also amends the Federal Deposit Insurance Act to provide that an insured State bank is, among other limitations, subject to the capital deduction and deconsolidation requirements that apply to a national bank if the State bank holds an interest in a subsidiary that engages as principal in activities that would only be permissible for a national bank to conduct through a financial subsidiary. Under section 121(d) of GLBA (12 U.S.C. 1831w), a State bank that holds an interest in any financial subsidiary—whether conducting activities as a principal or agent—must comply with all of the same conditions that apply to a national bank, including the capital deduction and deconsolidation requirement. The OCC, the FDIC, and the FRB adopted final rules implementing their respective provisions of section 121 of GLBA for national banks in March 2000, for state nonmember banks in January 2001, and for state member banks in August 2001. GLBA did not provide new authority to OTS-regulated institutions to own, hold or operate financial subsidiaries, as defined.

Nonfinancial Equity Investments

Under final rules jointly published by the OCC, the FRB, and the FDIC, on January 25, 2002 (67 FR 3783), subject to certain exceptions, covered equity investments in nonfinancial companies are subject to a Tier 1 capital charge (for both risk-based and leverage capital purposes) that increases in steps as the banking organization's level of concentration in equity investments increases. The GLBA authorizes financial holding companies, which are bank holding companies granted expanded investment and activity authority by the GLBA, to acquire or control shares, assets, or ownership interests of any nonfinancial company as part of a bona fide underwriting, or merchant or investment banking activity. Banks and bank holding companies supervised by the OCC, the FDIC, or the FRB also have authority, which predated GLBA, to make limited equity investments in nonfinancial companies under various other legal authorities.

OTS-regulated holding companies grandfathered by GLBA have no statutory limits on their investments. Nongrandfathered holding companies may make equity investments in nonfinancial companies of the type authorized for financial holding companies (*e.g., bona fide* underwriting or merchant or investment banking activity). The OTS does not prescribe specific capital regulations for OTS-regulated holding companies.

Collateralized Transactions

The FRB and the OCC assign a zero percent risk weight to certain claims collateralized by cash on deposit in the institution or by securities issued or guaranteed by the U.S. government, U.S. government agencies, or the central governments of other countries that are members of the Organization of Economic Cooperation and Development (OECD). To qualify for the zero percent risk weight, the OCC and the FRB rules require the collateral to be marked-to-market daily and a positive margin of collateral protection to be maintained daily. The FRB requires qualifying claims to be fully collateralized, while the OCC rule permits partial collateralization.

The FDIC and the OTS assign a 20 percent risk weight to claims collateralized by cash on deposit in the institution or by securities issued or guaranteed by the U.S. government, U.S. government agencies, or other OECD central governments.

In a final interagency rule assigning a 20 percent risk weight to certain claims on qualifying securities firms, which was published in the **Federal Register** on April 9, 2002, (67 FR 16971), the FDIC and the OTS conformed their rules to assign a zero percent risk weight to certain collateralized claims on qualifying securities firms that are marked to market daily and have a positive margin of collateral. The rule became effective July 1, 2002. The actions taken by the FDIC and the OTS in adopting the April 9, 2002, rule for claims on qualifying securities firms eliminates a portion of the capital difference regarding collateralized transactions between these agencies and the OCC and the FRB.

Noncumulative Perpetual Preferred Stock

Under the Federal banking agencies' capital standards, noncumulative perpetual preferred stock is a component of Tier 1 capital. The capital standards of the OCC, the FRB, and the FDIC require noncumulative perpetual preferred stock to give the issuer the option to waive the payment of dividends and to provide that waived dividends neither accumulate to future periods nor represent a contingent claim on the issuer.

The practical effect of these requirements is that if a bank supervised by the OCC, the FRB, or the FDIC issues perpetual preferred stock and is required to pay dividends in a form other than cash—*e.g.*, stock—when cash dividends are not or cannot be paid, the bank does not have the option to waive or eliminate dividends and the stock would not qualify as noncumulative. If an OTS-supervised savings association issues perpetual preferred stock that requires the payment of dividends in the form of stock when cash dividends are not paid, the stock may, subject to supervisory approval, qualify as noncumulative.

Equity Securities of Government-Sponsored Enterprises

The FRB, the FDIC, and the OTS apply a 100 percent risk weight to equity securities of government-sponsored enterprises (GSEs), other than the 20 percent risk weighting of Federal Home Loan Bank stock held by banking organizations as a condition of membership. The OCC applies a 20 percent risk weight to all GSE equity securities. This difference arises because the OCC's risk-based capital standards specify that "securities" of GSEs, which includes both debt and equity securities, qualify for the 20 percent risk weight. In contrast, the risk-based capital standards of the FRB, the FDIC, and the OTS apply a 20 percent risk weight only to debt claims on these companies.

Limitation on Subordinated Debt and Limited-Life Preferred Stock

The OCC, the FRB, and the FDIC limit the amount of subordinated debt and intermediate-term preferred stock that may be treated as part of Tier 2 capital to 50 percent of Tier 1 capital. The OTS does not prescribe such a limit. In addition, for banking organizations supervised by the OCC, the FRB, and the FDIC, these maturing instruments must be discounted by 20 percent in each of the last five years before maturity. The OTS provides thrifts the option of using either the discounting approach used by the other Federal banking agencies, or an approach which, during the last seven years of the maturing instrument's life, allows for the full inclusion of all such instruments, provided that the amount maturing in any one year does not exceed 20 percent of the thrift's total capital.

Pledged Deposits, Nonwithdrawable Accounts, and Certain Certificates

The OTS capital regulations permit mutual savings associations to include in Tier 1 capital pledged deposits and nonwithdrawable accounts to the extent that such accounts or deposits have no fixed maturity date, cannot be withdrawn at the option of the accountholder, and do not earn interest that carries over to subsequent periods. The OTS also permits the inclusion of net worth certificates, mutual capital certificates, and income capital certificates complying with applicable OTS regulations in savings associations' Tier 2 capital. The OCC, the FRB, and the FDIC do not expressly address these instruments in their regulatory capital standards, and they generally are not recognized as Tier 1 or Tier 2 capital components.

Servicing Assets and Intangible Assets

The Federal banking agencies' capital rules permit servicing assets and purchased credit card relationships to be included in assets (*i.e.*, not be deducted), subject to certain limits. The aggregate regulatory capital limit on these two categories of assets is 100 percent of Tier 1 capital. However, within this overall limit, nonmortgage servicing assets are combined with purchased credit card relationships and this combined amount is limited to no more than 25 percent of an institution's Tier 1 capital. Before applying these Tier 1 capital limits, mortgage servicing assets, nonmortgage servicing assets, and purchased credit card relationships are each valued at the lesser of 90 percent of their fair value or 100 percent of their book value (net of any valuation allowances).

A recent statutory change permits the agencies to eliminate this 10 percent fair value discount from their capital standards if the agencies determine that such assets can be valued at 100 percent of their book value consistent with safety and soundness. The agencies are considering how best to make such a determination. Any servicing assets and purchased credit card relationships that exceed the relevant limits, as well as all other intangible assets such as goodwill and core deposit intangibles, are deducted from capital and assets in calculating an institution's Tier 1 capital.

Although the Federal banking agencies' regulatory capital treatment of servicing assets and intangible assets is fundamentally the same, the OTS' capital rules contain one difference that, with the passage of time, continues to lose significance. Under its rules, the OTS has grandfathered, *i.e.*, does not deduct from regulatory capital, core deposit intangibles acquired before February 1994 up to 25 percent of Tier 1 capital.

Covered Assets

The OCC, the FRB, and the FDIC generally place assets subject to guarantee arrangements by the FDIC or the former Federal Savings and Loan Insurance Corporation in the 20 percent risk weight category. The OTS places

these "covered assets" in the zero percent risk-weight category.

Tangible Capital Requirement

Savings associations supervised by the OTS, by statute, must satisfy a 1.5 percent minimum tangible capital requirement. However, subsequent statutory and regulatory changes have imposed higher capital standards on savings associations, rendering it unlikely, if not impossible, for the 1.5 percent tangible capital requirement to function as a meaningful regulatory trigger. This statutory tangible capital requirement does not apply to institutions supervised by the OCC, the FRB, or the FDIC.

Interest Rate Risk

The OCC, the FRB, and the FDIC specifically include in their evaluation of capital adequacy an assessment of a banking organization's interest rate risk, as measured by its exposure to declines in the economic value of its capital due to changes in interest rates. In addition, these three agencies have provided guidance on sound practices for managing interest rate risk and on the standards that they use to evaluate the adequacy and effectiveness of a banking organization's interest rate risk management.

Historically, the OTS employed an explicit interest rate risk component in its capital rule, as distinct from the other banking agencies. In 2002 the OTS eliminated this explicit requirement from its standards in light of other supervisory tools that are currently available to measure and control interest rate risk. The OTS, like the other banking agencies, has provided written guidance on sound practices for managing interest rate risk, and directs examiners to take into account interest rate risk when assessing capital adequacy. The OTS' final rule brought its regulatory capital treatment of interest rate risk into line with the approach followed by the other Federal banking agencies, thereby formally eliminating a capital difference between the OTS and the other agencies.

Differences in Accounting Standards Among the Federal Banking and Thrift Agencies

Push-Down Accounting

Push-down accounting is the establishment of a new accounting basis for a depository institution in its separate financial statements as a result of a substantive change in control. Under push-down accounting, when a depository institution is purchased by another organization yet retains its separate corporate existence, the assets and liabilities of the acquired institution are restated to their fair values as of the acquisition date. These values, including any goodwill, are reflected in the separate financial statements of the acquired institution, as well as in any consolidated financial statements of the institution's parent.

The OCC, the FRB, and the FDIC require the use of push-down accounting for regulatory reporting purposes when there is a 95 percent or greater change in ownership. This approach is generally consistent with accounting interpretations issued by the staff of the Securities and Exchange Commission. The OTS requires the use of push-down accounting when there is a 90 percent or greater change in ownership.

Dated: January 29, 2003.

John D. Hawke, Jr.,

Comptroller of the Currency.

Dated: January 28, 2003.

By order of the Board of Governors of the Federal Reserve System.

Jennifer J. Johnson,

Secretary of the Board.

Dated in Washington, DC this 29th day of January, 2003.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

Dated: January 24, 2003.

By the Office of Thrift Supervision.

James E. Gilleran,

Director.

[FR Doc. 03–2780 Filed 2–4–03; 8:45 am]

BILLING CODE 4810–33, 6210–01, 6714–01 and 6720–01–P

DEPARTMENT OF VETERANS AFFAIRS

Research and Development Office; Government Owned Invention Available for Licensing

AGENCY: Research and Development Office, VA.

ACTION: Notice of government owned invention available for licensing.

SUMMARY: The invention listed below is owned by the U.S. Government as represented by the Department of Veterans Affairs, and is available for licensing in accordance with 35 U.S.C. 207 and 37 CFR part 404 to achieve expeditious commercialization of results of federally funded research and development. Foreign patents are filed on selected inventions to extend market coverage for U.S. companies and may also be available for licensing.

FOR FURTHER INFORMATION CONTACT: Technical and licensing information on the invention may be obtained by writing to: Mindy Aisen, MD, Department of Veterans Affairs, Director Technology Transfer Program, Research and Development Office, 810 Vermont Avenue NW., Washington, DC 20420; fax: 202–275–7228; e-mail at *mindy.aisen@mail.va.gov*. Any request for information should include the Number and Title for the relevant invention as indicated below. Issued patents may be obtained from the Commissioner of Patents, U.S. Patent and Trademark Office, Washington, DC 20231.

SUPPLEMENTARY INFORMATION: The invention available for licensing is: PCT/US02/11088 "Methods for Modeling Infectious Disease and Chemosensitivity in Cultured Cells and Tissues"

Dated: January 28, 2003.

Anthony J. Principi,

Secretary, Department of Veterans Affairs.

[FR Doc. 03–2664 Filed 2–4–03; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Capital Asset Realignment for Enhanced Services (CARES) Commission Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 (Federal Advisory Committee Act) that the Capital Asset Realignment for Enhanced Services (CARES) Commission will meet on Wednesday, February 19, 2003, from 8:30 a.m. to 5 p.m. and Thursday, February 20, 2003, from 8:30 a.m. to 5 p.m. The meeting will be held at the Jefferson Hotel in the Monticello Room, 1200 16th Street, NW., Washington, DC. The meeting is open to the public.

The purpose of the Commission is to conduct an external assessment of VA's capital asset needs and to assure that stakeholder and beneficiary concerns are fully addressed. The Commission will consider recommendations prepared by VA's Under Secretary for Health, veterans service organizations, individual veterans, Congress, medical school affiliates, VA employees, local government entities, community groups and others. Following its assessment, the Commission will make specific recommendations to the Secretary of Veterans Affairs regarding the realignment and allocation of capital assets necessary to meet the demands

for veterans health care services over the next 20 years.

This is the initial meeting of the Commission. On February 19, the agenda topics for this meeting will include background briefings on the CARES and an overview of the nine-step CARES process. On February 20, the Commission will discuss operating rules, future meeting topics and schedules, subcommittee assignments, and hearings. Also, the Commission members will receive an ethics briefing.

Interested persons may either attend or file statements with the Commission. Written statements may be filed either before the meeting or within 10 days after the meeting and addressed to: Department of Veterans Affairs, CARES Commission, 810 Vermont Avenue, NW., Washington, DC 20420. Any member of the public wishing additional information should contact Mr. Richard E. Larson at (202) 273–4800.

Dated: January 30, 2003.

By Direction of the Secretary.

Nora E. Egan,

Committee Management Officer.

[FR Doc. 03–2665 Filed 2–4–03; 8:45 am]

BILLING CODE 8320–01–M

Federal Register

Wednesday,
February 5, 2003

Part II

Securities and Exchange Commission

17 CFR Parts 228, 229 and 249
Disclosure in Management's Discussion and Analysis About Off-Balance Sheet Arrangements and Aggregate Contractual Obligations; Final Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 228, 229 and 249

[Release Nos. 33–8182; 34–47264; FR–67 International Series Release No. 1266 File No. S7–42–02]

RIN 3235–AI70

Disclosure in Management's Discussion and Analysis About Off-Balance Sheet Arrangements and Aggregate Contractual Obligations

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: As directed by new section 13(j) of the Securities Exchange Act of 1934, added by section 401(a) of the Sarbanes-Oxley Act of 2002, we are adopting amendments to our rules to require disclosure of off-balance sheet arrangements. The amendments require a registrant to provide an explanation of its off-balance sheet arrangements in a separately captioned subsection of the "Management's Discussion and Analysis" ("MD&A") section of a registrant's disclosure documents. The amendments also require registrants (other than small business issuers) to provide an overview of certain known contractual obligations in a tabular format.

DATES: *Effective Date:* April 7, 2003. *Compliance Date:* Registrants must comply with the off-balance sheet arrangement disclosure requirements in registration statements, annual reports and proxy or information statements that are required to include financial statements for their fiscal years ending on or after June 15, 2003. Registrants (other than small business issuers) must include the table of contractual obligations in registration statements, annual reports, and proxy or information statements that are required to include financial statements for the fiscal years ending on or after December 15, 2003. Registrants may voluntarily comply with the new disclosure requirements before the compliance dates.

FOR FURTHER INFORMATION CONTACT: Questions about this release should be referred to Andrew Thorpe, Special Counsel, Division of Corporation Finance ((202) 942–2910), Jenifer Minke-Girard, Associate Chief Accountant, or Eric Schuppenhauer, Professional Accounting Fellow, Office of the Chief Accountant ((202) 942–4400), Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: We are adopting amendments to Item 303 [1] of Regulation S–K,[2] Item 303 [3] of Regulation S–B,[4] Item 5 of Form 20–F [5] and General Instruction B of Form 40–F [6] under the Securities Exchange Act of 1934.[7]

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I. Background

On July 30, 2002, the Sarbanes-Oxley Act of 2002 was enacted.[8] section 401(a) of the Sarbanes-Oxley Act added section 13(j) to the Securities Exchange Act of 1934,[9] which requires the Commission to adopt final rules by January 26, 2003 (180 days after the date of enactment) to require each annual and quarterly financial report required to be filed with the Commission, to disclose "all material off-balance sheet transactions, arrangements, obligations (including contingent obligations), and other relationships of the issuer with unconsolidated entities or other persons, that may have a material current or future effect on financial condition, changes in financial condition, results of operations, liquidity, capital expenditures, capital resources, or significant components of revenues or expenses." [10] In November 2002, we published for comment a proposed rulemaking to implement Section 401(a) [11] and to codify interpretive guidance set forth in our January 2002 Commission Statement.[12]

The Commission has long recognized the need for a narrative explanation of financial statements and accompanying footnotes and has developed MD&A over the years to fulfill this need.[13] The disclosure in MD&A is of paramount importance in increasing the transparency of a company's financial performance and providing investors with the disclosure necessary to evaluate a company and to make informed investment decisions. MD&A also provides a unique opportunity for management to provide investors with an understanding of its view of the financial performance and condition of the company, an appreciation of what the financial statements show and do not show, as well as important trends and risks that have shaped the past or are reasonably likely to shape the future.

The MD&A rules already require disclosure regarding off-balance sheet arrangements and other contingencies. They are designed to cover a wide range of corporate events, including events, variables and uncertainties not otherwise required to be disclosed under U.S. generally accepted accounting principles ("GAAP").[14] For

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[1] 17 CFR 229.303.
[2] 17 CFR 229.10 *et seq.*
[3] 17 CFR 228.303.
[4] 17 CFR 228.10 *et seq.*
[5] 17 CFR 249.220f.
[6] 17 CFR 249.240f.
[7] 15 U.S.C. § 78a *et seq.*
[8] Pub. L. 107–204, 116 Stat. 745 (2002).
[9] 15 U.S.C. 78m(j).
[10] Pub. L. 107–204 Sec. 401(a).
[11] *See* Release No. 33–8144 (Nov. 4, 2002) [67 FR 68054] (the "Proposing Release").
[12] *See* Release No. 33–8056, FR–61 (Jan. 22, 2002) [67 FR 3746] (the "Commission Statement"). That statement was issued in response to a petition from Arthur Andersen LLP, Deloitte and Touche LLP, Ernst & Young LLP, KPMG LLP, and PricewaterhouseCoopers LLP, with the endorsement of the American Institute of Certified Public Accountants, for an interpretive release to facilitate enhanced MD&A disclosures. *See* Rulemaking Petition No. 4–450 (Dec. 31, 2001).
[13] *See, e.g.*, Release No. 33–5443 (Dec. 12, 1973) [39 FR 829].
[14] In *In the Matter of Caterpillar Inc.*, Release No. 34–30532 (March 31, 1992), the Commission found that Caterpillar had violated section 13(a) of the Exchange Act [15 U.S.C. 78m(a)] by failing to have disclosed the magnitude of its Brazilian subsidiary's contribution to Caterpillar's overall earnings. Disclosure of the extent of that contribution was required under the MD&A disclosure requirements, even though disclosure was not required under GAAP, because the subsidiary's earnings materially affected Caterpillar's reported income from continuing operations. *See* Item 303(a)(3)(i) of Regulation S–K [17 CFR 229.303(a)(3)(i)].

example, the current MD&A rules require disclosure of:

- Information necessary to an understanding of the registrant's financial condition, changes in financial condition and results of operations;[15]
- Any known trends, demands, commitments, events or uncertainties that will result in, or that are reasonably likely to result in, the registrant's liquidity increasing or decreasing in any material way;[16]
- The registrant's internal and external sources of liquidity, and any material unused sources of liquid assets;[17]
- The registrant's material commitments for capital expenditures as of the end of the latest fiscal period;[18]
- Any known material trends, favorable or unfavorable, in the registrant's capital resources, including any expected material changes in the mix and relative cost of capital resources, considering changes between debt, equity and any off-balance sheet financing arrangements.[19]
- Any unusual or infrequent events or transactions or any significant economic changes that materially affected the amount of reported income from continuing operations and, in each case, the extent to which income was so affected.[20]
- Significant components of revenues or expenses that should, in the company's judgment, be described in order to understand the registrant's results of operations;[21]
- Known trends or uncertainties that have had, or that the registrant reasonably expects will have, a material favorable or unfavorable impact on net sales or revenues or income from continuing operations.[22]
- Matters that will have an impact on future operations and have not had an impact in the past;[23] and
- Matters that have had an impact on reported operations and are not expected to have an impact upon future operations.[24]

Accordingly, while only one item in our current MD&A rules specifically identifies off-balance sheet arrangements,[25] the other items clearly require disclosure of off-balance sheet arrangements if necessary to an understanding of a registrant's financial condition, changes in financial condition or results of operations. As discussed below, the amendments clarify disclosures that registrants must make with regard to off-balance sheet arrangements, require registrants to set apart disclosure relating to off-balance sheet arrangements in a designated section of MD&A and (except in the case of small business issuers) require tabular disclosure of aggregate contractual obligations.[26]

II. Overview of Proposals, Comments and Amendments

A. Proposing Release

In November 2002, we published for comment proposals to require disclosure of a registrant's off-balance sheet arrangements in its MD&A.[27] To address the scope of the disclosure contemplated by the Sarbanes-Oxley Act, the proposals included a definition of the term "off-balance sheet arrangement" that covered a wide variety of arrangements. The proposed rules defined the term "off-balance sheet arrangement" as any transaction, agreement or other contractual arrangement to which an entity that is not consolidated with the registrant is a party, under which the registrant, whether or not a party to the arrangement, has, or in the future may have:

- Any obligation under a direct or indirect guarantee or similar arrangement;
- A retained or contingent interest in assets transferred to an unconsolidated entity or similar arrangement;
- Derivatives, to the extent that the fair value thereof is not fully reflected as a liability or asset in the financial statements; or
- Any obligation or liability, including a contingent obligation or liability, to the extent that it is not fully reflected in the financial statements (excluding the footnotes thereto).

Because the Sarbanes-Oxley Act refers to off-balance sheet arrangements that "may" have a material future effect on the registrant, the proposed rules included a threshold for determining which off-balance sheet arrangements would have such an effect. In particular, the proposals would have required disclosure where the likelihood of either the occurrence of a future event implicating an off-balance sheet arrangement, or its material effect, was higher than remote. The proposed disclosure threshold departed from the existing MD&A threshold, under which a company must disclose information that is "reasonably likely" to have a material effect on financial condition, changes in financial condition or results of operations.[28]

The proposals contained specific items designed to elicit comprehensive information about a registrant's off-balance sheet arrangements that would provide investors with a clear understanding of the registrant's business activities, financial arrangements and financial statements. To filter out disclosure of insignificant details, the proposals would have required disclosure of enumerated items only "to the extent necessary to an understanding of the registrant's off-balance sheet arrangements and their effect on financial condition, changes in financial condition and results of operations." The proposals would have required a registrant to disclose:

- The nature and business purpose of the registrant's off-balance sheet arrangements;
- The significant terms and conditions of the arrangements;
- The nature and amount of the total assets and of the total obligations and liabilities of an unconsolidated entity

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Furthermore, Caterpillar's MD&A should have discussed various factors which contributed to the subsidiary's earnings, such as currency translation gains, export subsidies, interest income, and Brazilian tax loss carry-forwards, because such items were significant components of its revenues that should have been identified and addressed in order for a reader of the company's financial statements to understand Caterpillar's results of operations. *Id.*

[15] *See* Item 303(a) of Regulation S–K [17 CFR 229.303(a)].

[16] *See* Item 303(a)(1) of Regulation S–K [17 CFR 229.303(a)(1)].

[17] *Id.*

[18] *See* Item 303(a)(2)(i) of Regulation S–K [17 CFR 229.303(a)(2)(i)].

[19] *See* Item 303(a)(2)(ii) of Regulation S–K [17 CFR 229.303(a)(2)(ii)].

[20] *See* Item 303(a)(3)(i) of Regulation S–K [17 CFR 229.303(a)(3)(i)].

[21] *Id.*

[22] *See* Item 303(a)(3)(iii) of Regulation S–K [17 CFR 229.303(a)(3)(iii)].

[23] *See* Instruction 3(A) to Item 303(a) of Regulation S–K [17 CFR 229.303(a)].

[24] *See* Instruction 3(B) to Item 303(a) of Regulation S–K [17 CFR 229.303(a)].

[25] *See* Item 303(a)(2)(ii) of Regulation S–K [17 CFR 229.303(a)(2)(ii)].

[26] The Sarbanes-Oxley Act exempts from section 401 investment companies registered under section 8 of the Investment Company Act of 1940 (15 U.S.C. 80a–8). *See* Pub. L. 107–204 Sec. 405 [15 U.S.C. 7263]. Therefore, registered investment companies are excluded from the scope of the amendments. The amendments apply, however, to business development companies. Business development companies are defined in section 2(a)(48) of the Investment Company Act of 1940. *See* 15 U.S.C. 80a–2(a)(48). Business development companies are a category of closed-end investment companies that are not required to register under the Investment Company Act, but file Forms 10–K and 10–Q, and also include MD&A in their annual reports to shareholders.

[27] *See* Release No. 33–8144 (Nov. 4, 2002) [67 FR 68054].

[28] In a January 2002 Commission Statement, we indicated our view that "reasonably likely" is a lower disclosure threshold than "more likely than not." *See* Release No. 33–8056, FR–61 (Jan. 22, 2002) [67 FR 3746] (the "Commission Statement").

that conducts off-balance sheet activities;

- The amounts of revenues, expenses and cash flows, the nature and amount of any retained interests, securities issued or other indebtedness incurred, or any other obligations or liabilities (including contingent obligations or liabilities) of the registrant arising from the arrangements that are, or may become, material and the circumstances under which they could arise;
- Management's analysis of the material effects of the above items, including an analysis of the degree to which the registrant relies on off-balance sheet arrangements for its liquidity and capital resources or market risk or credit risk support or other benefits; and
- A reasonably likely termination or material reduction in the benefits of an off-balance sheet arrangement and any material effects.

We also proposed to require registrants to provide tabular disclosure of contractual obligations and either tabular or textual disclosure of contingent liabilities and commitments. With regard to the proposed table of contractual obligations, the proposed disclosure included amounts of a registrant's known contractual obligations, aggregated by type of obligation and by time period in which payments are due. The proposed disclosure of contingent liabilities and commitments required registrants to disclose, either in text or in tabular format, the expected amount, range of amounts or maximum amount of contingent liabilities and commitments, aggregated by type and by time period of the expiration of the commitment.

B. Overview of Comments and Amendments

We received responses to our proposals from 48 commenters.[29] Generally, the major issues raised by the responses fell into four categories: (1) The scope of the proposed definition of "off-balance sheet arrangements;" (2) the proposed disclosure threshold; (3) the proposed disclosure requirements for off-balance sheet arrangements; and (4) the scope of the proposed disclosure of contractual obligations and contingent liabilities and commitments. The commentary provided useful perspective on the practical issues that registrants would face in applying the proposed rules.

1. Proposed Definition of "Off-Balance Sheet Arrangements"

While some commenters expressed general support for the proposed definition of "off-balance sheet arrangements," [30] the majority expressed the view that the definition was too broad and in need of further clarification.[31] In particular, several commenters believed that the proposed definition included routine transactions that would not typically be considered to be "off-balance sheet arrangements" (*e.g.*, executory contracts, employment agreements, consulting agreements, leases, licenses, royalty contracts, minimum purchase commitments, guarantees under customer contracts, and employee pension plan and postretirement benefit arrangements).[32] Eight commenters suggested that the definition should focus on the types of unconsolidated entities that are typically used to conduct off-balance sheet activities, such as structured finance entities or special purpose entities ("SPEs").[33] One commenter suggested that the definition should focus on off-balance sheet arrangements used as a financing, liquidity or risk-sharing technique.[34] Six commenters either were confused by, or opposed to, our proposal to include obligations or liabilities "not fully reflected in the financial statements."[35] Finally, eight commenters recommended that we should reconcile apparent discrepancies between the elements of the proposed definition and the corollary accounting concepts embodied in GAAP.[36]

At the commenters' suggestion, we are adopting a revised definition of "off-balance sheet arrangement" to clarify its scope. We agree that certain modifications of the proposed definition are necessary to eliminate disclosure of routine arrangements that could obscure more meaningful information. Accordingly, we have revised the definition to incorporate concepts from U.S. GAAP.[37] We believe that the inclusion of references in the definition to U.S. GAAP help narrow the scope of arrangements that require more transparent disclosure under the amendments. The same types of off-balance sheet arrangements covered by the definition must be discussed in the MD&A regardless of the particular GAAP under which a registrant presents its primary financial statements. We are not imposing U.S. GAAP on foreign private issuers with respect to the preparation of their primary financial statements.

2. Proposed Disclosure Threshold

The proposed rules would have required disclosure of off-balance sheet arrangements that "may have a material current or future effect." The proposed rules stated that disclosure of an arrangement was not necessary "if the likelihood of either the occurrence of an event implicating an off-balance sheet arrangement, or the materiality of its effect, is remote." We indicated that the proposed threshold of disclosure would have been lower than the current MD&A standard of "reasonably likely to have a material effect." We requested commentary on whether the proposed threshold was consistent under section 401(a) or whether a "reasonably likely" threshold was appropriate. Most commenters suggested that the final rule should incorporate the "reasonably likely" disclosure threshold that is currently found in MD&A rules,[38] while

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[29] The commenters are as follows: *Accounting Firms:* BDO Seidman LLP ("BDO"); Deloitte & Touche LLP ("D&T"); Ernst & Young LLP ("E&Y"); KPMG LLP ("KPMG"); PricewaterhouseCoopers LLP ("PwC"). *Law Firms:* Cleary, Gottlieb, Steen & Hamilton ("Cleary"); Fried, Frank, Harris, Shriver & Jacobson ("Fried Frank"); Sullivan & Cromwell ("S&C"); Troutman Sanders LLP ("Troutman"). *Associations:* American Bar Association ("ABA"); American Institute of Certified Public Accountants ("AICPA"); American Society of Corporate Secretaries ("ASCS"); America's Community Bankers ("ACB"); Association for Financial Professionals ("AFP"); Association of the Bar of the City of New York ("NY City Bar"); Edison Electric Institute ("EEI"); Financial Executives International ("FEI"); Interfaith Council on Corporate Accountability ("CANICCOR"); Investment Company Institute ("ICI"); Investment Counsel Association of America ("ICAA"); National Association of Real Estate Investment Trusts ("NAREIT"); New York County Lawyer's Association ("NYCLA"); New York State Bar Association ("NYBA"); Organization for International Investment ("OFII"); Rose Foundation for Communities & Environment ("Rose"); Securities Industry Association ("SIA"). *Corporations:* Boeing Company ("Boeing"); Centex Corporation; ("Centex"); Compass Bancshares, Inc. ("Compass"); Computer Sciences Corporation ("CSC"); Constellation Energy Group ("CEG"); Eaton Corporation ("Eaton"); Eli Lilly and Company ("Lilly"); Emerson Electric Corporation ("Emerson"); First Tennessee National Corporation ("FTNC"); Ford Motor Company ("Ford"); IMC Global Inc. ("IMC"); Intel Corporation ("Intel"); Kellogg Company ("Kellogg"); Pfizer Inc. ("Pfizer"). *Individuals:* Barbara Barry ("Barry"); Robert Beard, C.P.A. ("Beard"); Kevin Bronner, Ph.D. ("Bronner"); Dave Henseler ("Henseler"); Timothy O'Keefe ("O'Keefe"); Ralph Saul ("Saul"). *Governmental Bodies:* European Commission ("EC").

[30] *See, e.g.*, the letters of Compass, Emerson, Fried Frank, ICAA, IMC and PwC.

[31] *See, e.g.*, the letters of ABA, ACB, AICPA, Boeing, CEG, CSC, D&T, Eaton, EEI, E&Y, FTNC, Kellogg, KPMG, Pfizer and S&C.

[32] *See, e.g.*, the letters of ABA, ACB, AICPA, CEG, Centex, CSC, D&T, Eaton, EEI, E&Y, Kellogg, KPMG, NY City Bar and PwC.

[33] *See, e.g.*, the letters of ABA, ACB, Centex, CSC, D&T, E&Y, KPMG and NY City Bar.

[34] *See* the letter of ABA.

[35] *See, e.g.*, the letters of BDO, Compass, D&T, FTNC, Intel and S&C.

[36] *See, e.g.*, the letters of ACB, AICPA, Boeing, CEG, D&T, EEI, E&Y and Pfizer.

[37] *See* Discussion in Section III.A.

[38] *See, e.g.*, the letters of ABA, ACB, AICPA, ASCS, Boeing, CEG, Cleary, Compass, CSC, D&T, Eaton, EEI, E&Y, Fried Frank, ICAA, IMC, Intel,

three commenters supported the disclosure threshold as proposed.[39] In addition, many commenters stated that the "reasonably likely" threshold is an appropriate interpretation of the Sarbanes-Oxley Act.[40] Many commenters opposed the proposed threshold because they thought that it would: be difficult for management to apply; yield voluminous disclosures; attribute undue prominence to information that is not important to investors; confuse or mislead investors; and elicit information that would not be comparable among firms.[41] Some commenters indicated that the "reasonably likely" threshold is preferable because it would provide investors with the information that management considers important, as opposed to more speculative information that registrants would disclose under a lower threshold.[42] Several commenters believed that it would be preferable to have consistency throughout MD&A by adopting the "reasonably likely" standard.[43]

After considering the comments, we are adopting the "reasonably likely" disclosure threshold that we currently apply to other portions of MD&A disclosure.[44] We believe that the "reasonably likely" threshold best promotes the utility of the disclosure requirements by reducing the possibility that investors will be overwhelmed by voluminous disclosure of insignificant and possibly unnecessarily speculative information.[45] We have found no express reference in the legislative history conclusively demonstrating Congress' intent in using the word "may." After considering the comments, we conclude that the "reasonably likely" standard focuses on the information most important to an understanding of a registrant's off-balance sheet arrangements and their material effects on the registrant's financial condition, changes in financial condition, revenues or expenses, results of operations, liquidity, capital expenditures or capital resources. In addition, we are mindful of the potential difficulty that registrants would have faced in attempting to comply with the "remote" disclosure threshold set forth in the Proposing Release. We also believe that our use of a consistent disclosure threshold throughout MD&A will preclude the potential confusion that could result from disparate thresholds.

3. Proposed Disclosure Requirements

While some commenters supported the proposed disclosure requirements,[46] others believed the proposals to be overly prescriptive and detail-oriented.[47] Eight commenters stated that the proposed disclosure would be voluminous, would not be useful or would be confusing to investors.[48] Three commenters expressed concerns about the sensitivity and potential competitive harm of the required disclosures.[49] In addition, seven commenters suggested that we should adopt a more flexible, principles-based approach to the MD&A disclosures.[50]

Another area of concern was whether it is feasible to expect a registrant to be able to obtain information about the activities of unconsolidated entities over which it may not have control.[51] For example, some commenters believed that companies might be unable to obtain, monitor or evaluate certain information about unconsolidated entities that conduct off-balance sheet activities (*e.g.*, certain multi-party conduits or third parties that benefit from a pre-existing guarantee of the registrant).[52]

After carefully evaluating the comments, we are adopting disclosure requirements that are more consistent with the principles-based approach found in current MD&A rules. The principle throughout the amendments is that the registrant should disclose information to the extent that it is necessary to an understanding of a registrant's material off-balance sheet arrangements and their material effects on financial condition, changes in financial condition, revenues or expenses, results of operations, liquidity, capital expenditures or capital resources. Consistent with traditional MD&A disclosure, management has the responsibility to identify and address the key variables and other qualitative and quantitative factors that are peculiar to, and necessary for, an understanding and evaluation of the company.[53] The amendments contain the following four specific items to bolster the principles-based approach. These items require disclosure of the following information to the extent necessary for an understanding of a registrant's off-balance sheet arrangements and their effects:

- The nature and business purpose of the registrant's off-balance sheet arrangements;[54]
- The importance of the off-balance sheet arrangements to the registrant for liquidity, capital resources, market risk or credit risk support or other benefits;[55]
- The financial impact of the arrangements on the registrant (*e.g.*, revenues, expenses, cash flows or securities issued) and the registrant's exposure to risk as a result of the arrangements (*e.g.*, retained interests or contingent liabilities);[56] and
- Known events, demands, commitments, trends or uncertainties that affect the availability or benefits to the registrant of material off-balance sheet arrangements.[57]

In addition, the amendments contain another principles-based requirement, similar to that used elsewhere in MD&A, that the registrant provide other information that it believes to be necessary for an understanding of its off-balance sheet arrangements and their material effects on the registrant's financial condition, changes in financial condition, revenues or expenses, results of operations, liquidity, capital expenditures or capital resources.[58]

KPMG, Lilly, NAREIT, NYBA, NY City Bar, Pfizer, PwC and S&C.

[39] *See, e.g.*, the letters of Beard, CANICCOR and IMC.

[40] *See, e.g.*, the letters of ABA, ACB, AICPA, CEG, Cleary, Compass, CSC, D&T, EEI, E&Y, Fried Frank, Lilly, NYBA, NY City Bar, Pfizer, PwC and S&C.

[41] *See, e.g.*, the letters of ACB, AICPA, ASCS, Boeing, CEG, Cleary, Compass, CSC, D&T, EEI, FEI, Fried Frank, ICAA, KPMG, Lilly, NAREIT, NYBA, NY City Bar, Pfizer, PwC and S&C.

[42] *See, e.g.*, the letters of Fried Frank, KPMG and Pfizer.

[43] *See, e.g.*, the letters of ABA, ACB, AICPA, ASCS, CEG, CSC, D&T, Eaton, EEI, Fried Frank, FTNC, ICAA, Intel, KPMG, Lilly, NAREIT, NYBA, NY City Bar, Pfizer, PwC and S&C.

[44] *See* Discussion in Section III.B.

[45] In June 2002, we proposed amendments to require registrants to file current reports on Form 8–K in the event of the creation of a direct or contingent material financial obligation or the occurrence of an event triggering a direct or contingent material financial obligation. *See* Release No. 33–8106 (June 17, 2002) [67 FR 42914]. If adopted, those current reporting requirements will keep investors apprised of material contingent obligations arising from off-balance sheet arrangements even if these fall below the "reasonably likely" threshold that we are adopting for MD&A disclosure.

[46] *See, e.g.*, the letters of ICI, IMC, D&T, NYBA, Pfizer and PwC.

[47] *See, e.g.*, the letters of Cleary, CSC, FTNC, NY City Bar and S&C.

[48] *See, e.g.*, the letters of ACB, AFP, Boeing, CSC, FTNC, Cleary, NY City Bar and S&C.

[49] *See, e.g.*, the letters of AFP, Boeing and Pfizer.

[50] *See, e.g.*, the letters of BDO, Cleary, CSC, FTNC, NY City Bar, Pfizer and S&C.

[51] *See, e.g.*, the letters of ABA, ACB, AICPA, Boeing, CSC, IMC, KPMG and Pfizer.

[52] *Id.*

[53] *See* Release No. 33–6349 (Sept. 28, 1981).

[54] *See, e.g.*, Item 303(a)(4)(i)(A) of Regulation S–K [17 CFR 229.303(a)(4)(i)(A)].

[55] *See, e.g.*, Item 303(a)(4)(i)(B) of Regulation S–K [17 CFR 229.303(a)(4)(i)(B)].

[56] *See, e.g.*, Item 303(a)(4)(i)(C) of Regulation S–K [17 CFR 229.303(a)(4)(i)(C)].

[57] *See, e.g.*, Item 303(a)(4)(i)(D) of Regulation S–K [17 CFR 229.303(a)(4)(i)(D)].

[58] *See, e.g.*, Item 303(a)(4)(i) of Regulation S–K [17 CFR 229.303(a)(4)(i)].

We have eliminated one aspect of the proposed disclosure requirements after considering the public commentary. The amendments do not require a registrant to disclose the nature and amount of the total assets and total obligations of an unconsolidated entity that conducts off-balance sheet activities on behalf of the registrant. Commenters indicated that it might be impracticable to obtain, monitor or evaluate information about unconsolidated entities that are unaffiliated with the registrant.[59] We believe that information regarding the nature and amount of assets transferred to an unconsolidated entity is more pertinent than a listing of the total assets and liabilities of that entity. We also believe that it may be necessary for a registrant to disclose the nature and amount of assets transferred to an unconsolidated entity in fulfilling its requirement to explain the nature and business purpose of an off-balance sheet arrangement.

4. Proposed Tabular and Textual Disclosure

Six commenters generally supported the proposed disclosure of contractual obligations and contingent liabilities and commitments,[60] while four commenters opposed it.[61] Two commenters expressed support for the proposed table of contractual obligations, but not for contingent liabilities and commitments.[62] Four commenters believed that the disclosure would not improve transparency,[63] and at least 13 commenters requested guidance or clarification on how to implement the disclosure requirements.[64]

Many of the commenters urged us to further limit and define the types of contractual obligations and contingent liabilities and commitments that would be subject to the new disclosure requirements.[65] For example, some commenters believed that the disclosure should exclude purchase orders and contracts for goods and services in the ordinary course of business, as well as items for which GAAP would not require any disclosure in the financial statements and footnotes.[66] In addition, some commenters suggested that we limit the disclosure of contractual obligations and commitments to contracts requiring cash payment.[67] Some commenters suggested that the disclosure of contingent liabilities should cover only "commercial commitments," to be defined by the rule[68] and should exclude loss contingencies from litigation, arbitration or regulatory proceedings.[69]

In addition, many commenters believed that the disclosure would impose a large, new compliance burden on registrants by requiring them to aggregate and assess multiple contracts and commitments.[70] Three commenters suggested that the disclosure should include a materiality threshold to help a registrant avoid the burden of identifying and evaluating insignificant contracts, contingencies or commitments.[71] Finally, five commenters believed that the rule should exclude notes, drafts, acceptances, bills of exchange or other commercial instruments with a maturity of one year or less issued in the ordinary course of business.[72]

After evaluating the comments received, we have modified the required table of contractual obligations. Contrary to the proposed rules, which only suggested the categories of contractual obligations to be included, the amendments specify that the following categories of contractual obligations must be included within the table:

- Long-term debt obligations;
- Capital lease obligations;
- Operating lease obligations;
- Purchase obligations; and
- Other long-term liabilities reflected on the registrant's balance sheet under GAAP.

The preparation of financial statements in accordance with GAAP already requires registrants to assess payments under all of the above categories of contractual obligations, except for purchase obligations. To aid registrants in preparing the table, the amendments define the first four categories of contractual obligations.[73] For issuers that present their primary financial statements in accordance with U.S. GAAP, we have defined the first three categories by referencing the relevant U.S. GAAP accounting pronouncements that require disclosure of these obligations in a registrant's financial statements or footnotes. The definition of "purchase obligations" is designed to capture the registrant's capital expenditures for purchases of goods or services over a five-year period. The fifth category captures all other long-term liabilities that are reflected on the registrant's balance sheet under the registrant's applicable GAAP.

The amendments require disclosure of the amounts of a registrant's purchase obligations without regard to whether notes, drafts, acceptances, bills of exchange or other commercial instruments will be used to satisfy such obligations because those instruments could have a significant effect on the registrant's liquidity. The purpose of this new disclosure requirement is to obtain enhanced disclosure concerning a registrant's contractual payment obligations, and the exclusion of commercial instruments would be inconsistent with that objective. Adoption of certain other suggestions of commenters, such as an exclusion of ordinary course items, a limitation to items reflected in financial statements or notes under GAAP or a materiality threshold would also be inconsistent with the objective.

We are not adopting a disclosure requirement for contingent liabilities and commitments. We believe that meaningful disclosure of contingent liabilities and commitments is not necessarily best accomplished by an aggregated disclosure format (either tabular or textual) because such a format would inevitably omit important information about the operative facts and circumstances of contingent liabilities and commitments (*e.g.*, triggering events, probability of occurrence or recourse provisions). In addition, we note that a number of new accounting[74] and disclosure

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[59] *See, e.g.*, the letters of ABA, ACB, AICPA, Boeing, CSC, IMC, KPMG and Pfizer.

[60] *See, e.g.*, the letters of ACB, Compass, CSC, ICAA, IMC and Pfizer.

[61] *See, e.g.*, the letters of ABA, Eaton, Emerson and NY City Bar.

[62] *See, e.g.*, the letters of AICPA and E & Y.

[63] *See, e.g.*, the letters of Eaton, Emerson, NY City Bar and Troutman.

[64] *See, e.g.*, the letters of ABA, ACB, BDO, Centex, D & T, Eaton, Emerson, ICAA, Kellogg, NYBA, NY City Bar, Rose and Troutman.

[65] *See, e.g.*, the letters of Centex, D & T, Eaton, Ford, FTNC, ICAA, IMC, Intel, Kellogg, NY City Bar and Pfizer.

[66] *See, e.g.*, the letters of BDO, Centex, D & T, Emerson, Kellogg and NY City Bar.

[67] *See, e.g.*, the letters of Centex and D & T.

[68] *See, e.g.*, the letters of AICPA, E & Y, D & T; NYBA and PwC.

[69] *See, e.g.*, the letters of AICPA, Eaton, E & Y, D & T, Intel, Troutman and PwC.

[70] *See, e.g.*, the letters of ABA, Centex, Eaton, Ford and NY City Bar.

[71] *See, e.g.*, the letters of Centex, IMC and NY City Bar.

[72] *See, e.g.*, the letters of Beard, CSC, IMC, NYBA and Pfizer.

[73] *See, e.g.*, Item 303(a)(5)(ii) of Regulation S–K [17 CFR 229.303(a)(5)(ii)]. We are unable to follow a similar approach for registrants whose financial statements are prepared in accordance with a non-U.S. GAAP. An instruction, however, makes clear that such a registrant should base the categories of contractual obligations (except "purchase obligations") on the classifications used in the GAAP under which its primary financial statements are prepared. *See, e.g.*, Instruction 2 to Item 5.F of Form 20–F [17 CFR 249.220f].

[74] *See, e.g.*, Financial Accounting Standards Board ("FASB") Interpretation No. 45, *Guarantor's Accounting and Disclosure Requirements for Guarantees, Including Indirect Guarantees of*

requirements, including these amendments, address a registrant's contingent liabilities and commitments and may obviate the need for this additional disclosure requirement. We will, however, continue to assess the costs and benefits of an MD & A disclosure requirement for aggregate contingent liabilities and commitments in connection with our ongoing review of MD & A.[75] Pending future Commission action on the subject, registrants should refer to the existing guidance in our Commission Statement to consider whether it would be beneficial to investors to include tabular disclosure of aggregate commercial commitments.[76]

III. Discussion of Amendments

A. Definition of "Off-Balance Sheet Arrangement"

The definition of "off-balance sheet arrangement" primarily targets the means through which companies typically structure off-balance sheet transactions or otherwise incur risks of loss that are not fully transparent to investors. For example, in many cases, in order to facilitate a transfer of assets or otherwise finance the activities of an unconsolidated entity, a company must provide financial support designed to reduce risks to the entity or other third parties. That financial support may assume many different forms, such as financial guarantees, subordinated retained interests, keepwell agreements,[77] derivative instruments or other contingent arrangements that expose the registrant to continuing risks or material contingent liabilities.[78] To appropriately capture these transactions, the definition of "off-balance sheet arrangement" includes any contractual arrangement to which an unconsolidated entity is a party, under which the registrant has:

- Any obligation under certain guarantee contracts;[79]
- A retained or contingent interest in assets transferred to an unconsolidated entity or similar arrangement that serves as credit, liquidity or market risk support to that entity for such assets;
- Any obligation under certain derivative instruments;[80]
- Any obligation under a material variable interest[81] held by the registrant in an unconsolidated entity that provides financing, liquidity, market risk or credit risk support to the registrant, or engages in leasing, hedging or research and development services with the registrant.

1. Guarantees

The definition of "off-balance sheet arrangements" addresses certain guarantees that may be a source of potential risk to a registrant's future liquidity, capital resources and results of operations, regardless of whether or not they are recorded as liabilities. The definition borrows concepts from U.S. GAAP in order to identify the types of guarantee contracts for which disclosure is required. The references to U.S. GAAP apply regardless of the particular GAAP under which a registrant presents its primary financial statements.

The first element of the definition refers to any obligation under a guarantee contract that has any of the characteristics identified in paragraph 3 of FIN 45, and that is not excluded from the initial recognition and measurement provisions of FIN 45.[82] Paragraph 3 of FIN 45 includes within its scope any contract with one or more of the following four characteristics:

- Contracts that contingently require the guarantor to make payments to the guaranteed party based on changes in an "underlying"[83] that is related to an asset, a liability or an equity security of the guaranteed party (*e.g.*, a financial standby letter of credit, a market value guarantee, a guarantee of the market price of the common stock of the guaranteed party or a guarantee of the collection of the scheduled contractual cash flows from individual financial assets held by an SPE);[84]
- Contracts that contingently require the guarantor to make payments to the guaranteed party based on another entity's failure to perform under an obligating agreement (*e.g.*, a performance guarantee);[85]
- Indemnification agreements (contracts) that contingently require the indemnifying party (guarantor) to make payments to the indemnified party (guaranteed party) based on changes in an underlying that is related to an asset, a liability or an equity security of the indemnified party (*e.g.*, an adverse judgment in a lawsuit or the imposition of additional taxes due to either a change in the tax law or an adverse interpretation of the tax law);[86] or
- Indirect guarantees of the indebtedness of others, which arise under an agreement that obligates one entity to transfer funds to a second entity upon the occurrence of specified events, under conditions whereby (a) the funds become legally available to creditors of the second entity and (b) those creditors may enforce the second entity's claims against the first entity under the agreement (*e.g.*, keepwell agreements).[87]

The definition of "off-balance sheet arrangement" is designed so that a registrant's application of FIN 45 will provide the basis for determining the guarantee contracts that are subject to disclosure under the amendments.[88] Paragraphs 6 and 7 of FIN 45 exclude certain guarantee contracts from the recognition and measurements provisions of FIN 45.[89] These exclusions

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Indebtedness of Others (Nov. 2002), ("FIN 45"); and FASB Interpretation No. 46, *Consolidation of Variable Interest Entities* (Jan. 2003), ("FIN 46").

[75] We are considering future rule proposals or interpretive releases to improve MD & A disclosure, such as requiring an overview about a company's situation and information about the trends that its management follows and evaluates in making decisions about how to guide the company's business.

[76] *See* Commission Statement, Release No. 33–8056, FR–61 (Jan. 22, 2002) [67 FR 3746] at Section II.A.3.

[77] A "keepwell agreement" includes any agreement or undertaking under which a company is, or would be, obligated to provide or arrange for the provision of funds or property to an affiliate or third party.

[78] For purposes of the amendments, contingent liabilities arising out of litigation, arbitration or regulatory actions are not considered to be off-balance sheet arrangements. *See, e.g.*, Instruction 3 to Paragraph 303(a)(4) of Regulation S–K [17 CFR 229.303].

[79] The guarantee contracts covered by the definition are consistent with the scope of the recently issued FIN 45.

[80] For registrants whose financial statements are prepared in accordance with U.S. GAAP, the definition includes a contract that would be accounted for as a derivative instrument, except that it is both indexed to the registrant's own stock and classified in the registrant's statement of stockholders' equity. See FASB Statement of Financial Accounting Standards ("SFAS") No. 133, *Accounting for Derivative Instruments and Hedging Activities* (June 1998), ("SFAS No. 133"), paragraph 11a. For other registrants, the definition includes derivative instruments that are both indexed to the registrant's own stock and classified in stockholders' equity, or not reflected, in the company's statement of financial position.

[81] *See* FIN 46.

[82] *See, e.g.*, Item 303(a)(4)(ii)(A) of Regulation S–K [17 CFR 229.303(a)(4)(ii)(A)].

[83] An "underlying" is defined as "a specified interest rate, security price, commodity price, foreign exchange rate, index of prices or rates, or other variable." *See* FIN 45 at fn. 2.

[84] *See* FIN 45, paragraph 3a.

[85] *Id.*, paragraph 3b.

[86] *Id.*, paragraph 3c.

[87] *Id.*, paragraphs 3d and 17.

[88] A registrant that prepares its financial statements in accordance with a non-U.S. GAAP must apply FIN 45 to reconcile its financial statements with U.S. GAAP.

[89] Paragraph 6 of FIN 45 excludes: guarantees issued by insurance and reinsurance companies and accounted for under specialized accounting principles for those companies; a lessee's guarantee of the residual value of leased property in a capital lease; contingent rents; vendor rebates; and guarantees whose existence prevents the guarantor from recognizing a sale or the earnings from a sale. Paragraph 7 of FIN 45 excludes: product warranties; guarantees that are accounted for as derivatives; contingent consideration in a business combination;

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also will apply to the definition of "off-balance sheet arrangements" in the amendments.

2. Retained or Contingent Interests

As an alternative to guarantee contracts, companies may structure and facilitate off-balance sheet arrangements by retaining an interest in assets transferred to an unconsolidated entity. For example, a subordinated retained interest in a pool of receivables transferred to an unconsolidated entity can provide credit support to the entity by cushioning the senior interests in the event that a portion of the receivables becomes uncollectible. In this event, the value of the retained interest can decline and can therefore have a material effect on a registrant's financial condition. Accordingly, the second element of the definition of "off-balance sheet arrangements" includes retained or contingent interests in assets transferred to an unconsolidated entity or similar arrangements that serve as credit, liquidity or market risk support to such entity for such assets.[90]

3. Certain Derivative Instruments

Similar to guarantees or retained interests, certain derivative instruments have been used in structuring off-balance sheet arrangements. For example, a registrant may issue or hold derivative instruments that are indexed to its stock and classified as stockholders' equity under GAAP.[91] The impact of those derivative instruments often is not transparent to investors because those derivative instruments are classified as equity and subsequent changes in fair value may not be periodically recognized in the financial statements. Therefore, the third element of the definition includes those derivative instruments to better apprise investors of their impact. The definition for registrants whose financial statements are prepared in accordance with U.S. GAAP includes derivative instruments that are excluded from SFAS No. 133 pursuant to paragraph 11a of that Statement.[92] Similarly, the definition for registrants whose financial statements are prepared in accordance with a non-U.S. GAAP includes any obligation under a derivative instrument that is both indexed to the registrant's own stock and classified in stockholders' equity, or not reflected, in the registrant's statement of financial position.[93]

4. Variable Interests

The fourth element of the definition includes any obligation, including a contingent obligation, arising out of a material variable interest held by the registrant in an unconsolidated entity, where such entity provides financing, liquidity, market risk or credit risk support to, or engages in leasing, hedging or research and development services with, the registrant.[94] We intend for this element of the definition to be consistent with the concept of a "variable interest" that is included in the recently issued FASB Interpretation No. 46 ("FIN 46"). The term "variable interest" is defined in FIN 46 as "contractual, ownership, or other pecuniary interests in an entity that change with changes in the entity's net asset value."[95] In other words, variable interests are investments or other interests that will absorb a portion of an entity's expected losses if they occur or receive portions of the entity's expected residual returns if they occur.[96] To apply this element of the definition, a registrant must assess the variable interests it holds in the specified unconsolidated entities regardless of whether the entity is deemed to be a "variable interest entity" pursuant to paragraph 5 of FIN 46. To focus the disclosure on the most crucial off-balance sheet arrangements, however, the definition only applies to variable interests, that are material to the registrant, in entities that provide financing, liquidity, market risk or credit risk support to the registrant, or engage in leasing, hedging or research and development services with the registrant.[97]

B. Disclosure Threshold

The amendments require disclosure of off-balance sheet arrangements that either have, or are reasonably likely to have, a current or future effect on the registrant's financial condition, changes in financial condition, revenues or expenses, results of operations, liquidity, capital expenditures or capital resources that is material to investors.[98] That disclosure threshold is consistent with the existing disclosure threshold under which information that could have a material effect on financial condition, changes in financial condition or results of operations must be included in MD&A.[99]

To apply the disclosure threshold, management first must identify and critically analyze the registrant's off-balance sheet arrangements, including its guarantee contracts, retained or contingent interests, derivative instruments and variable interests. Second, management must assess the likelihood of the occurrence of any known trend, demand, commitment, event or uncertainty that could affect an off-balance sheet arrangement (*e.g.*, performance under a guarantee; an obligation under a variable interest or equity-linked or indexed derivative instrument; or recognition of an impairment). If management concludes that the known trend, demand, commitment, event or uncertainty is not reasonably likely to occur, then no disclosure is required in MD&A.[100] If management cannot make that determination, it must evaluate objectively the consequences of the known trend, demand, commitment, event or uncertainty on the assumption that it will come to fruition. Disclosure is then required unless management determines that a material effect on the registrant's financial condition, changes in financial condition, revenues or expenses, results of operations,

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guarantees for which the guarantor's obligations would be reported as an equity item (rather than a liability); certain guarantees in connection with a lease restructuring; guarantees issued between either parents and their subsidiaries or corporations under common control; a parent's guarantee of a subsidiary's debt to a third party; and a subsidiary's guarantee of the debt owed to a third party by either its parent or another subsidiary of that parent.

[90] *See, e.g.*, Item 303(a)(4)(ii)(B) of Regulation S–K [17 CFR 229.303(a)(4)(ii)(B)].

[91] See FASB Emerging Issues Task Force Issue ("EITF") No. 00–19 *Accounting for Derivative Financial Instruments Indexed to, and Potentially Settled in, a Company's Own Stock* (Jan. 2001). The FASB has been reevaluating the accounting treatment for such financial instruments and is expected to issue SFAS No. 149 *Accounting for Financial Instruments with Characteristics of Liabilities or Equity* in February 2003.

[92] *See* SFAS No. 133, paragraph 11a. In particular, paragraph 11a excludes contracts issued or held by a registrant that are both: (1) indexed to its own stock and (2) classified in stockholder's equity in its statement of financial position.

[93] *See, e.g.*, Item 5.E.2(c) of Form 20–F [17 CFR 249.220f].

[94] *See, e.g.*, Item 303(a)(4)(ii)(D) of Regulation S–K [17 CFR 229.303(a)(4)(ii)(D)].

[95] *See* FIN 46 at paragraph 2c.

[96] *See* FIN 46 at paragraph 6. The definition of "off-balance sheet arrangement" only addresses obligations arising out of a variable interest held by a registrant, and not residual returns.

[97] We identified the need for improved disclosures about entities that conduct these activities in the January 2002 Commission Statement. *See* Commission Statement, Release No. 33–8056, FR–61 (Jan. 22, 2002) [67 FR 3746] at Section II.A.2.

[98] *See, e.g.*, Item 303(a)(4)(i) of Regulation S–K [17 CFR 229.303(a)(4)(i)].

[99] *See* Release No. 33–6835 (May 18, 1989) [54 FR 22427] (the "1989 Interpretive Release"). The January 2002 Commission Statement indicated that "reasonably likely" is a lower disclosure threshold than "more likely than not." *See* Release No. 33–8056, FR–61 (Jan. 22, 2002) [67 FR 3746].

[100] Even if management determines that the likelihood of a material effect is not reasonably likely, disclosure may still be required in the footnotes to the financial statements. *See, e.g.*, FIN 45, paragraph 13.

liquidity, capital expenditures or capital resources is not reasonably likely to occur. Consistent with other disclosure threshold determinations that management must make in drafting MD&A, the assessment must be objectively reasonable, viewed as of the time the determination is made.[101]

C. Disclosure About Off-Balance Sheet Arrangements

The amendments require a registrant to disclose the material facts and circumstances that provide investors with a clear understanding of a registrant's off-balance sheet arrangements and their material effects. To provide flexibility to registrants and to filter out disclosure of insignificant details, the amendments require disclosure of enumerated information only to the extent necessary to an understanding of a registrant's off-balance sheet arrangements and their material effects on financial condition, changes in financial condition, revenues and expenses, results of operations, liquidity, capital expenditures and capital resources. In addition to the enumerated information, the discussion must include such other information that the registrant believes is necessary for an understanding of its off-balance sheet arrangements and the specified material effects.[102] The disclosure shall generally cover the most recent fiscal year, but it also should address changes from the previous year where such discussion is necessary to an understanding of the disclosure.[103]

Under the amendments, a registrant must disclose the nature and business purpose of the off-balance sheet arrangements.[104] This disclosure should explain to investors why a registrant engages in off-balance sheet arrangements and should provide the information that investors need to understand the business activities advanced through a registrant's off-balance sheet arrangements. For example, a registrant may indicate that the arrangements enable the company to lease certain facilities rather than acquire them, where the latter would require the registrant to recognize a liability for the financing. Other possible disclosure under this requirement may indicate that the off-balance sheet arrangement enables the registrant to readily obtain cash through sales of groups of loans to a trust; to finance inventory, transportation or research and development costs without recognizing a liability; or to lower borrowing costs of unconsolidated affiliates by extending guarantees to their creditors.

Under the amendments, a registrant must discuss the importance of its off-balance sheet arrangements to its liquidity, capital resources, market risk support, credit risk support or other benefits.[105] This disclosure should provide investors with an understanding of the importance of off-balance sheet arrangements to the registrant as a financial matter. For example, if a registrant materially relies on off-balance sheet arrangements for its liquidity and capital resources, a registrant may be required to disclose how often it securitizes financial assets, to what degree its securitizations are a material source of liquidity, whether it has materially increased or decreased securitizations from past periods and to explain such increase or decrease. Together with the other disclosure requirements, registrants should provide information sufficient for investors to assess the extent of the risks that have been transferred and retained as a result of the arrangements.

In addition, the disclosure should provide investors with insight into the overall magnitude of a registrant's off-balance sheet activities, the specific material impact of the arrangements on a registrant and the circumstances that could cause material contingent obligations or liabilities to come to fruition. Disclosure is required to the extent material and necessary to investors' understanding of:

- The amounts of revenues, expenses, and cash flows of the registrant arising from the arrangements;
- The nature and total amount of any interests retained, securities issued and other indebtedness incurred by the registrant in connection with such arrangements; and
- The nature and amount of any other obligations or liabilities (including contingent obligations or liabilities) of the registrant arising from the arrangements that are, or are reasonably likely to become, material and the triggering events or circumstances that could cause them to arise.[106]

The discussion also must identify any known event, demand, commitment, trend or uncertainty that will, or is reasonably likely to, result in the termination, or material reduction in availability to the registrant, of its off-balance sheet arrangements that provide the registrant with material benefits.[107] Under this requirement, a registrant must disclose, for example, any material contractual provisions calling for the termination or material reduction of an off-balance sheet arrangement. The disclosure also should address factors that are reasonably likely to affect the registrant's ability to continue using off-balance sheet arrangements that provide it with material benefits. For example, if a registrant's credit rating were to fall below a certain level, some off-balance sheet arrangements may require the registrant to purchase the assets or assume the liabilities of an unconsolidated entity. In addition, a change in a registrant's credit rating could either preclude or materially reduce the benefits to the registrant of engaging in off-balance sheet arrangements. In such cases, the registrant will have to disclose known circumstances that are reasonably likely to cause its credit rating to fall to the specified level and discuss the material consequences of the drop in ratings. In addition, the registrant must discuss the course of action that it has taken or proposes to take in response to a termination or material reduction in the availability of an off-balance sheet arrangement that provides material benefits.

The amendments contain a principles-based requirement stating that a registrant must provide other information that it believes to be necessary for an understanding of its off-balance sheet arrangements and the material effects of these arrangements on its financial condition, changes in financial condition, revenues or expenses, results of operations, liquidity, capital expenditures or capital resources.[108] The disclosure should provide investors with management's insight into the impact and proximity of the potential material risks that are reasonably likely to arise from material off-balance sheet arrangements.

The amendments instruct registrants to aggregate off-balance sheet arrangements in groups or categories that provide information in an efficient and understandable manner and avoid repetition and disclosure of immaterial

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[101] *See* Release No. 33–6835 (May 18, 1989) [54 FR 22427].

[102] *See, e.g.*, Item 303(a)(4)(i) of Regulation S–K [17 CFR 229.303(a)(4)(i)].

[103] *See, e.g.*, Instruction 4 to paragraph 303(a)(4) of Regulation S–K [17 CFR 229.303]. *Compare* Instruction 1 to Item 303(a) of Regulation S–K [17 CFR 229.303].

[104] *See, e.g.*, Item 303(a)(4)(i)(A) of Regulation S–K [17 CFR 229.303(a)(4)(i)(A)].

[105] *See, e.g.*, Item 303(a)(4)(i)(B) of Regulation S–K [17 CFR 229.303(a)(4)(i)(B)].

[106] *See, e.g.*, Item 303(a)(4)(i)(C) of Regulation S–K [17 CFR 229.303(a)(4)(i)(C)].

[107] *See, e.g.*, Item 303(a)(4)(i)(D) of Regulation S–K [17 CFR 229.303(a)(4)(i)(D)].

[108] *See, e.g.*, Item 303(a)(4)(i) of Regulation S–K [17 CFR 229.303(a)(4)(i)].

information.[109] Common or similar effects that may result from a number of different off-balance sheet arrangements must be analyzed in the aggregate to the extent that the aggregation increases understanding. For example, if particular triggering events or circumstances would either require a registrant to become directly obligated, or accelerate its obligations, under a number of off-balance sheet arrangements, and the overall obligations would be material, then the amendments will require an analysis of the circumstances and their aggregate effect to the extent it increases understanding. Registrants should discuss distinctions among aggregated off-balance sheet arrangements if such distinctions are material, but the discussion should avoid repetition and disclosure of immaterial information.

In light of the fact that the off-balance sheet arrangements covered under the amendments are contractual, it is appropriate to apply the Commission's policy regarding MD&A disclosure of preliminary negotiations. Therefore, the amendments include an instruction that no obligation to make disclosure of an off-balance sheet arrangement will arise until an unconditionally binding definitive agreement, subject only to customary closing conditions exists or, if there is no such agreement, when settlement of the transaction occurs.[110] That instruction is consistent with the Commission policy set forth in its 1989 Interpretive Release on disclosure of preliminary negotiations for the acquisition or disposition of assets not in the ordinary course of business.[111] In the 1989 Interpretive Release, the Commission stated that, "where disclosure is not otherwise required, and has not otherwise been made, the MD&A need not contain a discussion of the impact of [preliminary negotiations for the acquisition or disposition of assets not in the ordinary course of business] where, in the registrant's view, inclusion of such information would jeopardize completion of the transaction."[112]

D. Tabular Disclosure of Contractual Obligations

Some accounting standards require disclosure concerning a registrant's obligations and commitments to make future payments under contracts, such as debt and lease agreements.[113] Information about other obligations, such as purchase contracts, may or may not be disclosed, but if disclosed, it is usually dispersed throughout a filing and may not be presented in a consistent manner among registrants. Aggregated information about a registrant's contractual obligations in a single location will provide useful context for investors to assess a registrant's short- and long-term liquidity and capital resource needs and demands. In addition, it will improve an investor's ability to compare registrants. Therefore, we are requiring registrants to disclose in a tabular format the amounts of payments due under specified contractual obligations, aggregated by category of contractual obligation, for specified time periods.[114] We are not adopting this requirement for small business issuers that file small business reporting forms.[115] The registrant must provide the information as of the latest fiscal year end balance sheet date,[116] and the table should be in substantially the same form as follows:

Contractual obligations	Payments due by period				
	Total	Less than 1 year	1–3 years	3–5 years	More than 5 years
[Long-Term Debt]					
[Capital Lease Obligations]					
[Operating Leases]					
[Purchase Obligations]					
[Other Long-Term Liabilities Reflected on the Registrant's Balance Sheet under GAAP]					
Total					

To provide flexibility for company-specific disclosure, the amendments allow a registrant to disaggregate the specified categories by using other categories suitable to its business, but the table must include all of the obligations that fall within specified categories.[117] In addition, the table should be accompanied by footnotes necessary to describe material contractual provisions or other material information to the extent necessary for an understanding of the timing and amount of the contractual obligations in the table.

U.S. GAAP already requires registrants to aggregate and assess all of the specified categories, except for purchase obligations. Accordingly, the first three categories of contractual obligations are defined by reference to the relevant U.S. GAAP accounting pronouncements.[118] A registrant that prepares financial statements in accordance with a non-U.S. GAAP should include contractual obligations in the table that are consistent with the classifications used in the GAAP under which its primary financial statements are prepared.[119]

Some purchase obligations are executory contracts, and therefore are not recognized as liabilities in

[109] *See, e.g.*, Instruction 2 to paragraph 303(a)(4) of Regulation S–K [17 CFR 229.303].

[110] *See, e.g.*, Instruction 1 to paragraph 303(a)(4) of Regulation S–K [17 CFR 229.303].

[111] *See* Release No. 33–6835 (May 18, 1989) [54 FR 22427].

[112] *Id.* at 22436.

[113] *See, e.g.*, FASB SFAS No. 13, *Accounting for Leases* (Nov. 1976); SFAS No. 47, *Disclosure of Long-Term Obligations* (March 1981); and SFAS No. 129, *Disclosure of Information about Capital Structure* (Feb. 1997).

[114] *See, e.g.*, Item 303(a)(5)(i) of Regulation S–K [17 CFR 229.303(a)(5)(i)].

[115] "Small business issuer" is defined to mean any entity that (1) Has revenues of less than $25,000,000; (2) is a U.S. or Canadian issuer; (3) is not an investment company; and (4) if a majority-owned subsidiary, has a parent corporation that also is a small business issuer. An entity is not a small business issuer, however, if it has a public float (the aggregate market value of the outstanding equity securities held by non-affiliates) of $25,000,000 or more. *See* 17 CFR 228.10.

[116] Registrants are not required to include the table for interim periods. Instead, a registrant should update the table from its annual report by disclosing only material changes outside of the ordinary course of business. *See, e.g.*, Instruction 7 to paragraph 303(b) of Regulation S–K [17 CFR 229.303].

[117] *See, e.g.*, Item 303(a)(5)(i) of Regulation S–K [17 CFR 229.303(a)(5)(i)].

[118] *See, e.g.*, Item 303(a)(5)(ii) of Regulation S–K [17 CFR 229.303(a)(5)(ii)].

[119] *See, e.g.*, Instruction 2 to Item 5.F of Form 20–F [17 CFR 249.220f].

accordance with GAAP.[120] Because purchase obligations may have a significant effect on the registrant's liquidity, they are included in the table. The amendments provide a definition of "purchase obligations." A "purchase obligation" is defined as an agreement to purchase goods or services that is enforceable and legally binding on the registrant and that specifies all significant terms, including: fixed or minimum quantities to be purchased; fixed, minimum or variable price provisions; and the approximate timing of the transaction.[121] If the purchase obligations are subject to variable price provisions, then the registrant must provide estimates of the payments due. In that case, the table should include footnotes to inform investors of the payments that are subject to market risk, if that information is material to investors. In addition, the footnotes should discuss any material termination or renewal provisions to the extent necessary for an understanding of the timing and amount of the registrant's payments under its purchase obligations.

E. Presentation of Disclosure

1. Separate Disclosure Sections

The amendments require a registrant to present the disclosure about off-balance sheet arrangements in a separately-captioned section of MD&A. In contrast, a registrant may place the tabular disclosure of known contractual obligations in an MD&A location that it deems to be appropriate. In response to the request for comments in the Proposing Release, five commenters suggested that the issuer should be able to determine the placement of the off-balance sheet disclosures within the MD&A,[122] and two commenters supported a separate disclosure section for off-balance sheet disclosures.[123] After evaluating the comments, we are adopting a requirement for a separate section for two reasons. First, a distinct presentation of the information will highlight it for readers and enable investors to more easily compare disclosure of different companies. Second, a distinct presentation will layer the MD&A, and thereby enable investors with varying levels of interest and financial acumen to easily obtain desired information.

[120] *See* FASB, Statement of Financial Accounting Concepts No. 6, *Elements of Financial Statements* (Dec. 1985), paragraphs 35–40.

[121] *See, e.g.*, Item 303(a)(5)(ii)(D) of Regulation S–K [17 CFR 229.303(a)(5)(ii)(D)].

[122] See, *e.g.*, the letters of ACB, CSC, D&T, IMC and Pfizer.

[123] See, *e.g.*, the letters of Beard and PwC.

2. Language and Format

The MD&A discussion should be presented in language and a format that is clear, concise and understandable. For example, a registrant may choose to include the financial impact of its off-balance sheet arrangements (*e.g.*, revenues, expenses, gains or losses) aggregated by type of arrangement in a tabular format. The information should not be presented in such a manner that only an accountant or financial analyst or an expert on a particular industry would be able to fully understand it. Boilerplate disclosures that do not specifically address the registrant's particular circumstances and operations will not satisfy the MD&A requirements. Disclosure that can easily be transferred from year to year, or from company to company, with no change will neither inform investors adequately nor reflect the independent thinking that must precede the assessment by management that is intended for MD&A disclosure.

3. Cross-Referencing to the Financial Statements

In response to the Proposing Release, eight commenters noted that some of the disclosures appear to be redundant with GAAP disclosure requirements.[124] To eliminate unnecessary repetition, the amendments allow a registrant to include within its MD&A section a cross-reference to information in the footnotes to the financial statements.[125] The cross-reference must clearly identify specific information in the footnotes and must integrate the substance of the footnotes into the MD&A discussion in a manner designed to inform readers of the significance of the information that is not included within the body of the MD&A. Registrants should ensure that the quality of the discussion of off-balance sheet arrangements has not diminished as a result of including a cross-reference. In addition, the disclosure in the referenced footnotes should comply with the language and format requirements discussed above.

F. Effect of Amendments on Commission Statement

In an effort to provide guidance to public companies, our January 2002 Commission Statement presented a number of factors that management should consider regarding the MD&A disclosure requirements for liquidity and capital resources, off-balance sheet arrangements, certain trading activities that include non-exchange traded contracts accounted for at fair value, and transactions with persons or entities that derive benefits from their non-independent relationships with the registrant or the registrant's related parties.[126] The amendments relating to disclosures that are the subject of this release will supersede the guidance in the Commission Statement on disclosure of off-balance sheet arrangements[127] as of the Compliance Date for the amendments. On the Compliance Date for the amendments relating to disclosure of the table of contractual obligations, the guidance in the Commission Statement on disclosure of the table of contractual obligations[128] also will be superseded by the amendments. All other guidance issued in the Commission Statement will remain in effect. While the Compliance Dates for the amendments applies to annual reports, registration statements and proxy or information statements that are required to include financial statements for the fiscal years ending on or after June 15, 2003 for disclosure about off-balance sheet arrangements and December 15, 2003 for the table of contractual obligations, we assume that registrants with fiscal years ending before the Compliance Dates will continue to follow the guidance in the Commission Statement. Registrants may voluntarily comply with the new disclosure requirements before the Compliance Dates.

G. Application to Foreign Private Issuers

The amendments apply to foreign private issuers that file annual reports on Form 20–F[129] or on Form 40–F.[130] Because section 401(a) of the Sarbanes-Oxley Act does not distinguish between foreign private issuers[131] and U.S. companies, we interpret Congress' directive to the Commission to adopt rules requiring expanded disclosure about off-balance sheet transactions in annual reports filed with the

[124] *See, e.g.*, the letters of ACB, Boeing, Eaton, E&Y, Ford, KPMG, NAREIT and NY City Bar.

[125] *See, e.g.*, Instruction 5 to paragraph 303(a)(4) of Regulation S–K [17 CFR 229.303(a)(4)].

[126] *See* Commission Statement, Release No. 33–8056, FR–61 (Jan. 22, 2002)[67 FR 3746].

[127] *See* Commission Statement, Section II.A.2.

[128] *See* Commission Statement, Section II.A.3.

[129] 17 CFR 249.220f.

[130] 17 CFR 249.240f. Form 40-F is the form used by qualified Canadian issuers to file their Exchange Act registration statements and annual reports with the Commission in accordance with Canadian disclosure requirements under the U.S.-Canadian Multijurisdictional Disclosure System ("MJDS").

[131] A foreign private issuer is a non-U.S. company except for a company that has more than 50% of its outstanding voting securities owned by U.S. investors and has a majority of its officers and directors residing in or being citizens of the U.S., has a majority of its assets located in the U.S., or has its business principally administered in the U.S. *See* Exchange Act Rule 3b–4 [17 CFR 240.3b–4].

Commission to apply equally to Form 20–F or 40–F annual reports filed by foreign private issuers and to Form 10–K or 10–KSB annual reports filed by domestic issuers. In response to the Proposing Release, three commenters believed that the rules should apply to foreign private issuers, [132] five commenters believed that the rules should not apply to MJDS filers,[133] and four commenters believed that the Sarbanes-Oxley Act does not, and should not, require the proposals to be applied to foreign private issuers and MJDS filers.[134] We do not believe that it is appropriate to exempt foreign private issuers or MJDS filers because, as discussed below, the disclosure requirements do not represent a fundamental change in our approach with respect to the financial disclosure provided by foreign private issuers and MJDS filers.

There are two additional reasons for applying the amendments to foreign private issuers' annual reports filed with the Commission. First, investors and others would enjoy the same benefits from expanded off-balance sheet disclosure in foreign private issuers' annual reports as they would from this disclosure in domestic issuers' annual reports. Second, for Form 20-F annual reports, the existing MD&A-equivalent requirements for foreign private issuers currently mirror the substantive MD&A requirements for U.S. companies. We believe this desirable policy should continue.[135]

The disclosure provided by Canadian issuers that file Form 40–F is generally that required under Canadian law. We have, however, supplemented these disclosure requirements with specific required items of information.[136] We have adopted additional disclosure requirements under Form 40–F as a result of the Sarbanes-Oxley Act.[137]

Although an issuer prepares its MD&A discussion contained in a Form 40-F registration statement or annual report in accordance with Canadian disclosure standards, we believe that requiring disclosure of off-balance sheet arrangements and a table of contractual obligations in accordance with SEC rules is not inconsistent with the principles of the MJDS, is consistent with the Sarbanes-Oxley Act and, most importantly, will provide investors with useful information that is comparable to that provided by U.S. and other foreign companies that file reports under the Exchange Act.

Section 401(a) of the Sarbanes-Oxley Act also requires the Commission to adopt off-balance sheet disclosure rules that apply to "each quarterly financial report required to be filed with the Commission." [138] Foreign private issuers are not required to file "quarterly" reports with the Commission, and therefore the amendments do not apply to Form 6-K reports submitted by foreign private issuers to provide copies of materials required to be made public in their home jurisdictions.[139] Thus, unless a foreign private issuer files a Securities Act registration statement that must include interim period financial statements and related MD&A disclosure, it will not be required to update its MD&A disclosure more frequently than annually.[140]

The MD&A disclosure that foreign private issuers currently provide in documents filed with the Commission must focus on the primary financial statements, whether those are prepared in accordance with U.S. GAAP or a non-U.S. GAAP.[141] Foreign private issuers whose primary financial statements are prepared in accordance with a non-U.S. GAAP should include in their MD&A a discussion of the reconciliation to U.S. GAAP, and any differences between foreign and U.S. GAAP, if it would be necessary for an understanding of the financial statements as a whole.[142] Consistent with that existing MD&A requirement for foreign private issuers, the disclosure about off-balance sheet arrangements and the table of contractual obligations must focus on the primary financial statements presented in the document, while taking the reconciliation into account.

The definition of "off-balance sheet arrangements" covers the same types of arrangements regardless of whether a registrant is a foreign private issuer or a domestic issuer. We believe that the references to U.S. GAAP in the definition best achieve the appropriate scope of arrangements that require more transparent disclosure, regardless of any particular accounting treatment. To identify the types of arrangements that are subject to disclosure under the amendments, a foreign private issuer must assess its guarantee contracts and variable interests pursuant to U.S. GAAP. Foreign private issuers must already make this assessment when they reconcile or prepare their financial statements in accordance with U.S. GAAP. A foreign private issuer's MD&A disclosure should continue to focus on its primary financial statements despite the fact that its various "off-balance sheet arrangements" have been defined by reference to U.S. GAAP.

H. Safe Harbor for Forward-Looking Information

Some of the disclosure required by the amendments would require disclosure of forward-looking information.[143] To encourage the type of

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[132] *See, e.g.*, the letters of AICPA, D&T and Pfizer.

[133] *See, e.g.*, the letters of AICPA, D&T, Fried Frank, Pfizer and PwC.

[134] See, *e.g.*, the letters of ABA, OFII, NY City Bar and S&C.

[135] Although we revised the wording of the MD&A Item in Form 20–F in 1999, the adopting release noted that we interpret that Item as requiring the same disclosure as Item 303 of Regulation S–K. See Release No. 33–7745 (September 28, 1999) [64 FR 53900 at 59304]. In addition, Instruction 1 to Item 5 in Form 20–F provides that issuers should refer to the Commission's 1989 interpretive release on MD&A disclosure under Item 303 of Regulation S–K for guidance in preparing the discussion and analysis by management of the company's financial condition and results of operations required in Form 20–F. *See* Release No. 33–6835 (May 18, 1989) [54 FR 22427].

[136] For example, under General Instruction C.2 of Form 40-F, the issuer must usually include financial information that is reconciled to U.S. generally accepted accounting principles.

[137] We have recently adopted amendments in Form 40-F to require disclosure concerning whether the issuer has adopted a code of ethics applicable to certain officers and whether it has a financial expert on its audit committee. *See* Release No. 33–8177 (January 23, 2003) [Not yet published in **Federal Register**].

[138] Exchange Act section 13(j) [15 U.S.C. 78m(j)].

[139] A foreign private issuer must furnish under cover of Form 6–K material information that it makes public or is required to make public under its home country laws or the rules of its home country stock exchange or that it distributes to security holders. While foreign private issuers may submit interim financial information under cover of Form 6-K, they do so pursuant to their home country requirements and not because of a Commission requirement to submit updated financial information for specified periods and according to specified standards. Therefore, we do not believe that a Form 6–K constitutes a "periodic" or "quarterly" report analogous to a Form 10–Q or 10–QSB for which expanded disclosure is required. We similarly clarified that Form 6–K reports are not subject to the recently adopted section 302 certification requirements. *See* Release No. 33–8124 at n. 50.

[140] Similar to our treatment of Securities Act registration statements filed by domestic issuers, we are including within the scope of the amendments Securities Act registration statements filed by foreign private issuers on Forms F–1, F–2, F–3 and F–4 [17 CFR 239.31–239.34]. Each of these registration statements references Form 20–F's disclosure requirements. The amendments would not, however, apply to Securities Act registration statements filed by Canadian issuers under the MJDS because we believe them to be outside the scope of the directive in section 401(a) of the Sarbanes-Oxley Act. These MJDS registration statements are based on Canadian disclosure requirements.

[141] *See* Instruction 2 to Item 5 of Form 20-F [17 CFR 249.220f].

[142] *Id.*

[143] We are therefore eliminating a portion of the instructions in the MD&A rules that state that registrants are not required to provide forward-looking information. See, *e.g.*, Instruction 7 to Item 303(a) and 6 to Item 303(b) of Regulation S–K [17

information and analysis necessary for investors to understand the impact of off-balance sheet arrangements and to reduce the burden of estimating the payments due under contractual obligations, the amendments include a safe harbor for forward-looking information.[144] The safe harbor explicitly applies the statutory safe harbor protections (sections 27A of the Securities Act and 21E of the Exchange Act)[145] to forward-looking information that is required to be disclosed.

The statutory safe harbors contain provisions to protect forward-looking statements against private legal actions that are based on allegations of a material misstatement or omission.[146] The statutory safe harbors provide three separate bases for a registrant to claim the protection against liability for forward-looking statements made in the registrant's MD&A. First, a forward-looking statement will fall within the safe harbors if identified as forward-looking and accompanied by meaningful cautionary statements that identify important factors that could cause actual results to differ materially from those in the forward-looking statement. Second, the safe harbors protect from private liability any forward-looking statement that is not material. Finally, the safe harbors preclude private liability if a plaintiff fails to prove that the forward-looking statement was made by or with the approval of an executive officer of the registrant who had actual knowledge that it was false or misleading. The statutory safe harbors cover statements by reporting companies, persons acting on their behalf, outside reviewers retained by them, and their underwriters (when using information from, or derived from, the companies).

Because we believe that it would promote more meaningful disclosure, we are invoking rulemaking authority under sections 27A and 21E to create a new safe harbor to ensure the application of the statutory safe harbors to the forward-looking statements required under the amendments. The safe harbor is designed to remove possible ambiguity about whether the statutory safe harbors would apply to the forward-looking statements made in response to the amendments. The safe harbor specifies that, except for historical facts, the disclosure would be deemed to be a "forward looking statement" as that term is defined in the statutory safe harbors.[147] In addition, with respect to the MD&A discussion of off-balance sheet arrangements, we are adopting a provision that the "meaningful cautionary statements" element of the statutory safe harbors will be satisfied if a registrant satisfies all of its off-balance sheet arrangements disclosure requirements.[148] Because the new MD&A safe harbor is closely linked to the statutory safe harbors, we urge companies preparing their disclosure to consider the terms, conditions and scope of the statutory safe harbors in drafting their disclosure.

IV. Paperwork Reduction Act

A. Background

The amendments to Regulations S–B, S–K,[149] Form 20–F and Form 40–F contain "collection of information" requirements within the meaning of the Paperwork Reduction Act of 1995 ("PRA").[150] We published a notice requesting comment on the collection of information requirements in the Proposing Release, and we submitted these requirements to the Office of Management and Budget ("OMB") for review in accordance with the PRA.[151] The titles for the collections of information are:

(1) "Form S–1" (OMB Control No. 3235–0065);

(2) "Form F–1" (OMB Control No. 3235–0258);

(3) "Form SB–2" (OMB Control No. 3235–0418);

(4) "Form S–4" (OMB Control No. 3235–0324);

(5) "Form F–4" (OMB Control No. 3235–0325);

(6) "Form 10" (OMB Control No. 3235–0064);

(7) "Form 10–SB" (OMB Control No. 3235–0419);

(8) "Form 20–F" (OMB Control No. 3235–0288);

(9) "Form 40–F" (OMB Control No. 3235–0381);

(10) "Form 10–K" (OMB Control No. 3235–0063);

(11) "Form 10–KSB" (OMB Control No. 3235–0420);

(12) "Proxy Statements—Regulation 14A (Commission Rules 14a–1 through 14a–15) and Schedule 14A" (OMB Control No. 3235–0059);

(13) "Information Statements—Regulation 14C (Commission Rules 14c–1 through 14c–7 and Schedule 14C)" (OMB Control No. 3235–0057);

(14) "Form 10–Q" (OMB Control No. 3235–0070);

(15) "Form 10–QSB" (OMB Control No. 3235–0416);

(16) "Regulation S–K" (OMB Control No. 3235–0071); and

(17) "Regulation S–B" (OMB Control No. 3235–0417).

These regulations and forms were adopted pursuant to the Securities Act and the Exchange Act and set forth the disclosure requirements for annual and quarterly reports, registration statements and proxy and information statements filed by companies to ensure that investors are informed. The hours and costs associated with preparing, filing, and sending these forms constitute reporting and cost burdens imposed by each collection of information. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

The amendments require public companies to include a discussion of material off-balance sheet arrangements and a table of certain contractual obligations in the MD&A section of their filings with the Commission. We are adopting these rules pursuant to the legislative mandate in section 401(a) of the Sarbanes-Oxley Act of 2002.[152] Compliance with the revised disclosure requirements is mandatory. There is no mandatory retention period for the information disclosed, and responses to the disclosure requirements will not be kept confidential.

B. Paperwork Burden Estimates

For purposes of the Paperwork Reduction Act, we estimated the annual

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CFR 229.303]. Deleting that portion of the instructions does not in any way reduce the availability of any existing safe harbor for forward-looking information.

[144] *See, e.g.*, Item 303(c) of Regulation S–K [17 CFR 229.303(c)].

[145] *See* 15 U.S.C. 77z–2 and 78u–5.

[146] While the statutory safe harbors by their terms do not apply to forward-looking statements included in financial statements prepared in accordance with U.S. GAAP, they do cover MD&A disclosures. The statutory safe harbors would not apply, however, if the MD&A forward-looking statement were made in connection with: an initial public offering, a tender offer, an offering by a partnership or a limited liability company, a roll-up transaction, a going private transaction, an offering by a blank check company or a penny stock issuer, or an offering by an issuer convicted of specified securities violations or subject to certain injunctive or cease and desist actions. *See* 15 U.S.C. 77z–2(b) and 78u–5(b).

[147] *See, e.g.*, Item 303(c)(2)(i) of Regulation S–K [17 CFR 229.303(c)(2)(i)].

[148] *See, e.g.*, Item 303(c)(2)(ii) of Regulation S–K [17 CFR 229.303(c)(2)(ii)]. Because this provision does not apply to the required table of contractual obligations, registrants should tailor the required cautionary language to the specific forward-looking statements being made.

[149] Although we are proposing amendments to Regulations S–B and S–K, the burden is imposed through the forms that refer to the disclosure regulations. To avoid a Paperwork Reduction Act inventory reflecting duplicative burdens, we estimate the burdens imposed by Regulations S–B and S–K to be one hour.

[150] 44 U.S.C. 3501 *et seq.*

[151] 44 U.S.C. 3507(d) and 5 CFR 1320.11.

[152] Pub. L. 107–204 Sec. 401(a) [15 U.S.C. 78m(j)].

incremental paperwork burden for all companies to prepare the disclosure required under the amendments to be approximately 366,337 hours of company personnel time and the incremental cost to be approximately $44,795,000 for the services of outside professionals.[153] That estimate includes the time and the cost of in-house preparation of the disclosure, reviews by executive officers, in-house counsel, outside counsel, independent auditors and members of the audit committee.[154] It does not include the full cost of establishing systems to collect and monitor the information because a registrant must already do so to prepare its financial statements, comply with current disclosure requirements and maintain adequate internal controls.

We derived the paperwork burden estimates by estimating the total amount of time it will take a company to prepare each item of the disclosure. We estimate that in the first year, the off-balance sheet disclosure will take 14.5 hours for annual reports and proxy statements (11 hours in-house personnel time and a cost of approximately $1100 for professional services), 16 hours for registration statements (4 hours in-house personnel time and a cost of approximately $3600 for professional services) and 10 hours for quarterly reports (7.5 hours in-house personnel time and a cost of approximately $750 for professional services). We estimate that in the first year, the disclosure of contractual obligations will take 7.5 hours for annual reports and proxy statements (5.5 hours in-house personnel time and a cost of approximately $600 for professional services), 8.5 hours for registration statements (2 hours in-house personnel time and a cost of approximately $1900 for professional services) and 3 hours for each quarterly report (2.25 hours in-house personnel time and a cost of approximately $225 for professional services). Our estimates for the preparation time for all of the disclosure items in the first year are 22 hours for annual reports and proxy statements (16.5 hours in-house personnel time and a cost of approximately $1650 for professional services), 24.5 hours for registration statements (6 hours in-house personnel time and a cost of approximately $5500 for professional services) and 13 hours for quarterly reports (9.75 hours in-house personnel time and a cost of approximately $975 for professional services). The paperwork burden estimate for preparing one annual report and three quarterly reports is 61 hours (46 hours in-house personnel time and a cost of approximately $4600 for professional services).

Because the paperwork burden estimates reflect a three-year period, we averaged the first year estimates with later year estimates to account for the fact that registrants would become accustomed to the disclosure requirements after the first year and therefore spend less time preparing the disclosure over the two subsequent years. The submission to OMB also reduced the burden to account for issuers that do not engage in off-balance sheet arrangements and for issuers that include identical MD&A sections in more than one filing covering the same period (*e.g.*, Form 10–K and Form S–1).

C. Responses to Request for Comments

We requested comment on the PRA analysis contained in the Proposing Release and received the following responses. Two commenters believed that the average estimate of 37 hours per registrant underestimated the compliance burden.[155] One commenter provided an estimated burden of approximately 150 to 190 hours to implement the rule.[156] Another commenter believed that compliance with the proposed requirement to include a tabular or textual disclosure of contractual obligations and contingent liabilities and commitments would require most companies to implement tracking and monitoring systems for contractual obligations and commitments (which would cost approximately $75,000 to $125,000 for software, with annual personnel costs of $90,000 to $125,000, plus an additional $25,000 for other costs).[157]

We believe that registrants already must collect the information required by the amendments in order to prepare their financial statements, meet their existing disclosure requirements and to maintain adequate internal controls. For example, U.S. GAAP currently requires registrants to disclose information about guarantees, contractual obligations under leases and long-term debt.[158] Current MD&A rules require disclosure of the registrant's material commitments for capital expenditures as of the end of the latest fiscal period.[159] We also believe that the treasury functions of most registrants track and monitor payments due under purchase obligations for internal control and budgeting purposes. Therefore, the paperwork burden in our estimate reflects the time it will take to draft and review the required disclosures, but not to initially collect the information.

Accordingly, we are not changing our initial estimates that have been submitted to OMB. In response to the commenters' concerns that the Proposing Release underestimated the paperwork burden, we are not reducing our estimates even though we have refined the definition of "off-balance sheet arrangements," specified the particular contractual obligations to be included in the table and eliminated the table or text of contingent liabilities or commitments.

V. Cost-Benefit Analysis

A. Background

In accordance with the directive in section 401(a) of the Sarbanes-Oxley Act,[160] the Commission is adopting amendments to disclosure rules regarding a company's off-balance sheet arrangements. The amendments require disclosure to improve investors' understanding of a company's overall financial condition, changes in financial condition and results of operations. The amendments require companies that are reporting, raising capital in the registered public markets or asking shareholders for their votes to provide information about their off-balance sheet arrangements and an aggregate overview of their known contractual obligations in tabular format.

B. Objectives of Amendments

The amendments seek to improve transparency of disclosure regarding a company's off-balance sheet arrangements and to provide an overview of aggregate contractual obligations. We believe that improvement in the quality of information in these areas is necessary for investors to better understand a company's current and future financial position and current and future sources of liquidity. Moreover, because

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[153] For convenience, the estimated PRA hour burdens have been rounded to the nearest whole number, and the estimated PRA cost burdens have been rounded to the nearest $1,000.

[154] In connection with other recent rulemakings, we have had discussions with several private law firms to estimate an hourly rate of $300 as the cost of outside professionals that assist companies in preparing these disclosures. For Securities Act registration statements, we also consider additional reviews of the disclosure by underwriters' counsel and underwriters.

[155] *See, e.g.*, the letters of CSC and Eaton.

[156] *See, e.g.*, the letter of FTNC.

[157] *See, e.g.*, the letter of Troutman.

[158] *See*, FASB SFAS No. 5, *Accounting for Contingencies* (Mar. 1975), paragraph 12 and FASB Interpretation No. 45, paragraph 13. *See also*, FASB SFAS No. 13, *Accounting for Leases* (Nov. 1976); SFAS No. 47, *Disclosure of Long-Term Obligations* (March 1981); and SFAS No. 129, *Disclosure of Information about Capital Structure* (Feb. 1997).

[159] *See* Item 303(a)(2)(i) of Regulation S–K [17 CFR 229.303(a)(2)(i)].

[160] Pub. L. 107–204 Sec. 401(a) [15 U.S.C. 78m(j)].

management is in the best position to monitor and assess those aspects of its business, it also is in the best position to provide clear explanations and analysis to investors. Our objectives are:

- To implement the legislative mandate in section 401(a) of the Sarbanes-Oxley Act;
- To provide investors with the information and analysis necessary to gain a more comprehensive understanding of the implications of a company's obligations and contingencies from off-balance sheet arrangements that are neither readily apparent, nor easily understood, from a reading of the financial statements alone; and
- To better inform investors of the short- and long-term impact of payments due under contractual obligations, from both on- and off-balance sheet activities, by presenting a complete picture in a single location.

With a greater understanding of off-balance sheet arrangements and contractual obligations, investors should be better able to understand how a company conducts significant aspects of its business (including financing), to assess the quality of earnings and to understand the risks that are not apparent on the face of the financial statements.

C. Regulatory Approach

We are adopting principles-based disclosure requirements that are bolstered by four specific disclosure items to provide basic information about off-balance sheet arrangements. The principle governing our regulatory approach is that registrants should disclose information to the extent that it is necessary to an understanding of its off-balance sheet arrangements and their effect on financial condition, changes in financial condition, revenues or expenses, results of operations, liquidity, capital expenditures or capital resources. To militate against obscure disclosure, the amendments include four disclosure items that are designed to result in a focused and descriptive discussion of the registrant's material off-balance sheet arrangements. This approach attempts to balance the need for registrants to have flexibility when drafting financial disclosure with investors' needs for more transparency. While the amendments could be considered less prescriptive than the proposed rules, we believe that we have preserved the benefits to investors of the disclosure requirements for off-balance sheet arrangements.

Certain disclosures required by this amendment are already required by generally accepted accounting principles.[161] The amendments are designed to work in concert with the disclosures required by generally accepted accounting principles to provide investors with a deeper, more comprehensive understanding of off-balance sheet arrangements employed by the registrant. Management is afforded the flexibility under the amendments to enhance the factual content contained in the financial statements with its perspective of how off-balance sheet arrangements are used in the context of the registrant's business.

D. Benefits of the Amendments

The primary anticipated benefit of the amendments is to increase transparency of a registrant's financial disclosure. Current market events have evidenced a need to provide investors with a clearer understanding of how a company's off-balance sheet arrangements materially affect the financial statements and company performance.[162] The amendments are intended to enhance the utility of the disclosure in the MD&A section by providing more information, including management's analysis, of off-balance sheet arrangements. In addition, the tabular disclosure of contractual obligations is designed to provide investors with an understanding of the liquidity and capital resource need and demands in short- and long-term time horizons.

By making information about off-balance sheet arrangements and contractual obligations available and more understandable, the amendments will benefit investors both directly and indirectly through the financial analysts and the credit rating agencies whose analyses investors consider.[163] In addition, the amendments should benefit investors because the enumerated disclosure will likely be more comparable across all firms and consistent over time. Greater transparency will thus enable investors to make more informed investment decisions and to allocate capital on a more efficient basis.

E. Costs of Amendments

We estimate that the amendments will impose a disclosure requirement on approximately 9,850 public companies.[164] We estimate that the disclosure will involve multiple parties, including in-house preparers, senior management, in-house counsel, outside counsel, outside auditors, and audit committee members. One commenter, commenting on the types of expenses, believed that companies would incur significant legal, accounting and internal costs (including collection and monitoring systems) in order to comply with the proposed disclosure.[165] For purposes of the Paperwork Reduction Act,[166] we estimated that company personnel would spend approximately 366,337 hours per year (37 hours per company) to prepare, review and file the proposed disclosure. Based on our estimated cost of in-house staff time, we estimated that the PRA hour-burden would translate into an approximate cost of $45,792,000 ($5,000 per company).[167] We also estimated that companies would spend approximately $44,795,000 ($5,000 per company) on outside professionals to comply with the disclosure.[168] In response to our request for comment, one commenter estimated the annual cost for a large multinational company to be about $2 million.[169] One commenter noted that, in view of the limited number of public companies that may have failed to provide disclosures, it had significant reservations about whether the additional cost of regulation is justified.[170]

We believe the amendments will not substantially increase the costs to collect the information necessary to prepare the disclosure. This information should largely be readily available from each company's books and records. Since management should be fully apprised of off-balance sheet arrangements and contractual

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[161] *See* FASB Interpretation No. 45, *Guarantor's Accounting and Disclosure Requirements for Guarantees, Including Indirect Guarantees of Indebtedness of Others* (Nov. 2002); FASB Interpretation No. 46, *Consolidation of Variable Interest Entities* (Jan. 2003); and FASB SFAS No. 129, *Disclosure of Information about Capital Structure* (Feb. 1997).

[162] *See, e.g.*, Paquita Y. Davis-Friday *et. al.*, *The Value Relevance of Financial Statement Recognition vs. Disclosure: Evidence from SFAS No. 106*, 74 The Accounting Review 403 (Oct. 1999).

[163] *See, e.g.*, Kent L. Womack, *Do Brokerage Analysts' Recommendations have Investment Value?* 51 Journal of Finance 137 (1996). *See also*, R. Mear and M. Firth, *Risk Perceptions of Financial Analysts and the Use of Market and Accounting Data*, 18 Accounting and Business Research 335 (1988).

[164] We estimate that about 80% of the number of registrants who filed annual reports last year will provide the disclosure.

[165] *See, e.g.*, the letter of Pfizer.

[166] 44 U.S.C. 3501 *et seq.*

[167] We estimate the average hourly cost of in-house personnel to be $125. This cost estimate is based on data obtained from *The SIA Report on Management and Professional Earnings in the Securities Industry* (Oct. 2001).

[168] To derive our estimates for the Paperwork Reduction Act, we multiplied the number of filers for each form by the incremental hours per form. The portion of the product carried by the company is reflected in hours and the portion carried by outside professionals is reflected as a cost.

[169] *See, e.g.*, the letter of Pfizer.

[170] *See, e.g.*, the letter of KPMG.

obligations in the ordinary course of managing the company, maintaining adequate internal controls and preparing the financial statements, the amendments may not impose significant incremental costs for the collection and calculation of data.

In assessing the cost of the amendments, we have considered possible unintended consequences. One possible unintended consequence of the amendments is that a registrant's competitors may be able to infer proprietary information from the disclosure. For example, a registrant's competitors may infer that the registrant has adopted a particular strategy based on disclosure about its off-balance sheet arrangements. In addition, a registrant may be discouraged from developing innovative financing techniques if a competitor may be able to copy the technique at little cost. The amendments could impose additional costs to the extent that the disclosure would deter legitimate uses of off-balance sheet arrangements.

F. Foreign Private Issuers

The amendments apply to foreign private issuers the same MD&A disclosure requirements that apply to U.S. companies. Foreign private issuers, however, are not required to file quarterly reports with the Commission. Thus, unless a foreign private issuer files a registration statement that must include interim period financial statements and related MD&A disclosure, it generally will not be required to update the MD&A disclosure more frequently than annually. Therefore, the cost of compliance could be lower for foreign private issuers than for U.S. companies. It is possible, however, that foreign private issuers will incur greater expenses in connection with the required reconciliation to U.S. GAAP, but only if a discussion of the differences in accounting is necessary for an understanding of the financial statements as a whole.

G. Small Business Issuers

The amendments do not require that small businesses provide tabular disclosure about contractual obligations. This information is currently required to be disclosed in various locations in filings. While it would be useful to investors if this information were disclosed in a single location, we believe that excluding small business issuers from this requirement is consistent with the policies underlying the small business issuer disclosure system. Although a small business issuer is not required to provide the table of contractual obligations in its MD&A, we encourage small business issuers to identify for investors the relevant financial footnotes that contain information about certain contractual obligations.

VI. Effects on Efficiency, Competition and Capital Formation

Section 23(a)(2) of the Exchange Act [171] requires us, when adopting rules under the Exchange Act, to consider the anti-competitive effects. In addition, section 23(a)(2) prohibits us from adopting any rule that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act. We have considered the amendments in accordance with the standards in section 23(a)(2).

The amendments require disclosure of information that is essential to an understanding of the ways that a company conducts its business and the potential material risks that the company may face as a result. The amendments also enhance the transparency of financial information that is neither readily apparent, nor easily understood, from a reading of the financial statements alone. The amendments are intended to make information about off-balance sheet arrangements and their impact on a public company's financial condition, changes in financial condition and operating results more understandable to investors. The amendments also will provide an overview of a company's known contractual obligations, which will improve an investors' ability to assess the liquidity and capital resource needs of a company over short- and long-term time periods.

In the Proposing Release, we identified two possible areas where the rules could potentially place a burden on competition. First, the amendments could burden competition to the extent that the disclosure may deter legitimate uses of off-balance sheet arrangements. Second, there is a possibility that a company's competitors could be able to infer proprietary or sensitive information from the company's disclosure about its off-balance sheet arrangements. We requested comment regarding the degree to which the proposed disclosure requirements would create competitively harmful effects upon public companies and how to minimize those effects. Three commenters on the Proposing Release expressed concerns about the sensitivity and potential competitive harm that could result from the disclosure.[172] The likelihood that competitors could infer proprietary information must be weighed against investors' needs for transparency of financial arrangements and resultant risk exposures. The amendments attempt to mitigate competitive harm by requiring disclosure to the extent necessary for an understanding of a registrant's off-balance sheet arrangements and their financial effects. Seven commenters believed that the proposal to require tabular or textual disclosure of contingent liabilities would cause competitive harm to the extent that such disclosure could negatively influence the outcome of the contingency.[173] We are not adopting that proposal at this time.

Section 2(b) of the Securities Act [174] and section 3(f) of the Exchange Act [175] require us, when engaging in rulemaking that requires us to consider or determine whether an action is necessary or appropriate in the public interest, to consider, in addition to the protection of investors, whether the action will promote efficiency, competition and capital formation. We believe the amendments will promote market efficiency by making information about off-balance sheet arrangements, and their impact on the presentation of the company's financial position, more understandable. In addition, information about payments under known contractual obligations will be aggregated and presented in a single location. As a result, we believe that investors may be able to make more informed investment decisions and capital may be allocated on a more efficient basis.

VII. Final Regulatory Flexibility Analysis

This Final Regulatory Flexibility Analysis ("FRFA") has been prepared in accordance with the Regulatory Flexibility Act.[176] This FRFA relates to amendments to Item 303 of Regulation S–K,[177] Item 303 of Regulation S–B,[178] Item 5 of Form 20–F [179] and General Instruction B of Form 40–F.[180] The amendments require public companies to discuss off-balance sheet arrangements and to provide a table of aggregate contractual obligations as of

[171] 15 U.S.C. 78w(a)(2).

[172] *See, e.g.*, the letters of AFP, Boeing and Pfizer.

[173] *See, e.g.*, the letters of AICPA, Eaton, E&Y, D&T, Intel, Troutman and PwC.

[174] 15 U.S.C. 77b(b).

[175] 15 U.S.C. 78c(f).

[176] 5 U.S.C. 603.

[177] 17 CFR 229.303.

[178] 17 CFR 228.303.

[179] 17 CFR 249.220f.

[180] 17 CFR 249.240f.

the latest fiscal year end balance sheet date. The disclosure will be included in the MD&A section of a public company's annual reports, quarterly reports, registration statements and proxy and information statements.

A. Need for the Amendments

On July 30, 2002, the Sarbanes-Oxley Act of 2002 was enacted.[181] Section 401 of the Sarbanes-Oxley Act, entitled "Disclosures in Periodic Reports," requires the Commission to adopt final rules by January 26, 2003 (180 days after the date of enactment) that require a company, in each annual and quarterly financial report that it files with the Commission, to disclose "all material off-balance sheet transactions, arrangements, obligations (including contingent obligations), and other relationships of the issuer with unconsolidated entities or other persons, that may have a material current or future effect on financial condition, changes in financial condition, results of operations, liquidity, capital expenditures, capital resources, or significant components of revenues or expenses."[182] The Commission is adopting the amendments to fulfill that legislative mandate. The amendments address the lack of transparency of off-balance sheet arrangements in a public company's financial disclosure. The amendments address this problem by requiring a discussion of off-balance sheet arrangements in a public company's MD&A. The potential consequences of not taking this action to require disclosure regarding the off-balance sheet arrangements are: (a) Less transparency in the presentation of companies' financial statements and, correspondingly, a lesser understanding of companies' financial condition, changes in financial condition and results of operations when making investment decisions; and (b) a potential decrease in investor confidence in the full and fair disclosure system that is the hallmark of the U.S. capital markets.

The amendments seek to improve transparency of a company's off-balance sheet arrangements and aggregate contractual obligations. We believe that improvements in the quality of information in these areas will promote investor understanding of a company's current and future financial position. Our objectives are:

- To implement the legislative mandate in section 401(a) of the Sarbanes-Oxley Act;
- To provide investors with the information and analysis necessary to gain a more comprehensive understanding of the implications of a company's obligations and contingencies from off-balance sheet arrangements that are neither readily apparent, nor easily understood, from a reading of the financial statements alone; and
- To better inform investors of the aggregate impact of short- and long-term contractual obligations, from both on- and off-balance sheet activities, by presenting a complete picture in a single location.

With a greater understanding of a company's off-balance sheet arrangements and contractual obligations, investors will be better able to understand how a company conducts significant aspects of its business and to assess the quality of a company's earnings and the risks that are not apparent on the face of the financial statements.

B. Significant Issues Raised by Public Comment

The Initial Regulatory Flexibility Analysis ("IRFA") appeared in the Proposing Release. We requested comment on any aspect of the IRFA, including the number of small entities that would be affected by the proposals, the nature of the impact, how to quantify the number of small entities that would be affected and how to quantify the impact of the proposals. We received no comment letters responding to that request.

C. Small Entities Subject to the Amendments

The amendments would affect companies that are small entities. Securities Act Rule 157[183] and Exchange Act Rule 0–10(a)[184] define a company, other than an investment company, to be a "small business" or "small organization" if it had total assets of $5 million or less on the last day of its most recent fiscal year. We estimate that there are approximately 2,500 companies, other than investment companies, that may be considered small entities. The amendments would apply to any small entity that fulfills its disclosure obligations by complying with our standard disclosure requirements[185] or with our optional disclosure system available only to small businesses.[186]

We believe that off-balance sheet arrangements involving small entities are most likely to be operating leases, but we did not receive any comments substantiating that belief. In our Paperwork Reduction Act analysis, we estimated that the cost of in-house staff time would translate into an approximate cost of $4,000 per company.[187] This figure may be lower for a small entity if its average hourly cost for its personnel were lower than $125, but we did not receive any specific data regarding these estimates. We also estimated that companies would spend approximately $5,000 per company on outside professionals to comply with the disclosure.[188] This figure may be lower for a small entity if its average hourly cost of outside professionals were lower than $300, but we did not receive any substantiating data.

D. Projected Reporting, Recordkeeping and Other Compliance Requirements

The amendments will impose reporting and recordkeeping requirements on the class of small entities subject to our reporting requirements, either due to Securities Act registration or by the Exchange Act reporting requirements. The amendments will subject this class of small entities to reporting and recordkeeping requirements in connection with drafting, reviewing, filing, printing and disseminating disclosure in annual reports, registration statements, proxy or information statements and quarterly reports. The data underlying the disclosure about off-balance sheet transactions should be readily available from a company's books and records. Since management should be fully apprised of material off-balance sheet arrangements to fulfill its existing disclosure requirements and to maintain proper internal controls, the amendments may not impose significant incremental costs related to the collection and calculation of data. Small entities will either utilize existing personnel or hire an outside professional to provide the required disclosure.

[181] Pub. L. 107–204, 116 Stat. 745 (2002).

[182] Pub. L. 107–204 Sec. 401 [15 U.S.C. 78m(j)].

[183] 17 CFR 230.157.

[184] 17 CFR 270.0–10(a).

[185] Regulation S–K, 17 CFR 229.10–229.1016.

[186] Regulation S–B, 17 CFR 228.10–228.701.

[187] We estimate the average hourly cost of in-house personnel to be $125. This cost estimate is based on data obtained from *The SIA Report on Management and Professional Earnings in the Securities Industry* (Oct. 2001).

[188] To derive our estimates for the Paperwork Reduction Act, we multiplied the number of filers for each form by the incremental hours per form. The portion of the product carried by the company is reflected in hours and the portion carried by outside professionals is reflected as a cost.

E. Agency Action To Minimize Effect on Small Entities

Because section 401(a) of the Sarbanes-Oxley Act does not distinguish between small entities and other companies, we interpret Congress' directive to the Commission to adopt rules requiring expanded disclosure about off-balance sheet transactions to apply equally to small entities and to other public companies. However, we were able to further ease the regulatory burden on small entities by excluding small business issuers from the tabular disclosure requirement about contractual obligations. Tabular disclosure of contractual obligations was not mandated by the Sarbanes-Oxley Act. That information is currently required to be disclosed in various locations in filings. While it would be useful to investors if this information were disclosed in a single location, we believe that excluding small business issuers from this requirement would reduce their regulatory burden.

As required by the Regulatory Flexibility Act, we have considered alternatives that would accomplish our stated objectives, while minimizing any significant adverse impact on small entities. In connection with the amendments, we considered the following alternatives:

(a) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities;

(b) The clarification, consolidation, or simplification of disclosure for small entities;

(c) The use of performance rather than design standards; and

(d) An exemption for small entities from all or part of the amendments.

We have drafted the amendments to require clear and straightforward disclosure of off-balance sheet arrangements in MD&A. Separate disclosure requirements regarding off-balance sheet arrangements for small entities will not yield the disclosure that we believe is necessary to achieve our objectives. In addition, the informational needs of investors in small entities are typically as great as the needs of investors in larger companies. Therefore, it does not seem appropriate to develop separate requirements with regard to off-balance sheet arrangements for small entities that clarify, consolidate or simplify the amendments. We have, however, excluded small business issuers from the requirement to provide tabular disclosure of contractual obligations.

We have used design rather than performance standards in connection with the amendments for three reasons. First, we believe the disclosure will be easier to implement and more useful to investors with enumerated informational requirements. The required disclosures may be likely to result in a more focused and comprehensive discussion of the company's off-balance sheet arrangements. Second, mandated disclosures regarding off-balance sheet arrangements may benefit investors in small entities because the enumerated disclosure under the amendments likely will be more comparable across all firms and consistent over time. Third, a mandated discussion of a company's off-balance sheet arrangements is uniquely suited to the MD&A disclosure in light of MD&A's emphasis on the identification of significant uncertainties and events and favorable or unfavorable trends. Therefore, adding a disclosure requirement to the existing MD&A appears to be the most effective method of eliciting the disclosure.

Because section 401(a) of the Sarbanes-Oxley Act does not distinguish between small entities and other companies, we do not believe it is appropriate to exempt small entities from the requirement to discuss off-balance sheet arrangements. We have, however, excluded small business issuers from the requirement to provide tabular disclosure of contractual obligations.

VIII. Statutory Authority and Text of Rule Amendments

The amendments contained in this release are being adopted under the authority set forth in sections 7, 10, 19, 27A and 28 of the Securities Act, sections 12, 13, 14, 21E, 23 and 36 of the Exchange Act and sections 3(a) and 401(a) of the Sarbanes-Oxley Act of 2002.

List of Subjects in 17 CFR Parts 228, 229 and 249

Reporting and recordkeeping requirements, Securities.

Text of Amendments

In accordance with the foregoing, Title 17, Chapter II, of the Code of Federal Regulations is amended as follows:

PART 228—INTEGRATED DISCLOSURE SYSTEM FOR SMALL BUSINESS ISSUERS

1. The authority citation for Part 228 is amended by adding the following citation in numerical order to read as follows:

Authority: 15 U.S.C. 77e, 77f, 77g, 77h, 77j, 77k, 77s, 77z–2, 77z–3, 77aa(25), 77aa(26), 77ddd, 77eee, 77ggg, 77hhh, 77jjj, 77nnn, 77sss, 78*l*, 78m, 78n, 78o, 78u–5, 78w, 78*ll*, 78mm, 80a–8, 80a–29, 80a–30, 80a–37 and 80b–11.

Section 228.303 is also issued under secs. 3(a) and 401(a), Pub. L. No. 107–204, 116 Stat. 745.

* * * * *

2. Section 228.303 is amended by:

a. Removing the phrase "paragraph (a)" and adding, in its place, the phrase "paragraphs (a) and (c)" in the first sentence of the introductory text;

b. Removing the phrase "paragraph (b)" and adding, in its place, the phrase "paragraphs (b) and (c)" in the second sentence of the introductory text;

c. Adding paragraph (c);

d. Adding Instructions 1 through 5 to paragraph (c) of Item 303; and

e. Adding paragraph (d).

The additions read as follows:

§ 228.303 (Item 303) Management's discussion and analysis or plan of operation.

* * * * *

(c) *Off-balance sheet arrangements.* (1) In a separately-captioned section, discuss the small business issuer's off-balance sheet arrangements that have or are reasonably likely to have a current or future effect on the small business issuer's financial condition, changes in financial condition, revenues or expenses, results of operations, liquidity, capital expenditures or capital resources that is material to investors. The disclosure shall include the items specified in paragraphs (c)(1)(i), (ii), (iii) and (iv) of this Item to the extent necessary to an understanding of such arrangements and effect and shall also include such other information that the small business issuer believes is necessary for such an understanding.

(i) The nature and business purpose to the small business issuer of such off-balance sheet arrangements;

(ii) The importance to the small business issuer of such off-balance sheet arrangements in respect of its liquidity, capital resources, market risk support, credit risk support or other benefits; (iii) The amounts of revenues, expenses and cash flows of the small business issuer arising from such arrangements; the nature and amounts of any interests retained, securities issued and other indebtedness incurred by the small business issuer in connection with such arrangements; and the nature and amounts of any other obligations or liabilities (including contingent obligations or liabilities) of the small business issuer arising from such arrangements that are or are reasonably

likely to become material and the triggering events or circumstances that could cause them to arise; and

(iv) Any known event, demand, commitment, trend or uncertainty that will result in or is reasonably likely to result in the termination, or material reduction in availability to the small business issuer, of its off-balance sheet arrangements that provide material benefits to it, and the course of action that the small business issuer has taken or proposes to take in response to any such circumstances.

(2) As used in paragraph (c) of this Item, the term *off-balance sheet arrangement* means any transaction, agreement or other contractual arrangement to which an entity unconsolidated with the small business issuer is a party, under which the small business issuer has:

(i) Any obligation under a guarantee contract that has any of the characteristics identified in paragraph 3 of FASB Interpretation No. 45, *Guarantor's Accounting and Disclosure Requirements for Guarantees, Including Indirect Guarantees of Indebtedness of Others* (November 2002) ("FIN 45"), as may be modified or supplemented, and that is not excluded from the initial recognition and measurement provisions of FIN 45 pursuant to paragraphs 6 or 7 of that Interpretation;

(ii) A retained or contingent interest in assets transferred to an unconsolidated entity or similar arrangement that serves as credit, liquidity or market risk support to such entity for such assets;

(iii) Any obligation, including a contingent obligation, under a contract that would be accounted for as a derivative instrument, except that it is both indexed to the small business issuer's own stock and classified in stockholders' equity in the small business issuer's statement of financial position, and therefore excluded from the scope of FASB Statement of Financial Accounting Standards No. 133, *Accounting for Derivative Instruments and Hedging Activities* (June 1998), pursuant to paragraph 11(a) of that Statement, as may be modified or supplemented; or

(iv) Any obligation, including a contingent obligation, arising out of a variable interest (as referenced in FASB Interpretation No. 46, *Consolidation of Variable Interest Entities* (January 2003), as may be modified or supplemented) in an unconsolidated entity that is held by, and material to, the small business issuer, where such entity provides financing, liquidity, market risk or credit risk support to, or engages in leasing, hedging or research and development services with, the small business issuer.

Instructions to paragraph (c) of Item 303. 1. No obligation to make disclosure under paragraph (c) of this Item shall arise in respect of an off-balance sheet arrangement until a definitive agreement that is unconditionally binding or subject only to customary closing conditions exists or, if there is no such agreement, when settlement of the transaction occurs.

2. Small business issuers should aggregate off-balance sheet arrangements in groups or categories that provide material information in an efficient and understandable manner and should avoid repetition and disclosure of immaterial information. Effects that are common or similar with respect to a number of off-balance sheet arrangements must be analyzed in the aggregate to the extent the aggregation increases understanding. Distinctions in arrangements and their effects must be discussed to the extent the information is material, but the discussion should avoid repetition and disclosure of immaterial information.

3. For purposes of paragraph (c) of this Item only, contingent liabilities arising out of litigation, arbitration or regulatory actions are not considered to be off-balance sheet arrangements.

4. Generally, the disclosure required by paragraph (c) of this Item shall cover the most recent fiscal year. However, the discussion should address changes from the previous year where such discussion is necessary to an understanding of the disclosure.

5. In satisfying the requirements of paragraph (c) of this Item, the discussion of off-balance sheet arrangements need not repeat information provided in the footnotes to the financial statements, provided that such discussion clearly cross-references to specific information in the relevant footnotes and integrates the substance of the footnotes into such discussion in a manner designed to inform readers of the significance of the information that is not included within the body of such discussion.

(d) *Safe harbor.* (1) The safe harbor provided in section 27A of the Securities Act of 1933 (15 U.S.C. 77z–2) and section 21E of the Securities Exchange Act of 1934 (15 U.S.C. 78u–5) ("statutory safe harbors") shall apply to forward-looking information provided pursuant to paragraph (c) of this Item, provided that the disclosure is made by: an issuer; a person acting on behalf of the issuer; an outside reviewer retained by the issuer making a statement on behalf of the issuer; or an underwriter, with respect to information provided by the issuer or information derived from information provided by the issuer.

(2) For purposes of paragraph (d) of this Item only:

(i) All information required by paragraph (c) of this Item is deemed to be a "forward looking statement" as that term is defined in the statutory safe harbors, except for historical facts.

(ii) With respect to paragraph (c) of this Item, the meaningful cautionary statements element of the statutory safe harbors will be satisfied if a small business issuer satisfies all requirements of that same paragraph (c) of this Item.

PART 229—STANDARD INSTRUCTIONS FOR FILING FORMS UNDER SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934 AND ENERGY POLICY AND CONSERVATION ACT OF 1975—REGULATION S–K

3. The authority citation for Part 229 is amended by adding the following citation in numerical order to read as follows:

Authority: 15 U.S.C. 77e, 77f, 77g, 77h, 77j, 77k, 77s, 77z–2, 77z–3, 77aa(25), 77aa(26), 77ddd, 77eee, 77ggg, 77hhh, 77iii, 77jjj, 77nnn, 77sss, 78c, 78i, 78j, 78*l*, 78m, 78n, 78o, 78u–5, 78w, 78*ll* 78mm, 79e, 79j, 79n, 79t, 80a–8, 80a–9, 80a–20, 80a–29, 80a–30, 80a–31(c), 80a–37, 80a–38(a), 80a–39 and 80b–11, unless otherwise noted.

Section 229.303 is also issued under secs. 3(a) and 401(a), Pub. L. No. 107–204, 116 Stat. 745.

* * * * *

4. Section 229.303 is amended by:

a. Removing the authority citation following § 229.303;

b. Removing the phrase "paragraphs (a)(1), (2) and (3) with respect to liquidity, capital resources and results of operations" and adding, in its place, the phrase "paragraphs (a)(1) through (5) of this Item" in the second sentence of the introductory text of paragraph (a);

c. Removing the phrase "or for those fiscal years beginning after December 25, 1979," in paragraph (a)(3)(iv);

d. Adding paragraphs (a)(4) and (a)(5) before the "Instructions to Paragraph 303(a)";

e. Removing the second sentence of Instruction 2 of "Instructions to Paragraph 303(a)";

f. Removing the first three sentences of Instruction 7 of "Instructions to Paragraph 303(a)";

g. Removing the first sentence of Instruction 6 of "Instructions to Paragraph (b) of Item 303";

h. Adding Instructions 1 through 5 to paragraph 303(a)(4) at the end of "Instructions to Paragraph 303(a)";

i. Adding Instruction 7 to "Instructions to Paragraph (b) of Item 303"; and

j. Adding paragraph (c).

The additions read as follows:

§ 229.303 (Item 303) Management's discussion and analysis of financial condition and results of operations.

(a) * * *

(4) *Off-balance sheet arrangements.* (i) In a separately-captioned section, discuss the registrant's off-balance sheet arrangements that have or are reasonably likely to have a current or future effect on the registrant's financial condition, changes in financial condition, revenues or expenses, results of operations, liquidity, capital expenditures or capital resources that is material to investors. The disclosure shall include the items specified in paragraphs (a)(4)(i)(A), (B), (C) and (D) of this Item to the extent necessary to an understanding of such arrangements and effect and shall also include such other information that the registrant believes is necessary for such an understanding.

(A) The nature and business purpose to the registrant of such off-balance sheet arrangements;

(B) The importance to the registrant of such off-balance sheet arrangements in respect of its liquidity, capital resources, market risk support, credit risk support or other benefits;

(C) The amounts of revenues, expenses and cash flows of the registrant arising from such arrangements; the nature and amounts of any interests retained, securities issued and other indebtedness incurred by the registrant in connection with such arrangements; and the nature and amounts of any other obligations or liabilities (including contingent obligations or liabilities) of the registrant arising from such arrangements that are or are reasonably likely to become material and the triggering events or circumstances that could cause them to arise; and

(D) Any known event, demand, commitment, trend or uncertainty that will result in or is reasonably likely to result in the termination, or material reduction in availability to the registrant, of its off-balance sheet arrangements that provide material benefits to it, and the course of action that the registrant has taken or proposes to take in response to any such circumstances.

(ii) As used in this paragraph (a)(4), the term *off-balance sheet arrangement* means any transaction, agreement or other contractual arrangement to which an entity unconsolidated with the registrant is a party, under which the registrant has:

(A) Any obligation under a guarantee contract that has any of the characteristics identified in paragraph 3 of FASB Interpretation No. 45, *Guarantor's Accounting and Disclosure Requirements for Guarantees, Including Indirect Guarantees of Indebtedness of Others* (November 2002) ("FIN 45"), as may be modified or supplemented, and that is not excluded from the initial recognition and measurement provisions of FIN 45 pursuant to paragraphs 6 or 7 of that Interpretation;

(B) A retained or contingent interest in assets transferred to an unconsolidated entity or similar arrangement that serves as credit, liquidity or market risk support to such entity for such assets;

(C) Any obligation, including a contingent obligation, under a contract that would be accounted for as a derivative instrument, except that it is both indexed to the registrant's own stock and classified in stockholders' equity in the registrant's statement of financial position, and therefore excluded from the scope of FASB Statement of Financial Accounting Standards No. 133, *Accounting for Derivative Instruments and Hedging Activities* (June 1998), pursuant to paragraph 11(a) of that Statement, as may be modified or supplemented; or

(D) Any obligation, including a contingent obligation, arising out of a variable interest (as referenced in FASB Interpretation No. 46, *Consolidation of Variable Interest Entities* (January 2003), as may be modified or supplemented) in an unconsolidated entity that is held by, and material to, the registrant, where such entity provides financing, liquidity, market risk or credit risk support to, or engages in leasing, hedging or research and development services with, the registrant.

(5) *Tabular disclosure of contractual obligations.* (i) In a tabular format, provide the information specified in this paragraph (a)(5) as of the latest fiscal year end balance sheet date with respect to the registrant's known contractual obligations specified in the table that follows this paragraph (a)(5)(i). The registrant shall provide amounts, aggregated by type of contractual obligation. The registrant may disaggregate the specified categories of contractual obligations using other categories suitable to its business, but the presentation must include all of the obligations of the registrant that fall within the specified categories. A presentation covering at least the periods specified shall be included. The tabular presentation may be accompanied by footnotes to describe provisions that create, increase or accelerate obligations, or other pertinent data to the extent necessary for an understanding of the timing and amount of the registrant's specified contractual obligations.

Contractual obligations	Payments due by period				
	Total	Less than 1 year	1–3 years	3–5 years	More than 5 years
[Long-Term Debt Obligations]					
[Capital Lease Obligations]					
[Operating Lease Obligations]					
[Purchase Obligations]					
[Other Long-Term Liabilities Reflected on the Registrant's Balance Sheet under GAAP]					
Total					

(ii) *Definitions:* The following definitions apply to this paragraph (a)(5):

(A) *Long-Term Debt Obligation* means a payment obligation under long-term borrowings referenced in FASB Statement of Financial Accounting Standards No. 47 *Disclosure of Long-Term Obligations* (March 1981), as may be modified or supplemented.

(B) *Capital Lease Obligation* means a payment obligation under a lease classified as a capital lease pursuant to FASB Statement of Financial Accounting Standards No. 13

Accounting for Leases (November 1976), as may be modified or supplemented.

(C) *Operating Lease Obligation* means a payment obligation under a lease classified as an operating lease and disclosed pursuant to FASB Statement of Financial Accounting Standards No. 13 *Accounting for Leases* (November 1976), as may be modified or supplemented.

(D) *Purchase Obligation* means an agreement to purchase goods or services that is enforceable and legally binding on the registrant that specifies all significant terms, including: fixed or minimum quantities to be purchased; fixed, minimum or variable price provisions; and the approximate timing of the transaction.

Instructions to Paragraph 303(a):

* * * * *

Instructions to Paragraph 303(a)(4):

1. No obligation to make disclosure under paragraph (a)(4) of this Item shall arise in respect of an off-balance sheet arrangement until a definitive agreement that is unconditionally binding or subject only to customary closing conditions exists or, if there is no such agreement, when settlement of the transaction occurs.

2. Registrants should aggregate off-balance sheet arrangements in groups or categories that provide material information in an efficient and understandable manner and should avoid repetition and disclosure of immaterial information. Effects that are common or similar with respect to a number of off-balance sheet arrangements must be analyzed in the aggregate to the extent the aggregation increases understanding. Distinctions in arrangements and their effects must be discussed to the extent the information is material, but the discussion should avoid repetition and disclosure of immaterial information.

3. For purposes of paragraph (a)(4) of this Item only, contingent liabilities arising out of litigation, arbitration or regulatory actions are not considered to be off-balance sheet arrangements.

4. Generally, the disclosure required by paragraph (a)(4) shall cover the most recent fiscal year. However, the discussion should address changes from the previous year where such discussion is necessary to an understanding of the disclosure.

5. In satisfying the requirements of paragraph (a)(4) of this Item, the discussion of off-balance sheet arrangements need not repeat information provided in the footnotes to the financial statements, provided that such discussion clearly cross-references to specific information in the relevant footnotes and integrates the substance of the footnotes into such discussion in a manner designed to inform readers of the significance of the information that is not included within the body of such discussion.

(b) * * *

Instructions to Paragraph (b) of Item 303:

* * * * *

7. The registrant is not required to include the table required by paragraph (a)(5) of this Item for interim periods. Instead, the registrant should disclose material changes outside the ordinary course of the registrant's business in the specified contractual obligations during the interim period.

(c) *Safe harbor.* (1) The safe harbor provided in section 27A of the Securities Act of 1933 (15 U.S.C. 77z–2) and section 21E of the Securities Exchange Act of 1934 (15 U.S.C. 78u–5) ("statutory safe harbors") shall apply to forward-looking information provided pursuant to paragraphs (a)(4) and (5) of this Item, provided that the disclosure is made by: an issuer; a person acting on behalf of the issuer; an outside reviewer retained by the issuer making a statement on behalf of the issuer; or an underwriter, with respect to information provided by the issuer or information derived from information provided by the issuer.

(2) For purposes of paragraph (c) of this Item only:

(i) All information required by paragraphs (a)(4) and (5) of this Item is deemed to be a *forward looking statement* as that term is defined in the statutory safe harbors, except for historical facts.

(ii) With respect to paragraph (a)(4) of this Item, the meaningful cautionary statements element of the statutory safe harbors will be satisfied if a registrant satisfies all requirements of that same paragraph (a)(4) of this Item.

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

5. The authority citation for Part 249 is amended by revising the sectional authority for 249.220f and 249.240f to read as follows:

Authority: 15 U.S.C. 78a *et seq.*, unless otherwise noted.

Section 249.220f is also issued under secs. 3(a), 302, 306(a), 401(a), 401(b), 406 and 407, Pub. L. No. 107–204, 116 Stat. 745.

Section 249.240f is also issued under secs. 3(a), 302, 306(a), 401(a), 406 and 407, Pub. L. No. 107–204, 116 Stat. 745.

* * * * *

6. Form 20–F (referenced in § 249.220f), Item 5 is amended by:

a. Adding Items 5.E through 5.G;

b. Adding Instructions to 5.E; and

c. Adding Instructions to Item 5.F to read as follows:

Note: Form 20–F does not, and this amendment will not, appear in the Code of Federal Regulations.

Form 20–F

* * * * *

Item 5. Operating and Financial Review and Prospects

* * * * *

E. Off-Balance Sheet Arrangements

1. In a separately-captioned section, discuss the company's off-balance sheet arrangements that have or are reasonably likely to have a current or future effect on the company's financial condition, changes in financial condition, revenues or expenses, results of operations, liquidity, capital expenditures or capital resources that is material to investors. The disclosure shall include the items specified in Items 5.E.1(a), (b), (c) and (d) of this Item to the extent necessary to an understanding of such arrangements and effect, and shall also include such other information that the company believes is necessary for such an understanding.

(a) The nature and business purpose to the company of such off-balance sheet arrangements;

(b) The importance to the company of such off-balance sheet arrangements in respect of its liquidity, capital resources, market risk support, credit risk support or other benefits;

(c) The amounts of revenues, expenses and cash flows of the company arising from such arrangements; the nature and amounts of any interests retained, securities issued and other indebtedness incurred by the company in connection with such arrangements; and the nature and amounts of any other obligations or liabilities (including contingent obligations or liabilities) of the company arising from such arrangements that are or are reasonably likely to become material and the triggering events or circumstances that could cause them to arise; and

(d) Any known event, demand, commitment, trend or uncertainty that will result in or is reasonably likely to result in the termination, or material reduction in availability to the company, of its off-balance sheet arrangements that provide material benefits to it, and the course of action that the company has taken or proposes to take in response to any such circumstances.

2. As used in this Item 5.E., the term *off-balance sheet arrangement* means any transaction, agreement or other contractual arrangement to which an entity unconsolidated with the company is a party, under which the company has:

(a) Any obligation under a guarantee contract that has any of the characteristics identified in paragraph 3 of FASB Interpretation No. 45, *Guarantor's Accounting and Disclosure Requirements for Guarantees, Including Indirect Guarantees of Indebtedness of Others* (November 2002) ("FIN 45"), as may be modified or supplemented, excluding the types of guarantee contracts described in paragraphs 6 and 7 of FIN 45;

(b) A retained or contingent interest in assets transferred to an unconsolidated entity or similar arrangement that serves as credit, liquidity or market risk support to such entity for such assets;

(c) Any obligation under a derivative instrument that is both indexed to the company's own stock and classified in stockholders' equity, or not reflected, in the company's statement of financial position; or

(d) Any obligation, including a contingent obligation, arising out of a variable interest (as referenced in FASB Interpretation No. 46, *Consolidation of Variable Interest Entities* (January 2003), as may be modified or supplemented) in an unconsolidated entity that is held by, and material to, the company, where such entity provides financing, liquidity, market risk or credit risk support to, or engages in leasing, hedging or research and development services with, the company.

F. Tabular Disclosure of Contractual Obligations

1. In a tabular format, provide the information specified in this Item 5.F.1 as of the latest fiscal year end balance sheet date with respect to the company's known contractual obligations specified in the table that follows this Item 5.F.1. The company shall provide amounts, aggregated by type of contractual obligation. The company may disaggregate the specified categories of contractual obligations using other categories suitable to its business, but the presentation must include all of the obligations of the company that fall within the specified categories. A presentation covering at least the periods specified shall be included. The tabular presentation may be accompanied by footnotes to describe provisions that create, increase or accelerate obligations, or other pertinent data to the extent necessary for an understanding of the timing and amount of the company's specified contractual obligations.

Contractual obligations	Payments due by period				
	Total	Less than 1 year	1–3 years	3–5 years	More than 5 years
[Long-Term Debt Obligations]					
[Capital (Finance) Lease Obligations]					
[Operating Lease Obligations]					
[Purchase Obligations]					
[Other Long-Term Liabilities Reflected on the Company's Balance Sheet under the GAAP of the primary financial statements]					
Total					

2. As used in this Item 5.F.1, the term *purchase obligation* means an agreement to purchase goods or services that is enforceable and legally binding on the company that specifies all significant terms, including: fixed or minimum quantities to be purchased; fixed, minimum or variable price provisions; and the approximate timing of the transaction.

G. Safe Harbor

1. The safe harbor provided in section 27A of the Securities Act and section 21E of the Exchange Act ("statutory safe harbors") shall apply to forward-looking information provided pursuant to Item 5.E and F, provided that the disclosure is made by: an issuer; a person acting on behalf of the issuer; an outside reviewer retained by the issuer making a statement on behalf of the issuer; or an underwriter, with respect to information provided by the issuer or information derived from information provided by the issuer.

2. For purposes of Item 5.G.1 of this Item only, all information required by Item 5.E.1 and 5.E.2 of this Item is deemed to be a "forward looking statement" as that term is defined in the statutory safe harbors, except for historical facts.

3. With respect to Item 5.E, the meaningful cautionary statements element of the statutory safe harbors will be satisfied if a company satisfies all requirements of that same Item 5.E.

* * * * *

Instructions to Item 5.E:

1. No obligation to make disclosure under Item 5.E shall arise in respect of an off-balance sheet arrangement until a definitive agreement that is unconditionally binding or subject only to customary closing conditions exists or, if there is no such agreement, when settlement of the transaction occurs.

2. Companies should aggregate off-balance sheet arrangements in groups or categories that provide material information in an efficient and understandable manner and should avoid repetition and disclosure of immaterial information. Effects that are common or similar with respect to a number of off-balance sheet arrangements must be analyzed in the aggregate to the extent the aggregation increases understanding. Distinctions in arrangements and their effects must be discussed to the extent the information is material, but the discussion should avoid repetition and disclosure of immaterial information.

3. For purposes of paragraph Item 5.E only, contingent liabilities arising out of litigation, arbitration or regulatory actions are not considered to be off-balance sheet arrangements.

4. Generally, the disclosure required by Item 5.E shall cover the most recent fiscal year. However, the discussion should address changes from the previous year where such discussion is necessary to an understanding of the disclosure.

5. In satisfying the requirements of Item 5.E, the discussion of off-balance sheet arrangements need not repeat information provided in the footnotes to the financial statements, provided that such discussion clearly cross-references to specific information in the relevant footnotes and integrates the substance of the footnotes into such discussion in a manner designed to inform readers of the significance of the information that is not included within the body of such discussion.

Instructions to Item 5.F:

1. The company is not required to include the table required by Item 5.F.1 for interim periods. Instead, the company should disclose material changes outside the ordinary course of the company's business in the specified contractual obligations during the interim period.

2. Except for "purchase obligations," the contractual obligations in the table required by Item 5.F.1 should be based on the classifications used in the generally accepted accounting principles under which the company prepares its primary financial statements. If the generally accepted accounting principles under which the company prepares its primary financial statements do not distinguish between capital (finance) leases and operating leases, then present all leases under one category.

* * * * *

7. Form 40–F (referenced in § 249.240f) is amended by adding paragraphs (11) through (13) and *Instructions* to General Instruction B. to read as follows:

Note: The text of Form 40–F does not, and this amendment will not, appear in the Code of Federal Regulations.

Form 40–F

* * * * *

General Instructions

* * * * *

B. Information To Be Filed on this Form

* * * * *

(11) *Off-balance sheet arrangements.* (i) In a separately-captioned section, discuss the registrant's off-balance sheet arrangements that have or are reasonably likely to have a current or future effect on the registrant's financial condition, changes in financial condition, revenues or expenses, results of operations, liquidity, capital expenditures or capital resources that is material to investors. The disclosure shall include the items specified in this General Instruction B.(11)(i)(A), (B), (C) and (D) to the extent necessary to an understanding of such arrangements and effect and shall also include such other information that the registrant believes is necessary for such an understanding.

(A) The nature and business purpose to the registrant of such off-balance sheet arrangements;

(B) The importance to the registrant of such off-balance sheet arrangements in respect of its liquidity, capital resources, market risk support, credit risk support or other benefits; and

(C) The amounts of revenues, expenses and cash flows of the registrant arising from such arrangements; the nature and amounts of any interests retained, securities issued and other indebtedness incurred by the registrant in connection with such arrangements; and the nature and amounts of any other obligations or liabilities (including contingent obligations or liabilities) of the registrant arising from such arrangements that are or are reasonably likely to become material and the triggering events or circumstances that could cause them to arise.

(D) Any known event, demand, commitment, trend or uncertainty that will result in or is reasonably likely to result in the termination, or material reduction in availability to the registrant, of its off-balance sheet arrangements that provide material benefits to it, and the course of action that the registrant has taken or proposes to take in response to any such circumstances.

(ii) As used in this General Instruction B.(11), the term *off-balance sheet arrangement* means any transaction, agreement or other contractual arrangement to which an entity unconsolidated with the registrant is a party, under which the registrant has:

(A) Any obligation under a guarantee contract that has any of the characteristics identified in paragraph 3 of FASB Interpretation No. 45, *Guarantor's Accounting and Disclosure Requirements for Guarantees, Including Indirect Guarantees of Indebtedness of Others* (November 2002) ("FIN 45"), as may be modified or supplemented, excluding the types of guarantee contracts described in paragraphs 6 and 7 of FIN 45;

(B) A retained or contingent interest in assets transferred to an unconsolidated entity or similar arrangement that serves as credit, liquidity or market risk support to such entity for such assets;

(C) Any obligation under a derivative instrument that is both indexed to the registrant's own stock and classified in stockholders' equity, or not reflected, in the company's statement of financial position; or

(D) Any obligation, including a contingent obligation, arising out of a variable interest (as referenced in FASB Interpretation No. 46, *Consolidation of Variable Interest Entities* (January 2003), as may be modified or supplemented) in an unconsolidated entity that is held by, and material to, the registrant, where such entity provides financing, liquidity, market risk or credit risk support to, or engages in leasing, hedging or research and development services with, the registrant.

(12) *Tabular disclosure of contractual obligations.* (i) In a tabular format, provide the information specified in this General Instruction B.(12) as of the latest fiscal year end balance sheet date with respect to the registrant's known contractual obligations specified in the table that follows this General Instruction B.(12). The registrant shall provide amounts, aggregated by type of contractual obligation. The registrant may disaggregate the specified categories of contractual obligations using other categories suitable to its business, but the presentation must include all of the obligations of the registrant that fall within the specified categories. A presentation covering at least the periods specified shall be included. The tabular presentation may be accompanied by footnotes to describe provisions that create, increase or accelerate obligations, or other pertinent data to the extent necessary for an understanding of the timing and amount of the registrant's specified contractual obligations.

Contractual obligations	Payments due by period				
	Total	Less than 1 year	1–3 years	3–5 years	More than 5 years
[Long-Term Debt Obligations]					
[Capital (Finance) Lease Obligations]					
[Operating Lease Obligations]					
[Purchase Obligations]					
[Other Long-Term Liabilities Reflected on the Registrant's Balance Sheet under the GAAP of the primary financial statements]					

Contractual obligations	Payments due by period				
	Total	Less than 1 year	1–3 years	3–5 years	More than 5 years
Total					

(ii) As used in this General Instruction B.(12), the term *purchase obligation* means an agreement to purchase goods or services that is enforceable and legally binding on the registrant that specifies all significant terms, including: fixed or minimum quantities to be purchased; fixed, minimum or variable price provisions; and the approximate timing of the transaction.

(13) *Safe harbor.* (i) The safe harbor provided in section 27A of the Securities Act and section 21E of the Exchange Act ("statutory safe harbors") shall apply to forward-looking information provided pursuant to General Instruction B.(11) and (12) of this Form 40–F, provided that the disclosure is made by: an issuer; a person acting on behalf of the issuer; an outside reviewer retained by the issuer making a statement on behalf of the issuer; or an underwriter, with respect to information provided by the issuer or information derived from information provided by the issuer.

(ii) For purposes of paragraph (i) of this General Instruction B.(13) only, all information required by General Instruction B.(11) and (12) of this Form 40–F is deemed to be a "forward looking statement" as that term is defined in the statutory safe harbors, except for historical facts.

(iii) With respect to General Instruction B.(11), the meaningful cautionary statements element of the statutory safe harbors will be satisfied if a registrant satisfies all requirements of that same General Instruction B.(11).

Instructions:

1. No obligation to make disclosure under General Instruction B.(11) shall arise in respect of an off-balance sheet arrangement until a definitive agreement that is unconditionally binding or subject only to customary closing conditions exists or, if there is no such agreement, when settlement of the transaction occurs.

2. Registrants should aggregate off-balance sheet arrangements in groups or categories that provide material information in an efficient and understandable manner and should avoid repetition and disclosure of immaterial information. Effects that are common or similar with respect to a number of off-balance sheet arrangements must be analyzed in the aggregate to the extent the aggregation increases understanding. Distinctions in arrangements and their effects must be discussed to the extent the information is material, but the discussion should avoid repetition and disclosure of immaterial information.

3. For purposes of paragraph General Instruction B.(11) only, contingent liabilities arising out of litigation, arbitration or regulatory actions are not considered to be off-balance sheet arrangements.

4. Generally, the disclosure required by General Instruction B.(11) shall cover the most recent fiscal year. However, the discussion should address changes from the previous year where such discussion is necessary to an understanding of the disclosure.

5. In satisfying the requirements of General Instruction B.(11), the discussion of off-balance sheet arrangements need not repeat information provided in the footnotes to the financial statements, provided that such discussion clearly cross-references to specific information in the relevant footnotes and integrates the substance of the footnotes into such discussion in a manner designed to inform readers of the significance of the information that is not included within the body of such discussion.

6. The registrant is not required to include the table required by General Instruction B.(12) for interim periods. Instead, the registrant should disclose material changes outside the ordinary course of the registrant's business in the specified contractual obligations during the interim period.

7. Except for "purchase obligations," the contractual obligations in the table required by General Instruction B.(12) should be based on the classifications used in the generally accepted accounting principles under which the registrant prepares its primary financial statements. If the generally accepted accounting principles under which the registrant prepares its primary financial statements do not distinguish between capital (finance) leases and operating leases, then present all leases under one category.

* * * * *

By the Commission.

Dated: January 28, 2003.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 03–2365 Filed 2–4–03; 8:45 am]

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February 5, 2003

Part III

Securities and Exchange Commission

17 CFR Parts 210, 240, et al.
Strengthening the Commission's Requirements Regarding Auditor Independence; Final Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 210, 240, 249 and 274

[Release No. 33–8183; 34–47265; 35–27642; IC–25915; IA–2103, FR–68, File No. S7–49–02]

RIN 3235–AI73

Strengthening the Commission's Requirements Regarding Auditor Independence

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Securities and Exchange Commission ("SEC" or "Commission") is adopting amendments to its existing requirements regarding auditor independence to enhance the independence of accountants that audit and review financial statements and prepare attestation reports filed with the Commission. The final rules recognize the critical role played by audit committees in the financial reporting process and the unique position of audit committees in assuring auditor independence. Consistent with the direction of Section 208(a) of the Sarbanes-Oxley Act of 2002, we are adopting rules to: revise the Commission's regulations related to the non-audit services that, if provided to an audit client, would impair an accounting firm's independence; require that an issuer's audit committee pre-approve all audit and non-audit services provided to the issuer by the auditor of an issuer's financial statements; prohibit certain partners on the audit engagement team from providing audit services to the issuer for more than five or seven consecutive years, depending on the partner's involvement in the audit, except that certain small accounting firms may be exempted from this requirement; prohibit an accounting firm from auditing an issuer's financial statements if certain members of management of that issuer had been members of the accounting firm's audit engagement team within the one-year period preceding the commencement of audit procedures; require that the auditor of an issuer's financial statements report certain matters to the issuer's audit committee, including "critical" accounting policies used by the issuer; and require disclosures to investors of information related to audit and non-audit services provided by, and fees paid to, the auditor of the issuer's financial statements. In addition, under the final rules, an accountant would not be independent from an audit client if an audit partner received compensation based on selling engagements to that client for services other than audit, review and attest services.

As described further in the release, these rules also will have an impact on foreign accounting firms that conduct audits of foreign subsidiaries and affiliates of U.S. issuers, as well as of foreign private issuers. Many of the modifications to the proposed rules, such as those limiting the scope of partner rotation and personnel subject to the "cooling off period," have the added benefit of addressing particular concerns raised about the international implications of these requirements. Moreover, additional time is being afforded to foreign accounting firms with respect to compliance with rotation requirements. The release also provides guidance on the provision of non-audit services by foreign accounting firms, including the treatment of legal services and tax services.

DATES: *Effective Date:* May 6, 2003. *Transition Dates:* Provided the following relationships did not impair the accountant's independence under pre-existing requirements of the Commission, the Independence Standards Board, or the accounting profession in the United States, an accountant's independence will not be deemed to be impaired:

(1) By employment relationships described in § 210.2–01(c)(2)(iii)(B) that commenced at the issuer prior to May 6, 2003;

(2) By compensation earned or received, as described in § 210.2–01(c)(8), during the accounting firm's fiscal year that includes May 6, 2003;

(3) Until May 6, 2004 by the provision of services described in § 210.2–01(c)(4) provided those services are pursuant to contracts in existence on May 6, 2003;

(4) Until May 6, 2003 by the provision of services that have not been pre-approved by an audit committee as required in § 210.2–01(c)(7);

(5) An accountant's independence will not be deemed to be impaired until the first day of the issuer's fiscal year beginning after May 6, 2003 by a "lead" partner and other audit partner (other than the "concurring" partner) providing services in excess of those permitted under § 210.2–01(c)(6); and

(6) An accountant's independence will not be deemed to be impaired until the first day of the issuer's fiscal year beginning after May 6, 2004 by a "concurring" partner providing services in excess of those permitted under § 210.2–01(c)(6).

For the purposes of calculating periods of service under § 210.2–01(c)(6):

(1) For the "lead" and "concurring" partner, the period of service includes time previously served as the "lead" or "concurring" partner prior to May 6, 2003; and

(2) For audit partners other than the "lead" partner or "concurring" partner, and for audit partners in foreign firms, the period of service does not include time served on the audit engagement team prior to the first day of issuer's fiscal year beginning on or after May 6, 2003.

FOR FURTHER INFORMATION CONTACT: Samuel L. Burke, Associate Chief Accountant, Paul Munter, Academic Fellow, or Robert E. Burns, Chief Counsel, at (202) 942–4400, Office of the Chief Accountant, or, with respect to questions about investment companies, Brian D. Bullard, Chief Accountant, at (202) 942–0590, Division of Investment Management, U.S. Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: We are adding Rule 2–07[1] to Regulation S–X, amending Rule 2–01 of Regulation S–X,[2] amending Item 9 of Regulation S–K,[3] amending Forms 10–K, 10–KSB, 20–F and 40–F,[4] amending Form N–CSR[5] and adding new Exchange Act Rule 10A–2.[6]

I. Introduction and Background

On July 30, 2002, the Sarbanes-Oxley Act of 2002 ("Sarbanes-Oxley Act" or "the Act") was enacted.[7] Title II of the Sarbanes-Oxley Act, entitled "Auditor Independence," requires the Commission to adopt, by January 26, 2003, final rules under which certain non-audit services will be prohibited, conflict of interest standards will be strengthened, auditor partner rotation and second partner review requirements will be strengthened, and the relationship between the independent auditor and the audit committee will be clarified and enhanced.

We are adopting amendments to our current rules regarding auditor independence.[8] The final rules advance our important policy goal of protecting the millions of people who invest in our securities markets in reliance on financial statements that are prepared by public companies and other issuers

[1] 17 CFR 210.2–07.

[2] 17 CFR 210.2–01.

[3] 17 CFR 240.14a–101.

[4] 17 CFR 249.310; 17 CFR 249.310b; 17 CFR 249.220f; 17 CFR 249.240f.

[5] 17 CFR 249.331; 17 CFR 274.128.

[6] 17 CRF 240.10A–2.

[7] Pub. L. 107–204, 116 Stat. 745 (2002).

[8] The amendments were proposed in Securities Act Release No. 8154 (December 2, 2002) 67 FR 76779–76817.

and that, as required by Congress, are audited by independent auditors. We believe the final rules strike a reasonable balance among commenters' differing views about the proposals while achieving our important public policy goals.[9]

As directed by the Sarbanes-Oxley Act, the rules focus on key aspects of auditor independence: the provision of certain non-audit services, the unique ability and responsibility of the audit committee to insulate the auditor from the pressures that may be exerted by management, the potential conflict of interest that can be created when a former member of the audit engagement team accepts a key management position with the audit client, and the need for effective communications between the auditor and audit committee. In addition, under the final rules, an accountant would not be independent from an audit client if any audit partner received compensation based directly on selling engagements to that client for services other than audit, review and attest services.

Title II of the Sarbanes-Oxley Act adds new subsections (g) through (l) to Section 10A of the Securities Exchange Act of 1934 as follows:

- Section 201 adds sub-section (g), which specifies that a number of non-audit services are prohibited. Many of these services were previously prohibited by the Commission's independence standards adopted in November 2000 (with some exceptions and qualifications).[10] The rules we are adopting amend the Commission's existing rules on auditor independence and clarify the meaning and scope of the prohibited services under the Sarbanes-Oxley Act.
- Section 201 also adds sub-section (h), which requires that non-audit services that are not prohibited under the Sarbanes-Oxley Act and the Commission's rules be subject to pre-approval by the registrant's audit committee. These rules specify the requirements for obtaining such pre-approval from the registrant's audit committee.
- Section 202 adds sub-section (i), which requires an audit committee to pre-approve allowable non-audit services and specifies certain exceptions to the requirement to obtain pre-approval. These rules specify the requirements of the registrant's audit committee for pre-approving non-audit services by the auditor of the registrant's financial statements.
- Section 203 adds sub-section (j), which establishes mandatory rotation of the lead partner and the concurring partner every five years. These rules expand the number of engagement personnel covered by the rotation requirement and clarify the "time out" period.
- Section 204 adds sub-section (k), which requires that the auditor report on a timely basis certain information to the audit committee. In particular, the Sarbanes-Oxley Act requires that the auditor report to the audit committee on a timely basis (a) all critical accounting policies used by the registrant, (b) alternative accounting treatments that have been discussed with management along with the potential ramifications of using those alternatives, and (c) other written communications provided by the auditor to management, including a schedule of unadjusted audit differences.[11] These rules strengthen the relationship between the audit committee and the auditor.
- Section 206 adds sub-section (l) addressing certain conflict of interest provisions. The Sarbanes-Oxley Act prohibits an accounting firm from performing audit services for a registrant if certain key members of management have recently been employed in an audit capacity by the audit firm. These rules clarify which members of management are covered by these conflict of interest rules.

In addition, under the final rules, an accountant would not be independent of an audit client if an audit partner received compensation based on selling engagements to that client for services other than audit, review and attest services.

As noted above, the rules establish and clarify the important roles and responsibilities of registrant audit committees as well as the registrant's independent accountant.[12]

We have adopted a separate rule under Exchange Act Section 10A (17 CFR 240.10A–2) to implement Section 3(b)(1) of the Sarbanes-Oxley Act and clarify that our rules implementing Title II of Sarbanes-Oxley not only define conduct that impairs independence but also constitute separate violations under the Exchange Act. We have otherwise adopted rules (except for the proxy disclosure changes) as part of Regulation S–X, and placed them among the current auditor independence provisions.

II. Discussion of Rules

A. Conflicts of Interest Resulting From Employment Relationships

The Commission's previous rules deem an accounting firm to be not independent with respect to an audit client if a former partner, principal, shareholder, or professional employee of an accounting firm [13] accepts employment with a client if he or she has a continuing financial interest in the accounting firm or is in a position to influence the firm's operations or financial policies. These rules renumber, but do not otherwise change, that existing requirement.

Consistent with Section 206 of the Sarbanes-Oxley Act, we are adding a restriction on employment with audit clients by former employees of the accounting firm. The Act specifies that an accounting firm cannot perform an audit for a registrant:

> * * *[i]f a chief executive officer, controller, chief financial officer, chief accounting officer, or any person serving in an equivalent position for the issuer, was employed by that registered independent public accounting firm and *participated in any capacity in the audit* of that issuer during the 1-year period preceding the date of the initiation of the audit.[14] (emphasis added)

Thus, the Act requires a "cooling off" period of one year before a member of the audit engagement team can begin working for the registrant in certain key positions. Based on the provisions of the Act, we proposed that the employment of former audit engagement team [15] members of an accounting firm in a financial reporting oversight role [16] at an audit client would cause the accounting firm not to be independent with respect to that registrant if they were members of the audit engagement team within one year prior to the commencement of procedures for the current audit engagement. The rules that we proposed would have applied to employment relationships entered into between

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[9] In addition to soliciting comments in the Proposing Release, we held one roundtable (December 17, 2002). The public comments we received can be reviewed in our Public Reference Room at 450 Fifth Street, NW., Washington, DC 20549, in File No. S7–49–02. Public comments submitted by electronic mail are on our Web site, *www.sec.gov*.

[10] The Commission adopted a set of rules governing auditor independence on November 21, 2000. See Release No. 33–7919 (Nov. 21, 2000); 65 FR 76008 (Dec. 5, 2000) (hereinafter "November 2000 release").

[11] SAS No. 89, "Audit Adjustments," (Dec. 1999) at AU § 380.

[12] The Commission's rules respond not only to the provisions of the Sarbanes-Oxley Act but also the rulemaking petitions filed by the AFL–CIO on December 11, 2001 and The Honorable H. Carl McCall on January 21, 2002.

[13] Consistent with our existing rules, the terms accounting firm and accountant are used interchangeably in this release. The term "accountant" is defined in § 210.2–01(f)(1) below.

[14] *See*, Section 206 of the Sarbanes-Oxley Act.

[15] *See*, Rule 2–01(f)(7).

[16] *See*, Rule 2–01(f)(3)(ii).

"audit engagement team" members and their "audit clients." [17]

The concept of a "cooling-off" period before an auditor can take a position at the audit client was previously considered by the Independence Standards Board.[18] In considering a cooling-off period, the Independence Standards Board noted that a mandated cooling-off period for partners and professional staff might create a greater appearance of independence between the accounting firm and the registrant.[19] Ultimately, however, the Independence Standards Board provided for an alternative to a cooling-off period. The Independence Standards Board concluded that:

> An audit firm's independence is impaired with respect to an audit client that employs a former firm professional who could, by reason of his or her knowledge of and relationships with the audit firm, adversely influence the quality or effectiveness of the audit, unless the firm has taken steps that effectively eliminate such risk.[20]

Independence Standards Board's Standard No. 3 specifically notes that additional caution is warranted when it has been less than one year since the professional disassociated him or herself from the firm.[21] The provisions of the Sarbanes-Oxley Act reflect the view that the passage of time is an additional safeguard to reduce the perceived loss of independence for the audit firm caused by the acceptance of employment by a member of the engagement team with an audit client.

Some commenters [22] stated that the rule should apply only to partners on the audit engagement team. However, we believe that the Act is clear that the cooling off period should apply more broadly. Additionally, our proposal would have applied to relationships between members of the audit engagement team and the audit client. Some commenters [23] believe that extending the requirement to the audit client was too broad. In some situations (such as certain affiliate companies), it could be difficult for the accounting firm and its audit clients to monitor and, in some cases, control the employment relationship.

Our proposed rule did not make a distinction based on the number of hours of audit, review, or attest services provided in determining who would be subject to this rule. The Act refers to individuals who "participated in any capacity in the audit." Commenters [24] noted that not all members of the audit engagement team, as that term is currently defined, necessarily participate in a meaningful audit capacity.

As discussed both in our proposing release and in this release, the term "financial reporting oversight role" refers to any individual who has direct responsibility for oversight over those who prepare the registrant's financial statements and related information (*e.g.*, management's discussion and analysis) that are included in filings with the Commission. Some commenters [25] stated that the final rule only should apply to the four named positions in the Act (*e.g.*, chief executive officer, controller, chief financial officer, chief accounting officer). Other commenters,[26] however, agreed with the Commission's approach of using the concept of financial reporting oversight role.

In response to the issues raised by commenters,[27] we are requiring that when the lead partner, the concurring partner, or any other member of the audit engagement team [28] who provides more than ten hours of audit, review or attest services for the issuer accepts a position with the issuer in a financial reporting oversight role within the one year period preceding the commencement of audit procedures for the year that included employment by the issuer of the former member of the audit engagement team, the accounting firm is not independent with respect to that registrant. Our rule applies to all members of the audit engagement team unless specifically exempted, as discussed later in this section of the release.

We agree with the commenters [29] who noted that extending the requirement to the "audit client" might be difficult to monitor because of the potentially broad scope of that defined term—particularly in situations where a member of the audit engagement team begins employment with an affiliate of the audit client.[30] Accordingly, the rules that we are adopting apply to employment relationships entered into between members of the audit engagement team and the "issuer." [31]

The Commission recognizes that, in certain instances, there are individuals who meet the definition of engagement team members while spending a relatively small amount of time on audit-related matters of the issuer. For example, a staff member may be asked to spend one day of time to observe inventory. While the input may have been important to resolving specific aspects of the audit, the staff member likely has not had significant interaction with the audit engagement team or management of the issuer. However, it is likely that those who spent more than a *de minimis* amount of time on the engagement team did participate in a meaningful audit capacity. Because of their roles in the engagement, the lead and concurring partner always should participate in a meaningful audit capacity, regardless of the number of hours spent on the engagement.

In order to provide useful guidance, our rule on conflicts of interest resulting from employment relationships specifies that, other than the lead and concurring partner, an individual [32] must provide more than ten hours of service during the annual audit period [33] as a member of the engagement team to have participated in an audit capacity. The Commission previously has considered a threshold based on the number of hours of service and, based on our experience, concluded that use of ten hours of service to the client

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[17] *See*, Rule 2–01(f)(6).

[18] The Independence Standards Board was a private sector body that, from 1997 to 2001, was charged with the responsibility to set auditor independence standards for auditors of the financial statements of SEC registrants. *See* Financial Reporting Release Nos. 50 (February 18, 1998) and 50A (July 17, 2001).

[19] Independence Standards Board, "Employment with Audit Clients," *Discussion Memorandum 99–1* (March 12, 1999).

[20] Independence Standards Board, "Employment with Audit Clients," *Standard No. 3* (July 2000).

[21] *Id.*, ¶ 2(b)(iii).

[22] *See, e.g.*, letter from Asahi & Co., dated January 10, 2003; letter from CPA Associates, dated January 3, 2003; letter from International Group of Accounting Firms, dated December 24, 2002.

[23] *See, e.g.*, letter from Eli Lilly and Company, dated January 9, 2003; letter from KPMG, dated January 9, 2003; letter from PricewaterhouseCoopers, dated January 8, 2003; letter from Roland G. Ley, dated January 9, 2003.

[24] *See, e.g.*, letter from American Institute of Certified Public Accountants, dated January 9, 2003; letter from KPMG, dated January 9, 2003; letter from Instituted of Chartered Accountants of Scotland, dated January 8, 2003.

[25] *See, e.g.*, letter from Eli Lilly and Company, dated January 9, 2003; letter from McGladrey & Pullen LLP, dated January 9, 2003; letter from PricewaterhouseCoopers, dated January 8, 2003; letter from Computer Sciences Corporation, dated January 13, 2003.

[26] *See, e.g.*, letter from Consumer Federation of America, dated January 13, 2003.

[27] *See, e.g.*, letter from Deloitte & Touche, dated January 10, 2003; letter from KPMG, dated January 9, 2003; letter from PricewaterhouseCoopers, dated January 8, 2003.

[28] *See*, Rule 2–01(f)(7).

[29] *See, e.g.*, letter from KPMG, dated January 9, 2003; letter from PricewaterhouseCoopers, dated January 8, 2003.

[30] *See*, Rule 2–01(f)(4).

[31] *See*, Section 3(a)(8) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(8)).

[32] It should be noted that the ten hour threshold does not apply to the lead or concurring review partner. Such individuals are always subject to these rules, regardless of the number of hours of audit, review or attest services provided.

[33] This includes hours of service provided in reviewing the issuer's quarterly filing or in providing attest services for the issuer related to the audit.

constitutes a reasonable basis for distinguishing whether there has been participation on the audit.[34]

The Commission has determined that using the "financial reporting oversight role" is a better test for the scope of the provision than the four particular officers named in the Act. As discussed in the definitions section of this release, the term financial reporting oversight role is not a new concept. Furthermore, in addition to naming four specific positions, the Act also states that the cooling off period applies to "any person serving in an equivalent position for the issuer." Because issuers do not use uniform titles nor do all named positions (*e.g.*, controller) have uniform duties among all issuers, we believe that a more complete definition of the applicable positions is needed. Furthermore, the term financial reporting oversight role captures other key positions, such as members of the board of directors, who may have significant interaction with the audit engagement team.

While the rule is intended to apply broadly to members of the audit engagement team, we recognize the need to provide accommodations for certain unique situations. In addition to the exemption discussed previously for those who provided ten or fewer hours of audit, review, or attest services, the final rule provides an exception for conflicts that are created through merger or acquisition. Some commenters[35] noted that an individual may have complied fully with the rule and, subsequent to his or her beginning employment with an issuer, the issuer merged with or was acquired by another entity resulting in he or she becoming a person in a financial reporting oversight role of the combined entity and the combined entity being audited by the individual's previous employer. In such a situation, unless the employment was taken in contemplation of the combination, the individual or the issuer could not be expected to know that his or her employment decision would result in a conflict. Thus, as long as the audit committee is aware of this conflict, the audit firm would continue to be independent under these rules.

Further, we recognize that other unusual situations that may arise. For example, some commenters[36] have stated that in certain foreign jurisdiction it may be extremely difficult or costly to comply with these requirements. Accordingly, we have provided an additional exemption for emergency or unusual circumstances which we anticipate being invoked very rarely. However, in order for a company to avail itself of this exemption, the audit committee[37] must determine that doing so is in the best interests of investors.

Some commenters[38] stated that determining the time period of the prohibition would be difficult to apply as proposed. We recognize the difficulties when there is, potentially, a different applicable date for each member of the engagement team. For that reason, our final rule adopts a uniform date for all members of the engagement team.

For purposes of this rule, audit procedures are deemed to have commenced for the current audit engagement period the day after the prior year's periodic annual report (*e.g.*, Form 10–K, 10–KSB, 20–F or 40–F) is filed with the Commission. The audit engagement period for the current year is deemed to conclude the day the current year's periodic annual report (for example, Form 10–K, 10–KSB, 20–F or 40–F) is filed with the Commission.

To illustrate the application of this rule, assume that Issuer A's Forms 10–K are filed on March 15, 2003, April 5, 2004, March 10, 2005, and March 30, 2006. Issuer A is a calendar-year reporting entity. The audit engagement periods would be deemed to commence and end:

Annual Period	Engagement Period Commences	Engagement Period Ends
2003	March 16, 2003.	April 5, 2004
2004	April 6, ...	2004 March 10, 2005
2005	March 11, 2005.	March 30, 2006

If audit engagement person B provided audit, review or attest services for Issuer A *at any time* during the 2003 engagement period (March 16, 2003—April 5, 2004), and he or she begins employment with Issuer A in a financial reporting oversight role prior to March 11, 2005, the accounting firm would be deemed to be not independent with respect to Issuer A. For example, if person B last performed audit, review or attest services for Issue A on March 24, 2003 and he or she began employment with Issuer A in a financial reporting oversight role prior to March 11, 2005, the accounting firm would be deemed to be not independent with respect to Issuer A. Likewise, if person B provided audit, review or attest services for Issuer A at any time during the 2004 engagement period (April 6, 2004—March 10, 2005) and he or she began employment with Issuer A in a financial reporting oversight role prior to March 31, 2006, the accounting firm would be deemed to be not independent with respect to Issuer A.

The Act specifies that the cooling off period must be one year. Under our rules, the prohibition would require that the accounting firm has completed one annual audit[39] subsequent to when an individual was a member of the audit engagement team. As previously discussed, the measurement period is based upon the dates the issuer filed its annual financial information with the Commission.

With respect to investment companies, we proposed that the employment of a former audit engagement team member in a financial reporting oversight role at any entity in the same investment company complex during the one year period after the completion of the last audit would impair the independence of the accounting firm with respect to the audit client. The proposed rule was designed to prevent a former audit engagement team member from taking a position in an investment company complex where they could influence the preparation of the financial statements or the conduct of the audit.

Several commenters[40] suggested this requirement was too broad and could have unintended consequences, such as preventing a former audit engagement team member on an investment company audit engagement from taking a financial reporting position at an entity in the investment company complex whose operations are unrelated to the investment company. Some

[34] Use of ten hours as a threshold is consistent with the determination of a "covered person" as specified by § 210.2–01(f).

[35] *See, e.g.*, letter from Deloitte & Touche, dated January 10, 2003; letter from KPMG, dated January 9, 2003; letter from PricewaterhouseCoopers, dated January 8, 2003.

[36] *See, e.g.*, letter from Deloitte & Touche, dated January 10, 2003; letter from European Commission, dated January 13, 2003.

[37] These rules do not require the company to have an independent audit committee. *See*, discussion of definitions in this release.

[38] *See, e.g.*, letter from Ernst & Young, dated January 6, 2003; letter from KPMG, dated January 9, 2003; letter from Sullivan & Cromwell LLP, dated January 10, 2003; letter from California Public Employees' Retirement System, dated January 10, 2003.

[39] As used here, the term annual audit also includes procedures needed to conduct timely review of interim periods as well as procedures needed to attest to the registrant's internal controls.

[40] *See*, letter from Deloitte & Touche, dated January 10, 2003; letter from PricewaterhouseCoopers, dated January 8, 2003; letter from Investment Company Institute, dated January 13, 2003.

commenters[41] acknowledged, however, that it was in investors' interests to prevent audit engagement team members from leaving the firm and assuming a financial reporting oversight role at an entity in the investment company complex that had responsibility for the financial reporting or operations of the investment company audit client. One commenter[42] suggested the rule should not apply to positions at service providers solely because they are in the investment company complex.

Due to the unique structure of investment companies, where the normal operating activities, including activities related to the preparation of financial statements, are provided by outside service providers, we believe the rules need to extend beyond the investment company itself. After considering the comments, we agree, however, that the reach of the rule as proposed was too broad and have determined to tailor the scope of the rule with respect to investment companies to those situations where independence could be impaired. As adopted, an accounting firm would not be independent if a former audit engagement team member is employed in a financial reporting oversight role with not only the registered investment company, but also with any entity in the same investment company complex that is responsible for the financial reporting or operations of the registered investment company or any other registered investment company in the same investment company complex. The adopted rule prohibits employment in positions at an investment company complex that would allow a former audit engagement team member to bring undue influence over the audit process of an investment company. The rule recognizes that certain positions exist at an entity in the investment company complex that would be considered financial reporting or oversight positions but those positions have no direct influence in the financial reporting or operations of an investment company in the investment company complex. In these instances, we believe tailoring the focus of this rule will not harm investor interests.

We recognize the need to provide for orderly transition. We believe it would be unfair to expect those who began employment before the effective date of these rules to be asked to sever those employment relationships. Accordingly, these rules are effective for employment relationships with the issuer that commence after the effective date of these rules.

B. Scope of Services Provided by Auditors

Section 201(a) of the Sarbanes-Oxley Act adds new Section 10A(g) to the Securities Exchange Act of 1934. Except as discussed below, this section states that it shall be unlawful for a registered public accounting firm that performs an audit of an issuer's financial statements (and any person associated with such a firm) to provide to that issuer, contemporaneously with the audit, any non-audit services, including the nine categories of services set forth in the Act. Additionally, the Act provides that the provision of "any non-audit service, including tax services, that is not described" as a prohibited service, can be provided by the auditor without impairing the auditor's independence "only if" the service has been pre-approved by the issuer's audit committee. The nine categories of prohibited non-audit services included in the Act are:

- Bookkeeping or other services related to the accounting records or financial statements of the audit client;
- Financial information systems design and implementation;
- Appraisal or valuation services, fairness opinions, or contribution-in-kind reports;
- Actuarial services;
- Internal audit outsourcing services;
- Management functions or human resources;
- Broker or dealer, investment adviser, or investment banking services;
- Legal services and expert services unrelated to the audit; and
- Any other service that the Board[43] determines, by regulation, is impermissible.

The Commission's principles of independence with respect to services provided by auditors are largely predicated on three basic principles, violations of which would impair the auditor's independence: (1) An auditor cannot function in the role of management, (2) an auditor cannot audit his or her own work, and (3) an auditor cannot serve in an advocacy role for his or her client.[44]

Some commenters[45] stated that the Commission should prohibit the audit firm from performing most, if not all, non-audit services. Other commenters[46] supported a less strict approach. Consistent with our proposing release,[47] we are adopting rules related to the scope of services that independent accountants can provide to their audit clients. In adopting these rules, the Commission is clarifying the scope of the prohibited services. The prohibited services contained in these rules only apply to non-audit services provided by independent accountants to their audit clients. These rules do not limit the scope of non-audit services provided by an accounting firm to a non-audit client. Under the Act, the responsibility falls on the audit committee to pre-approve all audit and non-audit services provided by the accountant.

Recognizing that audit clients may need a period of time to exit existing contracts our rules provide that until May 6, 2004 the provision of services described in § 210.2–01(c)(4) will not impair an accountant's independence *provided* those services are pursuant to contracts in existence on May 6, 2003.[48]

1. Bookkeeping or Other Services Related Accounting Records or Financial Statements of the Audit Client

Previously, an auditor's independence was impaired if the auditor provided bookkeeping services to an audit client, except in limited situations, such as in an emergency or where the services are provided in a foreign jurisdiction and certain conditions were met. The current Rule 2–01(c)(4)(i) continues the prohibition on bookkeeping, but we have eliminated the limited situations where bookkeeping services could have been provided under the previous rules.

Some commenters[49] suggested that bookkeeping services should be permitted, especially under the previous exceptions. However, our independence

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[41] *See*, letter from Investment Company Institute, dated January 13, 2003; letter from Deloitte & Touche, dated January 10, 2003.

[42] *See*, letter from PricewaterhouseCoopers dated January 8, 2003.

[43] As used in this section of the Act, the term Board refers to the Public Company Accounting Oversight Board.

[44] *See*, Preliminary note to Rule 2–01 of Regulation S–X, 17 CFR 210.2–01.

[45] *See, e.g.*, letter from California Public Employees' Retirement System, dated January 10, 2003; letter from William E. Fraser, dated November 26, 2002, letter from Ellen Sweet, dated November 26, 2002, letter from Council on Institutional Investors, dated January 10, 2003.

[46] *See, e.g.*, letter from Chamber of Commerce of the United States of America, dated January 9, 2003; letter from America's Community Bankers, dated January 13, 2003; letter from Deloitte & Touche LLP, dated January 10, 2003; letter from American Society of Corporate Secretaries, dated January 13, 2003.

[47] 17 CFR parts 210, 240, 249 and 274.

[48] Additionally, in the unusual instance where additional time is needed to exit an existing contract, the staff in the Office of the Chief Accountant or the Public Company Accounting Oversight Board may be consulted on a case by case basis.

[49] *See, e.g.*, letter from American Institute of Certified Public Accountants, dated January 9, 2003; letter from Radin, Gloss & Co., dated December 31, 2002; letter from Grant Thornton LLP, dated January 13, 2003; letter from International Federation of Accountants, dated January 10, 2003.

rules are predicated on the three basic principles enumerated earlier. One of those principles is that an auditor cannot audit his or her own work and maintain his or her independence. When an accounting firm provides bookkeeping services for an audit client, the firm may be put in the position of later auditing the accounting firm's own work. If, during an audit, an accountant must audit the bookkeeping work performed by his or her accounting firm, it is questionable that the accountant could, or that a reasonable investor would believe that the accountant could, remain objective and impartial. If the accountant found an error in the bookkeeping, the accountant could well be under pressure not to raise the issue with the client if raising the issue could jeopardize the firm's contract with the client for bookkeeping services or result in heightened litigation risk for the firm. In addition, keeping the books is a management function, which also is prohibited.[50]

Accordingly, we are adopting rules stating that all bookkeeping services would cause the auditor to lack independence unless it is reasonable to conclude that the results will not be subject to audit procedures. We proposed to prohibit bookkeeping services unless it was "reasonably likely that such services would not be subject to audit procedures." Our final rules make clear the presumption to emphasize the responsibility the accounting firm has in making a determination that the bookkeeping services will not be subject to audit procedures.

The rules utilize the previous definition of bookkeeping or other services, which focuses on the provision of services involving: (1) Maintaining or preparing the audit client's accounting records, (2) preparing financial statements that are filed with the Commission or the information that forms the basis of financial statements filed with the Commission, or (3) preparing or originating source data underlying the audit client's financial statements. Our experience with this definition demonstrates that the concept of bookkeeping and other services is well understood in practice.

We understand that accountants sometimes are asked to prepare statutory financial statements for foreign companies, and these are not filed with us. Consistent with the Commission's previous rules, an accountant's independence would be impaired where the accountant prepared the statutory financial statements if those statements form the basis of the financial statements that are filed with us. Under these circumstances, an accountant or accounting firm who has prepared the statutory financial statements of an audit client is put in the position of auditing its own work when auditing the resultant U.S. GAAP financial statements.

With respect to the prohibitions on (1) bookkeeping; (2) financial information systems design and implementation; (3) appraisal, valuation, fairness opinions, or contribution-in-kind reports; (4) actuarial; and (5) internal audit outsourcing, the rules state that the service may not be provided "unless it is reasonable to conclude that the results of these services will not be subject to audit procedures during an audit of the audit client's financial statements."[51] As proposed, for bookkeeping, appraisal or valuation, and actuarial services, the provision was "where it is reasonably likely that the results of these services will be subject to audit procedures during an audit of the audit client's financial statements" while for the other two services, there was no such wording. We have added the new wording to all five services to provide consistency in application. Additionally, the change from "reasonably likely * * *" to "unless it is reasonable to conclude" is intended to narrow the circumstances in which that condition can be invoked to justify the provision of such services.[52]

2. Financial Information Systems Design and Implementation

Currently, Paragraph (c)(4)(ii) identifies certain information technology services that, if provided to an audit client, impair the accountant's independence. The proposed rules identified information technology services that would impair the auditor's independence. Under Paragraph (c)(4)(ii)(A) of the proposed rule, an accountant would not be independent if the accountant directly or indirectly operates or supervises the operation of the audit client's information system or manages the audit client's local area network or information system. Further, Paragraph (c)(4)(ii)(B) of the proposed rule provided that an accountant is *not* deemed independent if the accountant designs or implements a hardware or software system that aggregates source data underlying the financial statements or generates information that is significant to the audit client's financial statements taken as a whole. These services were deemed to impair an accountant's independence under our previous rules.

Some commenters[53] suggested that the Commission's rules should include a dollar threshold limit or other qualifying language. Others[54] suggested that the Commission should clarify that the prohibition on designing and implementing systems would include selecting and testing a client's financial information system. Commenters[55] also believe that the Commission should clarify that recommendations for improvements in the systems should be permitted.

The Commission is adopting rules, consistent with our previous rules, that prohibited the accounting firm from providing any service related to the audit client's information system, unless it is reasonable to conclude that the results of these services will not be subject to audit procedures during an audit of the audit client's financial statements. These rules do not preclude an accounting firm from working on hardware or software systems that are unrelated to the audit client's financial statements or accounting records as long as those services are pre-approved by the audit committee.

As noted above, the rule prohibits the accountant from designing or implementing a hardware or software system that aggregates source data or generates information that is "significant" to the financial statements taken as a whole. In this context, information would be "significant" if it is reasonably likely to be material to the financial statements of the audit client. Since materiality determinations may not be complete before financial statements are generated, the audit client and accounting firm by necessity will need to evaluate the general nature of the information as well as system output during the period of the audit engagement. An accountant, for

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[50] Letter of Samuel L. Burke, Associate Chief Accountant, SEC, to Florida Institute of Certified Public Accountants re: bookkeeping (March 4, 2002).

[51] An example of a situation where it would be reasonable to conclude that the results would not be subject to audit procedures would be where an accounting firm provides a prohibited service to an affiliate of the client, as defined in Rule 2–01(f)(4), but the accounting firm is not the auditor of the entity or entities that controls the accounting firm's audit client or its affiliate.

[52] As such, there is a rebuttable presumption that the services are subject to audit procedures.

[53] *See, e.g.*, letter from Radin, Glass & Co., dated December 31, 2002; letter from Institute of Chartered Accountants in England & Wales, dated December 24, 2002; letter from Deloitte & Touche LLP, dated January 10, 2003.

[54] *See, e.g.*, letter from HarborView Partners LLC, dated December 4, 2002; letter from California Public Employees' Retirement System, dated January 10, 2003; letter from Center for Investor Trust, dated January 13, 2003.

[55] *See, e.g.*, letter from Sullivan & Cromwell LLP, dated January 10, 2003.

example, would not be independent of an audit client for which it designed an integrated Enterprise Resource Planning ("ERP") or similar system since the system would serve as the basis for the audit client's financial reporting system.

Designing, implementing, or operating systems affecting the financial statements may place the accountant in a management role, or result in the accountant auditing his or her own work or attesting to the effectiveness of internal control systems designed or implemented by that accountant.[56] For example, if an auditor designs or installs a computer system that generates the financial records, and that system generates incorrect data, the accountant is placed in a position of having to report on his or her firms' own work. Investors may perceive that the accountant would be unwilling to challenge the integrity and efficacy of the client's financial or accounting information collection systems that the accountant designed or installed.

However, this prohibition does not preclude the accountant from evaluating the internal controls of a system as it is being designed, implemented or operated either as part of an audit or attest service and making recommendations to management. Likewise, the accountant would not be precluded from making recommendations on internal control matters to management or other service providers in conjunction with the design and installation of a system by another service provider.

3. Appraisal or Valuation Services, Fairness Opinions, or Contribution-in-Kind Reports

The Commission's previous independence rules stated that an accountant is deemed to lack independence when providing appraisal or valuation services, fairness opinions, or contribution-in-kind reports for audit clients. However, the previous rules contained certain exemptions that we proposed to eliminate.[57] The proposals provided that the auditor is not independent if the auditor provides appraisal or valuation services, or contribution-in-kind reports,[58] where it is reasonably likely that the results of the service will not be subject to audit procedures by the auditor because the auditor is in a position of auditing his or her own work. Additionally, an accountant was not independent under the proposal if he or she provided a fairness opinion because to do so requires the accountant to function as a part of management and may require the accountant to audit the results of his or her own work.

Appraisal and valuation services include any process of valuing assets, both tangible and intangible, or liabilities. They include valuing, among other things, in-process research and development, financial instruments, assets and liabilities acquired in a merger, and real estate. Fairness opinions and contribution-in-kind reports are opinions and reports in which the firm provides its opinion on the adequacy of consideration in a transaction.

Some commenters[59] believe that our proposed prohibitions were appropriate and others would be even more restrictive.[60] Other commenters,[61] however, believe that certain valuation services should be permissible.

We continue to believe that providing these services to audit clients raises several independence concerns. When it is time to audit the financial statements, it is likely that the accountant would review his or her own work, including key assumptions or variables that underlie an entry in the financial statements. Also, if the appraisal methodology involves a projection of future results of operations and cash flows, some[62] believe that the accountant that prepares the projection may be unable to evaluate skeptically and without bias the accuracy of that valuation or appraisal. Accordingly, the rules we are adopting prohibit the accountant from providing any appraisal service, valuation service or any service involving a fairness opinion or contribution-in-kind report for an audit client, unless it is reasonable to conclude that the results of these services will not be subject to audit procedures during an audit of the audit client's financial statements.

Our rules do not prohibit an accounting firm from providing such services for non-financial reporting (*e.g.*, transfer pricing studies, cost segregation studies, and other tax-only valuations) purposes. Also, the rule does not prohibit an accounting firm from utilizing its own valuation specialist to review the work performed by the audit client itself or an independent, third-party specialist employed by the audit client, provided the audit client or the client's specialist (and not the specialist used by the accounting firm) provides the technical expertise that the client uses in determining the required amounts recorded in the client financial statements. In those instances the accountant will not be auditing his or her own work because a third party or the audit client is the source of the financial information subject to the audit. Additionally, the quality of the audit may be improved where specialists are utilized in such situations.

Some commenters[63] believe that a strict application of these rules related to contribution-in-kind reports may create conflicts in certain foreign jurisdictions. We are sensitive to these issues and, as we have done in the past,[64] we will continue to work with other regulatory agencies.

4. Actuarial Services

The previous rules generally bar auditors only from providing actuarial services related to insurance company policy reserves and related accounts. Our proposal provided that the accountant is not independent if the auditor provides any actuarial service involving the amounts recorded in the financial statements and related accounts for the audit client where it is reasonably likely that the results of

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[56] *See*, Section 404(b) of the Sarbanes-Oxley Act.

[57] Exemptions proposed to be eliminated included: (1) Firm's valuation expert can review the work of a client's specialist; (2) firm's actuaries can value a client's pension or other post-retirement benefit obligation provided that the client assumes responsibility for significant assumptions; (3) valuations performed for planning and implementing tax-planning strategies; and (4) valuations for non-financial purposes which do not affect the financial statements.

[58] Laws or regulations in certain foreign countries require the auditor in connection with designated transactions of its audit clients, to provide contribution-in-kind reports that express an opinion on the fairness of the transaction, the value of a security, or the adequacy of consideration to shareholders.

[59] *See, e.g.*, letter from Piercy, Bowler, Taylor & Kern, dated January 7, 2003; letter from Robert G. Beard, undated; letter from BDO Seidman LLP, dated January 13, 2003.

[60] *See, e.g.*, letter from Stikeman Elliot, dated January 13, 2003; letter from California Public Employees' Retirement System, dated January 10, 2003.

[61] *See, e.g.*, letter from American Institute of Certified Public Accountants, dated January 9, 2003; letter from HSBC, dated January 1, 2003; letter from PricewaterhouseCoopers, dated January 8, 2003.

[62] *See, e.g.*, letter from Aurora Group, dated January 13, 2003; letter from Cowhey, Girard Consulting, dated December 30, 2002.

[63] *See, e.g.*, letter from Japanese Institute of Certified Public Accountants, dated January 13, 2003; letter from The Hundred Group of Finance Directors, dated January 13, 2003; letter from European Commission, dated January 13, 2003.

[64] Letter of Lynn Turner, Chief Accountant, SEC, to Commissione Nazionale per le Societa e la Borsa re: auditor independence (August 24, 2000). In that letter, the Chief Accountant did not deem the auditor's independence to be impaired where there were certain agreed-upon procedures for the contribution-in-kind report and the accountant represented in the report that the report did not express an opinion on the fairness of the transaction, the value of the security, or the adequacy of consideration to shareholders. This letter is available on our website.

these services will be subject to audit procedures during an audit of the audit client's financial statements because providing these services may cause an accountant later to audit his or her own work. Additionally, accountants providing these services assume a key management task. In addition, actuarially-oriented advisory services may affect amounts reflected in some company's financial statements.

Some commenters[65] agreed with our proposed prohibition of actuarial services. Others,[66] however, believe that some types of actuarial services should be permitted.

Consistent with our proposal, we continue to believe that when the accountant provides actuarial services for the client, he or she is placed in a position of auditing his or her own work. Accordingly, the rules we are adopting prohibit an accountant from providing to an audit client any actuarially-oriented advisory service involving the determination of amounts recorded in the financial statements and related accounts for the audit client other than assisting a client in understanding the methods, models, assumptions, and inputs used in computing an amount, unless it is reasonable to conclude that the results of these services will not be subject to audit procedures during an audit of the audit client's financial statements.

As can be seen, however, we believe that it is appropriate to advise the client on the appropriate actuarial methods and assumptions that will be used in the actuarial valuations. It is not appropriate for the accountant to provide the actuarial valuations for the audit client.

The rules also provide that the accountant may utilize his or her own actuaries to assist in conducting the audit provided the audit client uses its own actuaries or third-party actuaries to provide management with its actuarial capabilities.

5. Internal Audit Outsourcing

Our previous rules on internal audit outsourcing allowed a company to outsource part of its internal audit function to the independent audit firm subject to certain exemptions. For example, smaller businesses were exempt from the internal audit outsourcing prohibition because there had been concerns about the potentially disproportionate impact on such companies.

Some companies "outsource" internal audit functions by contracting with an outside source to perform, among other things, all or part of their audits of internal controls. As emphasized by the Committee of Sponsoring Organizations ("COSO"), internal auditors play an important role in evaluating and monitoring a company's internal control system.[67] As a result, some argue that internal auditors are, in effect, part of a company's system of internal accounting control.[68]

Since the external auditor typically will rely, at least to some extent, on the existence of an internal audit function and consider its impact on the internal control system when conducting the audit of the financial statements,[69] the accountant may be placed in the position of auditing his or her firm as part of the internal control system. In other words, if the internal audit function is outsourced to an accountant, the accountant assumes a management responsibility and becomes part of the company's control system. Our proposed rule provided that an accountant is not independent when the accountant performs internal audit services related to the internal accounting controls, financial systems, or financial statements, for an audit client.

Some commenters[70] agreed with the proposed rule. While some commenters[71] believed that our rule should contain exemptions for smaller companies, others[72] did not. Some commenters[73] believed that the final rule should include a "reasonably likely to be subject to audit procedures" provision similar to other prohibited services (*e.g.*, bookkeeping). Still other commenters[74] suggested that the Commission should clarify that services provided in conjunction with an audit or attest service are permissible.

The rules we are adopting prohibit the accountant from providing to the audit client internal audit outsourcing services. This prohibition would include any internal audit service that has been outsourced by the audit client that relates to the audit client's internal accounting controls, financial systems, or financial statements unless it is reasonable to conclude that the results of these services will not be subject to audit procedures during an audit of the audit client's financial statements.

During the conduct of the audit in accordance with generally accepted auditing standards ("GAAS") or when providing attest services related to internal controls, the auditor evaluates the company's internal controls and, as a result, may make recommendations for improvements to the controls. Doing so is a part of the accountant's responsibilities under GAAS or applicable attestation standards and, therefore, does not constitute an internal audit outsourcing engagement.

Along those lines, this prohibition on "outsourcing" does not preclude engaging the accountant to perform nonrecurring evaluations of discrete items or other programs that are not in substance the outsourcing of the internal audit function. For example, the company may engage the accountant, subject to the audit committee pre-approval requirements, to conduct "agreed-upon procedures" engagements[75] related to the company's internal controls, since management takes responsibility for the scope and assertions in those engagements. The prohibition also does not preclude the accountant from performing operational internal audits unrelated to the internal accounting controls, financial systems, or financial statements.

6. Management Functions

In our proposal, we did not propose any significant change to our previous rule on management functions. Some commenters[76] suggested that we clarify

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[65] *See, e.g.*, letter from California Public Employees' Retirement System, dated January 10, 2003; letter from Aon Consulting, dated January 13, 2003.

[66] *See, e.g.*, letter from PricewaterhouseCoopers, dated January 8, 2003; letter from Deloitte & Touche LLP, dated January 10, 2003; letter from General Electric Company, dated January 9, 2003.

[67] *See*, Committee of Sponsoring Organizations of the Treadway Commission (COSO), *Internal Control—Integrated Framework*, at 7 (1992) (the "COSO Report").

[68] *See*, SAS No. 65, "The Auditor's Consideration of the Internal Audit Function in an Audit of Financial Statements," AU § 322.

[69] SAS No. 55, "Consideration of Internal Control in a Financial Audit," AU § 319.

[70] *See, e.g.*, letter from Perry Adkins, dated December 24, 2002; letter from The Center for Investor Trust, dated January 13, 2003.

[71] *See, e.g.*, letter from James L. Crites, dated December 28, 2002; letter from Cranmore, FitzGerald & Meaney, dated December 27, 2002; letter from America's Community Bankers, dated January 13, 2003; letter from Dixon Odom LLC, dated December 20, 2002.

[72] *See, e.g.*, letter from California Public Employees' Retirement System, dated January 10, 2003; letter from Institute of Internal Auditors, dated January 13, 2003.

[73] *See, e.g.*, letter from Deloitte & Touche, dated January 10, 2003; letter from Ernst & Young LLP, dated January 6, 2003.

[74] *See, e.g.*, letter from Hansen, Barnett & Maxwell, dated January 13, 2003; letter from Deloitte & Touche LLP, dated January 10, 2003; letter from PricewaterhouseCoopers, dated January 8, 2003; letter from American Institute of Certified Public Accountants, dated January 9, 2003.

[75] *See*, AT § 201, "Agreed-Upon Procedures."

[76] *See, e.g.*, letter from American Institute of Certified Public Accountants, dated January 9, 2003; letter from Grant Thornton, LLP dated January 13, 2003; letter from Sullivan & Cromwell LLP, dated January 10, 2003; letter from Computer Sciences Corporation, dated January 13, 2003.

that evaluations of and recommendations for improvements in a company's systems or controls does not constitute a management function.

Consistent with our proposal, the final rules prohibit the accountant from acting, temporarily or permanently, as a director, officer, or employee of an audit client, or performing any decision-making, supervisory, or ongoing monitoring function for the audit client.

We believe, however, that services in connection with the assessment of internal accounting and risk management controls, as well as providing recommendations for improvements, do not impair an accountant's independence. Accountants must gain an understanding of their audit clients' systems of internal controls when conducting an audit in accordance with GAAS.[77] With this insight, accountants often become involved in diagnosing, assessing, and recommending to audit committees and management ways in which their audit client's internal controls can be improved or strengthened.[78] The resulting improvements in the audit client's controls not only result in improved financial reporting to investors but also can facilitate the performance of high quality audits. For these reasons, we are continuing to allow accountants to assess the effectiveness of an audit client's internal controls and to recommend improvements in the design and implementation of internal controls and risk management controls.

As discussed in the previous section on financial information systems design and implementation, when an accountant designs and implements its audit client's internal accounting and risk management control systems, some believe that the accountant will lack objectivity if called upon to audit financial statements that are derived, at least in part, from data from those systems or to report on those controls or on management's assessment of those controls. As such, we believe that designing and implementing internal accounting and risk management controls is fundamentally different from obtaining an understanding of the controls and testing the operation of the controls which is an integral part of any audit of the financial statements of a company. Likewise, design and implementation of these controls involves decision-making and, therefore, is different from recommending improvements in the internal accounting and risk management controls of an audit client (which is permissible, if pre-approved by the audit committee).

For example, management could engage a third-party service provider to design and implement an inventory control system. In the course of that engagement, the third-party service provider might ask the accountant to make recommendations on internal control and accounting system components that have been included in the system being designed. Providing such recommendations to the third-party service provider would not place the independent accountant in the role of management.

Because of this fundamental difference, we believe that designing and implementing internal accounting and risk management controls impairs the accountant's independence because it places the accountant in the role of management. Conversely, obtaining an understanding of, assessing effectiveness of, and recommending improvements to the internal accounting and risk management controls is fundamental to the audit process and does not impair the accountant's independence. Furthermore, the accountant may be engaged by the company, subject to the audit committee pre-approval requirements, to conduct an agreed-upon procedures engagement[79] related to the company's internal controls or to provide attest services related to the company's internal controls without impairing his or her independence.

7. Human Resources

Our previous rules deem an accountant to lack independence when performing certain human resources functions, and we did not propose any significant change to those rules. Many commenters[80] agreed that the accountant should be prohibited from providing certain human resources functions for audit clients.

Consistent with our proposal, these rules provide that an accountant's independence is impaired with respect to an audit client when the accountant searches for or seeks out prospective candidates for managerial, executive or director positions; acts as negotiator on the audit client's behalf, such as determining position, status, compensation, fringe benefits, or other conditions of employment; or undertakes reference checks of prospective candidates. Under the rule, an accountant's independence also is impaired when the accountant engages in psychological testing, or other formal testing or evaluation programs, or recommends or advises the audit client to hire a specific candidate for a specific job.

Assisting management in human resource selection or development places the accountant in the position of having an interest in the success of the employees that the accountant has selected, tested, or evaluated. Accordingly, observers may perceive that an accountant would be reluctant to suggest the possibility that those employees failed to perform their jobs appropriately, or at least reasonable investors might perceive the accountant to be reluctant, because doing so would require the accountant to acknowledge shortcomings in its human resource service. The accountant also might have other incentives not to report such employees' ineffectiveness, including that the accountant would identify and be identified with the recruited employees.

8. Broker-Dealer, Investment Adviser or Investment Banking Services

Our previous rules deem an accountant to lack independence when performing brokerage or investment advising services for an audit client.[81] We are adopting rules that add serving as an unregistered broker-dealer[82] to

[77] AU § 319, "Consideration of Internal Control in a Financial Statement Audit." In addition, Section 404(b) of the Act requires a company's audit to attest to the internal control report provided annually by management.

[78] AU § 325, "Communication of Internal Control Related Matters Noted in an Audit," requires the auditor to communicate reportable conditions and material weaknesses in internal control to the company's audit committee or equivalent.

[79] *See*, AT § 201, "Agreed-Upon Procedures."

[80] *See, e.g.*, letter from California Public Employees' Retirement System, dated January 10, 2003; letter from Aon Consulting, dated January 13, 2003.

[81] These rules are not meant to change the Commission's previous position that an audit firm's broker-dealer division can cover an industry (including industry surveys and analyses) which includes an audit client when performing analyst functions. However, analysis of a specific audit client's stock places the auditor in the position of acting as an advocate for the client and would cause the auditor to lack independence.

[82] Accountants and the companies that retain them should recognize that the key determination required here is a functional one (*i.e.*, Is the accounting firm or its employee acting as a broker-dealer?). The failure to register as a broker-dealer does not necessarily mean that the accounting firm is not a broker-dealer. In relevant part, the statutory definition of "broker" captures persons "engaged in the business of effecting transactions in securities for the account of others." Securities Exchange Act of 1934 3(a)(4). Unregistered persons who provide services related to mergers and acquisitions or other securities-related transactions should limit their activities so they remain outside of that statutory definition. A person may "effect transactions," among other ways, by assisting an issuer to structure prospective securities transactions, by helping an issuer to identify potential purchasers of securities, or by soliciting securities transactions. A person may be "engaged in the business," among

our rules that prohibit serving as a promoter or underwriter, making investment decisions on behalf of the audit client or otherwise having discretionary authority over an audit client's investments, or executing a transaction to buy or sell an audit client's investment, or having custody of assets of the audit client. The rule is substantially the same as the Commission's previous rule related to the provision of these types of services to audit clients. We are including unregistered broker-dealers within the rules because the nature of the threat to independence is unchanged whether the entity is or is not a registered broker-dealer.

Selling—directly or indirectly—an audit client's securities is incompatible with the accountant's responsibility of assuring the public that the company's financial condition is fairly presented. When an accountant, in any capacity, recommends to anyone (including non-audit clients) that they buy or sell the securities of an audit client or an affiliate of the audit client, the accountant has an interest in whether those recommendations were correct. That interest could affect the audit of the client whose securities, or whose affiliate's securities, were recommended. These concepts are echoed in the "simple principles" included in the legislative history to the Sarbanes-Oxley Act.[83] In such a situation, if an accountant uncovers an accounting error in a client's financial statements, and the accountant, in an investment adviser capacity, had recommended that client's securities to investment clients, the accountant performing the audit may be reluctant to recommend changes to the client's financial statements if the changes could negatively affect the value of the securities recommended by the accountant to its investment adviser clients.

Broker-dealers[84] often give advice and recommendations on investments and investment strategies. The value of that advice is measured principally by the performance of a customer's securities portfolio. When the customer is an audit client, the accountant has an interest in the value of the audit client's securities portfolio, even as the accountant must determine whether management has properly valued the portfolio as part of an audit. Thus, the accountant would be placed in a position of auditing his or her own work. Furthermore, the accountant is placed in a position of acting as an advocate on behalf of the client.

9. Legal Services

Our previous rule stated that an accountant is deemed to lack independence when he or she provides legal services to an audit client. The proposed rule provided that an accountant was not independent of an audit client if the accountant provides any service to the audit client that, under circumstances in which the service is provided, could be provided only by someone licensed, admitted or otherwise qualified to practice law in the jurisdiction in which the service is provided.

We believe that a lawyer's core professional obligation is to advance clients' interests. Rules of professional conduct in the U.S. require the lawyer to "represent a client zealously and diligently within the bounds of the law."[85] The lawyer must "take whatever lawful and ethical measures are required to vindicate a client's cause or endeavor * * * In the exercise of professional judgment, a lawyer should always act in a manner consistent with the best interests of the client."[86] We have long maintained that an individual cannot be both a zealous legal advocate for management or the client company, and maintain the objectivity and impartiality that are necessary for an audit.[87] The Supreme Court has agreed with our view. In *United States* v. *Arthur Young*, the Supreme Court emphasized, "If investors were to view the accountant as an advocate for the corporate client, the value of the audit function itself might well be lost."[88]

Some commenters[89] believed that the prohibition on legal services should apply to all registrants, regardless of their jurisdiction. Others believed that certain accommodations should be made for foreign jurisdictions[90] or for routine or ministerial duties.[91]

The rules we are adopting are consistent with our proposal. Accordingly, an accountant is prohibited from providing to an audit client any service that, under circumstances in which the service is provided, could be provided only by someone licensed, admitted, or otherwise qualified to practice law in the jurisdiction in which the service is provided.

We recognize that there may be implications for some foreign registrants from this rule. For example, we understand that in some jurisdictions it is mandatory that someone licensed to practice law perform tax work, and that an accounting firm providing such services, therefore, would be deemed to be providing legal services. As a general matter, our rules are not intended to prohibit foreign accounting firms from providing services that an accounting firm in the United States may provide. In determining whether or not a service would impair the accountant's independence solely because the service is labeled a legal service in a foreign jurisdiction, the Commission will consider whether the provision of the service would be prohibited in the United States as well as in the foreign jurisdiction.

Evaluating and determining whether services are permissible may require a comprehensive analysis of the facts and circumstances. We are, however, sensitive to these issues and, as we have done in the past,[92] we encourage accounting firms and foreign regulators to consult with the staff to address these issues.

10. Expert Services

The Sarbanes-Oxley Act includes expert services in the list of non-audit services an accountant is prohibited from performing for an audit client. As

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other ways, by receiving transaction-related compensation or by holding itself out as a broker-dealer. Involvement of accounting personnel as unregistered broker-dealers not only can impair auditor independence, but also would violate Section 15(a) of the Exchange Act.

[83] Floor Statement of Senator Sarbanes, 148 Cong. Rec. S7364 (July 25, 2002) "* * * A public company auditor should not be a promoter of the company's stock or other financial interest (as it would be if it served as broker-dealer, investment adviser, or investment banker for the company)." To do so places the auditor in a position of serving as an advocate for his or her audit client.

[84] In the past, some have expressed concern that terms such as "securities professional" and "analyst" are not defined in the securities laws and use of the terms could cause confusion. Because of that concern, we have not used those terms in these rules. We note, however, that broker-dealers provide an array of services that may include certain analyst activities.

[85] *See, e.g.*, D.C. Rules of Professional Conduct, Rule 1.3(a).

[86] *Id.* at Rule 1.5.

[87] In the Matter of Charles Falk, AAER No. 1134 (May 19, 1999) (formally disciplining an attorney/accountant who gave legal advice to an audit client of another partner in his accounting firm).

[88] *United States* v. *Arthur Young*, 465 U.S. 805 (1984) at 819–20 n.15.

[89] *See, e.g.*, letter of Lynn E. Turner, dated January 13, 2003; letter from California Public Employees' Retirement System, dated January 10, 2003.

[90] *See, e.g.*, letter from HSBC, dated January 10, 2003; letter from Institute of Chartered Accountants in England and Wales, dated December 24, 2002; letter from Institut der Wirtschaftsprufer, dated December 27, 2002; letter from Federation des Experts Comptables Europeens, dated January 13, 2003.

[91] *See, e.g.*, letter from KPMG, dated January 9, 2003.

[92] Letter of Lynn Turner, Chief Accountant, SEC, to Commissione Nazionale per le Sonieta e la Borsa re: statutory procedures (August 24, 2000).

discussed earlier, the legislative history related to expert services is focused on the accountant's role when serving in an advocacy capacity.

Some commenters [93] believed that the prohibition on expert services should be limited to instances of public advocacy or public adversarial proceedings and should not extend to situations where the accountant is advising a client or its counsel on technical matters apart from a public proceeding. Other commenters [94] believed a distinction exists between serving as an expert witness and serving as a fact witness in a proceeding. Additionally, many commenters [95] simply raised concerns over the lack of clarity of the term "expert" indicating that, as proposed, the meaning of the term is unclear.

Clients retain experts to lend authority to their contentions in various proceedings by virtue of the expert's specialized knowledge and experience. In situations involving advocacy, the provision of expert services by the accountant makes the accountant part of the "team" that has been assembled to advance or defend the client's interests.[96] The appearance of advocacy created by providing such expert services is sufficient to deem the accountant's independence impaired. The prohibition on providing "expert" services included in this rule covers engagements that are intended to result in the accounting firm's specialized knowledge, experience and expertise being used to support the audit client's positions in various adversarial proceedings.[97]

The rules we are adopting prohibit an accountant from providing expert opinions or other services to an audit client, or a legal representative of an audit client, for the purpose of advocating that audit client's interests in litigation or regulatory, or administrative investigations or proceedings. For example, under this rule an auditor's independence would be impaired if the auditor were engaged to provide forensic accounting services to the audit client's legal representative in connection with the defense of an investigation by the Commission's Division of Enforcement. Additionally, an accountant's independence would be impaired if the audit client's legal counsel, in order to acquire the requisite expertise, engaged the accountant to provide such services in connection with a litigation, proceeding or investigation.[98]

Our rules do not, however, preclude an audit committee or, at its direction, its legal counsel, from engaging the accountant to perform internal investigations or fact finding engagements. These types of engagements may include, among others, forensic or other fact-finding work that results in the issuance of a report to the audit client. The involvement by the accountant in this capacity generally requires performing procedures that are consistent with, but more detailed or more comprehensive than, those required by GAAS. Performing such procedures is consistent with the role of the independent auditor and should improve audit quality. If, subsequent to the completion of such an engagement,[99] a proceeding or investigation is initiated, the accountant may allow its work product to be utilized by the audit client and its legal counsel without impairing the accountant's independence. The accountant, however, may not then provide additional services, but may provide factual accounts or testimony about the work performed.

Accordingly, our rules would not prohibit an accountant from assisting the audit committee [100] in fulfilling its responsibilities to conduct its own investigation of a potential accounting impropriety.[101] For example, if the audit committee is concerned about the accuracy of the inventory accounts at a subsidiary, it may engage the auditor to conduct a thorough inspection and analysis of those accounts, the physical inventory at the subsidiary, and related matters without impairing the auditor's independence.

We recognize that auditors have obligations under Section 10A of the Exchange Act and GAAS [102] to search for fraud that is material to an issuer's financial statements and to make sure the audit committee and others are informed of their findings. Auditors should conduct these procedures whether they become aware of a potential illegal act as a result of audit, review or attestation procedures they have performed or as a result of the audit committee expressing concerns about a part of the company's operations or compliance with the company's financial reporting system. In these situations, we believe that the auditor may conduct the procedures, with the approval of the audit committee, and provide the reports that the auditor deems appropriate. Should litigation arise or an investigation commence during the time period that the auditors are conducting such procedures, we would not deem the completion of these procedures to be prohibited expert services so long as the auditor remains in control of his or her work and that work does not become subject to the direction or influence of legal counsel for the issuer.

Furthermore, under this rule, an accountant's independence will not be deemed to be impaired if, in an investigation or proceeding, an accountant provides factual accounts or testimony describing work it performed. Further, an accountant's independence will not be deemed to be impaired if an accountant explains the positions taken or conclusions reached during the performance of any service provided by the accountant for the audit client.

11. Tax Services

Since the Commission issued its auditor independence proposal, there has been considerable debate regarding whether an accountant's provision of tax services for an audit client can impair the accountant's independence.

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[93] *See, e.g.*, letter from Sullivan & Cromwell LLP, letter from Deloitte & Touche LLP, dated January 10, 2003; letter from American Institute of Certified Public Accountants, dated January 9, 2003; letter from Federation des Experts Comptables Europeens, dated January 13, 2003.

[94] *See, e.g.*, letter from Sullivan & Cromwell LLP, dated January 10, 2003; letter from California Public Employees' Retirement System, dated January 10, 2003; letter from Grant Thornton LLP, dated January 13, 2003; letter from American Academy of Actuaries, dated January 6, 2003.

[95] *See, e.g.*, letter from Eli Lily and Co., dated January 9, 2003; letter from Federation des Experts Comptables Europeens, dated January 13, 2003; letter from PG&E Corporation, dated January 10, 2003; letter from America's Community Bankers, dated January 13, 2003.

[96] The accountant becomes an advocate under such circumstances even if the accountant is working behind the scenes to advance the client's interests.

[97] As we discussed in our proposing release, virtually all services provided by an accountant may be perceived to be expert services. This prohibition, however, only applies to those services that involve advocacy in proceedings and investigations (as discussed in this section of the release) and does not apply to other permitted non-audit services, such as tax services.

[98] For purposes of this release, an investigation is an inquiry by a regulatory body, including by its staff.

[99] *See, infra*, discussion stating that if litigation arises or an investigation commences during the auditor's performance of such procedures, completion of the procedures is not prohibited provided the auditor remains in control of his or her work and that work does not become subject to the direction or influence of legal counsel for the issuer.

[100] For example, Section 301 of the Act stipulates that each audit committee shall have the authority to engage independent counsel and other advisers, as it determines necessary to carry out its duties.

[101] An auditor's independence would, however, be impaired if its assistance to the audit committee included defending, or helping to defend, the audit committee or the company generally in a shareholder class action or derivative lawsuit, other than as a fact witness.

[102] *See*, SAS No. 99, "Consideration of Fraud in a Financial Statement Audit," AU § 316.

Tax services are unique among non-audit services for a variety of reasons. Detailed tax laws must be consistently applied, and the Internal Revenue Service has discretion to audit any tax return. Additionally, accounting firms have historically provided a broad range of tax services to their audit clients.[103]

In the proposing release, we suggested that in determining whether a given tax service should be allowed, the audit committee should be mindful of the three basic principles. In response, some commenters [104] indicated that asking audit committees to evaluate the provision of tax services by the accountant in light of the three basic principles would significantly alter the Commission's historic position related to tax services. Other commenters raised significant clarity and certainty issues. Some commenters [105] that urged clarity would, for example, prohibit accountants from providing any tax services to audit clients. Other commenters [106] believed that accountants should be permitted to provide only certain types of tax services to their audit clients.[107] Some commenters [108] believed that allowing the accountant to perform tax services both enhances the quality of the audit and provides greater independent oversight over the provision of tax services than would occur if a non-audit firm were engaged to provide these services. Additionally, one commenter's research suggests that higher levels of tax services fees are associated with substantially lower instances of financial restatements.[109]

The Commission reiterates its long-standing position that an accounting firm can provide tax services to its audit clients without impairing the firm's independence. Accordingly, accountants may continue to provide tax services such as tax compliance, tax planning, and tax advice to audit clients, subject to the normal audit committee pre-approval requirements under 2–01(c)(7). Additionally, the rules we are adopting require registrants to disclose the amount of fees paid to the accounting firm for tax services. The rules are consistent with the Act which states that:

> A registered public accounting firm may engage in any non-audit service, *including tax services*, that is not described in any of paragraphs (1) through (9) of subsection (g) for an audit client, only if the activity is approved in advance by the audit committee of the issuer.[110] (Emphasis added)

Nonetheless, merely labeling a service as a "tax service" will not necessarily eliminate its potential to impair independence under Rule 2–01(b).[111] Audit committees and accountants should understand that providing certain tax services to an audit client would, as described below, or could, in certain circumstances, impair the independence of the accountant. Specifically, accountants would impair their independence by representing an audit client before a tax court, district court, or federal court of claims. In addition, audit committees also should scrutinize carefully the retention of an accountant in a transaction initially recommended by the accountant, the sole business purpose of which may be tax avoidance and the tax treatment of which may be not supported in the Internal Revenue Code and related regulations.[112]

C. Partner Rotation

For 25 years, partner rotation has been a component of quality control processes for a vast majority of the accounting firms that audit SEC registrants.[113] The judgment about who should be subject to rotation and how long the partner(s) should remain on the engagement prior to rotating involves balancing the need to bring a "fresh look" to the audit engagement with the need to maintain continuity and audit quality.

The Sarbanes-Oxley Act requires rotation of certain audit partners on a five-year basis in order to continue to provide audit services for a registrant. Section 203 of the Sarbanes-Oxley Act of 2002 specifies that:

> It shall be unlawful for a registered public accounting firm to provide audit services to an issuer if the lead (or coordinating) audit partner (having primary responsibility for the audit), or the audit partner responsible for reviewing the audit, has performed audit services for that issuer in each of the 5 previous fiscal years of that issuer.

Section 301 of the Sarbanes-Oxley Act specifies that the Commission is to direct the national securities exchanges and associations to adopt company listing standards stating that the company's audit committee has the responsibility for appointment, compensation, and oversight of the work of the company's audit firm.[114] In that capacity, the audit committee has the responsibility for evaluating and determining that the audit engagement team has the competence necessary to conduct the audit engagement in accordance with GAAS. Additionally, the accountant is required to conduct the audit in accordance with GAAS.[115]

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[103] The provision of tax services by accountants to their audit clients existed and continued without change when Congress formulated the securities laws in the 1930s. The Sarbanes-Oxley Act also recognized that accountants may engage in certain non-audit services "including tax services * * * only if the activity is approved in advance by the audit committee."

[104] Some commenters (*see, e.g.*, letter from Ernst & Young, dated January 6, 2003; letter from Deloitte & Touche, dated January 10, 2003; letter from KPMG, dated January 9, 2003; letter from the Chamber of Commerce of the United States of America, dated January 9, 2003; letter from SafeCo Corporation, dated January 7, 2003; letter from Pfizer, dated January 13, 2003; letter from The Business Roundtable, dated January 14, 2003) believe that asking audit committees to evaluate tax services in light of the three principles in its pre-approval process creates an unnecessary degree of uncertainty in the marketplace.

[105] *See, e.g.*, letter from Norman Marks, dated December 9, 2002; letter from Harbor View Partners, dated December 4, 2002; letter from Douglas Estes, dated November 30, 2002; letter from William Fraser, dated November 26, 2002; letter from M.E. Saunders, dated November 26, 2002.

[106] *See, e.g.*, letter from Robert T. Bossart, dated January 2, 2003; letter from FedEx Corporation, dated December 31, 2002; letter from the American Bar Association Section of Taxation, dated January 6, 2003; letter from California Public Employees' Retirement System, dated January 10, 2003.

[107] Commenters identified a variety of tax services they believe should be prohibited. However, there was no "consensus" view on what tax services should be prohibited.

[108] *See, e.g.*, letter from Philip A. Laskawy, dated January 2, 2003; letter from FedEx Corporation, dated December 31, 2002; letter from The Business Roundtable, dated January 14, 2003.

[109] *See*, comment letter of William Kinney, University of Texas, Zoe-Vonna Palmrose, University of Southern California, and Susan Scholz, University of Kansas.

[110] Sarbanes-Oxley Act of 2002, Section 201.

[111] It would not be appropriate to provide a prohibited service, label it a "tax service," and argue that it is, therefore, permissible. For example, an accountant seeking to provide a broker-dealer service and arguing that, because there are tax implications of certain brokerage activities, the service is permissible would constitute an attempt to improperly circumvent the list of prohibited services. *See*, letter of Ernst & Young dated January 6, 2003 (p. 16).

[112] The Commission on Public Trust and Private Enterprise recently concluded as a "best practice" that an accounting firm should not be providing "novel and debatable tax strategies and products that involve income tax shelters and extensive off-shore partnerships or affiliates" to audit clients. *See* The Conference Board Commission on Public Trust and Private Enterprise, *Findings and Recommendations*, January 9, 2003, p. 37.

[113] American Institute of Certified Public Accountants (AICPA), *Division for CPA Firms SEC Practice Section Peer Review Manual*, 1978.

[114] *See*, Release No. 33–8173 (Jan 8, 2003).

[115] In addition to the audit, registrants are required to have their quarterly financial information subjected to a timely review by the accounting firm. Such review is typically conducted according to the provisions required by GAAS—*see*, AU § 722. Furthermore, Section 404 of the Sarbanes-Oxley Act, as well as the Commission's proposed rules—*see*, Release No. 33–8138, Oct. 22, 2002, (67 FR 66208)—would require the accounting firm to attest to management's report on the registrant's internal controls. Both a timely review engagement and an attestation engagement require the accounting firm to be independent with respect to the registrant. Accordingly, the Commission's rules for partner rotation extend to partners who serve on the engagement team that conducts the timely review of the registrant's

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In particular, the third general standard requires that the accountant exercise due professional care in the conduct of the audit.[116] In order to exercise due professional care, it is necessary to ensure that the engagement is properly staffed with individuals competent to understand the unique issues relevant to that audit. Additionally, the accounting profession's quality control standards require that the firm have processes in place to ensure that appropriate personnel are assigned to each audit engagement.[117]

In our proposing release, we proposed that all partners on the audit engagement team, with the exception of certain "technical services" or "national office" partners and those serving on significant subsidiaries as defined in 1–02(w) of Regulation S–X, be subject to rotation after five years and that after rotation, they would be subject to a five year time-out before they could return to that engagement. Furthermore, the proposed rules would have applied the partner rotation requirements at the audit client[118] level.

Some commenters[119] have suggested that the fresh look can only be accomplished by requiring mandatory rotation of audit firms. In contrast, others[120] expressed the concern that the loss of continuity and audit competence created by mandatory firm rotation creates an even greater risk to audit quality. The issue of mandatory audit firm rotation as an effective means of safeguarding auditor independence has been debated for many years. Several different groups, including appointed commissions, professional organizations, and academics, have researched and analyzed the issue of audit firm rotation.[121] The results of those efforts have raised many of the same concerns as our commenters which the Commission considered in this rule-making. This issue will continue to be monitored by the Commission and others. As directed by Section 207 of the Sarbanes-Oxley Act, the issue of mandatory firm rotation is a matter requiring further study.[122]

1. Rotation of the Lead and Concurring Partner

Under the current requirements of the profession, the balance between the need for a fresh look with concerns about loss of continuity and competence is accomplished by requiring the lead partner to rotate off the audit engagement of SEC registrants after seven years with a two year time out period.[123] However, some commenters[124] believed that extending the partner rotation requirements to other audit partners would be a better balance of the need for a fresh look with concerns about continuity and competence.

These commenters' views are consistent with the provisions of the Sarbanes-Oxley Act, which clearly specify that, at a minimum, two partners be subject to rotation: the lead audit partner and the concurring partner. Furthermore, the Act specifies a five-year period prior to rotation rather than the current seven-year period specified in the membership requirements of the SECPS.[125] While the Act specified that these two partners were subject to rotation after five years, the Act is silent with regard to the time out period. One approach to the partner rotation rules could have been to preclude the partner from returning to the audit client after he or she rotates off to that engagement. Many commenters,[126] however, believed that the time out should be shorter than in our proposal. Other commenters[127] did not object to or even agreed with the five-year time out period for the lead and concurring partners.

The Commission is adopting rules to require the lead and concurring partners to rotate after five years and, upon rotation, be subject to a five-year "time out" period. Because of the importance of achieving a fresh look to the independence of the audit function, we believe that a five-year time out period is appropriate for these two partners.

2. Additional Partner Rotation

Clearly, the lead partner and the concurring partner perform critical functions that affect the conduct and effectiveness of the engagement. However, in many larger engagements, the engagement team will include more than just the lead partner and the concurring partner. Often, those other partners on the engagement team play a significant role in the conduct of the audit and maintaining ongoing relationships with the audit client.

• Our proposal would have applied the same rotation requirements to all partners on the audit engagement team with the exception of certain "national office" technical partners and those who did not work on significant subsidiaries as defined in Rule 1–02(w) of Regulation S–X. Some commenters[128] believed that the rotation requirements should be at or extend beyond our proposal level to include, for example, "national office" or "technical" partners[129] or other audit engagement team members below the level of

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interim financial information as well as the engagement team that conducts the attest engagement on management's report on the registrant's internal controls.

[116] *See*, AU § 150.02.

[117] *See*, QC § 20.13.

[118] As defined in Rule 2–01(f).

[119] *See, e.g.*, letter from Jason Zahner, dated December 23, 2002; letter from Hugh Higgins, dated November 20, 2002.

[120] *See, e.g.*, letter from American Institute of Certified Public Accountants, dated January 9, 2003.

[121] *See*, The Commission on Auditors' Responsibilities, "Report, Conclusions, and Recommendations," 1978, p. 109; Report of the National Commission on Fraudulent Financial Reporting, 1987, p. 54; research commissioned by the Committee of Sponsoring Organizations of the Treadway Commission, "Report of the National Commission on Fraudulent Financial Reporting," 1987, p. 113; Committee of Sponsoring Organizations of the Treadway Commission, "Fraudulent Financial Reporting: 1987–1997 An Analysis of U.S. Public Companies," 1999, p. 28; United States General Accounting Office, Report to the Ranking Minority Member, Committee on Commerce, House of Representatives, "The Accounting Profession, Major Issues: Progress and Concerns," 1996, p. 56; Arrunada, Benito, "Mandatory Rotation of Company Auditors: A Critical Examination," *International Review of Law And Economics*, March 1997; St. Pierre, K. and J. Anderson, "An Analysis of Factors Associated with Lawsuits Against Public Accountants," *Accounting Review* (1984), p. 256; and Dallocchio, M. and A. Vigano"The Impact Of Mandatory Audit Rotation On Audit Quality And On Audit Pricing: The Case Of Italy," SDA Universita Bocconi, 2003.

[122] Section 207 of the Act directs the Comptroller General of the United States to conduct a study and review of the potential effects of mandatory rotation of firms.

[123] AICPA, SEC Practice Section, Requirements of Members, at item e. The membership requirements are available online at *www.aicpa.org/members/div/secps/require.htm*. Audit firms which are members of the SEC Practice Section must comply with its rules (*e.g.*, partner rotation) and undergo periodic peer review to ensure that the firms' audit practice is consistent with both the rules of the AICPA and those of the Commission.

[124] *See, e.g.*, letter from California Public Employees' Retirement System, dated January 10, 2003; letter from Denzil Dias, dated December 11, 2002; letter from HSBC, dated January 11, 2003.

[125] While the current lead partner rotation requirements specify a seven-year period prior to rotation, the original rotation requirements developed by the SECPS specified a five-year rotation period: *See*, AICPA, *Division for CPA Firms SEC Practice Section Peer Review Manual*, 1978, p.1–5.

[126] *See, e.g.*, letter from The Putnam Funds, not dated; letter from Commercial Federal Bank, dated January 13, 2003; letter from Dixon Odom, dated December 20, 2002; letter from American Institute of Certified Public Accountants, dated January 9, 2003.

[127] *See, e.g.*, letter from Aetna, Inc., dated January 13, 2003; letter from Royal Philips Electronics, dated January 9, 2003; letter from Lynn Turner, dated January 13, 2003; letter from Medtronic, Inc., dated January 13, 2003.

[128] *See, e.g.*, letter from Denzil Dias, dated December 11, 2002.

[129] *See, e.g.*, letter from California Public Employees' Retirement System dated January 10, 2003.

partner.[130] Other commenters,[131] however, believed that extending the rotation requirements beyond the two partners named in the Act could potentially harm audit quality and could impose additional costs on registrants. For example, one commenter[132] indicated that the proposed rotation requirements would cause the firm to have to rotate 181 partners in 88 countries for one large multi-national client. Another commenter[133] estimated that more than 250 partners in 80 countries would be subject to the rotation requirements under the proposed rules. Additionally, some commenters stated that the additional costs that accounting firms would incur to rotate and, in many cases, relocate audit partners would have to be passed on to registrants.

While other commenters[134] agreed with the concept of extending the partner rotation requirements beyond the two partners named in the Act, they suggested that the final rules should not apply as broadly as the Commission had proposed. One commenter suggested that assessing the "right cut" in identifying partners for rotation was a balance between the responsibility for final decisions on accounting and financial reporting issues affecting the financial statements and the level of the relationship with management.[135]

Commenters[136] noted that applying the rotation requirements too deeply could threaten the quality of the audit in certain situations. For example, in certain countries there may be a limited pool of audit partners who are familiar with U.S. GAAP and GAAS. In certain "specialty" areas, there may be a limited number of "specialty" partners available to service the client.[137] In certain industries there may be limited industry expertise. Also, by applying the rotation requirements more deeply, firms might have a difficult time grooming another partner to both have sufficient knowledge of the industry and the client and have sufficient time remaining prior to rotation when the lead partner or concurring partner must rotate. Also, some commenters[138] noted that applying the proposed rotation requirements to specialty partners could impact audit quality.

We believe that the partner rotation requirements must strike a balance between the need to achieve a fresh look on the engagement and a need for the audit engagement team to be composed of competent accountants. We believe that a proper balance is one that weighs the responsibility for decisions on accounting and financial reporting issues impacting the financial statements with the level of the relationship with senior management of the client. Such a balancing clearly would include the lead (high on both dimensions) and concurring partners (high on responsibility for final decisions, somewhat lower on level of relationship with management). In addition to that, the lead partner at significant operating units has a high involvement with senior management and, for significant operations, responsibility for decisions on accounting matters that affect the financial statements. Likewise, other audit partners at the parent or issuer have a high involvement with senior management and some responsibility for accounting matters to be included in the financial statements.

In contrast, partners at smaller operating units and "specialty" partners typically have a low level of involvement with senior management and the responsibility for the overall presentation in the financial statements is relatively low.

Nonetheless, the Commission is sensitive to the impact that its proposed rotation requirements would have on audit competence in certain instances as well as costs to registrants. Consistent with this approach, we believe that the proper balance is achieved by extending the partner rotation requirements beyond the lead and concurring partner but less deeply than we proposed. In response to the concerns of commenters that our proposed rules went too deep, thus imposing significant costs on registrants and accountants as well as creating potential concerns of audit quality, the rules we are adopting will subject a smaller number of partners to the rotation requirement. Accordingly, we are adopting rules that apply the partner rotation requirements to "audit partners" which is a new term defined in these rules.

In addition to the lead and concurring partners, "audit partners" include partners on the audit engagement team who have responsibility for decision-making on significant auditing, accounting, and reporting matters that affect the financial statements or who maintain regular contact with management and the audit committee. In particular, audit partners would include all those who serve the client at the issuer or parent level, other than specialty partners. Further, the lead partner on subsidiaries of the issuer whose assets or revenues constitute 20% or more of the consolidated assets or revenues are included within the definition of "audit partner."

Thus, the term audit partner does not extend to all partners on the audit engagement team. For example, partners serving on subsidiaries which constitute less than 20% of the assets and revenues of the issuer would not be audit partners as we have defined that term and, thus, would not be subject to rotation. Likewise, partners on subsidiaries above the 20% threshold, other than the lead partner on those subsidiaries, are not subject to rotation.[139]

Audit partners also would exclude "specialty" partners because they typically do not have significant interaction with management on an ongoing basis regarding significant audit, accounting, and reporting matters. It is the lead partner (who is subject to rotation) who has the ultimate responsibility for the audit. We believe that this addresses the concern that many commenters expressed regarding certain "specialty" partners.

We believe that defining the term "audit partners" as the basis for defining those partners who are subject to the rotation requirements is responsive to the concerns expressed by some commenters of the problems that would be created by applying the

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[130] *See, e.g.*, letter from Lynn E. Turner dated January 13, 2003.

[131] *See, e.g.*, letter from Aramark Corporation, dated December 26, 2002; letter from Aetna, Inc., dated January 13, 2003; letter from PricewaterhouseCoopers, dated January 8, 2003; letter from Mellon Financial Corporation, dated January 10, 2003; letter from SAP AG, undated; letter from Chamber of Commerce of the United States of America, dated January 9, 2003; letter from The Business Roundtable, dated January 14, 2003.

[132] *See*, letter from PricewaterhouseCoopers dated January 8, 2003.

[133] *See*, letter from HSBC dated January 10, 2003.

[134] *See, e.g.*, letter from Ernst & Young LLP, dated January 6, 2003; letter from Robert G. Beard, undated; letter from Institute of Chartered Accountants in England and Wales, dated January 10, 2003.

[135] *See*, letter from Deloitte & Touche LLP, dated January 10, 2003.

[136] *See, e.g.*, letter from The Business Roundtable, dated January 14, 2003; PricewaterhouseCoopers, dated January 8, 2003; letter from KPMG, dated January 9, 2003; letter from Philip A. Laskawy, dated January 9, 2003; letter from Pfizer, dated January 13, 2003; letter from Aetna, Inc., dated January 13, 2003.

[137] Specialty partners are, among others, those partners who consult with others on the audit engagement team during the audit, review or attestation engagement regarding technical or industry-specific issues. For example, such partners would include tax specialist and valuation specialist.

[138] *See, e.g.*, letter from Ernst & Young LLP, dated January 6, 2003; letter from Deloitte & Touche, dated January 10, 2003.

[139] A threshold of 20% often has been used in the accounting literature as a basis for "significance" tests. *See, e.g.*, APB Opinion No. 18, "The Equity Method of Accounting for Investments in Common Stock," and ARB No. 43, Chapter 7, "Capital Accounts."

rotation requirements deeper in the firm. Accordingly, we believe that this requirement establishes an appropriate balance between the need for a fresh look with the difficulties encountered in certain locations where the pool of available talent is limited.

In many cases, registrants have complex business transactions and other situations which may require that the engagement team consult with the accounting firm's national office or others on technical issues. Consistent with our proposal, partners assigned to "national office" duties (which can include technical accounting and auditing—whether at a local or national level—as well as centralized quality control functions) who may be consulted on specific accounting issues related to a client are not audit partners even though they may periodically consult on client matters.[140] While these partners play an important role in the audit process, they serve, primarily, as a technical resource for members of the audit team. Because these partners are not involved in the audit *per se* and do not routinely interact or develop relationships with the audit client, we do not believe that it is necessary to rotate the involvement of these personnel.

3. Rotation Period for Partners Other Than the Lead and Concurring Partners

Some commenters[141] believed that a different rotation period should be provided to partners other than the lead and concurring partners. In particular, if other partners subject to the rotation requirements had a longer period before they were required to rotate, firms would be better able to establish appropriate transition plans from one lead or concurring partner to the next. The longer rotation period for the other partners would allow them to spend time on the engagement team to learn about the business and the industry before having the ultimate responsibility for the engagement.

In response to these concerns, the rules we are adopting require partners subject to the rotation requirements, other than the lead and concurring partner, to rotate after no more than seven years and to be subject to a two-year time-out. In this way, a partner could serve either as the lead partner on a significant subsidiary or as an "audit partner" at the parent or issuer level for a period of time (*e.g.*, two years) prior to becoming the lead or concurring partner on the engagement and still be able to serve in that lead or concurring role for five years.[142]

In conducting its oversight review of registered public accounting firms, we expect that the Public Company Accounting Oversight Board ("the Board") will monitor the impact of these rules on audit quality and independence.

4. Small Business/Small Firm Considerations

Many commenters[143] stated that if the rotation requirements were applied to smaller firms, many smaller firms would be unable to provide audit services to their public clients and would be forced to give up their public clients. Many commenters[144] suggested that this would result in those clients incurring greater costs such as from having to identify a new accounting firm, from the need to familiarize accountants with the client firm's industry and business practices and from the resulting reduction in competition among firms.[145] As we noted in the proposal, we are sensitive to the impact of our rules on smaller business and smaller firms.

Commenters[146] made a number of suggestions about how to accommodate the needs of smaller issuers and smaller firms including: (1) Exempting the firms based on criteria such as number of partners, number of SEC clients, firm revenue, or number of professional personnel and (2) exempting accountants of smaller issuers as measured by revenue, assets, market capitalization, or profitability.

The existing professional standards on partner rotation contain an exemption for firms with fewer than five audit clients and fewer than ten partners.[147] We recognize the need to consider the impact of our rules on smaller businesses and smaller firms. While we believe it is appropriate to codify that exemption, we remain concerned about the quality of audits of all registrants. Accordingly, in order for audit firms with fewer than five audit clients that are issuers[148] and fewer than ten partners to qualify for the exemption from partner rotation, the Board must conduct a review of all of the firm's engagements subject to the rule at least once every three years. This special review should focus on the overall quality of the audit and, in particular, the independence and competence of the key personnel on the audit engagement teams.

5. Investment Companies

Under the proposed rule, a partner performing audit, review, or attestation services for any entity in the investment company complex could only do so if they had not served five consecutive years on any entity in the same investment company complex. The rotation requirement would have extended not only to the audit partners, but also those specialized partners, such as tax partners, that work on significant aspects of the audit. Those partners affected by the rotation requirement would have had to remain completely off any engagements in the investment company complex for a period of five years before they could again audit the investment company.

Commenters[149] raised significant concerns in the application of the proposed rule to investment companies. Two commenters[150] were concerned with the prohibition of partners who had served five consecutive years at a service provider or other non-investment company entity in the

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[140] 17 CFR 210.2–01(f)(7).

[141] *See, e.g.*, letter from Ernst & Young, dated January 6, 2003; letter from Deloitte & Touche, dated January 10, 2003; letter from KPMG, dated January 9, 2003; letter from Dixon Odom, dated December 20, 2002; letter from The Business Roundtable, dated January 14, 2003.

[142] An audit partner who starts in a position other than the lead or concurring partner and subsequently moves to the lead or concurring partner cannot serve the client in an audit partner capacity for more than seven consecutive years. For example, a person serving as the lead partner on a significant subsidiary for a period of four years who then becomes the lead partner on the issuer would be able to serve in that capacity for three additional years before reaching a total of seven years as an audit partner on that client.

[143] *See, e.g.*, letter from Piercy, Bowler, Taylor & Kern, dated January 7, 2003; letter from Witt, Mares & Company PLC, dated January 11, 2003; letter from Burton, McCumber & Cortez LLP, dated January 2, 2003; letter from American Institute of Certified Public Accountants, dated January 9, 2003; letter from Spence, Marston, Bunch, Morris & Co., dated January 13, 2003; letter from The Business Roundtable, dated January 14, 2003.

[144] *See, e.g.*, letter from Weaver & Martin LLC, dated December 31, 2002; letter from CPA Associates, dated January 3, 2003; letter from Symonds, Evans & Company PC, dated December 19, 2002.

[145] *See, e.g.*, letter from U.S. Small Business Administration's Office of Advocacy, January 13, 2003. We note that the GAO also is conducting a study on the consolidation in the accounting industry as directed by Section 701 of the Sarbanes-Oxley Act.

[146] *See, e.g.*, letter from Castaing, Hussey & Lolan LLC, dated January 10, 2003; letter from Piercy, Bowler, Taylor & Kern, dated January 7, 2003; letter from Trice, Geary & Myers LLC, dated January 13, 2003; letter from Smith, Carney & Co., dated January 7, 2003; letter from Cranmore, FitzGerald & Meaney, dated December 27, 2002.

[147] AICPA, SEC Practice Section, Requirements of Members, at item e.

[148] As defined in section 10A(f) of the Securities Exchange Act of 1934 (15 U.S.C. 78j–1(f)).

[149] *See, e.g.*, letter from Deloitte & Touche, dated January 10, 2003; letter from Putnam Mutual Funds, not dated; letter from The Vanguard Group, dated January 13, 2003; letter from PricewaterhouseCoopers, dated January 8, 2003.

[150] *See*, letter from PricewaterhouseCoopers, dated January 8, 2003; letter from Investment Company Institute, dated January 13, 2003.

investment company complex from serving on the audit of a registered investment company in the same investment company complex without first observing the five year "time out" period.[151] One commenter[152] was concerned with the prohibition against partners who had served five consecutive years at an unregistered fund from serving on the audit of a registered investment company in the same investment company complex without first observing the five year "time out" period. One commenter[153] emphasized the financial reporting personnel and accounting control systems used by investment companies are different from those used for other entities in the investment company complex. As a result, the rotation of an audit partner from a non-registered investment company entity in the investment company complex to a registered investment company would provide a "fresh look" at the accounting control systems and the financial reporting process. In addition, due to the structure of the investment company complex organizations, the rotated partner typically would not be dealing with the same individuals in management or on the audit committee that they might have dealt with previously as the audit partner on an entity in the investment company complex.

We believe that the rotation requirements with regard to investment companies should prohibit the rotation of partners between different investment companies in the same investment company complex. We do not believe, however, that it is necessary for the rule to prohibit accountants from rotating to other entities in the investment company complex. Consequently, the rule, as adopted, will not allow audit partners to satisfy the partner rotation requirements by rotating between investment companies in the same investment company complex. The individual required to rotate and the applicable periods for rotation and "time-out" from the audit client will be applied in the same manner to investment companies as to other issuers. Lead and concurring partners will be required to rotate after a total of five consecutive years in either role. At a minimum, all audit partners that audit investment companies will be required to rotate after a total of seven years of consecutive service on any of the investment companies in the same investment company complex. Lead and concurring partners will be required to observe a "time out" period for five years before returning to the investment company and all other audit partners will be subject to a two year "time out" period.

The unique structure of investment company complexes allows for many different fiscal year-ends within the same investment company complex. In order to allow a partner to serve the total number of allowable periods on any one investment company audit in the complex, while still requiring partners to rotate off an investment company complex at the end of their specific periods, we have defined consecutive years of service for investment companies. A consecutive year of service for audit partners includes all fiscal year-end audits of investment companies in the same investment company complex that are performed in a continuous 12-month period. This would allow audit partners auditing multiple investment companies in the same investment company complex to audit each investment company for five or seven complete fiscal years, as appropriate.

6. Effective Date and Transition

In order to allow firms to establish an orderly transition of their audit engagement teams, the Commission is establishing transition provisions related to the partner rotation requirements. Since the lead partner was previously subject to rotation requirements, these rotation requirements should not impose a significant incremental burden on accounting firms. Accordingly, the rotation requirements applicable to the lead partner are effective for the first fiscal year ending after the effective date of these rules. Furthermore, in determining when the lead partner must rotate, time served in the capacity of lead partner prior to the effective date of these rules is included. For example, for a lead partner serving a calendar year audit client, if 2003 was that partner's fifth, sixth or seventh year as lead partner for that audit client, he or she would be able to complete the current year's audit and he or she must rotate off for the 2004 engagement.

The other partners subject to these rotation requirements were not previously subject to rotation. Accordingly, we believe that some additional transition is needed for these partners. In order to maintain continuity on the engagement, firms will need to stagger the rotation of partners. This is especially critical for the lead and concurring partners. As a consequence, to facilitate the process of staggering the rotation of the lead and concurring partners, the rotation requirements for the concurring partner are effective as of the end of the second fiscal year after the effective date of the rules. Therefore, a concurring partner for a calendar year audit client for which 2003 was his or her fourth or greater year in that role,[154] he or she would be able to serve in that capacity for the 2004 audit before being subject to rotation.

Since the other partners covered by these rules were neither identified in the Act nor previously subject to rotation requirements, we believe, consistent with many commenters, that a longer transition period is warranted. Accordingly, for other partners, the rules are effective as of the beginning of the first fiscal year after the effective date of these rules. However, in determining the time served, that first fiscal year will constitute the first year of service for such partners. For example, for a lead partner on a significant subsidiary with a calendar year reporting period, 2004 would constitute the first year in the seven year rotation period, regardless of how many years he or she had previously served in that capacity.

Finally, we recognize that in many foreign jurisdictions partners previously were not subject to rotation requirements. Accordingly, for all partners with foreign accounting firms who are subject to rotation requirements, the rules are effective as of the beginning of the first fiscal year after the effective date of these rules. Likewise, in determining the time served, that first fiscal year will

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[151] Commenters also were concerned with the availability of competent audit, tax and other specialized partners to effectively rotate between the investment company audits. One commenter indicated tax partners typically served a far greater number of investment company audit clients per partner than their counterparts in the other industry practices (*see*, letter from Investment Company Institute, dated January 13, 2003). Commenters were concerned that lack of depth in this industry would ultimately reduce audit quality and harm investors (*see, e.g.*, letter from Putnam Mutual Funds, not dated). Commenters also were concerned with the depth of audit resources in certain markets (*see, e.g.*, letter from Oppenheimer Funds, Inc., dated January 13, 2003). One commenter indicated the proposed rule would effectively bar them from performing audits of investment companies (*see*, letter from McCurdy & Associates, CPAs, Inc., dated December 12, 2002). We have addressed these concerns by the changes to the partner rotation requirements that impact all issuers in addition to registered investment companies.

[152] *See*, letter from PricewaterhouseCoopers, dated January 8, 2003.

[153] *See*, letter from PricewaterhouseCoopers, dated January 8, 2003. *See, also*, letter from Investment Company Institute, dated January 6, 2003.

[154] Since concurring partners were not previously subject to rotation requirements, it is quite likely that many partners will have served in significantly more than five years in that capacity at the time of transition.

constitute the first year of service for such partners. Thus, for a partner from a foreign firm who is serving as the lead partner for an issuer with a calendar year, 2004 would constitute the first year of the five year rotation period for that partner, without regard to the number of years he or she had previously served in that capacity.

D. Audit Committee Administration of the Engagement

Historically, management has retained the accounting firm, negotiated the audit fee, and contracted with the accounting firm for other services. Our proposed rules, however, recognized the critical role that audit committees can play in the financial reporting process and in helping accountants maintain their independence from audit clients. An effective audit committee may enhance the accountant's independence by, among other things, providing a forum apart from management where the accountants may discuss their concerns. It may facilitate communications among the board of directors, management, internal auditors and independent accountants. An audit committee also may enhance auditor independence from management by appointing, compensating and overseeing the work of the independent accountants.

In that light, Section 202 of the Sarbanes-Oxley Act requires that audit committees pre-approve the services—both audit and permitted non-audit—of the accounting firm.

Specifically, our proposed rules would have required the audit committee to approve the engagement of the independent accountant to audit the issuer and its subsidiary's financial statements and have ongoing communications with the accountant. The proposals also would have required that the audit committee pre-approve all permissible non-audit services and all audit, review or attest engagements required under the securities laws either:

- before the accountant is engaged by the audit client to provide services other than audit, review or attest services, the audit client's audit committee expressly approve the particular engagement; or
- any such engagement be entered into pursuant to detailed pre-approval policies and procedures established by the audit committee and the audit committee be informed on a timely basis of each service.

Finally, consistent with the provisions of the Act, under our proposals, audit committees could apply a *de minimis* exception to the pre-approval requirements in certain circumstances.

Some commenters [155] believed that the pre-approval alternatives stated above, coupled with the disclosure of fees based on the pre-approval practices conveyed an impression that one method of pre-approval was preferable. Other commenters [156] stated that it was uncertain whether audit committees could use policies and procedures as the basis for pre-approving audit services.

The rules we are adopting are intended to clarify that, to the extent permitted by the Sarbanes-Oxley Act,[157] the audit committee may pre-approve audit and non-audit services based on policies and procedures and that explicit approval and approval based on policies and procedures are equally acceptable. As discussed later in this release, we have revised the proposed disclosures to match our conclusions about pre-approval processes.

Accordingly, the final rules require that the audit committee pre-approve all permissible non-audit services and all audit, review or attest engagements required under the securities laws. The rules require that before the accountant is engaged by the issuer or its subsidiaries, or the registered investment company or its subsidiaries, to render the service, the engagement is:

- approved by the issuer's or registered investment company's audit committee; or
- entered into pursuant to pre-approval policies and procedures established by the audit committee of the issuer or registered investment company, provided the policies and procedures are detailed as to the particular service, the audit committee is informed of each service, and such policies and procedures do not include delegation of the audit committee's responsibilities to management.

As provided in the Sarbanes-Oxley Act, the rules recognize audit services to be broader than those services required to perform an audit pursuant to GAAS. For example, the Act identifies services related to the issuance of comfort letters and services related to statutory audits required for insurance companies for purposes of state law as audit services.[158] We recognize that domestically and internationally there are various requirements for statutory audits. These rules recognize this fact; accordingly, such engagements are viewed as audit services in the context of these rules.

Furthermore, audit services also would include services performed to fulfill the accountant's responsibility under GAAS. For example, in some situations, a tax partner may be involved in reviewing the tax accrual that appears in the company's financial statements. Since that is a necessary part of the audit process, that activity constitutes an audit service. Likewise, complex accounting issues may require that the firm engage in consultation with "national office" or other technical reviewers to reach an audit judgment. Whether or not the firm separately charges for that consultation, the activity constitutes an audit service since it is a necessary procedure used by the accountant in reaching an opinion on the financial statements.

This would contrast with a situation where a registrant is evaluating a proposed transaction and asks the independent accountant to evaluate the accounting for the proposed transaction. After research and consultation, the accounting firm provides an answer to the registrant and bills for those services. In considering the nature of the services, these services would not be considered to be audit services.

These rules require that the audit committee pre-approve all services. In doing so, the Act permits the audit committee to establish policies and procedures for pre-approval provided they are detailed as to the particular service and designed to safeguard the continued independence of the accountant. For example, the Sarbanes-Oxley Act allows for one or more audit committee members who are independent board directors to pre-approve the service. Decisions made by the designated audit committee members must be reported to the full audit committee at each of its scheduled meetings.[159]

Consistent with the Sarbanes-Oxley Act, our rules also reflect a *de minimis*

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[155] *See, e.g.*, letter from The Business Roundtable, dated January 13, 2003; letter from Chamber of Commerce of the United States of America, dated January 9, 2003; letter from Investment Company Institute, dated January 13, 2003; letter from Pfizer, dated January 13, 2003; letter from Sullivan & Cromwell LLP, dated January 10, 2003; letter from Wells Fargo & Company, dated January 13, 2003.

[156] *See, e.g.*, letter from America's Community Bankers, dated January 13, 2003; letter from American Society of Corporate Secretaries, dated January 13, 2003; letter from Ernst & Young, dated January 6, 2003.

[157] Section 202 of the Sarbanes-Oxley Act.

[158] Section 202 of the Sarbanes-Oxley Act; 15U.S.C 78j-1(i)(1)(A).

[159] The Act permits the audit committee to pre-approve a service at any time in advance of the activity. We expect that audit committees will establish policies for the maximum period in advance of the activity the approval may be granted. *See* "Report of the Senate Committee on Banking, Housing and Urban Affairs, Public Company Accounting Reform and Investor Protection Act of 2002," 107th Cong., 2nd Sess., at 20 (Report 107–205. July 3, 2002).

exception solely related to the provision of non-audit services for an issuer. This exception waives the pre-approval requirements for non-audit services provided that: (1) All such services do not aggregate to more than five percent of total revenues paid by the audit client to its accountant in the fiscal year when services are provided, (2) were not recognized as non-audit services at the time of the engagement, and (3) are promptly brought to the attention of audit committee and approved prior to the completion of the audit by the audit committee or one or more designated representatives. Lastly, as further discussed later in this release, the audit committee's policies for pre-approvals of services should be disclosed by registrants in periodic annual reports.

As noted earlier, the proposed rules provided two alternatives related to pre-approval of permissible non-audit services as well as all audit, review, or attest engagements required under the securities laws: either pre-approval before the accountant is engaged to provide the services or the engagement is entered into pursuant to detailed pre-approval policies and procedures established by the audit committee, with the audit committee informed on a timely basis of each service. In response to issues raised by commenters, the final rule has been modified to remove the appearance of an implicit preference of one alternative over another.

With respect to investment companies, the proposed rule would have required pre-approval not only of the non-auditing services provided to the investment company, but also require pre-approval by the investment company's audit committee of the non-auditing services provided to the investment company's investment adviser and any entity controlling, controlled by, or under common control with the investment adviser that provides services to the investment company.

Commenters [160] expressed concern over the breadth of this proposed rule and the unintended consequences of the pre-approval process. Commenters [161] observed that an auditor could provide a non-audit service to an entity in an investment company complex that would require the pre-approval of multiple audit committees. Some commenters [162] indicated investment company complexes often have more than one audit committee for the various investment companies in the complex. Additionally, the other entities in the complex, themselves, will often have their own audit committees. As proposed, the rule would require not only the audit committee of the entity engaging the auditor to provide the non-audit service to pre-approve the use of the accountant, but also would require each audit committee of an investment company registrant in the complex to pre-approve the use of the accountant. This would ultimately result in each investment company audit committee having veto power over all non-audit services provided to the complex even if those services did not relate directly to the financial reporting or operations of the investment company. One commenter [163] expressed concern over the burden this would place on the investment company's audit committee. Other commenters [164] expressed concern with whether the members of the audit committee would be capable of evaluating the appropriateness of services provided to entities unrelated to the investment company's operations or financial reporting.

Commenters [165] suggested the rule should require the audit committee of the investment company to only pre-approve those audit and non-audit services provided directly to the investment company. One commenter [166] suggested the rule should require the audit committee of the investment company to pre-approve those audit and non-audit services that relate to the operations of the investment company.

After considering the comments, we believe modifying the approach by requiring the pre-approval of non-audit services to only those provided to the investment company directly, as suggested by several of the commenters, would not be consistent with the spirit or intent of the Sarbanes-Oxley Act. To address the commenters' concerns, but preserve the intent of the legislation, the rules as adopted would limit the investment company's audit committee pre-approval responsibility to those services provided directly to the investment company and those services provided to an entity in the investment company complex where the nature of the services provided have a direct impact on the operations or financial reporting of the investment company. The final rules would allow the investment company's audit committee to assess and determine before the work is conducted the impact that the services might reasonably have on the investment company accountant's independence as it relates to the audits of the investment company's financial statements. In addition, in response to one commenter's [167] suggestion concerning the non-audit services that should be disclosed, we have clarified the entities that provide services to the investment company that must be pre-approved. As adopted only the service providers that provide "ongoing" services to the investment company must have their non-audit services pre-approved. Thus, the final rules would limit the number of instances where pre-approval would be sought from multiple audit committees in the complex.

Although it may not be practical or feasible for the investment company audit committee to pre-approve all services provided to the investment company complex, we continue to believe the audit committee should be aware of all services the accountant is providing to entities in the investment company complex. One commenter [168] agreed with this position suggesting non-audit services be disclosed quarterly. As a result, we are adopting a requirement in the rule that the accountant disclose to the audit committee all services provided to the investment company complex, including the fees associated with those services.

The *de minimis* exception that was proposed would have calculated the percentage threshold based on the total revenues paid to the investment company's accountant by the investment company, its investment adviser and any entity controlling, controlled by, or under common control with the investment adviser that provided services to the investment company. We asked for comment on the appropriate methodology for calculating the *de minimis* exception. One commenter [169] suggested it would be

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[160] *See, e.g.*, letter from Deloitte & Touche, dated January 10, 2003; letter from Ernst & Young, dated January 6, 2003; letter from Investment Company Institute, dated January 13, 2003.

[161] *See, e.g.*, letter from Ernst & Young, dated January 6, 2003; letter from Deloitte & Touche, dated January 10, 2003; letter from PricewaterhouseCoopers, dated January 8, 2003.

[162] *See*, letter from PricewaterhouseCoopers, dated January 8, 2003; letter from Investment Company Institute, dated January 13, 2003.

[163] *See*, letter from Investment Company Institute, dated January 13, 2003.

[164] *See*, letter from PricewaterhouseCoopers, dated January 8, 2003; letter from Deloitte & Touche, LLP, dated January 10, 2003.

[165] *See*, letter from Ernst & Young, LLP, dated January 6, 2003; letter from Investment Company Institute, dated January 13, 2003.

[166] *See*, letter from PricewaterhouseCoopers, dated January 8, 2003.

[167] *See*, letter from PricewaterhouseCoopers, dated January 8, 2003.

[168] *See*, letter from KPMG, LLP, dated January 9, 2003.

[169] *See*, letter from PricewaterhouseCoopers, dated January 8, 2003.

unfair to determine the calculation of the *de minimis* exception based on the total fees paid to the accountant by the investment company because the resulting threshold would be so low; the practical effect would be no *de minimis* exception for investment companies. Therefore, the commenter suggested the threshold should coincide with the scope of the pre-approval requirement. We agree with the commenter and believe that the calculation of the *de minimis* exception should not relate solely to the level of services provided to the investment company. We have modified the proposed rule to determine the threshold based on the services provided to the investment company complex that were subject to the pre-approval requirements for the investment company's audit committee.

The proposed rules would require the audit committee to pre-approve all audit, review, and attest reports required under the securities laws. Section 32(a) of the Investment Company Act requires that a majority of the directors who are not interested persons appoint the independent accountant of the investment company. We requested comment on who should approve the selection of the accountant of the investment company, for example, the independent directors, the audit committee or both. One commenter[170] stated that the audit committee should select the accountant and the independent directors should ratify the selection, thereby retaining the independent directors as the ultimate decision making authority with respect to accountant selection. After consideration of these matters, we have determined to adopt the rules as proposed.

Also, as discussed later in this release, these provisions are supplemented as a result of the proxy disclosure requirements. We believe that disclosure of the procedures the audit committee uses to pre-approve audit services, as well as the disclosure of all non-audit services by category, including those meeting the *de minimis* exception stated above, will provide investors valuable information that may be used to evaluate the relationships that exist between the accountant and the audit client.

These rules apply to all audit, review, and attest services and non-audit services that are entered into after the effective date of these rules. For arrangements for non-audit services entered into prior to the effective date of these rules—regardless of whether or not they were pre-approved by the audit committee—the accounting firm will have 12 months from the effective date of these rules to complete these services. For example, an engagement to provide non-audit services that was entered into in December 2002, which may or may not be complete by the effective date of these rules, is not subject to these rules, but must be completed within 12 months of the effective date of these rules. We believe these transition provisions will permit an orderly completion of existing engagements and permit accountants and audit committees adequate time to prepare to implement the new rules.

E. Compensation

We understand that some accounting firms offer their professionals cash bonuses and other financial incentives to sell products or services, other than audit, review, or attest services, to their audit clients. Such compensation arrangements may create a financial or other self-interest that could constitute a threat to the accountant's objectivity.[171] These arrangements also may detract from audit quality by incentivizing the audit partner to focus on selling non-audit services rather than providing high quality audit services.

We also question whether a reasonable investor with full knowledge of such incentive programs would believe that the accountant could function with the independence and objectivity that is necessary for him or her to maintain, both in fact and in appearance. We are concerned that an accountant might be viewed as compromising accounting judgments in order not to jeopardize the potential for increased income from the act of selling non-audit services to the audit client. Because of this concern, we proposed that an accountant's independence would be deemed to have been impaired when he or she is compensated for selling or performing non-audit services for an audit client. Our proposed rule limited such compensation, direct or otherwise, that could be provided to any audit engagement team partner.

Commenters expressed two primary concerns with the proposals. First,[172] because the compensation was not directly related to sales activities, the operation of the rule would have been difficult given the size and nature of some firms' national and global operations. For example, read literally as proposed, a partner's compensation could not include a proportionate share of the accounting firm's overall profits, because some of those profits would be derived from the provision of non-audit services by other firm personnel. Second, some commenters[173] observed that the provisions were perceived to be overly broad because, as proposed, they would have applied to partners who provide specialized services and would have prevented them from being rewarded for selling or performing services in their area of expertise. For example, under the proposal an audit partner could be rewarded for selling audit, review or attest services; however, tax partners could not be rewarded for selling additional tax services to audit clients if they were members of the audit engagement team. That is, audit partners could be rewarded for selling within their own discipline, but tax partners could not.

We are addressing these concerns by clarifying that the compensation concerns exist where the audit partner's compensation is based on the act of selling non-audit services and specifying that the rule applies to audit partners. As described more fully in our discussion of definitions, the term audit partner refers to the lead and concurring partners and other partners on the audit engagement team who have responsibility for decision-making on significant auditing, accounting, and reporting matters that affect the financial statements or who maintain regular contact with management or the audit committee. In particular, audit partners, other than specialty partners, would include all audit partners serving the client at the issuer or parent.[174] Further, the lead partner on subsidiaries of the issuer whose assets or revenues constitute 20% or more of the consolidated assets or revenues are included within the definition of audit partner. Conceivably, "compensation" could include any form of cash or other assets distributed to the audit partner, including any income or benefit based

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[170] *See*, letter from Investment Company Institute, dated January 13, 2003.

[171] *See, e.g.*, AICPA, *Practice Alert 99–1*, Guidance for Independence Discussions with Audit Committees, (May 1999).

[172] *See, e.g.*, letter from American Institute of Certified Public Accountants, dated January 9, 2003; letter from Deloitte & Touche, LLP, dated January 10, 2003; letter from Ernst & Young, LLP, dated January 6, 2003; letter from Federation des Experts Comptables Europeens, dated January 13, 2003; letter from Institute of Chartered Accountants in England and Wales, dated December 24, 2002; letter from KPMG, LLP, dated January 9, 2003; letter from PricewaterhouseCoopers, dated January 8, 2003.

[173] *See, e.g.*, letter from Ernst & Young, LLP, dated January 6, 2003; letter from Deloitte & Touche, LLP, dated January 10, 2003; letter from KPMG, LLP, dated January 9, 2003; letter from McGladrey & Pullen, LLP, dated January 9, 2003.

[174] As discussed previously, partners who provided ten or fewer hours of service are excluded from the definition of audit partner.

on an evaluation of the partner's performance.

This rule prohibits accounting firms from establishing an audit partner's compensation or allocation of partnership "units" based on the sale[175] of non-audit services to the partner's audit clients.[176] This provision also reinforces the position that accountants at the partner level should be viewed as skilled professionals and not as conduits for the sale of non-audit services to the audit partner's individual clients. This provision recognizes and focuses on the need for independence of the most senior members of the engagement team. However, this rule does not preclude an audit partner from sharing in the profits of the audit practice and those of the overall firm.[177] And, an audit partner's evaluation could take into account a number of factors directly or indirectly related to selling services to an audit client.[178]

Accordingly, we are amending the auditor independence rules to address the practice of accountants being compensated by their firms for selling non-audit products and services to their audit clients.[179] The new rule would provide that an accountant is not independent if, at any point during the audit and professional engagement period,[180] any audit partner,[181] other than specialty partners,[182] earns or receives compensation[183] based on selling engagements to that audit client, to provide any services,[184] other than audit, review, or attest services.

The lead partner is responsible for managing not only the audit engagement but also the client relationship. The lead partner is in a position to identify potential services that could benefit the audit client. Furthermore, because of the lead partner's frequent interaction with management, he or she has the opportunity to "pitch" those services to management. Thus, the lead partner relationship with management has been used by some as a conduit to sell non-audit services to the audit client.[185] In contrast, partners at smaller operating units and "specialty" partners typically have a low level of involvement with senior management and the responsibility for the overall presentation in the financial statements is relatively low.

The application of these rules allows partners to be compensated for selling services with their discipline. Thus, just as an audit partner can be compensated for selling audit and audit-related services, so, too, can a tax partner be compensated for selling tax services. A specialty partner receiving compensation for selling within his or her discipline does not create the same threat to independence as when an audit partner is compensated for selling those non-audit services because the lead partner retains overall responsibility for the conduct of the audit. Additionally, there is a concurring partner who reviews the work on the audit engagement team. Finally, specialty partners have limited relationships with management in the context of their activities as a member of the audit engagement team.

The rules that we are adopting mitigate the concerns that an audit partner might be viewed as compromising audit judgments in order not to jeopardize the potential for selling non-audit services. These rules do not specifically address the provision of compensation to other audit engagement team members for directly selling non-audit services. We believe that, however, the other audit engagement team members will perform in a fashion that is consistent with the direction and tone set by the audit partners. Nonetheless, as it pre-approves non-audit services an audit committee may wish to consider whether, in the company's particular circumstances, compensating a senior staff member on the audit engagement team based on his or her success in selling the service to the company compromises that individual's or the firm's independence.

Further, in conducting its oversight review of registered public accounting firms, we expect that the Board will monitor the impact of these rules on audit quality and independence.

With respect to investment companies, the proposed rule on compensation would have prohibited all partners, principals and shareholders of an accounting firm that are members of the audit engagement team from being compensated for selling non-audit services to a registered investment company audit client or any other entity in the investment company complex. One commenter[186] suggested the rule on partner compensation for investment companies should apply only to the selling of non-audit services to the investment company itself and not to other entities in the investment company complex. We disagree and continue to believe a partner on a registered investment company audit should not be directly compensated for selling non-audit services to other entities in the investment company complex, for example, the investment company's investment adviser. Thus, we have not made changes to this aspect of the rule.

We understand that because of the seasonal nature of accounting firms that many firms have fiscal periods that end in the April to September time frame. In recognition of this fact and understanding that individuals may be operating in the current period under an established set of performance goals, the provisions of this paragraph will be effective in the fiscal periods of the accounting firm that commence after the effective date of these rules. Further, recognizing that the application of this rule could have a disproportionate economic impact on small firms, we are exempting firms with fewer than five

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[175] For purposes of this rule, the term "sale" is meant to encompass any revenue, fees, or compensation related to non-audit services provided over the period of the evaluation, regardless when contracted.

[176] *Id.*

[177] Consistent with the idea that an audit partner cannot be directly compensated for selling non-audit services, no part of that partner's distribution or other form of compensation should be directly received from selling of non-audit services (for example, from a "pool" of profits generated by a valuation services business unit). In contrast, that partner may receive distributions or other compensation from the "pool" attributable to the audit practice, a geographic unit comprised of several services or offices, or the entire firm.

[178] For example, an audit partner could be evaluated on the complexity of his or her engagements, the overall management of the relationship with an audit client including the provision of non-audit services, and/or the attainment of explicit sales goals.

[179] An audit partner could be compensated for selling audit or audit-related services to an audit client. Additionally, an audit partner could be compensated for selling either audit or non-audit services to a non-audit client.

[180] "Audit and professional engagement period" includes both the period covered by the financial statements being audited or reviewed and the period of engagement to audit or review the client's financial statements or to prepare a report filed with the Commission. The period of engagement begins when the auditor signs an initial engagement letter or begins audit, review or attest procedures, and ends when the client or the auditor notifies the Commission that the client is no longer the auditor's audit client. *See* Rule 2–01(f)(5) of Regulation S–X, 17 CFR 210.2–01(f)(5).

[181] 17 CFR 210.2–01(f)(7)(ii).

[182] Specialty partners are, among others, those partners who consults with others on the audit engagement team during the audit, review or attestation engagement regarding technical or industry-specific issues. For example, such partners would include tax specialist and valuation specialist.

[183] Nothing in these rules is meant to limit the ability of an accounting firm from distributing profits in a manner that is consistent with the operation of a partnership or service organization.

[184] For purposes of this discussion, services include tangible products as well as professional services.

[185] *See e.g., In the Matter of Arthur Andersen LLP*, Accounting and Auditing Enforcement Release No. 1405 (June 19, 2001), at notes 15–17.

[186] *See*, letter from Investment Company Institute, dated January 13, 2003.

audit clients that are issuers [187] and fewer than ten partners from the provisions of this requirement.

F. Definitions

The rules that the Commission is adopting impact various parties involved in the audit and financial reporting process of issuers. To more clearly identify those parties, we have revised and added to the definitions in Rule 2–01(f) of Regulation S–X. This section discusses those definitions.

1. Accountant

The term "accountant" previously was defined under the rules of the Commission as a "certified public accountant or public accountant performing services in connection with an engagement for which independence is required." [188] We have added to the definition the phrase, "registered public accounting firm." Under the provisions of the Sarbanes-Oxley Act, public accounting firms must register with the Board in order to prepare or issue, or to participate in the preparation or issuance of, any audit report with respect to any issuer.[189] Thus, the term "registered public accounting firm" refers to a firm that has registered with the Board in accordance with the requirements of the Sarbanes-Oxley Act.

2. Accounting Role

Under the previous rules of the Commission, "accounting role or financial reporting oversight role" was a defined term. However, because the rules requiring a cooling-off period for employment at the issuer relate only to those performing a financial reporting oversight role, the Commission has separated the definition of "accounting role" from that of "financial reporting oversight role." The term "accounting role" refers to a role where a person can or does exercise more than minimal influence over the contents of the accounting records or over any person who prepares the accounting records. All persons in a "financial reporting oversight role" (defined below) also are in an "accounting role." Persons in an accounting role include individuals in clerical positions responsible for accounting records (*e.g.*, payroll, accounts payable, accounts receivable, purchasing, sales) as well as those who report to individuals in financial reporting oversight roles (*e.g.*, assistant controller, assistant treasurer, manager of internal audit, manager of financial reporting).

3. Financial Reporting Oversight Role

The term "financial reporting oversight role" refers to a role in which an individual has direct responsibility for or oversight of those who prepare the registrant's financial statements and related information (*e.g.*, management discussion and analysis), which will be included in a registrant's document filed with the Commission. As noted above, "accounting role and financial reporting oversight role" previously was one definition. In order to subject the appropriate individuals to certain portions of these rules, we have bifurcated the definitions.

4. Audit Committee

Section 205 of the Sarbanes-Oxley Act defines an audit committee as:

> A committee (or equivalent body) established by and amongst the board of directors of an issuer for the purpose of overseeing the accounting and financial reporting processes of the issuer and audits of the financial statements of the issuer.

The Act further stipulates that if no such committee exists, then the audit committee is the entire board of directors. For purposes of these independence rules, the Commission is adopting the same meaning for audit committee as used in the Act.

The audit committee serves as an important body, serving the interests of investors, to help ensure that the registrant and its accountants fulfill their responsibilities under the securities laws. Because the definition of an audit committee can include the entire board of directors if no such committee of the board exists, these rules do not require registrants to establish audit committees. Likewise, the auditor independence rules do not require that the committee be composed of independent members of the board.[190]

Some entities do not have boards of directors and therefore do not have audit committees. For example, some limited liability companies and limited partnerships that do not have a corporate general partner may not have an oversight body that is the equivalent of an audit committee. We are not exempting these entities from the requirements. Rather, such issuers should look through each general partner of the successive limited partnerships until a corporate general partner or an individual general partner is reached. With respect to a corporate general partner, the registrant should look to the audit committee of the corporate general partner or to the full board of directors as fulfilling the role of the audit committee. With respect to an individual general partner, the registrant should look to the individual as fulfilling the role of the audit committee.

We are, however, exempting asset-backed issuers [191] and unit investment trusts [192] from this requirement. Because of the nature of these entities, such issuers are subject to substantially different reporting requirements. Most significantly, asset-backed issuers are not required to file financial statements like other companies. Similarly, unit investment trusts are not required to provide shareholder reports containing audited financial statements. Also, such entities typically are passively managed pools of assets. Therefore, we are not applying the requirements related to audit committees in this release to such entities.

5. Audit Engagement Team

As discussed earlier in this release, the cooling off period applies to members of the audit engagement team. As used in this release, the term audit engagement team means all partners (or person in an equivalent position) and professional employees participating in an audit, review, or attestation engagement of an audit client. Included within the audit engagement team would be partners and all other persons who consult with other members of the engagement team during the audit, review, or attestation engagement regarding technical or industry-specific issues, transactions, or events.

6. Audit Partner

The term audit partner is an integral part of the rules we are adopting related to partner compensation and partner rotation. In each case, the affected parties are audit partners. As used in this rule, the term audit partner means a partner (or person in an equivalent position) who is a member of the audit engagement team (as defined above) who has responsibility for decision-making on significant auditing, accounting, and reporting matters that affect the financial statements or who maintains regular contact with management and the audit committee.

The term audit partner would include the lead and concurring partners, partners such as relationship partners who serve the client at the issuer or

[187] As defined in section 10A(f) of the Securities Exchange Act of 1934 (15 U.S.C. 78j–1(f)).

[188] 17 CFR 2–01(f)(1).

[189] *See*, Section 102(a) of the Sarbanes-Oxley Act.

[190] *See*, Release No. 33–8173 (Jan. 8, 2003).

[191] As defined in 17 CFR 240.13a–14(g) and 240.15d–14(g).

[192] As defined by Section 4(2) of the Investment Company Act [15 U.S.C. 80a–4(2)].

parent level, other than a partner who consults with others on the audit engagement team during the audit, review, or attestation engagement regarding technical or industry-specific issues, transactions, or events, and the lead partner on subsidiaries of the issuer whose assets or revenues constitute 20% or more of the consolidated assets or revenues of the issuer.[193]

G. Communication With Audit Committees

Auditors are required by GAAS to communicate certain matters to the audit committee. In particular, GAAS require that the accountant should determine that the audit committee is informed about matters such as:

- Auditor's responsibility under GAAS,
- Significant accounting policies,
- Methods used to account for significant unusual transactions,
- Effects of significant accounting policies in controversial or emerging areas for which there is a lack of authoritative guidance or consensus,
- Process used by management in formulating particularly sensitive accounting estimates and the basis for the auditor's conclusions regarding the reasonableness of those estimates,
- Material audit adjustments proposed and immaterial adjustments not recorded by management,
- Auditor's judgments about the quality of the company's accounting principles,
- Auditor's responsibility for other information in documents containing audited financial statements,
- Auditor's views about significant matters that were the subject of consultation between management and other accountants,
- Major issues discussed with management prior to retention,
- Difficulties with management encountered in performing the audit, and
- Disagreements with management over the application of accounting principles, the basis for management's accounting estimates, and the disclosures in the financial statements.[194]

Accountants are required under GAAS to provide these communications in a timely manner but not necessarily before the issuance of the audit report.[195] Accountants also may communicate with audit committees on matters in addition to those specifically required by GAAS, including auditing issues, engagement letters, management representation letters, internal controls, auditor independence, and others.

Section 204 of the Sarbanes-Oxley Act directs the Commission to issue rules requiring timely reporting of specific information by accountants to audit committees. In response to the Act, we proposed amending Regulation S–X to require each public accounting firm registered with the Board that audits an issuer's financial statements to report, prior to the filing of such report with the Commission, to the issuer or registered investment company's audit committee: (1) All critical accounting policies and practices used by the issuer or registered investment company, (2) all alternative accounting treatments of financial information within generally accepted accounting principles ("GAAP") that have been discussed with management, including the ramifications of the use of such alternative treatments and disclosures and the treatment preferred by the accounting firm, and (3) other material written communications between the accounting firm and management of the issuer or registered investment company.

Some commenters[196] believe that these communications should be the responsibility of management alone. Others,[197] however, believe that both the accountant and management should share the responsibility for informing the audit committee about such matters. While we understand that management has the primary responsibility for the information contained in the financial statements, since the accounting firm is retained by the audit committee, we share the view reflected in Section 205 of the Sarbanes-Oxley Act and current auditing standards, that the accounting firm has a responsibility to communicate certain information to the audit committee. As discussed below, we are adopting rules requiring that certain information be communicated by the independent accountant to the audit committee. Some commenters[198] believe that the Commission should require that these communications be in writing. Others,[199] however, disagree. We have not required that the communication be in writing. We would expect, however, that such communications would be documented by the accountant and the audit committee. We believe that many of these communications currently are being made as accountants fulfill their responsibilities under GAAS and the securities laws.[200]

In describing the role and responsibilities of the audit committee, Warren Buffett has stated that:

> Their function * * * is to hold the auditor's feet to the fire. And, I suggest * * * the audit committee ask [questions] of the auditors [including]: if the auditor were solely responsible for preparation of the company's financial statements, would they have been prepared in any way differently than the manner selected by management? They should inquire as to both material and non-material differences. If the auditor would have done anything differently than management, then explanations should be made of management's argument and the auditor's response.[201]

Requiring that the accountants communicate information to the audit committee will aid the audit committee in fulfilling its responsibilities.

1. Critical Accounting Policies and Practices

Consistent with our proposal, we are establishing rules requiring communication by accountants to audit committees of all critical accounting policies and practices.[202] In December 2001, we issued cautionary advice regarding each issuer disclosing in the Management's Discussion and Analysis[203] section of its annual report

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[193] The term "audit partner" also would include any audit partner on a registered investment company whether or not the investment company issues consolidated financial statements.

[194] *See*, AU § 380, "Communication with Audit Committees." There are additional GAAS requirements related to auditor communications that are not included in this rule, such as the auditor's responsibilities under GAAS, the auditor's responsibilities related to documents containing audited financial statements, and disagreements with management, consultations with other accountants, major issues discussed with management prior to retention, and difficulties encountered in performing the audit, to the extent that those matters do not relate to accounting policies and practices.

[195] *Id.*

[196] *See, e.g.*, letter from The Institute of Chartered Accountants of Scotland, dated January 8, 2003; letter from Battelle & Battelle, LLP, dated December 20, 2002; letter from Grant Thornton LLP, dated January 13, 2003.

[197] *See, e.g.*, letter from Gelford Hochstadt Pangburn, PC, dated January 3, 2003; letter from Ernst & Young LLP, dated January 6, 2003.

[198] *See, e.g.*, letter from Piercy Bowler Taylor & Kern, dated January 7, 2003; letter from Robert G. Beard, undated; letter from Eide Bailly LLP, dated January 8, 2003; letter from California Public Employees' Retirement System, dated January 10, 2003; letter from Lynn E. Turner, dated January 13, 2003.

[199] *See, e.g.*, letter from Computer Sciences Corporation, dated January 13, 2003; letter from Sullivan & Cromwell LLP, dated January 10, 2003; letter from America's Community Bankers, dated January 13, 2003; letter from Deloitte & Touche LLP, dated January 10, 2003.

[200] *See*, "Audit Committee Disclosures," Release No. 34–42266, Dec. 22, 1999.

[201] Warren Buffett, Comments during SEC "Roundtable Discussion on Financial Disclosure and Auditor Oversight," March 4, 2002.

[202] In this release, the terms "critical accounting policies and practices" and "critical accounting policies" are used interchangeably.

[203] Item 303 of Regulation S–K, (17 CFR 229.303), which requires disclosure about, among other

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those accounting policies that management believes are most critical to the preparation of the issuer's financial statements.[204] The cautionary advice indicated that "critical" accounting policies are those that are both most important to the portrayal of the company's financial condition and results and require management's most difficult, subjective or complex judgments, often as a result of the need to make estimates about the effect of matters that are inherently uncertain.[205] As part of that cautionary advice, we stated:

> Prior to finalizing and filing annual reports, audit committees should review the selection, application and disclosure of critical accounting policies. Consistent with auditing standards, audit committees should be apprised of the evaluative criteria used by management in their selection of the accounting principles and methods. Proactive discussions between the audit committee and the company's senior management and auditor about critical accounting policies are appropriate.[206]

In May 2002, the Commission proposed rules to require disclosures that would enhance investors' understanding of the application of companies' critical accounting policies.[207] The May 2002 proposed rules cover (1) accounting estimates a company makes in applying its accounting policies and (2) the initial adoption by a company of an accounting policy that has a material impact on its financial presentation. Under the first part of those proposed rules, a "critical accounting estimate" is defined as an accounting estimate recognized in the financial statements (1) that requires the registrant to make assumptions about matters that are highly uncertain at the time the accounting estimate is made and (2) for which different estimates that the company reasonably could have used in the current period, or changes in the accounting estimate that are reasonably likely to occur from period to period, would have a material impact on the presentation of the registrant's financial condition, changes in financial condition or results of operations. The May 2002 proposed rules outline certain disclosures that a company would be required to make about its critical accounting estimates. In addition, under the second part of the May 2002 proposed rules, a company would be required to make certain disclosures about its initial adoption of accounting policies, including the choices the company had among accounting principles.

Accountants and issuers should read and refer to the December 2001 Cautionary Guidance to determine the types of matters that should be communicated to the audit committee under this rule. We are not requiring that those discussions follow a specific form or manner, but we expect, at a minimum, that the discussion of critical accounting estimates and the selection of initial accounting policies will include the reasons why estimates or policies meeting the criteria in the Guidance are or are not considered critical and how current and anticipated future events impact those determinations. In addition, we anticipate that the communications regarding critical accounting policies will include an assessment of management's disclosures along with any significant proposed modifications by the accountants that were not included.

2. Alternative Accounting Treatments

We recognize that the complexity of financial transactions results in accounting answers that are often the subject of significant debate between management and the accountants. Some commenters[208] to the proposed rules suggested that this rule be restricted to material accounting alternatives. These commenters indicated that restricting these communications will assist audit committee members by focusing their attention on important accounting alternatives. One commenter[209] believes that only alternative treatments under GAAP that were the subject of serious consideration and debate by the accountant and management should be communicated to the audit committee.

We understand the concerns expressed and, accordingly, we have clarified the final rule. Providing audit committees with information on material accounting alternatives is consistent with the objectives of the Act and will minimize the risk that audit committee members will be distracted from material accounting policy matters by the numerous discussions between the accountant and management on the application of accounting principles to relatively small transaction or events. Therefore, these rules require communication, either orally or in writing, by accountants to audit committees of all alternative treatments within GAAP for policies and practices related to material items that have been discussed with management, including the ramifications of the use of such alternative treatments and disclosures and the treatment preferred by the accounting firm. This rule is intended to cover recognition, measurement, and disclosure considerations related to the accounting for specific transactions as well as general accounting policies.

We believe that communications regarding specific transactions should identify, at a minimum, the underlying facts, financial statement accounts impacted, and applicability of existing corporate accounting policies to the transaction. In addition, if the accounting treatment proposed does not comply with existing corporate accounting policies, or if an existing corporate accounting policy is not applicable, then an explanation of why the existing policy was not appropriate or applicable and the basis for the selection of the alternative policy should be discussed. Regardless of whether the accounting policy selected preexists or is new, the entire range of alternatives available under GAAP that were discussed by management and the accountants should be communicated along with the reasons for not selecting those alternatives. If the accounting treatment selected is not, in the accountant's view, the preferred method, we expect that the reasons why the accountant's preferred method was not selected by management also will be discussed.

Communications regarding general accounting policies should focus on the initial selection of and changes in significant accounting policies, as required by GAAS,[210] and should include the impact of management's judgments and accounting estimates, as well as the accountant's judgments about the quality of the entity's accounting principles. The discussion of general accounting policies should include the range of alternatives available under GAAP that were discussed by management and the accountants along with the reasons for selecting the chosen policy. If an existing accounting policy is being modified, then the reasons for the change also should be communicated. If the accounting policy selected is not the accountant's preferred policy, then we

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things, trends, events or uncertainties known to management that would have a material impact on reported financial information.

[204] Release No. 33–8040, Dec. 12, 2001, (66 FR 65013).

[205] *Id.*

[206] *Id.* (footnotes omitted).

[207] Release No. 33–8090, May 10, 2002, (67 FR 35620).

[208] *See, e.g.*, letter from Chamber of Commerce of the United States of America, dated January 9, 2003; letter from Battelle & Battelle LLP, dated December 20, 2002; letter from Eli Lilly and Company, dated January 9, 2003; letter from Computer Sciences Corporation, dated January 13, 2003; letter from PricewaterhouseCoopers, dated January 8, 2003.

[209] *See, e.g.*, letter from Deloitte & Touche LLP, dated January 10, 2003.

[210] *See*, AU § 380.

expect the discussions to include the reasons why the accountant considered one policy to be preferred but that policy was not selected by management.

The separate discussion of critical accounting policies and practices is not considered a substitute for communications regarding general accounting policies, since the discussion about critical accounting policies and practices might not encompass any new or changed general accounting policies and practices. Likewise, this discussion of general accounting policies and practices is not intended to dilute the communications related to critical accounting policies and practices, since the issues affecting critical accounting policies and practices, such as sensitivities of assumptions and others, may be tailored specifically to events in the current year, and the selection of general accounting policies and practices should consider a broad range of transactions over time.

3. Other Material Written Communications

We understand written communications between accountants and management range from formal documents, such as engagement letters, to informal correspondence, such as administrative items. We also acknowledge that historically not all forms of written communications provided to management have been provided to the audit committee. Our rule is intended to implement Section 205 of the Sarbanes-Oxley Act, which clarified the substance of information that should be provided by accountants to audit committees to facilitate accountant and management oversight by those committees.

The Sarbanes-Oxley Act specifically cites the management letter and schedules of unadjusted differences as examples of material written communications to be provided to audit committees. Examples of additional written communications that we expect will be considered material to an issuer include:

- Management representation letter;[211]
- Reports on observations and recommendations on internal controls;[212]
- Schedule of unadjusted audit differences,[213] and a listing of adjustments and reclassifications not recorded, if any;
- Engagement letter;[214] and
- Independence letter.[215]

These examples are not exhaustive, and accountants are encouraged to critically consider what additional written communications should be provided to audit committees.

4. Timing of Communications

Commenters[216] generally agreed with our proposal that the communications should occur prior to the filing of the issuer's periodic annual report, although a commenter[217] suggested that the communications should occur throughout the period. The Act requires that the communications be timely reported to the audit committee. For purposes of the requirements of this provision, our rule specifies that the communications between the accountant and the audit committee occur prior to the filing of the audit report with the Commission pursuant to applicable securities laws. As a result, these discussions will occur, at a minimum, during the annual audit, but we expect that they could occur as frequently as quarterly or more often on a real-time basis.

The timing of these communications is intended to occur before any audit report is filed with the Commission pursuant to the securities laws. We believe that this rule will ensure that these communications occur prior to filing of annual reports and proxy statements, as well as prior to filing registration statements and other periodic or current reports when audit reports are included.

5. Investment Companies

The proposed rules would have required accountants to communicate with an audit committee of an investment company all critical accounting policies, alternative methodologies and other material information before filing an audit report with the Commission. Although commenters[218] generally agreed that the information required to be communicated was appropriate, the timing of such communications would be problematic for investment companies. Commenters[219] stated that investment companies within an investment company complex frequently have a common board of directors, but have staggered fiscal-year ends. As a result, the proposed rules could require accountants to communicate with audit committees as frequently as monthly. To eliminate this burden, some commenters[220] suggested these discussions occur as infrequently as annually, with two commenters[221] suggesting updates for material changes. Another commenter[222] suggested that we leave communication of these matters up to the discretion of the investment company's audit committee and the accountant.

We believe it is important to discuss critical accounting policies, alternative methodologies, and other material information close to the time when the audit report is filed. It is not our intention, however, to have accountants communicate the same information to the audit committee multiple times during the year. As adopted, the final rules require the accountant to communicate to the audit committee of an investment company annually, and if the annual communication is not within 90 days prior to the filing, provide an update in the 90 day period prior to the filing, of any changes to the previously reported information.[223]

The adopted rules, in effect, would require an accountant of an investment company complex where the individual funds have different fiscal year ends to communicate the required information no more frequently than four times during a calendar year. We believe this should not place an undue burden on investment company audit committees because many of the boards of directors

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[211] *See*, SAS No. 85, "Management Representations," AU § 333.

[212] *See*, SAS 60, "Communication of Internal Control Related Matters Noted in an Audit," AU § 325.

[213] *See*, SAS No. 89, "Audit Adjustments," AU § 333.

[214] *See*, SAS No. 83, "Establishing an Understanding With the Client," AU § 310.

[215] *See*, SQCS No. 2, "System of Quality Control for a CPA Firm's Accounting and Auditing Practice," QC § 20.

[216] *See, e.g.*, letter from California Public Employees' Retirement System, dated January 10, 2003; letter from Computer Sciences Corporation, dated January 13, 2003; letter from American Institute of Certified Public Accountants, dated January 9, 2003; letter from PricewaterhouseCoopers, dated January 8, 2003.

[217] *See, e.g.*, letter from Lynn E. Turner, dated January 13, 2003.

[218] *See*, letter from The Vanguard Group, dated January 13, 2003; letter from Investment Company Institute, dated January 13, 2003; letter from PricewaterhouseCoopers, dated January 8, 2003.

[219] *See, e.g.*, letter from The Vanguard Group, dated January 13, 2003; letter from Investment Company Institute, dated January 13, 2003; letter from Ernst & Young, dated January 6, 2003.

[220] *See*, letter from The Vanguard Group, dated January 13, 2003; letter from Investment Company Institute, dated January 13, 2003; letter from PricewaterhouseCoopers, dated January 8, 2003.

[221] *See*, letter from Investment Company Institute, dated January 13, 2003; letter from The Vanguard Group, dated January 13, 2003.

[222] *See*, letter from Ernst & Young, dated January 6, 2003.

[223] The rule also would require communication of a description of all non-audit services provided, including fees associated with the services, to the investment company complex that were not subject to the pre-approval requirements for investment companies as discussed in Section II.D of this release.

for investment companies meet on a quarterly basis.[224]

H. Expanded Disclosure

To allow the issuer's investors to be better able to evaluate the independence of the accountant, we believe that disclosures should be made by issuers of the scope of services provided by its independent public accountants. Section 202 of the Sarbanes-Oxley Act requires pre-approval of all audit and non-audit services, with exceptions provided for *de minimis* amounts under certain circumstances, as described in the Act and in rules discussed previously in this release. The Sarbanes-Oxley Act further requires disclosure in periodic reports of non-audit services approved by the audit committee.

Current proxy disclosure rules require that a registrant disclose, in the most recent fiscal year, the professional fees paid for both audit and non-audit services to its principal independent accountant. As a result of the requirements of Sarbanes-Oxley and partly in response to public comment on the current proxy disclosures requirements since their adoption in 2000, we proposed rules to change both the types of fees that must be described and the number of years for which the disclosures must be provided.[225] The proposed rules would have increased the disclosed categories of professional fees paid for audit and non-audit services from three to four. The categories of reportable fees proposed were: (1) Audit Fees, (2) Audit-Related Fees, (3) Tax Fees, and (4) All Other Fees.[226] The proposed disclosure called for information to be provided for each of the two most recent fiscal years, rather than just the most recent fiscal year. In addition, we proposed that registrants be required to describe in subcategories the nature of the services provided that are categorized as audit-related fees and all other fees.

Our proposed changes to the proxy disclosure rules were intended to clarify the categorization of services provided by the audit firm in order to provide increased transparency for investors. Many commenters[227] favored the approach of our proposals, however, some commenters[228] requested clarification relating to the categorization of certain types of services. For example, the discussion accompanying the proposed rules stated that the "tax fees" category would capture all services performed by professional staff in the independent accountant's tax division. Thus, the proposed rules would have required that the fees associated with the review by the tax partner of the tax accrual during the audit be included within the "tax services category." However, as stated elsewhere in the proposing release, the "audit services" category should include services performed to fulfill the accountant's responsibility under GAAS. Likewise, complex accounting issues may require that the firm engage in consultation with national office or other technical reviewers to reach an audit judgment.

Some commenters[229] generally agreed with the proposed categories of services. Some,[230] however, suggested modifications or clarifications to the categories or reductions in the number of categories. Additionally, some commenters suggested that the disclosures should be provided for three years[231] and others suggested that they be provided for only one year.[232]

Our final rules retain the basic provisions of our proposals. In response to the requests by commenters for clarification of the categorization of services, we expect that all services performed to comply with GAAS should be classified as "audit services" in providing the disclosures. Certain services, such as tax services and accounting consultations, may not be billed as audit services. However, to the extent that such services are necessary to comply with GAAS, an appropriate allocation of those fees may be included in the audit fee category. We recognize, however, that some services may be difficult to classify and we encourage issuers and their accountants to contact our staff to discuss the appropriate classifications.

Consistent with our proposal, we are adopting rules requiring issuers to provide disclosures of fees paid to the independent accountant segregated into the four previously-identified categories. Additionally, other than for the audit category, the issuer is required to describe, in qualitative terms, the types of services provided under the remaining three categories. Also, consistent with our proposal, this information is required for the two most recent years. Finally, consistent with our proposal, this information must be provided either in the issuer's proxy statement, or its periodic annual filing.

While the rules we are adopting continue to require issuers to disclose fees paid to the principal accountant for audit services, we are expanding the types of fees that should be included in this category to include fees for services that normally would be provided by the accountant in connection with statutory and regulatory filings or engagements. In addition to including fees for services necessary to perform an audit or review in accordance with GAAS,[233] this category also may include services that generally only the independent accountant reasonably can provide, such as comfort letters, statutory audits, attest services, consents and assistance with and review of documents filed with the Commission.

We believe that the addition of a new category, "Audit-Related Fees," will enable registrants to present the audit fee relationship with the principal accountant in a more transparent fashion. In general, "Audit-Related Fees" are assurance and related services (*e.g.*, due diligence services) that traditionally are performed by the independent accountant. More specifically, these services would include, among others: employee benefit plan audits, due diligence related to mergers and acquisitions, accounting consultations and audits in connection with acquisitions, internal control reviews, attest services that are not required by statue or regulation and

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[224] Similarly, the accountant only would need to disclose those non-audit services provided to the investment company complex that they were engaged to perform during the intervening period since their last communication, but for which pre-approval by the investment company's audit committee was not required.

[225] *See*, proposed Item 9(e), Schedule 14A.

[226] Previously, registrants were required to disclose only "Audit Fees," "Financial Systems Design and Implementation Fees" and "All Other Fees."

[227] *See, e.g.*, letter from California Public Employees' Retirement System, dated January 10, 2003; letter from The Business Roundtable, dated January 13, 2003; letter from American Community Bankers, dated January 13, 2003; letter from American Institute of Certified Public Accountants, dated January 9, 2003; letter from Financial Executives International's Committee on Corporate Reporting, dated January 14, 2003.

[228] *See, e.g.*, letter from Eli Lilly and Company, dated January 9, 2003; letter from KPMG, dated January 9, 2003; letter from Deloitte & Touche, LLP, dated January 10, 2003.

[229] *See, e.g.*, letter from Ralph S. Saul, dated December 23, 2002; letter from Ernst & Young, dated January 6, 2003; letter from Commercial Federal Corporation, dated January 13, 2003.

[230] *See, e.g.*, letter from Lynn E. Turner, dated January 13, 2003; letter from California Public Employees' Retirement System, dated January 10, 2003; letter from Eli Lily and Company, dated January 9, 2003; letter from American Bar Association, Sector of Business Law, dated January 14, 2003.

[231] *See, e.g.*, letter from California Public Employees' Retirement System, dated January 10, 2003; letter from California Board of Accountancy, dated January 13, 2003; letter from Lynn E. Turner, dated January 13, 2003.

[232] *See, e.g.*, letter from American Institute of Certified Public Accountants, dated January 9, 2003; letter from Wells Fargo & Company, dated January 13, 2003.

[233] *See also*, Section 2(a)(2) the Sarbanes-Oxley Act which defines the term "audit."

consultation concerning financial accounting and reporting standards.

We also believe it is appropriate to add transparency regarding a second category of fees: "Tax Fees." The review of a registrant's tax returns and reserves is a task that often requires extensive knowledge about the audit client. In many public companies, the fee for tax services is substantial in relation to other services. We believe that investors will benefit from being able to consider those fees separately from the "All Other Fees" category. The "Tax Fees" category would capture all services performed by professional staff in the independent accountant's tax division except those services related to the audit as discussed previously. Typically, it would include fees for tax compliance, tax planning, and tax advice. Tax compliance generally involves preparation of original and amended tax returns, claims for refund and tax payment-planning services. Tax planning and tax advice encompass a diverse range of services, including assistance with tax audits and appeals,[234] tax advice related to mergers and acquisitions, employee benefit plans and requests for rulings or technical advice from taxing authorities.

The category of "All Other Fees" would remain unchanged from the existing rule, except that to the extent that financial information systems implementation and design exist they would be disclosed as a component of "All Other Fees."

Consistent with our proposal, we also are requiring that the information be provided for two periods so that investors will have comparative information about the fees paid to the independent accountant by the issuer.

As noted in our previous discussion about audit committee pre-approval requirements, we have clarified the guidance on audit committee pre-approval of services provided by the independent accountant. Accordingly, the issuer must provide disclosure of the audit committee's pre-approval policies and procedures. Additionally, to the extent that the audit committee has applied the *de minimis* exception discussed previously, the issuer must disclose the percentage of the total fees paid to the independent accountant where the *de minimis* exception was used. This information should be provided by category.

We expect registrants to provide clear, concise and understandable descriptions of the policies and procedures. Alternatively, registrants could include a copy of those policies and procedures with the information delivered to investors and filed with the Commission. Either method should allow shareholders to obtain a complete and accurate understanding of the audit committee's policies and procedures. We expect the policies and procedures would address auditor independence oversight functions in a prudent and responsible manner. Additionally, these procedures would describe, if applicable, the specific processes in place that monitor activities where the *de minimis* exception is invoked.

Consistent with our proposal, we are requiring that the disclosures be included in a company's annual report. However, because we believe that this information is relevant to a decision to vote for a particular director or to elect, approve or ratify the choice of an independent public accountant, we are requiring that this disclosure be included in a company's proxy statement on Schedule 14A or information statement on Schedule 14C. Since the information is included in Part III of annual reports on Forms 10–K and 10–KSB, domestic companies are able to incorporate the required disclosures from the proxy or information statement into the annual report.

Our intent is that this information be made available to investors of all registrants. However, not all registrants are required to file proxy statements. Thus, consistent with the provisions in the Act, registrants that do not issue proxy statements are required to include appropriate disclosures in their annual filing included in Form 10–K, Form 10–KSB, 20–F, Form 40–F and Form N–CSR[235] as appropriate. For the reasons noted previously in this release, we are exempting asset-backed issuers and unit investment trusts from these disclosure requirements.

With respect to investment companies, we proposed to require investment companies to make disclosure that is similar to the disclosure proposed for operating companies filing with the Commission. The proposed rule required an investment company to disclose the audit fees paid by the investment company to its accountant and the aggregate fees paid for audit related, tax services, and other services to the investment company's accountant by the investment company and its investment adviser and any entity controlling, controlled by or under common control with the adviser, that provides services to the investment company. The proposed rule also required the disclosure of the percentage, for each category presented, of fees which were subject to: (1) Direct pre-approval; (2) pre-approval pursuant to policies and procedures; and (3) pre-approval pursuant to the *de minimis* exception. Lastly, the proposed rule would require these disclosures in the annual report on proposed Form N–CSR and proxy and information statements.

Commenters[236] generally raised several significant issues related to the disclosure that would be required for investment companies. Many commenters[237] believed the fee disclosures should only be required to be made for the services provided by the accountant to the investment company registrant. One commenter[238] suggested the fees presented should be disclosed separately for those services provided to the investment company directly and those provided to the other entities in the investment company complex. Some commenters[239] believed that only those fees required to be pre-approved by the investment company's audit committee should be disclosed. Lastly, one commenter[240] expressed concern that providing percentage disclosure by type of pre-approval method (*i.e.*, direct, pursuant to policy and procedures, or the *de minimis* exception) would imply that some of these methodologies were improper.

After considering the comments, we do not believe that the fee disclosures should be limited to only those fees paid directly by the investment company registrant. We believe the fees paid by other entities in the investment company complex can have a bearing on the investment company accountant's independence. However, we are concerned that the disclosures provide meaningful information to investors. Consequently, we have determined to modify the proposed requirements.

Our final rule requires the investment company to disclose separately those

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[234] As discussed previously in this release an accountant's independence is deemed to be impaired when representing the audit client before a tax court, district court and U.S. federal court of claims.

[235] We recently adopted Form N–CSR to be used by registered management investment companies to file certified shareholder reports with the Commission under the Sarbanes-Oxley Act of 2002.

[236] *See, e.g.*, letter from Investment Company Institute, dated January 13, 2003; letter from PricewaterhouseCoopers, dated January 8, 2003.

[237] *See, e.g.*, letter from KPMG, dated January 9, 2003; letter from PricewaterhouseCoopers, dated January 8, 2003; letter from Ernst & Young, dated January 6, 2003.

[238] *See*, letter from Ernst & Young, dated January 6, 2003.

[239] *See*, letter from PricewaterhouseCoopers, dated January 8, 2003; letter from Deloitte & Touche, dated January 10, 2003.

[240] *See*, letter from Investment Company Institute, dated January 13, 2003.

audit and non-audit fees from services provided directly to the investment company and those non-audit fees from services provided to all other entities in the investment company complex where the services were subject to pre-approval by the investment company's audit committee. Like an operating company, the investment company would be required to disclose the percentage of fees for each category of fees that were pre-approved pursuant to the *de minimis* exception. The final rules require disclosure of the total non-audit fees paid to the accountant, regardless of whether those fees were pre-approved by the investment company's audit committee, by the investment company, its adviser, and any entity controlling, controlled by, or under common control with the investment adviser that provides ongoing services to the fund. The final rule also will require the investment company to disclose if the audit committee has considered whether the provision of non-audit services provided to the investment company's adviser and its related parties that were not subject to the investment company audit committee's pre-approval is compatible with maintaining the principal accountant's independence.

These disclosure provisions are effective for periodic annual filings for the first fiscal year ending after December 15, 2003. We encourage issuers who have not previously issued their periodic annual filings to adopt these disclosure provisions earlier.

I. International Impact

The Commission realizes that these rules will have an international impact. It will affect foreign accounting firms that conduct audits of both foreign private issuers and foreign subsidiaries and affiliates of U.S. issuers. Through its participation in the International Organization of Securities Commissions and bilateral meetings, and through a roundtable held in Washington in December, the Commission has made a concerted effort to obtain the views of the international community of regulators, market participants and practitioners. Through this process and public consultation, the Commission has received valuable insight into various foreign regulatory regimes relating to auditor independence, and detailed and specific comments on the proposed rule.

The partner rotation requirements set forth in the proposed rule were of particular concern to the international community. The proposal, as mandated by the Act, called for the rotation of the lead and concurring partners on a five-year basis. In addition, it precluded these partners from returning to an audit of the same registrant for five years. The proposal also applied the same rotation requirement to all partners on the audit engagement team. Commentators noted that the proposed requirements could have a particularly adverse impact in foreign countries, especially in emerging countries, where there may be a more limited pool of accountants and experts conversant in U.S. GAAP and U.S. GAAS. Other commentators indicated that the proposed rotation requirements would cause firms to rotate hundreds of partners in scores of countries. The resulting widespread rotation would affect audit quality adversely, and would be hard, if not impossible, to achieve practically.

We are extending the partner rotation requirements beyond the lead and concurring partners. However, taking into account these and other comments, the rotation will not be applied as broadly as proposed. We believe that partner rotation should be a function of the level of responsibility for decisions on accounting and financial reporting issues, and the level of interaction with senior management of an issuer. Accordingly, under the final rule, the rotation requirement will apply to partners that serve the client at the issuer or parent level. It also will apply to the lead partner serving an issuer's subsidiary whose revenues constitute 20% or more of the consolidated assets or revenues of the parent. Partners serving subsidiaries whose assets and revenues fall below the threshold are not subject to rotation. The same is true for partners, other than lead partners, serving subsidiaries above the threshold.

The international community also requested that the Commission modify its approach to conflicts of interest resulting from employment relationships. The Act requires a "cooling off" period of one year before a member of the audit engagement team can work for a registrant in certain key positions. Under the proposed rule, the restriction applied with regard to employment by the issuer and its affiliates. Some commentators stated that the rule should only apply to partners on the audit engagement team. Commentators also indicated that extending the requirement to apply with regard to key positions at the issuer and its affiliates was overbroad, difficult to monitor, and possibly impossible to control. Moreover, we have become aware that in certain jurisdictions the labor law or jurisprudence would prohibit foreign accounting firms from imposing restrictions on the future employment opportunities of their personnel.

We agree that extending the requirement to the audit client might be difficult to monitor particularly in situations where a member of the audit engagement team begins employment with an affiliate of the issuer. Further, we recognize that in certain foreign jurisdiction it may be extremely difficult to comply with these requirements. In response to the concerns raised, the cooling-off period will apply to the lead, concurring partner or any other member of the audit engagement team, unless exempted, who provides more than ten hours of audit, review or attest services. The restriction on employment will apply only with regard to key positions at the issuer. Members of the audit engagement team, including those employed by a foreign accounting firm, will be able to take positions with the subsidiaries or affiliates of an issuer. They also may take key positions at the issuer in certain circumstances and upon the approval of the audit committee (or a similar body).

The Commission also has given consideration to comments regarding foreign requirements with respect to the provision of appraisal and valuation services. The Commission believes that the extension of these services to audit clients raises concerns with respect to the auditor's independence. The Commission is, therefore, eliminating some exemptions previously provided in this area. However, we understand that laws and regulations in certain foreign countries require auditors to provide contribution-in-kind reports or valuation services. The Commission has historically addressed conflicts between U.S. and foreign requirements regarding non-audit services on an *ad hoc* basis. Commission staff has previously afforded relief from proscriptions against appraisal and valuation services where, among other things, the auditor and issuer were able to demonstrate that the auditor was not providing an opinion on the fairness of a given transaction. The Commission will continue to take this *ad hoc* approach, and will continue to consider requests for exemptive relief from foreign auditors.

Finally, several foreign commentators noted that a prohibition on legal services could amount to a prohibition on the provision of tax services by foreign accounting firms from particular jurisdictions. It would appear that in certain jurisdictions tax services are defined as legal services and can only be rendered by persons licensed to practice law. The Commission is making clear that foreign accounting firms can

provide tax services, as appropriate, despite their local definition and local licensing requirements.

The Commission is mindful of the fact that this rule may overlap with foreign requirements designed to achieve auditor independence. The Commission has taken foreign requirements into account, and afforded accommodations to foreign accounting firms in a manner and to the extent consistent with the spirit and intent of the Act. As the rule is implemented, the Commission, as well as the PCAOB, will monitor its international impact and continue to dialogue with its foreign counterparts.

III. Paperwork Reduction Act

Certain provisions of our final amendments contain "collection of information" requirements within the meaning of the Paperwork Reduction Act of 1995 ("PRA").[241] We published a notice requesting comment on the collection of information requirements in the proposing release for the rule amendments, and we submitted these requirements to the Office of Management and Budget ("OMB") for review in accordance with the PRA.[242] The titles for the collection of information are:

(1) "Proxy Statements—Regulation 14A (Commission Rules 14a–1 through 14a–15 and Schedule 14A)" (OMB Control No. 3235–0059);

(2) "Information Statements—Regulation 14C (Commission Rules 14c–1 through 14c–7 and Schedule 14C)" (OMB Control No. 3235–0057);

(3) "Form 10–K" (OMB Control No. 3235–0063);

(4) "Form 10–KSB" (OMB Control No. 3235–0420);

(5) "Form 20–F" (OMB Control No. 3235–0288);

(6) "Form 40–F" (OMB Control No. 3235–0381);

(7) "Regulation S–X" (OMB Control No. 3235–0009); and

(8) "Form N–CSR" (OMB Control No. 3235–0570).

These regulations and forms were adopted pursuant to the Securities Act, the Exchange Act and the Investment Company Act and set forth the disclosure requirements for periodic reports, registration statements and proxy and information statements filed by companies to ensure that investors are informed. The hours and costs associated with preparing, filing and sending these forms constitute reporting and cost burdens imposed by each collection of information. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. Compliance with the requirements will be mandatory. There will be no mandatory retention period for the information disclosed, and responses to the requirements will not be kept confidential.

Regulation S–X is the central repository for rules related to the form and content of financial statements with the Commission. Regulation S–X, however, does not direct registrants to file financial statements or to collect financial data. Regulation S–X indicates what should be in the financial statements and how financial statements should be presented when they are required to be filed by other rules and forms under the securities laws. Burden hours and costs associated with the preparation of financial statements in accordance with Regulation S–X are allocated to the rules or forms that require the financial statements to be filed. Because Regulation S–X does not require any information to be filed with the Commission, we previously have assigned one burden hour to Regulation S–X for administrative convenience to reflect the fact that this regulation does not impose any direct burden on companies.

A. Summary of Amendments

1. Communication With Audit Committees

As required by Section 204 of the Sarbanes-Oxley Act, we are amending Regulation S–X to require each public accounting firm registered with the Board that audits an issuer's financial statements to report to the issuer's or investment company's audit committee: (1) All critical accounting policies and practices used by the issuer, (2) all material alternative accounting treatments within GAAP that have been discussed with management, including the ramifications of the use of the alternative treatments and the treatment preferred by the accounting firm, (3) other material written communications between the accounting firm and management of the issuer such as any management letter or schedule of "unadjusted differences," and (4) in the case of registered investment companies, all non-audit services provided to certain entities in the investment company complex that were not pre-approved by the investment company's audit committee. The required reports need not be in writing but the report is required to be presented to the audit committee before the auditor's report on the financial statements is filed with the Commission.[243]

2. Disclosures of Audit and Non-Audit Services

Item 9 of Schedule 14A requires the disclosure of certain information regarding the registrant's relationship with the independent auditor of the company's financial statements when there is a solicitation relating to: (1) A meeting at which directors to the company's board of directors are to be elected (or the solicitation of consents or authorizations in lieu of such a meeting) or (2) the election of the auditor, or the approval or ratification of the company's selection of the auditor. We are amending paragraph (e) of Item 9 to provide more detailed information regarding the categories of fees paid by the registrant to the auditor and to inform investors about the critical role that audit committees play in assuring the auditor's independence. We believe that the disclosure will allow investors to better assess an auditor's independence and certain activities of an audit committee.

Item 9(e) previously required disclosure of fees billed by the auditor in the last fiscal year, with the fees broken down into three categories: audit fees, financial information systems design and implementation fees, and all other fees. The final rules add disclosure of two categories (tax fees and audit-related fees), while eliminating one category (financial information systems design and implementation), and require disclosure of one more past year of each of these fees. Because these fees are already being disclosed, repeating the prior year's disclosures for comparison purposes should not increase significantly a registrant's compliance burden. In addition, breaking tax fees and audit-related fees out of the "all other" category of fees currently being disclosed should not result in any significant incremental burden.

With respect to investment companies, the final rules also will require disclosure of all non-audit fees paid to the investment company's

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[241] 44 U.S.C. 3501 *et seq.*

[242] 44 U.S.C. 3507(d) and 5 CFR 1320.11.

[243] *See*, Release No. 33–8040, Dec. 12, 2001 (66 FR 65013). In this release the Commission provided cautionary advice regarding disclosure about critical accounting policies. *See also*, Release No. 33–8098, May 10, 2002, (67 FR 35620). In this release the Commission proposed rules to require disclosures that would enhance investors' understanding of the application of companies' critical accounting policies. The proposed disclosures would focus on accounting estimates a company makes in applying its accounting policies and the initial adoption by a company of an accounting policy that has a material impact on its financial presentation.

accountant by any entity in the investment company complex and whether the audit committee has considered those non-audit services in evaluating the auditor's independence from the investment company. Since these disclosures exist in some form currently, there should be no significant incremental disclosure burden.

Under the final rules, registrants also will be required to disclose any policies and procedures adopted by an audit committee to be followed for pre-approval of services to be performed by the accounting firm in the event that the audit committee does not expressly pre-approve the particular engagements.[244] In addition, the final rules require registrants to disclose what percentage of fees in each of the categories noted above (audit, audit-related, tax, and other) relate to engagements for which the pre-approval requirement was waived under the *de minimis* exception.[245]

Some companies that file Forms 10–K or 10–KSB are not subject to the proxy disclosure requirements. These companies, therefore, now will be required to present the required disclosures in the Form 10–K or 10–KSB. Foreign private issuers that file Form 20–F and Canadian companies that file Form 40–F generally are not subject to the proxy disclosure requirements and, therefore, will be required to present the required disclosures on Form 20–F or Form 40–F. Some investment companies do not regularly file proxy or information statements. These investment companies will, therefore, now be required to disclose this information in the investment company's annual report on Form N–CSR.

B. Summary of Comment Letters and Revisions to Proposals

We requested comment on the PRA analysis contained in the proposing release. Two commenters responded generally that they believed the burden estimates seemed unrealistic.[246] However, neither commenter provided supporting data, revised burden hour estimates or other information to support their views. One of these commenters believed that the 25% allocation to outside professionals was unrealistically low.[247] As we have mentioned in many recent releases, we believe that the allocation of 75% of the burden to internal staff and 25% of the burden to outside professionals accurately reflects current practice for proxy and information statements and annual reports for domestic issuers.[248] In particular, the disclosure requirements regarding principal accountant's fees should involve information that already is readily available to internal staff of the registrant. We have not concluded that our burden hour estimates for purposes of the Paperwork Reduction Act should be changed, although we will continue to monitor registrant response to our burden hour estimates.

In addition, we have made several revisions to the proposals. However, we do not believe these changes will significantly change our previous estimates of the burden on registrants from the amendments.

1. Communication With Audit Committees

We have made one change to the proposed rules concerning communication with audit committees. We proposed rules that would have required public accounting firms performing the audit for an issuer or investment company to report to the audit committee of the issuer or investment company, prior to the filing of such audit with the Commission, all alternative treatments of financial information within GAAP that have been discussed with management of the issuer or investment company. In response to commenters, the final rules only require reporting of material alternative treatments of financial information within GAAP that have been discussed with management of the issuer or investment company. This change should aid in focusing the reports to audit committees on important matters and not dilute the usefulness with discussion of less important matters. With respect to investment companies, we have added a requirement to disclose all non-audit services provided to the investment company complex that were not pre-approved by the investment company's audit committee. However, we are changing the requirement to discuss these matters from before each filing, which could have been as frequent as monthly, to annually, with an update, if necessary.

2. Disclosures of Audit and Non-Audit Services

We have made three minor changes in response to commenters' concerns regarding the rules requiring disclosure of audit and non-audit services. The first change clarifies the audit fee category to specifically include services that normally are provided by the accountant in connection with statutory and regulatory filings. The second change relates to tax fees and specifies that registrants will be required to describe each subcategory of services comprising the fees disclosed under the "tax fees" category, similar to the requirement for the "audit-related fees" category. Finally, the third change relates to the requirement to disclose the percentage of audit fees, audit-related fees, tax fees, and all other fees that were approved by the audit committee. The proposed rule would have required this disclosure for all fees derived from engagements that were: (1) Approved by the issuer's or investment company's audit committee before the accountant was engaged by the issuer or investment company, (2) entered into pursuant to pre-approval policies and procedures established by the audit committee of the issuer or investment company, provided the audit committee was informed of each service, and (3) for which the pre-approval requirement was waived under the *de minimis* exception. The final rules will only require disclosure of the percentage of audit fees, audit-related fees, tax fees, and all other fees for which the pre-approval requirement was waived under the *de minimis* exception.

With respect to investment companies, we have made three changes to the rule. The first change requires the fund to disclose all non-audit fees paid by entities in the investment company complex only to the extent those non-audit services relate to the operations or financial reporting of the investment company. The second change requires investment companies to disclose the aggregate non-audit fees paid to the auditor by any entity in the investment company complex. The third change requires the investment company to disclose if the audit committee has considered whether the provision of non-audit services by the accountant to the investment company complex is compatible with maintaining the accountant's independence.

[244] 17 CFR 210.2–01(c)(7)(A) and (B).

[245] 17 CFR 210.2–01(c)(7)(C).

[246] *See, e.g.*, letter from Deloitte & Touche LLP, dated January 10, 2003; letter from Lynn E. Turner, dated January 13, 2003.

[247] *See, e.g.*, letter from Deloitte & Touche LLP, dated January 10, 2003.

[248] *See, e.g.*, Release No. 33–8098, May 10, 2002, (67 FR 35620); Release No. 33–8106, Jun. 17, 2002, (67 FR 42914); Release No. 33–8124, Aug. 28, 2002, (67 FR 57276); Release No. 33–8128, Sept. 5, 2002, (67 FR 58480); Release No. 33–8138, Oct. 22, 2002, (67 FR 66208); Release No. 33–8144, Nov. 4, 2002, (67 FR 68054); Release No. 34–46778, Nov. 6, 2002, (67 FR 69430); Release No. 33–8154, Dec. 2, 2002, (67 FR 76780); Release No. 33–8160, Dec. 10, 2002, (67 FR 77594); and Release No. 33–8173, Jan. 8, 2003.

C. Revisions to Reporting and Burden Estimates

1. Communication With Audit Committees

As discussed in the proposing release, we believe that GAAS currently require discussions between the auditors and the audit committee of significant unusual, controversial, or emerging accounting policies, of the process used by management to select certain estimates, and of disagreements with management over certain accounting matters.[249] We further believe that audit committees generally are aware of management's letter making representations to the auditors, which the auditor uses in completing the audit of the issuer's financial statements.[250] Audit committees also should be aware of "unadjusted differences," [251] if any, as a result of the enactment of Section 401 of the Sarbanes-Oxley Act, which added Section 13(i) to the Securities Exchange Act of 1934 ("Exchange Act").[252] Under new Section 13(i) of the Exchange Act, therefore, there should be no material "unadjusted differences." In the case of investment companies, we believe auditors already are reporting non-audit services provided to the investment company complex annually and some routinely provide more frequent updates at the request of the audit committee.[253] Because of these GAAS and legal provisions, we believe that the final rules regarding auditor reports to audit committees will not increase significantly the burden hours on accounting firms or registrants.

2. Disclosures of Audit and Non-Audit Services

While we have made some modifications to the proposals relating to disclosure of audit and non-audit services, we do not believe these changes will have a significant effect on the total amount of burden hours for preparing the forms. Accordingly, we believe that our estimates of the burden articulated in the proposing release have not changed as a result of modifications contained in the final rules.

a. *Proxy and Information Statements.* We estimate that the incremental disclosure changes would impose, on average, two additional burden hours on each of the 7,661 filers of Schedule 14A, or an aggregate 15,322 additional burden hours. We further estimate that approximately 75% of the extra burden hours, or approximately 11,492 hours, would be expended by internal staff and the remaining 25%, or 3,830 hours, would be expended by outside professionals who are retained by the filer. Assuming that outside professional costs would be an average of $300 per hour, the aggregate annual professional costs would be $1,149,000. Similarly, we estimate that these disclosures would impose, on average, two additional burden hours on each of the 464 filers of Schedule 14C, or an aggregate 928 additional burden hours. Using the same allocation of hours and cost estimate of professional fees as for Schedule 14A, we estimate that 696 hours would be expended by internal staff and the remaining 232 hours would be for outside professional assistance, producing an outside professional cost of $69,600.

b. *Annual Reports on Form 10–K.* We estimate that the incremental disclosure changes will impose, on average, two additional burden hours per year on each of the 8,484 filers of Form 10–K. 6,676 of those filers, however, will provide the information under Schedule 14A and 209 of those filers would provide the information under Schedule 14C.[254] The burden hours for the disclosure by these filers therefore have been assigned to Schedule 14A and Schedule 14C, respectively. The burden imposed on the remaining 1,599 filers is being assigned to Form 10–K. This results in 3,198 (2 hours × 1,599 filers) additional burden hours for Form 10–K. We further estimate that approximately 75% of the extra burden hours, or approximately 2,399 hours, will be expended by internal staff and the remaining 25%, or 799 hours, will be expended by outside professionals. Assuming that outside professional costs average $300 per hour, the estimated aggregate annual professional costs are $239,700.

c. *Annual Reports on Form 10–KSB.* We estimate that the incremental disclosure changes will impose, on average, two additional burden hours per year on each of the 3,820 filers of Form 10–KSB. 985 of those filers, however, will provide the information under Schedule 14A and 255 of those filers will provide the information under Schedule 14C. The burden hours for the disclosure by these filers have been assigned to Schedule 14A and Schedule 14C, respectively. The burden imposed on the remaining 2,580 filers is being assigned to Form 10–KSB. This results in 5,160 (2 hours × 2,580 filers) additional burden hours. We further estimate that approximately 75% of the extra burden hours, or approximately 3,870 hours, will be expended by internal staff and the remaining 25%, or 1,290 hours, will be expended by outside professionals. Assuming that outside professional costs average $300 per hour, the estimated aggregate annual professional costs are $387,000.

d. *Annual Reports by Foreign Private Issuers on Form 20–F.* We estimate that the incremental disclosure changes will impose, on average, two additional burden hours per year on each of the 1,194 filers of Form 20–F, or 2,388 additional burden hours. We further estimate that approximately 25% of the extra burden hours, or approximately 597 hours, will be expended by internal staff and the remaining 75%, or 1,791 hours, will be expended by outside professional costs associated with reviewing the disclosures because this form is prepared by foreign private issuers who rely more heavily on outside counsel for assistance. Assuming that outside professional costs average $300 per hour, the estimated aggregate annual professional costs are $537,300.

e. *Reports by Certain Canadian Issuers on Form 40–F.* We estimate that the incremental disclosure changes will impose, on average, two additional burden hours per year on each of the 134 filers of Form 40–F, or 268 additional burden hours. Consistent with our treatment of foreign private issuers filing Form 20–F, we further estimate that approximately 25% of the extra burden hours, or approximately 67 hours, will be expended by internal staff and the remaining 75%, or 201 hours, will be expended by outside professionals. Assuming that outside professional costs average $300 per hour, the estimated aggregate annual professional costs are $60,300.

f. *Form N–CSR.* We estimate that the additional disclosure changes will impose, on average, 1.5 additional burden hours per year on each of the anticipated 3,700 filers of Form N—CSR. This results in 5,550 (1.5 hours × 3,700 filers) additional burden hours. We

[249] *See*, SAS 61, "Communication with Audit Committees or Others with Equivalent Authority and Responsibility," AU § 380.

[250] SAS No. 85, "Management Representations," AU § 333.

[251] *See*, SAS No. 89, "Audit Adjustments," AU § 333.

[252] Each financial report that contains financial statements, and that is required to be prepared in accordance with (or reconciled to) generally accepted accounting principles under this title and filed with the Commission shall reflect all material corrections adjustments that have been identified by a registered public accounting firm in accordance with generally accepted accounting principles and the rules and regulations of the Commission.

[253] *See*, Independence Standards Board, "Independence Discussions with Audit Committees," *Independence Standard No. 1* (Jan. 1998).

[254] These numbers are obtained by reviewing the number of filers that filed a Form 10–K and Schedule 14A or Schedule 14C, respectively, between October 1, 2001 and September 30, 2002.

estimate that the cost of these burden hours is $81 per hour, resulting in aggregate internal costs of $449,550.[255] Further, we estimate that this additional disclosure will require 0.5 hours in professional review by outside counsel at an average rate of $300 per hour, resulting in an estimated aggregate annual outside professional costs of $555,000.

IV. Cost—Benefit Analysis

We are sensitive to the costs imposed by and benefits derived from our rules, and we have identified certain costs and benefits of these rules. Additionally, certain of these costs are imposed by Congressional mandate through the enactment of the Sarbanes-Oxley Act.

A. Background

The Sarbanes-Oxley Act was enacted on July 30, 2002. Title II to that Act adds Sections 10A(g) through 10A(l) to the Securities Exchange Act of 1934 ("Exchange Act") and requires that the Commission, within 180 days of enactment, adopt rules to carry out each of those sections.[256]

The final rules:

- Revise the Commission's regulations related to the non-audit services that, if provided to an audit client, would result in the accounting firm being deemed to lack independence with respect to the audit client; [257]
- Require that an issuer's audit committee pre-approve all audit and non-audit services provided to the issuer by the independent accountant; [258]
- Prohibit certain partners on the audit engagement team from providing audit services to the issuer for more than five or seven consecutive years, depending on the partner's involvement in the audit (smaller accounting firms may be exempted from this requirement); [259]
- Prohibit an accounting firm from auditing an issuer's financial statements if a person in a financial reporting oversight role of that issuer had been a member of the accounting firm's audit engagement team within the one-year period preceding the commencement of audit procedures; [260]
- Require that the auditor of an issuer's financial statements report certain matters to the issuer's audit committee, including "critical" accounting policies and practices used by the issuer; [261] and
- Require disclosures to investors of information related to audit and non-audit services provided by, and fees paid by the issuer to, the auditor of the issuer's financial statements.[262]

In addition, under the final rules, an accountant will be deemed to be not independent from an audit client if any "audit partner" receives compensation based directly on selling engagements to that client other than audit, review, or attest services. We have narrowed the final rule by exempting accounting firms with fewer than ten partners and fewer than five audit clients from this provision.[263] While many of the final rules respond directly to the provisions of Title II of the Sarbanes-Oxley Act, certain of the rules go beyond the specific provisions of the Act. These provisions include:

- Applying the partner rotation rules to additional "audit partners";
- Applying the one-year cooling off period to persons in a financial reporting oversight role with the issuer; and
- Prohibiting an accounting firm from compensating an audit partner for directly selling non-audit services to an audit client.

B. Potential Benefits of the Final Rules

Potential benefits resulting from the final amendments include increased investor confidence in the independence of accountants, in the audit process, and in the reliability of reported financial information. As discussed below, clearer auditor independence regulations should provide investors with comfort that auditors are placing the interests of investors over financial or personal incentives. The final rules mandating that accountants communicate certain matters to audit committees should benefit investors by enhancing the opportunities for meaningful audit committee oversight of the financial reporting process. Investors also will benefit from the enhanced disclosure of the non-audit services provided by, and fees paid to, the accounting firm that audits the company's financial statements, and from better disclosure of the audit committee's role in approving the provision of audit and non-audit services by the accounting firm that audits the company's financial statements. We believe that these factors could improve the efficiency of the markets and result in a lower cost of capital.

1. Auditor Independence

The amendments are intended to facilitate the independence of the accountant from management in the following ways:

- Providing clearer definition of the types of non-audit services that would be deemed to impair an auditor's independence;
- Requiring that each engagement of the accountant to perform audit or non-audit services for the company be pre-approved by the audit committee, which serves as the representative of investors;
- Requiring the "rotation" of "audit partners" on the audit engagement team to assure a periodic fresh look at the accounting and auditing issues related to the issuer's financial statements;
- Providing that the accountant's independence would be deemed to be impaired if an "audit partner" is compensated directly for selling non-audit services or products to an audit client. This provision should mitigate the concerns that an accountant might be viewed as compromising accounting judgments in order not to jeopardize the potential for increased income from the act of selling non-audit services to the audit client; and
- Requiring a "cooling off" period between working on the audit engagement team and joining the client in a "financial reporting oversight role" in order to assure that personal relationships and the new member of management's knowledge of the audit plan do not negatively impact the audit process.

Strengthening auditor independence should provide investors with more confidence that the accountants are playing their "gatekeeper" role related to companies" financial reporting and provide further assurance that the financial condition, results of operations, and cash flows of companies are fairly reflected in their financial reports thereby allowing public companies less costly access to the capital markets.

The final rules specify that "audit partners" who are compensated for cross-selling non-audit services are deemed to be not independent with respect to the audit client. This will further enhance the independence of the audit function since the audit partner's focus will be on the conduct of the audit rather than on efforts to sell other engagements to the audit client. The

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[255] *See*, Securities Industry Association, *Report on Management & Professional Earnings in the Securities Industry 2002* (2002).

[256] Section 208(a) of the Sarbanes-Oxley Act of 2002.

[257] *See*, Section 201 of the Sarbanes-Oxley Act.

[258] *See*, Section 202 of the Sarbanes-Oxley Act.

[259] *See*, Section 203 of the Sarbanes-Oxley Act.

[260] *See*, Section 206 of the Sarbanes-Oxley Act.

[261] *See*, Section 204 of the Sarbanes-Oxley Act.

[262] *See, generally*, Section 202 of the Sarbanes-Oxley Act; Section 10A(i)(2) of the Exchange Act, 15 U.S.C. 78j–1(i)(2).

[263] *See, e.g.*, letter from U.S. Small Business Administration's Office of Advocacy, January 13, 2002.

danger inherent in compensating audit partners for cross-selling non-audit services is that it might create a temptation for accountants to compromise the quality of the audit in order to maintain their relationship with management to whom they wish to cross-sell such services.

2. Auditor Reports to Audit Committees

The final rules require that each public accounting firm registered with the Board that audits an issuer's financial statements report specified information to the issuer's audit committee, including: (1) All critical accounting policies and practices used by the issuer, (2) all material alternative accounting treatments within GAAP that have been discussed with management, (3) other material written communications between the accounting firm and management of the issuer, such as any management letter or schedule of "unadjusted differences," and (4) in the case of registered investment companies, all non-audit services provided to entities in the investment company complex that were not pre-approved by the investment company's audit committee.

The report by the Senate Committee on Banking, Housing, and Urban Affairs on the bill that later became the foundation for the Sarbanes-Oxley Act, in addressing the need for such reports from the accountant to the audit committee, stated, in part:

> The Committee believes that it is important for the audit committee to be aware of key assumptions underlying a company's financial statements and of disagreements that the auditor has with management. The audit committee should be informed in a timely manner of such disagreements, so that it can independently review them and intervene if it chooses to do so in order to assure the integrity of the audit.[264]

Almost eight months before passage of the Sarbanes-Oxley Act, in December 2001, we issued cautionary advice regarding the disclosure in the Management's Discussion and Analysis [265] section of its annual report of those accounting policies that management believes are most critical to the preparation of the issuer's financial statements.[266] As part of that cautionary advice, we stated:

> Prior to finalizing and filing annual reports, audit committees should review the selection, application and disclosure of critical accounting policies. Consistent with auditing standards, audit committees should be apprised of the evaluative criteria used by management in their selection of the accounting principles and methods. Proactive discussions between the audit committee and the company's senior management and auditor about critical accounting policies are appropriate.[267]

Communications with the audit committee about such policies facilitate the audit committee's oversight of the financial reporting process. Investors should benefit by the audit committee being better informed and, thus, in a position to better challenge what it may view as non-typical, aggressive, or improper applications of GAAP used by management to enhance or manipulate reports of the company's financial results or financial condition.

3. Enhanced Disclosures About the Services Provided by Auditors to Registrants

Investors will receive more detailed information about:

- Any policies and procedures adopted by an audit committee for pre-approving audit and non-audit services provided by the independent accountant,
- The fees paid by the registrant to the accountant in each of the last two years for audit, audit-related, tax, and all other services,[268] and
- The percentage of fees in each of those categories where the audit committee used the *de minimis* exception.

These disclosures will provide greater transparency to investors of certain aspects of the auditor-client relationship. Providing better, more complete information in cases where non-audit services occur allows investors to determine for themselves whether there are concerns related to the auditor's independence. It also may allow investors to ask more direct and useful questions of management and directors regarding their decisions to engage the accountants for such services.

C. Potential Costs of the Final Rules

1. Auditor Independence

Changes in our auditor independence rules may impose costs on accounting firms and on any issuers that engage, or would like to consider engaging, the accountant of an issuer's financial statements to perform non-audit services.

a. *Non-audit services.* According to the information available to the staff in 2000, approximately 12,600 registrants did not purchase any consulting services from the auditor of their financial statements, and 4,100 registrants reported purchasing such services.[269] Based on the scrutiny that these services have received over the past year, the Commission believes that the number of companies purchasing non-audit services from their accountant might have decreased further.

The current auditor independence rules state that the performance of certain non-audit services will be deemed to impair an auditor's independence. The final rules, in some cases, redefine those services and add one more item, "expert services," to the list of prohibited services. These changes may impact the competitive markets for these services. Audit clients are precluded from engaging their independent accountants to perform services in the categories of bookkeeping services, financial systems design and implementation services, appraisal and valuation services, actuarial services, internal audit outsourcing services, management functions, human resources, broker-dealer, investment adviser or investment banking services, legal services and expert services. These companies may incur costs from having to use a separate vendor for such services resulting in the possible loss of any benefits of having a single provider for both audit and non-audit services. Companies also may incur costs in locating a new vendor and developing a business relationship with that vendor. In addition, companies may incur costs from not being able to retain their preferred provider of non-audit services, if that preferred provider is their independent accountant. The difference in value between a preferred provider and a second choice may be substantial, particularly if the preferred provider has relatively rare service offerings or service offerings that are particularly well suited to the needs of the company.

The final rules may cause accountants to lose one or more sources of revenue because they will no longer be able to

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[264] Report of the Senate Committee on Banking, Housing, and Urban Affairs, "Public Company Accounting Reform and Investor Protection Act of 2002," Senate Report 107–205, 107th Cong., 2d Sess., at 21 (July 3, 2002).

[265] Item 303 of Regulation S–K (17 CFR 229.303), which requires disclosure about, among other things, trends, events or uncertainties known to management that would have a material impact on reported financial information.

[266] Release No. 33–8040, Dec. 12, 2001, (66 FR 65013).

[267] Id. (footnotes omitted).

[268] In the case of an investment company, the investors will receive this information for the investment company registrant and separately, for all other entities in the investment company complex where the services were subject to pre-approval by the investment company's audit committee.

[269] *Id.*; 65 FR at 43185.

sell certain non-audit services to their audit clients. Additionally, accounting firms may incur additional costs to market these services with non-audit clients as well as additional learning costs to familiarize themselves with the operations of those non-audit clients. Finally, to the extent that there exist economies of scope in the provision of audit and non-audit services (as, for example, through the use of shared knowledge management systems and other infrastructure) and to the extent that the preclusion of certain non-audit services to audit clients results in the exit of personnel who provide such services from accounting firms, there may be an increase in the cost of both audit and non-audit services.

We believe, however, that in view of the statements by the largest four accounting firms, and others, that they no longer intend to provide internal audit outsourcing services and financial system design and implementation services to audit clients,[270] the cost associated with the adoption of the final rules may be limited. Also, to the extent that the provision of non-audit services is merely redistributed among the firms, there would be no net loss of revenue to public accounting firms as a whole.

b. *Audit Committee Pre-approval of Services.* Under the final rules, all auditing and non-audit services to be provided by the independent accountant must be pre-approved by the issuer or investment company's audit committee.[271] There may be incremental costs associated with audit committees performing this function. Such costs might include more frequent committee meetings, an increased workload on audit committee members, and having the audit committee's legal counsel review the audit committee's draft policies and procedures for engaging the independent accountants for non-audit services. The increased burden on audit committee members might result in the need to increase their compensation, resulting in additional costs to issuers or investment companies. Some of these costs may be mitigated by the provisions in the Act and the final rules that allow the audit committee to delegate to one or more audit committee members the authority to grant pre-approvals of these services.[272]

Inadvertent violations of the Act and the final rules that would add to the costs of the rules also may be mitigated by the *de minimis* exception to the pre-approval requirement.[273] This exception applies if: (1) The aggregate amount of the non-audit services is not more than five percent of the total amount of revenues paid by the issuer to the accountant during the fiscal year in which the non-audit services were provided,[274] (2) at the time of the engagement the issuer did not recognize the services to be non-audit services, and (3) the services are approved by the audit committee prior to the completion of the audit.[275]

We also believe that as a result of the Commission's audit committee disclosure requirements adopted in 1999,[276] prior disclosures related to the involvement of the audit committee in recommending or approving changes in independent accountants and the resolution of disagreements between management and the accountants,[277] and professional standards that require communications between the accountant and the audit committee on auditor independence and other issues,[278] many companies currently have audit committees that carefully evaluate the engagement of accountants to perform non-audit services. Accordingly, we believe that the incremental costs associated with these rules will not be substantial.

c. *Rotation of Partners on the Audit Engagement.* Under the final rules, no "audit partner" will serve on an audit engagement team for more than seven consecutive years, and the "lead" and "concurring" partners will be prohibited from serving for more than five consecutive years. Current professional requirements state that the "lead" partner should be replaced at least once every seven years.[279] The proposed rules would have required any partner on the audit engagement team of an issuer and its significant subsidiaries to rotate after five years. Many commenters believed that the reach of the proposal was too deep, particularly for individuals that have limited participation in the audit. The final rules require fewer partners to rotate than under the proposal. Under the final rules, the lead partner, who has primary responsibility for the audit, along with the concurring partner, must rotate after five years. Other audit partners at the issuer,[280] or a subsidiary of the issuer whose assets or revenues constitute 20% or more of the consolidated assets or revenues of the issuer must rotate after seven years. Accounting firms with fewer than five audit clients and fewer than ten partners may be exempted from the partner rotation requirements if the Board conducts a special review of each of the firm's audit engagements for audit clients at least once every three years. In total, the final rule expands the rotation requirements to cover a greater number of partners than under the current professional requirements.

A number of commenters expressed concern that under the proposed rules many small accounting firms would be unable to meet the partner rotation requirements and may be driven out of

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[270] Report of the Senate Committee on Banking, Housing, and Urban Affairs, "Public Company Accounting Reform and Investor Protection Act of 2002," Senate Report 107–205, 107th Cong., 2d Sess., at 18 (July 3, 2002). *See* also letter from HarborView Partners LLC, dated December 4, 2002.

[271] Section 301 of the Sarbanes-Oxley Act of 2002 requires the Commission to direct the national securities exchanges and national securities associations to prohibit the listing of any security of an issuer that does not meet certain criteria, including having an audit committee that performs certain functions. *See* Section 10A(m) of the Exchange Act, 15 U.S.C. 78j–1(m), and Release No. 33–8173 (Jan. 8, 2003). The Sarbanes-Oxley Act defines "audit committee" to be "(A) a committee (or equivalent body) established by and amongst the board of directors of an issuer for the purpose of overseeing the accounting and financial reporting processes of the issuer and audits of the financial statements of the issuer; and (B) if no such committee exists with respect to an issuer, the entire board of directors of the issuer." Section 205(a) of the Sarbanes-Oxley Act, which, among other things, adds Section 3(a)(58) to the Exchange Act.

[272] Section 202 of the Sarbanes-Oxley Act; Section 10A(i)(3) of the Exchange Act, 15 U.S.C. 78j–1(i)(3).

[273] Section 202 of the Sarbanes-Oxley Act; Section 10A(i)(1)(B) of the Exchange Act, 15 U.S.C. 78j–1(i)(1)(B).

[274] In the case of an investment company, the five percent threshold is calculated based on the services provided to the investment company complex that were subject to the pre-approval requirements for the investment company's audit committee.

[275] *Id.*

[276] Item 306 of Regulation S–K (17 CFR 229.306), and Item 306 of Regulation S–B (17 CFR 228.306); see generally, Release No. 34–42266, Dec. 22, 1999, (64 FR 73389). These disclosure requirements are discussed *supra*, in Section II.C. of this release.

[277] Item 4 of Form 8–K, 17 CFR 249.308 and Item 304 of Regulation S–K, 17 CFR 229.304, which require disclosure of "whether the decision to change accountants was recommended or approved by: (A) Any audit or similar committee of the board of directors, if the issuer has such a committee; or (B) the board of directors, if the issuer has no such committee" and "whether any audit or similar committee of the board of directors, or the board of directors, discussed the subject matter of each of such disagreements with the former accountant * * *." Item 304(a)(1)(iii)(A), (iii)(B), and (iv)(B). 17 CFR 229.304(a)(1)(iii)(A), (iii)(B) and (iv)(B). For small business issuers, Item 304(a)(1)(iii) of Regulation S–B, 17 CFR 228.304(a)(1)(iii) requires disclosure of "whether the decision to change accountants was recommended or approved by the board of directors or an audit or similar committee of the board of directors."

[278] *See, e.g.*, SAS No. 61, as amended by SAS No. 89 and No. 90, "Communications With Audit Committees," AU §380; Independence Standards Board, "Independence Discussions with Audit Committees," *Independence Standard No. 1* (Jan. 1999).

[279] *See*, AICPA, SEC Practice Section, *Requirements of Members*, at item e. The membership requirements are available online at *http://www.aicpa.org/members/div/secps/require.htm*.

[280] In the case of investment companies, other audit partners would include all audit partners working on an investment company registrant.

business, potentially burdening the ability of smaller companies to retain auditors and access the public markets. We have attempted to mitigate this effect by providing an exemption for smaller accounting firms in the final rules.[281]

Without the exemption, clients of many of the smaller accounting firms would have to change auditors every five years because their incumbent auditor would not be able to meet the partner rotation requirements. This would have imposed marketing and client-specific learning costs on the accounting firms and costs on clients to familiarize the new accountant with their operations.

Costs associated with the periodic replacement of partners might include more frequent company-specific training, conducted by both the accounting firm and the audit client, as new partners join the audit engagement team. For example, the new partners will need to learn the company's accounting and financial reporting procedures, controls and familiarize themselves with key personnel. The final rules also might result in incremental costs related to some partners being required to travel extensively, relocate from one part of the country to another, or from one country to another.[282]

The costs related to these rules will vary based on the proximity of an accounting firm's audit clients, the concentration of the firm's practice within an industry, and the availability of partners to whom the work may be redistributed, and similar factors. We note that these costs may be passed on to issuers in the form of higher audit fees.

Had the proposed rules been adopted, another potential impact would have been the impact on the specialization of accounting firms within each industry. To minimize partners' costs of learning new businesses, accounting firms have an incentive to specialize in certain industries. This, potentially, could have had the effect of creating oligopolies within each industry and could have adversely affected competition among accounting firms.

d. *One-Year Cooling Off Period.* The final rules indicate that an accounting firm is deemed to be not independent with respect to an audit client if a former member of the audit engagement team is employed by the issuer in a "financial reporting oversight role" unless the individual had not been a member of the audit engagement team during the one year period preceding the initiation of the audit.[283]

Currently, when a former professional employee of an accounting firm joins an audit client within one year of leaving the firm, and the individual has significant interaction with the accounting firm's audit engagement team, professional standards require the accounting firm to perform procedures to assure that the individual's knowledge of, or relationships with, the accounting firm do not adversely influence the quality of the audit.[284] These procedures include modifying the audit plan to adjust for the risk that the individual would be able to circumvent key aspects of the audit, and assuring that the people on the audit engagement team have the stature and objectivity not to be influenced by their former partner or co-employee and to have the appropriate level of skepticism when evaluating the individual's representations and views.

Costs might occur, however, from the company being required to delay the hiring, or not being able to hire, the individual that it believes is the most qualified person to perform a "financial reporting oversight role" at the company. This may add to recruitment costs or result in less efficient operations. Such costs are difficult to estimate and vary from one company to another. However, in response to several commenters' concerns regarding the reach of the proposed rules, the final rules limit the prohibitions based on the individual's role on the audit engagement team. These costs might be ameliorated in unusual circumstances due to the exception provided for emergency and unusual circumstances.

e. *Compensation.* The final rules provide that an accountant is deemed to be not independent with respect to an audit client if any "audit partner" earns or receives compensation in consideration of directly selling engagements to provide any services to that client other than audit, review or attest services. The final rules differ from the proposed rules in three notable respects. First, the proposed rules also would have provided that any accountant is not independent with respect to an audit client if an audit partner earns or receives compensation based on the selling or performance of engagements with an audit client to provide any products or services other than audit, review or attest services. The final rule applies only to compensation based on the direct selling of engagements in the independence determination. Second, several commenters noted that, as proposed, the rules would have precluded a "specialty" partner from receiving compensation when he or she sold services in his or her specialty area. The final rules address this concern because they apply to "audit partners" rather than all partners who are members of the audit engagement team. Third, several commenters indicated the compensation rules might be particularly difficult for smaller accounting firms. To address this concern, the final rules include an exemption for accounting firms with fewer than five audit clients and fewer than ten partners.

Despite these revisions, the provision might affect the compensation plans of those firms that currently reward audit partners of the firm for selling non-audit services to their audit clients. The final rules may result in those revenues being allocated to other persons within the accounting firm. Absent this incentive, auditors may be less inclined to inform issuers of ways to improve their performance or condition through non-audit services. We do not expect, however, that there would be any incremental costs to the firm or to the client.

2. Auditor Reports To Audit Committees

The final rules are identical to those proposed, with two exceptions. The proposed rules would have required accounting firms to report to audit committees all alternative accounting treatments within GAAP that have been discussed with management, including the ramifications of the use of the alternative treatments and the treatment preferred by the accounting firm. The final rules only require accounting firms to report material alternative treatments, which should aid in focusing the reports to audit committees. The final rules add a specific requirement related to investment companies that requires auditors to disclose to the investment company's audit committee all non-

[281] According to data provided by the SECPS, out of 767 accounting firms with audit clients, 462 firms are eligible for the exemption from partner rotation.

[282] For example, one commenter estimated that on certain large engagements, the proposed rotation requirements would result in an average annual incremental cost of $1,250,000; *see*, letter from Deloitte & Touche LLP dated January 10, 2003. Another commenter estimated the cost to be as much as $2,000,000 per year for large registrants; *see*, letter from KPMG dated January 9, 2003.

[283] In the case of investment companies, the cooling off period would extend not only to positions at the investment company, but also to positions at any entity in the investment company complex that is directly responsible for the operations or financial reporting of the investment company.

[284] Independence Standards Board, "Employment with Audit Clients" *Independence Standard No. 3* (July 2000).

audit fees paid to the accountant by any entity in the investment company complex that was not subject to pre-approval by the investment company's audit committee.

Because of existing GAAS and legal provisions,[285] we believe that the final rules regarding accountants' reports to audit committees will not significantly increase costs for accounting firms or registrants. Any such costs may arise from the timing of the communications,[286] which must occur before the auditor's report is filed with the Commission. We also believe limiting the reporting requirement to only material alternative treatments will reduce unnecessary costs. The required reports need not be in writing, but the report is required to be presented to the audit committee before the auditor's report is filed with the Commission.

3. Enhanced Disclosures About the Services Provided by Auditors to Registrants

The existing proxy disclosure rules require disclosure of all professional fees billed by the principal auditor in the last fiscal year, with the fees broken down into three categories: audit fees, financial information systems design and implementation fees, and all other fees. The final rules divide the disclosure into two more categories—tax fees and audit-related fees—and add disclosure of one more year of these fees while eliminating separate disclosure of fees related to financial information systems design and implementation.[287] The final rules also require companies that do not file proxy statements to file this information with the Commission in their annual reports on Forms 10–K and 10–KSB, foreign private issuers to file the information on Form 20–F, certain Canadian issuers to file the information on Form 40–F, and registered management investment companies to file the information on Form N–CSR.[288]

Registrants also are required to disclose the audit committee's policies and procedures for approval of services provided by the accounting firm, and the percentage of fees in each of the four categories noted above (audit, audit-related, tax, and all other) where the audit committee used the *de minimis* exception to the pre-approval requirements.[289]

Based on the staff's experience, we believe that the additional disclosure contemplated by the final rules will require, on average, approximately one-half of a page in a company's proxy statement or annual report. Accordingly, we believe the additional printing costs from these additional disclosures will be small.

Using estimates derived from our Paperwork Reduction Act analysis, we estimate that the incremental impact of the disclosure changes will result in a total cost of $5,862,400 for all affected filers. The estimate is based on the burden hour estimates calculated under the Paperwork Reduction Act. For purposes of the Paperwork Reduction Act, we estimate that the additional disclosure will result in 26,678 internal burden hours and $2,999,400 in external costs. Assuming a cost of $125/hour for in-house professional staff (and $40 per hour for internal staff review for Form N–CSR), the total cost for the internal burden hours would be $2,863,000.[290] Hence the aggregate cost estimate is $5,862,400 ($2,863,000 + $2,999,400).

4. Transition

In response to the concerns of several commenters, we are providing a transition period for several of the requirements of the final rules. A transition period helps to alleviate the immediate impact of any costs and burdens that may be imposed on certain registrants and their accounting firms. A transition period may even help reduce costs as registrants and accounting firms will have additional time to adjust their processes and procedures to the new requirements.

V. Consideration of Burden on Competition, and Promotion of Efficiency, Competition, and Capital Formation

Section 23(a)(2) of the Exchange Act[291] requires the Commission, when adopting rules under the Exchange Act, to consider the anti-competitive effects of any rule it adopts. In addition, Section 2(b) of the Securities Act of 1933,[292] Section 3(f) of the Exchange Act,[293] and Section 2(c) of the Investment Company Act[294] require the Commission, when engaging in rulemaking that requires it to consider or determine whether an action is necessary or appropriate in the public interest, to consider whether the action will promote efficiency, competition, and capital formation.

The rules prohibit the independent accounting firm from providing certain non-audit services for their audit clients. These rules, therefore, could result in some companies seeking new accounting firms for non-audit services permitted under our previous rules, but not allowed under the Sarbanes-Oxley Act and the final rules. This may have an impact on competition for those services, although to the extent the new vendor is another accounting firm, the result may redistribute services among firms rather than an increase or decrease in services.

The proposed rules may have disadvantaged smaller accounting firms because of the partner rotation requirements, since smaller firms may not have other partners available to continue providing audit services to the client. We have modified the final rules to mitigate this concern. Under the final rules, accounting firms with fewer than five audit clients and fewer than ten partners may be exempted from the audit partner rotation and compensation requirements.

One possible adverse impact on capital formation may come from additional costs related to audit committees. Although the final rules do

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[285] *See*, Item 303 of Regulation S–K, 17 CFR 229.303; Release No. 33–8040 (Dec. 12, 2001); and SAS 61, "Communication with Audit Committees or Others with Equivalent Authority and Responsibility," AU § 380.

[286] An investment company's auditor will only be required to communicate this information to the audit committee annually, unless there have been changes from the previously-reported information and the annual communication was completed more than 90 days prior to the filing. This should reduce the cost for investment companies to comply with this requirement.

[287] In the case of investment companies, the investors will receive this information for the investment company registrant and separately, for all other entities in the investment company complex where the services were subject to pre-approval by the investment company's audit committee.

[288] Form 10–K is the annual report that registrants file with the Commission pursuant to Section 13 or 15(d) of the Exchange Act, if no other annual reporting form has been prescribed. Small business issuers may use abbreviated Form 10–KSB. A "small business issuer" is an entity that (1) has revenues of less than $25,000,000, (2) is a U.S. or Canadian issuer, (3) is not an investment company, and (4) if a majority owned subsidiary, the parent corporation is also a small business issuer. An entity is not a "small business issuer," however, if the aggregate market value of its outstanding voting and non-voting common stock held by non-affiliates is $25,000,000 or more. *See*, 17 CFR 240.12b–2. Registered management investment companies would use Form N–CSR to file certified shareholder reports with the Commission under the Sarbanes-Oxley Act of 2002.

[289] With respect to investment companies, the final rules also will require disclosure of all non-audit fees paid to the investment company's accountant by all entities in the investment company complex, and whether the audit committee considered those non-audit services in evaluating the auditor's independence with respect to the investment company.

[290] The $125/hour cost estimate is based on data obtained from *The SIA Report on Management and Professional Earnings in the Securities Industry* (Oct. 2001).

[291] 15 U.S.C. 78w(a)(2).

[292] 15 U.S.C. 77b(b).

[293] 15 U.S.C. 78c(f).

[294] 15 U.S.C. 80a–2(c).

not require companies to have audit committees, many companies may choose to establish such committees to facilitate the pre-approval requirements of the rules. Additional costs may be associated with forming such committees and, if necessary, recruiting and retaining directors to serve on those committees. One commenter noted that the costs to maintain audit committees may increase due to additional meetings required, increased compensation for members due to the increased time demands, and increased director's and officer's insurance premiums due to increased liability of audit committee members. While the rules may increase the number of meetings required and the time demands of audit committee members, we believe a properly functioning audit committee should enhance the quality and accountability of the financial reporting process and help increase investor confidence, which results in increased efficiency and competitiveness of the U.S. capital markets.

Investors' confidence in the independence of auditors and in the integrity of the financial information fuels our securities markets. These rules are designed to bolster investor confidence in the securities markets by strengthening auditor independence, improving the transparency of the role of corporate audit committees, and enhancing the reliability and credibility of financial statements of public companies. Accordingly, on the whole, we believe the final rules will promote capital formation and market efficiency.

VI. Final Regulatory Flexibility Act Analysis

This Final Regulatory Flexibility Act Analysis has been prepared in accordance with 5 U.S.C. 603. It relates to revisions to Regulation S–X and to Item 9 of Schedule 14A, and to Forms 10–K, 10–KSB, 20–F, 40–F and N–CSR. The rules strengthen the Commission's requirements regarding the independence of auditors, audit committee pre-approval of services provided by the independent accountant and related disclosures, and auditor communications with the audit committee.

A. Reasons for the Rule Amendments

The rules generally implement a congressional mandate. Some of the amendments, although not specifically required by the statute, are designed to implement the intent of the Sarbanes-Oxley Act. The rules are intended to provide greater assurance to investors that independent auditors are performing their public responsibilities.

The rules, in general:

- Revise the Commission's regulations related to the non-audit services that, if provided to an audit client, will impair an accounting firm's independence;
- Require that an issuer's audit committee pre-approve all audit and non-audit services provided to the issuer by the auditor of an issuer's financial statements;
- Prohibit certain partners on the audit engagement team from providing audit services to the issuer for more than five or seven consecutive years, depending on the partner's involvement in the audit, except that certain small accounting firms may be exempted from this requirement;
- Prohibit an accounting firm from auditing an issuer's financial statements if certain members of management of that issuer had been members of the accounting firm's audit engagement team within the one-year period preceding the commencement of audit procedures;
- Require that the auditor of an issuer's financial statements report certain matters to the issuer's audit committee, including "critical" accounting policies used by the issuer; and
- Require disclosures to investors of information related to audit and non-audit services provided by, and fees paid to, the auditor of the issuer's financial statements.
- Provide that an accountant will not be independent from an audit client if an audit partner received compensation based on selling engagements to that client for services other than audit, review and attest services, except that the rules exempt certain small accounting firms from this requirement.

B. Objectives

Our objectives in implementing Title II of the Sarbanes-Oxley Act are to increase investor confidence in the independence of auditors, in the audit process, and in the reliability of reported financial information. The rules accomplish these objectives by having: (1) Clearer auditor independence regulations that will assure investors that auditors are placing the interests of investors over financial or personal incentives, (2) rules mandating that auditors communicate certain matters to audit committees which should enhance the opportunities for meaningful audit committee oversight of the financial reporting process, and (3) enhanced disclosure of the non-audit services provided by, and fees paid to, the accounting firm that audits the company's financial statements and disclosure of the audit committee policies for pre-approving the provision of non-audit services by the accounting firm that audits the company's financial statements. We believe that these factors will improve the efficiency of the markets and result in a lower cost of capital.

C. Significant Issues Raised by Public Comment

Several commenters indicated that the partner rotation and compensation rules might be particularly difficult for small accounting firms to implement. They stated that if the rotation requirements were applied to small accounting firms, many of these firms would be unable to provide audit services to their public clients and would be forced to give them up. They further suggested a number of accommodations for small issuers and small firms including: exempting the firms based on criteria such as number of partners, number of SEC clients, firm revenue, or number of professional personnel; and exempting accountants of small issuers as measured by revenue, assets, market capitalization or profitability.

The U.S. Small Business Administration's Office of Advocacy ("Advocacy") was among the commenters recommending that the Commission include a small firm exemption from the audit partner rotation requirements. Advocacy stated that the exemption would ensure that small issuers would not incur marked increases in audit costs. It also expressed the concern that small issuers retaining the services of accounting firms that previously were exempt from audit rotation requirements may no longer be able to retain such firms if the firms lose the exemption and decline to offer audit services as a result. Advocacy asserted that if the small issuers then have to engage the services of larger firms, the costs incurred by these companies would increase due to the need of the new firms to familiarize themselves with the issuers' industries and business practices. Advocacy further stated that an effect of the elimination of small firms from the competitive market for audit services and market consolidation would be an increase in audit prices because of larger firms' gain in power over pricing.

The final amendments provide an alternative application for small accounting firms to address commenters' concerns. Under the final rules, accounting firms with fewer than five audit clients that are issuers and fewer than ten partners may qualify for the exemption from partner rotation, but

the Board must conduct a special review of all of the firm's engagements subject to the rule at least once every three years. This special review should focus on the overall quality of the audit, and in particular, the independence and competence of the key personnel on the audit engagement teams. Additionally, accounting firms with fewer than five audit clients that are issuers and fewer than ten partners are exempt from the compensation requirements.

D. Small Entities Subject to the Rules

The rules affect smaller registrants and smaller accounting firms. Exchange Act Rule 0–10(a) [295] and Securities Act Rule 157 [296] define a company to be a "small business" or "small organization" if it had total assets of $5 million or less on the last day of its most recent fiscal year. We estimate that approximately 2,500 companies, other than investment companies, are small entities.

For purposes of the Investment Company Act, Rule 0–10 [297] defines a "small business" as an investment company complex [298] with net assets of $50 million or less as of the end of its most recent fiscal year. We estimate that approximately 225 investment companies meet this definition.

Our rules do not define "small business" or "small organization" for purposes of accounting firms. The Small Business Administration defines small business, for purposes of accounting firms, as those with under $6 million in annual revenues. We have only limited data indicating revenues for accounting firms, and we cannot estimate the number of firms with less than $6 million in revenues that practice before the Commission. We requested comment on the number of accounting firms with revenue under $6 million. Advocacy provided information indicating that a great majority of the 51,645 accounting firms in the United States have less than $6 million in revenue.[299] Advocacy noted that the U.S. Census does not classify the firms according to revenue, but obtained average per-firm revenue through publicly available IRS tax return information. According to Advocacy, IRS data indicates that in 1998, there were 46,407 tax returns for accounting firms organized as corporations.[300] Advocacy concluded that, of the firms captured by the IRS data, 99.18% (46,025) would likely qualify as small businesses because they had less than $3 million in receipts, and a further 318 corporate filers were reported to have an average of $5.7 million in receipts, indicating that the majority of these firms also had less than $6 million in revenues. Since fewer than 1,000 firms [301] provide audit services to issuers, it is uncertain how many of those firms qualify as small businesses.

E. Reporting, Recordkeeping and Other Compliance Requirements

1. Auditor Independence

The vast majority of registrants are audited by one of the four largest accounting firms, which clearly are not small entities. Nonetheless, changes in the auditor independence regulations may impose compliance requirements, recordkeeping and reporting requirements on smaller accounting firms and on any smaller registrant that engages, or would like to consider engaging, the auditor of an issuer's financial statements to perform non-audit services.

(a) *Non-audit services.* These auditor independence rules state that the performance of certain non-audit services will impair an auditor's independence. The rules, in some cases, redefine the limits of those non-audit services and add an additional item, "expert services," to the previous list of prohibited services. These changes could impact the competitive markets for these services. In particular, the Commission is withdrawing the specific exemption in the current rules that allows audit clients with less than $200 million in total assets to engage the auditors of their financial statements to perform internal audit outsourcing services.[302] Under these rules, small issuers also are precluded from engaging the independent accountants to perform services in the categories of financial systems design and implementation services, appraisal and valuation services, actuarial services, and others, that could have been performed under the previous rules. Smaller registrants, therefore, may have to use a separate vendor for such services. Smaller accounting firms may lose one or more sources of revenue because they no longer will be able to sell certain non-audit services to their audit clients.

According to the information available to the staff in 2000, however, approximately 12,600 registrants did not purchase any consulting services from the auditor of their financial statements, and 4,100 registrants reported purchasing such services.[303] Based on the attention that non-audit services have received in the past year, the Commission staff believes that the number of smaller registrants purchasing non-audit services from their auditors, and the number of smaller accounting firms providing a significant amount of non-audit services to audit clients that are Commission registrants, might have decreased. Also, to the extent non-audit services are merely redistributed among the firms, there will be no net loss of revenue to public accounting firms as a whole.

(b) *Audit Committee Pre-Approval of Services.* Under the rules, all audit and non-audit services to be provided by the auditor of an issuer's financial statements must be pre-approved by the issuer's audit committee.[304] The definition of audit committee in the Sarbanes-Oxley Act, which is cited in the rules, however, indicates that if no such committee exists, the entire board of directors of the issuer may perform this function.[305] The rules, therefore, do not require a small company to form an audit committee.

There are reasons to believe that many smaller entities currently have audit committees.[306] Any smaller entity that does not have such a committee and forms one to facilitate operation of the rules, however, will incur costs to establish such a committee and, if necessary, to recruit and retain the required number of independent

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[295] 17 CFR 240.0–10(a).

[296] 17 CFR 230.157.

[297] 17 CFR 270.0–10.

[298] The definition of a "small business" also includes a "unit investment trust" and a "business development company."

[299] Advocacy cited recent U.S. Census Statistics. *See*, Bureau Of The Census, U.S. Department Of Commerce, "Statistics Of U.S. Business," 1998 (NAICS Code #541211).

[300] *See*, IRS, "1998 Corporation Source Book Of Statistics Of Income, Income Tax Returns of Active Corporations with Accounting periods ended July 1998 Through June 1999," Minor Industry 541215 (1998).

[301] Data provided by the SEC Practice Section of the AICPA.

[302] 17 CFR 210.2–01(c)(4)(v)(A).

[303] *Id.*; 65 FR at 43185.

[304] In the case of investment companies, all non-audit services provided by the auditor to an entity in the investment company complex that relate to the operations or financial reporting of the investment company must be pre-approved by the audit committee of the investment company.

[305] Section 301 of the Sarbanes-Oxley Act of 2002 requires the Commission to direct the national securities exchanges and national securities associations to prohibit the listing of any security of an issuer that does not meet certain criteria, including having an audit committee that performs certain functions. *See*, Section 10A(m) of the Exchange Act, 15 U.S.C. 78j–1(m). The Sarbanes-Oxley Act defines "audit committee" to be "(A) a committee (or equivalent body) established by and amongst the board of directors of an issuer for the purpose of overseeing the accounting and financial reporting processes of the issuer and audits of the financial statements of the issuer; and (B) if no such committee exists with respect to an issuer, the entire board of directors of the issuer." Section 205(a) of the Sarbanes-Oxley Act, among other things, adds Section 3(a)(58) to the Exchange Act.

[306] *See, e.g.*, NACD, 2001–2002 Public Company Governance Survey (Nov. 2001).

directors. Smaller entities also may spend time and incur costs to document the audit committee's activities in the areas covered by the rules, including drafting and maintaining the audit committee's policies and procedures related to engaging the auditor to perform non-audit services. Moreover, small entities may incur costs in seeking the help of outside experts, particularly outside legal counsel, in drafting the audit committee's policies and procedures.

(c) *Rotation of Partners on the Audit Engagement.* Under the rules, certain partners may not serve on an audit engagement team for more than five or seven years, depending on the partner's involvement in the audit. Current professional requirements state that the lead partner should be replaced after serving in that capacity for seven years.[307] The rules, therefore, require more partners to be rotated and the lead partner to be rotated more frequently.

Potential costs associated with the periodic replacement of partners include more frequent company-specific training because new partners joining the audit engagement team will need to learn the company's accounting and financial reporting procedures, controls and familiarize themselves with key personnel. The rules also may result in incremental costs related to some partners being required to relocate.

In response to concerns expressed by commenters, the final rules allow accounting firms with fewer than five audit clients and fewer than ten partners to be exempted from the rotation requirement.

(d) *One-Year Cooling Off Period.* The rules deem an accounting firm to be not independent with respect to an audit client if a former member of the audit engagement team begins employment in a "financial reporting oversight role" at that issuer if the individual had been a member of the audit engagement team within the one-year period preceding the initiation of the audit.[308] A "financial reporting oversight role" is a role in which a person is in a position to or does influence the contents of financial statements or anyone who prepares them.[309] Such persons include directors, chief executive officers, chief financial officers, chief accounting officers, controllers, and others.

A smaller registrant may incur costs from a delay in hiring, or not being able to hire, the individual that it believes is the most qualified person to perform a "financial reporting oversight role" at the company. This may add to recruitment costs or less efficient operations.

(e) *Compensation.* Under the rules, an accounting firm's independence will be deemed to be impaired if any audit partner receives compensation based on directly selling to an audit client services other than audit, review and attest services. Thus, accounting firms will have to discontinue compensating these individuals for "cross-selling" services.

Some smaller accounting firms may have a relatively small number of partners, available to serve each client. Such firms may not have personnel, other than the partner in charge of the smaller company's audit with sufficient expertise to market and provide non-audit services to that company. In recognition of the special issues associated with smaller firms, the final rules provide that accounting firms with fewer than five audit clients and fewer than ten partners may be exempted from the compensation rule.

2. Auditor Reports to Audit Committees

Under the rules, each public accounting firm registered with the Board that audits an issuer's financial statements must report to the issuer's audit committee (1) all critical accounting policies and practices used by the issuer, (2) all material alternative accounting treatments within GAAP that have been discussed with management, including the ramifications of the use of the alternative treatments and the treatment preferred by the accounting firm, (3) other material written communications between the accounting firm and management of the issuer such as any management letter or schedule of "unadjusted differences," and (4) in the case of registered investment companies, all non-audit services provided to entities in the investment company complex that were not pre-approved by the investment company's audit committee. The required reports need not be in writing, but must be provided to the audit committee before the auditor's report on the financial statements is filed with the Commission.[310]

GAAS currently require discussions between the auditors and the audit committee of significant unusual, controversial, or emerging accounting policies, of the process used by management to select certain estimates, and of disagreements with management over certain accounting matters. Further, audit committees generally are aware of management's letter making representations to the auditors, which the auditor uses in conducting the audit of the issuer's financial statements, and the auditor's letters to management on reportable conditions in internal controls and other matters. Also, due to enactment of Section 401 of the Sarbanes-Oxley Act, all material adjustments identified by the auditor should be reflected in the issuer's financial statements and, therefore, there should be no material "unadjusted differences." In the case of investment companies, we believe auditors already are reporting non-audit services provided to the investment company complex annually and some routinely provide more frequent updates at the request of the audit committee.

Because of these GAAS and legal provisions, we believe that adoption of the rules regarding auditor reports to audit committees will not significantly increase costs, including costs for smaller accounting firms and smaller registrants. Some costs may be incurred, however, to the extent communications are required before the auditor's report is filed with the Commission.

3. Enhanced Disclosures About the Services Provided by Auditors to Registrants

Currently, disclosure is required in proxy statements of the fees billed in the most recent fiscal year under the categories of audit fees, information systems design and implementation fees, and all other fees.[311] The rules require disclosure of the fees billed in each of the two most recent years. The rules also add the categories of tax fees and audit-related fees but eliminate separate disclosure of information systems design and implementation from the current list of categories of fees. The rules also require disclosure of

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[307] *See,* AICPA, SEC Practice Section, Requirements of Members, at item e. The membership requirements are available online at *http://www.aicpa.org/members/div/secps/require.htm.* In its comment letter, Advocacy stated its belief that there are approximately 460 audit firms in the United States providing audit services to 765 smaller reporting companies who are currently exempt from the AICPA audit partner rotation requirements.

[308] In the case of investment companies, the cooling off period extends not only to positions at the investment company, but also to positions at any entity in the investment company complex that is directly responsible for the operations or financial reporting of the investment company.

[309] *See,* Rule 2–01(f)(3)(ii) of Regulation S–X.

[310] In the case of investment companies, the auditors are required to discuss these matters with the audit committee annually, with an update, if necessary.

[311] In the case of investment companies, the investors will receive this information for the investment company registrant and separately, for all other entities in the investment company complex where the services were subject to pre-approval by the investment company's audit committee.

the percentage of fees in each category where the audit committee used the *de minimis* exception to the pre-approval requirements. Finally, the rules extend the disclosure requirements to all entities filing Forms 10–K, 10–KSB, 20–F, 40–F and N–CSR.[312]

The rules require all entities filing Forms 10–K, 10–KSB, 20–F, 40–F and N–CSR to include the disclosure either in the proxy or information statement or, if the company is does not issue a proxy or information statement, in Forms 10–K, 10–KSB, 20–F, 40–F or Form N–CSR. The rules, therefore, may require smaller entities to spend additional time and incur additional costs in preparing disclosures. Smaller entities also may incur costs to set up procedures to monitor the activities of the audit committee in order to collect and record the information to be disclosed under the rules.

F. Agency Action To Minimize Effect on Small Entities and Significant Alternatives

The Regulatory Flexibility Act directs us to consider significant alternatives that would accomplish the stated objective, while minimizing any significant adverse impact on small entities. In connection with the amendments, we considered the following alternatives:

- The establishment of differing compliance or reporting requirements or timetables that take into account the resources of smaller entities;
- The clarification, consolidation, or simplification of compliance and reporting requirements under the rule for smaller entities;
- The use of performance rather than design standards; and
- An exemption from coverage of the proposed amendments, or any part thereof, for smaller entities.

We believe investors in both smaller companies and larger companies want and benefit from the revisions to the auditor independence rules, enhanced communications between the auditor and the audit committee, and enhanced disclosures required by the rule.

We, nevertheless, have determined that the two specific exemptions from the final rules for smaller accounting firms that are described above are appropriate and consistent with the Sarbanes-Oxley Act.

VII. Codification Update

The Commission is amending the "Codification of Financial Reporting Policies" announced in Financial Reporting Release No. 1 (April 15, 1982):

By amending Section 602 to add a new discussion at the end of that section under the Financial Reporting Release Number (FR–68) assigned to the adopting release and including the text in the adopting release that discusses the final rules would be as presented in Section II of this release.

The Codification is a separate publication of the Commission. It will not be published in the Code of Federal Regulations.

VIII. Statutory Bases and Text of Amendments

We are adopting amendments to Rules 2–01 and 2–07 of Regulation S–X, Item 9 of Schedule 14A, Forms 10–K, 10–KSB, 20–F and 40–F, Form N–CSR and Exchange Act Rule 10A–2 under the authority set forth in Schedule A and Sections 7, 8, 10, 19 and 28 of the Securities Act, Sections 3, 10A, 12, 13, 14, 17, 23 and 36 of the Exchange Act, Sections 5, 10, 14 and 20 of the Public Utility Holding Company Act of 1935, Sections 8, 30, 31 and 38 of the Investment Company Act of 1940, Sections 203 and 211 of the Investment Advisers Act of 1940, and Sections 3(a) and 208 of the Sarbanes-Oxley Act.

Text of Amendments

List of Subjects

17 CFR Part 210

Accountants, Accounting.

17 CFR Part 240

Broker-dealers, Issuers, Securities.

17 CFR Part 249

Reporting and recordkeeping requirements, Securities.

17 CFR Part 274

Investment companies, Reporting and recordkeeping requirements, Securities.

In accordance with the foregoing, Title 17, Chapter II of the Code of Federal Regulations is amended as follows:

PART 210—FORM AND CONTENT OF AND REQUIREMENTS FOR FINANCIAL STATEMENTS, SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934, PUBLIC UTILITY HOLDING COMPANY ACT OF 1935, INVESTMENT COMPANY ACT OF 1940, INVESTMENT ADVISERS ACT OF 1940 AND ENERGY POLICY AND CONSERVATION ACT OF 1975

1. The authority citation for Part 210 continues to read as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 77z–2, 77z–3, 77aa(25), 77aa(26), 78c, 78j–1, 78*l*, 78m, 78n, 78o(d), 78q, 78u–5, 78w(a), 78*ll*, 78mm, 79e(b), 79j(a), 79n, 79t(a), 80a–8, 80a–20, 80a–29, 80a–30, 80a–37(a), 80b–3, 80b–11 unless otherwise noted.

2. Section 210.2–01 is amended by:
a. Revising paragraph (c)(2)(iii);
b. Revising paragraph (c)(4);
c. Adding paragraph (c)(6);
d. Adding paragraph (c)(7);
e. Adding paragraph (c)(8);
f. Revising paragraph (e)(1);
g. Removing paragraph (e)(2);
h. Redesignating paragraph (e)(3) as (e)(2);
i. Revising paragraph (f)(1);
j. Revising paragraph (f)(3);
k. Revising paragraph (f)(7); and
l. Adding paragraph (f)(17).

The revisions and additions read as follows:

§ 210.2–01 Qualifications of accountants.

* * * * * *

(c) * * *

(2) *Employment relationships.* * * *

(i) * * *

(ii) * * *

(iii) *Employment at audit client of former employee of accounting firm.*

(A) A former partner, principal, shareholder, or professional employee of an accounting firm is in an accounting role or financial reporting oversight role at an audit client, unless the individual:

(*1*) Does not influence the accounting firm's operations or financial policies;

(*2*) Has no capital balances in the accounting firm; and

(*3*) Has no financial arrangement with the accounting firm other than one providing for regular payment of a fixed dollar amount (which is not dependent on the revenues, profits, or earnings of the accounting firm):

(*i*) Pursuant to a fully funded retirement plan, rabbi trust, or, in jurisdictions in which a rabbi trust does not exist, a similar vehicle; or

(*ii*) In the case of a former professional employee who was not a partner, principal, or shareholder of the accounting firm and who has been disassociated from the accounting firm

[312] Form 10–K is the annual report that registrants file with the Commission pursuant to Section 13 or 15(d) of the Exchange Act, if no other annual reporting form has been prescribed. Small business issuers may use abbreviated Form 10–KSB. A "small business issuer" is an entity that (1) has revenues of less than $25,000,000, (2) is a U.S. or Canadian issuer, (3) is not an investment company, and (4) if a majority owned subsidiary, the parent corporation also is a small business issuer. An entity is not a "small business issuer," however, if the aggregate market value of its outstanding voting and non-voting common stock held by non-affiliates is $25,000,000 or more. See 17 CFR 240.12b–2. Registered management investment companies use Form N–CSR to file certified shareholder reports with the Commission.

for more than five years, that is immaterial to the former professional employee; and

(B) A former partner, principal, shareholder, or professional employee of an accounting firm is in a financial reporting oversight role at an issuer (as defined in section 10A(f) of the Securities Exchange Act of 1934 (15 U.S.C. 78j–1(f)), except an issuer that is an investment company registered under section 8 of the Investment Company Act of 1940 (15 U.S.C. 80a–8), unless the individual:

(1) Employed by the issuer was not a member of the audit engagement team of the issuer during the one year period preceding the date that audit procedures commenced for the fiscal period that included the date of initial employment of the audit engagement team member by the issuer;

(2) For purposes of paragraph (c)(2)(iii)(B)(*1*) of this section, the following individuals are not considered to be members of the audit engagement team:

(i) Persons, other than the lead partner and the concurring partner, who provided ten or fewer hours of audit, review, or attest services during the period covered by paragraph (c)(2)(iii)(B)(*1*) of this section;

(ii) Individuals employed by the issuer as a result of a business combination between an issuer that is an audit client and the employing entity, provided employment was not in contemplation of the business combination and the audit committee of the successor issuer is aware of the prior employment relationship; and

(iii) Individuals that are employed by the issuer due to an emergency or other unusual situation provided that the audit committee determines that the relationship is in the interest of investors;

(3) For purposes of paragraph (c)(2)(iii)(B)(*1*) of this section, audit procedures are deemed to have commenced for a fiscal period the day following the filing of the issuer's periodic annual report with the Commission covering the previous fiscal period; or

(C) A former partner, principal, shareholder, or professional employee of an accounting firm is in a financial reporting oversight role with respect to an investment company registered under section 8 of the Investment Company Act of 1940 (15 U.S.C. 80a–8), if:

(*1*) The former partner, principal, shareholder, or professional employee of an accounting firm is employed in a financial reporting oversight role related to the operations and financial reporting of the registered investment company at an entity in the investment company complex, as defined in (f)(14) of this section, that includes the registered investment company; and

(*2*) The former partner, principal, shareholder, or professional employee of an accounting firm employed by the registered investment company or any entity in the investment company complex was a member of the audit engagement team of the registered investment company or any other registered investment company in the investment company complex during the one year period preceding the date that audit procedures commenced that included the date of initial employment of the audit engagement team member by the registered investment company or any entity in the investment company complex.

(*3*) For purposes of paragraph (c)(2)(iii)(C)(*2*) of this section, the following individuals are not considered to be members of the audit engagement team:

(*i*) Persons, other than the lead partner and concurring partner, who provided ten or fewer hours of audit, review or attest services during the period covered by paragraph (c)(2)(iii)(C)(*2*) of this section;

(*ii*) Individuals employed by the registered investment company or any entity in the investment company complex as a result of a business combination between a registered investment company or any entity in the investment company complex that is an audit client and the employing entity, provided employment was not in contemplation of the business combination and the audit committee of the registered investment company is aware of the prior employment relationship; and

(*iii*) Individuals that are employed by the registered investment company or any entity in the investment company complex due to an emergency or other unusual situation provided that the audit committee determines that the relationship is in the interest of investors.

(*4*) For purposes of paragraph (c)(2)(iii)(C)(*2*) of this section, audit procedures are deemed to have commenced the day following the filing of the registered investment company's periodic annual report with the Commission.

* * * * *

(4) *Non-audit services.* An accountant is not independent if, at any point during the audit and professional engagement period, the accountant provides the following non-audit services to an audit client:

(i) *Bookkeeping or other services related to the accounting records or financial statements of the audit client.* Any service, unless it is reasonable to conclude that the results of these services will not be subject to audit procedures during an audit of the audit client's financial statements, including:

(A) Maintaining or preparing the audit client's accounting records;

(B) Preparing the audit client's financial statements that are filed with the Commission or that form the basis of financial statements filed with the Commission; or

(C) Preparing or originating source data underlying the audit client's financial statements.

(ii) *Financial information systems design and implementation.* Any service, unless it is reasonable to conclude that the results of these services will not be subject to audit procedures during an audit of the audit client's financial statements, including:

(A) Directly or indirectly operating, or supervising the operation of, the audit client's information system or managing the audit client's local area network; or

(B) Designing or implementing a hardware or software system that aggregates source data underlying the financial statements or generates information that is significant to the audit client's financial statements or other financial information systems taken as a whole.

(iii) *Appraisal or valuation services, fairness opinions, or contribution-in-kind reports.* Any appraisal service, valuation service, or any service involving a fairness opinion or contribution-in-kind report for an audit client, unless it is reasonable to conclude that the results of these services will not be subject to audit procedures during an audit of the audit client's financial statements.

(iv) *Actuarial services.* Any actuarially-oriented advisory service involving the determination of amounts recorded in the financial statements and related accounts for the audit client other than assisting a client in understanding the methods, models, assumptions, and inputs used in computing an amount, unless it is reasonable to conclude that the results of these services will not be subject to audit procedures during an audit of the audit client's financial statements.

(v) *Internal audit outsourcing services.* Any internal audit service that has been outsourced by the audit client that relates to the audit client's internal accounting controls, financial systems, or financial statements, for an audit client unless it is reasonable to conclude that the results of these services will not

be subject to audit procedures during an audit of the audit client's financial statements.

(vi) *Management functions.* Acting, temporarily or permanently, as a director, officer, or employee of an audit client, or performing any decision-making, supervisory, or ongoing monitoring function for the audit client.

(vii) *Human resources.* (A) Searching for or seeking out prospective candidates for managerial, executive, or director positions;

(B) Engaging in psychological testing, or other formal testing or evaluation programs;

(C) Undertaking reference checks of prospective candidates for an executive or director position;

(D) Acting as a negotiator on the audit client's behalf, such as determining position, status or title, compensation, fringe benefits, or other conditions of employment; or

(E) Recommending, or advising the audit client to hire, a specific candidate for a specific job (except that an accounting firm may, upon request by the audit client, interview candidates and advise the audit client on the candidate's competence for financial accounting, administrative, or control positions).

(viii) *Broker-dealer, investment adviser, or investment banking services.* Acting as a broker-dealer (registered or unregistered), promoter, or underwriter, on behalf of an audit client, making investment decisions on behalf of the audit client or otherwise having discretionary authority over an audit client's investments, executing a transaction to buy or sell an audit client's investment, or having custody of assets of the audit client, such as taking temporary possession of securities purchased by the audit client.

(ix) *Legal services.* Providing any service to an audit client that, under circumstances in which the service is provided, could be provided only by someone licensed, admitted, or otherwise qualified to practice law in the jurisdiction in which the service is provided.

(x) *Expert services unrelated to the audit.* Providing an expert opinion or other expert service for an audit client, or an audit client's legal representative, for the purpose of advocating an audit client's interests in litigation or in a regulatory or administrative proceeding or investigation. In any litigation or regulatory or administrative proceeding or investigation, an accountant's independence shall not be deemed to be impaired if the accountant provides factual accounts, including in testimony, of work performed or explains the positions taken or conclusions reached during the performance of any service provided by the accountant for the audit client.

* * * * *

(6) *Partner rotation.* (i) Except as provided in paragraph (c)(6)(ii) of this section, an accountant is not independent of an audit client when:

(A) Any audit partner as defined in paragraph (f)(7)(ii) of this section performs:

(*1*) The services of a lead partner, as defined in paragraph (f)(7)(ii)(A) of this section, or concurring partner, as defined in paragraph (f)(7)(ii)(B) of this section, for more than five consecutive years; or

(*2*) One or more of the services defined in paragraphs (f)(7)(ii)(C) and (D) of this section for more than seven consecutive years;

(B) Any audit partner:

(*1*) Within the five consecutive year period following the performance of services for the maximum period permitted under paragraph (c)(6)(i)(A)(*1*) of this section, performs for that audit client the services of a lead partner, as defined in paragraph (f)(7)(ii)(A) of this section, or concurring partner, as defined in paragraph (f)(7)(ii)(B) of this section, or a combination of those services, or

(*2*) Within the two consecutive year period following the performance of services for the maximum period permitted under paragraph (c)(6)(i)(A)(*2*) of this section, performs one or more of the services defined in paragraph (f)(7)(ii) of this section.

(ii) Any accounting firm with less than five audit clients that are issuers (as defined in section 10A(f) of the Securities Exchange Act of 1934 (15 U.S.C. 78j–1(f))) and less than ten partners shall be exempt from paragraph (c)(6)(i) of this section *provided* the Public Company Accounting Oversight Board conducts a review at least once every three years of each of the audit client engagements that would result in a lack of auditor independence under this paragraph.

(iii) For purposes of paragraph (c)(6)(i) of this section, an audit client that is an investment company registered under section 8 of the Investment Company Act of 1940 (15 U.S.C. 80a–8), does not include an affiliate of the audit client that is an entity in the same investment company complex, as defined in paragraph (f)(14) of this section, except for another registered investment company in the same investment company complex. For purposes of calculating consecutive years of service under paragraph (c)(6)(i) of this section with respect to investment companies in an investment company complex, audits of registered investment companies with different fiscal year-ends that are performed in a continuous 12-month period count as a single consecutive year.

(7) *Audit committee administration of the engagement.* An accountant is not independent of an issuer (as defined in section 10A(f) of the Securities Exchange Act of 1934 (15 U.S.C. 78j–1(f))), other than an issuer that is an Asset-Backed Issuer as defined in § 240.13a–14(g) and § 240.15d–14(g) of this chapter, or an investment company registered under section 8 of the Investment Company Act of 1940 (15 U.S.C. 80a–8), other than a unit investment trust as defined by section 4(2) of the Investment Company Act of 1940 (15 U.S.C. 80a–4(2)), unless:

(i) In accordance with Section 10A(i) of the Securities Exchange Act of 1934 (15 U.S.C. 78j–1(i)) either:

(A) Before the accountant is engaged by the issuer or its subsidiaries, or the registered investment company or its subsidiaries, to render audit or non-audit services, the engagement is approved by the issuer's or registered investment company's audit committee; or

(B) The engagement to render the service is entered into pursuant to pre-approval policies and procedures established by the audit committee of the issuer or registered investment company, *provided* the policies and procedures are detailed as to the particular service and the audit committee is informed of each service and such policies and procedures do not include delegation of the audit committees responsibilities under the Securities Exchange Act of 1934 to management; or

(C) With respect to the provision of services other than audit, review or attest services the pre-approval requirement is waived if:

(*1*) The aggregate amount of all such services provided constitutes no more than five percent of the total amount of revenues paid by the audit client to its accountant during the fiscal year in which the services are provided;

(*2*) Such services were not recognized by the issuer or registered investment company at the time of the engagement to be non-audit services; and

(*3*) Such services are promptly brought to the attention of the audit committee of the issuer or registered investment company and approved prior to the completion of the audit by the audit committee or by one or more members of the audit committee who are members of the board of directors to

whom authority to grant such approvals has been delegated by the audit committee.

(ii) A registered investment company's audit committee also must pre-approve its accountant's engagements for non-audit services with the registered investment company's investment adviser (not including a sub-adviser whose role is primarily portfolio management and is sub-contracted or overseen by another investment adviser) and any entity controlling, controlled by, or under common control with the investment adviser that provides ongoing services to the registered investment company in accordance with paragraph (c)(7)(i) of this section, if the engagement relates directly to the operations and financial reporting of the registered investment company, except that with respect to the waiver of the pre-approval requirement under paragraph (c)(7)(i)(C) of this section, the aggregate amount of all services provided constitutes no more than five percent of the total amount of revenues paid to the registered investment company's accountant by the registered investment company, its investment adviser and any entity controlling, controlled by, or under common control with the investment adviser that provides ongoing services to the registered investment company during the fiscal year in which the services are provided that would have to be pre-approved by the registered investment company's audit committee pursuant to this section.

(8) *Compensation.* An accountant is not independent of an audit client if, at any point during the audit and professional engagement period, any audit partner earns or receives compensation based on the audit partner procuring engagements with that audit client to provide any products or services other than audit, review or attest services. Any accounting firm with fewer than ten partners and fewer than five audit clients that are issuers (as defined in section 10A(f) of the Securities Exchange Act of 1934 (15 U.S.C. 78j–1(f))) shall be exempt from the requirement stated in the previous sentence.

* * * * *

(e)(1) *Transition and grandfathering.* Provided the following relationships did not impair the accountant's independence under pre-existing requirements of the Commission, the Independence Standards, Board, or the accounting profession in the United States, the existence of the relationship on May 6, 2003 will not be deemed to impair an accountant's independence:

(i) Employment relationships that commenced at the issuer prior to May 6, 2003 as described in paragraph (c)(2)(iii)(B) of this section.

(ii) Compensation earned or received, as described in paragraph (c)(8) of this section during the fiscal year of the accounting firm that includes the effective date of this section.

(iii) Until May 6, 2004, the provision of services described in paragraph (c)(4) of this section provided those services are pursuant to contracts in existence on May 6, 2003.

(iv) The provision of services by the accountant under contracts in existence on May 6, 2003 that have not been pre-approved by the audit committee as described in paragraph (c)(7) of this section.

(v) Until the first day of the issuer's fiscal year beginning after May 6, 2003 by a "lead" partner and other audit partner (other than the "concurring" partner) providing services in excess of those permitted under paragraph (c)(6) of this section. An accountant's independence will not be deemed to be impaired until the first day of the issuer's fiscal year beginning after May 6, 2004 by a "concurring" partner providing services in excess of those permitted under paragraph (c)(6) of this section. For the purposes of calculating periods of service under paragraph (c)(6) of this section:

(A) For the "lead" and "concurring" partner, the period of service includes time served as the "lead" or "concurring" partner prior to May 6, 2003; and

(B) For audit partners other than the "lead" partner or "concurring" partner, and for audit partners in foreign firms, the period of service does not include time served on the audit engagement team prior to the first day of issuer's fiscal year beginning on or after May 6, 2003.

* * * * *

(f) * * *

(1) *Accountant,* as used in paragraphs (b) through (e) of this section, means a registered public accounting firm, certified public accountant or public accountant performing services in connection with an engagement for which independence is required. References to the accountant include any accounting firm with which the certified public accountant or public accountant is affiliated.

* * * * *

(3)(i) *Accounting role* means a role in which a person is in a position to or does exercise more than minimal influence over the contents of the accounting records or anyone who prepares them.

(ii) *Financial reporting oversight role* means a role in which a person is in a position to or does exercise influence over the contents of the financial statements or anyone who prepares them, such as when the person is a member of the board of directors or similar management or governing body, chief executive officer, president, chief financial officer, chief operating officer, general counsel, chief accounting officer, controller, director of internal audit, director of financial reporting, treasurer, or any equivalent position.

* * * * *

(7)(i) *Audit engagement team* means all partners, principals, shareholders and professional employees participating in an audit, review, or attestation engagement of an audit client, including audit partners and all persons who consult with others on the audit engagement team during the audit, review, or attestation engagement regarding technical or industry-specific issues, transactions, or events.

(ii) *Audit partner* means a partner or persons in an equivalent position, other than a partner who consults with others on the audit engagement team during the audit, review, or attestation engagement regarding technical or industry-specific issues, transactions, or events, who is a member of the audit engagement team who has responsibility for decision-making on significant auditing, accounting, and reporting matters that affect the financial statements, or who maintains regular contact with management and the audit committee and includes the following:

(A) The lead or coordinating audit partner having primary responsibility for the audit or review (the "lead partner");

(B) The partner performing a second level of review to provide additional assurance that the financial statements subject to the audit or review are in conformity with generally accepted accounting principles and the audit or review and any associated report are in accordance with generally accepted auditing standards and rules promulgated by the Commission or the Public Company Accounting Oversight Board (the "concurring or reviewing partner");

(C) Other audit engagement team partners who provide more than ten hours of audit, review, or attest services in connection with the annual or interim consolidated financial statements of the issuer or an investment company registered under section 8 of the Investment Company Act of 1940 (15 U.S.C. 80a–8); and

(D) Other audit engagement team partners who serve as the "lead partner"

in connection with any audit or review related to the annual or interim financial statements of a subsidiary of the issuer whose assets or revenues constitute 20% or more of the assets or revenues of the issuer's respective consolidated assets or revenues.

* * * * *

(17) *Audit committee* means a committee (or equivalent body) as defined in section 3(a)(58) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(58)).

3. By adding § 210.2–07 preceding General Instructions as to Financial Statements to read as follows:

§ 210.2–07 Communication with audit committees.

(a) Each registered public accounting firm that performs for an audit client that is an issuer (as defined in section 10A(f) of the Securities Exchange Act of 1934 (15 U.S.C. 78j–1(f))), other than an issuer that is an Asset-Backed Issuer as defined in § 240.13a–14(g) and § 240.15d–14(g) of this chapter, or an investment company registered under section 8 of the Investment Company Act of 1940 (15 U.S.C. 80a–8), other than a unit investment trust as defined by section 4(2) of the Investment Company Act of 1940 (15 U.S.C. 80a–4(2)), any audit required under the securities laws shall report, prior to the filing of such audit report with the Commission (or in the case of a registered investment company, annually, and if the annual communication is not within 90 days prior to the filing, provide an update, in the 90 day period prior to the filing, of any changes to the previously reported information), to the audit committee of the issuer or registered investment company:

(1) All critical accounting policies and practices to be used;

(2) All alternative treatments within Generally Accepted Accounting Principles for policies and practices related to material items that have been discussed with management of the issuer or registered investment company, including:

(i) Ramifications of the use of such alternative disclosures and treatments; and

(ii) The treatment preferred by the registered public accounting firm;

(3) Other material written communications between the registered public accounting firm and the management of the issuer or registered investment company, such as any management letter or schedule of unadjusted differences;

(4) If the audit client is an investment company, all non-audit services provided to any entity in an investment company complex, as defined in §210.2–01 (f)(14), that were not pre-approved by the registered investment company's audit committee pursuant to §210.2–01 (c)(7).

(b) [Reserved]

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

4. The authority citation for Part 240 continues to read, in part, as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77z–3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78e, 78f, 78g, 78i, 78j, 78j–1, 78k, 78k–1, 78*l*, 78m, 78n, 78o, 78p, 78q, 78s, 78u–5, 78w, 78x, 78*ll*, 78mm, 79q, 79t, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4 and 80b–11, unless otherwise noted.

* * * * *

5. Section 240.10A–2 is added to read as follows:

§ 240.10A–2 Auditor independence.

It shall be unlawful for an auditor not to be independent under § 210.2–01(c)(2)(iii)(B), (c)(4), (c)(6), (c)(7), and § 210.2–07.

6. Section 240.14a–101 is amended by revising paragraph (e) of Item 9 to read as follows:

§ 240.14a–101 Schedule 14A. Information required in proxy statement.

* * * * *

Item 9. *Independent public accountants.* * * *

* * * * *

(e)(1) Disclose, under the caption *Audit Fees*, the aggregate fees billed for each of the last two fiscal years for professional services rendered by the principal accountant for the audit of the registrant's annual financial statements and review of financial statements included in the registrant's Form 10–Q (17 CFR 249.308a) or 10–QSB (17 CFR 249.308b) or services that are normally provided by the accountant in connection with statutory and regulatory filings or engagements for those fiscal years.

(2) Disclose, under the caption *Audit-Related Fees*, the aggregate fees billed in each of the last two fiscal years for assurance and related services by the principal accountant that are reasonably related to the performance of the audit or review of the registrant's financial statements and are not reported under paragraph (e)(1) of this section. Registrants shall describe the nature of the services comprising the fees disclosed under this category.

(3) Disclose, under the caption *Tax Fees*, the aggregate fees billed in each of the last two fiscal years for professional services rendered by the principal accountant for tax compliance, tax advice, and tax planning. Registrants shall describe the nature of the services comprising the fees disclosed under this category.

(4) Disclose, under the caption *All Other Fees*, the aggregate fees billed in each of the last two fiscal years for products and services provided by the principal accountant, other than the services reported in paragraphs (e)(1) through (e)(3) of this section. Registrants shall describe the nature of the services comprising the fees disclosed under this category.

(5)(i) Disclose the audit committee's pre-approval policies and procedures described in 17 CFR 210.2–01(c)(7)(i).

(ii) Disclose the percentage of services described in each of paragraphs (e)(2) through (e)(4) of this section that were approved by the audit committee pursuant to 17 CFR 210.2–01(c)(7)(i)(C).

(6) If greater than 50 percent, disclose the percentage of hours expended on the principal accountant's engagement to audit the registrant's financial statements for the most recent fiscal year that were attributed to work performed by persons other than the principal accountant's full-time, permanent employees.

(7) If the registrant is an investment company, disclose the aggregate non-audit fees billed by the registrant's accountant for services rendered to the registrant, and to the registrant's investment adviser (not including any subadviser whose role is primarily portfolio management and is subcontracted with or overseen by another investment adviser), and any entity controlling, controlled by, or under common control with the adviser that provides ongoing services to the registrant for each of the last two fiscal years of the registrant.

(8) If the registrant is an investment company, disclose whether the audit committee of the board of directors has considered whether the provision of non-audit services that were rendered to the registrant's investment adviser (not including any subadviser whose role is primarily portfolio management and is subcontracted with or overseen by another investment adviser), and any entity controlling, controlled by, or under common control with the investment adviser that provides ongoing services to the registrant that were not pre-approved pursuant to 17 CFR 210.2–01(c)(7)(ii) is compatible with maintaining the principal accountant's independence.

Instruction to Item 9(e).

For purposes of Item 9(e)(2), (3), and (4), registrants that are investment

companies must disclose fees billed for services rendered to the registrant and separately, disclose fees required to be approved by the investment company registrant's audit committee pursuant to 17 CFR 210.2–01(c)(7)(ii). Registered investment companies must also disclose the fee percentages as required by item 9(e)(5)(ii) for the registrant and separately, disclose the fee percentages as required by item 9(e)(5)(ii) for the fees required to be approved by the investment company registrant's audit committee pursuant to 17 CFR 210.2–01(c)(7)(ii).

* * * * *

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

7. The authority citation for Part 249 is amended by revising the sectional authority for §§ 249.220f, 249.240f, 249.310, 249.310b and 249.331 to read as follows:

Authority: 15 U.S.C. 78a *et seq.*, unless otherwise noted.

Section 249.220f is also issued under secs. 3(a), 202, 208, 302, 306(a), 401(a), 401(b), 406 and 407, Pub. L. No. 107–204, 116 Stat. 745.

Section 249.240f is also issued under secs. 3(a), 202, 208, 302, 306(a), 401(a), 406 and 407, Pub. L. No. 107–204, 116 Stat. 745.

* * * * *

Section 249.310 is also issued under secs. 3(a), 202, 208, 302, 406 and 407, Pub. L. No. 107–204, 116 Stat. 745.

Section 249.310b is also issued under secs. 3(a), 202, 208, 302, 406 and 407, Pub. L. No. 107–204, 116 Stat. 745.

* * * * *

Section 249.331 is also issued under secs. 3(a), 202, 208, 302, 406 and 407, Pub. L. No. 107–204, 116 Stat. 745.

8. Amend Form 20–F (referenced in § 249.220f) by adding Item 16C to read as follows:

Note: The text of Form 20–F does not, and this amendment will not, appear in the Code of Federal Regulations.

Form 20–F

* * * * *

Item 16C. Principal Accountant Fees and Services.

(a) Disclose, under the caption *Audit Fees*, the aggregate fees billed for each of the last two fiscal years for professional services rendered by the principal accountant for the audit of the registrant's annual financial statements or services that are normally provided by the accountant in connection with statutory and regulatory filings or engagements for those fiscal years.

(b) Disclose, under the caption *Audit-Related Fees*, the aggregate fees billed in each of the last two fiscal years for assurance and related services by the principal accountant that are reasonably related to the performance of the audit or review of the registrant's financial statements and are not reported under paragraph (a) of this Item. Registrants shall describe the nature of the services comprising the fees disclosed under this category.

(c) Disclose, under the caption *Tax Fees*, the aggregate fees billed in each of the last two fiscal years for professional services rendered by the principal accountant for tax compliance, tax advice, and tax planning. Registrants shall describe the nature of the services comprising the fees disclosed under this category.

(d) Disclose, under the caption *All Other Fees*, the aggregate fees billed in each of the last two fiscal years for products and services provided by the principal accountant, other than the services reported in paragraphs (a) through (c) of this Item. Registrants shall describe the nature of the services comprising the fees disclosed under this category.

(e)(1) Disclose the audit committee's pre-approval policies and procedures described in paragraph (c)(7)(i) of Rule 2–01 of Regulation S–X.

(2) Disclose the percentage of services described in each of paragraphs (b) through (d) of this Item that were approved by the audit committee pursuant to paragraph (c)(7)(i)(C) of Rule 2–01 of Regulation S–X.

(f) If greater than 50 percent, disclose the percentage of hours expended on the principal accountant's engagement to audit the registrant's financial statements for the most recent fiscal year that were attributed to work performed by persons other than the principal accountant's full-time, permanent employees.

Instructions to Item 16C.

1. You do not need to provide the information called for by this Item 16C unless you are using this form as an annual report.

2. A registrant that is an Asset-Backed Issuer (as defined in § 240.13a–14(g) and § 240.15d–14(g) of this chapter) is not required to disclose the information required by this Item.

* * * * *

9. Amend Form 40–F (referenced in § 249.240f) by adding paragraph (10) to General Instruction B to read as follows:

Note: The text of Form 40–F does not, and this amendment will not, appear in the Code of Federal Regulations.

Form 40–F

* * * * *

General Instructions

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B. Information To Be Filed on This Form

* * * * * *

(10) Principal Accountant Fees and Services

(1) Disclose, under the caption *Audit Fees*, the aggregate fees billed for each of the last two fiscal years for professional services rendered by the principal accountant for the audit of the registrant's annual financial statements or services that are normally provided by the accountant in connection with statutory and regulatory filings or engagements for those fiscal years.

(2) Disclose, under the caption *Audit-Related Fees*, the aggregate fees billed in each of the last two fiscal years for assurance and related services by the principal accountant that are reasonably related to the performance of the audit or review of the registrant's financial statements and are not reported under paragraph B.(10)(1) of this Instruction. Registrants shall describe the nature of the services comprising the fees disclosed under this category.

(3) Disclose, under the caption *Tax Fees*, the aggregate fees billed in each of the last two fiscal years for professional services rendered by the principal accountant for tax compliance, tax advice, and tax planning. Registrants shall describe the nature of the services comprising the fees disclosed under this category.

(4) Disclose, under the caption *All Other Fees*, the aggregate fees billed in each of the last two fiscal years for products and services provided by the principal accountant, other than the services reported in paragraphs B.(10)(1) through B.(10)(3) of this Instruction. Registrants shall describe the nature of the services comprising the fees disclosed under this category.

(5)(i) Disclose the audit committee's pre-approval policies and procedures described in paragraph (c)(7)(i) of Rule 2–01 of Regulation S–X.

(ii) Disclose the percentage of services described in each of paragraphs B.(10)(2) through B.(10)(4) of this Instruction that were approved by the audit committee pursuant to paragraph (c)(7)(i)(C) of Rule 2–01 of Regulation S–X.

(6) If greater than 50 percent, disclose the percentage of hours expended on the principal accountant's engagement to audit the registrant's financial statements for the most recent fiscal year that were attributed to work performed by persons other than the principal accountant's full-time, permanent employees.

Notes to Instruction B.(10)

1. You do not need to provide the information called for by this Instruction B.(10) unless you are using this form as an annual report.

2. A registrant that is an Asset-Backed Issuer (as defined in § 240.13a–14(g) and § 240.15d–14(g) of this chapter) is not required to disclose the information required by this Instruction B.(10).

* * * * *

10. Amend Form 10–K (referenced in § 249.310) by:

a. Redesignating Item 16 of Part IV as Item 17 of Part IV, and

b. Adding new Item 16 to Part III.

The addition reads as follows:

Note: The text of Form 10–K does not, and this amendment will not, appear in the Code of Federal Regulations.

Form 10–K

* * * * *

General Instructions

* * * * *

Annual Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934

* * * * *

Part III

* * * * *

Item 16. Principal Accountant Fees and Services.

Furnish the information required by Item 9(e) of Schedule 14A (§ 240.14a–101 of this chapter).

(1) Disclose, under the caption *Audit Fees*, the aggregate fees billed for each of the last two fiscal years for professional services rendered by the principal accountant for the audit of the registrant's annual financial statements and review of financial statements included in the registrant's Form 10–Q (17 CFR 249.308a) or 10–QSB (17 CFR 249.308b) or services that are normally provided by the accountant in connection with statutory and regulatory filings or engagements for those fiscal years.

(2) Disclose, under the caption *Audit-Related Fees*, the aggregate fees billed in each of the last two fiscal years for assurance and related services by the principal accountant that are reasonably related to the performance of the audit or review of the registrant's financial statements and are not reported under Item 9(e)(1) of Schedule 14A. Registrants shall describe the nature of the services comprising the fees disclosed under this category.

(3) Disclose, under the caption *Tax Fees*, the aggregate fees billed in each of the last two fiscal years for professional services rendered by the principal accountant for tax compliance, tax advice, and tax planning. Registrants shall describe the nature of the services comprising the fees disclosed under this category.

(4) Disclose, under the caption *All Other Fees*, the aggregate fees billed in each of the last two fiscal years for products and services provided by the principal accountant, other than the services reported in Items 9(e)(1) through 9(e)(3) of Schedule 14A. Registrants shall describe the nature of the services comprising the fees disclosed under this category.

(5)(i) Disclose the audit committee's pre-approval policies and procedures described in paragraph (c)(7)(i) of Rule 2–01 of Regulation S–X.

(ii) Disclose the percentage of services described in each of Items 9(e)(2) through 9(e)(4) of Schedule 14A that were approved by the audit committee pursuant to paragraph (c)(7)(i)(C) of Rule 2–01 of Regulation S–X.

(6) If greater than 50 percent, disclose the percentage of hours expended on the principal accountant's engagement to audit the registrant's financial statements for the most recent fiscal year that were attributed to work performed by persons other than the principal accountant's full-time, permanent employees.

Instruction to Item 16.

A registrant that is an Asset-Backed Issuer (as defined in § 240.13a–14(g) and § 240.15d–14(g) of this chapter) is not required to disclose the information required by this Item.

* * * * *

11. Amend Form 10–KSB (referenced in § 249.310b) by adding Item 16 to Part III to read as follows:

Note: The text of Form 10–KSB does not, and this amendment will not, appear in the Code of Federal Regulations.

Form 10–KSB

* * * * *

Part III

* * * * *

Item 16. Principal Accountant Fees and Services.

Furnish the information required by Item 9(e) of Schedule 14A (§ 240.14a–101 of this chapter).

(1) Disclose, under the caption *Audit Fees*, the aggregate fees billed for each of the last two fiscal years for professional services rendered by the principal accountant for the audit of the registrant's annual financial statements and review of financial statements included in the registrant's Form 10–Q (17 CFR 249.308a) or 10–QSB (17 CFR 249.308b) or services that are normally provided by the accountant in connection with statutory and regulatory filings or engagements for those fiscal years.

(2) Disclose, under the caption *Audit-Related Fees*, the aggregate fees billed in each of the last two fiscal years for assurance and related services by the principal accountant that are reasonably related to the performance of the audit or review of the registrant's financial statements and are not reported under Item 9(e)(1) of Schedule 14A. Registrants shall describe the nature of the services comprising the fees disclosed under this category.

(3) Disclose, under the caption *Tax Fees*, the aggregate fees billed in each of the last two fiscal years for professional services rendered by the principal accountant for tax compliance, tax advice, and tax planning. Registrants shall describe the nature of the services comprising the fees disclosed under this category.

(4) Disclose, under the caption *All Other Fees*, the aggregate fees billed in each of the last two fiscal years for products and services provided by the principal accountant, other than the services reported in Items 9(e)(1) through 9(e)(3) of Schedule 14A. Registrants shall describe the nature of the services comprising the fees disclosed under this category.

(5)(i) Disclose the audit committee's pre-approval policies and procedures described in paragraph (c)(7)(i) of Rule 2–01 of Regulation S–X.

(ii) Disclose the percentage of services described in each of Items 9(e)(2) through 9(e)(4) of Schedule 14A that were approved by the audit committee pursuant to paragraph (c)(7)(i)(C) of Rule 2–01 of Regulation S–X.

(6) If greater than 50 percent, disclose the percentage of hours expended on the principal accountant's engagement to audit the registrant's financial statements for the most recent fiscal year that were attributed to work performed by persons other than the principal accountant's full-time, permanent employees.

Instruction to Item 16.

A registrant that is an Asset-Backed Issuer (as defined in § 240.13a–14(g) and § 240.15d–14(g) of this chapter) is not required to disclose the information required by this Item.

* * * * *

PART 274—FORMS PRESCRIBED UNDER THE INVESTMENT COMPANY ACT OF 1940

12. The authority citation for Part 274 is amended by adding the following citation in numerical order to read as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 78c(b), 78l, 78m, 78n, 78o(d), 80a–8, 80a–24, 80a–26, and 80a–29, unless otherwise noted.

* * * * *

Section 274.128 is also issued under secs. 3(a), 202, 302, 406, and 407, Pub. L. No. 107–204, 116 Stat. 745.

13. By amending Form N–CSR (referenced in §§ 249.331 and 274.128):

a. By revising General Instruction D; and

b. By adding Item 4.

The revision and addition read as follows:

Note: The text of Form N–CSR does not, and this amendment will not, appear in the Code of Federal Regulations.

Form N–CSR

* * * * *

General Instructions

* * * * *

D. Incorporation by Reference

A registrant may incorporate by reference information required by Items 4 and 10(a). No other Items of the Form shall be answered by incorporating any information by reference. The information required by Item 4 may be incorporated by reference from the registrant's definitive proxy statement (filed or required to be filed pursuant to Regulation 14A (17 CFR 240.14a–1 *et seq.*)) or definitive information statement (filed or to be filed pursuant to Regulation 14C (17 CFR 240.14c–1 *et seq.*)) which involves the election of directors, if such definitive proxy statement or information statement is filed with the Commission not later than 120 days after the end of the fiscal year covered by an annual report on this Form. All incorporation by reference must comply with the requirements of this Form and the following rules on incorporation by reference: Rule 10(d) of Regulation S–K under the Securities Act of 1933 (17 CFR 229.10(d)) (general rules on incorporation by reference, which, among other things, prohibit, unless specifically required by this Form, incorporating by reference a document that includes incorporation by reference to another document, and limits incorporation to documents filed within the last 5 years, with certain exceptions); Rule 303 of Regulation S–T (17 CFR 232.303) (specific requirements for electronically filed documents); Rules 12b–23 and 12b–32 under the Exchange Act (additional rules on incorporation by reference for reports filed pursuant to Sections 13 and 15(d) of the Exchange Act); and Rules 0–4, 8b–23, and 8b–32 under the Investment Company Act of 1940 (17 CFR 270.0–4, 270.8b–23, and 270.8b–32) (additional rules on incorporation by reference for investment companies).

* * * * *

Item 4. Principal Accountant Fees and Services.

(a) Disclose, under the caption *Audit Fees*, the aggregate fees billed for each of the last two fiscal years for professional services rendered by the principal accountant for the audit of the registrant's annual financial statements or services that are normally provided by the accountant in connection with statutory and regulatory filings or engagements for those fiscal years.

(b) Disclose, under the caption *Audit-Related Fees*, the aggregate fees billed in each of the last two fiscal years for assurance and related services by the principal accountant that are reasonably related to the performance of the audit of the registrant's financial statements and are not reported under paragraph (a) of this Item. Registrants shall describe the nature of the services comprising the fees disclosed under this category.

(c) Disclose, under the caption *Tax Fees*, the aggregate fees billed in each of the last two fiscal years for professional services rendered by the principal accountant for tax compliance, tax advice, and tax planning. Registrants shall describe the nature of the services comprising the fees disclosed under this category.

(d) Disclose, under the caption *All Other Fees*, the aggregate fees billed in each of the last two fiscal years for products and services provided by the principal accountant, other than the services reported in paragraphs (a) through (c) of this Item. Registrants shall describe the nature of the services comprising the fees disclosed under this category.

(e)(1) Disclose the audit committee's pre-approval policies and procedures described in paragraph (c)(7) of Rule 2–01 of Regulation S–X.

(2) Disclose the percentage of services described in each of paragraphs (b) through (d) of this Item that were approved by the audit committee pursuant to paragraph (c)(7)(i)(C) of Rule 2–01 of Regulation S–X.

(f) If greater than 50 percent, disclose the percentage of hours expended on the principal accountant's engagement to audit the registrant's financial statements for the most recent fiscal year that were attributed to work performed by persons other than the principal accountant's full-time, permanent employees.

(g) Disclose the aggregate non-audit fees billed by the registrant's accountant for services rendered to the registrant, and rendered to the registrant's investment adviser (not including any sub-adviser whose role is primarily portfolio management and is subcontracted with or overseen by another investment adviser), and any entity controlling, controlled by, or under common control with the adviser that provides ongoing services to the registrant for each of the last two fiscal years of the registrant.

(h) Disclose whether the registrant's audit committee of the board of directors has considered whether the provision of non-audit services that were rendered to the registrant's investment adviser (not including any sub-adviser whose role is primarily portfolio management and is subcontracted with or overseen by another investment adviser), and any entity controlling, controlled by, or under common control with the investment adviser that provides ongoing services to the registrant that were not pre-approved pursuant to paragraph (c)(7)(ii) of Rule 2–01 of Regulation S–X is compatible with maintaining the principal accountant's independence.

Instructions.

1. The information required by this Item 4 is only required in an annual report on this Form N–CSR.

2. For purposes of paragraphs (b), (c), and (d), registrants that are investment companies must disclose fees billed for services rendered to the registrant and separately, disclose fees required to be approved pursuant to paragraph (c)(7)(ii) of Rule 2–01 of Regulation S–X. Registered investment companies must also disclose the fee percentages as required by Item 4(e)(2) for the registrant and separately, disclose the fee percentages as required by Item 4(e)(2) for the fees required to be approved by the investment company registrant's audit committee pursuant to paragraph (c)(7)(ii) of Rule 2–01 of Regulation S–X.

* * * * *

By the Commission.

Dated: January 28, 2003.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 03–2364 Filed 2–4–03; 8:45 am]

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Federal Register

Wednesday,
February 5, 2003

Part IV

The President

Proclamation 7644—American Heart Month, 2003

Proclamation 7645—National African American History Month, 2003

Proclamation 7646—Honoring the Memory of the Astronauts Aboard Space Shuttle *Columbia*

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Federal Register
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Wednesday, February 5, 2003

Presidential Documents

Title 3—

The President

Proclamation 7644 of January 30, 2003

American Heart Month, 2003

By the President of the United States of America

A Proclamation

Advances in medical research have significantly improved our capacity to fight heart disease by providing greater knowledge about its causes, more innovative diagnostic tools to detect and counter it, and new and improved treatments that help people survive and recover from it. Despite these advances, heart disease continues to be America's number one killer. During American Heart Month, we renew our commitment to fighting cardiovascular disease by encouraging our citizens to learn more about its risk factors, its various warning signs, and life-saving emergency response techniques.

Heart attacks result when the blood supply to part of the heart muscle is severely reduced or stopped. Because many heart attack victims do not recognize the warning signs until it is too late, only one in five is able to reach a hospital quickly enough to benefit fully from treatments. To help Americans survive heart attacks, the National Heart, Lung, and Blood Institute (NHLBI), which is part of the National Institutes of Health, has joined with the American Heart Association (AHA) and other national organizations to create a major educational campaign, called "Act in Time to Heart Attack Signs." This campaign encourages Americans to learn the warning signs of a heart attack and to call 911 within minutes—five at most—of the start of symptoms. The campaign also offers educational materials for both the general public and healthcare professionals to encourage communication among doctors, other healthcare providers, and their patients about the importance of recognizing heart attack signs and getting treatment quickly.

Far too many Americans are also unaware of the dangers of cardiac arrest, in which the heart suddenly loses its ability to function. Most cases of cardiac arrest that result in sudden death occur when the diseased heart's electrical impulses become rapid and then chaotic. About 95 percent of sudden cardiac arrest victims die before reaching the hospital. However, if treated within a few minutes, cardiac arrest can be reversed through defibrillation, an electric shock that allows the heart to resume a normal beat.

Research has shown that early cardiopulmonary resuscitation (CPR) and rapid defibrillation, combined with early advanced care, can produce long-term survival rates of 40 percent where a cardiac arrest has been witnessed by a bystander. The AHA has developed a nationwide educational campaign called "Operation Heartbeat," to increase public awareness about cardiac arrest. "Operation Heartbeat" is educating the public about the warning signs of cardiac arrest, the importance of calling 911 immediately, and the benefits of administering CPR until defibrillation can be given.

When Americans take personal steps to improve their health, our whole society benefits. By developing good eating habits, being physically active, taking advantage of preventive screenings, and avoiding drugs, tobacco, and excessive use of alcohol, individuals and families can significantly reduce the onset and burden of heart disease. In promoting new education programs, supporting research, expanding access to life-saving tools, and encouraging our citizens to learn more about cardiovascular disease and lead healthy lifestyles, we can save lives.

In recognition of the important ongoing fight against cardiovascular disease, the Congress, by Joint Resolution approved December 30, 1963, as amended (77 Stat. 843; 36 U.S.C. 101), has requested that the President issue an annual proclamation designating February as "American Heart Month."

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, do hereby proclaim February 2003 as American Heart Month. I invite the Governors of the States, the Commonwealth of Puerto Rico, officials of other areas subject to the jurisdiction of the United States, and the American people to join me in reaffirming our commitment to combating cardiovascular disease.

IN WITNESS WHEREOF, I have hereunto set my hand this thirtieth day of January, in the year of our Lord two thousand three, and of the Independence of the United States of America the two hundred and twenty-seventh.

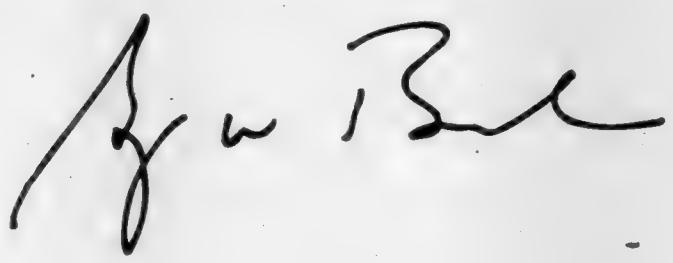

[FR Doc. 03–3047
Filed 2–4–03; 11:04 am]
Billing code 3195–01–P

Presidential Documents

Proclamation 7645 of January 31, 2003

National African American History Month, 2003

By the President of the United States of America

A Proclamation

African Americans have played central roles in some of the most triumphant and courageous moments in our Nation's history. During National African American History Month, we honor the rich heritage of African Americans and pay tribute to their many contributions to our Nation. As we celebrate this year's theme, "The Souls of Black Folk: Centennial Reflections," we remember the successes and challenges of our past. We also resolve to honor the achievements and legacy of these proud citizens by continuing to improve our society so that it fully lives up to our founding ideals.

In 1915, Dr. Carter Godwin Woodson recognized the need for our country to gain a more complete and informed understanding of our past. He founded the Association for the Study of Negro Life and History and established the first Negro History Week to emphasize that "We have a wonderful history behind us . . . " Through the pioneering efforts of Dr. Woodson and the hard work of the Association, this observance officially became Black History Month in 1976.

For generations, African Americans have strengthened our Nation by urging reforms, overcoming obstacles, and breaking down barriers. We see the greatness of America in those who have risen above injustice and enriched our society, a greatness reflected in the resolve of Jackie Robinson, the intellect of W.E.B. DuBois, and the talent of Louis Armstrong. We also gain a deeper appreciation for the African-American experience in the writings of James Baldwin, Ralph Ellison, and Zora Neal Hurston, as well as in the music of Mahalia Jackson, Billie Holiday, Duke Ellington, and countless others.

African Americans reflect a proud legacy of courage and dedication that has helped to guide our Nation's success and prosperity. Visionary leaders like Frederick Douglass, Thurgood Marshall, and Martin Luther King, Jr., possessed a clarity of purpose and were instrumental in exposing and addressing the issues that threatened our founding principles. The battle for freedom, equality, and opportunity was fought on the front lines by strong figures such as Harriet Tubman and Fannie Lou Hamer, as well as many other everyday heroes who helped to lead this Nation to a more hopeful and just society.

As we recall these remarkable individuals, we also recognize that, despite our progress, racial prejudice still exists in America. As a Nation and as individuals, we must be vigilant in responding to discrimination wherever we find it. By promoting diversity, understanding, and opportunity, we will continue our efforts to build a society where every person, of every race, can realize the promise of America.

This month, I encourage all citizens to gain awareness of and appreciation for African-American history. As we remember this important part of our Nation's past, we look to a bright future, recognizing the potential of an America united in purpose, guided by spirit, and dedicated to equality.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution

and laws of the United States, do hereby proclaim February 2003 as National African American History Month. I call upon public officials, educators, librarians, and all of the people of the United States to observe this month with appropriate programs and activities that highlight and honor the myriad of contributions that African Americans have made to our Nation.

IN WITNESS WHEREOF, I have hereunto set my hand this thirty-first day of January, in the year of our Lord two thousand three, and of the Independence of the United States of America the two hundred and twenty-seventh.

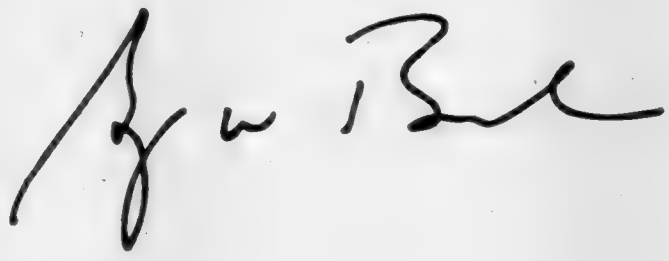

[FR Doc. 03–3007
Filed 2–4–03; 11:04 am]
Billing code 3195–01–P

Presidential Documents

Proclamation 7646 of February 1, 2003

Honoring the Memory of the Astronauts Aboard Space Shuttle *Columbia*

By the President of the United States of America

A Proclamation

As a mark of respect for Rick Douglas Husband, William C. McCool, Laurel Blair Salton Clark, Kalpana Chawla, Michael P. Anderson, David M. Brown, and Ilan Ramon who gave their lives during the mission of STS–107 aboard the Space Shuttle Columbia on February 1, 2003, I hereby order, by the authority vested in me as President of the United States of America by the Constitution and the laws of the United States of America, that the flag of the United States shall be flown at half-staff at the White House and upon all public buildings and grounds, at all military posts and naval stations, and on all naval vessels of the Federal Government in the District of Columbia and throughout the United States and its Territories and possessions through Wednesday, February 5, 2003. I also direct that the flag shall be flown at half-staff for the same length of time at all United States embassies, legations, consular offices, and other facilities abroad, including all military facilities and naval vessels and stations.

IN WITNESS WHEREOF, I have hereunto set my hand this first day of February, in the year of our Lord two thousand three, and of the Independence of the United States of America the two hundred and twenty-seventh.

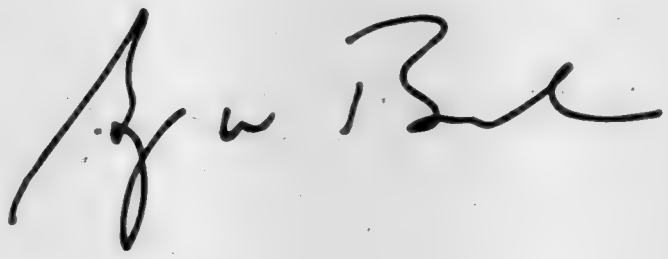

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H.J. Res. 13/P.L. 108–4
Making further continuing appropriations for the fiscal year 2003, and for other purposes. (Jan. 31, 2003; 117 Stat. 8)
Last List January 15, 2003

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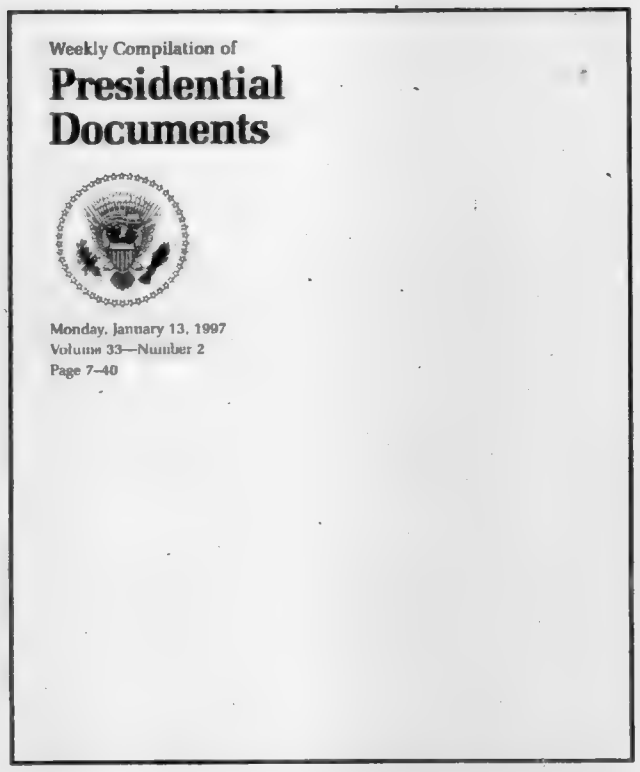

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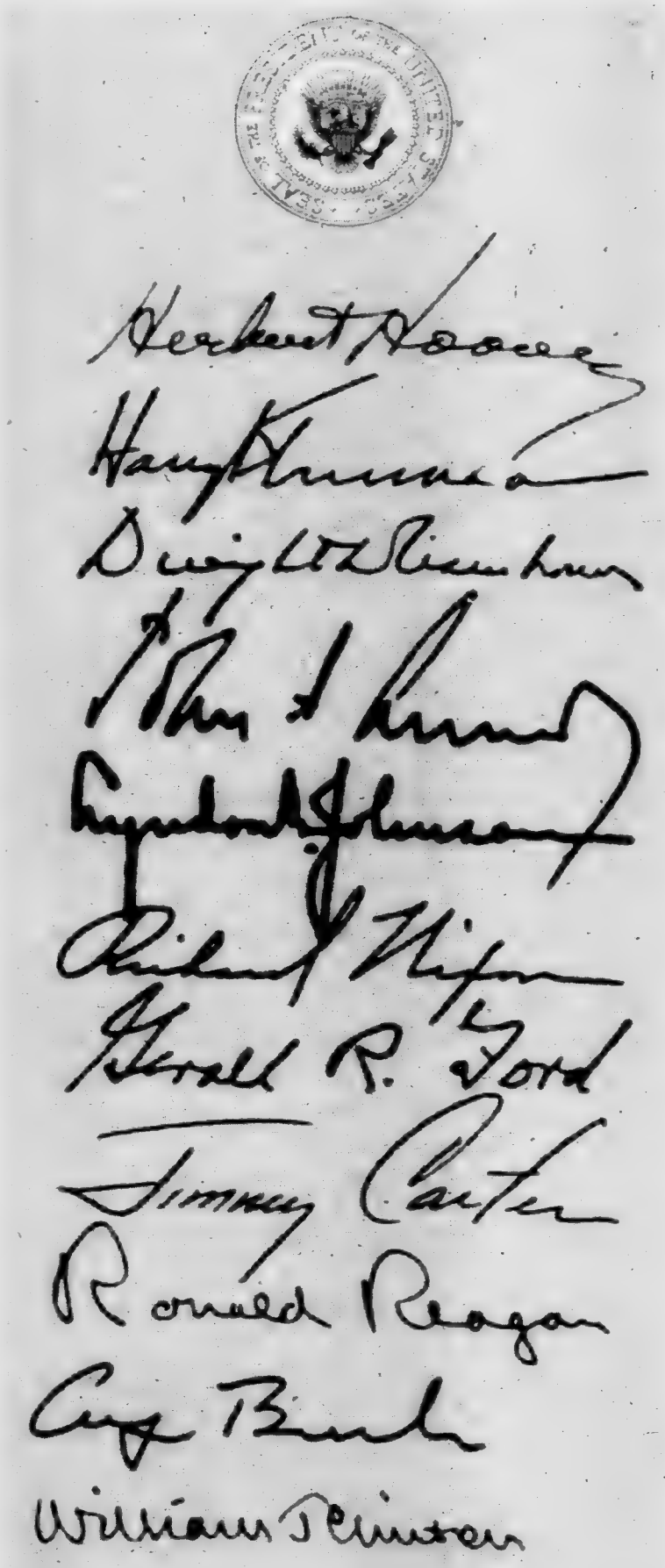

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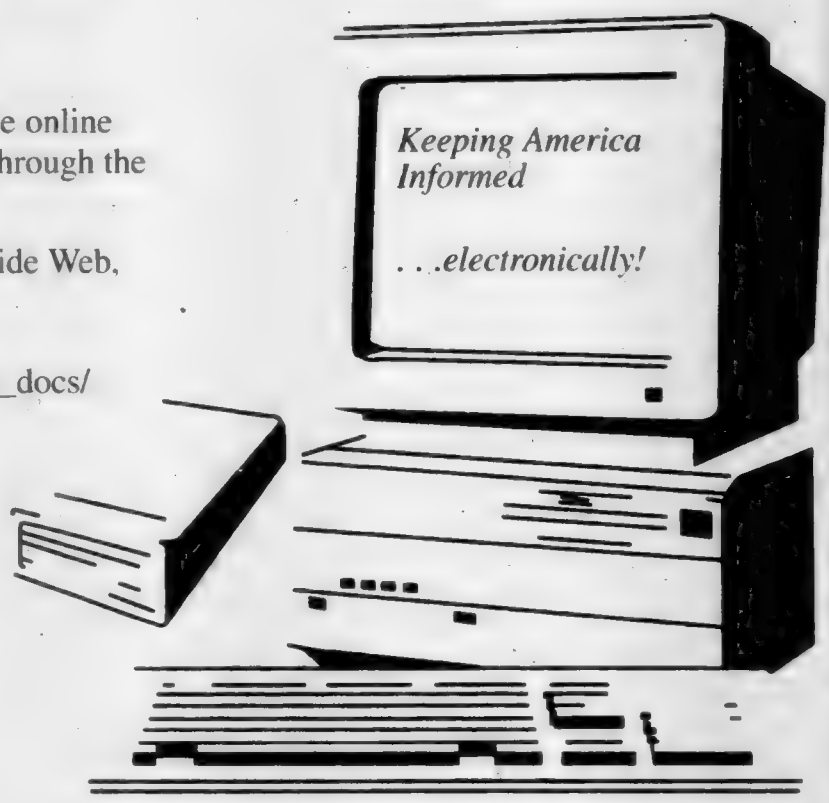

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Rules and Regulations

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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FEDERAL RESERVE SYSTEM

12 CFR Part 272

[Docket No. R–1142]

Federal Open Market Committee; Amendment to Rules of Procedure

AGENCY: Federal Open Market Committee.

ACTION: Final rule.

SUMMARY: The Federal Open Market Committee has amended its definition of a quorum of the Committee. The amendment is designed to enhance the Committee's ability to perform its functions in the event of a national emergency.

DATES: The rule is effective February 6, 2003.

FOR FURTHER INFORMATION CONTACT: Kieran J. Fallon, Senior Counsel (202–452–5270), Legal Division; Board of Governors of the Federal Reserve System; or Normand R.V. Bernard, Deputy Secretary (202–452–3606), Federal Open Market Committee, 20th Street and Constitution Avenue, NW., Washington, DC 20551. Users of Telecommunication Device for Deaf (TTD) only, call (202) 263–4869.

SUPPLEMENTARY INFORMATION: The Federal Open Market Committee (Committee) is composed of (1) all of the members of Board of Governors of the Federal Reserve System (Board), and (2) five representatives of the Federal Reserve Banks elected in the manner provided in the Federal Reserve Act (Act).[1] Because the Board has an authorized membership of seven Governors, the Committee has a maximum authorized strength of 12 members (7 Board members and 5 Federal Reserve Bank representatives).

The Act does not define a quorum of the Committee. Since the current structure of the Committee was established in 1936, the Committee itself has defined a quorum of the Committee to be seven members, including alternates serving in place of a primary Federal Reserve Bank representative.[2]

The Committee's current quorum rule would prevent the Committee from taking action, including adjusting the Committee's target for the federal funds rate, if an act of war, terrorist attack or other catastrophic event reduced the membership of the Committee to below seven members (including alternates). In light of this possibility, the Committee has amended its definition of a quorum of the Committee. Under the Committee's amended rule, a quorum of the Committee will continue to be seven members unless there are fewer than seven members of the Committee in office, in which case a quorum of the Committee will consist of the number of members in office. As under the current rule, alternates serving in place of an absent primary Federal Reserve Bank representative are considered members for purposes of determining whether a quorum of the Committee is available.

The Committee believes that the revised quorum rule will enhance the Committee's ability to fulfill its critical monetary policy responsibilities in a national emergency. At the same time, the revised rule should not alter the functioning of the Committee in normal operating environments. As noted above, under the revised rule, a quorum of the Committee would continue to be seven members whenever seven or more members of the Committee are in office. The Committee notes that the Securities and Exchange Commission (SEC) has revised its quorum rule in a similar fashion to ensure that the SEC could continue to function if the 5-member SEC ever had fewer than 3 commissioners in office.[3]

The amended rule relates solely to the internal procedure of the Committee. Accordingly, the public notice, public comment and delayed effective date provisions of the Administrative Procedure Act do not apply. *See* 5 U.S.C. 553(b) and (d). Because public notice and comment is not required, the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) also does not apply to the amended rule.

List of Subjects

Administrative practice and procedure, Federal Open Market Committee, Organization and functions (Government agencies).

For the reasons set out in the preamble, the Federal Open Market Committee amends 12 CFR part 272 as follows:

PART 272—FEDERAL OPEN MARKET COMMITTEE—RULES OF PROCEDURE

1. The authority citation for part 272 continues to read as follows:

Authority: 5 U.S.C. 552.

2. Section 272.3(c) is revised to read as follows:

§ 272.3 Meetings

* * * * *

(c) *Quorum.* Seven members constitute a quorum of the Committee for purposes of transacting business except that, if there are fewer than seven members in office, then the number of members in office constitute a quorum. For purposes of this paragraph (c), members of the Committee include alternates acting in the absence of members. Less than a quorum may adjourn a meeting of the Committee from time to time until a quorum is in attendance.

* * * * *

[1] *See* 12 U.S.C. 263(a). Pursuant to the Act, the Federal Reserve Banks also elect an alternate for each primary Federal Reserve Bank representative on the Committee. Each alternate is authorized to serve on the Committee in the absence of the relevant primary representative. Each primary and alternate Federal Reserve Bank representative on the Committee must be a President or First Vice President of a Federal Reserve Bank. *Id.*

[2] *See* 12 CFR 272.3(c). From 1936 to 1973, the Committee's quorum rule was reflected in the Committee's By-Laws. *See* Minutes of the Committee's Meeting of March 18, 1936. In 1973, the Committee's By-Laws were rescinded and the Committee's quorum rule was incorporated into the Committee's Rules of Procedure. *See* 38 FR 2754, Jan. 30, 1973.

[3] *See* 17 CFR 200.41; 60 FR 17201, Apr. 5, 1995. The enabling statutes of the SEC, like those of the Committee, do not define a quorum of the SEC. The SEC's revised quorum rule has been upheld by two separate Federal courts. *See Falcon Trading Group, Ltd.* v. *SEC*, 102 F.3d 579 (D.C. Cir. 1996); *SEC* v. *Feminella*, 947 F. Supp. 722 (S.D.N.Y. 1996).

By order of the Federal Open Market Committee, January 30, 2003.

Vincent R. Reinhart,

Secretary, Federal Open Market Committee.

[FR Doc. 03–2582 Filed 2–5–03; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 201

[Docket No. 00N–1463]

RIN 0910–AB78

Labeling Requirements for Systemic Antibacterial Drug Products Intended for Human Use

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending its regulations to require that the labeling for all systemic antibacterial drug products (i.e., antibiotics and their synthetic counterparts) intended for human use include certain statements about using antibiotics in a way that will reduce the development of drug-resistant bacterial strains. The final rule reflects a growing concern in FDA and the medical community that unnecessary use of systemic antibacterials has contributed to a dramatic increase in recent years in the prevalence of drug-resistant bacterial infections. The final rule is intended to encourage physicians to prescribe systemic antibacterial drugs only when clinically necessary. The final rule is also intended to encourage physicians to counsel their patients about the proper use of such drugs and the importance of taking them exactly as directed.

DATES: This rule is effective February 6, 2004.

FOR FURTHER INFORMATION CONTACT: Christine F. Rogers, Center for Drug Evaluation and Research (HFD–7), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–2041.

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I. Background

In the **Federal Register** of September 19, 2000 (65 FR 56511), FDA proposed to amend its regulations to require that the labeling for all systemic antibacterial drug products (i.e., antibiotics and their synthetic counterparts) intended for human use include certain statements about using antibiotics in a way that will reduce the development of drug-resistant bacterial strains. The new labeling is intended to help educate physicians and the public about the resistance problem and to encourage physicians to prescribe systemic antibacterial drugs only when clinically necessary. FDA personnel involved in drafting the statements included practicing physicians who are in a position to evaluate the effect of the labeling on physicians. The statements were also reviewed by other practicing physicians in the agency.

Antibacterial resistance among disease-causing bacteria represents a serious and growing public health problem in the United States and worldwide. Many bacterial species, including the species that cause pneumonia and other respiratory tract infections, meningitis, and sexually transmitted diseases, are becoming increasingly resistant to the antibacterial drugs used to treat them. Several bacterial species have developed strains that are resistant to every approved antibiotic, thus severely limiting the therapeutic options available for adequate treatment. The incidence of resistance in both hospital- and community-acquired infections has increased dramatically in the past several years, making many common illnesses more difficult to treat than they were only 5 or 10 years ago.

According to the Centers for Disease Control and Prevention (CDC), half of the 100 million antibiotic prescriptions a year written by office-based physicians in the United States are unnecessary because they are prescribed for the common cold and other viral infections, against which antibiotics are not effective (Ref. 1). Unnecessary use of antibiotics in hospitals is common as well. The more an antibiotic is used, the more likely it is that bacteria will develop resistance to it. Thus, using antibiotics when they are not necessary contributes to the increasing prevalence of antibacterial resistance without providing any patient benefit.

Educating physicians and the public about the resistance problem and discouraging unnecessary use of antibiotics are important steps to decrease the prevalence of antibacterial resistance and slow its future development and spread. FDA believes that professional labeling has an important role in that educational effort. Therefore, FDA is requiring that the labeling for systemic antibacterial drug products include certain statements about unnecessary use of antibiotics and the link between such use and the emergence of drug-resistant bacterial strains.

Recent reports of a reduction in antibiotic prescribing raise the hope that the trend in overuse of antibiotics can be reversed and provide additional support for the need to include information in labeling to ensure the continued safety and efficacy of antibiotics (Refs. 2 and 3). The studies reported were conducted in children seen in outpatient practice and have not been confirmed in either adults or hospitalized patients. Nevertheless, as the authors of the two studies and the editorial (Ref. 4) that accompanied them note, efforts to promote the appropriate use of antibiotics have likely contributed to a decrease in antibiotic prescribing. These authors observe that it is important to continue such efforts if these gains are to be maintained. The authors cite the ongoing role of the U.S. Public Health Service Action Plan (Ref. 5) to combat antimicrobial resistance. FDA is one of the three lead agencies for this plan. The plan indicates that educational efforts should be one of the highest priorities and placing information on the labeling of systemic antimicrobial products is specifically cited in the plan.

II. Highlights of the Final Rule

The final rule amends FDA regulations to require that all systemic antibacterial drug products (i.e., antibiotics and their synthetic counterparts) intended for human use contain additional labeling information

about the emergence of drug-resistant bacterial strains.

The final rule has been revised in response to comments received on the proposed rule. The comments and responses are discussed in section III of this document. In the final rule, the agency has significantly revised the statements required directly under the product name, in the "Indications and Usage" section, and in the "General" subsection of the "Precautions" section. The agency made minor revisions to the statement proposed for the "Information for Patients" subsection of the "Precautions" section. The final rule omits the statement that was proposed for the "Clinical Pharmacology" section.

The final rule requires that the labeling for all systemic drug products indicated to treat a bacterial infection, except a mycobacterial infection, include the following information.

At the beginning of the label, under the product name, the labeling must state that to reduce the development of drug-resistant bacteria and maintain the effectiveness of the antibacterial drug product and other antibacterial drugs, the drug product should be used only to treat or prevent infections that are proven or strongly suspected to be caused by bacteria.

In the "Indications and Usage" section, the labeling must state that to reduce the development of drug-resistant bacteria and maintain the effectiveness of the antibacterial drug product and other antibacterial drugs, the drug product should be used only to treat or prevent infections that are proven or strongly suspected to be caused by susceptible bacteria. The labeling must state that, when culture and susceptibility information are available, they should be considered in selecting or modifying antimicrobial therapy. The labeling must also state that in the absence of such data, local epidemiology and susceptibility patterns may contribute to the empiric selection of therapy.

In the "General" subsection of the "Precautions" section, the labeling must state that prescribing the antibacterial drug product in the absence of a proven or strongly suspected bacterial infection of a prophylactic indication is unlikely to provide benefit to the patient and increases the risk of the development of drug-resistant bacteria.

In the "Information for patients" subsection of the "Precautions" section, the labeling must state that patients should be counseled that antibacterial drugs, including the antibacterial drug product prescribed, should only be used to treat bacterial infections and that they do not treat viral infections (e.g., the common cold). The labeling must state that when an antibacterial drug product is prescribed to treat a bacterial infection, patients should be told that, although it is common to feel better early in the course of therapy, the medication should be taken exactly as directed. The labeling must also advise physicians to counsel patients that skipping doses or not completing the full course of therapy may: (1) Decrease the effectiveness of the immediate treatment, and (2) increase the likelihood that bacteria will develop resistance and will not be treatable by the antibacterial drug product or other antibacterial drugs in the future.

III. Comments on the Proposed Rule

FDA received 19 comments on the proposed rule. The comments were submitted by pharmaceutical companies, trade associations, individuals, and public and private health organizations.

A. Statements of Support

(Comment 1) Many comments supported the proposed rule. One comment expressed the view that the proposal will be another step in building public awareness and improving antibiotic use before there is a public health emergency. Another comment stated that the proposed rule is an important first step in more appropriate use of antimicrobial agents by health care workers and that regulatory actions have the potential for positive impact on the problem of antibiotic resistance. Another supportive comment stated that for the label changes to have an impact, it will be important to ensure that all antimicrobial drug promotional and marketing activities, whether directed at clinicians, health care organizations, or the public, explicitly and thoroughly communicate the cautions expressed in the rule.

(Response) FDA recognizes the importance of increasing awareness by health care providers and patients about the appropriate use of antibiotics and the cautions about antibiotic resistance. FDA will work with sponsors on ways that these important messages can best be communicated.

B. Sources and Frequency of Antibiotic Resistance

(Comment 2) The agency received many comments concerning the sources of antibiotic resistance. One comment contended that the proposed labeling statements imply that inappropriate use of antibiotics is the only reason for the development of resistance, a notion with which the comment disagreed. Another comment maintained that more likely causes of resistance than individual misuse of antibiotics are a breakdown in basic infection control practices and hygiene (e.g., hand washing, immunization, adequate personal care in daycare centers for children and adults). Another comment cited daycare, veterinary use, and improper hand washing as reasons for antibiotic resistance. This comment also stated that even if doctors prescribe appropriately, resistance to antibiotics will still occur because of selection of resistant strains arising from normal physiological spontaneous mutations.

One comment stated that the emergence of resistance involves many factors including intrinsic properties of the drug, such as whether it has a static or cidal mechanism of action and the nature of its cellular target, and extrinsic considerations, such as the target organism, the health of the patient, the type and site of infection, and prior exposure of the patient to antibiotics. Another comment stated that the proposal ignores other factors involved in minimizing resistance and determining clinical outcome. These factors include pharmacodynamic data, including information on tissue or drug concentrations at the site of infection, and host factors, such as risk for resistant bacterial infections.

(Response) FDA believes labeling concerning antibiotic resistance has the potential to make a significant contribution toward the goal of reducing resistance. The agency is aware, however, that many factors contribute to antibiotic resistance and that there need to be efforts on many fronts to combat the resistance problem. FDA's proposal does not imply that the wisest use of antibiotics by physicians would eliminate the resistance problem entirely. FDA agrees that, regardless of the measures adopted, some level of antibiotic resistance will be present because of the selection of resistant strains that arise during normal bacterial reproduction.

This final rule is one of many ongoing efforts by FDA to combat antibiotic resistance. FDA has previously and will continue to organize and participate in numerous advisory committee meetings, open public meetings, and workshops with industry and academia to focus on strategies to encourage the development of new antimicrobials while preserving the usefulness of existing drug products. Past meetings have already led to changes in the collection of clinical data by stakeholders that will ultimately shorten the development time of future antimicrobial products. The agency has an ongoing partnership with other

government agencies and medical organizations to educate the public about the proper use of antimicrobials and the risks of inappropriate use. FDA has recently awarded a contract to a company to obtain antimicrobial resistance surveillance information in an effort to help the agency identify resistant organisms that pose a significant health threat to the public.

(Comment 3) One comment agreed that any use of antibiotics may increase selective pressure, but stated that decreased effectiveness of antibiotics is a greater clinical concern in empiric therapy when microbiological data for a particular patient are not readily available.

(Response) Existing antibiotics may become less effective because of antibiotic resistance. Thus, reducing the development of resistance and maintaining the effectiveness of existing antibiotics are intertwined goals. FDA's concern with these goals is indicated in the revised statement to appear under the product name, which advocates using antibiotics only for bacterial infections in order to reduce the development of drug-resistant bacteria and maintain the effectiveness of existing antibiotics.

(Comment 4) One comment objected to the general nature of the proposed labeling statements because certain antibiotics, for example cephalosporins, are more likely to be associated with the development of resistance than others. Another comment stated that newer antibiotics are less likely to generate resistance. The comment also stated that the differences in in vitro frequency of resistance in different classes of antibiotics suggest that continued research can decrease the frequency of resistance by emphasizing, in drug development, factors such as area under the curve/minimum inhibitory concentration (MIC) and maximum concentration (Cmax)/MIC ratios. Another comment maintained that there should be greater emphasis on the use of pharmacokinetic (PK) and pharmacodynamic (PD) data to provide clinically relevant information to establish which antibiotics are likely to maximize efficacy and minimize the risk of developing resistance. The comment stated that this suggestion accords with the FDA Anti-Infectives Advisory Committee's recommendation that the PK/PD relationship for antibiotics be investigated during drug development.

(Response) The final rule affects all systemic antibacterial products because all antibiotics develop resistance, even though the frequency of resistance can vary among different antibiotics. FDA supports efforts by pharmaceutical companies to investigate PK/PD relationships during drug development. However, it would not be appropriate at this time to require PK/PD information in the labeling of antibiotic drug products. A number of factors limit the usefulness of PK/PD relationships in clinical practice. First, it has not been established that population PK/PD relationships are predictive of outcomes in individual patients. Second, there are practical obstacles to the use of this information by physicians. To make use of a PK/PD relationship, the physician would have to have access to PK information, that is the level of antibiotic in the patient's blood, and PD information, the MIC for the specific strain of bacteria. Measuring antibiotic levels in patients' blood requires specialized testing that is not available on an outpatient basis and may not even be available in hospitals. As discussed in section III.H of this document, susceptibility testing is often not performed. Even if susceptibility data were available, the information may not be provided quantitatively so that it can be used in a PK/PD ratio.

(Comment 5) One comment maintained that all antimicrobials have built-in obsolescence, and thus there will be a natural progression of selection for resistance regardless of how appropriately doctors prescribe antibiotics.

(Response) Regardless of whether all antibiotics will eventually lead to resistant bacteria, there are great benefits to delaying that progression as long as possible. As stated previously, there is a strong correlation between the improper use of antibiotics and the incidence of antibiotic drug resistance. The CDC estimates that as much as 50 percent of antibiotic use is unnecessary, that is, prescribed for diseases like the common cold that do not respond to antibacterial drugs. Judicious physician prescribing of antimicrobial agents and proper antibiotic usage by patients play an important role in slowing down the natural progression of selection for resistance to antibiotics. For example, limiting the use of erythromycin in Finland decreased the rate of resistance to this drug in group A streptococci causing sore throats by approximately 50 percent.

C. Influence of Labeling

(Comment 6) Some comments suggested that doctors will probably not be influenced by the proposed labeling. One comment stated that since doctors treat infections empirically despite advice in current labeling to determine the causative agent, it is unlikely that the new labeling will influence doctors' behavior. One comment stated that FDA's Director of the Office of Postmarketing Drug Risk Assessment expressed the opinion that labeling changes do not alter doctors' prescribing practices. Another comment expressed the view that doctors are already aware of the information contained in the proposed labeling and therefore might be offended by the labeling or might not read the warnings. Another comment stated that it is questionable whether prescribers read package inserts thoroughly because of their length and small print. Another comment contended that before adopting the proposal, FDA should assess whether physicians understand the proposed labeling and change their behavior as a result. One comment stated that FDA should send periodic letters to prescribers giving updates on antibiotic resistance and prudent use of antibiotics because doctors may not read package inserts.

(Response) Antibiotic resistance is a serious public health problem that needs to be addressed by a major educational effort. FDA believes that physician labeling can contribute to that effort by reminding physicians that their individual prescribing decisions have a collective impact on the resistance problem. The agency believes that physicians frequently consult selected portions of the package insert and thus will encounter one or more of the statements on antibiotic resistance that appear in multiple, significant locations in the package insert. The agency believes that the prominence of the statement under the product name will be particularly likely to have an effect on prescribing decisions. FDA believes it is important to institute labeling discussing antibiotic resistance as soon as possible because it will be an important step in addressing the resistance problem; therefore, the agency declines to adopt the suggestion to measure the effect of the labeling before adopting the rule. The agency also rejects the suggestion to send "Dear Doctor" letters; the package insert, rather than letters, is FDA's primary tool for communicating with physicians.

D. Alternatives and General Comments

(Comment 7) Many comments stated that labeling is not the best way to accomplish the goal of reducing antibiotic resistance and suggested alternative mechanisms. Several comments suggested using educational and scientific forums to educate doctors. Organizations mentioned as appropriate to provide educational programs included pharmaceutical companies

and pharmaceutical industry trade organizations, the American Medical Association (AMA), and the CDC in conjunction with FDA.

(Response) The agency agrees that labeling alone will not be sufficient to reduce or prevent antibiotic resistance. This final rule is one of many ongoing efforts by FDA to combat antibiotic resistance. FDA has previously and will continue to organize and participate in numerous advisory committee meetings, open public meetings, and workshops with industry and academia to focus on strategies to encourage the development of new antimicrobials while preserving the usefulness of existing drug products. Past meetings have already led to changes in the collection of clinical data by stakeholders which will ultimately shorten the development time of future antimicrobial products. The agency has an ongoing partnership with other government agencies and medical organizations to educate the public about the proper use of antimicrobials and the risks of inappropriate use. FDA has recently awarded a contract to a company to obtain antimicrobial resistance surveillance information in an effort to help the agency identify resistant organisms that pose a significant health threat to the public.

(Comment 8) One comment urged FDA to focus on the effective implementation of existing guidelines, such as the CDC guidelines for the treatment of acute otitis media in children and the Sinus and Allergy Health Partnership guidelines for the treatment of acute bacterial sinusitis, as a means of addressing antibiotic resistance. The comment added that these guidelines are both comprehensive and able to be updated as new information becomes available, whereas labeling cannot be updated quickly.

(Response) Many responsible organizations issue guidelines for the treatment of various types of bacterial infections. FDA supports these efforts and has worked with many of the sponsoring organizations to develop guidelines for clinical studies and related matters. The agency disagrees that labeling cannot be updated as quickly as guidelines. Guidelines for the treatment of bacterial infections are not usually revised more often than every 2 years. If necessary, FDA's professional labeling can be revised in 2 years.

(Comment 9) Another comment stated that peer review of antimicrobial use and prescribing practices is preferred over static treatment guidelines and restrictions, given the complexity of the decisionmaking process in evaluating patients.

(Response) The labeling statements required by this final rule are not static treatment guidelines or restrictions. Furthermore, nothing in the final rule forecloses the use of peer review as a way of reducing antibiotic resistance. FDA recognizes that many different approaches can assist physicians in making good prescribing decisions.

(Comment 10) One comment asserted that resistant infections are most often acquired in hospitals and then spread to the community and, therefore, FDA should work with public health agencies and state boards of health to establish more effective hospital infection-control programs, rather than addressing the resistance problem through labeling.

(Response) FDA is working with the CDC and other public health agencies to establish more effective hospital infection-control programs and to develop means for educating physicians and communicating current information on the resistance problem. However, the agency believes that antibiotic resistance labeling is also needed as a part of a multifaceted attack on the resistance problem. FDA also notes that some resistant organisms, for example, penicillin-resistant *Streptococcus pneumoniae*, are acquired in the community, rather than in the hospital.

(Comment 11) One comment endorsed the development and implementation of a coordinated plan for monitoring antimicrobial resistance at the local level using standardized tests. This comment stated that the use of universally accepted standard tests is critical to the consistent and meaningful interpretation of surveillance data throughout the United States and that these standards need to be in place before collecting and collating surveillance data. Without such standards, collated surveillance data would be difficult to interpret and of very limited value.

(Response) FDA is working with the CDC and other agencies to develop tools and methods that will allow for a coordinated plan for monitoring antibiotic resistance. However, efforts to curb the development of antibiotic resistance should not be delayed pending the creation of such a monitoring plan.

(Comment 12) Another comment suggested requiring a special prescription blank for antimicrobials, formatted to include FDA criteria for prescribing antibiotics, and placing the responsibility on pharmacists to ensure that the criteria are met.

(Response) Such a restriction would be extraordinarily difficult to implement because of the large number of systemic antibacterial products. The agency believes that measures less restrictive of medical practice are more reasonable at this time.

(Comment 13) One comment recommended that marketed antibiotics be evaluated and that older products with higher potential for inducing resistance (i.e., poor PKs and/or potency, single-step resistance development) be retired in favor of newer antibiotics with optimized PKs, potency, and multiple-step pathways. This comment contended that doctors need to be educated to prescribe improved antibiotics and asserted that the rule might hinder this goal.

(Response) FDA does not agree that newer antibiotics are necessarily preferable to older ones. While some newer antibiotics may require more than one pathway to develop resistance, newer antibiotics tend to be broad-spectrum, which, in itself, can increase the development of resistance.

(Comment 14) One comment stated that the antibiotic labeling proposal should be coordinated with other agency labeling initiatives.

(Response) Rulemaking requires an opportunity for the public to comment and thus have input into proposed agency actions. To make it easy for the public to comment on only those issues that are of interest, FDA generally pursues separate rulemakings for labeling proposals concerning different subjects. FDA has proposed to revise the content and format of labeling for prescription drugs (physician labeling rule) (65 FR 81082, December 22, 2000). The agency has received comments on the proposal and is in the process of finalizing it. Whether the requirements of the physician labeling rule will apply to a systemic antibacterial drug product will depend on the approval date of that product. For those systemic antibacterial drug products that must comply with the physician labeling rule by using the new format, the final physician labeling rule will explain where in the new format the statements required by § 201.24 should be placed and when implementation of the new format must be completed.

E. Scope and Implementation

(Comment 15) A number of comments addressed the scope of the proposal. One comment stated that resistance can also develop from using topical, veterinary, and antimycobacterial antibiotics, and that there should be education about all these sources. One comment stated that the proposed rule should also apply to prescription and over-the-counter (OTC) otic, ophthalmic, and topical agents. One

comment suggested that FDA propose another rule that would cover antimycobacterials, topical antibiotics, and antiseptics. Another comment stated that the proposal should cover topical products because they are sometimes an alternative to systemic antibacterials. Another comment questioned the exclusion of drugs to treat tuberculosis. Another comment anticipated that statements concerning antibiotic resistance will eventually be included in the labels of antiparasitic, antiviral, antifungal, and antimycobacterial agents, topical antibacterials, and topical antiseptics. This comment recognized that labeling for these products involves unique challenges, but expressed the view that development of resistance to these types of agents is a real or potential problem that may be aggravated by inappropriate use.

(Response) Prescription and OTC topical antibacterials, topical antiseptics, antimycobacterial drugs, and veterinary antibiotics raise different scientific and regulatory issues than do systemic antibacterials. The agency is considering how to address concerns about the development of antibiotic resistance from the use of these other types of products and will consider whether additional rulemaking would be appropriate.

(Comment 16) A few comments requested clarification of the scope of the proposed rule. One comment asked if the rule would apply to oral antibiotics or intravenous (IV) antibiotics, or both. Another comment asked whether the proposal would apply to antibiotics such as clarithryomycin and rifampin that are used for mycobacterial infections as well as for regular bacterial infections.

(Response) The final rule applies to both oral and IV antibiotics. The final rule applies to all systemic antibacterials that are indicated for the treatment of bacterial infections, even if, like clarithryomycin and rifampin, they are also indicated for the treatment of mycobacterial infections.

(Comment 17) One comment stated that generic antibiotics should be held to the same standard as innovator products. Another comment asserted that labeling that has already been approved should be grandfathered, and the rule should not apply to it. Another comment stated that the rule's effective date should be contingent on complete implementation of the surveillance, prevention, and control goals identified in the joint CDC, FDA, and National Institutes of Health "Draft Public Health Action Plan to Combat Antimicrobial Resistance" (65 FR 38832, June 22, 2000).

(Response) The final rule applies to both generic and branded systemic antibacterial drug products. FDA declines to adopt the suggestion that the rule not apply to already-approved labeling because there is no scientific basis to distinguish between products approved before the effective date of the rule and products approved after the effective date in terms of causing antibiotic resistance. The agency believes it is important to implement the final rule as soon as possible and therefore rejects the notion that the effective date should be delayed to coordinate the rule with other items in the June 22, 2000, Action Plan.

F. Location of Statements

(Comment 18) Many comments expressed the view that requiring statements in five locations in the labeling would be redundant. One such comment stated that the repetitiveness would clutter the label without adding value. Another comment contended that the redundancy of the warnings would cause doctors to view them as "boilerplate noise." Another comment pointed out that the same statement appears under the product name and in the "Precautions" section. Another comment stated that the statements in the "Clinical Pharmacology" section and the "Indications and Usage" section are redundant.

(Response) In response to these comments, FDA has eliminated the statement proposed for the "Clinical Pharmacology" section. In addition, the same statement does not appear under the product name and in the "Precautions" section in the final rule; the statements for these locations have been revised. As discussed in the response to comment 6 in section III.C of this document, FDA recognizes that physicians are unlikely to read the package insert in its entirety whenever they prescribe an antibiotic. Instead, physicians consult selected portions of the package insert. The agency's intent in requiring warnings directly under the product name and in the "Indications and Usage" and "Precautions" sections was to ensure that most physicians will encounter one of the statements on antibiotic resistance when they are considering whether to prescribe an antibiotic.

In addition, the context and wording of each of the four statements is different. The statement under the product name emphasizes that the goal of reducing the development of drug-resistant bacteria and maintaining the effectiveness of antibacterial drugs can be accomplished by using antibacterials only to treat infections that are proven or strongly suspected to be caused by bacteria. The statement in the "Precautions" section warns that prescribing antibacterials other than to treat a proven or strongly suspected bacterial infection is unlikely to provide benefit to the patient. The "Indications and Usage" section is where the physician looks to see what the uses of the product are. It is the most frequently consulted portion of the labeling. The statement in this section advises physicians to consider culture and susceptibility information and local epidemiology and suspectibility patterns when prescribing antibacterial therapy. The context of the statement in the "Information for Patients" section is very different from the other statements because it is information for physicians to convey to their patients. Patients should be advised not to skip doses of antibacterial therapy and to complete the full course of therapy, even if they start to feel better. Patients should also be advised that antibacterials do not treat viral infections.

(Comment 19) One comment asserted that standard statements about inappropriate use of antibacterial drugs do not merit the extraordinary prominence of appearing directly under the product name, thus giving the impression that these statements are the most important information about the product.

(Response) FDA believes it is important that the pressing public health problem of antibiotic resistance be highlighted in a prominent location. Furthermore, there is precedent for the appearance of a statement in this location. Oral contraceptives contain a statement under the product name indicating that they do not protect against sexually transmitted diseases. The antibiotic resistance statement, like the statement in oral contraceptive labeling, provides an important context for product use.

(Comment 20) Several comments stated that placement of a statement concerning antibiotic resistance under the product name would dilute the effectiveness of black boxed warnings, which are often placed there. One comment also claimed that the placement of a statement under the product name would conflict with FDA regulations at § 201.57(e) (21 CFR 201.57(e)) that reserve the area under the product name for boxed warnings, which, in turn, are reserved for critical safety information on hazards that may lead to death or serious injury.

(Response) FDA disagrees with the assertion that a statement under the

product name would detract from boxed warnings that appear at the beginning of labeling. Systemic antibacterial products rarely contain boxed warnings. Furthermore, physicians recognize that a box demarcates a critical warning; therefore, placement of a statement before the boxed warning would not detract from that warning.

The agency disagrees with the claim that placing a statement under the product name conflicts with § 201.57(e). That section does not state that the only information that can be placed directly under the product name is a boxed warning. Nor does the section state that boxed warnings must be placed directly under the product name. Section 201.57(e) states: "If a boxed warning is required, its location will be specified by the Food and Drug Administration." It should be noted that boxed warnings may appear anywhere in the package insert, not only under the product name.

(Comment 21) One comment objected to placement of the statement under the product name because the same statement appears in the "Precautions" section.

(Response) In the final rule, the statements for both locations have been revised, and two different statements now appear in these two sections.

(Comment 22) One comment opposed the proposal but stated that if the agency were to proceed with it, a statement concerning antimicrobial resistance should be in a new section entitled "General," which would appear before one of the existing sections of labeling that doctors are likely to read such as "Microbiology," "Indications and Usage," or "Dosage and Administration." Another comment stated that of the two locations proposed for a general statement on antibiotic resistance, the "Precautions" section is a more suitable place for such a statement than directly under the product name.

(Response) FDA believes that the labeling statements required by this final rule are appropriately placed to be as visible as possible to readers; therefore, the agency declines to adopt the suggestion to create a new labeling section entitled "General" or to adopt the suggestion not to require a statement under the product name.

(Comment 23) Three identical comments stated that all anti-infective labeling should contain a new section entitled "Clinical Microbiology" because physicians and nurses are used to seeing clinical microbiology information under that heading rather than under "Clinical Pharmacology." The comments maintained that the statement proposed for the "Clinical Pharmacology" section appear instead in this new section because the statement is more correctly a "Clinical Microbiology" statement rather than a "Clinical Pharmacology" statement. The comments also stated that readers would recognize the statement more easily if it were in a separate section. Another comment stated that the language proposed for the "Clinical Pharmacology" section should appear in a "Microbiology" subsection of the "Clinical Pharmacology" section, adding that this type of information does not belong in any other area of the "Clinical Pharmacology" section. Another comment stated that the "Clinical Pharmacology" section should also include a summary of the preclinical and clinical data regarding PK and PD parameters to predict clinical response and minimize development of resistance, but that if such data are lacking, that should be stated.

(Response) The agency has decided that advice about obtaining cultures belongs in the "Indications and Usage" section rather than the "Clinical Pharmacology" section. Because the rule does not require microbiology information, there is no need for a separate microbiology section.

(Comment 24) Two comments stated that the proposal contradicted approved labeling for prophylaxis indications. One comment stated that antibiotic use for prophylaxis is within the standard of care and is found in indications in several labels (i.e., mezlocillin, cefuroxime, and metronidazole). Another comment noted that antibiotic use for prophylaxis of bacterial infection in some settings is an FDA-approved and valuable clinical use of several antibacterial drugs. Another comment stated that the "proposed statements deviate from the long-standing practice of FDA to grant indications for each specific infection that was studied in adequate and well-controlled trials."

(Response) FDA recognizes that some antibacterial drug products are indicated for prophylactic use, for example, to prevent postoperative bacterial infection. The statements required by the final rule to appear under the product name and in the "Indications and Usage" section advise that antibacterial drug products "should be used only to treat or prevent infections that are proven or strongly suspected to be caused by bacteria." The statement required in the "Precautions" section, under the "General" subsection, also recognizes that some antibacterial drug products are indicated for prophylaxis. The final rule has no impact on the approval of antibiotics for various indications.

G. Statements Under the Product Name and in the "Precautions" Section

The proposed rule would have required that the following statement appear directly under the product name and also in the "Precautions" section:

> Inappropriate use of (*insert name of antibacterial drug product*) may increase the prevalence of drug resistant microorganisms and may decrease the effectiveness of (*insert name of antibacterial drug product*) and related antimicrobial agents.
>
> Use (*insert name of antibacterial drug product*) only to treat infections that are proven or strongly suspected to be caused by susceptible microorganisms. See Indications and Usage section.

This statement used the term "inappropriate use" of antibacterial drug products.

(Comment 25) Several comments objected to the term "inappropriate use" as vague and subject to varying interpretations. One comment asked that inappropriate use be defined. Another comment maintained that the rule should focus on appropriate, rather than inappropriate, prescribing and should include a clear definition of appropriate prescribing. This comment asserted that it is important to distinguish between unnecessary use, such as prescribing an antibiotic for a viral infection, and inappropriate use, such as prescribing antibiotics at the wrong dose or for the wrong duration, or prescribing the wrong antibiotic to treat a particular bacterial infection. The comment also maintained that it is entirely appropriate to prescribe antibiotics whenever a bacterial infection is suspected, even in patients who initially have influenza-like symptoms.

The comment also stated that a definition of appropriate prescribing should include the following points: (1) There must be a known or suspected bacterial infection, and (2) the choice of antibiotic should effect a rapid inhibition of bacterial growth, ideally by bacterial kill, and minimize the development of resistance and drug-related toxicity. This comment also stated that failure to use antibiotics may lead to serious bacterial infections that progress, and that the proposed rule's focus on inappropriate use might have the unwanted result of making doctors hesitate to prescribe antibiotics when they are truly necessary to treat a bacterial infection. One comment expressed the opinion that when a doctor uses his judgment about prescribing, that is not inappropriate use. Another comment stated that appropriate use of antibiotics may also

increase resistance if patients do not comply with the full course of therapy or otherwise alter the prescribed dosing regimen.

(Response) In response to the comments, the agency has decided not to use the words "appropriate" or "inappropriate" because it recognizes that determining appropriate use, and therefore what is not appropriate, involves many factors and requires the exercise of the physician's judgment in using available information to select an antibiotic for a particular patient in a particular context. Instead, FDA has revised the statement under the product name to directly link reducing antibiotic resistance with prescribing antibiotics only to treat or prevent infections that are proven or strongly suspected to be caused by bacteria. Similarly, the statement in the "Precautions" section indicates that prescribing antibiotics in the absence of a proven or strongly suspected bacterial infection increases the risk of developing resistance.

(Comment 26) One comment offered the following examples of inappropriate use: (1) Using antibiotics for common respiratory viral infections, (2) using a broad-spectrum antibiotic when a narrower spectrum antibiotic would be more appropriate, (3) using an antibiotic with an excessively long half-life, and (4) using a less potent antibiotic when a more potent agent would be more appropriate. Another comment described inappropriate use as including the use of antibiotics to treat viral infections, failure to prescribe an adequate length of treatment, failure of patients to complete the entire course of treatment, and skipping doses. This comment stated that it is important for physicians and the public to understand the basic value of antibiotics and went on to say that only inappropriate usage should be highlighted as requiring further education and restraint.

(Response) As discussed in the response to comment 25, the agency has decided not to use the words "appropriate" or "inappropriate" in the labeling statements required by this rule. The agency agrees, however, that examples of inappropriate use may include using antibiotics for viral infections, failure to prescribe an adequate length of treatment, failure of patients to complete the entire course of treatment, skipping doses, and using a broad-spectrum antibiotic when a narrower spectrum antibiotic would be more appropriate. The agency does not agree that it is never appropriate to use an antibiotic with a very long half-life. Half-life is a factor to be considered along with other many other specific factors involved in patient management, but it is not appropriate to make generalizations about it in the context of this rule. Furthermore, focusing on the potency of an antibiotic is not a helpful approach because there is no standard definition of the potency of an antibiotic.

(Comment 27) The agency received the following five suggestions for wording to appear in place of that proposed to appear under the product name. Suggestions 1 through 4 were also proposed for the "Precautions" section:

1. "Inappropriate use of antibiotic products may increase the prevalence of drug resistant microorganisms, leading to a potential decrease in the general overall effectiveness of antimicrobial agents."

2. "Appropriate use of antimicrobial agents may help decrease the prevalence of drug resistant microorganisms, resulting in the continued effectiveness of this product and related agents. This product should be used only to treat infections that are strongly suspected or proven to be caused by susceptible microorganisms."

3. "Inappropriate use of an antibiotic may increase the prevalence of drug-resistant microorganisms and may decrease the future effectiveness of the antibiotic and related antimicrobial agents. It is not appropriate to extrapolate the benefit/risk profile established in patients with documented bacterial infections to other patients (e.g., patients with viral infections). This antibiotic does not treat viral infections."

4. "Appropriate antibiotic use requires the selection of an antibiotic, for a known or suspected bacterial infection, that optimizes clinical therapeutic effect by maximizing bacteriological eradication and minimizing the development of resistance and drug-related toxicity. In order to eradicate the bacteria and minimize the development of bacterial resistance, it is important to administer the appropriate antibiotic at the right dose and for the right duration. See Dosage and Administration Section."

5. "Inappropriate use of antibacterial agents, including (insert name of antibacterial drug product) may increase the prevalence of drug resistant bacteria and may decrease the effectiveness of antibacterial agents, including (insert name of antibacterial drug product). (Insert name of antibacterial drug product) should be used only to treat infections that are proven or suspected to be caused by indicated bacteria."

Suggestion 5 eliminates from the proposed phrase "strongly suspected" the word "strongly," contending that it adds nothing.

The agency also received a suggestion intended only for the "Precautions" section:

"Inappropriate use of antibacterial agents, including (insert name of antibacterial drug product) may increase the prevalence of drug resistant bacteria and may decrease the effectiveness of antibacterial agents, including the drug product. Antibacterial agents, including the drug product, should be used to treat infections that are proven or suspected to be caused by indicated bacteria. The antibacterial agent chosen to treat a documented or presumptive bacterial infection should be targeted to the most likely bacterial pathogen(s) and should have the narrowest spectrum possible to cover the likely pathogen(s)."

(Response) All of the previous wording suggestions are phrased in terms of either inappropriate or appropriate use. The agency has been persuaded by the comments that using the words "inappropriate" or "appropriate" is confusing and unhelpful; therefore, the final rule does not use these terms. Because FDA has decided not to use the words "inappropriate" or "appropriate," the agency declines to adopt any of the wordings suggested in the comments. The agency disagrees with the opinion that there is no difference between "suspected" and "strongly suspected." Since many infections could theoretically be either viral or bacterial, the direction to use antibiotics for suspected bacterial infections could be interpreted as approving of antibiotic use whenever there is a possibility of a bacterial infection. Therefore, the final rule retains the word "strongly."

H. Culture and Susceptibility Tests

Proposed § 201.24(b) would have required the following statement in the "Clinical Pharmacology" section: "Appropriate use of (*insert name of antibacterial drug product*) includes, where applicable, identification of the causative microorganism and determination of its susceptibility profile."

(Comment 28) Many comments objected to this statement, asserting that it is not always possible or advisable to do cultures. Comments stated that for the majority of infections, including respiratory tract infections, obtaining a specimen for a culture is not possible. One comment objected that diagnostic tests that immediately distinguish viral and bacterial infections are not available.

(Response) The agency recognizes that it is not possible to obtain specimens for cultures for many common community-

acquired infections, including many respiratory tract infections and *otitis media*. FDA also agrees that there are no diagnostic tests that can immediately determine whether an infection is bacterial or viral. The revised statement for the "Indications and Usage" section recognizes these realities by advising that culture and susceptibility information should be considered in selecting or modifying antibacterial therapy when it is available.

(Comment 29) Many comments stated that the majority of infections, especially those acquired in the community rather than in the hospital, are and should be treated empirically without waiting for identification of the causative microorganism. One comment asserted that antibiotics must be initiated empirically for a febrile neutropenic patient or a patient with pneumonia in an intensive care unit (ICU). Another comment stated that the American Thoracic Society Guideline for Pneumonia recommends empirical treatment of pneumonia and concludes that Gram stains of sputum, cultures, and susceptibility testing are not cost-effective, particularly for outpatient infection. One comment stated that to delay the start of treatment waiting for culture results would be unethical as well as impractical. Another comment maintained that when patients are at risk of serious complications from infection, they must be treated empirically, and broad-spectrum therapy may be used to avoid treatment failure. Another comment stated that the agency has not considered outcome data concerning the benefits of empiric treatment on mortality and morbidity. One comment stated that doctors should decide whether to change antibiotic therapy based on the clinical situation, not only on in vitro susceptibility data. Another comment stated that there are not many efforts to gather information on treatment outcomes in ambulatory settings. One comment asked what the agency meant by the phrase "where applicable" in the statement: "Appropriate use of (*insert name of antibacterial drug product*) includes, where applicable, identification of the causative microorganism and determination of its susceptibility profile."

(Response) FDA agrees that antibiotic therapy must often be initiated empirically, including for patients with febrile neutropenia or ICU patients with pneumonia, and that it may be unethical to delay the initiation of therapy. FDA recognizes that in many situations physicians must make difficult choices about the need for empiric therapy and broad-spectrum agent use. Most clinical guidelines concerning the management of such situations also recommend taking measures to alter treatment to more targeted antimicrobial coverage, such as through the use of bacterial cultures, whenever possible.

The agency did not intend to call for physicians to always refrain from initiating antibiotic therapy until the causative microorganism has been identified. The statement proposed for the "Indications and Usage" section recommended that initial selection of an antibiotic be guided by local epidemiology and susceptibility patterns, thus clearly contemplating that antibiotic therapy would be initiated before the results of culturing had been obtained. In addition, the modifier "where applicable" was intended to indicate that it is not always possible to do culture and susceptibility testing.

In response to comments, the agency has revised the statements about the role of culture and susceptibility tests and the use of local epidemiology and susceptibility patterns to make clear that FDA is not advising physicians that they should never prescribe antibiotics without first obtaining culture and susceptibility results or without referring to local epidemiology and susceptibility patterns. The agency has decided that the statement about culture and susceptibility information is more appropriate for the "Indications and Usage" section than for the "Clinical Pharmacology" section. The statement suggests that after initiating antibiotic therapy empirically, physicians should consider modifying therapy if susceptibility information becomes available and indicates that the microorganisms causing the infection are different from those initially suspected. FDA recognizes, however, that the physician must also weigh the clinical situation.

(Comment 30) One comment asserted that there is no scientific consensus on the need to use narrow-spectrum antibiotics targeted at organisms that have been identified through cultures.

(Response) FDA believes that using narrower spectrum, more targeted therapy, to treat a known organism can reduce the development of resistance. Narrower spectrum antimicrobials may have less impact on the normal organisms that colonize the body. Normal flora may protect the body from becoming colonized with other, more pathogenic bacteria. Also, normal flora exposed to an antimicrobial may become resistant to that antimicrobial and pass resistance genes on to more pathogenic bacteria. Therefore, prescribing narrower spectrum drugs may limit the spread of resistance while still treating the pathogenic organisms causing the disease. This subject was discussed by presenters and panel members at the January 8, 2003, Anti-Infective Drugs Advisory Committee meeting. However, the labeling statements in the final rule do not dictate the use of narrow-spectrum antibiotics.

(Comment 31) Comments maintained that there are not enough laboratories to perform susceptibility testing for all of the antibiotics prescribed and that, in many parts of the country, physicians do not have access to susceptibility testing. One comment stated that few clinics have access to local microbiology labs; that the majority of microbiological diagnostic testing is done in central locations by a few laboratories, and that many hospitals do not have microbiology laboratories. This comment noted that the Infectious Disease Society of America has recently issued a position paper on the lack of access to microbiology laboratories and the threat that this lack of facilities poses to the public health. Two comments stated that the regulations of the Clinical Laboratory Improvement Act provide that Gram stains should be performed and interpreted by qualified lab technicians, not doctors.

One comment stated that the infrastructure required to support diagnostic testing in primary care settings is not in place and that diagnostic testing is not likely to be funded unless there are data to support the cost-effectiveness of doing culture and susceptibility testing rather than using broad-spectrum antibiotics. This comment also stated that the pharmaceutical industry should not have to fund such testing. Another comment stated that managed care and third-party payers have not funded the infrastructure required for diagnostic testing in primary care settings.

(Response) FDA agrees that some physicians lack access to facilities that perform susceptibility testing. The agency also agrees that it is not the responsibility of the pharmaceutical industry to make such testing available. The final rule's statement in the "Indications and Usage" section takes into account that culture and susceptibility information may not always be available.

I. Local Epidemiology and Susceptibility Patterns

Proposed § 201.24(c) would have required the following statement in the "Indications and Usage" section:

Local epidemiology and susceptibility patterns of the listed microorganisms should direct initial selection of (*insert name of*

antibacterial drug product) for the treatment of the following indications. Because of changing susceptibility patterns, definitive therapy should be guided by the results of susceptibility testing of the isolated pathogens.

(Comment 32) One comment stated that the direction to use local epidemiology and susceptibility patterns is not practical because this information is not available to doctors. Another comment stated that lack of susceptibility data on a particular product in a particular geographic region should not contraindicate use of the drug. Several comments stated that various practice guidelines do not recommend the use of surveillance data to guide antibiotic therapy. Another comment stated that there are different datasets of susceptibility data and asked which set should be used. This comment also stated that susceptibility patterns can change rapidly, making data obsolete.

(Response) FDA recognizes that surveillance data on microbial sensitivities may not be available in some settings and are not helpful in other situations. However, in many circumstances, the data provide a source of information that may assist the prescriber in the selection of empiric therapy. FDA suggests that physicians obtain epidemiology and susceptibility data from local hospitals or State health departments. Physicians who have access to such sources of information and make it a practice to update their information periodically can remain current on susceptibility patterns in their areas.

(Comment 33) One comment contained the following detailed objections to the use of susceptibility data:

- MIC data from in vitro testing are unproven as predictors of clinical outcome in many diseases.
- Susceptibility data obtained from surveillance studies have limitations for prospective therapeutic decisions. These limitations include the fact that large national and international surveillance studies obtain data from hospitalized patients who are more likely to have resistant isolates. These data are unlikely to be linked to clinical data so that the relevance of the MIC values generated is limited.
- Local surveillance data can be biased because of small sample sizes. The data that are likely to be available to physicians in the community come from clinical trials that exclude patients who would be at risk for resistant isolates.
- Laboratory methodology and expertise can influence susceptibility testing, e.g., E tests often err for drugs that are highly dependent on pH for activity, which is a particularly important problem for macrolides such as erythromycin and clarithromycin.
- Clinical outcome data are not the basis for current National Committee for Clinical Laboratory Standards (NCCLS) and FDA breakpoints for most drugs used for outpatient respiratory tract infections. The NCCLS changed the breakpoints for some beta-lactam antibacterials and that has altered the susceptibility rates.

(Response) The agency agrees that surveillance data has limitations; however, data with limitations may still be useful. Accordingly, the revised statement in the "Indications and Usage" section states that local epidemiology and susceptibility patterns may contribute to the empiric selection of therapy when culture and susceptibility information are not available.

(Comment 34) One comment contended that recommending the use of local epidemiology and susceptibility patterns will lead to the use of newer, possibly broad-spectrum agents that have lower rates of in vitro resistance, although older agents are still appropriate choices. This comment also stated that other factors may be useful in selecting antibiotic therapy. For example, molecular resistance mechanisms for particular bacteria may be useful to predict clinical efficacy, and the location of infection predicts response to therapy in some diseases.

(Response) FDA agrees that it is not reasonable to focus solely on epidemiology and susceptibility patterns as the decisive factor in selecting an antibiotic. Most clinicians use this information as one of many factors considered in deciding which drug to use.

(Comment 35) Two comments suggested alternative wording for the statement to appear in the "Clinical Pharmacology" section as follows:

1. "Appropriate use of this product may include, where applicable and practical, identification of the causative microorganism and the determination of its susceptibility profile."

2. "Appropriate use of antibacterial agents includes, where applicable, identification of the causative bacteria and determination of its susceptibility profile. The pharmacokinetic and pharmacodynamic profile of the agent and the location of the infection should also be considered when selecting an appropriate antibiotic for treatment of a documented or presumptive infection."

(Response) The previous two wording suggestions are modified versions of the statement that was proposed for the "Clinical Pharmacology" section. The final rule does not require a statement in the "Clinical Pharmacology" section because the agency has decided that advice about obtaining cultures belongs in the "Indications and Usage" section rather than the "Clinical Pharmacology" section. Therefore, FDA declines to adopt either of these suggestions.

(Comment 36) The agency received three suggestions for wording to appear in the "Indications and Usage" section as follows:

1. "Appropriate culture and susceptibility tests should be performed before treatment in order to isolate and identify organisms causing infection and to determine their susceptibility to (name of drug). Therapy with (name of drug) may be initiated before results of these tests are known; once results become available, appropriate therapy should be continued."

2. "Appropriate specimens for bacteriological examination should be obtained, when indicated and feasible, in order to isolate and identify causative organisms and to determine their susceptibility to [name of product]. Therapy may be instituted while awaiting the results of these studies. Once these results become available, antimicrobial therapy should be adjusted accordingly."

3. "The efficacy of this drug has been demonstrated when it is used as directed for the indications and susceptible pathogens listed below. Use of this drug in other regimens or for other indications or pathogens may be ineffective. Inappropriate use of this or other antibacterials may increase the prevalence of drug resistant microorganisms. The prescription of antimicrobial therapy should be guided, when possible, by the results of local or regional susceptibility testing of causative pathogens typically isolated during the infection. When microbiological data are not available for an individual patient, the decision to prescribe an antibiotic should be based on the clinician's assessment of the most likely etiology and optimal therapy based on the available clinical, pharmacodynamic, and in vitro information provided from clinical trials and post-marketing experience with antimicrobial agents."

(Response) The agency declines to adopt the specific wording in any of these suggestions. However, the revised statement for the "Indications and Usage" section incorporates many ideas from these suggestions. The idea that therapy may be initiated before obtaining culture results is captured by the statement that antibiotics may be

used to treat infections that are strongly suspected to be bacterial. The statement that culture and susceptibility information should be considered when available captures the idea expressed by such phrases as "where applicable and practical" and "when indicated and feasible." FDA's statement also includes the idea that physicians may wish to modify antibiotic therapy after obtaining the results of susceptibility testing.

J. Practice of Medicine

(Comment 37) Many comments asserted that the proposal is outside the scope of labeling, the purpose of which is to provide the information necessary for the safe and effective use of drugs, not to tell physicians how to practice medicine. One such comment maintained that product labeling should not dictate medical practice, which requires individualized clinical assessment of the patient and the circumstances under which the patient is being treated, and that FDA's role does not include teaching medicine. Another comment asserted that the proposal interferes with the practice of medicine since the choice of antibiotic should be made by the physician after weighing the overall benefits and risks to the patient. Another comment stated that labeling should not impose a specific standard of care or practice that must be followed. Another comment maintained that there is no statutory basis for FDA to regulate physician conduct or train physicians and that the clinical knowledge gained from years of medical training and experience cannot be completely provided for in labeling.

Several comments expressed concern that the proposed labeling statements would result in legal liability for physicians because in many cases they would not be able to follow the standard of practice required by the labeling, that is, obtaining cultures to identify microorganisms and determine their susceptibility profiles.

(Response) The agency disagrees with comments maintaining that the proposed rule is outside the scope of labeling. As FDA has long recognized, its role is neither to regulate physician conduct, nor to train physicians. As FDA wrote in 1972:

> Throughout the debate leading to enactment (of the 1938 Act and the drug amendments of 1962), there were repeated statements that Congress did not intend the Food and Drug Administration to interfere with medical practice and referenced to the understanding that the bill did not purport to regulate the practice of medicine as between the physician and the patient . . . . 37 Fed. Reg. at 16503.

FDA's 1972 notice continues:

> {A}lthough it is clear that Congress did not intend the Food and Drug Administration to regulate or interfere with the practice of medicine, it is equally clear that it did intend that the Food and Drug Administration determine those drugs for which there exists substantial evidence of safety and effectivenss and thus will be available for prescribing by the medical profession, and additionally, what information about the drugs constitutes truthful, accurate, and full disclosure to permit safe and effective prescription by the physician. As the law now stands, therefore, the Food and Drug Administration is charged with the responsibility for judging the safety and effectiveness of drugs and the truthfulness of their labeling. The physician is then responsible for making the final judgment as to which, if any, of the available drugs his patient will receive in the light of the information contained in their labeling and other adequate scientific data available to him.
>
> Physicians have been concerned that the failure to follow the labeling of a drug may render them unduly liable for malpractice.
>
> Although labeling, along with medical articles, tests, and expert opinion, may constitute evidence of the proper practice of medicine, it is not controlling on this issue. The labeling is not intended either to preclude the physician from using his best judgment in the interest of the patient, or to impose liability if he does not follow the package insert. A physician should recognize, however, that the package insert represents a summary of the important information on the conditions under which the drug has been shown to be safe and effective by adequate scientific data submitted to the Food and Drug Administration.

Given this framework, it is appropriate to include in labeling information necessary for the safe and effective use of the drug, including information about the context of product use. For example, labeling for anesthetic agents often includes very specific recommendations about the conditions under which the products should be used and the training of the personnel who administer them. Furthermore, many approved antibiotics already recommend that appropriate culture and susceptibility tests be performed.

FDA has adopted revised statements to address concerns expressed in the comments that the proposed rule categorically dictated medical practice and held up a standard that physicians would be unable to meet. The revised statements take into account that culture and susceptibility information are not always available. In addition, rather than stating that local epidemiology and susceptibility patterns should help direct initial selection of antibiotic therapy, the final rule provides that information from these sources may contribute to the selection of therapy. With these changes, the agency believes that the statements required by the final rule cannot be interpreted as overly directive and thus do not interfere with the practice of medicine. The final rule is not intended to establish a standard of care. The rule is designed to provide information and context for health care providers to consider in prescribing certain medications.

K. Information for Patients

The proposed rule provided that the following statement appear in the "Precautions" section under the "Information for patients" subsection:

> Patients should be counseled that (*insert name of antibacterial drug product*) should only be used to treat bacterial infections. It does not treat viral infections (e.g., the common cold).
>
> Patients should also be told that the medication should be taken exactly as directed. Skipping doses and not completing the full course of therapy may (1) decrease the effectiveness of the immediate treatment and (2) increase the likelihood that bacteria will develop that will not be treatable by (*insert name of antibacterial drug product*) in the future.

(Comment 38) The comments were generally supportive of the proposal to educate patients. However, one comment stated that FDA's attempt to educate the public through labeling is misguided. The comment pointed to a study[1] evaluating a medication guide that found that less than 50 percent of the patients who received the guide read it; that of the patients who read the guide, only 50 percent could recall at least one issue discussed in it; and that only 20 percent of the patients who knew the contents of the guide said they had taken some action based on it. This comment stated that if the agency proceeded with the proposal to include a statement for patients, the statement should be: "Patients should be counseled to take all medicinal products exactly as directed."

(Response) The agency does not believe the medication guide study is relevant to the labeling proposal concerning antibiotic resistance because the agency has not proposed a medication guide or anything else for patients to read. The "Information for patients" subsection contains information that would be communicated to the patient by the prescriber. The agency disagrees with the suggestion that patient information be limited to advising patients to take all medications exactly as directed because that advice would not explain

[1] Chianese, C. P., "An Overview of an Initial Experience With a Medication Guide," *Drug Information Journal*, vol. 34, pp. 855–859, 2000.

the specific consequences of failure to take antibiotics as directed.

(Comment 39) One comment asserted that, as written, the statement could suggest that patients are qualified and capable of diagnosing their own infections. Another comment stated that patient information should primarily reinforce the prescribed dosing because patients should not be expected to know how to distinguish between viral and bacterial infections. The comment also asserted that patients should be educated that at least one office visit is necessary to decide whether an antibiotic should be prescribed. Another comment stated that pharmacists should give patients the entire package insert rather than a summary, because patient demand for antibiotics often leads to unnecessary prescribing.

(Response) FDA does not agree that its proposed language suggests that patients are capable of diagnosing their own infections or are able to tell the difference between a viral and a bacterial infection. Generally, FDA expects that information concerning the use of antibiotics would be communicated to the patient in the doctor's office after the patient had already decided to seek medical care. However, because antibiotics are prescribed in hospitals as well as on an outpatient basis, FDA declines to adopt the suggestion that patients be told that at least one office visit is necessary. It is not clear how giving the package insert to patients who are prescribed antibiotics would reduce patient demand for antibiotics. In any event, FDA usually requires patient package inserts only when there is a need to communicate detailed risk information about a drug product or instructions for using the product. Neither of these circumstances apply to systemic antibacterial drug products.

(Comment 40) One comment stated that the patient information statement should not apply to any antibiotic administered solely via intravenous or intramuscular routes because patients do not self-administer by these routes.

(Response) FDA disagrees with the notion that patients never self-administer antibiotics by intravenous or intramuscular routes. Patients who are started on intravenous antibiotics in the hospital sometimes continue to use injectable antibiotics on an outpatient basis. Therefore, the patient information section must be included in the labeling of systemic antibacterials administered intravenously or intramuscularly.

(Comment 41) The agency received many specific suggestions for revisions to the proposed patient statement. One comment proposed the following language: "Patients should be counseled about the differences between viral and bacterial infections." One comment suggested adding the phrase "the oral antibiotic" before the name of the product in the first sentence. Another suggestion was to add the words "despite feeling better or 'totally' well" after the phrase "Skipping doses and not completing the full course of therapy." Another comment suggested using the phrase "likelihood of selecting bacteria" rather than the phrase "likelihood that bacterial will develop."

Two comments suggested adding either "antibacterial drugs, including" or "antibacterial agents including" before the product name in the first sentence. One comment suggested replacing the specific product name in the last sentence with the phrase "antibacterial drugs," while another comment proposed to add "or other antibacterials" after the product name in the last sentence. In the sentence "Skipping doses and not completing the full course of therapy may (1) decrease the effectiveness of the immediate treatment and (2) increase the likelihood that bacteria will develop that will not be treatable by (*insert name of antibacterial drug product*) in the future," one comment proposed to replace the first "will" with "may," while another comment suggested replacing both instances of the word "will" with the word "may."

(Response) In the final rule, FDA has adopted a number of the suggestions made in the comments. FDA has adopted the suggestion to precede the name of the product in the first sentence with the phrase "antibacterial drugs including" because the information applies to all antibacterial drugs. The agency also agrees with the idea of adding the phrase "or other antibacterials" to the last sentence, but has altered the wording slightly to state "or other antibacterial drugs." FDA agrees with the concept that patients should be told to continue therapy even after they feel better and has included the phrase "Patients should be told that although it is common to feel better early in the course of therapy * * *" in the statement.

FDA declines to adopt other suggestions. The agency believes that the suggestion that patients be counseled about the differences between bacterial and viral infections is not as direct as and, therefore, not preferable to FDA's revised language. FDA does not agree that the phrase "the oral antibiotic" should be added because the implication of this suggestion is that patients are never responsible for using injectable antibiotics. As discussed previously, there are circumstances where injectable antibiotics are self-administered. The agency rejects the suggestion to use the phrase "likelihood of selecting bacteria" because most lay people are not familiar with the concept of bacterial selection. The agency declines to adopt the suggestions to use "may" rather than "will" in the phrases "will develop" and "will not be treatable." The concept of possibility rather than certainty is already expressed by the words "may" and "likelihood" earlier in the sentence.

IV. Environmental Impact

The agency has determined under 21 CFR 25.30(h) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

V. Analysis of Impacts

FDA has examined the impacts of the final rule under Executive Order 12866, the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). Under the Regulatory Flexibility Act, if a rule has a significant economic impact on a substantial number of small entities, an agency must consider alternatives that would minimize the economic impact of the rule on small entities. Section 202(a) of the Unfunded Mandates Reform Act of 1995 requires that agencies prepare a written statement of anticipated costs and benefits before proposing any rule that may result in an expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million in any one year (adjusted annually for inflation).

The agency believes that the final rule is consistent with the regulatory philosophy and principles identified in Executive Order 12866 and in these two statutes. The final rule will amend the content of the professional labeling for human prescription antibacterial drugs. Based on the analysis, summarized in table 1 of this document, FDA projects the annualized costs to comply with the final rule to be less than $600,000. The agency finds that if the revised labeling reduces direct and indirect costs attributable to resistant bacteria by 1

percent, the annual benefit will exceed $10 million. Thus, while it has been determined that the final rule is significant under the Executive order, the final rule will not be economically significant as defined by the Executive order, because the annual impacts on the economy are substantially below $100 million. With respect to the Regulatory Flexibility Act, the agency certifies that this final rule will not have a significant effect on a substantial number of small entities. The effect of small entities is discussed in more detail in section V.D of this document. The Unfunded Mandates Reform Act does not require FDA to prepare a statement of costs and benefits for the final rule because the rule will not result in any 1-year expenditure that would exceed $100 million adjusted for inflation. The current inflation-adjusted statutory threshold is about $110 million.

TABLE 1.—SUMMARY OF QUANTIFIABLE BENEFITS AND COSTS ($MILLION)

Benefits and Costs	One-Time	Annual	Total
Benefits[1]			
Avoided cost of hospital infections		3.8	3.8
Indirect cost of longer hospital stays		0.4	0.4
Indirect costs of mortality (discounted at 3% and 7%)		6.6–11.8	6.6–11.8
Total Benefits		10.8–16.0	10.8–16.0
Costs[2]			
One-time labeling revision	2.9		0.42
Annual incremental printing cost		0.02	0.02
Annual Physicians Desk Reference (PDR) Costs		0.123	0.123
Total Costs	2.9	0.146	0.568

[1] Assumes medical, productivity, and mortality costs now attributable to antibacterial resistance are reduced by 1 percent.
[2] May not sum to total because of rounding.

A. Objective of the Final Rule

Drug-resistant bacteria pose a public health risk by reducing the effectiveness of prescription antibacterial drug products. Some disease-producing bacteria can adapt and become resistant to newly developed drugs within a couple of years. For example, a report of infections resistant to linezolid, the first drug in a new class of antibiotics, was published just 1 year after its approval (Ref. 6). To stress the need for continued vigilance against the emergence of resistant bacteria, the final rule requires that labeling of systemic antibacterial drug products include statements that encourage the use of antibiotics in a way that reduces the risk of developing drug-resistant bacteria. The final rule requires that labeling for affected prescription drug products comply with the requirements by February 6, 2004.

B. Costs of Regulation

The agency received several comments about the costs of the proposed rule. One comment asked whether the economic analysis in the proposed rule included the cost of initial and followup doctor visits or the cost of culture and sensitivity tests. Because patients normally see a health care provider to obtain a prescription for an antibacterial drug, the agency's initial analysis of impacts did not include costs for health care visits.

The agency also did not estimate the number or cost of laboratory tests that might have been ordered because of the proposed labeling change. Many doctors and hospitals currently order susceptibility tests, especially when there is a high incidence of resistant bacterial infections locally. In any event, in response to comments, the agency has revised the wording of the proposed statement that suggested a general need for susceptibility testing. Instead, the final rule adds statements to antibacterial labeling that remind health care providers to consider laboratory results, if available, when selecting drug therapy. Because the final rule does not require additional laboratory tests or visits to health care providers, this analysis of impacts does not include these patient health care costs as regulatory costs.

Some comments questioned the cost-effectiveness of susceptibility testing. The agency did not evaluate the cost-effectiveness of laboratory tests. As stated elsewhere in the preamble, the agency has modified the language about susceptibility tests to clarify that initial drug therapy should be modified if available test results suggest the infection is caused by different microorganisms than initially suspected, not by testing each patient.

One comment stated that waiting to initiate drug therapy would lead to additional health care, morbidity, and mortality costs. While the agency agrees that any delay in starting therapy can increase the direct and indirect costs of infection, the final rule does not suggest that health care providers postpone treatment once they strongly suspect that an infection is caused by a bacteria. The agency agrees that costs increase when resistant bacteria are not initially identified as the cause of an infection. In one study on bloodstream infections, the length of hospital stay increased by 6.4 days and mortality increased from 11.9 percent to 29.9 percent with inadequate treatment (defined as either giving an incorrect drug for an infection-causing pathogen or giving the correct drug for an infection-causing pathogen that is resistant to the drug) (Ref. 7). The objective of the final rule is to reduce the prevalence of and costs associated with resistant bacteria and their associated costs. A more detailed discussion of avoided costs follows in section V.C of this document.

1. Affected Products

The final rule will affect all systemic antibacterial drug products except those primarily indicated to treat a mycobacterial infection. Antifungal, antiviral, antiparasitic, and topical antibacterial products will not be subject to the labeling requirements of the final rule. FDA estimates that manufacturers will be required to modify labeling of 669 antibacterial drug products.[2]

[2] Derived from FDA's *Approved Drug Products With Therapeutic Equivalence Evaluations*, 2002, and *2001 Drug Information*, American Hospital Formulary Service (AHFS). Products counted and active ingredients matching the AHFS lists of antibacterial agents, and a distinct manufacturer, active ingredient, or dosage form. Topical dosage forms were excluded. Products with different

Continued

2. Professional Labeling Design Costs

For a major revision in the content of professional labeling, FDA had estimated in its preliminary analysis that, on average, prescription drug manufacturers would incur costs of about $2,600 per product, including inventory loss, because the 12-month implementation period is shorter than the average useful life of pharmaceutical labeling. To derive this estimate, labeling costs for four categories of pharmaceutical manufacturers were weighted by their market share of all pharmaceutical products. Comments from a large pharmaceutical manufacturer, however, stated that labeling redesign costs to industry are more than three times FDA's estimate. In response, the agency has recalculated the market shares of the affected antibacterial products based on its current drug approval data (table 2). Adjusting for both inflation and market shares, FDA now estimates that manufacturers of antibacterial drugs will incur, on average, per product costs of approximately $4,380, including $1,040 in inventory loss. The weighted average cost to revise drug labeling is based on input from industry consultants on the time and materials required to modify the package insert accompanying pharmaceutical products. (Table 2a shows a breakdown, by firm size, of the labor and material costs used to derive the weighted average cost of $4,380.) While some firms may incur per product costs higher than the average estimate, the agency believes that the revised per product cost represents a reasonable estimate of industrywide costs.

TABLE 2.—MARKET SHARE OF AFFECTED ANTIBACTERIAL DRUG PRODUCTS BY CATEGORY OF FIRM

Category of Firm	Number of Firms	Number of Products	Market Share[1]
Innovator[2]			
Small[3]	10	18	2.69%
Medium	3	27	4.04%
Large	45	501	74.89%
Generic[4]	43	123	18.39%
Totals	101	669	100.00%

[1] May not sum to total because of rounding.
[2] Includes firms manufacturing both innovator and generic products.
[3] Includes 7 private firms without size data.
[4] Includes firms manufacturing only generic products and 26 private firms without size data.

TABLE 2A.—LABELING REVISION COSTS BY FIRM SIZE

Item	Generic Drug Manufacturers	Innovator Drug Manufacturers		
		Small	Medium	Large
Labor Cost	$830	$830	$1,242	$1,812
Material Cost	$740	$740	$2,230	$3,400
Total Cost to Revise Labeling	$1,570	$1,570	$3,472	$5,212

3. Incremental Printing Costs for Professional Labeling

No comments were received on FDA's estimate of incremental printing costs for longer labeling. Therefore, FDA maintains its estimate that an average of 100,000 package inserts are printed annually for each antibacterial drug product marketed in the United States.[3] Compared to the proposed rule, the final rule requires fewer statements in the labeling, thus reducing the costs to print longer labeling. Adding new information on prudent use of antibacterial drug products to professional labeling will increase the size of current package inserts by an estimated 3.3 percent or 3.3 square inches (in^2) for the average insert. Although few package inserts will change size, if all manufacturers had to increase the length of the package insert to accommodate the new statements, they would incur additional printing costs of about $37 per affected product.[4] If all affected products had longer labeling, printing costs for the industry would increase by less than $25,000 annually.

4. PDR Costs

No comments were received on the impact of the rule on PDR costs for manufacturers. According to its publisher, a page in the print version of the PDR costs an average of $9,500 in 2001.[5] Furthermore, according to the publisher of the electronic versions of the PDR, each full package insert published in the print version is also included in the Internet and CD-ROM versions of the PDR at no additional cost to the drug manufacturer. A search of the Internet version of the PDR showed that as many as 160 antibacterial drug products will have slightly longer descriptions in the PDR.[6] The additional

therapeutic equivalence codes for the same manufacturer were counted separately.

[3] In 1996, there were approximately 133 million prescriptions for antibacterial drugs written by physicians in office and hospital settings (Government Accounting Office, 1999). An estimated 45.3 million inserts were printed to accompany these drugs. (45.3 million = (106 retail prescriptions/3 prescriptions per container) + (19 million hospital emergency prescriptions/2 prescriptions per container) + (8 million hospital outpatient prescriptions/(500 units per container/(28 units per prescription))). An average of 56,767 inserts therefore accompanied each product (45.3 million ÷ 798 products). Also, we assume that 40,000 additional inserts per product are distributed annually by sales representatives as promotional material.

[4] Although the length of an average package insert will only increase by 3.3 in^2, we rounded to 4 in^2 to calculate costs. The 1997 estimated incremental printing cost of $ 0.0086 per 100 in^2 was adjusted for inflation by the producer price index for commercial printing (i.e., a 6 percent increase in costs between 1997 and April 2001). $36.53 = 100,000 inserts per product x 1.06 x $0.000086 per in^2 x 4 in^2.

[5] $9,500 is the estimated average industry cost. Per page charges to an individual firm will decrease as more PDR pages are purchased. The maximum per page charge listed on Medical Economics' 2001 rate card is $19,035 (i.e., less than eight pages purchased for the year).

[6] A search of the Internet version of the PDR by affected drug category and by indication found only 156 affected products. According to Micromedex (http://www.micromedex.com), all fully described

language will add less than one-tenth of a page to an average PDR listing and cost about $842 more per product.[7] The annual costs of printing the larger labels in the PDR, therefore, will increase by $0.13 million.

Over 10 years, the agency estimates that the annualized compliance costs of the final rule will be approximately $580,000. These costs are summarized in table 3.

TABLE 3.—COSTS TO REVISE PROFESSIONAL LABELING AND INCREMENTAL PRINTING COSTS

	One-Time Labeling Revision Costs	Annual Incremental Printing Costs	Annual PDR Costs
Per product cost[1]	$4,379	$37	$842
Number of affected products	669	669	160
Total	$2,929,228	$24,439	$134,720
Total annualized costs[2]	$417,056	$24,439	$134,720

[1] Rounding may affect totals.
[2] One-time costs are annualized over 10 years at 7 percent.

C. Benefits

Bacterial resistance to antibacterial drugs directly affects health care costs by requiring the use of newer and more expensive drugs and by requiring longer treatment and hospitalization periods for patients infected by resistant bacteria. The societal costs of the infections from these resistant bacteria include both the direct costs for additional drugs and medical care and the indirect costs of lost productivity for patients with extended illness and increased mortality. The agency did not receive any direct comments on the benefits estimate in the proposed rule. However, during the review of the proposed rule, the Office of Management and Budget (OMB) requested that the agency estimate mortality attributable to resistant bacteria for the final rule. Thus, the final analysis of impacts also includes an estimate of the number of lifeyears saved.

1. Direct Costs of Resistant Infections

Most studies on the cost of hospital infections in the United States have not separated infections caused by resistant bacteria from those caused by susceptible bacteria. Researchers from the CDC, examining summary reports of outbreak investigations for 1971 through 1980, as well as published and unpublished reports of infections caused by bacteria with known antibacterial resistance, found that infections from resistant bacteria were typically associated with substantially longer hospital stays. The examined studies, however, had too few subjects to allow statistical analysis (Ref. 8).

Two recent studies on the effects of methicillin-resistant *Staphylococcus aureus* (MRSA) reported significantly different lengths of stay for patients infected with resistant bacteria compared to controls. The studies included only patients with similar underlying diseases. One study found that patients with infections from resistant bacteria stayed an average of 9.5 days in an intensive care unit (ICU) while control patients stayed there 5 days (Ref. 9). The other study found that patients with infections from resistant bacteria stayed an average of 21 days in an ICU compared to 12.5 days for control patients (Ref. 10).

Three regional studies directly compared the costs of infections caused by resistant and susceptible bacteria. In the first study, using hospital discharge data from hospitals in New York City, researchers modeled differences between infections caused by MRSA and those caused by methicillin-susceptible *S. aureus* (MSSA). They estimated that each MRSA infection costs an additional $2,500 in direct medical costs and longer hospital stays (Ref. 11).

The second study, performed at a university teaching hospital in North Carolina, also measured length of hospital stay and direct costs of hospitalization for patients with hospital-acquired bloodstream infections caused by MRSA and MSSA bacteria (Ref. 12). Patients infected with resistant bacteria stayed 8 additional days in the hospital (i.e., 12 days with MRSA infections compared to 4 days with MSSA infections), costing approximately $17,000 more in direct hospital costs.

In the third study, conducted at a Boston hospital, researchers examined the economic impact of antibiotic resistance in *Pseudomonas aeruginosa* (Ref. 13). This study compared length of stay and costs for three groups: (1) Patients with susceptible bacteria, (2) patients with some baseline resistant bacteria, and (3) patients with resistance that emerged while hospitalized. Daily hospital charges of $2,059 were the same for all three groups. Also, the length of stay was similar for patients infected with susceptible bacteria and those with baseline resistant bacteria. However, patients in whom resistant bacteria emerged during hospitalization incurred additional costs of $7,340 for 3.5 extra days.

The total number of annual infections caused by resistant bacteria is uncertain. Although diagnosis codes exist for infections with drug-resistant microorganisms, the codes are intended only to supplement other codes for infectious conditions and are not always included in patient data. As a result, hospital patient records may provide only an estimate of the minimum number of cases of drug-resistant infections in a given year. The U.S. National Center for Health Statistics publishes annual estimates of the number of diagnoses (by diagnosis code) in nonfederal short-stay hospitals from the National Hospital Discharge Survey (NHDS). NHDS estimates about 18,000 and 43,000 cases of infections by resistant microorganisms for 1995 and 1997, respectively (Refs. 14 and 15). On the basis of data from a larger national sample of hospital patients, the Healthcare Cost and Utilization Project (HCUP) estimates 84,000 diagnoses of resistant infections in community hospitals for 1997 (Ref. 16). CDC hospital surveillance data for 5 known strains of resistant bacteria for 1995 suggest a much higher figure, approximately 279,000 cases (Ref. 17). For this analysis, FDA has assumed the average of the 1995 data, or that 150,000 hospital-acquired infections per year are attributable to resistant bacteria. Thus, if patients incur additional hospital charges of only $2,500 per resistant infection, the total hospital cost attributable to antibacterial resistance is estimated at $375 million annually. However, these costs are likely understated because the more recent

products in the print version of the PDR are also included in the CD–ROM and Internet version.

[7] $842 per product = ($9,500 per page ÷ columns per page) x 0.266 column.

1997 studies found even greater costs and longer hospital stays associated with infections from resistant bacteria than the 1995 studies.

2. Indirect Costs of Resistant Infections

a. *Morbidity.* In addition to direct medical costs, patients also incur indirect costs from lost productivity due to resistant bacterial infections. FDA does not know how long a typical hospital stay is extended due to antibacterial resistance. However, if just 1 extra day were needed for relatively simple cases, at an average hourly wage of $16 including benefits, each case would cost about $128 in lost productivity. For cases where few alternatives are effective against the disease-causing bacteria, as with *Pseudomonas*, patients might need an additional 3.5 days in the hospital, with lost productivity cost of about $448 per patient. Assuming the mean of these two estimates, 150,000 cases of resistant bacterial infections would cost the economy about $43 million per year in lost productivity.

b. *Mortality.* The threat of mortality appears to be greater from hospital-acquired infections than from community-acquired infections. According to the CDC, about 40 percent of all community-acquired infections from *S. pneumoniae* are penicillin-nonsusceptible (includes both intermediate-susceptible and resistant strains). These bacteria can cause infections such as bacteremia, pneumonia, meningitis, and otitis media. Until the mid–1990s, surveillance data for *S. pneumoniae* included few cases of resistant bacteria. Current surveillance data, however, show the incidence of resistant bacteria has dramatically increased, surpassing the incidence of intermediate-susceptible bacteria (Ref. 18). Several studies have reported higher crude mortality rates with infections caused by drug-resistant *S. pneumoniae* (DRSP) (Refs. 19, 20, 21, 22, and 23). However, once adjusted for age and severity of illness, mortality rates for patients with community-acquired infections from DRSP and drug-sensitive *S. pneumoniae* strains are statistically similar. As the incidence of community-acquired infections from resistant bacteria increases, the differences in mortality rates may become statistically significant.

In a report released last year, the World Health Organization estimated that 14,000 people die in the United States annually from drug-resistant infections acquired in hospitals (Ref. 24). Several published studies have reported higher crude mortality rates from hospital-acquired infections caused by resistant bacteria. However, direct comparison of the findings of these studies is difficult because of differences in definitions, base line mortality rates, and the characteristics of patients included in the studies. In most studies, age and severity of illness confound the mortality data. Furthermore, because the prevalence of resistant bacteria is not uniform throughout the United States, studies conducted in a specific hospital or region may not be representative of the whole country.

To develop a rough estimate of the mortality that might be attributable to resistant bacterial infections, FDA estimated base line in-hospital mortality rates by age cohort, using hospital discharge and diagnosis data from HCUP (table 4 of this document). The number of life-years lost due to resistant bacterial infections was then derived from this base line mortality rate and from a weighted measure of the deaths attributable to resistant bacteria (27.1 percent).

TABLE 4.—1997 IN-HOSPITAL MORTALITY RATES BY AGE COHORT

Age cohort	Population (000)[1]	Number of In-Hospital Deaths)[2]	In-Hospital Mortality as % of Population for Age Cohort
Birth–17	69,603	25,739	0.04%
18–44	108,553	49,687	0.05%
45–64	55,441	143,670	0.26%
65–84	30,272	462,465	1.53%
85+	3,913	185,868	4.75%
Total	267,782	867,429	

[1] U.S. Department of Commerce, Census Bureau, Statistical Abstract of the United States: 2000, Table 12.
[2] 1997 hospital discharge data from HCUPnet, Healthcare Cost and Utilization Project, Agency for Healthcare Research and Quality (AHRQ), Rockville, MD, http://www.ahrq.gov/data/hcup/hcupnet.htm.

Table 5 of this document shows the number and monetary value of the life-years lost from resistant bacteria. The monetary values shown in columns 6 and 7 are derived by amortizing the value of a statistical life of $5 million[8] over the average remaining life span of a 35-year-old, which is estimated to be 44.3 years. At zero discount rate, this would be the equivalent of receiving a payment of $112,867 per year. However, applying discount rates of 3 percent and 7 percent[9], to reflect more plausible rates of social time preference, results in life-year values equal to $205,493 and $368,404, respectively.

[8] The $5 million estimate is the aggregate amount society is willing to pay to save one life. Fisher, A., D. Violette, and L. Chestnut, "The Value of Reducing Risks of Death: A Note on New Evidence," *Journal of Policy Analysis and Management*, vol. 8, pp. 88–100, 1989.

[9] The Panel on Cost-Effectiveness in Health and Medicine convened by the U.S. Public Health Service recommends using a discount rate of 3 percent to calculate health benefits (Weinstein, M. C. et al. "Recommendations of the Panel on Cost-Effectiveness in Health and Medicine," *Journal of the American Medical Association*, vol. 276, p. 1253–1258). OMB requires agencies to use a discount rate of 7 percent when calculating regulatory impacts.

TABLE 5.—ESTIMATED NUMBER AND MONETARY VALUE OF LIFE-YEARS LOST FROM DEATHS DUE TO INFECTIONS WITH DRUG-RESISTANT BACTERIA[1]

Age cohort	Average Life Years Remaining for Each Cohort[2]	Number of In-Hospital Diagnoses With Drug-Resistant Infections[3, 4]	Number of Deaths From Drug-Resistant Infections[5]	Number of Life Years Lost From Drug-Resistant Infections	Monetary Value of Life Years Lost—3% Discount Rate ($ Mil)[6, 7]	Monetary Value of Life Years Lost—7% Discount Rate ($ Mil)[6, 8]
Birth–17	69.2	3,056	0.3	21.2	$4.4	$7.8
18–44	48.1	10,372	1.3	62.0	$12.7	$22.8
45–64	26.8	16,807	11.8	317.1	$65.2	$116.8
65–84	12.3	39,857	165.2	2,039.5	$419.1	$751.3
85+	4.2	13,838	178.4	750.6	$154.2	$276.5
Total		83,930	357.0	3,190.3	$655.6	$1,175.3

[1] Numbers may not sum or multiply due to rounding.
[2] Anderson, R. N., "United States Life Tables, 1997," *National Vital Statistics Reports*, vol. 47, Table 1, 1999.
[3] 1997 hospital discharge data from HCUPnet, Healthcare Cost and Utilization Project, "AHRQ, Rockville, MD (http://www.ahrq.gov/data/hcup/hcupnet.htm).
[4] Includes all reported ICD–9 V09 diagnoses (i.e., infection with drug-resistant microorganisms).
[5] Baseline mortality from table 4 of this document. The number of deaths from drug-resistant infections was derived from published reports and HCUP data. Drug resistance increased mortality rates across all age cohorts by a weighted average of 27.1 percent. The mean percent increase in mortality rates and the estimated share of infections caused by the bacteria (shown in parentheses) are: 88 percent (5.3 percent) for vancomycin resistant *Enterococci* (Refs. 24, 25, 26, 27, 28, 29, 30, 31, 32, and 33); 103 percent (7.4 percent) for methicillin resistant *S. aureus* (Refs. 9, 10, 27, and 35); and 230 percent (6.5 percent) for *P. aeruginosa* (Refs. 12 and 36). No difference in mortality rates between resistant and susceptible strains was assumed for all other infection-causing bacteria. 27.1 percent = (0.053 x 0.88) + (0.074 x 1.03) + (0.065 x 2.30) + (0.808 x 0) (may not sum or multiply to total because of rounding.
[6] $5 million = value of statistical life saved; 34.9 years = median age of population in 1997; 44.3 years remaining from 1997 Life Table, used to amortize $5 million (see footnote 2 of this table).
[7] $205,493/life-year lost.
[8] $368,404/life-year lost.

3. Reduced Direct and Indirect Costs

Many factors can contribute to the development of antibiotic resistance, including the unnecessary use of antibiotics. The final rule adds statements to the professional labeling of these drugs that will encourage health care providers and patients to use antibiotics in a way that reduces the risk that antibiotic-resistant bacteria will develop, thus maintaining the effectiveness of these drugs.

As discussed elsewhere in this document, some comments to the agency questioned the effectiveness of labeling as an information tool. Health care organizations and government, however, can employ a variety of ways to inform stakeholders of the serious public health threat posed by resistant bacteria. Labeling that prompts health care providers and patients to use antibacterial drugs prudently will complement the educational efforts of organizations such as the AMA and CDC. The agency finds that while many health care providers infrequently consult the actual package insert, they often refer to the PDR for information about available drugs. Both the print and electronic versions of the PDR reproduce the professional labeling verbatim. Moreover, many patients use the PDR to obtain information about the drugs they are taking.

FDA cannot accurately quantify the magnitude of the impact that these changes in labeling will have on physician and patient behavior, or of its subsequent impact on the development of resistant bacteria and their societal costs. If, however, the changes avoid even 1 percent of the above estimated costs of antibacterial resistance, the annual cost savings will amount to $3.8 million in direct hospital costs, $0.4 million in lost productivity, and from $6.6 million to $11.8 million in life-years lost (discounted at 3 percent and 7 percent respectively), for a total benefit exceeding $10 to $16 million annually.

If the costs of increased antibiotic resistance were decreased as little as 0.01 percent, the benefits of this rule would exceed the compliance costs estimated in the previous paragraph. FDA believes it is extremely likely that the decrease in the excess cost of antibiotic resistance will be at least this large, and is likely to be significantly larger.

D. Impacts on Small Entities

No comments on the initial regulatory flexibility analysis were received by the agency. The final rule affects manufacturers of systemic antibacterial drug products. The 1997 Economic Census found approximately 700 pharmaceutical preparation manufacturing firms in the United States (i.e., North American Industry Classification System (NAICS) code 325412). The Small Business Administration (SBA) considers firms with fewer than 750 employees to be small. As seen in table 6 of this document, Census data classify firms in size categories that do not permit a precise determination of the number of pharmaceutical firms that have fewer than 750 employees. However, Census data do show that more than 90 percent of pharmaceutical manufacturers have fewer than 500 employees, and thus are small businesses (Ref. 12).

Approximately 101 large and small firms manufacture systemic antibacterial drug products[10] and thus would be affected by the rule. The estimated annualized costs of $861 per product[11] are relatively modest for most manufacturers of antibiotic drugs. Since small manufacturers of human prescription drugs already submit labeling to FDA, the labeling requirements of the rule will not require small firms to seek employees with additional special skills. As physicians and patients become more cautious in their use of antibiotics, some small antibiotic manufacturers could experience a decline in the demand for their products. The objective of the final rule is to safeguard the effectiveness of all antibiotic drug products. Thus, slowing the appearance of more resistant strains of bacteria will increase the demand for those antibiotic drugs that remain an effective treatment for those infections. More prudent use of

[10] Derived from FDA's *Approved Drug Products With Therapeutic Equivalence Evaluations*, 2001, and *2001 Drug Information*, American Hospital Formulary Service.

[11] Total annulaized costs per product: $417,056 + $24,439 + $134,720 = $576,216. Average annualized costs: $576,216/669 = $861.

antibiotics therefore will protect small, as well as large, manufacturers against the decline in demand that would otherwise follow a drop in product effectiveness.

Based on the previous analyses, any foreseeable significant adverse impacts of the rule would be incurred only by those small firms that manufacture many affected products and consequently would be required to change multiple package inserts at one time. We reviewed *FDA's Approved Drug Products With Therapeutic Equivalence Evaluations*, 2001, and identified only eight small domestic firms that manufacture more than three antibiotic products. These 8 small firms manufacture 11, 8, 8, 6, 5, 4, 4 and 4 products respectively, 95 percent of which are generic products. At least 2 of the 3 firms with over 6 products are multi-million dollar firms with over 400 employees. Three of the eight firms also manufacture one reference listed drug product.

Table 6 of this document compares the estimated annualized and first-year costs of compliance to reported average annual sales revenues for pharmaceutical firms of varying sizes and for the average firm that primarily manufactures antimicrobial drugs. Almost all manufacturers of antibiotic products in the United States have over 20 employees.[12] Thus, the last column of the table shows that the first-year costs will be less than two-tenths of one percent of sales revenues for almost all small firms. Based on the minimal impact implied by these data, FDA certifies that this final rule would not have a significant adverse economic effect on a substantial number of small entities.

[12] Derived from FDA's *Approved Drug Products With Therapeutic Equivalence Evaluations*, 2001, and *2001 Drug Information*, American Hospital Formulary Service.

TABLE 6.—EXAMPLES OF ANNUALIZED AND FIRST-YEAR COSTS TO MODIFY PROFESSIONAL LABELING AS A PERCENTAGE OF AVERAGE ANNUAL SHIPMENT

TABLE 6.—EXAMPLES OF ANNUALIZED AND FIRST-YEAR COSTS TO MODIFY PROFESSIONAL LABELING AS A PERCENTAGE OF AVERAGE ANNUAL SHIPMENT VALUE BY NUMBER OF EMPLOYEES FOR NAICS 325412 AND 325412P[1]

No. of Employees	No. of Establishments	Value of Shipments (mil$)	Average Annual Per Establishment Shipment Value (mil$)	Annualized Cost to Modify One Product as a Percentage of Shipment Value[2]	Annualized Cost to Modify Two Products as a Percentage of Shipment Value[2]	Annualized Cost to Modify Three Products as a Percentage of Shipment Value[2]	First-Year Costs to Modify Three Products as a Percentage of Shipment Value[3]
NAICS 325412 (All Pharmaceutical Preparation Manufacturing) Small Businesses By SBA Size Standards (fewer than 750 employees)							
1–4	179	90.0	0.5	0.17%	0.34%	0.51%	2.76%
5–9	88	137.5	1.6	0.06%	0.11%	0.17%	0.89%
10–19	128	451.6	3.5	0.02%	0.05%	0.07%	0.39%
20–49	138	1,078.4	7.8	0.01%	0.02%	0.03%	0.18%
50–99	85	2,486.1	29.2	0.00%	0.01%	0.01%	0.05%
100–249	107	7,846.8	73.3	0.00%	0.00%	0.00%	0.02%
250–499	62	15,217.1	245.4	0.00%	0.00%	0.00%	0.01%
500–999	29	13,720.8	473.1	0.00%	0.00%	0.00%	0.00%
Large Businesses by SBA Size Standards (750 or more employees)							
1,000–2,499	15	9,163.3	610.9	0.00%	0.00%	0.00%	0.00%
2500 +	6	17,328.5	2,888.1	0.00%	0.00%	0.00%	0.00%
NAICS 325412P (Primary Product Class = pharmaceutical preparations for human parasitic and infective diseases)							
All	28	6,480.3	231.4	0.00%	0.00%	0.00%	0.01%

[1]U.S. Department of Commerce, Bureau of the Census, *Pharmaceutical Preparation Manufacturing: 1997 Economic Census of Manufacturing*, Industry Series, EC97M–3254B.
[2]Average annualized per product costs = $861.
[3]Average first-year per product costs = $4,616.

VI. Paperwork Reduction Act of 1995

FDA concludes that this final rule does not require information collections subject to review by OMB under the Paperwork Reduction Act of 1995 (the PRA) (Public Law 104–13). FDA received no comments on its determination concerning information collections.

FDA is amending its labeling regulations to require that the labeling for systemic antibacterial drug products include certain statements, specified by FDA, about the link between unnecessary use of antibiotics and the development of drug-resistant bacterial strains. These labeling statements are not subject to review by OMB because they are "originally supplied by the Federal Government to the recipient for the purpose of disclosure to the public" (5 CFR 1320.3(c)(2)) and therefore do not constitute a "collection of information" under the PRA of 1995.

Holders of approved new drug applications (NDAs) and abbreviated new drug applications (ANDAs) are required to submit supplements and holders of pending NDAs and ANDAs are required to submit amendments to comply with the new labeling requirements. The final rule also requires that all new NDAs and ANDAs for systemic antibacterial drug products comply with the new labeling requirements. FDA regulations governing the submission and approval of NDAs and ANDAs, including the submission of product labeling, are in part 314 (21 CFR part 314). Recordkeeping and reporting requirements included in part 314 are approved by OMB until March 31, 2005, under OMB control number 0910–0001.

VII. Federalism

FDA has analyzed this final rule in accordance with the principles set forth in Executive Order 13132. FDA has determined that the rule does not contain policies that have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the agency has concluded that the rule does not contain policies that have federalism implications as defined in the Executive order and, consequently, a federalism summary impact statement is not required.

VIII. References

The following references have been placed on display in the Dockets Management Branch (see **ADDRESSES**) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

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List of Subjects in 21 CFR Part 201

Drugs, Labeling, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 201 is amended as follows:

PART 201—LABELING

1. The authority citation for 21 CFR part 201 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 355, 358, 360, 360b, 360gg–360ss, 371, 374, 379e; 42 U.S.C. 216, 241, 262, 264.

2. Add § 201.24 to subpart A to read as follows:

§ 201.24 Labeling for systemic antibacterial drug products.

The labeling of all systemic drug products intended for human use indicated to treat a bacterial infection, except a mycobacterial infection, must bear the following statements:

(a) At the beginning of the label, under the product name, the labeling must state:

To reduce the development of drug-resistant bacteria and maintain the effectiveness of (*insert name of antibacterial drug product*) and other antibacterial drugs, (*insert name of antibacterial drug product*) should be used only to treat or prevent infections that are proven or strongly suspected to be caused by bacteria.

(b) In the "Indications and Usage" section, the labeling must state:

To reduce the development of drug-resistant bacteria and maintain the effectiveness of (*insert name of antibacterial drug product*) and other antibacterial drugs, (*insert name of antibacterial drug product*) should be used only to treat or prevent infections that are proven or strongly suspected to be caused by susceptible bacteria. When culture and susceptibility information are available, they should be considered in selecting or modifying antibacterial therapy. In the absence of such data, local epidemiology and susceptibility patterns may contribute to the empiric selection of therapy.

(c) In the "Precautions" section, under the "General" subsection, the labeling must state:

Prescribing (*insert name of antibacterial drug product*) in the absence of a proven or strongly suspected bacterial infection or a prophylactic indication is unlikely to provide benefit to the patient and increases the risk of the development of drug-resistant bacteria.

(d) In the "Precautions" section, under the "Information for Patients" subsection, the labeling must state:

Patients should be counseled that antibacterial drugs including (*insert name of antibacterial drug product*) should only be used to treat bacterial infections. They do not treat viral infections (e.g., the common cold). When (*insert name of antibacterial drug product*) is prescribed to treat a bacterial infection, patients should be told that although it is common to feel better early in the course of therapy, the medication should be taken exactly as directed. Skipping doses or not completing the full course of therapy may (1) decrease the effectiveness of the immediate treatment and (2) increase the likelihood that bacteria will develop resistance and will not be treatable by (*insert name of antibacterial drug product*) or other antibacterial drugs in the future.

Dated: October 4, 2002.

Mark B. McClellan,

Commissioner of Food and Drugs.

[FR Doc. 03–2969 Filed 2–5–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9022]

RIN 1545–BB40

Information Reporting Relating to Taxable Stock Transactions; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to temporary regulations.

SUMMARY: This document contains corrections to temporary regulations that were published in the **Federal Register** on November 18, 2002 (67 FR 69468). This document contains temporary regulations under section 6043(c) requiring information reporting by a corporation if control of the corporation is acquired or if the corporation has a recapitalization or other substantial change in capital structure.

DATES: This correction is effective November 18, 2002.

FOR FURTHER INFORMATION CONTACT: Nancy Rose at (202) 622–4910 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The temporary regulations that are the subject of this correction are under section 6043(c) of the Internal Revenue Code.

Need for Correction

As published, the temporary regulations (TD 9022) contains errors that may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication of the temporary regulations (TD 9022), which is the subject of FR Doc. 02–29199, is corrected as follows:

1. On page 69469, column 2, in the preamble, under the paragraph heading "Background and Explanation of Provisions", line 5, the language "regulations published in proposed rules" is corrected to read "regulations published in the proposed rules".

§ 1.6043–4T [Corrected]

2. On page 69470, column 1, § 1.6043–4T, paragraph (a)(5), the last line in column one, the language "shareholders who receive cash, stock or" is corrected to read "shareholders who receive cash, stock, or".

3. On page 69472, column 1, § 1.6043–4T, paragraph (h), of *Example 2*, line 1, the language "Example 2. C, a domestic corporation, and" is corrected to read "Example 2. C, a domestic corporation and".

§ 1.6045–3T [Corrected]

4. On page 69473, column 1, § 1.6045–3T, paragraph (d), line 2, the language "receives stock, cash or other property" is corrected to read "receives stock, cash, or other property".

Cynthia E. Grigsby,

Chief, Regulations Unit, Associate Chief Counsel, (Procedure and Administration).

[FR Doc. 03–2802 Filed 2–5–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 254

Teacher and Teacher's Aide Placement Assistance Program

AGENCY: Department of Defense.

ACTION: Final rule.

SUMMARY: This document removes information in Title 32 of the Code of Federal Regulations concerning the Teacher and Teacher's Aide Placement Assistance Program. This part has served the purpose for which it was intended in the CFR and is no longer necessary.

EFFECTIVE DATE: February 6, 2003.

FOR FURTHER INFORMATION CONTACT: L. Bynum or P. Toppings, 703–601–4722.

SUPPLEMENTARY INFORMATION:

List of Subjects in 32 CFR Part 254

Elementary and secondary education; Government contracts; Government employees; Grant programs-education; Military personnel; Teachers.

PART 254—[REMOVED]

Accordingly, by the authority of 10 U.S.C. 301, 32 CFR part 254 is removed.

Dated: January 29, 2003.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 03–2821 Filed 2–5–03; 8:45 am]

BILLING CODE 5001–08–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 61

[FRL–7448–6]

RIN 2060–AJ87

National Emission Standards for Benzene Waste Operations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Partial withdrawal of direct final rule.

SUMMARY: On November 12, 2002, the EPA promulgated amendments to the national emission standards for benzene waste operations as a direct final rule, along with a parallel proposal to be used as a basis for final action in the event that we received any adverse comments on the direct final amendments. Because an adverse comment was received on one provision, we are withdrawing the corresponding parts of the direct final rule. We will address the adverse comments in a subsequent final rule based on the parallel proposal published on November 12, 2002.

DATES: As of February 6, 2003, the EPA withdraws 40 CFR 61.343(e), introductory text, and withdraws and reserves paragraph (e)(2) published on November 12, 2002 at 67 FR 68526. The remaining provisions published on November 12, 2002, will be effective on February 10, 2003.

ADDRESSES: Docket number A–2001–23, containing supporting information used in the development of this notice, is available for public inspection and copying between 8 a.m. and 5:30 p.m., Monday through Friday (except for Federal holidays) at the following address: U.S. Environmental Protection Agency, Air and Radiation Docket and Information Center (6102T), 1301 Constitution Avenue, NW., Room B108, Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Mr. Robert B. Lucas, Waste and Chemical Process Group (C439–03), Emission Standards Division, Office of Air Quality Planning and Standards, U.S. EPA, Research Triangle Park, NC 27711, telephone number (919) 541–0884, facsimile number (919) 541–0426, electronic mail address, *lucas.bob@epa.gov.*

SUPPLEMENTARY INFORMATION: On November 12, 2002, we published a direct final rule (67 FR 68526) and a parallel proposed rule (67 FR 68546) amending the national emission standards for benzene waste operations (40 CFR part 61, subpart FF). The amendments clarified the applicability of the standards with respect to fuel gas recovery systems and added new compliance options for tanks and containers based on the requirements in other similar EPA rules for hazardous waste treatment, storage, and disposal facilities (40 CFR parts 264 and 265, subparts CC).

We stated in the preamble to the direct final rule and parallel proposal that if we received significant adverse comment by December 12, 2002 (or by February 18, 2003, if a public hearing was requested), we would publish a timely notice in the **Federal Register** specifying which provisions will become effective and which provisions will be withdrawn due to adverse comment. We subsequently received an adverse comment from one commenter on the provisions related to control devices in the new compliance option for tanks equipped with an enclosure in 40 CFR 61.343(e).

Accordingly, we are withdrawing 40 CFR 61.343(e), introductory text, and withdrawing and reserving paragraph(e)(2). These amendments are withdrawn as of February 6, 2003. We will take final action on the proposed rule after considering the comments received. We will not institute a second comment period on this action. The provisions for which we did not receive adverse comment will become effective on February 10, 2003, as provided in the preamble to the direct final rule.

List of Subjects in 40 CFR Part 61

Environmental protection, Air pollution control, Reporting and recordkeeping requirements.

Dated: January 30, 2003.

Robert Brenner,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 03–2936 Filed 2–5–03; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 03–143; MB Docket No. 02–321, RM–10583]

Radio Broadcasting Services; Oak Grove, LA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Audio Division, at the request of Charles Crawford, allots Channel 289A to Oak Grove, Louisiana, as the community's second local FM transmission service. *See* 67 FR 66377, October 31, 2002. Channel 289A can be allotted to Oak Grove in compliance with the Commission's minimum distance separation requirements with a site restriction 11.3 kilometers (7 miles) east to avoid short-spacing to the license site of Station KVVP, Channel 289C3, Leesville, Louisiana. The reference coordinates for Channel 289A at Oak Grove are 29–43–41 North Latitude and 93–00–05 West Longitude. A filing window for Channel 289A at Oak Grove, Louisiana, will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent order.

DATES: Effective March 3, 2003.

ADDRESSES: Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC. 20554.

FOR FURTHER INFORMATION CONTACT: Rolanda F. Smith, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MB Docket Nos. 02–321, adopted January 15, 2003, and released January 17, 2003. The full text of this Commission decision is available for inspection and copying during regular business hours at the FCC's Reference Information Center, Portals II, 445 Twelfth Street, SW., Room CY–A257, Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC, 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com*.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. *See* 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, *see* 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Louisiana, is amended by adding Channel 289A at Oak Grove.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 03–2838 Filed 2–5–03; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Transportation Security Administration

49 CFR Parts 1570 and 1572

[Docket No. TSA–2003–14421]

RIN 2110–AA18

Transportation of Explosives From Canada to the United States Via Commercial Motor Vehicle and Railroad Carrier

AGENCY: Transportation Security Administration (TSA), DOT.

ACTION: Interim final rule; request for comments.

SUMMARY: This interim final rule addresses security issues regarding transportation of explosives by commercial motor vehicles and railroads. It establishes temporary requirements that all motor carriers, motor private carriers, and railroad carriers not using United States citizens or lawful permanent resident aliens as drivers or railroad crews to transport explosives to the United States must meet during the period while DOT develops the standards that will apply on a more permanent basis.

DATES: Effective on February 3, 2003. Submit comments by March 10, 2003.

ADDRESSES: Address your comments to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number TSA–2003–14421 at the beginning of your comments, and you should submit two copies of your comments. If you wish to receive confirmation that TSA received your comments, include a self-addressed, stamped postcard.

You may also submit comments through the Internet to *http://dms.dot.gov*. You may review the public docket containing comments to these regulations in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Dockets Office is on the plaza level of the NASSIF Building at the Department of Transportation at the above address. Also, you may review public dockets on the Internet at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Benjamin Klein, Office of the Chief Counsel, Transportation Security Administration, 400 Seventh Street, SW., Washington, DC 20590–0001; telephone 202–385–1262; e-mail: *Benjamin.Klein@tsa.dot.gov*.

SUPPLEMENTARY INFORMATION:

Comments Invited

This final rule is being adopted without prior notice and prior public comment. However, the Regulatory Policies and Procedures of the Department of Transportation (DOT) (44 FR 1134; February 26, 1979) provide that, to the maximum extent possible, operating administrations within DOT should provide an opportunity for public comment on regulations issued without prior notice. Accordingly, interested persons are invited to participate in this rulemaking by submitting written data, views, or arguments. We also invite comments relating to the economic, environmental, energy, or federalism impacts that might result from adopting this amendment. The most helpful comments reference a specific portion of the rule, explain the reason for any recommended change, and include supporting data. *See* **ADDRESSES** above for information on how to submit comments.

We will file in the docket all comments we receive, as well as a report summarizing each substantive public contact with TSA personnel concerning this rulemaking. The docket is available for public inspection before and after the comment closing date.

We will consider all comments we receive on or before the closing date for comments. We will consider comments filed late if it is possible to do so without incurring expense or delay. We may change these rules in light of the comments we receive.

Electronic Access

You can get an electronic copy using the Internet by:

(1) Searching the Department of Transportation's electronic Docket Management System (DMS) web page (*http://dms.dot.gov/search*);

(2) Accessing the Government Printing Office's web page at *http://www.access.gpo.gov/su_docs/aces/aces140.html*; or

(3) Visiting the TSA's Laws and Regulations web page at *http://www.tsa.dot.gov/public/index.jsp*.

In addition, copies are available by writing or calling the individual in the **FOR FURTHER INFORMATION CONTACT.**

Background

The Safe Explosives Act, Public Law 107–296 (116 Stat. 2280, 11/25/2002), sections 1121–1123, amended section 842(i) of Title 18, United States Code (U.S.C.) by adding several categories to the list of persons who may not lawfully "ship or transport any explosive in interstate or foreign commerce" or "receive or possess any explosive which

has been shipped or transported in interstate or foreign commerce." The Act added three new categories to the list of prohibited persons: aliens, persons dishonorably discharged from the armed forces, and former citizens of the United States who have renounced their citizenship. Under the Act, "alien" does not include lawful permanent resident aliens of the United States as defined in 8 U.S.C. 1101(a)(2). *See* 18 U.S.C. 845(a).

Section 845(a)(1) of Title 18, United States Code, provides in part that any aspect of the transportation of explosive materials that is regulated by DOT and that pertains to safety is exempt from § 842(i). Therefore, to the extent that DOT rules address matters in § 842(i) (such as by addressing the security risk posed by aliens), § 842(i) does not apply.

The Department of Transportation has statutory responsibility for the safe and secure transportation of hazardous materials, including explosives, in commerce. *See* 49 U.S.C. 5101 *et seq.* The Secretary of Transportation has delegated to RSPA, an agency within DOT, the authority to issue regulations governing the safe, including secure, transportation of hazardous materials (including explosives) in commerce. TSA has responsibility for security in all modes of transportation regulated under DOT, including coordinating countermeasures with appropriate departments, agencies, and instrumentalities of the United States government, and ensuring the adequacy of security measures for the transportation of cargo. 49 U.S.C. 114(d), (f)(4), (f)(10). Because this rule addresses the secure transportation of explosives in commerce, TSA has coordinated this rule with RSPA.

In addition, DOT works closely with other U.S. Government agencies to facilitate efficient international commerce, especially across our borders. Since the passage of the Safe Explosives Act, we have had extensive consultations with the Bureau of Alcohol, Tobacco and Firearms, the United States Customs Service, other interested U.S. Government agencies, and representatives of the Government of Canada.

DOT has evaluated the risk to security posed by aliens who transport commercial shipments of explosives into the United States from Canada and has determined that the requirements adopted in this Interim Final Rule are sufficient to mitigate that risk at this time. The focus of this rule is solely on the addition of aliens to the list of prohibited persons. This rulemaking only addresses the narrow issue regarding transportation of explosives by commercial motor vehicle carriers and railroad carriers and their drivers and train crew members in commerce crossing the border from Canada into the United States. It is intended as a temporary measure until the completion of consultations with Canada and other U.S. Government agencies, and issuance of more comprehensive regulations requiring background checks of persons transporting hazardous materials in commerce.

DOT is consulting with the Government of Mexico regarding a comparable regulatory regime for the transportation of explosives from Mexico to the United States.

USA PATRIOT Act and Related Rulemakings

Section 1012 of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (USA PATRIOT Act), Public Law 107–56 (115 Stat. 272, 10/26/2001), provides that the States must submit to the Department of Justice (DOJ) for a background records check (including a check of criminal, Immigration and Naturalization Service (INS), and intelligence databases) the names of all commercial motor vehicle drivers applying for a hazardous materials endorsement to a commercial drivers license (CDL). DOJ is directed to report the results of the background check to the Department of Transportation, which will decide whether the driver poses "a security risk warranting denial of the license." DOT plans to issue regulations in the near future to implement these provisions. The long-term solution will involve background checks of all persons transporting hazardous materials in commerce to help ensure that they do not pose a security risk to the American public.

DOT is considering a number of other regulatory actions to address the issue of security in the transportation of hazardous materials. For example, the Research and Special Programs Administration (RSPA) published a notice of proposed rulemaking (NPRM) on May 2, 2002, under Docket HM–232, to enhance the security of hazardous materials in transportation (67 FR 22028). The NPRM proposed to require shippers and carriers of hazardous material shipments that require placarding (which includes explosives) to adopt and implement security plans that would include measures to address personnel security, unauthorized access, and en route security vulnerabilities. As part of its security plan, a company would have to implement measures to confirm information provided by job applicants hired for positions that involve access to and handling of the hazardous materials. The NPRM is expected to be the first step in what will likely be a series of rulemakings that will examine the necessity for imposing more stringent security requirements on certain materials or classes of materials deemed to be significant security threats. RSPA expects to publish a final rule under Docket HM–232 in the very near future.

The Interim Final Rule

TSA is establishing temporary requirements applicable to motor carriers, motor private carriers, and railroad carriers transporting explosives in commerce from Canada to the United States using drivers and train crew members who are not United States Citizens or lawful permanent resident aliens. These interim rules will be effective only during the period while DOT develops the standards that will apply on a more permanent basis.

This rule creates a new subchapter in TSA regulations, Subchapter D, which will eventually contain a number of rules covering maritime and land transportation security. This rule also creates new part 1572, which will contain rules related to credentialing and background checks for maritime and land transportation security.

Section 1572.9 Transportation of Explosives From Canada to the United States via Commercial Motor Vehicle

New § 1572.9 covers transportation of explosives from Canada to the United States via commercial motor vehicle. This section provides procedures to ensure that the carrier, offeror of explosives, and driver of the motor vehicle are properly checked.

Under this section carriers must ensure that they are known carriers, and that their offeror of explosives and their driver are known before crossing the border into the United States. They will become known by submitting specified information to Transport Canada in advance. Transport Canada is an agency within the Government of Canada with responsibility to oversee safety and security of transportation. Transport Canada will conduct checks to ensure that the carrier and the shipper are legitimate entities and authorized to do business in Canada. Transport Canada will also check the drivers to ensure there are no known security concerns. Transport Canada will forward to TSA the information on the carriers, offerors, and drivers that it has determined to be known. TSA will make independent additional checks with such other U.S.

government agencies as may be appropriate and will forward the list of acceptable carriers, offerors, drivers, and train crew members to the United States Customs Service. TSA will not include on the list of known carriers, offerors, drivers, or train crew members any whose background check indicates that they are not truly known (such as they are not truly authorized to conduct business in Canada) or may present a security risk.

The United States Customs Service will conduct a number of checks at the border. It will check the driver's commercial driver's license, as well as shipping papers and other required documentation. The Customs Service will determine whether the carrier, offeror, driver, and train crew member are on the list of known persons. If a carrier attempts to enter the United States without having complied with this section, the Customs Service will deny entry of the explosives and take other appropriate action. The Customs Service may allow the driver or train crew member to return to Canada, hold the shipment until the carrier has corrected the problem (such as by providing a driver or train crew member who is on the list), or take whatever action the Customs Service deems appropriate under other laws that may apply.

If a person violates TSA regulations, including those adopted here, TSA may take civil enforcement action if appropriate, including seeking a civil penalty of up to $10,000 for each violation. *See* 49 U.S.C. 46301(a). TSA's enforcement procedures are in 49 CFR part 1503. In appropriate cases violations will be referred for criminal investigation and prosecution.

It should be noted that some U.S. citizens and lawful permanent resident aliens have Canadian commercial driver's licenses or are train crew members on operations subject to this rulemaking. Because such persons are not required to comply with this rule, they may not appear on the list of known drivers or train crew members provided by Transport Canada. To show to the Customs Service that they are eligible to serve as drivers, they may provide a valid U.S. passport or other U.S. Federal or State identification acceptable to the Customs Service.

Once a carrier, offeror, or driver is on the known list, they do not need to be submit their names again under this rule. Transport Canada and TSA will conduct additional checks on these persons as appropriate and will remove names from the list as necessary.

Section 1572.11 Transportation of Explosives From Canada to the United States via Railroad Carrier

New section 1572.11 covers transportation of explosives from Canada to the United States via railroad carrier. It closely parallels § 1572.9, with changes to reflect that crews rather than individual drivers operate trains and that the Customs Service sometimes directs trains to inspection points that are not precisely at the border.

Transportation by Maritime and Aviation

This rule does not cover transportation by maritime or aviation. The Coast Guard has extensive regulations relating to the security of transportation of explosives by aliens designed to discover and prevent entry to ports and places in the United States of those who present a threat to the United States on ships carrying explosives. *See* 33 CFR 160.T208 and 33 CFR part 6, and 33 CFR 160.111(a). DOT has determined that there is no need at this time to add further requirements. Similarly, TSA has extensive security requirements covering the security of flight crew and cargo on both foreign and U.S. air carriers. *See* 49 CFR parts 1544 and 1546. These requirements include criminal history checks and checks against other Federal databases of the flight crewmembers to ensure that they do not pose a security threat. DOT has determined that there is no need to add further requirements at this time. DOT has assessed the security risk posed by aliens transporting explosives by water and air and has determined that existing regulations are sufficient to mitigate the risk. Accordingly, these regulations exempt aliens transporting explosives in the United States by water and by air from liability for transportation offenses under 18 U.S.C. 845(a)(1).

Good Cause for Immediate Adoption

This action is being taken without providing the opportunity for notice and comment, and it provides for immediate effectiveness upon adoption. Under the Administrative Procedure Act (APA) an agency may forgo notice and comment rulemaking when "the agency for good cause finds * * * that notice and public procedures thereon are impracticable, unnecessary, or contrary to the public interest." 5 U.S.C. 553(b). TSA finds good cause under 5 U.S.C. 553 that notice and comment are impracticable and contrary to the public interest. This rule is designed to address an unanticipated impact of the Safe Explosives Act on the routine transportation of explosives in commerce across the U.S.-Canadian border. This rule has been developed after consultation with representatives of the Canadian government and the trucking and railroad industry.

Further, TSA has determined that this action is necessary to minimize security threats and potential security vulnerabilities. TSA and other federal security organizations have been concerned about the potential use of explosives to carry out terrorist acts in the United States since September 11, 2001. This rule provides additional assurance that explosives being carried into this country will be carried by authorized persons.

Further, the Under Secretary finds that good cause exists under 5 U.S.C. 553(d) for making this final rule effective immediately upon publication. Without an immediate effective date, there is a potential for a serious disruption of trans-border transportation.

Economic Analyses

Changes to Federal regulations must undergo several economic analyses. First, Executive Order (E.O.) 12866 directs each Federal agency to propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Office of Management and Budget directs agencies to assess the effect of regulatory changes on international trade. Fourth, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more annually (adjusted for inflation).

Executive Order 12866 and DOT Regulatory Policies and Procedures

Executive Order 12866, "Regulatory Planning and Review" (58 FR 51735, October 4, 1993), provides for making determinations whether a regulatory action is "significant" and therefore subject to Office of Management and Budget (OMB) review and to the requirements of the Executive Order. The Order defines a "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or

adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

This rule was reviewed under Executive Order 12866. It is significant within the meaning of the DOT's Regulatory Policies and Procedures. No regulatory analysis or evaluation accompanies this rule. When a rulemaking action does not include publication of a notice of proposed rulemaking, as is the case in this proceeding, economic assessments are not required for the final rule.

TSA recognizes that this rule will impose costs on affected carriers in Canada. These costs will stem from ensuring that the carrier, offeror, drivers, and train crew members are known to Transport Canada and to TSA. However, given the Act and the current security threat, TSA believes it is necessary to require these enhanced security measures, to avoid the potential of a serious disruption of trans-border transportation and to provide additional assurance that persons who transport explosives are authorized to do so. TSA will assess the costs and benefits of the rule as soon as possible and include the analysis in the docket of this rulemaking.

Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions). No regulatory flexibility analysis is required if the head of an agency certifies the rule will not have a significant economic impact on a substantial number of small entities. SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities.

TSA recognizes that this rule will impose costs on affected foreign carriers, offerors, drivers, and train crew members, and that some of these carriers are small businesses. However, given the Act and the current security threat, TSA believes it is necessary to require these enhanced security measures. In any event, when a rulemaking action does not include publication of a notice of proposed rulemaking, as is the case in this proceeding, economic assessments are not required for the final rule.

Unfunded Mandates Determination

The Unfunded Mandates Reform Act of 1995 (the Act), enacted as Public Law 104–4 on March 22, 1995, is intended, among other things, to curb the practice of imposing unfunded Federal mandates on State, local, and tribal governments.

Title II of the Act requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in a $100 million or more expenditure (adjusted annually for inflation) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a "significant regulatory action."

This final rule does not contain such a mandate. Therefore, the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) requires that the TSA consider the impact of paperwork and other information collection burdens imposed on the public. A person is not required to respond to a collection of information unless it displays a current valid Office of Management and Budget (OMB) control number.

Under this rule, the Canadian Government will gather information from their carriers and railroads and share it with TSA as a part of Government-to-Government consultation and coordination. Persons operating from Canada transporting explosives across the border pursuant to this rule will not be subject to additional paperwork burdens. The information that they will present to Customs is already required under other international, statutory, and regulatory provisions. We note that this rule is an interim measure that must be issued quickly to prevent disruption of commerce. We are working closely with OMB to obtain expedited clearance under the Paperwork Reduction Act of 1995 (44 U.S.C. 3507) for the Government-to-Government paperwork collection.

International Trade Impact Statement

The Trade Agreement Act of 1979 prohibits Federal agencies from engaging in any standards or related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety and security, are not considered unnecessary obstacles. The statute also requires consideration of international standards, and where appropriate, that they be the basis for U.S. standards. DOT has assessed the potential effect of this rulemaking in consultation with the Government of Canada, and has determined that it will not have a significant impact on foreign commerce and, therefore, has no effect on any trade-sensitive activity.

Executive Order 13132, Federalism

TSA has analyzed this final rule under the principles and criteria of Executive Order 13132, Federalism. We determined that this action will not have a substantial direct effect on the States, or the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government, and therefore does not have federalism implications.

Environmental Analysis

TSA has reviewed this action for purposes of the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4347) and has determined that this action will not have a significant effect on the human environment.

Energy Impact

The energy impact of this final rule has been assessed in accordance with the Energy Policy and Conservation Act (EPCA) Public Law 94–163, as amended (42 U.S.C. 6362). We have determined that this rulemaking is not a major regulatory action under the provisions of the EPCA.

List of Subjects in 49 CFR Part 1572

Motor carriers, Motor vehicle carriers, Railroads, Security measures.

The Interim Final Rule

In consideration of the foregoing, the Transportation Security Administration amends Chapter XII of Title 49, Code of Federal Regulations, by adding a new subchapter D to read as follows:

SUBCHAPTER D—MARITIME AND LAND TRANSPORTATION SECURITY

PART 1570—[Reserved]

PART 1572—CREDENTIALING AND BACKGROUND CHECKS FOR MARITIME AND LAND TRANSPORTATION SECURITY

Sec.
1572.1 Applicability.
1572.9 Transportation of explosives from Canada to the United States via commercial motor vehicle.
1572.11 Transportation of explosives from Canada to the United States via railroad carrier.

Authority: 49 U.S.C. 114, 40113, 46105.

§ 1572.1 Applicability.

This part prescribes regulations for credentialing and background checks in specified uses for maritime and land security.

§ 1572.9 Transportation of explosives from Canada to the United States via commercial motor vehicle.

(a) *Applicability.* This section applies to carriers that carry explosives from Canada to the United States using a driver who is not a United States citizen or lawful permanent resident alien of the United States.

(b) *Terms used in this section.* For purposes of this section:

Carrier means any "motor carrier" or "motor private carrier" as defined in 49 U.S.C. 13102(12) and (13), respectively.

Customs Service means the United States Customs Service.

Explosive means a material that has been examined by the Associate Administrator for Hazardous Materials Safety, Research and Special Programs Administration, in accordance with 49 CFR 173.56, and determined to meet the definition for a Class 1 material in 49 CFR 173.50.

Known carrier means a person that has been determined by the Governments of Canada and the United States to be a legitimate business operating in accordance with all applicable laws and regulations governing the transportation of explosives.

Known driver means a driver of a motor vehicle who has been determined by the Governments of Canada and the United States to present no known security concern.

Known offeror means an offeror that has been determined by the Governments of Canada and the United States to be a legitimate business operating in accordance with all applicable laws and regulations governing the transportation of explosives.

Lawful permanent resident alien means a lawful permanent resident alien of the United States as defined by 8 U.S.C. 1101(a)(2).

Offeror means the person offering a shipment to the carrier for transportation from Canada to the United States, and may also be known as the "consignor" in Canada.

(c) *Prior approval of carrier, offeror, and driver.* (1) No carrier may transport in commerce any explosive into the United States from Canada via motor vehicle if the driver of the vehicle is a not a United States citizen or lawful permanent resident alien unless the carrier, offeror, and driver are identified on a TSA list as a known carrier, known offeror, and known driver, respectively.

(2) The carrier must ensure that it, its offeror, and its driver have been determined to be a known carrier, known offeror, and known driver, respectively. If any has not been so determined, the carrier must submit the following information to Transport Canada:

(i) The carrier must provide its:
(A) Official name;
(B) Business number;
(C) Any trade names; and
(D) Address.

(ii) The following information about any offeror of explosives whose shipments it will carry:
(A) Official name;
(B) Business number; and
(C) Address.

(iii) The following information about any driver the carrier may use to transport explosives into the United States from Canada who is neither a United States citizen nor lawful permanent resident alien of the United States:
(A) Full name;
(B) Canada Commercial Driver's License number; and
(C) Both current and most recent prior residential addresses.

(3) Transport Canada will determine that the carrier and offeror are legitimately doing business in Canada and will also determine that the drivers are properly licensed and present no known problems for purposes of this section. Transport Canada will notify TSA of these determinations by forwarding to TSA lists of known carriers, offerors, and drivers and their identifying information.

(4) TSA will update and maintain the list of known carriers, offerors, and drivers and forward the list to the Customs Service.

(5) Once included on the list, the carriers, offerors, and drivers need not obtain prior approval for future transport of explosives under this section.

(d) TSA checks. TSA may periodically check the data on the carriers, offerors and drivers to confirm their continued eligibility and may remove from the list any that TSA determines is not known or is a threat to security.

(e) *At the border*—(1) *Driver who is not a United States citizen or lawful permanent resident alien.* Upon arrival at the border, and prior to entry into the United States, the driver must provide a valid Canadian commercial driver's license to the Customs Service.

(2) *Driver who is a United States citizen or lawful permanent resident alien.* If the Customs Service cannot verify that the driver is on the list, and if the driver is a United States citizen or lawful permanent resident alien, the driver may be cleared by the Customs Service upon providing:

(i) A valid United States passport; or

(ii) One or more other document(s) including a form of United States federal or state government-issued identification with photograph, acceptable to the Customs Service.

(3) *Compliance.* If a carrier attempts to enter the United States without having complied with this section, the Customs Service will deny entry of the explosives and may take other appropriate action.

§ 1572.11 Transportation of explosives from Canada to the United States via railroad carrier.

(a) *Applicability.* This section applies to railroad carriers that carry explosives from Canada to the United States using a train crew member who is not a United States citizen or lawful permanent resident alien of the United States.

(b) *Terms under this section.* For purposes of this section:

Customs Service means the United States Customs Service.

Explosive means a material that has been examined by the Associate Administrator for Hazardous Materials Safety, Research and Special Programs Administration, in accordance with 49 CFR 173.56, and determined to meet the definition for a Class 1 material in 49 CFR 173.50.

Known railroad carrier means a person that has been determined by the Governments of Canada and the United States to be a legitimate business operating in accordance with all applicable laws and regulations governing the transportation of explosives.

Known offeror means an offeror that has been determined by the Governments of Canada and the United States to be a legitimate business operating in accordance with all

applicable laws and regulations governing the transportation of explosives.

Known train crew member means an individual used to transport explosives from Canada to the United States who has been determined by the Governments of Canada and the United States to present no known security concern.

Lawful permanent resident alien means a lawful permanent resident alien of the United States as defined by 8 U.S.C. 1101(a)(2).

Offeror means the person offering a shipment to the railroad carrier for transportation from Canada to the United States, and may also be known as the "consignor" in Canada.

Railroad carrier means "railroad carrier" as defined in 49 U.S.C. 20102.

(c) *Prior approval of railroad carrier, offeror, and train crew member.* (1) No railroad carrier may transport in commerce any explosive into the United States from Canada via a train operated by a crew member who is not a United States citizen or lawful permanent resident alien unless the railroad carrier, offeror, and train crew member are identified on a TSA list as a known railroad carrier, known offeror, and known train crew member, respectively.

(2) The railroad carrier must ensure that it, its offeror, and each of its crew members have been determined to be a known railroad carrier, known offeror, and known train crew member, respectively. If any has not been so determined, the railroad carrier must submit the following information to Transport Canada:

(i) The railroad carrier must provide its:

(A) Official name;

(B) Business number;

(C) Any trade names; and

(D) Address.

(ii) The following information about any offeror of explosives whose shipments it will carry:

(A) Official name;

(B) Business number; and

(C) Address.

(iii) The following information about any train crew member the railroad carrier may use to transport explosives into the United States from Canada who is neither a United States citizen nor lawful permanent resident alien:

(A) Full name; and

(B) Both current and most recent prior residential addresses.

(3) Transport Canada will determine that the railroad carrier and offeror are legitimately doing business in Canada and will also determine that the train crew members present no known problems for purposes of this section. Transport Canada will notify TSA of these determinations by forwarding to TSA lists of known railroad carriers, offerors, and train crew members and their identifying information.

(4) TSA will update and maintain the list of known railroad carriers, offerors, and train crew members and forward the list to the Customs Service.

(5) Once included on the list, the railroad carriers, offerors, and train crew members need not obtain prior approval for future transport of explosives under this section.

(d) *TSA checks.* TSA may periodically check the data on the railroad carriers, offerors, and train crew members to confirm their continued eligibility and may remove from the list any that TSA determines is not known or is a threat to security.

(e) *At the border*—(1) *Train crew members who are not United States citizens or lawful permanent resident aliens.* Upon arrival at a point designated by the Customs Service for inspection of trains crossing into the United States, the train crew members of a train transporting explosives must provide sufficient identification to the Customs Service to enable that agency to determine if each crew member is on the list of known train crew members maintained by TSA.

(2) *Train crew members who are United States citizens or lawful permanent resident aliens.* If the Customs Service cannot verify that the crew member is on the list and the crew member is a United States citizen or lawful permanent resident alien, the crew member may be cleared by the Customs Service upon providing:

(i) A valid United States passport; or

(ii) One or more other document(s) including a form of United States federal or state government-issued identification with photograph, acceptable to the Customs Service.

(3) *Compliance.* If a carrier attempts to enter the United States without having complied with this section, the Customs Service will deny entry of the explosives and may take other appropriate action.

Issued in Washington, DC, on February 3, 2003.

Stephen J. McHale,

Deputy Administrator.

[FR Doc. 03–3005 Filed 2–3–03; 5:00 pm]

BILLING CODE 4910–62–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 021101264–3016–02; I.D. 101802D]

RIN 0648–AQ33

Fisheries of the Northeastern United States; Atlantic Herring Fishery

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule, 2003 specifications.

SUMMARY: NMFS announces final specifications for the 2003 Atlantic herring fishery. There are two changes from the 2002 specifications approved by NMFS for the 2003 fishery: A transfer of 10,000 mt from Area 2 total allowable catch (TAC) reserve to the Area 3 TAC resulting in an Area 3 TAC of 60,000 mt and an Area 2 TAC reserve of 70,000 mt; and a restriction on U.S. at-sea processing (USAP) vessels to fish in Areas 2 and 3, only. The intent of this final rule is to promote the development and conservation of the Atlantic herring resource.

DATES: Effective February 6, 2003, through December 31, 2003.

ADDRESSES: Copies of supporting documents, including the Environmental Assessment (EA) and Regulatory Impact Review (RIR), Final Regulatory Flexibility Analysis (FRFA), and the Stock Assessment and Fishery Evaluation (SAFE) Report for the 2001 Atlantic Herring Fishing Year are available from Patricia A. Kurkul, Regional Administrator, Northeast Regional Office, NMFS, One Blackburn Drive, Gloucester, MA 01930–2298. The EA/RIR/FRFA/SAFE are accessible via the Internet at *http://www.nero.nmfs.gov.*

FOR FURTHER INFORMATION CONTACT: Paul H. Jones, Fishery Policy Analyst, 978–281–9273, fax 978–281–9135, e-mail *paul.h.jones@noaa.gov.*

SUPPLEMENTARY INFORMATION: Regulations implementing the Atlantic Herring Fishery Management Plan (FMP) require the New England Fishery Management Council's (Council) Atlantic Herring Plan Development Team (PDT) to meet at least annually, no later than July each year, with the Atlantic States Marine Fisheries Commission's (Commission) Atlantic Herring Plan Review Team (PRT) to develop and recommend the following

specifications for consideration by the Council's Atlantic Herring Oversight Committee: Allowable biological catch (ABC), optimum yield (OY), domestic annual harvest (DAH), domestic annual processing (DAP), total foreign processing (JVPt), joint venture processing (JVP), internal waters processing (IWP), USAP, border transfer (BT), total allowable level of foreign fishing (TALFF), and reserve (if any). The PDT and PRT also recommend the total allowable catch (TAC) for each management area and subarea identified in the FMP. As the basis for its recommendations, the PDT reviews available data pertaining to: Commercial and recreational catch; current estimates of fishing mortality; stock status; recent estimates of recruitment; virtual population analysis results and other estimates of stock size; sea sampling and trawl survey data or, if sea sampling data are unavailable, length frequency information from trawl surveys; impact of other fisheries on herring mortality; and any other relevant information. Recommended specifications are presented to the Council for adoption and recommendation to NMFS. To the extent that these recommendations are adopted by NMFS, they serve as the basis for the allocations.

Proposed 2003 initial specifications were published on November 15, 2002 (67 FR 69181). Public comments were accepted through December 16, 2002. The final specifications are unchanged from those that were proposed.

2003 Final Initial Specifications

The following table contains the final initial specifications for the 2003 Atlantic herring fishery.

FINAL SPECIFICATIONS AND AREA TACS FOR THE 2003 ATLANTIC HERRING FISHERY

Specification	Final Allocation (mt)
ABC	300,000
OY	250,000
DAH	250,000
DAP	226,000
JVPt	20,000
JVP	10,000 (Area 2 and 3 only)
IWP	10,000
USAP	20,000 (Area 2 and 3 only)
BT	4,000
TALFF	0
Reserve	0
TAC-Area 1A	60,000
TAC-Area 1B	10,000
TAC-Area 2	50,000 (Area 2 and 3 only)
TAC-Area 3	60,000

There are two changes from the specifications approved by NMFS for the 2002 fishery: A transfer of 10,000 mt from the Area 2 TAC reserve to the Area 3 TAC resulting in an Area 3 TAC of 60,000 mt and an Area 2 TAC reserve of 70,000 mt; and a restriction on USAP vessels to fish in Areas 2 and 3 only. A complete discussion of the development of these changes appears in the recommendations from the Council and the preamble to the proposed rule and is not repeated here.

Comments and Responses

Three members of the public submitted comments on the proposed specifications. One of the three commenters submitted general comments about Atlantic herring management, which is not the subject of this rulemaking and will not be responded to here .

Comment 1: One commenter supported the proposed restriction of USAP activity from Area 1, the proposed increase in Area 3 TAC, and the proposed USAP specification of 20,000 mt.

Response 1: This final rule implements the proposed measures.

Comment 2: One commenter opposed restricting USAP activity to Areas 2 and 3. He argued USAP should be allowed throughout the management area and that allowing USAP vessels in the area provides fishing opportunities for vessels that lack refrigerated sea water and holding tanks needed to deliver fish to shore.

Response 2: There are no expected biological impacts on the Atlantic herring stock from restricting potential USAP vessel activity to Areas 2 and 3. If a USAP vessel has the opportunity to operate in or near Area 1 at a lower cost (for fuel, maintenance, or other operational expenses) than it would incur from fishing in Area 2 or 3, and it is restricted from doing so, then the economic profitability of the USAP vessel would be reduced. However, there has been no USAP activity, so such concern is hypothetical at this time. The prohibition on harvesting Area 1 fish for delivery to USAP vessels would leave more fish available to shoreside processors and bait dealers operating on the coasts of Maine, New Hampshire, and Massachusetts, the three states that border Area 1A (the inshore portion of Area 1). The quota in Area 1A was taken prior to the end of both the 2000 and 2001 fishing years, and the period 1 (January through June) quota implemented in 2002 was taken by April. Therefore, based on recent fishing activity in Area 1, restricting USAP activity from Area 1 seems to result in net benefits to the fishery.

As a result, the Council recommended, and NMFS is implementing, the restriction of USAP activity from Area 1.

Classification

This final rule has been determined to be not significant for purposes of E.O. 12866.

This action establishes TACs and related management measures for the Atlantic herring fishery. If implementation of the TACs and other management measures is delayed, NMFS will be prevented from carrying out its function of preventing overfishing of the species. The Atlantic herring fishery will begin making landings on January 1, 2003. If a delay in effectiveness is required, and a quota were to be harvested during a delayed effectiveness period, the lack of effective quota specifications would prevent NMFS from closing the fishery. Of particular concern would be the impact if the Area 1A TAC allocated for the period January-June is overharvested. NMFS must close Area 1A when 95 percent of the TAC allocated to the first seasonal period is reached or exceeded. The quota in Area 1A was taken prior to the end of the 2000, 2001, and 2002 fishing years. The Period 1 quota for 2002 was taken earlier (April) than in 2001, and that trend might continue in 2003. If Period 1 is not closed prior to reaching 95 percent of the TAC allocated to this period, then there would be distributional effects on the fishery for the remainder of the fishing year and would likely reduce economic gains for some of the industry participants who traditionally harvest Atlantic herring in Area 1A during Period 2 (June through December). Therefore, the Assistant Administrator for Fisheries, NOAA, finds good cause under 5 U.S.C. 553(d)(3) to waive the 30–day delayed effectiveness period for the quotas and other management measures.

NMFS prepared a FRFA for this action. The FRFA includes a summary of the analyses in support of these specifications. A copy of the FRFA is available from NMFS (see **ADDRESSES**).

A summary of the FRFA, which includes the IRFA and applicable sections of the 2003 specifications package, follows:

The reasons why this action is being taken by the agency, and the objectives of this final rule are explained in the preamble to the proposed rule and are not repeated here. This action does not contain any collection-of-information, reporting, recordkeeping, or other compliance requirements. This action is taken under authority of the Magnuson-Stevens Act and regulations at 50 CFR part 648.

Three comments were submitted on the proposed rule, but none of them were specific to the initial regulatory flexibility analysis. However, one individual commented on the economic impacts of the measures on the fishing industry; NMFS has responded to the comment (Comment 2) in the Comments and Responses section of the preamble to this final rule. No changes were made to the final rule as a result of the comments received.

All of the affected businesses (fishing vessels and dealers) are considered small entities under the standards described in NMFS guidelines because they have profits that do not exceed $3 million annually. The last full year of data available for the Atlantic herring fishery is for 2001. There were 146 vessels, 6 processors, and 190 dealers participating in the fishery in 2001. Given that vessels caught less than half the OY in 2001, the status quo OY should not result in a negative economic impact on the revenues of vessels, producer surplus, or consumer surplus.

The increase in the Area 3 TAC from 50,000 to 60,000 mt, and concomitant decrease in the Area 2 TAC reserve from 80,000 to 70,000 mt, should have a positive impact on vessels and processors. Landings from Area 3 increased from 12,884 mt in 2000 to 34,510 mt in 2001. The Council thus sought to provide additional opportunity for the industry to increase its activity in Area 3. The Council did not consider transferring any TAC from Area 1 because that is the area in which the fishery has historically concentrated its activity. In fact, in 2001, landings from Area 1A and Area 1B totaled 68,130 mt, nearly attaining the combined TAC for both areas of 70,000 mt. Landings from Area 2 in 2001 were only 15,388 mt out of a combined Area 2 TAC and Area 2 TAC Reserve of 120,000 mt. Thus, the transfer of 10,000 mt from the Reserve will still leave a substantial amount of TAC for the fishery to expand its activity in Area 2. If the TAC transfer is fully utilized, an additional 10,000 mt would produce additional revenues of $1.2M (assuming $120/mt) to vessels and a proportionate increase in profits to processors.

As noted above, landings from Area 1 in 2001 neared the total TAC for the area. The Council was concerned that future USAP activity, if allowed in Area 1, would have a negative impact on firms that have historically harvested Area 1 fish for sale to shoreside processors. If the Area 1 TACs were attained, harvesting vessels that sell their catch to shoreside processors would have to fish farther offshore, increasing their operating costs and potentially reducing their profitability. The economic impact on USAP vessels from the prohibition on receiving fish harvested in Areas 1A and 1B cannot be directly measured since there is no history of over-the-side purchases upon which to base economic impacts.

The Council considered a Committee recommendation to reduce USAP by 5,000 mt, but rejected it based on comments that a vessel may enter the fishery in 2003 that could fully utilize the 20,000 mt specification. The reduction of the specification to 15,000 mt would reduce potential profits of USAP operations when compared to the status quo specification of 20,000 mt, although as yet, no part of USAP has been utilized.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: January 30, 2003.

Rebecca Lent,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. 03–2798 Filed 1–31–03; 3:43 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 68, No. 25
Thursday, February 6, 2003

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Federal Highway Administration

23 CFR Part 1225

[Docket No. NHTSA–2002–13680]

RIN 2127–AI44

Operation of Motor Vehicles by Intoxicated Persons

AGENCY: National Highway Traffic Safety Administration (NHTSA) and Federal Highway Administration (FHWA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking (NPRM); request for comments.

SUMMARY: This document proposes to implement a new program enacted by the Department of Transportation and Related Agencies Appropriations Act, 2001 (DOT Appropriations Act of FY 2001), which requires the withholding of Federal-aid highway funds, beginning in fiscal year (FY) 2004, from any State that has not enacted and is not enforcing a law that provides that any person with a blood alcohol concentration (BAC) of 0.08 percent or greater while operating a motor vehicle in the State shall be deemed to have committed a *per se* offense of driving while intoxicated or an equivalent *per se* offense. This document solicits comments on a proposed regulation to clarify what States must do to avoid the withholding of funds.

DATES: Comments must be received on or before April 7, 2003.

ADDRESSES: Submit written comments to the Docket Management Facility, DOT, 400 Seventh Street, SW., Room PL–401, Washington, DC 20590.

Alternatively, you may submit your comments electronically by logging onto the Docket Management System (DMS) Web site at *http://dms.dot.gov/submit*. Click on "Help & Information" or "Help/Info" to view instructions for filing your comments electronically. Regardless of how you submit your comments, you should mention the docket number of this proposed rule.

FOR FURTHER INFORMATION CONTACT: In NHTSA: Ms. Marlene Markison, Office of Injury Control Operations & Resources, NTI–200, telephone (202) 366–2121, fax (202) 366–7394; Ms. Heidi Coleman, Office of Chief Counsel, NCC–113, telephone (202) 366–1834, fax (202) 366–3820; or Ms. Tyler Bolden, Office of Chief Counsel, NCC–113, telephone (202) 366–1834, fax (202) 366–3820.

In FHWA: Mr. Randy Umbs, Office of Safety, HSA–1, telephone (202) 366–2177, fax (202) 366–3222; or Mr. Raymond W. Cuprill, Office of Chief Counsel, HCC–30, telephone (202) 366–0791, fax (202) 366–7499.

SUPPLEMENTARY INFORMATION: The DOT Appropriations Act of FY 2001 was signed into law on October 23, 2000. *See* Public Law 106–346—Appendix, sec. 351, 114 Stat. 1356A–34, 35. Section 351 of Public Law 106–346—Appendix (Section 351) provides that, beginning in FY 2004, the Secretary of Transportation shall withhold certain Federal-aid highway funds from any State that has not enacted and is not enforcing a 0.08 BAC law as described in 23 U.S.C. 163(a) (Section 163). Section 163 provides that 0.08 BAC laws must specify that any person with a BAC of 0.08 percent or greater while operating a motor vehicle in the State shall be deemed to have committed a *per se* offense of driving while intoxicated or an equivalent *per se* offense.

Background

The Problem of Impaired Driving

In the year 2000, the number of people who were killed in motor vehicle crashes reached 41,821. Alcohol use was linked to 16,653 of these crashes, an average of 1 alcohol-related fatality every 32 minutes. Although only about 8 percent of all motor vehicle crashes involve the use of alcohol, 40 percent of fatal crashes involve alcohol use.

Injuries caused by motor vehicle crashes are the leading cause of death for people aged 4 to 33. Each year, these injuries cost Americans an estimated $150 billion, including $19 billion in medical and emergency expenses, $42 billion in lost productivity, $52 billion in property damage, and $37 billion in other crash related costs. Alcohol-related crashes account for roughly 30 percent of these costs—more than $45 billion each year.

While alcohol-related fatalities have dropped significantly, from 22,084 in 1990 to 16,653 in 2000, a 25 percent decrease in ten years, alcohol involvement is still the single greatest factor in motor vehicle deaths and injuries. The 25 percent decrease in alcohol-related fatalities can be attributed to more effective laws, strong enforcement and highly visible public information and education. Four laws that have been proven effective in the fight against impaired driving are: illegal *per se* laws; administrative license revocation (ALR) laws; "zero tolerance" laws and 0.08 BAC laws. Both individually and collectively, these laws have played a crucial role in reducing the number of alcohol-related fatalities in this country. Indeed, it has been estimated that, if every State adopted a 0.08 BAC law, approximately 590 lives could be saved each year.

Support for 0.08 BAC Laws

As we stated in the final rule for the Section 163 Incentive Grant program (64 FR 35568, July 1, 1999), a number of studies sponsored by NHTSA support a legal limit of 0.08 BAC, copies of which have been placed in the docket. For example, the effect of California's 0.08 law was analyzed in a 1991 NHTSA study entitled "The Effects Following the Implementation of an 0.08 BAC Limit and an Administrative Per Se law in California." The study found that 81 percent of the driving population knew that the BAC limit had become stricter (as the result of a successful public education effort). The State experienced a 12 percent reduction in alcohol-related fatalities, although some of the reduction may have resulted from a new ALR law that was enacted during the same year that the BAC standard was lowered. The State also experienced an increase in the number of impaired driving arrests.

Another study, "Lowering State Legal Blood Alcohol Limits to 0.08%: The Effect on Fatal Motor Vehicle Crashes," reported in the September 1996 issue of the "American Journal of Public Health," analyzed the effect of lowering BAC levels to 0.08 in multiple states. The study, conducted by Boston University's School of Public Health,

compared the first five States to lower their BAC limit to 0.08 (California, Maine, Oregon, Utah and Vermont) with five nearby States that retained the 0.10 BAC limit. The results of this study suggested that 0.08 BAC laws, particularly in combination with ALR laws, reduced the proportion of fatal crashes involving drivers and fatally injured drivers at blood alcohol levels of 0.08 percent and higher by 16 percent and those at a BAC of 0.15 percent and greater by 18 percent.

The immediate significance of these findings is that, the 0.08 BAC laws, particularly in combination with ALR laws, not only reduced the overall incidence of alcohol fatalities, but they also reduced fatalities at the *higher* BAC levels. The effect on the number of extremely impaired drivers was even greater than the overall effect. The study concluded that if all States lowered their BAC limits to 0.08, alcohol-related fatalities would decrease nationwide by 500–600 per year, which would result in an economic cost savings of approximately $1.5 billion.

More recently, additional studies have been conducted to determine the effectiveness of 0.08 BAC laws. For example, in August 1999, NHTSA sponsored a study conducted by the Pacific Institute for Research and Evaluation, entitled "The Relationship of Alcohol Safety Laws to Drinking Drivers in Fatal Crashes," which analyzed the relationships between the passage of key alcohol safety laws and the number of drinking drivers in fatal crashes. Specifically, the study evaluated the extent to which the reduction in alcohol-related fatalities could be attributed to ALR laws, 0.10 BAC laws and/or 0.08 BAC laws. Study results indicated that all three laws were associated with significant reductions in fatal crashes involving drinking drivers. In particular, 0.08 BAC laws were associated with 8 percent reductions in the involvement of both high BAC and lower BAC drivers in fatal crashes. The study concluded that if all 50 States had 0.08 BAC laws in 1997, 590 lives could have been saved.

Also, Illinois' 0.08 BAC law, which was enacted in July 1997, was analyzed in a NHTSA-sponsored study conducted by the Pacific Institute for Research and Evaluation in December 2000. This study, entitled "The Effectiveness of the Illinois .08 Law," found that after enactment of the 0.08 BAC law, the number of DUI arrests of offenders in the new 0.08 to 0.09 range increased statewide, while the average BAC of arrested drivers declined. In addition, the proportion of offenders with BACs higher than 0.15 decreased, and the proportion of offenders in the 0.10 to 0.14 range increased slightly. Moreover, the State experienced an overall reduction of 13.7 percent in the proportion of alcohol-related fatalities, whereas surrounding States without a 0.08 BAC law showed no similar decline. Illinois also experienced an increase, by almost 11 percent, in the number of total impaired driving arrests, and it was estimated that the 0.08 law may have saved 47 lives in 1998 alone. However, only 18 months of data were available for the report, so the above-mentioned reductions are limited somewhat by the relatively short period of post-0.08 law data available and the possible effects of other legislation implemented at the same time as the 0.08 law.

An update to the Illinois study was published in December 2001. The update, entitled "Evaluation of the Illinois .08 Law: An Update with the 1999 FARS Data," concluded that Illinois' 0.08 law reduced the percentage of drinking drivers involved in fatal crashes by 13.65%. In addition, it was estimated that during a two-year period (1998 and 1999), the 0.08 law had saved approximately 105 lives.

Another recent study sponsored by NHTSA, entitled "Relative Risk of Fatal Crash Involvement by BAC, Age, and Gender," provides further support for a 0.08 BAC limit. The study reported that the relative risk of involvement in a fatal passenger vehicle crash increased with higher driver BAC levels in every age and sex group, among both fatally injured and surviving drivers. Even a BAC increase of 0.02 percentage points among 16–20 year old male drivers was estimated to more than double the relative risk of a fatal single-vehicle crash injury. In addition, at the midpoint of the 0.08 to 0.10 BAC range, the relative risk of a fatal-single vehicle crash injury varied between 11.4 percent for drivers 35 and older to 51.9 percent for male drivers aged 16–20. The study concluded that drivers at non-zero BACs somewhat lower than 0.10 percent pose substantially elevated risks to themselves and to other road users.

In addition, the results of a study, entitled "A Review of the Literature on the Effects of Low Doses of Alcohol on Driving-Related Skills," were published by NHTSA in 2000. The study indicated that alcohol impairs some driving skills, beginning with any significant departure from zero BAC. Moreover, significant impairment was reported at 0.05 BAC, and by 0.08 BAC, more than 94 percent of the reviewed studies showed impairment in measurable skills. The study concluded that all drivers can be expected to experience impairment in some driving-related skills by 0.08 BAC or less.

Also in 2000, NHTSA published a study conducted by the Southern California Research Institute, entitled "Driver Characteristics and Impairment at Various BACs." The study reported that there is evidence of significant alcohol-related impairment throughout the range from 0.02 to 0.10 BAC. In addition, the study found that the percentage of people exhibiting impairment and the magnitude of that impairment grows as BAC levels increase. The study concluded that a majority of the driving population is impaired in some important measures at BACs as low as 0.02 BAC.

TEA–21, Section 163 Incentive Grant Program

On June 9, 1998, the Transportation Equity Act for the 21st Century (TEA–21) was signed into law. Section 1404 of the Act established a $500 million incentive grant program under 23 U.S.C. 163 to encourage States to adopt tough 0.08 BAC laws. Section 163 provides that the Secretary of Transportation shall make a grant to any State that has enacted and is enforcing a law that provides that any person with a BAC of 0.08 percent or greater while operating a motor vehicle in the State shall be deemed to have committed a *per se* offense of driving while intoxicated or an equivalent *per se* offense.

On September 3, 1998, NHTSA and the FHWA (the agencies) published a joint interim rule, establishing the criteria that States must meet and the procedures they must follow to qualify for an incentive grant. *See* 63 FR 46881. On July 1, 1999, the agencies published a final rule, implementing the Section 163 incentive grant program. *See* 64 FR 35568.

Effects of Section 163 Incentive Grant Program

Before the Section 163 program was implemented, only 16 States had enacted laws that established 0.08 BAC as their legal *per se* limit. Fifteen of these States had laws already in effect, so they were eligible to receive Section 163 incentive grant funds in FY 1998. One State, Washington, enacted a 0.08 BAC law on March 30, 1998, but the law did not become effective until January 1, 1999. Thus, Washington was not eligible to receive Section 163 incentive grant funds until FY 1999. Between June 1998 and October 2000, only two additional States (Washington and Texas) and the District of Columbia enacted and began enforcing 0.08 BAC laws that met all of the Section 163 criteria. Although both

Kentucky and the Commonwealth of Puerto Rico enacted 0.08 BAC laws in 2000, these laws did not become effective until October 1, 2000 and January 10, 2001 respectively. Thus, Kentucky and Puerto Rico were not eligible for Section 163 incentive grant funds until FY 2001. Rhode Island also adopted a 0.08 BAC law in 2000, but its 0.08 BAC law does not conform to all of the requirements of Section 163 and Rhode Island is not eligible to receive an incentive grant. *See* Table 1.

DOT Appropriations Act for FY 2001—Sanction Program

In an effort to further reduce drunk driving injuries and fatalities, Congress created a new 0.08 BAC program in the DOT Appropriations Act of FY 2001. *See* Public Law 106–346—Appendix, sec. 351, 114 Stat. 1356A–34, 35. Section 351 of Public Law 106–346—Appendix (Section 351) provides for the withholding of Federal-aid highway funds from any State that has not enacted and is not enforcing a 0.08 BAC law by the beginning of FY 2004. This legislation did not alter the incentive grant program, which was established in TEA–21 and will continue through FY 2003.

The DOT Appropriations Act of FY 2001 was signed into law on October 23, 2000. Since that date, fifteen additional States (Alaska, Arizona, Arkansas, Connecticut, Georgia, Indiana, Louisiana, Maryland, Mississippi, Missouri, Nebraska, Oklahoma, South Dakota, Tennessee and Wyoming) have enacted conforming 0.08 BAC laws. By October 2002, thirty-three States, the District of Columbia and the Commonwealth of Puerto Rico had established 0.08 BAC laws that met all of the requirements of Section 163. *See* Table 1.

Although, Louisiana enacted a 0.08 BAC law in June 2001, this 0.08 BAC law will not become effective until September 30, 2003. Thus, Louisiana will not be eligible to receive an incentive grant under the Section 163 program until FY 2003, but it will avoid the withholding of funds in FY 2004. Similarly, Tennessee enacted a 0.08 BAC law in June 2002, however, this law will not become effective until July 1, 2003. Thus, Tennessee will not be eligible to receive an incentive grant under the Section 163 program until FY 2003, but it will avoid the withholding of funds in FY 2004.

TABLE 1.—STATES WITH 0.08 BAC LAWS THAT MEET SECTION 163 CRITERIA (AS OF OCTOBER 2002)

State	Enactment Date	Effective Date
Alabama	07/31/95	10/01/95
Alaska	07/03/01	09/01/01
Arizona	04/11/01	08/31/01
Arkansas	03/06/01	08/13/01
California	1989	01/01/90
Connecticut	07/01/02	07/01/02
District of Columbia	12/01/98	04/13/99
Florida	04/27/93	01/01/94
Georgia	04/16/01	07/01/01
Hawaii	06/30/95	06/30/95
Idaho	03/17/97	07/01/97
Illinois	07/02/97	07/02/97
Indiana	05/09/01	07/01/01
Kansas	04/22/93	07/01/93
Kentucky	04/21/00	10/01/00
Louisiana	06/26/01	09/30/03
Maine	04/28/88	08/04/88
Maryland	04/10/01	09/30/01
Mississippi	03/11/02	07/01/02
Missouri	06/12/01	09/29/01
Nebraska	03/01/01	09/01/01
New Hampshire	04/15/93	01/01/94
New Mexico	03/19/93	01/01/94
North Carolina	07/05/93	10/01/93
Oklahoma	06/08/01	07/01/01
Oregon	08/04/83	10/15/83
Puerto Rico	01/10/00	01/10/01
South Dakota	02/27/02	07/01/02
Tennessee	06/27/02	07/01/03
Texas	05/28/99	09/01/99
Utah	03/19/83	08/01/83
Vermont	06/06/91	07/01/91
Virginia	04/06/94	07/01/94
Washington	03/30/98	01/01/99
Wyoming	03/11/02	07/01/02

Total: 33 States, plus the District of Columbia and Puerto Rico

Adoption of 0.08 BAC Law

Section 351 provides that the Secretary must withhold from apportionment a portion of Federal-aid highway funds from any State that does not meet the Section 163 requirements. To avoid such withholding, a State must enact and enforce a law that provides that any person with a BAC of 0.08 percent or greater while operating a motor vehicle in the State shall be deemed to have committed a *per se* offense of driving while intoxicated or an equivalent *per se* offense.

Any State that does not enact and enforce a conforming 0.08 BAC law will be subject to the withholding of a portion of its Federal-aid highway funds. In accordance with the statute, if any State has not enacted and is not enforcing a conforming 0.08 BAC law by October 1, 2003, two percent of its FY 2004 Federal-aid highway apportionment under 23 U.S.C. 104(b)(1), 104(b)(3) and 104(b)(4) shall be withheld on that date. These sections relate to the apportionments for the National Highway System, the Surface Transportation Program and the Interstate System (including resurfacing, restoring, rehabilitating and reconstructing the interstate system). The amount withheld would increase by two percent each year, until it reaches eight percent in FY 2007 and thereafter.

Compliance Criteria

To avoid the withholding from apportionment of Federal-aid highway funds, a State must enact and enforce a 0.08 BAC law that meets the criteria defined in the implementing regulations for the Section 163 incentive grant program. *See* 64 FR 35568. To conform to the requirements of Section 163, a law must contain the following elements:

1. Any Person

A State must enact and enforce a law that establishes a BAC limit of 0.08 or greater that applies to all persons. The law can provide for no exceptions.

2. Blood Alcohol Concentration (BAC) of 0.08 Percent

A State must set a level of no more than 0.08 percent as the legal limit for blood alcohol concentration, thereby making it an offense for any person to have a BAC of 0.08 or greater while operating a motor vehicle.

3. Per Se Law

A State must consider persons who have a BAC of 0.08 percent or greater while operating a motor vehicle in the State to have committed a *per se* offense of driving while intoxicated. In other words, States must establish a 0.08 "*per se*" law, that makes operating a motor vehicle with a BAC of 0.08 percent or above, in and of itself, an offense.

4. Primary Enforcement

A State must enact and enforce a 0.08 BAC law that provides for primary enforcement. Under a primary enforcement law, law enforcement officials have the authority to enforce the law without, for example, the need to show that they had probable cause or had cited the offender for a violation of another offense. Any State with a law that provides for secondary enforcement of its 0.08 BAC provision will not qualify for funds under this program.

5. Both Criminal and ALR Laws

A State must establish a 0.08 BAC *per se* level under its *criminal code*. In addition, if the State has an administrative license revocation or suspension (ALR) law, the State must

establish an illegal 0.08 BAC *per se* level under its *ALR law,* as well.

6. Standard Driving While Intoxicated Offense

The State's 0.08 BAC *per se* law must be deemed to be or be equivalent to the State's standard driving while intoxicated offense. That is the State's non-BAC *per se* driving while intoxicated offense in the State.

In States with multiple drinking and driving provisions, the final rule for the Section 163 incentive grant program stated that the agencies will consider a number of factors to determine whether the State's 0.08 BAC *per se* law has been deemed to be or is equivalent to the standard driving while intoxicated offense in the State. These factors include the treatment of these offenses, their relation to other offenses in the State and the sanctions and other consequences that result when persons violate these offenses. *See* 64 FR 35568.

A more detailed discussion of the six elements described above is contained in the interim final rule establishing the criteria for the Section 163 incentive grant program. See 63 FR at 46883–84.

During the agency's administration of the Section 163 incentive grant program, we have considered a number of proposed laws to determine whether a State's proposed 0.08 BAC offense was equivalent to the State's standard driving while intoxicated offense. In some reviews, these proposed laws were determined to be equivalent and in others they were determined not to be equivalent. Two examples are described below.

A. Rhode Island

Following our review of Rhode Island's new 0.08 BAC law (enacted in 2000), we concluded that the law did not make driving while intoxicated with a BAC of 0.08 the standard driving while intoxicated offense or equivalent to that offense in the State. Moreover, we determined that the Rhode Island law did not apply the 0.08 BAC legal limit to the State's criminal code.

Previously, Rhode Island's law provided that a person convicted of driving while intoxicated (with a BAC of 0.10 or more) had committed a misdemeanor and was subject to a fine of $100–$300, 10 to 60 hours of public community restitution and/or imprisonment for up to one year. Such person was subject also to a driver's license suspension of three to six months.

Rhode Island's new law creates a three-tiered penalty scheme that distinguishes between offenders with BACs of: (1) 0.08–0.09; (2) 0.10–0.14 and (3) 0.15 and above. Under the new law, a person convicted of driving while intoxicated with a BAC of 0.08 or 0.09 may receive the following sanctions: a fine of $100–$250; 10–60 hours of public community restitution; a special driving course; and suspension of their driver's license up to 45 days. Moreover, the new law treats a first time violation to the 0.08 offense only as a civil violation.

However, under Rhode Island's new law, a person convicted of driving while intoxicated with a BAC of 0.10–0.14 is subject to a fine of $100–$300, 10 to 60 hours of public community restitution and/or imprisonment for up to one year, and suspension of their driver's license for 3 to 6 months. Likewise, persons convicted of driving while intoxicated with a BAC level of 0.15 or more, would receive increased penalties of a fine of $500, 20–60 hours of public community restitution, imprisonment up to one year, and suspension of their driver's license for 3–6 months. Thus, the agency concluded that Rhode Island's new law subjected 0.08 offenders to less severe sanctions than those imposed on 0.10 offenders; and contained sanctions that were permissive, and not mandatory, as required by Section 163 and the agency's implementing regulations. In addition, violations to the 0.08 offense were only civil offenses and violations to the 0.10 offense were criminal. Accordingly, the agency determined that Rhode Island's law did not make driving while intoxicated with a BAC of 0.08 the standard driving while intoxicated offense or an equivalent offense.

B. Alaska

Following our review of Alaska's new law (enacted in 2001), the agency concluded that the 0.08 law was equivalent to the standard driving while intoxicated offense in the State.

Previously, Alaska's law provided that a person committed the crime of driving while intoxicated if the person operated or drove a motor vehicle while they were under the influence of intoxicating liquor or if a chemical test revealed a BAC of 0.10 or more (within four hours after the alleged offense). This offense was a Class A misdemeanor and was subject to at least 72 hours of imprisonment and a fine of not less than $250.

Under Alaska's new law, people commit the crime of driving while intoxicated if they operate or drive a motor vehicle while they are under the influence of intoxicating liquor or if a chemical test reveals a BAC of 0.08 or more (within four hours after the alleged offense). This offense is a Class A misdemeanor and is subject to not less than 72 hours of imprisonment and a fine of not less than $250.

In summary, Alaska's new 0.08 law retained the same penalties as those previously imposed on the State's 0.10 law. Indeed, the new law merely changed the State's legal limit from 0.10 to 0.08 BAC. Accordingly, the agency concluded that Alaska's new 0.08 BAC offense was equivalent to the standard driving while intoxicated offense in the State.

Demonstrating Compliance

A. Sanction Program

Section 351 provides that funds will be withheld from apportionment from noncomplying States beginning in FY 2004. To avoid the withholding, each State would be required by this proposed regulation to submit a certification. Under the agencies' proposal, States would be required to submit their certifications on or before September 30, 2003, to avoid the withholding from apportionment of FY 2004 funds on October 1, 2003. The agencies propose to permit (and strongly encourage) States to submit certifications in advance.

States that are found in noncompliance with these requirements in any fiscal year would be required to submit a certification to avoid the withholding of funds from apportionment in the following fiscal year. To avoid the withholding in that fiscal year, these States would be required to submit a certification demonstrating compliance before the last day (September 30) of the previous fiscal year.

Certifications submitted under this part would provide agencies with the basis for finding States in compliance with the Section 351 requirements. The agencies are proposing that the certification must consist of: (1) A statement from an appropriate State official that the State has enacted and is enforcing a 0.08 BAC *per se* law that conforms to 23 U.S.C. § 163 and 23 CFR Part 1225; and (2) citations to the State's conforming 0.08 BAC *per se* law, including all applicable definitions and provisions of the State's criminal code and, if the State has an ALR law, all applicable provisions of that law, as well.

Once a State is determined by the agencies to be in compliance with the requirements of Section 163, the agencies propose that the State would not be required to submit certifications in subsequent fiscal years, unless the State's law had changed. This proposal specifies that it would be the

responsibility of the States to inform the agencies of any such change in a subsequent fiscal year, by submitting an amendment or supplement to its certification.

B. Incentive Grant Program

In this notice, the agencies propose to simplify the certification process for the incentive grant program. States that are receiving their first grant under the incentive grant program, must submit a certification consisting of: (1) A statement from an appropriate State official that the State has enacted and is enforcing a 0.08 BAC *per se* law that conforms to 23 U.S.C. 163 and 23 CFR Part 1225; (2) a statement that the funds received by the State under this program will be used for projects eligible for assistance under title 23 of the United States Code, which include highway construction as well as highway safety projects and programs; and (3) citations to the State's conforming 0.08 BAC *per se* law, including all applicable definitions and provisions of the State's criminal code and, if the State has an ALR law, all applicable provisions of that law, as well.

To receive subsequent-year grants under this program, a State must submit a certification consisting of: (1) A statement from an appropriate State official, stating either that the State either has amended or has not changed its 0.08 BAC *per se* law; (2) a statement that the State is enforcing the law; and (3) a statement that the funds received by the State under this program will be used for projects eligible for assistance under title 23 of the United States Code, which include highway construction as well as highway safety projects and programs. Citations to the States' laws will not be required for subsequent-year certifications.

For all States in compliance with the requirements of Section 163 in FY 2003, certifications submitted for the incentive grant program will apply toward avoiding the withholding of apportionment funds in FY 2004. No further certification is necessary from these States. To qualify for an incentive grant in any fiscal year, the regulations would continue to provide that the certifications must be received by July 15.

Certification Requirements

As stated previously, under the agencies' proposal, States would be required to submit a conforming certification on or before July 15, to receive an incentive grant in a fiscal year; and on or before September 30, to avoid the withholding of funds in a fiscal year.

Advance Notice of Apportionments Under the Sanction Program

To avoid a sanction beginning in FY 2004, the agencies propose that States would be required to enact and make effective a conforming 0.08 BAC law and submit a conforming certification on or before the last day (September 30) of the previous fiscal year.

However, NHTSA and the FHWA expect that States will want to know well in advance of the September 30 deadline whether their laws meet the requirements of Section 163 and its implementing regulations. Accordingly, the agencies encourage States to submit their laws for review as quickly as they can. More importantly, the agencies encourage States that are considering proposed 0.08 BAC legislation to request reviews from the agencies while the legislation is still pending. The agencies will review the legislation and determine whether it would conform to the Federal requirements if enacted without change, thus avoiding a situation whereby a State unintentionally enacts a non-conforming 0.08 BAC law and then is unable to meet the Section 163 requirements. Requests should be submitted through NHTSA's Regional Administrators, who will refer the requests to appropriate NHTSA and FHWA offices for review.

To ensure that the States are advised of their status under the Section 163 program well in advance of any withholding, the agencies propose to notify States of their compliance or non-compliance with the requirements of Section 163 through FHWA's normal certification of apportionments process. Under this process, States are advised in advance of the amount of funds expected to be withheld from their apportionments in the upcoming fiscal year. The advance notice normally is issued not later than ninety days prior to the date on which the funds are to be apportioned. (Since funds normally are apportioned on October 1 of each year, the advance notice ordinarily is issued on or about July 1 of each year.)

Under the agencies' proposal, if the agencies have not received a law and certification from a State and determined that they conform with the requirements of Section 163 and its implementing regulations before June 15, the agencies would make an initial determination that the State is in non-compliance with Section 163, and the State would be advised in FHWA's advance notice of apportionments of the amount of funds expected to be withheld from the State in the following fiscal year.

Accordingly, if States wish to avoid receiving an advance notice of apportionments, based on an initial determination that the State is in non-compliance with Section 163, the State should submit a conforming law and certification to the agencies well in advance of June 30.

Each State that receives an advance notice of non-compliance with the requirements of Section 163 will have an opportunity to rebut the agencies' initial determination. In addition, these States will be notified of the agencies' final determination of compliance or non-compliance as part of the final notice of apportionments (which normally is issued on October 1 of each year).

Period of Availability for Funds

Section 351 provides an incremental approach to the withholding of funds from apportionment for noncompliance. If a State is found to be in noncompliance on October 1, 2003, the State would be subject to a two percent withholding of its FY 2004 apportionment on that date. If a State is found to be in noncompliance on October 1 of any subsequent fiscal year, the withholding percentage would increase by two percent each year, until it reaches eight percent in FY 2007 and thereafter. *See* Table 2.

In addition, if a State comes into compliance with the requirements of Section 163 on or before September 30, 2007, the funds withheld from apportionment would be restored to the State. Specifically, Section 351 provides that, "If within four years from the date that the apportionment for any State is reduced in accordance with this section the Secretary determines that such State has enacted and is enforcing a provision described in section 163(a) of chapter 1 of title 23, United States Code, the apportionment of such State shall be increased by an amount equal to such reduction."

However, if a State is not in compliance with the requirements of Section 163 on October 1, 2007, any funds withheld from apportionment to the State will begin to lapse and will no longer be available for apportionment. Section 351 provides that, "If at the end of such four-year period, any State has not enacted and is not enforcing a provision described in section 163(a) of title 23, United States Code, any amounts so withheld shall lapse."

TABLE 2.—EFFECTS OF THE 0.08 BAC SANCTION PROGRAM ON NON-COMPLYING STATES

Fiscal year	Withhold (percent)	Lapse
2004	2	
2005	4	
2006	6	
2007	8	
2008	8	2% withheld in FY04.
2009	8	4% withheld in FY05.
2010	8	6% withheld in FY06.
2011	8	8% withheld in FY07.
2012	8	8% withheld in FY08.

Comments

Interested persons are invited to comment on this notice of proposed rulemaking. It is requested, but not required, that two copies be submitted. All comments must be limited to 15 pages in length. Necessary attachments may be appended to those submissions without regard to the 15 page limit. *See* 49 CFR 553.21. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

You may submit your comments by one of the following methods:

(1) By mail to: Docket Management Facility, Docket No. NHTSA–01–XXXX, DOT, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590;

(2) By hand delivery to: Room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday;

(3) By fax to the Docket Management Facility at (202) 493–2251; or

(4) By electronic submission: log onto the DMS website at *http://dms.dot.gov* and click on "Help and Information" or "Help/Info" to obtain instructions.

All comments received before the close of business on the comment closing date will be considered and will be available for examination in the docket at the above address before and after that date. To the extent possible, comments filed after the closing date will also be considered. However, the rulemaking action may proceed at any time after that date. The agencies will continue to file relevant material in the docket as it becomes available after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

You may review submitted comments in person at the Docket Management Facility located at Room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday. You may also review submitted comments on the Internet by taking the following steps:

(1) Go to the DMS web page at *http://dms.dot.gov/search/*.

(2) On that page, click on "search".

(3) On the next page (*http://dms.dot.gov/search/*) type in the four digit docket number shown at the beginning of this notice. Click on "search".

(4) On the next page, which contains docket summary information for the docket you selected, click on the desired comments. You may also download the comments. Although the comments are imaged documents, instead of word processing documents, the "pdf" versions of the documents are word searchable.

Those persons who wish to be notified upon receipt of their comments in the docket should enclose, in the envelope with their comments, a self-addressed stamped postcard. Upon receiving the comments, the docket supervisor will return the postcard by mail.

Regulatory Analyses and Notices

Executive Order 12988 (Civil Justice Reform)

This proposed rule would not have any preemptive or retroactive effect. This action meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

Executive Order 12866, "Regulatory Planning and Review" (58 FR 51735, October 4, 1993), provides for making determinations whether a regulatory action is "significant" and therefore subject to Office of Management and Budget (OMB) review and to the requirements of the Executive Order.

The Order defines a "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations or recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

The agency has considered the impact of this rulemaking action under Executive Order 12866 and the Department of Transportation's regulatory policies and procedures and determined that it is "significant" because it involves the withholding of Federal-aid highway funds to any State that has not enacted and is not enforcing a 0.08 BAC law by FY 2004, a matter of substantial interest to the public and to Congress. Further, there is a possibility that the State withholdings resulting from this proposed rule could total from $100 million to $400 million. *See* NHTSA, Preliminary Regulatory Evaluation, 0.08 Sanction Program 20. Thus, this rulemaking could be economically significant under Executive Order 12866, *i.e.*, have an annual effect on the economy of $100 million or more. Accordingly, a preliminary regulatory evaluation has been prepared to review costs and benefits imposed on States to enact a 0.08 BAC law. The preliminary regulatory evaluation has been placed in the docket for this proposed rule.

The preamble to this rulemaking indicates that the adoption of 0.08 BAC laws could save 590 lives each year. This "benefit" is based upon a research study published in 1999 that measured the effects of 0.08 BAC laws by reviewing the fatality numbers in States with conforming 0.08 BAC laws at the time this study was conducted (15 States). This study concluded that 0.08 BAC laws might reduce alcohol-related fatalities by approximately 8 percent.

The preliminary regulatory evaluation uses a slightly different measure to determine the "benefit" of adoption of 0.08 BAC laws. As explained in more detail below, the "benefit" was determined in the preliminary regulatory evaluation by measuring the fatality numbers for the States that had not enacted conforming 0.08 BAC laws before the creation of the 0.08 sanction program in October 2000 (32 States), using an estimate that 0.08 BAC laws might reduce alcohol-related fatalities by 7 percent. This estimate was derived from a recent Center for Disease Control (CDC)-sponsored independent task force study, which calculated 7 percent as the median effectiveness percentage for 0.08 BAC laws. Using these measures, the preliminary regulatory evaluation concludes that 616 lives (are being/could be) saved each year by the adoption of 0.08 BAC laws. *See* Preliminary Regulatory Evaluation, *supra*, at 1.

A. Benefits

The preliminary regulatory evaluation concludes that changing the level of

alcohol from 0.10 to 0.08 in State *per se* laws will result in fewer alcohol-related traffic crashes and fatalities. Specifically, the preliminary regulatory evaluation cites a review performed by a CDC-sponsored independent task force, to support the conclusion that 0.08 BAC laws may reduce alcohol-related fatalities by 7 percent each year. This 7 percent reduction could annually prevent 616 fatalities, over 13,800 non-fatal injuries, and over 50,000 damaged vehicles involved in over 30,000 property-damage only (PDO) crashes. *See* Preliminary Regulatory Evaluation, *supra,* at 23.

B. Costs

The regulatory evaluation concludes that the impact of 0.08 BAC laws will depend on drinking drivers' perceptions that they are more likely to be caught over the limit, and thereby reduce the amount they drink before driving. To successfully accomplish this goal, States will develop public information campaigns, both at the time of legislative debate to inform the public of the need for the law and later during enforcement and prosecution of the law to help achieve compliance. Typically, States will use unpaid media exposure, such as news stories and public service messages, however, some States will implement public information campaigns that involve paying for airtime on radio and television and/or advertising space in print media and billboards. Both approaches would require the time of State and local workers, especially in the State Highway Safety Office, to develop and manage these public information programs.

To mitigate costs incurred in educating the public, States may use Federal highway safety grant funds to pay for the development of public information programs and for airtime and print advertising space. In addition, NHTSA provides sample press release kits to aid communities in publicizing new programs through newspapers, TV and radio.

Aside from advertising costs, the preliminary regulatory evaluation expects that the costs for implementing this proposed rule will be minimal and consist of changes that States make as a matter of course when amending a State law (*e.g.,* updating driver handbooks and forms).

C. Conclusion

The preliminary regulatory evaluation notes that it is difficult to measure the effects of 0.08 BAC laws. This difficulty arises because impaired-driving laws are often passed concurrently or within the same year. In addition, the degree of the law's enforcement, and especially the publicity surrounding that enforcement, can vary significantly and such variability can influence the law's effectiveness. Nonetheless, the preliminary regulatory evaluation concludes that 616 lives (are being/could be) saved each year by the adoption of 0.08 BAC laws.

Regulatory Flexibility Act

The Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601–612) requires an agency to review regulations to assess their impact on small entities unless the agency determines that a rule is not expected to have a significant impact on a substantial number of small entities. We hereby certify that the rule proposed in this notice of proposed rulemaking will not have a significant economic impact on a substantial number of small entities. As a sanction program, this rule will have different consequences depending on whether the States enact and enforce a conforming 0.08 BAC law or whether they choose to accept the sanction for not enacting and enforcing a conforming law.

In States that have passed 0.08 BAC laws, consumption of beer has dropped 3.5 percent on average. By contrast, consumption of wine and spirits do not correlate with the number of drinking drivers in fatal crashes. Thus, if a State passes a 0.08 law, all businesses, large and small, that sell and serve beer are likely to experience a small reduction in sales. However, most businesses sell other products, such as food or other beverages. Therefore, the overall impact on those businesses would be significantly less than 3.5 percent. For some businesses, such as beer distributors (where a small business is defined as 100 employees or less), the decline may approach the 3.5 percent range. *See* Preliminary Regulatory Evaluation, *supra,* at 21.

States that do not enact and enforce conforming 0.08 BAC laws will lose Federal-aid highway funds. This loss may impact highway construction firms, where a small business is defined as $28.5 million in annual gross income. The precise number of small businesses that may be affected cannot be determined, since it is assumed that any impact is just as likely to impact businesses of any size. In addition, the penalty affects only Federal highway funds, which make up, on average in the 17 States affected, only 16 percent of all State highway expenditures. Accordingly, even if the sanction was imposed at the highest rate of 8 percent, the maximum reductions in highway expenditures in the relevant States would be within a range of only 0.77 percent (in Massachusetts) to 3.62 percent (in Montana). Further, most of these businesses do not rely totally on highway construction contracts for their revenue. Based on these considerations, the preliminary regulatory evaluation finds that this action would not result in a significant impact on the small businesses involved. *See* Preliminary Regulatory Evaluation, *supra,* at 21.

Paperwork Reduction Act

This action does not contain a collection of information requirement for purposes of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as implemented by the Office of Management and Budget (OMB) in 5 CFR Part 1320.

National Environmental Policy Act

The agencies have analyzed this proposed action for the purpose of the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) and have determined that it would not have any significant impact on the quality of the human environment.

The Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531) requires agencies to prepare a written assessment of the costs, benefits and other effects of rules that include a Federal mandate likely to result in the expenditure by State, local or tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year. This proposed rule does not require an assessment under this law. The costs to States to enact and make effective conforming 0.08 BAC laws will not result in annual expenditures that exceed the $100 million threshold. Moreover, States that enact 0.08 BAC laws will avoid the loss of millions of dollars in Federal-aid highway funds.

Executive Order 13132 (Federalism)

Executive Order 13132 requires the agencies to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have Federalism implications." "Policies that have Federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

Under Executive Order 13132, the agency may not issue a regulation with

Federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, the agency consults with State and local governments, or the agency consults with State and local officials early in the process of developing the proposed regulation. The agencies also may not issue a regulation with Federalism implications that preempts State law unless the agency consults with State and local officials early in the process of developing the proposed regulation.

We have analyzed this proposed rule in accordance with the principles and criteria set forth in Executive Order 13132 and have determined that this proposal may have Federal implications. We intend to consult with State and local officials about this proposal, and we will include a Federalism summary impact statement in the preamble to the final rule. NHTSA seeks comments on the federalism impact of this proposal.

Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments)

The agencies have analyzed this proposed rule under Executive Order 13175, and believe that the proposed action would not have a substantial direct effect on one or more Indian tribes; would not impose substantial direct compliance costs on Indian tribal governments; and would not preempt tribal law. Therefore, a tribal summary impact statement is not required.

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory section listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross-reference this section with the Unified Agenda.

List of Subjects in 23 CFR Part 1225

Alcohol and alcoholic beverages, Transportation, Highway safety.

In consideration of the foregoing, the agencies propose to revise 23 CFR part 1225 as follows:

PART 1225—OPERATION OF MOTOR VEHICLES BY INTOXICATED PERSONS

Sec.

1225.1 Scope.
1225.2 Purpose.
1225.3 Definitions
1225.4 Adoption of 0.08 BAC *per se* law.
1225.5 General requirements for incentive grant program.
1225.6 Award procedures for incentive grant program.
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1225.9 Period of availability of withheld funds.
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1225.11 Notification of compliance.
1225.12 Procedures affecting states in noncompliance.
Appendix A To Part 1225—Effects of the 0.08 BAC Sanction Program on Non-Complying States

Authority: 23 U.S.C. 163; sec. 351, Pub. L 106–346—Appendix, 114 Stat. 1356A–34, 35; delegation of authority at 49 CFR 1.48 and 1.50.

§ 1225.1 Scope.

This part prescribes the requirements necessary to implement 23 U.S.C. 163, which encourages States to enact and enforce 0.08 BAC *per se* laws through the use of incentive grants and section 351 of Public Law 106–346—Appendix, which requires the withholding of Federal-aid highway funds from any State that has not enacted and is not enforcing a 0.08 BAC *per se* law as described in 23 U.S.C. 163.

§ 1225.2 Purpose.

The purpose of this part is to specify the steps that States must take to qualify for incentive grant funds in accordance with 23 U.S.C. 163; and the steps that States must take to avoid the withholding of funds as required by Section 351 of Public Law 106–346—Appendix.

§ 1225.3 Definitions.

As used in this part:

(a) *Alcohol concentration* means either grams of alcohol per 100 milliliters of blood or grams of alcohol per 210 liters of breath.

(b) *ALR* means either administrative license revocation or administrative license suspension.

(c) *BAC* means either blood or breath alcohol concentration.

(d) *BAC* per se law means a law that makes it an offense, in and of itself, to operate a motor vehicle with an alcohol concentration at or above a specified level.

(e) *Citations to State law* means citations to all sections of the State's law relied on to demonstrate compliance with 23 U.S.C. 163, including all applicable definitions and provisions of the State's criminal code and, if the State has an ALR law, all applicable provisions of the State's ALR law.

(f) *Has enacted and is enforcing* means the State's law is in effect and the State has begun to implement the law.

(g) *Operating a motor vehicle* means driving or being in actual physical control of a motor vehicle.

(h) *Standard driving while intoxicated offense* means the non-BAC *per se* driving while intoxicated offense in the State.

(i) *State* means any one of the fifty States, the District of Columbia, or Puerto Rico.

§ 1225.4 Adoption of 0.08 BAC per se law.

In order to avoid the withholding of funds as specified in § 1225.8 of this part, and to qualify for an incentive grant under § 1225.5 of this part, a State must demonstrate that it has enacted and is enforcing a law that provides that any person with a blood alcohol concentration (BAC) of 0.08 percent or greater while operating a motor vehicle in the State shall be deemed to have committed a *per se* offense of driving while intoxicated or an equivalent *per se* offense. The law must:

(a) Apply to all persons;

(b) Set a BAC of not higher than 0.08 percent as the legal limit;

(c) Make operating a motor vehicle by an individual at or above the legal limit a *per se* offense;

(d) Provide for primary enforcement;

(e) Apply the 0.08 BAC legal limit to the State's criminal code and, if the State has an administrative license suspension or revocation (ALR) law, to its ALR law; and

(f) Be deemed to be or be equivalent to the standard driving while intoxicated offense in the State.

§ 1225.5 General requirements for incentive grant program.

(a) *Certification requirements.*

(1) To qualify for a first-year grant under 23 U.S.C. 163, a State must submit a certification by an appropriate State official, that the State has enacted and is enforcing a 0.08 BAC *per se* law that conforms to 23 U.S.C. 163 and §1225.4 of this part and that the funds will be used for eligible projects and programs.

(i) If the State's 0.08 BAC *per se* law is currently in effect and is being enforced, the certification shall be worded as follows:

(Name of certifying official), (position title), of the (State or Commonwealth) of _____. do hereby certify that the (State or Commonwealth) of _____ has enacted and is enforcing a 0.08 BAC *per se* law that conforms to 23 U.S.C. 163 and 23 CFR 1225.4, (citations to State law), and that the funds received by the (State or Commonwealth) of _____ under 23 U.S.C. 163 will be used for projects eligible

for assistance under title 23 of the United States Code, which include highway construction as well as highway safety projects and programs.

(ii) If the State's 0.08 BAC *per se* law is not currently in effect, but will become effective and be enforced before the end of the current fiscal year, the certification shall be worded as follows:

(Name of certifying official), (position title), of the (State or Commonwealth) of _____, do hereby certify that the (State or Commonwealth) of _____ has enacted a 0.08 BAC *per se* law that conforms to 23 U.S.C. 163 and 23 CFR 1225.4, (citations to State law), and will become effective and be enforced as of (effective date of the law), and that the funds received by the (State or Commonwealth) of _____ under 23 U.S.C. 163 will be used for projects eligible for assistance under title 23 of the United States Code, which include highway construction as well as highway safety projects and programs.

(2) To qualify for a subsequent-year grant under 23 U.S.C. 163, a State must submit a certification by an appropriate State official.

(i) If the State's 0.08 BAC *per se* law has not changed since the State last qualified for grant funds under this program, the certification shall be worded as follows:

(Name of certifying official), (position title), of the (State or Commonwealth) of _____, do hereby certify that the (State or Commonwealth) of _____ has not changed and is enforcing a 0.08 BAC *per se* law, which conforms to 23 U.S.C. 163 and 23 CFR 1225.4, and that the funds received by the (State or Commonwealth) of _____ under 23 U.S.C. 163 will be used for projects eligible for assistance under title 23 of the United States Code, which include highway construction as well as highway safety projects and programs.

(ii) If the State's 0.08 BAC *per se* law has changed since the State last qualified for grant funds under this program, the certification shall be worded as follows:

(Name of certifying official), (position title), of the (State or Commonwealth) of _____, do hereby certify that the (State or Commonwealth) of _____ has amended and is enforcing a 0.08 BAC *per se* law that conforms to 23 U.S.C. 163 and 23 CFR 1225.4, (citations to State law), and that the funds received by the (State or Commonwealth) of _____, under 23 U.S.C. 163 will be used for projects eligible for assistance under title 23 of the United States Code, which include highway construction as well as highway safety projects and programs.

(3) An original and four copies of the certification shall be submitted to the appropriate NHTSA Regional Administrator. Each Regional Administrator will forward the certifications it receives to appropriate NHTSA and FHWA offices.

(4) Each State that submits a certification will be informed by the agencies whether or not it qualifies for funds.

(5) To qualify for grant funds in a fiscal year, certifications must be received by the agencies not later than July 15 of that fiscal year.

(b) *Limitation on grants.* A State may receive grant funds, subject to the following limitations:

(1) The amount of a grant apportioned to a State under § 1225.4 of this part shall be determined by multiplying:

(i) The amount authorized to carry out section 163 of 23 U.S.C. for the fiscal year; by

(ii) The ratio that the amount of funds apportioned to each such State under section 402 for such fiscal year bears to the total amount of funds apportioned to all such States under section 402 for such fiscal year.

(2) A State may obligate grant funds apportioned under this part for any project eligible for assistance under title 23 of the United States Code.

(3) The Federal share of the cost of a project funded with grant funds awarded under this part shall be 100 percent.

§ 1225.6 Award procedures for incentive grant program.

(a) In each Federal fiscal year, grant funds will be apportioned to eligible States upon submission and approval of the documentation required by § 1225.5(a) and subject to the limitations in § 1225.5(b). The obligation authority associated with these funds are subject to the limitation on obligation pursuant to section 1102 of the Transportation Equity Act for the 21st Century (TEA–21).

(b) As soon as practicable after the apportionment in a fiscal year, but in no event later than September 30 of the fiscal year, the Governor's Representative for Highway Safety and the Secretary of the State's Department of Transportation for each State that receives an apportionment shall jointly identify, in writing to the appropriate NHTSA Regional Administrator and FHWA Division Administrator, the amounts of the State's apportionment that will be obligated to highway safety program areas and to Federal-aid highway projects.

§ 1225.7 Certification requirements for sanction program.

(a) Beginning with FY 2004, to avoid the withholding of funds, each State shall certify to the Secretary of Transportation, before the last day of the previous fiscal year, that it meets all of the requirements of 23 U.S.C. 163 and this part.

(b) The certification shall contain a statement from an appropriate State official that the State has enacted and is enforcing a 0.08 BAC *per se* law that conforms to 23 U.S.C. 163 and 23 CFR part 1225. The certifying statement should be worded as follows:

I, (name of certifying official), (position title), of the (State or Commonwealth) of _____, do hereby certify that the (State or Commonwealth) of _____, has enacted and is enforcing a 0.08 BAC *per se* law that conforms to the requirements of 23 U.S.C. 163 and 23 CFR 1225, (citations to State law).

(c) An original and four copies of the certification shall be submitted to the appropriate NHTSA Regional Administrator. Each Regional Administrator will forward the certifications it receives to appropriate NHTSA and FHWA offices.

(d) Once a State has been determined to be in compliance with the requirements of 23 U.S.C. 163 and this part, it is not required to submit additional certifications, except that the State shall promptly submit an amendment or supplement to its certification provided under paragraphs (a) and (b) of this section if the State's 0.08 BAC *per se* law changes.

(e) FY 2003 Certifications.

(1) Any State that submits a certification of compliance in conformance with the requirements of 23 U.S.C. 163 on or before July 15, 2003, will qualify for an incentive grant in FY 2003 and will avoid the withholding of funds in FY 2004. All certifications submitted in conformance with the incentive grant program will meet the certification requirements of the sanction program. No further certification is necessary from these States.

(2) Any State that submits a certification of compliance in conformance with the requirements of 23 U.S.C. 163 between July 16, 2003 and September 30, 2003, will not qualify for an incentive grant in FY 2003, but will meet the certification requirements of the sanction program, thereby avoiding the withholding of funds in FY 2004. No further certification is necessary from these States.

§ 1225.8 Funds withheld from apportionment.

(a) Beginning in fiscal year 2004, the Secretary shall withhold two percent of the amount required to be apportioned for Federal-aid highways to any State under each of paragraphs (1), (3), and (4) of section 104(b) of title 23, United

States Code, if a State has not enacted and is not enforcing a law that meets the requirements of 23 U.S.C. 163 and § 1225.4 of this part.

(b) In fiscal year 2005, the Secretary shall withhold four percent of the amount required to be apportioned for Federal-aid highways to any State under each of paragraphs (1), (3), and (4) of section 104(b) of title 23, United States Code, if a State has not enacted and is not enforcing a law that meets the requirements of 23 U.S.C. 163 and § 1225.4 of this part.

(c) In fiscal year 2006, the Secretary shall withhold six percent of the amount required to be apportioned for Federal-aid highways to any State under each of paragraphs (1), (3), and (4) of section 104(b) of title 23, United States Code, if a State has not enacted and is not enforcing a law that meets the requirements of 23 U.S.C. 163 and § 1225.4 of this part.

(d) In fiscal year 2007, and in each fiscal year thereafter, the Secretary shall withhold eight percent of the amount required to be apportioned for Federal-aid highways to any State under each of paragraphs (1), (3), and (4) of section 104(b) of title 23, United States Code, if a State has not enacted and is not enforcing a law that meets the requirements of 23 U.S.C. 163 and § 1225.4 of this part.

§ 1225.9 Period of availability of withheld funds.

If a State meets the requirements of 23 U.S.C. 163 and § 1225.4 of this part within four years from the date that a State's apportionment is reduced under § 1225.8, the apportionment for such State shall be increased by an amount equal to the reduction, as illustrated by appendix A of this part.

§ 1225.10 Apportionment of withheld funds after compliance.

If a State has not met the requirements of 23 U.S.C. 163 and § 1225.4 of this part by October 1, 2007, the funds withheld under § 1225.8 shall begin to lapse and will no longer be available for apportionment to the State, in accordance with appendix A of this part.

§ 1225.11 Notification of compliance.

(a) Beginning with FY 2004, NHTSA and FHWA will notify States of their compliance or noncompliance with the statutory and regulatory requirements of 23 U.S.C. 163 and this part, based on a review of certifications received. States will be required to submit their certifications on or before September 30, to avoid the withholding of funds in a fiscal year.

(b) This notification of compliance will take place through FHWA's normal certification of apportionments process. If the agencies do not receive a certification from a State or if the certification does not conform to the requirements of 23 U.S.C. 163 and this part, the agencies will make an initial determination that the State is not in compliance.

§ 1225.12 Procedures affecting states in noncompliance.

(a) Each fiscal year, beginning with FY 2004, based on a preliminary review of certifications received, States that are determined to be in noncompliance with 23 U.S.C. 163 and this part, will be advised of the amount of funds expected to be withheld through FHWA's advance notice of apportionments, normally not later than ninety days prior to final apportionment.

(b) If NHTSA and FHWA determine that any State is not in compliance with 23 U.S.C. 163 and this part, based on the agencies' preliminary review, the State may, within 30 days of its receipt of the advance notice of apportionments, submit documentation showing why it is in compliance. Documentation shall be submitted through NHTSA's Regional Administrators, who will refer the requests to appropriate NHTSA and FHWA offices for review.

(c) Each fiscal year, each State determined not to be in compliance with 23 U.S.C. 163 and this part, based on NHTSA's and FHWA's final determination, will receive notice of the funds being withheld under § 1225.8 from apportionment, as part of the certification of apportionments required under 23 U.S.C. 104(e), which normally occurs on October 1 of each fiscal year.

Appendix A to Part 1225—Effects of the 0.08 BAC Sanction Program on Non-Complying States

EFFECTS OF THE 0.08 BAC SANCTION PROGRAM ON NON-COMPLYING STATES

Fiscal year	Withhold (percent)	Lapse (percent)
2004	2	
2005	4	
2006	6	
2007	8	
2008	8	2% withheld in FY04.
2009	8	4% withheld in FY05.
2010	8	6% withheld in FY06.
2011	8	8% withheld in FY07.
2012	8	8% withheld in FY08.

Issued on: January 31, 2003.

Mary E. Peters,

Administrator, Federal Highway Administration.

Jeffrey W. Runge,

Administrator, National Highway Traffic Safety Administration.

[FR Doc. 03–2790 Filed 2–5–03; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD05–02–065]

RIN 2115–AE47

Drawbridge Operation Regulations; Raccoon Creek, NJ

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to change the regulations that govern the operation of the Consolidated Rail Corporation (CONRAIL) Railroad Bridge across Raccoon Creek at mile 2.0, in Bridgeport, New Jersey. The proposed rule would increase openings and eliminate the need for a bridge tender by allowing the bridge to be operated by a train crewmember. This change will provide for the reasonable needs of navigation.

DATES: Comments and related material must reach the Coast Guard on or before April 7, 2003.

ADDRESSES: You may mail comments and related material to Commander (Aowb), Fifth Coast Guard District, Federal Building, 4th Floor, 431 Crawford Street, Portsmouth, Virginia 23704–5004, or they may be hand delivered to the same address between 8 a.m. and 4 p.m., Monday through Friday, except Federal Holidays. The telephone number is (757) 398–6222. The Commander (Aowb), Fifth Coast Guard District maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at the above address.

FOR FURTHER INFORMATION CONTACT: Ann B. Deaton, Bridge Administrator, Fifth Coast Guard District, at (757) 398–6222.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting

comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (CCGD5–02–065), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to the Commander, Fifth Coast Guard District at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

CONRAIL, who owns and operates this movable (swing-type) bridge, requested changes to the operating procedure for the drawbridge located at mile 2.0 across Raccoon Creek, in Bridgeport, New Jersey. Currently, Title 33 Code of Federal Regulations (CFR) Part 117.741 requires the bridge to open on signal from March 1 through November 30 from 7 a.m. to 11 p.m. At all other times, the draw must open on signal if at least four hours notice is given. The draw must open at all times as soon as possible for passage of a public vessel of the United States.

In late September 2002, CONRAIL will be installing a new Programmable Logic Controller and associated mechanical, electrical and signal apparatus on the CONRAIL Railroad Bridge over Raccoon Creek in Bridgeport, New Jersey. The proposal would allow a radio-controlled system to operate the opening and closing of the swing span, which would be controlled from the cab of the locomotive. From March 1 through November 30, the swing bridge will normally be left in the fully opened position displaying flashing green channel lights indicating that vessels may pass through. At all other times, the draw the CONRAIL Railroad Bridge need only open on signal if at least four hours notice is given by calling (856) 231–2393.

When a train approaches the bridge, it will stop and a train crewmember will observe the waterway for approaching craft, which will be allowed to pass. The train crewmember will then enter a prearranged code number using a radio keypad. The radio code will send a radio signal to the Programmable Logic Controller attached to the bridge, which will begin the process of closing the bridge. At that time, the bridge channel lights will change from flashing green to flashing red, a horn blast will sound four times, followed by a pause, then the four horn blasts will be repeated and the bridge will close. Once closed, the train will proceed across the bridge. After the train has cleared the swing span, which is approximately 300 feet from the bridge, the horn will automatically sound five times to indicate the span of the bridge is about to return to the full open position. Channel traffic lights would change from flashing green to flashing red any time the bridge is not in the full open position. In the full open position, the channel traffic lights will turn from flashing red to flashing green.

This change is being requested to make the closure process of the CONRAIL Railroad Bridge be more efficient during train crossings and periodic maintenance and to save operational costs by eliminating bridge tenders while providing greater bridge operating capabilities.

Discussion of Proposed Rule

The Coast Guard proposes to revise 33 CFR 117.741, which governs the Route 130 highway bridge, mile 1.8 and the CONRAIL Railroad bridge at mile 2.0, both across Raccoon Creek in Bridgeport, New Jersey. From March 1 through November 30 from 7 a.m. to 11 p.m., the draw of both bridges currently open on signal. At all other times, the draws shall open on signal if at least four hours notice is given. The draws shall open at all times as soon as possible for passage of a public vessel of the United States.

The current paragraph would be divided into paragraphs (a) and (b). Paragraph (a) would contain the existing rule for the Route 130 highway bridge, mile 1.8, at Bridgeport and would state that the draw of shall open on signal from March 1 to November 30. At all other times, the draw shall open on signal if at least four hours notice is given.

Paragraph (b) would contain the proposed rule for the CONRAIL Railroad Bridge, mile 2.0, at Bridgeport. The proposed rule would require the draw of the CONRAIL Railroad Bridge, mile 2.0, at Bridgeport, to be operated by a train crewmember. From March 1 through November 30, the bridge would be left in the open position and would only close for the passage of trains and to perform periodic maintenance authorized in accordance with subpart A of this part.

At all other times, the draw of the CONRAIL Railroad Bridge need only open on signal if at least four hours notice is given by calling (856) 231–2393.

When the CONRAIL Railroad Bridge closes for any reason, a train crewmember will assist in observing the waterway for approaching craft, which will be allowed to pass. The train crewmember will then operate the bridge by control radiophone.

The CONRAIL Railroad Bridge would only be closed if the train crewmember's visual inspection shows that the channel is clear and there are no vessels transiting in the area.

While the CONRAIL Railroad Bridge is moving from the full open position to the full closed position, the train crewmember will maintain constant surveillance of the navigation channel to ensure no conflict with maritime traffic exists. In the event of failure or obstruction, the train crewmember will stop and return to the full open position.

The CONRAIL Railroad Bridge channel traffic lights would change from flashing green to flashing red any time the bridge is not in the full open position. During span movement, the channel traffic lights would change from flashing green to flashing red, the horn will sound four times, followed by a pause, then the four blasts will be repeated and the bridge will close.

When the rail traffic has cleared, the horn will automatically sound five times to indicate that the draw of the CONRAIL Railroad Bridge is about to return to its full open position. During the open span movement, the channel traffic lights would turn from flashing green to flashing red, the horn will sound four times, followed by a pause, then four repeat blasts of the horn until the bridge is in the full open position. In the full open position, the bridge channel traffic lights will turn from flashing red to flashing green. After the train has cleared the bridge by leaving the track circuit, any delay in opening of the draw shall not exceed ten minutes except as provided in 33 CFR 117.31(b).

The surplus language currently stated in 33 CFR 117.741 would be removed to be consistent with the general operating regulations under 33 CFR 117.31. The Coast Guard intends to delete the phrase "the draws shall open on signal as soon as possible for passage of a public vessel of the United States." This requirement is currently published in 33 CFR

117.31(a)(1) and is no longer required to be published in each specific bridge regulation.

Regulatory Evaluation

This proposed rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT)(44 FR 11040, February 26, l979).

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. We reached this conclusion based on the fact that the proposed changes for the CONRAIL Railroad Bridge regulation will provide for greater flow of vessel traffic than the current regulations of the drawbridge.

Under the current regulations, the CONRAIL Railroad Bridge remains closed and open after proper signal March 1 through November 30 from 7 a.m. to 11 p.m. The proposed regulation will require the bridge to remain in the open position from March 1 through November 30, permitting vessels to pass freely. The bridge will close only for train crossings and bridge maintenance. This proposed regulation will provide for the reasonable needs of navigation.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities.

This proposed rule would not have a significant economic impact on a substantial number of small entities for the following reasons. The proposed rule will provide for the CONRAIL Railroad Bridge to remain in the open position from March 1 through November 30, allowing the free flow of vessel traffic. The bridge would only close for the passage of trains and maintenance.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Ann B. Deaton, Bridge Administrator, Fifth Coast Guard District, (757) 398–6222.

Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520.).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this proposed rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This proposed rule would not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

To help the Coast Guard establish regular and meaningful consultation and collaboration with Indian and Alaskan Native tribes, we published a notice in the **Federal Register** (66 FR 36361, July 11, 2001) requesting comments on how to best carry out the Order. We invite your comments on how this proposed rule might impact tribal governments, even if that impact may not constitute a "tribal implication" under the Order.

Energy Effects

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have considered the environmental impact of this proposed rule and concluded that, under figure 2–1, paragraph (32)(e), of Commandant Instruction M16475.lD, this rule is

categorically excluded from further environmental documentation. A "Categorical Exclusion Determination" is available in the docket where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATIONS REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g); Section 117.255 also issued under authority of Pub.L. 102–587, 106 Stat. 5039.

2. Section 117.741 is revised to read as follows:

§ 117.741 Raccoon Creek.

(a) The draw of the Route 130 highway bridge, mile 1.8 at Bridgeport, shall open on signal:

(1) March 1 through November 30, from 7 a.m. to 11 p.m.

(2) At all other times, if at least four hours notice is given.

(b) The draw of the CONRAIL Railroad Bridge, mile 2.0 at Bridgeport, shall operate as follows:

(1) From March 1 through November 30, the draw shall be left in the open position at all times and will only be close for the passage of trains and to perform periodic maintenance authorized in accordance with subpart A of this part.

(i) Trains shall be controlled so that any delay in opening of the draw shall not exceed ten minutes except as provided in § 117.31(b).

(ii) Before the bridge closes for any reason, a train crewmember will observe the waterway for approaching craft, which will be allowed to pass. A train crewmember will then operate the bridge by radiophone. The bridge shall only be closed if a train crewmember's visual inspection shows that the channel is clear and there are no vessels transiting in the area.

(iii) While the CONRAIL Railroad Bridge is moving from the full open to the full closed position, a train crewmember will maintain constant surveillance of the navigational channel to ensure no conflict with maritime traffic exists. In the event of failure or obstruction, the train crewmember will stop the bridge and return the bridge to the open position.

(iv) The CONRAIL Railroad channel traffic lights will change from flashing green to flashing red anytime the bridge is not in the full open position.

(v) During closing of the span, the channel traffic lights will change from flashing green to flashing red, the horn will sound four times, followed by a pause, then the four blasts will be repeated and the bridge will close. When the rail traffic has cleared the swing span, the horn will automatically sound five times to signal the draw of the CONRAIL Railroad Bridge is about to return to its full open position.

(vi) During open span movement, the channel traffic lights will be flashing red, the horn will sound four times, followed by a pause, then four blasts will be repeated until the bridge is in the full open position. In the full open position, the channel traffic lights will then turn from flashing red to flashing green.

(2) At all other times, the draw may be left in the closed position and opened on signal if at least four hours notice is given by telephone at (856) 231–2393.

Dated: January 28, 2003.

James D. Hull,

Vice Admiral, USCG, Commander, Fifth Coast Guard District.

[FR Doc. 03–2930 Filed 2–5–03; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 300

[Docket No. 030124019–3019–01; I.D. 010703B]

RIN 0648–AQ67

Pacific Halibut Fisheries; Catch Sharing Plan

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; proposed changes to the Catch Sharing Plan and to sport fishing management.

SUMMARY: NMFS proposes, under authority of the Northern Pacific Halibut Act (Halibut Act), to approve and implement changes to the Area 2A Pacific Halibut Catch Sharing Plan (Plan) to: implement closed areas for the Washington North Coast sport fishery subarea and the nontreaty commercial halibut fishery to protect yelloweye rockfish; allocate subarea halibut quota between the May and June sport seasons in Washington's North Coast subarea; cap the incidental halibut retention allocation for the primary sablefish fishery at 70,000 lb (31.8 kg) when halibut is available to that fishery; move the season ending date for Oregon sport fisheries in the North Central and South Central areas from September 30 to October 31; provide more flexibility for inseason sport fishery management; and revise the names of Oregon sport seasons. These actions are intended to enhance the conservation of Pacific halibut and to protect yelloweye rockfish, and overfished groundfish species, from incidental catch in the halibut fisheries.

DATES: Comments on the proposed changes to the Plan and on the proposed sport fishery regulations must be received by February 18, 2003.

ADDRESSES: Send comments or requests for a copy of the Plan and/or the EA/RIR to D. Robert Lohn, Regional Administrator, Northwest Region, NMFS, 7600 Sand Point Way NE, Seattle, WA 98115. Electronic copies of the Plan, including proposed changes for 2003, and of the draft EA/RIR are also available at the NMFS Northwest Region Web site: *http://www.nwr.noaa.gov*, click on "Pacific Halibut." Comments will not be accepted if submitted via email or the Internet.

FOR FURTHER INFORMATION CONTACT: Yvonne deReynier or Jamie Goen (Northwest Region, NMFS), phone: 206–526–6140; fax: 206–526–6736 and; e-mail: *yvonne.dereynier@noaa.gov* or *jamie.goen@noaa.gov*.

SUPPLEMENTARY INFORMATION: The Halibut Act of 1982, at 16 U.S.C. 773c, gives the Secretary of Commerce (Secretary) general responsibility for implementing the provisions of the Halibut Convention between the United States and Canada. It requires the Secretary to adopt such regulations as may be necessary to carry out the purposes and objectives of the Convention and the Halibut Act. Section 773c(c) of the Halibut Act authorizes the Regional Fishery Management Councils to develop regulations governing the Pacific halibut catch in their corresponding U.S. Convention waters that are in addition to, but not in conflict with, regulations of the International Pacific Halibut Commission (IPHC). Each year between 1988 and 1995, the Pacific Fishery Management Council (Pacific Council) developed a catch sharing plan in accordance with the Halibut Act to allocate the total allowable catch (TAC) of Pacific halibut between treaty Indian and non-treaty harvesters and among non-treaty commercial and sport

fisheries in IPHC statistical Area 2A (off Washington, Oregon, and California).

In 1995, NMFS implemented the Pacific Council-recommended long-term Plan (60 FR 14651, March 20, 1995). In each of the intervening years between 1995 and the present, minor revisions to the Plan have been made to adjust for the changing needs of the fisheries. The Plan allocates 35 percent of the Area 2A TAC to Washington treaty Indian tribes in Subarea 2A–1 and 65 percent to non-Indian fisheries in Area 2A. The allocation to non-Indian fisheries is divided into three shares, with the Washington sport fishery (north of the Columbia River) receiving 36.6 percent, the Oregon/California sport fishery receiving 31.7 percent, and the commercial fishery receiving 31.7 percent. The commercial fishery is further divided into a directed commercial fishery that is allocated 85 percent of the commercial allocation and an incidental catch in the salmon troll fishery that is allocated 15 percent of the commercial allocation. The directed commercial fishery in Area 2A is confined to southern Washington (south of 46°53′18″ N. lat.), Oregon, and California. North of 46°53′18″ N lat. (Pt. Chehalis), the Plan allows for incidental halibut retention in the primary limited entry sablefish fishery when the overall Area 2A TAC is above 900,000 lb (408.2 mt). The Plan also divides the sport fisheries into seven geographic subareas, each with separate allocations, seasons, and bag limits.

Pacific Council Recommended Changes to the Plan

Each year, the states and tribes consider whether changes to the Plan are needed or desired by their fishery participants. Fishery managers from the states and tribes hold public meetings before both the September and November Pacific Council meetings to get public input on revisions to the Plan. At the September 2002 Pacific Council meeting, the states recommended several changes to the Plan and the tribes announced that they had no proposal for revising the Plan in 2003. Following the September 2002 Pacific Council meeting, the states again reviewed their proposals with the public and drafted their recommended revisions for review by the Pacific Council.

At its October 29 through November 1, 2002, meeting, the Pacific Council considered the results of State-sponsored workshops on the proposed changes to the Plan and public comments, and made the final recommendations for modifications to the Plan as follows:

(1) Divide the Washington North Coast subarea recreational quota such that 78 percent of the quota for that subarea is available to a May fishery and 22 percent is available for a late June fishery. Revise the closed area within this sport fishery subarea to better protect yelloweye rockfish, an overfished groundfish species.

(2) Require non-treaty commercial vessels operating in the directed commercial fishery for halibut to fish offshore of 100 fm (184 m) to protect yelloweye rockfish.

(3) Cap the incidental halibut retention allocation for the primary sablefish fishery at 70,000 lb (31.8 kg) when halibut is available to that fishery so that the fishery is maintained as an incidental, not directed, opportunity.

(4) Change the season ending date for Oregon sport fisheries in the North Central and South Central areas from September 30 to October 31.

(5) Revise the inseason management provisions to allow more flexibility for managers making inseason adjustments to fishery openings and closures to ensure that the available quota may be taken.

(6) Change the names of the Oregon North Central and South Central all-depth fisheries from the "May" and "August" fisheries to the "Spring" and "Summer" fisheries.

Proposed Changes to the Catch Sharing Plan

NMFS is proposing to approve and to make the following changes to the Plan:

In section (e) of the Plan, Non-Indian Commercial Fisheries, insert a new third sentence in paragraph (2) to read as follows:

This fishery may also be managed with closed areas designed to protect overfished groundfish species. Any such closed areas will be described annually in Federal halibut regulations and published in the **Federal Register**.

In section (e) of the Plan, Non-Indian Commercial Fisheries, add a sentence at the end of the first paragraph of paragraph (3) to read as follows:

The amount of halibut allocated to the sablefish fishery will be shared as follows: up to 70,000 lb (31.8 kg) of halibut to the primary sablefish fishery north of Pt. Chehalis. Any remaining allocation will be distributed to the Washington sport fishery among the four subareas according to the sharing described in the Plan, Section (f)(1).

In section (f) of the Plan, Sport Fisheries, revise the third sentence through the end of the paragraph of paragraph (1)(ii) to read from the third sentence as follows:

The management objective for this subarea is to provide a quality recreational fishing opportunity during May and the latter part of June. To meet this objective, the north coast subarea quota will be allocated as follows: 72 percent for the month of May and 28 percent for the latter part of June. The fishery will open on May 1, and continue 5 days per week (Tuesday through Saturday) until the May allocation is projected to be taken. If May 1 falls on a Sunday or Monday, the fishery will open on the following Tuesday. The fishery will then reopen on the third Wednesday in June and continue until the remaining quota is projected to be taken, 5 days per week (Tuesday through Saturday.) No sport fishing for halibut is allowed after September 30. The daily bag limit in all fisheries is one halibut per person, with no size limit. A "C-shaped" yelloweye rockfish conservation area that is closed to recreational groundfish and halibut fishing is defined by the following coordinates in the order listed:

48°18' N. lat.; 125°18' W. long.;
48°18' N. lat.; 124°59' W. long.;
48°11' N. lat.; 124°59' W. long.;
48°11' N. lat.; 125°11' W. long.;
48°04' N. lat.; 125°11' W. long.;
48°04' N. lat.; 124°59' W. long.;
48°00' N. lat.; 124°59' W. long.;
48°00' N. lat.; 125°18' W. long.;
and connecting back to 48°18' N. lat.; 125°18' W. long.

In section (f) of the Plan, Sport Fisheries, revise the third through the thirteenth sentence of paragraph (1)(v) to read from the third sentence as follows:

The structuring objectives for this subarea are to provide two periods of fishing opportunity in spring and in summer in productive deeper water areas along the coast, principally for charterboat and larger private boat anglers, and provide a period of fishing opportunity in the summer for nearshore waters for small boat anglers. Fixed season dates will be established preseason for the spring and summer openings and will not be modified inseason except that the summer openings may be modified inseason if the combined Oregon all-depth quotas are estimated to be achieved. Recent year catch-rates will be used as a guideline for estimating the catch rate for the spring and summer fisheries each year. The number of fixed season days established will be based on the projected catch per day with the intent of not exceeding the subarea season subquotas. Oregon Department of Fish and Wildlife (ODFW) will monitor landings and provide a postseason estimate of catch within 2 weeks of the

end of the fixed season. If sufficient catch remains for an additional day of fishing after the spring season or the summer season, the fishery may be reopened between May and June or August and October respectively. Additional opening dates for both the spring and summer seasons will be announced preseason. If a decision is made inseason to allow fishing on one or more additional days, notice of the opening will be announced on the NMFS hotline (206) 526–6667 or (800) 662–9825. No all-depth halibut fishing will be allowed on the additional dates unless the opening date has been announced on the NMFS hotline. If preseason catch and effort estimates determine catch rates and quotas allocated to the Oregon North Coast and South Coast subareas will result in spring seasons of differing durations, quota may be shifted pre- or inseason to ensure that the two subareas have the same number of fishing days. Any poundage remaining unharvested in the spring all-depth subquota will be added to the summer all-depth subquota. Any poundage that is not needed to extend the inside 30–fathom fishery through to October 31 will be added to the summer all-depth season if it can be used, and any poundage remaining unharvested from the summer all-depth fishery will be added to the inside 30–fathom fishery subquotas.

In section (f) of the Plan, Sport Fisheries, paragraph (1)(v)(A) is revised to read as follows:

The first season opens on May 1, only in waters inside the 30–fathom (55 m) curve, and continues daily until the combined subquotas for the North Central and South Central inside 30–fathom fisheries (7 percent of the North Central subarea quota plus 20 percent of the South Central subarea quota) are taken, or until October 31, whichever is earlier. Poundage that is estimated to be above the amount needed to keep this season open through October 31 will be transferred to the summer all-depth fishery if it can be used. Any overage in the all-depth fisheries would not affect achievement of allocation set aside for the inside 30–fathom curve fishery.

In section (f) of the Plan, Sport Fisheries, revise the fourth through the thirteenth sentence of paragraph (1)(vi) to read from the third sentence as follows:

Fixed season dates will be established preseason for the spring and summer openings and will not be modified inseason except that the summer openings may be modified inseason if the combined Oregon all-depth quotas are estimated to be achieved. Recent year catch rates will be used as a guideline for estimating the catch rate for the spring fishery and summer fishery each year. The number of fixed season days established will be based on the projected catch per day with the intent of not exceeding the subarea season subquotas. ODFG will monitor landings and provide a postseason estimate of catch within 2 weeks of the end of the fixed season. If sufficient quota remains for an additional day of fishing after the spring season or the summer season, the fishery may be reopened from May to July and August to October respectively. Additional opening dates for both the spring and summer seasons will be announced preseason. If a decision is made inseason to allow fishing on one or more additional days, notice of the opening will be announced on the NMFS hotline (206) 526–6667 or (800) 662–9825. No all-depth halibut fishing will be allowed on the additional dates unless the opening date has been announced on the NMFS hotline. If preseason catch and effort estimates determine catch rates and quotas allocated to the Oregon North Coast and South Coast subareas will result in spring seasons of differing durations, quota may be shifted preseason to ensure that the two subareas have the same number of fixed season days. Any poundage remaining unharvested in the spring all-depth subquota will be added to the summer all-depth sub-quota. Any poundage that is not needed to extend the inside 30–fathom fishery through to October 31 will be added to the summer all-depth season, if it can be used, and any poundage remaining unharvested from the August all-depth fishery will be added to the inside 30–fathom fishery subquotas.

In section (f) of the Plan, Sport Fisheries, paragraph (1)(vi)(A) is revised to read as follows:

The first season opens on May 1, only in waters inside the 30–fathom (55 m) curve, and continues daily until the combined subquotas for the North Central and South Central inside 30–fathom fisheries (7 percent of the North central subarea quota plus 20 percent of the South Central subarea quota) are taken, or until October 31, whichever is earlier. Poundage that is estimated to be above the amount needed to keep this season open through October 31 will be transferred to the summer all-depth fishery if it can be utilized. Any overage in the all-depth fisheries would not affect achievement of allocation set aside for the inside 30–fathom curve fishery.

In section (f) of the Plan, Sport Fisheries, paragraph (5)(i)(C) is revised to read as follows:

If any of the sport fishery subareas north of Cape Falcon, OR are not projected to utilize their respective quotas by September 30, NMFS may take inseason action to transfer any projected unused quota to another Washington sport subarea.

In section (f) of the Plan, Sport Fisheries, paragraph (5)(i)(D) is added to read as follows:

If any of the sport fishery subareas south of Leadbetter Point, WA are not projected to utilize their respective quotas by their season ending dates, NMFS may take inseason action to transfer any projected unused quota to another Oregon sport subarea.

In section (f) of the Plan, Sport Fisheries, paragraph (5)(ii)(E) is revised to read as follows:

Modification of subarea quotas north of Cape Falcon, OR.

Proposed 2003 Sport Fishery Management Measures

NMFS is proposing sport fishery management measures that are necessary to implement the Plan in 2003. The 2003 TAC for Area 2A was determined by the IPHC at its annual meeting January 21–24, 2003, to be 1,310,000 lb (594 mt), the same as in 2002. The proposed 2003 sport fishery regulations based on the Area 2A TAC of 1,310,000 lb (594 mt) are as follows:

Washington Inside Waters (Subarea Puget Sound and Straits)

This subarea would be allocated 63,278 lb (28.7 mt) at an Area 2A TAC of 1,310,000 lb (594 mt) in accordance with the Plan. According to the Plan, the structuring objective for this subarea is to provide a stable sport fishing opportunity and to maximize the season length. In 2002, the fishery in this subarea was 49 days long, from May 23 through July 26, held for 5 days per week (Thursday through Monday). For the 2003 fishing season, the fishery in this subarea would be set to meet the structuring objectives described in the Plan, possibly with separate seasons in eastern and western Puget Sound. The final determination of the season dates would be based on the allowable harvest level, projected 2003 catch rates and on recommendations developed in a public workshop sponsored by Washington Department of Fish and Wildlife after the 2003 TAC is set by the IPHC. The daily bag limit would be one halibut of any size per day, per person.

Washington North Coast Subarea (North of the Queets River)

This subarea would be allocated 113,915 lb (52 mt) at an Area 2A TAC of 1,310,000 lb (594 mt) in accordance

with the Plan. According to the Plan, the management objective for this subarea is to provide a quality recreational fishing opportunity during May and the latter part of June. The fishery opens on May 1, and continues 5 days per week (Tuesday through Saturday) until 72 percent of the quota for the subarea has been taken, 82,019 lb (37 mt). The fishery will re-open on the third Wednesday in June, which is June 18th, until the remaining quota for the subarea is taken, 31,896 lb (14 mt). The daily bag limit would be one halibut of any size per day per person. A portion of this subarea would be closed to sport fishing for halibut as a yelloweye rockfish conservation area bounded by the following coordinates:

48°18′ N. lat.; 125°18′ W. long.;
48°18′ N. lat.; 124°59′ W. long.;
48°11′ N. lat.; 124°59′ W. long.;
48°11′ N. lat.; 125°11′ W. long.;
48°04′ N. lat.; 125°11′ W. long.;
48°04′ N. lat.; 124°59′ W. long.;
48°00′ N. lat.; 124°59′ W. long.;
48°00′ N. lat.; 125°18′ W. long.;
and connecting back to 48°18′ N. lat.; 125°18′ W. long.

Washington South Coast Subarea

This subarea would be allocated 48,623 lb (22 mt) at an Area 2A TAC of 1,310,000 lb (594 mt) in accordance with the Plan. The fishery would open on May 1 and continue 5 days per week (Sunday through Thursday) until September 30, or until the quota is achieved, whichever occurs first. According to the Plan, the structuring objective for this subarea is to maximize the season length, while maintaining a quality fishing experience. The fishery would be open Sunday through Thursday in all areas, except where prohibited, and the fishery will be open 7 days per week in the area from the Queets River south to 47°00′00″ N lat. and east of 124°40′00″ W long. Subsequent to the closure of the Washington South Coast subarea, if any remaining quota is sufficient for a nearshore fishery, the area from the Queets River south to 47°00′00″ N lat. and east of 124°40′00″ W long. would be allowed 7 days per week until either the remaining subarea quota is estimated to have been taken and the season is closed by the IPHC, or until September 30, whichever occurs first. The daily bag limit would be one halibut of any size per day, per person.

Columbia River Subarea

This subarea would be allocated 11,923 lb (5.4 mt) at an Area 2A TAC of 1,310,000 lb (594 mt) in accordance with the Plan. The fishery would open on May 1 and continue 7 days per week until the quota is reached or September 30, whichever occurs first. The daily bag limit would be the first halibut taken, per person, of 32 inches (81.3 cm) or greater in length.

Oregon North Central Coast Subarea

This subarea would be allocated 230,639 lb (104.6 mt) at an Area 2A TAC of 1,310,000 lb (594 mt) in accordance with the Plan. The structuring objectives for this subarea are to provide two periods of fishing opportunity in spring (May-June) and in summer (August-October) in productive deeper water areas along the coast, principally for charterboat and larger private boat anglers, and to provide a period of fishing opportunity during the summer in nearshore waters for small boat anglers. The May all-depth season would be allocated 156,835 lb (71 mt). Based on an observed catch per day trend in this fishery, an estimated 24,000 - 29,000 lb (10.9–13.1 mt) would be caught per day in 2003, resulting in a 5 to 6 day fixed season. In accordance with the Plan, the season dates could be May 8, 9, 10, 15, 16, and 17. An appropriate number of additional fishing days will be scheduled for late May or early June and fishing will be allowed on those days if the quota has not already been taken. The restricted depth fishery inside 30 fathoms for the North Central and South Central coast subareas combined would be allocated 19,797 lb (9 mt), starting May 1 through October 31 or until the TAC is attained, whichever occurs first. The August coastwide all-depth fishery (Cape Falcon to Humbug Mountain) would be allocated 57,660 lb (26 mt), which may be sufficient for a 3–day or 2–day opening, starting August 1, based on the expected catch per day. If sufficient quota remains after this season for additional days of fishing, the dates for an all-depth fishery would be in mid-August. The final determination of the season dates will be based on the allowable harvest level, projected catch rates, and recommendations developed in a public workshop sponsored by Oregon Department of Fish and Wildlife after the 2003 TAC is set by the IPHC. The daily bag limit would be the first halibut taken, per person, of 32 inches (81.3 cm) or greater in length.

Oregon South Central Coast Subarea

This subarea would be allocated 18,261 lb (8.3 mt) at an Area 2A TAC of 1,310,000 lb (594 mt) in accordance with the Plan. The May all-depth season would be allocated 14,609 lb (6.6 mt) and, based on the observed catch per day trend in this fishery, an estimated 2,400 - 2,900 lb (1.1–1.3 mt) would be caught per day in 2003, resulting in a 5 to 6 day fixed season. In accordance with the Plan, the season dates could be May 8, 9, 10, 15, 16 and 17. An appropriate number of additional fishing days will be scheduled for late May or early June and fishing will be allowed on those days if the quota has not already been taken. The restricted depth fishery inside 30 fathoms is combined for the North Central and South Central coast subareas and would be allocated 19,797 lb (9 mt), starting May 1 through October 31 or until the TAC is attained, whichever occurs first. The August coastwide all-depth fishery (Cape Falcon to Humbug Mountain) would be allocated 57,660 lb (26 mt), which may be sufficient for a 3–day opening, starting August 1, based on the expected catch per day. If sufficient quota remains for additional fishing days after this season, the dates for an all-depth fishery would be in mid-August. The final determination of the season dates would be based on the allowable harvest level, projected catch rates, and recommendations developed in an ODFW-sponsored public workshop after the IPHC sets the 2003 TAC. The daily bag limit would be the first halibut taken, per person, of 32 inches (81.3 cm) or greater in length.

Humbug Mountain, OR, through California Subarea

This subarea would be allocated 7,860 lb (3.6 mt) at an Area 2A TAC of 1,310,000 lb (594 mt) in accordance with the Plan. The proposed 2003 sport season for this subarea would be the same as last year, with a May 1 opening and continuing 7 days per week until September 30. The daily bag limit would be the first halibut taken, per person, of 32 inches (81.3 cm) or greater in length.

NMFS requests public comments on the Pacific Council's recommended modifications to the Plan and the proposed sport fishing regulations. The Area 2A TAC were set by the IPHC at its annual meeting on January 21–24, 2003, in Victoria, British Columbia. NMFS requests comments on the proposed changes to the Plan and sport fishing regulations by February 18, 2003, after the annual meeting, so that the public will have the opportunity to consider the final Area 2A TAC before submitting comments on the proposed changes. The States of Washington and Oregon will conduct public workshops shortly after the IPHC meeting to obtain input on the sport season dates. After the Area 2A TAC is known and after NMFS reviews public comments and comments from the States, NMFS will issue final rules for the Area 2A Pacific

halibut sport fishery concurrent with the IPHC regulations for the 2003 Pacific halibut fisheries.

Housekeeping Revision to Halibut Regulations

With this rule, NMFS is proposing a minor housekeeping revision to the Federal halibut regulations at 50 CFR 300.63, which authorizes vessels with IPHC licenses that are operating in the primary sablefish longline fishery north of Pt. Chehalis to land halibut taken incidentally in that fishery. The housekeeping revision would alter the regulations to more clearly state that no halibut taken in this fishery may be landed south of Pt. Chehalis, an action that would be contrary to the Plan. This is a minor clarification and has no effect on the environment.

Classification

NMFS has prepared a draft EA/RIR on the proposed changes to the Plan. Copies of the Draft Environmental Assessment and Regulatory Impact Review of Changes to the Catch Sharing Plan for Pacific Halibut in Area 2A are available from NMFS (see **ADDRESSES**) Comments on the EA/RIR are requested by February 18, 2003.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration (SBA) that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities as follows:

The Regulatory Flexibility Act (RFA), 5 U.S.C. 603 *et seq.*, requires government agencies to assess the effects that various regulatory alternatives would have on small entities, including small businesses, and to determine ways to minimize those effects. A fish-harvesting business is considered a "small" business by the SBA if it has annual receipts not in excess of $3.5 million. For related fish-processing businesses, a small business is one that employs 500 or fewer persons. For marinas and charter/party boats, a small business is one with annual receipts not in excess of $5.0 million. All of the businesses that would be affected by this action are considered small businesses under SBA guidance.

The proposed changes to the Area 2A Catch Sharing Plan (Plan), which allocates the catch of Pacific halibut among users in Washington, Oregon and California, would: (1) Allocate the Washington North Coast sport fishery sub-area quota, 78 percent for a May fishery and 22 percent for a late June fishery; (2) Revise the closed area within the Washington north coast subarea so that it is better situated to protect yelloweye rockfish, an overfished groundfish species; (3) Require non-treaty commercial vessels operating in the directed commercial fishery for halibut to fish offshore of 100 fm to protect yelloweye rockfish; (4) Set the incidental halibut retention allocation for the primary sablefish fishery at 70,000 lb; (5) Move the season ending date for Oregon sport fisheries in the North Central and South Central areas to October 31; (6) Revise the inseason management measures provisions to allow more flexibility for managers making inseason adjustments to fishery openings and closures.

Setting a more clear allocation between the May and late June fisheries in the Washington north coast fishery subarea is primarily intended to recognize the historical but informal allocation between these two fisheries. A formal allocation is also intended to reduce inseason pressure from anglers asking managers to move quota from May to June or vice versa. The Yelloweye Rockfish Conservation Area within the Washington North Coast and the closure of nontreaty commercial fishing opportunities in depths inshore of the 100 fm (184 m) depth contour are intended to protect yelloweye rockfish, an overfished species, from being incidentally caught in directed halibut fisheries. Specifying a 70,000 lb (31.8 mt) cap on the allocation to the primary sablefish longline fishery when the overall Area 2A TAC is over 900,000 lb (408 mt) is intended to maintain this fishery as an incidental catch fishery and to return halibut quota to the sport halibut fisheries, where it is more likely to be taken. Other proposed changes to the Plan are either editorial or intended to provide managers with more flexibility for adjusting fisheries inseason in order to ensure the available quota is taken. These changes are authorized under the Pacific Halibut Act and implementing regulations at 50 CFR 300.60–65.

Proposed changes to the Plan will affect charter fishing operations and anglers who operate off the north coast of Washington state and participants in the nontreaty directed commercial fishery. In 2002, approximately 1,888 anglers participated in the Washington north coast sport fishery from charterboats and 4,875 anglers participated from private boats. In 2002, IPHC issued 252 licenses to participate in either the directed commercial fishery or the primary longline sablefish fishery. Revisions to the plan affecting the Washington north coast sport fishery subarea are expected to have either no economic effect or a modest positive effect based on fuel and maintenance savings from having more open fishing areas closer to shore while setting the closed area farther offshore. The revision to the Plan to set the primary longline sablefish fishery allocation at 70,000 lb (31.8 mt) is not expected to have any effect on this fishery, which caught less than that amount in 2001 and 2002, the only years this incidental halibut fishing opportunity was open. The revision to the Plan to require nontreaty directed commercial vessels to operate offshore of a boundary line approximating the 100 fm (184 m) is expected to have no economic effect or a modest negative effect based on greater fuel and maintenance costs associated with having to fish farther offshore.

The proposed changes to the Plan are expected to result in a modest increase in fishery and regulatory convenience for sport fisheries and/or a modest decrease in fishery convenience for the nontreaty directed commercial fishery. The proposed sport management measures for 2003 implement the Plan by managing the recreational fishery to meet the differing fishery needs of the various areas along the coast according to the Plan's objectives. The measures for 2003 will be very similar to last year's management measures. These changes do not include any reporting or recordkeeping requirements. These changes will also not duplicate, overlap or conflict with other laws or regulations. Consequently, these changes to the Plan are not expected to meet any of the RFA tests of having a "significant" economic impact on a "substantial number" of small entities.

As a result, an initial regulatory flexibility analysis was not prepared.

This action has been determined to be not significant for purposes of Executive Order 12866.

Pursuant to Executive Order 13175, the Secretary of Commerce recognizes the sovereign status and co-manager role of Indian tribes over shared Federal and tribal fishery resources. At section 302(b)(5), the Magnuson-Stevens Fishery Conservation and Management Act reserves a seat on the Pacific Council for a representative of an Indian tribe with federally recognized fishing rights from California, Oregon, Washington, or Idaho.

The U.S. government formally recognizes that the thirteen Washington Tribes have treaty rights to fish for Pacific halibut. In general terms, the quantification of those rights is 50 percent of the harvestable surplus of Pacific halibut available in the tribes' usual and accustomed (U and A) fishing areas (described at 50 CFR 660.324). Each of the treaty tribes has the discretion to administer their fisheries and to establish their own policies to achieve program objectives. Accordingly, tribal allocations and regulations, including the proposed changes to the Plan, have been developed in consultation with the affected tribe(s) and, insofar as possible, with tribal consensus.

List of Subjects in 50 CFR Part 300

Fisheries, Fishing, Indians, Reporting and recordkeeping requirements, Treaties.

Dated: January 30, 2003.

Rebecca Lent,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 300 is proposed to be amended as follows:

PART 300 INTERNATIONAL FISHERIES REGULATIONS, SUBPART E—PACIFIC HALIBUT FISHERIES

1. The authority citation for 50 CFR part 300, subpart E continues to read as follows:

Authority: 16 U.S.C. 773–773k.

2. In § 300.63, paragraph (a)(3)(ii) is revised to read as follows:

§ 300.63 Catch sharing plans, local area management plans, and domestic management measures.

* * * * *

(a) * * *

(3) * * *

(ii) It is unlawful for any person to possess or land halibut south of 46°53′8″ N. lat. that were taken and retained as incidental catch authorized by this section in the directed longline sablefish fishery.

* * * * *

[FR Doc. 03–2806 Filed 2–5–03; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register
Vol. 68, No. 25
Thursday, February 6, 2003

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. 03–005N]

Listeria Risk Assessment Technical Meeting—Notice of Availability and Public Meeting

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice of availability and announcement of public meeting.

SUMMARY: The Food Safety and Inspection Service (FSIS) is announcing the availability of, and requesting public comment on, its draft risk assessment for *Listeria* in deli- and hot dog-type meat and poultry products that are exposed to the environment post-lethality. FSIS conducted this risk assessment, addressing both *Listeria monocytogenes* and *Listeria* species (spp), to examine the effectiveness of testing food contact surfaces and sanitation on product contamination and the subsequent risk of illness, and to evaluate the effectiveness of other interventions (*e.g.*, post-processing interventions). In addition, the frequency of testing food contact surfaces, as proposed in the proposed rule on Performance Standards for the Production of Processed Meat and Poultry Products, was specifically addressed.

FSIS also is holding a public meeting to discuss the technical design and assumptions that were used to create this draft risk assessment.

DATES: The public meeting is scheduled for Wednesday, February 26, 2003. The meeting will be held from 9 a.m. to 4:30 p.m. The draft risk assessment will be available in the FSIS docket room (address below) and will be posted to the FSIS Web site at *http://www.fsis.usda.gov* on or before February 14, 2003.

Submit written comments on the draft risk assessment on or before February 21, 2003.

ADDRESSES: The public meeting will be held at the Washington Plaza Hotel, 10 Thomas Circle, Washington, DC 20005. Telephone: (202) 842–1300.

A tentative agenda is available in the FSIS docket room (address below) and on the FSIS Web site at *http://www.fsis.usda.gov/OPPDE/rdad/Notices02.htm*

Please send written comments on the draft risk assessment to the FSIS Docket Room, Docket 03–005N, U.S. Department of Agriculture, Food Safety and Inspection Service, Room 102 Cotton Annex, 300 12th Street, SW., Washington, DC 20250–3700. All comments and the official transcript of the meeting, when they become available, will be available for viewing in the FSIS docket room.

FOR FURTHER INFORMATION CONTACT: Moshe Dreyfuss at (202) 205–0260. Registration for the meeting will be on-site. No pre-registration will be accepted. Persons requiring a sign language interpreter should notify Ms. Sheila Johnson by February 12, 2003 at (202) 690–6498. Notify Ms. Johnson as soon as possible if other special accommodations are required.

SUPPLEMENTARY INFORMATION:

Background

FSIS administers the Federal Meat Inspection Act, the Poultry Products Inspection Act, and the Egg Products Inspection Act. The Agency's activities are intended to prevent the distribution in domestic and foreign commerce, as human food, of unwholesome, adulterated, or misbranded meat, poultry, and egg products, including products that may transmit diseases or that may be otherwise injurious to health.

On February 27, 2001, (66 FR 12589) FSIS issued proposed regulations to require that each establishment that produces ready-to-eat meat and poultry products test food contact surfaces for *Listeria* spp., in order to verify the efficacy of its sanitation standard operating procedures, unless it has incorporated one or more controls for *Listeria monocytogenes* into its HACCP plan. Under the proposed regulations, food contact surface positives for *Listeria* would trigger mandatory product testing. In November 2002, FSIS issued a directive outlining additional steps to be taken by U.S. Department of Agriculture inspectors to ensure that establishments producing ready-to-eat meat and poultry products are taking the necessary steps to prevent contamination with *Listeria*.

FSIS has recently completed an extensive, scientific risk assessment on *Listeria* to determine how the pathogen may contaminate meat and poultry products during production and packaging processes. The draft risk assessment will provide important additional data that the Agency will use in developing a final regulation concerning the reduction and control of *Listeria* in processing plants producing ready-to-eat products, and a new directive to replace Directive 10,240.3 (Microbial Sampling of Ready To Eat Products for the FSIS Verification Testing Program), if appropriate, as a consequence of the final rule.

FSIS requests comment on this draft risk assessment and will hold a public meeting to discuss and seek input on it on February 26, 2003, at the Washington Plaza Hotel (See **ADDRESSES** above).

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, in an effort to better ensure that minorities, women, and persons with disabilities are aware of this notice, FSIS will announce it and make copies of this **Federal Register** publication available through the FSIS Constituent Update. FSIS provides a weekly Constituent Update, which is communicated via Listserv, a free e-mail subscription service. In addition, the update is available on-line through the FSIS web page located at *http://www.fsis.usda.gov/oa/update/update.htm*. The update is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, recalls, and any other types of information that could affect or would be of interest to our constituents/stakeholders. The constituent Listserv consists of industry, trade, and farm groups, consumer interest groups, allied health professionals, scientific professionals, and other individuals that have requested to be included. Through the Listserv and web page, FSIS is able to provide information to a much broader, more diverse audience.

For more information, contact the Congressional and Public Affairs Office, at (202) 720–9113. To be added to the free e-mail subscription service (Listserv) go to the "Constituent Update" page on the FSIS Web site at *http://www.fsis.usda.gov/oa/update/update.htm*. Click on the "Subscribe to the Constituent Update Listserv" link, then fill out and submit the form.

Done at Washington, DC, on: January 31, 2003.

Linda M. Swacina,

Associate Administrator.

[FR Doc. 03–2942 Filed 2–5–03; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Forest Service

Flagtail Fire Recovery Project; Malheur National Forest, Grant County, OR

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The USDA, Forest Service will prepare an Environmental Impact Statement (EIS) on a proposal to assist the recovery of the area burned in 2002 by the Flagtail Fire. This will include proposals to salvage fire-killed and fire-damaged timber, implement reforestation, and implement projects to alleviate the potential for future damage to wildlife habitat, and aquatic resources as a result of the Flagtail Fire. The 7,250-acre project area is located on the Blue Mountain Ranger District, approximately 25 miles southwest of John Day, Oregon, within the Silvies Watershed.

DATES: Comments concerning the scope of the analysis must be received by February 28, 2003.

ADDRESSES: Send written comments to Michael Montgomery, District Ranter, Blue Mountain Ranger District, P.O. Box 909, John Day, OR 97845.

FOR FURTHER INFORMATION CONTACT: Linda Batten, Flagtail Fire Recovery Project Team Leader, Blue Mountain Ranger District. Phone: (541) 575–3000. E-mail *lbatten@fs.fed.us* or the Malheur National Forest website at *http://www.fs.fed.us/r6/malheur.*

SUPPLEMENTARY INFORMATION: In July 2002, the Flagtain Fire burned approximately 8,200 acres, of which 7,250 occur on the Malheur National Forest. The remainder of the fire includes approximately 950 acres of private land. The 7,250-acre decision area for the Flagtail Fire Recovery Project includes those portions of the Flagtail Fire that burned within the Silvies Watershed on National Forest System lands.

Purpose and Need for Action

The purposes and needs for action in the project planning area are to:

- Reduce fuel loadings,
- Reduce the risk of insect infestation in surviving stands,
- Capture economic value of the killed and damaged trees,
- Provide safe and adequate roaded access in the fire area,
- Reduce the effects of roads on wildlife and water quality,
- Re-establish upland vegetation, and
- Designate suitable dedicated and replacement old growth areas to replace those degraded by the fire.

Proposed Action

The proposed project could include the following activities:

—Salvage harvest approximately 5,200 acres, in the Silvies watershed;

—Decommission approximately 13 miles and close approximately 13 miles of road;

—Reforest areas that sustained high tree mortality with appropriate species;

—Replace Dedicated Old Growth that is now unsuitable due to the fire (resulting in a Forest Plan amendment).

About 80% of the proposed timber salvage units would be harvested using ground-based logging systems. Access for the salvage activities would require construction of less than 1 mile of road, construction of approximately 60 miles of road. The temporary roads would be decommissioned after completion of project activities. Approximately 20% of the area to be salvaged would be harvested using helicopter based logging systems. Connected actions in association with salvage include water barring and erosion control measures such as scattering of slash on skid trails and treatment of slash.

Approximately 5,200 acres would be planted with tree seedlings following site preparation. Fuels, including those created by the fire, by salvage activity, and by site preparation, would be reduced to meet the range of historic levels throughout the project area. A variety of fuel treatment methods would be used including removing marketable timber through salvage harvest, burning in place, piling and burning, and whole tree yarding.

All proposed activities are responsive to the stated purpose and need for this project.

Possible Alternatives

A full range of alternatives will be considered, including a "no action" alternative in which none of the activities proposed above would be implemented. Based on the issues gathered through scoping, the action alternatives could differ in the silvicultural and post-harvest treatments prescribed, the amount and location of harvest, or the amount and location of fuels reduction activity. Tentative alternatives to the proposed action could include an alternative that does not require the construction of additional temporary or permanent roads, other than temporary re-opening of existing roads. Another alternative could emphasize removal (or other fuels treatment options) of dead timber in the size classes most likely to reburn. Currently available science on snag and coarse woody debris dependent species habitat will be a factor in alternative development and could result in a proposal of a site-specific Forest Plan amendment to update standards and guidelines for these species. Consideration of various regeneration strategies including planting at relatively low stocking levels could also be a factor that differentiates alternatives.

Scoping Process

The public will have an opportunity to participate at several points during the analysis including the scoping period after publication of the notice of intent, and during the comment period after publication of the draft EIS. Notification of these opportunities will appear in subsequent issues of the Malheur National Forest's Schedule of Proposed Activities; letters to agencies, organizations, and individuals who have previously indicated their interest in such activities; and a legal notice in the *Blue Mountain Eagle*. Public meetings may be scheduled during the winter/spring of 2002–2003. The scoping process will include identifying potential issues, identifying major issues to be analyzed in depth, eliminating non-significant issues or those previously covered by a relevant environmental analysis, considering additional alternatives based on themes which will be derived from issues recognized during scoping activities, and identifying potential environmental effects of the proposed action and alternatives (*i.e.* direct, indirect, and cumulative effects and connected actions).

Preliminary Issues

Preliminary issues include snag and downed wood habitat; noxious weeds; effects of proposed activities on soils exposed by the fire; effects of proposed activities on the recovery of water quality and resident fisheries resource; ability of proposed activities to contribute to restoration of historic vegetation composition, structures, and patterns; potential loss of commercial timber value; and economic viability of timber salvage.

Public comments about this proposal are requested in order to assist in properly scoping issues, to determine how to best manage the resources, and to fully analyze environmental effects. Comments received to this notice, including names and addresses of those who comment, will be considered part of the public record on this proposed action and will be available for public inspection. Comments submitted anonymously will be accepted and considered; those who submit anonymous comments will not have standing to appeal the subsequent decision under 36 CFR parts 215 and 217. Additionally, pursuant to 7 CFR 1.27(d), any person may request the agency to withhold a submission from the public record by showing how the Freedom of Information Act (FOIA) permits such confidentiality. Persons requesting such confidentiality should be aware that under FOIA, confidentiality may be granted in only very limited circumstances, such as to protect trade secrets. The Forest Service will inform the requester of the agency's decision regarding the request for confidentiality and, where the request is denied, the agency will return the submission and notify the requester that the comments may be resubmitted with or without name and address within a specific number of days.

Early Notice of Importance of Public Participation in Subsequent Environmental Review

The comment period on the draft EIS will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register** the draft EIS is expected in May 2003 and the final EIS is expected in September 2003.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of a draft EIS must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft EIS stage but that are not raised until after completion of the final EIS may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45 day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final EIS.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft EIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft EIS. Comments may also address the adequacy of the draft EIS or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

The Forest Service is the lead agency. The Responsible Official is the Forest Supervisor, Malheur National Forest, 431 Pattern Bridge Road, John Day, Oregon 97845. The Responsible Official will decide which, if any, of the proposed projects will be implemented. The Responsible Official may also decide on site-specific Forest Plan amendments regarding standards and guidelines for snag and coarse woody debris, as well as big game habitat, if warranted by the analysis of those components in light of recent science.

The Responsible Official will document the Flagtail Fire Recovery Project decision and reasons for the decision in the Record of Decision. That decision will be subject to Forest Service Appeal Regulations (36 CFR part 215).

Dated: January 27, 2003.

Roger W. Williams,

Forest Supervisor.

[FR Doc. 03–2836 Filed 2–5–03; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Ravalli County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Ravalli County Resource Advisory Committee will be meeting to discuss project development for 2003. Agenda topics will include project form submittals and a public forum (question and answer session). The meeting is being held pursuant to the authorities in the Federal Advisory Committee Act (Pub. L. 92–463) and under the Secure Rural Schools and Community Self-Determination Act of 2000 (Pub. L. 106–393). The meeting is open to the public.

DATES: The meeting will be held on February 25, 2003, 6:30 p.m.

ADDRESSES: The meeting will be held at the Ravalli County Administration Building, 215 S. 4th Street, Hamilton, Montana. Send written comments to Jeanne Higgins, District Ranger, Stevensville Ranger District, 88 Main Street, Stevensville, MT 59870, by facsimile (406) 777–7423, or electronically to *jmhiggins@fs.fed.us.*

FOR FURTHER INFORMATION CONTACT: Jeanne Higgins, Stevensville District Ranger and Designated Federal Officer, Phone: (406) 777–5461.

Dated: January 30, 2003.

David T. Bull,

Forest Supervisor.

[FR Doc. 03–2835 Filed 2–5–03; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Interim Direction for Commercial Filming and Still Photography Activities on National Forest System Lands

AGENCY: Forest Service, USDA.

ACTION: Notice of issuance of agency interim directives.

SUMMARY: The Forest Service is issuing interim directives to guide its employees in the permitting and administration of authorizations and the collection of land use fees for commercial filming and still photography on National Forest System lands. These interim directives make Forest Service policy and procedures in Forest Service Manual chapter 2720 and in Forest Service Handbook 2709.11, chapter 30, consistent with the

provisions of the Act of May 26, 2000, which provides authority for the Secretary of the Interior and the Secretary of Agriculture to authorize and set conditions on the use of Federal lands for commercial filming and still photography and to establish, retain, and spend without further appropriation land use fees collected for those uses. A primary purpose of the act is to promote consistent permitting and land use fee practices among the Federal land management agencies.

DATES: These interim directives are effective February 6, 2003.

ADDRESSES: These interim directives (ID 2700–2003–1 and ID 2709.11–2003–2) are available electronically from the Forest Service via the World Wide Web/Internet at *http://www.fs.fed.us/im/directives.* Single paper copies of the IDs are also available by contacting Melissa Hearst, Lands Staff (Mail Stop 1124), Forest Service, 1400 Independence Avenue, SW., Washington, DC 20250–1124 (telephone 202–205–1196).

FOR FURTHER INFORMATION CONTACT: Melissa Hearst, Lands Staff (202–205–1196).

SUPPLEMENTARY INFORMATION: The Forest Service is issuing interim directives (IDs) to Forest Service Manual (FSM) chapter 2720 and Forest Service Handbook (FSH) 2709.11, chapter 30 to guide its employees in the permitting and administration of authorizations and the collection of land use fees for commercial filming and still photography consistent with the provisions of the Act of May 26, 2000 (16 U.S.C. 460l–6d).

Prior to this act, the Forest Service's authority to issue permits for commercial filming and still photography and to collect land use fees for these uses was the Organic Act of 1897 (16 U.S.C. 551) and implementing regulations at title 36, Code of Federal Regulations, part 251, subpart B. Legislative history for the Act of May 26, 2000, states that the act is intended to supplement the Forest Service's existing authorities to regulate commercial filming and still photography.

The interim directive to FSM 2720 provides a definition for "commercial filming" that establishes the types of filming activities for which a special use permit is required. This definition specifically excludes "breaking news" as an activity for which a special use permit is required, because the need for commercial filming and still photography to cover breaking news arises suddenly, may evolve quickly, and may cease to be newsworthy by the time a permit is issued. The ID also sets out definitions of other terms common to commercial filming and still photography. A clear understanding of these definitions is essential so that agency personnel can correctly determine under what situation or condition a special use permit is required.

The Act of May 26, 2000, also provides the Forest Service with the authority to collect, retain, and spend without further appropriation the land use fees collected for commercial filming and still photography. The ID to FSH 2709.11, chapter 30, instructs agency personnel to continue to use current Regional and Forest fee schedules established for these activities and provides direction for the accounting and expenditure of these funds.

The interim directive to FSM 2720 is issued as ID number 2700–2003–1 and the interim directive to FSH 2709.11, chapter 30, is issued as ID number 2709.11–2003–2.

Dated: January 30, 2003.

Sally Collins,

Associate Chief.

[FR Doc. 03–2968 Filed 2–5–03; 8:45 am]

BILLING CODE 3410–11–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Connecticut Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Connecticut Advisory Committee to the Commission will convene at 1:30 p.m. and adjourn at 5:30 p.m. on Thursday, March 6, 2003, at the Bridgeport Holiday Inn, 1070 Main Street, Bridgeport, Connecticut. 06604. The Advisory Committee will hold new member orientation, be briefed by invited guests on civil rights issues in Bridgeport, and plan future activities.

Persons desiring additional information, or planning a presentation to the Committee, should contact Ki-Taek Chun, Director of the Eastern Regional Office, 202–376–7533 (TDD 202–376–8116). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, January 31, 2003.

Ivy L. Davis,

Chief, Regional Programs Coordination Unit.

[FR Doc. 03–2944 Filed 2–5–03; 8:45 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Illinois Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a planning meeting of the Illinois Advisory Committee to the Commission will convene at 1 p.m. and adjourn at 5 p.m. on Thursday, February 27, 2003, at 55 West Monroe Street, Suite 525, Chicago, Illinois 60603. The purpose of the meeting is to discuss civil rights issues and plan future activities.

Persons desiring additional information, or planning a presentation to the Committee, should contact Constance M. Davis, Director of the Midwestern Regional Office, 312–353–8311 (TDD 312–353–8362). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, January 31, 2003.

Ivy L. Davis,

Chief, Regional Programs Coordination Unit.

[FR Doc. 03–2943 Filed 2–5–03; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

National Infrastructure Advisory Council; Amended Notice of Open Meeting

The time of the meeting of the National Infrastructure Advisory Council (NIAC) scheduled for Friday, February 7, 2003, notice of which previously appeared in the **Federal Register** (*see* 68 FR 4167, January 28, 2003), has changed. The meeting will now commence at 11:15 a.m., rather than at 12 p.m.

As previously announced, the meeting will be open to interested members of the public via conference call-in line. Members of the public interested in attending by telephone should call (toll free) 1–888–899–7785

or (toll) 1–913–312–4169 and, when prompted, enter pass code 1468517.

The Council advises the President of the United States on the security of information systems for critical infrastructure supporting other sectors of the economy, including banking and finance, transportation, energy, manufacturing, and emergency government services.

Agenda

I. Formal Opening of Meeting—Nancy J. Wong, Acting Director, Critical Infrastructure Assurance Office, U.S. Department of Commerce; Designated Federal Officer, NIAC
II. Introduction of NIAC Members [Roll Call]
III. Welcoming remarks—Howard A. Schmidt, Vice Chairman, President's Critical Infrastructure Protection Board; Acting Executive Director, NIAC; Kenneth I. Juster, Under Security of Commerce for Industry and Security, U.S. Department of Commerce
IV. Welcoming remarks—Richard K. Davidson, Chairman, NIAC; John T. Chambers, Vice Chairman, NIAC
V. Briefing Concerning National Security Telecommunications Advisory Committee (NSTAC) Activities and Responsibilities
  a. Introduction of NSTAC Chairman and Vice Chairman—Mr. Schmidt
  b. Briefing—Dr. Vance D. Coffman, Chairman and CEO, Lockheed Martin, and Chairman, NSTAC; and Mr. F. Duane Ackerman, President, Chairman & CEO, BellSouth, and Vice Chairman, NSTAC
  c. Question and Answer Session—Dr. Coffman, Mr. Ackerman, NIAC Members
VI. Introduction and Discussion of Possible Topics for Future NIAC Study:
  a. Internet Protocol Version 6.0 (IPv6)—Vice Chairman Chambers
  b. Responsible Disclosure of Cyber Vulnerabilities, Attacks/Incidents—Vice Chairman Chambers; and John W. Thompson, Chairman and CEO, Symantec Corporation, Member of the NIAC
VII. Adjournment

Written comments may be submitted at any time before or after the meeting. Please direct them to the following address: Ms. Wanda Rose, Critical Infrastructure Assurance Office, Bureau of Industry and Security, U.S. Department of Commerce, Room 6095, 14th Street & Constitution Avenue, NW., Washington, DC 20230.

For more information contact Wanda Rose on (202) 482–7481.

Dated: February 4, 2003.

Eric T. Werner,

Council Liaison Officer.

[FR Doc. 03–3107 Filed 2–4–03; 3:35 pm]

BILLING CODE 3510–JT–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–804]

Ball Bearings and Parts Thereof From Japan; Notice of Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of extension of time limit for preliminary results of antidumping duty administrative review.

SUMMARY: The Department of Commerce is extending the time limit for the preliminary results of the administrative review of the antidumping duty order on ball bearings and parts thereof from Japan. The preliminary results of this review are now due March 3, 2003.

EFFECTIVE DATE: February 6, 2003.

FOR FURTHER INFORMATION CONTACT: Sochieta Moth, (202) 482–0168, or Richard Rimlinger, (202) 482–4477, AD/CVD Enforcement 3, Import Administration, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230.

Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review

The Department has received requests to conduct an administrative review of the antidumping duty order on ball bearings and parts thereof from Japan. On June 25, 2002, the Department initiated this administrative review covering the period May 1, 2001, through April 30, 2002. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocations in Part*, 67 FR 42753.

Because of the complexity of certain issues and the large number of respondents in the review, it is not practicable to complete this review within the time limits mandated by section 751(a)(3)(A) of the Tariff Act of 1930, as amended. Therefore, in accordance with that section, the Department is extending the time limit for the preliminary results of this administrative review until March 3, 2003.

Dated: January 31, 2003.

Laurie Parkhill,

Acting Deputy Assistant Secretary for AD/CVD Enforcement I.

[FR Doc. 03–2956 Filed 2–5–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–557–805]

Extruded Rubber Thread from Malaysia; Rescission of Antidumping DutyAdministrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Rescission of the Antidumping Duty Administrative Review for the Period October 1, 2001, through September 30, 2002.

EFFECTIVE DATE: February 6, 2003.

FOR FURTHER INFORMATION CONTACT: Irina Itkin or Elizabeth Eastwood, Office of AD/CVD Enforcement Group I, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–0656 or (202) 482–3874, respectively.

SUPPLEMENTARY INFORMATION:

Background

On October 2, 2002, the Department published in the **Federal Register** (67 FR 61849) a notice of opportunity to request an administrative review of the antidumping order regarding extruded rubber thread from Malaysia for the period October 1, 2001, through September 30, 2002. In accordance with 19 CFR 351.213(b)(2), on October 31, 2002, one producer/exporter of extruded rubber thread (i.e., Heveafil Sdn. Bhd. and Filmax Sdn. Bhd. (collectively "Heveafil")) requested a review of the antidumping duty order on extruded rubber thread from Malaysia.

On November 22, 2002, the Department initiated an administrative review for this company (67 FR 70402) and issued it a questionnaire. Heveafil requested an extension to respond to the questionnaire on December 10, 2002, which the Department granted.

On January 13, 2003, Heveafil withdrew its request for review.

Rescission of Review

Heveafil withdrew its request for an administrative review for the above-referenced period on January 13, 2003. Therefore, because no other interested party requested a review for this period

of review, in accordance with 19 CFR 351.213(d)(1) and consistent with our practice, we are rescinding this review of the antidumping duty order on extruded rubber thread from Malaysia for the period of October 1, 2001, through September 30, 2002. This notice is published in accordance with section 751 of the Tariff Act of 1930, as amended, and 19 CFR 351.213(d)(4).

Dated: January 31, 2003.

Laurie Parkhill,

Acting Deputy Assistant Secretary Import Administration.

[FR Doc. 03–2957 Filed 2–5–03; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–357–812]

Honey From Argentina: Initiation of New Shipper Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: February 6, 2003.

FOR FURTHER INFORMATION CONTACT: Phyllis Hall or Donna Kinsella at (202) 482–1398 or (202) 482–0194, respectively; Antidumping and Countervailing Duty Enforcement Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

The Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the Tariff Act of 1930, as amended. In addition, unless otherwise indicated, all citations to the Department's regulations are references to the provisions codified at 19 CFR part 351 (2002).

Background

The Department received a timely request from Nutrin, S.A., the exporter and Nutrin Corporation, its affiliated U.S. company (collectively, Nutrin) in accordance with 19 CFR 351.214(c), for a new shipper review of the antidumping duty order on honey from Argentina, which has a December annual anniversary month. See Notice of Antidumping Duty Order; Honey from Argentina, 66 FR 63672 (December 10, 2001). As required by 19 CFR 351.214(b)(2)(i), (ii) and (iii)(A), the company identified above and its supplier of subject merchandise have certified that they did not export honey to the United States during the period of investigation (POI), and that neither have been affiliated with any exporter or producer which did export honey during the POI. Pursuant to the Department's regulations at 19 CFR 351.214(b)(2)(iv)(A), Nutrin submitted documentation establishing the date on which it first shipped the subject merchandise to the United States, the volume of that first shipment, and the date of the first sale to an unaffiliated customer in the United States.

In accordance with section 751(a)(2)(B) of the Act, as amended, and 19 CFR 351.214(d)(i), and based on information on the record, we are initiating a new shipper review for Nutrin S.A.

Scope

The merchandise under review is honey from Argentina. For purposes of this review, the products covered are natural honey, artificial honey containing more than 50 percent natural honey by weight, preparations of natural honey containing more than 50 percent natural honey by weight, and flavored honey. The subject merchandise includes all grades and colors of honey whether in liquid, creamed, comb, cut comb, or chunk form, and whether packaged for retail or in bulk form.

The merchandise under review is currently classifiable under subheadings 0409.00.00, 1702.90.90, and 2106.90.99 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and U.S. Customs Service (Customs) purposes, the Department's written description of the merchandise under this order is dispositive.

Initiation of Review

In accordance with section 751(a)(2)(B)(ii) of the Act and 19 CFR 351.214(d)(1), we are initiating a new shipper review of the antidumping duty order on honey from Argentina. Therefore, we intend to issue the preliminary results of this review not later than 180 days after the date on which the review is initiated. We intend to issue the final results of this review within 90 days after the date on which the preliminary results were issued.

Pursuant to 19 CFR 351.214(g)(1)(ii)(A) of the Department's regulations, the period of review (POR) for a new shipper review initiated in the month immediately following the annual anniversary month, the review will normally cover as appropriate entries, exports or sales during the period from the date of suspension of liquidation under this part to the end of the month immediately preceding the first anniversary month. Therefore, the POR for this new shipper review is:

Antidumping duty proceeding	Period to be reviewed
Nutrin, S.A.	05/11/01—11/30/02

We will instruct the Customs Service to allow, at the option of the importer, the posting, until the completion of the review, of a single entry bond or security in lieu of a cash deposit for each entry of the merchandise exported by the above-listed company. This action is in accordance with 19 CFR 351.214(e). Interested parties that need access to proprietary information in this new shipper review should submit applications for disclosure under administrative protective orders in accordance with 19 CFR 351.305 and 351.306. This initiation and notice are in accordance with section 751(a) of the Act (19 U.S.C. 1675(a)) and 19 CFR 351.214(d).

Dated: January 31, 2003.

Joseph A. Spetrini,

Deputy Assistant Secretary for Import Administration, Group III.

[FR Doc. 03–2955 Filed 2–5–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–485–806]

Certain Hot-Rolled Carbon Steel Flat Products From Romania: Notice of Rescission of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of rescission of antidumping duty administrative review.

EFFECTIVE DATE: February 6, 2003.

SUMMARY: On December 26, 2002, the Department of Commerce (the Department) published in the **Federal Register** (67 FR 78772) a notice announcing the initiation of an administrative review of the antidumping duty order on certain hot-rolled carbon steel flat products from Romania, covering the period May 3, 2001, through October 31, 2002, and three manufacturer/exporters of the subject merchandise: Sides Trading, SRL and Sidex International PLC;

Metanef, S.A. and Metagrimex, S.A.[1] We are now rescinding this review as a result of the petitioners' withdrawal of their request for an administrative review.

FOR FURTHER INFORMATION CONTACT: Charles Riggle at (202) 482–0650 or Magd Zalok at (202) 482–4162, Import Administration, Room 1870, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On November 27, 2002, Bethlehem Steel Corporation, National Steel Corporation, and U.S. Steel Corporation (Bethlehem Steel *et al.*), the petitioners in the original investigation in this case, in accordance with 19 CFR 351.213(b), requested an administrative review of the antidumping duty order on certain hot-rolled carbon steel flat products from Romania. On December 19, 2002, in accordance with 19 CFR 351.221(c)(1)(i), we initiated an administrative review of this order for the period May 3, 2001, through October 31, 2002. *See Notice of Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 67 FR 78772 (December 26, 2002). On December 24, 2002, Bethlehem Steel *et al.* withdrew their request for this review.

Rescission of Review

The Department's regulations at 19 CFR 351.213(d)(1) provide that the Department will rescind an administrative review if the party that requested the review withdraws its request for review within 90 days of the date of publication of the notice of initiation of the requested review, or withdraws its request at a later date if the Department determines that it is reasonable to extend the time limit for withdrawing the request. Bethlehem Steel *et al.* were the only parties to request this review and they withdrew their request within the 90-day period. Accordingly, this review is rescinded.

This notice is issued and published in accordance with section 751 of the Tariff Act of 1930, as amended (19 U.S.C. 1675), and 19 CFR 351.213(d)(4).

[1] The petitioners requested a review of a fourth company, Metalexportimport, S.A., which the Department inadvertently failed to include in its notice of initiation. In their December 24, 2002, letter, the petitioners withdrew their review request for this company, as well.

Dated: January 29, 2003.

Bernard T. Carreau,

Deputy Assistant Secretary for Group II, Import Administration.

[FR Doc. 03–2954 Filed 2–5–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Call for Applications for Representatives and Alternates to the Northewestern Hawaiian Islands Coral Reef Ecosystem Reserve Advisory Council for the Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve

AGENCY: National Marine Sanctuary Program (NMSP), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Notice and request for applications.

SUMMARY: The Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve is seeking applicants for the following vacant seats on its Reserve Advisory Council (Council): (1) Conservation, (2) Research, (1) Ocean-Related Tourism, (1) Recreational Fishing, (1) Education, (1) Citizen-At-Large. Council Representatives and Alternates are chosen based upon their particular expertise and experience in relation to the seat for which they are applying; community and professional affiliations; philosophy regarding the protection and management of marine resources; and possibly the length of residence in the area affected by the Sanctuary. Applicants who are chosen as Representatives or Alternates should expect to serve three-year terms, pursuant to the Council's Charter. Persons who are interested in applying for membership on the Council as either a Representative or Alternate may obtain an application from the person or website identified under the **ADDRESSES** section below.

DATES: Completed applications must be postmarked no later than February 28, 2003.

ADDRESSES: Applications may be obtained from Moani, Pai, 6700 Kalanianaole Highway, Suite 215, Honolulu, Hawaii 96825, (808) 397–2661 or online at *http://hawaiireef.noaa.gov.*

FOR FURTHER INFORMATION CONTACT: Aulani Wilheim, 6700 Kalanianaole Highway, Suite 215, Honolulu, Hawaii 96825, (808) 397–2657, *Aulani.Wilhelm@noaa.gov.*

SUPPLEMENTARY INFORMATION: The NWHI Coral Reef Ecosystem Reserve is a new marine protected area to conserve and protect the coral reef ecosystem and related natural and cultural resources of the area. The Reserve was established by Executive Order pursuant to the National Marine Sanctuaries Amendments Act of 2000 (Pub. L. 106–513). The NWHI Reserve was established by Executive Order 13178 (December 2000) and Executive Order 13196 (January 2001).

The Reserve encompasses an area of the marine waters and submerged lands of the Northwestern Hawaiian Islands, extending approximately 1200 nautical miles long and 100 nautical miles wide. The Reserve is adjacent to and seaward of the seaward boundary of Hawaii State waters and submerged lands and the Midway Atoll National Wildlife Refuge, and includes the Hawaiian Islands National Wildlife Refuge to the extent it extends beyond Hawaii State waters and submerged lands. The Reserve is managed by the Secretary of Commerce pursuant to the National Marine Sanctuaries Act and the Executive Orders. The Secretary has also initiated the process to designate the Reserve as a National Marine Sanctuary. The management principles and implementation strategy and requirements for the Reserve are found in the enabling Executive Orders, which are part of the application kit and can be found on the website listed above.

In designating the Reserve, the Secretary of Commerce was directed to establish a Coral Reef Ecosystem Reserve Advisory Council, pursuant to section 315 of the National Marine Sanctuaries Act, to provide advice and recommendations on the development of the Reserve Operations Plan and the designation and management of a Northwestern Hawaiian Islands National Marine Sanctuary by the Secretary.

The National Marine Sanctuary Program (NMSP) has established the Reserve Advisory Council and is now accepting applications from interested individuals for Council Representatives and Alternates for the following seven citizen/constituent positions on the Council:

1. Two (2) representatives from the non-Federal science community with experience specific to the Northwestern Hawaiian Islands and with expertise in at least one of the following areas:

A. Marine mammal science.
B. Coral reef ecology.
C. Native marine flora and fauna of the Hawaiian Islands.
D. Oceanography.

E. Any other scientific discipline the Secretary determines to be appropriate.

2. One (1) representative from a non-governmental wildlife/marine life, environmental, and/or conservation organization.

3. One (1) representative from the recreational fishing industry that conducts activities in the Northwestern Hawaiian Islands.

4. One (1) representative from the ocean-related tourism industry.

5. One (1) representative from the non-Federal community with experience in education and outreach regarding marine conservation issues.

6. One (1) citizen-at-large representative.

Current Reserve Council Representatives and Alternates may re-apply for these vacant seats.

The Council consists of 25 members, 15 of which are non-government voting members and 10 of which are government non-voting members. The voting members are representatives of the following constituencies: Conservation, Citizen-At-Large, Ocean-Related Tourism, Recreational Fishing, Research, Commercial Fishing, Education, State of Hawaii and Native Hawaiian. The government non-voting seats are represented by the following agencies: Department of Defense, Department of the Interior, Department of State, Marine Mammal Commission, NOAA's Hawaiian Islands Humpback Whale National Marine Sanctuary, NOAA's National Marine Fisheries Service, National Science Foundation, U.S. Coast Guard, Western Pacific Regional Fishery Management Council, and NOAA's National Ocean Service.

Authority: 16 U.S.C. 1431, *et seq.*

(Federal Domestic Assistance Catalog Number 11.429 Marine Sanctuary Program)

Dated: January 29, 2003.

Jamison S. Hawkins,

Acting Assistant Administrator for Ocean Services and Coastal Zone Management.

[FR Doc. 03–2837 Filed 2–5–03; 8:45 am]

BILLING CODE 3510–08–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 121902A]

Small Takes of Marine Mammals Incidental to Specified Activities; Installation of a New Floating Dock at the U.S. Coast Guard Pier, Monterey, CA

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of receipt of application and proposed authorization for a small take exemption; request for comments.

SUMMARY: NMFS has received an application from the United States Coast Guard (USCG) for an Incidental Harassment Authorization (IHA) to take small numbers of marine mammals, by harassment, incidental to the installation of a floating dock in Monterey, CA. Under the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to issue a small take authorization to the USCG to incidentally take, by harassment, small numbers of Pacific harbor seals and California sea lions for 1 year.

DATES: Comments and information must be received no later than March 10, 2003.

ADDRESSES: Comments on the application should be addressed to James Lecky, Assistant Regional Administrator for Protected Resources, NMFS - Southwest Regional Office, 501 West Ocean Blvd. Suite 4200, Long Beach, CA 90802–4213. A copy of the application may be obtained by writing to this address or by telephoning the contact listed here. Comments cannot be accepted if submitted via e-mail or the Internet.

FOR FURTHER INFORMATION CONTACT: Christina Fahy, Southwest Regional Office, NMFS, (562) 980–4023.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

Permission may be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses and that the permissible methods of taking and requirements pertaining to the monitoring and reporting of such takings are set forth. NMFS has defined "negligible impact" in 50 CFR 216.103 as "...an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival."

Subsection 101(a)(5)(D) of the MMPA established an expedited process by which citizens of the United States can apply for an authorization to incidentally take small numbers of marine mammals by harassment. The MMPA defines "harassment" as:

> ...any act of pursuit, torment, or annoyance which (a) has the potential to injure a marine mammal or marine mammal stock in the wild; or (b) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to migration, breathing, nursing, breeding, feeding, or sheltering.

Subsection 101(a)(5)(D) establishes a 45–day time limit for NMFS review of an application followed by a 30–day public notice and comment period on any proposed authorizations for the incidental harassment of small numbers of marine mammals. Within 45 days of the close of the comment period, NMFS must either issue or deny issuance of the authorization.

Summary of Request

On August 16, 2002, NMFS received a letter from the USCG requesting an IHA for the possible harassment of small numbers of California sea lions (*Zalophus californianus*) and Pacific harbor seals (*Phoca vitulina*), incidental to the installation of a new floating dock.

The installation of a new floating dock is needed to provide better and safer access to an 87–ft (26.6–m) Coastal Patrol Boat, USCGC Hawksbill (Hawksbill). Currently, the Hawksbill moors at a fixed wharf which does not meet the Coast Guard's minimum standards for mooring a patrol boat. The tidal range causes severe chafing to the mooring lines and difficulties with the access gangway. The Coast Guard estimates that the cost of mooring line replacement is approximately $10,000 a year. When the patrol boat is at the dock, a crewmember is required to be continually present to adjust mooring lines and the gangway about every 40 minutes. The Hawksbill has a 10–person crew, which is not designed to have one person awake the entire night while in port. Finally, several locally produced gangways, mounted from the wharf, have failed to give adequate access to the Hawksbill during the entire tidal cycle. The installation of a floating dock will eliminate the excessive cost to mooring lines and gangway

replacement, as well as, any unnecessary burden on the crew.

Project Description

The project is located at 100 Lighthouse Avenue in the city and county of Monterey, California. The fixed pier extends east into Monterey Bay. The floating dock will be located on the south side near the end of the fixed wharf. The installation of the new floating dock will consist of installing a new 10 ft x 100 ft (3.05 x 30.5 m) pier, including the driving of five new piles.

The pile driving work will be completed from a welded steel barge equipped with a pedestal mounted revolving crane that has a 105–foot (32–meter) boom with a 30–ton (27,216–kg) capacity and 25–ft (7.62–m) radius. The barge will be mobilized, moved, and tended by a barge tender/work boat. The pile driving will be completed using a "DELMAG D19–32 Pile Hammer," which is a single piston internal combustion type hammer powered by diesel fuel. The pile hammer motor has a single piston, which is attached to a 2,000 lb (907 kg) weight. The weight is used to drive the piles. The pile design was completed with the existing conditions (5 ft (1.5 m) of mud over approximately 5 to 10 ft (1.5 to 3.05 m) of 500 lbs. (227 kgs) rock over decomposed granite) in mind. The new pile will consist of a 12–in (0.3–m) I-beam driven to refusal. It is anticipated that the I-beam will penetrate the mud through the rock and a firm toe will be established in the decomposed granite. This I-beam will be covered with a 24–in (0.6–m) round pile that will be driven to refusal creating a seal with the ocean floor. This second pile will be attached to the existing pier with metal braces and drained of seawater. After the pile is drained and stabilized, the 24–in (0.6 m) pile will be filled with concrete using a pump truck.

The manufacturer of the pile hammer has stated that the maximum in-air noise level under extreme driving conditions and at maximum refusal will be between 90 and 100 decibels (dB)(re 20 microPascal-m) at the source; however during this project, extreme conditions will not be encountered, and anticipated in-air noise levels should be between 60 and 85 dB. The manufacturer was not able to estimate the underwater noise level. However, acoustic monitoring of pile driving operations on the Noyo River (Fort Bragg, CA) using a similar size hammer under similar conditions (2 m (6.6 ft) water, mud bottom) and a 12–in (0.3 m) I-beam pile measured noise levels of 169 dB (dB re 1 microPascal-meter) at 100 m. The closest measurement to the hammer was 30 m, with an underwater noise level of approximately 170 dB.

The pile driving and in water work for this project is expected to last 10 days, while the entire project should be completed within 30 days. Because the site is adjacent to a haul-out for California sea lions and near a small colony of Pacific harbor seals, the potential exists that these marine mammals may be harassed by the action; therefore, an IHA is warranted.

Description of Habitat and Marine Mammals Affected by the Activity

A description of the Monterey Harbor and its associated marine mammals can be found in the USCG application (USCG, 2002) which is available upon request (see **ADDRESSES**).

Marine Mammals

The marine mammals under NMFS' jurisdiction likely to be found in the project area are limited to the California sea lion and the Pacific harbor seal. General information on harbor seals and California sea lions found in Central California waters can be found in Caretta et al. (2001).

California sea lions

The California sea lion primarily uses the Central California area to feed during the non-breeding season. Following the breeding season on the Channel Islands, most adult and sub-adult males migrate northward to central and northern California and to the Pacific Northwest, while most females and young animals either remain on or near the breeding grounds throughout the year or move southward or northward, as far as Monterey Bay.

California sea lions are regularly observed in the Monterey Harbor area in the autumn, winter, and into the early spring. They regularly haul out on the Coast Guard Jetty. Based on ground surveys conducted from June 1997 through October 1999, an average of between 143.3 (standard deviation (SD) = 51.5) and 425 (SD=130.5) sea lions hauled out on the jetty during the autumn. Mean number of sea lions observed during the winter season (1997–98) was 628 (SD=238.5) animals (Weise 2000). During ground counts from 1997 to 1999, Weise (2000) estimated that approximately 74 percent (SD=18.1 percent) of the sea lions observed were juveniles, 14.9 percent were adults (SD=15.3 perecent), and 10.5 percent (SD=6.7 percent) were sub-adult males or females. No pupping occurs in the project area.

Harbor seals

A small number of harbor seals are also expected to be found in the project area. Harbor seals are distributed throughout the west coast of California. In general, they do not migrate, preferring instead to forage within several miles of their haul-out sites. In Monterey Harbor, harbor seals haul out on a rocky outcropping located approximately 300 m (984 ft) inshore of the proposed project site and approximately 100 m (328 ft) from a small beach and the Monterey Fisherman's Wharf. Based on surveys conducted in the Monterey Harbor, less than 20 harbor seals are expected to be found on this site within the harbor. The presence of all size classes of animals are possible. Harbor seals do not pup on this haulout, although several pupping sites are located around the Monterey Peninsula within 3 to 20 km (1.9 to 12.4 mi)of the project site.

Potential Effects on Marine Mammals

It is possible that California sea lions and harbor seals swimming in the vicinity of the project during pile driving may be subject to elevated sound pressure levels that could produce a temporary shift in the animal's hearing threshold. Construction and human activity around the site could also potentially result in behavioral changes in nearby pinnipeds. California sea lions and harbor seals may temporarily cease normal activities, such as feeding, or pop their heads up above water in response to the noise. They may also be curious and choose to investigate the project site. However, existing evidence shows that most marine mammals tend to avoid loud noises and will likely move away from the project site (Richardson et al., 1995). Disturbance from these activities is expected to have a short-term negligible impact to a number of sea lions and harbor seals. These disturbances will be reduced to the lowest level practicable by implementation of the proposed work restrictions and mitigation measures (see Mitigation).

During the installation of the floating dock, the incidental harassment of California sea lions is expected to occur on a daily basis upon initiation of the pile driving. Sea lions are also likely to be initially harassed by the barge tender moving the barge into place. If the animals no longer perceive construction noise and activity as being threatening, they are likely to resume their regular hauling out behavior. The number of sea lions disturbed will vary daily, but animals in the water near the project

site or hauled out closest to the project site are more likely to be disturbed than animals hauled out at the farther end of the jetty. Based on past ground surveys, the number of California sea lions that may potentially be harassed could range from 200 to 400, and possibly as many as 600 animals may move each day as a result of the project activities.

Whether harbor seals will react to construction noise and associated activity and move away from the rock outcropping during construction activities (especially pile driving) is unknown. While seals are generally thought to be less tolerant of human activities than sea lions, the location of their haulout from the project site may be far enough away that disturbances may be less likely. Seals that are swimming near the project site may be harassed during construction activity, especially pile driving, and may swim away from the immediate area.

Potential Effects on Habitat

The activity will take place on a part of the Monterey USCG pier that is not used directly by any marine mammal species. Short-term impacts of the activities are expected to result in a temporary reduction in utilization of the rock jetty at the end of the USCG pier by California sea lions and perhaps of the nearby rocky outcropping by Pacific harbor seals while work is in progress or until pinnipeds acclimate to the disturbance. This will not likely result in any permanent reduction in the number of sea lions or seals at these haulouts. Sea lions are regularly disturbed by boats and human activities in Monterey Harbor. In addition, approximately 4 to 5 m (13.2 to 16.4 ft) above the harbor seal haul-out, there is a busy bike path and pedestrian walkway. Seals are frequently disturbed year-round due to their proximity to the bike path, particularly during the daytime. The abandonment of either haulout is not anticipated since existing foot traffic, commercial and recreational boating, and human activity currently occurring within the area have not caused long-term abandonment.

Therefore, other than the potential, short-term abandonment by California sea lions and harbor seals of part of their existing haulouts in Monterey Harbor during floating dock installation, no impacts on the habitat or food sources of marine mammals are likely from this project.

Mitigation

Several mitigation measures to reduce the potential for harassment from installation of the floating dock will be implemented by USCG as part of their activity. General restrictions include: the work will be performed during daylight hours only so that potential impacts can be detected more easily and steps can taken to avoid them; shouting, loud noises, fast movements, and other activities that would disturb the haul-out sites will be minimized (considering human safety concerns foremost); the number of people and the amount of equipment on the USCG pier in close proximity to the sea lion haulout will be restricted to the minimum required to effectively perform the work; all equipment will be kept on the west side of the USCG pier and, as much as possible, out of sight of the sea lion haulout site; a NMFS-approved biological monitor will be on site at all times during the project operations to monitor marine mammal disturbances and to advise personnel on ways to minimize or avoid disturbances.

General restrictions during pile driving will include: no piles will be driven between the hours of 5 pm and 8 am. Based on a recommendation from NMFS, the USCG will avoid exposing pinnipeds to unsafe noise levels (greater than 190 dB re 1 microPascal-m). Given the acoustic monitoring from pile driving exercises for the Noyo River Bridge, the USCG will establish an initial safety zone of 50 m (164 ft) around the pile-driving site. The marine mammal monitor will scan the safety zone continuously for 5 minutes just prior to, and during, pile driving to determine whether marine mammals are present. Pile driving will not begin until the safety zone is clear. If an animal is in the safety zone before initiation of the pile driving activity on any given work day, operations will be delayed until the animal has moved a safe distance away. If an animal enters the safety zone while pile driving is occurring, operations will be stopped immediately until the animal has moved beyond the range of the safety zone. In consultation with NMFS, the safety zone may be increased if animals beyond 50 m (164 ft)show excessive behavioral changes in response to pile driving operations. If pile driving stops for less than 45 minutes, another 5–minute scan will not be necessary; if it stops for longer than 45 minutes, another scan will be performed.

In order to provide further protection to pinnipeds hauled out near the project area, the USCG also proposes to "dry fire" the hammer prior to operating at full capacity. A "dry fire" occurs when the hammer is raised and dropped with no compression of the pistons which produces approximately 50 percent of the maximum in-air noise level, or 45–55 dB (dB re 20 microPascal-meter). This dry-firing should allow pinnipeds in the area to voluntarily move from the area and should expose fewer animals to loud sounds both underwater and above water.

Monitoring

NMFS will require USCG to monitor the impact of the floating dock installation activities on California sea lions and harbor seals in Monterey Harbor. Monitoring will be conducted by one or more NMFS-approved monitors.

In general, the marine mammal monitor(s) will record the date, time of arrival and departure of the monitor and work crew. The monitor will also conduct counts of sea lions on the jetty and counts of pinnipeds in the water near the project site every hour, commencing 1 hour before the start of project activity each day and ending 15 minutes after all project activities have ceased. Data on size classes and sex (when possible) of sea lions on the jetty will be collected. Counts of harbor seals will be obtained at the beginning and the end of each work day. If possible, data on size class and sex of animals will be collected. The monitor(s) will also collect information on disturbance reactions, including the number of animals disturbed, the source (including type, location, timing, and duration of disturbance). The monitor will also record environmental conditions, including date, time, cloud cover, visibility, wind direction and velocity, swell direction and height, and tides.

During pile driving operations, the monitor will monitor the 50–meter safety zone, as described above (see Mitigation). The safety zone will be marked with temporary buoys in order to facilitate monitoring efforts.

Reporting

The USCG will provide weekly reports to the Southwest Regional Administrator (Regional Administrator), NMFS, including a summary of the previous week's monitoring activities and an estimate of the number of California sea lions and harbor seals that may have been disturbed as a result of floating dock installation activities. These reports will include data collected during daily monitoring.

A draft final report must be submitted to the Regional Administrator within 60 days after the conclusion of the project. A final report must be submitted to the Regional Administrator within 30 days after receiving comments from the Regional Administrator on the draft final report. If no comments are received from NMFS, the draft final report will be considered to be the final report.

Endangered Species Act (ESA)

Under section 7 of the ESA, NMFS has begun consultation on the proposed issuance of an IHA for this project. Consultation will be concluded upon completion of the comment period and consideration of those comments in the final determination on issuance of an authorization.

National Environmental Policy Act (NEPA)

In conjunction with the promulgation of regulations implementing section 101(a)(5)(D) of the MMPA, NMFS completed an Environmental Assessment (EA) on May 9, 1995 that addressed the impacts on the human environment from issuance of IHAs and the alternatives to that action. NMFS' analysis resulted in a Finding of No Significant Impact (FONSI). In addition, this proposed action, including pile driving, will use pile driving equipment that is less intense and will, therefore, have a lower impact on the marine environment than pile driving equipment used in other surveys for which EAs and resulting FONSIs have been prepared previously. Accordingly, this proposed action qualifies for a categorical exclusion under NEPA and, therefore, a new EA will not be prepared.

Preliminary Conclusions

NMFS has preliminarily determined that the short-term impact of the floating dock installation, as described in this document and in USCG (2002), should result, at worst, in the temporary modification in behavior by California sea lions and Pacific harbor seals. While behavioral modifications, including temporarily vacating the haulout, may be made by these species to avoid the resultant visual and acoustic disturbance, this action is expected to have a negligible impact on the animals. In addition, no take by injury and/or death is anticipated, and harassment takes will be at the lowest level practicable due to incorporation of the mitigation measures mentioned previously in this document.

Proposed Authorization

NMFS proposes to issue an IHA to the USCG for the potential harassment of small numbers of harbor seals and California sea lions incidental to floating dock installation, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated. NMFS has preliminarily determined that the proposed activity would result in the harassment of only small numbers of harbor seals and California sea lions and will have no more than a negligible impact on these marine mammal stocks.

Information Solicited

NMFS requests interested persons to submit comments, information, and suggestions concerning this request (see **ADDRESSES**).

Dated: January 31, 2003.

Laurie K. Allen,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 03–2953 Filed 2–5–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 012903F]

Mid-Atlantic Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Mid-Atlantic Fishery Management Council's (Council) Demersal Species Committee and the Atlantic States Marine Fisheries Commission's (ASMFC) Summer Flounder, Scup and Black Sea Bass Board, will hold a public meeting.

DATES: The meeting will be held on Tuesday, February 25, 2003, from 1 p.m. to 3 p.m.

ADDRESSES: The meeting will be held at the Doubletree Hotel, Crystal City, 300 Army Navy Drive, Arlington, VA; telephone: 703–416–4100 or 800–222–8733.

Council address: Mid-Atlantic Fishery Management Council, 300 S. New Street, Dover, DE 19904; telephone: 302–674–2331.

FOR FURTHER INFORMATION CONTACT: Daniel T. Furlong, Executive Director, Mid-Atlantic Fishery Management Council; telephone: 302–674–2331, ext. 19.

SUPPLEMENTARY INFORMATION: The main agenda item for this meeting is to discuss 2003 planning priorities for summer flounder, scup, and black sea bass.

Although non-emergency issues not contained in this agenda may come before the Council and ASMFC for discussion, these issues can not be the subject of formal Council action during this meeting. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Joanna Davis at the Council (see **ADDRESSES**) least 5 days prior to the meeting date.

Dated: January 29, 2003.

Theophilus R. Brainerd,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 03–2807 Filed 2–5–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 012903E]

Mid-Atlantic Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Mid-Atlantic Fishery Management Council's (MAFMC) Atlantic Mackerel, Squid, and Butterfish Committee, together with Industry Advisors, will hold a public meeting.

DATES: The meeting will be held on Thursday, February 20, 2003, from 10 a.m. until 4 p.m.

ADDRESSES: This meeting will be held at the Renaissance Hotel Philadelphia Airport, 500 Stevens Drive, Philadelphia, PA; telephone: 610–521–8954.

Council address: Mid-Atlantic Fishery Management Council, Room 2115, 300 S. New Street, Dover, DE 19904.

FOR FURTHER INFORMATION CONTACT: Daniel T. Furlong, Executive Director, Mid-Atlantic Fishery Management Council; telephone: 302–674–2331, ext. 19.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is to discuss possible management measures to address over-capacity in the *Loligo* fishery including additional limited entry provisions, seasonal allocation of quota, trip limits, and individual fishing quotas for inclusion in Amendment 10

to the Atlantic Mackerel, Squid, and Butterfish Fishery Management Plan.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the MAFMC's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Joanna Davis at the Mid-Atlantic Council Office (see **ADDRESSES**) at least 5 days prior to the meeting date.

Dated: January 29, 2003.

Theophilus R. Brainerd,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 03–2808 Filed 2–5–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

Patent and Trademark Office

[Docket No. 2002–C–001]

Patent and Trademark Office Acquisition Guidelines (PTAG)

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Notice of promulgation of guidelines.

SUMMARY: The United States Patent and Trademark Office (USPTO) is publishing guidelines which will apply to its acquisitions.

EFFECTIVE DATE: The guidelines will be adopted on March 10, 2003.

FOR FURTHER INFORMATION CONTACT: Ms. Susan Messina, Procurement Analyst, USPTO, Office of Procurement, at 703–305–8014.

SUPPLEMENTARY INFORMATION:

Background

The USPTO published the proposed guidelines and requested comments on October 23, 2002 (67 FR 65092). No comments were received in response to this notice and request for comments.

Nature of Guidelines

Neither the Federal Acquisition Regulation (FAR) nor the procedures set forth in this notice will be binding on USPTO contracting officers or other USPTO employees involved in the procurement process. However, USPTO employees may assume that following either the FAR procedures or, to the extent applicable, the alternate procedures set forth in this notice will ensure compliance with applicable legal requirements and result in fair and appropriate decisions. USPTO employees may use procedures other than those set forth in the FAR and this notice so long as these procedures comply with all applicable statutes, Executive Orders and regulations, will further the legitimate interests of the USPTO and are calculated to result in fair decisions.

Neither the FAR nor the alternate guidance provided in this notice is binding on USPTO vendors or any other member of the public, except to the extent provisions therefrom are incorporated in legally enforceable contracts. Instructions set forth in solicitations or other procurement documents are also binding in that they may establish conditions on an offeror's continued participation in the procurement process.

The alternate procedures set forth in this notice are intended to incorporate brevity of content, streamlined procedures, innovation in process, flexibility, and discretion to the acquisition process while ensuring objectivity and maximum reasonable competition. The following are highlights of the benefits the USPTO hopes to achieve through this alternate guidance:

- Increase the competitive threshold from $2500 to $5000 to decrease processing time and costs.
- Use "maximum reasonable competition" instead of "full and open competition" for a more efficient procurement process.
- Reflect the USPTO's increased flexibility in procuring printing services.
- Increase the threshold for the use of simplified acquisition procedures for commercial items from $5 million to $10 million to reduce the lead time for processing requirements and decrease acquisition costs.
- Provide guidance on the use of an Alternative Streamlined Contracting Approach. This process involves the early identification of highly qualified vendors, which will reduce the investment of vendor time and resources, provide greater flexibility, and establish better partnerships with the vendor community. The use of a pre-set number of firms for the competitive range also reduces unreasonable contractor expectations.
- Permit limited discussions after the establishment of the competitive range in lieu of making an award without discussions. USPTO hopes to reduce processing time and administrative burdens associated with proposal revisions.
- Permit use of contract types not included in the FAR (*i.e.*, contract types that combine elements of the various contract types listed in the FAR (Labor Hour Award Fee, for one example). This provides greater flexibility to improve mission accomplishment and improved partnering relationships with vendors.

Guidelines

Expanded Use of Electronic Commerce

Recognizing that the Internet provides a valuable means of disseminating information, USPTO intends to continue and expand its use of electronic commerce to facilitate streamlining of the acquisition process. While the USPTO will continue to synopsize proposed actions and contract awards, the objective is to use the USPTO Office of Procurement web site as the foremost method of publicizing requirements, business opportunities, and providing procurement information to the business community.

Competition

The USPTO will endeavor to acquire products and services to the maximum extent possible in all acquisitions on a competitive basis; however, it is exempt from the requirement to meet the test of "full and open competition" as defined in FAR part 6.

The USPTO will use competition as a principal tool in achieving results and intends to adopt means of affording competition that it determines will effectually serve the performance goals established for particular acquisitions.

It is the policy of the USPTO to promote competition to the maximum extent possible. Competition reduces the risk of having to rely on only one source for critical goods or services and reduces costs. USPTO intends to balance these considerations with the program benefits that can be gained from developing a reduced supplier base and building strategic alliances with its suppliers. The degree of competition sought will be influenced by knowledge of the marketplace and successful past performance records, with competition in most cases limited to a reasonable number of capable sources.

Under the USPTO process, all firms will be apprised of opportunities, but

only those judged to be the most viable will commit the resources to fully participate. USPTO intends to have an open interchange with industry about USPTO potential requirements and contractor capabilities long before any formal solicitation is issued. It is the policy of the USPTO to inform all firms of opportunities and seek to ensure only the most viable will need to commit resources to fully participate.

Where justifications for limiting competition are prepared, they will be approved at the following levels:

a. Justifications of procurements $1,000,000 or less will be approved by the Contracting Officer.

b. Justifications over $1,000,000 and less than $10,000,000 will be approved by the Director, Office of Procurement.

c. Justifications greater than $10,000,000 will be approved by the Agency Competition Advocate.

Simplified Acquisition Procedures

Competitive quotations need not be sought for purchases under $5,000 provided that the Contracting Officer can readily determine the price to be fair and reasonable. Written solicitations should only be utilized when appropriate given the complexity of the requirement.

The USPTO contracting officer may use procedures similar to those set forth at subpart 13.5 of the FAR for acquisitions of commercial items not in excess of $10 million.

Alternative Streamlined Contracting Approach

The Contracting Officer may utilize the streamlined process described below to solicit offers. The characteristics of this process include:

a. Early identification of the most highly qualified contractors;

b. Establishing a pre-set number of firms for the competitive range to limit the investment of contractor time and resources and to reduce the administrative burden of the procurement process; and

c. Conducting negotiations only where it is practical and efficient to do so and without the requirement for a common cut-off date for concluding negotiations.

The USPTO intends to use a project team to conduct acquisitions under the alternative streamlined contracting approach. The project team will be a multi-disciplinary team that consists of a warranted contracting officer, representatives from the program office whose requirement is the subject of the procurement, the Office of Corporate Planning, and the Office of the General Counsel. The project team will possess the necessary authority needed to conduct all aspects of the acquisition. No further approvals will be required to conduct the acquisition.

The Alternative Streamlined Contracting Process is conducted as follows:

a. A project team conducts all aspects of the acquisition.

b. The team employs strategies and methods that best fulfill the needs of the acquisition.

c. When using the streamlined Alternative Streamlined Contracting Approach, USPTO may employ announcements of opportunities rather than announcement of individual actions over $25,000.

d. Initially, a high-level solicitation document is used. It should solicit basic and essential information such as offeror qualifications, broad-based product data, proposed technical concept, past performance, and pricing. The solicitation document will typically consist of:

1. Information on goals and objectives of the requirement,

2. Specific procedures related to conducting the acquisition,

3. Instructions to offerors on preparing a response,

4. Information on how responses will be evaluated,

5. Budget information on the value of the acquisition, where appropriate, and

6. Project and acquisition timeframes and schedules.

e. A competitive range will be established after initial evaluation of responses. Respondents judged as not being among the most highly rated will be eliminated from further consideration.

f. After establishment of the competitive range, a detailed Statement of Need is issued to solicit additional information and obtain a more complete offer from all firms. The Statement of Need will incorporate the principles of performance-based contracting to permit offerors the opportunity to propose the best solution to meet the USPTO's needs.

g. Oral presentations may be used. The Contracting Officer should maintain an adequate record of oral presentations.

Based on responses to the Statement of Need, the Contracting Officer may negotiate or conduct discussions only with the highest ranked offeror based on the evaluation factors set forth in the solicitation. If the USPTO Contracting Officer is unable to reach agreement with this offeror, negotiations will be initiated with the next highest-ranked firm. This process will continue until those firms remaining in the competitive range have been considered. If agreement cannot be reached, negotiations may be reopened with all firms in the competitive range or the solicitation may be canceled.

Selecting Contract Types

Where appropriate, the USPTO may use any contract type (*e.g.*, fixed price or labor hour) provided for in the FAR without regard to any limitations specified therein, and in addition may use hybrid or other contract types not provided for in the FAR.

Indefinite-Delivery Contracts

Because it is exempt from the Federal Property and Administrative Services Act (FPAS), the USPTO is not required to make multiple awards for indefinite-quantity contracts under any circumstances, or, where multiple awards are made, to use any specific procedures for placing task or delivery orders. Contracting Officers are encouraged, however, to consider the use of multiple awards where doing so would result in benefits to the USPTO. A solicitation contemplating multiple awards should address the procedures the USPTO will use for selecting between contractors when awarding task or delivery orders. Where a specific procurement includes procedures for seeking task or delivery order proposals from multiple contractors, applying these procedures to individual requirements below $5,000 normally will not be in the best interest of the USPTO.

Options

Because of the USPTO's exemption from FPAS, it may make award on the basis of unpriced options contained in an existing contract without seeking further competition. The USPTO intends to consider the use of this technique in connection with performance-based contracting under the following circumstances:

a. The award of additional option periods to the incumbent contractor without competition is used as an incentive and reward for good contract performance;

b. The solicitation notifies offerors that unpriced options will be used as a performance incentive; and

c. The contract includes provisions for measuring contract performance and the pricing, negotiation, and exercise of additional option periods.

Acquisition Plans

Acquisition planning serves two important purposes: it establishes how an agency will meet programmatic requirements within the agency's

budgetary goals and it serves as a guideline for the acquisition.

Annual Acquisition Plans—As a means of funds control, prioritization, and workload scheduling, USPTO intends to continue to utilize yearly acquisition plans that are tied to the budget process. The plans should be updated as priorities and funding changes occur to ensure accuracy and currency. Plans will be concise. All planned acquisitions for a given fiscal year should be included on the yearly acquisition plan.

Separate Project Agreements—The USPTO may use a separate project agreement for individual or multiple actions that utilize the Alternative Streamlined Contracting Approach. Project Agreement documents tailored to the size and complexity of the various acquisitions will be developed.

Individual Acquisition Plans—The content of the individual acquisition plan shall be left to the discretion of the Contracting Officer. At a minimum, acquisitions plans should contain the following:

a. Statement of need.
b. Applicable conditions.
c. Cost.
d. Risks.
e. Plan of action.
f. Milestones.

Printing Requirements

The Patent and Trademark Efficiency Act, 35 U.S.C. 2(b)(4)(B), exempts the USPTO from requirements for printing by the Government Printing Office. Accordingly the USPTO intends to acquire printing by the most economic and efficient means available, which may in particular acquisitions include the Government Printing Office.

Market Research

The purpose of USPTO's approach to market research is to identify and determine the availability of products or services that will satisfy its requirements. The USPTO will use such research, as appropriate, to help it ascertain the most efficient acquisition strategy—with consideration of the range of potential sources, availability of commercial items, and identification of standard commercial practices. Accordingly, the USPTO intends to conduct market research that, to the extent possible, is based upon clear statements of an acquisition's intended outcome and does not foreclose, before research is conducted, the consideration of any reasonable solution or technology for accomplishing its goal. The best result of market research will be achieved when there is a clear statement of the acquisition's intended outcome.

Market research is the responsibility of the entire acquisition team. USPTO Contracting Officers should work closely with technical/program staff to ensure that appropriate market research is conducted. The extent and results of market research efforts should be documented in acquisition planning documents and/or project agreements when the Alternative Streamlined Contracting Approach is utilized.

Bid Protests

The USPTO continues to be subject to the bid protest jurisdiction of the General Accounting Office and of the Court of Federal Claims. The USPTO is also subject to Executive Order 12979 concerning protests to the agency. Its procedures for considering such protests are available at: *http://www.uspto.gov/web/offices/ac/comp/proc/protest.htm.*

Dated: January 31, 2003.

James E. Rogan,

Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

[FR Doc. 03–2921 Filed 2–5–03; 8:45 am]

BILLING CODE 3510–16–P

CONSUMER PRODUCT SAFETY COMMISSION

Request for Comments Concerning Proposed Extension of Approval of a Collection of Information—Safety Standard for Walk-Behind Power Lawn Mowers

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: As required by the Paperwork Reduction Act (44 U.S.C. Chapter 35), the Consumer Product Safety Commission requests comments on a proposed request for an extension of approval of a collection of information from manufacturers and importers of walk-behind power lawn mowers. This collection of information consists of testing and recordkeeping requirements in certification regulations implementing the Safety Standard for Walk-Behind Power Lawn Mowers (16 CFR part 1205). The Commission will consider all comments received in response to this notice before requesting an extension of approval of this collection of information from the Office of Management and Budget.

DATES: The Office of the Secretary must receive written comments not later than April 7, 2003.

ADDRESSES: Written comments should be captioned "Walk-Behind Power Lawn Mowers" and mailed to the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207, or delivered to that office, room 502, 4330 East-West Highway, Bethesda, Maryland 20814. Written comments may also be sent to the Office of the Secretary by facsimile at (301) 504–0127 or by e-mail at *cpsc-os@cpsc.gov.*

FOR FURTHER INFORMATION CONTACT: For information about the proposed extension of approval of the collection of information, or to obtain a copy of 16 CFR part 1205, call or write Linda L. Glatz, Office of Planning and Evaluation, Consumer Product Safety Commission, Washington DC 20207; telephone (301) 504–7671.

SUPPLEMENTARY INFORMATION: In 1979, the Commission issued the Safety Standard for Walk-Behind Power Lawn Mowers (16 CFR part 1205) under provisions of the Consumer Product Safety Act (CPSA) (15 U.S.C. 2051 *et seq.*) to eliminate or reduce risks of amputations, avulsions, lacerations, and other serious injuries which have resulted from the accidental contact of some part of an operator's body with the rotating blade of a power lawn mower. The standard contains performance and labeling requirements for walk-behind power lawn mowers to address risks of blade-contact injuries.

A. Certification Requirements

Section 14(a) of the CPSA (15 U.S.C. 2063(a)) requires manufacturers, importers, and private labelers of a consumer product subject to a consumer product safety standard to issue a certificate stating that the product complies with all applicable consumer product safety standards. Section 14(a) of the CPSA also requires that the certificate of compliance must be based on a test of each product or upon a reasonable testing program.

Section 14(b) of the CPSA authorizes the Commission to issue regulations to prescribe a reasonable testing program to support certificates of compliance with a consumer product safety standard. Section 16(b) of the CPSA (15 U.S.C 2065(b)) authorizes the Commission to issue rules to require that firms "establish and maintain" records to permit the Commission to determine compliance with rules issued under the authority of the CPSA.

The Commission has issued regulations prescribing requirements for a reasonable testing program to support certificates of compliance with the standard for walk-behind power mowers. These regulations also require manufacturers, importers, and private labelers of walk-behind power mowers

to establish and maintain records to demonstrate compliance with the requirements for testing to support certification of compliance. 16 CFR part 1205, subpart B.

The Commission uses the information compiled and maintained by manufacturers and importers of walk-behind power mowers to protect consumers from risks of injuries associated with walk-behind power lawn mowers. More specifically, the Commission uses this information to determine whether the mowers produced and imported comply with the applicable standard. The Commission also uses this information to obtain corrective actions if walk-behind power mowers fail to comply with the standard in a manner which creates a substantial risk of injury to the public.

The Office of Management and Budget (OMB) approved the collection of information requirements for walk-behind mowers under control number 3041–0091. OMB's most recent extension of approval will expire on March 31, 2003. The Commission proposes to request an extension of approval without change for these collection of information requirements.

B. Estimated Burden

The Commission staff estimates that about 20 firms are subject to the testing and recordkeeping requirements of the certification regulations. The Commission staff estimates further that the annual testing and recordkeeping burden imposed by the regulations on each of these firms on average is approximately 390 hours. Thus, the total annual burden imposed by the certification regulations on all manufacturers and importers of walk-behind power mowers is about 7,800 hours.

The Commission staff estimates that the hourly wage for the time required to perform the required testing and to maintain the required records is about $26.46, and that the annual total cost to the industry is approximately $206,388.

C. Request for Comments

The Commission solicits written comments from all interested persons about the proposed collection of information. The Commission specifically solicits information relevant to the following topics:

—Whether the collection of information described above is necessary for the proper performance of the Commission's functions, including whether the information would have practical utility;

—Whether the estimated burden of the proposed collection of information is accurate;

—Whether the quality, utility, and clarity of the information to be collected could be enhanced; and

—Whether the burden imposed by the collection of information could be minimized by use of automated, electronic or other technological collection techniques, or other forms of information technology.

Dated: January 30, 2003.

Todd A. Stevenson,

Secretary, Consumer Product Safety Commission.

[FR Doc. 03–2803 Filed 2–5–03; 8:45 am]

BILLING CODE 6355–01–P

CONSUMER PRODUCT SAFETY COMMISSION

Request for Comments Concerning Proposed Extension of Approval of a Collection of Information—Electrically Operated Toys and Children's Articles

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: As required by the Paperwork Reduction Act (44 U.S.C. Chapter 35), the Consumer Product Safety Commission requests comments on a proposed extension of approval of a collection of information from manufacturers and importers of certain electrically operated toys and children's articles. The collection of information consists of testing and recordkeeping requirements in regulations entitled "Requirements for Electrically Operated Toys or Other Electrically Operated Articles Intended for Use by Children," codified at 16 CFR part 1505.

The Commission will consider all comments received in response to this notice before requesting an extension of this collection of information from the Office of Management and Budget.

DATES: The Office of the Secretary must receive written comments not later than April 7, 2003.

ADDRESSES: Written comments should be captioned "Electrically Operated Toys" and mailed to the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207, or delivered to that office, room 502, 4330 East-West Highway, Bethesda, Maryland 20814. Written comments may also be sent to the Office of the Secretary by facsimile at (301) 504–0127 or by e-mail at *cpsc-os@cpsc.gov*.

FOR FURTHER INFORMATION CONTACT: For information about the proposed extension of the collection of information, or to obtain a copy of 16 CFR part 1505, call or write Linda L. Glatz, Office of Planning and Evaluation, Consumer Product Safety Commission, Washington DC 20207; telephone (301) 504–7671.

SUPPLEMENTARY INFORMATION: In 1973, the Commission issued safety requirements for electrically operated toys and children's articles to protect children from unreasonable risks of injury from electric shock, electrical burns, and thermal burns. These regulations are codified at 16 CFR part 1505 and were issued under the authority of sections 2 and 3 of the Federal Hazardous Substances Act (15 U.S.C. 1261, 1262).

A. Requirements for Electrically Operated Toys

These regulations are applicable to toys, games, and other articles intended for use by children that are powered by electrical current from a 120 volt circuit. Video games and articles designed primarily for use by adults that may be incidentally used by children are not subject to these regulations.

The regulations prescribe design, construction, performance, and labeling requirements for electrically operated toys and children's articles. The regulations also require manufacturers and importers of those products to develop and maintain a quality assurance program. Additionally, section 1505.4(a)(3) of the regulations requires those firms to maintain records for three years containing information about: (1) Material and production specifications; (2) the quality assurance program used; (3) results of all tests and inspections conducted; and (4) sales and distribution of electrically operated toys and children's articles.

The Office of Management and Budget (OMB) approved the collection of information requirements in the regulations under control number 3041–0035. OMB's most recent extension of approval expires on April 30, 2003. The Commission now proposes to request an extension of approval without change for the information collection requirements in the regulations.

The safety need for this collection of information remains. Specifically, if a manufacturer or importer distributes products that violate the requirements of the regulations, the records required by section 1505.4(a)(3) can be used by the firm and the Commission (i) to identify specific lots or production lines of products which fail to comply with applicable requirements, and (ii) to notify distributors and retailers in the event the products are subject to recall.

B. Estimated Burden

The Commission staff estimates that about 40 firms are subject to the testing and recordkeeping requirements of the regulations. Each one may have an average of ten products each year for which testing and recordkeeping would be required. The Commission staff estimates that the tests required by the regulations can be performed on one product in 16 hours and that recordkeeping and maintenance can be performed for one product in four hours. Thus, the total annual burden imposed by the regulations on all manufacturers and importers is about 8,000 hours. Using the rate of $42.30 per hour as the average total compensation (Total Compensation, Private Goods-Producing Section, Managerial, Executive, and Administrative Category, Bureau of Labor Statistics), the estimated annualized cost is $338,400.

C. Request for Comments

The Commission solicits written comments from all interested persons about the proposed collection of information. The Commission specifically solicits information relevant to the following topics:

—Whether the collection of information described above is necessary for the proper performance of the Commission's functions, including whether the information would have practical utility;

—Whether the estimated burden of the proposed collection of information is accurate;

—Whether the quality, utility, and clarity of the information to be collected could be enhanced; and

—Whether the burden imposed by the collection of information could be minimized by use of automated, electronic or other technological collection techniques, or other forms of information technology.

Dated: January 30, 2003.

Todd A. Stevenson,

Secretary, Consumer Product Safety Commission.

[FR Doc. 03–2804 Filed 2–5–03; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Proposed Collection; Comment Request

AGENCY: Office of the Under Secretary of Defense (Personnel and Readiness), DoD.

ACTION: Notice.

In compliance with Section 3506(c)(2)(A) of the paperwork reduction Act of 1995, The Office of the Under Secretary of Defense (Personnel and Readiness) announces the following proposed reinstatement of a public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the function of the Agency, including whether the information shall have practical utility: (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received before April 7, 2003.

ADDRESSES: Written comments and recommendation on the proposed information collection should be sent to the Office of the Under Secretary of Defense (Personnel and Readiness) (Military Personnel Policy/Access Policy) ATTN: Major Brenda K. Leong, 4000 Defense Pentagon, Washington, DC 20301–4000.

FOR FURTHER INFORMATION CONTACT: To request additional information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the above address or call (703) 695–5529.

Title, Associated Form, and OMB Control Number: Medical Screening of Military Personnel, DD Form 2807–1 and DD Form 2807–2, OMB Control Number 0704–0413.

Needs and Uses: Title 10, USC Chapter 31: Section 504 and 505, and Chapter 33, Section 532, require applicants to meet accession medical standards prior to enlistment into the Armed Forces (including the Coast Guard). If applicants' medical history reveals a medical condition that does not meet the accession medical standards, they are medically disqualified for military entrance. This form also will be used by all Service members not only in their initial medical examination but also for required periodic medical examinations.

Affected Public: Individuals or households, not-for-profit institutions.

Annual Burden Hours: 135,833.

Number of Respondents: 850,000.

Responses per Respondent: 1.

Average Burden per Response: 9.6 mins.

Frequency: On occasion.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

These forms obtain medical information which affects entrance physical examinations, routine in-service physical examinations, separation physical examinations, and other medical examinations as required. The respondents are all applicants for enlisted, induction or commissioning. The applicant(s) completes the medical history information recorded on the form. This information collected provides the Armed Services and the medical history of applicants. The DD Forms 2807–1 and 2807–2 are the method of collecting and verifying medical data on applicants applying for entrance. These DD Forms are the official DoD medical documents used by the Services through which historical medical information is collected, reviewed and maintained.

Dated: January 30, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 03–2815 Filed 2–5–03; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Proposed Collection; Comment Request

AGENCY: Office of the Under Secretary of Defense (Personnel and Readiness), DoD.

ACTION: Notice.

In compliance with Section 3506(c)(2)(A) of the paperwork reduction Act of 1995, The Office of the Under Secretary of Defense (Personnel and Readiness) announces the following proposed reinstatement of a public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the function of the Agency, including whether the information shall have practical utility: (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received before April 7, 2003.

ADDRESSES: Written comments and recommendation on the proposed information collection should be sent to the Office of the Under Secretary of Defense (Personnel and Readiness), (Military Personnel Policy/Accession Policy) ATTN: Major Brenda K. Leong, 4000 Defense Pentagon, Washington, DC 20301–4000.

FOR FURTHER INFORMATION CONTACT: To request additional information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the above address or call (703) 695–5529.

Title, Associated Form, and OMB Control Number: Record of Military Processing, Armed Forces of the United States, DD Form 1966, OMB Control Number: 0704–0173.

Needs and Uses: This information collection is necessary to obtain data on individuals applying for enlistment in the Armed Forces of the United States to determine eligibility for enlistment. The information collected accompanies the applicant throughout the enlistment process. It also is used for establishing personnel records on those who enlist.

Affected Public: Individuals or households.

Annual Burden Hours: 170,000.

Number of Respondents: 510,000.

Responses per Respondent: 1.

Average Burden per Response: 20 minutes.

Frequency: On occasion.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

Title 10 U.S.C., Sections 504, 505, 508, 12102 and 520a, Title 14 U.S.C., Sections 351 and 632, and Title 50 U.S.C., Section 451, require applicants to meet standards for enlistment into the Armed Forces. This information collection is the basis for determining eligibility of applicants for enlistment in the Armed Forces and is needed to verify data given by the applicant and to determine his/her qualification of enlistment. The information collected aids in the determination of qualifications, term of service, and grade in which a person, if eligible, will enter active duty or reserve status.

Dated: January 30, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 03–2816 Filed 2–5–03; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Proposed Collection; Comment Request

AGENCY: Real Estate and Facilities Directorate, Federal Facilities Division, Washington Headquarters Services, Department of Defense.

ACTION: Notice.

SUMMARY: In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, Washington Headquarters Services announces the proposed information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by April 7, 2003.

ADDRESSES: Written comments and recommendations on the proposed information collection should be sent to Washington Headquarters Services, Real Estate and Facilities Directorate, Federal Facilities Division, Technical Staff, Integrated Environmental Management Support, ATTN: Jennifer Judd, Room RDF1J702, 1155 Defense Pentagon, Washington, DC 20301–1155. Consideration will be given to all comments received within 60 days of the date of publication of this notice.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the above address, or call WHS, RE&F, FFD, Technical Staff Branch at (703) 695–8004.

Title and OMB Number: Exposure and Medical Surveillance Program for the Pentagon in the Aftermath of 9–11–01; OMB Number 0704—[To be determined].

Needs and Uses: The information collection requirement is necessary to obtain and record the temporal and spatial location of those present at the Pentagon on 9–11–01 and in the three month time period that followed, and to obtain and record known or perceived exposures or symptoms of same population. The recorded information will be used to estimate possible exposure to hazardous contaminants, and to individually recommend appropriate medical follow-up.

Affected Public: Individuals, State and local governments and other responders to crash scene, visitors, construction and clean-up contractors.

Annual Burden Hours: 950 hours.

Number of Respondents: 1900.

Responses per Respondent: 1.

Average Burden per Response: 30 minutes.

Frequency: One time.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

The terrorist activity at the Pentagon on September 11, 2001, resulted in the destruction of a large amount of building materials and equipment in a devastating manner. The catastrophe has raised concerns of possible health effects, ranging from acute and temporary to longer-term and permanent, resulting from exposures to hazardous materials and air contaminants of the building occupants and first responders on September 11th, and, for some contaminants, continuing since that date. This program will enumerate potentially affected individuals, estimate their exposures on and since September 11, 2001, and based on these exposure estimates, make recommendations on an individual basis for their appropriate medical follow-up. Collecting symptomatic and location information from individuals at and near the crash site is essential in executing a thorough and accurate medical surveillance program.

Dated: January 31, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 03–2819 Filed 2–5–03; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Dates: Consideration will be given to all comments received by March 10, 2003.

Title, Form Number, and OMB Number: CHAMPUS Claims Patient's Request for Medical Payment; DD Form 2642; OMB Number 0720–0006.

Type of Request: Reinstatement.

Number of Respondents: 1,035,000.

Responses per Respondent: 1.

Annual Responses: 1,035,000.

Average Burden per Response: 15 minutes.

Annual Burden Hours: 258,750.

Needs and Uses: This form is used solely by beneficiaries claiming reimbursement for medical expenses under the TRICARE Program [formerly the Civilian Health and Medical Program of the Uniformed Services (TRICARE/CHAMPUS)]. The information collected will be used by TRICARE/CHAMPUS to determine beneficiary eligibility, other health insurance liability, certification that the beneficiary received the care, and reimbursement for the medical services received.

Affected Public: Individuals or households.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Ms. Cristal Thomas.

Written comments and recommendations on the proposed information collection should be sent to Ms. Thomas at the Office of Management and Budget, Desk Officer for DoD Health Affairs, Room 10235, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. Robert Cushing.

Written requests for copies of the information collection proposal should be sent to Mr. Cushing, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: January 30, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 03–2817 Filed 2–5–03; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of Paperwork Reduction Act (44 U.S.C. Chapter 35).

Dates: Consideration will be given to all comments received by March 10, 2003.

Title and OMB Number: Evaluation of Army Benefits Center-Civilian (ABC–C) Retirement System; Survey; OMB Number 0702-[To Be Determined].

Type of Request: New collection.

Number of Respondents: 1,500.

Responses per Respondent: 1.

Annual Responses: 1,500.

Average Burden per Response: 15 minutes.

Annual Burden Hours: 375.

Needs and Uses: To assess the utility and efficiency of the Army Benefits Center-Civilian (ABC–C) retirement system. To this end, recently retired Army civilian employees whose retirements were processed by the Army Benefits Centers will be surveyed. The purpose of the survey is to determine the degree of customer satisfaction with the current system and to make recommendations for improvements.

Affected Public: Individuals or households.

Frequency: One time.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Ms. Jacqueline Zeiher.

Written comments and recommendations on the proposed information collection should be sent to Ms. Zeiher at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. Robert Cushing.

Written requests for copies of the information collection proposal should be sent to Mr. Cushing, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: January 30, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 03–2818 Filed 2–5–03; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board

AGENCY: Department of Defense.

ACTION: Notice of advisory committee meeting date change.

SUMMARY: On November 29, 2002 (67 FR 71144), the Department of Defense announced closed meetings of the Defense Science Board (DSB) Task Force on Unexploded Ordnance. The meeting originally scheduled for March 12–13, 2003, has been moved to March 11–12, 2003. This meeting will be held at SAIC, 4001 N. Fairfax Street, Arlington, VA.

Dated: January 30, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 03–2820 Filed 2–5–03; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before April 7, 2003.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will

this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: January 30, 2003.

John D. Tressler,

Leader, Regulatory Management Group, Office of the Chief Information Officer.

Office of Educational Research and Improvement

Type of Review: New Collection.

Title: National Assessment of Educational Progress: Foreign Language Assessment, field test 2003 and full scale 2004.

Frequency: Other: One-time.

Affected Public: Individuals or household (primary), State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 50250.

Burden Hours: 14252.

Abstract: The National Assessment of Educational Progress Foreign Language assessment will assess the current status of the foreign language skills of high school seniors in the U.S. as well as collecting information about foreign language programs, instructional practices, and attitudes towards learning foreign languages.

Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address *Vivian.reese@ed.gov*. Requests may also be faxed to 202–708–9346. *Please specify the complete title of the information collection when making your request.*

Comments regarding burden and/or the collection activity requirements should be directed to Kathy Axt at her e-mail address *Kathy.axt@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 03–2825 Filed 2–5–03; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Recognition of Accrediting Agencies, State Agencies for the Approval of Public Postsecondary Vocational Education, and State Agencies for the Approval of Nurse Education

AGENCY: National Advisory Committee on Institutional Quality and Integrity, Department of Education (The Advisory Committee).

What Is the Purpose of This Notice?

The purpose of this notice is to invite written comments on accrediting agencies and State approval agencies whose applications to the Secretary for initial or renewed recognition or whose interim reports will be reviewed at the Advisory Committee meeting to be held on June 9–10, 2003.

Where Should I Submit My Comments?

Please submit your written comments by March 24, 2003 to Carol Griffiths, Chief, Accrediting Agency Evaluation, Accreditation and State Liaison. You may contact her at the U.S. Department of Education, room 7105, MS 8509, 1990 K Street, NW., Washington, DC 20006, telephone: (202) 219–7011. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service at 1–800–877–8339.

What is the Authority for the Advisory Committee?

The National Advisory Committee on Institutional Quality and Integrity is established under section 114 of the Higher Education Act (HEA), as amended, 20 U.S.C. 1011c. One of the purposes of the Advisory Committee is to advise the Secretary of Education on the recognition of accrediting agencies and State approval agencies.

Will This Be My Only Opportunity to Submit Written Comments?

Yes, this notice announces the only opportunity you will have to submit written comments. However, a subsequent **Federal Register** notice will announce the meeting and invite individuals and/or groups to submit requests to make oral presentations before the Advisory Committee on the agencies that the Committee will review. That notice, however, does not offer a second opportunity to submit written comment.

What Happens to the Comments That I Submit?

We will review your comments, in response to this notice, as part of our evaluation of the agencies' compliance with the Secretary's Criteria for Recognition of Accrediting Agencies and State Approval Agencies. The Criteria are regulations found in 34 CFR part 602 (for accrediting agencies) and in 34 CFR part 603 (for State approval agencies) and are found at the following site: *http://www.ed.gov/offices/OPE/accreditation/index.html*. We will also include your comments with the staff analyses we present to the Advisory Committee at its June 2003 meeting. Therefore, in order for us to give full consideration to your comments, it is important that we receive them by March 24, 2003. In all instances, your comments about agencies seeking initial or continued recognition must relate to the Criteria for Recognition. In addition, your comments for any agency whose interim report is scheduled for review must relate to the issues raised and the Criteria for Recognition cited in the Secretary's letter that requested the interim report.

What Happens to Comments Received After the Deadline?

We will review any comments received after the deadline. If such comments, upon investigation, reveal that the accrediting agency is not acting in accordance with the Criteria for Recognition, we will take action either before or after the meeting, as appropriate.

What Agencies Will the Advisory Committee Review at the Meeting?

The Secretary of Education recognizes accrediting agencies and State approval agencies for public postsecondary vocational education and nurse education if the Secretary determines that they meet the Criteria for Recognition. Recognition means that the Secretary considers the agency to be a reliable authority as to the quality of education offered by institutions or programs that are encompassed within the scope of recognition he grants to the agency. The following agencies will be reviewed during the June 2003 meeting of the Advisory Committee:

Nationally Recognized Accrediting Agencies

Petition for Initial Recognition

1. Commission on English Language Program Accreditation (Requested scope of recognition: The accreditation of postsecondary English language programs and institutions in the United States).

2. Council on Naturopathic Medical Education (Requested scope of recognition: The accreditation and pre-accreditation throughout the United States of graduate-level, four-year

naturopathic medical educational programs leading to the Doctor of Naturopathic Medicine (N.D. or N.M.D.) or Doctor of Naturopathy (N.D.) degree.

3. Teacher Education Accreditation Council (Requested scope of recognition: The accreditation throughout the United States of professional education programs in institutions offering baccalaureate and graduate degrees for the preparation of teachers K–12)

Petitions for Renewal of Recognition

1. Montessori Accreditation Council for Teacher Education (Current scope of recognition: The accreditation of Montessori teacher education institutions and programs throughout the United States evaluated by the following review committees: the American Montessori Society Review Committee and the Independent Review Committee only.)

2. Western Association of Schools and Colleges, Accrediting Commission for Schools (Current scope of recognition: the accreditation and preaccreditation ("Candidate for Accreditation") of adult and postsecondary schools that offer programs below the degree level in California, Hawaii, the United States territories of Guam and American Samoa, the Republic of Palau, the Federated States of Micronesia, the Commonwealth of the Northern Mariana Islands, and the Republic of the Marshall Islands.)

Interim Reports (An interim report is a follow-up report on an accrediting agency's compliance with specific criteria for recognition that was requested by the Secretary when the Secretary granted renewed recognition to the agency.)

1. Accrediting Association of Bible Colleges, Commission on Accreditation

2. American Academy for Liberal Education

3. Association for Clinical Pastoral Education, Inc., Accreditation Commission

4. American Physical Therapy Association, Commission on Accreditation in Physical Therapy Education

5. American Veterinary Medical Association, Council on Education

6. Distance Education and Training Council, Accrediting Commission

7. National League for Nursing Accrediting Commission *Progress Report:* A report on the agency's implementation of its new accreditation process.

1. Western Association of Schools and Colleges, Accrediting Commission for Senior Colleges and Universities

State Agencies Recognized for the Approval of Public Postsecondary Vocational Education

Petition for Renewal of Recognition

1. Missouri State Board of Education

State Agencies Recognized for the Approval of Nurse Education

Petition for Renewal of Recognition

1. Missouri State Board of Nursing

Where Can I Inspect Petitions and Third-Party Comments Before and After the Meeting?

All petitions and those third-party comments received in advance of the meeting, will be available for public inspection and copying at the U.S. Department of Education, room 7105, MS 8509, 1990 K Street, NW., Washington, DC 20006, telephone (202) 219–7011 between the hours of 8 a.m. and 3 p.m., Monday through Friday, until May 16, 2003. They will be available again after the June 9–10 Advisory Committee meeting. An appointment must be made in advance of such inspection or copying.

How May I Obtain Electronic Access to This Document?

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/legislation/FedRegister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.access.gpo.gov/nara/index.html.*

Authority: 5 U.S.C. Appendix 2

Dated: January 31, 2003.

Sally L. Stroup,

Assistant Secretary for Postsecondary Education.

[FR Doc. 03–2834 Filed 2–5–03; 8:45 am]

BILLING CODE 4000–01–U

DEPARTMENT OF ENERGY

Office of Science Financial Assistance Program Notice 03–17: Theory, Modeling and Simulation in Nanoscience

AGENCY: Department of Energy.

ACTION: Notice inviting research grant applications.

SUMMARY: The Office of Advanced Scientific Computing Research (ASCR) and the Office of Basic Energy Sciences (BES) of the Office of Science (SC), U.S. Department of Energy (DOE), hereby announce their interest in receiving applications for projects in the area of theory and modeling in nanoscience. Partnerships among universities, National Laboratories, and industry are encouraged. The full text of Program Notice 03–17 is available via the Internet using the following Web site address: *http://www.science.doe.gov/production/grants/grants.html.*

DATES: Preapplications referencing Program Notice 03–17 should be received by February 18, 2003.

Formal applications in response to this notice should be received by 4:30 p.m., E.S.T., April 9, 2003, to be accepted for merit review and funding in Fiscal Year 2003.

ADDRESSES: Preapplications referencing Program Notice 03–17 should be sent via e-mail using the following address: *nanoscience.preposal@science.doe.gov.*

Formal applications referencing Program Notice 03–17 must be sent electronically by an authorized institutional business official through DOE's Industry Interactive Procurement System (IIPS) at: *http://e-center.doe.gov* (see also *http://www.sc.doe.gov/production/grants/grants.html*) IIPS provides for the posting of solicitations and receipt of applications in a paperless environment via the Internet. In order to submit applications through IIPS your business official will need to register at the IIPS Website. The Office of Science will include attachments as part of this notice that provide the appropriate forms in PDF fillable format that are to be submitted through IIPS. Color images should be submitted in IIPS as a separate file in PDF format and identified as such. These images should be kept to a minimum due to the limitations of reproducing them. They should be numbered and referred to in the body of the technical scientific application as Color image 1, Color image 2, etc. Questions regarding the operation of IIPS may be E-mailed to the IIPS Help Desk at: *HelpDesk@pr.doe.gov* or you may call the help desk at: (800) 683–0751. Further information on the

use of IIPS by the Office of Science is available at: *http://www.sc.doe.gov/production/grants/grants.html.*

If you are unable to submit the application through IIPS, please contact the Grants and Contracts Division, Office of Science at: (301) 903–5212, in order to gain assistance for submission through IIPS or to receive special approval and instruction on how to submit printed applications.

FOR FURTHER INFORMATION CONTACT: Dr. William Kirchhoff, U.S. Department of Energy, Office of Science, SC–14/Germantown Building, 1000 Independence Avenue, SW., Washington, DC 20585–1290, telephone: (301) 905–5809, E–mail: *William.Kirchhoff@Science.doe.gov*; Dr. Dale Koelling, U.S. Department of Energy, Office of Science, SC–13/Germantown Building, 1000 Independence Avenue, SW., Washington, DC 20585–1290, telephone: (301) 903–2187, E–mail; *Dale.Koelling@Science.doe.gov*; or Dr. Charles H. Romine, U.S. Department of Energy, Office of Science, SC–31/Germantown Building, 1000 Independence Avenue, SW., Washington, DC 20585–1290, telephone: (301) 903–5800, E–mail: *Romine@er.doe.gov*, fax: (301) 903–7774.

SUPPLEMENTARY INFORMATION: In May of 2002, a workshop on Theory and Modeling in Nanoscience was held in San Francisco, sponsored by the Basic Energy Sciences and Advanced Scientific Computing Research Advisory Committees to the Office of Science of the U.S. Department of Energy. The charge to the workshop was to identify challenges and opportunities for theory, modeling and simulation in nanoscience and nanotechnology, and to investigate the growing and promising role of applied mathematics and computer science in meeting those challenges. The final report of the workshop can be found at *http://www.sc.doe.gov/bes/Theory_and_Modeling_in_Nanoscience.pdf.*

Background: The Revolution in Theory, Modeling and Simulation

The past two decades have seen the fundamental techniques of theory, modeling and simulation undergo a revolution that paralles the experimental advances on which the new field of nanoscience is based. This period has seen the development of density functional algorithms, quantum Monte Carlo techniques, *ab initio* molecular dynamics, advances in classical Monte Carlo methods and mesoscale methods for soft matter and fast-multipole and multigrid algorithms. The application of these and other new theoretical capabilities are providing quantitative understanding of the novel behavior of nanoscale systems. The same two decades have also seen dramatic advances in computing hardware, which have increased raw computing power by four orders of magnitude. The combination of new theoretical and computational methods with increased computing power has made it now possible to simulate systems with millions of degrees of freedom.

The application of new experimental tools to nanosystems has created a concurrent need for a quantitative, predictive understanding of matter at the nanoscale. The absence of quantitative models that describe newly observed phenomena increasingly limits progress in the field. Without reliable, robust predictive tools and models for the quantitative description of structure and dynamics at the nanoscale, the research community will miss important scientific opportunities in nanoscience. The lack of such tools inhibits widespread applications in fields of nanotechnology ranging from molecular electronics to biomolecular materials. New investments in both human and computational resources are required to maintain the creative pace of nanoscience and nanotechnology.

The Opportunity and the Challenge

The nanoscale is not just another step towards miniaturization. It is a qualitatively new scale where materials properties depend on size and shape, as well as composition, and differ significantly from the same properties in the bulk or in insolated molecules. It is at this scale where one crosses over from the smallest scales, where a quantum mechanical description is required, to the larger scales, where a classical description in often adequate. All approximations and assumptions used previously are suspect for systems at this scale and must be reexamined. Fundamental methods for theory, modeling and simulation developed for larger of smaller scales will need to be modified, extended, and sometimes combined into a more complete description.

Completely new methods may be required. Synergism created within a team of researchers from nanoscience, computational science and applied mathematics can accelerate progress and broaden insight. Thus, the current solicitation for applications allows for and encourages the building of teams of theorists, computational scientists, applied mathematicians, and experts in high-performance computing. There are many theory, modeling and simulation challenges in the broad topical areas of: (1) Nano building blocks (nanotubes, quantum dots, clusters and nanoparticles); (2) complex structures and interfaces involving such building blocks; and (3) the assembly and growth of nanostructures, including (but not limited to):

- Determining the essential science of transport mechanisms at the nanoscale.
- Devising theoretical and simulation approaches to study nanointerfaces, which dominate many nanoscale systems and are highly complex and heterogeneous.
- Simulating, with reasonable accuracy, the optical properties of nanoscale structures and modeling nanoscale opto-electronic devices.
- Simulating complext nanostructures involving "soft" biological or organic structures, and "hard" inorganic ones, as well as nanointerfaces between hard and solt matter.
- Simulating self-assembly and directed self-assembly.
- Bringing from length- and time-scales appropriate for electronic motion to those needed for larger scale phenomena—all the way up to macroscopic properties.
- Devising theoretical and simulation approaches to quantum coherence, decoherence, and spintronics.
- Devising self-validating and benchmarking methods.

Each of these challenges represents an opportunity for theory, modeling and simulation to provide new insights into the dynamic behavior of nanoscale systems.

Investment Plan of the Office of Science

A new investment in theory, modeling and simulation in nanoscience will have a major impact on the national nanoscience initiative, by stimulating the formation of alliances and teams of experimentalists, theorists, applied mathematicians and computer and computational scientists to meet the challenge of developing a broad quantitative understanding of structure and dynamics at the nanoscale. The Department of Energy is uniquely situated to build such a program in theory, modeling and simulation in nanoscience. First, DOE currently supports much of the nation's experimental work in nanoscience, and new facilities dedicated to nanoscience research are currently being built at the DOE national laboratories. Second, the Department maintains an internationally renowned program in applied mathematical sciences research,

a program that has been responsible for must of the fundamental research that forms the foundation of mathematical modeling and computational science. Third, the Department provides unique resources and more than two decades of experience in high performance computing and algorithms. The combination of these three capabilities makes the Department a natural home for nanoscience theory, modeling and simulation. This solicitation of strengths by stimulating new research efforts in theory, modeling and simulation in nanoscience, built around strong teams of interdisciplinary reseachers.

Solicitation Emphasis

This solicitation is to accelerate computional nanoscience. Nanoscience is considered to be the study of the properties and processes unique to nanoscale and of the larger systems that incorporate nanoscale objects, so long as one or more nanoscale-driven properties remain significant. A nanoscale object is one in which two dimensions are in the range between a few and a few hundred nanometers. Applications are sought which seek to establish new capabilities in nanoscience that incorporate, and thereby elucidate, its special features. Applications may involve any of the broad topical areas or any combination thereof:

(1) Nano building blocks (nanotubes, quantum dots, clusters and nanoparticles)
(2) Complex structures and interfaces involving such building blocks
(3) Assembly and growth of nanostructures

Addressing prediction of properties and dynamical behavior. Nanotechnology, which is the design of specific devices, is not directly a part of this solicitation.

It is expected that a responsive project will progress beyond current limitations and will require serious development. This joint solicitation anticipates the necessity of a closely interacting team of researchers composed of people from the nanoscience field(s), computer experts, and applied mathematicians. Applied mathematics research applicable to theory, modeling and simulation in nanoscience includes (but is not limited to):

- Fast algorithms—new algorithms or variants of algorithms that lower the asymptotic computational complexity of a computation. Examples include fast multipole methods, fast Poisson solvers in complex geometries, fast eigensolvers, fast linear solvers, Monte Carlo (including improvements in variants such as Quantum Monte Carlo and Kinetic Monte Carlo), fast data exploration techniques, and fast computational geometry.
- Optimization and Predictability—energy minimization problems of unprecedented size and complexity, optimization methods that incorporate domain knowledge, optimization methods for understanding self-assembly processes, optimal control methods for design of nanosystems, predictability analysis and uncertainty quantification.
- Multiscale mathematics—that is, new mathematical techniques for effectively transferring quantitative information across a wide range of length- and time-scales, for merging atomistic and continuum modeling, new adaptive methods, separation of scales, and for coping with models where complex interactions between scales makes separation impossible. Here, it should be pointed out that nanoscience offers two separate opportunities. In the individual building blocks, the number of interacting scales is significantly reduced permitting addressing fundamental issues. The composites, on the other hand, exhibit greater interactions between different scales but with special constraints.

Applications to the BES and ASCR base programs through the Continuing Solicitation for all Office of Science Programs Notice 03–01, found at: *http://www.science.doe.gov/production/grants/grants.html*, which may have the potential for contributing to the nanoscience theory, modeling and simulation activities, should so indicate.

Collaboration

Applicants are encouraged to collaborate with researchers in other institutions, such as: universities, industry, non-profit organizations, federal laboratories and Federally Funded Research and Development Centers (FFRDCs), including the DOE National Laboratories, where appropriate, and to include cost sharing wherever feasible. Additional information on collaboration is available in the Application Guide for the Office of Science Financial Assistance Program that is available via the Internet at: *http://www.sc.doe.gov/production/grants/Colab.html*.

Program Funding

It is anticipated that up to $4 million annually will be available for multiple awards for this program. Initial awards will be made late in Fiscal Year 2003 or early Fiscal Year 2004, in the categories described above, and applications may request project support for up to five years. All awards are contingent on the availability of funds and programmatic needs. Annual budgets for successful projects are expected to range from $1,000,000 to $2,000,000 per project although smaller projects of exceptional merit may be considered. Annual budgets may increase in the out-years but should remain within the overall annual maximum guidance. Any proposed effort that exceeds the annual maximum in the out-years should be separately identified for potential award increases if additional funds become available.

Preapplications

Preapplications are strongly encouraged but not required prior to submission of a full application. However, notification of a successful preapplication is not an indication that an award will be made in response to the formal application. The preapplication should identify on the cover sheet the institution, Principal Investigator name(s), address(s), telephone, and fax number(s) and E-mail address(es), and the title of the project. A brief (one-page) vitae should be provided for each Principal Investigator. The preapplication should consist of a two to three page narrative describing the research project objectives, the approach to be taken, and a description of any research partnerships.

Merit Review

Applications will be subjected to scientific merit review (peer review) and will be evaluated against the following evaluation criteria listed in descending order of importance as codified at 10 CFR 605.10(d):

1. Scientific and/or Technical Merit of the Project,
2. Appropriateness of the Proposed Method or Approach,
3. Competency of Applicant's Personnel and Adequacy of Proposed Resources,
4. Reasonableness and Appropriateness of the Proposed Budget.

The evaluation of applications under item 1, Scientific and Technical Merit, will pay particular attention to:

(a) The potential of the proposed projects to make a significant impact in nanoscience research;

(b) The demonstrated capabilities of the applicants to perform basic research related to nanoscience and transform these research results into software that can be widely deployed;

(c) The likelihood that the algorithms, methods, mathematical libraries, and software components that result from this effort will have a substantial impact

on the nanoscience research community outside of the projects;

The evaluation under item 2, Appropriateness of the Proposed Method of Approach, will also consider the following elements related to Quality of Planning:

(a) Quality of the plan for effective coupling of nanoscience researchers, computational scientists and applied mathematicians;

(b) Quality and clarity of proposed work schedule and deliverables.

Note that external peer reviewers are selected with regard to both their scientific expertise and the absence of conflict-of-interest issues. Non-federal reviewers may be used, and submission of an application constitutes agreement that this is acceptable to the investigator(s) and the submitting institution. Reviewers will be selected to represent expertise in the technology areas proposed, applications groups that are potential users of the technology, and related programs in other Federal Agencies or parts of DOE, such as the Advanced Strategic Computing Initiative (ASCI) within DOE's National Nuclear Security Administration.

Information about the development and submission of applications, eligibility, limitations, evaluation, selection process, and other policies and procedures including detailed procedures for submitting applications from multi-institution partnerships may be found in 10 CFR part 605, and in the Application Guide for the Office of Science Financial Assistance Program. Electronic access to the Guide and required forms is made available via the World Wide Web at: *http://www.science.doe.gov/production/grants/grants.html*. The Project Description must be 20 pages or less, including tables and figures, but exclusive of attachments. The application must contain an abstract or project summary, letters of intent from collaborators, and short vitae. DOE is under no obligation to pay for any costs associated with the preparation or submission of applications if an award is not made.

(The Catalog of Federal Domestic Assistance number for this program is 81.049, and the solicitation control number is ERFAP 10 CFR part 605).

Issued in Washington, DC, on January 30, 2003.

John Rodney Clark,

Associate Director of Science for Resource Management.

[FR Doc. 03–2909 Filed 2–5–03; 8:45 am]

BILLING CODE 6450–01–M

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

State Energy Program (SEP) Special Projects

AGENCY: Golden Field Office, Department of Energy.

ACTION: Notice of issuance of the 2003 State Energy Program Special Projects Solicitation.

SUMMARY: The Office of Energy Efficiency and Renewable Energy of the Department of Energy (DOE) is anticipating the availability of financial assistance to the States for a group of special project activities. Funding is being provided by a number of programs in the Office of Energy Efficiency and Renewable Energy. States may apply to undertake any of the projects being offered by these programs. Financial Assistance will be awarded to the States separately for each special project, with activities to be carried out in conjunction with their efforts under SEP. The special projects' funding and activities are tracked separately so that the DOE Program Offices may follow the progress of individual projects.

DATES: The program solicitation is anticipated to be posted on the Industry Interactive Procurement System (IIPS) Web site in mid-February, 2003. Applications will be due in early to mid-May, 2003.

ADDRESSES: To obtain a copy of the solicitation, interested parties should access the DOE Golden Field Office Home Page at *http://www.golden.doe.gov/businessopportunities.html*, and click on the "Solicitations" button. The Golden Home Page will provide a link to the Solicitation in the IIPS Web site and provide instructions on using IIPS. The Solicitation can also be obtained directly through IIPS at *http://e-center.doe.gov* by browsing opportunities by Contract Activity, for those solicitations issued by the Golden Field Office. DOE will not issue paper copies of the solicitation.

IIPS provides the medium for disseminating solicitations, receiving financial assistance applications, and evaluating the applications in a paperless environment. The application must be submitted to IIPS by an eligible State applicant. For questions regarding the operation of IIPS, contact the IIPS Help Desk at *IIPS_HelpDesk@e-center.doe.gov* or at (800) 683–0751.

FOR FURTHER INFORMATION CONTACT: Andrea Lucero, DOE Golden Field Office, 1617 Cole Boulevard, Golden, CO 80401–3393 or via facsimile to Andrea Lucero at (303) 275–4788, or electronically to *andrea_lucero@nrel.gov*.

SUPPLEMENTARY INFORMATION: The projects must meet the relevant requirements of the program providing the funding, as well as of the SEP as specified in the 2003 State Energy Program Special Projects Solicitation. The goals of the special projects activities are to assist States accelerate deployment of energy efficiency and renewable energy technologies; facilitate the acceptance of emerging and underutilized energy efficiency and renewable energy technologies; and increase the responsiveness of Federally funded technology development efforts to private sector needs.

Fiscal Year 2003 is the eighth year special project activities have been funded in conjunction with the State Energy Program (10 CFR part 420). Most of these special projects are related to or based on similar efforts that have been funded by other DOE programs.

Availability of Fiscal Year 2003 Funds

With this publication, DOE is anticipating the availability of an estimated $16.3 million in new financial assistance awards from Fiscal Year 2003 appropriations. DOE's obligation for performance of this Solicitation is contingent upon the availability of appropriated funds from which financial assistance awards can be made.

The awards will be made through a competitive process. The programs that are participating in the State Energy Program Special Projects for Fiscal Year 2003, with the estimated amount of funding available for each, are as follows:

- *Clean Cities:* The program will provide funds to support the deployment of alternative fuels and alternative fuel vehicles (AFV) in the following four categories: (1) Projects that promote acquisition of commercially-available AFVs that maximize alternative fuel use, especially when those vehicles support an AFV niche market activity center or niche deployment strategy; (2) projects that promote AFV infrastructure development; (3) Projects that promote the acquisition of AFV school buses; (4) Projects that support coalition activities ($5,000,000).
- *Industrial Technology Program:* The objective is to broaden the impact of investments in advanced industrial technologies and practices geared toward energy savings and waste reduction. This will be done through

increased partnerships composed of State agencies, universities and local small and mid-sized manufacturing entities ($2,000,000).

• *Building Codes and Standards:* Support States' actions to adopt, update, implement, enforce and evaluate the effectiveness of their residential and commercial building energy codes ($1,650,000).

• *Rebuild America:* Support Rebuild America State Programs which are consistent with the Rebuild America Strategic Plan that identifies specific and measurable building and related energy saving projects. The goal is for 50% of the partnerships to have completed at least one major building renovation project by 2005. The partnerships must define a program and process that would show a significant opportunity for completion of building projects ($3,000,000).

• *Building America:* Applications should include research that coordinates with Building America's goal of creating building system performance packages that make new houses 40% to 70% more energy efficient than those built to local building code standards. Existing houses should be 30% more energy efficient than the local building code ($300,000).

• *Federal Energy Management Program:* Applications should promote and facilitate sustainable design and construction, energy efficient operations and maintenance, distributed and renewable energy, renewable energy purchases, siting of renewable power on Federal sites, and assessment and implementation of load and energy reduction techniques ($500,000).

• *Solar Technology Program:* To determine if islanding is a reasonable concern for distributed energy resources, grants are available to utilities to conduct measurements of the actual watts, Volt-Amp Reactives (VARs), and harmonics present on 12 distribution lines ($250,000).

• *State Wind Energy Support:* Applications are sought for (1) State outreach and technical assistance, and (2) regional consortia on transmissions ($400,000).

• *Distributed Energy and Electric Reliability—Transmission Reliability, Energy Storage, and Interconnection:* Applications are sought for (1) Energy Storage, Renewable Generation Dispatch, and Transmission Stability, and (2) Electrical Interconnection Regulatory Education and Outreach ($205,000).

• *Distributed Energy and Electric Reliability—Regional Combined Cooling Heating and Power Applications Centers:* The objectives of the Regional Application Centers will be to provide essential and appropriate applied research and development support, focused on the technology transfer and deployment of advanced Combined Heat and Power (CHP) technologies. The Regional Application Centers will achieve this objective through targeted education and outreach programs as well as project assistance ($1,200,000).

• *Distributed Energy and Electric Reliability—High Temperature Superconductivity, State Outreach Centers:* Project requests are for the development and facilitation of State meetings and workshops designed to disseminate information on the technical, economic, environmental feasibility, and effectiveness of High Temperature Superconductivity (HTS) technologies and their systems integration approach ($400,000).

• *Geothermal Outreach:* Program funding will be provided for outreach and information sharing with State-based agricultural/rural sectors in States with direct use geothermal resources. Additional funding will be provided for projects that update the inventory of geothermal resources in a given State (300,000).

• *Biomass:* To foster significant penetration of biomass-based technologies and products, cost-shared proposals are sought under two broad categories (1) outreach and information transfer to consumers, farmers, and industry; or (2) Development of innovative State or local incentives that facilitate increased market penetration of bio-based products and biomass-based technologies ($600,000).

• *Residential Deployment:* The goal of this solicitation is to develop self-sustaining energy efficiency programs for the existing home market that incorporate marketing efforts, builder training/certification, home inspections, and quality assurance of contractor work ($500,000).

Restricted Eligibility

Eligible Applicants under this solicitation are limited to the 50 States, the District of Columbia, American Samoa, Guam, the Northern Mariana Islands, Puerto Rico, and the U. S. Virgin Islands. Applications must be submitted by the State Energy Office or other agency responsible for administering the State Energy Program pursuant to 10 CFR part 420, although States may work in collaboration with non-State partners. For convenience, the term "State" in this solicitation refers to all eligible Applicants.

The Catalog of Federal Domestic Assistance number assigned to the State Energy Program Special Projects is 81.119.

Requirements for cost sharing contributions are addressed in each category. Cost sharing contributions beyond any required percentage is desirable.

Evaluation Review and Criteria

A first tier review for compliance will occur at the appropriate DOE Regional Office. Applications found to be in compliance will undergo a merit review process by panels comprised of members representing the participating programs at DOE's Office of Energy Efficiency and Renewable Energy. The program offices recommend projects to the Office of Weatherization and Intergovernmental Program Manager who is the designated selecting official. DOE reserves the right to fund, in whole or in part, any, all or none of the applications submitted in response to this notice.

Issued in Golden, Colorado, on January 29, 2003.

Jerry L. Zimmer,

Director, Office of Acquisition and Financial Assistance.

[FR Doc. 03–2910 Filed 2–5–03; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP03–41–000 and CP03–43–000]

Dominion Transmission, Inc.; Texas Eastern Transmission, LP; Notice of Filings

January 30, 2003.

Take notice that on January 24, 2003, Dominion Transmission, Inc. (Dominion), Docket No. CP03–41–000, 445 West Main Street, Clarksburg, West Virginia 26301; and Texas Eastern Transmission, LP (Texas Eastern), Docket No. CP03–43–000, 5400 Westheimer Court, Houston, Texas 77056–5310, filed with the Federal Energy Regulatory Commission (Commission) abbreviated applications for certificate of public convenience and necessity pursuant to Section 7 of the Natural Gas Act and part 157 of the Commission's Rules and Regulations. Dominion requests authorization to lease, construct, own, operate, and maintain certain facilities in Pennsylvania, Virginia, and West Virginia; and to provide certain firm transportation and storage services. Texas Eastern requests authorization to construct, own, operate and maintain

proposed facilities that will increase the firm transportation capacity on Texas Eastern's system by 223,000 dekatherms per day (Dth/d), and lease this incremental capacity to Dominion. The applications are on file with the Commission and open for public inspection. These filings are available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866)208–3676, or for TTY, contact (202) 502–8659.

Dominion

Dominion requests authority to lease capacity of 223,000 Dth/d of firm transportation service from Texas Eastern on CRP pipeline system located in Pennsylvania, and 5.6 Bcf of firm storage service. In addition, Dominion proposes to construct and place in service the following compressor station additions, and new compressor stations:

- At a new compressor station, Mockingbird Hill, located in Wetzel County, West Virginia: installing a 5,000 hp gas-fired turbine;
- At the existing Crayne station, located in Green County, Pennsylvania: replacing the existing #1 unit, a 5,500 hp gas-fired turbine, with a 7,800 hp gas-fired turbine, and the existing #2 unit would be reconfigured from a 6,500 hp gas-fired turbine to a 7,800 hp gas-fired turbine;
- At the existing Chambersburg station, located in Franklin County, Pennsylvania: upgrading the 2 existing electric powered units from 4,000 hp to 4,600 hp, and installing 2 new 7,800 hp gas-fired turbines;
- At the existing Leesburg station, located in Loudoun County, Virginia: installing an additional 7,800 hp gas-fired turbine;
- At a new compressor station, Quantico station, located in Fauquier County, Virginia: installing a 6,000 hp gas-fired turbine; and
- Also installing non-jurisdictional facilities as associated appurtenant facilities with each compressor installation and conducting non-jurisdictional work associated with abandoned oil wells at its Fink-Kennedy/Lost Creek Storage Reservoir to insure the integrity of the reservoir.

The estimated cost of the proposed project is $83.0 million. Dominion will pay Texas Eastern a monthly Lease Payment of $1,085,341 for the leased capacity. Dominion proposes incrementally priced transportation services at rates that are designed to recover the costs of both Dominion's incremental transmission facilities and the capacity that is to be leased from Texas Eastern.

Dominion proposes to roll in the storage service costs at its next general Section 4 rate case, since incremental cost-based storage rates would be less than the existing storage rates. In addition to the transportation rate, a reservation-based compression charge is being proposed in order to recover the cost of the new Quantico compressor station.

Texas Eastern

In order to provide the 223,000 Dth/d of lease capacity to Dominion, Texas Eastern requests authorization to construct, install, own, operate, and maintain four new 36-inch diameter pipeline loops totaling approximately 34.64 miles. Texas Eastern proposes to replace certain segments of the existing 24-inch diameter pipeline, which is currently abandoned in place, with new 36-inch diameter pipeline. The new 36-inch diameter sections of pipeline looping will be constructed in the same location as the currently existing abandoned 24-inch diameter pipeline looping. Texas Eastern will remove the existing pipe and relay the 36-inch diameter pipe in the same right-of-way. In addition, Texas Eastern proposes to replace the existing aerodynamic assembly on the 11,000 HP electric drive compressor unit at the Uniontown (Station 21-A) Compressor station in Uniontown, Pennsylvania, to accommodate the increased throughput. The estimated cost of the proposed project is $82.855 million. This cost will be fully reimbursed by Dominion under the Lease Agreement with no subsidization by Texas Eastern's existing customers.

Any questions regarding the applications are to be directed to Sean R. Sleigh, Certificates Manager, Dominion Transmission, Inc., 445 West Main Street, Clarksburg, WV 26301, or Steven E. Tillman, General Manager, Regulatory Affairs, Texas Eastern Transmission, LP, P.O. Box 1642, Houston, Texas 77251–1642.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the below listed comment date, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission may issue a preliminary determination on non-environmental issues prior to the completion of its review of the environmental aspects of the project. This preliminary determination typically considers such issues as the need for the project and its economic effect on existing customers of the applicant, on other pipelines in the area, and on landowners and communities. For example, the Commission considers

the extent to which the applicant may need to exercise eminent domain to obtain rights-of-way for the proposed project and balances that against the non-environmental benefits to be provided by the project. Therefore, if a person has comments on community and landowner impacts from this proposal, it is important either to file comments or to intervene as early in the process as possible.

Motions to intervene, protests and comments may be filed electronically via the internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

If the Commission decides to set the application for a formal hearing before an Administrative Law Judge, the Commission will issue another notice describing that process. At the end of the Commission's review process, a final Commission order approving or denying a certificate will be issued.

Comment Date: February 20, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–2874 Filed 2–5–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP00–411–006 and RP01–44–008]

Iroquois Gas Transmission System, L.P.; Notice Compliance Filing

January 30, 2003.

Take notice that on January 28, 2003, Iroquois Gas Transmission System, L.P. (Iroquois) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Substitute Original Sheet No. 65C, proposed to become effective November 1, 2002.

Iroquois states that copies of this filing were served on all jurisdictional customers and interested state regulatory agencies and all parties to the proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's rules and regulations. All such protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Protest Date: February 10, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–2885 Filed 2–5–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–241–000]

KeySpan LNG, LP and Algonquin ALNG, LP; Notice of Tariff Filing

January 29, 2003.

Take notice that on January 27, 2003, KeySpan LNG, LP (KLNG) and Algonquin LNG, LP (ALNG) tendered for filing its FERC Gas Tariff, Third Revised Volume No. 1, the tariff sheets attached to Appendix A to the filing, with an effective date of January 27, 2003.

KLNG and ALNG state that the filing is being filed to reflect a corporate name change that became effective January 24, 2003.

KLNG and ALNG state that copies of its filing have been mailed to all affected customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.314 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: February 10, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–2887 Filed 2–5–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL98–6–001]

Old Dominion Electric Cooperative, Complainant v. Public Service Electric and Gas Company, Respondent; Notice of Amended Complaint

January 29, 2003.

Take notice that on January 24, 2003, pursuant to Rules 206, 212 and 716 of the Federal Power Act, Old Dominion Electric Cooperative (Old Dominion) filed with the Federal Energy Regulatory Commission (Commission) an amended complaint against Public Service Electric and Gas Company (PSE&G) requesting that the Commission: consider Old Dominion's previously-filed complaint action against PSE&G, as amended; on its merits; find that the rate pancaking to Old Dominion under a bundled power sales contract between Old Dominion and PSE&G is unjust, unreasonable, and unduly discriminatory; order and direct that the transmission component in the bundled rate of PSE&G under the contract be eliminated; and on a fast-track basis, direct that PSE&G defer any claim or demand for payment of past due amounts prior to final Commission determination of the matters and proceedings discussed in Old Dominion's motion or grant a stay pending final Commission determination on such matters.

Old Dominion states that copies of the filing were served upon PSE&G, PJM, Delmarva Power & Light Company, and

the Delaware Public Service Commission. Old Dominion is not aware of any other parties that may be expected to be affected by the complaint.

Any person desiring to be heard or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. The answer to the complaint and all comments, interventions or protests must be filed on or before the comment date . This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866)208–3676, or for TTY, contact (202)502–8659. The answer to the complaint, comments, protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Comment Date: February 14, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–2876 Filed 2–5–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP93–618–014]

PG&E Gas Transmission, Northwest Corporation; Notice of Annual Report

January 30, 2003.

Take notice that on January 28, 2003, PG&E Gas Transmission, Northwest Corporation (GTN) tendered for filing its "Annual Report on Deferred Revenue Recovery Mechanism and Revenue Reconciliation for the Year Ending October 31, 2002" for its Medford, Oregon Lateral.

GTN asserts that the purpose of this filing is to comply with the Commission's Order of January 12, 1995 in Docket Nos. CP93–618, *et al.* That Order requires GTN to file an annual report concerning its deferred revenue recovery mechanism and detailing the cost of service for GTN's Medford Lateral and the status of its deferred revenue recovery mechanism.

GTN further states that a copy of this filing has been served on GTN's jurisdictional customers and interested state regulatory agencies, and on the parties listed on the Commission's service list for this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: February 6, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–2875 Filed 2–5–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP03–40–000]

Sid Richardson Energy Services, Ltd.; Notice of Application

January 30, 2003.

On January 21, 2003, Sid Richardson Energy Services, Ltd. (Richardson), 201 Main Street, Suite 3000, Fort Worth, Texas 76102, filed an application in Docket No. CP03–40–000, pursuant to Rule 207(a)(2) of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (Commission) 18 CFR 385.207(a)(2), for a declaratory order declaring that Richardson's ownership and operation of certain facilities to be purchased from Northern Natural Gas Company (Northern) will not subject Richardson or its rates, services, facilities, or operations, to the Commission's jurisdiction under the Natural Gas Act. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at FERCOnline Support@ferc.gov or call toll-free, (866) 208–3676, or for TTY, (202) 502–8659.

Richardson states that it is purchasing from Northern 26.82 miles of 16-inch pipeline between the outlet of Richardson's Jal Processing Plant (at Northern's block value #836BBB02) and Northern's Kermit compressor station, which will allow Richardson to use its processing/treating plants and gathering systems more efficiently.

Richardson further states that it will operate the subject pipeline as part of its non-jurisdictional gathering and processing operations. Accordingly, Richardson states that under the Commission's primary function test, the subject facilities should be declared exempt from the Commission's jurisdiction pursuant to Section 1(b) of the Natural Gas Act. Richardson states that Northern will be abandoning the subject facilities pursuant to its Subpart F blanket certificate authority and the automatic abandonment provisions of 18 CFR 157.216.

Any questions regarding this application may be directed to Richard Moncrief, Sid Richardson Energy Services, Ltd., 201 Main Street, Suite 3000, Fort Worth, Texas 76102 at (817) 339–7480 or Joseph S. Koury, Wright & Talisman, P.C., 1200 G Street, NW., Suite 600, Washington, DC 20005 at (202) 393–1200.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and

Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made in the proceeding with the Commission and must mail a copy to the applicant and to every other party. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

If the Commission decides to set the application for a formal hearing before an Administrative Law Judge, the Commission will issue another notice describing that process. At the end of the Commission's review process, a final Commission order approving or denying a certificate will be issued.

Comment Date: February 19, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–2873 Filed 2–5–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP02–17–004, *et al.*]

Texas Eastern Transmission, LP; Notice of Compliance Filing

January 29, 2003.

Take notice that on December 31, 2002, Texas Eastern Transmission, LP (Texas Eastern) tendered for filing as part of its FERC Gas Tariff, Seventh Revised Volume No. 1, the following tariff sheet to be effective February 1, 2003.

Second Revised Sheet No. 51B

Texas Eastern states that the purpose of this filing is to comply with the Commission's letter order issued on October 31, 2002 in Docket Nos. CP02–17–002 and CP02–45–002 (October 31 Order). Texas Eastern states that the October 31 Order accepted initial rates for Texas Eastern's Hanging Rock Lateral to become effective on the later of November 1, 2002 or the in-service date of the Hanging Rock Lateral.

Texas Eastern states that the Hanging Rock Lateral is expected to commence service on February 1, 2003. Texas Eastern states that the instant filing is being made to reflect the rates for service on the Hanging Rock Lateral, effective on the February 1, 2003 in-service date as provided in the October 31 Order.

Texas Eastern states that copies of its filing have been mailed to all affected customers of Texas Eastern, interested state commissions, and all parties listed on the Official Service Lists compiled by the Secretary of the Commission in these proceedings.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: February 5, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–2872 Filed 2–5–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–240–000]

Transcontinental Gas Pipe Line Corporation; Notice of Tariff Filing

January 29, 2003.

Take notice that on January 24, 2003, Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, Eighth Revised Twenty-First Revised Sheet No. 28, to be effective February 1, 2003.

Transco states that the purpose of the instant filing is to track rate changes attributable to storage service purchased from Texas Eastern Transmission Corporation (TETCO) under its Rate Schedule X–28, the costs of which are included in the rates and charges payable under Transco's Rate Schedule S–2. Transco states that this filing is being made pursuant to tracking provisions under section 26 of the general terms and conditions of Transco's Third revised Volume No. 1 Tariff.

Transco states that included in Appendix A attached to the filing is the explanation of the rate changes and details regarding the computation of the revised S–2 rates.

Transco states that copies of the filing are being mailed to affected customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC

20426, in accordance with sections 385.314 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: February 5, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–2886 Filed 2–5–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER00–644–001, *et al.*]

Calpine Philadelphia, Inc., *et al.*; Electric Rate and Corporate Filings

January 28, 2003.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Calpine Philadelphia, Inc.

[Docket No. ER00–644–001]

Take notice that on January 23, 2003, Calpine Philadelphia, Inc. submitted for filing with the Federal Energy Regulatory Commission (Commission) its triennial market power analysis in compliance with the Commission order issued in this docket on January 12, 2000.

Comment Date: February 13, 2003.

2. PJM Interconnection, L.L.C.

[Docket No. ER02–1326–005]

Take notice that on January 24, 2003, PJM Interconnection, L.L.C. (PJM) amended its January 21, 2003, filing made in compliance with the Commission's December 19, 2002, order in PJM Interconnection, L.L.C., 101 FERC ¶ 61,308. PJM amends its January 21, 2003, compliance filing to include retroactive sheets of the PJM Open Access Transmission Tariff and the Amended and Restated Operating Agreement of PJM Interconnection, L.L.C., in accordance with Designation of Electric Rate Schedule Sheets, Order No. 614.

PJM states that copies of this filing have been served on all parties listed on the official service list compiled by the Secretary in this proceeding, all PJM members, and each state electric utility regulatory commission in the PJM region.

Comment Date: February 14, 2003.

3. PJM Interconnection, L.L.C.

[Docket No. ER02–2491–001]

Take notice that on January 24, 2003, in compliance with the Federal Energy Regulatory Commission's (Commission) October 16, 2002, letter order in this proceeding, PJM Interconnection, L.L.C. (PJM) submitted for filing five substitute interim interconnection service agreements between PJM and Handsome Lake Energy L.L.C., PPL Martins Creek LLC, and Pennsylvania Electric Company d/b/a GPU Energy, one substitute interconnection service agreement between PJM and Pennsylvania Electric Company, and three notices of cancellation.

PJM states that copies of this filing were served upon all the persons on the official service list and the parties to the agreements.

Comment Date: February 14, 2003.

4. The Detroit Edison Company

[Docket No. ER03–19–001]

Take notice that on January 24, 2003, The Detroit Edison Company submitted its response to the letter issued by FERC staff in the captioned proceeding on November 27, 2002. FERC staff requested additional information about Detroit Edison's October 4, 2002, filing.

Comment Date: February 14, 2003.

5. Mirant Delta, LLC; Mirant Potrero, LLC

[Docket No. ER03–215–001]

Take notice that on January 24, 2003, Mirant Delta, LLC and Mirant Potrero, LLC (collectively, Mirant) submitted a filing with the Federal Energy Regulatory Commission (Commission) in compliance with the Commission's directives in its Order Accepting for Filing and Suspending Proposed Revisions to Reliability Must-Run Agreements, issued in the captioned docket on January 16, 2003, 102 FERC ¶ 61,040 (2003).

Comment Date: February 14, 2003.

6. Progress Energy Service Company on behalf of Progress Energy Carolinas, Inc.

[Docket Nos. ER03–433–000, ER03–441–000 and ER03–442–000]

Take notice that on January 24, 2003, Progress Energy Service Company on behalf of Progress Energy Carolinas, Inc. (Progress Carolinas) tendered for filing a notice of withdrawal of its service agreements under Market Based Rate Tariff in the above-captioned dockets. Consistent with Order No. 2001, the company is no longer required to file its market-based service agreements in paper form with the Commission.

Progress Carolinas state that copies of the filing were served upon the counterparties to the agreements and the relevant state commissions.

Comment Date: February 14, 2003.

Standard Paragraph

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866)208–3676, or for TTY, contact (202)502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The

Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. 03–2877 Filed 2–5–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER95–1586–012, *et al.*]

Citizens Utilities Company, *et al.*; Electric Rate and Corporate Filings

January 29, 2003.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Citizens Utilities Company

[Docket Nos. ER95–1586–012, EL96–17–006, OA96–184–009 and EL01–20–002]

Take notice that on January 21, 2003, Citizens Utilities Company (Citizens) tendered for filing with the Federal Energy Regulatory Commission (Commission) a summary and details showing both the refunds due to and repayments due from each customer under each of the relevant transmission services, and the total refunds due to and repayments due from each customer.

Comment Date: February 11, 2003.

2. PPL Brunner Island, LLC; PPL Holtwood, LLC; PPL Martins Creek, LLC; PPL Montour, LLC; PPL Susquehanna, LLC

[Docket No. ER00–744–001]

Take notice that on January 27, 2003, PPL Brunner Island, LLC, PPL Holtwood, LLC, PPL Martins Creek, LLC, PPL Montour, LLC, and PPL Susquehanna, LLC filed an updated market power analysis pursuant to the Commission's order in Southaven Power, LLC, 90 FERC ¶ 61,063.

The Companies state that a copy of this filing has been served on the parties on the Commission's official service list for this docket.

Comment Date: February 18, 2003.

3. Sussex Rural Electric Cooperative

[Docket No. ER02–2001–000]

Take notice that on January 27, 2003, Sussex Rural Electric Cooperative (Sussex) filed a request for waiver of the requirements of Order No. 2001 pursuant to 18 CFR 385.207 of the Federal Energy Regulatory Commission (Commission) regulations. Sussex's filing is available for public inspection at its offices in Sussex, New Jersey.

Comment Date: February 19, 2003.

4. Idaho Power Company

[Docket No. ER03–66–002]

Take notice that on January 27, 2003, Idaho Power Company submitted its compliance filing in the above-captioned docket.

Comment Date: February 18, 2003.

5. Termoelectrica U.S., LLC

[Docket No. ER03–175–002]

Take notice that on January 27, 2003, in compliance with the Federal Energy Regulatory Commission's (Commission) order, 102 FERC ¶ 61,024, Termoelectrica U.S., LLC (Termoelectrica US) tendered for filing a revised Rate Schedule FERC No. 1 to (1) prohibit sales between Termoelectrica U.S. and its affiliate San Diego Gas & Electric Company; and (2) to remove language allowing Termoelectrica U.S. to sell ancillary services into markets not operated by the California Independent System Operator Corporation, New England Power Pool, New York Power Pool, and Pennsylvania-New Jersey-Maryland Interconnection.

Comment Date: February 18, 2003.

6. PJM Interconnection, L.L.C.

[Docket No. ER03–331–002]

Take notice that on January 27, 2003, PJM Interconnection, L.L.C. (PJM) amended its December 24, 2002, and January 3, 2003, filings in this proceeding. In its December 24, 2002, and January 3, 2003, filings, PJM submitted for filing amendments to the Appendix of Attachment K of the PJM Open Access Transmission Tariff and Schedule 1 of the Amended and Restated Operating Agreement to modify the provisions relating to the determination of eligibility to receive Operating Reserves credits during Maximum Generation Emergency conditions. PJM amends the December 24, 2002, and January 3, 2003, filings to reflect more accurately the original intent of the amendments and to correct a mistake in the previously filed amendments.

Consistent with its December 24, 2002, and January 3, 2003, filings, PJM requests an effective date of February 23, 2003, for the amended filing.

PJM states that copies of this filing were served upon all parties listed on the official service list compiled by the Secretary in this proceeding, all PJM members, and each state electric utility regulatory commission in the PJM region.

Comment Date: February 18, 2003.

7. Soyland Power Cooperative, Inc.

[Docket No. ER03–357–001]

Take notice that on January 27, 2003, Soyland Power Cooperative, Inc. (Soyland) tendered for filing an amendment to its notice of cancellation of its all-requirements service contract with M.J.M. Electric Cooperative, Inc. (MJM). Soyland states that MJM has withdrawn from membership in Soyland, and Soyland will no longer provide all-requirements electric service to MJM. Soyland requests an effective date of December 31, 2002, for the notice of cancellation. Accordingly, Soyland requests waiver of the Commission's regulations. Soyland states that a copy of the filing has been served on MJM.

Comment Date: February 18, 2003.

8. Black Oak Energy, LLC

[Docket No. ER03–447–000]

Take notice that on January 27, 2003, Black Oak Energy, LLC (Seller) petitioned the Commission for an order: (1) Accepting Seller's proposed FERC rate schedule for market-based rates; (2) granting waiver of certain requirements under Subparts B and C of part 35 of the regulations; (3) granting the blanket approvals normally accorded sellers permitted to sell at market-based rates; and (4) granting waiver of the 60-day notice period.

Comment Date: February 18, 2003.

9. Metropolitan Edison Company

[Docket No. ER03–448–000]

Take notice that on January 27, 2003, Metropolitan Edison Company, a FirstEnergy Company, (MetEd) submitted a Notice of Cancellation for Service Agreement No. 584 between MetEd and The Bentech Group of Delaware, Inc. (Bentech).

MetEd states that a copy of this filing has been served upon Bentech, PJM Interconnection, L.L.C. and state regulators in Pennsylvania.

Comment Date: February 18, 2003.

10. Sussex Rural Electric Cooperative

[Docket No. ER03–449–000]

Take notice that on January 27, 2003, Sussex Rural Electric Cooperative (Sussex) submitted for filing and acceptance an agreement for mutual use of facilities with Jersey Central Power & Light pursuant to 205 of the Federal Power Act (FPA), 16 U.S.C. 824d, and 35.12 of the regulations of the Federal Energy Regulatory Commission (Commission), 18 CFR 35.12. Sussex's filing is available for public inspection at its offices in Sussex, New Jersey.

Sussex requests that the Commission accept the agreement with an effective date of July 26, 2002.

Comment Date: February 18, 2003.

11. Pleasants Energy, LLC

[Docket No. ER03–451–000]

Take notice that on January 28, 2003, Pleasants Energy, LLC (Pleasants or the Company) respectfully tendered for filing a rate schedule for reactive power and voltage control from Generation Sources Service. The Company respectfully requests an effective date of April 1, 2003.

Copies of the filing were served upon the PJM Interconnection, L.L.C., Virginia State Corporation Commission, and the North Carolina Utilities Commission.

Comment Date: February 18, 2003.

12. Conjunction LLC

[Docket No. ER03–452–000]

Take notice that on January 27, 2003, on behalf of a yet to be formed subsidiary, submitted for filing an application for authority to sell transmission rights at negotiated rates (application). The application also includes a request for certain limited waivers of the Commission's regulations, as well as a request for Commission action on or before April 15, 2003. The application concerns a proposed transmission facility that will help integrate the upstate and downstate power markets in New York and improve reliability in New York City. The facility will be placed in service in 2005.

Comment Date: February 18, 2003.

13. Valley Electric Association, Inc.

[Docket No. ES03–21–000]

Take notice that on January 23, 2003, Valley Electric Association, Inc. (Valley Electric) submitted an application pursuant to section 204 of the Federal Power Act seeking authorization to make long-term borrowing under the loan agreement with the National Rural Utilities Cooperative Finance Corporation (CFC) in the amount of $39.3 million and to issue its debt under a line of credit with CFC of up to $15 million.

Valley Electric also requests a waiver from the Commission's competitive bidding and negotiated placement requirements at 18 CFR 34.2.

Comment Date: February 18, 2003.

Standard Paragraph

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number filed to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866)208–3676, or for TTY, contact (202)502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. 03–2879 Filed 2–5–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER01–3001–005, *et al.*]

New York Independent System Operator, Inc., *et al.*; Electric Rate and Corporate Filings

January 30, 2003.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. New York Independent System Operator, Inc.

[Docket No. ER01–3001–005]

Take notice that on January 29, 2003, the New York Independent System Operator, Inc. (NYISO) filed revisions to its Open Access Transmission Tariff and its Market Administration and Control Area Services Tariff pertaining to temporary extraordinary procedures, pursuant to the Commission's Order issued on July 19, 2002, in the above-captioned proceeding. The NYISO has requested that the proposed revisions be made effective as of November 1, 2001.

The NYISO has served a copy of this filing upon parties on the official service list maintained by the Commission for the above-captioned proceeding. The NYISO has also served this filing upon all parties that have executed service agreements under the NYISO's Open Access Transmission Tariff or the Market Administration and Control Area Services Tariff and upon the New York State Public Service Commission.

Comment Date: February 19, 2003.

2. Oklahoma Gas and Electric Company

[Docket No. ER02–1420–003, ER02–1420–004, ER02–1402–006]

Take notice that on January 15, 2003, Oklahoma Gas and Electric Company (Company) filed a status report regarding its plans to participate in the regional transmission organization (RTO) to be formed by the proposed merger of the Midwest Independent Transmission System Operator, Inc., (Midwest ISO) and the Southwest Power Pool, Inc., (SPP), to comply with the Federal Energy Regulatory Commission's December 19, 2002, Order in the above-captioned proceeding.

The Company states that a copy of the filing has been served on all parties to this proceeding, and on the Arkansas Public Service Commission and the Oklahoma Corporation Commission.

Comment Date: February 10, 2003.

3. Westar Energy, Inc.

[Docket No. ER02–1420–003, ER02–1420–004, ER02–1420–006]

Take notice that on January 16, 2003, Westar Energy, Inc., and its wholly owned subsidiary, Kansas Gas and Electric Company (collectively referred to as Westar Energy) filed a status report regarding its plans to participate in the regional transmission organization (RT)) to be formed by the proposed merger of the Midwest Independent Transmission System Operator, Inc., (Midwest ISO) and the Southwest Power Pool, Inc., (SPP), to comply with the Federal Energy Regulatory Commission's December 19, 2002, Order in the above-captioned proceeding.

Westar Energy states that a copy of the filing has been served on all parties to the proceeding.

Comment Date: February 11, 2003.

4. Cleco Power LLC

[Docket No. ER03–450–000]

Take notice that on October 29, 2002, Cleco Power, LLC, tendered for filing Third Revised Sheet Nos. 77 and 78, an Attachment E, from Cleco Power's open access transmission tariff, titled "Index

of Point-to-Point Transmission Service Customers", to include Reliant Energy Services, Inc., as a short-term firm and non-firm transmission customer. Cleco Power will provide short-term firm point-to-point transmission service and non-firm point-to-point transmission service to Reliant Energy Services, Inc., under its Open Access Transmission Tariff.

Comment Date: February 18, 2003.

5. Allegheny Power System, Inc.

[Docket No. ER03–453–000]

Take notice that on January 28, 2003, Allegheny Power System, Inc., on behalf of certain of its operating companies, filed a notice of termination of Schedule 9 under the Interconnection Facilities Agreement among Pennsylvania Electric Company and Metropolitan Edison Company, subsidiaries of General Public Utilities Energy, Inc. (now FirstEnergy Corporation) and West Penn Power Company and The Potomac Edison Company, operating companies of the Allegheny Power.

Comment Date: February 18, 2003.

6. Southern Company Services, Inc.

[Docket No. ER03–454–000]

Take notice that on January 29, 2003, Southern Company Services, Inc. (SCS), acting on behalf of Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, and Savannah Electric and Power Company (collectively Southern Companies), filed three rollover transmission service agreements under the Open Access Transmission Tariff of Southern Companies (FERC Electric Tariff, Fourth Revised Volume No. 5) (Tariff). Specifically, these agreements are for firm point-to-point transmission service for rollover service with Carolina Power & Light Company (First Revised Service Agreement No. 444), Calpine Energy Services, LP (First Revised Service Agreement No. 441), and Duke Energy Corporation (First Revised Service Agreement No. 446).

Comment Date: February 19, 2003.

7. Duke Energy Corporation

[Docket No. ER03–455–000]

Take notice that on January 29, 2003, Duke Energy Corporation filed an amendment to Appendix B to its contract with the Southeastern Power Administration.

Comment Date: February 19, 2003.

8. Westar Energy, Inc.

[Docket No. OA03–2–000]

Take notice that on January 27, 2003, Westar Energy, Inc. (Westar), filed with the Federal Energy Regulatory Commission (Commission), pursuant to section 37.4 of the Commission's regulations, proposed revisions to its standards of conduct on file with the Commission as required by Order 889, Open Access Same-time Information Systems (Formerly Real-time Information Network) and Standards of Conduct, FERC Stats. & Regs. (Regulations Preambles 1991–1996) ¶ 31,035 (1996), Order 889-A, III FERC Stats. & Regs. (Regulations Preambles) ¶ 31,049, Order 889-B, 81 FERC ¶ 61,253 (1997).

Comment Date: February 26, 2003.

Standard Paragraph

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number filed to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866)208–3676, or for TTY, contact (202)502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. 03–2878 Filed 2–5–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Comments, Motions to Intervene, and Protests

January 30, 2003.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection: a. *Type of Application:* Preliminary permit. b. *Project No.:* 12356–000. c. *Date filed:* August 21, 2002. d. *Applicant:* Universal Electric Power Corporation. e. *Name and Location of Project:* The Kentucky L&D #10 Hydroelectric Project would be located on the Kentucky River in Madison County, Kentucky. The project would utilize the U.S. Army Corps of Engineers' existing Kentucky River Lock and Dam No. 10. f. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)—825(r). g. *Applicant Contact:* Mr. Raymond Helter, Universal Electric Power Corporation, 1145 Highbrook Street, Akron, OH 44301, (330) 535–7115. h. *FERC Contact:* James Hunter, (202) 502–6086. i. *Deadline for filing comments, protests, and motions to intervene:* 60 days from the issuance date of this notice.

The Commission's rules of practice and procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency. j. *Description of Project:* The proposed project, using the Corps' existing Kentucky River Lock and Dam No. 10, would consist of: (1) two 50-foot-long, 8-foot-diameter steel penstocks, (2) a powerhouse containing two generating units with a total installed capacity of 2.55 megawatts, (3) a 300-foot-long, 14.7-kilovolt transmission line connecting to an existing power line, and (4) appurtenant facilities. The project would have an average annual generation of 16 gigawatthours. k. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail

ferconlineSupport@ferc.gov. For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item g. above. l. Competing Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (*see* 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36. m. Competing Development Application—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36. n. Notice of Intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice. o. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the applicant would decide whether to proceed with the preparation of a development application to construct and operate the project. p. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of rules of practice and procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application. q. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by sending an original and eight copies to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings. Please include the project number (P–12356–000) on any comments or motions filed. r. Agency Comments—Federal, State, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. 03–2880 Filed 2–5–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Comments, Motions to Intervene, and Protests

January 30, 2003.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection: a. *Type of Application:* Preliminary permit. b. *Project No.:* 12364–000. c. *Date filed:* September 12, 2002. d. *Applicant:* Rough River Hydro, LLC. e. *Name and Location of Project*: The Rough River Dam Hydroelectric Project is proposed to be located at the U.S. Army Corps of Engineers' existing Rough River Dam on the Rough River in Grayson County, Kentucky. f. *Filed Pursuant to*: Federal Power Act, 16 U.S.C. 791(a)—825(r). g. *Applicant Contact:* Mr. Brent L. Smith, Northwest Power Services, Inc., P.O. Box 535, Rigby, ID 83442, (208) 745–0834. h. *FERC Contact:* James Hunter, (202) 502–6086. i. *Deadline for filing comments, protests, and motions to intervene*: 60 days from the issuance date of this notice.

The Commission's rules of practice and procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency. j. *Description of Project*: The proposed project, using the Corps' existing Rough River Dam, would consist of: (1) a 200-foot-long, 72-inch-diameter steel penstock, (2) a powerhouse containing one generating unit with an installed capacity of 2.3 megawatts, (3) a 1-mile-long, 15-kilovolt transmission line connecting to an existing power line, and (4) appurtenant facilities. The project would have an average annual generation of 15 gigawatthours. k. These filings are available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *ferconlineSupport@ferc.gov*. For TTY, (202) 502–8659. Copies are also available for inspection and

reproduction at: Ecosystems Research Institute, Inc., 975 South State Highway, Logan, UT 84321. l. Competing Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (*see* 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36. m. Competing Development Application—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36. n. Notice of Intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice. o. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the applicant would decide whether to proceed with the preparation of a development application to construct and operate the project. p. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of rules of practice and procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application. q. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing an original and eight copies to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the applicant specified in the particular application.

Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings. Please include the project number (P–12364–000) on any comments or motions filed. r. Agency Comments—Federal, State, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. 03–2881 Filed 2–5–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Comments, Motions to Intervene, and Protests

January 30, 2003.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection: a. *Type of Application:* Preliminary permit. b. *Project No.:* 12403–000. c. *Date filed:* October 30, 2002. d. *Applicant:* Universal Electric Power Corporation. e. *Name and Location of Project:* The Hildebrand L&D Hydroelectric Project would be located on the Monongahela River in Monongalia County, West Virginia. The project would utilize the U.S. Army Corps of Engineers' existing Hildebrand Lock and Dam. f. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)—825(r). g. *Applicant Contact:* Mr. Raymond Helter, Universal Electric Power Corporation, 1145 Highbrook Street, Akron, OH 44301, (330) 535–7115. h. *FERC Contact:* James Hunter, (202) 502–6086. i. *Deadline for Filing Comments, Protests, and Motions to intervene:* 60 days from the issuance date of this notice.

The Commission's rules of practice and procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency. j. *Description of Project:* The proposed project, using the Corps' existing Hildebrand Lock and Dam, would consist of: (1) five 50-foot-long, 96-inch-diameter steel penstocks, (2) a powerhouse containing a turbine generating system with a total installed capacity of 6.5 megawatts, (3) a 400-yard-long, 14.7-kilovolt transmission line connecting to an existing power line, and (4) appurtenant facilities. The project would have an average annual generation of 40 gigawatthours. k. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail

ferconlineSupport@ferc.gov. For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item g. above. l. Competing Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (*see* 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36. m. Competing Development Application—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application.

A competing license application must conform with 18 CFR 4.30(b) and 4.36. n. Notice of Intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice. o. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project. p. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of rules of practice and procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application. q. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers.

Any of the above-named documents must be filed by an original and eight copies to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings. Please include the project number (P–12403–000) on any comments or motions filed. r. Agency Comments—Federal, State, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. 03–2882 Filed 2–5–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application to Amend License and Soliciting Comments, Motions to Intervene, and Protests

January 30, 2003.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection: a. *Application Type*: Change in project boundary. b. *Project No.*: 1984–092. c. *Date Filed:* December 5, 2002; January 7, 2003 (supplement). d. *Applicant:* Wisconsin River Power Company (WRPC). e. *Name of Project:* Petenwell and Castle Rock Hydroelectric Project. f. *Location:* The project is located on the Wisconsin River in Adams, Wood, and Juneau Counties, Wisconsin. The land that would be excluded from the project by the proposed boundary change is located adjacent to Plank Hill Lane on the Petenwell Flowage in Wood County. g. *Filed Pursuant to*: Federal Power Act, 16 U.S.C. 791(a)-825(r). h. *Applicant Contact:* Shawn Puzen, P.O. Box 19001, Green Bay, Wisconsin 54307–9001. Phone: (920) 433–1094. i. *FERC Contact:* Steve Naugle, *steven.naugle@ferc.gov*, 202–502–6061. j. *Deadline for Filing Comments and or Motions*: February 21, 2003. k. *Description of the Application*: WRPC requests Commission approval to change the project boundary to remove a 4.37-acre parcel of land from the project. WRPC intends to convey the land parcel to Mr. Richard Skibba, an adjacent landowner, for the construction of a home. l. *Locations of the Application*: This filings are available for review at the Commission in the Public Reference Room or may viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above. m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission. n. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of rules of practice and procedure, 18 CFR 385.210, .211, .214.

In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application. o. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by sending an original and eight copies to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the applicant specified in the particular application. p. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. Please reference "Petenwell and Castle Rock Project, FERC Project No.1984–092" on any comments or motions filed. q. Agency Comments—Federal, State, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. 03–2883 Filed 2–5–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Request to Use Alternative Procedures in Preparing a License Application

January 30, 2003.

Take notice that the following request to use alternative procedures to prepare a license application has been filed with the Commission. a. *Type of Application:* Request to use alternative procedures to prepare a new license application. b. *Project No.:* 659. c. *Date filed:* January 22, 2003. d. *Applicant:* Crisp County Power Commission. e. *Name of Project:* Lake Blackshear. f. *Location:* On the Flint River, in Worth, Lee, Sumter, Dooly, and Crisp Counties, Georgia. The project does not occupy federal lands. g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)—825(r). h. *Applicant Contact:* Steve Rentfrow, General Manager, Crisp County Power Commission, P.O. Box 1218, Cordele, GA 31010; phone (229) 273–3811; e-mail *srentfrow@crispcountypower.com.* i. *FERC Contact:* Janet Hutzel at (202) 502–8675; e-mail *janet.hutzel@ferc.gov.* j. *Deadline for Comments:* 30 days from the date of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

Comments may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the "e-Filing" link. k. The existing 15.2 MW project consists of: (1) A 415-foot-long, 49-foot-high gated spillway; (2) a 630-foot-long auxiliary spillway; (3) a 3,410-foot-long north embankment; (4) a 680-foot-long south embankment; (5) a 8,700-acre impoundment at a full pool elevation of 237 feet mean sea level; (6) a powerhouse containing four turbines; (7) a 1,400-foot-long, 46-kV transmission line; and (8) appurtenant facilities. No new facilities are proposed. l. A copy of the request to use alternative procedures is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above. m. Crisp County Power Commission (CCPC) has demonstrated that it has made an effort to contact all Federal and State resources agencies, non-governmental organizations (NGO), and others affected by the project. CCPC has also demonstrated that a consensus exists that the use of alternative procedures is appropriate in this case. CCPC has submitted a communications protocol that is supported by the stakeholders.

The purpose of this notice is to invite any additional comments on CCPC's request to use the alternative procedures, pursuant to section 4.34(i) of the Commission's regulations. Additional notices seeking comments on the specific project proposal, interventions and protests, and recommended terms and conditions will be issued at a later date. CCPC will complete and file a preliminary Environmental Assessment, in lieu of Exhibit E of the license application. This differs from the traditional process, in which an applicant consults with agencies, Indian tribes, NGOs, and other parties during preparation of the license application and before filing the application, but the Commission staff performs the environmental review after the application is filed. The alternative procedures are intended to simplify and expedite the licensing process by combining the pre-filing consultation and environmental review processes into a single process, to facilitate greater participation, and to improve communication and cooperation among the participants.

Magalie R. Salas,

Secretary.

[FR Doc. 03–2884 Filed 2–5–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AD03–4–000]

Credit Issues in Energy Markets—Clearing and Other Solutions; Notice and Agenda for Technical Conference

January 30, 2003.

As announced, the Federal Energy Regulatory Commission (FERC) and the Commodity Futures Trading Commission (CFTC) are holding a joint technical conference on credit issues & potential solutions in energy markets. The conference is scheduled for Wednesday, February 5, 2003, at FERC headquarters, 888 First Street, NE., Washington, DC, in the Commission Meeting Room (Room 2C).

Attached is the Agenda for this conference. This one-day conference will begin at 9 a.m. and will conclude at about 4:30 p.m.

This conference will provide education on potential credit solutions, particularly clearing. It will cover clearing fundamentals, clearing regulation, clearing alternatives, other

credit solutions and implementation. Speakers include representatives of clearing providers and other experts who will discuss the issues in depth, as well as FERC and CFTC staff. All interested parties are invited to attend. There is no registration fee.

Interested parties wishing to file comments may do so under this Docket Number by February 26, 2003. Filings will be placed in the Federal Energy Regulatory Record Information System (FERRIS) data base which is accessible to everyone through the FERC Web site.

As previously announced, Capitol Connection will cover this meeting live over the Internet, as well as via telephone and satellite. For a fee, you can receive these meetings in your office, at home, or anywhere in the world. To find out more about Capitol Connection's live Internet, phone bridge, or satellite coverage, contact David Reininger or Julia Morelli at (703) 993–3100, or visit *http://www.capitolconnection.gmu.edu*. Also, the conference will be transcribed. Those interested in obtaining transcripts of the conference need to contact Ace Federal Reporters at (202) 347–3700 or (800) 336–6646. Transcripts will be available to view electronically under this docket number seven days after the conference. Anyone interested in purchasing videotapes of the meeting should call VISCOM at (703) 715–7999.

For additional information, please contact Saida Shaalan of FERC's Office of Market Oversight & Investigations at 202–502–8278 or by e-mail, *Saida.Shaalan@ferc.gov*.

Magalie R. Salas,

Secretary.

Commodity Futures Trading Commission

Credit Issues in Energy Markets Clearing & Other Solutions

February 5, 2003.

Agenda for Technical Conference

Welcoming Remarks: 9–9:30 a.m.

Pat Wood III, Chairman of the Federal Energy Regulatory Commission (FERC)

James E. Newsome, Chairman of the Commodity Futures Trading Commission (CFTC)

Overview:

Bill Hederman, Director of the Office of Market Oversight and Investigations (OMOI)—FERC Jane Kang Thorpe, Director of Division of Clearing & Intermediary Oversight (DCIO)—CFTC Panel I: Clearing Fundamentals & Oversight 9:30–11:30 am Moderator: Jane Kang Thorpe, Director of Division of Clearing & Intermediary Oversight (DCIO)

This panel will focus on issues such as the benefits of centralized clearing, the process of clearing and how derivatives clearing organizations are regulated by the CFTC.

John Davidson, Managing Director, Morgan Stanley

Ananda Radhakrishnan, Special Counsel, CFTC–DCIO

John Lawton, Deputy Director, CFTC–DCIO

Lunch 11:30 a.m-12:30 p.m.

Panel II: Clearing Models in the Energy Markets 12:30–2:30 p.m.

Moderator: Jane Kang Thorpe, Director of Division of Clearing & Intermediary Oversight (DCIO)

This panel will discuss their clearing models and the protections they provide.

Neal Wolkoff, Chief Operating Officer and Executive Vice President, New York Mercantile Exchange (NYMEX)

Andrew Lamb, Deputy Chief Executive and Managing Director of Risk, The London Clearing House, Ltd.

Dennis Dutterer, President and Chief Executive Officer, Board of Trade Clearing Corporation

Dennis Earle, President, EnergyClear Corporation

David Goone, Senior Vice President, InterContinental Exchange (ICE)

Robert Stewart, President, Merchant's Exchange

Break 2:30–2:45 p.m.

Panel III: Other Credit Solutions & Implementation2:45–4:30 p.m.

This panel will explore different industry proposed solutions to mitigate credit risk.

Steven Bunkin, Vice President and Associate General Counsel, Goldman Sachs/ J. Aron, and Co-Chair of ISDA's North American Energy & Developing Products Committee

Harold Loomis, Credit Manager, PJM Interconnection, L.L.C.

Vincent Kaminski, Managing Director, Citadel Investment Group

Robert Stibolt, Senior Vice President, Risk Management & Trade Coordination, Tractebel North America, and Co-Chair of Credit Committee, Committee of Chief Risk Officers (CCRO)

Edward Comer, Vice President and General Counsel, Edison Electric Institute (EEI)

Carol St. Clair, Director and Senior Counsel, UBS Warburg Energy, L.L.C.

Craig Goodman, President, National Energy Marketers Association

[FR Doc. 03–2871 Filed 2–5–03; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[Docket ID Number 2002–0011; FRL–7448–5]

Agency Information Collection Activities; Submission of EPA ICR Number 1156.09 (OMB Control Number 2060–0059) to OMB for Review and Approval; Comment Request

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: NSPS for Synthetic Fiber Production Facilities (40 CFR part 60, subpart HHH) (OMB Control Number 2060–0059 and EPA ICR Number 1156.09). The ICR, which is abstracted below, describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before March 10, 2003.

ADDRESSES: Follow the detailed instructions in the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: María Malavé, Compliance Assessment and Media Program Division (Mail Code 2223A), Office of Compliance, United States Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone number: (202) 564–7027; fax number: (202) 564–0050; e-mail address: *malave.maria@epa.gov*.

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On June 20, 2002 (67 FR 41981), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments.

EPA has established a public docket for this ICR under Docket ID Number OECA–2002–0011, which is available for public viewing at the Enforcement and Compliance Docket Information Center (ECDIC), in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Avenue, NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the ECDIC

Docket is (202) 566–1514. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket.* Use EDOCKET to submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA and OMB within 30 days of this notice, and according to the following detailed instructions: (1) Submit your comments to EPA online using EDOCKET (our preferred method), by e-mail to *docket.oeca@epa.gov*, or by mail to: EPA Docket Center, Environmental Protection Agency, Mailcode: 2201T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, and (2) Mail your comments to OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, *see* EPA's **Federal Register** notice describing the electronic docket at 67 FR 38102 (May 31, 2002), or go to *http://www.epa.gov/edocket.*

Title: NSPS for Synthetic Fiber Production Facilities (40 CFR part 60, subpart HHH) (OMB Control Number 2060–0059 and EPA ICR Number 1156.09). This is a request to renew an existing approved collection that is scheduled to expire on January 31, 2003. Under the OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB.

Abstract: The NSPS for Synthetic Fiber Production Facilities, published at 40 CFR part 60, subpart HHH, were proposed on November 23, 1982, and promulgated on April 5, 1984. These standards apply to affected facilities at synthetic fiber production facilities including: each solvent-spun synthetic fiber process that produces more than 500 megagrams of fiber per year and that commenced construction or reconstruction after November 23, 1982. The provisions of this subpart do not apply to any facility that uses the reaction spinning process to produce spandex fiber or the viscose process to produce rayon fiber, nor to facilities that commence modification but not reconstruction after November 23, 1982. Volatile organic compounds (VOCs) are the pollutants regulated under this subpart. This information is being collected to assure compliance with 40 CFR part 60, subpart HHH.

Owners or operators of the affected facilities described must make one-time-only initial notifications and report on the results of the initial performance test. Owners or operators also are required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. Monitoring requirements specific to synthetic fiber production facilities provide information on VOC emissions. Owners or operators of affected facilities are required to install, calibrate, maintain, and operate a continuous monitoring system for the measurement of makeup solvent and solvent feed. These values shall be used in calculating monthly VOC emissions. Section 60.603(b)(1) provides three options for determining solvent feed.

Each owner or operator calculates VOC emissions every month from the amount of solvent feed and makeup solvent used in each affected facility. These values are used to calculate compliance with the emission limitations on a six-month rolling average basis.

Also required are semiannual reports, and quarterly reports of instances of excess emissions. The owner or operator subject to the provisions of this part shall maintain a file of these measurements, and retain the file for at least two years following the date of such measurements. Responses to this collection of information are mandatory and are being collected to assure compliance with 40 CFR part 60, subpart HHH. All reports are sent to the delegated State or Local authority. In the event that there is no such delegated authority, the reports are sent directly to the EPA Regional Office. These notifications, reports, and records are essential in determining compliance. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15, and are identified on the form and/or instrument, if applicable.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average approximately 29 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Synthetic fiber production facilities.

Estimated Number of Respondents: 25.

Frequency of Response: Initial, quarterly and semiannual.

Estimated Total Annual Hour Burden: 1,838.

Estimated Total Annualized Cost: $293,000 of which $188,000 are O&M annual costs.

There is a decrease of 848 hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens. This is due to a decrease in the number of sources and the assumption that no new sources will become subject to the standard. The estimate on the number of sources was based on the most recent data on major sources subject to the NSPS program for the corresponding SIC codes subject to this rule available on the EPA AFS database.

Dated: January 29, 2003.

Doreen Sterling,

Acting Director, Collection Strategies Division.

[FR Doc. 03–2937 Filed 2–5–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7448–4]

Proposed Settlement Agreement, Clean Air Act Petition for Review

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed settlement agreement; request for public comment.

SUMMARY: In accordance with section 113(g) of the Clean Air Act, as amended ("Act"), 42 U.S.C. 7413(g), notice is hereby given of a proposed Settlement Agreement. On December 18, 2001, the Sierra Club ("Sierra Club") and Group Against Smog and Pollution, Inc. ("GASP") filed a petition in the United States Court of Appeals for the Third Circuit for review of the Environmental Protection Agency's ("EPA") final action redesignating the Pittsburgh-Beaver Valley Ozone Nonattainment Area (the "Pittsburgh area") to attainment of the one-hour National Ambient Air Quality Standard ("NAAQS") for ground-level ozone, and approving the maintenance plan for the Pittsburgh area as a revision to the Pennsylvania State Implementation Plan (SIP) pursuant to the Act. *Sierra Club* v. *EPA*, No. 01–4426 (3rd Cir.). On January 22, 2003, the respondents EPA and EPA Administrator Christine T. Whitman and the petitioners Sierra Club and GASP executed the proposed Settlement Agreement. The Settlement Agreement provides for holding the petition for review in abeyance while the Commonwealth of Pennsylvania has an opportunity to adopt and EPA has an opportunity to approve revisions to the contingency measures portion of the Pittsburgh area maintenance plan. Adoption and approval of the revisions described in Attachment A to the proposed Settlement Agreement will result in a joint motion to dismiss the petition. The agreement further provides for payment in settlement of claims for costs of litigation, including reasonable attorney's fees and expenses.

DATES: Written comments on the proposed settlement agreement must be received by March 10, 2003.

ADDRESSES: Written comments should be sent to Kendra Sagoff, Air and Radiation Law Office (2344A), Office of General Counsel, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20004. Copies of the proposed Settlement Agreement are available from Phyllis J. Cochran, (202) 564–5566.

FOR FURTHER INFORMATION CONTACT: Kendra Sagoff at (202) 564–5566.

SUPPLEMENTARY INFORMATION: On October 19, 2001, EPA published a **Federal Register** notice redesignating the Pittsburgh area to attainment for the one-hour ozone standard, and approving a revision to the area's maintenance plan as a revision to the SIP. 66 FR 53094. On December 18, 2001, Sierra Club and GASP filed a petition for review of this action in the United States Court of Appeals for the Third Circuit, contending that the redesignation did not meet statutorily-required prerequisites for redesignation. *Sierra Club* v. *EPA*, No. 01–4426. The Commonwealth of Pennsylvania and the Southwestern Pennsylvania Growth Alliance were granted leave to participate as intervenors. Briefing was stayed pending settlement discussions.

The proposed Settlement Agreement, which was executed on January 22, 2003, provides for a stay of proceedings to allow the Commonwealth of Pennsylvania to submit to EPA, not later than May 1, 2003, a revision to the Pennsylvania contingency measures portion of the maintenance plan SIP that adds additional contingency measures and procedures for implementing them. The contingency measures are outlined in Attachment A to the proposed Settlement Agreement. The Agreement further allows EPA an opportunity to sign a final approval of the revision no later then February 1, 2004, to be forwarded within five business days for publication in the **Federal Register**, and to sign a final approval of the final rule in finally adopted form, that is referenced in paragraph 1(b) of Attachment A, no later than November 1, 2004. EPA must also provide status reports at 120-day intervals. (In an order dated January 2, 2003, the Court unilaterally changed the interval to 60-days from the date of the Court's order until the settlement agreement has been finalized and implemented.) Petitioners agree not to challenge in any court or administrative proceeding the validity of any EPA action fully approving these revisions. Within 30 days of November 1, 2004, the parties will file a joint stipulation dismissing the petition in accordance with Rule 42 of the Federal Rules of Appellate Procedure if EPA has published the final rulemakings fully approving the revisions and the stay of the litigation has not been lifted. Finally, EPA agrees to pay, and the Petitioners agree to accept, the sum of $30,987.00 in full settlement of all claims by Petitioners for their costs of litigation (including reasonable attorney's fees and expenses).

For a period of thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the proposed Settlement Agreement from persons who were not named as parties or intervenors to the litigation in question. EPA or the Department of Justice may withdraw or withhold consent to the proposed Settlement Agreement if the comments disclose facts or considerations that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act. Unless EPA or the Department of Justice determine, following the comment period, that consent is inappropriate, the Settlement Agreement will be final.

Dated: January 28, 2003.

Lisa K. Friedman,

Associate General Counsel.

[FR Doc. 03–2934 Filed 2–5–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2002–0018; FRL–7289–4]

Pesticide Product; Registration Applications

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of applications to register pesticide products containing new active ingredients not included in any previously registered products pursuant to the provisions of section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

DATES: Written comments, identified by the docket ID number OPP–2002–0018, must be received on or before March 10, 2003.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: The Regulatory Action Leader, Biopesticides and Pollution Prevention Division (7511C), listed in the table in this unit:

Regulatory Action Leader	Office address/telephone no.	E-mail address
Leonard Cole	1921 Jefferson Davis Highway, CM 2; Arlington, VA 22202; 703.305.5412	*cole.leonard@epa.gov*

SUPPLEMENTARY INFORMATION:

I. General Information

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide. Potentially affected entities may include, but are not limited to:

Categories	NAICS codes	Examples of potentially affected entities
Industry	111	Crop Production
	112	Animal Production
	311	Food Manufacturing
	32532	Pesticide Manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. To determine whether you or your business may be affected by this action, you should carefully examine the applicability provisions in. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of This Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPP–2002–0018. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the Docket will be scanned and placed in EPA's electronic public docket: Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and To Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically.* If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic

public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket*, and follow the online instructions for submitting comments. Once in the system, select "search," and then key in docket ID number OPP–2002–0018 The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by e-mail to *opp-docket@epa.gov*, Attention: Docket ID Number OPP–2002–0018. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail.* Send your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency (7502C), 1200 Pennsylvania Ave., NW., Washington, DC, 20460–0001, Attention: Docket ID Number OPP–2002–0018.

3. *By hand delivery or courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA., Attention: Docket ID Number OPP–2002–0018. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

D. How Should I Submit CBI To the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Offer alternative ways to improve the registration activity.
7. Make sure to submit your comments by the deadline in this notice.
8. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Registration Applications

EPA received applications as follows to register pesticide products containing active ingredients not included in any previously registered products pursuant to the provision of section 3(c)(4) of FIFRA. Notice of receipt of these applications does not imply a decision by the Agency on the applications.

Products Containing Active Ingredients not Included in any Previously Registered Products

File Symbol: 68467–G. Applicant: Dow AgroSciences, 9330 Zionsville Road, Indianapolis, IN 46268–1054. Product Name: Bacillus Thuringiensis Cry 1F(Synpro)/Cry 1Ac(synpro constuct 281/3006 Insectical Crystal Protein As Expressed in Cotton. Proposed Classification/Use: Plant-Incorporated Protectant.

List of Subjects

Environmental protection, Pesticides and pest.

Dated: January 26, 2003.

Janet L. Andersen,

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. 03–2935 Filed 2–5–03; 8:45 am]
BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7449–3]

Emergency Planning and Notification; Hazardous Chemical Reporting: Community Right-to-Know; Request for Comment on Change of Contractor Handling Trade Secret Claims

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces a change in location and contractor designated to manage the trade secret claims submitted for reports under Emergency Planning and Notification and Hazardous Chemical Reporting for Community Right-to-Know pursuant to 40 CFR part 350. In compliance with 40 CFR part 350 ("Trade Secrecy Claims for Emergency Planning and Community Right-to-Know Information") facilities providing emergency planning notification and relevant information to the State Emergency Response Commission and Local Emergency Planning Committee under section 303(d)(2) and (d)(3) of EPCRA; facilities submitting Material Safety Data Sheets or lists of those chemicals submitted in place of the MSDSs under section 311 of EPCRA; facilities submitting Emergency and Hazardous Chemical Inventory Forms under section 312 of EPCRA may be eligible to claim Trade

Secret for the specific chemical identity of a chemical that is reported in these reports. Pursuant to 40 CFR 350.23 ("Disclosure to authorized representatives"), information entitled to trade secret or confidential treatment may not be disclosed by the Agency to the Agency's authorized representative until each affected submitter has been furnished notice of the contemplated disclosure by the EPA program office and has been afforded a period found reasonable by that office (not less than five working days) to submit its comments. Pursuant to this **Federal Register** Notice, comments are limited to the change of contractor handling trade secret and confidential information submitted under 40 CFR part 350. The new mailing address will soon be announced in a **Federal Register** Notice and also will be posted on the Chemical Emergency Preparedness and Prevention Office Web site *http://www.epa.gov/ceppo/*.

DATES: Comments, identified by the docket control number SFUND–2003–0002, must be submitted on or before February 11, 2003.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit III of the Supplementary Information section of this notice.

FOR FURTHER INFORMATION CONTACT: For general information, contact the Emergency Planning and Community Right-to-Know Hotline at (800) 424–9346, TDD (800) 553–7672, *http://www.epa.gov/epaoswer/hotline/*. For technical information about this change in contractor and location for submitting trade secrets, contact: Dorothy McManus, Chemical Emergency Preparedness and Prevention Office (5104A), Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington DC 20460, Telephone: 202–564–8606; Fax: 202–564–8222; email: *mcmanus.dorothy@epa.gov*. For questions on the applicability of provisions contained in 40 CFR part 350, 40 CFR part 355, and 40 CFR part 370, contact: Sicy Jacob, Chemical Emergency Preparedness and Prevention Office (5104A), Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington DC 20460, Telephone: 202–564–8019; Fax: 202–564–8233; email: *jacob.sicy@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. Does This Notice Apply to Me?

A. Affected Entities: Entities that will be affected by this section are those facilities subject to 40 CFR 355.30 Emergency Planning and 40 CFR part 370 Hazardous Chemical Reporting: Community Right-to-Know.

To determine whether your facility is affected by this action, you should carefully examine the applicability provisions at 40 CFR part 350, 40 CFR part 355, and 40 CFR part 370. If you have any questions regarding the applicability of this action to a particular entity, consult the person(s) listed in the **FOR FURTHER INFORMATION CONTACT** section.

II. How Can I Get Copies of This Document and Other Related Information?

A. Docket: EPA has established an official public docket for this action under Docket ID No. SFUND–2003–0002.

The public docket includes information considered by EPA in developing this action, including the documents listed below, which are physically located in the docket. In addition, interested parties should consult documents that are referenced in the documents that EPA has placed in the docket, regardless of whether these referenced documents are physically located in the docket. For assistance in located documents that are referenced in documents that EPA has placed in the docket, but that are not physically located in the docket, please consult the person(s) in the preceding **FOR FURTHER INFORMATION CONTACT** section. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the EPA Docket Center, (EPA/DC) EPA West, Room B102, 1301 Constitution Avenue, NW., Washington DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–0274.

B. Electronic Access. You may access this Federal Register document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in section II.A. of this document. Once in the system, select "search," then key in the appropriate docket identification number.

III. How Can I Respond to This Notice?

A. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. Be sure to identify the appropriate docket control number (*i.e.*, SFUND–2003–0002) in your correspondence.

1. *By Mail.* All comments should be sent in triplicate to : Chemical Emergency Preparedness and Prevention Office, Mail code 5104 A, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Ariel Rios Building, Washington DC 20460.

2. *In person or by courier.* Comments may be delivered in person or by courier to: EPA Docket Center, (EPA/DC) EPA West, Room B102, 1301 Constitution Avenue, NW., Washington DC 20460. The Docket Center is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the docket is (202) 566–1744.

3. *Electronically.* Submit your comments electronically by e-mail to: *"superfund.docket@epa.gov"*. Please note that you should not submit any information electronically that you consider to be CBI. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on standard computer disks in WordPerfect 6.1/8.0 or ASCII file format. All comments and data in electronic form must be identified by the docket control number SFUND–2003–0002. Electronic comments on this document may also be filed online at many Federal Depository Libraries.

B. How Should I Handle CBI Information That I Want To Submit to the Agency?

All comments which contain information claimed as CBI must be clearly marked as such. Three sanitized copies of any comments containing information claimed as CBI must also be submitted and will be placed in the public record for this document. Persons submitting information on any portion of which they believe is entitled to treatment as CBI by EPA must assert a business confidentiality claim in

accordance with 40 CFR 2.203(b) for each such portion. This claim must be made at the time that the information is submitted to EPA. If a submitter does not assert a confidentiality claim at the time of submission, EPA will consider this as a waiver of any confidentiality claim and the information may be made available to the public by EPA without further notice to the submitter.

IV. What Is the General Background for This Action?

The Emergency Planning Notification (codified in 40 CFR part 355) and the Hazadous Chemical Reporting (codified in 40 CFR part 370) are mandated by the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA). EPCRA established a program designed to require state and local planning and preparedness for spills or releases of hazardous substances and to provide the public and local governments with information concerning potential chemical hazards in their communities. Under EPCRA section 303, (codified in 40 CFR part 355) a facility which has present an Extremely Hazardous Substance in excess of its threshold planning quantity (TPQ) must notify the State emergency response commission and local emergency planning committee as well as participate in local emergency planning activities. Under EPCRA sections 311 and 312, (codified in 40 CFR part 370), a facility is required to submit an inventory of hazardous chemicals present at their site at or above the specified threshold quantities.

Under section 322 of EPCRA (codified in 40 CFR part 350), facilities submitting reports under sections 303, 311 and 312 of EPCRA, may be eligible to claim Trade Secret for the specific chemical identity of the extremely hazardous substance or the hazardous chemical being reported. Pursuant to 40 CFR 350.23 ("Disclosure to authorized representatives"), information entitled to trade secret or confidential treatment may not be disclosed by the Agency to the Agency's authorized representative until each affected submitter has been furnished notice of the contemplated disclosure by the EPA program office and has been afforded a period found reasonable by that office (not less than five working days) to submit its comments. Such notice shall include a description of the information to be disclosed, the identity of the contractor, subcontractor, or grantee, the contract, subcontract, or grant number, if any, and the purposes to be served by the disclosure. This notice may be published in the **Federal Register** or may be sent to individual submitters.

The contract to manage the trade secret submissions under sections 303, 311, 312 and 313 was recompeted in 1998 and was awarded to the Computer Based Systems Incorporated, now known as Titan Systems, Inc. This contract ended on January 31, 2003. The new contract was transitioned to Computer Sciences Corporation (CSC) (GSA Contract GSOOT99ALD0203) at the end of December 2002. This new facility is located in New Carrollton, MD. All trade secret submissions for sections 303, 311, 312 and 313 pursuant to 40 CFR part 350 will be managed by CSC. (*See* 67 FR 65566, Oct. 25, 2002, for notice authorized representative to receive claims of trade secrecy under EPCRA section 313.)

In accordance with 40 CFR 350.23, EPA has determined that CSC and their subcontractors require access to trade secret and confidential information submitted under 40 CFR part 350 in order to receive, manage, process, and safely store such information. The contractor's and subcontractor's personnel will be required to sign a "Confidentiality Agreement" prior to being permitted access to trade secret and confidential information submitted under 40 CFR part 350. All contractor and subcontractor access to trade secrets and confidential information filed for sections 303, 311, 312 and 313 of EPCRA will take place at the contractor's facility in New Carrollton, MD. The contractor will have appropriate procedures and facilities in place to safeguard these trade secrets and confidential information submissions to which the contractor and subcontractors have access during the term of this contract.

Dated: February 3, 2003.

Deborah Y. Dietrich,

Director, Chemical Emergency Preparedness and Prevention Office.

[FR Doc. 03–3062 Filed 2–5–03; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[Report No. AUC–02–48–B (Auction No. 48); DA 02–3560]

Lower and Upper Paging Bands Auction Scheduled for May 13, 2003; Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments and Other Auction Procedures

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This document announces the procedures and minimum opening bids for the upcoming auction of licenses for the lower and upper paging bands scheduled for May 13, 2003. This document is intended to familiarize prospective bidders with the procedures and minimum opening bids for this auction.

DATES: Auction No. 48 is scheduled to begin on May 13, 2003.

FOR FURTHER INFORMATION CONTACT: *Auctions and Industry Analysis Division:* Rosemary Cabral, Legal Branch, at (202) 418–0660; Roy Knowles or Barbara Sibert, Auctions Operations Branch, at (717) 338–2888, *Media Contact:* Lauren Kravetz at (202) 418–7944, *Commercial Wireless Division:* Amal Abdallah, Policy and Rules Branch, at (202) 418–7307; Bettye Woodward or Dwain Livingston, Licensing and Technical Analysis Branch, at (202) 418–0620.

SUPPLEMENTARY INFORMATION: This is a summary of the *Auction No. 48 Procedures Public Notice* released on December 20, 2002. The complete text of the *Auction No. 48 Procedures Public Notice,* including attachments and statements, is available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554. The *Auction No. 48 Procedures Public Notice* may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone (202) 863–2893, facsimile (202) 863–2898, or via e-mail *qualexint@aol.com.*

I. General Information

A. Introduction

1. By the *Auction No. 48 Procedures Public Notice,* the Wireless Telecommunications Bureau ("Bureau") announces the procedures and minimum opening bids for the upcoming auction of licenses for the lower and upper paging bands (Auction No. 48) scheduled for May 13, 2003. In accordance with the Balanced Budget Act of 1997, the Bureau released a public notice on November 7, 2002, seeking comment on reserve prices or minimum opening bids and the procedures to be used in Auction No. 48. The Bureau received two comments and no reply comments in response to the *Auction No. 48 Comment Public Notice,* 67 FR 72683 (December 6, 2002).

i. Background of Proceeding

2. In the *Paging Second Report and Order*, 62 FR 11616 (March 12, 1997), the Commission adopted rules governing geographic licensing for exclusive channels in the 35 MHz, 43 MHz, 152 and 158 MHz, 454 MHz and 459 MHz, 929 MHz, and 931 MHz bands allocated for paging, and competitive bidding procedures for granting mutually exclusive applications for non-nationwide geographic area licenses in those bands. In order to facilitate geographic licensing, the Commission dismissed all pending mutually exclusive paging applications and all non-mutually exclusive paging applications filed after July 31, 1996. In part, the Commission developed a standard methodology for providing protection to incumbent licensees from co-channel interference for the 929–930 MHz and 931–932 MHz paging bands to supplement the existing formulas for determining interference contours on other paging bands.

ii. Licenses To Be Auctioned

3. The licenses available in Auction No. 48 include 8,874 lower paging bands (35 MHz, 43 MHz, 152 and 158 MHz, 454 MHz and 459 MHz, 929 MHz, 931 MHz bands) licenses, as well as 1,328 upper paging bands (929–931 MHz) licenses that remained unsold from a previous auction or were defaulted on by a winning bidder in a previous auction. The lower bands licenses will be offered in each of the 175 geographic areas known as Economic Areas (EAs) and the upper bands licenses will be offered in all but three of the 51 geographic areas known as Major Economic Areas (MEAs). These EAs and MEAs both encompass the United States, Guam and Northern Mariana Islands, Puerto Rico and the United States Virgin Islands, and American Samoa. The tables contain the block/frequency cross-reference list for the paging bands. Due to the large volume of licenses in Auction No. 48, the complete list of licenses available for this auction will be provided in electronic format only, available as "Attachment A" of the *Auction No. 48 Procedures Public Notice* at *http://wireless.fcc.gov/auctions/48/*.

35 MHz Lower Band Paging—20 kHz Per Block, Unpaired Channels

Block	Center frequency (MHz)	Block	Center frequency (MHz)	Block	Center frequency (MHz)	Block	Center frequency (MHz)
CA	35.20	CE	35.30	CI	35.46	CM	35.58
CB	35.22	CF	35.34	CJ	35.50	CN	35.60
CC	35.24	CG	35.38	CK	35.54	CO	35.62
CD	35.26	CH	35.42	CL	35.56	CP	35.66

Each frequency listed in this chart is the center frequency of the channel to be auctioned in each block.

43 MHz Lower Band Paging—20 kHz Per Block, Unpaired Channels

Block	Center frequency (MHz)	Block	Center frequency (MHz)	Block	Center frequency (MHz)	Block	Center frequency (MHz)
DA	43.20	DE	43.30	DI	43.46	DM	43.58
DB	43.22	DF	43.34	DJ	43.50	DN	43.60
DC	43.24	DG	43.38	DK	43.54	DO	43.62
DD	43.26	DH	43.42	DL	43.56	DP	43.66

Each frequency listed in this chart is the center frequency of the channel to be auctioned in each block.

152 and 158 MHz Lower Bands Paging—20 kHz Per Block, Unpaired Channels

Block	Center frequency (MHz)	Block	Center frequency (MHz)
EA	152.24	EC	158.10
EB	152.84	ED	158.70

Each frequency listed in this chart is the center frequency of the channel to be auctioned in each block.

152 and 158 MHz Lower Bands Paging—40 kHz Per Block, Paired 20 kHz Channels

Block	Center frequencies (MHz)	Block	Center frequencies (MHz)
FA	152.03 / 158.49	FJ	152.57 / 157.83
FB	152.06 / 158.52	FK	152.60 / 157.86
FC	152.09 / 158.55	FL	152.63 / 157.89
FD	152.12 / 158.58	FM	152.66 / 157.92
FE	152.15 / 158.61	FN	152.69 / 157.95
FF	152.18 / 158.64	FO	152.72 / 157.98
FG	152.21 / 158.67	FP	152.75 / 158.01
FH	152.51 / 157.77	FQ	152.78 / 158.04
FI	152.54 / 157.80	FR	152.81 / 158.07

Each frequency listed in this chart is the center frequency of the channels to be auctioned in each block.

454 MHz and 459 MHz Lower Bands Paging—40 kHz Per Block, Paired 20 kHz Channels

Block	Center frequencies (MHz)	Block	Center frequencies (MHz)
GA	454.025 / 459.025	GN	454.350 / 459.350
GB	454.050 / 459.050	GO	454.375 / 459.375
GC	454.075 / 459.075	GP	454.400 / 459.400
GD	454.100 / 459.100	GQ	454.425 / 459.425
GE	454.125 / 459.125	GR	454.450 / 459.450
GF	454.150 / 459.150	GS	454.475 / 459.475
GG	454.175 / 459.175	GT	454.500 / 459.500
GH	454.200 / 459.200	GU	454.525 / 459.525
GI	454.225 / 459.225	GV	454.550 / 459.550
GJ	454.250 / 459.250	GW	454.575 / 459.575
GK	454.275 / 459.275	GX	454.600 / 459.600
GL	454.300 / 459.300	GY	454.625 / 459.625
GM	454.325 / 459.325	GZ	454.650 / 459.650

Each frequency listed in this chart is the center frequency of the channels to be auctioned in each block.

929 MHz Upper Band Paging—20 kHz Per Block, Unpaired Channels

Block	Center frequency (MHz)	Block	Center frequency (MHz)
A	929.0125	G	929.4625
B	929.1125	H	929.6375
C	929.2375	I	929.6875
D	929.3125	J	929.7875
E	929.3875	K	929.9125
F	929.4375	L	929.9625

Each frequency listed in this chart is the center frequency of the channel to be auctioned in each block.

931 MHz Upper Band Paging—20 kHz Per Block, Unpaired Channels

Block	Center frequency (MHz)	Block	Center frequency (MHz)	Block	Center frequency (MHz)
AA	931.0125	AN	931.3375	BA	931.6625
AB	931.0375	AO	931.3625	BB	931.6875
AC	931.0625	AP	931.3875	BC	931.7125
AD	931.0875	AQ	931.4125	BD	931.7375
AE	931.1125	AR	931.4375	BE	931.7625
AF	931.1375	AS	931.4625	BF	931.7875
AG	931.1625	AT	931.4875	BG	931.8125
AH	931.1875	AU	931.5125	BH	931.8375
AI	931.2125	AV	931.5375	BI	931.8625
AJ	931.2375	AW	931.5625	BJ	931.9625
AK	931.2625	AX	931.5875	BK	931.9875
AL	931.2875	AY	931.6125		
AM	931.3125	AZ	931.6375		

Each frequency listed in this chart is the center frequency of the channel to be auctioned in each block.

Note: In Auction No. 48, for each block listed in the tables, licenses are not available in every market. The complete list of licenses available for Auction No. 48 will be provided in electronic format only, available as "Attachment A" of the *Auction No. 48 Procedures Public Notice* at *http://wireless.fcc.gov/auctions/48/*. The format of the frequency tables has been modified from the tables presented in the *Auction No. 48 Comment Public Notice*, however, the spectrum represented by the tables is the same.

B. Rules and Disclaimers

i. Relevant Authority

4. Prospective bidders must familiarize themselves thoroughly with the Commission's rules relating to the paging services, contained in title 47, part 22 and part 90 of the Code of Federal Regulations, and those relating to application and auction procedures, contained in title 47, part 1 of the Code of Federal Regulations. Prospective bidders must also be thoroughly familiar with the procedures, terms and conditions (collectively, "Terms") contained in the *Auction No. 48 Procedures Public Notice;* the *Auction No. 48 Comment Public Notice;* the *Part 1 Fifth Report and Order* 65 FR 52401 (August 29, 2000), (as well as prior and subsequent Commission proceedings regarding competitive bidding procedures); the *Paging Notice;* the *Paging First Report and Order;* the *First Paging Reconsideration Order;* the *Paging Second Report and Order;* the *Second Paging Reconsideration Order;* the *Paging Third Report and Order;* and the *Third Paging Reconsideration Order.*

5. The terms contained in the Commission's rules, relevant orders, and public notices are not negotiable. The Commission may amend or supplement the information contained in our public notices at any time, and will issue public notices to convey any new or supplemental information to bidders. It is the responsibility of all prospective bidders to remain current with all Commission rules and with all

public notices pertaining to this auction. Copies of most Commission documents, including public notices, can be retrieved from the FCC Auctions Internet site at *http://wireless.fcc.gov/auctions*. Additionally, documents are available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC, 20554 or may be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com*. When ordering documents from Qualex, please provide the appropriate FCC number (for example, FCC 99–98 for the *Paging Third Report and Order*).

ii. Prohibition of Collusion

6. To ensure the competitiveness of the auction process, the Commission's rules prohibit applicants for the same geographic license area from communicating with each other during the auction about bids, bidding strategies, or settlements. This prohibition begins at the short-form application filing deadline and ends at the down payment deadline after the auction. Bidders competing for licenses in the same geographic license areas are encouraged not to use the same individual as an authorized bidder. A violation of the anti-collusion rule could occur if an individual acts as the authorized bidder for two or more competing applicants, and conveys information concerning the substance of bids or bidding strategies between the bidders he or she is authorized to represent in the auction. A violation could similarly occur if the authorized bidders are different individuals employed by the same organization (*e.g.*, law firm or consulting firm). In such a case, at a minimum, applicants should certify on their applications that precautionary steps have been taken to prevent communication between authorized bidders and that applicants and their bidding agents will comply with the anti-collusion rule.

7. However, the Bureau cautions that merely filing a certifying statement as part of an application will not outweigh specific evidence that collusive behavior has occurred, nor will it preclude the initiation of an investigation when warranted. The Commission's anti-collusion rules allow applicants to form certain agreements during the auction, provided the applicants have not applied for licenses covering the same geographic areas. Note that in Auction No. 48, applicants for licenses in overlapping EAs and MEAs will not be able to take advantage of these rule provisions, even though the licenses are not completely co-extensive. For example, assume that one applicant applies for several lower paging bands licenses, *i.e.*, licenses covering EAs, in its Auction No. 48 FCC Form 175 and that a second applicant applies for licenses in the upper paging bands, *i.e.*, licenses covering MEAs, in its Auction No. 48 FCC Form 175. If the first applicant selects licenses for EAs that are within MEAs covered by licenses selected by the second applicant, the two parties will have applied for licenses covering the same geographic areas. Consequently, unlike applicants who have applied for licenses that do not cover the same geographic areas, these two applicants will not be permitted to form a consortium or bid jointly for licenses after they file FCC Form 175. However, all applicants may enter into bidding agreements before filing FCC Form 175, as long as they disclose the existence of the agreement(s) in their FCC Form 175. If parties agree in principle on all material terms prior to the short-form filing deadline, those parties must be identified on the short-form application pursuant to § 1.2105(c), even if the agreement has not been reduced to writing. If the parties have not agreed in principle by the filing deadline, an applicant would not include the names of those parties on its application, and may not continue negotiations with other applicants for licenses covering the same geographic areas. By signing their FCC Form 175 short-form applications, applicants are certifying their compliance with § 1.2105(c).

8. In addition, § 1.65 of the Commission's rules requires an applicant to *maintain* the accuracy and completeness of information furnished in its pending application and to notify the Commission within 30 days of any substantial change that may be of decisional significance to that application. Thus, §§ 1.65 and 1.2105 require an auction applicant to notify the Commission of any violation of the anti-collusion rules upon learning of such violation. Bidders therefore are required to make such notification to the Commission immediately upon discovery.

9. A summary listing of documents from the Commission and the Bureau addressing the application of the anti-collusion rules may be found in Attachment F of the *Auction No. 48 Procedures Public Notice*.

iii. Incumbent Licensees

10. Incumbent (non-geographic) paging licensees operating under their existing authorizations are entitled to full protection from co-channel interference. Geographic area licensees are likewise afforded co-channel interference protection from incumbent licensees. Adjacent geographic area licensees are obligated to resolve possible interference concerns of adjacent geographic area licensees by negotiating a mutually acceptable agreement with the neighboring geographic licensee. Incumbency issues are further discussed.

iv. Due Diligence

11. Potential bidders are reminded that there are a number of incumbent licensees already licensed and operating on frequencies that will be subject to the upcoming auction. Geographic area licensees in accordance with the Commission's rules must protect such incumbents from harmful interference. *See* 47 CFR 22.503(i). These limitations may restrict the ability of such geographic area licensees to use certain portions of the electromagnetic spectrum or provide service to certain areas in their geographic license areas.

12. In addition, potential bidders seeking licenses for geographic areas adjacent to the Canadian and Mexican border should be aware that the use of some or all of the channels they acquire in the auction could be restricted as a result of current or future agreements with Canada or Mexico. Licensees on the lower paging channels must submit a Form 601 to obtain authorization to operate stations north of Line A or east of Line C because these channels are subject to the *Above 30 Megacycles per Second Agreement* with Industry Canada. Although the upper paging channels do not require coordination with Canada, the *U.S.-Canada Interim Coordination Considerations for the Band 929–932 MHz, as amended,* assigns specific 929 and 931 MHz frequencies to the United States for licensing along certain longitudes above Line A, and assigns other specific 929 and 931 MHz frequencies to Canada for licensing along certain longitudes along the U.S.-Canada border. In addition, the 929 and 931 MHz frequencies assigned to Canada are unavailable for use by U.S. licensees above Line A as set out in the agreement. Also, licensees in some EAs and MEAs may be required to protect quiet zones.

13. Potential bidders should also be aware that certain applications (including those for modification), petitions for rulemaking, requests for

special temporary authority ("STA"), waiver requests, petitions to deny, petitions for reconsideration, and applications for review may be pending before the Commission and relate to particular applicants or incumbent licensees. In addition, certain judicial proceedings that may relate to particular applicants or incumbent licensees, on the licenses available in Auction No. 48 may be commenced, or may be pending, or may be subject to further review. We note that resolution of these matters could have an impact on the availability of spectrum in Auction No. 48. Some of these matters (whether before the Commission or the Courts) may not be resolved by the time of the auction.

14. Potential bidders are solely responsible for identifying associated risks, and investigating and evaluating the degree to which such matters may affect their ability to bid on, otherwise acquire, or make use of licenses available in Auction No. 48.

15. To aid potential bidders, Attachment G of the *Auction No. 48 Procedures Public Notice* lists paging matters pending before the Commission that relate to licenses or applications in the bands being auctioned. The Commission makes no representations or guarantees that the listed matters are the only pending matters that could affect spectrum availability in these bands.

16. Copies of pleadings from pending cases relating to paging matters identified in Attachment G of the *Auction No. 48 Procedures Public Notice* are available for public inspection and copying during normal reference room hours at: Office of Public Affairs (OPA), Reference Operations Division, 445 12th Street, SW., Room CY–C314, Washington, DC 20554.

17. In addition, potential bidders may research the Bureau's licensing database on the Internet in order to determine which frequencies are already licensed to incumbent licensees. The Commission makes no representations or guarantees regarding the accuracy or completeness of information in its databases or any third party databases, including, for example, court docketing systems. Furthermore, the Commission makes no representations or guarantees regarding the accuracy or completeness of information that has been provided by incumbent licensees and incorporated into the database. Potential bidders are strongly encouraged to physically inspect any sites located in, or near, the EA or MEA for which they plan to bid.

18. Licensing records for paging are contained in the Bureau's Universal Licensing System (ULS) and may be researched on the Internet at *http://wireless.fcc.gov/uls*. Potential bidders may query the database online and download a copy of their search results if desired. Detailed instructions on using License Search (including frequency searches and the GeoSearch capability) and downloading query results are available online by selecting the "?" button at the upper right-hand corner of the License Search screen.

19. Potential bidders should direct questions regarding the search capabilities to the FCC Technical Support hotline at (202) 414–1250 (voice) or (202) 414–1255 (TTY), or via e-mail at *ulscomm@fcc.gov*. The hotline is available to assist with questions Monday through Friday, from 8 a.m. to 6 p.m. e.t. In order to provide better service to the public, *all calls to the hotline are recorded*.

v. Bidder Alerts

20. All applicants must certify on their FCC Form 175 applications under penalty of perjury that they are legally, technically, financially and otherwise qualified to hold a license, and not in default on any payment for Commission licenses (including down payments) or delinquent on any non-tax debt owed to any Federal agency. Prospective bidders are reminded that submission of a false certification to the Commission is a serious matter that may result in severe penalties, including monetary forfeitures, license revocations, exclusion from participation in future auctions, and/or criminal prosecution.

21. The FCC makes no representations or warranties about the use of this spectrum for particular services. Applicants should be aware that an FCC auction represents an opportunity to become an FCC licensee in this service, subject to certain conditions and regulations. An FCC auction does not constitute an endorsement by the FCC of any particular services, technologies or products, nor does a FCC license constitute a guarantee of business success. Applicants and interested parties should perform their own due diligence before proceeding, as they would with any new business venture.

22. As is the case with many business investment opportunities, some unscrupulous entrepreneurs may attempt to use Auction No. 48 to deceive and defraud unsuspecting investors. Common warning signals of fraud include the following:

- The first contact is a "cold call" from a telemarketer, or is made in response to an inquiry prompted by a radio or television infomercial.
- The offering materials used to invest in the venture appear to be targeted at IRA funds, for example, by including all documents and papers needed for the transfer of funds maintained in IRA accounts.
- The amount of investment is less than $25,000.
- The sales representative makes verbal representations that: (a) The Internal Revenue Service ("IRS"), Federal Trade Commission ("FTC"), Securities and Exchange Commission ("SEC"), FCC, or other government agency has approved the investment; (b) the investment is not subject to State or Federal securities laws; or (c) the investment will yield unrealistically high short-term profits. In addition, the offering materials often include copies of actual FCC releases, or quotes from FCC personnel, giving the appearance of FCC knowledge or approval of the solicitation.

23. Information about deceptive telemarketing investment schemes is available from the FTC at (202) 326–2222 and from the SEC at (202) 942–7040. Complaints about specific deceptive telemarketing investment schemes should be directed to the FTC, the SEC, or the National Fraud Information Center at (800) 876–7060. Consumers who have concerns about specific proposals regarding Auction No. 48 may also call the FCC Consumer Center at (888) CALL–FCC ((888) 225–5322).

vi. National Environmental Policy Act ("NEPA") Requirements

24. Licensees must comply with the Commission's rules regarding the National Environmental Policy Act (NEPA). The construction of a wireless antenna facility is a Federal action and the licensee must comply with the Commission's NEPA rules for each such facility. The Commission's NEPA rules require, among other things, that the licensee consult with expert agencies having NEPA responsibilities, including the U.S. Fish and Wildlife Service, the State Historic Preservation Office, the Army Corp of Engineers and the Federal Emergency Management Agency (through the local authority with jurisdiction over floodplains). The licensee must prepare environmental assessments for facilities that may have a significant impact in or on wilderness areas, wildlife preserves, threatened or endangered species or designated critical habitats, historical or archaeological sites, Indian religious sites, floodplains, and surface features. The licensee must also prepare environmental assessments for facilities that include high intensity white lights in residential neighborhoods or excessive radio frequency emission.

C. Auction Specifics

i. Auction Date

25. The auction will begin on Tuesday, May 13, 2003. The initial schedule for bidding will be announced by public notice at least one week before the start of the auction. Unless otherwise announced, bidding on all licenses will be conducted on each business day until bidding has stopped on all licenses.

ii. Auction Title

26. Auction No. 48—Lower and Upper Paging.

iii. Bidding Methodology

27. The bidding methodology for Auction No. 48 will be simultaneous multiple round bidding. The Commission will conduct this auction over the Internet. Telephonic bidding will also be available. As a contingency, the FCC Wide Area Network will be available as well. Qualified bidders are permitted to bid telephonically or electronically.

iv. Pre-Auction Dates and Deadlines

28. Listed are important dates associated with Auction No. 32:

Auction seminar: March 6, 2003.

Short-form application (FCC Form 175): March 21, 2003; 6 p.m. e.t.

Upfront payments (via wire transfer): April 14, 2003; 6 p.m. e.t.

Mock auction: May 8, 2003.

Auction begins: May 13, 2003..

v. Requirements for Participation

29. Those wishing to participate in the auction must:

- Submit a short-form application (FCC Form 175) electronically by 6 p.m. e.t., March 21, 2003.
- Submit a sufficient upfront payment and an FCC Remittance Advice Form (FCC Form 159) by 6 p.m. e.t., April 14, 2003.
- Comply with all provisions outlined in the *Auction No. 48 Procedures Public Notice.*

vi. General Contact Information

30. The following is a list of general contact information relating to Auction No. 32.

General Auction Information: General Auction Questions, Seminar Registration.

FCC Auctions Hotline, (888) 225–5322, Press Option #2, or direct (717) 338–2888. Hours of service: 8 a.m.—5:30 p.m. e.t.

Auction Legal Information: Auction Rules, Policies, Regulations.

Auctions and Industry Analysis Division, Legal Branch (202) 418–0660.

Licensing Information: Rules, Policies, Regulations, Licensing Issues, Due Diligence, Incumbency Issues.

Commercial Wireless Division (202) 418–0620.

Technical Support: Electronic Filing, Automated Auction System.

FCC Auctions Technical Support Hotline, (202) 414–1250 (Voice), (202) 414–1255 (TTY). Hours of service: Monday through Friday 8 a.m. to 6 p.m. e.t.

Payment Information: Wire Transfers, Refunds.

FCC Auctions Accounting Branch, (202) 418–0578 or (202) 418–0496, (202) 418–2843 (Fax).

Telephonic Bidding: Will be furnished only to qualified bidders.

FCC Copy Contractor: Additional Copies of Commission Documents.

Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554. (202) 863–2893, (202) 863–2898 (Fax), *qualexint@aol.com* (E-mail).

Press Information: Lauren Kravetz (202) 418–7944.

FCC Forms: (800) 418–3676 (outside Washington, DC), (202) 418–3676 (in the Washington Area), *http://www.fcc.gov/formpage.html.*

FCC Internet Sites: http://www.fcc.gov. http://wireless.fcc.gov/auctions. http://wireless.fcc.gov/uls.

II. Short-Form (FCC Form 175) Application Requirements

31. Guidelines for completion of the short-form (FCC Form 175) are set forth in Attachment D of the *Auction No. 48 Procedures Public Notice.* The short-form application seeks the applicant's name and address, legal classification, status, small business bidding credit eligibility, identification of the license(s) sought, the authorized bidders and contact persons. Applicants must certify on their FCC Form 175 applications under penalty of perjury that they are legally, technically, financially and otherwise qualified to hold a license and, as discussed in section II.E (Provisions Regarding Defaulters and Former Defaulters), that they are not in default on any payment for Commission licenses (including down payments) or delinquent on any non-tax debt owed to any Federal agency.

A. License Selection

32. In Auction No. 48, Form 175 will include a mechanism that allows an applicant to filter the 10,202 licenses by paging service, frequency band, market area, and/or channel block/license suffix to create customized lists of licenses. The applicant will make selections for one or more of the filter criteria and the system will produce a list of licenses satisfying the specified criteria. The applicant may apply for all the licenses in the customized list by using the "Select All" option; select individual licenses separately from the list; or create a second customized list without selecting any of the licenses from the first list. Applicants also will be able to select licenses from one customized list and then create a second customized list to select additional licenses.

B. Ownership Disclosure Requirements (FCC Form 175 Exhibit A)

33. All applicants must comply with the uniform part 1 ownership disclosure standards and provide information required by §§ 1.2105 and 1.2112 of the Commission's rules. Specifically, in completing FCC Form 175, applicants will be required to file an "Exhibit A" providing a full and complete statement of the ownership of the bidding entity. The ownership disclosure standards for the short-form are set forth in § 1.2112 of the Commission's rules.

C. Consortia and Joint Bidding Arrangements (FCC Form 175 Exhibit B)

34. Applicants will be required to identify on their short-form applications any parties with whom they have entered into any consortium arrangements, joint ventures, partnerships or other agreements or understandings which relate in any way to the licenses being auctioned, including any agreements relating to post-auction market structure. Applicants will also be required to certify on their short-form applications that they have not entered into any explicit or implicit agreements, arrangements or understandings of any kind with any parties, other than those identified, regarding the amount of their bids, bidding strategies, or the particular licenses on which they will or will not bid. As discussed, if an applicant has had discussions, but has not reached a joint bidding agreement by the short-form deadline, it would not include the names of parties to the discussions on its applications and may not continue discussions with applicants after the deadline. Where applicants have entered into consortia or joint bidding arrangements, applicants must submit an "Exhibit B" to the FCC Form 175.

35. A party holding a non-controlling, attributable interest in one applicant will be permitted to acquire an ownership interest in, form a consortium with, or enter into a joint bidding arrangement with other competing applicants provided that (i)

the attributable interest holder certifies that it has not and will not communicate with any party concerning the bids or bidding strategies of more than one of the applicants in which it holds an attributable interest, or with which it has formed a consortium or entered into a joint bidding arrangement; and (ii) the arrangements do not result in a change in control of any of the applicants. While the anti-collusion rules do not prohibit non-auction related business negotiations among auction applicants, bidders are reminded that certain discussions or exchanges could touch upon impermissible subject matters because they may convey pricing information and bidding strategies.

D. Eligibility

i. Small Business Bidding Credit Eligibility (FCC Form 175 Exhibit C)

36. In the *Paging Second Report and Order*, the Commission adopted small business bidding credits to promote and facilitate the participation of small businesses in competitive bidding for licenses in the paging service. In the *Second Paging Reconsideration Order*, the Commission subsequently increased the size of the bidding credits.

37. Bidding credits are available to small businesses, or consortia thereof, (as defined in 47 CFR 1.2110(c) and 22.217(a)). A bidding credit represents the amount by which a bidder's winning bids are discounted. The size of the bidding credit depends on the average of the aggregated annual gross revenues for each of the preceding three years of the bidder, its affiliates, its controlling interests, and the affiliates of its controlling interests:

- A bidder with attributed average annual gross revenues of not more than $15 million for the preceding three years receives a 25 percent discount on its winning bids for paging licenses;
- A bidder with attributed average annual gross revenues of not more than $3 million for the preceding three years receives a 35 percent discount on its winning bids for paging licenses.

38. Bidding credits are not cumulative; a qualifying applicant receives either the 25 percent or the 35 percent bidding credit on its winning bids, but not both.

ii. Tribal Land Bidding Credit

39. To encourage the growth of wireless services in federally recognized tribal lands the Commission has implemented a tribal land bidding credit. *See* part V.D. of the *Auction No. 48 Procedures Public Notice.*

iii. Applicability of Part 1 Attribution Rules

40. *Controlling interest standard.* On August 14, 2000, the Commission released the *Part 1 Fifth Report and Order*, in which the Commission, *inter alia*, adopted a "controlling interest" standard for attributing to auction applicants the gross revenues of their investors and affiliates in determining small business eligibility for future auctions. The Commission observed that the rule modifications adopted in the various part 1 orders would result in discrepancies and/or redundancies between certain of the new part 1 rules and existing service-specific rules, and the Commission delegated to the Bureau the authority to make conforming edits to the Code of Federal Regulations (CFR) consistent with the rules adopted in the part 1 proceeding. Part 1 rules that superseded inconsistent service-specific rules will control in Auction No. 48. Accordingly, the "controlling interest" standard as set forth in the part 1 rules will be in effect for Auction No. 48.

41. *Control.* The term "control" includes both *de facto* and *de jure* control of the applicant. Typically, ownership of at least 50.1 percent of an entity's voting stock evidences de jure control. *De facto* control is determined on a case-by-case basis. The following are some common indicia of *de facto* control:

- The entity constitutes or appoints more than 50 percent of the board of directors or management committee;
- The entity has authority to appoint, promote, demote, and fire senior executives that control the day-to-day activities of the licensee; or
- The entity plays an integral role in management decisions.

42. *Attribution for small business eligibility.* In determining which entities qualify as small businesses, the Commission will consider the gross revenues of the applicant, its affiliates, its controlling interests, and the affiliates of its controlling interests. The Commission does not impose specific equity requirements on controlling interest holders. Once the principals or entities with a controlling interest are determined, only the revenues of those principals or entities, the affiliates of those principals or entities, the applicant and its affiliates, will be counted in determining small business eligibility.

43. A consortium of small businesses is a "conglomerate organization formed as a joint venture between or among mutually independent business firms," each of which individually must satisfy the definition of small business in §§ 1.2110(f) and 22.223(b). Thus, each consortium member must disclose its gross revenues along with those of its affiliates, its controlling interests, and the affiliates of its controlling interests. The Bureau notes that although the gross revenues of the consortium members will not be aggregated for purposes of determining eligibility for small business credits, this information must be provided to ensure that each individual consortium member qualifies for any bidding credit awarded to the consortium.

iv. Supporting Documentation

44. Applicants should note that they will be required to file supporting documentation to their FCC Form 175 short-form applications to establish that they satisfy the eligibility requirements to qualify as small businesses (or consortia of small businesses) for this auction.

45. Applicants should further note that submission of an FCC Form 175 application constitutes a representation by the certifying official that he or she is an authorized representative of the applicant, has read the form's instructions and certifications, and that the contents of the application and its attachments are true and correct. Submission of a false certification to the Commission may result in penalties, including monetary forfeitures, license forfeitures, ineligibility to participate in future auctions, and/or criminal prosecution.

46. *Small business eligibility (Exhibit C).* Entities applying to bid as small businesses (or consortia of small businesses) will be required to disclose on Exhibit C to their FCC Form 175 short-form applications, *separately and in the aggregate*, the gross revenues for the preceding three years of each of the following: (i) the applicant, (ii) its affiliates, (iii) its controlling interests, and (iv) the affiliates of its controlling interests. Certification that the average annual gross revenues for the preceding three years do not exceed the applicable limit is not sufficient. A statement of the total gross revenues for the preceding three years is also insufficient. The applicant must provide separately for itself, its affiliates, its controlling interests, and the affiliates of its controlling interests, a schedule of gross revenues for each of the preceding three years, as well as a statement of total average gross revenues for the three-year period. If the applicant is applying as a consortium of small businesses, this information must be provided for each consortium member.

E. Provisions Regarding Defaulters and Former Defaulters (FCC Form 175 Exhibit D)

47. Each applicant must certify on its FCC Form 175 application that it is not in default on any Commission licenses and that it is not delinquent on any non-tax debt owed to any Federal agency. In addition, each applicant must attach to its FCC Form 175 application a statement made under penalty of perjury indicating whether or not the applicant, its affiliates, its controlling interests, or the affiliates of its controlling interest have ever been in default on any Commission licenses or have ever been delinquent on any non-tax debt owed to any Federal agency. The applicant must provide such information for itself, its affiliates, its controlling interests, and the affiliates of its controlling interests, as defined by § 1.2110 of the Commission's rules (as amended in the *Part 1 Fifth Report and Order*). Applicants must include this statement as Exhibit D of the FCC Form 175. Prospective bidders are reminded that the statement must be made under penalty of perjury and, further, submission of a false certification to the Commission is a serious matter that may result in severe penalties, including monetary forfeitures, license revocations, exclusion from participation in future auctions, and/or criminal prosecution.

48. "Former defaulters"—*i.e.*, applicants, including their attributable interest holders, that in the past have defaulted on any Commission licenses or been delinquent on any non-tax debt owed to any Federal agency, but that have since remedied all such defaults and cured all of their outstanding non-tax delinquencies—are eligible to bid in Auction No. 48, provided that they are otherwise qualified. However, as discussed *infra* in section III.D.iii, former defaulters are required to pay upfront payments that are fifty percent more than the normal upfront payment amounts.

F. Installment Payments

49. Installment payment plans will not be available in Auction No. 48.

G. Other Information (FCC Form 175 Exhibits E and F)

50. Applicants owned by minorities or women, as defined in 47 CFR 1.2110(c)(2), may attach an exhibit (Exhibit E) regarding this status. This applicant status information is collected for statistical purposes only and assists the Commission in monitoring the participation of "designated entities" in its auctions. Applicants wishing to submit additional information may do so, on Exhibit F (Miscellaneous Information) to the FCC Form 175.

H. Minor Modifications to Short-Form Applications (FCC Form 175)

51. After the short-form filing deadline (March 21, 2003), applicants may make only minor changes to their FCC Form 175 applications. Applicants will not be permitted to make major modifications to their applications (*e.g.*, change their license selections or proposed service areas, change the certifying official, change control of the applicant or change bidding credits). *See* 47 CFR 1.2105. Permissible minor changes include, for example, deletion and addition of authorized bidders (to a maximum of three) and revision of exhibits. Applicants must make these modifications to their FCC Form 175 electronically and should submit a letter, briefly summarizing the changes, by electronic mail to the attention of Margaret Wiener, Chief, Auctions and Industry Analysis Division, at the following address: *auction48@fcc.gov*. The electronic mail summarizing the changes should include a subject or caption referring to Auction No. 48. The Bureau requests that parties format any attachments to electronic mail as Adobe® Acrobat® (pdf) or Microsoft® Word documents.

52. A separate copy of the letter should be faxed to the attention of Kathryn Garland at (717) 338–2850. Questions about other changes should be directed to Rosemary Cabral of the Auctions and Industry Analysis Division at (202) 418–0660.

I. Maintaining Current Information in Short-Form Applications (FCC Form 175)

53. Applicants have an obligation under 47 CFR 1.65, to maintain the completeness and accuracy of information in their short-form applications. Amendments reporting substantial changes of possible decisional significance in information contained in FCC Form 175 applications, as defined by 47 CFR 1.2105(b)(2), will not be accepted and may in some instances result in the dismissal of the FCC Form 175 application.

III. Pre-Auction Procedures

A. Auction Seminar

54. On Thursday, March 6, 2003, the FCC will sponsor a free seminar for Auction No. 48 at the Federal Communications Commission, located at 445 12th Street, SW., Washington, DC. The seminar will provide attendees with information about pre-auction procedures, conduct of the auction, the FCC Automated Auction System, and the paging and auction rules. The seminar will also provide an opportunity for prospective bidders to ask questions of FCC staff.

55. To register, complete the registration form found in Attachment B of the *Auction No. 48 Procedures Public Notice* and submit it by Tuesday, March 4, 2003. Registrations are accepted on a first-come, first-served basis.

B. Short-Form Application (FCC Form 175)—Due March 21, 2003

56. In order to be eligible to bid in this auction, applicants must first submit a FCC Form 175 application. This application must be submitted electronically and received at the Commission no later than 6 p.m. e.t. on March 21, 2003. Late applications will not be accepted.

57. There is no application fee required when filing an FCC Form 175. However, to be eligible to bid, an applicant must submit an upfront payment. *See* Part III.D.

i. Electronic Filing

58. Applicants must file their FCC Form 175 applications electronically. Applications may generally be filed at any time beginning at noon ET on March 6, 2003, until 6 p.m. e.t. on March 21, 2003. Applicants are strongly encouraged to file early and are responsible for allowing adequate time for filing their applications. Applicants may update or amend their electronic applications multiple times until the filing deadline on March 21, 2003.

59. Applicants must press the "SUBMIT Application" button on the "Submission" page of the electronic form to successfully submit their FCC Form 175s. Any form that is not submitted will not be reviewed by the FCC. Information about accessing the FCC Form 175 is included in Attachment C of the *Auction No. 48 Procedures Public Notice*. Technical support is available at (202) 414–1250 (voice) or (202) 414–1255 (text telephone (TTY)); hours of service Monday through Friday, from 8 a.m. to 6 p.m. e.t. In order to provide better service to the public, *all calls to the hotline are recorded*.

60. Applicants can also contact Technical Support via e-mail. To obtain the address, click the Support tab on the Form 175 Homepage.

ii. Completion of the FCC Form 175

61. Applicants should carefully review 47 CFR 1.2105, and must complete all items on the FCC Form

175. Instructions for completing the FCC Form 175 are in Attachment D of the *Auction No. 48 Procedures Public Notice*. Applicants are encouraged to begin preparing the required attachments for FCC Form 175 prior to submitting the form. Attachments C and D of the *Auction No. 48 Procedures Public Notice* provide information on the required attachments and appropriate formats.

iii. Electronic Review of FCC Form 175

62. The FCC Form 175 electronic review system may be used to locate and print applicants' FCC Form 175 information. Applicants may also view other applicants' completed FCC Form 175s after the filing deadline has passed and the FCC has issued a public notice explaining the status of the applications. **Note:** Applicants should not include sensitive information (*i.e.*, TIN/EIN) on any exhibits to their FCC Form 175 applications. There is no fee for accessing this system. *See* Attachment C of the *Auction No. 48 Procedures Public Notice* for details on accessing the review system.

C. Application Processing and Minor Corrections

63. After the deadline for filing the FCC Form 175 applications has passed, the FCC will process all timely-submitted applications to determine which are acceptable for filing, and subsequently will issue a public notice identifying: (i) Those applications accepted for filing; (ii) those applications rejected; and (iii) those applications which have minor defects that may be corrected, and the deadline for filing such corrected applications.

64. As described more fully in the Commission's rules, after the March 21, 2003, short-form filing deadline, applicants may make only minor corrections to their FCC Form 175 applications. Applicants will not be permitted to make major modifications to their applications (*e.g.*, change their license selections, change the certifying official, change control of the applicant, or change bidding credit eligibility).

D. Upfront Payments—Due April 14, 2003

65. In order to be eligible to bid in the auction, applicants must submit an upfront payment accompanied by a FCC Remittance Advice Form (FCC Form 159). After completing the FCC Form 175, filers will have access to an electronic version of the FCC Form 159 that can be printed and faxed to Mellon Bank in Pittsburgh, PA. All upfront payments must be received at Mellon Bank by 6 p.m. e.t. on April 14, 2003.

Please note that:

- All payments must be made in U.S. dollars.
- All payments must be made by wire transfer.
- Upfront payments for Auction No. 48 go to a lockbox number different from the lockboxes used in previous FCC auctions, and different from the lockbox number to be used for post-auction payments.
- Failure to deliver the upfront payment by the April 14, 2003, deadline will result in dismissal of the application and disqualification from participation in the auction.

i. Making Auction Payments by Wire Transfer

66. Wire transfer payments must be received by 6 p.m. e.t. on April 14, 2003. To avoid untimely payments, applicants should discuss arrangements (including bank closing schedules) with their banker several days before they plan to make the wire transfer, and allow sufficient time for the transfer to be initiated and completed before the deadline. Applicants will need the following information:

ABA Routing Number: 043000261.
Receiving Bank: Mellon Pittsburgh.
Beneficiary: FCC/Account # 910–1182.
OBI Field: (Skip one space between each information item) "Auctionpay"
FCC Registration Number (FRN): (same as FCC Form 159, block 11 and/or 21).
Payment Type Code (same as FCC Form 159, block 24A: A48U).
FCC Code 1 (same as FCC Form 159, block 28A: "48").
Payer Name (same as FCC Form 159, block 2).
Lockbox No. # 358415.

Note: The BNF and Lockbox number are specific to the upfront payments for this auction; do not use BNF or Lockbox numbers from previous auctions.

67. Applicants must fax a completed FCC Form 159 (Revised 2/00) to Mellon Bank at (412) 209–6045 at least one hour before placing the order for the wire transfer (but on the same business day). On the cover sheet of the fax, write "Wire Transfer—Auction Payment for Auction Event No. 48." Bidders should confirm receipt of their upfront payment at Mellon Bank by contacting their sending financial institution.

ii. FCC Form 159

68. A completed FCC Remittance Advice Form (FCC Form 159, Revised 2/00) must be faxed to Mellon Bank in order to accompany each upfront payment. Proper completion of FCC Form 159 (Revised 2/00) is critical to ensuring correct credit of upfront payments. Detailed instructions for completion of FCC Form 159 are included in Attachment E of the *Auction No. 48 Procedures Public Notice*. An electronic version of the FCC Form 159 is available after filing the FCC Form 175. The FCC Form 159 can be completed electronically, but must be filed with Mellon Bank via facsimile.

iii. Amount of Upfront Payment

69. In the *Part 1 Order* the Commission delegated to the Bureau the authority and discretion to determine appropriate upfront payment(s) for each auction. In addition, in the *Part 1 Fifth Report and Order*, the Commission ordered that "former defaulters," *i.e.*, applicants that have ever been in default on any Commission license or have ever been delinquent on any non-tax debt owed to any Federal agency, be required to pay upfront payments fifty percent greater than non-"former defaulters." For purposes of this calculation, the "applicant" includes the applicant itself, its affiliates, its controlling interests, and affiliates of its controlling interests, as defined by § 1.2110 of the Commission's rules (as amended in the *Part 1 Fifth Report and Order*).

70. In the *Auction No. 48 Comment Public Notice*, the Bureau proposed that the amount of the upfront payment would determine the number of bidding units on which a bidder may place bids. In order to bid on a license, otherwise qualified bidders that applied for that license on Form 175 must have an eligibility level that meets or exceeds the number of bidding units assigned to that license. At a minimum, therefore, an applicant's total upfront payment must be enough to establish eligibility to bid on at least one of the licenses applied for on Form 175, or else the applicant will not be eligible to participate in the auction. An applicant does not have to make an upfront payment to cover all licenses for which the applicant has applied on Form 175, but rather to cover the maximum number of bidding units that are associated with licenses on which the bidder wishes to place bids and hold high bids at any given time.

71. In the *Auction No. 48 Comment Public Notice*, the Bureau proposed setting upfront payments for each license equal to the license's minimum opening bid. The Bureau further proposed setting the bidding units for each license equal to the license's upfront payment on a bidding unit for dollar basis. The bidding unit level for each license will remain constant throughout the auction. The Bureau

received no comments on this issue. The Bureau adopts its proposed upfront payments. The specific upfront payments and bidding units for each license are set forth in the list of licenses available for Auction No. 48 ("Attachment A"), available with the *Auction No. 48 Procedures Public Notice* at *http://wireless.fcc.gov/auctions/48/*.

72. In calculating its upfront payment amount, an applicant should determine the *maximum* number of bidding units on which it may wish to be active (bidding units associated with licenses on which the bidder has the standing high bid from the previous round and licenses on which the bidder places a bid in the current round) in any single round, and submit an upfront payment covering that number of bidding units. In order to make this calculation, an applicant should add together the upfront payments for all licenses on which it seeks to bid in any given round. Bidders should check their calculations carefully, as there is no provision for increasing a bidder's maximum eligibility after the upfront payment deadline.

73. Former defaulters should calculate their upfront payment for all licenses by multiplying the number of bidding units they wish to purchase by 1.5. In order to calculate the number of bidding units to assign to former defaulters, the Commission will divide the upfront payment received by 1.5 and round the result up to the nearest bidding unit.

Note: An applicant may, on its FCC Form 175, apply for every applicable license being offered, but its actual bidding in any round will be limited by the bidding units reflected in its upfront payment.

iv. Applicant's Wire Transfer Information for Purposes of Refunds of Upfront Payments

74. The Commission will use wire transfers for all Auction No. 48 refunds. To ensure that refunds of upfront payments are processed in an expeditious manner, the Commission is requesting that all pertinent information as listed be supplied to the FCC. Applicants can provide the information electronically during the initial short-form filing window after the form has been submitted. Wire Transfer Instructions can also be manually faxed to the FCC, Financial Operations Center, Auctions Accounting Group, ATTN: Tim Dates or Gail Glasser, at (202) 418–2843 by April 14, 2003. All refunds will be returned to the payer of record as identified on the FCC Form 159 unless the payer submits written authorization instructing otherwise. For additional information, please call Gail Glasser at (202) 418–0578 or Tim Dates at (202) 418–0496.

Name of Bank; ABA Number; Contact and Phone Number; Account Number to Credit; Name of Account Holder; FCC Registration Number (FRN); Taxpayer Identification Number; Correspondent Bank (if applicable); ABA Number; Account Number.

(Applicants should also note that implementation of the Debt Collection Improvement Act of 1996 requires the FCC to obtain a Taxpayer Identification Number (TIN) before it can disburse refunds.) Eligibility for refunds is discussed in part V.F.

E. Auction Registration

75. Approximately ten days before the auction, the FCC will issue a public notice announcing all qualified bidders for the auction. Qualified bidders are those applicants whose FCC Form 175 applications have been accepted for filing and have timely submitted upfront payments sufficient to make them eligible to bid on at least one of the licenses for which they applied.

76. All qualified bidders are automatically registered for the auction. Registration materials will be distributed prior to the auction by two separate overnight mailings, one containing the confidential bidder identification number (BIN) required to place bids and the other containing the SecurID cards. These mailings will be sent only to the contact person at the contact address listed in the FCC Form 175.

77. Applicants that do not receive both registration mailings will not be able to submit bids. Therefore, any qualified applicant that has not received both mailings by noon on Tuesday, May 6, 2003, should contact the Auctions Hotline at (717) 338–2888. Receipt of both registration mailings is critical to participating in the auction and each applicant is responsible for ensuring it has received all of the registration material.

78. Qualified bidders should note that lost bidder identification numbers or SecurID cards can be replaced only by appearing in person at the FCC Auction Headquarters located at 445 12th St., SW., Washington, DC 20554. Only an authorized representative or certifying official, as designated on an applicant's FCC Form 175, may appear in person with two forms of identification (one of which must be a photo identification) in order to receive replacement codes. Qualified bidders requiring replacements must call technical support prior to arriving at the FCC.

F. Electronic Bidding

79. The Commission will conduct this auction over the Internet. Telephonic bidding will also be available. As a contingency, the FCC Wide Area Network will be available as well. Qualified bidders are permitted to bid electronically or telephonically, *i.e.*, over the Internet or the FCC's Wide Area Network. In either case, each authorized bidder must have its own Remote Security Access SecurID card, which the FCC will provide at no charge. Each applicant with less than three authorized bidders will be issued two SecurID cards, while applicants with three authorized bidders will be issued three cards. For security purposes, the SecurID cards and the FCC Automated Auction System user manual are only mailed to the contact person at the contact address listed on the FCC Form 175. Please note that each SecurID card is tailored to a specific auction, therefore, SecurID cards issued for other auctions or obtained from a source other than the FCC will not work for Auction No. 48. The telephonic bidding phone number will be supplied in the first overnight mailing, which also includes the confidential bidder identification number. Each applicant should indicate its bidding preference—electronic or telephonic—on the FCC Form 175.

80. Please note that the SecurID cards can be recycled, and the Bureau encourages bidders to return the cards to the FCC. The Bureau will provide pre-addressed envelopes that bidders may use to return the cards once the auction is over.

a. Mock Auction

81. All qualified bidders will be eligible to participate in a mock auction on Thursday, May 8, 2003. The mock auction will enable applicants to become familiar with the FCC Automated Auction System prior to the auction. Participation by all bidders is strongly recommended. Details will be announced by public notice.

IV. Auction Event

82. The first round of bidding for Auction No. 48 will begin on Tuesday, May 13, 2003. The initial bidding schedule will be announced in a public notice listing the qualified bidders, which is released approximately 10 days before the start of the auction.

A. Auction Structure

i. Simultaneous Multiple Round Auction

83. In the *Auction No. 48 Comment Public Notice*, we proposed to award all licenses in Auction No. 48 in a

simultaneous multiple round auction. The Bureau received no comments on this issue. The Bureau concludes that it is operationally feasible and appropriate to auction the paging licenses through a simultaneous multiple round auction. Unless otherwise announced, bids will be accepted on all licenses in each round of the auction. This approach, the Bureau believes, allows bidders to take advantage of any synergies that exist among licenses and is administratively efficient.

ii. Maximum Eligibility and Activity Rules

84. In the *Auction No. 48 Comment Public Notice,* the Bureau proposed that the amount of the upfront payment submitted by a bidder would determine the initial maximum eligibility (as measured in bidding units) for each bidder. The Bureau received no comments on this issue.

85. For Auction No. 48, the Bureau adopts this proposal. The amount of the upfront payment submitted by a bidder determines the number of bidding units on which a bidder may place bids. Note again that each license is assigned a specific number of bidding units equal to the upfront payment, listed in the license inventory available for Auction No. 48 ("Attachment A"), available with the *Auction No. 48 Procedures Public Notice* at *http://wireless.fcc.gov/auctions/48/,* on a bidding unit per dollar basis. The total upfront payment defines the maximum number of bidding units on which the applicant will be permitted to bid and hold high bids during any given round. As there is no provision for increasing a bidder's eligibility after the upfront payment deadline, prospective bidders are cautioned to calculate their upfront payments carefully. The total upfront payment does not affect the total dollar amount a bidder may bid on any given license.

86. In order to ensure that the auction closes within a reasonable period of time, an activity rule requires bidders to bid actively throughout the auction, rather than wait until the end before participating. Bidders are required to be active on a specific percentage of their current eligibility during each round of the auction.

87. A bidder's activity level in a round is the sum of the bidding units associated with licenses on which the bidder is active. A bidder is considered active on a license in the current round if it is either the high bidder at the end of the previous bidding round and does not withdraw the high bid in the current round, or if it submits a bid in the current round (*see* "Bid Increments and Minimum Acceptable Bids" in Part IV.B.(iii)). The minimum required activity is expressed as a percentage of the bidder's current bidding eligibility, and increases by stage as the auction progresses. Because these procedures have proven successful in maintaining the pace of previous auctions (as set forth under "Auction Stages" in part IV.A.iii and "Stage Transitions" in part IV.A.iv), we adopt them for Auction No. 48.

iii. Auction Stages

88. In the *Auction No. 48 Comment Public Notice,* the Bureau proposed to conduct the auction in three stages and employ an activity rule. The Bureau further proposed that, in each round of Stage One, a bidder desiring to maintain its current eligibility would be required to be active on licenses encompassing at least 80 percent of its current bidding eligibility. In each round of Stage Two, a bidder desiring to maintain its current eligibility would be required to be active on at least 90 percent of its current bidding eligibility. Finally, the Bureau proposed that a bidder in Stage Three, in order to maintain its current eligibility, would be required to be active on 98 percent of its current eligibility. The Bureau received no comments on this proposal.

89. The Bureau will adopt its proposals for the activity rules. Listed are the activity levels for each stage of the auction. The FCC reserves the discretion to further alter the activity percentages before and/or during the auction.

Stage One: During the first stage of the auction, a bidder desiring to maintain its current eligibility will be required to be active on licenses that represent at least 80 percent of its current bidding eligibility in each bidding round. Failure to maintain the required activity level will result in a reduction in the bidder's bidding eligibility in the next round of bidding (unless an activity rule waiver is used). During Stage One, reduced eligibility for the next round will be calculated by multiplying the bidder's current activity (the sum of bidding units of the bidder's standing high bids and bids during the current round) by five-fourths (5/4).

Stage Two: During the second stage of the auction, a bidder desiring to maintain its current eligibility is required to be active on 90 percent of its current bidding eligibility. Failure to maintain the required activity level will result in a reduction in the bidder's bidding eligibility in the next round of bidding (unless an activity rule waiver is used). During Stage Two, reduced eligibility for the next round will be calculated by multiplying the bidder's current activity (the sum of bidding units of the bidder's standing high bids and bids during the current round) by ten-ninths (10/9).

Stage Three: During the third stage of the auction, a bidder desiring to maintain its current eligibility is required to be active on 98 percent of its current bidding eligibility. Failure to maintain the required activity level will result in a reduction in the bidder's bidding eligibility in the next round of bidding (unless an activity rule waiver is used). In this stage, reduced eligibility for the next round will be calculated by multiplying the bidder's current activity (the sum of bidding units of the bidder's standing high bids and bids during the current round) by fifty-forty ninths (50/49).

Caution: Since activity requirements increase in each auction stage, bidders must carefully check their current activity during the bidding period of the first round following a stage transition. This is especially critical for bidders that have standing high bids and do not plan to submit new bids. In past auctions, some bidders have inadvertently lost bidding eligibility or used an activity rule waiver because they did not re-verify their activity level at stage transitions. Bidders may check their activity against the required activity level by using the bidding system's bidding module.

90. Because the foregoing procedures have proven successful in maintaining proper pace in previous auctions, the Bureau adopts them for Auction No. 48.

iv. Stage Transitions

91. In the *Auction No. 48 Comment Public Notice,* the Bureau proposed that the auction would generally advance to the next stage (*i.e.*, from Stage One to Stage Two, and from Stage Two to Stage Three) when the auction activity level, as measured by the percentage of bidding units receiving new high bids, is below 20 percent for three consecutive rounds of bidding in each Stage. The Bureau further proposed that it would retain the discretion to change stages unilaterally by announcement during the auction. This determination, the Bureau proposed, would be based on a variety of measures of bidder activity, including, but not limited to, the auction activity level, the percentages of licenses (as measured in bidding units) on which there are new bids, the number of new bids, and the percentage increase in revenue. The Bureau received no comments on this subject.

92. The Bureau adopts its proposal. Thus, the auction will start in Stage One

and will advance to the next stage (*i.e.*, from Stage One to Stage Two, and from Stage Two to Stage Three) when, in each of three consecutive rounds of bidding, the high bid has increased on 20 percent or less of the licenses being auctioned (as measured in bidding units). In addition, the Bureau will retain the discretion to regulate the pace of the auction by announcement. This determination will be based on a variety of measures of bidding activity, including, but not limited to, the auction activity level, the percentages of licenses (as measured in bidding units) on which there are new bids, the number of new bids, and the percentage increase in revenue. The Bureau believes that these stage transition rules, having proven successful in prior auctions, are appropriate for use in Auction No. 48.

v. Activity Rule Waivers and Reducing Eligibility

93. In the *Auction No. 48 Comment Public Notice*, the Bureau proposed that each bidder in the auction would be provided five activity rule waivers. Bidders may use an activity rule waiver in any round during the course of the auction. The Bureau received no comments on this subject.

94. Based upon our experience in previous auctions, the Bureau adopts its proposal that each bidder be provided five activity rule waivers that may be used in any round during the course of the auction. Use of an activity rule waiver preserves the bidder's current bidding eligibility despite the bidder's activity in the current round being below the required level. An activity rule waiver applies to an entire round of bidding and not to a particular license. The Bureau is satisfied that its practice of providing five waivers over the course of the auction provides a sufficient number of waivers and flexibility to the bidders, while safeguarding the integrity of the auction.

95. The Automated Auction System assumes that bidders with insufficient activity would prefer to use an activity rule waiver (if available) rather than lose bidding eligibility. Therefore, the system will automatically apply a waiver (known as an "automatic waiver") at the end of any round where a bidder's activity level is below the minimum required unless: (i) There are no activity rule waivers available; or (ii) the bidder overrides the automatic application of a waiver by reducing eligibility, thereby meeting the required activity level. If a bidder has no waivers remaining and does not satisfy the required activity level, the current eligibility will be permanently reduced, possibly eliminating the bidder from the auction.

96. A bidder with insufficient activity that wants to reduce its bidding eligibility rather than use an activity rule waiver must affirmatively override the automatic waiver mechanism during the round by using the "reduce eligibility" function in the bidding system. In this case, the bidder's eligibility is permanently reduced to bring the bidder into compliance with the activity rules as described in "Auction Stages" (*see* part IV.A.iii). Once eligibility has been reduced, a bidder will not be permitted to regain its lost bidding eligibility.

97. Finally, a bidder may proactively use an activity rule waiver as a means to keep the auction open without placing a bid. If a bidder submits a proactive waiver (using the proactive waiver function in the Automated Auction System) during a round in which no bids are submitted, the auction will remain open and the bidder's eligibility will be preserved. However, an automatic waiver triggered during a round in which there are no new bids or withdrawals will not keep the auction open.

Note: Once a proactive waiver is placed during a round, that waiver cannot be unsubmitted.

vi. Auction Stopping Rules

98. For Auction No. 48, the Bureau proposed to employ a simultaneous stopping rule approach. The Bureau also sought comment on a modified version of the stopping rule. The modified version of the stopping rule would close the auction for all licenses after the first round in which no bidder submits a proactive waiver, a withdrawal, or a new bid on any license on which it is not the standing high bidder. Thus, absent any other bidding activity, a bidder placing a new bid on a license for which it is the standing high bidder would not keep the auction open under this modified stopping rule.

99. The Bureau further proposed retaining the discretion to keep the auction open even if no new acceptable bids or proactive waivers are submitted and no previous high bids are withdrawn in a round. In this event, the effect will be the same as if a bidder had submitted a proactive waiver. Thus, the activity rule will apply as usual, and a bidder with insufficient activity will either use an activity rule waiver (if it has any left) or lose bidding eligibility.

100. In addition, the Bureau proposed that it reserve the right to declare that the auction will end after a designated number of additional rounds ("special stopping rule"). If the Bureau invokes this special stopping rule, it will accept bids in the final round(s) only for licenses on which the high bid increased in at least one of the preceding specified number of rounds. The Bureau proposed to exercise this option only in circumstances such as where the auction is proceeding very slowly, where there is minimal overall bidding activity or where it appears likely that the auction will not close within a reasonable period of time. Before exercising this option, the Bureau is likely to attempt to increase the pace of the auction by, for example, moving the auction into the next stage (where bidders will be required to maintain a higher level of bidding activity), increasing the number of rounds per day and/or adjusting the minimum acceptable bids and bid increments for the licenses.

101. The Bureau received no comments concerning the auction stopping rules; therefore, it adopts the proposals. Auction No. 48 will begin under the simultaneous stopping rule, and the Bureau will retain the discretion to invoke the other versions of the stopping rule. The Bureau believes that these stopping rules are most appropriate for Auction No. 48, because its experience in prior auctions demonstrates that the auction stopping rules balance the interests of administrative efficiency and maximum bidder participation.

vii. Auction Delay, Suspension, or Cancellation

102. In the *Auction No. 48 Comment Public Notice*, the Bureau proposed that, by public notice or by announcement during the auction, the Bureau may delay, suspend, or cancel the auction in the event of natural disaster, technical obstacle, evidence of an auction security breach, unlawful bidding activity, administrative or weather necessity, or for any other reason that affects the fair conduct of competitive bidding.

103. Because this approach has proven effective in resolving exigent circumstances in previous auctions, the Bureau adopts its proposed auction cancellation rules. By public notice or by announcement during the auction, the Bureau may delay, suspend, or cancel the auction in the event of natural disaster, technical obstacle, evidence of an auction security breach, unlawful bidding activity, administrative or weather necessity, or for any other reason that affects the fair and competitive conduct of competitive bidding. In such cases, the Bureau, in its sole discretion, may elect to resume the auction starting from the beginning of

the current round, resume the auction starting from some previous round, or cancel the auction in its entirety. Network interruption may cause the Bureau to delay or suspend the auction. The Bureau emphasizes that exercise of this authority is solely within the discretion of the Bureau, and its use is not intended to be a substitute for situations in which bidders may wish to apply their activity rule waivers.

B. Bidding Procedures

i. Round Structure

104. The initial bidding schedule will be announced in the public notice listing the qualified bidders, which is released approximately 10 days before the start of the auction. Each bidding round is followed by the release of the round results. Multiple bidding rounds may be conducted in a given day. Details regarding round results formats and locations will also be included in the qualified bidders public notice.

105. The FCC has discretion to change the bidding schedule in order to foster an auction pace that reasonably balances speed with the bidders' need to study round results and adjust their bidding strategies. The Bureau may increase or decrease the amount of time for the bidding rounds and review periods, or the number of rounds per day, depending upon the bidding activity level and other factors.

ii. Reserve Price or Minimum Opening Bid

106. *Background.* The Balanced Budget Act calls upon the Commission to prescribe methods by which a reasonable reserve price will be required or a minimum opening bid established when FCC licenses are subject to auction (*i.e.*, because they are mutually exclusive), unless the Commission determines that a reserve price or minimum opening bid is not in the public interest. Consistent with this mandate, the Commission directed the Bureau to seek comment on the use of a minimum opening bid and/or reserve price prior to the start of each auction. Among other factors, the Bureau should consider the amount of spectrum being auctioned, levels of incumbency, the availability of technology to provide service, the size of the geographic service areas, the extent of interference with other spectrum bands, and any other relevant factors that could have an impact on the spectrum being auctioned. The Commission concluded that the Bureau should have the discretion to employ either or both of these mechanisms for future auctions.

107. In the *Auction No. 48 Comment Public Notice,* the Bureau proposed to establish minimum opening bids for Auction No. 48 and to retain discretion to lower the minimum opening bids. Specifically, for Auction No. 48, the Bureau proposed the following formula for minimum opening bids:

- For a license being auctioned by MEA, the minimum opening bid will be 20% of the average gross high bid received in Auction No. 40 in the same MEA and the same band.
- For a license being auctioned by EA, the minimum opening bid will be 20% of the average gross high bid received in Auction No. 40 in the same EA and the same band.

108. The Bureau will set a "floor" for minimum opening bids at $500 for licenses in both the upper paging bands (929–931 MHz) and the lower paging bands (35 MHz, 43 MHz, 152 and 158 MHz, 454 MHz and 459 MHz, 929 MHz, 931 MHz).

109. In the alternative, the Bureau sought comment on whether, consistent with the Balanced Budget Act, the public interest would be served by having no minimum opening bid or reserve price. The Bureau received one comment regarding this issue, suggesting that there be no minimum bid on all licenses that remain unsold from a previous auction.

110. After reviewing the comment, the Bureau has concluded that it should adopt its original proposal and the minimum opening bids listed in the *Auction No. 48 Comment Paging Notice.* The Bureau believes that the use of minimum opening bids is in the public interest because parties unable or unwilling to make proposed minimum opening bids most likely will be unable or unwilling to use the licenses to provide service to the public. The Bureau has concluded that the proposed absolute minimum opening bid of $500 will not impede any party willing and able to use the license to provide paging service. Under the Commission's current rules, the filing fee for a new paging service license or to make major modifications to an existing paging service license is $325. This fee is waived for applicants that obtained licenses through the auction process. Finally, small businesses qualifying for a thirty-five percent (35%) bidding credit and winning a lower paging bands license for the minimum opening bid of $500 will have to pay $325 for the license. Thus, even absent an auction, service providers would have to meet costs comparable to the proposed absolute minimum opening bids in order to obtain a license.

111. The Bureau will adopt minimum opening bids for Auction No. 48, that are reducible at the discretion of the Bureau. The Bureau emphasizes, however, that such discretion will be exercised, if at all, sparingly and early in the auction, *i.e.*, before bidders lose all waivers and begin to lose substantial eligibility. During the course of the auction, the Bureau will not entertain requests to reduce the minimum opening bid on specific licenses.

112. The specific minimum opening bid for each license available in Auction No. 48 is set forth in the list of licenses provided in electronic format as the *Auction No. 48 Procedures Public Notice* at *http://wireless.fcc.gov/auctions/48/.*

iii. Minimum Acceptable Bids and Bid Increments

113. In the *Auction No. 48 Comment Public Notice,* the Bureau proposed to set the minimum acceptable bid as the minimum opening bid or the standing high bid plus the defined increment. Eligible bidders will be able to place bids on a given license in any of nine different amounts. Until a bid has been placed on a license, the minimum acceptable bid for that license will be equal to its minimum opening bid. In the rounds after a bid is placed on a license, the minimum acceptable bid for that license will be equal to the standing high bid plus the defined increment. With respect to calculating the defined increment, the Bureau proposed basing the defined increment on a percentage of the standing high bid or, if no standing high bid had been placed, on a percentage of the minimum opening bid. The Bureau proposed that at the outset of the auction, it would use twenty percent of the standing high bid or minimum opening bid to calculate the increment. The Bureau further proposed to retain the discretion to change the percentage used to calculate the defined increment if circumstances so dictate and to set a floor for the increment used to calculate the minimum acceptable bid at an absolute dollar amount. Finally, the Bureau proposed that it have discretion to use a smaller percentage to calculate the increment used in setting acceptable bids higher than the minimum acceptable bid. In all other respects, such as rounding, the smaller defined increment would be calculated in the same manner as the defined increment used to set the minimum acceptable bid.

114. For Auction No. 48, the Bureau proposed to use a fixed 20 percent bid increment. This means that the minimum acceptable bid for a license will be approximately 20 percent greater

than the previous standing high bid received on the license. The minimum acceptable bid amount will be calculated by multiplying the standing high bid times one plus the fixed percentage—*i.e.*, minimum acceptable bid amount = (standing high bid) * (1.20){rounded}. The Bureau will round the result using its standard rounding procedure for minimum acceptable bid calculations: Results above $10,000 are rounded to the nearest $1,000; results below $10,000 but above $1,000 are rounded to the nearest $100; and results below $1,000 are rounded to the nearest $10.

115. At the start of the auction and until a bid has been placed on a license, the minimum acceptable bid for that license will be equal to its minimum opening bid. Corresponding additional bid amounts will be calculated using bid increments defined as the difference between the minimum opening bid times one plus the percentage increment, rounded as described, and the minimum opening bid—*i.e.*, bid increment = (minimum opening bid)(1 + percentage increment){rounded}—(minimum opening bid). At the start of the auction and until a bid has been placed on a license, the nine acceptable bid amounts for each license consist of the minimum opening bid and additional amounts are calculated using multiple bid increments (*i.e.*, the second bid amount equals the minimum opening bid plus the bid increment, the third bid amount equals the minimum opening bid plus two times the bid increment, etc.).

Example bid amount calculation for licenses at the start of the auction and without standing high bids:

1st bid amount = minimum opening bid
2nd bid amount = minimum opening bid + (bid increment)
3rd bid amount = minimum opening bid + 2(bid increment) * * *
9th bid amount = minimum opening bid + 8(bid increment)

116. Once there is a standing high bid on the license, the Automated Auction System will calculate a minimum acceptable bid for that license for the following round, as described. The difference between the minimum acceptable bid and the standing high bid for each license will define the bid increment—*i.e.*, bid increment = (minimum acceptable bid) − (standing high bid). The nine acceptable bid amounts for each license consist of the minimum acceptable bid (the standing high bid plus one bid increment) and additional amounts calculated using multiple bid increments (*i.e.*, the second bid amount equals the standing high bid plus two times the bid increment, the third bid amount equals the standing high bid plus three times the bid increment, etc.).

Example bid amount calculation for a license with standing high bids:

1st bid amount (minimum acceptable bid) = standing high bid + bid increment
2nd bid amount = standing high bid +2(bid increment)
3rd bid amount = standing high bid +3(bid increment) * * *
9th bid amount = standing high bid +9(bid increment)

117. The Bureau retains the discretion to change the minimum acceptable bids and bid increments and the methodology for determining the minimum acceptable bids and bid increments if it determines circumstances so dictate. The Bureau will do so by announcement in the FCC Automated Auction System. The Bureau may also use its discretion to adjust the minimum bid increment without prior notice if circumstances warrant.

118. The Bureau will adopt its proposals contained in the *Auction No. 48 Comment Public Notice*. In doing so, the Bureau will retain the discretion to set the percentages being used. Advance notice of the Bureau's decision to exercise its discretion with regard to acceptable bids in any manner will be announced via the Automated Auction System.

iv. High Bids

119. At the end of each bidding round, the high bids will be determined based on the highest gross bid amount of the bids received for each license.

120. In the *Auction No. 48 Comment Public Notice*, the Bureau proposed to use a random number generator to select a high bid in the event of identical high bids on a license in a given round (*i.e.*, tied bids). A random number will be assigned to each bid. The tied bid having the highest random number will become the standing high bid. The remaining bidders, as well as the high bidder, will be able to submit a higher bid in a subsequent round. If no bidder submits a higher bid in a subsequent round, the high bid from the previous round will win the license. If any bids are received on the license in a subsequent round, the high bid will once again be determined on the highest gross bid amount received for the license. The Bureau received no comments on this issue. Therefore, the Bureau adopts its proposal.

v. Bidding

121. During a round, a bidder may submit bids for as many licenses as it wishes (subject to its eligibility), withdraw high bids from previous bidding rounds, remove bids placed in the same bidding round, or permanently reduce eligibility. Bidders also have the option of making multiple submissions and withdrawals in each round. If a bidder submits multiple bids for a single license in the same round, the system takes the last bid entered as that bidder's bid for the round. Bidders should note that the bidding units associated with licenses for which the bidder has removed or withdrawn its bid do not count towards the bidder's activity at the close of the round.

122. Please note that all bidding will take place remotely either through the Automated Auction System or by telephonic bidding. (Telephonic bid assistants are required to use a script when entering bids placed by telephone. Telephonic bidders are therefore reminded to allow sufficient time to bid by placing their calls well in advance of the close of a round. Normally, five to 10 minutes are necessary to complete a bid submission. Due to the large number of licenses in Auction No. 48, bidders may require more time to submit their bids than in past auctions.) There will be no on-site bidding during Auction No. 48.

123. A bidder's ability to bid on specific licenses in the first round of the auction is determined by two factors: (i) the licenses applied for on FCC Form 175 and (ii) the upfront payment amount deposited. The bid submission screens will allow bidders to submit bids on only those licenses for which the bidder applied on its FCC Form 175.

124. In order to access the bidding functions of the Automated Auction System, bidders must be logged in during the bidding round using the bidder identification number provided in the registration materials, and the generated SecurID code. Bidders are strongly encouraged to print bid confirmations for each round after they have completed all of their activity for that round.

125. In each round, eligible bidders will be able to place bids on a given license in any of nine different amounts. For each license, the Automated Auction System interface will list the nine acceptable bid amounts in a drop-down box. Bidders may use the drop-down box to select from among the nine acceptable bid amounts. The Automated Auction System also includes an import function that allows bidders to upload text files containing their bid information.

126. Until a bid has been placed on a license, the minimum acceptable bid for that license will be equal to its

minimum opening bid. In the rounds after an acceptable bid is placed on a license, the minimum acceptable bid for that license will be equal to the standing high bid plus the defined increment.

127. As detailed, for each license in Auction No. 48, the defined increment for the minimum acceptable bid is based on a percentage of the standing high bid on the license or, if no bid has been placed on the license, a percentage of the minimum opening bid for the license. Presuming, for example, that the percentage being used is 20 percent—the initial value at the start of the auction—and the standing high bid for a license is $10,000, the minimum acceptable bid will be $12,000.

128. In addition, the Bureau proposed discretion to use a smaller defined increment to calculate acceptable bids higher than the minimum acceptable bid. The smaller defined increment would be calculated using a smaller percentage than the percentage used to calculate the defined increment that sets the minimum acceptable bid. For example, 20 percent might be used to calculate the defined increment for the minimum acceptable bid and 10 percent might be used to calculate the smaller defined increment used to calculate higher acceptable bids. In all other respects, the smaller defined increment would be calculated in exactly the manner described for the initial defined increment, including rounding. In this case, for the example in which the standing high bid for a license is $10,000 and the minimum acceptable bid is $12,000, the values for the minimum acceptable bid and higher amounts will be calculated as follows:

Defined Increment
= (Standing High Bid * 1.2{rounded}) − Standing High Bid
= ($10,000 * 1.2{rounded}) − $10,000
= ($12,000{rounded}) − $10,000
= $12,000 − $10,000
= $2,000

Smaller Defined Increment
= (Standing High Bid * 1.1{rounded}) − Standing High Bid
= ($10,000 * 1.1{rounded}) − $10,000
= ($11,000{rounded}) − $10,000
= $11,000 − $10,000
= $1,000

Minimum Acceptable Bid
= Standing High Bid + Defined Increment
= $10,000 + $2,000
= $12,000

One Increment Higher Than Minimum Acceptable Bid
= Minimum Acceptable Bid + (Smaller Defined Increment * 1)
= $12,000 + ($1,000 * 1)
= $12,000 + $1,000
= $13,000

Two Increments Higher Than Minimum Acceptable Bid
= Minimum Acceptable Bid + (Smaller Defined Increment * 2)
= $12,000 + ($1,000 * 2)
= $12,000 + $2,000
= $14,000

129. This procedure would enable bidders unwilling to raise the standing high bid by twice the defined increment to place bids higher than the minimum acceptable bid. Thus, in the example, a bidder wanting to bid above the minimum acceptable bid but unwilling to raise the standing high bid of $10,000 by twice the defined increment of $2,000 ($4,000 or 40 percent) would have the flexibility to bid $13,000, raising the standing high bid by $3,000. In the case of a license for which the standing high bid has been withdrawn, the minimum acceptable bid will equal the second highest bid received for the license. The additional bid amounts are calculated using the defined increment, as stated. The Bureau will adopt these proposals for Auction No. 48.

130. Finally, bidders are cautioned in selecting their bid amounts because, as explained in the following section, bidders who withdraw a standing high bid from a previous round, even if mistakenly or erroneously made, are subject to bid withdrawal payments.

vi. Bid Removal and Bid Withdrawal

131. In the *Auction No. 48 Comment Public Notice*, the Bureau proposed bid removal and bid withdrawal procedures. With respect to bid withdrawals, the Bureau proposed limiting each bidder to withdrawals in no more than two rounds during the course of the auction. The two rounds in which withdrawals are utilized, the Bureau proposed, would be at the bidder's discretion. The Bureau received no comments on this issue.

132. Procedures. Before the close of a bidding round, a bidder has the option of removing any bids placed in that round. By using the "remove bid" function in the bidding system, a bidder may effectively "unsubmit" any bid placed within that round. A bidder removing a bid placed in the same round is not subject to withdrawal payments. Removing a bid will affect a bidder's activity for the round in which it is removed, *i.e.*, a bid that is subsequently removed does not count toward the bidder's activity requirement. This procedure, about which the Bureau received no comments, will enhance bidder flexibility during the auction. Therefore, the Bureau will adopt these procedures for Auction No. 48.

133. Once a round closes, a bidder may no longer remove a bid. However, in later rounds, a bidder may withdraw standing high bids from previous rounds using the withdraw bid function in the Automated Auction System (assuming that the bidder has not exhausted its withdrawal allowance). A high bidder that withdraws its standing high bid from a previous round during the auction is subject to the bid withdrawal payments specified in 47 CFR 1.2104(g).

Note: Once a withdrawal is placed during a round, that withdrawal cannot be unsubmitted.

134. In previous auctions, the Bureau has detected bidder conduct that, arguably, may have constituted strategic bidding through the use of bid withdrawals. While the Bureau continues to recognize the important role that bid withdrawals play in an auction, *i.e.*, reducing risk associated with efforts to secure various licenses in combination, it concludes that, for Auction No. 48, adoption of a limit on their use to two rounds per bidder is the most appropriate outcome. By doing so the Bureau believes it strikes a reasonable compromise that will allow bidders to use withdrawals. The Bureau's decision on this issue is based upon our experience in prior auctions, particularly the PCS D, E and F block auctions, and 800 MHz SMR auction, and is in no way a reflection of its view regarding the likelihood of any speculation or "gaming" in this auction.

135. The Bureau will therefore limit the number of rounds in which each bidder may place withdrawals to two rounds. These rounds will be at the bidder's discretion, and there will be no limit on the number of bids that may be withdrawn in either of these rounds. Withdrawals during the auction will still be subject to the bid withdrawal payments specified in 47 CFR 1.2104(g). Bidders should note that abuse of the Commission's bid withdrawal procedures could result in the denial of the ability to bid on a market.

136. If a high bid is withdrawn, the minimum acceptable bid will equal the second highest bid received for the license, which may be less than, or equal to, in the case of tied bids, the amount of the withdrawn bid. To set the additional bid amounts, the second highest bid also will be used in place of the standing high bid in the formula used to calculate bid increments. The Commission will serve as a "place holder" high bidder on the license until a new bid is submitted on that license.

137. Calculation. Generally, the Commission imposes payments on

bidders that withdraw high bids during the course of an auction. If a bidder withdraws its bid and there is no higher bid in the same or subsequent auction(s), the bidder that withdrew its bid is responsible for the difference between its withdrawn bid and the net high bid in the same or subsequent auction(s). In the case of multiple bid withdrawals on a single license, within the same or subsequent auctions(s), the payment for each bid withdrawal will be calculated based on the sequence of bid withdrawals and the amounts withdrawn. No withdrawal payment will be assessed for a withdrawn bid if either the subsequent winning bid or any of the intervening subsequent withdrawn bids, in either the same or subsequent auctions(s), equals or exceeds that withdrawn bid. Thus, a bidder that withdraws a bid will not be responsible for any withdrawal payments if there is a subsequent higher bid in the same or subsequent auction(s). This policy allows bidders most efficiently to allocate their resources as well as to evaluate their bidding strategies and business plans during an auction while, at the same time, maintaining the integrity of the auction process. The Bureau retains the discretion to scrutinize multiple bid withdrawals on a single license for evidence of anti-competitive strategic behavior and take appropriate action when deemed necessary.

138. In the *Part 1 Fifth Report and Order*, the Commission modified § 1.2104(g)(1) of the rules regarding assessments of interim bid withdrawal payments. As amended, § 1.2104(g)(1) provides that in instances in which bids have been withdrawn on a license that is not won in the same auction, the Commission will assess an interim withdrawal payment equal to 3 percent of the amount of the withdrawn bids. The 3 percent interim payment will be applied toward any final bid withdrawal payment that will be assessed after subsequent auction of the license. Assessing an interim bid withdrawal payment ensures that the Commission receives a minimal withdrawal payment pending assessment of any final withdrawal payment. *The Part 1 Fifth Report and Order* provides specific examples showing application of the bid withdrawal payment rule

vii. Round Results

139. In the *Auction No. 48 Comment Public Notice*, the Bureau proposed disclosing all information relating to the bids during Auction No. 48 after each round of bidding closes, including all bids and withdrawals placed in each round, the identity of the bidder placing each bid or withdrawal, and the net and gross amounts of each bid or withdrawal. Accordingly, the Bureau will adopt the proposal in the *Auction No. 48 Comment Public Notice*.

140. Bids placed during a round will not be published until the conclusion of that bidding period. After a round closes, the Bureau will compile reports of all bids placed, bids withdrawn, current high bids, new minimum acceptable bids, and bidder eligibility status (bidding eligibility and activity rule waivers), and post the reports for public access. Reports reflecting bidders' identities and bidder identification numbers for Auction No. 48 will be available before and during the auction. Thus, bidders will know in advance of this auction the identities of the bidders against which they are bidding.

viii. Auction Announcements

141. The FCC will use auction announcements to announce items such as schedule changes and stage transitions. All FCC auction announcements will be available by clicking a link on the Automated Auction System.

ix. Maintaining the Accuracy of FCC Form 175 Information

142. As noted in part II.H., after the short-form filing deadline, applicants may make only minor changes to their FCC Form 175 applications. For example, permissible minor changes include deletion and addition of authorized bidders (to a maximum of three) and certain revision of exhibits. Applicants must make these modifications to their FCC Form 175 electronically and submit a letter, briefly summarizing the changes, by electronic mail to the attention of Margaret Wiener, Chief, Auctions and Industry Analysis Division at the following address: *auction48@fcc.gov*. The electronic mail summarizing the changes should include a subject or caption referring to Auction No. 48. The Bureau requests that parties format any attachments to electronic mail as Adobe® Acrobat® (pdf) or Microsoft® Word documents.

143. A separate copy of the letter should be faxed to the attention of Kathryn Garland at (717) 338–2850. Questions about other changes should be directed to Rosemary Cabral of the Auctions and Industry Analysis Division at (202) 418–0660.

V. Post-Auction Procedures

A. Down Payments and Withdrawn Bid Payments

144. After bidding has ended, the Commission will issue a public notice declaring the auction closed, identifying winning bidders, down payments and any withdrawn bid payments due.

145. Within 10 business days after release of the auction closing notice, each winning bidder must submit sufficient funds (in addition to its upfront payment) to bring its total amount of money on deposit with the Government to 20 percent of its net winning bids (actual bids less any applicable small business bidding credits). *See* 47 CFR 1.2107(b). In addition, by the same deadline all bidders must pay any bid withdrawal payments due under 47 CFR 1.2104(g), as discussed in "Bid Removal and Bid Withdrawal," Part IV.B.vi. (Upfront payments are applied first to satisfy any withdrawn bid liability, before being applied toward down payments.)

B. Auction Discount Voucher

146. On June 8, 2000, the Commission awarded Qualcomm, Inc. a transferable Auction Discount Voucher ("ADV") in the amount of $125,273,878.00. This ADV may be used by Qualcomm or its transferee, in whole or in part, to adjust a winning bid in any spectrum auction prior to June 8, 2003, subject to terms and conditions set forth in the Commission's Order. Qualcomm transferred $10,848,000.00 of the ADV to a winning bidder in FCC Auction No. 35 and the transferee used its portion of the ADV to pay a portion of one of its winning bids in Auction No. 35. The remaining portion of Qualcomm's ADV could be used to adjust winning bids in another FCC auction, including Auction No. 48.

C. Long-Form Application

147. Within 10 business days after release of the auction closing notice, winning bidders must electronically submit a properly completed long-form application (FCC Form 601) and required exhibits for each license won through Auction No. 48. Winning bidders that are small businesses must include an exhibit demonstrating their eligibility for small business bidding credits. *See* 47 CFR 1.2112(b), 24.709(c)(2)(i). Further filing instructions will be provided to auction winners at the close of the auction.

D. Tribal Land Bidding Credit

148. A winning bidder that intends to use its license(s) to deploy facilities and provide services to federally-recognized

tribal lands that are unserved by any telecommunications carrier or that have a telephone service penetration rate equal to or below 70 percent is eligible to receive a tribal land bidding credit as set forth in 47 CFR 1.2107 and 1.2110(f). A tribal land bidding credit is in addition to, and separate from, any other bidding credit for which a winning bidder may qualify.

149. Unlike other bidding credits that are requested prior to the auction, a winning bidder applies for the tribal land bidding credit after winning the auction when it files its long-form application (FCC Form 601). When filing the long-form application, the winning bidder will be required to advise the Commission whether it intends to seek a tribal land bidding credit, for each market won in the auction, by checking the designated box(es). After stating its intent to seek a tribal land bidding credit, the applicant will have 90 days from the close of the long-form filing window to amend its application to select the specific tribal lands to be served and provide the required tribal government certifications. Licensees receiving a tribal land bidding credit are subject to performance criteria as set forth in 47 CFR 1.2110(f).

150. For additional information on the tribal land bidding credit, including how the amount of the credit is calculated, applicants should review the Commission's rule making proceeding regarding tribal land bidding credits and related public notices. Relevant documents can be viewed on the Commission's web site by going to *http://wireless.fcc.gov/auctions* and clicking on the *Tribal Land Credits* link.

E. Default and Disqualification

151. Any winning bidder that defaults or is disqualified after the close of the auction (*i.e.*, fails to remit the required down payment within the prescribed period of time, fails to submit a timely long-form application; fails to make full payment, or is otherwise disqualified) will be subject to the payments described in 47 CFR 1.2104(g)(2). In such event the Commission may re-auction the license or offer it to the next highest bidder (in descending order) at its final bid. In addition, if a default or disqualification involves gross misconduct, misrepresentation, or bad faith by an applicant, the Commission may declare the applicant and its principals ineligible to bid in future auctions, and may take any other action that it deems necessary, including institution of proceedings to revoke any existing licenses held by the applicant.

F. Refund of Remaining Upfront Payment Balance

152. All applicants that submitted upfront payments but were not winning bidders for a license in Auction No. 48 may be entitled to a refund of their remaining upfront payment balance after the conclusion of the auction. No refund will be made unless there are excess funds on deposit from that applicant after any applicable bid withdrawal payments have been paid. All refunds will be returned to the payer of record, as identified on the FCC 159, unless the payer submits written authorization instructing otherwise.

153. Bidders that drop out of the auction completely may be eligible for a refund of their upfront payments before the close of the auction. Qualified bidders that have exhausted all of their activity rule waivers, have no remaining bidding eligibility, and have not withdrawn a high bid during the auction must submit a written refund request. If you have completed the refund instructions electronically, then only a written request for the refund is necessary. If not, the request must also include wire transfer instructions, Taxpayer Identification Number (TIN) and FCC Registration Number (FRN). Send refund request to: Federal Communications Commission, Financial Operations Center, Auctions Accounting Group, Gail Glasser or Tim Dates, 445 12th Street, SW, Room 1–C863, Washington, DC 20554.

154. Bidders are encouraged to file their refund information electronically using the refund information portion of the FCC Form 175, but bidders can also fax their information to the Auctions Accounting Group at (202) 418–2843. Once the information has been approved, a refund will be sent to the party identified in the refund information.

Note: Refund processing generally takes up to two weeks to complete. Bidders with questions about refunds should contact Tim Dates at (202) 418–0496 or Gail Glasser at (202) 418–0578.

Federal Communications Commission.

Margaret Wiener,

Chief, Auctions and Industry Analysis Division, WTB.

[FR Doc. 03–2839 Filed 2–5–03; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

[Report No. AUC–03–53–A (Auction No. 53); DA 03–286]

Auction of Multichannel Video Distribution and Data Service Licenses Rescheduled for June 25, 2003; Comment Sought on Reserve Prices or Minimum Opening Bids and Other Auction Procedures

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This document announces that the auction of licenses in the Multichannel Video Distribution and Data Service ("MVDDS") is rescheduled for June 25, 2003 and seeks comment on specific terms and conditions of this auction.

DATES: Comments are due on or before February 13, 2003, and reply comments are due on or before February 20, 2003.

ADDRESSES: Comments and reply comments must be sent by electronic mail to the following address: *auction53@fcc.gov*. *See* **SUPPLEMENTARY INFORMATION** for filing instructions.

FOR FURTHER INFORMATION CONTACT: *For legal questions:* Brian Carter (202) 418–0660. *For general auction questions:* Roy Knowles (717) 338–2888 or Barbara Sibert (717) 338–2888. *For service rule questions:* Jennifer Burton (legal), Michael Pollak (technical) at (202) 418–0680.

SUPPLEMENTARY INFORMATION: This is a summary of the *Auction No. 49 Comment Public Notice* released on January 30, 2003. The complete text of the *Auction No. 49 Comment Public Notice* is available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. The *Auction No. 49 Comment Public Notice* may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com*.

1. By the *Auction No. 49 Comment Public Notice*, the Wireless Telecommunications Bureau ("Bureau") announces that the auction of licenses in the MVDDS previously scheduled to commence on August 6, 2003 ("Auction No. 53") has been rescheduled for June 25, 2003. The *Auction No. 49 Comment Public Notice* seeks comment on specific terms and conditions of this auction. The key dates are listed:

Auction Seminar: May 1, 2003.
Short Form Deadline: May 12, 2003. (FCC Form 175 Application)
Upfront Payment Deadline: May 30, 2003.
Mock Auction: June 20, 2003.
Auction Begins: June 25, 2003.

2. Auction No. 53 will offer one block of unpaired spectrum in the 12.2–12.7 GHz band. MVDDS licensees may use this spectrum for any digital fixed one-way non-broadcast service including direct-to-home/office wireless service.[1] Mobile and aeronautical services are not authorized. Two-way services may be provided by using other spectrum or media for the return or upstream path.[2]

I. Background

3. In the *MVDDS Second Report and Order*, 67 FR 43031 (June 26, 2002), the Commission adopted Component Economic Areas ("CEAs") as the geographic licensing areas for this service. CEAs are based on Economic Areas delineated by the United States Department of Commerce. There are a total of 354 CEAs and FCC-defined CEA-like service areas that encompass the United States, American Samoa, Guam, the Northern Mariana Islands, San Juan (Puerto Rico), Mayagüez/Aguadilla-Ponce (Puerto Rico), and the United States Virgin Islands. The 354 CEA service areas are based on the 348 Component Economic Areas delineated by the Regional Economic Analysis Division, Bureau of Economic Analysis, U.S. Department of Commerce, February 1995, with the following six FCC-defined service area additions: American Samoa, Guam, the Northern Mariana Islands, San Juan (Puerto Rico), Mayagüez/Aguadilla-Ponce (Puerto Rico), and the United States Virgin Islands. County definitions for the 348 U.S. Department of Commerce Component Economic Areas can be obtained from a file posted on the internet at *http://www.fcc.gov/oet/info/maps/areas/* via the link labeled "CEA DATA." (This link is to a compressed file (ceadata.zip) that includes the text file Eacodes.fin. The Eacodes.fin file includes county, metro area, Component Economic Area, and Economic Area codes for each county, and alphabetic names for all counties, Component Economic Areas, and Economic Areas.)

4. The Commission has before it petitions for reconsideration of the *MVDDS Second Report and Order*, and a pleading filed in response to these petitions that urges the Commission, *inter alia*, to reconsider its decision to use CEAs and instead use Designated Market Areas ("DMAs") as the geographic licensing areas. DMAs have been developed by Nielsen Media Research ("Nielsen") utilizing audience survey information from cable and non-cable households to determine the assignment of counties to local television markets.[3] There are a total of 214 DMAs and FCC-defined DMA-like service areas that encompass the United States, Guam and the Northern Mariana Islands, Puerto Rico and the United States Virgin Islands, and American Samoa.

5. The 214 service areas are based on the 210 DMAs delineated by Nielsen in its publication entitled "U.S. Television Household Estimates" dated September 2002 plus the following four FCC-defined service area additions: Alaska—Balance of State (all geographic areas of Alaska not included in Nielsen's three DMAs for the state: Anchorage, Fairbanks, and Juneau), Guam and the Northern Mariana Islands, Puerto Rico and the United States Virgin Islands, and American Samoa. While most DMAs consist of one contiguous geographic area, a few are composed of multiple noncontiguous areas.

6. To minimize any delay in the auction process that might result from a decision by the Commission to change the MVDDS geographic license areas, the Bureau seeks comment on reserve prices, minimum opening bids, and other auction procedures as they would apply to an auction of either CEA licenses or DMA licenses. With respect to licenses for the 210 DMAs developed by Nielsen, the Bureau seeks comment on reserve prices, minimum opening bids, and other auction procedures as they would apply to DMAs as defined in Nielsen's publication entitled "U.S. Television Household Estimates" dated September 2002.[4]

7. As discussed, the Bureau proposes to use the same auction rules and procedures for an auction of MVDDS licenses whether the licenses are based on CEAs or DMAs, but it proposes different upfront payments and minimum opening bids for each of these geographic licensing areas.

8. A complete list of the CEA licenses that are available for Auction No. 53 is included in Attachment A of the *Auction No. 49 Comment Public Notice*. Attachment B of the *Auction No. 49 Comment Public Notice* provides a complete list of the licenses that would be available in Auction No. 53 if licenses were based on DMAs.

9. The following table describes the licenses that will be auctioned, depending on whether the Bureau uses a CEA or DMA geographic license area:

Frequencies	Bandwidth	Geographic area type	No. of licenses
12.2–12.7 GHz	500 MHz	CEA	354
12.2–12.7 GHz	500 MHz	DMA	214

10. The Balanced Budget Act of 1997 requires the Commission to "ensure that, in the scheduling of any competitive bidding under this subsection, an adequate period is allowed * * * before issuance of bidding rules, to permit notice and comment on proposed auction procedures * * *." Consistent with the provisions of the Balanced Budget Act and to ensure that potential bidders have adequate time to familiarize themselves with the specific rules that will govern the day-to-day conduct of an auction, the Commission directed the Bureau, under its existing delegated authority, to seek comment on a variety of auction-specific procedures prior to the start of each auction. The Bureau therefore seeks comment on the issues set forth relating to Auction No. 53. Parties submitting comments in response to the *Auction No. 49 Comment Public Notice* should file an additional copy of such comments in ET Docket No. 98–206. Instructions for filing comments are provided.

[1] 47 CFR 101.1407. Broadcast services are intended for reception of the general public and not on a subscribership basis.

[2] The following eligibility restriction applies to MVDDS licenses: no cable operator, nor any entity owning an attributable interest in a cable operator, may hold an attributable interest in an MVDDS license if such cable operator's service area significantly overlaps the MVDDS license area. *See* 47 CFR 101.1412.

[3] *See http://www.nielsenmedia.com/DMAs.html*. Nielsen determines what constitutes a separate market by applying a complex statistical formula based upon viewership and other factors. Nielsen owns the copyright to the DMA listing.

[4] This publication lists estimates of television households "as of January 2003" and can be found at Nielsen's Web site. *See http://www.nielsenmedia.com*. Interested parties are advised to consult this website and contact Nielsen directly for relevant market data.

II. Auction Structure

A. Simultaneous Multiple Round (SMR) Auction Design

11. The Bureau proposes to award all licenses included in Auction No. 53 in a simultaneous multiple-round auction. As described further, this methodology offers every license for bid at the same time with successive bidding rounds in which bidders may place bids. The Bureau seeks comment on this proposal.

B. Upfront Payments and Initial Maximum Eligibility

12. The Bureau has been delegated authority and discretion to determine an appropriate upfront payment for each license being auctioned, taking into account such factors as the population in each geographic license area, and the value of similar spectrum. As described further, the upfront payment is a refundable deposit made by each bidder to establish eligibility to bid on licenses. Upfront payments related to the specific spectrum subject to auction protect against frivolous or insincere bidding and provide the Commission with a source of funds from which to collect payments owed at the close of the auction. With these guidelines in mind for Auction No. 53, the Bureau proposes to calculate upfront payments on a license-by-license basis.

13. The Bureau proposes to calculate upfront payments on a license-by-license basis for CEAs using the following formula: $0.025 * License Area Population with a minimum of $1,000 per license.

14. Accordingly, the Bureau lists all CEA licenses, including the related license area population and proposed upfront payment for each license, in Attachment A of the *Auction No. 49 Comment Public Notice*. The Bureau seeks comment on this proposal.

15. The Bureau proposes to calculate upfront payments on a license-by-license basis for DMAs as follows: From the total upfront payment amount for all CEA licenses ($7,139,300), subtract the upfront payments for CEA349–CEA354 ($104,700), for a remainder of $7,034,600. For each DMA (DMA001–DMA210), the upfront payment is calculated by multiplying $7,034,600 by a percentage that is the ratio of television households in that DMA to the total television households in DMA001–DMA210, with a minimum of $1,000 per license. The upfront payment for DMA211 is set at the minimum upfront payment amount of $1,000. Upfront payments for DMA212–DMA214 are calculated as the sum of the upfront payments for the corresponding CEA licenses.[5] Accordingly, the Bureau lists all DMA licenses, including the related percentage of total television households and proposed upfront payment for each license, in Attachment B of the *Auction No. 49 Comment Public Notice*. The Bureau seeks comment on this proposal.

16. The Bureau further proposes that the amount of the upfront payment submitted by a bidder will determine the number of bidding units on which a bidder may place bids. This limit is a bidder's "maximum initial eligibility." Each license is assigned a specific number of bidding units equal to the upfront payment listed in Attachment A of the *Auction No. 49 Comment Public Notice* (CEAs) or Attachment B of the *Auction No. 49 Comment Public Notice* (DMAs), on a bidding unit per dollar basis. This number does not change as prices rise during the auction. A bidder's upfront payment is not attributed to specific licenses. Rather, a bidder may place bids on any combination of licenses as long as the total number of bidding units associated with those licenses does not exceed the bidder's eligibility. Eligibility cannot be increased during the auction. Thus, in calculating its upfront payment amount, an applicant should determine the maximum number of bidding units it may wish to bid on (or hold high bids on) in any single round and submit an upfront payment covering that number of bidding units. The Bureau seeks comment on this proposal.

C. Activity Rules

17. In order to ensure that the auction closes within a reasonable period of time, an activity rule requires bidders to bid actively on a percentage of their current bidding eligibility during each round of the auction rather than waiting until the end to participate. A bidder that does not satisfy the activity rule will either use an activity rule waiver (if any remain) or lose bidding eligibility for the next round.

18. The Bureau proposes to divide the auction into three stages, each characterized by an increased activity requirement. The auction will start in Stage One. The Bureau proposes that the auction generally will advance to the next stage (*i.e.*, from Stage One to Stage Two, and from Stage Two to Stage Three) when the auction activity level, as measured by the percentage of bidding units receiving new high bids, is approximately twenty percent or below for three consecutive rounds of bidding. However, the Bureau further proposes that it retain the discretion to change stages unilaterally by announcement during the auction. In exercising this discretion, the Bureau will consider a variety of measures of bidder activity, including, but not limited to, the auction activity level, the percentage of licenses (as measured in bidding units) on which there are new bids, the number of new bids, and the percentage increase in revenue. The Bureau seeks comment on these proposals.

19. For Auction No. 53, the Bureau proposes the following activity requirements:

Stage One: In each round of the first stage of the auction, a bidder desiring to maintain its current eligibility is required to be active on licenses representing at least 80 percent of its current bidding eligibility. Failure to maintain the requisite activity level will result in a reduction in the bidder's bidding eligibility in the next round of bidding (unless an activity rule waiver is used). During Stage One, reduced eligibility for the next round will be calculated by multiplying the current round activity by five-fourths (5/4).

Stage Two: In each round of the second stage, a bidder desiring to maintain its current eligibility is required to be active on 90 percent of its current bidding eligibility. During Stage Two, reduced eligibility for the next round will be calculated by multiplying the current round activity by ten-ninths (10/9).

Stage Three: In each round of the third stage, a bidder desiring to maintain its current eligibility is required to be active on 98 percent of its current bidding eligibility. In this final stage, reduced eligibility for the next round will be calculated by multiplying the current round activity by fifty/forty-ninths (50/49).

20. The Bureau seeks comment on these proposals. Commenters that believe these activity rules should be modified should explain their reasoning and comment on the desirability of an alternative approach. Commenters are advised to support their claims with analyses and suggested alternative activity rules.

D. Activity Rule Waivers and Reducing Eligibility

21. Use of an activity rule waiver preserves the bidder's current bidding eligibility despite the bidder's activity in the current round being below the required minimum level. An activity rule waiver applies to an entire round

[5] That is, the upfront payment for DMA212 equals the sum of the upfront payments for CEA352–CEA354; for DMA213, the sum of the upfront payments for CEA350 and CEA351; and for DMA214, the upfront payment for CEA349.

of bidding and not to a particular license. Activity rule waivers can be either proactive or automatic and are principally a mechanism for auction participants to avoid the loss of auction eligibility in the event that exigent circumstances prevent them from placing a bid in a particular round.

Note: Once a proactive waiver is submitted during a round, that waiver cannot be unsubmitted.

22. The FCC Automated Auction System assumes that bidders with insufficient activity would prefer to use an activity rule waiver (if available) rather than lose bidding eligibility. Therefore, the system will automatically apply a waiver (known as an "automatic waiver") at the end of any bidding round in which a bidder's activity level is below the minimum required unless: (i) the bidder has no activity rule waivers remaining; or (ii) the bidder overrides the automatic application of a waiver by reducing eligibility, thereby meeting the minimum requirements.

Note: If a bidder has no waivers remaining and does not satisfy the required activity level, its current eligibility will be permanently reduced, possibly eliminating the bidder from the auction.

23. A bidder with insufficient activity may wish to reduce its bidding eligibility rather than use an activity rule waiver. If so, the bidder must affirmatively override the automatic waiver mechanism during the bidding period by using the "reduce eligibility" function in the bidding system. In this case, the bidder's eligibility is permanently reduced to bring the bidder into compliance with the activity rules as described. Once eligibility has been reduced, a bidder will not be permitted to regain its lost bidding eligibility.

24. A bidder may proactively use an activity rule waiver as a means to keep the auction open without placing a bid. If a bidder submits a proactive waiver (using the "proactive waiver" function in the bidding system) during a bidding period in which no bids or withdrawals are submitted, the auction will remain open and the bidder's eligibility will be preserved. An automatic waiver invoked in a round in which there are no new valid bids or withdrawals will not keep the auction open.

25. The Bureau proposes that each bidder in Auction No. 53 be provided with five activity rule waivers that may be used at the bidder's discretion during the course of the auction as set forth. The Bureau seeks comment on this proposal.

E. Information Relating to Auction Delay, Suspension, or Cancellation

26. For Auction No. 53, the Bureau proposes that, by public notice or by announcement during the auction, it may delay, suspend, or cancel the auction in the event of natural disaster, technical obstacle, evidence of an auction security breach, unlawful bidding activity, administrative or weather necessity, or for any other reason that affects the fair and efficient conduct of competitive bidding. In such cases, the Bureau, in its sole discretion, may elect to resume the auction starting from the beginning of the current round, resume the auction starting from some previous round, or cancel the auction in its entirety. Network interruption may cause the Bureau to delay or suspend the auction. The Bureau emphasizes that exercise of this authority is solely within its discretion, and its use is not intended to be a substitute for situations in which bidders may wish to apply their activity rule waivers. The Bureau seeks comment on this proposal.

III. Bidding Procedures

A. Round Structure

27. The Commission will conduct Auction No. 53 over the Internet. Telephonic Bidding will also be available. As a contingency, the FCC Wide Area Network will be available as well. The telephone number through which the backup FCC Wide Area Network may be accessed will be announced in a later public notice. Full information regarding how to establish such a connection, and related charges, will be provided in the public notice announcing details of auction procedures.

28. The initial bidding schedule will be announced in a public notice to be released at least one week before the start of the auction, and will be included in the registration mailings. The simultaneous multiple round format will consist of sequential bidding rounds, each followed by the release of round results. Details regarding the location and format of round results will be included in the same public notice.

29. The Bureau has discretion to change the bidding schedule in order to foster an auction pace that reasonably balances speed with the bidders' need to study round results and adjust their bidding strategies. The Bureau may increase or decrease the amount of time for the bidding rounds and review periods, or the number of rounds per day, depending upon the bidding activity level and other factors. The Bureau seeks comment on this proposal.

B. Reserve Price or Minimum Opening Bid

30. The Balanced Budget Act calls upon the Commission to prescribe methods for establishing a reasonable reserve price or a minimum opening bid when FCC licenses are subject to auction, unless the Commission determines that a reserve price or minimum opening bid is not in the public interest. Consistent with this mandate, the Commission has directed the Bureau to seek comment on the use of a minimum opening bid and/or reserve price prior to the start of each auction.

31. Normally, a reserve price is an absolute minimum price below which an item will not be sold in a given auction. Reserve prices can be either published or unpublished. A minimum opening bid, on the other hand, is the minimum bid price set at the beginning of the auction below which no bids are accepted. It is generally used to accelerate the competitive bidding process. Also, the auctioneer often has the discretion to lower the minimum opening bid amount later in the auction. It is also possible for the minimum opening bid and the reserve price to be the same amount.

32. In light of the Balanced Budget Act's requirements, the Bureau proposes to establish minimum opening bids for Auction No. 53. The Bureau believes a minimum opening bid, which has been utilized in other auctions, is an effective bidding tool.

33. For Auction No. 53, the Bureau proposes the following license-by-license formula for calculating minimum opening bids for CEAs: $0.05 * License Area Population with a minimum of $1,000 per license.

34. The specific minimum opening bid for each CEA license available in Auction No. 53 is set forth in Attachment A of the *Auction No. 49 Comment Public Notice*. Comment is sought on this proposal.

35. The Bureau proposes to calculate minimum opening bids on a license-by-license basis for DMAs as follows: From the total minimum opening bid amount for all CEA licenses ($14,283,500), subtract the minimum opening bids for CEA349–CEA354 ($210,500), for a remainder of $14,073,000. For each DMA (DMA001–DMA210), the minimum opening bid is calculated by multiplying $14,073,000 by a percentage that is the ratio of television households in that DMA to the total television households in DMA001–DMA210, with a minimum of $1,000 per license. The minimum opening bid for DMA211 is set at the minimum amount of $1,000.

Minimum opening bids for DMA212–DMA214 are calculated as the sum of the minimum opening bids for the corresponding CEA licenses.[6] Accordingly, the Bureau lists all DMA licenses, including the related percentage of total television households and proposed minimum opening bid for each license, in Attachment B of the *Auction No. 49 Comment Public Notice*. The Bureau seeks comment on this proposal.

36. If commenters believe that these minimum opening bids will result in substantial numbers of unsold licenses, or are not reasonable amounts, or should instead operate as reserve prices, they should explain why this is so, and comment on the desirability of an alternative approach. Commenters are advised to support their claims with valuation analyses and suggested reserve prices or minimum opening bid levels or formulas. In establishing the minimum opening bids, the Bureau particularly seeks comment on such factors as the amount of spectrum being auctioned, levels of incumbency, the availability of technology to provide service, the size of the geographic service areas, issues of interference with other spectrum bands and any other relevant factors that could reasonably have an impact on valuation of the MVDDS spectrum. Alternatively, comment is sought on whether, consistent with the Balanced Budget Act, the public interest would be served by having no minimum opening bid or reserve price.

C. Minimum Acceptable Bids and Bid Increments

37. In each round, eligible bidders will be able to place bids on a given license in any of nine different amounts. The FCC Automated Auction System interface will list the nine acceptable bid amounts for each license. Until a bid has been placed on a license, the minimum acceptable bid for that license will be equal to its minimum opening bid. In the rounds after an acceptable bid is placed on a license, the minimum acceptable bid for that license will be equal to the standing high bid plus the defined increment.

38. Once there is a standing high bid on a license, the FCC Automated Auction System will calculate a minimum acceptable bid for that license for the following round, as described. The difference between the minimum acceptable bid and the standing high bid for each license will define the bid increment. The nine acceptable bid amounts for each license consist of the minimum acceptable bid (the standing high bid plus one bid increment) and additional amounts calculated using multiple bid increments (*i.e.*, the second bid amount equals the standing high bid plus two times the bid increment, the third bid amount equals the standing high bid plus three times the bid increment, etc.).

39. Until a bid has been placed on a license, the minimum acceptable bid for that license will be equal to its minimum opening bid. The additional bid amounts for licenses that have not yet received a bid will be calculated differently, as explained.

40. For Auction No. 53, the Bureau proposes to calculate minimum acceptable bids by using a smoothing methodology, as it has done in several other auctions. The smoothing formula calculates minimum acceptable bids by first calculating a percentage increment, not to be confused with the bid increment. The percentage increment for each license is based on bidding activity on that license in all prior rounds; therefore, a license which has received many bids throughout the auction will have a higher percentage increment than a license which has received few bids.

41. The calculation of the percentage increment used to determine the minimum acceptable bids for each license for the next round is made at the end of each round. The computation is based on an activity index, which is a weighted average of the number of bids in that round and the activity index from the prior round. The current activity index is equal to a weighting factor times the number of new bids received on the license in the most recent bidding round plus one minus the weighting factor times the activity index from the prior round. The activity index is then used to calculate a percentage increment by multiplying a minimum percentage increment by one plus the activity index with that result being subject to a maximum percentage increment. The Commission will initially set the weighting factor at 0.5, the minimum percentage increment at 0.1 (10%), and the maximum percentage increment at 0.2 (20%). Hence, at these initial settings, the percentage increment will fluctuate between 10% and 20% depending upon the number of bids for the license.

Equations

$A_i = (C * B_i) + ((1–C) * A_{i–1})$

I_{i+1} = smaller of $((1 + A_i) * N)$ and M

$X_{i+1} = I_{i+1} * Y_i$

Where:

A_i = activity index for the current round (round i)

C = activity weight factor

B_i = number of bids in the current round (round i)

$A_{i–1}$ = activity index from previous round (round i–1), A_0 is 0

I_{i+1} = percentage increment for the next round (round i+1)

N = minimum percentage increment or percentage increment floor

M = maximum percentage increment or percentage increment ceiling

X_{i+1} = dollar amount associated with the percentage increment

Y_i = high bid from the current round

42. Under the smoothing methodology, once a bid has been received on a license, the minimum acceptable bid for that license in the following round will be the high bid from the current round plus the dollar amount associated with the percentage increment, with the result rounded to the nearest thousand if it is over ten thousand or to the nearest hundred if it is under ten thousand.

Examples

License 1

C = 0.5, N = 0.1, M = 0.2

Round 1 (2 new bids, high bid = $1,000,000)

i. Calculation of percentage increment for round 2 using the smoothing formula:

$A_1 = (0.5 * 2) + (0.5 * 0) = 1$

I_2 = The smaller of ((1 + 1) * 0.1) = 0.2 or 0.2 (the maximum percentage increment)

ii. Calculation of dollar amount associated with the percentage increment for round 2 (using I_2):

$X_2 = 0.2 * \$1{,}000{,}000 = \$200{,}000$

iii. Minimum acceptable bid for round 2 = $1,200,000

Round 2 (3 new bids, high bid = $2,000,000)

i. Calculation of percentage increment for round 3 using the smoothing formula:

$A_2 = (0.5 * 3) + (0.5 * 1) = 2$

I_3 = The smaller of ((1 + 2) * 0.1) = 0.3 or 0.2 (the maximum percentage increment)

ii. Calculation of dollar amount associated with the percentage increment for round 3 (using I_3):

$X_3 = 0.2 * \$2{,}000{,}000 = \$400{,}000$

iii. Minimum acceptable bid for round 3 = $2,400,000

[6] That is, the minimum opening bid for DMA212 equals the sum of the minimum opening bids for CEA352–CEA354; for DMA213, the sum of the minimum opening bids for CEA350 and CEA351; and for DMA214, the minimum opening bid for CEA349.

Round 3 (1 new bid, high bid = $2,400,000)

i. Calculation of percentage increment for round 4 using the smoothing formula:

$A_3 = (0.5 * 1) + (0.5 * 2) = 1.5$

I_4 = The smaller of ((1 + 1.5) * 0.1) = 0.25 or 0.2 (the maximum percentage increment)

ii. Calculation of dollar amount associated with the percentage increment for round 4 (using I_4):

$X_4 = 0.2 * \$2,400,000 = \$480,000$

iii. Minimum acceptable bid for round 4 = $2,880,000

43. As stated, until a bid has been placed on a license, the minimum acceptable bid for that license will be equal to its minimum opening bid. The additional bid amounts are calculated using the difference between the minimum opening bid times one plus the minimum percentage increment, rounded as described, and the minimum opening bid. That is, I = (minimum opening bid)(1 + N){rounded}-(minimum opening bid). Therefore, when N equals 0.1, the first additional bid amount will be approximately ten percent higher than the minimum opening bid; the second, twenty percent; the third, thirty percent; etc.

44. In the case of a license for which the standing high bid has been withdrawn, the minimum acceptable bid will equal the second highest bid received for the license. The additional bid amounts are calculated using the difference between the second highest bid times one plus the minimum percentage increment, rounded, and the second highest bid.

45. The Bureau retains the discretion to change the minimum acceptable bids and bid increments if it determines that circumstances so dictate. The Bureau will do so by announcement in the FCC Automated Auction System. The Bureau seeks comment on these proposals.

D. High Bids

46. At the end of a bidding round, the high bids will be determined based on the highest gross bid amount received for each license. A high bid from a previous round is sometimes referred to as a "standing high bid." A "standing high bid" will remain the high bid until there is a higher bid on the same license at the close of a subsequent round. Bidders are reminded that standing high bids confer bidding activity.

47. In the event of identical high bids on a license in a given round (*i.e.*, tied bids), the Bureau proposes to use a random number generator to select a high bid from among the tied bids. The remaining bidders, as well as the high bidder, will be able to submit a higher bid in a subsequent round. If no bidder submits a higher bid in a subsequent round, the high bid from the previous round will win the license. If any bids are received on the license in a subsequent round, the high bid again will be determined by the highest gross bid amount received for the license.

E. Information Regarding Bid Withdrawal and Bid Removal

48. For Auction No. 53, the Bureau proposes the following bid removal and bid withdrawal procedures. Before the close of a bidding period, a bidder has the option of removing any bid placed in that round. By removing selected bids in the bidding system, a bidder may effectively "unsubmit" any bid placed within that round. A bidder removing a bid placed in the same round is not subject to a withdrawal payment. Once a round closes, a bidder may no longer remove a bid.

49. A high bidder may withdraw its standing high bids from previous rounds using the withdraw function in the bidding system. A high bidder that withdraws its standing high bid from a previous round is subject to the bid withdrawal payment provisions of the Commission rules. The Bureau seeks comment on these bid removal and bid withdrawal procedures.

50. In the *Part 1 Third Report and Order*, 63 FR 770 (January 7, 1998), the Commission explained that allowing bid withdrawals facilitates efficient aggregation of licenses and the pursuit of efficient backup strategies as information becomes available during the course of an auction. The Commission noted, however, that, in some instances, bidders may seek to withdraw bids for improper reasons. The Bureau, therefore, has discretion, in managing the auction, to limit the number of withdrawals to prevent any bidding abuses. The Commission stated that the Bureau should assertively exercise its discretion, consider limiting the number of rounds in which bidders may withdraw bids, and prevent bidders from bidding on a particular market if it finds that a bidder is abusing the Commission's bid withdrawal procedures.

51. Applying this reasoning, the Bureau proposes to limit each bidder in Auction No. 53 to withdrawing standing high bids in no more than two rounds during the course of the auction. To permit a bidder to withdraw bids in more than two rounds would likely encourage insincere bidding or the use of withdrawals for anti-competitive purposes. The two rounds in which withdrawals are utilized will be at the bidder's discretion; withdrawals otherwise must be in accordance with the Commission's rules. There is no limit on the number of standing high bids that may be withdrawn in either of the rounds in which withdrawals are utilized. Withdrawals will remain subject to the bid withdrawal payment provisions specified in the Commission's rules. The Bureau seeks comment on this proposal.

F. Stopping Rule

52. The Bureau has discretion "to establish stopping rules before or during multiple round auctions in order to terminate the auction within a reasonable time." For Auction No. 53, the Bureau proposes to employ a simultaneous stopping rule approach. A simultaneous stopping rule means that all licenses remain open until bidding closes simultaneously on all licenses.

53. Bidding will close simultaneously on all licenses after the first round in which no new acceptable bids, proactive waivers, or withdrawals are received. Thus, unless circumstances dictate otherwise, bidding will remain open on all licenses until bidding stops on every license.

54. However, the Bureau proposes to retain the discretion to exercise any of the following options during Auction No. 53:

i. Utilize a modified version of the simultaneous stopping rule. The modified stopping rule would close the auction for all licenses after the first round in which no bidder submits a proactive waiver, withdrawal, or a new bid on any license on which it is not the standing high bidder. Thus, absent any other bidding activity, a bidder placing a new bid on a license for which it is the standing high bidder would not keep the auction open under this modified stopping rule. The Bureau further seeks comment on whether this modified stopping rule should be used at any time or only in stage three of the auction.

ii. Keep the auction open even if no new acceptable bids or proactive waivers are submitted and no previous high bids are withdrawn. In this event, the effect will be the same as if a bidder had submitted a proactive waiver. The activity rule, therefore, will apply as usual, and a bidder with insufficient activity will either lose bidding eligibility or use a remaining activity rule waiver.

iii. Declare that the auction will end after a specified number of additional rounds ("special stopping rule"). If the Bureau invokes this special stopping rule, it will accept bids in the specified

final round(s) only for licenses on which the high bid increased in at least one of a specified preceding number of rounds.

55. The Bureau proposes to exercise these options only in certain circumstances, such as, for example, where the auction is proceeding very slowly, there is minimal overall bidding activity, or it appears likely that the auction will not close within a reasonable period of time. Before exercising these options, the Bureau is likely to attempt to increase the pace of the auction by, for example, increasing the number of bidding rounds per day, and/or increasing the amount of the minimum bid increments for the limited number of licenses where there is still a high level of bidding activity. The Bureau seeks comment on these proposals.

IV. Conclusion

56. Comments are due on or before February 13, 2003, and reply comments are due on or before February 20, 2003. Because of the disruption of regular mail and other deliveries in Washington, DC, the Bureau requires that all comments and reply comments be filed electronically. Comments and reply comments must be sent by electronic mail to the following address: *auction53@fcc.gov*. The electronic mail containing the comments or reply comments must include a subject or caption referring to Auction No. 53 Comments. The Bureau requests that parties format any attachments to electronic mail as Adobe® Acrobat® (pdf) or Microsoft® Word documents. In addition, the Bureau requests that commenters fax a courtesy copy of their comments and reply comments to the attention of Kathryn Garland at (717) 338–2850.

57. Parties submitting comments in response to the *Auction No. 49 Comment Public Notice* should file an additional copy of such comments in ET Docket No. 98–206. Comments may be filed in ET Docket No. 98–206 using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. *See* Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24121 (May 1, 1998). Commenters that wish confidential treatment of their submissions should request that their submission, or specific part thereof, be withheld from public inspection. *See* 47 CFR 0.459.

58. Comments filed through the ECFS can be sent as an electronic file via the Internet to *<http://www.fcc.gov/e-file/ecfs.htm>*. Generally, only one copy of an electronic submission must be filed. Because multiple docket or rulemaking numbers appear in the caption of the MVDDS rulemaking proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to *ecfs@fcc.gov*, and should include the following words in the body of the message, "get form." A sample form and directions will be sent in reply. Parties who choose to file by paper must file an original and four copies of each filing. Because more than one docket or rulemaking number appears in the caption of the MVDDS rulemaking proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Vistronix, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW., Washington, DC 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission. Commenters also should send four (4) paper copies of their filings to Jennifer Burton, Federal Communications Commission, Room 4–C425, 445 12th Street, SW., Washington, DC 20554. Copies of comments and reply comments will be available for public inspection during regular business hours in the FCC Public Reference Room, Room CY–A257, 445 12th Street, SW., Washington, DC 20554.

59. This proceeding and the MVDDS rulemaking proceeding have been designated as "permit-but-disclose" proceedings in accordance with the Commission's *ex parte* rules. Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented is generally required. Other rules pertaining to oral and written *ex parte* presentations in permit-but-disclose proceedings are set forth in § 1.1206(b) of the Commission's rules.

Federal Communications Commission.

Louis J. Sigalos,

Deputy Chief, Auctions and Industry Analysis Division, WTB.

[FR Doc. 03–3039 Filed 2–5–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Sunshine Act Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 2:15 p.m. on Friday, January 31, 2003, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider matters relating to the Corporation's corporate activities.

In calling the meeting, the Board determined, on motion of Director James E. Gilleran (Director, Office of Thrift Supervision), seconded by Vice Chairman John M. Reich, concurred in by John M. Hawke, Jr. (Comptroller of the Currency), and Chairman Donald E. Powell, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2), (c)(8), and (c)(9)(A)(ii)).

The meeting was held in the Board Room of the FDIC Building located at 550—17th Street, NW., Washington, DC.

Federal Deposit Insurance Corporation.

Dated: February 3, 2003.

Valerie J. Best,

Assistant Executive Secretary.

[FR Doc. 03–3038 Filed 2–4–03; 10:23 am]

BILLING CODE 6714–01–M

FEDERAL ELECTION COMMISSION

Sunshine Act Meeting

AGENCY: Federal Election Commission.

PREVIOUSLY ANNOUNCED DATE & TIME: Thursday, February 6, 2003, meeting open to the public. This meeting was cancelled.

DATE & TIME: Tuesday, February 11, 2003 at 10 a.m.

PLACE: 999 E Street, NW., Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. 437g.

Audits conducted pursuant to 2 U.S.C. 437g, 438(b), and Title 26, U.S.C.

Matters concerning participation in civil actions or proceedings or arbitration.

Internal personnel rules and procedures or matters affecting a particular employee.

DATE & TIME: Thursday, February 13, 2003 at 10 a.m.

PLACE: 999 E Street, NW., Washington, DC (Ninth Floor).

STATUS: This meeting will be open to the public.

ITEMS TO BE DISCUSSED:

Correction and Approval of Minutes.

Draft Advisory Opinion 2002–15: Association of Clinical Urologists and American Urological Association, Inc. by counsel, Randolph B. Fenninger.

Administrative Matters.

PERSON TO CONTACT FOR INFORMATION: Mr. Ron Harris, Press Officer, Telephone: (202) 694–1220.

Mary W. Dove,

Secretary of the Commission.

[FR Doc. 03–3041 Filed 2–4–03; 8:45 am]

BILLING CODE 6715–01–M

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Reissuances

Notice is hereby given that the following Ocean Transportation Intermediary licenses have been reissued by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984, as amended by the Ocean Shipping Reform Act of 1998 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, 46 CFR part 515.

License No.	Name/address	Date reissued
17096NF	Aero Costa International, Inc., 460 E. Carson Plaza Drive, #220, Carson, CA 90746	December 25, 2002.
11289N	Cargo Marketing Services Limited dba Procon Express Line, The Old Bakery, One Shaw Lane, Lichfield, Staffordshire, WS13 7AG, United Kingdom.	December 8, 2002.
17466N	Compass Shipping, Inc., 825 Empire Boulevard, Brooklyn, NY 11225	November 1, 2002.
3508F	E & B International, Inc., 5353 E. Princess Anne Road, Suite A, Norfolk, VA 23502	December 19, 2002.
16971N	Wil Can (USA) Group Inc., 167–10 South Conduit Avenue, Suite 210, Jamaica, NY 11434.	November 30, 2002.

Sandra L. Kusumoto,

Director, Bureau of Consumer Complaints and Licensing.

[FR Doc. 03–2810 Filed 2–5–03; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Applicants:

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission an application for license as a Non-Vessel Operating Common Carrier and Ocean Freight Forwarder—Ocean Transportation Intermediary pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. app. 1718 and 46 CFR part 515).

Persons knowing of any reason why the following applicants should not receive a license are requested to contact the Office of Transportation Intermediaries, Federal Maritime Commission, Washington, DC 20573.

Non-Vessel Operating Common Carrier Ocean Transportation Intermediary Applicants

JUC Ocean Express Inc., 3380 Flair Dr., Suite 234, El Monte, CA 91731. *Officers:* Nai Hui Wang, Director (Qualifying Individual), Tai-Chuan, Wu, Secretary.

Hermes International Movers Corp., 23–83 31st Street, Astoria, NY 11105. *Officers:* Antonia Ladis, Secretary (Qualifying Individual), Ioannis Ladis, President.

Bravo International Group Corp., 17595 Almahurst Street, #206, City of Industry, CA 91748. *Officers:* Patricia Wu, Secretary (Qualifying Individual), Chi Hao Hung, President

Embarque Puerto Plata, Corp., 1426 Cromwell Avenue, Bronx, NY 10452. *Officer:* Hayda Garcia, President (Qualifying Individual).

Excel Freight Logistics, Inc., 9133 S. La Cienega Blvd., Suite #260, Inglewood, CA 90301. *Officers:* Edmund Tsang, Secretary (Qualifying Individual), Nick Tsu-Wei Lin, President.

WT Cargo LLC, 2100 Northwest 102nd Place, Miami, FL 33172. *Officer:* Francisco Celedon, President (Qualifying Individual).

Frederic Int'l Co. LLC, 16961 Colchester Way, Hacienda Heights, CA 91745, (Chih-Hui, Cheng, Vice President (Qualifying Individual), Samantha Pao, Secretary.

Railway Express Inc., 123 Pennsylvania Avenue, Kearney, NJ 07032. *Officer:* Mark Carrera, President (Qualifying Individual).

Non-Vessel Operating Common Carrier and Ocean Freight Forwarder Transportation Intermediary Applicant

HMM Logistics USA, Inc., 12917 Wolverton Lane, Cerritos, CA 90703. *Officer:* Kee Soo Pahk, President (Qualifying Individual).

Ocean Freight Forwarder—Ocean Transportation Intermediary Applicants

TISCO Logistic, Inc., 19 Schuyler Street, Pasippany, NJ 07054. *Officers:* Gang Qian, Vice President (Qualifying Individual), Jimmy Hsu, President.

Pacific Ocean Ship Management Co.. dba Pacocean Forwarding, 388 Market Street, Suite 1500, San Francisco, CA 94111, *Officers:* Alexander J. Bennett, President (Qualifying Individual), Joel S. Zaves, Director.

Dated: January 31, 2003.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 03–2812 Filed 2–5–03; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Revocations

The Federal Maritime Commission hereby gives notice that the following Ocean Transportation Intermediary licenses have been revoked pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, effective on the corresponding date shown below:

License Number: 3987N.
Name: Abdulrazak Morgan Farah dba Overseas Express Services.
Address: 17206 S. Figueroa Street, Gardena, CA 90248.
Date Revoked: January 1, 2003.
Reason: Failed to maintain a valid bond.

License Number: 16183F.
Name: AJ International Shipping/ Logistics, Inc.
Address: 4548 Mundy Road, Jacksonville, FL 32207.
Date Revoked: September 25, 2002.
Reason: Surrendered license voluntarily.

License Number: 3883N.
Name: Brye International, Inc.
Address: 108 So. Franklin Avenue, Suite 15, Valley Stream, NY 11580.
Date Revoked: December 3, 2002.
Reason: Surrendered license voluntarily.

License Number: 17662N.
Name: Cargozone Trans Corporation.
Address: 19550 Dominguez Hills Drive, Rancho Dominguez, CA 90220.
Date Revoked: January 11, 2003.
Reason: Failed to maintain a valid bond.

License Number: 17037N.
Name: Global Network Financial Services, Inc. dba Global Network.
Address: 1237 NW 93 Court, Miami, FL 33178.
Date Revoked: January 2, 2003.
Reason: Failed to maintain a valid bond.

License Number: 5892N and 5892F.
Name: Greenbriar Forwarding Co., Inc.
Address: 108 Liberty Street, Metuchen, NJ 08840.
Date Revoked: November 22, 2002 and December 22, 2002.
Reason: Failed to maintain valid bonds.

License Number: 11972N and 11972F.
Name: Magna Transportation Inc.
Address: 515 N. Sam Houston Pkwy. East, Suite 340, Houston, TX 77060.
Date Revoked: December 25, 2002 And December 6, 2002.
Reason: Failed to maintain valid bonds.

License Number: 4648F.
Name: Mega Express, Inc.
Address: 6481 Orangethorpe Avenue, #21, Buena Park, CA 90620.
Date Revoked: November 18, 2002.
Reason: Surrendered license voluntarily.

License Number: 12367N.
Name: Maritime Express, Inc.
Address: 9009 Pinehill Line, #226, Houston, TX 77041.
Date Revoked: November 30, 2002.
Reason: Failed to maintain a valid bond.

License Number: 13709N.
Name: Pac West Trading and Transport Inc. dba Pacwest Transport.
Address: 2531 W. 237th Street, Suite 122, Torrance, CA 90505.
Date Revoked: January 8, 2003.
Reason: Failed to maintain a valid bond.

License Number: 1636N.
Name: Packers Enterprises Inc. dba American Export International.
Address: 100 Broad Avenue, Wilmington, CA 90744.
Date Revoked: November 23, 2002.
Reason: Failed to maintain a valid bond.

License Number: 4175N.
Name: Silken Fortress Corporation dba Transcargo International.
Address: 4564 W. 130th Street, Hawthorne, CA 90250.
Date Revoked: December 8, 2002.
Reason: Failed to maintain a valid bond.

License Number: 17742N.
Name: Vankor Logistics Int'l (U.S.A.), Inc.
Address: 1031 W. Manchester Blvd., Unit D, Inglewood, CA 90301.
Date Revoked: October 16, 2002.
Reason: Surrendered license voluntarily.

License Number: 16556N.
Name: YKL America Inc.
Address: 500 Carson Plaza Drive, Suite 213, Carson, CA 90746.
Date Revoked: January 11, 2003.
Reason: Failed to maintain a valid bond.

Sandra L. Kusumoto,
Director, Bureau of Consumer Complaints and Licensing.

[FR Doc. 03–2811 Filed 2–5–03; 8:45 am]
BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center Web site at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 3, 2003.

A. Federal Reserve Bank of Boston (Richard Walker, Community Affairs Officer) 600 Atlantic Avenue, Boston, Massachusetts 02106-2204:

1. South Shore Mutual Holding Company, Weymouth, Massachusetts; to become a bank holding company by acquiring 100 percent of the voting shares of South Shore Co-operative Bank, Weymouth, Massachusetts.

Board of Governors of the Federal Reserve System, January 31, 2003.

Jennifer J. Johnson,
Secretary of the Board.

[FR Doc. 03–2813 Filed 2–5–03; 8:45 am]
BILLING CODE 6210–01–S

GENERAL SERVICES ADMINISTRATION

Office of Management Services; Cancellation of an Optional Form by the Department of Defense

AGENCY: General Services Administration.

ACTION: Notice.

SUMMARY: The Department of Defense cancelled the following Optional Form because of low usage: OF 81, 999 Label (4 x 4")

FOR FURTHER INFORMATION CONTACT: Ms. Barbara Williams, General Services Administration, (202) 501–0581.

DATES: Effective February 6, 2003.

Dated: January 30, 2003.

Barbara M. Williams,

Deputy Standard and Optional Forms Management Officer, General Services Administration.

[FR Doc. 03–2958 Filed 2–5–03; 8:45 am]

BILLING CODE 6820–34–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 00E–1238]

Determination of Regulatory Review Period for Purposes of Patent Extension; TEMODAR

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for TEMODAR and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human drug product.

ADDRESSES: Submit written comments and petitions to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to http://www.fda.gov.dockets/ecomments.

FOR FURTHER INFORMATION CONTACT: Claudia V. Grillo, Office of Regulatory Policy (HFD–013), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–3460.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Public Law 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Public Law 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (for example, half the testing phase must be subtracted, as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product TEMODAR (temozolomide). TEMODAR is indicated for the treatment of adult patients with refractory anaplastic astrocytoma, i.e., patients at first relapse who have experienced disease progression on a drug regimen containing a nitrosourea and procarbazine. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for TEMODAR (U.S. Patent No. 5,260,291) from Schering Corp., and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated April 13, 2000, FDA advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of TEMODAR represented the first permitted commercial marketing or use of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for TEMODAR is 2,032 days. Of this time, 1,668 days occurred during the testing phase of the regulatory review period, while 364 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355(i)) became effective*: January 19, 1994. The applicant claims January 20, 1994, as the date the investigational new drug application (IND) became effective. However, FDA records indicate that the IND effective date was January 19, 1994, which was 30 days after FDA receipt of the IND.

2. *The date the application was initially submitted with respect to the human drug product under section 505(b) of the act*: August 13, 1998. The applicant claims August 12, 1998, as the date the new drug application (NDA) for TEMODAR (NDA 21–029) was initially submitted. However, FDA records indicate that NDA 21–029 was submitted on August 13, 1998.

3. *The date the application was approved*: August 11, 1999. FDA has verified the applicant's claim that NDA 21–029 was approved on August 11, 1999.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 1,136 days of patent term extension.

Anyone with knowledge that any of the dates as published are incorrect may submit to the Dockets Management Branch (see **ADDRESSES**) written or electronic comments and ask for a redetermination by April 7, 2003. Furthermore, any interested person may petition FDA by for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period August 5, 2003. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch (see **ADDRESSES**). Three copies of any information are to be submitted, except that individuals may submit single copies. Comments are to be identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: January 13, 2003.

Jane A. Axelrad,

Associate Director for Policy, Center for Drug Evaluation and Research.

[FR Doc. 03–2970 Filed 2–5–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Telehealth Network Competitive Grant Announcement HRSA–03–049

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice of availability of funds.

SUMMARY: This announcement replaces the announcement published on page 60 of the Fall 2002 HRSA Preview and the **Federal Register** dated August 9, 2002, Vol. 67, No.154.

The Health Resources and Services Administration's (HRSA), Office for the Advancement of Telehealth (OAT), announces the availability of funds for fiscal year (FY) 2003 awards for approximately 20 Telehealth Network Grants. HRSA will award grants to demonstrate how telehealth network projects in rural areas, in medically underserved areas, in frontier communities, and for medically underserved populations, can be used to: (a) Expand access to, coordinate, and improve the quality of health care services; (b) improve and expand the training of health care providers; and (c) expand and improve the quality of health information available to health care providers, patients, and their families. The primary objective of the Telehealth Network Grant Program (TNGP) is to help communities build the human, technical, and financial capacity to develop sustainable telehealth programs and networks.

Available Funding: At the time this **Federal Register** Notice is issued, HRSA is operating under a Continuing Resolution. Assuming that this level of funding continues, there will be available approximately $5 million to support up to 20 Telehealth Network Grant awards in FY 2003. It is expected that the average TNGP award will be approximately $250,000. These estimates are subject to change if an appropriations act providing otherwise is enacted. After the first year, continuation funding will depend on reasonable progress and on the availability of funds. There are no matching requirements for this program.

Eligible Applicants: The applicant shall be a nonprofit entity that will provide services through a telehealth network. Although the grant recipient may not be a profit making entity, each entity participating in the telehealth network may be either a nonprofit or for-profit entity. Faith-based and community-based organizations are encouraged to apply.

The telehealth network shall include at least two (2) of the following entities (at least one (1) of which shall be a community-based health care provider):

(a) Community or migrant health centers or other federally qualified health centers;

(b) Health care providers, including pharmacists, in private practice;

(c) Entities operating clinics, including rural health clinics;

(d) Local health departments;

(e) Nonprofit hospitals, including community (critical) access hospitals;

(f) Other publicly funded health or social service agencies;

(g) Long-term care providers;

(h) Providers of health care services in the home;

(i) Providers of outpatient mental health services and entities operating outpatient mental health facilities;

(j) Local or regional emergency health care providers;

(k) Institutions of higher education, and/or

(l) Entities operating dental clinics.

Authorizing Legislation: The Telehealth Network Grant Program is authorized by Section 330I of the Public Health Service Act. The Health Care Safety Net Amendments of 2002, Public Law 107–251, amended the Public Service Act by adding Section 330I.

Where to Request and Send Applications: To obtain an application kit, contact the HRSA Grants Application Center at their toll-free telephone number (1–877–477–2123) and request the OMB Catalogue of Federal Domestic Assistance number (CFDA) 93.211, citing "Telehealth Network Grant Program." To submit the completed kit: Send the original and two copies of your grant application to: HRSA Grants Application Center, Attention: HAB Grants Management Officer, CFDA # 93.211, HRSA–03–049, 901 Russell Avenue, Suite 450, Gaithersburg, MD 20879. Applications sent to any other address are subject to being returned.

Application Dates: A letter of intent to submit an application is requested by February 20, 2003. Applications for this announced grant must be received in the HRSA Grants Application Center by close of business April 7, 2003. Applications shall be considered as meeting the deadline if they are (1) received on or before the deadline date or (2) postmarked on or before the deadline date and received in time for orderly processing and submission to the review committee. Applicants should request a legibly dated receipt from a commercial carrier or U.S. Postal Service postmark. Private metered postmarks will not be accepted as proof of timely mailing. Applications postmarked after the due date will be returned to the applicant.

ADDRESSES: Using the form in the application, letters of intent are requested for OAT to determine how many will apply. Letters of intent to apply for funding should be faxed to (301) 443–1330 or e-mailed to Monica Cowan at *mcowan@hrsa.gov*.

FOR FURTHER INFORMATION CONTACT: Inquiries regarding programmatic and technical information may be made to (301) 443–0447 or to the following e-mail address: *THGP@hrsa.gov*. Telephone responses, where appropriate, will be made within 48 hours by an OAT staff member.

SUPPLEMENTARY INFORMATION: Applications will be reviewed by an objective review committee. The review criteria will include:

(1) Needs assessment and development of goals and objectives (*e.g.*, Does the applicant demonstrate knowledge of the region's health status, referral and usage patterns, issues of practitioner recruitment/retention, other telehealth activities in the region, etc? Are the expected outcomes for each objective described using qualitative and quantitative measures?);

(2) Program priorities—Does the applicant address any or all of the following: (a) Clinical telemedicine networks that address chronic conditions (*e.g.*, asthma, diabetes) in a variety of settings, such as patient homes, schools, and other community settings; (b) projects that are designed to demonstrate improved health care outcomes (*e.g.*, improved access, productivity, dollars saved) as well as improved quality of services (*e.g.* reduction of medical errors); (c) clinical telemedicine networks that include distance-learning education for health professionals, and patients and their families, if such activities are in conjunction with the delivery of health services; and (d) clinical telemedicine networks that integrate their telemedicine information system into overall electronic clinical information systems (*e.g.* electronic medical record) used by network members.

(3) Implementation and monitoring of the work plan (*e.g.*, Is the proposed work plan feasible? Are the qualifications and responsibilities of key individuals in the telehealth network clearly identified?);

(4) Community involvement, cost participation, and sustainability (*e.g.*, How will network members and members of the community have an active role in planning the telehealth network project? Does the applicant

demonstrate a long-term commitment to the project, beyond the 3-year funding cycle?);

(5) Evaluation and dissemination (*e.g.* Do the data collection tools and strategies directly address the objectives outlined for the program? Is there a plan for disseminating information about the project, including "lessons learned?"); and

(6) Budget (*e.g.* Are program needs for equipment, supplies, contractual services, etc., adequately justified in terms of the goal(s), objectives, and proposed activities?).

The Secretary will give preference to an eligible entity that meets at least one (1) of the following requirements:

(a) Organization—The eligible entity is a rural community-based organization, other community-based organization, or a faith-based organization.

(b) Service—The eligible entity proposes to use Federal funds made available through such a grant to develop plans for, or to establish, telehealth networks that provide mental health, public health, long-term care, home care, preventive health, or case management services.

(c) Coordination—The eligible entity demonstrates how the project to be carried out under the grant will be coordinated with other relevant federally funded projects in the areas, communities, and populations to be served through the grant.

(d) Network—The eligible entity demonstrates that the project involves a telehealth network that includes an entity that—

(i) Provides clinical health care services, or educational services for health care providers and for patients or their families; and

(ii) Is—

(I) A public school;

(II) A public library;

(III) An institution of higher education; or

(IV) A local government entity.

(e) Connectivity—The eligible entity proposes a project that promotes local connectivity within areas, communities, or populations to be served through the project.

(f) Integration—The eligible entity demonstrates that health care information has been integrated into the project.

Priority will be given to applications that address the following program priorities:

(g) Clinical telemedicine networks that address chronic conditions (*e.g.*, asthma, diabetes) in a variety of settings, such as patient homes, schools, and other community settings;

(h) Projects designed to improve health care outcomes (*e.g.*, improved access, productivity, dollars saved) as well as improved quality of services (*e.g.*, reduction of medical errors);

(i) Clinical telemedicine networks that include distance-learning education for health professionals, and patients and their families, if such activities are in conjunction with the delivery of health services; and

(j) Clinical telemedicine networks that integrate their telemedicine information system into overall electronic clinical information systems (*e.g.*, electronic medical record) used by network members.

Note: In accordance with Public Law 107–251, (a) the total amount of funds awarded for rural projects for FY 2003 shall not be less than the total amount of funds awarded for FY 2001 under section 330A, and (b) the funds will be distributed so that not less than 50 percent of the total funds awarded under this program announcement shall be awarded for projects in rural areas.

Paperwork Reduction Act: Should any of the data collection activities associated with this grant program fall under the purview of the Paper Reduction Act of 1995, OMB approval will be sought.

Dated: January 22, 2003.

Elizabeth M. Duke,

Administrator.

[FR Doc. 03–2823 Filed 2–5–03; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4815–N–02]

Notice of Submission of Proposed Information Collection to OMB: Data Collection Techniques for Identifying the Housing Subsidy Status of Survey Respondents

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments Due Date: March 10, 2003.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval number and should be sent to: Lauren Wittenberg, OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503; Fax number (202) 395–6974; E-mail *Lauren_Wittenberg@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, AYO, Department of Housing and Urban Development, 451 Seventh Street, Southwest, Washington, DC 20410; e-mail *Wayne_Eddins@HUD.gov*; telephone (202) 708–2374. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35). The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the name and telephone number of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

This Notice also lists the following information:

Title of Proposal: Data Collection Techniques for Identifying the Housing Subsidy Status of Survey Respondents.

OMB Approval Number: 2528–XXXX.

Form Numbers: None.

Description of the Need for the Information and its Proposed Use:

This collection will test new questions developed to better identify respondents housing subsidy status in the American Housing Survey.

Respondents: Individuals or households.

Frequency of Submission: Once.

	Number of respondents	Annual responses	×	Hours per response	=	Burden Hours
Reporting burden	815	1		0.1		82

Total Estimated Burden Hours: 82.
Status: New Collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: January 31, 2003.

Wayne Eddins,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 03–2826 Filed 2–5–03; 8:45 am]

BILLING CODE 4210–72–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Availability of *Birds of Conservation Concern 2002*

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: We are announcing the availability of a document entitled *Birds of Conservation Concern 2002*. The purpose of this document is to identify species, subspecies, and populations of migratory and non-migratory birds in need of additional conservation actions. The document is published under authority of the Fish and Wildlife Conservation Act of 1980, the Endangered Species Act of 1973, the Fish and Wildlife Act of 1956, and 16 U.S.C. 701.

DATES: Individuals wishing to comment on the process used in developing *Birds of Conservation Concern 2002*, especially to provide recommendations for improving future versions of the document, may direct their written comments to the Chief, Division of Migratory Bird Management (listed below under **ADDRESSES**). All comments received will be filed for use in developing the next version of the list. Comments will be accepted up until the time that work begins on the next edition of this report (approximately 5 years).

ADDRESSES: Printed copies of *Birds of Conservation 2002* may be obtained by writing to the Chief, Division of Migratory Bird Management, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Mail Stop 4107, Arlington, VA 22203–1610, ATTN: BCC 2002. This document is also available for downloading on the Division of Migratory Bird Management's World Wide Web page at *http://migratorybirds/fws.gov*.

FOR FURTHER INFORMATION CONTACT: Brian Millsap, Chief, Division of Migratory Bird Management, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Mail Stop 4107, Arlington, VA 22203–1610; phone: (703) 358–1714; fax: (703) 358–2272.

SUPPLEMENTARY INFORMATION: The 1988 amendment to the Fish and Wildlife Conservation Act (FWCA) of 1980 (Pub. L. 100–653, Title VIII) requires the Secretary of the Interior, through the U.S. Fish and Wildlife Service, to "identify species, subspecies, and populations of all migratory nongame birds that, without additional conservation actions, are likely to become candidates for listing under the Endangered Species Act [ESA] of 1973." *Birds of Conservation Concern 2002* fulfills that mandate, and supersedes *Migratory Nongame Birds of Management Concern in the United States: The 1995 List*. The current document differs from the 1995 version in that it identifies birds of conservation concern at three different scales: Bird Conservation Regions, U.S. Fish and Wildlife Service Regions, and National. This will maximize flexibility and increase the utility of the document for a variety of users and purposes. The species that appear in *Birds of Conservation Concern 2002* are deemed to be the highest priority for conservation actions. We anticipate that the document will be consulted by Federal agencies and their partners prior to undertaking cooperative research, monitoring, and management actions that might directly or indirectly affect migratory birds. Our goal in publishing this document is to stimulate coordinated and collaborative proactive conservation actions among Federal, State, and private partners.

To serve as a broad early warning system in the context of the FWCA, this document includes all of the species for which we have some basis, no matter how remote, to consider them to be of conservation concern. Our objective in publishing this list is to focus conservation attention on bird species of concern well in advance of a possible or plausible need to consider them for listing under the ESA. Inclusion on this list does not constitute a finding that listing under the ESA is warranted, or that substantial information exists to indicate that listing under the ESA may be warranted. Many of the species on this list will probably never have to be considered for ESA listing, even if no additional conservation actions are taken.

Dated: January 30, 2003.

Steven A. Williams,

Director, Fish and Wildlife Service.

[FR Doc. 03–2908 Filed 2–5–03; 8:45 am]

BILLING CODE 4310–55–P

INTERNATIONAL TRADE COMMISSION

[USITC SE–03–004]

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: International Trade Commission.

DATE AND TIME: February 13, 2003 at 11 a.m.

PLACE: Room 101, 500 E Street SW., Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda for future meetings: none
2. Minutes
3. Ratification List
4. Inv. No. 731–TA–1023 (Preliminary)(Certain Ceramic Station Post Insulators from Japan)—briefing and vote. (The Commission is currently scheduled to transmit its determination to the Secretary of Commerce on or before February 14, 2003; Commissioners' opinions are currently scheduled to be transmitted to the Secretary of Commerce on or before February 24, 2003.)
5. Outstanding action jackets: none

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

Issued: January 31, 2003.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 03–3006 Filed 2–3–03; 4:49 pm]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Office of Community Policing Services; Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 30-day notice of information collection under review: New Universal Hiring Program Extension Request Worksheet.

The Department of Justice (DOJ), Office of Community Oriented Policing Services (COPS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 67, Number 191, page 61923 on October 2, 2002, allowing for a 60 day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until March 10, 2003. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to The Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202) 395–7285.

Request written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* New collection.

(2) *Title of the Form/Collection:* Universal Hiring Program Extension Request Worksheet.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form Number:* None. U.S. Department of Justice Office of Community Oriented Policing Services (COPS).

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Law Enforcement Agencies. *Other:* none. *Abstract:* The information collected will be used by the COPS Office to assess grantees' requests for no-cost extensions to their Universal Hiring Program grants.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* There will be an estimated 4,000 respondents, who will complete the worksheet within approximately 30 minutes.

(6) *An estimate of the total burden (in hours) associated with the collection:* There are an estimated 2,000 total burden hours associated with this collection.

If additional information is required contact: Mrs. Brenda E. Dyer, Deputy Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 1600, Patrick Henry Building, 601 D Street NW., Washington, DC 20530.

Dated: January 31, 2003.

Brenda E. Dyer,

Department Deputy Clearance Officer, Department of Justice.

[FR Doc. 03–2829 Filed 2–5–03; 8:45 am]

BILLING CODE 4410–AT–M

DEPARTMENT OF JUSTICE

Notice of Lodging Proposed Consent Decree

In accordance with Departmental Policy, 28 CFR 50.7, notice is hereby given a proposed consent decree in *United States* v. *Frenchtown Harbor, Inc.*, United States District Court, Eastern District of Michigan 03–70364, was lodged with the United States District Court for the Eastern District of Michigan on January 28, 2003. This proposed Consent Decree concerns a compliant filed by the United States of America against Frenchtown Harbor, Inc., pursuant to section 309 of the Clean Water Act, 33 U.S.C. 1319, to obtain injunctive relief from and impose civil penalties against the Defendant for the discharge of pollutants into waters of the United States without authorization by the United States Department of the Army in violation of section 301(a) of the Clean Water Act, 33 U.S.C. 1311(a).

The proposed Consent Decree prohibits the Defendant from discharging any pollutant into waters of the United States except in compliance with the Clean Water act, requires the restoration of the violation site and the payment of $15,000 in civil penalties.

The Department of Justice will accept written comments relating to this proposed Consent Decree for thirty (30) days from the date of publication of this notice. Please address comments to Karen R. Hiyama, Assistant U.S. Attorney, 211 W. Fort Street, Suite 2001, Detroit, MI 48226, and refer to *U.S.* v. *Frenchtown Harbor, Inc.*, USAO No. 2002V00808, DJ#90–5–1–1–16858.

The proposed Consent Decree may be examined at the Clerk's Office, United States District Court for the Eastern District of Michigan. In addition, the proposed Consent Decree may be viewed on the World Web at *http://www.usdoj.gov/enrd/enrd-home.html.*

Karen R. Hiyama,

Assistant U.S. Attorney, United States Attorney's Office, Eastern District of Michigan.

[FR Doc. 03–2832 Filed 2–5–03; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Settlement Agreement Under the Comprehensive Environmental Response Compensation and Liability Act (CERCLA) and the Resource Conservation and Recovery Act (RCRA)

Notice is hereby given that on January 21, 2003, a proposed Settlement Agreement in *In re: Laclede Steel Company*, Case No. 01–48321–399 was lodged with the United States Bankruptcy Court for the Eastern District of Missouri.

In this action the United States sought future response costs associated with the release or threatened release of hazardous substances at Laclede's Alton, Illinois mill and injunctive relief in the form of compliance with all Resource Conservation and Recovery Act ("RCRA") corrective action and closure and post-closure care

requirements applicable to the facility. The Settlement Agreement provides that Laclede will sell the Facility to Alton Steel Company for $1,000,000. These funds will be placed in a trust to be used by Alton Steel to perform clean-up activities at the site according to an agreed order of priorities and under the supervision of the U.S. Environmental Protection Agency and Illinois Environmental Protection Agency. Laclede will also pay the United States $100,000 to be placed in a Superfund special account.

Under the Settlement Agreement, Laclede will transfer its RCRA part B permit ("RCRA Permit") to Alton Steel, and Alton Steel will perform closure and corrective action work and take other steps required in the Agreement to bring the Alton mill back into compliance with the RCRA Permit. Alton Steel will receive a covenant not to sue under CERCLA Sections 106 and 107 and RCRA Section 7003 for "existing contamination" at the Site. Alton Steel will also receive a covenant not to sue under RCRA Section 3008(h) so long as it remains in compliance with the compliance plan. Finally, Laclede will assign its rights under any applicable insurance policies to Alton Steel, and Alton Steel will seek to recover under such policies, with the proceeds to be used in remediating the Facility.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Settlement Agreement. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *In re: Laclede Steel Company*, D.J. Ref. 90–7–1–07324/1. Commenters may request an opportunity for a public meeting in the affected area, in accordance with Section 7003(d) of RCRA, 42 U.S.C. 6973(d).

The Settlement Agreement may be examined at the Office of the United States Attorney, 111 South 10th Street, 20th Floor, St. Louis, Missouri, and at U.S. EPA Region 5, 77 West Jackson Boulevard, Chicago, IL 60604. A copy of the Settlement Agreement may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $15.00 (25 cents per page reproduction cost) payable to the U.S. Treasury.

William D. Brighton,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 03–2833 Filed 2–5–03; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response Compensation and Liability Act ("CERCLA")

Pursuant to section 122(d) of CERCLA, 42 U.S.C. 9622(d), and 28 CFR 50.7 notice is hereby given that on January 13, 2003, a proposed Consent Decree in *United States* v. *Regional Refuse District No. 1, et al.*, Civ. No. 3:03CV84 (PCD), was lodged with the United States District Court for the District of Connecticut.

In this action the United States sought recovery of costs incurred, and injunctive relief requiring performance of response actions at the Barkhamsted-New Hartford Landfill Superfund Site located adjacent to and southwest of Route 44, in the Towns of Barkhamsted and New Hartford, Connecticut. The Consent Decree requires that the settling parties pay $483,304.55 in reimbursement of past response costs; implement EPA's September 28, 2001 Record of Decision ("ROD"); pay the governments' future oversight costs; and implement certain institutional controls, including recordation of land/water use restrictions.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *Regional Refuse District No. 1, et al.*, Civ. No. 3:03CV84 (PCD), D.J. Ref. No. 90–11–2–830/1.

The Consent Decree may be examined at the Office of the United States Attorney, 157 Church Street, 23rd Floor, New Haven, CT, and at U.S. EPA Region I, 1 Congress Street, Suite 1100, Boston, MA. A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing a request to Tonia Fleetwood, fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy, please enclose a check in the amount of $58.50 (25 cents per page reproduction cost) payable to the U.S. Treasury. In requesting a copy exclusive of exhibits, defendants' signatures, and appendices, please enclose a check in the amount of $11.25 (25 cents per page reproduction cost) payable to the U.S. Treasury.

Ronald Gluck,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 03–2831 Filed 2–5–03; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to § 1301.33(a) of title 21 of the Code of Federal Regulations (CFR), this is notice that on October 23, 2002, AccuStandard, Inc., 125 Market Street, New Haven, Connecticut 06513, made application by letter to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Cathinone (1235)	I
Methcathinone (1237)	I
Aminorex (1585)	I
Gamma hydroxybutyric acid (2010).	I
Metaqualone (2565)	I
Ibogaine (7260)	I
Lysergic acid diethylamide (7315)	I
Tetrahydrocannabinols (7370)	I
Mescaline (7381)	I
4-Bromo-2,5-dimethoxyamphetamine (7391).	I
4-Bromo-2,5-dimethoxyphenethylamine (7392).	I
4-Methyl-2,5-dimethoxyamphetamine (7395).	I
2,5-Dimethoxyamphetamine (7396).	I
3,4-Methylenedioxyamphetamine (7400).	I
N-Hydroxy-3,4-methylenedioxyamphetamine (7402).	I
3,4-Methylenedioxy-N-ethylamphetamine (7404).	I
3,4-Methylenedioxymethamphetamine (7405).	I
4-Methoxyamphetamine (7411)	I
Bufotenine (7433)	I
1-[1-(2-Thienyl)cyclohexyl]piperidine (7470).	I
Codeine-N-oxide (9053)	I
Dihydromorphine (9145)	I

Drug	Schedule
Heroin (9200)	I
Morphine-N-oxide (9307)	I
Normorphine (9313)	I
Etonitazene (9624)	I
Amphetamine (1100)	II
Methamphetamine (1105)	II
Phenmetrazine (1631)	II
Methylphenidate (1724)	II
Amobarbital (2125)	II
Pentobarbital (2270)	II
Secobarbital (2315)	II
Glutethimide (2550)	II
Phencyclidine (7471)	II
Alphaprodine (9010)	II
Anileridine (9020)	II
Cocaine (9041)	II
Codeine (9050)	II
Diprenorphine (9058)	II
Dihydrocodeine (9120)	II
Hydromorphone (9150)	II
Diphenoxylate (9170)	II
Benzoylecgonine (9180)	II
Ecgonine (9180)	II
Hydrocodone (9193)	II
Levorphanol (9220)	II
Methadone (9250)	II
Morphine (9300)	II
Thebaine (9333)	II
Opium, raw (9600)	II
Opium tincture (9630)	II
Opium powdered (9639)	II
Levo-alphacetylmethadol (9648)	II
Oxymorphone (9652)	II
Alfentanil (9737)	II
Sufentanil (9740)	II
Fentanyl (9801)	II

The firm plans to manufacture small quantities of the listed controlled substances to make reference standards.

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the proposed registration.

Any such comments or objections may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA **Federal Register**, Representative (CCR), and must be filed no later then April 7, 2003.

Dated: January 27, 2003.

Laura M. Nagel,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 03–2919 Filed 2–5–03; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to § 1301.33(a) of title 21 of the Code of Federal Regulations (CFR), this is notice that on July 3, 2002, American Radiolabeled Chemicals, Inc., 11624 Bowling Green Drive, St. Louis, Missouri 63146, made application by renewal to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Gamma hydroxybutyric acid (2010).	I
Lysergic acid diethylamide (7315)	I
Dimethyltryptamine (7435)	I
Dihydromorphine (9145)	I
Phencyclidine (7471)	II
Cocaine (9041)	II
Codeine (9050)	II
Hydromorphone (9150)	II
Oxycodone (9143)	II
Thebaine (9333)	II
Benzoylecgonine (9180)	II
Meperidine (9230)	II
Metazocine (9240)	II
Morphine (9300)	II
Oxymorphone (9652)	II

The firm plans to bulk manufacture small quantities of the listed controlled substances as radiolabeled compounds.

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the proposed registration.

Any such comments or objections may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA **Federal Register** Representative (CCR), and must be filed no later than April 7, 2003.

Dated: January 27, 2003.

Laura M. Nagel,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 03–2916 Filed 2–5–03; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to § 1301.33(a) of title 21 of the Code of Federal Regulations (CFR), this is notice that on July 31, 2002, Cerrilliant Corporation, 811 Paloma Drive, Suite A, Round Rock, Texas 78664, made application by renewal to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Cathinone (1235)	I
Methcathinone (1237)	I
N-Ethylamphetamine (1475)	I
N,N–Dimethylamphetamine (1480).	I
Aminorex (1585)	I
4-Methylaminorex (cis isomer) (1590).	I
Gamma hydroxybutyric acid (2010).	I
Methaqualone (2565)	I
Alpha-Ethyltryptamine (7249)	I
Lysergic acid diethylamide (7315)	I
Tetrahydrocannabinols (7370)	I
Mescaline (7381)	I
3,4,5-Trimethoxyamphetamine (7390).	I
4-Bromo-2,5-dimethoxyamphetamine (7391).	I
4-Bromo-2,5-dimethoxyphenethylamine (7392).	I
4-Methyl-2,5-dimethoxyamphetamine (7395).	I
2,5-Dimethoxyamphetamine (7396).	I
2,5-Dimethoxy-4-ethylamphetamine (7399).	I
3,4-Methylenedioxyamphetamine (7400).	I
5-Methoxy-3,4-methylenedioxyamphetamine (7401).	I
N-Hydroxy-3,4-methylenedioxyamphetamine (7402).	I
3,4-Methylenedioxy-N-ethylamphetamine (7404).	I
3,4-Methylenedioxymethamphetamine (7405).	I
4-Methoxyamphetamine (7411)	I
Bufotenine (7433)	I
Diethyltryptamine (7434)	I
Dimethyltryptamine (7435)	I
Psilocybin (7437)	I
Psilocyn (7438)	I
Acetyldihydrocodeine (9051)	I
Benzylmorphine (9052)	I
Codeine-N-oxide (9053)	I
Dihydromorphine (9145)	I
Heroin (9200)	I
Hydromorphinol (9301)	I
Methyldihydromorphine (9304)	I
Morphine-N-oxide (9307)	I

Drug	Schedule
Normorphine (9313)	I
Pholcodine (9314)	I
Acetylmethadol (9601)	I
Allyprodine (9602)	I
Alphacetylmethadol except Levo-Alphacetylmethadol (9603).	I
Alphameprodine (9604)	I
Alphamethadol (9605)	I
Betacetylmethadol (9607)	I
Betameprodine (9608)	I
Betamethadol (9609)	I
Betaprodine (9611)	I
Hydromorphinol (9627)	I
Noracymethadol (9633)	I
Norlevorphanol (9634)	I
Normethadone (9635)	I
Trimeperidine (9646)	I
Phenomorphan (9647)	I
Para-Fluorofentanyl (9812)	I
3-Methylfentanyl (9813)	I
Alpha-methylfentanyl (9814)	I
Acetyl-alpha-methylfentanyl (9815).	I
Beta-hydroxyfentanyl (9830)	I
Beta-hydroxy-3-methylfentanyl (9831).	I
Alpha-Methylthiofentanyl (9832)	I
3-Methylthiofentanyl (9833)	I
Thiofentanyl (9835)	I
Amphetamine (1100)	II
Methamphetamine (1105)	II
Phenmetrazine (1631)	II
Methylphenidate (1724)	II
Amobarbital (2125)	II
Pentabarbital (2270)	II
Secobarbital (2315)	II
Glutethimide (2550)	II
Nabilone (7379)	II
1-Phenylcyclohexylamine (7460)	II
Phencyclidine (7471)	II
1-Piperidinocyclohexanecarbonitrile (8603).	II
Alphaprodine (9010)	II
Cocaine (9041)	II
Codeine (9050)	II
Dihydrocodeine (9120)	II
Oxycodone (9143)	II
Hydromorphone (9150)	II
Diphenoxylate (9170)	II
Benzoylecgonine (9180)	II
Ethylmorphine (9190)	II
Hydrocodone (9193)	II
Levomethorphan (9210)	II
Levorphanol (9220)	II
Isomethadone (9226)	II
Meperidine (9230)	II
Methadone (9250)	II
Methadone-intermediate (9254)	II
Dextropropoxyphene, bulk (non-dosage forms) (9273).	II
Morphine (9300)	II
Thebaine (9333)	II
Levo-alphacetylmethadol (9648)	II
Oxymorphone (9652)	II
Noroxymorphone (9668)	II
Racemethorphan (9732)	II
Alfentanil (9737)	II
Sufentanil (9740)	II
Fentanyl (9801)	II

The firm plans to manufacture small quantities of the listed controlled substances to make deuterated and non-deuterated drug reference standards which will be distributed to analytical and forensic laboratories for drug testing programs.

Any other such applicant and nay person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the proposed registration.

Any such comments or objections may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than April 7, 2003.

Dated: January 27, 2003.

Laura M. Nagel,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 03–2914 Filed 2–5–03; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to § 1301.33(a) of title 21 of the Code of Federal Regulations (CFR), this is notice that on October 10, 2002, Houba Inc., 16235 State Road 17, Culver, Indiana 46511, made application by renewal to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Oxycodone (9143)	II
Hydrocodone (9193)	II

The firm plans to bulk manufacture the controlled substances for the production of finished dosage form products.

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the proposed registration.

Any such comments or objections may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA **Federal Register** Representative (CCR), and must be filed no later than April 7, 2003.

Dated: January 27, 2003.

Laura M. Nagel,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 03–2912 Filed 2–5–03; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importation of Controlled Substances; Notice of Application

Pursuant to section 1008 of the Controlled Substances Import and Export Act (21 U.S.C. 958(i)), the Attorney General shall, prior to issuing a registration under this section to a bulk manufacturer of a controlled substance in Schedule I or II and prior to issuing a regulation under section 1002(a) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with § 1301.34 of title 21, Code of Federal Regulations (CFR), notice is hereby given that on November 4, 2002, Lipomed, Inc., One Broadway, Cambridge, Massachusetts 02142, made application by renewal to the Drug Enforcement Administration to be registered as an importer of the basic classes of controlled substances listed below:

Drug	Schedule
Cathinone (1235)	I
Methaqualone (2565)	I
Lysergic acid diethylamide (7315)	I
Marihuana (7360)	I
Tetrahydrocannabinols (7370)	I
Mescaline (7381)	I
3,4,5-Trimethoxyamphetamine (7390).	I
4-Bromo-2,5-dimethoxyamphetamine (7391).	I
4-Methyl-2,5-dimethoxyamphetamine (7395).	I
2,5-Dimethoxyamphetamine (7396).	I
2,5-Dimethoxy-4-ethylamphetamine (7399).	I
3,4-Methylenedioxyamphetamine (7400).	I
3,4-Methylenedioxy-N-ethylamphetamine (7404).	I
3,4-Methylenedioxymethamphetamine (7405).	I
Psilocybin (7437)	I
Psilocyn (7438)	I
Acetyldihydrocodeine (9051)	I
Dihydromorphine (9145)	I
Heroin (9200)	I
Tilidine (9750)	I
Amphetamine (1100)	II

Drug	Schedule
Methamphetamine (1105)	II
Amobarbital (2125)	II
Secobarbital (2315)	II
Phencyclidine (7471)	II
Cocaine (9041)	II
Codeine (9050)	II
Dihydrocodeine (9120)	II
Oxycodone (9143)	II
Hydromorphone (9150)	II
Benzoylecgonine (9180)	II
Hydrocodone (9193)	II
Levorphanol (9220)	II
Methadone (9250)	II
Dextropropoxyphene, bulk (non-dosage forms) (9273).	II
Morphine (9300)	II
Thebaine (9333)	II
Oxymorphone (9652)	II
Alfentanil (9737)	II
Fentanyl (9801)	II

The firm plans to import small reference standard quantities of finished commercial product from its sister company in Switzerland for sale to its customers for drug testing and pharmaceutical research and development.

Any manufacturer holding, or applying for, registration as a bulk manufacturer of these basic classes of controlled substances may file written comments on or objections to the application described above and may, at the same time, file a written request for a hearing on such application in accordance with 21 CFR 1301.43 in such form as prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention DEA Federal Register Representative (CCR), and must be filed no later than March 10, 2003.

This procedure is to be conducted simultaneously with and independent of the procedures described in 21 CFR 1301.34(b), (c), (d), (e),and (f). As noted in a previous notice at 40 FR 43745–46 (September 23, 1975), all applicants for registration to import the basic classes of any controlled substances in Schedule I or II are and will continue to be required to demonstrate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 823(a), and 21 CFR 1301.34(a), (b), (c), (d), (e), and (f) are satisfied.

Dated: January 27, 2003.

Laura M.Nagel,

deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 03–2913 Filed 2–5–03; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to § 1301.33(a) of title 21 of the Code of Federal Regulations (CFR), this is notice that on July 24, 2002, National Center for Natural Products Research-NIDA MProject University of Mississippi, 135 Coy Waller Complex, University, Mississippi 38677, made application by renewal to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Marihuana (7360)	I
Tetrahydrocannabinols (7370)	I

The firm will cultivate marijuana for the National Institute of Drug Abuse for research approved by the Department of Health and Human Services.

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the proposed registration.

Any such comments or objections may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than April 7, 2003.

Dated: January 27, 2003.

Laura M. Nagel,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 03–2918 Filed 2–5–03; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to § 1301.33(a) of title 21 of the Code of Federal Regulations (CFR), this is notice that on July 10, 2002, Norac Company, Inc., 405 S. Motor Avenue, Azusa, California 91702, made application by renewal to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of tetrahydrocannabinols (7370), a basic class of controlled substance listed in Schedule I.

The firm plans to manufacture bulk tetrahydrocannabinols for formulation into pharmaceutical products.

Any other such applicant and any person who is presently registered with DEA to manufacture such substance may file comments or objections to the issuance of the proposed registration.

Any such comment or objections may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than April 7, 2003.

Dated: January 27, 2003.

Laura M. Nagel,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 03–2915 Filed 2–5–03; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to § 1301.33(a) of title 21 of the Code of Federal Regulations (CFR), this is notice that on October 1, 2002, Noramco, Inc., 1440 Olympic Drive, Athens, Georgia 30601, made application by renewal to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Amphetamine (1100)	II
Oxycodone (9143)	II
Hydrocodone (9193)	II
Morphine (9300)	II
Thebaine (9333)	II
Sufentanil (9740)	II
Fentanyl (9801)	II

The firm plans to support its other manufacturing facility with manufacturing and analytical testing.

Any other such applicant and any person who is presently registered with DEA to manufacture such substances

may file comments or objections to the issuance of the proposed registration.

Any such comments or objections may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than April 7, 2003.

Dated: January 27, 2003.

Laura M. Nagel,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 03–2920 Filed 2–5–03; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to § 1301.33(a) of title 21 of the Code of Federal Regulations (CFR), this is notice that on September 24, 2002, OraSure Technologies, Inc., 1745 Eaton Avenue, Bethlehem, Pennsylvania 18018, made application by renewal to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Alphamethadol (9605)	I
Benzoylecgonine (9180)	II
Morphine (9300)	II

The firm plans to bulk manufacture the listed controlled substances to be used in-house to manufacture other controlled substances.

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the proposed registration.

Any such comments or objections may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than April 7, 2003.

Dated: January 27, 2003.

Laura M. Nagel,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 03–2917 Filed 2–5–03; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Office of Justice Programs

[OJP(OJP)–1372]

Meeting of the Public Safety Officer Medal of Valor Review Board

AGENCY: Office of Justice Programs (OJP), Justice.

ACTION: Notice of meeting.

SUMMARY: This is an announcement of a meeting of the Public Safety Officer Medal of Valor Review Board to review and discuss the timetable for carrying out the Board's responsibilities for 2003.

DATES: The meeting will take place on Thursday, February 13, 2003, from 2 p.m. to 5 p.m. E.S.T.

ADDRESSES: The meeting will take place at the Office of Justice Programs, 810 7th St., NW., Washington, DC 20531; Phone: 202–307–5933.

FOR FURTHER INFORMATION CONTACT: Tracy A. Henke, Principal Deputy Assistant Attorney General, Office of Justice Programs, 810 7th Street NW., Sixth Floor, Washington, DC 20531; Phone: (202) 307–5933 (note: this not a toll free number).

SUPPLEMENTARY INFORMATION: This meeting will be open to the public and registrations will be accepted on a space available basis. Members of the public who wish to attend the meeting must register at least seven (7) days in advance of the meeting by contacting Ms. Henke at the above address. Access to the meeting will not be allowed without registration. All attendees will be required to sign in at the meeting registration desk. Please bring photo identification and allow extra time prior to the meeting.

Anyone requiring special accommodations should contact Ms. Henke at least seven (7) days in advance of the meeting.

Authority

The Public Safety Officer Medal of Valor Review Board is authorized to carry out its advisory function under 42 U.S.C. 15202. 42 U.S.C. 15201 authorizes the President to award the Public Safety Officer Medal of Valor, the highest national award for valor by a public safety officer.

Tracy A. Henke,

Principal Deputy Assistant Attorney General, Office of Justice Programs.

[FR Doc. 03–2814 Filed 2–5–03; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF LABOR

Office of the Secretary

Privacy Act of 1974; Publication of A New System of Records

AGENCY: Office of the Secretary, Labor.

ACTION: Notice of a new system of records.

SUMMARY: The Privacy Act of 1974 requires that each agency publish notice of all of the systems of records that it maintains. This document adds a new system of records to the Department's current systems of records. With the addition of the new system of records, the Department will be maintaining 148 systems of records.

DATES: Persons wishing to comment on this new system of records may do so by March 18, 2003.

EFFECTIVE DATE: Unless there is a further notice in the **Federal Register**, this new system of records will become effective on April 2, 2003.

ADDRESSES: Written comments may be mailed or delivered to Robert A. Shapiro, Associate Solicitor, Division of Legislation and Legal Counsel, 200 Constitution Avenue, NW., Room N–2428, Washington, DC 20210 or by e-mail to *miller-miriam@dol.gov*.

FOR FURTHER INFORMATION CONTACT: Miriam McD. Miller, Co-Counsel for Administrative Law, Office of the Solicitor, Department of Labor, 200 Constitution Avenue, NW., Room N–2428, Washington, DC 20210, telephone (202) 693–5500.

SUPPLEMENTARY INFORMATION: Pursuant to section three of the Privacy Act of 1974 (5 U.S.C. 552a(e)(4)), hereinafter referred to as the Act, the Department hereby publishes notice of a new system of records currently maintained pursuant to the Act. On April 8, 2002, in volume 67 at page 16816 of the **Federal Register**, the Department published a notice of 147 systems of records which are maintained under the Act. The new system of records presented herein, established by the Office of the 21st Century Workforce, is entitled DOL/21st CENTURY–1, *Correspondents With the Office of the 21st Century Workforce*. This system contains information necessary to

satisfy requests by individuals for information, brochures, or requests to register for events, activities and/or programs. Depending on the nature of the request, the file may include (but is not limited to) the following information on the individuals who have contacted DOL: name, title, mailing address, telephone and fax numbers, E-Mail addresses.

General Prefatory Statement

1. In its April 8, 2002, publication, the Department gave notice of 12 paragraphs containing routine uses which apply to all of its systems of records, except for DOL/OASAM–5 and DOL/OASAM–7. These 12 paragraphs were presented in the General Prefatory Statement for that document, and it appeared at pages 16825 of volume 67 of the **Federal Register**. At this time we are republishing the April 8, 2002, version of the General Prefatory Statement as a convenience to the reader of this document.

2. This republication shall include the statement that pursuant to the Flexiplace Program, the system location for all systems of records may be temporarily located at alternate worksites, including the employees' homes or at geographically convenient satellite offices for part of the workweek.

The public, the Office of Management and Budget (OMB), and the Congress are invited to submit written comments on this new system. A report on this system has been provided to OMB and to the Congress as required by OMB Circular A–130, Revised, and 5 U.S.C. 552a.

General Prefatory Statement

A. Universal Routine Uses of the Records

The following routine uses of the records apply to and are incorporated by reference into each system of records published below unless the text of a particular notice of a system of records indicates otherwise. These routine uses do not apply to DOL/OASAM—5, Rehabilitation and Counseling File, nor to DOL/OASAM—7, Employee Medical Records.

1. To disclose the records to the Department of Justice when: (a)The agency or any component thereof; or (b) any employee of the agency in his or her official capacity; or (c) the United States Government, is a party to litigation or has an interest in such litigation, and by careful review, the agency determines that the records are both relevant and necessary to the litigation, and the use of such records by the Department of Justice is for a purpose that is compatible with the purpose for which the agency collected the records.

2. To disclose the records in a proceeding before a court or adjudicative body, when: (a) The agency or any component thereof; or (b) any employee of the agency in his or her official capacity; or (c) any employee of the agency in his or her individual capacity; or (d) the United States government, is a party to litigation or has an interest in such litigation, and by careful review, the agency determines that the records are both relevant and necessary to the litigation, and that the use of such records is a purpose that is compatible with the purpose for which the agency collected the records.

3. When a record on its face, or in conjunction with other information, indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule, or order issued pursuant thereto, disclosure may be made to the appropriate agency, whether Federal, foreign, State, local, or tribal, or other public authority responsible for enforcing, investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation, or order issued pursuant thereto, if the agency determines by careful review that the records or information are both relevant and necessary to any enforcement, regulatory, investigative or prosecutive responsibility of the receiving entity, and that the use of such records or information is for a purpose that is compatible with the purposes for which the agency collected the records.

4. To a Member of Congress or to a Congressional staff member in response to an inquiry of the Congressional office made at the written request of the constituent about whom the record is maintained.

5. To the National Archives and Records Administration or to the General Services Administration for records management inspections conducted under 44 U.S.C. 2904 and 2906.

6. To disclose to contractors, employees of contractors, consultants, grantees, and volunteers who have been engaged to assist the agency in the performance of or working on a contract, service, grant, cooperative agreement or other activity or service for the Federal Government.

Note 1. Recipients shall be required to comply with the requirements of the Privacy Act of 1974, as amended, 5 U.S.C. 552a; *see also* 5 U.S.C. 552a(m).

7. To the parent locator service of the Department of Health and Human Services or to other authorized persons defined by Pub. L. 93–647 the name and current address of an individual for the purpose of locating a parent who is not paying required child support.

8. To any source from which information is requested in the course of a law enforcement or grievance investigation, or in the course of an investigation concerning retention of an employee or other personnel action, the retention of a security clearance, the letting of a contract, the retention of a grant, or the retention of any other benefit, to the extent necessary to identify the individual, inform the source of the purpose(s) of the request, and identify the type of information requested.

9. To a Federal, State, local, foreign, or tribal or other public authority of the fact that this system of records contains information relevant to the hiring or retention of an employee, the granting or retention of a security clearance, the letting of a contract, a suspension or debarment determination or the issuance or retention of a license, grant, or other benefit.

10. To the Office of Management and Budget during the coordination and clearance process in connection with legislative matters.

11. To the Department of the Treasury, and a debt collection agency with which the United States has contracted for collection services to recover debts owed to the United States.

12. To the news media and the public when (1) the matter under investigation has become public knowledge, (2) the Solicitor of Labor determines that disclosure is necessary to preserve confidence in the integrity of the Department or is necessary to demonstrate the accountability of Department's officers, employees, or individuals covered by this system, or (3) the Solicitor of Labor determines that there exists a legitimate public interest in the disclosure of the information, except to the extent that the Solicitor of Labor determines in any of these situations that disclosure of specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

B. System Location—Flexiplace Programs

The following paragraph applies to and is incorporated by reference into all of the Department's systems of records under the Privacy Act, within the category entitled, System Location: "Pursuant to the Department of Labor's

Flexiplace Programs, copies of records may be temporarily located at alternative worksites, including employees' homes or at geographically convenient satellite offices for part of the workweek. All appropriate safeguards will be taken at these sites."

Publication of a New System of Records

Office of the 21st Century Workforce (21st CENTURY)

DOL/21st Century-1

SYSTEM NAME:

Correspondents with the Office of the 21st Century Workforce.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Office of the 21st Century Workforce, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individual correspondents with the Office of the 21st Century Workforce who contact, by telephone, U.S. Mail or E-Mail, the Office of the 21st Century Workforce for various reasons such as, but not limited to, requests for information, brochures, registration for events, activities, and programs and requests for related reasons.

CATEGORIES OF RECORDS IN THE SYSTEM:

Information necessary to satisfy requests for information, brochures, or requests to register for events, activities and /or programs. Depending on the nature of the request, the file may include (but is not limited to) the following information on the individuals who have contacted DOL: name, title, mailing address, telephone and fax numbers, E-Mail addresses.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Executive Order 13218 of June 20, 2001, 66 FR 33627, 3 CFR, 2001 Compilation, p.776.

PURPOSE(S):

To enhance information exchange by improving the availability of the Office of the 21st Century Workforce and DOL component information on automated systems; to facilitate sending information about events, activities and programs to correspondents with the Office of the 21st Century Workforce with the public access Internet site, and to provide a frame from which to select an unbiased sample of individuals for surveys. Maintaining the names, addresses, *etc.* of individuals requesting data/publications will streamline the process for handling subsequent inquiries and requests by eliminating duplicative gathering of mailing information, data and material to individuals with corresponding interests; to provide usage statistics associated with the DOL public access Internet site, and to provide a frame from which to select an unbiased sample of users for users service surveys.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

A record from this system of records may be disclosed to the United States Small Business Administration. The Routine Uses listed at paragraphs 3, 4, 5, 7, 8, 9, 10, 11, and 12 in the General Prefatory Statement to this document are not applicable to this system of records. The Routine Uses listed at paragraphs 1, 2, and 6 are applicable to this system of records, and the records also may be disclosed where required by law.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Files are stored electronically and/or on paper.

RETRIEVABILITY:

By name, telephone or fax number (including the telephone number from which the individual dials), E-Mail address or other identifying information in the System.

SAFEGUARDS:

Access by authorized personnel only. Computer security safeguards are used for electronically stored data and locked locations for paper files.

RETENTION AND DISPOSAL:

Current correspondent information files are updated as necessary and are destroyed when no longer needed.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of the 21st Century Workforce, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

NOTIFICATION PROCEDURE:

Mail, or present in writing, all inquiries to the System Manager at the above address.

RECORD ACCESS PROCEDURES:

As in notification procedure.

CONTESTING RECORD PROCEDURES:

As in notification procedure.

RECORD SOURCE CATEGORIES:

Correspondents with the Office of the 21st Century Workforce.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

Signed in Washington, DC this 27th day of January, 2003.

Elaine L. Chao,

Secretary of Labor.

[FR Doc. 03–2841 Filed 2–5–03; 8:45 am]

BILLING CODE 4510–23–U

DEPARTMENT OF LABOR

Employee Benefits Security Administration

[Application No. D–10988]

Proposed Exemption; Deutsche Bank Securities Inc. and Its Affiliates

AGENCY: Employee Benefits Security Administration, Labor.

ACTION: Notice of proposed exemption.

SUMMARY: This document contains a notice of pendency before the Department of Labor (the Department) of a proposed exemption from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemption, unless otherwise stated in the Notice of Proposed Exemption, within 45 days from the date of publication of this **Federal Register** Notice. Comments and requests for a hearing should state: (1) The name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

ADDRESSES: All written comments and requests for a hearing (at least three copies) should be sent to the Employee Benefits Security Administration (EBSA), Office of Exemption Determinations, Room N–5649, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

Attention: Application No. _____, stated in each Notice of Proposed Exemption. Interested persons are also invited to submit comments and/or hearing requests to EBSA via e-mail or FAX. Any such comments or requests should be sent either by e-mail to: *moffittb@pwba.dol.gov*, or by FAX to (202) 219–0204 by the end of the scheduled comment period. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of the Employee Benefits Security Administration, U.S. Department of Labor, Room N–1513, 200 Constitution Avenue, NW., Washington, DC 20210.

Notice to Interested Persons

Notice of the proposed exemption will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemption was requested in an application filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The application contains representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the application on file with the Department for a complete statement of the facts and representations.

Deutsche Bank Securities Inc. and Its Affiliates Located in New York, NY

[Application No. D–10988]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code, and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32847, August 10, 1990).

Section I—Transactions

If the exemption is granted, the restrictions of sections 406(a)(1)(A) through (D) of the Act and the sanctions resulting from application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply to any purchase or sale of securities, in the context of a portfolio liquidation or restructuring, between (i) Deutsche Bank Securities Inc. (DBSI) and its current and future affiliates, including certain foreign broker-dealers or banks (the Foreign Affiliates, as defined in Section III below), (collectively, the Applicant) and (ii) employee benefit plans (the Plans) with respect to which the Applicant is a party in interest, provided that the conditions set forth in Section II are satisfied.

Section II—Conditions

A. The Applicant customarily purchases and sells securities for its own account in the ordinary course of its business as a broker-dealer or bank;

B. Neither the Applicant nor an affiliate thereof has discretionary authority or control with respect to the investment of the Plan assets involved in the transaction, or renders investment advice (within the meaning of 29 CFR 2510.3–21(c)) with respect to those assets.

Notwithstanding the foregoing, the Applicant may be a directed trustee (as defined in Section III below) with respect to the Plan assets involved in the transaction.

In addition, this condition will be deemed satisfied if the Applicant is being terminated as a manager of the plan assets involved in the transaction, the termination is effective prior to the commencement of the portfolio liquidation or restructuring, and the Applicant has not used its discretion to appoint the transition broker-dealer.

Lastly, a transaction will not fail to meet the requirements of this section solely because the Applicant is being retained as an investment manager with respect to the Plan assets involved in the transaction, provided that: (i) The Applicant has not used its discretion to appoint the transition broker-dealer; (ii) the plan assets are to be managed as an Index or Model-Driven Fund; or (iii) the investment manager of such assets supplies a list of securities to be purchased, which list is prepared without regard to the identity of the broker-dealer and without reference to the portfolio being liquidated or restructured (*i.e.*, the list is substantially the same as would be provided to other similarly situated investors with similar objectives or consists of substantially the same securities as those in other existing investment portfolios managed in the same style);

C. The transaction is a purchase or sale, for no consideration other than cash;

D. The terms of any transaction are at least as favorable to the Plan as those obtainable in a comparable arm's length transaction with an unrelated party;

E. An Independent Fiduciary has given prior approval for the transaction, specifying (solely in the case where the price for any principal transaction is not based on an objective measure) whether the transaction is to be agency or principal, either on a security-by-security basis, or based on the whole portfolio or an identifiable part of the portfolio (such as all debt securities, all equity securities, all domestic securities, or the like);

F. All purchases and sales are effected within two days following the Independent Fiduciary's direction to purchase or sell a given security—except that, with the approval of the Independent Fiduciary, the Applicant may extend such initial period for a time not exceeding two additional days;

G. Prior to any transaction, the Independent Fiduciary agrees that the purchase or sale of a security, which must be one that is publicly traded, may be effectuated through a principal transaction at a price that—

(1) In the case of an equity security, is specified in advance by the Independent Fiduciary and is a stated dollar amount, or is based on an objective measure (as of a specified date or dates), including, but not limited to, the closing price, the opening price, or the volume-weighted average price; or

(2) In the case of a fixed income security, is a stated dollar amount, or is within the bid and asked spread, as of the close of the relevant market (on a specified date or dates), as reported by an independent third party reporting service or a publicly available electronic exchange;

H. The Independent Fiduciary is furnished with confirmations including the relevant information required under Rule 10b-10 of the Securities Exchange Act of 1934 (the 1934 Act), as well as a report, within five business days of the transaction, containing the following information with respect to each security:

(1) The identity of the security;

(2) The date on which the transaction occurred;

(3) The quantity and price of the securities involved; and

(4) Whether the transaction was executed with the Applicant as principal or agent;

I. Each Plan shall have total net assets with a value of at least $100 million. For purposes of the net assets test, where a group of Plans is maintained by a single employer or controlled group of employers, as defined in section 407(d)(7) of the Act, the $100 million net assets requirement may be met by aggregating the assets of such Plans, if the assets are pooled for investment purposes in a single master trust;

J. The Applicant complies with all applicable securities or banking laws relating to the transaction;

K. Any Foreign Affiliate is a registered broker-dealer or bank subject to regulation by a governmental agency, as described in Section III, B, and is in compliance with all applicable rules and regulations thereof in connection with any transaction covered by the proposed exemption;

L. Any Foreign Affiliate, in connection with any transaction covered by the proposed exemption, is in compliance with the requirements of Rule 15a–6 (17 CFR 240.15a–6) of the 1934 Act, and Securities and Exchange Commission (SEC) interpretations thereof, providing for foreign affiliates a limited exemption from U.S. broker-dealer registration requirements;

M. Prior to any transaction, the Foreign Affiliate enters into a written agreement with the Plan in which the Foreign Affiliate consents to the jurisdiction of the courts of the United States for any civil action or proceeding brought in respect of the subject transactions. In this regard, the Foreign Affiliate must (i) agree to submit to the jurisdiction of the United States; (ii) agree to appoint an agent for service of process in the United States, which may be an affiliate (the Process Agent); and (iii) consent to service of process on the Process Agent;

N. The Applicant maintains, or causes to be maintained, within the United States for a period of six years from the date of any transaction, such records as are necessary to enable the persons described in Paragraph O, below, to determine whether the conditions of the exemption have been met, except that—

(1) A party in interest with respect to a Plan, other than the Applicant, shall not be subject to a civil penalty under section 502(i) of the Act, or the taxes imposed by section 4975 (a) and (b) of the Code, if such records are not maintained, or not available for examination, as required by Paragraph O; and

(2) This record-keeping condition shall not be violated if, due to circumstances beyond the Applicant's control, such records are lost or destroyed prior to the end of the six year period; and

O. Notwithstanding any provisions of subsections (a)(2) and (b) of section 504 of the Act, the Applicant makes the records referred to in Paragraph N, above, unconditionally available within the United States during normal business hours at their customary location to the following persons or a duly authorized representative thereof: (1) The Department, the Internal Revenue Service, or the SEC; (2) any fiduciary of a Plan; (3) any contributing employer to a Plan; (4) any employee organization any of whose members are covered by a Plan; and (5) any participant or beneficiary of a Plan. However, none of the persons described in Items (2) through (5) of this subsection is authorized to examine the trade secrets of the Applicant, or commercial or financial information which is privileged or confidential.

Section III—Definitions

A. The term "DBSI" means Deutsche Bank Securities Inc. DBSI and its domestic affiliates must be one of the following:

(i) A broker-dealer registered under the 1934 Act; (ii) a reporting dealer who makes primary markets in securities of the United States Government or of any agency of the United States Government ("Government securities") and reports daily to the Federal Reserve Bank of New York its positions with respect to Government securities and borrowings thereon; or (iii) a bank supervised by the United States or a State. DBSI and its current and future affiliates, including the Foreign Affiliates (as defined in Paragraph C, below), are collectively referred to herein as "the Applicant."

B. The term "affiliate" shall include: (1) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with such person; (2) any officer, director, or partner, employee or relative (as defined in section 3(15) of the Act) of such person; and (3) any corporation or partnership of which such person is an officer, director or partner. For purposes of this definition, the term "control" means the power to exercise a controlling influence over the management or policies of a person other than an individual.

C. The term "Foreign Affiliate" means an affiliate of DBSI that is subject to regulation as a broker-dealer or bank by: (1) The Securities and Futures Authority or the Financial Services Authority in the United Kingdom; (2) the Federal Authority for Financial Services Supervision, *i.e.*, der Bundesanstalt fuer Finanzdienstleistungsaufsicht (the BAFin) in Germany; (3) the Ministry of Finance and/or the Tokyo Stock Exchange in Japan; (4) the Ontario Securities Commission and/or the Investment Dealers Association, or the Office of the Superintendent of Financial Institutions, in Canada; (5) the Swiss Federal Banking Commission in Switzerland; or (6) the Australian Prudential Regulation Authority or the Australian Securities & Investments Commission, and/or the Australian Stock Exchange Limited, in Australia.

D. The term "security" shall include equities, fixed income securities, options on equity or fixed income securities, government obligations, and any other instrument that constitutes a security under U.S. securities laws. The term "security" does not include swap agreements or other notional principal contracts.

E. The term "index" means a securities index that represents the investment performance of a specific segment of the public market for equity or debt securities in the United States and/or foreign countries, but only if—

(1) The organization creating and maintaining the index is—

(i) Engaged in the business of providing financial information, evaluation, advice, or securities brokerage services to institutional clients,

(ii) A publisher of financial news or information, or

(iii) A public securities exchange or association of securities dealers;

(2) The index is created and maintained by an organization independent of the Applicant; and

(3) The index is a generally accepted standardized index of securities that is not specifically tailored for the use of the Applicant.

F. The term "Index Fund" means any investment fund, account, or portfolio trusteed or managed by the Applicant, in which one or more investors invest, and—

(1) Which is designed to track the rate of return, risk profile, and other characteristics of an independently maintained securities index (as "index" is defined in Paragraph E, above) by either (i) replicating the same combination of securities that compose such index, or (ii) sampling the securities that compose such index based on objective criteria and data;

(2) For which the Applicant does not use its discretion, or data within its control, to affect the identity or amount of securities to be purchased or sold;

(3) That contains "plan assets" subject to the Act, pursuant to the Department's regulations (*see* 29 CFR 2510.3–101, Definition of "plan assets"—plan investments); and

(4) That involves no agreement, arrangement, or understanding regarding the design or operation of the Fund that is intended to benefit the Applicant or any party in which the Applicant may have an interest.

G. The term "Model-Driven Fund" means any investment fund, account, or portfolio trusteed or managed by the Applicant, in which one or more investors invest, and—

(1) Which is composed of securities, the identity of which and the amount of which, are selected by a computer model that is based on prescribed objective criteria using independent third party data, not within the control of the Manager, to transform an Index (as defined in Paragraph E, above);

(2) Which contains "plan assets" subject to the Act, pursuant to the Department's regulations (*see* 29 CFR 2510.3–101, Definition of "plan assets"—plan investments); and

(3) That involves no agreement, arrangement, or understanding regarding the design or operation of the Fund, or the utilization of any specific objective criteria, that is intended to benefit the Applicant or any party in which the Applicant may have an interest.

H. The term "Plan" means an employee benefit plan that is subject to the fiduciary responsibility provisions of the Act.

I. The term "Independent Fiduciary" means a fiduciary of a Plan who is unrelated to, and independent of, the Applicant. For purposes of the proposed exemption, a Plan fiduciary will be deemed to be unrelated to, and independent of, the Applicant if such fiduciary represents that neither such fiduciary, nor any individual responsible for the decision to authorize or terminate authorization for transactions described in Section I, is an officer, director, or highly compensated employee (within the meaning of section 4975(e)(2)(H) of the Code) of the Applicant and represents that such fiduciary shall advise the Applicant if those facts change.

(1) Notwithstanding anything to the contrary in this Section III, I, a fiduciary is not independent if:

(i) Such fiduciary directly or indirectly controls, is controlled by, or is under common control with the Applicant;

(ii) Such fiduciary directly or indirectly receives any compensation or other consideration from the Applicant for his or her own personal account in connection with any transaction described in the proposed exemption;

(iii) Any officer, director, or highly compensated employee (within the meaning of section 4975(e)(2)(H) of the Code) of the Applicant, responsible for the transactions described in Section I, is an officer, director, or highly compensated employee (within the meaning of section 4975(e)(2)(H) of the Code) of the Plan sponsor or the fiduciary responsible for the decision to authorize or terminate authorization for transactions described in Section I. However, if such individual is a director of the Plan sponsor or the responsible fiduciary, and if he or she abstains from participation in (A) the choice of the Plan's broker-dealer or bank executing the transactions covered herein, and (B) the decision to authorize or terminate authorization for transactions described in Section I, then Section III, I(1)(iii) shall not apply.

(2) The term "officer" means a president, any vice president in charge of a principal business unit, division or function (such as sales, administration or finance), or any other officer who performs a policy-making function for the entity.

J. The term "directed trustee" means a Plan trustee whose powers and duties with respect to any assets of the Plan involved in the portfolio liquidation or restructuring are limited to (i) the provision of nondiscretionary trust services to the Plan, and (ii) duties imposed on the trustee by any provision or provisions of the Act or the Code. The term "nondiscretionary trust services" means custodial services and services ancillary to custodial services, none of which services is discretionary. For purposes of the proposed exemption, a person who is otherwise a directed trustee will not fail to be a directed trustee solely by reason of having been delegated, by the sponsor of a master or prototype Plan, the power to amend such Plan.

Summary of Facts and Representations

1. Deutsche Bank Securities Inc. (*i.e.*, DBSI) is an indirect wholly-owned subsidiary of Deutsche Bank AG, a German banking corporation regulated by the BAFin. DBSI, a Delaware corporation, is a full-service broker-dealer, providing research, sales and trading, investment banking, retail, investment advisory services, and prime brokerage services. DBSI is registered as a U.S. broker-dealer under Section 15 of the 1934 Act, as amended, and is a member of the New York Stock Exchange, American Stock Exchange, Chicago Board of Options Exchange, and the Chicago Stock Exchange, among others, and DBSI is a member of the National Association of Securities Dealers.

DBSI's affiliate, Deutsche Bank Trust Company Americas (DBT), is a wholly-owned subsidiary of Deutsche Bank Trust Corporation, which, in turn, is an indirectly wholly-owned subsidiary of Deutsche Bank AG. DBT, a New York State banking corporation, is supervised by the Federal Reserve Bank of New York.

2. DBSI also has several foreign affiliates which are broker-dealers or banks. Those covered by the proposed exemption (*i.e.*, the Foreign Affiliates) include but are not limited to:

(a) United Kingdom—Morgan Grenfell & Co., Ltd., Bankers Trust International PLC, and the London Branch of Deutsche Bank;

(b) Germany—Deutsche Bank AG;

(c) Japan—Japan Bankers Trust Ltd., Deutsche Bank Securities Limited, Tokyo Branch, and Deutsche Trust Bank Limited;

(d) Canada—Deutsche Bank Canada and Deutsche Bank Securities Limited;

(e) Switzerland—Deutsche Bank (Suisse) S.A.; and

(f) Australia—Deutsche Bank Securities Australia, Limited and the Sydney Branch of Deutsche Bank.

The Applicant requests an individual exemption for DBSI and its current and future affiliates, including the Foreign Affiliates identified above, which would permit principal transactions with employee benefit plans (*i.e.*, the Plans), as described herein.

The Applicant represents that the Foreign Affiliates are subject to regulation by a governmental agency in the foreign country in which they are located. The Applicant states that registration of a foreign broker-dealer or bank with the governmental agency in these cases addresses regulatory concerns similar to those addressed by registration of a broker-dealer with the SEC under the 1934 Act. The rules and regulations set forth by the above-referenced agencies and the SEC share a common objective: The protection of the investor by the regulation of securities markets. The foreign regulatory regimes have been described in detail in numerous other exemptions previously granted by the Department [*see, e.g.*, PTE 99–50 (65 FR 534, January 5, 2000), granted to Bankers Trust Company, now known as Deutsche Bank Trust Company Americas].

Further, the Applicant represents that, in connection with the transactions covered by the proposed exemption, the Foreign Affiliates' compliance with any applicable requirements of Rule 15a–6

(17 CFR 240.15a–6) of the 1934 Act (as discussed further in Item 9, below), and SEC interpretations thereof, providing for foreign affiliates a limited exemption from U.S. registration requirements, will offer additional protections to the Plans.

3. The Applicant represents that it customarily purchases and sells securities for its own account in the ordinary course of its business as a broker-dealer or bank. Such trades are referred to as principal transactions. In the subject principal transactions with Plans, occurring in the context of a portfolio liquidation or restructuring, the Applicant may be a party in interest with respect to such Plans.

The Applicant believes that the principal transactions at issue may fall outside the scope of relief provided by Prohibited Transaction Exemption (PTE) 75–1 (40 FR 50845, October 31, 1975), Part II,[1] because that class exemption is unavailable where the broker-dealer's affiliate is the trustee of a Plan, even if only a directed trustee. In addition, because PTE 75–1 provides an exemption only for U.S. registered broker-dealers and U.S. banks, it is unavailable for the Applicant's Foreign Affiliates.[2] Thus, the Applicant seeks an individual exemption permitting it to execute principal transactions with Plans in the situations described above.

As a condition of the proposed exemption, neither the Applicant nor an affiliate thereof may have discretionary authority or control with respect to the investment of the Plan assets involved in the principal transaction, or render investment advice (within the meaning of 29 CFR 2510.3–21(c)) with respect to those assets. However, one or more of the entities affiliated with the Applicant may be a directed trustee of the Plan (as discussed further in Item 5, below).

In addition, this condition will be deemed met if the Applicant or an affiliate is the "legacy manager" whose appointment as a manager of plan assets has been terminated prior to the commencement of the portfolio liquidation or restructuring, since the legacy manager would not have been involved in the selection of the "transition broker-dealer" and would no longer be acting as a fiduciary with respect to the assets involved in the liquidation or restructuring.

This condition will also be met if the Applicant or an affiliate is the "destination manager," who was not involved in the selection of the transition broker-dealer but provides such broker-dealer with a list of securities to be purchased for the Plan with the proceeds of the securities being liquidated, so long as the list represents those securities in an Index or Model-Driven Fund.

Similarly, this condition will be met if the destination manager prepares for the Plan sponsor (*i.e.*, the Independent Fiduciary) a list of securities to be purchased for the Plan with the proceeds of the securities being liquidated, so long as that list is prepared without regard to the identity of the transition broker-dealer and without reference to the portfolio being liquidated or restructured (*i.e.*, the list is substantially the same as would be provided to other similarly situated investors with similar objectives or consists of substantially the same securities as those in other existing investment portfolios managed in the same style).

Thus, the Applicant or an affiliate may be retained as an investment manager for the Plan with respect to some or all of the portfolio resulting from the liquidation or restructuring (as discussed further in Item 6, below), provided that an Independent Fiduciary has given prior approval for the principal transactions, as part of the liquidation or restructuring, and the other conditions set forth herein are met.[3]

4. The Applicant represents that when sponsors of Plans terminate an investment manager, it is customary to hire a broker-dealer to liquidate the portfolio of the terminated manager and/or create the portfolio of the newly hired manager. An Independent Fiduciary, generally the Plan sponsor, hires a broker-dealer to perform these so-called "transition services." The Independent Fiduciary instructs the broker-dealer to purchase or sell a list of securities within a specified period. The list of securities to be sold is from the portfolio held by the Plan at the time the manager is terminated. The list of securities to be purchased is from a list prepared by the new manager (who may or may not be affiliated with the Applicant). Generally, the transition broker-dealer takes both the legacy portfolios and the destination portfolios, matches any securities that appear in both, and allocates such securities to the appropriate destination managers ratably. Then the remaining legacy securities are sold, the cash proceeds placed in the appropriate custody account, and the destination securities are purchased.

The Applicant represents that, while the Independent Fiduciary may specify that the transactions are to be executed by the broker-dealer as agent in markets where such transactions are typical,[4] it is often the case that the markets involved require principal transactions, such as is the case for NASDAQ National Market securities or fixed income securities.

The Applicant represents that often the Independent Fiduciary and the transition broker-dealer will agree that certain principal transactions will be effected at a price determined by an objective reference outside the control of the transition broker-dealer, including, but not limited to, the opening or closing price of the security for the day on the principal exchange on which the security is traded, the volume-weighted average price[5] for the day, or the price as reported by an independent reporting service for that particular day. In such case, the Applicant represents that the price at which the principal transaction will

[1] PTE 75–1, Part II, provides a class exemption, subject to certain conditions, from section 406(a) of the Act and section 4975(c)(1)(A) through (D) of the Code, for principal transactions between employee benefit plans and U.S. registered broker-dealers or U.S. banks that are parties in interest with respect to such plans. PTE 75–1, Part II(d) states, among other things, that "such broker-dealer, reporting dealer or bank is not a fiduciary with respect to the plan, and such broker-dealer, reporting dealer or bank is a party in interest or disqualified person with respect to the plan solely by reason of section 3(14)(B) of the Act or section 4975(e)(2)(B) of the Code, or by reason of a relationship to a person described in such sections."

[2] Deutsche Bank AG, and certain foreign affiliates thereof, filed Submission No. E–00194 and obtained authorization from the Department to engage in principal transactions, among other things, with employee benefit plans, pursuant to an authorization made under PTE 96–62 (61 FR 39988, July 31, 1996), and which was designated Final Authorization No. (FAN) 2000–28E, effective November 25, 2000. In this regard, the Department notes that the relief provided by FAN 2000–28E may not cover the principal transactions described in this proposed exemption.

[3] The Department notes that the proposed exemption is unavailable for any principal transaction occurring upon or after the Applicant's assumption of responsibility as an investment manager for the Plan assets that would be involved in such transaction (notwithstanding the transactions described herein). Once the transition has been completed and the purchases and sales have been consummated, the destination manager will then assume fiduciary responsibility for the portfolio, and the proposed exemption will not apply to any subsequent principal transactions with an affiliate, as described herein, unless the manager is terminated (*i.e.*, a "legacy" investment manager).

[4] The Applicant represents that where securities are to be purchased or sold on an agency basis, the Applicant will comply with the safe harbor provided by 29 CFR 2510.3–21(d) for the execution of a securities transaction.

Further, the Department notes that PTE 86–128 (51 FR 41686, November 18, 1986) provides a class exemption permitting, among other things, persons who serve as fiduciaries for employee benefit plans to effect or execute securities transactions as an agent for the plan, provided the conditions set forth therein are met.

[5] For purposes of the proposed exemption, the term volume-weighted average price means the weighted average of the price of each trade that was reported for the security on a given day.

occur will be determined by market forces and not by the broker-dealer.

Prior to any transaction that is not based on an objective reference for pricing, the Independent Fiduciary shall specify whether the transaction is to be agency or principal, either on a security-by-security basis, or based on the whole portfolio or an identifiable part of the portfolio (such as all debt securities, all equity securities, all domestic securities, or the like). Any principal transaction will be for cash, and the terms at least as favorable to the Plan as those obtainable in a comparable arm's length transaction with an unrelated party.

5. The Applicant represents that purchases and sales of securities effected as part of transition services will take place as follows. The Independent Fiduciary of a Plan, after such due diligence as it deems appropriate under the circumstances, selects a broker-dealer to purchase or sell a specified portfolio of securities. Where the broker-dealer selected is the Applicant and an affiliate of the Applicant is the directed trustee of the Plan, such affiliate must be a fiduciary that has no discretionary authority or control with respect to the investment of the Plan assets involved in the transaction (including determining the broker-dealer to be hired to provide transition services for the Plan), nor renders investment advice (within the meaning of 29 CFR 2510.3–21(c)) with respect to those assets.

The Applicant asserts that permitting it to engage in principal transactions where one of its affiliates is a directed trustee of a Plan will provide Plans with additional expert broker-dealers experienced at transition services from which Plans may choose to implement changes in investment managers or investment strategies.

In such situations, the Applicant believes it may not be able to rely on the Department's class exemptions providing relief for principal transactions. For example, the Applicant believes that the Independent Fiduciary for the subject transactions is unlikely to be a "qualified professional asset manager" (QPAM), as defined in PTE 84–14, (49 FR 9494, 9506, March 13, 1984),[6] or an "in-house asset manager" (INHAM), as defined in PTE 96–23 (61 FR 15975, April 10, 1996).[7]

[6] PTE 84–14 provides a class exemption, subject to certain conditions, for transactions between a party in interest with respect to an employee benefit plan and an investment fund (including a single customer or pooled separate account) in which the plan has an interest and which is managed by a QPAM.

[7] PTE 96–23 provides a class exemption, subject to certain conditions, for transactions between a party in interest with respect to an employee benefit plan and an investment fund (including a single customer or pooled separate account) in which the plan has an interest and which is managed by an INHAM.

6. Although the Applicant may not have discretionary authority or control over the Plan assets involved at the time of the transaction, this condition is not violated and the proposed exemption provides relief for purchases and sales of securities where the Applicant's affiliate will serve as the new investment manager for such assets, where such manager has provided a list of securities to be purchased for the Plan to the transition broker-dealer, as described below.

Where the destination manager will be managing the assets in an Index Fund (as defined in Section III, F) or a Model-Driven Fund (as defined in Section III, G), the list of securities to be purchased is the optimum portfolio that has been identified by the manager's computer model, or is a slice of the underlying index, or a slice of the Fund (taking into account round lots and other conventions).

Where the destination manager of an actively managed portfolio supplies a list of securities that it would purchase if it were to receive cash, the transition broker-dealer uses that list to assemble the desired portfolio prior to the date that the destination manager assumes responsibility for the portfolio. That list is prepared without reference to the identity of the transition broker-dealer, without reference to the portfolio being liquidated, and without reference to the securities held in inventory by the transition broker-dealer. The Applicant asserts that compliance with condition II.B(iii) can be demonstrated by comparison with a list that was provided on the same day to other similarly situated investors with similar objectives or by comparison with the holdings in other existing investment portfolios managed in the same style.

According to the Applicant, the choice of a destination manager of an actively managed portfolio generally precedes and is separate from any decision regarding the transition broker-dealer. The Independent Fiduciary has selected the destination manager on the basis of its investment style and performance, and the Plan's asset allocation requirements. The destination manager may introduce the transition broker-dealer to the Independent Fiduciary but is not responsible for choosing the transition broker-dealer, nor for giving advice on which the Independent Fiduciary intends to rely as a primary basis for such choice. When the transition broker-dealer is selected, the Independent Fiduciary requests that the destination manager provide the list of securities to be purchased, which is the same list that the destination manager would provide to any new client with the same investment style choices, as described above. The Applicant further represents that the situation should not present an opportunity for self-dealing on the part of the transition broker-dealer or destination manager, since the destination manager would not be acting as a fiduciary with respect to the buy portfolio until after the portfolio is purchased.[8]

7. Generally, the time period for the transition program is specified in advance by the Independent Fiduciary as of a date certain, to be completed by a date certain. The Applicant represents that this time period may vary, based on the size of the portfolio, but, generally, does not exceed four business days. As a condition of the proposed exemption, all purchases and sales must be effected within two days following an Independent Fiduciary's direction to purchase or sell a given security—except that, with the approval of the Independent Fiduciary, the Applicant may extend such initial period for an additional two days.

8. The Applicant represents that the Independent Fiduciary often specifies an objective method or reference for pricing, such as the closing price, opening price, or the volume-weighted average price for the security on a particular day. In the fixed income markets, it is generally customary for an Independent Fiduciary to specify that the price be within the bid-asked spread, as of the close of the relevant market. Such benchmarks provide an Independent Fiduciary with a basis for measuring the performance of the broker-dealer and satisfying itself that the Plan obtained best execution.

The Applicant represents that it will provide the Independent Fiduciary with confirmations that include the relevant information required under Rule 10b–10 of the 1934 Act, as well as a report, within five business days after any principal transaction, which specifies the security, the date of the transaction,

[8] The Department notes, and the Applicant concurs, that no relief would be provided under the proposed exemption for any violation of section 406(b) of the Act by the destination manager or transition broker-dealer. In this regard, section 406(b) of the Act prohibits, among other things, a fiduciary for a plan from dealing with the assets of the plan in his own interest or for his own account or acting, in his individual or in any other capacity, in a transaction involving the plan on behalf of a party (or representing a party) whose interests are adverse to the interests of the plan or the interest of its participants or beneficiaries.

the quantity and price paid or received by the Plan, and the manner of execution (agency or principal). The Applicant states that such disclosure is meaningful because it can be verified against objective prices obtainable through independent pricing services available to the public.

Only Plans with total assets in excess of $100 million are covered by the proposed exemption. However, for purposes of the net assets test, where a group of Plans is maintained by a single employer or controlled group of employers, as defined in section 407(d)(7) of the Act, the $100 million net assets requirement may be met by aggregating the assets of such Plans, if the assets are pooled for investment purposes in a single master trust.

9. Finally, the Applicant notes that many Plans have expanded their investment portfolios in recent years to include foreign securities. With respect to the Foreign Affiliates covered by the proposed exemption, the Applicant represents that Rule 15a–6 of the 1934 Act provides an exemption from U.S. registration requirements for a foreign broker-dealer that induces or attempts to induce the purchase or sale of any security (including over-the-counter equity and debt options) by a "U.S. institutional investor" or a "major U.S. institutional investor," provided that the foreign broker-dealer, among other things, enters into these principal transactions through a U.S. registered broker or dealer intermediary.

The term "U.S. institutional investor," as defined in Rule 15a–6(b)(7), includes an employee benefit plan within the meaning of the Act if:

(a) The investment decision is made by a plan fiduciary, as defined in section 3(21) of the Act, which is either a bank, savings and loan association, insurance company or registered investment adviser, or

(b) The employee benefit plan has total assets in excess of $5 million, or

(c) The employee benefit plan is a self-directed plan with investment decisions made solely by persons that are "accredited investors," as defined in Rule 501(a)(1) of Regulation D of the Securities Act of 1933, as amended.

The term "major U.S. institutional investor," as defined in Rule 15a–6(b)(4), includes a U.S. institutional investor that has total assets in excess of $100 million.[9] The Applicant represents that the intermediation of the U.S. registered broker or dealer imposes upon the foreign broker-dealer the requirement that the securities transaction be effected in accordance with a number of U.S. securities laws and regulations applicable to U.S. registered broker-dealers.

The Applicant represents that under Rule 15a–6, a foreign broker-dealer that induces or attempts to induce the purchase or sale of any security by a U.S. institutional or major U.S. institutional investor in accordance with Rule 15a–6 must, among other things:

(a) Provide written consent to service of process for any civil action brought by or proceeding before the SEC or a self-regulatory organization;

(b) Provide the SEC with any information or documents within its possession, custody or control, any testimony of foreign associated persons, and any assistance in taking the evidence of other persons, wherever located, that the SEC requests and that relates to transactions effected pursuant to the Rule;

(c) Rely on the U.S. registered broker or dealer through which the principal transactions with the U.S. institutional and major U.S. institutional investors are effected, among other things, for:

(1) Effecting the transactions, other than negotiating their terms;

(2) Issuing all required confirmations and statements;

(3) As between the foreign broker-dealer and the U.S. registered broker or dealer, extending or arranging for the extension of any credit in connection with the transactions;

(4) Maintaining required books and records relating to the transactions, including those required by Rules 17a–3 (Records to be Made by Certain Exchange Members) and 17a–4 (Records to be Preserved by Certain Exchange Members, Brokers and Dealers) of the 1934 Act; [10]

(5) Receiving, delivering, and safeguarding funds and securities in connection with the transactions on behalf of the U.S. institutional investor or major U.S. institutional investor in compliance with Rule 15c3–3 (Customer Protection—Reserves and Custody of Securities) of the 1934 Act; [11] and

(6) Participating in all oral communications (*e.g.*, telephone calls) between the foreign associated person and the U.S. institutional investor, other than a major U.S. institutional investor. Under certain circumstances, the foreign associated person may have direct communications and contact with the U.S. institutional investor. (*See* April 9, 1997 No-Action Letter.)

10. Prior to any transaction, the Foreign Affiliate will enter into a written agreement with the Plan in which the Foreign Affiliate consents to the jurisdiction of the courts of the United States for any civil action or proceeding brought in respect of the subject transactions. In this regard, the Foreign Affiliate must (i) Agree to submit to the jurisdiction of the United States; (ii) agree to appoint a Process Agent for service of process in the United States; and (iii) consent to service of process on the Process Agent.

11. In summary, the Applicant represents that the proposed transactions will satisfy the statutory criteria for an exemption under section 408(a) of the Act for the following reasons:

(a) Permitting the Applicant to engage in principal transactions where its affiliate is the directed trustee of a Plan will provide Plans with additional expert broker-dealers experienced at transition services from which Plans may choose as service providers;

(b) Permitting the Applicant to engage in principal transactions, as described herein, will provide Plans with more predictable and verifiable pricing and enable transitions to occur in dealer markets in a timely and efficient manner, by transferring to the broker-dealer the risk of adverse execution;

(c) An Independent Fiduciary will give prior approval for the principal transactions and will monitor the prices received by the Plan through independent, verifiable means; and

(d) An Independent Fiduciary will ensure that securities assembled for either an Index or Model-Driven Fund or actively managed portfolio by a transition broker-dealer affiliated with the destination manager are consistent with the Plan's investment guidelines and objectives.

For Further Information Contact: Ms. Karin Weng of the Department, telephone (202) 693–8540. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

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[9] The Department notes that the categories of entities that qualify as "major U.S. institutional investors" has been expanded by an SEC No-Action letter. *See* No-Action Letter issued to Cleary, Gottlieb, Steen & Hamilton on April 9, 1997 (the April 9, 1997 No-Action Letter).

[10] The Applicant represents that all such requirements relating to record-keeping of principal transactions would be applicable for any Foreign Affiliate in a transaction that would be covered by the proposed exemption.

[11] Under certain circumstances described in the April 9, 1997 No-Action Letter (*e.g.*, clearance and settlement transactions), there may be direct transfers of funds and securities between a Plan and a Foreign Affiliate. Please note that in such situations (as in the other situations covered by Rule 15a–6), the U.S. broker-dealer will not be acting as a principal with respect to any duties it is required to undertake pursuant to Rule 15a–6.

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which, among other things, require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries, and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed in Washington, DC, this 3rd day of February, 2003.

Ivan Strasfeld,

Director of Exemption Determinations, Employee Benefits Security Administration, Department of Labor.

[FR Doc. 03–2964 Filed 2–5–03; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

[Prohibited Transaction Exemption 2003–01; Exemption Application No. D–10995 et al.,]

Grant of Individual Exemptions; The Northern Trust Company and Affiliates

AGENCY: Employee Benefits Security Administration, Labor.

ACTION: Grant of individual exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

A notice was published in the **Federal Register** of the pendency before the Department of a proposal to grant such exemption. The notice set forth a summary of facts and representations contained in the application for exemption and referred interested persons to the application for a complete statement of the facts and representations. The application has been available for public inspection at the Department in Washington, DC. The notice also invited interested persons to submit comments on the requested exemption to the Department. In addition the notice stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicant has represented that it has complied with the requirements of the notification to interested persons. No requests for a hearing were received by the Department. Public comments were received by the Department as described in the granted exemption.

The notice of proposed exemption was issued and the exemption is being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department makes the following findings:

(a) The exemption is administratively feasible;

(b) The exemption is in the interests of the plan and its participants and beneficiaries; and

(c) The exemption is protective of the rights of the participants and beneficiaries of the plan.

The Northern Trust Company and Affiliates Located in Chicago, Illinois

[Prohibited Transaction Exemption 2003–01; Application No. D–10995]

Exemption

Section I—Exemption for In-Kind Redemption of Assets

The restrictions of section 406(a) and 406(b) of ERISA and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1)(A) through (F) of the Code shall not apply [1] to the in-kind redemption (the Redemption) by the Northern Trust Company Thrift-Incentive Plan (the Plan) (the Applicant) of shares (the Shares) of proprietary mutual funds currently offered by, or offered in the future by, investment companies for which the Northern Trust Company (Northern) or an affiliate thereof provides investment advisory and other services (the Mutual Funds), provided that the following conditions are satisfied:

(A) The Plan pays no sales commissions, redemption fees, or other similar fees in connection with the Redemption (other than customary transfer charges paid to parties other than Northern and any affiliates of Northern (Northern Affiliates);

(B) The assets transferred to the Plan pursuant to the Redemptions consist entirely of cash and Transferable Securities. Notwithstanding the foregoing, Transferable Securities which are odd lot securities, fractional shares and accruals on such securities may be distributed in cash;

(C) With certain exceptions defined below, the Plan receives a pro rata portion of the securities of the Mutual Fund upon a Redemption that is equal in value to the number of Shares redeemed for such securities, as determined in a single valuation performed in the same manner and as of 3 p.m. Chicago time (local time for the closing of the exchanges) on the same day in accordance with Rule 2a–4 under the Investment Company Act of 1940, as amended (the 1940 Act), and the then-

[1] Section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996) generally transferred the authority of the Secretary of the Treasury to issue exemptions under section 4975(c)(2) of the Code to the Secretary of Labor. For purposes of this exemption, references to specific provisions of Title I of the Act, unless otherwise specified, refer also to the corresponding provisions of the Code.

existing procedures established by the Board of Trustees of the Mutual Fund (using sources independent of Northern and Northern Affiliates);

(D) Northern, or any affiliate thereof, does not receive any fees, including any fees payable pursuant to Rule 12b–1 under the 1940 Act in connection with any redemption of the Shares;

(E) Prior to a Redemption, Northern provides in writing to an independent fiduciary, as such term is defined in Section II (an Independent Fiduciary), a full and detailed written disclosure of information regarding the Redemption;

(F) Prior to a Redemption, the Independent Fiduciary provides written authorization for such Redemption to Northern, such authorization being terminable at any time prior to the date of Redemption without penalty to the Plan, and such termination being effectuated by 3 p.m. Chicago time following the date of receipt by Northern of written or electronic notice regarding such termination (unless circumstances beyond the control of Northern delay termination for no more than one additional business day);

(G) Before authorizing a Redemption, based on the disclosures provided by the Mutual Fund to the Independent Fiduciary, the Independent Fiduciary determines that the terms of the Redemption are fair to the participants of the Plan, and comparable to and no less favorable than terms obtainable at arms-length between unaffiliated parties, and that the Redemption is in the best interest of the Plan and its participants and beneficiaries;

(H) Not later than thirty (30) business days after the completion of a Redemption, the relevant Fund will provide to the Independent Fiduciary a written confirmation regarding such Redemption containing:

(i) The number of Shares held by the Plan immediately before the Redemption (and the related per Share net asset value and the total dollar value of the Shares held);

(ii) the identity (and related aggregate dollar value) of each security provided to the Plan pursuant to the Redemption, including each security valued in accordance with Rule 2a–4 under the 1940 Act and the then-existing procedures established by the Board of Trustees of the Mutual Fund (using sources independent of Northern and Northern Affiliates);

(iii) The current market price of each security received by the Plan pursuant to the Redemption; and

(iv) The identity of each pricing service or market-maker consulted in determining the value of such securities;

(I) The value of the securities received by the Plan for each redeemed Share equals the net asset value of such Share at the time of the transaction, and such value equals the value that would have been received by any other investor for shares of the same class of the Mutual Fund at that time;

(J) Subsequent to a Redemption, the Independent Fiduciary performs a post-transaction review which will include, among other things, testing a sampling of material aspects of the Redemption deemed in its judgment to be representative, including pricing;

(K) Each of the Plan's dealings with: the Mutual Funds, the investment advisors to the Mutual Funds (the Investment Advisers), the principal underwriter for the Mutual Funds, or any affiliated person thereof, are on a basis no less favorable to the Plan than dealings between the Mutual Funds and other shareholders holding shares of the same class as the Shares;

(L) Northern will maintain, or cause to be maintained, for a period of six years from the date of any covered transaction such records as are necessary to enable the persons. described in paragraph (M) below to determine whether the conditions of this exemption have been met, except that (i) this record-keeping condition shall not be violated if, due to circumstances beyond the control of Northern, the records are lost or destroyed prior to the end of the six year period, (ii) no party in interest with respect to the Plan other than Northern shall be subject to the civil penalty that may be assessed under section 502(i) of the Act or to the taxes imposed by section 4975(a) and (b) of the Code if such records are not maintained or are not available for examination as required by paragraph (M) below;

(M)(1) Except as provided in subparagraph (2) of this paragraph (M), and notwithstanding any provisions of section 504(a)(2) and (b) of the Act, the records referred to in paragraph (L) above are unconditionally available at their customary locations for examination during normal business hours by (i) any duly authorized employee or representative of the Department of Labor, the Internal Revenue Service, or the Securities and Exchange Commission, (ii) any fiduciary of the Plan or any duly authorized representative of such fiduciary, (iii) any participant, beneficiary, or union employee covered by the Plan or duly authorized representative of such participant, beneficiary, or union employee, (iv) any employer whose employees are covered by Plan and any employee organization whose members are covered by such Plan.

(2) None of the persons described in paragraphs (M)(1)(ii), (iii) and (iv) shall be authorized to examine trade secrets of Northern or the Mutual Funds, or commercial or financial information which is privileged or confidential; and

(3) Should Northern or the Mutual Funds refuse to disclose information on the basis that such information is exempt from disclosure pursuant to paragraph (2) above, Northern shall, by the close of the thirtieth (30th) day following the request, provide a written notice advising that person of the reasons for the refusal and that the Department may request such information.

Section II—Definitions

For purposes of this exemption—

(A) The term "affiliate" means:

(1) Any person (including corporation or partnership) directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with the person;

(2) Any officer, director, employee, relative, or partner in any such person; and

(3) Any corporation or partnership of which such person is an officer, director, partner, or employee.

(B) The term "control" means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(C) The term "net asset value" means the amount for purposes of pricing all purchases and sales calculated by dividing the value of all securities, determined by a method as set forth in the Mutual Fund's prospectus and statement of additional information, and other assets belonging to the Mutual Fund, less the liabilities charged to each such Mutual Fund, by the number of outstanding shares.

(D) The term "Independent Fiduciary" means a fiduciary who is: (i) independent of and unrelated to Northern and its affiliates, and (ii) appointed to act on behalf of the Plan with respect to the in-kind transfer of assets from one or more Mutual Funds to or for the benefit of the Plan. For purposes of this exemption, a fiduciary will not be deemed to be independent of and unrelated to Northern if: (i) Such fiduciary directly or indirectly controls, is controlled by or is under common control with Northern, (ii) such fiduciary directly or indirectly receives any compensation or other consideration in connection with any transaction described in this exemption; except that an independent fiduciary

may receive compensation from Northern in connection with the transactions contemplated herein if the amount or payment of such compensation is not contingent upon or in any way affected by the independent fiduciary's ultimate decision, and (iii) more than 2 percent (2%) of such fiduciary's gross income, for federal income tax purposes, in its prior tax year, will be paid by Northern and its affiliates in the fiduciary's current tax year.

(E) The term "Transferable Securities" shall mean securities (1) for which market quotations are readily available (as determined under Rule 2a–4 of the 1940 Act) and (2) which are not: (i) Securities which, if distributed, would require registration under the 1933 Act; (ii) securities issued by entities in countries which (a) restrict or prohibit the holding of securities by non-nationals other than through qualified investment vehicles, such as the Mutual Funds, or (b) permit transfers of ownership of securities to be effected only by transactions conducted on a local stock exchange; (iii) certain portfolio positions (such as forward foreign currency contracts, futures and options contracts, swap transactions, certificates of deposit and repurchase agreements) that, although they may be liquid and marketable, involve the assumption of contractual obligations, require special trading facilities or can only be traded with the counter-party to the transaction to effect a change in beneficial ownership; (iv) cash equivalents (such as certificates of deposit, commercial paper and repurchase agreements) which are not readily distributable; (v) other assets which are not readily distributable (including receivables and prepaid expenses), net of all liabilities (including accounts payable); and (vi) securities subject to "stop transfer" instructions or similar contractual restrictions on transfer.

(F) The term "relative" means a "relative" as that term is defined in section 3(15) of ERISA (or a "member of the family" as that term is defined in section 4975(e)(6) of the Code), or a brother, sister, or a spouse of a brother or a sister.

Effective Date: The exemption is effective as of the date this notice of final exemption is published in the **Federal Register**.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on November 18, 2002, at 67 FR 69560.

For Further Information Contact: Ms. Andrea W. Selvaggio of the Department, telephone (202) 694–8540. (This is not a toll-free number).

Brightpoint, Inc. (Brightpoint) Located in Indianapolis, Indiana

[Prohibited Transaction Exemption 2003–02; Exemption Application No. D–10999]

Exemption

The restrictions of sections 406(a) and 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975(a) and (b) of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply, effective June 5, 2001, to: (1) The payment (the Payment) by Brightpoint of $108,738.85 (the Assessment Amount) to the Millennium Trust Company LLC (Millennium) on behalf of the Brightpoint, Inc. 401(k) Plan (the Plan) for the purpose of satisfying a court-ordered assessment against the assets of the Plan (the Assessment) that arose in connection with the $68,100,000.00 deficiency (the Deficiency) incurred by the Independent Trust Corporation (Intrust); and (2) the transfer by the Plan to Brightpoint (the Repayment) of certain assets recovered by PricewaterhouseCoopers LLP (the Receiver) in connection with the Deficiency, if the following conditions are met:

(A) In the event the Plan receives an amount of assets from the Receiver (a Recovery Amount) that is greater than the Assessment Amount, the Plan will not be required to pay Brightpoint that portion of the Recovery Amount that is in excess of the Assessment Amount;

(B) In the event the Plan receives a Recovery Amount that is less than the Assessment Amount, the Plan will not be required to pay Brightpoint the difference between the Assessment Amount and the Recovery Amount;

(C) The Plan will not pay any of the costs and/or fees associated with the Payment and the Repayment;

(D) The Deficiency did not arise in connection with any improper act undertaken by a Plan fiduciary (other than Intrust or its principals); and

(E) Upon notification of the Intrust losses, the Brightpoint Plan fiduciaries undertook, and will continue to undertake, any actions necessary to ensure that the assets of the Plan were, and are, adequately protected.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published in the **Federal Register** on October 8, 2002 (67 FR 62822).

For Further Information Contact: Christopher Motta of the Department, telephone (202) 693–8544. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) This exemption is supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of this exemption is subject to the express condition that the material facts and representations contained in the application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed in Washington, DC this 3rd day of February, 2003.

Ivan Strasfeld,

Director of Exemption Determination, Employee Benefits Security Administration, Department of Labor.

[FR Doc. 03–2963 Filed 2–5–03; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

[Application No. D–11122]

Notice of Proposed Individual Exemption To Replace Prohibited Transaction Exemption 97–63 (PTE 97–63) Involving State Street Bank and Trust Company (State Street) Located in Boston, MA

AGENCY: Employee Benefits Security Administration, Department of Labor.

ACTION: Notice of proposed individual exemption to replace PTE 97–63.

SUMMARY: This document contains a notice of pendency before the Department of Labor (the Department) of a proposed individual exemption which, if granted, would replace PTE 97–63 (62 FR 66689, December 19, 1997). The exemption, as proposed, would permit securities lending transactions between State Street, its United States (U.S.) domiciled affiliates, and certain employee benefit plans (the Client Plan(s)), including commingled investment funds holding plan assets, for which State Street, through any division or U.S. affiliate of State Street or of its parent acts as securities lending agent (or sub-agent). The exemption, as proposed, would also permit receipt of compensation by an U.S. registered introducing broker affiliated with State Street (the Introducing Broker) in connection with an arrangement whereby securities are lent to an unrelated U.S. registered broker-dealer (the Clearing Broker) who in turn lends such securities to clients of the Introducing Broker; provided that certain conditions are satisfied.

In addition, State Street has requested that this exemption incorporate various modifications to specific terms and conditions of PTE 97–63. The replacement of PTE 97–63 will affect the participants and beneficiaries of the Client Plans participating in securities lending transactions and the fiduciaries with respect to such Client Plans.

EFFECTIVE DATE: If granted, the exemption will be effective as of the date this notice of proposed exemption (the notice) is published in the **Federal Register**.

DATES: Written comments and requests for a public hearing should be received by the Department on or before 45 days from the date of the publication in the **Federal Register** of this notice.

ADDRESSES: All written comments and requests for a public hearing (preferably, three copies) should be sent to the Office of Exemption Determinations, Employee Benefits Security Administration, Room N–5649, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, Attention: Application No. D–11122. The application pertaining to this notice and the comments received will be available for public inspection in the Public Disclosure Room of the Employee Benefits Security Welfare Benefits Administration, U.S. Department of Labor, Room N–1513, 200 Constitution Avenue, NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Ms. Angelena C. Le Blanc, Office of Exemption Determinations, Employee Benefits Security Administration, U.S. Department of Labor, telephone number (202) 693–8540. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Notice is hereby given of the pendency before the Department of a proposed exemption that would replace PTE 97–63. The proposed exemption has been requested in an application filed on behalf of State Street and its U.S. affiliates (the Applicants), pursuant to section 408(a) of the Employee Retirement Income Security Act of 1974 (the Act) and section 4975(c)(2) of the Internal Revenue Code of 1986 (the Code), and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (5 U.S.C. App. 1, 1995) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Accordingly, this proposed exemption is issued solely by the Department.

PTE 97–63 provides an exemption from certain prohibited transaction restrictions of section 406 of the Act and from the sanctions resulting from the application of section 4975 of the Code, as amended, by reason of section 4975(c)(1) of the Code. Specifically, PTE 97–63 provides relief from the restrictions of sections 406(a)(1)(A) through (D), 406(b)(1), and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, for:

(1) The lending of securities to State Street, acting through its Financial Markets Group (FMG) (formerly the Money Market Division of the Capital Markets Area) or acting through any other division or U.S. affiliate of State Street that is a successor to the activities of FMG; and for the lending of securities to any U.S. registered broker-dealer affiliated with State Street (the Affiliated Broker Dealer(s)) [1] by certain Client Plans (the Client Plans or the Client Plan), including commingled investment funds holding plan assets, for which State Street, through its Master Trust Services Division, acts as directed trustee or custodian, and for which State Street, through its Global Securities Lending Division or any other similar division of State Street or U.S. affiliate of State Street or of its parent (collectively, GSL) acts as securities lending agent (or sub-agent), and (2) the receipt of compensation by GSL in connection with such securities lending transactions; provided that certain conditions are satisfied.

The Applicants have confirmed that the representations, as set forth in paragraphs 18, 19, 20, 21, 22, and 23 of the summary of facts and representations of the notice of proposed exemption relating to PTE 97–63 (62 FR 51684, at 51686, October 2, 1997) continue to accurately describe the material terms of the transactions to be consummated, pursuant to this proposed exemption, except that (i) the factual statements contained in the second and third sentences of paragraph 21 related to market conditions at the time, may not be accurate currently and should be deleted, and (ii) the provisions of paragraph 22 that contemplate that an affirmative approval or consent will be given by the Client Plan will be overridden by the negative consent procedure contained in conditions (p) and (q) of this proposed exemption to the extent that the requirements thereof have been satisfied. Accordingly, the Department, hereby, incorporates by reference such representations (as adjusted by the preceding sentence) into the preamble of this proposed exemption.

The proposed exemption would replace PTE 97–63 and expand the relief beyond that already provided, pursuant to PTE 97–63. In this regard, it is represented that one of State Street's Affiliated Broker Dealers proposes to act as a "prime broker" with respect to certain of its clients, including hedge fund clients (the Prime Brokerage Client(s)). As a prime broker, the Affiliated Broker Dealer will provide a wide range of services to its Prime Brokerage Clients, including daily trade reporting, trade break resolution, consolidated position and profit and loss reporting, custodial services, risk analytics, and performance reporting.

Because these Prime Brokerage Clients frequently engage in short sales of securities (*i.e.*, the sale of securities that are not owned by the seller), such

[1] FMG, any division or U.S. affiliate of State Street that becomes a successor to the activities of FMG, and U.S. registered broker-dealers affiliated with State Street (the Affiliated Broker Dealer(s)) are collectively referred to, herein, as the "SSB Group."

clients are often required to borrow the securities needed to engage in such short selling activity. Accordingly, one of the services that the Prime Brokerage Clients seek is the ability to borrow the required securities from their prime broker. This, in turn, frequently causes the prime broker to borrow the required securities on the institutional securities lending market from lenders such as the Client Plans. It is represented that a significant component of the institutional securities lending market consists of the lending of securities to broker-dealers who require such securities in order to meet the short selling needs of their prime brokerage clients.

As noted above, one of State Street's Affiliated Broker Dealers proposes to provide prime brokerage services to its Prime Brokerage Clients. Eventually, this Affiliated Broker Dealer intends to self-clear all of the securities transactions (including the securities borrowing and lending transactions) required of a prime broker. It is represented that, at that time, the Affiliated Broker Dealer anticipates that it will borrow the required securities on the institutional lending market, including borrowing such securities from the Client Plans, pursuant to PTE 97–63.[2]

It is represented that the Affiliated Broker Dealer will not initially have all of the administrative and back-office capability required to perform such self-clearing functions. As a result, until these functions and capabilities are developed, the Affiliated Broker Dealer will limit its role to acting as Introducing Broker for its Prime Brokerage Clients and will utilize a Clearing Broker to actually borrow securities to meet the Prime Brokerage Clients' short selling needs. It is represented that the Clearing Broker will be well-known within the industry as providing complete clearing services for introducing broker-dealers. It is further represented that the provision of such clearing services will be a core focus of such Clearing Broker's business.

It is represented that the Introducing Broker will select the Clearing Broker based on all of the relevant facts and circumstances, including such factors as the Clearing Broker's: (1) Financial stability; (2) ability to execute effectively the trading activities of the Prime Brokerage Clients; (3) ability to meet such clients' needs for financing of margin transactions; (4) ability to meet such clients' needs to borrow securities to implement short selling strategies; (5) internal systems and controls; (6) reporting capabilities; and (7) credibility within the industry. It is represented that the Clearing Broker will be registered as a broker-dealer under the Security Exchange Act of 1934 and will satisfy all of the Securities Exchange Commission and NASD requirements for clearing brokers. In addition, the Clearing Broker will be required to have net capital at least equal to $10 million.

As indicated above, it is anticipated that the Clearing Broker will frequently borrow securities to meet the Prime Brokerage Clients' short selling needs. To the extent that it is necessary for the Clearing Broker to borrow securities for this purpose, the Clearing Broker will act as a principal in borrowing the requisite securities from institutional lenders, such as the Client Plans. In this regard, the Applicants have requested relief that encompasses securities lending transactions, as described in PTE 97–63, and also encompasses securities lending transactions between the Client Plans and the Clearing Broker, in situations where an Affiliated Broker Dealer is acting as the Introducing Broker for the Clearing Broker, provided that certain conditions are satisfied.[3]

The Applicants have also requested relief for receipt of compensation by the Introducing Broker in connection with an arrangement with the Clearing Broker. In this regard, it is anticipated that the Introducing Broker will receive consideration from the Clearing Broker based upon the revenue generated by the Clearing Broker through its use of the securities borrowed from the Client Plans. The Applicants have provided the following example of how the cash flow would operate in the context of the interim transition period when both the Clearing Broker and the Introducing Broker are involved in a securities lending transaction covered by this exemption.

Example: Assume one of the Introducing Broker's Prime Brokerage Clients desires to borrow a particular security in order to consummate a short sale. The Prime Brokerage Client contacts the Introducing Broker who, as agent for the Prime Brokerage Client, contacts the Clearing Broker. The Clearing Broker can satisfy the request (*i.e.*, lend the required securities) using: (A) Securities that the Clearing Broker already holds in its own inventory, (B) securities that the Clearing Broker borrows from GSL (*i.e.*, from the Client Plans) pursuant to its securities loan agreement with GSL, or (C) securities that the Clearing Broker borrows from some other securities lender.

Further, assume that the Clearing Broker elects to borrow the securities from GSL, pursuant to this proposed exemption, and that the loan is collateralized with cash. Under the applicable securities loan agreement, GSL will invest the cash collateral and will agree to pay the Clearing Broker a specified rate (the rebate rate) throughout the term of the loan. In turn, the Clearing Broker will loan the securities that it has just borrowed from GSL to the Introducing Broker's Prime Brokerage Client, will receive cash collateral from the Prime Brokerage Client, and will agree to pay the Introducing Broker, as agent for its Prime Brokerage Client, a rebate rate (typically lower than the rebate rate that the Clearing Broker will receive from GSL) with respect to the cash collateral throughout the term of the loan. The Introducing Broker will pay a portion of this rebate rate to its Prime Brokerage Client, retaining the difference as its compensation for serving as the Introducing Broker.

Utilizing hypothetical numbers for illustrative purposes, GSL might agree to pay the Clearing Broker a rebate rate of 200 basis points while the Clearing Broker in turn might pay the Introducing Broker, as agent for its Prime Brokerage Client, a rebate rate of 185 basis points of which the Introducing Broker might retain 5 basis points. Accordingly, if one assumes that GSL earns 250 basis points by investing the cash collateral during the term of the loan, GSL will pay 200 basis points to the Clearing Broker (leaving 50 basis points as the securities lending income to be split between the Client Plan and GSL). The Clearing Broker will, in turn, pay 185 basis points to the Introducing Broker, as agent for its Prime Brokerage Client, with 15 basis points remaining with the Clearing Broker as its compensation. Finally, the Introducing Broker will pay 180 basis points to its Prime Brokerage Client, with 5 basis points remaining with the Introducing Broker as its compensation.

The Applicants believe that the receipt of consideration by the

[2] The Department notes that the proposed exemption, if granted, will replace PTE 97–63. Accordingly, the Applicants must comply with the terms and conditions of this exemption, if granted, in order to obtain relief for securities lending transactions between Client Plans and an Affiliated Broker Dealer, acting as a prime broker for the Prime Brokerage Clients.

[3] The Department, herein, is not providing relief for securities lending transactions engaged in by the Clearing Broker, beyond that available, pursuant to Prohibited Transaction Exemption 81–6 (PTE 81–6) (46 FR 7527, January 23, 1981, as amended at 52 FR 18754, May 19, 1987) and Prohibited Transaction Exemption 82–63 (PTE 82–63) (47 FR 14804, April 6, 1982); provided the condition of these class exemptions are satisfied.

Introducing Broker from the Clearing Broker could be deemed a prohibited transaction. In this regard, the decision by GSL, acting as a fiduciary of a Client Plan, to lend such securities to the Clearing Broker could be deemed to violate section 406(b) of the Act. Accordingly, the Applicants have requested relief from section 406(a), 406(b)(1), 406(b)(2), and 406(b)(3) of the Act and section 4975(c)(1)(A) through (F) of the Code for the receipt of such compensation paid to the Introducing Broker by the Clearing Broker; provided that certain conditions are satisfied.

The Applicants have also requested that the underlined phrase, below, from the opening paragraph of PTE 97–63, be deleted from the proposed exemption:

The restrictions of sections 406(a)(1)(A) through (D) and 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the lending of securities to State Street Bank and Trust Company (State Street), acting through its Financial Markets Group (FMG) (formerly the Money Market Division of the Capital Markets Area) or acting through any other division or U.S. affiliate of State Street that is a successor to the activities of FMG; and shall not apply to the lending of securities to any U.S. registered broker-dealers affiliated with State Street (the Affiliated Broker Dealers) by employee benefit plans (the Client Plans or the Client Plan), including commingled investment funds holding plan assets *for which State Street, through its Master Trust Services Division (the Trust Division) acts as directed trustee or custodian, and* for which State Street, through its Global Securities Lending Division or any other similar division of State Street or U.S. affiliate of State Street or of its parent (collectively, GSL) acts as securities lending agent (or sub-agent); and shall not apply to the receipt of compensation by GSL in connection with the transactions, provided that the following conditions are met.

In this regard, the Applicants have informed the Department that State Street, in most cases, will be either the trustee or the custodian of the Client Plans. However, on occasion GSL may be retained as a securities lending agent by a Client Plan as to which State Street is neither the trustee nor the custodian. The Applicants do not believe that there is any reason to deprive such Client Plans of the opportunity to participate in securities lending transactions for which GSL acts as agent (or sub-agent). Further, the Applicants do not believe that there is any reason to impose the incremental administrative burdens on GSL that would be entailed, if such Client Plans were treated differently from all other securities lending clients in this regard. Accordingly, the Applicants request that the specified phrase in PTE 97–63 not be included in the language of the proposed exemption in order to provide the flexibility needed to enable a non-trustee, non-custodial Client Plan to lend securities.

In connection with the expansion of PTE 97–63, the Applicants have requested relief which would permit securities lending by certain index funds (the Index Fund(s)) or model-driven funds (the Model-Driven Fund(s)) managed by State Street or one of its divisions or U.S. affiliates. Specifically, the Applicants request that the Department modify Condition (a) of PTE 97–63. In this regard, Condition (a) of PTE 97–63 precludes the lending of securities to the SSB Group, if State Street or any of its divisions or affiliates has or exercises discretionary authority or renders investment advice with respect to the assets being lent. The Applicants have acknowledged that section II(a) in this proposed exemption precludes the lending of securities to either the SSB Group or the Clearing Broker, if State Street, the Clearing Broker, or any affiliate of State Street or the Clearing Broker has discretionary authority or renders investment advice with respect to such securities.

However, the Applicants note that the management of Index Funds and Model-Driven Funds entails a very limited degree of discretionary authority. As a result, the Applicants maintain that the potential for the abuse which Condition (a), as set forth in PTE 97–63, was designed to protect against (*i.e.*, that the investment decisions relating to a portfolio will be influenced by the possibility that the securities in such portfolio will be available for loan to an affiliated borrower) is not present in the context of Index Funds and Model-Driven Funds. Accordingly, the Applicants have requested that the language of section II(a) of this proposed exemption permit the lending of securities by an Index Fund or a Model-Driven Fund, managed by State Street or one of its divisions or U.S. affiliates, to members of the SSB Group or to the Clearing Broker. In this regard, the Applicants submit that it would be in the interest of such Index Funds and Model-Driven Funds to allow such funds to lend securities, as this would increase the securities lending opportunities available to such funds and enable such funds to generate additional securities lending revenue.

In addition, the Applicants request that the proposed exemption incorporate various modifications to specific terms and conditions, as set forth in PTE 97–63, including the following:

1. Modification of the language of Condition (f), as set forth in PTE 97–63, such that any reference to PTE 81–6 and PTE 82–63 also refer to such class exemptions as they may be amended from time to time or, alternatively, refer to any superseding class exemption that may be issued to cover securities lending by employee benefit plans. The Applicants maintain that the request is consistent with the Department's approach taken in Condition (d) of PTE 97–63 with respect to eligible collateral for securities loans.

2. Modification of the language in Condition (g), as set forth in PTE 97–63, to clarify that State Street is not required to indemnify the Client Plans against any potential investment losses associated with the investment of cash collateral received by such Client Plan in connection with securities lending transactions. The Applicants maintain that the request incorporates language previously provided by the Department in an interpretive letter relating to PTE 97–63.[4]

3. Change in the language of Condition (j), as set forth in PTE 97–63, to modify the plan size requirement in a context of master trusts and collective investment funds. In this regard, Condition (j), as set forth in PTE 97–63, provides that only Client Plans with total assets having an aggregate market value of at least $50 million are permitted to lend securities to the SSB Group. The Applicants note that in recent years the Department, in various class exemptions and individual exemptions, has recognized that the plan size requirement should be adjusted in the case of two or more Client Plans whose assets are commingled for investment purposes in a master trust or collective fund, provided certain conditions are satisfied. Accordingly, the Applicants request that the language in section II(j) of this proposed exemption address master trusts and collective funds in a comparable manner. It is represented that the specific language suggested by the Applicants for this purpose is substantially similar to that found in Prohibited Transaction Exemption 2002–45 (PTE 2002–45) granted to Deutsche Bank AG, as amended.[5]

(4) Modification of the language of Condition (l), as set forth in PTE 97–63, to require quarterly, rather than

[4] Letter from Ivan L. Strasfeld, Director, Office of Exemption Determinations, U.S. Department of Labor, to William A. Schmidt, Esq. and Eric Berger, Esq. (February 27, 2001) (C–9199).

[5] PTE 2002–45; granted (67 FR 59564, September 23, 2002, as corrected, 67 FR 69046, November 14, 2002); proposed (67 FR 9070, February 27, 2002); application no. D–10924.

monthly, reporting. The Applicants maintain that this request is consistent with the approach approved by the Department in PTE 2002–45, and would make the provision of such reports to all Client Plans more administratively feasible.

The Applicants also request the addition of the following conditions to the requirements of this proposed exemption:

(1) A new section II(p) which would permit certain authorizations and approvals required or contemplated by this proposed exemption to be obtained by a negative consent procedure, provided that an initial affirmative authorization and approval was obtained from an independent fiduciary of each Client Plan. In this regard, the Applicants maintain that a requirement that affirmative approval be obtained from the independent fiduciary of each Client Plan for each change in the securities lending program imposes unnecessary administrative burdens. In the opinion of the Applicants, it is appropriate for such subsequent authorizations and approvals to be obtained by means of a procedure whereby each independent fiduciary of a Client Plan receives full disclosure of all of the required information and has a reasonable opportunity to object. Failure by an independent fiduciary to object within a prescribed time period would be deemed to constitute authorization and approval; and

(2) A new section II(q) which would set forth special authorization and approval rules in the context of certain commingled Index Funds and commingled Model-Driven Funds in which Client Plans invest and for which State Street or a U.S. affiliate serves as a trustee, custodian, and/or manager (collectively, the Commingled Index Fund(s) and the Commingled Model-Driven Funds(s)). It is represented that these special rules are appropriate in order to avoid the type of administrative burden and disruption that could result from including a requirement that an independent fiduciary of each Client Plan that participates in a Commingled Index Fund or Commingled Model-Driven Fund must give affirmative authorization or approval before a securities lending program (or a change in such program) can be implemented with respect to such fund.

Further, the Applicants have requested a special rule applicable to any employee benefit plans maintained by State Street (or a U.S. affiliate) for its own employees (the State Street Plan(s)) that participate in a Commingled Index Fund or a Commingled Model-Driven Fund. In this regard, the Applicants have requested that in the case of a State Street Plan that has invested in a Commingled Index Fund or Commingled Model-Driven Fund, the requirement that the fiduciary be independent shall not apply; provided that at all times the holdings of all State Street Plans invested in such fund in the aggregate comprise less than 10% of the assets of such fund.

In addition, the Applicants have suggested a number of definitions for terms utilized in this proposed exemption. These definitions are set forth in section III of this proposed exemption.

Finally, the Department has determined to include the following conditions to this proposed exemption which provide additional safeguards for the Client Plans:

(1) A new section II(s) and a new section II(t) concerning the requirement that the Applicants establish and maintain certain records for a period of six years; and

(2) A new section II(o) which would require that at least 50% of the dollar value of all securities lending transactions negotiated by GSL be negotiated with borrowers unrelated to both State Street and the Clearing Broker. The language of section II(o), as set forth in this proposed exemption, tracks the language that was included in the Summary of Facts and Representations relating to PTE 97–63 (62 FR 51684, at 51686, October 2, 1997), but which did not appear in the operative language or conditions of PTE 97–63.

It is represented that the proposed exemption would be administratively feasible, because it involves identifiable transactions which will require minimal on-going monitoring by the Department. Specifically, it is represented that any loans of securities made pursuant to this proposed exemption are clearly identifiable and do not raise any issues from the perspective of administrative feasibility that are any different from the issues raised by PTE 97–63. Further, the Applicants maintain that the requested exemption incorporates approaches and concepts that the Department has utilized in other comparable contexts and has determined to be administratively feasible in those contexts.

It is represented that the proposed exemption is in the interest of affected Client Plans, because the ability to lend securities to the Clearing Broker in situations where the Affiliated Broker Dealer is acting as the Introducing Broker will enable the Client Plans to have access to the additional securities lending opportunities generated by the prime brokerage business of the Introducing Broker. Such additional securities lending opportunities will, in turn, enable the Client Plans to generate additional securities lending revenue.

The proposed exemption is protective of the Client Plans, because it provides all of the same protections for the Client Plans as does PTE 97–63, including, without limitation, the collateral requirement contained in Condition (d) of PTE 97–63 and the indemnity requirement imposed by Condition (g) of PTE 97–63.

In summary, the Applicants represent that the proposed replacement of PTE 97–63 satisfies the statutory criteria for an exemption under section 408(a) of the Act for the following reasons:

a. The proposed exemption will be as administratively feasible as PTE 97–63 and will provide all of the same benefits and protections as PTE 97–63;

b. To the extent that securities are lent to the Clearing Broker, the Client Plans will be able to look to the creditworthiness of both the Clearing Broker (as the borrower, pursuant to the terms of the securities loan agreement) and the SSB Group (as indemnitor, pursuant to section II(g) of this proposed exemption);

c. The proposed exemption will benefit Client Plans in that it will enable them to take advantage of additional securities lending opportunities that will be generated by the prime brokerage business of the Affiliated Broker Dealer during any period that the such broker-dealer acts only as an Introducing Broker which, in turn, will permit the Client Plans to generate incremental securities lending revenue; and

d. For each Client Plan, neither the SSB Group, the Clearing Broker, nor any affiliate of the SSB Group or the Clearing Broker will have or exercise discretionary investment authority or control with respect to the investment of the assets of such Client Plan involved in the transaction or render investment advice with respect to such assets, including a Client Plan's acquisition or disposition of securities available for loan, except to the extent that State Street or a division or affiliate of State Street exercises discretionary authority or control or renders investment advice in connection with an Index Fund or Model-Driven Fund in which Client Plans invest.

Notice to Interested Persons

Notification of the publication of the notice in the **Federal Register** will be mailed by first class mail to sponsors of the Client Plans who participate in securities lending transactions, as

described herein. Such notification will be given within 15 days of the publication of the notice in the **Federal Register**. The notification will contain a copy of the notice, as published in the **Federal Register**, and a copy of the supplemental statement, as required pursuant to 29 CFR 2570.43(b)(2). The supplemental statement will inform interested persons of their right to comment on and/or to request a hearing with respect to the pending exemption. Written comments and hearing requests are due within 45 days of the publication of the notice in the **Federal Register**.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which require, among other things, a fiduciary to discharge his or her duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirements of section 401(a) of the Code that the plan operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption can be granted under section 408(a) of the Act and section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interest of the plan and of its participants and beneficiaries, and protective of the rights of participants and beneficiaries of the plan;

(3) This proposed exemption, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) This proposed exemption, if granted, is subject to the express condition that the summary of facts and representations, as set forth in this notice, and the summary of facts and representations, as set forth in the notice of proposed exemption relating to PTE 97–63, accurately describe the material terms of the transactions to be consummated pursuant to this exemption.

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemption to the address above, within the time frame set forth above, after the publication of this proposed exemption in the **Federal Register**. All comments will be made a part of the record. Comments received will be available for public inspection with the referenced application at the address set forth above.

Proposed Exemption

Based on the facts and representations set forth in the application, under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, August 10, 1990), the Department of Labor (the Department) proposes to replace Prohibited Transaction Exemption 97–63 (PTE 97–63), as set forth below.

I. Transactions

(a) The restrictions of sections 406(a)(1)(A) through (D), 406(b)(1), and 406(b)(2) of the Employee Retirement Income Security Act of 1974 (the Act) and the sanctions resulting from the application of section 4975 of the Internal Revenue Code of 1986 (the Code), by reason of 4975(c)(1)(A) through (E) of the Internal Revenue Code of 1986 (the Code),[6] shall not apply to the lending of securities:

(1) To State Street Bank and Trust Company (State Street), acting through its Financial Markets Group (FMG) (formerly the Money Market Division of the Capital Markets Area) or acting through any other division or United States (U.S.) domiciled affiliate, as defined in this exemption in section III(a)(1), below, of State Street that is a successor to the activities of FMG; or

(2) To any U.S. registered broker-dealers affiliated with State Street (the Affiliated Broker Dealer(s));[7] by an employee benefit plan (the Client Plan(s)), including any commingled investment fund holding plan assets, for which State Street, through its Global Securities Lending Division or any other similar division of State Street or U.S. affiliate of State Street or of its parent (collectively, GSL) acts as securities lending agent (or sub-agent);[8]

(b) The restrictions of sections 406(a)(1)(A) through (D), 406(b)(1), and 406(b)(2) of the Act and the sanctions resulting from the application of section of 4975 of the Code, by reason of 4975(c)(1)(A) through (E) of the Code, shall not apply to the receipt of compensation by GSL in connection with any securities lending transaction, as described, above, in section I(a) of this exemption; and

(c) The restrictions of section 406 of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of 4975(c)(1) of the Code shall not apply to an arrangement whereby a U.S. registered broker-dealer affiliated with State Street (the Introducing Broker) receives compensation from the Clearing Broker in connection with, or as a direct or indirect result of, the lending of securities to the Clearing Broker by an employee benefit plan for which GSL acts as securities lending agent; provided that the conditions, set forth in section II, below, are satisfied.

II. Conditions

Section I of this exemption applies only if the conditions of section II of this exemption are satisfied.

(a) Neither State Street, the SSB Group, GSL, the Clearing Broker, nor any other division or U.S. affiliate of State Street or of the Clearing Broker has or exercises discretionary authority or control with respect to the investment of the assets of Client Plans involved in the transactions which are the subject of this exemption (other than with respect to the investment of cash collateral after securities have been loaned and collateral received), nor renders investment advice (within the meaning of 29 CFR 2510.3–21(c)) with respect to such assets, including decisions concerning the acquisition or disposition of securities available for loan by a Client Plan.

Section II(a) of this exemption will be deemed satisfied notwithstanding the fact that State Street or any division or

[6] For purposes of this exemption, references to specific provisions of title I of the Act, unless otherwise specified, refer also to the corresponding provisions of the Code.

[7] FMG, any division or U.S. affiliate of State Street that becomes a successor to the activities of FMG, and the Affiliated Broker Dealers are collectively referred to, herein, as "the SSB Group."

[8] For the sake of simplicity, future references to GSL's performance of services as securities lending agent should be deemed to include its parallel performance as securities lending sub-agent, and references to Client Plans should be deemed to refer to plans for which GSL is acting as sub-agent with respect to securities lending activities, unless otherwise indicated specifically or by the context of reference.

affiliate of State Street has or exercises discretionary authority or control or renders investment advice in connection with an index fund (the Index Fund(s)), as defined, below, in section III(d) of this exemption, or a model-driven fund (the Model-Driven Fund(s)), as defined, below, in section III(e) of this exemption, managed by State Street or any division or U.S. affiliate of State Street in which Client Plans invest. An Index Fund or a Model-Driven Fund with multiple Client Plan investors is referred to herein as a commingled Index Fund or a commingled Model-Driven Fund (the Commingled Index Fund(s) or the Commingled Model-Driven Fund(s));

(b) Except as otherwise provided, below, in section II(q) of this exemption with respect to Commingled Index Funds or Commingled Model-Driven Funds, before a Client Plan participates in a securities lending program, and before any loan of securities to the SSB Group or the Clearing Broker is effected, pursuant to this exemption, the fiduciary of the plan who is independent of State Street, GSL, the SSB Group, the Clearing Broker, and any other division or affiliate of State Street or the Clearing Broker must have:

(1) Authorized and approved the securities lending authorization agreement with GSL (the Agency Agreement), where GSL is acting as the direct securities lending agent; or

(2) Authorized and approved the primary securities lending authorization agreement (the Primary Lending Agreement) with the primary lending agent, where GSL is lending securities under a sub-agency arrangement with the primary lending agent;[9] and

(3) Approved the general terms of the securities loan agreement (the Loan Agreement) between the plan and the SSB Group or the Clearing Broker, as applicable, the specific terms of which are negotiated and entered into by GSL;

(c)(1) Each Client Plan may terminate the Agency Agreement or the Primary Lending Agreement at any time, without penalty to such Client Plan, on five business days notice, whereupon the borrower shall deliver certificates for securities identical to the borrowed securities (or the equivalent thereof in the event of reorganization, recapitalization or merger of the issuer of the borrowed securities) to the Client Plan within: (A) The customary delivery period for such securities, (B) five business days, or (C) the time negotiated for such delivery by the Client Plan and the borrower, whichever is lesser. With respect to a Commingled Index Fund or a Commingled Model-Driven Fund in which a Client Plan invests, termination is pursuant to the procedure, as set forth, below, in section II(q) of this exemption;

(2) If any event of default occurs (*e.g.*, a loan is terminated and the borrower fails to return the borrowed securities or the equivalent thereof within the time described, above, in section II(c)(1) of this exemption), to the extent that (A) liquidation of the pledged collateral, or (B) additional cash received from the SSB Group or the Clearing Broker, as applicable, does not provide sufficient funds on a timely basis, a Client Plan, including a Commingled Index Fund or a Commingled Model-Driven Fund in which a Client Plan invests, will have the right under the terms of the Loan Agreement to purchase securities identical to the borrowed securities (or their equivalent as discussed above) and may apply the collateral to the payment of the purchase price, any other obligations of the borrower under the agreement, and any expenses associated with the sale and/or purchase. If the collateral is insufficient to accomplish such purchase, State Street will indemnify the Client Plan, including a Client Plan invested in a Commingled Index Fund or Commingled Model-Driven Fund, pursuant to section II(g) of this exemption;

(d) Each Client Plan or Commingled Index Fund or Commingled Model-Driven Fund in which a Client Plan invests will receive from the SSB Group or the Clearing Broker, as applicable, (either by physical delivery, or by book entry in a securities depository, wire transfer or similar means) by the close of business on or before the day the loaned securities are delivered to the SSB Group or the Clearing Broker, as applicable, collateral consisting of U.S. currency, securities issued or guaranteed by the U.S. Government or its agencies or instrumentalities, an irrevocable bank letter of credit issued by a person other than State Street, the Clearing Broker, or an affiliate thereof, or any combination thereof, or other collateral permitted under PTE 81–6 (as amended from time to time or, alternatively, any superseding class exemption that may be issued to cover securities lending by employee benefit plans). The collateral will be held on behalf of a Client Plan in a manner that causes such collateral to be (i) segregated from and not commingled with the general assets of State Street, the Clearing Broker, or any of their affiliates, and (ii) identifiable and reachable by such Client Plan;

(e) The market value of the collateral (or in the case of a letter of credit the stated amount) must, as of the close of business on the preceding business day, initially equal at least 102 percent (102%) of the market value of the loaned securities. If the market value of the collateral, on the close of trading on a business day, is less than 100 percent (100%) (or such greater percentage as agreed to by the parties) of the market value of the loaned securities at the close of business on that day, the SSB Group or the Clearing Broker, as applicable, is required to deliver by the close of business on the following day sufficient additional collateral such that the market value of the collateral will again equal at least 102 percent (102%). The applicable Loan Agreement will give Client Plans or a Commingled Index Fund or Commingled Model-Driven Funds in which a Client Plan invests a continuing security interest in, title to, or the rights of a secured creditor with respect to the collateral and a lien on the collateral. GSL will monitor the level of the collateral daily;

(f) All GSL's procedures regarding securities lending activities will at a minimum conform to PTE 81–6 and PTE 82–63 (as amended from time to time or, alternatively, any superseding class exemption that may be issued to cover securities lending by employee benefit plans);

(g) State Street will agree to indemnify and hold harmless each lending Client Plan (including the sponsor and fiduciaries of each Client Plan) and any Client Plan invested in a Commingled Index Fund or Commingled Model-Driven Fund against any and all damages, losses, liabilities, costs, and expenses (including attorneys' fees) which such plans may incur or suffer directly arising out of the lending of the securities to the SSB Group or the Clearing Broker, as applicable; provided that this condition does not require State Street to indemnify a plan against any potential investment losses associated with the investment of cash collateral received by such Client Plan (or by such Commingled Index Fund or Commingled Model-Driven Fund) in connection with such securities lending transactions;

(h) Each Client Plan, including a Commingled Index Fund or Commingled Model-Driven Fund in which a Client Plan invests, will receive the equivalent of all distributions made to holders of the borrowed securities during the term of any loan, including,

[9] The Department, herein, is not providing relief for securities lending transactions engaged in by primary lending agents, other than GSL, beyond that provided, pursuant to Prohibited Transaction Exemption 81–6 (PTE 81–6) (46 FR 7527, January 23, 1981, as amended at 52 FR 18754, May 19, 1987) and Prohibited Transaction Exemption 82–63 (PTE 82–63) (47 FR 14804, April 6, 1982).

but not limited to, cash dividends, interest payments, shares of stock as a result of stock splits and rights to purchase additional securities, or other distributions;

(i) Each Client Plan, including a Client Plan invested in a Commingled Index Fund or Commingled Model-Driven Fund, will receive prior to any approval of the lending of securities to the SSB Group or the Clearing Broker, as applicable, a copy of this notice of proposed exemption (the notice), a copy of the final exemption, if granted, a copy of PTE 97–63, and a copy of the notice of proposed exemption related to PTE 97–63 (the previous notice);

(j) Only Client Plans with total assets having an aggregate market value of at least $50 million will be permitted to lend securities to the SSB Group or to the Clearing Broker, as applicable; provided, however that—

(1) In the case of two or more Client Plans which are maintained by the same employer, controlled group of corporations or employee organization, whose assets are commingled for investment purposes in a single master trust or any other entity the assets of which are "plan assets" under 29 CFR 2510.3–101 (the Plan Asset Regulation), which entity is engaged in a securities lending arrangement with GSL, the foregoing $50 million requirement shall be deemed satisfied, if such trust or other entity has aggregate assets which are in excess of $50 million; provided that if the fiduciary responsible for making the investment decision on behalf of such master trust or other entity is not the employer or an affiliate of the employer, such fiduciary has total assets under its management and control, exclusive of the $50 million threshold amount attributable to plan investment in the commingled entity, which are in excess of $100 million.

(2) In the case of two or more Client Plans which are not maintained by the same employer, controlled group of corporations or employee organization, whose assets are commingled for investment purposes in a group trust or any other form of entity the assets of which are "plan assets" under the Plan Asset Regulation, which entity is engaged in a securities lending arrangement with GSL, the foregoing $50 million requirement is satisfied, if such trust or other entity has aggregate assets which are in excess of $50 million (excluding the assets of any Client Plan with respect to which the fiduciary responsible for making the investment decision on behalf of such group trust or other entity or any member of the controlled group of corporations including such fiduciary is the employer maintaining such Client Plan or an employee organization whose members are covered by such Client Plan). However, the fiduciary responsible for making the investment decision on behalf of such group trust or other entity—

(A) Has full investment responsibility with respect to plan assets invested therein; and

(B) Has total assets under its management and control, exclusive of the $50 million threshold amount attributable to plan investment in the commingled entity, which are in excess of $100 million.

(3) In the case of two or more Client Plans whose assets are commingled for investment purposes in an entity, whether or not through an entity described, above, in section II(j)(1) or (j)(2) of this exemption, the $50 million requirement shall be deemed satisfied if 50 percent (50%) or more of the units of beneficial interest in such entity are held by investors each having total net assets of at least $50 million. Such investors may include Client Plans, entities described, above, in section II(j)(1) or (j)(2) of this exemption, or other investors that are not employee benefit plans covered by section 406 of the Act, or section 4975 of the Code.

In addition, none of the entities described above are formed for the sole purpose of making loans of securities;

(k) The terms of each loan of securities by a Client Plan or by a Commingled Index Fund or Commingled Model-Driven Fund in which a Client Plan invests to the SSB Group or the Clearing Broker, as applicable, will be at least as favorable to the plan as those of a comparable arm's-length transaction between unrelated parties;

(l) Each Client Plan, including a Client Plan invested in a Commingled Index Fund or Commingled Model-Driven Fund, will receive quarterly reports with respect to the securities lending transactions which are the subject of this exemption, including but not limited to the information described in paragraph 26 of the previous notice, so that an independent fiduciary of the plan may monitor the securities lending transactions with the SSB Group and, if applicable, the Clearing Broker. In the event the identity of the Clearing Broker has changed since the issuance of the report for the immediately preceding calendar quarter, the report for the current calendar quarter must contain name of the new Clearing Broker and the most recently available audited and unaudited financial statements of such Clearing Broker;

(m) Except in the case of a Commingled Index Fund or Commingled Model-Driven Fund subject to the requirements, as set forth, below, in section II(q) of this exemption, before entering into the Loan Agreement and before a Client Plan lends any securities to the SSB Group or to the Clearing Broker, as applicable, an independent fiduciary of the Client Plan will receive sufficient information, concerning the financial condition of State Street and, if applicable, the Clearing Broker, including but not limited to the most recently available audited and unaudited financial statements of State Street's parent corporation and, if applicable, the Clearing Broker. In the event of a change in the identity of the Clearing Broker, the name of such Clearing Broker and the information required by this section (m) with respect to the new Clearing Broker must be provided to the independent fiduciary of the Client Plan before such Client Plan lends any securities to the new Clearing Broker;

(n) Except in the case of a Commingled Index Fund or Commingled Model-Driven Fund subject to the requirements, as set forth, below, in section II(q) of this exemption, the SSB Group and, if applicable, the Clearing Broker, will provide to a Client Plan prompt notice at the time of each loan by such plan of any material adverse changes in State Street's and, if applicable, the Clearing Broker's financial condition, since the date of the most recently furnished financial statements.

If any such material adverse changes have taken place, GSL will not make any further loans to the Affiliated Broker Dealers and, if applicable, the Clearing Broker, unless an independent fiduciary of the Client Plan is provided notice of the material change and approves the continuation of the lending arrangement in view of the changed financial condition.

If the independent fiduciary of a Client Plan not invested in a Commingled Index Fund or Commingled Model-Driven Fund objects to any material adverse change, as disclosed pursuant to section II(n) of this exemption, such plan may terminate its participating in the Agency Agreement or the Primary Lending Agreement, without penalty to such plan, pursuant to section II(c), above, of this exemption. In the case of a Client Plan invested in a Commingled Index Fund or Commingled Model-Driven Fund, termination is pursuant to the procedure described, below, in section II(q)(2), of this exemption;

(o) With respect to any calendar quarter, at least 50 percent (50%) or more of the outstanding dollar value of securities loans negotiated on behalf of all securities lending clients of GSL will be to borrowers unrelated to both State Street and the Clearing Broker;

(p) If an independent fiduciary of a Client Plan has given the initial affirmative authorization and approval for such plan to engage in securities lending transactions, pursuant to the terms of PTE 97–63, or pursuant to section II(b), above, of this exemption, then any subsequent authorization or approval contemplated under this exemption shall be deemed to have been given, if such independent fiduciary has not objected in writing to GSL within 30 days following disclosure to the independent fiduciary of all material information required in connection with said authorization or approval, a statement apprizing the independent fiduciary that PTE 97–63 has been replaced by this exemption, and a copy of this notice, and a copy of the final exemption, if granted;

(q) In the case of a Commingled Index Fund or Commingled Model-Driven Fund in which a Client Plan invests:

(1) The requirement, as set forth, above, in section II(b) of this exemption, shall not apply, provided that the information described in sections II(b), II(i), and II(m), above, of this exemption, including a description of the proposed securities lending arrangement, shall be furnished by GSL to a fiduciary who is independent of State Street, GSL, the SSB Group, the Clearing Broker, and any other division or affiliate of State Street or the Clearing Broker with respect to each Client Plan whose assets are invested in the Commingled Index Fund or Commingled Model-Driven Fund, not less than 30 days prior to implementation of any such securities lending arrangement, or any material changes thereto, and, thereafter, upon the reasonable request of the independent fiduciary of a Client Plan whose assets are invested in a Commingled Index Fund or Commingled Model-Driven Fund.

In the event of a material adverse change in the financial condition of the SSB Group, or the Clearing Broker, as applicable, GSL will make a decision, using the same standards of credit analysis GSL would use in evaluating unrelated borrowers, whether to terminate existing loans and whether to continue making additional loans to the SSB Group, or the Clearing Broker, as applicable.

For purposes of section II(q) of this exemption, any requirement that the fiduciary be independent of State Street and its affiliates shall not apply in the case of an employee benefit plan sponsored and maintained by State Street and/or an affiliate for its own employees (the State Street Plan(s)), as defined, below, in section III(c) of this exemption; provided such plan is invested in a Commingled Index Fund or Commingled Model-Driven Fund, and provided further that at all times the value of the aggregate holdings of all State Street Plans in such fund comprises less than 10% of the value of the total assets of such fund;

(2) In the event that the independent fiduciary of a Client Plan whose assets are invested in the Commingled Index Fund or Commingled Model-Driven Fund submits a notice in writing within 30 days after receipt of notification of implementation of any such securities lending arrangement, or any material changes thereto, to GSL, as securities lending agent to the Commingled Index Fund or Commingled Model-Driven Fund, objecting to the implementation of, material change in, or continuation of the securities lending arrangement, the Client Plan on whose behalf the objection was tended is given the opportunity to terminate its investment in the Commingled Index Fund or Commingled Model-Driven Fund, without penalty to such Client Plan, no later than 35 days after the notice of withdrawal is received.

In the case of a Client Plan that elects to withdraw pursuant to the foregoing, such withdrawal shall be effected prior to the implementation of, or material change in, the securities leading arrangement; but an existing securities lending arrangement need not be discontinued by reason of such Client Plan electing to withdraw. If a Client Plan's withdrawal necessitates a return of securities to the Commingled Index Fund or Commingled Model-Driven Fund, the SSB Group or the Clearing Broker, as applicable, will transfer securities identical to the borrowed securities (or the equivalent thereof in the event of reorganization, or merger of the issuer of the borrowed securities) to the Commingled Index Fund or Commingled Model-Driven Fund within:

(A) The customary delivery period for such securities;

(B) Five business days; or

(C) The time negotiated for such delivery by GSL, as lending agent to the Commingled Index Fund or Commingled Model-Driven Fund, and the SSB Group or Clearing Broker, as applicable, whichever is least; and

(3) In the case of a Client Plan whose assets are proposed to be invested in a Commingled Index Fund or Commingled Model-Driven Fund subsequent to the implementation of the securities lending arrangement, the Client Plan's investment in a Commingled Index Fund or Commingled Model-Driven Fund shall be authorized in the manner described, above, in section II(b) of this exemption;

(4) The provisions of section II(q) of this exemption shall not apply to a Commingled Index Fund or Commingled Model-Driven Fund, if more than 10% of the ownership interests in such fund are held by State Street Plans;

(5) In the case of a Commingled Index Fund or Commingled Model-Driven Fund subject to the requirements of section II(q) of this exemption, GSL will furnish upon reasonable request to the independent fiduciary of any Client Plan invested in such fund,[10] the most recently available audited and unaudited financial statements of the parent corporation of State Street and, if applicable, the Clearing Broker (or any new Clearing Broker) prior to the authorization of the securities lending program, and annually after such authorization;

(r) In return for lending securities, a Client Plan, including a Client Plan invested in a Commingled Index Fund or Commingled Model-Driven Fund, either—

(1) Receives a reasonable fee, which is related to the value of the borrowed securities and the duration of the loan; or

(2) Has the opportunity to derive compensation through the investment of cash collateral. (Under such circumstances, such plan may pay a loan rebate or similar fee to the SSB Group or the Clearing Broker, as applicable, if such fee is not greater than the fee such plan would pay in a comparable arm's length transaction with an unrelated party);

(s) State Street and/or its affiliates maintain, or cause to be maintained, within the United States for a period of six years from the date of each transaction which is subject to this exemption, in a manner that is convenient and accessible for audit and examination, such records as are necessary to enable the persons described, below, in section II(t)(1), to determine whether the conditions of

[10] The Department notes that it is the responsibility of the independent fiduciary for the Client Plan to periodically monitor any material changes in the securities lending program, including but not limited to a change in the Clearing Broker or in the Clearing Broker's financial status, that may occur after an initial authorization to participate in the program, pursuant to this exemption.

this exemption have been met, except that—

(1) This record-keeping condition shall not be violated if, due to circumstances beyond the control of State Street and/or its affiliates, the records are lost or destroyed prior to the end of the six-year period; and

(2) No party in interest other than State Street and its affiliates shall be subject to the civil penalty that may be assessed under section 502(i) of the Act, or to the taxes imposed by section 4975(a) and (b) of the Code, if the records are not maintained, or are not available for examination as required by section II(t)(1) of this exemption; and

(t)(1)Except as provided in section II(t)(2), below, of this exemption and notwithstanding any provisions of sections (a)(2) and (b) of section 504 of the Act, the records referred to in section II(s) of this exemption are unconditionally available at their customary location for examination during normal business hours by:

(A) Any duly authorized employee or representative of the Department, the Internal Revenue Service, or the Securities and Exchange Commission;

(B) Any fiduciary of a participating Client Plan, a State Street Plan, or any duly authorized representative of such fiduciary;

(C) Any contributing employer to any participating Client Plan, State Street Plan, or any duly authorized employee or representative of such employer; and

(D) Any participant or beneficiary of any participating Client Plan, State Street Plan, or any duly authorized representative of such participant or beneficiary.

(2) None of the persons described above in section II(t)(1)(B)–(t)(1)(D) are authorized to examine the trade secrets of State Street or its affiliates or commercial or financial information which is privileged or confidential.

III. Definitions

For purposes of this proposed exemption, the following definition shall apply:

(a) The term, "affiliate" or "affiliates," means:

(1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with the person;

(2) Any officer, director, employee, or partner in any such person; and

(3) Any corporation or partnership of which such person is an officer, director, partner, or employee;

(b) The term, "control," means the power to exercise a controlling influence over the management or policies of a person other than an individual;

(c) The term, "State Street Plan(s)," refer to employee benefit plans covered by the Act sponsored and maintained by State Street and/or an affiliate for its own employees;

(d) The term, "Index Fund(s)," refers to any investment fund, account or portfolio sponsored, maintained, trusteed, or managed by State Street or a U.S. affiliate, in which one or more investors invest, and

(1) Which is designed to track the rate of return, risk profile and other characteristics of an Index, as defined, below, in section III(f) of this exemption, by either:

(A) Replicating the same combination of securities which compose such Index, or

(B) Sampling the securities which compose such Index based on objective criteria and data;

(2) For which State Street or its affiliate does not use its discretion, or data within its control, to affect the identity or amount of securities to be purchased or sold;

(3) That contains "plan assets" subject to the Act, pursuant to the Plan Asset Regulation; and

(4) That involves no agreement, arrangement, or understanding regarding the design or operation of the fund which is intended to benefit State Street or its affiliate or any party in which State Street or its affiliate may have an interest;

(e) The term, "Model-Driven Fund(s)," refers to any investment fund, account or portfolio sponsored, maintained, trusteed, or managed by State Street or a U.S. affiliate, in which one or more investors invest, and

(1) Which is composed of securities the identity of which and the amount of which are selected by a computer model that is based on prescribed objective criteria using independent third-party data, not within the control of State Street or an affiliate, to transform an Index;

(2) Which contains "plan assets" subject to the Act, pursuant to the Plan Asset Regulation; and

(3) That involves no agreement, arrangement or understanding regarding the design or operation of the fund or the utilization of any specific objective criteria which is intended to benefit State Street, any affiliate of State Street, or any party in which State Street or any affiliate may have an interest;

(f) The term, "Index," refers to a securities index that represents the investment performance of a specific segment of the public market for equity or debt securities in the United States and/or foreign countries, but only if—

(1) The organization creating and maintaining the index is—

(A) Engaged in the business of providing financial information, evaluation, advice or securities brokerage services to institutional clients,

(B) A publisher of financial news or information, or

(C) A public stock exchange or association of securities dealers;

(2) The index is created and maintained by an organization independent of State Street; and

(3) The index is a generally accepted standardized index of securities which is not specifically tailored for the use of State Street; and

(g) The term, "Clearing Broker," means a U.S. broker-dealer registered under the Securities Exchange Act of 1934 that is unrelated to State Street, that has net capital equal to at least $10 million and that regularly serves as a clearing broker for introducing brokers in the ordinary course of its business, but only in the context, and to the extent, of its service as a clearing broker for an Affiliated Broker Dealer that is acting as introducing broker.

For a complete statement of the facts and representations supporting the Department's decision to grant PTE 97–63, refer to the proposed exemption and the grant notice that are cited above.

Signed in Washington, DC, this 3rd day of February, 2003.

Ivan L. Strasfeld,

Director of Exemption Determinations, Employee Benefits Security Administration, Department of Labor.

[FR Doc. 03–2962 Filed 2–5–03; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

[Application No. D–11059]

Notice of Proposed Individual Exemption To Replace Prohibited Transaction Exemptions (PTEs) 81–56, 85–19 and 89–5 Involving the Truman Arnold Companies Retirement Plan and Trust (the Plan) Located in Texarkana, TX

AGENCY: Employee Benefits Security Administration, Department of Labor.

ACTION: Notice of proposed individual exemption to replace PTEs 81–56, 85–19 and 89–5.

SUMMARY: This document contains a notice of pendency before the

Department of Labor (the Department) of a proposed individual exemption which, if granted, will replace PTEs 81–56 (46 FR 36273, July 17, 1981), 85–19 (50 FR 3045, January 23, 1985) and PTE 89–5 (54 FR 4348, January 30, 1989). These are individual exemptions (the Prior Exemptions) that were previously issued by the Department to the Truman Arnold Companies (the Employer), a party in interest with respect to the Plan. Each of the Prior Exemptions permitted the Employer to contribute and/or lease from the Plan certain improved real property (the Properties) under the provisions of three distinct written leases.

If granted, the proposed exemption will incorporate many of the facts and representations contained in the Prior Exemptions and update information to the extent there have been changes. Because it appears that PTE 81–56 expired on September 30, 1999, and the parties have been not been covered by an administrative exemption since that time, the proposed exemption will provide retroactive exemptive relief from October 1, 1999, until September 30, 2002. In addition, to resolve uncertainty regarding the expiration dates of the leases described in PTEs 81–56 and PTE 85–19, the proposed exemption merges the leases, along with the lease described in PTE 89–5, under a new master lease (the Master Lease) and provides retroactive exemptive relief, effective October 1, 2002, with respect to such past and continued lease arrangements. This will ensure that the subject Properties are, at all times, covered by an administrative exemption.

Further, the proposed exemption will permit the replacement of AmSouth Bank (AmSouth), the Plan's former independent fiduciary, with Regions Bank (Regions), the Plan's current trustee. Thus, the proposed exemption will affect participants and beneficiaries of the Plan, as well as Plan fiduciaries.

EFFECTIVE DATE: If granted, this proposed exemption will be effective from October 1, 1999, until September 30, 2002, with respect to the leasing arrangement described in PTE 81–56. In addition, the proposed exemption will apply retroactively from October 1, 2002, with respect to the consolidation of the properties described in the Prior Exemptions under the Master Lease.

DATES: Written comments and requests for a public hearing should be received by the Department on or before March 24, 2003.

ADDRESSES: All written comments and requests for a public hearing (preferably, three copies) should be sent by mail to the Office of Exemption Determinations, Employee Benefits Security Administration, Room N–5649, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, (Attention: Notice of Proposed Individual Exemption to Replace Prohibited Transaction Exemptions 81–56, 85–19 and 89–5 Involving the Truman Arnold Companies Retirement Plan and Trust; Application No. D–11059). Interested persons are also invited to submit comments and/or hearing requests to the Department by facsimile to (202) 219–0204 or by electronic mail to *moffitb@pwba.dol.gov* by the end of the scheduled comment period. The application pertaining to the exemptive relief proposed herein and the comments received will be available for public inspection in the Public Disclosure Room of the Employee Benefits Security Administration, U.S. Department of Labor, Room N–1513, 200 Constitution Avenue, NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Ms. Jan D. Broady, Office of Exemption Determinations, Employee Benefits Security Administration, U.S. Department of Labor, telephone (202) 693–8556. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Notice is hereby given of the pendency before the Department of a proposed exemption that will replace PTEs 81–56, 85–19 and 89–5. The Prior Exemptions provided exemptive relief from the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and from the sanctions resulting from the application of section 4975 of the Internal Revenue Code of 1986 (the Code). The proposed exemption has been requested in an application filed on behalf of the Plan pursuant to section 408(a) of the Act and section 4975(c)(2) of the Code, and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Accordingly, this proposed exemption is being issued solely by the Department.

I. Background

The Plan is a defined contribution plan with 369 participants as of September 30, 2002. Also as of September 30, 2002, the Plan had total assets with a fair market value of $11,080,680. The Plan is sponsored by the Truman Arnold Companies, which are engaged in the petroleum wholesale business in Texarkana, Texas. Currently, Regions of Texarkana, Texas serves as the Plan trustee and the independent fiduciary for the leasing arrangements described herein.

Between 1981 and 1989, the Department granted the Prior Exemptions which provided exemptive relief primarily from the prohibited transaction provisions of sections 406(a), 406(b)(1) and (b)(2) of the Act [1] and from the sanctions resulting from the application of section 4975 of the Code, as amended, by reason of section 4975(c)(1)(A) through (E) of the Code. Specifically, PTE 81–56 permitted the Employer, which was then known as the "Truman Arnold Distributing Company, Inc.," to contribute to the Plan a parcel of real property and the improvements situated thereon (the New Facilities Property), as part of the Employer's annual contribution to the Plan. The New Facilities Property is located on South Robison Road in Texarkana, Texas and it is contiguous to other property also owned by the Plan and leased to the Employer and its sister corporation, Truman Arnold Transport Company, Inc. (Transport) for use as the Employer's headquarters. During 1979, the Employer purchased the land portion of the New Facilities Property for $33,667 from unrelated parties and subsequently caused a building to be constructed thereon for $219,372, or an aggregate cost of $253,039. As of September 30, 1979, the Plan had $692,797 in total assets and as of March 12, 1980, it had 80 participants.

PTE 81–56 also permitted the Employer to lease the New Facilities Property from the Plan under the provisions of a written, triple-net lease for an initial annual rental of $37,800. Taxes, insurance or other costs incident to the ownership of the New Facilities Property were to result in a corresponding increase in the amount of the rental payment under the lease.

An independent appraisal report was prepared of the New Facilities Property on November 17, 1980, by Jim Freeman of P.M. Brown, Inc. Realtors in Texarkana, Texas. Mr. Freeman, a qualified independent appraiser and a senior member of both the American Society of Appraisers and the American Association of Certified Appraisers, placed the gross fair market rental value of such property at $38,405 and its net rental value (after expenses) at $34,560.

[1] It should be noted that exemptive relief from section 407(a) of the Act is also provided in PTE 81–56.

Thus, the initial net rental income to the Plan of $37,800 exceeded Mr. Freeman's net income estimate.

Mr. Freeman also placed the fair market value of the New Facilities Property at $270,000 as of November 17, 1980. This represented a $15,000 increase over an earlier appraisal which he had completed in February 1980. In an addendum to the November 1980 appraisal, Mr. Freeman represented that the New Facilities Property was a multipurpose property that could be easily converted to other uses.

Commercial National Bank in Shreveport, Louisiana (Commercial) was appointed as independent fiduciary to monitor both the contribution and subsequent leasing of the New Facilities Property on behalf of the Plan. Commercial was vested with full authority and responsibility to take all actions necessary to protect the interests of the Plan. Commercial, through its President and Chief Executive Officer, James E. Burt III, represented that it had over $700 million in assets and that it maintained no financial or other relationship with either the Employer or its principal shareholder, Mr. Truman Arnold. Commercial also represented that it had reviewed the transaction and determined that it was in the best interests of the Plan and its participants and beneficiaries.

Although the Employer was authorized to lease the New Facilities Property from the Plan until September 30, 1984, it was permitted to extend the lease for three, additional five year terms, provided Commercial approved each successive renewal option. The monthly rental payments for the New Facilities Property were again established on the basis of an independent appraisal conducted once every three years and Commercial was responsible for selecting the independent appraiser. Further, at each lease adjustment period, a lease payment could not be less than that of the preceding three year term, or less than 14 percent of the fair market value of the New Facilities Property. Finally, the Employer and Mr. Arnold agreed to indemnify the Plan against any decrease in the fair market value of the New Facilities Property below the Plan's original cost basis.

PTE 81–56 expired on September 30, 1999.

PTE 85–19 allowed the Plan, which had net assets of $2.4 million and 182 participants as of September 30, 1983, to continue leasing the land and buildings comprising the Employer's Texarkana, Texas headquarters (the Home Site Property) after June 30, 1984, under the provisions of a new lease. Previously, the Plan had been leasing the Home Site Property to the Employer and Transport under a transitional rule lease that was subject to the provisions of section 414(c)(2) of the Act.[2] However, in order to continue the leasing arrangement, the Employer requested an administrative exemption from the Department on essentially the same terms and conditions as those contained in PTE 81–56.

Mr. Freeman, the independent appraiser utilized in PTE 81–56, placed the fair market value of the Home Site Property at $256,000 as of September 15, 1983. He also determined that the gross fair market rental value of the Home Site Property was $33,480 per year and, adjusting such property for taxes, insurance, maintenance and management expenses, determined that the net fair market rental value of the Home Site Property was $28,705 per year. Further, Mr. Freeman opined that the Home Site Property was a multipurpose property that could easily be adapted to other uses.

In addition to determining the fair market rental value of the Home Site Property, Mr. Freeman placed the fair market value of such property at $256,000 as of September 15, 1983. Thus, the value of the New Facilities Property, whose lease was covered by PTE 81–56 and the Home Site Property, whose lease was covered by PTE 85–19, totaled $566,000 and constituted 23.5 percent of the Plan's assets at that time.

As in PTE 81–56, Commercial, acting as the independent fiduciary, negotiated the lease prior to July 1, 1984. The lease was a triple-net lease having a primary term of five years with three, additional five year renewal terms that could be exercised solely at Commercial's discretion. The initial annual rental under the lease was set at $35,840 based upon an independent appraisal and it provided a 14 percent rate of return to the Plan. Every third year of the lease term, the fair market rental value of the Home Site Property was to be adjusted by an independent appraiser selected by Commercial. Again the rental rate would be the greater of the fair market rental rate, as determined by the independent appraiser, or 14 percent of the fair market value of the Home Site Property. The Employer agreed to maintain adequate fire and casualty insurance on the Home Site Property, as determined by Commercial, with the Plan named as the loss payee of such insurance. Further, the Employer and Mr. Arnold agreed to indemnify the Plan against any decrease in the fair market value of the Home Site Property if it fell below its $256,000 fair market value.

Commercial, which had exclusive oversight authority over the leasing and potential sale of the Home Site Property, concluded that the Plan should retain the property after reviewing the Plan's financial records and asset portfolio. Commercial also concluded that the terms of the lease were arm's length and found the guaranteed 14 percent rate of return to be an attractive feature of the lease. Moreover, Commercial examined the Employer's past lease payment records and financial statements. Based upon such information, Commercial discovered that the Employer had never defaulted on any rental payments and it concluded that the Employer was a responsible lessee and financially healthy.

Finally, PTE 89–5 permitted the Employer to construct, contribute to the Plan (which had 214 participants and net assets of $5,029,632 as of September 30, 1987), and then lease from the Plan two buildings (the Buildings) located on the Home Site Property. PTE 89–5 also permitted the Employer and Mr. Arnold to indemnify the Plan against any decrease in the fair market value of the Buildings. PTE 89–5 became effective as of June 1, 1988.

Under the terms of its lease of the Home Site Property and with Commercial's approval, the Employer constructed the Buildings which connected the original office building portion of the Home Site Property at a total cost of $556,000. The Buildings were subsequently appraised by Mr. Freeman as having a combined fair market value of $587,000 as of October 1, 1987.

On June 1, 1988, the Employer, with Commercial's approval as independent fiduciary, contributed the Buildings to the Plan as part of its annual contribution and then leased back the Buildings from the Plan under a written lease. The subject lease is a triple net lease. It had an initial term of five years, also commencing June 1, 1988, and it has three renewal options, each of five years' duration. The initial annual rental under the lease, as determined by an independent appraisal, was $82,188. The rental amount was also equal to 14 percent of the appraised fair market value of the Buildings.

The lease provided for fair market rental adjustments every three years, again pursuant to an independent appraisal. Although the rental payments

[2] In relevant part, section 414(c)(2) of the Act states that the provisions of sections 406 and 407(a) of the Act would not apply until June 30, 1984, to a lease or joint use of property involving a plan and a party in interest pursuant to a binding contract in effect on July 1, 1974 (or pursuant to renewals of such contract).

for each adjustment period were required to represent 14 percent of the appraised value of the Buildings, in no event could the lease payments be less than that of the preceding three year period. The lease required the Employer to maintain fire and casualty insurance on the Buildings and to name the Plan as the loss payee. As in the other two Prior Exemptions, both Mr. Arnold and the Employer agreed to indemnify the Plan against any decrease in the fair market value of the Buildings below their $567,000 appraised value.

Commercial was again designated as the independent fiduciary to approve and monitor the contribution and leaseback transactions on behalf of the Plan and to determine whether it would be appropriate to sell the Buildings. Commercial concluded that the transactions were in the best interests of the Plan and its participants and beneficiaries and found the Buildings to be of high quality. Moreover, Commercial examined the Plan's financial records and asset portfolio and concluded that the Plan had sufficient liquidity. Finally, Commercial determined that the terms of the lease were arm's length, the Employer was financially solvent and had never defaulted on rental payments to the Plan, and the Buildings were readily adaptable to other uses.

It is represented that there were never any defaults or delinquencies on the part of the Employer under its respective leases with the Plan. It is also represented that the terms and conditions of the leases were always complied with by the parties.

II. Replacement of Leases Described in the Prior Exemptions

When the Prior Exemptions were granted, it was the Employer's understanding that the New Facilities Property, the Home Site Property and the Buildings (collectively, the Properties) could be wrapped into a single lease such that the last lease would encompass all of the Properties. This mistake resulted in both a prohibited leasing arrangement with respect to the New Facilities Property and an inconsistency in the actual termination date of the lease involving the Home Site Property.

As stated above, PTE 81–56, permitted the Employer to lease the New Facilities Property from the Plan until September 30, 1984. However, the Employer was allowed to extend the lease for three additional five year terms, provided Commercial approved each such extension. Because the Employer extended the lease for the additional terms, it appears that the lease expired on September 30, 1999. As a result, the Employer continued to lease the New Facilities Property from the Plan without the benefit of an administrative exemption, even though the Employer represents that it had always been compliant with the other terms and conditions of the lease.

With the exception of its July 1, 1984, commencement date, the lease described in PTE 85–19 was based on terms that are identical to those described in PTE 81–56. However, it appears that both the lease (including all applicable extensions) is due to expire on June 30, 2004.[3] Nevertheless, it is represented that the Employer expected, with the approval of the independent fiduciary, to be able to extend such lease until June 30, 2008. Assuming the extension is approved by the independent fiduciary, the leasing arrangement would be prohibited, inasmuch as it would not be covered by an administrative exemption.

To correct the inconsistencies in the termination dates of the leases described in PTEs 81–56 and 85–19, and to consolidate these leases, with the lease described in PTE 89–5, into one master lease, the Plan and the Employer entered into a new leasing arrangement with respect to the Properties, effective October 1, 2002. Accordingly, an administrative exemption is requested from the Department to cover this past and continued leasing arrangement.

The Master Lease has a primary term of three years, which commenced on October 1, 2002, and will end on September 30, 2005. Under the Master Lease, the Employer is required to pay the Plan a monthly rental of $14,933.33 on the first day of each calendar month. The Master Lease may be renewed by the Employer for four additional three year terms, exercisable solely at the discretion of Regions, as independent fiduciary for the Plan. The monthly lease payments for each such renewal term are to be established by an independent appraisal. Regions is also responsible for selecting the independent appraiser to conduct the appraisals for the Plan. As in the provisions of the Prior Leases, the rental installments due for the renewal terms will be in an amount equal to a 14 percent return upon the appraised value of the properties covered under the Master Lease, and in no event will the lease payments be less than that of the preceding three year period. During each renewal term, all monthly rental installments will be due and payable on the first day of each month. In addition, the Employer is required to pay for all utilities, taxes and assessments, and to insure the Properties against loss.

As of August 27, 2002, the Properties that are subject to the Master Lease, had a combined fair market value of $1,280,000 according to an independent appraisal report prepared by Messrs. P.M. Brown, ASA, CRA, and Michael Hendrix, qualified, independent appraisers affiliated with the real estate appraisal firm of P.M. Brown Real Estate Appraisers, located in Texarkana, Texas. The appraisers also confirmed that in their opinion, net fair market rentals on comparable properties within the Texarkana marketing area were equal to or less than 14 percent of the market value of the subject Properties. Thus, the monthly fair market rental value of the Properties was set at $14,933.33 on the commencement date of the Master Lease.[4]

III. Independent Fiduciary Changes

Since the Prior Exemptions were granted, several unrelated banks succeeded Commercial as the independent fiduciary for the Plan with respect to the leases. In this regard, during 1990, Commercial was acquired by the Deposit Guaranty Bank (Deposit). In 1998, Deposit merged with First American Bank (First American). During 1999, First American merged with AmSouth. In each instance, these banks succeeded to the independent fiduciary responsibilities of Commercial under applicable banking laws. It is also represented that there were never any time lags between the departure and replacement of these independent fiduciaries.

On December 17, 2002, the Employer appointed Regions, the Plan's current trustee,[5] as the successor independent fiduciary to AmSouth with respect to oversight of the Master Lease. Regions was selected by the Employer to serve as the independent fiduciary for the Plan for reasons of administrative convenience and to facilitate the handling of Plan-related matters. Moreover, Regions is not charging the Plan any additional fees for services

[3] The Employer, however, determined that the lease would expire on June 30, 2003.

[4] To the extent that the amount of rent paid by the Employer to the Plan under the Master Lease exceeds the fair market rental value of the subject Properties, the Employer represents that such excess rent, if any, when combined to the balance of the annual additions to the Plan, will not exceed the limitations prescribed by section 415 of the Code.

[5] The Plan's former trustee was State First National Bank (State First) of Texarkana, Texas. On March 10, 1994, State First was merged into First Commercial Corporation (First Commercial). On July 31, 1998, First Commercial was merged into Regions Bank Financial Corporation, the parent of Regions. On that same date, Regions also became the Plan trustee.

rendered as an independent fiduciary, aside from its trustee duties.

Regions, a subsidiary of Regions Bank Financial Corporation, a major Southern bank holding company, is one of the 25 largest banking companies in America with current assets in excess of $39 billion. Of these total assets, the Trust Division of Regions holds more than $23.5 billion in trust assets and the assets of the Plan constitute approximately 0.05 percent of Regions' total trust assets.

Mr. Arnold, the principal owner of the Employer, maintains a checking account with Regions. However, the total balance of Mr. Arnold's account with Regions represents a negligible portion of the bank's total deposits. In addition, the Employer maintains a checking account with Regions but funds are swept to another bank on a daily basis, so a zero balance is maintained. Further, neither Mr. Arnold nor the Employer has a lending relationship with Regions and no officer or director of Regions sits on the Board of Directors of the Employer or vice versa. Finally, there are no familial relationships existing between Mr. Arnold, his son, and Regions or between the Employer and Regions.

Regions represents that it is knowledgeable and experienced with lease transactions and it maintains a staff of qualified trust and investment professionals who provide legal, portfolio management and consulting services to clients.

As the successor independent fiduciary under the Prior Exemptions and the Master Lease, Regions has agreed to (a) represent the interests of the Plan for the duration of the initial term of the Master Lease and during each renewal term; (b) monitor the transactions on the Plan's behalf; (c) enforce compliance with all conditions of the leases; and (d) ensure that the transactions remain in the best interest of the Plan and protective of the Plan's participants and beneficiaries. In addition, Regions has also reviewed the Prior Exemptions and has evaluated the terms and conditions of the subject leases. Based upon this review, Regions believes the leasing arrangements should be continued under the Master Lease.

IV. Other Modifications

The Department has modified the operative language of the proposed exemption in order to clarify the relevant terms of the Master Lease and the role of the independent fiduciary, thereby replacing the Prior Exemptions:

If the exemption is granted, the restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply, (1) effective October 1, 1999, until September 30, 2002, to the leasing by the Plan of a parcel of real property and the improvements thereon (the New Facilities Property), as described in Prohibited Transaction Exemption (PTE) 81–56 (46 FR 36273, July 17, 1981), to the Truman Arnold Companies, Inc. (the Employer), a party in interest with respect to the Plan; and (2) to the leasing, effective October 1, 2002, by the Plan to the Employer, under the provisions of a master lease (the Master Lease) of the New Facilities Property, another parcel of real property and the improvements comprising the Employer's headquarters (the Home Site Property), as described in PTE 85–19 (50 FR 3045, January 23, 1985), and two buildings (the Buildings) constructed on the Home Site Property and described in PTE 89–5 (54 FR 4348, January 30, 1989), (The New Facilities Property, the Home Site Property and the Buildings are collectively referred to herein as the "Properties.")

This proposed exemption is subject to the following conditions:

(a) The terms of the Master Lease remain at least as favorable to the Plan as those obtainable in an arm's length transaction with an unrelated party.

(b) The Employer is obligated under the terms of the Master Lease for expenses incurred by the Properties, including taxes and assessments, maintenance, insurance and utilities.

(c) The interests of the Plan with regard to the Master Lease are, at all times, represented by an independent fiduciary. Such independent fiduciary—

(i) Represents the interests of the Plan for the remaining duration of the Master Lease;

(ii) Monitors the terms and conditions of the Master Lease on behalf of the Plan;

(iii) Enforces compliance with all conditions of the Master Lease;

(iv) Ensures that the Master Lease remains in the best interest of the Plan and protective of the Plan's participants and beneficiaries;

(v) Following review and evaluation of the Master Lease, determines that the retention of the Properties by the Plan and the continued leasing of such Properties to the Employer are in the best interest of the Plan and its participants and beneficiaries;

(vi) Adjusts the rental rate under the Master Lease every third year such lease is in effect based upon independent appraisals of the Properties and ensures that the rentals equal the greater of 14 percent of the fair market value of the Properties or the prior rental amounts paid; and

(vii) Takes all actions that are necessary and proper to enforce and protect the rights of the Plan and its participants and beneficiaries.

(d) The rental rate under the Master Lease, during its initial term and each renewal term remains at 14 percent of the fair market value of the Properties, which amount is not less than the current fair market value of such Properties;

(e) The aggregate fair market value of the Properties that are subject to the Master Lease, at no time, exceeds 25 percent of the Plan's assets.

Tax Consequences of Transaction

The Department of the Treasury has determined that if a transaction between a qualified employee benefit plan and its sponsoring employer (or affiliate thereof) results in the plan either paying less than or receiving more than fair market value, such excess may be considered to be a contribution by the sponsoring employer to the plan and, therefore, must be examined under applicable provisions of the Code, including section 401(a)(4), 404 and 415.

Notice to Interested Persons

Notice of the proposed exemption will be provided to interested persons within 14 days of the publication of the notice of proposed exemption in the **Federal Register**. With respect to active employees of the Employer, notice will be delivered in writing at such employees' place of employment. With respect to retired employees or participants having deferred vested interests in the Plan, notice will be provided by first class mail. The notice will include a copy of the notice of proposed exemption, as published in the **Federal Register**, and a supplemental statement, as required under 29 CFR 2570.43(b)(2), which shall inform interested persons of their right to comment on and/or to request a hearing with respect to the proposed exemption. All written comments and/or requests for a hearing are due within 44 days after the date of publication of the pendency notice in the **Federal Register**.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which require, among other things, a fiduciary to discharge his or her duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirements of section 401(a) of the Code that the plan operate for the exclusive benefit of the employees of

the employer maintaining the plan and their beneficiaries;

(2) The proposed exemption, if granted, will not extend to transactions prohibited under section 406(b)(3) of the Act and section 4975(c)(1)(F) of the Code;

(3) Before an exemption can be granted under section 408(a) of the Act and section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interest of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan;

(4) This proposed exemption, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(5) This proposed exemption, if granted, is subject to the express condition that the facts and representations set forth in the Prior Exemptions and this notice, accurately describe, where relevant, the material terms of the transactions to be consummated pursuant to this exemption.

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemption by regular mail, electronic mail or facsimile to the addresses or facsimile number noted above, within the time frame set forth above, after the publication of this proposed exemption in the **Federal Register**. All comments will be made a part of the record. Comments received will be available for public inspection with the referenced applications at the address set forth above.

Proposed Exemption

Based on the facts and representations set forth in the application, the Department is considering granting the requested exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, August 10, 1990).

If the exemption is granted, the restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply, (1) effective October 1, 1999, until September 30, 2002, to the leasing by the Plan of a parcel of real property and the improvements thereon (the New Facilities Property), as described in Prohibited Transaction Exemption (PTE) 81–56 (46 FR 36273, July 17, 1981), to the Truman Arnold Companies, Inc. (the Employer), a party in interest with respect to the Plan; and (2) effective October 1, 2002, with respect to the leasing by the Plan to the Employer, under the provisions of a master lease (the Master Lease) of the New Facilities Property, another parcel of real property and the improvements comprising the Employer's headquarters (the Home Site Property), as described in PTE 85–19 (50 FR 3045, January 23, 1985), and two buildings (the Buildings) constructed on the Home Site Property, as described in PTE 89–5 (54 FR 4348, January 30, 1989). (The New Facilities Property, the Home Site Property and the Buildings are collectively referred to herein as the "Properties.")

This proposed exemption is subject to the following conditions:

(a) The terms of the Master Lease remain at least as favorable to the Plan as those obtainable in an arm's length transaction with an unrelated party.

(b) The Employer is obligated under the terms of the Master Lease for expenses incurred by the Properties, including taxes and assessments, maintenance, insurance and utilities.

(c) The interests of the Plan with regard to the Master Lease are, at all times, represented by an independent fiduciary. Such independent fiduciary—

(i) Represents the interests of the Plan for the remaining duration of the Master Lease;

(ii) Monitors the terms and conditions of the Master Lease on behalf of the Plan;

(iii) Enforces compliance with all conditions of the Master Lease;

(iv) Ensures that the Master Lease remains in the best interest of the Plan and protective of the Plan's participants and beneficiaries;

(v) Following review and evaluation of the Master Lease, determines that the retention of the Properties by the Plan and the continued leasing of such Properties to the Employer are in the best interest of the Plan and its participants and beneficiaries;

(vi) Adjusts the rental rate under the Master Lease every third year such lease is in effect based upon independent appraisals of the Properties and ensures that the rentals equal the greater of 14 percent of the fair market value of the Properties or the prior rental amounts paid; and

(vii) Takes all actions that are necessary and proper to enforce and protect the rights of the Plan and its participants and beneficiaries.

(d) The rental rate under the Master Lease, during its initial term and each renewal term remains at 14 percent of the fair market value of the Properties, which amount is not less than the current fair market value of such Properties;

(e) The aggregate fair market value of the Properties that are subject to the Master Lease, at no time, exceeds 25 percent of the Plan's assets.

The availability of this proposed exemption is subject to the express condition that the material facts and representations contained in the application for exemption are true and complete and accurately describe all material terms of the transactions. In the case of continuing transactions, if any of the material facts or representations described in the applications change, the exemption will cease to apply as of the date of such change. In the event of any such change, an application for a new exemption must be made to the Department.

For a more complete statement of the facts and representations supporting the Department's decision to grant the Prior Exemptions, refer to the proposed exemptions and the grant notices which are cited above.

Signed in Washington, DC, this 3rd day of February, 2003.

Ivan L. Strasfeld,

Director of Exemption Determinations, Employee Benefits Security Administration, Department of Labor.

[FR Doc. 03–2961 Filed 2–5–03; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance and NAFTA Transitional Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974, as amended, the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) issued during the period of January, 2003.

In order for an affirmative determination to be made and a certification of eligibility to apply for worker adjustment assistance to be issued, each of the group eligibility

requirements of section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated, or are threatened to become totally or partially separated; and

(2) That sales or production, or both, of the firm or sub-division have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production of such firm or subdivision.

Negative Determinations for Worker Adjustment Assistance

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA–W–42,254; American Fibers and Yarns Co., Rocky Mount, NC
TA–W–42,224; Radio Frequency Systems, Conditioning Div., Including Leased Workers at Strategic Staffing and Selectemp, Corvallis, OR
TA–W–42,286; Best Manufacturing Co., Fayette, AL: September 14, 2001.
TA–W–41,624; ADC Telecommunications, 1000 Valley Park Drive, Shakopee, MN
TA–W–42,278; Owen Development Corp. d/b/a Intra, Spartanburg, SC

In the following case, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

Increased imports did not contribute importantly to worker separations at the firm.

TA–W–42,324; United Plastic Group, Inc., Bensenville, IL
TA–W–42,004; IBM Corp., Microelectronics Div., Essex Junction, VT

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

The investigation revealed that criterion (a)(2)(A) (I.B.) (No Sales or Production declines) and (a) (2)(B) (II.B) (No shift in production to a foreign country) have not been met.

TA–W–50,025; Andrew Corp., Orland Park, IL

The investigation revealed that criterion (a)(2)(A) (I.C.) (Increased imports) and (a) (2)(B) (II.B) (No shift in production to a foreign country) have not been met.

TA–W–50,015; Houlton International Corp., Houlton, ME
TA–W–50,231; Snorkel International, a division of Omniquip Textron, Inc., Elwood, KS
TA–W–50,281; U.S. Manufacturing Corp., Bad Axe, MI
TA–W–50,449; PTC Alliance, Darlington, PA
TA–W–50,114l; Cadmus Mack (CPS), East Stroudsburg, PA
TA–W–50,312; Intertape Polymer Group, Nenasha Div., Menasha, WI
TA–W–50,185; Smurfit-Stone Container Corp., Corrugated Container Div., Milwaukee, WI

The investigation revealed that criterion (a)(2)(A) (I.C.) (Increased imports) was not met.

TA–W–50,270; Kreuter Manufacturing Co., Inc., New Paris, IN
TA–W–50,307; Xerox Corp., Xerox Supplies Business Group, Supplies Development Unit, Oklahoma City, OK

The workers firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–50,352; Spherion Atlanta Enterprises, LLC, Wilmington, NC
TA–W–50,423; L.A. Darling Co. (LAD), a Member of Marmon Retail Services, Pocahontas, AR
TA–W–50,210; Convergys, Technical Support Services, Jacksonville, FL
TA–W–50,471; MGM Transport Corp., Totowa, NJ
TA–W–50,481; Nautilus HPS, Inc., Independence, VA
TA–W–50,486; Electronic Data Systems Corp., I Solutions Center, Fairborn, OH
TA–W–50,246; Orcom Solutions, Inc., Bend, OR
TA–W–50,518; Bangor and Aroostook Railroad Co., Hermon, ME
TA–W–50,485; Oshkosh B'Gosh, Inc., Miami Trim Warehouse, Medley, FL
TA–W–50,565; ABM Janitorial Services, Greenville, SC

The investigation revealed that criteria (2) has not been met. The workers' firm (or subdivision) is not a supplier or downstream producer for trade-affected companies.

TA–W–50,472; Sharon Tube Co., Sharon, PA

The investigation revealed that criteria (2) has not been met. The workers' firm (or subdivision) is not an upstream supplier of components for trade-affected companies.

TA–W–50,386; Burelbach Industries, Inc., Rickreal, OR
TA–W–50,213; Fishercast, Inc., a Division of Fisher Gauge Ltd.,Watertown, NY
TA–W–50,217; Emerald Creek Garnet Ltd., a subsidiary of WGI Heavy Minerals, Inc., Fernwood, ID
TA–W–50,494; Manufacturers' Services Limited (MSL), Arden Hills, MN

Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued; the date following the company name and location of each determination references the impact date for all workers of such determination.

TA–W–42,054; Treesource Industries, Inc., d/b/a Spanaway Lumber, Tacoma, WA: August 21, 2001.
TA–W–42,232; Nilfisk-Advance, Inc., Plymouth, MN: September 26, 2001.
TA–W–42,149; Modine Manufacturing Co., Knoxville, TN: August 16, 2001.

The following certifications have been issued. The requirements of (a)(2)(A) (increased imports) of Section 222 have been met.

TA–W–50,086; J.C. Apparel, Inc., A.K.A. American Apparel, Sebastopol, MS: November 14, 2001.
TA–W–50,402; Tillotson Healthcare Corp., Dixville Notch, NH: November 21, 2001.
TA–W–50,290; Sipex Corp., Billerica, MA: November 6, 2001.
TA–W–50,278; Dennis Windings, Inc., Wilkes-Barre, PA: December 3, 2001.
TA–W–50,258 &A, B; Weyerhaeuser Co., Cascase Operations, Softwood Lumber Div., Enumclaw, WA, Snoqualmie, WA and Tacoma, WA: December 2, 2001.
TA–W–50,147; Sanmina-SCI Corp., Printed Circuit Board Div., Tech Center East, Ward Hill, MA: November 14, 2001.
TA–W–50,100; Smith Systems Manufacturing Co., Princeton, MN: November 12, 2001.
TA–W–50,480; Miller Bag Co., Minneapolis, MN: December 23, 2001.
TA–W–50,361; OEM Shades, Inc., Ford City, PA: December 13, 2001.
TA–W–50,298; SPX Corp., Valves and Controls Div., Sartell, MN: November 15, 2001.
TA–W–50,509; Sensient Colors, Inc., a subsidiary of Sensient Technologies Corp., Crompton Corp., Birdsboro, PA: December 20, 2001.
TA–W–50,385; Santini Corp., Leoma, TN: December 17, 2001.
TA–W–50,198; Vaagen Brother Lumber, Inc., Republic, WA: November 25, 2001.

TA–W–50,224; Upstate Printed Circuits, Inc., Syracuse, NY: November 30, 2001.
TA–W–50,084; Henry Pratt Co., Dixon, IL: November 7, 2001.
TA–W–50,084; Long Manufacturing, Thermal Products Div., a Div. of Dana Corp., Sheffield, PA: December 10, 2001.
TA–W–50,151; SIG Doyboy, In., a subsidiary of SIG Pack International, New Richmond, WI: November 20, 2001.

The following certifications have been issued. The requirements of (a)(2)(B) (shift in production) of Section 222 have been met.

TA–W–50,050; Advanced Energy Industries, Inc. (AE), Advanced Energy—Flow Products, (Aera Products—TX), Austin, TX: November 8, 2001.
TA–W–50,394; Micro Component Technology, Inc. (MCT), St. Paul, MN: December 18, 2001.
TA–W–50,359; General Chemical Group, Manistee, MI: December 13, 2001.
TA–W–50,159; Pliant Solutions, Ft. Edward, NY: November 13, 2001.
TA–W–50,324; Smith Aerospace, Inc., Display and Control Systems, Malvern Div., a Subsidiary of Smiths Group LLP, Malvern, PA: December 9, 2001.
TA–W–50,223; Alcoa Fujikura LTD, Photonics Div., Allentown, PA: December 2, 2001.
TA–W–50,244; Medtronics Corp., a Vascular World Medical Div., Sunrise, FL: November 27, 2001.
TA–W–50.546; Emerson Tool Co., Paris, TN: January 10, 2002,
TA–W–50,405; Dorr-Oliver Eimco USA, Inc., Salt Lake City, UT: December 20, 2001.
TA–W–50,190; Powder Processing and Technology, LLC, Valparaiso, IN: November 20, 2001.
TA–W–50,036; Nortel Networks, Department #2446, Research Triangle Park, NC: November 5, 2001.
TA–W–50,095; Johnson Controls, Inc., Controls Group, Kennesaw, GA: November 3, 2001.
TA–W–50,183; Donaldson Co., Inc., Port Huron, MI: November 19, 2001.
TA–W–50,296; TRW Automotive, Engine Components Div., Danville, PA: December 12, 2002
TA–W–50,318; Fairfield Manufacturing Co, Inc., Lafayette, IN: November 28, 2002.
TA–W–50356; Key Plastics LLC, Port Huron, MI: December 1, 2001.

The following certification have been issued. The requirement of upstream supplier to trade certified primary firm as been met.

TA–W–50,163; Seadrift Coke, L.P., a subsidiary of the Carbide/Graphite Group, Port Lavaca, TX: November 21, 2001.
TA–W–50,227; The Fabricating Source, Inc., Youngstown, OH: November 19, 2001
TA–W–50,182; TSCO/Tube Specialties Co., Inc., Troutdale, OR: November 20, 2001.
TA–W–50,135; Punch Components, Inc., Lima, OH: November 12, 2001.
TA–W–50,010; Vulcan Chemicals, Workers Producing R–22 and Chloroform, Wichita, KS: November 4, 2001.

The following certification has been issued. The requirement of downstream finisher to trade certified primary firm has been met.

TA–W–50,199; J. Dreier Enterprises, LTD, New Brighton, MN: November 19, 2001

Also, pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance hereinafter called (NAFTA–TAA) and in accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act as amended, the Department of Labor presents summaries of determinations regarding eligibility to apply for NAFTA–TAA issued during the month of January, 2003.

In order for an affirmative determination to be made and a certification of eligibility to apply for NAFTA–TAA the following group eligibility requirements of section 250 of the Trade Act must be met:

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, (including workers in any agricultural firm or appropriate subdivision thereof) have become totally or partially separated from employment and either—

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely,

(3) That imports from Mexico or Canada of articles like or directly competitive with articles produced by such firm or subdivision have increased, and that the increases imports contributed importantly to such workers' separations or threat of separation and to the decline in sales or production of such firm or subdivision; or

(4) That there has been a shift in production by such workers' firm or subdivision to Mexico or Canada of articles like or directly competitive with articles which are produced by the firm or subdivision.

Negative Determinations NAFTA–TAA

In each of the following cases the investigation revealed that criteria (3) and (4) were not met. Imports from Canada or Mexico did not contribute importantly to workers' separations. There was no shift in production from the subject firm to Canada or Mexico during the relevant period.

NAFTA–TAA–07635; Plastic Products Co., Inc., Moline, IL.
NAFTA–TAA–07574; Radio Frequency Systems, Conditioning Div., including leased workers at Strategic Staffing and Selectemp, Corvallis, OR
NAFTA–TAA–06227; ADC Telecommunications, 1000 Valley Park Drive, Shakopee, MN
NAFTA–TAA–07624; Pohlman Foundry Co., Inc., Buffalo, NY
NAFTA–TAA–06487; Disa Industries, Holly, MI
NAFTA–TAA–07577; Decatur Mold Tool and Engineering, Inc., Southeast Div., Sanford, NC
NAFTA–TAA–07641; Nutramax Oral Care, Florence, MA
NAFTA–TAA–07631; United Plastics Group, Bensenville, IL
NAFTA–TAA–07548; ADC Telecommunications, Inc., U.S. Photonics Engineering and Manufacturing, Vadnais Heights, MN
NAFTA–TAA–07602; Anderson Packaging, Inc., Rockford, IL
NAFTA–TAA–07630; Owen Development Corp., d/b/a Intra, Spartanburg, SC

Affirmative Determinations NAFTA–TAA

NAFTA–TAA–06499; Treesource Industries, Inc., d/b/a Spanaway Lumber, Tacoma, WA: August 21, 2001.
NAFTA–TAA–07615; Sermatech Manufacturing, Mal Tool Div., Manchester, CT: September 24, 2001.
NAFTA–TAA–06440; ADC Telecommunications, 1087 Park Place, Shakopee, MN: June 11, 2001.
NAFTA–TAA–06490; IBM Corp., Microelectronics Div., Essex Junction, VT: August 14, 2001.
NAFTA–TAA–07652; Pacific Electricord, a subsidiary of Leviton Manufacturing Co., Gardena, CA: October 4, 2001.

I hereby certify that the aforementioned determinations were issued during the months of January, 2003. Copies of these determinations are available for inspection in Room C–5311, U.S. Department of Labor, 200

Constitution Avenue, NW., Washington, DC 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: January 24, 2003.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 03–2847 Filed 2–5–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–42,107]

Bath Unlimited, Inc., a Division of Masco Corporation Doing Business as Melard Manufacturing Corporation, Passaic, New Jersey; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on October 4, 2002, applicable to workers of Bath Unlimited, Inc., a Division of MASCO Corp., Passaic, New Jersey. The notice was published in the **Federal Register** on November 5, 2002 (67 FR 67418).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of showerhead and plumbing repair products. .

New information provided by the State shows that Bath Unlimited is doing business as Melard Manufacturing Corporation as of January 1, 2002. Information also shows that workers separated from employment at the subject firm had their wages reported under a separate unemployment insurance (UI) tax account for Melard Manufacturing Corporation.

Accordingly, the Department is amending the certification to properly reflect this matter.

The intent of the Department's certification is to include all workers of Bath Unlimited, Inc. who were adversely affected by imports. The amended notice applicable to TA–W–42,107 is hereby issued as follows:

"All workers of Bath Unlimited, Inc., a division of MASCO Corp., doing business as Melard Manufacturing Corporation, Passaic, New Jersey, who became totally or partially separated from employment on or after August 28, 2001, through October 4, 2004, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974."

Signed at Washington, DC this 13th day of January 2003.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–2865 Filed 2–5–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–50,167]

Bike Athletic Company, Knoxville, TN; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on December 4, 2002, applicable to workers of Bike Athletic Company, Cutting Department, Knoxville, Tennessee. The notice was published in the **Federal Register** on December 23, 2002 (67 FR 78256).

The Union of Needletrades, Industrial and Textile Employees, Tennessee/Kentucky requested that the Department expand the certification to include all workers of the subject firm. The Department reviewed the certification for workers of the subject firm. The findings show that the Department issued certification coverage to all workers of the subject firm's Cutting Department.

The investigation conducted for the subject firm was on behalf of workers manufacturing (cut fabric) men's and women's athletic team apparel. The investigation revealed that company imports of men's and women's athletic team apparel increased while production and employment declined during the period of the investigation, thus impacting all workers of the subject firm.

It is the intent of the Department to include all workers of Bike Athletic Company adversely affected by increased imports. Therefore, the Department is amending the certification determination to correctly identify the worker group to read all workers.

The amended notice applicable to TA–W–50,167 is hereby issued as follows:

"All workers of Bike Athletic Company, Knoxville, Tennessee who became totally or partially separated from employment on or after November 21, 2001, through December 4, 2004, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974."

Signed at Washington, DC this 14th day of January 2003.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–2862 Filed 2–5–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–41,060; TA–W–41,060A; TA–W–41,060B; TA–W–41,060C; TA–W–41,060D; TA–W–41,060E; and TA–W–41,060F]

Brooks Instruments, a Division of Emerson Process Management, Hatfield, Pennsylvania; Grayson, Georgia; Eden Prairie, Minnesota; Plantation, Florida; Boulder, Colorado; Houston Sales Office, Houston, Texas; Austin Sales Office, Austin, Texas; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on April 9, 2002, applicable to workers of Brooks Instrument, a Division of Emerson Process Management, Hatfield, Pennsylvania. The notice was published in the **Federal Register** on April 24, 2002 (67 FR 20166).

At the request of the company, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of sensors for flow meters.

Information shows that worker separations occurred at the Grayson, Georgia, Eden Prairie, Minnesota, Plantation, Florida, Boulder, Colorado, Houston Sales Office, Houston, Texas, Austin Sales Office, Austin, Texas locations of the subject firm. These locations provide sales and engineering support services for the subject firm's production facility in Hatfield, Pennsylvania.

Accordingly, the Department is amending the certification to included workers of the Brooks Instruments, a Division of Emerson Process Management, Grayson, Georgia, Eden Prairie, Minnesota, Plantation, Florida, Boulder, Colorado, Houston Sales Office, Houston, Texas, and the Austin Sales Office, Austin, Texas.

The intent of the Department's certification is to include all workers of Brooks Instruments, a Division of Emerson Process Management adversely affect by increased imports.

The amended notice applicable to TA–W–41,061 is hereby issued as follows:

"All workers of Brooks Instruments, a Division of Emerson Process Management, Hatfield, Pennsylvania (TA–W–41,060), Grayson, Georgia (TA–W–41,060A), Eden Prairie, Minnesota (TA–W–41,060B), Plantation, Florida (TA–W–41,060C), Boulder, Colorado (TA–W–41,060D), Houston Sales Office, Houston, Texas (TA–W–41,060E), and the Austin Sales Office, Austin, Texas (TA–W–41,060F), who became totally or partially separated from employment on or after February 7, 2001, through April 9, 2004, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974."

Signed at Washington, DC this 14th day of January 2003.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–2867 Filed 2–5–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–50,094 and TA–W–50,094A]

Chiquola Industrial Products Group LLC, Honea Path, South Carolina and Chiquola Industrial Products Group LLC, Abbeville, South Carolina; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on December 19, 2002, applicable to workers of Chiquola Industrial Products Group LLC, Honea Path, South Carolina. The notice will soon be published in the **Federal Register**.

At the request of a company official, the Department reviewed the certification for workers of the subject firm. The workers produced industrial fabrics. Information contained in the record shows that the company intended workers in Abbeville, South Carolina to be included in the certification. The workers at both South Carolina locations are considered by the company as one worker group. Data collected from the company official were for both locations.

It is the Department's intent to include all workers of Chiquola Industrial Products Group LLC, adversely affected by increased imports. Accordingly, the Department is amending the certification to include all workers of Chiquola Industrial Products Group LLC, located in Abbeville, South Carolina.

The amended notice applicable to TA-W–50,094 is hereby issued as follows:

"All workers of Chiquola Industrial Products Group LLC, Honea Path, South Carolina (TA–W–50,094) and Abbeville, South Carolina (TA–W–50,094A), who became totally or partially separated from employment on or after November 5, 2001, through December 19, 2004, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974."

Signed at Washington, DC, this 14th day of January, 2003.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–2863 Filed 2–5–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–50,273]

Harvard Industries, Inc., Corporate Headquarters, Lebanon, New Jersey; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on December 9, 2002 in response to a worker petition that was filed on behalf of workers at Harvard Industries, Inc., Corporate Headquarters, Lebanon, New Jersey.

An active certification covering the petitioning group of workers is already in effect (TA–W–41,871, as amended). Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 17th day of January 2003.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–2849 Filed 2–5–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–41,871 and 871A]

Harvard Industries, Inc., Albion Division, Albion, Michigan and Harvard Industries, Inc., Corporate Headquarters, Lebanon, New Jersey; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Notice of Certification Regarding Eligibility to Apply for Worker Adjustment Assistance on September 10, 2002, applicable to workers of Harvard Industries, Inc., Albion Division, Albion, Michigan. The notice was published in the **Federal Register** on September 27, 2002 (67 FR 61161).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The company reports that worker separations occurred at the Corporate Headquarters located in Lebanon. New Jersey. The workers at the Lebanon, New Jersey location provide support services (legal, payroll, human resources, tax, etc.) supporting the production of auto parts, castings and stampings at the Albion Division, Albion, Michigan facility of the subject firm.

Based on these findings, the Department is amending the certification to include workers of Harvard Industries, Inc., Corporate Headquarters, Lebanon, New Jersey.

The intent of the Department's certification is to include all workers of Harvard Industries, Albion Division, who were adversely affected by increased customer imports.

The amended notice applicable to TA–W–41,871 is hereby issued as follows:

"All workers of Harvard Industries, Inc., Albion Division, Albion, Michigan (TA–W–41,871), and Harvard Industries, Inc., Corporate Headquarters, Lebanon, New Jersey (TA–W–41,871A), who became totally or partially separated from employment on or after June 27, 2001, through September 10, 2004, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974."

Signed at Washington, DC, this 17th day of January 2003.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–2850 Filed 2–5–03; 8:45 am]

BILLING CODE 4510–30–U

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–50,430]

L'Art De La Mode, Inc. Carlstadt, New Jersey; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on January 2, 2003 in response to a worker petition filed by a state workforce agency on behalf of workers at L'Art De La Mode, Inc., Carlstadt, New Jersey.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation would serve no useful purpose and the investigation has been terminated.

Signed at Washington, DC, this 24th day of January 2003.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–2843 Filed 2–5–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–40,666]

Loren Castings, Inc., Loren Industries Including Leased Workers of ADP Totalsource, Hollywood, Florida; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on July 19, 2002, applicable to workers of Loren Castings, Inc., Loren Industries, Hollywood, Florida. The notice was published in the **Federal Register** on August 7, 2002 (67 FR 51295).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. Information provided by the State shows that some employees of Loren Castings, Inc., Loren Industries were leased from ADP Totalsource to produce jewelry at the Hollywood, Florida facility of the subject firm.

Based on these findings, the Department is amending the certification to include leased workers of ADP Totalsource producing jewelry at the Hollywood, Florida location of the subject firm.

The intent of the Department's certification is to include all workers of Loren Castings, Inc., Loren Industries adversely affected by increased imports.

The amended notice applicable to TA–W–40,666 is hereby issued as follows:

"All workers of Loren Castings, Inc., Loren Industries, Hollywood, Florida, engaged in employment related to the production of jewelry, including leased workers of ADP Totalsource, engaged in employment related to the production of jewelry at Loren Castings, Inc., Loren Industries, Hollywood, Florida, who became totally or partially separated from employment on or after December 4, 2000, through July 19, 2004, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974."

Signed at Washington, DC this 15th day of January 2003.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–2868 Filed 2–5–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–41,084 and TA–W–41,084A]

Milady Bridals, Incorporated, Union City, New Jersey, and Milady Bridals, Incorporated, New York, New York; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on May 24, 2002, applicable to workers of Milady Bridals, Incorporated, Union City, New Jersey. The notice was published in the **Federal Register** on June 11, 2002 (67 FR 40006).

At the request of the company, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of bridal gowns and bridesmaids' dresses.

Information shows that worker separations occurred at the New York, New York location of the subject firm. The workers provide administrative support functions and accounting for the subject firm's production facility located in Union City, New Jersey.

Accordingly, the Department is amending the certification to include workers of the Milady Bridals, Incorporated, New York, New York.

The intent of the Department's certification is to include all workers of Milady Bridals, Incorporated adversely affected by increased imports.

The amended notice applicable to TA–W–41,084 is hereby issued as follows:

"All workers of Milady Bridals, Incorporated, Union City, New Jersey (TA–W–41,084) and Milady Bridals, Incorporated, New York, New York (TA–W–41,084A), who became totally or partially separated from employment on or after February 14, 2001, through May 24, 2004, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974."

Signed at Washington, DC this 17th day of January 2003.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–2866 Filed 2–5–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–42,190]

Pechiney Rolled Products, Ravenswood, West Virginia; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on September 30, 2002 in response to a worker petition which was filed on September 30, 2002 on behalf of workers at Pechiney Rolled Products, Ravenswood, West Virginia.

At the request of the petitioner, the petition has been withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 23rd day of January, 2003.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–2846 Filed 2–5–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–40,075]

Pohlman Foundry Company, Inc., Freedom Services, Inc., Buffalo, NY; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for

Worker Adjustment Assistance on March 27, 2002, applicable to workers of Pohlman Foundry Company, Inc., Buffalo, New York. The notice was published in the **Federal Register** on April 5, 2002 (67 FR 16442).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers were engaged in the production of steel and cast iron castings.

New information shows that workers of Freedom Services, Inc. provided payroll function services for Pohlman Foundry Company, Inc., Buffalo, New York. Information also shows that workers separated from employment at the subject firm had their wages reported under a separate unemployment insurance (UI) tax account for Freedom Services, Inc.

Therefore, the certification is being amended to include workers at the Buffalo, New York location whose wages were reported to the Freedom Services, Inc. tax account.

The intent of the Department's certification is to include all workers of Pohlman Foundry Company, Inc. who were adversely affected by increased imports.

The amended notice applicable to TA–W–40,075 is hereby issued as follows:

"All workers of Pohlman Foundry Company, Inc., Freedom Services, Inc., Buffalo, New York who became totally or partially separated from employment on or after September 6, 2000, through March 27, 2004, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974."

Signed at Washington, DC this 17th day of January 2003.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–2869 Filed 2–5–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–42,140]

SPX Valves & Controls Division Sartell, Minnesota; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on September 16, 2002, in response to a filed on behalf of workers SPX, Valves & Controls Division, Sartell, Minnesota.

The petitioning group of workers are under a current certification which was issued on January 15, 2003 (TA–W–50,298). Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 23rd day of January, 2003.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–2845 Filed 2–5–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–50,556]

Stora Enso North America Wisconsin Rapids, Wisconsin; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on January 13, 2003, in response to a worker petition filed by a company official on behalf of workers at Stora Enso North America, Wisconsin Rapids, Wisconsin.

The petitioning group of workers is covered by an active certification issued on March 12, 2001 and which remains in effect (TA–W–38,305). Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 21st day of January 2003.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–2844 Filed 2–5–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–42,343 and TA–W–42,343A]

Wolverine World Wide, Inc. Formerly Frolic Footwear, A Division of Wolverine Manufacturing Group, Arkansas Operations, Monette, Arkansas; Wolverine World Wide, Inc. Formerly Frolic Footwear, A Division of Wolverine Manufacturing Group, Arkansas Operations, Jonesboro, Arkansas; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Notice of Certification Regarding Eligibility to Apply for Worker Adjustment Assistance on December 13, 2002, applicable to workers of Wolverine World Wide, Inc., formerly Frolic Footwear, a Division of Wolverine Manufacturing Group, Arkansas operations, Monette, Arkansas. The notice will be published soon in the **Federal Register**.

At the request of the company, the Department reviewed the certification for workers of the subject firm. The company reports that worker separations occurred at the Jonesboro, Arkansas location of Wolverine World Wide, Inc., Arkansas Operations. The Jonesboro, Arkansas location produces cut to fit upper component parts needed for the production of house slippers and clog slippers at the Monette, Arkansas location of the subject firm.

Based on these findings, the Department is amending the certification to include workers of the Jonesboro, Arkansas location of Wolverine World Wide, Inc., Arkansas Operations.

The intent of the Department's certification is to include all workers of Wolverine World Wide, Inc., Arkansas Operations who were adversely affected by increased imports.

The amended notice applicable to TA–W–42,343 is hereby issued as follows:

"All workers of Wolverine World Wide, Inc., formerly Frolic Footwear, a Division of Wolverine Manufacturing Group, Arkansas Operations, Monette, Arkansas (TA–W–42,343), and Jonesboro, Arkansas (TA–W–42,343A), who became totally or partially separated from employment on or after October 23, 2001, through December 13, 2004, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974."

Signed at Washington, DC this 13th day of January 2003.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–2864 Filed 2–5–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–37,937]

Wolverine Worldwide, Inc., Kirksville, Missouri; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the

Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on August 31, 2000, applicable to workers of Wolverine Worldwide, Inc., Kirksville, Missouri. The notice was published in the **Federal Register** on September 22, 2000 (65 FR 57386).

At the request of the company and the State agency, the Department reviewed the certification for workers of the subject firm. New information shows that Mr. Clifford Lumsden was retained at the subject firm as a security guard/maintenance personnel until the plant closed in September 2002 resulting in Mr. Lumsden's termination. Information also shows that Mr. Lumsden was separated from the subject firm after the August 31, 2002 expiration date of previous certification.

The intent of the Department's certification is to include all workers of Wolverine Worldwide, Inc. who were adversely affected by increased imports. Therefore, the Department is amending the certification to extend coverage through October 31, 2002 to include Mr Clifford Lumsden.

The amended notice applicable to TA–W–37,937 is hereby issued as follows:

"All workers of Wolverine Worldwide, Inc., Kirksville, Missouri, who became totally or partially separated from employment on or after July 17, 1999, through October 31, 2002, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974."

Signed at Washington, DC this 24th day of January 2003.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 03–2870 Filed 2–5–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6879]

State of Alaska Commercial Fisheries Entry Commission Permit #59419M, Naknek, Alaska; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit #59419M, Naknek, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 29th day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–2851 Filed 2–5–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6881]

State of Alaska Commercial Fisheries Entry Commission Permit #59452H, Naknek, Alaska; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit #59452H, Naknek, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 29th day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–2852 Filed 2–5–03; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6882]

State of Alaska Commercial Fisheries Entry Commission Permit #57197L, Naknek, Alaska; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit #57197L, Naknek, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 29th day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–2853 Filed 2–5–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6885]

State of Alaska Commercial Fisheries Entry Commission Permit #62009Q, Naknek, Alaska; Notice of Termination of Investigation

Pursuant to title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), subchapter D, chapter 2, title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit #62009Q, Naknek, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 29th day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–2854 Filed 2–5–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6886]

State of Alaska Commercial Fisheries Entry Commission Permit No. 68340V Naknek, Alaska; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit No. 68340V, Naknek, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 29th day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–2855 Filed 2–5–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6889]

State of Alaska Commercial Fisheries Entry Commission Permit No. 60111L Naknek, Alaska; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit No. 60111L, Naknek, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 29th day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–2856 Filed 2–5–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6891]

State of Alaska Commercial Fisheries Entry Commission Permit No. 58282J, Naknek, Alaska; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit No. 58282J, Naknek, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 29th day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–2857 Filed 2–5–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6894]

State of Alaska Commercial Fisheries Entry Commission Permit No. 57729N, Naknek, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit No. 57729N, Naknek, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 29th day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–2858 Filed 2–5–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6895]

State of Alaska Commercial Fisheries Entry Commission Permit No. 56999Q, Naknek, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit No. 56999Q, Naknek, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 29th day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–2859 Filed 2–5–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6929]

State of Alaska Commercial Fisheries Entry Commission Permit No. 66590F, New Stuyahok, Alaska; Notice of Termination of Investigation

Pursuant to title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with Section 250(a), subchapter D, chapter 2, title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit No. 66590F, New Stuyahok, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 29th day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–2860 Filed 2–5–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6900]

State of Alaska Commercial Fisheries Entry Commission Permit 61341V, Naknek, Alaska; Notice of Termination of Investigation

Pursuant to title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), subchapter D, chapter 2, title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002, in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit No. 61341V, Naknek, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 29th day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–2888 Filed 2–5–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6902]

State of Alaska Commercial Fisheries Entry Commission Permit No. 61438E, Naknek, Alaska; Notice of Termination of Investigation

Pursuant to title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), subchapter D, chapter 2, title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002, in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit No. 61438E, Naknek, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 29th day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–2889 Filed 2–5–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6904]

State of Alaska Commercial Fisheries Entry Commission Permit No. 58226Q, Naknek, Alaska; Notice of Termination of Investigation

Pursuant to title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), subchapter D, chapter 2, title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002, in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit No. 58226Q, Naknek, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 29th day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–2890 Filed 2–5–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6905]

State of Alaska Commercial Fisheries Entry Commission Permit #61176J, Naknek, Alaska; Notice of Termination of Investigation

Pursuant to title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), subchapter D, chapter 2, title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002, in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit No. 61176J, Naknek, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 29th day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–2891 Filed 2–5–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6908]

State of Alaska Commercial Fisheries Entry Commission Permit #57954M, New Stuyahok, Alaska; Notice of Termination of Investigation

Pursuant to title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), subchapter D, chapter 2, title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002, in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit #57954M, New Stuyahok, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 29th day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–2892 Filed 2–5–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6909]

State of Alaska Commercial Fisheries Entry Commission Permit #55926G, New Stuyahok, Alaska; Notice of Termination of Investigation

Pursuant to title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), subchapter D, chapter 2, title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002, in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit #55926G, New Stuyahok, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 29th day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–2893 Filed 2–5–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6910]

State of Alaska Commercial Fisheries Entry Commission Permit #59312H; New Stuyahok, Alaska; Notice of Termination of Investigation

Pursuant to title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), subchapter D, chapter 2, title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit #59312H, New Stuyahok, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 29th day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–2894 Filed 2–5–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6911]

State of Alaska Commercial Fisheries Entry Commission Permit #65630C; New Stuyahok, Alaska; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit #65630C, New Stuyahok, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 29th day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–2895 Filed 2–5–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6913]

State of Alaska Commercial Fisheries Entry Commission Permit #56717H, New Stuyahok, Alaska; Notice of Termination of Investigation

Pursuant to title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), subchapter D, chapter 2, title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit #56717H, New Stuyahok, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 29th day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–2896 Filed 2–5–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6915]

State of Alaska Commercial Fisheries Entry Commission Permit #67327X, New Stuyahok, Alaska; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit #67327X, New Stuyahok, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 29th day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–2897 Filed 2–5–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6917]

State of Alaska Commercial Fisheries Entry Commission Permit #63691J, New Stuyahok, Alaska; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit #63691J, New Stuyahok, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 29th day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–2898 Filed 2–5–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6918]

State of Alaska Commercial Fisheries Entry Commission Permit #56223Q, New Stuyahok, Alaska; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit #56223Q, New Stuyahok, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 29th day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–2899 Filed 2–5–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6920]

State of Alaska Commercial Fisheries Entry Commission Permit #59026X, New Stuyahok, Alaska; Notice of Termination of Investigation

Pursuant to title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), subchapter D, chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit #59026X, New Stuyahok, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 29th day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–2900 Filed 2–5–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6921]

State of Alaska Commercial Fisheries Entry Commission Permit # 51469K, New Stuyahok, Alaska; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with Section 250(a), subchapter D, chapter 2, title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit #51469K, New Stuyahok, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 29th day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–2901 Filed 2–5–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6922]

State of Alaska Commercial Fisheries Entry Commission Permit #66411G, New Stuyahok, Alaska; Notice of Termination of Investigation

Pursuant to title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), subchapter D, chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit #66411G, New Stuyahok, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 29th day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–2902 Filed 2–5–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6924]

State of Alaska Commercial Fisheries Entry Commission Permit #56219X, New Stuyahok, Alaska; Notice of Termination of Investigation

Pursuant to title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), subchapter D, chapter 2, title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit #56219X, New Stuyahok, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 29th day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–2903 Filed 2–5–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6925]

State of Alaska Commercial Fisheries Entry Commission Permit No. 63414L, New Stuyahok, Alaska; Notice of Termination of Investigation

Pursuant to title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), subchapter D, chapter 2, title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit No. 63414L, New Stuyahok, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 29th day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–2904 Filed 2–5–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6926]

State of Alaska Commercial Fisheries Entry Commission Permit No. 60396X; New Stuyahok, Alaska; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA-TAA and in accordance with section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit No. 60396X, New Stuyahok, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 29th day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–2905 Filed 2–5–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6927]

State of Alaska Commercial Fisheries Entry Commission Permit No. 61228N; New Stuyahok, Alaska; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit No. 61228N, New Stuyahok, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 29th day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–2906 Filed 2–5–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6928]

State of Alaska Commercial Fisheries Entry Commission Permit No. 64737J; New Stuyahok, Alaska; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit No. 64737J, New Stuyahok, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 29th day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–2907 Filed 2–5–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–06445, NAFTA–06445A, NAFTA–06445B, and NAFTA–06445C]

Creo Americas, Inc., Subsidiary of Creo, Inc., Bedford, Massachusetts; Creo Americas, Inc., Subsidiary of Creo, Inc., Atlanta Regional Office, Atlanta, Georgia; Creo Americas, Inc., Subsidiary of Creo, Inc., Chicago Regional Office, Itasca, Illinois; Creo Americas, Inc., Subsidiary of Creo, Inc., Irvine Regional Office, Irvine, California; Amended Certification Regarding Eligibility To Apply for NAFTA–Transitional Adjustment Assistance

In accordance with section 250(a), subchapter D, chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), the Department of Labor issued a Certification of Eligibility to Apply for NAFTA Transitional Adjustment Assistance on October 15, 2002, applicable to workers of Creo Americas, Inc., a Subsidiary of Creo, Inc., Bedford, Massachusetts. The notice was published in the **Federal Register** on November 5, 2002 (67 FR 67422).

At the request of the company, the Department reviewed the certification for workers of the subject firm. The company reports that worker separations occurred at the Atlanta Regional Office, Atlanta, Georgia, Chicago Regional Office, Itasca, Illinois and the Irvine Regional Office, Irvine, California of Creo Americas, Inc., a subsidiary of Creo, Inc. The workers are employed in administrative functions directly supporting the production of digital proofing hardware, software, ink and paper.

The intent of the Department's certification is to include all workers of Creo Americas, Inc., a subsidiary of Creo, Inc. affected by a shift in production to Canada.

Accordingly, the Department is amending the certification to include workers of Creo Americas, Inc., a subsidiary of Creo, Inc., Atlanta Regional Office, Atlanta, Georgia, Chicago Regional Office, Itasca, Illinois and the Irvine Regional Office, Irvine, California.

The amended notice applicable to NAFTA–06445 is hereby issued as follows:

"All workers of Creo Americas, Inc., a subsidiary of Creo, Inc., Bedford, Massachusetts (NAFTA–06445), Atlanta Regional Office, Atlanta, Georgia (NAFTA–06445A), Chicago Regional Office, Itasca, Illinois (NAFTA–06445B), and Irvine Regional Office, Irvine, California (NAFTA–06445C), who became totally or partially separated from employment on or after August 2, 2001, through October 15, 2004, are eligible to apply for NAFTA–TAA under Section 250 of the Trade Act of 1974."

Signed in Washington, DC, this 23rd day of January, 2003.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–2848 Filed 2–5–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–7634 and NAFTA–7634A]

Wolverine World Wide, Inc. Formerly Frolic Footwear, a Division of Wolverine Manufacturing Group, Arkansas Operations, Monette, AR; and Wolverine World Wide, Inc. Formerly Frolic Footwear, a Division of Wolverine Manufacturing Group, Arkansas Operations, Jonesboro, AR; Amended Certification Regarding Eligibility To Apply for NAFTA–Transitional Adjustment Assistance

In accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), the Department of Labor issued a Certification of Eligibility to Apply for NAFTA Transitional Adjustment Assistance on December 3, 2002, applicable to workers of Wolverine World Wide, Inc., formerly Frolic Footwear, a Division of Wolverine Manufacturing Group, Arkansas Operations, Monette, Arkansas. The notice was published in the **Federal Register** on December 23, 2002 (67 FR 78257).

At the request of the company, the Department reviewed the certification for workers of the subject firm. The company reports that worker separations occurred at the Jonesboro, Arkansas location of Wolverine World Wide, Inc., Arkansas Operations. The Jonesboro, Arkansas location produces cut to fit upper component parts needed for the production of house slippers and clog slippers at the Monette, Arkansas location of the subject firm.

Based on these findings, the Department is amending the certification to include workers of the Jonesboro, Arkansas location of Wolverine World Wide, Inc., Arkansas Operations.

The intent of the Department's certification is to include all workers of Wolverine World Wide, Arkansas

Operations affected by the shift in production of house slippers and clog slippers to Mexico.

The amended notice applicable to NAFTA–07634 is hereby issued as follows:

"All workers of Wolverine World Wide, Inc., formerly Frolic Footwear, a Division of Wolverine Manufacturing Group, Arkansas Operations, Monette, Arkansas (NAFTA–7634), and Jonesboro, Arkansas (NAFTA–7634A), who became totally or partially separated from employment on or after October 23, 2001, through December 3, 2004, are eligible to apply for NAFTA–TAA under Section 250 of the Trade Act of 1974."

Signed in Washington, DC this 13th day of January 2003.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–2861 Filed 2–5–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment Standards Administration

Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment Standards Administration is soliciting comments concerning the proposed collection: Statement of Recovery Forms (CA/EN–1108, EB/EN–1108, CA/EN–1122). A copy of the proposed information collection request can be obtained by contacting the office listed below in the addresses section of this Notice.

DATES: Written comments must be submitted to the office listed in the addresses section below on or before April 7, 2003.

ADDRESSES: Ms. Hazel M. Bell, U.S. Department of Labor, 200 Constitution Ave., NW., Room S–3201, Washington, DC 20210, telephone (202) 693–0418, fax (202) 693–1451, Email *hbell@fenix2.dol-esa.gov*. Please use only one method of transmission for comments (mail, fax, or Email).

SUPPLEMENTARY INFORMATION:

I. *Background:* Under section 8131 a Federal employee can sustain a work-related injury, for which he or she is eligible for compensation under the Federal Employees' Compensation Act (FECA), under circumstance that create a legal liability in some third party to pay damages for the same injury. When this occurs, section 8131 of the FECA (5 U.S.C. 8131) authorizes the Secretary of Labor to either require the employee to assign his or her right of action to the United States or to prosecute the action. When the employee receives a payment for his or her damages, whether from a final court judgment on or a settlement of the action, section 8132 of the FECA (5 U.S.C. 8132) provides that the employee "shall refund to the United States the amount of compensation paid by the United States * * *" To enforce the United States' statutory right to this refund, the Office of Workers' Compensation Programs (OWCP) has promulgated regulations that require both the reporting of these types of payments (20 CFR 10.710) and the submission of the type of detailed information necessary to calculate the amount of the required refund (20 CRF 10.707(e)). The information collected by Form CA/EN–1122 is requested from the claimant if he or she received a payment for damages without hiring an attorney. Form CA/EN–1108 requests this information from the attorney if one was hired to bring suit against the third party. Form EB/EN–1108 request the same information as the CA/EN–1108 if the claimant's attorney contacts the Office of the Solicitor (SOL) directly.

II. *Review Focus:* The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

III. *Current Actions:* The Department of Labor seeks approval to collect this information in order to exercise its responsibility to enforce the United States' right to this refund. These forms will be used to obtain information about amounts received as the result of a final judgment in litigation, or a settlement of the litigation, brought against a third party who is liable for damages due to compensable work-related injury.

Type of Review: New Collection.

Agency: Employment Standards Administration.

Title: Statement of Recovery Forms.

OMB Number: 1215–.

Agency Number: CA/EN–1108, EB/EN–1108, CA/EN–1122.

Affected Public: Business or other for-profit, individuals or households.

Form/requirement	Respondents/ responses	Time per response (in minutes)	Burden hours
CA/EN–1108	2,720	30	1,360
EB/EN–1108	160	30	80
CA/EN–1122	320	15	80

Total Respondents/Responses: 3,200.

Frequency: As needed.

Estimated Total Burden Hours: 1,520.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintenance): $1,280.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: January 31, 2003.

Bruce Bohanon,

Chief, Branch of Management Review and Internal Control, Division of Financial Management, Office of Management, Administration and Planning, Employment Standards Administration.

[FR Doc. 03–2842 Filed 2–5–03; 8:45 am]

BILLING CODE 4510–CH–P

OFFICE OF MANAGEMENT AND BUDGET

Federal Activities Inventory Reform Act of 1998; Public Availability of Year 2002

SUBJECT: Public Availability of Year 2002 Agency Inventories Under the Federal Activities Inventory Reform Act of 1998 (Pub. L. 105–270) ("FAIR Act").

AGENCY: Office of Management and Budget; Executive Office of the President.

ACTION: Notice of public availability of agency inventories of activities that are not inherently governmental and of activities that are inherently governmental.

SUMMARY: Agency inventories of activities that are not inherently governmental are now available to the public from the agencies listed below, in accordance with the "Federal Activities Inventory Reform Act of 1998" (Pub. L. 105–270) ("FAIR Act"). Agency inventories of activities that are inherently governmental are also now available to the public from the agencies listed below. This is the third release of the 2002 FAIR Act inventories. The Office of Federal Procurement Policy has made available a summary FAIR Act User's Guide through its Internet site: *http://www.whitehouse.gov/OMB/procurement/index.html*. The User's Guide should help interested parties review 2002 FAIR Act inventories, and gain access to agency inventories through agency Web site addresses.

The FAIR Act requires OMB to publish an announcement of public availability of agency inventories of activities that are not inherently governmental upon completion of OMB's review and consultation process concerning the content of the agencies' inventory submissions. After review and consultation with OMB, the agency inventories are made available to the public. Interested parties who disagree with the agency's initial judgment can challenge the inclusion or the omission of an activity on the list and, if not satisfied with this review, may also demand a higher agency review/appeal.

Mitchell E. Daniels, Jr.,

Director.

Attachment:

THIRD FAIR ACT RELEASE 2002

Agency	Contact
American Battle Monuments Commission	Vincent Scatamacchia (703) 696–6898, William Athas (703) 696–6869, *www.abmc.gov.*
Arlington National Cemetery	Rory Smith (703) 614–5060 *www.arlingtoncemetery.org.*
Armed Forces Retirement Home	Steve McManus (202) 730–3533, *www.afrh.com.*
Chemical Safety and Hazard Investigation Board	Bea Robinson, (202) 261–7627, *www.csb.gov.*
Defense Nuclear Facilities Safety Board	Kenneth M. Pusateri (202) 694–7000, *www.dnfsb.gov.*
Department of Agriculture	Barbara McNeal (202) 720–0995, *www.usda.gov/ocfo.*
Department of Agriculture, IG	Delmas R. Thornsbury (202) 720–4474, *www.usda.gov/oig.*
Department of Commerce	Edna Campbell (202) 482–4115, *www.osec.doc.gov/oebam/fair/.*
Department of Defense	Paul Soloman (703) 824–2692 (Hotline #), *http://web.lmi.org/fairnet/.* *Note:* The POC for individual DOD components can be obtained from the DOD Web site.
Department of Energy	Mark Hively, (202) 586–5655, *www.ma.mbe.doe.gov/a–76.*
Department of Justice	Larry Silvis, (202) 616–3754, *www.usdoj.gov/jmd/pe/preface.htm.*
Department of Labor	Kathy Alejandro, (202) 693–4026, *www.dol.gov/OASAM/programs/boc/welcome2boc.html.*
Department of State	Eugene Batt (202) 663–2325, *www.state.gov.*
Department of Transportation	Barbara Fallat, (202) 366–4974, *www.dot.gov/ost/m60/FairAct.*
Farm Credit Administration	Philip Shebest, (703) 883–4146, *www.fca.gov.*
Federal Election Commission	John O'Brien, (202) 694–1216, *www.fec.gov.*
Federal Energy Regulatory Commission	Kimberly F. Fernandez, (202) 502–8302, *www.ferc.gov.*
Federal Labor Relations Authority	Kevin Kopper, (202) 482–6690 (ext. 425), *www.flra.gov/reports/fair_inv02.cmmrcl.html.*
Federal Maritime Commission	JoAnn Baca, (202) 523–5800, *www.fmc.gov.*
General Services Administration	Paul Boyle (202) 501–0324, *www.gsa.gov/Portal/content/orgs_content.jsp? contentOID=123082&contentType=1005.*
Marine Mammal Commission	Suzanne Montgomery (301) 504–0087.
Nuclear Regulatory Commission	Mark J. Flynn (301) 415–6736, *www.nrc.gov/who-we-are/contracting/inventory-report.*
Nuclear Regulatory Commission, IG	David Lee (301) 415–5930, *www.nrc.gov/insp-gen/fairact-inventory.html.*
Nuclear Waste Technical Review Board	Joyce M. Dory (703) 235–4473, *www.nwtrb.gov.*
Office of Federal Housing Enterprise Oversight	Jill Weide, (202) 414–3813, *www.ofheo.gov.*
Office of Government Ethics	Sean Donohue, (202) 208–8000, x1217, *www.usoge.gov.*
Office of Personnel Management	Steven VanRees, (202) 606–2200, *www.opm.gov/procure.*
Selective Service System	Freida Brockington (703) 605–4081, *www.sss.gov.*
Small Business Administration	Robert Moffitt, (202) 205–6610, *www.sba.gov/fair.*
Smithsonian Institution	Alice Maroni (202) 275–2020, *www.si.edu.*
Social Security Administration	Phil Kelly (410) 965–4656, *www.ssa.gov/.*
U.S. Agency for International Development	Debra Lewis, (202) 712–0936, *www.usaid.gov/procurement_bus_opp/.*
U.S. Agency for International Development, Office of the Inspector General.	Cheryl Woodard, (202) 712–4129, *www.usaid.gov/procurement_bus_opp/.*

[FR Doc. 03–2827 Filed 2–5–03; 8:45 am]
BILLING CODE 3110–01–P

OFFICE OF MANAGEMENT AND BUDGET

Discount Rates for Cost-Effectiveness Analysis of Federal Programs

AGENCY: Office of Management and Budget.

ACTION: Revisions to Appendix C of OMB Circular A–94.

SUMMARY: The Office of Management and Budget revised Circular A–94 in 1992. The revised Circular specified certain discount rates to be updated annually when the interest rate and inflation assumptions used to prepare the budget of the United States Government were changed. These discount rates are found in Appendix C of the revised Circular. The updated discount rates are shown below. The discount rates in Appendix C are to be used for cost-effectiveness analysis, including lease-purchase analysis, as specified in the revised Circular. They do not apply to regulatory analysis.

DATES: The revised discount rates are effective immediately and will be in effect through January 2004.

FOR FURTHER INFORMATION CONTACT: Robert B. Anderson, Office of Economic Policy, Office of Management and Budget, (202) 395–3381.

James D. Foster,

Associate Director for Economic Policy, Office of Management and Budget.

Appendix C

(Revised February 2003) Discount Rates for Cost-Effectiveness, Lease Purchase, and Related Analyses

Effective Dates. This appendix is updated annually around the time of the President's budget submission to Congress. This version of the appendix is valid through the end of January 2004. A copy of the updated appendix can be obtained in electronic form through the OMB home page at *http://www.whitehouse.gov/omb/circulars/a094/a94_appx-c.html*, the text of the main body of the Circular is found at *http://www.whitehouse.gov/omb/circulars/a094/a094.html*, and a table of past years' rates is located at *http://www.whitehouse.gov/omb/circulars/a094/DISCHIST-2003.pdf*. Updates of the appendix are also available upon request from OMB's Office of Economic Policy (202–395–3381).

Nominal Discount Rates. A forecast of nominal or market interest rates for 2003 based on the economic assumptions from the 2004 Budget are presented below. These nominal rates are to be used for discounting nominal flows, which are often encountered in lease-purchase analysis.

NOMINAL INTEREST RATES ON TREASURY NOTES AND BONDS OF SPECIFIED MATURITIES

[in percent]

3-Year	5-Year	7-Year	10-Year	30-Year
3.1	3.6	3.9	4.2	5.1

Real Discount Rates. A forecast of real interest rates from which the inflation premium has been removed and based on the economic assumptions from the 2004 Budget are presented below. These real rates are to be used for discounting real (constant-dollar) flows, as is often required in cost-effectiveness analysis.

REAL INTEREST RATES ON TREASURY NOTES AND BONDS OF SPECIFIED MATURITIES

[in percent]

3-Year	5-Year	7-Year	10-Year	30-Year
1.6	1.9	2.2	2.5	3.2

Analyses of programs with terms different from those presented above may use a linear interpolation. For example, a four-year project can be evaluated with a rate equal to the average of the three-year and five-year rates. Programs with durations longer than 30 years may use the 30-year interest rate.

[FR Doc. 03–2965 Filed 2–5–03; 8:45 am]
BILLING CODE 3110–01–P

RAILROAD RETIREMENT BOARD

Proposed Collection; Comment Request

SUMMARY: In accordance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 which provides opportunity for public comment on new or revised data collections, the Railroad Retirement Board (RRB) will publish periodic summaries of proposed data collections.

Comments are invited on: (a) Whether the proposed collection is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the RRB's estimate of the burden of the collection of the information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden related to the collection of information on respondents, including the use of automated collection techniques of other forms of information technology.

Title and purpose of information collection: Employee Representative's Status and Compensation Reports; OMB 3220–0014. Under Section 1(b)(1) of the Railroad Retirement Act (RRA), the term "employee" includes an individual who is an employee representative. As defined in Section 1(c) of the RRA, an employee representative is an officer or official representative of a railroad labor organization other than a labor organization include in the term "employer," as defined in the RRA, who before or after August 29, 1935, was in the service of aN employer under the RRA and who is duly authorized and designated to represent employees in accordance with the Railway Labor Act, or, any individual who is regularly assigned to or regularly employed by such officer or official representative in connection with the duties of his or her office. The requirements relating to the application for employee representative status and the periodic reporting of the compensation resulting from such status is contained in 20 CFR 209.10.

The RRB utilizes Forms DC–2a, Employee Representative's Status Report, and DC–2, Employee Representative's Report on Compensation to obtain the information needed to determine employee representative status and to maintain a record of creditable service and compensation resulting from such status. Completion is required to obtain or retain a benefit. One response is requested of each respondent.

No changes are proposed to Form DC–2a and Form DC–2. The completion time for Form DC–2 is estimated at 30 minutes per response. The RRB estimates that approximately 65 Form DC–2's are received annually. The RRB estimates that less than 10 Form DC–2a's are received annually.

Additional Information or Comments: To request more information or to obtain a copy of the information collection justification, forms, and/or supporting material, please call the RRB Clearance Officer at (312) 751–3363. Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092. Written comments should be received within 60 days of this notice.

Chuck Mierzwa,

Clearance Officer.

[FR Doc. 03–2822 Filed 2–5–03; 8:45 am]
BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–27646]

Filings Under the Public Utility Holding Company Act of 1935, As Amended ("Act")

January 31, 2003.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated under the Act. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) is/are available for public inspection through the Commission's Branch of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by February 25, 2003, to the Secretary, Securities and Exchange Commission, Washington, DC 20549–0609, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of facts or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After February 25, 2003, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Northeast Utilities (70–10051)

Northeast Utilities ("NU"), a registered holding company under the Act, 107 Selden Street, Berlin, Connecticut 01037, ("Applicant"), has filed a declaration ("Declaration") with the Commission under sections 6(a), 7, 32 and 33 of the Act.

NU requests authority through the period ending June 30, 2005 ("Authorization Period"), to: (a) Issue from time to time unsecured long-term debt securities ("Long-term Debt") in an aggregate amount at any time outstanding not to exceed $600 million, and (b) enter into hedging transactions ("Interest Rate Hedges") with respect to existing indebtedness of NU and its nonutility subsidiaries [1] ("Nonutility Subsidiaries") in order to manage and minimize interest rate costs and enter into hedging transactions with respect to future expected debt issuances ("Anticipatory Hedges") in order to lock in then current interest rates and/or manage interest rate risk exposure.

I. Long-Term Debt

NU requests authorization to issue Long-term Debt, the proceeds of which will enable NU to reduce or refinance short-term debt with more permanent capital and provide a source of future financing for the operations of and investments in Nonutility Subsidiaries that are exempt under the Act. Long-term Debt of NU may be in the form of unsecured notes ("Debentures") issued in one or more series. The Debentures of any series will: (i) Have a maturity ranging from one to 50 years, (ii) bear interest at a rate not to exceed 500 basis points over the yield to maturity of a U.S. Treasury security having a remaining term approximately equal to the term of the series of Debentures, (iii) be subject to optional and/or mandatory redemption, in whole or in part, at par or at various premiums above or discounts below the principal amount, (iv) be entitled to mandatory or optional sinking fund provisions, and (v) may provide for reset of the coupon according to a remarketing arrangement. Long-term Debt of NU also may be in the form of bank lines of credit ("Bank Lines"). Bank Lines will have maturities of not more than five years from the date of each borrowing and the effective cost of these loans will not exceed at the time of issuance 500 basis points over LIBOR. The maturity dates, interest rates, call, redemption and sinking fund provisions and conversion features, if any, with respect to the Debentures of a particular series, as well as any associated placement, underwriting or selling agent fees, commissions and discounts, if any, will be established by negotiation or competitive bidding and reflected in the applicable supplemental indenture or officer's certificate and purchase agreement or underwriting agreement setting forth the terms.

NU contemplates that the Debentures would be issued and sold directly to one or more purchasers in privately negotiated transactions or to one or more investment banking or underwriting firms or other entities that would resell the Debentures without registration under the 1933 Act, in reliance upon one or more applicable exemptions from registration or to the public either (i) through underwriters selected by negotiation or competitive bidding or (ii) through selling agents acting either as agent or principal for resale to the public, either directly or through dealers.

II. Hedges

NU requests authorization to enter into Interest Rate Hedges in connection with indebtedness of NU or its Nonutility Subsidiaries, subject to certain limitations and restrictions as proposed in the Declaration, in order to reduce or manage interest rate costs and risks and to generate parent-level cash and earnings. Interest Rate Hedges would only be entered into with counterparties ("Approved Counterparties") whose senior unsecured debt ratings, or the senior unsecured debt ratings of the parent companies of the counterparties, as published by Standard and Poor's Ratings Group, are equal to or greater than BBB, or an equivalent rating from Moody's Investors Service or Fitch IBCA. Interest Rate Hedges will involve the use of financial instruments commonly used in the capital markets, such as interest rate swaps, locks, caps, collars, floors, and other similar appropriate instruments. The transactions would be for fixed periods and stated notional amounts. In no case will the notional principal amount of any interest rate swap exceed that of the underlying debt instrument. NU will not engage in speculative transactions as that term is described in Financial Accounting Standard 133. Transaction fees, commissions and other amounts payable to the counterparty or exchange (excluding, however, the swap or option payments) in connection with an Interest Rate Hedge will not exceed those generally obtainable in competitive markets for parties of comparable credit quality.

In addition, NU requests authorization to enter into Anticipatory Hedges in connection with anticipated debt offerings of NU and its Nonutility Subsidiaries, subject to certain limitations and restrictions set forth in the Declaration. Anticipatory Hedges would only be entered into with Approved Counterparties, and would be utilized to fix and/or manage the interest rate risk associated with any new Long-term Debt issuance of its own or of its Nonutility Subsidiaries through (i) a forward sale of exchange-traded U.S. Treasury futures contracts, U.S. Treasury Securities and/or a forward swap ("Forward Sale"), (ii) the purchase of put options on U.S. Treasury Securities ("Put Options Purchase"),

[1] Nonutility Subsidiaries will include exempt wholesale generators ("EWGs") as defined in the Act, foreign utility companies ("FUCOs") as defined in the Act, nonutility companies exempt under rule 58 of the Act ("rule 58 Subsidiaries"), exempt telecommunications companies ("ETCs") and other competitive companies.

(iii) a Put Options Purchase in combination with the sale of call options on U.S. Treasury Securities (a "Zero Cost Collar"), (iv) transactions involving the purchase or sale, including short sales, of U.S. Treasury Securities, or (v) some combination of a Forward Sale, Put Options Purchase, Zero Cost Collar and/or other derivative or cash transactions, including, but not limited to locks, caps and collars, appropriate for the Anticipatory Hedges. Anticipatory Hedges may be executed on-exchange ("On-Exchange Trades") with brokers through the opening of futures and/or options positions publicly traded, the opening of over-the-counter positions with one or more counterparties ("Off-Exchange Trades"), or a combination of On-Exchange Trades and Off-Exchange Trades. NU will determine the optimal structure of each Anticipatory Hedge transaction at the time of execution. NU may decide to lock in interest rates and/or limit its exposure to interest rate increases. NU represents that each Interest Rate Hedge and Anticipatory Hedge will qualify for hedge accounting treatment under generally acceptable accounting practices. NU will also comply with the then existing financial disclosure requirements of the Financial Accounting Standards Board associate with hedging transactions.

III. Use of Proceeds

NU will use the proceeds from these financings for general corporate purposes, including (a) investments in its regulated utility companies, (b) investments in EWGs, FUCOs, Rule 58 Subsidiaries, ETCs and other competitive companies, (c) the repayment, redemption, refunding or purchase by NU of its own securities, (d) financing working capital requirements of NU and its subsidiaries, and (e) other corporate purposes.

Ameren Corp. et al. (70–10106)

Ameren Corporation ("Ameren"), a registered holding company under the Act, 1901 Chouteau Avenue, St. Louis, Missouri 63103; the following direct and indirect subsidiaries of Ameren, also at 1901 Chouteau Avenue, St. Louis, Missouri 63103: Union Electric Company, d/b/a AmerenUE ("AmerenUE"), an electric and gas utility company, Ameren Services Company ("Ameren Services"), a service company subsidiary, Ameren Energy, Inc., Ameren ERC, Inc., Ameren Energy Marketing Company, Ameren Energy Fuels and Services Company, and AFS Development Company, LLC, all of which are "energy-related companies" within the meaning of rule 58 under the Act, Ameren Development Company and Ameren Energy Resources Company, which are intermediate non-utility holding companies, Ameren Energy Development Company and Ameren Energy Generating Company, which are "exempt wholesale generators" ("EWGs") within the meaning of section 32 of the Act, Ameren Energy Communications, Inc., an "exempt telecommunications company" within the meaning of section 34 of the Act, Illinois Materials Supply Co., an "enterprise zone" company formed to purchase goods and equipment for Ameren's EWG subsidiaries, and Union Electric Development Company, a wholly-owned non-utility subsidiary of AmerenUE that engages in various energy-related businesses and invests in affordable housing projects; Central Illinois Public Service Company d/b/a AmerenCIPS ("AmerenCIPS"), an electric and gas utility subsidiary of Ameren, and its wholly-owned non-utility subsidiary, CIPSCO Investment Company, which invests in, among other things, affordable housing projects, at 607 East Adams Street, Springfield, Illinois 62739; CILCORP Inc. ("CILCORP"), an exempt holding company and formerly a direct wholly-owned subsidiary of The AES Corporation ("AES"), at 300 Liberty Street, Peoria, Illinois 61602, an exempt holding company under section 3(a)(5) of the Act; [2] the following direct and indirect subsidiaries of CILCORP, also at 300 Liberty Street, Peoria, Illinois 61602: Central Illinois Light Company ("CILCO"), an electric and gas utility company, Central Illinois Generation, Inc. ("CIGI"), an EWG formed by CILCO to acquire substantially all of CILCO's generating assets, CILCORP Investment Management, Inc., which, through subsidiaries manages CILCORP's investments in equipment leases, affordable housing projects and non-regulated independent power projects, CILCORP Ventures, Inc., which through its subsidiary, CILCORP Energy Services, Inc., provides energy-related services and products, QST Enterprises, Inc., which through subsidiaries provides energy and related services in non-regulated retail and wholesale markets, including utility operations and management services to industrial customers of CILCO, and CILCO's wholly-owned non-utility subsidiaries, CILCO Exploration and Development Company and CILCO Energy Corporation, which are engaged in, respectively, exploration and development of gas and oil and other mineral resources and research and development activities relating to new sources of energy; and AES Medina Valley Cogen (No. 4), L.L.C. ("AES Medina Valley"), a limited liability company formerly owned by the AES Corporation ("AES"), its direct and indirect wholly-owned non-utility subsidiaries, AES Medina Valley Cogen (No. 2), an intermediate non-utility subsidiary, and AES Medina Valley Cogen, L.L.C., an EWG, and AES Medina Valley Operations, L.L.C., which provides operating services to AES Medina Valley Cogen, L.L.C., at P.O. Box 230, Mossville, Illinois 61552–0230 (the foregoing companies herein referred to collectively as the "Applicants"), have filed an application-declaration ("Application") under sections 6(a), 7, 9(a)(1), 9(c)(3), 10, 12(b), 12(c) and 12(f) of the Act and rules 40, 43, 45 and 54 under the Act.

In a separate proceeding (File No. 70–10078), Ameren received authorization [3] under sections 9(a)(1) and 10 of the Act to acquire from AES all of the issued and outstanding common stock of CILCORP. As explained in that proceeding, CILCO intends to transfer substantially all of its generating assets to CIGI prior to or following Ameren completes its acquisition of CILCORP. Following the acquisition of CILCORP, Ameren will cause CIGI to relinquish EWG status. Thus, Ameren is treating CIGI as an "electric utility company" under the Act both for purposes of File No. 70–10078 and this proceeding.

1. Current Authorization

By order dated March 13, 1998 [4] ("1998 Financing Order"), AmerenUE and AmerenCIPS are currently authorized for the period through February 27, 2003, to issue and sell commercial paper and to establish credit lines and issue notes thereunder evidencing unsecured short-term borrowings ("Short-term Debt"). AmerenUE is authorized to issue up to $575 million of commercial paper at any one time outstanding and borrow up to $425 million under credit lines. AmerenCIPS is authorized to issue up to $125 million of commercial paper at any one time outstanding and borrow up to $125 million under credit lines. Under the 1998 Financing Order, AmerenUE and AmerenCIPS were also authorized to enter into interest rate hedging

[2] *See* HCAR Nos. 27063 (Aug. 20, 1999) and 27363 (March 23, 2001).

[3] *See* HCAR No. 27645 (Jan. 29, 2003) ("CILCORP Acquisition Order").

[4] See Ameren Corporation, *et al.*, HCAR No. 26841 (Mar. 13, 1998).

instruments with respect to outstanding indebtedness of those companies.

By order dated March 22, 1999, in File No. 70–9423 (the "Money Pool Order"),[5] Ameren was authorized to establish and fund loans to AmerenUE, AmerenCIPS and Ameren Services through the Ameren Corporation System Utility Money Pool Agreement (the "Utility Money Pool") in order to provide for the short-term cash and working capital needs of these companies.[6] Further, to the extent not exempt under rule 52, AmerenUE, AmerenCIPS, and Ameren Services are authorized to make borrowings from and extend credit to each other pursuant to the Utility Money Pool. Ameren may not make borrowings under the Utility Money Pool. AmerenUE is authorized to borrow up to $500 million at any one time outstanding under the Utility Money Pool.[7]

Ameren states that it also maintains and funds loans to certain of its non-utility subsidiaries pursuant to the Ameren Corporation System Amended and Restated Non-Utility Money Pool Agreement (the "Non-Utility Money Pool") in order to provide for the short-term cash and working capital requirements of these subsidiaries.

2. Requested Authorization

The Applicants request authorization for the period through March 31, 2006 (the "Authorization Period"), (1) to extend and restate the external short-term financing and interest rate hedging authorization of AmerenUE and AmerenCIPS under the 1998 Financing Order, (2) to extend and continue the Utility Money Pool and Non-Utility Money Pool (to be re-designated as the "Non-Regulated Subsidiary Money Pool") arrangements,[8] and (3) following Ameren's acquisition of CILCORP, to add CILCO as a participant in the Utility Money Pool and CILCORP, CIGI, certain non-utility subsidiaries of CILCORP (as identified below), and AES Medina Valley and its direct and indirect non-utility subsidiaries as participants in the Non-Regulated Subsidiary Money Pool, in each case subject to all of the existing terms, conditions and limitations of the money pool agreements. Ameren states that it is not requesting any new financing authority in this proceeding.

3. Proposed Sale of Short-Term Debt

Specifically, AmerenUE and AmerenCIPS propose to issue and sell from time to time during the Authorization Period Short-term Debt in an aggregate principal amount at any time outstanding not to exceed, when added to any borrowings by such companies under the Utility Money Pool, $1 billion in the case of AmerenUE and $250 million in the case of AmerenCIPS. Short-term Debt may include commercial paper notes, bank notes, and other forms of short-term indebtedness. All Short-term Debt will have maturities of less than one year from the date of issuance and will be unsecured.

It is stated that the commercial paper will be sold in established domestic or European commercial paper markets. That commercial paper would typically be sold to dealers at the discount rate per annum prevailing at the date of issuance for commercial paper of comparable quality and maturities sold to commercial paper dealers generally. It is expected that the dealers acquiring the commercial paper will reoffer it at a discount to corporate, institutional and, with respect to European commercial paper, individual investors. It is anticipated that the commercial paper will be reoffered to investors such as commercial banks, insurance companies, pension funds, investment trusts, foundations, colleges and universities, finance companies and nonfinancial corporations.

AmerenUE and AmerenCIPS also propose to establish and maintain back-up credit facilities and other credit facilities with banks or other financial institutions to support their commercial paper programs and other credit and/or borrowing facilities generally available to borrowers with comparable credit ratings as they may deem appropriate in light of their needs and existing market conditions providing for revolving credit or other loans and having commitment periods not longer than the Authorization Period. Only the amounts drawn and outstanding under these agreements and facilities will be counted against the proposed limits on Short-term Debt.

The effective cost of money on all Short-term Debt will not exceed at the time of issuance the greater of (i) 300 basis points over the six-month London Interbank Offered Rate (LIBOR), or (ii) a gross spread over six-month LIBOR that is consistent with similar securities of comparable credit quality and maturities issued by other companies. Issuance expenses in connection with any non-competitive offering of Short-term Debt may not exceed 5% of the principal amount.

4. Proposed Interest Rate Hedges

AmerenUE and AmerenCIPS also request authorization to enter into interest rate hedging transactions with respect to outstanding indebtedness ("Interest Rate Hedges"), subject to certain limitations and restrictions, in order to reduce or manage the effective interest rate cost. Interest Rate Hedges would only be entered into with counterparties ("Approved Counterparties") whose senior debt ratings, or the senior debt ratings of any credit support providers who have guaranteed the obligations of such counterparties, as published by S&P, are equal to or greater than BBB, or an equivalent rating from Moody's or Fitch. In addition, AmerenUE and AmerenCIPS request authorization to enter into interest rate hedging transactions with respect to anticipated debt offerings (the "Anticipatory Hedges"), subject to certain limitations and restrictions. Those Anticipatory Hedges would only be entered into with Approved Counterparties, and would be utilized to fix the interest rate and/or limit the interest rate risk associated with any new issuance of debt.

It is stated that each Interest Rate Hedge and Anticipatory Hedge will qualify for hedge accounting treatment under the current Financial Accounting Standards Board ("FASB") guidelines in effect and as determined at the time entered into. Further, the applicants will comply with the Statement of Financial Accounting Standards ("SFAS") 133 ("Accounting for Derivatives Instruments and Hedging Activities") and SFAS 138 ("Accounting for Certain Derivative Instruments and Certain Hedging Activities") or other standards relating to accounting for derivative transactions as are adopted and implemented by the FASB.

5. Utility Money Pool

Ameren, AmerenUE, AmerenCIPS, and Ameren Services seek authorization to continue their participation in the Utility Money Pool, subject to all of the terms, conditions and limitations set forth in the Money Pool Order. AmerenUE requests authority to borrow up to $500 million at any time outstanding under the Utility Money Pool. Ameren will continue to participate in the Utility Money Pool as a lender only and may not make any

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[5] See Ameren Corporation, *et al.*, HCAR No. 26993 (Mar. 22, 1999).

[6] Funds advanced by Ameren to the Utility Money Pool are derived from commercial paper sales and other short-term borrowings by Ameren previously authorized in File No. 9877, as well as surplus funds in the treasury of Ameren.

[7] Borrowings by AmerenCIPS under the Utility Money Pool have been approved by the Illinois Commerce Commission ("ICC") and are therefore exempt under rule 52(a). Borrowings by Ameren Services are exempt under rule 52(b).

[8] In the CILCORP Acquisition Order, CILCORP, CILCO and CIGI have been authorized to issue short-term and long-term securities and to engage in interest rate hedging transactions through March 31, 2006.

borrowings from or receive any extension of credit through the Utility Money Pool. In addition, CILCO proposes to become a participant in the Utility Money Pool upon becoming a subsidiary of Ameren, subject to receiving approval from the Illinois Commerce Commission.

Ameren will continue to fund loans to Utility Money Pool participants with the proceeds of commercial paper sales and other short-term borrowings by Ameren previously authorized by the Commission, as well as Surplus funds in the treasury of Ameren. Ameren is not requesting any new financing authority in this proceeding.

In accordance with the terms and provisions of the Utility Money Pool, funds will be available from the following sources for short-term loans to AmerenUE, AmerenCIPS, CILCO and Ameren Services, from time to time: (1) Surplus funds in the treasuries of AmerenUE, AmerenCIPS, CILCO and Ameren Services, (2) surplus funds in the treasury of Ameren, and (3) proceeds from bank borrowings and the sale of commercial paper by Ameren, AmerenUE, AmerenCIPS, CILCO and Ameren Services ("External Funds"). Funds will be made available from such sources in such other order as Ameren Services, as administrator of the Utility Money Pool, may determine would result in a lower cost of borrowing, consistent with the individual borrowing needs and financial standing of the companies providing funds to the Utility Money Pool.

Utility Money Pool participants that borrow will borrow *pro rata* from each company that lends, in the proportion that the total amount loaned by each such lending company bears to the total amount then loaned through the Utility Money Pool. On any day when more than one fund source (*e.g.*, surplus treasury funds of Ameren and other Utility Money Pool participants ("Internal Funds") and External Funds), with different rates of interest, is used to fund loans through the Utility Money Pool, each borrower will borrow *pro rata* from each such fund source in the Utility Money Pool in the same proportion that the amount of funds provided by that fund source bears to the total amount of short-term funds available to the Utility Money Pool.

If only Internal Funds are available in the Utility Money Pool, the interest rate applicable to loans of those Internal Funds will be the CD yield equivalent of the 30-day Federal Reserve "AA" Non-Financial commercial paper composite rate (or if no such rate is established for that day, then the applicable rate would be the rate for the next preceding day for which such rate was established). If only External Funds are available in the Utility Money Pool, the interest rate applicable to loans of those External Funds will be equal to the lending company's cost for those External Funds (or, if more than one Utility Money Pool participant had made available External Funds on such day, the applicable interest rate will be a composite rate equal to the weighted average of the cost incurred by the respective Utility Money Pool participants for those External Funds). In cases where both Internal Funds and External Funds are concurrently borrowed through the Utility Money Pool, the rate applicable to all loans comprised of such "blended" funds will be a composite rate equal to the weighted average of (a) the cost of all Internal Funds contributed by Utility Money Pool participants (as determined pursuant to the second preceding paragraph above) and (b) the cost of all such External Funds (as determined pursuant to the immediately preceding paragraph above).

6. Non-Regulated Subsidiary Money Pool

Ameren also proposes to continue to maintain and fund loans to certain of its non-utility subsidiaries and, following the acquisition of CILCORP and AES Medina Valley, to CILCORP, AES Medina Valley and certain of CILCORP's current direct and indirect non-utility subsidiaries, in accordance with a new Non-Regulated Subsidiary Money Pool Agreement. As is the case with the current Non-Utility Money Pool, Ameren will participate in the Non-Regulated Subsidiary Money Pool solely as a lender and may not make any borrowings from or receive any extension of credit through the Non-Regulated Subsidiary Money Pool. CILCORP also proposes to participate in the Non-Regulated Subsidiary Money Pool as a lender only and will not be permitted to make borrowings from or receive any extension of credit through the Non-Regulated Subsidiary Money Pool. Ameren Services will participate in the Non-Regulated Subsidiary Money Pool (as it currently does in the Non-Utility Money Pool) solely as a borrower.

CIGI also proposes to become a participant in the Non-Regulated Subsidiary Money Pool. It is stated that, although CIGI will be an "electric utility company" under the Act once it relinquishes EWG status, for purposes of state regulation in Illinois, CIGI will be considered to be a "non-regulated" affiliate of CILCO and therefore cannot participate in the Utility Money Pool. CIGI is requesting authorization to borrow up to $250 million at any time outstanding under the Non-Regulated Subsidiary Money Pool. The interest rate payable on borrowings from and loans to the Non-Regulated Subsidiary Money Pool and the allocation of fees and investment income to participants will be determined in the same manner described above in connection with the Utility Money Pool.

Accordingly, the following direct and indirect subsidiaries of Ameren will be participants in the Non-Regulated Subsidiary Money Pool: Ameren Services (solely as a borrower), Ameren Development Company, Ameren ERC, Inc., Ameren Energy Communications, Inc., Ameren Energy Resources Company, Ameren Energy Development Company, Ameren Energy Generating Company, Ameren Energy Fuels and Services Company, AFS Development Company, LLC, Illinois Materials Supply Co., Union Electric Development Corporation, CIPSCO Investment Company, CILCORP (solely as a lender), CIGI, CILCORP Investment Management Inc., CILCORP Ventures Inc., CILCORP Energy Services Inc., QST Enterprises Inc., CILCO Exploration and Development Company, CILCO Energy Corporation, AES Medina Valley, AES Medina Valley Cogen (No. 2), L.L.C., AES Medina Valley Cogen, L.L.C., and AES Medina Valley Operations, L.L.C.

The Commission is requested to reserve jurisdiction over the participation in the Non-Regulated Subsidiary Money Pool of any other direct or indirect, current or future, non-utility subsidiary of Ameren.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–2947 Filed 2–5–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–25921]

Notice of Applications for Deregistration Under Section 8(f) of the Investment Company Act of 1940

January 31, 2003.

The following is a notice of applications for deregistration under section 8(f) of the Investment Company Act of 1940 for the month of January, 2003. A copy of each application may be obtained for a fee at the SEC's Public Reference Branch, 450 Fifth St., NW.,

Washington, DC 20549–0102 (tel. (202) 942–8090). An order granting each application will be issued unless the SEC orders a hearing. Interested persons may request a hearing on any application by writing to the SEC's Secretary at the address below and serving the relevant applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on February 25, 2003, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549–0609. For Further Information Contact: Diane L. Titus at (202) 942–0564, SEC, Division of Investment Management, Office of Investment Company Regulation, 450 Fifth Street, NW., Washington, DC 20549–0506.

North American Funds [File No. 811–5797]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On November 14, 2001, applicant transferred its assets to SunAmerica Strategic Investment Series, Inc., SunAmerica Style Select Series, Inc., SunAmerica Income Funds, SunAmerica Equity Funds, and SunAmerica Money Market Funds, Inc., based on net asset value. Expenses of $5,808,000 incurred in connection with the reorganization were paid by SunAmerica Asset Management Corp., investment adviser to the acquiring funds.

Filing Dates: The application was filed on October 25, 2002, and amended on January 8, 2003, and January 29, 2003.

Applicant's Address: 286 Congress Street, Boston, MA 02210.

Kala Investment Corp. [File No. 811–3311]

Summary: Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. On October 29, 2001, applicant transferred its assets to Pitcairn Tax-Exempt Bond Fund, based on net asset value. Expenses of $46,221 incurred in connection with the reorganization were paid by applicant.

Filing Date: The application was filed on January 24, 2003.

Applicant's Address: 225 West 34th St., New York, NY 10122.

ATC Funds, Inc. [File No. 811–8617]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On November 27, 2002, applicant made a liquidating distribution to its shareholders, based on net asset value. Expenses of $22,440 incurred in connection with the liquidation were paid by Avalon Trust Company, applicant's investment adviser.

Filing Date: The application was filed on January 17, 2003.

Applicant's Address: 125 Lincoln Ave., Suite 100, Santa Fe, NM 87501–2052.

One Fund, Inc. [File No. 811–6675]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On November 15, 2002, applicant made a liquidating distribution to its shareholders based on net asset value. Expenses of approximately $5,000 incurred in connection with the liquidation were paid by applicant.

Filing Dates: The application was filed on January 15, 2003, and amended on January 28, 2003.

Applicant's Address: One Financial Way, Cincinnati, OH 45242.

East West Securities Company, Inc. [File No. 811–10029]

Summary: Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. On December 30, 2002, applicant made a liquidating distribution to its shareholder, based on net asset value. Expenses of $3,000 incurred in connection with the liquidation were paid by East West Bank.

Filing Date: The application was filed on January 8, 2003.

Applicant's Address: 415 Huntington Dr., San Marino, CA 91108.

Snoqualmie Asset Fund, Inc. [File No. 811–10087]

Summary: Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. On December 31, 2002, applicant made a liquidating distribution to its shareholders, based on net asset value. Expenses of $14,000 incurred in connection with the liquidation were paid by Marion Holdings, Inc.

Filing Date: The application was filed on January 2, 2003.

Applicant's Address: 1201 Third Ave., WMT 1706, Seattle, WA 98101.

Broadway Street Pooled Trust Preferred Fund A [File No. 811–9771]

Summary: Applicant, a closed-end investment company, seeks and order declaring that it has ceased to be an investment company. Applicant has never made a public offering of its securities and does not propose to make a public offering or engage in business of any kind.

Filing Dates: The application was filed on November 26, 2002, and amended on December 20, 2002.

Applicant's Address: 501 North Broadway, St. Louis, MO 63102.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–2830 Filed 2–5–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: [68 FR 5058, January 31, 2003].

STATUS: Closed meeting.

PLACE: 450 Fifth Street, NW., Washington, DC.

DATE AND TIME OF PREVIOUSLY ANNOUNCED MEETING: Wednesday, February 5, 2003 at 2:30 p.m.

CHANGE IN THE MEETING: Additional item.

The following item has been added to the Closed Meeting scheduled for Wednesday, February 5, 2003: amicus consideration.

Commissioner Goldschmid, as duty officer, determined that Commission business required the above change and that no earlier notice thereof was possible.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: The Office of the Secretary at (202) 942–7070.

Dated: February 4, 2003.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–3117 Filed 2–4–03; 4:04 pm]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47293; File No. SR–ISE–2002–19]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by International Securities Exchange, Inc., Relating to Rules Governing the Intermarket Linkage, and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 1 Thereto

January 31, 2003.

I. Introduction

On September 24, 2002, the International Securities Exchange, Inc. ("ISE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] and rule 19b–4 thereunder,[2] a proposed rule change to adopt new Chapter 19 of its rules, governing the operation of the intermarket linkage (the "Linkage"). The proposed rule change was published for comment in the **Federal Register** on December 26, 2002.[3] The Commission received no comments on the proposed rule change. On January 28, 2003, the Exchange filed Amendment No. 1 to the proposed rule change.[4] This order approves the proposed rule change, provides notice of filing of Amendment No. 1 and grants accelerated approval to Amendment No. 1.

II. Description of Proposal

In general, the proposed rules contain relevant definitions, establish the conditions pursuant to which market makers may enter Linkage orders, impose obligations on the Exchange regarding how it must process incoming Linkage orders, and establish a general standard that members should avoid trade-throughs.[5] The proposed rules establish potential regulatory liability for members who engage in a pattern or practice of trading through other exchanges, whether or not the exchanges traded through participate in the Linkage, provide procedures to unlock and uncross markets, and codify the "80/20 Test" contained in section 8(b)(iii) of the Plan for the Purpose of Creating and Operating an Intermarket Options Linkage (the "Plan"),[6] which provides that a market maker on an Exchange would be restricted from sending principal orders (other than P/A orders, which reflect unexecuted customer orders) through the Linkage if the market maker effects less than 80 percent of specified order flow on the Exchange. The proposed rule change also establishes a fee, which will apply to Principal Orders and Principal Acting as Agent Orders. These fees are the same fees applicable to ISE market makers.

III. Discussion

The Commission has reviewed the ISE's proposed rule change and finds that the proposal is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange,[7] and with the requirements of section 6(b).[8] In particular the Commission finds that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest in accordance with section 6(b)(5) of the Act.[9] The Commission also finds that the proposed fee change is consistent with section 6(b)(4) of the Act[10] in that it represents an equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities.

The Commission believes that the rules proposed by the ISE will adequately govern the operation of the Linkage as envisioned in the Plan. The Commission believes that these rules will help to ensure that the Linkage is operated fairly and effectively, in accordance with the principles of the Act and the Plan.

The Commission also finds good cause for approving proposed Amendment No. 1 prior to the 30th day after the date of publication of notice of filing thereof in the **Federal Register**. Amendment No. 1 proposes several changes to the Exchange's original proposal that are designed to conform the Exchange's rules governing linkage more closely to the Plan. The provisions of the Plan have already been subject to notice and comment, and have been approved by the Commission. The changes proposed in Amendment No. 1 do not raise any novel regulatory issues, and therefore, it is appropriate for the Commission to accelerate approval of Amendment No. 1.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 1 to the proposed rule change, including whether Amendment No. 1 is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to Amendment No. 1 between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR-ISE–2002–19 and should be submitted by February 27, 2003.

V. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[11] that the proposed rule change (SR–ISE–2002–19), be, and hereby is, approved, and that Amendment No. 1 to the proposed

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 47029 (December 18, 2002), 67 FR 78834.

[4] *See* letter from Michael J. Simon, Senior Vice President and General Counsel, ISE, to Nancy J. Sanow, Assistant Director, Division of Market Regulation, Commission, dated January 27, 2003 ("Amendment No. 1"). In Amendment No. 1, the Exchange proposed to amend: (1) The definition of "Linkage Order" contained in ISE rule 1900 to state that such orders are immediate or cancel orders; (2) ISE rule 1901 to clarify when members may send linkage orders when markets are non-firm; (3) ISE rule 1901 to include a provision regarding mitigation of damages; (4) ISE rule 1902 to clarify language regarding liability for trade-throughs at the end of the trading day and to request approval of this provision only for a one-year pilot period; and (5) ISE rule 1902 to clarify that members may not engage in a pattern or practice of trading through.

[5] Trade-throughs occur when broker-dealers execute customer orders on one exchange at prices inferior to another exchange's disseminated quote.

[6] Approved by the Commission in Securities Exchange Act Release No. 43086 (July 28, 2000), 65 FR 48023 (August 4, 2000), as subsequently amended. *See* Securities Exchange Act Release No. 44482 (June 27, 2001), 66 FR 35470 (July 5, 2001) ("Initial Amendment Order") and Securities Exchange Act Release No. 46001 (May 30, 2002), 67 FR 38687 (June 5, 2002); 47274 (January 29, 2003); and 47298 (January 31, 2003).

[7] In approving this rule proposal, the Commission notes that it has also considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78f(b)(4).

[11] 15 U.S.C. 78s(b)(2).

rule change be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–2949 Filed 2–5–03; 8:45 am]

BILLING CODE 8010–01–U

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47302; File No. SR–NASD–2002–174]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by National Association of Securities Dealers, Inc., Relating to Increasing Dissemination of Debt Securities Transaction Information Under the TRACE Rules

January 31, 2003.

I. Introduction

On December 6, 2002, the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("SEC" or "Commission") a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder[2] to amend the Rule 6200 Series of the Rules of NASD, which provides for the reporting and dissemination of transaction information in eligible corporate debt securities ("TRACE Rules"). The proposed rule change would provide additional transparency in the corporate bond market by increasing the categories of TRACE-eligible securities for which transaction information is required to be disseminated. NASD amended the proposed rule change on December 18, 2002.[3] Notice of the proposed rule change and Amendment No. 1 thereto was published for comment in the **Federal Register** on December 27, 2002.[4] The Commission received two comment letters regarding the proposal.[5]

This order approves the proposed rule change as amended by Amendment No. 1.

II. Background

On January 23, 2001, the Commission approved the TRACE Rules to establish a corporate bond trade reporting and transaction dissemination facility and to eliminate Nasdaq's Fixed Income Pricing System ("FIPS").[6] Subsequently, on March 5, 2001, the Commission approved amendments to the TRACE Rules requiring trade reports in transactions between two NASD members to be filed by each member.[7] In addition, on January 3, 2002, the Commission issued a notice stating that certain other amendments to the TRACE Rules had become effective on filing.[8] On June 28, 2002, the Commission approved a proposed rule change to establish fees for the use of TRACE on a pilot basis for six months,[9] and also approved proposed amendments to the TRACE Rules to make technical changes to the TRACE Rules and clarify certain provisions of those Rules prior to implementation of TRACE.[10]

The TRACE Rules became effective on July 1, 2002. On that day, members began to report transactions in TRACE-eligible securities, and the TRACE system began the dissemination of certain reported information. On November 22, 2002, the Commission issued a notice stating that NASD was reducing certain TRACE fees for the fourth quarter of 2002.[11] On December 19, 2002, the Commission issued a notice stating that an extension of the pilot program for TRACE fees to February 28, 2002 and a modification of the pilot effective January 1, 2003 had become effective on filing.[12]

III. Description of the Proposal

NASD is proposing to amend: (1) NASD Rule 6250 to provide for the dissemination of transaction information on additional Investment Grade TRACE-eligible securities under the NASD Rule 6200 Series (also known as the Trade Reporting and Compliance Engine ("TRACE") Rules);[13] (2) NASD Rule 6210(e) to include the term "customer" in the defined term, "party to the transaction'; (3) NASD Rule 6260 to make minor clarifications; and, (4) in the provisions referenced in (1) through (3) above, to delete the term "Association" and to replace it with "NASD." These amendments are discussed in greater detail in the Commission's notice soliciting public comment on this proposal.[14]

In Amendment No. 1, NASD deleted proposed changes to NASD Rule 6230 and NASD Rule 9610(a) that would have allowed members to request exemptive relief from NASD Rule 6230.

IV. Discussion

After careful consideration, the Commission finds that the proposed rule change, as amended by Amendment No. 1, is consistent with the Act and the rules and regulations promulgated thereunder applicable to a registered securities association and, in particular, with the requirements of Section 15A(b)(6).[15] Specifically, the Commission finds that approval of the proposed rule change is consistent with Section 15A(b)(6) of the Act in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and in general, to protect investors and the public interest.[16]

The Commission believes that the proposed rule change will substantially increase the amount of information available to the public and market participants about the corporate debt markets and will clarify other TRACE Rule provisions. NASD stated that if the proposed rule change is approved, over 4,000 TRACE-eligible securities will be

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[12] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Barbara Z. Sweeney, Senior Vice President and Corporate Secretary, NASD, to Katharine A. England, Assistant Director, Division of Market Regulation, SEC, dated December 18, 2002, and enclosures ("Amendment No. 1"). In Amendment No. 1, NASD deleted proposed changes to NASD Rule 6230 and NASD Rule 9610(a) that would have allowed members to request exemptive relief from NASD Rule 6230.

[4] *See* Securities Exchange Act Release No. 47057 (December 19, 2002), 67 FR 79210.

[5] *See* letter from John M. Ramsay, Vice President and Senior Regulatory Counsel, The Bond Market Association ("TBMA"), to Jonathan G. Katz, Secretary, SEC, dated January 16, 2003 ("TBMA's Letter") and letter from Rene L. Robert, President and CEO, Advantage Data, Inc., to Secretary, SEC, dated January 10, 2003 ("Advantage Data's Letter"). TBMA's Letter and Advantage Data's Letter are described in Section IV, *infra*.

[6] *See* Securities Exchange Act Release No. 43873 (January 23, 2001), 66 FR 8131 (January 29, 2001) (File No. SR–NASD–1999–65). FIPS, which was operated by Nasdaq, collected transaction and quotation information on domestic, registered, non-convertible high-yield corporate bonds.

[7] *See* Securities Exchange Act Release No. 44039 (March 5, 2001), 66 FR 14234 (March 9, 2001) (File No. SR–NASD–2001–04).

[8] *See* Securities Exchange Act Release No. 45229 (January 3, 2002), 67 FR 1255 (January 9, 2002) (File No. SR–NASD–2001–91).

[9] *See* Securities Exchange Act Release No. 46145 (June 28, 2002), 67 FR 44911 (July 5, 2002) (File No. SR–NASD–2002–63).

[10] *See* Securities Exchange Act Release No. 46144 (June 28, 2002), 67 FR 44907 (July 5, 2002) (File No. SR–NASD–2002–46).

[11] *See* Securities Exchange Act Release No. 46893 (November 22, 2002), 67 FR 72008 (December 3, 2002) (SR–NASD–2002–167).

[12] *See* Securities Exchange Act Release No. 47056 (December 19, 2002), 67 FR 79205 (December 27, 2002) (File No. SR–NASD–2002–176).

[13] The terms "Investment Grade" and "TRACE-eligible security" are defined in TRACE Rule 6210, Definitions, in paragraphs (h) and (a), respectively.

[14] *See supra*, note 4.

[15] 15 U.S.C. 78o–3(b)(6).

[16] In approving this proposed rule change, the Commission has considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

subject to dissemination under NASD Rule 6250, which represents approximately 75% of the current average daily trading volume of Investment Grade TRACE-eligible securities.[17] The proposed rule change substantially exceeds the anticipated increase in dissemination in the second phase of TRACE, "Phase II," described in the original regulatory scheme approved by the SEC.[18] In addition, the proposed amendments are crafted to disseminate transactions in a diverse test group of 90 of the lowest rated Investment Grade TRACE-eligible debt securities to obtain additional empirical data about the impact that dissemination may have on the liquidity of a market or a market sector.

In NASD Rule 6210(e), NASD is proposing to add the term, "customer," to the defined term, "party to the transaction." Under the TRACE Rules, a non-NASD-member customer of a broker-dealer, when buying or selling a security, is considered a "party to the transaction." In addition, for purposes of the Rule, "customer" includes a broker-dealer that is not an NASD member.[19] NASD believes, and the Commission agrees, that NASD Rule 6210(e) would be clearer if the term "customer" is included in the definition of "party to the transaction," and the Rule clearly states that broker-dealers that are not NASD members are included in the term "customer."

As previously noted, the Commission received two comment letters, from TBMA and Advantage Data, on the proposed rule change.[20] Although TBMA generally supported the latest amendments, it proposed one change. TBMA noted that as the proposal was originally filed by NASD with the Commission, it provided that NASD could exempt a member from particular provisions of the TRACE rules for good cause shown, pursuant to NASD's Rule 9600 Series. NASD later amended the proposal to delete this provision. TBMA requested that the exemptive provision be reinstated. After considering TBMA's Letter, the Commission believes that the absence of exemptive authority with respect to TRACE reporting does not make these rules inconsistent with the statute.

Advantage Data's Letter raised a number of specific concerns, including concerns about NASD's mandated use of CUSIP data in TRACE reporting, the ongoing review of NASD's handling of TRACE reporting, the implementation of a permanent fee structure for TRACE, certain delays in disseminating TRACE information and the ownership of derived data. Advantage Data states that vendors and investors should be able to receive TRACE information without having to receive CUSIP data licensed by Standard & Poor's Corporation, and that Advantage Data would like to be allowed to receive TRACE information without receiving CUSIP data via a redistribution vendor. However, the proposal does not appear to prohibit redistribution vendors from removing CUSIP data from the BTDS (TRACE) data feed and providing TRACE data to users and other vendors without the requirement to have a CUSIP subscription.

Advantage Data's Letter also contends that the proposed BTDS Vendor Agreement currently requires a four-hour delay for disseminating delayed TRACE information and that the NASD claims ownership of the TRACE information and "any derivation thereof" in the proposed Vendor Agreement. These concerns relate to the vendor agreements rather than to the TRACE Rules. The TRACE vendor agreements were not included as part of this filing. Therefore, the Commission is not approving or disapproving the vendor agreements.

The Commission does consider concerns raised in comments about the vendor agreements in determining whether the proposed rules will operate in a manner consistent with the statute. The Commission does not believe that the impact of the vendor agreement provisions challenged by Advantage Data on the operation of the rules is sufficient to make the proposed rules inconsistent with the statute. The CUSIP license requirement is a relatively narrow limitation on receipt of the data.[21] The dissemination delay and ownership assertions are ancillary to the TRACE service proposed in the filing, with little collateral effect on its operation.

Advantage Data's Letter further states that it does not believe that the TRACE fee structure should be made permanent because it expects that the fees collected by NASD will dramatically increase in the years to come. This proposal does not address the TRACE permanent fee structure. Finally, Advantage Data's Letter raised questions about NASD's ongoing handling of TRACE. The Commission expects to continue its review of NASD's operation of TRACE in the context of future proposed rule filings filed by NASD as well as the Commission's ongoing oversight of NASD as a self-regulatory organization.

V. Conclusion

For the reasons discussed above, the Commission finds that the proposal is consistent with the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (SR–NASD–2002–174), as amended, be and hereby is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[22]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–2945 Filed 2–5–03; 8:45 am]

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[17] Trading volume is the total par value of all Investment Grade TRACE-eligible securities traded (and reported) each day.

[18] *See* Securities Exchange Act Release No. 43873 (January 23, 2001); 66 FR 8131 (January 29, 2001) ("Approval Order"). In the Approval Order, the SEC approved NASD Rule 6250, which provided that initially, transaction information on publicly offered, Investment Grade bonds with an initial issuance size of $1 billion or greater, and the FIPS 50, would be distributed immediately. The SEC also discussed NASD's plans to phase in the dissemination of additional securities. Under the phase-in schedule, the Bond Transaction Reporting Committee ("BTRC"), an advisory committee of industry representatives, was to advise the NASD Board of Governors regarding liquidity issues. By the end of Phase I, the BTRC was obligated to recommend to the NASD Board "dissemination protocols for investment grade bonds, starting with the largest issuance size, that, when combined together, make up the top 50% (by dollar volume) of such bonds." 66 FR 8131, 8134. Dissemination of these securities was to begin in Phase II. File No. SR–NASD–99–65.

[19] NASD Rule 0120(g) provides generally that the term "customer" shall not include a broker or dealer.

[20] *See supra,* note 5.

[21] Of course, if the vendor agreements are viewed by commenters as creating an unreasonable denial of access to TRACE services, that claim can be raised in a review process under Section 19(d) of the Act. 15 U.S.C. 78s(d).

[22] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47300; File No. SR–NASD–2003–10]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by National Association of Securities Dealers, Inc. To Eliminate SuperMontage Fees for Cancellation and Cancel/Replace of Quotes/Orders

January 31, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 30, 2003, the National Association of Securities Dealers, Inc. ("NASD"),

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

through its subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. Nasdaq has designated this proposal as one establishing or changing a due, fee or other charge imposed by the self-regulatory organization under Section 19(b)(3)(A)(ii) of the Act [3] and Rule 19b–4(f)(2) thereunder,[4] which renders the rule effective upon Commission receipt of this filing. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

Nasdaq proposes to eliminate certain of the fees for the cancellation and cancel/replace of Quotes/Orders in Nasdaq's SuperMontage system. Nasdaq will implement the rule change on February 3, 2003.

The text of the proposed rule change is below. Proposed new language is in italics; proposed deletions are in brackets.

* * * * *

Rule 7010. System Services

(a)–(h) No change.

(i) Nasdaq National Market Execution System (SuperMontage)

The following charges shall apply to the use of the Nasdaq National Market Execution System (commonly known as SuperMontage) by members:

Order Entry	
Non-Directed Orders (excluding Preferenced Orders)	No charge.
Preferenced Orders:	
Preferenced Orders that access a Quote/Order of the member that entered the Preferenced Order).	No charge.
Other Preferenced Orders	$0.02 per order entry.
Directed Orders	$0.10 per order entry.
Order Execution	
Non-Directed or Preferenced Order that accesses the Quote/Order of a market participant that does not charge an access fee to market participants accessing its Quotes/Orders through the NNMS:	
Charge to member entering order	$0.003 per share executed (but no more than $120 per trade for trades in securities executed at $1.00 or less per share).
Credit to member providing liquidity	$0.002 per share executed (but no more than $80 per trade for trades in securities executed at $1.00 or less per share).
Non-Directed or Preferenced Order that accesses the Quote/Order of a market participant that charges an access fee to market participants accessing its Quotes/Orders through the NNMS.	$0.001 per share executed (but no more than $40 per trade for trades in securities executed at $1.00 or less per share).
Directed Order	$0.003 per share executed.
Non-Directed or Preferenced Order entered by a member that accesses a Quote/Order of such member.	No charge.
Order Cancellation	
Non-Directed *and Preferenced* Orders [(excluding Preferenced Orders)].	[$0.01 per order cancelled] *No charge.*
[Preferenced Orders]	[$0.01 per order cancelled].
Directed Orders	$0.10 per order cancelled.
[Entry and Maintenance of Quotes/Orders by Nasdaq Quoting Market Participants]	
[Initial entry of Quote/Order]	[No charge].
[Change of Quote/Order due to order execution through SuperMontage].	[No charge].
[Cancel/replace of Quote/Order to increase size]	[No charge].
[Cancel/replace of Quote/Order to change price]	[$0.01].
[Cancel/replace of Quote/Order to decrease size manually]	[$0.01].
[Cancellation of Quote/Order]	[$0.01].
[Cancellation of Quote/Order due to order purge or timeout]	[$0.0075].

(j)–(s) No change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Nasdaq is proposing to eliminate: (i) The fee for the cancellation and cancel/replace of Quotes/Orders in SuperMontage and (ii) the fee for canceling non-directed and preferenced orders entered into SuperMontage.

Nasdaq first introduced a "quotation update" fee in February 2002 in connection with its SuperSOES system, to encourage efficient quoting and to help ensure that system capacity could keep pace with the growth of quotation update volume.[5] With the introduction of SuperMontage, Nasdaq refined the quotation update fee by applying it only for updates that remove liquidity without an execution occurring or that change the price of a Quote/Order.[6]

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

[5] *See* Securities Exchange Act Release No. 45342 (January 28, 2002), 67 FR 5019 (February 1, 2002) (SR–NASD–2001–96).

[6] *See* Securities Exchange Act Release No. 45906 (May 10, 2002), 67 FR 34965 (May 16, 2002) (SR–NASD–2002–44).

Thus, the fee has not been assessed for changes to SuperMontage Quotes/Orders that add liquidity or that occur when an order execution occurs.

Nasdaq has recently made several enhancements to the capacity of its network systems. Specifically, hardware upgrades and improvements in system architecture have resulted in a doubling of quote update processing capability since the time when the fee was first introduced. In addition, the decision of several electronic communications networks not to participate in SuperMontage will result in a decrease in Nasdaq's quote update traffic. As a result of these factors, Nasdaq has determined that the elimination of the quote update fee is unlikely to result in a volume of quotation updates that will strain the capacity of Nasdaq's systems. Accordingly, Nasdaq is eliminating the fee in order to lower the overall cost of market participants' use of SuperMontage. Nasdaq is also eliminating the fees for cancellation of non-directed and preferenced orders entered into SuperMontage, to allow a further reduction of market participants' costs.[7]

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A of the Act,[8] including Section 15A(b)(5) of the Act,[9] which requires that the rules of the NASD provide for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which the NASD operates or controls.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

[7] The elimination of order cancellation fees is correlative to the elimination of the fee for cancellation of Quotes/Orders, since Nasdaq's billing systems are not currently programmed to distinguish between cancellation messages that relate to orders entered as non-directed or preferenced orders and those that are entered as Quotes/Orders.

[8] 15 U.S.C. 78o–3.

[9] 15 U.S.C. 78o–3(b)(5).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change establishes or changes a due, fee, or other charge and, therefore, has become effective immediately pursuant to Section 19(b)(3)(A)(ii) of the Act[10] and Rule 19b–4(f)(2) thereunder.[11] At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to file number SR–NASD–2003–10 and should be submitted by February 27, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–2946 Filed 2–5–03; 8:45 am]

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[10] 15 U.S.C. 78s(b)(3)(A)(ii).

[11] 17 CFR 19b–4(f)(2).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47301; File No. SR–NASD–2002–173]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval to a Proposed Rule Change and Amendment Nos. 1, 2, and 3 Thereto by the National Association of Securities Dealers, Inc. To Establish a 90-Day Pilot Program To Allow NNMS Order Entry Firms To Enter Non-Marketable Limit Orders Into SuperMontage Using the SIZE MMID

January 31, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b-4 thereunder,[2] notice is hereby given that on December 2, 2002, the National Association of Securities Dealers, Inc. ("NASD"), through its subsidiary, the Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("Commission") a proposed rule change, as described in Items I and II below, which Items have been prepared by Nasdaq. The NASD amended its proposal on December 23, 2002,[3] January 29, 2003,[4] and January 30, 2003.[5] The Commission is publishing

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b-4.

[3] *See* letter from Edwards S. Knight, Executive Vice President and General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division of Market Regulation ("Division"), Commission, dated December 20, 2002, replacing the original Form 19b-4 in its entirety ("Amendment No. 1"). In Amendment No. 1, Nasdaq clarified that NNMS Order Entry Firms would be allowed to enter multiple orders (with or without reserve size) at single or multiple price levels and be subject to automatic execution functionality of the system. Nasdaq also explained that any order entered by a NNMS Order Entry Firm that created a locked/crossed market would be processed like other locking/crossing quotes/orders as set forth in Rule 4710(b)(3). Furthermore, Nasdaq made corrections to its rule text and requested accelerated approval of the proposed rule change on a 90-day pilot basis.

[4] *See* letter from Edwards S. Knight, Executive Vice President and General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division, Commission, dated January 29, 2003, replacing in its entirety the original Form 19b-4 and Amendment No. 1 ("Amendment No. 2"). In Amendment No. 2, Nasdaq represented that additional programming to distinguish NNMS Order Entry Firms from Nasdaq Quoting Market Participants for internalization purposes would be implemented on or before April 28, 2003. Furthermore, Nasdaq provided additional rational for its request for accelerated approval by the Commission, and made corrections to its rule text.

[5] *See* letter from Thomas P. Moran, Associate General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division, Commission, dated January 30, 2003 ("Amendment No. 3"). In Amendment No. 3, Nasdaq made conforming changes to its definitions in Rule 4701 and made corrections in Rule 4710(b)(1)(B) to incorporate the changes made under the proposed rule change, as amended.

this notice to solicit comments on the proposed rule change and Amendment Nos. 1, 2 and 3 from interested persons and to approve the proposal, as amended, on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes to allow NNMS Order Entry Firms ("OE Firms") to enter non-marketable limit orders into SuperMontage using the SIZE Market Maker Identifier ("SIZE MMID" or "SIZE") for a 90-day pilot period that commences on February 10, 2003.[6] The proposed rule language follows. Proposed new language is italicized; proposed deletions are [bracketed].

* * * * *

4701. Definitions—Unless stated otherwise, the terms described below shall have the following meaning:

* * * * *

(a) The term "Displayed Quote/Order" shall mean both Attributable and Non-Attributable (as applicable) Quotes/Orders transmitted to Nasdaq by Quoting Market Participants *or NNMS Order Entry Firms.*

* * * * *

(o) The term "Non-Attributable Quote/Order" shall mean a bid or offer Quote/Order that is entered by a Nasdaq Quoting Market Participant *or NNMS Order Entry Firm* and is designated for display (price and size) on an anonymous basis in the Nasdaq Order Display Facility.

* * * * *

(w) The term "NNMS Order Entry Firm" shall mean a member of the Association who is registered as an Order Entry Firm for purposes of participation in NNMS [which permits the firm to enter orders for execution against NNMS Market Makers].

* * * * *

(bb) The term "Quote/Order" shall mean a single quotation or shall mean an order or multiple orders at the same price submitted to Nasdaq by a Nasdaq Quoting Market Participant *or NNMS Order Entry Firm* that is displayed in the form of a single quotation. Unless specifically referring to a UTP Exchange's agency Quote/Order (as set out in Rule 4710(f)(2)(b)), when this term is used in connection with a UTP Exchange, it shall mean the best bid and/or the best offer quotation transmitted to Nasdaq by the UTP Exchange.

* * * * *

(dd) The term "Reserve Size" shall mean the system-provided functionality that permits a Nasdaq Quoting Market Participant *or NNMS Order Entry Firm* to display in its Displayed Quote/Order part of the full size of a proprietary or agency order, with the remainder held in reserve on an undisplayed basis to be displayed in whole or in part after the displayed part is reduced by executions to less than a normal unit of trading.

* * * * *

4706. Order Entry Parameters

(a) Non-Directed Orders—(1) General. The following requirements shall apply to Non-Directed Orders Entered by NNMS Market Participants: (A) An NNMS Participant may enter into the NNMS a Non-Directed Order in order to access the best bid/best offer as displayed in Nasdaq. (B) A Non-Directed Order must be a market or limit order, must indicate whether it is a buy, short sale, short-sale exempt, or long sale, and [if entered by a Quoting Market Participant] may be designated as "Immediate or Cancel", or as a "Day" or a "Good-till-Cancelled" order. If a priced order designated as "Immediate or Cancel" ("IOC") is not immediately executable, the unexecuted order (or portion thereof) shall be returned to the sender. If a priced order designated as a "Day" order is not immediately executable, the unexecuted order (or portion thereof) shall be retained by NNMS and remain available for potential display/execution until it is cancelled by the entering party, or until 4:00 p.m. Eastern Time on the day such order was submitted, whichever comes first, whereupon it will *be* returned to the sender. If the order is designated as "Good-till-Cancelled" ("GTC"), the order (or unexecuted portion thereof) will be retained by NNMS and remain available for potential display/execution until cancelled by the entering party, or until 1 year after entry, whichever comes first. Starting at 7:30 a.m., until the 4:00 p.m. market close, IOC and Day Non-Directed Orders may be entered into NNMS (or previously entered orders cancelled), but such orders entered prior to market open will not become available for execution until 9:30 a.m. Eastern Time. GTC orders may be entered (or previously entered GTC orders cancelled) between the hours 7:30 a.m. to 6:30 p.m. Eastern Time, but such orders entered prior to market open, or GTC orders carried over from previous trading days, will not become available for execution until 9:30 a.m. Eastern Time. Exception: Non-Directed Day and GTC orders may be executed prior to market open if required under Rule 4710(b)(3)(B).

(C) The system will not process a Non-Directed Order to sell short if the execution of such order would violate NASD Rule 3350.

(D) Non-Directed Orders will be processed as described in Rule 4710.

(E) The NNMS shall not accept Non-Directed Orders that are All-or-None, or have a minimum size of execution.

(F) A NNMS Market Participant may enter a Non-Directed Order that is either a market order or a limit order prior to the market's open. Market orders and limit orders designated as Immediate or Cancel orders shall be held in a time-priority queue that will begin to be processed by NNMS at market open. If an Immediate or Cancel limit order is unmarketable at the time it reaches the front of time-priority processing queue, it will be returned to the entering market participant. Limit orders that are not designated as Immediate or Cancel orders shall be retained by NNMS for potential display in conformity with Rule 4707(b) and/or potential execution in conformity with Rule 4710(b)(1)(B).

(2) Entry of Non-Directed Orders by NNMS Order Entry Firms—In addition to the requirements in paragraph (a)(1) of this rule, the following conditions shall apply to Non-Directed Orders entered by NNMS Order-Entry Firms:

(A) All Non-Directed orders shall be designated as Immediate or Cancel, *GTC or Day but shall be required to be entered as Non-Attributable if not entered as IOC.* [As such] *For IOC Orders,* if after entry into the NNMS of a Non-Directed Order that is marketable, the order (or the unexecuted portion thereof) becomes non-marketable, the system will return the order (or unexecuted portion thereof) to the entering participant.

(B) A Non-Directed Order that is either a market order or a limit order may be entered prior to the market's open. Such limit and market orders will be held in a time-priority queue that will begin to be processed at market open. [If a] *A* limit order *that is designated as IOC and* is not marketable at the time it reaches the front of the time-priority processing queue [, it] will be returned to the entering participant.

(b) through (e) No Change.

* * * * *

4707. Entry and Display of Quotes/Orders

(a) Entry of Quotes/Orders—Nasdaq Quoting Market Participants may enter Quotes/Orders into the NNMS, *and NNMS Order Entry Firms may enter*

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[6] This filing also makes certain non-substantive corrective and conforming changes to the written rules of the NNMS.

Non-Attributable Orders into the NNMS, subject to the following requirements and conditions:

(1) Nasdaq Quoting Market Participants shall be permitted to transmit to the NNMS multiple Quotes/Orders at a single as well as multiple price levels. Such Quote/Order shall indicate whether it is an "Attributable Quote/Order" or "Non-Attributable Quote/Order," and the amount of Reserve Size (if applicable). *NNMS Order Entry Firms shall be permitted to transmit to NNMS multiple Non-Attributable Quotes/Orders at a single as well as multiple price levels and the amount of Reserve Size (if applicable).*

(2) Upon entry of a Quote/Order into the system, the NNMS shall time-stamp it, which time-stamp shall determine the ranking of the Quote/Order for purposes of processing Non-Directed Orders as described in Rule 4710(b). For each subsequent size increase received for an existing quote at a given price, the system will maintain the original time-stamp for the original quantity of the quote and assign a separate time-stamp to that size increase.

(3) Consistent with Rule 4613, an NNMS Market Maker is obligated to maintain a two-sided Attributable Quote/Order at all times, for at least one normal unit of trading.

(4) Nasdaq Quoting Market Participants may continue to transmit to the NNMS only their best bid and best offer Attributable Quotes/Orders. Notwithstanding NASD Rule 4613 and subparagraph (a)(1) of this rule, nothing in these rules shall require a Nasdaq Quoting Market Participant to transmit to the NNMS multiple Quotes/Orders.

(b) Display of Quotes/Orders in Nasdaq—The NNMS will display [a Nasdaq Quoting Market Participant's] Quotes/Orders *submitted to the system* as follows:

(1) Attributable Quotes/Orders—The price and size of a Nasdaq Quoting Market Participant's best priced Attributable Quote/Order on both the bid and offer side of the market will be displayed in the Nasdaq Quotation Montage under the Nasdaq Quoting Market Participant's MMID, and also will be displayed in the Nasdaq Order Display Facility as part of the aggregate trading interest at a particular price when the price of such Attributable Quote/Order falls within the number of price levels authorized for aggregation and display pursuant to Rule 4701(ee) on either side of the market. Upon execution or cancellation of the Nasdaq Quoting Market Participant's best-priced Attributable Quote/Order on a particular side of the market, the NNMS will automatically display the participant's next best Attributable Quote/Order on that side of the market.

(2) Non-Attributable Quotes/Orders—The price and size of a Nasdaq Quoting Market Participant's *and NNMS Order Entry Firm's* Non-Attributable Quote/Order on both the bid and offer side of the market will be displayed in the Nasdaq Order Display Facility as part of the aggregate trading interest at a particular price when the price of such Non-Attributable Quote/Order falls within the number of price levels authorized for aggregation and display pursuant to Rule 4701(ee) on either side of the market. A Non-Attributable *Quote/*Order will not be displayed in the Nasdaq Quotation Montage under the Nasdaq Quoting Market Participant's MMID. Non-Attributable Quotes/Orders that are the best priced Non-Attributable bids or offers in the system will be displayed in the Nasdaq Quotation Montage under an anonymous MMID, which shall represent and reflect the aggregate size of all Non-Attributable Quotes/Orders in Nasdaq at that price level. Upon execution or cancellation of a Nasdaq Quoting Market Participant's *or NNMS Order Entry Firm's* Non-Attributable Quote/Order, the NNMS will automatically display a Non-Attributable Quote/Order in the Nasdaq Order Display Facility (consistent with the parameters described above) if it falls within the number of price levels authorized for aggregation and display pursuant to Rule 4701(ee) on either side of the market.

(3) Exceptions—The following exceptions shall apply to the display parameters set forth in paragraphs (1) and (2) above:

(A) Odd-lots, Mixed Lots, and Rounding—The Nasdaq system (and all accompanying data feeds) shall be capable of displaying trading interest in round lot amounts. For quote display purposes, Nasdaq will aggregate all shares, including odd-lot share amounts, entered by a Quoting Market Participant *and NNMS Order Entry Firm* at a single price level and then round that total share amount down to the nearest round-lot amount for display and dissemination, consistent with subparagraphs (b)(1) and (b)(2) of this rule. Though rounded, any odd-lot portion of a [Quoting Market Participant's trading interest] *Quote/Order* that is not displayed as a result of this rounding process will remain in the system, with the time-priority of their original entry, and be continuously available for execution. Round-lots that are subsequently reduced by executions to a mixed lot amount will likewise be rounded for display purposes by the system to the nearest round-lot amount at that same price level. Any odd-lot number of shares that do not get displayed as a result of this rounding will remain in the system with the time-priority of their original entry and thus be continuously available for execution. If executions against an Attributable Quote/Order result in there being an insufficient (odd-lot) amount of shares at a price level to display an Attributable Quote/Order for one round-lot, the system will display the Quoting Market Participant's next best priced Attributable Quote/Order consistent with Rule 4710(b)(2). If all Attributable Quotes/Orders on the bid and/or offer side of the market are exhausted so that there are no longer any Attributable Quotes/Orders, the system may refresh a market maker's exhausted bid or offer quote using the process set forth in Rule 4710(b)(5). With the exception of Legacy Quotes, odd-lot remainders that are not displayed will remain in the system at their original price levels and continue to be available for execution.

(c) through (e) No Change.

* * * * *

4710. Participant Obligations in NNMS

(a) No Change.

(b) Non-Directed Orders.

(1) General Provisions—A Quoting Market Participant in an NNMS Security, as *well as NNMS Order Entry Firms,* shall be subject to the following requirements for Non-Directed Orders:

(A) Obligations For each NNMS security in which it is registered, a Quoting Market Participant must accept and execute individual Non-Directed Orders against its quotation, in an amount equal to or smaller than the combination of the Displayed Quote/Order and Reserve Size (if applicable) of such Quote/Order, when the Quoting Market Participant is at the best bid/best offer in Nasdaq. *This obligation shall also apply to the Non-Attributable Quotes/Orders of NNMS Order Entry Firms. Quoting Market Participants, and NNMS Order Entry Firms,* shall participate in the NNMS as follows:

(i) NNMS Market Makers, [and] NNMS Auto-Ex ECNs, *and NNMS Order Entry Firms to the extent they enter a Non-Attributable Quote/Order* shall participate in the automatic-execution functionality of the NNMS, and shall accept the delivery of an execution up to the size of the participant's Displayed Quote/Order and Reserve Size.

(ii) NNMS Order-Delivery ECNs shall participate in the order-delivery functionality of the NNMS, and shall accept the delivery of an order up to the size of the NNMS Order-Delivery ECN's Displayed Quote/Order and Reserve Size. The NNMS Order-Delivery ECN

shall be required to execute the full size of such order (even if the delivered order is a mixed lot or odd lot) unless that interest is no longer available in the ECN, in which case the ECN is required to execute in a size equal to the remaining amount of trading interest available in the ECN.

(iii) UTP Exchanges that choose to participate in the NNMS shall do so as described in subparagraph (f) of this rule and as otherwise described in the NNMS rules and the UTP Plan.

(B) Processing of Non-Directed Orders—Upon entry of a Non-Directed Order into the system, the NNMS will ascertain who the next Quoting Market Participant *or NNMS Order Entry Firm* in queue to receive an order is (based on the algorithm selected by the entering participant, as described in subparagraph (b)(B)(i)–(iii) of this rule), and shall deliver an execution to Quoting Market Participants *or NNMS Order Entry Firms* that participate in the automatic-execution functionality of the system, or shall deliver a Liability Order to Quoting Market Participants that participate in the order-delivery functionality of the system; provided however, that the system always shall deliver an order (in lieu of an execution) to the Quoting Market Participant next in queue when the participant that entered the Non-Directed Order into the system is a UTP Exchange that does not provide automatic execution against its Quotes/Orders for Nasdaq Quoting Market Participants and NNMS Order Entry Firms. Non-Directed Orders entered into the NNMS system shall be delivered to or automatically executed against Quoting Market Participants' *or NNMS Order Entry Firms'* Displayed Quotes/Orders and Reserve Size in strict price/time priority, as described in the algorithm contained in subparagraph (b)(B)(i) of this rule. Alternatively, an NNMS Market Participant can designate that its Non-Directed Orders be executed based on a price/time priority that considers ECN quote-access fees, as described in subparagraphs (b)(B)(ii) of this rule, or executed based on price/size/time priority, as described in subparagraph (b)(B)(iii) of this rule. The individual time priority of each Quote/Order submitted to NNMS shall be assigned by the system based on the date and time such Quote/Order was received. Remainders of Quote/Orders reduced by execution, if retained by the system, shall retain the time priority of their original entry. For purposes of the execution algorithms described in paragraphs (i), (ii) and (iii) below, "Displayed Quotes/Orders" shall also include any odd-lot, odd-lot portion of a mixed-lot, or any odd-lot remainder of a round-lot(s) reduced by execution, share amounts that while not displayed in the Nasdaq Quotation Montage, remain in system and available for execution.

(i) Default Execution Algorithm—Price/Time—The system will default to a strict price/time priority within Nasdaq, and will attempt to access interest in the system in the following priority and order:

(a) Displayed Quotes/Orders of NNMS Market Makers[,] *and* NNMS ECNs, *displayed Non-Attributable Quotes/Orders of NNMS Order Entry Firms,* and *displayed* non-attributable agency Quotes/Orders of UTP Exchanges (as permitted by subparagraph (f) of this rule), in time priority between such participants' Quotes/Orders[:];

(b) Reserve Size of Nasdaq Quoting Market Participants *and NNMS Order Entry Firms,* in time priority between such participants' Quotes/Orders; and

(c) Principal Quotes/Orders of UTP Exchanges, in time priority between such participants' Quotes/Orders.

(ii) Price/Time Priority Considering Quote-Access Fees—If this option[s] is chosen, the system will attempt to access interest in the system in the following priority and order:

(a) Displayed Quotes/Orders of NNMS Market Makers, *displayed Non-Attributable Quotes/Orders of NNMS Order Entry Firms, displayed Quotes/Orders of* NNMS ECNs that do not charge a separate quote-access fee to non-subscribers, and non-attributable agency Quotes/Orders of UTP Exchanges (as permitted by subparagraph (f) of this rule), as well as Quotes/Orders from NNMS ECNs that charge[s] a separate quote-access fee to non-subscribers where the ECN entering such Quote/Order indicates that the price improvement offered by the specific Quote/Order is equal to or exceeds the separate quote-access fee the ECN charges, in time priority between such participants' Quotes/Orders;

(b) Displayed Quotes/Orders of NNMS ECNs that charge a separate quote-access fee to non-subscribers, in time priority between such participants' Quotes/Orders;

(c) Reserve Size of NNMS Market Makers *and NNMS Order Entry Firms,* and NNMS ECNs that do not charge a separate quote-access fee to non-subscribers, as well as Reserve Size of Quotes/Orders from NNMS ECNs that charge[s] a separate quote-access fee to non-subscribers where the ECN entering such Quote/Order has indicated that the price improvement offered by the specific Quote/Order is equal to or exceeds the separate quote-access fee the ECN charges, in time priority between such participants' Quotes/Orders;

(d) Reserve Size of NNMS ECNs that charge a separate quote-access fee to non-subscribers, in time priority between such participants' Quotes/Orders; and

(e) Principal Quotes/Orders of UTP Exchanges, in time priority between such participants' Quotes/Orders.

(iii) Price/Size Priority—If this option is chosen, Non-Directed Orders shall be executed in price/size/time priority against:

(a) Displayed Quotes/Orders of NNMS Market Makers, *displayed Non-Attributable Quotes/Orders of NNMS Order Entry Firms, displayed Quotes/Orders of* NNMS ECNs, and non-attributable agency Quotes/Orders of UTP Exchanges (as permitted by subparagraph (f) of this rule), in price/size/time priority between such participants' Quotes/Orders[:] ;

(b) the Reserve Size of Nasdaq Quoting Market Participants *and NNMS Order Entry Firms,* in price/size/time priority between such participants' Quotes/Orders, which size priority shall be based on the size of the Displayed Quote/Order, and not on the amount held in Reserve Size; and

(c) Principal Quotes/Orders of UTP Exchanges, in price/size/time priority between such participants' Quotes/Orders.

(iv) Exceptions—The following exceptions shall apply to the above execution parameters:

(a) If a Nasdaq Quoting Market Participant enters a Non-Directed Order into the system, before sending such Non-Directed Order to the next Quoting Market Participants in queue, the NNMS will first attempt to match off the order against the Nasdaq Quoting Market Participant's own Quote/Order if the participant is at the best bid/best offer in Nasdaq. *Effective February 10, 2003, until April 28, 2003 (or such earlier date as determined by Nasdaq with appropriate notice to the Securities and Exchange Commission and market participants), this processing shall also apply to Non-Directed Orders of NNMS Order Entry Firms. Thereafter, this exception shall not apply to Non-Directed Orders entered by NNMS Order Entry Firms.*

(b) If an NNMS Market Participant enters a Preferenced Order, the order shall be executed against (or delivered in an amount equal to) both the Displayed Quote/Order and Reserve Size of the Quoting Market Participant to which the order is being directed, if that Quoting Market Participant is at the best bid/best offer when the Preferenced

Order is next in line to be delivered (or executed). Any unexecuted portion of a Preferenced Order shall be returned to the entering NNMS Market Participant. If the Quoting Market Participant is not at the best bid/best offer when the Preferenced Order is next in line to be delivered (or executed), the Preferenced Order shall be returned to the entering NNMS Market Participant.

(c) If an NNMS Market Participant enters a Quote or Non-Directed Order that would result in NNMS either: (1) Delivering an execution to a Quoting Market Participant(s) *or an NNMS Order Entry Firm* that participates in the automatic-execution functionality of the system at a price substantially away from the current inside bid/offer in that security; or (2) delivering a Liability Order to a Quoting Market Participant(s) that participates in the order-delivery functionality of the system at a price substantially away from the current inside bid/offer in that security, the system shall instead process only those portions of the order that will not result in either an execution or delivery at a price substantially away from the current inside best bid/offer in the security and return the remainder to the entering party. For purposes of this subsection only, an execution or delivery based on a sell order shall be deemed to be substantially away from the current inside bid if it is to be done at a price lower than a break-price established by taking the inside bid, reducing it by 10% of the bid's value, and then subtracting $0.01. For example, in a stock with a current inside bid of $10.00, the maximum price at which a single sell order could be executed would be $8.99 calculated as follows: ($10.00 − ($10.00 × .10 e.g $1) − $.01 = $8.99). For offers, an execution or delivery based on a buy order shall be deemed to be substantially away from the current inside offer if it is done a price higher than a break-price established by taking the inside offer, adding 10% of the offer's value to it, and then adding $0.01. For example, in a stock with a current inside offer of $10.00, the highest price at which a single sell order could be executed would be $11.01 calculated as follows: ($10.00 + ($10.00 × .10 e.g. $1) + $.01 = $11.01.

(C) through (D) No Change.

(2) Refresh Functionality.

(A) Reserve Size Refresh—Once a Nasdaq Quoting Market Participant's *or NNMS Order Entry Firm's* Displayed Quote/Order size on either side of the market in the security has been decremented to an amount less than one normal unit of trading due to NNMS processing, Nasdaq will refresh the displayed size out of Reserve Size to a size-level designated by the Nasdaq Quoting Market Participant *or NNMS Order Entry Firm*, or in the absence of such size-level designation, to the automatic refresh size. The amount of shares taken out of reserve to refresh display size shall be added to any shares remaining in the Displayed Quote/Order and shall be of an amount that when combined with the number of shares remaining in the Nasdaq Quoting Market Participant's Displayed Quote/Order before it is refreshed will equal the displayed size-level designated by the Nasdaq Quoting Market Participant or, in the absence of such size-level designation, to the automatic refresh size. If there are insufficient shares available to produce a Displayable Quote/Order, the Nasdaq Quoting Market Participant's Quote/Order, and any odd-lot remainders, will be refreshed, updated, or retained, in conformity with NNMS Rules 4707 and 4710 as appropriate. To utilize the Reserve Size functionality, a minimum of 100 shares must initially be displayed in the Nasdaq Quoting Market Participant's *or NNMS Order Entry Firm's* Displayed Quote/Order, and the Displayed Quote/Order must be refreshed to at least 100 shares. This functionality will not be available for use by UTP Exchanges.

(B) Auto Quote Refresh ("AQR")—No Change.

(3) Entry of Locking/Crossing Quotes/Orders The system shall process locking/crossing Quotes/Orders as follows:

(A) Locked/Crossed Quotes/Orders During Market Hours—If during market hours, a [Quoting Market] [P]participant enters into the NNMS a Quote/Order that will lock/cross the market (as defined in NASD Rule 4613(e)), the system will not display the Quote/Order as a quote in Nasdaq; instead the system will treat the Quote/Order as a marketable limit order and enter it into the system as a Non-Directed Order for processing (consistent with subparagraph (b) of this rule) as follows:

(i) For locked-market situations, the order will be routed to the Quoting Market Participant *or NNMS Order Entry Firm* next in queue who would be locked, and the order will be executed (or delivered for execution) at the lock price;

(ii) For crossed-market situations, the order will be entered into the system and routed to the next Quoting Market Participants *or NNMS Order Entry Firms* in queue who would be crossed, and the order will be executed (or delivered for execution) at the price of the Displayed Quote/Order that would have been crossed.

Once the lock/cross is cleared, if the participant's order is not completely filled, the system will reformat the order and display it in Nasdaq (consistent with the parameters of the Quote/Order) as a Quote/Order on behalf of the entering Quoting Market Participant *or Order Entry Firm*.

(B) No Change.

(4) through (8) No Change.

(c) No Change.

(d) NNMS Order Entry Firms.

All entries in NNMS shall be made in accordance with the procedures and requirements set forth in the NNMS User Guide *and these rules*. Orders may be entered in NNMS by the NNMS Order Entry Firm through either its Nasdaq terminal or computer interface. The system will transmit to the firm on the terminal screen and printer, if requested, or through the computer interface, as applicable, an execution report generated immediately following the execution.

(e) No Change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of, and basis for, the proposed rule change, as amended, and discussed any comments it received on the proposed rule change, as amended. The text of these statements may be examined at the places specified in Item III below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Currently, OE Firms must designate all limit orders they enter into SuperMontage as "Immediate-or-Cancel" ("IOC"). This designation, while allowing such orders to potentially execute if marketable when they reach the front of the SuperMontage processing queue, also instructs the system to return the order to the OE Firms if the order's price precludes an immediate execution. In short, OE Firms can enter market orders and marketable limit orders, but cannot enter non-marketable limit orders. Nasdaq believes that the result is that all SuperMontage participants are deprived

of the additional liquidity these rejected orders represent and the supply/demand information they provide the market as a whole.

In response to both the negative market impacts rejection of these orders engender, and requests from order entry market participants for enhanced access to the SuperMontage system, Nasdaq proposes that OE Firms be permitted to voluntarily enter non-marketable limit orders into SuperMontage without the IOC designation and have such order retained for potential execution [7] through display under the SIZE MMID [8] on a pilot basis for 90-days commencing February 10, 2003.

With one exception, Non-Attributable Orders entered into the system by OE Firms would be processed in the same manner as other non-attributable orders placed into SIZE by NNMS Market Makers. The only exception would be that, unlike the quotes/orders of Nasdaq Quoting Market Participants, SuperMontage would not first attempt to have Non-Attributable Orders submitted by OE Firms match off against orders entered by the same OE Firm on the other side of the market. Instead, OE Firm orders would execute based solely on the algorithm selected by the entering party (price/time, price/time with fee consideration, or price/size) against the quotes/orders of other SuperMontage users—including orders from the same OE firm entered on the other side of the market. However, the technology to support this functionality will not be available at the start of the pilot program on February 10, 2003. Instead, for a limited period, OE Firms would have their orders processed in a manner similar to Nasdaq Quoting Market Participants in that the system would first attempt to match off OE Firm orders against orders from the same OE Firm on the other side of the market. Nasdaq is working to program its system and formally commits to having the technology in place to inhibit this automatic matching, as proposed in this filing, on or before April 28, 2003.

[7] Under the proposal, OE Firms would be able to designate orders as IOC, "Good-till-Cancelled," or "Day."

[8] The SIZE MMID is the anonymous MMID that represents the aggregate size of all Non-Attributable Quotes and Orders entered by market participants in Nasdaq at a particular price level. Non-Attributable Quotes/Orders are not displayed in the Nasdaq Quotation Montage using the market participant's MMID. Instead, the SIZE MMID is displayed and represents the aggregate, Non-Attributable trading interest at a particular price level in the Nasdaq Quotation Montage. Telephone conversation between Thomas P. Moran, Associate General Counsel, Nasdaq, and Marc F. McKayle, Special Counsel, Division, Commission, on January 30, 2003 (making corrections to the text in the footnote).

Under the proposal, OE Firms would be allowed to enter multiple orders (with or without reserve size) at single or multiple price levels, and such orders would be subject to the automatic execution functionality of the system. If any order entered by an OE Firm would create a locked/crossed market, such orders would be processed like other locking/crossing quotes/orders as set forth in NASD Rule 4710(b)(3).

Nasdaq believes that the above proposal is an important step in its ongoing process to make its systems more accessible to all NASD member firms, while ensuring that market participants who undertake the burdens of continuous liquidity provision are provided benefits commensurate with their activities. Nasdaq believes that most important, however, are the improvements to market quality that can be expected from the proposed rule change's swift implementation. In addition to enhanced liquidity and informational benefits, retention of non-marketable limit orders from OE Firms in SuperMontage can be expected, in Nasdaq's view, to reduce fragmentation of trading interest, thereby improving execution quality and speed and shrinking the costs market participants now incur when searching for trading partners in multiple venues. Finally, to the extent that any currently rejected OE Firm order is retained, Nasdaq believes that it would reduce the potential for locked/crossed markets that can occur if such rejected trading interest is subsequently displayed in an unlinked market center and thus does not benefit from SuperMontage processing that eliminated locks or crosses among all quotes and orders residing in the system.

2. Statutory Basis

Nasdaq believes that the proposed rule change, as amended, is consistent with Section 15A of the Act [9] in general, and furthers the objectives of Section 15A(b)(6)[10] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change, as amended, will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

[9] 15 U.S.C. 78*o*–3.

[10] 15 U.S.C. 78*o*–3(b)(6).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to file number SR–NASD–2002–173 and should be submitted by February 27, 2003.

IV. Commission Findings and Order Granting Accelerated Approval of the Proposed Rule Change

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association and, in particular, with the requirements of Section 15A(b)(6) of the Act,[11] in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.[12] The Commission believes that allowing OE Firms to enter non-marketable limit orders into SuperMontage using the SIZE MMID should provide greater

[11] 15 U.S.C. 78*o*–3(b)(6).

[12] In approving the proposed rule, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

access to the system by all NASD members, as well as encourage OE Firms to enter orders into SuperMontage and thereby increase liquidity in the market to the benefit of all market participants. Further, even though the orders of OE Firms will not be matched off against orders entered by the same OE Firm on the other side of the market,[13] Nasdaq has represented that in all other respects, Non-Attributable Orders entered by OE Firms will be processed in the same manner as other non-attributable orders placed into SIZE by NNMS Market Makers. As a result, the Commission believes that OE Firms will have far greater access to the SuperMontage then currently exists.

The Commission further believes that the proposal is consistent with the goals of Section 11A(a)(1)(C), particularly Congress' finding that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly market to assure the economically efficient execution of securities transactions. The proposal should provide OE Firms with greater flexibility to reflect buying and selling interest at various price levels by entering Non-Attributable Orders directly into SuperMontage, instead of relying on electronic communications networks and NNMS Market Makers to post their trading interest.

Accordingly, the Commission finds good cause, pursuant to Sections 15A(b)(6) and 19(b)(2) of the Act,[14] for approving the proposed rule change, as amended, prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. The Commission believes that accelerated approval of the pilot will enable Nasdaq to allow OE Firms to enter orders into Nasdaq and thereby, remove a barrier to access to the SuperMontage, while enabling the Commission, NASD, Nasdaq, and market participants to gain actual experience with the pilot before the Commission considers permanent approval of the pilot.[15] As a result, market participants will be able to better assess the impact of the proposal and offer insightful and valuable public comment on the pilot. Further, the Commission notes that several commenters suggested that OE Firms be allowed to enter orders directly into the order display facility as part of the original public comment process on the SuperMontage proposal.[16] The Commission notes that the proposed rule change addresses those comments.

[13] Nasdaq's proposed rule change would eliminate the ability of OE Firms to use this feature no later than April 28, 2003.

[14] 15 U.S.C. 78*o*–3(b)(6) and 78s(b)(2).

[15] The Commission notes that approval of the pilot should not be interpreted as suggesting that the Commission is predisposed to approving the proposal on a permanent basis if requested by the NASD.

[16] *See* Securities Exchange Act Release No. 43863 (January 19, 2001), 66 FR 8020 (January 26, 2001).

I. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act[17], that the proposed rule change, as amended, (File No. SR–NASD–2002–173) be, and it hereby is, approved on an accelerated basis, as a 90-day pilot beginning on February 10, 2003 and expiring on May 12, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[18]

Margaret H. McFarland,

Deputy Secretary.

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[17] 15 U.S.C. 78s(b)(2).

[18] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47295; File No. SR–PCX–2002–64]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by Pacific Exchange, Inc., Relating to Rules Governing the Intermarket Linkage, and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 1 Thereto

January 31, 2003.

I. Introduction

On September 26, 2002, the Pacific Exchange, Inc. ("PCX" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] and Rule 19b-4 thereunder,[2] a proposed rule change to adopt new rules, governing the operation of the intermarket linkage (the "Linkage"). The proposed rule change was published for comment in the **Federal Register** on December 26, 2002.[3] The Commission received no comments on the proposed rule change. On January 29, 2003, the Exchange filed Amendment No. 1 to the proposed rule change.[4] This order approves the proposed rule change, provides notice of filing of Amendment No. 1 and grants accelerated approval to Amendment No. 1.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b-4.

[3] *See* Securities Exchange Act Release No. 47026 (December 18, 2002), 67 FR 78843.

[4] *See* letter from Mai S. Shiver, Senior Attorney, Regulatory Policy, PCX, to Nancy J. Sanow, Assistant Director, Division of Market Regulation, Commission, dated January 28, 2003 ("Amendment No. 1"). In Amendment No. 1, the Exchange proposed to amend: (1) The definition of "Linkage Order" contained in PCX Rule 6.92(a)(12) to state that such orders are immediate or cancel orders; (2) PCX Rule 6.93(e) to clarify the Lead Market Market's obligation to address a linkage order when such order is not eligible to be automatically executed; (3) PCX Rule 6.94(a) to clarify language regarding liability for trade-throughs at the end of the trading day and to request approval of this provision only for a one-year pilot period; and (4) PCX Rule 6.94(e) to clarify that members may not engage in a pattern or practice of trading through.

II. Description of Proposal

In general, the proposed rules contain relevant definitions, establish the conditions pursuant to which market makers may enter Linkage orders, impose obligations on the Exchange regarding how it must process incoming Linkage orders, and establish a general standard that members should avoid trade-throughs.[5] The proposed rules establish potential regulatory liability for members who engage in a pattern or practice of trading through other exchanges, whether or not the exchanges traded through participate in the Linkage, provide procedures to unlock and uncross markets, and codify the "80/20 Test" contained in section 8(b)(iii) of the Plan for the Purpose of Creating and Operating an Intermarket Options Linkage (the "Plan"),[6] which provides that a market maker on an Exchange would be restricted from sending principal orders (other than P/A orders, which reflect unexecuted customer orders) through the Linkage if the market maker effects less than 80 percent of specified order flow on the Exchange.

III. Discussion

The Commission has reviewed the PCX's proposed rule change and finds that the proposal is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange,[7] and with the requirements of section 6(b).[8] In particular the Commission finds that the proposed rule change is designed to

[5] Trade-throughs occur when broker-dealers execute customer orders on one exchange at prices inferior to another exchange's disseminated quote.

[6] Approved by the Commission in Securities Exchange Act Release No. 43086 (July 28, 2000), 65 FR 48023 (August 4, 2000), as subsequently amended. *See* Securities Exchange Act Release No. 44482 (June 27, 2001), 66 FR 35470 (July 5, 2001) ("Initial Amendment Order") and Securities Exchange Act Release No. 46001 (May 30, 2002), 67 FR 38687 (June 5, 2002); 47274 (January 29, 2003); and 47298 (January 31, 2003).

[7] In approving this rule proposal, the Commission notes that it has also considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[8] 15 U.S.C. 78f(b).

prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest in accordance with section 6(b)(5) of the Act.[9]

The Commission believes that the rules proposed by the PCX will adequately govern the operation of the Linkage as envisioned in the Plan. The Commission believes that these rules will help to ensure that the Linkage is operated fairly and effectively, in accordance with the principles of the Act and the Plan.

The Commission also finds good cause for approving proposed Amendment No. 1 prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. Amendment No. 1 proposes several changes to the Exchange's original proposal that are designed to conform the Exchange's rules governing linkage more closely to the Plan. The provisions of the Plan have already been subject to notice and comment, and have been approved by the Commission. The changes proposed in Amendment No. 1 do not raise any novel regulatory issues, and therefore, it is appropriate for the Commission to accelerate approval of Amendment No. 1.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 1 to the proposed rule change, including whether Amendment No. 1 is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to Amendment No. 1 between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR-PCX–2002–64 and should be submitted by February 27, 2003.

V. Conclusion

It is therefore Ordered, pursuant to section 19(b)(2) of the Act,[10] that the proposed rule change (SR-PCX–2002–64), be, and hereby is, approved, and that Amendment No. 1 to the proposed rule change be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

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[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78s(b)(2).

[11] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 4272]

Bureau of Educational and Cultural Affairs Request for Grant Proposals: Kyrgyz Republic Educational Partnerships Program in Cultural and Comparative Religious Studies

SUMMARY: The Office of Global Educational Programs of the Bureau of Educational and Cultural Affairs announces an open competition for the Kyrgyz Republic Educational Partnerships Program in Cultural and Comparative Religious Studies. Public and private non-profit organizations meeting the provisions described in Internal Revenue Code section 26 U.S.C. 501(c)(3) may submit proposals to support mutually beneficial partnerships which contribute to the development of instruction in comparative religion, cultural studies/history, computer science and English at the Bishkek Islamic Institute in the Kyrgyz Republic. The means for achieving these objectives may include the exchange of university and college faculty and research scholars, administrators, and advanced students between the Kyrgyz Republic and appropriate U.S. counterpart colleges and universities.

In a program announced in a separate RFGP, the Bureau supports linkages in higher education with partners in the Eurasian states of the former Soviet Union through the FREEDOM Support Educational Partnerships Program. Applicants seeking support for educational partnerships with partners in the Kyrgyz Republic other than the one specified in this RFGP or for fields of study other than those specified in this RFGP should consult the RFGP for the FREEDOM Support Educational Partnerships Program or contact the Bureau's Humphrey Fellowships and Institutional Linkages Branch at (202) 619–5289.

Program Information

Overview: The Kyrgyz Republic Educational Partnerships Program in Cultural and Comparative Religious Studies will fund a three-year project to permit one or more U.S. institutions to work with the Bishkek Islamic Institute. Pending availability of funds, approximately $200,000 is expected to be available under the FREEDOM Support Act for the Kyrgyz Republic Educational Partnerships Program in Cultural and Comparative Religious Studies in FY 2003.

Objectives: Proposals that benefit both partner institutions will be the most competitive, although the benefits do not need to be identical for each partner. The proposal should outline a plan to cooperate with the Bishkek Islamic Institute to: (1) Develop courses and curricula in eligible fields; (2) improve teaching methods; (3) develop educational materials which support new courses and curricula; (4) train teachers or other practitioners in the effective use of these materials; and (5) foster self-sustaining relationships with U.S. academic institutions and educators.

The program should equip the Bishkek Islamic Institute to provide accurate and balanced information about religion, including Islam, and cultural history framed within a contemporary understanding of human rights and the role of cultural and religious pluralism in a democratic society. At the conclusion of the program, teachers at the Bishkek Islamic Institute should be capable of teaching the newly introduced or revised courses and should be able to participate more fully in international dialogue with U.S. and other educators. Students graduating from the Bishkek Islamic Institute should have a better understanding of the relationships between religion, politics, and society in modern democracies and should be better prepared to apply this understanding in public service, education, and the private sector, and to contribute to building a democratic society.

The Bureau anticipates that the participating U.S. institution(s) and individuals will benefit by developing or strengthening regional expertise. Participating U.S. faculty may utilize

this experience to develop new courses or incorporate comparative content into existing courses. Students at participating U.S. institutions will gain a better understanding of Central Asia through interaction with visiting scholars and U.S. faculty that have incorporated international content into their courses.

Pending availability of funds, the grant should begin on or about June 15, 2003.

Participant Eligibility

All participants traveling to the Kyrgyz Republic funded under the grant must be U.S. citizens. Foreign participants must be both qualified to receive U.S. J–1 visas and willing to travel to the U.S. under the provisions of a J–1 visa during the exchange visits funded by this Program.

Programs must comply with J–1 visa regulations. Please refer to Solicitation Package for further information.

Budget Guidelines

The Bureau anticipates awarding one grant not to exceed $200,000. Applicants may submit a budget not to exceed this amount. Organizations with less than four years experience in conducting international exchanges are limited to $60,000, and are not encouraged to apply. The Bureau encourages applicants to provide maximum levels of cost-sharing and funding from private sources in support of its programs.

Applicants must submit a comprehensive budget for the entire program. There must be a summary budget as well as breakdowns reflecting both administrative and program budgets. Please refer to the Solicitation Package for complete budget guidelines and formatting instructions.

Announcement Title and Number: All correspondence with the Bureau concerning this RFGP should reference the above title and number ECA/A/S/U–03–14.

FOR FURTHER INFORMATION CONTACT: To request a solicitation package, contact the Humphrey Fellowships and Institutional Linkages Branch; Office of Global Educational Programs; Bureau of Educational and Cultural Affairs; ECA/A/S/U, Room 349; U.S. Department of State; SA–44, 301 Fourth Street, SW., Washington, DC 20547; phone: (202) 619–5289, fax: (202) 401–1433. The Solicitation Package includes more detailed award criteria, all application forms, and guidelines for preparing proposals, including specific criteria for preparation of the proposal budget. Applicants desiring more information may contact Program Officer Jonathan Cebra at 202–205–8379 or *jcebra@pd.state.gov.*

Please read the complete **Federal Register** announcement before sending inquiries or submitting proposals. Once the RFGP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

To Download a Solicitation Package Via Internet

The entire Solicitation Package may be downloaded from the Bureau's Web site at *http://exchanges.state.gov/education/RFGPs.* Please read all information before downloading.

Deadline for Proposals

All proposal copies must be received at the Bureau of Educational and Cultural Affairs by 5 p.m. Washington, DC time on Tuesday, April 1, 2003. Faxed documents will not be accepted at any time. Documents postmarked the due date but received on a later date will not be accepted. Each applicant must ensure that the proposals are received by the above deadline.

Applicants must follow all instructions in the Solicitation Package. The original and ten copies of the application should be sent to: U.S. Department of State, SA–44, Bureau of Educational and Cultural Affairs, Ref.: ECA/A/S/U–03–14, Program Management, ECA/EX/PM, Room 534, 301 4th Street, SW., Washington, DC 20547.

No later than one week after the competition deadline, applicants must also submit the Proposal Title Sheet, Executive Summary, and Proposal Narrative sections of the proposal as e-mail attachments in Microsoft Word (preferred), WordPerfect, or as ASCII text files to the following e-mail address: *partnerships@pd.state.gov.* In the e-mail message subject line, include the following: ECA/A/S/U–03–14. To reduce the time needed to obtain advisory comments from the Public Affairs Section of the U.S. Embassy in Bishkek, the Bureau will transmit these files electronically to this office.

Diversity, Freedom and Democracy Guidelines

Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. "Diversity" should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and physical challenges. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the 'Support for Diversity' section for specific suggestions on incorporating diversity into the total proposal. Public Law 104–319 provides that "in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy," the Bureau "shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries." Public Law 106–113 requires that the governments of the countries described above do not have inappropriate influence in the selection process. Proposals should reflect advancement of these goals in their program contents, to the full extent deemed feasible.

Adherence to All Regulations Governing the J Visa

The Bureau of Educational and Cultural Affairs is placing renewed emphasis on the secure and proper administration of Exchange Visitor (J visa) Programs and adherence by grantees and sponsors to all regulations governing the J visa. Therefore, proposals should demonstrate the applicant's capacity to meet all requirements governing the administration of Exchange Visitor Programs as set forth in 22 CFR 6Z, including the oversight of Responsible Officers and Alternate Responsible Officers, screening and selection of program participants, provision of pre-arrival information and orientation to participants, monitoring of participants, proper maintenance and security of forms, record-keeping, reporting and other requirements. The Grantee will be responsible for issuing DS–2019 forms to participants in this program.

A copy of the complete regulations governing the administration of Exchange Visitor (J) programs is available at *http://exchanges.state.gov* or from: United States Department of State, Office of Exchange Coordination and Designation, ECA/EC/ECD—SA–44, Room 734, 301 4th Street, SW., Washington, DC 20547, Telephone: (202) 401–9810, FAX: (202) 401–9809.

Review Process

The Bureau will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. All eligible proposals will be reviewed by

the program office, as well as the Public Diplomacy section overseas, where appropriate. Eligible proposals will be subject to compliance with Federal and Bureau regulations and guidelines and forwarded to Bureau grant panels for advisory review. Proposals may also be reviewed by the Office of the Legal Adviser or by other elements of the Department or the United States Government. Final funding decisions are at the discretion of the Department of State's Assistant Secretary for Educational and Cultural Affairs. Final technical authority for grants resides with the Bureau's Grants Officer.

Review Criteria

Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank ordered and all carry equal weight in the proposal evaluation:

(1) *Broad and Enduring Significance of Institutional Objectives:* Program objectives should have significant and ongoing benefits for the participating institutions and for their surrounding societies or communities.

(2) *Creativity and Feasibility of Strategy to Achieve Objectives:* Strategies to achieve program objectives should be feasible and realistic within the budget and timeframe. These strategies should utilize and reinforce exchange activities creatively to ensure an efficient use of program resources.

(3) *Multiplier effect/impact:* Proposed programs should strengthen long-term mutual understanding, including maximum sharing of information and establishment of long-term institutional and individual linkages.

(4) *Support of Diversity:* Proposals should demonstrate substantive support of the Bureau's policy on diversity by explaining how issues of diversity are included in objectives for all institutional partners. Issues resulting from differences of race, ethnicity, gender, religion, geography, socio-economic status, or physical challenge should be addressed during program implementation. In addition, program participants and administrators should reflect the diversity within the societies which they represent (see the section of this document on "Diversity, Freedom, and Democracy Guidelines"). Proposals should also discuss how the various institutional partners approach diversity issues in their respective communities or societies.

(5) *Institution's Capacity and Record/ Ability:* Proposed personnel and institutional resources should be adequate and appropriate to achieve the program or project's goals. Proposals should demonstrate an institutional record of successful exchange programs, including responsible fiscal management and full compliance with all reporting requirements for past Bureau grants as determined by Bureau Grant Staff. The Bureau will consider the past performance of prior recipients and the demonstrated potential of new applicants.

(6) *Evaluation:* Proposals should outline a methodology for determining the degree to which the project meets its objectives, both while it is underway and at its conclusion. The final program evaluation should include an external component and should provide observations about the program's influence within the participating institutions as well as their surrounding communities or societies.

(7) *Cost-effectiveness:* Administrative and program costs should be reasonable and appropriate with cost-sharing provided by all participating institutions within the context of their respective capacities. Cost-sharing is viewed as a reflection of institutional commitment to the program.

(8) *Value to U.S.-Partner Country Relations:* Proposed projects should receive positive assessments by the U.S. Department of State's geographic area desk and overseas officers of program need, potential impact, and significance in the Kyrgyz Republic.

Authority

Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Pub. L. 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is "to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world." The funding authority for the program cited above is provided through the Freedom for Russia and Emerging Eurasian Democracies and Open Markets Support Act of 1992 (FREEDOM Support Act).

Notice

The terms and conditions published in this RFGP are binding and may not be modified by any Bureau representative. Explanatory information provided by the Bureau that contradicts published language will not be binding. Issuance of the RFGP does not constitute an award commitment on the part of the Government. The Bureau reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements.

Notification

Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal Bureau procedures.

Dated: January 28, 2003.

C. Miller Crouch,

Principal Deputy Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 03–2925 Filed 2–5–03; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 4273]

Bureau of Educational and Cultural Affairs Request for Grant Proposals (RFGPs) for the Project "Cultural and Religious Pluralism in Uzbekistan and the United States"

SUMMARY: The Europe/Eurasia Division of the Office of Citizen Exchanges of the Bureau of Educational and Cultural Affairs announces an open competition for the project, Cultural and Religious Pluralism in Uzbekistan and the United States. Public and private non-profit organizations meeting the provisions described in Internal Revenue Code section 26 U.S.C. 501(c)(3) may submit proposals to conduct a two-component exchange program with Uzbekistan. The first component of the program is for 60 community and religious leaders from Uzbekistan to travel to host communities in the United States for a program on cultural and religious pluralism. The second component is the recruitment of 16 experts on religion and the role of religion in American society who will travel to Uzbekistan to conduct lectures and training programs.

Program Information

Organizations must have four or more years of documented experience in conducting international exchange to be eligible to apply for a grant under this competition.

Overview: The Office of Citizen Exchanges consults with and supports American public and private nonprofit organizations in developing and implementing multi-phased, often multi-year, exchanges of professionals,

community leaders, scholars and academics, public policy advocates, non-governmental organization professionals, etc. These exchanges address issues crucial to both the United States and the foreign countries involved; they promote focused, substantive, and cooperative interaction among counterparts; and they entail both theoretical and experiential learning for all participants.

The initiative *Cultural and Religious Pluralism in Uzbekistan and the United States* will support an outreach program in a number of Uzbek communities to encourage an exchange of ideas about religious tolerance and diversity and the role of religion in a democratic society. The U.S. Embassy in Tashkent will select approximately twelve communities within Uzbekistan where the program will be conducted. The program will expose participants to freedom of religion and church-state issues in the United States, including the study and practice of religion (including Islam) in the United States, interfaith issues and associations, the role of religious organizations in the community, and the role of religion in a democratic political and social structure. ECA estimates that the project will run over a three-year period with the first part of the program commencing in the spring/summer of 2003. It is anticipated that one grant will be awarded under this competition. Requested ECA funding for the project should not exceed $1,305,000. Bureau guidelines state that organizations with less than four years of international exchange experience are limited to no more than $60,000 in ECA funding. Therefore, organizations that do not have more than four years of international exchange experience are not eligible under this competition. Project activities supported by the Department of State should be consistent with the principles of the non-establishment of religion and the separation of church and state. Activities that focus on theology or training in religious doctrine are not appropriate under this competition.

Guidelines: Strong proposals will have the following characteristics:

- A proven track record of working in Uzbekistan;
- Established offices in Uzbekistan and experienced staff with language facility and a commitment by the staff to monitor projects locally to ensure accountability;
- A clear, convincing plan showing how permanent results will be accomplished as a result of the activity funded by the grant.

Public Affairs Section Involvement: Though project administration and implementation are the responsibility of the grantee, the Public Affairs Section (PAS) of the U.S. Embassy in Tashkent will play a primary role in this project. The Public Affairs Section of the U.S. Embassy in Tashkent will evaluate project proposals, coordinate planning with the grantee organization, help coordinate in-country activities (including identification of participating communities), help nominate participants and review grantee nominations, observe in-country activities, debrief participants, work with grantee to solicit and approve follow-on projects, and evaluate project impact. The U.S. Embassy Public Affairs Section in Tashkent and the Bureau of Educational and Cultural Affairs must approve all participants.

Bureau Acknowledgement: Proposal narratives must confirm that all materials developed for the project with funds provided by the Bureau will acknowledge the Bureau of Educational and Cultural Affairs, U.S. Department of State funding for the program. Please note that this will be a formal requirement in all final grant awards.

Project Components: As envisioned by ECA and the Public Affairs Section of the U.S. Embassy in Tashkent, this project will be comprised of two program components that will run concurrently over the three years of the project. Proposals must address both components.

Uzbekistan Community Leaders Component: Proposals should describe a U.S. based program that involves substantive meetings with U.S. experts on the role of religion and religious and cultural pluralism in American life. Proposals should include activities that involve Islamic and other clerics and lay experts, faith-based organizations, and representatives of local government, and others involved in the interplay between church and state. The program should also include observation of classes on religion at religious and secular educational institutions. Groups from two Uzbek communities at a time should travel together to the U.S. for a two to three week program. The program should be based in one U.S. community (approximately two weeks) but include visits to other representative or relevant communities. There will be approximately five participants from each of the communities identified by the U.S. Embassy for a total of approximately 60 participants. Proposals should describe a transparent selection process that will be coordinated with the Public Affairs Section in Tashkent. Uzbek community leaders in the selected regions should include imams, clerics from other religions, government officials responsible for monitoring and regulating religion, people involved in formal and informal religious education (including women), as well as others involved in community religious affairs from the selected communities. The Public Affairs Section of the U.S. Embassy in Tashkent must approve all Uzbek participants in this program. Proposals should identify possible appropriate U.S. hosting communities. Host communities should be chosen based on their ability to accommodate visiters' dietary and worship needs, expose participants to the variety of religious practice in the U.S., offer appropriate academic programs in the vicinity, and demonstrate active faith-based and interfaith community organizations. Proposals should include a plan to address all logistics for the Uzbek participants including international and domestic travel, ground transportation, and lodging arrangements. Also, applicants should include detailed orientation programs for Uzbek participants. Proposals must include a plan for interpretation while in the United States. Interpretation for the participants must be in Uzbek (not Russian).

Follow On: Proposals should describe how applicants would encourage and organize the participants to undertake follow-on activities individually or in groups upon their return to Uzbekistan. These activities might include projects to describe participants' experiences in the U.S. to Uzbek audiences or other community-based projects that would build on the themes of this exchange. These themes include government/religious community relations, interfaith relations, the role of religion in a democratic society, and cultural heritage and its preservation. Proposals should describe how applicants would, in coordination with the U.S. Embassy in Tashkent, assist participants to develop concrete plans for activities such as community presentations and discussions, articles in/interviews with local media outlets, projects to advance interfaith dialogue in their communities, and local community-based projects to explore the diversity of Uzbek religious and cultural heritage.

U.S. Experts Component: This program component should build on the themes of this exchange, including government/religious community relations, interfaith relations, the role of religion in a democratic society, and cultural heritage preservation. This component involves the recruitment, selection, and programming of

approximately 16 U.S. experts on religion and the role of religion in American society to travel to Uzbekistan over a three-year period. Each expert should be in Uzbekistan for approximately two weeks. U.S. participants would be expected to prepare speeches and presentations, conduct workshops, and consult with Uzbek peers. For this component, proposals should focus on the same communities identified by the U.S. Embassy for the Uzbek leaders component.

Applicants should describe in detail how U.S. experts would interact with groups in the community including religious leaders, local government officials, students and educators, NGOs, and mahalla leadership. U.S. experts may be asked to address general issues related to religious practice in the United States and to speak on specific issues of interest to the Embassy or the community. U.S. experts may also be identified to participate in special events, conferences, or other relevant activities in connection with other parts of this initiative. Proposals should describe how logistical preparations would be made for the U.S. experts including transportation, lodging, interpretation (if necessary), insurance, visa processing, etc. Applicants should describe the content of orientation programs for U.S. experts before departure to Uzbekistan. Also, applicants should include a plan to follow up with the U.S. experts when they return from Uzbekistan.

Participants: Applicants should describe recruitment of U.S. participants, preferably from among specialists who have worked with Uzbek participants during the U.S.-based part of this program. Participants should be American experts on religion and religious pluralism, including religious scholars, religious organization leaders, clerics, and professionals active in community/religious relations. ECA and Public Affairs Section of the U.S. Embassy in Tashkent must approve final selections.

Media: For both components, the implementing organization will work with PAS Tashkent to coordinate media coverage in Uzbekistan with a USAID-funded grantee that will be responsible for working with local media outlets.

Note: In a separate solicitation, the Bureau anticipates announcing the Uzbekistan Educational Partnerships Program in Religious and Cultural Studies. That program will support academic linkages between scholars and institutions in the United States and selected counterparts in Uzbekistan. The Uzbek institutions identified for participation in the Uzbekistan Educational Partnerships Program in Religious and Cultural Studies may be appropriate venues for experts sponsored by the Cultural and Religious Pluralism in Uzbekistan and the United States Program. Therefore the grantees in the two programs for Uzbekistan will be expected to coordinate activities closely with one another to make sure that the activities of the two programs are complementary.

Evaluation: In general, evaluation should occur throughout the project. The evaluation should incorporate an assessment of the program from a variety of perspectives. Specifically, project assessment efforts will focus on: (a) Determining if objectives are being met or have been met, (b) identifying any unmet needs, and (c) assessing if the project has effectively discovered resources, advocates, and financial support for sustainability of future projects. Informal evaluation through discussions and other sources of feedback will be carried out throughout the duration of the project. Formal evaluation must be conducted at the end of each component, should measure the impact of the activities and should obtain participants' feedback on the program content and administration. A detailed evaluation should be conducted at the conclusion of the project and included in the final report submitted to the Department of State Bureau of Educational and Cultural Affairs. When possible, the evaluation should be conducted by an independent evaluator.

Program Data Requirements: Organizations that are awarded grants will be required to maintain specific data on program participants and activities in an electronically accessible database format that can be shared with the Bureau as required. As a minimum, the data must include the following:

(1) Name, address, contact information and biographic sketch of all persons who travel internationally on funds provided by the grant or who benefit from the grant funding but do not travel.

(2) Itineraries of international and domestic travel, providing dates of travel and cities in which any exchange experiences take place.

Budget Guidelines and Cost-Sharing Requirements: Applicants must submit a comprehensive budget for the entire program. Applicants must provide a summary budget as well as breakdowns reflecting both administrative and program budgets. Applicants may provide separate sub-budgets for each program component, phase, location, or activity to provide clarification. Please refer to the Proposal Submission Instructions (PSI) for complete budget guidelines and formatting instructions. Since Bureau grant assistance constitutes only a portion of total project funding, proposals should list and provide evidence of other anticipated sources of financial and in-kind support. Competitive proposals will provide cost sharing to the fullest extent possible beyond ECA's minimum cost-sharing requirements.

The following program costs are eligible for funding consideration:

1. *Travel Costs.* International and domestic airfares (per the Fly America Act), transit costs, ground transportation costs, and visas for U.S. participants (J–1 visas for Bureau-supported participants from Eurasia to travel to the U.S. are issued at no charge).

2. *Per Diem.* For U.S.-based programming, organizations should use the published Federal per diem rates for individual U.S. cities. For activities in Uzbekistan, ECA strongly encourages applicants to budget realistic costs that reflect the local economy. Domestic per diem rates may be accessed at: *http://www.policyworks.gov/* and foreign per diem rates can be accessed at: *http://www.state.gov/www/perdiems/index.html.*

3. *Interpreters.* Local interpreters with adequate skills and experience may be used for program activities. The Bureau strongly encourages applicants to use local interpreters, if possible. Salary costs for local interpreters must be included in the budget. Costs associated with using their services may not exceed rates for U.S. Department of State interpreters. Typically, one interpreter is provided for every four visitors who require interpreting, with a minimum of two interpreters. Bureau grants do not pay for foreign interpreters to accompany delegations from their home country. U.S. Department of State Interpreters may be used for highly technical programs with the approval of the Office of Citizen Exchanges. Proposal budgets should contain a flat $170/day per diem for each U.S. Department of State interpreter, as well as home-program-home air transportation of $400 per interpreter, reimbursements for taxi fares, plus any other transportation expenses during the program. Salary expenses for State Department interpreters are covered centrally and should not be part of an applicant's proposed budget.

4. *Book and cultural allowance.* Foreign participants are entitled to a one-time cultural allowance of $150 per person, plus a book allowance of $50. Interpreters should be reimbursed up to $150 for expenses when they escort participants to cultural events. U.S. program staff, trainers or participants are not eligible to receive these benefits.

5. *Consultants.* Consultants may be used to provide specialized expertise or to make presentations. Daily honoraria cannot exceed $250 per day. Subcontracting organizations may also be used, in which case the written agreement between the prospective grantee and subcontractor should be included in the proposal. Subcontracts should be itemized in the budget.

6. *Room rental.* Room rental may not exceed $250 per day.

7. *Materials development.* Proposals may contain costs to purchase, develop and translate materials for participants. The Bureau strongly discourages the use of automatic translation software for the preparation of training materials or any information distributed to the group of participants or network of organizations. Costs for high-quality translation of materials should be anticipated and included in the budget. Grantee organizations should expect to submit a copy of all program materials to the Bureau.

8. *Equipment.* Proposals may contain costs to purchase equipment for Eurasia-based programming such as computers, fax machines and copy machines. Costs for furniture are not allowed. Equipment costs must be kept to a minimum.

9. *Working meal.* Only one working meal may be provided during the program. Per capita costs may not exceed $5–8 for a lunch and $14–20 for a dinner, excluding room rental. The number of invited guests may not exceed participants by more than a factor of two-to-one. Interpreters must be included as participants.

10. *Return travel allowance.* A return travel allowance of $70 for each foreign participant may be included in the budget. The allowance may be used for incidental expenses incurred during international travel.

11. *Health Insurance.* Foreign participants will be covered under the terms of a Bureau-sponsored health insurance policy. The Bureau pays the premium directly to the insurance company. Applicants are permitted to include costs for travel insurance for U.S. participants in the budget.

12. *Wire transfer fees.* When necessary, applicants may include costs to transfer funds to partner organizations overseas.

13. *Administrative Costs.* Costs necessary for the effective administration of the program may include salaries for grantee organization employees, benefits, and other direct and indirect costs per detailed instructions in the Application Package. While there is no rigid ratio of administrative to program costs, priority will be given to proposals whose administrative costs are less than twenty-five (25) per cent of the total requested from the Bureau. Proposals should show strong administrative cost-sharing contributions from the applicant, the in-country partner and other sources.

Announcement Title and Number: All correspondence with the Bureau concerning this RFGP should reference the above title and number ECA/PE/C/EUR–03–23.

FOR FURTHER INFORMATION CONTACT: Brent Beemer, Program Officer, The Office of Citizen Exchanges Europe/Eurasia Division ECA/PE/C/EUR, Room 220, U.S. Department of State, 301 4th Street, SW., Washington, DC 20547, (202) 401–6887, fax: (202) 260–0440, *bbeemer@pd.state.gov*. The Solicitation Package contains detailed award criteria, required application forms, specific budget instructions, and standard guidelines for proposal preparation. Please specify Bureau Program Officer Brent Beemer on all other inquiries and correspondence.

Please read the complete **Federal Register** announcement before sending inquiries or submitting proposals. Once the RFGP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

To Download a Solicitation Package Via Internet: The entire Solicitation Package may be downloaded from the Bureau's Web site at *http://exchanges.state.gov/education/RFGPs*. Please read all information before downloading.

Deadline for Proposals: All proposal copies must be received at the Bureau of Educational and Cultural Affairs by 5 p.m. Washington, DC time on Friday, April 11, 2003. Faxed documents will not be accepted at any time. Documents postmarked the due date but received on a later date will not be accepted. Each applicant must ensure that the proposals are received by the above deadline.

Applicants must follow all instructions in the Solicitation Package narrative. The original and eight copies of the application should be sent to: U.S. Department of State, SA–44, Bureau of Educational and Cultural Affairs, Ref.: ECA/PE/C/EUR–03–23, Program Management, ECA/EX/PM, Room 534, 301 4th Street, SW., Washington, DC 20547.

Applicants must also submit the "Executive Summary" and "Proposal Narrative" sections of the proposal on a 3.5″ diskette, formatted for DOS. These documents must be provided in ASCII text (DOS) format with a maximum line length of 65 characters. The Bureau will transmit these files electronically to the Public Affairs section at the US Embassy for its review, with the goal of reducing the time it takes to get embassy comments for the Bureau's grants review process.

Note: Proposal should not exceed a narrative of 20 pages double spaced in length.

Diversity, Freedom and Democracy Guidelines

Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. "Diversity" should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and physical challenges. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the 'Support for Diversity' section for specific suggestions on incorporating diversity into the total proposal. Public Law 104–319 provides that "in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy," the Bureau "shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries." Public Law 106–113 requires that the governments of the countries described above do not have inappropriate influence in the selection process. Proposals should reflect advancement of these goals in their program contents, to the full extent deemed feasible.

Adherence to All Regulations Governing the J Visa

The Office of Citizen Exchanges of the Bureau of Educational and Cultural Affairs is the official program sponsor of the exchange program covered by this RFGP, and an employee of the Bureau will be the "Responsible Officer" for the program under the terms of 22 CFR part 62, which covers the administration of the Exchange Visitor Program (J visa program). Under the terms of 22 CFR part 62, organizations receiving grants under this RFGP will be third parties "cooperating with or assisting the sponsor in the conduct of the sponsor's program." The actions of grantee program organizations shall be "imputed to the sponsor in evaluating

the sponsor's compliance with" 22 CFR part 62. Therefore, the Bureau expects that any organization receiving a grant under this competition will render all assistance necessary to enable the Bureau to fully comply with 22 CFR part 62 *et seq.* The Bureau of Educational and Cultural Affairs places great emphasis on the secure and proper administration of Exchange Visitor (J visa) Programs and adherence by grantee program organizations and program participants to all regulations governing the J visa program status. Therefore, proposals should explicitly state in writing that the applicant is prepared to assist the Bureau in meeting all requirements governing the administration of Exchange Visitor Programs as set forth in 22 CFR part 62. If the applicant has experience as a designated Exchange Visitor Program Sponsor, the applicant should discuss their record of compliance with 22 CFR part 62 *et. seq.*, including the oversight of their Responsible Officers and Alternate Responsible Officers, screening and selection of program participants, provision of pre-arrival information and orientation to participants, monitoring of participants, proper maintenance and security of forms, record-keeping, reporting and other requirements.

The Office of Citizen Exchanges of ECA will be responsible for issuing DS–2019 forms to participants in this program.

A copy of the complete regulations governing the administration of Exchange Visitor (J) programs is available at *http://exchanges.state.gov* or from: United States Department of State, Office of Exchange Coordination and Designation, ECA/EC/ECD–SA–44, Room 734, 301 4th Street, SW., Washington, DC 20547, Telephone: (202) 401–9810, Fax: (202) 401–9809.

Review Process

The Bureau will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Proposal Submission Instructions (PSI). The Program Office, the State Department Regional Office, as well as the Public Diplomacy section overseas will review all eligible proposals. Eligible proposals will be subject to compliance with Federal and Bureau regulations and guidelines and forwarded to Bureau grant panels for advisory review. Proposals may also be reviewed by the Office of the Legal Adviser or by other Department elements. Final funding decisions are at the discretion of the Department of State's Assistant Secretary for Educational and Cultural Affairs. Final technical authority for assistance awards resides with the Bureau's Grants Officer.

Review Criteria

Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank ordered and all carry equal weight in the proposal evaluation:

1. *Program Planning and Ability to Achieve Program Objectives:* Program objectives should be stated clearly and should reflect the applicant's expertise in the subject area and region. Objectives should respond to the priority topics in this announcement and should relate to the current conditions in Uzbekistan. A detailed agenda and relevant work plan should explain how objectives will be achieved and should include a timetable for completion of major tasks. The substance of workshops, internships, seminars and/or consulting should be described in detail. Sample training schedules should be outlined.

2. *Institutional Capacity:* The proposal should include (1) The U.S. institution's mission and date of establishment (2) an outline of prior awards—U.S. government and private support received for the selected theme/region (3) descriptions of experienced staff members who will implement the program. Proposed personnel and institutional resources should be adequate and appropriate to achieve the program's goals. The proposal should reflect the institution's expertise in the subject area and knowledge of the conditions in the selected country. Proposals should demonstrate an institutional record of successful exchange programs, including responsible fiscal management and full compliance with all reporting requirements for past Bureau grants as determined by Bureau Grant Staff. The Bureau will consider the past performance of prior recipients and the demonstrated potential of new applicants.

3. *Cost Effectiveness and Cost Sharing:* Overhead and administrative costs for the proposal, including salaries, honoraria and subcontracts for services, should be kept to a minimum. Priority will be given to proposals whose administrative costs are less than twenty-five (25) per cent of the total funds requested from the Bureau. Applicants are encouraged to cost share a portion of overhead and administrative expenses. Cost-sharing, including contributions from the applicant, the in-country partner, and other sources should be included in the budget request.

4. *Multiplier Effect and Impact:* Proposed programs should strengthen long-term mutual understanding, should enhance information sharing and should establish long-term institutional and individual linkages. Applicants should describe how responsibility and ownership of the project will be transferred to the in-country partners and participants to ensure continued impact.

5. *Support of Diversity:* Proposals should demonstrate substantive support of the Bureau's policy on diversity. Achievable and relevant features should be cited in both program administration (selection of participants, program venues and program evaluation) and program content (orientation and wrap-up sessions, program meetings, resource materials and follow-up activities). Applicants should refer to the Bureau's Diversity, Freedom and Democracy Guidelines in the Proposal Submission Instructions (PSI).

6. *Follow-on Activities:* Proposals should provide a plan for continued follow-on activity ensuring that Bureau supported programs are not isolated events.

7. *Evaluation:* Proposals should include a detailed plan to monitor and evaluate the program. A draft survey questionnaire plus a description of a methodology to use to link outcomes to original project objectives should be included. Successful applicants will be expected to submit intermediate reports after each project component concludes or on a quarterly basis, whichever is less frequent.

Authority: Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is "to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries* * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations* * *and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world." The funding authority for the program above is provided through the FREEDOM Support Act (FSA) legislation.

Notice

The terms and conditions published in this RFGP are binding and may not be modified by any Bureau representative. Explanatory information

provided by the Bureau that contradicts published language will not be binding. Issuance of the RFGP does not constitute an award commitment on the part of the Government. The Bureau reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements.

Notification

Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal Bureau procedures.

Dated: January 28, 2003.

C. Miller Crouch,

Principal Deputy Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 03–2924 Filed 2–5–03; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 4229]

Notice of Meetings: United States International Telecommunication Advisory Committee, International Telecommunication Union Telecommunications Development Advisory Group Preparations

The Department of State announces meetings of the U.S. International Telecommunication Advisory Committee. The purpose of the Committee is to advise the Department on policy and technical issues with respect to the International Telecommunication Union (ITU). The purpose of these meetings is to prepare for the 2003 meeting of the Telecommunications Development Advisory Group (TDAG).

An ITAC meeting will be held on Thursday, February 20, 2003, at the State Department from 10 am to 12 pm to begin preparations for the meeting of the ITU Telecommunications Development Advisory Group, which will take place March 19–21, 2003 in Geneva, Switzerland. An additional meeting is scheduled concerning preparations for the TDAG on Thursday, March 6, 2003 from 10 am to 12 pm. All of these meetings will be at the Department of State in rooms yet to be determined.

Members of the public may attend these meetings and are welcome to participate in the discussions, subject to the discretion of the Chair. Directions to meeting location and room assignments may be determined by calling the ITAC Secretariat at 202–647–2592. Entrance to the State Department is controlled; in order to get precleared for each meeting, people planning to attend should send an e-mail to *worsleydm@state.gov* no later than 48 hours before the meeting. This e-mail should include the name of the meeting and date of meeting, your name, social security number, date of birth, and organizational affiliation. One of the following valid photo identifications will be required for admission to the State Department: U.S. driver's license, passport, U.S. Government identification card. Enter the Department of State from the C Street Lobby; in view of escorting requirements, non-Government attendees should plan to arrive not less than 15 minutes before the meeting begins.

Dated: January 30, 2003.

Anne D. Jillson,

Foreign Affairs Officer, Bureau of Economic and Business Affairs, Department of State.

[FR Doc. 03–2922 Filed 2–5–03; 8:45 am]

BILLING CODE 4710–45–P

DEPARTMENT OF STATE

[Public Notice 4228]

U.S. Advisory Commission on Public Diplomacy; Notice of Meeting

The Department of State announces the meeting of the U.S. Advisory Commission on Public Diplomacy on Wednesday, February 26 in Room 1408 of the U.S. Department of State at 2201 C Street, NW., Washington, DC. The meeting will take place from 1:30 p.m. to 2:45 p.m.

The Commission will hear from the State Department's Coordinator for International Information Programs (IIP). IIP is the State Department's information arm, providing the tools for the U.S. government to communicate effectively with foreign audiences. IIP provides communication strategy, products and programs that provide context for U.S. policy and American foreign policy overseas.

Stuart W. Holliday, IIP Coordinator, will be the speaker at the meeting. Previously, Mr. Holliday served as Principal Deputy Assistant Secretary for the Bureau of Public Affairs. Prior to this appointment, he served as Special Assistant to the President and Associate Director of Presidential Personnel at the White House, where he was responsible for the National Security Area. Mr. Holliday also served as policy advisor to Vice Presidential candidate Dick Cheney, and starting in 1998 he served as Deputy Policy Director in the Office of Governor W. Bush.

The U.S. Advisory Commission on Public Diplomacy is a bipartisan Presidentially appointed panel created by Congress in 1948 to provide oversight of U.S. Government activities intended to understand, inform and influence foreign publics. The Commission reports its findings and recommendations to the President, the Congress and the Secretary of State and the American people. Current commission members include Harold Pachios of Maine, who is the chairman; Charles Dolan of Virginia, who is the vice chairman; Penne Percy Korth of Texas; Lewis Manilow of Illinois; and Maria Elena Torano of Florida.

Members of the press and general public may attend the meeting, though attendance will be limited to the seating available. Access to the building is controlled, and individual building passes are required for all attendees.

To attend the meeting, please contact Matt Lauer at (202) 619–4457 and provide date of birth and Social Security number. For more information visit *http://www.state.gov/r/adcompd*.

Dated: January 31, 2003.

Matthew Lauer,

International Information Programs, U.S. Advisory Commission on Public Diplomacy, Department of State.

[FR Doc. 03–2923 Filed 2–5–03; 8:45 am]

BILLING CODE 4710–11–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Advisory Circular 25.775–1, Windows and Windshields

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of issuance of advisory circular.

SUMMARY: This notice announces the issuance of Advisory Circular (AC) 25.775–1, "Windows and Windshields." This AC sets forth an acceptable means, but not the only means, of demonstrating compliance with the provisions of Title 14, Code of Federal Regulations (14 CFR), part 25, related to the certification requirements for windows, windshields, and mounting structures for transport category airplanes. Like all ACs, it is not regulatory but provides guidance for applicants in demonstrating compliance with the objective safety standards set forth in the rule.

DATES: Advisory Circular 25.775–1 was issued by the Manager, Transport

Airplane Directorate, Aircraft Certification Service, on January 17, 2003.

FOR FURTHER INFORMATION CONTACT: Rich Yarges, FAA, Airframe/Cabin Safety Branch, ANM–115, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA 98055–4056; telephone (425) 227–2143; facsimile (425) 227–1320, e-mail *rich.yarges@faa.gov*.

SUPPLEMENTARY INFORMATION:

How To Obtain a Copy of the AC

How To Obtain Copies: Copies of this AC can be found and downloaded from the Internet at *http://www.faa.gov/regulatoryAdvisory/ac_index.htm/*. You may also go to the Regulatory and Guidance Library Web site at *http://www.airweb.faa.gov/rgl*, at the link titled "Advisory Circulars." Paper copies of the AC will be available in approximately 6–8 weeks from the U.S. Department of Transportation, Subsequent Distribution Office, SVC–121.23, Ardmore East Business Center, 3341 Q 75th Avenue, Landover, MD 20785.

Issued in Renton, Washington, on January 17, 2003.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–2927 Filed 2–5–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Burbank-Glendale-Pasadena Airport, Burbank, California

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Burbank-Glendale-Pasadena Airport under the provisions of the 49 United States Code (U.S.C.) section 40117 and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before March 10, 2003.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Airports Division, 15000 Aviation Blvd., Room 3012, Lawndale, CA 90261. In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Dan Feger, Deputy Executive Director at the following address: Burbank-Glendale-Pasadena Airport Authority, 2627 Hollywood Way, Burbank, CA 91505–9989.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Burbank-Glendale-Pasadena Airport Authority under section 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Ruben Cabalbag, Airports Program Engineer, Airports Division, Federal Aviation Administration, 15000 Aviation Blvd., Room 3012, Lawndale, CA 90261, Telephone (310) 725–3630. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Burbank-Glendale-Pasadena Airport under the provisions of the 49 United States Code (U.S.C.) section 40117 and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On January 27, 2003, the FAA determined that the application to impose and use the revenue from a PFC submitted by the Burbank-Glendale-Pasadena Airport Authority was substantially complete within the requirements of § 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than April 30, 2003.

The following is a brief overview of the impose and use PFC application number 03–05–C–00–BUR.

Level of proposed PFC: $4.50.

Proposed charge effective date: January 1, 2008.

Proposed charge expiration date: November 1, 2009.

Total estimated PFC revenue approved in this application: $17,509,405.

Brief description of the proposed project: Terminal Security Enhancement Project.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: All air taxi/commercial operators (ATCO) filing or required to file FAA Form 1800–31.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT**. In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Burbank-Glendale-Pasadena Airport Authority.

Issued in Hawthorne, California on January 27, 2003.

Herman C. Bliss,

Manager, Airports Division, Western-Pacific Region.

[FR Doc. 03–2928 Filed 2–5–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application 03–06–C–00–TPA To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Tampa International Airport, Tampa, Florida

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from the PFC at Tampa International Airport under the provisions of the 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before March 10, 2003.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Orlando Airports District Office, 5950 Hazeltine National Drive, Suite 400, Orlando, Florida 32822.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Louis E. Miller of the Hillsborough County Aviation Authority at the following address: Hillsborough County Aviation Authority, PO Box 22287, Tampa, Florida 33622–2287.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Hillsborough County Aviation Authority under § 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Vernon P. Rupinta, Program Manager, 5950 Hazeltine National Drive, Suite 400, Orlando, Florida 32822, (407) 812–6331, Extension 24. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Tampa International Airport under the provisions of the 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On January 30, 2003, in FAA determined that the application to impose and use the revenue from a PFC submitted by Hillsborough County Aviation-Authority was substantially complete within the requirements of § 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than May 16, 2003.

The following is a brief overview of the application.

Proposed charge effective date: August 1, 2006.

Proposed charge expiration date: September 1, 2003.

Level of the proposed PFC: $4.50.

Total estimated PFC revenue: $298,115,400.

Brief description of proposed project(s): Airside "C" Redevelopment Program; Airside "B" Demolition/Apron Reconstruction; Engine Run-up, Taxiway and Ramp; Outbound Baggage System & Security Enhancements.

Level of the proposed PFC: $4.50.

Total estimated PFC revenue: $298,115,400.

Class or classes or air carriers which the public agency has requested not be required to collect PFCs: On-Demand Air Taxi\Commercial Operators (ATCO).

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA regional Airports office located at: Southern Region Headquarters, 1701 Columbia Avenue, College Park, Georgia 30337.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Hillsborough County Aviation Authority.

Issued in Orlando, Florida on January 30, 2003.

Miguel A. Martinez,

Acting DOD Manager, Southern Region.

[FR Doc. 03–2929 Filed 2–5–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Maritime Administration

Reports, Forms and Recordkeeping Requirements; Agency Information Collection Activity Under OMB Review

AGENCY: Maritime Administration, DOT.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and approval. The nature of the information collection is described as well as its expected burden. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on November 20, 2002. No comments were received.

DATES: Comments must be submitted on or before March 10, 2003.

FOR FURTHER INFORMATION CONTACT: Lennis Fludd, Maritime Administration (MAR–560), 400 Seventh Street, SW., Washington, DC 20590. Telephone: (202) 366–2308; FAX: (202) 366–9580, or e-mail: *lennis.fludd@marad.dot.gov*.

Copies of this collection also can be obtained from that office.

SUPPLEMENTARY INFORMATION: Maritime Administration (MARAD).

Title: Records Retention Schedule.

OMB Control Number: 2133–0501.

Type of Request: Extension of currently approved collection.

Affected Public: U.S. Shipping Companies.

Form(s): None.

Abstract: Section 801, Merchant Marine Act, 1936, as amended, requires retention of financial records pertaining to financial assistance programs for ship construction and ship operations. These records are required to permit proper audit of pertinent records at the conclusion of a contract. The information will be used to audit pertinent records at the conclusion of a contract when the contractor was receiving financial assistance from the government.

Annual Estimated Burden Hours: 150 hours.

ADDRESSES: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention MARAD Desk Officer.

Comments are Invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

Issued in Washington, DC on February 3, 2003.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 03–2931 Filed 2–5–03; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

January 24, 2003.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before March 10, 2003 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–1812.

Regulation Project Number: REG–143321–02 (NPRM and Temporary).

Type of Review: Extension.

Title: Information Reporting Relating to Taxable Stock Transactions.

Description: The regulation prescribes procedures for reporting the acquisition of control of a corporation, substantial change in capital structure of a corporation, substantial change in capital structure of a corporation.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 1.

Estimated Burden Hours Per Respondent: 1 hour.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 1 hour.

Clearance Officer: Glenn Kirkland, (202) 622–3428, Internal Revenue Service, Room 6411–03, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Joseph F. Lackey, Jr., (202) 395–7316, Office of Management and Budget, Room 10235, New

Executive Office Building, Washington, DC 20503.

Mary A. Able,

Departmental Reports, Management Officer.

[FR Doc. 03–2824 Filed 2–5–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

[TTB Notice No. 1; TTB O 1190.1]

Delegation Order—Deciding Requests Under the Freedom of Information Act and the Privacy Act; Authority To Decide Administrative Appeals Under the Freedom of Information Act and the Privacy Act

To: All Bureau Employees and All Interested Parties

1. *Purpose.* This order establishes responsibilities for making initial decisions on requests under the Freedom of Information Act (FOIA) and the Privacy Act (PA). It also delegates the authority to decide administrative appeals under the Freedom of Information Act, 5 U.S.C. 552, and the Privacy Act, 5 U.S.C. 552a.

2. *Background.* The Freedom of Information Act generally provides that any person has the right of access to Alcohol and Tobacco Tax and Trade Bureau (TTB) records, except to the extent that such records (or portions thereof) are protected from disclosure by a specific provision of the FOIA. The Privacy Act is both an access law and a non-disclosure law. Any individual (i.e. U.S. citizen or legal alien) who is the subject of a Privacy Act record or records maintained by the Bureau can request access to such records. The Privacy Act requires the Bureau to give access to their records unless the Bureau has exempted the entire system of records from the access provisions.

3. *Effective Date.* This order is effective January 24, 2003.

4. *Ratification.* In addition to section 1512(a) of the Homeland Security Act of 2002, Public Law 107–296, 116 Stat. 2135 (2002), this order affirms and ratifies any action taken that is consistent with this order.

5. *Delegation.*

a. The Chief, Regulations and Procedures Division is hereby delegated responsibility for making initial decisions on requests under the FOIA or PA and processing such requests.

b. The Assistant Administrator, Headquarters Operations is hereby delegated authority to decide administrative appeals under the Freedom of Information Act, 5 U.S.C. 552, and the Privacy Act, 5 U.S.C. 552a.

6. *Coordination.* The Office of Chief Counsel is responsible for preparing proposed decisions on administrative appeals under the FOIA and PA for consideration of the Assistant Administrator, Headquarters Operations.

7. *Submission of FOIA Requests.* All FOIA requests for the Alcohol and Tobacco Tax and Trade Bureau should be sent to the following address: Chief, Regulations and Procedures Division, Alcohol and Tobacco Tax and Trade Bureau, 650 Massachusetts Avenue, NW., Room 5000, Washington, DC 20226.

8. *Redelegation.* The authorities delegated in this order may not be redelegated.

9. *Questions.* If you have a question about this order, contact the Chief, Regulations and Procedures Division (202–927–8210).

Arthur J. Libertucci,

Administrator.

[FR Doc. 03–2932 Filed 2–5–03; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

[TTB Notice No. 2; TTB O 1130.1]

Delegation Order—Delegation of the Administrator's Authorities in 27 CFR

To: All Bureau Employees and All Interested Parties

1. *Purpose.* This order delegates certain authorities of the Administrator, Alcohol and Tobacco Tax and Trade Bureau (TTB) to subordinate TTB officers and prescribes the subordinate TTB officers with whom persons file documents.

2. *Background.* a. On November 25, 2002, the President signed into law the Homeland Security Act of 2002, Public Law 107–296, 116 Stat. 2135 (2002). The Homeland Security Act of 2002 divided the Bureau of Alcohol, Tobacco and Firearms, Department of the Treasury, into two separate agencies, the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) in the Department of Justice, and the Tax and Trade Bureau (TTB) in the Department of the Treasury. This division of the former agency and division of its responsibilities into two new agencies took place 60 days after enactment of the Act on January 24, 2003.

b. The Homeland Security Act of 2002 provides that the newly established Tax and Trade Bureau be headed by an Administrator. It also provides that the authorities, functions, personnel and assets of the Bureau of Alcohol, Tobacco and Firearms that are not transferred to the Department of Justice shall be retained within the Department of the Treasury and administered by the Tax and Trade Bureau.

c. Pursuant to the duties and powers established by the Homeland Security Act of 2002, the Administrator of TTB is authorized to administer and enforce Chapters 51 (relating to distilled spirits, wine and beer) and 52 (relating to tobacco products and cigarette papers and tubes) of title 26, U.S.C., the Internal Revenue Code of 1986, as amended, sections 4181 and 4182 (relating to the excise tax on firearms and ammunition) of the Internal Revenue Code of 1986, and title 27, United States Code (relating to alcohol).

d. In addition, Treasury Order No. 120–1 (Revised) dated January 24, 2003 established the Tax and Trade Bureau within the Department of the Treasury and designated it as the Alcohol and Tobacco Tax and Trade Bureau (TTB). It directed that the head of TTB is the Administrator who shall exercise the authorities, perform the functions, and carry out the duties of the Secretary in the administration and enforcement of the laws cited in paragraph 2 c above.

e. Treasury Order No. 120–1 also grants the Administrator of TTB all authorities delegated to the Director of the Bureau of Alcohol, Tobacco and Firearms in effect on January 23, 2003, that are related to the administration and enforcement of the laws specified in paragraph 2 c. In addition, it grants the Administrator full authority, powers, and duties to administer the affairs of and to perform the functions of TTB, including, without limitation, all management and administrative authorities and responsibilities similarly granted and assigned to Bureau Heads or Heads of Bureaus in Treasury Orders and Treasury Directives.

f. Treasury Order No. 120–1 provides that all regulations adopted on or before January 23, 2003 for the administration and enforcement of the laws cited in paragraph 2 c above shall continue in effect until superseded or revised.

g. Through this delegation order the Administrator of TTB intends to redelegate certain authorities of the Administrator in Title 27 of the Code of Federal Regulations (CFR) to subordinate TTB officers.

3. *Effective Date.* This order is effective January 24, 2003.

4. *Ratification.* In addition to section 1512(a) of the Homeland Security Act of 2002, this order affirms and ratifies any

action taken that is consistent with this order.

5. *Delegations.* a. Under the authority vested in the Administrator, Alcohol and Tobacco Tax and Trade Bureau, by the Homeland Security Act of 2002, Treasury Department Order No. 120–01 (Revised) dated January 24, 2003, and by 26 CFR 301.7701–9, this TTB order delegates certain authorities prescribed in 27 CFR to subordinate TTB officers. Also, this TTB order prescribes the subordinate officers with whom applications, notices, and reports required by 27 CFR are filed.

b. Accordingly, the following delegations of authority issued by the former Bureau of Alcohol, Tobacco and Firearms, Department of the Treasury relative to authorities in 27 CFR are hereby adopted by the Administrator, Alcohol and Tobacco Tax and Trade Bureau, Department of the Treasury, subject to the amendments and exceptions listed in Paragraph 6 of this order.

27 CFR Part 1

ATF Order 1130.6—Delegation of the Director's Authorities in 27 CFR PART 1, Date of Order: 9/15/99 (64 FR 50135)

27 CFR Parts 4, 5, and 7

ATF Order 1130.2A—Delegation of the Director's Authorities in 27 CFR Parts 4, 5, and 7, Labeling and Advertising of Wine, Distilled Spirits and Malt Beverages, Date of Order: 2/22/00 (65 FR 12054)

27 CFR Parts 6, 8, 10, and 11

ATF Order 1130.7— Delegation of the Director's Authorities in 27 CFR Parts 6, 8, 10 and 11, Date of Order: 8/28/00 (65 FR 52159)

27 CFR Part 13

ATF Order 1130.21—Delegation of the Director's Authorities in 27 CFR Part 13, Labeling Proceedings, Date of Order: 5/17/01 (66 FR 29884)

27 CFR Parts 17 and 18

ATF Order 1130.13—Delegation of the Director's Authorities in 27 CFR Parts 17 and 18, Date of Order: 8/23/01 (66 FR 47933)

27 CFR Parts 20, 21, and 22

ATF Order 1130.9—Delegation of the Director's Authorities in 27 CFR Parts 20, 21, and 22, Date of Order: 6/21/01 (66 FR 35511)

27 CFR Part 24

ATF Order 1130.5—Delegation of the Director's Authorities in 27 CFR Part 24, Wine, Date of Order: 3/22/99 (64 FR 13846)

27 CFR Part 25

ATF Order 1130.10—Delegation of the Director's Authorities in 27 CFR Part 25, Beer, Date of Order: 6/21/01 (66 FR 35509)

27 CFR Part 26

ATF Order 1130.29—Delegation of the Director's Authorities in 27 CFR Part 26, Liquors and Articles from Puerto Rico and the Virgin Islands, Date of Order: 7/18/02 (67 FR 49388)

27 CFR Part 29

ATF Order 1130.25—Delegation of the Director's Authorities in 27 CFR Part 29, Stills and Miscellaneous Regulations, Date of Order: 2/6/02 (67 FR 7447)

27 CFR Part 30

ATF Order 1130.17—Delegation of the Director's Authorities in 27 CFR Part 30, Gauging Manual, Date of Order: 5/25/01 (66 FR 30989)

27 CFR Part 44

ATF Order 1130.31—Delegation of the Director's Authorities in 27 CFR Part 44, Exportation of Tobacco Products and Cigarette Papers and Tubes, Without Payment of Tax, or With Drawback of Tax, Date of Order: 4/26/02 (67 FR 30994)

27 CFR Parts 45 and 46

ATF Order 1130.28—Delegation of the Director's Authorities in 27 CFR Parts 45 and 46, Date of Order: 2/15/02 (67 FR 9043)

27 CFR Part 53

ATF Order 1130.18—Delegation of the Director's Authorities in 27 CFR Part 53, Manufacturer's Excise Taxes—Firearms and Ammunition, Date of Order: 7/18/01 (66 FR 39226)

27 CFR Part 70

ATF Order 1130.19—Delegation of the Director's Authorities in 27 CFR Part 70, Procedure and Administration, Other Than Certain Offers in Compromise, Date of Order: 2/1/02 (67 FR 7448)

ATF O 1100.63F—Delegation of Authority to Accept or Reject Offers in Compromise, Date of Order: 3/8/94 (59 FR 11826)

27 CFR Part 251—[Recodified as 27 CFR Part 27]

ATF Order 1130.12—Delegation of the Director's Authorities in 27 CFR Part 251, Importation of Distilled Spirits, Wines and Beer, Date of Order: 3/5/02 (67 FR 11371)

27 CFR Part 252

ATF Order 1130.27—Delegation of the Director's Authorities in 27 CFR Part 252, Exportation of Liquors, Date of Order: 3/29/02 (67 FR 18300)

27 CFR Parts 270, 275, and 296

Partially cancelled ATF Order 1130.15—Delegation of Certain of the Director's Authorities in 27 CFR Parts 270, 275 and 296, Date of Order: 12/22/99 (64 FR 71850)

27 CFR Part 275

ATF Order 1130.16—Delegation of Certain of the Director's Authorities in 27 CFR Part 275, Date of Order: 6/30/00 (65 FR 42764)

6. *Amendments and Exceptions.* Under the new organizational structure established for the Alcohol and Tobacco Tax and Trade Bureau, several offices and positions referenced in the above delegation orders have been amended, revised or deleted. Listed below are amendments to the above listed delegation orders which reflect the new organizational structure of the TTB and changes in titles or offices.

Any references in the above listed orders to authorities granted to—	Are hereby replaced with the term—
Headquarters	
Director, Bureau of Alcohol, Tobacco and Firearms	Administrator, Alcohol and Tobacco Tax and Trade Bureau.
Deputy Director	Deputy Administrator.
Assistant Director (Alcohol and Tobacco)	*For headquarters matters:* Assistant Administrator, Headquarters Operations. *For field matters:* Assistant Administrator, Field Operations.
Deputy Assistant Director (Alcohol and Tobacco)	*For headquarters matters:* Assistant Administrator, Headquarters Operations. *For field matters:* Assistant Administrator, Field Operations.

Any references in the above listed orders to authorities granted to—	Are hereby replaced with the term—
Assistant Director (Firearms, Explosives and Arson)	*For headquarters matters:* Assistant Administrator, Headquarters Operations. *For field matters:* Assistant Administrator, Field Operations.
Associate Director (Compliance Operations)	*For headquarters matters:* Assistant Administrator, Headquarters Operations. *For field matters:* Assistant Administrator, Field Operations.
Deputy Associate Director (Compliance Operations)	*For headquarters matters:* Assistant Administrator, Headquarters Operations. *For field matters:* Assistant Administrator, Field Operations.
Deputy Assistant Director (Field Operations)	Deputy Assistant Administrator, Field Operations.
Division Chief in the Office of Alcohol and Tobacco, or Division Chief (Alcohol and Tobacco).	Division Chief in Headquarters Operations.
Chief, Regulations Division	Chief, Regulations and Procedures Division.
Chief, Alcohol and Tobacco Programs Division	Chief, Trade Investigations Division.
Chief, Diversion Branch	Any Division Chief in Headquarters or Field Operations.
Chief, Alcohol Import/Export Branch	Chief, International Trade Division.
Chief, Market Compliance Branch	*With respect to advertising:* Specialist, Advertising, Labeling and Formulation Division. *With respect to interlocking directorates:* Chief, Trade Investigations Division.
Specialist, Market Compliance Branch	Specialist, Advertising, Labeling and Formulation Division.
Division Chief (Compliance)	Division Chief in Headquarters Operations.
Chief, Financial Management Division	CFO/Assistant Administrator, Management.
Chief, Acquisition and Property Management Division	Chief, Regulations and Procedures Division.
Chief, Document Services Branch	Assistant Chief, Regulations and Procedures Division (Knowledge Management).
Chief, Revenue Programs Division	Chief, Regulations and Procedures Division.
Chief, Revenue Division	Unit Supervisor (FAET), National Revenue Center.
Alcohol Labeling and Formulation Division and Predecessors	
Chief, Alcohol Labeling and Formulation Division (ALFD)	Chief, Advertising, Labeling and Formulation Division.
Assistant to the Chief, Alcohol Labeling and Formulation Division (ALFD).	Assistant Chief, Advertising, Labeling and Formulation Division.
Specialist, Alcohol Labeling and Formulation Division (ALFD)	Specialist, Advertising, Labeling and Formulation Division.
Alcohol Labeling Specialist	Specialist, Advertising, Labeling and Formulation Division.
Clerk, Alcohol Labeling and Formulation Division (ALFD)	Clerk, Advertising, Labeling and Formulation Division.
Chief, Product Compliance Branch	Assistant Chief, Advertising, Labeling and Formulation Division.
Specialist, Product Compliance Branch	Specialist, Advertising, Labeling and Formulation Division.
Chief, Formula and Processing Section	Assistant Chief, Advertising, Labeling and Formulation Division.
Specialist, Formula and Processing Section	Specialist, Advertising, Labeling and Formulation Division.
Field Offices	
Division Director/Special Agent in Charge	Chief, Trade Investigations Division or Chief, Tax Audit Division.
Resident Agent in Charge/Group Supervisor	Supervisor, Trade Investigations Group [1] or Supervisor, Tax Audit Group.[1]
Director, Industry Operations	Chief, National Revenue Center.
Area Supervisor	Unit Supervisor, National Revenue Center, or Supervisor, Trade Investigations Group [1] or Supervisor, Tax Audit Group.[1]
Inspector	Specialist, National Revenue Center or Investigator [1] or Auditor.[1]
Special Agent	Investigator [1] or Auditor.[1]
Regional Director	Chief, National Revenue Center.
Regional Director (Compliance)	Chief, National Revenue Center.
Audit Manager	Supervisor, Tax Audit Group.[1]
National Revenue Center and Technical Services	
Chief, Revenue Section, NRC	Chief, National Revenue Center.
Chief, Tax Processing Center	Chief, National Revenue Center.
Chief, Technical Services	Section Chief, National Revenue Center.
Technical Section Supervisor	Unit Supervisor, National Revenue Center.
Specialist	Specialist, National Revenue Center.
Laboratory	
Chief, Laboratory Services	Chief, Alcohol and Tobacco Laboratory.
Chemist, ATF Laboratory	Chemist, Alcohol and Tobacco Laboratory.
Other Titles	
An ATF supervisor in the Office of Alcohol and Tobacco or Firearms, Explosives and Arson.	Chief, Regulations and Procedures Division.

Any references in the above listed orders to authorities granted to—	Are hereby replaced with the term—
Clerk in the Office of Alcohol and Tobacco	Specialist, National Revenue Center.

[1] Field officials are not able to receive materials by mail—all mail should be sent to the National Revenue Center official until further notice.

7. *Redelegation.* The authorities delegated in this order may not be redelegated.

8. *Questions.* If you have a question about this order, contact the Regulations and Procedures Division (202–927–8210).

Arthur J. Libertucci,
Administrator.

BILLING CODE 4810–31–P

Department of the Treasury

Alcohol and Tobacco Tax and Trade Bureau

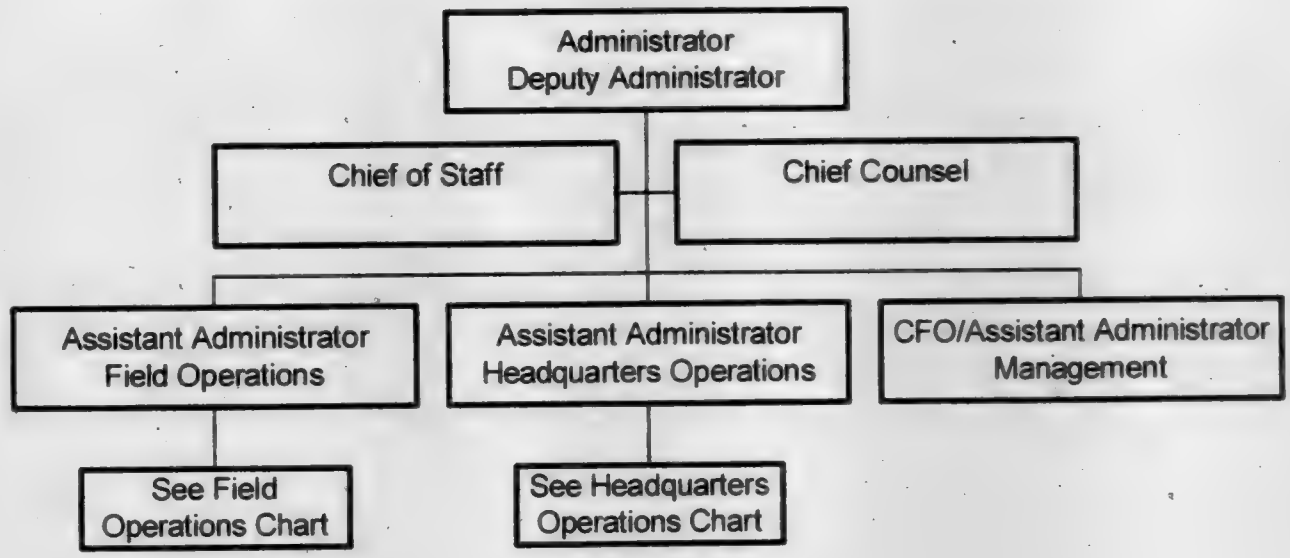

Field Operations

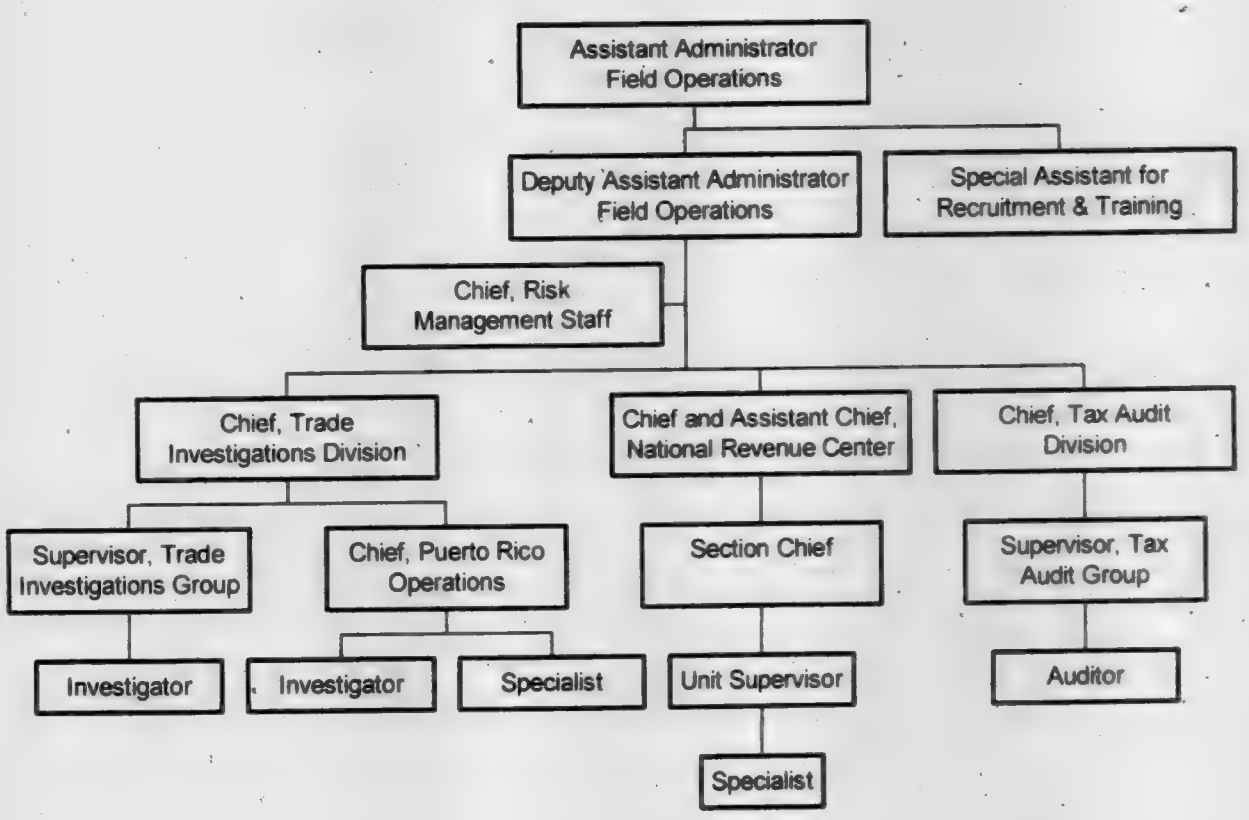

Headquarters Operations

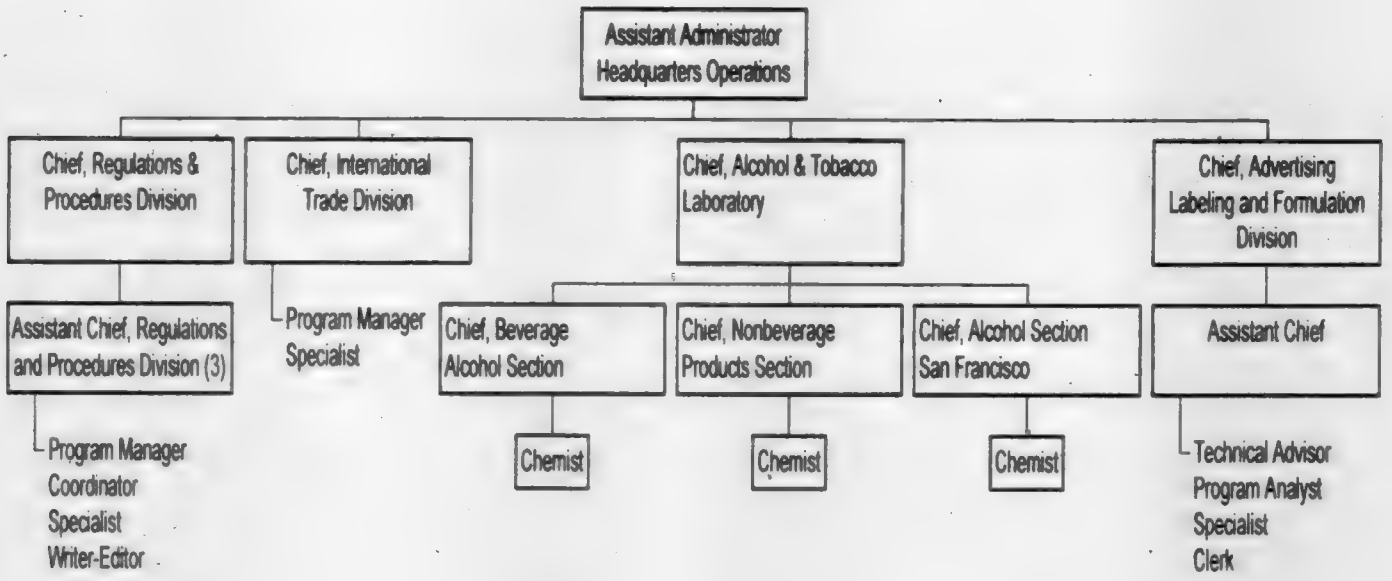

Organizational charts as of 1/24/2003.

Charts are subject to change.

[FR Doc. 03–2933 Filed 2–5–03; 8:45 am]

BILLING CODE 4810–31–C

DEPARTMENT OF THE TREASURY

Customs Service

Notice of Cancellation of Customs Broker Permit

AGENCY: Customs Service, Department of the Treasury.

ACTION: General notice.

SUMMARY: Pursuant to section 641 of the Tariff Act of 1930, as amended (19 U.S.C. 1641), and the Customs Regulations (19 CFR 111.51), the following Customs broker local permits are canceled without prejudice.

Name	Permit number	Issuing port
Yamato Customs Brokers USA, Inc.	39–580	Chicago
Yamato Customs Brokers USA, Inc.	9198–P	San Francisco
Yamato Customs Brokers USA, Inc.	888	New York
Yamato Customs Brokers USA, Inc.	94–17–045	Savannah
Yamato Customs Brokers USA, Inc.	1270	Los Angeles
Yamato Customs Brokers USA, Inc.	097	Seattle
Yamato Customs Brokers USA, Inc.	(no number)	Detroit
All Nations Forwarding Import Co., Inc.	6532	Los Angeles
James W. Ghedi	53–87002	Houston

Dated: January 22, 2003.

Jayson P. Ahern,

Assistant Commissioner, Office of Field Operations.

[FR Doc. 03–2966 Filed 2–5–03; 8:45 am]

BILLING CODE 4820–02–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Financial Crimes Enforcement Network; Proposed Collection; Comment Request for Form 8300

AGENCY: Internal Revenue Service (IRS) and Financial Crimes Enforcement Network (FinCEN), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS and the FinCEN are soliciting comments concerning Form 8300, Report of Cash Payments Over $10,000 Received in a Trade or Business.

DATES: Written comments should be received on or before April 7, 2003 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, Room 6411, 1111 Constitution Avenue, NW., Washington, DC 20224; and/or Office of Chief Counsel, Financial Crimes Enforcement Network, Department of the Treasury, PO Box 39, Vienna, Virginia 22183. *Attention:* PRA Comments—Form 8300. Comments also may be submitted by electronic mail to the following Internet address: *regcomments@fincen.treas.gov* with the caption in the body of the text, "Attention: PRA Comments—Form 8300."

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Carol Savage, (202) 622–3945, *CAROL.A.SAVAGE@irs.gov*, or Internal Revenue Service, room 6407, 1111 Constitution Avenue, NW., Washington, DC 20224; Russell Stephenson, Senior Compliance Administration Specialist, FinCEN, (800) 949–2732, or Laurence Levine, Attorney-Advisor, FinCEN, (703) 905–3590. A copy of the form may be obtained through the Internet at *www.irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Report of Cash Payments Over $10,000 Received in a Trade or Business.

OMB Numbers: 1545–0892 (IRS) and 1506–0018 (FinCEN).

Form Number: 8300.

Abstract: Internal Revenue Code section 6050I requires any person in a trade or business who, in the course of the trade or business, receives more than $10,000 in cash or foreign currency in one or more related transactions to report it to the IRS and provide a statement to the payer. Form 8300 is used for this purpose.

Section 365 of the USA Patriot Act of 2001 (Pub. L. 107–56), adding new section 5331 to title 31 of the United States Code, authorized the Financial Crimes Enforcement Network to collect the information reported on Form 8300. In a joint effort to develop a dual use form, IRS and FinCEN worked together to ensure that the transmission of the data collected to FinCEN on Forms 8300 does not violate the provisions of section 6103. FinCEN makes the Forms 8300 available to law enforcement through its Bank Secrecy Act information sharing agreements.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, farms, and the Federal government.

Estimated Number of Respondents: 46,800.

Estimated Time Per Respondent: 1hr., 22 min.

Estimated Total Annual Burden Hours: 63,539.[1]

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

[1] The burden for the information collection in 31 CFR 103.30 (also approved under control number 1506–0018) relating to the Form 8300, is reflected in the burden of the form.

Approved: January 15, 2003.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

William F. Baity,

Deputy Director Administration, Financial Crimes Enforcement Network.

[FR Doc. 03–2351 Filed 2–5–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

Enhanced-Use Lease Development of Property at the Department of Veterans Affairs Medical Center, Butler, PA

AGENCY: Department of Veterans Affairs.

ACTION: Notice of intent to designate.

SUMMARY: The Secretary of the Department of Veterans Affairs (VA) is designating the Department of Veterans Affairs Medical Center, Butler, Pennsylvania, for an enhanced-use leasing development. The Department intends to enter into a 50-year lease of real property with a competitively selected lessee/developer who will finance, design, develop, maintain and manage a mental health facility, all at no cost to VA.

FOR FURTHER INFORMATION CONTACT: Vanessa Chambers, Capital Asset Management and Planning Service (182C), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 565–6554.

SUPPLEMENTARY INFORMATION: 38 U.S.C. section 8161 *et seq.* specifically provides that the Secretary may enter into an enhanced-use lease if he determines that at least part of the use of the property under the lease will be to provide appropriate space for an activity contributing to the mission of the Department; the lease will not be inconsistent with and will not adversely affect the mission of the Department; and the lease will enhance the property or result in improved services to veterans. This project meets these requirements.

Approved: January 31, 2003.

Anthony J. Principi,

Secretary of Veterans Affairs.

[FR Doc. 03–2967 Filed 2–5–03; 8:45 am]

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Federal Register

Thursday,
February 6, 2003

Part II

Department of Housing and Urban Development

24 CFR Part 902

Changes to the Public Housing Assessment System (PHAS); Proposed Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 902

[Docket No. FR–4707–P–01]

RIN 2577–AC32

Changes to the Public Housing Assessment System (PHAS)

AGENCY: Office of the Assistant Secretary for Public and Indian Housing.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend the Public Housing Assessment System (PHAS) regulation at 24 CFR part 902 to provide additional information, revise certain procedures and establish others for the assessment of the physical condition, financial condition, management operations, and resident services and satisfaction with services provided to public housing residents. This proposed rule takes into consideration additional examination of the PHAS by HUD, as well as comments and suggestions on the PHAS provided through research conducted with representatives of public housing agencies (PHAs) and public housing residents.

The purpose of the PHAS is to function as a management tool that effectively and fairly measures a PHA's performance based on standards that are uniform and verifiable.

DATES: *Comment Due Date:* April 7, 2003.

ADDRESSES: Interested persons are invited to submit comments regarding this interim rule to the Regulations Division, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–0500. Communications should refer to the above docket number and title. Facsimile (FAX) comments are not acceptable. A copy of each communication submitted will be available for public inspection and copying between 8 a.m. and 5 p.m. Eastern time weekdays at the above address.

FOR FURTHER INFORMATION CONTACT: For further information contact the Office of Public and Indian Housing Real Estate Assessment Center (PIH–REAC), Attention: Wanda Funk, Department of Housing and Urban Development, 1280 Maryland Avenue, SW, Suite 800, Washington DC, 20024; telephone Technical Assistance Center at (888)–245–4860 (this is a toll-free number). Persons with hearing or speech impairments may access that number via TTY by calling the Federal Information Relay Service at (800) 877–8339 (this is a toll-free number). Additional information is available from the PIH–REAC Internet site, *http://www.hud.gov/reac.*

SUPPLEMENTARY INFORMATION:

I. Background

Regulatory Background

On September 1, 1998 (63 FR 46596), HUD published a final rule, codified at 24 CFR part 902, that established the PHAS, a new system for the assessment of America's public housing. Under the PHAS, HUD evaluates PHAs based on four key indicators: (1) The physical condition of the PHA's properties; (2) the PHA's financial condition; (3) the PHA's management operations; and (4) the residents' service and satisfaction assessment (through a resident survey). On the basis of these four indicators, PHAs receive a composite score that represents a single score for a PHA's entire operation and a corresponding performance designation. The PHAs that are designated high performers receive public recognition and relief from specific HUD requirements. The PHAs that are designated troubled or substandard receive remedial action.

The PHAS regulation became effective for all PHAs with fiscal years ending (FYE) on and after September 30, 1999.

To provide further information about the PHAS scoring process for each of the PHAS indicators, HUD published four scoring notices. The scoring notices which are periodically updated were first published on May 13, 1999: the Physical Condition Scoring at 64 FR 26166; the Financial Condition Scoring at 64 FR 26222; the Management Operations Scoring at 64 FR 26232; and the Resident Service and Satisfaction Scoring at 64 FR 26236.

On January 11, 2000 (65 FR 1712), HUD issued a final rule that made certain amendments to the PHAS regulation applicable to PHAs with FYE on or after June 30, 2000. In the January 11, 2000, amended rule, HUD deferred full implementation of the PHAS for PHAs with FYE on September 30, 1999, and December 31, 1999. These PHAs would receive an assessment score on the basis of HUD's assessment of the PHA's management operations in accordance with subpart D of part 902 and an overall PHAS advisory score.

On June 6, 2000 (65 FR 36042), HUD issued a technical correction to the January 11, 2000, final rule, and further deferred full implementation of the PHAS for PHAs with FYE through March 31, 2000. On May 30, 2001, HUD issued a notice (66 FR 29342) further deferring full implementation of the PHAS until after June 30, 2001.

On March 15, 2002 (67 FR 11844), HUD issued a notice advising that the PHAS became effective for PHAs with FYE on September 30, 2001. All PHAs now receive an overall PHAS score based on the four PHAS indicator scores and a corresponding designation based on the overall score. The notice advised that PHAs with FYE on September 30, 2001, through and including September 30, 2002, would be assessed in accordance with the interim scoring procedures described in the scoring notices published in the **Federal Register** on November 26, 2001, at 66 FR 59084 for the Physical Condition Indicator and at 66 FR 59126 for the Financial Condition Indicator.

Then on August 30, 2002 (67 FR 55860), HUD published a notice that extended the interim scoring methodology to all PHAs with FYE December 31, 2002, March 30, 2003, and June 30, 2003.

Recommendations for Changes to the PHAS

Since its inception in 1998, the PHAS has been the subject of discussion and further consideration both internally within HUD, and among the public and the public housing industry. A report by the National Academy of Public Administration (Evaluating Methods for Monitoring and Improving HUD-Assisted Housing Programs, 2001), issued at the request of Congress, found that "the credibility of HUD's new system has been undermined by its adversarial relationship with many of the entities that implement HUD-assisted housing programs." They stated, "The Academy panel believes that HUD cannot achieve an effective, well-run quality-assurance program for its assisted housing programs without a more effective working relationship with the assisted housing industry. Improved working relationships are needed to raise the credibility of the assessment tools being used, reduce the administrative burden, and better align the system's goals with the outcomes that well-run assisted housing providers are trying to achieve. Failing this, the industry and HUD will continue to have unproductive confrontations over the assessment scores from HUD's new quality-assurance system." The Academy recommended that, "In consultation with all of the affected parties, HUD should proceed to refine and modify its current quality-assurance system * * *."

In 2001, the Department followed this recommendation and met with public

housing stakeholders (including representatives of PHAs, residents, housing advocacy representatives, governmental representatives, and other groups) to discuss specific PHAS concerns and possible solutions.

In the November 26, 2001, **Federal Register** notice proposing the interim scoring changes to the PHAS, the Department stated it expects to give extensive consideration to potential improvements in the PHAS, and that this consideration might lead to further changes in the PHAS.

II. Compliance Monitoring and Quality Assurance Procedures

As a companion to implementation of the PHAS regulation that assesses a PHA's performance, HUD is expanding its programs for PHA compliance and quality assurance (QA) reviews. This places additional emphasis on the principle that with increased PHA flexibility comes additional accountability.

HUD is also expecting more from itself through this increased emphasis on compliance and QA reviews, and is committing resources to both areas.

The process to select PHAs for compliance and QA reviews will minimize duplication of resources and repetition of reviews for PHAs. Both review areas will share information obtained during PHA reviews, thus increasing efficiency and streamlining HUD's accountability efforts.

A. Compliance Monitoring

HUD is introducing a new compliance monitoring initiative which is a management tool designed to focus and enhance HUD's compliance monitoring of PHAs.

This new PHA compliance monitoring initiative will determine a PHA's compliance levels and direct the compliance monitoring resources accordingly. HUD will look at pre-selected business flags in the individual PHAS indicators that are most related to issues of compliance. When the indicator flags indicate that a PHA may have compliance issues, that PHA will be referred to the appropriate field office for further observation. HUD will use this information to identify the PHAs that will be scheduled for on-site compliance reviews conducted by field offices, thereby more accurately deploying the Department's compliance resources.

HUD anticipates that field offices will conduct a minimum of 350 annual, on-site compliance reviews nationwide. Approximately 150 of the PHAs that receive 80 percent of all funds will be reviewed annually and approximately 200 of the remaining PHAs will be reviewed annually.

B. Quality Assurance Procedures

The QA procedures are designed to ensure that (1) Overall PHAS grades, as well as the individual indicator grades, are based on standards that are uniform and verifiable; and (2) the PHA maintains proper and accurate records supporting PHAS and Section 8 Management Assessment Program (SEMAP) certifications.

Each of the PHAS subsystems undergoes rigorous quality assurance to ensure fair and accurate scores. For the Physical Assessment Subsystem, the QA plan is a multi-step procedure that employs both automated and manual reviews, the cornerstone of which is the QA inspection process.

In the QA inspection process, trained HUD inspectors go on-site to verify the results of the physical inspections performed by HUD contract inspectors. These quality assurance reviews may be conducted at any time, including during the course of a property inspection, following an inspection, or as a separate analysis. The reviews seek to verify that the contract inspector has followed HUD's procedures and correctly assessed the property. An inspector who is not performing within HUD's protocol is subject to administrative action in the form of performance deficiency letters that may lead to decertification. Other measures in the QA plan include ongoing training of inspectors in HUD's protocol, and the use of automated systems that flag anomalies in the inspections as they are processed.

Another QA procedure is the new PHAS Exigent Health and Safety (EHS) certification review. This certification review, performed by HUD staff, validates certain information that the PHA has provided to HUD. It is an on-site property review of the EHS deficiencies cited in the property inspection reports against the PHA's certification that these deficiencies have been corrected. Annually, HUD will conduct certification reviews for a minimum of 25 percent of the PHAs that were assessed under the PHAS and certified to the correction of EHS deficiencies.

Both the Financial Assessment Subsystem and the Management Assessment Subsystem conduct automated reviews of all of their respective submissions when they are transmitted to HUD. This automated review is followed by a manual review. If corrections, changes, or further information are necessary, HUD contacts the PHA.

There also is an independent audit review of the PHA's financial submission and management operations submission. The Independent Public Accountant (IPA) or Certified Public Accountant (CPA) performs the PHA's annual audit reviews and verifies the supporting documentation for these submissions. Then, in the audited submission, the IPA/CPA reports any findings to HUD. When the findings indicate inaccuracies or discrepancies, HUD adjusts the financial indicator, management indicator, and overall PHAS grade.

For the Financial Assessment Subsystem, the Quality Assurance Subsystem (QASS) addresses the reliability of financial data collected and assessed by the PIH–REAC. The QASS staff conducts Quality Assurance Reviews (QARs) of IPA and CPA firms that perform financial statement and compliance audits of PHAs. The CPA firms are selected based on three established risk factors. These factors are: The number of audit clients; the total dollar amount (revenue and assets audited); and referrals from field offices, HUD management, or the PIH–REAC subsystems. Annually, the QASS staff performs a minimum of 15 reviews of CPA firms that audit PHAs. Teams of QASS auditors visit the firms and review a sample of audits and the associated working papers for compliance with professional auditing standards promulgated by the General Accounting Office and the American Institute of Certified Public Accountants (AICPA), as well as the Office of Management and Budget and the HUD audit requirements.

When the QASS team identifies material departures from professional standards the team recommends administrative sanctions which may include referrals to one or more oversight bodies, such as state boards of accountancy, the AICPA Professional Ethics Division, state societies of CPAs, and HUD's enforcement office.

The QA for the Resident Service and Satisfaction Subsystem includes a manual review of the random sample of addresses to ensure that they are complete and that there are no duplications. When the grade for the survey is generated, HUD performs a QA review of all grades of D or F to assure that the survey process was successful.

The final PHAS QA procedure is the seven-day field office review of a PHA's overall PHAS grade. All PHAs' grades are transmitted to the field office for this review period prior to release of the grade to the PHA.

In addition to the QAR reviews, the QASS staff also will perform two other

types of reviews, both of which are new. The first additional review is the PHA monitoring review using the OMB A–133 Compliance Supplement. All major requirements associated with PIH programs are covered in the OMB A–133 Compliance Supplement and the monitoring review is to verify the PHA's adherence with statutes, regulations, and contract provisions; verify the documents supporting the PHAS (*e.g.*, Management Operations (MASS) Certification) and SEMAP certifications; and verify the results of the testing that the PHA's CPA is to perform during the annual financial statement audit. The PHAs who will be visited for a monitoring review will be selected both randomly and through a targeted risk-based approach. Each year the QASS team will conduct approximately 45 to 50 monitoring reviews nationwide. Once again, these reviews will be coordinated with field office staff to avoid repetitive reviews at the same PHA. Reported PHA findings, including false MASS certification, will result in appropriate follow-up action by the field office staff, such as referral for limited denial of participation (LDP), suspension, or debarment. The QASS staff will follow-up with CPAs who are not conducting the appropriate compliance testing. Follow-up actions include, but are not limited to, referring the CPA to one or more oversight bodies and HUD's enforcement office and/or including the CPA firm in the risk ranking process for QARs.

The second type of new review performed by QASS staff is an internal control review of PHA service providers (*e.g.*, fee accountants). The QASS staff will perform independent internal control reviews of the largest PHA service providers and determine whether follow-up action is required. Depending on the deficiencies identified, referrals will be made to HUD's enforcement office for action if the PHA service provider failed to comply with HUD requirements.

III. Proposed Amendments to the PHAS

Policy Considerations

After further research involving public housing stakeholders, as well as far-reaching internal review, HUD has developed proposed amendments to the PHAS. These proposed amendments to the PHAS make important improvements to the system, while retaining the core principle of ensuring housing is decent, safe, sanitary, and in good repair for public housing residents.

HUD received suggestions for changes to the PHAS from representatives of the public housing industry, public housing directors, HUD program experts, residents, and recommendations from the Millennial Housing Commission. HUD evaluated all of these suggestions in a deliberative process that led to this latest version of the PHAS. As a result, the Department has made numerous changes to the PHAS.

Above all, this proposed rule strives to be simpler to understand and utilize. It places more emphasis on assessing those items that directly affect day-to-day living conditions.

The proposed amendments to the PHAS retain the basic structure of the rule that they replace. A PHA will continue to be evaluated in four areas: physical condition, financial condition, management operations, and resident service and satisfaction. The PHAS continues to rely on information that is verifiable by a third party wherever possible, but with clearer QA standards.

Under current PHAS protocols, the evidence is clear there has been improvement generally in the management of the PHAs.

Recognizing this improvement, this proposed PHAS rule gives PHAs increased flexibility and regulatory relief without sacrificing accountability. Under the proposal, Grade A PHAs will be assessed less often. The physical inspection scoring process is revised and places a stronger emphasis on the concept of livability and the immediate correction of exigent health and safety deficiencies. In the financial assessment, four of the component thresholds have been lowered for Small and Very Small PHAs. In addition, the penalty for high liquidity and reserves is eliminated. Along with this additional flexibility and regulatory relief, the Department is placing increased accountability on PHAs for the information they supply. The Department expects the highest standards of integrity from providers of public housing. All information to which PHAs self-certify will be subject to audit and verification. When this information is false, fraudulent, or otherwise justifies enforcement, the Department will take aggressive action against those who would abuse the public trust. The Department has also increased the penalties for late submissions.

The proposed amendments to the PHAS are a collaborative effort between HUD and its partners. They have been developed out of mutual respect between HUD and the affected parties.

Highlights of Changes

Under the proposed rule, a PHA will receive letter grades of A, B, C, D, or F, and the frequency of assessments is based on the designation. Under the current PHAS rule, a PHA receives numeric scores and is assessed annually. Further, under the proposed rule, a PHA will no longer be designated high performer, standard performer, or troubled. A PHA's designation will be a letter grade based on the overall PHAS grade and indicator grades. In addition to publishing the proposed amendments to the PHAS rule, HUD is also publishing five proposed grading notices for comment. Four of the notices explain the grading process for each of the four PHAS indicators, and there is one overall notice explaining the grading process in general.

All observed deficiencies determine the physical condition score under the current rule. Under the proposed rule, only observed deficiencies that primarily impact "livability" determine the property grade.

In the proposed rule, the penalty points under Current Ratio (CR) and Months Expendable Fund Balance (MEFB) for high liquidity or reserves are eliminated.

In the proposed rule, the management operations self-sufficiency sub-indicator has four components rather than a stand-alone sub-indicator. Furthermore, self-sufficiency questions have been added to the resident survey. The proposed rule changes the standards for rating vacant unit turnaround time, work orders, and annual inspection of dwelling units and building systems. The maximum time periods have decreased, and the percentages of units, and buildings and systems required to be inspected for a given grade have increased.

Currently, the Resident Service and Satisfaction (RASS) indicator points are apportioned between the survey, and the implementation plan and follow-up plan certification. Under the proposed PHAS, the entire RASS assessment is based on survey results. If the survey process is not properly managed as directed by HUD, the PHA shall receive a zero and a grade of F under this indicator.

Under the current PHAS rule, a PHA may be designated "troubled in one area" based on the physical, financial, or management score. In this proposed rule, a PHA may be referred to the appropriate HUD office for remedial action if it receives a grade of F in any one of the four PHAS indicators.

The point deductions from the overall PHAS score for any late submission under the current rule are replaced with grade deductions from the affected indicators under the proposed rule. When a submission is late, the time period for a presumptive rating of

failure for that indicator is changed from 90 days to 49 days.

Overview of Changes

The following paragraphs describe the significant changes that will increase the fairness and accuracy of the assessments, and allow for more flexibility and regulatory relief for PHAs, while at the same time holding them increasingly accountable for performance.

- Under the proposed PHAS system, PHAs would receive an overall PHAS grade, four indicator grades, and sub-indicator/component grades. This grading system would replace the scoring system of the current regulation. The grades would be A, B, C, D, and F. The sub-indicator/component grades would determine the indicator grade. The four indicator grades would determine the overall PHAS grade. The weight of each of the four indicators would remain the same, *i.e.*, 30 percent for the physical condition indicator, 30 percent for the financial condition indicator, 30 percent for the management operations indicator, and 10 percent for the resident service and satisfaction indicator. To implement the new grading approach for assessing PHAs, HUD will publish five proposed grading notices for comment in the **Federal Register**.
- A new assessment schedule is being proposed which recognizes and rewards superior performance. The frequency of a PHA's assessments would be based on its PHAS designation. All PHAs would be assessed under the four PHAS indicators in the first year after implementation of the revised PHAS rule. Each PHA's designation from that year would serve as its baseline. That baseline designation would determine the PHA's next PHAS assessments. When a PHA is designated Grade A, under this proposal the PHA will next be assessed in three years. When a PHA is designated Grade B, under this proposal the PHA will next be assessed in two years. When a PHA is designated Grade C, D, or F, under this proposal the PHA will be assessed the next year. Thereafter, the PHA's most recent designation would determine the intervals between PHAS assessments. These assessment intervals and the grading bands are modeled after those HUD uses for physical inspections of multifamily housing.
- The designations "high performer, standard performer, and troubled performer," would be replaced with grade designations. The grades proposed are A, B, C, D, and F, with A being the highest, similar to a "high performer" under the current system, and F being the lowest.
- For a PHA that receives an overall PHAS grade of A, B or C, and that does not receive a grade of less than C in any of the indicators, the PHA's overall grade would serve as its designation. However, a PHA that receives a grade D in one or more indicators would be designated Grade D, regardless of the overall grade. Similarly, a PHA that receives a grade F in any of the indicators would be designated Grade F, regardless of the overall grade. Finally, a PHA that receives a grade F in the Capital Fund management operations sub-indicator would be designated Capital Fund Grade F. This proposed grading system reflects the principle that designations signify the level of risk HUD assigns to PHAs, rather than a subjective categorization of their overall performance. A PHA that is under-performing in one or more indicators is assumed to be at higher risk than a PHA that is performing at a level of least C across the indicators. The designations of Grade D or Grade F for PHAs that under-perform in one or more indicators will reflect that heightened level of risk and will serve to increase the level of attention these PHAs receive from HUD field offices and other interested parties.
- HUD would continue to assess the physical condition of properties in compliance with HUD's housing standard of decent, safe, sanitary, and in good repair. The characterization and reporting of the results, however, would be changed. The proposed approach would continue to use the existing inspection methodology but would place a stronger emphasis on the concept of livability and the correction of EHS deficiencies. Specific deficiencies that have a direct impact on residents would be identified and categorized in the new deficiency class "livability." All EHS deficiencies would remain the same and require immediate correction or remedy. Deficiencies not classified as directly affecting livability or EHS concerns would be recorded and reported to the PHA, but will not impact a property's assessment grade.
- Under the proposed livability concept, the existing property level numeric scoring approach would be changed to a letter-based grading system of A, B, C, D, and F. PHAS Indicator #1 grades would then be derived from the property grades. As in the current regulation, PHAS Indicator #1 grades for PHAs with more than one property would be calculated as a weighted average of the individual property results using the number of dwelling units in each property as weights.
- The grading scale for the six Financial Condition Indicator components would be redistributed to allow equal weight for the financial condition and the financial management of a PHA.
- In the financial condition assessment, the penalty points for PHAs with high liquidity or reserves under CR and MEFB would be eliminated. This will prevent PHAs with high liquidity or reserves from being unfairly penalized.
- The proposed rule would reinstitute the peer group and threshold assessment methodologies for the CR and MEFB components of the Financial Condition Indicator. A PHA will receive a letter grade of A, B, C, D, or F for each component.
- The proposed rule would establish an additional size category in the financial condition peer groupings. The Large size-based category (*i.e.*, those PHAs administering 1,250 to 9,999 units) will be divided into two large peer groups: Large (1,250–4,999 units) and Very Large (5,000–9,999 units). Further analysis demonstrates there is a statistically significant difference in distribution of component values between the Large and Very Large size categories, and that this will lead to a more accurate assessment.
- The assessment thresholds for four of the financial condition components would be less stringent for small PHAs (less than 250 units).
- The number of components in MASS sub-indicator #2, Capital Fund, is proposed to be reduced from five to two. The two components that assess a PHA's compliance with statutory requirements for expending (component #1) and obligating (component #2) capital funds would be retained. Grade A would be available to PHAs whose time for obligation and expenditure is extended because of those exemptions for obligation of funds that are provided in the statute, including an exemption that the Secretary may establish by notice. The Grade F standard would apply if there are unexpended or unobligated funds for any other reason.
- Recognizing the importance of self-sufficiency to improving the lives of residents of public housing, the proposed PHAS amendment places greater emphasis on assessing a PHA's performance under HUD's various self-sufficiency programs. The management operations self-sufficiency sub-indicator would be amended to better capture the PHA's performance in administering the various self-sufficiency programs. Questions regarding self-sufficiency would also be added to the resident survey, as residents' awareness of these

programs is key to their potential for success.

• The standards for rating vacant unit turnaround time, work orders, and the annual inspection of dwelling units and systems are proposed to be changed. The maximum time permitted before a PHA will receive a grade of F for vacant unit turnaround time and completion of work orders would be decreased, as would the maximum time permitted in order to receive the highest grade. The grades between these two extremes would be distributed accordingly. Similarly, the percent of dwelling units and systems that are required to be inspected before the PHA will receive a grade of F would be increased. These proposed standards more closely reflect the standards in the private rental market.

• Under the previous version of the PHAS, five of the available ten points in the RASS assessment went to the PHA for the follow-up plan and the implementation plan. To obtain a more accurate accounting of resident satisfaction, this assessment and the PHA's RASS grade would be based entirely on the responses to the resident survey, although, as a threshold matter, a PHA would receive a zero and a grade of F if it fails to implement the survey as HUD directs.

• As in the three other PHAS indicators, a PHA that receives a grade of F under the RASS indicator would be designated a Grade F PHA. All Grade F PHAs are referred to the appropriate HUD office for remedial action, including execution of a Memorandum of Agreement.

• The penalties for late submissions would be changed from point reductions to grade reductions. The time period before a PHA will receive a presumptive rating of zero for failing to make a submission would be reduced. In addition, the late penalties would apply to late submissions under each indicator. Accordingly, when a PHA submits its unaudited financial information or management certification more than 7 days after the submission due date, but no more than 21 days after that date, the PHA's grade for each indicator submitted late would be lowered one letter grade. When a PHA submits its unaudited financial information or management certification more than 21 days, but no more than 35 days after the submission due date, the PHA's grade for each indicator submitted late would be lowered two letter grades. When a PHA submits its unaudited financial information or management certification more than 35 days, but no more than 49 days after the submission due date, the PHA's grade for each indicator submitted late would be lowered three letter grades. After 49 days, the PHA would receive a late presumptive rating of zero and a grade of F for each indicator submitted late.

IV. Section-by-Section Overview of the PHAS Amendments

To assist the reader in identifying those sections of the existing PHAS regulation that are proposed to be revised and the new sections that would be added, the following provides a section-by-section overview of the amendments being proposed by this rule.

Subpart A—General Provisions

Section 902.1 (Purpose and general description). Paragraph (a) would be amended to remove superfluous editorial comments pertaining to the purpose of the PHAS. Paragraph (b) would be removed because the Real Estate Assessment Center (REAC) is no longer independent of the Office of Public and Indian Housing (PIH). Following the administrative reorganization of HUD, REAC was incorporated into PIH. Paragraph (c), which briefly describes the PHAS Indicators, would be redesignated paragraph (b) and amended to add information pertaining to the objectives of each of the PHAS Indicators in former paragraphs §§ 902.20(a), 902.30(a), 902.40(a) and 902.50(a). Paragraph (d) would be redesignated paragraph (c) and amended to reflect the proposal that PHAs be graded and not numerically scored. The proposed rule would remove paragraph (e) pertaining to changes in a PHA's fiscal year end because it is no longer applicable.

Section 902.3 (Scope). This section proposes minor editorial changes.

Section 902.5 (Applicability). This section would be amended to clarify the applicability of the PHAS to resident management corporations (RMCs), direct-funded resident management corporations (DF-RMCs) and alternate management entities (AMEs). Paragraph (a) would be divided into new paragraphs (a) and (b). The information in paragraph (b) pertaining to implementation of the PHAS is proposed to be placed in paragraph (d). The information in paragraph (b) pertaining to the issuance of PHAS advisory scores is removed because it is no longer applicable.

Section 902.7 (Definitions). The proposed rule would delete the following definitions that are no longer applicable or are not used in the regulation: Occupancy loss; reduced actual vacancy rate within the previous three years; and tenant receivable outstanding. The following definitions are proposed to be added: Annual contributions contract (ACC); Assistant Secretary; certification review; decent, safe, sanitary, and in good repair; entity-wide; family self-sufficiency; Grade A PHA; Grade B, C, or D PHA; Grade F PHA; Memorandum of Agreement (MOA); the acronym PIH-REAC; and self-sufficiency. The following definitions would be clarified and rewritten in plain language: adjustment for physical condition and neighborhood environment; deficiency; reduced average number of days non-emergency work orders were active during the previous three years; and work order deferred to the Capital Fund Program. Section 902.9 (PHAS grading). This proposed new section would explain the letter-based grading system and organize PHAS scoring information in a more logical fashion. Additionally, this section would consolidate general grading information in one location, rather than placing it at the end of the subpart for each Indicator. Proposed paragraph (a) briefly describes the grading process. Proposed paragraphs (b) and (c) include information about the distribution of PHAS indicator grades among the four indicators, and availability of grading notices that is in current §§ 902.25(a), 902.27, 902.35(a)(1), 902.37, 902.45(a), 902.47, 902.53(a)(2) and 902.55.

Section 902.10 (PHAS designation). This proposed new section presents the PHAS designation information in the first part of the regulation. The performance designations high performer, standard performer, and troubled, would be replaced by a grading system of the following letter grades: A, B, C, D, and F. Paragraphs (a) through (e) of this proposed section would contain amended information about the performance requirements for the PHAS designations that is in § 902.67(a), (b) and (c) of the current rule. Under this proposal, a PHA's designation would be A, B, or C, when its overall grade is an A, B, or C, and there are no indicator grades of D or F. A PHA would be designated a Grade D PHA if any of the indicator grades are a grade of D. A PHA would be designated a Grade F PHA if any of the indicator grades are a grade of F. If a PHA has a grade of F under the Capital Fund component of the management operations indicator, the PHA would be designated a Capital Fund Grade F PHA.

Section 902.13 (Frequency of PHAS assessments). This proposed new section would describe the revised frequency of PHAS assessments. Under the new PHAS, the frequency of

assessment would be based on the performance of the PHA.

Section 902.15 (Posting and publication of PHAS grades and designations). This proposed new section would include information about the provisions for posting and publication of PHAS grades that is in § 902.63(e) of the current rule. This section proposes that HUD will continue to post final PHAS grades on the Internet, but removes the existing provision that HUD will publish final overall PHAS grades in the **Federal Register**.

Subpart B—PHAS Indicator #1: Physical Condition

Section 902.20 (Physical condition assessment). This proposed rule would reorganize this section. Paragraph (a) pertaining to the objective of the physical condition assessment would be moved to new § 902.1(b)(2). Paragraph (b)(1) and § 902.24(a), which briefly describe the method of assessment, would be incorporated into new paragraph (a). Paragraph (b)(2) describing the assessments is proposed to be moved to § 902.24(a). New paragraph (b) would include the information about transmission of inspection results included in § 902.24(a)(3). New paragraph (c) would include information pertaining to the frequency of physical inspections. Paragraph (c) pertaining to physical inspection requirements would be redesignated paragraph (d). New paragraph (e) pertaining to HUD access to PHA properties would contain the information in § 902.24(d).

Section 902.23 (Physical condition standards for public housing—decent, safe, and sanitary housing in good repair (DSS/GR)). The title for this section is proposed to be changed to "Inspectable areas." Paragraph (a) would be revised because information regarding DSS/GR has been moved to § 902.7, "Definitions." There would be minor editorial changes to paragraphs (b)(4) and (c), such as substituting the word "housing" with the term "PHA properties."

Section 902.24 (Physical inspection of PHA properties). The information in current§ 902.24(a) pertaining to inspection of PHA properties would be moved to § 902.20(a). The information in current § 902.23(a)(1) pertaining to PHA compliance with DSS/GR standards would be moved to proposed § 902.24(a). Proposed § 902.24(a) would also clarify that a random sample of dwelling units is to be inspected. Proposed §§ 902.24 (a)(1) and (2) pertaining to inspection of occupied units contain the information in current § 902.20(b)(2). The paragraph on off-line units currently in § 902.20(b)(2)(iii) would be revised to be more specific and would be located in § 902.24(a)(2)(iii) of the proposed rule. The information in current § 902.24 (a)(1) pertaining to inspector actions during a property inspection would be moved to new § 902.24(b). The information in current § 902.24(a)(2) pertaining to PHA notification of health and safety deficiencies would be moved to new § 902.24(c). Paragraph (c)(1) would state the requirement that PHAs correct all health and safety deficiencies. Paragraph (c)(2) would address procedures for EHS deficiencies. Each PHA must correct all EHS deficiencies within 24 hours and must certify to HUD that the corrections have been made. HUD will provide additional guidance on the certification requirements. Section 902.24(a)(3) pertaining to inspectors transmitting inspection results to HUD would be moved to new § 902.20(b). Section 902.24(b), entitled "definitions," would be redesignated new § 902.24(d). This paragraph would be amended to remove the reference to the publishing for comment of significant amendments in the definition for "Dictionary of Deficiency Definitions." The references to publishing proposed amendments to the Dictionary of Deficiency Definitions for comment would be moved to new § 902.24(e). The definitions for criticality, Item Weights and Criticality Levels Document, normalized weights, score, and sub-area are removed because they are no longer applicable. The definitions for base grade, deficiency classification, Deficiency Classification Summary Document, grading class, livability, property grade, property livability points, and PHAS Indicator #1 grade are added. Section 902.24(c) pertaining to civil rights and nondiscrimination compliance would have minor editorial changes and would be redesignated § 902.24(f). Section 902.24(d) regarding access to properties would be moved to new § 902.20(f).

Section 902.25 (Physical condition scoring and thresholds). The title for this section would be changed to "Adjustments to physical condition property grade." Paragraph (a) pertaining to the Federal Register Scoring Notice (now Grading Notice) for the physical condition indicator would be moved to the new § 902.9(c). As proposed, § 902.25(a) would only address the adjustments for physical condition and neighborhood environment currently in § 902.25(b). The portion of paragraph (b) describing adjustments would be moved to paragraph (a), with editorial changes. The content of current paragraph (b)(1) would be removed. The definitions currently in paragraph (b)(2) would be moved to paragraphs (c)(1) and (2), with changes. Specifically, property age and percentage of families with incomes below the poverty rate would no longer be used as factors for the physical condition adjustment. Instead, the physical condition adjustment would apply to properties with documented design or structural defects that a PHA cannot correct, and the neighborhood environment adjustment would apply to documented conditions existing in the immediate surrounding neighborhood such as a landfill, floodplain, or other environmentally hazardous area. Current paragraph (b)(3) would become paragraph (b), rephrased in terms of a one-letter grade adjustment, and revised to remove the reference to property age and to add the concept that the adjustment would be determined by HUD on a case by case basis. Material on scattered-site properties, currently in paragraph (b)(4), would be deleted. Paragraph (b)(5), on supporting documentation, would be redesignated paragraph (e), with editorial changes. Proposed new paragraph (d) would clarify that a PHA would certify to the adjustment for physical condition and/or neighborhood environment as part of the management operations submission. Paragraph (c) regarding database adjustments would be redesignated as § 902.26. Current § 902.25(d) regarding overall physical inspection score would be moved to new § 902.28(d). The provision in current § 902.25(e)(1) establishing the number of points (now percentage of grade) for this indicator would be moved, with changes, to new § 902.9(b)(1). Paragraph (e)(2) pertaining to score (now grade) thresholds would be moved, with changes, to proposed § 902.29.

Section 902.26 (Physical inspection report). The title for this section would be changed to "Database adjustments to physical condition assessments" to reflect that this section now only addresses database adjustments. The information in paragraph (a) that describes the physical inspection report would be moved to proposed new § 902.27. Paragraphs (a)(1) through (a)(5) pertaining to reinspections when EHS deficiencies are corrected are proposed to be removed. The provisions in paragraphs (a)(1) through (5) have not been used by PHAs, and therefore are proposed to be replaced by provisions elsewhere in the proposed rule that are more beneficial to PHAs. Section 902.25(c) describing database

adjustments to physical inspection scores (as proposed, "grades") would be reorganized and redesignated as § 902.26 (a) through (d). The language would be amended to clarify the circumstances in which a PHA may request a database adjustment.

Section 902.27 (Physical condition portion of total PHAS points). The title for this section would be changed to "Physical inspection report." The material in § 902.26(a) that describes the physical inspection report would be moved to proposed § 902.27(a). The section would reflect the proposed new scoring based on grade and livability and the changes to the inspection report.

Section 902.28 (Overall Physical Condition Indicator grade). This is proposed as a new section. Paragraph (a) would describe the new system of property grades. Paragraph (b) would describe the impact of EHS deficiencies on property grades. Paragraph (c) would describe the requirements and consequences of PHA certification to EHS corrections, and to adjustments to physical condition and neighborhood environment. Paragraph (d) pertaining to the overall Physical Condition Indicator grade would contain the information in current § 902.25(d), with revisions reflecting the new grading system for PHA properties.

Section 902.29 (Threshold). This proposed new section would contain information pertaining to the performance threshold, currently found in § 902.25(e), revised to reflect the proposed grading system.

Subpart C—PHAS Indicator #2: Financial Condition

Most of the changes proposed to Subpart C are to provide clarification to the current regulation. Three of the changes would amend the financial condition grading. First, the reference in § 902.35(a)(3) to penalty points for PHAs with high liquidity or reserves under CR component and MEFB component would be eliminated. Second, the proposed § 902.35(d) amends the Occupancy Loss (OL) component to clarify that the calculation for OL would not include Section 8 assistance. Third, the grading thresholds for four of the components would be made less stringent for small PHAs (less than 250 units). Further changes to the financial condition grading will be provided in a separate PHAS Notice on the Financial Condition Grading Process.

Section 902.30 (Financial condition assessment). Paragraph (a) pertaining to the objective of the financial condition assessment would be moved to proposed § 902.1(b)(2). Proposed § 902.30(a) would state the annual financial filing requirement for both the unaudited and audited financial information, currently found in § 902.33(b) and (c). Proposed paragraph (b) contains the requirement for an IPA or CPA to certify to audited financial submissions. Proposed paragraph (c) contains the requirements and format of the financial information. Proposed paragraph (d) would list the components of the financial condition indicator. Proposed paragraph (e) would describe the annual electronic submission requirement for financial information.

Section 902.33 (Financial reporting requirements). The title for this section is proposed to be changed to "Financial condition grading." Sections 902.33(a), (b), and (c) of the current rule would be moved to § 902.30 of this proposed rule. Proposed §§ 902.33(a) and (b) pertain to grading. The information in those sections is analogous to current § 902.35(a) on scoring, amended to clarify the role of peer groups in financial grading. Proposed paragraph (c) pertains to grade adjustments after submission of audited financial information, similar to § 902.63(b) of the current rule.

Section 902.35 (Financial condition scoring and thresholds). The title for this section is proposed to be changed to "Financial condition components." Section 902.35(a) would be removed and replaced by proposed §§ 902.33(a) and (b). Section 902.35(a)(1) would be removed. Similar content would be reflected in the proposed rule § 902.9(c) on grading procedures, and § 902.33 on financial condition grading. Paragraph (a)(2), regarding PHAS advisory scores, is proposed to be removed because it is no longer applicable. Paragraph (a)(3) regarding penalty points for PHAs with high liquidity or reserves under CR component and MEFB component is proposed to be removed. HUD will no longer penalize a PHA for having high liquidity or reserves under either the CR component or MEFB component.

Section 902.35, as proposed, would only describe the six components of PHAS Indicator #2. The six components would remain the same as in current § 902.35(b) except for revisions to the Occupancy Loss component in proposed § 902.35(d) (currently in § 902.35(b)(4)).

Section 902.37 (Financial condition portion of total PHAS points). The title for this section would be changed to "Threshold." This section is analogous to current § 902.35(c), revised to reflect the grading system.

Subpart D—PHAS Indicator #3: Management Operations

The Management Operations Indicator would be significantly changed, with new sections describing the general requirements for management operations assessments and grading. Two new components would be added, evaluating a PHA's performance in the areas of income verification (#7) and tenant rent calculation (#8), in compliance with the President's management agenda goal of reducing overpayments of rent subsidies. Each of the eight sub-indicators, including their components, specific exemptions, and grades are described in a separate section in this proposed rule. Each sub-indicator would be of equal weight. More detailed information is provided in the PHAS Notice on the Management Operations Grading Process.

Section 902.40 (Management operations assessment and performance standards). Paragraph (a) pertaining to objectives of the management operations assessment would be incorporated into proposed § 902.1(b)(3). Proposed § 902.40(c) lists the management operations sub-indicators, as well as the specific exemptions for two of the sub-indicators, the components and the ratings, of each sub-indicator and/or component. The grading for management operations would be a scale of grades A, B, C, D, and F. All of the sub-indicators would be graded either under the A, B, C, D, F scale, the A, C, F scale, or, in the case of the Capital Fund sub-indicator, the new rent and income verification sub-indicators, and two components of the security sub-indicator, on an A and F scale. Proposed paragraph (d) states that in the case of PHAs reviewed less often than annually under proposed § 902.13(a), the management operations certification shall include only information for the assessed fiscal year. Proposed paragraph (e) states the HUD existing requirement that the management operations submission is subject to the PHA's annual audit. It would provide for HUD on-site review of the submission and supporting documentation. Paragraph (e) also proposes consequences for failure to maintain supporting documentation.

Section 902.41 (Management operations sub-indicator #1—vacant unit turnaround time). This proposed new section would state the specific exemptions for the vacant unit turnaround time sub-indicator, as well as guidance for maintaining documentation to support such exemptions (see proposed § 902.41(a)).

This section would make one important change to current practice. Where it is currently HUD's practice to exempt employee occupied units from the unit turnaround time calculation, as provided at 24 CFR § 901.10, proposed § 902.41(a) would not retain that exemption. Proposed § 902.41(e) would state the standards for grades A, B, C, D, and F.

Section 902.42 (Management operations sub-indicator #2—Capital Fund). This sub-indicator would be changed from five components to two components in accordance with § 9(j) of the 1937 Act as amended by § 519 of the Quality Housing and Work Responsibility Act of 1998, Pub. L. 105–276 (approved Oct. 21, 1998) (QHWRA). Section 9(j) specifically states the time limits for expenditure and obligation of funds to be four years and two years, respectively, except for extensions or waivers as approved by the Secretary. Section 9(j) also provides that the Secretary shall enforce the expenditure and obligation requirements. Therefore, the proposed rule would follow closely the requirements of section 9(j). The three components that would be eliminated are budget controls, quality of the physical work, and contract administration. The two components that would be measured are timeliness of expenditure of funds and timeliness of obligation of funds. This sub-indicator, and its components, would be graded on an A and F scale. This sub-indicator would be automatically excluded if a PHA chooses not to receive capital funding under § 9(d).

Section 902.43 (Management operations performance standards). The title for this section would be changed to "Management operations sub-indicator #3—work orders." This proposed rule would redesignate §§ 902.43(a)(1) through 902.43(a)(5), which describe the management operations sub-indicators, as §§ 902.41 through 902.46, respectively, and would move § 902.43(b)(2) pertaining to requests for manual rather than electronic submissions to § 902.60(a).

As proposed, § 902.43 describes work orders, and states the standards for grades A, B, C, D, and F. The standards for component #1, emergency work orders, would remain the same as the current standard, which is similar to the standard for indicator number four in the Public Housing Management Assessment Program (PHMAP) regulation, 24 CFR 901.25(a). The Grade F standard would apply when less than 96 percent of emergency work orders were completed or the emergency was abated within 24 hours or less. The standards for non-emergency work orders (component #2) would be shortened. The standard for a Grade A for this component would be shortened to seven days, and, for a Grade F, the standard would be shortened to greater than 30 calendar days rather than greater than 60 calendar days. These new standards more realistically reflect the standards in the private market.

Section 902.44 (Management operations sub-indicator #4—annual inspection of dwelling units and systems). This section would incorporate the information in § 902.43(a)(4) of the current rule. This section would state the specific exemptions for this sub-indicator, as well as provide guidance for maintaining documentation to support such exemptions. It would state the standards for grades A, B, C, D, and F. The standards for a Grade F for component #1, annual inspection of dwelling units, and component #2, annual inspection of systems, would be less than 96 percent of inspected component #1, annual inspection of dwelling units, and to less than 85 percent for component #2, annual inspection of systems, to more closely reflect the standards in the private market.

Section 902.45 (Management operations scoring and thresholds). The title for this section would be changed to "Management operations sub-indicator #5—security." The information in paragraph (a) pertaining to the Federal Register Scoring Notice (as proposed, the "grading notice") for the management operations indicator is moved to the new § 902.9(c). Paragraph (b) pertaining to scoring thresholds would be moved to new § 902.49 and rewritten to reflect the proposed new grading system.

Proposed § 902.45 incorporates the information in § 902.43(a)(5) regarding the security sub-indicator, and lists the standards for grades A, B, C, D, and F for component 1, tracking and reporting crime and crime-related problems by category of crime and date, time, and place of incident, and the standards for A and F for components #2 and #3, screening of applicants and lease enforcement, respectively. Component #4, grant program goals, would be removed from this sub-indicator. The standards for components #1, tracking and reporting crime-related problems by category and date, time, and place of incident, would be stated as grades A, B, C, D, and F, and would require tracking of crimes by category as well as tracking of actions taken by the PHA to address the crime-related issue. The standards for components #2 and #3, screening of applicants and lease enforcement, respectively, would be stated as A and F, revising the approach taken in 24 CFR 901.45(b) and (c) of PHMAP.

Section 902.46 (Management operations sub-indicator #6—self-sufficiency). This proposed new section would incorporate the information in § 902.43(a)(6) on the self-sufficiency sub-indicator. This sub-indicator would be changed in its entirety. There would be four new components: component #1, economic self-sufficiency; component #2, Family Self-Sufficiency (FSS); component #3, resident job training and employment; and component #4, resident participation in management, business development, and public housing administration. Each of these components would be graded A, C, or F. The FSS component is proposed to be analogous to the FSS component under SEMAP, 24 CFR § 985.3(o), and would be based on percentage of participation and percentage of participating families who have escrow accounts greater than zero.

Section 902.47 (Management operations sub-indicator # 7—income verification). This sub-indicator would be new, and would evaluate the PHA's performance in properly verifying all residents' income, including such matters as exclusions from income and utility allowances. The grades would be either A or F. The information in current § 902.47 would be moved to proposed § 902.9(b).

Section 902.48 (Management operations sub-indicator # 8—rent calculation). This new sub-indicator would evaluate a PHA's performance in correctly calculating tenant rent for all tenants. The possible grades would be A or F.

Section 902.49 (Threshold). This proposed new section describes the grading threshold for the Management Operations Indicator. It contains information pertaining to the scoring threshold currently in § 902.45(b), revised to reflect the proposed grading system.

Subpart E—PHAS Indicator #4: Resident Service and Satisfaction

This subpart would be substantially revised to present the information in a clearer manner and to reflect that the grade is based primarily on the survey results, although a PHA will receive an F if it fails to implement the survey according to HUD's instructions. Under this proposed rule, a PHA would continue to receive the media package from HUD and is required to certify to the implementation of the survey in the RASS. However, a PHA would not be graded for the performance of the

implementation plan, other than to receive an F if it fails to properly implement it according to HUD's instructions. A PHA would be required to update unit addresses in the Public and Indian Housing Information Center (PIC) database and certify to updating unit addresses in RASS. The follow-up plan would no longer be required and would not be graded. The survey would include new questions on family self-sufficiency. More detailed information on the grading of this indicator would be provided in the PHAS Notice on the Resident Service and Satisfaction Grading Process.

Section 902.50 (Resident service and satisfaction assessment). Paragraph (a) of current § 902.50, pertaining to the objectives of the resident service and satisfaction assessment, would be incorporated into new § 902.1(b)(4). Current § 902.50(b) would be redesignated paragraph (a), and would briefly describe the method of assessment. Current § 902.50(c), describing the survey process, would be redesignated paragraph (b). Proposed paragraph (c) parallels proposed § 902.40(e) regarding HUD on-site review of the required certifications and activities. The paragraph also describes the consequences for failure to maintain supporting documentation.

Section 902.51 (Updating of public housing unit address information). The title for this section would be changed to "Certifications and updating of unit address information." This section would be amended and would clarify the responsibilities of a PHA regarding the survey process. The information in paragraph (c) pertaining to requests for manual rather than electronic submissions is moved to proposed § 902.60(b).

Section 902.52 (Distribution of survey to residents). The title for this section would be changed to "Resident survey sampling." Current § 902.52(a), pertaining to resident survey sampling, would comprise the entire proposed § 902.52. The most significant change is that the proposed section would require the sample of units to be random. Current § 902.52(b), pertaining to a third party survey administrator, is moved to § 902.53.

Section 902.53 (Resident service and satisfaction scoring and thresholds). The title for this section would be changed to "Third party administrator." Paragraph (a)(1) pertaining to scoring (now grading) would be moved to new § 902.54. Paragraph (a)(2) pertaining to **Federal Register** Scoring Notice (as proposed, the "grading notice") for the resident service and satisfaction indicator would be moved to new § 902.9(c). Section 902.53(b) pertaining to performance threshold would be moved to § 902.55. The information in § 902.52(b) pertaining to the third party survey administrator would comprise this proposed section.

Section 902.54 (Resident service and satisfaction grading and survey contents). This proposed section would explain the grading and contents of the resident survey. This section would reflect that the grade for this indicator is proposed to be based on survey results only. This section also would reflect that the content of the survey is proposed to be changed to include questions regarding self-sufficiency. The survey questions regarding services would be moved to the category of maintenance and repair in order to consolidate questions in these categories.

Section 902.55 (Resident service and satisfaction portion of total PHAS points). The title for this section would be changed to "Threshold." The information in this section pertaining to scoring ("grading" in this proposed rule) would be moved to new § 902.9(b). This section would contain the information pertaining to performance thresholds in § 902.53(b), revised to reflect the proposed grading system.

Subpart F—PHAS submissions and grading adjustments

Section 902.60 (Data collection). This section would be completely redrafted and renamed "Requests for manual and late submissions." The information currently in paragraph (a) pertaining to fiscal year reporting periods would be removed because the information is no longer applicable. The information currently in paragraph (b) pertaining to collection of physical inspection data would be moved to proposed § 902.9(b)(1). The information currently in paragraph (c) pertaining to the submissions of financial information would be moved to the new § 902.9(b)(2). The information currently in paragraph (d) pertaining to management operations submissions would be moved to new § 902.9(b)(3). The information currently in paragraph (d)(2) pertaining to the retention of documentation that supports the submissions and calculations is moved to new § 902.63(c). Proposed § 902.60(a), pertaining to the request to manually submit information for Indicators #2 and #3, contains the information currently in § 902.43(b)(2). Proposed § 902.60(b) pertaining to the request to manually submit information for Indicator #4 contains the information currently in § 902.51(c). Proposed § 902.60(c) would pertain to the request for extension of time to make submissions. Proposed § 902.60(d) would provide for a request for extension of time to submit audited financial information. The information currently in §§ 902.60(f)(1) and (2) pertaining to circumstances in which HUD may make adjustments to a PHA's score would be moved to proposed §§ 902.63(c)(2) and (3), respectively. The information currently in § 902.60(g) regarding RMCs and DF–RMCs would be in proposed § 902.5(a).

Section 902.61 (Failure to submit data). This proposed new section would state the *information* currently in § 902.60(e). The penalties for late submissions would be increased, and the time period before a PHA will receive a presumptive rating of zero would be reduced. Proposed § 902.61(b) would provide for presumptive ratings of zero in the case of late submissions, similar to current § 902.60(e)(2). The penalties and late presumptive rating provisions also would be presented in table format for clarity.

Section 902.63 (PHAS grading adjustments). Paragraph (a) pertaining to the computation method of a PHAS score (now grade) would be moved to proposed § 902.9(a). Paragraph (b) would be amended to reflect the proposed grading system and to organize the information in a more logical fashion. Paragraph (c) pertaining to issuance of a PHAS score by HUD would be redesignated new paragraph (a) and revised to reflect the proposed grading system. This proposed paragraph expressly states when a PHAS grade is final, and this meaning is used throughout the proposed rule to prevent misunderstanding. Paragraph (d) would contain minor editorial changes. Paragraph (e) pertaining to posting and publication of PHAS grades would be moved to proposed § 902.15.

Section 902.67 (Score and designation status). The title for this section would be changed to "Withholding, denying, and rescinding grades" because it would, as proposed, only address situations when a grade may be withheld, denied, or rescinded. Paragraphs (a), (b), and (c) pertaining to performer designation status would be moved to proposed §§ 902.10(a), (b), and (c) and amended to reflect the new grading system. The amendments describe the proposed terms for PHAS designation, which would be Grade A PHA, Grade B PHA, Grade C PHA, Grade C PHA, and Grade F PHA. Section 902.67(d) pertaining to withholding, denying, and rescinding designations would comprise proposed §§ 902.67(a) through (c), which clarify

when HUD may withhold or rescind a PHA's PHAS designation.

Section 902.68 (Technical review of results of PHAS Indicators #1 or #4). This section would be rewritten, in part, for the purposes of providing clarity. A new paragraph (d) would be added, providing that the Assistant Secretary reviews all technical reviews that are denied.

Section 902.69 (PHA right of petition and appeal). This section would be rewritten to provide more clarity and consistency in terminology. Throughout this section, reference is made to Grade A PHA, Grade B PHA, Grade C PHA, Grade D PHA, Grade F PHA, and Capital Fund Grade F PHA. Two situations in which a PHA has a right to appeal would be added. As proposed, a PHA may appeal its final overall PHAS grade if the change would result in a higher grade. In addition, a PHA that is under the jurisdiction of the HUD office with jurisdiction over Grade F PHAs would have the right to appeal after one year if granting the appeal would result in meeting the requirements to substantially improve its performance under PHAS pursuant to § 902.75(f).

Subpart G—PHAS Incentives and Remedies

Section 902.71 (Incentives for high performers). The title for this section would be changed to "Incentives for Grade A PHAs." This proposed section contains editorial changes and would be amended to reflect that the highest designation would be "Grade A PHA." Although exempt from annual assessments, Grade A PHAs would be required to submit financial information annually.

Section 902.73 (Referral to an area Hub/Program Center). The title for this section would be changed to "Referral of Grade B, C, and D PHAs." This section is proposed to be rewritten to more clearly present the process and content of the Improvement Plan. Information currently in this section regarding RMCs and DF–RMCs would be moved to § 902.5.

Section 902.75 (Referral to a Troubled Agency Recovery Center (TARC)). The title for this section would be changed to "Referral of Grade F PHAs." All of the paragraphs in this section would be rewritten to streamline and clarify the information pertaining to the performance requirements of PHAs that have been referred to the HUD office with jurisdiction over Grade F PHAs. The information in paragraph (b) pertaining to MOAs would be reorganized for clarity into paragraphs (b) and (c). Paragraph (c), discussing a PHA's review of the MOA, would be deleted. Paragraph (d) addressing the statutorily prescribed maximum time a PHA may remain under the jurisdiction of the HUD office responsible for Grade F PHAs would be redesignated paragraph (f). Paragraph (f) regarding resident participation would be deleted. The involvement of resident leadership in the MOA would be described in paragraph (c)(7). Because the time periods that a Grade F PHA can remain under the jurisdiction of the remedial HUD office would be explained in subparagraphs (f)(1) and (f)(2), the example that is in current paragraph (g)(3) is deleted. Paragraph (h) providing for HUD audit reviews of Grade F PHAs would be redesignated paragraph (g). Paragraph (i) providing for continuation of service to residents would be redesignated paragraph (h).

Section 902.77 (Referral to the Departmental Enforcement Center (DEC)). The name of this section would be changed to "Actions and sanctions." All references to the DEC would be changed to reflect a reorganization within the Department. This section would be rewritten to streamline and clarify the information pertaining to PHA nonperformance and the actions that HUD may take against a PHA.

Section 902.79 (Substantial default). Proposed § 902.79(a)(1), like the current section, describes the events or conditions that constitute a substantial default. Paragraph (a)(5) of this section would be redesignated paragraph (b) of this proposed section. Paragraph (b) of this section would be redesignated paragraph (c) of this proposed section. This section also proposes minor editorial changes.

Section 902.83 (Interventions). This section would be rewritten to clarify the information pertaining to interventions HUD may initiate if HUD determines that a PHA is in substantial default.

Section 902.85 (Resident petitions for remedial action). This section would be rewritten to more clearly present the information pertaining to the percentage of residents required to participate in a petition for remedial action.

V. Findings and Certifications

Paperwork Reduction Act Statement

The revised information collection requirements contained in this rule have been submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). Under this Act, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number.

The public reporting burden for this new collection of information is estimated to include the time for reviewing the instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Information on the estimated public reporting burden is provided in the following table.

Information collection	Under OMB control No.	Number of respondents	Total annual responses	Hours per response	Total hours
Financial Management Template	2535–0107	5,964	5,964	5	29,850
Management Operations Certification	2535–0106	3,169	3,169	2	6,274.5
Assessment of Resident Satisfaction:	2507–0001	637,629	267,382	0.25 —Res. 4.8—PHA	78,104
Residents		631,283	262,398	.25	65,600
PHAs-Unit Addresses		3,173	2,394	2.24	5,371
PHAs-Implementation Plan		3,173	2,590	2.75	7,133
RASS Totals		637,629	267,382	.....	78,104

In accordance with 5 CFR 1320.8(d)(1), HUD is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Interested persons are invited to submit comments regarding the information collection requirements in this proposal. Comments must be received by April 7, 2003. Comments must refer to the proposal by name and docket number (FR–4707–P–01) and must be sent to:

Lauren Wittenberg, OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, Fax number (202) 395–6947, E-mail *Lauren_Wittenberg@omb.eop.gov.*

and

Rules Docket Clerk, Office of the General Counsel, Room 10276, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410.

Regulatory Planning and Review

The Office of Management and Budget (OMB) reviewed this rule under Executive Order 12866, *Regulatory Planning and Review*. OMB determined that this rule is a "significant regulatory action" as defined in section 3(f) of the Order (although not an economically significant regulatory action under the Order). Any changes made to this rule as a result of that review are identified in the docket file, which is available for public inspection in the office of the Department's Rules Docket Clerk, Room 10276, 451 Seventh Street, SW, Washington, DC 20410–0500.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments, and the private sector. This rule will not impose any federal mandates on any state, local, or tribal governments or the private sector within the meaning of the Unfunded Mandates Reform Act of 1995.

Environmental Review

A Finding of No Significant Impact with respect to the environment was made in accordance with HUD regulations in 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332). The Finding remains available for public inspection during regular business hours in the Office of the Rules Docket Clerk, Office of General Counsel, Department of Housing and Urban Development, Room 10276, 451 Seventh Street, SW., Washington, DC 20410.

Impact on Small Entities

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed and approved this rule, and in so doing certifies that this rule is not anticipated to have a significant economic impact on a substantial number of small entities. This rule revises HUD's existing regulations for the assessment of public housing at 24 CFR part 902, PHAS, to revise certain procedures to clarify the regulation and to simplify the PHAS process. The additional information and the revision of certain procedures impose no significant economic impact on a substantial number of small entities.

Notwithstanding HUD's determination that this rule will not have a significant effect on a substantial number of small entities, HUD specifically invites comments regarding any less burdensome alternatives to this rule that will meet HUD's objectives as described in this preamble.

Federalism

The General Counsel, as the Designated Official under Executive Order 12612, Federalism, has determined that the policies contained in this rule will not have substantial direct effects on states or their political subdivisions, on the relationship between the federal government and the states, or on the distribution of power and responsibilities among the various levels of government. This rule is intended to promote good management practices by including, in HUD's relationship with PHAs, continuing review of PHAs' compliance with already existing requirements. This rule will not create any new significant requirements. As a result, the rule is not subject to review under the Order.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance numbers for Public Housing is 14.850.

List of Subjects in 24 CFR part 902

Administrative practice and procedure, Public Housing, Reporting and recordkeeping requirements.

Accordingly, HUD proposes to revise 24 CFR part 902 to read as follows:

PART 902—PUBLIC HOUSING ASSESSMENT SYSTEM

Subpart A—General Provisions

Sec.
902.1 Purpose and general description.
902.3 Scope.
902.5 Applicability.
902.7 Definitions.
902.9 PHAS grading.
902.10 PHAS designation.
902.13 Frequency of PHAS assessments.
902.15 Posting and publication of PHAS grades and designations.

Subpart B—PHAS Indicator #1: Physical Condition

902.20 Physical condition assessment.
902.23 Inspectable areas.
902.24 Physical inspection of PHA properties.
902.25 Adjustments to physical condition property grade.
902.26 Database adjustments to physical condition assessments.
902.27 Physical inspection report.
902.28 Overall physical condition indicator grade.
902.29 Threshold.

Subpart C—PHAS Indicator #2: Financial Condition

902.30 Financial condition assessment.
902.33 Financial condition grading.
902.35 Financial condition components.
902.37 Threshold.

Subpart D—PHAS Indicator #3: Management Operations

902.40 Management operations assessment and performance standards.
902.41 Management operations sub-indicator #1—vacant unit turnaround time.
902.42 Management operations sub-indicator #2—Capital Fund.
902.43 Management operations sub-indicator #3—work orders.
902.44 Management operations sub-indicator #4—annual inspection of dwelling units and systems.
902.45 Management operations sub-indicator #5—security.
902.46 Management operations sub-indicator #6—self-sufficiency.
902.47 Management operations sub-indicator #7—income verification.
902.48 Management operations sub-indicator #8—rent calculation.
902.49 Threshold.

Subpart E—PHAS Indicator #4: Resident Service and Satisfaction

902.50 Resident service and satisfaction assessment.
902.51 Certification and updating of unit address information.
902.52 Resident survey sampling.
902.53 Third party administrator.
902.54 Resident service and satisfaction grading and survey contents.
902.55 Threshold.

Subpart F—PHAS Submission Requests and Grade Adjustments

902.60 Requests for manual and late submissions.

902.61 Failure to submit data.
902.63 PHAS grade adjustments.
902.67 Withholding, denying, and rescinding grades.
902.68 Technical review of results of PHAS Indicators #1 or #4.
902.69 PHA right of petition and appeal.

Subpart G—PHAS Incentives and Remedies

902.71 Incentives for Grade A PHAs.
902.73 Referral of Grade B, C, and D PHAs.
902.75 Referral of Grade F PHAs.
902.77 Actions and sanctions.
902.79 Substantial default.
902.83 Interventions.
902.85 Resident petitions for remedial action.

Authority: 42 U.S.C. 1437d(j) and 3535(d).

Subpart A—General Provisions

§ 902.1 Purpose and general description.

(a) *Purpose.* The Public Housing Assessment System (PHAS) provides a management tool for effectively and fairly measuring the performance of a public housing agency (PHA) in essential housing operations, including rewards for strong performers and consequences for poor performers.

(b) *PHAS Indicators.* PHAS assesses and grades a PHA's performance based on four indicators.

(1) PHAS Indicator #1 assesses the physical condition of a PHA's properties (see subpart B of this part). The objective of the Physical Condition Indicator is to determine whether a PHA is meeting HUD's standard for acceptable basic housing conditions—decent, safe, sanitary and in good repair (DSS/GR)—and the level to which the PHA is maintaining its public housing in accordance with this standard.

(2) PHAS Indicator #2 assesses the financial condition of a PHA (see subpart C of this part). The objective of the Financial Condition Indicator is to measure the financial condition of a PHA to evaluate whether it has sufficient financial resources and is capable of managing those financial resources effectively to provide housing that is DSS/GR.

(3) PHAS Indicator #3 assesses the management operations of a PHA (see subpart D of this part). The objective of the Management Operations Indicator is to measure certain key management operations and responsibilities of a PHA for the purpose of assessing the PHA's management operations performance.

(4) PHAS Indicator #4 assesses the resident service and satisfaction feedback on a PHA's operations (see subpart E of this part). The objective of the Resident Service and Satisfaction Indicator is to measure the level of resident satisfaction with living conditions at the PHA.

(c) *Assessment tools.* HUD shall use uniform and objective protocols for the physical inspection of properties and the financial assessment of the PHA, and shall gather relevant data from the PHA and the PHA's public housing residents to assess management operations and resident service and satisfaction, respectively. On the basis of this data, HUD shall assess and grade the results, advise PHAs of their grade and identify low graded PHAs so that these PHAs shall receive the appropriate guidance to improve performance and provision of services to residents.

§ 902.3 Scope.

(a) The PHAS measures a PHA's essential housing operations. All PHAs remain responsible for complying with requirements such as fair housing and equal opportunity requirements, requirements under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), and requirements of programs under which the PHA is receiving assistance even though these other requirements are not specifically referenced in this part. A PHA's adherence to all requirements will be monitored in accordance with the applicable program regulations, HUD compliance and review policies, and the PHA's Annual Contributions Contract (ACC).

(b) All PHA certifications, year-end financial information, and supporting documentation are subject to HUD verification at any time, including an independent auditor review. Failure to maintain and provide supporting documentation for any indicator(s), sub-indicator(s) and/or component(s) shall result in a zero and grade of F for the indicator(s), sub-indicator(s) and/or component(s), and a lower overall PHAS grade. Appropriate sanctions for false certifications shall be imposed, including civil penalties, limited denial of participation, suspension or debarment of the signatories, the loss of Grade A PHA designation, pursuant to § 902.67, and a lower grade under the PHAS indicators. See § 902.63.

§ 902.5 Applicability.

(a) *PHAs, RMCs, DF–RMCs, and AMEs.* This part applies to PHAs (as described in §§ 902.1 and 902.3) and to Resident Management Corporations (RMCs), RMCs that receive direct funding from HUD in accordance with § 20 of the Act (DF–RMCs) (42 U.S.C. 1437r) and alternate management entities (AMEs). When management operations of a PHA's properties have been assumed by an RMC, the PHA's certification shall identify the property and the management functions assumed by the RMC.

(b) *Assessments of RMCs, DF–RMCs and AMEs.* (1) RMCs and DF–RMCs will be assessed and issued grades under PHAS based on the public housing properties or portions of public housing properties that they manage and the responsibilities they assume that can be graded under PHAS. All RMCs and DF–RMCs are subject to the requirements of this part.

(2) AMEs are not issued PHAS grades. The performance of the AME contributes to the PHAS grade of the PHA or PHAs for which the AME assumed management responsibilities. The PHA shall obtain a certification from the AME of the management functions undertaken by the AME. The PHA shall include the information regarding the management functions undertaken by the AME as part of its own management operations certification under subpart D.

(3) For an RMC, the PHA shall obtain a certified questionnaire from the RMC as to the management functions undertaken by the RMC. Following verification of the RMC's certification, the PHA shall submit the RMC's certified questionnaire along with its own. The RMC's Executive Director, Chief Executive Officer, or other responsible party must approve its certification.

(4) A DF–RMC shall submit directly to HUD its certified statement concerning the management functions that it has undertaken. The DF–RMC's Executive Director, Chief Executive Officer, or other responsible party must approve the certification prior to submission to HUD.

(c) *PHA responsible entity under ACC, except where DF–RMC assumes management operations.* (1) Because the PHA and not the RMC or AME is responsible to HUD under the ACC, the PHAS grade of a PHA shall be based on all of the properties covered by the ACC, including those with management operations assumed by an RMC or AME (including a court ordered receivership agreement, if applicable).

(2) A PHA's overall PHAS grade will not be based on properties managed by a DF–RMC.

(d) *Implementation of PHAS.* The regulations in this part are applicable to PHAs with fiscal years ending on and after September 30, 2003.

§ 902.7 Definitions.

As used in this part:

Act means the U.S. Housing Act of 1937 (42 U.S.C. 1437 *et seq.*)

Adjustment for physical condition and neighborhood environment is one

letter grade increase in the property grade. The letter grade increase, however, shall not result in a property grade of more than an A.

Alternative management entity (AME) is a receiver, private contractor, private manager, or any other entity that is under contract with a PHA, under a Regulatory or Operating Agreement with a PHA, or that is otherwise duly appointed or contracted (for example, by court order or agency action) to manage all or part of a PHA's operations.

Annual Contributions Contract (ACC) means the written contract between HUD and a PHA under which HUD agrees to provide funding for a program under the Act and the PHA agrees to comply with HUD requirements for the program.

Assessed fiscal year is the PHA fiscal year that is being assessed under the PHAS.

Assistant Secretary means the Assistant Secretary for Public and Indian Housing.

Average number of days non-emergency work orders were active is calculated:

(1) By dividing the total of—

(i) The number of days in the assessed fiscal year it takes to close active non-emergency work orders that were carried over from the previous fiscal year;

(ii) The number of days it takes to complete non-emergency work orders issued and closed during the assessed fiscal year; and

(iii) The number of days all active non-emergency work orders were open in the assessed fiscal year, but not completed;

(2) By the total number of non-emergency work orders that were used in the calculation of paragraphs (1)(i), (ii) and (iii) of this definition.

Certification review means the HUD on-site property review of the exigent health and safety deficiencies observed in the property inspection against the PHA's certification that these deficiencies have been corrected.

Days means calendar days unless otherwise specified.

Decent, safe, sanitary and in good repair (DSS/GR) is HUD's standard for acceptable basic housing conditions and the level to which a PHA is to maintain its public housing.

Deficiency means any PHAS indicator, sub-indicator, or component for which the PHA has received a PHAS grade of F. In the context of PHAS Indicator #1, deficiency is an observed physical condition of an inspectable item that is recorded during a physical condition inspection. Examples of deficiencies are a hole in the wall or a damaged refrigerator in the kitchen (see § 902.24).

Entity-wide means all programs and activities regardless of funding source (federal and non-federal) of a PHA. The determination of entity-wide shall be made in accordance with generally accepted accounting principles (GAAP) authoritative literature.

Family self-sufficiency (FSS) program means the program established by a PHA within its jurisdiction to promote self-sufficiency among participating families, including the provision of supportive services to these families, as authorized by section 23 of the Act.

Improvement Plan is a document developed by a PHA that sets forth the required actions to be taken, including timetables, to correct deficiencies in any of the PHAS indicators, sub-indicators and components identified during the PHAS assessment. An Improvement Plan may be required when a Memorandum of Agreement (MOA) is not required.

Memorandum of Agreement is a binding contractual agreement between a PHA and HUD that is required for each Grade F PHA as described in this subpart. The MOA sets forth target dates, strategies, and incentives for improving management performance, and provides sanctions if improved performance does not result.

Memorandum of Understanding (MOU) is a binding agreement by and among a PHA and other parties outlining activities, responsibilities, and timelines for social services and property management and maintenance services.

PIH–REAC means HUD's Office of Public and Indian Housing Real Estate Assessment Center.

Property is a project or development with a separate identifying project number.

Reduced average number of days non-emergency work orders were active during the previous three years is a comparison of the average time non-emergency work orders were active in the assessed fiscal year to the average number of days non-emergency work orders were active in the fiscal year two years prior to the assessed fiscal year. It is calculated by subtracting the average number of days non-emergency work orders were active in the assessed fiscal year from the average number of days non-emergency work orders were active in the earlier year. If a PHA elects to certify to the reduction of the average time non-emergency work orders were active during the previous three years, the PHA shall retain justifying documentation to support its certification for HUD review as described in subpart F.

Self-sufficiency means that an FSS family is no longer receiving Section 8, public or Indian housing assistance, or any federal, state, or local rent or homeownership subsidies or welfare assistance. Achievement of self-sufficiency, although an FSS program objective, is not a condition for receipt of the FSS account funds.

Unit months available is the total number of units managed by a PHA multiplied by 12 (adjusted by new units entering a PHA's public housing stock during the assessed fiscal year) exclusive of units months vacant due to demolition, conversion, ongoing modernization, and units approved for non-dwelling purposes.

Unit months leased is the actual number of months each unit was rented during the fiscal year based on the PHA's tenant rent rolls or Housing Assistant Payment (HAP) records.

Work order deferred to the Capital Fund Program is any work order that is combined with similar work items under the PHA's Capital Fund Program or other PHA capital improvements program and is completed within the assessed fiscal year, or shall be completed in the following fiscal year when there are fewer than three months remaining before the end of the assessed fiscal year from the time the work order was generated.

§ 902.9 PHAS grading.

(a) *Overall PHAS grade.* Each PHA will receive an overall PHAS grade of A, B, C, D, or F. Sub-indicators and components within each of the four PHAS indicators are graded individually, and the grades for the sub-indicators and components are used to determine a single grade for each of the four PHAS indicators. Then, the four indicator grades are combined to determine a PHA's final overall PHAS grade.

(b) *Indicator grades.* The overall PHAS grade is derived from a weighted average of grade values for the four indicators as follows:

(1) Physical Condition Indicator #1—Weighted 30 percent of the overall PHAS grade. The PHA's grade is based on the results of the physical inspections of PHA properties performed by contract inspectors using HUD's Uniform Physical Condition Standards (UPCS) inspection protocol. The results of the inspections are electronically submitted to HUD.

(2) Financial Condition Indicator #2—Weighted 30 percent of the overall PHAS grade. The PHA's grade is based on year-end financial information,

prepared in accordance with GAAP, which is electronically submitted to HUD. All PHAs that meet the federal assistance threshold set forth in the Single Audit Act and the Office of Management and Budget (OMB) Circular A–133 (see 24 CFR 84.26) also submit year-end audited financial information. The audited information is transmitted to HUD electronically after the independent public accountant (IPA) or certified public accountant (CPA) certifies or attests to the accuracy of the financial information.

(3) Management Operations Indicator #3—Weighted 30 percent of the overall PHAS grade. The PHA's grade is based on the management certification that is electronically submitted to HUD. The certification is approved by PHA Board resolution and signed and attested to by the Executive Director. In accordance with § 902.63, appropriate sanctions for false certification shall be imposed, including civil penalties, limited denial of participation, suspension, or debarment of the signatories.

(4) Resident Service and Satisfaction Indicator #4—Weighted 10 percent of the overall PHAS grade. The PHA's grade is based on the responses to the resident survey that is conducted by a third party administrator.

(c) *Grading procedures.* (1) The grades for each PHAS indicator are calculated in accordance with the grading procedures described in the grading notices published separately in the **Federal Register**. The PHAS grading notices, with their respective appendices, are:

(i) Public Housing Assessment System (PHAS); Changes to the PHAS; Introduction to PHAS Grading;

(ii) Physical Condition Grading Process;

(iii) Financial Condition Grading Process;

(iv) Management Operations Grading Process; and

(v) Resident Service and Satisfaction Grading Process.

(2) HUD will publish for comment any significant proposed amendments to the notices. After comments have been considered, HUD will publish a notice adopting a final notice or amendment. The PHAS grading notices currently in effect are posted on the PIH–REAC Internet site at *http://www.hud.gov/reac* or may be obtained from the PIH–REAC Technical Assistance Center at 888–245–4860 (this is a toll-free number).

§ 902.10 PHAS designation.

All PHAs shall receive a designation. The designation is based on the overall PHAS grade and the four indicator grades as set forth below.

(a) *Grade A PHA, Grade B PHA, and Grade C PHA.* A PHA's overall PHAS grade is its designation if none of its indicator grades are less than a grade of C.

(1) Grade A PHAs are eligible for incentives that include relief from reporting and other requirements, as described in §§ 902.13 and 902.71.

(2) Grade B PHAs are eligible for relief as described in § 902.13.

(3) Grade B and C PHAs shall be referred to the Hub Office/Program Center pursuant to § 902.73 and shall correct all deficiencies.

(b) *Grade D PHAs.* A PHA shall be designated a Grade D PHA if at least one of the four indicator grades is a grade of D and none of the indicator grades is a grade of F.

(1) Grade D PHAs shall be referred to the Hub Office/Program Center pursuant to § 902.73 and shall correct all deficiencies.

(2) A PHA that is designated a Grade D PHA is at risk of being designated a Grade F PHA.

(c) *Grade F PHAs.* A PHA shall be designated a Grade F PHA if at least one of the four indicator grades is a grade of F.

(d) *Capital Fund Grade F PHA.* A PHA that receives a grade of F for the Capital Fund sub-indicator under Management Operations Sub-Indicator #2 (see § 902.42) shall be a Capital Fund Grade F PHA. In accordance with section 6(j)(2) of the Act (42 U.S.C. 1437d(j)(2)), a Capital Fund Grade F PHA is subject to the sanctions in section 6(j)(4) of the Act (42 U.S.C. 1437(d)(j)(4)), as appropriate.

(e) *Referral of Grade F PHAs.* A Grade F PHA and Capital Fund Grade F PHAs shall be referred to the appropriate HUD office for remedial action pursuant to § 902.75.

§ 902.13 Frequency of PHAS assessments.

(a) *Frequency.* The PHA's PHAS designation determines the frequency of the PHAS assessments.

(1) When a PHA is designated a Grade A PHA, the PHA's next assessment shall be in three years.

(2) When a PHA is designated a Grade B PHA, the PHA's next assessment shall be in two years.

(3) When a PHA is designated a Grade C, D, or F PHA, the PHA's next assessment shall be the following year.

(b) *Baseline.* In the first calendar year after implementation of this regulation, all PHAs shall be assessed in accordance with the requirements of this part and graded in accordance with the most recent grading notices. For PHA's with fiscal years ending September 30, 2003, December 31, 2003, March 31, 2004, and June 30, 2004, this PHAS assessment shall be the baseline assessment. The baseline assessment will determine each PHA's next PHAS assessment. Thereafter, the PHA's most recent final overall PHAS grade will determine the intervals between PHAS assessments.

(c) *Financial submissions.* Notwithstanding the foregoing, a PHA shall electronically submit the unaudited and audited financial information to HUD every year pursuant to subpart C of this part. HUD shall not issue a grade for the unaudited and audited financial information in the years that a PHA is not being assessed under PHAS.

§ 902.15 Posting and publication of PHAS grades and designations.

Each PHA and DF–RMC shall post its overall PHAS grade, each of the four indicator grades and its designation in appropriate conspicuous and accessible locations in its offices within two weeks of receipt of the overall grade. In addition, HUD shall post every PHA's and DF–RMC's overall PHAS grade, indicator grades, and designation on the PIH–REAC Internet site.

Subpart B—PHAS Indicator #1: Physical Condition

§ 902.20 Physical condition assessment.

(a) *Method of assessment, generally.* The physical condition assessment is based on an independent physical inspection of a PHA's properties provided by HUD and conducted using HUD's UPCS inspection protocol. This assessment determines the extent of a PHA's compliance with the DSS/GR standards.

(b) *Method of transmission.* After the inspection is completed, the inspector transmits the results to HUD where the results are verified for accuracy and then graded in accordance with the procedures in this subpart. The PHA's property inspection reports for the assessed fiscal year are used to determine the PHA's physical condition grade under this subpart.

(c) *Frequency of inspections.* HUD will conduct a physical inspection of PHA properties only for the fiscal years for which the PHA is assessed under this part.

(d) *PHA physical inspection requirements.* The HUD-conducted physical inspections required by this part do not relieve the PHA of the responsibility to inspect public housing units as provided in section 6(f)(3) of the Act (42 U.S.C. 1437d(f)(3)) and § 902.44.

(e) *Compliance with State and local codes.* The physical condition standards

in this subpart do not supersede or preempt state and local building and maintenance codes with which the PHA's public housing must comply. PHAs must continue to adhere to these codes.

(f) *HUD access to PHA properties.* All PHAs are required by the ACC to provide the Government with full and free access to all facilities in its property(ies). All PHAs are required to provide HUD or its representative with access to its property(ies), and all units and appurtenances in order to permit physical inspections, certification reviews, and quality assurance reviews under this part. Access to the units shall be provided whether or not the resident is home or has installed additional locks for which the PHA did not obtain keys. In the event that the PHA fails to provide access as required by HUD or its representative, the PHA shall be given a zero and grade of F for the property or properties involved which shall be reflected in the PHAS Indicator #1 grade and the overall PHAS grade.

§ 902.23 Inspectable areas.

(a) *General.* The physical inspections address five major physical areas of public housing: site, building exteriors, building systems, dwelling units, and common areas. The physical inspections also identify health and safety considerations (including exigent health and safety (EHS) considerations). The inspections focus on acceptable basic housing conditions, not the adornment, decor, or other cosmetic appearance of the properties.

(b) *Major inspectable areas.* The five major inspectable areas of public housing are the following:

(1) Site. The site includes components such as fencing and retaining walls, grounds, lighting, mailboxes, signs (such as those identifying the property or areas of the property), parking lots/driveways, play areas and equipment, refuse disposal, roads, storm drainage, and walkways. The site must be free of health and safety hazards and be in good repair. The site must not be subject to material adverse conditions, such as abandoned vehicles, dangerous walks or steps, poor drainage, septic tank back-ups, sewer hazards, excess accumulations of trash, vermin or rodent infestation, or fire hazards.

(2) Building exterior. Each building on the site must be structurally sound, secure, habitable, and in good repair. The building's exterior components such as doors, fire escapes, foundations, lighting, roofs, walls and windows, where applicable, must be free of health and safety hazards, operable, and in good repair.

(3) Building systems. The building's systems include components such as domestic water, electrical system, elevators, emergency power, fire protection, HVAC, and sanitary system. Each building's systems must be free of health and safety hazards, functionally adequate, operable, and in good repair.

(4) Dwelling units. (i) Each dwelling unit within a building must be structurally sound, habitable, and in good repair. All areas and aspects of the dwelling unit (for example, the unit's bathroom, call-for-aid, ceiling, doors electrical systems, floors, hot water heater, HVAC (where individual units are provided), kitchen, lighting, outlets/switches, patio/porch/balcony, smoke detectors, stairs, walls, and windows) must be free of health and safety hazards, functionally adequate, operable, and in good repair.

(ii) Where applicable, the dwelling unit must have hot and cold running water, including an adequate source of potable water.

(iii) If the dwelling unit includes its own sanitary facility, it must be in proper operating condition, usable in private, and adequate for personal hygiene and the disposal of human waste.

(iv) The dwelling unit must include at least one battery-operated or hard-wired smoke detector in proper working condition on each level of the unit.

(5) Common areas. The common areas must be structurally sound, secure, and functionally adequate for the purposes intended. The common areas include components such as basement/garage/carport, restrooms, closets, utility, mechanical, community rooms, day care, halls/corridors, stairs, kitchens, laundry rooms, office, porch, patio, balcony, and trash collection areas, if applicable. The common areas must be free of health and safety hazards, operable, and in good repair. All common area ceilings, doors, floors, HVAC, lighting, outlets/switches, smoke detectors, stairs, walls, and windows, to the extent applicable, must be free of health and safety hazards, operable, and in good repair.

(c) *Health and safety concerns.* All areas and components of PHA properties must be free of health and safety hazards. Health and safety hazards include, but are not limited to, air quality, electrical hazards, elevators, emergency/fire exits, flammable materials, garbage and debris, handrail hazards, infestation, and lead-based paint. For example, the buildings must have fire exits that are not blocked, and have handrails that are undamaged and have no other observable deficiencies. PHA properties must have no evidence of infestation by rats, mice, or other vermin, or of garbage and debris. PHA properties must have no evidence of electrical hazards, natural hazards, or fire hazards. The dwelling units and common areas must have proper ventilation and be free of mold, odor (*e.g.*, propane, natural gas, methane gas), or other observable deficiencies. The PHA must comply with all regulations and requirements related to the ownership of pets, and the evaluation and reduction of lead-based paint hazards, and must have all appropriate certifications available for review (see 24 CFR part 35).

§ 902.24 Physical inspection of PHA properties.

(a) *The inspection, generally.* During the physical inspection of a property, an inspector inspects a random sample of dwelling units and buildings in the PHA's public housing portfolio to determine the extent of compliance with HUD's DSS/GR standards. The dwelling units inspected in a property are a randomly selected sample of the units in the properties. The buildings inspected include all buildings with sampled units plus additional buildings, including all common (non-residential) buildings.

(1) Only occupied units shall be inspected as dwelling units. Units approved by HUD for non-dwelling purposes, such as daycare or meetings, are inspected as common areas. Certain categories of vacant units that are not under lease at the time of the physical inspection (*e.g.*, units undergoing rehabilitation or extensive repair, vacant units during the turnaround period prior to lease-up) shall not be inspected, but shall be assessed under the Financial Condition Indicator #2 (subpart C).

(2) The categories of vacant units that are not under lease that are not inspected are as follows:

(i) Units undergoing vacant unit turnaround—vacant units that are in the routine process of turnover; *i.e.*, the period between which one resident vacates a unit and a new lease takes effect;

(ii) Units undergoing rehabilitation—vacant units that have substantial rehabilitation needs already identified, and for which there is an approved implementation plan to address the identified rehabilitation needs and the plan is fully funded; and

(iii) Off-line units—vacant units that have significant unanticipated repair requirements, such as fire damage, that prevent the units from being occupied after a normal period of time (considered to be between 5 and 7 days)

and which are not included in an approved rehabilitation plan.

(b) *Observed deficiencies.* During the inspection of a property, the inspector looks for deficiencies in each inspectable item within the inspectable areas. For example, the inspector looks for holes (deficiencies) in the walls (item) of a dwelling unit (area).

(c) *Health and safety deficiencies and EHS deficiencies.*

(1) *Health and safety deficiencies.* The PHA is required to promptly correct all health and safety deficiencies.

(2) *EHS deficiencies.* Before leaving the site, the inspector gives the property representative the list of every observed EHS deficiency (*i.e.*, every life-threatening health and safety deficiency). The property representative acknowledges receipt of the list of the observed deficiencies by signature. The PHA must immediately correct or remedy all EHS deficiencies cited in the deficiency report and the property inspection report within 24 hours. In addition, the PHA must certify, as directed by HUD, that all EHS deficiencies were corrected or remedied within 24 hours.

(d) *Definitions for grading.* The following definitions apply to the physical condition grading process in this subpart:

Base grade means the initial property grade derived from the number of livability deficiencies.

Deficiencies means the specific problems, such as a hole in a wall or a damaged refrigerator in the kitchen, that can be recorded for the inspectable items.

Deficiency Classification Summary Document refers to the Deficiency Classification Summary Document that is included as Appendix 2 to the PHAS notice on the Interim Physical Condition Scoring Process published in the **Federal Register** on November 26, 2001.

This document is also available from the Real Estate Assessment Center, 1280 Maryland Ave., SW., Suite 800, Washington, DC 20410. This document shows the grading class for each severity level of each deficiency listed in the Dictionary of Deficiency Definitions.

Dictionary of Deficiency Definitions ("Dictionary") refers to the Dictionary of Deficiency Definitions document that is included as Appendix 2 to the PHAS Notice on the Physical Condition Grading Process. The Dictionary lists each deficiency that may be observed, defines each deficiency, and sets forth the severity levels for each deficiency under this subpart.

Grading class is a group of deficiencies that are treated alike. Each deficiency within a grading class has the same type of impact on a property grade. There are three grading classes:

(1) *Livability:* deficiencies that have a major impact on livability for residents (*e.g.*, toilet not working);

(2) *EHS:* deficiencies that are life-threatening and require immediate attention or remedy. This category includes all of the deficiencies for which the PHA receives a notice at the end of the physical inspection (*e.g.*, exposed wires); and

(3) *Other:* deficiencies that have little or no impact on livability for residents (*e.g.*, small hole in an interior door) but are a valuable management tool because they provide information on the condition of the property.

Inspectable areas (or area) means any of the five major components of the property that are inspected. They are: site; building exteriors; building systems; dwelling units; and common areas.

Inspectable item means the individual parts, such as walls, kitchens, bathrooms, and other things, to be inspected in an inspectable area. The number of inspectable items varies for each inspectable area.

Livability is the concept of grading the physical condition of PHA properties that focuses on the impact of the deficiencies on the residents. The severity levels of each deficiency in the Dictionary have been classified into one of three grading classes: livability, EHS or other.

PHAS Indicator #1 grade is a letter grade (A, B, C, D, or F) that corresponds to the weighted average of all of the property grades, reflecting the physical condition of all of a PHA's properties.

Property grade is a letter (A, B, C, D, or F), based on counts of deficiencies in grading classes, that reflects the physical condition of a property.

Property livability points mean a value derived from the number of deficiencies in the livability grading class that is used to assign a base grade to a PHA property.

Reported grade means the grade reported to a PHA, including any change in the base grade due to observed EHS deficiencies. Deficiencies in grading class "other" are recorded, but do not affect the base grade or the reported grade.

Severity means one of three levels (*i.e.*, level 1, level 2, and level 3) that reflects the extent of the damage or problem associated with each deficiency. The severity levels for each deficiency are set forth in the Dictionary. The Dictionary also sets forth the specific definitions for each severity level.

(e) *Dictionary and Deficiency Classification.* HUD shall publish for comment any significant proposed amendments to the Dictionary and the Deficiency Classification Summary Document. After comments have been considered, HUD shall publish a notice adopting the final Dictionary and Document or the amendments. The Dictionary and the Deficiency Classification Summary Document that are currently in effect can be found at HUD's Internet site at *http://www.hud.gov/reac* or obtained from the PIH–REAC Technical Assistance Center at 888–245–4860 (this is a toll free number).

(f) *Compliance with civil rights/nondiscrimination requirements.* HUD reviews certain elements during the physical inspection to determine possible indications of noncompliance with the Fair Housing Act (42 U.S.C. 3601–19) and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794). All Fair Housing Act and Rehabilitation Act observations recorded by an inspector are classified as "other" deficiencies under livability and are not included in the property grade. All information is provided to HUD's Office of Fair Housing and Equal Opportunity for further review.

§ 902.25 Adjustments to physical condition property grade.

(a) *Adjustment for physical condition and neighborhood environment.* In accordance with section 6(j)(1)(I)(2) of the Act (42 U.S.C. 1437d(j)(1)(I)(2)), the overall physical condition grade for a property shall be adjusted upward to the extent that negative conditions are caused by situations outside the control of the PHA. The intent of this adjustment is to avoid penalizing the PHA through appropriate application of the adjustment.

(b) *One-letter grade adjustment.* A PHA shall receive a one-letter grade adjustment (*i.e.*, increase) in the property grade if the property satisfies the criteria for either physical condition or neighborhood environment or for both. To be eligible for this adjustment, the PHA must certify that the property meets the definitions of physical condition and/or neighborhood environment. An adjustment made under this section will be an adjustment to an individual property grade determined by HUD on a case by case basis.

(c) *Definitions.* Definitions and application of physical condition and neighborhood environment factors are:

(1) Physical condition applies to documented structural or design defects in a property that a PHA cannot correct.

(2) Neighborhood environment applies to documented conditions within the immediate surrounding neighborhood that adversely impact a property's physical condition such as:

(A) A landfill;

(B) Flood plain; or

(C) Other environmentally hazardous areas.

(d) *Certification to an adjustment for physical condition and/or neighborhood environment.* The PHA certifies to the adjustment for physical condition and/or neighborhood environment as part of its management operations submission.

(e) *Maintenance of supporting documentation.* A PHA shall maintain supporting documentation (pursuant to § 902.63(c)) to show how it determined that the property's grade is subject to adjustment under this section.

(1) If the basis for adjustment was neighborhood environment, the PHA shall have on file the appropriate documentation supporting the adjustment. Properties that fall into this category but which have already been removed from consideration for other reasons (permitted exemptions and modifications and/or exclusions) shall not be counted in this calculation.

(2) For the physical condition adjustment, a PHA must maintain documentation showing the structural or design defects. A PHA shall also maintain documentation showing that any property exempted for other reasons was not included in the calculation.

§ 902.26 Database adjustments to physical condition assessments.

(a) *Generally.* HUD may review the results of a PHA's physical inspection and make adjustments to the property grade based on certain circumstances such as:

(1) Factors not reflected or inappropriately reflected in the physical property grade;

(2) Adverse conditions beyond the PHA's control; and

(3) Modernization work in progress.

(b) *Adjustments for factors not reflected or inappropriately reflected in the property grade.* (1) Factors not reflected or inappropriately reflected in the property grade include inconsistencies between local code requirements and the HUD UPCS physical inspection protocol (24 CFR part 5, subpart G); conditions which are permitted by local variance or license or which are preexisting physical features that do not conform to, or are inconsistent with, HUD's UPCS physical inspection protocol; or the inspector grading the PHA for elements (*e.g.*, roads, sidewalks, mail boxes, resident-owned appliances, etc.) that the PHA does not own and is not responsible for maintaining, and for which it has notified the proper authorities regarding the deficient structure.

(2) The PHA may request an adjustment due to these circumstances through the applicable Hub Office/Program Center. The request shall be in writing and include appropriate proof of the reasons for the unusual or incorrect result. A PHA may submit the request for this adjustment either prior to or after the physical inspection has been concluded. If the request is made after the conclusion of the physical inspection, the request shall be made within 15 days of issuance of the Physical Inspection Report and grade for the property. Based on the recommendation of the applicable HUD Hub Office/Program Center following its review of the PHA's documentation, HUD may determine that a reinspection and/or re-grading of the PHA's property is necessary.

(c) *Adjustments for adverse conditions beyond the PHA's control.* Under certain circumstances, HUD may determine that certain deficiencies that adversely and significantly affect the property grades of the PHA were caused by circumstances beyond the control of the PHA. The correction of these conditions, however, remains the responsibility of the PHA.

(1) Adverse conditions beyond the PHA's control may include, but are not limited to, damage caused by third parties (such as a private entity or public entity undertaking work near a public housing property that results in damage to the property) or natural disasters.

(2) A PHA may request an adjustment due to these circumstances through the applicable HUD Hub Office/Program Center. The request shall be submitted within 15 days of the issuance of the Physical Inspection Report and grade for the property to the PHA and shall be accompanied by a certification that all deficiencies identified in the original report have been corrected. Based on the recommendation of the applicable HUD Hub Office/Program Center after its review of the PHA's evidence or documentation, HUD may determine that a reinspection and/or re-grading of the PHA's property is necessary.

(d) *Adjustments for modernization work in progress.* HUD may determine that an occupied dwelling unit or other areas of a PHA property, subject to physical inspection under this subpart, which are undergoing modernization work in progress require an adjustment to the physical condition grade.

(1) Occupied dwelling units or other areas of a PHA property undergoing modernization are not exempt from physical inspection. All elements of the dwelling units or of the other areas of the PHA property that are subject to inspection and are not undergoing modernization at the time of the inspection (even if modernization is planned) shall be subject to HUD's physical inspection protocol without adjustment. For those elements of the dwelling units or of the property that are undergoing modernization, deficiencies shall be noted in accordance with HUD's physical inspection protocol, but the PHA may request adjustment of the physical condition grade as a result of modernization work in progress.

(2) The PHA may request an adjustment due to modernization work in progress through the applicable HUD Hub Office/Program Center. The request shall be in writing and include supporting documentation of the modernization work underway at the time of the physical inspection. A PHA may submit the request for this adjustment either prior to or after the physical inspection has been concluded. If the request is made after the conclusion of the physical inspection, the request shall be made within 15 days of issuance of the Physical Inspection Report and grade for the property. Based on the recommendation of the applicable HUD Hub Office/Program Center, HUD may determine that a reinspection and/or re-grading of the PHA's property is necessary.

§ 902.27 Physical inspection report.

(a) *Report generally.* Following the physical inspection of each property and the determination of the property grade under this subpart, the PHA shall receive an Inspection Summary Report. The Inspection Summary Report allows the PHA to see all observed deficiencies by inspectable area, and the impact of livability and EHS deficiencies on the property grade.

(b) *Report contents.* The Inspection Summary Report includes the following items:

(1) A list of the livability, EHS, and other deficiencies observed;

(2) The health and safety deficiencies for each of the five inspectable areas; a listing of all observed smoke detector deficiencies; and a projection of the total number of health and safety deficiencies that the inspector potentially would see in an inspection of all buildings and all units;

(3) The overall property grade;

(4) The values of the livability points; and

(5) The reported property grade.

§ 902.28 Overall physical condition indicator grade.

(a) *Property grade.* To determine a property's base grade, all livability deficiencies reported for dwelling units, buildings (which combines the inspectable areas of building exterior, building systems and common areas), and site are counted. To quantify the impact of the cited deficiencies on the inspectable areas, values called "livability points" are calculated separately for dwelling units, buildings (adjusted for the number of units in each building and to account for any sampling of the buildings), and site. The livability points are then combined into overall livability points for the property, with dwelling units, buildings, and site each contributing 60 percent, 30 percent, and 10 percent, respectively. Property livability points are translated into the base grade as specified in the Physical Condition Grading Process notice. When there are no EHS deficiencies cited, the base grade is the property's reported grade.

(b) *Impact of EHS deficiencies on a property grade.* If at least one EHS deficiency is cited, other than for smoke detectors, then the reported grade will be one grade lower than the base grade (*i.e.*, A becomes B, B becomes C, C becomes D, D becomes F, and F remains as F).

(c) *Correction of EHS deficiencies.* When a PHA corrects all of the EHS deficiencies on a property inspection report and certifies to HUD that they have been corrected pursuant to section § 902.24 (c), the property grade will revert to the base grade. If an EHS certification review later shows that all of the EHS deficiencies to which the PHA certified were not corrected, then the PHA's property grade will be reduced one-letter grade below the reported property grade and the PHA's overall physical inspection grade also may be reduced, with F being the lowest possible grade.

(d) *PHAS Indicator #1 grade.* The PHAS Indicator #1 grade for a PHA is based on the grades for all the properties in a PHA's portfolio. To determine the PHAS Indicator #1 grade, each property grade is assigned a numerical value. Then a weighted average of property grade values is calculated with weights equal to the number of units in the property divided by the total number of units in the PHA. This PHAS Indicator #1 grade is the letter grade corresponding to the weighted average of property grade values.

§ 902.29 Threshold.

When a PHA receives a grade of F under this indicator, the PHA shall be designated a Grade F PHA. When a PHA receives a grade of D under this indicator, the PHA shall be designated a Grade D PHA.

Subpart C—PHAS Indicator #2: Financial Condition

§ 902.30 Financial condition assessment.

(a) *Annual financial filing dates.* Under this indicator, PHAs shall submit unaudited and audited financial information to HUD on an annual basis.

(1) Unaudited financial information filing date. The unaudited financial information shall be submitted to HUD annually, no later than two months after the end of the PHA's fiscal year in accordance with Uniform Financial Reporting Standards (see 24 CFR part 5, subpart H).

(2) Audited financial information filing date. The audited financial information shall be submitted no later than nine months after the end of the PHA's fiscal year, in accordance with the Single Audit Act and OMB Circular A–133 (see 24 CFR 84.26). A PHA that has an audit conducted, but is not subject to the Single Audit Act, shall also submit audited information no later than nine months after the end of the PHA's fiscal year.

(b) *Certification or attestation.* Prior to the electronic submission of the PHA's audited statement, the PHA's IPA or CPA shall certify or attest that the financial information being submitted electronically accurately reflects the audited "hard copy" financial information.

(c) *Annual financial information.* The financial information shall be:

(1) Submitted on an entity-wide basis;

(2) Prepared in accordance with GAAP; and

(3) Submitted electronically in the format prescribed by HUD.

(d) *Components of Financial Condition Indicator.* A PHA's financial condition shall be assessed on the basis of six components described in § 902.35. The six components are:

(1) Current Ratio;

(2) Number of Months Expendable Fund Balance;

(3) Tenant Receivables Outstanding;

(4) Occupancy Loss;

(5) Expense Management/Utility Consumption; and

(6) Net Income or Loss Divided by the Expendable Fund Balance.

(e) *Annual submission requirement.* A PHA shall electronically submit its unaudited and audited financial information to HUD every year. In accordance with § 902.13, HUD will not grade the unaudited and audited financial information in the years that a PHA is not being assessed under PHAS.

§ 902.33 Financial condition grading.

(a) Under PHAS Indicator #2, HUD will determine a grade based on the calculated values of the six financial condition components, and the results of the audit.

(b) Each financial condition component value will be converted to a grade. The grade from each financial condition component will then be combined to create the overall financial condition assessment grade. A PHA's grade for a financial condition component depends upon both the calculated value of the financial condition components and the PHA's peer group. A PHA's peer group will be determined based on a PHA's size and regional location. HUD will use a region as part of the peer group only if a peer group based solely on size would not allow an equitable assessment. A PHA's size will be based on the number of public housing, Section 8, and other units the PHA operates.

(c) HUD may adjust a PHA's Financial Conditioner Indicator grade after receipt of the PHA's audited submission for the assessed fiscal year. Any adjustment to the Financial Conditioner Indicator grade (*i.e.*, increase or decrease) shall result in a corresponding adjustment to the PHA's final overall PHAS grade. In addition, if there is a significant difference between the unaudited and audited submissions, a PHA's financial condition grade and final overall PHAS grade shall be adjusted (*i.e.*, a letter grade reduction) as described in the PHAS notice on the Financial Condition Grading Process. Findings, qualifications, or other conditions reported as the result of an audit may also reduce the Financial Condition grade by one or more letter grades. The letter grade reductions are based on the severity of the finding, qualifications, or reported condition, as described in the PHAS notice on the Financial Condition Grading Process.

§ 902.35 Financial condition components.

The six Financial Condition Indicator components are:

(a) *Current Ratio.* This component is calculated by dividing the current assets by current liabilities. This component measures a PHA's liquidity position. This component is calculated on an entity-wide basis.

(b) *Number of Months Expendable Fund Balance.* This component is calculated by dividing the expendable fund balance by the monthly operating expenses. This component measures the adequacy of the PHA's reserves. This component is calculated on an entity-wide basis.

(c) *Tenant Receivables Outstanding.* This component is calculated by dividing the gross tenant receivables by the amount of tenant rents collected during the assessed fiscal year. This component measures a PHA's ability to collect rent. This component is calculated on an entity-wide basis.

(d) *Occupancy Loss.* This component is calculated by dividing the unit months leased by the unit months available, and then subtracting that number from one. This component measures the ability of a PHA to maximize rental income. This component is calculated on all programs, excluding any units associated with the Section 8 Housing Choice Vouchers, Section 8 Rental Vouchers and Section 8 Certificates programs.

(e) *Expense Management/Utility Consumption.* This component is calculated by dividing key expenses, including the expense for utility consumption, by months leased. This component measures the ability of a PHA to maintain utility expenses at a reasonable level relative to its peers. This component is calculated only on the low rent program.

(f) *Net Income or loss divided by the Expendable Fund Balance.* This component is calculated by dividing net income or loss by the expendable fund balance. This component measures how the results of the PHA's operations for the assessed fiscal year affect the PHA's viability. This component is calculated on an entity-wide basis.

§ 902.37 Threshold.

When a PHA receives a grade of F under this indicator, the PHA shall be designated a Grade F PHA. When a PHA receives a grade of D under this indicator, the PHA shall be designated a Grade D PHA.

Subpart D—PHAS Indicator #3: Management Operations

§ 902.40 Management operations assessment and performance standards.

(a) *Management certification filing date.* Under this indicator, a PHA shall electronically submit to HUD its annual management operations information no later than two months after the end of the assessed fiscal year.

(b) *Board resolution and attestation.* The management operations certification shall be approved by a resolution of the PHA Board and signed and attested to by the Executive Director. In accordance with § 902.63, appropriate sanctions for false certification shall be imposed, including civil penalties, limited denial of participation, suspension, or debarment of the signatories.

(c) *Sub-indicators of Management Operations Indicator.* The PHA's management operations shall be assessed on the basis of eight sub-indicators described in the sections below. Five sub-indicators have two or more components. Two sub-indicators have specific exemptions. The eight sub-indicators are:

(1) Vacant unit turnaround time. This sub-indicator has a single component and has specific exemptions.

(2) Capital Fund. This sub-indicator has two components.

(3) Work orders. This sub-indicator has two components.

(4) Annual inspection of dwelling units and systems. This sub-indicator has two components and has specific exemptions.

(5) Security. This sub-indicator has three components.

(6) Self-sufficiency. This sub-indicator has four components.

(7) Income verification. This sub-indicator has a single component.

(8) Rent calculation. This sub-indicator has a single component.

(d) *Assessed period.* The Management Operations certification shall include only information for the assessed fiscal year. No information is required for and no certification is required during the years a PHA is not assessed under this part in accordance with § 902.13(a).

(e) *Audit and HUD review.* A PHA's management operations submission is subject to the annual IPA or CPA audit required by the Single Audit Act and OMB Circular A–133. A PHA's management operations submission also is subject to HUD on-site review at any time in accordance with § 902.63. A PHA that is unable to provide supporting documentation for the information under any of the sub-indicators or components to which it certified will receive a zero and a grade of F for the sub-indicator or component, and its management operations grade and final overall PHAS grade will be lowered.

§ 902.41 Management operations sub-indicator #1—vacant unit turnaround time.

This sub-indicator measures a PHA's efforts during the assessed fiscal year to reduce unit turnaround time, and assesses the adequacy of a PHA's system to track unit downtime, make ready time, and lease up time.

(a) *Units Exempted.* The following two categories of units that are not considered available for occupancy are exempted from the computation of vacant unit turnaround time.

(1) Units approved for non-dwelling use. Units approved for non-dwelling use that are exempt during the assessed fiscal year are HUD-approved units used to promote self-sufficiency and anti-drug activities or for non-dwelling purposes, such as police substations, day care centers, public safety activities, or resident job training.

(2) Vacant units approved for deprogramming. Vacant units approved for deprogramming that are exempt during the assessed fiscal year are HUD-approved units for demolition and/or disposition, or units that have been combined.

(b) *Vacancy days exempted.* The vacancy days for units in the following two categories shall be exempted from the calculation of vacant unit turnaround time in the assessed fiscal year. The two categories are:

(1) Vacancy days associated with vacant units receiving section 9(d) Capital Funds during the assessed fiscal year. Vacancy days associated with a vacant unit prior to the time the unit meets the conditions of being a unit receiving section 9(d) Capital Funds, and vacancy days associated with a vacant unit after construction work has been completed or after the time period for placing the vacant unit under construction has expired, shall not be exempted.

(2) Vacancy days associated with units vacant during the assessed fiscal year due to circumstances and actions beyond a PHA's control. Circumstances and actions beyond a PHA's control may include:

(i) A legally enforceable court order or settlement agreement resulting from litigation during the assessed fiscal year;

(ii) Federal law or state law, not preempted by federal law, or the implementing regulations;

(iii) Natural disasters during the assessed fiscal year; or

(iv) Vacant units during the assessed fiscal year that have sustained casualty damage and are pending resolution of insurance claims or settlements, but only until the insurance claims are settled.

(c) *Supporting documents for section 9(d) Capital Fund units.* A PHA shall maintain information to support its determination of vacancy days associated with a vacant unit that meets the conditions of being a unit receiving section 9(d) Capital Funds under paragraph (b)(1) of this section. The PHA shall maintain:

(1) The date on which the unit met the conditions of being a vacant unit receiving section 9(d) Capital Funds; and

(2) The date on which construction work was completed or the time period

for placing the vacant unit under construction expired.

(d) *Supporting documents for vacancies beyond PHA's control.* A PHA shall maintain information to support its determination of vacancy days associated with units vacant due to circumstances and actions beyond the PHA's control under paragraph (b)(2) of this section. This supporting information is subject to review and may be requested for verification purposes at any time by HUD. The PHA shall, at a minimum, maintain:

(1) The date on which the unit met the conditions of being a unit vacant due to circumstances and actions beyond a PHA's control;

(2) Documentation identifying the specific conditions that distinguish the unit as a unit vacant due to circumstances and actions beyond a PHA's control;

(3) A description or list of the actions taken by a PHA to eliminate or mitigate these conditions; and

(4) The date on which the unit ceased to meet such conditions and became an available unit.

(e) *Ratings for vacant unit turnaround time.*

(1) Grade A: When the average number of days during the assessed fiscal year between the time a unit is vacated and a new lease takes effect for units reoccupied is less than or equal to 5 days.

(2) Grade B: When the average number of days during the assessed fiscal year between the time a unit is vacated and a new lease takes effect for units reoccupied is greater than 5 days and less than or equal to 10 days.

(3) Grade C: When the average number of days during the assessed fiscal year between the time a unit is vacated and a new lease takes effect for units reoccupied is greater than 10 days and less than or equal to 20 days.

(4) Grade D: When the average number of days during the assessed fiscal year between the time a unit is vacated and a new lease takes effect for units reoccupied is greater than 20 days and less than or equal to 30 days.

(5) Grade F: When the average number of days during the assessed fiscal year between the time a unit is vacated and a new lease takes effect for units reoccupied is greater than 30 days.

§ 902.42 Management operations sub-indicator #2—Capital Fund.

This sub-indicator grades the funds provided to a PHA from the Capital Fund under section 9(d) of the Act (42 U.S.C. 1437g(9)(d)) that during the assessed fiscal year remain unobligated by a PHA after two years beyond the date on which the funds became available to a PHA for obligation in the case of modernization, or the date on which the agency accumulates adequate funds to undertake modernization, substantial rehabilitation, or new construction of units, and/or remain unexpended by a PHA after four years beyond the date on which the funds became available to a PHA for obligation. Funds from the Capital Fund under section 9(d) of the Act (42 U.S.C. 1437g(d)(2)) do not include HOPE VI program funds and Vacancy Reduction program funds.

(a) *Applicability.* This sub-indicator is not applicable for PHAs that choose not to receive Capital Funds under section 9(d) of the Act.

(b) *Components of Capital Fund sub-indicator.* The two components of the Capital Fund sub-indicator are:

(1) Unexpended funds over four years old; and

(2) Timeliness of fund obligation.

(c) *Grades for Capital Fund sub-indicator.*

(1) Component #1. Unexpended funds over four years old.

(i) Grade A: When a PHA has no unexpended funds during the assessed fiscal year that are over four years old beyond the date on which the funds became available to a PHA for expenditure, or when the Secretary has approved a time extension because of litigation, obtaining approvals of the federal, state, or local government, complying with environmental assessment or abatement requirements, relocating residents, or any other reason established by the Secretary by notice published in the **Federal Register**.

(ii) Grade F: When a PHA has unexpended funds during the assessed fiscal year over four years old beyond the date on which the funds became available to a PHA for expenditure and is unable to demonstrate any of the above conditions.

(2) Component #2. Timeliness of fund obligation.

(i) Grade A: When a PHA has no unobligated funds during the assessed fiscal year over two years old beyond the date on which the funds became available to a PHA for obligation, or the Secretary has approved a time extension because of litigation, obtaining approvals of the federal, state, or local government, complying with environmental assessment or abatement requirements, relocating residents or any other reason established by the Secretary by notice published in the **Federal Register**.

(ii) Grade F: When a PHA has unobligated funds during the assessed fiscal year over two years old beyond the fiscal year in which funds were obligated by HUD to the PHA and is unable to demonstrate any of the above conditions.

§ 902.43 Management operations sub-indicator #3—work orders.

This sub-indicator examines the time it takes to complete or abate emergency work orders; the average number of days non-emergency work orders were active during the assessed fiscal year; and any progress a PHA has made during the preceding three fiscal years to reduce the period of time non-emergency work orders were active.

(a) *Adequacy of work order system.* It is implicit in this sub-indicator that the PHA have an adequate work order system in terms of how a PHA accounts for and controls its work orders, and its timeliness in preparing/issuing work orders.

(b) *Grades for work orders.*

(1) Component #1. Emergency work orders.

(i) Grade A: When at least 99 percent of emergency work orders during a PHA's assessed fiscal year were completed or the emergency was abated within 24 hours or less.

(ii) Grade B: When at least 98 percent of emergency work orders during a PHA's assessed fiscal year were completed or the emergency was abated within 24 hours or less.

(iii) Grade C: When at least 97 percent of emergency work orders during a PHA's assessed fiscal year were completed or the emergency was abated within 24 hours or less.

(iv) Grade D: When at least 96 percent of emergency work orders during a PHA's assessed fiscal year were completed or the emergency was abated within 24 hours or less.

(v) Grade F: When less than 96 percent of emergency work orders during a PHA's assessed fiscal year were completed or the emergency was abated within 24 hours or less.

(2) Component #2. Non-emergency work orders. The PHA shall track all non-emergency work orders that were active during the assessed fiscal year (including preventive maintenance work orders). A PHA is not required to track non-emergency work orders from the date they are deferred for the Capital Fund Program, issued to prepare a vacant unit for re-rental, or issued for the performance of cyclical maintenance.

(i) Grade A: When the average number of days non-emergency work orders were active during the assessed fiscal year is 7 days or less.

(ii) Grade B: When the average number of days non-emergency work

orders were active during the assessed fiscal year is more than 7 days and less than or equal to 15 days.

(iii) Grade C: When a PHA is in one of the following categories:

(A) The average number of days non-emergency work orders were active during the assessed fiscal year is more than 15 days and less than or equal to 22 days; or

(B) The PHA has reduced the average number of days non-emergency work orders were active during the assessed fiscal year by at least 15 days during the past three fiscal years.

(iv) Grade D: When a PHA is in one of the following categories:

(A) The average number of days non-emergency work orders were active during the assessed fiscal year is more than 22 days and less than or equal to 30 days; or

(B) The PHA has reduced the average number of days non-emergency work orders were active during the assessed fiscal year by at least 10 days during the past three fiscal years.

(v) Grade F: When the average number of days non-emergency work orders were active during the assessed fiscal year is more than 30 days.

§ 902.44 Management operations sub-indicator #4—annual inspection of dwelling units and systems.

This sub-indicator examines the percentage of dwelling units and systems that a PHA inspects on an annual basis in order to determine short-term maintenance needs and long-term modernization needs. The PHA is required to conduct dwelling unit and systems inspections using the HUD Uniform Physical Condition Standards (UPCS) set forth in 24 CFR part 5, subpart G.

(a) *Adequacy of inspection program.* It is implicit in this sub-indicator that the PHA have an adequate inspection program in terms of tracking inspections, ensuring the thoroughness/quality of the PHA's inspections, and tracking needed repairs.

(b) *Units to be inspected.* All occupied units and/or units available for occupancy are required to be inspected. This includes units used for non-dwelling purposes, those occupied by an employee, and those used for resident services.

(c) *Units exempted.* Units in the following categories are exempted and not included in the calculation of the total number of units, and the number and percentage of units inspected for the assessed fiscal year.

(1) Occupied units for which a PHA has documented two attempts to inspect the unit during the assessed fiscal year, but only if the PHA can document that it has initiated eviction proceedings, and is in the process of evicting the legal or illegal occupant(s) as provided under the lease to ensure that the unit can be subsequently inspected.

(2) Units vacant during the assessed fiscal year for the following reasons:

(i) Vacant units that are receiving section 9(d) Capital Funds; or

(ii) Vacant units that are documented to be uninhabitable for reasons beyond a PHA's control due to:

(A) High/unsafe levels of hazardous/toxic materials;

(B) An order of the local health department or state agency or a directive of the Environmental Protection Agency;

(C) Natural disasters; or

(D) Units that are kept vacant because they are structurally unsound and documented action has been initiated to rehabilitate or demolish the units.

(d) *Systems exempted.* Systems that are a part of individual dwelling units that are exempted, or a part of a building where all of the dwelling units in the building are exempted, are also exempted from the calculation of this sub-indicator.

(e) *Grades for annual inspection of dwelling units and systems.*

(1) Component #1. Annual inspection of dwelling units.

(i) Grade A: When a PHA inspected 100 percent of its units during the assessed fiscal year and, if repairs were necessary for compliance with 24 CFR part 5, subpart G:

(A) Completed the repairs during the inspection;

(B) Issued work orders for the repairs; or

(C) Referred similar work items to the current year's section 9(d) Capital Fund program, or to next year's section 9(d) Capital Fund program if there are fewer than three months remaining before the end of a PHA's assessed fiscal year from the time the inspection was completed.

(ii) Grade B: When a PHA inspected less than 100 percent but at least 98 percent of the units during the assessed fiscal year and, if repairs were necessary for compliance with 24 CFR part 5, subpart G:

(A) Completed the repairs during the inspection;

(B) Issued work orders for the repairs; or

(C) Referred similar work items to the current year's section 9(d) Capital Fund program, or to next year's section 9(d) Capital Fund program if there are fewer than three months remaining before the end of a PHA's assessed fiscal year from the time the inspection was completed.

(iii) Grade C: When a PHA inspected less than 98 percent but at least 97 percent of its units during the assessed fiscal year and, if repairs were necessary for compliance with 24 CFR part 5, subpart G:

(A) Completed the repairs during the inspection;

(B) Issued work orders for the repairs; or

(C) Referred similar work items to the current year's section 9(d) Capital Fund program, or to next year's section 9(d) Capital Fund program if there are fewer than three months remaining before the end of a PHA's assessed fiscal year from the time the inspection was completed.

(iv) Grade D: When a PHA inspected less than 97 percent but at least 96 percent of its units during the assessed fiscal year and, if repairs were necessary for compliance with 24 CFR part 5, subpart G:

(A) Completed the repairs during the inspection;

(B) Issued work orders for the repairs; or

(C) Referred similar work items to the current year's section 9(d) Capital Fund program, or to next year's section 9(d) Capital Fund program if there are fewer than three months remaining before the end of a PHA's assessed fiscal year from the time the inspection was completed.

(v) Grade F: When a PHA has failed to:

(A) Inspect at least 96 percent of its units during the assessed fiscal year for compliance with 24 CFR part 5, subpart G;

(B) Correct deficiencies during the inspection or issue work orders for the repairs; or

(C) Refer similar work items to the current year's section 9(d) Capital Fund program, or to next year's section 9(d) Capital Fund program if there are fewer than three months remaining before the end of a PHA's assessed fiscal year from the time the inspection was completed.

(2) Component #2. Annual inspection of systems (including common areas and non-dwelling space).

(i) Grade A: When a PHA inspected all major systems during the assessed fiscal year at 100 percent of its buildings and sites, according to its maintenance plan. The inspection must include:

(A) Performing the required maintenance on structures and systems in accordance with 24 CFR part 5, subpart G, and manufacturers' specifications;

(B) Issuing work orders for maintenance/repairs; or

(C) Including identified deficiencies in the current year's section 9(d) Capital Fund program, or in next year's section 9(d) Capital Fund program if there are fewer than three months remaining before the end of the PHA's assessed

fiscal year at the time the inspection was performed.

(ii) Grade B: When a PHA inspected all major systems for less than 100 percent but at least 95 percent of its buildings and sites during the assessed fiscal year, according to its maintenance plan. The inspection must include:

(A) Performing the required maintenance on structures and systems in accordance with 24 CFR part 5, subpart G, and manufacturers' specifications;

(B) Issuing work orders for maintenance/repairs; or

(C) Including identified deficiencies in the current year's section 9(d) Capital Fund program, or in next year's section 9(d) Capital Fund program if there are fewer than three months remaining before the end of the PHA's assessed fiscal year at the time the inspection was performed.

(iii) Grade C: When a PHA inspected all major systems for less than 95 percent but at least 90 percent of its buildings and sites during the assessed fiscal year, according to its maintenance plan. The inspection must include:

(A) Performing the required maintenance on structures and systems in accordance with 24 CFR part 5, subpart G, and manufacturers' specifications;

(B) Issuing work orders for maintenance/repairs; or

(C) Including identified deficiencies in the current year's section 9(d) Capital Fund program, or in next year's section 9(d) Capital Fund program if there are fewer than three months remaining before the end of the PHA's assessed fiscal year at the time the inspection was performed.

(iv) Grade D: When a PHA inspected all major systems for less than 90 percent but at least 85 percent of its buildings and sites during the assessed fiscal year, according to its maintenance plan. The inspection must include:

(A) Performing the required maintenance on structures and systems in accordance with 24 CFR part 5, subpart G, and manufacturers' specifications;

(B) Issuing work orders for maintenance/repairs; or

(C) Including identified deficiencies in the current year's section 9(d) Capital Fund program, or in next year's section 9(d) Capital Fund program if there are fewer than three months remaining before the end of the PHA's assessed fiscal year at the time the inspection was performed.

(v) Grade F: When a PHA failed to:

(A) Inspect all major systems for at least 85 percent of its buildings and sites during the assessed fiscal year and perform the required maintenance on these systems in accordance with 24 CFR part 5, subpart G, and manufacturers' specifications;

(B) Issue work orders for maintenance/repairs; or

(C) Include identified deficiencies in the current year's section 9(d) Capital Fund program, or in next year's section 9(d) Capital Fund program if there are fewer than three months remaining before the end of the PHA's assessed fiscal year at the time the inspection was performed.

§ 902.45 Management operations sub-indicator #5—security.

This sub-indicator evaluates a PHA's performance in tracking all types of crime-related problems by category of crime and date, time and place of incident in its properties; reporting incidents of crime to local law enforcement agencies; adopting and implementing applicant screening and resident eviction policies and procedures, and other anticrime strategies; coordinating with local government officials and residents in the properties on the implementation of such strategies. There are three components.

(a) *Policies.* The applicant screening and resident eviction policies and procedures adopted by the Board and implemented by the PHA should be consistent with section 6(j)(1)(I) of the 1937 Act (42 U.S.C. 1437d(j)(1)(I)).

(b) *Grades for the components of resident and applicant information.*

(1) Component #1. Tracking and reporting crime-related problems.

(i) Grade A: When a PHA's Board, by resolution, adopted policies and a PHA implemented procedures and can document that it:

(A) Tracked all types of crime and crime-related problems by category, date, time, and place in at least 95 percent of its property during the assessed fiscal year, and the action taken, as appropriate;

(B) Had a cooperative system for tracking and reporting incidents of crime during the assessed fiscal year to local police authorities to improve law enforcement and crime prevention; and

(C) Coordinated with local government officials and its residents during the assessed fiscal year on the implementation of anticrime strategies.

(ii) Grade B: When a PHA's Board, by resolution, adopted policies and a PHA implemented procedures and can document that it:

(A) Tracked all types of crime and crime-related problems by category, date, time, and place in at least 85 percent of its property during the assessed fiscal year, and the action taken, as appropriate; and

(B) Reported incidents of crime during the assessed fiscal year to local police authorities to improve law enforcement and crime prevention.

(iii) Grade C: When a PHA's Board, by resolution, adopted policies and a PHA implemented procedures and can document that it:

(A) Tracked all types of crime and crime-related problems by category, date, time, and place in at least 75 percent of its property during the assessed fiscal year, and the action taken, as appropriate; and

(B) Reported incidents of crime during the assessed fiscal year to local police authorities to improve law enforcement and crime prevention.

(iv) Grade D: When a PHA's Board, by resolution, adopted policies and a PHA implemented procedures and can document that it:

(A) Tracked all types of crime and crime-related problems by category, date, time, and place in at least 65 percent of its property during the assessed fiscal year, and the action taken, as appropriate; and

(B) Reported incidents of crime during the assessed fiscal year to local police authorities to improve law enforcement and crime prevention.

(v) Grade F: When a PHA's Board, by resolution, did not adopt policies or a PHA did not implement procedures, did not track any crime, or cannot document that it:

(A) Tracked all types of crime and crime-related problems by category, date, time, and place in at least 65 percent of its property during the assessed fiscal year, and the action taken, as appropriate; or

(B) Reported incidents of crime during the assessed fiscal year to local police authorities to improve law enforcement and crime prevention.

(2) Component #2. Screening of Applicants.

(i) Grade A: When a PHA's Board, by resolution, adopted policies and a PHA implemented procedures and can document that it successfully screened out and denied admission to public housing applicants during the assessed fiscal year who:

(A) Had a recent history of criminal activity involving crimes to persons or property and/or other criminal acts that would adversely affect the health, safety or welfare of other residents or PHA personnel;

(B) Were evicted, because of drug-related criminal activity, from housing assisted under the Act, for a minimum of a three year period beginning on the date of such eviction, unless the

applicant successfully completed, since the eviction, a rehabilitation program approved by a PHA;

(C) A PHA had reasonable cause to believe are illegally using a controlled substance; or

(D) A PHA had reasonable cause to believe abuses alcohol in a way that causes behavior that may interfere with the health, safety, or right to peaceful enjoyment of the premises by other residents or PHA personnel.

(ii) Grade F: When a PHA's Board has not adopted policies or has not implemented procedures that result in screening out and denying admission during the assessed fiscal year to a public housing applicant who meets the criteria as described in paragraph (b)(2)(i) of this section, or the screening procedures do not result in the denial of admission to a public housing applicant who meets the criteria as described in paragraph (b)(2)(i) of this section.

(3) Component #3. Lease enforcement.

(i) Grade A: When a PHA's Board, by resolution, adopted policies and a PHA implemented procedures and can document that it appropriately evicted during the assessed fiscal year any public housing resident who:

(A) A PHA had reasonable cause to believe engages in any criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises by other residents or PHA personnel;

(B) A PHA had reasonable cause to believe engages in any drug-related criminal activity (as defined at section 3(b) of the Act (42 U.S.C. 1437a(b)(9)) on or off a PHA's property; or

(C) A PHA had reasonable cause to believe abuses alcohol in such a way that causes behavior that may interfere with the health, safety, or right to peaceful enjoyment of the premises by other residents or PHA personnel.

(ii) Grade F: When a PHA's Board has not adopted policies or has not implemented procedures that document results in the eviction during the assessed fiscal year of any public housing resident who meets the criteria as described in paragraph (b)(3)(i) of this section, or the eviction procedures do not result in the eviction of public housing residents who meet the criteria as described in paragraph (b)(3)(i) of this section.

§ 902.46 Management operations sub-indicator #6—self-sufficiency.

This sub-indicator measures a PHA's efforts to coordinate, promote or provide effective programs and activities to promote the self-sufficiency of residents and resident participation in the administration of public housing.

(a) *General applicability.* A PHA that does not have a mandatory FSS program shall not be assessed under the applicable component of this sub-indicator. The weight for that component shall be redistributed among the remaining components of this sub-indicator.

(b) *Grades for self-sufficiency.*

(1) Component #1. Economic self-sufficiency. A PHA shall use its best efforts to enter into cooperative agreements with state, local and other agencies providing welfare or public assistance that may provide information to facilitate a PHA in targeting assistance and services supporting economic self-sufficiency.

(i) Grade A: When a PHA entered into an agreement with a public assistance provider and can document that information is being provided to facilitate assistance to the PHA in targeting assistance and services supporting economic self-sufficiency.

(ii) Grade C: When a PHA entered into an agreement with a public assistance provider, but cannot document that information is being provided to facilitate assistance to the PHA in targeting assistance and services supporting economic self-sufficiency.

(iii) Grade F: When a PHA has not entered into an agreement with a public assistance provider and has not documented that information is being provided to facilitate assistance to the PHA in targeting assistance and services supporting economic self-sufficiency.

(2) Component #2. FSS. After assessing the needs of families and the training and employment resources in the community, a PHA and other local partners, such as public assistance providers, work together to develop a comprehensive program that can provide each family with appropriate education, job training and other services to enable them to obtain employment.

(i) Grade A: When a PHA documents that it has a mandatory FSS program and documents that it:

(A) Met or exceeded at least 80 percent of the total proposed participation; and

(B) At least 30 percent of the FSS families have escrow accounts greater than zero.

(ii) Grade C: When a PHA documents that it has a mandatory FSS program and documents that it:

(A) Met at least 60 percent of the total proposed participation; and

(B) At least 30 percent of the FSS families have escrow accounts greater than zero.

(iii) Grade F: When a PHA documents that it has a mandatory FSS program and cannot document its performance or documents that it:

(A) Met less than 60 percent of the total proposed participation; or

(B) Less than 30 percent of the FSS families have escrow accounts greater than zero.

(3) Component #3. Resident job training and employment. A PHA has executed a Memorandum of Understanding for partnering locally with a social service, labor, Temporary Assistance for Needy Families (TANF) or similar type agency or non-profit to supply employment and/or job training and placement for residents. A PHA has hired residents under in-house apprenticeship programs or through force account employment to perform maintenance and repairs, or Section 3 compliance requirements incorporated into agency procurement and contracting solicitations and awards. A PHA has provided space and/or transportation for residents to access literacy, job training, and supportive services in connection with residents obtaining and maintaining employment.

(i) Grade A: When a PHA executed a Memorandum of Understanding for partnering locally with a social service, labor, TANF, or similar type agency or non-profit to supply employment and/or job training and placement for residents and can document that it has hired residents under in-house apprenticeship programs or through force account employment to perform maintenance and repairs, or under Section 3 compliance requirements. The PHA documents that it has incorporated Section 3 requirements in the agency's procurements and contracting solicitation and awards and provides space and/or transportation for residents to access literacy, job training, and supportive services in connection with residents obtaining and maintaining employment.

(ii) Grade C: When a PHA executed a Memorandum of Understanding for partnering locally with a social service, labor, TANF, or similar type agency or non-profit to supply employment and/or job training and placement for residents, but cannot document that it has hired residents under in-house apprenticeship programs, or through force account employment to perform maintenance and repairs and Section 3 compliance requirements. The PHA cannot document that it has incorporated Section 3 requirements in the agency's procurements and contracting solicitation and awards and does not provide space and/or transportation for residents to access literacy, job training, and supportive services in connection

with residents obtaining and maintaining employment.

(iii) Grade F: When a PHA has not executed a Memorandum of Understanding for partnering locally with a social service, labor, TANF, or similar type agency or non-profit to supply employment and/or job training and placement for residents, and has not hired residents under in-house apprenticeship programs, through force account employment to perform maintenance and repairs and or Section 3 compliance requirements. The PHA has not incorporated Section 3 requirements in the agency's procurements and contracting solicitation and awards and does not provide space and/or transportation for residents to access literacy, job training, and supportive services in connection with residents obtaining and maintaining employment.

(4) Component #4. Resident participation in management, business property, and public housing administration. A PHA has executed a Memorandum of Understanding that provides for at least quarterly meetings with a Resident Advisory Board and/or duly elected resident organizations to assure quality service in the delivery of property management and maintenance services. For public housing administration, a PHA has entered into written agreements with RMCs and/or resident-owned businesses to provide full or partial property management and maintenance services, or supportive services to residents.

(i) Grade A: When a PHA executed a Memorandum of Understanding with a Resident Advisory Board and/or duly elected resident organizations and documents that quarterly meetings were held to assure quality service in the deliverance of property management and maintenance services. The PHA entered into written agreements with RMCs and/or resident-owned businesses and can document that it provided full or partial property management and maintenance services.

(ii) Grade C: When a PHA executed a Memorandum of Understanding with a Resident Advisory Board and/or duly elected resident organizations, but cannot document that quarterly meetings were held to assure quality service in the deliverance of property management and maintenance services. The PHA has entered into written agreements with RMCs and/or resident-owned businesses, but cannot document that it provided full or partial property management and maintenance services.

(iii) Grade F: When a PHA has not executed a Memorandum of Understanding with a Resident Advisory Board and/or duly elected resident organizations, and cannot document that quarterly meetings were held to assure quality service in the deliverance of property management and maintenance services. The PHA has not entered into written agreements with RMCs and/or resident-owned businesses, and cannot document that it provided full or partial property management and maintenance services.

§ 902.47 Management operations sub-indicator # 7—income verification.

This sub-indicator evaluates a PHA's performance in and ability to properly verify applicant/resident income.

(a) *Grade A:* When a PHA, at the time of admission and annual reexamination, correctly verifies and determines adjusted annual income for 100 percent of assisted families.

(b) *Grade F:* When a PHA, at the time of admission and annual reexamination, does not correctly verify and determine adjusted annual income for 100 percent of assisted families.

§ 902.48 Management operations sub-indicator #8—rent calculation.

This sub-indicator evaluates a PHAs performance in and ability to correctly calculate resident rents.

(a) *Grade A:* When a PHA correctly calculates the rent of 100 percent of its residents by applying the appropriate deductions, exclusions and allowances; and when the family is responsible for utilities under the lease, the PHA uses the appropriate utility allowance for the unit leased in determining gross rent.

(b) *Grade F:* When a PHA does not correctly calculate the rent of 100 percent of its residents by applying the appropriate deductions, exclusions and allowances; or when the family is responsible for utilities under the lease, the PHA did not use the appropriate utility allowance for the unit leased in determining gross rent.

§ 902.49 Threshold.

When a PHA receives a grade of F under this indicator, the PHA shall be designated a Grade F PHA. When a PHA receives a grade of D under this indicator, the PHA shall be designated a Grade D PHA.

Subpart E—PHAS Indicator #4: Resident Service and Satisfaction

§ 902.50 Resident service and satisfaction assessment.

(a) *Method of assessment, generally.* The resident service and satisfaction assessment, which measures the level of resident satisfaction with living conditions, is performed through a survey. A third party organization administers the survey to the PHA residents.

(b) *Survey process.* The PHA shall manage the survey process in accordance with a methodology prescribed by HUD. In addition, PHAs must address any issues identified in the survey. As part of the survey process, the PHA is responsible for:

(1) Updating the unit addresses;

(2) Certifying to the update of the unit addresses; and

(3) Completing implementation plan activities and certifying to their completion.

(c) *HUD review.* The completion of the required actions and the corresponding certifications are subject to HUD on-site review at any time. A PHA that is unable to provide supporting documentation to HUD will receive a zero and a grade of F for this indicator and its final overall PHAS grade will be lowered.

(d) *Frequency of assessment.* In accordance with § 902.13(a), HUD will conduct a resident service and satisfaction survey for an assessed fiscal year only. For fiscal years when a PHA is not assessed under this part, the PHA may undertake a resident service and satisfaction survey on its own.

§ 902.51 Certifications and updating of unit address information.

(a) *Electronic unit address update and verification.* At the beginning of the annual survey process the PHA is required to ensure that its public housing unit addresses are accurate.

(1) All PHAs are required to electronically update unit address information in the Public and Indian Housing Information Center (PIC) database. All PHAs are required to make any additions, deletions and corrections to their respective unit addresses in PIC.

(2) After updating the unit address information electronically, the PHA will certify electronically in the resident assessment sub-system (RASS) database that the list of unit addresses for their property residents is correct.

(3) A PHA is required to both update and certify its unit address information to ensure that HUD has complete and accurate information, and to ensure that the surveys reach the residents. If a random sample of residents cannot be selected to participate in the survey because the unit addresses are incorrect or obsolete, HUD is not able to conduct the survey at that PHA. In that case, the PHA shall receive a zero and a grade of F for the Resident Service and Satisfaction Indicator.

(b) *Implementation plan certification.* All PHAs are required to certify to their implementation plans electronically in

the RASS database in accordance with HUD guidance.

§ 902.52 Resident survey sampling.

A random sample of units shall be chosen to receive the Customer Service and Satisfaction Survey at each PHA. The units shall be randomly selected based on the total number of occupied and vacant units at the PHA. The unit sampling for each PHA is based on the unit representation of each property in relation to the size of the entire PHA.

§ 902.53 Third party administrator.

The third party administrator designated by HUD is responsible for performing the following functions as part of the survey process.

(a) Distributing the survey to a randomly selected sample of units at each PHA;

(b) Receiving the completed surveys;

(c) Collecting, scanning, and aggregating results of the survey;

(d) Transmitting the survey results to HUD for analysis and grading; and

(e) Maintaining the individual surveys and ensuring that the responses to the surveys are kept confidential.

§ 902.54 Resident service and satisfaction grading and survey contents.

(a) *Grading.* A PHA shall be graded A, B, C, D or F on the Resident Service and Satisfaction Indicator survey results. The overall resident service and satisfaction grade for a PHA is based on the numeric value for each property within the PHA. It is a weighted average of the numeric value of each property-level grade. The final grades are based on the percentage of points out of the total number of possible points that the PHA receives on the survey, converted to a 0.0 to 4.0 scale. The methods for obtaining the weighted average and the final resident service and satisfaction grades are more fully explained in the resident service and satisfaction grading process notice.

(b) *Survey contents.* The survey content focuses on resident evaluation of the overall living conditions. Residents are asked questions about:

(1) Maintenance, repair, and services (*e.g.*, work order response);

(2) Communications (*e.g.*, perceived effectiveness);

(3) Safety (*e.g.*, perception of personal security);

(4) Property appearance; and

(5) Self-Sufficiency.

§ 902.55 Threshold.

A PHA shall receive a zero and a grade of F under this indicator if the survey process is not managed as directed by HUD, it is determined that the survey results have been altered, or it is determined that the surveys were completed by someone other than the designated residents. When a PHA receives a grade of F under this indicator, the PHA shall be designated a Grade F PHA. When a PHA receives a grade of D under this indicator, the PHA shall be designated a Grade D PHA.

Subpart F—PHAS Submission Requests and Grade Adjustments

§ 902.60 Requests for manual and late submissions.

(a) *Request to manually submit PHAS Indicators #2 and #3.* If the electronic submission requirement poses an administrative or cost burden, a PHA may request approval to submit the unaudited year-end financial information and management operations certification manually. The request must include the reasons why the PHA is unable to submit the data electronically. The PIH–REAC must receive the request for manual submission 60 days prior to the submission due date for each PHAS indicator. A PHA shall forward its request for manual submission in writing to the Director of PIH–REAC, 1280 Maryland Avenue, SW., Suite 800, Washington, DC 20024–2135 or submit its request to *phas@hud.gov* by e-mail. HUD shall respond to the PHA's request and forward its determination in writing or by e-mail to the PHA. Approvals are for the PHA's assessed fiscal year only.

(b) *Request to manually submit PHAS Indicator #4.* If the electronic updating and certification requirements pose an administrative or cost burden, a PHA may request approval to manually update resident unit addresses, certify to updated addresses and certify to the survey implementation plan. The request must include the reason why the PHA is unable to update and certify electronically. The PIH–REAC must receive the request 30 days prior to the due dates for the resident unit address update and certification and for the certification to the survey implementation plan. A PHA shall forward its request in writing to the Director of PIH–REAC, 1280 Maryland Avenue, SW., Washington, DC 20024–2135 or submit its request to *phas@hud.gov* by e-mail. HUD shall respond to the PHA's request and forward its determination in writing to the PHA. Approvals shall be only for the PHA's current survey cycle.

(c) *Request for extension of time to make submissions.* In the event of extenuating circumstances, a PHA may request an extension of time to submit its unaudited financial information, management operations certification, and resident service and satisfaction certifications. To receive an extension, a PHA must ensure that the PIH–REAC receives the PHA's extension request (electronic or written) 15 days before the submission due date. The PHA's extension request (electronic or written) must include a justification as to why the PHA cannot submit the information by the submission due date. A PHA shall submit its request for an extension of time to the Director of PIH–REAC, 1280 Maryland Avenue, SW., Suite 800, Washington, DC 20024–2135, or submit its request to *phas@hud.gov* by email. HUD shall forward its determination (electronic or written) to the PHA.

(d) *Request for extension of time to submit audited financial information.* In accordance with OMB Circular A–133, HUD, for good cause, may grant PHAs an extension of time to submit audited financial information. HUD shall consider PHA requests for extensions of the report submission due date (established by OMB as no later than nine months after the end of the fiscal year). The PHA's extension request (electronic or written) must include a justification as to why the PHA cannot submit the information by the submission due date. The OMB requires that the request be submitted prior to the submission due date. A PHA shall submit its request for an extension of time to the Director of PIH–REAC, 1280 Maryland Avenue, SW., Suite 800, Washington, DC 20024–2135, or submit its request to *phas@hud.gov* by email. HUD shall forward its determination (electronic or written) to the PHA.

§ 902.61 Failure to submit data.

(a) *Failure to submit data by due date.* (1) HUD shall impose letter grade deductions if a PHA, without a finding of good cause by HUD, submits its year-end unaudited financial information or management operations certification, required by this part, past the due dates. The letter grade deductions will be imposed on each indicator beginning on the eighth day after the submission due date.

(2) A PHA shall receive a presumption rating of zero and a grade of F for each PHAS indicator for which the certification or year-end unaudited financial information is not received within 49 days after the due date.

(i) TABLE 1.—LATE SUBMISSION FOR EITHER UNAUDITED FINANCIAL INFORMATION OR MANAGEMENT OPERATIONS CERTIFICATION

If a PHA submits either its unaudited financial information or management operations certification * * *	Then * * *
(A) more than 7 days, but no more than 21 days after the submission due date.	the PHA's grade will be lowered one letter grade for the indicator submitted late.
(B) more than 21 days, but no more than 35 days, after the submission due date.	the PHA's grade will be lowered two letter grades for the indicator submitted late.
(C) more than 35 days, but no more than 49 days, after the submission due date.	the PHA's grade will be lowered three letter grades for the indicator submitted late.
(D) more than 49 days after the submission due date	the PHA will receive a late presumptive rating of zero and its grade for the indicator submitted late will be an F.

(ii) TABLE 2.—LATE SUBMISSION FOR BOTH UNAUDITED FINANCIAL INFORMATION AND MANAGEMENT OPERATIONS CERTIFICATION

If a PHA submits both its unaudited financial information and management operations certification * * *	Then * * *
(A) more than 7 days, but no more than 21 days after the submission due date.	one letter grade will be deducted from each indicator submitted during this time period.
(B) more than 21 days, but no more than 35 days after the submission due date.	two letter grades will be deducted from each indicator submitted during this time period.
(C) more than 35 days, but no more than 49 days, after the submission due date.	three letter grades will be deducted from each indicator submitted during this time period.
(D) more than 49 days after the submission due date	the PHA will receive a late presumptive rating of zero and its grade for both indicators will be an F.

(3) The PHA shall receive a presumptive rating of zero and a grade of F for the Financial Condition Indicator, if a PHA, without a finding of good cause, submits its audited financial information after the due date.

(i) TABLE 3.—LATE SUBMISSION FOR AUDITED FINANCIAL INFORMATION

If a PHA submits its audited financial information * * *	Then * * *
(A) more than 9 months after the PHA's fiscal year end	the PHA will receive a late presumptive rating of zero and its financial condition indicator grade will be an F.
(B) [Reserved].	

(b) *Presumptive rating of zero and grade of F.* If the PHA receives a presumptive rating of zero and grade of F for any PHAS indicator due to failure to submit a certification, year-end financial information, or audited financial information by the due date, including any applicable extension of the due date, the PHA shall be designated a Grade F PHA or Capital Fund Grade F PHA pursuant to § 902.10.

(c) *Rejected submissions.* When HUD rejects a PHA's year-end unaudited financial information or management operations certifications after the due date, a PHA shall have 15 days from the date of the rejection to resubmit the information without a penalty being applied.

§ 902.63 PHAS grade adjustments.

(a) *Issuance of grade by HUD.* HUD will issue an overall PHAS grade for each PHA after the later of one month after the submission due date for financial information and the other required certifications, or one month after submission by the PHA of its financial information and the other required information certifications. The overall PHAS grade becomes the PHA's final grade upon issuance by HUD.

(b) *Adjustments to the PHAS grade.* Adjustments may be made to a PHA's final overall PHAS grade as a result of:

(1) The IPA or CPA audit, as provided in subpart C;

(2) Property reinspections;

(3) The appeal process provided in § 902.69;

(4) Determinations as a result of HUD's Office of Inspector General (OIG) investigation and/or audit;

(5) Investigations by HUD's Office of Fair Housing and Equal Opportunity;

(6) A HUD conducted compliance review or quality assurance review;

(7) A HUD conducted certification review;

(8) A Field Office on-site review; and/or

(9) An investigation by any appropriate legal authority.

(c) *Record retention and verification of information submitted.* (1) A PHA shall maintain documentation for three years verifying information on all indicators, sub-indicators, and components for HUD on-site review.

(2) A PHA's certifications, year-end financial information, and all supporting documentation are subject to verification by HUD at any time, including review by an independent auditor as authorized by section 6(j)(6) of the Act (42 U.S.C. 1437d(j)(6)). Appropriate sanctions for false certification shall be imposed, including civil penalties, limited denial of participation, suspension, or debarment of the signatories, the loss of Grade A PHA designation pursuant to § 902.67, and a lower grade under the PHAS indicators that shall result in a lower overall PHAS grade.

(3) A PHA that cannot provide supporting documentation to HUD, or to the PHA's IPA or CPA for the assessment under any indicator(s), sub-indicator(s), and/or component(s) shall receive a zero and a grade of F for that indicator(s), sub-indicator(s), and/or component(s), and its overall PHAS grade shall be lowered.

(d) *Review of a PHA's audited financial information.* As part of HUD's ongoing quality assurance process, HUD may conduct a quality assurance review of a PHA's IPA or CPA statement and work papers. If a PHA's audit is determined to be deficient as a result of a quality assurance review, HUD may, at its discretion, select the audit firm that will perform a new audit of the PHA and may serve as the audit committee for the audit in question. This quality assurance review is important to determine the accuracy of the grading under Financial Condition Indicator #2.

§ 902.67 Withholding, denying, and rescinding grades.

(a) *Withholding, denying, and rescinding grade/designation.* (1) In exceptional circumstances, HUD may conduct any review as it may determine necessary, and may deny or rescind incentives for Grade A, B, C, or D PHA designations even though a PHA has satisfied all of the PHAS indicators for Grade A, B, C, or D PHA designation. HUD may do so only in the case of a PHA that:

(i) Is operating under a special agreement with HUD;

(ii) Is involved in litigation that bears directly upon the physical, financial, or management performance of a PHA;

(iii) Is operating under a court order;

(iv) Demonstrates substantial evidence of fraud or misconduct, including evidence that the PHA's certifications submitted under this part, are not supported by the facts as evidenced by sources such as a HUD monitoring and/or compliance review, routine reports, a HUD (OIG) investigation and/or audit, an IPA's or CPA's audit, or an investigation by any appropriate legal authority; or

(v) Demonstrates substantial noncompliance in one or more areas of a PHA's required compliance with applicable laws and regulations, including areas not assessed under the PHAS. Areas of substantial noncompliance include, but are not limited to, noncompliance with civil rights, procurements, nondiscrimination and fair housing laws and regulations, or the ACC. Substantial noncompliance casts doubt on the capacity of a PHA to preserve and protect its public housing properties and operate them consistent with Federal laws and regulations.

(2) If a Grade A, B, C, or D PHA designation is denied or rescinded, the PHA shall be a Grade F PHA.

(b) *Effect of denial or rescission.* The denial or rescission of a designation of a Grade A, B, C, or D PHA will result in an overall final PHAS grade of zero.

(c) *Procedures for request for reinstatement of grade/designation.* A PHA that disagrees with the denial or rescission of its grade/designation may request reinstatement of the grade/designation. The request, which must be in writing and include reasons for the reinstatement, must be directed to the Assistant Secretary. Requests must be sent to: Assistant Secretary for Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street SW., Room 4100, Washington, DC 20410.

§ 902.68 Technical review of results of PHAS Indicators #1 or #4.

(a) *Request for technical reviews.* A PHA may request a technical review of physical inspection results and resident survey results.

(1) For all technical reviews, the burden of proof is on the PHA to show that an error occurred.

(2) A PHA's request for technical review must be submitted in writing to the Director of PIH–REAC, 1280 Maryland Avenue, SW., Suite 800, Washington, DC 20024–2135. PIH–REAC must receive the written request no later than 15 days following the issuance of the physical inspection results or the resident survey results to the PHA. The request must include the PHA's reasonable evidence that an error occurred.

(b) *Technical review of physical inspection results.* (1) If after review of the results of the physical inspection and grade for a property, the PHA believes that an objectively verifiable and material error (or errors) occurred in the inspection of that property, the PHA may request a technical review of the inspection results for that property.

(2) The PHA's request must include the PHA's evidence that an objectively verifiable and material error occurred. A PHA must submit documentation such as photographic evidence, written material from an objective source such as a local fire marshal or building code official, or other similar evidence. The evidence must have a factual basis other than a disagreement with the inspector's observations or the inspector's finding regarding the severity of the deficiency.

(3) A technical review of a property's physical inspection will not be conducted based on conditions, other than EHS deficiencies, that were corrected subsequent to the inspection, or based on a challenge to the grading class.

(4) After receipt of a PHA's request for technical review of a property's inspection results, PIH–REAC shall review the PHA's file and any objectively verifiable evidence submitted by the PHA. If PIH–REAC's review determines that an objectively verifiable and material error (or errors) has been documented, then PIH–REAC may take one or a combination of the following actions:

(i) Undertake a new inspection;

(ii) Correct the physical inspection report;

(iii) Issue a corrected physical condition grade; or

(iv) Issue a corrected PHAS grade.

(5) In determining whether a new inspection of the property is warranted, PIH–REAC shall review the PHA's file and evidence submitted. PIH–REAC shall then determine whether the evidence supports that there may have been a significant contractor error in the inspection which, if a new inspection were conducted, would result in a significant change from the property's original physical condition grade, overall PHAS grade, and corresponding PHAS designation (*i.e.*, Grade A PHA, Grade B PHA, Grade C PHA, and Grade D PHA). If the new inspection results in a significant change in the PHA's original physical condition grade, PHAS grade and corresponding designation, PIH–REAC shall issue a new PHAS grade and corresponding designation to the PHA.

(6) Material errors are the only grounds for technical review of physical inspection results. There are three types of material errors.

(i) Building data error. A building data error occurs if the inspection includes the wrong building, a building that was not owned by the PHA, or a common area or site areas that are not a part of the property. Incorrect building data that does not affect the grade, such as the address, the building name, the year built, etc., are not considered material. However, HUD requests notification of these errors so they may be corrected in the database.

(ii) Unit count error. A unit count error occurs if the total number of public housing units used in the grading is incorrect. Because the grading uses total public housing units, PIH–REAC shall review instances when the participant can provide evidence that the total units used is incorrect.

(iii) Non-existent deficiency error. A non-existent deficiency error occurs if the inspection cites a deficiency that does not exist.

(c) *Technical review of resident survey results.* If after review of the results of the resident service and satisfaction survey, the PHA believes that the contracted third party administrator can be shown to be in error, the PHA may request a technical review of a PHA's resident survey results.

(1) The PHA's request must include objectively verifiable evidence that a technical error occurred. Examples of technical errors include, but are not limited to, incorrect material being mailed to residents, or incorrect PHA unit addresses due to the third party administrator's error, such as unit numbers being omitted from the addresses. A PHA that does not update its unit address list pursuant to § 902.51 may not request a technical review based on incorrect addresses.

(2) After receipt of a PHA's request for technical review of resident survey results, PIH–REAC shall review the PHA's file and any evidence submitted by the PHA. If PIH–REAC's review determines that an error has been documented, then PIH–REAC may take one or a combination of the following actions:

(i) Undertake a new survey;

(ii) Correct the resident survey results report;

(iii) Issue a corrected resident services and satisfaction grade; or

(iv) Issue a corrected PHAS grade.

(d) *Review of technical review decisions.* The Assistant Secretary will review all technical reviews that are denied by PIH–REAC.

§ 902.69 PHA right of petition and appeal.

(a) *Appeals and petitions.* A PHA may:

(1) Appeal its Grade F PHA designation (including Grade F PHA and Capital Fund Grade F PHA as provided in § 902.10(c));

(2) Appeal its final overall PHAS grade;

(3) Petition for removal of Grade F PHA designation; and

(4) Appeal any refusal of a petition to remove its Grade F PHA designation.

(b) *Appeal of final overall PHAS grade.* (1) If a PHA believes that an objectively verifiable and material error (or errors) exists in any of its final PHAS indicator grades, which, if corrected, will result in a significant change in the PHA's final overall PHAS grade and its designation, the PHA may appeal its final overall PHAS grade in accordance with the procedures of this section. A significant change in a final overall PHAS grade is a change that would cause the PHA's final overall PHAS grade to increase, resulting in a higher PHAS designation for the PHA (*i.e.*, from Grade F PHA to Grade D PHA, Grade D PHA to Grade C PHA, Grade C PHA to Grade B PHA, Grade B PHA to Grade A PHA).

(2) A PHA that is under the jurisdiction of the appropriate HUD office having jurisdiction over Grade F PHAs may appeal its overall final PHAS grade after one year even if granting the appeal does not change its grade of F. This right to appeal provides the PHA with the opportunity to meet the requirements to substantially improve its performance under PHAS pursuant to § 902.75(f).

(c) *Appeal and petition procedures.* (1) To appeal its Grade F PHA designation or its final overall PHAS grade, a PHA shall submit a request in writing to the Director of PIH–REAC at 1280 Maryland Avenue, SW., Suite 800, Washington, DC 20024. PIH–REAC must receive the written request no later than 30 days following the issuance of the designation and the final overall PHAS grade to the PHA.

(2) To petition removal of Grade F PHA designation, a PHA shall submit its request in writing to the Director of PIH–REAC at 1280 Maryland Avenue, SW., Suite 800, Washington, DC 20024.

(3) An appeal of a Grade F designation or petition for removal of Grade F designation must include the PHA's supporting documentation and reasons for the appeal. An appeal of a final overall PHAS grade must include the PHA's reasonable evidence that an objectively verifiable and material error occurred. Any appeal or petition submitted to PIH–REAC without appropriate documentation shall not be considered and shall be returned to the PHA.

(d) *Consideration of petitions and appeals.* (1) *Consideration of appeal of final overall PHAS grade.* After receipt of an appeal of a final overall PHAS grade from a PHA, PIH–REAC shall review the PHA's file and the evidence submitted by the PHA supporting that an objectively verifiable and material error occurred. If PIH–REAC determines that the PHA has documented an objectively verifiable and material error, PIH–REAC shall convene a Board of Review (the Board), in accordance with the procedures of this section, to evaluate the appeal and its merits. If the Board determines that an objectively verifiable and material error existed for any of the PHAS indicators based on the evidence, the Board may determine either that a reassessment of the PHA is warranted or that the PHA's PHAS indicator grade(s) and final overall PHAS grade are changed, resulting in a change of designation. If the Board determines that a reassessment of the PHA is warranted, PIH–REAC shall schedule a reinspection or undertake a new assessment of the financial condition, management operations, or resident service and satisfaction, or any combination thereof. If the Board determines that a grade should be changed, that change shall be made by PIH–REAC.

(2) *Consideration of appeal of Grade F PHA designation or petition to remove Grade F PHA designation.* After receipt of an appeal of a Grade F PHA designation or petition to remove a Grade F PHA designation, PIH–REAC shall convene a Board to evaluate the appeal or petition and its merits. The Board may determine that a reassessment is necessary or may determine that other actions such as changing the PHA's designation, or removing the PHA's Grade F PHA designation are appropriate. If the Board determines that a reassessment is warranted, PIH–REAC shall schedule a reinspection or undertake a new assessment of the financial condition, management operations or resident service and satisfaction, or any combination thereof. If the Board determines that the designation should be changed, that change shall be made by PIH–REAC.

(3) *Board Membership.* The Board membership shall be comprised of a representative from PIH–REAC, from the Office of Public and Indian Housing, and from such other office or other representatives as the Secretary may designate.

(e) *Appeal and petition decisions.* HUD shall make final decisions of appeals and petitions under this section, within 30 days of receipt of the appeal or petition, and may extend this period for an additional 30 days if necessary. A PHA's failure to submit supporting documentation with its request for appeal or petition, or within any additional period granted by HUD is grounds for denial of the appeal or petition. The Assistant Secretary shall report all final appeal decisions to PHAs.

Subpart G—PHAS Incentives and Remedies

§ 902.71 Incentives for Grade A PHAs.

(a) *Incentives for Grade A PHAs.* A PHA that is a Grade A PHA shall be eligible for the following incentives, and any other incentives that HUD may determine appropriate and permissible under program statutes or regulations.

(1) Relief from specific HUD requirements. (i) A Grade A PHA shall be relieved of specific HUD requirements (for example, fewer reviews and less monitoring), effective upon notification of Grade A PHA designation.

(ii) As provided in §§ 902.13 and 902.30, a PHA that is a Grade A PHA shall be next assessed under PHAS in three years. Notwithstanding the PHA's

PHAS assessment schedule, a Grade A PHA is required to submit annual unaudited and audited financial information. However, HUD shall not issue a grade for the unaudited and audited financial information in the years that a PHA is not being assessed under PHAS.

(2) Public recognition. Grade A PHAs will receive a Certificate of Commendation from HUD. These PHAs also will receive special public recognition from the Hub Office/Program Centers.

(3) Bonus points in funding competitions. A Grade A PHA shall be eligible for bonus points in HUD's funding competitions, and formula-based programs when bonus points are not restricted by statute or regulation governing the funding program. Eligibility for Grade A PHAs to receive these bonus points will be stated in HUD's notices of funding availability or other funding documents.

(b) *Compliance with applicable Federal laws and regulations.* Relief from any standard procedural requirement provided under this section does not relieve a PHA from the requirements of the provisions of other federal and state laws and regulations or other HUD handbook requirements. For example, although a Grade A PHA or a Grade B, C or D PHA may be relieved of requirements for prior HUD approval for certain types of contracts for services, the PHA must still comply with all other Federal and State requirements that remain in effect, such as those for competitive bidding or competitive negotiation (see 24 CFR 85.36).

(c) *Audits and reviews not relieved by designation.* A Grade A PHA or a Grade B, C or D PHA remains subject to:

(1) Regular IPA or CPA audits.

(2) OIG audits or investigations, which shall continue to be conducted as circumstances may warrant.

§ 902.73 Referral of Grade B, C, and D PHAs.

(a) *General.* (1) Referral. Grade B, C, and D PHAs shall be referred to the Hub Office/Program Center for appropriate action.

(2) Improvement Plan. (i) A PHA that is designated a Grade D PHA shall be required to submit an Improvement Plan to address deficiencies in the PHA's performance.

(ii) A PHA that is designated a Grade B or C PHA may be required, at the discretion of the appropriate area Hub Office/Program Center, to submit an Improvement Plan to address specific deficiencies.

(b) *Submission of an Improvement Plan.* A PHA is required to submit its Improvement Plan to the Hub Office/Program Center for approval within 30 days after the PHA's final overall PHAS grade is issued. All Improvement Plans must meet the requirements of paragraphs (d), (e) and (f) of this section.

(c) *Correction of deficiencies.* (1) Time period for correction. After a PHA receives its overall PHAS grade and designation of Grade B, C, or D PHA, the PHA must correct any deficiency indicated in the assessment within 90 days, or, if an Improvement Plan is required, within such period as provided in the Improvement Plan.

(2) Notification and report to Hub Office/Program Center. A PHA shall notify the Hub Office/Program Center of its action to correct each deficiency.

(d) *Improvement Plan.* An Improvement Plan shall:

(1) List each PHAS indicator, sub-indicator and/or component, together with the grade, that was identified as a deficiency and identify other baseline data, including all relevant raw data;

(2) Describe any other problems with performance and/or compliance that were identified during an on-site review of the PHA's operations;

(3) Describe the procedures that shall be followed to correct each deficiency;

(4) Provide a timetable for the correction of each deficiency; and

(5) Provide for or facilitate technical assistance to the PHA.

(e) *Determination of acceptability of Improvement Plan* (1) The Hub Office/Program Center shall approve or deny an Improvement Plan and notify the PHA of its decision.

(2) An Improvement Plan that is not approved shall be returned to the PHA with recommendations from the Hub Office/Program Center for revising the Improvement Plan to obtain approval.

(f) *Submission of revised Improvement Plan.* The PHA shall submit a revised Improvement Plan within 30 days of its receipt of the Hub Office/Program Center recommendations.

(g) *Failure to submit acceptable Improvement Plan or correct deficiencies.* (1) The Hub Office/Program Center shall notify a PHA if a PHA fails to submit an acceptable Improvement Plan or fails to correct deficiencies within the time specified in an Improvement Plan or such extensions that may be granted by HUD.

(2) The PHA shall respond to the Hub Office/Program Center's notification within 30 days and provide the Hub Office/Program Center with the reasons for its lack of progress in submitting or carrying out the Improvement Plan.

(3) The Hub Office/Program Center shall advise the PHA whether its reasons for lack of progress are acceptable. If the Hub Office/Program Center determines that the PHA's reasons for lack of progress are unacceptable, HUD shall notify the PHA that it shall be referred to the HUD office with jurisdiction over Grade B, C, or D PHAs for remedial actions, or such actions as that office may determine appropriate in accordance with the provisions of the ACC, this part and other HUD regulations, including the remedies available for substantial default.

(4) If the HUD office with jurisdiction over Grade B, C, or D PHAs determines that a PHA failed to correct deficiencies within the time specified in an Improvement Plan or such extensions as may be granted by HUD, HUD may take further action to sanction the PHA, but only after the PHA has had one year since the PHA was notified it was a Grade B, C, or D PHA to correct its deficiencies.

§ 902.75 Referral of Grade F PHAs.

(a) *General.* After a PHA has received notification it is a Grade F PHA (*i.e.*, Grade F PHA or Capital Fund Grade F PHA), in accordance with the requirements of section 6(j)(2)(B) of the Act (42 U.S.C. 1437d(j)(2)(B)) and in accordance with this part, HUD shall refer the PHA to the appropriate HUD office for remedial action. The remedial actions taken by HUD and the PHA will include actions statutorily required, and such other actions that HUD determines to be appropriate.

(b) *Memorandum of Agreement (MOA).* HUD shall initiate the development of an MOA, within 30 days of notifying a PHA that it is a Grade F PHA. The PHA must execute the MOA as drafted by HUD within 10 days after issuance. The final MOA is a binding contractual agreement between HUD and a PHA.

(c) *Scope of the MOA.* The scope of the MOA may vary depending upon the extent of the deficiencies identified in the PHAS assessment. All MOAs will include:

(1) Each PHAS indicator, sub-indicator or component, together with the grade, that was identified as a deficiency and other baseline data, including all relevant raw data;

(2) Performance targets for the periods specified by HUD;

(3) Strategies for the PHA to use to achieve the performance targets within the time period of the MOA;

(4) Technical assistance that will be provided to the PHA or facilitated by HUD;

(5) Incentives for meeting the targets, such as the removal of Grade F PHA designation;

(6) The consequences for failing to meet the targets including, but not limited to, the sanctions that may be imposed. Sanctions include the imposition of budget and management controls by HUD, declaration of substantial default, and subsequent actions. Subsequent actions include judicial appointment of a receiver, limited denial of participation, suspension, debarment, or other actions HUD deems appropriate; and

(7) A description of the involvement of local public and private entities, including PHA resident leaders, in carrying out the MOA and rectifying the PHA's deficiencies.

(d) *Parties to the MOA.* An MOA will be executed by:

(1) The PHA Board Chairperson (supported by a Board resolution) or a receiver (pursuant to a court ordered receivership agreement, if applicable);

(2) The PHA Executive Director, or a designated receiver (pursuant to a court ordered receivership agreement, if applicable) or other designated Chief Executive Officer;

(3) The Director of the HUD office with jurisdiction over the PHA while the PHA is a Grade F PHA; and

(4) The appointing authorities of the Board of Commissioners, unless exempted by the HUD office with jurisdiction over the PHA while the PHA is a Grade F PHA.

(e) *Failure to execute MOA or improve performance under MOA.* HUD will take further action if the PHA fails or refuses to execute an MOA within the period provided in paragraph (b) of this section, or the PHA operating under an executed MOA does not improve its performance as provided in paragraph (f) of this section. HUD shall take the actions required by § 902.77(a).

(f) *Recovery.* (1) Two year maximum recovery period. After referral to the appropriate HUD office for remedial action, the PHA has two years to improve its performance as measured by the PHAS indicators. The PHA must improve its performance in each year of the two-year period as required by the Act or HUD will take further action as set forth in § 902.77.

(2) Benchmarks. (i) By the end of the first year, the PHA must make the following improvements. For a Grade F PHA, for each indicator with a grade of F, the PHA must improve that indicator's grade value by at least 50 percent of the difference between its value and the minimum grade value for a grade of D. For a Capital Fund Grade F PHA, the PHA must obligate 50 percent of the unobligated funds and/or expend 50 percent of the unexpended funds.

(ii) By the end of the second year, the PHA must make the following improvements. For a Grade F PHA, the PHA must achieve an overall PHAS grade of D and a grade of D for each of the four indicators. For a Capital Fund Grade F PHA, the PHA must obligate 100 percent of the unobligated funds and/or expend 100 percent of the unexpended funds.

(iii) The end of the first year is one year from the date the PHA receives the initial notice of its final overall PHAS grade and Grade F PHA designation. The end of the second year is two years from the date the PHA receives the initial notice of its final overall PHAS grade and Grade F PHA designation.

(g) *Audit review.* HUD shall perform an audit review and may, at its discretion, select the audit firm to perform the audit of the PHA that is a Grade F PHA. Further, HUD may, at its discretion, serve as the audit committee for the audit in question.

(h) *Continuation of services to residents.* To the extent feasible, all services to residents will continue uninterrupted during the time a PHA is a Grade F PHA and under jurisdiction of the appropriate HUD office.

§ 902.77 Actions and sanctions.

(a) *Actions against Grade F PHAs.* (1) *Failure to execute or meet the MOA requirements.* The failure of a Grade F PHA to execute or meet the requirements of an MOA in accordance with § 902.75 constitutes a substantial default under § 902.79. The HUD office with jurisdiction over the PHA while the PHA is a Grade F PHA will recommend to the Assistant Secretary that the PHA be declared in substantial default. In accordance with § 902.79, the Assistant Secretary shall notify the PHA of the default and allow the PHA an opportunity to cure the default. If the PHA fails to cure the default within a period not to exceed 30 days unless the Assistant Secretary determines that a longer period is appropriate, HUD shall take further action.

(2) Actions. (i) For PHAs with fewer than 1250 units, HUD shall initiate either the judicial appointment of a receiver or an administrative receivership.

(ii) For PHAs with 1250 or more units, HUD shall initiate the judicial appointment of a receiver or an administrative receivership, but may only initiate an administrative receivership while HUD's petition for judicial receivership is pending.

(iii) For all PHAs, following the recommendation of the Assistant Secretary, HUD shall initiate the interventions provided in § 902.83, and may initiate such other sanctions available to HUD, including limited denial of participation, suspension, debarment, and referral to the appropriate federal government agencies or offices for the imposition of civil or criminal sanctions.

(b) *Actions against other PHAs in substantial default.* A PHA that is not a Grade F PHA, but that has been found to be in substantial default under the provisions of § 902.79 also is subject to further action. The Assistant Secretary makes the determination that a PHA is in substantial default. In accordance with § 902.79, the Assistant Secretary shall notify the PHA of the default and allow the PHA an opportunity to cure the default. If the PHA fails to cure the default within the specified period of time, HUD shall initiate the judicial appointment of a receiver or the interventions provided in § 902.83, as recommended by the Assistant Secretary. HUD also may initiate such other available sanctions, including limited denial of participation, suspension, debarment, and referral to the appropriate federal government agencies or offices for the imposition of civil or criminal sanctions.

(c) *Receivership/Possession of PHA by HUD.* (1) The appointments of receivers, the actions of receivers, and HUD's responsibilities toward the receivers are governed by the provisions of section 6(j)(3) of the Act (42 U.S.C. 1437d(j)(3)).

(2) If a judicial receiver is appointed, the receiver, in addition to the powers provided by the court, shall have available the powers provided by section 6(j)(3)(C) of the Act (42 U.S.C. 1437d(j)(3)(C)).

(3) If HUD assumes responsibility for all or part of the PHA, the Secretary of HUD shall have available the powers provided by section 6(j)(3)(D) of the Act (42 U.S.C. 1437d(j)(3)(D)).

(4) If an administrative receiver is appointed, the Secretary may delegate to the administrative receiver any of the powers provided to the Secretary as described in paragraph (c)(3) of this section, in accordance with section 6(j)(3)(D) of the Act.

(d) *Continuation of services to residents.* To the extent feasible, all services to residents shall continue uninterrupted, during the time a PHA is under referral to HUD.

§ 902.79 Substantial default.

(a) *Events or conditions that constitute substantial default.* The

following events or conditions shall constitute substantial default.

(1) HUD may determine that events have occurred or that conditions exist that constitute a substantial default if a PHA is determined to be in violation of federal statutes, including but not limited to the Act, or in violation of regulations implementing such statutory requirements, whether or not such violations would constitute a substantial breach or default under provisions of the PHA's ACC.

(2) HUD may determine that a PHA's failure to execute an MOA or satisfy the terms of an MOA entered into pursuant to § 902.75, or to make reasonable progress to execute or meet requirements included in an MOA, are events or conditions that constitute a substantial default.

(3) HUD shall determine that a Grade F PHA that does not show substantial improvement, as described in § 902.75(f), is in substantial default.

(4) HUD may determine that a substantial breach or default in the terms and conditions of the PHA's ACC constitutes a substantial default.

(b) *Scope of substantial default.* HUD may determine that the events or conditions constituting a substantial default are limited to a portion of a PHA's public housing operations, designated either by program, by operational area, or by property(ies).

(c) *Notification of substantial default and response.* In the event of substantial default described in paragraph (a) of this section or if information from an annual assessment, audit, or any other credible source (including, but not limited to, the Office of Fair Housing Enforcement, the OIG, a court order, or a referral from a mayor or other official) indicates that events or conditions may exist that constitute a substantial default or breach, HUD shall perform an independent investigation. Upon a determination or finding, HUD shall advise a PHA of such substantial default or of such information. HUD is authorized to protect the confidentiality of the source(s) of such information in appropriate cases.

(1) Form of notification. Except in the case of apparent fraud or criminality, and/or in the case of an emergency condition that poses an imminent threat to the life, health, or safety of residents, the Assistant Secretary shall provide written notification to the PHA of the determination or finding that events have occurred or that conditions exist that constitute substantial default. Before taking further action, HUD shall provide the PHA an opportunity to take corrective action, including the remedies and procedures available to PHAs designated Grade F. The written notification shall be transmitted to the Executive Director, the Chairperson of the Board, and the appointing authority(ies) of the Board. The written notification shall include, but is not limited to:

(i) Identification of the specific covenants, conditions, and/or agreements under which the PHA is determined to be in noncompliance;

(ii) Identification of the specific events, occurrences, or conditions that constitute the determined noncompliance;

(iii) Identification of the information, referrals, and opportunities to initiate corrective action;

(iv) Identification of a specific time period of not less than 10 days (except in cases of apparent fraud or other criminal behavior, and/or under emergency conditions) nor more than 30 days, during which the PHA shall be required to demonstrate that the determination or finding is not substantively accurate; and

(v) A statement indicating that, absent a satisfactory response in accordance with paragraph (c)(2) of this section, HUD will take action, using any or all of the interventions specified in § 902.83 and determined to be appropriate to remedy the noncompliance, citing § 902.83, and any additional authority.

(2) Receipt of notification. Upon receipt of the notification, the PHA must demonstrate, within the time period permitted in the notification, factual error(s) in HUD's description of events, occurrences, or conditions, or show that the events, occurrences, or conditions do not constitute noncompliance with the statute, regulation, covenants, or conditions.

(3) Waiver of notification. A PHA may waive, in writing, receipt of written notice from HUD of a finding of substantial default, and voluntarily consent to a determination of substantial default. The PHA shall concur on the existence of substantial default conditions that can be remedied by technical assistance, and the PHA shall provide HUD with written assurance that the PHA shall address all deficiencies. HUD shall then immediately proceed with interventions as provided in § 902.83.

(d) *Emergency situations.* In any situation determined to be an emergency, or in any case when the events or conditions precipitating the intervention are determined to be the result of criminal or fraudulent activity, the Secretary or the Secretary's designee is authorized to intercede to protect the residents' and HUD's interests by causing the proposed interventions to be implemented without appeals or delays.

§ 902.83 Interventions.

(a) If HUD determines that a substantial default exists under this part, HUD may initiate any interventions deemed necessary to maintain dwellings that are decent, safe, sanitary and in good repair for the residents. Interventions under this part (including an assumption of operating responsibilities) may be limited to one or more of a PHA's operational areas (*e.g.*, maintenance, modernization, occupancy, or financial management) or to a single public housing property or a group of properties. Under this limited intervention procedure, HUD may select, or participate in the selection of, an AME to assume management responsibility for a specific property, a group of properties in a geographical area, or a specific operational area. During the limited intervention procedure, the PHA retains responsibility for all programs, operational areas, and properties not subject to the intervention.

(b) Interventions may include:

(1) Providing technical assistance for existing PHA management staff;

(2) Selecting or participating in the selection of an AME to provide technical assistance or other services up to and including contract management of all or any part of the public housing properties administered by a PHA;

(3) Assuming possession and operational responsibility for all or any part of the public housing administered by a PHA;

(4) Entering into agreements, arrangements, and/or contracts for or on behalf of a PHA, or acting as the PHA, and expending or authorizing the expenditure of PHA funds, irrespective of the source of such funds, to remedy the events or conditions constituting the substantial default;

(5) Providing intervention and assistance necessary to remedy emergency conditions;

(6) Selecting an administrative receiver to manage and operate all or part of the PHA's housing after soliciting competitive proposals; and

(7) Petitioning for the appointment of a receiver to any District Court of the United States or any court of the state in which real property of the PHA is located.

(c) The receiver is to conduct the affairs of the PHA:

(1) In a manner consistent with statutory, regulatory, and contractual obligations of the PHA;

(2) In accordance with additional terms and conditions that the court may provide; and

(3) In accordance with section 6(j)(3)(C) of the Act (42 U.S.C. 1437d(j)(3)(C)).

(d) Any party may petition for termination of a receiver appointed pursuant to this section. The receiver may be terminated when the court determines that all defaults have been cured or the PHA is capable again of discharging its duties.

(e) HUD may take the actions described in this section sequentially or simultaneously in any combination.

§ 902.85 Resident petitions for remedial action.

Residents may petition HUD to take remedial action pursuant to sections 6(j)(3)(A)(i) through (iv) of the Act (42 U.S.C. 1437d(j)(3)(A)(i) through (iv)) if:

(a) the resident petitioners equal at least 20 percent of the PHA's residents; or

(b) the petitioning organization or organizations' membership equals at least 20 percent of the PHA's residents.

Dated: January 9, 2003.

Michael Liu,

Assistant Secretary for Public and Indian Housing.

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February 6, 2003

Part III

Securities and Exchange Commission

17 CFR Parts 205, 240, and 249
Implementation of Standards of Professional Conduct for Attorneys; Final Rule and Proposed Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 205

[Release Nos. 33–8185; 34–47276; IC–25919; File No. S7–45–02]

RIN 3235–AI72

Implementation of Standards of Professional Conduct for Attorneys

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Securities and Exchange Commission ("Commission") is adopting a final rule establishing standards of professional conduct for attorneys who appear and practice before the Commission on behalf of issuers. Section 307 of the Sarbanes-Oxley Act of 2002 requires the Commission to prescribe minimum standards of professional conduct for attorneys appearing and practicing before the Commission in any way in the representation of issuers. The standards must include a rule requiring an attorney to report evidence of a material violation of securities laws or breach of fiduciary duty or similar violation by the issuer up-the-ladder within the company to the chief legal counsel or the chief executive officer of the company (or the equivalent thereof); and, if they do not respond appropriately to the evidence, requiring the attorney to report the evidence to the audit committee, another committee of independent directors, or the full board of directors. Proposed Part 205 responds to this directive and is intended to protect investors and increase their confidence in public companies by ensuring that attorneys who work for those companies respond appropriately to evidence of material misconduct. We are still considering the "noisy withdrawal" provisions of our original proposal under section 307; in a related proposing release we discuss this part of the original proposal and seek comment on additional alternatives.

EFFECTIVE DATE: August 5, 2003.

FOR FURTHER INFORMATION CONTACT: Timothy N. McGarey or Edward C. Schweitzer at 202–942–0835.

I. Executive Summary

Section 307 of the Sarbanes-Oxley Act of 2002 (the "Act") (15 U.S.C. 7245)[1] mandates that the Commission issue rules prescribing minimum standards of professional conduct for attorneys appearing and practicing before it in any way in the representation of issuers, including at a minimum a rule requiring an attorney to report evidence of a material violation of securities laws or breach of fiduciary duty or similar violation by the issuer or any agent thereof to appropriate officers within the issuer and, thereafter, to the highest authority within the issuer, if the initial report does not result in an appropriate response. The Act directs the Commission to issue these rules within 180 days.[2]

On November 21, 2002, in response to this directive, we published for comment proposed Part 205, entitled "Standards of Professional Conduct for Attorneys Appearing and Practicing before the Commission in the Representation of an Issuer." The proposed rule prescribed minimum standards of professional conduct for attorneys appearing and practicing before us in any way in the representation of an issuer. The proposed rule took a broad view of who could be found to be appearing and practicing before us. It covered lawyers licensed in foreign jurisdictions, whether or not they were also admitted in the United States. In addition to a rigorous up-the-ladder reporting requirement, the proposed rule incorporated several corollary provisions. Under certain circumstances, these provisions permitted or required attorneys to effect a so-called "noisy withdrawal" by notifying the Commission that they have withdrawn from the representation of the issuer, and permitted attorneys to report evidence of material violations to the Commission.

Our proposing release[3] generated significant comment and extensive debate. We received a total of 167 timely comment letters: 123 from domestic parties and 44 from foreign parties. In addition to soliciting comments, on December 17, 2002 the Commission hosted a Roundtable discussion concerning the impact of the rules upon foreign attorneys. Many of these comments focused on the following issues: The scope of the proposed rule (including, particularly, its application to attorneys who either are not admitted to practice in the United States, or are admitted in the United States but who do not practice in the field of securities law); the proposed rule's "noisy withdrawal" provision (including the Commission's authority to promulgate this portion of the rule and the provision's impact upon the attorney-client relationship); and the triggering standard for an attorney's duty to report evidence of wrongdoing. In light of the compressed time period resulting from the 180-day implementation deadline prescribed in the Act, a number of commenters requested that the Commission allow additional time for consideration of several aspects of the proposed rule, including the application of the rule to non-United States lawyers and the impact of the "noisy withdrawal" and related provisions.

The thoughtful and constructive suggestions we have received from a broad spectrum of commenters have enabled us better to understand interested parties' views concerning the operation and impact of the proposed rule. As more specifically discussed below, the final rule we adopt today has been significantly modified in light of these comments and suggestions. Thus, the triggering standard for reporting evidence of a material violation has been modified to clarify and confirm that an attorney's actions will be evaluated against an objective standard. The documentation requirements imposed upon attorneys and issuers under the proposed rule have been eliminated, and a "safe harbor" provision has been added to protect attorneys, law firms, issuers and officers and directors of issuers. In response to the large number of comments requesting that we defer the immediate implementation of a final rule to accord affected persons adequate time to assess the duties imposed thereunder, we have deferred the effective date of the rule until 180 days after publication in the **Federal Register**.

We believe that the final rule responds fully to the mandate of Section 307 to require reporting of evidence of material violations up-the-ladder within an issuer, thereby allowing issuers to take necessary remedial action expeditiously and reduce any adverse

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[1] Section 307 of the Sarbanes-Oxley Act of 2002 (the "Act") (15 U.S.C. 7245) mandates that the Commission: Shall issue rights, in the public interest and for the protection of investors, setting forth minimum standards of professional conduct for attorneys appearing and practicing before the Commission in any way in the representation of issuers, including a rule—

(1) Requiring an attorney to report evidence of a material violation of securities law or breach of fiduciary duty or similar violation by the company or any agent thereof, to the chief legal counsel or the chief executive officer of the company (or the equivalent thereof); and

(2) If the counsel or officer does not appropriately respond to the evidence (adopting, as necessary, appropriate remedial measures or sanctions with respect to the violation), requiring the attorney to report the evidence to the audit committee of the board of directors of the issuer or to another committee of the board of directors comprised solely of directors not employed directly or indirectly by the issuer, or to the board of directors.

[2] President Bush signed the Act on July 30, 2002.

[3] *See* Release 33–8150 (Nov. 21, 2002), 67 FR 71669 (Dec. 2, 2002).

impact upon investors. The final rule strikes an appropriate balance between our initial rule proposal on up-the-ladder reporting and the various views expressed by commenters while still achieving this important goal.

At the same time, the Commission considers it important to move forward in its assessment of rules under Section 307 requiring attorney withdrawal and notice to the Commission in cases where an issuer's officers and directors fail to respond appropriately to violations that threaten substantial injury to the issuer or investors. Accordingly, we are extending the comment period on the "noisy withdrawal" and related provisions of the proposed rule and are issuing a separate release soliciting comment on this issue. In that release, we are also proposing and soliciting comment on an alternative procedure to the "noisy withdrawal" provisions. Under this proposed alternative, in the event that an attorney withdraws from representation of an issuer after failing to receive an appropriate response to reported evidence of a material violation, the issuer would be required to disclose its counsel's withdrawal to the Commission as a material event. In the same release, we are soliciting additional comment on the final rules we are adopting, particularly insofar as adoption of the "noisy withdrawal" provisions of the proposed alternative might require conforming changes to the final rule.

Interested parties should submit comments within 60 days of the date of publication of the proposing release in the **Federal Register**. This will provide additional time for interested parties to comment on the impact of these provisions while still allowing for their implementation as of the effective date of the final rule.

II. Section-by-Section Discussion of the Final Rule

Section 205.1—Purpose and Scope

This part sets forth minimum standards of professional conduct for attorneys appearing and practicing before the Commission in the representation of an issuer. These standards supplement applicable standards of any jurisdiction where an attorney is admitted or practices and are not intended to limit the ability of any jurisdiction to impose additional obligations on an attorney not inconsistent with the application of this part. Where the standards of a state or other United States jurisdiction where an attorney is admitted or practices conflict with this part, this part shall govern.

Proposed Section 205.1 stated that this part will govern "[w]here the standards of a state where an attorney is admitted or practices conflict with this part." In the proposing release, we specifically raised the question whether this part should "preempt conflicting state ethical rules which impose a lower obligation" upon attorneys.[4]

A number of commenters questioned the Commission's authority to preempt state ethics rules, at least without being explicitly authorized and directed to do so by Congress.[5] Another comment letter noted that the Constitution's Commerce Clause grants the federal government the power to regulate the securities industry, that the Sarbanes-Oxley Act requires the Commission to establish rules setting forth minimum standards of conduct for attorneys appearing and practicing before it, and that, under the Supremacy Clause, duly adopted Commission rules will preempt conflicting state rules.[6] Finally, several commenters questioned why the Commission would seek to supplant state ethical rules which impose a higher obligation upon attorneys.[7]

The language which we adopt today clarifies that this part does not preempt ethical rules in United States jurisdictions that establish more rigorous obligations than imposed by this part. At the same time, the Commission reaffirms that its rules shall prevail over any conflicting or inconsistent laws of a state or other United States jurisdiction in which an attorney is admitted or practices.

Section 205.2—Definitions

For purposes of this part, the following definitions apply:

(a) *Appearing and practicing* before the Commission:

(1) Means:

(i) Transacting any business with the Commission, including communications in any form;

(ii) Representing an issuer in a Commission administrative proceeding or in connection with any Commission investigation, inquiry, information request, or subpoena;

(iii) Providing advice in respect of the United States securities laws or the Commission's rules or regulations thereunder regarding any document that the attorney has notice will be filed with or submitted to, or incorporated into any document that will be filed with or submitted to, the Commission, including the provision of such advice in the context of preparing, or participating in the preparation of, any such document; or

(iv) Advising an issuer as to whether information or a statement, opinion, or other writing is required under the United States securities laws or the Commission's rules or regulations thereunder to be filed with or submitted to, or incorporated into any document that will be filed with or submitted to, the Commission; but

(2) Does not include an attorney who:

(i) Conducts the activities in paragraphs (a)(1)(i) through (a)(1)(iv) of this section other than in the context of providing legal services to an issuer with whom the attorney has an attorney-client relationship; or

(ii) Is a non-appearing foreign attorney.

The definition of the term "appearing and practicing" included in the proposed rule was based upon Rule 102(f) of our Rules of Practice, and covered, *inter alia*, an attorney's advising a client (1) that a statement, opinion, or other writing does not need to be filed with or incorporated into any type of submission to the Commission or its staff, or (2) that the issuer is not required to submit or file any registration statement, notification, application, report, communication or other document with the Commission or its staff. This broad definition was intended to reflect the reality that materials filed with the Commission frequently contain information contributed, edited or prepared by individuals who are not necessarily responsible for the actual filing of the materials, and was consistent with the position the Commission has taken as *amicus curiae* in cases involving liability under Section 10(b) of the Exchange Act (15 U.S.C. 78j(b)).

A number of commenters argued that the proposed definition of "appearing and practicing" was overly broad. The American Bar Association ("ABA") stated that the definition in the proposed rule would unfairly:

> subject to the rules attorneys who do not practice securities law and may have only limited or tangential involvement with particular SEC filings and documents. For example, it could inappropriately encompass non-securities specialists who do no more than prepare or review limited portions of a filing, lawyers who respond to auditors' letters or prepare work product in the ordinary course unrelated to securities matters that may be used for that purpose,

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[4] 67 FR 71670, 71697 (Dec. 2, 2002).

[5] See Comments of the Association of the Bar of the City of New York, at 28 ("There is nothing in Section 307 to suggest that Congress authorized the Commission to preempt state law and rules governing attorney conduct."); *see also* Comments of the American Bar Association, at 32; Comments of 77 law firms, at 2. While questioning the Commission's authority in this area, the American Bar Association ("ABA") nevertheless recognized that "the federal system of the United States may provide an arguable basis for the pre-emption of attorney-client and confidentiality obligations applicable to United States attorneys." *See* Comments of the American Bar Association, at 37.

[6] *See* Comments of Susan P. Koniak *et al.*, at 28–29.

[7] *See, e.g.*, Comments of Susan P. Koniak *et al.*, at 32; Comments of Richard W. Painter, at 8; Comments of Nancy J. Moore, at 3.

and lawyers preparing documents that eventually may be filed as exhibits. * * * We also believe it is inappropriate for the Commission to include lawyers who simply advise on the availability of exemptions from registration.[8]

The ABA recommended that the definition be modified to apply "only to those lawyers with significant responsibility for the company's compliance with United States securities law, including satisfaction of registration, filing and disclosure obligations, or with overall responsibility for advising on legal compliance and corporate governance matters under United States law."[9]

On the other hand, several commenters supported the more expansive definition set forth in the proposed rule. A comment letter submitted by a group of 50 academics specifically affirmed their:

> support [for] the Commission's inclusion of lawyers who advise and/or draft, but do not sign, documents filed with the Commission, as well as lawyers who advise that documents need not be filed with the Commission. Any other rule would facilitate circumvention of these rules by encouraging corporate managers and corporate counsel to confine lawyer signatures on Commission documents or filings to a bare minimum to ensure no up-the-ladder reporting of wrongdoing. That would risk gutting these rules and § 307.[10]

The definition contained in the final rule addresses several of the concerns raised by commenters. Attorneys who advise that, under the federal securities laws, a particular document need not be incorporated into a filing, registration statement or other submission to the Commission will be covered by the revised definition. In addition, an attorney must have notice that a document he or she is preparing or assisting in preparing will be submitted to the Commission to be deemed to be "appearing and practicing" under the revised definition. The definition in the final rule thereby also clarifies that an attorney's preparation of a document (such as a contract) which he or she never intended or had notice would be submitted to the Commission, or incorporated into a document submitted to the Commission, but which subsequently is submitted to the Commission as an exhibit to or in connection with a filing, does not constitute "appearing and practicing" before the Commission.

As discussed below, commenters also raised concerns regarding the potential application of the rule to attorneys who, while admitted to practice in a state or other United States jurisdiction, were not providing legal services to an issuer. Under the final rule, attorneys need not serve in the legal department of an issuer to be covered by the final rule, but they must be providing legal services to an issuer within the context of an attorney-client relationship. An attorney-client relationship may exist even in the absence of a formal retainer or other agreement. Moreover, in some cases, an attorney and an issuer may have an attorney-client relationship within the meaning of the rule even though the attorney-client privilege would not be available with respect to communications between the attorney and the issuer.

The Commission intends that the issue whether an attorney-client relationship exists for purposes of this part will be a federal question and, in general, will turn on the expectations and understandings between the attorney and the issuer. Thus, whether the provision of legal services under particular circumstances would or would not establish an attorney-client relationship under the state laws or ethics codes of the state where the attorney practices or is admitted may be relevant to, but will not be controlling on, the issue under this part. This portion of the definition will also have the effect of excluding from coverage attorneys at public broker-dealers and other issuers who are licensed to practice law and who may transact business with the Commission, but who are not in the legal department and do not provide legal services within the context of an attorney-client relationship. Non-appearing foreign attorneys, as defined below, also are not covered by this definition.

205.2(b) provides:

> (b) *Appropriate response* means a response to an attorney regarding reported evidence of a material violation as a result of which the attorney reasonably believes:
>
> (1) That no material violation, as defined in paragraph (i) of this section, has occurred, is ongoing, or is about to occur;
>
> (2) That the issuer has, as necessary, adopted appropriate remedial measures, including appropriate steps or sanctions to stop any material violations that are ongoing, to prevent any material violation that has yet to occur, and to remedy or otherwise appropriately address any material violation that has already occurred and to minimize the likelihood of its recurrence; or
>
> (3) That the issuer, with the consent of the issuer's board of directors, a committee thereof to whom a report could be made pursuant to § 205.3(b)(3), or a qualified legal compliance committee, has retained or directed an attorney to review the reported evidence of a material violation and either:
>
> (i) Has substantially implemented any remedial recommendations made by such attorney after a reasonable investigation and evaluation of the reported evidence; or
>
> (ii) Has been advised that such attorney may, consistent with his or her professional obligations, assert a colorable defense on behalf of the issuer (or the issuer's officer, director, employee, or agent, as the case may be) in any investigation or judicial or administrative proceeding relating to the reported evidence of a material violation.

The definition of "appropriate response" emphasizes that an attorney's evaluation of, and the appropriateness of an issuer's response to, evidence of material violations will be measured against a reasonableness standard. The Commission's intent is to permit attorneys to exercise their judgment as to whether a response to a report is appropriate, so long as their determination of what is an "appropriate response" is reasonable.

Many of the comments on this paragraph focused on the proposal's standard that an attorney has received an appropriate response when the attorney "reasonably believes," based on the issuer's response, that there either is or was no material violation, or that the issuer has adopted appropriate remedial measures. They suggested, among other things, that the paragraph be amended to state that the attorney could rely upon the factual representations and legal determinations that a reasonable attorney would rely upon,[11] or that the Commission adopt the ABA's Model Rules' definition of "reasonably believes."[12] Others opined that the

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[8] *See* Comments of the American Bar Association, at 12.

[9] *Id.*; *see also* Comments of Sullivan & Cromwell, at 12–14; Comments of 77 law firms, at 7 (arguing that the scope of the definition of the term may incite efforts by attorneys to limit their involvement in certain matters in an effort to avoid coming within the purview of the rule).

[10] *See* Comments on Susan P., Koniak *et al.*, at 33.

[11] Comments of Thomas D. Morgan, at 5–6; Comments of Morrison & Foerster and eight other law firms, at 14 (paragraph 205.2(b) should be revised to read that in all situations it would be an appropriate response for an issuer to assert a colorable defense to any claim of material violation).

[12] Comments of Palmer & Dodge, Attachment at 2 ("The Model Rules state that 'reasonable belief' or 'reasonably believes' when used in reference to a lawyer denotes that the lawyer believes the matter in question and that the circumstances are such that the belief is reasonable." Model Rule 1.0(i)). "Reasonable" and "reasonably," in turn, are defined as "denot[ing] the conduct of a reasonably prudent and competent lawyer." Model Rule 1.0(h). Along similar lines, one group of commenters suggested that the paragraph include language paralleling the Model Rule definition, setting as the standard the conclusion of "a prudent and competent attorney, acting reasonably under the same circumstances" that a response was appropriate. Comments of Susan P. Koniak *et al.*, at 12–13, 15; *see also* Comments of the SIA/TBMA, at 18 (urging that the Commission modify this paragraph to protect an attorney whose judgment that an issuer's response was appropriate was "reasonable under the circumstances").

"reasonably believes" standard was inappropriate because it would impose on lawyers who are not expert in the securities laws a standard based on the "reasonable" securities law expert.[13] Others opined that the standard should be modified to require the lawyer's "actual understanding," rather than reasonable belief, regarding a "clear" material violation,[14] while others urged that the standard must be objective.[15]

Other commenters felt that the paragraph did not properly address situations, which the commenters felt would be frequent, where an issuer's inquiry into the report of a possible material violation would be "inconclusive."[16] Others expressed the belief that the rule did not give a reporting lawyer sufficient guidance "such that a reporting attorney can with confidence, and without speculation, determine whether he or she has received an appropriate response."[17] Some comments questioned whether reporting attorneys would be able to judge whether discipline or corrective measures were sufficient to constitute an appropriate response.[18] One suggested that the paragraph be modified to provide that an attorney has received an appropriate response when the chief legal officer ("CLO") states that he or she has fulfilled the obligations set forth in Section 205.3(b)(3), unless the attorney is reasonably certain that the representations are untrue.[19] Some commenters found the term "and/or" in subparagraph (b)(2) of the proposed paragraph confusing.[20] Others questioned whether the provision that the issuer "rectify" the material violation should be read to contemplate restitution to injured parties, with one stating that it did not believe Congress intended to impose upon attorneys an obligation to require issuers to make restitution,[21] while others read the proposed rule as "impl[ying] that the appropriateness of a response need not include compensation of injured parties," and accordingly supported this standard.[22] A few commenters noted that under subparagraph (b)(2) a response is appropriate only if the issuer has already "adopted remedial measures," and thus apparently does not apply if the issuer is in the process of adopting them. They urged that the Commission provide that an appropriate response includes ongoing remedial measures.[23]

A few comments were directed at the discussion accompanying the proposed rule. One suggestion was that the Commission make clear that the factors it will consider in determining whether an outside law firm's response that no violation has occurred constitutes an appropriate response include a description of the scope of the investigation undertaken by the law firm and the relationship between the issuer and the firm. They also urged the Commission to expressly state that the greater or more credible the evidence that triggered the report, the more detailed an investigation into the matter must be.[24] One commenter also suggested that the Commission withdraw the statement in the release of the proposed rule that Section 205.2(b) "permits" attorneys "to exercise their judgment," finding that language both superfluous and conveying a signal that the Commission will be loathe to second-guess a lawyer's judgment that a response is "appropriate."[25]

Several commenters suggested that the proposed rule should exempt internal investigations of reported evidence of a material violation.[26] Commenters were concerned that the reporting and disclosure requirements in the proposed rules might discourage issuers from obtaining legal advice and undertaking internal investigations and that, as a result, some violations might not be discovered or resolved.[27] Thus, some commenters urged that an issuer must be permitted "to retain counsel to investigate the claim and respond to it, including defense in litigation, without being at risk of violating the rule."[28] Some commenters stated that "counsel conducting an internal investigation" should not be subject to the rule's reporting and disclosure requirements.[29]

The proposing release stated that "[i]t would not be an inappropriate response to reported evidence of a material violation for an issuer's CLO to direct defense counsel to assert either a colorable defense or a colorable basis for contending that the staff should not prevail. Such directions from the CLO, therefore, would not require defense counsel to report any evidence of a material violation to the issuer's directors."[30] Several commenters were concerned over a possible chilling effect on an attorney's representation of an issuer in a Commission investigation or administrative proceeding if the attorney were subject to reporting and disclosure requirements.[31] Some noted

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[13] Comments of the American Corporate Counsel Association, at 10. This concern was also expressed by commenters who asserted that foreign lawyers, in particular, would not have sufficient practical knowledge of United States laws to determine what constitutes an appropriate response. See, *e.g.*, Comments of Nagashima Ohno & Tsunematsu, at 7; Comments of the SIA/TBMA, at 13 (reporting attorney's judgment should be evaluated in light of that attorney's training, experience and position).

[14] Comments of Covington & Burling, at 3.

[15] Comments of Susan P. Koniak *et al.*, at 12–13.

[16] Comments of Covington & Burling, at 3.

[17] Comments of Richard Hall, Cravath Swaine & Moore, at 6–7; Comments of the Association of the Bar of the City of New York, at 12; Comments of Carter, Ledyard & Milburn, at 3 (stating that requiring an attorney, in deciding whether an issuer has made an appropriate response, to determine whether a material violation is about to occur, is an "impossibly predictive standard"); Comments of the Japan Federation of Bar Associations, at 3 (opining that the term "appropriate response" cannot be easily construed on its face).

[18] Comments of the SIA/TBMA, at 18; Comments of the Association of the Bar of the City of New York, at 12 ("[o]nce an attorney has reported and documented a possible violation, the attorney should be assured that good faith reliance upon the response protects the attorney).

[19] Comments of the Corporation, Finance and Securities Law Section of the District of Columbia Bar, at 14; Comments of the American Bar Association, at 22 ("[w]e believe it is important that the Commission recognize that a reporting attorney may rely on the considered judgment of the CLO so long as that judgment is in the range of reasonableness even though the attorney would not necessarily come out that way"); Comments of Skadden, Arps, Slate, Meagher & Flom, at 9–10 (reporting attorney should be able to rely upon the stated belief of the officer to whom he has reported the evidence of material violation that no material violation has occurred).

[20] Comments of JP Morgan & Chase, at 10–11; Comments of Debevoise & Plimpton, at 5.

[21] Comments of JP Morgan & Chase, at 11; Comments of Debevoise & Plimpton, at 5–6.

[22] Comments of the Corporation, Finance and Securities Law Section of the District of Columbia Bar, at 14.

[23] Comments of Carter, Ledyard & Milburn, at 3; Comments of Skadden, Arps, Slate, Meagher & Flom, at 9–10 (appropriate response should include a timely response that adequate measures are being taken).

[24] Comments of Susan P. Koniak *et al.*, at 13; Comments of Schiff Hardin & Waite, at 4–5 (criticizing the examples in the release of the proposed rule as undercutting the proposition that attorneys will be permitted to exercise their reasonable judgment, and stating that the Commission should clarify that the reasonableness of an issuer's response will vary depending on the circumstances and will not necessarily depend on the existence of a written legal opinion from outside counsel to the issuer); Comments of the SIA/TBMA, at 18 (suggesting revisions to Section 205.2(b) that would state that an appropriate response should be reasonable under the circumstances, measured by the magnitude and quality of the evidence of the violation, the severity of the violation, and whether there is a potential for ongoing or recurring violation).

[25] Comments of Susan P. Koniak *et al.*, at 12.

[26] Comments of the SIA/TBMA, at 11 (stating that the Rules "should exempt outside counsel whom securities firms retain to conduct internal investigations").

[27] Comments of Carter, Ledyard & Milburn, at 6 (noting risk that proposed rules "might discourage persons from seeking legal representation"); Comments of the SIA/TBMA, at 11.

[28] Comments of Weil Gotshal & Manges, at 7.

[29] Comments of the Corporation, Finance and Securities Law Section of the District of Columbia Bar, at 4; Comments of the American Bar Association, at 30.

[30] 67 FR 71683.

[31] Comments of Akin Gump Strauss Hauer & Feld, at 7–8; Comments of Cleary, Gottlieb, Steen &

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that an issuer's disagreement in good faith with the Commission over a matter in litigation should not raise a reporting obligation under the rules.[32] Others suggested that the definition of "appropriate response" include the assertion of "a colorable defense or the obligation of the Commission staff to bear the burden of proving its case." [33] Some commenters stressed that an attorney representing an issuer should be able to take any position for which there is an evidentiary foundation and a nonfrivolous legal basis.[34] The commenters did not want the final rules to impair an advocate's ability to present non-frivolous arguments. Some commenters noted that an issuer has no right to use an attorney to conceal ongoing violations or plan further violations of the law.[35]

The standard set forth in the final version of Section 205.2(b) requires the attorney to "reasonably believe" either that there is no material violation or that the issuer has taken proper remedial steps. The term "reasonably believes" is defined in Section 205.2(m). In providing that the attorney's belief that a response was appropriate be reasonable, the Commission is allowing the attorney to take into account, and the Commission to weigh, all attendant circumstances. The circumstances a reporting attorney might weigh in assessing whether he or she could reasonably believe that an issuer's response was appropriate would include the amount and weight of the evidence of a material violation, the severity of the apparent material violation and the scope of the investigation into the report. While some commenters suggested that a reporting attorney should be able to rely completely on the assurance of an issuer's CLO that there was no material violation or that the issuer was undertaking an appropriate response, the Commission believes that this information, while certainly relevant to the determination whether an attorney could reasonably believe that a response was appropriate, cannot be dispositive of the issue. Otherwise, an issuer could simply have its CLO reply to the reporting attorney that "there is no material violation," without taking any steps to investigate and/or remedy material violations. Such a result would clearly be contrary to Congress' intent in enacting Section 307. On the other hand, it is anticipated that an attorney, in determining whether a response is appropriate, may rely on reasonable and appropriate factual representations and legal determinations of persons on whom a reasonable attorney would rely.

Some commenters expressed confusion over the "and/or" connectors in the proposed subparagraph (b)(2), and they have been eliminated in the final rule. The Commission believes that the revisions to this subparagraph make clear that the issuer must adopt appropriate remedial measures or sanctions to prevent future violations, redress past violations, and stop ongoing violations and consider the feasibility of restitution. The concern that under subparagraph (b)(2) any issuer's response to a reporting attorney that remedial measures are ongoing but not completed must be deemed to be inappropriate, thereby requiring reporting up-the-ladder, appears to be overstated. Many remedial measures, such as disclosures and the cessation of ongoing material violations, will occur in short order once the decision has been made to pursue them. Beyond this, the reasonable time period after which a reporting attorney is obligated to report further up-the-ladder would include a reasonable period of time for the issuer to complete its ongoing remediation.

By broadening the definition of "appropriate response," subparagraph (b)(3) responds to a variety of concerns raised by commenters. Subparagraph (b)(3) permits an issuer to assert as an appropriate response that it has directed its attorney, whether employed or retained by it, to undertake an internal review of reported evidence of a material violation and has substantially implemented the recommendations made by an attorney after reasonable investigation and evaluation of the reported evidence. However, the attorney retained or directed to conduct the evaluation must have been retained or directed with the consent of the issuer's board of directors, a committee thereof to whom a report could be made pursuant to 205.3(b)(3), or a qualified legal compliance committee.

Subparagraph (b)(3) also explicitly incorporates into the final rule our view, expressed in the proposing release, that "[i]t would not be an inappropriate response to reported evidence of a material violation for an issuer's CLO to direct defense counsel to assert either a colorable defense or a colorable basis for contending that the staff should not prevail."[36] Subparagraph (b)(3) incorporates this standard into the definition of "appropriate response" by permitting an issuer to respond to a report that it has been advised by its attorney that he or she may assert a colorable defense on behalf of the issuer in response to the reported evidence "in any investigation or judicial or administrative proceeding," including by asserting a colorable basis that the Commission or other charging party should not prevail.[37] The provision would apply only where the defense could be asserted consistent with an attorney's professional obligation. Once again, the attorney opining that he or she may assert a colorable defense must have been retained or directed to evaluate the matter with the consent of the issuer's board of directors, a committee thereunder to whom a report could be made pursuant to Section 205(b)(3), or a qualified legal compliance committee.

We noted in our proposing release our intention that the rule not "impair zealous advocacy, which is essential to the Commission's processes."[38] The attorney conducting an internal investigation that is contemplated under subparagraph (b)(3) may engage in full and frank exchanges of information with the issuer he or she represents.

Hamilton, at 9 ("There would be an unavoidable chilling effect on the advocacy of lawyers who represent clients before the Commission in investigations and administrative proceedings if Rule 205 applies to them."); Comments of the Association of the Bar of the City of New York, at 19–20 (stating that it would be "unfair[] to include attorneys who are adverse parties in enforcement or administrative proceedings within the reporting and withdrawal requirements of the proposed rules"); Comments of Susan P. Koniak *et al.*, at 36 (final rules should "avoid chilling legitimate and vigorous advocacy").

[32] Comments of Richard Hall, Cravath, Swaine & Moore, at 3.

[33] Comments of Morrison & Foerster and eight other law firms, at 14.

[34] Comments of Securities Regulation Committee, Business Law Section, New York State Bar Association, at 6 (stating that "a lawyer need not subjectively believe that he or she has the 'better side of the argument' or that it is a position likely to prevail. The attorney is permitted to undertake the representation if he or she, after a reasonable investigation, believes that there is (or will be) evidentiary support for the position and that the assertions of law are nonfrivolous. See, *e.g.*, Rule 11, Fed. R. Civ. P."), *See also* Comments of Cleary, Gottlieb, Steen & Hamilton, at 9 ("Lawyers representing clients before the Commission must be free to make all non-frivolous arguments to the staff.").

[35] Comments of Susan P. Koniak, *et al.*, at 37.

[36] The text of the final rule does not specifically include a reference to a "colorable basis for contending that the staff [or other litigant] should not prevail," nor does it specifically refer to requiring the Commission staff or other litigant to bear the burden of its case. The Commission, however, considers these and related actions permitted to an attorney, consistent with his or her professional obligations, to be included within the reference to asserting a "colorable defense."

[37] Subparagraph (b)(3) thereby also addresses the concern of some commenters that an attorney representing an issuer in connection with a Commission investigation or administrative proceeding not be required to report the information. Under subparagraph (b)(3), asserting a colorable defense on an issuer's behalf in an investigation or administrative proceeding may constitute an appropriate response, and no further reporting would be required.

[38] 67 FR 71673.

Moreover, as noted above, subparagraph (b)(3) expressly provides that the assertion of colorable defenses in an investigation or judicial or administrative proceeding is an appropriate response to reported evidence of a material violation. Concerns over a chilling effect on advocacy should thus be allayed. At the same time, by including a requirement that this response be undertaken with the consent of the issuer's board of directors, or an appropriate committee thereof, the revised definition is intended to protect against the possibility that a chief legal officer would avoid further reporting "up-the-ladder" by merely retaining a new attorney to investigate so as to assert a colorable, but perhaps weak, defense.

The term "colorable defense" does not encompass all defenses, but rather is intended to incorporate standards governing the positions that an attorney appropriately may take before the tribunal before whom he or she is practicing. For example, in Commission administrative proceedings, existing Rule of Practice 153(b)(1)(ii), 17 CFR 201.153(b)(1)(ii), provides that by signing a filing with the Commission, the attorney certifies that "to the best of his or her knowledge, information, and belief, formed after reasonable inquiry, the filing is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law." An issuer's right to counsel is thus not impaired where the attorney is restricted to presenting colorable defenses, including by requiring the Commission staff to bear the burden of proving its case. Of course, as some commenters noted, an issuer has no right to use an attorney to conceal ongoing violations or plan further violations of the law.

205.2(c) provides:

(c) *Attorney* means any person who is admitted, licensed, or otherwise qualified to practice law in any jurisdiction, domestic or foreign, or who holds himself or herself out as admitted, licensed, or otherwise qualified to practice law.

Commenters suggested that the proposed rule's definition of the term "attorney" was unnecessarily broad. A number of commenters suggested that it was inappropriate to apply the rule to foreign attorneys, arguing that foreign attorneys, and attorneys representing or employed by multijurisdictional firms, are subject to statutes, rules, and ethical standards in those foreign jurisdictions that are different from, and potentially incompatible with, the requirements of this rule.[39] These points were amplified by foreign attorneys who attended a December 17, 2002 Roundtable discussion hosted by the Commission to address the issues raised by the application of the rule to foreign attorneys.

As noted above, and as set forth more fully below, the rule we adopt today adds a new defined term, "non-appearing foreign attorney," which addresses many of the concerns expressed regarding the application of the rule to foreign attorneys. In addition, other commenters argued that the proposed rule's definition of "attorney" applied to a large number of individuals employed by issuers who are admitted to practice, but who do not serve in a legal capacity. By significantly narrowing the definition of the term "appearing and practicing" as set forth above, we have addressed many of the concerns expressed by commenters concerning the application of the rule to individuals admitted to practice who are employed in non-legal positions and do not provide legal services.

205.2(d) provides:

(d) *Breach of fiduciary duty* refers to any breach of fiduciary or similar duty to the issuer recognized under an applicable federal or state statute or at common law, including but not limited to misfeasance, nonfeasance, abdication of duty, abuse of trust, and approval of unlawful transactions.

The definition we adopt today has been slightly modified from the definition included in the proposing release. Several commenters suggested that the definition in the proposing release should be amended to include breaches of fiduciary duty arising under federal or state statutes.[40] The phrase "under an applicable federal or state statute" has been added to clarify that breaches of fiduciary duties imposed by federal and state statutes are covered by the rule.

205.2(e) provides:

(e) *Evidence of a material violation* means credible evidence, based upon which it would be unreasonable, under the circumstances, for a prudent and competent attorney not to conclude that it is reasonably likely that a material violation has occurred, is ongoing, or is about to occur.

This revised definition of "evidence of a material violation" clarifies aspects of the objective standard that the Commission sought to achieve in the definition originally proposed.[41] The definition of "evidence of a material violation" originally proposed prompted extensive comment because (read together with the rule's other definitions) it defines the trigger for an attorney's obligation under the rule to report up-the-ladder to an issuer's CLO or qualified legal compliance committee ("QLCC") (in section 205.3(b)). Some commenters, including some practicing attorneys, found the proposed reporting trigger too high.[42] Many legal scholars endorsed the framework of increasingly higher triggers for reporting proposed by the Commission at successive stages in the reporting process but considered the Commission's attempt at articulating an objective standard unworkable and suggested changes to the language in the proposed rule.[43] Nearly all practicing lawyers who commented found the reporting trigger in the rule too low and called instead for a subjective standard, requiring "actual belief" that a material violation has occurred, is ongoing, or is about to occur before the attorney would be obligated to make an initial report within the client issuer.[44] The revised

[39] See, *e.g.*, Comments of Skadden, Arps, Slate, Meagher and Flom, at 16 (noting that foreign private issuers usually consult with United States counsel on securities matters, and suggesting that limiting the definition of "attorney" to lawyers licensed in United States jurisdictions "will avoid the unfairness of subjecting foreign lawyers to the Proposed Rules without compromising the effectiveness of the rules.").

[40] *See* Comments of Richard W. Painter, at 10–11 ("Breaches of fiduciary duty to pension funds under federal law such as ERISA, and other similar violations would thus clearly be covered, whereas arguably they are not under the current definition in the Proposed Rules.").

[41] The proposed rule defines *evidence of a material violation* as "information that would lead an attorney reasonably to believe that a material violation has occurred, is occurring, or is about to occur" and *reasonable belief* as what "an attorney, acting reasonably, would believe."

[42] *E.g.*, Comments of John Bullock, at 1 ("the threshold for mandatory reporting by an attorney should be the level of evidence that a responsible corporate officer should want to know, so that the client can pursue an investigation and take appropriate action. The standard should therefore be 'some credible information that a material violation may have occurred, may be occurring, or may be about to occur.'").

[43] Comments of Richard W. Painter, at 6 (suggesting that "evidence that a violation is 'possible' could trigger the duty to report to the Chief Legal Officer, whereas evidence that a violation is "likely" could trigger the duty to report to the full board or to the QLCC. Evidence that a violation was 'highly likely' or a 'near certainty' could trigger the requirement of a noisy withdrawal."); Comments of Susan P. Koniak *et al.*, at 9–11, 15–17 (emphasizing the importance of distinguishing between a violation and evidence of one and suggesting the use of the phrase "credible evidence").

[44] Comments of Skadden Arps, Slate, Meagher & Flom, at 10 (proposing to define "*evidence of a material violation*" as "facts and circumstances known to an attorney which have caused the attorney to believe that a material violation has occurred, is occurring or is about to occur"); Comments of Chadbourne & Parke, at 7 (proposing "a subjective standard that an attorney 'knows' that a material violation has occurred, is occurring or is about to occur"); Comments of Sullivan & Cromwell, at 11 ("Evidence of a material violation

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definition incorporates suggested changes into an objective standard that is designed to facilitate the effective operation of the rule and to encourage the reporting of evidence of material violations.

Evidence of a material violation must first be credible evidence.[45] An attorney is obligated to report when, based upon that credible evidence, "it would be unreasonable, under the circumstances, for a prudent and competent attorney not to conclude that it is reasonably likely that a material violation has occurred, is ongoing, or is about to occur." This formulation, while intended to adopt an objective standard, also recognizes that there is a range of conduct in which an attorney may engage without being unreasonable.[46] The "circumstances" are the circumstances at the time the attorney decides whether he or she is obligated to report the information. These circumstances may include, among others, the attorney's professional skills, background and experience, the time constraints under which the attorney is acting, the attorney's previous experience and familiarity with the client, and the availability of other lawyers with whom the lawyer may consult. Under the revised definition, an attorney is not required (or expected) to report "gossip, hearsay, [or] innuendo."[47] Nor is the rule's reporting obligation triggered by "a combination of circumstances from which the attorney, in retrospect, should have drawn an inference," as one commenter feared.

On the other hand, the rule's definition of "evidence of a material violation" makes clear that the initial duty to report up-the-ladder is not triggered only when the attorney "knows" that a material violation has occurred[48] or when the attorney "conclude[s] there has been a violation, and no reasonable fact finder could conclude otherwise."[49] That threshold for initial reporting within the issuer is too high. Under the Commission's rule, evidence of a material violation must be reported in all circumstances in which it would be unreasonable for a prudent and competent attorney not to conclude that it is "reasonably likely" that a material violation has occurred, is ongoing, or is about to occur. To be "reasonably likely" a material violation must be more than a mere possibility, but it need not be "more likely than not."[50] If a material violation is reasonably likely, an attorney must report evidence of this violation. The term "reasonably likely" qualifies each of the three instances when a report must be made. Thus, a report is required when it is reasonably likely a violation has occurred, when it is reasonably likely a violation is ongoing or when reasonably likely a violation is about to occur.

205.2(f) provides:

(f) *Foreign government issuer* means a foreign issuer as defined in 17 CFR 230.405 eligible to register securities on Schedule B of the Securities Act of 1933 (15 U.S.C. 77a *et seq.*, Schedule B).

We adopt the definition for this new term prescribed under Rule 405.

205.2(g) provides:

(g) *In the representation of an issuer* means providing legal services as an attorney for an issuer, regardless of whether the attorney is employed or retained by the issuer.

The definition we adopt today has been modified from the definition included in the proposing release. The phrase "providing legal services" has been substituted for the term "acting." Some commenters objected that the term "acting" was both imprecise and overly broad, and that the concept of "representation of an issuer" should "apply only to attorneys who are rendering legal advice to the organizational client. * * * and therefore have the professional obligations of an attorney."[51] The substitution of the term "providing legal services" responds to these concerns. We believe that this change, combined with the narrowing of the definition of the term "appearing and practicing" as set forth above, addresses the concerns expressed by the ABA and others.[52]

For the reasons explained in the proposing release,[53] an attorney employed by an investment adviser who prepares, or assists in preparing, materials for a registered investment company that the attorney has reason to believe will be submitted to or filed with the Commission by or on behalf of a registered investment company is appearing and practicing before the Commission under this definition.

Although some commenters objected to this construction of the definition of "in the representation of an issuer,"[54] those commenters did not contest either the fact that such an attorney, though employed by the investment adviser rather than the investment company, is providing legal services for the investment company or the logical implication of that fact: that the attorney employed by the investment adviser is accordingly representing the investment company before the Commission.[55] Indeed, the Investment Company Institute ("ICI") opposes the Commission's construction of its rule because, the ICI asserts, the Commission's construction might make investment advisers limit the participation of attorneys employed or retained by the investment adviser in preparing filings for investment companies, thereby forcing the investment companies "to retain their own counsel" to do exactly the same work now performed by attorneys for the investment adviser.[56]

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means information of which the attorney is consciously aware that would, in the attorney's judgment, constitute a material violation that has occurred, is occurring, or is about to occur."); Comments of the American Bar Association, at 17 (recommending use of "the knowledge standard").

[45] *See* Comments of Susan P. Koniak *et al.*, at 18.

[46] Comments of Richard W. Painter, at 5–6.

[47] Comments of the Association of the Bar of the City of New York, at 10.

[48] The standard was suggested, *e.g.*, in Comments of the American Bar Association, at 5, 16–17.

[49] Comments of Cleary, Gottlieb, Steen & Hamilton, at 5–6 (any lower trigger for reporting would be equivocal, would lead to disparate application of the rule, and would "chill" the attorney-client relationship).

[50] The Commission intends the definition of the term "reasonably likely" to be consistent with the discussion of the term included in the adopting release for the recently adopted final rule governing disclosure of off-balance sheet arrangements, enacted pursuant to § 401(a) of the Sarbanes-Oxley Act.

[51] Comments of the American Bar Association, at 14 ("It is not uncommon for persons who were attorneys and may still retain their license to move into other non-legal capacities in the organization. * * * These persons should be subject to no greater obligations to the organization than someone who is not an attorney."). However, the ABA stated that it believed that the rule "appropriately applied to any attorney for the issuer" who renders legal advice to the issuer. *Id.*

[52] We also note that the change should address concerns expressed that counsel to underwriters or similar persons might be covered by the rule.

[53] 67 FR 71678–79.

[54] *See, e.g.*, Comments of the Investment Company Institute at 1–5 (asserting that the Commission's construction of its rule may cause investment advisers to "limit or even eliminate the participation of their internal and outside lawyers in the preparation of fund filings and materials, and in providing day-to-day advice to advisory personnel responsible for managing funds, in order to ensure that such lawyers are not 'involved in the representation of an issuer' or 'practicing before the Commission' within the meaning of the proposed rule.").

[55] On the correctness of this inference, *see, e.g.*, Comments of Thomas D. Morgan at 3–4 (pointing out that "current law" makes an attorney employed by an investment adviser the "legal representative" of an investment company under these circumstances, although one has to take "a logical step" to reach that conclusion) (citing *Restatement (Third) of the Law Governing Lawyers* section 51(4)(2000)). An attorney-client relationship does not depend on payment for legal services performed. However, the legal services provided by an investment adviser to an investment company are usually performed pursuant to an advisory contract along with other services (such as investment advice) and are covered by the overall investment advisory fee.

[56] Comments of the Investment Company Institute, at 4. As noted in the proposing release, 67

205.2(h) provides:

(h) *Issuer* means an issuer (as defined in section 3 of the Securities Exchange Act of 1934 (15 U.S.C. 78c)), the securities of which are registered under section 12 of that Act (15 U.S.C. 78*l*), or that is required to file reports under section 15(d) of that Act (15 U.S.C. 78o(d)), or that files or has filed a registration statement that has not yet become effective under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*), and that it has not withdrawn, but does not include a foreign government issuer. For purposes of paragraphs (a) and (g) of this section, the term "issuer" includes any person controlled by an issuer, where an attorney provides legal services to such person on behalf of, or at the behest, or for the benefit of the issuer, regardless of whether the attorney is employed or retained by the issuer.

The definition for the term "issuer" we adopt today incorporates the definition set forth in Section 2(a)(7) of the Act, which in turn incorporates the definition contained in the Exchange Act. The definition has been modified to specifically exclude foreign government issuers, defined above.[57]

The definition also has been modified to make clear that, for purposes of the terms "appearing and practicing" before the Commission and "in the representation of an issuer," the term "issuer" includes any person controlled by an issuer (*e.g.*, a wholly-owned subsidiary), where the attorney provides legal services to that person for the benefit of or on behalf of an issuer. We consider the change important to achieving the objectives of Section 307 in light of the statutory reference to appearing and practicing "in any way" in the representation of an issuer. Under the revised definition, an attorney employed or retained by a non-public subsidiary of a public parent issuer will be viewed as "appearing and practicing" before the Commission "in the representation of an issuer" whenever acting "on behalf of, or at the behest, or for the benefit of" the parent. This language, consistent with the Commission's comment in the proposing release (although now limited to persons controlled by an issuer) would encompass any subsidiary covered by an umbrella representation agreement or understanding, whether explicit or implicit, under which the attorney represents the parent company and its subsidiaries, and can invoke privilege claims with respect to all communications involving the parent and its subsidiaries. Similarly, an attorney at a non-public subsidiary appears and practices before the Commission in the representation of an issuer when he or she is assigned work by the parent (*e.g.*, preparation of a portion of a disclosure document) which will be consolidated into material submitted to the Commission by the parent, or if he or she is performing work at the direction of the parent and discovers evidence of misconduct which is material to the parent. The definition of the term is also intended to reflect the duty of an attorney retained by an issuer to report to the issuer evidence of misconduct by an agent of the issuer (*e.g.*, an underwriter) if the misconduct would have a material impact upon the issuer.[58]

205.2(i) provides:

(i) *Material violation* means a material violation of an applicable United States federal or state securities law, a material breach of fiduciary duty arising under United States federal or state law, or a similar material violation of any United States federal or state law.

The definition we adopt today modifies the definition set forth in the proposed rule by adding the phrases "United States federal or state" and "arising under United States federal or state law." This modification clarifies that material violations must arise under United States law (federal or state), and do not include violations of foreign laws. The final rule does not define the word "material," because that term has a well-established meaning under the federal securities laws[59] and the Commission intends for that same meaning to apply here.

205.2(j) provides:

(j) *Non-appearing foreign attorney* means an attorney:

(1) Who is admitted to practice law in a jurisdiction outside the United States;

(2) Who does not hold himself or herself out as practicing, and does not give legal advice regarding, United States federal or state securities or other laws (except as provided in paragraph (j)(3)(ii) of this section); and

(3) Who:

(i) Conducts activities that would constitute appearing and practicing before the Commission only incidentally to, and in the ordinary course of, the practice of law in a jurisdiction outside the United States; or

(ii) Is appearing and practicing before the Commission only in consultation with counsel, other than a non-appearing foreign attorney, admitted or licensed to practice in a state or other United States jurisdiction.

The final rule provides that a "non-appearing foreign attorney" does not "appear and practice before the Commission" for purposes of the rule. In brief, the definition excludes from the rule those attorneys who; (1) Are admitted to practice law in a jurisdiction outside the United States; (2) do not hold themselves out as practicing, or giving legal advice regarding, United States law; and (3) conduct activities that would constitute appearing and practicing before the Commission only (i) incidentally to a foreign law practice, or (ii) in consultation with United States counsel. A non-United States attorney must satisfy all three criteria of the definition to be excluded from the rule.

The effect of this definition will be to exclude many, but not all, foreign attorneys from the rule's coverage. Foreign attorneys who provide legal advice regarding United States securities law, other than in consultation with United States counsel, are subject to the rule if they conduct activities that constitute appearing and practicing before the Commission. For example, an attorney licensed in Canada who independently advises an issuer regarding the application of Commission regulations to a periodic filing with the Commission is subject to the rule. Non-United States attorneys who do not hold themselves out as practicing United States law, but who engage in activities that constitute appearing and practicing before the Commission, are subject to the rule unless they appear and practice before the Commission only incidentally to a foreign law practice or in consultation with United States counsel.

Proposed Part 205 drew no distinction between the obligations of United States and foreign attorneys. The proposing release requested comment on the effects of the proposed rule on attorneys who are licensed in foreign jurisdictions or otherwise subject to foreign statutes, rules and ethical standards. The Commission recognized that the proposed rule could raise difficult issues for foreign lawyers and

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FR 71678–79, and below in the discussion of Section 205.3(b), an attorney employed by an investment adviser who becomes aware of evidence of a material violation that is material to an investment company while thus representing that investment company before the Commission has a duty to report such evidence up-the-ladder within the investment company. For the reasons explained in the proposing release and noted below, however, such reporting does no violence to the attorney-client privilege. *See Restatement (Third) of the Law Governing Lawyers*, section 75 and cmt. d (explaining that in a subsequent proceeding in which the co-client's interests are adverse there is normally no attorney-client privilege regarding either co-client's communications with their attorney during the co-client relationship).

[57] We also note that the changes should address concerns expressed that counsel to underwriters or similar persons might be covered by the rule.

[58] An attorney who represents a subsidiary or other person controlled by an issuer at the behest, for the benefit, or on behalf of a parent issuer who becomes aware of evidence of a material violation that is material to the issuer should report the evidence up-the-ladder through the issuer, as set forth in Section 205.3(b) of the rule.

[59] *See Basic, Inc.* v. *Levinson*, 485 U.S. 224, 231–36 (1988); *TSC Indus.* v. *Northway, Inc*, 426 U.S. 438 (1976).

international law firms because applicable foreign standards might be incompatible with the proposed rule. The Commission also recognized that non-United States lawyers play significant roles in connection with Commission filings by both foreign and United States issuers.

On December 17, 2002, the Commission hosted a Roundtable on the International Impact of the Proposed Rules Regarding Attorney Conduct. The Roundtable offered foreign participants the opportunity to share their views on the application of the proposed rule outside of the United States. The participants consisted of international regulators, professional associations, and law firms, among others. Participants at the Roundtable expressed concern about many aspects of the proposed rule. Some objected to the scope of the proposed definition of "appearing and practicing before the Commission," noting that a foreign attorney who prepares a contract or other document that subsequently is filed as an exhibit to a Commission filing might be covered by the rule. In addition, some of the participants stated that foreign attorneys with little or no experience or training in United States securities law may not be competent to determine whether a material violation has occurred that would trigger reporting requirements. Others stated that the "noisy withdrawal" and disaffirmation requirements of the proposed rule would conflict with the laws and principles of confidentiality and the attorney-client privilege recognized in certain foreign jurisdictions.

The Commission received more than 40 comment letters that addressed the international aspects of the proposed attorney conduct rule. Many suggested that non-United States attorneys should be exempt from the rule entirely, arguing that the Commission would violate principles of international comity by exercising jurisdiction over the legal profession outside of the United States. Others recommended that the Commission take additional time to consider these conflict issues, and provide a temporary exemption from the rule for non-United States attorneys. The majority of commenters asserted that the proposed rule's "noisy withdrawal" and disaffirmation requirements would conflict with their obligations under the laws of their home jurisdictions.

Section 205.2(j) and the final definition of "appearing and practicing before the Commission" under § 205.2(a) together address many of the concerns expressed by foreign lawyers. Foreign lawyers who are concerned that they may not have the expertise to identify material violations of United States law may avoid being subject to the rule by declining to advise their clients on United States law or by seeking the assistance of United States counsel when undertaking any activity that could constitute appearing and practicing before the Commission. Mere preparation of a document that may be included as an exhibit to a filing with the Commission does not constitute "appearing and practicing before the Commission" under the final rule, unless the attorney has notice that the document will be filed with or submitted to the Commission and he or she provides advice on United States securities law in preparing the document.

The Commission respects the views of the many commenters who expressed concerns about the extraterritorial effects of a rule regulating the conduct of attorneys licensed in foreign jurisdictions. The Commission considers it appropriate, however, to prescribe standards of conduct for an attorney who, although licensed to practice law in a foreign jurisdiction, appears and practices on behalf of his clients before the Commission in a manner that goes beyond the activities permitted to a non-appearing foreign attorney. Non-United States attorneys who believe that the requirements of the rule conflict with law or professional standards in their home jurisdiction may avoid being subject to the rule by consulting with United States counsel whenever they engage in any activity that constitutes appearing and practicing before the Commission. In addition, as discussed in Section 205.6(d) below, the Commission is also adopting a provision to protect a lawyer practicing outside the United States in circumstances where foreign law prohibits compliance with the Commission's rule.

205.2(k) provides:

(k) *Qualified legal compliance committee* means a committee of an issuer (which also may be an audit or other committee of the issuer) that:

(1) Consists of at least one member of the issuer's audit committee (or, if the issuer has no audit committee, one member from an equivalent committee of independent directors) and two or more members of the issuer's board of directors who are not employed, directly or indirectly, by the issuer and who are not, in the case of a registered investment company, "interested persons" as defined in section 2(a)(19) of the Investment Company Act of 1940 (15 U.S.C. 80a–2(a)(19));

(2) Has adopted written procedures for the confidential receipt, retention, and consideration of any report of evidence of a material violation under § 205.3;

(3) Has been duly established by the issuer's board of directors, with the authority and responsibility:

(i) To inform the issuer's chief legal officer and chief executive officer (or the equivalents thereof) of any report of evidence of a material violation (except in the circumstances described in § 205.3(b)(4));

(ii) To determine whether an investigation is necessary regarding any report of evidence of a material violation by the issuer, its officers, directors, employees or agents and, if it determines an investigation is necessary or appropriate, to:

(A) Notify the audit committee or the full board of directors;

(B) Initiate an investigation, which may be conducted either by the chief legal officer (or the equivalent thereof) or by outside attorneys; and

(C) Retain such additional expert personnel as the committee deems necessary; and

(iii) At the conclusion of any such investigation, to:

(A) Recommend, by majority vote, that the issuer implement an appropriate response to evidence of a material violation; and

(B) Inform the chief legal officer and the chief executive officer (or the equivalents thereof) and the board of directors of the results of any such investigation under this section and the appropriate remedial measures to be adopted; and

(4) Has the authority and responsibility, acting by majority vote, to take all other appropriate action, including the authority to notify the Commission in the event that the issuer fails in any material respect to implement an appropriate response that the qualified legal compliance committee has recommended the issuer to take.

A QLCC, as here defined, is part of an alternative procedure for reporting evidence of a material violation. That alternative procedure is set out in § 205.3(c) of the rule.

The definition of a QLCC in § 205.2(k) of the final rule contains a few modifications from the definition in the proposed rule. In the first clause of the definition, the final rule provides that an audit or other committee of the issuer may serve as the QLCC. As a result, the issuer is not required to form a QLCC as a new corporate structure, unless it wishes to, so long as another committee of the issuer meets all of the requisite criteria for a QLCC and agrees to function as a QLCC in addition to its separate duties and responsibilities. This change responds to comments that issuers should not be required to create a new committee to serve as a QLCC, so long as an existing committee contains the required number of independent directors.[60]

[60] Comments of the American Corporate Counsel Association, at 9–10; Comments of Association of the Bar of the City of New York, at 42; Comments of Corporations Committee, Business Law Section,

Subsection 205.2(k)(1) of the final rule, which addresses the composition of the QLCC, provides that if an issuer has no audit committee, the requirement to appoint at least one member of the audit committee to the QLCC may be met by appointing instead a member from an equivalent committee of independent directors. The Commission does not intend to limit use of the QLCC mechanism only to those issuers that have an audit committee. However, the Commission believes that the requirement that the QLCC be comprised of members who are not employed directly or indirectly by the issuer is warranted and appropriate, and thus disagrees with a commenter's suggestion to permit non-independent board members to be on the QLCC.[61]

Subsection 205.2(k)(3)(iii)(A) has been modified to clarify that the QLCC shall have the authority and responsibility to recommend that an issuer implement an appropriate response to evidence of a material violation, but not to require the committee to direct the issuer to take action. This modification responds to comments that the proposed rule would be in conflict with established corporate governance models insofar as the QLCC would have the explicit authority to compel a board of directors to take certain remedial actions.[62]

The proposed rule did not specify whether the QLCC could act if its members did not all agree. In response to comments expressing concern over this point,[63] language has been included in subsections 205.2(k)(3) and (4) of the final rule to clarify that decisions and actions of the QLCC must be made and taken based upon majority vote. Unanimity is not required for a QLCC to operate; nor should an individual member of a QLCC act contrary to the collective decision of the QLCC. Accordingly, the final rule specifies that a QLCC may make its recommendations and take other actions by majority vote.

Commenters suggested both that issuers would have great difficulty finding qualified persons to serve on a QLCC because of the burdens and risks of such service,[64] and that many companies will utilize a QLCC because reporting evidence of a material violation to a QLCC relieves an attorney of responsibility to assess the issuer's response.[65] The Commission does not know how widespread adoption of the QLCC alternative will be, but encourages issuers to do so as a means of effective corporate governance. In any event, the Commission does not intend service on a QLCC to increase the liability of any member of a board of directors under state law and, indeed, expressly finds that it would be inconsistent with the public interest for a court to so conclude.

As in the proposed rule, the final rule provides that members of the QLCC may not be "employed, directly or indirectly, by the issuer." This language, which is also included in Section 205.3(b)(3), is drawn directly from Section 307 of the Sarbanes-Oxley Act. The Commission considers it appropriate and consistent with the mandate of the Act to ensure a high degree of independence in QLCC members and members of committees to whom reports are made under Section 205.3(b)(3). Accordingly, the Commission anticipates that these provisions will be amended to conform to final rules defining who is an "independent" director under Section 301 of the Act, upon adoption of those rules.

205.2(l) provides:

(l) *Reasonable* or *reasonably* denotes, with respect to the actions of an attorney, conduct that would not be unreasonable for a prudent and competent attorney.

The definition of "reasonable" or "reasonably" is based on Rule 1.0(h) of the ABA's Model Rules of Professional Conduct, modified to emphasize that a range of conduct may be reasonable.

205.2(m) provides:

(m) *Reasonably believes* means that an attorney believes the matter in question and that the circumstances are such that the belief is not unreasonable.

This definition is based on the definition of "reasonable belief" or "reasonably believes" in Rule 1.0(i) of the ABA's Model Rules of Professional Conduct, modified to emphasize that the range of possible reasonable beliefs regarding a matter may be broad—limited for the purposes of this rule by beliefs that are unreasonable. Because the definition no longer is used in connection with the definition of "evidence of a material violation," the proposed rule's attempt to exclude the subjective element in "reasonable belief" has been abandoned.

205.2(n) provides:

(n) *Report* means to make known to directly, either in person, by telephone, by e-mail, electronically, or in writing.

The definition for this term has not been changed from the one included in the proposed rule.

Section 205.3—Issuer as Client

205.3(a) provides:

(a) *Representing an Issuer.* An attorney appearing and practicing before the Commission in the representation of an issuer owes his or her professional and ethical duties to the issuer as an organization. That the attorney may work with and advise the issuer's officers, directors, or employees in the course of representing the issuer does not make such individuals the attorney's clients.

This section makes explicit that the client of an attorney representing an issuer before the Commission is the issuer as an entity and not the issuer's individual officers or employees that the attorney regularly interacts with and advises on the issuer's behalf. Most commenters supported the second sentence of the subsection as it is consistent with a lawyer's recognized obligations under accepted notions of professional responsibility.[66] Thus, this sentence remains unchanged in the final rule.

The proposed rule provided that an attorney "shall act in the best interest of the issuer and its shareholders." Commenters raised three principal concerns regarding that provision: It misstates an attorney's duty under traditional ethical standards in charging an attorney with acting in the "best interest" of the issuer; it suggests attorneys have a duty to shareholders creating a risk that the failure to observe that duty could form the basis for a private action against the attorney by any of these shareholders;[67] and it appears to contradict the view expressed by the Commission in the proposing release that "nothing in Section 307 creates a private right of action against an attorney."[68] As the Commission agrees, in part, with these comments, it has modified language in the final rule.

As to the first concern, the Commission recognizes that it is the client issuer, acting through its management, who chooses the

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State Bar of California, at 12; Comments of Skadden, Arps, Slate, Meagher & Flom, at 12, 20, 25.

[61] *See* Comments of America's Community Bankers, at 5–6.

[62] Comments of Business Law Section, New York State Bar Association, at 14–15; Comments of the Business Roundtable, at 2–3.

[63] Comments of the American Bar Association, at 27; Comments of Business Law Section, New York State Bar Association, at 15.

[64] Comments of Clifford Chance, at 4–5; Comments of Emerson Electric Co., at 5.

[65] Comments of Susan P. Koniak *et al.*, at 11; Comments of Richard W. Painter, at 5; Comments of Thomas D. Morgan, at 12.

[66] *See* ABA Model Rule 1.13, "Organization as Client," at 1:139.

[67] *See, e.g.*, Comments of Cleary, Gottlieb, Steen & Hamilton, at 3–4; Comments of Corporations Committee, Business Law Section, The State Bar of California, at 7; Comments of the American Corporate Counsel Association, at 11; Comments of Task Force on Corporate Responsibility of the County of New York Lawyers' Association, at 2–3.

[68] *See* Comments of the Association of the Bar of the City of New York, at 47–50.

objectives the lawyer must pursue, even when unwise, so long as they are not illegal or unethical. However, we disagree with the comment to the extent it suggests counsel is never charged with acting in the best interests of the issuer. ABA Model Rule 1.13 provides that an attorney is obligated to act in the "best interests" of an issuer in circumstances contemplated by this rule: that is, when an individual associated with the organization is violating a legal duty, and the behavior "is likely to result in substantial injury" to the organization. In those situations, it is indeed appropriate for counsel to act in the best interests of the issuer by reporting up-the-ladder.[69] However, the Commission appreciates that, with respect to corporate decisions traditionally reserved for management, counsel is not obligated to act in the "best interests" of the issuer. Thus, the reference in the proposed rule to the attorney having a duty to act in the best interests of the issuer has been deleted from the final rule. The sentence has also been modified to make it clear the lawyer "owes his or her professional and ethical duties to the issuer as an organization."

As to the second concern, the courts have recognized that counsel to an issuer does not generally owe a legal obligation to the constituents of an issuer—including shareholders.[70] The Commission does not want the final rule to suggest it is creating a fiduciary duty to shareholders that does not currently exist. Accordingly, we have deleted from the final rule the reference to the attorney being obligated to act in the best interest of shareholders. This modification should also address the third concern as the Commission does not intend to create a private right of action against attorneys or any other person under any provision of this part. Indeed, the final rule contains a new provision, 205.7, that expressly provides that nothing in this part is intended to or does create a private right of action.

205.3(b) provides:

(b) *Duty to report evidence of a material violation.* (1) If an attorney, appearing and practicing before the Commission in the representation of an issuer, becomes aware of evidence of a material violation by the issuer or by any officer, director, employee, or agent of the issuer, the attorney shall report such evidence to the issuer's chief legal officer (or the equivalent thereof) or to both the issuer's chief legal officer and its chief executive officer (or the equivalents thereof) forthwith. By communicating such information to the issuer's officers or directors, an attorney does not reveal client confidences or secrets or privileged or otherwise protected information related to the attorney's representation of an issuer.

Section 205.3(b) clarifies an attorney's duty to protect the interests of the issuer the attorney represents by reporting within the issuer evidence of a material violation by any officer, director, employee, or agent of the issuer. The section was broadly approved by commenters. Paragraph (b)(1) describes the first step that an attorney representing an issuer is required to take after he or she becomes aware of evidence of a material violation, now defined in § 205.2. The definition of "evidence of a material violation" originally proposed was controversial and has been modified (as discussed above). Paragraph (b)(1), however, was otherwise generally approved.[71]

Section 205.3(b)(2) in Proposed Rule: Withdrawn

(2) The attorney reporting evidence of a material violation shall take steps reasonable under the circumstances to document the report and the response thereto and shall retain such documentation for a reasonable time.

The language set forth from proposed subsection 205.3(b)(2) of the proposed rule has been withdrawn.

In the final rules we have eliminated all requirements that reports and responses be documented and maintained for a reasonable period. Under the proposed rule, a lawyer would have been required to document his or her report of evidence of a material violation (205.3(b)(2)); the CLO would have been required to document any inquiry in response to a report (205.3(b)(3)); a reporting attorney would have been required to document when he or she received an appropriate response to a report (205.3(b)(2)); and an attorney who believed he or she did not receive an appropriate response to a report would have been required to document that response (205.3(b)(8)(ii)).

The Commission proposed the documentation requirements because it believed that up-the-ladder reporting would be handled more thoughtfully if those involved memorialized their decisions. It was also the Commission's view that documentation would benefit reporting attorneys as it would provide them with a contemporaneous written record of their actions that they could use in their defense if their up-the-ladder reporting subsequently became the subject of litigation. To that end, the Commission proposed 205.3(e)(1) (which is codified in the final rule as § 205.3(d)(1)) that specifically authorizes an attorney to use "[a]ny report under this section * * * or any response thereto * * * in connection with any investigation, proceeding, or litigation in which the attorney's compliance with this part is in issue." Moreover, the Commission noted (*see* note 52 to the proposing release) that in at least one reported judicial decision, an associate at a law firm who had memorialized his reasons for resigning from the firm over a dispute regarding the adequacy of disclosures in a registration statement, was dismissed as a defendant in subsequent litigation over the appropriateness of those disclosures because his contemporaneous record demonstrated he had not participated in the fraud.

Nevertheless, the comments that the Commission received to the proposed documentation requirements were almost unanimously in opposition to its inclusion in the final rule. A number of commenters expressed concern that the documentation requirement could be an impediment to open and candid discussions between attorneys and their issuer clients. Those commenters were of the view it would stultify the consultation process because if the client knows the lawyer is documenting discussions regarding a potential material violation, managers are less likely to be honest and forthcoming.[72]

Other commenters expressed concern that the documentation requirement has the potential to create a conflict of interest between the lawyer and his or her client. For example, one commenter

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[69] *See* ABA Model Rule 1.13, at 1:139.

[70] Decisions in a number of states recognize that, under state law, an attorney for an issuer does not owe a fiduciary duty to shareholders. *See Pelletier* v. *Zweifel*, 921 F.2d 1465, 1491–92 n.60 (11th Cir.) *cert. denied*, 502 U.S. 955 (1991) (Under Georgia law "[I]t is a black letter principle of corporation law that a corporation's counsel does not owe * * * [a] fiduciary duty to the corporation's shareholders"). *See also Skarbrevik* v. *Cohen, England & Whitfield*, 231 Cal. App. 3d 692, 703 (1991) (Under California law, "[a]n attorney representing a corporation does not become the representative of its stockholders merely because the attorney's actions on behalf of the corporation also benefit the stockholders; as attorney for the corporation, counsel's first duty is to the corporation."); *Egan* v. *McNamara*, 467 A.2d 733, 738 (DC 1983) ("According to the District of Columbia Code of Professional Responsibility (Code), an attorney represents, and therefore owes a duty to, the entity that retains him. * * * When retained to represent a corporation, he represents the entity, not its individual shareholders, officers, or directors.").

[71] The Comment of Federal Bar Counsel, at 12–13, for example, objected to "becomes aware" in (b)(1) but appears to have done so in connection with the proposed definition of "evidence of a material violation." The revisions made to that definition appear to address those objections.

[72] *See, e.g.*, Comments of the American Bar Association, at 22; Comments of the American Corporate Counsel Association, at 5; Comments of the Association of the Bar of the City of New York, at 16; Comments of Cleary, Gottlieb, Steen & Hamilton, at 6.

stated that it "places counsel to the issuer in the untenable position of having to protect himself or herself while trying to advise his or her client."[73] Similarly, another commenter pointed out that documentation would "occur at exactly the time when there was disagreement between an attorney and the client. At the very least, requiring the attorney to produce such product by virtue of his or her separate obligation to the Commission is bound to present potential for conflict of interest."[74] Indeed, it was pointed out, there may be occasions where the preparation of documentation is not in the best interests of the client.[75]

Additionally, commenters opined that the documentation requirement might increase the issuer's vulnerability in litigation. They noted that a report will be a "treasure trove of selectively damning evidence"[76] and, while the Commission may be of the view that such documentation should be protected by the attorney-client privilege, the applicability of the privilege will be decided by the courts. Thus, there is considerable uncertainty as to whether it will be protected. At a minimum, it was contended, assertions of privilege will be met with significant and prolonged legal challenges.[77]

At least at the present time, the potential harms from mandating documentation may not justify the potential benefits. In all likelihood, in the absence of an affirmative documentation requirement, prudent counsel will consider whether to advise a client in writing that it may be violating the law.[78] In other situations, responsible corporate officials may direct that such matters be documented. In those situations, the Commission's goal will be met, but not in an atmosphere where the issuer and the attorney may perceive that their interests are in conflict.

205.3(b)(2) provides:

(2) The chief legal officer (or the equivalent thereof) shall cause such inquiry into the evidence of a material violation as he or she reasonably believes is appropriate to determine whether the material violation described in the report has occurred, is ongoing, or is about to occur. If the chief legal officer (or the equivalent thereof) determines no material violation has occurred, is ongoing, or is about to occur, he or she shall notify the reporting attorney and advise the reporting attorney of the basis for such determination. Unless the chief legal officer (or the equivalent thereof) reasonably believes that no material violation has occurred, is ongoing, or is about to occur, he or she shall take all reasonable steps to cause the issuer to adopt an appropriate response, and shall advise the reporting attorney thereof. In lieu of causing an inquiry under this paragraph (b), a chief legal officer (or the equivalent thereof) may refer a report of evidence of a material violation to a qualified legal compliance committee under paragraph (c)(2) of this section if the issuer has duly established a qualified legal compliance committee prior to the report of evidence of a material violation.

Paragraph (b)(2) (corresponding to paragraph (b)(3) of the proposed rule, as revised) describes the responsibilities of the issuer's CLO (or the equivalent thereof) in handling reported evidence of a material violation. The final rule adds a provision expressly allowing the CLO to make use of an issuer's QLCC. The revision eliminates the CLO's documentation requirement and, for the time being, the CLO's obligation, as part of the QLCC process, to notify the Commission in the unlikely event that the issuer fails to take appropriate remedial actions recommended by the QLCC after a determination by the QLCC that there has been or is about to be a material violation. It also changes language that would have required a CLO who reasonably believed that a material violation had occurred, was ongoing, or was about to occur to "take any necessary steps to ensure that the issuer adopts an appropriate response" to language that would, under the same circumstances, require the CLO to "take all reasonable steps to cause the issuer to adopt an appropriate response." These are the points on which the corresponding paragraph in the proposed rule was criticized.[79] Reporting up-the-ladder was otherwise consistently supported. The CLO is responsible for investigating the reported evidence of a material violation for the reasons set out in the proposing release.[80] The second sentence of this paragraph has been modified to clarify the circumstances under which the CLO must advise a reporting attorney that no violation has been found. Thus, the term "determines" has been substituted for "reasonably believes" in the second sentence. This change makes the second sentence consistent with the first sentence which requires the CLO to cause an inquiry to be conducted "to determine" whether a violation has occurred, is ongoing, or is about to occur. Other minor textual changes have been made to the paragraph that do not alter its substantive requirements.

205.3(b)(3) provides:

(3) Unless an attorney who has made a report under paragraph (b)(1) of this section reasonably believes that the chief legal officer or the chief executive officer of the issuer (or the equivalent thereof) has provided an appropriate response within a reasonable time, the attorney shall report the evidence of a material violation to:

(i) The audit committee of the issuer's board of directors;

(ii) Another committee of the issuer's board of directors consisting solely of directors who are not employed, directly or indirectly, by the issuer and are not, in the case of a registered investment company, "interested persons" as defined in section 2(a)(19) of the Investment Company Act of 1940 (15 U.S.C. 80a–2(a)(19)) (if the issuer's board of directors has no audit committee); or

(iii) The issuer's board of directors (if the issuer's board of directors has no committee consisting solely of directors who are not employed, directly or indirectly, by the issuer and are not, in the case of a registered investment company, "interested persons" as defined in section 2(a)(19) of the Investment Company Act of 1940 (15 U.S.C. 80a–2(a)(19))).

This paragraph describes the circumstances under which an attorney who has reported evidence of a material violation to the issuer's CLO and/or CEO is obliged to report that evidence further up-the-ladder within the client issuer. The paragraph tracks the statutory language in Section 307 of the Act, is not controversial, and is adopted without change from the corresponding paragraph in the proposed rule—(b)(4)—for the reasons set out in the proposing release.[81]

205.3(b)(4) provides:

(4) If an attorney reasonably believes that it would be futile to report evidence of a material violation to the issuer's chief legal officer and chief executive officer (or the equivalents thereof) under paragraph (b)(1) of this section, the attorney may report such

[73] Comments of Skadden, Arps, Slater, Meagher & Flom, at 23.

[74] Comments of Corporations Committee, Business Law Section, the State Bar of California, at 10.

[75] *Id.*

[76] Comments of the American Corporate Counsel Association, at 5.

[77] *See* Comments of Corporations Committee, Business Law Section, the State Bar of California, at 10.

[78] *See* Comments of Cleary, Gottlieb, Steen & Hamilton, at 6.

[79] *E.g.*, Comments of the SIA/TBMA, at 16 (CLO should be able to make use of the QLCC); Comments of J.P. Morgan Chase & Co., at 3 (CLO should not be required to notify the Commission that a material violation has occurred and disaffirm documents that the issuer has submitted to or filed with the Commission that the CLO believes are false or materially misleading); Comments of Compass Bancshares, at 2–3 (requiring CLO "to issue a response in writing to the attorney creates an undue burden on the CLO [in] responding to an issue which the CLO may not feel is warranted"); Comments of Charles Schwab & Co., at 1–2 (CLO "typically does not have authority to sanction employees outside of his or her chain of command, to require the business units to adopt new procedures, or even to make disclosure on behalf of the company without the concurrence of other executives").

[80] 67 FR 71685–86.

[81] 67 FR 71686.

evidence as provided under paragraph (b)(3) of this section.

The basis for paragraph (b)(4) is implicit in Section 307 of the Act. This bypass provision, however, is not controversial, was not the subject of comment, and is adopted without any substantive change from the corresponding paragraph—(b)(5)—of the proposed rule for the reasons set out in the proposing release.[82]

205.3(b)(5) provides:

(5) An attorney retained or directed by an issuer to investigate evidence of a material violation reported under paragraph (b)(1), (b)(3), or (b)(4) of this section shall be deemed to be appearing and practicing before the Commission. Directing or retaining an attorney to investigate reported evidence of a material violation does not relieve an officer or director of the issuer to whom such evidence has been reported under paragraph (b)(1), (b)(3), or (b)(4) of this section from a duty to respond to the reporting attorney.

Paragraph (b)(5) addresses circumstances in which those to whom evidence of a material violation is reported direct others, either in-house attorneys or outside attorneys retained for that purpose, to investigate the possible violation. It elicited only a few comments, all of them negative.[83] The thrust of these comments was that issuers would be reluctant to retain counsel to investigate reports if those attorneys might trigger up-the-ladder reporting that could result in reporting out to the Commission. The definition of "appropriate response" in section 205.2(b) of the final rule has been modified to address these comments. Further, the modifications to the proposed rule reflected in final rule §§ 205.3(b)(6) and (b)(7) below, will relieve attorneys retained or directed to investigate or litigate reports of violations from reporting up-the-ladder in a number of instances.

Paragraph (b)(5) is adopted essentially as proposed. This paragraph—numbered (b)(6) in the proposed rule " makes two points: first, that the investigating attorneys are themselves appearing and practicing before the Commission and are accordingly bound by the requirements of the proposed rule; and, second, that the officers or directors who caused them to investigate remain obligated to respond to the attorney who initially reported the evidence of a material violation that other attorneys have been directed to investigate.

205.3(b)(6) and (b)(7) provide:

(6) An attorney shall not have any obligation to report evidence of a material violation under this paragraph (b) if:

(i) The attorney was retained or directed by the issuer's chief legal officer (or the equivalent thereof) to investigate such evidence of a material violation and:

(A) The attorney reports the results of such investigation to the chief legal officer (or the equivalent thereof); and

(B) Except where the attorney and the chief legal officer (or the equivalent thereof) each reasonably believes that no material violation has occurred, is ongoing, or is about to occur, the chief legal officer (or the equivalent thereof) reports the results of the investigation to the issuer's board of directors, a committee thereof to whom a report could be made pursuant to paragraph (b)(3) of this section, or a qualified legal compliance committee; or

(ii) The attorney was retained or directed by the chief legal officer (or the equivalent thereof) to assert, consistent with his or her professional obligations, a colorable defense on behalf of the issuer (or the issuer's officer, director, employee, or agent, as the case may be) in any investigation or judicial or administrative proceeding relating to such evidence of a material violation, and the chief legal officer (or the equivalent thereof) provides reasonable and timely reports on the progress and outcome of such proceeding to the issuer's board of directors, a committee thereof to whom a report could be made pursuant to paragraph (b)(3) of this section, or a qualified legal compliance committee.

(7) An attorney shall not have any obligation to report evidence of a material violation under this paragraph (b) if such attorney was retained or directed by a qualified legal compliance committee:

(i) To investigate such evidence of a material violation; or

(ii) To assert, consistent with his or her professional obligations, a colorable defense on behalf of the issuer (or the issuer's officer, director, employee, or agent, as the case may be) in any investigation or judicial or administrative proceeding relating to such evidence of a material violation.

As noted above in our discussion of paragraph (b)(5) of the final rule, a number of commenters expressed the view that the final rule should eliminate any requirement that attorneys report up-the-ladder when they are retained or directed to investigate a report of a material violation or to litigate whether a violation has occurred. New paragraphs (b)(6) and (b)(7) respond to these legitimate comments, and narrow considerably the instances when it is likely to be necessary for such an attorney to report up-the-ladder. Paragraph (b)(6) addresses the responsibilities of attorneys retained or directed to investigate or litigate reported violations by the chief legal officer (or the equivalent thereof); paragraph (b)(7) addresses circumstances where attorneys are retained or directed to investigate or litigate reported violations by a qualified legal compliance committee. Where an attorney is retained to investigate by the chief legal officer, the attorney has no obligation to report where the results of the investigation are provided to the chief legal officer and the attorney and the chief legal officer agree no violation has occurred and report the results of the inquiry to the issuer's board of directors or to an independent committee of the board. An attorney retained or directed by the chief legal officer to litigate a reported violation does not have a reporting obligation so long as he or she is able to assert a colorable defense on behalf of the issuer and the chief legal officer provides reports on the progress and outcome of the litigation to the issuer's board of directors. An attorney retained or directed by a qualified legal compliance committee to investigate a reported violation has no reporting obligations. Similarly, an attorney retained or directed by a qualified legal compliance committee to litigate a reported violation has no reporting obligation provided he or she may assert a colorable defense on behalf of the issuer.

205.3(b)(8) and (b)(9) provide:

(8) An attorney who receives what he or she reasonably believes is an appropriate and timely response to a report he or she has made pursuant to paragraph (b)(1), (b)(3), or (b)(4) of this section need do nothing more under this section with respect to his or her report.

(9) An attorney who does not reasonably believe that the issuer has made an appropriate response within a reasonable time to the report or reports made pursuant to paragraph (b)(1), (b)(3), or (b)(4) of this section shall explain his or her reasons therefor to the chief legal officer (or the equivalent thereof), the chief executive officer (or the equivalent thereof), and directors to whom the attorney reported the evidence of a material violation pursuant to

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[82] 67 FR 71686.

[83] *See* Comments of Schiff Hardin & Waite, at 4 (paragraph (b)(5) as proposed goes "too far" in deeming a lawyer engaged by an issuer to conduct an internal investigation of a possible material violation of the securities laws to be appearing and practicing before the Commission and that issuers will be reluctant to retain independent counsel to investigate if the independent counsel have "an obligation to effect a noisy withdrawal if they disagree with the client's response to the finding or recommendation resulting from the investigation"); Comments of the Chicago Bar Association, at 3 (paragraph as proposed is overbroad in requiring an outside lawyer engaged to investigate whether a violation has occurred to withdraw and notify the Commission if it disagrees with the issuer); Comments of the Corporation, Finance and Securities Law Section of the District of Columbia Bar, at 4–5 ("attorneys conducting an internal investigation, and not otherwise interacting with the Commission or even known to the Commission at that point, do not have a sufficient nexus with the Commission's processes" to be covered by the Commission's rules; making them subject to the Commission's rules will "make issuers less willing to retain, and attorneys less willing to conduct, such investigations"; and is unnecessary because section 205.3(b)(2) requires an issuer's CLO "to assess the timeliness and appropriateness of the issuer's response").

paragraph (b)(1), (b)(3), or (b)(4) of this section.

As proposed, paragraphs (b)(8) and (b)(9)—numbered (b)(7) and (b)(8) in the proposed rule—elicited no comment (apart from negative comments on documentation provisions that have been eliminated in the final rule). They are adopted without any other substantive change for reasons explained in the proposing release.[84]

205.3(b)(10) provides:

(10) An attorney formerly employed or retained by an issuer who has reported evidence of a material violation under this part and reasonably believes that he or she has been discharged for so doing may notify the issuer's board of directors or any committee thereof that he or she believes that he or she has been discharged for reporting evidence of a material violation under this section.

Paragraph (b)(10) authorizes an attorney to notify an issuer's board of directors or any committee thereof if the attorney reasonably believes that he or she has been discharged for reporting evidence of a material violation under this section. This provision, an important corollary to the up-the-ladder reporting requirement, is designed to ensure that a chief legal officer (or the equivalent thereof) is not permitted to block a report to the issuer's board or other committee by discharging a reporting attorney.

This provision is similar in concept to paragraph (d)(4) of the proposed rule (as to which, as noted above, the Commission is seeking further comment), although it does not provide for reporting outside the issuer.

205.3(c) provides:

(c) *Alternative reporting procedures for attorneys retained or employed by an issuer that has established a qualified legal compliance committee.* (1) If an attorney, appearing and practicing before the Commission in the representation of an issuer, becomes aware of evidence of a material violation by the issuer or by any officer, director, employee, or agent of the issuer, the attorney may, as an alternative to the reporting requirements of paragraph (b) of this section, report such evidence to a qualified legal compliance committee, if the issuer has previously formed such a committee. An attorney who reports evidence of a material violation to such a qualified legal compliance committee has satisfied his or her obligation to report such evidence and is not required to assess the issuer's response to the reported evidence of a material violation.

(2) A chief legal officer (or the equivalent thereof) may refer a report of evidence of a material violation to a previously established qualified legal compliance committee in lieu of causing an inquiry to be conducted under paragraph (b)(2) of this section. The chief legal officer (or the equivalent thereof) shall inform the reporting attorney that the report has been referred to a qualified legal compliance committee. Thereafter, pursuant to the requirements under § 205.2(k), the qualified legal compliance committee shall be responsible for responding to the evidence of a material violation reported to it under this paragraph (c).

This alternative to the reporting requirements of § 205.3(b) would allow, though not require, an attorney to report evidence of a material violation directly to a committee of the board of directors that meets the definitional requirements for a QLCC. It would also relieve the reporting attorney of any further obligation once he or she had reported such evidence to an issuer's QLCC.

Under this alternative, the QLCC—itself a committee of the issuer's board of directors with special authority and special responsibility—would be responsible for carrying out the steps required by Section 307 of the Act: notifying the CLO of the report of evidence of a material violation (except where such notification would have been excused as futile under § 205.3(b)(4)); causing an investigation where appropriate; determining what remedial measures are appropriate where a material violation has occurred, is ongoing, or is about to occur; reporting the results of the investigation to the CLO, the CEO, and the full board of directors; and notifying the Commission if the issuer fails in any material respect to take any of those appropriate remedial measures.

More generally, the QLCC institutionalizes the process of reviewing reported evidence of a possible material violation. That would be a welcome development in itself. It may also produce broader synergistic benefits, such as heightening awareness of the importance of early reporting of possible material violations so that they can be prevented or stopped.

Probably the most important respect in which § 205.3(c) differs from § 205.3(b) is, as noted, that Section 205.3(c) relieves an attorney who has reported evidence of a material violation to a QLCC from any obligation "to assess the issuer's response to the reported evidence of a material violation." If the issuer fails, in any material respect to take any remedial action that the QLCC has recommended, then the QLCC, as well as the CLO and the CEO, all have the authority to take appropriate action, including notifying the Commission if the issuer fails to implement an appropriate response recommended by the QLCC.

Commenters generally approved of the QLCC in concept, although several proposed changes in how it would work. The American Bar Association agreed with the need for corporate governance mechanisms to ensure legal compliance once a material violation is reported to an issuer's board, but suggested that existing corporate governance reforms should be given time before new reforms are added.[85] Another commenter suggested that the QLCC should be only one of a number of acceptable governance models, with issuers having freedom to craft techniques suitable to their own circumstances.[86] The Commission recognizes these concerns, but believes the benefits of the QLCC model, as described above, and the absence of any requirement that an issuer form or utilize a QLCC, justify inclusion of this alternative in the final rule.

One commenter suggested that the Commission's final rules should make clear that, for a matter to be referred to a QLCC, the issuer must have a QLCC in place and is not permitted simply to establish a QLCC to respond to a specific incident.[87] This comment has been addressed in § 205.3(c), which authorizes referral only to a QLCC that has been previously formed.

Commenters made a number of other suggestions regarding the QLCC provisions in the proposed rule. One commenter proposed that the Commission consider making creation of a QLCC mandatory for each issuer.[88] The Commission believes that keeping the QLCC as an alternative reporting mechanism is preferable, and that attorneys should be permitted to report up-the-ladder through their chief legal officers. Another commenter suggested that the QLCC proposal be modified to remove the "noisy withdrawal" provision.[89] The Commission has concluded that, in the extraordinary circumstance in which an appropriate response does not follow a QLCC's recommendation in response to evidence of a material violation, the QLCC should have the authority to take all appropriate action, including notifying the Commission, although it is not required to do so in every case. Another suggestion from a commentator was that the Commission offer a "safe harbor" for a chief legal officer who

[84] 67 FR 71687.

[85] Comments of the American Bar Association, at 27–28.

[86] Comments of the American Corporate Counsel Association, at 9–10.

[87] Comments of Richard W. Painter, at 5.

[88] Comments of Edward C. Brewer III, at 4.

[89] Comments of the Association of the Bar of the City of New York, at 41–42.

reports to a QLCC.[90] The Commission has provided a form of "safe harbor" against any inconsistent standard of a state or other United States jurisdiction in Section 205.6(c), and against a private action in Section 205.7.

Section 205.3(d) Issuer Confidences

205.3(d)(1) provides:

(1) Any report under this section (or the contemporaneous record thereof) or any response thereto (or the contemporaneous record thereof) may be used by an attorney in connection with any investigation, proceeding, or litigation in which the attorney's compliance with this part is in issue.

Paragraph (d)(1) makes clear that an attorney may use any records the attorney may have made in the course of fulfilling his or her reporting obligations under this part to defend himself or herself against charges of misconduct. It is effectively equivalent to the ABA's present Model Rule 1.6(b)(3) and corresponding "self-defense" exceptions to client-confidentiality rules in every state. The Commission believes that it is important to make clear in the rule that attorneys can use any records they may have prepared in complying with the rule to protect themselves.

One comment expressed concern that this provision would empower the Commission to use such records against the attorney. That concern misreads this paragraph, which expressly refers to the use of these records "by an attorney" in a proceeding where the attorney's compliance with this part is in issue.

205.3(d)(2) provides:

(2) An attorney appearing and practicing before the Commission in the representation of an issuer may reveal to the Commission, without the issuer's consent, confidential information related to the representation to the extent the attorney reasonably believes necessary:

(i) To prevent the issuer from committing a material violation that is likely to cause substantial injury to the financial interest or property of the issuer or investors;

(ii) To prevent the issuer, in a Commission investigation or administrative proceeding from committing perjury, proscribed in 18 U.S.C. 1621; suborning perjury, proscribed in 18 U.S.C. 1622; or committing any act proscribed in 18 U.S.C. 1001 that is likely to perpetrate a fraud upon the Commission; or

(iii) To rectify the consequences of a material violation by the issuer that caused, or may cause, substantial injury to the financial interest or property of the issuer or investors in the furtherance of which the attorney's services were used.

This paragraph thus permits, but does not require, an attorney to disclose, under specified circumstances, confidential information related to his appearing and practicing before the Commission in the representation of an issuer. It corresponds to the ABA's Model Rule 1.6 as proposed by the ABA's Kutak Commission in 1981–1982 and by the ABA's Commission of Evaluation of the Rules of Professional Conduct ("Ethics 2000 Commission") in 2000,[91] and as adopted in the vast majority of states.[92] It provides additional protection for investors by allowing, though not requiring, an attorney to disclose confidential information relating to his appearing and practicing before the Commission in the representation of an issuer to the extent the attorney reasonably believes necessary (1) to prevent the issuer from committing a material violation that the lawyer reasonably believes is likely to result in substantial injury to the financial interest or property of the issuer or investors; (2) to prevent the issuer from perpetrating a fraud upon the Commission; or (3) to rectify the consequences of an issuer's material violations that caused or may cause substantial injury to the issuer's financial interest or property in the furtherance of which the attorney's services were used.

The proposed version of this rule provided that the attorney appearing or practicing before the Commission could disclose information to the Commission:

(i) To prevent the issuer from committing an illegal act that the attorney reasonably believes is likely to result in substantial injury to the financial interest or property of the issuer or investors;

(ii) To prevent the issuer from committing an illegal act that the attorney reasonably believes is likely to perpetrate a fraud upon the Commission; or

(iii) To rectify the consequences of the issuer's illegal act in the furtherance of which the attorney's services had been used.

Several comments stated that permitting attorneys to disclose illegal acts to the Commission, in the situations delineated by the proposed rule, would undermine the relationship of trust and confidence between lawyer and client, and may impede the ability of lawyers to steer their clients away from unlawful acts.[93] Other comments expressed concern that this provision conflicts with, and would (in their eyes impermissibly) preempt, the rules of professional conduct of certain jurisdictions (such as the District of Columbia) which bar the disclosure of information which an attorney is permitted to disclose under this paragraph, particularly where it permits the disclosure of past client misconduct.[94] Some aver that "it is not a lawyer's job" in representing an issuer before the Commission "to correct or rectify the consequences of [the issuer's] illegal actions, or even to prevent wrong-doing."[95]

Other commenters noted that these disclosure provisions should be limited to illegal acts that are likely to have a material impact on the market for the issuer's securities,[96] or to ongoing criminal or fraudulent conduct by the issuer,[97] while others suggest that attorneys should only be permitted to disclose information where there is a risk of death or bodily harm, and not where only "monetary interests" are

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[90] *Id.*, at 42–43.

[91] ABA, *Report of the Commission on Evaluation of the Rules of Professional Conduct* (November 2000), recommended permitting a lawyer to disclose confidential "information relating to the representation of a client to the extent the lawyer reasonably believes necessary . . . to prevent the client from committing a crime or fraud that is reasonably certain to result in substantial injury to the financial interests or property of another and in furtherance of which the client has used or is using the lawyer's services."

[92] Thirty-seven states permit an attorney to reveal confidential client information in order to prevent the client from committing criminal fraud. *See Restatement (Third) of the Law Governing Lawyers* (2000) section 67, Cmt. f, and Thomas D. Morgan & Ronald D. Rotunda, *Model Code of Professional Responsibility, Model Rules of Professional Conduct, and Other Selected Standards*, at 146 (reproducing the table prepared by the Attorneys' Liability Assurance Society ("ALAS") cited in the Restatement). The ABA's Model Rule 1.6, which prohibits disclosure of confidential client information even to prevent a criminal fraud, is a minority rule. In its *Carter and Johnson* decision (1981 WL 384414, at n.78), the Commission expressly did not address an attorney's obligation to disclose a client's intention to commit fraud or an illegal act.

[93] See comments of Joseph T. McLaughlin, Heller Ehrman, at 2; Comments of the Los Angeles County Bar Association, at 2.

[94] Comments of Eleven Persons or Law Firms, at 8–9; Comments of the American Bar Association, at 33 (urging the Commission to refrain from considering the proposed disclosure provisions unless and until it receives express Congressional authority to preempt state privilege rules); Comments of 77 law firms, at 2; Comments of Latham & Watkins, at 5–6; Comments of Theodore Sonde, at 2; Comments of Schiff Hardin & Waite, at 7–8; Comments of Sheldon M. Jaffe, at 7–9; Comments of Emerson Electric, at 2; Comments of the Federal Bar Council, at 9–10 & n.9; Comments of JP Morgan & Chase, at 11 & n.3 (citing treatise for proposition that only six states permit disclosure to rectify past fraud).

[95] Comments of the Law Society of England and Wales, at 12.

[96] Comments of the Los Angeles County Bar Association, at 2; Comments of Edward C. Brewer, III at 8; see also Comments of the Association of the Bar of the City of New York at 5 (supporting attorney disclosure of materials facts to avoid assisting a criminal or fraudulent act by the client, or to correct prior representations made by the lawyer and believed by the lawyer still to be relied upon by a third person where the lawyer has discovered that the opinion or representation was based on materially inaccurate information or is being used to further a crime or fraud).

[97] Comments of Theodore Sonde, at 2.

involved.[98] Many of the commenters voicing objections to this paragraph suggested that the Commission defer its promulgation until after further developments by state supreme courts[99] or further discussion.[100] Others, while criticizing the rule, noted that an attorney practicing before the Commission could comply with this permissive disclosure provision, but would have a duty to explain to the client at the outset this limitation on the "normal" duty of confidentiality.[101]

Commenters supporting the paragraph, however, noted that at least four-fifths of the states now permit or require such disclosures as pertain to ongoing conduct,[102] and that those states that follow the minority rule "narrow[] the lawyer's options for responding to client conduct that could defraud investors and expose the lawyer to liability for legal work that the lawyer has already done."[103] Several of these comments noted that the Commission could or should have required that lawyers make these disclosures to it when the client insists on continuing fraud or pursuing future illegal conduct,[104] and urged the Commission to make clear that this paragraph does not override state ethics rules that make such disclosures mandatory.[105] Many commenters also stated that it was proper for this paragraph to preempt any state ethics rule that does not permit disclosure.[106] They also noted that the confidentiality interests of a corporate client are not infringed by lawyer disclosure under the circumstances required by the paragraph, as the paragraph addresses a situation where the lawyer reasonably believes that agents of an issuer are engaged in serious illegality that the issuer has failed to remedy; in that situation, an instruction by an officer or even the board of the issuer to remain silent cannot be regarded as authorized.[107] Others generally supported the provision as injecting vitality into existing ethics rules, and stated that the Commission should not delay action on this provision.[108] One commenter emphasized the need to protect from retaliation attorneys who engage in the reporting mandated by Part 205.[109]

The final version of this paragraph contains modifications or clarifications of the paragraph as proposed. In paragraph (2), the description of when an attorney may disclose client confidences is limited "to the extent the attorney reasonably believes necessary" to accomplish one of the objectives in the rule. In subparagraph (i), the term "material violation" has been substituted for "illegal act" to conform to the statutory language in Section 307. In subparagraph (ii), the final version identifies the illegal acts that might perpetrate a fraud upon the Commission in an investigation or administrative proceeding; each of the statutes now referenced in subparagraph (ii) were referenced in the release accompanying the proposed rule.[110] The term "perpetrate a fraud" in this paragraph covers conduct involving the knowing misrepresentation of a material fact to, or the concealment of a material fact from, the Commission with the intent to induce the Commission to take, or to refrain from taking, a particular action. Subparagraph (iii) has been modified to cover only material violations by the issuer, and now this material violation must be one that has "caused, or may cause, substantial injury to the financial interest or property of the issuer or investors" before the provision may be invoked.

With regard to the issues raised by the comments on this paragraph, as explained below, the Commission either has addressed the concerns voiced by the commenters, believes that the concerns are adequately addressed by the paragraph, or has found the concerns to be insufficient to warrant further modification. Although commenters raised a concern that permitting attorneys to disclose information to the Commission without a client's consent would undermine the issuers' trust in their attorneys, the vast majority of states already permit (and some even require) disclosure of information in the limited situations covered by this paragraph,[111] and the Commission has seen no evidence that those already-existing disclosure obligations have undermined the attorney-client relationship. In addition, the existing state law ethics rules support the proposition that generalized concerns about impacting the attorney-client relationship must yield to the public interest where an issuer seeks to commit a material violation that will materially damage investors, seek to perpetrate a fraud upon the Commission in enforcement proceedings, or has used the attorney's services to commit a material violation.

With regard to the comments that this paragraph would preempt state law ethics rules that do not permit disclosure of information concerning such acts, or the concerns expressed by commenters at the other end of the spectrum that this paragraph could be misread to supplant state ethics rules that require rather than permit disclosure,[112] the Commission refers to Section 205.1 and the related discussion above. Section 205.1 makes clear that Part 205 supplements state ethics rules and is not intended to limit the ability of any jurisdiction to impose higher obligations upon an attorney not inconsistent with Part 205. A mandatory disclosure requirement imposed by a state would be an additional requirement consistent with the Commission's permissive disclosure rule. The Commission also notes that, as this paragraph in most situations follows the permissive disclosure rules already in place in most jurisdictions, the conflict raised by these commenters is unlikely to arise in practice.

As for the comments suggesting that attorneys be permitted to disclose only information that would appear to have a material impact on the value of the issuer's securities, the Commission has,

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[98] Comments of the American College of Trial Lawyers, at 6.

[99] Comments of Conference of Chief Justices, at 4.

[100] Comments of the Federal Bar Council, at 14.

[101] Comments of the Law Society of England and Wales, at 12.

[102] Comments of Morrison & Foerster and eight other law firms, Exhibit B (listing jurisdictions whose ethics rules permit or require attorneys to disclose clients' past and/or require attorneys to disclose clients' past and/or ongoing fraud); Comments of Edward C. Brewer, III, at 8 (the proposed rule for permissive disclosure of an issuer's "illegal act" is essentially no different than the existing Model Code provision).

[103] Comments of Richard W. Painter, at 6.

[104] Comment of Edward C. Brewer, at 8.

[105] Comments of Susan P. Koniak *et al.*, at 26–27; Comments of Nancy J. Moore, at 2–3.

[106] Comments of Susan P. Koniak *et al.*, 27, 31–32.

[107] Comments of William H. Simon, at 3.

[108] See, *e.g.*, Comments of Manning G. Warren III, at 1; Comments of Douglas A. Schafer, Comment of Elaine J. Mittleman at 2; Comments of Thomas Ross *et al.*, at 6–8.

[109] Comment of Elaine J. Mittleman at 2.

[110] See 67 FR at 71693.

[111] Comment of the American Corporate Counsel Association, at 7 (noting that permissive disclosure standards are "more in line with a majority of state professional rules of conduct").

[112] Specifically, New Jersey requires an attorney to reveal confidential "information relating to the representation of a client to the proper authorities * * * to the extent the lawyer reasonably believes necessary to prevent the client: (1) [f]rom committing a criminal, illegal or fraudulent act that the lawyer reasonably believes is likely to result in * * * substantial injury to the financial interest or property of another" or (2) such an act that "the lawyer reasonably believes is likely to perpetrate a fraud upon a tribunal." New Jersey Rule of Professional Conduct 1.6(b). Wisconsin's corresponding rule is virtually identical to New Jersey's, except that it makes no reference to "proper authorities." Wisconsin Supreme Court Rule 20:1.6. Florida requires a lawyer to reveal confidential information "to the extent the lawyer reasonably believes necessary * * * to prevent a client from committing a crime." Florida Rule of Professional Conduct 4–1.6.

where appropriate, modified the paragraph in a manner that responds to that concern. Subparagraph (iii) has been limited to material violations, and subparagraph (i) limits its application to material violations that are likely to cause substantial injury to the financial interest or property of the issuer or investors.

Finally, the Commission concludes that it is not appropriate for it to wait for further developments. The Commission believes there has been ample discussion of this paragraph in the comments received, and that the major issues concerning this paragraph have been well identified. In addition, delay pending further developments does not promise to be fruitful: most state supreme courts already have rules in place that are consistent with this paragraph, and there is no evidence when, if ever, state supreme courts (or legislative bodies) will revisit these issues, and the public interest in allowing lawyers appearing and practicing before the Commission to disclose the acts covered by this paragraph counsels against waiting indefinitely for further refinement of state ethics rules.

Subsection 205.3(e)(3) in Proposed Rule: Withdrawn

The proposed paragraph read:

Where an issuer, through its attorney, shares with the Commission information related to a material violation, pursuant to a confidentiality agreement, such sharing of information shall not constitute a waiver of any otherwise applicable privilege or protection as to other persons.

Several commenters stated that it was uncertain if the Sarbanes-Oxley Act granted the Commission the authority to promulgate a rule that would control determinations by state and federal courts whether a disclosure to the Commission, even if conditioned on a confidentiality agreement, waives the attorney-client privilege or work product protection,[113] and a few suggested that the proposed paragraph would conflict with Federal Rule of Evidence 501.[114] They noted that this is an unsettled issue in the courts, or suggested that the Commission's proposed rule runs contrary to the bulk of decisional authority on this issue.[115] A few also noted that proposed legislation before Congress in 1974, supported by the Commission, that would have enacted a provision permitting issuers to selectively waive privileges in disclosures to the Commission was ultimately not passed by Congress.[116] The concern was expressed that attorneys might disclose information to the Commission in the belief that the evidentiary privileges for that information were preserved, only to have a court subsequently rule that the privilege was waived.[117]

The Commission has determined not to adopt the proposed rule on this "selective waiver" provision. The Commission is mindful of the concern that some courts might not adopt the Commission's analysis of this issue, and that this could lead to adverse consequences for the attorneys and issuers who disclose information to the Commission pursuant to a confidentiality agreement, believing that the evidentiary protections accorded that information remain preserved.

Nonetheless, the Commission finds that allowing issuers to produce internal reports to the Commission—including those prepared in response to reports under 205.3(b)—without waiving otherwise applicable privileges serves the public interest because it significantly enhances the Commission's ability to conduct expeditious investigations and obtain prompt relief, where appropriate, for defrauded investors. The Commission further finds that obtaining such otherwise protected reports advances the public interest, as the Commission only enters into confidentiality agreements when it has reason to believe that obtaining the reports will allow the Commission to save substantial time and resources in conducting investigations and/or provide more prompt monetary relief to investors. Although the Commission must verify that internal reports are accurate and complete and must conduct its own investigation, doing so is far less time consuming and less difficult than starting and conducting investigations without the internal reports. When the Commission can conduct expeditious and efficient investigations, it can then obtain appropriate remedies for investors more quickly. The public interest is thus clearly served when the Commission can promptly identify illegal conduct and provide compensation to victims of securities fraud.

The Commission also finds that preserving the privilege or protection for internal reports shared with the Commission does not harm private litigants or put them at any kind of strategic disadvantage. At worst, private litigants would be in exactly the same position that they would have been in if the Commission had not obtained the privileged or protected materials. Private litigants may even benefit from the Commission's ability to conduct more expeditious and thorough investigations. Indeed, many private securities actions follow the successful completion of a Commission investigation and enforcement action. Consequently, allowing the Commission access to otherwise privileged and inaccessible internal reports but denying access to others would not be unfair to private litigants but is appropriate in the public interest and for the protection of investors.

For these reasons, the Commission will continue to follow its policy of

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shall be governed by the principles of the common law as they may be interpreted by the courts of the United States in the light of reason and experience. However, in civil actions and proceedings, with respect to an element of a claim or defense as to which State law supplies the rule of decision, the privilege of a witness, person, government, State, or political subdivision thereof shall be determined in accordance with State law."

[113] Comments of Richard W. Painter, at 9 ("the only effective method" of assuring lawyers that the attorney-client privilege is not waived by disclosure to the Commission "is to seek an act of Congress establishing selective waiver and preempting inconsistent state law"); Comments of the American Bar Association, at 32; Comments of Susan P. Koniak *et al.*, at 44.

[114] Comments of Sheldon Jaffe, at 10. Fed. R. Evid. 501 provides that "[e]xcept as otherwise required by the Constitution of the United States or provided by Act of Congress or in rules prescribed by the Supreme Court pursuant to statutory authority, the privilege of a witness, person, government, State, or political subdivision thereof

[115] Comments of the American Bar Association, at 32 n. 21; Comments of Sheldon M. Jaffe, at 9–11; Comments of Edward C. Brewer, III, at 11; Comments of Latham & Watkins, at 5· Comments of Morrison & Foerster and eight other law firms, at 19.

[116] Comments of the American Bar Association, at 32 n. 22; Comments of Morrison & Foerster and eight other law firms, at 19. The Commission notes that the proposal in Congress to which these commenters refer would have applied the selective waiver doctrine to all documents produced to the Commission, and was not limited to productions conditioned upon an express confidentiality agreement. *See Westinghouse Elec. Corp.* v. *Republic of the Philippines*, 951 F.2d 1414, 1425 (3d Cir. 1991). Also, Congress did not reject the Commission's proposal; rather, the House Committee to which the proposal was submitted took no action. *See* SEC Oversight and Technical Amendments: Hearing Before the Subcommittee on Telecommunications, Consumer Protection, and Finance of the House Committee on Energy and Commerce, 98th Cong., 2d Sess 341 at 34, 51 (1984). Therefore, that the proposal before that House Committee in 1984 was not ultimately enacted carries no significance. *NAACP* v. *American Family Mut. Ins. Co.*, 978 F.2d 287, 299 (7th Cir. 1992) ("unsuccessful proposals to amend a law, in the years following passage, carry no significance").

[117] Comments of Richard W. Painter, at 9; Comments of Susan P. Koniak *et al.*, at 6; Comments of Latham & Watkins, at 5 ("[g]iven the high stakes associated with waiver of privilege, uncertainty as to interpretation of [Paragraph 205.3(e)(3)'s] requirements in this regard is troubling"); Comments of the SIA/TBMA at 15 ("[a]lthough we welcome this positive statement of Commission policy, given sharp disagreements among courts on the question of selective waiver, issuers and attorneys cannot be secure in their disclosures absent a statutory statement of express preemption").

entering into confidentiality agreements where it determines that its receipt of information pursuant to those agreements will ultimately further the public interest, and will vigorously argue in defense of those confidentiality agreements where litigants argue that the disclosure of information pursuant to such agreements waives any privilege or protection.

Section 205.4—Responsibilities of Supervisory Attorneys

(a) An attorney supervising or directing another attorney who is appearing and practicing before the Commission in the representation of an issuer is a supervisory attorney. An issuer's chief legal officer (or the equivalent thereof) is a supervisory attorney under this section.

(b) A supervisory attorney shall make reasonable efforts to ensure that a subordinate attorney, as defined in § 205.5(a), that he or she supervises or directs conforms to this part. To the extent a subordinate attorney appears and practices before the Commission in the representation of an issuer, that subordinate attorney's supervisory attorneys also appear and practice before the Commission.

(c) A supervisory attorney is responsible for complying with the reporting requirements in § 205.3 when a subordinate attorney has reported to the supervisory attorney evidence of a material violation.

(d) A supervisory attorney who has received a report of evidence of a material violation from a subordinate attorney under § 205.3 may report such evidence to the issuer's qualified legal compliance committee if the issuer has duly formed such a committee.

Section 205.4 prescribes the responsibilities of a supervisory attorney, and is based in part upon Rule 5.1 of the ABA's Model Rules, which (1) mandates that supervisory attorneys (including partners at law firms and attorneys exercising similar management responsibilities at law firms) must make reasonable efforts to ensure that attorneys at the firm conform to the Rules of Professional Conduct; and (2) provides that a supervisory attorney may be held liable for violative conduct by another attorney which he or she knowingly ratifies or which he or she fails to prevent when able to do so.

Several commenters objected that the articulation of the responsibilities of supervisory attorneys included in the proposed rule rendered senior attorneys responsible for the actions of more junior attorneys whose activities they might not actually supervise or direct. For example, the ABA argued that defining a supervisory attorney to include individuals "who have supervisory authority over another attorney" would unfairly cover "all partners in a law firm and even senior associates," many of whom might not exercise actual supervisory authority regarding, or have any involvement with, the matter in question.[118] On the other hand, comments submitted by a distinguished group of academics stated that the sections of the proposed rule prescribing the responsibilities of supervisor and subordinate attorneys were "necessary" and appropriate.[119]

The language we adopt today confirms that a supervisory attorney to whom a subordinate attorney reports evidence of a material violation is responsible for complying with the reporting requirements prescribed under the rule. This language modifies the proposed rule by clarifying that only a senior attorney who actually directs or supervises the actions of a subordinate attorney appearing and practicing before the Commission is a supervisory attorney under the rule. A senior attorney who supervises or directs a subordinate on other matters unrelated to the subordinate's appearing and practicing before the Commission would not be a supervisory attorney under the final rule. Conversely, an attorney who typically does not exercise authority over a subordinate attorney but who does direct the subordinate attorney in the specific matter involving the subordinate's appearance and practice before the Commission is a supervisory attorney under the final rule. The final rule eliminates the proposed requirement that a supervisory attorney who believes that evidence of a material violation presented by a subordinate attorney need not be reported "up-the-ladder" document the basis for that conclusion. The final rule also eliminates the requirement that a supervisory attorney ensure a subordinate's compliance with the federal securities laws.

Section 205.5—Responsibilities of a Subordinate Attorney

(a) An attorney who appears and practices before the Commission in the representation of an issuer on a matter under the supervision or direction of another attorney (other than under the direct supervision or direction of the issuer's chief legal officer (or the equivalent thereof)) is a subordinate attorney.

(b) A subordinate attorney shall comply with this part notwithstanding that the subordinate attorney acted at the direction of or under the supervision of another person.

(c) A subordinate attorney complies with § 205.3 if the subordinate attorney reports to his or her supervising attorney under § 205.3(b) evidence of a material violation of which the subordinate attorney has become aware in appearing and practicing before the Commission.

(d) A subordinate attorney may take the steps permitted or required by § 205.3(b) or (c) if the subordinate attorney reasonably believes that a supervisory attorney to whom he or she has reported evidence of a material violation under § 205.3(b) has failed to comply with § 205.3.

Section 205.5 is based, in part, on Rule 5.2 of the ABA's Model Rules (which provides that subordinate attorneys remain bound by the Model Rules notwithstanding the fact that they acted at the direction of another person). This section confirms that a subordinate attorney is responsible for complying with the rule. We do not believe that a subordinate attorney should be exempted from the application of the rule merely because he or she operates under the supervision or at the direction of another person. We believe that creation of such an exemption would seriously undermine Congress' intent to provide for the reporting of evidence of material violations to issuers. Indeed, because subordinate attorneys frequently perform a significant amount of work on behalf of issuers, we believe that subordinate attorneys are at least as likely (indeed, potentially more likely) to learn about evidence of material violations as supervisory attorneys.

This section attracted far less comment than section 205.4, and those comments which were received typically supported the concept of allowing a subordinate attorney to satisfy his or her obligations under the rule by reporting evidence of a material violation to a supervisory attorney.[120] The language we adopt today clarifies that a subordinate attorney must be appearing and practicing before the Commission to come under the rule, and conforms this section to the language in section 205.4 by providing that a senior attorney must actually direct or supervise the actions of a subordinate attorney (rather than have

[118] *See* Comments of the American Bar Association, at 22–23. *See also* Comments of Skadden, Arps, Slate, Meagher & Flom, at 27 (arguing that the section should be eliminated entirely, or, alternatively, "narrowed to apply only to the supervisory attorney within a law firm or a law department who is directly responsible for the supervision of a subordinate attorney in connection with the representation of the issuer in the specific matter, regardless of whether the attorney supervises such subordinate attorney in other unrelated matters.").

[119] *See* Comments of Susan P. Koniak *et al.*, at 42.

[120] *See* Comments of the American Bar Association, at 22 ("We believe the Commission correctly approaches in Rule 205.5 the treatment of subordinate lawyers who report to a supervisory attorney and in Rule 205.4(c) the shifting of responsibility for compliance to the supervisory attorney to which the matter was reported").

supervisory authority) to be a supervisory attorney under the rule.

New language has been added to this section to provide that an attorney who appears and practices before the Commission on a matter in the representation of an issuer under the supervision or direction of the issuer's CLO (or the equivalent thereto) is not a subordinate attorney. Accordingly, that person is required to comply with the reporting requirements of Section 205.3. For example, an issuer's Deputy General Counsel, who reports directly to the issuer's General Counsel (CLO) on a matter before the Commission, is not a subordinate attorney. Thus, the Deputy General Counsel is not relieved of any further reporting obligations by advising the CLO of evidence of a material violation. Further, in the event the Deputy General Counsel does not receive an appropriate response from the CLO, he or she is obligated to report further up-the-ladder within the issuer.

Section 205.6—Sanctions and Discipline

(a) A violation of this part by any attorney appearing and practicing before the Commission in the representation of an issuer shall subject such attorney to the civil penalties and remedies for a violation of the federal securities laws available to the Commission in an action brought by the Commission thereunder.

(b) An attorney appearing and practicing before the Commission who violates any provision of this part is subject to the disciplinary authority of the Commission, regardless of whether the attorney may also be subject to discipline for the same conduct in a jurisdiction where the attorney is admitted or practices. An administrative disciplinary proceeding initiated by the Commission for violation of this part may result in an attorney being censured, or being temporarily or permanently denied the privilege of appearing or practicing before the Commission.

(c) An attorney who complies in good faith with the provisions of this part shall not be subject to discipline or otherwise liable under inconsistent standards imposed by any state or other United States jurisdiction where the attorney is admitted or practices.

(d) An attorney practicing outside the United States shall not be required to comply with the requirements of this part to the extent that such compliance is prohibited by applicable foreign law.

Paragraph 205.6(a) of the proposed rule tracked the language of Section 3(b) of the Act (which expressly states that a violation of the Act and rules promulgated thereunder shall be treated as a violation of the Exchange Act, subjecting any person committing such a violation to the same penalties as are prescribed for violations of the Exchange Act). Similarly, paragraph 205.6(b) of the proposed rule was based on Section 602 of the Act (adding Section 4C(a) to the Exchange Act, which incorporates that portion of Rule 102(e) of the Commission's Rules of Practice prescribing the state-of-mind requirements for Commission disciplinary actions against accountants who engage in improper professional conduct). Finally, paragraph 205.6(c) of the proposed rule stated that the Commission may discipline attorneys who violate the rule, regardless of whether the attorney is subject to prosecution or discipline for violation of a state ethical rule that applies to the same conduct.

Collectively, proposed section 205.6 (originally entitled "Sanctions") generated a number of comments. One commenter complained that sections 3(b) and 307 of the Act did not authorize Commission enforcement action against violators of the rule, and that violations should be handled in Commission disciplinary proceedings.[121] Several other commenters argued that paragraph 205.6(a) should specifically state that the Commission will not seek criminal penalties for violations of the rule.[122] Commenters also suggested that the juxtaposition of paragraphs 205.6(a) and (b) created confusion as to whether the Commission would treat violations of the rule as an Exchange Act violation or a violation of Rule 102(e). A number of commenters also suggested that the Commission should create a safe harbor, protecting attorneys who make a good faith attempt to comply with the rule and explicitly stating that the rule is only enforceable by the Commission and does not create a private right of action.[123]

The language we today adopt in § 205.6 has been extensively modified in light of these comments. The amended section is now titled "Sanctions and Discipline," emphasizing that the Commission intends to proceed against individuals violating Part 205 as it would against other violators of the federal securities laws and, when appropriate, to initiate proceedings under this rule seeking an appropriate disciplinary sanction. Paragraph 205.6(a) has been amended to clarify that only the Commission may bring an action for violation of the part. Paragraph 205.6(b) incorporates the language of paragraph 205.6(c) of the proposed rule, and adds new language specifying the sanctions available to the Commission in administrative disciplinary proceedings against attorneys who violate the part.

New paragraph 205.6(c), consistent with § 205.1, provides that attorneys who comply in good faith with this part shall not be subject to discipline for violations of inconsistent standards imposed by a state or other United States jurisdiction. Paragraph 205.6(c) has been drafted to apply only to an attorney's liability for violating inconsistent standards of a state or other U.S. jurisdiction. Thus, it is not available where the state or other jurisdiction imposes additional requirements on the attorney that are consistent with the Commission's rules. Moreover, this paragraph has no application in actions or proceedings brought by the Commission relating to violations of the federal securities laws or the Commission's rules or regulations thereunder. Further, the fact that an attorney may assert or establish in a state professional disciplinary proceeding, or in a private action, that he or she complied with this part, and complied in good faith, does not affect the Commission's ability or authority to bring an enforcement action or disciplinary proceeding against an attorney for a violation of this part. Indeed, even if a state ethics board or a court were to determine in an action not brought by the Commission that an attorney complied with this part or complied in good faith with this part, that determination would not preclude the Commission from bringing either an enforcement action or a disciplinary proceeding against that attorney for a violation of this part based on the same conduct.

New paragraph 205.6(d) addresses the conduct of non-U.S. attorneys who are subject to this part, because they do not meet the definition of non-appearing foreign attorney. As noted above, the new definition of non-appearing foreign attorney in paragraph 205.2(j) responds to the large number of comments received from lawyers practicing in other jurisdictions stating that attorneys practicing in many foreign countries are subject to rules and regulations that render compliance with the part impossible. This point was also made at the December 17 Roundtable discussion. Several commenters also stated that attorneys who are admitted in United States jurisdictions but who practice in foreign countries are subject to similar restrictions. New paragraph 205.6(d) provides that attorneys in that situation must comply with the part to the

[121] *See* Comments of the Association of the Bar of the City of New York, at 43–44.

[122] *Id.* at 46–47. *See also* Comments of Morrison & Foerster and eight other law firms, at 21.

[123] *See* Comments of Skadden, Arps, Slate, Meagher and Flom, at 29; Comments of the SIA/TBMA, at 16; Comments of the American Bar Association, at 33; Comments of Sullivan & Cromwell, at 16–17.

maximum extent allowed by the regulations and laws to which they are subject.

Section 205.7—No Private Right of Action

(a) Nothing in this part is intended to, or does, create a private right of action against any attorney, law firm, or issuer based upon compliance or noncompliance with its provisions.

(b) Authority to enforce compliance with this part is vested exclusively in the Commission.

In the proposing release, the Commission expressed its view that: "nothing in Section 307 creates a private right of action against an attorney. * * * Similarly, the Commission does not intend that the provisions of Part 205 create any private right of action against an attorney based on his or her compliance or non-compliance with its provisions."[124] Nevertheless, the Commission requested comments on whether it should provide in the final rule "a 'safe harbor' from civil suits" for attorneys who comply with the rule.[125] Numerous commenters agreed that the final rule should contain such a provision.

Several commenters suggested that the final rule contain a safe harbor similar to that provided for auditors in Section 10A(c) of the Exchange Act, 15 U.S.C. 78j–1(c), which provides that "[n]o independent public accountant shall be liable in a private action for any finding, conclusion, or statement expressed in a report" to the Commission made by an issuer whose auditor has reported to its board a failure to take remedial action.[126] Other commenters recommended that the Commission adopt language similar to that in the Restatement (Third) of Law Governing Lawyers, Standards of Care section 52, which provides that "[p]roof of a violation of a rule or statute regulating the conduct of lawyers * * * does not give rise to an implied cause of action for professional negligence or breach of fiduciary duty * * *."[127] And others noted that the ABA Model Rules, Scope, ¶ 20, provides that "[v]iolation of Rule should not itself give rise to a cause of action against a lawyer nor should it create any presumption in such a case that a legal duty has been breached."[128] Finally, numerous other commenters were of the view that a safe harbor should be created to protect lawyers from liability where they have attempted in good faith to comply with this part.[129]

The Commission is persuaded that it is appropriate to include an express safe harbor provision in the rule, which is set forth in new Section 205.7, No Private Right of Action. Paragraph (a) makes it clear that Part 205 does not create a private cause of action against an attorney, a law firm or an issuer, based upon their compliance or non-compliance with the part. The Commission is of the view that the protection of this provision should extend to any entity that might be compelled to take action under this part; thus it extends to law firms and issuers. The Commission is also of the opinion that, for the safe harbor to be truly effective, it must extend to both compliance and non-compliance under this part.

Paragraph (b) provides that only the Commission may enforce the requirements of this part. The provision is intended to preclude, among other things, private injunctive actions seeking to compel persons to take actions under this part and private damages actions against such persons. Once again, the protection extends to all entities that have obligations under this part.

III. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 ("PRA")[130] requires the agency to obtain approval from the Office of Management and Budget ("OMB") if an agency's rule would require a "collection of information," as defined by the PRA. As set forth in the proposing release, certain provisions of the rule, such as the requirement of written procedures for QLCCs, meet the "collection of information" requirement of the PRA. The information collection is necessary to implement the Standards of Professional Conduct for Attorneys prescribed by the proposed rule and required by Section 307 of the Sarbanes-Oxley Act of 2002. Specifically, the collection of information is intended to ensure that evidence of violations is communicated to appropriate officers and/or directors of issuers, so that they can adopt appropriate remedies and/or impose appropriate sanctions. In the rare cases in which a majority of a QLCC has concluded that an issuer did not act appropriately, the information may be communicated to the Commission. The collection of information is, therefore, an important component of the Commission's program to discourage violations of the federal securities laws and promote ethical behavior of attorneys appearing and practicing before the Commission.

The final rule would impose an up-the-ladder reporting requirement when attorneys appearing and practicing before the Commission become aware of evidence of a material violation by the issuer or any officer, director, employee, or agent of the issuer. An attorney must report such evidence to the issuer's CLO or to both the CLO and CEO. A subordinate attorney complies with the rule if he or she reports evidence of a material violation to his or her supervisory attorney (who is then responsible for complying with the rule's requirements). A subordinate attorney may also take the other steps described in the rule if the supervisor fails to comply.

If the CLO, after investigation, determines that there is no violation, he or she must so advise the reporting attorney. Unless the CLO reasonably believes that there is no violation, he or she must take reasonable steps to cause the issuer to adopt an appropriate response to stop, prevent or rectify any violation. The CLO must also report on the remedial measures or sanctions to the reporting attorney.

The rule also requires attorneys to take certain steps if the CLO or CEO does not provide an appropriate response to a report of evidence of a violation. These steps include reporting the evidence up-the-ladder to the audit committee, another committee consisting solely of independent directors if there is no audit committee, or to the board of directors if there is no such committee. If the attorney believes that the issuer has not made an appropriate response to the report, the attorney must explain the reasons for his or her belief to the CEO, CLO or directors to whom the report was made.

Alternatively, if an attorney other than a CLO reports the evidence to a QLCC, he or she need take no further action under the rule. The QLCC must have written procedures for the receipt, retention and consideration of reports of material violations, and must be authorized and responsible to notify the CLO and CEO of the report, determine whether an investigation is necessary and, if so, to notify the audit committee or the board of directors. The QLCC may also initiate an investigation to be

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[124] 67 FR 71697.

[125] 67 FR 71691.

[126] *See* Comments of Attorney's Liability Assurance Society, Inc., at 20; Comments of the Association of the Bar of the City of New York, at 5.

[127] *See* Comments of the American Bar Association, at 33–34; Comments of Morrison & Foerster and eight other law firms, at 21.

[128] *Id.* Comments of the American Bar Association, at 33–34.

[129] *See, e.g.*, Comments of Skadden Arps Slate Meagher & Flom, at 29; Comments of the SIA/TBMA, at 21; Comments of the Investment Company Institute, at 7.

[130] 44 U.S.C. 3501 *et seq.*

conducted by the CLO or outside attorneys, and retain any necessary expert personnel. At the conclusion of the investigation, the QLCC may recommend that the issuer adopt appropriate remedial measures and/or impose sanctions, and notify the CLO, CEO, and board of directors of the results of the inquiry and appropriate remedial measures to be adopted. Where the QLCC decides, by a majority vote, that the issuer has failed to take any remedial measure that the QLCC has directed the issuer to take, the QLCC has the authority to notify the Commission. A CLO may also refer a report of evidence of a material violation to a QLCC, which then would have responsibility for taking the steps required by the rule.

The respondents to this collection of information would be attorneys who appear and practice before the Commission and, in certain cases, the issuer, and/or officers, directors and committees of the issuer. We proposed to require attorneys to document communications contemplated by the proposed rule. In response to commenters concerns, we are not specifying that the communications must be documented. We continue to believe that, in providing quality representation to issuers, attorneys report evidence of violations to others within the issuer, including the CLO, the CEO, and, where necessary, the directors. In addition, officers and directors already investigate evidence of violations and report within the issuer the results of the investigation and the remedial steps they have taken or sanctions they have imposed. Attorneys who believe that they were discharged for making a report under the proposed rule might notify the issuer of that fact. Except as discussed below, we therefore believe that the reporting requirements imposed by the rule are "usual and customary" activities that do not add to the burden that would be imposed by the collection of information.[131]

Certain aspects of the collection of information, however, impose a new burden. For an issuer to choose to establish a QLCC, the QLCC must adopt written procedures for the confidential receipt, retention and consideration of any report of evidence of a material violation. We are adopting this requirement and its collection of information requirement largely as proposed.

We estimate for purposes of the PRA that there are approximately 18,200 issuers that would be subject to the proposed rule.[132] We are unable to estimate precisely how many issuers will choose to form a QLCC. For these purposes, we estimate that approximately 20%, or 3,640, will choose to establish a QLCC. Establishing the written procedures required by the proposed rule should not impose a significant burden. We assume that an issuer would incur a greater burden in the year that it first establishes the procedures than in subsequent years, in which the burden would be incurred in updating, reviewing, or modifying the procedures. For purposes of the PRA, we assume that an issuer would spend six hours every three-year period on the procedures. This would result in an average burden of two hours per year. Thus, we estimate for purposes of the PRA that the total annual burden imposed by this collection of information would be 7,280 hours. We assume that half of those hours will be incurred by outside counsel at a rate of $300 per hour. Using these assumptions, we estimate the collection of information would result in a cost of $1,092,000.

We are not adopting at this time a requirement that attorneys make a "noisy withdrawal." We have amended the PRA submission to remove any burden from that collection of information. We are still considering that provision and, in a separate proposing release, we are requesting additional comments on it. In addition, we are separately proposing an alternative that, along with the "noisy withdrawal" proposal, also constitutes a collection of information under the PRA.

The Commission received two comments regarding the Paperwork Reduction Act section of the proposing release. One commenter indicated that the Commission has not considered the paperwork burdens of Part 205 on attorneys who do not specialize in securities law, but who may be considered to be appearing and practicing before the Commission under the rule.[133] The Commission believes that as adopted, the rule imposes little, if any, paperwork burdens on attorneys regardless of whether they specialize in securities law, especially in light of clarification to the rule's scope in the definition of "appearing and practicing." Another commenter suggested that the Commission's original estimate that one quarter of the 18,200 issuers subject to the rule will form QLCCs may be understated, but offered no alternate estimate.[134] The Commission estimated in the proposing release that one quarter of issuers would form QLCCs and received comments suggesting both that it would be difficult to find people to serve on QLCCs[135] and, on the other hand, many companies would use QLCCs.[136] Moreover, the Commission is not adopting at this time the "noisy withdrawal" proposal, which may tend to cause fewer companies to form QLCCs. Accordingly, the Commission estimates that under the rule, as adopted, 20% of issuers will form QLCCs.

The Commission submitted the collection of information to OMB for review in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11, under the title of "Reports of Evidence of Material Violations." Because of the changes to the nature of the information collected and because of the separate proposal for an alternative to "noisy withdrawal," we have changed the name of the submission to "QLCC and Other Internal Reporting." OMB has not yet approved the collection; we will separately publish the OMB control number. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number. Compliance with the collection of information requirements is in some cases mandatory and in some cases voluntary depending upon the circumstances. Responses to the requirements to make disclosures to the Commission will not be kept confidential.

IV. Costs and Benefits

Part 205 implements Section 307 of the Sarbanes-Oxley Act. Part 205 will affect all attorneys who appear and practice before the Commission in the representation of an issuer and who become aware of evidence that tends to show that a material violation of federal or state securities laws, a material breach of fiduciary duty, or a similar material violation by the issuer or an officer, director, agent, or employee of

[131] *See* 5 CFR 1320.3(b)(2).

[132] This estimate is based, in part, on the total number of operating companies that filed annual reports on Form 10–K (8,484), Form 10–KSB (3,820), Form 20–F (1,194) or Form 40–F (134) during the 2001 fiscal year, and an estimate of the average number of issuers that may have a registration statement filed under the Securities Act pending with the Commission at any time (100). In addition, we estimate that approximately 4,500 investment companies currently file periodic reports on Form N–SAR.

[133] Comments of the Mid-America Legal Foundation, at 3–4.

[134] Comments of Robert Eli Rosen, at 3.

[135] Comments of Clifford Chance, at 4–5; Comments of Emerson Electric Co., at 5.

[136] Comments of Susan P. Koniak *et al.*, at 11; Comments of Richard W. Painter, at 5; Comments of Thomas D. Morgan, at 12.

the issuer has occurred, is ongoing, or is about to occur. The rule we are issuing today implements a Congressional mandate to prescribe "minimum standards of professional conduct for attorneys appearing and practicing before the Commission in any way in the representation of issuers * * *." Prior to passage of the Sarbanes-Oxley Act, attorneys appearing and practicing before the Commission were regulated as to their professional conduct primarily by the ethics standards of the various states where attorneys happened to practice. By passing the Sarbanes-Oxley Act, Congress has implicitly concluded that the benefits of setting such minimum federal standards justify their costs. We enumerate and discuss these costs and benefits below.

Part 205 implements an up-the-ladder reporting requirement upon attorneys representing an issuer before the Commission who become aware of a potential material violation about which a reasonably prudent investor would want to be informed. It is expected that, in the vast majority of instances of such reports, the situation will be addressed and remedied before it causes significant harm to investors.

In addition to these requirements, the rule would authorize a covered attorney to reveal to the Commission confidences or secrets relating to the attorney's representation of an issuer before the Commission to the extent the attorney reasonably believes it necessary to: (i) Prevent the issuer from committing a material violation likely to cause substantial harm to the financial interest or property of the issuer or investors; (ii) prevent the issuer from perpetrating a fraud upon the Commission; or (iii) rectify the consequences of the issuer's illegal act that the attorney's services had furthered.

A. Benefits

Part 205 is designed to protect investors and increase their confidence in public companies by ensuring that attorneys who represent issuers report up the corporate ladder evidence of material violations by their officers and employees. The Commission recognizes that some attorneys may already follow up-the-ladder reporting procedures, especially where the conduct at issue is directly related to the matter on which the attorney represents the issuer, but believes it will prove beneficial if all attorneys who appear and practice before the Commission comply with this requirement.

Part 205 should protect investors by helping to prevent instances of significant corporate misconduct and fraud. The rule requires that attorneys report up-the-ladder when they become aware of evidence of a material violation. Although many attorneys already do this, some may not, especially if the violation is unrelated to the purpose for which they were retained. The rule gives issuers the option of forming a QLCC, consisting of at least one member of the issuer's audit committee and two or more independent directors, which would investigate reports of material violations and would be authorized to recommend that the issuer adopt appropriate remedial measures. The Commission believes that these requirements will make it more likely that companies will address instances of misconduct internally, and act to remedy violations at earlier stages.

Part 205 is intended to increase investor confidence. By requiring attorneys to report potential misconduct up-the-ladder within a corporation, the rule provides a measure of comfort to investors that evidence of fraud will be known and evaluated by the top authorities in a corporation, including its board of directors, and not dismissed by lower-level employees. Furthermore, investors will know that a company that forms a QLCC will have reports of misconduct evaluated by at least one member of the company's audit committee as well as two or more of its independent directors. Investors will also know that if an issuer fails to implement a recommendation that the QLCC has recommended, the QLCC, after a majority vote, may notify the Commission.

Part 205 should serve to deter corporate misconduct and fraud. Corporate wrongdoers at the lower or middle levels of the corporate hierarchy will be aware that an attorney who becomes aware of their misconduct is obligated under the rule to report it up-the-ladder to the highest levels of the corporation. In the event that wrongdoing or fraud exists at the highest levels of a corporation, those committing the misconduct will similarly know that the corporation's attorneys are obligated to report any misconduct of which they become aware up-the-ladder to the corporation's board and its independent directors.

Part 205 may improve the governance of corporations that are subject to the rule. By mandating up-the-ladder reporting of violations, the rule helps to ensure that evidence of material violations will be addressed and remedied within the corporation, rather than misdirected or "swept under the rug." The formation of QLCCs may also serve to improve corporate governance. The Commission believes that some issuers will choose to adopt QLCCs, and that they may prove to be a recognized and effective means of reviewing reported evidence of material violations. Because a QLCC must consist of at least two independent directors (as well as one member of the corporation's audit committee), it will give greater authority to independent directors. This should serve as an important check on corporate management.

Part 205 will give attorneys who appear and practice before the Commission guidance and clarity regarding their ethical obligations when confronted with evidence of wrongdoing by their clients. Part 205 requires that attorneys report up-the-ladder when they become aware of potential material violations and thus complies with an express Congressional directive to set minimum standards of professional conduct for attorneys who appear and practice before it. These benefits are difficult to quantify.

B. Costs

Part 205 will impose costs on issuers and law firms representing them. For issuers, the rule will require the chief legal officer of an issuer to investigate and, where necessary, cause remedial actions and/or sanctions to be taken and/or imposed. It also will cause the CEO, QLCC, and board of directors of the issuer to review evidence of material violations. We believe that most issuers already have procedures for reviewing evidence of misconduct. Similarly, we expect that most issuers already incur costs with investigating such reports.

Those companies that choose to form a QLCC to implement this provision will incur costs. These costs might include increased compensation and insurance for QLCC members, and administrative costs to establish the committee. Additionally, for purposes of the PRA, we assume that 20% of issuers will form such a committee and incur an annualized paperwork cost of two hours for a total annual burden of 7,280 hours. Assuming outside counsel accounts for half of these hours at a cost of $300 per hour,[137] and inside counsel accounts for the other half at $110 per hour,[138] this would result in a cost of $1,492,400.

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[137] Estimate of outside counsel rate was obtained by contacting a number of law firms regularly involved in completing Commission documents. *See* Disclosure Required by Sections 406 and 407 of the Sarbanes-Oxley Act of 2002, Release Nos. 33–8138 (Oct. 22, 2002) and 33–8177 at n.69 (Jan. 23, 2003).

[138] Estimate of inside counsel rate is derived from the Securities Industry Association "Report on Management & Professional Earnings in the

Continued

For lawyers, the rule could have an effect upon malpractice insurance premiums, which could, in turn, increase the cost of attorney services to issuers. The Commission received three comments suggesting that the rule, and particularly the provisions requiring mandatory withdrawal and reporting to the Commission, would lead to an increase in the number of malpractice suits brought against attorneys.[139] One of these comments, from an insurance carrier, indicated that the rule could cause malpractice insurance premiums for attorneys to rise by 10% to 50%.[140] The Commission has made a number of changes to the rule in light of these comments. The Commission has clarified and made explicit in Section 205.7 that no private right of action exists based on compliance or non-compliance with the rule. In addition, the Commission has made it clear in Section 205.6(c) that an attorney who complies in good faith with the rule will not be subject to discipline or otherwise liable under an inconsistent state standard. Moreover, the rule, as adopted, will not require attorneys to withdraw or report to the Commission, but will only require reporting to the Commission in the very limited circumstances occurring when a majority of a QLCC determines that an issuer has failed to take remedial action that was directed by the QLCC. Accordingly, the Commission believes that the rule will not have as great an effect on malpractice insurance premiums as suggested by commenters in response to the proposed rule.

Part 205 may also encourage some issuers to handle more legal matters in-house and may cause other issuers to limit the use of in-house counsel and rely more heavily on outside counsel, possibly increasing the cost of legal services. The Commission received one comment indicating that issuers would refer more matters to in-house counsel[141] and four comments indicating that the rule would result in more matters referred to outside counsel.[142] None of the commenters attempted to quantify the costs associated with these shifts. To the extent that the rule, as originally proposed, provided some perceived incentives to transfer functions to or from outside counsel, principally because of the "noisy withdrawal" requirements, we believe that those perceived incentives are not present in the rule as adopted.

There may also be some additional costs of the rule imposed on the market that are exceedingly difficult to predict or quantify. The Commission received comments indicating that the rule, and particularly the proposal regarding "noisy withdrawal," would cause issuers to be less willing to seek legal advice and would result in issuers being less forthcoming with their counsel.[143] However, no commenters presented data or attempted to quantify any costs associated with this effect. The Commission also received comments indicating that the rule would not cause any decrease in attorney-client communication.[144] Since the rule, as adopted, will not require mandatory withdrawal or disclosure to the Commission, we believe that Part 205 will not have any adverse impact on attorney-client communications.

V. Effect on Efficiency, Competition and Capital Formation

Section 23(a)(2) of the Exchange Act (15 U.S.C. 78w(a)(2)) requires us, when adopting rules under the Exchange Act, to consider the impact that any new rule would have on competition. Section 23(a)(2) prohibits us from adopting any rule that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act. In addition, Section 2(b) of the Securities Act (15 U.S.C. 77b(b)), Section 3(f) of the Exchange Act (15 U.S.C. 78c(f)), and Section 2(c) of the Investment Company Act (15 U.S.C. 80a–2(c)), require us, when engaging in rulemaking where we are required to consider or determine whether an action is necessary or appropriate in the public interest, to consider, in addition to the protection of investors, whether the action will promote efficiency, competition and capital formation.

Part 205 is intended to ensure that attorneys representing issuers before the Commission are governed by standards of conduct that increase disclosure of potential impropriety within an issuer so that prompt intervention and remediation can take place. Doing so should boost investor confidence in the financial markets. We anticipate that this rule will enhance the proper functioning of the capital markets and promote efficiency by reducing the likelihood that illegal behavior would remain undetected and unremedied for long periods of time. Part 205 will apply to all issuers and attorneys appearing before the Commission and is therefore unlikely to affect competition.

The Commission invited comment on this analysis, and received one comment on it.[145] The commenter suggested that the rule could result in a large quantity of information being sent to a CLO or QLCC, which would be expensive and unwieldy to process, and would thus conflict with the goal of promoting efficiency, competition and capital formation. The Commission believes that Part 205 is consistent with the statutory goals and will substantially assist in attaining them by preventing corporate misconduct, restoring investor confidence and lowering the cost of capital.

VI. Final Regulatory Flexibility Analysis

This Final Regulatory Flexibility Analysis ("FRFA") has been prepared in accordance with the Regulatory Flexibility Act, 5 U.S.C. 601. An Initial Regulatory Flexibility Analysis ("IRFA") was prepared in accordance with 5 U.S.C. 603 and was made available to the public.

A. Need for the Rule

Part 205 complies with Section 307 of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7245), which requires the Commission to prescribe "minimum standards of professional conduct for attorneys appearing and practicing before the Commission in any way in the representation of issuers. * * *" The standards must include a rule "requiring an attorney to report evidence of a material violation of securities law or breach of fiduciary duty or similar violation by the company or any agent thereof" to the CLO or the CEO of the company (or the equivalent thereof); and, if they do not respond appropriately to the evidence, requiring the attorney to report the evidence to the audit committee, another committee of independent directors, or the full board of directors.

B. Significant Issues Raised by Public Comment

The Commission received no comments in response to the IRFA.

Securities Industry 2002," and represents the SIA value for an Assistant General Counsel in New York City.

[139] Comments of Chubb Specialty Insurance, at 2–3; Comments of the American Bar Association, at 26–7; Comments of Attorneys' Liability Assurance Society, Inc., at 8, 11.

[140] Comments of Chubb Specialty Insurance, at 5.

[141] Comments of Carter, Ledyard & Milburn, at 2.

[142] Comments of Committee on Investment Management Regulation, Association of the Bar of the City of New York, at 4; Comments of the American Corporate Counsel Association, at 4–5; Comments of Investment Company Institute, at 4; Comments of Debra M. Brown, at 2.

[143] *See, e.g.*, Comments of the American Bar Association, at 26.

[144] *See, e.g.*, Comments of Susan P. Koniak *et al.*, at 24.

[145] Comments of Los Angeles County Bar Association, at 7–8.

C. Small Entities Subject to Part 205

Part 205 would affect issuers and law firms that are small entities. Exchange Act Rule 0–10(a) (17 CFR 240.0–10(a)) defines an issuer, other than an investment company, to be a "small business" or "small organization" if it had total assets of $5 million or less on the last day of its most recent fiscal year. As of October 23, 2002, we estimated that there were approximately 2,500 issuers, other than investment companies, that may be considered small entities. For purposes of the Regulatory Flexibility Act, an investment company is a small entity if it, together with other investment companies in the same group of related investment companies, has net assets of $50 million or less as of the end of its most recent fiscal year.[146] We estimate that there are 211 small investment companies that would be subject to the rule. The revisions would apply to any small entity that is subject to Exchange Act reporting requirements.

Part 205 also would affect law firms that are small entities. The Small Business Administration has defined small business for purposes of "offices of lawyers" as those with under $6 million in annual revenue.[147] Because we do not directly regulate law firms appearing before the Commission, we do not have data to estimate the number of small law firms that practice before the Commission or, of those, how many have revenue of less than $6 million. We sought comment on the number of small law firms affected by the rules, but received none.

D. Reporting, Recordkeeping and Other Compliance Requirements

Paragraph 205.3(b) prescribes the duty of an attorney who appears or practices before the Commission in the representation of an issuer to report evidence of a material violation that has occurred, is ongoing, or is about to occur. The attorney is initially directed to make this report to the issuer's CLO, or to the issuer's CLO and CEO.

When presented with a report of a possible material violation, the rule obligates the issuer's CLO to conduct a reasonable inquiry to determine whether the reported material violation has occurred, is occurring or may occur. A CLO who reasonably concludes that there has been no material violation must advise the reporting attorney of this conclusion. A CLO who concludes that a material violation has occurred, is occurring or is about to occur must take reasonable steps to ensure that the issuer adopts appropriate remedial measures and/or sanctions, including appropriate disclosures. Furthermore, the CLO is required to report up-the-ladder within the issuer and to the reporting attorney what remedial measures have been adopted.

A reporting attorney who receives an appropriate response within a reasonable time has satisfied all obligations under the rule. In the event a reporting attorney does not receive an appropriate response within a reasonable time, he or she must report the evidence of a material violation to the issuer's audit committee, to another committee of independent directors if the issuer has no audit committee, or to the full board if the issuer has no such committee. Similarly, if the attorney reasonably believes that it would be futile to report evidence of a material violation to the CLO and CEO, the attorney may report directly to the issuer's audit committee, another committee of independent directors, or to the full board.

Alternatively, pursuant to paragraph 205.3(c), issuers may (but are not required to) establish a QLCC, consisting of at least one member of the issuer's audit committee and two or more independent members of the issuer's board, for the purpose of investigating reports of material violations made by attorneys. Such a QLCC would be authorized to recommend to the issuer that it adopt appropriate remedial measures to prevent ongoing or alleviate past material violations, and empowered to notify the Commission of the material violation if the QLCC decides, by a majority vote, that the issuer has failed to take any remedial measure that the QLCC has directed the issuer to take. The QLCC would be required to notify the board of the results of any inquiry. An attorney other than a CLO may satisfy entirely his or her reporting obligations under the rule by reporting evidence of a material violation to a QLCC. Further, a CLO to whom a report of a material violation has been made may refer the matter to a QLCC.

Paragraph 205.3(d) sets forth the specific circumstances under which an attorney is authorized to disclose confidential information related to his or her appearance and practice before the Commission in the representation of an issuer. Pursuant to this provision, an attorney may use any contemporaneous records he or she creates to defend against charges of attorney misconduct. Paragraph 205.3(d)(2) also allows an attorney to reveal confidential information to the extent necessary to prevent the commission of a material violation that the attorney reasonably believes will result either in perpetration of a fraud upon the Commission or in substantial injury to the financial or property interests of the issuer or investors. Similarly, the attorney may disclose confidential information to rectify an issuer's material violations when such actions have been advanced by the issuer's use of the attorney's services.

We expect that the various reporting requirements required by Part 205 would, at least to a limited extent, increase costs incurred by both small issuers and law firms. We believe that many of these reports are, however, already being made by those affected by the rule. We are unable to estimate the frequency with which reports would have to be prepared by small entities. The time required for the actual preparation of a report would vary, but should not be extensive. Small issuers and law firms may bolster, and in some instances institute, internal procedures to ensure compliance—although the rule does not dictate how these procedures should be implemented.

E. Agency Action To Minimize Effect on Small Entities

The Regulatory Flexibility Act directs the Commission to consider significant alternatives that would accomplish the stated objective, while minimizing any significant adverse impact on small entities. In connection with the rule, we considered the following alternatives: (a) The establishment of differing compliance or reporting requirements that take into account the resources available to small entities; (b) the clarification, consolidation, or simplification of the reporting requirements for small entities; (c) an exemption from coverage of the requirements, or any part thereof, for small entities; and (d) the use of performance rather than design standards. As discussed above, the Sarbanes-Oxley Act directs the Commission to implement rules requiring up-the-ladder reporting. The Act does not contain any exemption or other limitation for small entities. Small business issuers may have some difficulty staffing a QLCC, as we presume that they may have fewer independent directors. We note that issuers are not required to have a QLCC under the rule.

The rule uses some performance standards and some design standards. While the rule establishes a framework for reporting evidence of material violations up-the-ladder, it does not set specific standards for how to comply with the rule's requirements. For the

[146] 17 CFR 270.0–10.
[147] 13 CFR 121.201.

most part, rather than requiring reports to contain specific, detailed disclosures, the rule prescribes general requirements for reporting. This should give small entities flexibility in complying with the rule.

By permitting issuers to establish QLCCs as an alternative mechanism for attorneys to report evidence of misconduct or fraud, the rule presents a performance standard (as opposed to a design standard). A performance standard is characterized by the provision for alternative means of fulfilling the regulatory standard. It has the advantage of permitting market participants to choose the method of meeting the standard that presents the least cost to them. The provision of alternative reporting mechanisms within this rule should serve to lower overall costs to issuers attributable to the rule in precisely this manner.

We believe that utilizing different reporting or other compliance requirements for small entities would undermine the effective functioning of the reporting regime. The rule is designed to restore investor confidence in the reliability of the financial statements of the companies they invest in—if small entities were not subject to such requirements, investors might be less inclined to invest in their securities. Further, we see no valid justification for imposing different standards of conduct upon small law firms than would apply to others who choose to appear and practice before the Commission. We also believe that the reporting requirements will be at least as well understood by small entities as would be any alternate formulation we might formulate to apply to them. Therefore, it does not seem necessary or appropriate to develop separate requirements for small entities.

VII. Statutory Authority

The Commission is adding a new Part 205 to Title 17, Chapter II, of the Code of Federal Regulations under the authority in Sections 3, 307, and 404 of the Sarbanes-Oxley Act of 2002,[148] Section 19 of the Securities Act of 1933,[149] Sections 3(b), 4C, 13, and 23 of the Securities Exchange Act of 1934,[150] Sections 38 and 39 of the Investment Company Act of 1940,[151] and Section 211 of the Investment Advisers Act of 1940.[152]

[148] 15 U.S.C. 7202, 7245, 7262.
[149] 15 U.S.C. 77s.
[150] 15 U.S.C. 78c(b), 78d–3, 78m, 78w.
[151] 15 U.S.C. 80a–37, 80a–38.
[152] 15 U.S.C. 80b–11.

Text of Rule

List of Subjects in 17 CFR Part 205

Standards of conduct for attorneys.

For the reasons set out in the preamble, the Commission amends Title 17, Chapter II, of the Code of Federal Regulations by adding Part 205 to read as follows:

PART 205—STANDARDS OF PROFESSIONAL CONDUCT FOR ATTORNEYS APPEARING AND PRACTICING BEFORE THE COMMISSION IN THE REPRESENTATION OF AN ISSUER

Sec.
205.1 Purpose and scope.
205.2 Definitions.
205.3 Issuer as client.
205.4 Responsibilities of supervisory attorneys.
205.5 Responsibilities of a subordinate attorney.
205.6 Sanctions and discipline.
205.7 No private right of action.

Authority: 15 U.S.C. 77s, 78d–3, 78w, 80a–37, 80a–38, 80b–11, 7202, 7245, and 7262.

§ 205.1 Purpose and scope.

This part sets forth minimum standards of professional conduct for attorneys appearing and practicing before the Commission in the representation of an issuer. These standards supplement applicable standards of any jurisdiction where an attorney is admitted or practices and are not intended to limit the ability of any jurisdiction to impose additional obligations on an attorney not inconsistent with the application of this part. Where the standards of a state or other United States jurisdiction where an attorney is admitted or practices conflict with this part, this part shall govern.

§ 205.2 Definitions.

For purposes of this part, the following definitions apply:

(a) *Appearing and practicing* before the Commission:

(1) Means:

(i) Transacting any business with the Commission, including communications in any form;

(ii) Representing an issuer in a Commission administrative proceeding or in connection with any Commission investigation, inquiry, information request, or subpoena;

(iii) Providing advice in respect of the United States securities laws or the Commission's rules or regulations thereunder regarding any document that the attorney has notice will be filed with or submitted to, or incorporated into any document that will be filed with or submitted to, the Commission, including the provision of such advice in the context of preparing, or participating in the preparation of, any such document; or

(iv) Advising an issuer as to whether information or a statement, opinion, or other writing is required under the United States securities laws or the Commission's rules or regulations thereunder to be filed with or submitted to, or incorporated into any document that will be filed with or submitted to, the Commission; but

(2) Does not include an attorney who:

(i) Conducts the activities in paragraphs (a)(1)(i) through (a)(1)(iv) of this section other than in the context of providing legal services to an issuer with whom the attorney has an attorney-client relationship; or

(ii) Is a non-appearing foreign attorney.

(b) *Appropriate response* means a response to an attorney regarding reported evidence of a material violation as a result of which the attorney reasonably believes:

(1) That no material violation, as defined in paragraph (i) of this section, has occurred, is ongoing, or is about to occur;

(2) That the issuer has, as necessary, adopted appropriate remedial measures, including appropriate steps or sanctions to stop any material violations that are ongoing, to prevent any material violation that has yet to occur, and to remedy or otherwise appropriately address any material violation that has already occurred and to minimize the likelihood of its recurrence; or

(3) That the issuer, with the consent of the issuer's board of directors, a committee thereof to whom a report could be made pursuant to § 205.3(b)(3), or a qualified legal compliance committee, has retained or directed an attorney to review the reported evidence of a material violation and either:

(i) Has substantially implemented any remedial recommendations made by such attorney after a reasonable investigation and evaluation of the reported evidence; or

(ii) Has been advised that such attorney may, consistent with his or her professional obligations, assert a colorable defense on behalf of the issuer (or the issuer's officer, director, employee, or agent, as the case may be) in any investigation or judicial or administrative proceeding relating to the reported evidence of a material violation.

(c) *Attorney* means any person who is admitted, licensed, or otherwise qualified to practice law in any jurisdiction, domestic or foreign, or who

holds himself or herself out as admitted, licensed, or otherwise qualified to practice law.

(d) *Breach of fiduciary duty* refers to any breach of fiduciary or similar duty to the issuer recognized under an applicable Federal or State statute or at common law, including but not limited to misfeasance, nonfeasance, abdication of duty, abuse of trust, and approval of unlawful transactions.

(e) *Evidence of a material violation* means credible evidence, based upon which it would be unreasonable, under the circumstances, for a prudent and competent attorney not to conclude that it is reasonably likely that a material violation has occurred, is ongoing, or is about to occur.

(f) *Foreign government issuer* means a foreign issuer as defined in 17 CFR 230.405 eligible to register securities on Schedule B of the Securities Act of 1933 (15 U.S.C. 77a *et seq.*, Schedule B).

(g) *In the representation of an issuer* means providing legal services as an attorney for an issuer, regardless of whether the attorney is employed or retained by the issuer.

(h) *Issuer* means an issuer (as defined in section 3 of the Securities Exchange Act of 1934 (15 U.S.C. 78c)), the securities of which are registered under section 12 of that Act (15 U.S.C. 78l), or that is required to file reports under section 15(d) of that Act (15 U.S.C. 78o(d)), or that files or has filed a registration statement that has not yet become effective under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*), and that it has not withdrawn, but does not include a foreign government issuer. For purposes of paragraphs (a) and (g) of this section, the term "issuer" includes any person controlled by an issuer, where an attorney provides legal services to such person on behalf of, or at the behest, or for the benefit of the issuer, regardless of whether the attorney is employed or retained by the issuer.

(i) *Material violation* means a material violation of an applicable United States federal or state securities law, a material breach of fiduciary duty arising under United States federal or state law, or a similar material violation of any United States federal or state law.

(j) *Non-appearing foreign attorney* means an attorney:

(1) Who is admitted to practice law in a jurisdiction outside the United States;

(2) Who does not hold himself or herself out as practicing, and does not give legal advice regarding, United States federal or state securities or other laws (except as provided in paragraph (j)(3)(ii) of this section); and

(3) Who:

(i) Conducts activities that would constitute appearing and practicing before the Commission only incidentally to, and in the ordinary course of, the practice of law in a jurisdiction outside the United States; or

(ii) Is appearing and practicing before the Commission only in consultation with counsel, other than a non-appearing foreign attorney, admitted or licensed to practice in a state or other United States jurisdiction.

(k) *Qualified legal compliance committee* means a committee of an issuer (which also may be an audit or other committee of the issuer) that:

(1) Consists of at least one member of the issuer's audit committee (or, if the issuer has no audit committee, one member from an equivalent committee of independent directors) and two or more members of the issuer's board of directors who are not employed, directly or indirectly, by the issuer and who are not, in the case of a registered investment company, "interested persons" as defined in section 2(a)(19) of the Investment Company Act of 1940 (15 U.S.C. 80a–2(a)(19));

(2) Has adopted written procedures for the confidential receipt, retention, and consideration of any report of evidence of a material violation under § 205.3;

(3) Has been duly established by the issuer's board of directors, with the authority and responsibility:

(i) To inform the issuer's chief legal officer and chief executive officer (or the equivalents thereof) of any report of evidence of a material violation (except in the circumstances described in § 205.3(b)(4));

(ii) To determine whether an investigation is necessary regarding any report of evidence of a material violation by the issuer, its officers, directors, employees or agents and, if it determines an investigation is necessary or appropriate, to:

(A) Notify the audit committee or the full board of directors;

(B) Initiate an investigation, which may be conducted either by the chief legal officer (or the equivalent thereof) or by outside attorneys; and

(C) Retain such additional expert personnel as the committee deems necessary; and

(iii) At the conclusion of any such investigation, to:

(A) Recommend, by majority vote, that the issuer implement an appropriate response to evidence of a material violation; and

(B) Inform the chief legal officer and the chief executive officer (or the equivalents thereof) and the board of directors of the results of any such investigation under this section and the appropriate remedial measures to be adopted; and

(4) Has the authority and responsibility, acting by majority vote, to take all other appropriate action, including the authority to notify the Commission in the event that the issuer fails in any material respect to implement an appropriate response that the qualified legal compliance committee has recommended the issuer to take.

(l) *Reasonable* or *reasonably* denotes, with respect to the actions of an attorney, conduct that would not be unreasonable for a prudent and competent attorney.

(m) *Reasonably believes* means that an attorney believes the matter in question and that the circumstances are such that the belief is not unreasonable.

(n) *Report* means to make known to directly, either in person, by telephone, by e-mail, electronically, or in writing.

§ 205.3 Issuer as client.

(a) *Representing an issuer.* An attorney appearing and practicing before the Commission in the representation of an issuer owes his or her professional and ethical duties to the issuer as an organization. That the attorney may work with and advise the issuer's officers, directors, or employees in the course of representing the issuer does not make such individuals the attorney's clients.

(b) *Duty to report evidence of a material violation.* (1) If an attorney, appearing and practicing before the Commission in the representation of an issuer, becomes aware of evidence of a material violation by the issuer or by any officer, director, employee, or agent of the issuer, the attorney shall report such evidence to the issuer's chief legal officer (or the equivalent thereof) or to both the issuer's chief legal officer and its chief executive officer (or the equivalents thereof) forthwith. By communicating such information to the issuer's officers or directors, an attorney does not reveal client confidences or secrets or privileged or otherwise protected information related to the attorney's representation of an issuer.

(2) The chief legal officer (or the equivalent thereof) shall cause such inquiry into the evidence of a material violation as he or she reasonably believes is appropriate to determine whether the material violation described in the report has occurred, is ongoing, or is about to occur. If the chief legal officer (or the equivalent thereof) determines no material violation has occurred, is ongoing, or is about to occur, he or she shall notify the

reporting attorney and advise the reporting attorney of the basis for such determination. Unless the chief legal officer (or the equivalent thereof) reasonably believes that no material violation has occurred, is ongoing, or is about to occur, he or she shall take all reasonable steps to cause the issuer to adopt an appropriate response, and shall advise the reporting attorney thereof. In lieu of causing an inquiry under this paragraph (b), a chief legal officer (or the equivalent thereof) may refer a report of evidence of a material violation to a qualified legal compliance committee under paragraph (c)(2) of this section if the issuer has duly established a qualified legal compliance committee prior to the report of evidence of a material violation.

(3) Unless an attorney who has made a report under paragraph (b)(1) of this section reasonably believes that the chief legal officer or the chief executive officer of the issuer (or the equivalent thereof) has provided an appropriate response within a reasonable time, the attorney shall report the evidence of a material violation to:

(i) The audit committee of the issuer's board of directors;

(ii) Another committee of the issuer's board of directors consisting solely of directors who are not employed, directly or indirectly, by the issuer and are not, in the case of a registered investment company, "interested persons" as defined in section 2(a)(19) of the Investment Company Act of 1940 (15 U.S.C. 80a–2(a)(19)) (if the issuer's board of directors has no audit committee); or

(iii) The issuer's board of directors (if the issuer's board of directors has no committee consisting solely of directors who are not employed, directly or indirectly, by the issuer and are not, in the case of a registered investment company, "interested persons" as defined in section 2(a)(19) of the Investment Company Act of 1940 (15 U.S.C. 80a–2(a)(19))).

(4) If an attorney reasonably believes that it would be futile to report evidence of a material violation to the issuer's chief legal officer and chief executive officer (or the equivalents thereof) under paragraph (b)(1) of this section, the attorney may report such evidence as provided under paragraph (b)(3) of this section.

(5) An attorney retained or directed by an issuer to investigate evidence of a material violation reported under paragraph (b)(1), (b)(3), or (b)(4) of this section shall be deemed to be appearing and practicing before the Commission. Directing or retaining an attorney to investigate reported evidence of a material violation does not relieve an officer or director of the issuer to whom such evidence has been reported under paragraph (b)(1), (b)(3), or (b)(4) of this section from a duty to respond to the reporting attorney.

(6) An attorney shall not have any obligation to report evidence of a material violation under this paragraph (b) if:

(i) The attorney was retained or directed by the issuer's chief legal officer (or the equivalent thereof) to investigate such evidence of a material violation and:

(A) The attorney reports the results of such investigation to the chief legal officer (or the equivalent thereof); and

(B) Except where the attorney and the chief legal officer (or the equivalent thereof) each reasonably believes that no material violation has occurred, is ongoing, or is about to occur, the chief legal officer (or the equivalent thereof) reports the results of the investigation to the issuer's board of directors, a committee thereof to whom a report could be made pursuant to paragraph (b)(3) of this section, or a qualified legal compliance committee; or

(ii) The attorney was retained or directed by the chief legal officer (or the equivalent thereof) to assert, consistent with his or her professional obligations, a colorable defense on behalf of the issuer (or the issuer's officer, director, employee, or agent, as the case may be) in any investigation or judicial or administrative proceeding relating to such evidence of a material violation, and the chief legal officer (or the equivalent thereof) provides reasonable and timely reports on the progress and outcome of such proceeding to the issuer's board of directors, a committee thereof to whom a report could be made pursuant to paragraph (b)(3) of this section, or a qualified legal compliance committee.

(7) An attorney shall not have any obligation to report evidence of a material violation under this paragraph (b) if such attorney was retained or directed by a qualified legal compliance committee:

(i) To investigate such evidence of a material violation; or

(ii) To assert, consistent with his or her professional obligations, a colorable defense on behalf of the issuer (or the issuer's officer, director, employee, or agent, as the case may be) in any investigation or judicial or administrative proceeding relating to such evidence of a material violation.

(8) An attorney who receives what he or she reasonably believes is an appropriate and timely response to a report he or she has made pursuant to paragraph (b)(1), (b)(3), or (b)(4) of this section need do nothing more under this section with respect to his or her report.

(9) An attorney who does not reasonably believe that the issuer has made an appropriate response within a reasonable time to the report or reports made pursuant to paragraph (b)(1), (b)(3), or (b)(4) of this section shall explain his or her reasons therefor to the chief legal officer (or the equivalent thereof), the chief executive officer (or the equivalent thereof), and directors to whom the attorney reported the evidence of a material violation pursuant to paragraph (b)(1), (b)(3), or (b)(4) of this section.

(10) An attorney formerly employed or retained by an issuer who has reported evidence of a material violation under this part and reasonably believes that he or she has been discharged for so doing may notify the issuer's board of directors or any committee thereof that he or she believes that he or she has been discharged for reporting evidence of a material violation under this section.

(c) *Alternative reporting procedures for attorneys retained or employed by an issuer that has established a qualified legal compliance committee.* (1) If an attorney, appearing and practicing before the Commission in the representation of an issuer, becomes aware of evidence of a material violation by the issuer or by any officer, director, employee, or agent of the issuer, the attorney may, as an alternative to the reporting requirements of paragraph (b) of this section, report such evidence to a qualified legal compliance committee, if the issuer has previously formed such a committee. An attorney who reports evidence of a material violation to such a qualified legal compliance committee has satisfied his or her obligation to report such evidence and is not required to assess the issuer's response to the reported evidence of a material violation.

(2) A chief legal officer (or the equivalent thereof) may refer a report of evidence of a material violation to a previously established qualified legal compliance committee in lieu of causing an inquiry to be conducted under paragraph (b)(2) of this section. The chief legal officer (or the equivalent thereof) shall inform the reporting attorney that the report has been referred to a qualified legal compliance committee. Thereafter, pursuant to the requirements under § 205.2(k), the qualified legal compliance committee shall be responsible for responding to the evidence of a material violation reported to it under this paragraph (c).

(d) *Issuer confidences.* (1) Any report under this section (or the contemporaneous record thereof) or any response thereto (or the contemporaneous record thereof) may be used by an attorney in connection with any investigation, proceeding, or litigation in which the attorney's compliance with this part is in issue.

(2) An attorney appearing and practicing before the Commission in the representation of an issuer may reveal to the Commission, without the issuer's consent, confidential information related to the representation to the extent the attorney reasonably believes necessary:

(i) To prevent the issuer from committing a material violation that is likely to cause substantial injury to the financial interest or property of the issuer or investors;

(ii) To prevent the issuer, in a Commission investigation or administrative proceeding from committing perjury, proscribed in 18 U.S.C. 1621; suborning perjury, proscribed in 18 U.S.C. 1622; or committing any act proscribed in 18 U.S.C. 1001 that is likely to perpetrate a fraud upon the Commission; or

(iii) To rectify the consequences of a material violation by the issuer that caused, or may cause, substantial injury to the financial interest or property of the issuer or investors in the furtherance of which the attorney's services were used.

§ 205.4 Responsibilities of supervisory attorneys.

(a) An attorney supervising or directing another attorney who is appearing and practicing before the Commission in the representation of an issuer is a supervisory attorney. An issuer's chief legal officer (or the equivalent thereof) is a supervisory attorney under this section.

(b) A supervisory attorney shall make reasonable efforts to ensure that a subordinate attorney, as defined in § 205.5(a), that he or she supervises or directs conforms to this part. To the extent a subordinate attorney appears and practices before the Commission in the representation of an issuer, that subordinate attorney's supervisory attorneys also appear and practice before the Commission.

(c) A supervisory attorney is responsible for complying with the reporting requirements in § 205.3 when a subordinate attorney has reported to the supervisory attorney evidence of a material violation.

(d) A supervisory attorney who has received a report of evidence of a material violation from a subordinate attorney under § 205.3 may report such evidence to the issuer's qualified legal compliance committee if the issuer has duly formed such a committee.

§ 205.5 Responsibilities of a subordinate attorney.

(a) An attorney who appears and practices before the Commission in the representation of an issuer on a matter under the supervision or direction of another attorney (other than under the direct supervision or direction of the issuer's chief legal officer (or the equivalent thereof)) is a subordinate attorney.

(b) A subordinate attorney shall comply with this part notwithstanding that the subordinate attorney acted at the direction of or under the supervision of another person.

(c) A subordinate attorney complies with § 205.3 if the subordinate attorney reports to his or her supervising attorney under § 205.3(b) evidence of a material violation of which the subordinate attorney has become aware in appearing and practicing before the Commission.

(d) A subordinate attorney may take the steps permitted or required by § 205.3(b) or (c) if the subordinate attorney reasonably believes that a supervisory attorney to whom he or she has reported evidence of a material violation under § 205.3(b) has failed to comply with § 205.3.

§ 205.6 Sanctions and discipline.

(a) A violation of this part by any attorney appearing and practicing before the Commission in the representation of an issuer shall subject such attorney to the civil penalties and remedies for a violation of the federal securities laws available to the Commission in an action brought by the Commission thereunder.

(b) An attorney appearing and practicing before the Commission who violates any provision of this part is subject to the disciplinary authority of the Commission, regardless of whether the attorney may also be subject to discipline for the same conduct in a jurisdiction where the attorney is admitted or practices. An administrative disciplinary proceeding initiated by the Commission for violation of this part may result in an attorney being censured, or being temporarily or permanently denied the privilege of appearing or practicing before the Commission.

(c) An attorney who complies in good faith with the provisions of this part shall not be subject to discipline or otherwise liable under inconsistent standards imposed by any state or other United States jurisdiction where the attorney is admitted or practices.

(d) An attorney practicing outside the United States shall not be required to comply with the requirements of this part to the extent that such compliance is prohibited by applicable foreign law.

§ 205.7 No private right of action.

(a) Nothing in this part is intended to, or does, create a private right of action against any attorney, law firm, or issuer based upon compliance or noncompliance with its provisions.

(b) Authority to enforce compliance with this part is vested exclusively in the Commission.

By the Commission.

Dated: January 29, 2003.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 03–2480 Filed 2–5–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 205, 240 and 249

[Release Nos. 33–8186; 34–47282; IC–25920; File No. S7–45–02]

RIN 3235–AI72

Implementation of Standards of Professional Conduct for Attorneys

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: The Securities and Exchange Commission ("Commission") is soliciting comments on proposed rules setting standards of professional conduct for attorneys who appear and practice before the Commission on behalf of issuers. Section 307 of the Sarbanes-Oxley Act of 2002 requires the Commission to prescribe minimum standards of professional conduct for attorneys appearing and practicing before the Commission in any way in the representation of issuers. The Commission in a companion release has adopted rules under Section 307. The Commission also is extending the comment period for certain other rules under Section 307. In particular, the Commission is extending the comment period for the provisions regarding an attorney's notification to the Commission (more commonly referred to as "noisy withdrawal") when an attorney, after reporting evidence of a material violation up-the-ladder of the issuer's governance structure, reasonably believes an issuer's directors have either made no response (within a reasonable time) or have not made an appropriate response. This release solicits additional comments on the "noisy withdrawal" provisions previously proposed and proposes an alternative approach. This release also solicits additional comments on the rules that the Commission adopted under Section 307.

DATES: Comments should be received on or before April 7, 2003.

ADDRESSES: To help us process and review your comments efficiently, comments should be sent by hard copy or by e-mail, but not by both methods.

Comments sent by hard copy should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Alternatively, comments may be submitted electronically to the following e-mail address: *rule-comments@sec.gov*. All comment letters should refer to File No. S7–45–02; this file number should be included on the subject line if e-mail is used. All comment letters received will be available for public inspection and copying in the Commission's Public Reference Room at the same address. Electronically submitted comments will be posted on the Commission's Internet Web site (*http://www.sec.gov*).[1]

FOR FURTHER INFORMATION CONTACT: Laura Walker, Office of the General Counsel, U.S. Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549. Phone: (202) 942–0835.

SUPPLEMENTARY INFORMATION: The Commission is proposing amendments to Rule 205.3 [2] of Title 17, Chapter II, of the Code of Federal Regulations, establishing standards of professional conduct for attorneys who appear and practice before the Commission in the representation of issuers, under the Securities Act of 1933,[3] the Securities Exchange Act of 1934,[4] the Investment Company Act of 1940,[5] the Investment Advisers Act of 1940,[6] and the Sarbanes-Oxley Act of 2002.[7] The Commission also is proposing new Rules 13a–17 [8] and 15d–17 [9] and amendments to Rules 13a–11 [10] and 15d–11 [11] and Forms 20–F [12], 40–F [13], and 8–K [14] under the Exchange Act.

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I. Background

Section 307 of the Sarbanes-Oxley Act of 2002 (the "Act") mandates that the Commission:

> shall issue rules, in the public interest and for the protection of investors, setting forth minimum standards of professional conduct for attorneys appearing and practicing before the Commission in any way in the representation of issuers, including a rule—
>
> (1) Requiring an attorney to report evidence of a material violation of securities law or breach of fiduciary duty or similar violation by the company or any agent thereof, to the chief legal counsel or the chief executive officer of the company (or the equivalent thereof); and
>
> (2) If the counsel or officer does not appropriately respond to the evidence (adopting, as necessary, appropriate remedial measures or sanctions with respect to the violation), requiring the attorney to report the evidence to the audit committee of the board of directors of the issuer or to another committee of the board of directors comprised solely of directors not employed directly or indirectly by the issuer, or to the board of directors.

On November 21, 2002, the Commission proposed rules under Section 307 to implement those provisions, including an up-the-ladder reporting system mandated by the Act.[15] On January 23, 2003, the Commission voted to approve the up-the-ladder reporting system.[16] In addition to the up-the-ladder reporting requirement, the Proposing Release proposed several corollary provisions in 205.3(d) that are not explicitly required by Section 307, but that the Commission considered potentially important minimum standards for attorneys appearing and practicing before the Commission in the representation of issuers. Under certain circumstances, these provisions would have permitted or required attorneys to withdraw from representation of an issuer, to notify the Commission that they have done so, and to disaffirm documents filed or submitted to the Commission on behalf of the issuer.

The Commission received numerous comment letters concerning these "noisy withdrawal" provisions. A number of commenters supported the proposal. They were of the view that the "noisy withdrawal" proposal is

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[1] The Commission does not edit personal identifying information, such as names or electronic mail addresses, from electronic submissions. Interested person submitting comments should only submit information that they wish to make publicly available.

[2] 17 CFR 205.3.

[3] 15 U.S.C. 77a *et seq.*

[4] 15 U.S.C. 78a *et seq.*

[5] 15 U.S.C. 80a–1 *et seq.*

[6] 15 U.S.C. 80b–1 *et seq.*

[7] 15 U.S.C. 7201 *et seq.*

[8] 17 CFR 240.13a–17.

[9] 17 CFR 240.15d–17.

[10] 17 CFR 240.13a–11.

[11] 17 CFR 240.15d–11.

[12] 17 CFR 249.220f.

[13] 17 CFR 249.240f.

[14] 17 CFR 249.308.

[15] Release No. 33–8150 (December 2, 2002) [67 FR 71670] (the "Proposing Release").

[16] Release No. 33–8185 (Jan. 29, 2003) (the "Adopting Release"). The effective date of the rule is 180 days following publication in the **Federal Register**. Until the effective date, those wishing to see the text of the rule should refer to the Adopting Release.

consistent with the Commission's mandate under Section 307 and is necessary to effectuate the up-the-ladder reporting rule, because it addresses the situation where an issuer inappropriately refuses to implement remedial measures.[17] One commenter not only thought the Commission's proposed rule was sound, but opined that "considerably more demanding reporting obligations would be consistent with the most plausible interpretation of corporate interests in confidentiality."[18] Other commenters supported the proposal but recommended certain modifications.[19]

On the other hand, a greater number of commenters opposed the "noisy withdrawal" provisions. Some commenters objected to the proposal because they are of the view that the Commission does not have the statutory authority to require "noisy withdrawal." They pointed to legislators' comments that, in their view, supported the position that Section 307 does not require the Commission to promulgate a rule mandating "noisy withdrawal."[20] Other objectors were concerned that the provision would conflict with longstanding requirements under state ethics laws and therefore would infringe on the jurisdiction of state ethics-setting bodies.[21] One commenter argued that such a provision would subject attorneys to conflicting liability claims, whether or not they complied with the rule. Several commenters from outside the United States stated that compliance with the "noisy withdrawal" requirement would cause them to violate the laws of their home jurisdiction.[22] Finally, several commenters believed that the rule would not further the Commission's goals because it would cause clients to exclude attorneys from meetings where information was exchanged that could lead an attorney to believe a material violation had been committed.[23]

The vast majority of commenters suggested that the Commission defer action on a rule mandating "noisy withdrawal" and provide interested parties an additional opportunity to comment. Their principal concerns were that: The rule raises novel issues with respect to establishing ethical rules for attorneys that require reporting to a third party; the rules are complex and the period of time provided under Section 307 did not allow adequate time for the preparation of comments or for the Commission to consider those comments; and because Section 307 requires the Commission only to issue the up-the-ladder reporting requirements within 180 days, the Commission need not issue a "noisy withdrawal" provision at the time it adopts the up-the-ladder reporting system and can postpone its consideration of the issue.

In light of these comments, the Commission has determined to extend the comment period on proposed § 205.3(d) of the proposed rule.[24] The Commission is soliciting comments on proposed alternative provisions, which prescribe attorney withdrawal in a narrower set of circumstances, and which require the issuer, rather than the attorney, to report to the Commission the attorney's withdrawal or written notice of failure to receive an appropriate response to a report of a material violation. The Commission also requests comment on whether any rules we are currently adopting under Section 307 should be revised if we adopt either of these proposals. The Commission is interested especially in receiving comments from interested parties outside the legal profession, such as issuers and investors, who might be affected by, or benefit from, the final rule or the proposals.[25]

II. The Role of Attorneys Who Appear Before the Commission

As discussed in more detail in the Proposing Release and the Adopting Release, attorneys play a varied and crucial role in the Commission's processes. Attorneys prepare, or assist in preparing, materials that are filed with or submitted to the Commission by or on behalf of issuers. Public investors rely on these materials in making their investment decisions. Thus, the Commission, and the investing public, must be able to rely upon the integrity of in-house and retained lawyers who represent issuers before the Commission. Attorneys also play an important and expanding role in the internal processes and governance of issuers, ensuring compliance with applicable reporting and disclosure requirements, including requirements mandated by the federal securities laws.

The actions of some attorneys have drawn increasing scrutiny and criticism in light of recent events demonstrating that at least "some lawyers have forgotten their responsibility."[26] Moreover, existing state ethical rules have not proven an effective deterrent to attorney misconduct.[27] The July 16, 2002 *Preliminary Report of the American Bar Association Task Force on Corporate Responsibility* (the "Cheek Report") noted that "a disturbing series of recent lapses in corporations involving false or misleading financial statements and alleged misconduct by executive officers" has compromised investors' confidence in both the "quality and the integrity" of public company governance.[28] Indeed, the Cheek Report concluded that "the system of corporate governance at many public companies has failed dramatically." Moreover, the Cheek Report acknowledges that attorneys representing and advising corporate clients bear some share of the blame for this failure.[29]

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[17] See, *e.g.*, Comments of Susan P. Koniak, *et al.*, at 23.

[18] *See* Comments of William Simon, at 2.

[19] *See, e.g.*, Comments of Richard Painter, at 2–3.

[20] *See* Comments of Attorneys' Liability Assurance Society, Inc., at 8; Comments of Frederick Lipman, at 1–3.

[21] *See* Comments of the Conference of Chief Justices, at 3; Comments of Attorneys' Liability Assurance Society, Inc., at 8.

[22] *See, e.g.*, Comments of Shearman & Sterling, at 3–7.

[23] *See* Comments of Attorneys' Liability Assurance Society, Inc., at 8.

[24] Proposed Part 205.3(d) should not be confused with Part 205.3(d) as adopted ("Issuer Confidences"). In the event that proposed Part 205.3(d), or an alternative thereto, is adopted, current Part 205.3(d) will be re-numbered.

[25] Persons who previously commented on proposed Part 205 need not re-submit the same comment letters. We will consider all relevant comment letters previously submitted, as well as any new comment letters we receive, in our deliberations on the rule.

[26] *See* remarks by Senator John Edwards, 148 Cong. Rec. at S6551 (July 10, 2002). *See also* Speech by SEC Chairman Harvey L. Pitt: Remarks Before the Annual Meeting of the American Bar Association's Business Law Section (Aug. 12, 2002) ("recent events have refocused our attention on the need for the profession to assist us in ensuring that fundamental tenets of professionalism, ethics and integrity work to ensure investor confidence in public companies"), available at *http://www.sec.gov/news/speech/spch579.htm*.

[27] *See* remarks by Senator Michael Enzi, 148 Cong. Rec. at S6555 ("I am usually in the camp that believes that [s]tates should regulate professionals within their jurisdiction. However, in this case, the [s]tate bars as a whole have failed. They have provided no specific ethical rule of conduct to remedy this kind of situation. Even if they do have a general rule that applies, it often goes unenforced").

[28] *See* Cheek Report at 3–4.

[29] *See* Cheek Report at 7 ("It is a clear failure of corporate responsibility if executive officers aware of potential accounting irregularities sell millions of dollars of stock to public investors who are unaware of [earnings misstatements and self-dealing by corporate officers]. It is a clear failure of corporate responsibility for insiders to borrow enormous amounts from their companies without adequate security beyond inflated stock of the company itself. And it is a clear failure of corporate responsibility when outside directors, auditors and lawyers, who have important roles in our system of independent checks on the corporation's management, fail to avert or even discover—and sometimes actually condone or contribute toward the creation of—the grossest of financial manipulations and fraud").

III. Discussion of Proposals

The proposals regarding "noisy withdrawal" contained in the Proposing Release, and the alternative provisions discussed below, are intended to further the purposes of the up-the-ladder requirement and enhance investor confidence in the financial reporting process. The proposed rules are designed to deter instances of attorney and issuer misconduct, and, where misconduct has occurred, reduce its impact on issuers and their shareholders.

At the same time, the Commission does not want the rule to impair zealous advocacy, which is important to the Commission's processes. The Commission also does not want the rule to discourage issuers from seeking and obtaining appropriate and effective legal advice. In this regard, the Commission today is proposing for comment alternative provisions to the "noisy withdrawal" provisions contained in the Proposing Release.

A. Part 205 as Adopted

In a companion release, we adopted rules under § 307 of the Act that mandate attorneys appearing and practicing before the Commission in the representation of an issuer to report evidence of a material violation up-the-ladder within the issuer.[30] The rules require an attorney to report such evidence to the issuer's chief legal officer, or to its chief legal officer and chief executive officer. The issuer's chief legal officer is required to inquire into the evidence of the material violation and, unless he or she reasonably believes that no material violation has occurred, is ongoing, or is about to occur, he or she must take reasonable steps to cause the issuer to adopt an appropriate response to the attorney's report. Unless an attorney, who has made a report of evidence of a material violation, reasonably believes that the chief legal officer or chief executive officer has provided an appropriate response within a reasonable period of time to his or her report, the attorney shall report the evidence to an appropriate committee of the issuer's board of directors. An attorney who reasonably believes that the issuer has not made an appropriate response shall explain his or her reasons to the issuer's chief legal officer, chief executive officer, or board of directors. An attorney retained or employed by an issuer that has established a qualified legal compliance committee ("QLCC") (a committee established to consider and investigate attorney reports under the rule and to recommend appropriate responses to such reports) may, as an alternative to the reporting requirements described above, report evidence of a material violation to the QLCC.

The final rule provides that members of the QLCC may not be "employed, directly or indirectly, by the issuer." This language, which is also included in § 205.3(b)(3), is drawn directly from § 307 of the Sarbanes-Oxley Act. The Commission considers it appropriate and consistent with the mandate of the Act, however, to ensure a high degree of independence in QLCC members and members of committees to whom reports are made. Accordingly, we anticipate that these provisions will be amended to conform to final rules defining who is an "independent" director under § 301 of the Act, upon adoption of those rules.[31] We request comment on who should be considered independent in this context.

The rule as adopted does not require either an attorney or an issuer to report evidence of a material violation, or an issuer's response to such evidence, outside the issuer. We request additional comment on the rule as adopted. Commenters should consider whether any aspects of the rule, as adopted, should be revised if we adopt any of the proposals discussed in this release. If yes, how should they be revised? If not, why not?

B. Extension of Comment Period/ Solicitation of Comments for "Noisy Withdrawal" Provisions as Previously Proposed

As explained in the Proposing Release, proposed § 205.3(d) addresses what we hope is the rare situation in which an attorney reasonably believes an issuer has either made no response (within a reasonable time) or has not made an appropriate response to reported evidence of a material violation. The proposed section distinguishes between material violations that have already occurred and are not ongoing, and material violations that are either ongoing or are about to occur. The proposed section also distinguishes between outside attorneys retained by an issuer and in-house attorneys employed by an issuer. The section requires an attorney to withdraw from representing an issuer and/or to disaffirm documents filed with the Commission in some circumstances; it also requires a withdrawing attorney to notify the Commission in writing of his or her withdrawal.

As proposed in the Proposing Release, § 205.3(d)(1) prescribes actions by an attorney who has not received an appropriate response to his or her report of a material violation and who believes that a material violation is ongoing or about to occur.[32] It states:

> (d) *Notice to the Commission where there is no appropriate response within a reasonable time.* (1) Where an attorney who has reported evidence of a material violation under paragraph 3(b) of this section rather than paragraph 3(c) of this section does not receive an appropriate response, or has not received a response in a reasonable time, to his or her report, and the attorney reasonably believes that a material violation is ongoing or is about to occur and is likely to result in substantial injury to the financial interest or property of the issuer or of investors:
>
> (i) An attorney retained by the issuer shall:
>
> (A) Withdraw forthwith from representing the issuer, indicating that the withdrawal is based on professional considerations;
>
> (B) Within one business day of withdrawing, give written notice to the Commission of the attorney's withdrawal, indicating that the withdrawal was based on professional considerations; and
>
> (C) Promptly disaffirm to the Commission any opinion, document, affirmation, representation, characterization, or the like in a document filed with or submitted to the Commission, or incorporated into such a document, that the attorney has prepared or assisted in preparing and that the attorney reasonably believes is or may be materially false or misleading;
>
> (ii) An attorney employed by the issuer shall:
>
> (A) Within one business day, notify the Commission in writing that he or she intends to disaffirm some opinion, document, affirmation, representation, characterization, or the like in a document filed with or submitted to the Commission, or incorporated into such a document, that the attorney has prepared or assisted in preparing and that the attorney reasonably believes is or may be materially false or misleading; and
>
> (B) Promptly disaffirm to the Commission, in writing, any such opinion, document, affirmation, representation, characterization, or the like; and
>
> (iii) The issuer's chief legal officer (or the equivalent) shall inform any attorney retained or employed to replace the attorney who has withdrawn that the previous attorney's withdrawal was based on professional considerations.

Proposed § 205.3(d)(2) concerns situations in which the reported

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[30] *See* Adopting Release. While we summarize here certain salient aspects of the rules as adopted, for a complete discussion, please review the Adopting Release.

[31] *See* Standards Related to Listed Company Audit Committees, Release No. 33–8173 (Jan. 8, 2003).

[32] Proposed § 205.3(d) would follow §§ 205.3(b) and (c) as adopted, which set forth the duty of an attorney to report evidence of a material violation up-the-ladder of the issuer's governance structure, and, if appropriate, to explain to the issuer his or her reasons for believing that the issuer has not made a timely or appropriate response.

material violation has already occurred and is not ongoing. It provides:

(2) Where an attorney who has reported evidence of a material violation under paragraph (b) rather than paragraph (c) of this section does not receive an appropriate response, or has not received a response in a reasonable time, to his or her report under paragraph (b) of this section, and the attorney reasonably believes that a material violation has occurred and is likely to have resulted in substantial injury to the financial interest or property of the issuer or of investors but is not ongoing:

(i) An attorney retained by the issuer may:

(A) Withdraw forthwith from representing the issuer, indicating that the withdrawal was based on professional considerations;

(B) Give written notice to the Commission of the attorney's withdrawal, indicating that the withdrawal was based on professional considerations; and

(C) Disaffirm to the Commission, in writing, any opinion, document, affirmation, representation, characterization, or the like in a document filed with or submitted to the Commission, or incorporated into such a document, that the attorney has prepared or assisted in preparing and that the attorney reasonably believes is or may be materially false or misleading; and

(ii) An attorney employed by the issuer may:

(A) Notify the Commission in writing that he or she intends to disaffirm some opinion, document, affirmation, representation, characterization, or the like in a document filed with or submitted to the Commission, or incorporated into such a document, that the attorney has prepared or assisted in preparing and that the attorney reasonably believes is or may be materially false or misleading; and

(B) Disaffirm to the Commission, in writing, any such opinion, document, affirmation, representation, characterization, or the like; and

(iii) The issuer's chief legal officer (or the equivalent) shall inform any attorney retained or employed to replace the attorney who has so withdrawn that the previous attorney's withdrawal was based on professional considerations.

Proposed § 205.3 (d)(3) restates what is largely settled law:

(3) The notification to the Commission prescribed by this paragraph (d) does not breach the attorney-client privilege.

Interested persons are invited to comment on any aspect of this proposal,[33] including: (1) Whether the proposed rule should include any provision permitting or requiring notification to the Commission when an attorney receives no response or an inappropriate response or whether this is a matter best left to state or local bar disciplinary processes; (2) whether a higher standard should apply to notification to the Commission than to reporting up-the-ladder within the issuer and, if so, how much higher it should be and how should such a higher test be framed; (3) whether "noisy withdrawal" should be mandatory under some circumstances but permissive under others and, if so, what circumstances should make "noisy withdrawal" mandatory and what circumstances should make "noisy withdrawal" permissive, or whether "noisy withdrawal" should be mandatory under all circumstances covered by § 205.3(d) or should be permissive under all such circumstances; (4) whether it is appropriate to distinguish between material violations that are ongoing or impending and material violations that are past and have no continuing effect, and whether such a distinction would be meaningful to investors; (5) whether the attorney who has reported evidence of a material violation to which the issuer has not made an appropriate response must know that the reported material violation has occurred, is occurring, or is about to occur before the attorney is required, or permitted, to make a "noisy withdrawal"; (6) whether an attorney should be required, or permitted, to make a "noisy withdrawal" where the attorney has not received an appropriate response to reported evidence of a material violation, and the attorney reasonably believes that the reported material violation has occurred, is occurring, or is about to occur; (7) whether there is an appropriate basis for a "noisy withdrawal" under circumstances in which an attorney reasonably believes that the reported material violation is likely to have occurred, be ongoing, or be about to occur; (8) whether there is an appropriate basis for a "noisy withdrawal" under circumstances in which the attorney reasonably believes that it is reasonably likely that the reported material violation has occurred, is ongoing, or is about to occur; (9) whether substantial injury to the financial interest of investors is an appropriate prerequisite to a "noisy withdrawal"; (10) whether substantial injury to the financial interest of the issuer client is an appropriate prerequisite to a "noisy withdrawal" and, if so, whether such substantial injury to a financial interest must be reasonably certain, likely, or merely possible; (11) whether the rule should distinguish between outside attorneys and those employed by the issuer and, if so, under what circumstances, how, and why; (12) whether an attorney who is employed by an investment adviser or manager and who is appearing and practicing before the Commission in the representation of the investment company should be treated as an outside attorney retained by the investment company under proposed paragraph (d)(1)(i) or should be treated as an in-house attorney under proposed paragraph (d)(1)(ii); (13) whether the rule should specify the content of a disaffirmance of an opinion or representation; (14) whether the rule should require that any disaffirmance be in writing; (15) whether there are any other actions the rule should require an attorney to take when the attorney does not receive an appropriate response to his or her report of evidence of a material violation (*e.g.*, should an in-house attorney be required to cease participating in or assisting in any matter relating to the violation); (16) what is the appropriate length of time to permit an attorney to make a "noisy withdrawal"; (17) whether it is important to require any successor attorney to be notified that the previous attorney withdrew based on "professional considerations" and, if so, whether there is a better way to require such notification be made than is proposed in paragraph (d)(1)(iii); (18) whether such notification should be required where "noisy withdrawal" is merely permissive; (19) whether it is important to provide a "safe harbor" from civil suits for the attorney who notifies the Commission that he or she has withdrawn based on professional considerations under proposed paragraph (d) and/or disaffirmed a document; and (20) whether the "noisy withdrawal" provisions would create conflicts with applicable law for any attorneys (foreign or U.S.) not excluded by the definition of "non-appearing foreign attorney" (section 205.2(j) of the rule as adopted). Should "noisy withdrawal" apply to these attorneys? If not, why not? If the provisions would create conflicts for these attorneys, please describe the conflicts and how they appropriately may be resolved.

The Commission is particularly interested in learning commenters' views on how common it is for attorneys to alert their issuer-clients' management or directors to evidence of violations of law but to receive either no response or an inappropriate response. How often would attorneys be required to make a "noisy withdrawal" under this provision, if adopted? Should we revise the provision so that attorneys must make a "noisy withdrawal" less often or more often? If so, how?

[33] *See also* the solicitation of comments in the Proposing Release.

C. Alternative Proposal to "Noisy Withdrawal"

In response to comments received to date on § 205.3(d) as proposed in the Proposing Release and described above, the Commission also proposes, and solicits comments on, the following alternative proposal. The alternative proposal does not contain "noisy withdrawal" and disaffirmation requirements and requires attorney action only where the attorney reasonably concludes that there is substantial evidence that a material violation is ongoing or about to occur and is likely to cause substantial injury to the issuer.

Section 205.3(e) of the alternative proposal requires an issuer (rather than its attorney) to report to the Commission an attorney's written notice of withdrawal or failure to receive an appropriate response, as described in § 205.3(d) of the alternative proposal. In connection with § 205.3(e) of the alternative proposal, the Commission also proposes to amend Forms 8–K, 20–F, and 40–F to require issuers to disclose publicly an attorney's written notice of withdrawal within two business days of that notice.[34] Section 205.3(f) of the alternative proposal permits (but does not require) an attorney to inform the Commission of his or her withdrawal if the issuer does not comply with paragraph (e).

1. Requiring an Attorney to Provide Written Notice of Withdrawal to the Issuer Where the Attorney Does Not Receive an Appropriate Response to His or Her Report of a Material Violation

Alternative proposed § 205.3(d) requires an attorney retained by the issuer who has reported evidence of a material violation and has not received an appropriate or timely response to withdraw from representing the issuer and to notify the issuer, in writing, that the withdrawal is based on professional considerations. In the same circumstances, an attorney employed by the issuer is required to cease participating or assisting in any matter concerning the violation and to notify the issuer, in writing, that he or she believes the issuer has not provided an appropriate response.

Unlike the original proposed § 205.3(d)(1), this proposed paragraph does not require a withdrawing attorney to notify the Commission of his or her withdrawal, and it does not require an attorney to disaffirm documents filed with the Commission. The proposed paragraph also does not require an attorney to withdraw or cease participation or assistance in a matter if he or she would be prohibited from doing so by order or rule of a court, administrative body, or other authority with jurisdiction over the attorney. Alternative proposed § 205.3(d) provides:

(d) *Actions required where there is no appropriate response within a reasonable time.* (1) Where an attorney who has reported evidence of a material violation under paragraph (b) of this section rather than paragraph (c) of this section (i) does not receive an appropriate response, or has not received an appropriate response in a reasonable time, and (ii) has followed the procedures set forth in paragraph (b)(3) of this section, and (iii) reasonably concludes that there is substantial evidence of a material violation that is ongoing or about to occur and is likely to cause substantial injury to the financial interest or property of the issuer or of investors:

(A) An attorney retained by the issuer shall withdraw from representing the issuer, and shall notify the issuer, in writing, that the withdrawal is based on professional considerations.

(B) An attorney employed by the issuer shall cease forthwith any participation or assistance in any matter concerning the violation and shall notify the issuer, in writing, that he or she believes that the issuer has not provided an appropriate response in a reasonable time to his or her report of evidence of a material violation under paragraph (b) of this section.

(2) An attorney shall not be required to take any action pursuant to paragraph (d)(1)(A) or (B) of this section if the attorney would be prohibited from doing so by order or rule of any court, administrative body or other authority with jurisdiction over the attorney, after having sought leave to withdraw from representation or to cease participation or assistance in a matter. An attorney shall give notice to the issuer that, but for such prohibition, he or she would have taken such action pursuant to paragraph (d)(1)(A) or (B), and such notice shall be deemed the equivalent of such action for purposes of this part.

(3) An attorney employed or retained by an issuer who has reported evidence of a material violation under this part and reasonably believes that he or she has been discharged for so doing shall notify the issuer's chief legal officer (or the equivalent thereof) forthwith.

(4) The issuer's chief legal officer (or the equivalent thereof) shall notify any attorney retained or employed to replace an attorney who has given notice to an issuer pursuant to paragraph (d)(1), (d)(2) or (d)(3) of this section that the previous attorney has withdrawn, ceased to participate or assist or has been discharged, as the case may be, pursuant to the provisions of this paragraph.

Interested persons are invited to comment on any aspect of alternative proposed section 205.3(d), including: (1) Whether requiring a different and higher evidentiary standard for withdrawal than for reporting up-the-ladder of the issuer, such as requiring an attorney to "conclude" there is "substantial evidence," will make the circumstances in which an attorney must withdraw (triggering an issuer's notification of the Commission) too narrow adequately to protect investors; (2) whether requiring an attorney to make a separate, more definitive, determination that evidence shows that a material violation "is" ongoing or "is" about to occur (rather than is likely to be ongoing or is likely to occur) too narrows the circumstances in which an attorney must withdraw (triggering an issuer's notification of the Commission) and fails adequately to protect investors; (3) whether requiring an attorney to make a separate determination of whether "substantial injury" is likely will make the circumstances in which an attorney must withdraw (triggering an issuer's notification to the Commission) too narrow adequately to protect investors; (4) whether the proposed alternative's requirement that the attorney make all three determinations addressed in the three preceding questions (higher level of evidence, more definitiveness, and substantial injury) so narrows the circumstances in which an attorney would withdraw (and an issuer would notify the Commission) so that the withdrawal and reporting requirements would be rendered ineffective; (5) whether an issuer's ability under the adopted rule to respond appropriately to a report of evidence of a material violation by retaining or directing an attorney to assert a colorable defense (should one exist), with the consent of the board of directors, would mitigate issuer concerns about withdrawal being required in situations where no violation actually has occurred; (6) whether failing to apply mandatory withdrawal (triggering an issuer's notification of the Commission) to past violations fails adequately to protect investors; (7) whether requiring an attorney to make a determination as to whether a violation "has occurred" or whether it "is ongoing" adequately protects investors; (8) whether the proposed rule should include a provision permitting or requiring withdrawal from representation when an attorney does not receive an appropriate response to his or her report of a material violation; (9) whether alternative proposed section (d) is more compatible with existing state standards

[34] On June 17, 2002, the Commission proposed to shorten the current deadlines for filing Form 8–K to two business days. "Additional Form 8–K Requirements and Acceleration of Filing Date," Release No. 33–8106. The Commission is still considering that rulemaking proposal and may address it separately from this release.

governing attorney conduct than the "noisy withdrawal" and disaffirmation requirements of proposed section 205.3(d)(1)–(3) described above and, if so, how; (10) whether alternative proposed section (d) is otherwise preferable to original proposed § 205.3(d)(1)–(3) as described above and in the Proposing Release; (11) whether alternative proposed section (d) is more compatible with foreign law governing attorney conduct than the "noisy withdrawal" and disaffirmation requirements of proposed § 205.3(d)(1)–(3) described above; if so, why; if not, why not; (12) whether an attorney who has reported evidence of a material violation to which the issuer has not made an appropriate response must know that the reported material violation is occurring or is about to occur before the attorney is required to withdraw or cease participation or assistance on a matter; (13) whether an attorney who is required to withdraw under this paragraph should be required to withdraw from all representation of the issuer, or only from representation on the matter concerning the material violation; (14) whether investors and issuers will receive adequate protection if the rule does not require attorneys to disaffirm any opinion, affirmation, representation or the like in a document the attorney or issuer filed with the Commission and that the attorney reasonably believes is or may be (or is reasonably likely to be) materially false or misleading; (15) whether investors and issuers will receive adequate protection if the rule contains no requirement that either an attorney or an issuer notify the Commission when the attorney withdraws or gives the issuer notice that he or she has not received an appropriate response to a report of a material violation; (16) whether an attorney who is prohibited from withdrawing or ceasing participation or assistance in a matter by a court or administrative body or other authority with jurisdiction over the attorney should be required to give notice to the issuer that, absent such prohibition, he or she would have taken such action or whether such a requirement is likely to be inconsistent with the attorney's continuing representation of the issuer; and (17) whether the proposal's withdrawal requirements would conflict with the obligations of attorneys not excluded by the "non-appearing foreign attorney" definition under applicable foreign law or professional standards of conduct.

2. Requiring an Issuer to Report an Attorney's Written Notice of Withdrawal

As noted above, the Commission received many comments opposing the "noisy withdrawal" provisions of the proposed rule. One commenter suggested that the requirement would "risk destroying the trust and confidence many issuers have up to now placed in their legal counsel, creating divided loyalties and driving a wedge into the attorney-client relationship," [35] and others expressed similar views.[36] Several commenters believed that the rule would not further the Commission's goals because it would cause clients to exclude attorneys from discussions that might prompt the attorney to begin the up-the-ladder reporting process.[37] Foreign lawyers and law associations expressed concerns, both in written comments and at the Commission's December 17, 2002 Roundtable on the International Impact of the Proposed Rules Regarding Attorney Conduct, that the "noisy withdrawal" requirements of the proposed rule would conflict with the laws and principles of confidentiality and attorney-client privilege recognized in certain foreign jurisdictions.[38] Some foreign commenters stated that it violated principles of international comity for the Commission to exercise jurisdiction over the legal profession outside the U.S.[39]

Accordingly, the Commission solicits comments on an alternative proposal that would require an issuer, rather than an attorney, to disclose publicly an attorney's withdrawal under the rule. The Commission believes that this alternative approach to "reporting out," by placing the responsibility on the issuer for such disclosure, addresses a number of the commenters' concerns noted above (those related to attorney-client privilege and those of foreign lawyers), yet provides some assurance that issuers will respond appropriately to reports of material violations by attorneys. Requiring issuers to report attorney withdrawals in a public filing with the Commission may also provide protection to investors by alerting them to the possibility of ongoing material violations by issuers. At least one commenter proposed requiring issuers, rather than attorneys, to report attorney resignations on Form 8–K, arguing that the proposed "noisy withdrawal" requirement "does little to warn investors about what is going on at the issuer." [40] In addition, the Commission invites comment on whether, from a corporate governance perspective, there may be advantages to vesting the obligation to "report out" an attorney's withdrawal for professional considerations in the board of directors of an issuer.

Proposed § 205.3(e) would require an issuer who has received notice from an attorney under alternative proposed § 205.3(d) to report the notice and the circumstances related thereto in an appropriate filing with the Commission. Proposed section 205.3(e) provides:

> (e) *Duties of an issuer where an attorney has given notice pursuant to paragraph (d).* (1) Where an attorney has provided an issuer with a written notice pursuant to paragraph (d)(1), (d)(2), or (d)(3) of this section, the issuer shall, within two business days of receipt of such written notice, report such notice and the circumstances related thereto on Form 8–K, 20–F, or 40–F, as applicable.

Proposed § 205.3(e) provides that the filing must be made by the issuer on Form 8–K, 20–F or 40–F, as applicable. Accordingly, the Commission is proposing to amend Forms 8–K, 20–F and 40–F to require issuers to report an attorney's written notice under alternative proposed paragraph (d) of the rule. These proposed amendments are described below.

In connection with proposed § 205.3(e), the Commission seeks comment on whether any circumstances exist in which an issuer should not be required to disclose an attorney's written notice under the rule. The Commission specifically seeks comment on whether an issuer should be permitted not to disclose an attorney's written notice where:

> a committee of independent directors of the issuer's board determines, based on the advice of counsel that was not involved in the matters underlying the reported material violation, (i) that the attorney providing such written notice acted unreasonably in providing such notice, or (ii) that the issuer has, subsequent to such written notice, implemented an appropriate response.

The Commission requests comment on the following questions: (1) Whether an issuer should be able to determine not to report an attorney's notice if an independent committee of the issuer's board of directors determines, based on

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[35] Comments of the American Bar Association, at 26.

[36] *See, e.g.*, Comments of 77 Law Firms, at 2; Comments of the American College of Trial Lawyers, at 2.

[37] *See, e.g.*, Comments of Attorneys' Liability Assurance Society, Inc., at 8.

[38] *See, e.g.*, Comments of the International Bar Association, at 5–6; Comments of the Law Society of England and Wales, at 1; Comments of the Japanese Federation of Bar Associations, at 3–4.

[39] *See* Comments of De Brauw Blackstone Westbroek, at 2; Comments of Stibbe, at 2.

[40] Comments of Jeffrey L. Schultz, at 2.

the advice of counsel, that subsequent to the attorney's notice, the issuer has implemented an appropriate response, or whether such a provision would be undesirable because the rule already provides issuers with sufficient opportunity to implement an appropriate response; (2) whether an issuer should be able to determine not to report an attorney's notice if an independent committee of the board of directors determines, based on the advice of counsel, that the attorney providing such notice acted unreasonably, or whether this provision would undermine the objectives of the rule; (3) whether, if an issuer should be able to determine not to report an attorney's notice to the Commission if an independent committee of the issuer's board of directors makes the appropriate determination, it is necessary to require the committee to obtain the advice of counsel not involved in the matters underlying the material violation; (4) whether there should be an alternative standard identifying when a board of directors could determine not to report an attorney's notice; (5) whether, with regard to foreign private issuers, "an independent committee of the issuer's board of directors" is the right group to make the determination that an attorney had acted unreasonably in providing a notice pursuant to § 205.3(d) or that the issuer had implemented an appropriate response subsequent to the notice and, if so, why? If not, what other bodies or groups at a foreign private issuer, or with oversight or audit responsibilities for the foreign private issuer, might be more appropriate? The Commission also requests comment on whether such an issuer should be required to inform the reporting attorney in writing of a decision by a committee of independent directors of the issuer's board not to report the attorney's written notice in a filing with the Commission.[41]

Interested persons are invited to comment on any other aspect of alternative proposed § 205.3(e), including: (1) Whether an issuer should be required to report an attorney's notice under paragraph (d)(1), (d)(2) or (d)(3); (2) whether a requirement that an issuer report an attorney's notice is preferable to the "noisy withdrawal" requirement in the original proposed rule; (3) whether investors will receive adequate protection if neither the issuer nor the attorney is required to report to the Commission an attorney's withdrawal or other notice of failure to receive an appropriate response; (4) whether it is inconsistent with the attorney-client privilege to require an issuer to report the circumstances related to an attorney's notice under paragraph (d)(1) or (d)(2), and whether an issuer should instead be permitted to report only the fact of the attorney's notice; (5) whether, if issuers should be required to report the circumstances related to an attorney's notice, and if the rule should specify which circumstances must be reported, which circumstances should be reported; (6) whether an issuer's report to the Commission under paragraph (e) should be confidential (*e.g.*, in the form of confidential correspondence) or public; (7) whether there are circumstances in which requiring a public filing under paragraph (e) could harm an issuer or its shareholders; (8) whether investors will receive adequate protection if issuer reports to the Commission under paragraph (e) are confidential; and (9) whether the requirement that a foreign private issuer report an attorney's notice of withdrawal would conflict with applicable foreign law or foreign principles of attorney-client privilege or corporate governance.

3. Permitting an Attorney To Inform the Commission Where an Issuer Has Not Complied With the Issuer Reporting Requirements

Proposed § 205.3(f) would permit an attorney, if an issuer had not complied with paragraph (e), to inform the Commission that he or she had provided the issuer with notice under paragraph (d)(1), (d)(2) or (d)(3). The Commission proposes, in this paragraph, making attorney notification to the Commission permissive in light of the numerous comments it received that were critical of "noisy withdrawal." Proposed § 205.3(f) states:

(f) *Additional actions by an attorney.* (1) An attorney retained or employed by the issuer may, if an issuer does not comply with paragraph (e) of this section, inform the Commission that the attorney has provided the issuer with notice pursuant to paragraph (d)(1), (d)(2), or (d)(3) of this section, indicating that such action was based on professional considerations.

Interested persons are invited to comment on any aspect of alternative proposed § 205.3(f), and to address the following questions in particular: (1) Would it be more consistent with the protection of investors to require, rather than permit, an attorney to inform the Commission of his or her written notice where an issuer does not comply with the issuer disclosure requirement? Would mandatory, rather than permissive, "reporting out" under these circumstances raise the same concerns as "noisy withdrawal?" If not, why not? If so, which ones; (2) assuming an issuer were permitted not to disclose an attorney's written notice if an independent committee of the issuer's board of directors were to make an appropriate determination, should an attorney be permitted to inform the Commission that he or she has provided the issuer with notice pursuant to paragraph (d) where the attorney disagrees with the independent committee's determination, or should the attorney be permitted to inform the Commission that he or she has provided the issuer with notice only where the issuer fails to report the notice without the required determination by the independent committee?

D. Proposed Amendments to Forms

1. Proposed Amendment to Form 8–K

The Commission proposes to amend Form 8–K to add a new item specifically designed for issuer disclosure, under alternative proposed § 205.3(e), of an attorney's written notice under alternative proposed § 205.3(d). Form 8–K prescribes information, such as material events or corporate changes, that an issuer subject to the reporting requirements of Sections 13(a) or 15(d) of the Exchange Act must disclose on a current basis. The proposed amendment to Form 8–K would require an issuer to report an attorney's written notice of withdrawal or failure to receive an appropriate response under alternative proposed § 205.3(e) within two business days of receiving the written notice.

Proposed § 205.3(e) also would apply to issuers that are registered investment companies. Exchange Act Rules 13a–11(b)[42] and 15d–11(b),[43] however, generally exempt registered investment companies from Form 8–K filing requirements. We recently amended those rules to require registered investment companies to file on Form 8–K in order to meet any filing obligations that might arise under Regulation BTR.[44] We are today

[41] Such a provision may be necessary in light of the proposal (discussed below) to permit an attorney to notify the Commission where an issuer has not complied with the issuer's reporting requirement in proposed § 205.3(e).

[42] 17 CFR 240.13a–11(b).

[43] 17 CFR 240.15d–11(b).

[44] *See* Release No. 34–47225 (Jan. 22, 2003). Regulation Blackout Trading Restriction (BTR) under the Exchange Act (17 CFR 245.100–104) clarifies the scope and application of Section 306(a). of the Sarbanes-Oxley Act of 2002, which prohibits any director or executive officer of an issuer from, directly or indirectly, purchasing, selling or otherwise acquiring or transferring any equity security of the issuer during a pension plan blackout period that prevents plan participants and

proposing an additional amendment to Exchange Act Rules 13a–11(b) and 15d–11(b) that would subject registered investment companies to Form 8–K filing requirements for the purpose of meeting any filing obligations that arise under proposed section 205.3(e).

We solicit comments on all aspects of this proposal and the effects it would have on issuers and the benefits it would provide to investors. We ask the following additional questions: (1) Is Form 8–K the appropriate form to use for this type of disclosure or should the Commission adopt a new form exclusively for such reports; (2) should issuers be permitted to make such reports in their periodic filings, such as Form 10–Q[45] or Form 10–K;[46] (3) is two business days the appropriate amount of time in which to require issuers to make the filing? What other amount of time might be more appropriate and what factors should we consider in determining the right amount of time under this rule? Should the time calculation use calendar days or U.S. business days; (4) should we exclude registered investment companies from proposed requirements to disclose under section 205.3(e)? If so, what would be the rationale for the exclusion? If we exclude registered investment companies, should we require them to meet their filing obligations under proposed § 205.3(e) in some other manner, *e.g.*, by filing a new form specifically for registered investment companies, Form N–CSR,[47] or some other means? With regard to the proposed Form 8–K filing requirement, we request public comment on the applicability of this requirement to registered investment companies, as well as feasible alternatives that would reduce the reporting burdens on registered investment companies. In addition, we request comment on the utility to investors of the reports to the Commission in relation to the costs to registered investment companies and their affiliated persons of providing those reports.

2. Proposed Amendments to Forms 20–F and 40–F for Foreign Private Issuers

With the globalization of the U.S. capital markets, there has been a marked increase in the number of companies from non-U.S. jurisdictions registering securities with the Commission. At present, there are over 1,300 foreign private issuers[48] from 59 countries that are filing reports with the Commission under the Exchange Act, as compared with approximately 400 issuers from less than 30 countries in 1990. The Commission realizes that the application of Section 307 and the rules we are proposing under Part 205 to foreign law firms, multijurisdictional law firms, foreign lawyers employed by those law firms and foreign registrants, raises a number of significant and difficult issues. We are requesting comment on a broad range of questions in this area, including whether foreign law firms and foreign lawyers should be exempt from Part 205.

Foreign private issuers that are subject to the periodic reporting requirements under the Exchange Act generally are not required to file current reports on Form 8–K.[49] Rather, many of the disclosures required of foreign private issuers are made on either Form 20–F or Form 40–F (in the case of some Canadian issuers), which are integrated forms used both as registration statements for purposes of registering securities of qualified foreign private issuers under Section 12 of the Exchange Act[50] or as annual reports under Section 13(a)[51] or 15(d)[52] of the Exchange Act.

Our rules pertaining to attorney conduct apply to attorneys for foreign private issuers, and we believe that foreign private issuers should have the same reporting duties as those proposed for domestic issuers in the alternative proposed section 205.3(e). Accordingly, we propose to require foreign private issuers to file a report on either Form 20–F or 40–F, as applicable, in order to make these disclosures. The proposal to amend these forms is designed to respond to comments we received from foreign attorneys and regulators stating that the original proposed "noisy withdrawal" requirement may conflict with foreign standards of attorney conduct. The proposed amendments to these forms would require an issuer to report to the Commission an attorney's written notice of withdrawal or failure to receive an appropriate response. The foreign private issuer would be required to make the disclosure by filing the form within two business days of the attorney's written notice. The proposed amendments provide that a filing for this purpose may consist only of the facing page of the form, the information required under the appropriate item of the form, and a signature page; issuers would not be required to file a complete Form 20–F or 40–F each time they made a disclosure of an attorney's written notice.[53]

We solicit comments on all aspects of this proposal and the effects it would have on foreign private issuers and the benefits it would provide to investors. Furthermore, we ask the following additional questions: (1) Is it appropriate to require a filing on Form 20–F or 40–F in order to meet these new disclosure requirements, or should we require that this disclosure be made on some other form? Would it be more appropriate to require that this disclosure be made on Form 6–K?[54] Should the Commission create a separate disclosure form (similar to Form 8–K) for these reports by foreign private issuers; (2) will there be any additional consequences to requiring that this disclosure be made on Form 20–F or 40–F; (3) would this type of mandatory disclosure requirement impose undue burdens on foreign companies that have chosen to register their securities in the United States? What might those burdens be? Would it discourage foreign companies from registering their securities in the United States? If so, would a broad exception for foreign companies disadvantage U.S. companies? Would such an exception lead U.S. companies to relocate off-shore; (4) is two business days the appropriate amount of time to allow foreign private issuers to make the required filing? What other amount of time might be more appropriate and what factors should we consider in determining the right amount of time under this rule? Should the time calculation use calendar days or U.S. business days? Would it be sufficient to require foreign private issuers to report this information on an annual basis in their annual reports on Form 20–F or 40–F; (5) should we allow any exceptions for certain foreign private issuers to this new proposed rule in light of the differing regulatory regimes for foreign attorneys and foreign private issuers? Which foreign private issuers would need such an exception and when should it be granted? How would

beneficiaries from engaging in transactions involving issuer equity securities held in their plan accounts.

[45] 17 CFR 308a.

[46] 17 CFR 310.

[47] 17 CFR 249.331 and 17 CFR 274.128.

[48] The term "foreign private issuer" is defined in Exchange Act Rule 3b–4(c) [17 CFR 240.3b–4(c)].

[49] *See* Exchange Act Rules 13a–11(b) and 15d–11(b) [17 CFR 240.13a–11(b) and 240.15d–11(b)].

[50] 15 U.S.C. 78*l*.

[51] 15 U.S.C. 78m(a).

[52] 15 U.S.C. 78o(d).

[53] Similarly, the report would not need to be certified by the issuer's principal executive officer or principal financial officer under Exchange Act Rules 13a–14 and 15d–14 [17 CFR 240.13a–14 and 240.15d–14].

[54] 17 CFR 249.30b. *See generally* Release No. 33–8106, "Proposed Rule: Additional Form 8–K Disclosure Requirements and Acceleration of Filing Date", for a discussion of the types of information reported on Form 6–K and for our solicitation of comment as to whether the requirements of that form should be otherwise modified.

any exceptions we might grant affect the benefits to investors that would otherwise accrue from the application of this rule to foreign private issuers; (6) would the disclosure requirements of proposed paragraph (e) effect a waiver of the attorney-client privilege by a foreign private issuer or present other special problems for foreign private issuers under applicable foreign law?

IV. General Request for Comments

The Commission requests comments on the rules and amendments proposed in this release, whether any further changes to our rules or forms are necessary or appropriate to implement the objectives of our proposed amendments, and on other matters that might have an effect on the proposals contained in this release.

V. Paperwork Reduction Act

The proposed rules and form amendments contain "collection of information" requirements within the meaning of the Paperwork Reduction Act of 1995 ("PRA").[55] We are submitting the proposed rules and form amendments to the Office of Management and Budget ("OMB") for review in accordance with the PRA.[56] The title for the proposed collection of information with respect to the proposed amended Rule 205.3 is "Notifications Under Part 205." The titles for the collections of information with respect to the proposed form amendments are "Form 20–F" (OMB Control No. 3235–0288), "Form 40–F" (OMB Control No. 3235–0381) and "Form 8–K" (OMB Control No. 3235–0060).

The Commission has adopted rules to impose an up-the-ladder reporting requirement when attorneys appearing and practicing before the Commission become aware of evidence of a material violation by the issuer or any officer, director, employee or agent of the issuer. The information collections in the proposed amendments to the rules are necessary to implement the Standards of Professional Conduct for Attorneys prescribed by the proposed rule. Specifically, the collections of information are intended to ensure that in the rare cases in which issuers do not act appropriately after being informed of possible violations, the information would be communicated to the public and the Commission, so that the Commission could take appropriate action. The collection of information is, therefore, an important component of the Commission's program to discourage violations of the federal securities laws and promote ethical behavior of attorneys appearing and practicing before the Commission.

The respondents to the proposed collections of information would be lawyers, issuers, and officers, directors and committees of issuers. We cannot estimate with precision how many attorneys will be subject to the "noisy withdrawal" requirements, if adopted. There are approximately 18,200 issuers that may employ or retain attorneys that would be subject to the rule.[57] These issuers may employ in-house attorneys, outside counsel, or a combination of both. We believe, however, that it will be the rare occasion when, as a last resort, a disclosure will be made to the Commission. In the vast majority of cases, we expect that problems will be resolved at the corporate level, and the Commission will not be notified. We therefore estimate for the purposes of the PRA that approximately 10 attorneys, CLOs, CEOs, or QLCCs will make one disclosure to the Commission per year. Depending on the circumstances, the disclosure could consist of a notice of withdrawal (and, in some cases, a similar notice to the issuer and a CLO's notice to successor attorneys), a notice of material violations, a notice of discharge, a notice of disaffirmation, a disaffirmation, or some combination thereof. The burden hours for the disclosure will obviously vary depending on the circumstances. We believe that none of the components of the disclosure, however, would require a significant amount of time to compile. We therefore estimate, for purposes of the PRA, that on average, each disclosure would require 10 burden hours. Under these assumptions, this aspect of the collection of information would impose approximately 100 annual burden hours. Assuming half the burden hours will be incurred by outside counsel at a rate of $300 per hour, the total cost would be $15,000.

Lawyers under the alternative proposal would not be required to report out, but they would be required, if they do not receive an appropriate response to a report of a material violation, to notify the issuer in writing that their withdrawal is based on professional considerations or that they believe that the issuer has not provided an appropriate response in a reasonable time period to their report. In addition, in the cases where a lawyer provides notice to an issuer, the CLO will be required to notify the successor attorney of the predecessor lawyer's withdrawal. For purposes of the PRA, we estimate that 10 lawyers or CLOs will make such written notifications each year and that each notification will require one hour. Proposed § 205.3(f) permits, but does not require, a withdrawing attorney to notify the Commission if the issuer does not comply with proposed § 205.3(e). For purposes of the PRA, we estimate that five lawyers will make a voluntary submission under § 205.3(f) and that each report would impose a burden of 10 hours.

We therefore estimate that this collection of information will have a total annual burden of 100 hours if the "noisy withdrawal" proposal is adopted and a total annual burden of 60 hours if the alternative proposal is adopted.

As we stated above, we estimate that there are approximately 18,200 issuers that would be subject to the proposed rule. We cannot estimate with precision how many issuers will be subject to the alternative rule's requirements or, if adopted, how frequently they will be required to notify the Commission that their attorney has notified them that they withdrew or that they did not receive an appropriate response to a report of a material violation. Under those circumstances, the issuer must file a form with the Commission. We estimate for the purposes of the PRA that approximately eight U.S. issuers, one Canadian issuer and one foreign private issuer per year will make one disclosure to the Commission. We estimate, for purposes of the PRA, that on average, each disclosure would require five burden hours. Under these assumptions, this aspect of the collection of information would impose approximately 40 annual burden hours to file Form 8–K, five hours to file Form 40–F and five hours to file Form 20–F. We assume that 25% of the burden hours for issuers that file on Form 8–K, and 75% of the burden hours for issuers that file on Form 20–F or 40–F, will be incurred by outside counsel at a rate of $300 per hour.[58] Using these assumptions, we estimate this aspect of these collections of information would result in a cost of $5,250.

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[55] 44 U.S.C. 3501 *et seq.*

[56] 44 U.S.C. 3507(d) and 5 CFR 1320.11.

[57] This estimate is based, in part, on the total number of operating companies that filed annual reports on Form 10–K (8,484), Form 10–KSB (3,820), Form 20–F (1,194) or Form 40–F (134) during the 2001 fiscal year, and an estimate of the average number of issuers that may have a registration statement filed under the Securities Act pending with the Commission at any time (100). In addition, we estimate that approximately 4,500 investment companies currently file periodic reports on Form N–SAR.

[58] This allocation of the burden is consistent with our recent PRA submissions for Exchange Act Reports. See, *e.g.*, Release No. 33–8098 (May 10, 2002) [67 FR 35620].

Pursuant to 44 U.S.C. 3506(c)(2)(B), the Commission solicits comments to: (i) Evaluate whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (ii) evaluate the accuracy of the Commission's estimate of the burden of the proposed collections of information; (iii) determine whether there are ways to enhance the quality, utility, and clarity of the information to be collected; and (iv) evaluate whether there are ways to reduce the burden of the collections of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology.

Persons submitting comments on the collections of information requirements should direct the comments to the Office of Management and Budget, Attention: Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Washington, DC 20503, and should send a copy to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609, with reference to File No. S7–45–02. Requests for materials submitted to OMB by the Commission with regard to these collections of information should be in writing, refer to File No. S7–45–02, and be submitted to the Securities and Exchange Commission, Records Management, Office of Filings and Information Services. OMB is required to make a decision concerning its review of the collections of information between 30 and 60 days after publication of this release. Consequently, a comment to OMB is assured of having its full effect if OMB receives it within 30 days of publication.

An agency may not conduct or sponsor, and a person is not required to respond to, a collections of information unless it displays a currently valid control number. Compliance with the collections of information requirements is, as described above, in some cases mandatory and in some cases voluntary depending upon the circumstances. There is no mandatory record retention period. Responses to the requirements to make disclosures to the Commission will not be kept confidential.

VI. Costs and Benefits

We are proposing amendments to section 205.3 and Forms 8–K, 20–F and 40–F to more fully implement Section 307 of the Sarbanes-Oxley Act and recently adopted Part 205. Part 205 affects all attorneys who appear and practice before the Commission in the representation of an issuer and who become aware of evidence of a material violation of the federal securities laws, a material breach of fiduciary duty, or a similar material violation by the issuer or an officer, director, agent or employee of the issuer that has occurred, is ongoing, or is about to occur. We are sensitive to the costs and benefits of our proposal. We discuss these costs and benefits below.

Part 205 imposes an up-the-ladder reporting requirement for attorneys representing an issuer before the Commission who become aware of potential misconduct of which a reasonably prudent investor in the issuer would want to be informed. It is expected that, in the vast majority of instances of such reports, the situation will be addressed and remedied before it causes significant harm to investors. Where the potential impropriety is ongoing and not taken care of internally following a report mandated by the rule, we are proposing an alternative means of providing notice to the Commission and the public. Previously, we have proposed that the attorney, if retained by the issuer, effectuate a "noisy withdrawal" from representation of the issuer and disaffirm to the Commission any tainted documents, which will alert the Commission to investigate the issuer. In this release we are proposing that the attorney would have to inform the issuer and the issuer would be required to inform the Commission.

A. Benefits

Many commenters on our original proposal noted that a "noisy withdrawal" may violate the attorney-client privilege, chill the zealous advocacy of lawyers and create an incentive for issuers not to seek legal advice on certain matters. Our alternative therefore allows the attorney to withdraw without notifying the Commission. Instead, the issuer must report the attorney's withdrawal to the Commission in a public filing. Thus, the Commission and the public obtain the benefit of the information of the attorney's withdrawal (at least when the issuer acts properly) where a violation of the law is likely, the lawyer may preserve the attorney-client privilege and the issuer has the opportunity to remedy the situation before disclosure is required. In addition, attorneys licensed in foreign jurisdictions would not be required to violate applicable professional obligations. These benefits are difficult to quantify. Interested persons are invited to comment upon this benefits analysis. Are there other foreseeable benefits? What is the likely economic impact of these benefits? Can the benefits be quantified in any meaningful way? If so, how, and what conclusions should be drawn?

B. Costs

The proposed form amendments will impose costs on issuers. Issuers would be subject to the additional cost of preparing and filing a brief report to the Commission on Forms 8–K, 20–F or 40–F, as applicable. This may require the issuer to report its own potentially illegal act to the Commission (although an issuer accused of wrongdoing may be less likely to report itself than the withdrawing attorney may be). Investors may treat the news that an attorney has resigned as proof of wrongdoing before any formal proceedings are brought. The issuer's cost of capital may increase. Unlike the "noisy withdrawal" proposal, this proposal would not require the attorney to disaffirm any corporate filings that he or she participated in drafting, which would provide clearer information about what the withdrawal signifies.

Issuers that receive notice that their lawyers have withdrawn for professional considerations will be required to file a Form 8–K (or comparable forms by foreign private issuers). For purposes of the PRA, we estimated that ten issuers will file such a report each year and that each form will impose a burden of five hours. Using estimates derived from our Paperwork Reduction Analysis, we estimate that the incremental impact of our proposals will result in a total cost of $8,825.[59] In addition, the withdrawing lawyer will be required to notify the issuer and may notify the Commission. For purposes of the PRA, we estimated that lawyers will make ten such required notifications and five such permissive notifications a year, for a combined burden of 60 hours. Assuming a cost of $300 an hour, this paperwork burden imposes a cost of $18,000.

Interested persons are invited to comment upon this costs analysis. Are there other foreseeable costs? What is the likely economic impact of these costs? Can the costs be quantified in any meaningful way? If so, how, and what conclusions should be drawn? Interested persons are invited to address

[59] For purposes of the Paperwork Reduction Act, we estimate that the proposals would result in 32.5 burden hours and $5,250 in external costs. Assuming a cost of $110/hour for in-house professional staff, the total cost of the burden would be $8,825. The $110/hour estimate is derived from *The SIA Report on Management and Professional Earnings for the Securities Industry* (Oct. 2001).

all aspects of costs and benefits attributable to proposed Part 205. The Commission requests data to quantify the expected costs and the value of the anticipated benefits.

VII. Effect on Efficiency, Competition and Capital Formation

Section 23(a)(2) of the Exchange Act (15 U.S.C. 78w(a)(2)) requires us, when adopting rules under the Exchange Act, to consider the impact that any new rule would have on competition. Section 23(a)(2) prohibits us from adopting any rule that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act. In addition, Section 2(b) of the Securities Act,[60] Section 3(f) of the Exchange Act,[61] and Section 2(c) of the Investment Company Act[62] require us when engaging in rulemaking where we are required to consider or determine whether an action is necessary or appropriate in the public interest, to consider, in addition to the protection of investors, whether the action will promote efficiency, competition and capital formation.

The proposals should boost investor confidence in the financial markets. We anticipate that these proposals would enhance the proper functioning of the capital markets and promote efficiency by reducing the likelihood that illegal behavior would remain undetected and unremedied for long periods of time. Proposed section 205.3(d)–(f) would apply to all issuers and attorneys appearing before the Commission and is therefore unlikely to affect competition.

Interested persons are invited to comment upon any aspect of this analysis. We request comment on whether proposed section 205.3(d)–(f), if adopted, would impose a burden on competition. For example, would U.S. lawyers face a competitive disadvantage because attorneys practicing outside the U.S. would not be required to comply with the proposal's withdrawal requirements to the extent that such compliance is prohibited by applicable foreign law? Commenters are requested to provide empirical data and other factual support for their views if possible.

VIII. Initial Regulatory Flexibility Analysis

This Initial Regulatory Flexibility Analysis has been prepared in accordance with 5 U.S.C. 603.

A. Reasons for the Proposed Action

We are proposing section 205.3 to more fully implement Section 307 of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7245 *et seq.*) ("the Act") and recently adopted Part 205 of Title 17 of the Code of Federal Regulations.

B. Objectives

Section 307 of the Act requires the Commission to prescribe "minimum standards of professional conduct for attorneys appearing and practicing before the Commission in any way in the representation of issuers." The standards must include a rule requiring an attorney to report "evidence of a material violation of securities laws or breach of fiduciary duty or similar violation by the company or any agent thereof" to the chief legal counsel or the chief executive officer of the company (or the equivalent); and, if they do not respond appropriately to the evidence, requiring the attorney to report the evidence to the audit committee, another committee of independent directors, or the full board of directors. This proposal is designed to address those circumstances where the attorney withdraws from representation due to professional considerations. We originally proposed to require the attorney to report such a withdrawal to the Commission; we are still considering that option. However, we are now also proposing an alternative whereby the withdrawing attorney would notify the issuer and the issuer would be required to notify the Commission. An objective is to provide notice of such an event to both the Commission and the public without unduly intruding on the attorney-client relationship.

C. Legal Basis

We are proposing the new rules and amendments under the authority set forth in Sections 7, 10 and 19 of the Securities Act of 1933, Sections 3(b), 4C, 12, 13, 15 and 23(a) of the Securities Exchange Act of 1934, Sections 30, 38 and 39 of the Investment Company Act of 1940, Section 211 of the Investment Advisers Act of 1940, and Sections 3(a), 307 and 404 of the Sarbanes-Oxley Act of 2002.

D. Small Entities Subject to Proposed Part 205

The proposed additions to Part 205 would affect issuers that are small entities. Exchange Act Rule 0–10(a) (17 CFR 240.0–10(a)) defines an issuer, other than an investment company, to be a "small business" or "small organization" if it had total assets of $5 million or less on the last day of its most recent fiscal year. As of October 23, 2002, we estimated that there were approximately 2,500 issuers, other than investment companies, that may be considered small entities. For purposes of the Regulatory Flexibility Act, an investment company is a small entity if it, together with other investment companies in the same group of related investment companies, has net assets of $50 million or less as of the end of its most recent fiscal year.[63] We estimate that there are 211 small investment companies that would be subject to the proposed rule. The proposed revisions would apply to any small entity that is subject to Exchange Act reporting requirements.

The proposed additions to Part 205 also would affect law firms that are small entities. The Small Business Administration has defined small business for purposes of "offices of lawyers" as those with under $6 million in annual revenue.[64] Because we do not directly regulate law firms appearing before the Commission, we do not have data to estimate the number of small law firms that practice before the Commission or, of those, how many have revenue of less than $6 million. We request data on that issue.

E. Reporting, Recordkeeping, and Other Compliance Requirements

Lawyers who believe that their issuer client is engaged in ongoing illegal conduct would be required to notify their client and withdraw from the representation. Issuers who receive such notices would be required to notify the Commission and the successor lawyer of the withdrawal. The time required for the actual preparation of a report would vary, but should not be extensive.

F. Duplicative, Overlapping, or Conflicting Federal Rules

Proposed § 205.3 would not duplicate, overlap, or conflict with other federal rules. There are no other statutory federal requirements that small entities make similar reports or provide similar information.

G. Agency Action To Minimize Effect on Small Entities

The Regulatory Flexibility Act directs the Commission to consider significant alternatives that would accomplish the stated objective, while minimizing any significant adverse impact on small entities. In connection with the proposed rule, we considered the following alternatives: (a) The establishment of differing compliance or

[60] 15 U.S.C. 77b(b).
[61] 15 U.S.C. 78c(f).
[62] 15 U.S.C. 80a–2(c).
[63] 17 CFR 270.0–10.
[64] 13 CFR 121.201.

reporting requirements that take into account the resources available to small entities; (b) the clarification, consolidation, or simplification of the reporting requirements for small entities; (c) an exemption from coverage of the requirements, or any part thereof, for small entities; and (d) the use of performance rather than design standards.

The Act does not contain any exemption or other limitation for small entities. We believe that utilizing different reporting or other compliance requirements for small entities would seriously undermine the effective functioning of the proposed reporting regime. The proposed rule is designed to help restore investor confidence in the reliability of the financial statements of the companies they invest in—if small entities were not subject to such requirements, investors might decline to invest in their securities. Further, we see no valid justification for imposing different standards of conduct upon small law firms than would apply to others who choose to appear and practice before the Commission. We also believe that the proposed reporting and recordkeeping requirements will be at least as well understood by small entities as would be any alternate formulation we might propose to apply to them. Therefore, it does not seem necessary or appropriate to develop separate requirements for small entities. We nevertheless solicit comment on whether small entities should be subject to different requirements.

H. Solicitation of Comments

Interested persons are invited to comment upon any aspect of this Initial Regulatory Flexibility Analysis. In particular, we request comments concerning: (1) The number of law practices that constitute small entities; (2) the number of small entities that may be affected by proposed section 205.3; (3) the existence or nature of the potential impact of the proposed rule on small entities; and (4) how to quantify the impact of the proposed revisions. Commenters are asked to describe the nature of any impact and provide empirical data supporting the extent of the impact. Such comments will be considered in the preparation of the Final Regulatory Flexibility Analysis, if the proposed rule is adopted, and will be placed in the same public file as comments on the proposed rule itself.

IX. Small Business Regulatory Enforcement Fairness Act

For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996 ("SBREFA"),[65] we must advise the OMB as to whether the proposed rule constitutes a "major" rule. Under SBREFA, a rule is considered "major" where, if adopted, it results or is likely to result in an annual effect on the economy of $100 million or more (either in the form of an increase or a decrease); a major increase in costs or prices for consumers or individual industries; or significant adverse effects on competition, investment, or innovation. Where a rule is "major," its effectiveness will generally be delayed for 60 days pending Congressional review. We request comment on the potential impact of the proposed rule on the economy on an annual basis. Commenters are requested to provide empirical data and other factual support for their views to the extent possible.

X. Statutory Basis and Text of Proposed Amendments to Parts 205, 240 and 249

The proposals contained in this document are being proposed under the authority in Sections 3, 307, and 404 of the Sarbanes-Oxley Act of 2002,[66] Sections 7, 10 and 19 of the Securities Act of 1933,[67] Sections 3(b), 4C, 12, 13, 15 and 23 of the Securities Exchange Act of 1934,[68] Sections 30, 38 and 39 of the Investment Company Act of 1940,[69] and Section 211 of the Investment Advisers Act of 1940.[70]

List of Subjects

17 CFR Part 205

Standards of conduct for attorneys.

17 CFR Parts 240 and 249

Reporting and recordkeeping requirements, Securities.

For the reasons set out in the preamble, the Commission proposes to amend Title 17, Chapter II, of the Code of Federal Regulations to read as follows:

PART 205—STANDARDS OF PROFESSIONAL CONDUCT FOR ATTORNEYS APPEARING AND PRACTICING BEFORE THE COMMISSION IN THE REPRESENTATION OF AN ISSUER

1. The authority citation for Part 205 continues to read as follows:

Authority: 15 U.S.C. 77s, 78d–3, 78w, 80a–37, 80a–38, 80b–11, 7202, 7245, and 7262.

2. Amend § 205.3 by:

a. Redesignating paragraph (d) as paragraph (g); and

b. Adding new paragraphs (d), (e) and (f).

The additions read as follows:

§ 205.3 Issuer as client.

* * * * *

(d) *Actions required where there is no appropriate response within a reasonable time.*

(1) Where an attorney who has reported evidence of a material violation under paragraph (b) of this section rather than paragraph (c) of this section:

(i) Does not receive an appropriate response, or has not received a response in a reasonable time,

(ii) Has followed the procedures set forth in paragraph (b)(3) of this section, and

(iii)Reasonably concludes that there is substantial evidence of a material violation that is ongoing or is about to occur and is likely to cause substantial injury to the financial interest or property of the issuer or of investors:

(A) An attorney retained by the issuer shall withdraw from representing the issuer, and shall notify the issuer, in writing, that the withdrawal is based on professional considerations.

(B) An attorney employed by the issuer shall cease forthwith any participation or assistance in any matter concerning the violation and shall notify the issuer, in writing, that he or she believes that the issuer has not provided an appropriate response in a reasonable time to his or her report of evidence of a material violation under paragraph (b) of this section.

(2) An attorney shall not be required to take any action pursuant to paragraph (d)(1) of this section if the attorney would be prohibited from doing so by order or rule of any court, administrative body or other authority with jurisdiction over the attorney, after having sought leave to withdraw from representation or to cease participation or assistance in a matter. An attorney shall give notice to the issuer that, but for such prohibition, he or she would have taken such action pursuant to this paragraph (d)(1) or (d)(2), and such notice shall be deemed the equivalent of such action for purposes of this part.

(3) An attorney employed or retained by an issuer who has reported evidence of a material violation under this part and reasonably believes that he or she has been discharged for so doing shall notify the issuer's chief legal officer (or the equivalent thereof) forthwith.

(4) The issuer's chief legal officer (or the equivalent thereof) shall notify any attorney retained or employed to replace

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[65] Pub. L. 104–121, Title II, 110 Stat. 857 (1996) (codified in various sections of 5 U.S.C., 15 U.S.C., and as a note to 5 U.S.C. 601).

[66] 15 U.S.C. 7202, 7245, 7262.

[67] 15 U.S.C. 77g, 77j and 77s.

[68] 15 U.S.C. 78c(b), 78d–3, 78*l*, 78m, 78o and 78w.

[69] 15 U.S.C. 80a–29, 80b–37, 80a–38.

[70] 15 U.S.C. 80b–11.

an attorney who has given notice to an issuer pursuant to paragraph (d)(1), (d)(2) or (d)(3) of this section that the previous attorney has withdrawn, ceased to participate or assist or has been discharged, as the case may be, pursuant to the provisions of this paragraph.

(e) *Duties of an issuer where an attorney has given notice pursuant to paragraph (d).* Where an attorney has provided an issuer with a written notice pursuant to paragraph (d)(1), (d)(2) or (d)(3) of this section, the issuer shall, within two business days of receipt of such written notice, report such notice and the circumstances related thereto on Form 8–K, 20–F, or 40–F (§§ 249.308, 220f or 240f of this chapter), as applicable.

(f) *Additional actions by an attorney.* An attorney retained or employed by the issuer may, if an issuer does not comply with paragraph (e) of this section, inform the Commission that the attorney has provided the issuer with notice pursuant to paragraph (d)(1), (d)(2), or (d)(3) of this section, indicating that such action was based on professional considerations.

* * * * *

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

3. The authority citation for Part 240 is amended by adding the following citations in numerical order to read as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77z–3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78e, 78f, 78g, 78i, 78j, 78j–1, 78k, 78k–1, 78*l*, 78m, 78n, 78o, 78p, 78q, 78s, 78u–5, 78w, 78x, 78*ll*, 78mm, 79q, 79t, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4 and 80b–11, unless otherwise noted.

* * * * *

Section 240.13a–11 is also issued under Secs. 3(a) and 307, Pub. L. 107–204, 116 Stat. 745.

* * * * *

Section 240.13a–17 is also issued under Secs. 3(a) and 307, Pub. L. 107–204, 116 Stat. 745.

* * * * *

Section 240.15d–11 is also issued under Secs. 3(a) and 307, Pub. L. 107–204, 116 Stat. 745.

* * * * *

Section 240.15d–17 is also issued under Secs. 3(a) and 307, Pub. L. 107–204, 116 Stat. 745.

* * * * *

4. Section 240.13a–11 is amended by revising paragraph (b) to read as follows:

§ 240.13a–11 Current reports on Form 8–K (§ 249.308 of this chapter).

* * * * *

(b) This section shall not apply to foreign governments, foreign private issuers required to make reports on Form 6–K (17 CFR 249.306) pursuant to § 240.13a–16, issuers of American Depositary Receipts for securities of any foreign issuer, or investment companies required to file reports pursuant to § 270.30b1–1 of this chapter under the Investment Company Act of 1940, except where such investment companies are required to file:

(1) Notice of a blackout period pursuant to § 245.104 of this chapter, or

(2) A notice regarding an attorney withdrawal pursuant to § 205.3(e) of this chapter.

5. Add § 240.13a–17 to read as follows:

§ 240.13a–17 Reports of foreign private issuers pursuant to § 205.3(e) of this chapter.

Every foreign private issuer which is subject to § 240.13a–1 shall make reports pursuant to § 205.3(e) of this chapter. If a foreign private issuer is filing a report on Form 20–F (§ 249.220f of this chapter) or Form 40–F (§ 249.240f of this chapter) solely to provide information pursuant to § 205.3(e) of this chapter, the foreign private issuer is not required to include the certifications required by § 240.13a–14 in such report.

6. Section 240.15d–11 is amended by revising paragraph (b) to read as follows:

§ 240.15d–11 Current reports on Form 8–K (§ 249.308 of this chapter).

* * * * *

(b) This section shall not apply to foreign governments, foreign private issuers required to make reports on Form 6–K (17 CFR 249.306) pursuant to § 240.15d–16, issuers of American Depositary Receipts for securities of any foreign issuer, or investment companies required to file periodic reports pursuant to § 270.30b1–1 of this chapter under the Investment Company Act of 1940, except where such investment companies are required to file:

(1) Notice of a blackout period pursuant to § 245.104 of this chapter, or

(2) A notice regarding an attorney withdrawal pursuant to § 205.3(e) of this chapter.

7. Add § 240.15d–17 to read as follows:

§ 240.15d–17 Reports of foreign private issuers pursuant to § 205.3(e) of this chapter.

Every foreign private issuer which is subject to § 240.15d–1 shall make reports pursuant to § 205.3(e) of this chapter. If a foreign private issuer is filing a report on Form 20–F (§ 249.220f of this chapter) or Form 40–F (§ 249.240f of this chapter) solely to provide information pursuant to § 205.3(e) of this chapter, the foreign private issuer is not required to include the certifications required by § 240.15d–14 in such report.

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

8. The authority citation for Part 249 is amended by revising the sectional authority for §§ 249.220f, 249.240f and 249.308 to read as follows:

Authority: 15 U.S.C. 78a, *et seq.*, unless otherwise noted.

* * * * *

Section 249.220f is also issued under secs. 3(a), 202, 208, 301, 302, 306(a), 307, 401(a), 401(b), 406 and 407, Pub. L. 107–204, 116 Stat. 745.

Section 249.240f is also issued under secs. 3(a), 202, 208, 301, 302, 306(a), 307, 401(a), 406 and 407, Pub. L. 107–204, 116 Stat. 745.

Section 249.308 is also issued under 15 U.S.C. 80a–29, 80a–37 and secs. 3(a), 306(a), 307, 401(b) and 406, Pub. L. 107–204, 116 Stat. 745.

* * * * *

9. Amend Form 20–F (referenced in § 249.220f) by:

a. Adding a paragraph on the cover page before the line beginning with the phrase "Commission file number";

b. Adding paragraph (d) to General Instruction A;

c. Removing the word "annual" in each place where it appears in paragraphs (a) and (b) of General Instruction D;

d. Adding Item 16E; and

e. Removing the phrase "[annual report]" in the paragraph after "Signatures" and adding in its place "[report]".

The additions read as follows:

Note: The text of Form 20–F does not, and this amendment will not, appear in the Code of Federal Regulations.

Form 20–F

* * * * *

Or

[ ] Report Pursuant to Rules 13a–17 and 15d–17 Under the Securities Exchange Act of 1934

Commission file number * * *

* * * * *

General Instructions

A. Who May Use Form 20–F and When It Must Be Filed

* * * * *

(d) A foreign private issuer must file a report on this Form within two business days after receipt of an attorney's written notice pursuant to 17

CFR 205.3(d)(1), (d)(2) or (d)(3). Such filing may consist only of the following: the facing page, the information required by Item 16E of this Form and the signature page. If such filing is made solely to provide information pursuant to 17 CFR 205.3(e), the foreign private issuer is not required to include the certifications required by 17 CFR 240.13a–14 or 17 CFR 240.15d–14 in the report.

* * * * *

Item 16E. Receipt of an Attorney's Written Notice Pursuant to 17 CFR 205.3(d)

Upon receipt of written notice from an attorney (as defined in 17 CFR 205.3(d)), provide the information specified in 17 CFR 205.3(e). You do not need to provide the information called for by this Item 16E unless you are using this form pursuant to General Instruction A.(d).

* * * * *

10. Amend Form 40–F (referenced in § 249.240f) by:

a. Revising the line on the cover page that begins with the phrase "For the fiscal year ended";

b. Adding paragraph (5) to General Instruction A;

c. Adding paragraph (15) to General Instruction B;

d. Removing the word "annual" in each place where it appears in paragraphs (7) and (8) of General Instruction D;

e. Removing the phrase "[annual report]" in the paragraph after "Signatures" and in its place adding "[report]"; and

f. Removing the word "annual" in the first sentence of Instruction A to "Signatures."

The revisions and additions read as follows:

Note: The text of Form 40–F does not, and this amendment will not, appear in the Code of Federal Regulations.

Form 40–F

* * * * *

For the fiscal year ended * * *

Or

[ ] Report Pursuant to Rules 13a–17 and 15d–17 Under the Securities Exchange Act of 1934

Commission file number * * *

* * * * *

General Instructions

A. Rules as to Use of Form 40–F

* * * * *

(5) If the Registrant uses Form 40–F to file reports with the Commission pursuant to Section 13(a) of the Exchange Act (15 U.S.C. 78m(a)) and Rule 13a–3 thereunder (17 CFR 240.13a–3) or pursuant to Section 15(d) of the Exchange Act (15 U.S.C. 78o(d)) and Rule 15d–4 thereunder (17 CFR 240.15d–4), the Registrant must file a report on this Form 40–F within two business days after receipt of an attorney's written notice pursuant to 17 CFR 205.3(d)(1), (d)(2) or (d)(3). Such filing may consist only of the following: the facing page, the information required by General Instruction B.(15) of this Form 40–F and the signature page. If such filing is made solely to provide information pursuant to 17 CFR 205.3(e), the Registrant is not required to include the certifications required by 17 CFR 240.13a–14 or 17 CFR 240.15d–14 in the report.

* * * * *

B. Information To Be Filed on This Form

* * * * *

(15) Receipt of an Attorney's Written Notice Pursuant to 17 CFR 205.3(d). Upon receipt of written notice from an attorney (as defined in 17 CFR 205.3(d)), provide the information specified in 17 CFR 205.3(e). You do not need to provide the information called for by this General Instruction B.(15) unless you are using this form pursuant to General Instruction A.(5).

* * * * *

11. Form 8–K (referenced in § 249.308) is amended by:

a. Removing the word "and" after the phrase "Rule 15d–11" and in its place adding a comma and adding the phrase "and for reports of an attorney's written notice required to be disclosed by 17 CFR 205.3(e)" before the period at the end of General Instruction A;

b. Adding a sentence to the end of General Instruction B(1); and

c. Adding Item 13 under "Information to be Included in the Report."

The additions read as follows:

Note: The text of Form 8–K does not, and this amendment will not, appear in the Code of Federal Regulations.

Form 8–K

* * * * *

General Instructions

* * * * *

B. Events To Be Reported and Time for Filing of Reports

1. * * * A report on this form pursuant to Item 13 is required to be filed within two business days after receipt of an attorney's written notice pursuant to 17 CFR 205.3(d)(1), (d)(2) or (d)(3).

* * * * *

Information To Be Included in the Report

* * * * *

Item 13. Receipt of an Attorney's Written Notice Pursuant to 17 CFR 205.3(d)

Upon receipt of written notice from an attorney (as defined in 17 CFR 205.3(d)) provide the information specified in 17 CFR 205.3(e).

Dated: January 29, 2003.

By the Commission.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 03–2520 Filed 2–5–03; 8:45 am]

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Thursday, February 6, 2003

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H.J. Res. 13/P.L. 108–4

Making further continuing appropriations for the fiscal year 2003, and for other purposes. (Jan. 31, 2003; 117 Stat. 8)

Last List January 15, 2003

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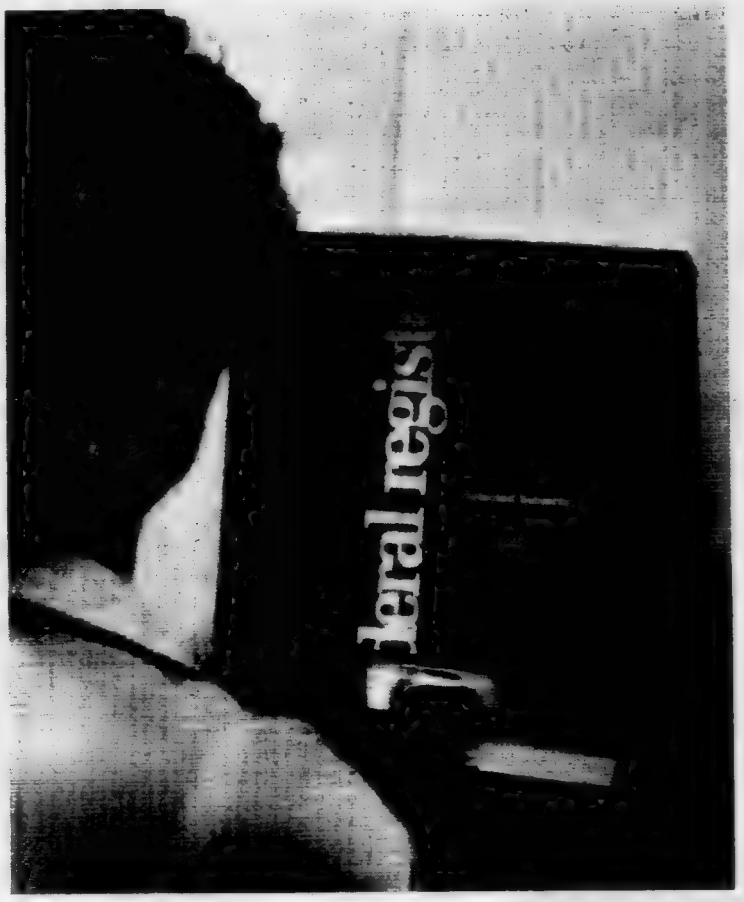

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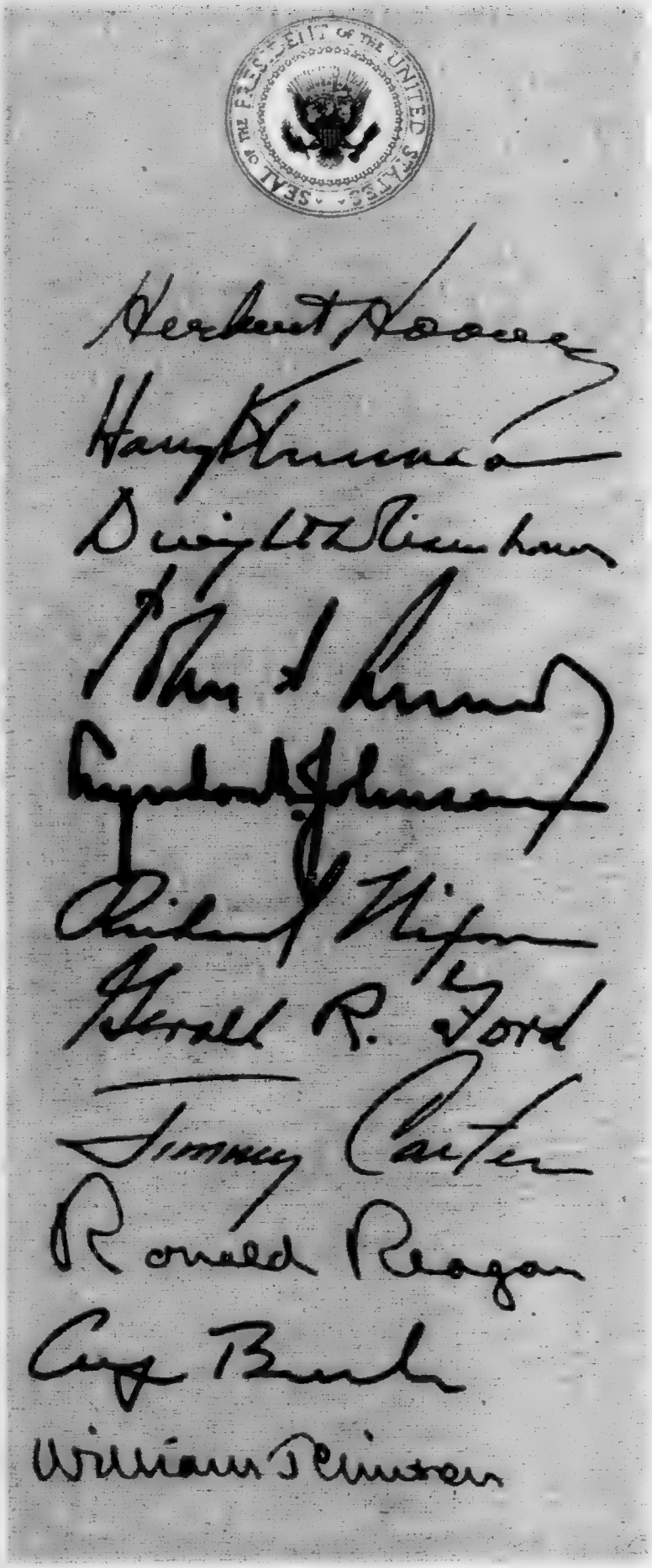

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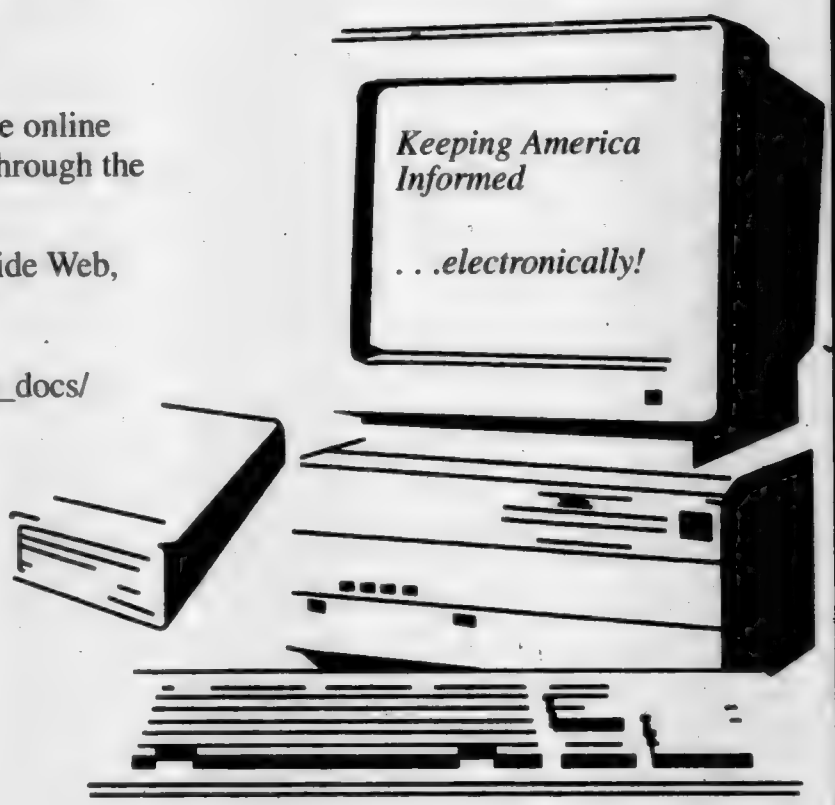

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DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 1

RIN 0503–AA25

Appeal of Oral Decisions Under the Rules of Practice

AGENCY: Office of the Secretary, USDA.

ACTION: Final rule.

SUMMARY: The Office of the Secretary is amending the rules of practice governing formal adjudicatory proceedings instituted by the Secretary under various statutes. This final rule amends the rules of practice governing formal adjudicatory proceedings instituted by the Secretary under various statutes to provide that any appeal to the Judicial Officer from an oral decision of an administrative law judge must be filed within 30 days after the oral decision is issued. The Office of the Secretary is also making a number of minor, nonsubstantive changes to the rules of practice governing formal adjudicatory proceedings instituted by the Secretary under various statutes.

EFFECTIVE DATE: February 7, 2003.

FOR FURTHER INFORMATION CONTACT: Patrice Harps, Deputy Assistant General Counsel, Trade Practices Division, Office of the General Counsel, USDA, Room 2309, South Building, 1400 Independence Avenue, SW., Washington, DC 20250, (202) 720–5293.

SUPPLEMENTARY INFORMATION:

Background

Appeal to the Judicial Officer

The rules of practice governing formal adjudicatory proceedings instituted by the Secretary under various statutes (7 CFR 1.130 through 1.151) (referred to as the "uniform rules" below) provide that an administrative law judge may issue an oral or written decision. Current 7 CFR 1.142(c)(2) provides that if an administrative law judge orally announces a decision, a copy of the decision shall be furnished to the parties by the Hearing Clerk. Irrespective of the date a copy of the decision is mailed, the issuance date of the oral decision is the date the decision is orally announced. Current 7 CFR 1.145(a) provides that a party who disagrees with an administrative law judge's decision may appeal to the Judicial Officer within 30 days after receiving service of the administrative law judge's decision.

The Judicial Officer has held that an appeal from an oral decision must be filed within 30 days after the date the administrative law judge orally announces the decision. *In re PMD Produce Brokerage Corp.*, 59 Agric. Dec. 344 (2000) (order denying late appeal); *In re PMD Produce Brokerage Corp.*, 59 Agric. Dec. 351 (2000) (order denying petition for reconsideration). On appeal, the United States Court of Appeals for the District of Columbia Circuit held that current 7 CFR 1.142(c)(2) and 7 CFR 1.145(a) are ambiguous because the Secretary of Agriculture did not give fair notice that the uniform rules require an appeal to be filed within 30 days after the administrative law judge orally announces a decision. *PMD Produce Brokerage Corp.* v. *U.S. Department of Agriculture*, 234 F.3d 48 (D.C. Cir. 2000).

The Office of the Secretary is amending 7 CFR 1.145(a) to eliminate the ambiguity found by the United States Court of Appeals for the District of Columbia Circuit. Specifically, the Office of the Secretary is amending 7 CFR 1.145(a) to provide that any appeal to the Judicial Officer from an oral decision issued by an administrative law judge must be filed within 30 days after the administrative law judge issues the oral decision.

Miscellaneous Changes

The Office of the Secretary is also making a number of minor, nonsubstantive changes.

The uniform rules are applicable to adjudicatory proceedings under the statutory provisions listed in 7 CFR 1.131(a). One of the statutory provisions listed in current 7 CFR 1.131(a) is the "Packers and Stockyards Act, 1921, as supplemented, sections 203, 312, 401, 502(b), and 505 of the Act, and section 1, 57 Stat. 422, as amended by section 4, 90 Stat. 1249 (7 U.S.C. 193, 204, 213, 218a, 218d, 221)." Sections 502 and 505 of the Packers and Stockyards Act were repealed by section 10 of the Poultry Producers Financial Protection Act of 1987. Therefore, in order to reflect the 1987 amendment to the Packers and Stockyards Act, the Office of the Secretary is amending the reference in 7 CFR 1.131(a) to the Packers and Stockyards Act to read "Packers and Stockyards Act, 1921, as supplemented, sections 203, 312, and 401 of the Act, and section 1, 57 Stat. 422, as amended by section 4, 90 Stat. 1249 (7 U.S.C. 193, 204, 213, 221)."

Current 7 CFR 1.131(a) also lists the "Perishable Agricultural Commodities Act, 1930, sections 1(9), 3(c), 4(d), 6(c), 8(a), 8(b), 8(c), 9 and 13(a), (7 U.S.C. 499c(c), 499d(d), 499f(c), 499h(a), 499h(b), 499h(c), 499i, 499m(a))." The Perishable Agricultural Commodities Act was amended by the Perishable Agricultural Commodities Act Amendments of 1995 on November 15, 1995. Section 11 of the Perishable Agricultural Commodities Act Amendments of 1995 added section 8(e) to the Perishable Agricultural Commodities Act which provides for the assessment of civil penalties for violations of the Perishable Agricultural Commodities Act after an adjudicatory proceeding conducted by the Secretary. These proceedings are currently conducted in accordance with the uniform rules. Therefore, in order to reflect the 1995 amendment to the Perishable Agricultural Commodities Act, the Office of the Secretary is amending the reference in 7 CFR 1.131(a) to the Perishable Agricultural Commodities Act by adding a reference to section 8(e) and to the section in the United States Code in which section 8(e) is codified, 7 U.S.C. 499h(e). The Office of the Secretary is also correcting the reference to section "1(9)" to read "1(b)(9)" and adding a reference to the section in the United States Code in which section 1(b)(9) of the Perishable Agricultural Commodities Act is codified, 7 U.S.C. 499a(b)(9).

Current 7 CFR 1.131(a) also lists the "United States Grain Standards Act, sections 7(g)(3), 9, (footnote 2) 10, and 17A(d) (7 U.S.C. 79(g)(3), 85, 86)." Footnote 2 states: "[t]he rules of practice in this subpart are applicable to formal proceedings under section 9 of the United States Grain Standards Act for

refusal to renew, or for suspension or revocation of a license if the respondent requests that such proceeding be subject to the administrative procedure provisions in 5 U.S.C. 554, 556, and 557. If such a request is not made, the rules of practice in 7 CFR part 26, subpart C shall apply." Title 7 CFR part 26, subpart C, was deleted, effective April 11, 1980 (45 FR 15873). Therefore, the Office of the Secretary is removing footnote 2 and the reference to footnote 2 in 7 CFR 1.131(a). The Office of the Secretary is also adding a reference to the section in the United States Code in which section 17A(d) of the United States Grain Standards Act is codified, 7 U.S.C. 87f–1(d).

The Office of the Secretary is also: (1) Correcting cross-references to regulations and statutes in 7 CFR 1.132, 7 CFR 1.133(b)(2), 7 CFR 1.136(c), 7 CFR 1.137(b), 7 CFR 1.141(e)(2), and 7 CFR 1.144(c); (2) making editorial changes in 7 CFR 1.131(b), 7 CFR 1.141(b)(1) (redesignated footnote 2), 7 CFR 1.142(c)(4), 7 CFR 1.143(d), 7 CFR 1.144(c)(13), 7 CFR 1.147(h), and 7 CFR 1.148(a)(3) for clarity and to correct typographical errors; and (3) eliminating gender-specific references in 7 CFR 1.141(e)(2).

5 U.S.C. 553, 601, and 804

This rule amends provisions of the rules of practice governing the conduct of certain adjudicatory proceedings before the Secretary of Agriculture. Therefore, pursuant to 5 U.S.C. 553, notice of proposed rulemaking and opportunity for comment are not required for this rule, and this rule may be made effective less than 30 days after publication in the **Federal Register**. In addition, under 5 U.S.C. 804, this rule is not subject to congressional review under the Small Business Regulatory Enforcement Fairness Act of 1996, Pub. L. 104–121. Finally, this rule is exempt from the requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Executive Order 12866 and 12988

This rule has been determined to be not significant for purposes of Executive Order 12866 and, therefore, has not been reviewed by OMB.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative proceedings which must be exhausted before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 7 CFR Part 1

Administrative practice and procedure, Agriculture, Antitrust, Blind, Claims, Concessions, Cooperatives, Equal access to justice, Federal buildings and facilities, Freedom of information, Lawyers, Privacy.

Accordingly, 7 CFR part 1 is amended as follows:

PART 1—ADMINISTRATIVE REGULATIONS

1. The authority citation for part 1 continues to read as follows:

Authority: 5 U.S.C. 301, unless otherwise noted.

Subpart H—Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary Under Various Statutes

§ 1.131 [Amended]

2. Section 1.131 is amended as follows:

a. In paragraph (a), the reference to "Packers and Stockyards Act, 1921, as supplemented, sections 203, 312, 401, 502(b), and 505 of the Act, and section 1, 57 Stat. 422, as amended by section 4, 90 Stat. 1249 (7 U.S.C. 193, 204, 213, 218a, 218d, 221)" is removed and "Packers and Stockyards Act, 1921, as supplemented, sections 203, 312, and 401 of the Act, and section 1, 57 Stat. 422, as amended by section 4, 90 Stat. 1249 (7 U.S.C. 193, 204, 213, 221)" is added in its place.

b. In paragraph (a), the reference to "Perishable Agricultural Commodities Act, 1930, sections 1(9), 3(c), 4(d), 6(c), 8(a), 8(b), 8(c), 9 and 13(a), (7 U.S.C. 499c(c), 499d(d), 499f(c), 499h(a), 499h(b), 499h(c), 499i, 499m(a))" is removed and "Perishable Agricultural Commodities Act, 1930, sections 1(b)(9), 3(c), 4(d), 6(c), 8(a), 8(b), 8(c), 8(e), 9, and 13(a) (7 U.S.C. 499a(b)(9), 499c(c), 499d(d), 499f(c), 499h(a), 499h(b), 499h(c), 499h(e), 499i, 499m(a))" is added in its place.

c. In paragraph (a), footnote 2 and the reference to footnote 2 are removed.

d. In paragraph (a), the reference to "(7 U.S.C. 79(g)(3), 85, 86)" is removed and "(7 U.S.C. 79(g)(3), 85, 86, 87f-1(d))" is added in its place.

e. In paragraph (b)(1), the period is removed immediately after the word "service" and a semicolon is added in its place.

f. In paragraph (b)(2), the period is removed immediately after the reference to "(9 CFR parts 160, 161)" and a semicolon is added in its place.

§ 1.132 [Amended]

3. In § 1.132 the definition of "Petitioner" is amended by removing the reference to "7 U.S.C. 499a(9)" and adding "7 U.S.C. 499a(b)(9)" in its place.

§ 1.133 [Amended]

4. In § 1.133, paragraph (b)(2) is amended by removing the reference to "7 CFR 47.47–47.68" and adding a reference to "§§ 47.47–47.49 of this title" in its place; and by removing the reference to "7 U.S.C. 499a(9)" and adding a reference to "7 U.S.C. 499a(b)(9)" in its place.

§ 1.136 [Amended]

5. In § 1.136, paragraph (c), the reference to "§ 1.136(a)" is removed and the words "paragraph (a) of this section" are added in its place.

§ 1.137 [Amended]

6. In § 1.137, paragraph (b) is amended by removing the reference to "7 U.S.C. 499a(9)" and adding a reference to "7 U.S.C. 499a(b)(9)" in its place.

§ 1.141 [Amended]

7. Section 1.141 is amended as follows:

a. In paragraph (b)(1), footnote 3 is redesignated as footnote 2 and is amended by removing the letter "z" immediately after the period at the end of the footnote.

b. In paragraph (e)(2), the reference to "7 U.S.C. 499a(9)" is removed and "7 U.S.C. 499a(b)(9)" is added in its place; and the word "his" is removed both times it appears and the word "the" is added in its place.

§ 1.142 [Amended]

8. In § 1.142, paragraph (c)(4) is amended by adding the words "final and" immediately before the word "effective".

§ 1.143 [Amended]

9. In § 1.143, paragraph (d) is amended by removing the word "their" and adding the words "the Judge's or Judicial Officer's" in its place.

§ 1.144 [Amended]

10. Section 1.144 is amended as follows:

a. In paragraph (c), the introductory text is amended by removing the word "elsewhere"; and by removing the word

"part" and adding the word "subpart" in its place.

b. Paragraph (c)(13) is amended by adding the word "and" immediately after the semicolon.

11. In § 1.145, paragraph (a) is revised to read as follows:

§ 1.145 Appeal to Judicial Officer.

(a) *Filing of petition.* Within 30 days after receiving service of the Judge's decision, if the decision is a written decision, or within 30 days after issuance of the Judge's decision, if the decision is an oral decision, a party who disagrees with the decision, any part of the decision, or any ruling by the Judge or who alleges any deprivation of rights, may appeal the decision to the Judicial Officer by filing an appeal petition with the Hearing Clerk. As provided in § 1.141(h)(2), objections regarding evidence or a limitation regarding examination or cross-examination or other ruling made before the Judge may be relied upon in an appeal. Each issue set forth in the appeal petition and the arguments regarding each issue shall be separately numbered; shall be plainly and concisely stated; and shall contain detailed citations to the record, statutes, regulations, or authorities being relied upon in support of each argument. A brief may be filed in support of the appeal simultaneously with the appeal petition.

* * * * *

§ 1.147 [Amended]

12. In § 1.147, paragraph (h), the word "extened" is removed and the word "extended" is added in its place.

§ 1.148 [Amended]

13. In § 1.148, paragraph (a)(3), the word "leat" is removed and the word "least" is added in its place.

14. In § 1.149 footnote 4 is redesignated as footnote 3.

Done in Washington, DC this 31st day of January, 2003.

Ann M. Veneman,

Secretary of Agriculture.

[FR Doc. 03–3059 Filed 2–6–03; 8:45 am]

BILLING CODE 3410–01–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Parts 330 and 354

9 CFR Parts 4, 11, 12, 49, 50, 51, 52, 53, 54, 70, 71, 72, 73, 74, 75, 77, 78, 79, 80, 85, 89, 91, 92, 93, 94, 95, 96, 97, 98, 99, 122, 123, 124, 130, 145, 147, 160, 161, 162, 166

[Docket No. 02–076–1]

Animal Health Protection Act; Revisions to Authority Citations

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the regulations in title 7, chapter III, and title 9, chapter I, to reflect the enactment of the Animal Health Protection Act (Pub. L. 107–171, 116 Stat. 494, 7 U.S.C. 8301 *et seq.*) in our lists of legal authorities. We are also removing or revising citations and references to animal health statutes that were repealed by the Animal Health Protection Act. In addition, we are updating the authority citations throughout our regulations in titles 7 and 9, where appropriate, to remove duplicative or outdated citations and are making other nonsubstantive editorial changes in the regulations for the sake of clarity.

EFFECTIVE DATE: February 7, 2003.

FOR FURTHER INFORMATION CONTACT: Ms. Cynthia Howard, Chief, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238, (301) 734–5957.

SUPPLEMENTARY INFORMATION:

Background

In a memorandum titled "Delegations of Authority Farm Security and Rural Investment Act of 2002 (FSRIA)," dated July 10, 2002, the Secretary of Agriculture delegated to the Animal and Plant Health Inspection Service (APHIS) the authority to carry out Subtitle E of FSRIA, known as the Animal Health Protection Act (AHPA) (Subtitle E, Pub. L. 107–171, 116 Stat. 494, 7 U.S.C. 8301 *et seq.*). In this document, we are amending titles 7 and 9 of the Code of Federal Regulations (referred to below as the regulations) to reflect the AHPA in our lists of legal authorities, update authority citations, and remove references to statutes that were repealed by the AHPA.

The AHPA repealed the following statutes:

1. Pub. L. 97–46 (7 U.S.C. 147b);
2. Section 101(b) of the Act of September 21, 1944 (7 U.S.C. 429);
3. The Act of August 28, 1950 (7 U.S.C. 2260);
4. Section 919 of the Federal Agriculture Improvement and Reform Act of 1996 (7 U.S.C. 2260a);
5. Section 306 of the Tariff Act of 1930 (19 U.S.C. 1306);
6. Sections 6 through 8 and 10 of the Act of August 30, 1890 (21 U.S.C. 102 through 105);
7. The Act of February 2, 1903 (21 U.S.C. 111, 120 through 122);
8. Sections 2 through 9, 11, and 13 of the Act of May 29, 1884 (21 U.S.C. 112, 113, 114, 114a, 114a–1, 115 through 120, 130);
9. The first section and sections 2, 3, and 5 of the Act of February 28, 1947 (21 U.S.C. 114b, 114c, 114d, 114d–1);
10. The Act of June 16, 1948 (21 U.S.C. 114e, 114f);
11. Pub. L. 87–209 (21 U.S.C. 114g, 114h);
12. The third and fourth provisos of the fourth paragraph under the heading "Bureau of Animal Industry" of the Act of May 31, 1920 (21 U.S.C. 116);
13. The first section and sections 2, 3, 4, and 6 of the Act of March 3, 1905 (21 U.S.C. 123 through 127);
14. The first proviso under the heading "General expenses, Bureau of Animal Industry" under the heading "BUREAU OF ANIMAL INDUSTRY" of the Act of June 30, 1914 (21 U.S.C. 128);
15. The fourth proviso under the heading "Salaries and Expenses" under the heading "Animal and Plant Health Inspection Service" of title I of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2001 (21 U.S.C. 129);
16. The third paragraph under the heading "MISCELLANEOUS" of the Act of May 26, 1910 (21 U.S.C. 131);
17. The first section and sections 2 through 6 and 11 through 13 of Pub. L. 87–518 (21 U.S.C. 134 through 134h);
18. Pub. L. 91–239 (21 U.S.C. 135 through 135b);
19. Sections 12 through 14 of the Federal Meat Inspection Act (21 U.S.C. 612 through 614); and
20. Chapter 39 of title 46, United States Code.

In this document we are also making other changes to the regulations, not related to enactment of the AHPA. We are:

1. Updating or removing from the regulations several outdated or extraneous authority citations;
2. Correcting several erroneous or outdated specific references to material in the U.S. Code and Code of Federal Regulations; and

3. Making other nonsubstantive editorial changes to enhance the clarity and usefulness of the regulations.

This rule relates to internal agency management. Therefore, this rule is exempt from the provisions of Executive Orders 12866 and 12988. Moreover, pursuant to 5 U.S.C. 553, notice of proposed rulemaking and opportunity for comment are not required for this rule, and it may be made effective less than 30 days after publication in the **Federal Register**. In addition, under 5 U.S.C. 804, this rule is not subject to congressional review under the Small Business Regulatory Enforcement Fairness Act of 1996, Pub. L. 104–121. Finally, this action is not a rule as defined by 5 U.S.C. 601 *et seq.*, the Regulatory Flexibility Act, and thus is exempt from the provisions of that Act.

List of Subjects

7 CFR Part 330

Customs duties and inspection, Imports, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

9 CFR Parts 49, 51, 52, 53, 70, 73, and 79

Administrative practice and procedure, Animal diseases, Cattle, Goats, Hogs, Indemnity payments, Livestock, Poultry and poultry products, Pseudorabies, Quarantine, Reporting and recordkeeping requirements, Scrapie, Sheep, Swine, Transportation.

9 CFR Parts 93, 94, 98, 99, and 124.

Administrative practice and procedure, Animal biologics, Animal diseases, Imports, Livestock, Meat and meat products, Milk, Patents, Poultry and poultry products, Quarantine, Reporting and recordkeeping requirements.

9 CFR Parts 130, 161, and 166

Animals, Birds, Diagnostic reagents, Exports, Hogs, Imports, Poultry and poultry products, Quarantine, Reporting and recordkeeping requirements, Tests, Veterinarians.

Accordingly, we are amending 7 CFR parts 330 and 354 and 9 CFR parts 4, 11, 12, 49, 50, 51, 52, 53, 54, 70, 71, 72, 73, 74, 75, 77, 78, 79, 80, 85, 89, 91, 92, 93, 94, 95, 96, 97, 98, 99, 122, 123, 124, 130, 145, 147, 160, 161, 162, and 166 as follows:

Title 7—Agriculture

PART 330—PLANT PEST REGULATIONS; GENERAL; PLANT PESTS; SOIL, STONE, AND QUARRY PRODUCTS; GARBAGE

1. The authority citation for part 330 is revised to read as follows:

Authority: 7 U.S.C. 450, 7701–7772, and 8301–8317; 21 U.S.C. 136 and 136a; 31 U.S.C. 9701; 42 U.S.C. 4331 and 4332; 7 CFR 2.22, 2.80, and 371.3.

2. In § 330.400, paragraph (f)(2) is revised to read as follows:

§ 330.400 Regulation of certain garbage.

* * * * *

(f) * * *

(2) Regulated garbage is subject to general surveillance for compliance with this section by Animal and Plant Health Inspection Service inspectors and to disposal measures authorized by the Plant Protection Act and the Animal Health Protection Act to prevent the introduction and dissemination of pests and diseases of plants and livestock.

* * * * *

PART 354—OVERTIME SERVICES RELATING TO IMPORTS AND EXPORTS; AND USER FEES

3. The authority citation for part 354 is revised to read as follows:

Authority: 7 U.S.C. 8301–8317; 21 U.S.C. 136 and 136a; 49 U.S.C. 80503; 7 CFR 2.22, 2.80, and 371.3.

Title 9—Animals and Animal Products

PART 4—RULES OF PRACTICE GOVERNING PROCEEDINGS UNDER THE ANIMAL WELFARE ACT

4. The authority citation for part 4 is revised to read as follows:

Authority: 7 U.S.C. 2149 and 2151; 7 CFR 2.22, 2.80, and 371.7.

PART 11—HORSE PROTECTION REGULATIONS

5. The authority citation for part 11 is revised to read as follows:

Authority: 15 U.S.C. 1823–1825 and 1828; 7 CFR 2.22, 2.80, and 371.7.

PART 12—RULES OF PRACTICE GOVERNING PROCEEDINGS UNDER THE HORSE PROTECTION ACT

6. In part 12, the citations "(84 Stat. 1406; 15 U.S.C. 1828)" that appear following the regulatory text of §§ 12.1 and 12.10 are removed and an authority citation for part 12 is added to read as follows:

Authority: 15 U.S.C. 1825 and 1828; 7 CFR 2.22, 2.80, and 371.7.

PART 49—RULES OF PRACTICE GOVERNING PROCEEDINGS UNDER CERTAIN ACTS

7. The authority citation for part 49 is revised to read as follows:

Authority: 7 U.S.C. 8301–8317; 7 CFR 2.22, 2.80, and 371.4.

§ 49.1 [Amended]

8. In section 49.1, the list of statutory provisions is amended by adding, in alphabetical order, an entry that reads: "The Animal Health Protection Act (7 U.S.C. 8301 *et seq.*).".

PART 50—ANIMALS DESTROYED BECAUSE OF TUBERCULOSIS

9. The authority citation for part 50 is revised to read as follows:

Authority: 7 U.S.C. 8301–8317; 7 CFR 2.22, 2.80, and 371.4.

PART 51—ANIMALS DESTROYED BECAUSE OF BRUCELLOSIS

10. The authority citation for part 51 is revised to read as follows:

Authority: 7 U.S.C. 8301–8317; 7 CFR 2.22, 2.80, and 371.4.

§ 51.1 [Amended]

11. In § 51.1, the definition of *recognized slaughtering establishment* is amended by removing the words "Meat Inspection Act (21 U.S.C. 601–695)" and adding the words "Federal Meat Inspection Act (21 U.S.C. 601 *et seq.*)" in their place.

PART 52—SWINE DESTROYED BECAUSE OF PSEUDORABIES

12. The authority citation for part 52 is revised to read as follows:

Authority: 7 U.S.C. 8301–8317; 7 CFR 2.22, 2.80, and 371.4.

§ 52.1 [Amended]

13. In § 52.1, the definition of *recognized slaughtering establishment* is amended by removing the citation "(21 U.S.C. 601–695)" and adding the citation "(21 U.S.C. 601 *et seq.*)" in its place.

PART 53—FOOT-AND-MOUTH DISEASE, PLEUROPNEUMONIA, RINDERPEST, AND CERTAIN OTHER COMMUNICABLE DISEASES OF LIVESTOCK OR POULTRY

14. The authority citation for part 53 is revised to read as follows:

Authority: 7 U.S.C. 8301–8317; 7 CFR 2.22, 2.80, and 371.4.

§ 53.3 [Amended]

15. Section 53.3 is amended by removing the citation "(21 U.S.C. 112, 113, 115, 117, 120, 121, 134b)" that follows paragraph (d).

PART 54—CONTROL OF SCRAPIE

16. The authority citation for part 54 is revised to read as follows:

Authority: 7 U.S.C. 8301–8317; 7 CFR 2.22, 2.80, and 371.4.

PART 70—RULES OF PRACTICE GOVERNING PROCEEDINGS UNDER CERTAIN ACTS

17. The authority citation for part 70 is revised to read as follows:

Authority: 7 U.S.C. 8301–8317; 7 CFR 2.22, 2.80, and 371.4.

§ 70.1 [Amended]

18. In § 70.1, the list of statutory provisions is amended by adding, in alphabetical order, an entry that reads: "The Animal Health Protection Act (7 U.S.C. 8301 *et seq.*).".

PART 71—GENERAL PROVISIONS

19. The authority citation for part 71 is revised to read as follows:

Authority: 7 U.S.C. 8301–8317; 7 CFR 2.22, 2.80, and 371.4.

PART 72—TEXAS (SPLENETIC) FEVER IN CATTLE

20. The authority citation for part 72 is revised to read as follows:

Authority: 7 U.S.C. 8301–8317; 7 CFR 2.22, 2.80, and 371.4.

PART 73—SCABIES IN CATTLE

21. The authority citation for part 73 is revised to read as follows:

Authority: 7 U.S.C. 8301–8317; 7 CFR 2.22, 2.80, and 371.4.

22. In § 73.1b, the first sentence is revised to read as follows:

§ 73.1b Quarantine policy.

Under the Animal Health Protection Act (7 U.S.C. 8301 *et seq.*), the Secretary may promulgate regulations and may prohibit or restrict the movement in interstate commerce of any animal, article, or means of conveyance as the Secretary determines necessary to prevent the introduction or dissemination of any pest or disease of livestock. * * *

PART 74—PROHIBITION OF INTERSTATE MOVEMENT OF LAND TORTOISES

23. The authority citation for part 74 is revised to read as follows:

Authority: 7 U.S.C. 8301–8317; 7 CFR 2.22, 2.80, and 371.4.

PART 75—COMMUNICABLE DISEASES IN HORSES, ASSES, PONIES, MULES, AND ZEBRAS

24. The authority citation for part 75 is revised to read as follows:

Authority: 7 U.S.C. 8301–8317; 7 CFR 2.22, 2.80, and 371.4.

PART 77—TUBERCULOSIS

25. The authority citation for part 77 is revised to read as follows:

Authority: 7 U.S.C. 8301–8317; 7 CFR 2.22, 2.80, and 371.4.

PART 78—BRUCELLOSIS

26. The authority citation for part 78 is revised to read as follows:

Authority: 7 U.S.C. 8301–8317; 7 CFR 2.22, 2.80, and 371.4.

PART 79—SCRAPIE IN SHEEP AND GOATS

27. The authority citation for part 79 is revised to read as follows:

Authority: 7 U.S.C. 8301–8317; 7 CFR 2.22, 2.80, and 371.4.

§ 79.2 [Amended]

28. In § 79.2, paragraph (f)(3), the second-to-last sentence is amended by removing the citation "21 U.S.C. 122 and 134e" and adding the citation "7 U.S.C. 8313" in its place.

PART 80—JOHNE'S DISEASE IN DOMESTIC ANIMALS

29. The authority citation for part 80 is revised to read as follows:

Authority: 7 U.S.C. 8301–8317; 7 CFR 2.22, 2.80, and 371.4.

PART 85—PSEUDORABIES

30. The authority citation for part 85 is revised to read as follows:

Authority: 7 U.S.C. 8301–8317; 7 CFR 2.22, 2.80, and 371.4.

PART 89—STATEMENT OF POLICY UNDER THE TWENTY-EIGHT HOUR LAW

31. The authority citation for part 89 is revised to read as follows:

Authority: 49 U.S.C. 80502; 7 CFR 2.22, 2.80, and 371.4.

PART 91—INSPECTION AND HANDLING OF LIVESTOCK FOR EXPORTATION

32. The authority citation for part 91 is revised to read as follows:

Authority: 7 U.S.C. 8301–8317; 19 U.S.C. 1644a(c); 21 U.S.C. 136, 136a, and 618; 46 U.S.C. 3901 and 3902; 7 CFR 2.22, 2.80, and 371.4.

PART 92—IMPORTATION OF ANIMALS AND ANIMAL PRODUCTS: PROCEDURES FOR REQUESTING RECOGNITION OF REGIONS

33. The authority citation for part 92 is revised to read as follows:

Authority: 7 U.S.C. 1622 and 8301–8317; 21 U.S.C. 136 and 136a; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.4.

PART 93—IMPORTATION OF CERTAIN ANIMALS, BIRDS, AND POULTRY, AND CERTAIN ANIMAL, BIRD, AND POULTRY PRODUCTS; REQUIREMENTS FOR MEANS OF CONVEYANCE AND SHIPPING CONTAINERS

34. The authority citation for part 93 is revised to read as follows:

Authority: 7 U.S.C. 1622 and 8301–8317; 21 U.S.C. 136 and 136a; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.4.

§ 93.101 [Amended]

35. In § 93.101, paragraph (d)(1)(ii) is amended by removing the words "as provided in section 5 of the Act of July 2, 1962 (21 U.S.C. 134d)", and by removing the words "section 2 of the Act of July 2, 1962 (21 U.S.C. 134a)" and adding the words "the Animal Health Protection Act (7 U.S.C. 8301 *et seq.*)" in their place.

§ 93.106 [Amended]

36. Section 93.106 is amended as follows:

a. In paragraph (a), by removing the words ", in accordance with the provisions of section 2 of the Act of July 2, 1962 (21 U.S.C. 134a)".

b. In paragraph (b)(4), by removing the words ", in accordance with § 2 of the Act of July 2, 1962 (21 U.S.C. 134a)".

c. In paragraph (c)(5)(iii), in the first paragraph of the text of the cooperative and trust fund agreement, by removing the words "section 2 of the Act of February 2, 1903, as amended, section 11 of the Act of May 29, 1884, as amended, and section 4 of the Act of July 2, 1962 (21 U.S.C. 111, 114a, and 134c, respectively)," and adding the words "the Animal Health Protection Act (7 U.S.C. 8301 *et seq.*)" in their place.

§ 93.201 [Amended]

37. In § 93.201, paragraph (b)(1)(ii) is amended by removing the words "as provided in section 5 of the Act of July 2, 1962 (21 U.S.C. 134d)", and by removing the words "section 2 of the Act of July 2, 1962 (21 U.S.C. 134a)" and adding the words "the Animal Health Protection Act (7 U.S.C. 8301 *et seq.*)" in their place.

§ 93.202 [Amended]

38. In § 93.202, paragraph (a) is amended by removing the citation "(21 U.S.C. 134d)".

§ 93.207 [Amended]

39. Section 93.207 is amended by removing the words "in accordance with provisions of section 2 of the Act of July 2, 1962 (21 U.S.C. 134a), or the provisions of section 8 of the Act of August 30, 1890 (21 U.S.C. 103)".

§ 93.301 [Amended]

40. In § 93.301, paragraph (b)(1)(ii) is amended by removing the words "as provided in section 5 of the Act of July 2, 1962 (21 U.S.C. 134d)" and by removing the words "section 2 of the Act of July 2, 1962 (21 U.S.C. 134a)" and adding the words "the Animal Health Protection Act (7 U.S.C. 8301 *et seq.*)" in their place.

§ 93.302 [Amended]

41. In § 93.302, paragraph (a) is amended by removing the citation "(21 U.S.C. 134d)".

§ 93.306 [Amended]

42. Section 93.306 is amended by removing the paragraph designation "(a)" from the regulatory text of the section, and by removing the words "in accordance with provisions of section 2 of the Act of July 2, 1962 (21 U.S.C. 134a), or the provisions of section 8 of the Act of August 30, 1890 (21 U.S.C. 103)".

§ 93.401 [Amended]

43. Section 93.401 is amended as follows:

a. In paragraph (a), by removing the words "except as prohibited by section 306 of the Act of June 17, 1930, as amended (19 U.S.C. 1306),".

b. In paragraph (b), in the introductory text, by removing the words "by section 306 of the Act of June 17, 1930, as amended (19 U.S.C. 1306)" and by removing the number "92" that appears after the word "part".

c. In paragraph (b)(1)(ii), by removing the words "as provided in section 5 of the Act of July 2, 1962 (21 U.S.C. 134d)", and by removing the words "section 2 of the Act of July 2, 1962 (21 U.S.C. 134a)" and adding the words "the Animal Health Protection Act (7 U.S.C. 8301 *et seq.*)" in their place.

§ 93.402 [Amended]

44. In § 93.402, paragraph (a) is amended by removing the citation "(21 U.S.C. 134d)".

45. In § 93.404, paragraph (a)(2) is revised to read as follows:

§ 93.404 Import permits for ruminants and for ruminant test specimens for diagnostic purposes; and reservation fees for space at quarantine facilities maintained by APHIS.

(a) * * *

(2) An application for permit to import will be denied for domestic ruminants from any region designated in § 94.1 of this chapter as a region where rinderpest or foot-and-mouth disease exists.

* * * * *

§ 93.405 [Amended]

46. In § 93.405, paragraph (d) is amended by removing the words "thereafter in accordance with the provisions of section 8 of the Act of August 30, 1890 (26 Stat. 416; 21 U.S.C. 103),".

§ 93.408 [Amended]

47. Section 93.408 is amended by removing the words "provisions of section 2 of the Act of July 2, 1962 (21 U.S.C. 134a), or the provisions of section 8 of the Act of August 30, 1890 (21 U.S.C. 103)" and adding the words "the Animal Health Protection Act (7 U.S.C. 8301 *et seq.*)" in their place.

§ 93.419 [Amended]

48. In § 93.419, paragraph (b) is amended by removing the words "thereafter in accordance with the provisions of section 8 of the act of August 30, 1890 (26 Stat. 416; 21 U.S.C. 103),".

§ 93.423 [Amended]

49. In § 93.423, paragraph (d) is amended by removing the words "thereafter in accordance with the provisions of section 8 of the act of August 30, 1890 (26 Stat. 416; 21 U.S.C. 103),".

§ 93.426 [Amended]

50. In § 93.426, paragraph (a) is amended by removing the words "thereafter in accordance with provisions of section 8 of the Act of August 30, 1890 (26 Stat. 416; 21 U.S.C. 103)" and by removing the comma after the word "Administrator".

§ 93.428 [Amended]

51. In § 93.428, paragraph (c) is amended by removing the words "thereafter in accordance with the provisions of section 8 of the act of August 30, 1890 (26 Stat. 416; 21 U.S.C. 103),".

§ 93.501 [Amended]

52. Section 93.501 is amended as follows:

a. In paragraph (a), by removing the words "except as prohibited by section 306 of the Act of June 17, 1930, as amended (19 U.S.C. 1306),".

b. In paragraph (b), in the introductory text, by removing the words "by section 306 of the Act of June 17, 1930, as amended (19 U.S.C. 1306)".

c. In paragraph (b)(1)(ii), by removing the words "as provided in section 5 of the Act of July 2, 1962 (21 U.S.C. 134d)", and by removing the words "section 2 of the Act of July 2, 1962 (21 U.S.C. 134a)" and adding the words "the Animal Health Protection Act (7 U.S.C. 8301 *et seq.*)" in their place.

§ 93.502 [Amended]

53. In § 93.502, paragraph (a) is amended by removing the citation "(21 U.S.C. 134d)".

54. In § 93.504, paragraph (a)(2) is revised to read as follows:

§ 93.504 Import permits for swine and for swine specimens for diagnostic purposes; and reservation fees for space at quarantine facilities maintained by APHIS.

(a) * * *

(2) An application for permit to import will be denied for domestic swine from any region designated in § 94.1 of this chapter as a region where rinderpest or foot-and-mouth disease exists.

* * * * *

§ 93.505 [Amended]

55. In § 93.505, paragraph (c) is amended by removing the words "thereafter in accordance with the provisions of section 8 of the act of August 30, 1890 (26 Stat. 416; 21 U.S.C. 103),".

§ 93.507 [Amended]

56. Section 93.507 is amended by removing the paragraph designation "(a)" from the regulatory text of the section, and by removing the words "in accordance with provisions of section 2 of the Act of July 2, 1962 (21 U.S.C. 134a), or the provisions of section 8 of the Act of August 30, 1890 (21 U.S.C. 103)".

57. In the center heading "Central America and West Indies" that

immediately precedes § 93.520, footnote 8 is amended by removing the words "§§ 93.520 to 93.522 inclusive" and adding the citation "§ 93.520" in their place.

PART 94—RINDERPEST, FOOT-AND-MOUTH DISEASE, FOWL PEST (FOWL PLAGUE), EXOTIC NEWCASTLE DISEASE, AFRICAN SWINE FEVER, HOG CHOLERA, AND BOVINE SPONGIFORM ENCEPHALOPATHY: PROHIBITED AND RESTRICTED IMPORTATIONS

58. The authority citation for part 94 is revised to read as follows:

Authority: 7 U.S.C. 450, 7701–7772, and 8301–8317; 21 U.S.C. 136 and 136a; 31 U.S.C. 9701; 42 U.S.C. 4331 and 4332; 7 CFR 2.22, 2.80, and 371.4.

§ 94.1 [Amended]

59. In § 94.1, the introductory text of paragraph (a) is amended by removing the words "section 306 of the Act of June 17, 1930, as amended (19 U.S.C. 1306)" and adding the words "the Animal Health Protection Act (7 U.S.C. 8301 *et seq.*)" in their place.

§ 94.1a [Amended]

60. In § 94.1a, the introductory text of paragraph (a) is amended by removing the words "for the purposes of section 306(a) of the Act of June 17, 1930, as amended (19 U.S.C. 1306(a))".

§ 94.4 [Amended]

61. In § 94.4, paragraph (b)(2) is amended by removing the citation "(21 U.S.C. 610 *et seq.*)" and adding the citation "(21 U.S.C. 601 *et seq.*)" in its place.

§ 94.5 [Amended]

62. In § 94.5, paragraph (e)(2) is amended by removing the words ", section 2 of the Act of February 2, 1903, as amended (21 U.S.C. 111), and section 306 of the Act of July 17, 1930, as amended (19 U.S.C. 1306)" and adding the words "the Animal Health Protection Act (7 U.S.C. 8301 *et seq.*)" in their place.

63. Section 94.7 is revised to read as follows:

§ 94.7 Disposal of animals, meats, and other articles ineligible for importation.

(a) Ruminants and swine, and fresh (chilled or frozen) meats, prohibited importation under §§ 94.1, 94.8, 94.9, 94.10, 94.12, 94.14, or 94.18, which come into the United States by ocean vessel and are offered for entry and refused admission into this country, shall be destroyed or otherwise disposed of as the Administrator may direct, unless they are exported by the consignee within 48 hours, and meanwhile are retained under such isolation and other safeguards as the Administrator may require to prevent the introduction or dissemination of livestock diseases into the United States.

(b) Ruminants and swine, and fresh (chilled or frozen) meats, prohibited importation under §§ 94.1, 94.8, 94.9, 94.10, 94.12, 94.14, or 94.18, which come into the United States aboard an airplane or railroad car and are offered for entry and refused admission into this country, shall be destroyed or otherwise disposed of as the Administrator may direct, unless they are exported by the consignee within 24 hours, and meanwhile are retained under such isolation and other safeguards as the Administrator may require to prevent the introduction or dissemination of livestock diseases into the United States.

(c) Ruminants and swine, and fresh (chilled or frozen) meats, prohibited importation under §§ 94.1, 94.8, 94.9, 94.10, 94.12, 94.14, or 94.18, which come into the United States by any means other than ocean vessel, airplane, or railroad car and are offered for entry and refused admission into this country, shall be destroyed or otherwise disposed of as the Administrator may direct, unless they are exported by the consignee within 8 hours, and meanwhile are retained under such isolation and other safeguards as the Administrator may require to prevent the introduction or dissemination of livestock diseases into the United States.

(d) Ruminants and swine, and fresh (chilled or frozen) meats, prohibited importation under §§ 94.1, 94.8, 94.9, 94.10, 94.12, 94.14, or 94.18, which come into the United States by any means but are not offered for entry into this country, and other animals, meats, and other articles prohibited importation under other sections of this part, which come into the United States by any means, whether they are offered for entry into this country or not, shall be immediately destroyed or otherwise disposed of as the Administrator may direct at any time.

§ 94.15 [Amended]

64. In § 94.15, paragraphs (b)(4) and (c)(4) are amended by removing the words "section 2 of the Act of February 2, 1903, as amended (21 U.S.C. 111)" and adding the words "the Animal Health Protection Act (7 U.S.C. 8301 *et seq.*)" in their place.

PART 95—SANITARY CONTROL OF ANIMAL BYPRODUCTS (EXCEPT CASINGS), AND HAY AND STRAW, OFFERED FOR ENTRY INTO THE UNITED STATES

65. The authority citation for part 95 is revised to read as follows:

Authority: 7 U.S.C. 8301–8317; 21 U.S.C. 136 and 136a; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.4.

PART 96—RESTRICTION OF IMPORTATIONS OF FOREIGN ANIMAL CASINGS OFFERED FOR ENTRY INTO THE UNITED STATES

66. The authority citation for part 96 is revised to read as follows:

Authority: 7 U.S.C. 8301–8317; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.4.

PART 97—OVERTIME SERVICES RELATING TO IMPORTS AND EXPORTS

67. The authority citation for part 97 is revised to read as follows:

Authority: 7 U.S.C. 8301–8317; 49 U.S.C. 80503; 7 CFR 2.22, 2.80, and 371.4.

PART 98—IMPORTATION OF CERTAIN ANIMAL EMBRYOS AND ANIMAL SEMEN

68. The authority citation for part 98 is revised to read as follows:

Authority: 7 U.S.C. 1622 and 8301–8317; 21 U.S.C. 136 and 136a; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.4.

§ 98.32 [Amended]

69. In § 98.32, paragraph (a) is amended by removing the citation "(21 U.S.C. 134d)".

PART 99—RULES OF PRACTICE GOVERNING PROCEEDINGS UNDER CERTAIN ACTS

70. The authority citation for part 99 is revised to read as follows:

Authority: 7 U.S.C. 8301–8317; 7 CFR 2.22, 2.80, and 371.4.

§ 99.1 [Amended]

71. In section 99.1, the list of statutory provisions is amended by adding, in alphabetical order, an entry that reads: "The Animal Health Protection Act, section 10414 (7 U.S.C. 8313)".

PART 122—ORGANISMS AND VECTORS

72. The authority citation for part 122 is revised to read as follows:

Authority: 7 U.S.C. 8301–8317; 21 U.S.C. 151–158; 7 CFR 2.22, 2.80, and 371.4.

PART 123—RULES OF PRACTICE GOVERNING PROCEEDINGS UNDER THE VIRUS-SERUM-TOXIN ACT

73. The authority citation for part 123 is revised to read as follows:

Authority: 7 U.S.C. 8301–8317; 21 U.S.C. 151–159; 7 CFR 2.22, 2.80, and 371.4.

PART 124—PATENT TERM RESTORATION

74. The authority citation for part 124 continues to read as follows:

Authority: 35 U.S.C. 156; 7 CFR 2.22, 2.80, and 371.4.

75. In § 124.2, the definition of *informal hearing* is revised to read as follows:

§ 124.2 Definitions.

* * * * *

Informal Hearing. A hearing that is not subject to the provisions of 5 U.S.C. 554, 556, and 557 and that is conducted as provided in 21 U.S.C. 321(x).

* * * * *

PART 130—USER FEES

76. The authority citation for part 130 is revised to read as follows:

Authority: 5 U.S.C. 5542; 7 U.S.C. 1622 and 8301–8317; 21 U.S.C. 136 and 136a; 31 U.S.C. 3701, 3716, 3717, 3719, and 3720A; 7 CFR 2.22, 2.80, and 371.4.

§ 130.51 [Amended]

77. In § 130.51, paragraph (d) is amended by removing the citation "30 U.S.C. 3717" and adding the citation "31 U.S.C. 3717" in its place.

PART 145—NATIONAL POULTRY IMPROVEMENT PLAN

78. The authority citation for part 145 is revised to read as follows:

Authority: 7 U.S.C. 8301–8317; 7 CFR 2.22, 2.80, and 371.4.

PART 147—AUXILIARY PROVISIONS ON NATIONAL POULTRY IMPROVEMENT PLAN

79. The authority citation for part 147 is revised to read as follows:

Authority: 7 U.S.C. 8301–8317; 7 CFR 2.22, 2.80, and 371.4.

PART 160—DEFINITION OF TERMS

80. The authority citation for part 160 is revised to read as follows:

Authority: 7 U.S.C. 8301–8317; 15 U.S.C. 1828; 7 CFR 2.22, 2.80, and 371.4.

PART 161—REQUIREMENTS AND STANDARDS FOR ACCREDITED VETERINARIANS AND SUSPENSION OR REVOCATION OF SUCH ACCREDITATION

81. The authority citation for part 161 is revised to read as follows:

Authority: 7 U.S.C. 8301–8317; 15 U.S.C. 1828; 7 CFR 2.22, 2.80, and 371.4.

§ 161.4 [Amended]

82. In § 161.4, paragraph (d) is amended by removing the citation "18 U.S.C. 1001, 21 U.S.C. 117, 122, 127, and 134e" and adding the citation "7 U.S.C. 8313, 18 U.S.C. 1001" in its place.

PART 162—RULES OF PRACTICE GOVERNING REVOCATION OR SUSPENSION OF VETERINARIANS" ACCREDITATION

83. The authority citation for part 162 is revised to read as follows:

Authority: 7 U.S.C. 8301–8317; 15 U.S.C. 1828; 7 CFR 2.22, 2.80, and 371.4.

PART 166—SWINE HEALTH PROTECTION

84. The authority citation for part 166 is revised to read as follows:

Authority: 7 U.S.C. 3801–3813; 7 CFR 2.22, 2.8, and 371.4.

§ 166.14 [Amended]

85. In § 166.14, paragraph (a)(3) is amended by removing the citation "(7 U.S.C. 135 *et seq.*)" and adding the citation "(7 U.S.C. 136 *et seq.*)" in its place.

Done in Washington, DC, this 4th day of February 2003.

Peter Fernandez,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 03–3058 Filed 2–6–03; 8:45 am]

BILLING CODE 3410–34–P

FEDERAL ELECTION COMMISSION

11 CFR Part 110

[Notice 2002–27–A]

Coordinated and Independent Expenditures; Correction

AGENCY: Federal Election Commission.

ACTION: Final rules; correction.

SUMMARY: The Federal Election Commission published final rules on January 3, 2003, regarding payments for communications that are coordinated with a candidate, a candidate's authorized committee, or a political party committee. The final rules also addressed expenditures by political party committees that are made either in coordination with, or independently from, candidate. The final rules implemented several requirements of the Bipartisan Campaign Reform Act of 2002 ("BCRA"). Two amendatory instructions were incorrect. This document corrects the amendatory instructions. There is no substantive change to the final rules.

EFFECTIVE DATE: February 3, 2003.

FOR FURTHER INFORMATION CONTACT: Mr. John Vergelli, Acting Assistant General Counsel, 999 E Street, NW., Washington, DC, 20463, (202) 694–1650 or (800) 424–9530.

SUPPLEMENTARY INFORMATION: In rule FR Doc 03–90 published on January 3, 2003 (68 FR 421), make the following corrections. On page 457, first and second columns, correct the amendatory instructions 11 and 12, and correct the amendments to §§ 110.8 and 110.14, to read as follows:

11. In section 110.8, paragraph (a) is amended as follows:

(a) Paragraph (a)(1) is redesignated as paragraph (a)(1)(i);

(b) The introductory text is redesignated as paragraph (a)(1);

(c) Paragraph (a)(2) is redesignated as paragraph (a)(1)(ii);

(d) A new paragraph (a)(2) is added; and

(e) A new paragraph (a)(3) is added.

The revised text reads as follows:

Sec. 110.8 Presidential candidate expenditure limitations.

(a) * * *

(2) The expenditure limitations in paragraph (a)(1) of this section shall be increased in accordance with 11 CFR 110.17.

(3) Voting age population is defined at 11 CFR 110.18.

* * * * *

12. Section 110.14 is amended as follows:

(a) Paragraph (f)(2)(i) introductory text is revised;

(b) Paragraphs (f)(2)(ii) introductory text and (f)(2)(ii)(B) are revised;

(c) Paragraph (f)(3)(iii) is revised;

(d) Paragraph (i)(2)(i) introductory text is revised;

(e) Paragraph (i)(2)(ii) is revised;

(f) Paragraph (i)(3)(iii) is revised.

The revised text reads as follows:

Sec. 110.14 Contributions to and expenditures by delegates and delegate committees.

(f) * * *

(2) * * *

(i) Such expenditures are independent expenditures under 11 CFR 100.16 if they are made for a communication

expressly advocating the election or defeat of a clearly identified Federal candidate that is not a coordinated communication under 11 CFR 109.21.

* * * * *

(ii) Such expenditures are independent expenditures under 11 CFR 100.16 if they are made for a communication expressly advocating the election or defeat of a clearly identified Federal candidate that is not a coordinated communication under 11 CFR 109.21.

* * * * *

(B) The delegate shall report the portion of the expenditure allocable to the Federal candidate as an independent expenditure in accordance with 11 CFR 109.10.

(3) * * *

(iii) Such expenditures are not chargeable to the presidential candidate's expenditure limitation under 11 CFR 110.8 unless they were coordinated communications under 11 CFR 109.21.

* * * * *

(i) * * *

(2) * * *

(i) Such expenditures are in-kind contributions to a Federal candidate if they are coordinated communications under 11 CFR 109.21.

* * * * *

(ii) Such expenditures are independent expenditures under 11 CFR 100.16 if they are made for a communication expressly advocating the election or defeat of a clearly identified Federal candidate that is not a coordinated communication under 11 CFR 109.21.

(A) Such independent expenditures must be made in accordance with the requirements of 11 CFR part 100.16.

(B) The delegate committee shall report the portion of the expenditure allocable to the Federal candidate as an independent expenditure in accordance with 11 CFR 109.10.

(3) * * *

(iii) Such expenditures are not chargeable to the presidential candidate's expenditure limitation under 11 CFR 110.8 unless they were coordinated communications under 11 CFR 109.21.

* * * * *

Dated: February 4, 2003.

Rosemary C. Smith,

Acting Associate General Counsel, Federal Election Commission.

[FR Doc. 03–3127 Filed 2–6–03; 8:45 am]

BILLING CODE 6715–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–326–AD; Amendment 39–13048; AD 2003–03–23]

RIN 2120–AA64

Airworthiness Directives; Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model EMB–135 and –145 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain EMBRAER Model EMB–135 and –145 series airplanes. This action requires replacement of the horizontal stabilizer control units (HSCUs) with new upgraded HSCUs, and corrective actions if necessary. This action is necessary to prevent reversal of the pilot's pitch trim command for the horizontal stabilizer, which could result in reduced controllability of the airplane. This action is intended to address the identified unsafe condition.

DATES: Effective February 24, 2003.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of February 24, 2003.

Comments for inclusion in the Rules Docket must be received on or before March 10, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–326–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9–anm–iarcomment@faa.gov*. Comments sent via the Internet must contain "Docket No. 2002–NM–326–AD" in the subject line and need not be submitted in triplicate. Comments sent via fax or the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in this AD may be obtained from Empresa Brasileira de Aeronautica S.A. (EMBRAER), P.O. Box 343—CEP 12.225, Sao Jose dos Campos—SP, Brazil. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Robert D. Breneman, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1263; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: The Departmento de Aviacao Civil (DAC), which is the airworthiness authority for Brazil, recently notified the FAA that an unsafe condition may exist on certain EMBRAER Model EMB–135 and –145 series airplanes. The DAC advises that, during EMBRAER production flight tests on a Model EMB–145 airplane, there were two occurrences of pitch trim system malfunction. Such malfunction resulted in reversed actuation of the horizontal stabilizer surface in response to nose down pitch trim command through the yoke switches. Investigation has revealed that the pitch trim system malfunction is due to failure of an internal component of the horizontal stabilizer control unit (HSCU). Reversal of the pilot's pitch trim command for the horizontal stabilizer could result in reduced controllability of the airplane.

Issuance of Brazilian Airworthiness Directives

The DAC issued emergency Brazilian airworthiness directive 2001–12–04, dated December 21, 2001, to address the identified unsafe condition on airplanes of Brazilian registry. As interim action to alleviate the identified unsafe condition; EMBRAER and Parker Hannifin (the manufacturer of the subject HSCUs) had developed a "burn-in" test designed to identify discrepant HSCUs. The "burn-in" test had already been accomplished on six airplanes of U.S. registry, and no discrepant HSCUs were found. Therefore, the FAA did not issue a corresponding AD.

Subsequently, the DAC issued two Brazilian airworthiness directives: 2001–12–04R1, dated March 11, 2002, and 2001–12–04R2, dated May 27, 2002, which require replacement of certain HSCUs with new upgraded HSCUs.

Explanation of Relevant Service Information

EMBRAER has issued the following service bulletins:

- Service Bulletin 145–27–0091, Change 01, dated June 17, 2002; and

Change 02, dated November 27, 2002. These service bulletin changes describe procedures for replacing the horizontal stabilizer actuator (HSA) with a new HSA having a modified clutch with a higher breakout torque set point. Change 02 revises the service bulletin effectivity.

- Service Bulletin 145–27–0092, Change 01, dated May 2, 2002; and Change 02, dated August 26, 2002. Among other things, these service bulletin changes describe procedures for replacing certain HSCUs with new upgraded HSCUs; and corrective actions, if necessary. For airplanes on which certain replacement HSCUs are used, corrective actions include replacement of the HSA with a new HSA that has a modified clutch with a higher breakout torque set point, and replacement of two pitch trim circuit breakers with new circuit breakers that are sized for the new system load capacity. Change 02 revises the service bulletin effectivity.

Accomplishment of the actions specified in these service bulletins is intended to adequately address the identified unsafe condition. The DAC classified these service bulletins as mandatory and issued Brazilian airworthiness directive 2001–12–04R2, described previously, in order to assure the continued airworthiness of these airplanes in Brazil.

FAA's Conclusions

These airplane models are manufactured in Brazil and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, this AD is being issued to prevent reversal of the pilot's pitch trim command for the horizontal stabilizer, which could result in reduced controllability of the airplane. This AD requires replacement of certain HSCUs with new upgraded HSCUs, and corrective actions if necessary. The actions are required to be accomplished in accordance with the service bulletins described previously, except as described below.

Clarifications/Differences Between This AD and the Brazilian Airworthiness Directives

Brazilian airworthiness directive 2001–12–04R1, dated March 11, 2002, specified that corrective actions must be accomplished "before June 15, 2002," which is equivalent to a compliance time of approximately 90 days. However, when Brazilian airworthiness directive 2001–12–04R2 was issued on May 27, 2002, the same compliance date of June 15, 2002, was retained; this resulted in a compliance time of approximately 20 days. In developing an appropriate compliance time for this AD, the FAA considered the compliance times specified in the Brazilian airworthiness directives. We find that 90 days is appropriate for accomplishment of the replacement required by this AD, and that it accurately reflects the intent of the Brazilian airworthiness directives.

In addition, Brazilian airworthiness directive 2001–12–04R2 specifies that replacement action may be accomplished per EMBRAER Service Bulletin 145–27–0092, Change 01, "or further revisions" that are approved by the DAC. The FAA cannot approve the use of a document that does not yet exist because to do so would violate Office of the Federal Register regulations regarding approval of materials that are incorporated by reference. However, use of a later revision of the service bulletin could be approved as an alternative method of compliance per paragraph (d) of this AD. As described earlier, the FAA has approved the use of Change 02 of EMBRAER Service Bulletin 145–27–0092 for accomplishment of the actions required by this AD.

Differences Between This AD, the Brazilian Airworthiness Directive, and EMBRAER Service Bulletin 145–27–0092

The applicability of Brazilian airworthiness directive 2001–12–04R2 specifies that the replacement must be accomplished on all EMBRAER Model EMB–135 and –145 series airplanes equipped with certain HSCUs having serial numbers (S/Ns) higher than 4000, including those S/Ns identified with an "A" suffix that were installed per Brazilian emergency airworthiness directive 2001–12–04. However, the effectivity of Changes 01 and 02 of EMBRAER Service Bulletin 145–27–0092 calls out certain airplanes by serial number, and does not specify HSCUs having an S/N with an "A" suffix. The applicability of this AD follows that of the Brazilian airworthiness directive with regard to including HSCUs with the "A" suffix designation; however, the applicability of this AD also specifies the airplane serial numbers called out in the service bulletin.

Additionally, Changes 01 and 02 of EMBRAER Service Bulletin 145–27–0092 specify the use of HSCU part numbers 362100–1007 MOD.0 and 362100–1007 interchangeably. Those revisions of the service bulletin also specify the use of HSCU part numbers 362100–5009 MOD.0 and 362100–5009 interchangeably. However, paragraphs (a)(1) and (a)(3) of this AD correspond to the Brazilian airworthiness directive by using the term "MOD.0."

Difference Between This AD and EMBRAER Service Bulletin 145–27–0092

Changes 01 and 02 of EMBRAER Service Bulletin 145–27–0092 specify replacement of certain HSCUs with the kits listed in the service bulletin, or with "alternative or similar parts approved by EMBRAER." However, this AD requires replacement with a new upgraded HSCU, and does not allow the use of alternative or similar parts approved by EMBRAER.

Determination of Rule's Effective Date

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether

additional rulemaking action would be needed.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2002–NM–326–AD." The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2003–03–23 Empresa Brasileira De Aeronautica S.A. (EMBRAER): Amendment 39–13048. Docket 2002–NM–326–AD.

Applicability: Model EMB–135 and –145 series airplanes, having serial numbers as listed in EMBRAER Service Bulletin 145–27–0092, Change 02, dated August 26, 2002; and other Model EMB–135 and –145 series airplanes that have been equipped with a horizontal stabilizer control unit (HSCU) having part number (P/N) 362100–1007 MOD.1, P/N 362100–1009 MOD.0, or P/N 362100–5009 MOD.0; and having a serial number (S/N) above 4000, including S/Ns identified with an "A" suffix that were installed per emergency Brazilian airworthiness directive 2001–12–04, dated December 21, 2001; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent reversal of the pilot's pitch trim command for the horizontal stabilizer, which could result in reduced controllability of the airplane, accomplish the following:

Part I: HSCU Replacement

(a) Within 90 days after the effective date of this AD, replace the HSCU with a new upgraded HSCU having the P/N identified in paragraphs (a)(1), (a)(2), and (a)(3) of this AD, as applicable; per Figure 1 and Part I of the Accomplishment Instructions of EMBRAER Service Bulletin 145–27–0092, Change 01, dated May 2, 2002; or Change 02, dated August 26, 2002.

(1) Replace HSCU P/N 362100–1007 MOD.1 with a new upgraded HSCU having P/N 362100–1007 MOD.0 or MOD.2, P/N 362100–1009 MOD.1, or P/N 362100–5009 MOD.1.

(2) Replace HSCU P/N 362100–1009 MOD.0 with a new upgraded HSCU having P/N 362100–1009 MOD.1, or P/N 362100–5009 MOD.1.

(3) Replace HSCU P/N 362100–5009 MOD.0 with a new upgraded HSCU having P/N 362100–5009 MOD.1.

Part II: Corrective Actions

(b) For airplanes on which a new upgraded HSCU having P/N 362100–1009 MOD.1 or 362100–5009 MOD.1 has been installed per paragraph (a)(1) of this AD: Concurrently with the requirements of paragraph (a) of this AD, do paragraphs (b)(1) and (b)(2) of this AD.

(1) Replace the horizontal stabilizer actuator (HSA) with a new HSA per the Accomplishment Instructions of EMBRAER Service Bulletin 145–27–0091, Change 01, dated June 17, 2002; or Change 02, dated November 27, 2002.

(2) Replace the pitch trim circuit breakers with new circuit breakers per the Accomplishment Instructions of EMBRAER Service Bulletin 145–27–0092, Change 01, dated May 2, 2002; or Change 02, dated August 26, 2002.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(e) The actions shall be done in accordance with EMBRAER Service Bulletin 145–27–0091, Change 01, dated June 17, 2002; EMBRAER Service Bulletin 145–27–0091, Change 02, dated November 27, 2002; EMBRAER Service Bulletin 145–27–0092, Change 01, dated May 2, 2002; and EMBRAER Service Bulletin 145–27–0092, Change 02, dated August 26, 2002; as applicable; which contain the specified list of effective pages:

Service bulletin reference and date	Page No.	Change level shown on page	Date shown on page
EMBRAER Service Bulletin 145–27–0091, June 17, 2002.	1–2 3–11	01 Original	June 17, 2002. Feb. 8, 2002.
EMBRAER Service Bulletin 145–27–0091, November 27, 2002.	1–2 3–11	02 Original	Nov. 27, 2002. Feb. 8, 2002.
EMBRAER Service Bulletin 145–27–0092, May 2, 2002.	1–2, 7–10, 35–36, 41–42 3–6, 11-34, 37–40	01 Original	May 2, 2002. Feb. 6, 2002.
EMBRAER Service Bulletin 145–27–0092, August 26, 2002.	1–2 7–10, 35–36, 41–42 3–6, 11–34, 37–40	02 01 Original	Aug. 26, 2002. May 2, 2002. Feb. 6, 2002.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Empresa Brasileira de Aeronautica S.A. (EMBRAER), P.O. Box 343—CEP 12.225, Sao Jose dos Campos—SP, Brazil. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in Brazilian airworthiness directive 2001–12–04R2, dated May 27, 2002.

Effective Date

(f) This amendment becomes effective on February 24, 2003.

Issued in Renton, Washington, on January 30, 2003.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–2783 Filed 2–6–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9029]

RIN 1545–BA43

Information Reporting for Qualified Tuition and Related Expenses; Magnetic Media Filing Requirements for Information Returns; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to final regulations.

SUMMARY: This document contains a correction to final regulations that were published in the **Federal Register** on Thursday, December 19, 2002 (67 FR 77678), relating to the information reporting requirements for qualified tuition and related expenses under section 6050S of the Internal Revenue Code.

DATES: This correction is effective December 19, 2002.

FOR FURTHER INFORMATION CONTACT: Tonya Christianson (202) 622–4910 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of this correction are under section 6050S of the Internal Revenue Code.

Need for Correction

As published, these final regulations contain an error that may prove to be misleading and is in need of clarification.

Correction of Publication

Accordingly, the publication of final regulations (TD 9029), that were the subject of FR Doc. 02–31915, is corrected as follows:

§ 1.6050S–1 [Corrected]

On page 77684, column 1, § 1.6050S–1(b)(2)(vii), *Example 4.*, line 7 from the bottom of paragraph (i), the language "expenses $6,000 for room and board for the" is corrected to read "expenses and $6,000 for room and board for the".

Cynthia E. Grigsby,

Chief, Regulations Unit, Associate Chief Counsel (Procedure and Administration).

[FR Doc. 03–3092 Filed 2–6–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9030]

RIN 1545–AX28

Exclusion of Gain From Sale or Exchange of a Principal Residence; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to final regulations.

SUMMARY: This document contains corrections to final regulations that were published in the **Federal Register** on Tuesday, December 24, 2002 (67 FR 78358), relating to the exclusion of gain from the sale or exchange of a taxpayer's principal residence.

DATES: This correction is effective December 24, 2002.

FOR FURTHER INFORMATION CONTACT: Sara Paige Shepherd, (202) 622–4960 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of these corrections are under section 121 of the Internal Revenue Code.

Need for Correction

As published, these final regulations contain errors that may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication of final regulations (TD 9030), that were the subject of FR Doc. 02–32281, is corrected as follows:

§ 1.121–4 [Corrected]

1. On page 78366, column 3, § 1.121–4(e), the language "(4) Example. The

provisions of this" is corrected to read "(3) Example. The provisions of this".

Cynthia E. Grigsby,
Chief, Regulations Unit, Associate Chief Counsel (Procedure and Administration).

[FR Doc. 03–3091 Filed 2–6–03; 8:45 am]
BILLING CODE 4830–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 32, 53 and 64

[WC Docket No. 02–112; FCC 02–336]

Section 272(f)(1) Sunset of the BOC Separate Affiliate and Related Requirements

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document addresses certain issues concerning the scope of the section 272(f)(1) sunset provisions and interprets section 272(f)(1) of the Act as providing for a state-by-state sunset of the separate affiliate and certain other requirements that apply to BOC provision of in-region, interLATA telecommunications services. It concludes that the meaning of section 272(f)(1) concerning the scope of the sunset is not clear and unambiguous and finds that this section is most reasonably interpreted as providing for a state-by-state sunset of the section 272 separate affiliate and related requirements. This approach is most consistent with the state-by-state in-region, interLATA authorization provisions in section 271 and the general structure of the Act.

DATES: Effective March 10, 2003.

FOR FURTHER INFORMATION CONTACT: Claudia Pabo, Senior Attorney Advisor, or Pamela Arluk, Attorney Advisor, Wireline Competition Bureau, at (202) 418–1580, TTY number: (202) 418–0484. It is also available on the Commission's Web site at *http://www.fcc.gov*.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Memorandum Opinion and Order in WC Docket No. 02–112, FCC 02–336, adopted December 20, 2002, and released December 23, 2002. The full text may be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW, Room CY–B402, Washington, DC 20554, telephone (202) 863–2893, facsimile (202) 863–2898, or via e-mail *qualexint@aol.com*.

Synopsis of the Memorandum Opinion and Order

1. In a rulemaking initiated in May of 2002, the Commission sought comment on whether the separate affiliate and related safeguards of section 272, that apply to Bell Operating Company (BOC) provision of in-region, interLATA telecommunications services, should sunset as provided in the statute or be extended by the Commission. It also sought comment on possible alternative safeguards for BOC provision of in-region, interLATA services after sunset of the 272 structural and related requirements. In this Order, the Commission addresses certain issues concerning the scope of the section 272(f)(1) sunset provisions raised by parties to this proceeding. The Commission interprets section 272(f) (1) of the Act as providing for a state-by-state sunset of the separate affiliate and certain other requirements that apply to BOC provision of in-region, interLATA telecommunications services. The Commission concludes that the meaning of section 272(f)(1) concerning the scope of the sunset is ambiguous and that this section is best interpreted as providing for a state-by-state sunset because this approach is consistent with the state-by-state in-region, interLATA authorization provisions in section 271 and the general structure of the Act.

2. *Background.* The section 272(f)(1) sunset language that the Commission addresses in this Order is part of the Act's provisions for allowing the BOCs to enter the in-region, interLATA long distance telecommunications market once they have opened their local exchange markets to competition. Prior to entering the in-region, interLATA market in a particular state, a BOC must demonstrate compliance with the requirements of section 271 in that state, and obtain Commission authorization to provide such services. Among other things, Section 271 requires that a BOC applying for in-region, interLATA entry demonstrate that it will provide the authorized interLATA service in compliance with the requirements of section 272. Section 272(a), among other things, provides that a BOC may not provide originating in-region, interLATA telecommunications services, subject to certain limited exceptions, unless it provides that service through one or more affiliates that are separate from the incumbent BOC. The separate affiliate and other related requirements of section 272 sunset as provided in section 272(f)(1).

3. In this Order, the Commission applies to section 272(f)(1) a two step process for statutory analysis. First, it finds that the meaning of section 272(f)(1) is not clear and unambiguous. Then, after a careful review of other closely related provisions of the Act, its underlying purposes, and its legislative history, the Commission concludes that section 272(f)(1) is most reasonably interpreted as providing for a state-by-state sunset of the section 272 separate affiliate and related requirements. The Commission therefore rejects the contentions advanced by Verizon, BellSouth and USTA that section 272(f)(1) unambiguously provides for a region-wide sunset of the separate affiliate and related requirements three years after the first BOC or an affiliate, including another affiliated BOC within the region, receives its first section 271 authorization. For the same reasons, the Commission cannot accept SBC's narrower argument that this language unambiguously requires a BOC-by-BOC sunset three years after an individual BOC or its affiliated interexchange carrier receives its first section 271 authorization.

4. Section 272(f)(1) cannot properly be viewed as unambiguous so as to foreclose the interpretation the Commission adopts in this Order. Both of the readings of section 272(f)(1) advocated by the BOCs and USTA produce anomalous results when considered in conjunction with the requirements of section 271, which specifically references section 272. The anomalous results produced by both the region-wide and BOC-by-BOC interpretations of the sunset provisions in section 272(f)(1) flow from the interaction of the sunset provisions and the requirements of section 271. Both of the purported "plain language" readings of section 272(f)(1) would effectively read the requirement for a showing of compliance with the requirements of section 272 out of section 271 to a large extent. Under the region-wide sunset approach, this section 271 requirement would effectively be eliminated three years after a BOC received section 271 authority for the first state in the region, regardless of whether it had obtained section 271 authority in all of its other in-region states. The BOC-by-BOC approach could potentially have produced similarly anomalous results. In addition, the BOC-by-BOC and region-wide interpretations of the section 272 sunset appear to produce arbitrary results when applied in conjunction with the definition of a BOC contained in the Act. In particular, under this reading, the scope of the sunset turns on matters of corporate structure, which are subject to control by the BOCs. In contrast, the language

of section 272(f)(1) can also be read as requiring a state-by-state sunset, thus avoiding anomalous results under section 271.

5. After a careful review of other closely related provisions of the Act, its underlying purposes, and its legislative history, the Commission concludes that section 272(f)(1) is most reasonably interpreted as providing for a state-by-state sunset of the section 272 separate affiliate and related requirements. A state-by-state sunset parallels the state-by-state authorization process provided for in section 271 and is consistent with the definition of a BOC contained in the Act. A state-by-state sunset also avoids the anomalous results under section 271(d)(3)(B) and the statutory definition of a BOC that are produced by application of a BOC-by-BOC or region-wide sunset.

Final Regulatory Flexibility Analysis

6. The Regulatory Flexibility Act of 1980, as amended (RFA), requires that a regulatory flexibility analysis be prepared for notice-and-comment rule making proceedings, unless the agency certifies that "the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities." The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act. A "small business concern" is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).

7. In the NPRM in this proceeding (67 FR 42211, June 21, 2002), the Commission certified that none of the proposals, if adopted, would have a significant economic impact on a substantial number of small entities because the issues under consideration in this proceeding directly affect only the BOCs and their affiliates, which do not qualify as small entities under the Regulatory Flexibility Act (RFA). The NPRM stated that none of the BOCs is a small entity because each BOC is an affiliate of a Regional Holding Company (RHC) and all of the BOCs or their RHCs have more than 1,500 employees under the applicable SBA size standard. The NPRM also stated that insofar as this proceeding applies to other BOC or RHC affiliates, those affiliates are controlled by the BOCs or by the RHC and thus are not "independently owned and operated" entities for purposes of the RFA. Furthermore, comment was requested on this initial certification, and no party addressed this issue. Therefore we certify that the requirements of this Order will not have a significant economic impact on a substantial number of small entities.

8. The Commission will send a copy of this Order, including a copy of this Final Regulatory Flexibility Certification, in a report to Congress pursuant to the Congressional Review Act. In addition, the Order and this final certification will be sent to the Chief Counsel for Advocacy of the SBA, and will be published in the **Federal Register**.

Final Paperwork Reduction Act Analysis

9. This Memorandum Opinion and Order does not contain information collections subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. It will not be submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the PRA.

Ordering Clauses

10. Accordingly, pursuant to the authority contained in sections 1, 2, 4(i)–(j), 201–205, 218–220, 251, 271, 272, 303(r) and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154 (i)–(j), 201–205, 218–220, 251, 271, 272, 303(r) and 403, this Order IS ADOPTED.

11. The Commission's Consumer Information Bureau, Reference Information Center, shall send a copy of this Order, including the Final Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the Small Business Administration.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 03–3068 Filed 2–6–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CC Docket No. 90–571; FCC 02–269]

Telecommunications Relay Services and the Americans With Disabilities Act of 1990

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document eliminates the requirement that common carriers provide coin sent-paid telecommunications relay service (TRS) from payphones on the grounds that it is currently technologically infeasible to provide coin sent-paid relay service through payphones. This document requires common carriers to provide local payphone calls made through TRS centers to TRS users on a cost-free basis. This document requires TRS providers to accept credit and calling cards and third party collect billing for toll calls from payphones. This document, also, encourages specific outreach and education programs to inform TRS users of their options when placing calls from payphones.

DATES: Effective March 10, 2003 except § 64.604(c)(3) of the Commission's rules which contain information collection(s) requirements shall become effective following approval by the Office of Management and Budget. The Federal Communications Commission will publish a document in the **Federal Register** announcing the effective date.

FOR FURTHER INFORMATION CONTACT: Janet Sievert, of the Consumer & Governmental Affairs Bureau at (202) 418–1362 (voice), (202) 418–1398 (TTY), or e-mail *jsievert@fcc.gov*. For additional information concerning the information collections contained in this *Fifth Report and Order*, contact Judy Boley at (202) 418–0214, or via the Internet at *jboley@fcc.gov*.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Fifth Report and Order* on coin sent-paid TRS, adopted September 17, 2002, and released October 25, 2002. Copies of any subsequently filed documents in this matter will be available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. The complete text of this decision also may be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone (202) 863–2893, facsimile (202) 863–2898, or via e-mail *qualexint@aol.com*. Copies of this document in other alternative formats (computer diskette, large print, and Braille) are available to persons with disabilities by contacting Brian Millin, of the Consumer & Governmental Affairs Bureau at (202) 418–7426 (voice), (202) 418–7365 (TTY), or e-mail *bmillin@fcc.gov*. This *Fifth Report and Order* can also be downloaded in Text and ASCII formats at: *http://www.fcc.gov/cgb/dro*.

Synopsis

In this *Fifth Report and Order*, the Commission eliminates the requirement that common carriers provide coin sent-paid toll TRS calls from payphones. The Americans with Disabilities Act (ADA) requires the Commission to establish functional requirements, guidelines, and operational procedures for TRS, and to establish minimum standards for carriers' provisioning of TRS. To achieve functional equivalence to telephone services available to voice users, Congress directed, among other things, that the Commission prohibit TRS providers from "failing to fulfill the obligations of common carriers by refusing calls" 47 U.S.C. 225(d)(1)(E). In the *First Report and Order* on TRS, 56 FR 36729, August 1, 1991, the Commission interpreted this mandate to require TRS providers to handle "any type of call normally provided by common carriers," and placed the burden of proving the infeasibility of handling a particular type of call on the carriers, 6 FCC Rcd 4657 (1991). The Commission interpreted "any type of call" to include coin sent-paid calls, which are calls made by depositing coins in a coin-operated public payphone, 6 FCC Rcd at 4661 n.18. Subsequent concerns about the technical difficulties associated with handling coin sent-paid calls through TRS centers, however, resulted in multiple suspensions of the mandate for TRS providers to handle these types of calls. The Commission issued the first of these suspensions in 1993; the current suspension remains in effect until publication of the final rules adopted in this *Fifth Report and Order*. Because no current technological solution to the coin sent-paid toll TRS issue appears feasible, this *Fifth Report and Order* eliminates the coin-sent paid toll TRS requirement affirms that credit and calling cards may be used to bill toll TRS calls made from a payphone, and encourages specific outreach and education programs to inform TRS users of their options when placing calls from payphones. Because we conclude that it is infeasible to provide coin sent-paid toll relay service through payphones at this time, and the coin sent-paid functionality is not necessary to achieve functional equivalence, carriers need not provide coin sent-paid toll TRS calls from payphones. As proposed in the *Coin Sent-Paid Further Notice*, this *Fifth Report and Order* mandates that local payphone calls made to and through TRS centers be provided by common carriers on a cost-free basis. This *Fifth Report and Order* also encourages specific outreach and education programs to inform TRS users of their options when placing TRS calls from payphones. Finally, the *Fifth Report and Order* mandates carriers via the Industry Team to submit a report on these outreach and education efforts to the Commission twelve months after publication of this *Fifth Report and Order* in the **Federal Register**. The report will facilitate the Commission's efforts to ensure that TRS consumers have the information they need to complete local as well as toll TRS calls from payphones.

Final Regulatory Flexibility Analysis

As required by the Regulatory Flexibility Act of 1980, as amended (RFA), *see* 5 U.S.C. 603. The RFA, *see* 5 U.S.C. 601 *et. Seq.*, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996, (SBREFA) Pub. L. 104–121, Title II, 110 Stat. 847 (1996), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the Telecommunications Relay Service and the Americans with Disabilities Act of 1990, *Second Further Notice of Proposed Rulemaking*. Telecommunications Relay Services and the Americans with Disabilities Act of 1990, *Second Further Notice of Proposed Rulemaking*, 16 FCC Rcd 5803 (2001), 66 FR 18059, April 5, 2001, including comment on the IRFA. The Commission sought written public comment on the proposals in the *Second Further Notice of Proposed Rulemaking*, including comment on the IRFA. The comments received discussed only the general recommendations, not the IRFA. This Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA. *See* 5 U.S.C. 604.

1. Need for, and Objective of This Fifth Report and Order

This proceeding was generally initiated to address the requirement that telecommunications relay services (TRS) users have access to telephone services using payphones that are functionally equivalent to those available to persons without hearing or speech disabilities. Our specific concern was to address the inability to make coin sent-paid local and toll TRS calls from payphones. Because no technological solution to the coin sent-paid issue appeared imminent, the Commission issued the *Second Further Notice of Proposed Rulemaking* to further develop the record with the goal of determining the best plan to make the full range of payphone services available to TRS users. This *Fifth Report and Order* addresses the means by which persons with hearing and speech disabilities will be able to make calls from payphones and eliminates the requirement that carriers be capable of providing coin sent-paid toll TRS calls.

2. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

No comments were filed in response to the IRFA in this proceeding. No comments on the NPRM were received concerning the small business issues. The Commission has nonetheless considered any potential significant economic impact of the rules on small entities, and as discussed in Section 5, *Infra*, has concluded that the rules adopted impose no significant economic burden on small businesses.

3. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

The RFA directs agencies to provide a description of and, where feasible, and estimate of the number of small entities that may be affected by the rules adopted herein. 5 U.S.C. 604(2)(3). The RFA defines the term "small entity" as having the same meaning as the terms "small business." "small organization," and "small governmental jurisdiction." 5 U.S.C. 601(6). In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act. 5 U.S.C. 601(3) (incorporating by reference the definition of "small business concern" in 15 U.S.C. 632). Pursuant to 5 U.S.C. 601(3), the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, established one or more definitions of such term which are appropriated to the activities of the agency and published such definition(s) in the **Federal Register**." A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA). 15 U.S.C. 632.

Below, we further describe and estimate the number of small entity licensees and regulatees that may be affected by these rules. The most reliable source of information available at this time regarding the total numbers of certain common carrier and related providers nationwide, as well as the numbers of commercial wireless entities, is data the Commission publishes annually in its *Telecommunications Provider Locator Report*, regarding FCC Form 499–A.

FCC, Common Carrier Bureau, Industry Analysis Division, *Telecommunications Provider Locator*, Tables 1–2 (November 2001) (*Provider Locator*).

TRS Providers. Neither the Commission nor the SBA has developed a definition of "small entity" specifically applicable to providers of telecommunications relay services (TRS). The closest applicable definition under the SBA rules is for telephone communications companies other than radiotelephone (wireless) companies. The SBA defines such establishments to be small businesses when they have no more than 1,500 employees. According to the FCC's most recent data, there are approximately 10 interstate TRS providers, which consist of interexchange carriers, local exchange carriers, state-managed entities, and non-profit organizations. Approximately five or fewer of these entities are small businesses. *See* National Association for State Relay Administration (NASRA) Statistics. The FCC notes that these providers include several large interexchange carriers and incumbent local exchange carriers. North American Industry Classification System (NAICS) code 513310. Some of these large carriers may only provide TRS service in a small area but they nevertheless are not small business entities. MCI, for example, provides relay service in approximately only 3 states, but is not a small business. Consequently, the FCC estimates that there are fewer than 5 small TRS providers that may be affected by the proposed rules, if adopted.

Payphone Providers. Neither the Commission nor SBA has developed a definition of small entities specifically applicable to pay telephone operators. The closest applicable definition under SBA rules is for telephone communications companies other than radiotelephone (wireless) companies. The most reliable source of information regarding the number of pay telephone operators nationwide of which we are aware appears to be the data that we collect annually in connection with the *Telecommunications Provider Locator Report*. According to our most recent data, 936 companies reported that they were engaged in the provision of pay telephone services. Provider Locator at Table 1. Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of pay telephone operators that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 936 small entity pay telephone operators that may be affected by this *Fifth Report and Order*.

Wireline Carriers and Service Providers. The SBA has developed a definition of small entities for telephone communications companies except radiotelephone (wireless) companies. The Census Bureau reports that there were 2,321 such telephone companies in operation for at least one year at the end of 1992. *1992 Census.* According to the SBA's definition, a small business telephone company other than a radiotelephone company is one employing no more than 1,500 persons. All but 26 of the 2,321 non-radiotelephone companies listed by the Census Bureau were reported to have fewer than 1,000 employees. Thus, even if all 26 of those companies had more than 1,500 employees, there would still be 2,295 non-radiotelephone companies that might qualify as small entities or small incumbent local exchange carriers (LECs). The FCC does not have data specifying the number of these carriers that are not independently owned and operated, and thus are unable at this time to estimate with greater precision the number of wireline carriers and service providers that would qualify as small business concerns under the SBA's definition. Consequently, the FCC estimates that fewer than 2,295 small telephone communications companies other than radiofelephone companies are small entities or small incumbent LECs. NAICS code 513310.

We have included small incumbent LECs in this present RFA analysis. As noted above, a "small business" under the RFA is one that, *inter alia*, meets the pertinent small business size standard (*e.g.*, a telephone communications business having 1,500 or fewer employees), and "is not dominant in its field of operation." 15 U.S.C. 632. The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not "national" in scope. Letter from Jere W. Glover, Chief Counsel for Advocacy, SBA, to William E. Kennard, Chairman, FCC (May 27, 1999). The Small Business Act contains a definition of "small business concerns," which the RFA incorporates into its own definition of "small business." *See* 15 U.S.C. 632(a) (Small Business Act); 5 U.S.C. 601(3) (RFA). SBA regulations interpret "small business concern" to include the concept of dominance on a national basis. 13 CFR 121.102(b). Since 1996, out of an abundance of caution, the Commission has included small incumbent LECs in its regulatory flexibility analyses. *See, e.g., Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket, 96–98, First Report and Order, 11 FCC Rcd 15499, 16144–45 (1996). We have therefore included small incumbent LECs in this RFA analysis, although we emphasize that this RFA action has no effect on FCC analyses and determination in other, non-RFA contexts. NAICS code 513310.

4. Description of Project Reporting, Recordkeeping and Other Compliance Requirements

The rules require carriers to submit a one-time report, twelve months after publication of this *Fifth Report and Order* in the **Federal Register**, detailing the steps they have taken to comply with the consumer requirements contained herein. Any additional costs incurred as a result of this proceeding should be nominal because the entities affected, including any small businesses, have been in compliance with the *Alternative Plan Order*, and because the reporting requirements is a one-time requirement.

5. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities. 5 U.S.C. 603(c)(1) through (c)(4).

For the following reasons, no steps need to be taken to minimize the economic impact on small businesses or to consider alternatives to minimize the economic impact on small businesses. First, the requirements in this *Fifth Report and Order* will have minimal impact on small entities because they require actions already being undertaken under the *Alternative Plan*. In this sense, the requirements merely formalize such actions. These actions are as follows: (1) Providing free local calling to a TRS provider from payphones; and (2) submitting a one-time report, to the Commission, 12 months after final rules are adopted in this proceeding regarding the steps that

have been taken to comply with the consumer education recommendations contained in the Report and Order.

Second, although this *Fifth Report and Order* recommends an extensive consumer outreach program, the program is only recommended, not required. Therefore, we conclude that the action taken herein should not adversely affect any small entities. Furthermore, this action aids all affected entities, including small businesses, as states and carriers consider such costs when entering into their contracts and determining their general overhead expenses.

6. Report to Congress

The Commission will send a copy of the *Fifth Report and Order*, including this FRFA, in a report to be sent to Congress pursuant to the Congressional Review Act. *See* 5 U.S.C. 801(a)(1)(A). In addition, the Commission will send a copy of the *Fifth Report and Order* including FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the *Fifth Report and Order* and FRFA (or summaries thereof) will also be published in the **Federal Register**. *See* 5 U.S.C. 604(b).

Paperwork Reduction Act of 1995 Analysis

This *Fifth Report and Order* contains new or modified information collection(s) subject to the Paperwork Reduction Act of 1995 (PRA) Pub. L. 104–13. It will be submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the PRA. OMB, the general public and other Federal agencies are invited to comment on the new or modified information collections(s) contained in this proceeding.

Ordering Clauses

Accordingly, *it is ordered* that, pursuant to the authority contained in sections 4(i), 225 and 303 of the Communications Act of 1934, as amended, 47 U.S.C. 4(i), 225 and 303, this Report and Order is adopted, and part 64 of the Commission's rules is amended and shall be effective March 10, 2003.

It is further ordered that the information collection(s) contained in the Report and Order shall become effective following approval by the Office of Management and Budget in the **Federal Register** announcing the effective date for those sections.

It is further ordered that the Commission's Consumer & Governmental Affairs Bureau, Reference Information Center, shall send a copy of this *Fifth Report and Order*, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 64

Reporting and recordkeeping requirements, Telecommunications. Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Final Rules

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR Part 64 as follows:

PART 64—MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

1. The authority citation for Part 64 is amended to read as follows:

Authority: 47 U.S.C. 154, 254(k); secs. 403(b)(2)(B), (c), Public Law 104–104, 110 Stat. 56. Interpret or apply 47 U.S.C. 201, 218, 225, 226, 228, and 254(k) unless otherwise noted.

2. Section 64.604 is amended by revising paragraph (a)(3) to read as follows:

§ 64.604 Mandatory Minimum Standards.

* * * * *

(a) * * *

(3) *Types of Calls*—Consistent with the obligations of telecommunications carrier operators, CAs are prohibited from refusing single or sequential calls or limiting the length of calls utilizing relay services. Relay services shall be capable of handling any type of call normally provided by telecommunications carriers unless the Commission determines that it is not technically feasible to do so. Relay service providers have the burden of proving the infeasibility of handling any type of call. Relay service providers are permitted to decline to complete a call because credit authorization is denied.

* * * * *

[FR Doc. 03–3069 Filed 2–6–03; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF ENERGY

48 CFR Parts 923, 936 and 970

RIN 1991–AB47

Acquisition Regulation: Affirmative Procurement Program—Acquisition of Products Containing Recovered Materials

AGENCY: Department of Energy.

ACTION: Final rule.

SUMMARY: The Department of Energy (DOE) is amending the Department of Energy Acquisition Regulation (DEAR) to further implement Executive Order 13101, *Greening the Government Through Waste Prevention, Recycling, and Federal Acquisition*, dated September 14, 1998. On June 6, 2000, the Federal Acquisition Regulation (FAR) was amended to implement the Executive Order by a final rule published in the **Federal Register**. Today's amendment to the DEAR is necessary to supplement the FAR regarding agency policy applicable to DOE's facility management contractors.

EFFECTIVE DATE: March 10, 2003.

FOR FURTHER INFORMATION CONTACT: Richard Langston, U.S. Department of Energy, Office of Procurement and Assistance Management, ME–61, 1000 Independence Avenue, SW., Washington, DC 20585 at (202) 586–8247, or via e-mail at *richard.langston@pr.doe.gov*.

SUPPLEMENTARY INFORMATION:

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J. Review Under Executive Order 13211
K. Approval by the Office of the Secretary of Energy

I. Background

This action follows a Notice of Proposed Rulemaking published in the **Federal Register** on November 30, 2000 (65 FR 71292). The public comment period for the notice ended January 2, 2001. The purpose of this rule is to provide additional guidance regarding Executive Order 13101, dated September 14, 1998 (63 FR 49641), entitled *Greening the Government Through Waste Prevention, Recycling, and Federal Acquisition*, which superceded Executive Order 12873 dated October 20, 1993, entitled *Federal Acquisition, Recycling, and Waste Prevention*. Among the changes made by this rule is the revision of the clause at section 970.5223–2 of the DEAR to

include subcontract flow down of Affirmative Procurement Program requirements in certain limited circumstances.

Subsequent to the publication of the Notice of Proposed Rulemaking, a separate final rule was published December 22, 2000, 65 FR 80994, amending the DEAR. That final rule amended the numbering structure of Part 970, Management and Operating Contracts. As a result of that final rule, the clause at 970.5204–39 in the proposed rule was redesignated 970.5223–2.

II. Discussion of Public Comments

Five organizations submitted comments in 9 areas as discussed below.

1. 923.405, Procedures [DOE supplemental coverage—paragraph (e)]. The Department had proposed that the percentage of recovered/recycled content, recommended by the Environmental Protection Agency (EPA) in their Recovered Materials Advisory Notices (RMANs) be specified in the solicitation as the minimum percentage of recycled content.

Comment: One reviewer suggested that this created a problem as the EPA RMANs often do not specify a specific content but rather a range of content as the content sometimes varies by geographical area.

Response: The Department agrees with this comment and has added the phrase "or range of content" at 923.405(e).

2. 923.705, Contract clause, specifies the use of the clause at FAR 52.223–10.

Comment: A reviewer did not believe the meaning of the phrase "prime support service awards being performed at Government-owned or Government-leased facilities" was clear. The same reviewer suggested the word "awards" was unnecessary in the same phrase.

Response: The Department has chosen not to finalize proposed section 923.705 because it would be unnecessarily duplicative of existing FAR coverage at 23.705.

3. 936.601–3, Applicable contract procedures. The Department had proposed to add a new Section 936.601 addressing topics that requirements personnel should consider when designing and constructing or modifying facilities. No comments were received but the Department has chosen to delete the addition of a section 936.601–3 from this rule as it is unnecessarily duplicative of existing FAR coverage at 36.601–3.

4. 970.5223–2, Affirmative Procurement Program. The rule would extend the Affirmative Procurement Program to certain subcontracts.

Comment: A reviewer suggested that flow down would be contrary to other DOE efforts to implement more economical and efficient commercial procurement practices. The reviewer suggested this would entail substantial cost to implement on the part of subcontractors who would have to develop additional compliance procedures, including an inspection program.

Response: The Department disagrees. The Resource Conservation and Recovery Act of 1976, 42 U.S.C. 6962, as amended, and EPA regulations, found at 40 CFR part 247, require Federal agencies to acquire products with recovered/recycled content which have been designated by EPA in the Comprehensive Procurement Guidelines. Executive Order 13101, *Greening the Government Through Waste Prevention, Recycling, and Federal Acquisition*, Section 701, requires contracts for contractor operation of a Government-owned or Government-leased facility to include provisions that obligate the contractor to comply with the requirements of the Executive Order. The result of the statute, EPA regulations, and the Executive Order are that this portion of the operation of a Federal facility cannot be operated as though it were a commercial facility. Disregarding these requirements when a subcontractor operates a portion of a Government facility would be contrary to the intent of the requirements. The purpose of this rulemaking is not to flow down the Affirmative Procurement Program to all subcontracts. The purpose of the rulemaking is to capture those instances in which a facility management contractor subcontracts for a significant portion of the operation of the Government facility which involves acquisition of items designated in EPA's Comprehensive Procurement Guidelines that Federal agencies and their contractors are to acquire with recovered/recycled content. The flow down applies only to such subcontracts not to all subcontracts. The reviewer is concerned that our flow down in this limited area will include extensive certifications or inspections. The Department has chosen not to flow down this level of detailed guidance. The contractor and subcontractor may agree on what degree of detail is appropriate to the circumstance. No inspection programs are contemplated or mandated by this rulemaking.

5. 970.5223–2, Affirmative Procurement Program. The Department had proposed changing the clause title from "Acquisition and Use of Environmentally Preferable Products and Services" to "Affirmative Procurement Program."

Comment: A reviewer asked the origin of the title of the clause. The same reviewer suggested we add "for EPA Designated Products." Another reviewer suggested "environmentally preferable" should be retained in the title as the program guidance materials address this topic.

Response: The title "Affirmative Procurement Program" is the title used by the Resource Conservation and Recovery Act, 42 U.S.C. 6962, to describe a preference program for Federal acquisition of products with recovered/recycled content. The DOE Affirmative Procurement Program Guidance materials do include consideration of environmentally preferable aspects of procurement; however, the primary focus of the program is products with recycled content. Environmentally preferable procurement is generally viewed as a separate program area which seeks to acquire products and services that have a lesser or reduced effect on human health and the environment when compared with competing products or services that serve the same purpose. Accordingly, the Department is not accepting the suggestion that we retain"environmentally preferable" in the title. The suggestion that we add "for EPA designated products" is not adopted as the Department prefers the shorter title.

6. 970.5223, Affirmative Procurement Program. Paragraph (a) advises the reader that the Department's Affirmative Procurement Program Guidance is available on the Internet.

Comment: Two reviewers questioned the meaning of this. They were concerned that posting the guidance on the Internet would allow the Government to revise the Guidance without notice.

Response: The guidance provided at the DOE Executive Order 13101 home page is extensive and includes Federal, EPA and DOE regulatory materials, Executive Orders, strategic plans, and related information. The specific portion considered to be the DOE Affirmative Procurement Program Guidance, for purposes of compliance with the clause at 970.5223–2, is entitled *DOE's Affirmative Procurement Program Guidance*. It was developed after extensive coordination within the Department. It is the same guidance referred to in current contracts and it is posted on the Internet only for the convenience of all. Any changes will be coordinated within the Department.

Posting the Guidance on the Internet is only for the convenience of all parties and will have no effect on the formal means through which revisions may be made.

7. 970.5223–2, Affirmative Procurement Program. Paragraph (c) addresses submission of contract reports.

Comment: A reviewer suggested that the requirement for the submission of subcontract reports at the "conclusion of each fiscal year" would be problematic for supply item subcontracts in particular since a set delivery date generally would not cross fiscal years. The reviewer suggested that it be revised to read "at the end of the Federal fiscal year and the end of the contract."

Response: The intent of this suggestion has been adopted but the text has been included at paragraph (d) for clarity since paragraph (d) addresses subcontract matters. The added text allows submission of the report upon completion of the subcontract unless the subcontract term is multiple year, in which case it provides that the parties will agree to an annual report submission schedule.

8. 970.5223–2, Affirmative Procurement Program. Paragraph (d) addresses applicability to subcontracts.

Comment: A reviewer suggested that the facility management contractor be allowed to flow down a clause substantially the same as that at 970.5223–2. The reviewer suggested it might be easier to accomplish the intent of the instruction if it is possible to tailor the clause to the circumstances of the subcontract situation. The reviewer also suggested that there was no reason to flow down the clause if the parties can determine the amount of products with recycled content that will be acquired under the subcontract at the time of the subcontract award.

Response: The Department agrees. The instructions, at 970.2304–2, and in paragraph (d) of the clause, have been revised to allow use of a clause substantially the same as the 970.5223–2 clause. Additionally, the instructions, at 970.2304–2, and in paragraph (d) of the clause, have been revised to provide that in situations in which the facility management contractor can reasonably determine the amount of products with recovered/recycled content that will be acquired under the subcontract, the facility management contractor may include such quantities in its own report and only flow down a requirement that the subcontractor will procure such products with recovered/recycled content. When it is not possible to determine the amount to be acquired under the subcontract, such as an "as required" supply or service subcontract, the clause should be included in the subcontract.

9. 970.5223–2, Affirmative Procurement Program. Paragraph (e) concerns terminology to be used when the clause is used in a subcontract.

Comment: A reviewer questioned whether all facility management contractors have a recycling coordinator.

Response: Yes, all DOE facility management contractors have a recycling coordinator.

III. Section-by-Section Analysis

The Department of Energy amends the regulation as follows:

1. The authority citation for Parts 923 and 936 is revised.

2. A new section 923.405, Procedures, is being added to note that the recommended percentage of recycled content or range of recycled content included in the EPA Recovered Materials Advisory Notices (RMANs) is to be specified in the solicitation and contract as the minimum recycled content or range of content.

3. Section 923.471, Policy, is being deleted as unnecessarily duplicative of FAR coverage at 23.403.

4. Section 936.602–70 is modified by the addition of a new paragraph (a)(8) regarding consideration of the Architect-Engineer firm's experience in energy efficiency, pollution prevention, waste reduction, and the use of recovered and environmentally preferable materials when performing Architect-Engineer evaluations.

5. Section 970.2304 is being updated to include reference to 48 CFR (FAR) 23.4 and 23.704 and is revised to provide guidance concerning circumstances under which the clause at 970.5223–2 should be included in subcontracts. The list of circumstances under which recycled content products need not be purchased is revised to conform to the wording of the Federal Acquisition Regulation.

6. The clause at 970.5223–2 is being updated and revised to include guidance concerning circumstances under which the clause should be included in certain subcontracts. The list of circumstances under which recycled content products need not be purchased is revised to conform to the wording of the Federal Acquisition Regulation.

IV. Procedural Requirements

A. Review Under Executive Order 12866

Today's regulatory action has been determined not to be a "significant regulatory action" under Executive Order 12866, "Regulatory Planning and Review" (58 FR 51735, October 4, 1993). Accordingly, this rule is not subject to review under that Executive Order by the Office of Information and Regulatory Affairs of the Office of Management and Budget (OMB).

B. Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, "Civil Justice Reform," 61 FR 4729 (February 7, 1996), imposes on Executive agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction. With regard to the review required by section 3(a), section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, this final rule meets the relevant standards of Executive Order 12988.

C. Review Under the Regulatory Flexibility Act

This final rule has been reviewed under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, which requires preparation of an initial regulatory flexibility analysis for any role that is likely to have significant economic impact on a substantial number of small entities. This rule, which would implement provisions of Executive Order 13101 concerning the use of recycled materials, would not have a significant economic impact on small entities. While rule requirements may flow down to subcontractors in certain

circumstances, the costs of compliance are not estimated to be large and, in any event, would be reimbursable expenses under the contract or subcontract.

Accordingly, DOE certifies that this rule would not have a significant economic impact on a substantial number of small entities, and, therefore, no regulatory flexibility analysis has been prepared.

D. Review Under the Paperwork Reduction Act

Information collection or record keeping requirements contained in this rulemaking have been previously cleared under Office of Management and Budget paperwork clearance package Number 1910–0300. There are no new burdens imposed by this rule.

E. Review Under the National Environmental Policy Act

DOE has concluded that promulgation of this rule falls into a class of actions which would not individually or cumulatively have significant impact on the human environment, as determined by DOE's regulations (10 CFR part 1021, subpart D) implementing the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 *et seq.*). Specifically, this rule is categorically excluded from NEPA review because the amendments to the DEAR would be strictly procedural (categorical exclusion A6). Therefore, this rule does not require an environmental impact statement or environmental assessment pursuant to NEPA.

F. Review Under Executive Order 13132

Executive Order 13132 (64 FR 43255, August 4, 1999) imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have federalism implications. Agencies are required to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and carefully assess the necessity for such actions. DOE has examined today's rule and has determined that it does not preempt State law and does not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. No further action is required by Executive Order 13132

G. Review Under the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires each agency to assess the effects of Federal regulatory action on State, local and tribal governments, and the private sector. The Department has determined that today's regulatory action does not impose a Federal mandate on State, local or tribal governments or on the private Sector.

H. Review Under the Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277), requires Federal agencies to issue a Family Policymaking Assessment for any rule or policy that may affect family well-being. This rulemaking will have no impact on family well-being.

I. Review Under the Small Business Regulatory Enforcement Fairness Act of 1996

As required by 5 U.S.C. 801, the Department of Energy will report to Congress promulgation of this rule prior to its effective date. The report will state that it has been determined that the rule is not a "major rule" as defined by 5 U.S.C. 804(3).

J. Review Under Executive Order 13211

Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use, (66 FR 28355, May 22, 2001) requires Federal agencies to prepare and submit to the Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget, a Statement of Energy Effects for any proposed significant energy action. A "significant energy action" is defined as any action by an agency that promulgates or is expected to lead to promulgation of a final rule, and that: (1) Is a significant regulatory action under Executive Order 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy, or (3) is designated by the Administrator of OIRA as a significant energy action. For any proposed significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use.

Today's rule is not a significant energy action. Accordingly, DOE has not prepared a Statement of Energy Effects.

K. Approval by the Office of the Secretary of Energy

Issuance of this final rule has been approved by the Office of the Secretary of Energy.

List of Subjects in 48 CFR Parts 923, 936 and 970

Government procurement.

Issued in Washington, DC, on January 28, 2003.

Richard H. Hopf,

Director, Office of Procurement and Assistance Management, Office of Management, Budget and Evaluation, Department of Energy.

Robert C. Braden, Jr.,

Director, Office of Procurement and Assistance Management, National Nuclear Security Administration.

For the reasons set out in the preamble, DOE amends Chapter 9 of Title 48 of the Code of Federal Regulations as set forth below.

1. The authority citations for Parts 923 and 936 are revised to read as follows:

Authority: 42 U.S.C. 7101 *et seq.*; 41 U.S.C. 418b; 50 U.S.C. 2401 *et seq.*

PART 923—ENVIRONMENT, CONSERVATION, OCCUPATIONAL SAFETY, AND DRUG-FREE WORKPLACE

2. Section 923.405 is added to read as follows:

923.405 Procedures [DOE supplemental coverage—paragraph (e)].

(e) When acquiring items designated in the EPA Comprehensive Procurement Guidelines, the EPA recommended percentage of recovered/recycled content or range of content contained in the Recovered Materials Advisory Notice (RMAN) shall be specified in the solicitation and contract as the minimum percentage of recovered/recycled content or range of content. Acquisition of a product with recycled content exceeding the RMAN recommended content or range of content is encouraged if the product performs acceptably.

923.471 [Removed and Reserved].

3. Section 923.471 is removed and reserved.

PART 936—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

4. Section 936.602–70 is amended by adding paragraph (a)(8) to read as follows:

936.602–70 DOE selection criteria.

* * * * *

(a) * * *

(8) In addition to these requirements, consider the Architect-Engineer firm's experience in energy efficiency, pollution prevention, waste reduction, and the use of recovered and environmentally preferable materials and other criteria at FAR 36.602–1.

* * * * *

PART 970—MANAGEMENT AND OPERATING CONTRACTS

5. The authority citation for Part 970 continues to read as follows:

Authority: 42 U.S.C. 2201; 42 U.S.C. 7101, *et seq.*; 50 U.S.C. 2401 *et seq.*

6. The subpart title for subpart 970.23 is revised to read as follows:

Subpart 970.23—Environment, Conservation, Occupational Safety, and Drug Free Work Place

7. Sections 970.2304–1 and 970.2304–2 are revised to read as follows:

970.2304–1 General.

The policy for the acquisition and use of EPA designated items, *i.e.*, items with recovered/recycled content, is set forth at 48 CFR (FAR) 23.4—Use of Recovered Materials as supplemented by 48 CFR (DEAR) 923.405(e) and by 48 CFR (FAR) 23.704, Application to Government-owned or leased facilities, and 48 CFR (FAR) 23.705, Contract clause.

970.2304–2 Contract clause.

The contracting officer shall insert the clause at 48 CFR (FAR) 52.223–10, Waste Reduction Program, and the clause at 48 CFR (DEAR) 970.5223–2, Affirmative Procurement Program, in contracts for the management of DOE facilities, including national laboratories. If the contractor subcontracts a significant portion of the operation of the Government facility which includes the acquisition of items designated in EPA's Comprehensive Procurement Guidelines, the subcontract shall contain a clause substantially the same as that at 48 CFR (DEAR) 970.5223–2. The EPA Comprehensive Procurement Guidelines identify products which Federal agencies and their contractors are to procure with recycled content pursuant to 40 CFR part 247. Examples of such subcontracts would be operation of the facility supply function, construction or remodeling at the facility, or maintenance of the facility motor vehicle fleet. In situations in which the facility management contractor can reasonably determine the amount of products with recovered/recycled content to be acquired under the subcontract, the facility management contractor is not required to flow down the reporting requirement of the 970.5223–2 clause. Instead, the facility management contractor may include the subcontract quantities in its own report and include an agreement in the subcontract that such products will be acquired with recovered/recycled content and that the subcontractor will advise if it is unable to procure such products with recovered/recycled content because the product is not available:

(a) Competitively within a reasonable time;

(b) At a reasonable price; or,

(c) Within the performance requirements.

Subpart 970.52—Solicitation Provisions and Contract Clauses for Management and Operating Contracts

8. Section 970.5223–2 is revised to read as follows:

970.5223–2 Affirmative procurement program.

As prescribed in 48 CFR (DEAR) 970.2304–2, insert the following clause in contracts for the management and operation of DOE facilities, including national laboratories.

Affirmative Procurement Program—March 2003

(a) In the performance of this contract, the Contractor shall comply with the requirements of Executive Order 13101 and the U.S. Department of Energy (DOE) Affirmative Procurement Program Guidance. This guidance includes requirements concerning environmentally preferable products and services, recycled content products and biobased products. This guidance is available on the Internet.

(b) In complying with the requirements of paragraph (a) of this clause, the Contractor shall coordinate its activities with the DOE Recycling Coordinator. Reports required by paragraph (c) of this clause shall be submitted through the DOE Recycling Coordinator.

(c) The Contractor shall prepare and submit reports, at the end of the Federal fiscal year, on matters related to the acquisition of items designated in EPA's Comprehensive Procurement Guidelines that Federal agencies and their Contractors are to procure with recovered/recycled content.

(d) If the Contractor subcontracts a significant portion of the operation of the Government facility which includes the acquisition of items designated in EPA's Comprehensive Procurement Guidelines, the subcontract shall contain a clause substantially the same as this clause. The EPA Comprehensive Procurement Guidelines identify products which Federal agencies and their Contractors are to procure with recycled content pursuant to 40 CFR 247. Examples of such a subcontract would be operation of the facility supply function, construction or remodeling at the facility, or maintenance of the facility motor vehicle fleet. In situations in which the facility management contractor can reasonably determine the amount of products with recovered/recycled content to be acquired under the subcontract, the facility management contractor is not required to flow down the reporting requirement of this clause. Instead, the facility management contractor may include such quantities in its own report and include an agreement in the subcontract that such products will be acquired with recovered/recycled content and that the subcontractor will advise if it is unable to procure such products with recovered/recycled content because the product is not available:

(i) Competitively within a reasonable time;

(ii) At a reasonable price; or,

(iii) Within the performance requirements.

If reports are required of the subcontractor, such reports shall be submitted to the facility management contractor. The reports may be submitted at the conclusion of the subcontract term provided that the subcontract delivery term is not multi-year in nature. If the delivery term is multi-year, the subcontractor shall report its accomplishments for each Federal fiscal year in a manner and at a time or times acceptable to both parties

(e) When this clause is used in a subcontract, the word "Contractor" will be understood to mean "subcontractor" and the term "DOE Recycling Coordinator" will be understood to mean "Contractor Recycling Coordinator."

[FR Doc. 03–2911 Filed 2–6–03; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA–98–4662]

RIN 2127–AJ02

Federal Motor Vehicle Safety Standards, School Bus Body Joint Strength; Correction

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Correcting amendment.

SUMMARY: In the **Federal Register** of December 13, 2001, NHTSA published a document in response to petitions for reconsideration that amended Federal Motor Vehicle Safety Standard No. 221, *School Bus Body Joint Strength*. There was a typographical error in S6.1.2. This document corrects the error.

DATES: Effective on January 1, 2003.

FOR FURTHER INFORMATION CONTACT: Dorothy Nakama, Office of the Chief Counsel, at (202) 366–2992. Her FAX

number is: (202) 366–3820. Her address is: National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, DC 20590.

SUPPLEMENTARY INFORMATION: NHTSA published a document in the **Federal Register** of December 13, 2001, (66 FR 64358) (FR Doc. 01–34096) amending Federal Motor Vehicle Safety Standard No. 221, *School bus body joint strength*, 49 CFR 571.221. As published, 6.1.2 of the standard stated: "If a joint is less than 305 mm long, cut a test specimen with enough of the adjacent material to permit it to be held in the tension testing machine specified in S6.3." This document corrects "305 mm" to read "203 mm."

Need for correction—As published, the final rule contains an error which may prove to be misleading and needs to be clarified.

List of Subjects in 49 CFR Part 571

Motor vehicle safety, Reporting and recordkeeping requirements, Tires.

Accordingly, 49 CFR Part 571 is corrected by making the following correcting amendment:

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

1. The authority citation for Part 571 continues to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegations of authority at 49 CFR 1.50.

2. Section 571.221 is corrected by revising S6.1.2 to read as follows:

§ 571.221 Standard No. 221, School Bus Body Joint Strength

* * * * *

S6.1.2 If a joint is less than 203 mm long, cut a test specimen with enough of the adjacent material to permit it to be held in the tension testing machine specified in S6.3.

* * * * *

Issued on: January 30, 2003.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. 03–2702 Filed 2–6–03; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 001005281–0369–02; I.D. 020303C]

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic; Closure

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS closes the commercial run-around gillnet fishery for king mackerel in the exclusive economic zone (EEZ) in the southern Florida west coast subzone. This closure is necessary to protect the Gulf king mackerel resource.

DATES: The closure is effective 6 a.m., local time, February 4, 2003, through 6 a.m., January 20, 2004.

FOR FURTHER INFORMATION CONTACT: Mark Godcharles, telephone:727–570–5305, fax:727–570–5583, e-mail: Mark.Godcharles@noaa.gov.

SUPPLEMENTARY INFORMATION: The fishery for coastal migratory pelagic fish (king mackerel, Spanish mackerel, cero, cobia, little tunny, dolphin, and, in the Gulf of Mexico only, bluefish) is managed under the Fishery Management Plan for the Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic (FMP). The FMP was prepared by the Gulf of Mexico and South Atlantic Fishery Management Councils (Councils) and is implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622.

Based on the Councils' recommended total allowable catch and the allocation ratios in the FMP, on April 30, 2001 (66 FR 17368, March 30, 2001) NMFS implemented a commercial quota of 2.25 million lb (1.02 million kg) for the eastern zone (Florida) of the Gulf migratory group of king mackerel. That quota is further divided into separate quotas for the Florida east coast subzone and the northern and southern Florida west coast subzones. On April 27, 2000, NMFS implemented the final rule (65 FR 16336, March 28, 2000) that divided the Florida west coast subzone of the eastern zone into northern and southern subzones, and established their separate quotas. The quota implemented for the southern Florida west coast subzone is 1,040,625 lb (472,020 kg). That quota is further divided into two equal quotas of 520,312 lb (236,010 kg) for vessels in each of two groups fishing with run-around gillnets and hook-and-line gear (50 CFR 622.42(c)(1)(i)(A)(2)(i)).

Under 50 CFR 622.43(a)(3), NMFS is required to close any segment of the king mackerel commercial fishery when its quota has been reached, or is projected to be reached, by filing a notification at the Office of the **Federal Register**. NMFS has determined that the commercial quota of 520,312 lb (236,010 kg) for Gulf group king mackerel for vessels using run-around gillnet gear in the southern Florida west coast subzone was reached on February 3, 2003. Accordingly, the commercial fishery for king mackerel for such vessels in the southern Florida west coast subzone is closed at 6 a.m., local time, February 4, 2003, through 6 a.m., January 20, 2004, the beginning of the next fishing season, i.e., the day after the 2004 Martin Luther King Jr. Federal holiday.

The Florida west coast subzone is that part of the eastern zone south and west of 25°20.4' N. lat. (a line directly east from the Miami-Dade County, FL boundary). The Florida west coast subzone is further divided into northern and southern subzones. The southern subzone is that part of the Florida west coast subzone that, from November 1 through March 31, extends south and west from 25°20.4' N. lat. to 26°19.8' N. lat. (a line directly west from the Lee/Collier County, FL boundary), i.e., the area off Collier and Monroe Counties. From April 1 through October 31, the southern subzone is that part of the Florida west coast subzone that is between 26°19.8' N. lat. and 25°48' N. lat.(a line directly west from the Monroe/Collier County, FL boundary), i.e., the area off Collier County.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, finds that the need to immediately implement this action to close the fishery constitutes good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth in 5 U.S.C. 553(b)(3)(B), as such procedures would be unnecessary and contrary to the public interest. Similarly, there is a need to implement these measures in a timely fashion to prevent an overrun of the commercial quota of Gulf group king mackerel, given the capacity of the

fishing fleet to harvest the quota quickly. Any delay in implementing this action would be impractical and contradictory to the Magnuson-Stevens Act, the FMP, and the public interest. NMFS finds for good cause that the implementation of this action cannot be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is waived.

This action is taken under 50 CFR 622.43(a) and is exempt from review under Executive Order 12866.

Authority: Authority:16 U.S.C. 1801 *et seq.*

Dated:February 3, 2003.

Richard W. Surdi,

Acting Director, Office Of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 03–2990 Filed 2–3–03; 4:55 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 68, No. 26
Friday, February 7, 2003

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. 02–058–1]

RIN 0579–AB49

Flag Smut Import Prohibitions on Wheat and Related Products

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Advance notice of proposed rulemaking and request for comments.

SUMMARY: We are soliciting public comment on whether and how we should amend the regulations regarding the importation of wheat and related items. Under these regulations, importation of wheat and related items from a number of countries and localities is currently prohibited to prevent the introduction of foreign strains of flag smut into the United States. We are considering easing restrictions on the importation of wheat and related articles from these countries and localities based on a recent risk assessment. After evaluating public comment on the issues presented in this document, we will determine whether to propose changes to our regulations.

DATES: We will consider all comments that we receive on or before April 8, 2003.

ADDRESSES: You may submit comments by postal mail/commercial delivery or by e-mail. If you use postal mail/commercial delivery, please send four copies of your comment (an original and three copies) to: Docket No. 02–058–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 02–058–1. If you use e-mail, address your comment to *regulations@aphis.usda.gov*. Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and "Docket No. 02–058–1" on the subject line.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at *http://www.aphis.usda.gov/ppd/rad/webrepor*.

FOR FURTHER INFORMATION CONTACT: Mr. Wayne Burnett, Senior Import Specialist, PPQ, APHIS, 4700 River Road Unit 140, Riverdale, MD 20737–1236; (301) 734–6799.

SUPPLEMENTARY INFORMATION:

Background

The regulations in "Subpart—Wheat Diseases" (7 CFR 319.59 through 319.59–2, referred to below as the regulations) prohibit the importation of wheat and related items into the United States from certain parts of the world to prevent the introduction of foreign strains of flag smut and Karnal bunt. This advance notice of proposed rulemaking concerns only the prohibitions on flag smut. Flag smut is a plant disease caused by a highly infective fungus, *Urocystis agropyri*, which attacks wheat and substantially reduces its yield.

Flag smut was first described in 1868 in Australian wheat fields. Affected plants within the growing crop are often severely stunted and produce excessive numbers of tillers. Unlike other bunts and smuts of wheat, flag smut does not affect the quality of harvested grain for feed or flour. Flag smut of wheat was first discovered in the United States in 1919, and a quarantine on wheat from countries having flag smut was put in effect. Until the 1930's, flag smut was a significant disease of wheat in the United States, but has recently been found only on wheat in the Pacific Northwest when seed is sown in late August and early September at depths of more than 2 inches.

To address the risk presented by foreign strains of flag smut, the regulations prohibit the importation, except by the United States Department of Agriculture under a departmental permit, of certain articles from specified countries and localities. Specifically, the regulations prohibit the importation of the following articles of *Triticum* spp. (wheat) or *Aegilops* spp. (barb goatgrass, goatgrass):

- Seeds;
- Plants;
- Straw (other than straw, with or without heads, that has been processed or manufactured for use indoors, such as for decorative purposes or for use as toys);
- Chaff; and
- Products of the milling process (*i.e.*, bran, shorts, thistle sharps, and pollards) other than flour.

The regulations also prohibit the importation of seeds of *Melilotus indica* (annual yellow sweetclover) and seeds of any other field crops that have been separated from wheat during the screening process.

The countries and localities from which the importation of those articles is prohibited are listed in § 319.59–2(a)(2) of the regulations. The listed countries and localities are: Afghanistan, Algeria, Armenia, Australia, Azerbaijan, Bangladesh, Belarus, Bulgaria, Chile, China, Cyprus, Egypt, Estonia, Falkland Islands, Georgia, Greece, Guatemala, Hungary, India, Iran, Iraq, Israel, Italy, Japan, Kazakhstan, Kyrgyzstan, Latvia, Libya, Lithuania, Moldova, Morocco, Nepal, North Korea, Oman, Pakistan, Portugal, Romania, Russia, Spain, Tajikistan, Tanzania, Tunisia, Turkey, Turkmenistan, South Africa, South Korea, Ukraine, Uzbekistan, and Venezuela.

We recently evaluated the need for continuing the prohibitions to protect against foreign strains of flag smut. We are considering removing these prohibitions because a risk assessment we have prepared regarding flag smut indicates: (1) Flag smut exists in the United States in only two counties in the Pacific Northwest; (2) there is no evidence that foreign strains of flag smut differ genetically from strains present in the United States or that they pose more risk than domestic strains to wheat production in the United States; (3) we do not currently regulate the interstate

movement of domestic commodities from areas in the United States where flag smut exists; (4) because of temperature and moisture needs of the pathogen, flag smut occurs in the United States only in the Pacific Northwest and only when seed is sown under certain conditions; and (5) effective production strategies exist that minimize the effects of this disease on wheat. The pest risk assessment is available on the Internet at *http://www.aphis.usda.gov/ppq/pra,* or a copy may be requested by contacting the person listed under **FOR FURTHER INFORMATION CONTACT.**

Under these circumstances, it does not appear that U.S. wheat would be at risk from foreign strains of flag smut if we remove the current prohibitions. Also, we believe that we are obligated to remove the prohibitions under the World Trade Organization Agreement on Sanitary and Phytosanitary Measures and the International Plant Protection Convention. These agreements require our import regulations concerning a specified plant or plant pest to be no more stringent than our domestic regulations concerning the same plant or plant pest. These agreements also require us to impose the least restrictive requirements consistent with our appropriate level of protection.

However, simply removing the prohibitions related to flag smut could present a plant pest risk. The flag smut regulations have for many years prohibited the importation of wheat and related products from the countries and localities listed in § 319.59–2(a)(2). As the prohibitions were put into place prior to our adoption of the pest risk analysis process, no risk assessment has been prepared to determine whether other plant pests associated with wheat and other products covered by the flag smut regulations are present in those countries and localities.

We are weighing whether to continue prohibitions on wheat and related products from these countries, even if we remove the prohibitions related to flag smut, until a risk assessment can be completed that would evaluate the risk of those products introducing other plant pests. Also, we are weighing whether a similar risk assessment should be done relative to imports of wheat and related products from countries that are not currently covered by the flag smut regulations and that already ship wheat and related products to the United States. Although pest interception data has not indicated a problem with those imports, no risk assessment has been done to evaluate the risk of those products introducing other plant pests. Major exporters of wheat to the United States include Canada and Mexico.

We invite comments on these issues. In particular, we are soliciting comments that address the following questions:

1. Should we remove the current prohibitions related to foreign strains of flag smut?

2. If we remove the prohibitions related to flag smut, are any lesser restrictions or safeguards necessary? If so, why, and what restrictions or safeguards would be appropriate?

3. If we remove the prohibitions related to flag smut, should we continue to prohibit the importation of wheat and related products from countries and localities currently covered by the flag smut regulations until a risk assessment can be completed that would evaluate the risk of those products introducing other plant pests?

4. If we require a risk assessment before allowing wheat and related products to be imported from countries now covered by the flag smut regulations, should we also require a risk assessment for wheat and related products from countries that are not currently covered by the flag smut regulations and that already ship wheat and related products to the United States?

5. What would be the effects of any of these options on:

a. U.S. wheat producers;

b. U.S. consumers of wheat products; and

c. Other interested parties in the United States, such as grain storage facilities, grain haulers, feed and flour millers, and seed companies?

We welcome comments on these questions and encourage the submission of new options or suggestions.

This action has been determined to be significant for the purposes of Executive Order 12866 and, therefore, has been reviewed by the Office of Management and Budget.

Authority: 7 U.S.C. 166, 450, 7711–7714, 7718, 7731, 7732, and 7751–7754; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

Done in Washington, DC, this 3rd day of February 2003.

Bill Hawks,

Under Secretary for Marketing and Regulatory Programs.

[FR Doc. 03–3057 Filed 2–6–03; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Parts 3, 5, 6, 7, 9, 28, and 34

[Docket No. 03–02]

RIN 1557–AB97

Rules, Policies, and Procedures for Corporate Activities; Bank Activities and Operations; Real Estate Lending and Appraisals

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Office of the Comptroller of the Currency (OCC) proposes to amend several of its regulations to update and clarify them in various respects. Proposed revisions to parts 5 and 7 would implement new authority provided to national banks by sections 1204, 1205, and 1206 of the American Homeownership and Economic Opportunity Act of 2000 (AHEOA). Section 1204 permits national banks to reorganize directly to be controlled by a holding company. Section 1205 increases the maximum term of service for national bank directors, permits the OCC to adopt regulations allowing for staggered terms for directors, and permits national banks to apply for permission to have more than 25 directors. Section 1206 permits national banks to merge with one or more of their nonbank affiliates, subject to OCC approval. In order to clarify issues that have arisen in connection with the scope of the OCC's visitorial powers, the proposal would revise part 7. The proposal contains other amendments to parts 5, 7, 9, and 34 as well as several technical corrections.

DATES: Comments must be received by April 8, 2003.

ADDRESSES: Please direct your comments to: Office of the Comptroller of the Currency, 250 E Street, SW., Public Information Room, Mailstop 1–5, Washington, DC 20219, Attention: Docket No. 03–02; fax number (202) 874–4448; or Internet address: *regs.comments@occ.treas.gov.* Due to delays in the delivery of paper mail in the Washington area, we encourage the submission of comments by fax or e-mail whenever possible. Comments may be inspected and photocopied at the OCC's Public Reference Room, 250 E Street, SW., Washington, DC. You can make an appointment to inspect comments by calling (202) 874–5043.

FOR FURTHER INFORMATION CONTACT: For questions concerning proposed 5.20,

contact Richard Cleva, Senior Counsel, Bank Activities and Structure Division, (202) 874–5300; or Andra Shuster, Counsel, Legislative and Regulatory Activities Division, (202) 874–5090. For questions concerning proposed 12 CFR 5.32, contact Robert Norris, Senior Licensing Analyst, Licensing Policy and Systems Division, (202) 874–5060; or Lee Walzer, Counsel, Legislative and Regulatory Activities Division, (202) 874–5090. For questions concerning proposed 12 CFR 5.33, contact Crystal Maddox, Senior Licensing Analyst, Licensing Policy and Systems Division, (202) 874–5060; Richard Cleva, Senior Counsel, Bank Activities and Structure Division, (202) 874–5300; or Andra Shuster, Counsel, Legislative and Regulatory Activities Division, (202) 874–5090. For questions concerning proposed 12 CFR 7.2024, contact Lee Walzer, Counsel, Legislative and Regulatory Activities Division, (202) 874–5090. For questions concerning proposed 12 CFR 7.4000, contact Mark Tenhundfeld, Assistant Director, or Andra Shuster, Counsel, Legislative and Regulatory Activities Division, (202) 874–5090. For questions concerning proposed 12 CFR 34.3, contact Mark Tenhundfeld, Assistant Director, or Andra Shuster, Counsel, Legislative and Regulatory Activities Division, (202) 874–5090. For questions concerning 12 CFR 9.18, contact Beth Kirby, Special Counsel, Securities and Corporate Practices Division, (202) 874–5210.

SUPPLEMENTARY INFORMATION:

I. Introduction

This notice of proposed rulemaking invites comment on changes to our regulations that fall into the following categories:

- Changes to our rules that implement the AHEOA (discussed in Section II of the **SUPPLEMENTARY INFORMATION**);
- Clarifications to our visitorial powers regulations (Section III);
- Amendments to part 5 concerning limited-purpose banks, factors to be considered in business combinations, and operating subsidiary activities eligible for after-the-fact notice requirements; to part 7 concerning national banks' ability to provide tax advice; to part 9 concerning the valuation of collective investment funds; and to part 34 to update regulatory text to conform to a statutory change (Section IV); and
- Various technical changes to correct citations or footnote numbering (Section V).

II. Amendments Implementing the AHEOA

A. Background

The National Bank Consolidation and Merger Act (12 U.S.C. 215 *et seq.*) (Merger Act) permits consolidations and mergers involving national banks. Pursuant to 12 U.S.C. 215 and 215a, national banks or state banks [1] may, with OCC approval, merge or consolidate with a national bank located in the same state, resulting in a national bank. National banks also may merge or consolidate with Federal thrifts under 12 U.S.C. 215c, resulting in either a national bank or Federal thrift. Pursuant to 12 U.S.C. 215a–1, an insured national bank may merge or consolidate with an insured bank located in a different state.

Prior to the enactment of the AHEOA on December 27, 2000,[2] the Merger Act did not address mergers or consolidations involving a national bank and its nonbank affiliates. However, section 1206 [3] of the AHEOA amended the Merger Act to permit national banks to merge with one or more of their nonbank affiliates with the approval of the OCC (Section 1206 Merger).

Other provisions of the AHEOA liberalize statutory reorganization and corporate governance requirements for national banks. Section 1204 [4] amends the Merger Act to expedite the procedures that a national bank may use when it reorganizes to become a subsidiary of a holding company. Section 1205 [5] of the AHEOA liberalizes the requirements governing the number and length of service of national bank directors.

This rulemaking contains proposed amendments to parts 5 and 7 to implement these changes made by the AHEOA.

B. Description of the Proposal

1. Reorganization Into a Holding Company Subsidiary—Proposed § 5.32 (New)

Pursuant to section 1204, a national bank, with the OCC's approval and the affirmative vote of shareholders holding at least two-thirds of the bank's outstanding capital stock, may reorganize to become a subsidiary of a bank holding company or a company that will become a bank holding company through the reorganization.

The proposal implements this provision in proposed new § 5.32. Paragraph (a) states the authority for engaging in section 1204 transactions. Paragraph (b) repeats the scope of the statute and provides that § 5.32 applies to a reorganization of a national bank into a subsidiary of a bank holding company or of a company that will become a bank holding company through the reorganization.

Pursuant to proposed § 5.32(c), a national bank must submit an application to, and obtain approval from, the OCC prior to participating in a reorganization under paragraph (b).

In accordance with proposed § 5.32(d)(1), the application will be deemed approved by the OCC as of the 30th day after the OCC receives it, unless the OCC otherwise notifies the applicant national bank. Approval of applications under § 5.32 is subject to the condition that the bank give the OCC 60 days' prior notice of any material change in its business plan or any material change from the proposed changes described in the bank's plan of reorganization. Paragraph (d)(2) of proposed § 5.32 implements the statutory requirements that apply to the content of the reorganization plan. The plan must: (1) Specify how the reorganization is to be carried out; (2) be approved by a majority of the national bank's board of directors; (3) specify the amount and type of consideration that the bank holding company will provide for the stock of the bank, the date on which the shareholders' rights to participate in the exchange are to be determined, and the procedure for carrying out the exchange; (4) be submitted to the shareholders of the reorganizing bank at a meeting called in accordance with the procedures outlined in section 3 of the Merger Act; [6] and (5) where applicable, describe any changes to the bank's business plan resulting from the reorganization. Consistent with section 3 of the Merger Act, the proposal also requires that at least two-thirds of the bank's shareholders approve a reorganization. Paragraph (d)(3) of proposed § 5.32

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[1] The term "state bank" is defined to include state-chartered banks, banking associations, trust companies, savings banks (other than mutual savings banks), and other banking institutions engaged in the business of receiving deposits. 12 U.S.C. 215b. This section also contains other definitions.

[2] Pub. L. 106–569, 114 Stat. 2944.

[3] Pub. L. 106–569, sec. 1206, 114 Stat. 2944, 3034 (codified at 12 U.S.C. 215a–3).

[4] Pub. L. 106–569, sec. 1204, 114 Stat. 2944, 3033 (codified at 12 U.S.C. 215a-2).

[5] Pub. L. 106–569, sec. 1205, 114 Stat. 2944, 3033–3034 (amending 12 U.S.C. 71 and 71a).

[6] Section 3 of the Merger Act, 12 U.S.C. 215a(a)(2), provides generally that a shareholders' meeting will be called by the bank's directors after publishing notice of the time, place, and object of the meeting for four consecutive weeks in a newspaper of general circulation where the bank is located and after sending notice to each shareholder of record by certified or registered mail at least 10 days prior to the meeting.

provides that the OCC will review the financial and managerial resources and future prospects of the national bank when considering a section 1204 reorganization.

Proposed § 5.32(e) provides dissenters' rights protections for section 1204 reorganizations. As provided in the Merger Act, this subsection permits any shareholder who has voted against the reorganization at a meeting or given notice in writing at or prior to the meeting to receive the value of his or her shares by providing a written request to the bank within 30 days after the consummation of the reorganization.

Section 5.32(f) of the proposal states that § 5.32 does not affect the applicability of the Bank Holding Company Act of 1956 (BHCA) to a transaction covered under § 5.32(b); applicants must indicate in their § 5.32 applications the status of any BHCA application they are required to file with the Board of Governors of the Federal Reserve System.

The OCC's approval of a § 5.32 application will expire if a national bank has not completed the reorganization within one year of the date of such approval. This is stated in proposed paragraph (g) of § 5.32.

Finally, proposed paragraph (h)(1) states that applicants shall inform shareholders of all material aspects of a reorganization and comply with applicable requirements in the Federal securities laws and the OCC's securities regulations in 12 CFR part 11. Proposed paragraph (h)(2) states that applicants that are not subject to registration requirements under the Securities Exchange Act of 1934 shall submit proxy materials or information statements used in connection with a reorganization to the appropriate OCC district office no later than when such materials are sent to shareholders.

2. Section 1206 Mergers—Proposed § 5.33 (Revised)

Section 1206 of the AHEOA provides new authority for a national bank to merge with one or more of its nonbank affiliates, subject to the OCC's approval. Current § 5.33 sets forth application and notice procedures for national banks entering into business combinations, such as mergers and consolidations with other national banks or state-chartered banks, as well as OCC review and approval standards for such transactions. The proposal amends § 5.33 to include Section 1206 Mergers within its scope.

The proposal adds new application and prior OCC approval requirements for Section 1206 Mergers at the end of redesignated § 5.33(c). These requirements are similar to those for mergers of a national bank or state bank into a national bank under 12 U.S.C. 215a.

A number of new definitions are added to § 5.33(d) in order to implement section 1206. Current § 5.33(d) defines only the terms "business combination," "business reorganization," "home state," and "interim bank." The proposal amends the definition of "business combination" to include Section 1206 Mergers, but leaves the definitions of the other three terms unchanged.

Proposed § 5.33(d)(1) adds a definition of "bank" and defines it as any national bank or state bank. This definition is added because the term is used in the definition for "nonbank affiliate."

Proposed § 5.33(d)(4) defines the term "company" to mean a corporation, limited liability company, partnership, business trust, association, or similar organization. This term is proposed to be added because it is used in the definition of "nonbank affiliate" and "control."

Proposed § 5.33(d)(5) defines "control," which is used in the definition of "nonbank affiliate." Under the proposal, for business combinations under §§ 5.33(g)(4) and (5), a company or shareholder will be deemed to control another company if (1) the company or shareholder, directly or indirectly, or acting through one or more other persons owns, controls, or has power to vote 25 per cent or more of any class of voting securities of the other company, or (2) the company or shareholder controls in any manner the election of a majority of the directors or trustees of the other company.

Because section 1206 provides merger authority for entities previously not included within the scope of § 5.33, the proposal adds the definition of "nonbank affiliate" to describe the entities that are covered by section 1206. Proposed § 5.33(d)(8) defines "nonbank affiliate" of a national bank as any company that controls, is controlled by, or is under common control with the national bank. However, banks and Federal savings associations are not included as "affiliates" because mergers with such entities are governed by statutes other than section 1206. Nonbank subsidiaries are considered to be nonbank affiliates for purposes of § 5.33.

Section 5.33(e)(3)(ii) currently requires that, if as a result of a business combination, a national bank obtains control of a new subsidiary, the bank must provide the same information regarding the new subsidiary's activities that would be required if the applicant were establishing a new subsidiary under either 12 CFR 5.34 (which addresses operating subsidiaries) or 12 CFR 5.39 (which addresses financial subsidiaries). The current rule contains an exception if the subsidiary was a subsidiary of a national bank. The proposal modifies this provision to take into account the fact that the bank may now merge with a nonbank affiliate that has a subsidiary.

Section 5.33(f) sets forth exceptions to the rules that generally govern the OCC's application procedures, such as requirements for the publication of notice or for hearings. Pursuant to § 5.33(f)(1), a national bank applicant that is subject to specific statutory notice requirements for business combinations is not subject to §§ 5.8(a), (b), or (c), which require, and prescribe the timing and contents of, public notice. Instead, a national bank applicant must follow the notice requirements in the applicable statute.

A national bank applicant in a Section 1206 Merger *resulting in a national bank* would be required to follow the notice requirements of 12 U.S.C. 215a. A national bank applicant in a Section 1206 Merger *resulting in a nonbank affiliate* would be required to follow the notice requirements of 12 U.S.C. 214a. We propose to amend § 5.33(f)(1) by adding references to the special procedures to be followed in Section 1206 Mergers.

In addition, we propose to state in § 5.33(f)(1) that §§ 5.10 (regarding public comments) and 5.11 (regarding requests for hearings) are not applicable as a general rule to Section 1206 Mergers. However, we also reserve the discretion to determine that some or all of the provisions in § 5.10 and § 5.11 apply in a Section 1206 Merger if an application presents significant and novel policy, supervisory, or legal issues.

Finally, we propose to make two technical changes to paragraph (f)(1). The reference to paragraph (g) for mergers or consolidations with a Federal savings association would be amended to refer more specifically to paragraph (g)(2) and the reference to a resulting state bank in the parenthetical following this reference would be corrected to refer to a national bank.

The proposal also adds a new § 5.33(g)(4) to address Section 1206 Mergers of national banks with their nonbank affiliates when the resulting entity is a national bank. Section 5.33(g)(4)(i) states that a national bank may enter into this type of Section 1206 Merger when the law of the state or other jurisdiction under which the nonbank affiliate is organized allows the

nonbank affiliate to engage in such mergers. This section also requires a national bank to obtain the OCC's approval.[7] Proposed § 5.33(g)(4)(ii) states that a national bank entering into such a merger must follow the procedures and requirements contained in 12 U.S.C. 215a (which addresses the merger of state banks into national banks), as if the nonbank entity were a state bank. The proposal applies the procedures and requirements in 12 U.S.C. 215a because section 215a addresses the same issues that arise in a Section 1206 Merger and its requirements are familiar to national banks. In addition, we believe that these procedures and requirements impose the least amount of burden on the participants consistent with our supervisory objectives in reviewing the proposed transactions. Proposed § 5.33(g)(4)(iii) states that a nonbank affiliate entering into such a merger is to follow the procedures in the law of the state or other jurisdiction under which the nonbank entity is organized. Proposed § 5.33(g)(4)(iv) states that the rights of dissenting shareholders and appraisal of dissenters' shares of stock in the nonbank entity shall be determined in accordance with the laws of the state or other jurisdiction under which the nonbank entity is organized. Finally, § 5.33(g)(4)(v) of the proposal states that the corporate existence of each institution participating in the merger shall be continued in the resulting national bank, and all the rights, franchises, property, appointments, liabilities, and other interests of the participating institutions shall be transferred to the resulting national bank as set forth in 12 U.S.C. 215a(a), (e), and (f), in the same manner and to the same extent as in a merger between a national bank and a state bank under 12 U.S.C. 215a, as if the nonbank affiliate were a state bank.

Further, the proposal adds a new § 5.33(g)(5), which addresses Section 1206 Mergers of uninsured national banks with their nonbank affiliates when the resulting entity is a nonbank affiliate. The proposal limits this type of Section 1206 Merger to national banks that are not insured banks (as defined in 12 U.S.C. 1813(h)). Prior to the enactment of section 1206, there was no efficient way for a national bank to cease its deposit-taking business, surrender its charter, and combine its business with that of an affiliate because no statutory provisions addressed this type of transaction. The section 1206 authority allows this transaction to take place in a merger and therefore allows the OCC to establish the procedures necessary when an uninsured national bank wishes to surrender its national charter but continue conducting lines of business that are authorized for the nonbank affiliate.

Proposed § 5.33(g)(5)(i) states that this type of Section 1206 Merger may be entered into when the law of the state or other jurisdiction under which the nonbank affiliate is organized allows such mergers. It also provides that an uninsured national bank must obtain the OCC's approval for the transaction. Section 5.33(g)(5)(ii) states that a national bank entering into such a merger shall follow the procedures and requirements contained in 12 U.S.C. 214a (which addresses the merger of national banks into state banks), as if the nonbank entity were a state bank. Section 5.33(g)(5)(iii) states that a nonbank affiliate entering into such a merger shall follow the procedures and requirements in the law of the state or other jurisdiction under which the nonbank entity is organized. Section 5.33(g)(5)(iv) of the proposal states that dissenting national bank shareholders may receive in cash the value of their national bank shares if they comply with the requirements of 12 U.S.C. 214a as if the nonbank affiliate were a state bank. In addition, the OCC may conduct an appraisal or reappraisal of dissenters' shares of stock in a national bank involved in a merger with a nonbank affiliate that results in a nonbank affiliate if all parties agree that the determination is final and binding on each party and agree on how the OCC's expenses relating to the appraisal will be divided among the parties and paid to the OCC. The rights of dissenting shareholders and appraisal of dissenters' shares of stock in the nonbank entity shall be determined in accordance with the laws of the state or other jurisdiction under which the nonbank entity is organized.

In addition, § 5.33(g)(5)(v) of the proposal states that the corporate existence of each entity participating in the merger shall be continued in the resulting nonbank affiliate, and all the rights, franchises, property, appointments, liabilities, and other interests of the participating national bank shall be transferred to the resulting nonbank affiliate as set forth in 12 U.S.C. 214b, in the same manner and to the same extent as in a merger between a national bank and a state bank under 12 U.S.C. 214a, as if the nonbank affiliate were a state bank.

Finally, the proposal adds a new paragraph (j)(1)(iv) to § 5.33 that permits applications for certain transactions under § 5.33(g)(4) to receive streamlined treatment. In order to qualify for such treatment, the acquiring bank must be an eligible bank, the resulting national bank must be well capitalized immediately following consummation of the transaction, the applicants in a prefiling communication must request and obtain approval from the appropriate district office to use the streamlined application, and the total assets acquired in the transaction must not exceed 10 percent of the total assets of the acquiring national bank, as reported in the bank's Consolidated Report of Condition and Income filed for the quarter immediately preceding the filing of the application.

3. National Bank Directors—Proposed § 7.2024 (New)

Section 1205 of the AHEOA amends section 5145 of the Revised Statutes of the United States (12 U.S.C. 71) and the Banking Act of 1933 (12 U.S.C. 71a) regarding national bank directors. Section 1205 increases the maximum term a director may serve from one to not more than three years and permits a national bank to adopt bylaws that provide for staggering the terms of its directors in accordance with the OCC's regulations. In addition, this section permits the OCC to exempt a national bank from the otherwise applicable requirement that it have no more than 25 directors.

The proposal adds a new § 7.2024 conforming the OCC's rules to these provisions. Pursuant to proposed § 7.2024(a), national banks may adopt bylaws that provide for staggering the terms of their directors. Proposed § 7.2024(b) increases the permissible maximum term of national bank directors from one year to three years. Finally, subsection (c) provides that a national bank may increase the size of its board of directors above the statutory limit of 25 provided that the bank satisfies the notice requirements set out in that section.

III. Visitorial Powers

A. Background

1. 12 CFR 7.4000

Current § 7.4000(a) provides that only the OCC or an authorized representative of the OCC may exercise visitorial powers with respect to national banks, subject to exceptions provided in Federal law. Section 7.4000(a) goes on to define the regulatory, supervisory, and enforcement actions included within our visitorial powers, while § 7.4000(b) sets out several exceptions to

[7] If the national bank involved is insured, the transaction may also be subject to approval by the FDIC under the Bank Merger Act, 12 U.S.C. 1828(c).

our exclusive authority that are created by Federal law.[8]

These provisions interpret and implement 12 U.S.C. 484. Paragraph (a) of that section states——

> No national bank shall be subject to any visitorial powers except as authorized by Federal law, vested in the courts of justice or such as shall be, or have been exercised or directed by Congress or by either House thereof or by any committee of Congress or of either House duly authorized.

Paragraph (b) of the statute then permits lawfully authorized state auditors or examiners to review a national bank's records "solely to ensure compliance with applicable State unclaimed property or escheat laws upon reasonable cause to believe that the bank has failed to comply with such laws."

In recent years, various questions have arisen with respect to the scope of the OCC's visitorial powers over national banks. In general, the questions fall into two broad categories: First, what activities conducted by a national bank are subject to the OCC's *exclusive* visitorial powers? At one end of the spectrum of activities, for example, are those, comprising the content of the business of banking and activities incidental thereto, expressly authorized or recognized as permissible for national banks by Federal statute or regulation, or by OCC issuance or interpretation. At the other end would be activities, not necessarily unique to a particular business, subject to public safety standards, such as fire codes and zoning requirements, that typically apply without reference to the content of an entity's business. Second, what is the meaning of certain exceptions to the OCC's exclusive visitorial powers that are provided in the statute, specifically the exception for visitorial powers "vested in the courts of justice?"

This rulemaking contains amendments to § 7.4000 to clarify the application of section 484 to both areas. The first amendment adds a new paragraph (3) to § 7.4000(a) that clarifies the extent of national bank activities subject to the OCC's exclusive visitorial authority. The second amendment revises § 7.4000(b) to reflect the exceptions explicitly set out in section 484(a) for visitorial powers "vested in the courts of justice" and for Congress, and clarifies the OCC's interpretation of the "vested in the courts of justice" exception.

[8] Paragraph (c) of 12 CFR 7.4000 clarifies that the OCC owns reports of examination and addresses a bank's obligations with respect to these reports. This paragraph is unaffected by this rulemaking.

To present these proposed changes in context, we first discuss the background and purpose of section 484, and then summarize case law and OCC interpretations in which questions concerning visitorial powers are addressed. We conclude with a summary of the proposed amendments to § 7.4000.

2. The National Charter and the Role of Visitorial Powers

Congress enacted the National Currency Act (Currency Act) in 1863 and the National Bank Act the year after for the purpose of establishing a new national banking system that would operate distinctly and separately from the existing system of state banks. The Currency Act and National Bank Act were enacted to create a uniform and secure national currency and a system of national banks designed to help stabilize and support the post-Civil War national economy.

Both proponents and opponents of the new national banking system expected that it would supersede the existing system of state banks.[9] Given this anticipated impact on state banks and the resulting diminution of control by the states over banking in general,[10] proponents of the national banking system were concerned that states[11] would attempt to undermine it. Remarks of Senator Sumner illustrate the sentiment of many legislators of the time: "Clearly, the bank must not be subjected to any local government, State or municipal; it must be kept absolutely and exclusively under that Government from which it derives its functions." Cong. Globe, 38th Cong., 1st Sess., at 1893 (April 27, 1864).[12]

The allocation of any supervisory responsibility for the new national banking system to the states would have been inconsistent with this need to protect national banks from state interference. Congress, accordingly, established a Federal supervisory regime and created a Federal agency within the Department of Treasury—the OCC—to carry it out. Congress granted the OCC the broad authority "to make a thorough examination of all the affairs of [a national] bank," [13] and solidified this Federal supervisory authority by vesting the OCC with exclusive visitorial powers over national banks. These provisions assured, among other things, that the OCC would have comprehensive authority to examine all the affairs of a national bank and protected national banks from potential state hostility by establishing that the authority to examine and supervise national banks is vested *only* in the OCC, unless otherwise provided by Federal law.[14]

[9] Representative Samuel Hooper, who reported the bill to the House, stated in support of the legislation that one of its purposes was "to render the law [Currency Act] so perfect that the State banks may be induced to organize under it, in preference to continuing under their State charters." Cong. Globe, 38th Cong. 1st Sess. 1256 (March 23, 1864). While he did not believe that the legislation was necessarily harmful to the state bank system, he did "look upon the system of State banks as having outlived its usefulness * * *" *Id.* Opponents of the legislation believed that it was intended to "take from the States * * * all authority whatsoever over their own State banks, and to vest that authority * * * in Washington * * *" Cong. Globe, 38th Cong., 1st Sess. 1267 (March 24, 1864) (statement of Rep. Brooks). Rep. Brooks made that statement to support the idea that the legislation was intended to transfer control over banking from the states to the Federal government. Given that the legislation's objective was to replace state banks with national banks, its passage would, in Rep. Brooks' opinion, mean that there would be no state banks left over which the states would have authority. Thus, by observing that the legislation was intended to take authority over state banks from the states, Rep. Brooks was not suggesting that the Federal government would have authority over state banks; rather, he was explaining the bill in a context that assumed the demise of state banks. Rep. Pruyn opposed the bill stating that the legislation would "be the greatest blow yet inflicted upon the States * * *" Cong. Globe, 38th Cong., 1st Sess. 1271 (March 24, 1864). *See also* John Wilson Million, *The Debate on the National Bank Act of 1863*, 2 Journal of Political Economy 251, 267 (1893–94) regarding the Currency Act. ("Nothing can be more obvious from the debates than that the national system was to supersede the system of state banks.").

[10] *See, e.g., Tiffany* v. *National Bank of the State of Missouri*, 85 U.S. 409, 412–413 (1874) ("It cannot be doubted, in view of the purpose of Congress in providing for the organization of national banking associations, that it was intended to give them a firm footing in the different states where they might be located. It was expected they would come into competition with state banks, and it was intended to give them at least equal advantages in such competition. * * * National banks have been national favorites. They were established for the purpose, in part, of providing a currency for the whole country, and in part to create a market for the loans of the general government. It could not have been intended, therefore, to expose them to the hazard of unfriendly legislation by the states, or to ruinous competition with state banks."). *See also* B. Hammond, *Banks and Politics in America from the Revolution to the Civil War*, 725–34 (1957); P. Studenski & H. Kroess, *Financial History of the United States*, 155 (1st ed. 1952).

[11] For ease of reference, we use the term "state" in this preamble in a way that includes other non-Federal governmental entities.

[12] *See also Anderson* v. *H&R Block*, 287 F.3d 1038, 1045 (11th Cir. 2002) ("congressional debates amply demonstrate Congress's desire to protect national banks from state legislation. * * *").

[13] Act of June 3, 1864, c. 106, § 54, 13 Stat. 116, codified at 12 U.S.C. 481.

[14] Writing shortly after the Currency Act and National Bank Act were enacted, then-Secretary of the Treasury, and formerly the first Comptroller of the Currency, Hugh McCulloch observed that "Congress has assumed entire control of the currency of the country, and, to a very considerable extent, of its banking interests, prohibiting the interference of State governments. * * *" Cong. Globe, 39th Cong., 1st Sess., Misc. Doc. No. 100, at 2 (April 23, 1866).

Courts have consistently recognized the unique status of the national banking system and the limits placed on states by the National Bank Act. The Supreme Court stated in one of the first cases to address the role of the national banking system that "[t]he national banks organized under the [National Bank Act] are instruments designed to be used to aid the government in the administration of an important branch of the public service. They are means appropriate to that end." *Farmers' and Mechanics' National Bank* v. *Dearing*, 91 U.S. 29, 33 (1875).

Subsequent opinions of the Supreme Court have been equally clear about national banks' unique role and status. *See Marquette National Bank* v. *First of Omaha Service Corp.*, 439 U.S. 299, 314–315 (1978) ("Close examination of the National Bank Act of 1864, its legislative history, and its historical context makes clear that, * * * Congress intended to facilitate * * * a 'national banking system'." (citation omitted)); *Franklin National Bank of Franklin Square* v. *New York*, 347 U.S. 373, 375 (1954) ("The United States has set up a system of national banks as Federal instrumentalities to perform various functions such as providing circulating medium and government credit, as well as financing commerce and acting as private depositories."); *Davis* v. *Elmira Savings Bank*, 161 U.S. 275, 283 (1896) ("National banks are instrumentalities of the Federal government, created for a public purpose, and as such necessarily subject to the paramount authority of the United States.").

In *Guthrie* v. *Harkness*, 199 U.S. 148 (1905), the Supreme Court recognized how the National Bank Act furthered the objectives of Congress:

> Congress had in mind, in passing this section [*i.e.*, section 484] that in other sections of the law it had made full and complete provision for investigation by the Comptroller of the Currency and examiners appointed by him, and, authorizing the appointment of a receiver, to take possession of the business with a view to winding up the affairs of the bank. It was the intention that this statute should contain a full code of provisions upon the subject, and that no state law or enactment should undertake to exercise the right of visitation over a national corporation. Except in so far as such corporation was liable to control in the courts of justice, this act was to be the full measure of visitorial power.

Id. at 159.

The Supreme Court also has recognized the clear intent on the part of Congress to limit the authority of states over national banks precisely so that the nationwide system of banking that was created in the Currency Act could develop and flourish. For instance, in *Easton* v. *Iowa*, 188 U.S. 220 (1903), the Court stated that Federal legislation affecting national banks—

> has in view the erection of a system extending throughout the country, and independent, so far as powers conferred are concerned, of state legislation which, if permitted to be applicable, might impose limitations and restrictions as various and as numerous as the States. * * * It thus appears that Congress has provided a symmetrical and complete scheme for the banks to be organized under the provisions of the statute. * * * [W]e are unable to perceive that Congress intended to leave the field open for the States to attempt to promote the welfare and stability of national banks by direct legislation. If they had such power it would have to be exercised and limited by their own discretion, and *confusion would necessarily result from control possessed and exercised by two independent authorities.*

Id. at 229, 231–232 (emphasis added). The Court in *Farmers' and Mechanics' Bank*, after observing that national banks are means to aid the government, stated—

> Being such means, brought into existence for this purpose, and intended to be so employed, the States can exercise no control over them, nor in any wise affect their operation, except in so far as Congress may see proper to permit. Any thing beyond this is "an abuse, because it is the usurpation of power which a single State cannot give."

Farmers' and Mechanics' Bank, 91 U.S. at 34 (citation omitted).

Consistent with the need for a uniform system of laws and uniform supervision that would foster the nationwide banking system, courts have interpreted the OCC's visitorial powers expansively. The Supreme Court in *Guthrie* noted that the term "visitorial" as used in section 484 derives from English common law, which used the term "visitation" to refer to the act of a superintending officer who visits a corporation to examine its manner of conducting business and enforce observance of the laws and regulations (citing *First National Bank of Youngstown* v. *Hughes*, 6 F. 737, 740 (6th Cir. 1881), *appeal dismissed*, 106 U.S. 523 (1883)). *Guthrie*, 199 U.S. at 158. "Visitors" of corporations "have power to keep them within the legitimate sphere of their operations, and to correct all abuses of authority, and to nullify all irregular proceedings." *Id.* (citations omitted). The *Guthrie* Court also noted that visitorial powers include bringing "judicial proceedings" against a corporation to enforce compliance with applicable law. *Id.*[15] *See also Peoples Bank* v. *Williams*, 449 F. Supp. 254, 259 (W. D. Va. 1978) (visitorial powers involve the exercise of the right of inspection, superintendence, direction, or regulation over a bank's affairs). Thus, section 484 establishes the OCC as the exclusive regulator of the business of national banks, except where otherwise provided by Federal law.

The OCC's exclusive visitorial authority complements principles of Federal preemption, to accomplish the objectives of the National Bank Act. The Supremacy Clause of the United States Constitution[16] provides that Federal law prevails over any conflicting state law. An extensive body of judicial precedent has developed over the nearly 140 years of existence of the national banking system, explaining and defining the standards of Federal preemption of state laws as applied to national banks.[17] Visitorial power is a closely

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[15] Enforcement through judicial proceedings was the most common—and perhaps exclusive—means of exercising the visitorial power to enforce compliance with applicable law at the time section 484 was enacted into law. Administrative actions were not widely used until well into the 20th century. Thus, by vesting the OCC with exclusive visitorial power, section 484 vests the OCC with the exclusive authority to enforce, whether through judicial or administrative proceedings—except where otherwise provided by Federal law.

[16] U.S. Const. Art. VI, cl. 2 ("This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.").

[17] *See, e.g., Barnett Bank of Marion County, N.A.* v. *Nelson*, 517 U.S. 25, 26, 32, 33 (1996) ("grants of both enumerated and incidental 'powers' to national banks [are] grants of authority not normally limited by, but rather ordinarily pre-empting, contrary state law." States may not "prevent or significantly interfere with the national bank's exercise of its powers."); *Franklin National Bank*, 347 U.S. at 378–379 (1954) (federal law preempts state law when there is a conflict between the two; "The compact between the states creating the Federal Government resolves them as a matter of supremacy. However wise or needful [the state's] policy, * * * it must give way to contrary federal policy."); *Anderson National Bank* v. *Luckett*, 321 U.S. 233, 248, 252 (1944) (state law may not "infringe the national banking laws or impose an undue burden on the performance of the banks' functions" or "unlawful[ly] encroac[h] on the rights and privileges of national banks"); *First National Bank* v. *Missouri*, 263 U.S. 640, 656 (1924) (Federal law preempts state laws that "interfere with the purposes of [national banks'] creation, tend to impair or destroy their efficiency as federal agencies or conflict with the paramount law of the United States."); *First National Bank of San Jose* v. *California*, 262 U.S. 366, 368–369 (1923) ("[National banks] are instrumentalities of the federal government. * * * [A]ny attempt by a state to define their duties or control the conduct of their affairs is void whenever it conflicts with the laws of the United States or frustrates the purposes of the national legislation, or impairs the efficiency of the bank to discharge the duties for which it was created."); *McClellan* v. *Chipman*, 164 U.S. 347, 358 (1896) (application to national banks of state statute forbidding certain real estate transfers by insolvent transferees would not "destro[y] or hampe[r]"

related authority, which Congress specifically addressed in section 484 to enable national banks to avoid inconsistent and potentially hostile application of standards by state authorities. Together, Federal preemption and the OCC's exclusive visitorial authority are defining characteristics of the national bank charter, which have fostered the development of the nationwide system of Federally chartered banks envisioned by Congress which now operates as part of the flourishing dual banking system of national and state-chartered banks in the United States.

Congress recently affirmed the OCC's exclusive visitorial powers with respect to national banks operating on an interstate basis in the Riegle-Neal Interstate Banking Act of 1994 (Riegle-Neal).[18] Although Riegle-Neal makes interstate branches of national banks subject to specified types of laws of a "host" state in which the bank has an interstate branch to the same extent as a branch of a state bank of that state, *except* when Federal law preempts the application of such state laws to national banks, the statute then makes clear that even where the state law is applicable, authority to enforce the law is vested in the OCC. *See* 12 U.S.C. 36(f)(1)(B) ("The provisions of any State law to which a branch of a national bank is subject under this paragraph shall be enforced, with respect to such branch, by the Comptroller of the Currency."). This approach is another, and very recent, recognition of the broad scope of the OCC's exclusive visitorial powers with respect to national banks.

B. Description of the Visitorial Powers Proposal

This rulemaking proposes to amend § 7.4000 in two ways. First, it adds a new paragraph (3) to § 7.4000(a) that identifies the scope of the activities of national banks for which the OCC's visitorial powers are exclusive. Second, it amends § 7.4000(b) to reflect the exceptions to our exclusive visitorial authority as set out in section 484. We have also added an exception in proposed new § 7.4000(b)(vi) recognizing the authority for functional regulators to exercise the authority provided under the Gramm-Leach-Bliley Act.[19]

Circumstances when OCC visitorial authority is exclusive. As we have discussed, the purpose of section 484 is to enable national banks to conduct the banking business they are authorized to conduct under Federal law, subject only to the "visitation," *i.e.*, inspection and supervision of their activities and the ability to compel compliance with standards for their operations, that is authorized under Federal law. Consistent with this purpose, the OCC's visitorial powers are exclusive (except where otherwise provided by Federal law) with respect to activities comprising or in furtherance of the content of national banks' business, that are expressly authorized or recognized as permissible for national banks under Federal law, including the OCC's regulations and interpretations. Examples include application of state standards (to the extent they are not preempted) to the content of the business conducted by a national bank, such as standards concerning the bank's transactions and relations with its customers, or directives or prescriptions regarding the components of, or income or expenses of, the bank's business. In these situations, section 484 directs that, unless Federal law supplies an exception, the OCC is exclusively authorized to determine what standards apply to a national bank's activities and whether a national bank's conduct complies with applicable standards, and to enforce adherence to those standards.

Proposed new § 7.4000(a)(3) would embody this clarification. It states, in paragraph (i), that, unless otherwise provided by Federal law, the OCC has exclusive visitorial authority with respect to activities expressly authorized or recognized as permissible for national banks under Federal law or regulation, or by OCC issuance or interpretation, including the content of those activities and the manner in which, and standards whereby, those activities are conducted. Proposed paragraph (ii) then provides that the question of whether the OCC possesses the exclusive authority to assess the applicability of a state law and determine and enforce compliance by national banks is determined solely by Federal law, including section 484 and § 7.4000.[20] Pursuant to § 7.4006, these standards also determine the scope of the OCC's exclusive visitorial authority with respect to national banks' operating subsidiaries.[21]

Exceptions to OCC exclusive visitorial authority. Section 484 also creates several exceptions to the exclusive visitorial authority it creates. Our current rule acknowledges, in § 7.4000(a), that our exclusive authority is subject to various exceptions created by Federal law. Current § 7.4000(b) lists several instances where Federal law creates such an exception. However, the current rule does not address two exceptions expressly set out in section 484(a): the exceptions "vested in the courts of justice" and for Congress (and its committees). We propose to amend § 7.4000(b) to include the exceptions for courts of justice and Congress, and, in so doing, clarify how the "vested in the courts of justice" exception operates.[22]

The "vested in the courts of justice" exception to the OCC's exclusive visitorial powers is best understood by referring to the purpose of the statute, the plain language of the "vested in the courts of justice" exception, and the structure of section 484. These points are addressed in order, below.

Courts must be able to compel a national bank to produce books and records in connection with private litigation involving the bank. However, one might argue that the issuance of a subpoena by a court would itself be a "visitation," even if the underlying litigation was not. Such a reading would effectively immunize national banks from civil litigation, a result that Congress clearly did not intend.

Accordingly, section 484 recognizes an exception to the OCC's exclusive visitorial authority for visitorial powers "vested in the courts of justice." This exception is consistent with case law, settled well before section 484 was

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national bank functions); *First National Bank of Louisville* v. *Commonwealth of Kentucky*, 76 U.S. (9 Wall.) 353, 362–63 (1870) (national banks subject to state law that does not "interfere with, or impair [national banks'] efficiency in performing the functions by which they are designed to serve [the Federal] Government"); *Bank of America et al.* v. *City and County of San Francisco et al.*, 309 F.3d 551, 561 (9th Cir. 2002) ("[s]tate attempts to control the conduct of national banks are void if they conflict with federal law, frustrate the purposes of the National Bank Act, or impair the efficiency of national banks to discharge their duties.") (citation omitted); *Association of Banks in Insurance, Inc.* v. *Duryee*, 270 F.3d 397, 403–404 (6th Cir. 2001) ("The Supremacy Clause 'invalidates state laws that "interfere with, or are contrary to," federal law'. * * * A state law also is pre-empted if it interferes with the methods by which the federal statute was designed to reach th[at] goal.") (citations omitted).

[18] Pub. L. 103–328, 108 Stat. 2338 (Sept. 29, 1994).

[19] Pub. L. 106–102, § 302, 113 Stat. 1338, 1407–08 (Nov. 12 1999), codified at 15 U.S.C. 6712.

[20] To the extent questions arise as to whether an activity is within the scope of the OCC's exclusive visitorial powers as defined in the regulation, the OCC is prepared to issue interpretive opinions on a case-by-case basis.

[21] *See* 66 FR 34784, 34788 (July 2, 2001). In the preamble to our final rule containing § 7.4006 we noted that the OCC's operating subsidiary regulation, 12 CFR 5.34(e)(3), states that "an operating subsidiary conducts its activities subject to the same authorization, terms, and conditions that apply to the conduct of those activities by its parent [national] bank." Further, we noted that "[o]perating subsidiaries often have been described as the equivalent of departments or divisions of their parent banks."

[22] We have not encountered questions concerning the application of the exception for Congress and its committees. Therefore, we propose only to include that exception in our rule without elaboration.

enacted into law, concluding that courts are vested with certain inherent powers. *See, e.g., United States* v. *Hudson and Goodwin,* 11 U.S. 32, 34 (1812) ("Certain implied powers must necessarily result to our Courts of justice from the nature of their institutions."); *State* v. *Morrill,* 16 Ark. 384, 1855 WL 607 (Ark.) (1855) (finding that there are express and implied powers, including the power to punish action found in contempt of court, that are inherently vested in courts). In order to avoid a constitutionally impermissable usurpation of the judiciary's powers, Congress included the "vested in the courts of justice" exception in section 484 and thereby recognized the inherent authority of courts of justice to exercise those powers required to fulfill the courts' responsibilities.

Congress clearly did not intend, however, to create new visitorial authority that could be exercised by state authorities when it recognized the authority of courts of justice. It would be completely contrary to the express purposes of section 484 to read the "vested in the courts of justice" exception as enabling state authorities to accomplish exactly what Congress deliberately and expressly intended states *not* to be able to do—namely, inspect and supervise the activities of national banks and compel their adherence to a variety of state-set standards.

This purpose is effectuated by the plain language of the statute. The exception permits the exercise of "visitorial powers" that are "*vested* in the courts of justice," powers, in other words, that *courts possess.* Section 484 *does not create new powers* for state executive, legislative, or administrative authorities to supervise and regulate national banks. It grants no *new* authority and thus does not authorize states to bring suits or enforcement actions that they do not otherwise have the power to bring.

To read the exception to permit state authorities to inspect, regulate, supervise, direct, or restrict the activities of national banks simply by filing a complaint in a court would be to *create* a visitorial power that states do not otherwise possess under Federal law. Section 484 by its express terms simply does not create such boundless visitorial powers for state authorities.[23]

Where section 484 *does* recognize visitorial authority for states in section 484(b), by contrast, it is specific and narrow, and expressly stated as an *exception* to the general exclusivity of the OCC's visitorial powers recognized in section 484(a).

This construction of the "vested in the courts of justice" exception also is supported by the rule of statutory construction that holds that "[s]tatutory language must be read in context and a phrase 'gathers meaning from the words around it.'"[24] *Jones* v. *United States,* 527 U.S. 373, 389 (1999) (quoting *Jarecki* v. *G.D. Searle & Co.,* 367 U.S. 303, 307 (1961)); *Tasini* v. *New York Times Company, Inc.,* 206 F.3d 161, 166–167 (2nd Cir. 2000), *cert. granted,* 531 U.S. 978 (2000), *aff'd,* 533 U.S. 483 (2001) (*noscitur a sociis* applied to a statute similar in format to section 484). Immediately following the "vested in the courts of justice" exception is an exception that preserves visitorial authority for Congress or any committee thereof. This exception addresses the need of Congress and its committees to issue subpoenas compelling the production of bank records or witnesses in fulfillment of congressional oversight responsibilities. Similarly, the exception set out in paragraph (b) of section 484 (preserving a state's ability to examine a national bank's books and records as necessary to ensure compliance with state unclaimed property and escheat laws) is narrowly focused on a specific purpose. Thus, the statutory context of the "vested in the courts of justice" exception also leads to the conclusion that it is comparably focused on a particular function, not an exception that endorses an indirect route to accomplish precisely what Congress clearly sought to prevent—state regulation and inspection of the banking business of national banks.[25]

Under this construction of section 484, states remain free to seek a declaratory judgment from a court as to whether a particular state law applies to the Federally-authorized business of a national bank or is preempted. However, if a court rules that a state law is not preempted, enforcement of a national bank's compliance with that law is within the OCC's exclusive purview. *See National State Bank, Elizabeth, N.J.* v. *Long,* 630 F.2d 981, 988 (3rd Cir. 1980) ("[W]e find ourselves unable to agree with the district court's determination that state officials have the power to issue cease and desist orders against national banks for violations of the [state's] antiredlining statute. Congress has delegated enforcement of statutes and regulations against national banks to the Comptroller of the Currency.").[26]

In addition, this position does not preclude private civil actions or actions brought by other governmental entities pursuant to a Federal grant of authority. *See, e.g. Guthrie, supra,* 199 U.S. 148 (an individual shareholder action against a bank for access to its books and records); *Bank of America National Trust & Savings Ass'n* v. *Douglas,* 105 F.2d 100 (D.C. Cir. 1939) (service of subpoenas on a national bank by the SEC in connection with an investigation under the Securities Exchange Act of 1934).

Accordingly, in light of the purpose of the "vested in the courts of justice" exception, its plain language, and the narrow focus of other exceptions in section 484, we propose to amend § 7.4000(b) to state that national banks shall be subject to such visitorial powers as are vested in the courts of justice to issue orders or writs compelling the production of information or witnesses. We propose further to clarify that this exception does not create or expand any authority of states or other governmental entities to inspect, regulate, or supervise national banks' activities, or to compel national banks' adherence to restrictions or mandates concerning the content of those activities or the manner in which, or standards whereby, those activities are conducted.

IV. Additional Changes to Parts 5, 7, 9, and 34

A. Part 5 Amendments

Section 5.20 of our regulations contains the requirements that govern the organization of a national bank. The proposal amends § 5.20(e)(1) to provide that the newly organized bank may be a special purpose national bank that limits its activities to fiduciary activities or to any other activities within the business of banking. The purpose of this

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[23] We note that one Federal district court has reached a different conclusion, but we respectfully disagree with the parts of the opinion in *First Union National Bank et al.* v. *Burke,* 48 F. Supp. 2d 132, 145–146 (D. Ct. 1999), that suggest a different reading of the exception, since the opinion did not analyze the purpose, plain language, and structure of section 484. Moreover, we note that the *Burke* court agrees that a state may not directly enforce state law against national banks. *See* 48 F. Supp. 2d at 146.

[24] This maxim is sometimes referred to as the *noscitur a sociis* doctrine.

[25] The *noscitur a sociis* doctrine as applied to the original National Bank Act also leads to the conclusion that only the OCC may enforce applicable laws. The visitorial powers language initially appeared in section 54 of the National Bank Act. The section that preceded it governed the forfeiture of a bank's charter upon a knowing violation of the National Bank Act, while the section that followed addressed penalties for embezzling. This location of section 484 in a series of enforcement-related provisions underscores the point that Congress intended for the OCC to have the exclusive authority to bring enforcement actions against national banks.

[26] This applies to enforcement of criminal statutes as well. *Easton* v. *Iowa,* 188 U.S. 220 (1903).

proposed change is to clarify that a limited purpose national bank may exist with respect to activities other than fiduciary activities, provided the activities in question are within the business of banking.

Section 5.33(e) of our regulations contains a listing of factors the OCC considers in evaluating applications for business combinations. These factors are based upon the factors set forth in the Bank Merger Act, 12 U.S.C. 1828(c), and the Community Reinvestment Act, 12 U.S.C. 2903. As part of the USA PATRIOT Act,[27] Congress amended the Bank Merger Act by adding an additional factor to be considered in evaluating merger transactions. This factor requires the responsible agencies to consider the effectiveness of any insured depository institution involved in a proposed merger in combating money laundering activities.[28] The proposal conforms our regulations with the statute by adding the factor at § 5.33(e)(1)(v).

Current § 5.34(e)(5)(iv) permits certain national banks to acquire or establish an operating subsidiary or perform a new activity in an existing operating subsidiary by providing after-the-fact notice to the OCC if the operating subsidiary conducts certain activities listed in § 5.34(e)(5)(v). That list currently includes the underwriting of credit-related insurance consistent with section 302 of the Gramm-Leach-Bliley Act. However, in Corporate Decision 2001–10 (April 23, 2001) and Corporate Decision 2000–16 (August 29, 2000), the OCC found that credit-related reinsurance products satisfy GLBA section 302's statutory requirements and are "authorized products." The proposal therefore amends 12 CFR 5.34(e)(5)(v)(L) to add reinsuring of credit-related insurance to the list of activities eligible for after-the-fact notice requirements.

B. Part 7 Amendment

As corporate transactions have become more sophisticated, an integral part of financial and transactional advice with respect to mergers and other corporate restructurings inevitably involves providing advice on the tax implications of those transactions. Recently amended § 5.34(e)(5)(v)(J) and (K) permit national banks to provide tax planning services and to provide financial and transactional advice on structuring, arranging, and executing financial transactions, including mergers, acquisitions, and divestitures. Providing tax planning services encompasses tax consulting in order for a bank to be able to offer comprehensive services in this area. Accordingly, the proposal deletes as outdated the prohibition against serving as an expert tax consultant that currently appears at § 7.1008.[29]

C. Part 9 Amendment

Currently, 12 CFR 9.18(b)(4)(i) requires valuation of collective investment funds at least every three months. However, certain funds are only required to be valued once a year. Those funds must be (a)(2) funds that are primarily invested in real estate or other assets that are not readily marketable. A growing number of collective investment funds, including (a)(1) funds, however, are comprised of a mix of assets that are readily marketable and assets that are not readily marketable. Those funds do not qualify for the one-year valuation because they are not (a)(2) funds primarily invested in real estate or other assets that are not readily marketable. However, a one-year valuation may be appropriate for assets in those funds that are not readily marketable. Thus, we propose to amend the regulation to require quarterly valuation of readily marketable assets in all collective investment funds, including (a)(1) funds. Assets that are not readily marketable will be valued at least once a year regardless of whether the assets are in (a)(1) or (a)(2) funds or whether the funds' assets are primarily invested in real estate or other assets that are not readily marketable. For purposes of an admission or withdrawal date, this provision does not negate the need to provide a current value at the time of such admission or withdrawal.

D. Part 34 Amendment

Section 34.3 restates the comprehensive authority vested in the OCC by 12 U.S.C. 371 to regulate real estate lending by national banks. Section 371 authorizes national banks to engage in real estate lending, making that authority subject only to 12 U.S.C. 1828(o) (real estate lending safety and soundness standards) and "such restrictions and requirements as the Comptroller of the Currency may prescribe by regulation or order." The text of the regulation was not revised to reflect a statutory amendment to section 371 referring to 12 U.S.C. 1828(o) and thus the proposal updates the regulation to reflect that change to the underlying statute. Other portions of the regulation remain unchanged, as are the implementing provisions of section 34.4, which set out by regulation certain types of state laws that are specifically preempted (section 34.4(a)), and provide that the OCC will apply recognized principles of Federal preemption in considering whether other types of state laws apply to real estate lending by national banks for purposes of issuing orders pursuant to section 371 (section 34.4(b)).

V. Technical Amendments

The proposal contains the following technical amendments:

- 12 CFR part 3, appendix A, section 3(a)(2)(ix) currently cross-references a definition of "General obligation of a State or political subdivision" but contains the wrong regulatory citation for that definition. The definition in question has been moved from 12 CFR 1.3(g) to 12 CFR 1.2(b). The proposed revision will correct the citation. Also in part 3 appendix A, section 4(a)(11)(ii) the references to sections (4)(a)(8)(i) and (ii) are corrected to refer to sections (4)(a)(9)(i) and (ii), respectively.
- The citations to FDIC regulations in current 12 CFR 6.4(c)(1)(i) and (ii) are incorrect. The proposal amends the citations to correct them.
- Current 12 CFR 7.1016(a) contains a footnote reference and accompanying footnote text. The footnote reference number is 30, but should be 1. The proposal makes this change.
- Current 12 CFR 9.20(b) contains a reference to SEC rules 17 CFR 240.17Ad–1 through 240.17Ad–16. A new rule, 240.17Ad–17, has been added, so the proposal changes the reference to 240.17Ad–16 to reflect the addition.
- Current 12 CFR 28.16(e), dealing with uninsured deposit notices, makes a reference to an FDIC regulation, 12 CFR 346.7, which was removed in 1998. The proposal would correct this citation to refer to the current rule for uninsured deposit notices which can now be found at 12 CFR 347.207.

Request for Comments

The OCC invites comment on all aspects of the proposed regulation.

Solicitation of Comments on Use of Plain Language

Section 722 of the Gramm-Leach-Bliley Act, Pub. L. 106–102, sec. 722, 113 Stat. 1338, 1471 (Nov. 12, 1999),

[27] Pub. L. 107–56 (Oct. 26, 2001).

[28] The FDIC recently updated its Statement of Policy on Bank Merger Transactions to include this new factor at 67 FR 48178 (July 23, 2002). This update only provides the new provision. The complete Policy Statement as it existed before this update may be found at 63 FR 44761 (August 20, 1998).

[29] National banks engaged in providing the services permitted by 12 CFR 5.34(e)(5)(v)(J) and (K) must comply with applicable regulations of the Internal Revenue Service (IRS) governing the provision of such services. Information about the IRS regulations may be obtained at *www.irs.treas.gov*.

requires the Federal banking agencies to use plain language in all proposed and final rules published after January 1, 2000. We invite your comments on how to make this proposal easier to understand. For example:

- Have we organized the material to suit your needs? If not, how could this material be better organized?
- Are the requirements in the proposed regulation clearly stated? If not, how could the regulation be more clearly stated?
- Does the proposed regulation contain language or jargon that is not clear? If so, which language requires clarification?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the regulation easier to understand? If so, what changes to the format would make the regulation easier to understand?
- What else could we do to make the regulation easier to understand?

Community Bank Comment Request

In addition, we invite your comments on the impact of this proposal on community banks. The OCC recognizes that community banks operate with more limited resources than larger institutions and may present a different risk profile. Thus, the OCC specifically requests comments on the impact of this proposal on community banks' current resources and available personnel with the requisite expertise, and whether the goals of the proposed regulation could be achieved, for community banks, through an alternative approach.

Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b) (RFA), the regulatory flexibility analysis otherwise required under section 604 of the RFA is not required if the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities and publishes its certification and a short, explanatory statement in the **Federal Register** along with its rule.

Pursuant to section 605(b) of the RFA, the OCC hereby certifies that this proposal will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not needed. The amendments to the OCC's regulations relating to the AHOEA are permissive provisions that will be used only by banks that wish to take advantage of the new transactions, procedures, or corporate governance options permitted by the statute as implemented by the regulations. Proposed 12 CFR 5.33(g)(5) reduces burden by implementing a simpler way to accomplish a merger of a national bank into one of its nonbank affiliates. The amendments regarding the OCC's visitorial powers simply identify the scope of activities for which the agency's visitorial powers are exclusive and clarify how an exception to such powers applies. These amendments simply provide the OCC's analysis and do not impose any new requirements or burdens. As such, they will not result in any adverse economic impact.

Executive Order 12866

The OCC has determined that this proposal is not a significant regulatory action under Executive Order 12866.

Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995, Pub. L. 104–4 (2 U.S.C. 1532) (Unfunded Mandates Act), requires that an agency prepare a budgetary impact statement before promulgating any rule likely to result in a Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector of $100 million or more in any one year. If a budgetary impact statement is required, section 205 of the Unfunded Mandates Act also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. The OCC has determined that the proposed rule will not result in expenditures by State, local, and tribal governments, or by the private sector, of $100 million or more in any one year. Accordingly, this rulemaking is not subject to section 202 of the Unfunded Mandates Act.

Paperwork Reduction Act

The OCC may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number.

The information collection requirements in this notice of proposed rulemaking are contained in §§ 5.32, 5.33, and 7.2024.

OMB has reviewed and approved the information collection requirements contained in this rule under OMB Control Number 1557–0014, in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Comptroller's Corporate Manual (Manual) explains the OCC's policies and procedures for the formation of a new national bank, entry into the national banking system by other institutions, and corporate expansion and structural changes by existing national banks. The Manual embodies all required procedures, forms, and regulations regarding OCC corporate decisions.

The information collection requirements imposed by §§ 5.32 and 5.33 are contained in the Business Combinations booklet in the Manual and are part of the total requirement.

The respondents are national banks.

Estimated number of respondents: 270.

Estimated number of responses: 270.

Average hours per response: 20.6.

Estimated total burden hours: 5,562.

The information collection requirements imposed by § 7.2024 are included in the Corporate Organization booklet in the Manual, along with several other corporate requirements.

The respondents are national banks.

Estimated number of respondents: 1,000.

Estimated number of responses: 1,000.

Average hours per response: .5 hour.

Estimated total burden hours: 500 hours.

The burden estimates represent total burden for national banks' compliance with the information collection requirements associated with corporate organization matters and business combination activities.

The OCC has a continuing interest in the public's opinion regarding collections of information. The OCC invites comments on:

(1) Whether the collection of information contained in the proposed rulemaking is necessary for the proper performance of the OCC's functions, including whether the information has practical utility;

(2) The accuracy of the OCC's estimate of the burden of the information collection, including the validity of the methodology and assumptions used;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected;

(4) Ways to minimize the burden of the information collection on respondents, including the use of automated collection techniques or other forms of information technology; and

(5) Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Comments may be sent to:

Jessie Dunaway, Clearance Officer, Office of the Comptroller of the Currency, 250 E Street, SW, Mailstop 8–4, Washington, DC 20219. Comments

may also be sent by fax to 202–874–4889 or by e-mail to *jessie.dunaway@occ.treas.gov*.

Joseph F. Lackey, Jr., Desk Officer, Office of Information and Regulatory Affairs, Attention: 1557–0014, Office of Management and Budget, Room 10235, Washington, DC 20503. Comments may also be sent by e-mail to *jlackeyj@omb.eop.gov*.

Executive Order 13132

Executive Order 13132 requires Federal agencies, including the OCC, to certify their compliance with that Order when they transmit to the Office of Management and Budget any draft final regulation that has Federalism implications. Under the Order, a regulation has Federalism implications if it has "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." In the case of a regulation that has Federalism implications and that preempts state law, the Order imposes certain consultation requirements with state and local officials; requires publication in the preamble of a Federalism summary impact statement; and requires the OCC to make available to the Director of the Office of Management and Budget any written communications submitted by state and local officials. By the terms of the Order, these requirements apply to the extent that they are practicable and permitted by law and, to that extent, must be satisfied before the OCC promulgates a final regulation.

This proposal may have Federalism implications, as that term is used in the Order. Therefore, before promulgating a final regulation based on this proposal, the OCC will, to the extent practicable and permitted by law, seek consultation with state and local officials, include a Federalism summary impact statement in the preamble to the final rule, and make available to the Director of OMB any written communications we receive from state or local officials.

List of Subjects

12 CFR Part 3

Administrative practice and procedure, Capital, National banks, Reporting and recordkeeping requirements, Risk.

12 CFR Part 5

Administrative practice and procedure, National banks, Reporting and recordkeeping requirements, Securities.

12 CFR Part 6

National banks.

12 CFR Part 7

Credit, Insurance, Investments, National banks, Reporting and recordkeeping requirements, Securities, Surety bonds.

12 CFR Part 9

Estates, Investments, National banks, Reporting and recordkeeping requirements, Trusts and trustees.

12 CFR Part 28

Foreign banking, National banks, Reporting and recordkeeping requirements.

12 CFR Part 34

Mortgages, National banks, Reporting and recordkeeping requirements.

Authority and Issuance

For the reasons set forth in the preamble, parts 3, 5, 6, 7, 9, 28, and 34 of chapter I of title 12 of the Code of Federal Regulations are proposed to be amended as follows:

PART 3—MINIMUM CAPITAL RATIOS; ISSUANCE OF DIRECTIVES

1. The authority citation for part 3 continues to read as follows:

Authority: 12 U.S.C. 93a, 161, 1818, 1828(n), 1828 note, 1831n note, 1835, 3907, and 3909.

Appendix A to Part 3—[Amended]

2. In appendix A to part 3:

A. In section 3, amend paragraph (a)(2)(ix) by removing "12 CFR 1.3(g)" and adding in its place "12 CFR 1.2(b)"; and

B. In section 4, amend paragraph (a)(11)(ii) by removing, "section(4)(a)(8)(i) and (ii)" and adding in its place "section (4)(a)(9)(i) and (ii)".

* * * * *

PART 5—RULES, POLICIES, AND PROCEDURES FOR CORPORATE ACTIVITIES

3. The authority citation for part 5 is revised to read as follows:

Authority: 12 U.S.C. 1 *et seq.*, 93a; 215a–2; 215a–3; and section 5136A of the Revised Statutes (12 U.S.C. 24a).

Subpart B—Initial Activities

4. In § 5.20, a new second sentence is added to paragraph (e)(1) to read as follows:

§ 5.20 Organizing a Bank.

* * * * *

(e) *Statutory requirements*—(1) *General.* * * * The bank may be a special purpose bank that limits its activities to fiduciary activities or to any other activities within the business of banking. * * *

* * * * *

Subpart C—Expansion of Activities

5. A new § 5.32 is added to read as follows:

§ 5.32 Expedited procedures for certain reorganizations.

(a) *Authority.* 12 U.S.C. 93a and 215a–2.

(b) *Scope.* This section prescribes the procedures for OCC review and approval of a national bank's reorganization to become a subsidiary of a bank holding company or a company that will, upon consummation of such reorganization, become a bank holding company.

(c) *Licensing requirements.* A national bank shall submit an application to, and obtain approval from, the OCC prior to participating in a reorganization described in paragraph (b) of this section.

(d) *Procedures*—(1) *General.* An application filed in accordance with this section shall be deemed approved on the 30th day after the OCC receives the application, unless the OCC notifies the bank otherwise. Approval is subject to the condition that the bank provide the OCC with 60 days' prior notice of any material change in the bank's business plan or any material change from the proposed changes to the bank's business plan described in the bank's plan of reorganization.

(2) *Reorganization plan.* The application must include a reorganization plan that:

(i) Specifies the manner in which the reorganization shall be carried out;

(ii) Is approved by a majority of the entire board of directors of the national bank;

(iii) Specifies:

(A) The amount and type of consideration that the bank holding company will provide to the shareholders of the reorganizing bank for their shares of stock of the bank;

(B) The date as of which the rights of each shareholder to participate in that exchange will be determined; and

(C) The manner in which the exchange will be carried out;

(iv) Is submitted to the shareholders of the reorganizing bank at a meeting to be held at the call of the directors in accordance with the procedures prescribed in connection with a merger of a national bank under section 3 of the National Bank Consolidation and Merger Act, 12 U.S.C. 215a(a)(2); and

(v) Describes any changes to the bank's business plan resulting from the reorganization.

(3) *Financial and managerial resources and future prospects.* In reviewing an application under this section, the OCC will consider the impact of the proposed affiliation on the financial and managerial resources and future prospects of the national bank.

(e) *Rights of dissenting shareholders.* Any shareholder of a bank who has voted against an approved reorganization at the meeting referred to in paragraph (d)(2)(iv) of this section, or who has given notice of dissent in writing to the presiding officer at or prior to that meeting, is entitled to receive the value of his or her shares by providing a written request to the bank within 30 days after the consummation of the reorganization, as provided by section 3 of the National Bank Consolidation and Merger Act, 12 U.S.C. 215a(b) and (c), for the merger of a national bank.

(f) *Approval under the Bank Holding Company Act.* This section does not affect the applicability of the Bank Holding Company Act of 1956. Applicants shall indicate in their application the status of any application required to be filed with the Board of Governors of the Federal Reserve System.

(g) *Expiration of approval.* Approval expires if a national bank has not completed the reorganization within one year of the date of approval.

(h) *Adequacy of disclosure.* (1) An applicant shall inform shareholders of all material aspects of a reorganization and comply with applicable requirements of the Federal securities laws and the OCC's securities regulations at 12 CFR part 11.

(2) Any applicant not subject to the registration provisions of the Securities Exchange Act of 1934 shall submit the proxy materials or information statements it uses in connection with the reorganization to the appropriate district office no later than when the materials are sent to the shareholders.

6. In § 5.33:

A. Paragraph (a) is revised;

B. Paragraph (b) is redesignated as paragraph (c), paragraph (c) is redesignated as paragraph (b), newly redesignated paragraph (b) is revised and a sentence is added at the end of newly redesignated paragraph (c);

C. Paragraphs (d)(1), (d)(2), (d)(3), and (d)(4) are redesignated as paragraphs (d)(2), (d)(3), (d)(6), and (d)(7), respectively; newly designated paragraph (d)(2) is revised; and new paragraphs (d)(1), (d)(4), (d)(5), and (d)(8) are added;

D. New paragraph (e)(1)(v) is added;

E. Paragraph (e)(3)(ii) is revised;

F. The second sentence of paragraph (f)(1) is revised and two new sentences are added at the end;

G. New paragraphs (g)(4) and (g)(5) are added;

H. At the end of paragraph (j)(1)(ii), remove the term "or";

I. At the end of paragraph (j)(1)(iii), remove "." and add "; or"; and

J. New paragraph (j)(1)(iv) is added to read as follows:

§ 5.33 Business combinations.

(a) *Authority.* 12 U.S.C. 24(Seventh), 93a, 181, 214a, 214b, 215, 215a, 215a-1, 215a-3, 215c, 1815(d)(3), 1828(c), 1831u, and 2903.

(b) *Scope.* This section sets forth the provisions governing business combinations and the standards for:

(1) OCC review and approval of an application for a business combination between a national bank and another depository institution resulting in a national bank or between a national bank and one of its nonbank affiliates; and

(2) Requirements of notices and other procedures for national banks involved in other combinations with depository institutions.

(c) *Licensing requirements.* * * * A national bank shall submit an application and obtain prior OCC approval for any merger between the national bank and one or more of its nonbank affiliates.

(d) *Definitions*—(1) *Bank* means any national bank or any state bank.

(2) *Business combination* means any merger or consolidation between a national bank and one or more depository institutions in which the resulting institution is a national bank, the acquisition by a national bank of all, or substantially all, of the assets of another depository institution, the assumption by a national bank of deposit liabilities of another depository institution, or a merger between a national bank and one or more of its nonbank affiliates.

* * * * *

(4) *Company* means a corporation, limited liability company, partnership, business trust, association, or similar organization.

(5) For business combinations under §§ 5.33(g)(4) and (5), a company or shareholder is deemed to *control* another company if:

(i) Such company or shareholder, directly or indirectly, or acting through one or more other persons owns, controls, or has power to vote 25 per cent or more of any class of voting securities of the other company, or

(ii) such company or shareholder controls in any manner the election of a majority of the directors or trustees of the other company. No company shall be deemed to own or control another company by virtue of its ownership or control of shares in a fiduciary capacity.

* * * * *

(8) *Nonbank affiliate* of a national bank means any company (other than a bank or Federal savings association) that controls, is controlled by, or is under common control with the national bank.

(e) * * *

(1) * * *

(v) The OCC considers the effectiveness of any insured depository institution involved in the business combination in combating money laundering activities, including in overseas branches.

* * * * *

(3) * * *

(ii) An applicant proposing to acquire, through a business combination, a subsidiary of any entity other than a national bank must provide the same information and analysis of the subsidiary's activities that would be required if the applicant were establishing the subsidiary pursuant to 12 CFR §§ 5.34 or 5.39.

* * * * *

(f) *Exceptions to rules of general applicability.* (1) *National bank applicant.* * * * A national bank applicant shall follow, as applicable, the public notice requirements contained in 12 U.S.C. 1828(c)(3) (business combinations), 12 U.S.C. 215(a) (consolidation under a national bank charter), 12 U.S.C. 215a(a)(2) (merger under a national bank charter), paragraph (g)(2) of this section (merger or consolidation with a Federal savings association resulting in a national bank), paragraph (g)(4) of this section (merger with a nonbank affiliate under a national bank charter), and paragraph (g)(5) (merger with nonbank affiliate not under national bank charter). Sections 5.10 and 5.11 ordinarily do not apply to mergers of a national bank with its nonbank affiliate. However, if the OCC concludes that an application presents significant and novel policy, supervisory, or legal issues, the OCC may determine that some or all provisions in §§ 5.10 and 5.11 apply.

* * * * *

(g) * * *

(4) *Mergers of a national bank with its nonbank affiliates under 12 U.S.C. 215a-3 resulting in a national bank*—(i) With the approval of the OCC, a national bank may merge with one or more of its nonbank affiliates, with the national bank as the resulting

institution, in accordance with the provisions of this paragraph, provided that the law of the state or other jurisdiction under which the nonbank affiliate is organized allows the nonbank affiliate to engage in such mergers.

(ii) A national bank entering into the merger shall follow the procedures of 12 U.S.C. 215a, as if the nonbank affiliate were a state bank, except as otherwise provided herein.

(iii) A nonbank affiliate entering into the merger shall follow the procedures for such mergers set out in the law of the state or other jurisdiction under which the nonbank affiliate is organized.

(iv) The rights of dissenting shareholders and appraisal of dissenters' shares of stock in the nonbank affiliate entering into the merger shall be determined in the manner prescribed by the law of the state or other jurisdiction under which the nonbank affiliate is organized.

(v) The corporate existence of each institution participating in the merger shall be continued in the resulting national bank, and all the rights, franchises, property, appointments, liabilities, and other interests of the participating institutions shall be transferred to the resulting national bank, as set forth in 12 U.S.C. 215a(a), (e), and (f) in the same manner and to the same extent as in a merger between a national bank and a state bank under 12 U.S.C. 215a(a), as if the nonbank affiliate were a state bank.

(5) *Mergers of an uninsured national bank with its nonbank affiliates under 12 U.S.C. 215a-3 resulting in a nonbank affiliate*—(i) With the approval of the OCC, a national bank that is not an insured bank as defined in 12 U.S.C. 1813(h) may merge with one or more of its nonbank affiliates, with the nonbank affiliate as the resulting entity, in accordance with the provisions of this paragraph, provided that the law of the state or other jurisdiction under which the nonbank affiliate is organized allows the nonbank affiliate to engage in such mergers.

(ii) A national bank entering into the merger shall follow the procedures of 12 U.S.C. 214a, as if the nonbank affiliate were a state bank, except as otherwise provided in this section.

(iii) A nonbank affiliate entering into the merger shall follow the procedures for such mergers set out in the law of the state or other jurisdiction under which the nonbank affiliate is organized.

(iv)(A) National bank shareholders who dissent from an approved plan to merge may receive in cash the value of their national bank shares if they comply with the requirements of 12 U.S.C. 214a as if the nonbank affiliate were a state bank. The OCC may conduct an appraisal or reappraisal of dissenters' shares of stock in a national bank involved in the merger if all parties agree that the determination is final and binding on each party and agree on how the total expenses of the OCC in making the appraisal will be divided among the parties and paid to the OCC.

(B) The rights of dissenting shareholders and appraisal of dissenters' shares of stock in the nonbank affiliate involved in the merger shall be determined in the manner prescribed by the law of the state or other jurisdiction under which the nonbank affiliate is organized.

(v) The corporate existence of each entity participating in the merger shall be continued in the resulting nonbank affiliate, and all the rights, franchises, property, appointments, liabilities, and other interests of the participating national bank shall be transferred to the resulting nonbank affiliate as set forth in 12 U.S.C. 214b, in the same manner and to the same extent as in a merger between a national bank and a state bank under 12 U.S.C. 214a, as if the nonbank affiliate were a state bank.

* * * * *

(j) * * *

(1) * * *

(iv) In the case of a transaction under paragraph (g)(4) of this section, the acquiring bank is an eligible bank, the resulting national bank will be well capitalized immediately following consummation of the transaction, the applicants in a prefiling communication request and obtain approval from the appropriate district office to use the streamlined application, and the total assets acquired do not exceed 10 percent of the total assets of the acquiring national bank, as reported in the bank's Consolidated Report of Condition and Income filed for the quarter immediately preceding the filing of the application.

* * * * *

7. In 5.34, paragraph (e)(5)(v)(L) is revised to read as follows:

§ 5.34 Operating subsidiaries.

* * * * *

(e) * * *

(5) * * *

(v) * * *

(L) Underwriting and reinsuring credit related insurance to the extent permitted under section 302 of the GLBA (15 U.S.C. 6712).

* * * * *

PART 6—PROMPT CORRECTIVE ACTION

8. The authority citation for part 6 continues to read as follows:

Authority: 12 U.S.C. 93a, 1831o.

Subpart A—Capital Categories

9. In § 6.4, paragraphs (c)(1)(i) and (ii) are revised to read as follows:

§ 6.4 Capital measures and capital category definitions.

* * * * *

(c) * * *

(1) * * *

(i) Maintains the pledge of assets required under 12 CFR 347.210; and

(ii) Maintains the eligible assets prescribed under 12 CFR 347.211 at 108 percent or more of the preceding quarter's average book value of the insured branch's third-party liabilities; and

* * * * *

PART 7—BANK ACTIVITIES AND OPERATIONS

10. The authority citation for part 7 is revised to read as follows:

Authority: 12 U.S.C. 1 *et seq.*, 71, 71a, 92, 92a, 93, 93a, 481, 484, 1818.

Subpart A—Bank Powers

11. Section 7.1008 is revised to read as follows:

§ 7.1008 Preparing income tax returns for customers or public.

A national bank may assist its customers in preparing their tax returns, either gratuitously or for a fee.

12. In § 7.1016(a), footnote 30 is redesignated as footnote 1.

Subpart B—Corporate Practices

13. A new § 7.2024 is added to read as follows:

§ 7.2024 Staggered terms for national bank directors and size of bank board.

(a) *Staggered terms.* Any national bank may adopt bylaws that provide for staggering the terms of its directors. National banks shall provide the OCC with copies of any bylaws so amended.

(b) *Maximum term.* Any national bank director may hold office for a term that does not exceed three years.

(c) *Number of directors.* A national bank's board of directors shall consist of no fewer than 5 and no more than 25 members. A national bank may, after notice to the OCC, increase the size of its board of directors above the twenty-five member limit. A national bank seeking to increase the number of its directors must notify the OCC any time

the proposed size would exceed 25 directors. The bank's notice shall specify the reason(s) for the increase in the size of the board of directors beyond the statutory limit.

Subpart D—Preemption

14. In § 7.4000:

A. Paragraphs (a)(3)(i) and (a)(3)(ii) are added; and

B. Paragraph (b) is revised to read as follows:

§ 7.4000 Visitorial powers.

(a) * * *

(3)(i) Unless otherwise provided by Federal law, the OCC has exclusive visitorial authority with respect to activities expressly authorized or recognized as permissible for national banks under Federal law or regulation, or by OCC issuance or interpretation, including the content of those activities and the manner in which, and standards whereby, those activities are conducted.

(ii) The question of whether the OCC possesses the exclusive visitorial authority to assess the applicability of a state law to a national bank, and determine and enforce compliance with that law, shall be determined exclusively by Federal law, including 12 U.S.C. 484 and this § 7.4000.

(b) *Exceptions to the general rule.* Under 12 U.S.C. 484, the OCC's exclusive visitorial powers are subject to the following exceptions:

(1) *Exceptions authorized by Federal law.* National banks are subject to such visitorial powers as are provided by Federal law. Examples of laws vesting visitorial power in other governmental entities include laws authorizing state or other Federal officials to:

(i) Inspect the list of shareholders, provided that the official is authorized to assess taxes under state authority (12 U.S.C. 62; this section also authorizes inspection of the shareholder list by shareholders and creditors of a national bank);

(ii) Review at reasonable times and upon reasonable notice to a bank, the bank's records solely to ensure compliance with applicable state unclaimed property or escheat laws upon reasonable cause to believe that the bank has failed to comply with those laws (12 U.S.C. 484(b));

(iii) Verify payroll records for unemployment compensation purposes (26 U.S.C. 3505(c));

(iv) Ascertain the correctness of Federal tax returns (26 U.S.C. 7602);

(v) Enforce the Fair Labor Standards Act (29 U.S.C. 211); and

(vi) Functionally regulate certain activities, as provided under the Gramm-Leach-Bliley Act, Pub. L. 106–102, 113 Stat. 1338 (Nov. 12, 1999).

(2) *Exception for courts of justice.* National banks are subject to such visitorial powers as are vested in the courts of justice to issue orders or writs compelling the production of information or witnesses. This exception does not authorize state or other governmental entities to inspect, regulate, or supervise the activities of national banks, or to compel production of information or adherence to restrictions or requirements concerning the content of those activities or the manner in which, or standards whereby, those activities are conducted.

(3) *Exception for Congress.* National banks are subject to such visitorial powers as shall be, or have been, exercised or directed by Congress or by either House thereof or by any committee of Congress or of either House duly authorized.

* * * * *

PART 9—FIDUCIARY ACTIVITIES OF NATIONAL BANKS

15. The authority citation for part 9 continues to read as follows:

Authority: 12 U.S.C. 24 (Seventh), 92a, and 93a; 15 U.S.C. 78q, 78q–1, and 78w.

16. In § 9.18, paragraph (b)(4)(i) is revised to read as follows:

§ 9.18 Collective investment funds.

* * * * *

(b) * * *

(4) *Valuation*—(i) *Frequency of valuation.* A bank administering a collective investment fund shall determine the value of the fund's readily marketable assets at least once every three months. A bank shall determine the value of the fund's assets that are not readily marketable at least once a year.

* * * * *

17. In § 9.20, amend paragraph (b), by removing the term "240.17Ad–16" and adding in its place the term "240.17Ad–17."

PART 28—INTERNATIONAL BANKING ACTIVITIES

18. The authority citation for part 28 continues to read as follows:

Authority: 12 U.S.C. 1 *et seq.*, 24(Seventh), 93a, 161, 602, 1818, 3101 *et seq.*, and 3901 *et seq.*

Subpart B—Federal Branches and Agencies of Foreign Banks

19. In § 28.16, amend paragraph (e), by removing the term "12 CFR 346.7" and adding in its place the term "12 CFR 347.207."

PART 34—REAL ESTATE LENDING AND APPRAISALS

Subpart A—General

20. The authority citation for part 34 continues to read as follows:

Authority: 12 U.S.C. 1 *et seq.*, 29, 93a, 371, 1701j–3, 1828(o), and 3331 *et seq.*

21. Section 34.3 is revised to read as follows:

§ 34.3 General rule.

(a) A national bank may make, arrange, purchase, or sell loans or extensions of credit, or interests therein, that are secured by liens on, or interests in, real estate ("real estate loans"), subject to 12 U.S.C. 1828(o) and such restrictions and requirements as the Comptroller of the Currency may prescribe by regulation or order.

Dated: January 27, 2003.

John D. Hawke, Jr.,

Comptroller of the Currency.

[FR Doc. 03–2641 Filed 2–6–03; 8:45 am]

BILLING CODE 4810–33–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–CE–02–AD]

RIN 2120–AA64

Airworthiness Directives; Pilatus Aircraft Ltd. Models PC–12 and PC–12/45 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to certain Pilatus Aircraft Ltd. (Pilatus) Models PC–12 and PC–12/45 airplanes. This proposed AD would require you to replace certain push switch caps on the electrical power management overhead panel with parts of improved design. This proposed AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Switzerland. The actions specified by this proposed AD are intended to prevent the inability to operate the switch, which could result in failure to activate the related operational system. Such failure could adversely affect the operation and control of the airplane.

DATES: The Federal Aviation Administration (FAA) must receive any

comments on this proposed rule on or before March 14, 2003.

ADDRESSES: Submit comments to FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2003–GE–02–AD, 901 Locust, Room 506, Kansas City, Missouri 64106. You may view any comments at this location between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays. You may also send comments electronically to the following address: *9-ACE-7-Docket@faa.gov*. Comments sent 1 electronically must contain "Docket No. 2003–CE–02–AD" in the subject line. If you send comments electronically as attached electronic files, the files must be formatted in Microsoft Word 97 for Windows or ASCII text.

You may get service information that applies to this proposed AD from Pilatus Aircraft Ltd., Customer Liaison Manager, CH–6371 Stans, Switzerland; telephone: +41 41 619 63 19; facsimile: +41 41 619 6224; or from Pilatus Business Aircraft Ltd., Product Support Department, 11755 Airport Way, Broomfield, Colorado 80021; telephone: (303) 465–9099; facsimile: (303) 465–6040. You may also view this information at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4059; facsimile: (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Comments Invited

How do I comment on this proposed AD? The FAA invites comments on this proposed rule. You may submit whatever written data, views, or arguments you choose. You need to include the rule's docket number and submit your comments to the address specified under the caption **ADDRESSES**. We will consider all comments received on or before the closing date. We may amend this proposed rule in light of comments received. Factual information that supports your ideas and suggestions is extremely helpful in evaluating the effectiveness of this proposed AD action and determining whether we need to take additional rulemaking action.

Are there any specific portions of this proposed AD I should pay attention to? The FAA specifically invites comments on the overall regulatory, economic, environmental, and energy aspects of this proposed rule that might suggest a need to modify the proposed rule. You may view all comments we receive before and after the closing date of the proposed rule in the Rules Docket. We will file a report in the Rules Docket that summarizes each contact we have with the public that concerns the substantive parts of this proposed AD.

How can I be sure FAA receives my comment? If you want FAA to acknowledge the receipt of your mailed comments, you must include a self-addressed, stamped postcard. On the postcard, write "Comments to Docket No. 2003–CE–02–AD." We will date stamp and mail the postcard back to you.

Discussion

What events have caused this proposed AD? The Federal Office for Civil Aviation (FOCA), which is the airworthiness authority for Switzerland, recently notified FAA that an unsafe condition may exist on certain Pilatus Models PC–12 and PC–12/45 airplanes. The FOCA reports that certain push switch cap spigots on the electrical power management overhead panel have failed to activate their related operational system when engaged. The plastic these push switch cap spigots are made of is not strong enough and causes the switch cap spigots to break when engaged. The defective switch caps have the caption of ON, OPEN, or have no caption or symbol located on the electrical power management overhead panel, part number 972.81.32.102, that has not been modified to Mod A status.

The FOCA has reported the following three incidents in which the switch failed to activate its related operational system when engaged:

—Inability to switch the probe heating on;
—Inability to open the Inertial Separator; and
—Inability to switch the Taxi Light on.

What are the consequences if the condition is not corrected? This condition, if not corrected, could result in failure to activate certain operational systems. Such failure could result in adverse operation and control of the airplane.

Is there service information that applies to this subject? Pilatus has issued Pilatus PC12 Service Bulletin No. 31–003, dated September 27, 2002.

What are the provisions of this service information? The service bulletin includes procedures for replacing certain push switch caps on the electrical power management overhead panel with parts of improved design.

What action did the FOCA take? The FOCA classified this service bulletin as mandatory and issued Swiss AD Number HB 2002–659, dated November 30, 2002, in order to ensure the continued airworthiness of these airplanes in Switzerland.

Was this in accordance with the bilateral airworthiness agreement? These airplane models are manufactured in Switzerland and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement.

Pursuant to this bilateral airworthiness agreement, the FOCA has kept FAA informed of the situation described above.

The FAA's Determination and an Explanation of the Provisions of This Proposed AD

What has FAA decided? The FAA has examined the findings of the FOCA; reviewed all available information, including the service information referenced above; and determined that:

—The unsafe condition referenced in this document exists or could develop on other Pilatus PC–12 and PC–12/45 of the same type design that are on the U.S. registry;
—The actions specified in the previously-referenced service information should be accomplished on the affected airplanes; and
—AD action should be taken in order to correct this unsafe condition.

What would this proposed AD require? This proposed AD would require you to incorporate the actions in the previously-referenced service bulletin.

Cost Impact

How many airplanes would this proposed AD impact? We estimate that this proposed AD affects 45 airplanes in the U.S. registry.

What would be the cost impact of this proposed AD on owners/operators of the affected airplanes? We estimate the following costs to accomplish the proposed replacements:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
3 workhours × $60 = $180	The manufacturer will provide replacement parts free of charge.	$180	$180 × 45 = $8,100.

Regulatory Impact

Would this proposed AD impact various entities? The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposed rule would not have federalism implications under Executive Order 13132.

Would this proposed AD involve a significant rule or regulatory action? For the reasons discussed above, I certify that this proposed action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. FAA amends § 39.13 by adding a new airworthiness directive (AD) to read as follows:

Pilatus Aircraft LTD.: Docket No. 2003–CE–02–AD

(a) *What airplanes are affected by this AD?* This AD affects Models PC–12 and PC–12/45 airplanes, manufacturer serial numbers (MSN) 321, 401 through 457, and 463 that:

(1) Have an overhead panel, part number (P/N) 972.81.32.102 (or FAA-approved equivalent part number), installed that has not been modified to Mod A status; and

(2) Are certificated in any category.

(b) *Who must comply with this AD?* Anyone who wishes to operate any of the airplanes identified in paragraph (a) of this AD must comply with this AD.

(c) *What problem does this AD address?* The actions specified by this AD are intended to prevent the inability to activate certain operational systems. Such failure could adversely affect the operation and control of the airplane.

(d) *What actions must I accomplish to address this problem?* To address this problem, you must accomplish the following, unless already accomplished:

Actions	Compliance	Procedures
(1) Replace all switch caps that have a caption of ON, OPEN, and ones with no caption or symbol on them.	Within the next 100 hours time-in-service after the effective date of this AD.	In accordance with Pilatus PC12 Service Bulletin No. 31–003, dated September 27, 2002.
(2) Using a permanent marker, mark MOD Status A on the overhead panel identification label.	Prior to further flight after completing the actions required in paragraph (d)(2) of this AD.	In accordance with Pilatus PC12 Service Bulletin No. 31–003, dated September 27, 2002.
(3) Do not install an overhead panel, P/N 972.81.32.102, unless it has been modified to Mod A status.	As of the effective date of this AD	In accordance with Pilatus PC12 Service Bulletin No. 31–003, dated September 27, 2002.

(e) *Can I comply with this AD in any other way?* You may use an alternative method of compliance or adjust the compliance time if:

(1) Your alternative method of compliance provides an equivalent level of safety; and

(2) The Manager, Standards Office, Small Airplane Directorate, approves your alternative. Submit your request through an FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standards Office.

Note 1: This AD applies to each airplane identified in paragraph (a) of this AD, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph 5 (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if you have not eliminated the unsafe condition, specific actions you propose to address it.

(f) *Where can I get information about any already-approved alternative methods of compliance?* Contact Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4059; facsimile: (816) 329–4090.

(g) *What if I need to fly the airplane to another location to comply with this AD?* The FAA can issue a special flight permit under sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate your airplane to a location where you can accomplish the requirements of this AD.

(h) *How do I get copies of the documents referenced in this AD?* You may get copies of the documents referenced in this AD from Pilatus Aircraft Ltd., Customer Liaison Manager, CH–6371 Stans, Switzerland; telephone: +41 41 619 63 19; facsimile: +41 41 619 6224; or from Pilatus Business Aircraft Ltd., Product Support Department, 11755 Airport Way, Broomfield, Colorado 80021; telephone: (303) 465–9099; facsimile: (303) 465–6040. You may view these documents at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106.

Note 2: The subject of this AD is addressed in Swiss AD Number HB 2002–659, dated November 30, 2002.

Issued in Kansas City, Missouri, on January 29, 2003.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–2994 Filed 2–6–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NE–23–AD]

RIN 2120–AA64

Airworthiness Directives; General Electric CF34–8C1 Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The Federal Aviation Administration (FAA) proposes to adopt a new airworthiness directive (AD) that is applicable to General Electric (GE) CF34–8C1 turbofan engines. This proposal would require replacing combustion chamber assemblies, part number (P/N) 4126T87G04, before accumulating a new reduced cyclic life limit. This proposal is prompted by stress and life analysis conducted by GE. The actions specified by the proposed AD are intended to prevent rupture of the combustion chamber assembly and possible engine fire.

DATES: Comments must be received by April 8, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 2002–NE–23–AD, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may be inspected at this location, by appointment, between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. Comments may also be sent via the Internet using the following address: "*9-ane-adcomment@faa.gov*". Comments sent via the Internet must contain the docket number in the subject line.

FOR FURTHER INFORMATION CONTACT: Eugene Triozzi, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7148; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2002–NE–23–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRM's

Any person may obtain a copy of this NPRM by submitting a request to the FAA, New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 2002–NE–23–AD, 12 New England Executive Park, Burlington, MA 01803–5299.

Discussion

GE has conducted a refined stress analysis for low-cycle fatigue (LCF) life on GE CF34–8C1 combustion chamber assemblies, P/N 4126T87G04, and has found a new critical location with a lower LCF life limit than the currently published life limit. Exceeding the LCF life limit could lead to crack initiation and propagation to rupture. This condition, if not corrected, could result in rupture of the combustion chamber assembly and possible engine fire.

FAA's Determination of an Unsafe Condition and Proposed Actions

Since an unsafe condition has been identified that is likely to exist or develop on other GE CF34–8C1 engines of the same type design, the proposed AD would require replacing the combustion chamber assembly, P/N 4126T87G04, before accumulating 28,000 cycles-since-new (CSN) and prohibit installation of any combustion chamber assembly, P/N 4126T87G04 that has 28,000 CSN or greater into any engine.

Economic Analysis

There are approximately 115 GE CF34–8C1 turbofan engines of the affected design in the worldwide fleet. The FAA estimates that 75 engines are installed on airplanes of U.S. registry. The FAA also estimates that it would take approximately 24 work hours per engine to perform the proposed actions, and that the average labor rate is $60 per work hour. Required parts would cost approximately $75,000 per engine. Based on these figures and the prorated cost of lost life of 9,800 CSN per engine, the total cost of the proposed AD to U.S. operators is estimated to be $1,600,000.

Regulatory Analysis

This proposed rule does not have federalism implications, as defined in Executive Order 13132, because it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the FAA has not consulted with state authorities prior to publication of this proposed rule.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

General Electric: Docket No. 2002–NE–23–AD.

Applicability: This airworthiness directive (AD) is applicable to General Electric (GE) CF34–8C1 turbofan engines with combustion chamber assembly, part number (P/N) 4126T87G04, installed. These engines are installed on, but not limited to Bombardier Inc. Model CL–600–2C10 (CRJ–700 & 701) airplanes.

Note 1: This AD applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Compliance with this AD is required as indicated, unless already done.

To prevent rupture of the combustion chamber assembly and possible engine fire, do the following:

(a) Replace combustion chamber assembly, P/N 4126T87G04, at or before the combustion chamber assembly accumulates 28,000 cycles-since-new (CSN).

(b) After the effective date of this AD, do not install any combustion chamber assembly, P/N 4126T87G04, that exceeds 28,000 CSN.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office (ECO). Operators must submit their request through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, ECO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the ECO.

Special Flight Permits

(d) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be done.

Issued in Burlington, Massachusetts, on January 30, 2003.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 03–2995 Filed 2–6–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NE–38–AD]

RIN 2120–AA64

Airworthiness Directives; Turbomeca S.A. Arriel –1B, –1D, and –1D1 Series Turboshaft Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The Federal Aviation Administration (FAA) proposes to adopt a new airworthiness directive (AD) that is applicable to Turbomeca S.A. Arriel –1B, –1D, and –1D1 series turboshaft engines. This proposal would require replacement of modules M03 modified to TU 204 standard with modules M03 not modified to TU 204 standard. This proposal is prompted by several reports of 2nd stage gas generator turbine blade failures. The actions specified by the proposed AD are intended to prevent 2nd stage gas generator turbine blade failure resulting in uncommanded engine in-flight shutdown.

DATES: Comments must be received by April 8, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 2002–NE–38–AD, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may be inspected at this location, by appointment, between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. Comments may also be sent via the Internet using the following address: "*9-ane-adcomment@faa.gov*". Comments sent via the Internet must contain the docket number in the subject line.

The service information referenced in the proposed rule may be obtained from Turbomeca S.A., 64511 Bordes Cedex, France; telephone 33 05 59 64 40 00, fax 33 05 59 64 60 80. This information may be examined, by appointment, at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: Antonio Cancelliere, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7751; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2002–NE–38–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRM's

Any person may obtain a copy of this NPRM by submitting a request to the FAA, New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 2002–NE–38–AD, 12 New England Executive Park, Burlington, MA 01803–5299.

Discussion

The Direction Generale de L'Aviation Civile (DGAC), which is the airworthiness authority for France, recently notified the FAA that an unsafe condition may exist on Turbomeca S.A. Arriel –1B, –1D, and –1D1 series turboshaft engines. The DGAC advises that at least five incidents of 2nd stage gas generator turbine blade failure have occurred since the introduction of the TU 204 standard to modules M03. Although the TU 204 standard was introduced to provide improved gas generator turbine blade thermal protection, the manufacturer has determined that due to the increased mass of the 2nd stage gas generator turbine blades introduced by the TU 204 standard, the blade root stress level is too high and can lead to blade failure.

Manufacturer's Service Information

Turbomeca S.A. has issued Service Bulletin (SB) No. 292 72 0258, Update No. 1, dated April 4, 2002, for Arriel –1B engines, and SB No. 292 72 0265, Update No. 1, dated August 18, 2000, for Arriel –1D and –1D1 engines, that specify the cancellation of Modification TU 204 by replacing modules M03 modified to TU 204 standard with modules M03 not modified to TU 204 standard. The DGAC has issued AD 2002–258(A), dated May 15, 2002, in order to ensure the airworthiness of these Turbomeca S.A. engines in France.

Bilateral Agreement Information

This engine model is manufactured in France and is type certificated for operation in the United States under the provisions of Section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Proposed Requirements of This AD

Since an unsafe condition has been identified that is likely to exist or develop on other Turbomeca S.A. Arriel –1B, –1D, and –1D1 series turboshaft engines of the same type design that are used on helicopters registered in the United States, the proposed AD would require replacing modules M03 modified to TU 204 standard with modules M03 not modified to TU 204 standard at the next engine shop visit, but no later than August 31, 2003. The actions would be required to be done in accordance with the service bulletins described previously.

Economic Analysis

There are approximately 1,319 engines of the affected design in the worldwide fleet. The FAA estimates that 48 engines installed on helicopters of U.S. registry would be affected by this proposed AD. The FAA also estimates that it would take approximately 12 work hours per engine to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Required parts would cost approximately $160,000 per engine. Based on these figures, the total cost of the proposed AD to U.S. operators is estimated to be $7,714,560. Turbomeca has advised the FAA that material and tooling may be provided at no cost to the operator, thereby substantially reducing the cost of the proposed rule.

Regulatory Analysis

This proposed rule does not have federalism implications, as defined in Executive Order 13132, because it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the FAA has not consulted with state authorities prior to publication of this proposed rule.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Turbomeca S.A.: Docket No. 2002–NE–38–AD.

Applicability: This airworthiness directive (AD) is applicable to Turbomeca S.A. Arriel –1B, –1D, and –1D1 series turboshaft engines. These engines are installed on, but not limited to Eurocopter AS–350B "Astar" helicopters.

Note 1: This AD applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Compliance with this AD is required at the next engine shop visit, but no later than August 31, 2003, unless already done.

To prevent 2nd stage gas generator turbine blade failure resulting in uncommanded engine in-flight shutdown, do the following:

(a) For Arriel –1B engines, replace TU 204 Standard modules M03 with modules M03 not modified to TU 204 standard, in accordance with Paragraphs 2.A. through 2.C. of Turbomeca S.A. Service Bulletin (SB) No. 292 72 0258, Update No. 1, dated April 4, 2002.

(b) For Arriel –1D and –1D1 engines, replace TU 204 Standard modules M03 with modules M03 not modified to TU 204 standard, in accordance with Paragraphs 2.A. through 2.C. of Turbomeca S.A. SB No. 292 72 0265, Update No. 1, dated August 18, 2000.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office (ECO). Operators must submit their request through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, ECO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the ECO.

Special Flight Permits

(d) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the helicopter to a location where the requirements of this AD can be done.

Note 3: The subject of this AD is addressed in Direction Generale de L'Aviation Civile airworthiness directive 2002–258(A), dated May 15, 2002.

Issued in Burlington, Massachusetts, on January 31, 2003.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 03–2996 Filed 2–6–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–SW–39–AD]

RIN 2120–AA64

Airworthiness Directives; Sikorsky Aircraft Corporation Model S76A, B, and C Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) for Sikorsky Aircraft Corporation (Sikorsky) Model S76A, B, and C helicopters. The AD would require removing non-conforming main landing gear brake discs (discs) and replacing them with different part-numbered airworthy discs. It would also require revising the Rotorcraft Flight Manual (RFM) to adjust takeoff and landing distances until the discs are replaced. This proposal is prompted by the manufacture of some discs using inferior materials. The actions specified by the proposed AD are intended to prevent reduced braking performance and subsequent loss of control of the helicopter.

DATES: Comments must be received on or before April 8, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 2002–SW–39–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137. You may also send comments electronically to the Rules Docket at the following address: *9-asw-adcomments@faa.gov*. Comments may be inspected at the Office of the Regional Counsel between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Terry Fahr, Aviation Safety Engineer, Boston Aircraft Certification Office, 12 New England Executive Park, Burlington, MA 01803, telephone (781) 238–7155, fax (781) 238–7199.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments will be considered before taking action on the proposed rule. The proposals contained in this document may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their mailed comments submitted in response to this proposal must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 2002–SW–39–AD." The postcard will be date stamped and returned to the commenter.

Discussion

This document proposes the adoption of a new AD for Sikorsky Model S76A, B, and C helicopters that would require, within 60 days, determining if discs, part number (P/N) 5014067, are installed. If so, replacing them with discs, P/N 5007672, and re-identifying brake assembly, P/ N 5007555 and P/N 5007555–1, as brake assembly P/N 5007555–3, and brake assembly, P/N 5007555–2, as brake assembly, P/N 5007555–4, is required within 90 days. The proposed AD would also require revising the RFM to adjust the Category A rejected takeoff distance, the Category A landing distance, and the Category B landing distance by multiplying the distance by 1.67 to obtain the corrected distance until the discs are replaced. This proposal is prompted by the manufacture of some discs using inferior materials, resulting in degraded braking performance. The actions specified by the proposed AD are intended to prevent reduced braking performance and subsequent loss of control of the helicopter. Removing the discs, P/N 5014067, and replacing them with discs, P/N 5007672, would be a terminating action for the requirements of the proposed AD.

The FAA has reviewed Sikorsky Aircraft Corporation Alert Service Bulletin (ASB) No. 76–32–27, dated April 30, 2002, which contains Aircraft Braking Systems Corporation ASB S76–32–A24, dated April 10, 2002; and Sikorsky Aircraft Corporation ASB No. 76–32–28, dated May 17, 2002, which contains Aircraft Braking Systems Corporation ASB S76–32–A25, dated May 15, 2002. The ASB's describe procedures for replacing any non-conforming discs, reidentifying brake assemblies, and revising takeoff and landing distances in the RFM until the discs are replaced.

This unsafe condition is likely to exist or develop on other helicopters of the same type designs. Therefore, the proposed AD would require, within 60 days, determining if non-conforming discs are installed, and if so, replacing them within 90 days with airworthy discs, P/N 5007672. It would also require revising the RFM to increase the takeoff and landing distances for helicopters with non-conforming discs installed until the discs are replaced. The actions would be required to be accomplished in accordance with the alert service bulletins described previously.

The FAA estimates that 180 helicopters of U.S. registry would be affected by this proposed AD, that it would take approximately 0.5 work hour per helicopter to determine if non-conforming discs are installed, and 1.25 work hours per helicopter to remove and replace and re-identify any non-conforming discs. The average labor rate is $60 per work hour. Required parts would cost approximately $1,902 per disc, and there are two discs per helicopter. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $703,620 to replace the discs throughout the fleet.

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the

location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

Sikorsky Aircraft Corporation: Docket No. 2002–SW–39–AD.

Applicability: Model S76A, B, and C helicopters, with main landing gear brake assembly (brake assembly), part number (P/N) 5007555, 5007555–1, or 5007555–2 installed, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent reduced braking performance and subsequent loss of control of the helicopter, accomplish the following:

(a) Within 60 days, determine if a main landing gear brake disc (disc), part number (P/N) 5014067, is installed in the braking assembly in accordance with:

(1) Section III-Accomplishment Instructions, paragraph 1.A. through 1.D., of Aircraft Braking Systems Corporation Alert Service Bulletin S76–32–A24, dated April 10, 2002 (ASB A24) for braking assembly, P/N 5007555 and P/N 5007555–1, and

(2) Section III-Accomplishment Instructions, paragraph 1.A. and 1.B., of Aircraft Braking Systems Corporation Alert Service Bulleting S76–32–A25, dated May 15, 2002 (ASB A25), for braking assembly, P/N 5007555–2.

(b) If disc, P/N 5014067, is installed, within 90 days, remove that disc and replace it with disc, P/N 5007672, and re-identify:

(1) Brake assembly, P/N 5007555 and P/N 5007555–1, as brake assembly, P/N 5007555–3, in accordance with the conversion of brake assembly instructions on page 6 of ASB A24, and

(2) Brake assembly, P/N 5007555–2, as brake assembly, P/N 5007555–4, in accordance with the conversion of brake assembly instructions on page 6 of ASB A25.

Note 2: Sikorsky Aircraft Corporation ASB No. 76–32–27, dated April 30, 2002, contains Aircraft Braking Systems Corporation ASB S76–32–A24, dated April 10, 2002, and Sikorsky Aircraft Corporation ASB No. 76–32–28, dated May 17, 2002, contains Aircraft Braking Systems Corporation ASB S76–32–A25, dated May 15, 2002.

(c) Until all installed discs, P/N 5014067, on the helicopter are replaced with disc, P/N 5007672, and all brake assemblies are re-identified in accordance with paragraph (b) of this AD, before further flight, increase the Category A-Rejected Takeoff Distance, the Category A-Landing Distance, and the Category B-Landing Distance as stated in the current Rotorcraft Flight Manual (RFM) by multiplying these rejected takeoff and landing distances by a factor of 1.67.

Note 3: There are temporary revisions to the RFM available from the helicopter manufacturer that documents increased rejected takeoff and landing distances.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Boston Aircraft Certification Office, Engine and Propeller Directorate, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Boston Aircraft Certification Office.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Boston Aircraft Certification Office.

(e) Special flight permits may be issued in accordance with 14 CFR 21.197 and 21.199 to operate the helicopter to a location where the requirements of this AD can be accomplished.

Issued in Fort Worth, Texas, on January 29, 2003.

David A. Downey,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 03–3031 Filed 2–6–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–SW–27–AD]

RIN 2120–AA64

Airworthiness Directives; Bell Helicopter Textron Canada Model 222, 222B, and 222U Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes adopting a new airworthiness directive (AD) for the specified Bell Helicopter Textron Canada (Bell) helicopters. This proposal would require a one-time inspection of the adjustable stop screws of the magnetic brake assembly; repairing, as appropriate, certain mechanical damage to the cyclic and collective flight control magnetic brake arm assembly (arm assembly), if necessary; and installing the stop screw with the proper adhesive, adjusting the arm assembly travel and applying slippage marks. This proposal is prompted by reports that the magnetic brake adjustable screws have backed out, which limited travel of the arm assembly. The actions specified by this proposed AD are intended to detect loose adjustable stop screws, that could result in limiting the travel of the cyclic and collective arm assembly, and subsequent loss of control of the helicopter.

DATES: Comments must be received on or before April 8, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 2002–SW–27–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137. You may also send comments electronically to the Rules Docket at the following address: *9-asw-adcomments@faa.gov.* Comments may be inspected at the Office of the Regional Counsel between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Charles Harrison, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Rotorcraft Standards Staff, Fort Worth, Texas 76193–0110, telephone (817) 222–5128, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments will be considered before taking action on the proposed rule. The proposals contained in this document may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their mailed comments submitted in response to this proposal must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 2002–SW–27–AD." The postcard will be date stamped and returned to the commenter.

Discussion

Transport Canada, the airworthiness authority for Canada, notified the FAA that an unsafe condition may exist on Bell Model 222, 222B, and 222U helicopters with Instrument Flight Rule (IFR) kits, part number (P/N) 222–706–013, installed, and all delivered spare magnetic brakes, P/N 222–706–013, manufactured by Memcor Truohm, Inc., under P/N MP 498–3. Transport Canada advises that the stop screws, P/N MS51959–3, of the magnetic brake, P/N 204–001–376–003 (Memcor Truohm P/N MP 498–3), were installed without the proper adhesive.

Bell has issued Bell Helicopter Textron Alert Service Bulletin (ASB) No. 222–01–87, for Model 222 and 222B helicopters, and ASB No. 222U–01–58, for Model 222U helicopters, both dated January 19, 2001. Both ASB's specify a one-time inspection of the magnetic brake adjustable stop screw, P/N M551959–3; repairing any arm assembly mechanical damage created by the screws; and installing the stop screw with the proper adhesive and adjusting the arm assembly shaft travel. Transport Canada classified these ASB's as mandatory and issued AD No. CF–2002–17, dated March 4, 2002, to ensure the continued airworthiness of these helicopters in Canada.

These helicopter models are manufactured in Canada and are type certificated for operation in the United States under the provisions of 14 CFR 21.29 and the applicable bilateral agreement. Pursuant to the applicable bilateral agreement, Transport Canada has kept the FAA informed of the situation described above. The FAA has examined the findings of Transport Canada, reviewed all available information, and determined that AD action is necessary for products of these type designs that are certificated for operation in the United States.

This unsafe condition is likely to exist or develop on other helicopters of these same type designs registered in the United States. Therefore, the proposed AD would require inspecting the adjustable stop screws of the magnetic brake assembly to ensure they are installed correctly; repairing the arm assembly, if necessary; installing the stop screw with the proper adhesive; adjusting the arm assembly travel; and applying slippage marks. The actions would be required to be accomplished in accordance with the ASB's described previously.

The FAA estimates that 92 helicopters of U.S. registry would be affected by this proposed AD, that it would take approximately 3 work hours per helicopter to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Required parts would cost approximately $3,785. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $364,780, assuming all parts are replaced.

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

Bell Helicopter Textron, a Division of Textron Canada: Docket No. 2002–SW–27–AD.

Applicability: Model 222, 222B, and 222U helicopters, with a magnetic brake, part number (P/N) 204–001–376–105 or 107, installed, that was manufactured by Memcor Truohm, Inc. as P/N MP498–105 or –107, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required within 100 hours time in service and before installation of any affected magnetic brake, unless accomplished previously.

To detect loose adjustable stop screws, that could result in limiting the travel of the cyclic and collective arm assembly, and subsequent loss of control of the helicopter:

(a) Inspect and, if necessary, repair, adjust, and apply slippage marks to the magnetic brake assembly in accordance with the Accomplishment Instructions, paragraphs 5. through 11. in Bell Helicopter Textron Alert Service Bulletin (ASB) No. 222–01–87, applicable to Model 222 and 222B helicopters, or ASB No. 222U–01–58, applicable to Model 222U helicopters, both dated January 19, 2001, except if damage to

the arm assembly exceeds 0.030 inch (0.762 mm), replace the magnetic brake assembly with an airworthy magnetic brake assembly. Contacting the manufacturer is not required.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Regulations Group, Rotorcraft Directorate, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Regulations Group.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Regulations Group.

(c) Special flight permits may be issued in accordance with 14 CFR 21.197 and 21.199 to operate the helicopter to a location where the requirements of this AD can be accomplished.

Note 3: The subject of this AD is addressed in Transport Canada (Canada) AD CF–2002–17, dated March 4, 2002.

Issued in Fort Worth, Texas, on January 29, 2003.

David A. Downey,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 03–3030 Filed 2–6–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 3500

[Docket No. FR–4727–N–01]

Real Estate Settlement Procedures Act (RESPA); Rule on Simplifying and Improving the Process of Obtaining Mortgages to Reduce Settlement Costs to Consumers: Target Publication Date of Final Rule

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice of target publication date of RESPA final rule.

SUMMARY: On July 29, 2002, HUD published its proposed rule on "RESPA; Simplifying and Improving the Process of Obtaining Mortgages to Reduce Settlement Costs to Consumers" (RESPA rule). This notice advises the public of HUD's anticipated publication date for the RESPA final rule.

FOR FURTHER INFORMATION CONTACT: Ivy Jackson, Acting Director, Office of RESPA and Interstate Land Sales, Room 9146, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone (202) 708–0502 (this is not a toll-free number) or for legal questions Kenneth A. Markison, Assistant General Counsel for GSE/RESPA, or Steven J. Sacks or Teresa L. Baker (Senior RESPA Attorneys); Room 9262, telephone (202) 708–3137. Persons with hearing or speech impairments may access this number via TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339. The address for the above listed persons is: Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410.

SUPPLEMENTARY INFORMATION: On December 9, 2002, over 60 Federal departments, agencies and commissions (collectively, Federal agencies) published, in the **Federal Register**, their respective agendas of regulations and regulatory plans. This compilation, referred to as the Unified Agenda, is published semiannually under the coordination of the Office of Management and Budget. The Unified Agenda provides for uniform reporting by Federal agencies of regulatory and deregulatory actions that are under development and expected to be issued within the next six to 12 months. In the fall, each Federal agency's semiannual agenda of regulations is accompanied by the agency's regulatory plan. The regulatory plan contains the Federal agency's most important significant regulatory actions that the agency expects to issue in the new fiscal year. Both documents provide the agencies' estimates of publication dates for their proposed and final rules. HUD's fall semiannual agenda of regulations and regulatory plan can be found in the December 9, 2002, **Federal Register** at 67 FR 74550 and 67 FR 74140, respectively.

HUD's regulatory plan advised that HUD's RESPA final rule would be published in January 2003. (*See* 67 FR 74147). This date is incorrect. HUD anticipates that its RESPA final rule will be published in the spring of 2003.

Dated: January 30, 2003.

John C. Weicher,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 03–2973 Filed 2–6–03; 8:45 am]

BILLING CODE 4210–27–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 192

[Docket No. RSPA–00–7666; Notice 5]

RIN 2137–AD54

Pipeline Safety: Pipeline Integrity Management in High Consequence Areas (Gas Transmission Pipelines)

AGENCY: Office of Pipeline Safety (OPS), Research and Special Programs Administration (RSPA), DOT

ACTION: Notice of workshop.

SUMMARY: This notice announces a two-day workshop on proposed regulations on "Pipeline Integrity Management in High Consequence Areas", jointly organized by the Interstate Natural Gas Association of America (INGAA) Foundation and the American Gas Association (AGA). This workshop is intended to give participants an understanding of the integrity management program requirements being proposed in the rule and the process to comment on the proposed rulemaking. An OPS representative will give an overview of the proposed regulation and answer questions about it.

DATES: The workshop is open to all. There is no registration fee. This workshop will be held on February 20, 2003, from 8 a.m. to 5 p.m., and on February 21, 2003, from 8 a.m. to 12 noon.

ADDRESSES: The workshop will be held at the Renaissance Houston Hotel, 6 Greenway Plaza, Houston, Texas, 713–629–1200.

FOR FURTHER INFORMATION CONTACT: Contact Mike Israni by phone at (202) 366–4571, by e-mail at *mike.israni@rspa.dot.gov*. General information about RSPA/OPS programs may be obtained by accessing OPS's Internet page at *http://ops.dot.gov*. For other details on this workshop contact Linda A. Thomas of INGAA at 202–216–5925.

SUPPLEMENTARY INFORMATION:

Background

RSPA/OPS has just proposed a rule to require operators of gas transmission pipelines to develop integrity management programs. The programs include conducting baseline and periodic assessments of pipeline segments. This follows rulemaking that requires integrity management programs for hazardous liquid pipelines.

Although the hazardous liquid and natural gas programs are structured somewhat differently to accommodate the differences between the two types of pipeline systems, both integrity management programs are designed to identify the best method(s) for maintaining the structural soundness (*i.e.*, integrity) of pipelines operating across the United States.

On January 9, 2002, RSPA/OPS began the integrity management rulemakings for gas transmission lines by proposing a definition of high consequence areas (See 67 FR 1108). We finalized the high consequence area definition on August 6, 2002 (67 FR 50824). On January 28, 2003 (68 FR 4278), we proposed a new 49 CFR 192.763 setting out integrity management program requirements for gas transmission pipelines affecting those areas. The comment period for this proposal closes on March 31, 2003.

The INGAA Foundation and AGA are conducting this workshop to give participants a better understanding of the proposed rule's requirements as they are intended to apply to gas transmission pipelines, and the process to comment on the proposed rulemaking. An OPS representative will give an overview of the proposed regulation and answer questions related to it.

The preliminary agenda for this AGA/INGAA sponsored workshop on Integrity Management for Natural Gas Pipelines is as follows:

February 20, 2003

Pipeline Safety Legislation—An overview of the recently passed legislation and its impact on the proposed integrity management program requirements.

Overview of Proposed Regulation—An OPS representative will discuss the intent and structure of the recently published proposed integrity management rule for gas transmission pipelines.

HCA Identification—An industry panel will discuss the high consequence area definition and the proposed refinement of that definition in the proposed integrity management rule.

Risk Assessment—An industry panel will discuss the risk assessment process detailed in the proposed rulemaking and compare it to present practices.

Plan Development—An industry panel will discuss the plan development as envisioned in the proposed rule and compare it to present practices.

IMP Implementation & Data Integration—Issues surrounding data integration and implementing the administrative process in a company will be discussed by an industry group.

February 21, 2003

Mitigation & Repair—An industry panel will discuss the proposed requirements for mitigation and remediation.

Performance Metrics—An industry panel will discuss performance measures for an integrity management program.

Open Forum and O&A—The audience will be able to query all the panelists and state their opinions during this session. Because this involves an open rulemaking, RSPA/OPS will include detailed notes of this workshop in the docket for the proposed rule. However, participants wishing to comment on the proposed rule should comment directly in the docket rather than rely on the notes of the workshop.

Issued in Washington, DC, on February 3, 2003.

James K. O'Steen,

Deputy Associate Administrator for Pipeline Safety.

[FR Doc. 03–3079 Filed 2–6–03; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 030130026–3026–01; I.D. 121202B]

RIN 0648–AM30

Fisheries of the Exclusive Economic Zone off Alaska; Halibut Fisheries in U.S. Convention Waters Off Alaska; Management Measures to Reduce Seabird Incidental Take in the Hook-and-Line Halibut and Groundfish Fisheries

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes revisions to current regulations requiring seabird avoidance measures in the hook-and-line groundfish fisheries of the Bering Sea and Aleutian Islands management area (BSAI) and Gulf of Alaska (GOA) and in the Pacific halibut fishery in U.S. Convention waters off Alaska. The proposed revisions to the current seabird measures are intended to enhance the current requirements and further mitigate interactions with the short-tailed albatross (*Phoebastria albatrus*), an endangered species protected under the Endangered Species Act (ESA), and with other seabird species in hook-and-line fisheries in and off Alaska. This action is necessary to effect such regulatory revisions and is intended to further the goals and objectives of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), the Northern Pacific Halibut Act of 1982 (Halibut Act), the Migratory Bird Treaty Act, and the ESA.

DATES: Comments must be received by March 10, 2003.

ADDRESSES: Comments may be mailed to Sue Salveson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668, Attn: Lori Gravel-Durall. Hand delivery or courier delivery of comments may be sent to the Federal Building, 709 West 9th St., Room 453, Juneau, AK, 99801. Comments will not be accepted if submitted via e-mail or the Internet.

Copies of the Environmental Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analysis (EA/RIR/IRFA) prepared for this action are available from NMFS at the above address, or by calling the Alaska Region, NMFS, at (907) 586–7228.

FOR FURTHER INFORMATION CONTACT: Kim S. Rivera, (907) 586–7424, or *Kim.Rivera@noaa.gov*.

SUPPLEMENTARY INFORMATION: The U.S. groundfish fisheries of the GOA and the BSAI in the exclusive economic zone (EEZ) are managed by NMFS under the Fishery Management Plan for Groundfish of the Gulf of Alaska and the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMPs). The FMPs were prepared by the North Pacific Fishery Management Council (Council) under the Magnuson-Stevens Act (16 U.S.C. 1801 *et seq.*) and are implemented by regulations at 50 CFR part 679. General regulations that also pertain to U.S. fisheries appear at subpart H of 50 CFR part 600. The Halibut Act, 16 U.S.C. 773 *et seq.*, authorizes the Council to develop, and NMFS to implement, halibut fishery regulations that are in addition to, and not in conflict with, regulations adopted by the International Pacific Halibut Commission (IPHC).

This proposed action is designed to reduce the incidental take of seabirds in hook-and-line fisheries. The Magnuson-Stevens Act emphasizes the importance of reducing bycatch to maintain sustainable fisheries. Although seabirds are not included within the Magnuson-Stevens Act's 'bycatch' definition,

efforts to reduce the incidental take of seabirds in fisheries are consistent with the Magnuson-Stevens Act's objective to conserve and manage the marine environment. In addition, the NMFS guidelines for implementing the Magnuson-Stevens Act's national standards for fishery conservation and management note that other applicable laws, such as the Marine Mammal Protection Act, the ESA, and the Migratory Bird Treaty Act (MBTA), require that Councils consider the impact of conservation and management measures on living marine resources other than fish; i.e. marine mammals and birds.

National and International Bycatch Reduction Initiatives

Several national and international initiatives highlight the need to address fisheries bycatch issues, including the incidental take of seabirds. The United Nation's Food and Agriculture Organization (FAO) Code of Conduct for Responsible Fisheries, adopted in 1995, contains a call for states to "take appropriate measures to minimize waste, discards, catch by lost or abandoned gear, catch of non-target species, both fish and non-fish species,...and promote, to the extent practicable, the development and use of selective, environmentally safe and cost effective gear and techniques." (Article 7.6.9.) NMFS's strategic document, *Managing the Nation's Bycatch: Programs, Activities, and Recommendations for the National Marine Fisheries Service (NMFS Bycatch Plan)*, sets forth national objectives, goals, and recommendations, all intended to address current programs and future efforts to reduce bycatch and bycatch mortality of marine resources, including seabirds. Consistent with the Code of Conduct for Responsible Fisheries, the FAO held a technical consultation to address the incidental take of seabirds in longline fisheries. The resulting *International Plan of Action for Reducing the Incidental Catch of Seabirds in Longline Fishing* (IPOA-S), is a voluntary plan endorsed by the FAO's Committee on Fisheries (COFI) in February 1999 and ultimately adopted by the FAO Conference in November 1999. The United States developed and is implementing a *National Plan of Action for Reducing the Incidental Catch of Seabirds in Longline Fishing* (NPOA-S) to fulfill our national responsibility described in the IPOA-S. Implementation is being carried out at the regional level through team efforts by a NMFS National Seabird Coordinator and designated staff in each NMFS region and fishery science center. Efforts are also coordinated with designated staff in each of the regional fishery management councils, regional offices of the U.S. Fish & Wildlife Service (USFWS), and the Department of State. Additionally, NMFS has formed an International Bycatch Reduction Task Force that will work with foreign governments and regional fisheries management organizations to reduce the bycatch of sea turtles and seabirds in longline fisheries and promote the conservation and management of sharks. NMFS believes that its complementary implementation of the Code of Conduct for Responsible Fisheries, the NMFS Bycatch Plan, the IPOA-S, and the NPOA-S should result in the reduction of seabird incidental take in the Alaska hook-and-line fisheries. This plan will require the joint and cooperative efforts of NMFS, the Councils, the USFWS, the affected commercial longline fishing industry, environmental non-governmental organizations, and other interested groups.

Incidental Seabird Mortality off Alaska

Awareness of the issue of seabird incidental take and incidental mortality in commercial fishing operations off Alaska has been heightened in recent years. Further information on this issue was provided in the preambles to the proposed and final rules implementing seabird avoidance measures in the GOA and BSAI hook-and-line groundfish fisheries (62 FR 10016 March 5, 1997, and 62 FR 23176 April 29, 1997) and in the Pacific halibut fishery off Alaska (62 FR 65635 December 15, 1997, and 63 FR 11161 March 6, 1998) and the EA/RIR/FRFAs prepared for those actions.

Council Action

At the December 1998 Council meeting, industry representatives requested that the Council revise and strengthen the seabird avoidance measures that are currently required by Federal regulation. Current regulations require that operators of vessels greater than or equal to 26 ft (7.9 m) LOA and using hook-and-line gear in the groundfish and halibut fisheries must employ one or more of the following seabird avoidance measures: (i) Tow a streamer line or lines during deployment of gear to prevent birds from taking hooks; (ii) tow a buoy, board, stick or other device during deployment of gear, at a distance appropriate to prevent birds from taking hooks (multiple devices may be employed); (iii) deploy hooks underwater through a lining tube at a depth sufficient to prevent birds from settling on hooks during deployment of gear; or (iv) deploy gear only during the hours specified below, using only the minimum vessel's lights necessary for safety.

All operators of these vessels must also conduct fishing operations in the following manner: (i) use hooks that when baited, sink as soon as they are put in the water; (ii) if offal is discharged while gear is being set or hauled, it must be discharged in a manner that distracts seabirds from baited hooks, to the extent practicable. The discharge site on board a vessel must be either aft of the hauling station or on the opposite side of the vessel from the hauling station; and (iii) make every reasonable effort to ensure that birds brought on board alive are released alive and that wherever possible, hooks are removed without jeopardizing the life of the birds. This request was made because two short-tailed albatrosses were taken in September 1998 and because the industry group perceives that some individual fishermen may not always be using seabird avoidance measures as carefully as is necessary to effectively reduce seabird incidental take.

These takes of endangered short-tailed albatross in the BSAI groundfish fishery highlight a seabird incidental take problem. Seabird avoidance measures must be used consistently and conscientiously if they are to be effective at reducing seabird incidental take. Under the ESA section 7 consultation on the 1999 GOA and BSAI groundfish fisheries, the USFWS anticipated that four short-tailed albatrosses could be taken in 1999 and 2000. USFWS extended its 1999 Biological Opinion until superseded by a subsequent biological opinion. No short-tailed albatrosses have been reported taken since 1998. Based on the ESA section 7 consultation in 1998 on the effects of the Pacific halibut fishery, the USFWS anticipates that two short-tailed albatrosses could be taken every 2 years. If the 2–year incidental take limit is exceeded in either the groundfish or the halibut fisheries, NMFS must immediately reinitiate section 7 consultation and review with USFWS the need for possible modification of the reasonable and prudent measures established to minimize take of short-tailed albatrosses.

The NMFS North Pacific Groundfish Observer Program office has documented incidental take of seabird species in the GOA and BSAI groundfish fisheries since 1989. Estimates of the annual seabird incidental take for the Alaska groundfish fisheries, based on 1993 to

1999 data, indicate that approximately 15,700 seabirds are killed (taken) annually in the combined BSAI and GOA groundfish hook-and-line fisheries (14,500 in the BSAI and 1,200 in the GOA) at the average rates of 0.10 and 0.03 birds per 1,000 hooks in the BSAI and in the GOA, respectively. Approximately 60 percent of the 15,700 seabirds taken are northern fulmars (Fulmaris glacialis), the most abundant seabird species off Alaska. Preliminary analyses of 2000 and 2001 observer data indicate that whereas the seabird take estimates for the year 2000 in the combined BSAI and GOA groundfish hook-and-line fisheries were greater than the 1999 estimates, the number of seabirds estimated taken in 2001 in these fisheries was reduced by about one-third (to approximately 10,500, of which about 55 percent were northern fulmars). The rate of birds taken (number of birds per 1,000 hooks) in the BSAI in 2001 was about one-half that of the 2000 rate. The incidental catch rate may have decreased because fishermen are becoming more diligent and skilled using seabird avoidance measures, outreach efforts may have been successful, the 1999–2000 University of Washington's Washington Sea Grant Program (WSGP) research program's collaborative industry approach may have acted to change fishermen behavior and improve the effective deployment of seabird avoidance measures, or some other, unknown, factor(s). The annual seabird incidental catch estimates based on observer data from 1993 through 2001 exhibit a great deal of inter-annual variation, as did the take numbers and bird attack rates on baits in the WSGP study. Various non-anthropogenic factors could be involved, such as, bird abundance and distribution and/or climatic and oceanographic conditions.

After initial action to propose revised seabird avoidance measures at its February 1999 meeting, the Council took final action at its April 1999 meeting and recommended regulatory revisions to improve and strengthen the effectiveness of the required seabird avoidance measures and reduce the incidental take of short-tailed albatrosses and other seabird species.

In October 2000, NMFS informed the Council of its decision to await research results from a 2–year study (1999 and 2000) by the WSGP on the effectiveness of seabird avoidance measures used in hook-and-line fisheries off Alaska before proceeding with rulemaking to revise the existing regulations. Such an investigation was required in a Biological Opinion issued by the USFWS. If warranted by the research results, NMFS would modify the existing seabird avoidance regulations to improve the effectiveness of avoidance measures or devices.

In October 2001, WSGP presented research results, recommendations, and its final report Solutions to Seabird Bycatch in Alaska's Demersal Longline Fisheries (available at *http://www.wsg.washington.edu/pubs/seabirds/seabirdpaper.html*) to the Council and NMFS. The Council took initial action at this meeting and final action at its December 2001 meeting.

Council's Final Action Based in Part on WSGP Research Results and Recommendations

For complete details of the research, results, and recommendations, see the WSGP final report. In summary, the WSGP research program compared seabird incidental take mitigation strategies over 2 years (1999 and 2000) in two major Alaska demersal longline fisheries: the Individual Fishing Quota (IFQ) fishery in the GOA and Aleutian Islands for sablefish and halibut and the Bering Sea catcher-processor longline fishery for Pacific cod. The program identified possible deterrents and tested them on active fishing vessels under typical fishing conditions. The avoidance measures tested were paired streamer lines, single streamer lines, weighted groundline, line shooter, lining tube, and a combination of paired streamer lines and weighted groundline. Rigorous experimental tests of seabird avoidance measures on the local abundance, attack rate, and hooking rate of seabirds in both fisheries were conducted on vessels over 60 ft (18.3 m) LOA. On vessels this size (larger vessels), paired streamer lines of specified performance and material standards were found to successfully reduce seabird incidental take in all years, regions, and fleets (88 percent to 100 percent relative to controls with no deterrent). Single streamer lines of specified performance and material standards were slightly less effective than paired streamer lines, reducing seabird incidental take by 96 percent and 71 percent in the sablefish and cod fisheries, respectively. This study represents the largest of its kind in the world with over 1.2 million hooks being set in the sablefish fishery and over 6.3 million hooks being set in the cod fishery component of the 2–year research program.

Seabird Avoidance Measures for Smaller Vessels

The Council's Science and Statistical Committee (SSC) generally agreed with the WSGP research study and found that the study was excellent in its conception, execution and analysis, regarding the reduction of seabird incidental take by large vessels participating in the Pacific cod and the sablefish and halibut IFQ longline fisheries. The SSC noted, however, that the WSGP recommendations, while appropriate and useful for reduction of seabird incidental take by the large vessels in the longline fishery, may not be appropriate for application on smaller vessels, particularly small vessels fishing in the inside waters of southeast Alaska. The SSC suggested that short-tailed albatrosses do not frequent the inside waters of southeast Alaska, and therefore less stringent regulations to avoid seabird incidental take may be appropriate. The SSC identified a need for additional study of the necessity of, and methods for, incidental take reduction on small vessels. The SSC also queried whether small vessels may not be able to deploy streamer lines as specified for the larger vessels of the longline fleet. The SSC suggested that fishermen of the small-vessel segment of the industry cooperate in developing new information, equivalent to that now available from the larger vessels on the frequency of incidental take and the most appropriate methods for incidental take reduction.

Given the similarities in the small boat longline fleet of southeast Alaska, Prince William Sound, and nearshore waters of Cook Inlet, as well as the rarity of albatrosses and other pelagic bird species in these inside waters, the Council recommended less stringent measures for vessels using hook-and-line gear in these inside waters. The proposed seabird avoidance requirements would be based on area fished, vessel length, vessel type, and gear type. This proposal would address the varying characteristics found in the fishing operations of the very diverse demersal hook-and-line fleet for groundfish and Pacific halibut off Alaska. For vessels greater than 26 ft (7.9 m) LOA, and less than or equal to 55 ft (16.8 m) LOA, the applicable performance standard would be voluntarily implemented as guidelines. If new information becomes available suggesting revised standards for smaller vessels, then these revised standards could be proposed as regulatory requirements. The Council recommends that NMFS, WSGP, USFWS, and industry engage in a cooperative study during the first year of the program to determine if modification to the performance standard for this class of vessels is warranted and investigate if vessels less than or equal to 55 ft (16.8

m) LOA should be exempted from the seabird avoidance measures when fishing at night from November 1 to April 1.

Summary of Council Recommendations

The Council's recommendations to NMFS for revised seabird avoidance measures are: (1) Seabird avoidance gear requirements would be based on area fished, vessel length, vessel type, and gear type, (2) Specified performance and material standards for the required avoidance measures would be required of larger vessels and suggested as guidelines for smaller vessels, (3) Specified gear would be required to be onboard the vessel, available for inspection upon the request of an authorized officer or observer, and used while hook-and-line gear is being deployed, (4) Measures would apply in specified areas to operators of specified vessels using hook-and-line gear to fish for groundfish or halibut, (5) Offal discharge methods designed to reduce interactions leading to seabird mortalities would be specified, and (6) A Seabird Avoidance Plan, a new reporting requirement, would be required to be onboard the vessel. The Seabird Avoidance Plan is described in more detail later in this preamble.In addition to the Council's recommendation for proposed regulatory revisions, the Council also made recommendations for suggested actions for a comprehensive seabird incidental take reduction program that addresses education, outreach, regulatory compliance, and enforcement. Such a program would improve the effectiveness of seabird avoidance measures at reducing the incidental take of endangered short-tailed albatrosses and other seabird species.

Weather Safety Factor

Council discussion and deliberation of alternative revisions to the seabird avoidance measures indicated support of WSGP recommendations for the larger vessels (greater than 55 ft (16.8m) LOA) and necessary modifications of these measures for smaller vessels (between 26 (7.9 m) and 55 ft (16.8m) LOA). The WSGP final report notes that weather conditions exist in which the vessel captain would not want crew on the buoy deck deploying or adjusting streamer lines, although fishing would still be possible. Included in the WSGP recommendation was a weather safety factor that in winds exceeding 45 knots (storm, or Beaufort 9, conditions), the deployment of streamer lines be discretionary. NMFS clarifies in this proposed rule that this weather safety factor applies to the deployment of buoy bag lines, single streamer lines, and paired streamer lines. Adverse weather conditions could impact the deployment of gear on vessels regardless of the vessel's size, so, the weather safety factor would be important when considering the deployment of buoy bag lines and single streamer lines (on smaller vessels) just as it would be with the deployment of paired streamer lines (on larger vessels).

Seabird Data Collection by Observers

In addition to the regulatory requirements for seabird avoidance measures, an integral part of the comprehensive seabird avoidance program is collection of data on seabirds by onboard observers. The data currently collected by observers are detailed in the EA/RIR/IRFA prepared for this proposed rule and include a count of the number of seabirds by species that are encountered in the sampled portion of each observed haul. To clarify its intent that these encountered seabird specimens are to be made available by the vessel crew to the observer, NMFS includes an explicit requirement in this proposed rule that all seabirds from the observer-sampled portions of hauls using hook-and-line gear be kept until sampled by the observer or as requested by an observer during non-sampled portions of hauls.

Exemption for Vessels 32 ft (9.8m) LOA or Less in state waters of IPHC Area 4E

In 2001, halibut accounted for the vast majority of fish harvested by these small vessels. It is not known if any of the sablefish harvested by vessels in the 30 to 35 ft (9.1 to 10.7 m) LOA category was harvested by vessels less than 32 ft (9.8m) LOA. Because of the difficulty of using surveillance aircraft to identify the species of fish harvested (e.g. halibut or groundfish), NMFS proposes in this rule to exempt any vessel less than 32 ft (9.8m) LOA fishing in state waters of IPHC Area 4E from using seabird avoidance measures, not just those vessels fishing halibut. NMFS has determined that if additional vessels are exempted by this language, it would not have a significant impact on the take of short-tailed albatrosses or other seabird species.

Vessels Required to Use Seabird Avoidance Measures

The factors potentially affecting seabird hooking and entanglement on hook-and-line gear are complex and may include geographic location of fishing activity; time of day; season; type of fishing operation and gear used; bait type; condition of the bait; length of time baited hooks remain at or near the surface of the water; water and weather conditions; availability of food (including bait and offal); bird size; bird behavior (feeding and foraging strategies); bird abundance and distribution; and physical condition of the bird. When establishing effective requirements that reduce the potential for seabird interactions with gear and the associated mortality of seabirds, it is desirable to consider or account for any of these factors, to the extent possible and practicable. Based on information from the WSGP study, the Council's SSC, several USFWS marine bird surveys, and anecdotal information from the commercial longline fleet off Alaska, the proposed seabird avoidance measures required of vessel operators would vary according to area fished, vessel length, vessel type, and gear type.

The current seabird avoidance regulations apply to operators of federally permitted vessels fishing for groundfish with hook-and-line gear in the GOA and the BSAI, and federally permitted vessels fishing for groundfish with hook-and-line gear in waters of the State of Alaska that are shoreward of the GOA and the BSAI, and to operators of vessels fishing for Pacific halibut in U.S. Convention waters off Alaska. Since the inception of requirements for seabird avoidance measures off Alaska, NMFS has required all hook-and-line vessel operators at risk of incidentally taking short-tailed albatrosses and/or other seabird species to use these measures, regardless of geographic area fished (i.e. EEZ, state waters, inside waters) or target fishery (i.e. groundfish, halibut, IFQ, CDQ). As new information on the necessity of, and methods for, incidental take reduction on small vessels becomes available, the applicability of the requirements could be revised as appropriate.

At its March 2002 meeting, the Alaska Board of Fisheries (Board) approved a proposal that will change state groundfish regulations to parallel these new Federal regulations governing seabird avoidance measure requirements for operators in hook-and-line fisheries.

Operators of vessels less than 26 ft (7.9m) LOA currently are not required to choose from the seabird avoidance options found at § 679.24(e)(3), i.e., towing a streamer line or buoy, underwater setting, and night setting. Operators of smaller vessels typically set many fewer hooks, set gear at slower speeds, fish closer to shore, and land many fewer fish (therefore, have less and more sporadic offal discharge). These characteristics contribute to attracting fewer birds to their vessels.

Some evidence suggests that large vessels may attract more seabirds than do smaller vessels and experience a higher seabird incidental take rate (see Vessel Size Considerations in section 4.1.2 of the EA/RIR/IRFA for this action). This proposed rule would exempt operators of vessels 32 ft (9.8 m) LOA or less fishing for halibut, including those fishing for halibut and groundfish, in IPHC Area 4E within 0 to 3 nm from the required use of seabird avoidance measures. Of the 1,733 vessels that landed halibut and/or sablefish in the IFQ and CDQ programs, only 219 vessels landed halibut in IPHC Area 4E. Ninety-eight percent of those were vessels less than 32 ft (9.8 m) LOA. Those small vessels fishing in Area 4E landed 150,000 lb (68,039 kg) of halibut, all of the halibut harvested in Area 4E and less than one-third of 1 percent of the total annual harvest in 2001. These landings represent such a very small portion of the total harvest, that any associated incidental take of seabirds is insignificant to non-existent. Testimony from local fishermen from these Western Alaska communities in the CDQ Program indicate they are fishing in areas very close to shore and never take seabirds. Sighting of short-tailed albatrosses have not been reported in nearshore areas of Area 4E. A few sightings have occurred in the perimeter of the area, beyond the nearshore areas fished by these very small vessels. Survey or sightings information on other seabird species in the area is not currently available.

Proposed Seabird Avoidance Requirements

NMFS proposes seabird avoidance measures that would apply to the operators of vessels using hook-and-line gear for (1) Pacific halibut in the IFQ and Community Development Quota (CDQ) management programs (0 to 200 nm), (2) IFQ sablefish in EEZ waters (3 to 200 nm) and waters of the State of Alaska (0 to 3 nm), except waters of Prince William Sound and areas in which sablefish fishing is managed under a State of Alaska limited entry program (Clarence Strait, Chatham Strait), and (3) Groundfish (except IFQ sablefish) with hook-and-line gear in the U.S. EEZ waters off Alaska (3–200 nm).

Operators of all applicable vessels using hook-and-line gear would be required to comply with the following bird line requirements:

For Applicable Vessels Operating in Inside Waters (NMFS Area 649, NMFS Area 659, and State Waters of Cook Inlet): (1) A minimum of 1 buoy bag line of a specified performance standard would be required of vessels greater than 26 ft (7.9 m) LOA and less than or equal to 55 ft (16.8 m) LOA that are without masts, poles, or rigging, (2) A minimum of 1 buoy bag line of a specified performance standard is required of vessels greater than 26 ft (7.9 m) LOA and less than or equal to 32 ft (9.8 m) LOA and with masts, poles, or rigging, (3) A minimum of 1 streamer line of a specified performance standard is required of vessels greater than 32 ft (9.8 m) LOA and less than or equal to 55 ft (16.8 m) LOA and with masts, poles, or rigging, and (4) A minimum of 1 streamer line of a specified performance standard is required of vessels greater than 55 ft (16.8 m) LOA.

For Applicable Vessels Operating in the EEZ (not including NMFS Area 659): (1) A minimum of 1 buoy bag line of a specified performance standard and one other specified device is required of vessels greater than 26 ft (7.9 m) LOA and less than or equal to 55 ft (16.8 m) LOA that are without masts, poles, or rigging, (2) A minimum of 1 streamer line of a specified performance standard and one other specified device is required of vessels greater than 26 ft (7.9 m) LOA and less than or equal to 55 ft (16.8 m) LOA and with masts, poles, or rigging, and (3) Except for vessels using snap gear, a minimum of paired streamer lines of a specified performance standard is required of vessels greater than 55 ft (16.8 m) LOA.

For Applicable Vessels Using Snap Gear: (1) A minimum of 1 buoy bag line of a specified performance standard and one other specified device is required of vessels greater than 26 ft (7.9 m) LOA and less than or equal to 55 ft (16.8 m) LOA and that are without masts, poles, or rigging, (2) A minimum of 1 streamer line of a specified performance standard and one other specified device is required of vessels greater than 26 ft (7.9 m) LOA and less than or equal to 55 ft (16.8 m) LOA and with masts, poles, or rigging, and (3) A minimum of 1 streamer line of a specified performance standard is required of vessels greater than or equal to 55 ft (16.8 m) LOA and with masts, poles, or rigging.

Other seabird avoidance devices and methods include weights added to groundline, a buoy bag line or streamer line of specified performance standards, and strategic offal discharge to distract birds away from the setting of baited hooks, that is, discharge fish, fish parts (i.e. offal) or spent bait to distract seabirds away from the main groundline while setting gear.

Gear Performance and Material Standards

Current information indicates that bird deterrent devices must be carefully constructed with the deterrent purpose in mind if they are to be effective. Given the variability of vessel sizes and configurations in the hook-and-line fisheries off Alaska, a single set of specific construction standards for bird lines would not be universally effective or practical. To enhance the effectiveness and improve the enforcement of seabird avoidance measures, the proposed rule would specify the gear performance and material standards for larger vessels (vessels greater than or equal to 55 ft (16.8 m) LOA). Voluntary guidelines for gear performance and material standards for smaller vessels (vessels greater than or equal to 26 ft (7.9m) and less than 55 ft (16.8 m) LOA) are provided and vessel operators are encouraged to comply with them.

Proposed Standards for Larger (Vessels Greater than 55 ft (16.8 m) LOA) Vessels Paired Streamer Standard

NMFS proposes that larger vessels deploy a minimum of two streamer lines while setting hook-and-line gear. Preferably, both streamer lines will be deployed prior to the first hook being set. At least one streamer line must be deployed before the first hook is set and both streamers must be fully deployed within 90 seconds. An exception to this standard would exist in conditions of wind speeds exceeding 30 knots (near gale or Beaufort 7 conditions), where it would be acceptable to fly a single streamer from the windward side of the vessel. In winds exceeding 45 knots (storm or Beaufort 9 conditions), the deployment of streamer lines would be discretionary. Further, streamer lines would have to be deployed in such a way that streamers are in the air for a minimum of 131.2 ft (40 m) aft of the stern for vessels under 100 ft (30.5 m) and 196.9 ft (60 m) aft of the stern for vessels 100 ft (30.5 m) or over. For vessels deploying gear from the stern, the streamer lines would have to be deployed from the stern, one on each side of the main groundline. For vessels deploying gear from the side, the streamer lines would have to be deployed from the stern, one over the main groundline and the other on one side of the main groundline.

Materials Standard:

NMFS proposes the following minimum streamer line specifications: (1) Length of 300 feet (91.4 m), (2) Spacing of streamers every 16.4 ft (5 m), and (3) Streamer material that is brightly colored, UV-protected plastic tubing or 3/8 inch polyester line or material of an equivalent density. An individual streamer must hang attached to the

mainline to 0.25 m above the waterline in the absence of wind.

Snap Gear Streamer Standard

For vessels using snap gear, a single streamer line (147.6 ft (45 m) length) deployed in such a way that streamers are in the air for 65.6 ft (20 m) aft of the stern and within 6.6 ft (2 m) horizontally of the point where the main groundline enters the water.

Guidelines for Standards for Smaller Vessels

For vessels greater than 26 ft (7.9 m) and less than or equal to 55 ft (16.8 m) LOA, a performance standard would be voluntarily implemented as guidelines. If new information becomes available suggesting revised standards for smaller vessels, then these revised standards could be proposed as regulatory requirements.

Performance Guidelines for Bird Line Requirements are as follows:

Buoy Bag Line Standard

A buoy bag line (32.8 to 131.2 ft (10 to 40 m) length) is deployed so that it is within 6.6 ft (2 m) horizontally of the point where the main groundline enters the water. The buoy bag line must extend beyond the point where the main groundline enters the water.

Single Streamer Standard

A single streamer line must be deployed in such a way that streamers are in the air for a minimum of 131.2 ft (40 m) aft of the stern and within 6.6 ft (2 m) horizontally of the point where the main groundline enters the water.

Materials Standard:

NMFS proposes the following minimum streamer line specifications: (1) Length of 300 feet (91.4 m), (2) Spacing of streamers every 16.4 ft (5 m), and (3) Streamer material that is brightly colored, UV-protected plastic tubing or 3/8 inch polyester line or material of an equivalent density. An individual streamer must hang attached to the mainline to 0.25 m above the waterline in the absence of wind.

Snap Gear Streamer Guideline

For vessels using snap gear, a single streamer line (147.6 ft (45 m) length) deployed in such a way that streamers are in the air for 65.6 ft (20 m) aft of the stern and within 6.6 ft (2 m) horizontally of the point where the main groundline enters the water.

The Council recommended that NMFS, WSGP, USFWS, and industry engage in a cooperative study during the first year of the program to determine if modification to the performance standard for small vessels is warranted. In the summer of 2002, USFWS funded the WSGP to conduct such a study, in cooperation with NMFS. WSGP researchers worked with owner/operators of small vessels (26 ft (7.9 m) to 55 ft (16.8 m) LOA) in several Alaska ports to test the sink rate of bird avoidance lines under the following scenarios: (1) Towing a single streamer line from small vessels with masts, poles, or rigging, while using conventional hook-and-line gear; (2) Towing a single buoy bag line from small vessels without masts, poles, or rigging, while using conventional hook-and-line gear (e.g. vessels such as bow setters and stern setters); and (3) Towing a single streamer line from small vessels using snap gear. The results of this study will be used to evaluate the effectiveness of the guidelines that have been suggested by the Council. If warranted by the research, improvements could be made to the guidelines which could then be promulgated into regulations.

Proposed Offal Requirements

The offal discharge regulation would be amended to require that prior to offal discharge, embedded hooks would be removed from offal. Otherwise, scavenging birds could become hooked while feeding on discharged fish offal. Hooked birds could eventually suffer increased mortality. Removing embedded hooks prior to fish offal being discharged is one of the mitigation measures identified in the FAO's IPOA-S.

WSGP researchers observed on some cod vessels the continual discharge of residual bait and in some cases the discharge of offal through dedicated chutes or pipes at the stern during the set, directly over baited hooks. This attracted birds into the area where baits were sinking, aggravating seabird interactions with the gear (WSGP final report). Eliminating such directed discharge of residual bait or offal over sinking longlines would reduce the attractiveness of this area to birds and thus reduce the likelihood of birds attacking the bait and becoming hooked and drowning.

Seabird Reporting Requirements

Regulations at § 679.5(a)(7)(ix)(C)(*3*) currently require operators of catcher vessels or catcher/processor vessels using longline gear to report the bird avoidance gear deployed using bird avoidance gear codes at Table 19 of part 679. Because this proposed rule would revise the required seabird avoidance measures, the seabird avoidance codes at Table 19 of part 679 would be revised to reflect these changes.

Proposed Seabird Avoidance Plan

NMFS proposes a Seabird Avoidance Plan that would be written and onboard the vessel and would contain the following information: (1) Vessel name, (2) Master's name, (3) Type of bird avoidance measures utilized, (4) Positions and responsibilities of crew for deploying, adjusting, and monitoring performance of deployed gear, (5) Instructions/Diagrams outlining the sequence of actions required to deploy and retrieve the gear to meet specified performance standards, and (5) Procedures for strategic discharge of offal, if any. The Seabird Avoidance Plan would be prepared and signed by vessel operator. The vessel operator's signature would indicate the operator had read the plan, reviewed it with the vessel crew, made it available to the crew, and instructed vessel crew to read it. The Seabird Avoidance plan must be made available for inspection upon request by an authorized officer (USCG boarding officer, NMFS Enforcement Officer or other designated official) or an observer.

The objective of the Seabird Avoidance Plan is to ensure that vessel operators are aware of the issue of seabird incidental take and have developed an effective plan for using the required measures on their vessels to avoid and reduce any seabird incidental take.

All seabirds from the observer-sampled portions of hauls using hook-and-line gear would be kept until sampled by the observer or as requested by an observer during non-sampled portions of hauls. The purpose of this proposed requirement is to assure that incidentally taken birds are accurately accounted for in observer reports.

Use of Multiple Seabird Avoidance Measures

Many sources acknowledge that using seabird avoidance measures in combination may be more effective in reducing incidental take. NMFS regulations for Alaska have reflected this multi-use concept. One example would be measures to sink baited gear quickly (line weighting), used in conjunction with surface deterrents (e.g. streamer lines, buoy bag lines) that are designed to prevent seabirds from accessing areas where baited hooks may be temporarily available. Current regulations allow for night-setting and use of a lining tube (device that deploys hook-and-line gear below the water's surface) as sole seabird avoidance measures. Tests conducted in the WSGP research study indicate that the incidental catch of fulmars and the

attack rate of Laysan albatrosses actually increased during night-time sets. Similarly, the use of a line shooter (hydraulic device designed to set lines at a speed slightly faster than the vessel's speed during setting) in the 1999 Pacific cod fishery was the only deterrent that significantly increased the rate of seabird incidental catch. Because lining tube performance was variable and limited by a number of factors, and because the device is costly and inappropriate for some vessels, the lining tube was not recommended to be used as a sole seabird avoidance measure. Therefore, under this proposed rule these three measures or methods (night-setting, line shooter, lining tube) would not be allowed for use as sole seabird avoidance measures and if used, must be accompanied by an additional required seabird avoidance measure.

Applicability of Seabird Avoidance Regulations While Fishing for CDQ Halibut

Paragraphs § 679.32(f)(2)(v) and § 679.42(b)(2) would require use of seabird avoidance measures on all vessels of a specified length that are fishing in U.S. Convention waters off Alaska for Pacific halibut, whether the vessels are engaged in IFQ fisheries or CDQ fisheries. At the time the seabird avoidance measures were required in the Pacific halibut fishery (63 FR 11161, March 6, 1998), the fixed gear halibut CDQ allocations were managed as part of the IFQ program and implementing regulations were codified at Part 679 Subpart D (§ 679.40). In 1999, regulations governing halibut CDQ fishing were revised to clarify which elements of the halibut IFQ regulations applied to the halibut CDQ fishery (64 FR 20210 April 26, 1999). These regulations are found at § 679.30 and inadvertently did not include reference to the seabird avoidance gear and methods requirements.

Paragraph § 679.32(f)(2)(v) would be amended by adding the phrase "and seabird avoidance requirements at § 679.42(b)(2)" so that it reads as follows: "The CDQ group, vessel owner or operator, and registered buyer must comply with all of the IFQ prohibitions at § 679.7(f) and seabird avoidance requirements at § 679.42(b)(2)".

Paragraph § 679.42(b)(2) would be amended by adding the phrase "CDQ halibut" so that it reads as follows: "Seabird avoidance gear and methods. The operator of a vessel using gear authorized at § 679.2 while fishing for IFQ halibut, CDQ halibut, or hook-and-line gear while fishing for IFQ sablefish must comply with requirements for seabird avoidance gear and methods set forth at § 679.24(e)."

Proposed Definitions at § 679.2

Definitions are proposed at § 679.2 for two previously undefined terms: "snap gear" (as a type of "authorized fishing gear") and "seabird." These proposed definitions pertain specifically to seabirds incidentally taken during fishing operations using hook-and-line gear and are necessary for the clarity of the proposed regulations for seabird avoidance measures.

Proposed Respecification of Paragraphs at § 679.24(e)

Seabird avoidance requirements currently in § 679.24 (e)(2)(i), (ii), and (iii) would be redesignated as paragraphs (e)(2)(iv), (e)(2)(v)(A), and (e)(2)(vi). These requirements will be retained and call for operators of specified vessels to conduct fishing operations in the following manner: (i) use hooks that when baited, sink as soon as they are put in the water; and (ii) if offal is discharged while gear is being set or hauled, it must be discharged in a manner that distracts seabirds from baited hooks, to the extent practicable. The discharge site on board a vessel must be either aft of the hauling station or on the opposite side of the vessel from the hauling station; and (iii) make every reasonable effort to ensure that birds brought on board alive are released alive and that wherever possible, hooks are removed without jeopardizing the life of the birds.

Classification

At this time, NMFS has not determined that the regulatory amendment this rule would implement is consistent with the national standards of the Magnuson-Stevens Act and other applicable laws. NMFS, in making that determination, will take into account the data, views, and comments received during the comment period.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

NMFS prepared an IRFA that describes the impact this proposed rule, if adopted, would have on small entities. Most catcher vessels and some catcher/processors harvesting groundfish and halibut off Alaska meet the definition of a small entity under the Regulatory Flexibility Act (RFA). In 2000, the total number of catcher vessels and catcher/processors using hook-and-line gear that caught groundfish off Alaska was 1,004 and 44, respectively. These numbers account for the vessels that operated in both the BSAI and GOA. Of these, approximately 1,006 would be subject to the revised seabird avoidance measures and would be considered to be small entities. In 2000, 1,694 vessels landed halibut from U.S. Convention waters off Alaska, and approximately 1,294 vessels landing halibut would be subject to the revised seabird measures (and assumed to be "small" under RFA criteria).

To the extent that any of these vessels are partners with CDQ groups, the proposed rule could indirectly impact the six CDQ groups representing the 65 western Alaska communities that are eligible for the CDQ Program. The CDQ groups and the communities they represent all are small entities under the RFA. To the degree that CDQ vessels can pass along costs to CDQ groups, this would reduce the direct impact on the vessels themselves, but only by redistributing these impacts among the broader universe of "small entities".

Under the proposed rule, the measures required of all applicable vessels over 26 ft (7.9 m) LOA would be expected to be of minimal cost. A bird streamer line is estimated to cost $50 to $250 and line weights represent a variable cost depending upon the necessary amount of weights to sink the baited hooks. Procedural or operational changes may be required in fishing operations.

The incidental take limit for short-tailed albatrosses could be exceeded during longline fishing operations. If the regulatory revisions under the proposed rule improve and strengthen the current seabird avoidance measures, then the likelihood of encountering and taking a short-tailed albatross would be reduced. Therefore, the likelihood of a fishery closure and its ensuing economic impacts would be reduced. If the anticipated take of short-tailed albatrosses was exceeded in either the groundfish fishery or the halibut fishery, the actual economic impacts resulting from a modification of the reasonable and prudent measures established to minimize take of short-tailed albatrosses would depend upon the revised measures, which could range from measures proposed in this rule to closures. The economic impact of fishery closures would depend upon the length of time of the closed period and the extent of the closure. The 1999 exvessel value of the Pacific cod fishery for hook-and-line gear was estimated at approximately $72 million, approximately $71 million for the sablefish fishery, and totaled approximately $150 million for all groundfish species caught with hook-and-line gear. The 2000 exvessel value of the Pacific halibut fishery was estimated at $67 million. Such

economic impacts on small entities could result in a substantial reduction in annual gross revenues and could, therefore, potentially have a significant adverse economic impact on a substantial number of small entities. Data are currently not available upon which to draw net revenue conclusions about these probable effects.

The Council considered recommending performance standards for seabird avoidance measures used on vessels greater than 26 ft (7.9 m) LOA and less than or equal to 55 ft (16.8 m) LOA. Until further information becomes available, performance standards for these smaller vessels are suggested only as guidelines at this time.

Alternatives to the proposed seabird avoidance measures were also considered. The status quo alternative, while posing no additional burden on small entities, would not alter the operations of the hook-and-line fisheries in ways that would significantly reduce the potential for the incidental take of seabirds. The second alternative to the proposed action is based on the Councils recommendation for revisions to seabird avoidance measures in 1999. Those recommendations would have revised existing regulations to require weighted groundlines, the deployment of bird scaring lines when a lining tube was used for the deployment of gear at depth, and an exemption for small vessels (<35 ft (10.7 m)). The proposed seabird avoidance measures are preferred to this second alternative because they specifically address performance and material standards for bird scaring lines, which the second alternative does not. The correct design and deployment of bird scaring lines are known to improve the effectiveness of these seabird avoidance devices. The third alternative to the preferred includes revisions to the existing regulations, based on recommendations from a two-year research study conducted by the WSGP on the effectiveness of seabird avoidance measures and includes all of the measures of the proposed alternative, except that there is no consideration for smaller vessels. Consequently, the third alternative would not mitigate the impacts on small entities. The improvements made to the existing seabird avoidance measures are expected to be much greater under the proposed action than with any of the other alternatives that were considered and evaluated.

This proposed rule contains a collection-of-information requirement subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA). The requirement for a Seabird Avoidance Plan has been submitted to OMB for approval. Public reporting burden for this collection of information is estimated to average 8 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. The following information would be collected from vessel operators: type of seabird avoidance measure used; description of each crew station's function for all tasks related to deploying, adjusting, and monitoring the performance of deployed seabird avoidance measures; diagrams and/or descriptions of the sequence of actions taken by the crew to deploy and retrieve the seabird avoidance measures.

Public comment is sought regarding: whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology. Send comments on these or any other aspects of the collection of information to NMFS at the **ADDRESSES** above, and to OMB at the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC. 20503 (Attention: NOAA Desk Officer).

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

A copy of the EA/RIR/IRFA can be obtained from NMFS (see **ADDRESSES**).

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Recordkeeping and reporting requirements.

Dated: January 31, 2003.

Rebecca Lent,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons discussed in the preamble, 50 CFR part 679 is proposed to be amended as follows:

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

1. The authority citation for 50 CFR part 679 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.*, 1801 *et seq.*, and 3631 *et seq.*

2. In § 679.2 the definition for "snap gear" under "authorized fishing gear" is added and the definition for "seabird" is added in alphabetical order to read as follows:

§ 679.2 Definitions.

* * * * *

*Authorized fishing gear** * *

(17) *Snap gear* means a type of hook-and-line gear where the hook and gangion are attached to the groundline using a mechanical fastener or snap.

* * * * *

Seabird means those bird species that habitually obtain their food from the sea below the low water mark.

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3. In § 679.24, paragraph (e) is revised as follows:

§ 679.24 Gear limitations.

* * * * *

(e) *Seabird avoidance program for vessels fishing with hook-and-line gear*—(1) *Applicability.* The operator of a vessel that is longer than 26 ft (7.9 m) LOA fishing with hook-and-line gear must comply with the seabird avoidance requirements as specified in paragraphs (e)(2) through (e)(4) of this section while fishing for:

(i) IFQ halibut or CDQ halibut,

(ii) IFQ sablefish, and

(iii) Groundfish in the EEZ off Alaska.

(2) *Seabird Avoidance Requirements.* The operator of a vessel described in paragraph (e)(1) of this section must:

(i) *Gear onboard.* Have onboard the vessel the seabird avoidance gear as specified in paragraph (e)(4) of this section;

(ii) *Gear inspection.* Upon request by an authorized officer or observer, make the seabird avoidance gear available for inspection;

(iii) *Gear use.* Use seabird avoidance gear as specified in paragraph (e)(4) of this section that meets performance and material standards as specified in paragraph (e)(5) of this section, while hook-and-line gear is being deployed.

(iv) *Sink baited hooks.* Use hooks that when baited, sink as soon as they are put in the water.

(v) *Offal discharge.* (A) If offal is discharged while gear is being set or hauled, discharge offal in a manner that distracts seabirds from baited hooks, to the extent practicable. The discharge

site on board a vessel must be either aft of the hauling station or on the opposite side of the vessel from the hauling station.

(B) Remove hooks from any offal that is discharged.

(C) Eliminate directed discharge through chutes or pipes of residual bait or offal from the stern of the vessel while setting gear. This does not include baits falling off the hook or offal discharges from other locations that parallel the gear and subsequently drift into the wake zone well aft of the vessel.

(D) For vessels not deploying gear from the stern, eliminate directed discharge of residual bait or offal over sinking hook-and-line gear while gear is being deployed.

(vi) *Safe release of seabirds.* Make every reasonable effort to ensure birds brought on board alive are released alive and that, wherever possible, hooks are removed without jeopardizing the life of the birds.

(3) *Seabird Avoidance Plan.* A Seabird Avoidance Plan must:

(i) Be written, current, and onboard the vessel.

(ii) Contain the following information:

(A) Vessel Name.

(B) Master's Name.

(C) Type of bird avoidance measures utilized.

(D) Positions and responsibilities of crew for deploying, adjusting, and monitoring performance of deployed gear.

(E) Instructions and/or diagrams outlining the sequence of actions required to deploy and retrieve the gear to meet specified performance standards.

(F) Procedures for strategic discharge of offal, if any.

(G) The NMFS "Seabird Avoidance Plan" form completed and signed by vessel operator. Vessel operator's signature shall indicate the operator has read the plan, reviewed it with the vessel crew, made it available to the crew, and has instructed the vessel crew to read it.

(iii) Be made available for inspection upon request by an authorized officer or observer.

(4) *Seabird Avoidance Gear Requirements.* (also see Table 20 of this part.) The operator of a vessel identified in paragraph (e)(1) of this section must comply with the following requirements:

(i) While fishing with hook-and-line gear other than snap gear in NMFS Reporting Area 649 (Prince William Sound), 659 (Eastern GOA Regulatory Area, Southeast Inside District), or state waters of Cook Inlet:

(A) A minimum of 1 buoy bag line as specified in paragraph (e)(5)(i) of this section must be used by vessels greater than 26 ft (7.9 m) LOA and less than or equal to 55 ft (16.8 m) LOA without masts, poles, or rigging.

(B) A minimum of 1 buoy bag line as specified in paragraph (e)(5)(i) of this section must be used by vessels greater than 26 ft (7.9 m) LOA and less than or equal to 32 ft (9.8 m) LOA with masts, poles, or rigging.

(C) A minimum of a single streamer line as specified in paragraph (e)(5)(ii)(B) of this section must be used by vessels greater than 32 ft (9.8 m) LOA and less than or equal to 55 ft (16.8 m) LOA with masts, poles, or rigging.

(D) A minimum of a single streamer line of a standard as specified in paragraph (e)(5)(ii) of this section must be used by vessels greater than 55 ft (16.8 m) LOA.

(ii) While fishing with hook-and-line gear other than snap gear in Federal waters (EEZ) not including NMFS Area 659.

(A) A minimum of 1 buoy bag line as specified in paragraph (e)(5)(i) of this section and one other device as specified in paragraph (e)(6) of this section must be used by vessels greater than 26 ft (7.9 m) LOA and less than or equal to 55 ft (16.8 m) LOA without masts, poles, or rigging.

(B) A minimum of a single streamer line as specified in paragraph (e)(5)(ii)(B) of this section and one other device as specified in paragraph (e)(6) of this section must be used by vessels greater than 26 ft (7.9 m) LOA and less than or equal to 55 ft (16.8 m) LOA with masts, poles, or rigging.

(C) A minimum of paired streamer lines of a standard as specified in paragraph (e)(5)(iii) of this section must be used by vessels greater than 55 ft (16.8 m) LOA.

(iii) While fishing with snap gear. (A) A minimum of 1 buoy bag line as specified in paragraph (e)(5)(i) of this section and one other device as specified in paragraph (e)(6) of this section must be used by vessels greater than 26 ft (7.9 m) LOA and less than or equal to 55 ft (16.8 m) LOA without masts, poles, or rigging.

(B) A minimum of a single streamer line as specified in paragraph (e)(5)(iv)(B) of this section and one other device as specified in paragraph (e)(6) of this section must be used by vessels greater than 26 ft (7.9 m) LOA and less than or equal to 55 ft (16.8 m) LOA with masts, poles, or rigging.

(C) A minimum of a single streamer line of a standard as specified in paragraph (e)(5)(iv) of this section and one other device as specified in paragraph (e)(6) of this section must be used by vessels greater 55 ft (16.8 m) LOA with masts, poles, or rigging.

(5) *Seabird Avoidance Gear Performance and Material Standards.* (i) Buoy Bag Line Weather Exception—In winds exceeding 45 knots (storm or Beaufort 9 conditions), the use of a buoy bag line is discretionary.

(ii) *Single Streamer Standard.* (A) A single streamer line must:

(*1*) Be a minimum of 300 feet (91.4 m) in length;

(*2*) Have streamers spaced every 16.4 ft (5 m);

(*3*) Be deployed before the first hook is set in such a way that streamers are in the air for a minimum of 131.2 ft (40 m) aft of the stern and within 6.6 ft (2 m) horizontally of the point where the main groundline enters the water.

(*4*) Have individual streamers that hang attached to the mainline to 9.8 in (0.25 m) above the waterline in the absence of wind.

(*5*) Have streamers constructed of material that is brightly colored, UV-protected plastic tubing or 3/8 inch polyester line or material of an equivalent density.

(B) *Weather Exception.* In winds exceeding 45 knots (storm or Beaufort 9 conditions), the use of a single streamer line is discretionary.

(iii) *Paired Streamer Standard.* (A) At least one streamer line must be deployed before the first hook is set and two streamer lines must be fully deployed within 90 seconds.

(B) *Weather Exceptions.* In conditions of wind speeds exceeding 30 knots (near gale or Beaufort 7 conditions), a single streamer must be deployed from the windward side of the vessel. In winds exceeding 45 knots (storm or Beaufort 9 conditions), the use of paired streamer lines is discretionary.

(C) Streamer lines must. (*1*) Be deployed in such a way that streamers are in the air for a minimum of 131.2 ft (40 m) aft of the stern for vessels under 100 ft (30.5 m) and 196.9 ft (60 m) aft of the stern for vessels 100 ft (30.5 m) or over;

(*2*) Be a minimum of 300 feet (91.4 m) in length;

(*3*) Have streamers spaced every 16.4 ft (5 m);

(*4*) For vessels deploying hook-and-line gear from the stern, the streamer lines must be deployed from the stern, one on each side of the main groundline.

(*5*) For vessels deploying gear from the side, the streamer lines must be deployed from the stern, one over the main groundline and the other on one side of the main groundline.

(*6*) Have individual streamers that hang attached to the mainline to 9.8 in

(0.25 m) above the waterline in the absence of wind.

(*7*) Have streamers constructed of material that is brightly colored, UV-protected plastic tubing or 3/8 inch polyester line or material of an equivalent density.

(iv) *Snap Gear Streamer Standard.* (A) For vessels using snap gear, a single streamer line must:

(*1*) Be deployed before the first hook is set in such a way that streamers are in the air for 65.6 ft (20 m) aft of the stern and within 6.6 ft (2 m) horizontally of the point where the main groundline enters the water.

(*2*) Have a minimum length of 147.6 ft (45 m).

(B) *Weather Exception.* In winds exceeding 45 knots (storm or Beaufort 9 conditions), the use of a single streamer line is discretionary.

(6) *Other Seabird Avoidance Devices and Methods* as required at paragraphs (e)(4)(ii)(A) and (B) and (e)(4)(iii) of this section include the following:

(i) Add weights to groundline.

(ii) Use a buoy bag line or single streamer line, of standards as appropriate and as specified in paragraph (e)(5) of this section.

(iii) Strategic offal discharge to distract birds away from the setting of baited hooks. Discharge fish, fish parts (i.e. offal) or spent bait.

(7) *Other methods.* The following measures or methods must be accompanied by the applicable seabird avoidance gear requirements as specified in paragraph (e)(4) of this section:

(i) Night-setting,

(ii) Line shooter, or

(iii) Lining tube.

(8) *Seabird Avoidance Exemption.* Nothwithstanding any other paragraph in this part, operators of vessels 32 ft (9.8 m) LOA or less using hook-and-line gear in IPHC Area 4E in waters shoreward of the EEZ are exempt from seabird avoidance regulations.

4. In § 679.32, paragraph (f)(2)(vi) is added to read as follows:

§ 679.32 Groundfish and halibut CDQ catch monitoring.

* * * * *

(f) * * *

(2) * * *

(vi) The CDQ group, and vessel owner or operator must comply with all of the seabird avoidance requirements at § 679.42(b)(2).

* * * * *

5. In § 679.42, paragraph (b)(2) is revised to read as follows:

§ 679.42 Limitations on use of QS and IFQ.

* * * * *

(b) * * *

(2) *Seabird avoidance gear and methods.* The operator of a vessel using gear authorized at § 679.2 while fishing for IFQ halibut, CDQ halibut, or hook-and-line gear while fishing for IFQ sablefish must comply with requirements for seabird avoidance gear and methods set forth at § 679.24(e).

* * * * *

6. In § 679.50, paragraph (f)(1)(viii)(F) is added to read as follows:

§ 679.50 Groundfish Observer Program applicable through December 31, 2007.

* * * * *

(f) * * *

(1) * * *

(viii) * * *

(F) Collecting all seabirds that are incidentally taken on the observer-sampled portions of hauls using hook-and-line gear or as requested by an observer during non-sampled portions of hauls.

* * * * *

7. In part 679, table 19 is revised and table 20 to part 679 is added to read as follows:

BILLING CODE 3510-22-S

Table 19 to Part 679. Seabird Avoidance Gear Codes

VESSEL LOGBOOK	
CODE	**SEABIRD AVOIDANCE GEAR OR METHOD.**
1	Paired Streamer Lines: Used during deployment of hook-and-line gear to prevent birds from taking hooks. Two streamer lines used, one on each side of the main groundline. Each streamer line consists of three components: a length of line, streamers attached along a portion of the length and one or more float devices at the terminal end. See performance and material standards at § 679.24(e)(5)(iii).
2	Single Streamer Line: Used during deployment of hook-and-line gear to prevent birds from taking hooks. The streamer line consists of three components: a length of line, streamers attached along a portion of the length and one or more float devices at the terminal end. See performance and material standards at § 679.24(e)(5)(ii).
3	Single Streamer Line, used with Snap Gear: Used during the deployment of snap gear to prevent birds from taking hooks. The streamer line consists of three components: a length of line, streamers attached along a portion of the length and one or more float devices at the terminal end. See performance and material standards at § 679.24(e)(5)(iv).
4	Buoy Bag Line: Used during the deployment of hook-and-line gear to prevent birds from taking hooks. A buoy bag line consists of two components: a length of line (without streamers attached) and one or more float devices at the terminal end. See performance and material standards at § 679.24(e)(5)(i).
Other Device used in conjunction with Single Streamer Line or Buoy Bag Line.	
5	Add weights to groundline: Applying weights to the groundline for the purpose of sinking the hook-and-line gear more quickly and preventing seabirds from accessing the baited hooks.
6	Additional Buoy Bag Line or Single Streamer Line: Using a second buoy bag line or streamer line for the purpose of enhancing the effectiveness of these deterrent devices at preventing seabirds from accessing baited hooks.
7	Strategic Offal Discharge: Discharging fish, fish parts (i.e. offal) or spent bait for the purpose of distracting seabirds away from the main groundline while setting gear.
Additional Device Used.	
8	Night Fishing: Setting hook-and-line gear during dark (night time hours).

	Line Shooter: A hydraulic device designed to deploy hook-and-line gear at a speed slightly faster than the vessel's speed during setting.
	Lining Tube: A device used to deploy hook-and-line gear through an underwater-setting device.
	Other (Describe)
9	**No Deterrent Used Due to Weather**. [See weather exceptions at § 679.24(e)(5)(i)(B), (e)(5)(ii)(B), (e)(5)(iii)(B), (e)(5)(iv)(B).]
0	**No Deterrent Used**.

Table 20 to Part 679. Seabird Avoidance Gear Requirements for Vessels, based on Area, Gear, and Vessel Type.

If you operate a vessel deploying hook-and-line gear, other than snap gear, in NMFS Reporting Area 649 (Prince William Sound), 659 (Eastern GOA Regulatory Area, Southeast Inside District) or state waters of Cook Inlet, and your vessel is...	**Then you must use this seabird avoidance gear in conjunction with requirements at § 679.24(e)...**
>26 ft to 32 ft LOA	minimum of one buoy bag line
>32 ft to 55 ft LOA and does not have masts, poles, or rigging	minimum of one buoy bag line
>32 ft to 55 ft LOA and has masts, poles, or rigging	minimum of a single streamer line
>55 ft LOA	minimum of a single streamer line of a standard specified at § 679.24(e)(5)(ii)
If you operate a vessel deploying hook-and-line gear, other than snap gear, in the EEZ (not including Area 659), and your vessel is...	**Then you must use this seabird avoidance gear in conjunction with requirements at § 679.24(e)...**
>26 ft to 55 ft LOA and does not have masts, poles, or rigging	minimum of one buoy bag line and one other device[1]
>26 ft to 55 ft LOA and has masts, poles, or rigging	minimum of a single streamer line and one other device[1]
>55 ft LOA	minimum of paired streamer lines of a standard specified at § 679.24(e)(5)(iii)
Except for vessels operating in state waters of IPHC Area 4E, if you operate a vessel deploying hook-and-line gear, and it is snap gear, and your vessel is...	**Then you must use this seabird avoidance gear in conjunction with requirements at § 679.24(e)...**
>26 ft to 55 ft LOA and does not have masts, poles, or rigging	minimum of one buoy bag line and one other device[1]
>26 ft to 55 ft LOA and has masts, poles, or rigging	minimum of a single streamer line and one other device[1]
>55 ft LOA	minimum of a single streamer line of a standard specified at § 679.24(e)(5)(iv) and one other device[1]
If you operate a vessel deploying hook-and-line gear, other than snap gear, in IPHC Area 4E (not including state waters), and your vessel is...	**Then you must use this seabird avoidance gear in conjunction with requirements at § 679.24(e)...**

>26 ft to 55 ft LOA and does not have masts, poles, or rigging	minimum of one buoy bag line and one other device[1]
>32 ft to 55 ft LOA and has masts, poles, or rigging	minimum of a single streamer line and one other device[1]
>55 ft LOA	minimum of paired streamer lines of a standard specified at § 679.24(e)(5)(iii)

[1]other device = weights added to groundline, another buoy bag line or single streamer line, or strategic offal discharge [see § 679.24(e)(6) for more details]

[FR Doc. 03–2805 Filed 2–6–03; 8:45 am]
BILLING CODE 3510–22–C

Notices

Federal Register
Vol. 68, No. 26
Friday, February 7, 2003

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Sunshine Act Meeting

ACTION: Staff briefing for the Board of Directors.

TIME AND DATE: 2 p.m., Thursday, February 13, 2003.

PLACE: Conference Room 104–A, Jamie L. Whitten Federal Building, U.S. Department of Agriculture, 12th & Jefferson Drive, SW., Washington, DC.

STATUS: Open.

MATTERS TO BE DISCUSSED:

1. Broadband Loan Program.
2. Privatization issues.
3. Administrative issues.

ACTION: Board of Directors meeting.

TIME AND DATE: 9 a.m., Friday, February 14, 2003.

PLACE: Conference Room 104–A, Jamie L. Whitten Federal Building, U.S. Department of Agriculture, 12th & Jefferson Drive, SW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED: The following matters have been placed on the agenda for the Board of Directors meeting:

1. Call to order.
2. Action on minutes of the November 14, 2002, and January 8, 2003, board meetings.
3. Secretary's report on loans approved in first quarter, FY 2003.
4. Treasurer's report.
5. Presentation of final report on privatization.
6. Discussion of privatization of the Rural Telephone Bank.
7. Governor's remarks.
8. Adjournment.

CONTACT PERSON FOR MORE INFORMATION: Roberta D. Purcell, Assistant Governor, Rural Telephone Bank, (202) 720–9554.

Dated: February 5, 2003.

Curtis M. Anderson,

Deputy Governor, Acting as Governor, Rural Telephone Bank.

[FR Doc. 03–3253 Filed 2–5–03; 1:11 pm]

BILLING CODE 3410–15–P

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Rural Business-Cooperative Service

Rural Utilities Service

Farm Service Agency

Notice of Request for Extension of a Currently Approved Information Collection

AGENCIES: Rural Housing Service (RHS), Rural Business-Cooperative Service (RBS), Rural Utilities Service (RUS), and Farm Service Agency (FSA), USDA.

ACTION: Proposed collection; comments requested.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Agencies' intention to request an extension for a currently approved information collection in support of the program for 7 CFR part 1942, subpart A, "Community Facility Loans."

DATES: Comments on this notice must be received by April 8, 2003, to be assured consideration.

FOR FURTHER INFORMATION CONTACT: For program content, contact Derek L. Jones, Loan Specialist, Rural Housing Service, U.S. Department of Agriculture, STOP 0787, 1400 Independence Ave., SW., Washington, DC 20250–0787, telephone (202) 720–1504.

SUPPLEMENTARY INFORMATION:

Title: Community Facility Loans.

OMB Number: 0575–0015.

Expiration Date of Approval: June 30, 2003.

Type of Request: Extension of a currently approved information collection.

Abstract: The Community Facilities loan program is authorized by Section 306 of the Consolidated Farm and Rural Development Act (7 U.S.C. 1926) to make loans to public entities, nonprofit corporations, and Indian tribes for the development of community facilities for public use in rural areas.

Community Facilities programs have been in existence for many years. These programs have financed a wide range of projects varying in size and complexity from large general hospitals to small day care centers. The facilities financed are designed to promote the development of rural communities by providing the infrastructure necessary to attract residents and rural jobs.

Information will be collected by the field offices from applicants, borrowers, and consultants. This information will be used to determine applicant/borrower eligibility, project feasibility, and to ensure borrowers operate on a sound basis and use funds for authorized purposes.

Failure to collect proper information could result in improper determination of eligibility, improper use of funds, and/or unsound loans.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 1.8 hours per response.

Respondents: Public bodies, not for profits, or Indian tribes.

Estimated Number of Respondents: 3,231.

Estimated Number of Responses per Respondent: 10.3.

Estimated Total Annual Burden on Respondents: 61,076 hours.

Copies of this information collection can be obtained from Tracy Givelekian, Regulations and Paperwork Management Branch, (202) 692–0039.

Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of RHS, including whether the information will have practical utility; (b) the accuracy of RHS' estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to Tracy Givelekian, Regulations and Paperwork Management Branch, U.S. Department of Agriculture, Rural

Development, STOP 0742, 1400 Independence Ave. SW., Washington, DC 20250. All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: February 3, 2003.

Arthur A. Garcia,

Administrator, Rural Housing Service.

Dated: January 27, 2003.

John Rosso,

Administrator, Rural Business-Cooperative Service.

Dated: January 29, 2003.

Hilda Legg,

Administrator, Rural Utilities Service.

Dated: January 30, 2003.

Verle E. Lanier,

Acting Administrator, Farm Service Agency.

[FR Doc. 03–3044 Filed 2–6–03; 8:45 am]

BILLING CODE 3410–XV–P

DEPARTMENT OF AGRICULTURE

Forest Service

Lake Project; Manti-La Sal National Forest, Emery and Sanpete Counties, UT

AGENCY: Forest Service, USDA;

ACTION: Notice of intent to prepare Environmental Impact Statement.

Authority: The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321–4346); Council on Environmental quality Regulations, title 40, Code of Federal Regulations, parts 1500–1508 (40 CFR parts 1500–1508); and U.S. Department of Agriculture NEPA Regulations, part 1b (7 CFR part 1b).

SUMMARY: Epidemic populations of spruce beetle are found on the Wasatch Plateau. Many susceptible spruce-fir stands have been infested, and it is anticipated that many more will soon be infested with spruce beetle populations. The beetle populations could collapse due to natural factors, but at this time the populations remain viable and continue to spread. Scattered 3–5 tree pockets of spruce beetle caused mortality are present in the Lake project analysis area and if the current level of beetle activity continues without check, it is probable that most of the spruce-fir component on the Wasatch Plateau would be lost. The beetles have already caused severe impacts on several thousand acres of spruce-fir stands adjacent to and south of the analysis area. As a consequence, most spruce trees over eight inches in diameter in the area to the south are dead or dying, and in some areas nearly all spruce are dead as a result of the beetle epidemic. The insects are continuing to move in a northward direction and it is anticipated they will continue to invade, infest, and kill most of the spruce trees eight inches and larger in diameter throughout this analysis area, as was the case in the adjacent spruce-fir stands to the south. The Forest Service will prepare an Environmental Impact Statement (EIS) to document the analysis and disclose the environmental impacts of proposed actions to salvage dead, insect infested and dying trees, commercially thin live high risk trees, manage natural and prescribed burning, and restock some stands of trees located in the Spring, and the north and south forks of Lake Canyon drainages within the project analysis area. The project area is located on public lands administered by the Ferron/Price Ranger District approximately 20 miles northwest of Huntington, Utah. It is bordered on the north by State highway 31 located in Huntington Canyon, on the west by Skyline Drive, Forest Service Road 50150, on the east by the Millers Flat road, Forest Service Road 50014, and on the south at the ridge between South Fork Lake and Rolfson canyons.

The need for the proposal is to:

- Restore and maintain composition, structure, and diversity by providing for tree species and stand density levels that are lower in stocking and more diverse;
- Facilitate rapid reestablishment of Engelmann spruce through replanting of spruce;
- Enhance the aspen communities that are being lost due to conifer invasion/encroachment and lack of natural fire;
- Contribute to a timber resource supply that helps meet National demand for forest products and recover some of the economic loss of the resource from the dead, dying, insect infested and high-risk green trees;
- Improve public safety by removing hazard trees from roadsides and from dispersed camping areas within the project area.

Portions of the Rolfson-Staker Inventoried Roadless Area are located within the analysis area but are not included in the Proposed Action. The No Action is one alternative that will be considered. Additional alternatives will be formulated based on public issues, and response analysis.

The proposed action involves harvesting/salvaging approximately 3.7 MMBF (Million Board Feet) of dead, dying, insect infested and high-risk green trees from approximately 820 acres within an analysis area of about 5,600 acres. Harvest of trees would be by both aerial (helicopter) and ground based (tractor) methods. Helicopter logging would be used to access approximately 500 acres, and tractor logging would be used to access approximately 320 acres. Approximately 135 acres are proposed for artificial reforestation (hand planting of seedlings) and 145 acres would be open to natural regeneration. Approximately 80 acres of aspen stands would be regenerated by removal of aspen and competing conifer species in clear-cut patches up to 10 acres in size. Other aspen stands would be enhanced by removing conifer trees from within and adjacent to the stands. Approximately 145 acres will be broadcast burned. Road work anticipated includes approximately: 2.1 miles of road reconstruction, 0.8 mile of new road construction and use of approximately 0.25 miles of temporary road. After the project is completed, approximately 2.8 miles of existing Forest Service Roads are proposed to remain open and be maintained. Approximately four temporary helicopter landing one acre in size and eleven temporary tractor landings of ¼ acre in size would be needed during the logging operation. The proposed action does not include road construction, reconstruction, or logging in the inventoried roadless area.

DATES: Written comments concerning the scope of the analysis described in this notice should be received within 30 days of the date of publication of this notice in the **Federal Register**.

ADDRESSES: Send written comments to Manti-La Sal National Forest, 599 West Price River Drive, Price Utah 84501.

FOR FURTHER INFORMATION CONTACT: Questions concerning the proposed action and EIS should be addressed to Alan Lucas, Forester, Manti-La Sal National Forest, phone (435) 636–3328.

SUPPLEMENTARY INFORMATION: This project was previously proposed in the spring of 2001, with a Notice of Intent to Prepare an Environmental Impact Statement published on May 4, 2001 (**Federal Register**/Vol. 66, No. 87, pages 22513–22514). The original purpose of need, and proposed actions have been modified to respond to new information. This EIS will tier to the final EIS for the Manti-La Sal National Forest Land and Resource Management Plan (Forest Plan). The Manti-La Sal Forest Plan provides the overall guidance (Goals, Objectives, Standards, and Management Area Direction) to achieve the Desired Future Condition

for the area being analyzed, and contains specific management area prescriptions for the entire Forest.

The Forest Service is seeking information and comments from Federal, State, and local agencies as well as individuals and organizations that may be interested in, or affected by the proposed action. The Forest Services invites written comments and suggestions on the issues related to the proposal and the area being analyzed. Information received will be used in preparation of the Draft EIS and Final EIS. For most effective use, comments should be submitted to the Forest Service within 30 days from the date of publication of this notice in the **Federal Register**.

The Ferron/Price Ranger District of the Manti-La Sal National Forest in Emery and Sanpete Counties in the state of Utah would administer the proposed management activities for this analysis. Agency representatives and other interested people are invited to visit with Forest Service officials at any time during the EIS process. Two specific time periods are identified for the receipt of formal comments on the analysis. The two comment periods are: (1) During the scoping process, the next 30 days following publication of this notice in the **Federal Register**, and (2) during the formal review period of the Draft EIS.

The comment period on the draft environmental impact statement will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**. The Forest Service believes it is important to give reviewers notice at this early stage of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewers' position and intentions.

Vermont Yankee Nuclear Power Corp. v. *NRDC*, 435 U.S. 519,553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waved or dismissed by the courts.

City of Angoon v. *Hodel*, 803 F. 2d 1016, 1022 (9th Circuit, 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final Environmental Impact Statement. To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act, 40 CFR 1503.3 in addressing these points.

The final release of the EIS is projected to be September 12, 2003. The Forest Supervisor for the Manti-La Sal National Forest is the responsible official for the EIS. After considering the comments, responses, and environmental consequences discussed in the Final Environmental Impact Statement, and applicable laws, regulations, and policies a decision by this official will be made regarding the proposal. The reasons for the decision will be documented in a Record of Decision. The Forest Supervisor's office of the Manti-La Sal National Forest is located at 599 West Price River Drive, Price, Utah 84501, phone: 435–637–2817.

Dated: January 13, 2003.

Elaine J. Zieroth,

Forest Supervisor, Manti-La Sal National Forest.

[FR Doc. 03–3104 Filed 2–6–03; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Southeast Washington County Resource Advisory Committee (RAC)

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committees Act (Pub. L. 92–463), the Southeast Washington County Resource Advisory Committee (RAC) will meet on February 26, 2003 in Pomeroy, Washington. The purpose of the meeting is to discuss the final selection of Title II projects for Fiscal Year 2003 under Pub. L. 106–393, H.R. 2389, the Secure Rural Schools and Community Self-Determination Act of 2000, also called the "Payments to States" Act.

DATES: The meeting will be held on February 26, 2003 from 6 p.m. to 8 p.m.

ADDRESSES: The meeting will be held at the Pomeroy Ranger District Office, 71 West Main Street, Pomeroy, Washington.

FOR FURTHER INFORMATION CONTACT: Monte Fujishin, Designated Federal Official, USDA, Umatilla National Forest, Pomeroy Ranger District, 71 West Main Street, Pomeroy, WA 99347. Phone: (509) 843–1891.

SUPPLEMENTARY INFORMATION: This meeting will focus on discussing Title II proposed projects. The meeting is open to the public. Public input opportunity will be provided and individuals will have the opportunity to address the committee at that time.

Dated: January 31, 2003.

Monte Fujishin,

Designated Forest Official.

[FR Doc. 03–2997 Filed 2–6–03; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Columbia County Resource Advisory Committee (RAC)

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committees Act (Pub. L. 92–463), the Columbia County Resource Advisory Committee (RAC) will meet on February 10, 2003, in Dayton, Washington. The purpose of the meeting is to discuss the final selection of title II projects for Fiscal Year 2003 under Public Law 106–393, H.R. 2389, the Secure Rural Schools and Community Self-Determination Act of 2000, also called the "Payments to States" Act.

DATES: The meeting will be held on February 10, 2003, from 6 p.m. to 8 p.m.

ADDRESSES: The meeting will be held at the Dayton Post Office, 202 South Second Street, Dayton, Washington.

FOR FURTHER INFORMATION CONTACT: Monte Fujishin, Designated Federal Official, USDA, Umatilla National Forest, Pomeroy Ranger District, 71 West Main Street, Pomeroy, WA 99347. Phone: (509) 843–1891.

SUPPLEMENTARY INFORMATION: This meeting will focus on discussing title II proposed projects. The meeting is open to the public. Public input opportunity will be provided and individuals will

have the opportunity to address the committee at that time.

Dated: January 31, 2003.

Monte Fujishin,

Designated Forest Official.

[FR Doc. 03–2998 Filed 2–6–03; 8:45 am]

BILLING CODE 3410–BH–M

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to procurement list.

SUMMARY: The Committee is proposing to add to the procurement list products and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

DATES: Comments must be received on or before March 9, 2003.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION CONTACT: Sheryl D. Kennerly, (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, the entities of the Federal government identified in the notice for each product or service will be required to procure the products and services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the products and services to the government.

2. If approved, the action will result in authorizing small entities to furnish the products and services to the government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the products and services proposed for addition to the procurement list. Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following products and services are proposed for addition to procurement list for production by the nonprofit agencies listed:

Products

Product/NSN: Protective Combat Uniform (Requirements for Natick Only).
8415–00–NSH–0626, Level 1, T-Shirt,
8415–00–NSH–0627, Level 1, Boxer,
8415–00–NSH–0628, Level 1, Long Sleeve Shirt,
8415–00–NSH–0629, Level 1, Pant,
8415–00–NSH–0630, Level 2, Long Sleeve Shirt,
8415–00–NSH–0631, Level 2, Pant.
NPA: Southeastern Kentucky Rehabilitation Industries, Inc., Corbin, Kentucky.
Contract Activity: U.S. Army Robert Morris Acquisition Center, Natick, Massachusetts.

Product/NSN: Protective Combat Uniform (Requirements for Natick Only).
8415–00–NSH–0632, Level 3, Jacket.
NPA: Southside Training Employment Placement Services, Inc., Victoria, Virginia.
Contract Activity: U.S. Army Robert Morris Acquisition Center, Natick, Massachusetts.

Product/NSN: Protective Combat Uniform (Requirements for Natick Only).
8415–00–NSH–0659, Level 4, Windshirt,
8415–00–NSH–0633, Level 5, Soft-shell Jacket,
8415–00–NSH–0634, Level 5, Soft-shell Pant,
8415–00–NSH–0635, Level 6, Wet Weather Jacket,
8415–00–NSH–0636, Level 6, Wet Weather Pant.
NPA: ORC Industries, Inc., La Crosse, Wisconsin.
Contract Activity: U.S. Army Robert Morris Acquisition Center, Natick, Massachusetts.

Product/NSN: Protective Combat Uniform (Requirements for Natick Only).
8415–00–NSH–0637, Level 7, Pant,
8415–00–NSH–0638, Level 7, Vest,
8415–00–NSH–0690, Level 7, Jacket.
NPA: Southeastern Kentucky Rehabilitation Industries, Inc., Corbin, Kentucky.
Contract Activity: U.S. Army Robert Morris Acquisition Center, Natick, Massachusetts.

Services

Service Type/Location: CD–ROM Replication, GPO Program 5545–S; Government Printing Office, Chicago, Illinois.
NPA: Assoc. for the Blind & Visually Impaired & Goodwill Industries of Greater Rochester, Rochester, New York.
Contract Activity: Government Printing Office, Chicago, Illinois.
Service Type/Location: Industrial Supply Store Prime Vendor; Anniston Army Depot, Anniston, Alabama.
NPA: Alabama Industries for the Blind, Talladega, Alabama.
Contract Activity: Anniston Army Depot, Anniston, Alabama.
Service Type/Location: Janitorial/Custodial; Area Maintenance Support Activity (AMSA) #110; New Castle, Pennsylvania.
NPA: Lark Enterprises, Inc., New Castle, Pennsylvania.
Contract Activity: 99th Regional Support Command, Coraopolis, Pennsylvania.
Service Type/Location: Janitorial/Custodial; DuPage Air Traffic Control Tower, West Chicago, Illinois.
NPA: Jewish Vocational Service and Employment Center, Chicago, Illinois.
Contract Activity: Federal Aviation Administration, Des Plaines, Illinois.
Service Type/Location: Paint Prime Vendor; Anniston Army Depot, Anniston, Alabama.
NPA: Alabama Industries for the Blind, Talladega, Alabama.
Contract Activity: Anniston Army Depot, Anniston, Alabama.

Sheryl D. Kennerly,

Director, Information Management.

[FR Doc. 03–3072 Filed 2–6–03; 8:45 am]

BILLING CODE 6353–01–P

BROADCASTING BOARD OF GOVERNORS

Sunshine Act Meeting

DATE AND TIME: February 12, 2003; 1 p.m.–4 p.m.

PLACE: Broadcasting Board of Governors, 330 Independence Avenue, SW., Washington, DC 20237.

CLOSED MEETING: The members of the Broadcasting Board of Governors (BBG) will meet in closed session to review and discuss a number of issues relating to U.S. Government-funded non-military international broadcasting. They will address internal procedural, budgetary, and personnel issues, as well as sensitive foreign policy issues relating to potential options in the U.S. international broadcasting field. This meeting is closed because if open it likely would either disclose matters that would be properly classified to be kept secret in the interest of foreign policy under the appropriate executive order (5 U.S.C. 552b.(c)(1)) or would disclose information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action. (5 U.S.C. 552b.(c)(9)(B)) In addition, part of the discussion will

relate solely to the internal personnel and organizational issues of the BBG or the International Broadcasting Bureau. (5 U.S.C. 552b.(c)(2) and (6))

CONTACT PERSON FOR MORE INFORMATION: Persons interested in obtaining more information should contact either Brenda Hardnett or Carol Booker at (202) 401–3736.

Dated: February 4, 2003.

Carol Booker,

Legal Counsel.

[FR Doc. 03–3183 Filed 2–5–03; 11:49 am]

BILLING CODE 8230–01–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A-427–801, A-428–801,[A-475–801, A-559–801]

Ball Bearings and Parts Thereof From France, Germany, Italy, and Singapore: Preliminary Results of Antidumping Duty Administrative Reviews, Partial Rescission of Administrative Reviews, and Notice of Intent To Revoke Order In Part

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Preliminary Results of Antidumping Duty Administrative Reviews, Partial Rescission of Administrative Reviews, and Notice of Intent to Revoke Order in Part.

SUMMARY: In response to requests from interested parties, the Department of Commerce is conducting administrative reviews of the antidumping duty orders on antifriction bearings (other than tapered roller bearings) and parts thereof from France, Germany, Italy, and Singapore. The merchandise covered by these orders are ball bearings and parts thereof. The reviews cover nine manufacturers/exporters. The period of review is May 1, 2001, through April 30, 2002.

We have preliminarily determined that sales have been made below normal value by various companies subject to these reviews. If these preliminary results are adopted in our final results of administrative reviews, we will instruct the Customs Service to assess antidumping duties on all appropriate entries.

We invite interested parties to comment on these preliminary results. Parties who submit comments in these proceedings are requested to submit with each argument (1) a statement of the issue and (2) a brief summary of the argument.

EFFECTIVE DATE: February 7, 2003.

FOR FURTHER INFORMATION CONTACT: Please contact the appropriate case analysts for the various respondent firms, as listed below, at Import Administration, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230; telephone: (202) 482–4733.

France

Minoo Hatten (SNR Roulements), Dunyako Ahmadu (SKF), Mark Ross, or Richard Rimlinger.

Germany

Dunyako Ahmadu (FAG), Sochieta Moth (SKF), Catherine Cartsos (Paul Mueller), Jeffrey Frank (Torrington), Mark Ross, or Richard Rimlinger.

Italy

Fred Aziz (FAG), Janis Kalnins (SKF), Mark Ross, or Richard Rimlinger.

Singapore

Yang Jin Chun (NMB/Pelmec) or Richard Rimlinger.

SUPPLEMENTARY INFORMATION:

Background

On May 15, 1989, the Department published in the **Federal Register** the antidumping duty orders on ball bearings and parts thereof (BBs) from France (54 FR 20902), Germany (54 FR 20900), Italy (54 FR 20903), and Singapore (54 FR 20907). On June 25, 2002, in accordance with 19 CFR 351.213(b), we published a notice of initiation of administrative reviews of these orders (67 FR 42753).

On October 23, 2002, the Department rescinded the following administrative reviews: INA-Schaeffler KG (INA) and Sachs Handel GmbH and ZF Sachs (collectively Sachs) with respect to ball bearings from Germany; SKF France S.A. with respect to spherical plain bearings from France; Barden Corporation (U.K.) Ltd., with respect to ball bearings from the United Kingdom. See *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from France, et al: Partial and Full Rescission of Antidumping Duty Administrative Reviews*, 67 FR 65089 (Oct. 23, 2002).

Subsequent to the publication of our rescission notice, we received withdrawals of the requests we had received for reviews of Ringball Corporation (France, Germany, and Italy) with respect to BBs. Because there were no other requests for review of the above-named firm and no other interested party objected, we are rescinding the reviews with respect to this company in accordance with 19 CFR 351.213(d).

Scope of Reviews

The products covered by these reviews are ball bearings and parts thereof (BBs). These products include all AFBs that employ balls as the rolling element. Imports of these products are classified under the following categories: antifriction balls, ball bearings with integral shafts, ball bearings (including radial ball bearings) and parts thereof, and housed or mounted ball bearing units and parts thereof.

Imports of these products are classified under the following *Harmonized Tariff Schedules* (HTSUS) subheadings: 3926.90.45, 4016.93.00, 4016.93.10, 4016.93.50, 6909.19.5010, 8431.20.00, 8431.39.0010, 8482.10.10, 8482.10.50, 8482.80.00, 8482.91.00, 8482.99.05, 8482.99.2580, 8482.99.35, 8482.99.6595, 8483.20.40, 8483.20.80, 8483.50.8040, 8483.50.90, 8483.90.20, 8483.90.30, 8483.90.70, 8708.50.50, 8708.60.50, 8708.60.80, 8708.70.6060, 8708.70.8050, 8708.93.30, 8708.93.5000, 8708.93.6000, 8708.93.75, 8708.99.06, 8708.99.31, 8708.99.4960, 8708.99.50, 8708.99.5800, 8708.99.8080, 8803.10.00, 8803.20.00, 8803.30.00, 8803.90.30, and 8803.90.90.

The size or precision grade of a bearing does not influence whether the bearing is covered by the order. For a listing of scope determinations which pertain to the orders, see the Scope Determinations Memorandum (Scope Memorandum) from the Antifriction Bearings Team to Laurie Parkhill, dated April 1, 2002, and hereby adopted by this notice. The Scope Memorandum is on file in the Central Records Unit (CRU), Main Commerce Building, Room B-099, in the General Issues record (A-100–001) for the 01/02 reviews.

Although the HTSUS item numbers above are provided for convenience and customs purposes, written descriptions of the scope of these proceedings remain dispositive.

Verification

As provided in section 782(i) of the Act, we verified information provided by certain respondents using standard verification procedures, including on-site inspection of the manufacturers' facilities, the examination of relevant sales and financial records, and the selection of original documentation containing relevant information. Our verification results are outlined in the public versions of the verification reports, which are on file in the CRU, Room B-099. We will also be verifying certain companies (SKF France, SKF Germany, and SNR) shortly after

publication of these preliminary results of reviews.

Use of Facts Available

In accordance with section 776(a) of the Act, we preliminarily determine that the use of facts available as the basis for the weighted-average dumping margin is appropriate for Torrington Nadellager. The firm did not respond to our antidumping questionnaire and, consequently, we find that it has not provided "information that has been requested by the administering authority" under section 776(a)(1) of the Act.

In accordance with section 776(b) of the Act, we are making an adverse inference in our application of the facts available. This is appropriate because Torrington Nadellager has not acted to the best of its ability in providing us with relevant information which is under its control. As adverse facts available for this firm, we have applied the highest rate we have calculated for any company under review in any segment of the relevant proceedings on BBs from Germany. We have selected this rate because it is sufficiently high as to reasonably assure that Torrington Nadellager does not obtain a more favorable result by failing to cooperate. Specifically, this rate is 70.41 percent.

Section 776(c) of the Act provides that the Department shall, to the extent practicable, corroborate secondary information used for facts available by reviewing independent sources reasonably at its disposal. Information from a prior segment of the proceeding or from another company in the same proceeding constitutes secondary information. The Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Doc. 103–316, at 870 (1994) (SAA), provides that the word "corroborate" means that the Department will satisfy itself that the secondary information to be used has probative value. As explained in *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from Japan, and Tapered Roller Bearings Four Inches or Less in Outside Diameter, and Components Thereof, from Japan: Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews*, 61 FR 57391, 57392 (Nov. 6, 1996) (*Tapered Roller Bearings and Parts Thereof from Japan*), in order to corroborate secondary information, the Department will examine, to the extent practicable, the reliability and relevance of the information used. However, unlike other types of information, such as input costs or selling expenses, there are no independent sources for calculated dumping margins. The only source for margins is administrative determinations. Thus, with respect to an administrative review, if the Department chooses as facts available a calculated dumping margin from a prior segment of the proceeding, it is not necessary to question the reliability of the margin for that time period.

With respect to the relevance aspect of corroboration, however, the Department will consider information reasonably at its disposal as to whether there are circumstances that would render a margin not relevant. Where circumstances indicate that the selected margin is not appropriate as adverse facts available, the Department will disregard the margin and determine an appropriate margin. See *Fresh Cut Flowers from Mexico; Final Results of Antidumping Duty Administrative Review*, 61 FR 6812 (Feb. 22, 1996), where the Department disregarded the highest dumping margin as best information available because the margin was based on another company's uncharacteristic business expense resulting in an unusually high margin. Further, in accordance with *F.lli De Cecco Di Filippo Fara S. Martino S.p.A. v. United States*, 216 F.3d 1027 (Fed. Cir. June 16, 2000), we also examine whether information on the record would support the selected rates as reasonable facts available.

We find that the 70.41 percent rate which we are using for these preliminary results does have probative value. We compared the selected margins to margins calculated on individual sales of the merchandise in question made by German companies covered by the instant review. We found a substantial number of sales, made in the ordinary course of trade and in commercial quantities, with dumping margins near or exceeding the rate under consideration. The details of this analysis are contained in the analysis memorandum for Torrington Nadellager dated January 31, 2003. This evidence supports an inference that the selected rate reflects the actual dumping margin for the firm in question.

Furthermore, there is no information on the record that demonstrates that the rate we have selected is an inappropriate total adverse facts-available rate for the company in question. On the contrary, our existing record supports the use of this rate as the best indication of the export price and dumping margin for this firm as explained in our January 31, 2003, memorandum. Therefore, we consider the selected rate to have probative value with respect to the firm in question in this review and to reflect the appropriate adverse inference.

Intent to Revoke

On May 31, 2002, Paul Mueller requested the revocation of the order covering BBs from Germany as it pertains to its sales of these bearings.

Under section 751 of the Act, the Department "may revoke, in whole or in part" an antidumping duty order upon completion of a review. Although Congress has not specified the procedures that the Department must follow in revoking an order, the Department has developed a procedure for revocation that is set forth under 19 CFR 351.222. Under subsection 351.222(b), the Department may revoke an antidumping duty order in part if it concludes that: (i) An exporter or producer has sold the merchandise at not less than normal value for a period of at least three consecutive years; (ii) the exporter or producer has agreed in writing to its immediate reinstatement in the order if the Secretary concludes that the exporter or producer, subsequent to the revocation, sold the subject merchandise at less than normal value; and (iii) the continued application of the antidumping duty order is no longer necessary to offset dumping. Subsection 351.222(b)(3) states that, in the case of an exporter that is not the producer of subject merchandise, the Department normally will revoke an order in part under subsection 351.222(b)(2) only with respect to subject merchandise produced or supplied by those companies that supplied the exporter during the time period that formed the basis for revocation.

A request for revocation of an order in part must address three elements. The company requesting the revocation must do so in writing and submit the following statements with the request: (1) The company's certification that it sold the subject merchandise at not less than normal value during the current review period and that, in the future, it will not sell at less than normal value; (2) the company's certification that, during each of the consecutive years forming the basis of the request, it sold the subject merchandise to the United States in commercial quantities; (3) the agreement to reinstatement in the order if the Department concludes that the company, subsequent to revocation, has sold the subject merchandise at less than normal value. See 19 CFR 351.222(e)(1).

We preliminarily determine that the request from Paul Mueller meets all of the criteria under 19 CFR 351.222(e)(1). With regard to the criteria of subsection

351.222(b)(2), our preliminary margin calculations show that this firm sold BBs at not less than normal value during the current review period. See dumping margins below. In addition, it sold BBs at not less than normal value in the two previous administrative reviews in which it was involved. See *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from France, et al; Final Results of Antidumping Duty Administrative Reviews and Revocation of Orders in Part*, 65 FR 49219 (Aug. 11, 2000), covering the period May 1, 1998, through April 30, 1999, and *Ball Bearings and Parts Thereof from France, et al; Final Results of Antidumping Duty Administrative Reviews and Revocation of Orders in Part*, 67 FR 55780 (Aug. 30, 2002), covering the period May 1, 2000, through April 30, 2001. Based on our examination of the sales data submitted by Paul Mueller, we preliminarily determine that Paul Mueller sold the subject merchandise in the United States in commercial quantities in each of the consecutive years cited by Paul Mueller to support its request for revocation, including the intervening unreviewed years. See preliminary results calculation memorandum for Paul Mueller, dated January 31, 2003, which is in the Department's CRU, Room B-099. Thus, we preliminarily find that Paul Mueller had zero or *de minimis* dumping margins for its last three administrative reviews and sold in commercial quantities in all years, including the unreviewed intervening years. Also, we preliminarily determine that application of the antidumping order to Paul Mueller is no longer warranted for the following reasons: (1) the company had zero or *de minimis* margins for a period of at least three consecutive years; (2) the company has agreed to immediate reinstatement of the order if the Department finds that it has resumed making sales at less than fair value; and (3) the continued application of the order is not otherwise necessary to offset dumping.

Therefore, we preliminarily determine that Paul Mueller qualifies for revocation of the order on BBs pursuant to 19 CFR 351.222(b)(2) and that the order with respect to merchandise produced and exported by Paul Mueller should be revoked.

If these preliminary findings are affirmed in our final results, we will revoke this order in part for Paul Mueller and, in accordance with 19 CFR 351.222(f)(3), we will terminate the suspension of liquidation for any of the merchandise in question that is entered, or withdrawn from warehouse, for consumption on or after May 1, 2002, and will instruct Customs to refund any cash deposits for such entries.

Export Price and Constructed Export Price

For the price to the United States, we used export price or constructed export price (CEP) as defined in sections 772(a) and (b) of the Act, as appropriate. Due to the extremely large volume of transactions that occurred during the period of review and the resulting administrative burden involved in calculating individual margins for all of these transactions, we sampled CEP sales in accordance with section 777A of the Act. When a firm made more than 10,000 CEP sales transactions to the United States of merchandise subject to a particular order, we reviewed CEP sales that occurred during sample weeks. We selected one week from each two-month period in the review period, for a total of six weeks, and analyzed each transaction made in those six weeks. The sample weeks are as follows: May 27 June 2, 2001; August 19 25, 2001; September 16 22, 2001; December 2 8, 2001; February 17 23, 2002; and March 24 30, 2002. We reviewed all export-price sales transactions made during the period of review.

We calculated export price and CEP based on the packed F.O.B., C.I.F., or delivered price to unaffiliated purchasers in, or for exportation to, the United States. We made deductions, as appropriate, for discounts and rebates. We also made deductions for any movement expenses in accordance with section 772(c)(2)(A) of the Act.

In accordance with section 772(d)(1) of the Act and the SAA at 823–824, we calculated the CEP by deducting selling expenses associated with economic activities occurring in the United States, which includes commissions, direct selling expenses, indirect selling expenses, and U.S. repacking expenses. When appropriate, in accordance with section 772(d)(2) of the Act, we also deducted the cost of any further manufacture or assembly, except where we applied the special rule provided in section 772(e) of the Act. See below. Finally, we made an adjustment for profit allocated to these expenses in accordance with section 772(d)(3) of the Act.

With respect to subject merchandise to which value was added in the United States prior to sale to unaffiliated U.S. customers, *e.g.*, parts of bearings that were imported by U.S. affiliates of foreign exporters and then further processed into other products which were then sold to unaffiliated parties, we determined that the special rule for merchandise with value added after importation under section 772(e) of the Act applied to all firms that added value in the United States.

Section 772(e) of the Act provides that, when the subject merchandise is imported by an affiliated person and the value added in the United States by the affiliated person is likely to exceed substantially the value of the subject merchandise, we shall determine the CEP for such merchandise using the price of identical or other subject merchandise if there is a sufficient quantity of sales to provide a reasonable basis for comparison and we determine that the use of such sales is appropriate. If there is not a sufficient quantity of such sales or if we determine that using the price of identical or other subject merchandise is not appropriate, we may use any other reasonable basis to determine the CEP.

To determine whether the value added is likely to exceed substantially the value of the subject merchandise, we estimated the value added based on the difference between the averages of the prices charged to the first unaffiliated purchaser for the merchandise as sold in the United States and the averages of the prices paid for the subject merchandise by the affiliated purchaser. Based on this analysis, we determined that the estimated value added in the United States by all firms accounted for at least 65 percent of the price charged to the first unaffiliated customer for the merchandise as sold in the United States. See 19 CFR 351.402(c) for an explanation of our practice on this issue. Therefore, we preliminarily determine that for all firms the value added is likely to exceed substantially the value of the subject merchandise. Also, for those companies, we determine that there was a sufficient quantity of sales remaining to provide a reasonable basis for comparison and that the use of these sales is appropriate. See analysis memoranda for SKF France, SKF Germany, SKF Italy, FAG Germany, Paul Mueller, and NMB/Pelmec dated January 31, 2003. Accordingly, for purposes of determining dumping margins for the sales subject to the special rule, we have used the weighted-average dumping margins calculated on sales of identical or other subject merchandise sold to unaffiliated persons. No other adjustments to export price or CEP were claimed or allowed.

Normal Value

Based on a comparison of the aggregate quantity of home-market and U.S. sales and absent any information that a particular market situation in the exporting country did not permit a

proper comparison, we determined that the quantity of foreign like product sold by all respondents in the exporting country was sufficient to permit a proper comparison with the sales of the subject merchandise to the United States, pursuant to section 773(a) of the Act. Each company's quantity of sales in its home market was greater than five percent of its sales to the U.S. market. Therefore, in accordance with section 773(a)(1)(B)(i) of the Act, we based normal value on the prices at which the foreign like products were first sold for consumption in the exporting country.

Due to the extremely large number of transactions that occurred during the period of review and the resulting administrative burden involved in examining all of these transactions, we sampled sales to calculate normal value in accordance with section 777A of the Act. When a firm had more than 10,000 home-market sales transactions on a country-specific basis, we used sales in sample months that corresponded to the sample weeks that we selected for U.S. CEP sales, sales in the month prior to the period of review, and sales in the month following the period of review. The sample months were April, May, August, September, and December of 2001, and February, March, and June of 2002.

We used sales to affiliated customers only where we determined such sales were made at arm's-length prices, *i.e.*, at prices comparable to prices at which the firm sold identical merchandise to unaffiliated customers.

Because we disregarded below-cost sales in accordance with section 773(b) of the Act in the last completed review with respect to ball bearings sold by SNR, SKF France, SKF Italy, Paul Mueller, and SKF Germany (see *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, et al; Final Results of Administrative Reviews and Revocation of Orders in Part*, 65 FR 49219, 49221 (Aug. 11, 2000), or *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, et al: Final Results of Administrative Reviews and Revocation of Orders in Part*, 67 FR 55780, 55781 (Aug. 30, 2002)), we had reasonable grounds to believe or suspect that sales of the foreign like product under consideration for the determination of normal value in these reviews may have been made at prices below the cost of production (COP) as provided by section 773(b)(2)(A)(ii) of the Act. Therefore, pursuant to section 773(b)(1) of the Act, we conducted COP investigations of sales by these firms in the home market.

In accordance with section 773(b)(3) of the Act, we calculated the COP based on the sum of the costs of materials and fabrication employed in producing the foreign like product, the selling, general and administrative (SG&A) expenses, and all costs and expenses incidental to packing the merchandise. In our COP analysis, we used the home-market sales and COP information provided by each respondent in its questionnaire responses.

After calculating the COP, in accordance with section 773(b)(1) of the Act, we tested whether home-market sales of the foreign like product were made at prices below the COP within an extended period of time in substantial quantities and whether such prices permitted the recovery of all costs within a reasonable period of time. We compared model-specific COPs to the reported home-market prices less any applicable movement charges, discounts, and rebates.

Pursuant to section 773(b)(2)(C) of the Act, when less than 20 percent of a respondent's sales of a given product were at prices less than the COP, we did not disregard any below-cost sales of that product because the below-cost sales were not made in substantial quantities within an extended period of time. When 20 percent or more of a respondent's sales of a given product during the period of review were at prices less than the COP, we disregarded the below-cost sales because they were made in substantial quantities within an extended period of time pursuant to sections 773(b)(2)(B) and (C) of the Act and because, based on comparisons of prices to weighted-average COPs for the period of review, we determined that these sales were at prices which would not permit recovery of all costs within a reasonable period of time in accordance with section 773(b)(2)(D) of the Act. Based on this test, we disregarded below-cost sales with respect to all of the above-mentioned companies.

We compared U.S. sales with sales of the foreign like product in the home market. We considered all non-identical products within a bearing family to be equally similar. As defined in the questionnaire, a bearing family consists of all bearings which are the foreign like product that are the same in the following physical characteristics: load direction, bearing design, number of rows of rolling elements, precision rating, dynamic load rating, outer diameter, inner diameter, and width.

Home-market prices were based on the packed, ex-factory, or delivered prices to affiliated or unaffiliated purchasers. When applicable, we made adjustments for differences in packing and for movement expenses in accordance with sections 773(a)(6)(A) and (B) of the Act. We also made adjustments for differences in cost attributable to differences in physical characteristics of the merchandise pursuant to section 773(a)(6)(C)(ii) of the Act and for differences in circumstances of sale in accordance with section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410. For comparisons to export price, we made circumstances-of-sale adjustments by deducting home-market direct selling expenses from and adding U.S. direct selling expenses to normal value. For comparisons to CEP, we made circumstances-of-sale adjustments by deducting home-market direct selling expenses from normal value. We also made adjustments, when applicable, for home-market indirect selling expenses to offset U.S. commissions in export-price and CEP calculations.

With respect to adjustments for differences in payment terms and for inventory credit expenses, Paul Mueller claimed that it did not have any short-term borrowings in the United States upon which to base a short-term borrowing rate and used a prime lending rate. The record indicates, however, that a wholly owned subsidiary of Paul Mueller did have a short-term borrowing rate in the United States and we used this rate to calculate credit for all U.S. sales made by Paul Mueller. See analysis memorandum for Paul Mueller dated January 31, 2003.

In accordance with section 773(a)(1)(B)(i) of the Act, we based normal value, to the extent practicable, on sales at the same level of trade as the export price or CEP. If normal-value was calculated at a different level of trade, we made an adjustment, if appropriate and if possible, in accordance with section 773(a)(7) of the Act. See *Level of Trade* section below.

In accordance with section 773(a)(4) of the Act, we used constructed value as the basis for normal value when there were no usable sales of the foreign like product in the comparison market. We calculated constructed value in accordance with section 773(e) of the Act. We included the cost of materials and fabrication, SG&A expenses, and profit in the calculation of constructed value. In accordance with section 773(e)(2)(A) of the Act, we based SG&A expenses and profit on the amounts incurred and realized by each respondent in connection with the production and sale of the foreign like product in the ordinary course of trade for consumption in the home market.

When appropriate, we made adjustments to constructed value in accordance with section 773(a)(8) of the Act and 19 CFR 351.410 for circumstances-of-sale differences and level-of-trade differences. For comparisons to export price, we made circumstances-of-sale adjustments by deducting home-market direct selling expenses from and adding U.S. direct selling expenses to normal value. For comparisons to CEP, we made circumstances-of-sale adjustments by deducting home-market direct selling expenses from normal value. We also made adjustments, when applicable, for home-market indirect selling expenses to offset U.S. commissions in export-price and CEP comparisons.

When possible, we calculated constructed value at the same level of trade as the export price or CEP. If constructed value was calculated at a different level of trade, we made an adjustment, if appropriate and if possible, in accordance with sections 773(a)(7) and (8) of the Act. See *Level of Trade* section below.

We found that NMB/Pelmec reported a small number of U.S. models for which it did not report CV data. We will obtain additional information to allow us to consider these transactions for our final results of administrative review. See analysis memorandum for NMB/Pelmec dated January 31, 2003.

Level of Trade

To the extent practicable, we determined normal value for sales at the same level of trade as the U.S. sales (either export price or CEP). When there were no sales at the same level of trade, we compared U.S. sales to home-market sales at a different level of trade. The normal-value level of trade is that of the starting-price sales in the home market. When normal value is based on constructed value, the level of trade is that of the sales from which we derived SG&A and profit.

To determine whether home-market sales are at a different level of trade than U.S. sales, we examined stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison-market sales were at a different level of trade from that of a U.S. sale and the difference affected price comparability, as manifested in a pattern of consistent price differences between the sales on which normal value is based and comparison-market sales at the level of trade of the export transaction, we made a level-of-trade adjustment under section 773(a)(7)(A) of the Act. See, *e.g., Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa*, 62 FR 61731 (Nov. 19, 1997).

For a company-specific description of our level-of-trade analysis for these preliminary results, see Memorandum to Laurie Parkhill from Antifriction Bearings Team Regarding Level of Trade, dated January 31, 2003, on file in the CRU, Room B-099.

Preliminary Results of Reviews

As a result of our reviews, we preliminarily determine the following percentage weighted-average dumping margins on BBs for the period May 1, 2001, through April 30, 2002:

FRANCE

Company	Margin
SNR Roulements	3.49
SKF	5.68

GERMANY

Company	Margin
FAG	1.44
Torrington	70.41
Paul Mueller	0.19
SKF	3.20

ITALY

Company	Margin
FAG	2.86
SKF	5.10

SINGAPORE

Company	Margin
NMB/Pelmec	1.62

Comments

Any interested party may request a hearing within 21 days of the date of publication of this notice. A general-issues hearing, if requested, and any hearings regarding issues related solely to specific countries, if requested, will be held at the main Commerce Department building at a time and location to be determined.

Issues raised in hearings will be limited to those raised in the respective case and rebuttal briefs. Case briefs from interested parties and rebuttal briefs, limited to the issues raised in the respective case briefs, may be submitted not later than the dates shown below for general issues and the respective country-specific cases. Parties who submit case or rebuttal briefs in these proceedings are requested to submit with each argument (1) a statement of the issue, and (2) a brief summary of the argument with an electronic version included.

Case	Briefs Due	Rebuttals Due
General Issues	March 17, 2003	March 24, 2003
France	March 18, 2003	March 25, 2003
Germany	March 19, 2003	March 26, 2003
Italy	March 20, 2003	March 27, 2003
Singapore	March 21, 2003	March 28, 2003

The Department will publish the final results of these administrative reviews, including the results of its analysis of issues raised in any such written briefs. The Department will issue final results of these reviews within 120 days of publication of these preliminary results.

Assessment Rates

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b)(1), we have calculated, whenever possible, an exporter/importer (or customer)-specific assessment rate or value for subject merchandise.

Export-Price Sales

With respect to export-price sales, for these preliminary results we divided the total dumping margins (calculated as the difference between normal value and export price) for each exporter's importer/customer by the total number of units the exporter sold to that importer/customer. We will direct the Customs Service to assess the resulting per-unit dollar amount against each unit of merchandise in each of that importer's/customer's entries under the relevant order during the review period.

Constructed Export Price Sales

For CEP sales (sampled and non-sampled), we divided the total dumping margins for the reviewed sales by the total entered value of those reviewed sales for each importer. We will direct the Customs Service to assess the resulting percentage margin against the entered customs values for the subject merchandise on each of that importer's entries under the relevant order during the review period. See 19 CFR 351.212(a).

Cash-Deposit Requirements

To calculate the cash-deposit rate for each respondent (*i.e.*, each exporter and/or manufacturer included in these reviews), we divided the total dumping margins for each company by the total net value for that company's sales of merchandise during the review period. In order to derive a single weighted-average margin for each respondent, we weight-averaged the export-price and CEP deposit rates (using the export price and CEP, respectively, as the weighting factors). To accomplish this when we sampled CEP sales, we first calculated the total dumping margins for all CEP sales during the review period by multiplying the sample CEP margins by the ratio of total days in the review period to days in the sample weeks. We then calculated a total net value for all CEP sales during the review period by multiplying the sample CEP total net value by the same ratio. Finally, we divided the combined total dumping margins for both export-price and CEP sales by the combined total value for both export-price and CEP sales to obtain the deposit rate.

Entries of parts incorporated into finished bearings before sales to an unaffiliated customer in the United States will receive the respondent's deposit rate applicable to the order.

Furthermore, the following deposit requirements will be effective upon publication of the notice of final results of administrative reviews for all shipments of AFBs entered, or withdrawn from warehouse, for consumption on or after the date of publication, as provided by section 751(a)(1) of the Act: (1) the cash-deposit rates for the reviewed companies will be the rates established in the final results of reviews; (2) for previously reviewed or investigated companies not listed above, the cash-deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the less-than-fair-value investigation, but the manufacturer is, the cash-deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash-deposit rate for all other manufacturers or exporters will continue to be the "All Others" rate for the relevant order made effective by the final results of review published on July 26, 1993. See *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, et al; Final Results of Antidumping Duty Administrative Reviews and Revocation in Part of an Antidumping Duty Order*, 58 FR 39729 (Jul. 26, 1993). For BBs from Italy, see *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, et al; Final Results of Antidumping Duty Administrative Reviews, Partial Termination of Administrative Reviews, and Revocation in Part of Antidumping Duty Orders*, 61 FR 66472 (Dec. 17, 1996). These rates are the "All Others" rates from the relevant less-than-fair-value investigations.

These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative reviews.

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Department's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

We are issuing and publishing these determinations in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: January 31, 2003.

Bernard T. Carreau,

Acting Assistant Secretary for Import Administration.

[FR Doc. 03–3090 Filed 2–6–03; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–549–807]

Certain Carbon Steel Butt-Weld Pipe Fittings From Thailand: Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On August 7, 2002, the Department of Commerce (the Department) published the preliminary results of administrative review of the antidumping duty (AD) order on carbon steel butt-weld pipe fittings from Thailand. This review covers one foreign producer/exporter, Thai Benkan Company, Ltd. (TBC). The period of review (POR) is July 1, 2000, through June 30, 2001. Based on our analysis of the comments received, we have made changes in the margin calculations. Therefore, the final results differ from the preliminary results. The final weighted-average dumping margin for the reviewed firm is listed below in the section entitled "*Final Results of the Review.*"

EFFECTIVE DATE: February 7, 2003.

FOR FURTHER INFORMATION CONTACT: Zev Primor or Tom Futtner, Antidumping/Countervailing Duty Enforcement, Office 4, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–4114 or 482–3814, respectively.

SUPPLEMENTARY INFORMATION:

Background

On August 7, 2002, the Department published the preliminary results of the administrative review of the AD order on carbon steel butt-weld pipe fittings from Thailand. *See Certain Carbon Steel Butt-Weld Pipe Fittings from Thailand: Preliminary Results of Antidumping Duty Administrative Review*, 67 FR 51178 (August 7, 2002) (*Preliminary Results*). The POR is July 1, 2000, through June 30, 2001; the is TBC. We conducted verification of the information submitted on the record by TBC and issued our verification report on December 9, 2002. We invited parties to comment on our preliminary results of review. On December 20, 2002, we received TBC's case brief. On January 3, 2003, we received rebuttal comments from Tube Forgings of America, Inc., one of the original petitioners in the less-than-fair-value (LTFV) investigation. No interested party requested a public hearing in this proceeding.

The Department has conducted this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

Extension of Deadlines

Under section 751(a)(3)(A) of the Act, the Department may extend the deadline for completion of final review results if it determines that it is not practicable to complete the review within the statutory time limit. On December 3, 2002, the Department fully extended the time limit for the final results of this case to February 3, 2003 (*see Notice of Extension of Time Limits for Final Results of Antidumping Duty Administrative Review*, 67 FR 71935).

Scope of the Review

The product covered by this order is certain carbon steel butt-weld pipe fittings, having an inside diameter of less than 14 inches, imported in either finished or unfinished form. These formed or forged pipe fittings are used to join sections in piping systems where conditions require permanent, welded connections, as distinguished from fittings based on other fastening methods (*e.g.*, threaded, grooved, or bolted fittings). Carbon steel pipe fittings are currently classified under subheading 7307.93.30 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

Verification

As provided in section 782(i) of the Act, during the week of October 28 through November 1, 2002, we conducted verification of the information provided by TBC. We used standard verification procedures including examination of relevant sales and financial records, and selection of relevant source documentation as exhibits. Our verification findings are detailed in the memorandum "Verification of the Sales Questionnaire Responses of Thai Benkan Corp., and Benkan America, Inc.—Carbon Steel Butt-Weld Pipe Fittings from Thailand—Administrative Review (2000–2001)" from Tom Futtner, Program Manager to The File, dated December 9, 2002, the public version of which is on file in the Central Records Unit, Room B099 of the Main Commerce building (CRU–Public File).

Facts Available

Section 776(a)(2) of the Act provides that if an interested party or any other person (A) withholds information that has been requested by the administering authority; (B) fails to provide such information by the deadlines for the submission of the information or in the form and manner requested, subject to subsections (c)(1) and (e) of section 782; (C) significantly impedes a proceeding under this title; or (D) provides such information but the information cannot be verified as provided in section 782(i), the administering authority shall, subject to section 782(d), use the facts otherwise available in reaching the applicable determination under this title. Because the home market sales information submitted by TBC could not be verified, the Department applied total facts available pursuant to section 776(a)(2).

Section 782(d) of the Act provides that, if the Department determines that a respondent's response to a request for information does not comply with the request, the Department shall inform the person submitting the response of the nature of the deficiency and shall, to the extent practicable, provide the person the opportunity to remedy or explain the deficiency. If that person submits further information that continues to be unsatisfactory, or this information is not submitted within the applicable time limits, the Department may, subject to section 782(e), disregard all or part of the original and subsequent responses, as appropriate.

Section 776(b) of the Act provides that, if the Department finds that an interested party "has failed to cooperate by not acting to the best of its ability to comply with a request for information," the Department may draw an inference that is adverse to the interests of that party in selecting from among the facts otherwise available. Section 776(b)(4) states that adverse inferences may be based on information derived from the petition, the investigation or prior reviews, or any other information placed on the record.

We find that, in accordance with sections 776(a)(2)(D) and 776(b) of the Act, the use of facts available for TBC is appropriate in this instant review. As the record of this case indicates, the Department provided TBC with ample opportunity to prepare a correct and verifiable home market data set. Yet, despite numerous opportunities to provide the Department with a correct home market data set, at verification the Department discovered that TBC's information was flawed. Because TBC failed to provide a reconciliation of the reported home market sales' quantity and value to its financial statements, and its constructed value (CV) information was determined to be unreliable in the preliminary results, TBC's actions prevented the Department from establishing a reliable basis for normal value (NV) in this review. As such, the use of facts available in the final determination is warranted pursuant to section 776(a)(2)(D) of the Act.

In selecting from among the facts available, section 776(b) of the Act authorizes the Department to use an inference that is adverse to a party if the Department finds that the party has failed to cooperate by not acting to the best of its ability to comply with requests for information. The Department applies adverse facts available "to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully." Uruguay Round Agreements Act, Statement of Administrative Action, H.R. Doc No. 103–316, vol. 1, at 870 (1994) (SAA).

To examine whether the respondent "cooperated" by "acting to the best of its ability" under section 776(b) of the Act, the Department considers, among other things, the accuracy and completeness of submitted information and whether the respondent has hindered the calculation of accurate dumping margins. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products From Venezuela*, 67 FR 62119 (October 3, 2002) (*Steel Flat Products From Venezuela*), *Certain Welded Carbon Steel Pipes and Tubes From Thailand: Final Results of Antidumping Duty Administrative Review*, 62 FR 53808 (October 16, 1997). In this case, TBC failed to cooperate to the best of its ability by not being adequately prepared for verification and not being able to reconcile its own home market data. Furthermore, TBC's inability to provide a reconcilable home market sales listing and its lack of preparedness for verification, has hindered the calculation of an accurate margin in this review.

It is the Department's practice to assign the highest rate from any segment of a proceeding as total adverse facts available when a respondent fails to cooperate to the best of its ability. *See e.g., Stainless Steel Plate in Coils from Taiwan; Preliminary Results and Rescission in Part of Antidumping Duty Administrative Review*, 67 FR 5789 (February 7, 2002) ("Consistent with Department practice in cases where a respondent fails to cooperate to the best of its ability, and in keeping with section 776(b)(3) of the Act, as adverse facts available we have applied a margin based on the highest margin from any prior segment of the proceeding * * * In this case, the highest margin from any segment of the proceeding is * * * the petition rate in the less-than-fair-value (LTFV) investigation"). Therefore, in the instant case, the Department is applying

the margin of 52.60 percent to TBC for these final results. This margin was derived from the AD petition used in the LTFV investigation (*see Final Determination of Sales at Less Than Fair Value: Certain Carbon Steel Butt-Weld Pipe Fittings From Thailand*, 57 FR 21065 (May 18, 1992). *See also Certain Carbon Steel Butt-Weld Pipe Fittings From Thailand; Final Results of the Antidumping Duty Administrative Review*, 62 FR 40797, 40803 (July 30, 1997) (*Review 1995–1896*).

Information from prior segments of the proceeding constitutes secondary information and section 776(c) provides that the Department shall, to the extent practicable, corroborate that secondary information from independent sources reasonably at its disposal. Secondary information is described in the SAA as "[i]nformation derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 concerning the subject merchandise." SAA at 870. The SAA further provides that "corroborate" means that the Department will satisfy itself that the secondary information to be used has probative value (*see* SAA, at 870). To corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information to be used.

As part of the corroboration process, we examined the basis of the rates contained in the petition. The U.S. prices in the petition were based on publicly available prices from a Thai manufacturer selling in the United States. The normal value was based on CV. We reviewed the data submitted by the petitioner and the assumptions that petitioner made when calculating CV. The methodology was reasonable and was based on the data reasonably available to petitioner at the time. We also note that the same rate of 52.60 percent was applied as the best information available in the prior segment of this proceeding when another respondent failed to cooperate to the best of its ability. *See Review 1995–1896*. For purposes of this administrative review, we have reviewed the petition and the administrative record, and found no reason to believe that the reliability of this information should be called into question.

With respect to the relevance aspect of corroboration, however, the Department is required to consider information reasonably at its disposal to determine whether there are circumstances that would render a margin inappropriate. Where circumstances indicate that the selected margin is not appropriate as adverse facts available, the Department will disregard the selected margin and determine an appropriate margin (*see, e.g., Fresh Cut Flowers from Mexico; Final Results of Antidumping Duty Administrative Review*, 61 FR 6812, 6814 (February 22, 1996) (where the Department disregarded the highest margin as adverse facts available because the margin was unusually high since it was based on another company's uncharacteristic business expense)).

The highest margin in the history of this proceeding is 52.60 percent from the petition in the original LTFV investigation. In this review, there are no circumstances indicating that this margin is inappropriate as facts available. Therefore, for the reasons stated above, we find that the 52.60 percent rate is corroborated to the greatest extent practicable in accordance with section 776(c) of the Act.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this review are addressed in the "Issues and Decision Memorandum" (Decision Memorandum) from Bernard T. Carreau, Deputy Assistant Secretary for Import Administration, Group II, to Faryar Shirzad, Assistant Secretary for Import Administration, dated February 3, 2003, which is hereby adopted by this notice. A list of the issues which parties raised, and to which we have responded, all of which are in the Decision Memorandum, is attached to this notice as an Appendix. Parties can find a complete discussion of all issues raised in this investigation and the corresponding recommendations in this public memorandum, which is on file in CRU-Public File. In addition, a complete version of the Decision Memorandum can be accessed directly on the World Wide Web at *http://ia.ita.doc.gov/frn/*. The paper copy and electronic version of the Decision Memorandum are identical in content.

Final Results of the Review

As a result of this review, we determine that the following weighted-average dumping margin exists for the period July 1, 2000, through June 30, 2001:

Manufacturer/exporter	Weighted-average margin (percent)
Thai Benkan Company, Ltd	52.60

Assessment Rate

The Department will determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. For the company for whom we applied facts available, we based the assessment rate on the facts available margin percentage. The Department will issue appropriate assessment instructions directly to the Customs Service within 15 days of publication of these final results of review. We will direct Customs to assess the resulting assessment rate against the entered customs values for the subject merchandise on each of the company's entries during the review period.

Cash Deposit Requirements

The following deposit requirements will be effective upon publication of this notice of final results of administrative review for all shipments of pipe fittings from Thailand entered, or withdrawn from warehouse, for consumption on or after the date of publication, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for the reviewed company will be the rate established in the final results of this administrative review, except if the rate is less than 0.5 percent *ad valorem* and, therefore, *de minimis*, no cash deposit will be required; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 39.10 percent, the "All Others" rate which is based on the LTFV investigation (57 FR 21065, May 18, 1992). These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

Notification to Importers

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the

subsequent assessment of double antidumping duties.

Administrative Protective Orders

This notice also serves as the only reminder to parties subject to administrative protective orders (APOs) of their responsibility concerning the return or destruction of proprietary information disclosed under an APO in accordance with 19 CFR 351.305 of the Department's regulations. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing this determination and notice in accordance with sections 751(a)(1) and 777(i) of the Act.

Dated: February 3, 2003.

Faryar Shirzad,

Assistant Secretary for Import Administration.

Appendix—Issues in Decision Memorandum Thai Benkan Company, Ltd. (TBC)

1. Application of Adverse Facts Available
2. Indirect Selling Expense Ratio
3. CEP Profit Ratio

[FR Doc. 03–3087 Filed 2–6–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-580–825]

Oil Country Tubular Goods, Other Than Drill Pipe, From Korea: Rescission of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, U.S. Department of Commerce.

SUMMARY: The Department initiated an administrative review of oil country tubular goods, other than drill pipe, from Korea for the period of review (POR) August 1, 2001, to July 31, 2002, in response to a timely request from SeAH Steel Corporation (SeAH) and for the period August 1, 2001, to July 31, 2002, in response to a timely request from Husteel Co., Ltd. (Husteel). SeAH and Husteel Co., Ltd., each the only party to request an administrative review of its respective sales, submitted timely withdrawals of requests for review. As such, the Department is rescinding this administrative review.

EFFECTIVE DATE: February 7, 2003.

FOR FURTHER INFORMATION CONTACT: Thomas Gilgunn at (202) 482–4236, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On August 11, 1995, the Department published in the **Federal Register** an antidumping duty order on OCTG from Korea (60 FR 41057). On August 30, 2002, SeAH and Husteel each filed a timely request that the Department conduct an administrative review of its respective sales. No other parties requested a review of SeAH or Husteel. On September 25, 2002, the Department initiated an administrative review of SeAH and Husteel under the antidumping duty order on OCTG from Korea. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 67 FR 60210 (September 25, 2002). In accordance with section 351.213(d)(1) of the regulations, Husteel timely withdrew its request for review on October 16, 2002 and SeAH timely withdrew its request for review on November 25, 2002.

Rescission of Review

Pursuant to our section 351.213(d)(1) of the regulations, the Department will rescind an administrative review, "if a party that requested the review withdraws the request within 90 days of the date of publication of notice of initiation of the requested review." Since the only parties that requested and administrative review timely withdrew their request for review, we are rescinding this administrative review for the period August 1, 2001, to July 31, 2002, for SeAH and for the period August 1, 2002, to July 31, 2002, for Husteel. The Department will issue appropriate assessment instructions to the U.S. Customs Service.

Dated: January 31, 2003.

Joseph A. Spetrini,

Deputy Assistant Secretary for Import Administration, Group III.

[FR Doc. 03–3089 Filed 2–6–03; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–854]

Certain Tin Mill Products From Japan: Final Results of Changed Circumstances Review

AGENCY: Import Administration, International Trade Administration, U.S. Department of Commerce.

EFFECTIVE DATE: February 7, 2003.

SUMMARY: On October 28, 2002, the Department of Commerce ("the Department") published a notice of initiation of a changed circumstances review with the intent to revoke, in part, the antidumping duty order on certain tin mill products from Japan with respect to certain laminated tin-free steel, as described below. *See Certain Tin Mill Products From Japan: Notice of Initiation of Changed Circumstances Antidumping Duty Review*, 67 FR 65783 (October 28, 2002) ("*Initiation Notice*"). On December 17, 2002, the Department published the preliminary results of the changed circumstances review and preliminarily determined to revoke this order, in part, with respect to future entries of certain laminated tin-free steel described below, based on the fact that domestic parties have expressed no interest in continuation of the order with respect to these particular laminated tin-free steel products. *See Certain Tin Mill Products from Japan: Preliminary Results of Changed Circumstances Review*, 67 FR 77227 (December 17, 2002) ("*Preliminary Results*"). In our *Initiation Notice*, and our *Preliminary Results*, we gave interested parties an opportunity to comment; however, we did not receive any comments from domestic parties opposing the partial revocation of the order. Therefore, in our final results of the changed circumstances review, the Department hereby revokes this order with respect to all future entries for consumption of certain laminated tin-free steel, as described below.

FOR FURTHER INFORMATION CONTACT: Michael Ferrier, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–1394.

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are to the Tariff Act of 1930, as amended (the Act). In addition, unless otherwise indicated, all citations to the Department of Commerce's (the Department's)

regulations are to the regulations at 19 CFR part 351 (2002).

SUPPLEMENTARY INFORMATION

Background

On August 28, 2000, the Department published in the **Federal Register** the antidumping duty order on certain tin mill products from Japan. *See Notice of Antidumping Duty Order: Certain Tin Mill Products from Japan* 65 FR 52067 (August 28, 2000) (*TMP Order*). On September 6, 2002, Nippon Steel Corporation ("Nippon"), an exporter and manufacturer of the subject merchandise requested that the Department revoke, in part, the antidumping duty order on certain tin mill products from Japan. Specifically, Nippon requested that the Department revoke the order with respect to imports meeting the following specifications: tin-free steel laminated on one or both sides of the surface with a polyester film, consisting of two layers (an amorphous layer and an outer crystal layer), that contains no more than the indicated amounts of the following environmental hormones: 1 mg/kg BADGE (BisPhenol—A Di-glycidyl Ether), 1 mg/kg BFDGE (BisPhenol—F Di-glycidyl Ether), and 3 mg/kg BPA (BisPhenol—A).

Nippon included letters from Weirton Steel Corporation, United States Steel Corporation, Bethlehem Steel Corporation, USS-Posco Industries, and National Steel Corporation, in its request for the changed circumstances review stating their support for the exclusion of the tin-free laminated steel, as described above. On October 28, 2002, the Department published a notice of initiation of a changed circumstances review of the antidumping duty order on certain tin mill products from Japan with respect to certain laminated tin-free steel. *See Initiation Notice.* On October 29, 2002, Nippon filed a letter on behalf of Ohio Coatings Company stating their support for the exclusion of certain laminated tin-free steel. On December 17, 2002, the Department published the preliminary results of the changed circumstances review. *See Preliminary Results.* In the *Initiation Notice* and *Preliminary Results*, we indicated that interested parties could submit comments for consideration in the Department's preliminary and final results. We did not receive any comments following the *Preliminary Results.*

Scope of Review

The products covered by this antidumping order are tin mill flat-rolled products that are coated or plated with tin, chromium or chromium oxides. Flat-rolled steel products coated with tin are known as tin plate. Flat-rolled steel products coated with chromium or chromium oxides are known as tin-free steel or electrolytic chromium-coated steel. The scope includes all the noted tin mill products regardless of thickness, width, form (in coils or cut sheets), coating type (electrolytic or otherwise), edge (trimmed, untrimmed or further processed, such and scroll cut), coating thickness, surface finish, temper, coating metal (tin, chromium, chromium oxide), reduction (single- nor double-reduced), and whether or not coated with a plastic material. All products that meet the written physical description are within the scope of this order unless specifically excluded. The following products, by way of example, are outside and/or specifically excluded from the scope of this order:

—Single reduced electrolytically chromium coated steel with a thickness 0.238 mm (85 pound base box) (±10%) or 0.251 mm (90 pound base box) (±10%) or 0.255 mm (±10%) with 770 mm (minimum width) (±1.588 mm) by 900 mm (maximum length if sheared) sheet size or 30.6875 inches (minimum width) (±1/16 inch) and 35.4 inches (maximum length if sheared) sheet size; with type MR or higher (per ASTM) A623 steel chemistry; batch annealed at T2½ anneal temper, with a yield strength of 31 to 42 kpsi (214 to 290 Mpa); with a tensile strength of 43 to 58 kpsi (296 to 400 Mpa); with a chrome coating restricted to 32 to 150 mg/m^2; with a chrome oxide coating restricted to 6 to 25 mg/m^2 with a modified 7B ground roll finish or blasted roll finish; with roughness average (Ra) 0.10 to 0.35 micrometers, measured with a stylus instrument with a stylus radius of 2 to 5 microns, a trace length of 5.6 mm, and a cut-off of 0.8 mm, and the measurement traces shall be made perpendicular to the rolling direction; with an oil level of 0.17 to 0.37 grams/base box as type BSO, or 2.5 to 5.5 mg/m^2 as type DOS, or 3.5 to 6.5 mg/m^2 as type ATBC; with electrical conductivity of static probe voltage drop of 0.46 volts drop maximum, and with electrical conductivity degradation to 0.70 volts drop maximum after stoving (heating to 400 degrees F for 100 minutes followed by a cool to room temperature).

—Single reduced electrolytically chromium- or tin-coated steel in the gauges of 0.0040 inch nominal, 0.0045 inch nominal, 0.0050 inch nominal, 0.0061 inch nominal (55 pound base box weight), 0.0066 inch nominal (60 pound base box weight), and 0.0072 inch nominal (65 pound base box weight), regardless of width, temper, finish, coating or other properties.

—Single reduced electrolytically chromium coated steel in the gauge of 0.024 inch, with widths of 27.0 inches or 31.5 inches, and with T–1 temper properties.

—Single reduced electrolytically chromium coated steel, with a chemical composition of 0.005% max carbon, 0.030% max silicon, 0.25% max manganese, 0.025% max phosphorous, 0.025% max sulfur, 0.070% max aluminum, and the balance iron, with a metallic chromium layer of 70–130 mg/m^2, with a chromium oxide layer of 5–30 mg/m^2, with a tensile strength of 260–440 N/mm^2, with an elongation of 28–48%, with a hardness (HR–30T) of 40–58, with a surface roughness of 0.5–1.5 microns Ra, with magnetic properties of Bm (KG)10.0 minimum, Br (KG) 8.0 minimum, Hc (Oe) 2.5–3.8, and MU 1400 minimum, as measured with a Riken Denshi DC magnetic characteristic measuring machine, Model BHU–60.

—Bright finish tin-coated sheet with a thickness equal to or exceeding 0.0299 inch, coated to thickness of ¾ pound (0.000045 inch) and 1 pound (0.00006 inch).

—Electrolytically chromium coated steel having ultra flat shape defined as oil can maximum depth of 5/64 inch (2.0 mm) and edge wave maximum of 5/64 inch (2.0 mm) and no wave to penetrate more than 2.0 inches (51.0 mm) from the strip edge and coilset or curling requirements of average maximum of 5/64 inch (2.0 mm) (based on six readings, three across each cut edge of a 24 inches (61 cm) long sample with no single reading exceeding 4/32 inch (3.2 mm) and no more than two readings at 4/32 inch (3.2 mm)) and (for 85 pound base box item only: crossbuckle maximums of 0.001 inch (0.0025 mm) average having no reading above 0.005 inch (0.127 mm)), with a camber maximum of ¼ inch (6.3 mm) per 20 feet (6.1 meters), capable of being bent 120 degrees on a 0.002 inch radius without cracking, with a chromium coating weight of metallic chromium at 100 mg/m^2 and chromium oxide of 10 mg/m^2, with a chemistry of 0.13% maximum carbon, 0.60% maximum manganese, 0.15% maximum silicon, 0.20% maximum copper, 0.04% maximum phosphorous, 0.05% maximum sulfur, and 0.20% maximum aluminum, with a surface finish of Stone Finish 7C, with a DOS-

A oil at an aim level of 2 mg/square meter, with not more than 15 inclusions/foreign matter in 15 feet (4.6 meters) (with inclusions not to exceed 1/32 inch (0.8 mm) in width and 3/64 inch (1.2 mm) in length), with thickness/temper combinations of either 60 pound base box (0.0066 inch) double reduced CADR8 temper in widths of 25.00 inches, 27.00 inches, 27.50 inches, 28.00 inches, 28.25 inches, 28.50 inches, 29.50 inches, 29.75 inches, 30.25 inches, 31.00 inches, 32.75 inches, 33.75 inches, 35.75 inches, 36.25 inches, 39.00 inches, or 43.00 inches, or 85 pound base box (0.0094 inch) single reduced CAT4 temper in widths of 25.00 inches, 27.00 inches, 28.00 inches, 30.00 inches, 33.00 inches, 33.75 inches, 35.75 inches, 36.25 inches, or 43.00 inches, with width tolerance of # 1/8 inch, with a thickness tolerance of #0.0005 inch, with a maximum coil weight of 20,000 pounds (9071.0 kg), with a minimum coil weight of 18,000 pounds (8164.8 kg) with a coil inside diameter of 16 inches (40.64 cm) with a steel core, with a coil maximum outside diameter of 59.5 inches (151.13 cm), with a maximum of one weld (identified with a paper flag) per coil, with a surface free of scratches, holes, and rust.

—Electrolytically tin coated steel having differential coating with 1.00 pound/base box equivalent on the heavy side, with varied coating equivalents in the lighter side (detailed below), with a continuous cast steel chemistry of type MR, with a surface finish of type 7B or 7C, with a surface passivation of 0.7 mg/square foot of chromium applied as a cathodic dichromate treatment, with coil form having restricted oil film weights of 0.3–0.4 grams/base box of type DOS-A oil, coil inside diameter ranging from 15.5 to 17 inches, coil outside diameter of a maximum 64 inches, with a maximum coil weight of 25,000 pounds, and with temper/coating/dimension combinations of : (1) CAT 4 temper, 1.00/.050 pound/base box coating, 70 pound/base box (0.0077 inch) thickness, and 33.1875 inch ordered width; or (2) CAT5 temper, 1.00/0.50 pound/base box coating, 75 pound/base box (0.0082 inch) thickness, and 34.9375 inch or 34.1875 inch ordered width; or (3) CAT5 temper, 1.00/0.50 pound/base box coating, 107 pound/base box (0.0118 inch) thickness, and 30.5625 inch or 35.5625 inch ordered width; or (4) CADR8 temper, 1.00/0.50 pound/base box coating, 85 pound/base box (0.0093 inch) thickness, and 35.5625 inch ordered width; or (5) CADR8 temper, 1.00/0.25 pound/base box coating, 60 pound/base box (0.0066 inch) thickness, and 35.9375 inch ordered width; or (6) CADR8 temper, 1.00/0.25 pound/base box coating, 70 pound/base box (0.0077 inch) thickness, and 32.9375 inch, 33.125 inch, or 35.1875 inch ordered width.

—Electrolytically tin coated steel having differential coating with 1.00 pound/base box equivalent on the heavy side, with varied coating equivalents on the lighter side (detailed below), with a continuous cast steel chemistry of type MR, with a surface finish of type 7B or 7C, with a surface passivation of 0.5 mg/square foot of chromium applied as a cathodic dichromate treatment, with ultra flat scroll cut sheet form, with CAT5 temper with 1.00/0.10 pound/base box coating, with a lithograph logo printed in a uniform pattern on the 0.10 pound coating side with a clear protective coat, with both sides waxed to a level of 15–20 mg/216 sq. in., with ordered dimension combinations of (1) 75 pound/base box (0.0082 inch) thickness and 34.9375 inch × 31.748 inch scroll cut dimensions; or (2) 75 pound/base box (0.0082 inch) thickness and 34.1875 inch × 29.076 inch scroll cut dimensions; or (3) 107 pound/base box (0.0118 inch) thickness and 30.5625 inch × 34.125 inch scroll cut dimension.

—Tin-free steel coated with a metallic chromium layer between 100–200 mg/m^2 and a chromium oxide layer between 5–30 mg/m^2; chemical composition of 0.05% maximum carbon, 0.03% maximum silicon, 0.60% maximum manganese, 0.02% maximum phosphorous, and 0.02% maximum sulfur; magnetic flux density ("Br") of 10 kg minimum and a coercive force ("Hc") of 3.8 Oe minimum.

The merchandise subject to this order is classified in the Harmonized Tariff Schedule of the United States ("HTSUS"), under HTSUS subheadings 7210.11.0000, 7210.12.0000, 7210.50.0000, 7212.10.0000, and 7212.50.0000 if of non-alloy steel and under HTSUS subheadings 7225.99.0090, and 7226.99.0000 if of alloy steel. Although the subheadings are provided for convenience and Customs purposes, our written description of the scope of this review is dispositive.

Final Results of Changed Circumstances Review

Pursuant to section 751(d) of the Act, the Department may partially revoke an antidumping duty order based on a review under section 751(b) of the Act. Section 782(h)(2) of the Act and section 351.222(g)(1)(i) of the Department's regulations provide that the Secretary may revoke an order, in whole or in part, based on changed circumstances if "(p)roducers accounting for substantially all of the production of the domestic like product to which the order (or the part of the order to be revoked)* * * pertains have expressed a lack of interest in the order, in whole or in part * * *." In this context, the Department has interpreted "substantially all" production normally to mean at least 85 percent of domestic production of the like product (*see Oil Country Tubular Goods From Mexico: Preliminary Results of Changed Circumstances Antidumping Duty Administrative Review*, 64 FR 14213, 14214 (March 24, 1999)).

No domestic producers of tin mill products have expressed opposition to the partial revocation of the tin mill products order following the *Initiation Notice* and the *Preliminary Results*. For these reasons, the Department is partially revoking the order on tin mill products from Japan with respect to all future entries for consumption of certain laminated tin-free steel which meets the specifications detailed above in accordance with sections 751(b) and (d) and 782(h) of the Act and 19 CFR 351.216. We will instruct the U.S. Customs Service not to assess antidumping duties on future entries of certain tin mill products (*i.e.*, laminated tin-free steel) meeting the specifications indicated above.

This notice also serves as a reminder to parties subject to administrative protective orders (APOs) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.306. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

This determination is issued and published in accordance with sections 751(b)(1) and 777(i)(1) of the Act and section 351.216 of the Department's regulations.

Dated: February 3, 2003.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 03–3088 Filed 2–6–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

National Institutes of Health—Bethesda, MD; Notice of Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 a.m. and 5 p.m. in Suite 4100W, U.S. Department of Commerce, Franklin Court Building, 1099 14th Street, NW., Washington, DC.

Docket Number: 02–048. *Applicant:* National Institutes of Health, Bethesda, MD 20892–0135. *Instrument:* (2) each Multi-Tasking Radiosynthesis Devices with Accessories. *Manufacturer:* Synthia Lab System Sweden AB, Sweden. *Intended Use:* See notice at 67 FR 77749, December 19, 2002.

Comments: None received. Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States. *Reasons:* The foreign instrument provides computer driven, robotically controlled modular reactors for producing more than 15 ^{11}C-labeled radiopharmaceutical compounds for research in human and primate brain chemistry and radiochemical compound development. The Lawrence Berkeley National Laboratory advised January 27, 2003, that (1) this capability is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

We know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

Gerald A. Zerdy,

Program Manager, Statutory Import Programs Staff.

[FR Doc. 03–3082 Filed 2–6–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Applications for Duty-Free Entry of Scientific Instruments

Pursuant to section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with 15 CFR 301.5(a)(3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, DC 20230. Applications may be examined between 8:30 a.m. and 5 p.m. in Suite 4100W, U.S. Department of Commerce, Franklin Court Building, 1099 14th Street, NW., Washington, DC.

Docket Number: 02–052. *Applicant:* University of Chicago, 920 East 58th Street, Chicago, IL 60637. *Instrument:* Electron Microscope, Model Tecnai G^2 F30 S–TWIN. *Manufacturer:* FEI Company, The Netherlands. *Intended Use:* The instrument is intended to be used for research in the following areas:

1. Nanostructured Solids

Projects investigating metal, semiconductor, and biological nanocrystals, focusing both on the characterization of individual nanocrystals as well as on their self-assembly properties.

2. Nanostructured Polyumer Architectures

Projects aimed at elucidating the nanoscale phase separation and pattern formation of block copolymers, including novel conjugated copolymers. Also, the use of those copolymer structures as nano-templates and scaffolds for organic/inorganic composites.

3. Nanoscale Bio-Structures

Projects investigating the structure and formation of bio-fibers and bio-membranes, as well as their potential for novel materials applications.

Application accepted by Commissioner of Customs: December 27, 2002.

Docket Number: 03–001. *Applicant:* University of Missouri-Kansas City, School of Dentistry, 650 E. 25th Street, Kansas City, MO 64108. *Instrument:* (2) Each Scanning Acoustic Microscopes, Models SAM 2000 and WINSAM 100. *Manufacturer:* Kramer Scientific Instruments GmbH, Germany. *Intended Use:* The instruments are intended to be used for projects including micro-mechanical measurement at the cellular/tissue level, and interfacial coupling defects in experimental oxirane/polyol composites. *Other studies include:* (1) Determining whether the lack of mechanical strain permits the osteocyte to send signals initiating bone resorption and (2) to study the fracture mechanics of newly synthesized low-shrinking and low-stress producing resin composite restorative materials. Application accepted by Commissioner of Customs: January 3, 2003.

Docket Number: 03–002. *Applicant:* University of Colorado, JILA, 440 UCB, Boulder, CO 80309–0440. *Instrument:* DFB Fiber Laser with Amplifier, Model Y10. *Manufacturer:* Koheras A/S, Denmark. *Intended Use:* The instrument is intended to be used to study the energy level of a single trapped Hg+ ion. *Application accepted by Commissioner of Customs:* January 15, 2003.

Gerald A. Zerdy,

Program Manager, Statutory Import Programs Staff.

[FR Doc. 03–3083 Filed 2–6–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 020303D]

Proposed Information Collection; Comment Request; Socioeconomic Monitoring Program for the Florida Keys National Marine Sanctuary

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before April 8, 2003.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW,

Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Dr. Vernon Leeworthy, 301–713–3000, extension 138, or at *Bob.Leeworthy@noaa.gov*.

SUPPLEMENTARY INFORMATION:

I. Abstract

The purpose of this information collection is to obtain socioeconomic monitoring information in the Florida Keys National Marine Sanctuary (FKNMS). In 1997, regulations became effective that created a series of "no take zones" in the FKNMS. Monitoring programs are used to test the ecological and socioeconomic impacts of the ≥no take zones.≥ Three voluntary data collection efforts support the socioeconomic monitoring program.

The first collection involves a set of four panels on commercial fishing operations, where commercial fishermen will be interviewed to assess financial performance and assess the impacts of Sanctuary regulations. Information on catch, effort, revenues, operating and capital costs will be obtained to do financial performance analysis. Information on socioeconomic factors for developing profiles of the commercial fishermen such as age, sex, education level, household income, marital status, number of family members, race/ethnicity, percent of income derived from fishing, percent of income derived from study area, years of experience in fishing will be gathered to compare panels with the general commercial fishing population. The data would be collected annually.

The second collection will monitor recreational for-hire operations through the use of dive logs for estimating use in the ≥no take areas≥ versus other areas for snorkeling, scuba diving and glass-bottom boat rides. Volunteers will collect the logbooks monthly.

The third collection will survey all users of ≥no take areas.≥ Respondents will be asked to rate both the importance and satisfaction with various natural resource attributes and characteristics (e.g., water clarity, coral cover, number and diversity of sea life, etc.).

II. Method of Collection

Interviews will generally be used. The users surveys will also include a mailed questionnaire, and dive shops will be requested to maintain records.

III. Data

OMB Number: 0648–0409.

Form Number: None.

Type of Review: Regular submission.

Affected Public: Individuals or households, business or other for-profit organizations.

Estimated Number of Respondents: 788.

Estimated Time Per Response: 3 hours for a commercial fishing panel member; 10 hours for a dive shop; and 20 minutes for a questionnaire or telephone survey of a visitor to or a resident of a Sanctuary Preservation Area or Ecological Reserve.

Estimated Total Annual Burden Hours: 725.

Estimated Total Annual Cost to Public: $0.

IV. Request for Comments

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: January 31, 2003.

Gwellnar Banks

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 03–3001 Filed 2–6–03; 8:45 am]

BILLING CODE 3510–NK–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 020303E]

Proposed Information Collection; Comment Request; Commercial Harvesters and Recreational Party and Charter Boat Socio-cultural and Economic Data Collection Pilot Study

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before April 8, 2003.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Jonathan O'Neil at 978–281–9257, or to *Jon.Oneil@noaa.gov*.

SUPPLEMENTARY INFORMATION:

I. Abstract

This is a request to extend Paperwork Reduction Act approval for data collection for the Socio-Economic Pilot Study sponsored by the Atlantic Coast Cooperative Statistics Program (ACCSP) and conducted by the National Marine Fisheries Service. Due to a one year delay in initiating the project, data collection efforts must be extended through June 30th, 2004 to allow for completion of the proposed data collection cycle.

This pilot study is designed to develop socio-cultural and economic information systems for commercial and recreational fisheries. Three specific arenas are being addressed during this study. One is to identify and address potential problems with the mechanics of implementing the system. These include all data gathering, entry, and storage activities as well as the ability to link the data to all other ACCSP data. The second is to carry out a field test of the survey instrument across the different cultural and socio-economic contexts in which the data-gathering system must eventually be implemented. Field testing questions and instruments is standard procedure in preparing for any survey research. The third arena is to utilize the collected information for test runs of several standard economic models.

II. Method of Collection

The study is collecting social, cultural, and economic data from commercial and recreational party/charter fishing vessels' owners, captains, and crew via face-to-face interviews.

III. Data

OMB Number: 0648–0400.
Form Number: None.
Type of Review: Regular submission.
Affected Public: Business or other for-profit organizations, individuals or households.
Estimated Number of Respondents: 323.
Estimated Time Per Response: 15 minutes for an interview; and 15 minutes for a vessel captain/owner to gather business information.
Estimated Total Annual Burden Hours: 793.
Estimated Total Annual Cost to Public: $0.

IV. Request for Comments

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: January 31, 2003.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 03–3002 Filed 2–6–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 020303G]

Proposed Information Collection; Comment Request; American Fisheries Act, Recordkeeping and Reporting Requirements.

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before April 8, 2003.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Patsy A. Bearden at 907–586–7228, or at *patsy.bearden@noaa.gov*.

SUPPLEMENTARY INFORMATION:

I. Abstract

The American Fisheries Act (AFA) established an allocation program for the pollock fishery of the Bering Sea and Aleutian Islands Management Area (BSAI) which imposed major structural changes on the BSAI pollock fishery. The AFA provides the BSAI pollock fleet the opportunity to conduct their fishery in a more rational manner, while protecting non-AFA participants in the other fisheries. The AFA also affected the management of other groundfish, crab, and scallop fisheries off Alaska.

Much of the monitoring and enforcement burden is placed on participating AFA cooperatives and their members, which allows NOAA to manage the pollock fishery more precisely. Monitoring their own catch, vessels are able to individually (and in aggregate) come very close to harvesting exactly the amount of pollock they were allocated. NOAA requires certain reports and information to allow it to manage the fishery and monitor the program.

II. Method of Collection

Shoreside processor logbooks are submitted electronically. Other reports may be e-mailed, FAXed or submitted in paper form.

III. Data

OMB Number: 0648–0401.
Form Number: None.
Type of Review: Regular submission.
Affected Public: Business or other for-profit organizations, individuals or households, and not-for-profit institutions.
Estimated Number of Respondents: 26.
Estimated Time Per Response: 20 hours for a cooperative preliminary report; 8 hours for a cooperative final report; 30 minutes for a non-member vessel contract fishing application; 35 minutes for a shoreside processor electronic logbook (SPELR); 5 minutes for a cooperative pollock catch report; and 5 minutes for a designation of agent for service of process.
Estimated Total Annual Burden Hours: 1,024.
Estimated Total Annual Cost to Public: $636.

IV. Request for Comments

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: January 31, 2003.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 03–3084 Filed 2–6–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 020303H]

Proposed Information Collection; Comment Request; Estuary Restoration Act Database

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on

proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before April 8, 2003.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Becky Allee, NMFS Restoration Center, 1315 East-West Highway, F/HC3, Silver Spring, MD 20910 (or via Internet at *becky.allee@noaa.gov).*

SUPPLEMENTARY INFORMATION:

I. Abstract

Collection of estuary habitat restoration project information (e.g., location, habitat type, goals, status, monitoring information) will be undertaken in order to populate a restoration project database mandated by the Estuary Restoration Act (ERA) of 2000. The Estuary Restoration Act Database is to contain information for estuary habitat restoration projects funded through the ERA as well as non-ERA project data that meet quality control requirements and data standards established under the Act. The database is intended to provide information to improve restoration methods, provide the basis for required reports to Congress, and track estuary habitat acreage restored. It will be accessible to the public via Internet for data queries and project reports. Recipients of ERA funds will be required to submit specific information on habitat restoration projects into the ERA Database through an interactive Web site available over the Internet. Projects that are not funded through the ERA can be voluntarily entered into the database by project managers. Other federal agency and private grant programs may also require recipients to enter project information in the ERA database.

II. Method of Collection

Project managers will electronically submit estuary restoration project information via NOAA's Estuary Restoration Act Database Web site. The Web site will contain a user-friendly data entry interface for project managers to enter and submit project information to the ERA database. The data entry interface will consist of a series of screens, containing several pull-down menus and text boxes, where users can enter specific project information (e.g. location, acreage restored, contacts, monitoring information). To facilitate the collection of information through the data entry interface, NOAA Fisheries will provide worksheets containing database fields that can be downloaded and printed from the Web site. These worksheets can be used by project managers to guide information collection, and can then serve as a reference as project managers enter project information over the Web site. The reporting forms will also be available in paper format to be sent to project managers as necessary.

The collection of estuary habitat restoration project information will be undertaken in a multi-phased approach. Project information will first be obtained from existing federal databases, and later from other existing state and regional databases. For projects funded through the Estuary Restoration Act, project managers will be required to enter project information into the database as part of their funding agreement. Submission of project information to the ERA Database may also be required by other public and private restoration financial assistance programs. For other projects implemented by not-for-profit institutions (primary), state, local, tribal governments, businesses and other for-profit organizations, project information can be entered into the database on a voluntary basis. Since database information will be provided by a wide range of respondents, data will be reviewed using a detailed quality assurance/quality control (QA/QC) program prior to being made available to the public. This QA/QC process will also ensure compliance with the Data Quality Act (Section 515). Projects entered into the ERA Database can be updated as new information is obtained but must be updated at least annually for use in database queries and reports.

III. Data

OMB Number: None.
Form Number: None.
Type of Review: Regular submission.
Affected Public: Not-for-profit institutions; state, local, and tribal governments; the Federal government; and business or other for-profit organizations (limited to organizations in the above categories engaging in estuary habitat restoration).
Estimated Number of Respondents: 1,000.
Estimated Time Per Response: One hour per report. This is assuming that most information needed for the database has already been obtained or is known. Projects in the database must be updated at least annually. Information originally collected and submitted for a project does not need to be collected again to update the project.
Estimated Total Annual Burden Hours: 1,000.
Estimated Total Annual Cost to Public: None.

IV. Request for Comments

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: January 31, 2003.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 03–3085 Filed 2–6–03; 8:45 am]
BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[ID 020303F]

Submission for OMB Review; Comment Request

The Department of Commerce has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration.
Title: Application Form for Membership on a National Marine Sanctuary Advisory Council.
Form Number(s): None.
OMB Approval Number: 0648-0397.
Type of Request: Regular submission.
Burden Hours: 150.

Number of Respondents: 150.
Average Hours Per Response: 1.
Needs and Uses: Section 315 of the National Marine Sanctuaries Act (16 U.S.C. 1445a) allows the Secretary of Commerce to establish one or more advisory councils to provide advice to the Secretary regarding the designation and management of national marine sanctuaries. Councils are individually chartered for each sanctuary to meet the needs of that sanctuary. Once a council has been chartered, the Sanctuary Manager starts a process to recruit members for that Council by providing notice to the public and asking interested parties to apply for the available seats. An application form and answers to guidelines for a narrative submission must be submitted to the Sanctuary Manager.
Affected Public: Individuals or households, business or other for-profit organizations, and not-for-profit institutions.
Frequency: On occasion.
Respondent's Obligation: Voluntary.
OMB Desk Officer: David Rostker, (202) 395–3897.
Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).
Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: January 31, 2003.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 03–3003 Filed 2–6–03; 8:45 am]

BILLING CODE 3510–NK–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 012903D]

Marine Mammals; File No. 859–1680

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Issuance of permit.

SUMMARY: Notice is hereby given that the United States Air Force, Environmental Management Office, Vandenberg Air Force Base, CA 93437 has been issued a permit to take California sea lions (*Zalophus californianus*), northern elephant seals (*Mirounga angustirostris*), northern fur seals (*Callorhinus ursinus*), and Pacific harbor seals (*Phoca vitulina richardsi*) for purposes of scientific research.

ADDRESSES: The permit and related documents are available for review upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)713–0376; and

Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213; phone (562)980–4001; fax (562)980–4018.

FOR FURTHER INFORMATION CONTACT: Tammy Adams or Amy Sloan, (301)713–2289.

SUPPLEMENTARY INFORMATION: On October 10, 2002, notice was published in the **Federal Register** (67 FR 63079) that a request for a scientific research permit to take the above listed species had been submitted by the above-named organization. The requested permit has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), and the Fur Seal Act of 1966, as amended (16 U.S.C. 1151 *et seq.*).

The permit is valid for 5 years and authorizes annual takes of up to 1200 California sea lions, 750 northern elephant seals, 300 northern fur seals, and 700 harbor seals inhabiting Vandenberg Air Force Base and the northern Channel Islands annually by harassment during various activities including capture, sedation, blood sampling, skin biopsy, physiological measurements, hearing sensitivity tests, attachment of scientific instruments, temporary captive maintenance, recapture for retrieval of instruments, surveys of abundance and distribution, incidental harassment, and accidental mortality. The movements and foraging behavior of seals exposed to launch noise and/or sonic booms will be compared with non-exposed control animals using remote VHF radio-telemetry, satellite transmitters, and electronic data loggers.

Dated: February 3, 2003.

Stephen L. Leathery,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 03–3086 Filed 2–6–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Consideration will be given to all comments received by March 10, 2003.

Title and OMB Number: Defense Acquisition Regulation Supplement (DFARS) Part 243, Contract Modification and related clause at DFARS 252.243–7002; OMB Number 0704–0397.
Type of Request: Extension of a Currently Approved Collection
Number of Respondents: 440
Responses Per Respondent: 1
Annual Responses: 440
Average Burden Per Response: 4.8 hours (average)
Annual Burden Hours: 2,120
Needs and Uses: This request concerns information collection requirements related to certification of contractor requests for equitable adjustment.
Affected Public: Business or Other Not-For-Profit and Not-for-Profit Institutions
Frequency: On Occasion
Respondent's Obligation: Required to Obtain or Retain Benefits
OMB Desk Officer: Ms. Jacqueline Zeiher
Written comments and recommendations on the proposed information collection should be sent to Ms. Zeiher at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.
DOD Clearance Officer: Mr. Robert Cushing
Written requests for copies of the information collection proposal should be sent to Mr. Cushing, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: February 3, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 03–2976 Filed 2–6–03; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Renewal of the Defense Finance and Accounting Service Board of Advisors

ACTION: Notice.

SUMMARY: The Defense Finance and Accounting Service (DFAS) Board of Advisors is being renewed in consonance with the public interest and in accordance with the provisions of Pub. L. 92–463, the "Federal Advisory Committee Act," Title 5 U.S.C., Appendix 2.

The DFAS Board of Advisors advises and assists the Under Secretary of Defense (Comptroller) and the Director, DFAS, with respect to providing world class finance and accounting services to the Department of Defense (DoD).

The DFAS Board of Advisors will continue to consist of a balanced membership of approximately ten senior executives and flag rank military officers, as-well as several representatives from the private sector appointed by the Secretary of Defense.

FOR FURTHER INFORMATION CONTACT: Please contact Ms. Beverly Lemon, DFAS, 703–607–3839.

Dated: February 3, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 03–2977 Filed 2–6–03; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Notice of Availability of the Ground-Based Midcourse Defense Extended Test Range Draft Environmental Impact Statement

AGENCY: Missile Defense Agency/ Federal Aviation Administration, Department of Defense.

ACTION: Notice of availability.

SUMMARY: This notice announces the availability of the Ground-Based Midcourse Defense (GMD) Extended Test Range Draft Environmental Impact Statement (DEIS), that analyzes the potential for environmental impacts associated with the proposed action of the establishment of an extended test range capability providing more realistic operational flight testing. The current capability includes missile launch sites and array of sensors and other test equipment located at the Ronald Reagan Ballistic Missile Test Site (RTS) at Kwajalein Atoll, the Pacific Missile Range Facility (PMRF) in Hawaii, and Vandenberg Air Force Base (AFB) in California.

The proposed action and alternatives examined in the DEIS include development of the capability for single and dual launches of interceptor and target missiles at the Kodiak Launch Complex (KLC) Alaska, RTS, and/or Vandenberg AFB, with intercepts over the Pacific Ocean. Development of these capabilities would entail construction of two interceptor launchers, one additional target launch pad and construction/alteration of launch support facilities at KLC; target pad modifications at RTS; modification of support facilities at Vandenberg AFB; construction of In-Flight Interceptor Communication System (IFICS) Data Terminals and military and commercial satellite communications in the mid-Pacific and at KLC or Vandenberg AFB; additional range instrumentation (tracking and range safety radars) in the vicinity of sites; and use of either existing Battle Management Command and Control (BMC2) facilities at Reagan Test Site, or new BMC2 facilities that may be developed at Forth Greely, Alaska and/or Shriever AFB, or Cheyenne Mountain Complex, Colorado, in the validation of the GMD operational concept effort.

Additionally, the proposed action and alternatives include the construction and operation of a Sea-Based Test X-Band Radar (SBX) that would operate in the Pacific broad ocean area and would be home-based in either Alaska, California, Washington, or Hawaii.

Public Hearings: In order to facilitate public review and comment on the DEIS, public hearings have been scheduled at the following cities:

City	Date	Location
Oxnard, CA	February 24, 2003	Oxnard Public Library.
Kodiak, AK	February 24, 2003	Kodiak High School.
Lompoc, CA	February 25, 2003	Lompoc City Council Chambers.
Anchorage, AK	February 25, 2003	Egan Convention Center.
Valdez, AK	February 26, 2003	Valdez Convention Center.
Everett, WA	February 27, 2003	Everett Holiday Inn.
Honolulu, HI	March 6, 2003	Disabled American Veterans Hall, Keehi Lagoon Park.

Detailed information on location and times for each of the public hearing will be published in local and regional newspapers two weeks in advance, and public service announcements will be provided to radio and television stations. MDA, GMD, and U.S. Army Space and Missile Defense Command personnel will attend all sessions to present information on the DEIS, to receive comments, and to answer questions.

Copies of the document will be made available at the following public libraries:

- Anchorage Municipal Library, 3600 Denali St., Anchorage, AK 99503
- Everett Library, 2702 Hoyt Ave, Everett, WA 98201
- Kodiak City Library, 319 Lower Mill Bay Rd, Kodiak, AK 99615
- Lompoc Public Library, 501 E North Ave, Lompoc, CA 93436
- Mountain View Branch Library, 150 S Bragaw St, Anchorage, AK 99508
- Oxnard Public Library, 251 S A St., Oxnard, CA 93030
- Valdez City Library, 212 Fairbanks, Valdez, AK 99686
- Hawaii State Library, Hawaii Documents Center, 478 South King St., Honolulu, HI 96813
- University of Hawaii at Manoa, Hamilton Library, 2550 The Mall, Honolulu, HI 96822

DATES: Public comments are invited and must be postmarked by March 24, 2003.

ADDRESSES: Requests for copies of the document or to provide comments on the DEIS should be addressed to: U.S. Army Space and Missile Defense Command, ATTN: SMDC–EN–V (Mrs. Julia Hudson-Elliott), 106 Wynn Drive, Huntsville, AL 35805, by e-mail at

gmdetreis@smdc.army.mil, or by phone at 1–800–823–8823.

FOR FURTHER INFORMATION CONTACT: For additional information on the MDA GMD program, please call Mr. Rick Lahner at (703) 697–8997.

Dated: February 3, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 03–2975 Filed 2–6–03; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board

AGENCY: Department of Defense

ACTION: Notice of Advisory Committee Meetings

SUMMARY: The Defense Science Board Task Force on Future Strategic Strike Forces will meet in closed session on February 20–21, 2003; March 19–20, 2003; April 24–25, 2003; May 22–23, 2003; June 18–19, 2003; and July 23–24, 2003, at SAIC, 4001 N. Fairfax Drive, Arlington, VA. The Task Force will assess the future strategic strike force needs of the Department of Defense.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition, Technology & Logistics on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings, the Task Force will: assess the estimated systems life of the current nuclear strike forces; assess the future need for nuclear strike forces and recommend a strategy for the evolution of the current nuclear force capability; identify promising non-nuclear strike systems with such capabilities and consequence that they should be coherently planned and directed with strategic nuclear forces; identify new concepts and approaches, to include hypersonics, for the application of these strategic nuclear and non-nuclear forces that address the future strategic environment.

In accordance with section 10(d) of the Federal Advisory Committee Act, Public Law No. 92–463, as amended (5 U.S.C. App. II), it has been determined that these Defense Science Board Task Force meetings concern matters listed in 5 U.S.C. 552b(c)(1) and that, accordingly, these meetings will be closed to the public.

Dated: February 3, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 03–2978 Filed 2–6–03; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Leader, Regulatory Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: An emergency review has been requested in accordance with the Act (44 U.S.C. chapter 3507 (j)), since public harm is reasonably likely to result if normal clearance procedures are followed. Approval by the Office of Management and Budget (OMB) has been requested by February 14, 2003. A regular clearance process is also beginning. Interested persons are invited to submit comments on or before April 8, 2003.

ADDRESSES: Written comments regarding the emergency review should be addressed to the Office of Information and Regulatory Affairs, Attention: Karen Lee, Desk Officer: Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the Internet address *Karen_F._Lee@omb.eop.gov*.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35) requires that the Director of OMB provide interested Federal agencies and the public an early opportunity to comment on information collection requests. The Office of Management and Budget (OMB) may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Management Group, Office of the Chief Information Officer, publishes this notice containing proposed information collection requests at the beginning of the Departmental review of the information collection. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.*, new, revision, extension, existing or reinstatement; (2) title; (3) summary of the collection; (4) description of the need for, and proposed use of, the information; (5) respondents and frequency of collection; and (6) reporting and/or recordkeeping burden. ED invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on respondents, including through the use of information technology.

Dated: February 4, 2003.

John D. Tressler,

Leader, Regulatory Management Group, Office of the Chief Information Officer.

Office of Special Education and Rehabilitative Services

Type of Review: Reinstatement, with change, of a previously approved collection for which approval has expired.

Title: Annual Performance Report and Report to the Secretary Under the Infants and Toddlers with Disabilities Program (Part C, IDEA) (SC).

Abstract: The State Interagency Coordinating Committee is required under section 641 of part C of the Individuals with Disabilities Education Act (IDEA) to submit an annual report to the Secretary and the State's governor on the status of the early intervention program for infants and toddlers with disabilities. States are also required to submit a performance report to the Secretary under section 80.40 of the Education Department General Administrative Regulations. This collection serves both of these functions.

Additional Information: An expedited review and approval is requested to give states the maximum time for preparing their response which is due on March 31, 2003.

Frequency: Annually.

Affected Public: State, local, or tribal gov't, SEAs or LEAs (primary).

Reporting and Recordkeeping Hour Burden: Responses: 57.

Burden Hours: 1710.

Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address *vivan.reese@ed.gov*. Requests may also be faxed to 202–708–9346. Please

specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements may be directed to Sheila Carey at *Sheila.carey@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 03–3124 Filed 2–6–03; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[CFDA No.: 84.365C]

Office of English Language Acquisition; Native American and Alaska Native Children in School Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2003; Correction

On December 30, 2002, the Assistant Secretary published a notice in the **Federal Register** (67 FR 79581 through 79587) inviting applications for new awards for the Native American and Alaska Native Children in School Program. The standard and program specific forms that were supposed to be included in the notice were inadvertently excluded. This notice includes all of these forms. All other information provided in the December 20 notice remains the same.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/legislation/FedRegister*.

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office toll free at 1–800–293–6498; or in the Washington, DC area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on the GPO Access at: *http://www.access.gpo.gov/nara/index.html*.

FOR FURTHER INFORMATION CONTACT: Samuel Lopez, Office of English Language Acquisition, U.S. Department of Education, 400 Maryland Avenue, SW., Room MES 5605, Washington, DC 20202–6400. Telephone: 202–401–1427, or via the Internet: *samuel.lopez@ed.gov*.

If you use telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Program Authority: 20 U.S.C. 6821(c), 6822.

Dated: January 31, 2003.

Maria Hernandez Ferrier,

Director, Office of English Language Acquisition, Language Enhancement, and Academic Achievement for Limited English Proficient Students.

Application for Federal Education Assistance (ED 424)

U.S. Department of Education
Form Approved
OMB No. 1875-0106
Exp. 11/30/2004

Applicant Information

1. Name and Address
Legal Name: _____
Address: _____
_____
City _____ State _____ County _____ ZIP Code + 4 _____
Organizational Unit

2. Applicant's D-U-N-S Number
3. Applicant's T-I-N
4. Catalog of Federal Domestic Assistance #: 84 ____
Title: _____
5. Project Director: _____
Address: _____
City _____ State _____ ZIP Code + 4 _____
Tel. #: _____ Fax #: _____
E-Mail Address: _____

6. Novice Applicant ☐ Yes ☐ No
7. Is the applicant delinquent on any Federal debt? ☐ Yes ☐ No
(If "Yes," attach an explanation.)
8. Type of Applicant (Enter appropriate letter in the box.) ☐

A State
B Local
C Special District
D Indian Tribe
E Individual
F Independent School District
G Public College or University
H Private, Non-Profit College or University
I Non-Profit Organization
J Private, Profit-Making Organization
K Other (Specify): _____

Application Information

9. Type of Submission:
—PreApplication ☐ Construction ☐ Non-Construction
—Application ☐ Construction ☐ Non-Construction

10. Is application subject to review by Executive Order 12372 process?
☐ Yes (Date made available to the Executive Order 12372 process for review): _____
☐ No (If "No," check appropriate box below.)
☐ Program is not covered by E.O. 12372.
☐ Program has not been selected by State for review.

11. Proposed Project Dates: Start Date: _____ End Date: _____

12. Are any research activities involving human subjects planned at any time during the proposed project period?
☐ Yes (Go to 12a.) ☐ No (Go to item 13.)

12a. Are all the research activities proposed designated to be exempt from the regulations?
☐ Yes (Provide Exemption(s) #): _____
☐ No (Provide Assurance #): _____

13. Descriptive Title of Applicant's Project:

Estimated Funding

14a. Federal	$	.00
b. Applicant	$	.00
c. State	$	.00
d. Local	$	.00
e. Other	$	.00
f. Program Income	$	.00
g. TOTAL	$	0.00

Authorized Representative Information

15. To the best of my knowledge and belief, all data in this preapplication/application are true and correct. The document has been duly authorized by the governing body of the applicant and the applicant will comply with the attached assurances if the assistance is awarded.

a. Authorized Representative (Please type or print name clearly.)
b. Title
c. Tel. #: _____ Fax #: _____
d. E-Mail Address:
e. Signature of Authorized Representative Date: _____

Instructions for ED 424

1. Legal Name and Address. Enter the legal name of applicant and the name of the primary organizational unit which will undertake the assistance activity.

2. D-U-N-S Number. Enter the applicant's D-U-N-S Number. If your organization does not have a D-U-N-S Number, you can obtain the number by calling 1-800-333-0505 or by completing a D-U-N-S Number Request Form. The form can be obtained via the Internet at the following URL: http://www.dnb.com.

3. Tax Identification Number. Enter the taxpayer's identification number as assigned by the Internal Revenue Service.

4. Catalog of Federal Domestic Assistance (CFDA) Number. Enter the CFDA number and title of the program under which assistance is requested. The CFDA number can be found in the federal register notice and the application package.

5. Project Director. Name, address, telephone and fax numbers, and e-mail address of the person to be contacted on matters involving this application.

6. Novice Applicant. Check "Yes" or "No" only if assistance is being requested under a program that gives special consideration to novice applicants. Otherwise, leave blank.

   Check "Yes" if you meet the requirements for novice applicants specified in the regulations in 34 CFR 75.225 and included on the attached page entitled "Definitions for Form ED 424." By checking "Yes" the applicant certifies that it meets these novice applicant requirements. Check "No" if you do not meet the requirements for novice applicants.

7. Federal Debt Delinquency. Check "Yes" if the applicant's organization is delinquent on any Federal debt. (This question refers to the applicant's organization and not to the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.) Otherwise, check "No."

8. Type of Applicant. Enter the appropriate letter in the box provided.

9. Type of Submission. See "Definitions for Form ED 424" attached.

10. Executive Order 12372. See "Definitions for Form ED 424" attached. Check "Yes" if the application is subject to review by E.O. 12372. Also, please enter the month, day, and four (4) digit year (e.g., 12/12/2001). Otherwise, check "No."

11. Proposed Project Dates. Please enter the month, day, and four (4) digit year (e.g., 12/12/2001).

12. Human Subjects Research. (See I.A. "Definitions" in attached page entitled "Definitions for Form ED 424.")

    If Not Human Subjects Research. Check "No" if research activities involving human subjects are not planned at any time during the proposed project period. The remaining parts of Item 12 are then not applicable.

    If Human Subjects Research. Check "Yes" if research activities involving human subjects are planned at any time during the proposed project period, either at the applicant organization or at any other performance site or collaborating institution. Check "Yes" even if the research is exempt from the regulations for the protection of human subjects. (See I.B. "Exemptions" in attached page entitled "Definitions for Form ED 424.")

12a. If Human Subjects Research is Exempt from the Human Subjects Regulations. Check "Yes" if all the research activities proposed are designated to be exempt from the regulations. Insert the exemption number(s) corresponding to one or more of the six exemption categories listed in I.B. "Exemptions." In addition, follow the instructions in II.A. "Exempt Research Narrative" in the attached page entitled "Definitions for Form ED 424." Insert this narrative immediately following the ED 424 face page.

12a. If Human Subjects Research is Not Exempt from Human Subjects Regulations. Check "No" if some or all of the planned research activities are covered (not exempt). In addition, follow the instructions in II.B. "Nonexempt Research Narrative" in the page entitled "Definitions for Form ED 424." Insert this narrative immediately following the ED 424 face page.

12a. Human Subjects Assurance Number. If the applicant has an approved Federal Wide (FWA) or Multiple Project Assurance (MPA) with the Office for Human Research Protections (OHRP), U.S. Department of Health and Human Services, that covers the specific activity, insert the number in the space provided. If the applicant does not have an approved assurance on file with OHRP, enter "None." In this case, the applicant, by signature on the face page, is declaring that it will comply with 34 CFR 97 and proceed to obtain the human subjects assurance upon request by the designated ED official. If the application is recommended/selected for funding, the designated ED official will request that the applicant obtain the assurance within 30 days after the specific formal request.

    Note about Institutional Review Board Approval. ED does not require certification of Institutional Review Board approval with the application. However, if an application that involves non-exempt human subjects research is recommended/selected for funding, the designated ED official will request that the applicant obtain and send the certification to ED within 30 days after the formal request.

13. Project Title. Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

14. Estimated Funding. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate only the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 14.

15. Certification. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. Be sure to enter the telephone and fax number and e-mail address of the authorized representative. Also, in item 15e, please enter the month, day, and four (4) digit year (e.g., 12/12/2001) in the date signed field.

Paperwork Burden Statement. According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless such collection displays a valid OMB control number. The valid OMB control number for this information collection is 1875-0106. The time required to complete this information collection is estimated to average between 15 and 45 minutes per response, including the time to review instructions, search existing data resources, gather the data needed, and complete and review the information collection. If you have any comments concerning the accuracy of the estimate(s) or suggestions for improving this form, please write to: U.S. Department of Education, Washington, D.C. 20202-4651. If you have comments or concerns regarding the status of your individual submission of this form write directly to: Joyce I. Mays, Application Control Center, U.S. Department of Education, 7th and D Streets, S.W. ROB-3, Room 3633, Washington, D.C. 20202-4725.

Definitions for Form ED 424

Novice Applicant (See 34 CFR 75.225). For discretionary grant programs under which the Secretary gives special consideration to novice applications, a novice applicant means any applicant for a grant from ED that—

- Has never received a grant or subgrant under the program from which it seeks funding;
- Has never been a member of a group application, submitted in accordance with 34 CFR 75.127-75.129, that received a grant under the program from which it seeks funding; and
- Has not had an active discretionary grant from the Federal government in the five years before the deadline date for applications under the program. For the purposes of this requirement, a grant is active until the end of the grant's project or funding period, including any extensions of those periods that extend the grantee's authority to obligate funds.

In the case of a group application submitted in accordance with 34 CFR 75.127-75.129, a group includes only parties that meet the requirements listed above.

Type of Submission. "Construction" includes construction of new buildings and acquisition, expansion, remodeling, and alteration of existing buildings, and initial equipment of any such buildings, or any combination of such activities (including architects' fees and the cost of acquisition of land). "Construction" also includes remodeling to meet standards, remodeling designed to conserve energy, renovation or remodeling to accommodate new technologies, and the purchase of existing historic buildings for conversion to public libraries. For the purposes of this paragraph, the term "equipment" includes machinery, utilities, and built-in equipment and any necessary enclosures or structures to house them; and such term includes all other items necessary for the functioning of a particular facility as a facility for the provision of library services.

Executive Order 12372. The purpose of Executive Order 12372 is to foster an intergovernmental partnership and strengthen federalism by relying on State and local processes for the coordination and review of proposed Federal financial assistance and direct Federal development. The application notice, as published in the Federal Register, informs the applicant as to whether the program is subject to the requirements of E.O. 12372. In addition, the application package contains information on the State Single Point of Contact. An applicant is still eligible to apply for a grant or grants even if its respective State, Territory, Commonwealth, etc. does not have a State Single Point of Contact. For additional information on E.O. 12372 go to http://www.cfda.gov/public/eo12372.htm.

PROTECTION OF HUMAN SUBJECTS IN RESEARCH

I. Definitions and Exemptions

A. Definitions.

A research activity involves human subjects if the activity is research, as defined in the Department's regulations, and the research activity will involve use of human subjects, as defined in the regulations.

—Research

The ED Regulations for the Protection of Human Subjects, Title 34, Code of Federal Regulations, Part 97, define research as "a systematic investigation, including research development, testing and evaluation, designed to develop or contribute to generalizable knowledge." If an activity follows a deliberate plan whose purpose is to develop or contribute to generalizable knowledge, it is research. Activities which meet this definition constitute research whether or not they are conducted or supported under a program which is considered research for other purposes. For example, some demonstration and service programs may include research activities.

—Human Subject

The regulations define human subject as "a living individual about whom an investigator (whether professional or student) conducting research obtains (1) data through intervention or interaction with the individual, or (2) identifiable private information." (1) If an activity involves obtaining information about a living person by manipulating that person or that person's environment, as might occur when a new instructional technique is tested, or by communicating or interacting with the individual, as occurs with surveys and interviews, the definition of human subject is met. (2) If an activity involves obtaining private information about a living person in such a way that the information can be linked to that individual (the identity of the subject is or may be readily determined by the investigator or associated with the information), the definition of human subject is met. [Private information includes information about behavior that occurs in a context in which an individual can reasonably expect that no observation or recording is taking place, and information which has been provided for specific purposes by an individual and which the individual can reasonably expect will not be made public (for example, a school health record).]

B. Exemptions.

Research activities in which the only involvement of human subjects will be in one or more of the following six categories of exemptions are not covered by the regulations:

(1) Research conducted in established or commonly accepted educational settings, involving normal educational practices, such as (a) research on regular and special education instructional strategies, or (b) research on the effectiveness of or the comparison among instructional techniques, curricula, or classroom management methods.

(2) Research involving the use of educational tests (cognitive, diagnostic, aptitude, achievement), survey procedures, interview procedures or observation of public behavior, unless: (a) information obtained is recorded in such a manner that human subjects can be identified, directly or through identifiers linked to the subjects; and (b) any disclosure of the human subjects' responses outside the research could reasonably place the subjects at risk of criminal or civil liability or be damaging to the subjects' financial standing, employability, or reputation. If the subjects are children, exemption 2 applies only to research involving educational tests and observations of public behavior when the investigator(s) do not participate in the

activities being observed. Exemption 2 does not apply if children are surveyed or interviewed or if the research involves observation of public behavior and the investigator(s) participate in the activities being observed. [Children are defined as persons who have not attained the legal age for consent to treatments or procedures involved in the research, under the applicable law or jurisdiction in which the research will be conducted.]

(3) Research involving the use of educational tests (cognitive, diagnostic, aptitude, achievement), survey procedures, interview procedures or observation of public behavior that is not exempt under section (2) above, if the human subjects are elected or appointed public officials or candidates for public office; or federal statute(s) require(s) without exception that the confidentiality of the personally identifiable information will be maintained throughout the research and thereafter.

(4) Research involving the collection or study of existing data, documents, records, pathological specimens, or diagnostic specimens, if these sources are publicly available or if the information is recorded by the investigator in a manner that subjects cannot be identified, directly or through identifiers linked to the subjects.

(5) Research and demonstration projects which are conducted by or subject to the approval of department or agency heads, and which are designed to study, evaluate, or otherwise examine: (a) public benefit or service programs; (b) procedures for obtaining benefits or services under those programs; (c) possible changes in or alternatives to those programs or procedures; or (d) possible changes in methods or levels of payment for benefits or services under those programs.

(6) Taste and food quality evaluation and consumer acceptance studies, (a) if wholesome foods without additives are consumed or (b) if a food is consumed that contains a food ingredient at or below the level and for a use found to be safe, or agricultural chemical or environmental contaminant at or below the level found to be safe, by the Food and Drug Administration or approved by the Environmental Protection Agency or the Food Safety and Inspection Service of the U.S. Department of Agriculture.

II. Instructions for Exempt and Nonexempt Human Subjects Research Narratives

If the applicant marked "Yes" for Item 12 on the ED 424, the applicant must provide a human subjects "exempt research" or "nonexempt research" narrative and insert it immediately following the ED 424 face page.

A. Exempt Research Narrative.

If you marked "Yes" for item 12a. and designated exemption numbers(s), provide the "exempt research" narrative. The narrative must contain sufficient information about the involvement of human subjects in the proposed research to allow a determination by ED that the designated exemption(s) are appropriate. The narrative must be succinct.

B. Nonexempt Research Narrative.

If you marked "No" for item 12a. you must provide the "nonexempt research" narrative. The narrative must address the following seven points. Although no specific page limitation applies to this section of the application, be succinct.

(1) Human Subjects Involvement and Characteristics: Provide a detailed description of the proposed involvement of human subjects. Describe the characteristics of the subject population, including their anticipated number, age range, and health status. Identify the criteria for inclusion or exclusion of any subpopulation. Explain the rationale for the involvement of special classes of subjects, such as children, children with disabilities, adults with disabilities, persons with mental disabilities, pregnant women, prisoners, institutionalized individuals, or others who are likely to be vulnerable

(2) Sources of Materials: Identify the sources of research material obtained from individually identifiable living human subjects in the form of specimens, records, or data. Indicate whether the material or data will be obtained specifically for research purposes or whether use will be made of existing specimens, records, or data.

(3) Recruitment and Informed Consent: Describe plans for the recruitment of subjects and the consent procedures to be followed. Include the circumstances under which consent will be sought and obtained, who will seek it, the nature of the information to be provided to prospective subjects, and the method of documenting consent. State if the Institutional Review Board (IRB) has authorized a modification or waiver of the elements of consent or the requirement for documentation of consent.

(4) Potential Risks: Describe potential risks (physical, psychological, social, legal, or other) and assess their likelihood and seriousness. Where appropriate, describe alternative treatments and procedures that might be advantageous to the subjects.

(5) Protection Against Risk: Describe the procedures for protecting against or minimizing potential risks, including risks to confidentiality, and assess their likely effectiveness. Where appropriate, discuss provisions for ensuring necessary medical or professional intervention in the event of adverse effects to the subjects. Also, where appropriate, describe the provisions for monitoring the data collected to ensure the safety of the subjects.

(6) Importance of the Knowledge to be Gained: Discuss the importance of the knowledge gained or to be gained as a result of the proposed research. Discuss why the risks to subjects are reasonable in relation to the anticipated benefits to subjects and in relation to the importance of the knowledge that may reasonably be expected to result.

(7) Collaborating Site(s): If research involving human subjects will take place at collaborating site(s) or other performance site(s), name the sites and briefly describe their involvement or role in the research.

Copies of the Department of Education's Regulations for the Protection of Human Subjects, 34 CFR Part 97 and other pertinent materials on the protection of human subjects in research are available from the Grants Policy and Oversight Staff, Office of the Chief Financial Officer, U.S. Department of Education, Washington, D.C. 20202-4248, telephone: (202) 708-8263, and on the U.S. Department of Education's Protection of Human Subjects in Research Web Site at http://www.ed.gov/offices/OCFO/humansub.html

U.S. DEPARTMENT OF EDUCATION

BUDGET INFORMATION

NON-CONSTRUCTION PROGRAMS

OMB Control Number: 1890-0004

Expiration Date: 02/28/2003

Name of Institution/Organization

Applicants requesting funding for only one year should complete the column under "Project Year 1." Applicants requesting funding for multi-year grants should complete all applicable columns. Please read all instructions before completing form.

SECTION A - BUDGET SUMMARY
U.S. DEPARTMENT OF EDUCATION FUNDS

Budget Categories	Project Year 1 (a)	Project Year 2 (b)	Project Year 3 (c)	Project Year 4 (d)	Project Year 5 (e)	Total (f)
1. Personnel						0
2. Fringe Benefits						0
3. Travel						0
4. Equipment						0
5. Supplies						0
6. Contractual						0
7. Construction						0
8. Other						0
9. Total Direct Costs (lines 1-8)	0	0	0	0	0	0
10. Indirect Costs						0
11. Training Stipends						0
12. Total Costs (lines 9-11)	0	0	0	0	0	0

ED Form No. 524

Name of Institution/Organization	Applicants requesting funding for only one year should complete the column under "Project Year 1." Applicants requesting funding for multi-year grants should complete all applicable columns. Please read all instructions before completing form.

SECTION B - BUDGET SUMMARY
NON-FEDERAL FUNDS

Budget Categories	Project Year 1 (a)	Project Year 2 (b)	Project Year 3 (c)	Project Year 4 (d)	Project Year 5 (e)	Total (f)
1. Personnel						0
2. Fringe Benefits						0
3. Travel						0
4. Equipment						0
5. Supplies						0
6. Contractual						0
7. Construction						0
8. Other						0
9. Total Direct Costs (lines 1-8)	0	0	0	0	0	0
10. Indirect Costs						0
11. Training Stipends						0
12. Total Costs (lines 9-11)	0	0	0	0	0	0

SECTION C - OTHER BUDGET INFORMATION (see instructions)

ED Form No. 524

Public reporting burden for this collection of information is estimated to vary from 13 to 22 hours per response, with an average of 17.5 hours per response, including the time reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the U.S. Department of Education, Information Management and Compliance Division, Washington, D.C. 20202-4651; and the Office of Management and Budget, Paperwork Reduction Project 1875-0102, Washington DC 20503.

INSTRUCTIONS FOR ED FORM 524

General Instructions

This form is used to apply to individual U.S. Department of Education discretionary grant programs. Unless directed otherwise, provide the same budget information for each year of the multi-year funding request. Pay attention to applicable program specific instructions, if attached.

Section A - Budget Summary
U.S. Department of Education Funds

All applicants must complete Section A and provide a breakdown by the applicable budget categories shown in lines 1-11.

Lines 1-11, columns (a)-(e): For each project year for which funding is requested, show the total amount requested for each applicable budget category.

Lines 1-11, column (f): Show the multi-year total for each budget category. If funding is requested for only one project year, leave this column blank.

Line 12, columns (a)-(e): Show the total budget request for each project year for which funding is requested.

Line 12, column (f): Show the total amount requested for all project years. If funding is requested for only one year, leave this space blank.

Section B - Budget Summary
Non-Federal Funds

If you are required to provide or volunteer to provide matching funds or other non-Federal resources to the project, these should be shown for each applicable budget category on lines 1-11 of Section B.

Lines 1-11, columns (a)-(e): For each project year for which matching funds or other contributions are provided, show the total contribution for each applicable budget category.

Lines 1-11, column (f): Show the multi-year total for each budget category. If non-Federal contributions are provided for only one year, leave this column blank.

Line 12, columns (a)-(e): Show the total matching or other contribution for each project year.

Line 12, column (f): Show the total amount to be contributed for all years of the multi-year project. If non-Federal contributions are provided for only one year, leave this space blank.

Section C - Other Budget Information
Pay attention to applicable program specific instructions, if attached.

1. Provide an itemized budget breakdown, by project year, for each budget category listed in Sections A and B.
2. If applicable to this program, enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period. In addition, enter the estimated amount of the base to which the rate is applied, and the total indirect expense.
3. If applicable to this program, provide the rate and base on which fringe benefits are calculated.
4. Provide other explanations or comments you deem necessary.

OMB Control No. 1890-0007 (Exp. 09/30/2004)

NOTICE TO ALL APPLICANTS

The purpose of this enclosure is to inform you about a new provision in the Department of Education's General Education Provisions Act (GEPA) that applies to applicants for new grant awards under Department programs. This provision is Section 427 of GEPA, enacted as part of the Improving America's Schools Act of 1994 (Public Law (P.L.) 103-382).

To Whom Does This Provision Apply?

Section 427 of GEPA affects applicants for new grant awards under this program. **ALL APPLICANTS FOR NEW AWARDS MUST INCLUDE INFORMATION IN THEIR APPLICATIONS TO ADDRESS THIS NEW PROVISION IN ORDER TO RECEIVE FUNDING UNDER THIS PROGRAM.**

(If this program is a State-formula grant program, a State needs to provide this description only for projects or activities that it carries out with funds reserved for State-level uses. In addition, local school districts or other eligible applicants that apply to the State for funding need to provide this description in their applications to the State for funding. The State would be responsible for ensuring that the school district or other local entity has submitted a sufficient section 427 statement as described below.)

What Does This Provision Require?

Section 427 requires each applicant for funds (other than an individual person) to include in its application a description of the steps the applicant proposes to take to ensure equitable access to, and participation in, its Federally-assisted program for students, teachers, and other program beneficiaries with special needs. This provision allows applicants discretion in developing the required description. The statute highlights six types of barriers that can impede equitable access or participation: gender, race, national origin, color, disability, or age. Based on local circumstances, you should determine whether these or other barriers may prevent your students, teachers, etc. from such access or participation in, the Federally-funded project or activity. The description in your application of steps to be taken to overcome these barriers need not be lengthy; you may provide a clear and succinct description of how you plan to address those barriers that are applicable to your circumstances. In addition, the information may be provided in a single narrative, or, if appropriate, may be discussed in connection with related topics in the application.

Section 427 is not intended to duplicate the requirements of civil rights statutes, but rather to ensure that, in designing their projects, applicants for Federal funds address equity concerns that may affect the ability of certain potential beneficiaries to fully participate in the project and to achieve to high standards. Consistent with program requirements and its approved application, an applicant may use the Federal funds awarded to it to eliminate barriers it identifies.

What are Examples of How an Applicant Might Satisfy the Requirement of This Provision?

The following examples may help illustrate how an applicant may comply with Section 427.

(1) An applicant that proposes to carry out an adult literacy project serving, among others, adults with limited English proficiency, might describe in its application how it intends to distribute a brochure about the proposed project to such potential participants in their native language.

(2) An applicant that proposes to develop instructional materials for classroom use might describe how it will make the materials available on audio tape or in braille for students who are blind.

(3) An applicant that proposes to carry out a model science program for secondary students and is concerned that girls may be less likely than boys to enroll in the course, might indicate how it intends to conduct "outreach" efforts to girls, to encourage their enrollment.

We recognize that many applicants may already be implementing effective steps to ensure equity of access and participation in their grant programs, and we appreciate your cooperation in responding to the requirements of this provision.

Estimated Burden Statement for GEPA Requirements

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless such collection displays a valid OMB control number. The valid OMB control number for this information collection is **1890-0007.** The time required to complete this information collection is estimated to average 1.5 hours per response, including the time to review instructions, search existing data resources, gather the data needed, and complete and review the information collection. **If you have any comments concerning the accuracy of the time estimate(s) or suggestions for improving this form, please write to:** Director, Grants Policy and Oversight Staff, U.S. Department of Education, 400 Maryland Avenue, SW (Room 3652, GSA Regional Office Building No. 3), Washington, DC 20202-4248.

CERTIFICATIONS REGARDING LOBBYING; DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS; AND DRUG-FREE WORKPLACE REQUIREMENTS

Applicants should refer to the regulations cited below to determine the certification to which they are required to attest. Applicants should also review the instructions for certification included in the regulations before completing this form. Signature of this form provides for compliance with certification requirements under 34 CFR Part 82, "New Restrictions on Lobbying," and 34 CFR Part 85, "Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants)." The certifications shall be treated as a material representation of fact upon which reliance will be placed when the Department of Education determines to award the covered transaction, grant, or cooperative agreement.

1. **LOBBYING**

As required by Section 1352, Title 31 of the U.S. Code, and implemented at 34 CFR Part 82, for persons entering into a grant or cooperative agreement over $100,000, as defined at 34 CFR Part 82, Sections 82.105 and 82.110, the applicant certifies that:

(a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal grant or cooperative agreement;

(b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions;

(c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, contracts under grants and cooperative agreements, and subcontracts) and that all subrecipients shall certify and disclose accordingly.

2. **DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS**

As required by Executive Order 12549, Debarment and Suspension, and implemented at 34 CFR Part 85, for prospective participants in primary covered transactions, as defined at 34 CFR Part 85, Sections 85.105 and 85.110—

A. The applicant certifies that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this application been convicted of or had a civil judgement rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (2)(b) of this certification; and

(d) Have not within a three-year period preceding this application had one or more public transaction (Federal, State, or local) terminated for cause or default; and

B. Where the applicant is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this application.

3. **DRUG-FREE WORKPLACE (GRANTEES OTHER THAN INDIVIDUALS)**

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 -

A. The applicant certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an on-going drug-free awareness program to inform employees about:

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will:

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency, in writing, within 10 calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to: Director, Grants Policy and Oversight Staff, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3652, GSA Regional Office Building No. 3), Washington, DC 20202-4248. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted:

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

B. The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address. city, county, state, zip code)

_____

_____

Check ☐ if there are workplaces on file that are not identified here.

DRUG-FREE WORKPLACE
(GRANTEES WHO ARE INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610-

A. As a condition of the grant, I certify that I will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant; and

B. If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, I will report the conviction, in writing, within 10 calendar days of the conviction, to: Director, Grants Policy and Oversight Staff, Department of Education, 400 Maryland Avenue, S.W. (Room 3652, GSA Regional Office Building No. 3), Washington, DC 20202-4248. Notice shall include the identification number(s) of each affected grant.

As the duly authorized representative of the applicant, I hereby certify that the applicant will comply with the above certifications.

NAME OF APPLICANT	PR/AWARD NUMBER AND / OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0013 12/98

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion — Lower Tier Covered Transactions

This certification is required by the Department of Education regulations implementing Executive Order 12549, Debarment and Suspension, 34 CFR Part 85, for all lower tier transactions meeting the threshold and tier requirements stated at Section 85.110.

Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," " person," "primary covered transaction," " principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion-Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may but is not required to, check the Nonprocurement List.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

NAME OF APPLICANT	PR/AWARD NUMBER AND/OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0014, 9/90 (Replaces GCS-009 (REV.12/88), which is obsolete)

OMB Approval No. 0348-0040

ASSURANCES - NON-CONSTRUCTION PROGRAMS

Public reporting burden for this collection of information is estimated to average 15 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0040), Washington, DC 20503.

PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.

NOTE: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant, I certify that the applicant:

1. Has the legal authority to apply for Federal assistance and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project cost) to ensure proper planning, management and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of the United States and, if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§4728-4763) relating to prescribed standards for merit systems for programs funded under one of the 19 statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. §794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. §§290 dd-3 and 290 ee 3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and, (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally-assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply, as applicable, with provisions of the Hatch Act (5 U.S.C. §§1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§276a to 276a-7), the Copeland Act (40 U.S.C. §276c and 18 U.S.C. §874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§327-333), regarding labor standards for federally-assisted construction subagreements.

10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§1451 et seq.); (f) conformity of Federal actions to State (Clean Air) Implementation Plans under Section 176(c) of the Clean Air Act of 1955, as amended (42 U.S.C. §§7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended (P.L. 93-523); and, (h) protection of endangered species under the Endangered Species Act of 1973, as amended (P.L. 93-205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. §470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. §§469a-1 et seq.).

14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. §§2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§4801 et seq.) which prohibits the use of lead-based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act Amendments of 1996 and OMB Circular No. A-133, "Audits of States, Local Governments, and Non-Profit Organizations."

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations, and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE
APPLICANT ORGANIZATION	DATE SUBMITTED

Standard Form 424B (Rev. 7-97) Back

DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB
0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

1. Type of Federal Action:	2. Status of Federal Action:	3. Report Type:
☐ a. contract b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance	☐ a. bid/offer/application b. initial award c. post-award	☐ a. initial filing b. material change **For Material Change Only:** year _____ quarter _____ date of last report _____

4. Name and Address of Reporting Entity:	5. If Reporting Entity in No. 4 is a Subawardee, Enter Name and Address of Prime:
☐ Prime ☐ Subawardee Tier _____, *if known*: **Congressional District**, *if known*:	 **Congressional District**, *if known*:
6. Federal Department/Agency:	**7. Federal Program Name/Description:** CFDA Number, *if applicable*: _____
8. Federal Action Number, *if known*:	**9. Award Amount**, *if known*: $
10. a. Name and Address of Lobbying Registrant (*if individual, last name, first name, MI*):	**b. Individuals Performing Services** (*including address if different from No. 10a*) (*last name, first name, MI*):
11. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less that $10,000 and not more than $100,000 for each such failure.	Signature: _____ Print Name: _____ Title: _____ Telephone No.: _____ Date: _____
Federal Use Only:	Authorized for Local Reproduction Standard Form LLL (Rev. 7-97)

INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.

2. Identify the status of the covered Federal action.

3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.

4. Enter the full name, address, city, State and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designales if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.

5. If the organization filing the report in item 4 checks "Subawardee," then enter the full name, address, city, State and zip code of the prime Federal recipient. Include Congressional District, if known.

6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizationallevel below agency name, if known. For example, Department of Transportation, United States Coast Guard.

7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.

8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."

9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.

10. (a) Enter the full name, address, city, State and zip code of the lobbying registrant under the Lobbying Disclosure Act of 1995 engaged by the reporting entity identified in item 4 to influence the covered Federal action.

    (b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).

11. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

According to the Paperwork Reduction Act, as amended, no persons are required to respond to a collection of information unless it displays a valid OMB Control Number. The valid OMB control number for this information collection is OMB No. 0348-0046. Public reporting burden for this collection of information is estimated to average 10 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, DC 20503.

Survey on Ensuring Equal Opportunity for Applicants

Do not enter information below unless instructed to do so.

OMB No. 1890-0014 Exp. 1/31/2006

Purpose: This form is for applicants that are nonprofit private organizations (not including private universities). Please complete it to assist the Federal government in ensuring that all qualified applicants, small or large, non-religious or faith-based, have an equal opportunity to compete for Federal funding. Information provided on this form will not be considered in any way in making funding decisions and will not be included in the Federal grants database.

Instructions for Submitting Survey

If submitting hard copy, please place the completed survey in an envelope labeled "Applicant Survey." Seal the envelope and include it with your application package.

If submitting electronically, please include the PR Award Number assigned to your e-application in the box above entitled "***Do not enter information below unless instructed to do so.***" Place and seal the completed survey in an envelope and mail it to: Joyce I. Mays, Application Control Center, U.S. Department of Education, 7th and D Streets, SW, ROB-3, Room 3671, Washington, DC 20202-4725.

1. Does the applicant have 501(c)(3) status?

❑ Yes ❑ No

2. How many full-time equivalent employees does the applicant have? *(Check only one box).*

❑ 3 or Fewer ❑ 15-50
❑ 4-5 ❑ 51-100
❑ 6-14 ❑ over 100

3. What is the size of the applicant's annual budget? *(Check only one box.)*

❑ Less Than $150,000
❑ $150,000 - $299,999
❑ $300,000 - $499,999
❑ $500,000 - $999,999
❑ $1,000,000 - $4,999,999
❑ $5,000,000 or more

4. Is the applicant a faith-based/religious organization?

❑ Yes ❑ No

5. Is the applicant a non-religious community-based organization?

❑ Yes ❑ No

6. Is the applicant an intermediary that will manage the grant on behalf of other organizations?

❑ Yes ❑ No

7. Has the applicant ever received a government grant or contract (Federal, State, or local)?

❑ Yes ❑ No

8. Is the applicant a local affiliate of a national organization?

❑ Yes ❑ No

Survey Instructions on Ensuring Equal Opportunity for Applicants

1. 501(c)(3) status is a legal designation provided on application to the Internal Revenue Service by eligible organizations. Some grant programs may require nonprofit applicants to have 501(c)(3) status. Other grant programs do not.

2. For example, two part-time employees who each work half-time equal one full-time equivalent employee. If the applicant is a local affiliate of a national organization, the responses to survey questions 2 and 3 should reflect the staff and budget size of the local affiliate.

3. Annual budget means the amount of money your organization spends each year on all of its activities.

4. Self-identify.

5. An organization is considered a community-based organization if its headquarters/service location shares the same zip code as the clients you serve.

6. An "intermediary" is an organization that enables a group of small organizations to receive and manage government funds by administering the grant on their behalf.

7. Self-explanatory.

8. Self-explanatory

Paperwork Burden Statement

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless such collection displays a valid OMB control number. The valid OMB control number for this information collection is 1890-0014. The time required to complete this information collection is estimated to average five (5) minutes per response, including the time to review instructions, search existing data resources, gather the data needed, and complete and review the information collection. **If you have any comments concerning the accuracy of the time estimate(s) or suggestions for improving this form, please write to:** U.S. Department of Education, Washington, D.C. 20202-4651. **If you have comments or concerns regarding the status of your individual submission of this form, write directly to:** Joyce I. Mays, Application Control Center, U.S. Department of Education, 7th and D Streets, SW, ROB-3, Room 3671, Washington, DC 20202-4725.

STUDENT DATA					
Name of Local Educational Agency					
SECTION A					
1. Total number of limited English proficient (LEP) students in the school district					
2. Total number of students in the school district					
3. Percentage of LEP students (line 1 divided by line 2)					%
SECTION B					
Name of project school	Language group(s) to be served	Grade(s) to be served	Number of students to be served		
			LEP	NON-LEP	TOTAL
Total number of students to be served					

OMB Number 1885-0551 Expires 10/31/2005

GROUP APPLICATION CERTIFICATION

NOTE: This form must be completed by eligible parties applying as a group for a grant. This form must be accompanied by a group agreement that details the activities that each member of the group plans to perform under the grant.

(34 FR 75.128(b)-(c)).

To the best of my knowledge and belief, all data in this application are true and correct. I agree to be bound to every statement and assurance made in this application

Authorized Representative					Name of Institution/ Organization
Typed Name	Title	Signature	Date Signed	Telephone Number (Including Area Code)	

OMB Number 1885-0551 Expires 10/31/2005

Paperwork Burden Statement: According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless such collection displays a valid OMB control number. The valid OMB control number for this information collection is **1885–0551.** The time required to complete this information collection is estimated to average 4 hours (or minutes) per response, including the time to review instructions, search existing data resources, gather the data needed, and complete and review the information collection. **If you have any comments concerning the accuracy of the time estimate(s) or suggestions for improving this form, please write to:** U.S. Department of Education, Washington, DC 20202-4651. **If you have comments or concerns regarding the status of your individual submission of this form, write directly to: Native American and Alaska Native Children in School Program,** Office of English Language Acquisition, Language Enhancement, and Academic Achievement for Limited English Proficient Students, U.S. Department of Education, 400 Maryland Avenue, S.W., Switzer Building, Room 5605, Washington, D.C. 20202-4651

[FR Doc. 03–3042 Filed 2–6–03; 8:45 am]
BILLING CODE 4000–01–C

DEPARTMENT OF ENERGY

Office of Science Financial Assistance Program Notice 03–18; Theoretical Research in Plasma and Fusion Science

AGENCY: U.S. Department of Energy.

ACTION: Notice inviting grant applications.

SUMMARY: The Office of Fusion Energy Sciences (OFES) of the Office of Science (SC), U.S. Department of Energy (DOE), announces its interest in receiving grant applications for theoretical research relevant to the U.S. program in magnetic fusion energy sciences. All individuals or groups planning to submit applications for new or renewal funding in Fiscal Year 2004 should submit in response to this Notice.

The specific areas of interest are:

1. Magnetohydrodynamics and Stability
2. Confinement and Transport
3. Edge and Divertor Physics
4. Plasma Heating and Non-inductive Current Drive
5. Innovative/Integrating Concepts
6. Atomic and Molecular Processes in Plasmas

More specific information on each area of interest is outlined in the general and program specific **SUPPLEMENTARY INFORMATION** section below. OFES may also solicit proposals from time to time under separate announcements of Initiatives to support coordinated, goal-directed community efforts. The Initiatives will be funded to achieve specific programmatic and scientific aims and will be subject to requirements that are different from those of this notice. Such grants, if funded, will be subject to periodic reviews of progress.

Due to the limited availability of funds, Principal Investigators with continuing grants may not submit a new application in the same area(s) of interest as their previous application(s), which received funding. A Principal Investigator may submit only one application under each area of interest as listed above.

DATES: To permit timely consideration for awards in Fiscal Year 2004, applications submitted in response to this notice must be received by DOE no later than 4:30 p.m., April 15, 2003. Electronic submission of formal applications in PDF format is required.

Applicants are requested to submit a letter-of-intent by March 18, 2003, which includes the title of the application, the name of the Principal Investigator(s), the requested funding and a one-page abstract. These letters-of-intent will be used to organize and expedite review processes. Failure to submit a letter-of-intent will not negatively prejudice a responsive formal application submitted in a timely fashion. The letters-of-intent should be sent by E-mail to the following E-mail address: *john.sauter@science.doe.gov* and the Subject line should state: Letter-of-intent regarding Program Notice 03–18.

ADDRESSES: Formal applications in response to this solicitation are to be electronically submitted by an authorized institutional business official through DOE's Industry Interactive Procurement System (IIPS) at: *http://e-center.doe.gov/*. IIPS provides for the posting of solicitations and receipt of applications in a paperless environment via the Internet. In order to submit applications through IIPS, your business official will need to register at the IIPS website. It is suggested that this registration be completed several days prior to the date on which you plan to submit the formal application. The Office of Science will include attachments as part of this notice that provide the appropriate forms in PDF fillable format that are to be submitted through IIPS. Color images should be submitted in IIPS as a separate file in PDF format and identified as such. These images should be kept to a minimum due to the limitations of reproducing them. They should be numbered and referred to in the body of the technical scientific grant application as Color image 1, Color image 2, etc. Questions regarding the operation of IIPS may be e-mailed to the IIPS Help Desk at: *HelpDesk@pr.doe.gov,* or you may call the help desk at: (800) 683–0751. Further information on the use of IIPS by the Office of Science is available at: *http://www.sc.doe.gov/production/grants/grants.html.*

If you are unable to submit an application through IIPS, please contact the Office of the Director, Grants and Contracts Division, Office of Science, DOE at: (301) 903–5212 in order to gain assistance for submission through IIPS or to receive special approval and instructions on how to submit printed applications.

FOR FURTHER INFORMATION CONTACT: Office of Fusion Energy Sciences, Germantown Building, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585–1290. Specific contacts for each area of interest, along with telephone numbers and Internet addresses, are listed below:

1. Magnetohydrodynamics and Stability: Rostom Dagazian, Research Division, SC–55, Telephone: (301) 903–4926, or by Internet address: *rostom.dagazian@science.doe.gov.*
2. Confinement and Transport: Curt Bolton, Research Division, SC–55, Telephone: (301) 903–4914, or by Internet address: *curt.bolton@science.doe.gov.*
3. Edge and Divertor Physics: Mike Crisp, Research Division, SC–55, Telephone: (301) 903–4883, or by Internet address: *michael.crisp@science.doe.gov.*
4. Plasma Heating and Non-inductive Current Drive: Rostom Dagazian, Research Division, SC–55, Telephone: (301) 903–4926, or by Internet address: *rostom.dagazian@science.doe.gov.*
5. Innovative/Integrating Concepts: Steve Eckstrand, Research Division, SC–55, Telephone: (301) 903–5546, or by Internet address: *steve.eckstrand@science.doe.gov.*
6. Atomic and Molecular Processes in Plasmas: Mike Crisp, Research Division, SC–55, Telephone: (301) 903–4883, or by Internet address: *michael.crisp@science.doe.gov.*

SUPPLEMENTARY INFORMATION: General information about development and submission of applications, eligibility, limitations, evaluations and selection processes, and other policies and procedures may be found in the Application Guide for the Office of Science Financial Assistance Program and 10 CFR Part 605. Electronic access to SC's Financial Assistance Guide and required forms is possible via the Internet using the following Web site address: *http://www.science.doe.gov/production/grants/grants.html.* DOE is under no obligation to pay for any costs associated with the preparation or submission of an application if an award is not made.

Program Funding

It is anticipated that about $4,000,000 of Fiscal Year 2004 funding will be available to fund new work, or renewals of existing work, from applications received in response to this Notice. The number of awards and range of funding will depend on the number of applications received and selected for award. Since future year funding is not anticipated to increase, applications should propose constant effort in future years (allowing for inflation). Future year funding will depend upon suitable progress and the availability of funds. The cost-effectiveness of the application will be considered when comparing applications with differing funding requirements. The number of grants funded, and the amount of funding for each grant, will depend on the number and quality of the applications received.

Collaborative research projects involving more than one institution, as well as basic work in support of the Scientific Discovery through Advanced Computing initiative, are encouraged. Applications submitted from different institutions, which are directed at a common research activity, should clearly indicate they are part of a proposed collaboration and contain a brief description of the overall research project. However, each application must have a distinct scope of work and a qualified principal investigator, who is responsible for the research effort being performed at his or her institution. Synergistic collaborations with researchers in federal laboratories and Federally Funded Research and Development Centers (FFRDCs), including the DOE National Laboratories are also encouraged, though no funds will be provided to these organizations under this Notice. Further information on preparation of collaborative applications may be accessed via the Internet at: *http://www.science.doe.gov/production/grants/Colab.html*.

Since we expect that reviewers will be asked to review several applications, those applications from individual PIs or small groups (1–4 people) should be limited to a maximum of twenty (20) pages (including text and figures) of technical information, while applications from larger theory groups should be limited to thirty (30) pages. The PDF file may also include a few selected publications in an Appendix as background information. In addition, in the electronic submission, please limit biographical and publication information for the principal investigator and senior personnel to no more than two pages each. Each principal investigator should provide an E-mail address.

In addition to the information required by 10 CFR part 605 each application should contain the following items: (1) A succinct statement of the goal of the research, (2) a detailed research plan, (3) the specific results expected at the end of the project period, (4) an analysis of the adequacy of the budget, (5) a discussion of the impact of the proposed research on other fields of science, and (6) for projects requiring significant computational resources (*e.g.*, at the National Energy Research Scientific Computing Center), an estimate and justification of the resources that will be required.

Merit Review

Applications will be subjected to formal merit review and will be evaluated against the following criteria, which are listed in descending order of importance as set forth in 10 CFR part 605 (*http://www.science.doe.gov/production/grants/605index.html*).

1. Scientific and/or technical merit of the project,

2. Appropriateness of the proposed method or approach,

3. Competency of the applicant's personnel and adequacy of the proposed resources,

4. Reasonableness and appropriateness of the proposed budget.

Scientific and technical merit also includes the importance and relevance of the proposed research to the U.S. fusion program. Accordingly, preference will be given to work based in the U.S.

In addition, proposals from theory groups will also be rated on the synergy of the group and the management of the group. With respect to synergy, the criteria are:

(1) Clear evidence of collaborative work.

(2) The extent to which the group addresses difficult problems requiring a team effort.

With respect to management the criteria are:

(1) Clear evidence of scientific leadership.

(2) The extent to which the management evaluates the relevance and scientific impact of the group's work.

The Office of Fusion Energy Sciences shall also consider, as part of the evaluation, other available advice or information as well as program policy factors, such as ensuring an appropriate balance among the program areas and within the program areas, ensuring support for major computational efforts, ensuring support for experiments, and quality of previous performance.

Selection of applications/proposals for award will be based upon the findings of the technical evaluations, the importance and relevance of the proposed research to the Office of Fusion Energy Sciences' mission, and funding availability.

Program Specific Information

1. Magnetohydrodynamics and Stability

Grant applications are solicited for new research or continuation of past efforts in magnetohydrodynamics (MHD) theory in support of work on magnetically confined fusion plasmas. Current areas of interest include advanced tokamak (AT), innovative confinement concepts (ICC), burning plasma physics and steady state, high-beta plasma issues. Both analytical and computational approaches will be considered. Additional work is needed on nonlinear MHD codes to include new physics, such as extended MHD (including flows and various non-ideal MHD effects), resistive wall modes, and particularly neoclassical tearing modes. Finally, basic work in support of the Scientific Discovery through Advanced Computing initiative that involves the development of large-scale MHD codes will also be considered.

2. Confinement and Transport

Applications will be considered in the area of confinement and transport in plasmas. This area covers plasma turbulence, energy, particle, momentum and radiation transport in the core of the plasma and theory based transport modeling. The work of interest includes work in support of tokamak as well as non-tokamak innovative concepts. Topics of interest include among others, electromagnetic effects on turbulence, shear flow generation and its impacts on transport, and understanding of the role of collisions in turbulent plasmas. Both analytical and computational work is of interest. Basic work in support of the Scientific Discovery through Advanced Computing initiative that involves the development of large-scale codes to explore turbulence will also be considered.

3. Edge and Divertor Physics

Applications will be considered in the area of edge physics theory. This area covers edge plasma turbulence, energy, particle and radiation transport in the edge of the plasma and in the neighborhood of the separatrix. The work of interest includes neutrals transport in divertors and plasma edge region, atomic physics processes affecting temperature, radiation and flame front propagation in divertors, and pedestal and Elm theory and modeling. Both analytical and numerical models are of interest. Techniques and algorithms for modeling fast particles in the edge region as well as adaptive grid methods and their application to modeling of plasma turbulence and transport in the edge region will be considered.

4. Plasma Heating and Non-inductive Current Drive

Applications will be considered in the area of radio frequency (RF) physics in plasmas. This includes RF propagation, heating and current drive. Of interest are both analytical and numerical treatments of interaction of plasmas with radio frequency waves. These include electron cyclotron, ion cyclotron, lower hybrid, and Bernstein waves. Topics of interest include,

among others, physical processes involved in conversion layers, power deposition for temperature profile control, and interaction of waves of different frequencies to produce specific effects on the plasma. Applications for modeling radio frequency launchers and their coupling to the edge plasma will also be considered.

5. Innovative/Integrating Concepts

Grant applications are desired for theoretical and computational research on innovative concepts that have the possibility of leading to improved magnetic fusion systems. Increased theoretical and computational research is needed to help in the analysis of experimental data and aid in planning innovative fusion related experiments. Topics of interest include: equilibrium and stability of 3D systems, including island formation; extension of turbulence models to 3D systems; improvement in extended MHD modeling of RFPs; increased understanding of turbulent transport in RFPs; and spheromak formation. Applications are also desired for theoretical and computational research on integrated studies that include multiple topics.

6. Atomic and Molecular Processes in Plasmas

Grant applications will be considered for theoretical research relevant to the description of atomic processes in plasmas. In addition to overall scientific merit, emphasis will be given to work that promises to aid the understanding of the basic atomic processes that are important for modeling of magnetically confined plasmas. Basic atomic processes that are important for modeling high energy density plasmas produced by high power lasers or ion beams may also be considered. The program has found understanding electron-atom and electron-ion collisions and the radiation emitted by atoms and ions to be of importance for the modeling of plasma behavior in experiments. Some current areas where atomic processes are considered to be important include the effects of transport, the effects of impurities and the understanding of diagnostics.

(The Catalog of Federal Domestic Assistance Number for this program is 81.049, and the solicitation control number is ERFAP 10 CFR part 605).

Issued in Washington DC, on January 31, 2003.

John Rodney Clark,

Associate Director of Science for Resource Management.

[FR Doc. 03–3046 Filed 2–6–03; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Science; Basic Energy Sciences Advisory Committee

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Basic Energy Sciences Advisory Committee (BESAC). Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Tuesday, February 25, 2003, 8 a.m. to 5 p.m., and Wednesday, February 26, 2003, 8 a.m. to 12 p.m.

ADDRESSES: Doubletree Hotel and Executive Meeting Center, 1750 Rockville Pike, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Sharon Long; Office of Basic Energy Sciences; U. S. Department of Energy; 19901 Germantown Road; Germantown, MD 20874–1290; Telephone: (301) 903–5565.

SUPPLEMENTARY INFORMATION:

Purpose of the Meeting: The purpose of this meeting is to provide advice and guidance with respect to the basic energy sciences research program.

Tentative Agenda: Agenda will include discussions of the following:

Tuesday, February 25, 2003

- Welcome and Introduction
- Office of Science Highlights
- Office of Basic Energy Sciences Highlights
- Review of the FY 2004 Budget
- Report of the Workshop on Basic Research Needs to Assure a Secure Energy Future
- Summary of the 20-Year Basic Energy Sciences Facilities Roadmap

Wednesday, February 26, 2003

- Status of BESAC Activities

—Report on the Biomolecular Materials Workshop

—Update on the Catalysis Report

Public Participation: The meeting is open to the public. If you would like to file a written statement with the Committee, you may do so either before or after the meeting. If you would like to make oral statements regarding any of the items on the agenda, you should contact Sharon Long at 301–903–6594 (fax) or *sharon.long@science.doe.gov (e-mail).* You must make your request for an oral statement at least 5 business days prior to the meeting. Reasonable provision will be made to include the scheduled oral statements on the agenda. The Chairperson of the Committee will conduct the meeting to facilitate the orderly conduct of business. Public comment will follow the 10-minute rule.

Minutes: The minutes of this meeting will be available for public review and copying within 30 days at the Freedom of Information Public Reading Room; 1E–190, Forrestal Building; 1000 Independence Avenue, SW., Washington, DC 20585; between 9 a.m. and 4 p.m., Monday through Friday, except holidays.

Issued in Washington, DC, on February 4, 2003.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 03–3045 Filed 2–6–03; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER03–304–000]

Before Commissioners: Pat Wood, III, Chairman; William L. Massey, and Nora Mead Brownell: Consolidated Edison Energy, Inc. and Rockland Electric Company; Order Granting Authorization To Make Affiliate Sales

Issued January 30, 2003.

I. Introduction

1. In this order, we grant an application under section 205 of the Federal Power Act (FPA)[1] by Consolidated Edison Energy, Inc. (CEE) and Rockland Electric Company (RECO) (collectively, Applicants), requesting that the Commission grant authorization for CEE to make sales to its affiliate RECO, pursuant to CEE's market-based rates tariff, as part of CEE's participation in the statewide auction bidding process approved by the New Jersey Board of Public Utilities (BPU). This order concludes that the BPU-approved bidding process as described below alleviates the Commission's concerns regarding affiliate abuse. This order benefits customers by permitting power to be bid into the BPU-approved auction while protecting against affiliate abuse.

[1] 16 U.S.C. 824d (2000).

II. Background

2. On December 20, 2002, Applicants filed the instant application, stating that "Commission approval is sought because both CEE and RECO have codes of conduct and electric tariffs that generally prohibit wholesale sales of electric power to affiliates absent approval from the Commission under [section] 205 of the FPA."[2] Accordingly, they request, to the extent necessary, waiver of the applicable provisions of Applicants' market-based rate tariffs, codes of conduct and any other applicable Commission regulations. Applicants request expedited consideration to allow them to participate in the BPU-sponsored statewide auction that will commence on February 3, 2003.

3. CEE and RECO are corporate affiliates and subsidiaries of Consolidated Edison, Inc. (Con Ed). CEE has on file a Commission-approved market-based rate tariff and code of conduct. RECO is a wholly-owned subsidiary of Orange and Rockland Utilities, Inc. (O&R) and provides retail electric service in New Jersey.

4. Applicants state that the BPU approved two statewide bidding auctions as the means for procuring Basic Generation Service (BGS)[3] for electric customers in New Jersey, the first of which was concluded in February 2002.[4] They state that in December 2002, the BPU approved an auction design for a statewide auction to commence on February 3, 2003, for the provision of all the BGS requirements for the period of August 1, 2003 to May 31, 2004 and a portion of the BGS requirements for the period of June 1, 2004 through May 31, 2006.

III. Notice of Filing and Pleadings

5. Notice of Applicants' filing was published in the **Federal Register**, 68 FR 554 (2003), with protests and motions to intervene due on or before January 10, 2003. Public Service Electric and Gas Company (PSE&G) filed a timely motion to intervene[5] and protest. On January 17, 2003, Applicants filed an answer.

IV. Discussion

A. Procedural Matters

6. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,[6] PSE&G's timely, unopposed motion to intervene serves to make it a party to this proceeding. Rule 213 of the Commission's Rules of Practice generally prohibits answers to protests unless otherwise ordered by the decisional authority.[7] We will permit Applicants' answer because it has aided us in understanding the issues.

B. Substantive Matters

7. As noted, Applicants ask the Commission to permit CEE to participate in the BPU-approved statewide auction process to the extent that CEE may bid to supply the electric load requirements of its affiliate RECO. Applicants also request, if necessary, waiver of the provisions of the applicable codes of conduct and market-based rate tariffs that, among other things, prohibit wholesale sales of electric power to affiliates absent approval from the Commission under section 205 of the FPA.[8]

8. Applicants assert that the proposed sale in this case would originate through a competitive bid process supervised by the state regulatory authority with jurisdiction over the rates of the purchasing utility and that the auction process is designed to prevent affiliate abuse. They describe the auction process as follows:

> The auction process is a completely competitive one based entirely on price. The bids are submitted electronically through the internet. During the bidding process, there is no contact outside of the process between any one supplier and an [electric distribution company (EDC)] concerning the bids. Indeed, during the auction process, the EDCs do not know which suppliers are bidding to supply their BGS customer load. Only the auction manager, National Economic Research Associates, Inc. ("NERA"), an independent consultant, is privy to such information. The auction commences by an EDC setting, in consultation with the BPU and the auction manager, a starting price. Suppliers bid the percentage of the EDC's BGS customer load that they are willing to supply at that price. They do this by bidding the number of tranches, each of which is equal to a set percentage of the EDC's overall BGS customer load, that they are willing to supply at the applicable price. Generally speaking, the auction manager then gradually lowers the price and suppliers continue to bid the volume they are willing to supply until the price is at the lowest point where one hundred percent of the EDC's BGS customer load is still covered by the suppliers' volumetric bids. Once the lowest price is determined, and the BPU approves it, the EDC and each of the winning suppliers are required to enter into the applicable BGS Supplier Master Agreement that was approved by the BPU in its decision and order issued on December 4, 2002 in Docket No. EX01110754.[9] There is no individualized negotiation of the BGS Supplier Master Agreement between the winning suppliers and the EDC. The price described above is the price that is paid under the BGS Supplier Master Agreement for the supply of BGS.[10]

9. The Commission has approved affiliate sales based upon a competitive bidding process only after the Commission has evaluated the bidding process and determined that, based on the evidence, the proposal was a result of direct head-to-head competition between the affiliates and competing unaffiliated suppliers in a formal solicitation or informal negotiation process.[11] In *Conectiv Energy Supply, Inc.*,[12] the Commission accepted for filing, among other things, a service agreement between Conectiv Energy Supply, Inc. (CESI) and its affiliate Atlantic City Electric Company (Atlantic) pursuant to which CESI would make sales of capacity, energy and ancillary services to Atlantic under CESI's market-based rate tariff. In that case, the Commission evaluated the first BPU bid process and determined that the process "alleviates our concerns regarding affiliate abuse."

10. PSE&G states that it does not oppose CEE's proposal to bid in the BGS auction. However, PSE&G requests that Applicants' filing be rejected, arguing that the Commission lacks jurisdiction over the BGS auction. It argues that BGS is a retail service subject to the BPU's jurisdiction because the underlying BGS supply contract, the BGS Master Supply Agreement (Agreement), creates a direct supply arrangement between the BGS supplier and the end-user of electricity

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[2] Applicants' Transmittal Letter at 4.

[3] BGS is electric generation service that is provided by a New Jersey electric distribution company to any customer who has not chosen an alternative power supplier. BGS is known in other states as provider of last resort service or default service.

[4] *See* Electric Discount and Energy Competition Act of 1999, *N.J.S.A.* 48:3–49 *et seq.*, which provides the framework for the transition from a regulated to a competitive market place in New Jersey.

[5] PSE&G states that it is the major supplier of electricity in New Jersey. It further states that it is a major distributor of electricity in New Jersey and a transmission-owning member of the PJM Interconnection LLC regional transmission organization and a provider of wholesale transmission service to surrounding regions.

[6] 18 CFR 385.214 (2002).

[7] 18 CFR 385.213 (2002).

[8] As noted above, CEE has a market-based rate tariff on file with the Commission. RECO is governed by the tariffs and code of conduct filed by O&R with the Commission on behalf of the Orange and Rockland System.

[9] There are two applicable BGS Master Supplier Master Agreements (BGS–FP for Basic Generation Service—Hourly Energy Pricing and BGS–HEP for Basic Generation Service—Fixed Pricing). Applicants attached two *pro forma* BGS Supplier Master Agreements (one for BGS–FP and one for BGS–HEP) to their filing.

[10] Applicants' Transmittal Letter at 3–4.

[11] *See* Connecticut Light & Power Company and Western Massachusetts Electric Company, 90 FERC ¶ 61,195 at 61,633–34 (2000); Aquila Energy Marketing Corp., 87 FERC ¶ 61,217 at 61,857–58 (1999); MEP Pleasant Hill, LLC, 88 FERC ¶ 61,027 at 61,059–60 (1999); Boston Edison Co. Re: Edgar Electric Energy Co., 55 FERC ¶ 61,382 at 62,167–69 (1991).

[12] 91 FERC ¶ 61,076 at 61,269 (2000).

and that RECO's role would be that of an agent for BGS customers. PSE&G states that section 13.2 of the Agreement provides that "[E]ach BGS–FP Supplier shall at all times be deemed to hold title to electric energy until delivery to the retail meter of the Customer at which time title shall be deemed to pass to such Customer." Thus, PSE&G argues that Commission approval is not required in order for CEE to bid in the BGS auction to sell to RECO. Alternatively, if the Commission does assert jurisdiction over BGS Agreements, PSE&G requests that it grant blanket waivers to all similarly-situated companies.

11. In response to PS&G's protest, Applicants state:

> In view of the February 3, 2003 date for submitting bids in New Jersey's BGS auction, [Applicants] simply seek to clarify that the Commission does not have to resolve the wholesale-retail jurisdictional issue raised by PSE&G prior to February 3rd in order for CEE to participate in the RECO auction. It would suffice for the Commission to simply waive any affiliate-transaction limitations of [Applicants'] electric tariffs or codes of conduct insofar as they might apply. Granting such waivers prior to February 3rd would serve the public interest by enabling CEE to participate in the auction and thereby would increase overall participation and competition in the BGS auction. [Applicants] have no objection to PSE&G's alternative proposal that the Commission grant blanket waivers to permit participation in the BGS auction to all companies that are similarly situated to CEE and RECO.[13]

12. As noted above, Applicants' transmittal letter assumes that, if CEE is a successful bidder, the proposed transaction would involve a wholesale sale by CEE to its affiliate RECO that requires Commission approval. In these circumstances, we will assume (without deciding) that we have jurisdiction.[14] The BGS competitive bid process described by Applicants alleviates the Commission's concerns regarding affiliate abuse. Therefore, we will grant Applicants' request for authorization for CEE to make sales to its affiliate RECO, pursuant to CEE's market-based rates tariff, as part of CEE's participation in the BPU-approved statewide auction process.

13. Because we believe that the BPU auction process alleviates our concerns as to affiliate abuse, the Commission would authorize similarly-situated public utilities (with Commission-approved market-based rate tariffs and with tariff prohibitions on affiliate sales absent prior Commission authorization) to make sales to their affiliates as part of their participation in the BPU-approved auction. Such similarly-situated public utilities must either make an appropriate section 205 filing[15] or file a petition explaining why they believe we lack jurisdiction.[16]

The Commission orders:

(A) Applicants' application for authorization for CEE to make sales to its affiliate RECO, pursuant to CEE's market-based rates tariff, as part of CEE's participation in the BPU-approved statewide auction process is hereby granted, as discussed in the body of this order.

(B) The Secretary shall promptly publish this order in the **Federal Register.**

By the Commission.

Magalie R. Salas,

Secretary.

[FR Doc. 03–3114 Filed 2–6–03; 8:45 am]

BILLING CODE 6717–01–P

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[13] Applicants' Answer at 2.

[14] We note that the *pro forma* Agreements contain several indicia that would suggest a finding that entry by a successful bidder into the requisite BPU-approved supply agreement and performance thereunder will result in a wholesale sale. (The relevant provisions are the same in the BGS-FP Agreement and the BGS–HEP Agreement.) As an initial matter, the parties to the Agreements are the BGS Supplier (here, CEE) and the electric distribution company (here, RECO). There is no provision in the Agreements that establishes privity of contract between the retail customers and the BGS Supplier; retail customers cannot enforce the contract against the BGS Supplier, nor can the BGS Supplier enforce the contract against the retail customer. (*E.g.*, BGS–FP Agreement, Article 2.1). Further, the electric distribution Company (here, RECO) would execute the contract in its own name and be obligated to pay the BGS Supplier from its own funds. (*E.g.*, BGS–FP Agreement, Article 2.2). The Agreements also provide that the agreement is a "legal and binding obligation of the Company [(*i.e.*, RECO)]." (*E.g.*, BGS–FP Agreement, Article 3.2). In addition, the "Company's performance under this agreement is not contingent upon the performance of [the retail] Customers or the ability of [the retail] Customers to pay rates;" the Company's non-payment, insolvency, illegality (including Federal Energy Regulatory Commission obligations), or material breach are all events of default for the Company and upon default, the BGS Supplier would receive damages from RECO, including liquidation and termination; and certain PJM penalties and costs are allocated among the BGS Supplier and the Company. (*E.g.*, BGS–FP Agreement, Articles 3.2, 5.1 and 5.3). Further, the Agreements provide that to the extent that the Agreement is deemed to be subject to the Commission's jurisdiction, the standard of review for changes to any sections of the Agreement specifying the rate(s) or other material economic terms and conditions will be the *Mobile-Sierra* "public interest" standard of review. (*E.g.*, BGS–FP Agreement, Article 11.2).

[15] *See* Aquila, Inc., 101 FERC ¶ 61,331 at P 12 (2002).

[16] In the Prior Notice Order, the Commission advised that "[t]o the extent a utility remains uncertain, even after consulting this order and the Appendix, as to its obligation to file rates and charges for a particular transaction or type of transaction, it should assume the initiative to seek a specific ruling. The easiest and most efficient way to do this is to file the agreement pursuant to part 35 of the Commission's regulations * * * and simultaneously request the Commission to disclaim jurisdiction." *See* Prior Notice and Filing Requirements Under part II of the Federal Power Act, 64 FERC ¶ 61,139 at 61,977–78 (1993) (Prior Notice Order) (emphasis deleted).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL02–88–000, et al.]

Before Commissioners: Pat Wood, III, Chairman; William L. Massey, and Nora Mead Brownell; Pacific Gas and Electric Company et al.; Order Partially and Fully Granting Rehearings and Partially Granting Complaints

Issued January 29, 2003.

In the matter of: ER02–1330–002, EL02–88–000, EL03–3–000 and ER02–1472–001, EL03–4–000 and ER02–1151–001, EL03–5–000 and ER02–1069–001, EL03–13–000 and ER02–2243–002, EL03–12–000; Pacific Gas and Electric Company, Wrightsville Power Facility, LLC v. Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Services, Inc., Entergy Services, Inc., Kinder Morgan Michigan, LLC v. Michigan Electric Transmission Company, LLC; Order Partially and Fully Granting Rehearings and Partially Granting Complaints.

1. In this order, we partially and fully grant the requests for rehearing and partially grant the complaints in the above-captioned proceedings and hold that the interconnection agreements (IAs) in these dockets must be modified to conform with our recent decision in *Duke Hinds II*.[1] Our holdings here benefit the public interest by assuring that the rates, terms, and conditions for interconnection service are just and reasonable, and provide the parties with a reasonable means to ensure the reliable operation, protection, and integrity of their transmission systems.

2. More specifically, we partially grant rehearing in *Pacific Gas and Electric Company*[2] (Docket No. ER02–1330–002) and find that the IA in this docket is unjust and unreasonable. We also partially grant the rehearings in *Entergy Gulf States, Inc.*[3] (Docket No. ER02–1472–001); *Entergy Services, Inc.*[4] (Docket No. ER02–1151–001); *Entergy Services, Inc.*[5] (Docket No. ER02–1069–001); and fully grant the rehearing in *Entergy Services, Inc.*[6] (Docket No. ER02–2243–002) and find that the IAs

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[1] Entergy Services, Inc., EL02–107–000, *et al.* (January 28, 2003) (*Duke Hinds II*).

[2] 101 FERC ¶ 61,079 (2002) (PG&E).

[3] 99 FERC ¶ 61,234 (2002).

[4] 99 FERC ¶ 61,097 (2002).

[5] 99 FERC ¶ 61,077 (2002).

[6] 100 FERC ¶ 61,397 (2002).

in these dockets are unjust and unreasonable under section 206 of the Federal Power Act (FPA).[7] We also partially grant the complaints filed by Wrightsville Power Facility, L.L.C. (Wrightsville Power) in Docket No. EL02–88–000 and by Kinder Morgan Michigan, LLC (Kinder Morgan) in Docket No. EL03–12–000.[8] In each of these cases, we direct modification to the respective IAs.

Background

3. On March 15, 2002, the Commission issued an order in *Duke Hinds I*.[9] In that proceeding, Entergy, the transmission provider, had filed a revision to an unexecuted IA to reflect Duke's, the generator's, election of certain additional upgrades that were not included in the original, executed IA, which had been previously accepted by the Commission. The Commission accepted the revisions, stating that, once the Commission accepts an IA, where the interconnecting generator assumed the responsibility, without protest, "to pay, on a direct assignment basis without credit, for certain facilities," the generator is "bound to the terms and conditions of the [original interconnection agreement] into which it willingly entered." [10] Further, the Commission stated that it "can act on behalf of a party to revise terms and conditions to which the parties have agreed and which the Commission has accepted, only if it finds that the contract is contrary to the public interest under Section 206 [of the FPA]." [11]

4. Duke sought rehearing and filed a complaint, pointing to language in the IA which specifically reserved the parties' rights to request changes to the IA under section 205 [12] or 206 of the FPA.

5. On January 28, 2003, the Commission issued *Duke Hinds II*. In *Duke Hinds II*, the Commission agreed with Duke that the revised IA was subject to review under a just and reasonable standard because the agreement contained provisions that allowed either party unilaterally to request changes to the IA under section 205 or 206 of the FPA. Further, the Commission found that the more stringent public interest [13] standard of review was not the appropriate standard of review; in *Duke Hinds I*, the Commission had "failed to recognize * * * the existence of specific provisions [in the interconnection agreement] preserving [the generator's] statutory right to file a complaint under section 206 and have the Commission revise the [IA] if we find [it] to be unjust and unreasonable." [14] The Commission then directed Entergy to revise its interconnection agreement to reclassify certain facilities as network upgrades and to provide the generator with transmission credits, plus interest, for the costs associated with those facilities, consistent with long-held Commission policy.[15]

Discussion

6. We will grant the above-captioned requests for rehearing and complaints. All of these IAs involve crediting issues that are inconsistent with Commission Policy. Further, each of the respective Commission-accepted IAs contain language, similar to the language found in the *Duke Hinds II* IA, preserving the rights of the parties to unilaterally seek revisions to their agreements, under sections 205 and 206 of the FPA. Thus, the Commission should evaluate these IAs under the just and reasonable, and not public interest, standard.

1. PG&E

7. In *Pacific Gas and Electric Company* [16] (Docket No. ER02–1330–002), the Commission conditionally accepted for filing, as modified, several executed agreements, to be effective May 17, 2002, relating to the interconnection of PG&E's transmission system and Los Medanos Energy Center LLC (LMEC), subject to the outcome of any future Commission action in the *Duke Hinds I* rehearing and complaint proceedings. We will now partially grant rehearing with respect to this issue and establish a May 17, 2002 refund effective date, the date the agreements became effective. Specifically, we find that because the agreements at issue contain provisions [17] that allow either party unilaterally to request changes to them under section 205 or 206 of the FPA, the just and reasonable standard applies, consistent with *Duke Hinds II*, and thus the agreements must be modified to be consistent with Commission policy. We will direct PG&E to file such modifications within 30 days of the date of this order.

2. Other IA-Related Rehearing Requests

8. In addition, we have reviewed the IAs, and their corresponding pending requests for rehearing, in other proceedings and partially and fully grant those rehearings. Because the IAs at issue also contain provisions that allow either party unilaterally to request changes to them under section 205 or 206 of the FPA, the just and reasonable standard applies, consistent with *Duke Hinds II*. We find that these agreements must be modified to be consistent with Commission policy. Specifically, in this regard, we partially grant the requests for rehearing in Entergy Gulf States, Inc. (in Docket No. ER02–1472–001); Entergy Services, Inc. (in Docket No. ER02–1151–001); Entergy Services, Inc. (in Docket No. ER02–1069–001); and fully grant the request for rehearing in Entergy Services, Inc. (in Docket No. ER02–2243–002).

9. Accordingly, pursuant to Section 206 of the FPA, the Commission will direct modification to the IAs in those proceedings, in accordance with our ruling in *Duke Hinds II* and Commission policy, within 30 days of the date of this order.

10. In order to give maximum protection to customers, we will establish the refund date at the earliest date allowed. Accordingly, we will direct the Secretary to publish this order in the **Federal Register** and, for Docket Nos. EL03–3–000 and ER02–1472–001; EL03–4–000 and ER02–1151–001;

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[7] 16 U.S.C. 824e (2000).

[8] We note that although we are partially granting most of the requests for rehearing and the complaints in the above captioned dockets, we plan to address the other issues raised in these proceedings, that are not addressed in this order, at a later date.

[9] Entergy Services, Inc., 98 FERC ¶ 61,290 at 62,261–62 (2002) (*Duke Hinds I*).

[10] *Id.*

[11] *Id.* at ¶ 62,262.

[12] 16 U.S.C. 824d (2000).

[13] *See United Gas Pipe Line Co.* v. *Mobile Gas Service Corp.*, 350 U.S. 332 (1956) (*Mobile*), and *FPC* v. *Sierra Pacific Power Co.*, 350 U.S. 348 (1956) (*Sierra*). Under the Mobile-Sierra doctrine, where the Commission has accepted a contract that contains a provision precluding changes to that contract, the Commission can act on behalf of a party to revise terms and conditions only if the Commission finds that the contract is contrary to the public interest, under section 206 of the FPA.

[14] *Duke Hinds II*, slip op. at P 21. *See also Papago Tribal Utility Authority* v. *Federal Energy Regulatory Commission*, 723 F.2d 950, 954 (DC Cir. 1983).

[15] *See* Consumers Energy Company (*Consumers*) 95 FERC ¶ 61,233 at 61,804 (2001); *reh'g denied*, 96 FERC ¶ 61,132 at 61,561 (2001) (holding that all network upgrade costs should be credited back to the customer that funded the upgrades once delivery service begins). American Electric Power Service Corp., 91 FERC ¶ 61,308 at 62,051 (2000), *order denying reh'g and granting clarification*, 94 FERC ¶ 61,166 (2001), *order dismissing request for clarification*, 95 FERC ¶ 61,130 (2001), *appeal docketed sub nom. Tenaska, Inc.* v. *FERC*, No. 01–1194 (DC Cir. April 23, 2001) (*AEP*) (stating the Commission's policy on crediting and interest on credits).

[16] 101 FERC ¶ 61,079 (2002) (Docket Nos. ER02–1330–000; ER02–1330–001).

[17] Paragraph 11 of the Supplemental Letter Agreement (SLA) to the IAs states that, "notwithstanding any other provisions of the SLA, GSFA, or the GIA, PG&E and [LMEC] retain their full and respective rights under Sections 205 and 206 of the [FPA] to file to change or challenge any rate, term or condition in any agreement between them related to LMEC that is or may be on file with the [Commission.]" *See also* Paragraph 5(a) of the SLA.

EL03–5–000 and ER02–1069–001; EL03–13–000 and ER02–2243–002, the refund effective date will be 60 days from the date on which this order is published in the **Federal Register**.

3. Other IA-Related Complaints

11. We will also partially grant the complaints filed by Wrightsville Power Facility, L.L.C. (Wrightsville Power) in Docket No. EL02–88–000 and by Kinder Morgan Michigan, LLC (Kinder Morgan) in Docket No. EL03–12–000. We find that, because the agreements at issue contain provisions that allow either party unilaterally to request changes to them under section 205 or 206 of the FPA, the just and reasonable standard applies, consistent with *Duke Hinds II*, and thus the agreements must be modified to be consistent with Commission policy. Accordingly, we will direct modifications to the IAs in these proceedings within 30 days of the date of this order.

12. In order to give maximum protection to consumers, we will establish the refund date at the earliest date allowed. For Docket No. EL02–88–000, because Wrightsville Power filed a complaint on its own motion, we will establish the refund date as July 19, 2002, 60 days after it filed the complaint. For Docket No. EL03–12–000, because Kinder Morgan filed a complaint on its own motion, we will establish the refund date as December 16, 2002, 60 days after it filed the complaint.

The Commission orders:

(A) The requests for rehearing in Docket Nos. ER02–1330–002, ER02–1472–001, ER02–1151–001, and ER02–1069–001 are hereby partially granted, as discussed in the body of this order.

(B) The request for rehearing in Docket No. ER02–2243–002 is hereby granted.

(C) The complaints filed by Wrightsville Power Facility, L.L.C. (Wrightsville Power) in Docket No. EL02–88–000 and by Kinder Morgan Michigan, LLC (Kinder Morgan) in Docket No. EL03–12–000 are hereby partially granted, as discussed in the body of this order.

(D) The transmission providers in the instant dockets are hereby directed to modify their IAs, as discussed in the body of this order, within 30 days of the date of this order.

(E) The Secretary shall promptly publish this order in the **Federal Register**.

(F) This order is hereby effective as discussed in the body of this order.

By the Commission.

Magalie R. Salas,

Secretary.

[FR Doc. 03–3113 Filed 2–6–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

January 31, 2003.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary permit

b. *Project No.:* 12385–000

c. *Date filed:* October 3, 2002

d. *Applicant:* Universal Electric Power Corporation

e. *Name and Location of Project:* The Grenada Dam Hydroelectric Project would be located on the Yalobusha River in Grenada County, Mississippi. The project would utilize the U.S. Army Corps of Engineers' existing Grenada Dam and Reservoir.

f. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

g. *Applicant Contact:* Mr. Raymond Helter, Universal Electric Power Corporation, 1145 Highbrook Street, Akron, OH 44301, (330) 535–7115.

h. *FERC Contact:* James Hunter, (202) 502–6086.

i. *Deadline for filing comments, protests, and motions to intervene:* 60 days from the issuance date of this notice.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

j. *Description of Project:* The proposed project, using the Corps' existing Grenada Dam and Reservoir, would consist of: (1) Two 80-foot-long, 96-inch-diameter steel penstocks, (2) a powerhouse containing five generating units with a total installed capacity of 12.75 megawatts, (3) a 3-mile-long, 14.7-kilovolt transmission line connecting to an existing substation, and (4) appurtenant facilities. The project would have an average annual generation of 78 gigawatthours.

k. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *ferconlineSupport@ferc.gov* . For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item g. above.

l. Competing Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (*see* 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

m. Competing Development Application—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

n. Notice of Intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

o. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work

proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

p. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

q. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing an original and eight copies to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings. Please include the project number (P–12385–000) on any comments or motions filed.

r. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. 03–3119 Filed 2–6–03; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6637–4]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7167 or *http://www.epa.gov/compliance/nepa:* Weekly receipt of Environmental Impact Statements filed January 27, 2003, through January 31, 2003, pursuant to 40 CFR 1506.9.

EIS No. 030046, DRAFT EIS, BLM, WY, South Powder River Basin Coal Project, Proposed Application for Leasing of Five Federal Coal Tracts: NARO North/South (North Antelope/Rochelle Mine Complex), Little Thunder (Black Thunder Mine) West Roundup (North Rochelle Mine) and West Antelope (Antelope Mine), Campbell and Converse Counties, WY, Comment Period Ends: April 08, 2003, Contact: Nancy Doelger (307) 261–7627.

This document is available on the Internet at: *http://www.wyblm.com.*

EIS No. 030047, DRAFT EIS, AFS, MI, Interior Wetlands Project, Proposal to Harvest Timber, Prune White Pine Trees, Adjust the Growth System, Create and Maintain Wildlife Openings and Improve Transportation System, Hiawatha National Forest, Eastside Administrative Unit, Chippewa County, MI, Comment Period Ends: April 08, 2003, Contact: Martha Sjogren (906) 643–7900.

This document is available on the Internet at: *http://www.fs.fed.us/r9/hiawatha.*

EIS No. 030048, DRAFT EIS, DOD, CA, AS, AK, HI, WA, Ground-Based Midcourse Defense (GMD) Extended Test Range (ETR) Project, Proposal to Construct and Operate Additional Launch and Test Facilities including the Sea Based X-Band Radar, Comment Period Ends: March 24, 2003, Contact: David Hasley (256) 955–4170.

Amended Notices

EIS No. 030034, DRAFT EIS, AFS, CA, Stream Fire Restoration Project, Implementation, Plumas National Forest, Mt. Hough Ranger District, Plumas County, CA, Comment Period Ends: March 17, 2003, Contact: Rich Bednarski (530) 283–7641.

Revision of FR Notice Published on 1/31/2003: Correction to Telephone number.

Dated: February 4, 2003.

Joseph C. Montgomery,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 03–3060 Filed 2–6–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6637–5]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 564–7167. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in the **Federal Register** dated April 12, 2002 (67 FR 17992).

Draft EISs

ERP No. D–AFS–F65034–WI Rating LO, Northwest Howell Project, Timber Harvest, Wildlife Openings Maintenance, Aspen and Jack Pine Types Regeneration, Hardwood and Conifer Tree Seedilings Protection, Lakes Habitat Improvements and Transportation System Development, Eagle-Florence District, Chequameg-Nicolet National Forest, Forest and Florence Counties, WI.

Summary: EPA has no objections to this vegetation management plan since the design features in the project should function to avoid and reduce potential impacts.

ERP No. D–AFS–F65035–WI Rating LO, Cayuga Project Area, Various Resource Management Projects, Chequamegon-Nicolet National Forest, Great Divide Ranger District, Ashland County, WI.

Summary: EPA has no objections to the preferred alternative, we believe Alternative 4 is environmentally preferable because of its emphasis on long-term ecosystem health over the desires of forest resource consumers.

ERP No. D–AFS–G65085–NM Rating EC2, Sacramento, Dry Canyon and Davis Grazing Allotments, Authorization of Livestock Grazing Activities, Lincoln

National Forst, Sacramento Ranger District, Otero County, NM.

Summary: EPA expressed environmental concerns and requested additional information to address and mitigate potential impacts to federally protected species under the Endangered Species Act.

ERP No. D–BLM–K09808–NV Rating LO, Ivanpah Energy Center Project, 500 Megawatt (MW) Gas-Fired Electric Power Generating Station Construction and Operation, Approval, Right-of-Way Grant, BLM Temporary Use Permit, FHWA Permit to Cross Federal Aid Highway, U.S. Army COE Section 10 and 404 Permits and NPDES Permit Issuance, Clark County, NV.

Summary: EPA expressed a lack of objections with the proposed action.

ERP No. D–BLM–L65407–OR Rating EC2, Lookout Mountain Forest and Rangeland Health Project and Baker Resource Management Plan (RMP) Amendment involving Changes in Visual Resources Management (VRM) Inventory Classes and Decommissioning of Roads, Implementation, Baker City, Baker County, OR.

Summary: EPA expressed environmental concerns with the lack of specific information on noxious weed treatment, and potential impacts to air quality from prescribed burns.

ERP No. D–JUS–K80044–CA Rating LO, Sacramento County Juvenile Hall Expansion Project, Accommodation of 90 New Beds in the Short-Term and 240 New Beds in the Long-Term, Sacramento County, CA.

Summary: EPA has no objection to the proposed action since the DEIS provided an adequate analysis of potential impacts, and all potentially significant impacts have been mitigated or accounted for.

ERP No. DS–COE–E36154–FL Rating LO, Upper St. Johns River Basin and Related Areas, Central and Southern Florida Flood Control Project, New Information concerning Preservation and Enhancement of Floodplain and Aquatic Habitats North of the Fellsmere Grade, Brevard County, FL

Summary: While future monitoring and some changes may be necessary to determine the degree of successful marsh enhancement resulting from these water manipulations, EPA has no environmental objections to its implementation.

Final EISs

ERP No. F–COE–E35086–FL, Fort Pierce Shore Protection Project, Future Dredging of Capron Shoal, Implementation, St. Lucie County, FL.

Summary: EPA determined that the unavoidable losses attendant to implementation of this project have been appropriately mitigated, therefore EPA has no objection to the proposed action.

ERP No. F–DOE–L05224–WA, Maiden Wind Farm Project, Construction and Operation of up to 494 Megawatts (MW) of Wind Generation on Privately-and Publicly-owned Property, Conditional Use Permits, Rattlesnake Hills, Benton and Yakima Counties, WA.

Summary: No formal comment letter was sent to the preparing agency.

ERP No. F–NPS–K61152–CA, Santa Monica Mountains National Recreation Area General Management Plan, Implementation, Los Angeles and Ventura Counties, CA.

Summary: No formal comment letter was sent to the preparing agency.

ERP No. F–USA–E11050–KY, Blue Grass Army Depot, Destruction of Chemical Munitions, Design, Construction, Operation and Closure of a Facility to Destroy the Chemical Agent and Munitions, Madison County, KY.

Summary: EPA has no objection to the proposed action or the various technologies which will be used to accomplish this objective.

Dated: February 4, 2003.

Joseph C. Montgomery,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 03–3061 Filed 2–6–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7449–2]

FY2003–2004 Great Lakes National Program Office Funding Guidance—Request for Proposals

AGENCY: Environmental Protection Agency.

ACTION: Notice of funding availability.

SUMMARY: The U.S. Environmental Protection Agency's Great Lakes National Program Office (GLNPO) is requesting Proposals for up to $4,827,000 for projects furthering protection and clean up of the Great Lakes ecosystem.

DATES: The initial deadline for all Proposals is 8 a.m. Central time, March 31, 2003, with a separate rolling deadline for specified conferences and publications.

ADDRESSES: The RFP is available on the Internet at *http://www.epa.gov/glnpo/fund/2003guid/*. It is also available from Lawrence Brail (312–886–7474/*brail.lawrence@epa.gov*).

FOR FURTHER INFORMATION CONTACT: Mike Russ, EPA–GLNPO, G–17J, 77 West Jackson Blvd., Chicago, IL 60604 (312–886–4013/*russ.michael@epa.gov*).

SUPPLEMENTARY INFORMATION: Proposals are requested through four requests:

RFP 1: General Request. $2,720,000 for Great Lakes projects addressing Contaminated Sediments, Pollution Prevention and Reduction, Habitat (Ecological) Protection and Restoration, Invasive Species, and Strategic or Emerging Issues.

RFP 2: Specific LaMP/RAP Requests—$1,752,000 for specific Great Lakes projects furthering the Lakewide Management Plans and Remedial Action Plans, such as monitoring, outreach, training, assessment, and coordination.

RFP 3: Conferences and Publications. $275,000 for Great Lakes conferences and publications, and for specific conferences on the State of Lake Michigan and Basin-wide RAP Priorities.

RFP 4: Grants Servicing Intermediary. $60,000 to $100,000 for an "intermediary" organization to make and administer grant sub-awards for habitat and other areas.

Assistance (through grants, cooperative agreements, and interagency agreements) is available pursuant to Clean Water Act section 104(b)(3) for activities in the Great Lakes Basin and in support of the Great Lakes Water Quality Agreement. State pollution control agencies, interstate agencies, other public or nonprofit private agencies, institutions, and organizations are eligible to apply.

Dated: January 30, 2003.

Gary V. Gulezian,

Director, Great Lakes National Program Office.

[FR Doc. 03–3064 Filed 2–6–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7449–1]

Inventory of U.S. Greenhouse Gas Emissions and Sinks: 1990–2001

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of document availability and request for comments.

SUMMARY: The Draft Inventory of U.S. Greenhouse Gas Emissions and Sinks: 1990–2001 is available for public review. Annual U.S. emissions for the period of time from 1990–2001 are summarized and presented by source

category and sector. The inventory contains estimates of carbon dioxide (CO_2), methane (CH_4), nitrous oxide (N_2O), Hydrofluorocarbons (HFC), perflourocarbons (PFC), and sulfur hexaflouride (SF_6) emissions. The inventory also includes estimates of carbon sequestration in U.S. forests and, new this year, an updated assessment of emissions from the electric power industry. The technical approach used in this report to estimate emissions and sinks for greenhouse gases is consistent with the methodologies recommended by the Intergovernmental Panel on Climate Change (IPCC) and reported in a format consistent with the United Nations Framework Convention on Climate Change (UNFCCC) reporting guidelines. The Inventory of U.S. Greenhouse Gas Emissions and Sinks is the latest in a series of annual U.S. submissions to the Secretariat of the UNFCCC.

DATES: To ensure your comments are considered for the final version of the document, please submit your comments within 30 days of the appearance of this notice. However, comments received after that date will still be welcomed and be considered for the next edition of this report.

ADDRESSES: Comments should be submitted to Mr. William N. Irving at: Environmental Protection Agency, Clean Air Markets Division (6204N), 1200 Pennsylvania Ave., NW., Washington, DC 20460, Fax: (202) 565–6673. You are welcome and encouraged to send an e-mail with your comments to *irving.bill@epa.gov.*

FOR FURTHER INFORMATION CONTACT: Mr. William N. Irving, Environmental Protection Agency, Office of Air and Radiation, Office of Atmospheric Programs, Clean Air Markets Division, (202) 565–9065, *irving.bill@epa.gov.*

SUPPLEMENTARY INFORMATION: The draft report can be obtained by visiting the U.S. EPA's global warming site at *http://www.epa.gov/globalwarming/publications/emissions/.*

Dated: January 30, 2003.

Robert Brenner,

Acting Assistant Administrator, Office of Air and Radiation.

[FR Doc. 03–3063 Filed 2–6–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7449–7]

Proposed National Pollutant Discharge Elimination System (NPDES) General Permits for Storm Water Discharges From Construction Activities—Extension of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; extension of comment period.

SUMMARY: On December 20, 2002 (67 FR 78116), EPA published a notice of the availability of the proposed National Pollutant Discharge Elimination System (NPDES) General Permits for Storm Water Discharges from Construction Activities and requested comments on the draft by February 13, 2003. The purpose of this notice is to extend this comment period to February 13, 2003.

DATES: Comments on the proposed general permits must be received by February 13, 2003.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Send written comments to: follow the detailed instructions as provided in section I.B.

FOR FURTHER INFORMATION CONTACT: Jack Faulk, Office of Wastewater Management, Office of Water, EPA Headquarters at tel.: 202–564–0768 or e-mail: *faulk.jack@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. How Can I Get Copies of This Document and Other Related Information ?

1. *Docket.* EPA has established an official public docket for this action under Docket ID No. OW–2002–0055. The official public docket is the collection of materials that is available for public viewing at the Water Docket in the EPA Docket Center, (EPA/DC) EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. A copy of both the proposed permit and fact sheet are available for viewing and downloading from the Water Docket. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Water Docket is (202) 566–2426.

2. *Electronic Access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/.*

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the appropriate docket identification number.

B. How and To Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments.

1. *Electronically.* If you submit an electronic comment as prescribed below, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket,* and follow the online instructions for submitting comments. Once in the system, select "search," and then key in

Docket ID No. OW–2002–0055. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by electronic mail (e-mail) to *ow-docket@epa.gov,* Attention Docket ID No. OW–2002–0055. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the Docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in section I.B.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By Mail.* Send the original and three copies of your comments to: Water Docket, Environmental Protection Agency, Mailcode: 4101T, 1200 Pennsylvania Ave., NW., Washington, DC, 20460, Attention Docket ID No. OW–2002–0055.

3. *By Hand Delivery or Courier.* Deliver your comments to: Public Reading Room, Room B102, EPA West Building, 1301 Constitution Avenue, NW., Washington, DC 20004, Attention Docket ID No. OW–2002–0055. Such deliveries are only accepted during the Docket's normal hours of operation as identified in section I.A.1.

C. What Action Is Being Taken?

The comment period for the construction general permits is being extended for 10 days until February 13, 2003, in response to requests from the National Association of Homebuilders, the National Mining Association, and the Associated General Contractors of America. After the close of the public comment period, EPA will issue a final permit decision. This decision will not be made until after public comments have been considered and appropriate changes made to the permit.

Dated: February 3, 2003.

G. Tracy Mehan, III,

Assistant Administrator for Water.

[FR Doc. 03–3240 Filed 2–6–03; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority 5 CFR 1320 Authority, Comments Requested

January 27, 2003.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13. An agency may not conduct or sponsor a collection of information unless it displays a current valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before April 8, 2003. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commission, Room 1–A804, 445 12th Street, SW., Washington, DC 20554, or via the Internet to *lesmith@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s) contact Les Smith at (202) 418–0217 or via the Internet at *lesmith@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0737.

Title: Disclosure Requirements for Information Services Provided Under a Presubscription or Comparable Arrangement.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business and other for-profit entities.

Number of Respondents: 1,000.

Estimated Time per Response: 5 hours.

Frequency of Response: On occasion reporting requirements; Third party disclosure.

Total Annual Burden: 5,000 hours.

Total Annual Costs: None.

Needs and Uses: 47 CFR section 64.1501(b) imposes disclosure requirements on information providers that offer "presubscribed" information services. The requirements are intended to ensure that consumers receive information regarding the terms and conditions associated with these services before they enter into a contract to subscribe to them.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 03–3000 Filed 2–6–03; 8:45 am]

BILLING CODE 6712–10–P

FEDERAL COMMUNICATIONS COMMISSION

[Report No. AUC–03–49–B (Auction No. 49); DA 03–100]

Revised Inventory and Auction Start Date for Auction of Lower 700 MHz Band Licenses; Comment Sought on Reserve Prices or Minimum Opening Bids and Other Auction Procedures

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This document revises the Auction No. 49 inventory to include five additional licenses, and seeks comment on procedural issues related to the auction of these additional licenses. This document also revises the starting date for Auction No. 49 to provide additional time for bidder preparation and planning.

DATES: Comments are due on or before February 12, 2003, and reply comments are due on or before February 19, 2003. Auction No. 49 is scheduled to begin May 28, 2003.

ADDRESSES: All comments and reply comments must be filed electronically to the following address: *auction49@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: *For legal questions:* Howard Davenport at (202) 418–0660. *For general auctions questions:* Lyle Ishida at (202) 418–0660 or Linda Sanderson at (717) 338–2888. *For service rule questions:* Amal

Abdallah, Evan Baranoff, Joanne Epps or Melvin Spann at (202) 418–0620.

SUPPLEMENTARY INFORMATION: This is a summary of the *Auction No. 49 Revised License Inventory Public Notice* released on January 29, 2003. The complete text of the *Auction No. 49 Revised License Inventory Public Notice*, including attachments, is available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554. The *Auction No. 49 Revised License Inventory Public Notice* may also be purchased from the Commission's duplicating contactor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone (202) 863–2893, facsimile (202) 863–2898, or via email to *qualexint@aol.com*.

I. Background

1. In the *Auction No. 49 Comment Public Notice*, 67 FR 72946 (December 09, 2002), the Wireless Telecommunications Bureau ("Bureau") announced the auction of 251 licenses in the Lower 700 MHz band C block (710–716/740–746 MHz) scheduled to commence on April 16, 2003 ("Auction No. 49"). The Bureau also sought comment on procedures for the auction of those licenses. In response to the *Auction No. 49 Comment Pubic Notice*, several commenters requested that the Bureau include the Lower 700 MHz band D block (716–722 MHz) licenses in Auction No. 49. By the *Auction No. 49 Revised License Inventory Public Notice*, the Bureau revises the auction inventory to include the five licenses in the Lower 700 MHz band D block (716–722 MHz band) that remained unsold in Auction No. 44. These five additional licenses, as well as the other licenses to be offered in Auction No. 49, are identified in Attachment A of the *Auction No. 49 Revised License Inventory Public Notice*. The *Auction No. 49 Revised License Inventory Public Notice* seeks comment on procedural issues related to the auction of the D block licenses. Also by the *Auction No. 49 Revised License Inventory Public Notice*, the Bureau revises the starting date for Auction No. 49 to May 28, 2003, in order to provide additional time for bidder preparation and planning.

2. The Bureau has before it a Request for Waiver of Auction Procedures and Section 1.2109 of the Commission's Rules filed on October 2, 2002, by Banks Broadcasting, Inc. ("Banks") and a Petition to Promptly Resolve Waiver Request or Remove Four Licenses from Auction No. 49 Pending Resolution of Outstanding Waiver Request, filed by Banks on December 17, 2002. In these filings, Banks seeks to have the Bureau offer it four of the licenses listed in Attachment A of the *Auction No. 49 Revised License Inventory Public Notice*, based on high bids Banks formerly held on these licenses in Auction No. 44. The Bureau will respond to Banks's request in a separate Order.

The following table contains the block/frequency cross-reference for the 710–716/740–746 MHz and 716–722 MHz Bands:

Block	Frequencies	Bandwidth (MHz)	Pairing	Geographic area type	Number of licenses
C	710–716, 740–746	12	2 × 6	MSA/RSA	251
D	716–722	6	unpaired	700 MHz EAG	5

Note: For Auction No. 49, licenses are not available in every market for the frequency blocks listed in the above table. See Attachment A of the *Auction No. 49 Revised License Inventory Public Notice* to determine which licenses will be offered.

II. Reserve Price or Minimum Opening Bid

3. For the five additional D block licenses offered in Auction No. 49, the Bureau proposes to use the same formula for calculating minimum opening bids as proposed in the *Auction No. 49 Comment Public Notice*. Specifically, for Auction No. 49, the Bureau has proposed the following license-by-license formula for calculating minimum opening bids:

$0.01 * MHz * License Area Population with a minimum of $1,000 per license.

A complete list of all licenses to be offered in Auction No. 49 and the proposed minimum opening bid for each is set forth in Attachment A of the *Auction No. 49 Revised License Inventory Public Notice*. Comment is sought on this proposal. Alternatively, comment is sought on whether, consistent with the Balanced Budget Act of 1997, the public interest would be served by having no minimum opening bid or reserve price.

III. Upfront Payments and Initial Maximum Eligibility for Each Bidder

4. For the five additional D block licenses offered in Auction No. 49, the Bureau proposes to use the same formula for determining upfront payments as previously proposed in the *Auction No. 49 Comment Public Notice*. Specifically, for Auction No. 49, the Commission has proposed the following license-by-license formula for calculating upfront payments:

$0.005 * MHz * License Area Population with a minimum of $1,000 per license.

The specific upfront payment and bidding units for each license are set forth in Attachment A of the *Auction No. 49 Revised License Inventory Public Notice*. The Bureau seeks comment on this proposal.

5. For the additional licenses offered in Auction No. 49, the Bureau further proposes that the amount of the upfront payment submitted by a bidder will determine the number of bidding units on which a bidder may place bids. This limit is a bidder's "maximum initial eligibility." Each license is assigned a specific number of bidding units equal to the upfront payment listed in Attachment A of the *Auction No. 49 Revised License Inventory Public Notice*, on a bidding unit per dollar basis. This number does not change as prices rise during the auction. Rather, a bidder may place bids on any combination of licenses as long as the total number of bidding units associated with those licenses does not exceed its maximum initial eligibility and the license was selected on the FCC Form 175. Eligibility cannot be increased during the auction. Thus, in calculating its upfront payment amount, an applicant must determine the maximum number of bidding units it may wish to bid on (or hold high bids on) in any single round, and submit an upfront payment covering that number of bidding units. The Bureau seeks comment on this proposal.

IV. Other Auction Procedural Issues

6. In the *Auction No. 49 Comment Public Notice*, the Bureau also set forth and sought comment on the following proposals relating to auction structure and bidding procedures: (i) Simultaneous multiple round auction design; (ii) activity rules; (iii) activity rule waivers and reducing eligibility; (iv) information relating to auction

delay, suspension or cancellation; (v) round structure; (vi) minimum acceptable bids and bid increments; (vii) high bids and tied bids; (viii) information regarding bid withdrawal and bid removal; and (ix) auction stopping rule. For the additional licenses in Auction No. 49, the Bureau proposes to use the same auction structure and bidding procedures proposed in the *Auction No. 49 Comment Public Notice*. The Bureau seeks comment on these proposals as they relate to the five additional licenses in the Lower 700 MHz band D block included in Attachment A of the *Auction No. 49 Revised License Inventory Public Notice*.

V. Conclusion

7. Comments are due on or before February 12, 2003, and reply comments are due on or before February 19, 2003. The Bureau requires that all comments and reply comments be filed electronically. Comments and reply comments must be sent by electronic mail to the following address: *auction49@fcc.gov*. The electronic mail containing the comments or reply comments must include a subject or caption referring to Auction No. 49 Comments. The Bureau requests that parties format any attachments to electronic mail as Adobe® Acrobat® (pdf) or Microsoft® Word documents. Copies of comments and reply comments will be available for public inspection during regular business hours in the FCC Public Reference Room, Room CY–A257, 445 12th Street, SW., Washington, DC 20554.

In addition, the Bureau requests that commenters fax a courtesy copy of their comments and reply comments to the attention of Kathryn Garland at (717) 338–2850.

8. This proceeding has been designated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules. Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented is generally required. Other rules pertaining to oral and written *ex parte* presentations in permit-but-disclose proceedings are set forth in § 1.1206(b) of the Commission's rules.

Federal Communications Commission.

Margaret Wiener,

Chief, Auctions and Industry Analysis Division, WTB.

[FR Doc. 03–3071 Filed 2–6–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[WC Docket No. 02–202, FCC 02–337]

Interstate Access Tariffs—Protections Against Risk of Uncollectibles

AGENCY: Federal Communications Commission.

ACTION: Policy statement.

SUMMARY: This document makes recommendations to incumbent local exchange carriers (LECs) seeking to revise the deposit provisions of their interstate access tariffs to increase protection from the risk of uncollectibles. The document recommends that incumbent LECs consider whether the following possible tariff provisions might address the risk of uncollectibles, making additional deposits unnecessary: Revise interstate access tariffs to define the "proven history of late payment" trigger for requiring a deposit to include a failure to pay the undisputed amount of a monthly bill in any two of the most recent twelve months, provided that both the past due period and the amount of the delinquent payment are more than *de minimis;* reduce the notice period for refusal or discontinuance of service from 30 days to some shorter period for customers that receive bills quickly enough to allow review and dispute; accelerate billing cycles from 30 days to some shorter period to reduce exposure to pre-bankruptcy petition debt and other possible nonpayment; and bill in advance for usage-based services currently billed in arrears, based on average usage over a sample period, perhaps phasing in the first advance bill over a period of several months. The policy statement does not rule on the lawfulness of various tariffs proposed by incumbent local exchange carriers to increase protections against the risk of uncollectibles and being investigated by the Wireline Competition Bureau of the Federal Communications Commission.

FOR FURTHER INFORMATION CONTACT: Julie Saulnier, Wireline Competition Bureau, Pricing Policy Division, (202) 418–1530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Policy Statement in WC Docket No. 02–202 released on December 23, 2002. The full text of this document is available on the Commission's website Electronic Comment Filing System and for public inspection during regular business hours in the FCC Reference Center, Room CY-A257, 445 Twelfth Street, SW., Washington, DC 20554.

Background: On July 24, 2002, Verizon filed a Petition for Emergency Declaratory and Other Relief in response to the WorldCom bankruptcy. The Wireline Competition Bureau of the Federal Communications Commission sought comment on Verizon's petition. Public Notice, WC Docket No. 02–202, DA 02–1859 (rel. July 31, 2002). The petition asks the Commission, among other things, to permit carriers expeditiously to revise their tariffs to require deposits, advance payments, and shorter notice periods where necessary to provide adequate assurance of payment by their customers. The petition also asks the Commission to take certain actions in bankruptcy proceedings and regarding customer transfers that are not addressed in this item. Concurrently with its petition, Verizon filed revisions to its interstate access tariffs to broaden its powers to seek deposits and advance payments, and to shorten the notice period before refusing new orders, stopping existing orders, and discontinuing service to customers at risk of nonpayment. Similar tariff revisions have been filed by other incumbent LECs. While current tariffs allow incumbent LECs to seek deposits from customers with a history of late payment or no established credit, the revised tariffs would allow incumbent LECs to seek deposits from such customers, as well as any customer that suffers from impaired credit worthiness, defined in a variety of ways. After balancing the interest of incumbent LECs in protecting themselves from uncollectibles against the potential burden on their customers of additional deposits in a period of tight credit, the document recommends that incumbent LECs consider whether possible tariff provisions such as advance or accelerated billing, or shortened notice periods tied to timely arrival of accurate interstate access bills, might address the risk of nonpayment, making additional deposits unnecessary.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 03–3070 Filed 2–6–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL MARITIME COMMISSION

[Docket No. 03–01]

Hual As v. Puerto Rico Ports Authority; Notice of Filing of Complaint and Assignment

HUAL AS ("Complainant") has filed a complaint against the Puerto Rico Ports Authority ("Respondent"). Complainant states that its roll-on/roll-off ("RO/RO") vessels call at ports and terminals operated by Respondent in San Juan, Puerto Rico, and that it leases port area land from Respondent. Although some of the vehicles Complainant discharges at San Juan are destined for Puerto Rico, most are discharged for subsequent transshipment throughout the Caribbean.

Complainant states that Respondent's marine terminal operator tariff sets forth wharfage rates for varying categories of commodities. Complainant states that the tariff provides: (1) That wharfage is assessed only on the inbound movement of cargo transferred from one vessel to another at Respondent's facilities without change in form or content; and (2) a 15-day free-time period for non-containerized cargo paying only incoming wharfage originally manifested for transshipment to other ports without change in form or content. Complainant states that the tariff does not set forth wharfage rates for transshipped motor vehicles.

Complainant asserts that Respondent has charged it wharfage for transshipped automobiles at a $6.0629 "Motor Vehicle" rate rather than at the $1.0860 "Transshipment" rate, and that Respondent charges it wharfage on both inbound and outbound movements. Complainant states that, because there is no specific rate in the tariff for transshipped automobiles, and given the tariff's rates for transshipped cargoes, the tariff's structure and language is vague and ambiguous and Respondent's practice of assessing the higher automobile wharfage rate against transshipped automobiles in contrast to other transshipped cargo is an unreasonable practice violative of section 10(d)(1) of the Shipping Act of 1984 ("Shipping Act"), 46 U.S.C. app. § 1909(d)(1). Complainant further contends that assessing the higher automobile rate against transshipped cargoes when the tariff establishes lower rates governing transshipped cargo generally confers unreasonable preference and advantage upon those shippers paying the lower tariff rate and unduly and unreasonably prejudices and disadvantages Complainant in violation of section 10(d)(4) of the Shipping Act, 46 U.S.C. app. § 1909(d)(4). Finally, Complainant asserts that Respondent's assessment of wharfage for inbound and outbound automobile movements is inconsistent with the express terms of its tariff and that Respondent has thus engaged in unreasonable practices violative of section 10(d)(1) of the Shipping Act, 46 U.S.C. app. § 1909(d)(1).

Complainant asks the Commission to issue an order finding Respondent to have violated sections 10(d)(1) and 10(d)(4) of the Shipping Act and directing Respondent to cease and desists from continued violations of the Shipping Act, including assessment of and pursuance of claims against Complainant for non-payment of disputed wharfage charges. Complainant also seeks recovery of the amounts it paid that exceed the governing tariff rate for transshipped cargo, reparations in amounts to be proved at trial, interest and reimbursement of attorneys' fees.

This proceeding has been assigned to the office of Administrative Law Judges. Hearing in this matter, if any is held, shall commence within the time limitations prescribed in 46 CFR 502.61, and only after consideration has been given by the parties and the presiding officer to the use of alternative forms of dispute resolution, such as those described in Subpart U of the Commission's Rules of Practice and Procedure, 46 CFR §§ 502.401–502.411.

The hearing, if any, shall include oral testimony and cross-examination in the discretion of the presiding officer only upon proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matter in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record. Pursuant to the further terms of 46 CFR 502.61, the initial decision of the presiding officer in this proceeding shall be issued by January 30, 2004, and the final decision of the Commission shall be issued by June 1, 2004.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 03–3016 Filed 2–6–03; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Notice of Meeting

TIME AND DATE: 10 a.m.—February 11, 2003.

PLACE: 800 North Capitol Street, NW., First Floor Hearing Room, Washington, DC.

STATUS: A portion of the meeting will be open to the public and the remainder of the meeting will be closed.

MATTERS TO BE CONSIDERED: The Portion Open to the public:

1. Docket No. 99–13—The Content of Ocean Common Carrier and Marine Terminal Operator Agreements Subject to the Shipping Act of 1984.

2. Proposed Revisions to the Information Form and Monitoring Report Regulations for Carrier Agreements Under 46 CFR part 535.

1. The Portion Closed to the public: Proposed Revisions to the Commission's Regulations Regarding the Filing of Agreements Minutes Under 46 CFR part 535.

CONTACT PERSON FOR MORE INFORMATION: Bryant L. VanBrakle, Secretary, (202) 523–5725.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 03–3102 Filed 2–6–03; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than February 21, 2003.

A. Federal Reserve Bank of Atlanta (Sue Costello, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30303:

1. Allen Tucker, Palm Beach, Florida; to acquire additional voting shares of Advantage Bankshares, Inc., North Palm Beach, Florida, and thereby indirectly acquire additional voting shares of Advantage Bank, North Palm Beach, Florida.

Board of Governors of the Federal Reserve System, February 3, 2003.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 03–3010 Filed 2–6–03; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 3, 2003.

A. Federal Reserve Bank of Richmond (A. Linwood Gill, III, Vice President) 701 East Byrd Street, Richmond, Virginia 23261-4528:

1. Bank of Granite Corporation, Granite Falls, North Carolina; to merge with First Commerce Corporation, Charlotte, North Carolina, and thereby indirectly acquire First Commerce Bank, Charlotte, North Carolina.

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166-2034:

1. Mechanics Banc Holding Company, Water Valley, Mississippi; to become a bank holding company by acquiring 100 percent of the voting shares of Mechanics Bank, Water Valley, Mississippi.

Board of Governors of the Federal Reserve System, February 3, 2003.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 03–3009 Filed 2–6–03; 8:45 am]

BILLING CODE 6210–01–S

GENERAL SERVICES ADMINISTRATION

President's Homeland Security Advisory Council

AGENCY: Office of Governmentwide Policy, General Services Administration.

ACTION: Notice of Federal Advisory Committee Meeting.

SUMMARY: The President's Homeland Security Advisory Council (PHSAC or Council) will meet telephonically in an open session on Friday, February 21, 2003, from 9:30 a.m. to 11 a.m., EST. The PHSAC will meet to deliberate on the draft Statewide Template for Homeland Security, prepared by the State and Local Senior Advisory Committee and, pending discussion, approve a draft letter to the President regarding the template.

Objectives: The President's Homeland Security Advisory Council was established by Executive Order 13260 (67 FR 13241, March 21, 2002). The objectives of the PHSAC are to provide advice and recommendations to the President of the United States through the Assistant to the President for Homeland Security on matters relating to homeland security.

Public Participation: This meeting will take place via teleconference through the following call-in number: 1–888–285–4585. Interested members of the public may listen to this meeting. To ensure the appropriate number of lines, however, persons wishing to listen to the meeting must register with Cynthia Gismegian at (202) 456–1700 by 4 p.m., EST, on Thursday, February 20, 2003, to obtain the access code.

Public Comments: Members of the public who wish to file a written statement with the PHSAC may do so by mail to Mr. Charles Howton at the following address: President's Homeland Security Advisory Council, U.S. General Services Administration (GSA/MC, Room G–230), 1800 F St., NW., Washington, DC 20405. Comments also may be sent to Charles Howton by e-mail at *charles.howton@gsa.gov*, or by facsimile (FAX) to (202) 273–3559.

Dated: February 5, 2003.

James L. Dean,

Director, Committee Management Secretariat, Office of Governmentwide Policy, General Services Administration.

[FR Doc. 03–3254 Filed 2–6–03; 8:45 am]

BILLING CODE 6820–34–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Annual Update of the HHS Poverty Guidelines

AGENCY: Department of Health and Human Services.

ACTION: Notice.

SUMMARY: This notice provides an update of the HHS poverty guidelines to account for last (calendar) year's increase in prices as measured by the Consumer Price Index.

EFFECTIVE DATE: These guidelines go into effect on the day they are published (unless an office administering a program using the guidelines specifies a different effective date for that particular program).

ADDRESSES: Office of the Assistant Secretary for Planning and Evaluation, Room 404E, Humphrey Building, Department of Health and Human Services (HHS), Washington, DC 20201.

FOR FURTHER INFORMATION CONTACT: *For information about how the poverty guidelines are used or how income is defined in a particular program*, contact the Federal (or other) office which is responsible for that program.

For general questions about the poverty guidelines (but NOT for questions about a particular program that uses the poverty guidelines), contact Gordon Fisher, Office of the Assistant Secretary for Planning and Evaluation, Room 404E, Humphrey Building, Department of Health and Human Services, Washington, DC 20201—telephone: (202) 690–5880; persons with Internet access may visit the poverty guidelines Internet site at *http://aspe.hhs.gov/poverty*.

For information about the Hill-Burton Uncompensated Services Program (no-fee or reduced-fee health care services at certain hospitals and other health care facilities for certain persons unable to pay for such care), contact the Office of the Director, Division of Facilities Compliance and Recovery, Health Resources and Services Administration, HHS, Room 16C–17, Parklawn Building,

5600 Fishers Lane, Rockville, Maryland 20857. To speak to a person, call (301) 443–5656. To receive a Hill-Burton information package, call 1–800–638–0742 (for callers outside Maryland) or 1–800–492–0359 (for callers in Maryland), and leave your name and address on the Hotline recording. Persons with Internet access may visit the Division of Facilities Compliance and Recovery Internet home page site at *http://www.hrsa.gov/osp/dfcr*. The Division of Facilities Compliance and Recovery notes that as set by 42 CFR 124.505(b), the effective date of this update of the poverty guidelines for facilities obligated under the Hill-Burton Uncompensated Services Program is sixty days from the date of this publication.

For information about the percentage multiple of the poverty guidelines to be used on immigration forms such as INS Form I–864, Affidavit of Support, contact the U.S. Immigration and Naturalization Service. To obtain information on the most recent applicable poverty guidelines from the Immigration and Naturalization Service, call 1–800–375–5283. Persons with Internet access may obtain the information from the Immigration and Naturalization Service Internet site at *http://www.ins.usdoj.gov/graphics/howdoi/affsupp.htm*.

For information about the Department of Labor's Lower Living Standard Income Level (an alternative eligibility criterion with the poverty guidelines for certain programs under the Workforce Investment Act of 1998), contact Haskel Lowery, Employment and Training Administration, U.S. Department of Labor—telephone: (202) 693–3608—e-mail: *hlowery@doleta.gov;* persons with Internet access may visit the Employment and Training Administration's Lower Living Standard Income Level Internet site at *http://wdsc.doleta.gov/llsil*.

For information about the number of people in poverty since 1959 or about the Census Bureau statistical poverty thresholds, contact the HHES Division, Room G251, Federal Office Building #3, U.S. Census Bureau, Washington, DC 20233–8500—telephone: (301) 763–3242—or send e-mail to *hhes-info@census.gov;* persons with Internet access may visit the Poverty section of the Census Bureau's Internet site at *http://www.census.gov/hhes/www/poverty.html*.

2003 Poverty Guidelines for the 48 Contiguous States and the District of Columbia

Size of family unit	Poverty guideline
1	$8,980
2	12,120
3	15,260
4	18,400
5	21,540
6	24,680
7	27,820
8	30,960

For family units with more than 8 members, add $3,140 for each additional member. (The same increment applies to smaller family sizes also, as can be seen in,the figures above.)

2003 Poverty Guidelines for Alaska

Size of family unit	Poverty guideline
1	$11,210
2	15,140
3	19,070
4	23,000
5	26,930
6	30,860
7	34,790
8	38,720

For family units with more than 8 members, add $3,930 for each additional member. (The same increment applies to smaller family sizes also, as can be seen in the figures above.)

2003 Poverty Guidelines for Hawaii

Size of family unit	Poverty guideline
1	$10,330
2	13,940
3	17,550
4	21,160
5	24,770
6	28,380
7	31,990
8	35,600

For family units with more than 8 members, add $3,610 for each additional member. (The same increment applies to smaller family sizes also, as can be seen in the figures above.)

(Separate poverty guideline figures for Alaska and Hawaii reflect Office of Economic Opportunity administrative practice beginning in the 1966–1970 period. Note that the Census Bureau poverty thresholds—the version of the poverty measure used for statistical purposes—have never had separate figures for Alaska and Hawaii. The poverty guidelines are not defined for Puerto Rico, the U.S. Virgin Islands, American Samoa, Guam, the Republic of the Marshall Islands, the Federated States of Micronesia, the Commonwealth of the Northern Mariana Islands, and Palau. In cases in which a Federal program using the poverty guidelines serves any of those jurisdictions, the Federal office which administers the program is responsible for deciding whether to use the contiguous-states-and-DC guidelines for those jurisdictions or to follow some other procedure.)

The preceding figures are the 2003 update of the poverty guidelines required by section 673(2) of the Omnibus Budget Reconciliation Act (OBRA) of 1981 (Pub. L. 97–35—reauthorized by Pub. L. 105–285, Section 201 (1998)). As required by law, this update reflects last year's change in the Consumer Price Index (CPI–U); it was done using the same procedure used in previous years. (The poverty guidelines are calculated each year from the latest published Census Bureau poverty thresholds—not from the previous year's guidelines. Besides the inflation adjustment, the figures are also adjusted to standardize the differences between family sizes.)

Section 673(2) of OBRA–1981 (42 U.S.C. 9902(2)) requires the use of these poverty guidelines as an eligibility criterion for the Community Services Block Grant program. The poverty guidelines are also used as an eligibility criterion by a number of other Federal programs (both HHS and non-HHS). Due to confusing legislative language dating back to 1972, the poverty guidelines have sometimes been mistakenly referred to as the "OMB" (Office of Management and Budget) poverty guidelines or poverty line. In fact, OMB has never issued the guidelines; the guidelines are issued each year by the Department of Health and Human Services (formerly by the Office of Economic Opportunity/Community Services Administration). The poverty guidelines may be formally referenced as "the poverty guidelines updated periodically in the **Federal Register** by the U.S. Department of Health and Human Services under the authority of 42 U.S.C. 9902(2)."

The poverty guidelines are a simplified version of the Federal Government's statistical poverty thresholds used by the Census Bureau to prepare its statistical estimates of the number of persons and families in

poverty. The poverty guidelines issued by the Department of Health and Human Services are used for administrative purposes—for instance, for determining whether a person or family is financially eligible for assistance or services under a particular Federal program. The poverty thresholds are used primarily for statistical purposes. Since the poverty guidelines in this notice—the 2003 guidelines—reflect price changes through calendar year 2002, they are approximately equal to the poverty thresholds for calendar year 2002 which the Census Bureau expects to issue in September or October 2003. (A preliminary version of the 2002 thresholds is now available from the Census Bureau.)

In certain cases, as noted in the relevant authorizing legislation or program regulations, a program uses the poverty guidelines as only one of several eligibility criteria, or uses a percentage multiple of the guidelines (for example, 125 percent or 185 percent of the guidelines). Non-Federal organizations which use the poverty guidelines under their own authority in non-Federally-funded activities also have the option of choosing to use a percentage multiple of the guidelines such as 125 percent or 185 percent.

While many programs use the guidelines to classify persons or families as either eligible or ineligible, some other programs use the guidelines for the purpose of giving priority to lower-income persons or families in the provision of assistance or services.

In some cases, these poverty guidelines may not become effective for a particular program until a regulation or notice specifically applying to the program in question has been issued.

The poverty guidelines given above should be used for both farm and non-farm families. Similarly, these guidelines should be used for both aged and non-aged units. The poverty guidelines have never had an aged/non-aged distinction; only the Census Bureau (statistical) poverty thresholds have separate figures for aged and non-aged one-person and two-person units.

Definitions

There is no universal administrative definition of "family," "family unit," or "household" that is valid for all programs that use the poverty guidelines. Federal programs in some cases use administrative definitions that differ somewhat from the statistical definitions given below; the Federal office which administers a program has the responsibility for making decisions about its administrative definitions. Similarly, non-Federal organizations which use the poverty guidelines in non-Federally-funded activities may use administrative definitions that differ from the statistical definitions given below. In either case, to find out the precise definitions used by a particular program, please consult the office or organization administering the program in question.

The following statistical definitions (derived for the most part from language used in U.S. Bureau of the Census, Current Population Reports, Series P60–185 and earlier reports in the same series) are made available for illustrative purposes only; in other words, these statistical definitions are not binding for administrative purposes.

(a) *Family.* A family is a group of two or more persons related by birth, marriage, or adoption who live together; all such related persons are considered as members of one family. For instance, if an older married couple, their daughter and her husband and two children, and the older couple's nephew all lived in the same house or apartment, they would all be considered members of a single family.

(b) *Unrelated individual.* An unrelated individual is a person (other than an inmate of an institution) who is not living with any relatives. An unrelated individual may be the only person living in a house or apartment, or may be living in a house or apartment (or in group quarters such as a rooming house) in which one or more persons also live who are not related to the individual in question by birth, marriage, or adoption. Examples of unrelated individuals residing with others include a lodger, a foster child, a ward, or an employee.

(c) *Household.* As defined by the Census Bureau for statistical purposes, a household consists of all the persons who occupy a housing unit (house or apartment), whether they are related to each other or not. If a family and an unrelated individual, or two unrelated individuals, are living in the same housing unit, they would constitute two family units (see next item), but only one household. Some programs, such as the Food Stamp Program and the Low-Income Home Energy Assistance Program, employ administrative variations of the "household" concept in determining income eligibility. A number of other programs use administrative variations of the "family" concept in determining income eligibility. Depending on the precise program definition used, programs using a "family" concept would generally apply the poverty guidelines separately to each family and/or unrelated individual within a household if the household includes more than one family and/or unrelated individual.

(d) *Family Unit.* "Family unit" is not an official U.S. Census Bureau term, although it has been used in the poverty guidelines **Federal Register** notice since 1978. As used here, either an unrelated individual or a family (as defined above) constitutes a family unit. In other words, a family unit of size one is an unrelated individual, while a family unit of two/three/etc. is the same as a family of two/three/etc.

Note that this notice no longer provides a definition of "income." This is for two reasons. First, there is no universal administrative definition of "income" that is valid for all programs that use the poverty guidelines. Second, in the past there has been confusion regarding important differences between the statistical definition of income and various administrative definitions of "income" or "countable income." The precise definition of "income" for a particular program is very sensitive to the specific needs and purposes of that program. To determine, for example, whether or not taxes, college scholarships, or other particular types of income should be counted as "income" in determining eligibility for a specific program, one must consult the office or organization administering the program in question; that office or organization has the responsibility for making decisions about the definition of "income" used by the program (to the extent that the definition is not already contained in legislation or regulations).

Dated: February 3, 2003.

Tommy G. Thompson,

Secretary of Health and Human Services.

[FR Doc. 03–3018 Filed 2–6–03; 8:45 am]

BILLING CODE 4154–05–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention and Agency for Toxic Substances and Disease Registry

(Program Announcement 03012)

Public Health Conference Support Cooperative Agreement Program; Notice of Availability of Funds Amendment

A notice announcing the availability of fiscal year (FY) 2003 funds for a cooperative agreement program for Public Health Conference Support published in the **Federal Register** on January 10, 2003, Volume 68, Number 7, and pages 1463–1467. The notice is

amended as follows: On page 1466, first column, under Section G. Submission and Deadline, paragraph one should read: For conferences May 15, 2003–September 30, 2004. Also on page 1466, first column, under Section G. Deadline, paragraph three, should read: If your conference dates fall between October 1, 2002 and May 14, 2003; and paragraph four, should read: May 15, 2003 to September 30, 2004.

Dated: January 31, 2003.

Sandra R. Manning,

CGFM, Director, Procurement and Grants Office Centers for Disease Control and Prevention.

[FR Doc. 03–3029 Filed 2–6–03; 8:45 am]

BILLING CODE 4163–18–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

Citizens Advisory Committee; Public Health Service Activities and Research at Department of Energy Sites

Citizens Advisory Committee on Public Health Service (PHS) Activities and Research at Department of Energy (DOE) Sites: Oak Ridge Reservation Health Effects Subcommittee (ORRHES): the meeting originally planned for February 10, 2003, has been postponed until March 3, 2003.

The items originally scheduled for discussion on February 10th will be presented and discussed when the subcommittee meets in Oak Ridge on March 3, 2003.

Contact Person for More Information: La Freta Dalton, Designated Federal Official, or Marilyn Palmer, Committee Management Specialist, Division of Health Assessment and Consultation, ATSDR, 1600 Clifton Road, NE., M/S E–54, Atlanta, Georgia 30333, telephone 1–888–42– ATSDR (28737), fax (404) 498–1744.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: February 3, 2003.

Burma Burch,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 03–3028 Filed 2–6–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30DAY–27–03]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 498–1210. Send written comments to CDC, Desk Officer, Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503. Written comments should be received within 30 days of this notice.

Proposed Project: Exposure to Aerosolized Brevetoxins During Red Tide Events (OMB No. 0920–0494)—Extension—National Center for Environmental Health (NCEH), Centers for Disease Control and Prevention (CDC).

Gymnodinium breve is the marine dinoflagellate responsible for extensive blooms (called "red tides") that form in the Gulf of Mexico. *G. breve* produces potent toxins, called brevetoxins, that have been responsible for killing millions of fish and other marine organisms. The biochemical activity of brevetoxins is not completely understood and there is very little information regarding human health effects from environmental exposures, such as inhaling brevetoxin that has been aerosolized and swept onto the coast by offshore winds. CDC, National Center for Environmental Health is planning to recruit 100 people who work along the coast of Florida and who potentially will be occupationally exposed to aerosolized red tide toxins some time during the year following recruitment. We plan to administer a base-line respiratory health questionnaire and conduct pre- and post-shift pulmonary function tests during a time when there is no red tide reported near the area. When a red tide develops, we plan to administer a symptom survey and conduct pulmonary function testing (PFT) on a group of study participants who are working in the area where the red tide is near shore and on a control group of study participants who are not working in an area where the red tide is near shore (*i.e.*, are not exposed to the red tide). We will then compare (1) symptom reports before and during the red tide and (2) the changes in baseline PFT values during the work shift (differences between pre- and post-shift PFT results without exposure to red tide) with the changes in PFT values during the work shift when individuals are exposed to red tide.

In addition, we plan to assist in collecting biological specimens (inflammatory cells from nose and throat swabs) to assess whether they can be used to verify exposure and to demonstrate a biological effect (*i.e.*, inflammatory response) from exposure to red tide. We have collected part of the data, but, because we are dealing with natural phenomena and are subject literally to the tides, we must extend our data collection time for an additional two years. The estimated annualized burden is 206 hours.

Respondents	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
Pulmonary History Questionnaire	20	1	20/60
Spirometry	20	20	20/60
Nasal and Throat Swabs	20	20	5/60
Symptom Questionnaire	20	20	5/60

Dated: January 31, 2003.

Thomas Bartenfeld,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention.

[FR Doc. 03–3024 Filed 2–6–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30DAY–25–03]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 498–1210. Send written comments to CDC, Desk Officer, Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503. Written comments should be received within 30 days of this notice.

Proposed Project: Data Collection on Attention Deficit Hyperactivity Disorder (ADHD)—New—National Center for Birth Defects and Developmental Disabilities (NCBDDD), Centers for Disease Control and Prevention (CDC). This project will collect data from proxy respondents on children ages 4 to 10 with and without ADHD. This program addresses the Healthy People 2010 focus area of Mental Health and Mental Disorders, and describes the prevalence, treated prevalence, select co-morbid conditions, secondary conditions, and health risk behavior of ADHD.

Background

The purpose of this program is to support research in ADHD and the exploration of other health conditions and health risk behaviors to children with the disorder. The main objectives of the project are to determine the prevalence or treated prevalence of children with ADHD in a defined community; to identify rates of select co-morbid or secondary conditions in children with ADHD in a defined community; to identify types and rates of health risk behaviors in children with ADHD; and to describe current and previous receipt of treatment in children with ADHD. The estimated annualized burden is 4,367 hours.

Respondents	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
VADTRS/SDQ (Teacher Report)	1,350	1	6/60
Two-Question Previous Diagnosis and Treatment Screener (Parent)	22,000	1	1/60
Health Risk Behavior Survey (Parent Report)	2,500	1	10/60
Demographic Survey (Parent)	2,500	1	5/60

Dated: February 3, 2003.

Thomas Bartenfeld,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention.

[FR Doc. 03–3037 Filed 2–6–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 03023]

Grants for Acute Care, Rehabilitation, and Disability Prevention Research; Notice of Availability of Funds

A. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under section 301(a) [42 U.S.C. 241(a)] of the Public Health Service Act, and section 391(a) [42 U.S.C. 280b(a)] of the Public Service Health Act, as amended. The catalog of Federal Domestic Assistance number is 93.136.

B. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2003 funds for grants for Acute Care, Rehabilitation and Disability Prevention Research. This program addresses the "Healthy People 2010" focus areas of Injury and Violence Prevention.

The purposes of the program are to:

1. Solicit research applications that address the priorities reflected under the heading, "Program Requirements."

2. Build the scientific base for the prevention and control of injuries, disabilities and deaths.

3. Encourage professionals from a wide spectrum of disciplines of engineering, epidemiology, medicine, biostatistics, public health, law and criminal justice, behavioral and social sciences to perform research in order to prevent and control injuries more effectively.

4. Encourage investigators to propose research that involves intervention development and testing as well as research on methods; to encourage individuals, organizations, or communities to adopt and maintain effective intervention strategies.

Measurable outcomes of the program will be in alignment with the following performance goal for the National Center for Injury Prevention and Control (NCIPC): Develop new or improved approaches for preventing and controlling death and disability due to injuries.

C. Eligible Applicants

Applications may be submitted by public and private nonprofit and for profit organizations and by governments and their agencies; that is, universities, colleges, technical schools, research institutions, hospitals, other public and private nonprofit and for profit organizations, community-based organizations, faith-based organizations, state and local governments or their bona fide agents, including the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau, federally recognized Indian tribal governments, Indian tribes, or Indian tribal organizations, and small, minority, and/or women-owned businesses.

Note: Title 2 of the United States Code section 1611 states that an organization described in section 501c(4) of the Internal Revenue Code that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant or loan.

Applications that are incomplete or non-responsive to the below requirements will be returned to the applicant without further consideration.

The following are applicant requirements:

1. A principal investigator who has conducted research, published the findings in peer-reviewed journals, and has specific authority and responsibility to carry out the proposed project.

2. Demonstrated experience on the applicant's project team in conducting, evaluating, and publishing injury control research in peer-reviewed journals.

3. Effective and well defined working relationships within the performing organization and with outside entities which will ensure implementation of the proposed activities.

4. The ability to carry out injury control research projects as defined under Attachment 2 (1.a–c). The attachment is posted with this program announcement on the CDC Web site: *http://www.cdc.gov/ncipc/ncipchm.htm.*

5. The overall match between the applicant's proposed theme and research objectives and the program priorities as described under the heading, "Program Requirements."

D. Funding

Availability of Funds

Approximately $1,800,000 is available in FY 2003 to fund approximately 6–9 awards. It is expected that the awards will begin on or about September 1, 2003, and will be made for a 12-month budget period within a project period of up to three years. The maximum funding level for each project will not exceed $300,000 per year (including both direct and indirect costs) or $900,000 for a three year project period.

Applications that exceed the funding caps noted above will be excluded from the competition and returned to the applicant. The availability of Federal funding may vary and is subject to change.

Consideration will also be given to current grantees who submit a competitive supplement requesting one year of funding to enhance or expand existing projects, or to conduct one-year pilot studies. These awards will not exceed $150,000, including both direct and indirect costs. Supplemental awards will be made for the budget period to coincide with the actual budget period of the grant and are based on the availability of funds.

Continuation awards within the approved project period will be made based on satisfactory progress demonstrated by investigators at work-in-progress monitoring workshops (travel expenses for this annual one day meeting should be included in the applicant's proposed budget), the achievement of work plan milestones reflected in the continuation application, and the availability of funds.

Funding Priority

The specific program priorities for these funding opportunities are outlined with examples in this announcement under the section, "Programmatic Requirements."

Use of Funds

Grant funds will not be made available to support the provision of direct care. Eligible applicants may enter into contracts, including consortia agreements, as necessary to meet the requirements of the program and strengthen the overall application.

Recipient Financial Participation

Matching funds are not required for this program.

E. Program Requirements

In conducting activities to achieve the purpose of this program, the recipient will be responsible for accomplishing one of the following activities:

Research Activity 1: Develop and evaluate protocols that provide onsite interventions in acute care settings or linkages to off-site services for patients at risk of injury or psycho social problems following injury.

Research Activity 2: Develop and apply methods that can be used to calculate population-based estimates of the incidence, costs, and long-term consequences of spinal cord injury (SCI) and non-hospitalized traumatic brain injury (TBI).

Research Activity 3: Identify methods and strategies to ensure that people with TBI and SCI receive needed services.

For more information on all 3 Research Activities, see Attachment 3 of this announcement as posted on the CDC Web site.

F. Content

Letter of Intent (LOI)

A LOI is optional for this program. The narrative should be no more than two double-spaced pages, printed on one side, with one inch margins, and unreduced 12-point font. The letter should identify the announcement number, the name of the principal investigator, and briefly describe the scope and intent of the proposed research work. The letter of intent does not influence review or funding decisions, but the number of letters received will enable CDC to plan the review more effectively and efficiently.

Applications

The Program Announcement title and number must appear in the application. Use the information in the Program Requirements, Other Requirements, and Evaluation Criteria sections to develop the application content. Your application will be evaluated on the criteria listed, so it is important to follow them in laying out your program plan. The narrative should be no more than 25 pages, printed on one side, with one-inch margins, and unreduced 12-point font.

Applications should follow the PHS–398 (Rev. 5/2001) application and Errata Sheet (see Attachment 4 of this announcement as it is posted on the CDC Web site). The narrative should include the following information:

1. The project's focus that justifies the research needs and describes the scientific basis for the research, the expected outcome, and the relevance of the findings to reduce injury morbidity, mortality, disability, and economic losses. This focus should be based on recommendations in "Healthy People 2010" and the "CDC Injury Research Agenda," and should seek creative approaches that will contribute to a national program for injury control.

2. Specific, measurable, and time-framed objectives.

3. A detailed plan describing the methods by which the objectives will be achieved, including their sequence. A comprehensive evaluation plan is an essential component of the application.

4. A description of the principal investigator's role and responsibilities.

5. A description of all the project staff, regardless of their funding source. It should include their titles, qualifications, experience, percentage of time each will devote to the project, as well as that portion of their salary to be paid by the grant.

6. A description of those activities related to, but not supported by, the grant.

7. A description of the involvement of other entities that will relate to the proposed project, if applicable. It should include commitments of support and a clear statement of their roles.

8. A detailed first year's budget for the grant, including future annual projections, if relevant.

9. An explanation of how the research findings will contribute to the national effort to reduce the morbidity, mortality and disability caused by injuries within three to five years from project start-up.

An applicant organization has the option of having specific salary and fringe benefit amounts for individuals omitted from the copies of the

application which are made available to outside reviewing groups. To exercise this option: on the original and two copies of the application, the applicant must use asterisks to indicate those individuals for whom salaries and fringe benefits are not shown; however, the subtotals must still be shown. In addition, the applicant must submit an additional copy of page 4 of Form PHS–398, completed in full, with the asterisks replaced by the salaries and fringe benefits. This budget page will be reserved for internal staff use only.

F. Submission and Deadline

Letter of Intent (LOI) Submission

On or before March 7, 2003, submit the LOI to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

Application Forms

Submit the signed original and two copies of the PHS 398 (OMB Number 0925–0001)(adhere to the instructions on the Errata Instruction Sheet for PHS 398). Forms are available at the following Internet address: *http://www.cdc.gov/od/pgo/forminfo.htm*. If you do not have access to the Internet, or if you have difficulty accessing the forms on-line, you may contact the CDC Procurement and Grants Office Technical Information Management Section (PGO–TIM) at: 770–488–2700. Application forms can be mailed to you.

Submission Date, Time, and Address

The application must be received by 4 p.m. Eastern Time April 8, 2003. Submit the application to: Technical Information Management—PA03023, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341–4146. Applications may not be submitted electronically.

CDC Acknowledgment of Application Receipt

A postcard will be mailed by PGO–TIM, notifying you that CDC has received your application.

Deadline

Letters of intent and applications shall be considered as meeting the deadline if they are received before 4 p.m. Eastern Time on the deadline date. Applicants sending applications by the United States Postal Service or commercial delivery services must ensure that the carrier will be able to guarantee delivery of the application by the closing date and time. If an application is received after closing due to (1) carrier error, when the carrier accepted the package with a guarantee for delivery by the closing date and time, or (2) significant weather delays or natural disasters, CDC will upon receipt of proper documentation, consider the application as having been received by the deadline.

Applications which do not meet the above criteria will not be eligible for competition and will be discarded. Applicants will be notified of their failure to meet the submission requirements.

H. Evaluation Criteria

Application

Upon receipt, applications will be reviewed by CDC staff for completeness and responsiveness as outlined under the "Eligible Applicants" Section (Items 1–5). Incomplete applications and applications that are not responsive will be returned to the applicant without further consideration. It is especially important that the applicant's abstract reflects the project's focus, because the abstract will be used to help determine the responsiveness of the application.

Applications which are complete and responsive may be subjected to a preliminary evaluation (streamline review) by a peer review committee, the Injury Research Grant Review Committee (IRGRC), to determine if the application is of sufficient technical and scientific merit to warrant further review by the IRGRC. CDC will withdraw from further consideration applications judged to be noncompetitive and promptly notify the principal investigator/program director and the official signing for the applicant organization. Those applications judged to be competitive will be further evaluated by a dual review process.

Competing supplemental grant awards may be made, when funds are available, to support research work or activities not previously approved by the IRGRC. Applications should be clearly labeled to denote their status as requesting supplemental funding support. These applications will be reviewed by the IRGRC and the secondary review group.

All awards will be determined by the Director of the NCIPC based on priority scores assigned to applications by the primary review committee IRGRC, recommendations by the secondary review committee of the Science and Program Review Subcommittee of the Advisory Committee for Injury Prevention and Control(ACIPC), consultation with NCIPC senior staff, and the availability of funds.

1. The primary review will be a peer review conducted by the IRGRC. All applications will be reviewed for scientific merit using current National Institutes of Health (NIH) criteria (a scoring system of 100–500 points) to evaluate the methods and scientific quality of the application. All categories are of equal importance, however, the application does not need to be strong in all categories to be judged likely to have a major scientific impact. Factors to be considered will include:

a. Significance—Does this study address an important problem? If the aims of the application are achieved, how will scientific knowledge be advanced? What will be the effect of these studies on the concepts or methods that drive this field?

b. Approach—Are the conceptual framework, design, methods, and analyses adequately developed, well-integrated, and appropriate to the aims of the project? Does the applicant acknowledge potential problem areas and consider alternative tactics? Does the project include plans to measure progress toward achieving the stated objectives? Is there an appropriate work plan included?

c. Innovation—Does the project employ novel concepts, approaches or methods? Are the aims original and innovative? Does the project challenge or advance existing paradigms, or develop new methodologies or technologies?

d. Investigator—Is the principal investigator appropriately trained and well-suited to carry out this work? Is the proposed work appropriate to the experience level of the principal investigator and other significant investigator participants? Is there a prior history of conducting injury-related research?

e. Environment—Does the scientific environment in which the work will be done contribute to the probability of success? Does the proposed research take advantage of unique features of the scientific environment or employ useful collaborative arrangements? Is there evidence of institutional support? Is there an appropriate degree of commitment and cooperation of other interested parties as evidenced by letters detailing the nature and extent of the involvement?

f. Ethical Issues—What provisions have been made for the protection of human subjects and the safety of the research environments? How does the applicant plan to handle issues of confidentiality and compliance with mandated reporting requirements, *e.g.*, suspected child abuse? Does the application adequately address the requirements of 45 CFR 46 for the protection of human subjects? Not scored; however an application can be

disapproved if the research risks are sufficiently serious and protection against risks is so inadequate as to make the entire application unacceptable. The degree to which the applicant has met the CDC Policy requirements regarding the inclusion of women, ethnic, and racial groups in the proposed research (See Attachment 1, AR–2, of this announcement, as posted on the CDC Web site). This includes:

(1) The proposed plan for the inclusion of both sexes and racial and ethnic minority populations for appropriate representation.

(2) The proposed justification when representation is limited or absent.

(3) A statement as to whether the design of the study is adequate to measure differences when warranted.

(4) A statement as to whether the plans for recruitment and outreach for study participants include the process of establishing partnerships with community(ies) and recognition of mutual benefits.

g. Study Samples—Are the samples sufficiently rigorously defined to permit complete independent replication at another site? Have the referral sources been described, including the definitions and criteria? What plans have been made to include women and minorities and their subgroups as appropriate for the scientific goals of the research? How will the applicant deal with recruitment and retention of subjects?

h. Dissemination—What plans have been articulated for disseminating findings?

i. Measures of Effectiveness—The Peer Review Panel shall assure that measures set forth in the application are in accordance with CDC's performance plans. How adequately has the applicant addressed these measures?

The IRGRC will also examine the appropriateness of the proposed project budget and duration in relation to the proposed research and the availability of data required for the project.

2. The secondary review will be conducted by the Science and Program Review Subcommittee (SPRS) of the ACIPC. The ACIPC Federal agency experts will be invited to attend the secondary review and will receive modified briefing books (*i.e.*, abstracts, strengths and weaknesses from summary statements, and project officer's briefing materials). ACIPC Federal agency experts will be encouraged to participate in deliberations when applications address overlapping areas of research interest, so that unwarranted duplication in federally-funded research can be avoided and special subject area expertise can be shared. The NCIPC Division Associate Directors for Science (ADS) or their designees will attend the secondary review in a similar capacity as the ACIPC Federal agency experts to assure that research priorities of the announcement are understood and to provide background regarding current research activities. Only SPRS members will vote on funding recommendations, and their recommendations will be carried to the entire ACIPC for voting by the ACIPC members in closed session. If any further review is needed by the ACIPC, regarding the recommendations of the SPRS, the factors considered will be the same as those considered by the SPRS.

The committee's responsibility is to develop funding recommendations for the NCIPC Director based on the results of the primary review, the relevance and balance of proposed research relative to the NCIPC programs and priorities, and to assure that unwarranted duplication of federally-funded research does not occur. The secondary review committee has the latitude to recommend to the NCIPC Director, to reach over better ranked proposals in order to assure maximal impact and balance of proposed research. The factors to be considered will include:

a. The results of the primary review including the application's priority score as the primary factor in the selection process.

b. The relevance and balance of proposed research relative to the NCIPC programs and priorities.

c. The significance of the proposed activities in relation to the priorities and objectives stated in "Healthy People 2010," the Institute of Medicine report, "Reducing the Burden of Injury," and the "CDC Injury Research Agenda." (See Attachment 2, Resource Materials, of this announcement, as posted on the CDC web site.)

d. Budgetary considerations.

3. Continued Funding.

Continuation awards made after FY 2003, but within the project period, will be made on the basis of the availability of funds and the following criteria:

a. The accomplishments reflected in the progress report of the continuation application indicate that the applicant is meeting previously stated objectives or milestones contained in the project's annual work plan and satisfactory progress is being demonstrated through presentations at work-in-progress monitoring workshops.

b. The objectives for the new budget period are realistic, specific, and measurable.

c. The methods described will clearly lead to achievement of these objectives.

d. The evaluation plan will allow management to monitor whether the methods are effective.

e. The budget request is clearly explained, adequately justified, reasonable and consistent with the intended use of grant funds.

I. Other Requirements

Technical Reporting Requirements

Provide CDC with an original plus two copies of:

1. Annual progress report. The progress report will include a data requirement that demonstrates measures of effectiveness.

2. A financial status report, no more than 90 days after the end of the budget period.

3. Final financial report and performance report, no more than 90 days after the end of the project period.

4. At the completion of the project, the grant recipient will submit a brief summary 2,500 to 4,000 words written in non-scientific [laymen's] terms. The narrative should highlight the findings and their implications for injury prevention programs, policies, environmental changes, etc. The grant recipient will also include a description of the dissemination plan for research findings. This plan will include publications in peer-reviewed journals and ways in which research findings will be made available to stakeholders outside of academia (*e.g.*, state injury prevention program staff, community groups; public health injury prevention practitioners, and others). CDC will place the summary report and each grant recipient's final report with the National Technical Information Service (NTIS) to further the agency's efforts to make the information more available and accessible to the public.

Send all reports to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

Additional Requirements

The following additional requirements are applicable to this program. For a complete description of each see Attachment 1 of the program announcement, as posted on the CDC web site.

AR–1 Human Subjects Requirements
AR–2 Requirements for Inclusion of Women and Racial and Ethnic Minorities in Research
AR–3 Animal Subjects Requirements
AR–9 Paperwork Reduction Act Requirements
AR–10 Smoke-Free Workplace Requirement

AR–11 Healthy People 2010
AR–12 Lobbying Restrictions
AR–13 Prohibition on Use of CDC Funds for Certain Gun Control Activities
AR–21 Small, Minority, and Women-Owned Business
AR–22 Research Integrity

Executive Order 12372 does not apply to this program.

J. Where To Obtain Additional Information

This and other CDC announcements, the necessary applications, and associated forms can be found on the CDC Web site, Internet address: *http://www.cdc.gov*. Click on "Funding," then "Grants and Cooperative Agreements."

For general questions about this announcement, contact: Technical Information Management, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341–4146, Telephone: 770–488–2700.

For business management and budget assistance, contact: Cheryl Maddux, Grants Management Specialist, Procurement and Grants Office, Centers for Disease Control and Prevention, 2920 Brandywine Road, Room 3000, Atlanta, GA 30341–4146, Telephone: 770–488–2759, E-mail address: *afx0@cdc.gov*.

For program technical assistance, contact:Tom Voglesonger, Program Manager, Office of the Director, National Center for Injury Prevention and Control, Centers for Disease Control and Prevention (CDC), 4770 Buford Highway, NE, Mailstop K–02, Atlanta, GA 30341–3724, Telephone: (770) 488–4823, E-mail address: *TVoglesonger@cdc.gov*.

Dated: February 1, 2003.

Sandra R. Manning,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

BILLING CODE 4163–18–P

Attachment 1

Additional Requirements

AR–1

Human Subjects Requirements

If the proposed project involves research on human subjects, the applicant must comply with the Department of Health and Human Services (DHHS) Regulations (Title 45 Code of Federal Regulations Part 46) regarding the protection of human research subjects. All awardees of CDC grants and cooperative agreements and their performance sites engaged in human subjects research must file an assurance of compliance with the Regulations and have continuing reviews of the research protocol by appropriate institutional review boards.

In order to obtain a Federal wide Assurance (FWA) of Protection for Human Subjects, the applicant must complete an on-line application at the Office for Human Research Protections (OHRP) website or write to the OHRP for an application. OHRP will verify that the Signatory Official and the Human Subjects Protections Administrator have completed the OHRP Assurance Training/Education Module *before* approving the FWA. Existing Multiple Project Assurances (MPAs), Cooperative Project Assurances (CPAs), and Single Project Assurances (SPAs) remain in full effect until they expire or until December 31, 2003, whichever comes first.

To obtain a FWA contact the OHRP at: *http://ohrp.osophs.dhhs.gov/irbasur.htm* OR If your organization is not Internet-active, please obtain an application by writing to: Office for Human Research Protections (OHRP), Department of Health and Human Services, 6100 Executive Boulevard, Suite 3B01, MSC 7501, Rockville, Maryland 20892–7507.

Note: For Express or Hand Delivered Mail, Use Zip Code 20852

Note: In addition to other applicable committees, Indian Health Service (IHS) institutional review committees must also review the project if any component of IHS will be involved with or will support the research. If any American Indian community is involved, its tribal government must also approve the applicable portion of that project.

AR–2

Requirements for Inclusion of Women and Racial and Ethnic Minorities in Research

It is the policy of the Centers for Disease Control and Prevention (CDC) and the Agency for Toxic Substances and Disease Registry (ATSDR) to ensure that individuals of both sexes and the various racial and ethnic groups will be included in CDC/ATSDR-supported research projects involving human subjects, whenever feasible and appropriate. Racial and ethnic groups are those defined in OMB Directive No. 15 and include American Indian or Alaska Native, Asian, Black or African American, Hispanic or Latino, Native Hawaiian or Other Pacific Islander. Applicants shall ensure that women, racial and ethnic minority populations are appropriately represented in applications for research involving human subjects. Where clear and compelling rationale exist that inclusion is inappropriate or not feasible, this situation must be explained as part of the application. This policy does not apply to research studies when the investigator cannot control the race, ethnicity, and/or sex of subjects. Further guidance to this policy is contained in the **Federal Register,** Vol. 60, No. 179, pages 47947–47951, and dated Friday, September 15, 1995.

AR–3

Animal Subjects Requirements

If the proposed project involves research on animal subjects, compliance with the "PHS Policy on Humane Care and Use of Laboratory Animals by Awardee Institutions" is required. An applicant (as well as each subcontractor or cooperating institution that has immediate responsibility for animal subjects) proposing to use vertebrate animals in CDC-supported activities must file (or have on file) the Animal Welfare Assurance with the Office of Laboratory Animal Welfare (OLAW) at the National Institutes of Health. The applicant must provide in the application the assurance of compliance number and evidence of review and approval (including the date of the most recent approval) by the Institutional Care and Use Committee (IACUC). Web page: *http://grants.nih.gov/grants/olaw*

AR–9

Paperwork Reduction Act

Under the Paperwork Reduction Act, projects that involve the collection of information from 10 or more individuals and funded by a grant or a cooperative agreement will be subject to review and approval by the Office of Management and Budget (OMB).

AR–10

Smoke-Free Workplace Requirements

CDC strongly encourages all recipients to provide a smoke-free workplace and to promote abstinence from all tobacco products. Public Law 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities that receive Federal funds in which education, library, day care, health care, or early childhood development services are provided to children.

AR–11

Healthy People 2010

CDC is committed to achieving the health promotion and disease prevention objectives of "Healthy People 2010," a national activity to reduce morbidity and mortality and improve the quality of life. For the conference copy of "Healthy People 2010," visit the internet site: <http://www.health.gov/>healthypeople.

AR–12

Lobbying Restrictions

Applicants should be aware of restrictions on the use of HHS funds for lobbying of Federal or State legislative bodies. Under the provisions of 31 U.S.C. Section 1352, recipients (and their subtier contractors) are prohibited from using appropriated Federal Funds (other than profits from a Federal contract) for lobbying congress or any Federal agency in connection with the award of a particular contract, grant, cooperative agreement, or loan. This includes grants/cooperative agreements that, in whole or in part, involve conferences for which Federal funds cannot be used directly or indirectly to encourage participants to lobby or to instruct participants on how to lobby.

In addition no part of CDC appropriated funds shall be used, other than for normal and recognized executive-legislative relationships, for publicity or propaganda purposes, for the preparation, distribution, or use of any kit, pamphlet, booklet, publication, radio, television, or video presentation designed to support or defeat legislation pending before the Congress or

any State or local legislature, except in presentation to the Congress or any State or local legislature itself. No part of the appropriated funds shall be used to pay the salary or expenses of any grant or contract recipient, or agent acting for such recipient, related to any activity designed to influence legislation or appropriations pending before the Congress or any State or local legislature.

Any activity designed to influence action in regard to a particular piece of pending legislation would be considered "lobbying." That is lobbying for or against pending legislation, as well as indirect or "grass roots" lobbying efforts by award recipients that are directed at inducing members of the public to contact their elected representatives at the Federal or State levels to urge support of, or opposition to, pending legislative proposals is prohibited. As a matter of policy, CDC extends the prohibitions to lobbying with respect to local legislation and local legislative bodies.

The provisions are not intended to prohibit all interaction with the legislative branch, or to prohibit educational efforts pertaining to public health. Clearly there are circumstances when it is advisable and permissible to provide information to the legislative branch in order to foster implementation or prevention strategies to promote public health. However, it would not be permissible to influence, directly or indirectly, a specific piece of pending legislation.

It remains permissible to use CDC funds to engage in activity to enhance prevention; collect and analyze data; publish and disseminate results of research and surveillance data; implement prevention strategies; conduct community outreach services; provide leadership and training, and foster safe and healthful environments.

Recipients of CDC grants and cooperative agreements need to be careful to prevent CDC funds from being used to influence or promote pending legislation. With respect to conferences, public events, publications, and "grassroots" activities that relate to specific legislation, recipients of CDC funds should give close attention to isolating and separating the appropriate use of CDC funds from non-CDC funds. CDC also cautions recipients of CDC funds to be careful not to give the appearance that CDC funds are being used to carry out activiites in a manner that is prohibited under Federal law.

AR–13

Prohibition on Use of CDC Funds for Certain Gun Control Activities

The Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act specifies that; "None of the funds made available for injury prevention and control at the Centers for Disease Control and Prevention may be used to advocate or promote gun control." Anti-Lobbying Act requirements prohibit lobbying Congress with appropriated Federal monies. Specifically, this Act prohibits the use of Federal funds for direct or indirect communications intended or designed to influence a member of Congress with regard to specific Federal legislation. This prohibition includes the funding and assistance of public grassroots campaigns intended or designed to influence members of Congress with regard to specific legislation or appropriation by Congress.

In addition to the restrictions in the Anti-Lobbying Act, CDC interprets the language in the CDC's Appropriations Act to mean that CDC's funds may not be spent on political action or other activities designed to affect the passage of specific Federal, State, or local legislation intended to restrict or control the purchase or use of firearms.

AR–21

Small, Minority, and Women-Owned Business

It is a national policy to place a fair share of purchases with small, minority and women-owned business firms. The Department of Health and Human Services is strongly committed to the objective of this policy and encourages all recipients of its grants and cooperative agreements to take affirmative steps to ensure such fairness. In particular, recipients should:

1. Place small, minority, women-owned business firms on bidders mailing lists.
2. Solicit these firms whenever they are potential sources of supplies, equipment, construction, or services.
3. Where feasible, divide total requirements into smaller needs, and set delivery schedules that will encourage participation by these firms.
4. Use the assistance of the Minority Business Development Agency of the Department of Commerce, the Office of Small and Disadvantaged Business Utilization, DHHS, and similar state and local offices.

AR–22

Research Integrity

The signature of the institution official on the face page of the application submitted under this Program Announcement is certifying compliance with the Department of Health and Human Services (DHHS) regulations in Title 42 Part 50, Subpart A, entitled "Responsibility of PHS Awardee and Applicant Institutions for Dealing with and Reporting Possible Misconduct in science."

The regulation places several requirements on institutions receiving or applying for funds under the PHS Act that are monitored by the DHHS Office of Research Integrity's (ORI) Assurance Program.

For examples: Section 50.103(a) of the regulation states: "Each institution that applies for or receives assistance under the Act for any project or program which involves the conduct of biomedical or behavioral research must have an assurance satisfactory to the Secretary (DHHS) that the applicant: (1) Has established an administrative process, that meets the requirements of this subpart, for reviewing, investigating, and reporting allegations of misconduct in science in connection with PHS-sponsored biomedical and behavioral research conducted at the applicant institution or sponsored by the applicant; and (2) Will comply with its own administrative process and the requirements of this Subpart."

Section 50.103(b) of the regulation states that: "an applicant or recipient institution shall make an annual submission to the [ORI] as follows: (1) The institution's assurance shall be submitted to the [ORI], on a form prescribed by the Secretary, * * * and updated annually thereafter * * * (2) An institution shall submit, along with its annual assurance, such aggregate information on allegations, inquiries, and investigations as the Secretary may prescribe."

An additional policy is added in the year 2000 that "requires research institutions to provide training in the responsible conduct of research to all staff engaged in research or research training with PHS funds.

Attachment 2

Definitions

1. Individual injury research projects (R49's) are defined as research designed to:

a. Elucidate the chain of causation—the etiology and mechanisms—of injuries and subsequent disabilities.

b. Yield results directly applicable to identifying interventions to prevent injury occurrence or minimize disability

c. Evaluate the effect of known interventions on injury morbidity, mortality, disability, and costs.

2. Injury is defined as physical damage to an individual that occurs over a short period of time as a result of acute exposure to one of the forms of physical energy in the environment, or to chemical agents, or the acute lack of oxygen. Excluded from this definition of injury are cumulative trauma disorders, musculoskeletal disorders of the back not caused by acute trauma, and effects of repeated exposure to chemical or physical agents. The three phases of injury control are defined as prevention, acute care, and rehabilitation. The major categories of injury are intentional, unintentional, and occupational. Intentional injuries result from interpersonal or self-inflicted violence, and include homicide, assaults, suicide and suicide attempts, child abuse and neglect (includes child sexual abuse), intimate partner violence, elder abuse, and sexual assault. Unintentional injuries include those that result from motor vehicle collisions, falls, fires, poisonings, drownings, recreational, and sports-related activities. Occupational injuries occur at the worksite and include unintentional trauma (for example, work-related motor-vehicle injuries, drownings, and electrocutions), and intentional injuries in the workplace.

Resource Materials

1. National Center for Injury prevention and Control. CDC Injury research Agenda. Atlanta (GA): Centers for Disease Control and Prevention; 2002. Internet Address: *http://www.cdc.gov/ncipc/pub-res/research_agenda/index.htm.*

2. Reducing the Burden of Injury: Advancing Prevention and Treatment. Institute of Medicine, National Academy Press, 1999. 2101 Constitution Avenue, NW. Washington, DC 20418. Cost: $27.96 Telephone 202–334–3313 Internet Address: *http://www.nap.edu/catalog/6321.html.*

Attachment 3

Research Activities

1. Develop and evaluate protocols that provide onsite interventions in acute care settings or linkages to off-site services for patients at risk of injury or psycho social problems following injury.

Clinical preventive services for patients treated in emergency departments (ED), hospital trauma units, and other acute care settings can help reduce the risk of injury and mitigate the effects of injuries that do occur. Such services might include instruction in the proper use of safety restraints and screening and interventions for alcohol problems, intimate partner violence, or child abuse. For injured patients, ED visits and inpatient hospital admissions for trauma care may provide crucial opportunities for early identification of and intervention for post-traumatic stress disorder and other psycho social problems that can follow or be exacerbated by injury.

Decision makers are often reluctant to fund preventive clinical services because they believe the investment needed to implement a single service in one clinical setting is too high. Research should demonstrate the effectiveness and value of such services and examine ways to implement multiple services simultaneously to amortize operational costs. Medical staff from the clinical setting should be actively involved in carrying out this research.

2. Develop and apply methods that can be used to calculate population-based estimates of the incidence, prevalence, costs, and long-term consequences of SCI and non-hospitalized TBI.

Development and validation of methods is needed to assess and describe both the spectrum of outcomes following "mild" TBI and the magnitude of those outcomes. Such methods are lacking for some subgroups of people with TBI, particularly those with "mild" TBI. Research should focus on increasing uniformity of case identification methods to improve the comparability of national-level data for people with TBI. Considering available resources and the language in the TBI Act Re-Authorization for 2000, case identification for people with "mild" TBI, including those who do not receive medical care, should receive highest priority.

The NCIPC conducts population-based surveillance to develop nationally representative estimates of the incidence, prevalence, nature, and causes of injuries that result in long-term disability. This activity includes conducting population-based follow-up studies to identify and track the long-term outcomes of disabling injuries. Research should investigate the unique outcomes and special needs of specific subgroups of TBI and SCI populations, such as those violently injured. Better information about outcomes could improve estimates of the true burden of disability for individuals with "mild" TBI by helping to document long-term problems resulting from these injuries. These improved estimates should also include screening persons for previous history of TBI, including "mild" TBI. Research should also identify the service needs of people with TBI and SCI, providing useful information for injured persons, service providers, and policy makers.

The direct medical costs and indirect costs associated with disabling injuries are not well documented; however, this information is important to guide decisions about resource allocation and other policies. For TBI, the study most often cited was published 10 years ago. Research should provide comprehensive, up-to-date information about the direct and indirect costs of TBI and SCI. In addition, research should estimate the costs associated with secondary conditions, e.g., pressure sores, depression, and alcohol abuse.

3. Identify methods and strategies to ensure that people with TBI and SCI receive needed services.

People disabled by an injury often do not receive the help they need. A CDC-funded follow-up study of TBI in Colorado found that one year after injury, about one third of people with a disability said they had not received any services since their discharge from the hospital. According to a 1998 General Accounting Office report, people who have cognitive or behavior problems, but not physical problems, resulting from TBI are among those most likely to have unmet service needs. Without treatment, people with behavior problems are the most likely to become homeless, be committed to mental institutions, or be sentenced to prison. A recent study showed that people with TBI who received the services they needed reported a better quality of life. Research should increase understanding of the gaps between needed and available services for people with TBI and SCI and should identify strategies to close those gaps. Development and validation of methods are needed to better identify persons with the mildest forms of central nervous system injury (including "mild" TBI) and to explore the possibility of using these identification methods to link these injured persons with services.

People with "mild" TBI may not even be diagnosed with a TBI, making it even more difficult for them to get assistance. Research should explore the possibility of adapting case identification methods to help link people with TBI and SCI to services. To that end, the Injury Center has already funded two small, pilot projects to investigate the feasibility of using state-based TBI surveillance to identify people hospitalized with TBI who may need help finding out about services. Studies should investigate specific methods for linking people to information and services, such as evaluating the usefulness of toll-free telephone numbers that serve as single points of entry to the service delivery system. Studies should also describe the spectrum of rehabilitation services and trends in service provision, and they should evaluate access to medical, rehabilitation, and social services to prevent disabling outcomes and secondary conditions.

Attachment 4

Errata Sheet

Special Instructions for PHS–398, Rev. 11/2002

Announcement # PA Title

Section I—Preparing Your Application

B. General Instructions (Page 3)

Use English only and avoid jargon and unusual abbreviations. Type the application.

Format Specifications

The Content section of the Program Announcement refers to "the narrative." The narrative should consist of items listed in the program announcement. Use only standard size fonts in black print that can be photocopied and easily read, do not use photo reduction or compressed print. Draw all graphs, diagrams tables, and charts in black ink. Do not include photographs, oversized documents, or materials that cannot be photocopied in the body of the application.

The ONLY item that should be used to keep the application together is a rubber band. Please do not use spiral binders, 3-ring notebooks, envelopes, binder clips, etc.

Do not submit an incomplete application. An application will be considered incomplete and returned if it is illegible, if it fails to follow the instructions, or if the material presented is insufficient to permit an adequate review. Unless specifically required by these instructions (e.g., human subjects certification, vertebrate animals verification, changes in other support), do not send supplementary or corrective material pertinent to the application after the receipt date without its being specifically solicited or agreed to by prior discussion with the Grants Management Specialist.

Page Limitations and Content Requirements (Page 4)

Disregard Page Limit under Research Plan, Sections a-d and adhere to the prescribed guidance in the Program Announcement.

C. Specific Instructions

Budget Instructions (Page 11)

CDC does not use the modular budget format. Disregard instructions regarding the dollar limitations. PHS 398 Form Page 4 and Form Page 5 are required to be submitted by all applicants regardless of the dollar amount requested.

Human Subject Research (Section 8.e., Pages 18–19)

Ensure that the application addresses the issue of Women and Minority Inclusion in Research Involving Human Subjects. The application could be determined as non-responsive if this issue is not covered within the research plan.

Section II—Submitting Your Application

Send the Application to the following address: Technical Information Management–PA#, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, Georgia 30341–4146. *Please do not send the application to the National Institutes of Health.*

Disregard all instructions under Section A. INSTRUCTIONS (Page 31)

Disregard Sections B–D (Pages 34–35). Please refer to the Program Announcement, "Evaluation Criteria" section, for the applicable CDC review process.

Disregard Section M, First Paragraph (Pages 53–54); Section N (Pages 54–55) and Section O (Pages 55–56); and all pages following Page 56.

[FR Doc. 03–3035 Filed 2–6–03; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 03033]

Grants for Dissemination Research of Effective Interventions To Prevent Unintentional Injuries; Notice of Availability of Funds

Application Deadline: April 8, 2003.

A. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under section 301(a) (42 U.S.C. 241(a)) of the Public Health Service Act and section 391(a) (42 U.S.C. 280b(a)) of the Public Health Service Act, as amended. The catalog of Federal Domestic Assistance number is 93.136.

B. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2003 funds for grants for Dissemination Research of Effective Interventions to Prevent Unintentional Injuries. This program addresses the "Healthy People 2010" focus area of Injury and Violence Prevention.

The purposes of the program are to:

1. Solicit research applications that address the priorities reflected under the "Programmatic Requirements."

2. Build the scientific base for the prevention and control of injuries, disabilities, and deaths.

3. Encourage professionals from a wide spectrum of disciplines of engineering, epidemiology, medicine, biostatistics, public health, law and criminal justice, behavioral, and social sciences to perform research in order to prevent and control injuries more effectively.

4. Encourage investigators to propose research that involves intervention development and testing as well as research on methods; to encourage individuals, organizations, or communities to adopt and maintain effective intervention strategies.

Measurable outcomes of the program will be in alignment with the following performance goal for the National Center for Injury Prevention and Control (NCIPC): Develop new or improved approaches for preventing and controlling death and disability due to injuries.

C. Eligible Applicants

Applications may be submitted by public and private nonprofit and for-profit organizations and by governments and their agencies; that is, universities, colleges, research institutions and institutes, hospitals, managed care organizations, other public and private nonprofit and for-profit organizations, faith-based organizations, State and local governments or their *bona fide* agents, including the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau, federally recognized Indian tribal governments, Indian tribes, or Indian tribal organizations, and small, minority, and/or women-owned businesses.

Note: Title 2 of the United States Code section 1611 states that an organization described in section 501(c)(4) of the Internal Revenue Code that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant or loan.

Applications that are incomplete or non-responsive to the below requirements will be returned to the applicant without further consideration:

1. A principal investigator who has conducted research, published the findings in peer-reviewed journals, and has specific authority and responsibility to carry out the proposed project.

2. Demonstrated experience on the applicant's project team in conducting, evaluating, and publishing injury prevention and dissemination research in peer-reviewed journals.

3. Effective and well-defined working relationships within the performing organization and with outside entities which will ensure implementation of the proposed activities.

4. The ability to carry out injury prevention and dissemination research projects as defined under Attachment 2 (1.a–c). The attachment is posted with this announcement on the CDC Web site: *http://www.cdc.gov/ncipc/ncipchm.htm*.

5. The overall match between the applicant's proposed theme and research objectives, and the program interests as described under the heading, "Program Requirements."

D. Funding

Availability of Funds

Approximately $450,000 is available in FY 2003 to fund two awards for this grant program. It is expected that the awards will begin on or about September 1, 2003, and will be made for a 12-month budget period within a project period of up to three years. The maximum funding level for each project will not exceed $225,000 (including both direct and indirect costs) per year or $675,000 for a three-year project period.

Applications that exceed the funding caps noted above will be excluded from the competition and returned to the applicant. The availability of Federal funding may vary and is subject to change.

Consideration will also be given to current grantees who submit a competitive supplement requesting one year of funding to enhance or expand existing projects, or to conduct one-year pilot studies. These awards will not exceed $150,000, including both direct and indirect costs. Supplemental awards will be made for the budget period to coincide with the actual budget period of the grant and are based on the availability of funds.

Continuation awards made after FY 2003, but within the approved project period, will be made on the basis of the availability of funds and the following criteria:

a. The accomplishments reflected in the progress report of the continuation application indicate that the applicant is meeting previously stated objectives or milestones contained in the project's annual work plan and satisfactory progress demonstrated through presentations at work-in-progress monitoring workshops.

b. The objectives for the new budget period are realistic, specific, and measurable.

c. The methods described will clearly lead to achievement of these objectives.

d. The evaluation plan will allow management to monitor whether the methods are effective.

e. The budget request is clearly explained, adequately justified, reasonable and consistent with the intended use of grant funds.

Use of Funds

Grant funds will not be made available to support the provision of direct care. Eligible applicants may enter into contracts, including consortia agreements, as necessary to meet the requirements of the program and strengthen the overall application.

Recipient Financial Participation

Matching funds are not required for this program.

E. Program Requirements

Types of Research

The focus of dissemination research sought in this solicitation is to determine what methods and factors influence the successful adoption of safety practices or safety policies by individuals, organizations, or institutions. Dissemination research examines strategies for promoting uptake, widespread adoption and maintenance of effective interventions and programs. Interventions are defined as systematic mechanisms or specific strategies designed to change the knowledge, attitudes, beliefs, behaviors, or practices of individuals and populations in order to reduce risk and improve health their health risk. Effective interventions are defined as interventions that have credible scientific evidence of effectiveness. Evidence of effectiveness (for an intervention) refers to the results from a completed study that has been evaluated by appropriate statistical methods, through research with control or comparison groups with whom pre- and post-intervention behavioral outcomes are measured, and found to have significantly influenced the adoption of safer behaviors or the reduction of risky behaviors. Uptake refers to the process in which an individual or population perceives a need for change, acquires information about interventions, assesses the fit between their need and the interventions, makes a selection, and prepares relevant others for implementation of the intervention. This program announcement is not intended to support just dissemination of effective programs without research on the process or outcomes, nor is it intended to support program development or replication studies. Studies can focus on methods to encourage practitioners and policy makers to adopt science-based programs, policies and laws that reduce unintentional injuries. Studies can also examine factors that increase or impede the individual adoption or organizational and community capacity for implementing and sustaining effective interventions.

Dissemination research can vary in its application in several ways. At the level of the individual, family or small group, a safety innovation typically involves changes in behaviors or lifestyle practices so that uptake and implementation of the innovation may be achieved. At the organizational level, such as the workplace, school or managed care organization, successful uptake may require the introduction of new programs, or changes in policies, enforcement, or management support. At a broader community level, facilitation of uptake may require a planned dissemination process. Dissemination activities might include the targeted use of mass media or the planned use of peer leaders to promote the development of new health standards that many in the community will endorse. Also, policy or legislative change may be relevant.

The following are the research themes of this solicitation:

1. Product-related dissemination research. Where there are effective safety products available that are not being sufficiently used (*e.g.*, bicycle helmets or hip pads for hip fracture prevention in a fall), achieving satisfactory diffusion of the innovation (whether at the individual, social or organizational level) requires an understanding of the barriers and facilitators for change, and mechanisms for overcoming resistance to change, including in the marketplace.

2. Social marketing-related dissemination research. Where effective interventions are being used successfully in one locale, but their diffusion throughout the culture is non-existent or slow, social marketing strategies may be effective to influence social norms and accelerate widespread adoption. It may be useful to select or target people and institutions at various stages in their willingness to change, such as early adopters, late adopters, and those who lag behind in adopting any innovation. Select methods may be necessary to reach and influence these audiences, such as those who are first contemplating the possibility of change or those who already intend to change but have not yet done so. Also, it may be useful to identify communication channels and systems to support legislation or other activities that promote widespread adoption. For any dissemination or diffusion activity, recruiting early adopters to assist in these efforts might provide role models for others and prove useful to enhance uptake of the intervention.

Examples

To assist the preparation of the application, note the following are examples where there is evidence of effective interventions and for which dissemination research is needed:

1. Increasing the use of bicycle helmets among adolescents.

2. Reducing fall-related injuries among older adults (exercise programs, medication review programs, hip protectors).

3. Reducing injuries due to residential fires.

4. Increasing the use of safety belts by high risk groups.

5. Reducing alcohol-impaired driving.

6. Increasing the use of booster seats.

7. Reducing young driver crash risks.

(Additional examples of effective strategies and several theory-based frameworks for dissemination and diffusion research can be found in Attachment 3, "Resources," of this announcement as posted on the CDC Web site.)

F. Content

Letter of Intent (LOI)

A LOI is optional for this program. The narrative should be no more than two single-spaced pages, printed on one side, with one-inch margins, and unreduced 12-point font. The letter should identify the announcement number, the name of the principal investigator, and briefly describe the scope and intent of the proposed research work. The letter of intent does not influence review or funding decisions, but the number of letters received will enable CDC to plan the review more effectively and efficiently.

Applications

The Program Announcement title and number must appear in the application. Use the information in the Program Requirements, Other Requirements, and Evaluation Criteria sections to develop the application content. Your application will be evaluated on the criteria listed, so it is important to follow them in laying out your program plan. The narrative should be no more than 25 single-spaced pages, printed on one side, with one-inch margins, and unreduced 12-point font.

Applications should follow the PHS–398 (Rev. 5/2001) application and Errata sheet (*see* Attachment 4 of this announcement as posted on the CDC Web site), and the narrative should include the following information:

1. The project's focus that justifies the research needs and describes the scientific basis for the research, the expected outcome, and the relevance of the findings to reduce injury morbidity, mortality, disability, and economic losses. This focus should be based on recommendations in "Healthy People 2010" and the "CDC Injury Research Agenda" and should seek creative approaches that will contribute to a national program for injury control.

2. Specific, measurable, and time-framed objectives.

3. A detailed plan describing the methods by which the objectives will be achieved, including their sequence. A comprehensive evaluation plan is an essential component of the application.

4. A description of the principal investigator's role and responsibilities.

5. A description of all the project staff regardless of their funding source. It should include their title, qualifications, experience, percentage of time each will devote to the project, as well as that portion of their salary to be paid by the grant.

6. A description of those activities related to, but not supported by the grant.

7. A description of the involvement of other entities that will relate to the proposed project, if applicable. It should include commitments of support and a clear statement of their roles.

8. A detailed first year's budget for the grant with future annual projections, if relevant.

9. An explanation of how the research findings will contribute to the national effort to reduce the morbidity, mortality and disability caused by violence-related injuries within three to five years from project start-up.

An applicant organization has the option of having specific salary and fringe benefit amounts for individuals omitted from the copies of the application which are made available to outside reviewing groups. To exercise this option: on the original and two copies of the application, the applicant must use asterisks to indicate those individuals for whom salaries and fringe benefits are not shown; however, the subtotals must still be shown. In addition, the applicant must submit an additional copy of page 4 of Form PHS–398, completed in full, with the asterisks replaced by the salaries and fringe benefits. This budget page will be reserved for internal staff use only.

G. Submission and Deadline

Letter of Intent (LOI) Submission

On or before March 10, 2003, submit the LOI to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

Application Forms

Submit the signed original and two copies of PHS 398 (OMB Number 0925–0001) (adhere to the instructions on the Errata Instruction Sheet for PHS 398). Forms are available at the following Internet address: *http://www.cdc.gov/od/pgo/forminfo.htm.*

If you do not have access to the Internet, or if you have difficulty accessing the forms on-line, you may contact the CDC Procurement and Grants Office Technical Information Management Section (PGO–TIM) at: 770–488–2700. Application forms can be mailed to you.

The application must be received by 4 p.m. eastern time April 8, 2003. Submit the application to: Technical Information Management—PA03033, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341–4146.

Applications may not be submitted electronically.

CDC Acknowledgment of Application Receipt

A postcard will be mailed by PGO–TIM, notifying you that CDC has received your application.

Deadline

Letters of intent and applications shall be considered as meeting the deadline if they are received before 4 p.m. eastern time on the deadline date. Applicants sending applications by the United States Postal Service or commercial delivery services must ensure that the carrier will be able to guarantee delivery of the application by the closing date and time. If an application is received after closing due to (1) carrier error, when the carrier accepted the package with a guarantee for delivery by the closing date and time, or (2) significant weather delays or natural disasters, CDC will upon receipt of proper documentation, consider the application as having been received by the deadline.

Applications which do not meet the above criteria will not be eligible for competition and will be discarded. Applicants will be notified of their failure to meet the submission requirements.

H. Evaluation Criteria

Applications

Upon receipt, applications will be reviewed by CDC staff for completeness and responsiveness as outlined under the "Eligible Applicants" section (items 1–5). Incomplete applications and applications that are not responsive will be returned to the applicant without further consideration. It is especially important that the applicant's abstract reflects the project's focus, because the abstract will be used to help determine the responsiveness of the application.

Applications which are complete and responsive may be subjected to a preliminary evaluation (streamline review) by a peer review committee, the Injury Research Grant Review Committee (IRGRC), to determine if the application is of sufficient technical and scientific merit to warrant further review by the IRGRC; CDC will withdraw from further consideration applications judged to be noncompetitive and promptly notify the principal investigator/program director and the official signing for the applicant organization. Those applications judged to be competitive will be further evaluated by a dual review process.

Competing supplemental grant awards may be made, when funds are available, to support research work or activities not previously approved by the IRGRC. Applications should be clearly labeled to denote their status as requesting supplemental funding support. These applications will be reviewed by the IRGRC and the secondary review group.

All awards will be determined by the Director of the NCIPC based on priority scores assigned to applications by the primary review committee IRGRC, recommendations by the secondary review committee of the Science and Program Review Subcommittee of the Advisory Committee for Injury Prevention and Control (ACIPC), consultation with NCIPC senior staff, and the availability of funds.

1. The primary review will be a peer review conducted by the IRGRC. A committee of reviewers with appropriate expertise will review all applications for scientific merit using current National Institutes of Health (NIH) criteria (a scoring system of 100–500 points) to evaluate the methods and scientific quality of the application. All categories are of equal importance, however, the application does not need to be strong in all categories to be judged likely to have a major scientific impact.

Factors to be considered will include:

a. *Significance.* Does this study address an important problem? If the aims of the application are achieved, how will scientific knowledge be advanced? What will be the effect of these studies on the concepts or methods that drive this field?

b. *Approach.* Are the conceptual framework, design, methods, and analyses adequately developed, well-integrated, and appropriate to the aims of the project? Does the applicant acknowledge potential problem areas and consider alternative tactics? Does the project include plans to measure progress toward achieving the stated objectives? Is there an appropriate work plan included?

c. *Innovation.* Does the project employ novel concepts, approaches or methods? Are the aims original and innovative? Does the project challenge or advance existing paradigms, or develop new methodologies or technologies?

d. *Investigator.* Is the principal investigator appropriately trained and well-suited to carry out this work? Is the proposed work appropriate to the experience level of the principal investigator and other significant investigator participants? Is there a prior history of conducting injury-related research?

e. *Environment.* Does the scientific environment in which the work will be done contribute to the probability of success? Does the proposed research take advantage of unique features of the scientific environment or employ useful collaborative arrangements? Is there evidence of institutional support? Is there an appropriate degree of commitment and cooperation of other interested parties as evidenced by letters detailing the nature and extent of the involvement?

f. *Ethical Issues.* What provisions have been made for the protection of human subjects and the safety of the research environments? How does the applicant plan to handle issues of confidentiality and compliance with mandated reporting requirements, (*e.g.*, suspected child abuse)? Does the application adequately address the requirements of 45 CFR part 46 for the protection of human subjects? (An application can be disapproved if the research risks are sufficiently serious and protection against risks is so inadequate as to make the entire application unacceptable.) The degree to which the applicant has met the CDC Policy requirements regarding the inclusion of women, ethnic, and racial groups in the proposed research (*see* Attachment 1, AR–2). This includes:

(1) The proposed plan for the inclusion of both sexes and racial and ethnic minority populations for appropriate representation.

(2) The proposed justification when representation is limited or absent.

(3) A statement as to whether the design of the study is adequate to measure differences when warranted.

(4) A statement as to whether the plans for recruitment and outreach for study participants include the process of establishing partnerships with community or communities and recognition of mutual benefits.

g. *Study Samples.* Are the samples rigorously defined to permit complete independent replication at another site? Have the referral sources been described, including the definitions and criteria? What plans have been made to include women and minorities and their subgroups as appropriate for the scientific goals of the research? How will the applicant deal with recruitment and retention of subjects?

h. *Dissemination.* What plans have been articulated for sharing the research findings?

i. *Measures of Effectiveness.* The Peer Review Panel shall assure that measures set forth in the application are in accordance with CDC's performance plans. How adequately has the applicant addressed these measures?

The IRGRC will also examine the appropriateness of the proposed project budget and duration in relation to the proposed research and the availability of data required for the project.

2. The secondary review will be conducted by the Science and Program Review Subcommittee (SPRS) of the ACIPC. ACIPC Federal agency experts will be invited to attend the secondary review and will receive modified briefing books (*i.e.*, abstracts, strengths and weaknesses from summary statements, and project officer's briefing materials). ACIPC Federal agency experts will be encouraged to participate in deliberations when applications address overlapping areas of research interest so that unwarranted duplication in federally funded research can be avoided and special subject area expertise can be shared. The NCIPC Division Associate Directors for Science (ADS) or their designees will attend the secondary review in a similar capacity as the ACIPC Federal agency experts to assure that research priorities of the announcement are understood and to provide background regarding current research activities. Only SPRS members will vote on funding recommendations, and their recommendations will be carried to the entire ACIPC for voting by the ACIPC members in closed session. If any further review is needed by the ACIPC, regarding the recommendations of the SPRS, the factors considered will be the same as those considered by the SPRS.

The committee's responsibility is to develop funding recommendations for the NCIPC Director based on the results of the primary review, the relevance and balance of proposed research relative to the NCIPC programs and priorities, and to assure that unwarranted duplication of federally funded research does not occur. The secondary review committee has the latitude to recommend to the NCIPC Director, to reach over better ranked proposals in order to assure maximal impact and balance of proposed research. The factors to be considered will include:

a. The results of the primary review including the application's priority score as the primary factor in the selection process.

b. The relevance and balance of proposed research relative to the NCIPC programs and priorities.

c. The significance of the proposed activities in relation to the priorities and objectives stated in "Healthy People 2010," the Institute of Medicine report, "Reducing the Burden of Injury," and the "CDC Injury Research Agenda."

d. Budgetary considerations.

I. Other Requirements

Technical Reporting Requirements

Provide CDC with an original plus two copies of:

1. Annual progress report. The progress report will include a data requirement that demonstrates measures of effectiveness.

2. A financial status report, no more than 90 days after the end of the budget period.

3. Final financial report, and performance report, no more than 90 days after the end of the project period.

4. At the completion of the project, the grant recipient will submit a brief (2,500 to 4,000 words written in non-scientific (laymen's) terms) summary highlighting the findings and their implications for injury prevention programs, policies, environmental changes, *etc.* The grant recipient will also include a description of the dissemination plan for research findings. This plan will include publications in peer-reviewed journals and ways in which research findings will be made available to stakeholders outside of academia, (*e.g.*, state injury prevention program staff, community groups, public health injury prevention practitioners, and others). CDC will place the summary report and each grant recipient's final report with the National Technical Information Service (NTIS) to further the agency's efforts to make the information more available and accessible to the public.

Send all reports to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

Additional Requirements

The following additional requirements are applicable to this program. For a complete description of each *see* Attachment 1 of the application kit, as posted on the CDC Web site.

AR–1 Human Subjects Certification

AR–2 Requirements for inclusion of Women and Racial and Ethnic Minorities in Research

AR–3 Animal Subjects Requirement

AR–9 Paperwork Reduction Requirements

AR–10 Smoke-Free Workplace Requirement

AR–11 Healthy People 2010

AR–12 Lobbying Restrictions

AR–13 Prohibition on Use of CDC funds for Certain Gun Control Activities

AR–21 Small, Minority, and Women-owned Business

AR–22 Research Integrity

Executive Order 12372 does not apply to this program.

J. Where To Obtain Additional Information

This and other CDC announcements, the necessary applications, and associated forms can be found on the CDC home page Internet address: *http://www.cdc.gov.*

Click on "Funding," then "Grants and Cooperative Agreements."

For general questions about this announcement, contact: Technical Information Management, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341–4146. Telephone: (770) 488–2700.

For business management and budget assistance, contact: Van King, Grants Management Specialist, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341–4146. Telephone: (770) 488–2751. E-mail address: *vbk5@cdc.gov.*

For program technical assistance, contact: Tom Voglesonger, Program Manager, Office of the Director, National Center for Injury Prevention and Control, Centers for Disease Control and Prevention (CDC), 4770 Buford Highway, NE., Mail Stop K–02, Atlanta, GA 30341–3724.

Telephone: (770) 488–4823. E-mail address: *TVoglesonger@cdc.gov.*

Dated: February 1, 2003.

Sandra R. Manning,

CGFM, Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 03–3025 Filed 2–6–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 03024]

Grants for Violence-Related Injury Prevention Research: Intimate Partner Violence and Sexual Violence; Notice of Availability of Funds

Application Deadline: April 8, 2003.

A. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under section 301(a) [42 U.S.C. 241(a)] of the Public Health Service Act and section 391(a) [42 U.S.C. 280b(a)] of the Public Health Service Act, as amended. The catalog of Federal Domestic Assistance number is 93.136.

B. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2003 funds for grants for Intimate Partner Violence and Sexual Violence Injury Prevention Research. This program addresses the "Healthy People 2010" focus area of Injury and Violence Prevention.

The purposes of the program are to:

1. Solicit research applications that address the priorities reflected under the "Programmatic Requirements."

2. Build the scientific base for the prevention and control of injuries, disabilities, and deaths.

3. Encourage professionals from a wide spectrum of disciplines of engineering, epidemiology, medicine, biostatistics, public health, law and criminal justice, and behavioral, and social sciences to perform research in order to prevent and control injuries more effectively.

4. Encourage investigators to propose research that involves intervention development and testing as well as research on methods, to encourage individuals, organizations, or communities to adopt and maintain effective intervention strategies.

Measurable outcomes of the program will be in alignment with the following performance goal for the National Center for Injury Prevention and Control (NCIPC): Develop new or improved approaches for preventing and controlling death and disability due to injuries.

C. Eligible Applicants

Applications may be submitted by public and private nonprofit and for profit organizations and by governments and their agencies; that is, universities, colleges, technical schools, research institutions, hospitals, other public and private nonprofit and for profit organizations, community-based organizations, faith-based organizations, state and local governments or their bona fide agents, including the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau, Federally recognized Indian tribal governments, Indian tribes, or Indian tribal organizations, and small, minority, and/or women-owned businesses.

Note: Title 2 of the United States Code section 1611 states that an organization described in section 501(c)(4) of the Internal Revenue Code that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant or loan.

Applications that are incomplete or non-responsive to the below requirements will be returned to the applicant without further consideration. The following are applicant requirements:

1. A principal investigator who has conducted research, published the findings in peer-reviewed journals, and has specific authority and responsibility to carry out the proposed project.

2. Demonstrated experience on the applicant's project team in conducting, evaluating, and publishing injury control research in peer-reviewed journals.

3. Effective and well-defined working relationships within the performing organization and with outside entities, which will ensure implementation of the proposed activities.

4. The ability to carry out injury control research projects as defined under Attachment 2 (1.a–c). The attachment is posted with this announcement on the CDC Web site: *http://www.cdc.gov/ncipc/ncipchm.htm.*

5. The overall match between the applicant's proposed theme and research objectives and the program priorities as described under the heading, "Program Requirements."

D. Funding

Availability of Funds

Approximately $1,200,000 is expected to be available in FY 2003 to fund approximately 4–6 awards for intimate partner violence and sexual violence research grants. It is expected that the awards will begin on or about September 1, 2003, and will be made for

a 12-month budget period within a three-year project period. The maximum funding level will not exceed $300,000 (including both direct and indirect costs) per year and $900,000 for the three-year project period. The specific program priorities for these funding opportunities are outlined with examples in this announcement under the section, "Programmatic Requirements."

Applications that exceed the funding caps noted above will be excluded from the competition and returned to the applicant. The availability of Federal funding may vary and is subject to change.

Consideration will also be given to current grantees that submit a competitive supplement requesting one year of funding to enhance or expand existing projects, or to conduct one-year pilot studies. These awards will not exceed $150,000, including both direct and indirect costs. Supplemental awards will be made for the budget period to coincide with the actual budget period of the grant and are based on the availability of funds.

Continuation awards within an approved project period will be made based on satisfactory progress demonstrated by investigators at work-in-progress monitoring workshops (travel expenses for this annual one day meeting should be included in the applicant's proposed budget), and the achievement of work plan milestones reflected in the continuation application.

Use of Funds

Grant funds will not be made available to support the provision of direct care. Eligible applicants may enter into contracts, including consortia agreements, as necessary to meet the requirements of the program and strengthen the overall application.

Recipient Financial Participation

Matching funds are not required for this program.

E. Program Requirements

NCIPC is soliciting investigator-initiated research that will help expand and advance our understanding of violence, its causes, and prevention strategies.

The following research themes are the focus of this investigator-initiated solicitation:

1. Evaluate strategies for disseminating and implementing evidence-based interventions or policies for the prevention of intimate partner violence and sexual violence.

2. Evaluate the efficacy, effectiveness, and cost effectiveness of interventions, programs, and policies to prevent intimate partner violence and sexual violence.

3. Identify shared and unique risk and protective factors for the perpetration of intimate partner violence and sexual violence and examine the relationships among these forms of violence and others such as child maltreatment, youth violence, or suicidal behavior.

Additional information may be found for all attachments as posted with this announcement on the CDC Web site: *http://www.cdc.gov.*

F. Content

Letter of Intent (LOI)

A LOI is optional for this program. The narrative should be no more than two single-spaced pages, printed on one side, with one-inch margins, and unreduced 12-point font. The letter should identify the announcement number, the name of the principal investigator, and briefly describe the scope and intent of the proposed research work. The letter of intent does not influence review or funding decisions, but the number of letters received will enable CDC to plan the review more effectively and efficiently.

Applications

The Program Announcement title and number must appear in the application. Use the information in the Program Requirements, Other Requirements, and Evaluation Criteria sections to develop the application content. Your application will be evaluated on the criteria listed, so it is important to follow them in laying out your program plan. The narrative should be no more than 25 single-spaced pages, printed on one side, with one-inch margins, and unreduced 12-point font.

Applications should follow the PHS–398 (Rev. 5/2001) application and Errata sheet (See Attachment 4 of this announcement). The narrative should include the following information:

1. The project's focus that justifies the research needs and describes the scientific basis for the research, the expected outcome, and the relevance of the findings to reduce injury morbidity, mortality, disability, and economic losses. This focus should be based on recommendations in "Healthy People 2010" and the "CDC Injury Research Agenda" and should seek creative approaches that will contribute to a national program for injury control.

2. Specific, measurable, and time-framed objectives.

3. A detailed plan describing the methods by which the objectives will be achieved, including their sequence. A comprehensive evaluation plan is an essential component of the application.

4. A description of the principal investigator's role and responsibilities.

5. A description of all the project staff regardless of their funding source. It should include their title, qualifications, experience, percentage of time each will devote to the project, as well as that portion of their salary to be paid by the grant.

6. A description of those activities related to, but not supported by the grant.

7. A description of the involvement of other entities that will relate to the proposed project, if applicable. It should include commitments of support and a clear statement of their roles.

8. A detailed first year's budget for the grant with future annual projections, if relevant.

9. An explanation of how the research findings will contribute to the national effort to reduce the morbidity, mortality and disability caused by violence-related injuries within three to five years from project start-up.

An applicant organization has the option of having specific salary and fringe benefit amounts for individuals omitted from the copies of the application, which are made available to outside reviewing groups. To exercise this option: on the original and two copies of the application, the applicant must use asterisks to indicate those individuals for whom salaries and fringe benefits are not shown; however, the subtotals must still be shown. In addition, the applicant must submit an additional copy of page four of Form PHS–398, completed in full, with the asterisks replaced by the salaries and fringe benefits. This budget page will be reserved for internal staff use only.

G. Submission and Deadline

Letter of Intent (LOI) Submission

On or before March 10, 2003, submit the LOI to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

Application Forms

Submit the original and two copies of PHS 398 (OMB Number 0925–0001) (adhere to the instructions on the Errata Instruction Sheet for PHS 398). Forms are available at the following Internet address: *http://www.cdc.gov/od/pgo/forminfo.htm.*

If you do not have access to the Internet, or if you have difficulty accessing the forms on-line, you may contact the CDC Procurement and

Grants Office Technical Information Management Section (PGO–TIM) at: 770–488–2700. Application forms can be mailed to you.

Submission Date, Time, and Address

The application must be received by 4 p.m. Eastern Time April 8, 2003. Submit the application to: Technical Information Management-PA03024, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341–4146.

Applications may not be submitted electronically.

CDC Acknowledgment of Application Receipt

A postcard will be mailed by PGO–TIM, notifying you that CDC has received your application.

Deadline

Letters of intent and applications shall be considered as meeting the deadline if they are received before 4 p.m. Eastern Time on the deadline date. Applicants sending applications by the United States Postal Service or commercial delivery services must ensure that the carrier will be able to guarantee delivery of the application by the closing date and time. If an application is received after closing due to (1) carrier error, when the carrier accepted the package with a guarantee for delivery by the closing date and time, or (2) significant weather delays or natural disasters, CDC will upon receipt of proper documentation, consider the application as having been received by the deadline.

Applications, which do not meet the above criteria, will not be eligible for competition and will be discarded. Applicants will be notified of their failure to meet the submission requirements.

H. Evaluation Criteria

Upon receipt, applications will be reviewed by CDC staff for completeness and responsiveness as outlined under the "Eligible Applicants" Section (Items one through five). Incomplete applications and applications that are not responsive will be returned to the applicant without further consideration. It is especially important that the applicant's abstract reflects the project's focus, because the abstract will be used to help determine the responsiveness of the application.

Applications which are complete and responsive may be subjected to a preliminary evaluation (streamline review) by a peer review committee, the Injury Research Grant Review Committee (IRGRC), to determine if the application is of sufficient technical and scientific merit to warrant further review by the IRGRC; CDC will withdraw from further consideration applications judged to be noncompetitive and promptly notify the principal investigator/program director and the official signing for the applicant organization. Those applications judged to be competitive will be further evaluated by a dual review process.

Competing supplemental grant awards may be made, when funds are available, to support research work or activities not previously approved by the IRGRC. Applications should be clearly labeled to denote their status as requesting supplemental funding support. These applications will be reviewed by the IRGRC and the secondary review group.

All awards will be determined by the Director of the NCIPC based on priority scores assigned to applications by the primary review committee IRGRC, recommendations by the secondary review committee of the Science and Program Review Subcommittee of the Advisory Committee for Injury Prevention and Control (ACIPC), consultation with NCIPC senior staff, and the availability of funds.

1. The primary review will be a peer review conducted by the IRGRC. All applications will be reviewed for scientific merit using current National Institutes of Health (NIH) criteria (a scoring system of 100–500 points) to evaluate the methods and scientific quality of the application. All categories are of equal importance, however, the application does not need to be strong in all categories to be judged likely to have a major scientific impact. Factors to be considered will include:

a. Significance. Does this study address an important problem? If the aims of the application are achieved, how will scientific knowledge be advanced? What will be the effect of these studies on the concepts or methods that drive this field?

b. Approach. Are the conceptual framework, design, methods, and analyses adequately developed, well-integrated, and appropriate to the aims of the project? Does the applicant acknowledge potential problem areas and consider alternative tactics? Does the project include plans to measure progress toward achieving the stated objectives? Is there an appropriate work plan included?

c. Innovation. Does the project employ novel concepts, approaches or methods? Are the aims original and innovative? Does the project challenge or advance existing paradigms, or develop new methodologies or technologies?

d. Investigator. Is the principal investigator appropriately trained and well suited to carry out this work? Is the proposed work appropriate to the experience level of the principal investigator and other significant investigator participants? Is there a prior history of conducting violence-related research?

e. Environment. Does the scientific environment in which the work will be done contribute to the probability of success? Does the proposed research take advantage of unique features of the scientific environment or employ useful collaborative arrangements? Is there evidence of institutional support? Is there an appropriate degree of commitment and cooperation of other interested parties as evidenced by letters detailing the nature and extent of the involvement?

f. Ethical Issues. What provisions have been made for the protection of human subjects and the safety of the research environments? How does the applicant plan to handle issues of confidentiality and compliance with mandated reporting requirements, *e.g.*, suspected child abuse? Does the application adequately address the requirements of 45 CFR Part 46 for the protection of human subjects? (An application can be disapproved if the research risks are sufficiently serious and protection against risks is so inadequate as to make the entire application unacceptable.) The degree to which the applicant has met the CDC Policy requirements regarding the inclusion of women, ethnic, and racial groups in the proposed research (See Attachment 1, AR–2). This includes:

(1) The proposed plan for the inclusion of both sexes and racial and ethnic minority populations for appropriate representation.

(2) The proposed justification when representation is limited or absent.

(3) A statement as to whether the design of the study is adequate to measure differences when warranted.

(4) A statement as to whether the plans for recruitment and outreach for study participants include the process of establishing partnerships with community(ies) and recognition of mutual benefits.

g. Study Samples. Are the samples sufficiently rigorously defined to permit complete independent replication at another site? Have the referral sources been described, including the definitions and criteria? What plans have been made to include women and minorities and their subgroups as appropriate for the scientific goals of the

research? How will the applicant deal with recruitment and retention of subjects?

h. Dissemination. What plans have been articulated for disseminating findings?

i. Measures of Effectiveness. The Peer Review Panel shall assure that measures set forth in the application are in accordance with CDC's performance plans (See attachment). How adequately has the applicant addressed these measures?

The IRGRC will also examine the appropriateness of the proposed project budget and duration in relation to the proposed research and the availability of data required for the project.

2. The secondary review will be conducted by the Science and Program Review Subcommittee (SPRS) of the ACIPC. The ACIPC Federal agency experts will be invited to attend the secondary review, will receive modified briefing books (*i.e.*, abstracts, strengths and weaknesses from summary statements, and project officer's briefing materials). The ACIPC Federal agency experts will be encouraged to participate in deliberations when applications address overlapping areas of research interest so that unwarranted duplication in federally-funded research can be avoided and special subject area expertise can be shared. The NCIPC Division Associate Directors for Science (ADS) or their designees will attend the secondary review in a similar capacity as the ACIPC Federal agency experts to assure that research priorities of the announcement are understood and to provide background regarding current research activities. Only SPRS members will vote on funding recommendations, and their recommendations will be carried to the entire ACIPC for voting by the ACIPC members in closed session. If any further review is needed by the ACIPC, regarding the recommendations of the SPRS, the factors considered will be the same as those considered by the SPRS.

The committee's responsibility is to develop funding recommendations for the NCIPC Director based on the results of the primary review, the relevance and balance of proposed research relative to the NCIPC programs and priorities, and to assure that unwarranted duplication of federally-funded research does not occur. The secondary review committee has the latitude to recommend to the NCIPC Director, to reach over better-ranked proposals in order to assure maximal impact and balance of proposed research. The factors to be considered will include:

a. The results of the primary review including the application's priority score as the primary factor in the selection process.

b. The relevance and balance of proposed research relative to the NCIPC programs and priorities.

c. The significance of the proposed activities in relation to the priorities and objectives stated in "Healthy People 2010," the Institute of Medicine report, "Reducing the Burden of Injury," and the "CDC Injury Research Agenda."

d. Budgetary considerations.

3. Continued Funding

Continuation awards made after FY 2003, but within the project period, will be made on the basis of the availability of funds and the following criteria:

a. The accomplishments reflected in the progress report of the continuation application indicate that the applicant is meeting previously stated objectives or milestones contained in the project's annual work plan and satisfactory progress demonstrated through presentations at work-in-progress monitoring workshops.

b. The objectives for the new budget period are realistic, specific, and measurable.

c. The methods described will clearly lead to achievement of these objectives.

d. The evaluation plan will allow management to monitor whether the methods are effective.

e. The budget request is clearly explained, adequately justified, reasonable and consistent with the intended use of grant funds.

I. Other Requirements

Technical Reporting Requirements

Provide CDC with an original plus two copies of:

1. Annual progress report. The progress report will include a data requirement that demonstrates measures of effectiveness.

2. A financial status report, no more than 90 days after the end of the budget period.

3. Final financial report and performance report, no more than 90 days after the end of the project period.

4. At the completion of the project, the grant recipient will submit a brief (2,500 to 4,000 words written in non-scientific [laymen's] terms) summary highlighting the findings and their implications for injury prevention programs, policies, environmental changes, etc. The grant recipient will also include a description of the dissemination plan for research findings. This plan will include publications in peer-reviewed journals and ways in which research findings will be made available to stakeholders outside of academia, (*e.g.*, state injury prevention program staff, community groups, public health injury prevention practitioners, and others). CDC will place the summary report and each grant recipient's final report with the National Technical Information Service (NTIS) to further the agency's efforts to make the information more available and accessible to the public.

Send all reports to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

Additional Requirements

The following additional requirements are applicable to this program. For a complete description of each see Attachment 1 of this announcement as posted on the CDC web site.

AR–1 Human Subjects Certification
AR–2 Requirements for inclusion of Women and Racial and Ethnic Minorities in Research
AR–3 Animal Subjects Requirement
AR–9 Paperwork Reduction Requirements
AR–10 Smoke-Free Workplace Requirement
AR–11 Healthy People 2010
AR–12 Lobbying Restrictions
AR–13 Prohibition on Use of CDC funds for Certain Gun Control Activities
AR–21 Small, Minority, and Women-owned Business
AR–22 Research Integrity

Executive Order 12372 does not apply to this program.

J. Where To Obtain Additional Information

This and other CDC announcements, the necessary applications, and associated forms can be found on the CDC Web site, Internet address: *http://www.cdc.gov*. Click on "Funding," then "Grants and Cooperative Agreements."

For business management assistance, contact: Angie Nation, Grants Management Specialist, Procurement and Grants Office, Centers for Disease Control and Prevention, 2920 Brandywine Road, Room 3000, Atlanta, GA 30341–4146, Telephone: (770) 488–2719, E-mail address: *aen4@cdc.gov*.

For program technical assistance, contact: Tom Voglesonger, Program Manager, Office of the Director, National Center for Injury Prevention and Control, Centers for Disease Control and Prevention (CDC), 4770 Buford Highway, NE, Mail Stop K–02, Atlanta, GA 30341–3724, Telephone: (770) 488–4823, Internet address: *TVoglesonger@cdc.gov*.

Dated: February 1, 2003.

Sandra R. Manning,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 03–3034 Filed 2–6–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 03036]

Grants for Dissertation Awards for Doctoral Candidates for Violence-Related Injury Prevention Research in Minority Communities; Notice of Availability of Funds

A. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under section 301(a) [42 U.S.C. 241(a)] of the Public Health Service Act and section 391 (a) [42 U.S.C. 280b(a)] of the Public Service Health Act, as amended. The catalog of Federal Domestic Assistance number is 93.136.

B. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2003 funds for a grant program for Dissertation Awards for Doctoral Candidates for Violence-Related Injury Prevention Research in Minority Communities. This program addresses the "Healthy People 2010" focus area of Injury and Violence Prevention.

The purposes of the program are to:

1. Solicit research applications that address the priorities reflected under the "Programmatic Requirements."

2. Build the scientific base for the prevention and control of injuries, disabilities, and deaths disproportionately experienced in minority communities.

3. Encourage doctoral candidates from a wide spectrum of disciplines, including, epidemiology, medicine, biostatistics, public health, law and criminal justice, behavioral and social sciences, to perform research in order to prevent and control injuries more effectively.

4. Assist students in the completion of their dissertation research on a violence-related topic.

5. Encourage investigators to build research careers related to the prevention of violence-related injuries, disabilities, and deaths in minority communities.

A dissertation represents the most extensive research experience formulated and carried out by a doctoral candidate, with the advice and guidance of a mentor (the chair or another member of the dissertation committee). Dissertation research involves a major investment of the doctoral student's time, energy, and interest and its substance is often the basis for launching a research career. This research initiative is aimed at providing students with assistance to complete their dissertation research on a violence-related topic and, thereby, increasing representation of junior investigators in violence-related injury research.

Deaths and injuries associated with interpersonal violence and suicidal behavior are a major public health problem in the United States and around the world. In 1999, more than 46,000 people died from homicide and suicide in the United States. Among 15 to 24 year olds, homicide ranked as the second and the third leading causes of death. Violent deaths are the most visible consequence of violent behavior in our society. Morbidity associated with physical and emotional injuries and disabilities resulting from violence, however, also constitutes an enormous public health problem. For every homicide that occurs each year there are more than 100 non-fatal injuries resulting from interpersonal violence. For every completed suicide it is estimated that there are 20 to 25 suicide attempts. The mortality and morbidity associated with violence are associated with a variety of types of violence including child mistreatment, youth violence, intimate partner violence, sexual violence, elder abuse, and self-directed violence or suicidal behavior.

Violence has a disproportionate impact on racial and ethnic minorities. In 1999, homicide was the leading cause of death for African Americans and the second leading cause of death for Hispanics between the ages of 15 and 34. Suicide was the second leading cause of death for American Indians and Alaskan Natives and Asian and Pacific islanders 15 to 34 years of age. It is important to note that existing research indicates that race or ethnicity, per se, is not a risk factor for violent victimization or a cause of violent behavior. Rather, racial or ethnic status is associated with many other factors that do influence the risk of becoming a victim or behaving violently. Nevertheless, racial and ethnic minorities in the United States are at high risk for both violent victimization and perpetration. A better understanding of the factors that contribute to this vulnerability or protection from such risk is important to furthering effective violence prevention programs that address racial and ethnic minorities.

There is a critical need for highly qualified scientists to carry out research on violence that can help in the development, implementation, and evaluation of effective violence prevention programs. In particular, scientists are needed who bring an understanding and sensitivity to the problems of violence as they affect minority communities. The purpose of this extramural research training grant program is to attract young scientists to the field of violence prevention by encouraging doctoral candidates from a variety of disciplines to conduct violence prevention research and hopefully carry this focus on throughout their careers. The number of individuals who are members of minority groups and who are engaged in violence-related injury prevention research is currently small. This research program should also attract young minority scientists to the field of violence research.

Measurable outcomes of the program will be in alignment with the following performance goal for the National Center for Injury Prevention and Control (NCIPC): Develop new or improved approaches for preventing and controlling death and disability due to injuries.

C. Eligible Applicants

Assistance will be provided to any United States public or private institution. The institution must support an accredited doctoral level training program. The performance site must be domestic.

Applicants must be students in good standing enrolled in an accredited doctoral degree program. The applicant must have the authority and responsibility to carry out the proposed project. Applicants must be conducting or intending to conduct research in one of the areas described under the "Research Objectives" in the Program Requirement's section of this announcement. To receive this funding, applicants must have successfully defended their dissertation proposal. This must be verified in a letter of certification from the mentor (the chair or another member of the dissertation committee). CDC requests that, if available, the letter of certification be submitted with the grant application, or before the negotiation and award.

Applications that are incomplete or non-responsive to the below requirements will be returned to the applicant without further consideration. The following are applicant requirements:

1. A principal investigator who has the skill and academic training to conduct the proposed research, and the specific authority to carry out the proposed project.

2. Effective and well-defined working relationships within the performing organization and with outside entities, which will ensure implementation of the proposed activities.

3. The ability to carry out injury-control research projects as defined under Attachment 2 (1.a–c) as posted on the CDC web site at *www.cdc.gov*.

4. The overall match between the applicant's proposed theme and research objectives and the program priorities as described under the heading, "Program Requirements".

Note: Title 2 of the United States Code section 1611 states that an organization described in section 501c(4) of the Internal Revenue Code that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, or loan.

D. Funds

Availability of Funds

Approximately $100,000 is expected to be available in FY 2003 to five fund approximately five dissertation awards for doctoral candidates. It is expected that the average awards will begin on or about September 1, 2003, and will be made for a 12-month budget and project period. The project period may be extended without additional funds for up to a total of 24 months. The maximum funding level will not exceed $20,000 (including both direct and indirect costs). Applications that exceed the funding caps noted above will be excluded from the competition and returned to the applicant. The availability of Federal funding may vary and is subject to change.

Use of Funds

Training grant funds will not be made available to support the provision of direct patient care including medical and/or psychiatric care. Eligible applicants may enter into contracts, including consortia agreements, as necessary to meet the requirements of the program and strengthen the overall application.

Allowable costs include direct research project expenses, such as interviewer expenses, data processing, participant incentives, statistical consultant services, supplies, dissertation printing costs, and travel to one scientific meeting, if adequately justified. Applicants should include travel costs for one two-day trip to CDC in Atlanta to present research findings. No tuition support is allowed.

Recipient Financial Participation

Matching funds are not required for this program.

E. Program Requirements

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the following activities:

1. Evaluating strategies for disseminating and implementing evidence-based interventions or policies for the prevention of intimate partner violence, sexual violence, youth violence, suicide, and child maltreatment.

2. Evaluating the efficacy, effectiveness, and cost effectiveness of interventions, programs, and policies to prevent intimate partner violence, sexual violence, youth violence, suicide, and child maltreatment.

3. Identifying shared and unique risk and protective factors for the perpetration of intimate partner violence and sexual violence and examine the relationships among these forms of violence and others such as child maltreatment, youth violence, or suicidal behavior.

Other Special Conditions for Dissertation Research Grants

1. The doctoral candidate must be the designated principal investigator. The principal investigator will be responsible for planning, directing, and executing the proposed project with the advice and consultation of the mentor and dissertation committee.

2. The responsible program official for CDC must be informed if there is a change of a mentor. A biographical sketch of the new mentor must be provided for approval by the CDC program official.

3. A dissertation research training grant may not be transferred to another institution, except under unusual and compelling circumstances (such as if the mentor moves to a new institution and both the mentor and the applicant wish to move together).

4. Two copies of the completed dissertation, including abstract, must be submitted to the CDC program official and will constitute the final report of the grant. The dissertation must be officially accepted by the dissertation committee or university official responsible for the candidate's dissertation and must be signed by the responsible university official.

5. Any publications directly resulting from the grant should be reported to the CDC program official. The grantee also should cite receiving support from the NCIPC and CDC, both in the dissertation and any publications directly resulting from the dissertation training grant.

F. Content

Letter of Intent (LOI)

A LOI is optional for this program. The Program Announcement title and number must appear in the LOI. The narrative should be no more than two pages, single-spaced, printed on one side, with one inch margins, and unreduced 12-point font. Your letter of intent will be used to enable CDC to plan the review more effectively and efficiently, and should include the following information: A brief description of the scope and intent of the proposed research work.

Applications

The Program Announcement title and number must appear in the application. Use the information in the Program Requirements, Other Requirements, and Evaluation Criteria sections to develop the application content. The application will be evaluated on the criteria listed, so it is important to follow them in laying out your program plan. The narrative should be no more than 15 pages, single-spaced, printed on one side, with one inch margins, and unreduced 12-point font.

Applications should follow the PHS–398 (Rev. 5/2001) application and Errata sheet (*See* attachment 3 of this announcement as posted on the CDC Web site). The narrative should consist of the following information:

1. The project's focus that justifies the research needs and describes the scientific basis for the research, the expected outcome, and the relevance of the findings to reduce injury morbidity, mortality, disability, and economic losses. This focus should be based on recommendations in "Healthy People 2010" and the "CDC Injury Research Agenda" and should seek creative approaches that will contribute to a national program for injury control.

2. Specific, measurable, and time-framed objectives.

3. A detailed plan describing the methods by which the objectives will be achieved, including their sequence. A comprehensive evaluation plan is an essential component of the application.

4. A description of the principal investigator's role and responsibilities.

5. A description of all the project staff regardless of their funding source. It should include their title, qualifications, experience, percentage of time each will devote to the project, as well as that portion of their salary to be paid by the grant.

6. A description of those activities related to, but not supported by the grant.

7. A description of the involvement of other entities that will relate to the proposed project, if applicable. It should include commitments of support and a clear statement of their roles.

8. A detailed budget for the grant.

9. An explanation of how the research findings will contribute to the national effort to reduce the morbidity, mortality and disability caused by violence-related injuries within three–five years from project start-up.

Additional Required Materials

The applicant must also submit the following materials, attached to the application as appendices:

1. A letter from the applicant's mentor which:

a. Fully identifies the members of the dissertation committee.

b. Certifies that the mentor has read the application and believes that it reflects the work to be completed in the dissertation. (Letters certifying approval of the dissertation proposal must be received before negotiation and award of the grant.)

c. Certification that the institution's facilities and general environment are adequate to conduct the proposed research.

2. A tentative time line for completion of the research, the dissertation, and the dissertation defense.

3. An official transcript of the applicant's graduate school record showing that the applicant has completed all required course work for the degree with the exception of the dissertation.

4. A statement of the applicant's career goals and intended career trajectory.

5. A biography of the mentor, limited to two pages (use the Biographical Sketch page in application form PHS 398).

G. Submission and Deadline

Letter of Intent (LOI) Submission

The LOI must be received by March 4, 2003. Submit the LOI to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

Application Forms

Submit the signed original and two copies of PHS 398 (OMB Number 0925–0001)(adhere to the instructions on the Errata Instruction Sheet for PHS 398). Forms are available at the following Internet address: *http://www.cdc.gov/od/pgo/forminfo.htm.*

If you do not have access to the Internet, or if you have difficulty accessing the forms on-line, you may contact the CDC Procurement and Grants Office Technical Information Management Section (PGO–TIM) at: 770–488–2700. Application forms can be mailed to you.

Submission, Date, Time and Address

The application must be received by 4 p.m. Eastern Time May 8, 2003. Submit the application to: Technical Information Management—PA # 03036, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341–4146.

Applications may not be sent electronically.

CDC Acknowledgment of Application Receipt

A postcard will be mailed by PGO–TIM, notifying you that CDC has received your application.

Deadline

Letters of intent and applications shall be considered as meeting the deadline if they are received before 4 p.m. Eastern Time on the deadline date. Any applicant who sends their application by the United States Postal Service or commercial delivery services must ensure that the carrier will be able to guarantee delivery of the application by the closing date and time. If an application is received after closing due to (1) carrier error, when the carrier accepted the package with a guarantee for delivery by the closing date and time, or (2) significant weather delays or natural disasters, CDC will upon receipt of proper documentation, consider the application as having been received by the deadline.

Any application that does not meet the above criteria will not be eligible for competition, and will be discarded. The applicant will be notified of their failure to meet the submission requirements.

H. Evaluation Criteria

Application

Upon receipt, applications will be reviewed by CDC staff for completeness and responsiveness as outlined under the "Eligible Applicants" Section (Items one through four). Incomplete applications and applications that are not responsive will be returned to the applicant without further consideration. It is especially important that the applicant's narrative reflects the project's focus, because the narrative will be used to help determine the responsiveness of the application.

Applications which are complete and responsive may be subjected to a preliminary evaluation (streamline review) by a peer review committee, the Injury Research Grant Review Committee (IRGRC), to determine if the application is of sufficient technical and scientific merit to warrant further review by the IRGRC; CDC will withdraw from further consideration applications judged to be noncompetitive and promptly notify the principal investigator/program director and the official signing for the applicant organization. Those applications judged to be competitive will be further evaluated by a dual review process.

Competing supplemental grant awards may be made, when funds are available, to support research work or activities not previously approved by the IRGRC. Applications should be clearly labeled to denote their status as requesting supplemental funding support. These applications will be reviewed by the IRGRC and the secondary review group.

All awards will be determined by the Director of the NCIPC based on priority scores assigned to applications by the primary review committee IRGRC, recommendations by the secondary review committee of the Science and Program Review Subcommittee of the Advisory Committee for Injury Prevention and Control (ACIPC), consultation with NCIPC senior staff, and the availability of funds. All categories are of equal importance, however, the application does not need to be strong in all categories to be judged likely to have a major scientific impact.

1. The primary review will be a peer review conducted by the IRGRC. All applications will be reviewed for scientific merit using current National Institutes of Health (NIH) criteria (a scoring system of 100–500 points) to evaluate the methods and scientific quality of the application. Factors to be considered will include:

a. Significance. Does this study address an important problem? If the aims of the application are achieved, how will scientific knowledge be advanced? What will be the effect of these studies on the concepts or methods that drive this field?

b. Approach. Are the conceptual framework, design, methods, and analyses adequately developed, well-integrated, and appropriate to the aims of the project? Does the applicant acknowledge potential problem areas and consider alternative tactics? Does the project include plans to measure progress toward achieving the stated objectives? Is there an appropriate work plan included?

c. Innovation. Does the project employ novel concepts, approaches or methods? Are the aims original and innovative? Does the project challenge or advance existing paradigms, or develop new methodologies or technologies?

d. Investigator. Is the principal investigator appropriately trained and well suited to carry out this work? Is the proposed work appropriate to the experience level of the principal investigator and other significant investigator participants? Is there a prior history of conducting violence-related research?

e. Environment. Does the scientific environment in which the work will be done contribute to the probability of success? Does the proposed research take advantage of unique features of the scientific environment or employ useful collaborative arrangements? Is there evidence of institutional support? Is there an appropriate degree of commitment and cooperation of other interested parties as evidenced by letters detailing the nature and extent of the involvement?

f. Ethical Issues. What provisions have been made for the protection of human subjects and the safety of the research environments? How does the applicant plan to handle issues of confidentiality and compliance with mandated reporting requirements, *e.g.*, suspected child abuse? Does the application adequately address the requirements of 45 CFR part 46 for the protection of human subjects? (An application can be disapproved if the research risks are sufficiently serious and protection against risks is so inadequate as to make the entire application unacceptable.) The degree to which the applicant has met the CDC Policy requirements regarding the inclusion of women, ethnic, and racial groups in the proposed research (See Attachment 1, AR–2).

This includes:

(1) The proposed plan for the inclusion of both sexes and racial and ethnic minority populations for appropriate representation.

(2) The proposed justification when representation is limited or absent.

(3) A statement as to whether the design of the study is adequate to measure differences if the proposed research is an intervention study.

(4) A statement as to whether the plans for recruitment and outreach for study participants include the process of establishing partnerships with community(ies) and recognition of mutual benefits.

g. Study Samples. Are the samples sufficiently rigorously defined to permit complete independent replication at another site? Have the referral sources been described, including the definitions and criteria? What plans have been made to include women and minorities and their subgroups as appropriate for the scientific goals of the research? How will the applicant deal with recruitment and retention of subjects?

h. Dissemination. What plans have been articulated for disseminating findings?

i. Measures of Effectiveness. The Peer Review Panel shall assure that measures set forth in the application are in accordance with CDC's performance plans. How adequately has the applicant addressed these measures?

The IRGRC will also examine the appropriateness of the proposed project budget and duration in relation to the proposed research and the availability of data required for the project.

2. The secondary review will be conducted by the Science and Program Review Subcommittee (SPRS)of the ACIPC. The ACIPC Federal agency experts will be invited to attend the secondary review, and will receive modified briefing books (*i.e.*, project narratives, strengths and weaknesses from summary statements, and project officer's briefing materials). The ACIPC Federal agency experts will be encouraged to participate in deliberations when applications address overlapping areas of research interest so that unwarranted duplication in federally-funded research can be avoided and special subject area expertise can be shared. The NCIPC Division Associate Directors for Science (ADS) or their designees will attend the secondary review in a similar capacity as the ACIPC Federal agency experts to assure that research priorities of the announcement are understood and to provide background regarding current research activities. Only SPRS members will vote on funding recommendations, and their recommendations will be carried to the entire ACIPC for voting by the ACIPC members in closed session. If any further review is needed by the ACIPC, regarding the recommendations of the SPRS, the factors considered will be the same as those considered by the SPRS.

The committee's responsibility is to develop funding recommendations for the NCIPC Director based on the results of the primary review, the relevance and balance of proposed research relative to the NCIPC programs and priorities, and to assure that unwarranted duplication of federally-funded research does not occur. The secondary review committee has the latitude to recommend to the NCIPC Director, to reach over better ranked proposals in order to assure maximal impact and balance of proposed research. The factors to be considered will include:

a. The results of the primary review including the application's priority score as the primary factor in the selection process.

b. The relevance and balance of proposed research relative to the NCIPC programs and priorities.

c. The significance of the proposed activities in relation to the priorities and objectives stated in "Healthy People 2010," the Institute of Medicine report, "Reducing the Burden of Injury," and the "CDC Injury Research Agenda."

d. Budgetary considerations.

I. Other Requirements

Technical Reporting Requirements

Provide CDC with original plus two copies of:

1. The dissertation, including abstract that will constitute the final Interim Progress Report of the grant.

2. A financial status report, no more than 90 days after the end of the budget period.

3. Final financial and performance reports, no more than 90 days after the end of the project period.

4. At the completion of the project, the grant recipient will submit a short (2,500 to 4,000 words written in non-scientific [laymen's] terms) summary highlighting the findings and their implications for injury prevention programs, policies, environmental changes, etc. The grant recipient will also include a description of the dissemination plan for research findings. This plan will include publications in peer-reviewed journals and ways in which research findings will be made available to stakeholders outside of academia, (*e.g.*, state injury prevention program staff, community groups, public health injury prevention practitioners, and others). CDC will place the summary report and each grant recipient's final report with the National Technical Information Service (NTIS) to further the agency's efforts to make the information more available and accessible to the public.

Send all reports to the Grants Management Specialist identified in the **Where To Obtain Additional Information** section of this announcement.

Additional Requirements:

The following additional requirements are applicable to this program. For a complete description of each, see Attachment 1 of this

announcement as posted on the CDC web site.

AR–1 Human Subjects Certification

AR–2 Requirements for inclusion of Women and Racial and Ethnic Minorities in Research

AR–3 Animal Subjects Requirement

AR–9 Paperwork Reduction Requirements

AR–10 Smoke-Free Workplace Requirement

AR–11 Healthy People 2010

AR–12 Lobbying Restrictions

AR–13 Prohibition on Use of CDC funds for Certain Gun Control Activities

AR–21 Small, Minority, and Women-owned Business

AR–22 Research Integrity

Executive Order 12372 does not apply to this program.

J. Where To Obtain Additional Information

This and other CDC announcements, the necessary applications, and associated forms can be found on the CDC home page Internet address: *http://www.cdc.gov*. Click on "Funding," then "Grants and Cooperative Agreements".

For general questions about this announcement, contact: Technical Information Management, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341–4146, Telephone: 770–488–2700.

For business management assistance, contact: Nancy Pillar, Grants Management Specialist, Procurement and Grants Office, Centers for Disease Control and Prevention, 2920 Brandywine Road, Room 3000, Atlanta, GA 30341–4146, Telephone: (770) 488–2721, E-mail address: *nfp6@cdc.gov*.

For program technical assistance, contact: Tom Voglesonger, Program Manager, Office of the Director, National Center for Injury Prevention and Control, Centers for Disease Control and Prevention (CDC), 4770 Buford Highway, NE., Mail Stop K–02, Atlanta, GA 30341–3724, Telephone: (770) 488–4823, E-mail address: *TVoglesonger@cdc.gov*.

Dated: February 1, 2003.

Sandra R. Manning,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 03–3033 Filed 2–6–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 03028]

Grants for Traumatic Injury Biomechanics Research; Notice of Availability of Funds

Application Deadline: April 8, 2003.

A. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under section 301 (a) [42 U.S.C. 241(a)] of the Public Health Service Act, and section 391 (a) [42 U.S.C. 280b (a)] of the Public Health Service Act, as amended. The catalog of Federal Domestic Assistance number is 93.136.

B. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2003 funds for Grants for Traumatic Injury Biomechanics Research. This program addresses the "Healthy People 2010" focus areas of Injury and Violence Prevention.

The purposes of the program are to:

1. Solicit research applications that address the priorities reflected under the heading, "Programmatic Requirements."

2. Build the scientific base for the prevention and control of injuries, disabilities, and deaths.

3. Encourage professionals from a wide spectrum of disciplines of engineering, epidemiology, medicine, biostatistics, public health, law and criminal justice, behavioral, and social sciences to perform research in order to prevent and control injuries more effectively.

4. Encourage investigators to propose research that involves intervention development and testing as well as research on methods; to encourage individuals, organizations, or communities to adopt and maintain effective intervention strategies.

Measurable outcomes of the program will be in alignment with the following performance goal for the National Center for Injury Prevention and Control (NCIPC): Develop new or improved approaches for preventing and controlling death and disability due to injuries.

C. Eligible Applicants

Applications may be submitted by public and private nonprofit and for profit organizations and by governments and their agencies; that is, universities, colleges, technical schools, research institutions, hospitals, other public and private nonprofit and for profit organizations, community-based organizations, faith-based organizations, State and local governments or their bona fide agents, including the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau, federally recognized Indian tribal governments, Indian tribes, or Indian tribal organizations, and small, minority, and women-owned businesses.

Note: Title 2 of the United States Code section 1611 states that an organization described in section 501(c)(4) of the Internal Revenue Code that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant or loan.

Applications that are incomplete or non responsive to the following requirements will be returned to the applicant without further consideration:

1. A principal investigator, who has conducted research, published the findings in peer-reviewed journals, and have specific authority and responsibility to carry out the proposed project.

2. Demonstrated experience on the applicant's project team in conducting, evaluating, and publishing injury control research in peer-reviewed journals.

3. Effective and well-defined working relationships within the performing organization and with outside entities which will ensure implementation of the proposed activities.

4. The ability to carry out injury control research projects as defined under Attachment 2 (1.a–c). The attachment is posted with this program announcement on the CDC Web site: *http://www.cdc.gov/ncipc/ncipchm.htm*.

5. The overall match between the applicant's proposed theme and research objectives and the program interests as described under the heading, "Program Requirements."

D. Funds

Availability of Funds

Approximately $600,000 is available in FY 2003 to fund approximately two-three awards. It is expected that the awards will begin on or about September 1, 2003, and will be made for a 12-month budget period within a project period of up to three years. Funding estimates may change.

The maximum funding level for each project will not exceed $300,000 per year (including both direct and indirect costs) or $900,000 for a three-year project period. Applications that exceed the funding caps noted above will be excluded from the competition and returned to the applicant. The availability of Federal funding may vary and is subject to change.

Consideration will also be given to current grantees who submit a competitive supplement requesting one year of funding to enhance or expand existing projects, or to conduct one-year pilot studies. These awards will not exceed $150,000, including both direct and indirect costs. Supplemental awards will be made for the budget period to coincide with the actual budget period of the grant and are based on the availability of funds.

Continuation awards within an approved project period will be made on the basis of the availability of funds and the following criteria:

1. The accomplishments reflected in the progress report of the continuation application indicate that the applicant is meeting previously stated objectives or milestones contained in the project's annual work plan and satisfactory progress demonstrated through presentations at work-in-progress monitoring workshops.

2. The objectives for the new budget period are realistic, specific, and measurable.

3. The methods described will clearly lead to achievement of these objectives.

4. The evaluation plan will allow management to monitor whether the methods are effective.

5. The budget request is clearly explained, adequately justified, reasonable and consistent with the intended use of grant funds.

Use of Funds

Grant funds will not be made available to support the provision of direct care. Eligible applicants may enter into contracts, including consortia agreements, as necessary to meet the requirements of the program and strengthen the overall application.

Funding Priority

Interested persons are invited to comment on the proposed funding priority (see the "Program Requirements" section of this announcement). All comments received within 30 days after publication in the Federal Register will be considered before the final funding priority is established. If the funding priority changes because of comments received, a revised announcement will be published in the Federal Register, and revised applications will be accepted before the final selections are made. Address comments to the grants management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

Recipient Financial Participation

Matching funds are not required for this program.

E. Program Requirements

NCIPC works to prevent non-occupational unintentional and violence-related injuries, and to minimize the consequences of injuries when they do occur. It's public health approach draws on biomechanics in seven topic areas:

1. Preventing Injuries at Home and in the Community.
2. Preventing Injuries in Sports, Recreation, and Exercise.
3. Preventing Transportation Injuries.
4. Preventing Intimate Partner Violence, Sexual Violence, and Child Maltreatment.
5. Preventing Suicidal Behavior.
6. Preventing Youth Violence.
7. Acute Care, Disability, and Rehabilitation.

In conducting activities to achieve the purpose of this program, the recipient will be responsible for addressing priorities listed below:

High Priority

Higher priority will be given to research proposals that:

1. Use biomechanics research and the knowledge of injury tolerance and injury mechanisms to develop and/or evaluate interventions that address the following specific injury prevention and control problems:

a. Falls that occur among older, community dwelling adults (*e.g.* hip pads).

b. Injuries in mass trauma events.

c. Severe and disabling falls among children.

d. Sports, recreation, and exercise-related injuries (*e.g.*, playground and other play environments, safety gear.)

e. Injuries associated with people initiating or increasing physical activity (*e.g.*, training programs or protective devices).

f. Injuries related to outdoor recreation (*e.g.*, vehicle design).

g. Motorcycling, bicycling and pedestrian injuries (*e.g.*, improved helmets or environments).

h. Injuries to child occupants of motor vehicles (*e.g.*, universal fasteners and alternative restraint designs).

i. Injuries to older drivers.

j. Injuries associated with the effects of emerging vehicle technologies.

2. Identify the biomechanics and specific injuries that would be highly predictive of diagnoses of intimate partner violence and child maltreatment, and improve case definitions.

Note: The scoring for applications addressing a high priority item will be weighted an additional 25 points in a scoring system of 100–500 points.

Lower Priority

In addition, lower priority will be given to research proposals that:

1. Advance the biomechanical understanding of traumatic injury (*e.g.*, injuries to the brain, spinal cord, thorax/abdomen, extremities and joints) including: development of biofidelic models to elucidate injury physiology as well as pharmacologic, surgical, rehabilitation, and other interventions; improvement of injury assessment technology; impact injury mechanisms research; and quantification of injury-related biomechanical responses for critical areas of the human body (*e.g.*, brain and vertebral injury with spinal cord involvement).

2. Define the human tolerance limits for injury, especially determining the differences in human tolerance by age, fitness level, and gender and the biomechanics and injury tolerances of tissue, bone, and other human structures as a prerequisite for developing interventions.

3. Identify the modifiable risk factors for and mechanisms of nonfatal neck, back and soft tissue ("whiplash-like") injuries.

F. Content

Letter of Intent (LOI)

A LOI is optional for this program. The program announcement title and number must appear in the LOI. The narrative should be no more than two single-spaced pages, printed on one side, with one-inch margins, and unreduced 12-point font. The letter should identify the name of the principal investigator, and briefly describe the scope and intent of the proposed research work. The letter of intent does not influence review or funding decisions, but the number of letters received will enable CDC to plan the review more effectively and efficiently.

Applications

The Program Announcement title and number must appear in the application. Use the information in the Program Requirements, Other Requirements, and

Evaluation Criteria sections to develop the application content. Your application will be evaluated on the criteria listed, so it is important to follow them in laying out your program plan. The narrative should be no more than 25 single-spaced pages, printed on one side, with one-inch margins, and unreduced 12-point font.

Applications should follow the PHS–398 (Rev. 5/2001) application and Errata sheet (See attachment 3 of this announcement as it is posted on the CDC web site). The narrative should include the following information:

1. The project's focus that justifies the research needs and describes the scientific basis for the research, the expected outcome, and the relevance of the findings to reduce injury morbidity, mortality, disability, and economic losses. This focus should be based on recommendations in "Healthy People 2010" and the "CDC Injury Research Agenda," and should seek creative approaches that will contribute to a national program for injury control.

2. Specific, measurable, and time-framed objectives.

3. A detailed plan describing the methods by which the objectives will be achieved, including their sequence. A comprehensive evaluation plan is an essential component of the application.

4. A description of the principal investigator's role and responsibilities.

5. A description of all the project staff regardless of their funding source. It should include their title, qualifications, experience, percentage of time each will devote to the project, as well as the portion of their salary to be paid by the grant.

6. A description of those activities related to, but not supported by the grant.

7. A description of the involvement of other entities that will relate to the proposed project, if applicable. It should include commitments of support and a clear statement of their roles.

8. A detailed first year's budget for the grant with future annual projections, if relevant.

9. An explanation of how the research findings will contribute to the national effort to reduce the morbidity, mortality and disability caused by injuries within three to five years from project start-up.

An applicant organization has the option of having specific salary and fringe benefit amounts for individuals omitted from the copies of the application which are made available to outside reviewing groups. To exercise this option: on the original and two copies of the application, the applicant must use asterisks to indicate those individuals for whom salaries and fringe benefits are not shown; however, the subtotals must still be shown. In addition, the applicant must submit an additional copy of page four of Form PHS–398, completed in full, with the asterisks replaced by the salaries and fringe benefits. This budget page will be reserved for internal staff use only.

F. Submission and Deadline

Letter of Intent (LOI) Submission

On or before March 10, 2003. Submit the LOI to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

Application Forms

Submit the signed original and two copies of PHS–398 (OMB Number 0925–0001). Forms are available at the following Internet address: *http://www.cdc.gov/od/pgo/forminfo.htm.*

If you do not have access to the Internet, or if you have difficulty accessing the forms on-line, you may contact the CDC Procurement and Grants Office Technical Information Management Section (PGO–TIM) at: 770–488–2700. Application forms can be mailed to you.

Submission Date, Time, and Address

The application must be received by 4 p.m. Eastern Standard Time, April 8, 2003. Submit the application to: Technical Information Management-PA#03028, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341–4146.

Applications may not be submitted electronically.

Deadline

Letters of intent and applications shall be considered as meeting the deadline if they are received before 4 p.m. Eastern Time on the deadline date. Applicants sending applications by the United States Postal Service or commercial delivery services must ensure that the carrier will be able to guarantee delivery of the application by the closing date and time. If an application is received after closing due to (1) carrier error, when the carrier accepted the package with a guarantee for delivery by the closing date and time, or (2) significant weather delays or natural disasters, CDC will upon receipt of proper documentation, consider the application as having been received by the deadline.

Any application which does not meet the above criteria will not be eligible for competition and will be discarded. The applicant will be notified of their failure to meet the submission requirements.

CDC Acknowledgment of Application Receipt

A postcard will be mailed by PGO–TIM, notifying you that CDC has received your application.

H. Evaluation Criteria

Applications will be reviewed by CDC staff for completeness and responsiveness as outlined under the "Eligible Applicants" Section (Items 1–5). Incomplete applications and applications that are not responsive will be returned to the applicant without further consideration. It is especially important that the applicant's abstract reflects the project's focus, because the abstract will be used to help determine the responsiveness of the application.

Applications which are complete and responsive may be subjected to a preliminary evaluation (streamline review) by a peer review committee, the Injury Research Grant Review Committee (IRGRC), to determine if the application is of sufficient technical and scientific merit to warrant further review by the IRGRC. CDC will withdraw from further consideration applications judged to be noncompetitive and promptly notify the principal investigator/program director and the official signing for the applicant organization. Those applications judged to be competitive will be further evaluated by a dual review process.

Competing supplemental grant awards may be made, when funds are available, to support research work or activities not previously approved by the IRGRC. Applications should be clearly labeled to denote their status as requesting supplemental funding support. These applications will be reviewed by the IRGRC and the secondary review group.

All awards will be determined by the Director of the NCIPC based on priority scores assigned to applications by the primary review committee IRGRC, recommendations by the secondary review committee of the Science and Program Review Subcommittee of the Advisory Committee for Injury Prevention and Control(ACIPC), consultation with NCIPC senior staff, and the availability of funds.

1. The primary review will be a peer review conducted by the IRGRC. All applications will be reviewed for scientific merit using current National Institutes of Health (NIH) and CDC criteria (a scoring system of 100–500 points) to evaluate the methods and scientific quality of the application. All categories are of equal importance, however, the application does not need to be strong in all categories to be

judged likely to have a major scientific impact. Factors to be considered will include:

a. *Significance.* Does this study address an important problem? If the aims of the application are achieved, how will scientific knowledge be advanced? What will be the effect of these studies on the concepts or methods that drive this field?

b. *Approach.* Are the conceptual framework, design, methods, and analyses adequately developed, well-integrated, and appropriate to the aims of the project? Does the applicant acknowledge potential problem areas and consider alternative tactics? Does the project include plans to measure progress toward achieving the stated objectives? Is there an appropriate work plan included?

c. *Innovation.* Does the project employ novel concepts, approaches or methods? Are the aims original and innovative? Does the project challenge or advance existing paradigms, or develop new methodologies or technologies?

d. *Investigator.* Is the principal investigator appropriately trained and well-suited to carry out this work? Is the proposed work appropriate to the experience level of the principal investigator and other significant investigator participants? Is there a prior history of conducting injury-related research?

e. *Environment.* Does the scientific environment in which the work will be done contribute to the probability of success? Does the proposed research take advantage of unique features of the scientific environment or employ useful collaborative arrangements? Is there evidence of institutional support? Is there an appropriate degree of commitment and cooperation of other interested parties as evidenced by letters detailing the nature and extent of the involvement?

f. *Ethical Issues.* What provisions have been made for the protection of human subjects and the safety of the research environments? How does the applicant plan to handle issues of confidentiality and compliance with mandated reporting requirements, *e.g.*, suspected child abuse? Does the application adequately address the requirements of 45 CFR 46 for the protection of human subjects? (An application can be disapproved if the research risks are sufficiently serious and protection against risks is so inadequate as to make the entire application unacceptable.) The degree to which the applicant has met the CDC Policy requirements regarding the inclusion of women, ethnic, and racial groups in the proposed research (See Attachment 1, AR–2).

This includes:

(1) The proposed plan for the inclusion of both sexes and racial and ethnic minority populations for appropriate representation.

(2) The proposed justification when representation is limited or absent.

(3) A statement as to whether the design of the study is adequate to measure differences when warranted.

(4) A statement as to whether the plans for recruitment and outreach for study participants include the process of establishing partnerships with community(ies) and recognition of mutual benefits.

g. *Study Samples.* Are the samples sufficiently rigorously defined to permit complete independent replication at another site? Have the referral sources been described, including the definitions and criteria? What plans have been made to include women and minorities and their subgroups as appropriate for the scientific goals of the research? How will the applicant deal with recruitment and retention of subjects?

h. *Dissemination.* What plans have been articulated for disseminating findings?

i. *Measures of Effectiveness.* The Peer Review Panel shall assure that measures set forth in the application are in accordance with CDC's performance plans. How adequately has the applicant addressed these measures?

The IRGRC will also examine the appropriateness of the proposed project budget and duration in relation to the proposed research and the availability of data required for the project.

2. The secondary review will be conducted by the Science and Program Review Subcommittee (SPRS) of the ACIPC. The ACIPC Federal agency experts will be invited to attend the secondary review and will receive modified briefing books (i.e., abstracts, strengths and weaknesses from summary statements, and project officer's briefing materials). ACIPC Federal agency experts will be encouraged to participate in deliberations when applications address overlapping areas of research interest, so that unwarranted duplication in federally-funded research can be avoided and special subject area expertise can be shared. The NCIPC Division Associate Directors for Science (ADS) or their designees will attend the secondary review in a similar capacity as the ACIPC Federal agency experts to assure that research priorities of the announcement are understood and to provide background regarding current research activities. Only SPRS members will vote on funding recommendations, and their recommendations will be carried to the entire ACIPC for voting by the ACIPC members in closed session. If any further review is needed by the ACIPC, regarding the recommendations of the SPRS, the factors considered will be the same as those considered by the SPRS.

The committee's responsibility is to develop funding recommendations for the NCIPC Director based on the results of the primary review, the relevance and balance of proposed research relative to the NCIPC programs and priorities, and to assure that unwarranted duplication of federally-funded research does not occur. The secondary review committee has the latitude to recommend to the NCIPC Director, to reach over better ranked proposals in order to assure maximal impact and balance of proposed research. The factors to be considered will include:

a. The results of the primary review including the application's priority score as the primary factor in the selection process.

b. The relevance and balance of proposed research relative to the NCIPC programs and priorities.

c. The significance of the proposed activities in relation to the priorities and objectives stated in "Healthy People 2010," the Institute of Medicine report, "Reducing the Burden of Injury," and the "CDC Injury Research Agenda."

d. Budgetary considerations.

I. Other Requirements

Technical Reporting Requirements

Provide CDC with an original plus two copies of:

1. *Annual progress report.* The progress report will include a data requirement that demonstrates measures of effectiveness.

2. A financial status report, no more than 90 days after the end of the budget period.

3. Final financial report and performance report, no more than 90 days after the end of the project period.

4. At the completion of the project, the grant recipient will submit a brief (2,500 to 4,000 words written in nonscientific [laymen's] terms) summary highlighting the findings and their implications for injury prevention programs, policies, environmental changes, etc. The grant recipient will also include a description of the dissemination plan for research findings. This plan will include publications in peer-reviewed journals and ways in which research findings will be made available to stakeholders

outside of academia, (*e.g.*, state injury prevention program staff, community groups, public health injury prevention practitioners, and others). CDC will place the summary report and each grant recipient's final report with the National Technical Information Service (NTIS) to further the agency's efforts to make the information more available and accessible to the public.

Send all reports to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

Additional Requirements

The following additional requirements are applicable to this program. For a complete description of each see Attachment 1 of this announcement as it appears on the CDC Web site.

AR–1 Human Subjects Certification
AR–2 Requirements for inclusion of Women and Racial and Ethnic Minorities in Research
AR–3 Animal Subjects Requirement
AR–9 Paperwork Reduction Requirements
AR–10 Smoke-Free Workplace Requirement
AR–11 Healthy People 2010
AR–12 Lobbying Restrictions
AR–13 Prohibition on Use of CDC funds for Certain Gun Control Activities
AR–21 Small, Minority, and Women-owned Business
AR–22 Research Integrity

Executive Order 12372 does not apply to this program.

J. Where To Obtain Additional Information

This and other CDC announcements, the necessary applications, and associated forms can be found on the CDC Web site, Internet address: *http://www.cdc.gov* Click on "Funding," then "Grants and Cooperative Agreements."

For general questions about this announcement, contact: Technical Information Management, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341–4146, Telephone: 770–488–2700.

For business management and budget assistance, contact: Steve Lester, Grants Management Specialist, Procurement and Grants Office, Centers for Disease Control and Prevention, 2920 Brandywine Road, Atlanta, GA 30341–4146, Telephone: (770) 488–1998, E-mail address: *svl3@cdc.gov*.

For program technical assistance, contact: Tom Voglesonger, Program Manager, Office of the Director, National Center for Injury Prevention and Control, Centers for Disease Control and Prevention (CDC), 4770 Buford Highway, NE, Mailstop K–02, Atlanta, GA 30341–3724, Telephone: (770) 488–4823, E-mail address: *TVoglesonger@cdc.gov*.

Dated: February 1, 2003.

Sandra R. Manning,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 03–3032 Filed 2–6–03; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 03027]

Grants for New Investigator Training Awards for Unintentional Injury, Violence Related Injury, Acute Care, Disability, and Rehabilitation-Related Research

Application Deadline: April 8, 2003.

A. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under section 301 (a) (42 U.S.C. 241(a)) of the Public Health Service Act, and section 391 (a) (42 U.S.C. 280b (a)) of the Public Service Health Act, as amended. The catalog of Federal Domestic Assistance number is 93.136.

B. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2003 funds for grants for new investigator training awards in four research areas: unintentional injury prevention, violence-related injury prevention, injury-related acute care and disability research, and injury-related biomechanics research. This program addresses the "Healthy People 2010" focus areas of Injury and Violence Prevention.

The purposes of this program are to:

1. Solicit research applications that address the priorities reflected under the "Program Requirements" section.

2. Encourage professionals from a wide spectrum of disciplines of engineering, epidemiology, medicine, biostatistics, public health, law and criminal justice, and behavioral, and social sciences to perform research in order to prevent and control injuries more effectively.

3. Support injury research by recent doctoral-level graduates or researchers who are redirecting their careers toward injury research.

4. Build the scientific base for the prevention and control of unintentional and violence-related injuries, disabilities, and deaths.

5. Encourage qualified applicants who are beginning or redirecting their career to focus on injury-related research. The career development objectives of this program are to encourage scientists to develop independent research skills and to gain experience in advanced methods and experimental approaches in injury-related research. This program is also intended to jump start the careers of researchers in injury prevention and control by providing support for pilot studies, enhancements to existing studies, or other studies that will serve as a foundation for a career in injury prevention and control. Applicants are required to seek mentoring or collaboration for their research with more senior-level injury researchers.

Measurable outcomes of the program will be in alignment with the performance goal for the National Center for Injury Prevention and Control (NCIPC): Develop new or improved approaches for preventing and controlling death and disability due to injuries.

Background and Significance

1. Unintentional Injury Prevention Research

For the purposes of this RFA, unintentional injuries are defined as unintentional damage to the body resulting from acute exposure to thermal, mechanical, electrical, or chemical energy or from the absence of such essentials as heat or oxygen. Unintentional injuries continue to be a major public health problem. In 1999, nearly 98,000 people died in the United States as a result of unintentional injuries. Someone dies in this country every six minutes from an injury that is within a category of injuries that includes: motor vehicle crashes, falls, poisonings, drowning, fires and burns, pedestrians struck by motor vehicles, bicycle crashes, or suffocation. In addition to deaths, injuries also constitute a significant cause of both permanent and temporary disability. In 2000, unintentional injuries resulted in nearly 30 million emergency department visits and millions more visits to physicians' offices. Although the greatest cost of injury is human pain and suffering, the financial costs also are staggering: over 200 billion dollars annually for medical care, wage and productivity losses and employer costs in 1998.

2. Violence Related Injury Prevention Research

Deaths and injuries associated with interpersonal violence and suicidal behavior are also a major public health problem in the U.S. and around the world. In 1999, over 46,000 people died from homicide and suicide in the U.S. Among 15 to 24 year olds, homicide and suicide ranked as the second and the third leading causes of death. Violent deaths are the most visible consequence of violent behavior in our society. Morbidity associated with physical and emotional injuries and disabilities resulting from violence, however, also constitute an enormous public health problem. For every homicide that occurs each year there are over 100 nonfatal injuries resulting from interpersonal violence. For every completed suicide it is estimated that there are 20 to 25 suicide attempts. The mortality and morbidity resulting from violence are associated with a variety of types of violence including child maltreatment, youth violence, intimate partner violence, sexual violence, elder abuse, and self-directed violence or suicidal behavior.

3. Injury Related Acute Care, Disability, and Rehabilitation

Each year, Americans make between 30 and 40 million emergency department (ED) visits for injuries. While most injured patients are treated and released, many are admitted to inpatient trauma units and later receive rehabilitative services. The most favorable outcomes are achieved when acute care and subsequent rehabilitation are as early as possible and focus on returning patients to baseline or to an optimal level of functioning. Trauma systems are designed to match trauma patients with the acute care and rehabilitative facilities they need, but in many parts of the U.S. trauma systems are not fully operational or are nonexistent. Also, as many as 30 to 40 percent of deaths among trauma patients are due to preventable problems in clinical care, including missed diagnoses and treatment delays.

Injuries are a major cause of disabilities in the U.S. Central nervous system injuries (those to the brain and spinal cord) are most likely to result in serious long-term disability. Each year, an estimated 80,000 Americans sustain a traumatic brain injury (TBI) that results in disability; an estimated 5.3 million Americans live with TBI-related disability. Although physical impairments from the injury may contribute to TBI disability, cognitive deficits are the hallmark, frequently resulting in secondary conditions such as depression and other adverse outcomes such as the inability to work. An estimated 177,000 to 200,000 people in the U.S. live with spinal cord injuries (SCI), and this number increases annually by as many as 20,000 individuals.

4. Biomechanics

The field of biomechanics quantifies the response and tolerance of the human body to impact (*e.g.*, motor vehicle collisions, playground falls, and child battering) and addresses the underlying mechanisms of injury, the forces deforming the body and the physiologic effects of injury to infants, children, adults and the aged population. Based on interdisciplinary research, the engineering factors are determined that deform the body and the medical consequences are quantified that affect vital functions. This knowledge is used to modify the design of protective systems to improve safety. Improved safety systems protect an individual from impact forces that can injure, and they can include protective equipment (cycling helmets) and environments (playground surfaces), occupant restraints (airbags and safety belts), and policies (rules to minimize spearing in football). Biomechanical knowledge can also be used to improve post-injury outcomes through physiologic models to address emergency medical treatments, pharmacologic interventions and rehabilitation to advance recovery.

An overview of the role of biomechanics in a national effort for injury control was included in the landmark NAS study "Injury in America: A Continuing Public Health Problem-Committee on Trauma Research" (Commission on Life Sciences, National Research Council and the Institute of Medicine, National Academy Press, Washington, DC, 1985). The role is described in more detail in a follow-on paper from the NAS study: Injury Biomechanics Research: An Essential Element in the Prevention of Trauma (Viano DC, King AI, Melvin JW, Weber K. Journal of Biomechanics, 22(5): 403–417, 1989).

This program attempts to build on the basic knowledge of biomechanics and encourage interdisciplinary intervention-oriented injury control research as supported in the "CDC Injury Research Agenda" (See Attachment 2 as posted on the CDC Web site).

C. Eligible Applicants

Applications may be submitted by public and private nonprofit and for profit organizations and by governments and their agencies; that is, universities and colleges (including but not limited to schools or departments of public health, medicine, nursing, criminal justice, bioengineering, or the behavioral or social sciences,) technical schools, research institutions, hospitals, other public and private nonprofit and for profit organizations, community-based organizations, faith-based organizations, State and local governments or their *bona fide* agents, including the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau, Federally recognized Indian tribal governments, Indian tribes, or Indian tribal organizations, and small, minority, and/or women-owned businesses.

Note: Title 2 of the United States Code section 1611 states that an organization described in section 501(c)(4) of the Internal Revenue Code that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant or loan.

Applicants must have a research or a health-professional doctorate-level degree from an accredited program and have demonstrated the capacity or potential for highly productive research in the period after the doctorate, commensurate with level of experience. Applicants must be within three years of having completed their doctoral or equivalent graduate work (including dissertation, where appropriate), or redirecting their research to injury-related research. Documentation of such redirection such as letters indicating recent substantive involvement in injury research or injury-related publications must be included in the application. Applicants who have been the principal investigator on a Public Health Service (PHS) injury-related research grant or who have had equivalent injury-related research support from an existing Injury Control Research Center (ICRC) are not eligible. Exceptions are researchers who have redirected their research areas from one area of injury research, *e.g.*, acute care or biomechanics, to another area, *e.g.*, violence prevention research. Recipients of dissertation research grants or National Institutes of Health (NIH) Small Grant Awards are eligible to apply.

Applications that are incomplete or non-responsive to the following requirements will be returned to the applicant without further consideration:

1. A principal investigator who has specific authority and responsibility to carry out the proposed project.

2. Effective and well-defined working relationships within the performing organization and with outside entities, which will ensure implementation of the proposed activities.

3. The ability to carry out injury control research projects as defined under Attachment 2 (1. a–c) as posted on the CDC website.

4. The overall match between the applicant's proposed theme and research objectives and the program priorities as described under the heading, "Program Requirements".

5. Mentorship as noted in the letter of support and commitment of mentor's time.

D. Funding

Availability of Funds

Approximately $400,000 is available in FY 2003 to fund approximately four awards. It is expected that the award will begin on or about September 1, 2003, and will be made for a 12-month project period. Grants will be awarded for 12 months, but may be extended without additional funds for up to a total of 24 months. The maximum funding level for each project will not exceed $100,000 (direct and indirect costs) per year. Funding estimates may change.

Applications that exceed the funding caps noted above will be excluded from the competition and returned to the applicant. The availability of federal funding may vary and is subject to change.

Note: Grant funds will not be made available to support the provision of direct care. Eligible applicants may enter into contracts, including consortia agreements, as necessary to meet the requirements of the program and strengthen the overall application.

Use of Funds

The use of funds for applicant include, partial salary and tuition support; direct research project expenses, such as trainee stipends, interviewer costs, data processing, participant incentives, statistical consultation services, and supplies; and travel to one scientific meeting, if adequately justified. Applicants should also include travel costs for one, two-day trip to CDC in Atlanta to present research findings. Funds for tuition support are limited to no more than 20 percent of the overall award and their use must be generally related to the content and methods of the proposed research. Indirect cost for these trainee-related activities are limited to eight percent.

Recipient Financial Participation

Matching funds are not required for this program.

E. Program Requirements

Applicants are encouraged to propose studies that can feasibly be completed within the available funds and funding period.

Research Objectives

For the purpose of this Program Announcement, highest consideration will be given to research that addresses one of the following research areas and subtopics:

Violence

1. Evaluation of strategies for disseminating and implementing evidence-based interventions or policies for the prevention of intimate partner violence, sexual violence (includes both sexual violence against adults and child sexual abuse), child maltreatment, youth violence or suicidal behavior.

2. Evaluation of the efficacy, effectiveness, and cost effectiveness of interventions, programs, and policies to prevent intimate partner violence, sexual violence, child maltreatment, youth violence or suicidal behavior.

3. Identification of shared and unique risk and protective factors for the perpetration of intimate partner violence, sexual violence, child maltreatment, youth violence or suicidal behavior, and examine the relationships among these forms of violence.

Unintentional Injury

1. Development of strategies that encourage practitioners and policy makers to adopt science-based programs, policies, laws, and regulations that reduce unintentional injuries.

2. Identification of modifiable behavioral responses to a residential fire and evaluating the effectiveness of evacuation strategies in fire emergencies and mass trauma events.

3. Among children, determination of the immediate causes of the most severe and disabling types of falls, or evaluating interventions that prevent serious falls in children.

4. Development of interventions that utilize applied behavioral analysis, behavioral safety, or other behavior modification strategies to change injury risk behaviors in non-occupational settings.

5. Development and implementation of interventions to increase motor vehicle safety in older adult drivers.

6. Evaluation of the effectiveness of implementing new innovative strategies to reduce alcohol-impaired driving.

7. Evaluation of the effectiveness of environmental, engineering or behavioral interventions to prevent pedestrian injury.

8. Methodological research to better define and measure aspects of supervision and its relative effectiveness in preventing injuries

Acute Care, Disability, and Rehabilitation

1. Development and evaluation of protocols that provide onsite interventions in acute care settings or linkages to off-site services for patients at risk of injury or psychosocial problems following injury.

2. Development and application of methods that can be used to calculate population-based estimates of the incidence, costs, and long-term consequences of spinal cord injury (SCI) and nonhospitalized traumatic brain injury (TBI). Identification of methods and strategies to ensure that people with TBI and SCI receive needed services.

Biomechanics

1. Use of biomechanics research and the knowledge of injury tolerance and injury mechanisms for the development and evaluation of interventions that address the following specific injury prevention and control problems:

a. Falls among older, community dwelling adults (*e.g.*, hip pads).

b. Injuries in mass trauma events.

c. Severe and disabling falls among children.

d. Sports, recreation, and exercise related injuries (*e.g.*, playground and other play environments, safety gear).

e. Injuries associated with people initiating or increasing physical activity (*e.g.*, training programs or protective devices).

f. Injuries related to outdoor recreation (*e.g.*, vehicle design).

g. Motorcycling, bicycling and pedestrian injuries (*e.g.*, vehicle design).

h. Injuries to child occupants of motor vehicles (*e.g.*, universal fasteners and alternative restraint designs).

i. Injuries to older drivers.

j. Injuries associated with the effects of emerging vehicle technologies.

2. Development of more basic biomechanical information that is needed to identify biomechanics and specific injuries that would be highly predictive of diagnoses of intimate partner violence and child maltreatment and improve case definitions.

3. Advancement of the biomechanical understanding of traumatic injury (*e.g.*, injuries to the brain, spinal cord, thorax/

abdomen, extremities and joints) including the development of biofidelic models to elucidate injury physiology as well as pharmacologic, surgical, rehabilitation, and other interventions; improvement of injury assessment technology; impact injury mechanisms research; and quantification of injury-related biomechanical responses for critical areas of the human body (*e.g.*, brain and vertebral injury with spinal cord involvement).

4. Definition of the human tolerance limits for injury, especially determining the differences in human tolerance by age, fitness level, and gender and the biomechanics and injury tolerances of tissue, bone, and other human structures as a prerequisite for developing interventions.

5. Identification of the modifiable risk factors for and mechanisms of nonfatal neck, back, and soft tissue (whiplash-like) injuries.

Other Special Conditions for New Investigator Research Grants

1. The applicant must be the designated principal investigator. The principal investigator must be responsible for planning, directing, and executing the proposed project. The applicant must include a signed letter indicating that he or she personally wrote the application.

2. The applicant must specify which of four areas the proposal addresses: (a) Unintentional injury; (b) violence-related injury research; (c) injury-related acute care, disability, and rehabilitation; or (d) biomechanics.

3. The applicant must provide measures of effectiveness that will demonstrate the accomplishment of the various identified objectives of the grant. Measures must be objective/quantitative and must measure the intended outcome. These measures of effectiveness must be submitted with the application and will be an element of the application evaluation.

4. The grant may not be transferred to another institution, except under unusual and compelling circumstances (such as if the mentor moves to a new institution and both the mentor and the applicant wish to move together).

5. Any publications directly resulting from the grant should be reported to the responsible CDC program official. The grantee also must cite receiving support from HHS/CDC/NCIPC in any publications directly resulting from the new investigator grant.

F. Content

Letter of Intent (LOI)

The LOI is optional for this program. The narrative should be no more than single-spaced pages, printed on one side, with one-inch margins, and unreduced 12-point font. Your letter should identify the announcement number, the name of the principal investigator, and briefly describe the scope and intent of the proposed research work. The letter of intent does not influence review or funding decisions, but the number of letters received will enable CDC to plan the application review more effectively and efficiently.

Applications

The Program Announcement title and number must appear in the application. Use the information in the Program Requirements, Other Requirements, and Evaluation Criteria sections to develop the application content. Your application will be evaluated on the criteria listed, so it is important to follow them in laying out your program plan. The narrative should be no more than 25 single-spaced pages, printed on one side, with one-inch margins, and unreduced 12-point font.

Applications should follow the PHS–398 (Rev. 5/2001) application and Errata sheet, and the narrative should include the following information:

1. The project's focus that justifies the research needs and describes the scientific basis for the research, the expected outcome, and the relevance of the findings to reduce injury morbidity, mortality, disability, and economic losses. This focus should be based on recommendations in "Healthy People 2010" and the "CDC Injury Research Agenda" and should seek creative approaches that will contribute to a national program for injury control.

2. Specific, measurable, and time-framed objectives.

3. A detailed plan, which describes the methods by which the objectives will be achieved, including their sequence. A comprehensive evaluation plan is an essential component of the application.

4. A description of the roles and responsibilities of the principal investigator and mentor, where appropriate.

5. A description of all project staff regardless of their funding source. It should include their title, qualifications, experience, percentage of time each will devote to the project, as well as that portion of their salary to be paid by the grant.

6. A description of those activities related to, but not supported by the grant.

7. A description of the involvement of other entities that will relate to the proposed project, if applicable. It should include letters of organizational commitments of support and a clear statement of their roles.

8. A detailed budget for the grant.

9. An explanation of how the research findings will contribute to the national effort to reduce the morbidity, mortality and disability caused by injuries.

10. An evaluation plan for the project, including quantifiable measures of effectiveness.

Additional Materials Required

In addition to the completed PHS 398 application form, the applicant must also submit the following materials, attached to the application as appendices:

1. An official transcript of the applicant's graduate school record, if within the last three years.

2. When relevant, documentation showing the researcher has redirected his or her career within the last three years.

3. A justification for any proposed tuition support.

4. An overview of the applicant's prior research training and experience as well as a statement of the applicant's short-term and long-term research and career goals and intended career trajectory.

5. A letter from the applicant's mentor or scientific collaborator that outlines the proposed plan for providing scientific advice and consultation to the applicant during the grant period and a biography of the mentor or senior-level collaborator, limited to two pages (Use the Biographical Sketch page in application form PHS 398.)

G. Submission and Deadline

Letter of Intent (LOI) Submission

On or before March 4, 2003, submit the LOI to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

Application Forms

Submit the original and two copies of PHS–398 (OMB Number 0925–0001). Forms are available at the following Internet address: *www.cdc.gov/od/pgo/forminfo.htm*.

If you do not have access to the Internet, or if you have difficulty accessing the forms on-line, you may contact the CDC Procurement and Grants Office Technical Information Management Section (PGO–TIM) at 770–488–2700, and forms can be mailed to you.

Submission Date, Time, and Address

The application must be received by 4 p.m. eastern time, April 8, 2003.

Submit the application to: Technical Information Management—PA 03027, Procurement and Grants Office, Centers for Disease Control Prevention, 2920 Brandywine Rd, Room 3000, Atlanta, GA 30341–4146.

Applications may not be submitted electronically.

CDC Acknowledgement of Application Receipt

A postcard will be mailed by PGO–TIM, notifying you that CDC has received your application.

Deadline

Letters of intent and applications shall be considered as meeting the deadline if they are received before 4 p.m. eastern time on the deadline date. Any applicant who sends their application by the United States Postal Service or commercial delivery services must ensure that the carrier will be able to guarantee delivery of the application by the closing date and time. If an application is received after closing due to (1) carrier error, when the carrier accepted the package with a guarantee for delivery by the closing date and time, or (2) significant weather delays or natural disasters, CDC will upon receipt of proper documentation, consider the application as having been received by the deadline.

Any application that does not meet the above criteria will not be eligible for competition and will be discarded. Applicants will be notified of their failure to meet the submission requirements.

H. Evaluation Criteria

Application

Upon receipt, applications will be reviewed by CDC staff for completeness, responsiveness, and eligibility as outlined under the "Eligible Applicants" section. Incomplete applications and applications that are not responsive will be returned to the applicant without further consideration.

It is especially important that the applicant's abstract reflects the project's focus, because the abstract will be used to help determine the responsiveness of the application.

Applications which are complete and responsive may be subjected to a preliminary evaluation (streamline review) by a peer review committee, the Injury Research Grant Review Committee (IRGRC), to determine if the application is of sufficient technical and scientific merit to warrant further review by the IRGRC; CDC will withdraw from further consideration applications judged to be noncompetitive and promptly notify the principal investigator/program director and the official signing for the applicant organization. Those applications judged to be competitive will be further evaluated by a dual review process.

All awards will be determined by the Director of the NCIPC based on priority scores assigned to applications by the IRGRC, recommendations by the secondary review committee, *e.g.*, NCIPC's Advisory Committee for Injury Prevention and Control (ACIPC), consultation with NCIPC senior staff, and the availability of funds.

1. The primary review will be a peer review conducted by the IRGRC. A committee consisting of no less than three reviewers with appropriate expertise using current NIH criteria (a scoring system of 100–500 points) will evaluate the methods and scientific quality of the application. All categories are of equal importance, however, the application does not need to be strong in all categories to be judged likely to have a major scientific impact.

Factors to be considered will include:

a. *Significance*—Does this study address an important problem? If the aims of the application are achieved, how will scientific knowledge be advanced? What will be the effect of these studies on the concepts or methods that drive this field?

b. *Approach*—Are the conceptual framework; design, methods, and analyses adequately developed, well integrated, and appropriate to the aims of the project and the resources available? Does the applicant acknowledge potential problem areas and consider alternative tactics? Does the project include plans to measure progress toward achieving the stated objectives? Is there an appropriate work plan included?

c. *Innovation*—Does the project employ novel concepts, approaches or methods? Are the aims original and innovative? Does the project challenge or advance existing paradigms, or develop new methodologies or technologies?

d. *Investigator*—Is the principal investigator appropriately trained and well suited to carry out this work? Is the proposed work appropriate to the experience level of the principal investigator? Is the name and role of a scientific mentor or collaborator described?

e. *Environment*—Does the scientific environment in which the work will be done contribute to the probability of success? Is there evidence of institutional support? Is there an appropriate degree of commitment and cooperation of other interested parties as evidenced by letters detailing the nature and extent of the involvement?

f. *Ethical Issues*. What provisions have been made for the protection of human subjects and the safety of the research environments? Where relevant, how does the applicant plan to handle issues of confidentiality and compliance with mandated reporting requirements, *e.g.*, suspected child abuse? Does the application adequately address the requirements of 45 CFR part 46 for the protection of human subjects? (An application can be disapproved if the research risks are sufficiently serious and protection against risks is so inadequate as to make the entire application unacceptable.) The degree to which the applicant has met the CDC Policy requirements regarding the inclusion of women, ethnic, and racial groups in the proposed research (*see* Attachment 1, AR–2). This includes:

(1) The proposed plan for the inclusion of both sexes and racial and ethnic minority populations for appropriate representation.

(2) The proposed justification when representation is limited or absent.

(3) A statement as to whether the design of the study is adequate to measure differences when warranted.

(4) A statement as to whether the plans for recruitment and outreach for study participants include the process of establishing partnerships with community(ies) and recognition of mutual benefits.

g. *Study Samples*. Are the samples sufficiently rigorously defined to permit complete independent replication at another site? Have the referral sources been described, including the definitions and criteria? What plans have been made to include women and minorities, and their subgroups as appropriate for the scientific goals of the research? How will the applicant deal with recruitment and retention of subjects?

h. *Dissemination*. What plans have been articulated for disseminating findings?

i. *Measures of Effectiveness*. The Peer Review Panel shall assure that measures set forth in the application are in accordance with CDC's performance plans. How adequately has the applicant addressed these measures?

The IRGRC will also examine the appropriateness of the proposed project budget and duration in relation to the proposed research and the availability of data required for the project.

2. The secondary review will be conducted by the Science and Program Review Subcommittee (SPRS) of the ACIPC. The ACIPC Federal agency experts will be invited to attend the

secondary review, and will receive modified briefing books (*i.e.*, abstracts, strengths and weaknesses from summary statements, and project officer's briefing materials). ACIPC Federal agency experts will be encouraged to participate in deliberations when applications address overlapping areas of research interest, so that unwarranted duplication in federally funded research can be avoided and special subject area expertise can be shared. The NCIPC Division Associate Directors for Science (ADS) or their designees will attend the secondary review in a similar capacity as the ACIPC Federal agency experts to assure that research priorities of the announcement are understood and to provide background regarding current research activities. Only SPRS members will vote on funding recommendations, and their recommendations will be carried to the entire ACIPC for voting by the ACIPC members in closed session. If any further review is needed by the ACIPC, regarding the recommendations of the SPRS, the factors considered will be the same as those considered by the SPRS.

The committee's responsibility is to develop funding recommendations for the NCIPC Director based on the results of the primary review, the relevance and balance of proposed research relative to the NCIPC programs and priorities, and to assure that unwarranted duplication of federally funded research does not occur. The secondary review committee has the latitude to recommend to the NCIPC Director, to reach over better-ranked proposals in order to assure maximal impact and balance of proposed research. The factors to be considered will include:

a. The results of the primary review including the application's priority score as the primary factor in the selection process.

b. The relevance and balance of proposed research relative to the NCIPC programs and priorities.

c. The significance of the proposed activities in relation to the priorities and objectives stated in "Healthy People 2010," the Institute of Medicine report, "Reducing the Burden of Injury," and the "CDC Injury Research Agenda'.

I. Other Requirements

Technical Reporting Requirements

Provide CDC with an original plus two copies of:

1. Annual progress report (The progress report will include a data requirement that demonstrates measures of effectiveness).

2. A financial status report, no more than 90 days after the end of the budget period.

3. A final financial report and performance report, no more than 90 days after the end of the project period.

4. At the completion of the project, the grant recipient will submit a brief (2,500 to 4,000 words written in non-scientific (laymen's) terms) summary highlighting the findings and their implications for injury prevention programs, policies, environmental changes, *etc.* The grant recipient will also include a description of the dissemination plan for research findings. This plan will include publications in peer-reviewed journals and ways in which research findings will be made available to stakeholders outside of academia, (*e.g.*, state injury prevention program staff, community groups, public health injury prevention practitioners, and others). CDC will place the summary report and each grant recipient's final report with the National Technical Information Service (NTIS) to further the agency's efforts to make the information more available and accessible to the public.

Send all reports to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

Additional Requirements

The following additional requirements are applicable to this program. For a complete description of each, see Attachment 1 of the program announcement as posted on the CDC web site.

AR–1 Human Subjects Certification
AR–2 Requirements for inclusion of Women and Racial and Ethnic Minorities in Research
AR–3 Animal Subjects Requirement
AR–9 Paperwork Reduction Requirements
AR–10 Smoke-Free Workplace Requirement
AR–11 Healthy People 2010
AR–12 Lobbying Restrictions
AR–13 Prohibition on Use of CDC funds for Certain Gun Control Activities
AR–21 Small, Minority, and Women-owned Business
AR–22 Research Integrity

Executive Order 12372 does not apply to this program.

J. Where To Obtain Additional Information

This and other CDC announcements, the necessary applications, and associated forms can be found on the CDC web site, Internet address: *http://www.cdc.gov.*

Click on "Funding," then "Grants and Cooperative Agreements."

For general questions about this announcement, contact: Technical Information Management, CDC Procurement and Grants Office, 2920 Brandywine Rd, Atlanta, GA 30341–4146. Telephone: 770–488–2700.

For business management and budget assistance, contact: Richard Jenkins, Grants Management Specialist, Procurement and Grants Office, Centers for Disease Control and Prevention, 2920 Brandywine Road, Atlanta, GA 30341–4146. Telephone: 770–488–2604. E-mail address: *rbj3@cdc.gov.*

For program technical assistance, contact: Tom Voglesonger, Program Manager, Office of the Director, National Center for Injury Prevention and Control, Centers for Disease Control and Prevention (CDC), 4770 Buford Highway, NE., Mailstop K–02, Atlanta, GA 30341–3724. Telephone: 770–488–4823. Internet address: *TVoglesonger@cdc.gov.*

Dated: February 1, 2003.

Sandra R. Manning,

CGFM, Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 03–3027 Filed 2–6–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Draft Recommended Infection Control Practices for Dentistry, 2003

AGENCY: Centers for Disease Control and Prevention (CDC), and Department of Health and Human Services (DHHS).

ACTION: Notice of availability and request for public comment.

SUMMARY: This notice is a request for review of and comment on the Draft Recommended Infection Control Practices for Dentistry, 2003 available on the CDC Web site at *http://www.cdc.gov/OralHealth/infection_control/guidelines/comments.htm.* The guideline has been developed for practitioners who provide care for patients and who are responsible for monitoring and preventing infections and occupational health and safety in dental healthcare settings. The guideline is intended to replace Recommended Infection-Control Practices for Dentistry, 1993.

DATES: Comments on the Draft Recommended Infection Control Practices for Dentistry, 2003 must be received in writing (mail, e-mail, fax) on or before March 14, 2003.

FOR FURTHER INFORMATION CONTACT: If you can not access the internet, requests for a written copy can be submitted to: CDC, NCCDPHP, Division of Oral Health, Attention: Infection Control Guideline, 4770 Buford Highway, Mailstop F–10, Atlanta, GA 30341; via fax: 770–488–6080; or via email: denticrecom@cdc.gov.

ADDRESSES: Comments on the Draft Recommended Infection Control Practices for Dentistry, 2003 should be sent to the CDC, NCCDPHP, Division of Oral Health, Attention: Infection Control Guideline, 4770 Buford Highway, Mailstop F–10, Atlanta, GA 30341; or via fax: 770–488–6080; or via email: *denticrecom@cdc.gov;* or Internet: *http://www.cdc.gov/OralHealth/infection_control/guidelines/comments.htm.*

SUPPLEMENTARY INFORMATION: The two-part Draft Recommended Infection Control Practices for Dentistry, 2003 consolidates recommendations for the prevention and control of infectious diseases and the management of occupational health and safety issues related to infection control in dental settings. The guideline is intended to assist dental health-care personnel in preventing occupational exposures to bloodborne pathogens, the control of infections associated with contaminated medical devices or surgical instruments, and prevention of occupationally acquired infections and other related safety and health issues. Part I provides a review of the scientific data regarding dental infection control issues pertaining to an employee health program, personal protective equipment, preventing exposures to bloodborne pathogens, hand hygiene, sterilization or disinfection of patient-care items, the office environment, dental unit waterlines and water quality, special dental equipment and procedures, and program evaluation. Part II contains the consensus evidence-based recommendations by the CDC Division of Oral Health, the National Center for Infectious Diseases, the National Center for HIV, STD, and TB Prevention, and a national panel of experts in dental infection control.

Dated: January 31, 2003.

James D. Seligman,

Associate Director for Program Services, Centers for Disease Control and Prevention.

[FR Doc. 03–3026 Filed 2–6–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare and Medicaid Services

[Document Identifiers: CMS–R–289, CMS–10082, CMS 1763, and CMS–4040 and 4040–SP]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare and Medicaid Services.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare and Medicaid Services (CMS) (formerly known as the Health Care Financing Administration (HCFA)), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

(1) *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Medicare Lifestyle Modification Program Demonstration and Addendum; *Form No.:* CMS–R–289 (OMB# 0938–0777); *Use:* This demonstration focuses on Medicare sponsored, lifestyle modification programs designed to reverse, reduce, or ameliorate the progression of cardiovascular disease (CAD) of Medicare beneficiaries at risk for invasive treatment procedures. This demonstration tests the feasibility and cost effectiveness of providing payment for cardiovascular lifestyle modification program services to Medicare beneficiaries; *Frequency:* On occasion; Weekly, Monthly, Quarterly; *Affected Public:* Individuals or Households, and Not-for-profit Institutions; *Number of Respondents:* 44; *Total Annual Responses:* 17,996; *Total Annual Hours:* 2,999.

(2) *Type of Information Collection Request:* New collection; *Title of Information Collection:* Survey of States Performance Measurement Reporting Capability; *Form No.:* CMS–10082 (OMB# 0938–NEW); *Use:* Because of the wide variability of Medicaid and SCHIP financing and service delivery approaches, there is little common ground from which to develop uniform reporting on performance measures by states. While CMS has decided on the first seven measures to be used, the ability of states to calculate those measures using HEDIS directly or HEDIS specifications (*e.g.*, when calculating measures from fee-for-service claims data) is highly variable. Current efforts are focused on assessing the capability of each state to report on the selected measures and on helping states to make necessary adjustments in order to be able to report measures uniformly so that state-to-state comparisons can be made. To accomplish this, states will be requested to report available numerator and denominator data for the seven core HEDIS measures via a survey instrument created for this purpose. The data will be requested for each state's Medicaid and SCHIP programs by delivery system; *Frequency:* Once; *Affected Public:* State, local, and tribal government; *Number of Respondents:* 51; *Total Annual Responses:* 51; *Total Annual Hours:* 2,360.

(3) *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Request for Termination of Premium+Hospital and/or Supplementary Medical Insurance; *Form No.:* CMS–1763 (OMB# 0938–0025); *Use:* The CMS–1763 is used by beneficiaries to request voluntary termination from Premium Hospital Insurance (premium-HI) and/or Supplementary Medicare Insurance (SMI); *Frequency:* One time only; *Affected Public:* Individuals or Households, Federal Government, State, local, and tribal government; *Number of Respondents:* 14,000; *Total Annual Responses:* 14,000; *Total Annual Hours:* 5,833.

(4) *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Request for Enrollment in Supplemental Medicare Insurance and Supporting Regulations in 42 CR 407.10 and 401.11; *Form No.:* CMS–4040 and 4040–SP (OMB# 0938–0245); *Use:* The CMS 4040 is used to establish entitlement to Supplemental Medical Insurance (Part B) by beneficiaries not eligible under Part A of the Title XVIII or Title II of the Social Security Act. The CMS–4040SP is also included in this renewal; *Frequency:* One time only; *Affected Public:*

Individuals or Households, Federal Government, State, local, and tribal government; *Number of Respondents:* 10,000; *Total Annual Responses:* 10,000; *Total Annual Hours:* 2,500.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS's Web Site address at *http://cms.hhs.gov/regulations/pra/default.asp,* or E-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@hcfa.gov,* or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the CMS Paperwork Clearance Officer designated at the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development and Issuances, *Attention:* Dawn Willinghan, *Room:* C5–14–03, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: January 30, 2003.

John P. Burke, III,

CMS Reports Clearance Officer, Office of Strategic Operations and Strategic Affairs, Division of Regulations Development and Issuances.

[FR Doc. 03–2999 Filed 2–6–03; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Advisory Committees; Tentative Schedule of Meetings for 2003; Amendment of Notice

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is amending the notice announcing the tentative schedule of public advisory committee meetings for 2003. This notice appeared in the **Federal Register** of December 19, 2002 (67 FR 77793 through 77796).

FOR FURTHER INFORMATION CONTACT: Theresa Green, Advisory Committee Oversight and Management Staff (HF–4), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1220.

SUPPLEMENTARY INFORMATION: The following list revises FDA's tentatively scheduled advisory committee meetings for 2003. You may also obtain up-to-date meeting information by calling the Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area):

Committee Name	Dates of Meetings	Advisory Committee 5-Digit Information Line Code
OFFICE OF THE COMMISSIONER		
Science Board to the Food and Drug Administration	April 9, November 6	12603
CENTER FOR BIOLOGICS EVALUATION AND RESEARCH		
Allergenic Products Advisory Committee	April 8, November 18	12388
Biological Response Modifiers Advisory Committee	February 27–28, June 9–10, October 9–10	12389
Blood Products Advisory Committee	March 13–14, June 19–20, September 18–19, December 11–12	19516
Transmissible Spongiform Encephalopathies Advisory Committee	February 20, July 17–18, October 30–31	12932
Vaccines and Related Biological Products Advisory Committee	February 20, May 8–9, September 22–23, November 19–20	12391
CENTER FOR DRUG EVALUATION AND RESEARCH		
Advisory Committee for Pharmaceutical Science	March 12–13, March 21, April 22–23, September 17, October 21–23	12539
Advisory Committee for Reproductive Health Drugs	August 18–19, November 13–14	12537
Anesthetic and Life Support Drugs Advisory Committee	June 26–27, December 11–12	12529
Anti-Infective Drugs Advisory Committee	March 4–5–6, June 10–11, October 15–16	12530
Antiviral Drugs Advisory Committee	April 29–30, September 19	12531
Arthritis Advisory Committee	September 5	12532
Cardiovascular and Renal Drugs Advisory Committee	May 29–30, September 15–16, December 11–12	12533
Dermatologic and Ophthalmic Drugs Advisory Committee	March 6–7, April 15–16, July 17–18, September 10–11	12534
Drug Safety and Risk Management Advisory Committee	April 24–25, September 18–19	12535
Endocrinologic and Metabolic Drugs Advisory Committee	June 12–13, September 11–12	12536

Committee Name	Dates of Meetings	Advisory Committee 5-Digit Information Line Code
Gastrointestinal Drugs Advisory Committee	March 6, July 17	12538
Nonprescription Drugs Advisory Committee	June 12–13, September 16–17	12541
Oncologic Drugs Advisory Committee	March 3–4, March 12–13, June 10–11	12542
Peripheral and Central Nervous System Drugs Advisory Committee	July 18	12543
Psychopharmacologic Drugs Advisory Committee	September 4–5	12544
Pulmonary-Allergy Drugs Advisory Committee	May 15–16, November 6–7	12545
CENTER FOR FOOD SAFETY AND APPLIED NUTRITION		
Food Advisory Committee	February 24–26, August 18–20	10564
Biotechnology Sub-Committee	March 24–25, October 15–16	10564
Dietary Supplements Sub-Committee	March 27–28, September 22–23	10564
Contaminants and Natural Toxicants Sub-Committee	March 6–7, September 4–5	10564
Nutrition Sub-Committee	April 28–29, November 3–4	10564
Food Additives Sub-Committee	June 19–20	10564
CENTER FOR DEVICES AND RADIOLOGICAL HEALTH		
Device Good Manufacturing Practice Advisory Committee	No meetings planned	12398
Medical Devices Advisory Committee		
Anesthesiology and Respiratory Therapy Devices Panel	May 7–8, September 4–5, November 10–11	12624
Circulatory System Devices Panel	March 6, April 24–25, June 26–27, August 28–29, October 23–24, December 11–12	12625
Clinical Chemistry and Clinical Toxicology Devices Panel	May 19, September 8–9, December 11–12	12514
Dental Products Panel	May 22–23, August 7–8, October 9–10	12518
Ear, Nose, and Throat Devices Panel	April 8–9, June 2–3, August 4–5, October 9–10, December 4–5	12522
Gastroenterology and Urology Devices Panel	January 17, April 4, July 25, October 17	12523
General and Plastic Surgery Devices Panel	February 27, April 10–11, July 23–24, October 23–24	12519
General Hospital and Personal Use Devices Panel	May 15–16, August 18–19, November 20–21	12520
Hematology and Pathology Devices Panel	June 20, October 3	12515
Immunology Devices Panel	March 17–18, June 9–10, September 15–16	12516
Medical Devices Dispute Resolution Panel	No meetings planned	10232
Microbiology Devices Panel	March 27–28, May 5–6, August 7–8, October 16–17	12517
Molecular and Clinical Genetics Panel	April 24–25, July 17–18, November 13–14	10231
Neurological Devices Panel	June 23–24, September 18–19, December 8–9	12513
Obstetrics and Gynecology Devices Panel	June 9–10, September 8–9, November 3–4	12524
Ophthalmic Devices Panel	May 22–23, July 10–11, September 11–12, November 6–7	12396
Orthopedic and Rehabilitation Devices Panel	May 29–30, August 27–28, November 20–21	12521
Radiological Devices Panel	May 20, August 12, November 18	12526

Committee Name	Dates of Meetings	Advisory Committee 5-Digit Information Line Code
National Mammography Quality Assurance Advisory Committee	April 28, September 8–9	12397
Technical Electronic Product Radiation Safety Standards Committee	June 18	12399
CENTER FOR VETERINARY MEDICINE		
Veterinary Medicine Advisory Committee	May 15, September 15	12548
NATIONAL CENTER FOR TOXICOLOGICAL RESEARCH		
Advisory Committee on Special Studies Relating to the Possible Long-Term Health Effects of Phenoxy Herbicides and Contaminants	March 12–13–14, June 23–25	12560
Science Advisory Board to the National Center for Toxicological Research	June 3–5	12559

Dated: January 29, 2003.

Linda Arey Skladany,

Associate Commissioner for External Relations.

[FR Doc. 03–3076 Filed 2–6–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed Collection; Comment Request; Assessment for NIH Minority Research/Training Programs: Phase 3

SUMMARY: In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, for opportunity for public comment on proposed data collection projects, the National Research Council, on behalf of the National Institutes of Health (NIH) will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

Proposed Collection

Title: Assessment for NIH Minority Research/Training Programs: Phase 3. *Type of Information Collection Request:* NEW. *Need and Use of Information Collection:* The goal of this study is to assess and analyze NIH minority trainee educational and career outcomes to determine which programs and which features of programs have been most successful in helping individual students and faculty members move toward productive careers as research scientists. The primary objectives of the study are to determine how well NIH minority research/training programs are working and what additional factors contribute to minority trainee success, including characteristics of individual participants and the academic institutions where they received NIH research/training support and/or obtained their terminal degree.

In addition to conducting an assessment and analysis of the programs based upon information in existing NIH databases, current and former NIH trainees will be asked to participate in a voluntary telephone interview in which they will be asked to comment on aspects of their research training experience. Trainees asked to participate in the survey will include individuals who received research training in underrepresented minority-targeted programs and non-targeted programs, and who received support at academic levels ranging from their undergraduate years to the faculty level. This data collection will involve the use of computer-assisted telephone interviewing (CATI) software.

Program administrators at training grant recipient institutions will be interviewed by telephone to obtain their perspectives on the training programs. The results of the program administrator interviews will help NIH determine (1) The ways and extent to which NIH minority research/training programs work; (2) which features of minority programs have been the most successful in helping individual students and faculty members move forward toward productive careers as research scientists; (3) what programmatic, environmental, or other factors increase the likelihood of minority training programs and their participating trainees achieving success; and (4) how to better assess NIH minority training programs in the future. These interviews will provide a depth and quality of data that are not available through database query alone.

Frequency of response: one-time. *Affected Public:* Individuals. *Type of Respondent:* Individuals who have participated in NIH minority training programs. *Estimated Number of Respondents:* 1,200; *Estimated Number of Responses per Respondent:* 1; *Average Burden Hours Per Response:* .5; and *Estimated Total Annual Burden Hours Requested:* 600. There are no Capital Costs to report. There are no Operating or Maintenance Costs to report.

Request for Comments: Written comments and/or suggestions from the public and affected agencies should address one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact: Dr. Joan Esnayra, Program Officer, Board on Higher Education and the Workforce, National Research Council National Academies, 2101 Constitution Ave. NW., Washington, DC 20418, or call non-toll-

free number (202) 334–2539, or e-mail your request, including your address, to *jesnayra@nas.edu*.

Comments Due Date: Comments regarding this information collection are best assured of having their full effect if received within 60 days of the date of this publication.

Dated: January 29, 2003.

John Ruffin,

Director, National Center on Minority Health and Health Disparities, NIH.

[FR Doc. 03–2988 Filed 2–6–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by agencies of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: (301) 496–7057; fax: (301) 402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

Recombinant SUMO–1 Isopeptidase Substrates for FRET Assays

Mary Dasso and Jun Hang (NICHD).
DHHS Reference No. E–086–02/0—Research Tool.
Licensing Contact: Marlene Shinn-Astor; (301) 435–4426; *shinnm@od.nih.gov*.

The NIH announces a new Fluorescence Resonance Energy Transfer (FRET) assay for peptidases that regulate the processing of SUMO–1 and its removal from conjugation. SUMO–1 is an ubiquitin-like protein that becomes covalently linked to other proteins, which in turn may participate in events leading to cancer and viral infection. The inventors have created a FRET substrate that fuses unprocessed SUMO–1 at its N- and C-termini with different Green Fluorescence Protein (GFP) derivatives. The FRET assay may be used to identify pharmacological agents that can regulate the SUMO–1 peptidases or to monitor their activities.

Human Gene Critical to Fertility

Lawrence Nelson and Zhi-bin Tong (NICHD).
DHHS Reference No. E–239–00/1 filed 04 Apr 2001 (PCT/US01/10981).
Licensing Contact: Marlene Shinn-Astor; (301) 435–4426; *shinnm@od.nih.gov*.

Some molecular pathways are unique to the reproductive process. Illuminating such processes would be expected to lead the way to the most specific molecular contraceptive targets. The Mater gene is essential for embryonic development beyond the two-cell stage. Mater expression is specific to the oocyte. Thus, Mater appears to qualify as a player in a unique molecular pathway that is specific to the reproductive process.

The human MATER gene was identified through research investigating autoimmune premature ovarian failure. Premature ovarian failure (POF) is a term used to describe a condition associated with female sex hormone deficiency and infertility in women younger than age 40. As many as 1% of all women in the United States are thought to be afflicted with POF. Autoimmunity is a well-established mechanism of premature ovarian failure.

The NIH announces a new technology that encompasses the MATER gene, protein and MATER-specific antibodies. These molecules can be used in diagnosing and/or treating infertility, and in developing contraceptives.

Anti-Inflammatory Actions of Cytochrome P450 Epoxygenase-derived Eicosanoids

Drs. Darryl C. Zeldin (NIEHS), James Liao (EM).
DHHS Reference Nos. E–252–1999/0–US–02 filed 09 Aug 2000 and E–252–1999/0–PCT–03 filed 10 Aug 2000.
Licensing Contact: Marlene Shinn-Astor; (301) 435–4426; *shinnm@od.nih.gov*.

Cytochrome P450s catalyze the NADPH-dependent oxidation of arachidonic acid to various eicosanoids found in several species including humans. The eicosanoids are biosynthesized in numerous tissues including pancreas, intestine, kidney, heart, and lung where they are involved in many different biological activities.

The NIH announces a new therapy wherein epoxyeicosatrienoic acid (EET) compositions have been found to be useful in preventing endothelial cell death due to hypoxia-reoxygenation. Given that endothelial injury is an important early event in the development of the atherosclerotic plaque and is associated with myocardial dysfunction in ischemic heart disease, reduced EET levels are speculated to be involved in the pathogenesis of these cardiovascular disorders.

This research is described in Yang *et al.*, Molecular Pharmacology 60: 310–320, 2001.

Dated: January 29, 2003.

Jack Spiegel,

Director, Division of Technology, Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 03–2989 Filed 2–6–03; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Heart, Lung, and Blood Program Project Review Committee.

Date: March 20, 2003.

Time: 8 a.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Jeffrey H. Hurst, PhD, Scientific Review Administrator, Review Branch, Division of Extramural Affairs, National Heart, Lung, and Blood Institute, National Institutes of Health, Bethesda, MD 20892, (301) 435–0303.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases

and Resources Research, National Institutes of Health, HHS)

Dated: January 31, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–2982 Filed 2–6–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute, Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel, SCOR in Neurobiology of Sleep and Sleep Apnea and Airway Biology and Pathogenesis of Cystic Fibrosis.

Date: March 12–13, 2003.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Marriott Baltimore Inner Harbor, 110 South Eutaw Street, Baltimore, MD 21201.

Contact Person: Arthur N Freed, PhD, Review Branch, Room 7186, Division of Extramural Affairs, National Heart, Lung, and Blood Institute, National Institutes of Health, 6701 Rockledge Drive, MSC 7924, Bethesda, MD 20892, (301) 435–0280.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: January 30, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–2986 Filed 2–6–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Human Genome Research Institute; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Advisory Council for Human Genome Research.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Council for Human Genome Research.

Date: February 9–11, 2003.

Closed: February 9, 2003, 7 p.m. to 10 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814,

Open: February 10, 2003, 8:30 a.m. to 2 p.m.

Agenda: To discuss matters of program relevance.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Bethesda, MD 20892,

Closed: February 10, 2003, 2 p.m. to adjournment at 5 p.m. on Tuesday, February 11, 2003.

Agenda: To review and evaluate grant applications and/or proposals.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Bethesda, MD 20892.

Contact Person: Mark S. Guyer, Director for Extramural Research, Assistant Director for Scientific Coordination, National Human Genome Research Institute, 31 Center Drive, MSC 2033, Building 31, Room B2B07, Bethesda, MD 20892–2033, (301) 435–5536, *guyerm@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.172, Human Genome Research, National Institutes of Health, HHS)

Dated: January 31, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–2983 Filed 2–6–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Nursing Research; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Nursing Research Special Emphasis Panel, Mentored Research Scientist Development Award.

Date: March 5, 2003.

Time: 8:15 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Contact Person: Jeffrey M. Chernak, PhD, Scientific Review Administrator, Office of Review, National Institute of Nursing Research, 6701 Democracy Plaza, Suite 712, MSC 4870, Bethesda, MD 20817, (301) 402–6959, *chernak@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.361, Nursing Research, National Institutes of Health, HHS)

Dated: January 31, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–2979 Filed 2–6–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Nursing Research; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Nursing Research Initial Review Group, NRRC 26.

Date: March 6–7, 2003.

Time: 8:15 a.m. to 5:15 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Contact Person: Jeffrey M. Chernak, PhD, Scientific Review Administrator, Office of Review, National Institute of Nursing Research, 6701 Democracy Plaza, Suite 712, MSC 4870, Bethesda, MD 20817, (301) 402–6959, *chernak@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.361, Nursing Research, National Institutes of Health, HHS)

Dated: January 31, 2003.

LaVerne J. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–2980 Filed 2–6–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Nursing Research; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Nursing Research Special Emphasis Panel, RFA NR–03–003: Research To Improve Care For Dying Children And Their Families.

Date: March 10–11, 2003.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Contact Person: John E. Richters, PhD, Scientific Review Administrator, National Institute of Nursing Research, National Institutes of Health, Natcher Building, Room 3AN32, Bethesda, MD 20892, (301) 594–5971, *jrichters@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.361, Nursing Research, National Institutes of Health, HHS)

Dated: January 31, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–2981 Filed 2–6–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel, Review of Program Project (P01) Applications.

Date: February 26–28, 2003.

Time: 6:30 p.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: Courtyard by Marriott-Duke University/Durham, 1815 Front St., Durham, NC 27705.

Contact Person: Leroy Worth, PhD, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research and Training, National Institute of Environmental health sciences, P.O. Box 12233, MD EC–30/Room 3171., Research Triangle Park, NC 27709, (919) 541–0670, *worth@niehs.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied toxicological Research and Testing; 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazards Waste Worker Health and Safety Training; 93.143, NIEHS SuperFund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences, National Institutes of Health, HHS)

Dated: January 31, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–2984 Filed 2–6–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel, "Synthesis of New Chemical Probes" (Topic 047).

Date: February 19, 2003.

Time: 10 a.m. to 1 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive

Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Eric Zatman, Contract Review Specialist, Office of Extramural Affairs, National Institute on Drug Abuse, National Institutes of Health, DHHS, 6001 Executive Boulevard, Room 3158, MSC 9547, Bethesda, MD 20892–9547, (301) 435–1438.

(Catalogue of Federal Domestic Assistance Program Nos. 93.277, Drug Abuse Scientist Development Award for Clinicians, Scientist Development Awards, and Research Scientist Awards; 93.278, Drug Abuse National Research Service Awards for Research Training; 93.279, Drug Abuse Research Programs, National Institutes of Health, HHS)

Dated: January 30, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–2985 Filed 2–6–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel.

Date: February 24, 2003.

Time: 3:30 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Mark Swieter, PhD, Health Scientist Administrator, Office of Extramural Affairs, National Institute on Drug Abuse, National Institutes of Health, DHHS, 6001 Executive Boulevard, Room 3158, MSC 9547, Bethesda, MD 20892–9547, (301) 435–1389.

(Catalogue of Federal Domestic Assistance Program Nos. 93.277, Drug Abuse Scientist Development Award for Clinicians, Scientist Development Award, and Research Scientist Awards; 93.278, Drug Abuse National Research Service Awards for Research Training; 93.279, Drug Abuse Research Programs, National Institutes of Health, HHS)

Dated: January 30, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–2987 Filed 2–6–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

The President's New Freedom Commission on Mental Health; Notice of Meeting

Pursuant to Executive Order 13263, notice is hereby given of a meeting of the President's New Freedom Commission on Mental Health in March 2003.

The meeting will be open and will consider how to accomplish the Commission's mandate to conduct a comprehensive study of the United States mental health service delivery system and make recommendations on improving the delivery of public and private mental health services for adults and children. The Commission will focus on issues relating to its final report.

Attendance by the public will be limited to space available. Public comments are welcome. Please communicate with the individual listed as contact below to make arrangements to comment or to request special accommodations for persons with disabilities.

Additional information and a roster of Commission members may be obtained either by accessing the Commission Web site, *http://www.mentalhealthcommission.gov,* or by communicating with the contact whose name and telephone number is listed below.

Committee Name: The President's New Freedom Commission on Mental Health.

Meeting Date/Time: Open: March 5, 2003, 10:15 a.m. to 3 p.m.; Open: March 6, 2003, 8:30 a.m. to 12:15 p.m.

Place: Crystal Gateway Marriott, 1700 Jefferson Davis Highway, Arlington, Virginia 22202.

Contact: Claire Heffernan, Executive Secretary, 5600 Fishers Lane, Parklawn Building, Room 13C–26, Rockville, MD 20857. Telephone: (301) 443–1545; Fax: (301) 480–1554 and e-mail: *Cheffern@samhsa.gov.* Web site: *http://www.mentalhealthcommission.gov.*

Dated: February 3, 2003.

Toian Vaughn,

Committee Management Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 03–3075 Filed 2–6–03; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Minor Adjustment of Kodiak National Wildlife Refuge Boundary

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of boundary adjustment.

SUMMARY: The Secretary of the Interior, acting through the Regional Director, Region 7, of the Fish and Wildlife Service, has made a minor modification to the boundary of the Kodiak National Wildlife Refuge in the State of Alaska. This boundary adjustment was made to incorporate a parcel of land which is adjacent to the former Refuge boundary. This parcel is a portion of a large, phased acquisition by the State of Alaska using *EXXON Valdez* oil spill settlement funds. This action added 2,699.75 acres to the Refuge.

DATES: Title to the land in question vested in the Untied States of America on December 5, 2000. Notification to Congress of the proposed boundary change was provided April 3, 2002.

ADDRESSES: Division of Realty, Fish and Wildlife Service, 1011 East Tudor Road, Anchorage, Alaska 99503–6199.

FOR FURTHER INFORMATION CONTACT: Sharon N. Janis, 907–786–3490.

SUPPLEMENTARY INFORMATION: In 2000, 2,699.75 acres of land were acquired from Afognak Joint Venture by the Untied States, for administration by the Fish and Wildlife Service. These lands lie outside, but adjacent to, the boundary of the Kodiak National Wildlife Refuge as established by the Alaska National Interest Lands Conservation Act. These lands are identified as Tract B of the Subdivision of Tract B Waterfall Addition, according to the plat thereof filed as Plat No. 2000–20 on November 8, 2000, in the Kodiak Recording District, Third Judicial District, State of Alaska, which is located in Sections 4, 9, 15, 16, 17, 19, 20, and 21, Township 21 South, Range 20 West, Seward Meridian, Alaska.

Section 103(b) of the Alaska National Interest Lands Conservation Act (16 U.S.C. 3103(b)) establishes authority for the Secretary of the Interior to make

minor boundary adjustments to the Wildlife Refuges created by the Act. Under this authority, and following due notice to Congress, the Secretary, acting through the Regional Director, Region 7, of the Fish and Wildlife Service, has used this authority to adjust the boundaries of the Kodiak Refuge to include the 2,699,75 acres of land referenced above. This adjustment modifies the boundary previously described in **Federal Register** (48 FR 7966, February 24, 1983).

David B. Allen,

Regional Director.

[FR Doc. 03–3103 Filed 2–6–03; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered and Threatened Species Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications.

SUMMARY: The following applicants have applied for a scientific research permit to conduct certain activities with endangered species pursuant to section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*).

DATES: Written comments on these permit applications must be received within 30 days of the date of publication.

ADDRESSES: Written data or comments should be submitted to the Chief, Endangered Species Division, Ecological Services, P.O. Box 1306, Room 4102, Albuquerque, New Mexico 87103; (505) 248–6649; Fax (505) 248–6788. Documents will be available for public inspection by written request, by appointment only, during normal business hours (8 to 4:30) at the U.S. Fish and Wildlife Service, 500 Gold Ave. SW, Room 4102, Albuquerque, New Mexico. Please refer to the respective permit number for each application when submitting comments. All comments received, including names and addresses, will become part of the official administrative record and may be made available to the public.

FOR FURTHER INFORMATION CONTACT: Chief, Endangered Species Division, Ecological Services, P.O. Box 1306, Room 4102, Albuquerque, New Mexico 87103. Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request to the address above for a copy of such documents within 30 days of the date of publication of this notice.

SUPPLEMENTARY INFORMATION:

Permit No. TE–060299

Applicant: Bruce Pavlick, Tucson, Arizona.

Applicant requests a new permit for research and recovery purposes to conduct presence/absence surveys for cactus ferruginous pygmy owl *(Glaucidium brasilianum cactorum)* within Arizona.

Permit No. TE–066684

Applicant: Peter Abraham, Tucson, Arizona.

Applicant requests a new permit for research and recovery purposes to conduct presence/absence surveys for cactus ferruginous pygmy owl *(Glaucidium brasilianum cactorum)* within Arizona.

Permit No. TE–065394

Applicant: David Cowley, Las Cruces, New Mexico.

Applicant requests a new permit for research and recovery purposes to survey for and collect specimens of Rio Grande silvery minnow *(Hybognathus amarus)* within New Mexico.

Permit No. TE–065393

Applicant: Robert Thompson, Tucson, Arizona.

Applicant requests a new permit for research and recovery purposes to conduct presence/absence surveys for cactus ferruginous pygmy owl *(Glaucidium brasilianum cactorum)* within Arizona.

Permit No. TE–840331

Applicant: Arizona State Land Department, Flagstaff, Arizona.

Applicant requests an amendment to an existing permit to allow presence/absence surveys for southwestern willow flycatcher *(Empidonax traillii extimus)* and cactus ferruginous pygmy owl *(Glaucidium brasilianum cactorum)* within Arizona.

Permit No. TE–826091

Applicant: Bureau of Land Management—Phoenix Field Office, Phoenix, Arizona.

Applicant requests an amendment to an existing permit to allow presence/absence and monitoring surveys for, capture of, and modification of habitat of Sonoran pronghorn *(Antilocapra americana sonoriensis)* within Arizona.

Permit No. TE–066458

Applicant: The National Aquarium, Washington, D.C.

Applicant request a new permit for purposes of education display to collect the following species: Texas blind salamander *(Typhlomolge rathbuni)*, fountain darter *(Etheostoma fonticola)*, bonytail chub *(Gila elegans)*, Rio Grande silvery minnow *(Hybognathus amarus)*, desert pupfish *(Cyprinodon macularius)*, Leon Springs pupfish *(Cyprinodon bovinus)*, razorback sucker *(Xyrauchen texanus)*, Gila topminnow *(Poeciliopsis occidentalis)*, and woundfin *(Plagopterus argentissimus)*. All specimens will be collected from either the San Marcos National Fish Hatchery, San Marcos, Texas or the Dexter National Fish Hatchery, Dexter, New Mexico.

Permit No. TE–023152

Applicant: Michael Baker Jr., Inc., Phoenix, Arizona.

Applicant requests an amendment to an existing permit to allow presence/absence surveys for southwestern willow flycatcher *(Empidonax traillii extimus)* within Arizona.

Permit No. TE–828963

Applicant: Connors State College, Warner, Oklahoma.

Applicant requests an amendment to an existing permit to allow presence/absence surveys for red-cockaded woodpecker *(Picoides borealis)* within Oklahoma.

Permit No. TE–028652

Applicant: Jean Krejca, Austin, Texas.

Applicant requests an amendment to an existing permit to allow presence/absence surveys for, mapping, and collection of the following species within Texas: Government Canyon Bat Cave spider *(Neoleptoneta microps)*, Government Canyon Bat Cave meshweaver *(Cicurina vespera)*, Braken Bat Cave meshweaver *(Cicurina venii)*, Madla Cave meshweaver *(Cicurina madla)*, Robber Baron Cave meshweaver *(Cicurina baronia)*, Cokendolpher cave harvestman *(Texella cokendolpheri)*, Helotes mold beetle *(Batrisodes venyivi)*, [unnamed] ground beetle *(Rhadine infernalis)*, and [unnamed] ground beetle *(Rhadine exilis)*.

Permit No. TE–066226

Applicant: Amanda Moors, Globe, Arizona.

Applicant requests a new permit for research and recovery purposes to conduct presence/absence surveys for the following species: Cactus ferruginous pygmy owl *(Glaucidium*

brasilianum cactorum), Sonoran pronghorn *(Antilocapra americana sonoriensis)*, and Mount Graham red squirrel *(Tamiasciurus hudsonicus grahamensis)* within Arizona; Yuma clapper rail *(Rallus longirostris yumanensis)* within Arizona and California; lesser long-nosed bat *(Leptonycteris curasoae yerbabuenae)* within Arizona and New Mexico; Mexican long-nosed bat *(Leptonycteris nivalis)* within New Mexico and Texas; and southwestern willow flycatcher *(Empidonax traillii extimus)* within Arizona, California, New Mexico, Texas, and Utah.

Permit No. TE–066229

Applicant: Whitenton Group, San Marcos, Texas.

Applicant request a new permit for research and recovery purposes to conduct presence/absence surveys for the following species within Texas: Golden-cheeked warbler *(Dendroica chrysoparia)*, black-capped vireo *(Vireo atricapillus)*, piping plover *(Charadrius melodus)*, red-cockaded woodpecker *(Picoides borealis)*, northern aplomado falcon *(Falco femoralis septentrionalis)*, fountain darter *(Etheostoma fonticola)*, San Marcos gambusia *(Gambusia georgei)*, ocelot *(Leopardus pardalis)*, jaguarundi *(Herpailurus yagouaroundi cacomitli)*, Barton Springs salamander *(Eurycea sosorum)*, bonytail chub *(Gila elegans)*, Texas blind salamander *(Typhlomolge rathbuni)*, and Houston toad *(Bufo houstonensis)*.

Permit No. TE–037155

Applicant: BIO–WEST, Logan, Utah.

Applicant requests an amendment to an existing permit to allow surveys for and collection of Colorado pikeminnow *(Ptychocheilus lucius)* and razorback sucker *(Xyrauchen texanus)* within New Mexico, Colorado, and Utah.

Susan MacMullin,

Acting Assistant Regional Director, Ecological Services, Region 2, Albuquerque, New Mexico.

[FR Doc. 03–2993 Filed 2–6–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered and Threatened Wildlife and Plants; Notice of 12-month Finding on a Petition to List Mount Ashland Lupine (*Lupinus lepidus var. ashlandensis*) and Henderson's Horkelia (*Horkelia hendersonii*)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 12-month petition finding.

SUMMARY: We, the Fish and Wildlife Service (Service), announce a 12-month finding for a petition to list *Lupinus lepidus* var. *ashlandensis* (Mount Ashland lupine), and *Horkelia hendersonii* (Henderson's horkelia), in accordance with the Endangered Species Act of 1973, as amended. After reviewing the best available scientific and commercial information available, we find that the petitioned action is not warranted. We ask the public to submit to us any new information that becomes available concerning the status of or threats to these species. This information will help us monitor and encourage the conservation of these species.

DATES: The finding announced in this document was made on January 26, 2003. Comments and information may be submitted to us until further notice. You may submit new information concerning these species for our consideration at any time.

ADDRESSES: You may send data, information, or questions concerning the finding to the Field Supervisor, Oregon Fish and Wildlife Office, 2600 SE. 98th Avenue, Suite 100, Portland, Oregon 97266. You may inspect the petition, administrative finding, supporting information, and comments received, by appointment, during normal business hours, at the above address.

FOR FURTHER INFORMATION CONTACT: Kathy L. Pendergrass, at the above address (telephone 503/231–6179; facsimile 503/231–6195).

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(B) of the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*), requires that, for any petition to revise the List of Threatened and Endangered Species containing substantial scientific or commercial information that listing may be warranted, we make a finding within 12 months of the date of receipt of the petition on whether the petition action is: (a) Not warranted, (b) warranted, or (c) warranted but precluded by other pending proposals. Such 12-month findings are to be published promptly in the **Federal Register**.

We received two separate petitions, both dated September 9, 1999, from the Rogue Group Sierra Club to list *Lupinus aridus* spp. *ashlandensis* (Mount Ashland lupine) and *Horkelia hendersonii* (Henderson's horkelia) as endangered or threatened throughout their range, and to designate critical habitat. On June 13, 2000, we published a 90-day finding for these two species in the **Federal Register** (65 FR 37108). We found that the petitions presented substantial information indicating that listing may be warranted. At that time, we initiated a review of the species' status within their historical range. This 12-month finding has been made in accordance with the judicially approved settlement agreement requiring us to submit a final listing decision on these species to the **Federal Register** by February 1, 2003 (*Sierra Club* v. *Norton et al.* (Civ. No. 01–1804–BR)).

Lupinus lepidus var. *ashlandensis* is an erect, perennial herb within the Fabaceae family. It forms clumps 15 to 20 centimeters (cm) (5.9 to 7.9 inches (in)) in diameter. Plants are 7 to 12 cm (2.8 to 4.7 in) tall with leaves palmately compound with 5 to 7 leaflets that are up to 3 cm (1.2 in) long. Leaves are numerous and crowded from the basal crown, with pubescent (hairy) undersurfaces and glabrous (hairless) upper sides. Flowers are blue with petals about 11 millimeters (mm) (0.43 in) long. The banner (upper petal) is glabrous and the keel (lower petal) ciliate (with sparse hairs) on the margin (Meinke 1982).

Lupinus lepidus var. ashlandensis occurs as a single population of approximately 35,000 plants on the summit and western ridge of Mount Ashland within Oregon. The entire population is located in an area of about 30 hectares (ha) (74 acres (ac)), with two thirds of the known population on the ridge-line within 0.4 kilometers (0.25 miles) of the summit of Mount Ashland (Rolle 1993). The plants occur in four discontinuous patches within this 30 ha (74 ac) area. Much of the habitat that *Lupinus lepidus* var. *ashlandensis* occurs in are brush fields or clumps of brush, and is not suitable habitat. It is estimated that less than 60 percent or approximately 17 ha (42 ac) is actually occupied by *Lupinus lepidus* var. *ashlandensis*.

Horkelia hendersonii, a member of the rose family (Family Rosaceae), is a perennial herb with several stems arising from a branching, woody crown, approximately 1 to 1.5 decimeters (3.9 to 5.9 in) high (Abrams 1941; Keck 1938). Leaves are silky and 4 to 6 cm (1.6 to 3.3 in) long with 11 to 19 leaflets arranged pinnately (Meinke 1982). Flowers are white to pink with petals 4 mm (0.16 in) long in a somewhat clustered terminal (grouped at the tip of the stems) inflorescence (Peck 1961). This plant is one of approximately eight Oregon species of the genus *Horkelia*. *Horkelia hendersonii* is distinguished

from similar species by entire or simple cleft leaf stipules (leaflet structure at the base of the leaf stem) and densely long-silky hairs on the leaves and stems. It is the only alpine horkelia in Oregon having dense silky, non-glandular (non-sticky) hairs.

Horkelia hendersonii is estimated to be approximately 32,307 individuals, occupying a total of 86.6 ha (214 ac), with four main population centers in Oregon and one small population in California. The two species co-occur on the top of Mount Ashland.

According to the petitions, the Mount Ashland populations of both species are threatened by the existing use and potential expansion of ski area facilities, roads, mountaintop facilities, and summer recreation. Additional threats identified in the *Horkelia hendersonii* petition included grazing, mining, firebreak construction, off-road vehicles, and logging.

Current recreational ski activities occur over about 3.4 ha (8.5 ac) or approximately 12 percent of the area where these species occur at Mount Ashland. These operations have occurred over this occupied habitat for about four decades with no observable changes in population distribution or numbers. A ski expansion proposed at Mount Ashland is expected to increase the number of skiers in occupied habitat. On the basis of information provided in the U.S. Forest Service's (Forest Service) (2000) draft environmental impact statement (DEIS), we believe that additional skier use as a result of the expansion of the ski area on Mount Ashland would not significantly destroy, modify, or curtail either species' habitat or range. We base this on the fact that the plants are dormant and insulated by a layer of snow during the winter period of use. Also, mitigation measures contained in a recently signed conservation agreement (CA) are expected to ameliorate impacts from the ski expansion.

The petitioners expressed concern that activities associated with the proposed ski expansion may increase the pressure of the snowpack on dormant *Lupinus lepidus* var. *ashlandensis* and *Horkelia hendersonii* root crowns, change the longevity of the snow pack, or otherwise affect the environment and habitat that currently support these two species in this area of impact. There have been no studies to date that we are aware of to determine if skiing activities affect *Lupinus lepidus* var. *ashlandensis* and *Horkelia hendersonii* or their habitat underneath the snowpack. Also, the petitioners did not present any information on scientific studies that detailed effects to alpine vegetation by ski activities. Thus, these impacts are unknown. If changes in environmental conditions occurred in the past as a result of these activities, it is unknown whether the effects were detrimental, beneficial, or neutral to *Lupinus lepidus* var. *ashlandensis* and *Horkelia hendersonii* individuals (Forest Service 2000).

Although initial road developments constructed years ago resulted in some habitat and individual plant loss, no current proposals call for expansion of existing roads or new road construction. Cutbanks and new drainage patterns created by the summit road on Mount Ashland have started gullies, which may reduce soil moisture retention, thereby reducing habitat for both species (Kagan and Zika 1987a, b; Zika 1987). During October 2002, the Forest Service started actions to improve drainage patterns of the existing road on Mount Ashland to ameliorate these potential gully impacts (W. Rolle, Forest Service, *in litt.*, 2002). The threat of gully formation associated with roads is much less at the Dutchman Peak/Jackson Gap, and is unknown for the Dry Lake Lookout site. Forest Service personnel are to evaluate sites that contain or are adjacent to roads for this potential impact on an annual basis, with the intent to implementing actions to reduce road impacts (Service and Forest Service 2002). Since no new road construction or widening are presently planned in areas where *Lupinus lepidus* var. *ashlandensis* and *Horkelia hendersonii* occur, and because the Forest Service is currently working to ameliorate habitat threats as a result of the current road at Mount Ashland, we do not consider road construction and maintenance to be a significant current threat to these species.

An existing off-road vehicle track leading west from the Mount Ashland summit access road at the first switchback has been reported to be a potential avenue for the introduction of roadside weeds into the meadow and flat area that supports a sizeable population of *Horkelia hendersonii* and a small population of *Lupinus lepidus* var. *ashlandensis* (Kagan and Zika 1987a; Zika 1987). However, this potential impact is not yet evident. Though a few non-natives are present, they are either not expanding or are fairly ephemeral (transient) components of the plant communities. Unlike many other plant communities, non-native species are generally not increasing in areas inhabited by *Lupinus lepidus* var. *ashlandensis* or *Horkelia hendersonii*. The lack of establishment by these non-natives is likely due to the harsh alpine conditions of these sites, and that non-native plants adapted for these conditions have not been introduced.

Although mountaintop developments constructed years ago resulted in some habitat and individual plant loss, there have been few other such developments since. Only one new mountaintop development is currently proposed, to replace an outdated underground power cable that supplies electricity to weather and telecommunications facilities at the summit of Mount Ashland (Forest Service 2002). The Forest Service proposes that, in order to reduce impacts to the populations, the cable installation should occur within the existing compacted roadbed, instead of where it presently occurs. With this alternative, the project would intersect only a small portion of habitat and result in the loss of just a few plants of both *Lupinus lepidus* var. *ashlandensis* and *Horkelia hendersonii*. No additional mountaintop developments are planned in the foreseeable future. Threats associated with the maintenance of these facilities are generally low in magnitude and are not thought to comprise a threat to either species or their habitat.

Relatively small areas (3 to 4 percent) of the total population areas are currently being impacted as a result of trampling and soil compaction from summer recreational activities. Actions currently being implemented by the Forest Service to reduce these impacts include the placement of barriers to delineate parking areas, enforcement of off-road vehicle restrictions, signing and environmental education, camping closures, and limitations on special use permits (limits on size and number of gatherings) (Service and Forest Service 2002). These efforts are expected to contain summer recreational impacts to these small areas occupied by *Lupinus lepidus* var. *ashlandensis* and *Horkelia hendersonii* (W. Rolle, *in litt.*, 2002). Since summer recreation threats are currently very limited in extent and overall magnitude, and the Forest Service is actively managing to reduce these threats, summer recreation is not currently thought to be a significant threat to the species or their habitat.

Cattle grazing is not permitted in the Ashland Watershed or on any part of Mount Ashland; thus, no legal grazing is affecting *Lupinus lepidus* var. *ashlandensis* or the Mount Ashland population of *Horkelia hendersonii*. There are no proposals to permit grazing in this area in the future. Although cattle occasionally wander into these species' population areas, their presence is transitory and does not appear to affect *Lupinus lepidus* var. *ashlandensis*

or *Horkelia hendersonii* individuals or alter habitat. A few *Horkelia hendersonii* plants have been observed with herbivore damage (Kagan and Zika 1987b), but there is no direct evidence that either species is utilized as a forage plant for cattle or wildlife, nor does either species grow with livestock-preferred forage plants. All of the *Horkelia hendersonii* occurrences outside of the Mount Ashland area are in active range allotments. The dry *Horkelia hendersonii* habitat does not produce much forage and is not near water. Hence, livestock use is currently light on most of these areas and does not appear to affect *Horkelia hendersonii* plants.

There are no proposals to conduct mining in any of the areas where either species occurs, and the potential of firebreak construction is considered to be low. Logging is not thought to threaten either species as both are alpine plants found in non-forested habitats.

Neither *Lupinus lepidus* var. *ashlandensis* or *Horkelia hendersonii* has any known commercial, sporting, or scientific uses at this time. There are no identified pests or pathogens that appear to be serious threats to either species. No other natural or manmade mechanisms are known to effect either *Lupinus lepidus* var. *ashlandensis* or *Horkelia hendersonii* or their habitat.

Lupinus lepidus var. *ashlandensis* is a candidate for listing as an endangered species under the Oregon Endangered Species Act (OESA), while *Horkelia hendersonii* has no State status in either Oregon or California. Neither species receives protection under the OESA.

Lupinus lepidus var. *ashlandensis* is considered a sensitive species in Region 6 of the Forest Service, and *Horkelia hendersonii* is a considered a sensitive species in both Regions 5 and 6 of the Forest Service. Forest Service policies for sensitive species discourage or prohibit activities that would increase the need for Federal listing under the Act. The Oregon Natural Heritage Program prepared management guidelines for *Lupinus lepidus* var. *ashlandensis* and *Horkelia hendersonii* under contract for the Forest Service in 1987. The Forest Service began the monitoring of both these species per this guidance, and the populations at Mount Ashland appear to be stable. The primary objective of the management guidance was to maintain or increase population numbers of these species and protect habitat. Since few new disturbances have occurred in occupied habitats, and the monitored populations appear to be stable, Forest Service management has been at least minimally successful in achieving this objective.

The Forest Service and the Service have developed a CA for both species across their ranges. This effort was initiated in 1995 as a cooperative agreement with the Oregon Natural Heritage Program to develop conservation agreements for selected high priority candidate species. The management goal of the CA is to maintain stable or increasing populations of *Lupinus lepidus* var. *ashlandensis* and *Horkelia hendersonii* across their known ranges. This CA is to remain in effect in perpetuity. Development of the CA was based on our draft Policy for Evaluation of Conservation Efforts (PECE policy) (65 FR 37102). The conservation efforts that the parties have agreed to are identified in the CA, along with details indicating anticipated staffing, funding levels and source, and other resources necessary to implement projects to protect and monitor the species.

Overall, threats to these species and their habitat are generally low in magnitude. The trampling of habitat and individual plants, and soil compaction, both associated with summer activities, are occurring in only small areas of occupied habitat. Under the CA, the Forest Service is implementing actions to reduce or remove any remaining impacts to these species and their habitat.

Finding

We have reviewed the petition, the literature cited in the petition, other available literature and information, and consulted with biologists and researchers familiar with Lupinus aridus spp. *ashlandensis* and *Horkelia hendersonii*. On the basis of the best scientific and commercial information available, we find the petitioned action is not warranted. We find that the overall imminence and magnitude of threats to *Lupinus lepidus* var. *ashlandensis* and *Horkelia hendersonii* is relatively low. Both species occur exclusively on lands managed by the Forest Service, and their distribution has historically been limited. The population distributions and numbers are thought to relate closely to their original extents.

We will continue to monitor the status of these species. Should an emergency situation develop with one or both of these species, we will act to provide immediate protection, if warranted. We ask the public to submit to us any new information that becomes available concerning the status of or threats to these species. This information will help us monitor and encourage the conservation of these species.

References Cited

A complete list of all references cited herein is available upon request from the State Supervisor, Oregon Fish and Wildlife Office (*see* **ADDRESSES** section).

Author(s)

The authors of this document are Andy Robinson, Brendan White, and Kathy Pendergrass, U.S. Fish and Wildlife Service, Oregon Fish and Wildlife Office (*see* **ADDRESSES** section).

Authority

The authority for this action is the Endangered Species Act (16 U.S.C. 1531 *et seq.*).

Dated: January 26, 2003.

Steve Williams,

Director, Fish and Wildlife Service.

[FR Doc. 03–3019 Filed 2–6–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered and Threatened Wildlife and Plants; 90-day Finding on a Petition To List the Western Sage Grouse

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 90-day petition finding.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce a 90-day finding on a petition to list the western sage grouse (*Centrocercus urophasianus phaios*) under the Endangered Species Act of 1973, as amended. We find that the petition does not present substantial scientific or commercial information indicating that listing this subspecies may be warranted, on the basis of our determination that there is insufficient evidence to indicate that the western population of sage grouse is a valid subspecies or a Distinct Population Segment (DPS). We will not be initiating a further status review in response to this petition. We ask the public to submit to us any new information that becomes available concerning the status of or threats to the western population of sage grouse. This information will help us monitor and encourage the conservation of this species.

DATES: The finding announced in this document was made on January 26, 2003. You may submit new information

concerning this species for our consideration at any time.

ADDRESSES: The complete file for this finding is available for inspection, by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Oregon Fish and Wildlife Office, 2600 SE. 98th Avenue, Suite 100, Portland, Oregon 97266. Submit new information or comments concerning this petition to the Service at the above address.

FOR FURTHER INFORMATION CONTACT: Kemper M. McMaster, Field Supervisor, Oregon Fish and Wildlife Office (*see* **ADDRESSES** section) (telephone 503/231–6179; facsimile 503/231–6195).

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(A) of the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*), requires that we make a finding on whether a petition to list, delist, U.S.C. 1531 *et seq.*), requires that we make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information indicating that the petitioned action may be warranted. We are to base this finding on all information available to us at the time we make the finding. To the maximum extent practicable, we must make this finding within 90 days of our receipt of the petition, and publish the notice of the finding promptly in the **Federal Register**. Our standard for substantial information within the Code of Federal Regulations (CFR) with regard to a 90-day petition finding is "that amount of information that would lead a reasonable person to believe that the measure proposed in the petition may be warranted" (50 CFR 424.14(b)). If the finding is that substantial information was presented, we are required to promptly commence a review of the status of the involved species, if one has not already been initiated, under our internal candidate assessment process.

We received a petition, dated January 24, 2002, from the Institute for Wildlife Protection requesting that the western sage grouse (*Centrocercus urophasianus phaios*) occurring from northern California, through Oregon and Washington, in addition to any western sage grouse that still occur in parts of Idaho, be listed under the Act. Although we published a 12-month finding for the Columbia Basin distinct population segment (DPS) of sage grouse in May 2001, the petitioner requested that we include this population in our review of the petition. The 12-month finding for the Columbia Basin DPS of sage grouse was that listing was warranted but precluded due to higher priority listing actions (66 FR 22984). That finding presented information describing genetic and ecological differences between sage grouse located in the Columbia Basin and the population of sage grouse in central and southern Oregon, as well as the significant gap in the range of the Washington population (66 FR 22984). The Columbia Basin DPS of sage grouse is presently a candidate for listing (67 FR 40657). Since our 12-month finding presented an in-depth review of this population of sage grouse, this review will only focus on the remaining portion of the petitioned sage grouse.

The petitioner requested that the western sage grouse occurring in northern California, in addition to any western sage grouse that still occur in parts of Idaho, be listed under the Act. However, we note that the inclusion of California is incorrect according to Aldrich and Duvall (1955) and Aldrich (1963). Sage grouse in northern California and northwestern Nevada were reclassified as an intermediate form (Aldrich and Duvall 1955; Aldrich 1963). As for any western sage grouse in Idaho, Aldrich (1946) stated that it was possible that western sage grouse occurred in central-western Idaho. However, no specimens have ever been collected to verify the existence of western sage grouse in Idaho.

The petition clearly identified itself as such and contained the name, address, and signature of the petitioning organization's representative. Accompanying the petition was information related to the taxonomy, life history, demographics, movements, habitats, threats, and the past and present distribution of the western sage grouse. The petitioner contends that the range of the western sage grouse and the number of individuals, have decreased by approximately half, and that the subspecies has become isolated into a series of fragments. In order to determine if substantial information is available to indicate that the petitioned action may be warranted, we have reviewed the subject petition, literature cited in the petition, information provided by recognized experts or agencies cited in the petition, and information otherwise available in Service files.

This 90-day petition finding is made in accordance with a proposed settlement agreement which would require us to complete a finding by January 30, 2003 (*Institute for Wildlife Protection and Dr. Steven G. Herman* v. *Norton et al.* (CV02 1604L, W.D. WA)).

The following information regarding the description and natural history of greater sage grouse (*Centrocercus urophasianus*) (sage grouse) (American Ornithological Union (AOU) 2000) has been condensed from these sources: Aldrich 1963; Johnsgard 1973; Connelly *et al.* 1988; Connelly *et al.* 2000; Fischer *et al.* 1993; Drut 1994; Western States Sage Grouse Technical Committee 1996 and 1998; and Schroeder *et al.* 1999.

The sage grouse is the largest North American grouse species. Adult males range in size from 66 to 76 centimeters (cm) (26 to 30 inches (in)) and weigh between 2 and 3 kilograms (kg) (4 and 7 pounds (lb)); adult females range in size from 48 to 58 cm (19 to 23 in) and weigh between 1 and 2 kg (2 and 4 lb). Males and females have dark grayish-brown body plumage with many small gray and white speckles, fleshy yellow combs over the eyes, long pointed tails, and dark green toes. Males also have blackish chin and throat feathers, conspicuous phylloplumes (specialized erectile feathers) at the back of the head and neck, and white feathers forming a ruff around the neck and upper belly. During breeding displays, males also exhibit olive-green apteria (fleshy bare patches of skin) on their breasts.

Sage grouse depend on a variety of shrub steppe habitats throughout their life cycle, and are particularly tied to several species of sagebrush (*Artemesia* spp.). Throughout much of the year, adult sage grouse rely on sagebrush to provide roosting cover and food. During the winter, they depend almost exclusively on sagebrush for food. The type and condition of shrub steppe plant communities strongly affect habitat use by sage grouse populations. However, these populations also exhibit strong site fidelity (loyalty to a particular area). Sage grouse may disperse up to 160 kilometers (km) (100 miles (mi)) between seasonal use areas; however, average population movements are generally less than 34 km (21 mi). Sage grouse are also capable of dispersing over areas of unsuitable habitat.

During the spring breeding season, primarily during the morning hours just after dawn, male sage grouse gather together and perform courtship displays on areas called leks (areas where animals assemble and perform courtship displays). Areas of bare soil, short grass steppe, windswept ridges, exposed knolls, or other relatively open sites may serve as leks. Leks range in size from less than 0.4 hectare (ha) (1 acre (ac)) to over 40 ha (100 ac) and can host from several to hundreds of males. Some leks are used for many years. These "historic" leks are typically larger than, and often surrounded by, smaller "satellite" leks, which may be less

stable in size and location within the course of 1 year and between 2 or more years. A group of leks where males and females may interact within a breeding season or between years is called a lek complex. Males defend individual territories within leks and perform elaborate displays with their specialized plumage and vocalizations to attract females for mating.

Females may travel up to 35 km (22 mi) after mating, and typically select nest sites under sagebrush cover, although other shrub or bunchgrass species are sometimes used. Nests are relatively simple and consist of scrapes on the ground. Clutch sizes range from 6 to 13 eggs. Nest success ranges from 10 to 63 percent and is relatively low compared to other prairie grouse species. Shrub canopy and grass cover provide concealment for sage grouse nests and young, and may be critical for reproductive success.

Sage grouse typically live between 1 and 4 years; however, sage grouse up to 10 years of age have been recorded in the wild. The annual mortality rate for sage grouse is roughly 50 to 55 percent, which is relatively low compared to other prairie grouse species. Females generally have a higher survival rate than males, which accounts for a female-biased sex ratio in adult birds.

Prior to European expansion into western North America, sage grouse were believed to occur in the States of Washington, Oregon, California, Nevada, Idaho, Montana, Wyoming, Colorado, Utah, South Dakota, North Dakota, Kansas, Oklahoma, Nebraska, New Mexico, Arizona, and the Canadian provinces of British Columbia, Alberta, and Saskatchewan (Schroeder *et al.* 1999). Currently, sage grouse occur in 11 states and 2 Canadian provinces, ranging from extreme southeastern Alberta and southwestern Saskatchewan, south to western Colorado, and west to eastern California, Oregon, and Washington. In addition, sage grouse occur in southern Idaho, the northern two-thirds of Nevada, parts of Utah, most of Wyoming, southern and eastern Montana, and extreme western North and South Dakota. Sage grouse have been extirpated from Nebraska, Kansas, Oklahoma, New Mexico, Arizona, and British Columbia (Schroeder *et al.* 1999).

The distribution of sage grouse has contracted in a number of areas, most notably along the northern and northwestern periphery and in the center of their historic range. There may have been between roughly 1.6 million and 16 million sage grouse rangewide prior to European expansion across western North America (65 FR 51578). The Western States Sage Grouse Technical Committee (WSSGTC) (1999) estimated that there may have been about 1.1 million birds in 1800. Braun (1998) estimated that the 1998 rangewide spring population numbered about 157,000 sage grouse. More recent estimates put the number of sage grouse rangewide at between roughly 100,000 and 500,000 birds (65 FR 51578). Sage grouse population levels may have declined from historic to recent times between 69 and 99 percent (65 FR 51578). WSSGTC (1999) estimates the decline between historic and present day to have been about 86 percent.

Apparently, much of the overall decline in sage grouse populations occurred from the late 1800s to the mid-1900s (Hornaday 1916; Crawford 1982; Drut 1994; Washington Department of Fish and Wildlife (WDFW) 1995; Braun 1998; Schroeder *et al.* 1999). Other declines in sage grouse populations apparently occurred in the 1920s and 1930s, and then again in the 1960s and 1970s (Connelly and Braun 1997).

In Oregon, a 50 percent net loss in sage grouse distribution took place between about 1900 and the mid-1950s (Drut 1994). Since the 1950s, sage grouse distribution in Oregon has undergone only minor changes (Drut 1994). Between 1941 and 1952, hundreds of birds from Harney and Malheur counties were transplanted to Crook, Sherman, Wasco, and other counties (Crawford 1982). These transplants were not successful, and it is unclear what effect a successful translocation of sage grouse from the eastern population into the western population might have had on the genetics of sage grouse in Oregon.

Two subpopulations of sage grouse remain in Washington (WSGWG 1998). One occurs primarily on private and State-owned lands in Douglas County; the other occurs at the Yakima Training Center, administered by the U.S. Army in Kittitas and Yakima counties. These two subpopulations are isolated from the Oregon population and nearly isolated from one another (65 FR 51578).

Western sage grouse were first described in 1946 by Aldrich. Aldrich (1946) examined 11 specimens collected in Washington (3), Oregon (7), and California (1), and on the basis of slight color differences in the plumage, concluded that a subspecies existed in the western portion of the greater sage grouse range. The distribution of the western sage grouse was described as occurring from north to central-southern British Columbia; west to central Washington, central Oregon, and northeastern California; south to northeastern California; east to southeast-central and northeastern Oregon (possibly central-western Idaho) and central-eastern Washington (Aldrich 1946). Later, the distribution was modified to reclassify sage grouse in northwestern Nevada and northern California as an intermediate form (Aldrich and Duvall 1955; AOU 1957; Aldrich 1963). The validity of the taxonomic separation between an eastern and a western subspecies has since been questioned (Johnsgard 1983; Johnsgard 2002; Benedict *et al.* in press).

In 1957, the AOU recognized a subspecies division within the sage grouse taxon. Since that time, however, it has not conducted a review of this subspecies distinction. The AOU stopped listing subspecies as of the 6th (1983) edition of its Checklist, although it recommended the continued use of the 5th edition for taxonomy at the subspecific level. The AOU has not formally or officially reviewed the subspecific treatment of most North American birds, although it is working towards that (Richard C. Banks, National Museum of Natural History, pers. comm., 2000, 2002). Therefore, the western and eastern subspecies of sage grouse are still recognized by the AOU. However, the Oregon Department of Fish and Wildlife and others do not agree with this subspecies designation (Drut 1994).

R. Banks of the National Museum of Natural History (*in litt.*, 1992) reviewed the same sage grouse specimens available to Aldrich in 1946 and concluded that there is only a weak basis for the separation into two subspecies. Braun stated that the so-called western race of sage grouse in Oregon and Washington does not differ from sage grouse in California, northern Colorado, Wyoming, and other States (Clait E. Braun, Colorado Division of Wildlife, *in litt.* 1992 cited in Drut 1994). Braun continued by stating that the inclusion of western sage grouse as a category 2 species/subspecies by the Service is without merit.

In 1990, protein and deoxyribonucleic acid (DNA) studies were initiated to clarify the status of sage grouse subspecies in Oregon. Preliminary results indicated no differentiation among birds collected from different areas (Drut 1994). However, because the sample size was small, these results were never published (M. Pope, Oregon State University, pers. comm., 2002). Benedict *et al.* (in press) recently collected 332 birds from 16 populations in Washington, Oregon, California, and Nevada to sequence a rapidly evolving portion of the mitochondrial control region. They collected samples from

either side of the proposed boundary between the western and eastern subspecies, but found no genetic evidence to support the delineation of subspecies (Benedict *et al.* in press).

The boundary between the western and eastern subspecies is generally considered to occur along a line starting on the Oregon-Nevada border south of Hart Mountain National Wildlife Refuge and ending near Nyssa, Oregon (Aldrich and Duvall 1955; Aldrich 1963). No study has been published depicting a more precise separation between the two previously recognized subspecies. Although no study has specifically been conducted to show movement along this separation boundary, other studies involving radio-tagged sage grouse have documented movements back and forth across the proposed boundary. For example, Crawford and Gregg (2001) noted that two radio-tagged sage grouse hens captured on Hart Mountain National Wildlife Refuge in south-central Oregon moved to the vicinity of Lone Grave Butte on the Beatys Butte study area southeast of the refuge. They also noted that a hen and week-old brood moved from Beatys Butte to the Catnip Reservoir area of Sheldon National Wildlife Refuge in Nevada, a distance of over 32 km (20 mi). By mid-summer, 25 percent of marked hens (6) still alive had moved south onto Sheldon National Wildlife Refuge (Crawford and Gregg 2001). This small sample demonstrates movement of sage grouse across the boundary area separating the western and eastern populations of sage grouse.

At this time, sage grouse experts disagree about whether the western sage grouse is a valid subspecies. When informed taxonomic opinion is not unanimous, we evaluate the available published and unpublished information to come to our own adequately documented conclusion regarding the validity of taxa. Although the AOU has not made a procedural change regarding the treatment of subspecies, the best available science tells us that there is no genetic distinction between western and eastern sage grouse. Therefore, on the basis of lack of distinct genetic differences between the two putative subspecies, lack of ecological or physical factors that might contribute to population isolation, and evidence that birds freely cross the supposed boundary zone between the subspecies, we conclude that the western sage grouse is not a valid subspecies of the greater sage grouse. Because we no longer consider the western sage grouse a valid taxon, we must then consider whether the petitioned sage grouse populations might constitute a DPS.

Under our DPS policy (61 FR 4722), we use three elements to assess whether a population under consideration for listing may be recognized as a DPS: (1) A population segment's discreteness from the remainder of the taxon; (2) the population segment's significance to the taxon to which it belongs; and (3) "[t]he population segment's conservation status in relation to the Act's standards for listing (*i.e.*, is the population segment, when treated as if it were a species, endangered or threatened?)." If we determine that a population being considered for listing may represent a DPS, then the level of threat to the population is evaluated based on the five listing factors established by the Act to determine if listing it as either threatened or endangered may be warranted.

A population segment of a vertebrate species may be considered discrete if it satisfies either of the following conditions. The first condition is whether the species' population is markedly separated, or isolated, from other populations of the same taxon "as a consequence of physical, physiological, ecological, or behavioral factors." When evaluating these four factors, "[q]uantitative measures of genetic or morphological discontinuity may provide evidence of this separation." The second condition, which does not apply here, is whether the population segment be "delimited by international governmental boundaries within which differences in control of exploitation, management of habitat, conservation status, or regulatory mechanisms exist that are significant in light of section 4(a)(1)(D) of the Act."

In determining the discreteness, or isolation, of the petitioned sage grouse, one of the factors to consider is physical separation from the rest of the taxon. The petitioner did not provide substantial information to demonstrate, nor does information in our files indicate, that the western population of sage grouse are physically isolated from nearby eastern populations. Along the eastern boundary of the petitioned sage grouse, the landscape consists of various mountain ranges, intervening valleys, and canyons, and birds are able to move between these areas. No physical barriers exist that would preclude the movement of birds across this landscape and hypothetical boundary separating the petitioned and more easterly populations. Crawford and Gregg (2001), through their studies, have documented the movement of sage grouse across this boundary. Dispersing birds have been estimated to be able to disperse up to 160 km (100 mi) (WDFW 1995; Schroeder *et al.* 1999). The petitioner acknowledges in the petition that the ranges of western and eastern populations of sage grouse overlap in Oregon (Webb 2001).

Other factors to consider with regard to discreteness or isolation of a population are genetic, morphological, and behavioral differences. As discussed above, there does not appear to be any genetic differentiation between sage grouse individuals found in western and eastern populations. Individual morphological variation, such as color, in this [sage] grouse, as in other species, is extensive (R. Banks, *in litt.*, 1992). Banks (*in litt.*, 1992) doubts that the color difference noted by Aldrich is sufficient to warrant the description or recognition of a subspecies, with the present concepts. He continues by stating that most taxonomists today would not make the decision to name a population on the basis of the minor color variation shown in the small sample available here. Even Aldrich (*in litt.*, 1992 cited in Drut 1994) states that the amount of morphological difference required to name a distinct population as a subspecies is arbitrary. The petitioner does not provide any information to document that the petitioned sage grouse exhibits any unique behavioral traits.

In summary, to make a DPS determination, we examined physical, physiological, ecological, and behavioral factors. Since no international government boundaries of significance are involved, this condition for a finding of discreteness was not considered in reaching this determination. Neither the information presented in the petition nor that available in Service files presents substantial scientific or commercial information to demonstrate that the western population of sage grouse is discrete from the remainder of the taxon. Accordingly, we are unable to define a listable entity of the western population of sage grouse within the greater sage grouse taxon. Therefore, we did not address the second element for determining a DPS, which is the potential significance of the western population of sage grouse to the remainder of the taxon. Finally, since the western population of sage grouse cannot be defined as a DPS at this time, we did not evaluate its status as endangered or threatened on the basis of either the Act's definitions of those terms or the factors in section 4(a) of the Act.

Petition Finding

We have reviewed the petition, literature cited in the petition, other

pertinent literature, and information available in Service files. After our review, we find the petition does not present substantial information to indicate that the petitioned action may be warranted. We base this finding on a lack of evidence to support a separation of the greater sage grouse into eastern and western subspecies, and also on our determination that the western population of sage grouse does not constitute a DPS on the basis of the following: (a) insufficient information to determine whether the western population of sage grouse is geographically separated from other sage grouse throughout the range of the taxon; and (b) insufficient information to demonstrate that genetic, morphological, and behavioral aspects of the western population of sage grouse are unique.

References Cited

A complete list of all references cited herein is available upon request from the Oregon Fish and Wildlife Office (see **ADDRESSES** section).

Author

The primary author of this notice is Jeff Dillon, U.S. Fish and Wildlife Service, Oregon Fish and Wildlife Office (*see* **ADDRESSES** section).

Authority: The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: January 27, 2003.

Steve Williams,

Director, Fish and Wildlife Service.

[FR Doc. 03–3020 Filed 2–6–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Submission of Collection of Water Delivery and Electric Service Data for the Operation of Irrigation and Power Projects and Systems to Office of Management and Budget

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Bureau of Indian Affairs (BIA) is submitting two information collection requests for extension to the Office of Management and Budget. The two collections are: Electrical Service Application, 1076–0021, and Water Request, 1076–0141.

DATES: Comments must be received on or before March 10, 2003, to be assured of consideration.

ADDRESSES: Comments should be sent to: Attn: Desk Officer for Department of the Interior, Office of Information and Regulatory Affairs, OMB, 725 17th Street NW., Washington, DC 20503. Send a copy to Bureau of Indian Affairs, Branch of Irrigation, Power, and Safety of Dams, Mail Stop 3061–MIB, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Interested persons may obtain copies of the information collection requests without charge by contacting Ross Mooney at 202–208–5480, or facsimile number: 202–219–0006, or E-mail: *Ross_Mooney@IOS.DOI.GOV*.

SUPPLEMENTARY INFORMATION: A request for comments regarding the two information collection requests was published in the **Federal Register** on October 1, 2002 (67 FR 61760). No comments were received during the comment period. We reviewed these two forms internally during the comment period and revised our burden hours for the two collections.

Request for Comments

The Bureau of Indian Affairs solicits comments in order to:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the bureau, including whether the information will have practical utility;

(2) Evaluate the bureau's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond.

OMB has up to 60 days to approve or disapprove the information collection but may respond after 30 days; therefore, comments submitted within 30 days are more assured of receiving maximum consideration. Please note that comments, names and addresses of commentators are available for public review during normal business hours. If you wish us to withhold any information you submit, you must state this prominently at the beginning of your comment. We will honor your request to the extent allowable by law.

Title: Water Request 25 CFR 171.

OMB Control #: 1076–0141.

Frequency of Collection: On occasion.

Description of Respondents: BIA Irrigation Project Water Users.

Total Respondents: 25,000.

Total Annual Responses: 51,500.

Total Annual Burden Hours: 4292.

Title: Electric Service Application—25 CFR 175.

OMB Control #: 1076–0021.

Frequency of Collection: On Occasion.

Description of Respondents: BIA Electric Power Consumers.

Total Respondents: 4,750.

Total Annual Responses: 4750.

Total Annual Burden Hours: 1188.

Dated: January 2, 2003.

Aurene M. Martin,

Acting Assistant Secretary—Indian Affairs.

[FR Doc. 03–2991 Filed 2–6–03; 8:45 am]

BILLING CODE 4310–W7–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–220–1020–JH–24 1A]

Extension of Approved Information Collection, OMB Control Number 1004–0019

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Bureau of Land Management (BLM) is requesting the Office of Management and Budget (OMB) to extend an existing approval to collect information from individuals, households, farms, or businesses interested in cooperating with the BLM in constructing or maintaining rangeland improvement projects to aid handling and caring for domestic livestock that BLM authorizes to graze on public land. BLM uses Form 4120–7, Application and Approval for Range Improvement Permit, to collect this information. This information allows the BLM to review the application and to make a decision on the proposed rangeland improvement project.

DATES: You must submit your comments to BLM at the address below on or before April 8, 2003. BLM will not necessarily consider any comments received after the above date.

ADDRESSES: You may mail comments to: Bureau of Land Management, (WO–630), Eastern States Office, 7450 Boston Blvd., Springfield, Virginia 22153.

You may send comments via Internet to: *WOComment@blm.gov*. Please include "ATTN: 1004–0019" and your name and return address in your Internet message.

You may deliver comments to the Bureau of Land Management,

Administrative Record, Room 401, 1620 L Street, NW., Washington, DC.

All comments will be available for public review at the L Street address during regular business hours (7:45 a.m. to 4:15 p.m.) Monday through Friday.

FOR FURTHER INFORMATION CONTACT: You may contact Ken Visser on (202) 452–7743 (Commercial or FTS). Persons who use a telecommnication device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) on 1–800–877–8330, 24 hours a day, seven days a week, to contact Mr. Visser.

SUPPLEMENTARY INFORMATION: 5 CFR 1320.12(a) requires that we provide a 60-day notice in the **Federal Register** concerning a collection of information to solicit comments on:

(a) Whether the collection of information is necessary for the proper functioning of the agency, including whether the information will have practical utility;

(b) the accuracy of our estimates of the information collection burden, including the validity of the methodology and assumptions we use;

(c) ways to enhance the quality, utility, and clarity of the information collected; and

(d) ways to minimize the information collection burden on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

The Taylor Grazing Act (TGA) of 1934 (43 U.S.C. 315 *et seq.*) and the Federal Land Policy and Management Act (FLMPA) of 1976 (43 U.S.C. 1701 *et seq.*) provide the authority for the BLM to administer the livestock grazing program consistent with land use plans, multiple use objectives, sustained yield, environmental values, economic considerations, and other factors. Sections 4 and 15 of the TGA and the regulation at 43 CFR 4120.3–3 allow permittees the opportunity to construct and maintain rangeland improvements on the public lands. Applicants must submit Form 4120–7, Application and Approval for Range Improvement Permit, to request rangeland improvement projects. BLM authorizes rangeland improvement projects to facilitate handling livestock while they are using public lands as an important and integral part of grazing use administration. BLM uses the information the permittees and lessees provide to:

(1) Review requests for privately funded rangeland improvement projects for compatibility with multiple use objectives and land use plans;

(2) Develop appropriate conditions and specifications; and

(3) Approve or reject the applications.

We use the name and address to determine if the applicant is a grazing permittee in compliance with 43 CFR 4120.3–3(a). Applicants also specify if they will construct a new improvement or obtain a permit to maintain an existing improvement. The applicant must briefly state a purpose or justification to determine the compatibility of proposed use with multiple use plans. The applicant identifies the specific location to determine land ownership and if needed, provides a plat to delineate linear improvements such as fences or pipelines.

Because of the variations in size and complexity of rangeland improvement projects, BLM estimates it takes 20 minutes to complete the required information. We estimate 60 responses per year and a total annual burden of 20 hours.

BLM will summarize all responses to this notice and include them in the request for OMB approval. All comments will become a matter of public record.

Dated: February 3, 2003.

Michael H. Schwartz,

Bureau of Land Management, Information Collection Clearance Officer.

[FR Doc. 03–3011 Filed 2–6–03; 8:45 am]

BILLING CODE 4310–84–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–310–1310–PB–241A]

Extension of Approved Information Collection. OMB Control Number 1004–0034

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the paperwork Reduction Act of 1995, the Bureau of Land Management (BLM) is requesting the office of Management and Budget (OMB) to extend an existing approval to collect certain information from those persons who wish to transfer interest in oil and gas or geothermal leases by assignment of record title or transfer operating rights (sublease) in oil and gas or geothermal leases under the terms of the mineral leasing laws. BLM uses Form 3000–3, Assignment of Record Title Interest In A Lease for Oil and Gas or Geothermal Resources, and Form 3000–3a, Transfer of Operating Rights (Sublease) In A Lease for Oil and Gas or Geothermal Resources, to collect this information. This information allows the BLM to transfer interest in oil and gas or geothermal leases by assignment of record title or transfer operating rights (sublease) in oil and gas or geothermal leases under the regulations at 43 CFR 3106, 3135, and 3216.

DATES: You must submit your comments to BLM at the address below on or before April 8, 2003. BLM will not necessarily consider any comments received after the above date.

ADDRESSES: You may mail comments to: Bureau of Land Management, (WO–630), Eastern States Office, 7450 Boston Blvd., Springfield, Virginia 22153.

You may send comments via Internet to: *WOComment@blm.gov*. Please include "ATTN: 1004–0034" and your name and return address in your Internet message.

You may deliver comments to the Bureau of Land Management, Administrative Record, Room 401, 1620 L Street, NW, Washington, DC.

All comments will be available for public review at the L Street address during regular business hours (7:45 a.m. to 4:15 p.m.), Monday through Friday.

FOR FURTHER INFORMATION CONTACT: You may contact Barbara Gamble on (202) 452–0338 (Commercial or FTS). persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service at 1–800–877–8330, 24 hours a day, seven days a week, to contact Ms. Gamble.

SUPPLEMENTARY INFORMATION: 5 CFR 1320.12(a) requires BLM to provide 60-day notice in the **Federal Register** concerning a collection of information to solicit comments on:

(a) Whether the collection of information is necessary for the proper functioning of the agency, including whether the information will have practical utility;

(b) The accuracy of our estimates of the information collection burden, including the validity of the methodology and assumptions we use;

(c) Ways to enhance the quality, utility, and clarity of the information collected; and

(d) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

The Mineral Leasing Act of 1920 (30 U.S.C. 181 *et seq.*) and the Geothermal Steam Act of 1970 (30 U.S.C. 1001–1025) authorize the Secretary of the

Interior to issue leases for development of Federal oil and gas and geothermal resources. The Act of August 7, 1947 (Mineral Leasing Act of Acquired Lands) authorizes the Secretary to lease lands acquired by the United States (30 U.S.C. 341–359). The Department of the Interior Appropriations Act of 1981 (42 U.S.C. 6508) provides for the competitive leasing of lands for oil and gas in the National Petroleum Reserve-Alaska (NPRA). The Attorney General's Opinion of April 2, 1941 (40 Opinion of Attorney General 41) provides the basis under which the Secretary issues certain leases for lands being drained of mineral resources. The Federal Property and Administrative Services Act of 1949 (40 U.S.C. 471 *et seq.*) provides the authority for leasing lands acquired from the General Services Administration.

Assignor/transferor submits Form 3000–3, Assignment of Record Title Interest In A lease for Oil and Gas or Geothermal Resources, and Form 3000–3A, Transfer of Operating Rights (Sublease) In A Lease for Oil and Gas or Geothermal Resources, to transfer interest in oil and gas or geothermal leases by assignment of record title or transfer operating rights (sublease) in oil and gas or geothermal leases under the regulations at 43 CFR 3106, 3135, and 3216. These regulations outline the procedures for assigning record title interest and transferring operating rights in a lease to explore for, develop, and produce oil and gas and geothermal resources.

The assignor/transferor provides the required information to comply with the regulations in order to process the assignments of record title interest or transfer of operating rights (sublease) in a lease for oil and gas or geothermal resources. The assignor/transferor submits the required information to BLM for approval under 30 U.S.C. 187a and the regulations at 43 CFR 3106, 3135, and 3216.

BLM uses the information submitted by the assignor/transferor to identify the interest ownership that is assigned or transferred and the qualifications of the assignor/transferee. BLM determines if the assignor/transferee is qualified to obtain the interest sought and ensures the assignor/transferee does not exceed statutory acreage limitations.

Based on BLM's experience administering the activities described above, we estimate it takes 30 minutes per response to complete the required information. The respondents include individuals, small businesses, and large corporations. The frequency of response is annual. We estimate 60,000 responses per year and a total annual burden of 30,000 hours.

BLM will summarize all responses to this notice and include them in the request for OMB approval. All comments will become a matter of public record.

Dated: February 3, 2003.

Michael H. Schwartz,

Bureau of Land Management, Information Collection Clearance Officer.

[FR Doc. 03–3012 Filed 2–6–03; 8:45 am]

BILLING CODE 4310–84–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–220–1020–PM–24 1A]

Extension of Approved Information Collection, OMB Control Number 1004–0051

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Bureau of Land Management (BLM) is requesting the Office of Management and Budget (OMB) to extend an existing approval to collect certain information from permittees and lessees on the actual grazing use by their livestock. BLM uses Form 4130–5, Actual Grazing Use Report, to collect this information. This information allows BLM to compute fees for the amount of forage authorized grazing livestock consume by area and period.

DATES: You must submit your comments to BLM at the address below on or before April 8, 2003. BLM will not necessarily consider any comments received after the above date.

ADDRESSES: You may mail comments to: Bureau of Land Management, (WO–630), Eastern States Office, 7450 Boston Blvd., Springfield, Virginia 22153.

You may send comments via Internet to: *WOComment@blm.gov*. Please include "ATTN: 1004–0051" and your name and return address in your Internet message.

You may deliver comments to the Bureau of Land Management, Administrative Record, Room 401, 1620 L Street, NW., Washington, DC.

All comments will be available for public review at the L Street address during regular business hours (7:45 a.m. to 4:15 p.m.), Monday through Friday.

FOR FURTHER INFORMATION CONTACT: You may contact Ken Visser on (202) 452–7743 (Commercial or FTS). Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service at 1–800–877–8330, 24 hours a day, seven days a week, to contact Mr. Visser.

SUPPLEMENTARY INFORMATION: 5 CFR 1320.12(a) requires BLM to provide 60-day notice in the **Federal Register** concerning a collection of information contained in regulations in 43 CFR part 4130 to solicit comments on:

(a) Whether the proposed collection of information is necessary for the proper functioning of the agency, including whether the information will have practical utility;

(b) The accuracy of our estimates of the information collection burden, including the validity of the methodology and assumptions we use;

(c) Ways to enhance the quality, utility, and clarity of the information collected; and

(d) Ways to minimize the burden of the information collection on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

The Taylor Grazing Act (TGA) of 1934 (43 U.S.C. 315, 315 *et seq.*), the Federal Land Policy and Management Act (FLPMA) of 1976 (43 U.S.C. 1701 *et seq.*), and the Public Rangelands Improvement Act (PRIA) of 1978 (43 U.S.C. 1901 *et seq.*) provide the authority for the BLM to administer the livestock grazing program consistent with land-use plans, multiple-use objectives, sustained yield, environmental values, economic considerations, and other factors. BLM administers the grazing program, generally, by issuing grazing permits or leases that specify allowable livestock use by location, number and period. BLM recognizes that to sustain and conserve resources, minor annual adjustments of grazing terms and conditions as specified on a multi-year term permit or lease are needed to balance actual grazing use with available forage and water. Therefore, rather than relying solely upon the terms and conditions of the permit or lease as a record of the use made during any one year, BLM can require permittees or lessees to submit information that more accurately reflects the grazing use. Sections 3 and 15 of the TGA and the regulation at 43 CFR 4130.3–2(d) provide that BLM may require permittees or lessees to furnish a record of their actual grazing use. The regulation (43 CFR 4130.8–1(e)) provides for a grazing fee payment after the grazing season under specified

circumstances. Lessees or permittees submit grazing use information on the Form 4130–5, Actual Grazing Use Report.

BLM uses this information for two specific purposes:

a. *To calculate the fees due for the grazing use completed.* Fees are due the United States when BLM issues a billing notice and must be paid in full prior to grazing use, except when an allotment management plan (AMP) provides for delayed payment and it is incorporated into a grazing permit or lease. In this latter situation, BLM will issue a billing notice based upon the actual grazing use completed at the end of the grazing period or year (43 CFR 4130.8–1(e)). BLM uses the information it collects to bill for grazing use or to make up a part of the allotment monitoring records. The permittee and lessee must keep accurate and current records for the period of time his/her permit or lease covers. The information collected includes allotment and pasture location of the grazing, the date and numbers of livestock permitted on or removed from the range, and the kind or class of livestock grazed.

b. *To obtain information needed to monitor and evaluate livestock grazing use.* The purposes of the information are to determine if adjustments in the amount of use are needed, or if other management actions could achieve the desired effects. Knowledge of actual livestock grazing use is essential in the monitoring and the evaluation of the livestock grazing management program. Information on the specific use is essential for an accurate and complete analysis and evaluation of the effects of livestock grazing during particular periods of time, as interrelated with other factors such as climate, growth characteristics of the vegetation, and utilization levels on the plants.

Without this information, the BLM could not fulfill its legal responsibility to manage uses of the public land as required by law. The required information is only available from the grazing operators. Because the actual grazing use that occurs is not constant from year to year, BLM requires information for each grazing season for which grazing use is sought.

Based on BLM's experience administering the activities described above, we estimate the average public reporting burden to complete the required information is 25 minutes per response. Because of the variations in size and complexity or range livestock operations, some of the 15,000 responses may take a few minutes in one recording session to complete the form, while others may take up to 60 minutes combined through several sessions during the grazing year, with each requiring a few minutes to enter the required data. The respondents include permittees and lessees required to furnish a record of the actual grazing use. The frequency of response is annually. We estimate the number of responses per year is 15,000 and a total annual burden of 6,250 hours.

BLM will summarize all responses to this notice and include them in the request for OMB approval. All comments will become a matter of public record.

Dated: February 3, 2003.

Michael H. Schwartz,

Bureau of Land Management, Information Collection Clearance Officer.

[FR Doc. 03–3013 Filed 2–6–03; 8:45 am]

BILLING CODE 4310–84–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–250–1231–EB–24 1A]

Extension of Approved Information Collection, OMB Control Number 1004–0119

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Bureau of Land Management (BLM) is requesting the Office of Management and Budget (OMB) to extend an existing approval to collect certain information from recreation visitors to areas of the public lands and related waters, where we require special recreation permits. BLM uses Form 8370–1, Special Recreation Application and Permit, to collect this information. This information allows the BLM to authorize requested recreation use and determine appropriate fees. BLM will also use the information to tabulate recreation use data for the annual Federal Recreation Fee Report as required by the Land and Water Conservation Act.

DATES: You must submit your comments to BLM at the address below on or before April 8, 2003. BLM will not necessarily consider any comments received after the above date.

ADDRESSES: You may mail comments to: Bureau of Land Management, (WO–630), Eastern States Office, 7450 Boston Blvd., Springfield, Virginia 22153.

You may send comments via Internet to: *WOComment@blm.gov.* Please include "ATTN: 1004–0119" and your name and return address in your Internet message.

You may deliver comments to the Bureau of Land Management, Administrative Record, Room 401, 1620 L Street, NW., Washington, DC.

All comments will be available for public review at the L Street address during regular business hours (7:45 a.m. to 4:15 p.m.), Monday through Friday.

FOR FURTHER INFORMATION CONTACT: You may contact Lee Larson, on (202) 452–5168 (Commercial or FTS). Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) on 1–800–877–8330, 24 hours a day, seven days a week, to contact Mr. Larson.

SUPPLEMENTARY INFORMATION: 5 CFR 1320.12(a) requires BLM to provide a 60-day notice in the **Federal Register** concerning a collection of information to solicit comments on:

(a) Whether the proposed collection of information is necessary for the proper functioning of the agency, including whether the information will have practical utility;

(b) The accuracy of our estimates of the information collection burden, including the validity of the methodology and assumptions we use;

(c) Ways to enhance the quality, utility, and clarity of the information collected; and

(d) Ways to minimize the burden of the information collection on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Respondents submit Form 8370–1, Special Recreation Application and Permit, to supply identifying information and data on proposed commercial, competitive, or individual recreation use. This information allows the BLM to authorize requested recreation use and determine appropriate fees. We will also use this information to tabulate recreation use data for the annual Federal Recreation Fee Report as required by the Land and Water Conservation Act.

Based on BLM's experience administering the activities described above, we estimate the public reporting burden for the information collected is 30 minutes per response. The respondents are recreation visitors to areas of the public lands and related waters, where we require special recreation permits. The frequency of response is on occasion. We estimate the number of responses per year is 31,000 and a total annual burden of 15,500 hours.

BLM will summarize all responses to this notice and include them in the request for OMB approval. All comments will become a matter of public record.

Dated: February 3, 2003.

Michael H. Schwartz,

Bureau of Land Management, Information Collection Clearance Officer.

[FR Doc. 03–3014 Filed 2–6–03; 8:45 am]

BILLING CODE 4310–84–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–250–1220–EA–24 1A]

Extension of Approved Information Collection, OMB Control Number 1004–0133

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Bureau of Land Management (BLM) is requesting the Office of Management and Budget (OMB) to extend an existing approval to collect certain information from individuals desiring to use campgrounds. BLM uses Form 1370–36, Permit Fee Envelope, to collect this information. This information allows BLM to determine if all users have paid the required fee, the number of users, and their State of origin.

DATES: You must submit your comments to BLM at the address below on or before April 8, 2003. BLM will not necessarily consider any comments received after the above date.

ADDRESSES: You may mail comments to: Bureau of Land Management, (WO–630) Eastern States Office, 7450 Boston Blvd., Springfield, Virginia 22153.

You may send comments via Internet to: *WOComment@blm.gov*. Please include "ATTN: 1044–0133" and your name and return address in your Internet message.

You may deliver comments to the Bureau of Land Management, Administrative Record, Room 401, 1620 L Street, NW., Washington, DC.

All comments will be available for public review at the L Street address during regular business hours (7:45 a.m. to 4:15 p.m.), Monday through Friday.

FOR FURTHER INFORMATION CONTACT: You may contact Lee Larson, on (202) 452–5168 (Commercial or FTS). Persons who use telecommunication device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) on 1–800–877–8330, 24 hours a day, seven days a week, to contact Mr. Larson.

SUPPLEMENTARY INFORMATION: 5 CFR 1320.12(a) requires that we provide a 60-day notice in the **Federal Register** concerning a collection of information to solicit comments on:

(a) Whether the proposed collection of information is necessary for the proper functioning of the agency, including whether the information will have practical utility;

(b) The accuracy of our estimates of the information collection burden, including the validity of the methodology and assumptions we use;

(c) Ways to enhance the quality, utility, and clarity of the information collected; and

(d) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Respondents use BLM Form 1370–36 (Permit Fee Envelope) to supply the following information:

(a) The campsite number;

(b) Date camping;

(c) Number in party;

(d) Zip code;

(e) Fee paid;

(f) Vehicle license number; and

(g) Primary purpose of visit.

This information allows the BLM to determine if all users paid the required fee, the number of users, and their State of origin.

Based on BLM's experience administering the activities described above, we estimate the public reporting burden to complete the information collected is two minutes per response. The respondents are individuals desiring to use the campground. The frequency of response is occasionally. We estimate the total annual burden is 11,767 hours.

BLM will summarize all responses to this notice and include them in the request for OMB approval. All comments will become a matter of public record.

Dated: February 3, 2003.

Michael H. Schwartz,

Bureau of Land Management, Information Collection Clearance Officer.

[FR Doc. 03–3015 Filed 2–6–03; 8:45 am]

BILLING CODE 4310–84–M

DEPARTMENT OF THE INTERIOR

National Park Service Northeast Region; Notice of Intent To Prepare an Environmental Impact Statement and Hold Public Meetings for Harriet Tubman Special Resource Study

In accordance with section 102 (c) of the National Environmental Policy Act of 1969, the National Park Service (NPS) is preparing an Environmental Impact Statement (EIS) for a Special Resource Study (SRS) of sites associated with Harriet Tubman in Auburn, New York, and Cambridge, Maryland, and possibly elsewhere. This study was mandated by Pub. L. 106–516, "The Harriet Tubman Special Resource Study Act."

Harriet Tubman was born into slavery in Maryland in about 1820. She escaped and returned many times to escort others from bondage, defying fugitive slave laws. Today, Harriet Tubman is widely known for her work as a "conductor" on the Underground Railroad, a role which has been described in legal documents, letters, newspapers, magazines, biographies, and histories. To some extent, this has overshadowed the other accomplishments for which she is less well noted. She had a military career during the Civil War as a scout, a spy, and a nurse, and received military honors at her burial. She also created her own social service institution by establishing a home for elderly poor African Americans, known later as Harriet Tubman Home for the Aged.

The purpose of this Special Resource Study/EIS is to provide Congress with information about the significance, suitability, and feasibility of sites related to Harriet Tubman. The study will develop alternative options for management and interpretation of certain sites. In addition, the study will also examine Tubman-related sites as a potential national heritage area, per the authorizing legislation.

The NPS will hold public meetings in winter 2002–2003, in various locations containing resources associated with Harriet Tubman. The meetings will be announced on the study's Internet Web site, *HarrietTubmanStudy.org*, in local media, by direct mail, and through known Tubman interest groups. The purpose of these meetings is to obtain written and oral comments concerning Tubman resources, commemoration of Tubman, and issues of possible environmental impact topics. A summary of public scoping will be prepared as part of the draft Environmental Impact Statement.

The draft report of the study, with the draft EIS, is expected to be completed

and available for public review by late 2003.

Additional information about the study/EIS may be obtained from the National Park Service Boston Support Office, 15 State Street, Boston, Massachusetts 02109, Barbara Mackey, Team Captain, at telephone 617–223–5138 or *Barbara_Mackey@nps.gov*.

Dated: December 11, 2002.

Lawrence Gall,

Acting Superintendent, Boston Support Office.

[FR Doc. 03–3097 Filed 2–6–03; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

San Luis Reservoir and Los Banos Creek State Recreation Area Joint General Plan and Resource Management Plan, Merced County, CA

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of intent to prepare a programmatic environmental impact statement/environmental impact report (PEIS/EIR).

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act (NEPA), the Bureau of Reclamation, in cooperation with the California Department of Parks and Recreation (DPR), proposes to prepare a draft PEIS/EIR for the San Luis Reservoir and Los Banos Creek State Recreation Area (SRA) joint General Plan and Resource Management Plan (GP/RMP). Scoping meetings are being conducted to elicit comments on the scope and issues to be addressed in the draft PEIS/EIR. The dates and times for the meetings are noted below.

DATES: The first scoping meeting was held on Saturday, January 11, 2003, from 10 a.m. to 2 p.m. in Gustine, California. The second scoping meeting will be held on Thursday, February 20, 2003, from 1 p.m. to 3 p.m. in Gustine, California.

Written comments should be sent to Reclamation at the address below by March 10, 2003.

ADDRESSES: The meeting location is at the California Department of Parks and Recreation, Four Rivers District Office, 31426 Gonzaga Road, Gustine, CA, 95322.

Written comments should be sent to Mr. Dan Holsapple, Bureau of Reclamation, South-Central California Area Office, 1243 N Street, Fresno, CA 93721–1813; or faxed to 559–487–5130 (TDD 559–487–5933); or e-mail: *dholsapple@mp.usbr.gov*.

FOR FURTHER INFORMATION CONTACT: Mr. Dan Holsapple, Bureau of Reclamation, at the above address, telephone: 559–487–5409; or Dennis Imhoff, CEQA Coordinator, California Department of Parks and Recreation, Four Rivers District, 31426 Gonzaga Road, Gustine, CA 95322, telephone: 209–826–1197, e-mail: *dimho@parks.ca.gov*.

SUPPLEMENTARY INFORMATION: San Luis Reservoir is approximately 5 miles west of the City of Los Banos, adjacent to State Route 152, in Merced County, California. Los Banos Creek State Recreation Area is located about 5 miles southwest of the City of Los Banos, south of State Route 152, off Volta Road, just west of Interstate 5.

Reclamation and DPR are preparing a joint draft PEIS/EIR. DPR will be the Lead Agency for the California Environmental Quality Act (CEQA) and Reclamation will be the Lead Agency for NEPA.

DPR's General Plan Unit, in conjunction with its Four Rivers District Office, is developing the General Plan (GP) portion of the GP/RMP, in accordance with Public Resources Code § 5002.2 (General Plan guidelines) and § 21000 *et seq.* (CEQA). The purpose of the GP is to guide future development activities and management objectives at the Park. Reclamation is developing a RMP portion of the GP/RMP, pursuant to the Reclamation Recreation Management Act of 1992, Title 28, Pub. L. 102–575, the Council on Environmental Quality Regulations (CEQ) (40 CFR 1500–08) and the Federal Water Project Recreation Act. Reclamation and DPR are cooperating to prepare the GP/RMP in a consolidated planning process to solicit agency and stakeholder participation for both efforts simultaneously. The project areas for each plan will vary, based on differences in management and ownership; however, there will be common components within the joint GP/RMP.

The San Luis Reservoir and the Los Banos Creek Retention Dam were built in 1965 as part of the Central Valley Project on lands owned by Reclamation. The lands are jointly managed by the California Department of Water Resources (DWR) and DPR. DPR is responsible for recreation and resource management while DWR manages the water supply facilities.

There are additional tracts of land, managed by the California Department of Fish and Game (DFG) in the vicinity of the San Luis Reservoir, which were set aside to mitigate for construction impacts. These DFG-managed lands will not be part of the GP and PEIR/EIS, as DPR does not have management jurisdiction over these lands.

San Luis Reservoir Wildlife Area and O'Neill Forebay Wildlife Area, federally owned lands which are managed by DFG, will be included in the RMP and PEIR/EIS.

The objectives of the GP/RMP are to establish management objectives, guidelines, and actions to be implemented by Reclamation directly, or through its recreation contract with DPR to:

- Protect the water supply and water quality functions of the reservoirs,
- Protect and enhance natural and cultural resources in the SRA, consistent with Federal law and Reclamation policies,
- Provide recreational opportunities and facilities consistent with the Central Valley Project purposes.

The GP/RMP will be the primary management guideline for defining a framework for resource stewardship, interpretation, facilities, visitor use, and services. The joint plan will define an ultimate purpose, vision and intent for management through goal statements, guidelines, and broad objectives. The GP/RMP will be a long-term plan that will guide future specific actions at the SRA. Subsequent specific actions will be the subject of future environmental analysis as required.

We would like to know the views of interested persons, organizations, and agencies as to the scope and content of the information to be included and analyzed in the draft PEIS/EIR. Agencies should comment on the elements of the environmental information that are relevant to their statutory responsibilities in connection with the proposed project.

It is Reclamation's practice to make comments, including names and home addresses of respondents, available for public review. Individual respondents may request that we withhold their home address from public disclosure, which we will honor to the extent allowable by law. There may also be circumstances in which we would withhold a respondent's identity from public disclosure, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public disclosure in their entirety.

Dated: February 3, 2003.

Frank Michny,

Regional Environmental Officer, Mid-Pacific Region.

[FR Doc. 03–3023 Filed 2–6–03; 8:45 am]

BILLING CODE 4310–MN–P

INTERNATIONAL TRADE COMMISSION

Request for Public Comments Concerning the Maintenance of the Harmonized Tariff Schedule of the United States

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission is responsible for the maintenance and publication of the Harmonized Tariff Schedule of the United States (HTS), pursuant to title I of the Omnibus Trade and Competitiveness Act of 1988 (19 U.S.C. 3001 *et seq.*). The Commission is seeking input from users of the HTS on the maintenance and structure of the change record, so that public and private users can identify more easily the changes in each issuance of the HTS and locate the source of such changes. In addition, the Commission is asking users of the electronic revisions of the HTS to suggest changes or improvements in the posting of such files on the Commission's Web site.

EFFECTIVE DATE: Upon publication; comments are sought through the close of business on the date that is four weeks after the date of publication of this notice in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Eugene A. Rosengarden, Director, Office of Tariff Affairs and Trade Agreements, (202) 205–2592; Janis L. Summers, Attorney-Adviser, Office of Tariff Affairs and Trade Agreements, (202) 205–2605; or David G. Michels, Special Assistant to the Director, (202) 205–3440; U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. General information concerning the Commission may also be obtained by accessing its Web site *(http://www.usitc.gov)*. Comments filed pursuant to this notice may be viewed on the Commission's Electronic Document Information System (EDIS–II) at *http://edis.usitc.gov*.

SUPPLEMENTARY INFORMATION:

Background

Beginning with the first edition of the HTS (Commission Publication 2030) and continuing through the present, each printed annual edition of the HTS and each printed supplement has included as a final section a record of the changes contained therein. These records, although not legally authoritative in regard to the tariff treatment of imported goods, assist both public and private sector users of the HTS by identifying changes in HTS provisions. The change records list legal and statistical modifications in the notes and headings of the tariff schedule and, more recently, have included the source of each change together with its effective date. They are intended to be read in conjunction with the Preface to each printed or electronic issuance, because the Preface contains a complete enumeration of legal and administrative instruments and actions that affect the particular issuance, along with effective dates and citations. Since 2000, the Commission has also posted periodic electronic revisions of the HTS on its Web site, *www.usitc.gov*, so that the information in the tariff schedule is more current, together with electronic links to legal instruments making changes in the legal provisions of the HTS. These revisions each contain a complete set of the files that comprise the HTS, whether or not each file was modified. Each such revision likewise contains a change record, but that change record lists only the modifications contained in that revision and is not cumulative to the last printed edition or supplement. Thus, in order to compile a complete list of changes since the immediately prior printed document, a user must retain and combine all of the revision-related change records to have a composite list of changes since that printed document. This system has proven to be confusing to users, even to those most familiar with the HTS. The change records are presented for convenient reference, and as such are not part of the legal text of the HTS; further explanation was provided in the recently revised and expanded Preface to the HTS (2003).

Possible changes.—First, the Commission is considering any modifications that may make the change record more useful to all users, while still being administratively feasible, and that may also enable the staff concerned to keep this record more current (and better meet the needs of the Customs Service in updating its automated entry system). It should be noted that any such modifications would have no effect on the advisory nature of the change record, because the interpretation and administration of the HTS are within the legal authority of the Customs Service. In addition, significant lengthening of the change record and proposals for software changes are not likely to be feasible. Nonetheless, possible modifications might include: (1) Expansion of or changes in the descriptions of changes; (2) use of a revised tabular format, perhaps with additional columns providing new information of interest to users; (3) devising a useful method to show the indentation level in the nomenclature structure at which a change has occurred; (4) providing an on-line composite change record, perhaps extending back as far as the 1989 HTS, reflecting all prior legal and/or statistical changes as a history of each tariff provision; (5) if possible, using a format that enables the maximum number of users having different software to download or access the change record. Because the Commission does not determine as a matter of law the classification of imported goods, the change record cannot provide a cross-reference table showing actual changes in classification or the derivation of the scope of new tariff categories. However, other possible useful modifications in addition to the list above can be considered.

In addition, the Commission is considering whether the posting of electronic revisions of the HTS might be changed or improved, either in timeliness or in their method of presentation. These changes might include: (1) Posting only those chapter files, or even individual pages, that contain actual modifications; (2) posting a downloadable file that contains all chapters or pages that were modified since the last electronic revision was posted; (3) posting chapter files or pages whenever changes occur, rather than periodically when several instruments have modified the HTS; (4) eliminating the WordPerfect version and posting only the PDF version of the schedule; or (5) making other changes in the organization of the Web site to make it easier to locate and use these revisions. It is not considered feasible or desirable to insert in the actual tariff chapter files themselves a typed indicator of a change (such as italicized language) or the date it occurred, given staff resources, possible confusion where multiple changes occur, and the need for a more rapid reflection of tariff changes; also, the change record already provides a clearer list of these modifications and their sources.

Written submissions.—All submissions must comply with the

Commission's rules and should be filed with the Office of the Secretary of the Commission as soon as is practicable, but in any case before the close of business on the date that is four weeks after the date of publication of this notice in the **Federal Register.** The Commission's rules do not authorize the filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by § 201.8 of the Commission's Rules, as amended, 67 Fed. Reg. 68036 (Nov. 8, 2002).

Confidential business information (CBI).—The Commission does not anticipate that any private sector party would need to include CBI in any submission filed in response to this notice. If such information must be included, the filer must comply with the Commission's rules of practice and procedure, in particular §§ 201.6, 207.3 and 207.7 (19 CFR 201.6, 207.3 and 207.7), in addition to the general requirements for written submissions in § 201.8 of the Commission's rules.

Staff review.—An informal staff review of the public comments filed in response to this notice, and the staff's reaction to each comment, will be prepared and will be posted in memorandum form on the Commission's internet server on the page for "Harmonized Tariff Schedule of the United States" as soon as is practicable following the close of the comment period.

By order of the Commission.

Issued: February 3, 2003.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 03–3056 Filed 2–6–03; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 701–TA–432 (Preliminary) and 731–TA–1024–1028 (Preliminary)]

Prestressed Concrete Steel Wire Strand From Brazil, India, Korea, Mexico, and Thailand

AGENCY: United States International Trade Commission.

ACTION: Institution of countervailing duty and antidumping investigations and scheduling of preliminary phase investigations.

SUMMARY: The Commission hereby gives notice of the institution of investigations and commencement of preliminary phase countervailing duty and antidumping investigations Nos. 701–TA–432 (Preliminary) and 731–TA–1024–1028 (Preliminary) under sections 703(a) and 733(a) of the Tariff Act of 1930 (19 U.S.C. 1671b(a) and 1673b(a)) (the Act) to determine whether there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from India of prestressed concrete steel wire strand (PC strand), provided for in subheading 7312.10.30 of the Harmonized Tariff Schedule of the United States, that are alleged to be subsidized by the Government of India and by reason of imports from Brazil, India, Korea, Mexico, and Thailand of PC strand that are alleged to be sold in the United States at less than fair value. Unless the Department of Commerce extends the time for initiation pursuant to sections 702(c)(1)(B) and 732(c)(1)(B) of the Act (19 U.S.C. 1671a(c)(1)(B) and 1673a(c)(1)(B)), the Commission must reach preliminary determinations in countervailing duty and antidumping investigations in 45 days, or in this case by March 17, 2003. The Commission's views are due at Commerce within five business days thereafter, or by March 24, 2003.

For further information concerning the conduct of these investigations and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and B (19 CFR part 207).

EFFECTIVE DATE: January 31, 2003.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*http://www.usitc.gov*). The public record for these investigations may be viewed on the Commission's electronic docket (EDIS–ON–LINE) at *http://dockets.usitc.gov/eol/public.*

SUPPLEMENTARY INFORMATION:

Background—These investigations are being instituted in response to petitions filed on January 31, 2003, by counsel on behalf of American Spring Wire Corp., Bedford Heights, OH; Insteel Wire Products Co., Mt. Airy, NC; and Sumiden Wire Products Corp., Stockton, CA.

Participation in the investigations and public service list—Persons (other than petitioners) wishing to participate in the investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in sections 201.11 and 207.10 of the Commission's rules, not later than seven days after publication of this notice in the **Federal Register**. Industrial users and (if the merchandise under investigation is sold at the retail level) representative consumer organizations have the right to appear as parties in Commission countervailing duty and antidumping investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in these investigations available to authorized applicants representing interested parties (as defined in 19 U.S.C. 1677(9)) who are parties to the investigations under the APO issued in the investigations, provided that the application is made not later than seven days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Conference—The Commission's Director of Operations has scheduled a conference in connection with these investigations for 9:30 a.m. on February 21, 2003, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Parties wishing to participate in the conference should contact Mary Messer (202–205–3193) not later than February 19, 2003, to arrange for their appearance. Parties in support of the imposition of countervailing and antidumping duties in these investigations and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the conference.

Written submissions—As provided in sections 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before

February 26, 2003, a written brief containing information and arguments pertinent to the subject matter of the investigations. Parties may file written testimony in connection with their presentation at the conference no later than three days before the conference. If briefs or written testimony contain BPI, they must conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means except to the extent provided by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002).

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.12 of the Commission's rules.

By order of the Commission.

Issued: February 3, 2003.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 03–3017 Filed 2–6–03; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Agency Information Collection Activities; Proposed Collection; Comments Requested

ACTION: 30-Day notice of information collection under review: extension of a currently approved collection, application for procurement quota for controlled substances.

The Department of Justice (DOJ), Drug Enforcement Administration (DEA) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was published in the **Federal Register** on December 6, 2002, Volume 67, Number 235, Page 72702, allowing for a 60 day public comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until March 10, 2003. This process is conducted in accordance with 5 CFR 1320.10.

Written comments/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to The Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection in information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, and mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of The Information Collection

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Application for procurement quota for controlled substances.

(3) *Agency form numbers, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number, DEA Form 250. Office of Diversion Control, Drug Enforcement Administration, U.S. Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:*

Primary: Business or other for-profit.

Other: None.

Abstract: Title 21, United States Code, section 826, and title 21, Code of Federal Regulations (CFR), 1303.12(b) require the United States companies who desire to use any basic class of controlled substances listed in Schedule I or II for purposes of manufacturing during the next calendar year shall apply on DEA Form 250 for a procurement quota for such class. DEA is required by statute (21 U.S.C. 826(c)) to limit the production of Schedule I and II controlled substances to the amounts necessary the meet "the estimated legitimate medical, scientific, research and industrial needs of the United States."

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* There will be an estimated 200 responses, one for each respondent. The estimated amount of time required for the average respond to respond: There are 284 respondents, completing 818 annual responses. Each response is estimated to take 1 hour.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are 818 annual burden hours associated with this collection.

If additional information is required contact: Robert B. Briggs, Department Clearance Officer, Information Management and Security Staff, Justice Management Division, United States Department of Justice, Suite 1600, Patrick Henry Building, 601 D Street, NW., Washington, DC 20530.

Dated: February 3, 2003.

Robert B. Briggs,

Department Clearance Officer, Department of Justice.

[FR Doc. 03–3077 Filed 2–6–03; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 30-day notice of information collection under review: extension of a currently approved collection; application for individual marketing quota for a basis class of controlled substances.

The Department of Justice (DOJ), Drug Enforcement Administration (DEA) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was

previously published in **Federal Register** on December 6, 2002, Volume 67, Number 235, Pages 72701–72702, allowing for a 60 day public comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until March 10, 2003. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to The Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Application for Individual Manufacturing Quota for a Basic Class of Controlled Substances.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: DEA Form 189. Office of Diversion Control, Drug Enforcement Administration, U.S. Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:*

Primary: Business or other for-profit.

Other: None.

Abstract: Title 21, United States Code, section 826, and title 21, Code of Federal Regulations (CFR) 1303.22 require that any person who is registered to manufacture any basic class of controlled substances listed in Schedule I or II and who desires to manufacture a quantity of such class must apply on DEA Form 189 for a manufacturing quota for such quantity of such class.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: There are an estimated 264 responses, provided by 44 respondents. The estimated time required for the average respondent to respond is 30 minutes.

(6) An estimate of the total public burden (in hours) associated with the collection: There are 132 annual burden hours associated with this collection.

If additional information is required contact; Robert B. Briggs, Department Clearance Officer, Information Management and Security Staff, Justice Management Division, United States Department of Justice, Suite 1600, Patrick Henry Building, 601 D Street, NW., Washington, DC 20530.

Dated: February 3, 2003.

Robert B. Briggs,

Department Clearance Officer, Department of Justice.

[FR Doc. 03–3078 Filed 2–6–03; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Registration

By Notice dated June 28, 2002, and published in the **Federal Register** on August 7, 2002, (67 FR 51294), Applied Science Labs, Division of Alltech Associates, Inc., 2701 Carolean Industrial Drive, State College, Pennsylvania 16801, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Methcathinone (1237)	I
N-Ethylamphetamine (1475)	I
N,N-Dimethylamphetamine (1480)	I
4-Methylaminorex (cis isomer) (1590).	I
Lysergic acid diethylamide (7315)	I
Mescaline (7381)	I
3,4-Methylenedioxyamphetamine (7400).	I
N-Hydroxy-3,4-methylenedioxyamphetamine (7402).	I
3,4-Methylenedioxy-N-ethylamphetamine (7404).	I
3,4-Methylenedioxymethamphetamine (7405).	I
N-Ethyl-1-phenylcyclohexylamine (7455).	I
1-(1-Phenylcyclohexyl)pyrrolidine (7458).	I
1-[-(2-Thienyl)cyclohexyl]piperidine (7470).	I
Dihydromorphine (9145)	I
Normorphine (9313)	I
1-Phenylcyclohexylamine (7460)	II
Phencyclidine (7471)	II
Phenylacetone (8501)	II
1-Piperidinocyclohexanecarbonitrile (8603).	II
Cocaine (9041)	II
Codeine (9050)	II
Dihydrocodeine (9120)	II
Benzoylecgonine (9180)	II
Morphine (9300)	II
Noroxymorphone (9668)	II

The firm plans to manufacture small quantities of the listed controlled substances for reference standards.

No comments or objections were received. DEA has considered the factors in Title 21, United States Code, section 823(a) and determined that the registration of Applied Science Labs to manufacture the listed controlled substances is consistent with the public interest at this time. DEA has investigated Applied Science Labs on a regular basis to ensure that the company's continued registration is consistent with the public interest. These investigations have included inspection and testing of the company's physical security systems, audits of the company's records, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823 and CFR 0.100 and 0.104, the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Dated: January 27, 2003.

Laura M. Nagel,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 03–3049 Filed 2–6–03; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated June 28, 2002, and published in the **Federal Register** on August 7, 2002, (67 FR 51294), Johnson Matthey, Inc., Custom Pharmaceuticals Department, 2003 Nolte Drive, West Deptford, New Jersey 08066, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Tetrahydrocannabinols (7370)	I
Difenoxin (9168)	I
Propiram (9649)	I
Amphetamine (1100)	II
Methylphenidate (1724)	II
Codeine (9050)	II
Oxycodone (9143)	II
Hydromorphone (9150)	II
Hydrocodone (9193)	II
Meperidine (9230)	II
Morphine (9300)	II
Thebaine (9333)	II
Alfentanil (9737)	II
Sufentanil (9740)	II
Fentanyl (9801)	II

The firm plans to manufacture the listed controlled substances in bulk to supply final dosage form manufacturers.

DEA has considered the factors in Title 21, United States Code, section 823(a) and determined that the registration of Johnson Matthey, Inc. to manufacture the listed controlled substances is consistent with the public interest at this time. DEA has investigated Johnson Matthey, Inc. on a regular basis to ensure that the company's continued registration is consistent with the public interest. These investigations have included inspection and testing of the company's physical security systems, audits of the company's records, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823 and 28 CFR 0.100 and 0.104, the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Dated: January 27, 2003.

Laura M. Nagel,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 03–3050 Filed 2–6–03; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By notice dated October 21, 2002, and published in the **Federal Register** on October 25, 2002, (67 FR 65604), Polaroid Corporation, 1265 Main Street, Building W6, Waltham, Massachusetts 02454, made application to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of 2, 5-dimethoxyamphetamine (7396), a basic class of controlled substance listed in Schedule I.

The firm plans to manufacture 2,5-dimethoxyamphetamine for conversion into a non-controlled substance.

No comments or objections have been received. DEA has considered the factors in Title 21, United States Code, Section 823(a) and determined that the registration of Polaroid Corporation to manufacture 2,5-dimethoxyamphetamine is consistent with the public interest at this time. DEA has investigated Polaroid Corporation to ensure that the company's registration is consistent with the public interest. The investigation included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823 and 28 CFR 0.100 and 0.104, the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic class of controlled substance listed above is granted.

Dated: January 27, 2003.

Laura M. Nagel,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 03–3048 Filed 2–6–03; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated August 20, 2002, and published in the **Federal Register** on October 18, 2002, (67 FR 64419), Research Triangle Institute, Kenneth H. Davis, Jr., Hermann Building, East Institute Drive, PO Box 12194, Research Triangle Park, North Carolina 27709, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Marihuana (7360)	I
Cocaine (9041)	II

The Institute will manufacture small quantities of cocaine derivatives and marihuana derivatives for use by their customers primarily in analytical kits, reagents and standards. No comments or objections have been received. DEA has considered the factors in Title 21, United States Code, section 823(a) and determined that the registration of Research Triangle Institute to manufacture the listed controlled substances is consistent with the public interest at this time. DEA has investigated Research Triangle Institute on a regular basis to ensure that the company's continued registration is consistent with the public interest. These investigations have included inspection and testing of the company's physical security systems, audits of the company's records, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore pursuant to 21 U.S.C. 823 and 28 CFR 0.100 and 0.104, the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Dated: January 27, 2003.

Laura M. Nagel,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 03–3051 Filed 2–6–03; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Registration

By Notice dated October 25, 2002, and published in the **Federal Register** on November 7, 2002, (67 FR 67872), Research Triangle Institute, Kenneth H. Davis, Jr., Hermann Building, East Institute Drive, PO Box 12194, Research Triangle Park, North Carolina 27709, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as an importer of the basic classes of controlled substances listed below:

Drug	Schedule
Marihuana (7360)	I
Cocaine (9041)	II

The firm plans to import small quantities of the listed controlled substances for the National Institute of Drug Abuse and other clients.

No comments or objections have been received. DEA has considered the factors in Title 21, United States Code, section 823(a) and determined that the registration of Research Triangle Institute is consistent with the public interest and with United States obligations under international treaties, conventions, or protocols in effect on May 1, 1971, at this time. DEA has investigated Research Triangle Institute on a regular basis to ensure that the company's continued registration is consistent with the public interest. These investigations have included inspection and testing of the company's physical security systems, audits of the company's records, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to section 1008(a) of the Controlled Substances Import and Export Act and in accordance with Title 21, Code of Federal Regulations, § 1301.34, the above firm is granted registration as a importer of the basic classes of controlled substances listed above.

Dated: January 27, 2003.

Laura M. Nagel,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 03–3052 Filed 2–6–03; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances: Notice of Registration

By Notice dated October 21, 2002, and published in the **Federal Register** on October 25, 2002, (67 FR 65604), Rhodes Technologies, 498 Washington Street, Conventry, Rhode Island 02816, made application by letter to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Tetrahydrocannabinols (7370)	I
Dihydrocodeine (9120)	II
Hydromorphone (9150)	II
Hydrocodone (9193)	II
Noroxymorphone (9668)	II
Fentanyl (9801)	II

The firm plans to produce bulk product for conversion and distribution to its customers.

No comments or objections have been received. DEA has considered the factors in Title 21, United States Code, section 823(a) and determined that the registration of Rhodes Technologies to manufacture the listed controlled substances is consistent with the public interest at this time.

DEA has investigated Rhodes Technologies to ensure that the company's registration is consistent with the public interest. This investigation included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823 and 28 CFR 0.100 and 0.104, the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Dated: January 27, 2003.

Laura M. Nagel,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 03–3053 Filed 2–6–03; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

[INS No. 2254–03]

Immigration and Naturalization Service; Meeting of the Data Management Improvement Act of 2000 Task Force

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Notice of meeting.

COMMITTEE MEETING: Immigration and Naturalization Service, (INS) Data Management Improvement Act of 2000 (DMIA) Task Force.

DATE AND TIME: Friday, February 21, 2003, 10 a.m. to 1 p.m.

PLACE: INS Headquarters, 425 I Street, NW., Washington, DC 20536, Shaughnessy Conference Room, Sixth Floor.

STATUS: Open. Notice is hereby given that the DMIA Task Force will meet on Friday, February 21, 2003, from 10 a.m. to 1 p.m. All times noted are eastern standard time. The meeting will be open to the public.

PURPOSE: The DMIA Task Force is focusing on issues related to facilitating the flow of traffic at United States ports-of-entry (POEs) while enhancing security and addressing commercial facilitation needs. The Task Force will be discussing facility and infrastructure issues, coordination and cooperation mechanisms, and information and technology issues. Discussion also will take place regarding resource requirements and how to determine those needs in support of POE operations.

PUBLIC PARTICIPATION: The meeting is open to the public; however, advance notice of attendance is required to ensure adequate seating and to arrange for appropriate clearance into the building. Persons planning to attend should notify the contact person no less than 5 days prior to the meeting. Members of the public may submit written comments or questions before the meeting to the contact person for consideration by the DMIA Task Force. Only written comments or questions received by the contact person no less than 5 days prior to the meeting will be considered for discussion at the meeting.

CONTACT PERSON: Michael Defensor or Deborah Hemmes, Immigration and Naturalization Service, 425 I Street, NW., Room 7257, Washington, DC 20536; telephone (202) 305–9863; fax: (202) 305–9871; e-mail:

michael.defensor@usdoj.gov or *deborah.hemmes@usdoj.gov*.

Dated: February 4, 2003.

Michael J. Garcia,

Acting Commissioner, Immigration and Naturalization Service.

[FR Doc. 03–3161 Filed 2–6–03; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF JUSTICE

Parole Commission

Public Announcement; Pursuant to the Government in the Sunshine Act (Public Law 94–409) [5 U.S.C. Section 552b]

AGENCY HOLDING MEETING: Department of Justice, United States Parole Commission.

DATE AND TIME: 9:30 a.m., Tuesday, February 11, 2003.

PLACE: 5550 Friendship Boulevard, Fourth Floor, Chevy Chase, Maryland 20815.

STATUS: Open.

MATTERS TO BE CONSIDERED: The following matters have been placed on the agenda for the open Parole Commission meeting:

1. Approval of minutes of Previous Commission Meeting.
2. Reports from the Chairman, Commissioners, Legal, Chief of Staff, Case Operations, and Administrative Sections.
3. Proposal to adopt rule providing for an administrative appeal for District of Columbia supervised release violators.
4. Adoption of final rule regarding supervision of military prisoners who are mandatorily released from prison.
5. Proposal to amend rules to consolidate conditions of release.

AGENCY CONTACT: Tom Hutchinson, Executive Office, United States Parole Commission, (301) 492–5307.

Dated: February 4, 2003.

Rockne J. Chickinell,

General Counsel, U.S. Parole Commission.

[FR Doc. 03–3129 Filed 2–5–03; 9:34 am]

BILLING CODE 4410–31–M

DEPARTMENT OF JUSTICE

Parole Commission

Public Announcement; Pursuant to the Government in the Sunshine Act (Pub. L. 94–409) (5 U.S.C. 552b)

AGENCY HOLDING MEETING: Department of Justice, United States Parole Commission.

DATE AND TIME: 11 a.m., Tuesday, February 11, 2003.

PLACE: U.S. Parole Commission, 5550 Friendship Boulevard, 4th Floor, Chevy Chase, Maryland 20815.

STATUS: Closed—Meeting.

MATTERS CONSIDERED: The following matter will be considered during the closed portion of the Commission's Business Meeting:

Appeals to the Commission involving approximately two cases decided by the National Commissioners pursuant to a reference under 28 CFR 2.27. These cases were originally heard by an examiner panel wherein inmates of Federal prisons have applied for parole and are contesting revocation of parole or mandatory release.

AGENCY CONTACT: Tom Hutchinson, Executive Office, United States Parole Commission, (301) 492–5307.

Dated: February 4, 2003.

Rockne J. Chickinell,

General Counsel, Parole Commission.

[FR Doc. 03–3130 Filed 2–5–03; 9:42 am]

BILLING CODE 4410–31–M

DEPARTMENT OF LABOR

Employment Standards Administration; Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedes decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department.

Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S–3014, Washington, DC 20210.

Modification to General Wage Determination Decisions

The number of the decisions listed to the Government Printing Office document entitled "General Wage

Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

Connecticut
CT020001 (Mar. 1, 2002)
CT020002 (Mar. 1, 2002)
CT020003 (Mar. 1, 2002)
CT020004 (Mar. 1, 2002)
CT020005 (Mar. 1, 2002)

Volume II

District of Columbia
DC020002 (Mar. 1, 2002)
DC020003 (Mar. 1, 2002)
Pennsylvania
PA020001 (Mar. 1, 2002)
PA020003 (Mar. 1, 2002)
PA020004 (Mar. 1, 2002)
PA020005 (Mar. 1, 2002)
PA020006 (Mar. 1, 2002)
PA020013 (Mar. 1, 2002)
PA020018 (Mar. 1, 2002)
PA020026 (Mar. 1, 2002)
PA020042 (Mar. 1, 2002)
PA020065 (Mar. 1, 2002)

Volume III

North Carolina
NC020050 (Mar. 2, 2002)

Volume IV

Illinois
IL020005 (Mar. 1, 2002)

Volume V

Kansas
KS020008 (Mar. 1, 2002)
Texas
TX020003 (Mar. 1, 2002)
TX020016 (Mar. 1, 2002)
TX020018 (Mar. 1, 2002)
TX020069 (Mar. 1, 2002)
TX020100 (Mar. 1, 2002)
TX020114 (Mar. 1, 2002)

Volume VI

Alaska
AK02001 (Mar. 1, 2002)
AK02006 (Mar. 1, 2002)
Washington
WA020001 (Mar. 1, 2002)

Volume VII

None

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts". This publication Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

General wage determinations issued under the Davis-Bacon and related Acts are available electronically at no cost on the Government Printing Office site at *http://www.access.gpo.gov/davisbacon*. They are also available electronically by subscription to the Davis-Bacon Online Service (*http://davisbacon.fedworld.gov*) of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at 1–800–363–2068. This subscription offers value-added features such as electronic delivery of modified wage decisions directly to the user's desktop, the ability to access prior wage decisions issued during the year, extensive Help Desk Support, etc.

Hard-copy subscriptions may be purchased from Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the six separate Volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC this 30th day of January 2003.

Carl J. Poleskey,

Chief, Branch of Construction Wage Determinations.

[FR Doc. 03–2655 Filed 2–6–03; 8:45 am]

BILLING CODE 4510–27–M

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Proposed Information Collection Request Submitted for Public Comment and Recommendations; Mine Fan Maintenance Record

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a pre-clearance consultation program to provide the general public and federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

Currently, the Mine Safety and Health Administration (MSHA) is soliciting comments concerning the extension of the information collection related to the 30 CFR Sections 56.1000 and 57.1000; Notification of Commencement of Operations and Closing of Mines.

DATES: Submit comments on or before April 8, 2002.

ADDRESSES: Send comments to Jane Tarr, Management Analyst, Administration and Management 1100 Wilson Boulevard, Room 2171, Arlington, VA 22209–3939. Commenters are encouraged to send their comments on computer disk, or via Internet E-mail to *Tarr-Jane@Msha.Gov*. Ms. Tarr can be reached at (202) 693–9824 (voice), or (202) 693–9801 (facsimile).

FOR FURTHER INFORMATION CONTACT: Jane Tarr, Management Analyst, Records Management Group, U.S. Department of Labor, mine Safety and Health Administration, Room 2171, 1100 Wilson Boulevard, Arlington, VA 22209–3939. Ms. Tarr can be reach at *Tarr-Jane@Msha.Gov*. (Internet E-mail), (202) 693–9824 (voice), or (202) 693–9801 (facsimile).

SUPPLEMENTARY INFORMATION:

I. Background

§ 57.8525 requires that the main ventilation fans for an underground mine be maintained either according to manufacturers' recommendations or a written periodic schedule adopted by the mine operators. If the operator produces a mine-specific fan maintenance schedule, it must be made available for review by an authorized Representative of the Secretary of Labor. The records assure compliance with the standard and may serve as a warning device for possible ventilation problems before they occur.

II. Desired Focus of Comments

MSHA is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who

are to respond, including through the sue of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

A copy of the proposed information collection request can be obtained by contacting the employee listed in the For Further Information Contact section of this notice, or viewed on the Internet, by accessing the MSHA home page (*http://www.msha.gov*) and then choosing "Statutory and Regulatory Information" and "Federal Register Documents."

III. Current Action

§ 57.8525 requires that the main ventilation fans for an underground mine be maintained either according to manufacturers' recommendations or a written periodic schedule adopted by the mine operators. A regular fan maintenance schedule is necessary to assure this uninterrupted and vital supply of air. The maintenance is normally scheduled as recommended by the fan manufacturers. Regardless of regularity, based on the loads of individual fans, the records assure compliance with the standard and may serve as a warning device for possible ventilation problems before they occur.

Type of Review: Extension.

Agency: Mine Safety and Health Administration.

Title: Main Fan Maintenance Record.

OMB Number: 1219–0012.

Recordkeeping: If the operator produces a mine-specific fan maintenance schedule, it must be made available for review by an unthorized Representative of the Secretary of Labor.

Frequency: On Occasion.

Affected Public: Business or other for-profit.

Respondents: 8.

Estimated Time Per Respondent: 1.5 hours.

Total Burden Hours: 12 hours.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintaining): $0.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and budget approval of the information collection request; they will also become a matter of public record.

Dated at Arlington, Virginia, this third day of February, 2003

David L. Meyer,

Director, Office of Administration and Management.

[FR Doc. 03–3055 Filed 2–6–03; 8:45 am]

BILLING CODE 4510–43–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

National Advisory Committee on Occupational Safety and Health; Notice of Meeting

Notice is hereby given of the date and location of the next meeting of the National Advisory Committee on Occupational Safety and Health (NACOSH), established under section 7(a) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 656) to advise the Secretary of Labor and the Secretary of Health and Human Services on matters relating to the administration of the Act. NACOSH will hold a meeting on February 27–28, in Room N–3437 (A–C), U.S. Department of Labor, located at 200 Constitution Avenue, NW., Washington, DC. The meeting is open to the public and will begin at 8:30 a.m. on February 27 until approximately 4 p.m. The meeting will reconvene on February 28 at 9 a.m. and end at approximately 12 noon.

The meeting will begin with an overview of activities of the Occupational Safety and Health Administration (OSHA) and the National Institute for Occupational Safety and Health (NIOSH). Other agenda items include: An update on OSHA's enforcement, compliance assistance and partnership activities, and regulatory issues as well as a presentation by NIOSH on their programs. The agenda will also include a discussion about possible future committee projects.

Written data, views or comments for consideration by the committee may be submitted, preferably with 20 copies, to Vivian Allen at the address provided below. Any such submissions received prior to the meeting will be provided to the members of the committee and will be included in the record of the meeting. Because of the need to cover a wide variety of subjects in a short period of time, there is usually insufficient time on the agenda for members of the public to address the committee orally. However, any such requests will be considered by the Chair who will determine whether or not time permits. Any request to make an oral presentation should state the amount of time desired, the capacity in which the person would appear, and a brief outline of the content of the presentation. Individuals with disabilities who need special accommodations should contact Veneta Chatmon (phone: 202–693–1912; fax 202–693–1634) one week before the meeting.

An official record of the meeting will be available for public inspection in the OSHA Technical Data Center (TDC) located in Room N2625 of the Department of Labor Building (202–693–2350). For additional information contact: Vivian Allen, Occupational Safety and Health Administration (OSHA); Room N–3641, 200 Constitution Avenue NW., Washington, DC 20210 (phone: 202–693–1935; FAX: 202–693–1641; e-mail *Vivian.Allen@osha.gov*); or check the National Advisory Committee on Occupational Safety and Health information pages located at *www.osha.gov*.

Signed at Washington, DC, this 3rd day of February 2003.

John L. Henshaw,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 03–3054 Filed 2–6–03; 8:45 am]

BILLING CODE 4510–26–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (03–009)]

NASA Advisory Council, Space Science Advisory Committee, Sun-Earth Connection Advisory Subcommittee Meeting

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council (NAC), Space Science Advisory Committee (SScAC), Sun-Earth Connection Advisory Subcommittee (SECAS).

DATES: Wednesday, February 19, 2003, 8:30 a.m. to 5 p.m., Thursday, February 20, 2002, 8:30 a.m. to 5 p.m., and Friday, February 21, 2002, 8:30 a.m. to noon.

ADDRESSES: Holiday Inn Capitol, Columbia II Meeting Room, 500 C Street, SW., Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Ms. Marian Norris, Code SB, National Aeronautics and Space Administration, Washington, DC 20546, (202) 358–4452.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the capacity of the room. The agenda for the meeting includes the following topics:

- Report on the results of the San Diego Workshop and implications for Sun-Earth Connection (SEC).
- SEC status, including reports on Solar Terrestrial Probe and Living with a Star Lines.
- Report on the Applied Physics Laboratory Solar Probe Study.
- Discussion of Prognosis for Low Cost Access to Space.
- Discussion of Draft Office of Space Science Strategic Plan.
- Science results from High Energy Solar Spectroscopic Imager and Solar Anomalous and Magnetospheric Particle Explorer.

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

June W. Edwards,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 03–3110 Filed 2–6–03; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (03–010)]

Notice of Prospective Patent License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of prospective patent license.

SUMMARY: NASA hereby gives notice that Graftel, Inc., of Rolling Meadows, IL, has applied for a partially exclusive patent license to practice the invention disclosed in NASA Case No. KSC–12220 entitled "Current Signature Sensor" for which a U.S. Patent Application was filed and assigned to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. The field of use will be the electric utility industry. Written objections to the prospective grant of a license should be sent to John F. Kennedy Space Center.

DATES: Responses to this notice must be received by February 24, 2003.

FOR FURTHER INFORMATION CONTACT: Randall M. Heald, Assistant Chief Counsel/Patent Counsel, John F. Kennedy Space Center, Mail Code CC–A, Kennedy Space Center, FL 32899, telephone (321) 867–7214.

Dated: January 31, 2003.

Robert M. Stephens,

Deputy General Counsel.

[FR Doc. 03–3109 Filed 2–6–03; 8:45 am]

BILLING CODE 7510–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–369 and 50–370]

Duke Power Company, McGuire Nuclear Station, Units 1 and 2; Exemption

1.0 Background

The Duke power Company (the licensee) is the holder of Facility Operating License Nos. NPF–9 and NPF–17, for the McGuire Nuclear Station, Units 1 and 2. The licenses provide, among other things, that the licensee is subject to all rules, regulations, and orders of the Commission now or hereafter in effect.

These facilities consist of two pressurized water reactors located at the licensee's site in Mecklenburg County, North Carolina.

2.0 Request/Action

Title 10 of the *Code of Federal Regulations* (10 CFR) at subsection (a) of 10 CFR 70.24, "Criticality Accident Requirements," requires that each licensee authorized to possess special nuclear material shall maintain in each area where such material is handled, used, or stored, a criticality accident monitoring system "using gamma- or neutron-sensitive radiation detectors which will energize clearly audible alarm signals if accident criticality occurs." Subsection (a)(1) and (a)(2) of 10 CFR 70.24 specify the detection, sensitivity, and coverage capabilities of the monitors required by 10 CFR 70.24(a). Subsection (a)(3) of 10 CFR 70.24 requires that the licensee shall maintain emergency procedures for each area in which this licensed special nuclear material is handled, used, or stored and provides (1) that the procedures ensure that all personnel withdraw to an area of safety upon the sounding of a criticality monitor alarm, (2) that the procedures must include drills to familiarize personnel with the evacuation plan, and (3) that the procedures designate responsible individuals for determining the cause of the alarm and placement of radiation survey instruments in accessible locations for use in such an emergency. Subsection (b)(1) requires licensees to have a means to quickly identify personnel who have received a dose of 10 rads or more. Subsection (b)(2) requires licensees to maintain personnel decontamination facilities, to maintain arrangements for a physician and other medical personnel qualified to handle radiation emergencies, and to maintain arrangements for the transportation of contaminated individuals to treatment facilities outside the site boundary. Subsection (c) exempts part 50 licensees (such as McGuire) from the requirements of paragraph (b).

By letter dated February 4, 1997, as supplemented March 19, 1997, Duke Power Company (the licensee) requested an exemption for all its nuclear plants from the requirements of 10 CFR 70.24. The staff reviewed the licensee's submittal and determined that procedures and design features made an inadvertent criticality in special nuclear materials handling or storage at McGuire unlikely, in accordance with General Design Criterion 62. Accordingly, the staff granted an Exemption on July 31, 1997. Part of the basis for that exemption was that the criticality parameter of k-effective (k_{eff}) would remain less than or equal to 0.95 when the spent fuel pool was filled with unborated water. By letter dated April 18, 2002, as supplemented on August 7 and October 9, 2002, and January 15, 2003, the licensee submitted an application for revisions to the McGuire Technical Specifications to address the spent fuel pool Boraflex degradation issues. The analysis supporting this application proposed to take partial credit for boron in the spent fuel pool water. Therefore, a part of the technical basis for which the 10 CFR 70.24 exemption was granted on July 31, 1997, has changed. The staff has reviewed the licensee's application and continues to find that existing procedures and design features make an inadvertent criticality in special nuclear materials handling or storage at McGuire unlikely.

3.0 Discussion

Pursuant to section 70.17 of 10 CFR, "Specific exemptions," the Commission may, upon application by any interested person or upon its own initiative, grant such exemptions from the requirements of the regulations in this part as it determines are authorized by law and will not endanger life or property or the common defense and security and are otherwise in the public interest.

The staff concludes, on the basis provided above, that the licensee has thus met the intent of 10 CFR 70.24 by the low probability of an inadvertent criticality in areas where fresh fuel could be present, by the licensee's adherence to General Design Criterion 63 regarding radiation monitoring, and

by provisions for personnel training and evacuation.

4.0 Conclusion

Accordingly, the Commission has determined that, pursuant to 10 CFR 70.17, the exemption is authorized by law and will not endanger life or property or the common defense and security and is otherwise in the public interest. Therefore, the Commission hereby grants Duke Power Company an exemption from the requirements of 10 CFR 70.24(a)(1), (2), and (3) for McGuire, Units 1 and 2, on the bases as stated in Section II above.

Pursuant to 10 CFR 51.32, the Commission has determined that granting of this exemption will not have a significant effect on the quality of the human environment (68 FR 5054).

This exemption is effective upon issuance and shall expire on December 31, 2005.

Dated at Rockville, Maryland, this 31st day of January.

For the Nuclear Regulatory Commission.

John A. Zwolinski,

Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 03–3066 Filed 2–6–03; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF MANAGEMENT AND BUDGET

Performance Measurement Advisory Council

AGENCY: Office of Management and Budget, Executive Office of the President.

ACTION: Notice of Federal Advisory Committee meeting.

OPEN MEETING NOTICE: The Performance Measurement Advisory Council ("PMAC") will meet on Monday, March 3, 2003, from 1 p.m. to 4 p.m. eastern time. Location for the meeting will be the Truman Room of the White House Conference Center, 726 Jackson Place, Washington, DC. The meeting is open to the public and written statements may be filed with the advisory committee. It is recommended that members of the public wishing to attend bring photo identification. Due to limited availability of seating, members of the public will be admitted on a first-come, first-served basis. This is the third and final meeting of the PMAC.

The purpose of the meeting is to provide independent expert advice and recommendations to the Office of Management and Budget regarding measures of program performance and the use of such measures in making management and budget decisions. The agenda and topics to be discussed include a review of program performance information in the budget, and review of the application of the Program Assessment Ratings Tool. An agenda may be obtained prior to the meeting at *http://www.whitehouse.gov/omb/budintegration/index.html.* Additional information, including information for members of the public with disabilities, may be obtained by calling Mr. Thomas M. Reilly, PMAC Designated Federal Officer, (202) 395–4926.

Dated: January 31, 2003.

Thomas M. Reilly,

PMAC Designated Federal Officer.

[FR Doc. 03–3105 Filed 2–6–03; 8:45 am]

BILLING CODE 3110–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–25923; 812–12736]

ARK Funds, et al.; Notice of Application

February 3, 2003.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of an application for an order under (a) section 6(c) of the Investment Company Act of 1940 ("Act") for an exemption from sections 18(f) and 21(b) of the Act; (b) section 12(d)(1)(J) of the Act for an exemption from sections 12(d)(1)(A) and (B) of the Act; (c) sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and 17(a)(3) of the Act; and, (d) section 17(d) of the Act and rule 17d-1 under the Act to permit certain joint transactions.

Summary of Application: Applicants request an order that would permit certain registered open-end investment companies to participate in a joint lending and borrowing facility.

Applicants: Allied Investment Advisers, Inc. ("AIA"); Allfirst Trust Company N.A. ("Allfirst Trust"); ARK Funds.

Filing Dates: The application was filed on December 28, 2001, and amended on December 19, 2002. Applicants have agreed to file an amendment during the notice period, the substance of which is reflected in this notice.

Hearing or Notification of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on February 28, 2003, and should be accompanied by proof of service on applicants, in the form of an affidavit, or for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Applicants, c/o Alan C. Porter, Esq., Kirkpatrick & Lockhart LLP, 1800 Massachusetts Avenue, NW., Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Stacy L. Fuller, Senior Counsel, or Nadya B. Roytblat, Assistant Director, at 202–942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549–0102 (telephone 202–942–8090).

Applicants' Representations

1. ARK Funds is registered under the Act as an open-end management investment company and is organized as a Massachusetts business trust.[1] AIA, an investment adviser registered under the Investment Advisers Act of 1940, serves as investment adviser for each series of ARK Funds. AIA is a wholly owned subsidiary of Allfirst Bank, a Federal Reserve member bank. Allfirst Trust, a wholly owned subsidiary of Allfirst Bank, serves as custodian, transfer agent and administrator for ARK Funds. An existing Commission order permits certain series of ARK Funds that are not money market funds to invest uninvested cash balances in one or more series of ARK Funds that are money market funds that comply with rule 2a–

[1] Applicants request that the relief also apply to any other existing or future registered open-end management investment company or series thereof that is advised by AIA or any person controlling, controlled by, or under common control with AIA or its successors (together with the series of ARK Funds, the "Funds"). "Successors" are limited to any entities that result from AIA's reorganization into another jurisdiction or a change in the type of business organization. All Funds that currently intend to rely on the order have been named as applicants, and any other existing or future Fund that subsequently may rely on the order will comply with the terms and conditions in the application.

7 under the Act ("Money Market Funds").[2]

2. Some Funds may lend money to banks or other entities by entering into repurchase agreements or purchasing other short-term instruments. Other Funds may borrow money from the same or other banks for temporary purposes to satisfy redemption requests or to cover unanticipated cash shortfalls such as trade "fails" in which cash payment for a portfolio security sold by a Fund has been delayed.

3. If the Funds were to borrow money from a bank, the Funds would pay interest on the borrowed cash at a rate that would be significantly higher than the rate that would be earned by other (non-borrowing) Funds on repurchase agreements and other short-term instruments of the same maturity as the bank loan. Applicants state that this differential represents the profit the banks would earn for serving as a middleman between a borrower and a lender. In addition, while bank borrowings generally could supply needed cash to cover unanticipated redemptions and sales fails, the borrowing Funds would incur commitment fees and/or other charges involved in obtaining a bank loan.

4. Applicants request an order that would permit the Funds to enter into lending agreements ("Interfund Lending Agreements") under which the Funds would lend and borrow money for temporary purposes directly to and from each other through a credit facility ("Interfund Loan"). Applicants state that the proposed credit facility would reduce potential borrowing Funds' costs and enhance lending Funds' ability to earn higher rates of interest on short-term loans. Although the proposed credit facility would reduce the Funds' need to borrow from banks, the Funds would be free to establish lines of credit or other borrowing arrangements with banks.

5. Applicants anticipate that the credit facility would provide borrowing Funds with significant savings when the cash position of the Funds is insufficient to meet temporary cash requirements. This situation could arise when redemptions exceed anticipated volumes and the Funds have insufficient cash on hand to satisfy such redemptions. When the Funds liquidate portfolio securities to meet redemption requests, which are normally effected promptly upon receipt, they often do not receive payment in settlement of the liquidation for up to three days (or longer for certain foreign transactions). The credit facility would provide a source of immediate, short-term liquidity pending settlement of the sale of portfolio securities.

6. Applicants also propose using the credit facility when a sale of securities fails due to circumstances beyond a Fund's control, such as delay in the delivery of cash to the Fund's custodian or improper delivery instructions by the broker effecting the transaction. Sales fails may present a cash shortfall if the Fund has undertaken to purchase a security with the proceeds from securities sold. Under such circumstances, the Fund could fail on its intended purchase due to lack of funds from the previous sale, resulting in additional cost to the Fund, or sell a security on a same day settlement basis, earning a lower return on the investment. Use of the credit facility would enable the Funds to have access to immediate short-term liquidity without incurring custodian overdraft or other charges or lower investment returns.

7. While borrowing arrangements with banks may be available to cover unanticipated redemptions and sales fails, under the proposed credit facility, a borrowing Fund would pay lower interest rates than those offered by banks on short-term loans. In addition, Funds making short-term cash loans directly to other Funds would earn interest at a rate higher than they otherwise could obtain from investing their cash in repurchase agreements or purchasing shares of a Money Market Fund. Thus, applicants believe that the proposed credit facility would benefit both borrowing and lending Funds.

8. The interest rate charged to the Funds on any Interfund Loan (the "Interfund Loan Rate") would be the average of the "Repo Rate" and the "Bank Loan Rate", both as defined below. The Repo Rate on any day would be the highest rate available to a lending Fund from investments in overnight repurchase agreements. The Bank Loan Rate on any day would be calculated by the Credit Facility Team, as defined below, each day an Interfund Loan is made according to a formula established by each Fund's board of trustees (each, a "Board"), intended to approximate the lowest interest rate at which a bank short-term loan would be available to the Fund. The formula would be based on a publicly available rate (*e.g.*, Federal funds plus 25 basis points) that would vary so as to reflect changing bank loan rates. The Board of each Fund periodically would review the continuing appropriateness of using the publicly available rate, as well as the relationship between the Bank Loan Rate and current bank loan rates that would be available to the Funds. The initial formula and any subsequent modifications to it would be subject to the approval of the Board of each Fund.

9. The credit facility would be administered by an AIA investment professional (namely, a portfolio manager for the Money Market Funds), representatives of Allfirst Trust and of ARK Funds' accounting group (collectively, the "Credit Facility Team"). Under the proposed credit facility, the portfolio managers for each participating Fund could provide standing instructions to participate daily as a borrower or lender. On each business day Allfirst Trust, as the Funds' custodian, would provide the Credit Facility Team with data on the uninvested cash and borrowing requirements of all participating Funds. Applicants expect far more available uninvested cash each day than borrowing demand. Once the Credit Facility Team determined the aggregate amount of cash available for loans and borrowing demand, the Credit Facility Team would allocate loans among borrowing Funds without any further communication from portfolio managers (other than the portfolio manager on the Credit Facility Team). All allocations would require approval of at least one member of the Credit Facility Team other than the Money Market Fund portfolio manager. After allocating cash for Interfund Loans, the Credit Facility Team would invest any remaining cash in accordance with the standing instructions from portfolio managers or return remaining amounts to the Funds. The Money Market Funds would not participate as borrowers.

10. The Credit Facility Team would allocate borrowing demand and cash available for lending among the Funds on what the Credit Facility Teams believes to be an equitable basis, subject to certain administrative procedures applicable to all Funds, such as the time of filing requests to participate, minimum loan lot sizes, and the need to minimize the number of transactions and associated administrative costs. To reduce transaction costs, each Interfund Loan normally would be allocated in a manner intended to minimize the number of participants necessary to complete the transaction.

11. The Credit Facility Team would (a) monitor the interest rates charged and the other terms and conditions of the loans, (b) limit the borrowings and loans entered into by each Fund to ensure that they comply with the Fund's investment policies and limitations, (c) ensure equitable treatment of each Fund, and (d) make quarterly reports to

[2] ARK Funds, *et al.* ICA Rel. Nos. 25136 (Aug. 24, 2001) (notice) and 25163 (Sept. 19, 2001) (order).

the Board of each Fund concerning any transactions by the Fund under the credit facility and the interest rates charged. The method of allocation and related administrative procedures would be approved by the Board of each Fund, including a majority of the trustees who are not "interested persons," as defined in section 2(a)(19) of the Act ("Independent Trustees"), of the Fund, to ensure that both borrowing and lending Funds participate on an equitable basis.

12. AIA, through the Credit Facility Team, would administer the credit facility as a disinterested fiduciary in the best interests of the Funds' shareholders. Neither AIA nor Allfirst Trust would receive any additional fee in connection with the administration of the proposed credit facility. AIA and Allfirst Trust, however, may collect standard pricing and recordkeeping, bookkeeping, and accounting fees associated with repurchase and lending transactions generally, including transactions effected through the credit facility. Fees paid to AIA or Allfirst Trust in connection with an Interfund Loan would be no higher than those applicable for comparable bank loan transactions.

13. No Fund may participate in the credit facility unless: (a) The Fund has obtained shareholder approval for its participation, if such approval is required by law; (b) the Fund has fully disclosed all material information concerning the credit facility in its prospectus and/or SAI; and (c) the Fund's participation in the credit facility is consistent with its investment objectives, limitations, and organizational documents.

14. In connection with the credit facility, applicants request an order under (a) section 6(c) of the Act granting relief from sections 18(f) and 21(b) of the Act; (b) section 12(d)(1)(J) of the Act granting relief from sections 12(d)(1)(A) and (B) of the Act; (c) sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and 17(a)(3) of the Act; and, (d) section 17(d) of the Act and rule 17d–1 under the Act to permit certain joint transactions.

Applicants' Legal Analysis

1. Section 17(a)(3) of the Act generally prohibits an affiliated person, or an affiliated person of an affiliated person, from borrowing money or other property from a registered investment company. Section 21(b) of the Act generally prohibits any registered management company from lending money or other property to any person if that person controls or is under common control with that company. Section 2(a)(3) of the Act defines an "affiliated person" of another person, in part, to be any person directly or indirectly controlling, controlled by, or under common control with, the other person. Applicants state that the Funds may be under common control by virtue of having AIA as their common investment adviser, and/or by reason of having common officers, directors and/or trustees.

2. Section 6(c) of the Act provides that an exemptive order may be granted where an exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Section 17(b) of the Act authorizes the Commission to exempt a proposed transaction from section 17(a) provided that the terms of the transaction, including the consideration to be paid or received, are fair and reasonable and do not involve overreaching on the part of any person concerned, and the transaction is consistent with the policy of the investment companies involved, as recited in their registration statements, and with the general purposes of the Act. Applicants believe that the proposed arrangements satisfy these standards for the reasons discussed below.

3. Applicants submit that sections 17(a)(3) and 21(b) of the Act were intended to prevent a person with potential adverse interests to, and some influence over the investment decisions of, a registered investment company from causing or inducing the investment company to engage in lending transactions that unfairly inure to the benefit of that person and that are detrimental to the best interests of the investment company and its shareholders. Applicants assert that the proposed credit facility transactions do not raise these concerns because: (a) AIA, through the Credit Facility Team, would administer the program as a disinterested fiduciary in the best interests of the Funds' shareholders; (b) all Interfund Loans would consist only of uninvested cash reserves that a Fund otherwise would invest in short-term repurchase agreements or other short-term instruments either directly or through a Money Market Fund; (c) the Interfund Loans would not involve a greater risk than such other investments; (d) a lending Fund would receive interest at a rate higher than it could obtain through such other investments; and (e) a borrowing Fund would pay interest at a rate lower than otherwise available to it under bank loan agreements and avoid the up-front commitment fees associated with committed lines of credit. Moreover, applicants believe that the other conditions in the application would effectively preclude the possibility of any Fund obtaining an undue advantage over any other Fund.

4. Section 17(a)(1) of the Act generally prohibits an affiliated person of a registered investment company, or an affiliated person of an affiliated person, from selling any securities or other property to the company. Section 12(d)(1) of the Act generally makes it unlawful for a registered investment company to purchase or otherwise acquire any security issued by any other investment company, except in accordance with the limitations set forth in that section. Applicants state that the obligation of a borrowing Fund to repay an Interfund Loan may constitute a security for purposes of sections 17(a)(1) and 12(d)(1) of the Act. Section 12(d)(1)(J) of the Act provides that the Commission may exempt persons or transactions from any provision of section 12(d)(1) if and to the extent that such exception is consistent with the public interest and the protection of investors. Applicants contend that the standards under sections 6(c), 17(b) and 12(d)(1)(J) of the Act are satisfied for all the reasons set forth above in support of their request for relief from sections 17(a)(3) and 21(b) and for the reasons discussed below.

5. Applicants state that section 12(d)(1) was intended to prevent the pyramiding of investment companies in order to avoid duplicative costs and fees attendant upon multiple layers of investment companies. Applicants submit that the proposed credit facility does not involve these abuses. Applicants note that there would be no duplicative costs or fees to the Funds or shareholders, and that neither AIA nor Allfirst Trust would receive any additional compensation for services provided in connection with administering the credit facility. Applicants also note that the purpose of the proposed credit facility is to provide economic benefits for all of the participating Funds.

6. Section 18(f)(1) of the Act prohibits open-end investment companies from issuing any senior security, except that a company is permitted to borrow from any bank, if immediately after the borrowing there is an asset coverage of at least 300 percent for all borrowings of the company. Under section 18(g) of the Act, the term "senior security" includes any bond, debenture, note, or similar obligation or instrument constituting a security and evidencing indebtedness. Applicants request exemptive relief from section 18(f)(1) to the limited

extent necessary to implement the credit facility (because the lending Funds are not banks).

7. Applicants believe that granting relief under section 6(c) of the Act is appropriate because the Funds would remain subject to the requirement of section 18(f)(1) that all borrowings of the Fund, including combined credit facility and bank borrowings, have at least 300% asset coverage. Based on the conditions and safeguards described in the application, applicants also submit that to allow the Funds to borrow from other Funds pursuant to the proposed credit facility is consistent with the purposes and policies of section 18(f)(1).

8. Section 17(d) of the Act and rule 17d–1 under the Act generally prohibit an affiliated person of a registered investment company, or an affiliated person of such a person, when acting as principal, from effecting any joint transaction unless the transaction is approved by the Commission. Rule 17d–1(b) under the Act provides that in passing upon applications for exemptive relief from section 17(d), the Commission will consider whether the participation of a registered investment company in a joint enterprise on the basis proposed is consistent with the provisions, policies, and purposes of the Act and the extent to which the company's participation is on a basis different from, or less advantageous than, that of other participants.

9. Applicants submit that the purpose of section 17(d) is to avoid overreaching by, and unfair advantage to, investment company insiders. Applicants believe that the credit facility is consistent with the provisions, policies and purposes of the Act in that it offers both reduced borrowing costs and enhanced returns on loaned funds to all participating Funds and their shareholders. Applicants note that each Fund would have an equal opportunity to borrow and lend on equal terms consistent with its investment policies and fundamental investment limitations. Applicants therefore believe that each Fund's participation in the credit facility will be on terms no different from, or less advantageous than, that of other participating Funds.

Applicants' Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. The interest rates to be charged to the Funds under the credit facility will be the average of the Repo Rate and the Bank Loan Rate.

2. On each business day, the Credit Facility Team will compare the Bank Loan Rate with the Repo Rate and will make cash available for Interfund Loans only if the Interfund Loan Rate is (a) more favorable to the lending Fund than the Repo Rate and, if applicable, the yield of any Money Market Fund in which the lending Fund could otherwise invest and (b) more favorable to the borrowing Fund than the Bank Loan Rate.

3. If a Fund has outstanding borrowings, any Interfund Loans to the Fund (a) will be at an interest rate equal to or lower than any outstanding bank loan, (b) will be secured at least on an equal priority basis with at least an equivalent percentage of collateral to loan value as any outstanding bank loan that requires collateral, (c) will have a maturity no longer than any outstanding bank loan (and in any event not over seven days), and (d) will provide that, if an event of default occurs under any agreement evidencing an outstanding bank loan to the Fund, that event of default will automatically (without need for action or notice by the lending Fund) constitute an immediate event of default under the Interfund Lending Agreement entitling the lending Fund to call the Interfund Loan (and exercise all rights with respect to any collateral) and that such call will be made if the lending bank exercises its right to call its loan under its agreement with the borrowing Fund.

4. A Fund may make an unsecured borrowing through the credit facility if its outstanding borrowings from all sources immediately after the interfund borrowing total 10% or less of its total assets, provided that if the Fund has a secured loan outstanding from any other lender, including but not limited to another Fund, the Fund's interfund borrowing will be secured on at least an equal priority basis with at least an equivalent percentage of collateral to loan value as any outstanding loan that requires collateral. If a Fund's total outstanding borrowings immediately after an interfund borrowing would be greater than 10% of its total assets, the Fund may borrow through the credit facility on a secured basis only. A Fund may not borrow through the credit facility or from any other source if its total outstanding borrowings immediately after the interfund borrowing would be more than 33⅓% of its total assets.

5. Before any Fund that has outstanding interfund borrowings may, through additional borrowings, cause its outstanding borrowings from all sources to exceed 10% of its total assets, the Fund must first secure each outstanding Interfund Loan by the pledge of segregated collateral with a market value at least equal to 102% of the outstanding principal value of the loan. If the total outstanding borrowings of a Fund with outstanding Interfund Loans exceed 10% of its total assets for any other reason (such as a decline in net asset value or because of shareholder redemptions), the Fund will within one business day thereafter (a) repay all its outstanding Interfund Loans, (b) reduce its outstanding indebtedness to 10% or less of its total assets, or (c) secure each outstanding Interfund Loan by the pledge of segregated collateral with market value at least equal to 102% of the outstanding principal value of the loan until the Fund's total outstanding borrowings cease to exceed 10% of its total assets, at which time the collateral called for by this condition 5 shall no longer be required. Until each Interfund Loan that is outstanding at any time that a Fund's total outstanding borrowings exceeds 10% is repaid or the Fund's total outstanding borrowings cease to exceed 10% of its total assets, the Fund will mark the value of the collateral to market each day and will pledge such additional collateral as is necessary to maintain the market value of the collateral that secures each outstanding Interfund Loan at least equal to 102% of the outstanding principal value of the loan.

6. No Fund may lend funds through the credit facility if the loan would cause its aggregate outstanding loans through the credit facility to exceed 15% of its net assets at the time of the loan.

7. A Fund's Interfund Loans to any one Fund shall not exceed 5% of the lending Fund's net assets.

8. The duration of Interfund Loans will be limited to the time required to receive payment for securities sold, but in no event more than seven days. Loans effected within seven days of each other will be treated as separate loan transactions for purposes of this condition.

9. A Fund's borrowings through the credit facility, as measured on the day when the most recent loan was made, will not exceed the greater of 125% of the Fund's total net cash redemptions and 102% of sales fails for the preceding seven calendar days.

10. Each Interfund Loan may be called on one business day's notice by a lending Fund and may be repaid on any day by a borrowing Fund.

11. A Fund's participation in the credit facility must be consistent with its investment policies and limitations and organizational documents.

12. The Credit Facility Team will calculate total Fund borrowing and lending demand through the credit facility, and allocate loans on an

equitable basis among the Funds without the intervention of any portfolio manager of the Funds (other than the Money Market Fund portfolio manager acting in his or her capacity as a member of the Credit Facility Team). All allocations will require approval of at least one member of the Credit Facility Team who is not the Money Market Fund portfolio manager. The Credit Facility Team will not solicit cash for the credit facility from any Fund or prospectively publish or disseminate loan demand data to portfolio managers (except to the extent that the portfolio manager of the Money Market Fund has access to loan demand data). The Credit Facility Team will invest any amounts remaining after satisfaction of borrowing demand in accordance with the standing instructions from portfolio managers or return remaining amounts to the Funds.

13. The Credit Facility Team will monitor the interest rates charged and the other terms and conditions of the Interfund Loans and will make a quarterly report to the Board of each Fund concerning the participation of the Fund in the credit facility and the terms and other conditions of any extensions of credit under the facility.

14. The Board of each Fund, including a majority of the Independent Trustees: (a) Will review no less frequently than quarterly the Fund's participation in the credit facility during the preceding quarter for compliance with the conditions of any order permitting the transactions; (b) will establish the Bank Loan Rate formula used to determine the interest rate on Interfund Loans and review no less frequently than annually the continuing appropriateness of the Bank Loan Rate formula, and (c) will review no less frequently than annually the continuing appropriateness of the Fund's participation in the credit facility.

15. In the event an Interfund Loan is not paid according to its terms and the default is not cured within two business days from its maturity or from the time the lending Fund makes a demand for payment under the provisions of the Interfund Lending Agreement, the Credit Facility Team will promptly refer the loan for arbitration to an independent arbitrator selected by the Board of any Fund involved in the loan who will serve as arbitrator of disputes concerning Interfund Loans.[3] The arbitrator will resolve any problem promptly, and the arbitrator's decision will be binding on both Funds. The arbitrator will submit, at least annually, a written report to the Board of each Fund setting forth a description of the nature of any dispute and the actions taken by the Funds to resolve the dispute.

16. Each Fund will maintain and preserve for a period of not less than six years from the end of the fiscal year in which any transaction under the credit facility occurred, the first two years in an easily accessible place, written records of all such transactions setting forth a description of the terms of the transaction, including the amount, the maturity and the rate of interest on the loan, the rate of interest available at the time on overnight repurchase agreements and bank borrowings, the yield of any Money Market Fund in which the lending Fund could otherwise invest and such other information presented to the Board in connection with the review required by conditions 13 and 14.

17. The Credit Facility Team will prepare and submit to the Board of each Fund for review an initial report describing the operations of the credit facility and the procedures to be implemented to ensure that all Funds are treated fairly. After the commencement of operations of the credit facility, the Credit Facility Team will report on the operations of the credit facility at the quarterly meetings of each Fund's Board.

In addition, for two years following the commencement of the credit facility, the independent public accountant for each Fund shall prepare an annual report that evaluates the Credit Facility Team's assertion that it has established procedures reasonably designed to achieve compliance with the conditions of the order. The report shall be prepared in accordance with the Statements on Standards for Attestation Engagements No. 3 and it shall be filed pursuant to item 77Q3 of Form N–SAR. In particular, the report shall address procedures designed to achieve the following objectives: (a) That the Interfund Loan Rate will be higher than the Repo Rate, and if applicable, the yield of the Money Market Funds, but lower than the Bank Loan Rate; (b) compliance with the collateral requirements as set forth in the application; (c) compliance with the percentage limitations on interfund borrowing and lending; (d) allocation of interfund borrowing and lending demand in an equitable manner and in accordance with procedures established by the Board; and, (e) that the interest rate on any Interfund Loan does not exceed the interest rate on any third-party borrowings of a borrowing Fund at the time of the Interfund Loan.

After the final report is filed, a Fund's external auditors, in connection with their Fund audit examinations, will continue to review the operation of the credit facility for compliance with the conditions of the application and their review will form the basis, in part, of the auditor's report on internal accounting controls in Form N–SAR.

18. No Fund will participate in the credit facility upon receipt of requisite regulatory approval unless it has fully disclosed in its SAI all material facts about its intended participation.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–3004 Filed 2–6–03; 8:45 am]

BILLING CODE 8010–01–P

[3] If the dispute involves Funds with different Boards, the Board of each Fund will select an independent arbitrator that is satisfactory to each Fund.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47298; File No. 4–429]

Joint Industry Plan; Order Approving on a Temporary Basis Joint Amendment No. 4 to the Options Intermarket Linkage Plan Relating to Satisfaction Orders, Trade-Throughs and Other Nonsubstantive Changes, as Modified by an Amendment Thereto, and Notice of Filing of Such Amendment

January 31, 2003.

I. Introduction

On September 24, 2002, October 1, 2002, October 9, 2002, November 6, 2002, and November 26, 2002, the International Stock Exchange, Inc. ("ISE"), the Pacific Exchange, Inc. ("PCX"), the Chicago Board Options Exchange, Inc. ("CBOE"), the Philadelphia Stock Exchange, Inc. ("Phlx"), and the American Stock Exchange LLC ("Amex") (collectively, the "Participants"), respectively, filed with the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to section 11A of the Securities Exchange Act of 1934 ("Act")[1] and Rule 11Aa3–2 thereunder,[2] an amendment ("Joint Amendment No. 4") to the Options Intermarket Linkage Plan ("Linkage Plan").[3]

[1] 15 U.S.C. 78k–1.

[2] 17 CFR 240.11Aa3–2.

[3] On July 28, 2000, the Commission approved a national market system plan for the purpose of creating and operating an intermarket options market linkage ("Linkage") proposed by Amex,

Proposed Joint Amendment No. 4 was published for comment in the **Federal Register** on December 27, 2002.[4] No comments were received on the proposal. On January 28, 2003, January 28, 2003, January 29, 2003, January 29, 2003, and January 29, 2003, the ISE, the Phlx, the Amex, the PCX, and the CBOE, respectively, filed with the Commission an amendment to proposed Joint Amendment No. 4 to provide that the limitation on the liability for trade-throughs for the last seven minutes of the trading day would be effective for a one-year pilot period and to clarify that the limitation on liability would apply to each Satisfaction Order ("Pilot Amendment").[5] This order approves Joint Amendment No. 4, as modified by the Pilot Amendment, on a temporary basis not to exceed 120 days, and solicits comment on the Pilot Amendment from interested persons.

II. Description of Proposed Joint Amendment No. 4

In proposed Joint Amendment No. 4, as modified by the Pilot Amendment, the Participants propose to clarify that the proposed limitation on liability for trade-throughs for the last seven minutes of the trading day would apply to the filling of 10 contracts per exchange, per transaction. Pursuant to the Pilot Amendment, this proposal would be effective for a one-year pilot period, and would apply to each Satisfaction Order. The proposed Linkage Plan amendment also would: (1) Decrease the time period a member must wait after sending a linkage order to a market before that member can trade through that market from 30 seconds to 20 seconds; (2) prohibit linkage fees for executing satisfaction orders; and (3) make other nonsubstantive revisions to the Linkage Plan.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the Pilot Amendment, including whether the proposed Pilot Amendment is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington DC 20549–0609. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed Pilot Amendment that are filed with the Commission, and all written communications relating to the proposed Pilot Amendment between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filings will also be available for inspection and copying at the principal offices of the Amex, CBOE, ISE, Phlx, and PCX. All submissions should refer to File No. 4–429 and should be submitted by February 28, 2003.

IV. Discussion

After careful consideration, the Commission finds that the proposed Joint Amendment to the Linkage Plan, as amended by the Pilot Amendment, is consistent with the requirements of the Act and the rules and regulations thereunder.[6] Specifically, the Commission finds that the proposed Joint Amendment, as modified by the Pilot Amendment, is consistent with section 11A of the Act,[7] and Rule 11Aa3–2 thereunder,[8] in that it is appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets. In addition, the Commission finds, as described further below, that it is appropriate to approve summarily the proposed amendment to the Linkage Plan, as amended, upon publication of the notice on a temporary basis for 120 days. The Commission believes that such action is appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and perfect mechanisms of, a national market system, or otherwise in furtherance of the purposes of the Act.[9]

The Participants have represented to the Commission that members of various exchanges have raised concerns regarding their obligations to fill Satisfaction Orders (which result after a trade-through [10]) at the close of trading in the underlying security. Specifically, these members are concerned that they may not have sufficient time to hedge the positions they acquire.[11] The Participants believe their proposal to limit liability for trade-throughs for the last five minutes of trading in the underlying security to the filling of 10 contracts per exchange, per transaction will protect small customer orders, yet establish a reasonable limit for their members' liability. The Participants represent that this proposal should not affect a member's potential liability under an exchange's disciplinary rule for engaging in a pattern or practice of trading through other markets under section 8(c)(i)(C) of the Linkage Plan.

The Pilot Amendment clarifies that the limitation on liability would apply to each Satisfaction Order. As amended, the proposal is limited to a one-year pilot period. The Commission believes this one-year pilot period will give the Participants and the Commission an opportunity to evaluate: (1) The need for the limitation on liability for trade-throughs near the end of the trading day; (2) whether 10 contracts per Satisfaction Order is the appropriate limitation; and (3) whether the opportunity to limit liability for trade-throughs near the end of the trading day leads to an increase in trade-throughs. The Commission expects the Participants to provide a report to the Commission at least sixty days prior to seeking permanent approval of the pilot program. The report should include information about the number and size of trade-throughs that occur during the last seven minutes of the trading day and the number and size of trade-throughs that occur during the rest of the trading day, the number and size of Satisfaction Orders that the Participants might be required to fill without the limitation on liability and how those amounts are affected by the limitation on liability, and the extent to which the

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CBOE, and ISE. *See* Securities Exchange Act Release No. 43086 (July 28, 2000), 65 FR 48023 (August 4, 2000). Subsequently, Phlx and PCX joined the Linkage Plan. *See* Securities Exchange Act Release Nos. 43573 (November 16, 2000), 65 FR 70850 (November 28, 2000) and 43574 (November 16, 2000), 65 FR 70851 (November 28, 2000). On June 27, 2001, May 30, 2002, and January 29, 2003, respectively, the Commission approved amendments to the Linkage Plan. *See* Securities Exchange Act Release Nos. 44482 (June 27, 2001), 66 FR 35470 (July 5, 2001), 46001 (May 30, 2002), 67 FR 38687 (June 5, 2002), and 47274 (January 29, 2003).

[4] *See* Securities Act Release No. 47028 (December 18, 2002), 67 FR 79171.

[5] *See* letters from Michael Simon, Senior Vice President and General Counsel, ISE, to Jonathan Katz, Secretary, Commission, dated January 27, 2003; Charles Rogers, Executive Vice President, Phlx, to Jonathan Katz, Secretary, Commission, dated January 27, 2003; Jeffrey Burns, Assistant General Counsel, Amex, to Jonathan Katz, Secretary, Commission, dated January 28, 2003; Kathryn L. Beck, Senior Vice President, General Counsel and Corporate Secretary, PCX, to Jonathan Katz, Secretary, Commission, dated January 28, 2003; and Edward J. Joyce, President and Chief Operating Officer, CBOE, to Jonathan Katz, Secretary, dated January 29, 2003.

[6] In approving this proposed Linkage Plan amendment, the Commission has considered its impact on efficiency, competition, and capital formation.

[7] 15 U.S.C. 78k–1.

[8] 17 CFR 240.11Aa3–2.

[9] 17 CFR 240.11Aa3–2(c)(2).

[10] Trade-throughs occur when broker-dealers execute customer orders on one exchange at prices inferior to another exchange's disseminated quote.

[11] *See* letter from Michael Simon, Senior Vice President and General Counsel, ISE, to Annette Nazareth, Director, Division of Market Regulation, Commission, dated November 19, 2002.

Participants use the underlying market to hedge their options positions.

The Commission finds that the proposal to reduce the amount of time a member must wait after sending a linkage order to a market before that member can trade through that market from thirty seconds to twenty seconds is appropriate because the Linkage Plan will retain the requirement that a Participant respond to a Linkage order within 15 seconds of receipt of that order.[12]

The Commission also finds that the proposal to establish a general prohibition against Linkage fees for executing Satisfaction Orders is appropriate. An exchange will receive a Satisfaction Order only when it has traded through customer orders on another exchange. The Commission agrees with the Participants that an exchange that traded through another market should not be allowed to impose a fee on the aggrieved party that exercises its rights under the Linkage Plan to complain about a trade-through.

V. Conclusion

It is therefore ordered, pursuant to section 11A of the Act,[13] and Rule 11Aa3–2(c)(4) thereunder,[14] that Joint Amendment No. 4, as modified by the Pilot Amendment, is approved until May 31, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–3101 Filed 2–6–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: 68 FR 5058, January 31, 2003.

STATUS: Open meeting.

PLACE: 450 Fifth Street, NW., Washington, DC.

DATE AND TIME OF PREVIOUSLY ANNOUNCED MEETING: Tuesday, February 4, 2003.

CHANGE IN THE MEETING: Rescheduled Item.

The following item has been rescheduled to be considered at the Open Meeting of Thursday, February 6, 2003 at 10 a.m., in Room 1C30, the William O. Douglas Room: Regulation AC (Analyst Certification).

Commissioner Goldschmid, as duty officer, determined that no earlier notice thereof was possible.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: The Office of the Secretary at (202) 942–7070.

Dated: February 4, 2003.

Jonathan G. Katz,

Secretary.

[FR Doc. 03–3241 Filed 2–5–03; 12:41 pm]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47297; File No. SR–Amex–2002–84]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by American Stock Exchange LLC, Relating to Rules Governing the Intermarket Linkage, and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 3 Thereto

January 31, 2003.

I. Introduction

On October 15, 2002, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to adopt new rules governing the operation of the intermarket linkage (the "Linkage"). On December 19, 2002, the Exchange submitted Amendment No. 1 to the proposed rule change.[3] The proposed rule change was published for comment in the **Federal Register** on December 27, 2002.[4] The Commission received no comments on the proposed rule change. On January 30, 2003, the Exchange filed Amendment No. 2 to the proposed rule change.[5] On January 31, 2003, the Exchange filed Amendment No. 3 to the proposed rule change, which replaces Amendment No. 2 in its entirety.[6] This order approves the proposed rule change, provides notice of filing of Amendment No. 3 and grants accelerated approval to Amendment No. 3.

II. Description of Proposal

In general, the proposed rules contain relevant definitions, establish the conditions pursuant to which market makers may enter Linkage orders, impose obligations on the Exchange regarding how it must process incoming Linkage orders, and establish a general standard that members should avoid trade-throughs.[7] The proposed rules establish potential regulatory liability for members who engage in a pattern or practice of trading through other exchanges, whether or not the exchanges traded through participate in the Linkage, provide procedures to unlock and uncross markets, and codify the "80/20 Test" contained in section 8(b)(iii) of the Plan for the Purpose of Creating and Operating an Intermarket Options Linkage (the "Plan"),[8] which

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[12] The Participants have represented that they believe reducing the response time even further to five seconds would provide an opportunity for the transmittal of responses to orders, while also allowing their members to execute orders on their own exchanges in a timely manner.

[13] 15 U.S.C. 78k–1.

[14] 17 CFR 240.11Aa3–2(c)(4).

[15] 17 CFR 200.30–3(a)(29).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter to Deborah Flynn, Assistant Director, Division of Market Regulation ("Division"), Commission, from Jeffrey Burns, Assistant General Counsel, Amex, dated December 18, 2002 ("Amendment No. 1"). In Amendment No. 1, Amex clarified that it was not deleting its interim linkage rules at that time.

[4] *See* Securities Exchange Act Release No. 47066 (December 20, 2002), 67 FR 79180.

[5] *See* letter from Jeffrey Burns, Assistant General Counsel, Amex, to Nancy J. Sanow, Assistant Director, Division, Commission, dated January 28, 2003 ("Amendment No. 2"). Amendment No. 2 was replaced with a subsequent amendment. Telephone call between Jeffrey Burns, Assistant General Counsel, Amex, and Jennifer Lewis, Attorney, Division, Commission, on January 31, 2003.

[6] *See* letter from Jeffrey Burns, Assistant General Counsel, Amex, to Nancy J. Sanow, Assistant Director, Division, Commission, dated January 28, 2003 ("Amendment No. 3"). Amendment No. 3 replaces Amendment Nos. 1 and 2 in their entireties. In Amendment No. 3, the Exchange proposes to: (1) Delete its interim linkage rules; (2) reorder the proposed linkage rules as Amex Rules 940 through 944; (3) amend the definition of "Linkage Order" contained in proposed Amex Rule 940 to state that such orders are immediate or cancel orders; (4) amend the definition of "Eligible Market Maker" contained in proposed Amex Rule 940 to state that such market maker is participating in the Exchange's automatic execution system, if available; (5) amend proposed Amex Rule 941 to clarify the specialist's obligation to address a linkage order when such order is not eligible to be executed automatically pursuant to commentary .01(d) to Amex Rule 933; (6) amend proposed Amex Rule 942 to clarify language regarding liability for trade-throughs at the end of the trading day and to request approval of this provision only for a one-year pilot period; (7) amend proposed Amex Rule 942 to clarify that members may not engage in a pattern or practice of trading through; (8) clarify that its existing fees for specialists and market makers will apply to certain Linkage orders; and (9) to make other non-substantive grammatical revisions to the proposed rules.

[7] Trade-throughs occur when broker-dealers execute customer orders on one exchange at prices inferior to another exchange's disseminated quote.

[8] Approved by the Commission in Securities Exchange Act Release No. 43086 (July 28, 2000), 65 FR 48023 (August 4, 2000), as subsequently amended. *See* Securities Exchange Act Release Nos.

provides that a market maker on an Exchange would be restricted from sending principal orders (other than P/A orders, which reflect unexecuted customer orders) through the Linkage if the market maker effects less than 80 percent of specified order flow on the Exchange. The proposed rule change also establishes a fee, which will apply to Linkage transactions except for Satisfaction Orders (which result after a trade-through). These fees are the same fees applicable to Amex specialists and market makers.

III. Discussion

The Commission has reviewed the Amex's proposed rule change and finds that the proposal is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange,[9] and with the requirements of section 6(b).[10] In particular the Commission finds that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest in accordance with section 6(b)(5) of the Act.[11] The Commission also finds that the proposed fee change is consistent with section 6(b)(4) of the Act [12] in that it represents an equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities.

The Commission believes that the rules proposed by the Amex will adequately govern the operation of the Linkage as envisioned in the Plan. The Commission believes that these rules will help to ensure that the Linkage is operated fairly and effectively, in accordance with the principles of the Act and the Plan.

The Commission also finds good cause for approving proposed Amendment No. 3 prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. Amendment No. 3 proposes several changes to the Exchange's original proposal that are designed to conform the Exchange's rules governing linkage more closely to the Plan. The provisions of the Plan have already been subject to notice and comment, and have been approved by the Commission. The changes proposed in Amendment No. 3 do not raise any novel regulatory issues, and therefore, it is appropriate for the Commission to accelerate approval of Amendment No. 3.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 3 to the proposed rule change, including whether Amendment No. 3 is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to Amendment No. 3 between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–Amex–2002–84 and should be submitted by February 28, 2003.

V. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[13] that the proposed rule change (SR–Amex–2002–84), be, and hereby is, approved, and that Amendment No. 3 to the proposed rule change be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–3100 Filed 2–6–03; 8:45 am]

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44482 (June 27, 2001), 66 FR 35470 (July 5, 2001); 46001 (May 30, 2002), 67 FR 38687 (June 5, 2002); 47274 (January 29, 2003); and 47298 (January 31, 2003).

[9] In approving this rule proposal, the Commission notes that it has also considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(5).

[12] 15 U.S.C. 78f(b)(4).

[13] 15 U.S.C. 78s(b)(2).

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47294; File No. SR–CBOE–2002–61]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by Chicago Board Options Exchange, Inc., Relating to Rules Governing the Intermarket Linkage, and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 1 Thereto

January 31, 2003.

I. Introduction

On October 9, 2002, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to adopt new rules governing the operation of the intermarket linkage (the "Linkage"). The proposed rule change was published for comment in the **Federal Register** on December 27, 2002.[3] The Commission received no comments on the proposed rule change. On January 30, 2003, the Exchange filed Amendment No. 1 to the proposed rule change.[4] This order approves the proposed rule change, provides notice of filing of Amendment No. 1 and grants accelerated approval to Amendment No. 1.

II. Description of Proposal

In general, the proposed rules contain relevant definitions, establish the conditions pursuant to which market makers may enter Linkage orders, impose obligations on the Exchange

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 47052 (December 19, 2002), 67 FR 79189.

[4] *See* letter from Angelo Evangelou, Senior Attorney, Legal Division, CBOE, to Jennifer Colihan, Special Counsel, Division of Market Regulation, Commission, dated January 29, 2003 ("Amendment No. 1"). In Amendment No. 1, the Exchange proposes to: (1) Amend the definition of "Linkage Order" contained in proposed CBOE Rule 6.80 to state that such orders are immediate or cancel orders; (2) amend the definition of "Reference Price" contained in proposed CBOE Rule 6.80 to conform to the definition of such term in the Plan for the Purpose of Creating and Operating an Intermarket Options Linkage ("Plan"); (3) amend proposed CBOE Rule 6.81 to clarify the specialist's obligation to address a linkage order when such order is not eligible to be executed automatically; (4) amend proposed CBOE Rule 6.83 to clarify language regarding liability for trade-throughs at the end of the trading day and to request approval of this provision only for a one-year pilot period; (5) amend proposed CBOE Rule 942 to clarify that members may not engage in a pattern or practice of trading through; and (6) establish fees for certain Linkage orders.

regarding how it must process incoming Linkage orders, and establish a general standard that members should avoid trade-throughs.[5] The proposed rules establish potential regulatory liability for members who engage in a pattern or practice of trading through other exchanges, whether or not the exchanges traded through participate in the Linkage, provide procedures to unlock and uncross markets, and codify the "80/20 Test" contained in section 8(b)(iii) of the Plan,[6] which provides that a market maker on an Exchange would be restricted from sending principal orders (other than P/A orders, which reflect unexecuted customer orders) through the Linkage if the market maker effects less than 80 percent of specified order flow on the Exchange. The proposed rule change also establishes the fees that will apply to Linkage transactions except for Satisfaction Orders (which result after a trade-through).

III. Discussion

The Commission has reviewed the CBOE's proposed rule change and finds that the proposal is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange,[7] and with the requirements of section 6(b).[8] In particular the Commission finds that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest in accordance with section 6(b)(5) of the Act.[9] The Commission also finds that the proposed fee change is consistent with section 6(b)(4) of the Act[10] in that it represents an equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities.

The Commission believes that the rules proposed by the CBOE will adequately govern the operation of the Linkage as envisioned in the Plan. The Commission believes that these rules will help to ensure that the Linkage is operated fairly and effectively, in accordance with the principles of the Act and the Plan.

The Commission also finds good cause for approving proposed Amendment No. 1 prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. Amendment No. 1 proposes several changes to the Exchange's original proposal that are designed to conform the Exchange's rules governing linkage more closely to the Plan. The provisions of the Plan have already been subject to notice and comment, and have been approved by the Commission. The changes proposed in Amendment No. 1 do not raise any novel regulatory issues, and therefore, it is appropriate for the Commission to accelerate approval of Amendment No. 1.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 1 to the proposed rule change, including whether Amendment No. 1 is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to Amendment No. 1 between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–CBOE–2002–61 and should be submitted by February 28, 2003.

V. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[11] that the proposed rule change (SR–CBOE–2002–61), be, and hereby is, approved, and that Amendment No. 1 to the proposed rule change be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–3098 Filed 2–6–03; 8:45 am]

BILLING CODE 8010–01–P

[5] Trade-throughs occur when broker-dealers execute customer orders on one exchange at prices inferior to another exchange's disseminated quote.

[6] Approved by the Commission in Securities Exchange Act Release No. 43086 (July 28, 2000), 65 FR 48023 (August 4, 2000), as subsequently amended. *See* Securities Exchange Act Release Nos. 44482 (June 27, 2001), 66 FR 35470 (July 5, 2001); 46001 (May 30, 2002), 67 FR 38687 (June 5, 2002); 47274 (January 29, 2003); and 47298 (January 31, 2003).

[7] In approving this rule proposal, the Commission notes that it has also considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78f(b)(4).

[11] 15 U.S.c. 78s(b)(2).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47296; File No. SR–Phlx–2002–67]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by Philadelphia Stock Exchange, Inc., Relating to Rules Governing the Intermarket Linkage, and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 1 Thereto

January 31, 2003.

I. Introduction

On October 29, 2002, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to adopt new rules governing the operation of the intermarket linkage (the "Linkage"). The proposed rule change was published for comment in the **Federal Register** on December 27, 2002.[3] The Commission received no comments on the proposed rule change. On January 31, 2003, the Exchange filed Amendment No. 1 to the proposed rule change.[4] This order approves the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] See Securities Exchange Act Release No. 47062 (December 20, 2002), 67 FR 79222.

[4] *See* letter from Richard Rudolph, Director and Counsel, Phlx, to Deborah Flynn, Assistant Director, Division of Market Regulation, Commission, dated January 30, 2003 ("Amendment No. 1"). In Amendment No. 1, the Exchange proposes to: (1) Amend the definition of "Reference Price" contained in proposed Phlx Rule 1083 to conform to the definition of such term in the Plan for the Purpose of Creating and Operating an Intermarket Options Linkage ("Plan"); (2) amend the definition of "Linkage Order" contained in proposed Phlx Rule 1083 to state that such orders are "Immediate or Cancel Orders"; (3) amend proposed Phlx Rule 1083 to define an "Immediate or Cancel Order" as a limited price order that is to be executed in whole or in part as soon as such order is received, and the portion not executed, if any, is immediately cancelled; (4) amend proposed Phlx Rule 1084 to clarify when members may send linkage orders when markets are non-firm; (5) amend proposed Phlx Rule 1084 to include a provision regarding mitigation of damages; (6) amend proposed Phlx

proposed rule change, provides notice of filing of Amendment No. 1 and grants accelerated approval to Amendment No. 1.

II. Description of Proposal

In general, the proposed rules contain relevant definitions, establish the conditions pursuant to which market makers may enter Linkage orders, impose obligations on the Exchange regarding how it must process incoming Linkage orders, and establish a general standard that members should avoid trade-throughs.[5] The proposed rules establish potential regulatory liability for members who engage in a pattern or practice of trading through other exchanges, whether or not the exchanges traded through participate in the Linkage, provide procedures to unlock and uncross markets, and codify the "80/20 Test" contained in section 8(b)(iii) of the Plan,[6] which provides that a market maker on an Exchange would be restricted from sending principal orders (other than P/A orders, which reflect unexecuted customer orders) through the Linkage if the market maker effects less than 80 percent of specified order flow on the Exchange.

III. Discussion

The Commission has reviewed the Phlx's proposed rule change and finds that the proposal is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange,[7] and with the requirements of section 6(b).[8] In particular the Commission finds that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest in accordance with section 6(b)(5) of the Act.[9]

The Commission believes that the rules proposed by the Phlx will adequately govern the operation of the Linkage as envisioned in the Plan. The Commission believes that these rules will help to ensure that the Linkage is operated fairly and effectively, in accordance with the principles of the Act and the Plan.

The Commission also finds good cause for approving proposed Amendment No. 1 prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. Amendment No. 1 proposes several changes to the Exchange's original proposal that are designed to conform the Exchange's rules governing linkage more closely to the Plan. The provisions of the Plan have already been subject to notice and comment, and have been approved by the Commission. The changes proposed in Amendment No. 1 do not raise any novel regulatory issues, and therefore, it is appropriate for the Commission to accelerate approval of Amendment No. 1.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 1 to the proposed rule change, including whether Amendment No. 1 is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to Amendment No. 1 between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–Phlx–2002–67 and should be submitted by February 28, 2003.

V. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[10] that the proposed rule change (SR–Phlx–2002–67), be, and hereby is, approved, and that Amendment No. 1 to the proposed rule change be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–3099 Filed 2–6–03; 8:45 am]

BILLING CODE 8010–01–P

Rule 1085 to clarify language regarding liability for trade-throughs at the end of the trading day and to request approval of this provision only for a one-year pilot period; (7) amend proposed Phlx Rule 1085 to clarify that members may not engage in a pattern or practice of trading through; and (8) make other non-substantive revisions to the proposed rules.

[5] Trade-throughs occur when broker-dealers execute customer orders on one exchange at prices inferior to another exchange's disseminated quote.

[6] Approved by the Commission in Securities Exchange Act Release No. 43086 (July 28, 2000), 65 FR 48023 (August 4, 2000), as subsequently amended. *See* Securities Exchange Act Release Nos. 44482 (June 27, 2001), 66 FR 35470 (July 5, 2001); 46001 (May 30, 2002), 67 FR 38687 (June 5, 2002); 47274 (January 29, 2003); and 47298 (January 31, 2003).

[7] In approving this rule proposal, the Commission notes that it has also considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78s(b)(2).

[11] 17 CFR 200.30–3(a)(12).

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Trade Policy Staff Committee; Request for Public Comment on Review of Employment Impact of United States—Morocco Free Trade Agreement

AGENCIES: Office of the United States Trade Representative and Department of Labor.

ACTION: Request for comments.

SUMMARY: The Trade Policy Staff Committee (TPSC) gives notice that the Office of the United States Trade Representative (USTR) and the Department of Labor (Labor) are initiating a review of the impact of the proposed U.S.-Morocco Free Trade Agreement (FTA) on United States employment, including labor markets. This notice seeks written public comment on potentially significant sectoral or regional employment impacts (both positive and negative) in the United States as well as other likely labor market impacts of the FTA.

DATES: USTR and Labor will accept any comments received during the course of the negotiations of the FTA. However, comments should be received by noon, March 28, 2003, to be assured of timely consideration in the preparation of the report.

ADDRESSES: Submissions by electronic mail: *FR0067@ustr.gov*. Submissions by facsimile: Gloria Blue, Executive Secretary, Trade Policy Staff Committee, at (202) 395–6143.

FOR FURTHER INFORMATION CONTACT: For procedural questions concerning public comments, contact Gloria Blue, Executive Secretary, TPSC, Office of the USTR, 1724 F Street, NW., Washington, DC 20508, telephone (202) 395–3475. Substantive questions concerning the employment impact review should be

addressed to Jorge Perez-Lopez, Director, Office of International Economic Affairs, Bureau of International Labor Affairs, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, telephone (202) 693–4883; or William Clatanoff, Assistant U.S. Trade Representative for Labor, telephone (202) 395–6120.

SUPPLEMENTARY INFORMATION:

1. Background Information

On October 1, 2002, in accordance with section 2104(a)(1) of the Trade Act of 2002, the United States Trade Representative notified the Congress of the President's intent to enter into trade negotiations with Morocco. The notification letters to the Congress can be found on the USTR Web site at *http://www.ustr.gov/releases/2002/2002-10-01-morocco-house.PDF* and *http://www.ustr.gov/releases/2002/2002-10-01-morocco-senate.PDF*, respectively. The TPSC received written submissions and, on November 21, 2003, conducted a public hearing to assist USTR in formulating positions and proposals with respect to all aspects of the negotiations (67 FR 63187) (Oct. 10, 2002). The first round of the U.S.-Morocco FTA negotiations took place January 21–24 in Washington, DC. The next round is scheduled for March 24 in Morocco and negotiations are expected to be completed before the end of 2003.

The U.S.-Morocco FTA will build on the bilateral work that began in 1995 under the U.S.-Morocco Trade and Investment Framework Agreement. The U.S.-Morocco FTA will seek to eliminate duties and unjustified barriers to trade for both U.S.- and Moroccan-origin goods and also address trade in services, trade in agricultural products, trade-related aspects of intellectual property rights, government procurement, trade-related environmental and labor matters, and other issues. The FTA is expected to contribute to stronger economies, the rule of law, sustainable development, and more accountable institutions of governance. The FTA will also help to support and accelerate economic and political reforms already underway in Morocco.

Section 2102(c)(5) of the Bipartisan Trade Promotion Act of 2002, 19 U.S.C. 3805(c)(5), directs the President to "review the impact of future trade agreements on United States employment, including labor markets, modeled after Executive Order 13141 to the extent appropriate in establishing procedures and criteria, report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate on such review, and make that report public." USTR and the Department of Labor will be conducting the employment reviews through the interagency Trade Policy Staff Committee (TPSC). The employment impact review will be based on the following elements, which are modeled, to the extent appropriate, after those in EO 13141. The review will be: (1) Written; (2) initiated through a **Federal Register** notice soliciting public comment and information on the employment impact of the FTA in the United States; (3) made available to the public in draft form for public comment, to the extent practicable; and (4) made available to the public in final form.

Comments may be submitted on potentially significant sectoral or regional employment impacts (both positive and negative) in the United States as well as other likely labor market impacts of the FTA. Persons submitting comments should provide as much detail as possible in support of their submissions.

2. Requirements for Submissions

To ensure prompt and full consideration of responses, the TPSC strongly recommends that interested persons submit comments by electronic mail to the following e-mail address: *FR0067@ustr.gov*. Persons making submissions by e-mail should use the following subject line: a Morocco Employment Review." Documents should be submitted in WordPerfect, MSWord, or text (.TXT) format. Supporting documentation submitted as spreadsheets is acceptable in Quattro Pro or Excel format. For any document containing business confidential information submitted electronically, the file name of the business confidential version should begin with the characters "BC-", and the file name of the public version should begin with the character "P-". The "P-" or "BC-" should be followed by the name of the submitter. Persons who make submissions by e-mail should not provide separate cover letters; information that might appear in a cover letter should be included in the submission itself. Similarly, to the extent possible, any attachments to the submission should be included in the same file as the submission itself, and not as separate files.

Written comments will be placed in a file open to public inspection pursuant to 15 CFR 2003.5, except confidential business information exempt from public inspection in accordance with 15 CFR 2003.6. Confidential business information submitted in accordance with 15 CFR 2003.6 must be clearly marked "Business Confidential" at the top of each page, including any cover letter or cover page, and must be accompanied by a non-confidential summary of the confidential information. All public documents and non-confidential summaries shall be available for public inspection in the USTR Reading Room in Room 3 of the annex of the Office of the USTR, 1724 F Street, NW., Washington, DC 20508. An appointment to review the file may be made by calling (202) 395–6186. The USTR Reading Room is generally open to the public from 10 a.m.–12 noon and 1–4 p.m. Monday through Friday. Appointments must be scheduled at least 48 hours in advance.

Carmen Suro-Bredie,

Chairman, Trade Policy Staff Committee.

[FR Doc. 03–2971 Filed 2–6–03; 8:45 am]

BILLING CODE 3190–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. 29303]

RIN 2120–AG58

Policy Regarding Airport Rates and Charges

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Advance notice of proposed policy, withdrawal.

SUMMARY: The FAA is withdrawing a previously published Advance Notice of Proposed Policy that sought suggestions for replacement provisions for the portions of the Policy Statement Regarding Airport Rates and Charges that were vacated by the United States Court of Appeals for the District of Columbia Circuit. We are withdrawing the document because the Department of Transportation is considering similar rate and charge issues in its study of congestion pricing at airports.

FOR FURTHER INFORMATION CONTACT: David L. Bennett, Director, Office of Airport Safety and Standards, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, telephone 202–267–3053.

SUPPLEMENTARY INFORMATION:

Background

In June 1996, the FAA adopted a policy for evaluating the reasonableness of landing fees and other charges paid by air carriers to airports (61 FR 31994, June 21, 1996). The United States Court

of Appeals for the District of Columbia Circuit partially vacated the policy, disallowing the portion dealing with historic cost valuation of airport property. *Air Transport Association of America* v. *Department of Transportation*, 119 F.3d 38 (D.C. Cir. 1997), as modified on rehearing, Order of Oct. 15, 1997. The Department of Transportation, Office of the Secretary, and the FAA published an Advance Notice of Proposed Policy seeking suggestions for replacement provisions of those portions the Court vacated (63 FR 43228, August 12, 1998).

The Department of Transportation is conducting studies related to the use of market pricing to manage demand at congested airports. Substantial overlap of the issues exists between the Department study and the published Advance Notice of Proposed Policy Regarding Airport Rates and Charges. To avoid duplication of effort and resources, and to allow more complete analysis of the issues, the FAA is withdrawing the Advance Notice of Proposed Policy Regarding Airport Rates and Charges.

Discussion of Comments

In response to the advance notice, we received comments from the Air Transport Association (ATA), Airports Council International " North America (ACI–NA), National Business Travel Association, the Kauai Helicopter Operators Association, and 13 airports. The time period for comments and reply comments was extended at the request of ATA and ACI–NA.

Commenters offer their perspective on existing fee structures and methodologies, distinctions between fees charged for airfield versus non-airfield assets, and evidence of airport monopoly power. Comments from ATA, ACI–NA and Los Angeles World Airports include economic discussions from consulting economists. In general, air carriers favor historical cost accounting as the basis for aeronautical rates and charges, while airports favor basing rates and charges on fair market value of aeronautical assets. Air carriers express concern that any new policy should prevent airports from adding imputed interest to funds derived from airfield and other essential aeronautical facilities. Issues and recommendations presented by commenters will require further study, but will not be pursued within the course of the Policy Regarding Airport Rates and Charges addressed by this document, because the Department of Transportation will consider these and related issues in its study of congestion pricing at airports.

Conclusion

The Department of Transportation's current study of congestion pricing at airports will encompass many of the rates and charges issues addressed in the Advance Notice of Proposed Policy entitled Policy Regarding Airport Rates and Charges. Therefore, the FAA withdraws the Advance Notice of Proposed Policy published at 63 FR 43228 on August 12, 1998. Withdrawal of the Advance Notice of Proposed Policy does not preclude the FAA from issuing another notice on the subject matter in the future or commit the agency to any future course of action.

Issued in Washington, DC, on January 31, 2003.

Woodie Woodward,

Associate Administrator for Airports.

[FR Doc. 03–2694 Filed 2–6–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Over-the-Road Bus Accessibility Program Grants

AGENCY: Federal Transit Administration (FTA), DOT.

ACTION: Notice of availability of fiscal year 2003 funds; solicitation of grant applications.

SUMMARY: The U.S. Department of Transportation (DOT) Federal Transit Administration (FTA) announces the availability of funds in fiscal year (FY) 2003 for the Over-the-road Bus (OTRB) Accessibility Program, authorized by Section 3038 of the Transportation Equity Act for the 21st Century (TEA–21), 49 U.S.C. 5310 *note*. The OTRB Accessibility Program makes funds available to private operators of over-the-road buses to finance the incremental capital and training costs of complying with DOT's over-the-road bus accessibility final rule, published in a **Federal Register** notice on September 24, 1998. The OTRB Accessibility Program calls for national solicitation of applicants, with grantees to be selected on a competitive basis. Federal transmit funds are available to intercity fixed-route providers and other OTRB providers are up to 90 percent of the project cost.

A total of $24.3 million is available for the program over the life of TEA–21. The guaranteed level of funding available for intercity fixed-route service was $2 million in FY 1999, $2 million in FY 2000, $3 million in FY 2001, $5.25 million in FY 2002, and is $5.25 million in FY 2003, for a total of $17.5 million. The guaranteed level of funding for other over-the-road bus service, including charter and tour bus, is $1.7 million per year from FY 2000 to FY 2003, for a total of $6.8 million.

FTA expects that in FY 2003, $5.25 million will be appropriated for intercity fixed-route service providers and $1.7 million will be appropriated for other over-the-road bus service providers. This announcement describes application procedures for the OTRB Accessibility Program and the procedures FTA will use to determine which projects it will fund.

This announcement is available on the Internet on the FTA Web site at: *http://www.fta.dot.gov/library/legal/federalregister/2003/index.html*. FTA will announce final selections on the Web site and in the **Federal Register**.

DATES: Complete applications for OTRB Accessibility Program grants must be submitted to the appropriate FTA regional office (see Appendix A) by the close of business March 28, 2003. The appropriate FTA regional office is that office which serves the state in which an applicant's headquarters office is located. FTA will announce grant selections in June 2003.

FOR FURTHER INFORMATION CONTACT: Contact the appropriate FTA Regional Administrator (Appendix B) for application-specific information and issues. For general program information, contact Blenda Younger, Office of Program Management, (202) 366–2053, e-mail: *blenda.younger@fta.dot.gov*. A TDD is available at 1–800–877–8339 (TDD/FIRS).

SUPPLEMENTARY INFORMATION:

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I. General Program Information

A. Authority

The program is authorized under section 3038 of the Transportation Equity Act for the 21st Century (TEA–21), 49 U.S.C. 5310 *note*. Although FY 2003 funds have not been appropriated, FTA is issuing the solicitation notice now to get the application cycle started.

B. Background

Over-the-road buses are used in intercity fixed-route service as well as other services, such as commuter, charter, and tour bus services. These services are an important element of the U.S. transportation system. TEA–21

authorized FTA's Over-the-road Bus Accessibility Program to assist over-the-road bus operators in complying with the Department's Over-the-road Bus Accessibility rule, "Transportation for Individuals with Disabilities" (49 CFR part 37) published in a **Federal Register** notice on September 24, 1998.

Summary of DOT's Over-the-Road Bus Accessibility Rule

Deadlines for Acquiring Accessible Vehicles. Under the over-the-road bus accessibility rule, all new buses obtained by large (Class I carriers, *i.e.*, those who gross annual operating revenues of $5.3 million or more), fixed-route carriers after October 30, 2000 must be accessible, with wheelchair lifts and tie-downs that allow passengers to ride in their own wheelchairs. The rule requires 50 percent of the fixed-route carriers' fleets to be accessible by 2006, and 100 percent of the vehicles in their fleets to be accessible by 2012. The buses acquired by small (gross operating revenues of less than $5.3 million annually) fixed-route providers after October 29, 2001 also are required to be lift-equipped, although they do not have a deadline for total fleet accessibility. Small providers also can provide equivalent service in lieu of obtaining accessible buses. Starting in 2001, charter and tour companies have to provide service in an accessible bus on 48 hours' advance notice. Fixed-route companies must also provide this kind of service on an interim basis until their fleets are completely accessible.

Deadlines for Delivering Accessible Service. The rules for delivering accessible motorcoach service went into effect October 29, 2001 for large fixed-route, charter, tour and other demand-responsive motorcoach companies. The rules went into effect for small operators on October 28, 2002. After these dates, companies must provide service in an accessible coach to a passenger who requests it and gives 48 hours' advance notice. Small companies may provide equivalent service, instead of acquiring accessible coaches. This equivalent service may be provided in an alternate vehicle (*e.g.*, a van), provided that the service allows passengers to travel in their own wheelchairs.

Specifications describing the design features that an over-the-road bus must have to be readily accessible to and usable by persons who use wheelchairs or other mobility aids required by the "Americans with Disabilities Act Accessibility Guidelines for Transportation Vehicles: Over-the-Bus Buses" rule (36 CFR part 1192) were published in another **Federal Register** notice on September 28, 1998.

C. Scope

Improving mobility and shaping America's future by ensuring that the transportation system is accessible, integrated, and efficient, and offers flexibility of choices is a key strategic goal of the Department of Transportation. Over-thee-road Bus Accessibility projects will improve mobility for individuals with disabilities by providing financial assistance to help make vehicles accessible and provide training to ensure that drivers and other understand have to use accessibility features as well as how to treat patrons with disabilities.

D. Eligible Applicants

Grants will be made directly to operators of over-the-road buses. Intercity, fixed-route over-the-road bus service providers may apply for the $5.25 million that FTA expects will be available to intercity fixed-route providers in FY 2003. Other over-the-road bus service providers, including operators of local fixed-route service, commuter service, and charter or tour service may apply for the $1.7 million expected to be available in FY 2003 for these providers. OTRB operators who provide intercity, fixed-route service and another type of service, such as commuter, charter or tour, may apply for both categories of funds with a single application. Private for-profit operators of over-the-road buses are eligible to be direct applicants for this program. This is a departure from most other FTA programs for which the direct applicant must be a state or local public body.

E. Vehicle and Service Definitions

An "over-the-road bus" is a bus characterized by an elevated passenger deck located over a baggage compartment.

Intercity, fixed-routed over-the-road bus service is regularly scheduled bus service for the general public, using an over-the-road bus that: Operates with limited stops over fixed routes connecting two or more urban areas not in close proximity or connecting one or more rural communities with an urban area not in close proximity; has the capacity for transporting baggage carried by passengers; and makes meaningful connections with scheduled intercity bus service to more distant points.

Other over-the-road bus service means any other transportation using over-the-road buses, including local fixed-route service, commuter service, and charter or tour service (including tour or excursion service that includes features in addition to bus transportation such as meals, lodging, admission to points of interest or special attractions). While some commuter service may also serve the needs of some intercity fixed-route passengers, the statute includes commuter service in the definition of "other" service. Commuter service providers should apply for these funds, even though the services designed to meet the needs of commuters may also provide service to intercity fixed-route passengers on an incidental basis. If a service provider can document that more than 50 percent of its passengers are using the service as intercity fixed-route service, the provider may apply for the funds designated for intercity fixed-route operators.

F. Eligible Projects

Projects to finance the incremental capital and training costs of complying with DOT's over-the-road bus accessibility rule (49 CFR Part 37) are eligible for funding. Incremental capital costs eligible for funding include adding lifts, tie-downs, moveable seats, doors and all labor costs associated with work on the vehicle needed to make vehicles accessible. Retrofitting vehicles with such accessibility components is also an eligible expense. Please see Buy America section for further determination of eligibility.

FTA may award funds for costs already incurred by the applicants. Any new wheelchair accessible vehicles delivered since June 8, 1998, the date that the Transportation Equity Act for the 21st Century was effective, are eligible for funding under the program. Vehicles of any age that have been retrofitted with lifts and other accessibility components since June 8, 1998 are also eligible for funding.

Eligible training costs are those required by the final accessibility rule as described in 49 CFR 37.209. These activities include training in proper operation and maintenance of accessibility features and equipment, boarding assistance, securement of mobility aids, sensitive and appropriate interaction with passengers with disabilities, and handling and storage of mobility devices. The costs associated with developing training materials or providing training for local providers of over-the-road bus services for these purposes are eligible expenses.

FTA will not fund the incremental costs of acquiring used wheelchair accessible OTRBs, as it may be impossible to verify whether or not FTA funds were already used to make the vehicles accessible. Also, it would be difficult to place a value on the accessibility features based upon the depreciated value of the vehicle. FTA

wishes to increase the number of wheelchair accessible over-the-road buses available to persons with disabilities throughout the country, and the purchase of used accessible vehicles, whether or not they were previously funded by FTA, does not further this objective.

FTA has sponsored the development of accessibility training materials for public transit operators. FTA-funded Projected Action is a national technical assistance program to promote cooperation between the disability community and the transportation industry. Project Action provides training, resources and technical assistance to thousands of disability organizations, consumers with disabilities, and transportation operators. It maintains a resource center with the most up-to-date information on transportation accessibility. Project Action may be contacted at: Project Action, 700 Thirteenth Street, NW., Suite 200, Washington, DC 20590, Phone: 1–800–659–6428, Internet address: *http://www.projectaction.org/.*

G. Grant Criteria

FTA will award grants based on:

1. The identified need for over-the-road bus accessibility for persons with disabilities in the areas served by the applicant;

2. The extent to which the applicant demonstrates innovative strategies and financial commitment to providing access to over-the-road buses to persons with disabilities;

3. The extent to which the over-the-road bus operator acquires equipment required by DOT's over-the-road bus accessibility rule prior to the required timeframe in the rule;

4. The extent to which financing the costs of complying with DOT's rule presents a financial hardship for the applicant; and

5. The impact of accessibility requirements on the continuation of over-the-road bus service, with particular consideration of the impact of the requirements on service to rural areas and for low-income individuals.

These are the statutory criteria upon which funding decisions will be made. In addition to these criteria, FTA may also consider other factors, such as the size of the applicant's fleet and the level of FTA funding that may already have been awarded to applicants in prior years.

H. Grant Requirements

Applicants selected for funding must include documentation necessary to meet the requirements of FTA's Nonurbanized Area Formula program (Section 5311 under Title 49, United States Code). Technical assistance regarding these requirements is available from each FTA regional office. The regional offices will contact those applicants selected for funding regarding procedures for making the required certifications and assurances to FTA before grants are made.

Those applicants selected for funding will be required to comply with all of the Federal requirements applicable to the OTRB Accessibility Program, provided in the comprehensive compilation below. Federal requirements apply to the incremental cost of adding wheelchair accessibility features to new vehicles or when retrofitting existing vehicles, not to the entire vehicle. All applicants are advised to read the entire list of requirements to be confident of their responsibilities and commitments for compliance.

The authority for these requirements are provided by the Transportation Equity Act for the 21st Century, Pub. L. 105–178, June 9, 1998, as amended by the TEA–21 Restoration Act 105–206, 112 Stat. 685, July 22, 1998, 49 U.S.C. chapter 53, Title 23, United States Code, DOT and FTA regulations at 49 CFR, and FTA Circulars.

1. Buy America

In the OTRB Accessibility program, FTA's Buy American regulations, 49 CFR part 661, apply to the incremental capital cost of making vehicles accessible. Those regulations do not apply to associated labor costs. The following discussion relates to the contract between the grantee and the prime contractor.

The "General Requirements" found at 49 CFR 661.5 apply to that portion of the accessibility system being funded. That section requires that all of the manufacturing processes for the product take place in the United States and that all components of the product be made in the United States. A component is considered domestic if it is manufactured in the U.S.A., regardless of the origin of its subcomponents. The lift, the moveable seats, and the securement devices will all be considered components for purposes of this program; accordingly, as components, each must be manufactured in the United States. Should a recipient choose to request funding for only a specific component, such as the lift or the securement device, then the Buy America requirements would apply only to that item funded by FTA.

Three exceptions to the general requirements can be found at 49 CFR 661.7: first, a waiver may be requested when the application of the regulation is not in the public interest; second, a waiver may be requested if the materials and products being procured are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality; and third, a price differential waiver may be requested where the results of competitive procurement show that there is a 25 percent price difference between the domestic and foreign products. FTA approval of a waiver must be received by the recipient of FTA funds prior to the execution of contract.

It should also be noted that FTA has issued a general public interest waiver for all purchases under the Federal "small purchase" threshold, which is currently $100,000. This waiver can be found in 49 CFR 661.7, Appendix A(e). In section 3038(b) of TEA–21, Congress authorized FTA financing of the incremental capital costs of compliance with DOT's OTRB accessibility rule. Consistent with this provision, the small purchase waiver applies only to the incremental cost of the accessibility features FTA is funding. Where more then one bus is purchased, the grantee must consider the incremental cost increase for the entire procurement when determining if the small purchase waiver applies. For example, if $30,000 is the incremental cost for the accessibility features eligible under this program per bus (regardless of the Federal share contribution), then a procurement of three buses with a total such cost of $90,000, would qualify for the small purchase waiver. No special application to FTA would be required.

The grantee must obtain a certification from the bus manufacturer that all items included in the incremental cost for which the applicant is applying for funds meet Buy America requirements.

The Buy America regulations can be found at *http://www.fta.dot.gov/library/legal/buyamer/.*

2. Labor Protection

Before FTA may award a grant for capital assistance, 49 U.S.C. 5333(b) requires that fair and equitable arrangements must be made to protect the interests of transit employees affected by FTA assistance. Those arrangements must be certified by the Secretary of Labor as meeting the requirements of the statute. When a labor organization represents a group of affected employees in the service area of an FTA project, the employee protective arrangement is usually the product of negotiations or discussions with the

union. The grant applicant can facilitate Department of Labor (DOL) certification by identifying in the application any previously certified protective arrangements that have been applied to similar projects undertaken by the grant applicant, if any. Receiving funds under the OTRB Accessibility program, however, will not require the grantee's employees to be represented by organized labor. Nothing in the labor protection provisions in 49 U.S.C. 5333(b) requires a motorcoach operator to become a union carrier or encourages union organizing in any manner. Upon receipt of a grant application requiring employee protective arrangements, FTA will transmit the application to DOL and request certification of the employee protective arrangements. In accordance with DOL guidelines, DOL notifies the relevant unions in the area of the project that a grant for assistance is pending and affords the grant applicant and union the opportunity to agree to an arrangement establishing the terms and conditions of the employee protections. If necessary, DOL furnishes technical and mediation assistance to the parties during their negotiations. The Secretary of Labor may determine the protections to be certified if the parties do not reach an agreement after good faith bargaining and mediation efforts have been exhausted. DOL will also set the protective conditions when affected employees in the service area are not represented by a union. When DOL determines that employee protective arrangements comply with labor protection requirements, DOL will provide a certification to FTA. The grant agreement between FTA and the grant applicant incorporates by reference the employee protective arrangements certified by DOL.

Applicants must identify any labor organizations that may represent their employees and all labor organizations that represent the employees of any other transit providers in the service area of the project.

For each local of a nationally affiliated union, the applicant must provide the name of the national organization and the number or other designation of the local union. (For example, Amalgamated Transit Union local 1258.) Since DOL makes its referral to the national union's headquarters, there is no need to provide a means of contacting the local organization.

However, for each independent labor organization (*i.e.*, a union that it is not affiliated with a national or international organization) the local information will be necessary (name of organization, address, contact person, phone, fax numbers).

Where a labor organization represents transit employees in the service area of the project, DOL must refer the proposed protective arrangements to each union and to each recipient. For this reason, please provide DOL with a contact person, address, telephone number and fax number for your company, and associated union information.

DOL issued a **Federal Register** notice addressing the new TEA–21 programs, including the OTRB Accessibility Program, "Amendment to Section 5333(b) Guidelines to Carry Out New Programs Authorized by the Transportation Equity Act of the 21st Century (TEA–21)"; Final Rule, dated July 28, 1999. FTA issued a "Dear Colleague" letter, dated December 5, 2000, addressing DOL processing of grant applications. Attached to the letter is an application checklist which provides information that DOL must have in order to review and certify FTA grant applications. This letter and attachment can be found at: *http://www.fta.dot.gov/office/public/c0019.html*. Questions concerning protective arrangements and related matters pertaining to transit employees should be addressed to the Division of Statutory Programs, Department of Labor, 200 Constitution Avenue, NW., Room N–5411, Washington, DC 20210; telephone (202) 693–0126, fax (202) 219–5338.

3. Planning

Applicants are encouraged to notify the appropriate state departments of transportation and metropolitan planning organizations (MPO) in areas likely to be served by equipment made accessible through funds made available in this program. Those organizations, in turn, should take appropriate steps to inform the public, and individuals requiring fully accessible services in particular, of operators' intentions to expand the accessibility of their services. Incorporation of funded projects in the plans and transportation improvement programs of states and metropolitan areas by states and MPOs also is encouraged, but is not required.

4. Standard Assurances

The Applicant assures that it will comply with all applicable Federal statutes, regulations, executive orders, FTA circulars, and other Federal administrative requirements in carrying out any project supported by the FTA grant. The Applicant acknowledges that it is under a continuing obligation to comply with the terms and conditions of the grant agreement issued for its project with FTA. The Applicant understands that Federal laws, regulations, policies, and administrative practices might be modified from time to time and affect the implementation of the project. The Applicant agrees that the most recent Federal requirements will apply to the project, unless FTA issues a written determination otherwise.

A. Debarment, Suspension, and Other Responsibility Matters for Primary Covered Transactions

As required by U.S. DOT regulations on Government-wide Debarment and Suspension (Nonprocurement) at 49 CFR 29.510:

(1) The Applicant (Primary Participant) certifies, to the best of its knowledge and belief, that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not, within a three (3) year period preceding this certification, been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, state, or local) transaction or contract under a public transaction, violation of Federal or state antitrust statutes, or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, state, or local) with commission of any of the offenses listed in subparagraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this certification had one or more public transactions (Federal, state, or local) terminated for cause or default.

(2) The Applicant also certifies that, if it later becomes aware of any information contradicting the statements of paragraph (1) above, it will promptly provide that information to FTA.

(3) If the Applicant (Primary Participant) is unable to certify to all statements in paragraphs (1) and (2) above, it shall indicate so in its signature page and provide a written explanation to FTA.

B. Drug-Free Workplace Agreement

As required by U.S. DOT regulations, "Drug-Free Workplace Requirements (Grants)," 49 CFR part 29, Subpart F, as modified by 41 U.S.C. 702, the Applicant agrees that it will provide a drug-free workplace by:

(1) Publishing a statement notifying its employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in its workplace and specifying the actions that will be taken against its employees for violation of that prohibition;

(2) Establishing an ongoing drug-free awareness program to inform its employees about:

(a) The dangers of drug abuse in the workplace,

(b) Its policy of maintaining a drug-free workplace,

(c) Any available drug counseling, rehabilitation, and employee assistance programs, and

(d) The penalties that may be imposed upon its employees for drug abuse violations occurring in the workplace;

(3) Making it a requirement that each of its employees be engaged in the performance of the grant be given a copy of the statement required by paragraph (1) above;

(4) Notifying each of its employees in the statement required by paragraph (1) that, as a condition of employment financed with Federal assistance provided by the grant, the employee will be required to:

(a) Abide by the terms of the statement, and

(b) Notify the employer (Applicant) in writing of any conviction for a violation of a criminal drug statute occurring in the workplace no later than five (5) calendar days after that conviction;

(5) Notifying FTA in writing, within ten (10) calendar days after receiving notice required by paragraph (4)(b) above from an employee or otherwise receiving actual notice of that conviction. The Applicant, as employer of any convicted employee, must provide notice, including position title, to every project officer or other designee on whose project activity the convicted employee was working. Notice shall include the identification number(s) of each affected grant;

(6) Taking one of the following actions within thirty (30) calendar days of receiving notice under paragraph (4)(b) of this agreement with respect to any employee who is so convicted:

(a) Taking appropriate personnel action against that employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended, or

(b) Requiring that employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, state, or local health, law enforcement, or other appropriate agency; and

(7) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (1), (2), (3), (4), (5), and (6) of this agreement. The Applicant agrees to maintain a list identifying its headquarters location and each workplace it maintains in which project activities supported by FTA are conducted, and make that list readily accessible to FTA.

C. Intergovernmental Review Assurance

The Applicant assures that each application for Federal assistance submitted to FTA has been or will be submitted, as required by each state, for intergovernmental review to the appropriate state and local agencies. Specifically, the Applicant assures that it has fulfilled or will fulfill the obligations imposed on FTA by U.S. DOT regulations, "Intergovernmental Review of Department of Transportation Programs and Activities," 49 CFR part 17.

D. Nondiscrimination Assurance

As required by 49 U.S.C. 5332 (which prohibits discrimination on the basis of race, color, creed, national origin, sex, or age, and prohibits discrimination in employment or business opportunity), Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000d, and U.S. DOT regulations, "Nondiscrimination in Federally-Assisted Programs of the Department of Transportation—Effectuation of Title VI of the Civil Rights Act," 49 CFR part 21 at 21.7, the Applicant assures that it will comply with all requirements of 49 CFR part 21; FTA Circular 4702.1, "Title VI Program Guidelines for Federal Transit Administration Recipients", and other applicable directives, so that no person in the United States, on the basis of race, color, national origin, creed, sex, or age will be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination in any program or activity (particularly in the level and quality of transportation services and transportation-related benefits) for which the Applicant receives Federal assistance awarded by the U.S. DOT or FTA as follows:

(1) The Applicant assures that each project will be conducted, property acquisitions will be undertaken, and project facilities will be operated in accordance with all applicable requirements of 49 U.S.C. 5332 and 49 CFR part 21, and understands that this assurance extends to its entire facility and to facilities operated in connection with the project.

(2) The Applicant assures that it will take appropriate action to ensure that any transferee receiving property financed with Federal assistance derived from FTA will comply with the applicable requirements of 49 U.S.C. 5332 and 49 CFR part 21.

(3) The Applicant assures that it will promptly take the necessary actions to effectuate this assurance, including notifying the public that complaints of discrimination in the provision of transportation-related services or benefits may be filed with U.S. DOT or FTA. Upon request by U.S. DOT or FTA, the Applicant assures that it will submit the required information pertaining to its compliance with these requirements.

As required by 49 U.S.C. 5332 (which prohibits discrimination on the basis of race, color, creed, national origin, sex, or age, and prohibits discrimination in employment or business opportunity), Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000d, and U.S. DOT regulations, "Nondiscrimination in Federally-Assisted Programs of the Department of Transportation—Effectuation of Title VI of the Civil Rights Act," 49 CFR part 21 at 21.7, the Applicant assures that it will comply with all requirements of 49 CFR part 21; FTA Circular 4702.1, "Title VI Program Guidelines for Federal Transit Administration Recipients", and other applicable directives, so that no person in the United States, on the basis of race, color, national origin, creed, sex, or age will be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination in any program or activity (particularly in the level and quality of transportation services and transportation-related benefits) for which the Applicant receives Federal assistance awarded by the U.S. DOT or FTA as follows:

(1) The Applicant assures that each project will be conducted, property acquisitions will be undertaken, and project facilities will be operated in accordance with all applicable requirements of 49 U.S.C. 5332 and 49 CFR part 21, and understands that this assurance extends to its entire facility and to facilities operated in connection with the project.

(2) The Applicant assures that it will take appropriate action to ensure that any transferee receiving property financed with Federal assistance derived from FTA will comply with the

applicable requirements of 49 U.S.C. 5332 and 49 CFR part 21.

(3) The Applicant assures that it will promptly take the necessary actions to effectuate this assurance, including notifying the public that complaints of discrimination in the provision of transportation-related services or benefits may be filed with U.S. DOT or FTA. Upon request by U.S. DOT or FTA, the Applicant assures that it will submit the required information pertaining to its compliance with these requirements.

(4) The Applicant assures that it will make any changes in its 49 U.S.C. 5332 and Title VI implementing procedures as U.S. DOT or FTA may request.

(5) As required by 49 CFR 21.7(a)(2), the Applicant will include in each third party contract or subagreement provisions to invoke the requirements of 49 U.S.C. 5332 and 49 CFR part 21, and include provisions to invoke those requirements in deeds and instruments recording the transfer of real property, structures, improvements.

E. Assurance of Nondiscrimination on the Basis of Disability

As required by U.S. DOT regulations, "Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance," at 49 CFR part 27, implementing the Rehabilitation Act of 1973, as amended, and the Americans with Disabilities Act of 1990, as amended, the Applicant assures that, as a condition to the approval or extension of any Federal assistance awarded by FTA to construct any facility, obtain any rolling stock or other equipment, undertake studies, conduct research, or to participate in or obtain any benefit from any program administered by FTA, no otherwise qualified person with a disability shall be, solely by reason of that disability, excluded from participation in, denied the benefits of, or otherwise subjected to discrimination in any program or activity receiving or benefiting from Federal assistance administered by the FTA or any entity within U.S. DOT. The Applicant assures that project implementation and operations so assisted will comply with all applicable requirements of U.S. DOT regulations implementing the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794, and the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. 12101 *et seq.* at 49 CFR parts 27, 37, and 38, and any applicable regulations and directives issued by other Federal departments or agencies.

5. Certifications Prescribed by the Office of Management and Budget (SF–424B and SF–424D)

The Applicant certifies that it:

(a) Has the legal authority to apply for Federal assistance and the institutional, managerial, and financial capability (including funds sufficient to pay the non-Federal share of project cost) to ensure proper planning, management, and completion of the project described in its application.

(b) Will give FTA, the Comptroller General of the United States and, if appropriate, the state, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

(c) Will establish safeguard to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest or personal gain.

(d) Will initiate and complete the work within the applicable project time periods following receipt of FTA approval.

(e) Will comply with all statues relating to nondiscrimination including, but not limited to:

(1) Title VI of the Civil Rights Act, 42 U.S.C. 2000d, which prohibits discrimination on the basis of race, color, or national origin;

(2) Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. 1681, 1683, and 1685 through 1687, which prohibits discrimination on the basis of sex;

(3) Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794, which prohibits discrimination on the basis of handicaps;

(4) The Age Discrimination Act of 1975, as amended, 42 U.S.C. 6101 through 6107, which prohibit discrimination on the basis of age;

(5) The Drug Abuse Office and Treatment Act of 1972, Pub. L. 92–255, March 21, 1972, and amendments thereto, relating to nondiscrimination on the basis of drug abuse;

(6) The Comprehensive Alcohol Abuse and Alcoholism Prevention Act of 1970, Pub. L. 91–616, Dec. 31, 1970, and amendments thereto, relating to nondiscrimination on the basis of alcohol abuse or alcoholism;

(7) The Public Health Service Act of 1912, as amended, 42 U.S.C. 290dd–3 and 290ee–3, related to confidentiality of alcohol and drug abuse patient records;

(8) Title VIII of the Civil Rights Act, 42 U.S.C. 3601 *et seq.*, relating to nondiscrimination in the sale, rental, or financing of housing;

(9) Any other nondiscrimination provisions in the specific statutes under which Federal assistance for the project may be provided including, but not limited to section 1101(b) of the Transportation Equity Act for the 21st Century, 23 U.S.C. 101 note, which provides for participation of disadvantaged business enterprises in FTA programs; and

(10) The requirements of any other nondiscrimination statute(s) that may apply to the project.

(f) Will comply, or has complied, with the requirements of Titles II and II of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, (Uniform Relocation Act) 42 U.S.C. 4601 *et seq.*, which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal of federally-assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases. As required by U.S. DOT regulations, "Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs," at 49 CFR 24.4, and sections 210 and 305 of the Uniform Relocation Act, 42 U.S.C. 4630 and 4655, the Applicant assures that it has the requisite authority under applicable state and local law and will comply or has complied with the requirements of the Uniform Relocation Act, 42 U.S.C. 46012 *et seq.*, and U.S. DOT regulations, "Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs," 49 CFR part 24 including, but not limited to the following:

(1) The Applicant will adequately inform each affected person of the benefits, policies, and procedures provided for in 49 CFR part 24;

(2) The Applicant will provide fair and reasonable relocation payments and assistance required by 42 U.S.C. 4622, 4623, and 4624; 49 CFR part 24; and any applicable FTA procedures, to or for families, individuals, partnerships, corporations or associations displaced as a result of any project financed with FTA assistance;

(3) The Applicant will provide relocation assistance programs offering the services described in 42 U.S.C. 4625 to such displaced families, individuals, partnerships, corporations, or associations in the manner provided in 49 CFR part 24 and FTA procedures;

(4) Within a reasonable time before displacement, the Applicant will make available comparable replace dwellings to displaced families and individuals as required by 42 U.S.C. 4625(c)(3);

(5) The Applicant will carry out the relocation process in such a manner as to provide displaced persons with uniform and consistent services, and will make available replacement housing in the same range of choices with respect to such housing to all displaced persons regardless of race, color, religion, or national origin; and

(6) In acquiring real property, the Applicant will be guided to the greatest extent practicable under state law, by the real property acquisition policies of 42 U.S.C. 4651 and 4652;

(7) The Applicant will pay or reimburse property owners for necessary expenses as specified in 42 U.S.C. 4653 and 4654, with the understanding that FTA will participate in the Applicant's eligible costs of providing payments for those expenses as required by 42 U.S.C. 4631;

(8) The Applicant will execute such amendments to third party contracts and subagreements financed with FTA assistance and execute, furnish, and be bound by such additional documents as FTA may determine necessary to effectuate or implement the assurance provided herein; and

(9) The Applicant agrees to make these assurances part of or incorporate them by reference into any third party contract or subagreement, or any amendments thereto, relating to any project financed by FTA involving relocation or land acquisition and provide in any affected document that these relocation and land acquisition provisions shall separate any conflicting provisions.

(g) To the extent applicable, will comply with provisions of the Hatch Act, 5 U.S.C. 1501 through 1508, and 7324 through 7326, which limit the political activities of state and local agencies and their officers and employees whose principal employment activities are financed in whole or part with Federal funds including a Federal loan, grant, or cooperative agreement, but pursuant to 23 U.S.C. 142(g), does not apply to nonsupervisory employee of a transit system (or of any other agency or entity performing related functions) receiving FTA assistance to whom the Hatch Act does not otherwise apply.

(h) To the extent applicable, will comply with the Davis-Bacon Act, as amended, 40 U.S.C. 276a through 276a(7), the Copeland Act, as amended, 18 U.S.C. 874 and 40 U.S.C. 276c, and the Contract Work Hours and Safety Standards Act, as amended, 40 U.S.C. 327 through 333, regarding labor standards for federally-assisted subagreements.

(i) To the extent applicable, will comply with flood insurance purchase requirements of section 102(a) of the Flood Disaster Protection Act of 1973, as amended, 42 U.S.C. 4012a(a), requiring recipients in a special flood hazard area to participate in the program and purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

(j) Will comply with environmental standards that may be prescribed to implement the following Federal laws and executive orders:

(1) Institution of environmental quality control measures under the National Environmental Policy Act of 1969, as amended, 42 U.S.C. *et seq.* and Executive Order No. 11514, as amended, 42 U.S.C. 4321 *note;*

(2) Notification of violating facilities pursuant to Executive Order No. 11738, 42 U.S.C. 7606 *note;*

(3) Protection of wetlands pursuant to Executive Order No. 11990, 42 U.S.C. 4321 *note;*

(4) Evaluation of flood hazards in floodplains in accordance with Executive Order 11988, 42 U.S.C. 4321 *note;*

(5) Assurance of project consistency with the approved State management program developed pursuant to the requirements of the Coastal Zone Management Act of 1972, as amended, 16 U.S.C. 1451 *et seq.*

(6) Conformity of Federal actions to State (Clean Air) Implementation Plans under section 176(c) of the Clean Air Act of 1955, as amended, 42 U.S.C. 7401 *et seq.;*

(7) Protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, 42 U.S.C. 300h *et seq.;*

(8) Protection of endangered species under the Endangered Species Act of 1973, as amended, Endangered Species Act of 1973, as amended, 16 U.S.C. 1531 *et seq.;* and

(9) Environmental protections for Federal transit programs, including, but not limited to protections for a park, recreation area, or wildlife or waterfowl refuge of national, state, or local significance or any land from a historic site of national state, or local significance used in a transit project as required by 49 U.S.C. 303:

(k) Will comply with the Wild and Scenic Rivers Act of 1968, as amended, 16 U.S.C. 1271 *et seq.* relating to protecting components of the national wild and scenic rivers systems.

(l) Will assist FTA in assuring compliance with section 106 of the National Historic Preservation Act of 1966, as amended, 16 U.S.C. 470f, Executive Order No. 11593 (identification and protection of historic properties), 16 U.S.C. 470 *note,* and the Archaeological and Historic Preservation Act of 1974, as amended, 16 U.S.C. 469a–1 *et seq.*

(m) Will comply with the Lead-Based Paint Poisoning Prevention Act, 42 U.S.C. 4801, which prohibits the use of lead-based paint in construction or rehabilitation of residence structures.

(n) Will not dispose of, modify the use of, or change the terms of the real property title, or other interest in the site and facilities on which a construction project supported with FTA assistance takes place without permission and instructions from the awarding agency.

(o) Will record the Federal interest in the title of real property in accordance with FTA directives and will include a covenant in the title of real property acquired in whole or in part with Federal assistance funds to assure nondiscrimination during the useful life of the project.

(p) Will comply with FTA requirements concerning the drafting, review, and approval of construction plans and specifications of any construction project supported with FTA assistance. As required by U.S. DOT regulations, "Seismic Safety," 49 CFR 41.117(d), before accepting delivery of any building financed with FTA assistance, it will obtain a certificate of compliance with the seismic design and construction requirements of 49 CFR part 41.

(q) Will provide and maintain competent and adequate engineering supervision at the construction site of any project supported with FTA assistance to ensure that the complete work conforms with the approved plans and specifications and will furnish progress reports and such other information as may be required by FTA or the State.

(r) Will comply with the National Research Act, Pub. L. 93–348, July 12, 1974, as amended, regarding the protection of human subjects involved in research, development, and related activities supported by Federal assistance and DOT regulation, "Protection of Human Subjects," 49 CFR part 11.

(s) Will comply with the Laboratory Animal Welfare Act of 1966, as amended, 7 U.S.C. 2131 *et seq.* pertaining to the care, handling, and treatment of warm blooded animals held

for research, teaching, or other activities supported by FTA assistance.

(t) Will have performed the financial and compliance audits required by the Single Audit Act Amendments of 1996, 31 U.S.C. 7501 *et seq.* U.S.C. 7501 *et seq.* and OMB Circular No. A–133, "Audits of States, Local Governments, and Non-Profit Organizations and Department of Transportation provisions of OMB A–133 Compliance Supplement, March 2000."

(u) Will comply with all applicable requirements of all other Federal laws, executive orders, regulations, and policies governing the project.

6. Lobbying Certification for an Application Exceeding $100,000

An applicant that submits, or intends to submit this fiscal year, an application for Federal assistance exceeding $100,000 must provide the following certification. Consequently, FTA may not provide Federal assistance for an application exceeding $100,000 until the Applicant provides this certification by selecting category "II" on the Signature Page at the end of this document.

(a) As required by U.S. DOT regulations, "New Restrictions on Lobbying," at 49 CFR 20.110, the Applicant's authorized representative certifies to the best of his or her knowledge and belief that for each application for a Federal assistance exceeding $100,000:

(1) No Federal appropriated funds have been or will be paid, by or on behalf of the Applicant, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress pertaining to the award of any Federal assistance, or the extension, continuation, renewal, amendment, or modification of any Federal assistance agreement; and

(2) If any funds other than Federal appropriated funds have been or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any application to FTA for Federal assistance, the Applicant assures that it will complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," including the information required by the form's instructions, which may be amended to omit such information as permitted by 31 U.S.C. 1352.

(b) The Applicant understands that this certification is a material representation of fact upon which reliance is placed and that submission of this certification is a prerequisite for providing Federal assistance for a transaction covered by 31 U.S.C. 1352. The Applicant also understands that any person who fails to file a required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

II. Guidelines for Preparing Grant Application

FTA is conducting a national solicitation for applications under the OTRB Accessibility program. Grant awards will be made on a competitive basis. Applicants should submit 3 copies of their proposal application, consistent with the application format provided at Appendix A, to the appropriate regional office. Project proposal applications must be received by FTA no later than March 28, 2003. The OTRB operators should submit the application to the office in the region in which its headquarters office is located (see Appendix B). The application should provide information on all items for which you are requesting funding in FY 2003. The application must include the following elements:

1. Applicant Information. This addresses basic identifying information, including:

a. Company name.

b. Contact information for notification of project selection: Contact name, address, fax and phone number.

c. Description of services provided by company.

d. For fixed-route carriers, whether you are a large (Class I, with gross annual operating revenues of $5.3 million or more) or small (gross operating revenues of less than $5.3 million annually) carrier.

e. Existing fleet and employee information, including number of over-the-road buses used for intercity fixed-route service and other service and number of employees.

f. Estimate of the proportion of service, if any, that is intercity fixed-route.

g. Description of your technical, legal, and financial capacity to implement the proposed project.

2. Project Information. Every application must:

a. Provide the Federal amount requested for each purpose for which funds are sought.

b. How intercity fixed-route service meets the definition of intercity fixed-route service, including how service makes meaningful connections with scheduled intercity bus service to more distant points.

c. Document matching funds, including amount and source.

d. Describe project, including components to be funded, *i.e.*, lifts, tie-downs, moveable seats, etc., and/or training.

e. Provide project time-line, including significant milestones such as date or contract for purchase of vehicle(s), and actual or expected delivery date of vehicles.

f. Address each of the five statutory evaluation criteria.

g. Complete Standard Form 424, "Federal Assistance".

3. Labor Information. a. Identify any labor organizations that may represent your employees and all labor organizations that represent the employees of any transit providers in the service area of the project. For each local of a nationally affiliated union, the applicant must provide the name of the national organization and the number or other designation of the local union. (For example, Amalgamated Transit Union local 1258.) Since DOL makes its referral to the national union's headquarters, there is no need to provide a means of contacting the local organization.

b. For each independent labor organization (*i.e.*, a union that is not affiliated with a national or international organization) the local information will be necessary (name of organization, address, contact person, phone, fax numbers).

c. Where a labor organization represents transit employees in the service area of the project, DOL must refer the proposed protective arrangements to each union and to each recipient. For this reason, please provide DOL with a contact person, address, telephone number and fax number for your company and associated union information.

III. Grant Application Review Process

Applications are to be submitted to the appropriate FTA Regional Office by the close of business on March 28, 2003. FTA will screen all applications to determine whether all required eligibility elements, as described in Section 2 of the application, are present. An FTA evaluation team will evaluate each application according to the criteria described in this announcement.

A. Notification

FTA expects to notify all applicants, both those selected for funding and those not selected, in June 2003.

Projects selected for funding will be published in a **Federal Register** notice.

Dated: February 3, 2003.

Jennifer L. Dorn,

Administrator.

Appendix—Over-the-Road Bus Accessibility Program Project Proposal Application (PAPER)

1. *Applicant Information*

A. *Company Name:*

B. *For Notification of Project Selection Contact:*

Name of Individual:
Address:
Telephone number:

C. *Describe Services Provided by Company, Including Areas Served:*

D. *Intercity Fixed-Route Carriers:*

_____Large/Class I (gross annual operating revenues of $5.3 Million or more)
_____Small (gross annual revenues of less than $5.3 Million)

E. *Existing Fleet and Employee Information:*

#_____Over-the-road Buses in fleet used for Intercity Fixed-route Service
#_____Over-the-road Buses in fleet used for Other Service, *e.g.*, Charter, Tour, & Commuter
#_____Employees

F. *If you provide both intercity fixed-route service and another type of service, such as commuter, charter or tour service, please provide an estimate of the proportion of your service that is intercity*

_____% of services is intercity fixed-route

G. *Describe your technical legal, and financial capacity to implement the proposed project.*

2. *Project Information*

A. *Federal Amount Requested (Up to 90% Federal Share):*

Intercity Fixed Route Service

$_____for #_____New Over-the-road Buses
$_____for #_____Retrofits
$_____ for #_____Employees–Training

If funds are being requested for intercity fixed-route services, please describe how the service meets the definition of intercity fixed-route service, including how the service makes meaningful connections with scheduled intercity bus service to more distant points.

Other Service (Commuter, Charter, or Tour)

$_____for #_____New Over-the-road Buses
$_____for #_____Retrofits
$_____for #_____Employees–Training

B. *Document Matching Funds, including Amount and Source:*

C. *Describe Project, including Components to be funded, i.e., Lifts, Tie-downs, Moveable Seats, etc. and/or Training:*

D. *Provide Project Time Line, including Significant Milestones such as Date of Contract for Purchase of Vehicle(s), and actual or expected delivery date of vehicles:*

E. *Project Evaluation Criteria—Projects will be evaluated according to the following criteria:*

The identified need for over-the-road bus accessibility for persons with disabilities in the areas served by the applicant. (20 points)

The extent to which the applicant demonstrated innovative strategies and financial commitment to providing access to over-the-road buses to persons with disabilities. (20 points)

The extent to which the over-the-road bus operator acquired equipment required by DOT's over-the-road bus accessibility rule prior to the required time-frame in the rule. (20 points)

The extent to which financing the costs of complying with DOT's rule presents a financial hardship for the applicant. (20 points)

The impact of accessibility requirements on the continuation of over-the-road bus service with particular consideration of the impact of the requirements on service to rural areas and for low-income individuals. (20 points)

Appendix B—FTA Regional Offices

Region I—Massachusetts, Rhode Island, Connecticut, New Hampshire, Vermont and Maine

Richard H. Doyle, FTA Regional Administrator, Volpe National Transportation Systems Center, Kendall Square, 55 Broadway, Suite 920, Cambridge, MA 02142–1093, (617) 494–2055.

Region II—New York, New Jersey, Virgin Islands

Letitia Thompson, FTA Regional Administrator, 26 Federal Plaza, Suite 2940, New York, NY 10278–0194, (212) 264–8162.

Region III—Pennsylvania, Maryland, Virginia, West Virginia, Delaware, Washington, DC

Susan Schruth, FTA Regional Administrator, 1760 Market Street, Suite 500, Philadelphia, PA 19103–4124, (215) 656–7100.

Region IV—Georgia, North Carolina, South Carolina, Florida, Mississippi, Tennessee, Kentucky, Alabama, Puerto Rico

Jerry Franklin, FTA Regional Administrator, 61 Forsyth Street, S.W., Suite 17T50, Atlanta, GA 30303, (404) 562–3500.

Region V—Illinois, Indiana, Ohio, Wisconsin, Minnesota, Michigan

Joel Ettinger, FTA Regional Administrator, 200 West Adams Street, Suite 320, Chicago, IL 60606–5232, (312) 353–2789.

Region VI—Texas, New Mexico, Louisiana, Arkansas, Oklahoma

Robert Patrick, FTA Regional Administrator, 819 Taylor Street, Room 8A36, Ft. Worth, TX 76102, (817) 978–0550.

Region VII—Iowa, Nebraska, Kansas, Missouri

Mokhtee Ahmad, Regional Administrator, 901 Locust Street, Suite 404, Kansas City, MO 64106, (816) 329–3920.

Region VIII—Colorado, North Dakota, South Dakota, Montana, Wyoming, Utah

Lee Waddleton, FTA Regional Administrator, Columbine Place, 216 16th Street, Suite 650, Denver, CO 80202–5120, (303) 844–3242.

Region IX—California, Arizona, Nevada, Hawaii, American Samoa, Guam

Leslie Rogers, FTA Regional Administrator, 201 Mission Street, Suite 2210, San Francisco, CA 94105–1831, (415) 744–3133.

Region X—Washington, Oregon, Idaho, Alaska

Richard Krochalis, FTA Regional Administrator, Jackson Federal Building, 915 Second Avenue, Suite 3142, Seattle, WA 98174–1002, (206) 220–7954.

[FR Doc. 03–3080 Filed 2–6–03; 8:45 am]

BILLING CODE 4910–57–M

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

January 31, 2003.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before March 10, 2003 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–1191.

Regulation Project Number: INTL–868–89 Final.

Type of Review: Extension.

Title: Information with Respect to Certain Foreign-Owned Corporations.

Description: The regulations require record maintenance, annual information filing, and the authorization of the U.S. corporation to act as an agent for IRS summons purposes. These requirements allow IRS International examiners to better audit the returns of U.S. corporations engaged in crossborder transactions with a related party.

Respondents: Business or other for-profit, Individuals or households.

Estimated Number of Respondents: 63,000.

Estimated Burden Hours Per Respondent: 10 hours.

Frequency of Response: Annually.

Estimated Total Reporting Burden: 630,000 hours.

Clearance Officer: Glenn Kirkland, (202) 622–3428, Internal Revenue Service, Room 6411–03, 1111 Constitution Avenue, NW, Washington, DC 20224.

OMB Reviewer: Joseph F. Lackey, Jr., (202) 395–7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Mary A. Able,

Departmental Reports Management Officer.

[FR Doc. 03–2992 Filed 2–6–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Community Development Financial Institutions Fund

Notice of Funds Availability Inviting Applications for the Community Development Financial Institutions Program—Financial Assistance Component: Change of Application Deadline

AGENCY: Community Development Financial Institutions Fund, Department of the Treasury.

ACTION: Change of application deadline.

SUMMARY: On February 4, 2003, the Community Development Financial Institutions Fund (the "Fund") announced in a NOFA for the Financial Assistance Component of the CDFI Program (68 FR 5738) that the deadline for applications for assistance through the Financial Assistance Component was March 10, 2003. This notice is to announce that the application deadline for the FY 2003 funding round of the Financial Assistance Component of the CDFI Program has been extended to March 17, 2003. All other information and requirements set forth in the February 4, 2003, NOFA for the Financial Assistance Component shall remain effective, as published.

FOR FURTHER INFORMATION CONTACT: If you have any questions about the programmatic requirements for this program, contact the Fund's Program Operations Manager. If you have questions regarding administrative requirements, contact the Fund's Awards Manager. The Program Operations Manager and the Awards Manager may be reached by e-mail at *cdfihelp@cdfi.treas.gov,* by telephone at (202) 622–6355, by facsimile at (202) 622–7754, or by mail at CDFI Fund, 601 13th Street, NW., Suite 200 South, Washington, DC 20005. These are not toll free numbers.

Authority: 12 U.S.C. 4703; chapter X, Pub. L. 104–19, 109 Stat. 237.

Dated: February 4, 2003.

Tony T. Brown,

Director, Community Development Financial Institutions Fund.

[FR Doc. 03–3108 Filed 2–6–03; 8:45 am]

BILLING CODE 4810–70–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[CO–26–96]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, CO–26–96 (TD 8825), Regulations Under Section 382 of the Internal Revenue Code of 1986; Application of Section 382 in Short Taxable Years and With Respect to Controlled Groups (§ 1.382–8).

DATES: Written comments should be received on or before April 8, 2003, to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulation should be directed to Carol Savage, (202) 622–3945, or through the Internet, *CAROL.A.SAVAGE@irs.gov.*, Internal Revenue Service, room 6407, 1111 Constitution Avenue, NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Regulations Under Section 382 of the Internal Revenue Code of 1986; Application of Section 382 in Short Taxable Years and With Respect to Controlled Groups.

OMB Number: 1545–1434.

Regulation Project Number: CO–26–96.

Abstract: Internal Revenue Code section 382 limits the amount of income that can be offset by loss carryovers after an ownership change in a loss corporation. These regulations provide rules for applying section 382 in the case of short taxable years and with respect to controlled groups of corporations.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 3,500.

Estimated Time Per Respondent: 15 minutes.

Estimated Total Annual Burden Hours: 875.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: January 31, 2003.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 03–3093 Filed 2–6–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[REG–208172–91]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, REG–208172–91 (TD 8787), Basis Reduction Due to Discharge of Indebtedness, (§§ 1.108–4,and 1.1017–1).

DATES: Written comments should be received on or before April 8, 2003, to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or regulations should be directed to Carol Savage, (202) 622–3945, or through the Internet, *CAROL.A.SAVAGE@irs.gov.*, Internal Revenue Service, room 6407, 1111 Constitution Avenue, NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Basis Reduction Due to Discharge of Indebtedness.

OMB Number: 1545–1539.

Regulation Project Number: REG–208172–91.

Abstract: This regulation provides ordering rules for the reduction of bases of property under Internal Revenue Code sections 108 and 1017. The regulation affects taxpayers that exclude discharge of indebtedness from gross income under Code section 108. The collection of information is required for a taxpayer to elect to reduce the adjusted bases of depreciable property under section 108(b)(5), to elect to treat section 1221(l) real property as either depreciable property or depreciable real property, and to account for a partnership interest as either depreciable property or depreciable real property.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, and business or other for-profit organizations.

Estimated Number of Responses: 10,000.

Estimated Time Per Response: 1 hour.

Estimated Total Annual Burden Hours: 10,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: January 31, 2003.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 03–3094 Filed 2–6–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[PS–105–75]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, PS–105–75 (TD 8348), Limitations on Percentage Depletion in the Case of Oil and Gas Wells (section 1.613A–3(l)).

DATES: Written comments should be received on or before April 8, 2003, to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulation should be directed to Larnice Mack (202) 622–3179, or *Larnice.Mack@irs.gov*, or Internal Revenue Service, room 6407, 1111 Constitution Avenue, NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Limitations on Percentage Depletion in the Case of Oil and Gas Wells.

OMB Number: 1545–0919.

Regulation Project Number: PS–105–75.

Abstract: Section 1.613A–3(1) of the regulation requires each partner to separately keep records of his or her share of the adjusted basis of partnership oil and gas property and requires each partnership, trust, estate, and operator to provide to certain persons the information necessary to compute depletion with respect to oil or gas.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

The burden associated with this collection of information is reflected on Forms 1065, 1041, and 706.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material

in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: January 30, 2003.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 03–3095 Filed 2–6–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 5304–SIMPLE, Form 5305–SIMPLE, and Notice 98–4

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 5304–SIMPLE, Savings Incentive Match Plan for Employees of Small Employers (SIMPLE)—Not for Use With a Designated Financial Institution; Form 5305–SIMPLE, Savings Incentive Match Plan for Employees of Small Employers (SIMPLE)—for Use With a Designated Financial Institution; Notice 98–4, Simple IRA Plan Guidance

DATES: Written comments should be received on or before April 8, 2003, to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6407, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the forms, instructions, and notice should be directed to Carol Savage, (202) 622–3945, or through the Internet *CAROL.A.SAVAGE@irs.gov.*, Internal Revenue Service, room 6407, 1111 Constitution Avenue, NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Form 5304–SIMPLE, Savings Incentive Match Plan for Employees of Small Employers (SIMPLE)—Not for Use With a Designated Financial Institution, Form 5304–SIMPLE; Savings Incentive Match Plan for Employees of Small Employers (SIMPLE)—for Use With a Designated Financial Institution, Form 5305–SIMPLE; SIMPLE IRA Plan Guidance(Notice 98–4).

OMB Number: 1545–1502.

Form Number: Form 5304–SIMPLE, Form 5305–SIMPLE, and Notice 98–4.

Abstract: Form 5304–SIMPLE is a model SIMPLE IRA agreement that was created to be used by an employer to permit employees who are not using a designated financial institution to make salary reduction contributions to a SIMPLE IRA described in Internal Revenue Code section 408(p). Form 5305–SIMPLE is also a model SIMPLE IRA agreement, but it is for use with a designated financial institutions. Notice 98–4 provides guidance for employers and trustees regarding how they can comply with the requirements of Code section 408(p) in establishing and maintaining a SIMPLE IRA, including information regarding the notification and reporting requirements under Code section 408.

Current Actions: There are no changes being made to the information collections at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations not-for-profit institutions, and individuals. *Estimated Number of Respondents:* 600,000.

Estimated Time Per Respondent: 3 hours, 33 minutes.

Estimated Total Annual Burden Hours: 2,127,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: February 3, 2002.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 03–3096 Filed 2–6–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Bureau of the Public Debt

Proposed Collection: Comment Request

AGENCY: Bureau of the Public Debt, Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A). Currently the Bureau of the Public Debt within the Department of the Treasury is soliciting comments concerning the Certificate by Legal Representative(s) of Decedent's Estate, During Administration, of Authority to

Act and of Distribution Where Estate Holds No More Than $1000 (face amount) United States Savings and Retirement Securities, Excluding Checks Representing Interest.

DATES: Written comments should be received on or before April 9, 2003, to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of the Public Debt, Vicki S. Thorpe, 200 Third Street, Parkersburg, WV 26106–1328, or *Vicki.Thorpe@bpd.treas.gov*.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Vicki S. Thorpe, Bureau of the Public Debt, 200 Third Street, Parkersburg, WV 26106–1328, (304) 480–6553.

SUPPLEMENTARY INFORMATION:

Title: Certificate By Legal Representative(s) of Decedent's Estate, During Administration, Of Authority To Act and Of Distribution Where Estate Holds No More Than $1000 (face amount) United States Savings and Retirement Securities, Excluding Checks Representing Interest.

OMB Number: 1535–0060.

Form Number: PD F 2488–1.

Abstract: The information is requested to establish legal representative of a decedent's estate authority to act and request disposition of securities.

Current Actions: None.

Type of Review: Extension.

Affected Public: Individuals or households.

Estimated Number of Respondents: 6,300.

Estimated Time Per Respondent: 15 minutes.

Estimated Total Annual Burden Hours: 1,575.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: February 3, 2003.

Vicki S. Thorpe,

Manager, Graphics, Printing and Records Branch.

[FR Doc. 03–3021 Filed 2–6–03; 8:45 am]

BILLING CODE 4810–39–P

DEPARTMENT OF THE TREASURY

Bureau of the Public Debt

Proposed Collection: Comment Request

AGENCY: Bureau of the Public Debt, Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A). Currently the Bureau of the Public Debt within the Department of the Treasury is soliciting comments concerning the Application For Disposition—United States Savings Bonds/Notes and/or Related Checks Owned by Decedent Whose Estate is Being Settled Without Administration.

DATES: Written comments should be received on or before April 9, 2003, to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of the Public Debt, Vicki S. Thorpe, 200 Third Street, Parkersburg, WV 26106–1328, or *Vicki.Thorpe@bpd.treas.gov*.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Vicki S. Thorpe, Bureau of the Public Debt, 200 Third Street, Parkersburg, WV 26106–1328, (304) 480–6553.

SUPPLEMENTARY INFORMATION:

Title: Application For Disposition—United States Savings Bonds/Notes and/or Related Checks Owned by Decedent Whose Estate Is Being Settled Without Administration.

OMB Number: 1535–0118.

Form Number: PD F 5336.

Abstract: The information is requested to support a request for distribution when a decedent's estate is not being administered.

Current Actions: None.

Type of Review: Extension.

Affected Public: Individuals or households.

Estimated Number of Respondents: 80,000.

Estimated Time Per Respondent: 30 minutes.

Estimated Total Annual Burden Hours: 40,000.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: February 3, 2003.

Vicki S. Thorpe,

Manager, Graphics, Printing and Records Branch.

[FR Doc. 03–3022 Filed 2–6–03; 8:45 am]

BILLING CODE 4810–39–P

Corrections

Federal Register

Vol. 68, No. 26

Friday, February 7, 2003

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. 00–059–1]

Movement and Importation of Fruits and Vegetables

Correction

In rule document 03–1211 beginning on page 2681 in the issue of Tuesday, January 21, 2003, make the following correction:

§319.56–2x [Corrected]

On page 2684, in the table, in § 319.56–2x, under the heading "Plant part(s)", in the first line "of" should read, "or".

[FR Doc. C3–1211 Filed 2–6–03; 8:45 am]

BILLING CODE 1505–01–D

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47025; File No. SR–NYSE–2002–59]

Self Regulatory Organizations; Notice of Filing of Proposed Rule Change by the New York Stock Exchange, Inc. Relating to Pilot Programs for Mediation and Administrative Conferences

December 18, 2002.

Correction

In notice document 02–32738 beginning on page 79214 in the issue of Friday, December 27, 2002, make the following correction:

On page 79214, in the third column, include the date as set forth above.

[FR Doc. C2–32738 Filed 2–6–03; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Friday,
February 7, 2003

Part II

Department of Housing and Urban Development

Federal Property Suitable as Facilities To Assist the Homeless; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4809–N–06]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

FOR FURTHER INFORMATION CONTACT: Mark Johnston, room 7266, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with 24 CFR part 581 and section 501 of the Stewart B. McKinney Homeless Assistant Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Where property is described as for "off-site use only" recipients of the property will be required to relocate the building to their own site at their own expense. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Shirley Kramer, Division of Property Management, Program Support Center, HHS, room 5B–41, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 24 CFR part 581.

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to Mark Johnston at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (*i.e.*, acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: **Army:** Ms. Julie Jones-Conte, Department of the Army, Office of the Assistant Chief of Staff for Installation Management, Attn: DAIM–MD, Room 1E677, 600 Army Pentagon, Washington, DC 20310–600; (703) 692–9223; **DOT:** Mr. Rugene Spruill, Principal, Space Management, SVC–140, Transportation Administrative Service Center, Department of Transportation, 400 7th Street, SW., Room 2310, Washington, DC 20590; (202) 366–4246; **COE:** Ms. Shirley Middleswarth, Army Corps of Engineers, Civil Division, Directorate of Real Estate, 441 G Street, NW., Washington, DC 20314–1000; (202) 761–7425; **Energy:** Mr. Tom Knox, Department of Energy, Office of Engineering & Construction Management, CR–80, Washington, DC 20585; (202) 586–8715; **GSA:** Mr. Brian K. Polly, Assistant Commissioner, General Services Administration, Office of Property Disposal, 18th and F Streets, NW., Washington, DC 20405; (202) 501–0052; **Interior:** Ms. Linda Tribby, Acquisition & Property Management, Department of the Interior, 1849 C Street, NW., MS5512, Washington, DC 20240; (202) 219–0728; **Navy:** Mr. Charles C. Cocks, Director, Department of the Navy, Real Estate Policy Division, Naval Facilities Engineering Command, Washington Navy Yard, 1322 Patterson Ave., SE., Suite 1000, Washington, DC 20374–5065; (202) 685–9200; **VA:** Ms. Amelia E. McLellan, Director, Real Property Service (183C), Department of Veterans Affairs, 810 Vermont Avenue, NW., Room 419, Washington, DC 20420; (202) 565–5941; (These are not toll-free numbers).

Dated: January 30, 2003.

John D. Garrity,

Director, Office of Special Needs Assistance Programs.

Title V, Federal Surplus Property Program Federal Register Report for 2/7/03

Suitable/Available Properties

Buildings (by State)

California

Bldg. 199
Naval Postgraduate School
Monterey Co: CA 93943–
Landholding Agency: Navy
Property Number: 77200310003
Status: Excess
Comment: 2186 sq. ft., gold pro shop, presence of asbestos/lead paint

Indiana

Office/Training Center
Newburgh Locks & Dam
Newburgh Co: IN 47630–
Landholding Agency: COE
Property Number: 31200310014
Status: Excess
Comment: 3000 sq. ft., steel structure, off-site use only

Bldg. 105, VAMC
East 38th Street
Marion Co: Grant IN 46952–
Landholding Agency: VA
Property Number: 97199230006

Status: Excess
Comment: 310 sq. ft., 1 story stone structure, no sanitary or heating facilities, Natl Register of Historic Places

Bldg. 140, VAMC
East 38th Street
Marion Co: Grant IN 46952–
Landholding Agency: VA
Property Number: 97199230007
Status: Excess
Comment: 60 sq. ft., concrete block bldg., most recent use—trash house

Bldg. 7
VA Northern Indiana Health Care System
Marion Campus, 1700 East 38th Street
Marion Co: Grant IN 46953–
Landholding Agency: VA
Property Number: 97199810001
Status: Underutilized
Comment: 16,864 sq. ft., presence of asbestos, most recent use—psychiatric ward, National Register of Historic Places

Bldg. 10
VA Northern Indiana Health Care System
Marion Campus, 1700 East 38th Street
Marion Co: Grant IN 46953–
Landholding Agency: VA
Property Number: 97199810002
Status: Underutilized
Comment: 16,361 sq. ft., presence of asbestos, most recent use—psychiatric ward, National Register of Historic Places

Bldg. 11
VA Northern Indiana Health Care System
Marion Campus, 1700 East 38th Street
Marion Co: Grant IN 46953–
Landholding Agency: VA
Property Number: 97199810003
Status: Underutilized
Comment: 16,361 sq. ft., presence of asbestos, most recent use—psychiatric ward, National Register of Historic Places

Bldg. 18
VA Northern Indiana Health Care System
Marion Campus, 1700 East 38th Street
Marion Co: Grant IN 46953–
Landholding Agency: VA
Property Number: 97199810004
Status: Underutilized
Comment: 13,802 sq. ft., presence of asbestos, most recent use—psychiatric ward, National Register of Historic Places

Bldg. 25
VA Northern Indiana Health Care System
Marion Campus, 1700 East 38th Street
Marion Co: Grant IN 46953–
Landholding Agency: VA
Property Number: 97199810005
Status: Unutilized
Comment: 32,892 sq. ft., presence of asbestos, most recent use—psychiatric ward, National Register of Historic Places

Kentucky

Green River Lock & Dam #3
Rochester Co: Butler KY 42273–
Location: SR 70 west from Morgantown, KY., approximately 7 miles to site
Landholding Agency: COE
Property Number: 31199010022
Status: Unutilized
Comment: 980 sq. ft., 2 story wood frame; two story residence; potential utilities; needs major rehab

Chaumont Facility
National Park
Mammouth Cave Co: Edmonson KY 42259–
Landholding Agency: 61200310001
Status: Excess
Comment: 5650 sq. ft., most recent use—office, off-site use only

Massachusetts

Storage Bldg.
Knightville Dam Road
Huntington Co: Hampshire MA 01050–
Landholding Agency: COE
Property Number: 31200030005
Status: Unutilized
Comment: 480 sq. ft., needs rehab, off-site use only

Mississippi

Quonset Bldg.
Greenville Casting Plant
Greenville Co: Washington MS 38701–
Landholding Agency: COE
Property Number: 31200220010
Status: Unutilized
Comment: 26,250 sq. ft., presence of asbestos/lead paint, most recent use—storage/office, off-site use only

Storage Bldg. #1
Greenville Casting Plant
Greenville Co: Washington MS 38701–
Landholding Agency: COE
Property Number: 31200220011
Status: Unutilized
Comment: 32,502 sq. ft., presence of asbestos/lead paint, most recent use—storage, off-site use only

Storage Bldg. #2
Greenville Casting Plant
Greenville Co: Washington MS 38701–
Landholding Agency: COE
Property Number: 31200220012
Status: Unutilized
Comment: 16,170 sq. ft., presence of asbestos/lead paint, most recent use—storage, off-site use only

Yellow Office Bldg.
Greenville Casting Plant
Greenville Co: Washington MS 38701–
Landholding Agency: COE
Property Number: 31200220013
Status: Unutilized
Comment: 1820 sq. ft., presence of asbestos/lead paint, most recent use—office, off-site use only

Storage Bldg.
Greenville Casting Plant
Greenville Co: Washington MS 38701–
Landholding Agency: COE
Property Number: 31200220014
Status: Unutilized
Comment: 1820 sq. ft., presence of asbestos/lead paint, most recent use—office, off-site use only

Container Bldg.
Greenville Casting Plant
Greenville Co: Washington MS 38701–
Landholding Agency: COE
Property Number: 31200220015
Status: Unutilized
Comment: 270 sq. ft., presence of lead paint, most recent use—storage, off-site use only

Montana

Bldg. 1
Butte Natl Guard
Butte Co: Silverbow MT 59701–
Landholding Agency: COE
Property Number: 31200040010
Status: Unutilized
Comment: 22799 sq. ft., presence of asbestos, most recent use—cold storage, off-site use only

Bldg. 2
Butte Natl Guard
Butte Co: Silverbow MT 59701–
Landholding Agency: COE
Property Number: 31200040011
Status: Unutilized
Comment: 3292 sq. ft., most recent use—cold storage, off-site use only

Bldg. 3
Butte Natl Guard
Butte Co: Silverbow MT 59701–
Landholding Agency: COE
Property Number: 31200040012
Status: Unutilized
Comment: 964 sq. ft., most recent use—cold storage, off-site use only

Bldg. 4
Butte Natl Guard
Butte Co: Silverbow MT 59701–
Landholding Agency: COE
Property Number: 31200040013
Status: Unutilized
Comment: 72 sq. ft., most recent use—cold storage, off-site use only

Bldg. 5
Butte Natl Guard
Butte Co: Silverbow MT 59701–
Landholding Agency: COE
Property Number: 31200040014
Status: Unutilized
Comment: 1286 sq. ft., most recent use—cold storage, off-site use only

New Jersey

Bldg. MA–1
Naval Weapons Station
Colts Neck Co: NJ 07722–
Landholding Agency: Navy
Property Number: 77200310007
Status: Unutilized
Comment: 7200 sq. ft., presence of asbestos/lead paint, off-site use only

Bldg. 5A
Naval Weapons Station
Colts Neck Co: NJ 07722–
Landholding Agency: Navy
Property Number: 77200310008
Status: Unutilized
Comment: 687 sq. ft., most recent use—storage, off-site use only

Bldg. R–17
Naval Weapons Station
Colts Neck Co: NJ 07722–
Landholding Agency: Navy
Property Number: 77200310009
Status: Unutilized
Comment: 1,134 sq. ft., presence of asbestos/lead paint, most recent use—storage, off-site use only

Bldg. C–32A
Naval Weapons Station
Colts Neck Co: NJ 07722–
Landholding Agency: Navy
Property Number: 77200310010
Status: Unutilized
Comment: 255 sq. ft., off-site use only

Bldg. S–331
Naval Weapons Station
Colts Neck Co: NJ 07722–

Landholding Agency: Navy
Property Number: 77200310011
Status: Unutilized
Comment: 256 sq. ft., presence of asbestos/lead paint, most recent use—storage, off-site use only

Bldg. 513
Naval Weapons Station
Colts Neck Co: NJ 07722–
Landholding Agency: Navy
Property Number: 77200310012
Status: Unutilized
Comment: 1647 sq. ft., presence of asbestos/lead paint, off-site use only

New York

Bldg. 0158
Brookhaven National Lab
Upton Co: Suffolk NY 11973–
Landholding Agency: Energy
Property Number: 41200310005
Status: Unutilized
Comment: 12,436 sq. ft., needs rehab, presence of asbestos/lead paint, most recent use—storage, off-site use only

Bldg. 0324
Brookhaven National Lab
Upton Co: Suffolk NY 11973–
Landholding Agency: Energy
Property Number: 41200310006
Status: Unutilized
Comment: 3886 sq. ft., needs rehab, presence of asbestos/lead paint, most recent use—housing, off-site use only

North Dakota

Office Bldg.
Lake Oahe Project
3rd & Main
Ft. Yates Co: Sioux ND 58538–
Landholding Agency: COE
Property Number: 31200020001
Status: Unutilized
Comment: 1200 sq. ft., 2-story wood, off-site use only

Ohio

Barker Historic House
Willow Island Locks and Dam
Newport Co: Washington OH 45768–9801
Location: Located at lock site, downstream of lock and dam structure
Landholding Agency: COE
Property Number: 31199120018
Status: Unutilized
Comment: 1600 sq. ft. bldg. with ½ acre of land, 2 story brick frame, needs rehab, on Natl Register of Historic Places, no utilities, off-site use only

Residence
506 Reservoir Rd.
Paint Creek Lake
Bainbridge Co: Highland OH 45612–
Landholding Agency: COE
Property Number: 31200210008
Status: Unutilized
Comment: 1200 sq. ft., needs repair, off-site use only

Residence
4969 Dillon Dam Road
Dillon Lake
Zanesville Co: OH 43701–
Landholding Agency: COE
Property Number: 31200210009
Status: Unutilized
Comment: 1800 sq. ft., off-site use only

Pennsylvania

Mahoning Creek Reservoir
New Bethleham Co: Armstrong PA 16242–
Landholding Agency: COE
Property Number: 31199210008
Status: Unutilized
Comment: 1015 sq. ft., 2 story brick residence, off-site use only

Dwelling
Lock & Dam 6, Allegheny River, 1260 River Rd.
Freeport Co: Armstrong PA 16229–2023
Landholding Agency: COE
Property Number: 31199620008
Status: Unutilized
Comment: 2652 sq. ft., 3-story brick house, in close proximity to Lock and Dam, available for interim use for nonresidential purposes

Govt. Dwelling
Youghiogheny River Lake
Confluence Co: Fayette PA 15424–9103
Landholding Agency: COE
Property Number: 31199640002
Status: Unutilized
Comment: 1421 sq. ft., 2-story brick w/ basement, most recent use—residential

Dwelling
Lock & Dam 4, Allegheny River
Natrona Co: Allegheny PA 15065–2609
Landholding Agency: COE
Property Number: 31199710009
Status: Unutilized
Comment: 1664 sq. ft., 2-story brick residence, needs repair, off-site use only

Dwelling #1
Crooked Creek Lake
Ford City Co: Armstrong PA 16226–8815
Landholding Agency: COE
Property Number: 31199740002
Status: Excess
Comment: 2030 sq. ft., most recent use—residential, good condition, off-site use only

Dwelling #2
Crooked Creek Lake
Ford City Co: Armstrong PA 16226–8815
Landholding Agency: COE
Property Number: 31199740003
Status: Excess
Comment: 3045 sq. ft., most recent use—residential, good condition, off-site use only

Govt Dwelling
East Branch Lake
Wilcox Co: Elk PA 15870–9709
Landholding Agency: COE
Property Number: 31199740005
Status: Underutilized
Comment: approx. 5299 sq. ft., 1-story, most recent use—residence, off-site use only

Dwelling #1
Loyalhanna Lake
Saltsburg Co: Westmoreland PA 15681–9302
Landholding Agency: COE
Property Number: 31199740006
Status: Excess
Comment: 1996 sq. ft., most recent use—residential, good condition, off-site use only

Dwelling #2
Loyalhanna Lake
Saltsburg Co: Westmoreland PA 15681–9302
Landholding Agency: COE
Property Number: 31199740007
Status: Excess
Comment: 1996 sq. ft., most recent use—residential, good condition, off-site use only

Dwelling #1
Woodcock Creek Lake
Saegertown Co: Crawford PA 16433–0629
Landholding Agency: COE
Property Number: 31199740008
Status: Excess
Comment: 2106 sq. ft., most recent use—residential, good condition, off-site use only

Dwelling #2
Lock & Dam 6, 1260 River Road
Freeport Co: Armstrong PA 16229–2023
Landholding Agency: COE
Property Number: 31199740009
Status: Excess
Comment: 2652 sq. ft., most recent use—residential, good condition, off-site use only

Dwelling #2
Youghiogheny River Lake
Confluence Co: Fayette PA 15424–9103
Landholding Agency: COE
Property Number: 31199830003
Status: Excess
Comment: 1421 sq. ft., 2-story + basement, most recent use—residential

Bldg. 3, VAMC
1700 South Lincoln Avenue
Lebanon Co: Lebanon PA 17042–
Landholding Agency: VA
Property Number: 97199230012
Status: Underutilized
Comment: portion of bldg. (4046 sq. ft.), most recent use—storage, second floor—lacks elevator access

South Dakota

Residence
Tract 109
Pierre Co: Hughes SD
Landholding Agency: COE
Property Number: 31200240002
Status: Excess
Comment: 960 sq. ft., off-site use only

Residence
Tract 118
Pierre Co: Hughes SD
Landholding Agency: COE
Property Number: 31200240003
Status: Excess
Comment: 912 sq. ft., off-site use only

Residence
Tract 131
Pierre Co: Hughes SD
Landholding Agency: COE
Property Number: 31200240004
Status: Excess
Comment: 912 sq. ft., off-site use only

Residence
Tract 141
Pierre Co: Hughes SD
Landholding Agency: COE
Property Number: 31200240005
Status: Excess
Comment: 936 sq. ft., off-site use only

Residence
Tract 514
Ft. Pierre Co: Stanley SD
Landholding Agency: COE
Property Number: 31200240006
Status: Excess

Comment: 1426 sq. ft., off-site use only

Residence
Tract 516
Ft. Pierre Co: Stanley SD
Landholding Agency: COE
Property Number: 31200240007
Status: Excess
Comment: 2264 sq. ft., off-site use only

Residence/Tract 103
Oahe Dam/Lake Oahe Proj.
Pierre Co: SD
Landholding Agency: COE
Property Number: 31200310015
Status: Excess
Comment: 1424 sq. ft., wood frame, off-site use only

Residence/Tract 117
Oahe Dam/Lake Oahe Proj.
Pierre Co: SD
Landholding Agency: COE
Property Number: 31200310016
Status: Excess
Comment: 912 sq. ft., wood frame, off-site use only

Residence/Tract 127
Oahe Dam/Lake Oahe Proj.
Pierre Co: SD
Landholding Agency: COE
Property Number: 31200310017
Status: Excess
Comment: 1386 sq. ft., wood frame, off-site use only

Residence/Tract 154
Oahe Dam/Lake Oahe Proj.
Pierre Co: SD
Landholding Agency: COE
Property Number: 31200310018
Status: Excess
Comment: 912 sq. ft., wood frame, off-site use only

Residence/Tract 158
Oahe Dam/Lake Oahe Proj.
Pierre Co: SD
Landholding Agency: COE
Property Number: 31200310019
Status: Excess
Comment: 816 sq. ft., wood frame, off-site use only

Residence/Tract 401
Oahe Dam/Lake Oahe Proj.
Pierre Co: SD
Landholding Agency: COE
Property Number: 31200310020
Status: Excess
Comment: 1268 sq. ft., wood frame, off-site use only

Residence/Tract 424
Oahe Dam/Lake Oahe Proj.
Pierre Co: SD
Landholding Agency: COE
Property Number: 31200310021
Status: Excess
Comment: 912 sq. ft., wood frame, off-site use only

Residence/Tract 523
Oahe Dam/Lake Oahe Proj.
Pierre Co: SD
Landholding Agency: COE
Property Number: 31200310022
Status: Excess
Comment: 1284 sq. ft., wood frame, off-site use only

Virginia

Metal Bldg.
John H. Kerr Dam & Reservoir
Co: Boydton VA
Landholding Agency: COE
Property Number: 31199620009
Status: Excess
Comment: 800 sq. ft., most recent use—storage, off-site use only

Wisconsin

Former Lockmaster's Dwelling
Cedar Locks
4527 East Wisconsin Road
Appleton Co: Outagamie WI 54911–
Landholding Agency: COE
Property Number: 31199011524
Status: Unutilized
Comment: 1224 sq. ft.; 2 story brick/wood frame residence; needs rehab; secured area with alternate access

Former Lockmaster's Dwelling
Appleton 4th Lock
905 South Lowe Street
Appleton Co: Outagamie WI 54911–
Landholding Agency: COE
Property Number: 31199011525
Status: Unutilized
Comment: 908 sq. ft.; 2 story wood frame residence; needs rehab

Former Lockmaster's Dwelling
Kaukauna 1st Lock
301 Canal Street
Kaukauna Co: Outagamie WI 54131–
Landholding Agency: COE
Property Number: 31199011527
Status: Unutilized
Comment: 1290 sq. ft.; 2 story wood frame residence; needs rehab; secured area with alternate access

Former Lockmater's Dwelling
Appleton 1st Lock
905 South Oneida Street
Appleton Co: Outagamie WI 54911–
Landholding Agency: COE
Property Number: 31199011531
Status: Unutilized
Comment: 1300 sq. ft.; potential utilities; 2 story wood frame residence; needs rehab; secured area with alternate access

Former Lockmaster's Dwelling
Rapid Croche Lock
Lock Road
Wrightstown Co: Outagamie WI 54180–
Location: 3 miles southwest of intersection State Highway 96 and Canal Road
Landholding Agency: COE
Proprerty Number: 31199011533
Status: Unutilized
Comment: 1952 sq. ft.; 2 story wood frame residence; potential utilities; needs rehab

Former Lockmaster's Dwelling
Little KauKauna Lock
Little KauKauna
Lawrence Co: Brown WI 54130–
Location: 2 miles southeasterly from intersection of Lost Dauphin Road (County Trunk Highway "D") and River Street
Landholding Agency: COE
Property Number: 31199011535
Status: Unutilized
Comment: 1224 sq. ft.; 2 story brick/wood frame residence; needs rehab

Former Lockmaster's Dwelling
Little Chute, 2nd Lock
214 Mill Street
Little Chute Co: Outagamie WI 54140–
Landholding Agency: COE
Property Number: 31199011536
Status: Unutilized
Comment: 1224 sq. ft.; 2 story brick/wood frame residence; potential utilities; needs rehab; secured area with alternate access

Bldg. 8
VA Medical Center
County Highway E
Tomah Co: Monroe WI 54660–
Landholding Agency: VA
Property Number: 97199010056
Status: Underutilized
Comment: 2200 sq. ft., 2 story wood frame, possible asbestos, potential utilities, structural deficiencies, needs rehab

Land (by State)

Alabama

VA Medical Center
VAMC
Tuskegee Co: Macon AL 36083–
Landholding Agency: VA
Property Number: 97199010053
Status: Underutilized
Comment: 40 acres, buffer to VA Medical Center, potential utilities, undeveloped

Arkansas

Parcel 01
DeGray Lake
Section 12
Arkadelphia Co: Clark AR 71923–9361
Landholding Agency: COE
Property Number: 31199010071
Status: Unutilized
Comment: 77.6 acres

Parcel 02
DeGray Lake
Section 13
Arkadelphia Co: Clark AR 71923–9361
Landholding Agency: COE
Property Number: 31199010072
Status: Unutilized
Comment: 198.5 acres

Parcel 03
DeGray Lake
Section 18
Arkadelphia Co: Clark AR 71923–9361
Landholding Agency: COE
Property Number: 31199010073
Status: Unutilized
Comment: 50.46 acres

Parcel 04
DeGray Lake
Section 24, 25, 30 and 31
Arkadelphia Co: Clark AR 71923–9361
Landholding Agency: COE
Property Number: 31199010074
Status: Unutilized
Comment: 236.37 acres

Parcel 05
DeGray Lake
Section 16
Arkadelphia Co: Clark AR 71923–9361
Landholding Agency: COE
Property Number: 31199010075
Status: Unutilized
Comment: 187.30 acres

Parcel 06
DeGray Lake
Section 13
Arkadelphia Co: Clark AR 71923–9361
Landholding Agency: COE
Property Number: 31199010076

Status: Unutilized
Comment: 13.0 acres

Parcel 07
DeGray Lake
Section 34
Arkadelphia Co: Hot Spring AR 71923–9361
Landholding Agency: COE
Property Number: 31199010077
Status: Unutilized
Comment: 0.27 acres

Parcel 08
DeGray Lake
Section 13
Arkadelphia Co: Clark AR 71923–9361
Landholding Agency: COE
Property Number: 31199010078
Status: Unutilized
Comment: 14.6 acres

Parcel 09
DeGray Lake
Section 12
Arkadelphia Co: Hot Spring AR 71923–9361
Landholding Agency: COE
Property Number: 31199010079
Status: Unutilized
Comment: 6.60 acres

Parcel 10
DeGray Lake
Section 12
Arkadelphia Co: Hot Spring AR 71923–9361
Landholding Agency: COE
Property Number: 31199010080
Status: Unutilized
Comment: 4.5 acres

Parcel 11
DeGray Lake
Section 19
Arkadelphia Co: Hot Spring AR 71923–9361
Landholding Agency: COE
Property Number: 31199010081
Status: Unutilized
Comment: 19.50 acres

Lake Greeson
Section 7, 8 and 18
Murfreesboro Co: Pike AR 71958–9720
Landholding Agency: COE
Property Number: 31199010083
Status: Unutilized
Comment: 46 acres

California

Land
4150 Clement Street
San Francisco Co: San Francisco CA 94121–
Landholding Agency: VA
Property Number: 97199240001
Status: Underutilized
Comment: 4 acres; landslide area

Florida

Communications Annex Site
S. Allapattah Road
Homestead Co: Miami-Dade FL
Landholding Agency: GSA
Property Number: 54200310008
Status: Excess
Comment: approx. 20 acres w/deteriorated building, no public water, within 100-year floodplain, approx. 17 acres identified as wetlands, subject to all applicable laws/regulations
GSA Number: 4–D–FL–1078–4A

Iowa

40.66 acres
VA Medical Center
1515 West Pleasant St.
Knoxville Co: Marion IA 50138–
Landholding Agency: VA
Property Number: 97199740002
Status: Unutilized
Comment: golf course, easement requirements

Kansas

Parcel 1
El Dorado Lake
Section 13, 24, and 18
(See County) Co: Butler KS
Landholding Agency: COE
Property Number: 31199010064
Status: Unutilized
Comment: 61 acres; most recent use—recreation

Kentucky

Tract 2625
Barkley Lake, Kentucky, and Tennessee
Cadiz Co: Trigg KY 42211–
Location: Adjoining the village of Rockcastle
Landholding Agency: COE
Property Number: 31199010025
Status: Excess
Comment: 2.57 acres; rolling and wooded

Tract 2709–10 and 2710–2
Barkley Lake, Kentucky and Tennessee
Cadiz Co: Trigg KY 42211–
Location: 2½ miles in a southerly direction from the village of Rockcastle
Landholding Agency: COE
Property Number: 31199010026
Status: Excess
Comment: 2.00 acres; steep and wooded

Tract 2708–1 and 2709–1
Barkley Lake, Kentucky and Tennessee
Cadiz Co: Trigg KY 42211–
Location: 2½ miles in a southerly direction from the village of Rockcastle
Landholding Agency: COE
Property Number: 31199010027
Status: Excess
Comment: 3.59 acres; rolling and wooded; no utilities

Tract 2800
Barkley Lake, Kentucky and Tennessee
Cadiz Co: Trigg KY 42211–
Location: 4½ miles in a southerly direction from the village of Rockcastle
Landholding Agency: COE
Property Number: 31199010028
Status: Excess
Comment: 5.44 acres; steep and wooded

Tract 2915
Barkley Lake, Kentucky and Tennessee
Cadiz Co: Trigg KY 42211–
Location: 6½ miles west of Cadiz
Landholding Agency: COE
Property Number: 31199010029
Status: Excess
Comment: 5.76 acres; steep and wooded; no utilities

Tract 2702
Barkley Lake, Kentucky and Tennessee
Cadiz Co: Trigg KY 42211–
Location: 1 mile in a southerly direction from the village of Rockcastle
Landholding Agency: COE
Property Number: 31199010031
Status: Excess
Comment: 4.90 acres; wooded; no utilities

Tract 4318
Barkley Lake, Kentucky and Tennessee
Canton Co: Trigg KY 42212–
Location: Trigg Co. adjoining the city of Canton, KY on the waters of Hopson Creek
Landholding Agency: COE
Property Number: 31199010032
Status: Excess
Comment: 8.24 acres; steep and wooded

Tract 4502
Barkley Lake, Kentucky and Tennessee
Canton Co: Trigg KY 42212–
Location: 3½ miles in a southerly direction from Canton, KY
Landholding Agency: COE
Property Number: 31199010033
Status: Excess
Comment: 4.26 acres; steep and wooded

Tract 4611
Barkley Lake, Kentucky and Tennessee
Canton Co: Trigg KY 42212–
Location: 5 miles south of Canton, KY
Landholding Agency: COE
Property Number: 31199010034
Status: Excess
Comment: 10.51 acres; steep and wooded; no utilities

Tract 4619
Barkley Lake, Kentucky and Tennessee
Canton Co: Trigg KY 42212–
Location: 4½ miles south of Canton, KY
Landholding Agency: COE
Property Number: 31199010035
Status: Excess
Comment: 2.02 acres; steep and wooded; no utilities

Tract 4817
Barkley Lake, Kentucky and Tennessee
Canton Co: Trigg KY 42212–
Location: 6½ miles south of Canton, KY
Landholding Agency: COE
Property Number: 31199010036
Status: Excess
Comment: 1.75 acres; wooded

Tract 1217
Barkley Lake, Kentucky and Tennessee
Eddyville Co: Lyon KY 42030–
Location: On the north side of the Illinois Central Railroad
Landholding Agency: COE
Property Number: 31199010042
Status: Excess
Comment: 5.80 acres; steep and wooded

Tract 1906
Barkley Lake, Kentucky and Tennessee
Eddyville Co: Lyon KY 42030–
Location: Approximately 4 miles east of Eddyville, KY
Landholding Agency: COE
Property Number: 31199010044
Status: Excess
Comment: 25.86 acres; rolling steep and partially wooded; no utilities

Tract 1907
Barkley Lake, Kentucky and Tennessee
Eddyville Co: Lyon KY 42038–
Location: On the waters of Pilfen Creek, 4 miles east of Eddyville, KY
Landholding Agency: COE
Property Number: 31199010045
Status: Excess
Comment: 8.71 acres; rolling steep and wooded; no utilities

Tract 2001 #1
Barkley Lake, Kentucky and Tennessee
Eddyville Co: Lyon KY 42030–

Location: Approximately 4½ miles east of Eddyville, KY
Landholding Agency: COE
Property Number: 31199010046
Status: Excess
Comment: 47.42 acres; steep and wooded; no utilities

Tract 2001 #2
Barkley Lake, Kentucky and Tennessee
Eddyville Co: Lyon KY 42030–
Location: Approximately 4½ miles east of Eddyville, KY
Landholding Agency: COE
Property Number: 31199010047
Status: Excess
Comment: 8.64 acres; steep and wooded; no utilities

Tract 2005
Barkley Lake, Kentucky and Tennessee
Eddyville Co: Lyon KY 42030–
Location: Approximately 5½ miles east of Eddyville, KY
Landholding Agency: COE
Property Number: 31199010048
Status: Excess
Comment: 4.62 acres; steep and wooded; no utilities

Tract 2307
Barkley Lake, Kentucky and Tennessee
Eddyville Co: Lyon KY 42030–
Location: Approximately 7½ miles southeasterly of Eddyville, KY
Landholding Agency: COE
Property Number: 31199010049
Status: Excess
Comment: 11.43 acres; steep and wooded; no utilities

Tract 2403
Barkley Lake, Kentucky and Tennessee
Eddyville Co: Lyon KY 42030–
Location: Approximately 7 miles southeasterly of Eddyville, KY
Landholding Agency: COE
Property Number: 31199010050
Status: Excess
Comment: 1.56 acres; steep and wooded; no utilities

Tract 2504
Barkley Lake, Kentucky and Tennessee
Eddyville Co: Lyon KY 42030–
Location: Approximately 4 miles east of Eddyville, KY
Landholding Agency: COE
Property Number: 31199010051
Status: Excess
Comment: 24.46 acres; steep and wooded; no utilities

Tract 214
Barkley Lake, Kentucky and Tennessee
Grand Rivers Co: Lyon KY 42045–
Location: South of the Illinois Central Railroad, 1 mile east of the Cumberland River
Landholding Agency: COE
Property Number: 31199010052
Status: Excess
Comment: 5.5 acres; wooded; no utilities

Tract 215
Barkley Lake, Kentucky and Tennessee
Grand Rivers Co: Lyon KY 42045–
Location: 5 mile east of Kuttawa
Landholding Agency: COE
Property Number: 31199010053
Status: Excess
Comment: 1.40 acres; wooded; no utilities

Tract 241
Barkley Lake, Kentucky and Tennessee
Grand Rivers Co: Lyon KY 42045–
Location: Old Henson Ferry Road, 6 miles west of Kuttawa, KY
Landholding Agency: COE
Property Number: 31199010054
Status: Excess
Comment: 1.26 acres; steep and wooded; no utilities

Tract 306, 311, 315 and 325
Barkley Lake, Kentucky and Tennessee
Grand Rivers Co: Lyon KY 42045–
Location: 2.5 miles southwest of Kuttawa, KY on the waters of Cypress Creek
Landholding Agency: COE
Property Number: 31199010055
Status: Excess
Comment: 38.77 acres; steep and wooded; no utilities

Tract 2305, 2306, and 2400–1
Barkley Lake, Kentucky and Tennessee
Eddyville Co: Lyon KY 42030–
Location: 6½ miles southeasterly of Eddyville, KY
Landholding Agency: COE
Property Number: 31199010056
Status: Excess
Comment: 97.66 acres; steep rolling and wooded; no utilities

Tract 5203 and 5204
Barkley Lake, Kentucky and Tennessee
Linton Co: Trigg KY 42212–
Location: Village of Linton, KY state highway 1254
Landholding Agency: COE
Property Number: 31199010058
Status: Excess
Comment: 0.93 acres; rolling, partially wooded; no utilities

Tract 5240
Barkley Lake, Kentucky and Tennessee
Linton Co: Trigg KY 42212–
Location: 1 mile northwest of Linton, KY
Landholding Agency: COE
Property Number: 31199010059
Status: Excess
Comment: 2.26 acres; steep and wooded; no utilities

Tract 4628
Barkley Lake, Kentucky and Tennessee
Canton Co: Trigg KY 42212–
Location: 4½ miles south from Canton, KY
Landholding Agency: COE
Property Number: 31199011621
Status: Excess
Comment: 3.71 acres; steep and wooded; subject to utility easements

Tract 4619–B
Barkley Lake, Kentucky and Tennessee
Canton Co: Trigg KY 42212–
Location: 4½ miles south from Canton, KY
Landholding Agency: COE
Property Number: 31199011622
Status: Excess
Comment: 1.73 acres; steep and wooded; subject to utility easements

Tract 2403–B
Barkley Lake, Kentucky and Tennessee
Eddyville Co: Lyon KY 42038–
Location: 7 miles southeasterly from Eddyville, KY
Landholding Agency: COE
Property Number: 31199011623
Status: Unutilized
Comment: 0.70 acres, wooded; subject to utility easements

Tract 241–B
Barkley Lake, Kentucky and Tennessee
Grand Rivers Co: Lyon KY 42045–
Location: South of Old Henson Ferry Road, 6 miles west of Kuttawa, KY
Landholding Agency: COE
Property Number: 31199011624
Status: Excess
Comment: 11.16 acres; steep and wooded; subject to utility easements

Tracts 212 and 237
Barkley Lake, Kentucky and Tennessee
Grand Rivers Co: Lyon KY 42045–
Location: Old Henson Ferry Road, 6 miles west of Kuttawa, KY
Landholding Agency: COE
Property Number: 31199011625
Status: Excess
Comment: 2.44 acres; steep and wooded; subject to utility easements

Tracts 215–B
Barkley Lake, Kentucky and Tennessee
Grand Rivers Co: Lyon KY 42045–
Location: 5 miles southwest of Kuttawa
Landholding Agency: COE
Property Number: 31199011626
Status: Excess
Comment: 1.00 acres; wooded; subject to utility easements

Tracts 233
Barkley Lake, Kentucky and Tennessee
Grand Rivers Co: Lyon KY 42045–
Location: 5 miles southwest of Kuttawa
Landholding Agency: COE
Property Number: 31199011627
Status: Excess
Comment: 1.00 acres; wooded; subject to utility easements

Tract N–819
Dale Hollow Lake & Dam Project
Illwill Creek, Hwy 90
Hobart Co: Clinton KY 42601–
Landholding Agency: COE
Property Number: 31199140009
Status: Underutilized
Comment: 91 acres; most recent use—hunting, subject to existing easements

Portion of Lock & Dam No. 1
Kentucky River
Carrolton Co: Carroll KY 41008–0305
Landholding Agency: COE
Property Number: 31199320003
Status: Unutilized
Comment: approx. 3.5 acres (sloping), access monitored

Tract No. F–610
Buckhorn Lake Project
Buckhorn Co: KY 41721–
Landholding Agency: COE
Property Number: 31200240001
Status: Underutilized
Comment: 0.64 acres, encroachments, most recent use—flood control purposes

Louisiana

Wallace Lake Dam and Reservoir
Shreveport Co: Caddo La 71103–
Landholding Agency: COE
Property Number: 31199011009
Status: Unutilized
Comment: 10.81 acres; wildlife/forestry; no utilities

Bayou Bodcau Dam and Reservoir
Haughton Co: Caddo LA 71037–9707
Location: 35 miles Northeast of Shreveport, LA
Landholding Agency: COE
Property Number: 31199011010
Status: Unutilized
Comment: 203 acres; wildlife/forestry; no utilities

Maryland

VA Medical Center
9600 North Point Road
Fort Howard Co: Baltimore MD 21052–
Landholding Agency: VA
Property Number: 97199010020
Status: Underutilized
Comment: Approx. 10 acres, wetland and periodically floods, most recent use—dump site for leaves

Mississippi

Parcel 7
Grenada Lake
Sections 22, 23, T24N
Grenada Co: Yalobusha MS 38901–0903
Landholding Agency: COE
Property Number: 31199011019
Status: Underutilized
Comment: 100 acres; no utilities; intermittently used under lease—expires 1994

Parcel 8
Grenada Lake
Section 20, T24N
Grenada Co: Yalobusha MS 38901–0903
Landholding Agency: COE
Property Number: 31199011020
Status: Underutilized
Comment: 30 acres; no utilities; intermittently used under lease—expires 1994

Parcel 9
Grenada Lake
Section 20, T24N, R7E
Grenada Co: Yalobusha MS 38901–0903
Landholding Agency: COE
Property Number: 31199011021
Status: Underutilized
Comment: 23 acres; no utilities; intermittently used under lease—expires 1994

Parcel 10
Grenada Lake
Sections 16, 17, 18 T24N, R8E
Grenada Co: Calhoun MS 38901–0903
Landholding Agency: COE
Property Number: 31199011022
Status: Underutilized
Comment: 490 acres; no utilities; intermittently used under lease—expires 1994

Parcel 2
Grenada Lake
Section 20, and T23N, R5E
Grenada Co: Grenada MS 38901–0903
Landholding Agency: COE
Property Number: 31199011023
Status: Underutilized
Comment: 60 acres; no utilities; most recent use—wildlife and forestry management

Parcel 3
Grenada Lake
Section 4, T23N, R5E
Grenada Co: Yalobusha MS 38901–0903
Landholding Agency: COE
Property Number: 31199011024
Status: Underutilized
Comment: 120 acres; no utilities; most recent use—wildlife and forestry management; (13.5 acres/agriculture lease)

Parcel 4
Grenada Lake
Section 2, 3. T23N, R5E
Grenada Co: Yalobusha MS 38901–0903
Landholding Agency: COE
Property Number: 31199011025
Status: Underutilized
Comment: 60 acres; no utilities; most recent use—wildlife and forestry management

Parcel 5
Grenada Lake
Section 7, T24N, R6E
Grenada Co: Yalobusha MS 38901–0903
Landholding Agency: COE
Property Number: 31199011026
Status: Underutilized
Comment: 20 acres; no utilities; most recent use—wildlife and forestry management; (14 acres/agriculture lease)

Parcel 6
Grenada Lake
Section 9, T24N, R6E
Grenada Co: Yalobusha MS 38901–0903
Landholding Agency: COE
Property Number: 31199011027
Status: Underutilized
Comment: 80 acres; no utilities; most recent use—wildlife and forestry management

Parcel 11
Grenada Lake
Section 20, T24N, R8E
Grenada Co: Calhoun MS 38901–0903
Landholding Agency: COE
Property Number: 31199011028
Status: Underutilized
Comment: 30 acres; no utilities; most recent use—wildlife and forestry management

Parcel 12
Grenada Lake
Section 25, T24N, R7E
Grenada Co: Yalobusha MS 38901–0903
Landholding Agency: COE
Property Number: 31199011029
Status: Underutilized
Comment: 30 acres; no utilities; most recent use—wildlife and forestry management

Parcel 13
Grenada Lake
Section 34, T24N, R7E
Grenada Co: Yalobusha MS 38903–0903
Landholding Agency: COE
Property Number: 31199011030
Status: Underutilized
Comment: 35 acres; no utilities; most recent use—wildlife and forestry management; (11 acres/agriculture lease)

Parcel 14
Grenada Lake
Section 3, T23N, R6E
Grenada Co: Yalobusha MS 38901–0903
Landholding Agency: COE
Property Number: 31199011031
Status: Underutilized
Comment: 15 acres; no utilities; most recent use—wildlife and forestry management

Parcel 15
Grenada Lake
Section 4, T24N, R6E
Grenada Co: Yalobusha MS 38901–0903
Landholding Agency: COE
Property Number: 31199011032
Status: Underutilized
Comment: 40 acres; no utilities; most recent use—wildlife and forestry management

Parcel 16
Grenada Lake
Section 9, T23N, R6E
Grenada Co: Yalobusha MS 38901–0903
Landholding Agency: COE
Property Number: 31199011033
Status: Underutilized
Comment: 70 acres; no utilities; most recent use—wildlife and forestry management

Parcel 17
Grenada Lake
Section 17, T23N, R7E
Grenada Co: Grenada MS 38901–0903
Landholding Agency: COE
Property Number: 31199011034
Status: Underutilized
Comment: 35 acres; no utilities; most recent use—wildlife and forestry management

Parcel 18
Grenada Lake
Section 22, T23N, R7E
Grenada Co: Grenada MS 28902–0903
Landholding Agency: COE
Property Number: 31199011035
Status: Underutilized
Comment: 10 acres; no utilities; most recent use—wildlife and forestry management

Parcel 19
Grenada Lake
Section 9, T22N, R7E
Grenada Co: Grenada MS 38901–0903
Landholding Agency: COE
Property Number: 31199011036
Status: Underutilized
Comment: 20 acres; no utilities; most recent use—wildlife and forestry management

Missouri

Harry S Truman Dam & Reservoir
Warsaw Co: Benton MO 65355–
Location: Triangular shaped parcel southwest of access road "B", part of Bledsoe Ferry Park Tract 150
Landholding Agency: COE
Property Number: 31199030014
Status: Underutilized
Comment: 1.7 acres; potential utilities

Oklahoma

Pine Creek Lake
Section 27
(See County) Co: McCurtain OK
Landholding Agency: COE
Property Number: 311990100923
Status: Unutilized
Comment: 3 acres; no utilities; subject to right of way for Oklahoma State Highway

Pennsylvania

Mahoning Creek Lake
New Bethlehem Co: Armstrong PA 16242–9603
Location: Route 28 north to Belknap, Road #4
Landholding Agency: COE
Property Number: 31199010018
Status: Excess
Comment: 2.58 acres; steep and densely wooded

Tracts 610, 611, 612
Shenango River Lake
Sharpsville Co: Mercer PA 16150–

Location: I–79 North, I–80 West, Exit Sharon. R18 North 4 miles, left on R518, right on Mercer Avenue
Landholding Agency: COE
Property Number: 31199011001
Status: Excess
Comment: 24.09 acres; subject to flowage easement

Tracts L24, L26
Crooked Creek Lake
Co: Armstrong PA 03051–
Location: Left bank—55 miles downstream of dam
Landholding Agency: COE
Property Number: 31199011011
Status: Unutilized
Comment: 7.59 acres; potential for utilities

Portion of Tract L–21A
Crooked Creek Lake, LR 03051
Ford City Co: Armstrong PA 16226–
Landholding Agency: COE
Property Number: 31199430012
Status: Unutilized
Comment: Approximately 1.72 acres of undeveloped land, subject to gas rights

Tennessee

Tract 6827
Barkley Lake
Dover Co: Stewart TN 37058–
Location: 2½ miles west of Dover, TN
Landholding Agency: COE
Property Number: 31199010927
Status: Excess
Comment: .57 acres; subject to existing easements

Tracts 6002–2 and 6010
Barkley Lake
Dover Co: Stewart TN 37058–
Location: 3½ miles south of village of Tabaccoport
Landholding Agency: COE
Property Number: 31199010928
Status: Excess
Comment: 100.86 acres; subject to existing easements

Tract 11516
Barkley Lake
Ashland City Co: Dickson TN 37015–
Location: ½ mile downstream from Cheatham Dam
Landholding Agency: COE
Property Number: 31199010929
Status: Excess
Comment: 26.25 acres; subject to existing easements

Tract 2319
J. Percy Priest Dam and Reservoir
Murfreesboro Co: Rutherford TN 37130–
Location: West of Buckeye Bottom Road
Landholding Agency: COE
Property Number: 3119010930
Status: Excess
Comment: 14.48 acres; subject to existing easements

Tract 2227
J. Percy Priest Dam and Reservoir
Murfreesboro Co: Rutherford TN 37130–
Location: Old Jefferson Pike
Landholding Agency: COE
Property Number: 31199010931
Status: Excess
Comment: 2.27 acres; subject to existing easements

Tract 2107
J. Percy Priest Dam and Reservoir
Murfreesboro Co: Rutherford TN 37130–
Location: Across Fall Creek near Fall Creek camping area
Landholding Agency: COE
Property Number: 3119010932
Status: Excess
Comment: 14.85 acres; subject to existing easements

Tracts 2601, 2602, 2603, 2604
Cordell Hull Lake and Dam Project
Doe Row Creek
Gainesboro Co: Jackson TN 38562–
Location: TN Highway 56
Landholding Agency: COE
Property Number: 31199010933
Status: Unutilized
Comment: 11 acres; subject to existing easements

Tract 1911
J. Percy Priest Dam and Reservoir
Murfreesboro Co: Rutherford TN 37130–
Location: East of Lamar Road
Landholding Agency: COE
Property Number: 31199010934
Status: Excess
Comment: 6.92 acres; subject to existing easements

Tract 2321
J. Percy Priest Dam and Reservoir
Murfreesboro Co: Rutherford TN 37130–
Location: South of Old Jefferson Pike
Landholding Agency: COE
Property Number: 31199010935
Status: Excess
Comment: 12 acres; subject to existing easements

Tract 7206
Barkley Lake
Dover Co: Stewart TN 37058–
Location: 2½ miles SE of Dover, TN
Landholding Agency: COE
Property Number: 31199010936
Status: Excess
Comment: 10.15 acres; subject to existing easements

Tracts 8813, 8814
Barkley Lake
Cumberland Co: Stewart TN 37050–
Location: 1½ miles east of Cumberland City
Landholding Agency: COE
Property Number: 31199010937
Status: Excess
Comment: 96 acres; subject to existing easement

Tract 8911
Barkley Lake
Cumberland City Co: Montgomery TN 37050–
Location: 4 miles east of Cumberland City
Landholding Agency: COE
Property Number: 31199010938
Status: Excess
Comment: 7.7 acres; subject to existing easements

Tract 11503
Barkley Lake
Ashland City Co: Cheatham TN 37015–
Location: 2 miles downstream from Cheatham Dam
Landholding Agency: COE
Property Number: 31199010939
Status: Excess
Comment: 1.1 acres; subject to existing easements

Tracts 11523, 11524
Barkley Lake
Cumberland Co: Stewart TN 37015–
Location: 2½ downstream from Cheatham Dam
Landholding Agency: COE
Property Number: 31199010940
Status: Excess
Comment: 19.5 acres; subject to existing easement

Tracts 6410
Barkley Lake
Bumpus Mills Co: Stewart TN 37028–
Location: 4½ miles SW of Bumpus Mills
Landholding Agency: COE
Property Number: 31199010941
Status: Excess
Comment: 17 acres; subject to existing easement

Tracts 9707
Barkley Lake
Palmyer Co: Montgomery TN: 37142–
Location: 3 miles NE of Palmyer, TN. Highway 149
Landholding Agency: COE
Property Number: 31199010943
Status: Excess
Comment: 6.6 acres; subject to existing easement

Tracts 6949
Barkley Lake
Dover Co: Stewart TN 37058–
Location: 1½ miles SE of Dover, TN
Landholding Agency: COE
Property Number: 31199010944
Status: Excess
Comment: 29.67 acres; subject to existing easement

Tracts 6005 and 6017
Barkley Lake
Dover Co: Stewart TN 37058–
Location: 3 miles south of Village of Tobaccoport
Landholding Agency: COE
Property Number: 31199011173
Status: Excess
Comment: 5 acres; subject to existing easement

Tracts K–1191, K–1135
Old Hickory Lock and Dam
Hartsville Co: Trousdale TN 37074–
Landholding Agency: COE
Property Number: 31199130007
Status: Underutilized
Comment: 54 acres, (portion in floodway), most recent use—recreation

Tract A–102
Dale Hollow Lake & Dam Project
Canoe Ridge, State Hwy 52
Celina Co: Clay TN 38551–
Landholding Agency: COE
Property Number: 31199140006
Status: Underutilized
Comment: 351 acres, most recent use—hunting, subject to existing easements

Tract A–120
Dale Hollow Lake & Dam Project
Swann Ridge, State Hwy No. 53
Celina Co: Clay TN 38551–
Landholding Agency: COE
Property Number: 31199140007
Status: Underutilized

Comment: 883 acres, most recent use—hunting, subject to existing easements

Tract D–185
Dale Hollow Lake & Dam Project
Ashburn Creek, Hwy No. 52
Livingston Co: Clay TN 38570–
Landholding Agency: COE
Property Number: 31199140010
Status: Underutilized
Comment: 97 acres, most recent use—hunting, subject to existing easements

Texas

Land
Olin E. Teague Veterans Center
1901 South 1st Street
Temple Co: Bell TX 76504–
Landholding Agency: VA
Property Number; 97199010079
Status: Underutilized
Comment: 13 acres, portion formally landfill, portion near flammable materials, railroad crosses property, potential utilities

Washington

15.1 acres
Road I8NE & Road 36NE
Coulee City Co: Grant WA 99115–
Landholding Agency: Interior
Property Number: 61200310002
Status: Excess
Comment: subject to existing easements/substation site

Wisconsin

VA Medical Center
County Highway E
Tomah Co: Monroe WI 54660–
Landholding Agency: VA
Property Number: 97199010054
Status: Underutilized
Comment: 12.4 acres, serves as buffer between center and private property, no utilities

Suitable/Unavailable Properties

Buildings (by State)

Illinois

Bldg. 7
Ohio River Locks & Dam No. 53
Grand Chain Co: Pulaski IL 62941–9801
Location: Ohio River Locks and Dam No. 53 at Grand Chain
Landholding Agency: COE
Property Number: 31199010001
Status: Unutilized
Comment: 900 sq. ft.; 1 floor wood frame; most recent use—residence

Bldg. 6
Ohio River Locks & Dam No. 53
Grand Chain Co: Pulaski IL 62941–9801
Location: Ohio River Locks and Dam No. 53 at Grand Chain
Landholding Agency: COE
Property Number: 31199010002
Status: Unutilized
Comment: 900 sq. ft.; one floor wood frame; most recent use—residence

Bldg. 5
Ohio River Locks & Dam No. 53
Grand Chain Co: Pulaski IL 62941–9801
Location: Ohio River Locks and Dam No. 53 at Grand Chain
Landholding Agency: COE
Property Number: 31199010003
Status: Unutilized
Comment: 900 sq. ft.; one floor wood frame; most recent use—residence

Bldg. 4
Ohio River Locks & Dam No. 53
Grand Chain Co: Pulaski IL 62941–9801
Location: Ohio River Locks and Dam No. 53 at Grand Chain
Landholding Agency: COE
Property Number: 31199010004
Status: Unutilized
Comment: 900 sq. ft.; one floor wood frame; most recent use—residence

Bldg. 3
Ohio River Locks & Dam No. 53
Grand Chain Co: Pulaski IL 62941–9801
Location: Ohio River Locks and Dam No. 53 at Grand Chain
Landholding Agency: COE
Property Number: 31199010005
Status: Unutilized
Comment: 900 sq. ft.; one floor wood frame

Bldg. 2
Ohio River Locks & Dam No. 53
Grand Chain Co: Pulaski IL 62941–9801
Location: Ohio River Locks and Dam No. 53 at Grand Chain
Landholding Agency: COE
Property Number: 31199010006
Status: Unutilized
Comment: 900 sq. ft.; one floor wood frame; most recent use—residence

Bldg. 1
Ohio River Locks & Dam No. 53
Grand Chain Co: Pulaski IL 62941–9801
Location: Ohio River Locks and Dam No. 53 at Grand Chain
Landholding Agency: COE
Property Number: 31199010007
Status: Unutilized
Comment: 900 sq. ft.; one floor wood frame; most recent use—residence

Montana

VA MT Healthcare
210 S. Winchester
Miles City Co: Custer MT 59301–
Landholding Agency: VA
Property Number: 97200030001
Status: Underutilized
Comment: 18 buildings, total sq. ft. = 123,851, presence of asbestos, most recent use—clinic/office/food production

Ohio

Bldg.—Berlin Lake
7400 Bedell Road
Berlin Center Co: Mahoning OH 44401–9797
Landholding Agency: COE
Property Number: 31199640001
Status: Unutilized
Comment: 1420 sq. ft.; 2-story brick w/garage and basement, most recent use—residential, secured w/alternate access

Pennsylvania

Tract 353
Grays Landing Lock & Dam Project
Greensboro Co: Greene PA 15338–
Landholding Agency: COE
Property Number: 31199430019
Status: Unutilized
Comment: 812 sq. ft., 2-story, log structure, needs repair, most recent use—residential, if used for habitation must be flood proofed or removed off-site

Tract 403A
Grays Landing Lock & Dam Project
Greensboro Co: Greene PA 15338–
Landholding Agency: COE
Property Number: 31199430021
Status: Unutilized
Comment: 620 sq. ft., 2-story, needs repair most recent use—residential, if used for habitation must be flood proofed or removed off-site

Tract 403B
Grays Landing Lock & Dam Project
Greensboro Co: Greene PA 15338–
Landholding Agency: COE
Property Number: 31199430022
Status: Unutilized
Comment: 1600 sq. ft., 2-story, brick structure, needs repair, most recent use—residential, if used for habitation must be flood proofed or removed off-site

Tract 403C
Grays Landing Lock & Dam Project
Greensboro Co: Greene PA 15338–
Landholding Agency: COE
Property Number: 31199430023
Status: Unutilized
Comment: 672 sq. ft., 2-story carriage house/stable barn type structure, needs repair, most recent use—storage/garage, if used for habitation must be flood proofed or removed

Tract 434
Grays Landing Lock & Dam Project
Greensboro Co: Greene PA 15338–
Landholding Agency: COE
Property Number: 31199430024
Status: Unutilized
Comment: 1059 sq. ft., 2-story, wood frame, 2 apt. units, historic property, if used for habitation must be flood proofed or removed off-site

Tract No. 224
Grays Landing Lock & Dam Project
Greensboro Co: Greene PA 15338–
Landholding Agency: COE
Property Number: 31199440001
Status: Unutilized
Comment: 1040 sq. ft., 2 story bldg., needs repair, historic struct., flowage easement, if habitation is desired property will be required to be flood proofed or removed off site.

Wisconsin

Former Lockmaster's Dwelling
DePere Lock
100 James Street
De Pere Co: Brown WI 54115–
Landholding Agency: COE
Property Number: 31199011526
Status: Unutilized
Comment: 1224 sq. ft., 2 story brick/wood frame residence, needs rehab, secured area with alternate access

Bldg. 2
VA Medical Center
5000 West National Ave.
Milwaukee WI 53295–
Landholding Agency: VA
Property Number: 97199830002
Status: Underutilized
Comment: 133,730 sq. ft., needs rehab, presence of asbestos/lead paint, most recent use—storage

Land (by State)

Illinois

Lake Shelbyville
Shelbyville Co: Shelby & Moultrie IL 62565–9804
Landholding Agency: COE
Property Number: 31199240004
Status: Unutilized
Comment: 5 parcels of land equalling 0.70 acres, improved w/4 small equipment storage bldgs. and a small access road, easement restrictions

Iowa

38 acres
VA Medical Center
1515 West Pleasant St.
Knoxville Co: Marion IA 50138–
Landholding Agency: VA
Property Number: 97199740001
Status: Unutilized
Comment: golf course

Michigan

VA Medical Center
5500 Armstrong Road
Battle Creek Co: Calhoun MI 49016–
Landholding Agency: VA
Property Number: 97199010015
Status: Underutilized
Comment: 20 acres, used as exercise trails and storage areas, potential utilities

New York

VA Medical Center
Fort Hill Avenue
Canandaigua Co: Ontario NY 14424–
Landholding Agency: VA
Property Number: 97199010017
Status: Underutilized
Comment: 27.5 acres, used for school ballfield and parking, existing utilities easements, portion leased

Pennsylvania

East Branch Clarion River Lake
Wilcox Co: Elk PA
Location: Free camping area on the right bank off entrance roadway.
Landholding Agency: COE
Property Number: 31199011012
Status: Underutilized
Comment: 1 acre, most recent use—free campground

Dashields Locks and Dam
Glenwillard, PA
Crescent Twp. Co: Allegheny PA 15046–0475
Landholding Agency: COE
Property Number: 31199210009
Status: Unutilized
Comment: 0.58 acres, most recent use—baseball field

VA Medical Center
New Castle Road
Butler Co: Butler PA 16001–
Landholding Agency: VA
Property Number: 97199010016
Status: Underutilized
Comment: Approx. 9.29 acres, used for patient recreation, potential utilities

Land No. 645
VA Medical Center
Highland Drive
Pittsburgh Co: Allegheny PA 15206–
Location: Between Campania and Wiltsie Streets
Landholding Agency: VA
Property Number: 97199010080
Status: Unutilized
Comment: 90.3 acres, heavily wooded, property includes dump area and numerous site storm drain outfalls

Land—34.16 acres
VA Medical Center
1400 Black Horse Hill Road
Coatesville Co: Chester PA 19320–
Landholding Agency: VA
Property Number: 97199340001
Status: Underutilized
Comment: 34.16 acres, open field, most recent use—recreation/buffer

Suitable/To Be Excessed

Land (by State)

Georgia

Lake Sidney Lanier
Co: Forsyth GA 30130–
Location: Located on Two Mile Creek adj. to State Route 369
Landholding Agency: COE
Property Number: 31199440010
Status: Unutilized
Comment: 0.25 acres, endangered plant species

Lake Sidney Lanier—3 parcels
Gainesville Co: Hall GA 30503–
Location: Between Gainesville H.S. and State Route 53 By-Pass
Landholding Agency: COE
Property Number: 31199440011
Status: Unutilized
Comment: 3 parcels totalling 5.17 acres, most recent use—buffer zone, endangered plant species

Kansas

Parcel #1
Fall River Lake
Section 26
Co: Greenwood KS
Landholding Agency: COE
Property Number: 31199010065
Status: Unutilized
Comment: 126.69 acres; most recent use—recreation and leased cottage sites

Parcel No. 2, El Dorado Lake
Approx. 1 mi east of the town of El Dorado
Co: Butler KS
Landholding Agency: COE
Property Number: 31199210005
Status: Unutilized
Comment: 11 acres, part of a relocated railroad bed, rural area

Massachusetts

Buffumville Dam
Flood Control Project
Gale Road
Carlton Co: Worcester MA 01540–0155
Location: Portion of tracts B–200, B–248, B–251, B–204, B–247, B–200 and B–256
Landholding Agency: COE
Property Number: 31199010016
Status: Excess
Comment: 1.45 acres

Tennessee

Tract D–456
Cheatham Lock and Dam
Ashland Co: Cheatham TN 37015–
Location: Right downstream bank of Sycamore Creek
Landholding Agency: COE
Property Number: 31199010942
Status: Excess
Comment: 8.93 acres; subject to existing easements

Texas

Corpus Christi Ship Channel
Corpus Christi Co: Neuces TX
Location: East side of Carbon Plant Road, approx. 14 miles NW of downtown Corpus Christi
Landholding Agency: COE
Property Number: 31199240001
Status: Unutilized
Comment: 4.4 acres, most recent use—farm land

Unsuitable Properties

Buildings (by State)

Alabama

Bldg. 7
VA Medical Center
Tuskegee Co: Macon AL 36083–
Landholding Agency: VA
Property Number: 97199730001
Status: Underutilized
Reason: Secured Area

Bldg. 8
VA Medical Center
Tuskegee Co: Macon AL 36083–
Landholding Agency: VA
Property Number: 97199730002
Status: Underutilized
Reason: Secured Area

Arkansas

Dwelling
Bull Shoals Lake/Dry Run Road
Oakland Co: Marion AR 72661–
Landholding Agency: COE
Property Number: 31199820001
Status: Unutilized
Reason: Extensive deterioration

Helena Casting Plant
Helena Co: Phillips AR 72342–
Landholding Agency: COE
Property Number: 31200220001
Status: Unutilized
Reason: Extensive deterioration

California

Soil & Materials Testing Lab
Sausalito Co: CA 00000–
Landholding Agency: COE
Property Number: 31199920002
Status: Excess
Reason: Contamination

Bldg. 513
Naval Postgraduate School
Monterey Co: CA 93943–
Landholding Agency: Navy
Property Number: 77200310004
Status: Excess
Reason: Extensive deterioration

Connecticut

Hezekiah S. Ramsdell Farm
West Thompson Lake
North Grosvenordale Co: Windham CT 06255–9801
Landholding Agency: COE
Property Number: 31199740001
Status: Unutilized
Reasons: Floodway; Extensive deterioration

Georgia

Prop. ID HAR18015
Hartwell Project
Hartwell Co: GA 30643–
Landholding Agency: COE
Property Number: 31200310001
Status: Unutilized
Reason: Extensive deterioration

Prop. ID RBR17830
Russell Dam Dr.
Elberton Co: GA 30635–
Landholding Agency: COE
Property Number: 31200310002
Status: Unutilized
Reason: Secured Area

Prop. ID RBR17832
Russell Dam Drive
Elberton Co: GA 30635–
Landholding Agency: COE
Property Number: 31200310003
Status: Unutilized
Reason: Secured Area

Idaho

Bldg. AFD0070
Albeni Falls Dam
Oldtown Co: Bonner ID 83822–
Landholding Agency: COE
Property Number: 31199910001
Status: Unutilized
Reason: Extensive deterioration

Indiana

Bldg. 21, VA Medical Center
East 38th Street
Marion Co: Grant IN 46952–
Landholding Agency: VA
Property Number: 97199230001
Status: Excess
Reason: Extensive deterioration

Bldg. 22, VA Medical Center
East 38th Street
Marion Co: Grant IN 46952–
Landholding Agency: VA
Property Number: 97199230002
Status: Excess
Reason: Extensive deterioration

Bldg. 62, VA Medical Center
East 38th Street
Marion Co: Grant IN 46952–
Landholding Agency: VA
Property Number: 97199230003
Status: Excess
Reason: Extensive deterioration

Iowa

Treatment Plant
South Fork Park
Mystic Co: Appanoose IA 52574–
Landholding Agency: COE
Property Number: 31200220002
Status: Excess
Reason: Extensive deterioration

Kansas

No. 01017
Kanopolis Project
Marquette Co: Ellsworth KS 67456–
Landholding Agency: COE
Property Number: 31200210001
Status: Unutilized
Reason: Extensive deterioration

No. 01020
Kanopolis Project
Marquette Co: Ellsworth KS 67456–
Landholding Agency: COE
Property Number: 31200210002
Status: Unutilized
Reason: Extensive deterioration

No. 61001
Kanopolis Project
Marquette Co: Ellsworth KS 67456–
Landholding Agency: COE
Property Number: 31200210003
Status: Unutilized
Reason: Extensive deterioration

Bldg. #1
Kanopolis Project
Marquette Co: Ellsworth KS 67456–
Landholding Agency: COE
Property Number: 31200220003
Status: Excess
Reason: Extensive deterioration

Bldg. #2
Kanopolis Project
Marquette Co: Ellsworth KS 67456–
Landholding Agency: COE
Property Number: 31200220004
Status: Excess
Reason: Extensive deterioration

Bldg. #4
Kanopolis Project
Marquette Co: Ellsworth KS 67456–
Landholding Agency: COE
Property Number: 31200220005
Status: Excess
Reason: Extensive deterioration

Comfort Station
Clinton Lake Project
Lawrence Co: Douglas KS 66049–
Landholding Agency: COE
Property Number: 31200220006
Status: Excess
Reason: Extensive deterioration

Privie
Perry Lake
Perry Co: Jefferson KS 66074–
Landholding Agency: COE
Property Number: 31200310004
Status: Unutilized
Reason: Extensive deterioration

Shower
Perry Lake
Perry Co: Jefferson KS 66073–
Landholding Agency: COE
Property Number: 31200310005
Status Unutilized
Reason: Extensive deterioration

Tool Shed
Perry Lake
Perry Co: Jefferson KS 66073–
Landholding Agency: COE
Property Number: 31200310006
Status: Unutilized
Reason: Extensive deterioration

Kentucky

Spring House
Kentucky River Lock and Dam No. 1
Highway 320
Carrollton Co: Carroll KY 41008–
Landholding Agency: COE
Property Number: 21199040416
Status: Unutilized
Reason: Spring House

6-Room Dwelling
Green River Lock and Dam No. 3
Rochester Co: Butler KY 42273–
Location: Off State Hwy 369, which runs off of Western Ky. Parkway
Landholding Agency: COE
Property Number: 31199120010
Status: Unutilized
Reason: Floodway

2-Car Garage
Green River Lock and Dam No. 3
Rochester Co: Butler KY 42273–
Location: Off State Hwy 369, which runs off of Western Ky. Parkway
Landholding Agency: COE
Property Number: 31199120011
Status: Unutilized
Reason: Floodway

Office and Warehouse
Green River Lock and Dam No. 3
Rochester Co: Butler KY 42273–
Location: Off State Hwy 369, which runs off of Western Ky. Parkway
Landholding Agency: COE
Property Number: 31199120012
Status: Unutilized
Reason: Floodway

2 Pit Toilets
Green River Lock and Dam No. 3
Rochester Co: Butler KY 42273–
Landholding Agency: COE
Property Number: 31199120013
Status: Unutilized
Reason: Floodway

Maryland

Bldg.
U.S. Naval Academy
95 Bowyer Road
Annapolis Co: Anne Arundel MD 21402–
Landholding Agency: Navy
Property Number: 77200310024
Status: Excess
Reason: Extensive deterioration

Massachusetts

Westview Street Wells
Lexington Co: MA 02173–
Landholding Agency: VA
Property Number: 97199920001
Status: Unutilized
Reason: Extensive deterioration

Michigan

Pipe Island Lighthouse
St. Mary's River
Chippewa Co: MI
Landholding Agency: GSA
Property Number: 54200310007
Status: Excess
Reason: Not accessible by road
GSA Number: 1–U–MI–413A

Mississippi

146 Units
Naval Air Station
Meridian Co: MS 39309–
Landholding Agency: Navy
Property Number: 77200310005
Status: Unutilized
Reason: Secured Area

Bldg. 6, Boiler Plant
Biloxi VA Medical Center
Gulfport Co: Harrison MS 39531–
Landholding Agency: VA
Property Number: 97199410001
Status: Unutilized
Reason: Floodway

Bldg. 67
Biloxi VA Medical Center
Gulfport Co: Harrison MS 39531–

Landholding Agency: VA
Property Number: 97199410008
Status: Unutilized
Reason: Extensive deterioration

Bldg. 68
Biloxi VA Medical Center
Gulfport Co: Harrison MS 39531–
Landholding Agency: VA
Property Number: 97199410009
Status: Unutilized
Reason: Extensive deterioration

Missouri

Rec Office
Harry S. Truman Dam & Reservoir
Osceola Co: St. Clair MO 64776–
Landholding Agency: COE
Property Number: 31200110001
Status: Unutilized
Reason: Extensive deterioration

Privy/Nemo Park
Pomme de Terre Lake
Hermitage Co: MO 65668–
Landholding Agency: COE
Property Number: 31200120001
Status: Excess
Reason: Extensive deterioration

Privy No. 1/Bolivar Park
Pomme de Terre Lake
Hermitage Co: MO 65668–
Landholding Agency: COE
Property Number: 31200120002
Status: Excess
Reason: Extensive deterioration

Privy No. 2/Bolivar Park
Pomme de Terre Lake
Hermitage Co: MO 65668–
Landholding Agency: COE
Property Number: 31200120003
Status: Excess
Reason: Extensive deterioration

#07004, 60006, 60007
Crabtree Cove/Stockton Area
Stockton Co: MO 65785–
Landholding Agency: COE
Property Number: 31200220007
Status: Excess
Reason: Extensive deterioration

Bldg.
Old Mill Park Area
Stockton Co: MO 65785–
Landholding Agency: COE
Property Number: 31200310007
Status: Excess
Reason: Extensive deterioration

Nebraska

Vault Toilets
Harlan County Project
Republican Co: NE 68971–
Landholding Agency: COE
Property Number: 31200210006
Status: Unutilized
Reason: Extensive deterioration

Patterson Treatment Plant
Harlan County Project
Republican Co: NE 68971–
Landholding Agency: COE
Property Number: 31200210007
Status: Unutilized
Reason: Extensive deterioration

#30004
Harlan County Project
Republican Co: NE 68971–
Landholding Agency: COE
Property Number: 31200220008
Status: Unutilized
Reason: Extensive deterioration

#3005, 3006
Harlan County Project
Republican Co: Harlan NE 68971–
Landholding Agency: COE
Property Number: 31200220009
Status: Unutilized
Reason: Extensive deterioration

Nevada

Air Traffic Control Tower
Perimeter Road
Las Vegas Co: NV
Landholding Agency: DOT
Property Number: 87200310002
Status: Unutilized
Reason: Within airport runway clear zone

New Jersey

Bldg. GB–1
Naval Weapons Station
Colts Neck Co: NJ 07722–
Landholding Agency: Navy
Property Number: 77200310013
Status: Unutilized
Reason: Extensive deterioration

Bldg. D–5
Naval Weapons Station
Colts Neck Co: NJ 07722–
Landholding Agency: Navy
Property Number: 77200310014
Status: Unutilized
Reason: Extensive deterioration

Bldg. 6A
Naval Weapons Station
Colts Neck Co: NJ 07722–
Landholding Agency: Navy
Property Number: 77200310015
Status: Unutilized
Reason: Extensive deterioration

Bldg. C–14
Naval Weapons Station
Colts Neck Co: NJ 07722–
Landholding Agency: Navy
Property Number: 77200310016
Status: Unutilized
Reason: Extensive deterioration

Bldg. C–31
Naval Weapons Station
Colts Neck Co: NJ 07722–
Landholding Agency: Navy
Property Number: 77200310017
Status: Unutilized
Reason: Extensive deterioration

Bldg. C–36
Naval Weapons Station
Colts Neck Co: NJ 07722–
Landholding Agency: Navy
Property Number: 77200310018
Status: Unutilized
Reason: Extensive deterioration

Bldg. S–179
Naval Weapons Station
Colts Neck Co: NJ 07722–
Landholding Agency: Navy
Property Number: 77200310019
Status: Unutilized
Reason: Extensive deterioration

Bldg. 531
Naval Weapons Station
Colts Neck Co: NJ 07722–
Landholding Agency: Navy
Property Number: 77200310020
Status: Unutilized
Reason: Extensive deterioration

Bldg. 569
Naval Weapons Station
Colts Neck Co: NJ 07722–
Landholding Agency: Navy
Property Number: 77200310021
Status: Unutilized
Reason: Extensive deterioration

Bldg. 570
Naval Weapons Station
Colts Neck Co: NJ 07722–
Landholding Agency: Navy
Property Number: 77200310022
Status: Unutilized
Reason: Extensive deterioration

Bldg. 589
Naval Weapons Station
Colts Neck Co: NJ 07722–
Landholding Agency: Navy
Property Number: 77200310023
Status: Unutilized
Reason: Extensive deterioration

New York

Warehouse
Whitney Lake Project
Whitney Point Co: Broome NY 13862–0706
Landholding Agency: COE
Property Number: 31199630007
Status: Unutilized
Reason: Extensive deterioration

North Carolina

Prop. ID WKS20350
Scott Reservoir Project
Wilkesboro Co: NC 28697–7462
Landholding Agency: COE
Property Number: 31200310008
Status: Unutilized
Reason: Extensive deterioration

Prop. ID WKS18652
Scott Reservoir Project
Wilkesboro Co: NC 28697–7462
Landholding Agency: COE
Property Number: 31200310009
Status: Unutilized
Reason: Extensive deterioration

Bldg. 9
VA Medical Center
1100 Tunnel Road
Asheville Co: Buncombe NC 28805–
Landholding Agency: VA
Property Number: 97199010008
Status: Unutilized
Reason: Extensive deterioration

Ohio

Bldg. 116
VA Medical Center
Dayton Co: Montgomery OH 45428–
Landholding Agency: VA
Property Number: 97199920002
Status: Unutilized
Reason: Extensive deterioration

Bldg. 402
VA Medical Center
Dayton Co: Montgomery OH 45428–
Landholding Agency: VA
Property Number: 97199920004
Status: Unutilized
Reason: Extensive deterioration

Bldg. 105
VA Medical Center
Dayton Co: Montgomery OH 45428–
Landholding Agency: VA

Property Number: 97199920005
Status: Unutilized
Reason: Extensive deterioration

Oklahoma

Comfort Station
LeFlore Landing PUA
Sallisaw Co: LeFlore OK 74955–9445
Landholding Agency: COE
Property Number: 31200240008
Status: Excess
Reason: Extensive deterioration

Comfort Station
Braden Bend PUA
Sallisaw Co: LeFlore OK 74955–9445
Landholding Agency: OK
Property Number: 31200240009
Status: Excess
Reason: Extensive deterioration

Water Treatment Plant
Salt Creek Cove
Sawyer Co: Choctaw OK 94756–0099
Landholding Agency: COE
Property Number: 31200240010
Status: Excess
Reason: Extensive deterioration

Water Treatment Plant
Wilson Point
Sawyer Co: Choctaw OK 94756–0099
Landholding Agency: COE
Property Number: 31200240011
Status: Excess
Reason: Extensive deterioration

2 Comfort Stations
Landing PUA/Juniper Point PUA
Stigler Co: McIntosh OK 94462–9440
Landholding Agency: COE
Property Number: 31200240012
Status: Excess
Reason: Extensive deterioration

Filter Plant/Pumphouse
South PUA
Stigler Co: McIntosh OK 74462–9440
Landholding Agency: COE
Property Number: 31200240013
Status: Excess
Reason: Extensive deterioration

Filter Plant/Pumphouse
North PUA
Stigler Co: McIntosh OK 74462–9440
Landholding Agency: COE
Property Number: 31200240014
Status: Excess
Reason: Extensive deterioration

Filter Plant/Pumphouse
Juniper Point PUA
Stigler Co: McIntosh OK 74462–9440
Landholding Agency: COE
Property Number: 31200240015
Status: Excess
Reason: Extensive deterioration

Comfort Station
Juniper Point PUA
Stigler Co: McIntosh OK 94462–9440
Landholding Agency: COE
Property Number: 31200240016
Status: Excess
Reason: Extensive deterioration

Comfort Station
Brooken Cove PUA
Stigler Co: McIntosh OK 74462–9440
Landholding Agency: COE
Property Number: 31200240017
Status: Excess
Reason: Extensive deterioration

South Carolina

Prop. ID JST18895
Thurmond Project
Clarks Hill Co: McCormick SC
Landholding Agency: COE
Property Number: 31200310010
Status: Unutilized
Reason: Extensive deterioration

5 Bldgs.
Thurmond Project
Clarks Hill Co: McCormick SC
Location: JST15781, JST15784, JST15864, JST15866, TST15868
Landholding Agency: COE
Property Number: 31200310011
Status: Unutilized
Reason: Extensive deterioration

Prop. ID JST17133
Thurmond Project
Clarks Hill Co: McCormick SC
Landholding Agency: COE
Property Number: 31200310012
Status: Unutilized
Reason: Extensive deterioration

Prop. ID JST18428
Thurmond Project
Clarks Hill Co: McCormick SC
Landholding Agency: COE
Property Number: 31200310013
Status: Unutilized
Reason: Extensive deterioration

South Dakota

Mobile Home
Tract L–1295
Oahe Dam
Potter Co: SD 00000–
Landholding Agency: COE
Property Number: 31200030001
Status: Excess
Reason: Extensive deterioration

Tennessee

Bldg. 204
Cordell Hull Lake and Dam Project
Defeated Creek Recreation Area
Carthage Co: Smith TN 37030–
Location: US Highway 85
Landholding Agency: COE
Property Number: 31199011499
Status: Unutilized
Reason: Floodway

Tract 2618 (Portion)
Cordell Hull Lake and Dam Project
Roaring River Recreation Area
Gainesboro Co: Jackson TN 38562–
Location: TN Highway 135
Landholding Agency: COE
Property Number: 31199011503
Status: Underutilized
Reason: Floodway

Water Treatment Plant
Dale Hollow Lake & Dam Project
Obey River Park, State Hwy 42
Livingston Co: Clay TN 38351–
Landholding Agency: COE
Property Number: 31199140011
Status: Excess
Reason: Water treatment plant

Water Treatment Plant
Dale Hollow Lake & Dam Project
Lillydale Recreation Area, State Hwy 53
Livingston Co: Clay TN 38351–
Landholding Agency: COE
Property Number: 31199140012
Status: Excess
Reason: Water treatment plant

Water Treatment Plant
Dale Hollow Lake & Dam Project
Willow Grove Recreational Area, Hwy No. 53
Livingston Co: Clay TN 38351–
Landholding Agency: COE
Property Number: 31199140013
Status: Excess
Reason: Water treatment plant

17 Bldgs.
Oak Ridge Tech Park
Oak Ridge Co: Roane TN 37831–
Location: K–801, A–D, H, K–891, K–892, K1025A–E, K–1064B–E, H, K, L, K1206–E
Landholding Agency: Energy
Property Number: 41200310007
Status Unutilized
Reasons: Secured Area; Extensive deterioration

Texas

Comfort Station
Overlook PUA
Powderly Co: Lamar TX 75473–9801
Landholding Agency: COE
Property Number: 31200240018
Status: Excess
Reason: Extensive deterioration

Former Army Aircraft Plant
Industrial Road
Saginaw Co: Tarrant TX 76131–
Landholding Agency: GSA
Property Number: 54200310009
Status: Surplus
Reason: Within 2000 ft. of flammable or explosive material; Extensive deterioration
GSA Number: 7–D–TX–0879

Virginia

4 Bldgs.
Fort AP Hill
Bowling Green Co: Caroline VA 22427–
Location: 01008, 01108, 01109, 01110
Landholding Agency: Army
Property Number: 21200310058
Status: Unutilized
Reason: Extensive deterioration

27 Bldgs.
Fort AP Hill
Bowling Green Co: Caroline VA 22427–
Location: S1259, 00872, 00894, 00924, 01003, 01006, 01008–01012, 01015–01016, 01023, 01052–01054, 01102, 01117–01119, 01204, 01249, 01270, A1007, A1101
Landholding Agency: Army
Property Number: 21200310059
Status: Unutilized
Reason: Extensive deterioration

Bldg. 01105
Fort AP Hill
Bowling Green Co: Caroline VA 22427–
Landholding Agency: Army
Property Number: 21200310060
Status: Unutilized
Reason: Extensive deterioration

Bldg. 11
Naval Air Station Oceana
Virginia Beach Co: VA 23451–
Landholding Agency: Navy
Property Number: 77200310006
Status: Excess
Reason: Extensive deterioration

Washington

Rec Storage Bldg.

Richland Parks
Richland Co: Benton WA 99352–
Landholding Agency: COE
Property Number: 31200240019
Status: Unutilized
Reason: Extensive deterioration

Land (by State)

Arizona

58 acres
VA Medical Center
500 Highway 89 North
Prescott Co: Yavapai AZ 86313–
Landholding Agency: VA
Property Number: 97190630001
Status: Unutilized
Reason: Floodway

20 acres
VA Medical Center
500 Highway 89 North
Prescott Co: Yavapai AZ 86313–
Landholding Agency: VA
Property Number: 97190630002
Status: Unutilized
Reason: Floodway

Florida

Wildlife Sanctuary, VAMC
10,000 Bay Pines Blvd.
Bay Pines Co: Pinellas FL 33504–
Landholding Agency: VA
Property Number: 97199230004
Status: Underutilized
Reason: Inaccessible

Kentucky

Tract 4626
Barkley, Lake, Kentucky and Tennessee
Donaldson Creek Launching Area
Cadiz Co: Trigg KY 42211–
Location: 14 miles from US Highway 68.
Landholding Agency: COE
Property Number: 31199010030
Status: Underutilized
Reason: Floodway

Tract AA–2747
Wolf Creek Dam and Lake Cumberland
US HWY. 27 to Blue John Road
Burnside Co: Pulaski KY 42519–
Landholding Agency: COE
Property Number: 312199010038
Status: Underutilized
Reason: Floodway

Tract AA–2726
Wolf Creek Dam and Lake Cumberland
US HWY. 80 to Route 769
Burnside Co: Pulaski KY 42519–
Landholding Agency: COE
Property Number: 31199010039
Status: Underutilized
Reason: Floodway

Tract 1358
Barkley Lake, Kentucky and Tennessee
Eddyville Recreation Area
Eddyville Co: Lyon KY 42038–
Location: US Highway 62 to state highway 93.
Landholding Agency: COE
Property Number: 31199010043
Status: Excess
Reason: Floodway

Red River Lake Project
Stanton Co: Powell KY 40380–
Location: Exit Mr. Parkway at the Stanton and Slade Interchange, then take SR Hand 15 north to SR 613.
Landholding Agency: COE
Property Number: 31199011684
Status: Unutilized
Reason: Floodway

Barren River Lock & Dam No. 1
Richardsville Co: Warren KY 42270–
Landholding Agency: COE
Property Number: 31199120008
Status: Unutilized
Reason: Floodway

Green River Lock & Dam No. 3
Rochester Co: Butler KY 42273–
Location: Off State Hwy. 369, which runs off of Western Ky. Parkway
Landholding Agency: COE
Property Number: 31199120009
Status: Unutilized
Reason: Floodway

Green River Lock & Dam No. 4
Woodbury Co: Butler KY 42288–
Location: Off State Hwy. 403, which is off State Hwy 231
Landholding Agency: COE
Property Number: 31199120014
Status: Underutilized
Reason: Floodway

Green River Lock & Dam No. 5
Readville Co: Butler KY 42275–
Location: Off State Highway 185
Landholding Agency: VA
Property Number: 31199120015
Status: Unutilized
Reason: Floodway

Green River Lock & Dam No. 6
Brownsville Co: Edmonson KY 42210–
Location: Off State Highway 259
Landholding Agency: COE
Property Number: 31199120016
Status: Underutilized
Reason: Floodway

Vacant land west of locksite
Greenup Locks and Dam
5121 New Dam Road
Rural Co: Greenup KY 41144–
Landholding Agency: COE
Property Number: 31199120017
Status: Unutilized
Reason: Floodway

Maryland

Tract 131R
Youghiogheny River Lake, Rt. 2, Box 100
Friendsville Co: Garrett MD
Landholding Agency: COE
Property Number: 31199240007
Status: Underutilized
Reason: Floodway

Minnesota

3.85 acres (Area #2)
VA Medical Center
4801 8th Street
St. Cloud Co: Stearns MN 56303–
Landholding Agency: VA
Property Number: 97199740004
Status: Unutilized
Reason: landlocked

7.48 acres (Area #1)
VA Medical Center
4801 8th Street
St. Cloud Co: Stearns MN 56303–
Landholding Agency: VA
Property Number: 97199740005
Status: Underutilized
Reason: Secured Area

Mississippi

Parcel 1
Grenada Lake
Section 20
Grenada Co: Grenada MS 38901–0903
Landholding Agency: COE
Property Number: 31199011018
Status: Underutilized
Reason: Within airport runway clear zone

Missouri

Ditch 19, Item 2, Tract No. 230
St. Francis Basin Project
2½ miles west of Malden
Co: Dunkin MO
Landholding Agency: COE
Property Number: 31199130001
Status: Unutilized
Reason: Floodway

New York

Tract 1
VA Medical Center
Bath Co: Steuben NY 14810–
Location: Exit 38 off New York State Route 17
Landholding Agency: VA
Property Number: 97199010011
Status: Unutilized
Reason: Secured Area

Tract 2
VA Medical Center
Bath Co: Steuben NY 14810–
Location: Exit 38 off New York State Route 17
Landholding Agency: VA
Property Number: 97199010012
Status: Underutilized
Reason: Secured Area

Tract 3
VA Medical Center
Bath Co: Steuben NY 14810–
Location: Exit 38 off New York State Route 17
Landholding Agency: VA
Property Number: 97199010013
Status: Underutilized
Reason: Secured Area

Tract 4
VA Medical Center
Bath Co: Steuben NY 14810–
Location: Exit 38 off New York State Route 17
Landholding Agency: VA
Property Number: 97199010014
Status: Unutilized
Reason: Secured Area

Ohio

Mosquito Creek Lake
Everett Hull Road Boat Launch
Cortland Co: Trumbull OH 44410–9321
Landholding Agency: COE
Property Number: 31199440007
Status: Underutilized
Reason: Floodway

Mosquito Creek Lake
Housel—Craft Rd., Boat Launch
Cortland Co: Trumbull OH 44410–9321
Landholding Agency: COE
Property Number: 31199440008
Status: Underutilized
Reason: Floodway

36 Site Campground
German Church Campground
Berlin Center Co: Portage OH 44401–9707

Landholding Agency: COE
Property Number: 31199810001
Status: Unutilized
Reason: Floodway

Pennsylvania

Lock and Dam #7
Monongahela River
Greensboro Co: Greene PA
Location: Left hand side of entrance roadway to project
Landholding Agency: COE
Property Number: 31199011564
Status: Unutilized
Reason: Floodway

Mercer Recreation Area
Shenango Lake
Transfer Co: Mercer PA 16154–
Landholding Agency: COE
Property Number: 31199810002
Status: Unutilized
Reason: Floodway

Tract No. B–212C
Upstream from Gen. Jadwin
Dam & Reservoir
Honesdale Co: Wayne PA 18431–
Landholding Agency: COE
Property Number: 31200020005
Status: Unutilized
Reason: Floodway

Tennessee

Brooks Bend
Cordell Hull Dam and Reservoir
Highway 85 to Brooks Bend Road
Gainesboro Co: Jackson TN 38562–
Location: Tracts 800, 802–806, 835–837, 900–902, 1000–1003, 1025
Landholding Agency: COE
Property Number: 21199040413
Status: Underutilized
Reason: Floodway

Cheathman Lock and Dam
Highway 12
Ashland City Co: Cheatham TN 37015–
Location: Tracts E–513, E–512–1 and E–512–2
Landholding Agency: COE
Property Number: 21199040415
Status: Underutilized
Reason: Floodway

Tract 6737
Blue Creek Recreation Area
Barkley Lake, Kentucky and Tennessee
Dover Co: Stewart TN 37058–
Location: U.S. Highway 79/TN Highway 761
Landholding Agency: COE
Property Number: 31199011478
Status: Underutilized
Reason: Floodway

Tracts 3102, 3105, and 3106
Brimstone Launching Area
Cordell Hull Lake and Dam Project
Gainesboro Co: Jackson TN 38562–
Location: Big Bottom Road
Landholding Agency: COE
Property Number: 31199011479
Status: Excess
Reason: Floodway

Tract 3507
Proctor Site
Cordell Hull Lake and Dam Project
Celina Co: Clay TN 38551–
Location: TN Highway 52
Landholding Agency: COE
Property Number: 31199011480
Status: Unutilized
Reason: Floodway

Tract 3721
Obey
Cordell Hull Lake and Dam Project
Celina Co: Clay TN 38551–
Location: TN Highway 53
Landholding Agency: COE
Property Number: 31199011481
Status: Unutilized
Reason: Floodway

Tracts 608, 609, 611 and 612
Sullivan Bend Launching Area
Cordell Hull Lake and Dam Project
Carthage Co: Smith TN 37030—
Location: Sullivan Bend Road
Landholding Agency: COE
Property Number: 31199011482
Status: Underutilized
Reason: Floodway

Tract 920
Indian Creek Camping Area
Cordell Hull Lake and Dam Project
Granville Co: Smith TN 38564—
Location: TN Highway 53
Landholding Agency: COE
Property Number: 31199011483
Status: Underutilized
Reason: Floodway

Tracts 1710, 1716 and 1703
Flynns Lick Launching Ramp
Cordell Hull Lake and Dam Project
Gainesboro Co: Jackson TN 38562—
Location: Whites Bend Road
Landholding Agency: COE
Property Number: 31199011484
Status: Underutilized
Reason: Floodway

Tract 1810
Wartrace Creek Launching Ramp
Cordell Hull Lake and Dam Project
Gainesboro Co: Jackson TN 38551—
Location: TN Highway 85
Landholding Agency: COE
Property Number: 31199011485
Status: Underutilized
Reason: Floodway

Tract 2524
Jennings Creek
Cordell Hull Lake and Dam Project
Gainesboro Co: Jackson TN 38562—
Location: TN Highway 85
Landholding Agency: COE
Property Number: 31199011486
Status: Underutilized
Reason: Floodway

Tracts 2905 and 2907
Webster
Cordell Hull Lake and Dam Project
Gainesboro Co: Jackson TN 38551—
Location: Big Bottom Road
Landholding Agency: COE
Property Number: 31199011487
Status: Underutilized
Reason: Floodway

Tracts 2200 and 2201
Gainesboro Airport
Cordell Hull Lake and Dam Project
Gainesboro Co: Jackson TN 38562—
Location: Big Bottom Road
Landholding Agency: COE
Property Number: 31199011488
Status: Underutilized
Reason: Within airport runway clear zone Floodway

Tracts 710C and 712C
Sullivan Island
Cordell Hull Lake and Dam Project
Carthage Co: Smith TN 37030—
Location: Sullivan Bend Road
Landholding Agency: COE
Property Number: 31199011489
Status: Underutilized
Reason: Floodway

Tract 2403, Hensley Creek
Cordell Hull Lake and Dam Project
Gainesboro Co: Jackson TN 38562—
Location: TN Highway 85
Landholding Agency: COE
Property Number: 31199011490
Status: Underutilized
Reason: Floodway

Tracts 2117C, 2118 and 2120
Cordell Hull Lake and Dam Project
Trace Creek
Gainesboro Co: Jackson TN 38562—
Location: Brooks Ferry Road
Landholding Agency: COE
Property Number: 31199011491
Status: Unutilized
Reason: Floodway

Tracts 424, 425 and 426
Cordell Hull Lake and Dam Project
Stone Bridge
Carthage Co: Smith TN 37030—
Location: Sullivan Bend Road
Landholding Agency: COE
Property Number: 31199011492
Status: Unutilized
Reason: Floodway

Tract 517
J. Percy Priest Dam and Reservoir
Suggs Creek Embayment
Nashville Co: Davidson TN 37214—
Location: Interstate 40 to S. Mount Juliet Road
Landholding Agency: COE
Property Number: 31199011493
Status: Underutilized
Reason: Floodway

Tract 1811
West Fork Launching Area
Smyrna Co: Rutherford TN 37167—
Location: Florence Road near Enon Springs Road
Landholding Agency: COE
Property Number: 31199011494
Status: Underutilized
Reason: Floodway

Tract 1504
J. Perry Priest Dam and Reservoir
Lamon Hill Recreation Area
Smyrna Co: Rutherford TN 37167—
Location: Lamon Road
Landholding Agency: COE
Property Number: 31199011495
Status: Underutilized
Reason: Floodway

Tract 1500
J. Perry Priest Dam and Reservoir
Pools Knob Recreation
Smyrna Co: Rutherford TN 37167—
Location: Jones Mill Road
Landholding Agency: COE
Property Number: 31199011496
Status: Underutilized
Reason: Floodway

Tracts 245, 257, and 256
J. Perry Priest Dam and Reservoir
Cook Recreation Area
Nashville Co: Davidson TN 37214—
Location: 2.2 miles south of Interstate 40 near Saunders Ferry Pike.
Landholding Agency: COE
Property Number: 31199011497
Status: Underutilized
Reason: Floodway

Tracts 107, 109 and 110
Cordell Hull Lake and Dam Project
Two Prong
Carthage Co: Smith TN 37030—
Location: US Highway 85
Landholding Agency: COE
Property Number: 31199011498
Status: Underutilized
Reason: Floodway

Tracts 2919 and 2929
Cordell Hull Lake and Dam Project
Sugar Creek
Gainesboro Co: Jackson TN 38562—
Location: Sugar Creek Road
Landholding Agency: COE
Property Number: 31199011500
Status: Unutilized
Reason: Floodway

Tracts 1218 and 1204
Cordell Hull Lake and Dam Project
Granville—Alvin Yourk Road
Granville Co: Jackson TN 38564—
Landholding Agency: COE
Property Number: 31199011501
Status: Unutilized
Reason: Floodway

Tract 2100
Cordell Hull Lake and Dam Project
Galbreaths Branch
Gainesboro Co: Jackson TN 38562—
Location: TN Highway 53
Landholding Agency: COE
Property Number: 31199011502
Status: Unutilized
Reason: Floodway

Tract 104 *et al.*
Cordell Hull Lake and Dam Project
Horseshoe Bend Launching Area
Carthage Co: Smith TN 37030—
Location: Highway 70 N
Landholding Agency: COE
Property Number: 31199011504
Status: Underutilized
Reason: Floodway

Tracts 510, 511, 513 and 514
J. Percy Priest Dam and Reservoir Project
Lebanon Co: Wilson TN 37087—
Location: Vivrett Creek Launching Area, Alvin Sperry Road
Landholding Agency: COE
Property Number: 31199120007
Status: Underutilized
Reason: Floodway

Tract A–142, Old Hickory Beach
Old Hickory Blvd.
Old Hickory Co: Davidson TN 37138—
Landholding Agency: COE
Property Number: 31199130008
Status: Underutilized
Reason: Floodway

Tract D, 7 acres
Cheatham Lock & Dam
Nashville Co: Davidson TN 37207—
Landholding Agency: COE
Property Number: 31200020006
Status: Underutilized
Reason: Floodway

Texas

Tracts 104, 105–1, 105–2 & 118
Joe Pool Lake
Co: Dallas TX
Landholding Agency: COE
Property Number: 31199010397
Status: Underutilized
Reason: Floodway

Part of Tract 201–3
Joe Pool Lake
Co: Dallas TX
Landholding Agency: COE
Property Number: 31199010398
Status: Underutilized
Reason: Floodway

Part of Tract 323
Joe Pool Lake
Co: Dallas TX
Landholding Agency: COE
Property Number: 31199010399
Status: Underutilized
Reason: Floodway

Tract 702–3
Granger Lake
Route 1, Box 172
Granger Co: Williamson TX 76530–9801
Landholding Agency: COE
Property Number: 31199010401
Status: Unutilized
Reason: Floodway

Tract 706
Granger Lake
Route 1, Box 172
Granger Co: Williamson TX 76530–9801
Landholding Agency: COE
Property Number: 31199010402
Status: Unutilized
Reason: Floodway

Washington

2.8 acres
Tract P–1003
Kennewick Co: Benton WA 99336—
Landholding Agency: COE
Property Number: 31200240020
Status: Excess
Reason: Within 2000 ft. of flammable or explosive material

West Virginia

Morgantown Lock and Dam
Box 3 RD # 2
Morgantown Co: Monongahelia WV 26505—
Landholding Agency: COE
Property Number: 31199011530
Status: Unutilized
Reason: Floodway

London Lock and Dam
Route 60 East
Rural Co: Kanawha WV 25126—
Location: 20 miles east of Charleston, W. Virginia
Landholding Agency: COE
Property Number: 31199011690
Status: Unutilized
Reason: .03 acres very narrow strip of land

Portion of Tract #101
Buckeye Creek
Sutton Co: Braxton WV 26601—
Landholding Agency: COE
Property Number: 31199810006
Status: Excess
Reason: Inaccessible

[FR Doc. 03–2630 Filed 2–6–03; 8:45 am]

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Federal Register

Friday,
February 7, 2003

Part III

Securities and Exchange Commission

17 CFR Parts 239, 249, 270, and 274
Disclosure of Proxy Voting Policies and Proxy Voting Records by Registered Management Investment Companies; Final Rule

17 CFR Part 275
Proxy Voting by Investment Advisers; Final Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 239, 249, 270, and 274

[Release Nos. 33–8188, 34–47304, IC–25922; File No. S7–36–02]

RIN 3235–AI64

Disclosure of Proxy Voting Policies and Proxy Voting Records by Registered Management Investment Companies

AGENCY: Securities and Exchange Commission.

ACTION: Final rule; request for comments on Paperwork Reduction Act burden estimate.

SUMMARY: The Securities and Exchange Commission is adopting rule and form amendments under the Securities Act of 1933, the Securities Exchange Act of 1934, and the Investment Company Act of 1940 to require registered management investment companies to provide disclosure about how they vote proxies relating to portfolio securities they hold. These amendments require registered management investment companies to disclose the policies and procedures that they use to determine how to vote proxies relating to portfolio securities. The amendments also require registered management investment companies to file with the Commission and to make available to shareholders the specific proxy votes that they cast in shareholder meetings of issuers of portfolio securities.

DATES: *Effective Date:* April 14, 2003.

Compliance Dates: See Section III of this release for information on compliance dates.

Comment Date: Comments regarding the "collection of information" requirements, within the meaning of the Paperwork Reduction Act of 1995, of Form N–PX should be received by March 14, 2003.

ADDRESSES: To help us process and review your comments more efficiently, comments should be sent by hard copy or electronic mail, but not by both methods.

Comments sent by hard copy should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549–0609. Comments also may be submitted electronically at the following E-mail address: *rule-comments@sec.gov*. All comment letters should refer to File No. S7–36–02; this file number should be included on the subject line if E-mail is used. All comments received will be available for public inspection and copying in the Commission's Public Reference Room, 450 5th Street, NW., Washington, DC 20549–0102. Electronically submitted comment letters will also be posted on the Commission's Internet site (*http://www.sec.gov*).[1]

FOR FURTHER INFORMATION CONTACT: Christian L. Broadbent, Attorney, Christopher P. Kaiser, Senior Counsel, or Paul G. Cellupica, Assistant Director, Office of Disclosure Regulation, Division of Investment Management, (202) 942–0721, at the Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549–0506.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission ("Commission") is adopting new rule 30b1–4 [17 CFR 270.30b1–4] and new Form N–PX [17 CFR 274.130] under the Investment Company Act of 1940 [15 U.S.C. 80a–1 *et seq.*] ("Investment Company Act"); amendments to Forms N–1A [17 CFR 239.15A; 274.11A], N–2 [17 CFR 239.14; 274.11a–1], and N–3 [17 CFR 239.17a; 17 CFR 274.11b], the registration forms used by management investment companies to register under the Investment Company Act and to offer their securities under the Securities Act of 1933 [15 U.S.C. 77a *et seq.*] ("Securities Act"); and amendments to Form N–CSR [17 CFR 249.331; 17 CFR 274.128],[2] the form to be used by registered management investment companies to file certified shareholder reports with the Commission under the Sarbanes-Oxley Act of 2002.[3]

Executive Summary

We are adopting rule and form amendments that:

- Require a management investment company registered under the Investment Company Act of 1940 ("fund") to disclose in its registration statement (and, in the case of a closed-end fund, Form N–CSR) the policies and procedures that it uses to determine how to vote proxies relating to portfolio securities; and
- Require a fund to file with the Commission and to make available to its shareholders, either on its Web site or upon request, its record of how it voted proxies relating to portfolio securities. A fund will be required to disclose in its annual and semi-annual reports to shareholders and in its registration statement the methods by which shareholders may obtain information about proxy voting.[4]

In a companion release, we are also adopting a new rule and rule amendments under the Investment Advisers Act of 1940 that will require a registered investment adviser that exercises voting authority over client proxies to adopt policies and procedures reasonably designed to ensure that the adviser votes proxies in the best interests of clients, to disclose to clients information about those policies and procedures, to disclose to clients how they may obtain information on how the adviser voted their proxies, and to maintain certain records relating to proxy voting.[5]

I. Introduction and Background

As of September 2002, mutual funds[6] held $2.0 trillion in publicly traded U.S. corporate equity, representing approximately 18% of all publicly traded U.S. corporate equity.[7] This represents a dramatic increase from only 7.4% at the end of 1992.[8] Millions of individual American investors, in turn, hold shares of equity mutual funds, relying on these funds—and the value of the corporate securities in which they invest—to fund their retirements, their childrens' educations, and their other basic financial needs.[9] Yet, despite the enormous influence of mutual funds in the capital markets and their huge

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[1] We do not edit personal identifying information, such as names or e-mail addresses, from electronic submissions. Submit only information that you wish to make publicly available.

[2] *See* Investment Company Act Release No. 25914 (Jan. 27, 2003) (adopting Form N–CSR).

[3] Pub. L. 107–204, § 302, 116 Stat. 745 (2002).

[4] *See* Disclosure of Proxy Voting Policies and Proxy Voting Records by Registered Management Investment Companies, Investment Company Act Release No. 25739 (Sept. 20, 2002) [67 FR 60826 (Sept. 26, 2002)] ("Proposing Release").

[5] *See* Investment Advisers Act Release No. 2106 (Jan. 31, 2003).

[6] For simplicity, this release focuses on mutual funds (*i.e.*, open-end management investment companies). An open-end management investment company is an investment company, other than a unit investment trust or face-amount certificate company, that offers for sale or has outstanding any redeemable security of which it is the issuer. *See* Sections 4 and 5(a)(1) of the Investment Company Act [15 U.S.C. 80a–4 and 80a–5(a)(1)]. The amendments, however, would also apply to registered closed-end management investment companies and insurance company separate accounts organized as management investment companies that offer variable annuity contracts.

[7] *See* Board of Governors of the Federal Reserve System, Flow of Funds Accounts of the United States: Flows and Outstandings, Third Quarter 2002, at 90 (2002) [hereinafter Flow of Funds Accounts] (estimating $2.005 trillion market value of mutual fund corporate equity holdings and $10.960 trillion market value of all corporate equity issues).

[8] Securities Industry Association, Securities Industry Fact Book 71 (2002).

[9] Investment Company Institute, Mutual Fund Fact Book 37 (42nd ed. 2002). Approximately 93 million individual investors hold shares of mutual funds. *Id.* Shares of equity mutual funds are held through 164.8 million shareholder accounts. *Id.* at 63. A single individual may hold mutual fund shares through multiple accounts.

impact on the financial fortunes of American investors, funds have been reluctant to disclose how they exercise their proxy voting power with respect to portfolio securities.[10] We believe that the time has come to increase the transparency of proxy voting by mutual funds. This increased transparency will enable fund shareholders to monitor their funds' involvement in the governance activities of portfolio companies, which may have a dramatic impact on shareholder value.

Mutual funds are formed as corporations or business trusts under state law and, as in the case of other corporations and trusts, must be operated for the benefit of their shareholders.[11] Because a mutual fund is the beneficial owner of its portfolio securities, the fund's board of directors, acting on the fund's behalf, has the right and the obligation to vote proxies relating to the fund's portfolio securities. As a practical matter, however, the board typically delegates this function to the fund's investment adviser as part of the adviser's general management of fund assets, subject to the board's continuing oversight. The investment adviser to a mutual fund is a fiduciary that owes the fund a duty of "utmost good faith, and full and fair disclosure."[12] This fiduciary duty extends to all functions undertaken on the fund's behalf, including the voting of proxies relating to the fund's portfolio securities. An investment adviser voting proxies on behalf of a fund, therefore, must do so in a manner consistent with the best interests of the fund and its shareholders.[13]

Traditionally, mutual funds have been viewed as largely passive investors, reluctant to challenge corporate management on issues such as corporate governance.[14] Funds have often followed the so-called "Wall Street rule," according to which an investor should either vote as management recommends or, if dissatisfied with management, sell the stock.[15] In recent years, however, some funds, along with other institutional investors, have become more assertive in exercising their proxy voting responsibilities.[16] The increased assertiveness by mutual funds in the voting of proxies may have a number of causes. In some instances, funds have come to hold such large positions in a particular portfolio company that they cannot easily sell the company's stock if the company's management is performing poorly.[17] The investment policies of index funds typically do not permit them to sell poorly performing investments, and thus these funds may become active in corporate governance in order to maximize value for their shareholders.[18]

Recent corporate scandals have created renewed investor interest in issues of corporate governance and have underscored the need for mutual funds and other institutional investors to focus on corporate governance.[19] The increased equity holdings and accompanying voting power of mutual funds place them in a position to have enormous influence on corporate accountability. As major shareholders, mutual funds may play a vital role in monitoring the stewardship of the companies in which they invest.

Moreover, in some situations the interests of a mutual fund's shareholders may conflict with those of its investment adviser with respect to proxy voting.[20] This may occur, for example, when a fund's adviser also manages or seeks to manage the retirement plan assets of a company whose securities are held by the fund.[21] In these situations, a fund's adviser may have an incentive to support management recommendations to further its business interests.

Yet, in spite of the substantial institutional voting power held by mutual funds, the increasing importance of the exercise of that power to fund shareholders, and the potential for conflicts of interest with respect to the exercise of fund proxy voting power, limited information is available regarding how funds vote their proxies. At present, the Commission's rules do not require mutual funds to disclose either their proxy voting policies and procedures or their proxy voting records.[22] Several mutual fund complexes voluntarily provide

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[10] *See* John Wasik, *Speak Loudly—Or Lose Your Big Stick*, The Financial Times, July 24, 2002, at 26 (only eight retail mutual fund groups openly disclose how they vote on proxies). We have previously prepared reports commenting on the role of institutional investors in the corporate accountability process and their impact on portfolio companies. *See* Division of Corporation Finance, SEC, Staff Report on Corporate Accountability (Sept. 4, 1980) (printed for the use of Senate Comm. on Banking, Housing and Urban Affairs, 96th Cong., 2d Sess.) [hereinafter SEC, Staff Report on Corporate Accountability]; SEC, Institutional Investor Study Report (Mar. 10, 1971) (printed for the use of House Comm. on Interstate and Foreign Commerce, 92nd Cong., 1st Sess.) [hereinafter SEC, Institutional Investor Study Report].

[11] *See generally* James M. Storey & Thomas M. Clyde, Mutual Fund Law Handbook § 7.2 (1998); Allan S. Mostoff & Olivia P. Adler, *Organizing an Investment Company—Structural Considerations* § 2.4 *in* The Investment Company Regulation Deskbook (Amy L. Goodman ed., 1997).

[12] *SEC v. Capital Gains Research Bureau, Inc.*, 375 U.S. 180, 194 (1963) (interpreting Section 206 of the Investment Advisers Act of 1940). *Cf.* Section 36(b) of the Investment Company Act [15 U.S.C. 80a–35] (investment adviser of a fund has a fiduciary duty with respect to the receipt of compensation paid by the fund).

[13] *See* Investment Advisers Act Release No. 2106, *supra* note 5. See also SEC, Staff Report on Corporate Accountability, *supra* note 10, at 391 (fiduciary principle applies to all aspects of investment management, including voting). *Cf.* Dep't of Labor, Interpretive Bulletins Relating to the Employee Retirement Income Security Act of 1974, 29 CFR 2509.94–2 (2002) (fiduciary act of managing employee benefit plan assets consisting of equity securities includes voting of proxies appurtenant to those securities).

[14] *See, e.g.*, SEC, Staff Report on Corporate Accountability, *supra* note 10, at 404 (investment managers have routinely supported management slates of director nominees); Alan R. Palmiter, *Mutual Fund Voting of Portfolio Shares: Why Not Disclose?*, 23 Cardozo L. Rev. 1419, 1430–31 (2002) (discussing mutual fund passivity in corporate governance). *See generally* John C. Coffee, Jr., *The SEC and The Institutional Investor: A Half-Time Report*, 15 Cardozo L. Rev. 837 (1994) (institutional investors have historically been passive investors); Bernard S. Black, *Shareholder Passivity Reexamined*, 89 Mich. L. Rev. 520 (1990) (shareholder voting has historically been passive).

[15] *See* SEC, Staff Report on Corporate Accountability, *supra* note 10, at 392 (describing "Wall Street Rule").

[16] *See, e.g.*, Aaron Lucchetti, *A Mutual-Fund Giant Is Stalking Excessive Pay*, Wall Street Journal, June 12, 2002, at C1 (Fidelity has voted against management recommendations involving stock-option plans); Kathleen Day, *Prodding For Disclosure of Funds' Proxy Votes*, Washington Post, Apr. 8, 2001, at H1 (Domini Social Equity Fund voted against management proposal to issue additional stock options for directors).

[17] *See* Palmiter, *supra* note 14, at 1435–36 (as holdings have increased, mutual funds have realized that they cannot easily sell blocks of poorly performing stock).

[18] *See* Kathleen Pender, *The Influence of Indexing on the Markets*, San Francisco Chronicle, June 23, 2002, at G1 (some index funds are more likely to vote proxies because they generally cannot sell portfolio securities consistent with their investment policies).

[19] *See, e.g.*, Josh Friedman, *Vanguard to Turn More Activist in Proxy Voting*, Los Angeles Times, Aug. 22, 2002, at B3 (Vanguard imposing stricter corporate governance guidelines in light of recent events); Tom Hamburger, *Union Targets Corporate Change*, Wall Street Journal, July 30, 2002, at A2 (workers should use pension funds and votes to compel changes in corporate behavior); Beth Healy, *Big Investors Assuming a More Activist Stance*, Boston Globe, July 11, 2002, at C1 (big investors say they are taking a more activist stance after financial scandals at Enron, Global Crossing, and WorldCom); Russ Wiles, *Funds May Have More to Say on Governance*, Chicago Sun-Times, June 3, 2002, at F53 (investors taking a closer look at corporate governance issues as a result of Enron).

[20] *See, e.g.*, Aaron Bernstein & Geoffrey Smith, *Can You Trust Your Fund Company?*, BusinessWeek Online, Aug. 8, 2002 (AFL–CIO argues that conflicts of interest lead mutual funds to vote with management).

[21] For additional examples of potential conflicts of interest involving investment advisers, *See* Investment Advisers Act Release No. 2106, *supra* note 5, at Section I., "Background."

[22] In general, investment companies are organized either as business trusts in Delaware or Massachusetts, or as corporations in Maryland. The applicable state statutes do not specifically permit shareholders to inspect books and records relating to proxy voting by funds with respect to portfolio securities. *See* Del. Code Ann. tit. 12, § 3801–3824 (2001); Mass. Gen. Laws. Ann. ch. 182, § 1–14 (2002); Md. Code Ann., Corporations § 2–512 (2001).

information to investors, often on their Web sites, about the policies and procedures that they use to determine how to vote proxies and, in some cases, their actual proxy voting decisions.[23] The Internet provides a medium for these funds to make information about their proxy voting available to shareholders quickly and in a cost-effective manner. We applaud these voluntary efforts of mutual funds to disclose proxy voting information to shareholders.

We believe, however, that the time has now arrived for the Commission to require mutual funds to disclose their proxy voting policies and procedures, and their actual voting records. Investors in mutual funds have a fundamental right to know how the fund casts proxy votes on shareholders' behalf. Last September, we proposed amendments that would require mutual funds and other registered management investment companies to provide disclosure about how they vote proxies relating to portfolio securities that they hold ("Proposing Release").[24] Our proposals resulted in an extraordinary level of public interest and vigorous debate and over 8,000 comment letters.[25] Today we adopt these proposals, with modifications to address commenters' concerns.

Proxy voting decisions by funds can play an important role in maximizing the value of the funds' investments, thereby having an enormous impact on the financial livelihood of millions of Americans. Further, shedding light on mutual fund proxy voting could illuminate potential conflicts of interest and discourage voting that is inconsistent with fund shareholders' best interests. Finally, requiring greater transparency of proxy voting by funds may encourage funds to become more engaged in corporate governance of issuers held in their portfolios, which may benefit all investors and not just fund shareholders.

II. Discussion

The Proposing Release generated significant comment and public interest. Of the approximately 8,000 comment letters, the overwhelming majority supported the proposals and urged us to adopt the proposed amendments. Many commenters, including individual investors, fund groups that currently provide proxy voting information to their shareholders, labor unions, and pension and retirement plan trustees, supported the proposals, and in some cases commented that the proposals did not go far enough in requiring funds to provide proxy voting disclosure. Many fund industry members supported the proposed amendments regarding the disclosure of policies and procedures. However, most fund industry members opposed the proposed amendments that would require disclosure of a fund's complete proxy voting record and disclosure of votes that are inconsistent with fund policies and procedures.

The Commission is adopting the proposed amendments with the modifications described below that address some of the concerns expressed by commenters.

A. Disclosure of Policies and Procedures With Respect to Voting Proxies Relating to Portfolio Securities

The Commission is adopting, with one modification to address commenters' concerns, the requirement that mutual funds that invest in voting securities disclose in their statements of additional information ("SAIs") the policies and procedures that they use to determine how to vote proxies relating to securities held in their portfolios.[26] We are also adopting the requirement that closed-end funds disclose their proxy voting policies and procedures annually on Form N–CSR.[27] This disclosure would include the procedures that a fund uses when a vote presents a conflict between the interests of fund shareholders, on the one hand, and those of the fund's investment adviser, principal underwriter, or an affiliated person of the fund, its investment adviser, or principal underwriter, on the other.[28] It also includes any policies and procedures of a fund's investment adviser, or any other third party, that the fund uses, or that are used on the fund's behalf, to determine how to vote proxies relating to portfolio securities. For example, if a fund delegates proxy voting decisions to its investment adviser and the adviser uses its own policies and procedures to vote the fund's proxies, disclosure of the adviser's policies and procedures is required. Or a fund's board may wish to adopt its adviser's policies and procedures, rather than designing its own.

We also are adopting, as proposed, the requirement that a fund disclose in its shareholder reports that a description of the fund's proxy voting policies and procedures is available (i) without charge, upon request, by calling a specified toll-free (or collect) telephone number; (ii) on the fund's Web site, if applicable; and (iii) on the Commission's Web site at *http://*

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[23] *See* Calvert Group, Ltd. <*www.calvertgroup.com*> (visited January 14, 2003) (proxy voting policies and votes cast); Domini Social Investments LLC <*www.domini.com*> (visited January 14, 2003) (proxy voting policies and votes cast); Fidelity Management & Research Company <*www.fidelity.com*> (visited January 14, 2003) (proxy voting policies); PAX World Management Corporation <*www.paxfund.com*> (visited January 14, 2003) (proxy voting policies and votes cast); Teachers Insurance and Annuity Association of America-College Retirement and Equities Fund <*www.tiaa-cref.org*> (visited January 14, 2003) (proxy voting policies); The Vanguard Group <*www.vanguard.com*> (visited January 14, 2003) (proxy voting policies).

[24] *See* Proposing Release, *supra* note 4. Prior to our rule proposal, we received three rulemaking petitions urging that we adopt rules requiring funds to disclose both the policies and guidelines followed by the funds in determining how to vote on proxy proposals and the record of actual proxy votes cast. *See* Rulemaking Petition by Domini Social Investments, LLC (Nov. 27, 2001); Rulemaking Petition by the International Brotherhood of Teamsters (Jan. 18, 2001); Rulemaking Petitions by the American Federation of Labor and Congress of Industrial Organizations (July 30, 2002 and Dec. 20, 2000). The rulemaking petitions are available for inspection and copying in File No. 4–439 in the Commission's Public Reference Room.

[25] *See, e.g.*, John J. Brennan and Edward C. Johnson 3d, *No Disclosure: The Feeling is Mutual*, Wall Street Journal, Jan. 14, 2003, at A14 (arguing that proxy voting disclosure would harm shareholders); Aaron Lucchetti, *SEC Proposal on Proxy Votes Finds Supporters in the House*, Wall Street Journal, Dec. 17, 2002, at C14 (reporting that House Financial Services Committee Chairman Michael G. Oxley and Capital Markets Subcommittee Chairman Richard H. Baker support the proxy voting disclosure proposal); John C. Bogle, *Mutual Fund Secrecy*, New York Times, Dec. 14, 2002, at A35 (arguing that fund agents should disclose proxy voting information); Gretchen Morgenson, *Wider Support Is Sought For Disclosing Mutual Fund Votes*, New York Times, Oct. 23, 2002, at C11 (explaining joint efforts of Pax World Funds, AFL–CIO, and Fund Democracy to urge investors to support the proposal, and discussing comments by industry participants); Kathleen Day, *SEC Wants Funds To Disclose Votes*, Washington Post, Sept. 20, 2002, at E3 (reporting comments on the proposal by disclosure advocates and opponents).

The comment letters are available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549 (File No. S7–36–02). Public comments submitted by electronic mail are also available on our Web site, *www.sec.gov*. Many of the comment letters that the Commission received commented on both the Proposing Release and a companion release proposing a new rule and rule amendments under the Investment Advisers Act of 1940 that we are also adopting today. *See* Investment Advisers Act Release No. 2106, *supra* note 5.

[26] Item 13(f) of Form N–1A; Item 18.16 of Form N–2; Item 20(o) of Form N–3. The SAI is part of a fund's registration statement and contains information about a fund in addition to that contained in the prospectus. The SAI is required to be delivered to investors upon request and is available on the Commission's Electronic Data Gathering, Analysis, and Retrieval System ("EDGAR").

[27] Item 7 of Form N–CSR.

[28] *See* Investment Advisers Act Release No. 2106, *supra* note, at Section II.A.2.b. "Resolving Conflicts of Interest" (discussing need for investment adviser's policies and procedures to address how adviser resolves material conflicts of interest with its clients).

www.sec.gov.[29] A fund will be required to send this description of the fund's proxy voting policies and procedures within three business days of receipt of the request, by first-class mail or other means designed to ensure equally prompt delivery.[30]

Commenters generally supported the proposed disclosure requirements regarding proxy voting policies and procedures. A number of commenters, however, objected to certain aspects of the disclosure requirements. Some commenters recommended that we provide additional, more specific guidelines regarding the categories of disclosure that should be included in proxy voting policies and procedures. These commenters, which included many "socially responsible" fund groups,[31] argued that the absence of specific guidelines could create an incentive for funds to adopt as few policies and procedures as possible, thereby minimizing reporting and disclosure obligations.

We have determined not to prescribe more specific guidelines or requirements for the proxy voting policies and procedures that a fund must disclose in its SAI or Form N–CSR for closed-end funds. The intent of our proposal is to promote transparency with respect to proxy voting information, and not to mandate the content of a fund's policies or procedures. Therefore, we believe that funds should be allowed the flexibility to determine the content that would be appropriate for this disclosure.

We do expect, however, that funds' disclosure of their policies and procedures will include general policies and procedures, as well as policies with respect to voting on specific types of issues. The following are examples of general policies and procedures that some funds include in their proxy voting policies and procedures and with respect to which disclosure would be appropriate:

- The extent to which the fund delegates its proxy voting decisions to its investment adviser or another third party, or relies on the recommendations of a third party;
- Policies and procedures relating to matters that may affect substantially the rights or privileges of the holders of securities to be voted; and
- Policies regarding the extent to which the fund will support or give weight to the views of management of a portfolio company.

The following are examples of specific types of issues that are covered by some funds' proxy voting policies and procedures and with respect to which disclosure would be appropriate:

- Corporate governance matters, including changes in the state of incorporation, mergers and other corporate restructurings, and anti-takeover provisions such as staggered boards, poison pills, and supermajority provisions;
- Changes to capital structure, including increases and decreases of capital and preferred stock issuance;
- Stock option plans and other management compensation issues; and
- Social and corporate responsibility issues.

We are modifying our proposal in one respect, however, to clarify that a fund may satisfy the requirements for a description of its policies and procedures by including a copy of the policies and procedures themselves.[32] A number of commenters recommended that we streamline the disclosure of policies and procedures that would be required in the SAI. Several of these commenters were fund groups that noted that they have funds with multiple sub-advisers, each of which uses its own proxy voting policies and procedures to vote the fund's proxies. Because the proposed rules would require the fund to include a description of each such sub-adviser's policies and procedures in the fund's SAI, commenters argued, the requirements would add lengthy disclosure to the SAI. Further, because different sub-advisers for a single fund could have policies that vary with respect to a particular issue, this disclosure could confuse investors. These commenters argued that disclosure of policies and procedures was not necessary or appropriate given the lack of genuine shareholder interest in the information.

We have determined that it would not be appropriate to modify the proposal to allow a fund to reduce or eliminate the disclosure regarding its proxy voting policies and procedures. Shareholders have a right to know the policies and procedures that are being used by a fund to vote proxies on their behalf. To the extent that multiple policies are being used by a single fund, shareholders should have access to information about all the policies that are in effect. In order to mitigate the burden of preparing descriptions of policies and procedures, however, we have modified our disclosure requirements to permit a fund to include the actual policies and procedures used to vote proxies in the SAI or N–CSR, rather than a description of the policies.

Some commenters argued that the SAI was not the appropriate location for disclosure of proxy voting policies and procedures because the SAI is not likely to reach a wide base of investors. These commenters argued that the policies and procedures should be required to be distributed to all investors, as part of the fund's prospectus, annual report, or in a separate mailing. We continue to believe, however, that the SAI is the most appropriate and cost-effective location for this disclosure. The disclosure will be readily accessible to shareholders because funds are required to provide an SAI promptly to any investor who requests one.[33] On the other hand, funds and their shareholders will not be forced to bear the costs for printing and mailing this information to every shareholder, without regard to their level of interest in this information.

B. Disclosure of Proxy Voting Record

The Commission is adopting, with modifications, amendments that will require each fund to file with the Commission its proxy voting record and make this record available to its shareholders. The Commission is not, however, adopting its proposal to require a fund to disclose in its annual and semi-annual reports to shareholders information regarding any proxy votes that are inconsistent with its proxy voting policies and procedures.

The proposal to require funds to disclose their proxy voting records generated strong and divergent views among commenters. A number of commenters, including an overwhelming number of individual investors, strongly supported the Commission's proposal to require a fund to disclose its complete proxy voting record. Many of these commenters stated that this disclosure would improve shareholders' ability to monitor funds' voting decisions on their behalf and that it would allow investors to make more informed decisions when choosing among funds.

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[29] *See* Item 22(b)(7) and 22(c)(5) of Form N–1A; Instructions 4.g. & 5.e. to Item 23 of Form N–2; Instructions 4(vii) & 5(v) to Item 27(a) of Form N–3.

[30] Instructions to Items 22(b)(7) and 22(c)(5) of Form N–1A; Instruction 6.a. to Item 23 of Form N–2; Instruction 6(i) to Item 27(a) of Form N–3.

[31] "Socially responsible" funds use social and moral criteria as well as traditional investment criteria to select investments.

[32] Instruction 1 to Item 13(f) of Form N–1A; Instruction 1 to Item 18.16 of Form N–2; Instruction 1 to Item 20(o) of Form N–3; Instruction to Item 7 of Form N–CSR.

[33] Instruction 3 to Item 1(b)(1) of Form N–1A (requiring fund or financial intermediary through which shares of the fund may be purchased or sold to send the SAI, within three business days of receipt of the request, by first-class mail or other means designed to ensure equally prompt delivery).

On the other hand, many commenters, including a large number of fund industry participants, strongly opposed any requirement for a fund to provide disclosure of its actual proxy votes cast. First, they argued that shareholders are not interested in this disclosure, with many fund groups claiming that they have received virtually no requests from their shareholders for proxy voting information. Second, they argued that the proposals would deny funds the ability to vote confidentially and subject funds to pressure from corporate management to influence proxy voting decisions, as well as to retaliatory actions by management, such as restricting access by portfolio managers to corporate personnel. Third, on a related point, commenters argued that mandatory disclosure of proxy votes would undermine their ability to change corporate governance practices of portfolio companies through "behind the scenes" private communications. Fourth, they argued that requiring funds to disclose their proxy votes publicly will subject them to orchestrated campaigns in the media and elsewhere by special interest groups with social or political agendas different from those of fund shareholders, which will detract from a fund's ability to concentrate on the management of its portfolio. Fifth, fund industry commenters argued that the required disclosure of proxy votes would undermine the role of fund boards of directors, including independent directors, in overseeing proxy voting and protecting fund shareholders against conflicts of interest. Some of these commenters suggested that rather than requiring disclosure of proxy votes, the Commission should mandate that fund directors approve proxy voting policies and procedures, including policies and procedures for addressing potential conflicts of interest, and should require reports to be provided to fund directors concerning actual proxy votes cast. Sixth, the commenters argued that the costs of collecting and disclosing the information in semi-annual reports on Form N–CSR would be substantial and would exceed any benefit to shareholders from the disclosure.

After careful consideration of these comments, we continue to believe that requiring funds to disclose their complete proxy voting records will benefit investors by improving transparency and enabling fund shareholders to monitor their funds' involvement in the governance activities of portfolio companies. With respect to the specific arguments raised by commenters who opposed disclosure of proxy votes, we note first that the argument that investors are not interested in proxy voting disclosure is to some extent belied by the large number of favorable comments from individual investors that the proposal attracted. In addition, we note that a recent shareholder proposal seeking to require a major fund to disclose its proxy votes on social and environmental issues generated significant support from fund shareholders.[34] Further, regardless of whether all, or a majority of, investors are interested in proxy vote disclosure, we believe that fund shareholders who are interested in this information have a fundamental right to know how the fund has exercised its proxy votes on their behalf.

Second, while we are cognizant of concerns that disclosure will undermine funds' ability to vote confidentially and thereby lead to pressure on or retaliation against funds, we believe that this risk is not sufficient to outweigh shareholders' interests in knowing how their funds have voted their portfolio securities. In addition, as some proponents of the disclosure requirements argued, the principle of confidential voting is intended to protect shareholders from having their votes disclosed *prior* to a shareholder meeting, while the amendments that we are adopting would only require disclosure of votes two months or more *after* a shareholder meeting. We are also persuaded by other commenters who noted that a large majority of portfolio companies currently do not have confidential voting policies and that companies are often able to identify when and how a particularly large shareholder, such as a fund, has cast its votes.[35]

Third, with respect to the argument that the disclosure of a fund's proxy voting record will undermine the use of "behind the scenes" communications to change corporate governance practices, we note that disclosure by funds of their proxy votes is not inconsistent with these communications and will not force funds to disclose these communications. Further, we believe that requiring a fund to disclose its proxy voting record may actually encourage it to become more engaged in corporate governance matters involving issuers held in its portfolio, through "behind the scenes" communications as well as other means.

Fourth, with respect to the argument that proxy vote disclosure will "politicize" the process of proxy voting by funds to the detriment of fund shareholders, we believe that to the extent that greater disclosure may encourage and enable shareholders to express their views on their funds' proxy decisions, that is an appropriate development. We agree, however, that fund shareholders could be adversely affected if, in fact, disclosure of fund proxy votes results in significant politicization of the proxy voting process by non-shareholder interest groups and interference with funds' ability to change corporate governance practices through "behind the scenes" communications. Therefore, the Commission has asked the staff to monitor the effects of the disclosure and report back to the Commission on the operation of the rules, and whether there have been any unintended consequences as a result of the disclosure, no later than December 31, 2005.

Fifth, we disagree with the argument that proxy voting disclosure will undermine the authority of funds' boards of directors, and that we instead should adopt amendments to require that boards be more involved in the proxy voting process. Disclosure of proxy votes is not inconsistent with, and, in fact, will promote recognition by fund boards of their obligation to exercise their proxy voting responsibilities in a manner that is consistent with shareholders' interests. Further, we believe that the additional requirements with respect to fund boards that some commenters suggested that we adopt in lieu of proxy voting disclosure are unnecessary. A fund's board of directors, acting on the fund's behalf, already has the obligation to vote proxies relating to the fund's portfolio securities. Although the board typically delegates this function to the fund's investment adviser, the adviser remains subject to the board's continuing oversight. By increasing transparency of proxy voting, the amendments will work in tandem with the existing obligation of fund boards.

Finally, with respect to arguments that the disclosure may impose excessive costs, we note that several fund groups that currently provide disclosure of their complete proxy

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[34] *See CREF Participants Reject All Four Resolutions at 2002 Annual Meeting*, TIAA–CREF Press Release, Nov. 7, 2002 <*www.tiaa-cref.org*> (visited Jan. 14, 2002) (18.7% of shares voted in favor of shareholder proposal that College Retirement Equities Fund (CREF) disclose how it votes proxies that involve social and environmental issues).

[35] *See* Timothy M. Hunt, *IRRC Corporate Governance Service 2002 Background Report F*, Background Reports (IRRC) at 7, 10 (Jan. 2002) (noting that 26.9% of the S&P 500 companies have confidential voting procedures, with smaller percentages at smaller companies, and that use of street names often does not protect the identity of shareholders).

voting records to their shareholders commented that although there are start-up costs for compliance systems, this cost decreases over time, and that the overall costs of the disclosure are minimal. We find these arguments made by funds that are providing this disclosure to be particularly persuasive and continue to believe that the costs of disclosure are reasonable. We also note that by requiring disclosure of the proxy voting record in filings with the Commission, with additional disclosure in the fund's SAI and annual and semi-annual reports to shareholders about how investors may obtain this voting record, we have tailored the disclosure requirement to allow those investors who are interested in this disclosure to access the information without imposing undue cost burdens. In addition, as discussed below, we have modified our proposals in order to further reduce the costs associated with this disclosure.[36]

Disclosure of Complete Proxy Voting Record

The Commission is adopting new rule 30b1–4 under the Investment Company Act to require that a fund file its complete proxy voting record on an annual basis.[37] This rule will require a fund to file new Form N–PX, containing its complete proxy voting record for the twelve-month period ended June 30, by no later than August 31 of each year. Form N–PX will be a reporting form required under the Investment Company Act, and will be required to be signed by the fund, and on behalf of the fund by its principal executive officer or officers.[38]

We had proposed to require a fund to file its complete proxy voting record as part of its semi-annual reports on Form N–CSR, which will be used by registered management investment companies to file certified shareholder reports with the Commission under the Sarbanes-Oxley Act of 2002.[39] One commenter argued that this means of disclosure would impose unnecessary costs and substantial administrative complexity.[40] The commenter noted that, under our proposed rules, fund complexes that have funds with staggered fiscal year ends would be required to file reports on Form N–CSR containing their proxy voting records as many as twelve times per year. We are persuaded that annual disclosure of a fund's proxy voting record is sufficient and that the filing does not need to be based on a fund's fiscal year end. Therefore, to reduce the burden of proxy vote disclosure, we are modifying our proposal to require that all funds file their voting records annually not later than August 31, for the twelve-month period ended June 30. This approach will have the advantages of making each fund's proxy voting record available within a relatively short period of time after the proxy voting season,[41] and of providing disclosure of all funds' proxy voting records over a uniform period of time.

Funds will be required to disclose the following information on Form N–PX for each matter relating to a portfolio security considered at any shareholder meeting held during the period covered by the report and with respect to which the fund was entitled to vote:

- The name of the issuer of the portfolio security;
- The exchange ticker symbol of the portfolio security;
- The Council on Uniform Securities Identification Procedures ("CUSIP") number for the portfolio security;
- The shareholder meeting date;
- A brief identification of the matter voted on;
- Whether the matter was proposed by the issuer or by a security holder;
- Whether the fund cast its vote on the matter;
- How the fund cast its vote (*e.g.*, for or against proposal, or abstain; for or withhold regarding election of directors); and
- Whether the fund cast its vote for or against management.[42]

In response to commenters who noted that the exchange ticker symbol and CUSIP number may be difficult to obtain for certain portfolio securities, particularly foreign securities, we have added an instruction permitting a fund to omit this information if it is not available through reasonably practicable means.[43]

A fund also will be required to make its proxy voting record available to shareholders. However, we are modifying our proposal, in response to a comment, to allow a fund the flexibility to choose to make its proxy voting record available to shareholders either upon request or by making available an electronic version on or through the fund's Web site.[44] The proposed amendments would have required a fund to send the proxy voting record upon request.[45] This modification addresses concerns that the proposals would require funds with large numbers of holdings to produce lengthy proxy voting spreadsheets and to send them to investors who request them.[46]

As adopted, our amendments will require a fund to include in its annual and semi-annual reports to shareholders as well as its SAI a statement that information regarding how the fund voted proxies relating to portfolio securities during the most recent twelve-month period ended June 30 is available (1) without charge, upon request, by calling a specified toll-free (or collect) telephone number; or on or through the fund's Web site at a specified Internet address; or both; and (2) on the Commission's Web site.[47] If a fund discloses that its proxy voting record is available by calling a toll-free (or collect) telephone number, it must send the information disclosed in the fund's most recently filed report on Form N–PX within three business days of receipt of a request for this information, by first-class mail or other

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[36] *See* discussion *infra*, "Disclosure of Complete Proxy Voting Record."

[37] 17 CFR 270.30b1–4; General Instruction A and Item 1 to Form N–PX [17 CFR 274.129].

[38] General Instruction F.2.(a) to Form N–PX.

[39] Investment Company Act Release No. 25914 (Jan. 27, 2003) (adopting Form N–CSR).

[40] Memorandum from Paul G. Cellupica, Assistant Director, Office of Disclosure Regulation, Division of Investment Management, Securities and Exchange Commission re: Comments of Investment Company Institute (Jan. 15, 2003) ("ICI Memorandum") (available in the comment file for File Nos. S7–36–02 and S7–38–02 and on the Commission's Web site, *www.sec.gov*).

[41] Based on information provided to the Commission staff by a third party that provides proxy voting services, the staff estimates that over 54% of shareholder meetings are held in the period from April through June of each year.

[42] Item 1 of Form N–PX.

[43] Instruction 2 to Item 1 of Form N–PX. *See* ICI Memorandum, *supra* note ; Letter of Eric D. Roiter, Senior Vice President and General Counsel, Fidelity Management & Research Company (Dec. 6, 2002).

[44] In addition, the fund's proxy voting record will be publicly available on the EDGAR section of the Commission's Web site.

[45] Proposed Instructions to Items 13(f), 22(b)(7), and 22(c)(5) of Form N–1A; Proposed Instruction to Item 18.16 and proposed Instruction 6 to Item 23 of Form N–2; Proposed Instruction to Item 20(o) and proposed Instruction 6 to Item 27(a) of Form N–3.

[46] Letter of Matthew P. Fink, President, Investment Company Institute (Jan. 21, 2003).

[47] Items 13(f), 22(b)(8), and 22(c)(6) of Form N–1A; Item 18.16 and Instructions 4.h and 5.f to Item 23 of Form N–2; Item 20(o) and Instructions 4(viii) and 5(vi) to Item 27(a) of Form N–3.

If a fund is complying with this disclosure requirement, the inclusion of the fund's Web site address will not, by itself, include or incorporate by reference the information on the site into the fund's reports to shareholders or SAI, unless the fund otherwise acts to incorporate the information by reference. *Cf.* Securities Act Release No. 8128 (Sept. 5, 2002) [67 FR 58480, 58494 (Sept. 16, 2002)] (noting that if a company is complying with the requirement to disclose its Web site address in its annual report on Form 10–K, inclusion of its Web site address would not, by itself, include or incorporate by reference the information on the Web site into the filing).

means designed to ensure equally prompt delivery.[48]

If a fund discloses that its proxy voting record is available on or through its Web site, it must make available free of charge the information disclosed in the fund's most recently filed report on Form N–PX on or through its Web site as soon as reasonably practicable after filing the report with the Commission.[49] We interpret the "as soon as reasonably practicable" standard to mean that the information would be available, barring unforeseen circumstances, on the same day as filing. We could revisit this requirement if posting on the same day does not generally occur.[50] A fund would not be required to continue to make available on or through its Web site any information from reports on Form N–PX that precede the most recently filed report on Form N–PX.

These rules require that a fund's proxy voting record be publicly available through filings with us. They also require that this information be readily available to fund shareholders from the fund itself and that shareholders be apprised of how this information may be obtained. We believe that these rules strike an appropriate balance—ensuring that a fund's proxy voting record is readily available to interested fund shareholders, while allowing funds the flexibility to choose how to make this information available in the most effective and cost-efficient manner.

Some commenters recommended other specific modifications to our proposed disclosure requirements, which we are not adopting. Several of these commenters suggested that we require funds to provide additional disclosure with respect to situations where the fund's investment adviser has a conflict of interest, including, for example, disclosure of any business and financial relationship with the issuer and all fees received by the adviser or its affiliates from the issuer during a designated period of time.

We have determined not to require additional disclosure regarding conflict of interest situations at the present time. We believe that disclosure of a fund's complete voting record will enable shareholders to monitor how the fund voted in specific instances and whether the vote is in the shareholders' best interests. Further, requiring additional public disclosure with respect to conflicts of interest would significantly increase the complexity and cost of the proxy vote disclosure.

Several commenters argued that we should require a fund to provide its proxy vote disclosure in a uniform, web-accessible, downloadable format. Other commenters indicated that we should require a fund to disclose its proxy voting record on its Web site, if it has one. Commenters also suggested that we require funds to provide an executive summary of their votes, that might include, for example, the percentage of votes cast for and against management, sorted by the type of issue.

We have determined not to modify our proposals in order to add these requirements, in order to minimize the cost to funds and their shareholders of providing disclosure of fund proxy voting records. As adopted, our requirements will allow funds the flexibility to determine the best manner in which to make their proxy voting records available to shareholders. We continue to believe that our disclosure requirements strike an appropriate balance by ensuring that a fund's proxy voting record, as well as its policies and procedures, is readily available to interested fund shareholders without imposing undue costs. We would, however, encourage funds to use their Web sites and other available means to make their proxy voting records readily accessible to shareholders in a user-friendly format.

Other commenters, by contrast, requested that we limit the proposed disclosure regarding a fund's proxy voting record. For example, some commenters recommended that we require a fund to disclose information regarding only those proxy votes cast against management of the portfolio companies in which it invests, or where a conflict of interest exists.[51] In addition, one commenter suggested that we require only a summary of all proxy votes in the aggregate arranged according to issue.[52] We believe, however, that limiting disclosure of the proxy voting record to specific votes, or to a general summary of all votes, would significantly undercut the intent of our proposals, which is to enable fund shareholders to determine how a fund voted with respect to any particular proxy vote.

Disclosure of Proxy Votes That Are Inconsistent With Fund's Policies and Procedures

The Commission has determined not to adopt the proposed requirement that a fund disclose in its annual and semi-annual reports to shareholders proxy votes (or failures to vote) that are inconsistent with the fund's proxy voting policies and procedures.[53] Many commenters, including both those who generally supported the disclosure of funds' proxy voting records and those who generally opposed this disclosure, expressed concerns regarding the proposed requirements for disclosure of inconsistent votes. Proponents of proxy voting record disclosure argued that a requirement to disclose inconsistent votes might lead funds to draft overly broad policies and procedures to avoid triggering the required disclosure. Opponents of proxy voting record disclosure argued that the disclosure of inconsistent votes would be burdensome because it would require funds to analyze a large volume of proxy votes to determine whether any vote triggered the disclosure and then to provide a lengthy explanation to shareholders regarding each inconsistent vote, which would be expensive to prepare and not meaningful to investors. We find these arguments persuasive and have therefore determined not to adopt the requirement that funds disclose information regarding votes that are inconsistent with the fund's policies and procedures.

III. Effective Date and Compliance Date

The effective date of these amendments is April 14, 2003.

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[48] Instruction 2 to Item 13(f), Instruction 1 to Item 22(b)(8), and Instruction to Item 22(c)(6) of Form N–1A; Instruction 2 to Item 18.16 and Instruction 6.b. to Item 23 of Form N–2; Instruction 2 to Item 20(o) and Instruction 6(ii) to Item 27(a) of Form N–3.

[49] Instruction 3 to Item 13(f), Instruction 2 to Item 22(b)(8), and Instruction to Item 22(c)(6) of Form N–1A; Instruction 3 to Item 18.16 and Instruction 6.c. to Item 23 of Form N–2; Instruction 3 to Item 20(o) and Instruction 6(iii) to Item 27(a) of Form N–3.

A fund could satisfy this requirement through hyperlinking to a third-party service or our EDGAR Web site. *Cf.* Securities Act Release No. 8128 (Sept. 5, 2002) [67 FR 58480, 58493 (Sept. 16, 2002)]. We direct funds to this release for guidance concerning satisfaction of this requirement through hyperlinking.

[50] *Cf.* Securities Act Release No. 8128 (Sept. 5, 2002) [67 FR 58480, 58493 (Sept. 16, 2002)] (construing the "as soon as reasonably practicable" standard to mean the same day as filing, barring unforeseen circumstances, with respect to the requirement that issuers disclose whether they make reports on Forms 10–K, 10–Q, and 8–K available on their Web sites as soon as reasonably practicable after filing of these reports with the Commission).

[51] *See* Letter of Peter C. Clapman, Senior Vice President and Chief Counsel, Teachers Insurance and Annuity Association of America/College Retirement and Equities Fund (Dec. 6, 2002) (recommending proxy vote disclosure in instances of potential conflict of interest); Letter of Leslie L. Ogg, President, Board Services Corporation (Nov. 22, 2002) (recommending disclosure when a fund votes against the recommendation of management and where a conflict of interest exists).

[52] Letter of Peter C. Clapman, Teachers Insurance and Annuity Association of America/College Retirement Equities Fund (Dec. 6, 2002).

[53] Proposed Items 22(b)(8) & (c)(6) of Form N–1A; Proposed Instructions 4.h. & 5.f. to Item 23 of Form N–2; Proposed Instructions 4(viii) & 5(vi) to Item 27(a) of Form N–3.

Registered management investment companies must file their first report on Form N–PX not later than August 31, 2004, for the twelve-month period beginning July 1, 2003, and ending June 30, 2004. Based on the comments, we believe that this will provide funds with sufficient time to make any necessary changes to existing software and internal systems in order to compile proxy voting information in the manner that will be required by new Form N–PX.

All initial registration statements on Form N–1A, N–2, or N–3, and all post-effective amendments that are annual updates to effective registration statements on these forms, filed on or after July 1, 2003, must include the disclosure required by Item 13(f) of Form N–1A, Item 18.16 of Form N–2, or Item 20(o) of Form N–3, as applicable, regarding the fund's proxy voting policies and procedures.[54] Every annual report by a closed-end fund on Form N–CSR filed on or after July 1, 2003, must include the disclosure required by Item 7 of Form N–CSR regarding the fund's proxy voting policies and procedures.

All initial registration statements on Form N–1A, N–2, or N–3, and all post-effective amendments that are annual updates to effective registration statements on these forms, filed on or after August 31, 2004, must include the disclosure required by Item 13(f) of Form N–1A, Item 18.16 of Form N–2, or Item 20(o) of Form N–3, as applicable, regarding the availability of the fund's proxy voting record. Every report to shareholders of a fund registered on Form N–1A, N–2, or N–3 that is transmitted to shareholders on or after August 31, 2004, must include the disclosure required by Item 22(b)(8) and 22(c)(6) of Form N–1A, Instructions 4.h. and 5.f. to Item 23 of Form N–2, or Instructions 4(viii) and 5(vi) to Item 27(a) of Form N–3, as applicable, regarding the availability of a fund's proxy voting record. Every report to shareholders of a fund registered on Form N–1A, N–2, or N–3 that is transmitted to shareholders on or after the effective date of an initial registration statement or post-effective amendment that is required to include a description of the fund's proxy voting policies and procedures (or, in the case of a closed-end fund, the filing date of its first annual report on Form N–CSR filed on or after July 1, 2003) must include the disclosure required by Item 22(b)(7) and 22(c)(5) of Form N–1A, Instructions 4.g. and 5.e. to Item 23 of Form N–2, or Instructions 4(vii) and 5(v) to Item 27(a) of Form N–3 regarding the availability of the fund's proxy voting policies and procedures.

[54] We would not object if existing funds file their first annual update complying with the amendments pursuant to rule 485(b) under the Securities Act [17 CFR 230.485(b)], provided that the post-effective amendment otherwise meets the conditions for immediate effectiveness under the rule.

IV. Paperwork Reduction Act

As explained in the Proposing Release, certain provisions of the amendments contain "collection of information" requirements within the meaning of the Paperwork Reduction Act of 1995 ("PRA") [44 U.S.C. 3501 *et seq.*], and the Commission has submitted the proposed collections of information to the Office of Management and Budget ("OMB") for review in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11. The titles for the collections of information that we have submitted are: (1) "Form N–1A under the Investment Company Act of 1940 and Securities Act of 1933, Registration Statement of Open-End Management Investment Companies"; (2) "Form N–2—Registration Statement of Closed-End Management Investment Companies"; (3) "Form N–3—Registration Statement of Separate Accounts Organized as Management Investment Companies"; (4) "Form N–CSR—Certified Shareholder Report of Registered Management Investment Companies"; and (5) "Rule 30e–1 under the Investment Company Act of 1940, Reports to Stockholders of Management Companies." OMB approved the collections of information for the amendments to Forms N–1A, N–2, and N–3, and rule 30e–1. Because we have modified our proposals as described above, we are revising the burden estimate for Form N–CSR and rule 30e–1. We have submitted a revised collection of information for Form N–CSR to OMB, and have submitted the following additional collection of information to OMB: "Form N–PX—Annual Report of Proxy Voting Record of Registered Management Investment Companies." An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Form N–1A (OMB Control No. 3235–0307), Form N–2 (OMB Control No. 3235–0026), and Form N–3 (OMB Control No. 3235–0316) were adopted pursuant to Section 8(a) of the Investment Company Act [15 U.S.C. 80a–8] and Section 5 of the Securities Act [15 U.S.C. 77e]. Form N–CSR (OMB Control No. 3235–0570) was adopted pursuant to Section 30 of the Investment Company Act [15 U.S.C. 80a–29] and Sections 13(a) and 15(d) of the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. 78m and 78o(d)]. Form N–PX is being adopted pursuant to Section 30 of the Investment Company Act [15 U.S.C. 80a–29]. Rule 30e–1 under the Investment Company Act (OMB Control No. 3235–0025) was adopted pursuant to Section 30(e) of the Investment Company Act [15 U.S.C. 80a–29(e)].

As discussed above, the amendments will require that funds holding equity securities disclose the policies and procedures that they use to determine how to vote the proxies of their portfolio securities. The amendments also require funds to file with the Commission and to make available to their shareholders the specific proxy votes that they cast in shareholder meetings of issuers of portfolio securities. These changes are intended to enhance the transparency of fund proxy voting and will allow shareholders to monitor whether funds are voting portfolio securities in the best interests of shareholders.

Summary of Comment Letters and Revisions to Proposals

We requested comment on the PRA analysis contained in the Proposing Release, and we received numerous comment letters concerning the proposed collection of information requirements, particularly with respect to the proposed requirement to disclose funds' actual proxy voting records. Many commenters, including in particular funds that currently provide disclosure of their proxy votes, indicated that the Commission's estimates of the burden of the proposed disclosure were reasonable, and that available technology and other resources would render record-keeping and reporting requirements relatively routine. Other commenters, including many other members of the fund industry, argued that the Commission's estimates substantially underestimated the burden of providing the proposed disclosure. Some of these commenters argued that the Commission's estimates omitted start-up and one-time transition costs for collecting proxy voting information and preparing it in the format that would be required by Form N–CSR.[55]

Several commenters provided specific estimates of the costs of providing the disclosure of their proxy vote records. However, these commenters generally did not provide any breakdown of the components of these estimates (*e.g.*, number of tasks required, persons

[55] *See, e.g.*, Letter of Craig Tyle, General Counsel, Investment Company Institute (Dec. 6, 2002) ("ICI Letter").

required to perform each task, wage rates for each person). One fund group which opposed the requirement to disclose its proxy voting record prepared a sample disclosure in the format prescribed by the proposed amendment to Form N–CSR for one of its funds which cast proxy votes on 1,607 agenda items at 500 shareholder meetings during a six-month period.[56] The fund group estimated that the collection of votes from its information systems would take four hours, reformatting the data to the format of Form N–CSR would take eight hours, and reconfirming that each vote was cast in accordance with the fund's proxy voting policies would take at least another two hours. Another fund group which recently began to post its proxy voting guidelines and proxy voting records for two of its funds on its Web site estimated that this task took approximately two days.[57] These estimates are generally consistent with the estimate in the Proposing Release that the disclosure on Form N–CSR of a fund's proxy voting record would take 10 hours per semi-annual filing on Form N–CSR, at an annual cost of $1,379 per fund. By contrast, a fund industry trade group estimated, based on a survey of fund complexes conducted on its behalf by a third-party, that proxy voting record disclosure would cost approximately $3,380 per fund in start-up costs, and $5,530 per year in ongoing costs.[58]

We note that we have modified our proposal in two significant ways, in part in response to concerns expressed about costs by commenters. First, the amendments will require disclosure of proxy votes cast in annual reports on new Form N–PX, rather than semi-annually on Form N–CSR. Second, we are not adopting the proposed requirement that funds disclose in their annual and semi-annual reports to shareholders votes that were inconsistent with their proxy voting policies and procedures. Because of these modifications, we have revised our burden estimates for Form N–CSR and rule 30e–1. The burden estimate for disclosure of a fund's proxy voting record will be the burden estimated for new Form N–PX. These revisions to the burden estimates are described below.

Form N–1A

Form N–1A, including the amendments, contains collection of information requirements. The likely respondents to this information collection are open-end funds registering with the Commission on Form N–1A. Compliance with the disclosure requirements of Form N–1A is mandatory. Responses to the disclosure requirements are not confidential.

Prior to the proposed amendments, the estimated hour burden for preparing an initial registration statement on Form N–1A was 801 hours per portfolio, and the estimated hour burden for preparing post-effective amendments on Form N–1A was 99 hours per portfolio. The Commission estimates that, on an annual basis, 193 portfolios file initial registration statements on Form N–1A and 7,525 portfolios file post-effective amendments on Form N–1A. Thus, the total hour burden for the preparation and filing of Form N–1A, prior to the proposed amendments, was 899,568 hours.

We estimated in the Proposing Release that the amendments would increase the hour burden per portfolio per filing of an initial registration statement by 8 hours, to 809 hours per portfolio, and would increase the hour burden per portfolio per filing of a post-effective amendment to a registration statement by 2 hours, to 101 hours per portfolio. Thus, the current total annual hour burden for all funds for preparation and filing of initial registration statements and post-effective amendments to Form N–1A is 916,162 hours.

Form N–2

Form N–2, including the amendments, contains collection of information requirements. The likely respondents to this information collection are closed-end funds registering with the Commission on Form N–2. Compliance with the disclosure requirements of Form N–2 is mandatory. Responses to the disclosure requirements are not confidential.

Prior to the proposed amendments, the estimated hour burden for preparing an initial registration statement on Form N–2 was 536.7 burden hours per filing, and the estimated annual hour burden for preparing post-effective amendments on Form N–2 was 101.7 hours per filing. The Commission estimates that, on an annual basis, 140 respondents file an initial registration statement on Form N–2 and 38 respondents file post-effective amendments on Form N–2. Thus, the total annual hour burden for the preparation and filing of Form N–2, prior to the proposed amendments, was 79,003 hours.

We estimated in the Proposing Release that the amendments would increase the hour burden per filing of an initial registration statement on Form N–2 by 8 hours, to 544.7 hours per filing, and would increase the hour burden per filing of a post-effective amendment to a registration statement on Form N–2 by 2 hours, to 103.7 hours per filing. Thus, the current total annual hour burden for all funds for preparation and filing of initial registration statements and post-effective amendments on Form N–2 is 80,198 hours.

Form N–3

Form N–3, including the amendments, contains collection of information requirements. The likely respondents to this information collection are separate accounts, organized as management investment companies and offering variable annuities, registering with the Commission on Form N–3. Compliance with the disclosure requirements of Form N–3 is mandatory. Responses to the disclosure requirements are not confidential.

Prior to the proposed amendments, the estimated hour burden for preparing an initial registration statement on Form N–3 was 907.2 hours per portfolio, and the estimated hour burden for preparing post-effective amendments on Form N–1A was 148.4 hours per portfolio. The Commission estimates that, on an annual basis, no initial registration statements will be filed on Form N–3 and 60 post-effective amendments will be filed on Form N–3. The estimated average number of portfolios per filing is 4, bringing the estimated total number of portfolios in post-effective amendments to filings on Form N–3 annually to 240. Thus, the total hour burden for the preparation and filing of Form N–3, prior to the proposed amendments, was 35,616 hours.

We estimated in the Proposing Release that the amendments to Form N–3 would increase the hour burden per portfolio of an initial registration statement by 8 hours, to 915.2 hours per portfolio, and would increase the hour burden per portfolio of a post-effective amendment to a registration statement by 2 hours, to 150.4 hours per portfolio. Thus, the current total annual hour burden for all funds for preparation and filing of initial registration statements and post-effective amendments on Form N–3 will be 36,096 hours.

Form N–CSR

Form N–CSR, including the amendments, contains collection of information requirements. The

[56] Letter of Eric D. Roiter, Senior Vice President and General Counsel, Fidelity Management & Research Co. (Dec. 6, 2002).

[57] Letter of Timothy Smith, Senior Vice-President, Walden Asset Management (Nov. 20, 2002).

[58] ICI Letter, *supra* note 55, at 14–15.

respondents to this information collection will be closed-end management investment companies subject to rule 30e–1 under the Investment Company Act of 1940 registering with the Commission on Form N–2. Compliance with the disclosure requirements of Form N–CSR is mandatory. Responses to the disclosure requirements are not confidential.

The current estimated total hour burden for preparation of Form N–CSR is 35,139 hours.[59] In the Proposing Release, we estimated that 3,700 registered investment companies would file Form N–CSR on a semi-annual basis for a total of 7,400 filings.[60] We estimated in the Proposing Release that the amendments to Form N–CSR would increase the hour burden per filing of each semi-annual report on Form N–CSR by 10 hours, or 74,000 hours total. However, we have modified our proposal to require funds to disclose their proxy voting record in reports on new Form N–PX on an annual basis, rather than in reports on Form N–CSR on a semi-annual basis. As proposed, however, we are requiring registered closed-end management investment companies to include in their annual reports on Form N–CSR a description of the policies and procedures that they use to determine how to vote proxies relating to portfolio securities. We estimate that 663 closed-end management investment companies will file reports on Form N–CSR, and are revising our estimate of the increase in the hour burden resulting from the amendments to 2 hours per filing. We estimate that the total annual burden attributable to the disclosure of proxy voting policies and procedures for closed-end funds will be 1,326 hours. Thus, the new total annual hour burden for preparation and filing of Form N–CSR will be 36,465 hours.[61]

Shareholder Reports

Rule 30e–1, including the amendments to Forms N–1A, N–2, and N–3, contains collection of information requirements.[62] Compliance with the disclosure requirements of rule 30e–1 is mandatory. Responses to the disclosure requirements are not confidential.

There are approximately 3,700 funds subject to rule 30e–1. We estimated in the Proposing Release that the hour burden for preparing and filing semi-annual and annual shareholder reports in compliance with rule 30e–1, prior to the proposed amendments, was 202.5 hours per year, and that the amendments would increase the hour burden of complying with rule 30e–1 by 10 hours per fund per year for a total increase in burden hours of 37,000 hours. However, we have revised our proposed amendments to eliminate the proposed requirement that annual and semi-annual shareholder reports include disclosure of proxy votes that are inconsistent with the fund's proxy voting policies. Thus, we are revising our estimate of the increase in the hour burden of complying with rule 30e–1 attributable to the proposed amendments to 3,700 hours, rather than 37,000 hours, to reflect the elimination of this proposed disclosure requirement. The total hour burden of complying with rule 30e–1 will be 203.5 hours per year, for a total annual burden to the industry of 752,950 hours.[63]

Rule 30b1–4

The purpose of rule 30b1–4 is to improve the transparency of information about funds' proxy voting records. Rule 30b1–4 will require a fund to file Form N–PX, containing its complete proxy voting record for the twelve-month period ended June 30, by no later than August 31 of each year. The respondents to rule 30b1–4 will be registered management investment companies, other than small business investment companies registered with the Commission on Form N–5.

We estimate that there are approximately 3,700 funds that will be affected by the rule. Each of these 3,700 funds will be required by rule 30b1–4 to file complete proxy voting records with the Commission on Form N–PX. For purposes of this PRA analysis, the burden associated with the requirement of Rule 30b1–4 has been included in the collection of information required by Form N–PX, rather than the rule. Compliance with rule 30b1–4 is mandatory for every registered management investment company, other than a small business investment company registered with the Commission on Form N–5. Responses to the disclosure requirements are not confidential.

Form N–PX

Form N–PX contains collection of information requirements. The respondents to this information collection will be registered management investment companies, other than small business investment companies registered with the Commission on Form N–5. Compliance with the disclosure requirements of Form N–PX is mandatory. Responses to the disclosure requirements are not confidential.

Every registered management investment company, other than a small business investment company registered with the Commission on Form N–5, will be required to file Form N–PX, containing its complete proxy voting record for the twelve-month period ended June 30, by no later than August 31 of each year. We estimate that there are approximately 3,700 funds registered with the Commission, with 5,200 fund portfolios that hold equity securities that will be required to file Form N–PX.[64] We further estimate that for each of these funds the disclosure of its proxy voting record in filings on Form N–PX as of the end of each twelve-month period ended June 30 will require, on average, 14.4 hours per filing per equity portfolio, for a total annual

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[59] *See* Investment Company Act Release No. 25914 (Jan. 27, 2003) (release adopting Form N–CSR).

[60] Investment Company Act Release No. 25739 (Sept. 20, 2002) [67 FR 60828 (Sept. 26, 2002)].

[61] The Commission has submitted additional collections of information to OMB for Form N–CSR in connection with Investment Company Act Release No. 25775 (Oct. 22, 2002) [67 FR 66208 (Oct. 30, 2002)] (code of ethics and financial expert disclosure); Investment Company Act Release No. 25838 (Dec. 2, 2002) [67 FR 76780 (Dec. 13, 2002)] (auditor independence provisions of the Sarbanes-Oxley Act); Investment Company Act Release No. 25845 (Dec. 10, 2002) [67 FR 77593 (Dec. 18, 2002)] (revisions to rule 10b–18 under the Exchange Act); Investment Company Act Release No. 25870 (Dec. 18, 2002) [68 FR 160 (Jan. 2, 2003)] (shareholder reports and quarterly portfolio disclosure); and Investment Company Act Release No. 25885 (Jan. 8, 2003) [68 FR 2637 (Jan. 17, 2003)] (standards relating to listed company audit committees). These submissions are currently pending before OMB. If these submissions are approved, the approved total burden hours for Form N–CSR will be 195,472 hours. With the adjustment to reflect the modifications we are making here to our proposed amendments to Form N–CSR, the approved total burden hours for Form N–CSR would be 122,798 hours (195,472—(74,000—1,326)).

[62] Rule 30e–1(a) under the Investment Company Act of 1940 [17 CFR 270.30e–1(a)] requires funds to include in their shareholder reports the information that is required by the fund's registration statement form.

[63] We have submitted an additional collection of information to OMB in connection with Investment Company Act Release No. 25870 (Dec. 18, 2002) [68 FR 160 (Jan. 2, 2003)] (proposing amendments regarding shareholder reports and quarterly portfolio disclosure). This submission is currently pending before OMB. If the submission is approved, the approved total burden hours for complying with rule 30e–1 will be 926,350 hours. With the adjustment to reflect the modifications we are making here to our proposed amendments to Forms N–1A, N–2, and N–3, the approved total burden hours for complying with rule 30e–1 would be 893,050 hours (926,350 – (37,000 – 3,700)).

[64] The estimate of 3,700 funds is based on the number of management investment companies currently registered with the Commission. We estimate, based on data from the Investment Company Institute and other sources, that there are approximately 4,700 fund portfolios that invest primarily in equity securities and 500 "hybrid" or bond portfolios that may hold some equity securities, for a total of 5,200 portfolios holding equity securities.

burden of 74,880 hours (14.4 hours per filing × 5,200 equity portfolios).[65]

In the Proposing Release, we estimated that the hour burden imposed by the proposed amendments to Form N–CSR, including the requirement for a fund to disclose its proxy voting record on Form N–CSR, would increase the hour burden per filing of a Form N–CSR by 10 hours, or 74,000 hours total.[66] This total burden hour estimate is comparable to our estimate of 74,880 total burden hours for filing Form N–PX. However, our estimate of the hour burden per filing of Form N–PX differs from the estimated hour burden per filing of Form N–CSR, in part because Form N–PX will be filed annually rather than semi-annually, and in part because we are calculating the hour burden for Form N–PX by portfolio, rather than by fund.[67]

Request for Comments

We request comments on the accuracy of our estimates with respect to Form N–PX. Pursuant to 44 U.S.C. 3506(c)(2)(B), the Commission solicits comments to: (i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (ii) evaluate the accuracy of the Commission's estimate of burden of the proposed collection of information; (iii) determine whether there are ways to enhance the quality, utility, and clarity of the information to be collected; and (iv) evaluate whether there are ways to minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology.

Persons submitting comments on the collection of information requirements should direct the comments to the Office of Management and Budget, Attention: Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Room 3208, New Executive Office Building, Washington, DC 20503, and should send a copy to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549–0609, with reference to File No. S7–36–02. OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this Release. Consequently, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days after publication of this Release.

V. Cost/Benefit Analysis

The Commission is sensitive to the costs and benefits imposed by its rules. The amendments we are adopting will require funds to provide disclosure about how they vote proxies of the portfolio securities they hold. A fund will be required to disclose in its registration statement the policies and procedures that it uses to determine how to vote proxies relating to portfolio securities, and to include disclosure about the availability of the fund's proxy voting record. This disclosure will be included in the fund's Statement of Additional Information ("SAI") (and on Form N–CSR also, in the case of a closed-end fund's policies and procedures), which is not part of the fund's prospectus but is delivered to investors free of charge upon request. We are also requiring a fund to file with the Commission an annual report on Form N–PX, containing the fund's complete proxy voting record for the twelve-month period ended June 30, by no later than August 31 of each year. Our amendments will also require a fund to include in its annual and semi-annual reports to shareholders disclosure that the fund's proxy voting policies and procedures are available (i) without charge, upon request from the fund, (ii) on the fund's Web site, if applicable, and (iii) on the SEC Web site. In addition, a fund will be required to state in its registration statement and reports to shareholders that its proxy voting record is available (i) without charge, upon request, by calling a specified toll-free (or collect) telephone number; or on or through the fund's Web site at a specified Internet address; or both; and (ii) on the SEC Web site.

In the Proposing Release, we analyzed the costs and benefits of our proposals and requested comments and data regarding the costs and benefits of the proposed form amendments. These comments are summarized below.

A. Benefits

The amendments to the registration statement and reporting forms that we are adopting will benefit fund investors, by providing them with access to information about how funds vote their proxies.

First, the amendments will provide better information to investors who wish to determine:

- To which fund managers they should allocate their capital, and
- Whether their existing fund managers are adequately maximizing the value of their shares.

The investment adviser to a mutual fund is a fiduciary that owes the fund a duty of "utmost good faith, and full and fair disclosure."[68] This fiduciary duty extends to all functions undertaken on the fund's behalf, including the voting of proxies relating to the fund's portfolio securities. An investment adviser voting proxies on behalf of a fund, therefore, must do so in a manner consistent with the best interests of the fund and its shareholders.[69] The increased transparency resulting from proxy voting disclosure may increase investors' confidence that their fund managers are voting proxies in accordance with their fiduciary duties. Without disclosure about how the fund votes proxies, fund shareholders cannot evaluate this aspect of their managers' performance. To the extent that investors choose among funds based on their proxy voting policies and records, in addition to other factors such as expenses, performance, and investment policies, investors will be better able to select funds that suit their preferences. Further, insofar as investors may over-emphasize certain of these factors, *e.g.*, past performance, in selecting funds, it may be beneficial to provide additional

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[65] The estimate of 14.4 hours per equity portfolio is based on the staff's consultations with funds that currently provide disclosure of their proxy voting records, and estimates that the average equity fund will cast votes at 144 shareholder meetings during a twelve-month reporting period, and will vote on three matters at each shareholder meeting, for a total of 432 matters voted on per year. The estimate of the number of shareholder meetings per equity fund is based on the staff's analysis of data on the average number of equities held per fund from the December 2002 edition of the *Morningstar Principia Pro* database. The estimate of the number of matters voted on at each shareholder meeting is based on information provided to the staff by a third-party provider of proxy voting services for funds and other institutional investors.

[66] Proposing Release, *supra* note 4, 67 FR at 60834.

[67] We believe it is more appropriate to estimate the burden of complying with Form N–PX by portfolio, rather than by fund, as we estimated the burden of complying with Form N–CSR in the Proposing Release. We note that many funds do not have portfolios that hold equity securities, while many funds have multiple equity portfolios. Funds with multiple equity portfolios would be required to report their proxy voting records for each portfolio holding equity securities.

[68] *SEC v. Capital Gains Research Bureau, Inc.*, 375 U.S. 180, 194 (1963) (interpreting Section 206 of the Investment Advisers Act of 1940). *Cf.* Section 36(b) of the Investment Company Act [15 U.S.C. 80a–35] (investment adviser of a fund has a fiduciary duty with respect to the receipt of compensation paid by the fund).

[69] *See* Investment Advisers Act Release No. 2106, *supra* note 5. *See also* SEC, Staff Report on Corporate Accountability, *supra* note 10, at 391 (fiduciary principle applies to all aspects of investment management, including voting). *Cf.* Dep't of Labor, Interpretive Bulletins Relating to the Employee Retirement Income Security Act of 1974, 29 CFR 2509.94–2 (2002) (fiduciary act of managing employee benefit plan assets consisting of equity securities includes voting of proxies appurtenant to those securities).

information to use in selecting funds. On a related point, we anticipate that over time, commercial third-party information providers will offer services that will enable investors to better analyze proxy voting by funds. These developments will further facilitate the benefits to fund investors from proxy vote disclosure.

Second, in some situations the interests of a fund's shareholders may conflict with those of its investment adviser with respect to proxy voting. This may occur, for example, when a fund's adviser also manages or seeks to manage the retirement plan assets of a company whose securities are held by the fund. In these situations, a fund's adviser may have an incentive to support management recommendations to further its business interests. The amendments require funds to disclose how they address such conflicts of interest in determining how to vote their proxies. This disclosure requirement may benefit fund shareholders by deterring voting decisions that are motivated by considerations of the interests of the fund's adviser rather than the interests of fund shareholders. Further, the increased transparency resulting from proxy voting disclosure may increase investors' confidence that their fund managers are voting proxies in accordance with their fiduciary duties.

A third significant benefit of the amendments comes from providing stronger incentives to fund managers to vote their proxies conscientiously. The amendments could increase the incentives for fund managers to vote their proxies carefully, and thereby improve corporate performance and enhance shareholder value. The improved corporate performance that could result from better decisionmaking in corporate governance matters may benefit fund investors. In addition, other equity holders may benefit from the improvement to corporate governance that results from more conscientious proxy voting by fund managers. We note that assets held in equity funds account for approximately 18% of the $11 trillion market capitalization of all publicly traded U.S. corporations, and therefore funds exercise a considerable amount of influence in proxy votes affecting the value of these corporations.[70]

The benefits to the economy that will result from improved corporate governance are difficult to measure. While measuring the effects of such a rule involves a high degree of uncertainty, the scale of the aggregate portfolio holdings involved suggests that they may be substantial.[71]

A number of commenters addressed the benefits of the proposals identified in the Proposing Release. Most commenters who addressed the costs and benefits of our proposals concurred with our assessment of the benefits of the proposed requirements to disclose the policies and procedures that funds use to determine how to vote proxies relating to securities held in their portfolios.

Our proposals to require disclosure of the actual votes cast by funds generated divergent views as to the possible benefits of this disclosure. Many commenters, including individual investors, labor unions, trustees of pension and retirement plans, and funds that currently make their proxy voting records available to their shareholders agreed with our assessment of the benefits of this disclosure, and argued that these benefits would be substantial. These commenters stated that investors would benefit from the increased transparency resulting from disclosure of proxy voting records, by allowing investors to consider a fund's proxy voting record when making an investment decision.[72] In addition, commenters argued that disclosure of proxy votes cast would have beneficial effects across the entire U.S. economy, by encouraging better decisionmaking in corporate governance matters, which would enhance shareholder value of the issuers of portfolio securities and, in turn, benefit both investors in the fund and other investors in these issuers.

Many other commenters, however, argued that the disclosure of proxy votes cast would not benefit fund investors. These commenters, who consisted primarily of funds, investment advisers, and members of boards of directors of funds, argued that the funds with which they are associated have received virtually no requests from their shareholders for proxy voting information.[73] They also argued that investors who care about proxy vote disclosure can decide to invest in those funds that choose to disclose their votes.

The arguments of these commenters do not address two important considerations, however. First, investors consider many factors besides proxy voting histories when choosing their investment managers. If other factors—for example, fund performance—are more important to them than proxy voting, competitive pressures alone may cause few funds to reveal their proxy votes. The fact that market pressure has not forced many funds to reveal their votes merely suggests that investors do not value transparency of proxy votes as much as they value other factors. That does not mean that investors do not value transparency of proxy votes. In addition, the availability of proxy voting information may increase shareholder interest in the future. Second, these arguments do not consider the external benefits that all fund investors may obtain if, as discussed above, disclosure increases the incentives for fund managers to vote their proxies more carefully, and thereby improve corporate performance and enhance shareholder value.

Commenters who objected to the proposed disclosure requirement also questioned whether disclosure of proxy voting records would benefit investors by discouraging voting motivated by conflicts of interest, and noted that the Proposing Release did not provide any evidence of any fund failing to vote its proxies in its shareholders' best interests due to a conflict of interest. However, as noted above, funds may have strong incentives to vote in a certain way when, for example, a fund's adviser also manages or seeks to manage the retirement plan assets of a company whose securities are held by the fund. It may be difficult to prove that a particular vote in such a situation was motivated by a conflict of interest, and therefore disclosure may be the most effective means of deterring these conflicts.

In addition, commenters objected to the argument that proxy voting disclosure would result in benefits to all investors by encouraging funds to be more engaged in corporate governance of issuers held in their portfolios. The commenters asserted that funds were already sufficiently engaged in corporate governance issues, and that requiring disclosure of proxy votes by funds, but not other institutional investors, would unfairly single out one class of investors and force them to bear the burdens of the Commission's broader objectives with respect to the improvement of corporate governance.[74]

We recognize that while the costs of the disclosure requirements will be borne by funds, the benefits of improved corporate governance resulting from the disclosure will accrue to all investors. We note, however, that investors in a fund may benefit from any improved

[70] *See* Flow of Funds Accounts, *supra* note 7.

[71] *Id.*

[72] *See, e.g.*, Letter of Mercer Bullard, Fund Democracy, LLC (Oct. 21, 2002).

[73] *See, e.g.*, ICI Letter, *supra* note 55, at 9; Letter of Robert D. Neary, Chairman of the Board, Armada Funds, at 2 (Dec. 4, 2002); Letter of Domenick Pugliese, Senior Vice President, Alliance Capital Management L.P. (Dec. 5, 2002).

[74] *See, e.g.*, ICI Letter, *supra* note 55, at 12.

oversight of its portfolio companies resulting from more careful proxy voting by other funds. In addition, we note that some of the other positive effects resulting from the disclosure, such as allowing investors to better evaluate whether their fund managers are voting proxies in accordance with their fiduciary duties, are benefits to fund investors.

We also note that, as adopted, the disclosure required by the amendments will provide the same benefits to investors as the proposal. However, the modifications to the proposal will mitigate the costs of disclosure, for funds and fund investors, by requiring a fund to file its proxy voting record on Form N–PX annually, by allowing a fund flexibility in determining how to disclose its proxy voting record to shareholders, and by not requiring a fund to disclose votes that are inconsistent with its policies and procedures.

B. Costs

The amendments will lead to some additional costs for funds, which may be passed on to fund shareholders. As discussed below, the amendments require new disclosure by a fund regarding how it votes proxies relating to portfolio securities it holds, in its SAI (and in Form N–CSR for closed-end funds), in annual reports on new Form N–PX, and in the fund's annual and semi-annual reports to shareholders. The direct costs of this disclosure will include both internal costs (for attorneys and other non-legal staff of a fund, such as computer programmers, to prepare and review the required disclosure) and external costs (for typesetting, printing, and mailing of the disclosure).

First, the amendments require disclosure of the fund's proxy voting policies and procedures, and disclosure about the availability of its proxy voting record, in the fund's SAI (and in the case of a closed-end fund, disclosure of its policies and procedures on Form N–CSR also).[75] Because the SAI is typically not typeset and is only provided to shareholders upon request, we estimate that the external costs per fund of this additional disclosure in the SAI will be minimal. Similarly, because the disclosure in Form N–CSR will only be required to be provided to shareholders upon request, we estimate that the external costs of this disclosure on Form N–CSR will be minimal as well. For purposes of the Paperwork Reduction Act, we have estimated that the disclosure requirements will add 19,596 hours to the burden of completing Forms N–1A, N–2, N–3, and N–CSR.[76] We estimate that this additional burden will equal total internal costs of $1,350,948 annually, or $365 per fund.[77]

Second, the amendments will require a fund to file with the Commission an annual report on new Form N–PX, containing the fund's complete proxy voting record for the twelve month period ended June 30, by no later than August 31 of each year, and to make available to its shareholders the information contained in Form N–PX. We estimate that because this information will be available on the Commission's Web site, and because we anticipate that many funds will choose to make this information available to their shareholders on or through their Web sites, the external costs to funds (for typesetting, printing, and mailing) of providing this disclosure to shareholders will be minimal. For purposes of the Paperwork Reduction Act, we estimate that funds will spend 74,880 hours to comply with Form N–PX, or 14.4 hours per equity fund portfolio filing on Form N–PX annually.[78] Further, we estimate that funds will file reports on Form N–PX for 5,200 portfolios holding equity securities.[79] Thus, we estimate that the burden of filing Form N–PX will equal $5,162,227 in total internal costs annually, or $992 per equity fund portfolio.[80] We had originally proposed to require a fund to file its complete proxy voting record as part of its semi-annual reports on Form N–CSR. However, we modified our proposal in response to one commenter who suggested that requiring disclosure on Form N–CSR would impose unnecessary costs and substantial administrative complexity for fund complexes that have funds with staggered fiscal year ends.

Third, with respect to reports to shareholders, funds will be required to include in their annual and semi-annual reports to shareholders disclosure about the availability of information regarding the fund's proxy voting policies and procedures, and the fund's proxy voting record. We estimate that to comply with these disclosure requirements, a typical fund will need to include at most one additional page in its annual and semi-annual reports to shareholders, at a typesetting cost of $55 per page and a printing cost of $0.025 per page.[81] We estimate that a typical fund may have, on average, 30,000 shareholder accounts;[82] therefore, the additional disclosure in shareholder reports will cost approximately $1,610 (($0.025 × 30,000 shareholder accounts, plus $55) × 2 reports per year) in external costs per fund. Based on the Commission's

[75] Because closed-end funds do not offer their shares continuously, and are therefore generally not required to maintain an updated SAI to meet their obligations under the Securities Act of 1933, they will be required to disclose their proxy voting policies and procedures in their annual reports on Form N–CSR. We are not requiring closed-end funds to provide disclosure about the availability of their proxy voting policies and records on Form N–CSR.

[76] This represents 16,594 additional hours for Form N–1A, 1,196 additional hours for Form N–2, 480 additional hours for Form N–3, and 1,326 additional hours for Form N–CSR. The estimated total hour burden for disclosure of proxy voting policies and procedures differs from the figure of 18,270 hours used in the Proposing Release, because here we are including the estimated hour burden for disclosure of policies and procedures by closed-end funds on Form N–CSR as well.

[77] These figures are based on a Commission estimate that approximately 3,700 management investment companies are subject to the amendments and an estimated hourly wage rate of $68.94. The estimate of the number of funds is based on data derived from the Commission's EDGAR filing system. The estimated wage rate figure is based on published hourly wage rates for compliance attorneys in New York City ($74.22) and programmers ($27.91), and the estimate, based on the Commission staff's discussions with certain fund complexes, that attorneys and programmers will divide time equally on compliance with the proxy voting disclosure requirements, yielding a weighted wage rate of $51.065 (($74.22 × .50) + (27.91 × .50)) = $51.065). *See* Securities Industry Association, *Report on Management & Professional Earnings in the Securities Industry 2001* (Oct. 2001). This weighted wage rate was then adjusted upward by 35% for overhead, reflecting the costs of supervision, space, and administrative support, to obtain the total per hour internal cost of $68.94 (51.065 × 1.35) = $68.94.

[78] The estimate of 14.4 hours per equity portfolio is based on the staff's consultations with funds that currently provide disclosure of their proxy voting records, and estimates that the average equity fund will cast votes at 144 shareholder meetings during a twelve-month reporting period, and will vote on three matters at each shareholder meeting, for a total of 432 matters voted on per year. The estimate of the number of shareholder meetings per equity fund is based on the staff's analysis of data on the average number of equities held per fund from the December 2002 edition of the *Morningstar Principia Pro* database. The estimate of the number of matters voted on at each shareholder meeting is based on information provided to the staff by a third-party provider of proxy voting services for funds and other institutional investors.

[79] This estimate is based on the staff's analysis of data from the Investment Company Institute and other sources indicating that there are approximately 4,700 fund portfolios that invest primarily in equity securities and 500 "hybrid" or bond portfolios that may hold some equity securities.

[80] These figures are based on the Commission's estimate that approximately 3,700 funds, with 5,200 portfolios holding equity securities, will report their proxy voting records on Form N–PX, an estimate of 14.4 hours per equity fund portfolio filing on Form N–PX, and an estimated hourly wage rate of $68.94. *See supra* note 77.

[81] This estimate is based on information provided to the Division of Investment Management by registered investment companies regarding printing and typesetting costs for prospectuses and SAIs.

[82] This estimate regarding the average number of shareholder accounts per typical fund is derived from data provided in the Mutual Fund Fact Book, *supra* note 9, at 63, 64.

estimate of 3,700 funds that are required to transmit annual and semi-annual reports to shareholders, we estimate these external costs will be $5,957,000 for the industry as a whole. In addition, we estimate for purposes of the Paperwork Reduction Act that these disclosure requirements will add 3,700 burden hours for funds required to transmit shareholder reports, or one hour per fund, equal to internal costs of $255,078 for the industry annually, or $69 per investment company.[83]

Therefore, based on this analysis, we estimate that the total external and internal direct costs of the additional disclosure required by the amendments will be $12,725,253.[84] Because the amendments may have the effect of inducing fund advisers and fund boards to devote more resources to articulating their proxy voting policies and procedures in more detail, and to monitoring proxy voting decisions, they may result in higher expenses and advisory fees for funds. Some or all of these expenses may be passed on to shareholders.

Numerous commenters responded to the Commission's request for comment on the potential costs of the proposed disclosure requirements, particularly with respect to the required disclosure of their complete proxy voting records in reports on Form N–CSR, and the proposed disclosure of inconsistent votes in annual and semi-annual reports to shareholders. A number of commenters, principally members of the fund industry, argued that the Commission's estimates substantially underestimated the direct costs of the proposed disclosure requirements. First, commenters argued that the estimates omitted any start-up or one-time transition costs, noting that fund groups would need to establish systems or make arrangements with outside vendors to capture the information on proxy votes cast.[85] Second, a commenter argued that while some fund groups rely on outside service providers to vote their proxies, and these service providers may provide proxy voting records in electronic form, many fund groups do not use such outside service providers, and hence may have higher costs to compile their proxy voting records in electronic form.[86] Third, commenters argued that the costs of preparing the voting record disclosure may be higher for funds with significant holdings in foreign securities, because foreign proxies typically contain more proposals than those of U.S. issuers, and certain required data, such as ticker symbols and sponsorship of proposals, is not readily available for meetings of foreign portfolio companies.[87] Fourth, some fund groups also stated that they would incur costs by having to hire and train shareholder servicing personnel in order to respond to requests from shareholders for the proxy voting records disclosed in Form N–CSR.

We continue to believe that our estimates of the direct costs imposed by the disclosure are reasonable. First, we note that our cost estimates, which were based in part on the costs of funds that currently disclose their proxy votes, incorporate start-up costs and one-time transition costs amortized over time. In addition, we believe that start-up costs should be limited in most cases, because most funds currently keep track of information regarding their proxy votes. Second, our cost estimates are derived both from funds that outsource the collection and disclosure of proxy voting information, and from funds that perform these tasks internally. We anticipate that funds will choose to provide the required proxy voting information in the most cost-efficient manner. Third, with respect to the argument that the costs incurred by funds with significant foreign holdings may be higher than estimated, we note that we have modified our proposal to include an instruction permitting a fund to omit exchange ticker symbols and CUSIP numbers if they are not available through reasonably practicable means.[88] Finally, with respect to the argument that funds would incur costs by having to hire and train personnel to respond to requests for their proxy voting records, we note that we have modified our proposals to allow funds to choose to provide their proxy voting records to shareholders through Web site disclosure or upon request, which should reduce the number of shareholder requests received by phone.

Other commenters argued that the estimates of direct costs in the Proposing Release were reasonable. Several fund groups which currently disclose proxy voting records on their Web sites as well as through hard copy stated that based on their experience the costs of the proposed disclosure requirements would be minimal.[89] These commenters argued that funds should already be keeping track of their proxy votes internally, so that providing the required disclosure should be a matter of converting existing data to new fields for web interface.[90] One commenter noted that the expense ratios of funds that disclose their proxy votes are not higher than those of funds in general.[91]

A few commenters, including supporters and opponents of the proposed requirement to disclose proxy voting records, provided specific estimates of the direct costs of providing this disclosure. One fund group which opposed the requirement to disclose its proxy voting record prepared a sample disclosure in the format prescribed by the proposed amendment to Form N–CSR, and estimated that the collection of votes from its information systems would take four hours, reformatting the data to the format of Form N–CSR would take eight hours, and that reconfirming that each vote was cast in accordance with the fund's proxy voting policies would take at least another two hours.[92] Another fund group which recently began to post its proxy voting guidelines and proxy voting records for two of its funds on its Web site estimated that this task took approximately two days.[93] These estimates are generally consistent with our estimate that proxy vote disclosure on Form N–PX will take 14.4 hours per equity portfolio per filing, at an annual cost of $992 per equity portfolio.[94] By

[83] These figures are based on a Commission estimate that approximately 3,700 investment companies will be subject to the amendments and an estimated hourly wage rate of $68.94. *See supra* note 77.

[84] The Commission has modified its estimate of the total external and internal costs of the additional disclosure required by the amendments from the estimate in the Proposing Release, to reflect that it is not adopting the proposal to require a fund to disclose in its annual and semi-annual reports to shareholders information regarding any proxy votes that are inconsistent with its proxy voting policies and procedures, and that it is requiring funds to disclose their proxy voting records annually on Form N–PX rather than semi-annually on Form N–CSR.

[85] *See, e.g.*, ICI Letter, *supra* note 55, at 14.

[86] ICI Letter, *supra* note 55, at 14–15.

[87] *See, e.g.*, Letter of Eric D. Roiter, Senior Vice President and General Counsel, Fidelity Management & Research Co., at 4 (Dec. 6, 2002).

[88] Instruction 2 to Item 1 of Form N–PX.

[89] *See, e.g.*, Letter of Amy Domini, CEO, Domini Social Investments LLC (Nov. 1, 2002); Letter of Thomas W. Grant, President, and Laurence A. Shadek, Chairman, Pax World Funds (Nov. 26, 2002); Letter of Timothy Smith, Senior Vice President, Walden Asset Management (Nov. 20, 2002).

[90] *See, e.g.*, Letter of Timothy H. Smith, President and Chair, Social Investment Forum (Nov. 11, 2002).

[91] *See, e.g.*, Letter of Mercer Bullard, Fund Democracy, LLC (Oct. 21, 2002).

[92] Letter of Eric D. Roiter, Senior Vice President and General Counsel, Fidelity Management & Research Co., at 3 (Dec. 6, 2002).

[93] Letter of Timothy Smith, Senior Vice President, Walden Asset Management (Nov. 20, 2002).

[94] By comparison, a third-party service provider of proxy voting services to funds and other institutional investors indicated to the staff that for a basic vote disclosure Web site it charges a $3,000 setup fee, a $12,000 base fee for disclosure for the first fund in the complex, and $1,000 for additional

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contrast, a fund industry trade group estimated, based on a survey of eight fund complexes conducted on its behalf by a third-party, that proxy voting record disclosure would cost approximately $3,380 per fund in start-up costs, and $5,530 per year in ongoing costs.[95]

We also note, as discussed above, that we have modified our proposals in three significant ways, in part in response to concerns expressed about costs by commenters. First, the amendments will require disclosure of proxy votes cast in annual reports on Form N–PX, rather than semi-annually on Form N–CSR. Second, we are not adopting the proposed requirement that funds disclose in their annual and semi-annual reports to shareholders votes that were inconsistent with their proxy voting policies and procedures. Third, rather than requiring funds to send their proxy voting records without charge and upon request, we are permitting them to choose to make their records available either upon request or by making available an electronic version on or through their Web sites.

The rules may also impose potential indirect costs on fund managers. Several commenters identified certain indirect costs that they argued were not addressed by the cost-benefit analysis in the Proposing Release. First, commenters argued that depriving funds of confidential voting would subject them to possible retaliatory actions by corporate management of the issuers of portfolio securities, such as restricting access by portfolio managers to corporate personnel.[96] These costs are difficult to quantify. Further, these commenters did not provide any evidence that this retaliatory action has occurred or might occur as a result of proxy vote disclosure. We also note that while it is possible that corporations could retaliate against fund managers if they knew that those fund managers had voted against them in the past, it is also possible that corporations could react by trying to work harder to develop cooperative relationships with fund managers. One additional advantage of the amendments is that they will permit fund managers to demonstrate credibly to management of a portfolio company that they have been willing to vote against the recommendations of corporate management in other cases.

Second, several commenters, including funds, claimed that required disclosure of proxy voting records would politicize the process of proxy voting and thereby impose costs on funds in order to address orchestrated campaigns in the media and elsewhere by special interest groups, which would detract from a fund's ability to concentrate on the management of its portfolio.[97] These commenters did not provide any estimates of the magnitude of these costs, however. Some commenters argued that proxy vote disclosure might lead to certain groups threatening to encourage their members and others to withdraw their investments from a fund complex unless the funds' adviser voted in a certain way.[98] To the extent that this possibility is real, and that fund managers may be pressured by large or influential shareholders to vote as directed, making voting policies and procedures available to investors will mitigate this influence to a large degree. Because of the disclosure requirements we are adopting, shareholders will be able to evaluate how closely fund managers follow their stated proxy voting policies, and to react adversely to fund managers who vote inconsistently with these policies.

VI. Consideration of Burden on Competition; Promotion of Efficiency, Competition, and Capital Formation

Section 23(a)(2) of the Exchange Act requires us, when adopting rules under the Exchange Act, to consider the impact that any new rule would have on competition. Section 23(a)(2) also prohibits us from adopting any rule that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.[99] In addition, Section 2(c) of the Investment Company Act, Section 2(b) of the Securities Act, and Section 3(f) of the Exchange Act require the Commission, when engaging in rulemaking that requires it to consider or determine whether an action is necessary or appropriate in the public interest, to consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation.[100] The Commission has considered these factors.

The amendments requiring disclosure of funds' proxy voting policies and procedures and actual proxy voting records are intended to provide greater transparency for fund shareholders regarding the management of their investments in funds. The amendments may improve efficiency. The enhanced disclosure requirements will provide shareholders with greater access to information regarding the proxy voting policies and decisions of the funds in which they invest, which should promote more efficient allocation of investments by investors and more efficient allocation of assets among competing funds. The amendments may also improve competition, as enhanced disclosure may prompt funds to seek to differentiate themselves based on their proxy voting policies and practices. Finally, the effects of the amendments on capital formation are unclear. Although, as noted above, we believe that the amendments will benefit investors, the magnitude of the effect of the amendments on efficiency, competition, and capital formation is difficult to quantify.

In the Proposing Release, we requested comment on whether the proposed amendments would promote efficiency, competition, and capital formation, or, conversely, would impose a burden on competition. The Commission received several letters addressing the effect of the proposed amendments on efficiency, competition, and capital formation. A number of commenters expressed concern that the required disclosure, particularly the requirements that funds disclose their proxy votes cast and any votes that are inconsistent with their proxy voting policies, may have adverse effects on competition and capital formation among funds. Commenters argued that the amendments would disadvantage funds relative to other institutional investors such as banks and pension funds, because funds would be the only class of investors not allowed to vote confidentially. Further, the commenters argued, depriving funds of confidential voting would subject them to possible retaliatory actions by corporate management of the issuers of portfolio securities, such as restricting access by portfolio managers to corporate personnel. Commenters also argued that requiring funds to disclose their proxy votes would subject them to orchestrated campaigns in the media and elsewhere by special interest groups with social or political agendas different from those of fund shareholders, which would detract from a fund's ability to

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funds after the first fund. Thus, a fund complex with 20 funds would pay $34,000 ($3,000 + $12,000 + (19 × $1,000)), or $1,700 per fund.

[95] ICI Letter, *supra* note 55, at 14–15.

[96] See, *e.g.*, Letter of Richard Mason, General Counsel, Mosaic Funds (Nov. 27, 2002).

[97] *See, e.g.*, Letter of Eric D. Roiter, Senior Vice President and General Counsel, Fidelity Management & Research Co., at 6–7 (Dec. 6, 2002); Letter of Philip L. Kirstein, General Counsel, Merrill Lynch Investment Managers, L.P., at 7 (Dec. 6, 2002).

[98] *See, e.g.*, Jonathan S. Bowater, Paul S. Lowengrub, and James C. Miller III, *The SEC's Proposal to Require Mutual Funds to Publish Proxy Votes*, at 23, *attachment to* Letter of Craig Tyle, General Counsel, Investment Company Institute (Jan. 16, 2003).

[99] 15 U.S.C. 78w(a)(2).

[100] 15 U.S.C. 77(b), 78c(f), and 80a–2(c).

concentrate on the management of its portfolio and ultimately harm fund shareholders. Finally, commenters asserted that the proposed disclosure requirements would impose substantial costs on funds, which would be passed on to their shareholders.

Other commenters, however, argued that proxy voting disclosure would improve competition by allowing investors who wish to consider proxy voting policies and records when deciding between two funds to do so. According to one such commenter, mandating proxy voting disclosure would thereby allow proxy voting policies and records to be fully "valued" by the marketplace.[101] Many commenters also asserted that because funds hold a significant percentage of equity securities, requiring proxy vote disclosure by funds would improve corporate governance and accountability among issuers of portfolio securities, which would benefit investors broadly. With respect to the argument that disclosure would harm funds by "politicizing" the proxy voting process, one commenter argued that to the extent that this meant funds would come under market pressure for behavior that their investors disapprove of, this would be a positive, not a negative, result.[102]

As discussed in more detail in the Cost-Benefit Analysis above, we continue to believe that the proxy vote disclosure required by the amendments will provide several benefits to fund investors. The amendments will provide better information to investors to use in selecting funds, and in determining whether fund managers are adequately maximizing the value of their shares. The amendments may also deter votes motivated by conflicts of interest. In addition, the amendments may provide stronger incentives to fund managers to vote their proxies carefully, which could thereby improve corporate performance and enhance shareholder value. With respect to the commenters' argument that the amendments may disadvantage funds by depriving them of confidential voting, we note that there is no evidence that retaliatory action by portfolio company management has occurred or might occur as a result of proxy vote disclosure, and that it is possible that this disclosure will encourage corporations to work harder to develop cooperative relationships with fund managers. With respect to the argument that disclosure of a fund's proxy voting record may subject it to pressure from special interest groups to vote in a certain manner, we note that to the extent that this possibility is real, making voting policies and procedures available to investors will mitigate this influence to a large degree. With respect to the argument that the proposed disclosure requirements would impose substantial costs on funds, we have modified certain of our proposals to mitigate costs by requiring a fund to file its proxy voting record annually on new Form N–PX rather than semi-annually on Form N–CSR, by eliminating the requirement that a fund disclose its proxy votes (or failures to vote) that are inconsistent with its proxy voting policies and procedures, and by permitting a fund to choose to make available to its shareholders its record of how it voted proxies relating to portfolio securities on or through its Web site or upon request.

[101] Letter of Mercer Bullard, Fund Democracy, LLC (Oct. 21, 2002).

[102] Letter of Richard L. Trumka, Secretary-Treasurer, AFL–CIO, at 4 (Dec. 6, 2002).

VII. Final Regulatory Flexibility Analysis

This Final Regulatory Flexibility Analysis ("FRFA") has been prepared in accordance with 5 U.S.C. 604, and relates to the Commission's rule and form amendments under the Securities Act, the Exchange Act, and the Investment Company Act to require funds to provide disclosure about how they vote proxies of portfolio securities they hold. Under the amendments, a fund will be required to disclose in its registration statement the policies and procedures that it uses to determine how to vote the proxies of portfolio securities. The amendments also require a fund to file with the Commission on new Form N–PX, and to make available to its shareholders, on or through its Web site or upon request, its record of how it voted proxies relating to portfolio securities.

Specifically, a fund will be required to disclose in its statement of additional information ("SAI") its policies and procedures used to determine how to vote proxies of the securities held in its portfolio, and to provide disclosure regarding the availability of its proxy voting record to shareholders.[103] The amendments also require a fund to file with the Commission, in an annual report on Form N–PX, its complete proxy voting record for the most recent twelve-month period ended June 30. The amendments require a fund to include in its annual and semi-annual reports to shareholders disclosure that the fund's proxy voting policies and procedures, are available (i) without charge, upon request from the fund, (ii) on the fund's Web site, if applicable, and (iii) on the SEC Web site. The amendments also require a fund to state in its registration statement and reports to shareholders that its proxy voting record is available (i) without charge, upon request, by calling a specified toll-free (or collect) telephone number; or on or through the fund's Web site at a specified Internet address; or both; and (ii) on the SEC Web site. The Commission prepared an Initial Regulatory Flexibility Analysis ("IRFA") in accordance with 5 U.S.C. 603 in conjunction with the Proposing Release, which was made available to the public. The Proposing Release included the IRFA and solicited comments on it.

[103] Because closed-end funds do not offer their shares continuously, and are therefore generally not required to maintain an updated SAI to meet their obligations under the Securities Act of 1933, they will be required to disclose their proxy voting policies and procedures in their annual reports on Form N–CSR.

A. Reasons for, and Objectives of, Amendments

Proxy voting decisions may play an important role in maximizing the value of a fund's investments for its shareholders. Requiring funds to disclose specific proxy voting information could enable shareholders to make an informed assessment as to whether funds are utilizing proxy voting for the benefit of fund shareholders. We are adopting these amendments because we believe that requiring management investment companies to disclose their proxy policies and procedures as well as voting records will result in greater transparency for fund shareholders regarding the overall management of their investments. We also believe it is possible to achieve this improved disclosure efficiently at minimal cost because of recent advances in technology, such as the Internet.

B. Significant Issues Raised by Public Comment

No comments specifically addressed the IRFA. However, a few commenters asserted that the proposed amendments that would require disclosure of a fund's proxy voting record would have a negative impact on small entities.[104] These commenters noted that the loss of confidential voting that would result from the disclosure of proxy votes would raise the risk that portfolio company management might retaliate against a fund, and that this risk of retaliation would be disproportionately greater for small funds. One commenter

[104] *See, e.g.*, Letter of Richard Mason, General Counsel, Mosaic Funds (Nov. 27, 2002); ICI Letter, *supra* note 55, at 16.

argued that small funds should not be required to bear the burden and costs of providing proxy voting disclosure, when many much larger institutional investors, such as pension plans, insurance companies, common and collective trust funds, and hedge funds would not be required to do so.[105] On the other hand, an association of "socially responsible" funds commented that some smaller fund companies have been providing proxy voting disclosure for some time, with little cost to their investors.[106]

C. Small Entities Subject to the Rule

For purposes of the Regulatory Flexibility Act, an investment company is a small entity if it, together with other investment companies in the same group of related investment companies, has net assets of $50 million or less as of the end of its most recent fiscal year.[107] Approximately 205 out of 3700 investment companies that will be affected by this rule meet this definition.[108]

D. Reporting, Recordkeeping, and Other Compliance Requirements

The amendments require a fund to disclose in its SAI (and in Form N–CSR, in the case of a closed-end fund) the policies and procedures it uses to determine how to vote proxies for the securities held in its portfolio, and to provide disclosure in its SAI regarding the availability of its proxy voting record to shareholders. The amendments also require a fund to file with the Commission, on Form N–PX, its complete proxy voting record for its most recent twelve-month period ended June 30. Finally, the amendments require a fund to include in its annual and semi-annual reports to shareholders disclosure that a description of the policies and procedures that the fund uses to determine how to vote proxies relating to portfolio securities is available (i) without charge, upon request, by calling a specified toll-free (or collect) telephone number; (ii) on the fund's Web site, if applicable; and (iii) on the SEC Web site. The amendments also require a fund to state in its registration statement and reports to shareholders that its proxy voting record is available (i) without charge, upon request, by calling a specified toll-free (or collect) telephone number; or on or through the fund's Web site at a specified Internet address; or both; and (ii) on the SEC Web site.

The Commission estimates some one-time formatting and ongoing costs and burdens that will be imposed on all funds, but which may have a relatively greater impact on smaller firms. These include the costs related to disclosing proxy voting policies and procedures to fund shareholders; filing proxy voting records with the Commission on Form N–PX; and disclosing voting records through Web site disclosure or upon request. These costs could include expenses for computer time, legal and accounting fees, information technology staff, and additional computer and telephone equipment. However, we believe, based on consultations with a number of fund complexes, including smaller fund complexes, that many investment companies presently collect in-house or outsource the collection of proxy voting information on a basis at least as current as annually and, therefore, that the marginal cost increases for most funds will be minimal.

E. Agency Action To Minimize Effect on Small Entities

The Commission believes at the present time that special compliance or reporting requirements for small entities, or an exemption from coverage for small entities, would not be appropriate or consistent with investor protection. The disclosure amendments will provide shareholders with greater transparency regarding a fund's proxy voting polices and procedures, as well as records of votes cast. Different disclosure requirements for small entities, such as reducing the level of proxy voting disclosure that small entities would have to provide shareholders, may create the risk that those shareholders would not receive sufficient information to make an informed evaluation as to whether the fund's board and its investment adviser are complying with their fiduciary duties to vote proxies of portfolio securities in the best interest of fund shareholders. We believe it is important for the proxy disclosure required by the amendments to be provided to shareholders by all funds, not just funds that are not considered small entities.

We have endeavored through the amendments to minimize the regulatory burden on all funds, including small entities, while meeting our regulatory objectives. Small entities should benefit from the Commission's reasoned approach to the amendments to the same degree as other investment companies. Further clarification, consolidation, or simplification of the amendments for funds that are small entities would be inconsistent with the Commission's concern for investor protection. Finally, we do not consider using performance rather than design standards to be consistent with our statutory mandate of investor protection in the present context.

We note, however, that we have modified our proposals in response to comments, in part to reduce the regulatory burden on funds, including small funds. As adopted, our amendments will require a fund to provide disclosure of its proxy voting record annually on Form N–PX, rather than semi-annually. In addition, we are not adopting the proposed requirement that a fund's annual and semi-annual reports to shareholders include all votes that are inconsistent with the fund's proxy voting policies and procedures. Further, we are modifying our proposed requirement that a fund must send its proxy voting record without charge and upon request, by permitting a fund to make its proxy voting record available on or through its Web site instead.

VIII. Statutory Authority

The Commission is adopting amendments to Forms N–1A, N–2, N–3, and N–CSR pursuant to authority set forth in Sections 5, 6, 7, 10, 19(a), and 28 of the Securities Act [15 U.S.C. 77e, 77f, 77g, 77j, 77s(a), and 77z–3], Sections 10(b), 13, 15(d), 23(a), and 36 of the Exchange Act [15 U.S.C. 78j(b), 78m, 78o(d), 78w(a), and 78mm], and Sections 6(c), 8, 24(a), 30, and 38 of the Investment Company Act [15 U.S.C. 80a–6(c), 80a–8, 80a–24(a), 80a–29, and 80a–37]. The Commission is adopting new rule 30b1–4 and new Form N–PX pursuant to authority set forth in Sections 8, 30, 31, and 38 of the Investment Company Act [15 U.S.C. 80a–8, 80a–29, 80a–30, and 80a–37].

List of Subjects

17 CFR Parts 239 and 249

Reporting and recordkeeping requirements, Securities.

17 CFR Parts 270 and 274

Investment companies, Reporting and recordkeeping requirements, Securities.

Text of Rule and Form Amendments

For the reasons set out in the preamble, the Commission amends Title 17, Chapter II of the Code of Federal Regulations as follows:

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[105] Letter of Richard Mason, General Counsel, Mosaic Funds (Nov. 27, 2002).

[106] Letter of Timothy H. Smith, President and Chair, Social Investment Forum, at 3 (Nov. 11, 2002).

[107] 17 CFR 270.0–10.

[108] This estimate is based on figures compiled by the Commission's staff regarding investment companies registered on Form N–1A, Form N–2, and Form N–3.

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

1. The authority citation for Part 239 continues to read in part as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 77z–2, 77sss, 78c, 78*l*, 78m, 78n, 78o(d), 78u–5, 78w(a), 78*ll*(d), 79e, 79f, 79g, 79j, 79*l*, 79m, 79n, 79q, 79t, 80a–8, 80a–24, 80a–26, 80a–29, 80a–30, and 80a–37, unless otherwise noted.

* * * * *

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

2. The authority citation for Part 249 continues to read in part as follows:

Authority: 15 U.S.C. 78a, *et seq.*, unless otherwise noted.

* * * * *

Section 249.331 is also issued under secs. 3(a), 202, 208, 302, 406, and 407, Pub. L. No. 107–204, 116 Stat. 745.

PART 270—RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940

3. The general authority citation for part 270 continues to read as follows:

Authority: 15 U.S.C. 80a–1 *et seq.*, 80a–34(d), 80a–37, and 80a–39, unless otherwise noted.

* * * * *

4. Section 270.30b1–4 is added to read as follows:

§ 270.30b1–4 Report of proxy voting record.

Every registered management investment company, other than a small business investment company registered on Form N–5 (§§ 239.24 and 274.5 of this chapter), shall file an annual report on Form N–PX (§ 274.129 of this chapter) not later than August 31 of each year, containing the registrant's proxy voting record for the most recent twelve-month period ended June 30.

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

PART 274—FORMS PRESCRIBED UNDER THE INVESTMENT COMPANY ACT OF 1940

5. The authority citation for Part 274 is amended by revising the sectional authority for § 274.128 to read as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 78c(b), 78l, 78m, 78n, 78o(d), 80a–8, 80a–24, 80a–26, and 80a–29, unless otherwise noted.

* * * * *

Section 274.128 is also issued under secs. 3(a), 202, 208, 302, 406, and 407, Pub. L. No. 107–204, 116 Stat. 745.

6. Form N–1A (referenced in §§ 239.15A and 274.11A) is amended by:

a. In Item 13, adding paragraph (f); and

b. In Item 22, adding paragraphs (b)(7) and (8) and (c)(5) and (6).

These additions read as follows:

Note: The text of Form N–1A does not, and these amendments will not, appear in the *Code of Federal Regulations*.

Form N–1A

* * * * *

Item 13. Management of the Fund

* * * * *

(f) *Proxy Voting Policies.* Unless the Fund invests exclusively in non-voting securities, describe the policies and procedures that the Fund uses to determine how to vote proxies relating to portfolio securities, including the procedures that the Fund uses when a vote presents a conflict between the interests of Fund shareholders, on the one hand, and those of the Fund's investment adviser; principal underwriter; or any affiliated person of the Fund, its investment adviser, or its principal underwriter, on the other. Include any policies and procedures of the Fund's investment adviser, or any other third party, that the Fund uses, or that are used on the Fund's behalf, to determine how to vote proxies relating to portfolio securities. Also, state that information regarding how the Fund voted proxies relating to portfolio securities during the most recent 12-month period ended June 30 is available (1) without charge, upon request, by calling a specified toll-free (or collect) telephone number; or on or through the Fund's Web site at a specified Internet address; or both; and (2) on the Commission's Web site at *http://www.sec.gov*.

Instructions.

1. A Fund may satisfy the requirement to provide a description of the policies and procedures that it uses to determine how to vote proxies relating to portfolio securities by including a copy of the policies and procedures themselves.

2. If a Fund discloses that the Fund's proxy voting record is available by calling a toll-free (or collect) telephone number, and the Fund (or financial intermediary through which shares of the Fund may be purchased or sold) receives a request for this information, the Fund (or financial intermediary) must send the information disclosed in the Fund's most recently filed report on Form N–PX, within three business days of receipt of the request, by first-class mail or other means designed to ensure equally prompt delivery.

3. If a Fund discloses that the Fund's proxy voting record is available on or through its Web site, the Fund must make available free of charge the information disclosed in the Fund's most recently filed report on Form N–PX on or through its Web site as soon as reasonably practicable after filing the report with the Commission. The information disclosed in the Fund's most recently filed report on Form N–PX must remain available on or through the Fund's Web site for as long as the Fund remains subject to the requirements of Rule 30b1–4 (17 CFR 270.30b1–4) and discloses that the Fund's proxy voting record is available on or through its Web site.

* * * * *

Item 22. Financial Statements

* * * * *

(b) * * *

(7) A statement that a description of the policies and procedures that the Fund uses to determine how to vote proxies relating to portfolio securities is available (i) without charge, upon request, by calling a specified toll-free (or collect) telephone number; (ii) on the Fund's Web site, if applicable; and (iii) on the Commission's Web site at *http://www.sec.gov*.

Instruction. When a Fund (or financial intermediary through which shares of the Fund may be purchased or sold) receives a request for a description of the policies and procedures that the Fund uses to determine how to vote proxies, the Fund (or financial intermediary) must send the information disclosed in response to Item 13(f) of this Form, within three business days of receipt of the request, by first-class mail or other means designed to ensure equally prompt delivery.

(8) A statement that information regarding how the Fund voted proxies relating to portfolio securities during the most recent 12-month period ended June 30 is available (i) without charge, upon request, by calling a specified toll-free (or collect) telephone number; or on or through the Fund's Web site at a specified Internet address; or both; and (ii) on the Commission's Web site at *http://www.sec.gov*.

Instructions.

1. If a Fund discloses that the Fund's proxy voting record is available by calling a toll-free (or collect) telephone number, and the Fund (or financial intermediary through which shares of the Fund may be purchased or sold) receives a request for this information, the Fund (or financial intermediary) must send the information disclosed in the Fund's most recently filed report on

Form N–PX, within three business days of receipt of the request, by first-class mail or other means designed to ensure equally prompt delivery.

2. If a Fund discloses that the Fund's proxy voting record is available on or through its Web site, the Fund must make available free of charge the information disclosed in the Fund's most recently filed report on Form N–PX on or through its Web site as soon as reasonably practicable after filing the report with the Commission. The information disclosed in the Fund's most recently filed report on Form N–PX must remain available on or through the Fund's Web site for as long as the Fund remains subject to the requirements of Rule 30b1–4 (17 CFR 270.30b1–4) and discloses that the Fund's proxy voting record is available on or through its Web site.

(c) * * *

(5) A statement that a description of the policies and procedures that the Fund uses to determine how to vote proxies relating to portfolio securities is available (i) without charge, upon request, by calling a specified toll-free (or collect) telephone number; (ii) on the Fund's Web site, if applicable; and (iii) on the Commission's Web site at http://www.sec.gov.

Instruction. When a Fund (or financial intermediary through which shares of the Fund may be purchased or sold) receives a request for a description of the policies and procedures that the Fund uses to determine how to vote proxies, the Fund (or financial intermediary) must send the information disclosed in response to Item 13(f) of this Form, within three business days of receipt of the request, by first-class mail or other means designed to ensure equally prompt delivery.

(6) A statement that information regarding how the Fund voted proxies relating to portfolio securities during the most recent 12-month period ended June 30 is available (i) without charge, upon request, by calling a specified toll-free (or collect) telephone number; or on or through the Fund's Web site at a specified Internet address; or both; and (ii) on the Commission's Web site at *http://www.sec.gov.*

Instruction. Instructions 1 and 2 to Item 22(b)(8) also apply to this Item 22(c)(6).

* * * * *

7. Form N–2 (referenced in §§ 239.14 and 274.11a–1) is amended by:

a. In Item 18, adding paragraph 16;

b. In Item 23, removing "and" from the end of Instruction 4.e.;

c. In Item 23, removing the period from the end of Instruction 4.f. and in its place adding a semi-colon;

d. In Item 23, adding Instructions 4.g. and 4.h.;

e. In Item 23, removing "and" from the end of Instruction 5.c.;

f. In Item 23, removing the period from the end of Instruction 5.d. and in its place adding a semi-colon;

g. In Item 23, adding Instruction 5.e and 5.f.;

h. In Item 23, redesignating Instruction 6 as Instruction 7; and

i. In Item 23, adding new Instruction 6.

These additions read as follows:

Note: The text of Form N–2 does not, and these amendments will not, appear in the *Code of Federal Regulations.*

Form N–2

* * * * *

Item 18. Management

* * * * *

16. Unless the Registrant invests exclusively in non-voting securities, describe the policies and procedures that the Registrant uses to determine how to vote proxies relating to portfolio securities, including the procedures that the Registrant uses when a vote presents a conflict between the interests of the Registrant's shareholders, on the one hand, and those of the Registrant's investment adviser; principal underwriter; or any affiliated person (as defined in Section 2(a)(3) of the 1940 Act (15 U.S.C. 80a–2(a)(3)) and the rules thereunder) of the Registrant, its investment adviser, or its principal underwriter, on the other. Include any policies and procedures of the Registrant's investment adviser, or any other third party, that the Registrant uses, or that are used on the Registrant's behalf, to determine how to vote proxies relating to portfolio securities. Also, state that information regarding how the Registrant voted proxies relating to portfolio securities during the most recent 12-month period ended June 30 is available (i) without charge, upon request, by calling a specified toll-free (or collect) telephone number; or on or through the Registrant's Web site at a specified Internet address; or both; and (ii) on the Commission's Web site at *http://www.sec.gov.*

Instructions.

1. A Registrant may satisfy the requirement to provide a description of the policies and procedures that it uses to determine how to vote proxies relating to portfolio securities by including a copy of the policies and procedures themselves.

2. If a Registrant discloses that the Registrant's proxy voting record is available by calling a toll-free (or collect) telephone number, and the Registrant (or financial intermediary through which shares of the Registrant may be purchased or sold) receives a request for this information, the Registrant (or financial intermediary) must send the information disclosed in the Registrant's most recently filed report on Form N–PX, within three business days of receipt of the request, by first-class mail or other means designed to ensure equally prompt delivery.

3. If a Registrant discloses that the Registrant's proxy voting record is available on or through its Web site, the Registrant must make available free of charge the information disclosed in the Registrant's most recently filed report on Form N–PX on or through its Web site as soon as reasonably practicable after filing the report with the Commission. The information disclosed in the Registrant's most recently filed report on Form N–PX must remain available on or through the Registrant's Web site for as long as the Registrant remains subject to the requirements of Rule 30b1–4 under the 1940 Act (17 CFR 270.30b1–4) and discloses that the Registrant's proxy voting record is available on or through its Web site.

* * * * *

Item 23. Financial Statements

* * * * *

Instructions:

* * * * *

4. * * *

g. a statement that a description of the policies and procedures that the Registrant uses to determine how to vote proxies relating to portfolio securities is available (1) without charge, upon request, by calling a specified toll-free (or collect) telephone number; (2) on the Registrant's Web site, if applicable; and (3) on the Commission's Web site at *http://www.sec.gov;* and

h. a statement that information regarding how the Registrant voted proxies relating to portfolio securities during the most recent 12-month period ended June 30 is available (1) without charge, upon request, by calling a specified toll-free (or collect) telephone number; or on or through the Registrant's Web site at a specified Internet address; or both; and (2) on the Commission's Web site at *http://www.sec.gov.*

5. * * *

e. a statement that a description of the policies and procedures that the Registrant uses to determine how to vote

proxies relating to portfolio securities is available (1) without charge, upon request, by calling a specified toll-free (or collect) telephone number; (2) on the Registrant's Web site, if applicable; and (3) on the Commission's Web site at *http://www.sec.gov;* and

f. a statement that information regarding how the Registrant voted proxies relating to portfolio securities during the most recent 12-month period ended June 30 is available (1) without charge, upon request, by calling a specified toll-free (or collect) telephone number; or on or through the Registrant's Web site at a specified Internet address; or both; and (2) on the Commission's Web site at *http://www.sec.gov.*

6. a. When a Registrant (or financial intermediary through which shares of the Registrant may be purchased or sold) receives a request for a description of the policies and procedures that the Registrant uses to determine how to vote proxies, the Registrant (or financial intermediary) must send the information most recently disclosed in response to Item 18.16 of this Form or Item 7 of Form N–CSR within three business days of receipt of the request, by first-class mail or other means designed to ensure equally prompt delivery.

b. If a Registrant discloses that the Registrant's proxy voting record is available by calling a toll-free (or collect) telephone number, and the Registrant (or financial intermediary through which shares of the Registrant may be purchased or sold) receives a request for this information, the Registrant (or financial intermediary) must send the information disclosed in the Registrant's most recently filed report on Form N–PX, within three business days of receipt of the request, by first-class mail or other means designed to ensure equally prompt delivery.

c. If a Registrant discloses that the Registrant's proxy voting record is available on or through its Web site, the Registrant must make available free of charge the information disclosed in the Registrant's most recently filed report on Form N–PX on or through its Web site as soon as reasonably practicable after filing the report with the Commission. The information disclosed in the Registrant's most recently filed report on Form N–PX must remain available on or through the Registrant's Web site for as long as the Registrant remains subject to the requirements of Rule 30b1–4 under the 1940 Act (17 CFR 270.30b1–4) and discloses that the Registrant's proxy voting record is available on or through its Web site.

* * * * *

8. Form N–3 (referenced in §§ 239.17a and 274.11b) is amended by:

a. In Item 20, adding paragraph (o);

b. In Item 27(a), removing "and" from the end of Instruction 4(v);

c. In Item 27(a), removing the period from the end of Instruction 4(vi) and in its place adding a semi-colon;

d. In Item 27(a), adding Instructions 4(vii) and 4(viii);

e. In Item 27(a), removing "and" from the end of Instruction 5(iii);

f. In Item 27(a), removing the period from the end of Instruction 5(iv) and in its place adding a semi-colon;

g. In Item 27(a), adding Instructions 5(v) and 5(vi);

h. In Item 27(a), redesignating Instruction 6 as Instruction 7; and

i. In Item 27(a), adding new Instruction 6.

These additions read as follows:

Note: The text of Form N–3 does not, and these amendments will not, appear in the *Code of Federal Regulations.*

Form N–3

* * * * *

Item 20. Management

* * * * *

(o) Unless the Registrant invests exclusively in non-voting securities, describe the policies and procedures that the Registrant uses to determine how to vote proxies relating to portfolio securities, including the procedures that the Registrant uses when a vote presents a conflict between the interests of the Registrant's contractowners, on the one hand, and those of the Registrant's investment adviser; principal underwriter; or any affiliated person (as defined in Section 2(a)(3) of the 1940 Act (15 U.S.C. 80a–2(a)(3)) and the rules thereunder) of the Registrant, its investment adviser, or its principal underwriter, on the other. Include any policies and procedures of the Registrant's investment adviser, or any other third party, that the Registrant uses, or that are used on the Registrant's behalf, to determine how to vote proxies relating to portfolio securities. Also, state that information regarding how the Registrant voted proxies relating to portfolio securities during the most recent 12-month period ended June 30 is available (1) without charge, upon request, by calling a specified toll-free (or collect) telephone number; or on or through the Registrant's Web site at a specified Internet address; or both; and (2) on the Commission's Web site at *http://www.sec.gov.*

Instructions:

1. A Registrant may satisfy the requirement to provide a description of the policies and procedures that it uses to determine how to vote proxies relating to portfolio securities by including a copy of the policies and procedures themselves.

2. If a Registrant discloses that the Registrant's proxy voting record is available by calling a toll-free (or collect) telephone number, and the Registrant (or financial intermediary through which shares of the Registrant may be purchased or sold) receives a request for this information, the Registrant (or financial intermediary) must send the information disclosed in the Registrant's most recently filed report on Form N–PX, within three business days of receipt of the request, by first-class mail or other means designed to ensure equally prompt delivery.

3. If a Registrant discloses that the Registrant's proxy voting record is available on or through its Web site, the Registrant must make available free of charge the information disclosed in the Registrant's most recently filed report on Form N–PX on or through its Web site as soon as reasonably practicable after filing the report with the Commission. The information disclosed in the Registrant's most recently filed report on Form N–PX must remain available on or through the Registrant's Web site for as long as the Registrant remains subject to the requirements of Rule 30b1–4 under the 1940 Act (17 CFR 270.30b1–4) and discloses that the Registrant's proxy voting record is available on or through its Web site.

* * * * *

Item 27. Financial Statements

(a) * * *

Instructions:

* * * * *

4. * * *

(vii) a statement that a description of the policies and procedures that the Registrant uses to determine how to vote proxies relating to portfolio securities is available (A) without charge, upon request, by calling a specified toll-free (or collect) telephone number; (B) on the Registrant's Web site, if applicable; and (C) on the Commission's Web site at *http://www.sec.gov;* and

(viii) a statement that information regarding how the Registrant voted proxies relating to portfolio securities during the most recent 12-month period ended June 30 is available (A) without charge, upon request, by calling a specified toll-free (or collect) telephone number; or on or through the

Registrant's Web site at a specified Internet address; or both; and (B) on the Commission's Web site at *http://www.sec.gov.*

5. * * *

(v) a statement that a description of the policies and procedures that the Registrant uses to determine how to vote proxies relating to portfolio securities is available (A) without charge, upon request, by calling a specified toll-free (or collect) telephone number; (B) on the Registrant's Web site, if applicable; and (C) on the Commission's Web site at *http://www.sec.gov;* and

(vi) a statement that information regarding how the Registrant voted proxies relating to portfolio securities during the most recent 12-month period ended June 30 is available (A) without charge, upon request, by calling a specified toll-free (or collect) telephone number; or on or through the Registrant's Web site at a specified Internet address; or both; and (B) on the Commission's Web site at *http://www.sec.gov.*

6. (i) When a Registrant (or financial intermediary through which shares of the Registrant may be purchased or sold) receives a request for a description of the policies and procedures that the Registrant uses to determine how to vote proxies, the Registrant (or financial intermediary) must send the information disclosed in response to Item 20(o) of this Form, within three business days of receipt of the request, by first-class mail or other means designed to ensure equally prompt delivery.

(ii) If a Registrant discloses that the Registrant's proxy voting record is available by calling a toll-free (or collect) telephone number, and the Registrant (or financial intermediary through which shares of the Registrant may be purchased or sold) receives a request for this information, the Registrant (or financial intermediary) must send the information disclosed in the Registrant's most recently filed report on Form N–PX, within three business days of receipt of the request, by first-class mail or other means designed to ensure equally prompt delivery.

(iii) If a Registrant discloses that the Registrant's proxy voting record is available on or through its Web site, the Registrant must make available free of charge the information disclosed in the Registrant's most recently filed report on Form N–PX on or through its Web site as soon as reasonably practicable after filing the report with the Commission. The information disclosed in the Registrant's most recently filed report on Form N–PX must remain available on or through the Registrant's Web site for as long as the Registrant remains subject to the requirements of Rule 30b1–4 under the 1940 Act (17 CFR 270.30b1–4) and discloses that the Registrant's proxy voting record is available on or through its Web site.

* * * * *

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

PART 274—FORMS PRESCRIBED UNDER THE INVESTMENT COMPANY ACT OF 1940

9. Form N–CSR (referenced in §§ 249.331 and 274.128) is amended by adding new Item 7 to read as follows:

Note: The text of Form N–CSR does not, and these amendments will not, appear in the *Code of Federal Regulations.*

Form N–CSR

* * * * *

Item 7. Disclosure of Proxy Voting Policies and Procedures for Closed-End Management Investment Companies

A closed-end management investment company that is filing an annual report on this Form N–CSR must, unless it invests exclusively in non-voting securities, describe the policies and procedures that it uses to determine how to vote proxies relating to portfolio securities, including the procedures that the company uses when a vote presents a conflict between the interests of its shareholders, on the one hand, and those of the company's investment adviser; principal underwriter; or any affiliated person (as defined in Section 2(a)(3) of the Investment Company Act of 1940 (15 U.S.C. 80a–2(a)(3)) and the rules thereunder) of the company, its investment adviser, or its principal underwriter, on the other. Include any policies and procedures of the company's investment adviser, or any other third party, that the company uses, or that are used on the company's behalf, to determine how to vote proxies relating to portfolio securities.

Instruction. A company may satisfy the requirement to provide a description of the policies and procedures that it uses to determine how to vote proxies relating to portfolio securities by including a copy of the policies and procedures themselves.

* * * * *

10. Section 274.129 is added to read as follows:

§ 274.129 Form N–PX, annual report of proxy voting record of registered management investment company.

This form shall be used by registered management investment companies, other than small business investment companies registered on Form N–5 (§§ 239.24 and 274.5 of this chapter), for annual reports to be filed not later than August 31 of each year, containing the company's proxy voting record for the most recent twelve-month period ended June 30, pursuant to section 30 of the Investment Company Act of 1940 and § 270.30b1–4 of this chapter.

11. Add Form N–PX (referenced in § 274.129) to read as follows:

Note: The text of Form N–PX will not appear in the *Code of Federal Regulations.*

OMB Approval
OMB Number:
Expires:
Estimated average burden hours per response:

United States Securities and Exchange Commission, Washington, DC 20549

Form N–PX—Annual Report of Proxy Voting Record of Registered Management Investment Company

Investment Company Act file number

_____

(Exact name of registrant as specified in charter)

(Address of principal executive offices) (Zip code)

(Name and address of agent for service)

Registrant's telephone number, including area code:

Date of fiscal year end:

Date of reporting period:

Form N–PX is to be used by a registered management investment company, other than a small business investment company registered on Form N–5 (§§ 239.24 and 274.5 of this chapter), to file reports with the Commission, not later than August 31 of each year, containing the registrant's proxy voting record for the most recent twelve-month period ended June 30, pursuant to section 30 of the Investment Company Act of 1940 and rule 30b1–4 thereunder (17 CFR 270.30b1–4). The Commission may use the information provided on Form N–PX in its regulatory, disclosure review, inspection, and policymaking roles.

A registrant is required to disclose the information specified by Form N–PX, and the Commission will make this information public. A registrant is not

required to respond to the collection of information contained in Form N–PX unless the Form displays a currently valid Office of Management and Budget ("OMB") control number. Please direct comments concerning the accuracy of the information collection burden estimate and any suggestions for reducing the burden to the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. The OMB has reviewed this collection of information under the clearance requirements of 44 U.S.C. § 3507.

General Instructions

A. Rule as to Use of Form N–PX

Form N–PX is to be used for reports pursuant to Section 30 of the Investment Company Act of 1940 (the "Act") and Rule 30b1–4 under the Act (17 CFR 270.30b1–4) by all registered management investment companies, other than small business investment companies registered on Form N–5 (§§ 239.24 and 274.5 of this chapter), to file their complete proxy voting record not later than August 31 of each year for the most recent twelve-month period ended June 30.

B. Application of General Rules and Regulations

The General Rules and Regulations under the Act contain certain general requirements that are applicable to reporting on any form under the Act. These general requirements should be carefully read and observed in the preparation and filing of reports on this form, except that any provision in the form or in these instructions shall be controlling.

C. Preparation of Report

1. This Form is not to be used as a blank form to be filled in, but only as a guide in preparing the report in accordance with Rules 8b–11 (17 CFR 270.8b–11) and 8b–12 (17 CFR 270.8b–12) under the Act. The Commission does not furnish blank copies of this form to be filled in for filing.

2. These general instructions are not to be filed with the report.

D. Incorporation by Reference

No items of this Form shall be answered by incorporating any information by reference.

E. Definitions

Unless the context clearly indicates the contrary, terms used in this Form N–PX have meanings as defined in the Act and the rules and regulations thereunder. Unless otherwise indicated, all references in the form to statutory sections or to rules are sections of the Act and the rules and regulations thereunder.

F. Signature and Filing of Report

1. If the report is filed in paper pursuant to a hardship exemption from electronic filing (see Item 201 *et seq.* of Regulation S–T (17 CFR 232.201 *et seq.*)), eight complete copies of the report shall be filed with the Commission. At least one complete copy of the report filed with the Commission must be manually signed. Copies not manually signed must bear typed or printed signatures.

2.(a) The report must be signed by the registrant, and on behalf of the registrant by its principal executive officer or officers.

(b) The name and title of each person who signs the report shall be typed or printed beneath his or her signature. Attention is directed to Rule 8b–11 under the Act (17 CFR 270.8b–11) concerning manual signatures and signatures pursuant to powers of attorney.

Item 1. Proxy Voting Record

Disclose the following information for each matter relating to a portfolio security considered at any shareholder meeting held during the period covered by the report and with respect to which the registrant was entitled to vote:

(a) The name of the issuer of the portfolio security;

(b) The exchange ticker symbol of the portfolio security;

(c) The Council on Uniform Securities Identification Procedures ("CUSIP") number for the portfolio security;

(d) The shareholder meeting date;

(e) A brief identification of the matter voted on;

(f) Whether the matter was proposed by the issuer or by a security holder;

(g) Whether the registrant cast its vote on the matter;

(h) How the registrant cast its vote (*e.g.*, for or against proposal, or abstain; for or withhold regarding election of directors); and

(i) Whether the registrant cast its vote for or against management.

Instructions

1. In the case of a registrant that offers multiple series of shares, provide the information required by this Item separately for each series. The term "series" means shares offered by a registrant that represent undivided interests in a portfolio of investments and that are preferred over all other series of shares for assets specifically allocated to that series in accordance with Rule 18f–2(a) under the Act (17 CFR 270.18f–2(a)).

2. The exchange ticker symbol or CUSIP number required by paragraph (b) or (c) of this Item may be omitted if it is not available through reasonably practicable means, *e.g.*, in the case of certain securities of foreign issuers.

Signatures

[See General Instruction F]

Pursuant to the requirements of the Investment Company Act of 1940, the registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

(Registrant) _____

By (Signature and Title)* _____

Date _____

* Print the name and title of each signing officer under his or her signature.

Dated: January 31, 2003.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–2951 Filed 2–6–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 275

[Release No. IA–2106; File No. S7–38–02]

RIN 3235–AI65

Proxy Voting by Investment Advisers

AGENCY: Securities and Exchange Commission

ACTION: Final rule.

SUMMARY: The Commission is adopting a new rule and rule amendments under the Investment Advisers Act of 1940 that address an investment adviser's fiduciary obligation to its clients when the adviser has authority to vote their proxies. The new rule requires an investment adviser that exercises voting authority over client proxies to adopt policies and procedures reasonably designed to ensure that the adviser votes proxies in the best interests of clients, to disclose to clients information about those policies and procedures, and to disclose to clients how they may obtain information on how the adviser has voted their proxies. The rule amendments also require advisers to maintain certain records relating to proxy voting. The rule and rule amendments are designed to ensure that advisers vote proxies in the best interest of their clients and provide clients with information about how their proxies are voted.

DATES: *Effective Date:* March 10, 2003.

Compliance Date: Advisers must comply with the new rule and amendments by August 6, 2003. Section III of this Release contains more information on the compliance date.

FOR FURTHER INFORMATION CONTACT: Daniel S. Kahl, Senior Counsel, or Jennifer L. Sawin, Assistant Director, at (202) 942–0719, Office of Investment Adviser Regulation, Division of Investment Management, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0506.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission ("Commission") is adopting new rule 206(4)–6 [17 CFR 275.206(4)–6] and amendments to rule 204–2 [17 CFR 275.204–2] under the Investment Advisers Act of 1940 [15 U.S.C. 80b] ("Advisers Act" or "Act").[1]

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I. Background

Investment advisers registered with us have discretionary authority to manage $19 trillion of assets on behalf of their clients, including large holdings in equity securities. In most cases, clients give these advisers authority to vote proxies relating to equity securities. This enormous voting power gives advisers significant ability collectively, and in many cases individually, to affect the outcome of shareholder votes and influence the governance of corporations. Advisers are thus in a position to significantly affect the future of corporations and, as a result, the future value of corporate securities held by their clients.

The federal securities laws do not specifically address how an adviser must exercise its proxy voting authority for its clients. Under the Advisers Act, however, an adviser is a fiduciary that owes each of its clients duties of care and loyalty with respect to all services undertaken on the client's behalf, including proxy voting.[2] The duty of care requires an adviser with proxy voting authority to monitor corporate events and to vote the proxies.[3] To satisfy its duty of loyalty, the adviser must cast the proxy votes in a manner consistent with the best interest of its client and must not subrogate client interests to its own.

An adviser may have a number of conflicts that can affect how it votes proxies. For example, an adviser (or its affiliate) may manage a pension plan, administer employee benefit plans, or provide brokerage, underwriting, insurance, or banking services to a company whose management is soliciting proxies.[4] Failure to vote in favor of management may harm the adviser's relationship with the company. The adviser may also have business or personal relationships with participants in proxy contests, corporate directors or candidates for directorships. For example, an executive of the adviser may have a spouse or other close relative who serves as a director or executive of a company.[5]

Our concern with these conflicts and how they affect clients of advisers led us to propose, on September 20, 2002, new rule 206(4)–6 and amendments to rule 204–2.[6] The proposals were designed to prevent material conflicts of interest from affecting the manner in which advisers vote clients' proxies. We proposed to require advisers to adopt and implement policies and procedures for voting proxies in the best interest of clients, to describe the procedures to clients, and to tell clients how they may obtain information about how the adviser has actually voted their proxies.

We received several thousand comment letters; nearly all supported adoption of the rule.[7] Commenters, including many advisers and groups representing advisers, agreed that advisers should have proxy voting procedures, and supported clients' right to information on how their proxies are voted. Several, however, urged that we revise the proposed recordkeeping requirements of rule 204–2 to make them less burdensome on advisers. We are today adopting rule 206(4)–6 as proposed, and are adopting amendments to rule 204–2 with certain changes that respond to issues raised by commenters.

II. Discussion

A. Rule 206(4)–6, Proxy Voting

Under rule 206(4)–6, it is a fraudulent, deceptive, or manipulative act, practice or course of business within the meaning of section 206(4) of the Act for an investment adviser to exercise voting authority with respect to client securities, unless (i) the adviser has adopted and implemented written policies and procedures that are reasonably designed to ensure that the adviser votes proxies in the best interest of its clients, (ii) the adviser describes its proxy voting procedures to its clients and provides copies on request, and (iii) the adviser discloses to clients how they may obtain information on how the adviser voted their proxies.[8]

1. Advisers Subject to the Rule

The rule applies, as proposed, to all investment advisers registered with us that exercise proxy voting authority over client securities. While several commenters urged that we create exceptions, none offered persuasive

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[1] Unless otherwise noted, when we refer to rule 204–2 or any paragraph of the rule, we are referring to 17 CFR 275.204–2 of the Code of Federal Regulations in which the rule is published, as amended by this release, and when we refer to rule 206(4)–6 or any paragraph of the rule, we are referring to 17 CFR 275.206(4)–6 of the Code of Federal Regulations as adopted by this release.

[2] *See SEC v. Capital Gains Research Bureau, Inc.*, 375 U.S. 180, 194 (1963) (interpreting section 206 of the Advisers Act [15 U.S.C. 80b–6]).

[3] As we discuss later in this Release, we do not mean to suggest that an adviser that does not exercise every opportunity to vote a proxy on behalf of its clients would thereby violate its fiduciary obligations to those clients under the Act.

[4] The adviser may also have a business relationship not with the company but with a proponent of a proxy proposal that may affect how it casts votes on clients' securities. For example, the adviser may manage money for an employee group.

[5] Whether the adviser's relationships with these other parties creates a material conflict will depend on the facts and circumstances. However, even in the absence of efforts by these parties to persuade the adviser how to vote, the value of the relationship to the adviser can create a material conflict. The Supreme Court has made it clear that the Advisers Act was intended to eliminate or expose advisers' unconscious biases as well as conscious ones. *Capital Gains, supra* note 2, at 191–192.

[6] *Proxy Voting by Investment Advisers*, Investment Advisers Act Release No. 2059 (Sept. 20, 2002) [67 FR 60841 (Sept. 26, 2002)] ("Proposing Release").

[7] The Proposing Release was issued with a companion release proposing amendments that would require mutual funds to disclose policies and procedures they use to vote proxies on their portfolio securities, and to make available to their shareholders the specific proxy votes they cast. *See Disclosure of Proxy Voting Policies and Proxy Voting Records by Registered Management* Investment Companies, Investment Company Act Release No. 25739 (Sept. 20, 2002) [67 FR 60827 (Sept. 26, 2002)] ("Fund Proposing Release"). Commenters submitted ten different types of form letters; five of these (approximately 2800 letters) and a large number of other letters were submitted in response to both the Proposing Release and the Fund Proposing Release. In addition, some letters submitted in response to the Proposing Release also raised points pertaining to the Fund Proposing Release, and vice versa.

[8] Nothing in this rule reduces or alters any fiduciary obligation applicable to any investment adviser (or person associated with any investment adviser).

arguments why an adviser that accepts voting authority ought not be required to have procedures in place to ensure that it meets its fiduciary obligations to clients.[9]

Advisers that have implicit as well as explicit voting authority must comply with rule 206(4)–6. The rule thus applies when the advisory contract is silent but the adviser's voting authority is implied by an overall delegation of discretionary authority.[10] The rule does not apply, however, to advisers that provide clients with advice about voting proxies but do not have authority to vote the proxies.[11]

2. Policies and Procedures

Under rule 206(4)–6, advisers that exercise voting authority with respect to client securities must adopt proxy voting policies and procedures.[12] The policies and procedures must be in writing. They must be reasonably designed to ensure that the adviser votes in the best interest of clients.[13] And they must describe how the adviser addresses material conflicts between its interests and those of its clients with respect to proxy voting.[14] Most commenters supported these requirements, and many advisers informed us that they already had written policies in place.

We did not propose, and are not adopting, specific policies or procedures for advisers. Nor are we, as some commenters requested, providing a list of approved procedures. Investment advisers registered with us are so varied that a "one-size-fits-all" approach is unworkable. By not mandating specific policies and procedures, we leave advisers the flexibility to craft policies and procedures suitable to their businesses and the nature of the conflicts they face. As noted by some commenters, some advisers (including many smaller firms) are unlikely to face any material conflicts of interest, in which case their procedures could be very simple.[15]

An adviser's proxy voting policies and procedures should be designed to enable the firm to resolve material conflicts of interest with its clients before voting their proxies. As we discussed above, these obligations involve both a duty to vote client proxies and a duty to vote them in the best interest of clients.[16]

a. Voting Client Proxies

The duty of care requires an adviser with voting authority to monitor corporate actions and vote client proxies. Therefore, the adviser should have procedures in place designed to ensure that it fulfills these duties.[17] We do not suggest that an adviser that fails to vote every proxy would necessarily violate its fiduciary obligations. There may even be times when refraining from voting a proxy is in the client's best interest, such as when the adviser determines that the cost of voting the proxy exceeds the expected benefit to the client.[18] An adviser may not, however, ignore or be negligent in fulfilling the obligation it has assumed to vote client proxies.[19]

b. Resolving Conflicts of Interest

An adviser's policies and procedures under the rule must also address how the adviser resolves material conflicts of interest with its clients. Some commenters urged us to approve methods that would resolve material conflicts. Clearly, an adviser's policy of disclosing the conflict to clients and obtaining their consents before voting satisfies the requirements of the rule and, when implemented, fulfills the adviser's fiduciary obligations under the Advisers Act.[20] In the absence of client disclosure and consent,[21] we believe that an adviser that has a material conflict of interest with its clients must take other steps designed to ensure, and must be able to demonstrate that those steps resulted in, a decision to vote the proxies that was based on the clients' best interest and was not the product of the conflict.[22]

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[9] We note that, while we are not creating an exception for smaller firms, as some commenters suggested, smaller firms without financial industry affiliates are likely to have few or even no potential conflicts of interest relating to proxy voting, in which case their procedures could be much simpler and compliance with the rule would be commensurately less burdensome.

[10] Several commenters argued that the rule should not apply to advisers that have not received explicit authority to vote proxies. Advisers who believe that the application of the rule to them would be inappropriate could revise their advisory contracts (or make other disclosure to clients) to make explicit their responsibility (or lack of responsibility) for voting proxies.

[11] The Advisers Act's general anti-fraud provisions would, however, continue to require such advisers to disclose any material conflict to the clients receiving the advice.

[12] Rule 206(4)–6(a).

[13] Nothing in the rule prevents an adviser from having different policies and procedures for different clients. Thus, the board of directors of an investment company could adopt and require an investment adviser to use different policies and procedures than the adviser uses with respect to its other clients.

[14] Advisers' proxy voting policies and procedures should address (although the rule does not require) how the adviser will vote proxies (or what factors it will take into consideration) when voting on particular types of matters, such as changes in corporate governance structures, adoption or amendments to compensation plans (including stock options) and matters involving social issues or corporate responsibility. The policies and procedures of an adviser whose advisory activities are limited to investments in investment companies would, of course, address different matters, including, for example, approval of advisory contracts, distribution plans ("12b–1 plans"), and mergers.

[15] Even the smallest firm, however, may from time to time have conflicts of interests with clients. For example, an adviser that is solicited to vote client proxies approving an increase in fees deducted from mutual fund assets pursuant to a 12b–1 plan has a conflict of interest with its clients invested in the fund if the fees are a source of compensation for the adviser.

[16] While the rule allows for flexibility, it does not allow for mere boilerplate. Procedures that merely declare that all proxies will be voted in the best interests of clients would not be sufficient to meet the rule's requirements.

[17] We suggested in the Proposing Release that effective procedures should identify personnel responsible for monitoring corporate actions, those responsible for making voting decisions, and those responsible for ensuring that proxies are submitted timely. Commenters felt that less detail could suffice and asked whether it was necessary for procedures to name individuals. Under the rule, advisers can write procedures that fit their firm. In a firm with few employees, those roles may be self-evident. Large firms, however, may need to clarify which department or group of employees has what responsibility in order to guard against non-compliance.

[18] For example, casting a vote on a foreign security may involve additional costs such as hiring a translator or traveling to the foreign country to vote the security in person.

[19] The scope of an adviser's responsibilities with respect to voting proxies would ordinarily be determined by the adviser's contracts with its clients, the disclosures it has made to its clients, and the investment policies and objectives of its clients. An adviser's fiduciary duties to a client do not necessarily require the adviser to become a "shareholder activist" by, for example, actively engaging in soliciting proxies or supporting or opposing matters before shareholders. As a practical matter, advisers will determine whether to engage in such activism based on its costs and expected benefits to clients. *Cf.* Department of Labor, Interpretive Bulletin Relating to Written Statements of Investment Policy, Including Proxy Voting Guidelines, 29 CFR 2509.94–2 at § 3 (2001).

[20] In this regard, we believe that an adviser to an investment company would satisfy its fiduciary obligations under the Advisers Act if, before voting the proxies, it fully discloses its conflict to the investment company's board of directors or a committee of the board and obtains the board's or committee's consent or direction to vote the proxies.

[21] An adviser seeking a client's consent must provide the client with sufficient information regarding the matter before shareholders and the nature of the adviser's conflict to enable the client to make an informed decision to consent to the adviser's vote. Boilerplate disclosure in a client brochure regarding generalized conflicts would be inadequate.

[22] Courts have taken a similar approach with respect to the business judgment rule afforded directors of corporations. When corporate directors take action notwithstanding their conflict of interest, they lose the deference that they normally receive under the "business judgment rule," and must demonstrate that their corporate action was fair to the corporation and its shareholders. *Cede & Co.* v. *Technicolor, Inc.*, 634 A.2d 345, 361 (Del. 1993). "The rationale for employing the intrinsic fairness standard is that where corporate fiduciaries, because of a conflict, are disabled from

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Advisers today use various means of ensuring that proxy votes are voted in their clients' best interest and not affected by the advisers' conflicts of interest.[23] An adviser that votes securities based on a pre-determined voting policy could demonstrate that its vote was not a product of a conflict of interest if the application of the policy to the matter presented to shareholders involved little discretion on the part of the adviser.[24] Similarly, an adviser could demonstrate that the vote was not a product of a conflict of interest if it voted client securities, in accordance with a pre-determined policy, based upon the recommendations of an independent third party. An adviser could also suggest that the client engage another party to determine how the proxies should be voted, which would relieve the adviser of the responsibility to vote the proxies.[25] Other policies and procedures are also available; their effectiveness (and the effectiveness of any policies and procedures) will turn on how well they insulate the decision on how to vote client proxies from the conflict.

3. Disclose How To Obtain Voting Information

Rule 206(4)–6 requires advisers to disclose to clients how they can obtain information from the adviser on how their securities were voted.[26] Commenters supported advisers' disclosure of actual votes.[27] Many advisers indicated that their clients, particularly institutional clients, do request this information and that the advisers already have procedures in place to facilitate clients' access to this information.

Many investors urged that rule 206(4)–6 require that advisers publicly disclose how they vote their client proxies. In a companion release, we are today adopting rules requiring that investment companies publicly disclose how they vote their proxies.[28] We are requiring public disclosure as a means of informing *fund shareholders* how the fund (or its adviser) voted proxies of the shareholders' fund. Public disclosure is unnecessary for advisers to communicate to each client how the adviser has voted that client's proxies. Moreover, public disclosure of proxy votes by some advisers would reveal client holdings and thus client confidences. We have determined, therefore, not to require advisers to disclose their votes publicly.

4. Describe Policies and Procedures

Rule 206(4)–6 also requires advisers to describe their proxy voting policies and procedures to clients, and upon request, to provide clients with a copy of those policies and procedures.[29] Commenters strongly supported this requirement, which we are adopting as proposed. The description should be a concise summary of the adviser's proxy voting process rather than a reiteration of the adviser's policies and procedures, and should indicate that a copy of the policies and procedures is available upon request. If a client requests a copy of the policies and procedures, the adviser must supply it.

B. Rule 204–2, Recordkeeping

Investment advisers expressed significant concerns with the compliance burdens of the proposed recordkeeping requirements and suggested several improvements. We are adopting the amendments to rule 204–2 with modifications that should substantially reduce those compliance burdens. Under rule 204–2, as amended, advisers must retain (i) their proxy voting policies and procedures; (ii) proxy statements received regarding client securities; (iii) records of votes they cast on behalf of clients; (iv) records of client requests for proxy voting information,[30] and (v) any documents prepared by the adviser that were material to making a decision how to vote, or that memorialized the basis for the decision.[31] In response to suggestions from commenters, the amendments permit an adviser to rely on proxy statements filed on our EDGAR system instead of keeping its own copies, and to rely on proxy statements and records of proxy votes cast by the adviser that are maintained with a third party such as a proxy voting service, provided that the adviser has obtained an undertaking from the third party to provide a copy of the documents promptly upon request.

III. Effective Date

New rule 206(4)–6 and the amendments to rule 204–2 are effective on March 10, 2003. Advisers must comply with the new rule and amendments by August 6, 2003. By this date, advisers subject to the new rule must have adopted and implemented the required proxy voting policies and procedures. Also by this date, advisers must have provided clients with a description of their policies and procedures, and disclosure of how the clients may obtain information from the adviser on how it voted with respect to their securities.

Advisers may choose any means to make this disclosure, provided that it is clear, not "buried" in a longer document, and received by clients by August 6, 2003. For example, an adviser could send clients the disclosure together with a periodic account statement, deliver it in a separate mailing, or include it in its brochure (or Part II of Form ADV). Advisers that use their brochure or Part II to make the disclosure must deliver (not merely offer) the revised brochure to existing clients by August 6, 2003, and should accompany the delivery with a letter identifying the new disclosure.

IV. Cost-Benefit Analysis

A. Background

The Commission is sensitive to the costs and benefits resulting from its rules. While investment advisers typically exercise proxy voting authority

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safeguarding the interests of the stockholders to whom they owe a duty, the Court will furnish compensatory procedural safeguards by imposing upon the fiduciaries an exacting burden of establishing the utmost propriety and fairness of their actions." *Van de Walle* v. *Unimation, Inc.* 1991 Del. Ch. LEXIS 27, at 30 (Mar. 6, 1991).

[23] We believe an adviser that has assumed the responsibility of voting client proxies cannot fulfill its fiduciary responsibilities to its clients by merely refraining from voting the proxies. Such proxies would not be voted in the best interest of the clients.

[24] Of course, the pre-determined policy must be designed to further the interests of clients rather than the adviser. Thus, an adviser could not, consistent with its duty, adopt a pre-determined policy of voting proxies in favor of the management of companies with which it does business. We recognize, however, that in many cases, voting policies are not sufficiently specific to determine how the vote will be cast.

[25] *See, e.g.*, Evergreen Investment Management Company, LLC, SEC Staff No-Action Letter at n. 6 (Feb. 13, 2002) (client mutual fund hired third party to vote proxies in merger contest involving the adviser's parent corporation).

[26] Rule 206(4)–6(b). We expect most advisers will make this disclosure in their written brochure required under rule 204–3 [17 CFR 275.204–3].

[27] The rule does not prescribe a client's right to this information because we do not believe a prescription is necessary. Although a few commenters suggested that the rule should prescribe a right, other commenters including investment advisers agreed with us that a client already has the right to information about how that client's securities were voted. *See* Restatement (Second) of Agency § 381.

[28] *Disclosure of Proxy Voting Policies and Proxy Voting Records by Registered Management Investment Companies*, Investment Company Act Release No. 25922 (Jan. 31, 2003).

[29] Rule 206(4)–6(c).

[30] As adopted, the amendments only require an adviser to keep all *written* requests from clients and any *written* response from the adviser (to either a written or an oral request).

[31] Rule 204–2(c)(2). These records (other than proxy statements on file with our EDGAR system or maintained by a third party and proxy votes maintained by a third party) must be maintained in an easily accessible place for five years, the first two in an appropriate office of the investment adviser. Rule 204–2(e)(1). These are the same retention requirements that apply to most other books and records under rule 204–2.

as part of their discretionary management of client securities, the federal securities laws do not specifically address how advisers must exercise this power. New rule 206(4)–6 is designed to ensure that advisers that have proxy voting authority vote clients' securities in the clients' best interest and provide clients with information on how their securities are voted. In addition, these advisers must keep records that permit the Commission to confirm their compliance with rule 206(4)–6.

Investment advisers registered with us have discretionary authority to manage $19 trillion on behalf of their clients, including large holdings in equity securities. In most cases, clients give these advisers authority to vote proxies relating to equity securities. This enormous voting power gives advisers significant ability collectively, and in many cases individually, to affect the outcome of shareholder votes and influence the governance of corporations. Advisers are thus in a position to significantly affect the future of corporations and, as a result, the future value of corporate securities held by their clients.

Under the Advisers Act, an adviser is a fiduciary that owes each of its clients duties of care and loyalty with respect to all services undertaken on the client's behalf, including proxy voting. The duty of care requires an adviser that has authority to vote its client's proxies to monitor corporate events and to vote the proxies. To satisfy its duty of loyalty, the adviser must cast the proxy votes in a manner consistent with the best interest of its client and must not subrogate client interests to its own.

An adviser may have conflicts that can affect how it votes proxies. For example, the adviser (or its affiliate) may manage a pension plan, administer employee benefit plans, or provide brokerage, underwriting, insurance, or banking services to a company whose management is soliciting proxies. Failure to vote in favor of management may harm the adviser's relationship with the company. The adviser may also have business or personal relationships with other proponents of proxy proposals, participants in proxy contests, corporate directors or candidates for directorships. For example, the adviser may manage money for an employee group, or an executive of the adviser may have a spouse or other close relative who serves as a director or executive of a company. Our concern with these conflicts and how they affect clients of advisers led us to propose, on September 20, 2002, new rule 206(4)–6 and amendments to rule 204–2.[32]

New rule 206(4)–6 is designed to prevent material conflicts of interest from affecting the manner in which advisers vote clients' proxies. The rule requires SEC-registered investment advisers that have authority to vote clients' proxies to adopt written policies and procedures reasonably designed to ensure that the adviser votes proxies in the best interest of its clients, including procedures to address any material conflict that may arise between the interest of the adviser and the clients. The adviser must describe these policies and procedures to clients, provide copies of the policies and procedures to clients upon their request, and disclose to clients how they may obtain information from the adviser about how the adviser has voted their proxies.

The amendments to rule 204–2 under the Advisers Act require SEC-registered investment advisers that vote client proxies to maintain specified records with respect to those clients. These records will permit our examiners to ascertain the advisers' compliance with new rule 206(4)–6.

Based on advisers' filings with us, we estimate that the majority of investment advisers registered with us will be subject to the new rule. SEC-registered advisers are not currently required to submit information to us describing their proxy voting practices. However, according to our records as of September 9, 2002, 6,203 of the 7,687 advisers registered with us manage client assets on a discretionary basis.[33] Because in most instances, advisers with discretionary investment authority are given authority to vote proxies relating to equity securities under management, it is likely that significant numbers of these 6,203 advisers vote proxies on behalf of one or more clients in connection with providing their discretionary asset management services.[34]

The Commission has given consideration to the costs of new rule 206(4)–6 and amendments to rule 204–2, as well as the benefits. In the Proposing Release we requested comment and specific data regarding these costs and benefits. The comments we received were mostly general in nature and are discussed below. We received one comment that included data and estimated the cost of our proposal to be slightly higher than our figure. In light of the changes we are making to the rules as adopted, we believe our original figures accurately estimate the costs of the rule and rule amendments.

B. Benefits

Rule 206(4)–6 will, we believe, provide several important benefits to advisory clients. Requiring advisers to have written proxy voting policies and procedures that address material conflicts of interest will benefit clients by ensuring that their advisers do resolve conflicts in the clients' best interests. Requiring advisers to describe their proxy voting policies and procedures to clients and to furnish copies to clients upon request will benefit clients by allowing them to understand how their advisers vote proxies. Clients will also be in a better position to evaluate whether their advisers' policies and procedures meet their own objectives and expectations. Many individual commented that they do want their advisers' policies and procedures to be available to them. Clients who do not approve of how their adviser votes their proxies may decide to reclaim the responsibility to vote proxies, provide the adviser with instructions on how to vote their proxies, or seek a different adviser whose voting policies they approve. Finally, requiring advisers to disclose to their clients how the clients can obtain information on how the advisers voted their proxies will benefit clients by allowing them to be fully informed about how their shares were voted and to confirm that their advisers are following their voting policies and procedures.

The benefit of codifying these practices through a rule is difficult to quantify, for two reasons. First, commenters confirmed that some advisory clients are already receiving these benefits as a matter of practice. Many advisers commented that they already have proxy voting policies and procedures in place, and that they already provide much of this information to clients. Second, the adviser is an agent and fiduciary of its clients; it already owes them a fiduciary duty to vote proxies in the clients' best interest, and must provide them with information on how their proxies were voted.

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[32] *See supra* note 6.

[33] This estimate is based on information submitted by SEC-registered advisers on Form ADV [17 CFR 279.1]. 6,203 SEC-registered investment advisers reported on Part 1A of their Form ADV that they provide continuous and regular supervisory or management services for client securities portfolios on a discretionary basis.

[34] Part 1A of Form ADV does not require advisers to describe the types of securities for which they hold discretionary investment authority. Some advisers that report having discretionary assets under management may manage only securities for which proxy voting issues do not arise, such as government or other debt obligations.

C. Costs

The Commission anticipates that rule 206(4)–6 and the amendments to rule 204–2 will impose certain costs on advisers that have voting authority over client securities.[35] Advisers that do not yet have proxy voting policies and procedures in place will incur costs in connection with establishing them. Because the rule does not require specific policies and procedures, but permits the adviser flexibility to craft policies and procedures suitable to its business and conflicts, we believe that the costs will very significantly from adviser to adviser based on factors such as size, investment philosophy, and clientele. Moreover, a number of very large advisers—likely the firms that would require the most detailed and complex policies and procedures—commented that they already had proxy voting policies and procedures in operation. Advisers that have established policies and procedures may incur only limited costs in revising them to meet the rule's requirements.

Advisers will also incur costs in preparing descriptions of their voting policies and procedures, furnishing the descriptions to clients (and furnishing copies of the policies and procedures upon request), responding to client requests for actual proxy votes, and keeping records as required by the rule amendments.

Although a number of advisers indicated that their cost to comply with the proposed recordkeeping requirements would be significant, they did not provide specific data. Advisers with relatively few staff indicated that they believed that complying with the recordkeeping requirements would require them to hire an additional employee, while large advisers chiefly commented on the requirement to maintain records that were material to the voting decision. We have narrowed the recordkeeping requirements from the proposal to incorporate several recommendations from commenters. Under the rule amendments as adopted, advisers may retrieve proxy statements from the Commission's EDGAR system rather than maintaining copies, and may rely on a third party to make and keep copies of proxy statements and records of votes. Further, the final rule substantially narrows the requirements for keeping documents material to the adviser's voting decision. We believe that these changes significantly reduce the costs involved.

[35] In connection with estimating the annual aggregate burden of the proposed rule and amendments for purposes of the Paperwork Reduction Act, the Commission staff has estimated that advisory firms subject to the rule will incur staff salary and benefit costs aggregating approximately $5,775,000 to prepare and maintain the documents and records required under the proposal. This is an aggregate estimate, and each firm's individual costs in this regard will vary depending on the nature of the firm's advisory business and clients. *See* Proposing Release at n. 45.

V. Paperwork Reduction Act

As set forth in the Proposing Release, new rule 206(4)–6 and the amendments to rule 204–2 contain "collection of information" requirements within the meaning of the Paperwork Reduction Act of 1995 ("PRA").[36] The titles for the collections of information are "Proxy Voting by Investment Advisers" and "Books and Records to be Maintained by Investment Advisers." The Commission submitted the new collection of information, Proxy Voting by Investment Advisers, to the Office of Management and Budget ("OMB") for review in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11. The collection for information for rule 206(4)–6 has been approved by OMB; and OMB control number is 3235–0571 (expires November 30, 2005). The collection of information for rule 204–2 was previously approved under OMB control number 3235–0278 (expires November 30, 2005). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

A. Rule 206(4)–6

Under rule 206(4)–6, an investment adviser that exercises voting authority over clients' securities must adopt written proxy voting policies and procedures, describe the procedures to clients, make them available to clients upon request, and inform clients how they can obtain information about how their securities were voted. We requested comment on the recordkeeping burden of rule 206(4)–6, but received no responses.

In the Proposing Release, we estimated that, on average, an adviser would spend 10 hours annually documenting its proxy voting policies and procedures.[37] For purposes of estimating the number of advisers that would be affected by the new rule, we assumed that all advisers with discretion to manage clients' assets also had discretion to vote clients' securities and would thus be subject to the rule.[38] We received no comments on this assumption. According to our records, 6,203 of the 7,687 total advisers registered with the Commission manage client assets on a discretionary basis.[39] We therefore estimated advisers' total burden for establishing proxy voting policies and procedures to be 62,030 hours.[40]

The rule also requires these advisers to describe their proxy voting policies and procedures to clients. The attendant paperwork burden is already incorporated in a collection of information titled "Form ADV," which is currently approved by OMB under control number 3235–0049.[41] In addition, the rule also requires these investment advisers to provide copies of their proxy voting policies and procedures to clients upon request. According to our records, SEC-registered advisers have, on average, 670 clients each; we had estimated that, on average, at least 90 percent of each of these adviser's clients would find the adviser's description of its proxy voting policies sufficiently informative, and ten percent at most (or 67 clients of each adviser on average), would request copies of the full policies and procedures.[42] We had also estimated that it would take an adviser 0.1 hours per client to deliver copies of the policies and procedures, for a total burden of 41,560 hours.[43] Advisers

[36] 44 U.S.C. 3501 to 3520.

[37] In preparing this estimate, we have taken into account the fact that many advisers subject to ERISA (because they manage plan assets) already have proxy voting procedures in place that can serve as the basis of the adviser's procedures under the new rule.

[38] This estimate potentially overstates the number of advisers that would be subject to the rule. Part 1A of ADV does not require investment advisers to describe whether they vote proxies on behalf of clients. Nor does Part 1A require advisers to describe whether the securities they manage are voting securities as opposed to, for example, government or other debt obligations for which proxy voting issues do not arise.

[39] Based on our records of information submitted to us by investment advisers on Part 1A of Form ADV, 6,203 SEC-registered investment advisers report that they provide continuous and regular supervisory or management services for client securities portfolios on a discretionary basis.

[40] $6,203 \times 10 = 62,030$.

[41] In April of 2000, we proposed amendments to Part 2 of Form ADV that would require investment advisers that vote client proxies to describe their proxy voting policies and procedures in their brochure. *Electronic Filing by Investment Advisers; Proposed Amendments to Form ADV*, Investment Advisers Act Release No. 1862 (April 5, 2000) [65 FR 20524 (April 17, 2000)]. An adviser could satisfy the disclosure requirements under new rule 206(4)–6(b) and (c) by describing its policies and procedures in its brochure. *See supra* note 26. In connection with our April 2000 proposal, when we obtained OMB approval for our amendments to the Form ADV collection that would result from the proposed changes to Part 2, we included the paperwork burden of describing any proxy voting policies and procedures in a firm's brochure.

[42] $670 \times 10\% = 67$.

[43] $0.1 \times 67 \times 6,203 = 41,560$. In connection with submitting this collection of information to OMB, the Commission has also prepared an estimate of

commented that very few clients currently request copies of proxy voting policies and procedures. We are not changing our original estimates at this time, because advisers may experience an increase in client requests as a result of the disclosure required under the rule.

We are adopting rule 206(4)–6 as proposed. Accordingly, the estimated annual aggregate burden of collection for rule 206(4)–6 remains 103,590 hours.[44] This collection of information is mandatory, and responses to the disclosure requirements are not kept confidential.

B. Rule 204–2

Rule 204–2 sets forth the requirements for maintaining and preserving specified books and records by investment advisers. The collection of information under rule 204–2 is necessary for the Commission staff to use in its examination and oversight program. This collection of information is mandatory. Responses provided to the Commission in the context of its examination and oversight program are generally kept confidential.[45] The records that an adviser must keep in accordance with rule 204–2 must generally be retained for not less than five years.[46]

As amended, rule 204–2 requires registered investment advisers that vote client proxies to maintain specified records with respect to those clients. The records must be maintained in the manner, and for the period of time, as other books and records under rule 204–2(c). Advisers subject to rule 206(4)–6, Proxy Voting by Investment Advisers, must maintain copies of their proxy voting policies and procedures, as well as copies or records of each proxy statement received with respect to the securities of clients for whom the adviser exercises voting authority. These advisers must also maintain a record of each vote cast, as well as certain records pertaining to the adviser's decision on the vote. In addition, the adviser must maintain a record of each written client request for proxy voting information, and all written responses by the investment adviser to written or oral client requests for proxy voting information.

We received numerous comments on how to minimize the burden of this collection of information. In response to these comments, we have substantially modified the rule amendments. Under the adopted amendments to rule 204–2, advisers may use a third party service provider to maintain proxy statements and proxy votes if the service provider undertakes to provide copies of those records promptly on request. Many advisers, particularly advisers that vote proxies on hundreds or thousands of companies, already retain a proxy voting service that they may be able to rely on under the amendments as adopted. In addition, advisers may rely on the Commission's EDGAR system to meet the requirement that they maintain proxy statements. We have also amended the requirement that advisers maintain client requests for proxy voting information, and the advisers' responses, by requiring only the retention of written client requests and of advisers' written responses to any client request, whether oral or in writing.[47] Finally, we narrowed the requirement that an adviser maintain records of documents material to the adviser's decision on how to vote. The revised rule requires advisers to maintain only documents that they created that were material to making the voting decision.[48]

In the Proposing Release, we estimated that the proposed amendments would increase the average annual collection burden of an adviser subject to the amendments by 20 hours, to 215.34 hours.[49] Based on the comments we received, we continue to estimate that the annual collection burden will increase 20 hours per adviser, on average. Many commenters indicated that the recordkeeping burdens as proposed were significant, which we interpreted to mean in excess of our original estimate of 20 hours. However, we believe 20 hours is an accurate estimate of the burden, in light of the changes we have made to the final version of the recordkeeping amendments. As discussed above in connection with proposed rule 206(4)–6, we estimate that 6,203 advisers exercise voting authority on behalf of clients and will thus be subject to this additional burden, for an annual aggregate burden increase of 124,060.[50] The average annual burden for SEC-registered investment advisers under rule 204–2 would accordingly increase from 195.34 hours to 211.48 hours.[51]

VI. Summary of Final Regulatory Flexibility Analysis

An Initial Regulatory Flexibility Analysis ("IRFA") was published in the Proposing Release. No comments were received on the IRFA. The Commission has prepared a Final Regulatory Flexibility Analysis ("FRFA"), in accordance with 5 U.S.C. 604, regarding rule 206(4)–6 and amendments to rule 204–2. The following summarizes the FRFA.

The FRFA discusses the need for, and objectives of, the new rule and rule amendments that require certain advisers to adopt proxy voting policies and procedures and maintain certain proxy voting records. The rule is designed to ensure that advisers vote clients' securities in the clients' best interest, and that the adviser addresses how it resolves material conflicts of interest.

The FRFA also discusses the effect of the rule and rule amendments on small entities. For purposes of the Advisers Act and the Regulatory Flexibility Act, an investment adviser generally is considered a small entity if it: (i) Has assets under management having a total value of less than $25 million; (ii) did not have total assets of $5 million or more on the last day of its most recent fiscal year; and (iii) does not control, is not controlled by, and is not under common control with another investment adviser that has assets under management of $25 million or more, or any person (other than a natural person) that had $5 million or more on the last

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the aggregate annual cost to affected firms of this annual aggregate hour burden. We anticipate that investment advisers would likely use compliance professionals to document their firms' proxy voting policies and procedures. We estimate the hourly wage for compliance professionals to be $60, including benefits. We anticipate that investment advisers would likely use clerical staff to deliver copies of proxy voting policies in response to clients' requests. We estimate the hourly wage for clerical staff to be $10, including benefits. Accordingly, we estimate the annual aggregate cost of collection to be $4,137,400 ((62,030 hours × $60 per hour) + (41,560 hours × $10 per hour) = $4,137,400).

[44] 62,030 × 41,560 = 103,590.

[45] *See* section 210(b) of the Advisers Act [15 U.S.C. 80b–10(b)].

[46] *See* rule 204–2(e).

[47] "Written" policies and procedures would, of course, include documents in electronic format. *See Use of Electronic Media by Broker-Dealers, Transfer Agents, and Investment Advisers for Delivery Of Information*, Investment Advisers Act Release No. 1562 (May 9, 1996) [61 FR 24643 (May 15, 1996)].

[48] The proposed amendments would have required a record of all oral and a copy of all written communications received and memoranda or similar documents created by the adviser that were material to making a decision on voting client securities.

[49] 195.34 + 20 = 215.34.

[50] 20 × 6,203 = 124,060. In connection with submitting this collection of information to OMB, the Commission also prepared an estimate of the aggregate annual cost to affected firms of this annual aggregate hour burden. We anticipated that investment advisers would likely use compliance clerical staff to maintain the records required under the proposed amendments. We estimated the hourly wage for compliance clerical staff to be $13.20, including benefits. Accordingly, we estimated the annual aggregate cost of collection to be $1,637,592 (124,060 hours x $13.20 per hour = $1,637,592).

[51] (1,501,578.5 current hours + 124,060 additional hours = 1,625,638.5 aggregate burden hours) / 7,687 SEC-registered investment advisers = 211.48.

day of its most recent fiscal year.[52] Of the 6,203 advisers the Commission estimates will be affected by the new rule, the FRFA estimates that 138 are likely to be small entities.

As discussed in the FRFA, the rule and rule amendments do not impose new reporting requirements, but do impose recordkeeping requirements on advisers, including small advisers, that exercise voting authority over client securities. The FRFA notes that advisers, generally vote client proxies only when they are managing client assets on a discretionary basis. Small advisers engage in discretionary asset management on a limited scale, and thus should not have to dedicate significant resources to meet the compliance and recordkeeping requirements in connection with their proxy votes.

The FRFA discusses alternatives considered by the Commission in adopting the new rule and rule amendments that might minimize adverse effects on small advisers, including: (i) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (ii) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (iii) the use of performance rather than design standards; and (iv) an exemption from coverage of the rule, or any part thereof, for such small entities.

We believe that the flexibility built into the rule provides for differing compliance requirements for small entities. We do not believe that further clarification, consolidation, or simplification of compliance and reporting requirements for small entities or an exemption from the coverage of the rule for small entities would be consistent with investor protection and the fiduciary duty an adviser owes to its clients. The new rule and rule amendments use performance, rather than design standards, in the sense that that they require policies and procedures to ensure votes are in the best interest of clients, rather than specifying specific elements of the policies and procedures.

The FRFA is available for public inspection in File No. S7–38–02. A copy of the FRFA may be obtained by contacting Daniel S. Kahl, Senior Counsel, Securities and Exchange Commission, 450 Fifth Street NW., Washington DC 20549–0506.

[52] 17 CFR 275.0–7(a).

VII. Consideration of Promotion of Efficiency, Competition, and Capital Formation

Section 202(c) of the Advisers Act requires the Commission, when engaging in rulemaking that requires it to consider or determine whether an action is necessary or appropriate in the public interest, to consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation.[53]

As discussed above, the rule and rule amendments will require investment advisers that have authority to vote clients' securities to adopt and implement written policies and procedures designed to ensure that votes are cast in the clients' best interest.

Although we recognize that compliance programs, including proxy voting programs, may require advisers to expend resources that they could otherwise use in their primary business, we expect that the rules and rule amendments may indirectly increase efficiency in a number of ways. Advisers would be required to carry out their proxy voting in an organized and systematic manner, which may be more efficient than their current approach. Requiring all advisers with voting authority to adopt proxy voting policies and procedures, and meet recordkeeping requirements, may enhance efficiency further by encouraging third parties to create new resources and guidance to which industry participants can refer in establishing, improving, and implementing their proxy voting procedures. In addition, proxy voting policies and procedures may focus advisers on their fiduciary duties in voting client securities, thus increasing efficiency by deterring securities law and common law fraud violations.

Because the rule and rule amendments apply equally to all advisers that exercise voting authority over clients' securities, we do not anticipate that any competitive disadvantages would be created. To the contrary, the rule and rule amendments may encourage competition by raising clients' awareness about advisers' proxy voting and facilitating the differentiation of services offered by various advisers.

We anticipate that the rule and rule amendments may have a limited indirect effect on capital formation. The rule and rule amendments will likely increase investor confidence in investment advisers by making proxy voting more transparent and encouraging increased emphasis on proxy voting by advisers. Because capital formation is influenced by investor confidence in the markets, we believe that the rule could have a positive effect on capital markets.

[53] 15 U.S.C. 80b–2(c). Section 204 of the Advisers Act, which is part of our statutory authority for the proposed recordkeeping amendments for investment advisers under rule 204–2, permits us to prescribe recordkeeping rules that we determine are necessary or appropriate in the public interest or for the protection of investors. Also in this Release, we are adopting new rule 206(4)–6, under other statutory provisions that do not express the same public interest standard, and are not covered by section 202(c). In the interest of comprehensiveness, we nevertheless have included rule 206(4)–6 in our section 202(c) analysis.

VIII. Statutory Authority

We are adopting new rule 206(4)–6 pursuant to our authority set forth in sections 206(4) and 211(a) of the Advisers Act [15 U.S.C. 80b–6(4) and 80b–11(a)]. We are adopting amendments to rule 204–2 pursuant to the authority set forth in sections 204 and 206(4) of the Advisers Act [15 U.S.C. 80b–4 and 80b–6(4)].

Text of Rule and Rule Amendments

List of Subjects in 17 CFR Part 275

Reporting and recordkeeping requirements, Securities.

For the reasons set out in the preamble, Title 17, Chapter II of the Code of Federal Regulations is amended as follows:

PART 275—RULES AND REGULATIONS, INVESTMENT ADVISERS ACT OF 1940

1. The authority citation for Part 275 continues to read in part as follows:

Authority: 15 U.S.C. 80b–2(a)(11)(F), 80b–2(a)(17), 80b–3, 80b–4, 80b–6(4), 80b–6a, 80b–11, unless otherwise noted.

* * * * *

2. Section 275.204–2 is amended by:

a. Redesignating paragraph (c) introductory text, paragraphs (c)(1) and (c)(2) as paragraph (c)(1) introductory text, paragraphs (c)(1)(i) and (c)(1)(ii) respectively;

b. Adding new paragraph (c)(2); and

c. Revising paragraph (e)(1).

The additions and revisions read as follows:

§ 275.204–2 Books and records to be maintained by investment advisers.

* * * * *

(c) * * *

(2) Every investment adviser subject to paragraph (a) of this section that exercises voting authority with respect to client securities shall, with respect to those clients, make and retain the following:

(i) Copies of all policies and procedures required by § 275.206(4)–6.

(ii) A copy of each proxy statement that the investment adviser receives regarding client securities. An investment adviser may satisfy this requirement by relying on a third party to make and retain, on the investment adviser's behalf, a copy of a proxy statement (provided that the adviser has obtained an undertaking from the third party to provide a copy of the proxy statement promptly upon request) or may rely on obtaining a copy of a proxy statement from the Commission's Electronic Data Gathering, Analysis, and Retrieval (EDGAR) system.

(iii) A record of each vote cast by the investment adviser on behalf of a client. An investment adviser may satisfy this requirement by relying on a third party to make and retain, on the investment adviser's behalf, a record of the vote cast (provided that the adviser has obtained an undertaking from the third party to provide a copy of the record promptly upon request).

(iv) A copy of any document created by the adviser that was material to making a decision how to vote proxies on behalf of a client or that memorializes the basis for that decision.

(v) A copy of each written client request for information on how the adviser voted proxies on behalf of the client, and a copy of any written response by the investment adviser to any (written or oral) client request for information on how the adviser voted proxies on behalf of the requesting client.

* * * * *

(e)(1) All books and records required to be made under the provisions of paragraphs (a) to (c)(1)(i), inclusive, and (c)(2) of this section (except for books and records required to be made under the provisions of paragraphs (a)(11) and (a)(16) of this section), shall be maintained and preserved in an easily accessible place for a period of not less than five years from the end of the fiscal year during which the last entry was made on such record, the first two years in an appropriate office of the investment adviser.

* * * * *

3. Section 275.206(4)–6 is added to read as follows:

§ 275.206(4)–6 Proxy voting.

If you are an investment adviser registered or required to be registered under section 203 of the Act (15 U.S.C. 80b–3), it is a fraudulent, deceptive, or manipulative act, practice or course of business within the meaning of section 206(4) of the Act (15 U.S.C. 80b–6(4)), for you to exercise voting authority with respect to client securities, unless you:

(a) Adopt and implement written policies and procedures that are reasonably designed to ensure that you vote client securities in the best interest of clients, which procedures must include how you address material conflicts that may arise between your interests and those of your clients;

(b) Disclose to clients how they may obtain information from you about how you voted with respect to their securities; and

(c) Describe to clients your proxy voting policies and procedures and, upon request, furnish a copy of the policies and procedures to the requesting client.

By the Commission.

Dated: January 31, 2003.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–2952 Filed 2–6–03; 8:45 am]

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Federal Register

Friday,
February 7, 2003

Part IV

Department of Housing and Urban Development

24 CFR Part 234

FHA Approval of Condominium Developments Located in the Commonwealth of Puerto Rico for Mortgage Insurance Under the Section 234(c) Program; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 234

[Docket No. FR–4713–F–02]

RIN 2502–AH80

FHA Approval of Condominium Developments Located in the Commonwealth of Puerto Rico for Mortgage Insurance Under the Section 234(c) Program

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Final rule.

SUMMARY: This final rule amends the Department's regulations with respect to condominium ownership mortgage insurance to provide that the date of recordation for purposes of obtaining Federal Housing Administration (FHA) approval of a condominium development in the Commonwealth of Puerto Rico for mortgage insurance under the section 234(c) program is the date the condominium legal documents are presented to the Commonwealth Registry of the Property. The Department believes that the change will improve homeownership opportunities through increased FHA activity under the section 234(c) program. This final rule follows publication of a proposed rule on August 21, 2002. One comment was received on the rule, and it supported the rule. Accordingly, the Department is adopting the proposed rule without change.

DATES: Effective Date: March 10, 2003.

FOR FURTHER INFORMATION CONTACT: Vance Morris, Office of the Deputy Assistant Secretary for Single Family Housing, Room 9278, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Telephone (202) 708–2121, ext. 2204 (this is not a toll-free number). Hearing-or speech-impaired persons may access this number by calling the Federal Information Relay Service at 1–800–877–8339 (this is a toll-free number).

SUPPLEMENTARY INFORMATION:

I. Background—The August 21, 2002, Proposed Rule

The Department published a proposed rule on August 21, 2002 (67 FR 54316), announcing its intention to amend its regulation that implements section 234(c) of the National Housing Act (12 U.S.C. 1715y(c)) (the Act). Section 234 (c) authorizes the Secretary to insure an individual mortgage on a one-family unit in a multifamily project and an undivided interest in the common areas and facilities that serve the project, provided certain conditions are met. Section 234(k) of the Act provides that, before FHA mortgage insurance can be placed on a unit in a condominium project converted from rental property, at least one year must elapse between the date of conversion and the date application for insurance is made. Conversion is not defined in the Act. HUD's regulation at 24 CFR 234.3 defines conversion as the date on which all documents necessary to create a condominium under state law (and under local law) have been recorded.

Under the Commonwealth of Puerto Rico's inscription law, the legal documents to create a condominium regime are "presented" to the Commonwealth Office of the Property Registry, which closely reviews the documents for sufficiency and accuracy. If the documents are found to be in compliance, or can be corrected to be brought into compliance, the documents then are inscribed or recorded. When the condominium documents are presented, a condominium regime is established. From the time the condominium legal documents are presented for inscription, the developer/proponent is responsible for paying assessments and costs associated with operating and maintaining the project as a condominium. This can result in substantial cost to a developer prior to the project's eligibility for FHA mortgage insurance.

The Department proposed revising the definition of "conversion" in 24 CFR 234.3 to provide that, in the case of Puerto Rico, conversion is defined as the date on which a condominium development's legal documents (which must be in compliance with applicable law) are "presented" for inscription (*i.e.*, recordation) to the Commonwealth Registry under Puerto Rico's inscription process. This revision would allow the Department to approve condominium developments in Puerto Rico for FHA mortgage insurance on individual units within the project on the basis of evidence of presentment of legal documents and the parties' obtaining title insurance on each unit.

II. This Final Rule

This final rule follows publication of the August 21, 2002, rule, which invited public comment on the proposed revision. HUD received one comment on the rule. The commenter supported the proposed revision. The commenter wrote that the rule will relieve Puerto Rican lenders from the heavy burden of holding section 234(c) loans without insurance, while waiting for documents to be recorded to meet the current definition of "conversion." Thus, the change will expedite placement of mortgage loans in the secondary mortgage market. The commenter also noted that the risks to HUD are minimal by adopting this rule. Under the condominium regime, legal documents undergo close scrutiny from lawyers who are experts in condominium law and hired by developers and bankers to protect their individual interests. The commenter added that the rule would expedite the conversion to condominiums of many section 8 rental projects in Puerto Rico. According to the commenter, the rule also will stimulate developers and lenders to build more condominium units in areas with high land prices, thus allowing many families the dream of homeownership.

Accordingly, HUD has decided to adopt the August 21, 2002, proposed rule without change.

III. Findings and Certifications

Environmental Review

A Finding of No Significant Impact with respect to the environment for this rule has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding of No Significant Impact is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of General Counsel, Department of Housing and Urban Development, Room 10276, 451 Seventh Street, SW., Washington, DC 20410.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U. S. C. 1531–1538) establishes requirements for federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. This final rule does not impose a Federal mandate that will result in expenditure by State, local, or tribal governments, within the meaning of the Unfunded Mandates Reform Act of 1995.

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this rule before publication and by approving it certifies that this rule would not have a significant economic impact on a substantial number of small entities. There are no anti-competitive discriminatory aspects of the rule with

regard to small entities, and there are no unusual procedures that would need to be complied with by small entities.

Executive Order 13132, Federalism

Executive Order 13132 (entitled "Federalism") prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial direct compliance costs on State and local governments and is not required by statute, or the rule preempts State law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This final rule does not have federalism implications and does not impose substantial direct compliance costs on State and local governments, nor preempt state law within the meaning of the Executive Order.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance numbers for 24 CFR part 234 are 14.117 and 14.133.

List of Subjects in 24 CFR Part 234

Condominiums, Mortgage insurance, Reporting and recordkeeping requirements.

Accordingly, for the reasons described in the preamble, HUD amends 24 CFR part 234 to read as follows:

PART 234—CONDOMINIUM OWNERSHIP MORTGAGE INSURANCE

1. The authority citation for 24 CFR part 234 continues to read as follows:

Authority: 12 U.S.C. 1715b and 1715y; 42 U.S.C. 3535 (d).

2. The definition of "conversion" in § 234.3 is revised to read as follows:

§ 234.3 Definitions.

* * * * *

Conversion means the date on which all documents necessary to create a condominium under state law (and under local law, where applicable) have been recorded, except that in the case of the Commonwealth of Puerto Rico, *conversion* is defined as the date on which the legal documents (which must be in compliance with applicable law) to create a condominium are presented for inscription (*i.e.*, recordation) to the Commonwealth Office of the Property Registry.

* * * * *

Dated: January 27, 2003.

John C. Weicher,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 03–2972 Filed 2–6–03; 8:45 am]

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Federal Register

Friday,
February 7, 2003

Part V

Department of Education

Submission of Data by State Educational Agencies; Notice

DEPARTMENT OF EDUCATION

Submission of Data by State Educational Agencies

AGENCY: National Center for Education Statistics, Department of Education.

ACTION: Notice of dates of submission of State revenue and expenditure reports for fiscal year 2002 and of revisions to those reports.

SUMMARY: The Secretary of Education announces dates for the submission by State educational agencies (SEAs) of expenditure and revenue data and average daily attendance statistics on ED Form 2447 (the National Public Education Financial Survey) for fiscal year (FY) 2002. The Secretary sets these dates to ensure that data are available to serve as the basis for timely distribution of Federal funds. The U.S. Bureau of the Census is the data collection agent for the Department's National Center for Education Statistics (NCES). The data will be published by NCES and will be used by the Secretary in the calculation of allocations for FY 2004 appropriated funds.

DATES: The date on which submissions will first be accepted is March 17, 2003. The mandatory deadline for the final submission of all data, including any revisions to previously submitted data, is September 2, 2003.

ADDRESSES: SEAs may mail ED Form 2447 to: Bureau of the Census, Attention: Governments Division, Washington, DC 20233–6800.

SEAs may submit data via the World Wide Web using the interactive form at *http://www.census.gov/govs/www/nperfs.html*. If the web form is used, it includes a certification page that can be printed and signed by the authorizing official. This signed page must be mailed within five business days of web form data submission.

Alternatively, SEAs may hand deliver submissions by 4 p.m. (eastern time) to: Governments Division, Bureau of the Census, 8905 Presidential Parkway, Washington Plaza II, Room 508, Upper Marlboro, MD 20772.

If an SEA's submission is received by the Bureau of the Census after September 2, 2003, in order for the submission to be accepted, the SEA must show one of the following as proof that the submission was mailed on or before the mandatory deadline date:

1. A legibly dated U.S. Postal Service postmark.
2. A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.
3. A dated shipping label, invoice, or receipt from a commercial carrier.
4. Any other proof of mailing acceptable to the Secretary.

If the SEA mails ED Form 2447 through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing:

1. A private metered postmark.
2. A mail receipt that is not dated by the U.S. Postal Service.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an SEA should check with its local post office.

FOR FURTHER INFORMATION CONTACT: Mr. Lawrence R. MacDonald, Chief, Bureau of the Census, Attention: Governments Division, Washington, DC 20233–6800. Telephone: (301) 457–1574. If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to: Frank Johnson, National Center for Education Statistics, U.S. Department of Education, Washington, DC 20208–5651. Telephone: (202) 502–7362.

SUPPLEMENTARY INFORMATION: Under the authority of section 153(a)(1)(I) of the Education Sciences Reform Act of 2002 (Pub. L. 107–279), 20 U.S.C. 9543, which authorizes NCES to gather data on the financing of education, NCES collects data annually from SEAs through ED Form 2447. The report from SEAs includes attendance, revenue, and expenditure data from which NCES determines the average State per pupil expenditure (SPPE) for elementary and secondary education, as defined in the Elementary and Secondary Education Act of 1965 (ESEA) (currently 20 U.S.C. 8801(12)).

In addition to utilizing the SPPE data as informative information on the financing of elementary and secondary education, the Secretary uses these data directly in calculating allocations for certain formula grant programs, including title I of the Elementary and Secondary Education Act of 1965 as amended by the No Child Left Behind Act (title I), Impact Aid, and Indian Education. Other programs such as the Educational Technology State Grants (title II, part D), the Education for Homeless Children and Youth Program under title VII of the McKinney-Vento Homeless Assistance Act, the Teacher Quality State Grants (title II, part A) Program, and the Safe and Drug-Free Schools and Communities (title IV, part A) Program make use of SPPE data indirectly because their formulas are based, in whole or in part, on State title I allocations.

In January 2003, the Bureau of the Census, acting as the data collection agent for NCES, will mail to SEAs ED Form 2447 with instructions and request that SEAs submit data to the Bureau of the Census on March 17, 2003, or as soon as possible thereafter. SEAs are urged to submit accurate and complete data on March 17, or as soon as possible thereafter, to facilitate timely processing. Submissions by SEAs to the Bureau of the Census will be checked for accuracy and returned to each SEA for verification. All data, including any revisions, must be submitted to the Bureau of the Census by an SEA not later than September 2, 2003.

Having accurate and consistent information, on time, is critical to an efficient and fair allocation process, as well as the NCES statistical process. To ensure timely distribution of Federal education funds based on the best, most accurate data available, NCES establishes, for allocation purposes, September 2, 2003, as the final date by which ED Form 2447 must be submitted. However, if an SEA submits revised data after the final deadline that results in a lower SPPE figure, its allocations may be adjusted downward or the Department may request the SEA to return funds. SEAs should be aware that all of these data are subject to audit and that, if any inaccuracies are discovered in the audit process, the Department may seek recovery of overpayments for the applicable programs. If an SEA submits revised data after September 2, 2003, the data may also be too late to be included in the final NCES published dataset.

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Authority: 20 U.S.C. 9003(a).

Dated: February 4, 2003.

Grover J. Whitehurst,

Director, Institute of Education Sciences.

[FR Doc. 03–3067 Filed 2–6–03; 8:45 am]

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H.J. Res. 13/P.L. 108–4

Making further continuing appropriations for the fiscal year 2003, and for other purposes. (Jan. 31, 2003; 117 Stat. 8)

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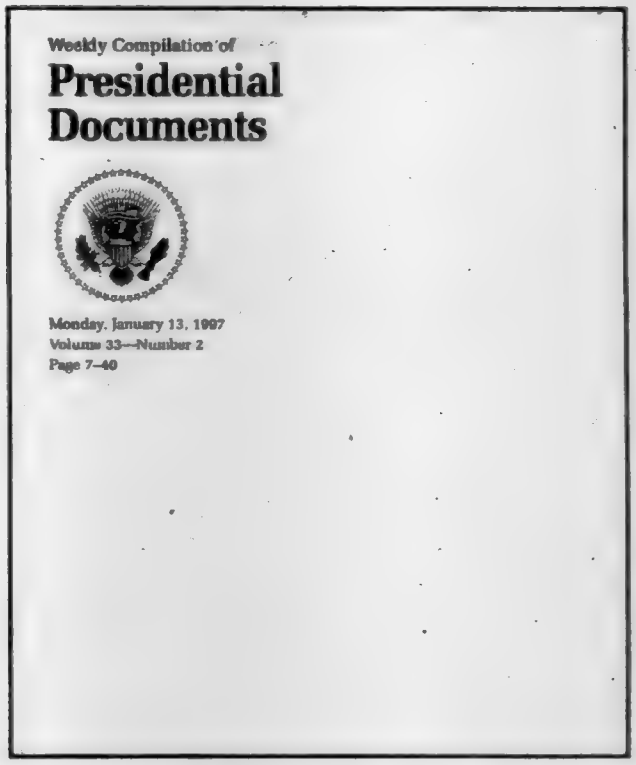

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Rules and Regulations

Federal Register
Vol. 68, No. 27
Monday, February 10, 2003

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 02–042–1]

Witchweed; Regulated Areas

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the witchweed quarantine and regulations by adding and removing areas in North Carolina and South Carolina from the list of regulated areas. These changes affect five counties in North Carolina and two counties in South Carolina. These actions are necessary in order to prevent the artificial spread of witchweed from areas where the weed has been detected and to remove restrictions that are no longer necessary on the interstate movement of regulated articles from areas where witchweed has been eradicated.

DATES: This interim rule was effective February 4, 2003. We will consider all comments that we receive on or before April 11, 2003.

ADDRESSES: You may submit comments by postal mail/commercial delivery or by e-mail. If you use postal mail/commercial delivery, please send four copies of your comment (an original and three copies) to: Docket No. 02–042–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 02–042–1. If you use e-mail, address your comment to *regulations@aphis.usda.gov*. Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and "Docket No. 02–042–1" on the subject line.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at *http://www.aphis.usda.gov/ppd/rad/webrepor.html*.

FOR FURTHER INFORMATION CONTACT: Dr. Alan V. Tasker, National Weed Program Coordinator, Invasive Species and Pest Management, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737–1236; (301) 734–5225.

SUPPLEMENTARY INFORMATION:

Background

Witchweed (*Striga* spp.) is a parasitic plant that feeds off the roots of its host, causing degeneration of corn, sorghum, and other grassy crops. Within the United States, witchweed is only found in parts of North Carolina and South Carolina.

The witchweed quarantine and regulations, contained in 7 CFR 301.80 through 301.80–10 (referred to below as the regulations), quarantine the States of North Carolina and South Carolina and restrict the interstate movement of certain articles from regulated areas in those States for the purpose of preventing the spread of witchweed.

Section 301.80–2(a) provides that the Deputy Administrator will designate as regulated areas each quarantined State, or each portion of a quarantined State, in which witchweed has been found, in which there is reason to believe that witchweed is present, or that it is deemed necessary to regulate because of its proximity to infestation or its inseparability for quarantine enforcement purposes from infested localities. The regulations impose restrictions on the interstate movement of regulated articles from the regulated areas. Regulated areas, which are listed in § 301.80–2a, are designated as either suppressive areas or generally infested areas. Suppressive areas are those portions of the regulated areas where eradication of infestation is undertaken as an objective. Currently, all the regulated areas listed in § 301.80–2a are designated as suppressive areas.

Less than an entire quarantined State will be designated as a regulated area only if the Deputy Administrator is of the opinion that: (1) The State has adopted and is enforcing restrictions on the intrastate movement of the regulated articles that are substantially the same as those imposed on the interstate movement of regulated articles and (2) the designation of less than the entire State as a regulated area will prevent the interstate spread of witchweed.

Changes to the List of Regulated Areas

In this interim rule, we are amending the list of regulated areas in § 301.80–2a by removing areas in Bladen, Columbus, Cumberland, Pender, and Robeson Counties, NC, and Dillon, Horry, and Marion Counties, SC, from the list of suppressive areas. The areas we are removing from Columbus County, NC, and Dillon County, SC, were the only suppressive areas in those counties; therefore, we have removed the entries for Columbus County, NC, and Dillon County, SC, from the list of regulated areas.

We are taking this action because we have determined that witchweed no longer occurs in these areas; therefore, we no longer need to list these areas as suppressive areas for the purpose of preventing the spread of witchweed. This action relieves restrictions on the movement of regulated articles from these areas that are no longer necessary.

In addition to removing areas from the list of regulated areas in § 301.80–2a, we are also adding several areas to that list. Specifically, we are adding 6 farms in Robeson County, NC, 11 farms in Horry County, SC, and 6 farms in Marion County, SC, as suppressive areas. We are taking this action because we have determined that witchweed occurs in these areas; therefore, we need to list these areas as suppressive areas for the purpose of preventing the artificial spread of witchweed. As a result of this action, the restrictions described in § 301.80–3 of the regulations on the interstate movement of regulated articles from suppressive areas will apply to the movement of regulated articles from the 6 farms in North

Carolina and the 17 farms in South Carolina that we are designating as suppressive areas. The entire regulated area is described in the rule portion of this document.

Immediate Action

Immediate action is necessary to update the list of areas in order to: (1) Relieve restrictions on the interstate movement of regulated articles from areas that are no longer infested with witchweed, and (2) prevent the spread of witchweed from newly infested areas into uninfested areas. Under these circumstances, the Administrator has determined that prior notice and opportunity for public comment are contrary to the public interest and that there is good cause under 5 U.S.C. 553 for making this action effective less than 30 days after publication in the **Federal Register**.

We will consider comments we receive during the comment period for this interim rule (*see* **DATES** above). After the comment period closes, we will publish another document in the **Federal Register**. The document will include a discussion of any comments we receive and any amendments we are making to the rule as a result of the comments.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review process required by Executive Order 12866.

We are amending the witchweed quarantine and regulations by adding and removing areas in North Carolina and South Carolina from the list of regulated areas. These changes affect five counties in North Carolina and two counties in South Carolina. These actions are necessary in order to prevent the artificial spread of witchweed from areas where the weed has been detected and to remove restrictions that are no longer necessary on the interstate movement of regulated articles from areas where witchweed has been eradicated.

Preventing the spread of witchweed has been an important goal for decades. Since 1951, witchweed has been found in a total of 38 counties in North Carolina and South Carolina, but currently, only portions of 8 counties are listed as suppressive areas. No areas are listed as generally infested. Witchweed affects U.S. corn, sorghum, and sugar cane producers. During 1999–2001, the average annual value of those crops was $201.5 million in North Carolina and South Carolina. If allowed to spread throughout the United States, witchweed could cost an estimated $1 billion in annual control costs in addition to an estimated 10 percent loss in yields for U.S. corn producers alone. U.S. sorghum and sugar cane producers would likewise bear additional costs. Using these figures, preventing the further spread of witchweed prevents an estimated $36.49 million in costs for North Carolina and South Carolina and an estimated $3.45 billion in costs for the entire United States.

In comparison, the costs of controlling witchweed are relatively low. Estimates for costs in 2002 are $1.32 million. Control activities include the use of herbicides to kill witchweed and its hosts. Producers with active witchweed infestations receive free herbicide applications, which provide the added benefit of controlling other weeds. Hence, the benefits of the witchweed control program clearly outweigh its costs.

The U.S. Small Business Administration (SBA) defines a small agricultural producer as one with annual sales receipts of $750,000 or less. In the suppressive areas of North Carolina, most producers grow corn, soybeans, cotton, tobacco, sweet potatoes, or peanuts. It can be assumed that a similar variety of crops is grown in South Carolina. During 1997–2001, 83 percent of North Carolina's producers had annual sales of $99,999 or less and 17 percent had annual sales of $100,000 or more. It is, therefore, reasonable to assume that the majority of producers potentially affected by the witchweed quarantine are small entities under SBA standards.

Agricultural producers in suppressive areas bear costs associated with the movement of regulated articles into or through non-suppressive areas. For example, sweet potatoes and other crops that are harvested with attached soil must be cleaned in order to remove any witchweed seeds. Additionally, producers moving articles must arrange for their inspection, obtain a certificate or limited permit, or enter into a compliance agreement. Agricultural machinery must also be cleaned prior to movement; however, all costs of machinery cleaning are paid for by the Federal government. Although specific data are unavailable, we estimate that the annual costs borne directly by agricultural producers in witchweed regulated areas are very low.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This interim rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

Accordingly, we are amending 7 CFR part 301 as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

1. The authority citation for part 301 continues to read as follows:

Authority: 7 U.S.C. 7711, 7712, 7714, 7731, 7735, 7751, 7752, 7753, 7754, and 7760; 7 CFR 2.22, 2.80, and 371.3.

Section 301.75–15 also issued under Sec. 204, Title II, Pub. L. 106–113, 113 Stat. 1501A–293; sections 301.75–15 and 301.75–16 also issued under Sec. 203, Title II, Pub. L. 106–224, 114 Stat. 400 (7 U.S.C. 1421 note).

2. Section 301.80–2a is revised to read as follows:

§ 301.80–2a Regulated areas; generally infested and suppressive areas.

The civil divisions and parts of civil divisions described below are designated as witchweed regulated areas within the meaning of this subpart.

North Carolina

(1) *Generally infested areas.* None.

(2) *Suppressive areas.*

Bladen County. That area north of a line beginning at the intersection of the Robeson-Bladen County line and State Highway 211, then east along State Highway 211 Bypass to State Highway 242, then northeast along State Highway 242 to U.S. Highway 701, then north along U.S. Highway 701 to the Cape

Fear River, then southeast along the Cape Fear River to the Bladen-Columbus County line.

The Hardison, H.B., farm located on a field road 0.25 mile northwest of its intersection with State Secondary Road 1719 and 0.2 mile west of its intersection with State Secondary Road 1797.

Cumberland County. That area bounded on the west by the Cape Fear River, then by a line running east and northeast along the Fayetteville city limits to U.S. Highway 301, then northeast along U.S. Highway 301 to Interstate 95, then northeast along Interstate 95 to U.S. Highway 13, then east and northeast along U.S. Highway 13 to the Cumberland-Sampson County line.

The Bullock, Berline, farm located on the north side of State Secondary Road 1722 and 0.2 mile west of its intersection with U.S. Highway 301.

The Lewis, David, farm located on the west side of U.S. Highway 301 and 0.1 mile south of its intersection with State Secondary Road 1802.

The Lovick, Eugene, farm located on the north side of State Secondary Road 1732 and 0.9 mile west of its junction with U.S. Highway 301.

The McLaurin, George, farm located on the north side of State Secondary Road 1722 and 0.4 mile west of its intersection with U.S. Highway 301.

Pender County. The Hardie, George, farm located along a private drive on the southeast side of State Secondary Road 1104, 0.3 mile north of its intersection with State Secondary Road 1103.

The Peterson, Grady, farm located along a private drive on the southeast side of State Secondary Road 1104, 0.3 mile north of its intersection with State Secondary Road 1103.

The Zibelin, John, farm located 0.5 mile east of State Secondary Road 1105, 1.2 miles south of its intersection with State Secondary Road 1104.

Robeson County. That area south of a line beginning at the intersection of State Highway 211 with the Robeson-Bladen County line, then west to its intersection with the Robeson-Hoke County line.

The Biggs, Furman, farm located on the west side of State Secondary Road 1956, 0.3 mile southeast of its intersection with State Secondary Road 1959.

The Blanks, Donnie, farm located on the west side of State Secondary Road 1761, 0.3 mile north of its junction with State Secondary Road 1758.

The Britt, R.B., farm located on both sides of State Secondary Road 1765, 0.2 mile southeast of its junction with State Secondary Road 1758,

The Burnett, C.C., farm located on the north side of State Secondary Road 1757, 0.2 mile northeast of its junction with State Road 1001.

The McMillan, J.P., farm located on both sides of State Secondary Road 1770, 1.25 miles north of its junction with State Highway 211.

The McNair Investment farm located on the north side of State Secondary Road 1764, 1.5 miles west of its intersection with State Secondary Road 1762.

Sampson County. That area south of a line beginning at a point where U.S. Highway 421 intersects the Sampson-Harnett County line, then southeast along U.S. Highway 421 to the Sampson-Pender County line.

South Carolina

(1) *Generally infested areas.* None.

(2) *Suppressive areas.*

Horry County. That area bounded by a line beginning at a point where State Highway 9 intersects the Horry-Marion County line, then east along U.S. Highway 9 to State Secondary Highway 19, then southeast along State Secondary Highway 19 to Lake Swamp, then southwest along Lake Swamp to State Secondary Highway 99, then south and southwest along State Secondary Highway 99 to U.S. Highway 501, then west along U.S. Highway 501 to the Little Pee Dee River, then north along the Little Pee Dee River to the Lumber River, then north along the Lumber River to State Highway 9, the point of beginning.

The Jenerette, Miriam, farm located on the east side of Secondary Road 23, 3.4 miles south of the intersection of State Highway 917 and Secondary Road 23.

The Stanley, Andrew, farm located on the east side of State Highway 90, 0.2 mile east of its junction with an unpaved road known as Andrew Road.

The Livingston, Donnie, farm located on the east side of State Highway 90, 0.5 mile southeast of its junction with the State Secondary Road known as Bombing Range Road and 0.6 mile southeast of its junction with an unpaved road known as Dewitt Road and 0.2 mile west of its junction with an unpaved road known as Sand Hill Lane.

The Lewis, Lula, farm located on west side of State Highway 90, 0.4 mile west of its junction with an unpaved road known as Livingston Lane and 0.1 mile east of its junction with an unpaved road known as Beecher Lane.

The Chestnut, Alberta, farm located on the west side of State Highway 90, 0.3 mile west of its junction with a State Secondary Road known as Pint Circle.

The Stanley, Sam, farm located on the west side of State Highway 90, 0.4 mile west of its junction with a State Secondary Road known as Pint Circle.

The Adams, Lena J., farm located on the west side of State Highway 90, 1.2 miles west of its junction with the State Secondary Road known as Pint Circle.

The James, Norman, farm located west of State Highway 90, 0.4 mile west of its junction with an unpaved road known as Thompson Road.

The Todd, Don, farm located west of State Highway 90, 0.4 mile west of its junction with an unpaved road known as Tilley Swamp Road.

The Livingston, Pittman, farm located on the east side of State Highway 90, 2.2 miles north of its junction with State Highway 22.

The Vereen, Rufus C., farm located east of State Highway 90, 0.4 mile east of its junction with the State Secondary Road known as Old Chesterfield Road.

Marion County: The Brown, Lewis, farm located on the south side of State Highway 76, 1.4 miles south of its junction with State Secondary Road 201.

The Rowell, Molite, farm located on the west side of State Secondary Road 9, 0.2 mile west of its junction with an unpaved road known as Molitz Road.

The Taw Caw Plantation farm located on the south side of State Highway 76, 1.3 miles south of its junction with an unpaved road known as Bubba Road.

The Washington, James, Estate, farm located on the south side of State Highway 76, 0.1 mile south of its junction with an unpaved road known as Samuel Road.

The Hughes, Roosevelt, farm located west of State Secondary 9 and its junction with an unpaved road known as Bishop Road.

The Fowler, Herbert, Estate, farm located east of State Highway 501, 1.4 miles northeast of its junction with an unpaved road known as Bowling Creek Road and 0.1 mile north of its junction with an unpaved road known as Salem Road.

Done in Washington, DC, this 4th day of February 2003 .

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 03–3182 Filed 2–7–03; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–14347; Airspace Docket No. 03–ACE–4]

Modification of Class D Airspace; and Modification of Class E Airspace; Topeka, Philip Billard Municipal Airport, KS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: An examination of controlled airspace for Topeka, Philip Billard Municipal Airport, KS has revealed discrepancies in the Topeka, Forbes Field, KS airport reference point used in the legal descriptions for the Topeka, Philip Billard Municipal Airport, KS Class D airspace and the Class E airspace designated as a surface area. This action corrects those discrepancies by incorporating the current Topeka, Forbes Field, KS airport reference point in the Class D airspace and the Class E airspace designated as a surface area for Topeka, Philip Billard Municipal Airport, KS.

DATES: This direct final rule is effective on 0901 UTC, May 15, 2003.

Comments for inclusion in the Rules Docket must be received on or before March 25, 2003.

ADDRESSES: Send comments on this proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2003–14347/ Airspace Docket No. 03–ACE–4, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov*. You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520A DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2525.

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR 71 modifies Class D airspace and Class E airspace designated as a surface area at Topeka, Philip Billard Municipal Airport, KS. It also brings the legal descriptions of these airspace areas into compliance with FAA Order 7400.2E, Procedures for Handling Airspace Matters. The areas will be depicted on appropriate aeronautical charts.

Class D airspace areas are published in Paragraph 5000 of FAA Order 7400.9K, dated August 30, 2002, and effective September 16, 2002, which is incorporated by reference in 14 CFR 71.1. Class E airspace areas designated as surface areas are published in Paragraph 6002 of the same FAA Order. The Class D and Class E airspace designations listed in this document will be published subsequently in the Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and, therefore, is issuing it as a direct final rule. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objections. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Interested parties are invited to participate in this rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Comments wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. FAA–2003–14347/Airspace Docket No. 03–ACE–4." The postcard will be date/time stamped and returned to the commenter.

Agency Findings

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

Accordingly, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9K, dated August 30, 2002, and effective September 16, 2002, is amended as follows:

Paragraph 5000 Class D Airspace

* * * * *

ACE KS D Topeka, Philip Billard Municipal Airport, KS

Topeka,.Topeka, Philip Billard Municipal Airport, KS
(Lat. 39°04′07″N., long. 95°37′21″W.)
Topeka, Forbes Field, KS
(Lat. 38°57′03″N., long. 95°39′49″W.)

That airspace extending upward from the surface to and including 3,400 feet MSL within a 4-mile radius of Philip Billard Municipal Airport, excluding that airspace within the Topeka, Forbes Field, KS, Class D airspace area. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Director.

* * * * *

Paragraph 6002 Class E Airspace Designated as Surface Areas

* * * * *

ACE KS E2 Topeka, Forbes Field, KS

Topeka, Topeka, Philip Billard Municipal Airport, KS
(Lat. 39°04′07″N., long. 95°37′21″W.)
Topeka, Forbes Field, KS
(Lat. 38°57′03″N., long. 95°39′49″W.)

Within a 4-mile radius of Philip Billard Municipal Airport, excluding that airspace within the Topeka, Forbes Field, KS, Class D and E airspace areas. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter by continuously published in the Airport/Facility Director.

* * * * *

Issued in Kansas City, MO, on January 30, 2003.

Herman J. Lyons, Jr.

Manager, Air Traffic Division, Central Region.

[FR Doc. 03–3266 Filed 2–7–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2002–13946; Airspace Docket No. 02–ASO–29]

Amendment of Class E5 Airspace; Memphis, TN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Class E5 airspace at Memphis, TN. As a result of an evaluation, the Memphis, TN, Class E5 airspace area has been amended to contain the Nondirectional Radio Beacon (NDB) Runway (RWY) 9 Standard Instrument Approach Procedure (SIAP) to Memphis International Airport and the NDB RWY 17 and NDB—B SIAP's to West Memphis Municipal Airport. Additional controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to contain the SIAP's.

DATES: 0901 UTC, May 15, 2003.

FOR FURTHER INFORMATION CONTACT: Walter R. Cochran, Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5627.

SUPPLEMENTARY INFORMATION:

History

On December 24, 2002, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) by amending Class E5 airspace at Memphis, TN, (67 FR 78397). This action provides adequate Class E airspace for IFR operations at Memphis International Airport and West Memphis Municipal Airport. Designations for Class E are published in FAA Order 7400.9K, dated August 30, 2002, and effective September 16, 2002, which is incorporated by reference in 14 CFR part 71.1. The Class E designations listed in this document will be published subsequently in the Order.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) amends Class E5 airspace at Memphis, TN.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR Part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; E.O 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 17.1 of Federal Aviation Administration Order 7400.9K, Airspace Designations and Reporting Points, dated August 30, 2002, and effective September 16, 2002, is amended as follows: Paragraph 6005 Class E Airspace Areas Extending Upward from 700 feet or More Above the Surface of the Earth.

* * * * *

ASO TN E5 Memphis, TN [REVISED]

Memphis International Airport, TN
Lat. 35°02′33″ N, long. 89°58′36″ W
Olive Branch Airport
Lat. 34°58′44″ N, long. 89°47′13″ W
West Memphis Municipal Airport
Lat. 35°08′06″ N, long. 90°14′04″ W
General DeWitt Spain Airport
Lat. 35°12′02″ N, long. 90°03′14″ W
Elvis NDB
Lat. 35°03′41″ N, long. 90°04′18″ W
West Memphis NDB
Lat. 35°08′22″ N, long. 90°13′57″ W

That airspace extending upward from 700 feet above the surface within an 8-mile radius of Memphis International Airport, and within 4 miles north and 8 miles south of the 271° bearing from the Elvis NDB extending from the 8-mile radius to 16 miles west of the Elvis NDB, and within a 7.5-mile radius of Olive Branch Airport, and within a 6.5-mile radius of West Memphis Municipal Airport, and within 4 miles east and 8 west of the 197° from the West Memphis NDB extending from the 6.5-miles radius to 16 miles south of the West Memphis NDB, and within 4 miles east and 8 miles west of the 353° bearing from the West Memphis NDB extending from the 6.5-mile radius to 16 miles north of the West Memphis NDB, and within a 6.4-mile radius of General DeWitt Spain Airport; excluding that airspace within the Millington, TN, Class E airspace area.

* * * * *

Issued in College Park, Georgia, on January 31, 2003.

Walter R. Cochran,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 03–3270 Filed 2–7–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 150

Airport Noise Compatibility Planning

CFR Correction

In Title 14 of the Code of Federal Regulations, Parts 140 to 199, revised as of January 1, 2002, on page 99, in Appendix A to Part 150, equation (3) is revised to read as follows:

Appendix A to Part 150—Noise Exposure Maps

* * * * *

$$L_{dn} = 10 \log_{10}\left[\frac{1}{86400}\left(\int_{0000}^{0700} 10^{[L_A(t)+10]/10}dt + \int_{0700}^{2200} 10^{L_A(t)/10}dt + \int_{2200}^{2400} 10^{[L_A(t)+10]/10}dt\right)\right] \quad (3)$$

* * * * *

[FR Doc. 03–55506 Filed 2–7–03; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 375

[Docket No. RM03–5–000; Order No. 629]

Before Commissioners: Pat Wood, III, Chairman; William L. Massey, and Nora Mead Brownell; Amendment to Delegations of Authority to the Chief Administrative Law Judge

Issued January 29, 2003.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final rule.

SUMMARY: This Final Rule clarifies the authority of the Chief Administrative Law Judge (Chief ALJ) to establish procedural timelines in matters set for hearing. The change is necessary to avoid any confusion over the Chief ALJ's authority to set and extend time frames. It will benefit parties and the public by helping to ensure that matters set for hearing are processed efficiently.

EFFECTIVE DATE: The rule will become effective January 29, 2003.

FOR FURTHER INFORMATION CONTACT: Wilbur Miller, Office of General Counsel, 888 First Street, NE., Washington, DC 20426, (202) 502–8953, *Wilbur.Miller@FERC.gov*.

SUPPLEMENTARY INFORMATION: 1. This final rule clarifies the authority of the Chief Administrative Law Judge (Chief ALJ) to set and extend procedural time standards in matters set for hearing. Currently, the Chief ALJ designates each matter for one of several specified timetables depending on the complexity of the case. The timetables contain deadlines for such matters as hearings, briefing, and the initial decision. The Commission regards these time standards as critical to the efficient processing of matters assigned for hearing. More detailed information about the time standards is available on the Commission's Web site at *www.ferc.gov/legal/oalj/standards.htm*.

2. Some confusion may have arisen over the Chief ALJ's authority to establish time standards for individual cases.[1] This final rule is intended to eliminate any such confusion. Accordingly, it amends the Commission's delegations of authority to the Chief ALJ with respect to matters pending under 18 CFR part 385, subpart E. Specifically, this rule amends Part 375 of the Commission's regulations, which contains the Commission's delegations of authority to its staff, by adding to the Chief ALJ's delegations the authority to set and extend procedural time standards in matters in litigation unless the Commission states otherwise in its order setting a hearing.[2] The times set by the Chief ALJ are mandatory, not advisory, and need not be specifically authorized by the Commission in individual cases.

3. The Commission is issuing this order as a final rule without a period for public comment. Under 5 U.S.C. 553(b), notice and comment procedures are unnecessary where a rulemaking concerns only agency procedure and practice, or where the agency finds that notice and comment is unnecessary. This rule concerns only matters of agency procedure and, in fact, makes no change to existing procedures. It thus will not significantly affect regulated entities or the general public. Therefore, the Commission finds notice and comment procedures to be unnecessary.

4. In addition, in accordance with 5 U.S.C. 553(d)(3), the Commission finds that good cause exists to make this Final Rule effective immediately upon issuance. As stated above, the rule clarifies rather than changes existing procedures. Therefore, no point would be served in making it effective at a later date.

Information Collection Statement

5. The Office of Management and Budget's ("OMB's") regulations require that OMB approve certain information collection requirements imposed by agency rule.[3] This Final Rule contains no information reporting requirements, and is not subject to OMB approval.

Environmental Analysis

6. The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment.[4] Issuance of this Final Rule does not represent a major federal action having a significant adverse effect on the human environment under the Commission's regulations implementing the National Environmental Policy Act.[5] Part 380 of the Commission's regulations lists exemptions to the requirement that an Environmental Analysis or Environmental Impact Statement be done. Included is an exemption for procedural, ministerial or

[1] *See* Midwest Independent System Operator, *et al.*, Docket No. EL02–111–000, (Jan. 14, 2003) (Order Extending Briefing Schedule).

[2] *See* new 18 CFR 375.304(b)(1)(v) (2002).

[3] 5 CFR part 1320.

[4] Order No. 486, Regulations Implementing the National Environmental Policy Act, 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs. Preambles 1986–1990 ¶ 30,783 (1987).

[5] Order No. 486, 52 FR 47897 (Dec. 17, 1987); FERC Stats. & Regs. [Regulations Preambles 1986–1990] ¶ 30,783 (Dec. 10, 1984) (*codified at* 18 CFR part 380).

internal administrative actions.[6] This rulemaking is exempt under that provision.

Regulatory Flexibility Act Certification

7. The Regulatory Flexibility Act of 1980 (RFA)[7] generally requires a description and analysis of final rules that will have significant economic impact on a substantial number of small entities. The Commission certifies that this final rule will not have such an impact. An analysis under the RFA therefore is not required.

Document Availability

8. In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through FERC's Home page (*http://www.ferc.gov*) and in FERC's Public Reference Room during normal business hours (8:30 a.m. to 5 p.m. Eastern time) at 888 First Street, NE., Room 2A, Washington, DC 20426.

9. From FERC's Home page on the Internet, this information is available in the Federal Energy Regulatory Records Information System (FERRIS). The full text of this document is available on FERRIS in PDF and WordPerfect format for viewing, printing, and/or downloading. To access this document in FERRIS, type the docket number excluding the last three digits of this document in the docket number field.

10. User assistance is available for FERRIS and the FERC's website during normal business hours. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659.

Effective Date

11. This final rule is effective immediately upon issuance. Congressional review of Final Rules does not apply to this Final Rule, because the rule concerns agency procedure and practice and will not substantially affect the rights of non-agency parties.

List of Subjects in 18 CFR Part 375

Authority delegations (Government agencies), Seals and insignia, Sunshine Act.

By the Commission.

Magalie R. Salas,

Secretary.

In consideration of the foregoing, the Commission amends Part 375, Chapter I, Title 18, *Code of Federal Regulations*, as follows.

PART 375—THE COMMISSION

1. The authority citation for part 375 continues to read as follows:

Authority: 5 U.S.C. 551–557; 15 U.S.C. 717–717w, 3301–3432; 16 U.S.C. 791–825r, 2601–2645; 42 U.S.C. 7101–7352.

2. Section 375.304 is amended by revising paragraph (b)(1)(iv) and adding paragraph (b)(1)(v) to read as follows:

§ 375.304 Delegations to the Chief Administrative Law Judge

* * * * *

(b) * * *

(1) * * *

(iv) Extend any close or record date ordered by the Commission in a proceeding for good cause, and

(v) Set or extend procedural time standards, including but not limited to hearing, briefing and initial decision dates, including dates set by the Commission, unless the Commission states otherwise in its hearing order.

* * * * *

[FR Doc. 03–3115 Filed 2–7–03; 8:45 am]

BILLING CODE 6716–01–P

[6] 18 CFR 380.4(1) and (5).

[7] 5 U.S.C. 601–612.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 58

Conforming Regulations Regarding Removal of Section 507 of the Federal Food, Drug, and Cosmetic Act

CFR Correction

In Title 21 of the Code of Federal Regulations, Parts 1 to 99, revised as of April 1, 2002, on page 310, in § 58.3, paragraph (e)(9) is removed and reserved.

[FR Doc. 03–55505 Filed 2–7–03; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF STATE

22 CFR Part 123

Licenses for the Export of Defense Articles

CFR Correction

In Title 22 of the Code of Federal Regulations, Parts 1 to 299, revised as of April 1, 2002, on page 447, the authority citation for part 123 is revised to read as follows:

Authority: Secs. 2, 38, and 71, Pub. L. 90–629, 90 Stat. 744 (22 U.S.C. 2752, 2778, 2797); 22 U.S.C. 2753; E.O. 11958, 42 FR 4311; 3 CFR, 1977 Comp. p. 79; 22 U.S.C. 2658; Pub. L. 105–261, 112 Stat. 1920.

[FR Doc. 03–55503 Filed 2–7–03; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Part 100

RIN 1219–AB32

Criteria and Procedures for Proposed Assessment of Civil Penalties

AGENCY: Mine Safety and Health Administration (MSHA), Labor.

ACTION: Direct final rule.

SUMMARY: The Mine Safety and Health Administration (MSHA) is revising its civil penalty assessment amounts to adjust for inflation. The Debt Collection Improvement Act of 1996 (DCIA) requires MSHA to adjust all civil penalties for inflation at least once every four years according to the formula specified in the Federal Civil Penalties Inflation Adjustment Act of 1990 (Inflation Adjustment Act). MSHA intends that this action will maintain the deterrent effect of its civil penalties and encourage compliance with the Federal Mine Safety and Health Act of 1977 (Mine Act) and its regulations. The revised penalties apply to citations and orders issued on or after the effective date, and not to citations or orders pending assessment on the effective date.

DATES: This direct final rule is effective April 11, 2003 without further notice, unless we (MSHA) receive significant adverse comment by March 12, 2003.

ADDRESSES: Clearly identify comments as such and submit them either electronically to *comments@msha.gov*; by facsimile to (202) 693–9441; or by regular mail or hand delivery to MSHA, Office of Standards, Regulations, and Variances, 1100 Wilson Blvd., Room 2313, Arlington, Virginia 22209–3939. Comments are posted for public viewing at *http://www.msha.gov/currentcomments.htm*.

FOR FURTHER INFORMATION CONTACT: Marvin W. Nichols, Director; Office of Standards, Regulations, and Variances, MSHA; Phone: (202) 693–9440; FAX: (202) 693–9441; E-mail: *nichols-marvin@msha.gov*.

SUPPLEMENTARY INFORMATION:

I. Direct Final Rule

The Debt Collection Improvement Act of 1996 requires MSHA to adjust our

civil penalties for inflation at least once every four years. MSHA has determined that this rulemaking is suitable for a direct final rule because we do not expect to receive any significant adverse comments. A significant adverse comment is one that explains why the rule is inappropriate, including challenges to the rule's underlying premise or approach, or why it will be ineffective or unacceptable without a change. In determining whether a comment necessitates withdrawal of this direct final rule, we will consider whether it warrants a substantive response in a notice and comment process. If we receive such comment, we will publish a timely withdrawal of this direct final rule in the **Federal Register**.

II. Rulemaking Background

Sections 105(a) and 110 of Mine Act require us (MSHA) to propose a civil penalty assessment for each violation of the Mine Act or a mandatory safety and health standard promulgated under the Mine Act. The Mine Act originally provided that—

(1) The maximum penalty for each violation would not exceed $10,000;

(2) The maximum penalty for failure to correct a violation cited under § 104(a) within the period permitted for its correction would not exceed $1,000 for each day that the violation continued to exist; and

(3) The maximum penalty for a miner who willfully violates the mandatory safety standards relating to smoking or the carrying of smoking materials would not exceed $250 for each occurrence of such violation.

On May 30, 1978 (43 FR 23514), MSHA promulgated its first regulations relating to civil penalty assessments under the Mine Act. These regulations included a Penalty Conversion Table for regular assessments based on the six criteria enumerated in 30 CFR 100.3(a).

On May 21, 1982 (47 FR 22286), MSHA promulgated a rule that—

(1) Revised its regular assessment Penalty Conversion Table;

(2) Further defined the criteria for issuing special assessments; and

(3) Created a $20 single penalty assessment for those violations that were not reasonably likely to result in reasonably serious injury or illness and which were abated in a timely manner.

Neither the 1978 nor the 1982 rule contained provisions addressing assessment of civil penalties for failing to abate violations of the Mine Act or for smoking or carrying smoking materials because the Mine Act had set these penalty amounts.

In 1990, the Omnibus Budget Reconciliation Act of 1990 (Budget Act), Pub. L. 101–508, amended the Mine Act. Section 3102 of the Budget Act raised the maximum MSHA civil penalty per violation from $10,000 to $50,000; and raised the civil penalty for failure to correct a violation under § 104(a) of the Mine Act from $1,000 to $5,000 per day. The miner smoking penalty remained at $250. Also in 1990, Congress passed the Federal Civil Penalties Inflation Adjustment Act of 1990 (Inflation Adjustment Act), Pub. L. 101–410, amending the Budget Act.

On January 24, 1992 (57 FR 2968), as amended December 21, 1992 (57 FR 60690), MSHA published a final rule which implemented the penalty increases prescribed by the Budget Act and accounted for inflation since 1982. The rule revised the regular assessment Penalty Conversion Table and raised the $20 single penalty assessment to $50.

In 1996, Congress passed the Omnibus Consolidated Rescissions and Appropriations Act of 1996 (OCRAA), Pub. L. 104–134. Chapter 10 of the OCRAA, titled the "Debt Collection Improvement Act of 1996" (DCIA), modified the Inflation Adjustment Act. The DCIA requires each agency to adjust for inflation each civil monetary penalty provided for by law within its jurisdiction at least once every four years. Agencies must make this cost-of-living adjustment using the inflation adjustment formula described under § 5 of the Inflation Adjustment Act. Although the first adjustment was not allowed to exceed 10% of the existing penalty, subsequent adjustments are not subject to this limitation.

On April 22, 1998 (63 FR 20032), MSHA published a final rule increasing civil penalties to comply with the DCIA. To account for inflation since 1992, this rule raised the maximum proposed civil penalty assessment from $50,000 to $55,000, raised the single penalty assessment from $50 to $55, and revised the Penalty Conversion Table. This rule also codified the penalties assessed under §§ 110(b) and 110(g) of the Mine Act into 30 CFR 100, raising the daily penalty for failing to abate violations from $5,000 to $5,500 and raising the penalty for smoking or carrying smoking materials from $250 to $275.

III. Discussion and Summary of the Direct Final Rule

A. General Discussion

In passing the Inflation Adjustment Act, Congress stated its concern that the punitive and deterrent effects of civil penalties erode over time when the penalties fail to keep pace with inflation. This direct final rule makes a cost-of-living adjustment to MSHA's proposed civil penalty assessment amounts in compliance with the Inflation Adjustment Act. Under § 5 of the Inflation Adjustment Act, civil monetary penalties are to be increased by a "cost-of-living" adjustment. The statute defines "cost-of-living" adjustment as—

* * * The percentage * * * by which—

(1) the Consumer Price Index for the month of June of the calendar year preceding the adjustment, exceeds;

(2) the Consumer Price Index for the month of June of the calendar year in which the amount of such civil monetary penalty was last set or adjusted pursuant to law.

The term *Consumer Price Index* (CPI) means "the Consumer Price Index for all-urban consumers published by the Department of Labor."

In determining the current cost-of-living adjustment for its proposed civil penalty assessments, MSHA calculated the following:

538.9.0 (the CPI for June 2002, the calendar year preceding the current adjustment).

488.2 (the CPI for June 1998, the calendar year in which the MSHA civil penalties were last adjusted).

10.4% = (538.9–488.2)/488.2 = rounded inflation adjustment factor = percentage increase.

The Inflation Adjustment Act also included criteria for rounding the cost-of-living adjustment amount as follows:

Any increase * * * shall be rounded to the nearest—

(1) Multiple of $10 in the case of penalties less than or equal to $100;

(2) Multiple of $100 in the case of penalties greater than $100 but less than or equal to $1,000;

(3) multiple of $1,000 in the case of penalties greater than $1,000 but less than or equal to $10,000;

(4) multiple of $5,000 in the case of penalties greater than $10,000 but less than or equal to $100,000;

The Inflation Adjustment Act only requires us to use the cost-of-living adjustment and rounding formula for penalties that were statutorily established by Congress. The Mine Act contains only three such penalties: the civil maximum penalty, the daily maximum penalty, and the miner smoking penalty. Consequently, this direct final rule adjusts our regulatory penalties, those not established by the Mine Act, by 10.4% truncated to the whole dollar.

B. Section-by-Section Analysis

The following discussion explains the direct final rule's effect on existing civil penalty amounts.

Section 100.3 Determination of Penalty Amount; Regular Assessment

This section describes the criteria that MSHA will use to determine the proposed civil penalty assessment for violations of the Mine Act or regulations promulgated under the Mine Act.

Paragraph (a) of this section specifies the maximum per violation proposed civil penalty assessment. This direct final rule increases the maximum civil penalty by $5,000 from $55,000 to $60,000, reflecting the 10.4% adjustment as calculated in accordance with the Inflation Adjustment Act. Because the Mine Act originally required this penalty, we have rounded the increase to $5,000 in accordance with the Inflation Adjustment Act rounding requirements.

Paragraph (g) of this section includes a Penalty Conversion Table that correlates the total of the points assigned for each criterion enumerated in this section with a proposed civil penalty assessment. Current penalties range from $66 to $55,000. The increased civil penalties in the Penalty Conversion Table range from $72 to $60,000 to reflect a 10.4% adjustment factor. Because the Mine Act originally did not require these penalties, with the exception of the maximum civil penalty, we have truncated the adjusted penalty to the nearest whole dollar.

Section 100.4 Determination of Penalty; Single Penalty Assessment

This section pertains to violations that are not reasonably likely to result in reasonably serious injury or illness and which are abated in a timely manner. This direct final rule increases the single penalty assessment by $5 from the existing $55 to $60 to reflect a 10.4% adjustment factor. Because the Mine Act originally did not require this penalty, we have truncated the adjusted penalty to the nearest whole dollar.

Section 100.5 Determination of Penalty; Special Assessment

This section pertains to violations, which are of such a nature or seriousness that we cannot determine an appropriate penalty using the regular assessment formula (§ 100.3) or the single penalty assessment (§ 100.4). MSHA field personnel review certain categories of violations for special assessment. If the violation qualifies, experienced MSHA mine safety and health specialists determine the special assessment penalty based on the facts and circumstances of each case.

Paragraph (c) of this section addresses penalties which may be assessed daily to an operator for failure to correct a violation within the period permitted for its correction. This direct final rule increases the existing maximum daily civil penalty by $1,000 from $5,500 to $6,500 to reflect the 10.4% adjustment factor computed under the Inflation Adjustment Act. Because the Mine Act originally required this penalty, we have rounded the increase to $1,000 in accordance with the Inflation Adjustment Act rounding requirements.

Paragraph (d) of this section addresses penalties for miners who willfully violate mandatory safety standards relating to the use or carrying of smoking materials underground. This direct final rule keeps the miner's smoking penalty at $275. Because the Mine Act originally required this penalty, we have rounded the increase to $0 (the nearest $100) in accordance with the Inflation Adjustment Act rounding requirements.

IV. Executive Order 12866, the Regulatory Flexibility Act, and the Small Business Regulatory Enforcement Fairness Act

In accordance with Executive Order (E.O.) 12866, we have analyzed the estimated costs and benefits associated with the revisions of Part 100—Criteria and Procedures for Proposed Assessment of Civil Penalties. We estimate that the direct final rule will result in increased costs to the mining industry of about $2.5 million annually, which is not an economically significant regulatory action under § 3(f)(1) of E.O. 12866.

In accordance with § 605 of the Regulatory Flexibility Act (RFA), we certify that this direct final rule does not have a significant economic impact on a substantial number of small entities. Under the Small Business Regulatory Enforcement Fairness Act (SBREFA) amendments to the RFA, we must include the factual basis for this certification in the direct final rule. Accordingly, we are publishing a summary of the factual basis for our regulatory flexibility certification statement in the **Federal Register**, as part of this preamble, and are providing a copy to the Small Business Administration (SBA), Office of Advocacy. We also will mail a copy of the direct final rule, including the preamble and certification statement, to mine operators and miners' representatives and post it on our Internet Home Page at *www.msha.gov*.

This direct final rule increases certain civil monetary penalties to account for inflation, as required by the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended. This statute specifies the procedure for calculating the adjusted civil monetary penalties and does not allow us to vary the calculation to minimize the effect on small entities. Moreover, the actual amount of the increase in penalties does not meet the threshold for a significant regulatory action, which is set forth in the RFA. We discuss our quantitative analysis supporting this conclusion below.

Factual basis for certification. Traditionally, MSHA has considered a small mine to be one with fewer than 20 employees. The SBA definition for a small business in the mining industry is one with 500 or fewer employees. For the purpose of this certification, we have analyzed the costs and evaluated the impact of this direct final rule on mines using both MSHA's traditional definition and SBA's definition for a small mine.

We analyzed the impact of this direct final rule separately for the two major sectors of the mining industry: coal mining operations and metal/nonmetal mining operations. We compared the costs of the direct final rule in each sector to the revenues for each sector for each size category analyzed. In each case, the results indicated that the costs were much less than 1% of revenue.

In determining revenues for coal mines, we multiplied coal production data (in tons) for mines in specific size categories (reported to MSHA quarterly) by the average price per ton for coal as determined in the *Coal Industry Annual 2000* (U.S. Department of Energy, Energy Information Administration). We obtained revenue data for metal and nonmetal mines from the *Mineral Commodities Summaries 2001* (U.S. Department of the Interior, Geological Survey).

The following table summarizes the results of our analysis.

COSTS COMPARED TO REVENUES BY MINE SIZE

Mine size (employment)	Number of mines	Estimated cost of rule	Estimated revenue (millions)	Estimated cost/mine	Cost as percent of revenue
Coal Mines					
Small <20	1,078	$720,498	$586	$668	0.123%
Small <=500	1,901	1,270,563	15,093	668	0.008%
Metal and Nonmetal (M/NM) Mines					
Small <20	9,928	1,002,761	8,377	101	0.012%
Small <=500	11,620	1,173,659	36,802	101	0.003%

The full economic analysis, including the factual basis for our regulatory flexibility certification statement, is provided in the Regulatory Economic Analysis (REA) supporting this direct final rule. The REA is available from MSHA, Office of Standards, Regulations, and Variances, 1100 Wilson Blvd., Room 2313, Arlington, Virginia 22209–3939. You can also view and obtain a copy from our Internet Home Page at *www.msha.gov*.

V. Other Regulatory Considerations

A. Paperwork Reduction Act of 1995

This direct final rule contains no information collections subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.

B. Unfunded Mandates Reform Act of 1995

This direct final rule affects about 220 small mines operated by governmental jurisdictions to provide aggregates for the construction and repair of highways and roads. We have determined, for purposes of § 202 of the Unfunded Mandates Reform Act of 1995, that this direct final rule does not include any Federal mandate that may result in increased expenditures by State, local, or tribal governments in the aggregate of more than $100 million, or increased expenditures by the private sector of more than $100 million. We also determined, for purposes of § 203, that this direct final rule does not significantly or uniquely affect these entities.

C. Executive Order 12630: Government Actions and Interference with Constitutionally Protected Property Rights

This direct final rule is not subject to Executive Order 12630 because it does not involve implementation of a policy with takings implications.

D. Executive Order 12988: Civil Justice Reform

We have reviewed Executive Order 12988 and determined that this direct final rule will not unduly burden the Federal court system. We wrote the direct final rule to provide a clear legal standard for affected conduct and have reviewed it carefully to eliminate drafting errors and ambiguities.

E. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

In accordance with Executive Order 13045, we have evaluated the environmental health and safety effects of this rule on children and have determined that it will have no effects on children.

F. Executive Order 13132: Federalism

We have reviewed this rule in accordance with Executive Order 13132 regarding federalism, and have determined that it will not have federalism implications.

G. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments

We certify that the direct final rule does not impose substantial direct compliance costs on Indian tribal governments.

H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

In accordance with Executive Order 13211, we have reviewed the direct final rule for its energy impacts. The direct final rule has no effect on the distribution or use of energy. The only impact of the rule on the supply of energy is through its effect on the price of coal or the production of coal. Impacts of the rule on metal and nonmetal mines do not affect the supply of energy.

The final rule has no direct effects on the production of coal. The rule does not prevent the mining of particular coal deposits, nor does the rule require coal deposits to be mined at a slower pace. The only impact of the rule on coal mine production is indirect, via the cost or price of coal. The estimated annual cost of the final rule for the coal mining industry is about $1.3 million. The annual revenues of the coal mining industry in 2000 were about $17,700 million. The cost of the rule for the coal mining industry is, therefore, equal to about 0.007% of revenues. Even if we were to suppose that the increased cost caused by the rule would be fully reflected in coal prices, the impact would be negligible.

Accordingly, we have determined that the direct final rule has no significant adverse effect on the supply, distribution, or use of energy, and no reasonable alternatives to this action are necessary.

I. Executive Order 13272: Proper Consideration of Small Entities in Agency Rulemaking

In accordance with Executive Order 13272, MSHA has thoroughly reviewed the direct final rule to assess and take appropriate account of its potential impact on small businesses, small governmental jurisdictions, and small organizations. As discussed previously in this preamble, MSHA has determined that the direct final rule does not have a significant economic impact on a substantial number of small entities.

List of Subjects in 30 CFR Part 100

Mine safety and health, Penalties.

Dated: February 4, 2003.

Dave D. Lauriski,

Assistant Secretary for Mine Safety and Health.

For the reasons set out in the preamble, and under the authority of the Federal Mine Safety and Health Act of 1977, chapter I, subchapter P, part 100 of title 30 of the Code of Federal Regulations is amended as follows:

PART 100—CRITERIA AND PROCEDURES FOR PROPOSED ASSESSMENT OF CIVIL PENALTIES

1. The authority citation for part 100 continues to read as follows:

Authority: 30 U.S.C. 815, 820, 957.

2. Section 100.3 is amended by revising the first sentence of the introductory text of paragraph (a) and by revising the Penalty Conversion Table in paragraph (g) to read as follows:

§ 100.3 Determination of penalty amount; regular assessment.

(a) *General.* The operator of any mine in which a violation occurs of a mandatory health or safety standard or who violates any other provision of the Mine Act, shall be assessed a civil penalty of not more than $60,000. * * * * * * * * * *

(g) * * *

PENALTY CONVERSION TABLE

Points	Penalty ($)
20 or fewer	72
21	80
22	87
23	94
24	101
25	109
26	120
27	131
28	142
29	153
30	164
31	178
32	193
33	207
34	221
35	237
36	254
37	273
38	291
39	310
40	327
41	354
42	383
43	409
44	437
45	463
46	500
47	536
48	629
49	749
50	878
51	1,033
52	1,198
53	1,376
54	1,566
55	1,769
56	2,003
57	2,252
58	2,515
59	2,793
60	3,086
61	3,419
62	3,770
63	4,137
64	4,521
65	4,856
66	5,099
67	5,342
68	5,585
69	5,828
70	6,071
71	6,374
72	6,678
73	6,981
74	7,285
75	7,588
76	7,892
77	8,499
78	9,106
79	9,713
80	10,321
81	11,535
82	12,749
83	13,963
84	15,177
85	16,392
86	18,213
87	20,642
88	23,070
89	25,498
90	27,927
91	30,355
92	33,391
93	36,427
94	39,462
95	42,498
96	45,533
97	48,569
98	51,605
99	54,640
100	60,000

* * * * *

3. Section 100.4 is amended by revising paragraph (a) to read as follows:

§ 100.4 Determination of penalty; single penalty assessment.

(a) An assessment of $60 may be imposed as the civil penalty where the violation is not reasonably likely to result in a reasonably serious injury or illness (non-S&S) and is abated within the time set by the inspector.

(1) If the violation is not abated within the time set by the inspector, the violation will not be eligible for the $60 single penalty and will be processed through either the regular assessment provision (§ 100.3) or special assessment provision (§ 100.5).

(2) If the violation meets the criteria for excessive history under paragraph (b) of this section, the violation will not be eligible for the $60 single penalty and will be processed through the regular assessment provision (§ 100.3).

* * * * *

4. Section 100.5 is amended by revising paragraph (c) to read as follows:

§ 100.5 Determination of penalty; special assessment.

* * * * *

(c) Any operator who fails to correct a violation for which a citation has been issued under section 104(a) of the Mine Act within the period permitted for its correction may be assessed a civil penalty of not more than $6,500 for each day during which such failure or violation continues.

* * * * *

[FR Doc. 03–3160 Filed 2–7–03; 8:45 am]

BILLING CODE 4510–43–P

DEPARTMENT OF THE TREASURY

31 CFR Part 103

RIN 1506–AA34

Financial Crimes Enforcement Network; Amendment to the Bank Secrecy Act Regulations—Requirement That Currency Dealers and Exchangers Report Suspicious Transactions

AGENCY: Financial Crimes Enforcement Network (FinCEN), Treasury.

ACTION: Final rule.

SUMMARY: This document contains amendments to the regulations implementing the statute generally referred to as the Bank Secrecy Act. The amendments require currency dealers and exchangers to report suspicious transactions to the Department of the Treasury. Further, the amendments require all money services businesses to which the suspicious transaction reporting rule applies to report transactions involving suspected use of the money services business to facilitate criminal activity. The amendments constitute a further step in the creation of a comprehensive system for the reporting of suspicious transactions by the major categories of financial institutions operating in the United States, as a part of the counter-money laundering program of the Department of the Treasury. This document also contains a technical correction to 31 CFR 103.19, changing the name of the form by which brokers and dealers in securities shall report suspicious transactions.

DATES: *Effective Date:* March 12, 2003.

Applicability Date: The applicability date is August 11, 2003.

FOR FURTHER INFORMATION CONTACT: David M. Vogt, Acting Executive Associate Director, Office of Regulatory Programs, FinCEN, (202) 354–6400; and Judith R. Starr, Chief Counsel, and Christine L. Schuetz, Attorney-Advisor,

Office of Chief Counsel, FinCEN, at (703) 905–3590.

SUPPLEMENTARY INFORMATION:

I. Background

A. Statutory Provisions

The Bank Secrecy Act ("BSA"), Public Law 91–508, as amended, codified at 12 U.S.C. 1829b, 12 U.S.C. 1951–1959, and 31 U.S.C. 5311–5314, 5316–5332, authorizes the Secretary of the Treasury, *inter alia*, to issue regulations requiring financial institutions to keep records and to file reports that are determined to have a high degree of usefulness in criminal, tax, and regulatory matters, or in the conduct of intelligence or counter-intelligence activities to protect against international terrorism, and to implement counter-money laundering programs and compliance procedures.[1] Regulations implementing Title II of the BSA (codified at 31 U.S.C. 5311–5314, 5316–5332) appear at 31 CFR Part 103. The authority of the Secretary to administer the BSA has been delegated to the Director of FinCEN.

With the enactment of 31 U.S.C. 5318(g) in 1992,[2] Congress authorized the Secretary of the Treasury to require financial institutions to report suspicious transactions. As amended by the USA PATRIOT ACT, subsection (g)(1) states generally:

> The Secretary may require any financial institution, and any director, officer, employee, or agent of any financial institution, to report any suspicious transaction relevant to a possible violation of law or regulation.

Subsection (g)(2)(A) provides further that

> If a financial institution or any director, officer, employee, or agent of any financial institution, voluntarily or pursuant to this section or any other authority, reports a suspicious transaction to a government agency—
>
> (i) The financial institution, director, officer, employee, or agent may not notify any person involved in the transaction that the transaction has been reported; and
>
> (ii) No officer or employee of the Federal Government or of any State, local, tribal, or territorial government within the United States, who has any knowledge that such report was made may disclose to any person involved in the transaction that the transaction has been reported, other than as necessary to fulfill the official duties of such officer or employee.

Subsection (g)(3)(A) provides that neither a financial institution, nor any director, officer, employee, or agent of any financial institution

> that makes a voluntary disclosure of any possible violation of law or regulation to a government agency or makes a disclosure pursuant to this subsection or any other authority * * * shall * * * be liable to any person under any law or regulation of the United States, any constitution, law, or regulation of any State or political subdivision of any State, or under any contract or other legally enforceable agreement (including any arbitration agreement), for such disclosure or for any failure to provide notice of such disclosure to the person who is the subject of such disclosure or any other person identified in the disclosure.

Finally, subsection (g)(4) requires the Secretary of the Treasury, "to the extent practicable and appropriate," to designate "a single officer or agency of the United States to whom such reports shall be made."[3] The designated agency is in turn responsible for referring any report of a suspicious transaction to "any appropriate law enforcement, supervisory agency, or United States intelligence agency for use in the conduct of intelligence or counterintelligence activities, including analysis, to protect against international terrorism." *Id.*, at subsection (g)(4)(B).

B. Suspicious Activity Reporting by Money Services Businesses

For purposes of regulations implementing the BSA, a "money services business" includes each agent, agency, branch, or office within the United States of any person (except a bank or person registered with, and regulated or examined by, the Securities and Exchange Commission or the Commodity Futures Trading Commission) doing business in one or more of the following capacities:

- Currency dealer or exchanger;
- Check casher;
- Issuer of traveler's checks, money orders, or stored value;
- Seller or redeemers of traveler's checks, money orders, or stored value;
- Money transmitter; and
- The United States Postal Service (except with regard to the sale of postage or philatelic products).

Persons who do not exchange currency, cash checks, or issue, sell, or redeem traveler's checks, money orders, or stored value in an amount greater than $1,000 to any person on any day in one or more transactions are not money services businesses for purposes of the BSA.[4]

On March 14, 2000, FinCEN published a final rule requiring certain money services business to report suspicious transactions to FinCEN beginning January 1, 2002 (the "MSB SAR rule").[5] The MSB SAR rule as originally promulgated, found at 31 CFR 103.20, required certain money services businesses to file a report of any transaction conducted or attempted by, at, or through the money services business, involving or aggregating at least $2,000 (or $5,000 to the extent that the identification of transactions required to be reported is derived from a review of clearance records of money orders or traveler's checks that have been sold or processed), when the money services business knows, suspects, or has reason to suspect that the transaction falls into one of three reporting categories contained in the rule. The first reporting category, described in 31 CFR 103.20(a)(2)(i), includes transactions involving funds derived from illegal activity or intended or conducted in order to hide or disguise funds or assets derived from illegal activity. The second category, described in 31 CFR 103.20(a)(2)(ii), involves transactions designed to evade the requirements of the BSA. The third category, described in 31 CFR 103.20(a)(2)(iii), involves transactions that appear to have no business purpose or that vary so substantially from normal commercial activities or

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[1] Language expanding the scope of the BSA to intelligence or counter-intelligence activities to protect against international terrorism was added by section 358 of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT ACT) Act of 2001, Public Law 107–56.

[2] 31 U.S.C. 5318(g) was added to the BSA by section 1517 of the Annunzio-Wylie Anti-Money Laundering Act, Title XV of the Housing and Community Development Act of 1992, Public Law 102–550; it was expanded by section 403 of the Money Laundering Suppression Act of 1994, Title IV of the Riegle Community Development and Regulatory Improvement Act of 1994, Public Law 103–325, to require designation of a single government recipient for reports of suspicious transactions.

[3] This designation does not preclude the authority of supervisory agencies to require financial institutions to submit other reports to the same agency or another agency "pursuant to any other applicable provision of law." 31 U.S.C. 5318(g)(4)(C).

[4] *See* 31 CFR 103.11(uu).

[5] *See* 65 FR 13683 (March 14, 2000). Banks, thrift institutions, and credit unions have been subject to the suspicious transaction reporting requirement since April 1, 1996, pursuant to regulations issued concurrently by FinCEN and the federal bank supervisors (the Board of Governors of the Federal Reserve System ("Federal Reserve"), the Office of the Comptroller of the Currency ("OCC"), the Federal Deposit Insurance Corporation ("FDIC"), the Office of Thrift Supervision ("OTS"), and the National Credit Union Administration ("NCUA")). *See* 31 CFR 103.18 (FinCEN); 12 CFR 208.62 (Federal Reserve Board); 12 CFR 21.11 (OCC); 12 CFR 353.3 (FDIC); 12 CFR 563.180 (OTS); and 12 CFR 748.1 (NCUA). On July 1, 2002, FinCEN published a final rule, found at 31 CFR 103.19, requiring broker-dealers to file reports of suspicious transactions beginning after December 30, 2002. *See* 67 FR 44048. On September 26, 2002, FinCEN published a final rule, found at 31 CFR 103.21, requiring casinos and card clubs to file reports of suspicious transactions. *See* 67 FR 60722.

activities appropriate for the particular customer or type of customer as to have no reasonable explanation.

Although the rule does not require the filing of multiple reports of suspicious activity by both a money services businesses and its agent with respect to the same reportable transaction, the obligation to identify and report suspicious transactions rests with each money services business involved in a particular transaction.

In accordance with paragraph 103.20(b) of the MSB SAR rule, money services businesses must report a suspicious transaction within 30 days after the money services business becomes aware of the suspicious transaction, by completing a Suspicious Activity Report-MSB ("SAR–MSB"). FinCEN published for comment on July 25, 2002, a draft SAR–MSB, which is now final and available for use.[6] FinCEN has made special provision for situations requiring immediate attention (*e.g.*, where delay in reporting might hinder law enforcement's ability to fully investigate the activity), in which case money services businesses are immediately to notify, by telephone, the appropriate law enforcement authority in addition to filing a SAR–MSB. Reports filed under the terms of the MSB SAR rule are lodged in a central database. Information contained in the database is made available electronically to federal and state law enforcement and regulatory agencies, to enhance their ability to fight financial crime and terrorism.

Paragraph 103.20(c) of the MSB SAR rule requires money services businesses to maintain copies of each filed SAR–MSB for five years. In addition, money services businesses must collect and maintain for five years supporting documentation relating to each SAR–MSB and make such documentation available to law enforcement and regulatory agencies upon request.

Paragraph 103.20(d) of the MSB SAR rule incorporates the terms of 31 U.S.C. 5318(g)(2) and (g)(3), and specifically prohibits persons filing reports in compliance with the MSB SAR rule (or voluntary reports of suspicious transactions) from disclosing, except to appropriate law enforcement and regulatory agencies, that a report has been prepared or filed. The paragraph also restates the BSA's broad protection from liability for making reports of suspicious transactions (whether such reports are required by the MSB SAR rule or made voluntarily), and for declining to disclose the fact of such reporting. The regulatory provisions do not extend the scope of either the statutory prohibition or the statutory protection; however, because FinCEN recognizes the importance of these statutory provisions in the overall effort to encourage meaningful reports of suspicious transactions and to protect the legitimate privacy expectations of those who may be named in such reports, they are repeated in the rule to remind compliance officers and others of their existence.

Paragraph 103.20(e) of the MSB SAR rule provides that compliance with the MSB SAR rule will be audited by the Department of the Treasury through FinCEN or its delegee. Failure to comply with the rule may constitute a violation of the BSA regulations, which may subject non-complying money services businesses to enforcement action under the BSA.

As originally promulgated, the MSB SAR rule only applied to certain categories of money services businesses including issuers, sellers, and redeemers (for monetary value) of traveler's checks and money orders, money transmitters, and the United States Postal Service.[7] The original MSB SAR rule did not apply to either check cashers or to currency dealers/exchangers. This rulemaking is based on FinCEN's determination that it is now appropriate to extend to currency dealers and exchangers the requirement to report suspicious transactions. FinCEN has determined that such reports will have a high degree of usefulness in criminal, tax, and regulatory investigations and proceedings, and in the conduct of intelligence and counter-intelligence activities, including analysis, to protect against international terrorism.

C. Importance of Suspicious Transaction Reporting in Treasury's Counter Money-Laundering Program

The Congressional authorization of reporting of suspicious transactions recognizes two basic points that are central to Treasury's counter-money laundering and counter-financial crime programs. First, to realize full use of their ill-gotten gains, money launderers at some point must turn to financial institutions, either initially to conceal their illegal funds, or eventually to recycle those funds back into the economy. Second, the employees and officers of those institutions are often more likely than government officials to have a sense as to which transactions appear to lack commercial justification or otherwise cannot be explained as constituting a legitimate use of the financial institution's products and services.

The importance of extending suspicious transaction reporting to all relevant financial institutions, including non-bank financial institutions, derives from the concentrated scrutiny to which banks have been subject with respect to money laundering. This attention, combined with the cooperation that banks have given to law enforcement agencies and banking regulators to root out money laundering, has made it far more difficult than in the past to pass large amounts of cash directly into the nation's banks unnoticed. As it has become increasingly difficult to launder large amounts of cash through banks, criminals have turned to non-bank financial institutions in their attempts to launder funds. Indeed, many non-bank financial institutions have come to recognize the increased pressure that money launderers have placed upon their operations and the need for innovative programs of training and monitoring necessary to counter that pressure.

The reporting of suspicious transactions is also recognized as essential to an effective counter-money laundering program in the international consensus on the prevention and detection of money laundering. One of the central recommendations of the Financial Action Task Force Against Money Laundering ("FATF") is that:

> If financial institutions suspect that funds stem from a criminal activity, they should be required to report promptly their suspicions to the competent authorities.

Financial Action Task Force Annual Report (June 28, 1996),[8] Annex 1

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[6] *See* 67 FR 48704 (July 25, 2002). The SAR[1] MSB and advice on how to complete it can be viewed on FinCEN's Web site (*http://www.fincen.gov*) under the categories of "What's New" and "Regulatory."

[7] The rule required money services businesses described in 31 CFR 103.11(uu)(3) (the money services business category that includes issuers of traveler's checks, money orders, or stored value), 103.11(uu)(4) (sellers or redeemers of traveler's checks, money orders, or stored value), 103.11(uu)(5) (money transmitters), and 103.11(uu)(6) (the United States Postal Service) to file reports of suspicious activity. Given the infancy of the use of stored value products in the United States at the time of issuance of the final rule, issuers, sellers, and redeemers of stored value were explicitly carved out of the final MSB SAR rule. *See* 31 CFR 103.20(a)(5).

[8] FATF is an inter-governmental body whose purpose is development and promotion of policies to combat money laundering. Originally created by the G–7 nations, its membership now includes Argentina, Australia, Austria, Belgium, Brazil, Canada, Denmark, Finland, France, Germany, Greece, Hong Kong, Iceland, Ireland, Italy, Japan, Luxembourg, Mexico, the Kingdom of the Netherlands, New Zealand, Norway, Portugal, Singapore, Spain, Sweden, Switzerland, Turkey, the United Kingdom, and the United States, as well as the European Commission and the Gulf Cooperation Council.

(Recommendation 15). The recommendation applies equally to banks and non-banks.[9]

Extending counter-money laundering controls to "non-traditional" financial institutions, not simply to banks, is necessary both to ensure fair competition in the marketplace and because non-bank providers of financial services as well as depository institutions are an attractive mechanism for, and are threatened by, money launderers. *See, e.g., Financial Action Task Force Annual Report, supra,* Annex 1 (Recommendation 8). For example, the international consensus is that currency dealers and exchangers are vulnerable to abuse not only by money launderers but also by those wishing to finance terrorist activity. On October 31, 2001, FATF issued its *Special Recommendations on Terrorist Financing.* Special Recommendation Four provides that:

> [i]f financial institutions, or other businesses or entities subject to anti-money laundering obligations, suspect or have reasonable grounds to suspect that funds are linked or related to, or are to be used for terrorism, terrorist acts or by terrorist organisations, they should be required to report promptly their suspicions to the competent authorities.

For purposes of FATF's Special Recommendation Four, the term "financial institutions" is intended to refer to both banks and non-bank financial institutions including, among other non-bank financial institutions, bureaux de change.[10] On December 4, 2001, the European Parliament and the Council of the European Union issued Directive 2001/97/EC amending *Directive on Prevention of the Use of the Financial System for the Purpose of Money Laundering* for the purpose of, among other things, reinforcing that anti-money laundering provisions should apply to currency exchange offices.

II. Notice of Proposed Rulemaking

The final rule contained in this document is based on the notice of proposed rulemaking published October 17, 2002 (the "Notice") (67 FR 64075). The Notice proposed the following amendments to the MSB SAR rule found at 31 CFR 103.20: (1) Adding currency dealers and exchangers to the list of money services businesses required to report suspicious transactions to the Department of the Treasury under 31 CFR 103.20, (2) adding a fourth reporting category to the suspicious transaction reporting rule applicable to money services businesses, and (3) adding to the rule the telephone number for FinCEN's Financial Institutions Hotline (1–866–556–3974).

The comment period for the Notice ended on December 16, 2002. FinCEN received one comment letter, submitted by a trade association of community banks. The commenter discussed the importance of ensuring adequate scrutiny of MSBs for compliance with the requirement to report suspicious activity, and advised that FinCEN should monitor for evidence of money laundering activity through check cashers in order to determine whether to extend the suspicious transaction reporting requirement to such entities. FinCEN is committed to ensuring fairness in examining for, and enforcing, compliance with BSA regulations, and will continue to review whether it is appropriate to extend the suspicious activity reporting requirement to other categories of money services businesses not currently subject to the rule.

III. Section-by-Section Analysis

In light of the fact that FinCEN did not receive any comments directly dealing with the language contained in the Notice, the format and terms of the final rule are consistent with the format and terms of the rule proposed in the Notice.

A. 103.20(a)—General

Paragraph 103.20(a)(1) generally sets forth the requirement that certain money services businesses, including currency dealers and exchangers,[11] issuers, sellers, and redeemers of traveler's checks and money orders, and money transmitters, report suspicious transactions to the Department of the Treasury. It should be noted that a money services business is subject to suspicious transaction reporting only with respect to transactions that involve or relate to the business activities described in 103.11(uu)(1), (3), (4), (5), or (6). Thus, for example, a currency dealer or exchanger (a money services business described in 103.11(uu)(1)) that is also a check casher (a money services business described in 103.11(uu)(2)) would not be required to report under the MSB SAR rule with respect to its check cashing activities in general, although it would be required to report check cashing activity that was part of a series of transactions that led to, for example, a suspicious currency exchange.

B. 103.20(a)(2)—Reportable Transactions

This document amends the MSB SAR rule by adding a fourth reporting category, described at 31 CFR 103.20(a)(2)(iv), for transactions involving use of the money services business to facilitate criminal activity. The addition of a fourth category of reportable transactions to the rule is intended to ensure that transactions involving legally-derived funds that the money services business suspects are being used for a criminal purpose, such as terrorist financing, are reported under the rule.[12] The addition of this reporting category is not intended to effect a substantive change in the rule. Rather, the fourth category has been added to make explicit that transactions being carried out for the purpose of conducting illegal activities, whether or not funded from illegal activities, must be reported under the rule.

C. 103.20(b)(3)—Filing Instructions

This document amends paragraph 103.20(b)(3) to include FinCEN's Financial Institution Hotline (1–866–556–3974) for use by financial institutions wishing voluntarily to report to law enforcement suspicious transactions that may relate to terrorist activity. Money services businesses reporting suspicious activity by calling the Financial Institutions Hotline must still file a timely SAR–MSB to the extent required by 31 CFR 103.20.

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[9] This recommendation revises the original recommendation, issued in 1990, that required institutions to be either "*permitted or* required" to make such reports. (Emphasis supplied.) The revised recommendation reflects the international consensus that a mandatory suspicious transaction reporting system is essential to an effective national counter-money laundering program and to the success of efforts of financial institutions themselves to prevent and detect the use of their services or facilities by money launderers and others engaged in financial crime.

[10] *See Guidance Notes for the Special Recommendations on Terrorist Financing and the Self-Assessment Questionnaire,* Special Recommendation Four, paragraph 19 (March 27, 2002). FATF defines "bureaux de change" as "institutions which carry out retail foreign exchange operations." *See also Financial Action Task Force Annual Report, supra,* Annex 1 (Interpretive Note to Recommendations 8 and 9 (Bureaux de Change)).

[11] The terms currency "dealer" and "exchanger" in 31 CFR 103.11(uu)(1) were intended to be interchangeable to ensure that the regulation captured the same type of activity whether denominated as exchanging or dealing—the physical exchange of currency for retail customers.

[12] The fourth reporting category has been added to the suspicious activity reporting rules promulgated since the passage of the USA PATRIOT ACT to make this point clear. *See* 31 CFR 103.19 and 103.21.

D. 103.19—Reports by Brokers or Dealers in Securities of Suspicious Transactions

Section 103.19 instructs broker and dealers in securities to report suspicious transactions using a "Suspicious Activity Report—Brokers or Dealers in Securities" (SAR–BD) form. Because the name of the form has been changed to "Suspicious Activity Report by the Securities and Futures Industries" (SAR–SF), section 103.19 is being amended to reflect the new name of the form.

IV. Regulatory Flexibility Act

FinCEN certifies that this final regulation will not have a significant economic impact on a substantial number of small entities. The average currency exchange is approximately $300, an amount which is substantially below the $2,000 threshold that triggers reporting under the amendments to 31 CFR 103.20. Thus, FinCEN believes the rule will not have a significant economic burden on small entities.

V. Executive Order 12866

The Department of the Treasury has determined that this final rule is not a significant regulatory action under Executive Order 12866.

VI. Paperwork Reduction Act

The collection of information contained in this final regulation has been approved by the Office of Management and Budget ("OMB") in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) under control number 1506–0015. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB.

The collection of information in this final rule is in 31 CFR 103.20(b)(3) and (c). This information is required to be provided pursuant to 31 U.S.C. 5318(g) and 31 CFR 103.20. This information will be used by law enforcement agencies in the enforcement of criminal and regulatory laws. The collection of information is mandatory. The likely recordkeepers are businesses.

The estimated average recordkeeping burden associated with the collection of information in this final rule is 20 minutes per recordkeeper. The burden estimate relates to the recordkeeping requirement contained in the final rule. The reporting burden of 31 CFR 103.20 will be reflected in the burden of the SAR–MSB form. FinCEN anticipates that the final rule will result in an annual filing of a total of 3,100 SAR–MSB forms. This result is an estimate, based on a projection of the size and volume of the industry.

Comments concerning the accuracy of this burden estimate should be directed to the Financial Crimes Enforcement Network, Department of the Treasury, Post Office Box 39, Vienna, VA 22183, and to the Office of Management and Budget, Attn: Joseph F. Lackey, Jr., Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503.

List of Subjects in 31 CFR Part 103

Authority delegations (Government agencies), Banks and banking, Currency, Investigations, Law enforcement, Reporting and recordkeeping requirements.

Amendments to the Regulations

For the reasons set forth above in the preamble, 31 CFR Part 103 is amended as follows:

PART 103—FINANCIAL RECORDKEEPING AND REPORTING OF CURRENCY AND FOREIGN TRANSACTIONS

1. The authority citation for part 103 continues to read as follows:

Authority: 12 U.S.C. 1829b and 1951–1959; 31 U.S.C. 5311–314, 5316–5332; title III, secs. 314, 352, Pub. L. 107–56, 115 Stat. 307.

2. In Subpart B, amend §§ 103.19(b)(1), (b)(2), (b)(3), (c)(1), (d), and (e) by removing the word "SAR–BD" each place it occurs and adding in its place the word "SAR–S–F."

3. In Subpart B, amend § 103.20 as follows:

a. Revise the first sentence of paragraph (a)(1),

b. Add new paragraph (a)(2)(iv), and

c. Add a new sentence to the end of paragraph (b)(3).

The additions and revisions read as follows:

§ 103.20 Reports by money services businesses of suspicious transactions.

(a) *General.* (1) Every money services business, described in § 103.11(uu) (1), (3), (4), (5), or (6), shall file with the Treasury Department, to the extent and in the manner required by this section, a report of any suspicious transaction relevant to a possible violation of law or regulation. * * *

(2) * * *

(iv) Involves use of the money services business to facilitate criminal activity.

* * * * *

(b) * * *

(3) * * * Money services businesses wishing voluntarily to report suspicious transactions that may relate to terrorist activity may call FinCEN's Financial Institutions Hotline at 1–866–556–3974 in addition to filing timely a SAR–MSB if required by this section.

* * * * *

Dated: January 31, 2003.

James F. Sloan,

Director, Financial Crimes Enforcement Network.

[FR Doc. 03–3112 Filed 2–7–03; 8:45 am]

BILLING CODE 4810–02–P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 199

RIN–0720–AA52

TRICARE Program; Double Coverage; Third-Party Recoveries

AGENCY: Office of the Secretary, DoD.

ACTION: Final rule.

SUMMARY: This final rule implements section 711 of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999, as amended by section 716(c)(2) of the National Defense Authorization Act for Fiscal Year 2000, which allows the Secretary of Defense to authorize certain TRICARE claims to be paid, even though other health insurance may be primary payer, with authority to collect from the other health insurance (third-party payer) the TRICARE costs incurred on behalf of the beneficiary.

DATES: This final rule is effective March 12, 2003.

ADDRESSES: TRICARE Management Activity (TMA), Office of General Counsel, 16401 East Centretech Parkway, Aurora, CO 80011–9043.

FOR FURTHER INFORMATION CONTACT: Stephen Isaacson Medical Benefits and Reimbursement Systems, TMA, (303)–676–3572.

SUPPLEMENTARY INFORMATION:

I. Summary of Final Rule Provisions

This final rule changes the TRICARE "double coverage" provisions authorizing payment of claims when a third-party payer, other than a primary medical insurer, is involved rather than delaying TRICARE payments pending payment by the third-party payer. In addition, this final rule changes the TRICARE "third-party recoveries" provisions incorporating the authority to collect from third-party payers the TRICARE costs for health care services incurred on behalf of the patient/

beneficiary. The radar should refer to the proposed rule that was published on October 19, 1999 (64 FR 56283), for more detailed information regarding these changes.

II. Public Comments

We provided a 60-day comment period on the proposed rule. We received no public comments.

III. Changes in the Final Rule

We have made changes in the final rule based on section 716 of the National Defense Authorization Act for Fiscal Year 2000, Pub. L. 106–65, which was passed subsequent to preparation of the proposed rule. We have removed paragraph (c)(2)(iii) of Section 199.8 as originally set forth in the proposed rule. The essence of this change is to remove the proposed requirement for contractors to assign the government any rights to seek recovery from third-party payers. Based on the section 716 of the National Defense Authorization Act for Fiscal Year 2000, it is clear that the government, rather than the contractor, has the authority to collect amounts paid on behalf of TRICARE beneficiaries for which there is a liable third party.

Based on Section 8118 of the Fiscal Year 2000 Department of Defense Appropriations Act, we also have eliminated the change to paragraph (d)(2) of Section 199.8 established Medicaid as primary payer to TRICARE under the case management program that is set out in Part 199.4(i). As a result, TRICARE will continue to be primary to Medicaid in all situations including case management.

IV. Regulatory Procedures

Executive Order (EO) 12866 requires that a comprehensive regulatory impact analysis be performed on any economically significant regulatory action, defined as one that would result in an annual effect of $100 million or more on the national economy or which would have other substantial impacts.

The Regulatory Flexibility Act (RFA) requires that each Federal agency prepare, and make available for public comment, a regulatory flexibility analysis when the agency issues a regulation that would have a significant impact on a substantial number of small entities.

This rule has been designated as significant rule and has been reviewed by the Office of Management and Budget as required under the provisions of E.O. 12866. In addition, we certify that this final rule will not significantly affect a substantial number of small entities.

Paperwork Reduction Act.

This final rule, as written, imposes no burden as defined by the Paperwork Reduction Act of 1995. If, however, any program implemented under this final rule causes such a burden to be imposed, approval will be sought of the Office of Management and Budget in accordance with the Act prior to implementation.

List of Subjects in 32 CFR Part 199

Claims, Handicapped, Health insurance, and Military personnel.

Accordingly, 32 CFR Part 199 is amended as follows:

PART 199—[AMENDED]

1. The authority citation for Part 199 continues to read as follows:

Authority: 5 U.S.C. 301; 10 U.S.C. Chapter 55.

2. Section 199.2(b) is amended by adding new definitions *automobile liability insurance, no-fault insurance,* and *third-party payer* in alphabetical order:

§ 199.2 Definitions.

* * * * *

Automobile liability insurance. Automobile liability insurance means insurance against legal liability for health and medical expenses resulting from personal injuries arising from operation of a motor vehicle. Automobile liability insurance includes:

(1) Circumstances in which liability benefits are paid to an injured party only when the insured party's tortious acts are the cause of the injuries; and

(2) Uninsured and underinsured coverage, in which there is a third-party tortfeasor who caused the injuries (i.e., benefits are not paid on a no-fault basis), but the insured party is not the tortfeasor.

* * * * *

No-fault insurance. No-fault insurance means an insurance contract providing compensation for health and medical expenses relating to personal injury arising from the operation of a motor vehicle in which the compensation is not premised on whom may have been responsible for causing such injury. No-fault insurance includes personal injury protection and medical payments benefits in cases involving personal injuries resulting from operation of a motor vehicle.

* * * * *

Third-party payer. Third-payer means an entity that provides an insurance, medical service, or health plan by contract or agreement, including an automobile liability insurance or no fault insurance carrier and a worker's compensation program or plan, and any other plan or program (*e.g.*, homeowners insurance) that is designed to provide compensation or coverage for expenses incurred by a beneficiary for medical services or supplies. For purposes of the definition of "third-party payer," an insurance, medical service, or health plan includes a preferred provider organization, an insurance plan described as Medicare supplemental insurance, and a personal injury protection plan or medical payments benefit plan for personal injuries resulting from the operation of a motor vehicle.

Note: TRICARE is secondary payer to all third-party payers. Under limited circumstances described in § 199.8(c)(2) of this part, TRICARE payment may be authorized to be paid in advance of adjudication of the claim by certain third-party payers. TRICARE advance payments will not be made when a third-party provider is determined to be a primary medical insurer under § 199.8(c)(3) of this part."

* * * * *

3. Section 199.8 is amended by revising paragraphs (a), (c)(1), and (d)(3), redesignating paragraphs (b)(3), (c)(2) and (c)(3) as paragraphs (b)(4), (c)(4) and (c)(5), respectively, and adding new paragraphs (b)(3), (c)(2), and (c)(3) to read as follows:

§ 199.8 Double coverage.

(a) *Introduction.* (1) In enacting TRICARE legislation, Congress clearly has intended that TRICARE be the secondary payer to all health benefit, insurance and third-party payer plans. 10 U.S.C. 1079(j)(1) specifically provides that a benefit may not be paid under a plan (CHAMPUS) covered by this section in the case of a person enrolled in, or covered by, any other insurance, medical service, or health plan, including any plan offered by a third-party payer (as defined in 10 U.S.C. 1095(h)(1)) to the extent that the benefit is also a benefit under the other plan, except in the case of a plan administered under title XIX of the Social Security Act (42 U.S.C. 1396 *et seq.*).

(2) The provision in paragraph (a)(1) of this section is made applicable specifically to retired members, dependents, and survivors by 10 U.S.C. 1086(g). The underlying intent, in addition to preventing waste of Federal resources, is to ensure that TRICARE beneficiaries receive maximum benefits while ensuring that the combined payments of TRICARE and other health and insurance plans do not exceed the total charges.

* * * * *

(b) * * *

(3) *Third-party payer.* A third-party payer means an entity that provides an insurance, medical service, or health plan by contract or agreement, including an automobile liability insurance or no-fault insurance carrier and a workers' compensation program or plan, and any other plan or program (e.g., homeowners insurance, etc.) that is designed to provide compensation or coverage for expenses incurred by a beneficiary for medical services or supplies. For purposes of the definition of "third-party payer," an insurance, medical service or health plan includes a preferred provider organization, an insurance plan described as Medicare supplemental insurance, and a personal injury protection plan or medical payments benefit plan for personal injuries resulting from the operation of a motor vehicle.

* * * * *

(c) * * *

(1) *TRICARE last pay.* For any claim that involves a double coverage plan as defined in paragraph (b) of this section, TRICARE shall be last pay *except* as may be authorized by the Director, TRICARE Management Activity, or a designee, pursuant to paragraph (c)(2) of this section. That is, TRICARE benefits may not be extended until all other double coverage plans have adjudicated the claim.

(2) *TRICARE advance payment.* The Director, TRICARE Management Activity, or a designee, may authorize payment of a claim in advance of adjudication of the claim by a double coverage plan and recover, under § 199.12, the TRICARE costs of health care incurred on behalf of the covered beneficiary under the following conditions:

(i) The claim is submitted for health care services furnished to a covered beneficiary; and,

(ii) The claim is identified as involving services for which a third-party payer, other than a primary medical insurer, may be liable.

(3) *Primary medical insurer.* For purposes of paragraph (c)(2) of this section, a "primary medical insurer" is an insurance plan, medical service or health plan, or a third-party payer under this section, the primary or sole purpose of which is to provide or pay for health care services, supplies, or equipment. The term "primary medical insurer" does not include automobile liability insurance, no-fault insurance, workers' compensation program or plan, homeowners insurance, or any other similar third-party payer as may be designated by the Director, TRICARE Management Activity, or a designee, in any policy guidance or instructions issued in implementation of this Part.

* * * * *

(d) * * *

(3) *TRICARE and Workers' Compensation.* TRICARE benefits are not payable for a work-related illness or injury that is covered under a workers' compensation program. Pursuant to paragraph (c)(2) of this section, however, the Director, TRICARE Management Activity, or a designee, may authorize payment of a claim involving a work-related illness or injury covered under a workers' compensation program in advance of adjudication and payment of the workers' compensation claim and then recover, under § 199.12, the TRICARE costs of health care incurred on behalf of the covered beneficiary.

* * * * *

4. Section 199.12 is revised as follows:

§ 199.12 Third party recoveries.

(a) *General.* This section deals with the right of the United States to recover from third-parties the costs of medical care furnished to or paid on behalf of TRICARE beneficiaries. These third-parties may be individuals or entities that are liable for tort damages to the injured TRICARE beneficiary or a liability insurance carrier covering the individual or entity. These third-parties may also include other entities who are primarily responsible to pay for the medical care provided to the injured beneficiary by reason of an insurance policy, workers' compensation program or other source of primary payment.

Authority. (1) *Third-party payers.* This part implements the provisions of 10 U.S.C. 1095b which, in general, allow the Secretary of Defense to authorize certain TRICARE claims to be paid, even though a third-party payer may be primary payer, with authority to collect from the third-party payer the TRICARE costs incurred on behalf of the beneficiary. (See § 199.2 for definition of "third-party payer.") Therefore, 10 U.S.C. 1095b establishes the statutory obligation of third-party payers to reimburse the United States the costs incurred on behalf of TRICARE beneficiaries who are also covered by the third-party payer's plan.

(2) *Federal Medical Care Recovery Act.* (i) *In general.* In many cases covered by this section, the United States has a right to collect under both 10 U.S.C. 1095b and the Federal Medical Care Recovery Act (FMCRA), Public Law 87–693 (42 U.S.C. 2651 *et. seq.*). In such cases, the authority is concurrent and the United States may pursue collection under both statutory authorities.

(ii) *Cases involving tort liability.* In cases in which the right of the United States to collect from an automobile liability insurance carrier is premised on establishing some tort liability on some third person, matters regarding the determination of such tort liability shall be governed by the same substantive standards as would be applied under the FMCRA including reliance on state law for determinations regarding tort liability. In addition, the provisions of 28 CFR part 43 (Department of Justice regulations pertaining to the FMCRA) shall apply to claims made under the concurrent authority of the FMCRA and 10 U.S.C. 1095b. All other matters and procedures concerning the right of the United States to collect shall, if a claim is made under the concurrent authority of the FMCRA and this section, be governed by 10 U.S.C. 1095b and this part.

(c) *Appealability.* This section describes the procedures to be followed in the assertion and collection of third-party recovery claims in favor of the United States arising from the operation of TRICARE. Actions taken under this section are not initial determinations for the purpose of the appeal procedures of § 199.10 of this part. However, the proper exercise of the right to appeal benefit or provider status determinations under the procedures set forth in § 199.10 may affect the processing of federal claims arising under this section. Those appeal procedures afford a TRICARE beneficiary or participating provider an opportunity for administrative appellate review in cases in which benefits have been denied and in which there is a significant factual dispute. For example, a TRICARE contractor may deny payment for services that are determined to be excluded as TRICARE benefits because they are found to be not medically necessary. In that event the TRICARE contractor will offer an administrative appeal as provided in § 199.10 of this part on the medical necessity issue raised by the adverse benefit determination. If the care in question results from an accidental injury and if the appeal results in a reversal of the initial determination to deny the benefit, a third-party recovery claim may arise as a result of the appeal decision to pay the benefit. However, in no case is the decision to initiate such a claim itself appealable under § 199.10.

(d) *Statutory obligation of third-party payer to pay.* (1) *Basic Rule.* Pursuant to 10 U.S.C. 1095b, when the Secretary of Defense authorizes certain TRICARE

claims to be paid, even though a third-party payer may be primary payer (as specified under § 199.8(c)(2)), the right to collect from a third-party payer the TRICARE costs incurred on behalf of the beneficiary is the same as exists for the United States to collect from third-party payers the cost of care provided by a facility of the uniformed services under 10 U.S.C. 1095 and part 220 of this title. Therefore the obligation of a third-party payer to pay is to the same extent that the beneficiary would be eligible to receive reimbursement or indemnification from the third-party payer if the beneficiary were to incur the costs on the beneficiary's own behalf.

(2) *Application of cost shares.* If the third-party payer's plan includes a requirement for a deductible or copayment by the beneficiary of the plan, then the amount the United States may collect from the third-party payer is the cost of care incurred on behalf of the beneficiary less the appropriate deductible or copayment amount.

(3) *Claim from the United States exclusive.* The only way for a third-party payer to satisfy its obligation under 10 U.S.C. 1095b is to pay the United States or authorized representative of the United States. Payment by a third-party payer to the beneficiary does not satisfy 10 U.S.C. 1095b.

(4) *Assignment of benefits not necessary.* The obligation of the third-party to pay is not dependent upon the beneficiary executing an assignment of benefits to the United States.

(e) *Exclusions impermissible.* (1) *Statutory requirement.* With the same right to collect from third-party payers as exists under 10 U.S.C. 1095(b), no provision of any third-party payer's plan having the effect of excluding from coverage or limiting payment for certain care if that care is provided or paid by the United States shall operate to prevent collection by the United States.

(2) *Regulatory application.* No provision of any third-party payer's plan or program purporting to have the effect of excluding or limiting payment for certain care that would not be given such effect under the standards established in part 220 of this title to implement 10 U.S.C. 1095 shall operate to exclude or limit payment under 10 U.S.C. 1095b or this section.

(f) *Records available.* When requested, TRICARE contractors or other representatives of the United States shall make available to representatives of any third-party payer from which the United States seeks payment under 10 U.S.C. 1095b, for inspection and review, appropriate health care records (or copies of such records) of individuals for whose care payment is sought. Appropriate records which will be made available are records which document that the TRICARE costs incurred on behalf of beneficiaries which are the subject of the claims for payment under 10 U.S.C. 1095b were incurred as claimed and the health care service were provided in a manner consistent with permissible terms and conditions of the third-party payer's plan. This is the sole purpose for which patient care records will be made available. Records not needed for this purpose will not be made available.

(g) *Remedies.* Pursuant to 10 U.S.C. 1095b, when the Director, TRICARE Management Activity, or a designee, authorizes certain TRICARE claims to be paid, even though a third-party payer may be primary payer, the right to collect from a third-party payer the TRICARE costs incurred on behalf of the beneficiary is the same as exists for the United States to collect from third-party payers the cost of care provided by a facility of the uniformed services under 10 U.S.C. 1095.

(1) This includes the authority under 10 U.S.C. 1095(e)(1) for the United States to institute and prosecute legal proceedings against a third-party payer to enforce a right of the United States under 10 u.S.C. 1095b and this section.

(2) This also includes the authority under 10 u.S.C. 1095(e)(2) for an authorized representative of the United States to compromise, settle or waive a claim of the United States under 10 U.S.C. 1095b and this section.

(3) The authorities provided by the Federal Claims Collection Act of 1966, as amended (31 U.S.C. 3701 *et. seq.*) and any implementing regulations (including § 199.11) regarding collection of indebtedness due the United States shall also be available to effect collections pursuant to 10 U.S.C. 1095b and this section.

(h) *Obligations of beneficiaries.* To insure the expeditious and efficient processing of third-party payer claims, any person furnished care and treatment under TRICARE, his or her guardian, personal representative, counsel, estate, dependents or survivors shall be required:

(1) To provide information regarding coverage by a third-party payer plan and/or the circumstances surrounding an injury to the patient as a conditional precedent of the processing of a TRICARE claim involving possible third-party payer coverage.

(2) To furnish such additional information as may be requested concerning the circumstances giving rise to the injury or disease for which care and treatment are being given and concerning any action instituted or to be instituted by or against a third person; and,

(3) To cooperate in the prosecution of all claims and actions by the United States against such third person.

(i) *Reponsibility for recovery.* The Director, TRICARE Management Activity, or a designee, is responsible for insuring that TRICARE claims arising under 10 U.S.C. 1095b and this section (including claims involving the FMCRA) are properly referred to and coordinated with designated claims authorities of the uniformed services who shall assert and recover TRICARE costs incurred on behalf of beneficiaries. Generally, claims arising under this section will be processed as follows:

(1) *Identification and referral.* In most cases where civilian providers provide medical care and payment for such care has been by a TRICARE contractor, initial identification of potential third-party payers will be by the TRICARE contractor. In such cases, the TRICARE contractor is responsible for conducting a preliminary investigation and referring the case to designated appropriate claims authorities of the Uniformed Services.

(2) *Processing TRICARE claims.* When the TRICARE contractor initially identifies a claim as involving a potential third-party payer, it shall request additional information concerning the circumstances of the injury or disease and/or the identify of any potential third-party payer from the beneficiary or other responsible party unless adequate information is submitted with the claim. The TRICARE claim will be suspended and no payment issued pending receipt of the requested information. If the requested information is not received, the claim will be denied. A TRICARE beneficiary may expedite the processing of his or her TRICARE claim by submitting appropriate information with the first claim for treatment of an accidental injury. Third-party payer information normally is required only once concerning any single accidental injury on episode of care. Once the third-party payer information pertaining to a single incident or episode of care is received, subsequent claims associated with the same incident or episode of care may be processed to payment in the usual manner. If, however, the requested third-party payer information is not received, subsequent claims involving the same incident or episode of care will be suspended or denied as stated above.

(3) *Ascertaining total potential liability.* It is essential that the appropriate claims responsible for

asserting the claim against the third-party payer recive from the TRICARE contractor a report of all amounts expended by the United States for care resulting from the incident upon which potential liability in the third party is based (including amounts paid by TRICARE for both inpatient and outpatient care). Prior to assertion and final settlement of a claim, it will be necessary for the responsible claims authority to secure from the TRICARE contractor updated information to insure that all amounts expended under TRICARE are included in the government's claim. It is equally important that information on future medical payments be obtained through the investigative process and included as a part of the government's claim. No TRICARE-related claim will be settled, compromised or waived without full consideration being given to the possible future medical payment aspects of the individual case.

(j) *Reporting requirements.* Pursuant to 10 U.S.C. 1079a, all refunds and other amounts collected in the administration of TRICARE shall be credited to the appropriation available for that program for the fiscal year in which the refund or amount is collected. Therefore, the Department of Defense requires an annual report stating the number and dollar amount of claims asserted against, and the number and dollar amount of recoveries from third-party payers (including FMCRA recoveries) arising from the operation of the TRICARE. To facilitate the preparation of this report and to maintain program integrity, the following reporting requirements are established:

(1) *TRICARE contractors.* Each TRICARE contractor shall submit on or before January 31 of each year an annual report to the Director, TRICARE Management Activity, or a designee, covering the 12 months of the previous calendar year. This report shall contain, as a minimum, the number and total dollar of cases of potential third-party payer/FMCRA liability referred to uniformed services claims authorities for further investigation and collection. These figures are to be itemized by the states and uniformed services to which the cases are referred.

(2) *Uniformed Services.* Each uniformed service will submit to the Director, TRICARE Management Activity, or designee, an annual report covering the 12 calendar months of the previous year, setting forth, as a minimum, the number and total dollar amount of cases involving TRICARE payments received from TRICARE contractors, the number and dollar amount of cases involving TRICARE payments received from other sources, and the number and dollar amount of claims actually asserted against, and the dollar amount of recoveries from, third-payment payers or under the FMCRA. The report, itemized by state and foreign claims jurisdictions, shall be provided no later than February 28 of each year.

(3) *Implementation of the reporting requirements.* The Director, TRICARE Management Activity, or a designee shall issue guidance for implementation of the reporting requirements prescribed by this section.

Dated: February 4, 2003.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 03–3159 Filed 2–7–03; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD07–03–018]

Drawbridge Operation Regulations; Ashley River, Charleston, SC

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Seventh Coast Guard District, has approved a temporary deviation from the regulations governing the operation of the Ashley River (US 17) drawbridges across the Ashley River, miles 2.4 and 2.5, Charleston, South Carolina. This temporary deviation allows the bridge owner or operator to keep all spans of the Ashley River drawbridges in the down or closed position for 16 days.

DATES: This temporary rule is effective from 7 a.m. on January 31, 2003 to 7 a.m. on February 15, 2003.

ADDRESSES: Material received from the public as well as documents indicated in this preamble as being available in the docket are part of docket [CGD07–03–018] and are available for inspection or copying at Commander (obr), Seventh Coast Guard District, Room 432, 909 S.E. 1st Avenue, Miami, Florida 33131–3050, between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Lieberum, Project Manager, Seventh Coast Guard District, Bridge Branch at (305) 415–6744.

SUPPLEMENTARY INFORMATION: The Ashley River (US 17) drawbridges across the Ashley River, miles 2.4 and 2.5 are double bascule leaf bridges, with vertical clearances of 14.0 feet at mean high water and horizontal clearances of 100 feet between fenders. The existing operating regulation in 33 CFR 117.915 requires the bridges to open on signal; except that, from 7 a.m. to 9 a.m. Monday through Friday and 4 p.m. to 7 p.m. daily, the draws need be opened only if at least 12 hours notice is given. The draws of either bridge shall open as soon as possible for the passage of vessels in an emergency involving danger to life or property.

On December 30, 2002, The Industrial Company (TLC), representing the South Carolina Department of Transportation, requested a temporary change to the operation of the Ashley River (US 17) drawbridges to allow them to complete the rehabilitation to the structure.

This deviation will have a limited impact on navigation as there is only one marina west of the structure and they have been notified by the contractor of the possible closure of the structure. Mariners have the opportunity to relocate the vessels that would require a bridge opening to one of the marinas located east of the structure.

The Commander, Seventh Coast Guard District has granted a temporary deviation from the operating requirements listed in 33 CFR 117.915 to allow The Industrial Company, representing the owner, to facilitate repairs to the bridge spans. Under this temporary deviation, the Ashley River drawbridges may remain closed to navigation from 7 a.m. on January 31, 2003, to 7 a.m. on February 15, 2003.

Dated: January 29, 2003.

Greg Shapley,

Chief, Bridge Administration, Seventh Coast Guard District.

[FR Doc. 03–3264 Filed 2–7–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 19

RIN 2900–AK62

Appeals Regulations: Title for Members of the Board of Veterans' Appeals

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document amends the Department of Veterans Affairs' (VA) Appeals Regulations to provide that a Member of the Board of Veterans'

Appeals may also be known as a Veterans Law Judge.

DATES: *Effective Date:* February 10, 2003.

FOR FURTHER INFORMATION CONTACT: Steven L. Keller, Senior Deputy Vice Chairman, Board of Veterans' Appeals, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 (202–565–5978).

SUPPLEMENTARY INFORMATION: The Board of Veterans' Appeals (Board) is an administrative body that decides appeals from denials of claims for veterans' benefits, after an opportunity for a hearing. There are currently 55 Board "members," who decide 35,000 to 40,000 such appeals per year.

On March 6, 2001, we published a notice of proposed rulemaking (NPRM) that would provide that a Member of the Board may also be known as a Veterans Law Judge. 66 FR 13463. The comment period ended May 7, 2001. We received 38 comments, 33 from individuals and 5 from organizations. Of the commenters, 27 supported the proposal, while 11 opposed it.

We have carefully considered all the comments. We also considered a letter from six veterans service organizations sent prior to the beginning of the comment period, but which we referenced in our NPRM. 66 FR at 13463. We have grouped the objections into seven general categories and discuss them below.

For the reasons described, we have decided to adopt the proposed regulation as a final regulation.

1. *The title is detrimental or of no benefit to veterans.*

Several individuals and one organization expressed concern that the change would "intimidate" veterans. Some organizations opined that the change would provide no benefit to veterans. At the same time, several individuals said they did not find the title intimidating. In addition, several individuals said that they found the current title of "member" confusing and thought that "judge" would be a clarification.

We do not agree that the change will intimidate veterans or provide them no benefit.

The chief reason we proposed this rule was to recognize Board members for what they are: Judges. It is a title that is widely used in the executive branch for thousands of people who hold hearings and decide appeals. For example—

If a person disagrees with a Social Security decision, his appeal is heard by a Social Security Administration (SSA) employee called a judge.

If he disagrees with that decision, the appeal is heard by another SSA employee called a judge.

If a federal employee appeals a personnel decision, her appeal is heard by a Merit Systems Protection Board employee called a judge.

If a person has a complaint about discrimination, her case is heard by an Equal Employment Opportunity Commission employee called a judge.

We also know that most veterans who come before the Board do so once in their life. As we said in our NPRM, "member" doesn't really tell the veteran much about what the member does. 66 FR at 13463. The term "judge" is simply more accurate.

The purpose of the Board is to give veterans an independent review of denied claims. Our experience is that veterans are most concerned that the person deciding their appeals is not part of the regional office, which initially decided their claims. We think that the term "judge" does a better job of letting veterans know what the Board member is and—almost as importantly—what the Board member is not.

VA actually used the term "Veterans Law Judge" for three or four months late in the year 2000 and early in 2001. *See* 65 FR 55461 (Sep. 14, 2000) (final rule establishing title), *rescinded*, 66 FR 13437 (Mar. 6, 2001). We received no complaints that our Board members had become more aloof or the hearings more formal, nor did we receive any complaints that any veterans were intimidated by the title.

Accordingly, we make no changes based on these comments.

2. *Board Members are not Administrative Law Judges.*

Some commenters objected to the rule because Board Members are not Administrative Law Judges (ALJs).

While this is certainly true, its apparent relevance to this rulemaking is that only ALJs are permitted to carry the title "judge." We noted in our NPRM that there are many types of non-ALJ adjudicators in the executive branch who carry the title "judge." We also note that individuals appointed to the judiciary under Articles I and III of the Constitution—*i.e.*, adjudicators in the various Federal courts—carry the title "judge," and none of them are ALJs.

The point is that the term "judge" describes what the individual does, not whether he or she is subject to particular procedures established by the Office of Personnel Management (OPM). In addition, we have not proposed to refer to Board members as "administrative law judges," but rather as "Veterans Law Judges."

Accordingly, we make no changes based on these comments.

3. *The selection process for Board Members is different from the selection process for ALJs.*

Some commenters objected to the rule because the Board member selection process is different from the ALJ selection process.

The processes are different. Like the ALJ process, however, the Board member process selects experienced attorneys and is based on merit principles. The following table illustrates the similarities and differences in the selection processes:

	Administrative Law Judge	Member, Board of Veterans' Appeals
General qualifications	Attorney with 7 years experience in Administrative Law or Litigation in a government setting. (OPM, non-regulatory requirement).	In practice, 7–10 years experience in the field of veterans' law. (VA, non-regulatory requirement)
Attorney status	Active member of the bar. (OPM, non-regulatory requirement).	Member in good standing of the bar of a State. 38 U.S.C. 7101A(a)(2).
Experience requirement	2 years experience equivalent to a GS–13 or 1 year experience as a GS–14 or GS–15. (OPM, non-regulatory requirement).	Generally, two or more years at the GS–14 or GS–15 level. (VA, non-regulatory requirement)
Skills	Knowledge of administrative procedures, rules of evidence, and trial practices; analytical ability; oral communications ability and judicial temperament; writing ability; organizational skills. (OPM, non-regulatory requirement).	Knowledge of veterans' law and of specialized areas of medicine and law; ability to conduct hearings; ability to manage attorneys; ability to participate in training activities. Additional qualification factors. (VA, non-regulatory requirement)

	Administrative Law Judge	Member, Board of Veterans' Appeals
Application process	Pass an OPM-administered 4-part exam NOTE: The "4-part exam" consists of (1) the application form; (2) a written test; (3) an interview; and (4) a reference check. See 5 CFR 930.203(c) and (d).	Application; interview; reference check; review of substantive work as attorney (generally as counsel at Board). (VA, non-regulatory requirement)

The similarity of the processes' results is illustrated by the fact that Board members have moved rather easily from the Board to the ALJ ranks. Indeed, a primary impetus for equalization of Board member pay with ALJ pay in 1994 (Pub. L. 103–446) was the loss of Board members to the ALJ ranks. *See, e.g.*, 140 Cong. Rec. H11349, H11350 (daily ed., Oct. 7, 1994) (statement of Rep. Montgomery in connection with passage of H.R. 4386) (pay equity provision for Board members "is intended to insure that Members of the Board not feel compelled to pursue ALJ positions, but rather to remain at the Board, where their expertise is badly needed"); 140 Cong. Rec. H7088, H7092 (daily ed. Aug. 8, 1994) (statement of Rep. Montgomery in connection with passage of H.R. 4088) ("current pay disparity between Board members and Administrative Law Judges is producing a migration of Board members to the Social Security Administration and other federal agencies"); 140 Cong. Rec. S9457, S9458 (daily ed., Jul. 21, 1994) (statement of Sen. Akaka on introduction of S. 2305) ("Since July 1993, nine Board members have been selected to be ALJ's. This figure represents 16 percent of the 55 attorneys who have held Board member positions since last July.").

Accordingly, we make no changes based on these comments.

4. *Board Members do not have the same "decisional independence" as ALJs.*

Some commenters objected to the rule because Board members do not have the same "decisional independence" as ALJs. Indeed, one commenter went so far as to state that "the BVA simply cannot provide appellants the assurance of impartiality that accompanies judicial status."

Not only are such comments, frankly, insulting to Board members, they are wrong as a matter of law.

In the first place, we believe there is no evidence that Board members are anything but impartial. We are unaware of a single instance in the 70-year history of the Board in which the differences between ALJs and Board members, as articulated by the commenters, resulted in a charge—much less a proven allegation—that any Board member at any time was other than impartial. The commenters, while referring generally to the administrative control of the Board Chairman over the Board, 38 U.S.C. 7101(a), have not directed us to any such instance. We categorically deny both that VA management has attempted to influence the result of Board members' decisions and that Board members do not provide appellants the assurance of impartiality.

We can, however, point to at least one situation in which a group of ALJs claimed that their agency—which has administrative control over them—was putting pressure on the ALJs to make fewer claimant-friendly decisions. In the early 1980s, the Department of Health and Human Services (HHS) instituted what came to be known as the "Bellmon Review Program," which allegedly put pressure on ALJs within SSA to make fewer reversals of denials of Social Security benefits. Although HHS eventually modified its stance, the ALJs claimed that their independence was threatened, notwithstanding their immunity from performance reviews and the fact that they were selected for ALJ positions by OPM, not HHS. *See generally Ass'n of Admin. Law Judges, Inc.* v. *Heckler*, 594 F. Supp. 1132 (D.D.C. 1984).

Second, the term "decisional independence" is not a clearly defined concept, and the commenters did not attempt to define the phrase. In *Ass'n of Admin. L. Judges v. Heckler, supra*, an action challenging the "Bellmon Review," the court found that ALJs had a "qualified" right to decisional independence. In that case—in which ALJs alleged that their decisional independence was threatened—the court noted that, while ALJs at SSA are exempt from the performance appraisals to which other civil service employees are subject (Board members, who are subject to the statutory performance review provisions of 38 U.S.C. 7101A, are also exempt from performance appraisals) and that they are entitled to rates of pay not set by the agency in which they serve (as are Board members), they are nevertheless subject to performance-related adverse personnel actions (as are Board members) and are entirely subject to their agency's right, under the administrative appeals process, to impose the agency's views on law and policy (as Board members are not). The court concluded that "the ALJ's right to decisional independence is qualified." 594 F. Supp. at 1141. *See also Goodman* v. *Svahn*, 614 F. Supp. 726, 728–29 (D.D.C. 1985) (imposition of case production quotas on SSA ALJ did not violate ALJ's rights under the Administrative Procedure Act, the Civil Rights Act of 1861, or the Fifth Amendment); *cf. Sannier* v. *MSPB*, 931 F.2d 856, 858–59 (Fed. Cir. 1991) (where SSA ALJ did not allege that increased pressure to process more cases affected his decisionmaking, ALJ's claim of constructive removal was properly dismissed by MSPB for lack of subject matter jurisdiction); *Nash* v. *Bowen*, 869 F.2d 675, 680 (2d Cir.) (setting of reasonable production goals for SSA ALJs is not an infringement of decisional independence), *cert. denied*, 493 U.S. 813 (1989).

As noted, the court in *Ass'n of Admin. Law Judges, Inc.* v. *Heckler, supra*, found that the power of the agency to alter ALJ decisions contributed to the "qualified" nature of ALJ decisional independence. Of all adjudicators within the Executive Branch, there may be none whose decisions are more independent than those of members of the Board of Veterans' Appeals. Unlike ALJs, Board members make decisions that generally can be altered only by a Federal court. (The exceptions are (1) reconsideration under 38 U.S.C. 7104, which can be ordered by the Board chairman, but results only in the vacation of the decision and reassignment to a panel of members, and (2) reversal on the grounds of clear and unmistakable error under 38 U.S.C. 7111, which can be ordered only by a Board member.) An ALJ decision, on the other hand, generally is not directly appealable to any court. Instead, it is, in effect, a preliminary decision subject to summary reversal by the agency head. *Compare Nash* v. *Bowen*, 869 F.2d at 680 (ALJs' authority to decide Social Security appeals is delegated by the Secretary and Secretary is ultimately authorized to make the final decision), *with* 38 U.S.C. 7104(a) (decisions on appeals to Secretary are made by the Board of Veterans' Appeals).

Neither ALJs nor Board members are subject to the normal performance reviews applicable to most civil service employees. However, Board members are subject to periodic recertification

following peer review, 38 U.S.C. 7101A, while no comparable review process applies to ALJs. Nevertheless, ALJs are subject to dismissal for inadequate performance. *See SSA* v. *Goodman*, 19 M.S.P.R. 321 (1984). The concept of rating judicial performance, particularly an approach involving peer review, is hardly a novel concept. *See, e.g.*, J. Lubbers, The Federal Administrative Judiciary: Establishing an Appropriate System of Performance Evaluation for ALJs, 7 Admin. L.J. Am. U. 589, 606–11 (1994) (citing state and local judicial systems employing such a process). We do not find this distinction between Board members and ALJs to be meaningful with respect to whether Board members should be called "Veterans Law Judges."

Finally, we can perceive no reason—and none was advanced by the commenters—to conclude that the selection and tenure characteristics associated with ALJs determine whether an individual may be called a judge. As we pointed out in our NPRM, there are within the Federal service "administrative judges" who are subject to the same selection and review criteria as most civil servants. In addition, individuals appointed to the judiciary under Article I of the Constitution—Tax Court judges, judges of the United States Court of Appeals for Veterans Claims—are selected by a political process, have fixed terms, and yet are called "judges." Finally, Federal District Court Judges and judges of the United States Courts of Appeals are called judges even though they are selected through a political process and have much more job security than ALJs. In sum, we are not persuaded by this argument.

For all these reasons, we find no substance to the commenters' claims that there is a substantive difference between the decisional independence of ALJs and that of Board members, nor do we believe that it is the characteristics of ALJ selection and tenure that determine whether an individual may be called "judge." Accordingly, we make no change in the regulation based on those comments.

5. *The statute calls them "members," not "judges."*

Some commenters suggest that, because the statute refers to "members" of the Board, VA is barred from using the title "judge." The commenters provided no authority for this proposition, and we could find none.

We do, however, note that it is not uncommon for members of a statutorily-created board to be defined in regulations as "judges." *See* 41 U.S.C. 607 (Boards of Contract Appeals) *and, e.g.*, 38 CFR 1.781 (BCA members at VA "are designated Administrative Judges") *and* 7 CFR 24.2 (BCA members at Department of Agriculture are "designated Administrative Judges"); 31 U.S.C. 751 (Personnel Appeals Board at the General Accounting Office) *and* 4 CFR 28.3 (when designated to preside over a hearing, Board members are titled "administrative judges"); 33 U.S.C. 921 (Benefits Review Board at the Department of Labor) *and* 20 CFR 801.2(3) & (12) (Board members are "officially entitled" administrative appeals judges); 42 U.S.C. 2241 (Atomic Safety and Licensing Boards) *and* 10 CFR 1.15 (members of these boards are called "administrative judges"); *cf.* 43 CFR 4.2(a) (members of various appellate boards created by Department of the Interior are "designated Administrative Judges").

We make no change based on these comments.

6. *Congress failed to enact a measure providing for a similar title.*

One commenter suggested that Congress had "rejected" changing the title of Board member, apparently concluding that such inaction prevented VA from doing so.

In the first place, the Congress did not "reject" the change. Indeed, the only Congressional action of record was adoption by the House of Representatives of a similar provision in the 105th Congress.

In 1998, the House of Representatives passed a bill which, among many other things, would have provided that Board members (other than the Chairman) could also be known as "veterans administrative law judges." H.R. 4110, 105th Cong. § 407(a); *see* 144 Cong. Rec. H6885 (daily ed. Aug. 3, 1998) (debate on passage of H.R. 4110 as reported by the Committee on Veterans' Affairs). That provision was never subject to a vote in the Senate. However, along with other provisions in H.R. 4110, § 407(a) was not adopted by the Senate in the compromise leading to the final version of the bill. *See* 144 Cong. Rec. H10374 (daily ed. Oct. 10, 1998) (debate on final passage of H.R. 4110).

Second, it is well-settled that the intent of the legislature is indicated by its action, not by its failure to act. *See, e.g., FDA* v. *Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 155 (2000) (in case challenging authority of FDA to regulate tobacco, Court would "not rely on Congress' failure to act—its consideration and rejection of bills that would have given the FDA this authority—" in reaching conclusion that FDA lacked authority); *United States* v. *Southwestern Cable Co.*, 392 U.S. 157, 170 (1968) (failed requests for legislative action do not prove agency did not already possess authority); *see generally* 73 Am. Jur.2d, Statutes § 84 (2001). In this case, not only was there, at best, a "failure to act" by the Congress with respect to the title of Board members, but, to the extent it did act, part of the Congress—the House—passed the measure.

We make no changes to the regulation based on this comment.

7. *The title "judge" would destroy the non-adversarial nature of the VA appellate process.*

Two commenters objected to the title "judge" because it would adversely affect the informal, non-adversarial nature of VA's appellate process. In addition to the fact that the commenters offer only their opinions in support of this proposition, it is relevant to note that the 973 administrative law "judges" at SSA—approximately 75% of all federal ALJs—administer justice in "an informal, nonadversary manner." 20 CFR 404.900(b) (rules relating to SSA administrative review process).

We make no changes based on these comments.

Administrative Procedure Act

This final rule concerns agency organization, procedure or practice and is not a substantive rule. Accordingly, it is exempt from the delayed effective date provision of 5 U.S.C. 553.

Paperwork Reduction Act

This document contains no provisions constituting a collection of information under the Paperwork Reduction Act (44 U.S.C. 3501–3520).

Executive Order 12866

This document has been reviewed by the Office of Management and Budget under Executive Order 12866.

Regulatory Flexibility Act

The Secretary hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. This final rule only affects members of the Board of Veterans' Appeals and not small entities. Therefore, pursuant to 5 U.S.C. 605(b), this final rule is exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

Unfunded Mandates

The Unfunded Mandates Reform Act requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before developing any rule that may result in an expenditure by State, local, or tribal governments, in

the aggregate, or by the private sector of $100 million or more in any given year. This rule would have no consequential effect on State, local, or tribal governments.

List of Subjects in 38 CFR Part 19

Administrative practice and procedure, Claims, Veterans.

Approved: November 18, 2002.

Anthony J. Principi,

Secretary of Veterans Affairs.

For the reasons set out in the preamble, 38 CFR part 19 is amended as set forth below:

PART 19—BOARD OF VETERANS' APPEALS: APPEALS REGULATIONS

1. The authority citation for part 19 continues to read as follows:

Authority: 38 U.S.C. 501(a), unless otherwise noted.

2. The section heading and section 19.2 are revised to read as follows:

§ 19.2 Composition of the Board; Titles.

(a) The Board consists of a Chairman, Vice Chairman, Deputy Vice Chairmen, Members and professional, administrative, clerical and stenographic personnel. Deputy Vice Chairmen are Members of the Board who are appointed to that office by the Secretary upon the recommendation of the Chairman.

(b) A member of the Board (other than the Chairman) may also be known as a Veterans Law Judge. An individual designated as an acting member pursuant to 38 U.S.C. 7101(c)(1) may also be known as an acting Veterans Law Judge.

(**Authority:** 38 U.S.C. 501(a), 512, 7101(a))

[FR Doc. 03–3040 Filed 2–7–03; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 36

RIN 2900–AL23

Loan Guaranty: Implementation of Public Law 107–103.

AGENCY: Department of Veterans Affairs.

ACTION: Interim final rule.

SUMMARY: The Department of Veterans Affairs (VA) amends its loan guaranty regulations to implement sections 401 through 404 of Pub. L. 107–103, the Veterans Education and Benefits Expansion Act of 2001. VA is incorporating into the regulations the following statutory changes: an increase in the maximum amount of loan guaranty entitlement from $50,750 to $60,000, a liberalization of the requirements regarding Memoranda of Understanding between VA and Native American Tribes in order for their members to qualify for direct housing loans to Native American veterans, a revision of the requirement that loan instruments used in connection with VA guaranteed loans contain a statement that such loans are not assumable without prior VA approval, and an increase in the specially adapted housing grant from $43,000 to $48,000 and in the special housing adaptations grant from $8,250 to $9,250.

DATES: *Effective Date:* This interim final rule is effective February 10, 2003. Comments must be received on or before April 11, 2003.

ADDRESSES: Mail or hand deliver written comments to: Director, Office of Regulations Management (02D), Department of Veterans Affairs, 810 Vermont Avenue, NW., Room 1154, Washington, DC 20420; or fax comments to (202) 273–9289; or e-mail comments to *OGCRegulations@mail.va.gov*. Comments should indicate that they are submitted in response to "RIN 2900–AL23." All written comments received will be available for public inspection at the above address in the Office of Regulations Management, Room 1158, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays).

FOR FURTHER INFORMATION CONTACT: Mr. Robert D. Finneran, Assistant Director for Policy and Valuation (262), Loan Guaranty Service, Veterans Benefits Administration, Department of Veterans Affairs, Washington, DC 20420, (202) 273–7368.

SUPPLEMENTARY INFORMATION: Under 38 U.S.C. chapter 37, VA guarantees loans made by private lenders to veterans for the purchase, construction, and refinancing of homes owned and occupied by veterans. VA also makes direct housing loans to Native American veterans living on tribal trust land.

In addition, under 38 U.S.C. chapter 21, VA provides grants to certain severely-disabled veterans with qualifying permanent and total service-connected disabilities to make adaptations to their homes that are necessary because of the nature of the veterans' disabilities.

VA is amending its loan guaranty regulations (38 CFR part 36) to implement changes to those housing programs made by sections 401 through 404 of Pub. L. 107–103.

Section 401 of Pub. L. 107–103 increased the maximum guaranty on a housing loan made to eligible veterans from $50,750 to $60,000. VA is making conforming changes to § 36.4302 to reflect the new statutory maximum.

Prior to enactment of Pub. L. 107–103, 38 U.S.C. 3762 required that, before VA could make a housing loan under 38 U.S.C. chapter 37, subchapter V to a Native American veteran, the tribal organization having jurisdiction over the veteran must have entered into a Memorandum of Understanding (MOU) with the Secretary of Veterans Affairs spelling out the conditions under which the program would operate on its trust lands. Section 402(b) of Pub. L. 107–103 allows VA to make loans under this program to a Native American veteran if the tribe has entered into an MOU with another Federal agency with regard to loans to Native Americans residing on tribal lands, so long as the Secretary of VA determines that the MOU substantially complies with VA's home loan requirements. VA is amending 38 CFR 36.4527 to reflect this change. The amendment requires that the MOU between the Tribe and the other Federal agency complies with the requirements now set forth in paragraph (b) of § 36.4527.

The goal of this statutory change and the new rule is to expand the number of Native American tribes participating in the VA Native American veteran direct loan program, ultimately increasing the number of Native American veterans obtaining housing loans from VA. VA is aware that many tribes do not wish to go through the process of negotiating an MOU with VA.

VA has participated in inter-agency task forces seeking to increase the availability of housing loans on Native American tribal trust land. These include the Executive Branch's One-Stop Mortgage Initiative during the Clinton Administration, and a task force created by the Federal National Mortgage Association (FNMA, commonly known as "Fannie Mae"). VA believes that the standards for an MOU contained in paragraph (b) of § 36.4527 mirror requirements by other Federal agencies. Therefore, an MOU between a tribe and another Federal agency would likely meet the requirements in paragraph (b).

VA specifically solicits comments from the public as to whether those requirements for an MOU between another Federal agency and a Native American tribe to be acceptable to VA are reasonable, or if they should be further modified.

Section 403 of Pub. L. 107–103 liberalized the requirement that loan instruments used in connection with VA guaranteed loans contain a

statement that such loans are not assumable without prior VA approval. Prior to enactment of Pub. L. 107–103, 38 U.S.C. 3714(d) required that the following notice, in all capital letters, using a font at least 2½ times larger than the regular type, be placed on the first page of the mortgage or deed of trust as well as any other instrument evidencing the loan, "This Loan is not Assumable Without the Approval of the Department of Veterans Affairs or its Authorized Agent." As modified by section 403 of Pub. L. 107–103, section 3714(d) requires that such notice appear conspicuously on at least one of the instruments evidencing the loan or the security therefor.

VA is therefore amending § 36.4308 to reflect this change. Under the new rule, the required language must appear on one of the following instruments: The note, the mortgage, the deed of trust, or a VA-specific rider to any of those documents. This language must appear in a typeface which is the larger of either twice the largest font size contained elsewhere in the body of the instrument or 18 points. VA is eliminating the current requirements that this notice be on the first page of the document and that it be in all capital letters.

The former statute imposed a significant paperwork burden on lenders, and made it virtually impossible for lenders to use uniform loan instruments available for FHA and conventional loans for VA guaranteed loans. VA believes the requirements in the new rule will provide adequate notice to borrowers regarding the restrictions on assumption of VA guaranteed loans while significantly reducing the administrative burden the former statute placed on lenders. Because VA believes lenders should be able to take immediate advantage of the new liberalization, VA is issuing this amendment as an interim-final rule. VA is soliciting comments from the public regarding whether the standards for such notice are adequate to provide reasonable notice to veteran borrowers without imposing an undue burden on our industry partners. VA will carefully consider comments received and, if warranted, further amend the standards for the required notice.

Section 404 of Pub. L. 107–103 increased the maximum grants VA may make under 38 U.S.C. chapter 21, to certain veterans with total and permanent service-connected disabilities to assist those veterans in adapting housing to their special needs. The maximum Specially Adapted Housing grant authorized by 38 U.S.C. 2101(a) for veterans who have lost or lost the use of both lower extremities or have lost or lost the use of one lower extremity and also are blind in both eyes or have residuals of organic disease or injury so as to preclude locomotion without the aid of braces, crutches, canes, or a wheelchair was increased from $43,000 to $48,000. The maximum Special Housing Adaptations grant authorized by 38 U.S.C. 2101(b) to veterans with blindness in both eyes or whose disability includes the anatomical loss or loss of use of both hands was increased from $8,250 to $9,250. VA is making conforming changes to § 36.4404 to reflect these statutory increases.

Administrative Procedure Act

These amendments are published without regard to the notice and comment and delayed effective date provisions of 5 U.S.C. 533 since amendments to §§ 36.4302, 36.4527, and 36. 4404 merely conform existing rules to statutory amendments or, in the case of the amendment to § 36. 4308, liberalize existing requirements pursuant to new statutory authority. We find that compliance with those provisions of 5 U.S.C. 533 would be impracticable, unnecessary, and contrary to the public interest.

Unfunded Mandates

The Unfunded Mandates Reform Act requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before developing any rule that may result in expenditure by State, local, or tribal governments, in the aggregate, or by the private sector of $100 million or more in any given year. This rule would have no consequential effect on State or local governments. With regard to the impact of this rule, on tribal governments, the amendments regarding MOUs with tribal governments are, as explained above, a liberalization of existing requirements. This rule may eliminate the necessity of some tribes having to negotiate a separate MOU with the Secretary. Accordingly, this rule may result in some cost saving to tribal government. Once VA approves making loans to members of a particular tribe, the loans would be funded by VA. Although the Indian housing authority may have some involvement in the servicing of some of these loans, any costs should be insignificant. Based on the current low loan volume in the Native American Veteran Direct Loan Program, VA anticipates making fewer than a dozen loans a year to American Indian tribal members.

Paperwork Reduction Act

This document contains no provisions constituting a collection of information under the Paperwork Reduction Act (44 U.S.C. 3501–3520).

Executive Order 12866

This document has been reviewed by the Office of Management and Budget under Executive Order 12866.

Regulatory Flexibility Act

The Secretary hereby certifies that this interim final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. The amendments regarding increases in the guaranty amount and specially adapted housing grant merely conform the regulations to statutory increases. The amendments regarding MOUs with tribal governments will not impact private entities. The liberalization of the notice requirements regarding loan assumptions should enable lenders to use standard loan instruments (such as note, mortgage, or deed of trust) they now use with regard to FHA, FNMA and FHLMC loans on VA loan transactions. Any costs to small entities originating VA loans with respect to these new requirements for loan instruments should be minimal. Therefore, pursuant to 5 U.S.C. 605(b), this interim rule is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

The Catalog of Federal Domestic Assistance Program numbers are 64.114 and 64.119.

List of Subjects in 38 CFR Part 36

Condominiums, Flood insurance, Housing, Indians, Individuals with disabilities, Loan programs-housing and community development, Loan programs-Indians, Loan programs-veterans, Manufactured homes, Mortgage insurance, Reporting and recordkeeping requirements, Veterans.

Approved: December 4, 2002.

Anthony J. Principi,

Secretary of Veterans Affairs.

For the reasons set out in the preamble, 38 CFR part 36 is amended as set forth below.

PART 36—LOAN GUARANTY

1. The authority citation for part 36 continues to read as follows:

Authority: 38 U.S.C. 501, 3701–3704, 3707, 3710–3714, 3719, 3720, 3729, 3762, unless otherwise noted.

2. In § 36.4302, paragraphs (a)(4), (e)(1)(i), (e)(2)(i), (e)(3), and the authority citation at the end of paragraph (e)(3) are revised to read as follows:

§ 36.4302 Computation of guaranties or insurance credits.

(a) * * *

(4) The lesser of $60,000 or 25 percent of the original principal loan amount where the loan amount exceeds $144,000 and the loan is for the purchase or construction of a home or the purchase of a condominium unit.

* * * * *

(e) * * *

(1) * * *

(i) Entitlement may be increased by up to $24,000 if the loan amount exceeds $144,000 and the loan is for purchase or construction of a home or purchase of a condominium; and

(2) * * *

(i) Entitlement may be increased by up to $24,000 if the loan amount exceeds $144,000 and the loan is for purchase or construction of a home or purchase of a condominium: and

* * * * *

(3) If a veteran previously secured a manufactured home loan under 38 U.S.C. 3712, the amount of entitlement used for that loan is subtracted from $36,000. The sum remaining is the amount of available entitlement for home loans and the sum remaining may be increased by up to $24,000 if the loan amount exceeds $144,000 and the loan is for purchase or construction of a home or purchase of a condominium. To determine the amount of entitlement available for manufactured home loans processed under 38 U.S.C. 3712, the amount of entitlement previously used for that purpose is subtracted from $20,000. The sum remaining is the amount of available entitlement for use for manufactured home loan purposes under 38 U.S.C. 3712.

(Authority: 38 U.S.C. 3703)

3. Section 36.4308 is amended by removing the first authority citation at the end of the section, and by revising paragraph (c)(2) to read as follows:

§ 36.4308 Transfer of title by borrower or maturity by demand or acceleration.

* * * * *

(c) * * *

(2) With respect to each such loan at least one of the instruments used in the transaction shall contain the following statement: "This loan is not assumable without the approval of the Department of Veterans Affairs or its authorized agent." This statement must be:

(i) Printed in a font size which is the larger of:

(A) Two times the largest font size contained in the body of the instrument; or

(B) 18 points; and

(ii) Contained in at least one of the following:

(A) The note;

(B) The mortgage or deed of trust; or

(C) A rider to either the note, the mortgage, or the deed of trust.

Authority: (38 U.S.C.3714(d))

4. In § 36.4404, paragraph (a) introductory text, paragraph (b)(2), and the authority citation at the end of the section are revised to read as follows:

§ 36.4404 Computation of cost.

(a) *Computation of cost of housing unit.* Under section 2101(a) of chapter 21, for the purpose of computing the amount of benefits payable to a veteran-beneficiary, there may be included in the total cost to the veteran the following amount, not to exceed $48,000.

* * * * *

(b) * * *

(2) $9,250.

(Authority: 38 U.S.C. 2102)

5. Section 36.4527(a) is amended by:

A. In paragraph (a)(1), at the end of the paragraph, removing "and" and adding, in its place, "or".

B. Redesignating paragraph (a)(2) as paragraph (a)(3).

C. Adding a new paragraph (a)(2).

The addition reads as follows:

§ 36.4527 Direct housing loans to Native American veterans on trust lands.

(a) * * *

(2) The tribal organization that has jurisdiction over the veteran has entered into a memorandum of understanding with any department or agency of the United States with respect to such loans and the memorandum complies with the requirements of paragraph (b) of this section.

(Authority: 38 U.S.C. 3762(a))

[FR Doc. 03–3176 Filed 2–7–03; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[WV058–6024a; FRL–7442–1]

Approval and Promulgation of Air Quality Implementation Plans; West Virginia; Regulation To Prevent and Control Air Pollution From Combustion of Refuse

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve a revision to the West Virginia State Implementation Plan (SIP). The SIP revision amends a regulation to prevent and control air pollution from combustion of refuse. EPA is approving these revisions in accordance with the requirements of the Clean Air Act.

DATES: This rule is effective on April 11, 2003 without further notice, unless EPA receives adverse written comment by March 12, 2003. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Written comments should be mailed to Kathleen Anderson, Air Quality Planning and Information Services Branch, 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 1301 Constitution Avenue, NW., Room B108, Washington, DC 20460; and West Virginia Department of Environmental Protection, Division of Air Quality, 7012 MacCorkle Avenue, SE., Charleston, WV 25304–2943.

FOR FURTHER INFORMATION CONTACT: Kathleen Anderson, (215) 814–2173, or by e-mail at *anderson.kathleen@epa.gov*. Please note that while questions may be posed via telephone and e-mail, formal comments must be submitted in writing, as indicated in the **ADDRESSES** section of this document.

SUPPLEMENTARY INFORMATION:

I. Background

On September 21, 2000 and on September 12, 2001, West Virginia submitted revisions to a regulation (45CSR6) to prevent and control air pollution from combustion of refuse as formal revisions to its State Implementation Plan (SIP). The first SIP revision went to public hearing on July 19, 1999 and became effective on August 31, 2000. This SIP revision modified and deleted certain definitions, updated opacity standards and clarified and expanded open burning requirements. The second SIP

revision went to public hearing on August 14, 2000 and became effective on July 1, 2001. This SIP revision added requirements for air curtain incinerators and exempted certain temporary flares form permitting. Since the most recent of the two SIP revisions incorporates all of the changes from the earlier SIP revision, EPA will incorporate by reference the version of 45CSR6 submitted on September 12, 2001 into the SIP.

I. Summary of SIP Revision

(A) The following definitions were revised as follows: (1) Definitions of "Commission," "Ringelmann Smoke Chart," "Construction and Demolition Wastes" were deleted, (2) "Incineration" was modified to include thermal oxidizers and thermal catalytic oxidizers, (3) "Director" was modified to include persons delegated authority by the Director; (4) "Open Burning" was modified to include "burn barrels," (5) "Person" was modified to include the State of West Virginia and the United States, (6) Definitions for "Land Clearing Debris," Air Curtain Incinerator", "Clean Lumber," and "Yard Waste" were added.

(B) Restrictions on open burning were revised as follows: (1) Open burning is prohibited for any purpose unless specifically exempted in the regulation, (2) Open burning for fire training is exempt but must be conducted according to 45CSR15 and 40 CFR part 61, subpart M, (3) References to "construction and demolition wastes" were replaced with "land clearing debris" and the exemption for open burning of backyard wastes was removed, (4) Prior Director's approval for open burning of land clearing debris is required in all areas of the State, and (5) An exemption was added for open burning of propellent and explosive wastes, subject to 45CSR25.

(C) Emission Standards for incinerators were revised as follows: (1) Particulate matter emission standards were changed from a Ringelmann Chart reading to a measured percent opacity standard, (2) The regulations at 40 CFR part 60 subparts Eb, AAAA and CCCC for air curtain incinerators were incorporated by reference, restrictions were imposed on the types of wastes allowed to be burned in air curtain incinerators, permits for construction, operation and modification of air curtain incinerators are required and an exemption from permitting was given to temporary air curtain incinerators.

(D) Permit requirements were changed to require permits for the construction, modification and relocation of any incinerator as applicable in 45CSR13, 45CSR14 and 45CSR19 and temporary flares and flare stacks with potential emissions below stationary source or major modification thresholds are exempt from permitting.

(E) Stack testing must be conducted using 40 CFR part 60, appendix A, Method 5 or other EPA-approved equivalent method approved by the Director to perform stack testing for particulate matter.

(F) The following sections were added or deleted: (1) The section on delayed compliance orders was deleted, (2) A section titled "Emergencies and Natural Disasters" was added to exempt open burning activities resulting from incineration of vegetation, building debris and other non-hazardous debris from natural disasters, (3) A section titled "Effect of the Rule" was added to prohibit 45CSR6 from being used to allow or permit construction of a new incinerator in violation of other State regulation, and (4) A section titled "Inconsistency Between Rules" allows the Director to determine applicability of conflicting rules based on imposing the more stringent provisions.

These revisions strengthen the SIP by clarifying and updating definitions, updating opacity standards, requiring EPA-approved test methods, and clarifying and expanding open burning and incineration requirements.

III. Final Action

EPA is approving the revisions to 45CSR6, "To Prevent and Control Air Pollution from Combustion of Refuse," submitted by West Virginia on September 12, 2001. EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comment. However, in the "Proposed Rules" section of today's **Federal Register**, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are filed. This rule will be effective on April 11, 2003 without further notice unless EPA receives adverse comment by March 12, 2003. If EPA receives adverse comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

IV. Regulatory Assessment Requirements

A. General Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

C. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 11, 2003. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action, to prevent and control air pollution for combustion of refuse in West Virginia, may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

Dated: January 15, 2003.

James W. Newsom,

Acting Regional Administrator, Region III.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart XX—West Virginia

2. Section 52.2520 is amended by adding paragraph (c)(51) to read as follows:

§ 52.2520 Identification of plan.

* * * * *

(c) * * *

(51) Revisions to the West Virginia's Regulations to prevent and control air pollution from combustion of refuse, submitted on September 12, 2001 by the West Virginia Division of Environmental Protection:

(i) Incorporation by reference.

(A) Letter of September 12, 2001 from the West Virginia Division of Environmental Protection.

(B) Revisions to Title 45, Series 6 (45CSR6), To Prevent and Control Air Pollution from Combustion of Refuse, effective July 1, 2001.

(ii) Additional Material.

(A) Letter of September 21, 2000 from the West Virginia Division of Environmental Protection to EPA transmitting the regulation to prevent and control air pollution from the combustion of refuse.

(B) Letter of January 26, 2001 from the West Virginia Division of Environmental Protection to EPA transmitting materials related to revisions of 45CSR6.

(C) Remainder of the State submittals pertaining to the revisions listed in paragraph (c)(51)(i) of this section.

[FR Doc. 03–2938 Filed 2–7–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[KY 125–2 –200308(c); FRL–7449–9]

Approval and Promulgation of Implementation Plans for Kentucky: Air Permit Regulations; Withdrawal of Direct Final Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Withdrawal of direct final rule.

SUMMARY: Due to adverse comment, EPA is withdrawing the direct final rule published December 30, 2002, (see 67 FR 79523) approving several revisions to the Kentucky State Implementation Plan. The revisions include separating Kentucky's air permits rule into several, smaller rules, and renumbering and rewriting these rules in plain English. EPA stated in the direct final rule that if EPA received adverse comment by January 29, 2003, the rule would be withdrawn and not take effect. EPA subsequently received adverse comment. EPA will address the comment in a subsequent final action based upon the proposed action also published on December 30, 2002 (see 67 FR 79543). EPA will not institute a second comment period on this action.

DATES: The direct final rule is withdrawn as of February 10, 2003.

FOR FURTHER INFORMATION CONTACT: Michele Notarianni, Air Planning Branch, U.S. Environmental Protection Agency Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303–8960. (404/562–9031 (phone) or *notarianni.michele@epa.gov* (e-mail).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: January 30, 2003.

A. Stanley Meiburg,

Acting, Regional Administrator, Region 4.

[FR Doc. 03–3239 Filed 2–7–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[KY 139–200307(c); FRL–7449–8]

Approval and Promulgation of Implementation Plans for Kentucky: Source-Specific Revision for Lawson Mardon Packaging; Withdrawal of Direct Final Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Withdrawal of direct final rule.

SUMMARY: Due to adverse comment, EPA is withdrawing the direct final rule published December 18, 2002, (see 67 FR 77430) approving a source-specific revision to the State Implementation Plan of the Commonwealth of Kentucky.

This revision allows Lawson Mardon Packaging, USA, Corporation to have an alternative compliance averaging period of 30 days instead of the 24-hour averaging period specified by Kentucky air quality regulations. EPA stated in the direct final rule that if EPA received adverse comment by January 17, 2003, the rule would be withdrawn and not take effect. EPA subsequently received adverse comment. EPA will address the comment in a subsequent final action based upon the proposed action also published on December 18, 2002 (see 67 FR 77463). EPA will not institute a second comment period on this action.

DATES: The direct final rule is withdrawn as of February 10, 2003.

FOR FURTHER INFORMATION CONTACT: Michele Notarianni, Air Planning Branch, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. (404/562–9031 (phone) or *notarianni.michele@epa.gov* (e-mail).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: January 31, 2003.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 03–3237 Filed 2–7–03; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[NH–51–7175a; FRL –7447–7]

Approval and Promulgation of State Plans for Designated Facilities and Pollutants: New Hampshire; Plan for Controlling MWC Emissions From Existing Municipal Waste Combustors

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The United States Environmental Protection Agency (EPA) approves the Sections 111(d)/129 State Plan submitted by the New Hampshire Department of Environmental Services (NH DES) on August 16, 2002. This State Plan is for implementing and enforcing provisions at least as protective as the federal Emission Guidelines (EGs) applicable to existing large and small Municipal Waste Combustion (MWC) units.

DATES: This rule is effective on April 11, 2003 without further notice unless EPA receives significant adverse comment by March 12, 2003. If EPA receives such comments, we will publish a timely withdrawl of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Comments must be submitted to Mr. Steven Rapp, Chief, Air Permits, Toxics & Indoors Programs Unit, Office of Ecosystem Protection, U.S. EPA, One Congress Street, Suite 1100 (CPA), Boston, Massachusetts 02114–2023. You may examine copies of materials relevant to this action during normal business hours, by appointment at the following locations:

Environmental Protection Agency-New England, Region 1, Air Permits, Toxics & Indoor Programs, Office of Ecosystem Protection, Suite 1100, One Congress Street, Boston, Massachusetts 02114–2023.

New Hampshire Department of Environmental Services, Air Resources Division, 6 Hazen Drive, P.O. Box 95, Concord, New Hampshire 03302–0095.

The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the day of the visit.

FOR FURTHER INFORMATION CONTACT: John Courcier at (617) 918–1659.

SUPPLEMENTARY INFORMATION:

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I. What Action Is EPA Taking Today?

EPA is approving the above referenced State Plan which New Hampshire submitted on August 16, 2002 for the control of air emissions from existing large (units with an individual capacity greater than 250 tons per day) and small (units with an individual capacity of 250 tons per day or less) MWCs throughout the State.

EPA is publishing this approval action without prior proposal because the Agency views this as a noncontroversial action and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the State Plan should relevant adverse comments be filed. If EPA receives no significant, material, and adverse comments by March 12, 2003, this action will be effective April 11, 2003.

If EPA receives significant, material, and adverse comments by the above date, the Agency will withdraw this action before the effective date by publishing a subsequent document in the **Federal Register** that will withdraw this final action. EPA will address all public comments received in a subsequent final rule based on the parallel proposed rule published in today's **Federal Register**. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

II. Why Does EPA Want To Regulate Air Emissions From MWCs?

When burned, municipal solid wastes emit various air pollutants, including hydrochloric acid, dioxin/furan, toxic metals (lead, cadmium, and mercury) and particulate matter. Mercury is highly hazardous and is of particular concern because it persists in the environment and bioaccumulates through the food web. Serious developmental and adult effects in humans, primarily damage to the nervous system, have been associated with exposures to mercury. Harmful effects in wildlife have also been reported; these include nervous system damage and behavioral and reproductive deficits. Human and wildlife exposure to mercury occur mainly through eating of fish. When inhaled, mercury vapor attacks also the lung tissue and is a cumulative poison. Short-term exposure to mercury in certain forms can cause hallucinations and impair consciousness. Long-term exposure to mercury in certain forms can affect the central nervous system and cause kidney damage.

Exposure to particulate matter can aggravate existing respiratory and cardiovascular disease and increase risk of premature death. Hydrochloric acid is a clear colorless gas. Chronic exposure

to hydrochloric acid has been reported to cause gastritis, chronic bronchitis, dermatitis, and photosensitization. Acute exposure to high levels of chlorine in humans may result in chest pain, vomiting, toxic pneumonitis, pulmonary edema, and death. At lower levels, chlorine is a potent irritant to the eyes, the upper respiratory tract, and lungs.

Exposure to dioxin and furan can cause skin disorders, cancer, and reproductive effects such as endometriosis. These pollutants can also affect the immune system.

III. When Did EPA First Publish These Requirements?

The EPA originally promulgated the EGs for large and small MWCs on December 19, 1995. However, the EGs for the small MWCs were vacated by the U.S. Court of Appeals for the District of Columbia Circuit in March 1997. In response to the Court's decision, EPA again proposed the small MWC emission guidelines on August 30, 1999. On December 19, 1995 and December 6, 2000, according to sections 111 and 129 of the Clean Air Act (Act), the EPA published the final form of the EGs applicable to existing large and small MWCs, respectively. The EGs are at 40 CFR part 60, subparts Cb (large MWCs) and BBBB (small MWCs). *See* 60 FR 65382 (large) and 65 FR 76378 (small) and the **Background** section.

IV. Who Must Comply With the Requirements?

All large MWCs that commenced construction before December 19, 1995, and all small MWCs that commenced construction on or before August 30, 1999 must comply with these requirements.

V. Are Any Sources Exempt From the Requirements?

The following incinerator source categories are exempt from the federal requirements for small MWCs:

(1) Small MWC units that combust less than 11 tons per day.

(2) Small power production facilities.

(3) Cogeneration facilities.

(4) MWC units that combust only tires.

(5) Hazardous waste combustion.

(6) Materials recovery units.

(7) Co-fired units.

(8) Plastics/rubber recycling units.

(9) Units that combust fuels made from products of plastics/rubber recycling plants.

(10) Cement kilns.

(11) Air curtain incinerators.

Please refer to 40 CFR 60.1555 for specific definitions of these incinerator source categories, and any recordkeeping or other requirements that still may need to be met.

VI. By What Date Must MWCs in New Hampshire Achieve Compliance?

All existing large MWCs must now be in compliance. The final compliance date for large MWCs was December 19, 2000. All existing small MWC units in the State of New Hampshire must comply with these requirements by December 6, 2005.

VII. What Happens If a Small MWC Does Not/Cannot Meet the Requirements by the Final Compliance Date?

Any existing small MWC that fails to meet the requirements by December 6, 2005 must shut down. The unit will not be allowed to start up until the owner/operator installs the controls necessary to meet the requirements.

VIII. What Options Are Available to Operators if They Cannot Achieve Compliance Within One Year of the Effective Date of the State Plan?

If a small MWC cannot achieve compliance within one year of the effective date of EPA approval of the State Plan, the operator must agree to meet certain increments of progress until they achieve compliance. The State Rule details the increments of progress for the affected small MWCs.

IX. What Is a State Plan?

Section 111(d) of the Act requires that pollutants controlled under NSPS must also be controlled at older sources in the same source category. Once an NSPS is issued, EPA then publishes an EG applicable to the control of the same pollutant from existing (designated) facilities. States with designated facilities must then develop State Plans to adopt the EGs into their body of regulations. States must also include in their State Plans other elements, such as inventories, legal authority, and public participation documentation, to demonstrate their ability to enforce the State Plans.

X. What Did the State Submit as Part of its State Plan?

The State of New Hampshire submitted its sections 111(d)/129 State Plan to EPA for approval on August 16, 2002. The State adopted the EG requirements into the New Hampshire Code of Administrative Rules Env–A–3300, "Municipal Waste Combustion" on June 7, 2002. The State Plan contains:

1. A demonstration of the State's legal authority to implement the State Plan.

2. New Hampshire Rule CHAPTER Env–A–3300, "Municipal Waste Combustion" as the enforceable mechanism.

3. An inventory of the sources on pages 5 and 6 of the State Plan.

4. An emissions inventory on pages 6 and 7 of the State Plan.

5. Emission limits, at least as protective as the limits found under Subparts Cb and DDDD, that are contained in Env–A–3303. (Please note that the State's mercury limit of 0.028 ug/dscm is more stringent than EPA's EG.)

6. Provisions for compliance schedules that are contained in Env–A–3308.

7. Testing, monitoring, and inspection requirements that are contained in Env–A–3306.

8. Reporting and Recordkeeping requirements that are contained in Env–A–3307.

9. Operator training and qualification requirements that are contained in Env–A–3305.

10. A record of the public notice and hearing requirements that are contained in Appendices E and F of the State Plan.

11. Provisions for state progress reports to EPA that are contained on page 10 of the State Plan.

12. A final compliance date of December 6, 2005.

XI. Why Is EPA Approving New Hampshire's State Plan?

EPA has evaluated the MWC State Plan submitted by New Hampshire for consistency with the Act, EPA guidelines and policy. EPA has determined that New Hampshire's State Plan meets all requirements and, therefore, EPA is approving New Hampshire's Plan to implement and enforce the EGs, as it applies to existing Large and Small MWCs.

EPA's approval of New Hampshire's State Plan is based on our findings that:

(1) NHDES provided adequate public notice of public hearings for the proposed rule-making that allows New Hampshire to carry out and enforce provisions that are at least as protective as the EGs for Large and Small MWCs, and

(2) NHDES demonstrated legal authority to adopt emission standards and compliance schedules applicable to the designated facilities; enforce applicable laws, regulations, standards and compliance schedules; seek injunctive relief; obtain information necessary to determine compliance; require record keeping; conduct inspections and tests; require the use of monitors; require emission reports of

owners and operators; and make emission data publicly available.

A detailed discussion of EPA's evaluation of the State Plan is included in the technical support document (TSD) located in the official file for this action and available from the EPA contact listed above. The State Plan meets all of the applicable approval criteria.

XII. Why Does EPA Need To Approve State Plans?

Under section 129 of the Act, EGs are not federally enforceable. Section 129(b)(2) of the Act requires states to submit State Plans to EPA for approval. Each state must show that its State Plan will carry out and enforce the emission guidelines. State Plans must be at least as protective as the EGs, and they become federally enforceable upon EPA's approval.

The procedures for adopting and submitting State Plans are in 40 CFR part 60, subpart B. EPA originally issued the subpart B provisions on November 17, 1975. EPA amended subpart B on December 19, 1995, to allow the subparts developed under section 129 to include specifications that supersede the general provisions in subpart B regarding the schedule for submittal of State Plans, the stringency of the emission limitations, and the compliance schedules. *See* 60 FR 65414.

XIII. Regulatory Assessment Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing sections 111(d)/129 State Plans, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a state plan for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a state plan, to use VCS in place of a submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*)

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 11, 2003. Interested parties should comment in response to the proposed rule rather than petition for judicial review, unless the objection arises after the comment period allowed for in the proposal. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 62

Environmental protection, Air pollution control, Intergovernmental relations, Sulfur oxides, Waste treatment and disposal, Reporting and recordkeeping requirements.

Dated: January 23, 2003.

Robert W. Varney,

Regional Administrator, EPA New England.

40 CFR part 62 of the Code of Federal Regulations is amended as follows:

PART 62—[AMENDED]

1. The authority citation for part 62 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart EE—New Hampshire

2. Part 62 is amended by adding a new § 62.7325(b)(4) and (c)(4) to subpart EE to read as follows:

Plan for the Control of Designated Pollutants From Existing Facilities (Section 111(d) Plan)

§ 62.7325 Identification of plan.

* * * * *

(b) * * *

(4) Control of air emissions from existing large and small municipal waste combustors, submitted on August 16, 2002.

(c) * * *

(4) Municipal waste combustors.

(i) Large MWCs with a capacity greater than 250 tons per day.

(ii) Small MWCs with a capacity of 250 tons per day or less.

3. Part 62 is amended by adding a new § 62.7460 and a new undesignated

center heading to subpart EE to read as follows:

Air Emissions From Existing Large and Small Municipal Waste Combustors

§ 62.7460 Identification of sources.

(a) The plan applies to the following existing large municipal waste combustor:

(1) The Wheelabrator Concord Co., L.P. in Penacook.

(2) [Reserved]

(b) The plan applies to the following existing small municipal waste combustor:

(1) The Wheelabrator Claremont Co., L.P. in Claremont.

(2) [Reserved]

[FR Doc. 03–2540 Filed 2–7–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[NH–50–7174a; FRL–7447–6]

Approval and Promulgation of State Plans for Designated Facilities and Pollutants: New Hampshire; Plan for Controlling Emissions From Existing Commercial and Industrial Solid Waste Incinerators

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) approves the sections 111(d)/129 State Plan submitted by the New Hampshire Department of Environmental Services (NH DES) on August 12, 2002. This State Plan is for implementing and enforcing provisions at least as protective as the federal Emission Guidelines (EGs) applicable to existing Commercial and Solid Waste Incineration units (CISWIs).

DATES: This rule is effective on April 11, 2003 without further notice unless EPA receives significant adverse comment by March 12, 2003. If EPA receives such comments, we will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Comments must be submitted to Mr. Steven Rapp, Chief, Air Permits, Toxics & Indoor Programs Unit, Office of Ecosystem Protection, U.S. EPA, One Congress Street, Suite 1100 (CPA), boston, Massachusetts 02114–2023. You may examine copies of materials relevant to this action during normal business hours, by appointment at the following locations: Environmental Protection Agency-New England, Region 1, Air Permits, Toxics & Indoor Programs, Office of Ecosystem Protection, Suite 1100, One Congress Street, Boston, Massachusetts 02114–2023.

New Hampshire Department of Environmental Services, Air Resources Division, 6 Hazen Drive, P.O. Box 95, Concord, New Hampshire 03302–0095.

The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the day of the visit.

FOR FURTHER INFORMATION CONTACT: John Courcier at (617) 918–1659.

SUPPLEMENTARY INFORMATION:

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I. What Action Is EPA Taking Today?

EPA is approving the above referenced State Plan which New Hampshire submitted on August 12, 2002 for the control of air emissions from existing CISWIs throughout the State.

EPA is publishing this approval action without prior proposal because the Agency views this as a noncontroversial action and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the State Plan should relevant adverse comments be filed. If EPA receives no significant, material, and adverse comments by March 12, 2003, this action will be effective April 11, 2003.

If EPA receives significant, material, and adverse comments by the above date, the Agency will withdraw this action before the effective date by publishing a subsequent document in the **Federal Register**. EPA will address all public comments received in a subsequent final rule based on the parallel proposed rule published in today's **Federal Register**. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

II. Why Does EPA Want To Regulate Air Emissions From CISWIs?

When burned, commercial and industrial solid wastes emit various air pollutants, including hydrochloric acid, dioxin/furan, toxic metals (lead, cadmium, and mercury) and particulate matter. Mercury is highly hazardous and is of particular concern because it persists in the environment and bioaccumulates through the food web. Serious developmental and adult effects in humans, primarily damage to the nervous system, have been associated with exposures to mercury. Harmful effects in wildlife have also been reported; these include nervous system damage and behavioral and reproductive deficits. Human and wildlife exposure to mercury occur mainly through eating of fish. When inhaled, mercury vapor attacks also the lung tissue and is a cumulative poison. Short-term exposure to mercury in certain forms can cause hallucinations and impair consciousness. Long-term exposure to mercury in certain forms can affect the central nervous system and cause kidney damage.

Exposure to particulate matter can aggravate existing respiratory and cardiovascular disease and increase risk of premature death. Hydrochloric acid is a clear colorless gas. Chronic exposure to hydrochloric acid has been reported to cause gastritis, chronic bronchitis, dermatitis, and photosensitization. Acute exposure to high levels of chlorine in humans may result in chest pain, vomiting, toxic pneumonitis, pulmonary edema, and death. At lower levels, chlorine is a potent irritant to the eyes, the upper respiratory tract, and lungs.

Exposure to dioxin and furan can cause skin disorders, cancer, and reproductive effects such as endometriosis. These pollutants can also affect the immune system.

III. When Did EPA First Publish These Requirements?

The EPA proposed the EGs in the **Federal Register** on November 30, 1999. On December 1, 2000, according to sections 111 and 129 of the Clean Air Act (Act), the EPA published the final

form of the EGs applicable to existing CISWIs. The EGs are at 40 CFR part 60, subpart DDDD. *See* 65 FR 75362 and the **Background** section.

IV. Who Must Comply With the Requirements?

All CISWIs that commenced construction on or before November 30, 1999 must comply with these requirements.

V. Are Any Sources Exempt From the Requirements?

The following incinerator source categories are exempt from the federal requirements for CISWIs:

(1) Pathological waste incineration units.
(2) Agricultural waste incineration.
(3) Municipal Waste Combustors.
(4) Hospital/medical/infectious waste incineration units.
(5) Small power production facilities.
(6) Cogeneration facilities.
(7) Hazardous waste combustion.
(8) Materials recovery units.
(9) Air curtain incinerators.
(10) Cyclonic barrel burners.
(11) Rack, part, and drum reclamation.
(12) Cement kilns.
(13) Sewage sludge incinerators.
(14) Chemical recovery units.
(15) Laboratory analysis units.

Please refer to 40 CFR 60.2555 for specific definitions of these incinerator source categories, and any recordkeeping or other requirements that still may need to be met.

VI. By What Date Must CISWIs in New Hampshire Achieve Compliance?

All existing CISWI units in the State of New Hampshire must comply with these requirements by December 1, 2005.

VII. What Happens if a CISWI Does Not/Cannot Meet the Requirements by the Final Compliance Date?

Any existing CISWI that fails to meet the requirements by December 1, 2005 must shut down. The unit will not be allowed to start up until the owner/operator installs the controls necessary to meet the requirements.

VIII. What Options Are Available to Operators if They Cannot Achieve Compliance Within One Year of the Effective Date of the State Plan?

If a CISWI cannot achieve compliance within one year of the effective date of EPA approval of the State Plan, the operator must agree to meet certain increments of progress until it achieves compliance. The State Rule details the increments of progress for the affected CISWI.

IX. What Is a State Plan?

Section 111(d) of the Act requires that pollutants controlled under NSPS must also be controlled at older sources in the same source category. Once an NSPS is issued, EPA then publishes an EG applicable to the control of the same pollutant from existing (designated) facilities. States with designated facilities must then develop State Plans to adopt the EGs into their body of regulations. States must also include in their State Plans other elements, such as inventories, legal authority, and public participation documentation, to demonstrate their ability to enforce the State Plans.

X. What Did the State Submit as Part of Its State Plan?

The State of New Hampshire submitted its sections 111(d)/129 State Plan to EPA for approval on August 12, 2002. The State adopted the EG requirements into the New Hampshire Code of Administrative Rules Env-A 3400, "Commercial and Industrial Solid Waste Incinerators" on May 2, 2002. The State Plan contains:

1. A demonstration of the State's legal authority to implement the State Plan.
2. New Hampshire Rule CHAPTER Env-A 3400, "Commercial and Industrial Solid Waste Incinerators" as the enforceable mechanism.
3. An inventory of the sources on page 6 of the State Plan.
4. An emissions inventory on page 6 of the State Plan.
5. Emission limits, at least as protective as the limits found under subpart DDDD, that are contained in Env-A–3403.
6. Provisions for compliance schedules that are contained in Env-A 3406.
7. Testing, monitoring, and inspection requirements that are contained in Env-A 3408 and 3409.
8. Reporting and Recordkeeping requirements that are contained in Env-A 3410.
9. Operator training and qualification requirements that are contained in Env-A 3405.
10. Requirements for the development of a Waste Management Plan that are contained in Env-A 3407.
11. A record of the public notice and hearing requirements that are contained in Appendices E and F of the State Plan.
12. Provisions for state progress reports to EPA that are contained on page 9 of the State Plan.
13. Title V permit application due date requirements that are contained in Env–A 3411 and are due on December 1, 2003.
14. A final compliance date of December 1, 2005.

XI. Why Is EPA Approving New Hampshire's State Plan?

EPA has evaluated the CISWI State Plan submitted by New Hampshire for consistency with the Act, EPA guidelines and policy. EPA has determined that New Hampshire's State Plan meets all requirements and, therefore, EPA is approving New Hampshire's Plan to implement and enforce the EGs, as it applies to existing CISWIs.

EPA's approval of New Hampshire's State Plan is based on our findings that:

(1) NHDES provided adequate public notice of public hearings for the proposed rule-making that allows New Hampshire to carry out and enforce provisions that are at least as protective as the EGs for CISWIs, and

(2) NHDES demonstrated legal authority to adopt emission standards and compliance schedules applicable to the designated facilities; enforce applicable laws, regulations, standards and compliance schedules; seek injunctive relief; obtain information necessary to determine compliance; require record keeping; conduct inspections and tests; require the use of monitors; require emission reports of owners and operators; and make emission data publicly available.

A detailed discussion of EPA's evaluation of the State Plan is included in the technical support document (TSD) located in the official file for this action and available from the EPA contact listed above. The State Plan meets all of the applicable approval criteria.

XII. Why Does EPA Need To Approve State Plans?

Under section 129 of the Act, EGs are not federally enforceable. Section 129(b)(2) of the Act requires states to submit State Plans to EPA for approval. Each state must show that its State Plan will carry out and enforce the emission guidelines. State Plans must be at least as protective as the EGs, and they become federally enforceable upon EPA's approval.

The procedures for adopting and submitting State Plans are in 40 CFR part 60, subpart B. EPA originally issued the subpart B provisions on November 17, 1975. EPA amended subpart B on December 19, 1995, to allow the subparts developed under section 129 to include specifications that supersede the general provisions in subpart B regarding the schedule for submittal of State Plans, the stringency of the

emission limitations, and the compliance schedules. *See* 60 FR 65414.

XIII. Regulatory Assessment Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing sections 111(d)/129 State Plans, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a state plan for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a state plan, to use VCS in place of a submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*)

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule; to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 11, 2003. Interested parties should comment in response to the proposed rule rather than petition for judicial review, unless the objection arises after the comment period allowed for in the proposal. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 62

Environmental protection, Air pollution control, Carbon monoxide, Metals, Nitrogen dioxide, Particulate matter, Sulfur oxides, Waste treatment and disposal, Reporting and recordkeeping requirements.

Dated: January 23, 2003.

Robert W. Varney,

Regional Administrator, EPA New England.

40 CFR part 62 of the Code of Federal Regulations is amended as follows:

PART 62—[AMENDED]

1. The authority citation for part 62 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q

Subpart EE—New Hampshire

2. Section 62.7325 is amended by adding paragraphs (b)(3) and (c)(3) to read as follows:

Plan for the Control of Designated Pollutants From Existing Facilities (Section 111(d) Plan)

§ 62.7325 Identification of plan.

* * * * *

(b) * * *

(3) Control of air emissions from existing commercial and industrial solid waste incineration units, submitted on August 12, 2002.

(c) * * *

(3) Commercial and industrial solid waste incineration units.

3. Subpart EE is amended by adding a new § 62.7455 and a new undesignated center heading to read as follows:

Air Emissions From Existing Commercial and Industrial Solid Waste Incineration Units

§ 62.7455 Identification of sources.

(a) The plan applies to the following existing commercial and solid waste incineration unit:

(1) D.D. Bean and Sons, Inc. in Jaffrey.

(2) [Reserved]

(b) [Reserved]

[FR Doc. 03–2941 Filed 2–7–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

National Emission Standards for Hazardous Air Pollutants: Generic Maximum Achievable Control Technology

CFR Correction

In Title 40 of the Code of Federal Regulations, Part 63 (§§ 63.600 to 63.1199), in § 63.1101, the definition of *Process wastewater* is added alphabetically to read as follows:

§ 63.1101 Definitions.

* * * * *

Process wastewater means wastewater which, during manufacturing or processing, comes into direct contact with or results from the production or use of any raw material, intermediate product, finished product, by-product, or waste product. Examples are product tank drawdown or feed tank drawdown, water formed during a chemical reaction or used as a reactant, water used to wash impurities from organic products or reactants, equipment washes between batches in a batch process, water used to cool or quench organic vapor streams through direct contact, and condensed steam from jet ejector systems pulling vacuum on vessels containing organics.

* * * * *

[FR Doc. 03–55504 Filed 2–7–03; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Parts 405 and 419

[CMS–1206–CN2]

RIN 0938–AL19

Medicare Program; Changes to the Hospital Outpatient Prospective Payment System and Calendar Year 2003 Payment Rates; and Changes to Payment Suspension for Unfiled Cost Reports; Correction

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Correction of final rule with comment period.

SUMMARY: This document corrects errors that appeared in the final rule with comment period published in the **Federal Register** on November 1, 2002, entitled "Changes to the Hospital Outpatient Prospective Payment System and Calendar Year 2003 Payment Rates; and Changes to Payment Suspension for Unfiled Cost Reports." This notice is a supplement to the November 1, 2002, final rule with comment period and to the November 15, 2002, correction notice, which added section "XVI. Waiver of Proposed Rulemaking."

EFFECTIVE DATE: January 1, 2003.

FOR FURTHER INFORMATION CONTACT: Anita Heygster, (410) 786–0378.

SUPPLEMENTARY INFORMATION:

I. Background

In FR Doc. 02–27548 of November 1, 2002 (67 FR 66719), there were several technical errors. The errors include incorrect or potentially misleading responses, incorrect description of comments, and revisions to information contained in Addenda A and B. In some cases, the errors were omissions, typographical errors, mathematical miscalculations or were caused by inadvertent failure to perform calculations or perform other functions as described in the final rule. We would ordinarily publish a notice of proposed rulemaking in the **Federal Register** and invite public comment on the proposed rule. This procedure can be waived, however, if an agency finds good cause that a notice-and-comment procedure is impracticable, unnecessary, or contrary to the public interest and incorporates a statement of the finding and its reasons in the rule issued. We find good cause to waive notice and comment procedures for this correction notice as set forth in section III, "Waiver of Proposed Rulemaking and Waiver of 30-Day Delay in Effective Date," below.

II. Correction of Errors

On page 66719, in column 2, in the definition of CPT, we cited the 2002 Current Procedural Terminology (CPT), although the CPT codes used for the 2003 Hospital Outpatient Prospective Payment System (OPPS) are those found in the American Medical Association's 2003 Current Procedural Terminology. Remove 2002 and insert 2003.

On page 66724; in column 3, under the second line following "Option 2:", we incorrectly cited as a Healthcare Common Procedure Coding System (HCPCS) code 703690. This is not a HCPCS code. Remove 703690 and insert 70390.

On page 66724, in column 3, under the forth line following "Option 3:", we incorrectly cited as a HCPCS code 7036736 and we omitted one HCPCS code that was presented to the APC Panel as discussed in the preamble. Remove 7036736 and insert 70373, 70120.

On page 66729, we inadvertently included two duplicate comments and responses on the issue of whether to move endometrial ablation out of a new technology Ambulatory Payment Classification (APC) for 2003. Remove the first comment and response under the heading "New Technology APC Issues" in column 2 and the second duplicative comment and response in column 3. The comment and response on this issue appear correctly on page 66737 (column 3, 4th comment and response). The comment and response on page 66737 are the correct comment and response on this issue; those being removed were mistakenly published.

On pages 66730, 66818, and 66914, we inadvertently included incorrect information that we intended to replace with correct information before publication of the final rule. Specifically, on page 66730, we inadvertently included an incorrect APC assignment for HCPCS codes 77523 and 77525. Remove Table 3 entries for HCPCS codes 77523, Proton Beam therapy intermediate, and 77525, Proton beam therapy complex. On page 66818, remove Addendum A entry for APC 650, Proton Beam Therapy. On page 66914, change the APC for HCPCS codes 77523 and 77525 from APC 650 to APC 712, and change payment and copayment amounts as described in corrections to Addendum B. Remove the first full response on page 66728, in column 3, and replace it with the following: "*Response:* We agree that codes for simple proton beam radiation therapy (CPT code 77522 and CPT code 77520) should be placed in a different APC than codes for intermediary (CPT code 77523) and complex (CPT code 77525) radiation therapy. However, it would be inappropriate to return codes for simple proton beam therapy to APCs for new technology services because we believe we have sufficient claims data to integrate them into the OPPS. Therefore, we have placed them in APC 664.

However, we agree that claims data are not sufficiently robust for us to move intermediate and complex proton beam therapy (CPT codes 77523 and 77525) out of APC 712. Therefore, we will retain these codes in APC 712 for the 2003 OPPS."

On page 66732, in column 1, in the first line carried over from the preceding page, we incorrectly stated that HCPCS code G0258 was effective on October 1, 2002, when it was effective April 1, 2002. Remove "October 1, 2002", and insert "April 1, 2002". HCPCS code G0258 was made effective April 1, 2002, and was removed effective January 1, 2003. The effective date of January 1, 2003, which is shown in Table 4—New G Codes for 2002 and 2003 for Which There are Final APC Assignments, is correct because January 1, 2003, is the effective date of the deletion of the code and the change of the status indicator to X. The entry in Addendum B on page 66979 correctly shows the payment amount and the minimum unadjusted copayment that will apply during the removed code's grace period.

On page 66735, in column 2, the first response under item #4, we mistakenly said that the APC payment includes both the cost of the procedure and the cost for the left ventricular lead. Remove the sentence that says: "We believe the APC placement accounts for the cost of

the procedure and for the lead." Insert the following sentence in its place: "The APC payment accounts for the cost of the procedure and cost of the left ventricular lead is billed under the appropriate device category "C" code."

On page 66741, in column 1, we failed to acknowledge and address a comment that objected to removing CPT code 92986 from the inpatient only list. Remove the response in this column and replace it with the following: "*Response:* We agree with the commenters and with the APC Panel's recommendations that CPT code 47001 be payable under the OPPS beginning in 2003. Because this is an add-on code, payment will be packaged with the payment for the surgical procedure with which it is billed. We are making final our proposal to remove this code from the inpatient list but we will consider presenting this concern to the APC panel.

"The comment that urged that CPT code 92986, Percutaneous balloon valvuloplasty; aortic value, not be assigned to APC 0083 did not contain an explanation for the allegation that it cannot be performed safely in an outpatient setting. In the absence of such justification and in the absence of other comments disagreeing with our proposal to pay under the OPPS for the 41 CPT codes listed in Table 6 of the August 2002 proposed rule (67 FR 52115), we are making these proposed changes final."

On page 66745, in Table 6, we included an incorrect APC assignment for an APC. Remove 693A and insert 648. APC 693 was split into two APCs to enable us to establish a weight for the services that require devices based on the claims on which the devices were billed. The APC with devices is APC 648, Breast Reconstruction with Prosthesis. It was properly shown in Addendum A of the November 1, 2002, final rule.

On page 66756, in column 2, at the end of the first complete paragraph, replace the comma after "misuse" with a period, and remove the following words "or received marketing approval based on the use of surrogate outcomes." We never intended to perform reasonable and necessary determinations on new technology solely because FDA marketing approval was based on surrogate outcomes.

On page 66760, in Table 9, in the section titled "Pass-through Devices Effective January 2003," we reversed the HCPCS codes for two items in the table (HCPCS codes C2614 and C2632). Remove HCPCS code C2614 and APC 2614 and replace them with HCPCS code C2632 and APC 2632. In the same location, remove HCPCS code C2632 and APC 2632 and replace them with HCPCS code C2614 and APC 2614.

On page 66768, in column 1, first comment at the top of the column, we incorrectly printed an exact replica of the immediately preceding comment. Remove the duplicate comment.

On page 66772, we failed to include a drug that meets our criteria as an orphan drug. HCPCS code J1785, Injection imiglucerase/unit meets the criteria for an orphan drug as specified in the November 1, 2001, final rule on page 66772. Remove the first full response in column 3 and replace it with the following: "*Response:* After reviewing the comments and reexamining whether there were other orphan drugs than the three we proposed to pay separately, we have decided to remove four orphan drugs that do not have any other non-orphan indications from the OPPS system and will pay them on a reasonable cost basis. In addition to the three drugs we proposed to treat as orphan drugs in the August 9, 2002, proposed rule, we have determined that J1785, Injection imiglucerase/unit, meets the criteria of having no indication other than an orphan indication and therefore meets our definition of an orphan drug and will be paid on a reasonable cost basis. Other drugs that have orphan status according to the FDA will be partly protected by the dampening options described in section III.B. of this final rule." On page 66820, remove all Addendum A entries for APC 0916. On page 66983, under CPT/HCPCS code J1785, remove status indicator K and insert status indicator F. Remove the APC number, relative weight, payment amount, and minimum unadjusted copayment. See these changes in Tables 1 and 2.

On page 66778, in the first response in column 1, we erroneously said that APC 312 is the lowest paying brachytherapy APC. Remove the response to the first comment under "Brachytherapy" and replace it with the following: "*Response:* The time frame of the claims used to set payment rates in the final rule differed from the time frame used in the proposed rule. According to the claims data used for the proposed rule, APC 312 was the lowest paying brachytherapy APC. However, according to the claims data used for the final rule, APC 0313 is the lowest paying brachytherapy APC. Therefore, CPT 77799 will remain in APC 313. This is consistent with our policy of assigning unspecified codes to the lowest paying similar APC because we do not know what procedures are being performed. Moreover, we do not apply the two times rule to unspecified codes like 77799 for the same reason. In 2003, CPT code 77799 is assigned to APC 0313."

On pages 66779, 66780, and 66781, our discussions of the use of the Red Book in the setting of payment rates for pass-through drugs may have been misleading because we had misunderstandings regarding Red Book publications. The Red Book issues one comprehensive annual printed version, and it was our intent to convey that we relied on the most recent comprehensive annual printed version of the Red Book to set the pass-through payments for drugs for the 2003 OPPS. Our discussions of the Red Book in the November 1, 2002, **Federal Register** erroneously suggested that we rely on updates other than the comprehensive annual printed version. The corrections below clarify that we rely on the comprehensive annual printed version of the Redbook (which is printed once a year) to set the payment rates for pass-through drugs and that we intend to continue to do so in the future.

On page 66779, in column 3, in the last paragraph, delete the second sentence and insert the following: "We update the APC rates for drugs that are eligible for pass through payments in 2003 using the comprehensive annual printed version of the Red Book."

On page 66780, remove the following beginning on the first line of column 1 of page 66780: ",* * * when we would again * * * update the AWPs for any pass-through drugs based on the latest quarterly version of the Red Book." Insert a period.

On page 66781, remove the first paragraph of the response beginning at the bottom of column 1 of page 66781 and insert: "*Response:* Upon considering the commenters suggestions that we use the October 2002 Red Book to set the pass-through rates for drugs and biologicals, we decided to continue using the comprehensive annual printed version of the Red Book since it is most consistent with our publication schedule. In the future, for all of our final rules that must be published by November, we intend to use the comprehensive annual printed version of the Red Book."

On page 66781, column 2, last response, remove the response and insert: "*Response:* As stated elsewhere in this final rule, we update the payment rates for pass-through drugs and biologicals only on an annual basis using the information published in the annual comprehensive printed version of the Red Book. We rely upon the Red Book to accurately reflect information supplied by manufacturers."

On page 66795, in column 3, in the first comment, we mistakenly said that everyone agreed with our proposal, although we received one comment that opposed the proposed policy, not for reasons related to payment under the OPPS. On page 66795, remove "Everyone" and replace it with "Many commenters."

On page 66796, in column 2, in the fifth full paragraph, in the last sentence, we mistakenly included the word "final" in describing the diagnosis information needed to justify separate payment for observation services. Our systems review all diagnoses reported on the claim to make this decision. Remove the word "final".

On page 66815, for APC 0162, we incorrectly stated the relative weight, payment rate, and minimum unadjusted copayment. The values in the November 1, 2002, final rule for this APC were incorrect because we failed to recalculate the values after moving CPT/HCPCS codes into and out of this APC as we discussed in the November 1, 2002, final rule (67 FR 66736, 66746–66749).

Remove the relative weight, payment rate, and minimum unadjusted copayment and replace them with a relative weight of 20.7844, payment rate of $1,083.93, and minimum unadjusted copayment of $216.79. See Table 2—Corrections to Addendum B of the November 1, 2002, Final Rule for corrections to Addendum B for the codes assigned to APC 162.

On page 66815, for APC 0163, we incorrectly stated the relative weight, payment rate, and minimum unadjusted copayment. The values in the November 1, 2002, final rule for this APC were incorrect because we failed to recalculate the values after moving CPT/HCPCS codes into and out of this APC 163 as we discussed in the November 1, 2002, final rule (67 FR 66736, 66746–66749). Remove relative weight, payment rate, and minimum unadjusted copayment and insert a relative weight of 32.2861, payment rate of $1,683.75, and minimum unadjusted copayment of $336.75. *See* Table 2—Corrections to Addendum B of the November 1, 2002, Final Rule for corrections to Addendum B for the codes assigned to APC.

On page 66816, for APC 0235, we incorrectly stated the relative weight, payment rate, and minimum unadjusted copayment. The values in the November 1, 2002, final rule for this APC were incorrect because we failed to recalculate the values after moving CPT/HCPCS codes into and out of this APC as we discussed in the November 1, 2002, final rule (67 FR 66725, 66746–66749). Remove the relative weight, payment rate, and minimum unadjusted copayment and replace them with a relative weight of 4.9902, payment rate of $260.24, and minimum unadjusted copayment of $72.04. *See* Table 2—Corrections to Addendum B of the November 1, 2002, Final Rule for corrections to Addendum B for the codes assigned to APC 0235.

On page 66820, under APC 0905, we misstated the correct description of the APC group title. Remove from the group title "Immune globulin 500 mg" and replace it with "Immune globulin, 1 g". On page 66983, under CPT/HCPCS J1561, we assigned J1561 to an incorrect status indicator. Remove status indicator K and replace it with status indicator E. Remove the APC number, relative weight, payment rate, and minimum unadjusted copayment. Also on page 66983, under HCPCS/CPT J1563, we misstated the correct description of J1563 and did not include the correct payment information. Remove description "IV immune globulin" and status indicator E and replace them with "Immune globulin, 1 g" and status indicator K. Insert APC 0905, relative weight of 0.8333, payment rate of $43.46, and minimum unadjusted copayment of $8.69. The corrections are also shown on Tables 1 and 2 of this correction notice.

On page 66821, for APC 1045, group title Iobenguane sulfate 1–31 per 0.5 mCi, and on page 66958 for CPT/HCPCS code A9508, we stated incorrect values because the limitations on the reduction in median costs were inadvertently omitted. On page 66821, for APC 1045, remove the relative weight, payment rate, and minimum unadjusted copayment and insert a relative weight of 3.8662, payment rate of $201.63, and minimum unadjusted copayment of $40.33. Also, on page 66821, we misstated the correct description of the APC group title. Remove from the group title "I–31per" and replace it with "I–131 per". On page 66958, for CPT/HCPCS code A9508, remove the relative weight, payment rate, and minimum unadjusted copayment and insert a relative weight of 3.8662, payment rate of $201.63, and minimum unadjusted copayment of $40.33.

As a result of a technical recalculation to Eptifibatide Injection, CPT/HCPCS code J1327, the median cost for this drug exceeds the threshold used for determining whether a drug qualifies for a separate APC. To reflect this change, on page 66821, insert APC 1607, group title of Eptifibatide Injection, 5 mg, status indictor of K, relative weight of 0.1453, payment rate of $7.58, minimum unadjusted copayment of $1.52.

On page 66821, under APC 2616, Brachytx seed, Yttrium-90, and on page 66961, under HCPCS code C2616, we inserted incorrect values. We made an error in calculation of the relative weight, payment rate, and copayment. On page 66821, remove the relative weight, payment amount, and minimum unadjusted copayment and insert a relative weight of 124.3576, payment amount of $6,485.37, and minimum unadjusted copayment amount of $1,297.07. On page 66961, under CPT/HCPCS code C2616, description Brachytx seed, Yttrium-90, remove the relative weight, payment amount, and minimum unadjusted copayment and insert a relative weight of 124.3576, payment amount of $6,485.37, and minimum unadjusted copayment amount of $1,297.07.

On page 66822, for APC 9015, Mycophenolate mofetil oral 250 mg, and on page 66986, under HCPCS code J7517, we failed to include the correct status indicator, relative weight, payment rate, and copayment. Remove the status indicator, relative weight, payment rate, and minimum unadjusted copayment for APC 9015 on page 66822 and insert a status indicator of G, payment rate of $2.53, and minimum unadjusted copayment of $0.38. On page 66986, under CPT/HCPCS code J7517, description Mycophenolate mofetil oral 250 mg, remove the status indicator, relative weight, payment rate, and minimum unadjusted copayment and insert a status indicator of G, payment rate of $2.53, and minimum unadjusted copayment of $0.38. These corrections are also shown in Tables 1 and 2 of this correction notice.

On page 66822, under APC 9112, group title Perflutren lipid micro, per 2 ml, and on page 66961, under HCPCS code C9112, we failed to include the correct payment and copayment rates. On page 66822, remove the payment rate and minimum unadjusted copayment and insert a payment rate of $148.20 and minimum unadjusted copayment of $22.15. On page 66961, under CPT/HCPCS code C9112, description Perflutren lipid micro, per 2 ml, remove the payment rate and minimum unadjusted copayment and insert a payment rate of $148.20 and minimum unadjusted copayment of $22.15. These corrections are also shown in Tables 1 and 2 of this correction notice.

On page 66822 for APC 9114 we incorrectly stated the description of the APC, and we stated incorrect payment and copayment information. On page 66822, remove the description of the APC and the payment and copayment information and insert the following:

APC description of Nesiritide, per 0.5 mg vial, payment amount of $144.40, and unadjusted national copayment amount of $21.58. On page 66984 for HCPCS code J2324, we incorrectly stated the description of the HCPCS code, and we stated incorrect payment and copayment information. On page 66984, remove the description of HCPCS code J2324 and the payment and copayment information and insert the following: Description of Nesiritide, per 0.5 mg vial, payment amount of $144.40, and unadjusted national copayment amount of $21.58.

On page 66822 for APC 9115, we incorrectly stated the description of the APC, and we stated incorrect payment and copayment information. On page 66822, remove the description of the APC and the payment and copayment information and insert the following: APC description of Inj, zoledronic acid, per 1 mg, payment amount of $203.39, and unadjusted national copayment amount of $30.40. On page 66985 for HCPCS code J3487, we incorrectly stated the description of the HCPCS code, and we stated incorrect payment and copayment information. Remove the description of HCPCS code J3487 and the payment and copayment information and insert the following: Description of Inj, zoledronic acid, per 1 mg, payment amount of $203.39, and unadjusted national copayment amount of $30.40.

On page 66822, under APC 9120, group title Inj. Fulvestrant, per 50 mg, and on page 66962, under CPT/HCPCS code C9120, we failed to include the correct payment and copayment. Remove the payment rate and minimum unadjusted copayment and insert a payment rate of $175.16 and minimum unadjusted copayment of $26.18. On page 66962, under CPT/HCPCS code C9120, remove the payment rate and minimum unadjusted copayment and insert a payment rate of $175.16 and minimum unadjusted copayment of $26.18. These corrections are also shown in Tables 1 and 2.

On page 66847, we incorrectly assigned status code N to CPT/HCPCS code 27096, inject sacroiliac joint. Two new codes, G0259, inject for sacroiliac joint, and G0260, inject for sacroiliac joint anesthesia, replace CPT code 27096 for reporting these injections in 2003. On page 66847, for CPT/HCPCS 27096, remove the status indicator of N and insert a status indicator of E.

On page 66916, for CPT/HCPCS code 78459, description Heart muscle imaging (PET), we assigned the wrong status indicator and did not include needed payment information. On page 66916, remove the status indicator of E and insert a status indicator of S, APC of 285, relative weight of 18.1294, payment rate of $945.47, national unadjusted copayment of $409.56, and minimum unadjusted copayment of $189.09.

On page 66958, for HCPCS codes A9522 (Indium111ibritumomabtiuxetan) and A9523 (Y–90ibritumomabtiuxetan), we wrongly assigned status indicator E, although the service is paid under the OPPS as a packaged service for which payment is made as a part of a separately billable service. On page 66958, remove the status indicator E and insert status indicator N for both codes. These corrections are also shown in Tables 1 and 2 of this correction notice.

On page 66972, for CPT/HCPCS code E0481, Intrpulmnry percuss vent sys, we wrongly assigned status indicator A, although the service is not covered under Medicare. On page 66972, remove status indicator A and insert status indicator E.

For the following codes on the pages identified, beginning on page 66974 and continuing as noted below on pages 67004, 67005, and 67006, we wrongly assigned status indicator E (not paid under OPPS or not covered) or A (paid under a payment system other than OPPS). These codes are for services that are covered and paid under OPPS but for which payment is packaged into payment for other OPPS services. Therefore, they require the status indicator of "N." We made this correction on page 66974, for codes E0752, E0756, E0757, E0782, E0783, E0785, E0786; on page 67004, for code L8606; on page 67005, for code L8614; and on page 67006, for codes Q1001, Q1002, Q1003, Q1004, and Q1005. These changes are also shown in Table 2—Corrections to Addendum B of the November 1, 2002, Final Rule for corrections to Addendum B for the codes identified above.

On page 66979, under CPT/HCPCS codes G0237, G0238, and G0239, we inadvertently assigned these codes to the incorrect APC and assigned an incorrect status indicator. Remove APC 0970 (group title New Technology Level I ($0–$50)) and status indicator T and insert APC 0706 (group title New Technology Level I) and status indicator of S. These corrections are also shown in Table 2 of this correction notice.

On pages 66979 and 66980, for CPT/HCPCS codes G0281, G0282, and G0283, we assigned the wrong status indicator. Remove the status indicator A. Insert the status indicator E. These codes are not effective for January 1, 2003; they are effective April 1, 2003.

On page 66979, for CPT/HCPCS code G0252, PET imaging initial dx, we incorrectly assigned a status indicator, APC, payment rate, and minimum unadjusted copayment. G0252 represents a noncovered condition under Medicare coverage policy and no payment should be made for this service. Remove status indicator S, APC, payment rate, and minimum unadjusted copayment and insert status indicator E.

On page 66983, for CPT/HCPCS code J1327, remove status indicator of N and insert status indicator of K, APC of 1607, relative weight of 0.1453, payment rate of $7.58, minimum unadjusted copayment of $1.52. This change results from the change relating to Eptifibatide Injection discussed above.

On page 66984, for CPT/HCPCS code J2260, Inj, milrinone lactate /5ml, we incorrectly stated the description. Remove "ml" and insert "mg".

On page 67006, for CPT/HCPCS code Q0184, Metabolically active tissue, we failed to include a condition code to indicate that the grace period applies, although the code is removed for 2003. Insert condition code DG.

III. Waiver of Proposed Rulemaking and Waiver of 30-Day Delay in Effective Date

We ordinarily publish a notice of proposed rulemaking in the **Federal Register** to provide a period for public comment before the provisions of a notice take effect. We can waive this procedure, however, if we find good cause that notice and comment procedure is impracticable, unnecessary, or contrary to the public interest and incorporate a statement of the finding and the reasons for it into the notice issued.

In addition, we ordinarily provide a 30-day delay in the effective date of the provisions of a notice. Section 553(d) of the Administrative Procedure Act (5 U.S.C. section 553(d)) ordinarily requires a 30-day delay in the effective date of final rules after the date of their publication in the **Federal Register**. This 30-day delay in effective date can be waived, however, if an agency finds for good cause that the delay is impracticable, unnecessary, or contrary to the public interest, and the agency incorporates a statement of the finding and its reasons in the rule issued.

In this case, we believe that it is in the public interest to make the corrections we identify above effective on January 1, 2003, without the 30-day delay in effective date because to fail to do so would result, in most cases, in underpayment of hospitals beginning January 1, 2003, with the implementation of the updated OPPS

rates. If we did not make these changes, hospitals would be paid improperly, access to care may be impeded for beneficiaries, and the preamble would not correctly explain the reasons for changes to policy that were made in response to comments. In most cases, these errors were the result of errors in mathematical calculations, inadvertent publication of language we did not intend to publish, failure to apply policies that we stated in the final rule had been applied, typographic errors, or misstatements of fact. These corrections do not cause reductions in payment for any other services.

We also find it unnecessary to undertake notice and comment rulemaking procedures because the corrections in this notice are technical in nature, reflecting the proper application of the policies in the November 1, 2002, final rule, and do not change any of the policies therein. Therefore, we find good cause to waive notice and comment procedures and to waive the 30-day delay in effective date.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: January 29, 2003.

Ann Agnew,

Executive Secretary to the Department.

Note: The following tables are published for the convenience of the reader. These tables reflect corrections made in section II of the **SUPPLEMENTARY INFORMATION.**

BILLING CODE 4120–01–P

Table 1 - Corrections to Addendum A - List of Ambulatory Payment Classifications (APCs) With Status Indicators, Relative Weights, Payment Rates, and Copayment Amounts

Addendum A as Published November 1, 2002								Addendum A as corrected by this Federal Register Notice							
APC	GROUP TITLE	Status indicator	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment		APC	GROUP TITLE	Status indicator	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment	
0162	Level III Cystourethroscopy and other Genitourinary Procedures	T	20.5906	$1,073.82		$214.76		0162	Level III Cystourethroscopy and other Genitourinary Procedures		20.7844	$1,083.93		$216.79	
0163	Level IV Cystourethroscopy and other Genitourinary Procedures	T	28.3714	$1,479.60		$295.92		0163	Level IV Cystourethroscopy and other Genitourinary Procedures		32.2881	$1,683.75		$336.75	
0235	Level I Posterior Segment Eye Procedures	T	5.0871	$265.30	$73.44	$53.06		0235	Level I Posterior Segment Eye Procedures		4.9802	$260.24		$72.04	
0285	Myocardial Positron Emisson Tomography (PET)	E						0285	Heart muscle imaging (PET)	S	18.1294	$945.47	$409.56	$189.09	
0650	Intermediate/Complex Proton Beam Radiation Therapy	S	12.0152	$626.60		$125.32		----	----------	----	---	----	---	----	
0905	Immune globulin 500 mg	K	0.8333	$43.46		$8.69		0905	Immune globulin, 1 g						
0916	Injection imiglucerase /unit	K	0.0484	$2.52		$0.50		----	----------	----	---	----	---	----	
1045	Iobenguane sulfate I-31per 0.5 mCi	K	1.5697	$81.86		$16.37		1045	Iobenguane sulfate I-131 per 0.5 mCi		3.8862	$201.63		$40.33	
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2616	Brachytx seed, Yttrium-90	K	8.8370	$460.86		$92.17		2616	Brachytx seed, Yttrium-90		124.3576	$6,485.37		$1,297.07	
9015	Mycophenolate mofetil oral 250 mg	K	0.0291	$1.52		$0.30		9015	Mycophenolate mofetil oral 250 mg	G		$2.53		$0.38	
9112	Perflutren lipid micro, per 2ml	G		$4.94		$0.74		9112	Perflutren lipid micro, per 2ml			$148.20		$22.15	
9114	Nesiritide, per 1.5 mg vial	G		$433.20		$64.75		9114	Nesiritide, per 0.5 mg vial	G		$144.40		$21.58	
9115	Inj, zoledronic acid, per 2 mg	G		$406.78		$60.80		9115	Inj, zoledronic acid, per 1 mg	G		$203.39		$30.40	
9120	Inj, Fulvestrant, per 50 mg	G		$87.58		$13.09		9120	Inj, Fulvestrant, per 50 mg			$175.16		$26.18	

Addendum B as corrected in this Federal Register Notice

CPT/ HCPCS	Status Indicator	Code condition	Description	APC	Relative weight	Payment rate	National Unadjusted Copayment	Minimum Unadjusted copayment
27096	E		Inject sacroiliac joint					
50080	T		Removal of kidney stone	0163	32.2861	$1,683.75		$336.75
50081	T		Removal of kidney stone	0163	32.2861	$1,683.75		$336.75
50557	T		Kidney endoscopy & treatment	0162	20.7844	$1,083.93		$216.79
51020	T		Incise & treat bladder	0162	20.7844	$1,083.93		$216.79
51030	T		Incise & treat bladder	0162	20.7844	$1,083.93		$216.79
51040	T		Incise & drain bladder	0162	20.7844	$1,083.93		$216.79
51050	T		Removal of bladder stone	0162	20.7844	$1,083.93		$216.79
51065	T		Remove ureter calculus	0162	20.7844	$1,083.93		$216.79
51520	T		Removal of bladder lesion	0162	20.7844	$1,083.93		$216.79
51880	T		Repair of bladder opening	0162	20.7844	$1,083.93		$216.79
52214	T		Cystoscopy and treatment	0162	20.7844	$1,083.93		$216.79
52224	T		Cystoscopy and treatment	0162	20.7844	$1,083.93		$216.79
52234	T		Cystoscopy and treatment	0162	20.7844	$1,083.93		$216.79
52235	T		Cystoscopy and treatment	0162	20.7844	$1,083.93		$216.79
52240	T		Cystoscopy and treatment	0162	20.7844	$1,083.93		$216.79
52250	T		Cystoscopy and radiotracer	0162	20.7844	$1,083.93		$216.79
52277	T		Cystoscopy and treatment	0162	20.7844	$1,083.93		$216.79
52282	T		Cystoscopy, implant stent	0163	32.2861	$1,683.75		$336.75
52317	T		Remove bladder stone	0162	20.7844	$1,083.93		$216.79
52318	T		Remove bladder stone	0162	20.7844	$1,083.93		$216.79
52320	T		Cystoscopy and treatment	0162	20.7844	$1,083.93		$216.79
52325	T		Cystoscopy, stone removal	0162	20.7844	$1,083.93		$216.79
52327	T		Cystoscopy, inject material	0162	20.7844	$1,083.93		$216.79
52330	T		Cystoscopy and treatment	0162	20.7844	$1,083.93		$216.79
52332	T		Cystoscopy and treatment	0162	20.7844	$1,083.93		$216.79
52334	T		Create passage to kidney	0162	20.7844	$1,083.93		$216.79
52341	T		Cysto w/ureter stricture tx	0162	20.7844	$1,083.93		$216.79
52342	T		Cysto w/up stricture tx	0162	20.7844	$1,083.93		$216.79
52343	T		Cysto w/renal stricture tx	0162	20.7844	$1,083.93		$216.79
52344	T		Cystoureteroscopy, stone remove	0162	20.7844	$1,083.93		$216.79
52345	T		Cystoureteroscopy w/up stricture	0162	20.7844	$1,083.93		$216.79
52346	T		Cystoureteroscopy w/renal strict	0162	20.7844	$1,083.93		$216.79
52352	T		Cystoureteroscopy w/stone remove	0162	20.7844	$1,083.93		$216.79
52353	T		Cystoureteroscopy w/lithotripsy	0163	32.2861	$1,683.75		$336.75
52354	T		Cystoureteroscopy w/biopsy	0162	20.5906	$1,073.82		$214.76
52355	T		Cystoureteroscopy w/excise tumor	0162	20.5906	$1,073.82		$214.76
52400	T		Cystoureteroscopy w/congen repr	0162	20.5906	$1,073.82		$214.76
52450	T		Incision of prostate	0162	20.5906	$1,073.82		$214.76
52500	T		Revision of bladder neck	0162	20.5906	$1,073.82		$214.76
52601	T		Prostatectomy (TURP)	0163	28.3714	$1,479.60		$295.92
52606	T		Control postop bleeding	0162	20.5906	$1,073.82		$214.76
52612	T		Prostatectomy, first stage	0163	28.3714	$1,479.60		$295.92
52614	T		Prostatectomy, second stage	0163	28.3714	$1,479.60		$295.92
52620	T		Remove residual prostate	0163	28.3714	$1,479.60		$295.92
52630	T		Remove prostate regrowth	0163	28.3714	$1,479.60		$295.92
52640	T		Relieve bladder contracture	0162	20.5906	$1,073.82		$214.76
52647	T		Laser surgery of prostate	0163	28.3714	$1,479.60		$295.92
52648	T		Laser surgery of prostate	0163	28.3714	$1,479.60		$295.92
52700	T		Drainage of prostate abscess	0162	20.5906	$1,073.82		$214.76
55720	T		Drainage of prostate abscess	0162	20.5906	$1,073.82		$214.76
55725	T		Drainage of prostate abscess	0162	20.5906	$1,073.82		$214.76
55859	T		Percut/needle insert, pros	0163	28.3714	$1,479.60		$295.92
67028	T		Injection eye drug	0236	4.9902	$260.24	$73.44	$53.06
67101	T		Repair detached retina	0235	5.0871	$265.30	$73.44	$53.06
67110	T		Repair detached retina	0235	5.0871	$265.30	$73.44	$53.06
67141	T		Treatment of retina	0235	5.0871	$265.30	$73.44	$53.06
67208	T		Treatment of retinal lesion	0235	5.0871	$265.30	$73.44	$53.06
67220	T		Treatment of choroid lesion	0235	5.0871	$265.30	$73.44	$53.06
67221	T		Ocular photodynamic ther	0235	5.0871	$265.30	$73.44	$53.06
67225	T		Eye photodynamic ther add-on	0235	5.0871	$265.30	$73.44	$53.06
67227	T		Treatment of retinal lesion	0235	5.0871	$265.30	$73.44	$53.06
67299	T		Eye surgery procedure	0235	5.0871	$265.30	$73.44	$53.06
77523	T		New Technology – Level VII ($75	0650		$826.80		$125.32
77525	T		New Technology – Level VII ($75	0650		$826.80		$125.32

Table 2 - Corrections to Addendum B - Payment Status by HCPCS Code and Related Information

Addendum B as corrected in this Federal Register Notice

CPT/ HCPCS	Status Indicator	Code condition	Description	APC	Relative weight	Payment rate	National Unadjusted Copayment	Minimum Unadjusted copayment
78459	S		Heart muscle imaging (PET)	0204	18.1294	$945.47	$409.56	$189.09
A9508	K		Iobenguane sulfate I-131	1045	3.8662	$201.63		$40.33
A9522	N	NI	Indium111 ibritumomabtiuxetan					
A9523	N	NI	Yttrium90ibritumomabtiuxetan					
C2616	K		Brachyth seed, Yttrium-90	2616	124.3576	$6,485.37		$1,297.07
C9112	G		Perflutren lipid microsp, 2 ml	9112		$148.20		$22.15
C9120	G	NI	Injection, Mivacurium	9120		$178.18		$26.18
E0481	E		Intrpulmnry percuss vent sys					
E0752	N		Neurostimulator electrode					
E0756	N		Implantable pulse generator					
E0757	N		Implantable RF receiver					
E0782	N		Non-programble infusion pump					
E0783	N		Programmable infusion pump					
E0785	N		Replacement impl pump cathet					
E0786	N		Implantable pump replacement					
G0185	T		Transpupillary thermoth	0235	4.9902	$260.24		$72.04
G0186	T		Dstry eye lesn,/dr vasl tech	0235	4.9902	$260.24		$72.04
G0187	T		Dstry mclr drusen,photocoag	0235	4.9902	$260.24		$72.04
G0237	T		Therapeutic prcd strg endur	0765				
G0238	S		Oth resp proc, indiv	0765				
G0239	S		Oth resp proc, group	0765				
G0252	S	NI	PET imaging initial dx					
G0281	E	NI	Elec stim unattend for press					
G0282	E	NI	Elect stim wound care not pd					
G0283	E	NI	Elec stim other than wound					
J1327	K		Eptifibatide injection, 5 mg	1007	0.1453	$7.50		$1.52
J1561	E	DG	Immune globulin 500 mg					
J1563	K	DG	Immune globulin, 1 g	0805	0.8333	$43.46		$8.69
J1785	K		Injection, imiglucerase/unit					
J2260	N		Inj milrinone lactate / 5 mg	0816	0.0484	$2.52		$0.50
J2324	G	NI	Nesiritide	9114		$433.20		$84.75
J3487	G	NI	Zoledronic acid	9115		$408.78		$80.80
J7517	K		Mycophenolate mofetil oral	9015	0.0291	$1.52		$0.30
L8606	A		Synthetic implnt urinary 1ml					
L8614	E		Cochlear device/system					
Q0184	N		Metabolically active tissue					
Q1001	E		Nhcl category 1					
Q1002	E		Nhcl category 2					
Q1003	E		Nhcl category 3					
Q1004	E		Nhcl category 4					
Q1005	E		Nhcl category 5					

Table 2 - Corrections to Addendum B - Payment Status by HCPCS Code and Related Information

[FR Doc. 03–2789 Filed 2–7–03; 8:45 am]
BILLING CODE 4120–01–C

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 65

[Docket No. FEMA–B–7434]

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Interim rule.

SUMMARY: This interim rule lists communities where modification of the Base (1-percent-annual-chance) Flood Elevations is appropriate because of new scientific or technical data. New flood insurance premium rates will be calculated from the modified Base Flood Elevations for new buildings and their contents.

DATES: These modified Base Flood Elevations are currently in effect on the dates listed in the table below and revise the Flood Insurance Rate Maps in effect prior to this determination for each listed community.

From the date of the second publication of these changes in a newspaper of local circulation, any person has ninety (90) days in which to request through the community that the Administrator, Federal Insurance and Mitigation Administration, reconsider the changes. The modified elevations may be changed during the 90-day period.

ADDRESSES: The modified Base Flood Elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Michael M. Grimm, Acting Chief, Hazards Study Branch, Federal Insurance and Mitigation Administration, 500 C Street SW., Washington, DC 20472, (202) 646–2878, or (e-mail) *Michael.Grimm@fema.gov*.

SUPPLEMENTARY INFORMATION: The modified Base Flood Elevations are not listed for each community in this interim rule. However, the address of the Chief Executive Officer of the community where the modified Base Flood Elevation determinations are available for inspection is provided.

Any request for reconsideration must be based on knowledge of changed conditions or new scientific or technical data.

The modifications are made pursuant to Section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and with 44 CFR Part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified Base Flood Elevations are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities.

The changes in Base Flood Elevations are in accordance with 44 CFR 65.4.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Administrator, Federal Insurance and Mitigation Administration certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified Base Flood Elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification

This interim rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

Accordingly, 44 CFR Part 65 is amended to read as follows:

PART 65—[AMENDED]

1. The authority citation for Part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 65.4 [Amended]

2. The tables published under the authority of § 65.4 are amended as follows:

State and county	Location and case No.	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community
Arizona:					
Coconino	City of Flagstaff (00–09–745P).	Nov. 7, 2002, Nov. 14, 2002, *Arizona Daily Sun*.	The Honorable Joseph C. Donaldson, Mayor, City of Flagstaff, 211 West Aspen Avenue, Flagstaff, Arizona 86001.	Jan. 4, 2001	040020
Maricopa	Town of Cave Creek (00–09–495P).	Oct. 31, 2002, Nov. 7, 2002, *Arizona Business Gazette*.	The Honorable Vincent Francia, Mayor, Town of Cave Creek, Town Hall, 37622 North Cave Creek Road, Cave Creek, 85331.	Feb. 15, 2001	040129

State and county	Location and case No.	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community
Maricopa	City of Chandler (01–09–006P).	Nov. 7, 2002, Nov. 14, 2002, *Arizona Republic.*	The Honorable Boyd Dunn, Mayor, City of Chandler, 55 North Arizona Place, Suite 3014, Chandler, Arizona 85225.	Dec. 13, 2000	040040
Maricopa	City of Goodyear (00–09–975P).	Nov. 6, 2002, Nov. 13, 2002, *West Valley View.*	The Honorable Bill Arnold, Mayor, City of Goodyear, 190 North Litchfield, Goodyear, Arizona 85338.	Feb. 15, 2001	040046
Maricopa	City of Phoenix (00–09–495P).	Nov. 7, 2002, Nov. 14, 2002, *Arizona Business Gazette.*	The Honorable Skip Rimsza, Mayor, City of Phoenix, 200 West Washington, 11th Floor, Phoenix, Arizona 85003–1611.	Feb. 15, 2001	040051
Maricopa	Unincorporated Areas (00–09–495P).	Nov. 7, 2002, Nov. 14, 2002, *Arizona Business Gazette.*	The Honorable Don Stapley, Chairman, Maricopa County, Board of Supervisors, 301 West Jefferson, 10th Floor, Phoenix, Arizona 85003.	Feb. 15, 2001	040037
California					
Monterey	Unincorporated Areas (02–09–869P).	Dec. 12, 2002, Dec. 19, 2002, *Californian.*	The Honorable Dave Potter, Chairman, Monterey County Board of Supervisors, P.O. Box 180 , Salinas, California 93902.	Mar. 20, 2003	060195
Sacramento ..	Unincorporated Areas (02–09–1169P).	Oct. 17, 2002, Oct. 24, 2002, *Daily Recorder.*	The Honorable Roger Niello, Chairman, Sacramento County Board of Supervisors, 700 H Street, Room 2450, Sacramento, California 95814.	Jan. 23, 2003	060262
San Diego	City of San Diego (02–09–1472X).	Dec. 4, 2002, Dec. 11, 2002, *San Diego Union Tribune.*	The Honorable Richard M. Murphy, Mayor, City of San Diego, 202 C Street, 11th Floor, San Diego, California 92101.	Nov. 22, 2002	060295
Santa Clara ...	Town of Los Gatos (01–09–159P).	Oct. 16, 2002, Oct. 23, 2002, *Los Gatos Weekly-Times.*	Mr. John Curtis, P.E. Director of Parks and Public Works, Town of Los Gatos, P.O. Box 949, Los Gatos, California 95031.	Jan. 22, 2003	060343
Santa Clara ...	Unincorporated Areas (01–09–159P).	Oct. 16, 2002, Oct. 23, 2002, *Los Gatos Weekly-Times.*	The Honorable Donald F. Gage, Chairman, Santa Clara County Board of Supervisors, East Wing, 10th Floor, 70 West Hedding Street, San Jose, California 95110.	Jan. 22, 2003	060337
Ventura	City of Camarillo (02–09–583P).	Oct. 24, 2002, Oct. 31, 2002, *Ventura County Star.*	The Honorable Jan McDonald, Mayor, City of Camarillo, 601 Carmen Drive, Camarillo, California 93010.	Jan. 30, 2003	065020
Ventura	City of Simi Valley (03–09–0051X).	Nov. 14, 2002, Nov. 24, 2002, *Ventura County Star.*	The Honorable William Davis, Mayor, City of Simi Valley, 2929 Tapo Canyon Road, Simi Valley, California 93063.	Nov. 6, 2002	060421
Ventura	Unincorporated Areas (02–09–1213P).	Oct. 31, 2002, Nov. 7, 2002, *Fillmore Gazette.*	The Honorable Frank Schillo, Chairman, Ventura County Board of Supervisors, 800 South Victoria Avenue, Ventura, California 93009.	Feb. 6, 2003	060413
Colorado:					
Adams	City of Commerce City (02–08–283P).	Oct. 24, 2002, Oct. 31, 2002, *Denver Post.*	The Honorable E.E. "Casey" Hayes, Mayor, City of Commerce City, 5291 East 60th Avenue, Commerce City, Colorado 80022.	Jan. 30, 2003	080006
Adams	City of Thornton (02–08–283P).	Oct. 24, 2002, Oct. 31, 2002, *Denver Post.*	The Honorable Noel Busck, Mayor, City of Thornton, 9500 Civic Center Drive, Thornton, CO 80229.	Jan. 30, 2003	080007
Adams	Unincorporated Areas (02–08–283P).	Oct. 24, 2002, Oct. 31, 2002, *Denver Post.*	The Honorable Martin Flaum, Chairman, Adams County Board of Commissioners, 450 South Fourth Avenue, Brighton, Colorado 80601.	Jan. 30, 2003	080001
Adams, Boulder, Jefferson, Weld.	City of Broomfield (02–08–156P).	Nov. 20, 2002, Nov. 27, 2002, *Denver Post.*	The Honorable Karen Stuart, Mayor, City and County of Broomfield, One Des Combes Drive, Broomfield, Colorado 80020.	Feb. 26, 2003	085073
Boulder	City of Boulder (02–08–340P).	Nov. 21, 2002, Nov. 28, 2002, *Denver Post.*	The Honorable William R. Toor, Mayor, City of Boulder, 1777 Broadway, Boulder, Colorado 80306.	Feb. 27, 2003	080024

State and county	Location and case No.	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community
Douglas	Town of Parker (02–08–171P).	Oct. 10, 2002, Oct. 17, 2002, *Denver Post.*	The Honorable Gary Lasater, Mayor, Town of Parker, 20120 East Main Street, Parker, Colorado 80138.	Jan. 16, 2003	080310
Douglas	Unincorporated Areas (02–08–171P).	Oct. 10, 2002, Oct. 17, 2002, *Denver Post.*	The Honorable James R. Sullivan, Chairman, Douglas County Board of Commissioners, 100 Third Street, Castle Rock, Colorado 80104.	Jan. 16, 2003	080049
Garfield	City of Rifle (02–08–123P).	Dec. 26, 2002, Jan. 2, 2003, *Citizen Telegram.*	The Honorable Keith Lambert, Mayor, City of Rifle, 202 Railroad Avenue, Rifle, Colorado 81650.	Dec. 4, 2002	085078
Larimer	City of Fort Collins (01–08–092P).	Nov. 7, 2002, Nov. 14, 2002, *Fort Collins Coloradoan.*	The Honorable Ray Martinez, Mayor, City of Fort Collins, P.O. Box 580, Fort Collins, Colorado 80522–0580.	May 30, 2001	080102
Hawaii.					
Hawaii	Hawaii County (99–09–680P).	Nov. 7, 2002, Nov. 14, 2002, *Hawaii Tribune Herald.*	The Honorable Harry Kim, Mayor, Hawaii County, 25 Aupuni Street, Hilo, Hawaii 96720.	Aug. 15, 2000	155166
Honolulu	City and County of Honolulu (00–09–244P).	Nov. 7, 2002, Nov. 14, 2002, *Honolulu Star Bulletin.*	The Honorable Jeremy Harris, Mayor, City and County of Honolulu, 530 South King Street, Honolulu, Hawaii 96813.	Feb. 1, 2001	150001
Missouri:.					
Clay	Unincorporated Areas (03–07–0112P).	Jan. 2, 2003, Jan. 9, 2003, *Kearney Courier.*	The Honorable Thomas Brandon, Presiding Commissioner, Clay County, Clay County Courthouse, One Courthouse Square, Liberty, Missouri 64068.	Apr. 24, 2003	290086
Montana:.					
Gallatin	City of Bozeman (00–08–367P).	Nov. 7, 2002, Nov. 14, 2002, *Bozeman Daily Chronicle.*	The Honorable Steven Kirchhoff, Mayor, City of Bozeman, P.O. Box 1230, Bozeman, Montana 59771–1230.	Dec. 20, 2000	300028
Texas:.					
Bexar	City of San Antonio (00–06–862P).	Nov. 7, 2002, Nov. 14, 2002, *San Antonio Express News.*	The Honorable Ed Garza, Mayor, City of San Antonio, P.O. Box 839966, San Antonio, Texas 78283–3966.	Apr. 2, 2001	480045
Utah:.					
Washington	City of St. George (02–08–101P).	Dec. 19, 2002, Dec 26, 2002, *Spectrum.*	The Honorable Daniel McArthur, Mayor, City of St. George, 175 East 200 North, St. George, Utah 84770.	Mar. 27, 2003	490177
Washington:.					
Spokane	Unincorporated Areas (02–10–614P).	Nov. 21, 2002, Nov. 28, 2002, *Spokesman-Review.*	Ms. Francine Boxer, Chief Executive Officer, Spokane County, 1116 West Broadway Avenue, Spokane, Washington 99260.	Mar. 25, 2003	530174

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance")

Dated: January 28, 2003.

Anthony S. Lowe,

Administrator, Federal Insurance and Mitigation Administration.

[FR Doc. 03–3184 Filed 2–7–03; 8:45 am]

BILLING CODE 6718–04–U

FEDERAL COMMUNICATIONS COMISSION

47 CFR Part 54

[CC Docket No. 96–45; DA 03–24]

Federal-State Joint Board on Universal Service

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Federal Communications Commission's (Commission) Wireline Competition Bureau (Bureau) adopts the Delphi version of the forward-looking cost model with certain incorporated technical improvements, which has been translated from Turbo-Pascal computer language, for calculating high-cost universal service support for non-rural carriers. To avoid the possibility of two successive changes in support amounts within a relatively short period of time, the Bureau defers calculating support for non-rural carriers using the Delphi version of the forward-looking cost model with incorporated technical improvements until the effective date of a Commission order in the separate proceeding addressing the non-rural high-cost support methodology adopted in the Ninth Report and Order, which was remanded to the Commission by the United States Court of Appeals for the Tenth Circuit.

DATES: Effective March 12, 2003.

FOR FURTHER INFORMATION CONTACT: Katie King or Thomas Buckley, Attorneys, Wireline Competition Bureau, Telecommunications Access Policy Division, (202) 418–7400, TTY (202) 418–0484.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Order in CC Docket No. 96–45 released on January 7, 2003. The full text of this document is available for public inspection during regular business hours in the FCC Reference Center, Room CY–A257, 445 12th Street, SW., Washington, DC 20554.

I. Introduction

1. The Bureau adopts the Delphi version of the forward-looking cost model, which has been translated from Turbo-Pascal computer language, for calculating high-cost universal service support for non-rural carriers. The Bureau also finds that certain technical improvements are necessary to ensure that the forward-looking cost mechanism operates as designed in the *Fifth Report and Order*, 63 FR 63993, November 18, 1998. To avoid the possibility of two successive changes in support amounts within a relatively short period of time, the Bureau shall defer calculating support for non-rural carriers using the Delphi version of the forward-looking cost model with incorporated technical improvements until the effective date of an order in the separate proceeding addressing the non-rural high-cost support methodology adopted in the *Ninth Report and Order*, 64 FR 67416, December 1, 1999, which was remanded to the Commission by the United States Court of Appeals for the Tenth Circuit. The Bureau finds, however, that adopting the Delphi version with incorporated technical improvements at this time is appropriate to enable its staff to perform necessary work to determine cost per loop estimates used to calculate high-cost support and to allow the Commission to consider such estimates in conjunction with its review of the Federal-State Joint Board on Universal Service's (Joint Board) recommendations in the *Ninth Report and Order* remand proceeding.

II. Discussion

2. In this Order, the Bureau determines that it should use the Delphi version of the forward-looking cost model for calculating and targeting support for non-rural carriers. The Bureau also finds that the technical improvements incorporated into the Delphi version of the model and discussed herein are necessary and appropriate to ensure that the forward-looking cost mechanism operates as designed in the *Fifth Report and Order*. As discussed below, calculating support using the Delphi version of the cost model with incorporated technical improvements could lead to changes in support amounts. The *Ninth Report and Order* remand proceeding also could lead to modifications of the non-rural high-cost support methodology that, in turn could lead to changes within a relatively brief time in support amounts. To avoid the possibility of two successive changes in support amounts resulting from adoption of the Delphi version with incorporated technical improvements and thereafter a final Commission action in the *Ninth Report and Order* remand proceeding, the Bureau shall defer calculating support for non-rural carriers using the Delphi version with incorporated technical improvements until the effective date of an order in the *Ninth Report and Order* remand proceeding.

3. *Translation to Delphi Computer Language.* The Bureau concludes that it is appropriate to use the outside plant portion of the forward-looking cost model that has been translated to Delphi computer language. Delphi, essentially an upgraded version of the previously used Turbo-Pascal language, is a more advanced and easier-to-use computer language than Turbo-Pascal. In particular, unlike Turbo-Pascal, Delphi computer language allows a user to step through the source code line-by-line. This improvement will allow the Bureau and interested parties to better understand and follow the logic of the model in reaching its results. In addition, the Delphi computer language processes data more quickly and is more adaptable to the Windows operating system than Turbo-Pascal. As such, translation to Delphi will enable the Bureau and interested parties to more easily use and analyze the cost model and its results.

4. The Bureau deferred adoption of Delphi computer language for the model last year in part to allow it to consider arguments that it should instead adopt a version of the outside plant portion of the model in Visual Basic computer language submitted by Qwest. Based on an examination of the record developed in response to the *Delphi Public Notice*, 66 FR 34447, June 28, 2001, the Bureau does not adopt the Visual Basic model submitted by Qwest for the reasons stated below. Because Delphi computer language uses the same logic in its programming steps as Turbo-Pascal, the translation to Delphi does not fundamentally change the organization of the model logic. Interested parties and Bureau staff already have invested a substantial amount of time understanding, testing, and fine tuning the Turbo-Pascal and Delphi computer code. Visual Basic, on the other hand, is an entirely different computer language. As a result, the Bureau finds it would be less reasonable to adopt the Visual Basic version than the Delphi translation. Rather, on this record, the Bureau finds it appropriate to use the outside plant portion of the model that has been translated to Delphi computer language.

5. *Technical Improvements.* As noted above, the Commission foresaw that technical improvements would be necessary to ensure that the model operates as designed and instructed the Bureau to implement such improvements where necessary and appropriate. After posting a Delphi version of the model, the Bureau sought recommendations on improvements to that Delphi version, incorporated technical improvements where necessary, and then posted a revised Delphi version of the model on the Bureau's website. In the *2002 Line Counts Update Order*, 67 FR 3118, January 23, 2002, the Bureau stated that more time was needed to study the effect these improvements would have on high-cost support calculations.

6. After investigating the various technical improvements incorporated into the posted Delphi version of the model, the Bureau discovered that two changes in particular impacted cost estimates generated by the model, which in turn could affect high-cost support calculations. First, a correction was made to locate drop terminals using the 360 feet square grid cell assumption adopted in the *Fifth Report and Order*, 63 FR 63993, November 18, 1998, rather than 1000 feet square grid cells. This correction places drop terminals closer to customer locations and results in an overall decrease in distribution cable and structure costs. Second, Bureau staff corrected the coding that caused the model to read the wrong row of input tables for drop terminal, manhole, and service area interfaces (SAIs) costs. This coding error caused the model to retrieve incorrect values for these outside plant inputs. Correcting this coding error results in higher costs in certain wire centers.

7. The Bureau finds that implementation of these technical improvements is necessary and appropriate to ensure that the model operates as designed in the *Fifth Report and Order*. The Bureau analysis indicates that these technical improvements cause small changes in

cost estimates generated by the model. For instance, using year-end 2000 line counts as input values, the combined effect of these technical improvements would cause the nationwide average cost per line to increase by less than $0.03 for 2002. However, the effect on statewide average cost per line varies by state. The statewide average cost per line increases in states containing wire centers with higher density zones because such service areas require more underground structure, larger SAIs, and larger drop terminals. By contrast, the average cost per line for states containing wire centers with lower density zones decreases, relative to the nationwide average, because their service areas require less underground structure, smaller SAIs, and fewer large drop terminals. Under the benchmark methodology adopted in the *Ninth Report and Order*, minor changes in nationwide or statewide average costs will affect non-rural high-cost support amounts.

8. The Bureau shall defer calculating support for non-rural carriers using the Delphi version of the cost model with incorporated technical improvements until the effective date of an order in the *Ninth Report and Order* remand proceeding. The *Ninth Report and Order* remand proceeding could lead to modifications to the non-rural high-cost support methodology that, in turn, would lead to changes in support amounts. Calculating support using the Delphi version of the cost model with incorporated technical improvements likewise could lead to changes in support amounts. Section 254(b)(5) of the Communications Act of 1996 Act states that the universal support mechanism should be specific and predictable. Consistent with this principle, the Bureau finds that coordinating the determination of support for non-rural carriers using the revised Delphi version of the cost model, incorporating the technical improvements described above, with the effective date of an order in the *Ninth Report and Order* remand proceeding will avoid the possibility of two successive changes in the model's calculations and support amounts within a relatively short period of time. Specifically, the Delphi version of the model with incorporated technical improvements will be used for purposes of estimating forward-looking costs and determining support for non-rural carriers following the effective date of an order in the *Ninth Report and Order* remand proceeding. In the intervening interim period, non-rural support shall continue to be based on cost estimates of the Turbo-Pascal version of the cost model using the data updates adopted in the *2002 Line Counts Update Order*. In addition, the Bureau will continue to adjust support amounts calculated using the current model's cost estimates to reflect the lines reported by non-rural carriers each quarter. The Bureau finds that adopting the Delphi version with incorporated technical improvements at this time is appropriate to enable the staff to perform necessary work to determine cost estimates under this version. Accompanying this Order is a Public Notice seeking comment on updating line counts and other input values for the Delphi version of the cost model consistent with the framework adopted in the *2001 and 2002 Line Counts Update Orders*, 65 FR 81759, December 27, 2000. Such action will enable the Commission to consider such estimates in conjunction with its consideration of the Joint Board recommendations in the *Ninth Report and Order* remand proceeding.

III. Ordering Clause

9. *It is ordered* pursuant to the authority contained in sections 1–4, 201–205, 214, 218–220, 254, 303(r), 403, and 410 of the Communications Act of 1934, as amended, 47 U.S.C. 151–154, 201–205, 214, 218–220, 254, 303(r), 403, and 410, this Order *is adopted*.

10. *It is further ordered* that this Order will be effective March 12, 2003.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 03–3111 Filed 2–7–03; 8:45 am]

BILLING CODE 6712–01–P

Proposed Rules

Federal Register
Vol. 68, No. 27
Monday, February 10, 2003

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 890

RIN 3206–AJ42

Financial Sanctions of Health Care Providers Participating in the Federal Employees Health Benefits Program

AGENCY: Office of Personnel Management.

ACTION: Proposed rule.

SUMMARY: The Office of Personnel Management (OPM) is proposing to amend its regulations on administrative sanctions of health care providers participating in the Federal Employees Health Benefits Program (FEHBP). This proposed rule addresses the financial sanctions provisions of Section 2 of Public Law 105–266, the Federal Employees Health Care Protection Act of 1998, which authorize OPM to impose civil monetary penalties and financial assessments against health care providers who commit certain types of violations against the FEHBP. In concert with the previously-issued regulations on debarment and suspension authorities, this proposed rule will afford OPM a full range of administrative remedies to deter and rectify provider misconduct within FEHBP. The regulatory framework established by this issuance provides appropriate due process protections to assure that the amounts of financial sanctions are assessed through a consistent and equitable process, the Government's financial interests are fully protected, and financial sanctions are imposed only after an opportunity for an administrative hearing on all facts material to the basis for the sanctions.

DATES: Submit comments on or before April 11, 2003.

ADDRESSES: Send or deliver written comments to David Cope, U.S. Office of Personnel Management, 1900 E Street NW., Room 6400, Washington, DC 20415, or submit comments electronically to *debar@opm.gov*.

FOR FURTHER INFORMATION CONTACT: David Cope, by telephone at 202–606–2851, by FAX at 202–606–2153, or by e-mail at *debar@opm.gov*.

SUPPLEMENTARY INFORMATION:

Background

Section 2 of the Federal Employees Health Care Protection Act of 1998 (Pub. L. 105–266), enacted a comprehensive set of administrative sanctions authorities for OPM to use in combating health care provider fraud within the FEHBP. These authorities fall into two broad categories—exclusion, comprising suspension and debarment from participation in FEHBP, and financial sanctions, comprising civil monetary penalties and financial assessments.

On December 12, 2001, OPM published proposed regulations at 66 FR 64160 to implement the exclusion-based authorities. The current issuance contains proposed regulations for the financial sanctions authorities. When issued as final rules, the two regulatory packages shall fully implement all of the administrative sanctions enacted by Pub. L. 105–266.

Administrative sanctions enable an agency to protect its financial and program interests against individuals or entities that have committed certain types of actionable violations specified by statute. In addition, health care provider sanctions also protect the health care interests of persons covered through the FEHBP. Both of these interests are specifically recognized by the proposed regulations as principal objectives of sanctions activities.

Exclusion-related sanctions recognize past misconduct and protect against future violations by removing the subject of the sanction from further participation in FEHBP. (In the context of the FEHBP sanctions statute, "participation" means receiving funds. Thus, an excluded provider may treat FEHBP covered persons, but may not be paid FEHBP funds for any items or services provided after the effective date of the exclusion.)

Financial sanctions have similar "look back" and "look forward" purposes. Pub. L. 105–266 established two categories of financial sanctions—assessments and civil monetary penalties. As stated in § 890.1060(b) of the proposed rule, assessments are intended to recognize all of the losses, costs, and damages OPM incurred as the result of a provider's wrongful conduct, although the amount assessed is not limited by the dollar value of those items. Civil monetary penalties are lump-sum amounts that, while computed by reference to improper claims, are intended principally to deter future violations.

Section 890.1060(e) states that financial sanctions may be imposed in addition to all other criminal, civil, and administrative remedies that any state or Federal agency may apply to the same conduct by a provider.

Bases for Financial Sanctions

Pub. L. 105–266 sets forth three bases for imposing financial sanctions. All relate in some degree either to claims actually filed with FEHBP carriers or to conduct associated with claims, even if no claim was filed. In contrast to exclusion-based sanctions, where the underlying violations need not have affected FEHBP, financial sanctions may be imposed only for violations that directly involve FEHBP enrollees, carriers, or funds.

As outlined in § 890.1061 of the proposed rule, the bases for financial sanctions are (1) fraudulent or improper claims; (2) false or misleading statements in or about claims; and (3) failure to provide claims-related information that is required by law to be disclosed.

Imposing Financial Sanctions

While some exclusion-based sanctions are mandatory (*i.e.*, OPM must debar a provider who commits certain types of violations), imposition of any financial sanction is always permissive with the debarring official. Sections 890.1062(b) through (d) identify the factors that the debarring official must consider in deciding whether to impose financial sanctions in a given case. Most of these factors are identified specifically by Pub. L. 105–266. We have added § 890.1062(d) to reflect the particular importance OPM attaches to protecting FEHBP covered persons from untrustworthy providers.

Amounts of Financial Sanctions

Section 890.1063 reflects the statutory limits on amounts of financial sanctions. Assessments may not exceed twice the amount claimed for each item or service "involved" in the claims on which the assessment is based. Civil monetary penalties may not exceed

$10,000 for each "involved" item or service. As the statute makes clear, penalties and assessments may be imposed concurrently for the same violations.

Setting the Amount of Financial Sanctions Within Statutory Limits

Federal courts have regularly upheld the use of financial sanctions authority in health care claims cases to produce a total of assessments and penalties that substantially exceeds the amount of Federal funds that had been paid improperly. Thus, the debarring official has authority to set sanctions amounts across very wide permissible limits, and decisions regarding the amounts may carry significant financial consequences for providers. Section 890.1064 is intended to provide the guidance necessary for the debarring official to exercise this authority in an equitable and consistent manner. Section 890.1064(b) sets the overall policy context for determining amounts of financial sanctions, including recovery of all damages, losses, and costs incurred by OPM as a result of sanctionable violations, and imposition of an additional penalty amount to deter future violations. Section 890.1064(c) emphasizes that "damages, losses, and costs" are to be given the broadest possible interpretation. Section 890.1064(d) summarizes the factors that the debarring official must consider in determining the amount of financial sanctions. These consist of (1) the factors identified in § 890.1062 as material to determining whether to impose financial sanctions; (2) the level of aggravation or mitigation reflected in the circumstances of the case; (3) the need to deter future misconduct; and (4) the provider's financial situation. This latter factor is not referred to in Pub. L. 105–266, but the concept appears in several other agencies' financial sanctions regulations, including the Department of Health and Human Services' Medicare provider sanctions authorities. Section 890.1064(e) addresses aggravating and mitigating factors as a series of benchmarks, describing the types of violations that would warrant assessments and penalties at the higher and lower ends of the statutory range.

Procedures

The procedures for proposing and imposing financial sanctions generally mirror those used for permissive debarments. OPM initiates a financial sanction action by sending written notice of the proposed sanction. As is the case with exclusion-based sanctions, there is a 6-year limitation period for proposed financial sanctions. Section 890.1066 explains the limitation period and specifies the contents and methods of delivery of the notice. Section 890.1067 sets out the options available to providers upon receiving a notice of proposed sanctions. In brief, the provider may either formally contest the sanctions or seek to settle or compromise them through negotiation with the debarring official. As indicated in § 890.1068, if the subject of the proposed sanction takes no action during the 30-day notice period, OPM may immediately finalize the sanction, without further right of appeal or recourse by the provider.

Contesting Proposed Financial Sanctions

Sections 890.1069 through 1071 address contests of proposed financial sanctions. They incorporate by reference most of the provisions of §§ 890.1022 through 1029, regarding contests of proposed permissive debarments.

As indicated by § 890.1069, the subject of the proposed sanction may contest it simply by submitting documents to the debarring official, or, at the provider's option, may also make a personal appearance, with or without counsel, to present testimony and oral arguments.

Section 890.1070(a) states that (as is the case in contests of proposed debarments), facts previously adjudicated in due process proceedings (*e.g.*, criminal or civil proceedings, administrative hearings, or actions that constitute waiver of the right to a due process proceeding) are binding on the debarring official in deciding the contest.

Section 890.1070(b) sets "preponderance of the evidence" as the standard of proof for decisions on contests.

Section 890.1070(c) states that the amounts of penalties and assessments proposed in OPM's notice to the provider effectively establish a ceiling on the size of financial sanctions that may ultimately be imposed. The debarring official cannot increase the proposed amount under any circumstances, and has the discretion to impose a lower amount if evidence in the administrative record so warrants.

Section 890.1071 applies to contests of financial sanctions the same decisionmaking methodologies established for contests of proposed debarments in §§ 890.1026 through 1029. The debarring official shall decide the contest without a further proceeding if there are no disputed material facts. If material facts are in dispute, the debarring official must refer them to a hearing officer who has had no prior involvement in the case, to conduct a due process hearing. The hearing process under § 890.1071(c) tracks that used to resolve disputed material facts in contests of proposed debarments. The hearing officer reports the facts found to the debarring official, who must accept and apply these findings in reaching a final decision on the contest.

Appeals of Final Decisions

Section 890.1072 states the right of judicial appeal provided in the FEHBP sanctions statute. Any provider on whom a final decision of the debarring official imposes any financial sanction may appeal to the appropriate U.S. district court, unless the provider's ability to appeal has been foreclosed by their failure to administratively contest a proposed sanction in a timely manner.

Collecting Payment of Financial Sanctions

Section 890.1073 outlines the methods OPM shall use to collect financial sanctions. These include a mutually agreed payment schedule and other administrative debt collection procedures, including offset against monies owed by other Federal agencies. If administrative efforts do not resolve the debt, 5 U.S.C. 8902a(i) authorizes the Department of Justice to file a civil lawsuit in the appropriate U.S. district court to enforce payment. As stated in 890.1073(e), the statute further specifies that monies collected in respect of financial sanctions are to be paid to the Employees Health Benefits Fund.

Regulatory Flexibility Act

I certify that this proposed regulation will not have a significant economic impact on a substantial number of small entities, because the financial sanctions are limited to the portion of health care providers' activities involving transactions with the Federal Employees Health Benefits Program.

Executive Order 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with Executive Order 12866.

List of Subjects in 5 CFR Part 890

Administrative practice and procedure, Government employees, Health facilities, Health insurance, Health professions, Hostages, Iraq, Kuwait, Lebanon, Military personnel, Reporting and recordkeeping requirements, Retirement.

Office of Personnel Management,
Kay Coles James,
Director.

Accordingly, OPM proposes to amend part 890 of title 5, Code of Federal Regulations as follows:

PART 890—FEDERAL EMPLOYEES HEALTH BENEFITS PROGRAM

1. The authority citation for Part 890 continues to read as follows:

Authority: 5 U.S.C. 8913; § 890.803 also issued under 50 U.S.C. 403(p), 22 U.S.C. 4069c and 4069c–1; subpart L also issued under sec 599C of Pub. L. 101–513, 104 Stat. 2064, as amended; § 890.102 also issued under sections 11202(f), 11232(e), 11246(b) and (c) of Pub. L. 105–33, 111 Stat 251; and section 721 of Pub. L. 105–261, 112 Stat. 2061.

2. In Subpart J, §§ 890.1060 through 1073 are added to read as follows:

Subpart J—Administrative Sanctions Imposed Against Health Care Providers

Sec.

Civil Monetary Penalties and Financial Assessments

890.1060 Purpose and scope of civil monetary penalties and assessments.
890.1061 Bases for penalties and assessments.
890.1062 Deciding whether to impose penalties and assessments.
890.1063 Maximum amounts of penalties and assessments.
890.1064 Determining the amounts of penalties and assessments to be imposed on a provider.
890.1065 Deciding whether to suspend or debar a provider in a case that also involves penalties and assessments.
890.1066 Notice of proposed penalties and assessments.
890.1067 Provider contests of proposed penalties and assessments.
890.1068 Effect of not contesting proposed penalties and assessments.
890.1069 Information the debarring official shall consider in deciding a provider's contest of proposed penalties and assessments.
890.1070 Burdens of proof and standards of evidence in contests of proposed penalties and assessments.
890.1071 Deciding contests of proposed penalties and assessments.
890.1072 Further appeal rights after final decision on penalties and assessments.
890.1073 Collecting penalties and assessments.

Civil Monetary Penalties and Financial Assessments

§ 890.1060 Purpose and scope of civil monetary penalties and assessments.

(a) *Civil monetary penalty.* A civil monetary penalty is an amount that OPM may impose on a health care provider who commits one of the violations listed in § 890.1061. Penalties are intended to protect the integrity of FEHBP by deterring repeat violations by the same provider and by reducing the likelihood of future violations by other providers.

(b) *Assessment.* An assessment is an amount that OPM may impose on a provider, calculated by reference to the claims involved in the underlying violations. Assessments are intended to recognize monetary losses, costs, and damages sustained by OPM as the result of a provider's violations.

(c) *Use of terminology.* In §§ 890.1060 through 1072

Penalty means "civil monetary penalty;" and

Penalties and assessments may connote the singular or plural forms of either of those terms, and may represent them in either the conjunctive or disjunctive sense.

(d) *Relationship to debarment and suspension.* In addition to imposing penalties and assessments, OPM may concurrently debar or suspend a provider from participating in FEHBP on the basis of the same violations.

(e) *Relationship to other penalties provided by law.* The penalties, assessments, debarment, and suspension imposed by OPM are in addition to any other penalties that may be prescribed by law or regulation administered by an agency of the Federal Government or any State.

§ 890.1061 Bases for penalties and assessments.

(a) *Improper claims.* OPM may impose penalties and assessments on a provider if a claim presented by that provider for payment from FEHBP funds meets the criteria set forth in 5 U.S.C. 8902a(d)(1).

(b) *False or misleading statements.* OPM may impose penalties and assessments on a provider who makes a false statement or misrepresentation as set forth in 5 U.S.C. 8902a(d)(2).

(c) *Failing to provide claims-related information.* OPM may impose penalties and assessments on a provider who knowingly fails to provide claims-related information as otherwise required by law.

§ 890.1062 Deciding whether to impose penalties and assessments.

(a) *Authority of debarring official.* The debarring official has discretionary authority to impose penalties and assessments in accordance with 5 U.S.C. 8902a and this subpart.

(b) *Factors to be considered.* In deciding whether to impose penalties and assessments against a provider that has committed one of the violations identified in § 890.1061, OPM shall consider:

(1) The number and frequency of the provider's violations;

(2) The period of time over which the violations were committed;

(3) The provider's culpability for the specific conduct underlying the violations;

(4) The nature of any claims involved in the violations and the circumstances under which the claims were presented to FEHBP carriers;

(5) The provider's history of prior offenses or improper conduct, including any actions that could have constituted a basis for a suspension, debarment, penalty, or assessment by any Federal or State agency, whether or not any sanction was actually imposed;

(6) Any monetary damages, losses, and costs, as described in § 890.1064(c), attributable to the provider's violations; and

(7) Such other factors as justice may require.

(c) *Additional factors when penalty or assessment is based on § 890.1061(b) or (c).* In the case of violations involving false or misleading statements or the failure to provide claims-related information, OPM shall also consider:

(1) The nature and circumstances of the provider's failure to properly report information; and

(2) The materiality and significance of the false statements or misrepresentations the provider made or caused to be made, or the information that the provider knowingly did not report.

§ 890.1063 Maximum amounts of penalties and assessments.

OPM may impose penalties and assessments in amounts not to exceed those set forth in 5 U.S.C. 8902a(d).

§ 890.1064 Determining the amounts of penalties and assessments to be imposed on a provider.

(a) *Authority of debarring official.* The debarring official has discretionary authority to set the amounts of penalties and assessments in accordance with law and this subpart.

(b) *Objectives of penalties and assessments.* In setting the amounts of penalties and assessments to be imposed on a provider, the debarring official shall be guided by the overall objectives of:

(1) Assuring that the United States is fully compensated for all damages, losses, and costs associated with a provider's violations; and

(2) Deterring future violations by the provider on whom the penalties and

assessments were imposed, and other health care providers.

(c) *Determining damages, losses, and costs.* In determining the appropriate amount of compensation due to the United States, OPM shall include, at the minimum:

(1) Amounts wrongfully paid from FEHBP funds as the result of a provider's violations and interest on those amounts, at rates determined by the Department of the Treasury;

(2) All costs incurred by OPM and FEHBP carriers in investigating a provider's sanctionable misconduct; and

(3) All costs associated with administrative review of a case, including every phase of the administrative sanctions process described by this subpart.

(d) *Factors considered in determining amounts of penalties and assessments.* In determining the amounts of penalties and assessments to impose on a provider OPM shall consider:

(1) All of the factors set forth in § 890.1062(b) through (d);

(2) The provider's personal financial situation, or, in the case of violations committed by an entity, the entity's financial situation;

(3) The Government's interests in deterring future misconduct by providers; and

(4) The presence of aggravating or less serious circumstances, as described in paragraphs (e)(1) through (e)(7) of this section.

(e) *Aggravated and less serious circumstances.* The presence of aggravating circumstances may cause OPM to impose penalties and assessments at a higher level within the authorized range, while less serious violations may warrant sanctions of relatively lower amounts. Paragraphs (e)(1) through (e)(7) of this section provide examples of aggravated and less serious violations. These examples are illustrative only, and are not intended to represent an exhaustive list of all possible types of violations.

(1) The existence of many separate violations, or of violations committed over an extended period of time, constitutes an aggravating circumstance. OPM may consider conduct involving a small number of violations, committed either infrequently or within a brief period of time, to be less serious.

(2) Violations for which a provider had direct knowledge of the material facts (for example, submitting claims that the provider knew to contain false, inaccurate, or misleading information), or for which the provider did not cooperate with OPM's or an FEHBP carrier's investigations, constitute aggravating circumstances. OPM may consider violations where the provider did not have direct knowledge of the material facts, or in which the provider cooperated with post-violation investigative efforts, to be less serious.

(3) Violations resulting in substantial damages, losses, and costs to OPM, the FEHBP, or FEHBP covered persons constitute aggravating circumstances. Violations producing a small or negligible overall financial impact may be considered to be less serious.

(4) A pattern of conduct reflecting numerous improper claims, high-dollar false claims, or improper claims involving several types of items or services constitutes aggravating circumstances. OPM may consider a small number of improper claims for relatively low dollar amounts to be less serious.

(5) Every violation involving any harm, or the risk of harm, to the health and safety of an FEHBP enrollee, shall be considered an aggravating circumstance.

(6) Any prior violation described in § 890.1062(b)(5) constitutes an aggravating circumstance. OPM may consider repeated or multiple prior violations to represent an especially serious form of aggravating circumstances.

(7) OPM may consider other circumstances or actions to be aggravating or less serious within the context of an individual case, as the interests of justice require.

§ 890.1065 Deciding whether to suspend or debar a provider in a case that also involves penalties and assessments.

In a case where both penalties and assessments and debarment are proposed concurrently, OPM shall decide the proposed debarment under the same criteria and procedures as if it had been proposed separately from penalties and assessments.

§ 890.1066 Notice of proposed penalties and assessments.

(a) *Written notice.* OPM shall inform a provider of proposed penalties and assessments by written notice, sent via certified mail with return receipt requested to the provider's last known street or post office address. OPM may, at its discretion, use an express service that furnishes a verification of delivery instead of postal mail.

(b) *Statutory limitations period.* OPM shall send the notice to the provider within 6 years of the date on which the claim underlying the proposed penalties and assessments was presented to an FEHBP carrier. If the proposed penalties and assessments do not involve a claim presented for payment, OPM shall send the notice within 6 years of the date of the actions on which the proposed penalties and assessments are based.

(c) *Contents of the notice.* OPM's notice shall contain, at a minimum:

(1) The statement that OPM proposes to impose penalties and/or assessments against the provider;

(2) Identification of the actions, conduct, and claims that comprise the basis for the proposed penalties and assessments;

(3) The amount of the proposed penalties and assessments, and an explanation of how OPM determined those amounts;

(4) The statutory and regulatory bases for the proposed penalties and assessments; and

(5) Instructions for responding to the notice, including specific explanations regarding:

(i) the provider's right to contest the imposition and/or amounts of penalties and assessments before they are formally imposed; and

(ii) OPM's right, if the provider does not contest the proposed penalties and assessments within 30 days of the date he receives the notice, to implement them immediately without further administrative appeal or recourse.

(d) *Proposing debarment in the same notice.* OPM may propose a provider's debarment in the same notice that also proposes penalties and assessments. In this case, the notice shall also provide the elements of information required to appear in a notice of proposed debarment under § 890.1006(b).

(e) *Procedures if the notice cannot be delivered.* OPM shall apply the provisions of § 890.1006(f) if the notice of proposed penalties and assessments cannot be delivered as originally addressed.

(f) *Sending notice by electronic means.* [Reserved]

§ 890.1067 Provider contests of proposed penalties and assessments.

(a) *Contesting proposed sanctions.* A provider may formally contest the proposed penalties and assessments by sending a written notice to the debarring official within 30-days after receiving the notice described in § 890.1066. The debarring official shall apply the administrative procedures set forth in §§ 890.1069 through 1071 to decide the contest.

(b) *Contesting debarments and financial sanctions concurrently.* If OPM proposes debarment and penalties and assessments in the same notice, the provider may contest both the debarment and the financial sanctions in the same proceeding. If the provider pursues a combined contest, the

requirements set forth in §§ 890.1022 through 1024, as well as this section, apply.

(c) *Settling or compromising proposed sanctions.* As part of or in lieu of a contest, a provider may offer to settle the proposed penalties and assessments. The debarring official has authority to settle or compromise proposed sanctions at any time before issuing a final decision under § 890.1071.

§ 890.1068 Effect of not contesting proposed penalties and assessments.

(a) *Proposed sanctions may be implemented immediately.* If a provider does not inform the debarring official of his intention to contest proposed penalties and assessments within the 30-day period set forth by § 890.1067(a), OPM may implement the proposed sanctions immediately, without further procedures.

(b) *Debarring official sends notice after implementing sanctions.* The debarring official shall send the provider written notice, via certified return receipt mail or express delivery service, stating:

(1) The amount of penalties and assessments imposed;

(2) The date on which they were imposed; and

(3) The means by which the provider may pay the penalties and assessments.

(c) *No appeal rights.* A provider may not pursue a further administrative or judicial appeal of the debarring official's final decision implementing any sanctions unless a timely contest was filed in response to OPM's notice under § 890.1066.

§ 890.1069 Information the debarring official shall consider in deciding a provider's contest of proposed penalties and assessments.

(a) *Documentary material and written arguments.* As part of the contest, a provider shall furnish a written statement of reasons why the proposed penalties and assessments should not be imposed and/or why the amounts proposed are excessive.

(b) *Mandatory disclosures.* In addition to any other information submitted during the contest, the provider shall inform the debarring official in writing of:

(1) Any existing, proposed, or prior exclusion, debarment, penalty, assessment, or other sanction that was imposed by a Federal, State, or local government agency, including any administrative agreement that purports to affect only a single agency; and

(2) Any current or prior criminal or civil legal proceeding that was based on the same facts as the penalties and assessments proposed by OPM.

(c) *In-person appearance.* A provider may request a personal appearance (in person, by telephone conference, or through a representative) to provide testimony and oral arguments to the debarring official.

§ 890.1070 Burdens of proof and standards of evidence in contests of proposed penalties and assessments.

(a) *Previously determined facts.* Any facts relating to the basis for the proposed penalties and assessments that were determined in a prior due process proceeding are binding on the debarring official in deciding the contest. Prior due process proceedings are those set forth in § 890.1025(a)(1) through (4).

(b) *Preponderance of the evidence.* To impose penalties and assessments, the debarring official must find that the preponderance of the evidence in the entire official record demonstrates that the provider committed a sanctionable violation described in § 890.1061.

(c) *Final decision regarding the amount of penalties and assessments.* If the preponderance of the evidence establishes that a provider committed a sanctionable violation for which penalties and assessments may be imposed, the debarring official may impose financial sanctions in amounts not exceeding those proposed in the notice issued to the provider under § 890.1066.

§ 890.1071 Deciding contests of proposed penalties and assessments.

(a) *Debarring official reviews entire official record.* After the provider submits the information and evidence authorized or required by § 890.1069, the debarring official shall review the entire official record to determine if the contest can be decided without additional administrative proceedings, or if an evidentiary hearing is required to resolve disputed material facts.

(b) *Deciding the contest without further proceedings.* To decide the contest without further administrative proceedings, the debarring official must determine that the evidentiary record contains no *bona fide* dispute as to material facts. A "material fact" is a fact essential to determining whether a provider committed a sanctionable violation for which penalties and assessments may be imposed. If there are no *bona fide* disputed material facts, the debarring official shall apply the provisions of § 890.1070 to reach a final decision of the contest.

(c) *Bona fide dispute about material facts.* If the debarring official determines that the official record contains a *bona fide* dispute about any fact material to the basis for the proposed penalties and assessments, a fact-finding hearing shall be held to resolve the disputed facts. The provisions of §§ 890.1027(b) and (c), 1028, and 1029(a) and (b) govern such hearings.

(d) *Debarring official's decision after fact-finding hearing.* After receiving the results of the fact-finding hearing, the debarring official shall apply the provisions of § 890.1070 to reach a final decision of the contest.

§ 890.1072 Further appeal rights after final decision to impose penalties and assessments.

If the debarring official's final decision imposes any penalties and assessments, the affected provider may appeal it to the appropriate United States district court under the provisions of 5 U.S.C. 8902a(h)(2).

§ 890.1073 Collecting penalties and assessments.

(a) *Agreed-upon payment schedule.* At the time OPM imposes penalties and assessments, or the amounts are settled or compromised, the provider shall be afforded the opportunity to arrange an agreed-upon payment schedule.

(b) *No agreement on payment schedule.* In the absence of an agreed-upon payment schedule, OPM shall collect penalties and assessments under its regular procedures for resolving debts owed to the Employees Health Benefits Fund.

(c) *Offsets.* As part of its debt collection efforts, OPM may request other Federal agencies to offset the penalties and assessments against amounts that the agencies may owe to the provider, including Federal income tax refunds.

(d) *Civil lawsuit.* If necessary to obtain payment of penalties and assessments, the United States may file a civil lawsuit as set forth in 5 U.S.C. 8902(i).

(e) *Crediting payments.* OPM shall deposit payments of penalties and assessments into the Employees Health Benefits Fund.

[FR Doc. 03–3125 Filed 2–7–03; 8:45 am]

BILLING CODE 6325–52–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 360

[Docket No. 02–067–1]

Noxious Weeds; Cultivars of Kikuyu Grass

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Advance notice of proposed rulemaking and request for comments.

SUMMARY: We are considering whether we should remove Whittet and AZ–1, two cultivars of kikuyu grass, from the list of noxious weeds. In order to make a scientifically sound decision, we are soliciting data regarding research or studies on cultivars of kikuyu grass. We are especially interested in data concerning potential invasiveness in the United States of cultivars of kikuyu grass.

DATES: We will consider all comments that we receive on or before April 11, 2003.

ADDRESSES: You may submit comments by postal mail/commercial delivery or electronically. If you use postal mail/commercial delivery, please send four copies of your comment (an original and three copies) to: Docket No. 02–067–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road, Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 02–067–1. If you wish to submit electronic comments, please visit the Internet Web site *http://comments.aphis.usda.gov* and follow the instructions there.

You may read any comments that we receive on this docket in our reading room, or online at *http://comments.aphis.usda.gov*. Electronic comments will be posted to this website immediately after receipt, and postal mail/commercial delivery comments will be scanned and posted to the website within a few days after receipt. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at *http://www.aphis.usda.gov/ppd/rad/webrepor.html*.

FOR FURTHER INFORMATION CONTACT: Mr. Michael A. Lidsky, Esq., Assistant Director, Regulatory Coordination, PPQ, APHIS, 4700 River Road Unit 141, Riverdale, MD 20737–1236; (301) 734–5762.

SUPPLEMENTARY INFORMATION:

Background

The noxious weed regulations were promulgated under the authority of the Federal Noxious Weed Act (FNWA) of 1974, as amended (7 U.S.C. 2801 *et seq.*), and are set out in 7 CFR part 360 (referred to below as the regulations). The Animal and Plant Health Inspection Service (APHIS) is authorized under the Plant Protection Act (the Act) to regulate the movement of noxious weeds into or through the United States or interstate in order to prevent the artificial spread of noxious weeds into noninfested areas of the United States (7 U.S.C. 7712). Under Executive Order 13112, Invasive Species (February 2, 1999), we are required, among other things, "to prevent the introduction of invasive species * * * and to minimize the economic, ecological, and human health impacts. * * *" The Executive Order defines "invasive species" as "an alien species whose introduction does or is likely to cause economic or environmental harm or harm to human health."

We list noxious weeds in § 360.200 of the regulations. In this section, weeds are divided into three categories: Aquatic weeds, parasitic weeds, and terrestrial weeds. In order for a weed to be listed, it must meet the definition contained in the Plant Protection Act for "noxious weed." The Plant Protection Act defines a "noxious weed" as

"* * * any plant or plant product that can directly or indirectly injure or cause damage to crops (including nursery stock or plant products), livestock, poultry or other interests of agriculture, irrigation, navigation, the natural resources of the United States, the public health, or the environment."

Kikuyu grass (*Pennisetum clandestinum*) has been listed as a noxious weed since 1983. As stated in our regulations at 7 CFR 360.200, footnote 1, each scientific name in our lists of noxious weeds is intended to include all plants within the genus or species represented by the scientific name. In other words, if the scientific name of a species is listed as a noxious weed, all cultivars are included in the listing. Under our regulations, kikuyu grass, like any other listed noxious weed, is subject to certain restrictions in order to prevent its artificial spread into noninfested areas of the United States. Listed noxious weeds are eligible to be moved into and through the United States, or interstate, only under a permit granted by APHIS. Persons who move noxious weeds under permit must follow all conditions contained in the permit with regard to storage, shipment, cultivation, and propagation. Kikuyu grass is not permitted to be moved interstate other than to Arizona, California, and Hawaii. Those States have agreed to accept shipments of kikuyu grass. California has listed kikuyu grass (*Pennisetum clandestinum*) as a noxious weed; Arizona and Hawaii have not.

We have received a recent request to remove two cultivars of kikuyu grass—Whittet and AZ–1—from the list of Federal noxious weeds. Based on all information available to us, we believe Whittet and AZ–1 are the only existing cultivars of kikuyu grass that are being moved interstate to Arizona, California, and Hawaii. As explained above, all cultivars of kikuyu grass are included in the list of Federal noxious weeds under the listing for *Pennisetum clandestinum* (kikuyu grass). The requesting individual is not requesting that we remove wild kikuyu grass from the list of Federal noxious weeds, only that we remove the kikuyu grass cultivars Whittet and AZ–1. The requesting individual maintains that our assessment of these cultivars is erroneous and that Whittet and AZ–1 do not qualify for inclusion on the noxious weed list.

Within the past several years, two scientific panels have reviewed pertinent scientific information regarding the invasiveness of Whittet. One independent panel of scientists representing the disciplines of genetics, ecology, weed science, ecosystems management, and cultivar development and evaluation considered all information published on Whittet as of the end of 1998. The panel documented one source published in early 1999. The other review was conducted by the Agricultural Research Service of the United States Department of Agriculture (USDA). The USDA panel considered all available information regarding Whittet, including the independent panel's report and information presented personally by the individual who is now requesting that we delist kikuyu grass cultivars Whittet and AZ–1. Both panels concluded that there is not enough scientific evidence to support removing Whittet from the list of noxious weeds.

Based on the findings of these panels, we continue to include all varieties and cultivars of kikuyu grass on the list of Federal noxious weeds. Both panels' reports and a list of other sources of information regarding kikuyu grass are available for review on the Internet at *http://comments.aphis.usda.gov*.

If we remove Whittet and AZ–1 from the list of noxious weeds, that would potentially remove all noxious weed-related interstate and import restrictions that now apply to these cultivars of

kikuyu grass. Any change to the noxious weed status of Whittet and AZ–1 would not, however, affect the possible regulation of Whittet and AZ–1 under other applicable regulations contained in 7 CFR, chapter III.

We are soliciting comments on the request we have received to remove Whittet and AZ–1, cultivars of kikuyu grass, from the list of noxious weeds in § 360.200. We welcome any comments regarding this request, including those documenting personal experiences with Whittet and AZ–1. However, we need research data in order to make a scientifically-sound decision regarding delisting Whittet and AZ–1 as noxious weeds. We believe we are aware of all research on kikuyu grass cultivars published prior to and during 1998; therefore, unpublished research conducted prior to or during 1998 and published or unpublished research conducted after that year would be especially helpful. In particular, we are soliciting information on the following issues:

1. At this time, we are aware of the existence of kikuyu grass cultivars Whittet and AZ–1. Are there any other cultivars of kikuyu grass that we need to consider for delisting? If so, please identify these cultivars.

2. What is the invasive potential in the United States of Whittet and AZ–1? What is the invasive potential in the United States of other cultivars of kikuyu grass that should be considered for delisting? Would Whittet and AZ–1, and other cultivars of kikuyu grass, be considered "invasive species" within the meaning of Executive Order 13112? Please explain and provide specific data supporting your conclusions.

3. Were any unpublished research or studies conducted on Whittet or AZ–1 during or prior to 1998? Has any research on Whittet or AZ–1 been conducted, published or unpublished, since 1998? If so, please identify the research or studies and provide results, especially data concerning invasiveness and potential noxious weediness.

4. If Whittet and AZ–1 have invasive potential in the United States, can they be controlled? If so, specify the conditions and control techniques and to which cultivar they should be applied. Include detailed supporting data.

5. Are there natural mechanisms that would tend to render control procedures ineffectual for Whittet and AZ–1 and that might contribute to the spread of these cultivars outside of agricultural settings?

We urge all commenters to include all relevant data supporting their positions.

Authority: 7 U.S.C. 7711–7714, 7718, 7731, 7751, and 7754; 7 CFR 2.22, 2.80, and 371.3.

Done in Washington, DC, this 4th day of February 2003.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 03–3181 Filed 2–7–03; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

7 CFR Part 1466

RIN 0587–AA31

Environmental Quality Incentives Program

AGENCIES: Natural Resources Conservation Service and Commodity Credit Corporation, Agriculture.

ACTION: Proposed rule with request for comments.

SUMMARY: This proposed rule implements the provisions of Title II of the Farm Security and Rural Investment Act of 2002 (the 2002 Act) relating to the Environmental Quality Incentives Program. The Natural Resources Conservation Service (NRCS) proposes to revise and update the rule for the Environmental Quality Incentives Program (EQIP). This proposed rule describes how the NRCS intends to implement EQIP as authorized by amendments in the 2002 Act.

DATES: Comments must be received by March 12, 2003.

ADDRESSES: Submit written comments to Mark W. Berkland, Director, Conservation Operations Division, U.S. Department of Agriculture (USDA), Natural Resources Conservation Service (NRCS), 1400 Independence Avenue SW., Room 5241, Washington, DC 20250–2890. This proposal may also be accessed, and comments submitted, via Internet. Users can access the NRCS homepage to submit comments to *FarmBillRules@usda.gov*. Persons with disabilities who require alternative means for communication (Braille, large print, audio tape, etc.) should contact the USDA TARGET Center at (202) 720–2600 (voice and TDD).

FOR FURTHER INFORMATION CONTACT: Mark W. Berkland, Director, Conservation Operations Division, USDA, 1400 Independence Avenue SW., Room 5241, Washington, DC 20250–2890. Phone: (202) 720–1845; e-mail: *mark.berkland@usda.gov*.

SUPPLEMENTARY INFORMATION:

Discussion of Program

The Farm Security and Rural Investment Act of 2002 (the 2002 Act) (Pub. L. 107–171, May 13, 2002) re-authorized and amended the Environmental Quality Incentives Program, which had been added to the Food Security Act of 1985 (the 1985 Act) (16 U.S.C. 3801 *et seq.*) by the Federal Agriculture Improvement and Reform Act of 1996 (the 1996 Act) (Pub. L. 104–127). The 2002 Act also amended the Environmental Conservation Acreage Reserve Program by changing the section name to the Comprehensive Conservation Enhancement Program and removing the authority for the Secretary of Agriculture to designate areas as conservation priority areas.

As provided by section 1241 of the 1985 Act (16 U.S.C. 3841), as amended by the 2002 Act, the funds, facilities, and authorities of the Commodity Credit Corporation (CCC) are available to NRCS for carrying out EQIP. (The Chief of the NRCS is a vice-president of the CCC.) Accordingly, where NRCS is mentioned in this rule, it also refers to the CCC's funds, facilities, and authorities where applicable.

Through EQIP, NRCS provides assistance to farmers and ranchers who face threats to soil, water, air, and related natural resources on their land. These include grazing lands, wetlands, private non-industrial forest land, and wildlife habitat. Participation in the program is voluntary. Under EQIP, NRCS will provide assistance in a manner that will promote agricultural production and environmental quality as compatible goals, optimize environmental benefits, and help farmers and ranchers meet Federal, State, and local environmental requirements. NRCS will offer the program throughout the Nation using the services of NRCS and technical service providers. NRCS will implement a consolidated and simplified process to reduce any administrative burdens that would otherwise be placed on producers.

In this rule, NRCS proposes to incorporate changes in the EQIP regulations, 7 CFR 1466, resulting from the passage of the 2002 Act. Several important changes were made in the 2002 Act that require changes to the regulation. These include:

(1) Changing the maximum payment limitation from $50,000 per person per contract to $450,000 per individual or entity for all contracts entered into in fiscal years 2002 through 2007;

(2) Revising the purpose from "maximize environmental benefits per

dollar expended" to "optimize environmental benefits";

(3) Eliminating the competitive bidding by applicants;

(4) Allowing payments to be made in the first year of the contract;

(5) Removing language authorizing targeting of funds to Conservation Priority Areas;

(6) Removing the provision prohibiting a producer from receiving cost-shares for an animal waste facility on an animal operation with more than 1,000 animal units;

(7) Allowing cost-share rates of up to 90 percent for limited resource farmers or ranchers and beginning farmers or ranchers;

(8) Reducing the minimum length of a contract from five years to one year after installation of the last practice;

(9) Increasing funding from $200 million per year to $400 million in FY 2002 and increasing to $1.3 billion per year in FY 2007; and,

(10) Imposing an average adjusted gross income (AGI) limitation.

In an effort to make the program more effective and efficient, the Department has initiated several streamlining changes, including:

(1) Eliminating the program's dual administration by changing Farm Service Agency (FSA) participation from concurrence to consultation;

(2) Reducing the planning requirements needed to develop the contract; and

(3) Allowing producers to have more than one contract per tract at any given time.

The fundamental philosophy of the program, assisting agricultural producers install conservation practices to provide environmental benefits, has not changed. The statutory and Departmental changes respond to limitations and restrictions identified by agency staff and participants. Agricultural producers who are interested in participating in the program will apply as they have in the past and should experience a quicker turn around on their application. Producers also have some expanded financial opportunities with higher contract limits and the ability to receive payments earlier in the contract period.

Optimizing Environmental Benefits

While the fundamental philosophy of the program has not changed, the revision to purpose of the program combined with removal of provisions related to Conservation Priority areas and the elimination of competitive bidding by applicants has required NRCS to propose an approach that will meet the new purpose of EQIP—the optimization of environmental benefits. NRCS is proposing to optimize environmental benefits through an approach that integrates consideration of National Priorities in four key program components: (1) The allocation of financial resources to States; (2) the allocation of financial resources within states; (3) the selection of conservation practices and the establishment of cost-share and incentive payment levels; and (4) the application ranking process.

With the advice of Federal agencies, NRCS will establish National Priorities that reflect our most pressing natural resource needs and emphasize off-site benefits to the environment. NRCS has identified the following National priorities:

- Reductions of nonpoint source pollutants; such as nutrients, sediment, or pesticides and excess salinity; in impaired watersheds consistent with Total Maximum Daily Loads (TMDL's) where available, as well as the reduction of groundwater contamination, and the conservation of ground and surface water resources;
- Reduction of emissions, such as particulate matter, NO_X, volatile organic compounds, and ozone precursors and depleters that contribute to air quality impairment violations of National Ambient Air Quality Standards;
- Reduction in soil erosion and sedimentation from unacceptably high rates on highly erodible land; and
- Promotion of at-risk species habitat recovery.

In establishing a National priority of at-risk species habitat recovery, NRCS recognizes unique local situations have the potential to add to Federally listed and candidate species. NRCS supports activities that will reduce the need for additional regulation but will monitor implementation of this aspect of the program to assure that primary focus is listed and candidate species.

NRCS has also identified National measures that can help EQIP achieve its National priorities and statutory requirements more efficiently. These proposed measures include identifying and implementing conservation practices that:

- Increase overall environmental benefits, for example by addressing multiple resource concerns, ensuring more durable environmental benefits and limiting adverse ancillary impacts;
- Encourage innovation;
- Support the statutory mandate to apply nationally 60 percent of available financial assistance to livestock-related conservation practices;
- Employ appropriate tools to more comprehensively serve EQIP purposes, such as Comprehensive Nutrient Management Plans and Integrated Pest Management Plans.

In the NRCS allocation of financial resources to states, NRCS is proposing that the National priorities and measures be used as guidance in determining the amount of funds received by states. NRCS is also proposing to retain a portion of EQIP funding to reward states that demonstrate a higher level of performance and address National priorities. Within states, NRCS is proposing that State Conservationists consider National priorities and measures as they allocate funds and determine priority resource concerns within their state. Similarly, NRCS is proposing that the State Conservationist, or the Designated Conservations, develop an application ranking that reflects both priority resource concerns within states and the National priorities and measures. Further detail about the specific changes in each of these key components is included in the Summary of Provisions.

While this proposal explicitly recognizes National priorities and measures, NRCS will continue to rely on "locally led conservation" as an important cornerstone of EQIP. Using a locally led process ensures consideration of the wide variability between and within states regarding resource issues, solutions, and limitations. Resource issues and concerns change as a result of shifts in population, climatic, or consumer habits; and Federal, state and local laws. Likewise, technical solutions evolve with the advent of new technology and the availability of new data on the effectiveness of practices. As a result, EQIP implementation may vary across jurisdictional boundaries. For example, some states may use state-level based program delivery while others will use county or parish based or regional (multi-county) based delivery.

Efficient and effective implementation of EQIP will be accomplished by building upon the existing NRCS delivery system that uses a line and staff organizational structure to provide both technical [1] and policy guidance from the

[1] Technical guidance is provided to all NRCS personnel using manuals, handbooks, bulletins, and memos. The primary technical tools are the soil surveys, the National Planning Procedures Handbook, the General Manual, and the Handbook of Conservation Practices. Based on this guidance from the National level, the State and District Conservationists, in coordination with universities, other federal agencies, conservation districts, and others, assemble the Field Office Technical Guide (FOTG) which is specific to each local NRCS office. The FOTG contains the primary scientific references tailored for NRCS at the local level. The FOTG contains identified natural resource concerns

National level to the local District Conservationist level. This delivery system will empower the state and local levels to adapt National Priorities and measures to site-specific conditions. State and local NRCS Conservationists will continue to supplement the EQIP Manual by specifying which practices qualify for EQIP payments and establishing maximum cost share rates, incentive payment levels, and the application ranking processes.

Ground and Surface Water Conservation

The 2002 Act also added a provision to EQIP which specifically addresses ground and surface water conservation with dedicated funding. Section 1240I of the 1985 Act provides the Secretary authority to promote ground and surface water conservation by providing cost-share payments, incentive payments, and loans to producers to carry out eligible water conservation activities including improvement to irrigation systems; enhancement of irrigation efficiencies; conversion to the production of less water-intensive agricultural commodities or dryland farming; improvement of the storage of water through measures such as water banking and ground water recharge; or mitigation of the effects of drought. NRCS seeks comments regarding how to administer a loan program in accordance with this section.

The Secretary may provide EQIP assistance for ground and surface water conservation to a producer only if the assistance will facilitate a conservation measure that results in a net savings in ground water or surface water resources in the agricultural operation of the producer. NRCS seeks comments regarding what criteria NRCS should use to determine what should constitute an agricultural operation. Should NRCS consider all the land operated by the producer, the contiguous parcel that includes the field where the practices are being implemented, or just the field in which the practices are being implemented?

Klamath Basin

Section 1204I(c)(2) of the 2002 Act dedicates an additional $50 million for ground and surface water conservation activities in the Klamath Basin located on the Californian/Oregon border. Pursuant to the 2002 Act, NRCS intends to use EQIP to implement this provision in accordance with the statutory requirements for ground and surface water conservation, such as improved irrigation systems, enhanced irrigation efficiencies, and improved water storage, with a goal of an overall "net savings" for agricultural operations. However, due to the complexity of resource issues in the Klamath Basin, a reduction of water usage may not always be the only appropriate solution available. Improving the quality of Klamath Basin water resources makes more "usable" water available, thus resulting in a net savings related to agricultural uses. Water conservation activities in the basin can therefore include water quality improvements as well as a reduction in water usage by agricultural operations.

The two Klamath Basin State Conservationists will lead a basin planning effort to identify water conservation activities to address the basin's resource issues. This plan may require additional funding from sources other than the $50 million in EQIP funding identified for the basin. NRCS seeks comments regarding how the Klamath Basin water conservation provisions should be implemented.

Credit Trading

NRCS recognizes that long-term environmental benefits can also be achieved utilizing innovative alternative approaches to provide incentives for a producer to implement conservation practices. One example is the use of trading mechanisms for water quality credits, under which a producer could sell credits derived from the implementation of conservation practices to other dischargers, who would use these credits for regulatory compliance. In order to assure net reductions in pollutant discharges, credits would need to be derived from conservation practices that go beyond any existing responsibilities of the producer. Pilot trading programs have already demonstrated substantial environmental progress at reduce cost.

NRCS would like to support the institutionalization of water quality credit trading. Accordingly, NRCS is considering the possibility of waiving any and all interests in credits the producers generate using EQIP funds. While producers would be normally be compensated for the costs incurred in generating credits through their sale in private markets, NRCS recognizes that in the absence of established markets, there is considerable uncertainty for producers, particularly if they wish to implement conservation practices before a buyer has been identified. For this reason, NRCS believes it may be appropriate to support development of trading program, for a limited time until functioning markets are established, by allowing producers to generate credits using EQIP funds that could potentially be sold in a trading market. At the same time, NRCS recognizes that there may be concern about allowing credits generated with taxpayer money to be sold for private gain. Any such waiver would likely have limitations; for example restricted to only those credits associated with the EQIP program and only for the duration of the 2002 Farm Bill, FY 2002 through FY2007. NRCS might also try such a waiver program on a pilot basis, to determine if it was effective in helping to establish self sustaining credit markets. NRCS seeks comments on adopting a limited waiver program, as well as on innovative mechanisms more generally that NRCS could consider to institutionalize alternatives for encouraging conservation implementation.

Summary of Provisions

The rule is organized into three subparts: Subpart A—General Provisions; Subpart B—Contracts; and, Subpart C—General Administration. The basic structure of the rule has not changed. However, NRCS is proposing to eliminate, add, or change several sections in Subparts A and B to make the rule consistent with the requirements of the 2002 Act and Departmental streamlining, to explicitly incorporate National priorities and measures, and to increase the overall transparency of the program. We provide a summary of each section below for Subparts A and B and identify proposed changes. We do not provide a detailed summary of Subpart C. This subpart describes administrative aspects of EQIP including appeal rights and exceptions thereto, the responsibilities of the participant to obtaining necessary easements and complying with other laws and regulations and provide USDA representatives with access to land, and provisions for relief if a participant relies on advice or action of a NRCS representative. Only minor changes were made in this subpart to reflect the determination that NRCS will administer EQIP.

Subpart A—General Provisions

Section 1466.1 sets forth the purpose, scope, and objectives of EQIP. The use of EQIP for educational assistance is removed from this section to reflect section 1240(B) of the 1985 Act, as amended by the 2002 Act. Air has also been added to the list of natural

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at each location, local reference data about soil, watersheds, air, and plant and animal resources, locally approved conservation practices including interim practices, the cost of implementing conservation practices, local and state laws and regulations, etc. Information about FOTGs can be found at *http://www.nrcs.usda.gov/technical/efotg/*.

resource concerns addressed by this program.

Section 1466.2 describes the roles of NRCS, FSA, other agencies, the State Technical Committees, and Local Work Groups. This section has been changed to reflect the Department's streamlining initiative. Specifically, with the delegation of EQIP to NRCS, § 1466.2(a)–(d) of the current rule, which described FSA's roles and responsibilities, has been eliminated. In § 1466.2(b), NRCS and FSA will consult at the national level on program and policy decisions and FSA may continue to have an advisory capacity in the administration of EQIP by participating on the State Technical Committees and Local Work Groups.

NRCS is clarifying the roles and responsibilities of State Technical Committees and Local Work Groups in § 1466.2 (c). While EQIP is administered by NRCS and all program decisions are made by NRCS, some decisions, such as determination of eligible practices and cost-shares rates and development of the ranking process, may be delegated to the State Conservationist. The State Conservationist will use advice of the State Technical Committee to make these decisions. The State Conservationist can, in turn, make a final decision or delegate the authority to a Designated Conservationist at the regional or local level. The Designated Conservationist will use advice from a Local Work Group to make decisions delegated to their level. Additional information regarding NRCS policy for State Technical Committees and Local Work Groups can be found at *http://policy.nrcs.usda.gov/scripts/lpsiis.dll/M/M_440_501.htm*.

Section 1466.3 sets forth definitions for terms used throughout the part. Several new definitions, including comprehensive nutrient management plan, limited resource farmer or rancher, beginning farmer or rancher, priority natural resource concerns, National priorities, National measures, Conservation Innovation Grants, EQIP plan of operations, and technical service providers are proposed to address statutory changes and administrative changes resulting from the Department's streamlining initiative. Other terms, such as agricultural operation, conservation district, and wildlife have been proposed to provide greater clarity. Because the administration of EQIP has been delegated to NRCS, definitions related to FSA, such as Administrator and Farm Service County Committee have been removed from this section. We are also proposing to eliminate definitions for Conservation Management System, Conservation Plan, Livestock related Natural Resource Concerns, National Conservation Priority Area, Priority Area, and Private Agribusiness Sector, Resource management system, unit of concern, and vegetative practice because these terms are no longer used in the proposed regulatory language.

A definition for the comprehensive nutrient management plan (CNMP) is included because it is specifically authorized by the 2002 Act. The definition is included to provide the technical base and is the same that NRCS uses in its Comprehensive Nutrient Management Planning Technical Guidance which is part of the NRCS National Planning Procedure Handbook.

Section 1240B of the 1985 Act, as amended by the 2002 Act, gives the Secretary the authority to increase the cost-share rate up to 90 percent for Limited Resource Farmers and Ranchers and beginning farmers or ranchers. NRCS proposes to use two criteria to define a limited resource producer or rancher. Specifically, a Limited Resource Producer or Rancher is a person with direct or indirect gross farm sales not more than $100,000 (to be increased starting in FY 2004 to adjust for inflation) and a total household income at or below the national poverty level for a family of four, or less than 50 percent of county median household income (to be determined annually), in each of the previous two years.

NRCS will use a definition for Beginning Farmer or Rancher that is consistent with the USDA definition of that term under section 343(a) of the Consolidated Farm and Rural Development Act (7 U.S.C. 1991(a)) as found at 7 CFR 1941.4. NRCS is proposing to define a Beginning Farmer or Rancher as an individual or entity who has not operated a farm or ranch, or who has operated a farm or ranch for not more than 10 years and will materially and substantially participate in the operation of the farm or ranch. In the case of a contract with an individual, individually or with the immediate family, material and substantial participation requires that the individual provide substantial day-to-day labor and management of the farm or ranch, consistent with the practices in the county or State where the farm is located. In the case of a contract made with an entity, all members must materially and substantially participate in the operation of the farm or ranch. Material and substantial participation requires that the members provide some amount of the management, or labor and management necessary for day-to-day activities, such that if the members did not provide these inputs, operation of the farm or ranch would be seriously impaired. For an entity to be defined as a Beginning Farmer or Rancher, all members of the entity must qualify. This regulation interprets the maximum length of farming experience allowable for Beginning Farmer or Rancher to be 10 consecutive years.

In order to assure consistency of program implementation, new definitions have been included for National priorities, National measures and priority natural resource concerns.

A definition of Conservation Innovative Grants is defined in this section because it is specifically authorized by the 2002 Act. This definition is included to provide guidance as to what these grants will be used for.

The 2002 Act authorizes NRCS to use certified Technical Service Providers for providing technical assistance, a definition of who qualifies as a TSP is included. A definition of the EQIP plan of operations is included to clarify to producers what is required to be eligible for EQIP assistance. A discussion of the EQIP plan of operations is included in § 1466.9.

Section 1466.4 is a new section that lists and describes how National priorities will be used to implement EQIP. Regulatory language related to Program Requirements found in § 1466.4 of the current EQIP rule has been moved to § 1466.7 in this proposal.

NRCS has established National priorities and measures to guide the allocation of EQIP funds and assist in the prioritization of EQIP applications. The National priorities are listed in § 1466.4(a) and § 1466.4(b) describes how NRCS will use the National priorities to implement the program at the state and local level. The Chief intends to review these National priorities and measures annually, utilizing input from the public and affected stakeholders and Federal agencies, and make revision as required to address emerging resource issues. Information and updates about the National priorities and measures will be provided to the State Conservationists through revisions to the EQIP manual.

Section 1466.5 is a new section that describes program management including National funding allocation. In § 1466.5 of the current rule priority areas and significant statewide natural resource concerns have been deleted from the regulatory language of this proposal.

This section describes the first key component in "optimizing environmental benefits", the allocation

of EQIP funds from the Chief to the State Conservationists. It also includes provisions for program management such as an incentive awards holdback, progress monitoring, periodic evaluation of program delivery and public disclosure of program results.

NRCS is proposing that the Chief of NRCS, with advice of other Federal agencies and in consultation with FSA, will make National funding allocation decisions that reflect the most pressing national resource needs.

Specifically, NRCS will determine the allocation of EQIP funds to NRCS State Conservationists based on National priorities and measures. NRCS will also include other considerations in their allocation decision, such as:

- The significance of the environmental and natural resource concern and the opportunity for environmental enhancement;
- The conservation needs of farmers and ranchers in complying with the highly erodible land and wetland conservation provisions of 7 CFR part 12;
- The ways the program can best assist producers in complying with Federal, State, local, and Tribal environmental laws, quantified where possible;
- The amount of agricultural land in different land use categories, such as grazing land, specialty crops, and others; and
- Other relevant information to meet the purposes of the program.

NRCS will evaluate the existing allocation formula and will consider additional factors to address air quality concerns such as air quality non-attainment areas and acres of cropland with excessive wind erosion. When updating the national allocation formula, NRCS intends to solicit input from an interagency Task Force of Federal agencies, which have knowledge and expertise in the areas of soil, water, air, wildlife and other related natural resources. NRCS seeks comments regarding what process should be used and factors should be considered when evaluating the National funding allocation formula.

NRCS is also proposing to retain a portion of the initial EQIP funding each fiscal year to reward states that demonstrate a higher level of performance in the implementation of EQIP and in addressing the National priorities in the previous year. When allocating the incentive holdback funds to those states demonstrating higher levels of performance, the Chief of NRCS will analyze the management decisions of the State Conservationist and State EQIP implementation performance considering factors such as:

- The degree to which states strategically prioritize and address priority resource concerns, such as through statewide conservation plans, fund allocation, and application ranking;
- The use of contracts with long lived practices;
- The use of contracts with cost-effective practices;
- The use of contracts that benefit multiple resources;
- The efficiency and cost-effectiveness of program delivery;
- The degree to which program implementation addresses National priorities;
- The extent to which Technical Service Providers are engaged to help deliver the program;
- The degree to which Limited Resource Producers are participating; and
- The degree to which states encourage innovation and the leveraging of EQIP funds.

NRCS is formulating the incentive award process and anticipates that the financial bonus will be distributed to a limited number of states assuring that the concept of a bonus is maintained. NRCS is soliciting comments regarding what approaches NRCS can use to efficiently and effectively implement this award incentive.

NRCS will set aside a portion of the available EQIP funding for purposes of complying with the "regional equity" provision of section 1241(c) of the 1985 Act as amended by section 2701 of the 2002 Act. The "regional equity" provision requires the Secretary to give, before April 1, a priority for certain conservation program funding to applications in states that have not received an aggregate of $12 million from those programs.

In order to manage EQIP in a manner that continues to optimize environmental benefits, NRCS will undertake periodic reviews of the effects of program delivery at the state and local level. State Conservationists will prepare annual reports explaining how EQIP was implemented within the state and the accomplishments that were achieved and the Chief will assure that information regarding EQIP implementation will be made available to the public using technology such as the Internet on the NRCS World Wide Web site at *http://www.nrcs.usda.gov/EQIP/*. NRCS seeks comments on how best to evaluate the performance of the EQIP program. For example, how should environmental changes be measured, and what methodologies would best identify environmental effects due to contract activities? What kind of output measures and data collection strategies should NRCS consider? What approaches could NRCS use to evaluate cost-effectiveness?

Section 1466.6 is a new section that describes the responsibilities of State Conservationists in the allocation of funds and implementation of the EQIP program. Much of the language found in § 1466.6 of the current rule, Conservation plan, has been used in § 1466.9 of the proposed rule, EQIP Plan of Operations.

The allocation of funds within States is the second key component in "optimizing environmental benefits." NRCS proposes that the State Conservationists will be responsible for identifying State priority natural resource concerns that incorporate National priorities and measures, for identifying which of the available conservation practices should be encouraged with recommended funding levels, for establishing local level EQIP performance goals and treatment objectives, and for monitoring program performance of the NRCS field offices to ensure that National priorities and measures are being achieved. As part of this process, the State Conservationist will consider the advice of the State Technical Committee and National guidance, in the form of notices and manuals, state priorities and state based resource inventories.

NRCS also proposes that the State Conservationist may delegate implementation of EQIP to Designated Conservationists. Designated Conservationists will use the advice of Local Work Groups to implement EQIP within their area. This delegation by the State Conservationist allows for greater management flexibility at the State level and, perhaps more importantly, explicitly provides for locally led conservation. The State Conservationist will also provide specific guidance to the offices reviewing and ranking applications regarding what factors should be considered in the ranking process. The State Conservationists will provide periodic reports to the public and the Chief regarding implementation of EQIP.

NRCS is also proposing to require that State Conservationists use the following in decisions related to the management of the program and the allocation of funds:

- The nature and extent of natural resource concerns at the state and local level;
- The availability of existing programs to assist with the activities

related to the priority natural resource concerns;

- The existence of multi-county and/or multi-state collaborative efforts to address natural resource concerns;
- Ways and means to measure performance and success; and
- The degree of difficulty that producers face in complying with environmental laws.

As part of these considerations, NRCS expects that State Conservationists will quantify, when and where possible the goals, objectives, and solutions for natural resource concerns in order to optimize environmental benefits that would be delivered by Federal dollars. NRCS also expects that State Conservationists will use science-based background data, quantified when and where possible, on the environmental status and needs, soils information, demographic information, and other available technical data that illustrate the nature and extent of natural resource concerns.

Section 1466.7 is a new section that describes how NRCS will establish special program outreach activities at the National, State, and local levels in order to ensure that producers whose land has environmental problems know that they are eligible to apply for program assistance. NRCS will target its outreach efforts to limited resource farmers, Tribes, beginning farmers and ranchers, and others with historically low participation rates in the programs of NRCS, NRCS, and other USDA agencies. NRCS is exploring new possibilities to increase its outreach to these communities and Tribes.

Section 1466.7 of the current EQIP rule, Conservation Practices, has been moved to Section 1466.10 of the proposed rule.

Section 1466.8 sets forth program requirements such as land and applicant eligibility and the amount of EQIP financial assistance to be used for livestock practices. With the following exceptions, NRCS is retaining the language of Section 1466.4 in the current EQIP rule:

- Section 1466.4(b) of the current rule has been removed. Much of this language appears in proposed Section 1466.5;
- Section 1466.4(d)(iii) has been eliminated;
- Proposed Section 1466.8(b)(3) adds submission of an acceptable EQIP plan of operations as an eligibility requirement; and
- Proposed Section 1466.8(d) increases the amount directed to be used for livestock practices from 50 to 60 percent, pursuant to section 1240B(g) of the 1985 Act, as amended by the 2002 Act.

Section 1466.9 describes the requirements of the EQIP plan of operations which is the basis of EQIP contracts. Producers will be required to develop and apply an EQIP plan that addresses identified priority natural resource concerns. The producer develops the plan of operations with the assistance of NRCS or other public or private technical service providers. With the following notable exceptions, NRCS is retaining the language of Section 1466.6 in the current EQIP rule:

- Section 1466.6(a) in the current rule has been deleted. It contained requirements for maximizing environmental benefits per dollar.
- Section 1466.6(b) and (c) have been removed from this section. Proposed Section 1466.11 addresses technical assistance.
- Section 1466.6(e)(1), (2), have been deleted. This information is contained in the producer's conservation plan and would be a duplication of effort.
- Section 1466.6(f) has been deleted. The single plan that was referenced is available to producers through the NRCS Conservation Operations program and is not required as a part of an EQIP contract.
- Proposed Section 1466.9(c) requires that an EQIP plan of operations include an animal waste storage or treatment facility to include a comprehensive management nutrient plan. Section 1240E(a)(3) of the 1985 Act, as amended by the 2002 Act, requires, in the case of a confined livestock feeding operation for the producer to submit an EQIP plan of operations that provides for the development and implementation of a comprehensive nutrient management plan.
- Proposed Section 1466.9(e) allows participant to receive assistance to implement an EQIP plan of operations for water conservation with funds authorizes by section 1240I of the 1985 Act only if the assistance will facilitate a net savings in ground or surface water resources in the agricultural operation of the producer.

Section 1466.10 describes how eligible practices will be determined by NRCS. NRCS State Conservationists will determine which conservation practices will be eligible and the maximum payment levels in the State. The State Conservationist may also request that the Designated Conservationist determine which conservation practices will be eligible in localities within the limits established by the State Conservationist.

The proposed language in Section 1466.10 does not include any of the language related to confined livestock operations found in Section 1466.7(b) of the current EQIP rule. The 2002 Act removed the restriction that a producer who owns or operates a large confined livestock operation cannot be eligible for cost-share payments through EQIP to construct an animal waste management facility. Financial assistance is available to all livestock producers regardless of size.

NRCS is also proposing to add paragraph (f) to Section 1466.10. It would permit NRCS to approve interim conservation practice standards and financial assistance for pilot testing new technologies or innovations. NRCS will involve other entities, including extension and research agencies and institutions, conservation districts, universities, private industry, and others, in pilot testing to evaluate and assess the practices. This portion of the regulation remains unchanged.

Section 1466.11 is a new section that addresses the sources of technical assistance to carry out EQIP. NRCS will provide technical assistance and will encourage producers to use the services of certified personnel of cooperating Federal, State, or local agencies, or private entities who can provide technical assistance. As determined by the State Conservationist, NRCS may contract with private enterprises or enter cooperative agreements with other Federal, State, or local entities for services related to EQIP implementation. NRCS retains the responsibility for ensuring that technical program standards are met. This section of the regulation remains unchanged, as proposed, but may be modified in the final rule to conform with the final rule for Technical Service Provider Assistance, 7 CFR 652 (*see* 72 FR 70119, Nov. 21, 2002).

Subpart B—Contracts

Section 1466.20 addresses applications for contracts and selection of offers from producers. The revisions to this section are pursuant to both statutory changes regarding section 1240C, which provides that contract selection will give higher priorities to applications that encourage cost-effective conservation and address National priorities, and USDA's streamlining initiative. The evaluation of applications using a ranking process is the fourth contributing factor to "optimizing environmental benefits".

NRCS will accept applications for EQIP throughout the year, but will rank the applications and select the participants periodically as determined at the local and/or State level. NRCS will announce, in advance, the date on

which NRCS will begin evaluating and ranking applications.

Before evaluating individual applications, the State Conservationist or designee, with advice from the State Technical Committee, and Local Work Groups, will develop ranking criteria to prioritize producer applications. The ranking process will evaluate applications according to the magnitude of the environmental benefits resulting from the treatment of the priority natural resource concerns. The ranking will determine which applications will be awarded contracts. The ranking process will be designed to award higher scores for offers from producers that address National and State priorities in conjunction with local resource concerns. The ranking process will score the producer's offer of conservation practices according to the following criteria as well as other locally defined pertinent factors:

- Use of cost-effective conservation practices;
- Treatment of Multiple Resource Concerns;
- Use of conservation practices that provide environmental enhancements for a longer periods of time; and
- Compliance with Federal, state, or local regulatory requirements concerning soil, water, and air quality; wildlife habitat; and ground and surface water conservation.

NRCS proposes that state and local lists of eligible practices, cost-share rates and incentive payment levels, and the ranking process will be posted on the NRCS EQIP website before final ranking of applications. NRCS will also make the appropriate ranking process or processes available at each local NRCS office.

NRCS is proposing to delete the ranking and selection criteria currently in § 1466.20(f)(1) and (g). The first criterion refers to consideration of the environmental benefits per dollar. As this purpose has been eliminated from the authorizing statute, this criterion is no longer necessary. Consistent with 2002 Act, NRCS is proposing that cost considerations alone will not be the only factor when comparing two applications that are expected to provide similar environmental benefits.

NRCS will give additional consideration to contracts that will help the producers comply and exceed requirements of environmental laws, such as EPA's Concentrated Animal Feeding Operations (CAFO) regulatory requirements, the Clean Water Act and Endangered Species Act.

In development of the ranking process, NRCS will recognize that EQIP can play an important role in assisting producers with conservation, restoration, and enhancement of fish and wildlife habitat on working lands. By identifying sound habitat practices targeted at priority species that are at risk from long term declines, EQIP can help producers aid those species while avoiding complications arising out of listings. Many at risk species are benefited by existing soil and water conservation practices. With minor additional effort they can be aided by additional practices that will benefit all resources simultaneously in a manner compatible with working operations. NRCS, state technical committees and local working groups will continue to collaborate with United States Fish and Wildlife Service, National Marine Fisheries Service, and state fish and wildlife agencies to capitalize on opportunities to proactively address at risk fish and wildlife species in conjunction with other resource concerns.

NRCS is also proposing that the approving authority for EQIP contracts will be the State Conservationist or designee except that:

(1) The approving authority for any contract that contains a structural practice with a cost-share rate exceeding 50 percent is the State Conservationist, and

(2) The approving authority of all contracts with payments greater than $100,000 is the NRCS Regional Conservationist.

Section 1466.21 addresses the requirements for EQIP contracts. Only land that meets the purpose and goals of the program and is to be treated under EQIP will be included in the contract. NRCS is including the following changes to the current EQIP language:

- In Section 1466.21(a) that both cost share payments and incentive payments may be included in the EQIP contract.
- Pursuant to section 1240B(b)(2) of the 1985 Act, as amended by the 2002 Act, Section 1466.21(b) the minimum contract length is revised from five years to one year after installation of the last practice. This part was also revised to allow more than one contract on a tract as a result of the Department's streamlining efforts.
- In Section 1466.21(b) NRCS proposes in paragraph (3)(iv) to require the implementation of a comprehensive nutrient management plan when the EQIP contract includes a waste storage or waste treatment facility.

Section 1466.22 addresses the participant's responsibility for conservation practice operation and maintenance. This part remains unchanged.

Section 1466.23 addresses cost-share rates, incentive payment levels, grants, and payment eligibility and limitations. In conjunction with Section 1466.10, this is the third key component in "optimizing environmental benefits."

Subject to the National direct funding caps, State Conservationists with advice of Local Work Groups and the State Technical Committee can set cost-share rates and incentive payment limits as determined appropriate to encourage a producer to perform the land management practice that would not otherwise be initiated without such assistance.

The number and type of eligible practices and the cost-share rates and incentive payment levels determined by the State Conservationist or designee influence the extent to which the program will optimize environmental benefits and what resource concerns will be addressed. The State Conservationist or designee, with advice from State Technical Committees and Local Work Groups will determine which conservation practices are eligible for EQIP funding in each state. The State Conservationist or designee will consider the level of environmental benefits of the eligible conservation practices and will use that information to determine cost-share rates and incentive payment levels. In general, cost share rates will be determined for structural practices, while incentive payments will be determined for land management practices. No incentive payments will be made available for land management practices that are currently generally accepted and practiced in the agricultural community. The State Conservationist or designee will set cost share rates and incentive payments that reflect:

(1) The cost effectiveness of conservation practices;

(2) The number of resource concerns a practice will address (*e.g.* a waste treatment facility that reduces ammonia emissions benefiting both air and water quality should have a higher cost-share rate than a waste storage lagoon.);

(3) The degree of treatment of priority natural resource concerns;

(4) The longevity of the beneficial environmental effect derived from the practice; and

(5) The energy savings demonstrated by the practice.

NRCS intends to fund most structural practices at no more than 50 percent cost-share. NRCS will make payments to the producer when NRCS determines that the conservation practices specified in the contract are satisfactorily established. NRCS intends to monitor and evaluate the program to ensure that

financial assistance is used in an appropriate manner to optimize the environmental benefits.

The EQIP contract specifies the cost-share or incentive payments the producer will receive from NRCS in return for applying the needed conservation practices and land-use adjustments according to a specified schedule. NRCS, with the advice of the State Technical Committee and/or Local Work Group and subject to funding caps, will determine the appropriate cost-share rates for structural practices and incentive payments for land management practices. In determining the amount and rate of incentive payments the State Conservationist should accord a greater significance to practices that address priority natural resource concerns.

NRCS, with the advice of the State Technical Committee or Local Work Groups, will also determine the appropriate incentive payments for development of a comprehensive nutrient management plan (CNMP). NRCS seeks comments regarding how incentive payments to develop a CNMP should be implemented.

The National direct funding cap for structural practices is 75 percent of the actual cost or 90 percent for limited resource producer and beginning farmer (Section 1240B(d)(2) of the 1985 Act as amended by the 2002 Act).

Section 1466.24 is concerned with payment eligibility and payment limitations. Pursuant to section 1240G of the 1985 Act, as amended by the 2002 Act, this part is revised to increase the contract total from $50,000 per person to a total of $450,000 maximum per individual or entity for all FY 2002–FY 2007 contracts and deletes the $10,000 per year limitation. It is also revised pursuant to section 1001D of the 1985 Act, as amended by Section 1604 of the 2002 Act, to limit payment eligibility for participants who have an average adjusted gross income of more than $2.5 million for the previous three years as determined under 7 CFR part 1400, subpart G.

(1) Payment Eligibility

For the definition of "individual" and "entity", NRCS proposes to continue to use the provisions in 7 CFR Part 1400 related to the definition of "person" and the limitation of payments will be used, except that:

(a) States, political subdivisions, and entities thereof will not be persons eligible for financial assistance.

(b) Payments in excess of the limitation may be made to a Tribal venture if an official of the Bureau of Indian Affairs or a Tribal official certifies that no one Tribal member will receive, directly or indirectly, more than the limitation. Annually, the certifying official must provide to NRCS a list of members, by Social Security Number, and the benefit each member has received.

Further, the following provisions in 7 CFR 1400 will not be used because they are not consistent with the intent and language of the EQIP statute: Subpart C for determining whether persons are actively engaged in farming, Subpart E for limiting payments to certain cash rent tenants, and Subpart F for determining whether foreign persons are eligible for payment.

(2) Individual Payment Limitation

Section 1240G of the 1985 Act, as amended by the 2002 Act, establishes a $450,000 EQIP payment limit to any individual or entity for all FY2002 through FY2007 contracts they enter either as an individual or as a beneficiary of an entity. In order to ensure that no individual will receive more than the $450,000, NRCS will track all EQIP funds paid to any and all individuals by the social security number. In order to be eligible to participate in EQIP, the application of an individual, entity (*e.g.*, corporation, limited liability partnership, irrevocable trust, or any other organization listed as an entity in FSA's rule 7 CFR 1400), or any other application in which there is more than one individual listed as a beneficiary must provide a list of all members or beneficiaries, their social security numbers and the percentage interest of each member or beneficiary.

(3) Adjusted Gross Income Eligibility

Section 1001D of the 1985 Act, as amended by section 1604 of the 2002 Act, provides that an individual or entity shall not be eligible to receive payments from several programs, including EQIP, during a crop year if the average adjusted gross income of the individual or entity exceeds $2,500,000, unless not less than 75 percent of the average adjusted gross income of the individual or entity is derived from farming, ranching, or forestry operations. This provision of the 1985 Act will be implemented in accordance with 7 CFR 1400, Subpart G—average adjusted gross income limitation. However, since NRCS will be making a commitment for payments under an EQIP contract for a period of time into the future, NRCS will make a one-time eligibility determination in accordance with Subpart G, 7 CFR 1400 at the time of contract approval.

Section 1466.25 addresses contract modifications and transfers of land. This section is revised to remove a requirement that Conservation District will approve modifications to both the EQIP plan of operations and EQIP contract to assure there will be no conflict of interest where the Conservation District is also a Technical Service Provider.

Section 1466.26 addresses the procedures to be followed for contract violations and terminations. Changes reflect the determination that NRCS will administer EQIP.

Section 1466.27 is reserved for future regulations that address implementation of Conservation Innovation Grants.

Section 1240H of the 1985 Act, as added by the 2002 Act, gives the Secretary the authority to use EQIP funds to pay up to 50 percent of the cost of competitive grants that are intended to stimulate innovative approaches to leveraging Federal investment in environmental enhancement and protection, in conjunction with agricultural production. USDA will issue a future public notice to solicit comments on how the Conservation Innovation Grants provision should be implemented.

Regulatory Certifications

Executive Order 12866

Pursuant to Executive Order 12866 (58 FR 51735, October 4, 1993), it has been determined that this proposed rule is an economically significant regulatory action because it may result in an annual effect on the economy of $100 million or more. The administrative record is available for public inspection in Room 5241 South Building, USDA, 14th and Independence Avenue SW., Washington, DC. Pursuant to Executive Order 12866, NRCS conducted an economic analysis of the potential impacts associated with this program, and included the analysis as part of a Regulatory Impact Analysis document prepared for this rule. A summary of the Economic Analysis can be found at the end of this preamble and a copy of the analysis is available upon request from Mark W. Berkland, Conservation Operations Division, Natural Resources Conservation Service, Room 5241, Washington, DC 20250–2890 or electronically at *http://www.nrcs.usda.gov/programs/eqip/index.html* under "Additional Information".

Regulatory Flexibility Act

The Regulatory Flexibility Act is not applicable to this rule because NRCS is not required by 5 U.S.C. 533 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

Environmental Analysis

A draft Environmental Assessment (EA) has been prepared to assist in determining whether this proposed rule, if implemented, would have a significant impact on the quality of the human environment. Based on the results of the draft EA, NRCS proposes issuing a finding of no significant impact (FONSI) before a final rule is published. Copies of the draft EA and draft FONSI may be obtained from Mark W. Berkland, Conservation Operations Division, Conservation Operations Division, Natural Resources Conservation Service, Room 5241–S, Washington, DC 20250–2890 and electronically at *http://www.nrcs.usda.gov/programs/ eqip/index.html* under "Additional Information". Mail comments on the draft EA and draft FONSI by March 12, 2003, to Mark W. Berkland, Conservation Operations Division, Natural Resources Conservation Service, Room 5241, Washington, DC 20250–2890, or submit them via the Internet to *farmbillrules@usda.gov*.

Civil Rights Impact Analysis

NRCS has determined through a Civil Rights Impact Analysis that the issuance of this proposed rule will not have a significant effect on minorities, women and persons with disabilities. Copies of the Civil Rights Impact Analysis and Finding of No Significant Impact may be obtained from Mark W. Berkland, Conservation Operations Division, Natural Resources Conservation Service, PO Box 2890, Washington, DC 20013–2890, and electronically at *http://www.nrcs.usda.gov/programs/ eqip/index.html* under "Additional Information'.

Paperwork Reduction Act

Section 2702(b)(1)(A) of the 2002 Act provides that the promulgation of regulations and the administration of Title II of the Act shall be made without regard to chapter 35 of Title 44 of the United State Code, the Paperwork Reduction Act. Accordingly, these regulations and the forms, and other information collection activities needed to administer the program authorized by these regulations, are not subject to provisions of the Paperwork Reduction Act, including review by the Office of Management and Budget.

NRCS is committed to compliance with the Government Paperwork Elimination Act (GPEA) and with the Freedom to E-File Act, which require Government agencies in general and NRCS in particular to provide the public the option of submitting information or transacting business electronically to the maximum extent possible. The forms and other information collection activities required for participation in the program proposed under this rule are not yet fully developed for the public to conduct business with NRCS electronically. However, the application form will be available electronically through the USDA eForms Web site at *http://www.sc.egov.usda.gov* for downloading. Applications may be submitted at the local USDA service centers, by mail or by FAX. Currently, electronic submission is not available because signatures from multiple producers with shares in agricultural operations are required.

Executive Order 12988

This proposed rule has been reviewed in accordance with Executive Order 12988, Civil Justice Reform. The provisions of this proposed rule are not retroactive. The provisions of this proposed rule preempt State and local laws to the extent such laws are inconsistent with this proposed rule. Before an action may be brought in a Federal court of competent jurisdiction, the administrative appeal rights afforded persons at 7 CFR parts 614, 780, and 11 must be exhausted.

Federal Crop Insurance Reform and Department of Agriculture Reorganization Act of 1994

Pursuant to section 304 of the Federal Crop Insurance Reform and Department of Agriculture Reorganization Act of 1994 (Pub. L. 103–354), USDA classified this proposed rule as major and NRCS conducted a risk analysis. The risk analysis establishes that the EQIP proposed rule will produce benefits and reduce risks to human health, human safety, and the environment in a cost-effective manner. A copy of the risk analysis is available upon request from Mark W. Berkland, Conservation Operations Division, Natural Resources Conservation Service, PO Box 2890, Washington, DC 20013–2890, and electronically at *http://www.nrcs.usda.gov/programs/eqip/index.html* under "Additional Information'.

Unfunded Mandates Reform Act of 1995

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), NRCS assessed the effects of this rulemaking action on State, local, and Tribal government, and the public. This action does not compel the expenditure of $100 million or more by any State, local, or Tribal governments, or anyone in the private sector; therefore, a statement under section 202 of the Unfunded Mandates Reform Act of 1995 is not required.

Economic Analysis—Executive Summary

Background

Pursuant to Executive Order 12866, Regulatory Planning and Review, the Natural Resources Conservation Service has conducted a benefit cost analysis of the Environmental Quality Incentives Program as formulated for the proposed rule. The Department of Agriculture Reorganization Act of 1994 and the Unfunded Mandates Reform Act of 1995 also require analysis of costs, benefits and risks associated with major regulation. These requirements provide decision makers with the opportunity to develop and implement a program that is beneficial, cost effective and that minimize negative impacts to health, human safety and the environment.

The analysis estimates EQIP will have a beneficial impact on the adoption of conservation practices and, when installed or applied to technical standards, will increase net farm income. In addition, benefits would accrue to society for long-term productivity maintenance of the resource base, reductions in non-point source pollution damage, and wildlife enhancements. As a voluntary program, EQIP will not impose any obligation or burden upon agricultural producers that choose not to participate. The program was authorized at $6.16 billion over the six-year period of FY 2002 through FY 2007, with annual amounts for the base program and the ground and surface water conservation provisions increasing to $1.36 billion in FY 2007 after the initial authorization in FY 2002 year of $425 million. In addition, the 2002 Act authorizes a total of $50 million for the Klamath Basin in California and Oregon.

Prior to the promulgation of the Environmental Protection Agency's "National Pollutant Discharge Elimination System Permit Regulation and Effluent Limitation Guidelines and Standards for Concentrated Animal Feeding Operations" (EPA CAFO) final rule which was published on December 15, 2002, NRCS estimated that 63 million acres of agricultural land will be treated over the six years of the program, including 44 million acres of cropland, 10 million acres of grazing land (pasture and rangeland), and 9 million acres for wildlife. The total evaluated on and off-site environmental benefits were projected to be $6.8 billion including $3.6 billion from animal waste treatment and $3.2 billion

from land treatment. Some of the off-site environmental benefits are attributable to improvements made to enhance freshwater and marine water quality and fish habitat, improved aquatic recreation opportunities, reduced sedimentation of reservoirs, streams, and drainage channels, and reduced flood damages. Additional benefits are from reduced pollution of surface and ground water from agrochemical, improvements in air quality by reducing wind erosion, and enhancements to wildlife habitat.

This analysis was conducted prior to the promulgation of the EPA CAFO final rule. The CAFO rule was published on December 15, 2002 and it underwent changes up to the time of promulgation. As a result, this analysis could not accurately separate the benefits and costs associated with the CAFO rule and those associated with the EQIP proposed rule. There is still some flexibility in the EPA CAFO rule relative to which facilities will be required to have an National Pollutant Discharge Elimination System (NPDES) permit. However, it is known that the CAFO rule will apply to all facilities with more than 1,000 animal units (AUs). Since the CAFO rule claims the environmental benefits for controlling pollution on these facilities, the EQIP rule cannot make the same claim. EQIP will be a primary vehicle for funding compliance with the CAFO rule transferring some of the funding obligations from producers to EQIP so the costs associated with implementing the required pollution control measures apply to EQIP.

This analysis will be revised to take into account comments received during the Proposed Rule comment period. During this revision, a full review of the overlap of the costs and benefits associated with the CAFO and EQIP rules will be undertaken. Meanwhile, it is estimated that approximately $1.7 billion in annual benefits that were identified in the EQIP economic analysis can be attributed to the EPA CAFO regulation. Consequently, total EQIP benefits are $5.1 billion and net benefits relative to EQIP funds are $620 million and net benefits relative to total costs of −$1.5 billion.

Methodology

In developing the benefit cost analysis for EQIP, it was necessary to identify a baseline for comparison. Since EQIP was created in 1996, the regulation and policy guidance for implementing that version was considered a baseline. In addition, changes to EQIP as outlined in the 2002 Farm Bill have been implemented via a Notice of Fund Availability (NOFA) issued in fiscal year 2002. This version of the program was also used as a basis for comparison, hence a two-tiered approach to the cost-benefit analysis. In order to estimate potential program impacts, several alternatives or variations of EQIP as outlined in the NOFA have been evaluated. Costs and benefits have been quantified where possible. Costs and benefits that could not be adequately or accurately quantified are discussed qualitatively.

Public costs quantified in this analysis are the total technical and financial assistance outlined in Congressional Budget Office scoring of the 2002 Farm Bill. Private costs are out of pocket costs paid by producers based on average cost share rates of EQIP. The quantifiable benefits are a subset of the environmental benefits that accrue to the types of practices implemented with EQIP. Available data and literature were found which support benefit in the following categories:

- Reduction in sheet and rill reduction as predicted by the Universal Soil Loss Equation (USLE).
- Improved forage production on grazing lands.
- Reduced wind erosion resulting in both improved air quality and reduced soil loss.
- Increased irrigation water use efficiency.
- Benefits of wildlife viewing and hunting resulting from improved wildlife habitat management.
- Reduced fertilizer expense resulting from nutrient management practices not associated with animal waste.
- Animal waste benefits.
- Savings resulting from decreased fertilizer purchases.
- Increased recreational activity resulting from improved water quality.
- Improved commercial shell fishing.
- Reduced incidence of fish kills.
- Reduced contamination of private wells.

In order to conduct the analysis, it was necessary to make certain assumptions based on the available data.

- Practice mix for the old and new EQIP is the same.
- Quantifiable benefits and per unit benefits are constant, and all benefits are based on national averages.
- Technical assistance costs are based on the full workload and costs associated with implementing the EQIP program, and are based on a projected average contract size.
- Average annual and net present value calculations use an OMB-recommended discount factor of 7 percent.

Description of Alternatives

Tier One

The baseline for comparison is the historical EQIP as established in the 1996 Federal Agricultural Improvement and Reform Act. The baseline reflects historical funding levels projected forward along with existing policy. Alternative one consists of EQIP as defined in the 2002 NOFA. The NOFA alternative reflects increased funding levels, no buy-down provision,[2] the elimination of priority areas, and maximum payment limitation of $450,000, with a payment cap of 50 percent cost-share for any practices with an actual cost exceeding $100,000, and the inclusion of large confined animal feeding operations (CAFOs). These are the most significant changes in the program legislation in terms of economic costs and benefits.

Tier Two

For the second tier of the cost-benefit analysis, the baseline (EQIP 2002 Farm Bill as outlined in the NOFA) is compared to three alternatives. Comparison of these alternatives represents sensitivity analyses of potential policy impacts of EQIP implementation. Following is a brief description.

Alternative One—Varying AFO/CAFO Funding Allocation by Size Class

The first alternative is an analysis of various methods of allocating funds to animal feeding operations (AFO) and confined animal feeding operations (CAFO) based on the size of the operation. The specific scenarios evaluated were allocating funds equally to each size class, allocating funds according to the necessary treatment costs, allocating funds based on the total number of animal units, allocating funds based on the number of operations, and allocating funds only to middle or smaller size operations.

Alternative Two—Varying Payment Limitation Between $50,000 and $450,000

Although legislation allows a maximum payment of $450,000 per participant, the analysis considered potential benefits if different payment limitations were allowed based on local market, cultural or economic conditions. Alternative two analyzes the effects of payment limitations ranging from $50,000, up to the legislated maximum of $450,000.

[2] The buy-down provision of the old EQIP allowed producers to improve the offer index of their applications by reducing the amount of cost share funds they would expect.

Alternative Three—Varying Methods of Environmentally Targeting Funds

The third alternative analyzes the effects of different fund allocation methods which target natural resource issues and concerns. The methods are:

- Homogenous evaluation process (NOFA)—A standardized allocation formula is applied to every application in every location.
- Spatial evaluation process—More points are given based on proximity to an identified natural resource (*i.e.* an impaired stream, underground aquifer, etc.), but no participants are excluded.
- Allocation and evaluation by natural resource concern—More points are given based on an identified natural resource concern, *ie.* water quality, soil erosion, or wildlife habitat development.
- Variable cost share rates—Rates vary by practice based on effectiveness or other criteria.
- Allocation formula—Established criteria are evaluated based on a weighted formula.
- Holdback option—Funds are set aside to be allocated at a later point to locations that achieved higher levels of program efficiency based on measures which have yet to be determined.

Conclusions

Tier One—Comparison of 1996 EQIP to EQIP as Outlined in the NOFA

The EQIP Benefit Cost Analysis compares the EQIP program created in 1996 ("old program") with those changes associated with the 2002 program implemented through the NOFA. Additionally, several alternatives associated with the proposed rule were then compared with the NOFA.

Based upon this analysis, if EQIP is implemented as described in the NOFA, it is estimated that 63 million acres of agricultural land will be treated, categorized by 44 million acres of cropland, 10 million acres of grazing land, and 9 million acres for wildlife habitat improvement if the proposed program is implemented. This results in $6.8 billion in total benefits, including $3.6 billion due to animal waste treatment and $3.2 billion due to non-animal waste land treatments.

The treatment level is expected to increase when compared to the old EQIP. An additional 0.9 million acres for sheet and rill water erosion (USLE) reduction, 2.3 million acres for wind erosion, 8.5 million acres for non-waste nutrient management, 9.6 million acres for net irrigation water reduction, 3.1 million acres for grazing productivity, and 4.1 million acres for wildlife habitat could be expected to occur on the landscape. In addition, 4.8 million animal units, and 2,755 animal feeding operations could be treated and total soil loss from agricultural land decreased by 7.5 million tons/year.

Under the assumption of the old program continuing at level funding and not accounting for the effects of the EPA CAFO rule, the net present value of benefits over the period of 2002–07 was estimated to be $2.2 billion with $0.3 billion coming from waste treatment and $1.9 billion from land treatment. Net benefits were $1.2 billion above EQIP funds and −$0.2 billion if total costs were accounted for.

Net benefits under the new program were $2.3 billion above EQIP funds and $0.2 billion if total costs were accounted for.

The difference between the net benefits estimates of the two scenarios is due to three factors:

- Scale effect associated with increased funding;
- Practice mix effect as a larger share of funds are allocated to livestock waste treatment and efficiencies; and
- Cost effect, since with cost share buy down eliminated, the government cost per treated unit is most likely increased.

Analysis suggests that implementation of EQIP outlined in the NOFA would provide substantial benefits and would help achieve program objectives of solving identified natural resource concerns while optimizing environmental benefits.

The option to include large AFOs, elimination of priority areas and discussion of increased payment limitation are discussed in detail in Tier Two of the benefit-cost analysis. Other proposed changes in EQIP are not quantified in this analysis due to lack of available data necessary to accurately evaluate effects. These include potentially shorter average contract lengths due to the fact that single practices will be allowed and contracts may terminate one year after completion of the last practice, allowing multiple contracts per tract of land, and providing higher cost share rates for limited resource producers or beginning farmers.

Tier Two—NOFA Compared to Policy Options

Alternative One: Alternatives to AFO/CAFO Funding

This analysis was generated before EPA has promulgated the CAFO rule, which regulates all large AFOs above 1,000 AUs. With the promulgation of this rule, EQIP can no longer claim environmental benefits from treatment of large producers, since they must comply with CAFO regulations. Use of EQIP resources would therefore be most efficiently used in treating the next largest non-regulated class of producers.

Allocating funds based on share of total animal units (AUs) results in 42 percent of the funding going to the largest size class (>1,000 AUs), and achieves the greatest net benefits of $2.03 billion and $1.02 billion for EQIP funds and total costs. Conversely, the allocation based on share in numbers of operations, the largest size class would only receive 4 percent of the funding and would achieve net benefits of $378 million and −$315 million for EQIP funds and total costs, respectively. Clearly, some efficiencies are lost due to the fact that it costs more per animal unit to treat the smaller size class AFOs than the large farms.

The strategy generating the highest net benefits (of the six alternatives evaluated) is to allocate the funds across the size classes according to their proportionate share in total number of AUs. That strategy would result in treatment of 15.8 million AUs, compared to as low as 9.4 million AUs for the strategy with the lowest net benefits (allocation divided evenly to the 3 smallest size classes and excluding funding to CAFOs.) The more that funds are shifted towards the (non regulated) larger AFOs, the larger the number of AUs treated, the lower the TA cost, and the greater the estimated benefits.

By comparison, if farms with greater than 1,000 animal units remained excluded from EQIP funding for animal waste practices, a total of 11,400 farms, with a total of 23 million animal units, and an overall need of $500 million in CNMP costs would remain ineligible for EQIP funding. In the scenario of not funding large CAFOs, this analysis shows that although net benefits would exceed the net EQIP costs, net benefits would be the lowest of all scenarios, with $314 million for EQIP funds and $−421 million for total costs.

Under the NOFA scenario, this analysis assumed that the 50 percent of EQIP funding designated for animal waste treatment would be divided equally across the four AFO size classes. However, from the total EQIP benefits, the benefits accruing from treatment of the largest class of AFOs, greater than 1,000 AUs, are excluded. This exclusion is appropriate now that the Environmental Protection Agency has formally published its revised CAFO rule and the benefits from treatment of those large AFOs are credited to the CAFO rule rather than the EQIP program. The definition of AFOs

governed by the new CAFO rule has a broader reach than the simple "greater than 1,000" class defined in this analysis. At this time, the extent to which the CAFO regulation covers small and medium sized AFOs is unclear. It is assumed that the coverage is not significant.

Alternative Two: Payment Limits Between $50,000 and $450,000

Although actual payment depends on the specific conservation system applied and the cost share rate, an assumed or artificial limit on payments can be used to analyze comparative environmental benefit. Data in the benefit-cost analysis suggests that while the various payment limitations do not have great bearing on the total number of farms that would be affected by the caps, a significant number of animal units could be eligible for funding without payment limitations at the higher cap levels.

At the $450,000 payment limitation level, only one percent of the remaining livestock farms would still be capped in the costs of implementing animal waste-related conservation practices. However, those large farms control 27 percent of the animal units. These represent the biggest farms with the highest total costs, but lowest cost per animal unit.

Although there are relatively few additional farms that would be funded as payment limitations increase, these farms have a large number of animal units. Increasing the payment limitation from $50,000 to $100,000 would allow an additional 9 million animal units to be eligible for funding under the payment limitation. Increasing the payment limitation from $300,000 to $450,000 would only increase the number of animal units by fewer than 3 million.

At $50,000, only 33 percent of the livestock farms' animal units would be eligible for funding without reaching the cap. At $100,000, half of the nation's animal units would qualify for EQIP funding without reaching the cap, and at the $450,000, almost three quarters of the nation's animal units would qualify for EQIP funding without reaching the payment limitation cap.

Although legislation allows a maximum payment of $450,000 per participant, it is assumed that the Agency and states may set lower limitations if necessary based on local market, cultural or economic conditions. The economic analysis indicates, there is no economic gain associated with imposing lower payment limitations. Since the larger farms represent those with the highest number of animal units and greatest cost efficiencies per animal unit, the program benefits by allowing full participation up to the payment maximum.

Alternative Three: Alternative Application Evaluation Procedures To Ensure Cost-Effective, Environmentally Targeted Fund Allocation

Under the previous program, 65 percent of funds were allocated to specially targeted, geographically defined areas. The NOFA/Proposed Rule eliminates the process of designating funds to conservation priority areas. There is concern that this will have a negative impact on the potential environmental benefits due to the fact that funds may not be targeted to specific geographic areas, and the environmental effects of practice implementation will be diluted by scattering cost share assistance over a much broader area.

Six options for environmentally targeting EQIP funds were compared in this alternative. Results of these comparisons indicate that if technical assistance costs are constant, then adopting some form of spatial evaluation, varying cost share by practice effectiveness, *or* allocating funds with a formula based on priority resource concerns could all have positive effects on total benefits.

In the case of varying fund allocation to emphasize a particular resource concern, the share of total funds allocated in the NOFA was increased by 5 percent for one category and decreased by 1 percent for the other benefit categories identified in this analysis, with the exception of animal waste. The results of these changes indicate that targeting non-animal waste related nutrient management concerns would yield the greatest net benefits above total costs ($673 M), compared to net benefits of $180 Million for the NOFA. When compared to the NOFA, net benefits would increase respectively for each category that was emphasized using the set percentages. When compared to the NOFA, total net benefits would decrease if grazing land productivity or wind erosion categories were to receive an increased share of funds. Although targeting by resource concern can have overall positive effects on benefits, emphasizing one particular resource concern may overlook the relationships between natural resource effects, and fail to capitalize on them.

In the case of varying cost share levels by practice, the National priorities are emphasized by reducing the cost share rates for practices that have primary impacts in the other benefit categories. For the purposes of this analysis, it is assumed that the average cost share for EQIP is 75 percent in the NOFA. This rate is decreased to 60 percent (mild) and to 50 percent (aggressive) for erosion reduction, grazing productivity, and wildlife habitat improvement. The results indicate that pursuing National priorities with a cost share mechanism can increase total benefits by 5 percent in the "mild" scenario, and by 8 percent for the more aggressive scenario. This rule allows flexibility at the state level to provide higher cost-share rates for practices that impact local resource concerns while reducing cost-share rates for practices that do not optimize benefits at the local level.

In addition to these methods, a holdback of funds for distribution based upon an objective comparison of states using performance criteria can be a useful tool that could increase net benefits and increase program efficiency. Data suggests that in spite of the removal of the requirement for geographically based priority areas, other approaches to targeting of EQIP funds to the most critical natural resource concerns are feasible and will have positive effects on total program benefits. This will ensure that environmental benefits are optimized and program objectives are met, but without excluding participation by persons outside of a designated boundary.

NRCS will revise and enhance this analysis for the final rule. Future analysis will seek to evaluate alternative allocations of program dollars across different conservation practices and quantify and estimate their impacts.

To better implement the program to optimize environmental benefits, as required by the 2002 Act, NRCS seeks public comment, data, or references that can quantitatively or qualitatively enhance its analytical efforts. NRCS especially welcomes comments or data on levels or trends in conservation technology adoption, the on-site and off-site environmental benefits and economic returns to various conservation practices, and other literature about incentive schemes for technology adoption.

List of Subjects in 7 CFR Part 1466

Administrative practices and procedures, conservation, natural resources, water resources, wetlands, payment rates.

For the reasons stated in the preamble, the Commodity Credit Corporation proposes to revise Part 1466 of Title 7 of the Code of Federal Regulations to read as follows:

PART 1466—ENVIRONMENTAL QUALITY INCENTIVES PROGRAM

Subpart A—General Provisions

Sec.
1466.1 Applicability.
1466.2 Administration.
1466.3 Definitions.
1466.4 National priorities.
1466.5 National allocation and management
1466.6 State allocation and management
1466.7 Outreach activities.
1466.8 Program requirements.
1466.9 EQIP plan of operations.
1466.10 Conservation practices.
1466.11 Technical and other assistance provided by qualified personnel not affiliated with USDA.

Subpart B—Contracts and Payments

1466.20 Application for contracts and selecting offers from producers.
1466.21 Contract requirements.
1466.22 Conservation practice operation and maintenance.
1466.23 Cost-share rates and incentive payment levels.
1466.24 EQIP payments.
1466.25 Contract modifications and transfers of land.
1466.26 Contract violations and termination.
1466.27 Conservation Innovation Grants.

Subpart C—General Administration

1466.30 Appeals.
1466.31 Compliance with regulatory measures.
1466.32 Access to operating unit.
1466.33 Performance based upon advice or action of representatives of NRCS.
1466.34 Offsets and assignments.
1466.35 Misrepresentation and scheme or devise.

Authority: 15 U.S.C. 714b and 714c; 16 U.S.C. 3839aa—3839aa—8.

Subpart A—General Provisions

§ 1466.1 Applicability.

Through the Environmental Quality Incentives Program (EQIP), the Commodity Credit Corporation (NRCS) provides assistance and to eligible farmers and ranchers to address soil, water, air, and related natural resources concerns, and to encourage enhancements on their lands in an environmentally beneficial and cost-effective manner. The purposes of the program are achieved by implementing structural and land management conservation practices on eligible land.

§ 1466.2 Administration.

(a) The funds, facilities, and authorities of the Commodity Credit Corporation (CCC) are available to NRCS for carrying out EQIP. Accordingly, where NRCS is mentioned in this part, it also refers to the CCC's funds, facilities, and authorities where applicable.

(b) NRCS and the Farm Service Agency (FSA) will consult, at the National level, in establishing policies, priorities, and guidelines related to the implementation of this part. FSA may continue to participate in EQIP through participation on State Technical Committees and Local Work Groups.

(c) NRCS supports "locally-led conservation" by using State Technical Committees at the state level and Local Work Groups at the county/parish level to advise NRCS on technical issues relating to the implementation of EQIP such as:

(1) Identification of priority natural resource concerns;

(2) Identification of which conservation practices should be eligible for financial assistance; and

(3) Establishment of cost-share rates and incentive payment levels.

(d) No delegation in this part to lower organizational levels shall preclude the Chief of NRCS or a Designated Conservationist from determining any issues arising under this part or from reversing or modifying any determination made under this part.

(e) NRCS may enter into cooperative agreements with other Federal or State agencies, Indian Tribes, conservation districts, units of local government, and public and private not-for-profit organizations to assist NRCS with implementation of the program.

§ 1466.3 Definitions.

The following definitions will apply to this part and all documents issued in accordance with this part, unless specified otherwise:

Agricultural land means cropland, rangeland, pasture, private non-industrial forest land, and other land on which crops or livestock are produced.

Agricultural operation means an area covered by the ground and surface water conservation program requirements and used to establish net savings.

Animal waste management facility means a structural conservation practice used for storing or treating animal waste.

Applicant means a producer, either an individual or entity, who has requested in writing to participate in EQIP. Producers who are members of a joint operation, as defined in 7 CFR part 1400, shall be considered one applicant.

Beginning Farmer or Rancher means an individual or entity who:

(1) Has not operated a farm or ranch, or who has operated a farm or ranch for not more than 10 consecutive years. This requirement applies to all members of an entity, and

(2) Will materially and substantially participate in the operation of the farm or ranch.

(i) In the case of a contract with an individual, individually or with the immediate family, material and substantial participation requires that the individual provide substantial day-to-day labor and management of the farm or ranch, consistent with the practices in the county or State where the farm is located

(ii) In the case of a contract with an entity, all members must materially and substantially participate in the operation of the farm or ranch. Material and substantial participation requires that each of the members provide some amount of the management, or labor and management necessary for day-to-day activities, such that if each of the members did not provide these inputs, operation of the farm or ranch would be seriously impaired.

Chief means the Chief of NRCS, USDA, or designee (State Conservationist or Designated Conservationist).

Comprehensive Nutrient Management Plan (CNMP) means a conservation system that is unique to an animal feeding operation (AFO). A CNMP is a grouping of conservation practices and management activities which, when implemented as part of a conservation system, will help to ensure that both production and natural resource protection goals are achieved. A CNMP incorporates practices to use animal manure and organic by-products as a beneficial resource. A CNMP addresses natural resource concerns dealing with soil erosion, manure, and organic by-products and their potential impacts on all natural resources including water and air quality, which may derive from an AFO. A CNMP is developed to assist an AFO owner/operator in meeting all applicable local, Tribal, State, and Federal water quality goals or regulations. For nutrient impaired stream segments or water bodies, additional management activities or conservation practices may be required by local, Tribal, State, or Federal water quality goals or regulations.

Confined livestock feeding operation means an animal feeding operation that stables, confines, feeds, or maintains animals for a total of 45 days or more in any 12-month period and does not sustain crops, vegetation, forage growth, or post-harvest residues in the normal growing season over any portion of the confined area.

Conservation district means any district or unit of State or local government formed under State or territorial law for the express purpose of developing and carrying out a local soil and water conservation program. Such district or unit of government may be

referred to as a "conservation district", "soil conservation district", "soil and water conservation district", "resource conservation district", "land conservation committee", or similar name.

Conservation Innovation Grants means competitive grants made under EQIP to individuals, governmental and non-governmental organizations to stimulate innovative methods to leverage Federal funds to implement EQIP to enhance and protect the environment in conjunction with agricultural production.

Conservation practice means a specified treatment, such as a structural or land management practice, that is planned and applied according to NRCS standards and specifications.

Contract means a legal document that specifies the rights and obligations of any person who has been accepted to participate in the program. An EQIP contract is a cooperative agreement for the transfer of assistance to the participant as opposed to procurement contract.

Cost-share payment means the financial assistance from NRCS to the participant to share the cost of installing a structural conservation practice.

Designated Conservationist means an NRCS employee whom the State Conservationist has designated as responsible for administration of EQIP in a specific area.

EQIP plan of operations means the identification, location and timing of conservation practices, both structural and land management, that the producer proposes to implement in order to address the priority natural resource concerns and optimize environmental benefits.

Field office technical guide means the official NRCS guidelines, criteria, and standards for planning and applying conservation treatments and conservation management systems. It contains detailed information on the conservation of soil, water, air, plant, and animal resources applicable to the local area for which it is prepared.

Incentive payment means the financial assistance from NRCS to the participant in an amount and at a rate determined appropriate to encourage the participant to perform a land management practice that would not otherwise be initiated without program assistance.

Indian Tribe means any Indian Tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 *et seq.*) that is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

Indian trust lands means real property in which:

(1) The United States holds title as trustee for an Indian or Tribal beneficiary, or

(2) An Indian or Tribal beneficiary holds title and the United States maintains a trust relationship.

Individual means a person who can receive EQIP payments.

Land management practice means conservation practices that primarily use site-specific management techniques and methods to conserve, protect from degradation, or improve soil, water, air, or related natural resources in the most cost-effective manner. Land management practices include, but are not limited to, nutrient management, manure management, integrated pest management, integrated crop management, irrigation water management, tillage or residue management, stripcropping, contour farming, grazing management, and wildlife habitat management.

Lifespan means the period of time during which a conservation practice is to be maintained and used for the intended purpose.

Limited Resource Farmer or Rancher means:

(1) A person with direct or indirect gross farm sales not more than $100,000 (to be increased starting in FY 2004 to adjust for inflation), and

(2) Has a total household income at or below the national poverty level for a family of four, or less than 50 percent of county median household income (to be determined annually), in each of the previous two years.

Liquidated damages means a sum of money stipulated in the EQIP contract which the participant agrees to pay NRCS if the participant fails to adequately complete the contract. The sum represents an estimate of the anticipated or actual harm caused by the failure, and reflects the difficulties of proof of loss and the inconvenience or non-feasibility of otherwise obtaining an adequate remedy.

Livestock means animals produced for food or fiber such as dairy cattle, beef cattle, poultry, turkeys, swine, sheep, horses, fish and other animals raised by aquaculture, or animals the State Conservationist identifies with the advice of the State Technical Committee.

Livestock production means farm and ranch operations involving the production, growing, raising, breeding, and reproduction of livestock or livestock products.

Local work group means representatives of local offices of FSA, the Cooperative State Research, Education, and Extension Service, the conservation district, and other Federal, State, and local government agencies, including Tribes, with expertise in natural resources who advise NRCS on decisions related to EQIP implementation.

National measures means measurable criteria identified by the Chief of NRCS, with the advice of other Federal agencies and State Conservationists, to help EQIP achieve the National Priorities and statutory requirements.

National priorities means resource issues identified by the Chief of NRCS, with advice from other Federal agencies and State Conservationists, which will be used to determine the distribution of EQIP funds and to guide local implementation of EQIP.

Operation and maintenance means work performed by the participant to keep the applied conservation practice functioning for the intended purpose during its life span. Operation includes the administration, management, and performance of non-maintenance actions needed to keep the completed practice safe and functioning as intended. Maintenance includes work to prevent deterioration of the practice, repairing damage, or replacement of the practice to its original condition if one or more components fail.

Participant means a producer who is a party to an EQIP contract.

Priority natural resource concern(s) means an existing or pending degradation of natural resource condition(s) as identified locally by the State Conservationist or Designee with advice from the State Technical Committee and Local Work Groups.

Producer means a person who is engaged in livestock or agricultural production.

Regional Conservationist means the NRCS employee authorized to direct and supervise NRCS activities in an NRCS region.

Related natural resources means natural resources that are associated with soil and water, including air, plants, and animals and the land or water on which they may occur, including grazing land, wetland, forest land, and wildlife habitat.

Secretary means the Secretary of the U. S. Department of Agriculture.

State Conservationist means the NRCS employee authorized to direct and supervise NRCS activities in a State, the Caribbean Area, or the Pacific Basin Area.

State Technical Committee means a committee established by the Secretary in a State pursuant to 16 U.S.C. 3861.

Structural practice means a conservation practice that involves establishing, constructing, or installing a site-specific measure to conserve, protect from degradation, or improve soil, water, air, or related natural resources in the most cost-effective manner. Examples include, but are not limited to, animal waste management facilities, terraces, grassed waterways, tailwater pits, livestock water developments, contour grass strips, filterstrips, critical area plantings, tree planting, permanent wildlife habitat and capping of abandoned wells.

Technical assistance means the personnel and support resources needed to conduct conservation planning; conservation practice survey, layout, design, installation, and certification; training, certification, and provide quality assurance of professional conservationists; and evaluation and assessment of the program.

Technical service provider means an individual, private-sector entity, or public agency certified by the State Conservationist to provide technical services to program participants or to NRCS.

Wildlife means birds, fishes, reptiles, amphibians, invertebrates, and mammals along with all other non-domesticated animals.

§ 1466.4 National priorities.

(a) The following National priorities will be used in the implementation of EQIP:

(1) Reductions of nonpoint source pollutants such as nutrients, sediment, or pesticides and excess salinity in impaired watersheds consistent with TMDL's where available as well as the reduction of groundwater contamination and the conservation of ground and surface water resources;

(2) Reduction of emissions, such as particulate matter, NO_X, volatile organic compounds, and ozone precursors and depleters that contribute to air quality impairment violations of National Ambient Air Quality Standards;

(3) Reduction in soil erosion and sedimentation from unacceptability high rates on highly erodible land; and

(4) Promotion of at-risk species habitat recovery.

(b) With the advice of other Federal agencies, NRCS will undertake periodic reviews of the National priorities and the effects of program delivery at the state and local level. The Chief intends to annually review the National priorities to adapt the program to address emerging resource issues. NRCS will:

(1) Use the National priorities to guide the allocation of EQIP funds to the State NRCS offices,

(2) Use the National priorities to assist with prioritization and selection of EQIP applications at the state and local levels, and

(3) Periodically review and update the National priorities utilizing input from the public and affected stakeholders to ensure that the program continues to address national resource needs.

§ 1466.5 National allocation and management.

The Chief allocates EQIP funds to the State Conservationists to implement EQIP at the state level. In order to optimize the overall environmental benefits over the duration of the program, the Chief of NRCS will:

(a) Use an EQIP fund allocation formula that reflects National priorities and measures and that uses available natural resource and resource concerns data to distribute funds to the states level. This procedure will be updated periodically to reflect adjustments to National priorities and information about resource concerns and program performance. The data used in the allocation formula will be updated as it becomes available.

(b) Provide an incentive award to States that demonstrate a high level of program performance in implementing EQIP considering factors such as strategically planning EQIP implementation, the use of long lived and cost-effective practices, benefits to multiple resources, the efficiency and cost-effectiveness of program delivery, achieving National priorities, the use of Technical Service Providers, contracts with Limited Resource Producers, and encouraging innovation and the leveraging of EQIP funds. These funds will be made available annually from a reserve established at the National level when funds become available.

(c) Use NRCS's Integrated Accountability System to establish state level EQIP performance goals and treatment objectives.

(d) Ensure that National, state and local level information regarding program implementation such as resource priorities, eligible practices, ranking processes, allocation of base and reserve funds, and program achievements is made available to the public using available technology such as the internet.

(e) Consult with State Conservationists and other Federal agencies with the appropriate expertise and information when evaluating the considerations described in this section.

(f) Authorize the State Conservationist, with advice from the State Technical Committee and Local Work Groups, to determine how funds will be used and how the program will be administered to achieve National priorities and measures in each state.

§ 1466.6 State allocation and management.

The State Conservationist, will:

(a) Identify State priority natural resource concerns with the advice of the State Technical Committee that incorporate National priorities and measures and will use NRCS's Integrated Accountability System to establish local level EQIP performance goals and treatment objectives;

(b) Identify, as appropriate and necessary, Designated Conservationists who are NRCS employees that are assigned the responsibility to administer EQIP in specific areas, and

(c) Use the following to determine how to manage the EQIP program and how to allocate funds within a state:

(1) The nature and extent of natural resource concerns at the state and local level;

(2) The availability of human resources, incentive programs, education programs, and on-farm research programs from Federal, State, Indian Tribe, and local levels, both public and private, to assist with the activities related to the priority natural resource concerns;

(3) The existence of multi-county and/or multi-state collaborative efforts to address regional priority natural resource concerns;

(4) Ways and means to measure performance and success; and

(5) The degree of difficulty that producers face in complying with environmental laws.

§ 1466.7 Outreach activities.

NRCS will establish program outreach activities at the National, State, and local levels in order to ensure that producers whose land has environmental problems and priority natural resource concerns are aware, informed, and know that they may be eligible to apply for program assistance. Special outreach will be made to eligible producers with historically low participation rates, including but not restricted to limited resource producers, small-scale producers, Indian Tribes, Alaska natives, and Pacific Islanders.

§ 1466.8 Program requirements.

(a) Program participation is voluntary. The applicant develops an EQIP plan of operations for the agricultural land to be

treated that serves as the basis for the EQIP contract. NRCS provides participants with cost-share or incentive payments to apply needed conservation practices and land-use adjustments.

(b) To be eligible to participate in EQIP, an applicant must:

(1) Be in compliance with the highly erodible land and wetland conservation provisions found at 7 CFR part 12;

(2) Have control of the land for the life of the proposed contract period.

(i) An exception may be made by the Chief in the case of land allotted by the Bureau of Indian Affairs (BIA), Tribal land, or other instances in which the Chief determines that there is sufficient assurance of control;

(ii) If the applicant is a tenant of the land involved in agricultural production, the applicant shall provide the Chief with the written concurrence of the landowner in order to apply a structural conservation practice.

(3) Submit an EQIP plan of operations that is acceptable to NRCS as being in compliance with the terms and conditions of the program;

(4) Comply with the provisions at 7 CFR 1412.304 for protecting the interests of tenants and sharecroppers, including provisions for sharing, on a fair and equitable basis, payments made available under this part, as may be applicable; and

(5) Supply information, as required by NRCS, to determine eligibility for the program, including information to verify the applicant's status as a limited resource farmer or rancher or beginning farmer or rancher.

(c) Land used as cropland, rangeland, pasture, private non-industrial forest land, and other land on which crops or livestock are produced, including agricultural land that NRCS determines poses a threat to soil, water, air, or related natural resources, may be eligible for enrollment in EQIP. However, land may be considered for enrollment in EQIP only if NRCS determines that the land is:

(1) Privately owned land;

(2) Publicly owned land where:

(i) The land is under private control for the contract period and is included in the participant's operating unit; and

(ii) The conservation practices will contribute to an improvement in the identified natural resource concern; or

(3) Tribal, allotted, or Indian trust land.

(d) Sixty percent of available EQIP financial assistance will be targeted to conservation practices related to livestock production, including practices on grazing lands and other lands directly attributable to livestock production, as measured at the National level.

§ 1466.9 EQIP plan of operations.

(a) All conservation practices in the EQIP plan of operations must be carried out in accordance with the applicable NRCS field office technical guide.

(b) The EQIP plan of operations must include:

(1) A description of the participant's specific conservation and environmental objectives to be achieved;

(2) To the extent practicable, the quantitative or qualitative goals for achieving the participant's conservation and environmental objectives;

(3) A description of one or more conservation practices in the conservation management system to be implemented to achieve the conservation and environmental objectives;

(4) A description of the schedule for implementing the conservation practices, including timing and sequence; and

(5) Information that will enable evaluation of the effectiveness of the plan in achieving the environmental objectives.

(c) An EQIP plan of operations that includes an animal waste storage or treatment facility must include a comprehensive nutrient management plan.

(d) Participants are responsible for implementing the EQIP plan of operations.

(e) A participant may receive assistance to implement an EQIP plan of operations for water conservation with funds authorized by section 1240I of the 1985 Act, 16 U.S.C. 3839aa–9, only if the assistance will facilitate a net savings in ground or surface water resources in the agricultural operation of the producer.

§ 1466.10 Conservation practices.

(a) NRCS will determine which structural and land management practices are eligible for program payments. To be considered as an eligible conservation practice, the practices must provide beneficial, cost-effective approaches for participants to change or adapt operations to address priority natural resource concerns. A list of eligible practices will be available at the local NRCS office.

(b) Cost-share and incentive payments will not be made to a participant for a conservation practice that the applicant has applied prior to application for the program.

(c) Cost-share and incentive payments will not be made to a participant who has implemented or initiated the implementation of a conservation practice prior to approval of the contract unless a waiver was granted by the State Conservationist or Designated Conservationist prior to the installation of the practice.

(d) A participant will be eligible for cost-share or incentive payments for irrigation related structural and land management practices only on land that has been irrigated for three of the last five years prior to application for assistance.

(e) Where new technologies or conservation practices that provide a high potential for optimizing environmental benefits have been developed, NRCS may approve interim conservation practice standards and financial assistance for pilot work to evaluate and assess the performance, efficacy, and effectiveness of the technology or conservation practices.

§ 1466.11 Technical and other assistance provided by qualified personnel not affiliated with USDA.

(a) NRCS may use the services of qualified technical service providers in performing its responsibilities for technical assistance.

(b) Participants may use technical and other assistance from qualified personnel of other Federal, State, and local agencies, or Indian Tribes who are certified as Technical Service Providers by NRCS.

(c) Technical and other assistance provided by qualified personnel not affiliated with USDA may include, but is not limited to, conservation planning; conservation practice survey, layout, design, installation, and certification; information, education, and training for producers; and training, certification, and quality assurance for professional conservationists. Payments to certified technical assistance providers will be made only for an application that has been approved for payments.

(d) NRCS retains approval authority over certification of work done by non-NRCS personnel for the purpose of approving EQIP payments.

(e) When NRCS authorizes payment for a practice that is certified by non-USDA personnel, the technical service provider must indemnify and hold NRCS and the program participant harmless for any costs, damages, claims, liabilities and judgments arising from past, present and future negligent acts or omissions of the technical service provider in connection with the technical service provided.

Subpart B—Contracts and Payments

§ 1466.20 Application for contracts and selecting offers from producers.

(a) Any producer who has eligible land may submit an application for participation in the EQIP. Applications are accepted throughout the year. Producers who are members of a joint operation may file a single application for the joint operation.

(b) The State Conservationist or Designated Conservationist with advice from the State Technical Committee or Local Work Groups will develop a ranking process to prioritize applications for funding which address priority natural resource concerns. The State Conservationist or Designated Conservationist will periodically select for funding the applications based on applicant eligibility and the NRCS ranking process. The State Conservationist or Designated Conservationist will rank all applications according to the following factors:

(1) Use of cost-effective conservation practices,

(2) The magnitude of the environmental benefits resulting from the treatment of the priority natural resource concerns,

(3) Treatment of multiple resource concerns,

(4) Use of conservation practices that provide environmental enhancements for a longer period of time,

(5) Compliance with Federal, state or local regulatory requirements concerning soil, water and air quality; wildlife habitat; and ground and surface water conservation, and

(6) Other locally defined pertinent factors, such as the location of the conservation practice, the extent of natural resource degradation, and the degree of cooperation by local producers to achieve environmental improvements.

(c) If the State Conservationist determines that the environmental values of two or more applications for cost-share payments or incentive payments are comparable, the State Conservationist will not assign a higher priority to the application solely because it would present the least cost to the program.

(d) The ranking will determine which applications will be awarded contracts. The approving authority for EQIP contracts will be the State Conservationist or designee except that:

(1) The approving authority for any EQIP contract that contains a structural conservation practice with a cost-share greater than 50 percent is the State Conservationist.

(2) The approving authority for any EQIP contract with total payment greater than $100,000 is the NRCS Regional Conservationist.

§ 1466.21 Contract requirements.

(a) In order for a participant to receive cost-share or incentive payments, the participant must enter into a contract agreeing to implement one or more conservation practices. Both cost-share payments and incentive payments may be included in a contract.

(b) An EQIP contract will:

(1) Identify all conservation practices to be implemented, the timing of practice installation, and applicable cost-shares and incentive payments allocated to the practices under the contract;

(2) Be for a minimum duration of 1 year after completion of the last practice, but not more than 10 years;

(3) Incorporate all provisions as required by law or statute, including requirements that the participant will:

(i) Not conduct any practices on the farm or ranch unit under the contract, or agricultural operation of the producer for ground and surface water conservation contracts, that would tend to defeat the purposes of the contract;

(ii) Refund any program payments received with interest, and forfeit any future payments under the program, on the violation of a term or condition of the contract, consistent with the provisions of § 1466.25;

(iii) Refund all program payments received on the transfer of the right and interest of the producer in land subject to the contract, unless the transferee of the right and interest agrees to assume all obligations of the contract, consistent with the provisions of § 1466.24;

(iv) Implement a comprehensive nutrient management plan when the EQIP contract includes a waste storage or waste treatment facility; and

(v) Supply information as may be required by NRCS to determine compliance with the contract and requirements of the program.

(4) Specify the participant's requirements for operation and maintenance of the applied conservation practices consistent with the provisions of § 1466.22; and

(5) Specify any other provision determined necessary or appropriate by NRCS.

(c) The participant must apply at least one contracted practice within the first 12 months of signing a contract.

§ 1466.22 Conservation practice operation and maintenance.

The contract will incorporate the operation and maintenance of conservation practices applied under the contract. The participant must operate and maintain each conservation practice installed under the contract for its intended purpose for the life span of the conservation practice as determined by NRCS. Conservation practices installed before the execution of a contract, but needed in the contract to obtain the environmental benefits agreed upon must be operated and maintained as specified in the contract. NRCS may periodically inspect a conservation practice during the lifespan of the practice as specified in the contract to ensure that operation and maintenance are occurring. When NRCS finds that a participant is not operating and maintaining practices in an appropriate manner, NRCS will request a refund of cost-share or incentive payments made for that practice under the contract.

§ 1466.23 Cost-share rates and incentive payment levels.

(a) *Determining cost-share payment rates.* (1) The maximum cost-share payments made to a participant under the program will not be more than 75 percent of the actual cost of a structural practice, as determined by the State Conservationist or Designated Conservationist, except that for a Limited Resource Farmer or Rancher or Beginning Farmer and Rancher cost-share payments may be up to 90 percent, as determined by the State Conservationist or Designated Conservationist.

(2) Cost-share rates and incentive payment levels for conservation practices will be established by the State Conservationist or Designated Conservationist with advice from the State Technical Committee and Local Work Groups in consideration of the practice cost-effectiveness, longevity and environmental benefit achieved. The State Conservationist or Designated Conservationist will develop a list of eligible conservation practices with varied cost-share rates and will set:

(i) Cost-share rates and incentive payment levels that reflect a conservation practice cost-effectiveness and innovation,

(ii) Cost-share rates and incentive payment levels for practices based on the degree of treatment of priority natural resource concerns,

(iii) Cost-share rates and incentive payment levels that reflect the number of resource concerns a practice will address,

(iv) Cost-share rates and incentive payment levels that reflect a practice's longevity of beneficial environmental effect, and

(v) Cost-share rates and incentive payment levels based on other pertinent local considerations.

(3) The cost-share payments to a participant under the program will be reduced proportionately below the rate established by the State Conservationist or Designated Conservationist, or the cost-share limit as set in paragraph (a)(2) of this section, to the extent that total financial contributions for a structural practice from all public and private sources exceed 100 percent of the actual cost of the practice.

(b) Determining incentive payment levels. NRCS will provide incentive payments to participants for a land management practice or to develop a comprehensive nutrient management plan in an amount and at a rate necessary to encourage a participant to perform the practice that would not otherwise be initiated without government assistance. The State Conservationist or Designated Conservationist, with the advice of the State Technical Committee or Local Work Groups, may consider establishing limits on the extent of land management practices that may be included in a contract.

§ 1466.24 EQIP payments.

(a) Except as provided in paragraph (b) of this section, the total amount of cost-share and incentive payments paid to an individual or entity under this part may not exceed an aggregate of $450,000, directly or indirectly, for all contracts entered into during fiscal years 2002 through 2007.

(b) To determine eligibility for payments, NRCS will use the provisions in 7 CFR part 1400 related to the definition of *person* and the *limitation of payments,* except that:

(1) States, political subdivisions, and entities thereof will not be considered to be persons eligible for payment.

(2) For purposes of applying the payment limitations provided for in this section, the following will not apply: the provisions in 7 CFR part 1400, subpart C for determining whether persons are actively engaged in farming, subpart E for limiting payments to certain cash rent tenants, and subpart F as the provisions apply to determining whether foreign persons are eligible for payment.

(3) To be eligible to participate in EQIP, all individuals considered to be part of an application must provide a social security number.

(4) To be eligible to participate in EQIP, any entity, as identified in 7 CFR part 1400, must provide a list of all members of the entity and embedded entities along with the member's social security numbers and percentage interest in the entity.

(5) With regard to contracts on Tribal land, Indian trust land, or BIA allotted land, payments exceeding the payment limitation may be made to the Tribal venture if an official of BIA or a Tribal official certifies in writing that no one person directly or indirectly will receive more than the limitation. The Tribal entity must also provide, annually, listing of individuals and payments made, by social security number, during the previous year for calculation of overall payment limitations. The Tribal entity must also produce, at the request by NRCS, proof of payments made to the individuals that incurred the costs for installation of the practices.

(6) Any cooperative association of producers that markets commodities for producers will not be considered to be a person eligible for payment.

(7) Eligibility for payments in accordance with 7 CFR part 1400, subpart G, average adjusted gross income limitation, will be determined at the time of contract approval.

(8) Eligibility for higher cost-share payments in accordance with paragraph (a)(1) of this section will be determined at the time of approval of the contract.

(c) A participant will not be eligible for cost-share or incentive payments for conservation practices on eligible land if the participant receives cost-share payments or other benefits for the same practice on same land under any other conservation program administered by USDA.

(d) Before NRCS will approve and issue any cost-share or incentive payment, the participant must certify that the conservation practice has been completed in accordance with the contract, and NRCS or other approved technical service provider certifies that the practice has been carried out in accordance with the applicable NRCS field office technical guide.

§ 1466.25 Contract modifications and transfers of land.

(a) The participant and NRCS may modify a contract if the participant and NRCS agree to the contract modification and the EQIP plan of operations is revised in accordance with NRCS requirements and is approved by the Designated Conservationist.

(b) The participant and NRCS may agree to transfer a contract to another producer. The transferee must be determined by NRCS to be eligible to participate in EQIP and must assume full responsibility under the contract, including operation and maintenance of those conservation practices already installed and to be installed as a condition of the contract.

(c) NRCS may require a participant to refund all or a portion of any assistance earned under EQIP if the participant sells or loses control of the land under an EQIP contract and the new owner or controller is not eligible to participate in the program or refuses to assume responsibility under the contract.

§ 1466.26 Contract violations and termination.

(a) (1) If NRCS determines that a participant is in violation of the terms of a contract or documents incorporated by reference into the contract, NRCS shall give the participant a reasonable time, as determined by NRCS, to correct the violation and comply with the terms of the contract and attachments thereto. If a participant continues in violation, NRCS may terminate the EQIP contract.

(2) Notwithstanding the provisions of paragraph (a)(1) of this section, a contract termination shall be effective immediately upon a determination by NRCS that the participant has submitted false information or filed a false claim, or engaged in any act for which a finding of ineligibility for payments is permitted under the provisions of § 1466.35, or in a case in which the actions of the party involved are deemed to be sufficiently purposeful or negligent to warrant a termination without delay.

(b)(1) If NRCS terminates a contract, the participant will forfeit all rights for future payments under the contract and shall refund all or part of the payments received, plus interest determined in accordance with 7 CFR part 1403. NRCS has the option of requiring only partial refund of the payments received if a previously installed conservation practice can function independently, is not adversely affected by the violation or the absence of other conservation practices that would have been installed under the contract, and the participant agrees to operate and maintain the installed conservation practice for the lifespan of the practice.

(2) If NRCS terminates a contract due to breach of contract or the participant voluntarily terminates the contract before any contractual payments have been made, the participant will forfeit all rights for further payments under the contract and shall pay such liquidated damages as are prescribed in the contract. NRCS will have the option to waive the liquidated damages, depending upon the circumstances of the case.

(3) When making contract termination decisions, NRCS may reduce the amount of money owed by the

participant by a proportion that reflects the good faith effort of the participant to comply with the contract or the hardships beyond the participant's control that have prevented compliance with the contract.

(4) The participant may voluntarily terminate a contract if NRCS determines that termination is in the public interest.

(5) In carrying out its role in this section, NRCS may consult with the local conservation district.

§ 1466.27 Conservation Innovation Grants.

[Reserved]

Subpart C—General Administration

§ 1466.30 Appeals.

A participant may obtain administrative review of an adverse decision under EQIP in accordance with 7 CFR parts 11 and 614. Determination in matters of general applicability, such as payment rates, payment limits, and cost-share percentages, the designation of identified priority natural resource concerns, and eligible conservation practices are not subject to appeal.

§ 1466.31 Compliance with regulatory measures.

Participants who carry out conservation practices shall be responsible for obtaining the authorities, rights, easements, or other approvals necessary for the implementation, operation, and maintenance of the conservation practices in keeping with applicable laws and regulations. Participants shall be responsible for compliance with all laws and for all effects or actions resulting from the participant's performance under the contract.

§ 1466.32 Access to operating unit.

Any authorized NRCS representative shall have the right to enter an operating unit or tract for the purpose of ascertaining the accuracy of any representations made in a contract or in anticipation of entering a contract, as to the performance of the terms and conditions of the contract. Access shall include the right to provide technical assistance, inspect any work undertaken under the contract, and collect information necessary to evaluate the performance of conservation practices in the contract. The NRCS representative shall make a reasonable effort to contact the participant prior to the exercise of this provision.

§ 1466.33 Performance based upon advice or action of representatives of NRCS.

If a participant relied upon the advice or action of any authorized representative of NRCS and did not know, or have reason to know, that the action or advice was improper or erroneous, NRCS may accept the advice or action as meeting the requirements of the program and may grant relief, to the extent it is deemed desirable by NRCS, to provide a fair and equitable treatment because of the good-faith reliance on the part of the participant. The financial or technical liability for any action by a participant that was taken based on the advice of a non-USDA certified technical service provider will remain with the certified technical service provider and will not be assumed by NRCS or NRCS when NRCS or NRCS authorizes payment.

§ 1466.34 Offsets and assignments.

(a) Except as provided in paragraph (b) of this section, any payment or portion thereof to any person shall be made without regard to questions of title under State law and without regard to any claim or lien against the crop, or proceeds thereof, in favor of the owner or any other creditor except agencies of the U.S. Government. The regulations governing offsets and withholdings found at 7 CFR part 1403 shall be applicable to contract payments.

(b) Any producer entitled to any payment may assign any payments in accordance with regulations governing assignment of payment found at 7 CFR part 1404.

§ 1466.35 Misrepresentation and scheme or device.

(a) A producer who is determined to have erroneously represented any fact affecting a program determination made in accordance with this part shall not be entitled to contract payments and must refund to NRCS all payments, plus interest determined in accordance with 7 CFR part 1403.

(b) A producer who is determined to have knowingly:

(1) Adopted any scheme or device that tends to defeat the purpose of the program;

(2) Made any fraudulent representation; or

(3) Misrepresented any fact affecting a program determination, shall refund to NRCS all payments, plus interest determined in accordance with 7 CFR part 1403 received by such producer with respect to all contracts. The producer's interest in all contracts shall be terminated.

Signed in Washington, DC on January 28, 2003.

Bruce I. Knight,

Vice President, Commodity Credit Corporation, Chief, Natural Resources Conservation Service.

[FR Doc. 03–2642 Filed 2–7–03; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 94

[Docket No. 02–109–1]

Importation of Beef From Uruguay

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the regulations governing the importation of certain animals, meat, and other animal products by allowing, under certain conditions, the importation of fresh (chilled or frozen) beef from Uruguay. Based on the evidence in a recent risk assessment, we believe that fresh (chilled or frozen) beef can be safely imported from Uruguay provided certain conditions are met. This action would provide for the importation of beef from Uruguay into the United States while continuing to protect the United States against the introduction of foot-and-mouth disease.

DATES: We will consider all comments that we receive on or before April 11, 2003.

ADDRESSES: You may submit comments by postal mail/commercial delivery or by e-mail. If you use postal mail/commercial delivery, please send four copies of your comment (an original and three copies) to: Docket No. 02–109–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 02–109–1. If you use e-mail, address your comment to *regulations@aphis.usda.gov*. Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and "Docket No. 02–109–1" on the subject line.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m.,

Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at *http://www.aphis.usda.gov/ppd/rad/webrepor.html*.

FOR FURTHER INFORMATION CONTACT: Dr. Hatim Gubara, Senior Staff Veterinarian, Regionalization Evaluation Services Staff, VS, APHIS, 4700 River Road Unit 38, Riverdale, MD 20737–1231; (301) 734–4356.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 94 (referred to below as the regulations) prohibit or restrict the importation of certain animals and animal products into the United States to prevent the introduction of various animal diseases, including rinderpest, foot-and-mouth disease (FMD), African swine fever, hog cholera, and swine vesicular disease. These are dangerous and destructive communicable diseases of ruminants and swine. Section 94.1 of the regulations lists regions of the world that are considered free of rinderpest or free of both rinderpest and FMD. The Animal and Plant Health Inspection Service (APHIS) considers rinderpest or FMD to exist in all regions of the world not listed.

On November 1, 1995, we published in the **Federal Register** a final rule (60 FR 55440–55443, Docket No. 95–050–2) adding Uruguay to the list in § 94.1 of regions considered to be free of rinderpest and FMD and to the list in § 94.11 of regions that, although free of rinderpest and FMD, are subject to certain restrictions on importation of meat and other animal products. On October 26, 2000, Uruguay's Ministry of Livestock, Agriculture and Fisheries notified us of an FMD outbreak in the northern Uruguayan department of Artigas and immediately prohibited the movement of all animals and animal products throughout the department. On November 20, 2000, Uruguay sent a team of veterinary officials to the United States to provide us with detailed information on the outbreak history, measures taken to eradicate the disease, movement controls, monitoring and surveillance, and other relevant activities. In an interim rule published in the **Federal Register** on December 13, 2000 (65 FR 77771–77773, Docket No. 00–111–1), and effective retroactively to October 1, 2000, we removed the Uruguayan department of Artigas from the list of regions considered to be free of rinderpest and FMD.

On April 24, 2001, FMD was clinically confirmed in the Uruguayan department of Soriano, near Uruguay's border with Argentina. The disease subsequently spread to additional departments. Uruguay's Ministry of Livestock, Agriculture and Fisheries notified the United States Department of Agriculture and the Office International des Epizooties that, as of August 21, 2001, there had been 2,057 confirmed cases of FMD in 18 departments of Uruguay, including Artigas and Soriano. In response to the outbreak, the Ministry of Livestock, Agriculture and Fisheries began a stamping out campaign on April 24, 2001, that continued until it was suspended on April 30, 2001. The government of Uruguay also issued a ban on the movement of all animals susceptible to FMD; began an emergency ring vaccination campaign on April 26, 2001; established a containment zone with strategic vaccination; applied strict sanitary measures within the outbreak areas; placed fixed control and disinfection posts on the main access routes to the affected areas; and suspended all export health certificates for ruminants and swine.

On July 13, 2001, we published in the **Federal Register** an interim rule (66 FR 36695–36697, Docket No. 00–111–2), effective retroactively to April 2, 2001, that amended the regulations by removing Uruguay from the list of regions considered free of rinderpest and FMD and from the list of regions that, although rinderpest and FMD-free, are subject to certain restrictions on the importation of meat and other animal products. That action was necessary because FMD had been confirmed in 18 departments of Uruguay. The effect of the interim rule was to prohibit or restrict the importation of any ruminants or swine and any fresh (chilled or frozen) meat and other products of ruminants or swine into the United States from Uruguay.

Although we removed Uruguay from the list of regions considered to be free of rinderpest and FMD, we recognized in the interim rule that Uruguay's Ministry of Livestock, Agriculture, and Fisheries responded immediately to the detection of the disease by imposing restrictions on the movement of ruminants, swine, and ruminant and swine products from the affected areas and by initiating measures to control and eradicate the disease. We also stated that we intended to reassess the situation to determine whether it was necessary to continue to prohibit or restrict the importation of ruminants or swine and any fresh (chilled or frozen) meat and other products of ruminants or swine from Uruguay..

Under the current regulations, the importation of fresh (chilled or frozen) beef from Uruguay is prohibited. Because Uruguay took immediate, effective measures to control and eradicate FMD after the initial outbreak; continues to employ control measures, including a vaccination program, movement controls (especially control of movement to slaughter), maturation, de-boning, ante- and post-mortem inspections, pH testing, and national and international border controls; and has not had a confirmed case of FMD in over a year, the government of Uruguay requested that APHIS consider allowing the export of fresh (chilled or frozen) beef to the United States.

In response to this request, APHIS prepared a risk assessment, which can be viewed on the Internet at *http://www.aphis.usda.gov/vs/ncie/reg-request.html*. To view the document, follow the link entitled, "Information previously submitted by Regions requesting export approval and their supporting documentation." At the next screen, click on the triangle beside "Uruguay/Animals and Animal Products/Foot-and-Mouth Disease," then on the triangle beside "Response by APHIS." A link will then appear for "Risk Assessment—Importation of Fresh (chilled or frozen) Beef from Uruguay (November 2002)." Following that link will allow you to view the assessment. You may also request paper copies of this document by calling or writing the person listed under **FOR FURTHER INFORMATION CONTACT.** Please refer to Docket No. 02–109–1 when requesting copies. The risk assessment is also available in our reading room. (Information on the location and hours of the reading room may be found at the beginning of this document under **ADDRESSES.**) The risk assessment process also included a site visit in July 2002 during which a team of APHIS representatives reviewed Uruguay's animal health infrastructure, vaccination program, movement controls, slaughter procedures, and national and international border controls. (The site visit report is available along with the risk assessment as discussed above). Under the Animal Health Protection Act (7 U.S.C. 8301 *et seq.*), the Secretary of Agriculture may prohibit the importation of any animal or article if the Secretary determines that the prohibition is necessary to prevent the introduction into or dissemination within the United States

of any pest or disease of livestock. Based on the risk assessment, the site visit, and information provided by the government of Uruguay, we have determined that it is not necessary to prohibit the importation of fresh (chilled or frozen) beef from Uruguay, provided certain stringent requirements are met.

On May 5, 2001, the government of Uruguay initiated the first round of a vaccination program. Four rounds have been completed to date, and one round of calf vaccinations for calves born between 2000 and 2001 was completed in November of 2001. The vaccination program will continue until May 2003, at which time the government of Uruguay plans to evaluate its vaccination policy. Although there has not been a confirmed case of FMD in Uruguay since August 21, 2001, this ongoing vaccination program makes additional mitigating measures necessary in order to ensure protection against the introduction of FMD into the United States from the importation of fresh (chilled or frozen) beef from Uruguay. When animals are vaccinated for FMD, it can be difficult to distinguish between serological responses that are caused by the FMD virus and responses that are caused by the vaccinations. Further, if the disease is present in a region, symptoms in a vaccinated animal can be suppressed and may not manifest themselves at a clinical level. To mitigate these additional risk factors, we are proposing to require the mitigating measures discussed below, which we have determined will protect against the introduction of FMD into the United States from the importation of fresh (chilled or frozen) beef from Uruguay.

Mitigation Measures

The proposed changes to the regulations include several additional conditions that would have to be met before importation of fresh (chilled or frozen) beef from Uruguay into the United States would be allowed. An authorized veterinary official of the government of Uruguay would have to certify that the following conditions have been met:

- The meat is beef from bovines that have been born, raised, and slaughtered in Uruguay;
- FMD has not been diagnosed in Uruguay within the previous 12 months;
- The beef came from bovines that originated from premises where FMD has not been present during the lifetime of any bovines slaughtered for the export of meat to the United States;
- The beef came from bovines that were moved directly from the premises of origin to the slaughtering establishment without any contact with other animals;
- The beef came from bovines that received ante- and post-mortem veterinary inspections, paying particular attention to the head and feet, at the slaughtering establishment, with no evidence found of vesicular disease;
- The beef consists only of bovine parts that are, by standard practice, part of the animal's carcass that is placed in a chiller for maturation after slaughter. Bovine parts that may not be imported include all parts of bovine heads, feet, hump, hooves, and internal organs;
- All bone and visually identifiable blood clots and lymphoid tissue have been removed from the beef;
- The beef has not been in contact with meat from regions other than those listed in § 94.1(a)(2); and
- The beef came from bovine carcasses that have been allowed to maturate at 40 to 50 °F (4 to 10 °C) for a minimum of 36 hours after slaughter and have reached a pH of 5.8 or less in the loin muscle at the end of the maturation period. Any carcass in which the pH does not reach 5.8 or less may be allowed to maturate an additional 24 hours and be retested, and, if the carcass still has not reached a pH of 5.8 or less after 60 hours, the meat from the carcass may not be exported to the United States.

In addition to these proposed requirements, § 94.21(l) of this proposed rule would also require the establishment in which the bovines are slaughtered to allow periodic on-site evaluation and subsequent inspection of its facilities, records, and operations by an APHIS representative.

Ante- and Post-Mortem Inspections

Among the proposed additional requirements that would have to be met for the importation of fresh (chilled or frozen) beef from Uruguay is the proposed requirement in § 94.21(e) of this proposed rule that the beef come from bovines that received ante-mortem and post-mortem veterinary inspections, paying particular attention to the head and feet, at the slaughtering establishment. Because FMD has a short incubation period, if animals were infected with FMD at a premises of origin, it is likely that lesions would be visible in at least a few of those animals at the slaughtering establishment prior to slaughter. Similarly, post-mortem inspection of carcasses would be likely to identify any lesions and vesicles in animals infected with FMD. Since the lesions associated with FMD occur primarily on the feet and in the mouth, particular attention must be paid to the head and feet during these inspections. Because ante- and post-mortem inspections are important in reducing disease risk, we are proposing explicit requirements for ante- and post-mortem inspections for bovines slaughtered for the export of fresh (chilled or frozen) beef from Uruguay to the United States.

Restrictions on Certain Bovine Parts

In this proposed rule, § 94.21(f) would provide that certain bovine parts would continue to be prohibited importation into the United States. Specifically, no part of the animal's head, feet, hump, hooves, or internal organs would be allowed entry into the United States. While portions of a bovine's head, feet, hump, hooves, and internal organs may reach the necessary pH level during the required maturation process (*see* "Maturation Process"), these items can contain lymph tissue, depot fat, and blood clots that may potentially harbor FMD virus that is not inactivated. When we refer to fresh (chilled or frozen) beef in proposed § 94.21, we mean only the traditional cuts of meat obtained from a bovine's carcass.

Bone, Blood Clots, and Lymphoid Tissue

The proposed requirement in § 94.21(g) of this proposed rule states that all bone, blood clots, and lymphoid tissue must be removed from the beef that is to be exported from Uruguay to the United States. The removal of these parts is necessary because any FMD virus these parts might potentially harbor may not be inactivated by the maturation process described in the following paragraph. Although we consider the removal of these parts necessary, we recognize that meat may contain small portions of blood clots or lymphoid tissue that are not visually identifiable as such. Because such small parts are unlikely to harbor any FMD virus that is not inactivated by the maturation process, and because we recognize that it would be difficult, if not impossible, to remove parts of blood clots or lymphoid tissue that are not recognizable as such, we have specified in the proposed requirement that all bone and "visually identifiable" blood clots and lymphoid tissue be removed.

Maturation Process

Paragraph (i) of proposed § 94.21 provides that the beef must come from bovine carcasses that have been allowed to maturate at 40 to 50 °F (4 to 10 °C) for a minimum of 36 hours after slaughter and that have reached a pH of 5.8 or less in the loin muscle at the end of the maturation period. Any carcass in which the pH does not reach 5.8 or less may be allowed to maturate an

additional 24 hours and be retested. This proposed provision goes on to state that if the meat does not meet this pH level after 60 hours, it may not be exported to the United States. This proposed requirement is based on the fact that the FMD virus in meat is inactivated by acidification, which occurs naturally during maturation. An acid environment of a pH of 5.8 or less destroys the virus quickly.

APHIS Inspection of Slaughtering Establishments

Although the proposed conditions in § 94.21 include a provision in paragraph (j) that an authorized veterinary official of the government of Uruguay certify that the required conditions for importation have been met, we are proposing an additional condition in paragraph (k) that would require establishments in which bovines are slaughtered to allow periodic APHIS inspection of their facilities, records, and operations. We continue to believe that, in the great majority of cases, certification by an authorized veterinary official of Uruguay will be sufficient verification. However, because of the possibility of occasional differing interpretations of the regulations, we consider it advisable to enable APHIS representatives to have access to slaughtering establishments for periodic inspections of the establishments and their records and operations.

Based on our assessment, and considering the effective control measures employed by the government of Uruguay after the initial outbreak and their ongoing control measures, we have determined that it is not necessary to prohibit the importation of fresh (chilled or frozen) beef from Uruguay, as long as the beef meets certain stringent conditions.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for the purposes of Executive Order 1286 and, therefore, has not been reviewed by the Office of Management and Budget.

This proposed rule would amend the regulations governing the importation of certain animals, meat, and other animal products by allowing, under certain conditions, the importation of fresh (chilled or frozen) beef from Uruguay. Based on the evidence documented in our recent risk assessment, we believe that fresh (chilled or frozen) beef can be safely imported from Uruguay provided certain conditions are met. This action would provide for the importation of beef from Uruguay into the United States while continuing to protect the United States against the introduction of FMD.

This proposed rule would reopen the U.S. market to Uruguayan beef producers. Beef producers and importers in the United States should not experience any notable economic effects as a result of these proposed changes because the United States has imported only a small amount of beef from Uruguay in the past (Table 1).

TABLE 1.—VALUE OF U.S. SUPPLY AND IMPORTS OF FRESH (CHILLED OR FROZEN) BEEF AND URUGUAY'S SHARE

	U.S. imports from Uruguay	Total U.S. imports		U.S. supply (domestic production + imports − exports)	
	(in millions of dollars)	(in millions of dollars)	Uruguay's share (in percent)	(in millions of dollars)	Uruguay's share (in percent)
1997	37.5	1,407.9	2.7	22,941	0.2
1998	29.2	1,609.8	1.8	23,184	0.1
1999	43.5	1,907.7	2.3	23,846	0.2
2000	40.9	2,221.0	1.8	24,000	0.2

Sources: Imports and Exports: U.S. Department of Commerce, Bureau of the Census, as reported by the World Trade Atlas. Domestic production: Calculated from quantities reported in Table 7–72 of Agricultural Statistics 2000, with a wholesale price for the 3 years conservatively approximated at $90 per hundredweight.

Uruguay's share in the value of U.S. imports of fresh (chilled or frozen) beef has been very small. From 1997 to 2000, Uruguayan exports accounted for only 1.8 to 2.7 percent of total U.S. imports of fresh (chilled or frozen) beef. During the same period, imports from Uruguay accounted for 0.2 percent or less of the value of the U.S. supply (domestic production plus imports minus exports) of fresh (chilled or frozen) beef.

Impact on Small Entities

According to the Small Business Administration's (SBA) size classification, beef cattle ranches and farms having $750,000 or less in annual revenues, and cattle feedlots having $1,500,000 or less in annual revenues are considered small entities. The number of farms and ranches with beef herds in the United States in 1997 was reported to be 766,991, and 99.8 percent of these beef farms could be categorized as small according to the SBA's criteria.[1]

It is impossible to determine from published data how many U.S. cattle feedlots could be categorized as small according to the SBA's criteria. Industry analysts suggest that feedlots with a capacity of roughly 1,000 head of cattle would have annual revenues of approximately $1,500,000. In 2000, roughly 18 percent (2,508) of cattle feedlots in the United States would have been considered small by SBA standards.[2]

Although this proposed rule could potentially affect a large number of small beef farms and a relatively small number of small feedlots by allowing Uruguayan beef into the U.S. market, it is not expected to have a significant economic effect on these entities because the import volumes involved are low.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. If this proposed rule is adopted: (1) State and local laws and regulations that are inconsistent with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings

[1] USDA, National Agricultural Statistics Service, 1997, Census of Agriculture—United States Data, table 28, page 32.

[2] Unpublished National Agriculture Statistics Service data, from *Changes in the U.S. Feedlot Industry 1994–1999*, USDA/APHIS/NAHMS, August 2000.

will not be required before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This proposed rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 9 CFR Part 94

Animal diseases, Imports, Livestock, Meat and meat products, Milk, Poultry and poultry products, Reporting and recordkeeping requirements.

Accordingly, we are proposing to amend 9 CFR part 94 as follows:

PART 94—RINDERPEST, FOOT-AND-MOUTH DISEASE, FOWL PEST (FOWL PLAGUE), EXOTIC NEWCASTLE DISEASE, AFRICAN SWINE FEVER, HOG CHOLERA, AND BOVINE SPONGIFORM ENCEPHALOPATHY: PROHIBITED AND RESTRICTED IMPORTATIONS

1. The authority citation for part 94 would continue to read as follows:

Authority: 7 U.S.C. 450, 7701–7772, and 8301–8317; 21 U.S.C. 136 and 136a; 31 U.S.C. 9701; 42 U.S.C. 4331 and 4332; 7 CFR 2.22, 2.80, and 371.4.

2. In § 94.1, a new paragraph (b)(4) would be added to read as follows:

§ 94.1 Regions where rinderpest or foot-and-mouth disease exists; importations prohibited.

* * * * *

(b) * * *

(4) Except as provided in § 94.21 for fresh (chilled or frozen) beef from Uruguay.

* * * * *

3. A new § 94.21 would be added to read as follows:

§ 94.21 Restrictions on importation of beef from Uruguay.

Notwithstanding any other provisions of this part, fresh (chilled or frozen) beef from Uruguay may be exported to the United States under the following conditions:

(a) The meat is beef from bovines that have been born, raised, and slaughtered in Uruguay.

(b) Foot-and-mouth disease has not been diagnosed in Uruguay within the previous 12 months.

(c) The beef came from bovines that originated from premises where foot-and-mouth disease has not been present during the lifetime of any bovines slaughtered for the export of beef to the United States.

(d) The beef came from bovines that were moved directly from the premises of origin to the slaughtering establishment without any contact with other animals.

(e) The beef came from bovines that received ante-mortem and post-mortem veterinary inspections, paying particular attention to the head and feet, at the slaughtering establishment, with no evidence found of vesicular disease.

(f) The beef consists only of bovine parts that are, by standard practice, part of the animal's carcass that is placed in a chiller for maturation after slaughter. Bovine parts that may not be imported include all parts of bovine heads, feet, hump, hooves, and internal organs.

(g) All bone and visually identifiable blood clots and lymphoid tissue have been removed from the beef.

(h) The beef has not been in contact with meat from regions other than those listed in § 94.1(a)(2).

(i) The beef came from bovine carcasses that were allowed to maturate at 40 to 50° F (4 to 10° C) for a minimum of 36 hours after slaughter and that reached a pH of 5.8 or less in the loin muscle at the end of the maturation period. Any carcass in which the pH does not reach 5.8 or less may be allowed to maturate an additional 24 hours and be retested, and, if the carcass still has not reached a pH of 5.8 or less after 60 hours, the meat from the carcass may not be exported to the United States.

(j) An authorized veterinary official of the Government of Uruguay certifies on the foreign meat inspection certificate that the above conditions have been met.

(k) The establishment in which the bovines are slaughtered allows periodic on-site evaluation and subsequent inspection of its facilities, records, and operations by an APHIS representative.

Done in Washington, DC, this 5th day of February, 2003.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 03–3228 Filed 2–7–03; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–14348; Airspace Docket No. 03–ACE–5]

Proposed Establishment of Class E Surface Area Airspace; and Modification of Class D Airspace; Topeka, Forbes Field, KS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to create a Class E surface area at Topeka, Forbes Field, KS for those times when the air traffic control tower (ATCT) is closed. It also proposes to modify the Class D airspace at Topeka, Forbes Field, KS.

DATES: Comments for inclusion in the Rules Docket must be received on or before March 25, 2003.

ADDRESSES: Send comments on this proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2003–14348/Airspace Docket No. 03–ACE–5, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov*. You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2525.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in tiplicate to the address listed above. Comments wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: Comments to Docket No. FAA–2003–14348/Airspace Docket No. 03–ACE–5." The postcard will be date/time stamped and returned to the commenter.

Availability of NPRM's

An electronic copy of this document may be downloaded through the Internet at *http://dms.dot.gov*. Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov* or the Superintendent of Document's Web page at *http://www.access.gpo.gov/nara*.

Additionally, any person may obtain a copy of this notice by submitting a request to the Federal Aviation Administration, Office of Air Traffic Airspace Management, ATA–400, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–8783. Communications must identify both docket numbers for this notice. Persons interested in being placed on a mailing list for future NPRM's should contact the FAA's Office of Rulemaking (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR Part 71) by establishing Class E airspace designated as a surface area for an airport at Topkea, Forbes Field, KS. Controlled airspace extending upward from the surface of the earth is needed to contain aircraft executing instruments approach procedures. This airspace would be in effect during those times when the ATCT is closed. Weather observations would be provided by an Automated Surface Observing System (ASOS) and communications would be through the Wichita Automated Flight Service Station. The area would be depicted on appropriate aeronautical charts. The FAA is also considering modifying Class D airspace at Topeka, Forbes Field, KS. An examination of the Class D airspace for Topeka, Forbes Field, KS has revealed a discrepancy in the airport reference point used for the Class D airspace legal description. This proposal would correct that discrepancy by incorporating the current airport reference point in the Class D airspace for Topeka, Forbes Field, KS.

Class E airspace areas designed as surface areas are published in Paragraph 6002 of FAA Order 7400.9K, dated August 30, 2002, and effective September 16, 2002, which is incorporated by reference in 14 CFR 71.1 Class D airspace areas are published in Paragraph 5000 of the same FAA Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9K, Airspace Designations and Reporting Points, dated August 30, 2002, and effective September 16, 2002, is amended as follows:

Paragraph 6002 Class E Airspace Designated as Surface Areas.

* * * * *

ACE KS E2—Topeka, Forbes Field, KS

Topeka, Forbes Field, KS
(Lat. 38°57′03″ N., long. 95°39′49″ W.)

Within a 4.6-mile radius of Forbes Field. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Paragraph 5000 Class D Airspace.

* * * * *

ACE KS D—Topeka, Forbes Field, KS

Topeka, Forbes Field, KS
(Lat. 38°57′03″ N., long. 95°39′49″ W.)

That airspace extending upward from the surface to and including 3,600 feet MSL within a 4.6-mile radius of Forbes Field. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in Kansas City, MO, on January 27, 2003.

Herman J. Lyons, Jr.

Manager, Air Traffic Division, Central Region.

[FR Doc. 03–3267 Filed 2–7–03; 8:45 am]

BILLING CODE 4910–13–M

LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 201

[Docket No. RM 2002–4A]

Exemption to Prohibition on Circumvention of Copyright Protection Systems for Access Control Technologies

AGENCY: Copyright Office, Library of Congress.

ACTION: Notice of inquiry.

SUMMARY: The Copyright Office of the Library of Congress has granted a petition by Static Control Components, Inc. to consider a newly-proposed class of works to be exempted from the prohibition on circumvention of technological measures that control access to copyrighted works as part of a pending rulemaking pursuant to the Digital Millennium Copyright Act. The Office has posted Static Control's comment in support of the proposed exemption on its website and seeks reply comments on the proposed exemption.

DATES: Reply comments must be received by the Copyright Office General Counsel no later than 5 pm Eastern Standard Time on March 10, 2003.

ADDRESSES: Electronic Internet submissions must be made through the Copyright Office Web site at *http://www.copyright.gov/1201/comment_forms*. *See* Exemption to Prohibition on Circumvention of Copyright Protection Systems for Access Control Technologies, 67 FR 63578, 63582 (October 15, 2002), for file formats and other information about electronic and non-electronic filing requirements. If delivered by hand, comments should be delivered to the Office of the General Counsel, Copyright

Office, LM–403, James Madison Memorial Building, 101 Independence Avenue, SE., Washington, DC. If delivered by means of the United States Postal Service, comments should be addressed to David O. Carson, General Counsel, Copyright GC/I&R, PO Box 70400, Southwest Station, Washington, DC 20024–0400.

FOR FURTHER INFORMATION CONTACT: Rob Kasunic, Office of the General Counsel, Copyright GC/I&R, PO Box 70400, Southwest Station, Washington, DC 20024–0400. Telephone (202) 707–8380; telefax (202) 707–8366.

SUPPLEMENTARY INFORMATION: The Copyright Office of the Library of Congress is currently conducting proceedings mandated by the Digital Millennium Copyright Act, which provides that the Librarian of Congress may exempt certain classes of works from the prohibition against circumvention of technological measures that control access to copyrighted works. *See* 17 U.S.C. 1201(a)(1)(C). The purpose of this rulemaking proceeding is to determine whether there are particular classes of works as to which users are, or are likely to be, adversely affected in their ability to make noninfringing uses due to the prohibition on circumvention. If there are, the Librarian may exempt such classes from the statutory prohibition.

Comments proposing classes of works to be exempted were due December 18, 2002. However, in order to provide flexibility in this rulemaking proceeding and to take into account unforeseen developments that might significantly affect the recommendation of the Register of Copyrights, the Office's October 15, 2002 Notice of Inquiry provided an opportunity to petition the Register for consideration of new information that could not reasonably have been known prior to the December 18 deadline. *See* Exemption to Prohibition on Circumvention of Copyright Protection Systems for Access Control Technologies, 67 FR 63578, 63582 (October 15, 2002). The Notice of Inquiry states that a petition to consider new classes of works proposed for exemption must be in writing and must set forth the reasons why the information could not have been made available earlier and why it should be considered by the Register after the deadline. A petition must also set forth the proposed class or classes of works to be exempted, a summary of the argument, the factual basis for such an exemption and the legal argument supporting such an exemption. The Register's determination whether to accept such a petition is based on the stage of the rulemaking process at which the request is made and the merits of the petition.

Static Control Components, Inc. ("Static Control") has petitioned for consideration of the following classes of works:

1. Computer programs embedded in computer printers and toner cartridges and that control the interoperation and functions of the printer and toner cartridge;

2. Computer programs embedded in a machine or product and which cannot be copied during the ordinary operation or use of the machine or product; and

3. Computer programs embedded in a machine or product and that control the operation of a machine or product connected thereto, but that do not otherwise control the performance, display or reproduction of copyrighted works that have an independent economic significance.

The Register of Copyrights has determined that Static Control has adequately explained why the information set forth in its petition could not have been made available earlier, and that Static Control has set forth sufficiently serious arguments on the merits to warrant consideration of its proposal after the initial deadline. Accordingly, the "Petition of Static Control Components, Inc. for Consideration of New Information" has been accepted as a comment proposing three classes of works to be exempted from the prohibition on circumvention, and interested parties are invited to submit reply comments responsive to this comment, either in support of or opposition to the Static Control proposal. Static Control's comment is available on the Copyright Office Web site at *http://www.copyright.gov/1201/2003/petitions/*.

Reply comments responsive to this new comment will be accepted from February 24, 2003 until March 10, 2003, at 5 pm Eastern Standard Time. Commenters are encouraged to file their comments electronically. *See* **ADDRESSES**, above. Please review the initial Notice of Inquiry for format requirements for comments. *See* 67 FR at 63582 (October 15, 2002).

Dated: February 5, 2003.

David O. Carson,

General Counsel, Copyright Office.

[FR Doc. 03–3256 Filed 2–7–03; 8:45 am]

BILLING CODE 1410–30–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3

RIN 2900–AL36

Presumption of Service Connection for Cirrhosis of the Liver in Former Prisoners of War

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: The Department of Veterans Affairs (VA) proposes to amend its adjudication regulations concerning presumptive service connection for certain diseases. The proposed amendment would add cirrhosis of the liver to the list of diseases for which entitlement to service connection is presumed for former prisoners of war (POWs). The intended effect is to make it easier for former POWs to obtain compensation for cirrhosis based on scientific and medical research showing a significantly higher risk of death from cirrhosis in former World War II POWs than in the general population.

DATES: Comments must be received on or before April 11, 2003.

ADDRESSES: Mail or hand deliver written comments to: Director, Office of Regulations Management (02D), Room 1154, 810 Vermont Ave., NW., Washington, DC 20420; or fax comments to (202) 273–9289; or e-mail comments to *OGCRegulations@mail.va.gov*. Comments should indicate that they are submitted in response to "RIN 2900–AL36." All comments received will be available for public inspection in the Office of Regulations Management, Room 1158, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays).

FOR FURTHER INFORMATION CONTACT: Beth McCoy, Consultant, Regulations Staff, Compensation and Pension Service (211A), Veterans Benefits Administration, Department of Veterans Affairs, 111 W. Huron Street, Room 22, Buffalo, NY 14202, (716) 551–4842.

SUPPLEMENTARY INFORMATION: Section 1112(b) of title 38, United States Code, designates 15 diseases considered to have been incurred in or aggravated during active duty service by former POWs detained or interned for at least 30 days, even though there is no record of such diseases during the period of service. Each listed disease must have become manifest to a degree of 10 percent or more after active duty service. VA implemented the provisions of 38 U.S.C. 1112(b) at 38 CFR 3.309(c). Former POWs are entitled to service connection for any of the 15 listed

diseases, even though there is no record of the disease during service, if it becomes manifest to a degree of 10 percent or more any time after discharge from active military, naval, or air service.

Presumptions of service connection under § 3.309 (c) are rebuttable under the provisions of § 3.307(d), which states that the presumption of service connection for a disease under § 3.309 may be rebutted by competent evidence. The presumption of service connection may be rebutted with affirmative evidence that the disease was not incurred in service based on sound medical reasoning and consideration of all evidence of record.

In October 2000, the Institute of Medicine (IOM) published results of a study that found a significantly higher risk of cirrhosis among former World War II POWs compared with control groups. POWs held in the Pacific and European theaters had roughly 1.5 times the risk of death due to cirrhosis compared to non-POW controls. (Page WF, Miller R: Cirrhosis Mortality among Former American Prisoners of War of World War II and the Korean Conflict: Results of a 50-year Follow-up. Military Medicine 2000; 165: 781–785.) Cirrhosis mortality was not found to be associated with any differences in levels of alcohol consumption among World War II and Korean POWs and Korean controls, which were similar to those among U.S. males. Therefore, it appears that alcohol consumption does not provide an explanation for the higher mortality rates identified in POWs.

IOM initially conducted a 30-year follow-up of American POWs of World War II and the Korean Conflict. (Nefzger MD: Follow-up of World War II and Korean prisoners. I. Study plan and mortality findings. Am J Epidemiology 1970; 91: 123–38.) Sampling began in the early 1950s of three groups of POWs (WWII Pacific theater prisoners, WWII European theater prisoners, and Korean conflict prisoners) along with sampling of non-POW military veteran controls. In the 30-year study, IOM found evidence of increased mortality from cirrhosis in American former POWs compared to the U.S. general population.

In the 2000 IOM study, the authors used federal records, primarily from VA and the Social Security Administration, to extend the follow-up to 50 years with similar results. Cirrhosis Mortality, 165 Military Medicine at 781. By crosschecking federal records, they estimate that their mortality statistics are 99.6 percent complete. *Id.* Furthermore, the design of their study not only allowed them to compare World War II and Korean POW mortality with that of the U.S. general population, but also permitted a direct comparison of POW mortality with that of non-POW military veteran controls. *Id.* at 782. The purpose was to avoid biases inherent in a general population comparison attributable to the general fitness of military veterans. *Id.*

The results of the 2000 IOM study are consistent with earlier studies. In 1999, a mortality follow-up of POWs held in the Far East found that British POWs had a higher mortality rate from diseases of the liver, including chronic liver disease and cirrhosis, than the general population. (Gale CR, Braidwood EA, Winter PD, Martyn CN: Mortality from Parkinson's disease and other causes in men who were prisoners of war in the Far East. Lancet 1999; 354: 2116–8.) Also, a 1968 mortality study of Australian World War II POWs taken prisoner after the fall of Singapore revealed twice as many deaths from cirrhosis as those expected during the period from 1951 to 1963. (Freed G, Stringer PB: Comparative Mortality Experience 1946–1963 among Australian prisoners of war of the Japanese. Aust Repat Med Dept Bull 1968; 150: 378–382.)

The Secretary believes that the research cited above constitutes sound scientific evidence supporting the conclusion that an association exists between cirrhosis and POW status. The 2000 IOM study indicates a "significantly higher risk of cirrhosis" for World War II POWs only; however, World War II POWs comprise 93 percent of the estimated 46,417 living POWs from the last five conflicts in which the United States was involved. The Secretary has therefore determined that it is appropriate to add cirrhosis of the liver to the list of diseases in § 3.309(c) for which VA presumes service connection in all former POWs interned or detained for at least 30 days.

Unfunded Mandates

The Unfunded Mandates Reform Act requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before developing any rule that may result in an expenditure by State, local, or tribal governments, in the aggregate, or by the private sector of $100 million or more in any given year. This rule would have no consequential effect on State, local, or tribal governments.

Paperwork Reduction Act

This document contains no provisions constituting a collection of information under the Paperwork Reduction Act (44 U.S.C. 3501–3521).

Executive Order 12866

This regulatory amendment has been reviewed by the Office of Management and Budget under the provisions of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993.

Regulatory Flexibility Act

The Secretary hereby certifies that this regulatory amendment will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. The reason for this certification is that this amendment would not directly affect any small entities. Only VA beneficiaries could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), this amendment is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

The Catalog of Federal Domestic Assistance number is 64.109.

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Disability benefits, Health care, Pensions, Veterans, Vietnam.

Approved: November 12, 2002.

Anthony J. Principi,

Secretary of Veterans Affairs.

For the reasons set forth in the preamble, VA proposes to amend 38 CFR part 3 as follows:

PART 3—ADJUDICATION

Subpart A—Pension, Compensation, and Dependency and Indemnity Compensation

1. The authority citation for Part 3 continues to read as follows:

Authority: 38 U.S.C. 501(a), unless otherwise noted.

§3.309 [Amended]

2. Section 3.309(c) is amended by adding "Cirrhosis of the liver." following "Peripheral neuropathy except where directly related to infectious causes." and before the explanatory note.

[FR Doc. 03–3175 Filed 2–7–03; 8:45 am]

BILLING CODE 8320–01–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[WV049–6024b; FRL–7442–2]

Approval and Promulgation of Air Quality Implementation Plans; West Virginia; Regulation To Prevent and Control Air Pollution From Combustion of Refuse

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the State of West Virginia for the purpose of establishing regulations for the prevention and control of air pollution from the open burning and incineration of refuse. In the Final Rules section of this **Federal Register**, EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A more detailed description of the state submittal and EPA's evaluation are included in a Technical Support Document (TSD) prepared in support of this rulemaking action. A copy of the TSD is available, upon request, from the EPA Regional Office listed in the **ADDRESSES** section of this document. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received in writing by March 12, 2003.

ADDRESSES: Written comments should be addressed to Kathleen Anderson, Air Quality Planning and Information Branch , Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; West Virginia Department of Environmental Protection, Division of Air Quality, 7012 MacCorkle Avenue, SE., Charleston, WV 25304–2943.

FOR FURTHER INFORMATION CONTACT: Kathleen Anderson, (215) 814–2173, or by e-mail at *anderson.kathleen@epa.gov*. Please note that while questions may be posed via telephone and e-mail, formal comments must be submitted in writing, as indicated in the **ADDRESSES** section of this document.

SUPPLEMENTARY INFORMATION: For further information, please see the information provided in the direct final action, with the same title, that is located in the "Rules and Regulations" section of this **Federal Register** publication.

Dated: January 15, 2003.

James W. Newsom,

Acting Regional Administrator, Region III.

[FR Doc. 03–2939 Filed 2–7–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[NH–50–7174b; FRL–7447–8]

Approval and Promulgation of State Plans for Designated Facilities and Pollutants: New Hampshire; Plan for Controlling Emissions From Existing Commercial and Industrial Solid Waste Incinerators

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The United States Environmental Protection Agency (EPA) proposes to approve the sections 111(d)/129 State Plan submitted by the New Hampshire Department of Environmental Services (DES) on August 12, 2002. This State Plan is for carrying out and enforcing provisions that are at least as protective as the Emissions Guidelines (EG) applicable to certain existing Commercial and Industrial Solid Waste Incinerators (CISWIs) in accordance with sections 111 and 129 of the Clean Air Act.

The New Hampshire DES submitted the Plan to satisfy certain Federal Clean Air Act requirements. In the Final Rules section of the **Federal Register**, EPA is approving the New Hampshire State Plan submittal as a direct final rule without a prior proposal. EPA is doing this because the Agency views this action as a noncontroversial submittal and anticipates that it will not receive any significant, material, and adverse comments. A detailed rationale for the approval is set forth in the direct final rule and incorporated herein. If EPA does not receive any significant, material, and adverse comments to the direct final rule, then the approval will become final without further proceedings. If EPA receives adverse comments, the direct final rule will be withdrawn and EPA will address all public comments received in a subsequent final rule based on this proposed rule. EPA will not begin a second comment period.

DATES: EPA must receive comments on this proposed rule in writing by March 12, 2003.

ADDRESSES: You should address your written comments to: Mr. Steven Rapp, Chief, Air Permits, Toxics & Indoor Programs Unit, Office of Ecosystem Protection, U.S. EPA, One Congress Street, Suite 1100 (CAP), Boston, Massachusetts 02114–2023.

Copies of documents relating to this proposed rule are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the day of the visit.

Environmental Protection Agency, Air Permits, Toxics & Indoor Programs Unit, Office of Ecosystem Protection, Suite 1100 (CAP), One Congress Street, Boston, Massachusetts 02114–2023.

New Hampshire Department of Environmental Services, Air Resources Division, 6 Hazen Drive, P.O. Box 95, Concord, New Hampshire 03301–0095, (603) 271–1370.

FOR FURTHER INFORMATION CONTACT: John Courcier, Office of Ecosystem Protection (CAP), EPA-New England, Region 1, Boston, Massachusetts 02203, (617) 918–1659, or by e-mail at *courcier.john@epa.gov*. While the public may forward questions to EPA via e-mail, it must submit comments on this proposed rule according to the procedures outlined above.

SUPPLEMENTARY INFORMATION: See the information provided in the Direct Final action of the same title which is found in the Rules section of this **Federal Register**.

Dated: January 23, 2003.

Robert W. Varney,

Regional Administrator, EPA New England.

[FR Doc. 03–2541 Filed 2–7–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[NH–51–7175b; FRL–7447–5]

Approval and Promulgation of State Plans for Designated Facilities and Pollutants: New Hampshire; Plan for Controlling MWC Emissions From Existing Municipal Waste Combustors

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) proposes to approve the sections 111(d)/129 State Plan submitted by the New Hampshire Department of Environmental Services (DES) on August 12, 2002. This State Plan is for carrying out and enforcing provisions that are at least as protective as the Emissions Guidelines (EG) applicable to certain existing large and small Municipal Waste Combustion (MWC) units in accordance with sections 111 and 129 of the Clean Air Act. The New Hampshire DES submitted the Plan to satisfy certain Federal Clean Air Act requirements. In the Final Rules section of the **Federal Register**, EPA is approving the New Hampshire State Plan submittal as a direct final rule without a prior proposal. EPA is doing this because the Agency views this action as a noncontroversial submittal and anticipates that it will not receive any significant, material, and adverse comments. A detailed rationale for the approval is set forth in the direct final rule and incorporated by reference herein. If EPA does not receive any significant, material, and adverse comments to this proposed rule, then the approval will become final without further proceedings. If EPA receives adverse comments, the direct final rule will be withdrawn and EPA will address all public comments received in a subsequent final rule based on this proposed rule. EPA will not begin a second comment period.

DATES: EPA must receive comments on this proposed rule in writing by March 12, 2003.

ADDRESSES: You should address your written comments to: Mr. Steven Rapp, Chief, Air Permits, Toxics & Indoor Programs Unit, Office of Ecosystem Protection, U.S. EPA, One Congress Street, Suite 1100 (CAP), Boston, Massachusetts 02114–2023.

Copies of documents relating to this proposed rule are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the day of the visit.

Environmental Protection Agency, Air Permits, Toxics & Indoor Programs Unit, Office of Ecosystem Protection, Suite 1100 (CAP), One Congress Street, Boston, Massachusetts 02114–2023.

New Hampshire Department of Environmental Services, Air Resources Division, 6 Hazen Drive, P.O. Box 95, Concord, New Hampshire 03301–0095, (603) 271–1370.

FOR FURTHER INFORMATION CONTACT: John Courcier, Office of Ecosystem Protection (CAP), EPA-New England, Region 1, Boston, Massachusetts 02203, (617) 918–1659, or by e-mail at *courcier.john@epa.gov*. While the public may forward questions to EPA via e-mail, it must submit comments on this proposed rule according to the procedures outlined above.

SUPPLEMENTARY INFORMATION: See the information provided in the Direct Final action of the same title which is found in the Rules section of this **Federal Register**.

Dated: January 23, 2003.

Robert W. Varney,

Regional Administrator, EPA New England.

[FR Doc. 03–2940 Filed 2–7–03; 8:45 am]

BILLING CODE 6560–50–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 413

[CMS–1126–P]

RIN 0938–AK02

Medicare Program; Provider Bad Debt Payment

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Proposed rule.

SUMMARY: This proposed rule would remove the cap on allowable Medicare bad debt for end-stage renal disease (ESRD) facilities and expand the application of a 30 percent reduction in bad debt reimbursement for hospitals to other Medicare providers or entities currently eligible to receive bad debt reimbursement. In addition, this proposed rule would clarify that bad debts are not allowable for entities paid under reasonable-charge or fee schedule methodologies. The goal of this proposal, with respect to bad debt payment, is to achieve a consistent bad debt reimbursement policy for hospitals and other providers or entities currently eligible to receive payments from Medicare for bad debt.

DATES: We will consider comments if we receive them at the appropriate address, as provided below, no later than 5 p.m. on April 11, 2003.

ADDRESSES: In commenting, please refer to file code CMS–1126–P. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission. Mail written comments (one original and three copies) to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services,Attention: CMS–1126–P, PO Box 8017, Baltimore, MD 21244–8017.

Please allow sufficient time for mailed comments to be timely received in the event of delivery delays.

If you prefer, you may deliver (by hand or courier) your written comments (one original and three copies) to one of the following addresses: Room 443–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201, or Room C5–14–03, 7500 Security Boulevard, Baltimore, MD 21244–1850.

Comments mailed to the addresses indicated as appropriate for hand or courier delivery may be delayed and could be considered late.

For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Katie Walker, (410) 786–7278.

SUPPLEMENTARY INFORMATION: *Inspection of Public Comments:* Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, at the headquarters of the Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, Maryland 21244, Monday through Friday of each week from 8:30 a.m. to 4 p.m. To schedule an appointment to view public comments, phone (410) 786–7195 or (410) 786–7201. We must be contacted at least 72 hours in advance.

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payable to the Superintendent of Documents, or enclose your Visa or Master Card number and expiration date. Credit card orders can also be placed by calling the order desk at (202) 512–1800 (or toll-free at 1–888–293–6498) or by faxing to (202) 512–2250. The cost for each copy is $10. As an alternative, you can view and photocopy the **Federal Register** document at most libraries designated as Federal Depository Libraries and at many other public and academic libraries throughout the country that receive the **Federal Register**.

This **Federal Register** document is also available from the **Federal Register** online database through GPO Access, a service of the U.S. Government Printing Office. The Web site address is: *http://www.access.gpo.gov/nara/index.html.*

I. Background

A. Bad Debt Reimbursement

In 1966, the Health Insurance Benefits Advisory Committee (HIBAC) (authorized by section 1867 of the Social Security Act, repealed 1984) recommended that Medicare cover the unpaid deductible and coinsurance amounts that arose in connection with the provision of covered services to beneficiaries (herein referred to as Medicare bad debt). This recommendation was meant to avoid cross-subsidization that might occur if hospitals or other entities tried to recoup Medicare bad debt from other payers. The HIBAC believed that under the statute, the Congress had intended to avoid cross-subsidization by meeting the cost of the bad debts that accrued to a provider where these amounts were otherwise uncollectible. The reasoning behind this view flowed from section 1861(v)(1)(A)(i) of the Act, which states that the costs for individuals covered by the Medicare program must not be borne by individuals not covered by the program, and the costs for individuals not covered by the program must not be borne by Medicare. We refer to this statutory provision as the prohibition on cross-subsidization. The Secretary agreed with the HIBAC recommendation and the bad debt policy was adopted in 1966. This anti-cross subsidization principle is now part of the definition of "reasonable cost" as defined in section 1861(v) of the Act.

Under section 2145 of the Omnibus Budget Reconciliation Act (OBRA) of 1981 (Pub. L. 97–35), the Congress mandated a prospective payment system (PPS) for paying providers of various services covered by Medicare. Hospitals became the first provider-type to receive Medicare reimbursement under this law with the establishment of a PPS for inpatient hospital services in 1983. PPS replaced the retrospective cost-based reimbursement methodology previously in effect. Under this reimbursement system, Medicare payment for Part A inpatient operating costs is made on the basis of a prospectively determined rate per type of discharge, as determined by the classification of each patient case into a diagnosis-related group (DRG).

Shortly after implementation of PPS, in a Priority Audit Memorandum dated July 9, 1985, the Office of Inspector General (OIG) recommended that, in light of this new payment system, we should discontinue the reimbursement of inpatient hospital bad debts. After a thorough evaluation, we rejected the OIG's recommendation to discontinue paying bad debt for hospitals, concluding that the payments continued to be appropriate for the reasons discussed below. We also evaluated and rejected a second option suggested by the OIG to include a bad debt component in the DRG rates. We decided that this proposal would limit a hospital's incentive to collect the deductible and coinsurance amounts from the beneficiary and would address only the inpatient side. We also felt that because every facility incurred varying amounts of bad debt, the inclusion of bad debt in the DRG rates would be inequitable.

Therefore, in accordance with our regulations, we have continued to recognize bad debt for entities receiving payment under a PPS, such as for inpatient hospital services (42 CFR 412.115(a)), where Medicare payment policy, before PPS, recognized payment of those bad debts and where the prospective payments were derived from costs that did not reflect base period Medicare bad debts. That is, the prospective rates used to reimburse entities for services furnished to Medicare patients have basis in cost and are calculated using cost data reported by the entities on a base year cost report. They are then updated for inflation to the year in which payments are to be made. However, the bad debts incurred during that base period were not included in the calculation of the prospective rates. The bad debts for these entities are claimed at the end of each fiscal year, and allowable amounts are reimbursed separately.

Entities currently eligible to receive bad debt payments include hospitals, skilled nursing facilities (SNFs), critical access hospitals, rural health clinics, end-stage renal disease (ESRD) facilities, federally qualified health clinics, community mental health clinics, health maintenance organizations (HMOs) reimbursed on a cost basis, competitive medical plans (CMPs) and health care pre-payment plans.

The general bad debt policy is set forth in regulations at § 413.80 and the Provider Reimbursement Manual (PRM) (CMS Pub. 1501), Part 1, Chapter 3). Bad debt policy for ESRD Facilities is set forth in a separate regulation at § 413.178 and is further discussed below.

B. Reasonable Charge/Fee Schedules

The concept of Medicare bad debt payments applies only to services reimbursed on the basis of reasonable cost. Medicare has never made payments to account for bad debts for services paid under a fee schedule or reasonable charge methodology, such as services of physicians or suppliers. Under a fee schedule or reasonable charge methodology, Medicare reimbursement is not based on costs and, therefore, the concept of unrecovered costs is not relevant. Fee schedules, which are either charge-based or resource-based, relate payments to the price the entity charges. Historically, these prices have reflected the entities cost of doing business, including expenses such as bad debt.

C. End-Stage Renal Disease Bad Debt Reimbursement

Medicare pays ESRD facilities a prospectively determined composite rate. Under the payment rules authorized by sections 1881(b)(2) and (b)(7) of the Act as amended by OBRA of 1981, we pay 80 percent of a prospectively set rate for outpatient dialysis services. The Medicare beneficiary is responsible for the remaining 20 percent as a copayment, as well as any applicable deductible amounts set forth in § 413.176. If the ESRD facility makes reasonable collection efforts, as described in the PRM (CMS, pub. 15–1) Part I, (Section 310) but is unable to collect the coinsurance or deductible, we consider the uncollected amount to be a "bad debt" as described in §§ 413.178(b) and 413.80(b)(1) and (e).

At the end of the year, Medicare recognizes a facility's Medicare bad debts. However, under our current regulations, bad debt payments are capped so that total Medicare reimbursement (composite rate plus bad debt payments) does not exceed the total cost to serve Medicare patients.

Although section 1881 of the Act does not require Medicare to pay for an ESRD facility's Medicare bad debt, Medicare for many years (before the composite payment rate system) paid hospital-based ESRD facilities for their Medicare

bad debts, as it has long paid Medicare bad debts of other types of providers or entities that were paid on a reasonable-cost basis. By contrast, "free-standing" or independent ESRD facilities were paid on a reasonable charge basis and were expected to absorb any Medicare bad debt as part of that charge. When we developed the composite payment rate system, which is used to pay both hospital-based and free-standing ESRD facilities, we based payment on the results of audits of ESRD facilities' reported costs, exclusive of Medicare bad debts. For this reason, we decided it was appropriate to separately recognize these bad debts at the end of the facility's fiscal year. Under the authority granted us in section 1881(b)(7) of the Act, we considered two options for paying these bad debts. One option was to include the bad debt allowance in the calculation of the composite rate. The other option was to reimburse an ESRD facility's bad debts in a special payment at the end of the facility's cost accounting period. We decided that this latter option was preferable because it would allow us to pay each facility the exact amount of its allowable bad debts. We concluded that, under the statute, we could pay an ESRD facility for its bad debts incurred from providing services to Medicare beneficiaries, and thereby avoid indirectly passing on these bad debts to individuals not covered by Medicare. Similarly, we determined that it would be appropriate to cap the total bad debt payment at a facility's unrecovered costs. In this way, the combination of the composite rate payments and our payment, if any, for Medicare bad debts would not exceed the facility's total allowable cost of providing services to Medicare beneficiaries.

In 1994, a group of providers of outpatient renal dialysis services challenged our regulation at § 413.178(a), which caps reimbursement for an ESRD facility's bad debt at costs. The plaintiffs argued, among other things, that we had provided inadequate justification for the reimbursement cap and were unable to demonstrate that the cap was consistent with the statute, as required by the Administrative Procedure Act (APA) (5 U.S.C., 706(2)(A)). The U.S. District Court for the District of Columbia upheld our regulation as an acceptable exercise of our discretion under the APA. On appeal, however, the D.C. Circuit Court overturned the District Court's ruling and found that our explanation, relying on the statutory provisions relating to cross-subsidization discussed above, was inadequate justification for the rule and inconsistent with a prospective rate scheme (*Kidney Center of Hollywood et al.* v. *Shalala*, 133 F.3d 78,88 (D.C. Circuit 1998)). The Circuit Court ordered that the final rule be vacated and remanded the case to us with the instruction that we either more adequately justify the rule or jettison it altogether.

D. Legislation Affecting Bad Debt Reimbursement for Hospitals

1. Omnibus Reconciliation Act of 1987

In 1987, the Congress enacted section 4008(c) of the OBRA of 1987 and later amended it in sections 8402 of the Technical and Miscellaneous Revenue Act of 1988 and section 6023 of OBRA of 1989. The provision, as amended, prohibits us from making "any change in the policy in effect on August 1, 1987, regarding reimbursement to hospitals for Medicare bad debts." This legislation is collectively referred to as the moratorium on changes to the Medicare bad debt policy for hospitals. Since its enactment, the moratorium has precluded us from making any changes to bad debt policy for hospitals, although the Congress has authorized subsequent changes through legislation. The moratorium does not apply to entities other than hospitals. Since the inception of the Medicare program, bad debt reimbursement for entities other than hospitals has been and continues to be at our discretion. According to *Kidney Center of Hollywood, et al.* v. *Shalala*, the Secretary's discretion on this matter is broad as long as it is authorized by statute and is rationally justified. Therefore, we believe any changes made to bad debt policy for these other entities can be implemented by regulation.

2. Balanced Budget Act of 1997

From 1989 to 1996, provider and entity cost report data showed an alarming growth in bad debt payments in the Medicare program. For hospitals alone, from 1990 to 1994, total Medicare bad debt payments grew 165 percent, from $415 million to $1.1 billion. During this period, the inpatient bad debts grew 140 percent, from $270 to $650 million, and Part B (primarily outpatient) bad debts tripled, from $140 to $430 million. In 1997, with increasing concern over the rapidly expanding payout for bad debts under Medicare, the Congress responded with section 4451 of the Balanced Budget Act (BBA) of 1997 (Pub. L. 105–33). Section 4451 of the BBA amended section 1861(v)(1) of the Act by adding section 1861(v)(1)(T). The legislation required that, in determining reasonable costs for hospitals, the amount of bad debts otherwise treated as allowable costs (attributable to deductibles and coinsurance amounts) should be reduced by 25 percent for fiscal year (FY) 1998, by 40 percent for FY 1999, and by 45 percent for subsequent years.

3. The Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000

As a response to concerns from Medicare hospitals that the fiscal impact of this provision of the BBA was too harsh, the Congress enacted section 541 of the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000 (Pub. L. 106–554) (BIPA). This eased the reduction in hospital bad debt reimbursement from 45 percent to 30 percent. Although the Congress decreased the reduction of bad debt reimbursement for hospitals, the BIPA did not address the issue for other providers.

E. Impact Using Prospective Payment Systems on the Role of Bad Debt in Medicare Payment Systems

The introduction of the PPS has changed the context for Medicare's bad debt policy. The PPS for inpatient hospital services was introduced in 1983 out of a notion that cost reimbursement systems provided an incentive for providers to incur costs. The costs were passed along to Medicare automatically and provided no incentive for prudent and efficient management of hospital resources. This methodology provided no opportunity for hospitals to earn profit through efficiency. The DRG payments were intended to provide a context in which the hospitals that achieved savings through efficiency and innovative practices could profit from their efforts. In fact, the result of this change in payment system was that hospital Medicare margins (a rough measure of the extent to which payments exceeded actual costs) rose immediately and have continued to exceed pre-PPS levels.

In this context, making separate payments for uncollected Medicare deductible and coinsurance amounts is no longer an appropriate expression of Medicare's responsibility for reimbursement, especially in a marketplace where commercial insurers do not make similar adjustments in their payments. In fact, the availability of additional payment when debts are not collected provides an incentive to the provider to forego effective collection efforts in return for the certainty of Medicare payments. If Medicare did not recognize these payments, there would be a greater incentive for the hospitals

to attempt to collect from the beneficiary. We believe that the percentage reduction in bad debt reimbursement would be a step toward fostering this incentive for nonhospital entities.

Fiscal responsibility to the Medicare program is an important factor in implementing this rule. We believe that reducing the amount of Medicare bad debt reimbursement by 30 percent will encourage accountability and foster an incentive to be more efficient in bad debt collection efforts. We also believe strongly that Medicare bad debt policy should be applied consistently and fairly among all providers eligible to receive bad debt reimbursement. Currently, hospitals are the only entities experiencing a reduction in bad debt reimbursement. Furthermore, ESRD facilities are the only entities whose bad debt claims are capped at the facilities costs.

After considering the action of the Congress in setting the reduction in bad debt reimbursement at 30 percent for hospitals, we decided that the number used by the Congress in this action was an equitable and reasonable policy choice with respect to entities other than hospitals. Subsequently, we decided to draft a regulation that would advance a consistent bad debt reimbursement policy for all Medicare entities. To implement this rule, we propose to remove the cap on allowable bad debt for ESRD facilities and apply the 30 percent reduction in bad debt reimbursement that was legislated for hospitals to all Medicare providers or entities eligible to receive payments in recognition of Medicare bad debts. We propose to implement the reduction in bad debt incrementally (as the Congress chose to do to implement the BBA reduction for hospitals) over a 3-year period to mitigate the impact on entities. Again, as discussed above, we believe that the percentage reduction in bad debt reimbursement would be a step toward fostering an incentive for nonhospital entities to make conscientious, effective collection efforts on their unpaid Medicare patient accounts.

II. Provisions of the Proposed Rule

A. Removal of Cap on End-Stage Renal Disease Bad Debt Reimbursement

In accordance with the DC Circuit Court ruling discussed above and in order to be consistent with other entities as mandated in the President's 2003 budget, the cap on ESRD bad debt reimbursement should be removed.

This proposed rule would, therefore, remove the cap on ESRD bad debts and allow ESRD facilities to claim bad debts at an amount exceeding unrecovered costs.

B. Adjustment in Allowable Bad Debt Reimbursement to Hospital Levels

As discussed above, we propose to reduce the amount of allowable bad debt for entities other than hospitals by 10 percent for cost reporting periods beginning October 1, 2003, by 20 percent for cost reporting periods beginning October 1, 2004, and by 30 percent for cost reporting periods beginning October 1, 2005 and thereafter. The entities currently included in this proposal are SNFs, ESRD facilities, rural health clinics, critical access hospitals, community mental health clinics, and federally qualified health clinics. Cost HMOs/CMPs and health care pre-payment plans are excluded from the proposed 30 percent reduction as the bad debt reimbursement for these entities is already limited according to § 417.536. The unpaid deductible and coinsurance amounts for services rendered by these entities is limited to no more than 3 months of the premium (portion related to deductible and coinsurance) for any one individual. To be reimbursable, the deductible and coinsurance must relate to what is covered under Medicare and under our contract with the HMO/CMP. As discussed above, the incremental reduction over a 3-year period is intended to mitigate the impact on entities.

C. Confirmation of Bad Debt Policy for Services Paid Under a Charge-Based Methodology or Fee Schedule

This proposed rule would amend language in the existing bad debt regulations to clarify that bad debts are not recognized or reimbursed for any services paid under a reasonable charge-based methodology or a fee schedule. This clarification is not a change in policy.

III. Collection of Information Requirements

This document does not impose information collection and recordkeeping requirements. Consequently, it need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995 (44 U.S.C.A. section 3506(c)(2)(A)).

IV. Response to Comments

Because of the large number of items of correspondence we normally receive on **Federal Register** documents published for comment, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the "**DATES**" section of this preamble, and, if we proceed with a subsequent document, we will respond to the major comments in the preamble to that document.

V. Regulatory Impact Statement

We have examined the impacts of this rule as required by Executive Order 12866 (September 1993, Regulatory Planning and Review), the Regulatory Flexibility Act (RFA) (September 16, 1980, Pub. L. 96–354), section 1102(b) of the Act, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), and Executive Order 13132. We believe that this regulation would qualify as a major rule.

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA must be prepared for major rules with economically significant effects ($100 million or more in any 1 year). We believe that this regulation would qualify as a major rule and that the impact would be economically significant.

Most ESRD facilities would benefit from this proposed rule, as they would be allowed to claim and receive reimbursement for more of their Medicare bad debts, allowing them to claim bad debts over their unrecovered costs.

Some entities, such as SNFs and rural health clinics, may experience a reduction in their bad debt reimbursement as a result of this rule. Data from SNF cost reports show bad debt totals of $8,244,192 for FYE 1996, $13,070,786 for FYE 1997 and $12,501,755 for 1998 (only settled cost report data was used and fewer cost reports were settled for 1998). Bad debt data for independent rural health clinics, federally qualified health centers and community mental health clinics is not captured because the independent facilities, which make up the majority of these entities, do not file electronic cost reports. The reduction in reimbursement would also affect critical access hospitals, which are defined under section 1820 of the Act and were not subject to the reduction in bad debt reimbursement imposed by the BBA on hospitals defined in section 1861(v)(1). Cost report data for critical access hospitals was badly skewed because of systems problems after November 1,

1997. Lab and outpatient services (which one Intermediary reports accounts for 30 to 40 percent of the revenue for critical access hospitals) for some of these entities were reimbursed on a cost basis with applicable coinsurance and deductible amounts, while some of these entities were paid under a fee schedule with no reimbursement for bad debts. As of November 29, 1999, coinsurance and deductibles were eliminated from lab services for critical access hospitals. We expect that this action will significantly reduce the amount of bad debt incurred by these facilities.

The following is the individual estimate of the economic impact of this rule between provider types (in $millions):

Fiscal year	SNF	ESRD	Net impact
2003	−20	20	0
2004	−30	20	10
2005	−70	20	50
2006	−90	20	70
2007	−100	20	80

The impact on all other provider types would round to $0. For both SNF and ESRD facilities, these savings or costs represent only a small portion (about 0.5%) of the total Medicare payments for those facilities.

Section 1102(b) of the Act requires us to prepare a regulatory impact analysis (RIA) if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 100 beds. Although this rule would impact some small rural hospitals, including critical access hospitals, most hospitals have already been subject to the 30 percent reduction implemented by statute. We believe this rule would not have a significant impact on the operations of a substantial number of small rural hospitals and the impact would be mitigated by implementing the rule gradually over a 3-year period.

The RFA requires agencies to analyze options for regulatory relief of small businesses. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and governmental agencies. Most hospitals and most other providers and suppliers are small entities, either by nonprofit status or by having revenues of $6 million to $29 million annually. Intermediaries and carriers are not considered to be small entities.

Small rural hospitals of fewer than 100 beds, rural health clinics, community mental health centers, free-standing ESRD facilities, and hospital-based ESRD facilities would be affected by this rule. There are approximately 352 critical access hospitals, and all of these facilities would be small rural hospitals. To the extent that they incur bad debts, they would be affected. It is very difficult to assess the impact on these facilities because the impact, if any, on a facility would be influenced by the amount of bad debts the facility incurs. However, the elimination of coinsurance and deductible amounts for lab services rendered by critical access hospitals should substantially reduce the amount of bad debt that these small hospitals incur. Any Medicare participants that are currently receiving full (that is, uncapped) reimbursement for their bad debts would see a reduction in payment.

Based on current data, there are approximately 3,528 freestanding and 787 hospital-based ESRD facilities. Although we are not certain how many of these facilities are small rural hospital-based, most ESRD facilities would benefit from this rule as they would be allowed to claim and receive reimbursement for more of their Medicare bad debts, allowing them to claim bad debts over their unrecovered costs. Costs are difficult to estimate because, as discussed above, not all uncapped ESRD bad debts were reported. We welcome all comments that would assist us in determining the possible impact of this rule on any of the above-mentioned entities.

Specific provisions of this proposed rule have already been applied in part to those ESRD facilities affected by the above-mentioned *Kidney Center* court settlement. These provisions, whether implemented as a result of the court settlement or the rule, were achieved through modifications made to the bad debt settlement portion of the cost report.

We do not believe that the changes made in a final rule will affect beneficiary access to care, as affected providers will continue to be reimbursed for services provided to Medicare beneficiaries, including, where allowable, for Medicare bad debt. By reducing the amount of bad debt reimbursement from 100 percent to 70 percent, this rule will fairly compensate providers, while providing an incentive for them to make reasonable efforts to collect unpaid deductibles and coinsurance.

The analysis indicates that some small, rural providers may experience an additional burden in the form of reduced payments for bad debts. However, our analysis points out that a number of factors will mitigate the impact on small rural hospitals and that payments to ESRD facilities will increase because of the removal of the cap on allowable bad debts claimed. It is impossible to determine the significance of the impact or the number of entities that may be adversely affected. We invite comments on our analysis.

The Unfunded Mandates Reform Act of 1995 also requires (in section 202) that agencies perform an assessment of anticipated costs and benefits before proposing any rule that may result in an annual expenditure in any 1 year by State, local, or Tribal governments, in the aggregate, or by the private sector, of $110 million. This rule does not impose any mandates on State, local or Tribal governments, or on the private sector, as defined by section 202. Entities such as hospitals, SNFs and ESRD facilities will continue to receive Medicare reimbursement for services provided to beneficiaries, including, where allowable, bad debt reimbursement.

For purpose of analysis, we considered two alternatives to this policy, (1) maintaining the existing Medicare bad debt policy, or (2) eliminating bad debt reimbursement, where we had authority to do so. However, we believe that the Medicare bad debt policy proposed in this rule is equitable across provider types and ensures that providers have the incentive to make reasonable efforts to collect bad debts without affecting beneficiary access to care. In addition, the removal of the cap on bad debt reimbursement for ESRD facilities is also in accordance with the ruling in *The Kidney Center of Hollywood, et al. v. Shalala.*

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. This rule would not have a substantial effect on State or local governments.

In accordance with the provisions of Executive Order 12866, this regulation was reviewed by the Office of Management and Budget.

List of Subjects in 42 CFR Part 413

Health facilities, Kidney diseases, Medicare, Puerto Rico, Reporting and record-keeping requirements.

For the reasons set forth in the preamble, CMS proposes to amend 42

CFR chapter IV part 413 as set forth below:

PART 413—PRINCIPLE OF REASONABLE COST REIMBURSEMENT; PAYMENT FOR END-STAGE RENAL DISEASE SERVICES; PROSPECTIVELY DETERMINED PAYMENT RATES FOR SKILLED NURSING FACILITIES

Subpart F—Specific Categories of Cost

1. The authority citation for part 413 continues to read as follows:

Authority: Sections 1102, 1812(d), 1814(b), 1815, 1833(a), (i), and (n), 1871, 1881, 1883, and 1886 of the Social Security Act (42 U.S.C. 1302, 1395d(d), 1395f(b), 1395g, 1395l(a), (i), and (n), 1395hh, 1395rr, 1395tt, and 1395ww).

2. In § 413.80, paragraphs (h) and (i) are revised to read as follows:

§ 413.80 Bad debts, charity, and courtesy allowances.

* * * * *

(h)(1) *Limitations on bad debts for hospitals.* The amount of bad debts otherwise treated as allowable costs (as defined in paragraph (e) of this section) is reduced as follows for cost reporting periods beginning during:

(i) Fiscal year 1998, by 25 percent.

(ii) Fiscal year 1999, by 40 percent.

(iii) Fiscal year 2000, by 45 percent.

(iv) All subsequent fiscal years, by 30 percent.

(2) *Limitations on bad debts for other entities.* Except as provided in § 417.536 of this title, the amount of bad debts otherwise treated as allowable costs (as defined in paragraph (e) of this section) is reduced as follows for cost reporting periods beginning on or after:

(i) October 1, 2003, by 10 percent.

(ii) October 1, 2004, by 20 percent.

(iii) October 1, 2005 and all subsequent years, by 30 percent.

(i) *Exception.* Bad debts arising from services paid under a reasonable charge-based methodology or a fee schedule are not reimbursable under the program.

Subpart H—Payment for End-Stage Renal Disease (ESRD) Services and Organ Procurement Costs

3. In § 413.178, paragraph (a) is revised to read as follows:

§ 413.178 Bad debts.

(a) CMS will reimburse each facility its allowable Medicare bad debts, as defined in § 413.80(b)(1), as determined under Medicare principles, in a single lump sum payment at the end of the facility's cost reporting period. The amount of allowable bad debt is reduced in accordance with § 413.80(h)(2).

* * * * *

(Catalog of Federal Domestic Assistance Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: September 3, 2002.

Thomas A. Scully,

Administrator, Centers for Medicare & Medicaid Services.

Approved: January 2, 2003.

Tommy G. Thompson,

Secretary.

[FR Doc. 03–2974 Filed 2–3–03; 4:31 pm]

BILLING CODE 4120–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 90

[WT Docket No. 02–55; DA 03–19]

Supplemental Comments of the Consensus Parties Filed in the 800 MHz Public Safety Interference Proceeding; Request for Comments

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; request for comments.

SUMMARY: This document seeks comment on "Supplemental Comments of the Consensus Parties" filed in the 800 MHz Public Safety Interference Proceeding—WT Docket No. 02–55. The Bureau, by this action, affords interested parties an opportunity to submit comments and reply comments that will improve public safety operations in the 800 MHz band. Improving public safety operations in the 800 MHz band will reduce interference experienced by 800 MHz public safety operators.

DATES: Comments are due on or before February 3, 2003 and Reply Comments are due on or before February 18, 2003.[1]

ADDRESSES: Federal Communications Commission 445, 12th Street, SW., TW–A325, Washington, DC 20554. *See* **SUPPLEMENTARY INFORMATION** for filing instructions.

FOR FURTHER INFORMATION CONTACT: Karen Franklin, Esq. or Michael J. Wilhelm, Esq., Policy and Rules Branch, Public Safety and Private Wireless Division at (202) 418–0680.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Public Notice, DA 03–19, released on January 3, 2003. The full text of this document is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street, SW., Washington, DC 20554. The complete text may be purchased from the Commission's copy contractor, Qualex International, 445 12th Street, SW., Room CY–B402, Washington, DC. 20554. The full text may also be downloaded at: *www.fcc.gov.* Alternative formats are available to persons with disabilities by contacting Brian Millin at (202) 418–7426 or TTY (202) 418–7365 or at *bmillin@fcc.gov.*

On December 24, 2002, a group of sixteen parties filed "Supplemental Comments of the Consensus Parties" in WT Docket 02–55, Improving Public Safety Communications in the 800 MHz Band—Consolidating the 900 MHz Industrial/Land Transportation and Business Pool Channels (67 FR 16351, April 5 2002). [2] In these comments, the parties provide additional details concerning the "Consensus Plan" for addressing interference issues in the 800 MHz band. In order to develop a full and complete record, the Wireless Telecommunications Bureau issues this public notice seeking comment on the Supplemental Comments of the Consensus Parties (Supplemental Comments). The Commission will accept comments on the Supplemental Comments on or before February 3, 2003; and reply comments on or before February 18, 2003.

The Supplemental Comments primarily address four issues: (1) Funding for the Consensus Plan; (2) procedures and processes for relocating 800 MHz incumbents; (3) post-realignment interference protection standards; and (4) border area realignment plans.

Interested parties may view the "Supplemental Comments of the Consensus Parties" on the Commission's Electronic Comment Filing System (ECFS) using the following steps: (1) Access ECFS at *http://www.fcc.gov/e-file/ecfs.html.* (2) In the introductory screen, click on "Search for Filed Comments." (3) In the "Proceeding" box, enter "02–55." (4) In the "Filed on Behalf of" box, enter "Consensus Parties." (5) In the "Date Submitted" box, enter "12/24/2002." In addition, the Supplemental Comments of the Consensus Parties will be available for inspection and duplication during regular business hours in the FCC Reference Information Center (RIC) of the Consumer and Governmental Affairs Bureau, Federal

[1] This document was received at the Office of the Federal Register on February 5, 2003.

[2] Subsequent to issuance of the public notice, the comment and reply comment dates were extended to February 10, 2003 and February 25, 2003, respectively (published elsewhere in this issue). *See* Improving Public Safety Communications in the 800 MHz Band and Consolidating the 800 MHz Industrial Land Transportation and Business Pool Channels, *Order Extending Time for Filing of Comments*, WT Docket 02–55, DA 03–163 (January 16, 2003)

Communications Commission, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. Copies of the Supplemental Comments of the Consensus Parties also may be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, (202) 863–2893, facsimile (202) 863–2898, or via e-mail *qualexint@aol.com*. For further information regarding the public reference file for this Public Notice, contact Maria Ringold, Chief, Wireless Branch, RIC, (202) 418–1355, with reference to the DA number of this *Public Notice*.

Comments may be filed using the ECFS or by filing paper copies. See Electronic Filing of Documents in Rule Making Proceedings, 63 Fed. Reg. 24121 (1988). Comments filed through the ECFS can be sent as an electronic file via the Internet to *http://www.fcc.gov/e-file/ecfs.html*. In completing the transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and the docket number "02–55."

Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to *ecfs@fcc.gov*, and should include the following words in the body of the message: "get form <your e-mail address>." A sample form and directions will be sent in reply. Parties who choose to file by paper must file an original and four copies of each filing. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. The Commission's contractor, Vistronix, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Ave., NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail or Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW., Washington, DC 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

Federal Communications Commission.

D'wana R. Terry,

Chief, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau.

[FR Doc. 03–3276 Filed 2–6–03; 3:02 pm]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 90

[WT Docket No. 02–55; DA 03–163]

Improving Public Safety Communications in the 800 MHz Band; Consolidating the 800 MHz Industrial/Land Transportation and Business Pool Channels Order Extending Time for Filing of Comments

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; extension of comments and reply comments due dates.

SUMMARY: This document addresses the Request for Extension of Time (Request) filed by the Cellular Telecommunications & Internet Association (CTIA). The Request sought additional time to respond to the public notice that sought comment on "Supplemental Comments of the Consensus Parties" filed in the 800 MHz Public Safety Interference Proceeding—WT Docket No. 02–55. The Bureau extended the comment and reply comment due dates. Extending the comment and reply comment period permits for a more thorough review of the proposal advanced in the "Supplemental Comments of the Consensus Parties" and affords additional time to prepare comments and reply comments. Such comments will enhance the record of WT Docket 02–55 and lead to an improvement in public safety operations in the 800 MHz band and will reduce interference experienced by 800 MHz public safety operators.

DATES: Comments are due on or before February 10, 2003 and Reply Comments are due on or before February 25, 2003.

ADDRESSES: Federal Communications Commission 445, 12th Street, SW., TW–A325, Washington, D.C. 20554. *See* Supplementary Information for filing instructions

FOR FURTHER INFORMATION CONTACT: Karen Franklin, Esq., or Michael J. Wilhelm, Esq., Policy and Rules Branch, Public Safety and Private Wireless Division at (202) 418–0680.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Order Extending Time for Filing of Comments*, DA 03–163, adopted on January 16, 2003, and released on January 16, 2003. The full text of this document is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street, SW., Washington, DC 20554. The complete text may be purchased from the Commission's copy contractor, Qualex International, 445 12th Street, SW., Room CY–B402, Washington, DC 20554. The full text may also be downloaded at: *www.fcc.gov*. Alternative formats are available to persons with disabilities by contacting Brian Millin at (202) 418–7426 or TTY (202) 418–7365 or at *bmillin@fcc.gov*.

On December 24, 2002, the "Consensus Parties" filed supplemental comments further explaining the particulars of their proposal addressing interference experienced by 800 MHz public safety systems. On January 3, 2003, the Wireless Telecommunications Bureau sought comment on the Consensus Parties supplemental comments. On January 13, 2002, the Cellular Telecommunications & Internet Association (CTIA) filed a *Request for Extension of Time* (*Request*) in the captioned proceeding, asking that the current date set for the filing of comments, February 3, 2003, and the date set for filing of reply comments, February 18, 2003, be extended by four weeks; *i.e.* that the date for submitting comments be changed to March 3, 2003, and the date for submitting reply comments be changed to March 18, 2003. We also note that Cinergy Corporation, Entergy Corporation and Entergy Services, Inc., Consumers Energy Company and Southern Communications Company each submitted pleadings supporting CTIA's request.

It is the policy of the Commission that extensions of time are not routinely granted. Here, CTIA requests additional time to thoroughly review the plan presented in the supplemental comments thereby to provide a more complete record in this docket. CTIA also asserts that it needs additional time to permit consultation with its members and expert personnel. It submits that time is not of the essence in this proceeding because the proposed band reconfiguration would take several years to implement. We disagree. On March 15, 2002, the Commission released the *Notice of Proposed Rule Making* (*NPRM*), [67 FR 16351, April 5, 2002], associated with this docket. In the *NPRM*, the Commission stated that it intended to move swiftly to achieve its

objective—improving the spectrum environment for public safety operations in the 800 MHz Band. However, finding some merit in the arguments advanced by CTIA and in the supporting pleadings, we believe that a modest extension of time " one week " may serve to compile a more complete record. Therefore, we hereby extend the comment date to February 10, 2003 and extend the reply comment date to February 25, 2003.

Accordingly, *it is Ordered* that CTIA's *Motion for Extension of Time is Granted* to the extent expressed herein and *is Denied* in all other respects, and that the time for filing comments in the captioned proceeding *is Extended* until February 10, 2003 and the time for filing reply comments in the captioned proceeding *is Extended* until February 25, 2003.

Federal Communications Commission.

D'wana R. Terry,

Chief, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau.

[FR Doc. 03–3275 Filed 2–6–03; 3:02 pm]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 0, 43, 63 and 64

[IB Docket Nos. 02–324, 96–261; DA 03–312]

International Settlements Policy Reform and International Settlement Rates

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; extension of reply comment period.

SUMMARY: On October 25, 2002, the Federal Communications Commission published a proposed rule document initiating a proceeding to re-examine the Commission's International Settlements Policy. The Commission received comments from a substantial number of foreign carriers or associations based in foreign countries. To ensure proper translations as well as the need for timely access to the initial comments, the Commission decided to extend the reply comment period by 12 days.

DATES: Reply comments are due on or before February 18, 2003.

ADDRESSES: Federal Communications Commission, Office of the Secretary, 445 12th Street, SW., Washington, DC 20554. See Supplementary Information for filing instructions.

FOR FURTHER INFORMATION CONTACT: James Ball, Chief, or Lisa Choi, Senior Legal Advisor, Policy Division, International Bureau, (202) 418–1460.

SUPPLEMENTARY INFORMATION:

1. On October 11, 2002, the Commission released a Notice of Proposed Rulemaking (NPRM) seeking comment from the public regarding possible reform of its International Settlements Policy, International Simple Resale and benchmarks policies, and the issue of foreign mobile termination rates. (*See* 67 FR 65527, October 25, 2002.)

2. On January 14, 2003, the Commission received comments from twenty parties on the issues under consideration in the NPRM. A substantial number of initial commenters are either foreign carriers or associations based in foreign countries. Therefore, recognizing the potential need of some of these commenters for additional time to ensure proper translations as well as the need for timely access to the initial comments through the Commission's Electronic Comment Filing System (ECFS), we extend the comment due date for replies regarding the NPRM, FCC 02–285, IB Docket Nos. 02–324 & 96–261, by 12 days to February 18, 2003 in order to afford all members of the public a full opportunity to comment on the issues raised in the initial comments. We find that the public interest will be served by this brief extension of the reply dates to allow for a more complete record in this proceeding.

3. Accordingly, pursuant to § 1.1 of the Commission's rules, 47 CFR 1.1, the new reply comment due date is February 18, 2003. Instructions for filing pleadings in this proceeding are set forth in the NPRM, available on the Commission's Web site at *http://www.fcc.gov.*

Federal Communications Commission:

James Ball,

Chief, Policy Division, International Bureau.

[FR Doc. 03–3137 Filed 2–7–03; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 173

[Docket No. RSPA–99–6223 (HM–213B)]

RIN 2137–AD36

Hazardous Materials: Safety Requirements for External Product Piping on Cargo Tanks Transporting Flammable Liquids

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Advance notice of proposed rulemaking (ANPRM).

SUMMARY: RSPA is considering alternatives for reducing safety risks associated with the transportation of flammable liquids in unprotected product piping (wetlines) on DOT specification cargo tank motor vehicles. In this notice, RSPA is soliciting comments and information regarding methods to reduce the risks posed by wetlines. In addition, we are seeking answers to questions to assist in determining whether further regulatory action is warranted. Regulatory amendments that may be promulgated as a result of comments to this notice will be developed jointly with the Federal Motor Carrier Safety Administration (FMCSA), which has primary enforcement authority for cargo tank motor vehicles and highway transportation.

DATES: Comments must be received by June 10, 2003.

ADDRESSES: *Written Comments:* Submit written comments to the Dockets Management System, U.S. Department of Transportation, Room PL. 401, 400 Seventh Street, SW., Washington, DC 20590–0001. Comments should identify the docket number, RSPA–99–6223 (HM–213B), and be submitted in two copies. If you wish to receive confirmation that RSPA has received your comments, include a self-addressed stamped postcard. You may also submit comments via e-mail by accessing the Dockets Management System Web site at "*http://dms.dot.gov*". Click on "Help & Information" to obtain instructions for filing the document electronically. You may also send your comments by facsimile to (202) 366–3753.

The Docket Management System is located on the Plaza Level of the Nassif Building at the U.S. Department of Transportation at the above address. You may review public dockets between the hours of 9 a.m. and 5 p.m., Monday

through Friday, excluding Federal holidays. Internet users may review all comments on-line at the DOT Docket Management System Web site at "*http://dms.dot.gov*".

FOR FURTHER INFORMATION CONTACT: Mr. Michael Stevens, Office of Hazardous Materials Standards, Research and Special Programs Administration, telephone (202) 366–8553; Mr. Philip Olson, Office of Hazardous Materials Technology, Research and Special Programs Administration, telephone (202) 366–4545; or Mr. Danny Shelton, Office of Safety and Technology; Federal Motor Carrier Safety Administration, telephone (202) 366–6121, U.S. Department of Transportation, 400 Seventh Street SW., Washington, DC 20590–0001.

SUPPLEMENTARY INFORMATION:

I. Background

The Hazardous Materials Regulations (HMR; 49 CFR Parts 171–180), at § 173.33(e), prohibit the retention of certain liquid hazardous materials in the external product piping of a DOT specification cargo tank, unless the cargo tank motor vehicle is equipped with bottom damage protection devices. The bottom damage protection devices must meet the requirements of § 178.337–10 for the MC 331 specification; § 178.345–8(b) for DOT 400-series specifications; or the accident damage protection requirements of the specification under which any other cargo tank motor vehicle was manufactured. The current prohibition applies to liquid hazardous materials in Divisions 6.1 (toxic), 5.1 (oxidizer), 5.2 (organic peroxide), and Class 8 (corrosive to skin only). The prohibition does not apply to a residue that remains after the product piping is drained to the extent possible or to the retention of flammable liquids in product piping.

The Research and Special Programs Administration (RSPA; we) adopted the current requirements in final rules published under Docket No. HM–183, on June 12, 1989 (54 FR 24982) and September 7, 1990 (55 FR 37028). In the June 12, 1989 final rule, we amended the regulations to require accident damage protection devices on product piping containing liquid hazardous materials in Divisions 6.1 (toxic), 5.1 (oxidizer), 5.2 (organic peroxide), Classes 8 (corrosive to skin only), and 3 (flammable liquids), except for flammable liquid fuels transported in cargo tank motor vehicles equipped with meters for fuel tax purposes. These latter tanks were excluded because of the potential costs to modify the cargo tank motor vehicles and the apparent unavailability of a practical system to empty wetlines after bottom-loading. We also imposed limitations for the inside diameter and aggregate volume of all unprotected product piping on a cargo tank motor vehicle as a means to limit the quantity of lading retained in wetlines (54 FR 24987).

In the preamble of the June 12, 1989 final rule, we stated that bottom loading and unloading outlets on a cargo tank motor vehicle present an inherent risk that, if the outlets are damaged, the entire contents of the cargo tank may be released. To counteract this risk, we required product piping attached to the outlet valve to have a sacrificial device designed to break under accident loads. We also stated that during the 1980's, the petroleum industry chose to equip their cargo tanks with top vapor recovery systems and to bottom load as a means of complying with state implementation plans promulgated under the Clean Air Act. In implementing this system, the industry did not provide for draining or purging product from the cargo tank piping after it was bottom-loaded.

After publication of the June 12, 1989 final rule, we received hundreds of petitions for reconsideration. Several petitioners requested that we broaden the exception for flammable liquid fuels metered for fuel tax purposes to include all flammable liquids and certain other hazardous materials and to remove the quantity limitations for product retention in wetlines. Many of the concerns raised in these petitions, about the difficulties of removing product from loading lines or compliance with the accident damage protection requirements, had not been brought to our attention during the comment period for the NPRM or during any of the subsequent hearings or public meetings.

In the September 7, 1990 final rule that responded to the petitions for reconsideration, we amended the June 12, 1989 final rule to remove all of the adopted restrictions on transporting flammable liquids in wetlines. We realized that the petroleum industry needed additional time to implement design and operational changes before a prohibition against unprotected product piping could be adopted. We recognized the inherent difficulties in draining or purging product from the loading lines while maintaining an accurate metering system. However, we stated:

> We strongly encourage the petroleum industry to consider the risk it accepts in operating cargo tank motor vehicles over the highway with hazardous materials retained in the piping and that the hazardous materials industry consider and recommend possible alternatives to eliminate this risk in the most cost-effective manner.

We reiterated that the prohibition of lading in product piping was applicable only to DOT specification cargo tanks used to transport liquid hazardous materials. We also clarified that the prohibition in § 173.33(e) does not apply to cargo tank motor vehicles used to transport hazardous materials having relatively low hazards, such as combustible liquids, where the use of a specification cargo tank is not required. *See* 55 FR 37030.

On October 9, 1997, in Yonkers, New York a westbound MC 306 cargo tank motor vehicle containing 8,800 gallons of gasoline was struck broadside in the area of the piping manifold by a southbound passenger vehicle. The initial impact fractured the cargo tank's product piping and released approximately 28 gallons of gasoline. After surviving the initial impact, the 62-year-old operator of the passenger vehicle died from burns sustained in the fire that ignited immediately following the collision. Once ignited, the fire eventually spread and consumed the entire contents of the cargo tank, destroying both vehicles and a New York State Thruway overpass.

As part of the accident investigation, investigators from the National Transportation Safety Board (NTSB) reviewed data related to MC 306 cargo tank motor vehicles in the Hazardous Materials Information System (HMIS) for the period January 1990 through August 1997. NTSB identified 501 cargo tank motor vehicle accidents reported during this period; 47 involved external product piping incidents due to outside forces. Of those 47 incidents, 27 involved collisions with other motor vehicles, 16 involved trucks hitting stationary objects, and four involved overturned cargo tank motor vehicles. Fires occurred in five of the 47 product piping incidents, resulting in two deaths, three major injuries, and reported damage estimates of over $800,000.

NTSB issued its accident summary report on May 5, 1998. The NTSB report (H 98–27) is available in this docket and by visiting the NTSB Internet Web site. In its report, NTSB stated that the immediate result of the Yonkers collision was a fire inside and below the car and that the fuel for the initial fire was the gasoline released from the cargo tank's loading lines during impact. The fire was then fed by gasoline from the cargo tank's compartments. NTSB concluded that had the loading lines been empty, the fire likely would not have occurred. Based on its

investigation, the NTSB identified as a safety issue the danger of operating a truck when its cargo tank's unprotected loading lines are carrying hazardous materials. In its report, NTSB expressed particular concern about the severity of the Yonkers accident. As a result of its investigation, NTSB recommended (NTSB Recommendation H–98–27) that the Secretary of Transportation prohibit the carrying of hazardous materials in external product piping, such as loading lines, that may be vulnerable to damage in an accident.

On July 22, 1999, RSPA met with industry and trade representatives, at their request, to discuss the NTSB recommendation. Attendees included representatives from the American Petroleum Institute (API), Truck Trailer Manufacturers Association (TTMA), Petroleum Marketers Association of America (PMAA), National Tank Truck Carriers, Inc. (NTTC), Sigma, Sunoco, BP Amoco, and Marathon Ashland. Discussions focused on the cargo tank industry's development of alternative solutions for unprotected product piping. We indicated that we were aware of a purging system under development and invited industry to provide cost data or information on any other potential solutions.

On December 4, 2000, the Office of the Secretary of Transportation, General Counsel, on behalf of RSPA, submitted a significant NPRM to the Office of Management and Budget (OMB) for consideration. In the NPRM, we proposed to adopt a performance standard for substantially eliminating product from unprotected piping that could be met with current technology or by other innovative systems developed by industry.

The proposal required that all affected cargo tanks conform to the performance standard within seven years, allowing for two years of research and development, and, dependent upon the cargo tank's pressure test date, a maximum of five years for retrofits to achieve compliance.

The proposed rule provided an exception for truck-mounted tanks, based on inherent safety features, significantly reducing compliance costs to small businesses. The Petroleum Marketers Association of America (PMAA), a federation of 42 state and regional trade associations, represents 7,850 small, independent petroleum marketers that sell nearly half the gasoline consumed in this country. In a May 23, 2000 letter, PMAA suggested that straight trucks should not be included in any proposed rulemaking because it was unaware of any wetlines-related fatalities involving straight trucks. The PMAA supported its suggestion by noting that the general design and construction of straight trucks is such that the placement of external product piping is afforded protection by the frame of the truck, the meter box and tool boxes. (The PMAA letter is in the docket for this rulemaking.)

On January 22, 2001, the NPRM was withdrawn for review by the current administration in accordance with a White House Chief of Staff directive. After review by the Secretary of Transportation, the NPRM was resubmitted to OMB for consideration.

On August 10, 2001, OMB returned the NPRM to the Department for reconsideration. In its return letter, OMB expressed concern with the methodology used to determine benefits and the true costs required to achieve them. First, regarding the retrofit of existing cargo tank motor vehicles, OMB was concerned that RSPA was engaging in a "risk-risk" tradeoff, that is, the increase in risk to install (*i.e.*, welding) a system to eliminate wetlines outweighed the benefits realized in lives saved on public highways. Second, OMB questioned whether some or all of the reported fatalities in the NPRM were the result of causes unrelated to wetlines (*e.g.*, blunt force trauma). Third, OMB questioned why RSPA would extrapolate the number of fatalities and injuries multiplied by a factor of 1.5 due to suspected under-reporting of incidents involving wetlines. OMB cited RSPA's "Preliminary Assessment of Risk/Benefit-Cost," dated January 25, 1999, as stating that this increase in benefits might overstate the risks but was necessary when considering any rulemaking action. (This document is available for review at the RSPA Hazardous Materials Safety Web site, *http://hazmat.dot.gov/risk_analyses.htm*, and the DOT Docket Management System Web site, *http://dms.dot.gov.*) Finally, OMB did, however, indicate support for the prohibition of wetlines on newly constructed cargo tank motor vehicles based on the proposal's greater net benefits to society. (The August 16, 2001 OMB letter is in the docket for this rulemaking.)

It is because of these and other uncertainties with regard to cost vs. benefit and new construction vs. retrofit that we have chosen to issue an advance notice of proposed rulemaking. It is our intent to take a "fresh look" at this issue by soliciting comments on the narrative discussion and answers to the questions posed in Section V of this notice.

II. Fatal Accidents Attributed to Wetlines

The unprotected product piping on a five-compartment cargo tank motor vehicle carrying gasoline typically contains 30–50 gallons of gasoline. If a passenger vehicle strikes the side of a cargo tank motor vehicle, the impact likely will fracture the wetlines. In such collisions, the passenger vehicle is often wedged under the cargo tank motor vehicle. With the automobile driver and passenger(s) trapped in the vehicle under the cargo tank and the fractured product piping releasing 30–50 gallons of gasoline, the gasoline spills onto, underneath, or into the passenger vehicle. If ignited, fire rapidly engulfs the driver and passenger(s) inside their vehicle. When ignited, a gasoline spill of 50 gallons will be fatal to persons within a zone of approximately 41 feet, dooming those trapped in a vehicle at the site of the release and fire. If the fire is not extinguished immediately, it may spread from the gasoline originally contained in the product piping to the gasoline contained in the cargo tank motor vehicle. In this instance, the safety threat to the surrounding community is significant.

Since 1992, there have been seven reported accidents, resulting in eight fatalities, where wetlines were damaged and gasoline released. These fatal accidents primarily involve collisions with passenger vehicles. Our experience with the HMIS indicates that there is a degree of under-reporting of hazardous materials transportation accidents of all types. In addition, prior to October 1, 1998, certain intrastate highway carriers were not required to report hazardous materials releases to RSPA. Therefore, the HMIS data probably do not include all accidents involving damage to wetlines on cargo tank motor vehicles.

In this section, we describe a sampling of five fatal wetlines accidents. These descriptions provide an indication of the nature of the safety problem and its possible consequences. In these five accidents, six fatalities appear to have resulted from fires that ignited after passenger vehicles struck wetlines that then released gasoline.

Long Beach, CA (one fatality). On November 22, 1992, in Long Beach, California, a passenger vehicle struck a cargo tank motor vehicle on the right side and ruptured the unprotected product piping. Approximately 26 gallons of gasoline and diesel fuel were released and ignited immediately. The driver of the passenger vehicle died in the accident.

Houston, TX (one fatality). On October 1, 1994, in Houston, Texas, the

driver of a passenger vehicle died after his westbound vehicle struck a northbound cargo tank motor vehicle broadside and the product piping sheared off the cargo tank and released 38 gallons of gasoline. A fire broke out. The driver was trapped inside the vehicle wedged under the cargo tank and died in the automobile.

Yonkers, NY (one fatality). On October 9, 1997, in Yonkers, New York, a passenger vehicle struck a cargo tank motor vehicle in the area of the external loading and unloading lines, fracturing the cargo tank's product piping and releasing approximately 28 gallons of gasoline. After surviving the initial impact of the collision, the 62-year old driver of the passenger vehicle died from burns and smoke inhalation from the fire that ignited immediately.

Hammond, IN (two fatalities). On November 12, 1999, in Hammond, Indiana, the 21-year old driver of a passenger vehicle and a four-year old passenger died from burns sustained in a fire that ignited immediately following the collision of their vehicle with a cargo tank motor vehicle. The passenger vehicle struck the cargo tank in the area of the piping manifold releasing the gasoline contained in the product piping. Both vehicles were destroyed by the fire that subsequently spread from the product piping and consumed the entire contents of the cargo tank.

Detroit, MI (one fatality). On July 11, 2001, near Detroit, Michigan, an out of control automobile crashed into a highway barrier and then collided with the underside of a cargo tank motor vehicle. The trapped automobile driver died as a result of the ignition of approximately 50 gallons of gasoline.

III. Alternatives for Addressing Safety Risk

In 1994, the American Petroleum Institute (API) initiated a two-phased study to assess the risks posed by petroleum products in unprotected product piping. Phase I of the study, titled *Alternative Means of Loading Cargo Tank Motor Vehicles*, analyzed the risks posed by the existing industry practice. This phase was completed in February 1994 and concluded:

> There is a small but definable risk to the public from a wet line spill. * * *the consequences can be more severe for the occupants of an automobile that impacts and fractures the wet lines and ignites the wet line contents. The majority of reported wet line spills are under 20 gallons. For this spill size of 20 gallons, the calculated maximum injury radius is 36 feet.

Phase II of the study was to identify engineering designs that would have the potential for eliminating wetlines or provide collision protection to reduce or eliminate the risk. Because Phase I of the study concluded that the probability of a fatality being directly attributed to wetlines is "quite low," the second phase of the study was not considered. In its Executive Summary API stated, "Based on the information gathered, the fatality rate from wetline spills is one for every 1.8×10^{10} miles traveled, or one fatality every eleven years." It also noted that additional information indicated the fatality rate could be considerably higher. In fact, this information indicated that "the fatality rate for these conditions is one for every 1.1×10^{9} miles" traveled, or 0.7 fatalities per year.

We are aware of two systems that have been demonstrated to reduce risks from wetlines. The first is an onboard system that evacuates the wetlines by forcing the lading out of the product piping and into the cargo tank body. After loading is complete and the main cargo compartment valves are closed, the system introduces compressed air from an auxiliary tank into the product piping under low pressure and at a low flow rate. Lading in the product piping flows through separate purging lines into the cargo tank body. This purging process is controlled automatically and lasts approximately six minutes. The system is also capable of detecting and automatically purging any leakage of product through the cargo tank's internal shutoff valve into the product piping, thereby eliminating a potential wetline condition during transportation. For an average cargo tank motor vehicle, the weight increase for a manual purging system is approximately 48 pounds.

The second system involves adding a set of short lines for loading that are independent of the unloading lines. These short loading lines, placed on the lower part of the cargo tank, are accessible and are not exposed to damage in case of rollover. Each short four-inch inside diameter pipe extends from the cargo tank wall and contains approximately one gallon of hazardous material; depending on the number of compartments on the cargo tank motor vehicle, the short line piping system on the vehicle could contain 4–5 gallons of hazardous material rather than the 30 to 50 gallons contained in a typical product piping system. For an average cargo tank motor vehicle, the weight increase for the short external product piping option is approximately 50 pounds.

For a system using separate loading lines, it may be feasible to recess the loading connections into the interior cargo tank body so that the surface of the loading inlet is flush with the cargo tank wall. This option may be preferred by cargo tank manufacturers and owners because it eliminates the need to ensure that external product piping is designed and positioned so as to protect the integrity of the cargo tank wall in the event of an accident. Recessing of loading inlets within the cargo tank wall would be expected to eliminate the risks posed by external product piping and could be designed to meet the appropriate accident damage protection requirements. At the present time, however, this option may be unrealistic because substantial modifications to existing loading racks would be necessary or loading times would increase due to the cargo tank being moved to reach loading arms. In addition, there are questions about the effectiveness of such a design and whether it might adversely impact the structural integrity of the cargo tank.

We understand that one major oil company, representing less than one percent of the potentially affected cargo tank population, has chosen to outfit its fleet with a system that purges product from unprotected external piping. Two additional carriers installed the same purging system on a small portion of their fleets as part of a successful field evaluation and expressed interest in equipping their entire fleets. However, these carriers have chosen to defer installation pending possible RSPA rulemaking.

There may also be other ways to reduce wetlines risk. For example, many of the incidents of which we are aware appear to be caused because automobile drivers do not see the cargo tank motor vehicle. Perhaps marking or other systems that increase vehicle conspicuity could be effective in reducing collisions between cargo tank motor vehicles and automobiles.

Further, we are aware that at least one cargo tank operator has installed under-ride protection on its cargo tank motor vehicles. Although this protection may not meet the bottom damage protection requirements under § 178.345–8(b), we invite comments on whether this may or may not substantially reduce the risks posed by unprotected product piping.

IV. Costs and Benefits of Risk Reduction Measures

It is our understanding that the useful life of a cargo tank motor vehicle is at least 20 years. However, we are aware that many cargo tank motor vehicles may remain in service for up to 30 years. Based on information in the U.S. Census Bureau's 1997 *Vehicle Inventory and Use Survey (VIUS)*, it appears that the average annual population of cargo

tank motor vehicles that would be affected by any rulemaking action is approximately 63,000. This number includes bottom-loaded single-unit trucks, straight trucks pulling trailers, and truck-tractors pulling trailers in flammable liquid service. Cargo tank motor vehicles average four compartments each, with piping that contains an aggregate total of approximately 40 gallons of product.

As previously discussed, we are aware of two systems that may reduce risk from wetlines. A manual onboard purging system can be installed on a newly constructed cargo tank motor vehicle for about $2,100 (welded) or $2,250 (non-welded) (2002 dollars). Equipment and installation costs are the same for the retrofit of existing cargo tank motor vehicles; however, additional costs in the form of lost profit or installation risk may be incurred. The independent short loading line system can be installed for $1,540 per cargo tank motor vehicle (2002 dollars). Because of the complexity of such a design, however, it may not be appropriate for the retrofit of existing cargo tank motor vehicles. We invite comments on the feasibility of retrofits of existing vehicles to reduce or eliminate product in wetlines and on costs that may be associated with such a retrofit.

We believe there may be other cost-effective solutions that could significantly reduce or eliminate the current level of risk. We encourage commenters to identify other possible approaches to reducing or eliminating the risks posed by the transportation of flammable liquids in wetlines.

Quantified and monetized benefits realized from action to reduce the transportation risks associated with wetlines would be in the form of reductions in fatalities, major and minor injuries, product losses, carrier damages, public and private property damages, risks to emergency responders, decontamination and cleanup costs, and evacuation costs. Through the HMIS database and information provided by the NTSB, we identified 194 reported incident cases involving wetlines during the period of 1990–2001. As previously discussed, we are aware of at least six fatalities as a result of five of those incidents where piping was damaged and gasoline released.

In addition to quantified/monetized benefits, measures to reduce wetlines risks would reduce losses by the private sector (in terms of time and productivity), by government (in terms of allocation of scarce resources, including emergency responders, their support vehicles and equipment), and by the general public (in terms of time and inconvenience). Some elements of actual and potential losses are: (1) The closure of transportation arteries; (2) the evacuation of homes, businesses and other facilities that are in harm's way; and (3) productivity losses in terms of facility and/or personnel down time attributed to traffic delays and/or facility evacuations.

V. Questions for Commenters

In general, we seek comments to determine whether regulatory changes are needed and can be made in a cost-effective manner. In particular, we invite commenters to respond to the following questions:

A. General

1. Are the statistics and data (*e.g.*, cargo tank population, useful life of a cargo tank, accident frequency and consequences), costs (*e.g.*, purging system, short-loading lines, new construction, retrofit), and potential benefits (*e.g.*, fatalities, injuries, and property damages prevented) provided in this ANPRM accurate?

2. What is the useful life of a cargo tank motor vehicle utilized for the transportation of flammable liquids?

3. What percentage of cargo tank motor vehicles are operated at maximum weight limits such that any additional weight of a system to eliminate wetlines would impose a weight penalty?

4. For cargo tank motor vehicles in flammable liquid service, what is the average distance per trip?

5. In addition to the potential benefits described in this ANPRM, are there additional benefits, measurable or otherwise, that would result from implementation of measures to reduce wetlines risks?

6. Should a benefit-cost analysis include the reduction of risks associated with low-frequency, high-consequence events?

7. Would requirements for systems to reduce the risk posed by wetlines for all newly constructed cargo tank motor vehicles result in significant reductions in per unit cost because of economies of scale?

B. Current Market Practices

1. What safety practices, other than those described in this ANPRM, are motor carriers currently utilizing to reduce the risks associated with the transportation of flammable liquids in wetlines?

2. How effective are these safety practices in reducing the risks associated with wetlines on cargo tanks?

3. What are the costs of these safety practices currently utilized?

4. Would an industry or industry/government sponsored research initiative to explore new methods to eliminate wetlines be of value?

5. If so, what would be the value of such a partnership?

C. Facility Modification

1. Concerning the short and recessed loading lines systems described in this ANPRM, what modifications to loading arms or hoses at existing loading racks would be necessary to accommodate short, including recessed within the cargo tank wall, loading lines?

2. What would be the cost of these modifications?

3. Can loading rack fuel tax accounting systems be modified to allow for product reversal once the cargo tank is full and the internal valves are closed, thus draining the loading lines?

4. Is this option viable?

5. What would such a modification cost?

D. Alternatives

Independent Loading Lines

1. Are the short and recessed loading lines options practicable for installation on new cargo tank motor vehicles?

2. Are either of these options practicable for installation on existing cargo tank motor vehicles (*i.e.*, retrofit)?

3. Are there any motor carriers actively operating or contemplating operating cargo tank motor vehicles with such a design?

4. If so, what configuration was utilized and what was the cost to modify the cargo tank?

5. Would maintaining a vehicle with such a design (*i.e.*, independent loading lines) result in higher or lower costs than currently utilized designs?

Purging System

1. How effective is a purging system in reducing the risks posed by wetlines?

2. Is a purging system practicable for installation on new cargo tank motor vehicles?

3. Is a purging system practicable for installation on existing cargo tank motor vehicles (*i.e.*, retrofit)?

4. Are there any motor carriers actively operating or contemplating operating cargo tank motor vehicles with a purging system?

5. If so, what configuration is utilized (automatic, manual, other) and what was the cost to modify the cargo tank?

6. What are the costs to maintain a cargo tank motor vehicle with a purging system installed?

Conspicuity

1. Would improved conspicuity for cargo tank motor vehicles generally, or wetlines in particular, reduce wetlines risks?

2. How effective would improved conspicuity be?

3. Are there marking or lighting systems currently available that could improve the visibility of cargo tank motor vehicles or components of those vehicles to other drivers?

Accident Damage Protection

1. Are there cost-effective designs for accident damage or under-ride protection (*e.g.*, guards), specification or otherwise, that would reduce the risks posed by unprotected product piping?

2. What would these designs cost?

3. What level of protection (*i.e.*, impact forces sustained) would be both cost-effective and provide a significant reduction in risks associated with wetlines?

Non-Regulatory

Would a non-regulatory approach, such as an awareness campaign to alert the public as to the hazards posed by wetlines, be successful in helping to reduce the risks posed by wetlines?

Other

1. In addition to the purging and short-line systems described in this ANPRM, are there other systems currently being marketed or in development that can evacuate wetlines after loading or prevent wetlines from retaining liquid during loading operations?

2. What are the costs or projected costs of such systems?

3. How effective are they?

4. How close to implementation are systems currently in the development phase?

5. Are there other concepts, either related to vehicles or facilities, that might have application in reducing the risks posed by wetlines?

VI. Regulatory Notices

There are a number of additional issues that we must address in determining whether to proceed with any rulemaking action. These include the analyses required under the following statutes and Executive Orders:

A. Executive Order 12866: Regulatory Planning and Review

This rulemaking is considered a significant regulatory action under section 3(f) of Executive Order 12866 and the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11032). This ANPRM was reviewed by the Office of Management and Budget.

E.O. 12866 requires agencies to regulate in the "most cost-effective manner," to make a "reasoned determination that the benefits of the intended regulation justify its costs," and to develop regulations that "impose the least burden on society." We therefore request comments, including specific data if possible, concerning the costs and benefits that may be associated with regulatory measures to reduce the safety risks associated with transportation of flammable liquids in wetlines. We would also be interested in comments on the several issues relating to the measurement of costs and benefits and the treatment of newly constructed as opposed to retrofitted cargo tank motor vehicles raised in the OMB Return Letter (discussed in Section I of this notice). To the extent feasible systems may be available to achieve compliance with a proposal to reduce wetlines risks, we invite commenters to discuss the effectiveness of such systems and to provide estimates of the unit cost of new construction and the unit cost to retrofit a cargo tank motor vehicle in the existing fleet. Alternatively, if there are feasible means to comply with a proposal by modifying equipment or procedures at the loading facility, interested parties are invited to provide comments on their cost and effectiveness.

B. Executive Order 13132: Federalism

E.O. 13132 requires agencies to assure meaningful and timely input by state and local officials in the development of regulatory policies that may have a substantial, direct effect on the States, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. We invite State and local governments with an interest in this rulemaking to comment on the effect that regulatory measures to reduce wetlines risks may have on State or local safety or environmental protection programs.

C. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

E.O. 13175 requires agencies to assure meaningful and timely input from Indian tribal government representatives in the development of rules that "significantly or uniquely affect" Indian communities and that impose "substantial and direct compliance costs" on such communities. We invite Indian tribal governments to provide comments as to the effect that regulatory measures to reduce wetlines risks may have on Indian communities.

D. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires each agency to review regulations and assess their impact on small entities unless the agency determines that a rule is not expected to have a significant impact on a substantial number of small entities. "Small entities" include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations under 50,000. Interested parties are invited to comment on estimates of the costs and benefits of rulemaking scenarios that would reduce wetlines risks, including any impact on small businesses.

E. National Environmental Policy Act

The National Environmental Policy Act of 1969 (NEPA) requires that Federal agencies consider the consequences of major Federal actions and that they prepare a detailed statement on actions significantly affecting the quality of the human environment. Interested parties are invited to review the Environmental Assessment available in the docket at *http://dms.dot.gov*, and to comment on what environmental impact, if any, a regulatory proposal to reduce wetlines risks would have.

F. Regulation Identifier Number (RIN)

The Department of Transportation assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document may be used to cross-reference this action with the Unified Agenda.

Issued in Washington, DC, on February 4, 2003, under authority delegated in 49 CFR Part 106.

Robert McGuire,

Associate Administrator for Hazardous Materials Safety.

[FR Doc. 03–3262 Filed 2–7–03; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

49 CFR Part 1180

[STB Ex Parte No. 282 (Sub–No. 20)]

Railroad Consolidation Procedures—Exemption for Temporary Trackage Rights

AGENCY: Surface Transportation Board, DOT.

ACTION: Notice of proposed exemption and rulemaking.

SUMMARY: The Surface Transportation Board (Board) is proposing to adopt a new class exemption and related regulations that would be available for trackage rights agreements that by their terms expire on a date certain and would permit their authorization for a limited period of time. Carriers utilizing this new class exemption would not be required to file for discontinuance authority at the end of the authorized period. The temporary trackage rights would automatically terminate on the date specified.

DATES: Comments must be submitted by March 12, 2003.

ADDRESSES: Send an original and 10 copies of any comments referring to STB Ex Parte No. 282 (Sub-No. 20) to: Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 565–1600. [Federal Information Relay Service (FIRS) for the hearing impaired: 1–800–877–8339.]

SUPPLEMENTARY INFORMATION:

Trackage Rights

Acquisition by a rail carrier of trackage rights over a railroad line owned or operated by another rail carrier may be carried out only with the approval and authorization of the Board. *See* 49 U.S.C. 11323(a)(6). Under 49 U.S.C. 11324(d), the Board is required to approve trackage rights applications unless we find that (1) as a result of a transaction, there is likely to be substantial lessening of competition, creation of a monopoly, or restraint of trade in freight surface transportation in any region of the United States, and (2) the anticompetitive effects of the transaction outweigh the public interest in meeting significant transportation needs.

Use of Exemption Authority

The Staggers Rail Act of 1980 substantially broadened the authority of our predecessor, the Interstate Commerce Commission (ICC), and hence our authority, to exempt transactions from regulation. Under 49 U.S.C. 10502, we are directed to exempt a person, class of persons, or a transaction or service from our regulation whenever we find that (1) regulation is not necessary to carry out the RTP, and (2) either the transaction or service is of limited scope or regulation is not needed to protect shippers from an abuse of market power. We may exempt not only a single transaction, but an entire class of transactions, as the ICC did when adopting the existing class exemption at 49 CFR 1180.2(d)(7). A class exemption does not mean that a particular transaction is beyond our reach. Rather, it is a means by which a carrier may obtain an authorization without going through a full regulatory process, in the types of cases to which the class exemption applies.

Existing Class Exemption for Trackage Rights

In *Railroad Consolidation Procedures*, 1 I.C.C.2d 270 (1985), the ICC adopted a class exemption for trackage rights based on written agreements and not sought in responsive applications in rail consolidation proceedings. *See* 49 CFR 1180.2(d)(7).[1] In adopting those procedures, the ICC found that exempting trackage rights proposals as a class would promote the RTP and competition generally because trackage rights facilitate operating efficiencies. The ICC also found that the exemption was limited in scope because the class of exempted transactions was limited and, typically, trackage rights transactions either involved modifications in operations that promoted efficiency for the operator and maintained the status quo, or involved the addition of a competing carrier to a line through trackage rights that increased the number of carriers on the line and increased competition for traffic. For these reasons, the ICC also found that regulation of this class of trackage rights is not necessary to protect shippers from an abuse of market power.

Proposed Class Exemption

Our reason for instituting this proceeding is that authorization of trackage rights approved under the current class exemption remains in effect indefinitely, regardless of any durational contract provision. However, in recent years parties have sought authorization for temporary trackage rights that were to expire on a certain date. On a number of occasions, those requests have involved carriers that were about to perform extensive maintenance over portions of their heavily used track. Other requests for temporary trackage rights have involved the need to accommodate the short-term storage of rail cars or the need to make provision for local service, line relocation and rehabilitation projects, as well as a variety of freight, intercity passenger and commuter operations.

Generally, a carrier seeking such a time-limited authorization has first filed a notice of exemption under 1180.2(d)(7), thereby acquiring authority to exercise trackage rights indefinitely over a particular line. Subsequently, it has filed a request that we allow the authorization to expire on a certain date. In the past, we have analyzed these subsequent filings on a case-by-case basis under 49 U.S.C. 10502, and have routinely granted the requested petition to allow the authorization to expire on a specific date.[2] In those individual cases, having found the time-limited authorization to be consistent with the statutory limited scope criterion, we have not found it necessary to examine whether full regulation of a temporary trackage rights arrangement is necessary to protect shippers from an abuse of market power.

Given our experience in those cases, we believe that both rail carriers and the public would benefit from a rule that expressly provides a class exemption from 49 U.S.C. 11323 to permit authorization, for a limited period of time, of trackage rights that by their terms expire on a date certain. We further believe that this proposal is consistent with the exemption criteria at 49 U.S.C. 10502, as next discussed.

Individual approval of trackage rights transactions for which the carriers seek authorization for a limited period of time does not appear to be necessary to carry out the goals of the RTP. Rather, exempting such proposals as a class would promote the RTP by eliminating the need to file a second pleading seeking discontinuance when the agreement expires, thereby minimizing regulation of the rail system (49 U.S.C. 10101(2)), promoting the continuation of a sound rail system by facilitating the

[1] Published in the **Federal Register** at 50 FR 15751. These rules were subsequently amended in 1986, 1993, and 1997.

[2] This second filing has often taken the form of a petition seeking a partial revocation of the class exemption, or a petition seeking an exemption to permit the trackage rights operations to remain in effect only on a temporary basis. Regardless of the form, we have generally dealt with each request as a request that the Board permit the authorization to expire on a particular date.

process of line repair and maintenance (49 U.S.C. 10101(4)), and promoting coordination between rail carriers (49 U.S.C. 10101(5)). The proposed class exemption would also reduce the regulatory uncertainty of the parties, facilitate the parties' ability to reach agreement on temporary trackage rights, reduce the filing fees required of carriers seeking such rights, and encourage more use of trackage rights in general and temporary trackage rights in particular. 49 U.S.C. 10101 (7), (15).

The proposed exemption also appears to be of limited scope because we are limiting the class of exempted transactions. And the authorization for trackage rights will be limited in duration.

In addition, it appears that regulation of this class of temporary trackage rights is not necessary to protect shippers from an abuse of market power. Providing temporary trackage rights authorization would not reduce competition, and temporary trackage rights authorizations that add no service on the line (e.g., overhead, or bridge, traffic) merely maintain the status quo among carriers and shippers on the line. Public comments are invited on all of these conclusions, as well as on possible negative consequences, if any, that could result from such a class exemption.

Implementation of the Class Exemption

If the proposed class exemption is adopted, an eighth category of exempt transactions would be added to our rail consolidation regulations. We would amend 49 CFR part 1180 by adding new sections 1180.2(d)(8), and 1180.4(g)(2)(iii) and (iv). Consistent with the regulations in part 1180, carriers seeking to use the proposed exemption would be required to submit the information required by 49 CFR 1180.4(g)(1)(i). This includes the names of the applicants, a summary of the nature of the proposed transaction, a contact person, the proposed time schedule for consummation, the purpose to be accomplished, any other supporting statements deemed material by applicants, the level of labor protection to be imposed, a list of the states in which any part of the property of each applicant carrier is located, and a map showing the involved lines. In addition, the caption summary required in connection with this proposed class exemption must specify the date the authorization will expire. 49 CFR 1180.4(g)(2)(iii). An executed copy of the written trackage rights agreement must also be submitted.

As noted, section 1180.4(g)(1)(i) requires that the exemption notice filed with the Board indicate the level of employee protection to be imposed.[3] As with other grants of trackage rights, approval of temporary trackage rights agreements under 49 U.S.C. 11323 must include the employee protective conditions set forth in *Norfolk and Western Ry. Co.-Trackage Rights-BN*, 354 I.C.C. 605 (1978), as modified by *Mendocino Coast Ry., Inc.-Lease and Operate*, 360 I.C.C. 653 (1980), *aff'd sub nom. Railway Labor Executives' Association* v. *ICC*, 675 F.2d 1248 (D.C. Cir. 1982). Accordingly, all temporary trackage rights exemptions would be so conditioned.

As previously discussed, under 49 U.S.C. 10903, after a carrier begins trackage rights operations, even when conducted under an exemption, discontinuance of the service may not occur absent a certificate of discontinuance, or exemption therefrom, issued by the Board. This requirement would continue to apply to carriers utilizing the current trackage rights class exemption, 49 CFR 1180.2(d)(7). Although we normally require that a carrier seeking to terminate trackage rights operations file a separate request for discontinuance authority, this requirement of a separate filing would be unnecessary under the proposed new 49 CFR 1180.2(d)(8) class exemption. In these cases, the authority to exercise trackage rights temporarily, only until a particular date, would implicitly include the authority to discontinue service on that date. Therefore, we would not require separate discontinuance authority to terminate temporary trackage rights operations authorized under the proposed class exemption. Finally, we note that the proposed class exemption would be limited to temporary trackage rights transactions and would not operate to exempt any other regulated activities conducted on that track or exempt any associated transactions of the involved carriers.

Conclusion

We propose under 49 U.S.C. 10502 to add a new category to the specific categories of exempt transactions listed at 49 CFR 1180.2(d). This new category, to be set forth, if adopted, at 49 CFR 1180.2(d)(8), would be for temporary trackage rights proposals under 49 U.S.C. 11323 that are: (1) Based on written agreements, (2) not filed or sought in responsive applications in rail consolidation proceedings, and (3) scheduled to expire on a specific date.

[3] Under 49, U.S.C. 10502(g), in granting exemptions, we may not relieve a carrier of its obligations to protect employees.

We also propose to add new subsections (iii) and (iv) to 49 CFR 1180.4(g)(2), regarding the caption summary to be provided by applicant and published in the **Federal Register**. The exemption as proposed would embrace temporary trackage rights sought for any purpose. Public comments on this specific proposal, its scope, and its limits are invited.

Standard labor protective conditions would be imposed on any carrier using this class exemption. Carriers using this class exemption could discontinue service without the need to obtain a certificate or exemption from the Board. Comments on these proposals are also invited.

Regulatory Flexibility Analysis

The Director of the Office of Proceedings has certified, by decision served concurrently with this notice and to be published in the **Federal Register**, that the proposed exemption will not have a significant impact on a substantial number of small entities. Exemption should not affect small shipper or carrier entities because the result of the temporary trackage rights proposed for exemption would not affect rail operations except to increase efficiency. No shipper would lose service and other shippers might receive more efficient service under the proposal. No carrier's operations would be significantly affected by the temporary trackage rights proposed for exemption.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

List of Subjects in 49 CFR Part 1180

Administrative practice and procedure, Railroads.

Authority: 49 U.S.C. 10502(b) and 5 U.S.C. 553.

Decided: January 31, 2003.

By the Board, Chairman Nober, Vice Chairman Burkes, and Commissioner Morgan.

Vernon A. Williams,

Secretary.

For the reasons set forth in the preamble, the Surface Transportation Board proposes to amend part 1180 of title 49, chapter X, of the Code of Federal Regulations as follows:

PART 1180—RAILROAD ACQUISITION, CONTROL, MERGER, CONSOLIDATION PROJECT, TRACKAGE RIGHTS, AND LEASE PROCEDURES

1. The authority citation for Part 1180 continues to read as follows:

Authority: 5 U.S.C. 553 and 559; 11 U.S.C. 1172; 49 U.S.C. 721, 10502, 11323–11325.

2. Amend § 1180.2 by revising the first sentence of paragraph (d) introductory text and by adding a new paragraph (d)(8) to read as follows:

§ 1180.2 Types of Transactions.

* * * * *

(d) A transaction is exempt if it is within one of the following eight categories. * * *

* * * * *

(8) Acquisition of temporary trackage rights by a rail carrier over lines owned or operated by any other rail carrier or carriers that are:

(i) Based on written agreements,

(ii) Not filed or sought in responsive applications in rail consolidation proceedings, and

(iii) Scheduled to expire on a specific date. Rail carriers acquiring temporary trackage rights need not seek authority from the Board to discontinue the trackage rights as of the expiration date specified under § 1180.4(g)(2)(iii).

3. Amend § 1180.4 by adding new paragraphs (g)(2)(iii) and (iv) to read as follows:

§ 1180.4 Procedures.

* * * * *

(g) * * *

(2) * * *

(iii) To qualify for an exemption under § 1180.2(d)(8) (acquisition of temporary trackage rights), in addition to the notice, the railroad must file a caption summary suitable for publication in the **Federal Register**. The caption summary must be in the following form:

Surface Transportation Board

Notice of Exemption

Finance Docket No.

(1)—Temporary Trackage Rights—(2).

(2) (3) to grant (4) temporary trackage rights to (1) between (5). The temporary trackage rights will be effective on (6). The authorization will expire on (7).

This notice is filed under § 1180.2(d)(8). Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction.

Dated: _____

By the Board.

[Insert name]

_____

Secretary.

The following key identifies the information symbolized in the summary.

(1) Name of the tenant railroad.

(2) Name of the landlord railroad.

(3) If an agreement has been entered use "has agreed," but if an agreement has been reached but not entered use "will agree."

(4) Indicate whether "overhead" or "local" trackage rights are involved.

(5) Describe the temporary trackage rights.

(6) State the date the temporary trackage rights agreement is proposed to be consummated.

(7) State the date the authorization will expire.

(iv) The Board will publish the caption summary in the **Federal Register** within 20 days of the date that it is filed with the Board. The filing of a petition to revoke under 49 U.S.C. 10502(d) does not stay the effectiveness of an exemption.

* * * * *

[FR Doc. 03–3251 Filed 2–7–03; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Parts 20, 21, and 92

RIN 1018–AI84

Migratory Bird Subsistence Harvest in Alaska; Proposed Spring/Summer Subsistence Harvest Regulations for Migratory Birds in Alaska During the 2003 Subsistence Season

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service or we) is proposing to establish spring/summer migratory bird subsistence harvest regulations in Alaska for the 2003 subsistence season. The proposed regulations prescribe frameworks, or outer limits, for dates when harvesting of birds may occur, species that can be taken, and methods and means excluded from use. These proposed regulations were developed under a new co-management process involving the Service, the Alaska Department of Fish and Game, and Alaska Native representatives. They are not intended to be a complete, all-inclusive set of regulations, but are intended to provide an initial framework to legalize customary and traditional subsistence uses of migratory birds in Alaska. The rulemaking is necessary because the regulations governing the subsistence harvest of migratory birds in Alaska are subject to annual public review. This rulemaking proposes regulations that expire on August 31, 2003, for the spring/summer subsistence harvest of migratory birds in Alaska. Seasons will open after April 1 and close prior to September 1.

DATES: You must submit comments on the proposed spring/summer harvest regulations for migratory birds in Alaska on or before March 12, 2003.

ADDRESSES: Send your comments on this proposed rule to the Regional Director, Alaska Region, U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Anchorage, Alaska, 99503 or fax them to (907) 786–3641.

FOR FURTHER INFORMATION CONTACT: Fred Armstrong, (907) 786–3887 or Donna Dewhurst, (907) 786–3499, U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Mail Stop 201, Anchorage, Alaska 99503.

SUPPLEMENTARY INFORMATION:

What Events led to This Action?

In 1916, the United States and Great Britain (on behalf of Canada) signed the Convention for the Protection of Migratory Birds in Canada and the United States (Canada Treaty). The treaty prohibited commercial hunting for, and specified a closed season on the taking of, migratory game birds between March 10 and September 1 of each year. In 1936, the United States and Mexico signed the Convention for the Protection of Migratory Birds and Game Mammals (Mexico Treaty). The Mexico treaty prohibited the taking of wild ducks between March 10 and September 1. Neither treaty took into account and allowed adequately for the traditional harvest of migratory birds by northern peoples during the spring and summer months. This harvest, which had occurred for centuries, was necessary to the subsistence way of life in the north and thus continued despite the closed season.

The Canada treaty and the Mexico treaty, as well as migratory bird treaties with Japan (1972) and Russia (1976), have been implemented in the United States through the Migratory Bird Treaty Act (MBTA). The courts have ruled that the MBTA prohibits the Federal Government from permitting any harvest of migratory birds that is inconsistent with the terms of any of the migratory bird treaties. The more restrictive terms of the Canada and Mexico treaties thus prevented the Federal Government from permitting the traditional subsistence harvest of migratory birds during spring and summer in Alaska. To remedy this situation, the United States negotiated Protocols amending both the Canada and Mexico treaties to allow for spring/summer subsistence harvest of migratory birds by indigenous inhabitants of identified subsistence

harvest areas in Alaska. The U.S. Senate approved the amendments to both treaties in 1997.

What will the Amended Treaty Accomplish?

The major goals of the amended treaty with Canada are to allow for traditional subsistence harvest and to improve conservation of migratory birds by allowing effective regulation of this harvest. The amended treaty with Canada allows permanent residents of villages within subsistence harvest areas, regardless of race, to continue harvesting migratory birds between March 10 and September 1 as they have done for thousands of years. The Letter of Submittal of May 20, 1996 from the Department of State to the White House which officially accompanied the treaty protocol, explains that lands north and west of the Alaska Range and within the Alaska Peninsula, Kodiak Archipelago, and the Aleutian Islands generally qualify as subsistence harvest areas. Treaty language provides for further refinement of this determination by management bodies.

The amendments are not intended to cause significant increases in the take of migratory birds relative to their continental population sizes. Therefore, the Letter of Submittal places limitations on who is eligible to harvest and where they can harvest migratory birds. Anchorage, the Matanuska-Susitna and Fairbanks North Star Boroughs, the Kenai Peninsula roaded area, the Gulf of Alaska roaded area, and Southeast Alaska generally do not qualify as subsistence harvest areas. Limited exceptions may be made so that some individual communities within these excluded areas may qualify for designation as subsistence harvest areas for specific purposes. For example, future regulations could allow some villages in Southeast Alaska to collect gull eggs.

The amended treaty with Canada calls for creation of management bodies to ensure an effective and meaningful role for Alaska's indigenous inhabitants in the conservation of migratory birds. According to the Letter of Submittal, management bodies are to include Alaska Native, Federal, and State of Alaska representatives as equals. Together they will develop recommendations for, among other things: seasons and bag limits, methods and means of take, law enforcement policies, population and harvest monitoring, education programs, research and use of traditional knowledge, and habitat protection. The management bodies will involve village councils to the maximum extent possible in all aspects of management.

The management bodies will submit relevant recommendations to the Service and to the Flyway Councils. Restrictions in harvest levels for the purpose of conservation will be shared equitably by users in Alaska and users in other States, taking into account nutritional needs of subsistence users in Alaska. The treaty amendments are not intended to create a preference in favor of any group of users in the United States or to modify any preference that may exist, nor do they create any private rights of action under U.S. law.

What Has the Service Accomplished Since Ratification of the Amended Treaty?

In 1998, we began a public involvement process to determine how to structure management bodies in order to provide the most effective and efficient involvement for subsistence users. We began by publishing a notice in the **Federal Register** stating that we intended to establish management bodies to implement the spring and summer subsistence harvest (63 FR 49707, September 17, 1998). The Service, the Alaska Department of Fish and Game, and the Native Migratory Bird Working Group held public forums to provide information regarding the amended treaties and to listen to the needs of subsistence users. The Native Migratory Bird Working Group was a consortium of Alaska Natives formed by the Rural Alaska Community Action Program to represent Alaska Native subsistence hunters of migratory birds during the treaty negotiations. We held forums in Nome, Kotzebue, Fort Yukon, Allakaket, Naknek, Bethel, Dillingham, Barrow, and Copper Center. We led additional briefings and discussions at the annual meeting of the Association of Village Council Presidents in Hooper Bay and for the Central Council of Tlingit & Haida Indian Tribes in Juneau. Staff members from National Wildlife Refuges in Alaska also conducted public meetings in the villages within their refuge areas and discussed the amended treaties at those meetings.

On July 1, 1999, we published in the **Federal Register** (64 FR 35674) a notice of availability of an options document, entitled "Forming management bodies to implement legal spring and summer migratory bird subsistence hunting in Alaska." This document described four possible models for establishing management bodies and was released to the public for review and comment. We mailed copies of the document to approximately 1,350 individuals and organizations, including all tribal councils and municipal governments in Alaska, Native regional corporations and their associated nonprofit organizations, the Alaska Department of Fish and Game, Federal land management agencies, representatives of the four Flyway Councils, conservation and other affected organizations, and interested businesses and individuals. We distributed an additional 600 copies at public meetings held in Alaska to discuss the four models. We also made the document available on the U.S. Fish and Wildlife Service Web page.

During the public comment period, we received 60 written comments addressing the formation of management bodies. Of those 60 comments, 26 were from tribal governments, 20 from individuals, 10 from nongovernmental organizations, 2 from the Federal Government, 1 from the State of Alaska, and 1 from the Native Migratory Bird Working Group. In addition to the 60 written comments, 9 of the 10 Federal Subsistence Regional Advisory Councils passed resolutions regarding the four models presented.

On March 28, 2000, we published in the **Federal Register** (65 FR 16405) the Notice of Decision, "Establishment of Management Bodies in Alaska To Develop Recommendations Related to the Spring/Summer Subsistence Harvest of Migratory Birds." This notice described the establishment and organization of management bodies.

Based on the wide range of views expressed on the options document, the decision incorporated key aspects of two of the models. The decision established one statewide management body consisting of 1 Federal member, 1 State member, and 7–12 Alaska Native members, with each component serving as equals. Decisions and recommendations of this management body will be by consensus wherever possible; however, if a vote becomes necessary, each component, Federal, State, and Native, will have one vote. This body will set a framework for annual regulations for spring and summer subsistence harvest of migratory birds.

The Alaska Regional Director of the Service divided Alaska into 12 geographic regions based on common subsistence resource use patterns and the 12 Alaska Native Regional Corporation boundaries under the Alaska Native Claims Settlement Act. Despite using the Alaska Native Regional Corporation boundaries, we are not working directly with the Regional Corporations in this program, and are instead working with the Alaska Native non-profit groups and local governments in those corresponding

regions. Eleven regional bodies have elected to participate in the statewide management body at this time. Out of all of the regions represented in the statewide management body, only eight regions actually represent included areas (50 CFR part 92.5). These eight eligible regions submitted proposals to open harvest in 2003.

In April 2000, we met with the Alaska Department of Fish and Game and the Native Migratory Bird Working Group to discuss bylaws for the statewide management body. At that meeting, participants decided to name the statewide management body the "Alaska Migratory Bird Co-management Council." On October 30, 2000, the Co-management Council convened for the first time to establish organizational guidelines and to begin preparation for the development of recommendations for regulations. On December 17, 2001, the Co-management Council met to refine organizational procedures and to discuss Alaska Frameworks/Guidelines for development of regulations for the first harvest season.

Over the winter of 2001/2002, the regional management bodies submitted recommendations for regulating the harvest within their regions. Recommendations were received only from the eight regions with communities included in the 2003 proposed harvest. The other four regions did not send in recommendations. On May 14, 2002, the Co-management Council met to make final recommendations on harvest dates and methods and means of harvest for the 2003 season as necessary to protect the migratory bird resource. The Co-management Council recommendations were sent to the four Flyway Councils for comments, and presentations were made at July 2002 meetings of the Pacific and Central Flyway Councils. The Co-management Council's harvest recommendations were initially presented to the Service Regulations Committee (SRC) on August 31, 2002, with final SRC action on October 24, 2002.

On April 8, 2002, we published in the **Federal Register** (67 FR 16709) a proposed rule to establish procedures for implementing a spring/summer migratory bird subsistence harvest in Alaska. The proposed rule provided for a public comment period of 46 days. We mailed copies of the proposed rule to more than 1,200 individuals and organizations that were on the project mailing list. We conducted two public meetings in Anchorage where people could ask questions or provide formal comment.

By the close of the public comment period on May 24, 2002, we had received written responses from 11 entities. Four of the responses were from individuals, five from organizations, one from the Alaska Legislature, and one from the Alaska Department of Fish and Game. On August 16, 2002, we published in the **Federal Register** (67 FR 53511) a final rule, which established procedures for incorporating subsistence management into the continental migratory bird management program. These procedural regulations establish an annual procedure to develop harvest guidelines for implementation of a spring/summer migratory bird subsistence harvest.

This is the first year that we will prescribe annual frameworks, or outer limits, for dates when subsistence harvest of birds may occur, the list of species that may be taken, methods and means excluded from use, etc. The proposed frameworks are not intended to be a complete, all-inclusive set of regulations, but are intended to provide an initial framework to legalize customary and traditional subsistence uses of migratory birds in Alaska during the spring and summer. The proposed rulemaking is necessary because the regulations governing the subsistence harvest of migratory birds in Alaska are subject to annual establishment and public review, *i.e.*, the season is closed unless opened. This proposed rule introduces regulations for reorganization of the regional areas, harvest seasons, methods, and means related to taking of migratory birds for subsistence uses in Alaska during the spring/summer of 2003. The creation of part 92 also necessitates the need for nonsubstantive changes to parts 20 and 21, and we have proposed these changes in the rule portion of this document.

How Did the Service Meet the International Aspects of the Migratory Bird Treaties?

The Service's authority arises from the four international treaties implemented by the Migratory Bird Treaty Act. Formerly, the 1916 Convention between the United States and Great Britain on behalf of Canada and the 1936 treaty with the United Mexican States contained language that precluded most spring/summer subsistence harvest of migratory birds in Alaska. Both of these treaties have now been amended to allow the U.S. government to implement subsistence harvests during the closed season by indigenous inhabitants of identified subsistence harvest areas in Alaska. Specifically, the Protocol with Canada, Article II of the Treaty was revised to allow migratory birds and their eggs to be harvested by the indigenous inhabitants of the State of Alaska, regardless of the closed season provisions in Article II.

Although the Protocol with the United Mexican States was amended to allow for the taking of wild ducks by indigenous inhabitants of Alaska, the hunting season limitation specified in Article II Part C was not altered. Therefore, the length of the Alaskan spring/summer subsistence harvest of migratory birds cannot exceed the period specified within the Mexican convention, which is 4 months. Historically, we have interpreted this restriction as 124 days. Therefore, to be consistent with the Mexican Treaty, subsistence harvest between March 11 and September 1 must be limited to 124 days. The above interpretation of season length came late in this initial regulatory process. The Co-management Council had developed season recommendations without being aware of a 124-day season limitation; therefore, the Service has elected to open the season on April 2, 2003, and allow the "Closed Season Policy" (53 FR 16877, May 12, 1988) to remain in effect through April 1. Under the "Closed Season Policy," the closed season is selectively enforced to protect those species for which there is greatest conservation concern. Following April 1, 2003, the "Closed Season Policy" will no longer be in effect. The regulations in 50 CFR part 20 will apply to all migratory bird harvests by all people in Alaska from September 1, 2003 to March 11, 2004.

The 1974 Migratory Bird Treaty with Japan provides for "taking of migratory birds by Eskimos, Indians, and Indigenous peoples of the Trust Territory of the Pacific Islands for their own food and clothing." The Japan Treaty further stipulates that "Open seasons for harvesting migratory birds may be decided by each Contracting Party respectively. Such harvesting seasons shall be set so as to avoid their principal nesting seasons and to maintain their populations in optimum numbers." In conformance with this provision, the Service developed a provision that would allow the traditional subsistence harvesting of eggs while also providing protection during the most critical part of the production period. Using ducks and geese as the initial model (with applications later considered for seabirds), a 30-day closed period targets the last two weeks of the incubation period and the first two weeks of the brood rearing period. This concept still permits an opportunity for traditional

egg harvesting during the early period after egg laying, but protects the later developing eggs and newly hatched young. To determine the best protective closure periods for their harvest regions based on mean nest initiation and egg laying dates, regional management bodies within the Co-management Council worked with the Service's Division of Migratory Bird Management in Anchorage, Alaska. Closures in some regions were geographically subdivided to provide the best protection, while other regions were provided separate closures for waterfowl and seabirds (primarily murres).

In this proposed rule, the Yukon-Kuskokwim Delta region requested flexibility to set and announce the annual mid-season principal nesting closure period, based on local information, such as timing of snow melt and initiation of nesting. Thus, the closure period in the Yukon-Kuskokwim Delta region will be announced by the Alaska Regional Director or his or her designee, after consultation with biologists in the field, local subsistence users, and the region's Waterfowl Conservation Committee. A press release announcing the actual closure dates will be forwarded to regional newspapers and radio and television stations and posted in village post offices and stores.

How Will the Service Ensure That This New Legalized Subsistence Harvest Will Not Raise Overall Migratory Bird Harvest?

The Preamble of the Protocol amending the Canada Treaty states one of its goals is to allow a traditional subsistence hunt while also improving conservation of migratory birds through effective regulation of this hunt. In addition, the Preamble notes that, by sanctioning a traditional subsistence hunt, the Parties do not intend to cause significant increases in the take of migratory birds, relative to their continental population sizes, compared to the take that is presently occurring. Any such increase in take as a result of the types of hunting provided for in the Protocol would be inconsistent with the Convention.

Eligibility to harvest under these new regulations is limited to permanent residents, regardless of race, in villages located within the Alaska Peninsula, Kodiak Archipelago, the Aleutian Islands, or in areas north and west of the Alaska Range (50 CFR part 92.5). These geographical restrictions open the initial spring/summer subsistence migratory bird harvest to only about 13% of Alaska residents. High-population areas such as Anchorage, the Matanuska-Susitna and Fairbanks North Star boroughs; the Kenai Peninsula roaded area; the Gulf of Alaska roaded area; and Southeast Alaska are currently excluded from the eligible subsistence harvest areas. The eligible subsistence harvest areas were determined by a history of customary and traditional use of migratory birds during the spring and summer as provided in the Protocol amending the Canada Treaty. Adoption of annual harvest regulations will legalize the spring/summer subsistence harvest, but is not intended to initiate or somehow increase it, since subsistence harvest has a long history of prior use in these regions. In addition, some regions, such as Bristol Bay and the Northwest Arctic, indicated that local interest in harvesting birds was declining due to increased commercial availability of alternative foods.

Alaska Natives have long-standing conservation ethics and traditions that are passed from generation to generation through the teachings of elders. These customary and traditional teachings have provided for the perpetuation of migratory birds prior to the ratification of the Canada and Mexico treaty amendments and will continue to do so following the opening of the legal subsistence season. Ultimately it is these components of Native Alaskan culture, rather than regulations, that will provide the more restrictive limits on the harvest of migratory birds.

We have long recognized that a legal and equitable harvest opportunity should be provided during traditional harvesting periods within a regulated framework that ensures conservation of the resource. Without regulating this ongoing activity, populations of the most heavily harvested species, principally waterfowl, could experience declines, and the recovery of depressed populations would be more difficult. Legalizing the subsistence harvest could make any documentation of the take easier and any reporting more accurate. In addition, the regulations will become part of the comprehensive, continental system of migratory bird management, thus integrating subsistence uses with other uses for the first time. Further, the Alaska subsistence migratory bird harvest is presently thought to constitute only approximately 2–3% of the aggregate national migratory bird harvest.

Under the prior "Closed Season Policy" (53 FR 16877, May 12, 1988), it was the position of the Service to emphasize enforcement of restrictions on species of greatest conservation concern. Since its implementation, information on the "Closed Season Policy" has been broadly distributed in Alaska. We believe it is reasonable to assume that most subsistence users were aware of the policy and continued their traditional harvest of non-protected migratory bird species, so few new subsistence users should be attracted by legalizing their customary and traditional harvests. Indications are that subsistence harvests of migratory birds have, in the past, been generally under reported due to fear of prosecution. Legalization of the harvest could make people more comfortable about reporting take. This could lead to more accurate reporting and ultimately help in regulation setting and bird conservation.

Subsistence harvest has been monitored for the past 14 years through the use of annual household surveys in the most heavily used subsistence harvest areas (*e.g.*, Yukon-Kuskokwim Delta). Continuation of this monitoring would enable tracking of any significant changes or trends in levels of harvest and user participation after legalization of the harvest. The harvest survey forms that we used to collect information were not approved by the Office of Management and Budget (OMB). We are initiating the process to request OMB approval of these forms, and we will publish a notice in the **Federal Register** in the near future requesting public comment on this information collection. We will not conduct or sponsor these surveys until we obtain OMB approval of this information collection. If OMB approves the forms, we intend to begin a Statewide program to gather information that would provide a more comprehensive view of the overall subsistence harvest and more species-specific harvest data, especially on shore birds.

How Did the Service Come Up With the Methods and Means Prohibitions?

The Co-Management Council in general adopted the existing methods and means prohibitions that occur in the Federal (50 CFR part 20) and Alaska (AS 16.05.940(17)) migratory bird hunting regulations. Some exceptions were made to allow the continuation of customary and traditional spring harvest methods. For example, an exception was made to allow use of live birds as decoys for the harvest of auklets on Diomede Island.

Why Are No Daily Harvest Limits Proposed Under These Subsistence Regulations?

The concept of harvest or bag limits is difficult to apply to the traditional subsistence harvest. A subsistence harvest involves opportunistic use of resources when they are available or

abundant, usually for short periods such as bird migration stopovers. Also, subsistence hunting traditionally is often not for individual purposes, meaning hunters are taking birds to be shared within the community, among several families. Historically, local survival depended on sharing which is a cultural value broadly taught and practiced both within and between communities. Often these designated village hunters are proficient in the techniques necessary to take specific species, for example, hunting murres from breeding areas along seacliff ledges. A restrictive daily limit for individual subsistence hunters would significantly constrain customary and traditional practices and limit opportunistic seasonal harvest opportunities within the Alaska subsistence communities.

The Co-management Council does recognize that setting harvest limits may become necessary, especially within local areas and individual species. However, these initial 2003 harvest regulations were not designed to be a complete, all-inclusive set of regulations, but intended to provide an initial framework to formally recognize and provide opportunities for the customary and traditional subsistence uses of migratory birds in Alaska. Within these initial frameworks, the first step in limiting the overall subsistence harvest was to establish a closed species list, that included regional restrictions. Establishing a 30-day closed period during the breeding season also limited the harvest impacts. The eventual need to further adjust levels of harvest take, either regionally or overall, is recognized and will be dealt with by the Co-management Council based on recommendations by their Technical Committee on an individual species basis. These decisions will likely be based on bird population status and past subsistence harvest data. Concepts such as community harvest limits and/or designated hunters may be considered to accommodate customary and traditional subsistence harvest methods.

How Did the Service Come Up With the List of Birds Open to Harvest?

The Service believed that it was necessary to develop a list of bird species that would be open to subsistence harvest during the spring/summer season. The original list was compiled from subsistence harvest data, with several species added based on their presence in Alaska without written records of subsistence take. The original intent was for the list to be reviewed by the regional management bodies as a check list. The list was adopted by the Co-management Council as part of the guidelines for the 2003 season. Most of the regions adopted the list as written; however, two regions created their own lists. One regional representative explained that it would take much more time than was available for his region to reduce the list and that, once a bird was removed, it would be more difficult to add it later. Going with the original list was viewed as protecting hunters from prosecution for the rare take of an unlisted bird. To understand this rationale, one must be aware that subsistence hunting is generally opportunistic and does not usually target individual species. Native language names for birds often group closely related species, with no separate names for species within these groups. Also, preferences for individual species differ greatly between villages and individual hunters. As a result, regions are hesitant to remove birds from the list until they are certain they are not taken. The list therefore contains some species that are taken infrequently and opportunistically, but this is still part of the subsistence tradition. The Co-Management Council initially decided to call this list "potentially harvested birds" versus "traditionally harvested birds" because a detailed written documentation of the customary and traditional use patterns for the 106 species listed had not yet been conducted. However, this terminology was leading to some confusion so the Service renamed the list "subsistence birds" to cover the birds open to harvest in 2003.

The "customary and traditional use" of a wildlife species has been defined in Federal regulations (50 CFR part 100.4) as a long-established, consistent pattern of use, incorporating beliefs and customs that have been transmitted from generation to generation. Much of the customary and traditional use information has not been documented in written form, but exists in the form of oral histories from elders, traditional stories, harvest methods taught to children, and traditional knowledge of the birds' natural history shared within a village or region. The only available empirical evidence of customary and traditional use of the harvested bird species comes from Alaska subsistence migratory bird harvest surveys, conducted by Service personnel and contractors and transferred to a computerized database. Due to difficulties in bird species identification, shorebird harvest information has been lumped into "large shorebird" and "small shorebird" categories. In reality, Alaska subsistence harvests are also conducted in this manner, generally with no targeting or even recognition of individual shorebird species in most cases. In addition, red-faced cormorants, trumpeter swans, Aleutian terns, whiskered auklets, short-eared owls and others have not been targeted in subsistence harvest questionnaires, so little or no numerical harvest data exists. Available summaries of subsistence harvest data include: Page and Wolf 1997; Trost and Drut 2001, 2002; Wentworth 1998; Wentworth and Wong 2001; and Wong and Wentworth 2001.

What Are Birds of Conservation Concern and How Do They Apply to Subsistence Harvest?

Birds of Conservation Concern (BCC) 2002 (FWS 2002) is the latest document in a continuing effort by the Service to assess and prioritize bird species for conservation purposes (FWS 1982, 1987, 1995; and U.S. Department of the Interior 1990). It identifies bird species at risk due to inherently small populations or restricted ranges, severe population declines, or imminent threats, and thus in need of increased conservation attention to maintain or stabilize populations. The legal authority for this effort is the Fish and Wildlife Conservation Act (FWCA) of 1980, as amended. The 1988 amendment (Pub. L. 100–653, Title VIII) to the FWCA requires the Secretary of the Interior (16 U.S.C. 2901–2912), through the Service, to "identify species, subspecies, and populations of all migratory nongame birds that, without additional conservation actions, are likely to become candidates for listing under the Endangered Species Act (ESA) of 1973, as amended (16 U.S.C. 1531–1543)."

In actuality, and fortunately, few of the species on the BCC lists are in such a precarious state that they will have to be considered for listing as endangered or threatened in the near future. Our goal is to implement preventive management measures that will serve to keep these species off the endangered species list. Proactive conservation clearly is more cost-effective than the extensive recovery efforts required once a species is federally listed under the ESA. The BCC lists are intended to stimulate coordinated and collaborative proactive conservation actions (including research, monitoring, and management) among Federal, State, and private partners. By focusing attention on these highest priority species, the Service hopes to promote greater study and protection of the habitats and ecological communities upon which

these species depend, thereby ensuring the future of healthy avian populations and communities (For more detailed information on the exact criteria used to select species for consideration and inclusion on the BCC lists, *see* FWS 2002).

Of the 106 species for which the Service proposes to establish regulations allowing subsistence hunting in Alaska, 22 are on BCC lists at one or more scales (*e.g.*, National, FWS Regions, or Bird Conservation Regions—Alaska). The Service considers one additional species (Trumpeter Swan) to be "sensitive" because of its small population size and limited breeding distribution in Alaska. Of the 22 species on BCC lists, 14 are technically considered "gamebirds" (as defined by bilateral migratory bird conventions with Canada and Mexico), although frameworks allowing sport hunting seasons have never been established for any of them in the 85-year history of the Migratory Bird Treaty Act. These species are included on the list of birds that could be hunted for subsistence at the request of the Co-management Council based on a continuing history of customary and traditional use, and the fact that they will continue to be taken for subsistence in the future. Although designation of these species by the Service as "birds of conservation concern" or "sensitive" does not automatically exclude them from consideration for subsistence hunting, we believe that it is incumbent upon the Service to make sure that appropriate conditions are in place to ensure that a limited subsistence harvest of these species will not worsen their conservation status.

The following 23 species are birds of conservation concern or considered sensitive for other reasons. We request public comments as to whether or not these bird species should be removed from the list of birds open for the spring/summer subsistence harvest in Alaska.

Family Gaviidae

Red-throated Loon (*Gavia stellata*)
Yellow-billed Loon (*Gavia adamsii*)

Family Phalacrocoracidae

Red-faced Cormorant (*Phalacrocorax urile*)

Family Anatidae

Trumpeter Swan (*Cygnus buccinator*)

Family Charadriidae

American Golden-Plover (*Pluvialis dominicus*)
Pacific Golden-Plover (*Pluvialis fulva*)

Family Haematopodidae

Black Oystercatcher (*Haematopus bachmani*)

Family Scolopacidae

Solitary Sandpiper (*Tringa solitaria*)
Upland Sandpiper (*Bartramia longicauda*)
Whimbrel (*Numenius phaeopus*)
Bristle-thighed Curlew (*Numenius tahitiensis*)
Hudsonian Godwit (*Limosa haemastica*)
Bar-tailed Godwit (*Limosa lapponica*)
Marbled Godwit (*Limosa fedoa*)
Black Turnstone (*Arenaria melanocephala*)
Red Knot (*Calidris canutus*)
Dunlin (*Calidris alpina*)
Buff-breasted Sandpiper (*Tryngites subruficollis*)

Family Laridae

Red-legged Kittiwake (*Rissa brevirostris*)
Arctic Tern (*Sterna paradisaea*)
Aleutian Tern (*Sterna aleutica*)

Family Alcidae

Whiskered Auklet (*Aethia pygmaea*)

Family Strigidae

Short-eared Owl (*Asio flammeus*)

In addition to whether or not these birds should be open for subsistence hunting, we specifically request information and comments from the public on the following four questions regarding the above list of bird species. Responses may reflect personal knowledge or opinion, or be based on a review of historical or contemporary documents and published literature.

1. What measurable impacts do you think a limited subsistence harvest would have on populations of these species?

2. Which bird species are more important in terms of food value and/or customary and traditional uses?

3. Apart from their designation as "birds of conservation concern," are there particular reasons why subsistence harvest should be restricted or closed for any of these species?

4. In the event that subsistence hunting were allowed for some or all of these species, do you believe that certain conditions should be imposed to ensure that the population status of these species is maintained or improved? If so, what would you recommend?

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Public Comments Solicited

The Department of the Interior's policy is, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. If you wish to comment, you may submit your comments by any one of several

methods. You may mail or fax comments to the address indicated under the caption **ADDRESSES.** You may hand-deliver comments to the address indicated under the caption **ADDRESSES.** Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. In some circumstances, we would also withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

You may inspect comments received on the proposed regulations during normal business hours at the Service's office in Anchorage, Alaska. We will consider, but possibly may not respond in detail to, each comment. We will summarize all comments received during the comment period and respond to them after the closing date in any final rules.

Because we conducted an extensive public involvement process prior to formulating these regulations, we are soliciting comments on this proposed rule for only 30 days. We need to finalize these regulations as soon as possible to open the first legal subsistence harvest in April 2003.

Statutory Authority

We derive our authority to issue these proposed regulations from the four migratory bird treaties with Canada, Mexico, Japan, and Russia, and from the Migratory Bird Treaty Act of 1918 (16 U.S.C. 703 *et seq.*), which implements the 1916 Convention, as amended, between the United States and Great Britain (for Canada) and other treaties for the protection of migratory birds. Specifically, these regulations are issued pursuant to 16 U.S.C. 712 (1), which authorizes the Secretary of the Interior to "issue such regulations as may be necessary to assure that the taking of migratory birds and the collection of their eggs, by the indigenous inhabitants of the State of Alaska, shall be permitted for their own nutritional and other essential needs, as determined by the Secretary of the Interior, during seasons established so as to provide for the preservation and maintenance of stocks of migratory birds."

Executive Order 12866

The E.O. 12866 requires each agency to write regulations that are easy to understand. We invite your comments on how to make this rule easier to understand, including answers to questions such as the following:

(1) Are the requirements in the rule clearly stated?

(2) Does the rule contain technical language or jargon that interferes with its clarity?

(3) Does the format of the rule (grouping and order of sections, use of headings, paragraphing, *etc.*,) aid or reduce its clarity?

(4) Would the rule be easier to understand if it were divided into more (but shorter) sections?

(5) Is the description of the rule in the "Supplementary Information" section of the preamble helpful in understanding the rule?

(6) What else could we do to make the rule easier to understand?

Send a copy of any comments that concern how we could make this rule easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street NW., Washington, DC 20240. You may also e-mail the comments to this address: *Exsec@ios.doi.gov.*

The Office of Management and Budget (OMB) has determined that this document is not a significant rule subject to OMB review under E.O. 12866.

a. This rule will not have an annual economic effect of $100 million or adversely affect an economic sector, productivity, jobs, the environment, or other units of government. A cost-benefit and economic analysis is not required. This rule is administrative, technical, and procedural in nature, establishing the procedures for implementing spring and summer harvest of migratory birds as provided for in the amended Canada Treaty. The rule does not provide for new or additional hunting opportunities and therefore will have minimal economic or environmental impact.

This rule benefits those participants who engage in the subsistence harvest of migratory birds in Alaska in two identifiable ways: first, participants receive the consumptive value of the birds harvested and second, participants get the cultural benefit associated with the maintenance of a subsistence economy and way of life. The U.S. Fish and Wildlife Service can estimate the consumptive value for birds harvested under this rule but does not have a dollar value for the cultural benefit of maintaining a subsistence economy and way of life.

The economic value derived from the consumption of the harvested migratory birds has been estimated using the results of a paper by Robert J. Wolfe titled "Subsistence Food Harvests in Rural Alaska, and Food Safety Issues," August 13, 1996." Using data from Wolfe's paper and applying it to the areas that will be included in this process, a maximum economic value of $6 million is determined. This is the estimated economic benefit of the consumptive part of this rule for participants in subsistence hunting. The cultural benefits of maintaining a subsistence economy and way of life can be of considerable value to the participants, and these benefits are not included in this figure.

b. This rule will not create inconsistencies with other agencies' actions. We are the Federal agency responsible for the management of migratory birds, coordinating with the State of Alaska's Department of Fish and Game on management programs within Alaska. The State of Alaska is a member of the Alaska Migratory Bird Co-management Council.

c. This rule will not materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients. The rule does not affect entitlement programs.

d. This rule will not raise novel legal or policy issues. The subsistence harvest regulations will go through the same National regulatory process as the existing migratory bird hunting regulations in 50 CFR part 20.

Regulatory Flexibility Act

The Department of the Interior certifies that this rule will not have a significant economic effect on a substantial number of small entities as defined under the Regulatory Flexibility Act (5 U.S.C. 601 *et. seq.*). An initial regulatory flexibility analysis is not required. Accordingly, a Small Entity Compliance Guide is not required. The rule legalizes a pre-existing subsistence activity, and the resources harvested will be consumed by the harvesters or persons within their local community.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act, as discussed in the E.O. 12866 section above.

a. This rule does not have an annual effect on the economy of $100 million or more. It will legalize and regulate a

traditional subsistence activity. It will not result in a substantial increase in subsistence harvest or a significant change in harvesting patterns.

The commodities being regulated under this rule are migratory birds. This rule deals with legalizing the subsistence harvest of migratory birds and, as such, does not involve commodities traded in the marketplace. A small economic benefit from this rule derives from the sale of equipment and ammunition to carry out subsistence hunting. Most, if not all, businesses that sell hunting equipment in rural Alaska would qualify as small businesses. The U.S. Fish and Wildlife Service has no reason to believe that this rule will lead to a disproportionate distribution of benefits.

b. This rule will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. This rule does not deal with traded commodities and, therefore, does not have an impact on prices for consumers.

c. This rule does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This rule deals with the harvesting of wildlife for personal consumption. It does not regulate the marketplace in any way to generate effects on the economy or the ability of businesses to compete.

Unfunded Mandates Reform Act

We have determined and certify pursuant to the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et. seq.*) that this rule will not impose a cost of $100 million or more in any given year on local, State, or tribal governments or private entities. A statement containing the information required by this Act is therefore not necessary.

Participation on regional management bodies and the Co-management Council will require travel expenses for some Alaska Native organizations and local governments. In addition they will assume some expenses related to coordinating involvement of village councils in the regulatory process. Total coordination and travel expenses for all Alaska Native organizations are estimated to be less than $300,000 per year. In the Notice of Decision, 65 FR 16405, March 28, 2000, we identified 12 partner organizations to be responsible for administering the regional programs. When possible, we will make annual grant agreements available to the partner organizations to help offset their expenses. The Alaska Department of Fish and Game will incur expenses for travel to the Co-management Council meetings and to meetings of the regional management bodies. In addition, the State of Alaska will be required to provide technical staff support to each of the regional management bodies and to the Co-management Council. Expenses for the State's involvement may exceed $100,000 per year, but should not exceed $150,000 per year.

Paperwork Reduction Act

This rule has been examined under the Paperwork Reduction Act of 1995 and has been found to contain no information collection requirements. We are, however, beginning the process to request OMB approval of associated voluntary annual household surveys used to determine levels of subsistence take. We will publish a notice in the **Federal Register** in the near future requesting public comment on that information collection. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Federalism Effects

As discussed in the E.O. 12866 and Unfunded Mandates Reform Act sections above, this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment under Executive Order 13132. We are working with the State of Alaska on development of these regulations.

Civil Justice Reform—Executive Order 12988

In accordance with Executive Order 12988, the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and that it meets the requirements of section 3 of the Order.

Takings Implication Assessment

This rule is not specific to particular land ownership, but applies to the harvesting of migratory bird resources throughout Alaska. Therefore, in accordance with Executive Order 12630, this rule does not have significant takings implications.

Government-to-Government Relations With Native American Tribal Governments

In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations With Native American Tribal Governments" (59 FR 22951), and Executive Order 13175, 65 FR 67249 (November 6, 2000), concerning consultation and coordination with Indian Tribal Governments, we have consulted with Alaska tribes, evaluated the rule for possible effects on tribes or trust resources and have determined that there are no significant effects. This rule establishes procedures by which the individual tribes in Alaska will be able to become significantly involved in the annual regulatory process for spring and summer subsistence harvesting of migratory birds and their eggs. The rule will legalize the subsistence harvest for tribal members, as well as for other indigenous inhabitants.

Endangered Species Act Consideration

Prior to issuance of annual spring and summer subsistence regulations, we will consider provisions of the Endangered Species Act of 1973, as amended, (16 U.S.C. 1531–1543; hereinafter the Act) to ensure that harvesting is not likely to jeopardize the continued existence of any species designated as endangered or threatened or modify or destroy their critical habitats, and that it is consistent with conservation programs for those species. Consultations under section 7 of this Act conducted in connection with the environmental assessment for the annual subsistence take regulations may cause us to change these regulations.

National Environmental Policy Act Consideration

We previously determined that establishing the procedures for future development of subsistence harvest regulations does not require an environmental assessment because the impacts to the environment are negligible. We therefore filed a categorical exclusion dated April 30, 1999. Copies of the categorical exclusion are available at the address shown in the section of this document entitled **ADDRESSES.** An environmental assessment was prepared in September 2002 for the 2003 subsistence harvest regulations.

Energy Supply, Distribution or Use (Executive Order 13211)

On May 18, 2001, the President issued Executive Order 13211 on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. Because this rule only allows for traditional subsistence harvest and improves conservation of migratory birds by allowing effective regulation of this harvest, it is not a significant regulatory action under Executive Order 12866. Consequently it is not expected to

significantly affect energy supplies, distribution, and use. Therefore, this action is a not significant energy action under Executive Order 13211 and no Statement of Energy Effects is required.

List of Subjects

Part 20

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

Part 21

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

Part 92

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Subsistence, Treaties, Wildlife.

For the reasons set out in the preamble, we propose to amend title 50, chapter I, subchapters B and F, of the Code of Federal Regulations as follows:

PART 20—Migratory Bird Hunting

1. The authority citation for part 20 continues to read as follows:

Authority: 16 U.S.C. 703–712 and 742 a–j; Pub. L. 106–108.

2. Amend § 20.2 by adding paragraph (e) to read as follows:

§ 20.2 Relation to other provisions.

* * * * *

(e) Migratory Bird Subsistence Harvest in Alaska. The provisions of this part are not applicable to the migratory bird subsistence harvest in Alaska issued pursuant to part 92 unless specifically referenced in part 92 of this subchapter.

3. Amend § 20.22 by revising the existing paragraph to read as follows:

§ 20.22 Closed seasons.

No person may take migratory game birds during the closed season except as provided in parts 21 and 92 of this chapter.

§ 20.132 [Removed and Reserved]

4. Remove and reserve § 20.132.

PART 21—MIGRATORY BIRD PERMITS

5. The authority citation for part 21 continues to read as follows:

Authority: Pub. L. 95–616, 92 Stat. 3112 (16 U.S.C. 712(2)); Pub. L. 106–108.

6. Amend § 21.11 by revising the section to read as follows:

§ 21.11 General permit requirements.

No person may take, possess, import, export, transport, sell, purchase, barter, or offer for sale, purchase, or barter, any migratory bird, or the parts, nests, or eggs of such bird except as may be permitted under the terms of a valid permit issued pursuant to the provisions of this part and part 13, or as permitted by regulations in this part, or part 20 of this subchapter (the hunting regulations), or part 92 of subchapter F of this chapter (the spring/summer subsistence harvest regulations). Birds taken or possessed under this part in subsistence included areas of Alaska are subject to this part and not to part 92. Subsistence included areas are defined in § 92.5(a).

PART 92—MIGRATORY BIRD SUBSISTENCE HARVEST IN ALASKA

7. The authority for part 92 continues to read as follows:

Authority: 16 U.S.C. 703–712.

Subpart A—General Provisions

8. In subpart A amend § 92.4 by revising the definition for "migratory bird" to read as follows:

§ 92.4 Definitions.

* * * * *

Migratory bird, for the purposes of this part, means the same as defined in § 10.12 of this chapter. Species eligible to harvest are listed in § 92.32.

* * * * *

9. In subpart A amend § 92.5 by revising paragraphs (b) and (d) to read as follows:

§ 92.5 Who is eligible to participate?

* * * * *

(b) *Excluded areas.* Village areas located in Anchorage, the Matanuska-Susitna or Fairbanks North Star Boroughs, the Kenai Peninsula roaded area, the Gulf of Alaska roaded area, or Southeast Alaska generally do not qualify for a spring or summer harvest. Communities located within one of these areas may petition the Co-management Council through their designated regional management body for designation as a spring and summer subsistence harvest area. The petition must state how the community meets the criteria identified in paragraph (c) of this section. The Co-management Council will consider each petition and will submit to the U.S. Fish and Wildlife Service any recommendations to designate a community as a spring and summer subsistence harvest area. The U.S. Fish and Wildlife Service will publish any approved recommendations to designate a community as a spring and summer subsistence harvest area in subpart D of this part. All areas outside Alaska are ineligible.

* * * * *

(d) *Participation by permanent residents of excluded areas.* Immediate family members that are permanent residents of excluded areas may participate in the customary spring and summer subsistence harvest in a village's subsistence harvest area with the permission of the village council, where it is appropriate to assist indigenous inhabitants in meeting their nutritional and other essential needs or for the teaching of cultural knowledge to or by their immediate family members. Eligibility for participation will be developed and recommended by the Co-management Council and adopted or amended by regulations published in subpart D of this part.

10. In subpart A amend § 92.6 by revising the section to read as follows:

§ 92.6 Use and possession of migratory birds.

Harvest and possession of migratory birds must be done using nonwasteful taking. You may not take birds for purposes other than human consumption. You may not sell, offer for sale, purchase, or offer to purchase migratory birds, their parts, or their eggs taken under this part. Nonedible by-products of migratory birds taken for food may be used for other non-commercial purposes only by individuals qualified to possess those birds. You may possess migratory birds, their parts, and their eggs, taken under this part, only if you are an eligible person as determined in § 92.5.

Subpart B—Program Structure

11. In subpart B amend § 92.10 by revising paragraph (b)(1) to read as follows:

§ 92.10 Alaska Migratory Bird Co-Management Council.

* * * * *

(b) * * *

(1) The Federal and State governments will each seat one representative. The Federal representative will be appointed by the Alaska Regional Director of the U.S. Fish and Wildlife Service, and the State representative will be appointed by the Commissioner of the Alaska Department of Fish and Game. Regional partner organizations may seat 1 representative from each of the 12 regions identified in § 92.11(a).

* * * * *

12. In subpart B, amend § 92.11 by revising paragraphs (a) and (b) introductory text to read as follows:

§ 92.11 Regional management areas.

(a) *Regions identified.* To allow for maximum participation by residents of

subsistence eligible areas, the Alaska Regional Director of the Service established 12 geographic regions based on common subsistence resource use patterns and the 12 Alaska Native Regional Corporation boundaries established under the Alaska Native Claims Settlement Act. Despite using the Alaska Native Regional Corporation boundaries, we are not working directly with the Regional Corporations in this program and are instead working with the Alaska Native nonprofit groups and local governments in those corresponding regions. You may obtain records and maps delineating the boundaries of the 12 regions from the U.S. Department of the Interior, Bureau of Land Management, Alaska State Office, 222 West 7th Ave., No. 13, Anchorage, AK 99513. The regions are identified as follows:

(1) Aleutian/Pribilof Islands;
(2) Kodiak Archipelago;
(3) Bristol Bay;
(4) Yukon/Kuskokwim Delta;
(5) Bering Strait/Norton Sound;
(6) Northwest Arctic;
(7) North Slope;
(8) Interior;
(9) Southeast;
(10) Gulf of Alaska;
(11) Upper Copper River; and
(12) Cook Inlet.

(b) *Regional partnerships.* The U.S. Fish and Wildlife Service will establish partner agreements with at least 1 partner organization in each of the 12 regions. The partner organization identified must be willing and able to coordinate the regional program on behalf of all subsistence hunters within that region. A regional partner will:

* * * * *

Subpart C—General Regulations Governing Subsistence Harvest

13. In subpart C, add § 92.20 to read as follows:

§ 92.20 Methods and means.

You may not use the following devices and methods to harvest migratory birds:

(a) Swivel guns, shotguns larger than 10 gauge, punt guns, battery guns, machine guns, fish hooks, poisons, drugs, explosives, or stupefying substances;

(b) Shooting from a sinkbox or any other type of low-floating device that affords the hunter a means of concealment beneath the surface of the water;

(c) Hunting from any type of aircraft;

(d) Taking waterfowl and other species using live birds as decoys, except for auklets on Diomede Island (Use of live birds as decoys is a customary and traditional means of harvesting auklets on Diomede Island);

(e) Hunting with the aid of recorded bird calls;

(f) Using any type of vehicle, aircraft, or boat for the purpose of concentrating, driving, rallying, or stirring up of any migratory bird, except boats may be used to position a hunter;

(g) The possession or use of lead or other toxic shot while hunting all migratory birds (Approved nontoxic shot types are listed in § 20.21(j) of this subchapter);

(h) Shooting while on or across any road or highway.

Subpart D—Annual Regulations Governing Subsistence Harvest

14. In subpart D, amend § 92.30 by adding an introductory paragraph to read as follows:

§ 92.30 General overview of regulations.

These regulations establish a spring/summer migratory bird subsistence harvest in Alaska. The regulations list migratory bird species that are authorized for harvest, species that are not authorized for harvest, season dates, and dates for a 30-day closure to protect nesting birds. The Co-Management Council will review and, if necessary, modify these harvest regulations on an annual basis, working within the schedule of the Federal late season waterfowl regulations.

* * * * *

15. In subpart D, add §§ 92.31 through 92.33 to read as follows:

§ 92.31 Migratory bird species not authorized for subsistence harvest.

(a) You may not harvest birds or gather eggs from the following species:

(1) Spectacled Eider, *Somateria fischeri.*

(2) Steller's Eider, *Polysticta stelleri.*

(3) Emperor Goose, *Chen canagica.*

(4) Aleutian Canada Goose, *Branta canadensis leucopareia*—Semidi Islands only.

(b) In addition, you may not gather eggs from the following species:

(1) Cackling Canada Goose, *Branta canadensis minima*

(2) Black Brant, *Branta bernicla nigricans*—in the Yukon/Kuskokwim Delta and North Slope regions only.

§ 92.32 Subsistence migratory bird species.

You may harvest birds or gather eggs from the following species, listed in taxonomic order, within all open regions. When birds are listed only to the species level, assume all subspecies existing in Alaska are open to harvest.

Family Gaviidae

Red-throated Loon (*Gavia stellata*)
Arctic Loon (*Gavia arctica*)
Pacific Loon (*Gavia pacifica*)
Common Loon (*Gavia immer*)
Yellow-billed Loon (*Gavia adamsii*)

Family Podicipedidae

Horned Grebe (*Podiceps auritus*)
Red-necked Grebe (*Podiceps grisegena*)

Family Procellariidae

Northern Fulmar (*Fulmarus glacialis*)

Family Phalacrocoracidae

Double-crested Cormorant (*Phalacrocorax auritus*)
Red-faced Cormorant (*Phalacrocorax urile*)
Pelagic Cormorant (*Phalacrocorax pelagicus*)

Family Anatidae

Greater White-fronted Goose (*Anser albifrons*)
Snow Goose (*Chen caerulescens*)
Lesser Canada Goose (*Branta canadensis parvipes*)
Taverner's Canada Goose (*Branta canadensis taverneri*)
Aleutian Canada Goose (*Branta canadensis leucopareia*)—except in the Semidi Islands
Cackling Canada Goose (*Branta canadensis minima*)—except no egg gathering is permitted
Black Brant (*Branta bernicla nigricans*)—except no egg gathering is permitted in the Yukon/Kuskokwim Delta and the North Slope Regions
Trumpeter Swan (*Cygnus buccinator*)
Tundra Swan (*Cygnus columbianus*)
Gadwall (*Anas strepera*)
Eurasian Wigeon (*Anas penelope*)
American Wigeon (*Anas americana*)
Mallard (*Anas platyrhynchos*)
Blue-winged Teal (*Anas discors*)
Northern Shoveler (*Anas clypeata*)
Northern Pintail (*Anas acuta*)
Green-winged Teal (*Anas crecca*)
Canvasback (*Aythya valisineria*)
Redhead (*Aythya americana*)
Ring-necked Duck (*Aythya collaris*)
Greater Scaup (*Aythya marila*)
Lesser Scaup (*Aythya affinis*)
King Eider (*Somateria spectabilis*)
Common Eider (*Somateria mollissima*)
Harlequin Duck (*Histrionicus histrionicus*)
Surf Scoter (*Melanitta perspicillata*)
White-winged Scoter (*Melanitta fusca*)
Black Scoter (*Melanitta nigra*)
Long-tailed Duck (*Clangula hyemalis*)
Bufflehead (*Bucephala albeola*)
Common Goldeneye (*Bucephala clangula*)
Barrow's Goldeneye (*Bucephala islandica*)
Hooded Merganser (*Lophodytes cucullatus*)

Common Merganser (*Mergus merganser*)
Red-breasted Merganser (*Mergus serrator*)

Family Gruidae

Sandhill Crane (*Grus canadensis*)

Family Charadriidae

Black-bellied Plover (*Pluvialis squatarola*)
American Golden-Plover (*Pluvialis dominicus*)
Pacific Golden-Plover (*Pluvialis fulva*)
Common Ringed Plover (*Charadrius hiaticula*)

Family Haematopodidae

Black Oystercatcher (*Haematopus bachmani*)

Family Scolopacidae

Greater Yellowlegs (*Tringa melanoleuca*)
Lesser Yellowlegs (*Tringa flavipes*)
Solitary Sandpiper (*Tringa solitaria*)
Wandering Tattler (*Heteroscelus incanus*)
Spotted Sandpiper (*Actitis macularia*)
Upland Sandpiper (*Bartramia longicauda*)
Whimbrel (*Numenius phaeopus*)
Bristle-thighed Curlew (*Numenius tahitiensis*)
Hudsonian Godwit (*Limosa haemastica*)
Bar-tailed Godwit (*Limosa lapponica*)
Marbled Godwit (*Limosa fedoa*)
Ruddy Turnstone (*Arenaria interpres*)
Black Turnstone (*Arenaria melanocephala*)
Red Knot (*Calidris canutus*)
Semipalmated Sandpiper (*Calidris pusilla*)
Western Sandpiper (*Calidris mauri*)
Least Sandpiper (*Calidris minutilla*)
Baird's Sandpiper (*Calidris bairdii*)
Sharp-tailed Sandpiper (*Calidris acuminata*)
Dunlin (*Calidris alpina*)
Buff-breasted Sandpiper (*Tryngites subruficollis*)
Long-billed Dowitcher (*Limnodromus scolopaceus*)
Common Snipe (*Gallinago gallinago*)
Red-necked phalarope (*Phalaropus lobatus*)
Red phalarope (*Phalaropus fulicaria*)

Family Laridae

Pomarine Jaeger (*Stercorarius pomarinus*)
Parasitic Jaeger (*Stercorarius parasiticus*)
Long-tailed Jaeger (*Stercorarius longicaudus*)
Bonaparte's Gull (*Larus philadelphia*)
Mew Gull (*Larus canus*)
Herring Gull (*Larus argentatus*)
Slaty-backed Gull (*Larus schistisagus*)
Glaucous-winged Gull (*Larus glaucescens*)
Glaucous Gull (*Larus hyperboreus*)
Sabine's Gull (*Xema sabini*)
Black-legged Kittiwake (*Rissa tridactyla*)
Red-legged Kittiwake (*Rissa brevirostris*)
Ivory Gull (*Pagophila eburnea*)
Arctic Tern (*Sterna paradisaea*)
Aleutian Tern (*Sterna aleutica*)

Family Alcidae

Common Murre (*Uria aalge*)
Thick-billed Murre (*Uria lomvia*)
Black Guillemot (*Cepphus grylle*)
Pigeon Guillemot (*Cepphus columba*)
Cassin's Auklet (*Ptychoramphus aleuticus*)
Parakeet Auklet (*Aethia psittacula*)
Least Auklet (*Aethia pusilla*)
Whiskered Auklet (*Aethia pygmaea*)
Crested Auklet (*Aethia cristatella*)
Rhinoceros Auklet (*Cerorhinca monocerata*)
Horned Puffin (*Fratercula corniculata*)
Tufted Puffin (*Fratercula cirrhata*)

Family Strigidae

Great Horned Owl (*Bubo virginianus*)
Snowy Owl (*Nyctea scandiaca*)
Northern Hawk Owl (*Surnia ulula*)
Short-eared Owl (*Asio flammeus*)

§ 92.33 Region-specific regulations.

The season dates for the 2003 season for eight subsistence regions are as follows:

(a) Aleutian/Pribilof Islands Region.

(1) Northern Unit (Pribilof Islands):

(i) Season: April 2—June 30.

(ii) Closure: July 1—August 31.

(2) Central Unit (Aleut Region's eastern boundary on the Alaska Peninsula westwards to Unalaska Island):

(i) Season: April 2–June 15 and July 16–August 31.

(ii) Closure: June 16–July 15.

(3) Western Unit (Umnak Island west to Attu Island):

(i) Season: April 2–July 15 and August 16–August 31.

(ii) Closure: July 16–August 15.

(b) Yukon/Kuskokwim Delta Region.

(1) Season: April 2–August 31.

(2) Closure: 30-day closure dates to be announced by the Alaska Regional Director or his designee, after consultation with local subsistence users and the region's Waterfowl Conservation Committee. This 30-day period will occur between June 1 and August 15 of each year. A press release announcing the actual closure dates will be forwarded to regional newspapers and radio and television stations and posted in village post offices and stores.

(c) Bristol Bay Region.

(1) Season: April 2–June 14 and July 16–August 31.

(2) Closure: June 15–July 15.

(d) Bering Strait/Norton Sound Region.

(1) Stebbins/St. Michael Area (Point Romanof to Canal Point):

(i) Season: April 15–June 14 and July 16–August 31.

(ii) Closure: June 15–July 15.

(2) Remainder of the region:

(i) Season: April 2–June 14 and July 16–August 31 for waterfowl; April 2–July 19 and August 21–August 31 for all other birds.

(ii) Closure: June 15–July 15 for waterfowl; July 20–August 20 for all other birds.

(e) Kodiak Archipelago Region.

(1) Season: April 2–June 20 and July 22–August 31, egg gathering: May 1–June 20.

(2) Closure: June 21–July 21.

(f) Northwest Arctic Region.

(1) Season: April 2–August 31 (in general); waterfowl egg gathering May 20–June 9; seabird egg gathering July 3–July 12; molting/non-nesting waterfowl July 1–July 31.

(2) Closure: June 10–August 14, except for the taking of seabird eggs and molting/non-nesting waterfowl as provided in paragraph (f)(1) of this section.

(g) North Slope Region.

(1) Southern Unit (Pt. Hope to Wainwright, along the Chuckchi coast, south and east to Atqasuk and Anaktuvuk Pass):

(i) Season: April 2–June 19 and July 20–August 31 for waterfowl; April 2–June 29 and July 30–August 31 for seabirds.

(ii) Closure: June 20–July 19 for waterfowl, June 30–July 29 for seabirds.

(2) Northern Unit (Barrow to Nuiqsut):

(i) Season: April 2–June 15 and July 16–August 31.

(ii) Closure: June 16–July 15.

(3) Eastern Unit (East of Nuiqsut):

(i) Season: April 2–June 19 and July 20–August 31.

(ii) Closure: June 20–July 19.

(h) Interior Region.

(1) Season: April 2–June 14 and July 16–August 31; egg gathering May 1–June 14

(2) Closure: June 15–July 15.

Dated: January 31, 2003.

Craig Manson,

Assistant Secretary for Fish and Wildlife and Parks.

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BILLING CODE 4310–55–P

Notices

Federal Register
Vol. 68, No. 27
Monday, February 10, 2003

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Doc. No. LS–03–01]

Request for Extension and Revision of a Currently Approved Information Collection

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), this notice announces the Agricultural Marketing Service's (AMS) intention to request an extension of and revision to the currently approved collections for 7 CFR part 54—Meats, Prepared Meats, and Meat Products (Grading, Certification, and Standards), which includes Form LS–313, "Application for Service" and Form LS–315, "Application for Commitment Grading or Certification Service."

DATES: Comments on this notice must be received on or before April 11, 2003.

ADDRESSES: Send written comments to Larry R. Meadows, Chief; USDA, AMS, LS, MGC; STOP 0248, Room 2628–S; 1400 Independence Avenue, SW., Washington, DC 20250–0248. Comments will be available for public inspection at the above address during regular business hours. Comments may also be submitted by e-mail to *Larry.Meadows@usda.gov* or by facsimile to (202) 690–4119. All comments should reference the docket number (LS–03–01), the date, and the page number of this issue of the **Federal Register**. All responses to this notice will be summarized and included in the request for OMB approval.

SUPPLEMENTARY INFORMATION:

Title: 7 CFR part 54—Meats, Prepared Meats, and Meat Products (Grading, Certification, and Standards).

OMB Number: 0581–0124.

Expiration Date of Approval: September 30, 2003.

Type of Request: Extension and revision of a currently approved collection of information.

Abstract: The application for meat grading and certification services requests Department of Agriculture employees to perform such services in the requesting establishment. The information contained on the applications constitutes an agreement between USDA and the requesting establishment.

The Agricultural Marketing Act of 1946, as amended, authorizes the Secretary of Agriculture to provide voluntary Federal meat grading and certification services that facilitate the marketing of meat and meat products. The Meat Grading and Certification (MGC) Branch provides these services pursuant to 7 CFR part 54—Meats, Prepared Meats, and Meat Products (Grading, Certification, and Standards).

Due to the voluntary nature of grading and certification services, 7 CFR part 54 contains provisions for the collection of fees from users of MGC Branch services that as nearly as possible are equal to the cost of providing the requested services. Applicants (individual or businesses with financial interest in the product) may request MGC Branch services through either submission of Form LS–313 or Form LS–315.

Congress did not specifically authorize this collection of information, but completion and submission of Form LS–313 or Form LS–315 serves as an agreement by the requester to pay for services provided.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average .0178 hours per response.

Respondents: Livestock and meat industry or other for-profit businesses.

Estimated Number of Respondents: 715 respondents.

Estimated Number of Responses per Respondent: 16 responses.

Estimated Total Annual Burden on Respondents: 212.40 hours.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: Larry R. Meadows, Chief, Meat Grading and Certification Branch, telephone (202) 720–1246, facsimile 202–690–4119, or e-mail at *Larry.Meadows@usda.gov*.

Dated: February 4, 2003.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 03–3116 Filed 2–7–03; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 02–103–2]

Public Meeting; Veterinary Biologics

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of cancellation of meeting.

SUMMARY: We are advising producers and users of veterinary biologics, and other interested individuals, that our planned 12th public meeting on veterinary biologics, which was scheduled to be held March 31 through April 2, 2003, is canceled.

FOR FURTHER INFORMATION CONTACT: Dr. Richard E. Hill, Jr., Director, Center for Veterinary Biologics, Veterinary Services, APHIS, 510 South 17th Street, Suite 104, Ames, IA 50010–8197; phone (515) 232–5785, fax (515) 232–7120, or e-mail *CVB@aphis.usda.gov*.

SUPPLEMENTARY INFORMATION: In a document published in the **Federal Register** on November 26, 2002 (67 FR 70714, Docket No. 02–103–1), we gave notice that we would be holding a public meeting March 31 through April 2, 2003, in Ames, IA. The purpose of the meeting was to discuss regulatory and

policy issues related to the manufacture, distribution, and use of veterinary biological products. Due to an outbreak of exotic Newcastle disease in commercial and non-commercial poultry flocks in Southern California and Nevada, Center for Veterinary Biologics personnel have been detailed to those States to assist with efforts to control the spread of the outbreak, and this has interfered with our ability to finalize the meeting agenda. We are, therefore, canceling the meeting that had been scheduled for March 31 through April 2, 2003. We regret any inconvenience caused by this cancellation.

Done in Washington, DC this 4th day of February 2003.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 03–3180 Filed 2–7–03; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF INTERIOR

Bureau of Land Management

DEPARTMENT OF AGRICULTURE

Forest Service

[OR–930–1610–PB–LITI; HAG03–0050]

Notice of Intent To Prepare a Supplemental Environmental Impact Statement To Amend Land and Resource Management Plans in Southwest Oregon for Management of Port-Orford-Cedar

AGENCIES: Bureau of Land Management, USDI and Forest Service, USDA.

ACTION: Notice of intent and initiation of public scoping.

SUMMARY: The Bureau of Land Management (BLM) and Forest Service are initiating work on a Supplemental Environmental Impact Statement (SEIS) to consider management alternatives for Port-Orford-Cedar in the Oregon portion of its natural range in southwestern Oregon and northwestern California. The SEIS is a joint effort by the Oregon/Washington BLM and the Pacific Northwest Region of the Forest Service, with BLM as the lead agency. The Pacific Southwest Region of the Forest Service is a cooperator. Specific administrative units include the Coos Bay, Medford, and Roseburg District of the BLM and the Siskiyou, Six Rivers, Klamath, and Shasta-Trinity National Forests. Additional cooperators may be identified through the scoping process. The SEIS will respond to analysis deficiencies identified in March, 2002 by the United States Court of Appeals for the Ninth Circuit relating to a District Court decision in Kern vs. U.S. Bureau of Land Management, 284 F.3d 1062 (9th Cir. 2002). This decision concluded that analysis of cumulative effects of the current management guidelines were inadequate for the Sandy-Remote Environmental Assessment because it did not extend to the entire range of Port-Orford-Cedar. The SEIS will develop alternative management strategies for the Oregon portion of the species range and analyze effects of those strategies throughout the entire natural range of the species.

The SEIS will amend the land management plan for the Siskiyou National Forest and the resource management plans for the Coos Bay, Medford, and Roseburg Districts of the Bureau of Land Management. The BLM will work collaboratively with interested parties to identify the management decisions that are best suited to local, regional, and national needs and concerns. The SEIS will fulfill the needs and obligations set forth by the National Environmental Policy Act (NEPA), the Federal Land Policy and Management Act (FLPMA), and BLM and Forest Service management policies.

DATES: This notice initiates the public scoping process. Public scoping will be used to identify interested and affected individuals and groups, and to identify issues associated with the management of Port-Orford-Cedar. Briefing materials are available on line at *http://www.or.blm.gov/planning/Port-Orford-Cedar_SEIS/*. Comments concerning the scope of the analysis should be received 30 days from publication of this notice in the **Federal Register**. No formal public scoping meetings are scheduled, but may be scheduled if there is sufficient interest. Public scoping meetings will be announced in local newspapers and at *http://www.or.blm.gov/planning/Port-Orford-Cedar_SEIS/* at least 15 days prior to the event. Early participation is encouraged and will help determine the future management of Port-Orfort-Cedar on public lands in California and Oregon. In addition to the ongoing public participation process, formal opportunities for public participation will be provided through comment on the alternatives and upon publication of the BLM draft RMP/EIS.

ADDRESSES: Written comments should be sent to the Port-Orford-Cedar EIS Team, PO Box 2965, Portland, OR 97208. Comments may be submitted electronically to the following e-mail address: *orpoceis@or.blm.gov*. Comments, including names and street addresses of respondents, will be available for public review at the Oregon State Office, BLM reading room, 333 SW., 1st Avenue, Portland, OR 97204, and may be published as part of the EIS. If you wish to withhold your name or address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comment. Such requests will be honored to the extent allowed by law. All submissions from organizations or businesses, submitted on official letterheads, and from individuals identifying themselves as representatives or officials of organization or businesses, will be made available for public inspection in their entirety.

FOR FURTHER INFORMATION CONTACT: Ken Denton, Bureau of Land Management, Port-Orford-Cedar EIS Team, PO Box 2965, Portland, OR 97208.

SUPPLEMENTARY INFORMATION: A root disease, *Phytophthora lateralis*, currently infects Port-Orford-Cedar. Research shows the rate of spread of the root disease is linked, at least in part, to transport of spore-infected soil by human and other vectors. Water-borne spores then readily spread the disease down slope and down stream. The participating agencies believe, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of a draft EIS must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft EIS stage but that are not raised until after completion of the final EIS may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45 day comment period so that substantive comments and objections are made available to the agencies at a time when it can meaningfully consider them and respond to them in the final EIS.

Current BLM management direction requires all management activities within the range of Port-Orford-Cedar conform to guidelines described in the Port-Orford Cedar Management Policies.

These Policies are designed to mitigate damage caused by *Phytophthora lateralis*.

Current Forest Service management direction requires all management activities within the range of Port-Orford-Cedar conform to guidelines described in the Siskiyou Forest Plan in Oregon and the Six Rivers, Klamath, and Shasta-Trinity Forest Plans in California.

The responsible official for the Forest Service is the Pacific Northwest Regional Forester.

The responsible official for the Bureau of Land Management is the Oregon/Washington State Director.

Charles Wassinger,

Acting State Director, Bureau of Land Management.

Richard W. Sowa,

Acting Regional Forester, U.S. Forest Service, Region 6.

[FR Doc. 03–3172 Filed 2–7–03; 8:45 am]

BILLING CODE 4310–33–P; 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Resource Advisory Committee Meeting

AGENCY: Lassen Resource Advisory Committee, Susanville, California, USDA Forest Service.

ACTION: Notice of the meeting.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committee Act (Public Law 92–463) and under the Secure Rural Schools and Community Self-Determination Act of 2000 (Pub. L. 106–393) the Lassen National Forest's Lassen County Resource Advisory Committee will meet Thursday, February 13, 2003, in Susanville, California for a business meeting. The meetings are open to the public.

SUPPLEMENTARY INFORMATION: The business meeting February 13, 2003 begins at 9 a.m., at the Lassen National Forest Headquarters Office, Caribou Conference Room, 2550 Riverside Drive, Susanville, CA 96130. Agenda topics will include: Review previous meeting minutes and approve, Approve Meeting Agenda, Review previous meeting minutes and approve, Discuss attendance of 6th Annual National Forest Counties & School Coalition Conference March 28–30 in Reno, Review Workshop Results, Use Rating System with Submitted Proposals and Review Proposals. Public Comment Time will also be set aside for public comments at the end of the meeting.

FOR FURTHER INFORMATION CONTACT: Robert Andrews, Eagle Lake District Ranger and Designated Federal Officer, at (530) 257–4188; or RAC Coordinator, Heidi Perry, at (530) 252–6604.

Heidi L. Perry,

Acting Forest Supervisor.

[FR Doc. 03–3131 Filed 2–7–03; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A-570–853]

Bulk Aspirin from the People's Republic of China; Final Results of Antidumping Duty Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Final Results of Antidumping Duty Review.

SUMMARY: On August 7, 2002, the Department of Commerce published the preliminary results of the administrative review of the antidumping duty order on bulk aspirin from the People's Republic of China. We gave interested parties an opportunity to comment on the preliminary results. Based upon our analysis of the comments received, we have made changes to the margin calculations presented in the final results of the review. We find that bulk aspirin from the People's Republic of China was not sold in the United States below normal value during the period of review.

EFFECTIVE DATE: February 10, 2003.

FOR FURTHER INFORMATION CONTACT: Julie Santoboni or Cole Kyle, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–4194 or (202) 482–1503, respectively.

SUPPLEMENTARY INFORMATION:

Background

On August 7, 2002, the Department of Commerce ("the Department") published in the **Federal Register** the preliminary results of its administrative review of bulk acetylsalicylic acid, commonly referred to as bulk aspirin, from the People's Republic of China ("PRC") (*Bulk Aspirin from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and Changed Circumstances Review*, 67 FR 51167 (August 7, 2002) ("*Preliminary Results*")).

Since the *Preliminary Results*, the following events have occurred: We received a case brief from the petitioner, Rhodia, Inc. ("petitioner"), on September 6, 2002. We received rebuttal briefs from the respondents, Shandong Xinhua Pharmaceutical Co., Ltd. ("Shandong") and Jilin Henghe Pharmaceutical Company Ltd. ("Jilin"), on September 13, 2002. On October 25, 2002, the Department of Commerce published the final results of the changed circumstances review of bulk aspirin from the PRC, finding that Jilin Henghe Pharmaceutical is the successor-in-interest to Jilin Pharmaceutical Company Ltd. and Jilin Pharmaceutical Import and Export Corporation (*see Bulk Aspirin from the People's Republic of China: Final Results of Changed Circumstances Review*, 67 FR 65537 (October 25, 2002)).

The Department has now completed this antidumping duty administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the "Act").

Scope of Order

The product covered by this review is bulk acetylsalicylic acid, commonly referred to as bulk aspirin, whether or not in pharmaceutical or compound form, not put up in dosage form (tablet, capsule, powders or similar form for direct human consumption). Bulk aspirin may be imported in two forms, as pure ortho-acetylsalicylic acid or as mixed ortho-acetylsalicylic acid. Pure ortho-acetylsalicylic acid can be either in crystal form or granulated into a fine powder (pharmaceutical form). This product has the chemical formula $C_9H_8O_4$. It is defined by the official monograph of the United States Pharmacopoeia ("USP") 23. It is classified under the Harmonized Tariff Schedule of the United States ("HTSUS") subheading 2918.22.1000.

Mixed ortho-acetylsalicylic acid consists of ortho-acetylsalicylic acid combined with other inactive substances such as starch, lactose, cellulose, or coloring materials and/or other active substances. The presence of other active substances must be in concentrations less than that specified for particular nonprescription drug combinations of bulk aspirin and active substances as published in the *Handbook of Nonprescription Drugs*, eighth edition, American Pharmaceutical Association. This product is classified under HTSUS subheading 3003.90.0000. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise under investigation is dispositive.

Period of Review

The period of review ("POR") is July 6, 2000 through June 30, 2001.

Comparisons

We calculated export price and normal value based on the same methodology used in the Preliminary Results with the following exceptions:
- We have valued certain inputs using domestic prices in India rather than import prices;
- We are no longer using Indian Chemical Weekly ("ICW") import prices in our calculation of factor values;
- We adjusted the valuation of certain surrogate inputs in order to make them contemporaneous with the POR;
- We relied solely on the overhead and SG&A ratios from the Indian surrogate producer Alta Laboratories;
- We have recalculated Shandong's overhead ratio as a percentage of materials and energy, rather than materials, energy and labor;
- Pursuant to section 351.408(c)(3) of the Department's regulations, we valued labor using the recently updated regression-based wage rate for the PRC published by Import Administration on its website. The revised PRC estimated average hourly wage rate for 2000 is $0.84 per hour. *See www.ia.ita.doc.gov/wages/00wages/00wages.htm*;
- For Jilin, we revised reported payment dates, imputed credit expenses, and quantities, where appropriate, for certain U.S. sales; and
- We corrected a ministerial error.

For a complete discussion of these changes see the February 3, 2003, "Issues and Decision Memorandum for the Final Results of the Antidumping Duty Administrative Review of Bulk Aspirin from the People's Republic of China" ("*Decision Memorandum*"), the February 3, 2003, company-specific calculation memorandum, and the February 3, 2003, Factors of Production Memorandum.

Analysis of Comments Received

All issues raised in the petitioner's case brief are addressed in the *Decision Memorandum* which is hereby adopted by this notice. Attached to this notice as an appendix is a list of the issues which the petitioner has raised and to which we have responded in the *Decision Memorandum*. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum which is on file in the Central Records Unit, Room B-099 of the Department. In addition, a complete version of the *Decision Memorandum* can be accessed directly on the Web at *http://ia.ita.doc.gov/frn/summary/list.htm*. The paper copy and electronic version of the *Decision Memorandum* are identical in content.

Final Results of Review

We determine that the following dumping margins exist for the period July 6, 2000, through June 30, 2001:

Exporter/manufacture	Weighted-average margin percentage
Shandong Xinhua Pharmaceutical Co., Ltd. ..	0.00
Jilin Henghe Pharmaceutical Company Ltd.	0.04 (*de minimis*)

Assessment Rates

In accordance with 19 CFR 351.212(b)(1), we have calculated importer (or customer)-specific assessment rates for the merchandise subject to this review. To determine whether the duty assessment rates were *de minimis*, in accordance with the requirement set forth in 19 CFR 351.106(c)(2), we calculated importer (or customer)-specific ad valorem rates by aggregating the dumping margins calculated for all U.S. sales to that importer (or customer) and dividing this amount by the total value of the sales to that importer (or customer). Where an importer (or customer)-specific *ad valorem* rate was greater than *de minimis*, we calculated a per unit assessment rate by aggregating the dumping margins calculated for all U.S. sales to that importer (or customer) and dividing this amount by the total quantity sold to that importer (or customer).

All other entries of the subject merchandise during the POR will be liquidated at the antidumping duty rate in place at the time of entry.

The Department will issue appropriate assessment instructions directly to the Customs Service within 15 days of publication of these final results of review.

Cash Deposit Requirements

The following deposit rates will be effective upon publication of these final results for all shipments of bulk aspirin from the PRC entered, or withdrawn from warehouse, for consumption on or after the publication date of this notice, as provided for by section 751(a)(1) of the Act:(1) for Shandong and Jilin, which have separate rates, no antidumping duty deposit will be required; (2) for a company previously found to be entitled to a separate rate and for which no review was requested, the cash deposit rate will be the rate established in the most recent review of that company; (3) for all other PRC exporters the cash deposit rate will be 144.02 percent, the PRC-wide rate established in the less than fair value investigation; and (4) for non-PRC exporters of subject merchandise from the PRC, the cash deposit rate will be the rate applicable to the PRC supplier of that exporter. These deposit rates shall remain in effect until publication of the final results of the next administrative review.

Notification to Importers

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

Notification Regarding APOs

This notice also serves as a reminder to parties subject to administrative protective orders ("APO") of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305, which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing this determination and notice in accordance with sections section 751(a)(3) and 777(i) of the Act.

Dated: February 3, 2003.

Faryar Shirzad,

Assistant Secretary for Import Administration.

APPENDIX

List of Comments in the Issues and Decision Memorandum

Comment 1: Use of Import Prices v. Domestic Prices in India to Value Certain Inputs
Comment 2: Adjustment of Overhead and SG&A Ratios to Account for Different Levels of Integration
Comment 3: Exclusion of Labor in the Calculation of the Overhead Ratio and Reclassification of R&D Expenses

Comment 4: Removal of Excise Tax from Alta's Reported Material Costs for the Calculation of Overhead and SG&A Ratios
Comment 5: Other Adjustments to the Overhead and SG&A Ratios
Comment 6: Inflation of Labor Rates
Comment 7: Valuation of a Proprietary Input for Shandong
Comment 8: Shandong's Usage of Acetic Anhydride

[FR Doc. 03–3284 Filed 2–7–03; 8:45 am]
BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A-570–847]

Persulfates from the People's Republic of China: Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Final Results of Antidumping Duty Administrative Review.

SUMMARY: On August 6, 2002, the Department of Commerce published the preliminary results of the 2000–2001 administrative review of the antidumping duty order on persulfates from the People's Republic of China. This review covers one manufacturer/exporter of the subject merchandise to the United States. The merchandise covered by this order are persulfates, including ammonium, potassium, and sodium persulfates. The period of review is July 1, 2000, through June 30, 2001.

Based on our analysis of the comments received, we have made certain changes in the margin calculations. In addition, because updated information now exists, we have made a change in the margin calculation for Ai Jian with respect to the surrogate value for labor. *See* the section entitled "Changes Since the Preliminary Results" listed below. The final weighted-average dumping margins are listed below in the section entitled "Final Results of the Review."

EFFECTIVE DATE: February 10, 2003.

FOR FURTHER INFORMATION CONTACT: Mike Strollo, AD/CVD Enforcement Group I, Office II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–0629.

SUPPLEMENTARY INFORMATION:

Background

On August 6, 2002, the Department published the preliminary results of the 2000–2001 administrative review of the antidumping duty order on persulfates from the People's Republic of China (PRC). *See Persulfates from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review, and Partial Rescission of Administrative Review*, 67 FR 50866 (Aug. 6, 2002) (*Preliminary Results*). This review covers one exporter, Shanghai Ai Jian Import & Export Corporation (Ai Jian), and its affiliated manufacturer, Shanghai Ai Jian Reagent Works.

We invited interested parties to comment on the preliminary results of review. The Department has conducted this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

Scope of Review

The products covered by this review are persulfates, including ammonium, potassium, and sodium persulfates. The chemical formula for these persulfates are, respectively, $(NH_4)_2S_2O_8$, $K_2S_2O_8$, and $Na_2S_2O_8$. Ammonium and potassium persulfates are currently classifiable under subheading 2833.40.60 of the *Harmonized Tariff Schedule of the United States* (HTSUS). Sodium persulfate is classifiable under HTSUS subheading 2833.40.20. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this review is dispositive.

Separate Rates

Ai Jian has requested a separate, company-specific antidumping duty rate. In our preliminary results, we found that Ai Jian had met the criteria for the application of a separate antidumping duty rate. *See Preliminary Results*, 67 FR at 50867. We have not received any other information since the preliminary results which would warrant reconsideration of our separate rates determination with respect to this company. We therefore determine that Ai Jian should be assigned an individual dumping margin in this administrative review.

Analysis of Comments Received

All issues raised in the case briefs by parties to this administrative review are addressed in the "Issues and Decision Memorandum" (Decision Memo) from Susan Kuhbach, Acting Deputy Assistant Secretary, Group I, to Faryar Shirzad, Assistant Secretary for Import Administration, dated February 3, 2003, which is adopted by this notice. A list of the issues which parties have raised and to which we have responded, all of which are in the Decision Memo, is attached to this notice as an Appendix. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum, which is on file in the Central Records Unit in Room B-099 of the main Commerce Building.

In addition, a complete version of the Decision Memo can be accessed directly on the Web at *http://ia.ita.doc.gov*. The paper copy and electronic version of the Decision Memo are identical in content.

Changes Since the Preliminary Results

For purposes of the final results, we have made certain changes in the margin calculation for Ai Jian. For a discussion of these changes, see the "Margin Calculations" section of the Decision Memo.

- We revalued labor based on the regression-based wage rate for 2000 in accordance with 19 CFR 351.408(c)(3);
- We revised the surrogate value for wood pallets using Indian import statistics for the period July 2000 through June 2001;
- We based factory overhead (FOH), SG&A expenses, and profit on the financial statements of Gujarat alone, rather than calculating these expenses as an average of the experience of Calibre and Gujarat;
- We adjusted the calculation of the surrogate FOH ratio for Gujarat by excluding the cost of traded goods from the denominator of the ratio; and
- We adjusted the calculation of the surrogate SG&A ratio for Gujarat. We excluded movement expenses originally included in the cost of manufacture used as the denominator for the surrogate SG&A ratio, as well as certain interest expenses used to offset financing costs.

Final Results of the Review

We determine that the following percentage weighted-average margin exists for the period July 1, 2000 through June 30, 2001:

Manufacturer/exporter	Margin (percent)
Shanghai Ai Jian Import & Export Corporation ..	0.00 percent

Assessment Rates

The Department will determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. For assessment purposes, we do not have the information to calculate entered value because Ai Jian is not the importer of record for the subject merchandise. Accordingly, we have

calculated customer-specific duty assessment rates for the merchandise in question by aggregating the dumping margins calculated for all U.S. sales to each customer and dividing this amount by the total quantity of those sales. To determine whether the duty assessment rates were *de minimis*, in accordance with the requirement set forth in 19 CFR 351.106(c)(2), we calculated customer-specific *ad valorem* ratios based on export prices. We will direct the Customs Service to assess the resulting assessment rates uniformly on all entries of that particular customer made during the period of review. Pursuant to 19 CFR 351.106(c)(2), we will instruct the Customs Service to liquidate without regard to antidumping duties any entries for which the assessment rate is *de minimis*. The Department will issue appropriate assessment instructions directly to the Customs Service within 15 days of publication of these final results of review.

Cash Deposit Requirements

The following deposit requirements will be effective upon publication of this notice of final results of this antidumping duty administrative review for all shipments of persulfates from the PRC entered, or withdrawn from warehouse, for consumption on or after the date of publication, as provided by section 751(a)(1) of the Act: (1) for Ai Jian, the cash deposit rate will be zero; (2) for previously reviewed or investigated companies not listed above that have separate rates, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) the cash deposit rate for all other PRC exporters will be 119.02 percent, the PRC-wide rate established in the less than fair value investigation; and (4) the cash deposit rate for non-PRC exporters of subject merchandise from the PRC will be the rate applicable to the PRC supplier of that exporter.

These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

This notice serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

We are issuing and publishing this determination and notice in accordance with sections section 751(a)(1) and 777(i) of the Act.

Dated: February 3, 2003.

Faryar Shirzad,

Assistant Secretary for Import Administration.

Appendix—Issues in Decision Memo

Comment 1: Separate Rates
Comment 2: Use of Adverse Facts Available
Comment 3: Ocean Freight
Comment 4: Marine Insurance
Comment 5: Steam, Coal and Water Consumption
Comment 6: Use of Indian Data to Value Wood Pallets
Comment 7: Packing Labor
Comment 8: Whether the Financial Statements of Calibre Chemicals Pvt., Ltd. (Calibre) and Gujarat Persalts (P) Ltd. (Gujarat) Are Publicly Available Information
Comment 9: Whether Gujarat's Financial Statements Are an Appropriate Source for Factory Overhead (FOH), Selling, General, and Administrative (SG&A) Expenses, and Profit
Comment 10: Whether Calibre's Financial Statements Are an Appropriate Source for FOH, SG&A, and Profit
Comment 11: Adjustments to SG&A

[FR Doc. 03–3285 Filed 2–7–03; 8:45 am]
BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A-580–834]

Stainless Steel Sheet and Strip in Coils From the Republic of Korea; Final Results and Partial Rescission of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results and partial rescission of antidumping duty administrative review of stainless steel sheet and strip in coils from the Republic of Korea.

SUMMARY: On August 7, 2002, the Department of Commerce ("the Department") published in the **Federal Register** the preliminary results and partial rescission of its administrative review of the antidumping duty order on stainless steel sheet and strip in coils from the Republic of Korea (67 FR 51216). This review covers imports of subject merchandise from Pohang Iron & Steel Co., Ltd. ("POSCO"), Samwon Precision Metals Co., Ltd. ("Samwon") and Daiyang Metal Co., Ltd. ("DMC"). The period of review ("POR") is July 1, 2000 through June 30, 2001.

Based on our analysis of the comments received, we have made changes in the margin calculations for POSCO and DMC. Therefore, the final results differ from the preliminary results of review. The final weighted-average dumping margins for the reviewed firms are listed below in the section entitled "Final Results of the Review." In addition, we are rescinding the administrative review with respect to Samwon.

EFFECTIVE DATE: February 10, 2003.

FOR FURTHER INFORMATION CONTACT: Laurel LaCivita ("POSCO") and ("Samwon") or Lilit Astvatsatrian ("DMC"), Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–4243 or (202) 482–6412, respectively.

SUPPLEMENTARY INFORMATION:

Background

On August 7, 2002, the Department published *Notice of Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review for Stainless Steel Sheet and Strip in Coils From the Republic of Korea*, 67 FR 51216 (August 7, 2002) ("*Preliminary Results*"). As we stated in that notice, we preliminarily rescinded this review with respect to Samwon, pursuant to its claim of no shipments of the subject merchandise during the POR. We are now rescinding this administrative review with respect to Samwon, since there is no information on the record that indicates that Samwon made any shipments during the POR.

We invited parties to comment on these preliminary results. We received written comments on September 6, 2002

from petitioners,[1] POSCO and DMC. On September 16, 2002, we received rebuttal comments from petitioners, POSCO and DMC. We have now completed the administrative review in accordance with section 751 of the Tariff Act of 1930, as amended ("the Act").

Under section 751(a)(3)(A) of the Act, the Department may extend the deadline for completion of an administrative review if it determines that it is not practicable to complete the review within the statutory time limit. On December 9, 2002, the Department extended the time limit for the final results in this review to February 3, 2003. *See Stainless Steel Sheet and Strip in Coils From the Republic of Korea: Extension of Final Results of Antidumping Duty Administrative Review*, 67 FR 72917 (December 9, 2002).

Scope of the Review

For purposes of this administrative review, the products covered are certain stainless steel sheet and strip in coils. Stainless steel is an alloy steel containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. The subject sheet and strip is a flat-rolled product in coils that is greater than 9.5 mm in width and less than 4.75 mm in thickness, and that is annealed or otherwise heat treated and pickled or otherwise descaled. The subject sheet and strip may also be further processed (*e.g.*, cold-rolled, polished, aluminized, coated, etc.) provided that it maintains the specific dimensions of sheet and strip following such processing.

The merchandise subject to this review is classified in the *Harmonized Tariff Schedule of the United States* (HTS) at subheadings: 7219.13.0031, 7219.13.0051, 7219.13.0071, 7219.1300.81[2], 7219.14.0030, 7219.14.0065, 7219.14.0090, 7219.32.0005, 7219.32.0020, 7219.32.0025, 7219.32.0035, 7219.32.0036, 7219.32.0038, 7219.32.0042, 7219.32.0044, 7219.33.0005, 7219.33.0020, 7219.33.0025, 7219.33.0035, 7219.33.0036, 7219.33.0038, 7219.33.0042, 7219.33.0044, 7219.34.0005, 7219.34.0020, 7219.34.0025, 7219.34.0030, 7219.34.0035, 7219.35.0005, 7219.35.0015, 7219.35.0030, 7219.35.0035, 7219.90.0010, 7219.90.0020, 7219.90.0025, 7219.90.0060, 7219.90.0080, 7220.12.1000, 7220.12.5000, 7220.20.1010, 7220.20.1015, 7220.20.1060, 7220.20.1080, 7220.20.6005, 7220.20.6010, 7220.20.6015, 7220.20.6060, 7220.20.6080, 7220.20.7005, 7220.20.7010, 7220.20.7015, 7220.20.7060, 7220.20.7080, 7220.20.8000, 7220.20.9030, 7220.20.9060, 7220.90.0010, 7220.90.0015, 7220.90.0060, and 7220.90.0080. Although the HTS subheadings are provided for convenience and Customs purposes, the Department's written description of the merchandise under review is dispositive.

Excluded from the scope of this review are the following: (1) sheet and strip that is not annealed or otherwise heat treated and pickled or otherwise descaled, (2) sheet and strip that is cut to length, (3) plate (*i.e.*, flat-rolled stainless steel products of a thickness of 4.75 mm or more), (4) flat wire (*i.e.*, cold-rolled sections, with a prepared edge, rectangular in shape, of a width of not more than 9.5 mm), and (5) razor blade steel. Razor blade steel is a flat-rolled product of stainless steel, not further worked than cold-rolled (cold-reduced), in coils, of a width of not more than 23 mm and a thickness of 0.266 mm or less, containing, by weight, 12.5 to 14.5 percent chromium, and certified at the time of entry to be used in the manufacture of razor blades. *See* Chapter 72 of the HTS, "Additional U.S. Note" 1(d).

In response to comments by interested parties, the Department has determined that certain specialty stainless steel products are also excluded from the scope of this review. These excluded products are described below.

Flapper valve steel is defined as stainless steel strip in coils containing, by weight, between 0.37 and 0.43 percent carbon, between 1.15 and 1.35 percent molybdenum, and between 0.20 and 0.80 percent manganese. This steel also contains, by weight, phosphorus of 0.025 percent or less, silicon of between 0.20 and 0.50 percent, and sulfur of 0.020 percent or less. The product is manufactured by means of vacuum arc remelting, with inclusion controls for sulphide of no more than 0.04 percent and for oxide of no more than 0.05 percent. Flapper valve steel has a tensile strength of between 210 and 300 ksi, yield strength of between 170 and 270 ksi, plus or minus 8 ksi, and a hardness (Hv) of between 460 and 590. Flapper valve steel is most commonly used to produce specialty flapper valves in compressors.

Also excluded is a product referred to as suspension foil, a specialty steel product used in the manufacture of suspension assemblies for computer disk drives. Suspension foil is described as 302/304 grade or 202 grade stainless steel of a thickness between 14 and 127 microns, with a thickness tolerance of plus-or-minus 2.01 microns, and surface glossiness of 200 to 700 percent Gs. Suspension foil must be supplied in coil widths of not more than 407 mm, and with a mass of 225 kg or less. Roll marks may only be visible on one side, with no scratches of measurable depth. The material must exhibit residual stresses of 2 mm maximum deflection, and flatness of 1.6 mm over 685 mm length.

Certain stainless steel foil for automotive catalytic converters is also excluded from the scope of this review. This stainless steel strip in coils is a specialty foil with a thickness of between 20 and 110 microns used to produce a metallic substrate with a honeycomb structure for use in automotive catalytic converters. The steel contains, by weight, carbon of no more than 0.030 percent, silicon of no more than 1.0 percent, manganese of no more than 1.0 percent, chromium of between 19 and 22 percent, aluminum of no less than 5.0 percent, phosphorus of no more than 0.045 percent, sulfur of no more than 0.03 percent, lanthanum of less than 0.002 or greater than 0.05 percent, and total rare earth elements of more than 0.06 percent, with the balance iron.

Permanent magnet iron-chromium-cobalt alloy stainless strip is also excluded from the scope of this review. This ductile stainless steel strip contains, by weight, 26 to 30 percent chromium, and 7 to 10 percent cobalt, with the remainder of iron, in widths 228.6 mm or less, and a thickness between 0.127 and 1.270 mm. It exhibits magnetic remanence between 9,000 and 12,000 gauss, and a coercivity of between 50 and 300 oersteds. This product is most commonly used in electronic sensors and is currently available under proprietary trade names such as "Arnokrome III."[3]

Certain electrical resistance alloy steel is also excluded from the scope of this review. This product is defined as a non-magnetic stainless steel manufactured to American Society of Testing and Materials ("ASTM") specification B344 and containing, by

[1] Allegheny Ludlum Corporation, AK Steel Corporation (formerly Armco, Inc.), J&L Specialty Steel, Inc., North American Stainless, Butler-Armco Independent Union, Zanesville Armco Independent Union, and the United Steelworkers of America, AFL-CIO/CLC.

[2] Due to changes to the HTS numbers in 2001, 7219.13.0030, 7219.13.0050, 7219.13.0070, and 7219.13.0080 are now 7219.13.0031, 7219.13.0051, 7219.13.0071, and 7219.13.0081, respectively.

[3] "Arnokrome III" is a trademark of the Arnold Engineering Company.

weight, 36 percent nickel, 18 percent chromium, and 46 percent iron, and is most notable for its resistance to high temperature corrosion. It has a melting point of 1390 degrees Celsius and displays a creep rupture limit of 4 kilograms per square millimeter at 1000 degrees Celsius. This steel is most commonly used in the production of heating ribbons for circuit breakers and industrial furnaces, and in rheostats for railway locomotives. The product is currently available under proprietary trade names such as "Gilphy 36."[4]

Certain martensitic precipitation-hardenable stainless steel is also excluded from the scope of this review. This high-strength, ductile stainless steel product is designated under the Unified Numbering System ("UNS") as S45500-grade steel, and contains, by weight, 11 to 13 percent chromium, and 7 to 10 percent nickel. Carbon, manganese, silicon and molybdenum each comprise, by weight, 0.05 percent or less, with phosphorus and sulfur each comprising, by weight, 0.03 percent or less. This steel has copper, niobium, and titanium added to achieve aging, and will exhibit yield strengths as high as 1700 Mpa and ultimate tensile strengths as high as 1750 Mpa after aging, with elongation percentages of 3 percent or less in 50 mm. It is generally provided in thicknesses between 0.635 and 0.787 mm, and in widths of 25.4 mm. This product is most commonly used in the manufacture of television tubes and is currently available under proprietary trade names such as "Durphynox 17."[5]

Finally, three specialty stainless steels typically used in certain industrial blades and surgical and medical instruments are also excluded from the scope of this review. These include stainless steel strip in coils used in the production of textile cutting tools (*e.g.*, carpet knives).[6] This steel is similar to AISI grade 420 but containing, by weight, 0.5 to 0.7 percent of molybdenum. The steel also contains, by weight, carbon of between 1.0 and 1.1 percent, sulfur of 0.020 percent or less, and includes between 0.20 and 0.30 percent copper and between 0.20 and 0.50 percent cobalt. This steel is sold under proprietary names such as "GIN4 Mo." The second excluded stainless steel strip in coils is similar to AISI 420-J2 and contains, by weight, carbon of between 0.62 and 0.70 percent, silicon of between 0.20 and 0.50 percent, manganese of between 0.45 and 0.80 percent, phosphorus of no more than 0.025 percent and sulfur of no more than 0.020 percent. This steel has a carbide density on average of 100 carbide particles per 100 square microns. An example of this product is "GIN5" steel. The third specialty steel has a chemical composition similar to AISI 420 F, with carbon of between 0.37 and 0.43 percent, molybdenum of between 1.15 and 1.35 percent, but lower manganese of between 0.20 and 0.80 percent, phosphorus of no more than 0.025 percent, silicon of between 0.20 and 0.50 percent, and sulfur of no more than 0.020 percent. This product is supplied with a hardness of more than Hv 500 guaranteed after customer processing, and is supplied as, for example, "GIN6"[7].

[4] "Gilphy 36" is a trademark of Imphy, S.A.

[5] "Durphynox 17" is a trademark of Imphy, S.A.

[6] This list of uses is illustrative and provided for descriptive purposes only.

[7] "GIN4 Mo," "GIN5" and "GIN6" are the proprietary grades of Hitachi Metals America, Ltd.

Rescission of Review

In the *Preliminary Results*, we stated that Samwon reported, and the Department confirmed through independent U.S. Customs Service data, that it had no shipments of subject merchandise during the POR. Since Samwon did not report any shipments during the POR, we had no basis for determining a margin. Consequently, in accordance with 19 CFR 351.213(d)(3) and consistent with the Department's practice, we preliminarily rescinded our review with respect to Samwon. Since we have received no information since the *Preliminary Results* that contradicts the decision made in the preliminary results of review, we are rescinding the administrative review with respect to Samwon. Since Samwon did not participate in the original investigation, its cash deposit rate will remain at 2.49 percent, which is the all others rate established in the less than fair value ("LTFV") investigation.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this administrative review are addressed in the "Issues and Decision Memorandum" ("*Decision Memorandum*") from Joseph A. Spetrini, Deputy Assistant Secretary, Import Administration, to Faryar Shirzad, Assistant Secretary for Import Administration, dated February 3, 2002, which is hereby adopted by this notice. A list of the issues which parties have raised and to which we have responded, all of which are in the *Decision Memorandum*, is attached to this notice as an Appendix. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum which is on file in the Central Records Unit, Room B-099 of the main Department building. In addition, a complete version of the *Decision Memorandum* can be accessed directly on the Web at *http://ia.ita.doc.gov/*. The paper copy and electronic version of the *Decision Memorandum* are identical in content.

Sales Below Cost

We disregarded sales below cost for both POSCO and DMC during the course of the review.

Changes Since the Preliminary Results

Based on our analysis of comments received, we have made changes in the margin calculations for POSCO and DMC. The changes to the margin calculations are listed below:

POSCO

- We revised the calculation of indirect selling expenses ("ISEs") in the United States to include housing income. *See Comment 4.*
- We reclassified POSCO's income and loss with respect to money market funds as financing expenses and used the short-term income earned on monetary instruments to offset interest expense for the final results of review. *See Comment 6.*
- We revised our calculation of general and administrative ("G&A") expenses to associate POSCO's reversal of bad debt to both export and domestic sales. *See Comment 7.*
- We revised the computer program to merge COP and constructed value ("CV") files in the initial phases of the cost calculation in order to prepare data for those models sold exclusively in the United States for the assignation of the revised variable cost of manufacturing ("VCOM") or total cost of manufacturing ("TCOM"). *See Comment 10.*
- We revised the computer program to apply the L-grade adjustment to the variable cost of manufacturing ("VCOM") and total cost of manufacturing ("TCOM") used in determining the difference-in-merchandise adjustment for sales to the United States. *See Comment 11.*

DMC

- We recalculated DMC's net interest expense in the home market using the actual amount of short-term interest income as an offset to interest expense. *See Comment 12.*
- We revised our calculation of ISE in the U.S. market to offset OMC's interest expense by the imputed credit reported in the sales database. *See Comment 13.*

• We revised the calculation of net price in the United States to eliminate the double counting of billing adjustments. *See Comment 14.*

Final Results of Review

We determine that the following percentage margin exists for the reviewed companies during the period July 1, 2000 through June 30, 2001:

STAINLESS STEEL SHEET AND STRIP IN COILS FROM KOREA

Manufacturer/exporter/ reseller	Margin (percent)
POSCO	0.98
DMC	5.44

The Department shall determine, and Customs shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b)(1), we have calculated exporter/importer (or customer)-specific assessment rate for merchandise subject to this review. The Department will issue appraisement instructions directly to the Customs Service within 15 days of publication of these final results of review. We will direct the Customs Service to assess the resulting assessment rates against the entered customs values for the subject merchandise on each of that importer's entries during the review period. For customer's duty-assessment purposes, we will calculate importer-specific assessment rates by dividing the dumping margins calculated for each importer by the total entered value of sales for each importer during the period of review.

Cash Deposit Requirements

The following deposit requirements will be effective upon publication of this notice of final results of administrative review for all shipments of stainless steel sheet and strip in coils from the Republic of Korea entered, or withdrawn from warehouse, for consumption on or after the date of publication, as provided by section 751(a)(1) of the Act: (1) The cash deposit rates for POSCO and DMC will be the rates shown above; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in these or any previous reviews conducted by the Department, the cash deposit rate will be the "all others" rate, which is 2.49 percent.

These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

Notification of Interested Parties

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties or countervailing duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of the antidumping duties or countervailing duties occurred and the subsequent assessment of double antidumping duties or countervailing duties.

This notice also serves as a reminder to parties subject to administrative protective orders ("APOs") of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305, which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing this determination and notice in accordance with sections 751(a)(1) and 771(i) of the Act.

Dated: February 3, 2003.

Faryar Shirzad,

Assistant Secretary for Import Administration.

Appendix 1—Issues in the Decision Memorandum

A. Issues with Respect to POSCO

Comment 1: ISE ratio in the United States
Comment 2: Imputed Credit Offset to Pohang Steel America's ("POSAM") Interest Expense Incurred in the United States
Comment 3: Major Inputs From Affiliated Parties
Comment 4: Housing Expenses in the United States
Comment 5: Loss on Valuation of Inventory
Comment 6: Short-term Financial Income Earned on Monetary Instruments
Comment 7: Reversal of an Allowance for Bad Debt
Comment 8: Unrealized Income Derived from Long-Term Trade Receivables
Comment 9: Constructed Export Price ("CEP") Offset on CEP Sales
Comment 10: Ministerial Errors in the Merging of the Cost Files
Comment 11: Ministerial Error in the Calculation of L-Grade Adjustment

B. Issues with Respect to DMC

Comment 12: Adjustment for DMC's Net Financial Expenses Ratio in the Home Market
Comment 13: Ocean Metal Corporation's ("OMC") Interest Expense Offset with Imputed Credit Expenses in the United States
Comment 14: Deduction of Billing Adjustments from OMC's Gross Unit Price
Comment 15: Inclusion of All Home Market Sales in the CEP Profit Calculation

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–428–825]

Stainless Steel Sheet and Strip in Coils From Germany; Notice of Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On August 7, 2002, the Department of Commerce (the Department) published the preliminary results of administrative review of the antidumping order covering stainless steel sheet and strip in coils from Germany. *See Stainless Steel Sheet and Strip in Coils from Germany; Notice of Preliminary Results of Antidumping Duty Administrative Review*, 67 FR 51199 (August 7, 2002) (*Preliminary Results*). The merchandise covered by this order is stainless steel sheet and strip in coils as described in the "Scope of the Review" section of the **Federal Register** notice. The period of review (POR) is July 1, 2000, through June 30, 2001. We invited parties to comment on our *Preliminary Results*. The Department also notes that on

September 30, 2002 we published the final results of changed circumstances antidumping duty administrative review of stainless steel sheet and strip in coils from Germany. *See Stainless Steel Sheet and Strip in Coils from Germany: Final Results of Changed Circumstances Antidumping Duty Administrative Review*, 67 FR 61319 (September 30, 2002) (*Changed Circumstances*). We determined that ThyssenKrupp Nirosta GmbH (TKN) is the successor-in-interest to Krupp Thyssen Nirosta GmbH.[1]

Based on our analysis of the comments received, we have made changes in the margin calculations. Therefore, the final results differ from the preliminary results. The final weighted-average dumping margin for the reviewed firm is listed below in the section entitled "Final Results of the Review."

EFFECTIVE DATE: February 10, 2003.

FOR FURTHER INFORMATION CONTACT: Patricia Tran, Michael Heaney, or Robert James at (202) 482–1121, (202) 482–4475, or (202) 482–0649, respectively, Antidumping and Countervailing Duty Enforcement Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Scope of the Review

For purposes of this order, the products covered are certain stainless steel sheet and strip in coils. Stainless steel is an alloy steel containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. The subject sheet and strip is a flat-rolled product in coils that is greater than 9.5 mm in width and less than 4.75 mm in thickness, and that is annealed or otherwise heat treated and pickled or otherwise descaled. The subject sheet and strip may also be further processed (*e.g.*, cold-rolled, polished, aluminized, coated, etc.) provided that it maintains the specific dimensions of sheet and strip following such processing.

The merchandise subject to this order is classified in the Harmonized Tariff Schedule of the United States (HTS) at subheadings: 7219.13.00.31, 7219.13.00.51, 7219.13.00.71, 7219.13.00.81, 7219.14.00.30, 7219.14.00.65, 7219.14.00.90, 7219.32.00.05, 7219.32.00.20, 7219.32.00.25, 7219.32.00.35, 7219.32.00.36, 7219.32.00.38, 7219.32.00.42, 7219.32.00.44, 7219.33.00.05, 7219.33.00.20, 7219.33.00.25, 7219.33.00.35, 7219.33.00.36, 7219.33.00.38, 7219.33.00.42, 7219.33.00.44, 7219.34.00.05, 7219.34.00.20, 7219.34.00.25, 7219.34.00.30, 7219.34.00.35, 7219.35.00.05, 7219.35.00.15, 7219.35.00.30, 7219.35.00.35, 7219.90.00.10, 7219.90.00.20, 7219.90.00.25, 7219.90.00.60, 7219.90.00.80, 7220.12.10.00, 7220.12.50.00, 7220.20.10.10, 7220.20.10.15, 7220.20.10.60, 7220.20.10.80, 7220.20.60.05, 7220.20.60.10, 7220.20.60.15, 7220.20.60.60, 7220.20.60.80, 7220.20.70.05, 7220.20.70.10, 7220.20.70.15, 7220.20.70.60, 7220.20.70.80, 7220.20.80.00, 7220.20.90.30, 7220.20.90.60, 7220.90.00.10, 7220.90.00.15, 7220.90.00.60, and 7220.90.00.80. Although the HTS subheadings are provided for convenience and Customs purposes, the Department's written description of the merchandise under review is dispositive.

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[1] In addition to ThyssenKrupp Nirosta GmbH the following companies involved in the production, importation, and U.S. sale of subject merchandise have changed their corporate names: Krupp Thyssen Nirosta North America, Inc. to ThyssenKrupp Nirosta North America, Inc.; Krupp VDM GmbH to ThyssenKrupp VDM GmbH; and Krupp VDM Technologies Corporation to ThyssenKrupp VDM USA, Inc.

available under proprietary trade names such as "Arnokrome III." [2]

Certain electrical resistance alloy steel is also excluded from the scope of this order. This product is defined as a non-magnetic stainless steel manufactured to American Society of Testing and Materials (ASTM) specification B344 and containing, by weight, 36 percent nickel, 18 percent chromium, and 46 percent iron, and is most notable for its resistance to high temperature corrosion. It has a melting point of 1390 degrees Celsius and displays a creep rupture limit of 4 kilograms per square millimeter at 1000 degrees Celsius. This steel is most commonly used in the production of heating ribbons for circuit breakers and industrial furnaces, and in rheostats for railway locomotives. The product is currently available under proprietary trade names such as "Gilphy 36." [3]

Certain martensitic precipitation-hardenable stainless steel is also excluded from the scope of this order. This high-strength, ductile stainless steel product is designated under the Unified Numbering System (UNS) as S45500-grade steel, and contains, by weight, 11 to 13 percent chromium, and 7 to 10 percent nickel. Carbon, manganese, silicon and molybdenum each comprise, by weight, 0.05 percent or less, with phosphorus and sulfur each comprising, by weight, 0.03 percent or less. This steel has copper, niobium, and titanium added to achieve aging, and will exhibit yield strengths as high as 1700 Mpa and ultimate tensile strengths as high as 1750 Mpa after aging, with elongation percentages of 3 percent or less in 50 mm. It is generally provided in thicknesses between 0.635 and 0.787 mm, and in widths of 25.4 mm. This product is most commonly used in the manufacture of television tubes and is currently available under proprietary trade names such as "Durphynox 17." [4]

Finally, three specialty stainless steels typically used in certain industrial blades and surgical and medical instruments are also excluded from the scope of this order. These include stainless steel strip in coils used in the production of textile cutting tools (*e.g.*, carpet knives).[5] This steel is similar to ASTM grade 440F, but containing, by weight, 0.5 to 0.7 percent of molybdenum. The steel also contains, by weight, carbon of between 1.0 and 1.1 percent, sulfur of 0.020 percent or less, and includes between 0.20 and 0.30 percent copper and between 0.20 and 0.50 percent cobalt. This steel is sold under proprietary names such as "GIN4 Mo." The second excluded stainless steel strip in coils is similar to AISI 420–J2 and contains, by weight, carbon of between 0.62 and 0.70 percent, silicon of between 0.20 and 0.50 percent, manganese of between 0.45 and 0.80 percent, phosphorus of no more than 0.025 percent and sulfur of no more than 0.020 percent. This steel has a carbide density on average of 100 carbide particles per square micron. An example of this product is "GIN5" steel. The third specialty steel has a chemical composition similar to AISI 420 F, with carbon of between 0.37 and 0.43 percent, molybdenum of between 1.15 and 1.35 percent, but lower manganese of between 0.20 and 0.80 percent, phosphorus of no more than 0.025 percent, silicon of between 0.20 and 0.50 percent, and sulfur of no more than 0.020 percent. This product is supplied with a hardness of more than Hv 500 guaranteed after customer processing, and is supplied as, for example, "GIN6." [6]

[2] "Arnokrome III" is a trademark of the Arnold Engineering Company.

[3] "Gilphy 36" is a trademark of Imphy, S.A.

[4] "Durphynox 17" is a trademark of Imphy, S.A.

[5] This list of uses is illustrative and provided for descriptive purposes only.

[6] "GIN4 Mo," "GIN5" and "GIN6" are the proprietary grades of Hitachi Metals America, Ltd.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this administrative review are addressed in the "Issues and Decision Memorandum" (Decision Memorandum) from Joseph A. Spetrini, Deputy Assistant Secretary for Import Administration to Faryar Shirzad, Assistant Secretary for Import Administration, dated February 3, 2003, which is hereby adopted by this notice. A list of the issues which parties have raised and to which we have responded, all of which are in the Decision Memorandum, is attached to this notice as an appendix. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum which is on file in room B–099 of the main Department of Commerce building. In addition, a complete version of the Decision Memorandum can be accessed directly on the internet at *www.ia.ita.doc.gov*. The paper copy and electronic version of the Decision Memorandum are identical in content.

Changes Since the Preliminary Results

Based on our analysis of comments received, we have made changes in the margin calculations. The changes are listed below:

- We have calculated average values for finish, gauge, width, hot/cold rolled, and temper for any sales missing these physical characteristics.
- We modified our calculation of interest expenses.
- We have deducted indirect selling expenses incurred in the country of manufacture from U.S. price and in our calculation of CEP profit to account for all U.S. selling expenses for TKN's affiliated U.S. reseller KHSP.
- We have also corrected certain programming and clerical errors in our preliminary results, where applicable. Any alleged programming errors with which we do not agree are discussed in the relevant sections of the Decision Memorandum, accessible in B–099 of the main Department of Commerce building and on the web at *www.ia.ita.doc.gov*.

Final Results of the Review

We determine the following percentage weighted-average margin exists for the period July 1, 2000 through June 30, 2001:

Manufacturer/Exporter	Weighted average margin (percentage)
TKN	4.77

Liquidation

The Department shall determine, and U.S. Customs Service (Customs) shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b)(1), we have calculated exporter/importer-specific assessment rates. The Department will issue appropriate assessment instructions directly to Customs within 15 days of publication of these final results of review. With respect to constructed export price sales, we divided the total dumping margins for the reviewed sales by the total entered value of those reviewed sales for each importer. We will direct Customs to assess the resulting assessment rate against the entered Customs values for the subject merchandise on each of the importer's entries under the relevant order during the POR.

Cash Deposit Requirements

The following deposit requirements will be effective upon publication of this notice of final results of administrative review for all shipments of stainless steel sheet and strip in coils from Germany entered, or withdrawn from warehouse, for consumption on or after the date of publication, as provided by section 751(a)(1) of the Tariff Act: (1) The cash deposit rate for the reviewed

company will be the rate shown above; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 13.48 percent. This rate is the "All Others" rate from the amended final determination in the LTFV investigations. *See Stainless Steel Sheet and Strip in Coils From Germany: Amended Final Determination of Antidumping Duty Investigation*, 67 FR 15178, 15179 (March 29, 2002).

These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping or countervailing duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping or countervailing duties occurred and the subsequent assessment of doubled antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective orders (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing this determination and notice in accordance with sections 751(a)(1) and 777(i) of the Tariff Act.

Dated: February 3, 2003.

Faryar Shirzad,

Assistant Secretary for Import Administration.

Appendix

Comments and Responses

1. Whether TKN and TKVDM are Entitled to Separate Cash Deposit Rates
2. Indirect Selling Expenses Incurred in the Home Market for U.S. sales
3. Product Characteristics
4. Non-Dumped Sales
5. Financial Expenses
6. Clerical Errors

[FR Doc. 03–3286 Filed 2–7–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-428–825]

Stainless Steel Sheet and Strip in Coils from Germany; Antidumping Duty Administrative Review; Extension of Time Limit for Preliminary Results

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Extension of Time Limits.

SUMMARY: The Department of Commerce (the Department) is extending the time limits for the preliminary results of the 2001–2002 administrative review of the antidumping duty order on stainless steel sheet and strip in coils from Germany. This review covers one manufacturer/exporter of the subject merchandise to the United States and the period July 1, 2001 through June 30, 2002.

EFFECTIVE DATE: February 10, 2003.

FOR FURTHER INFORMATION CONTACT: Patricia Tran at (202) 482–1121 or Robert James at (202) 482–0649, Antidumping and Countervailing Duty Enforcement Group III, Office Eight, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION: On August 27, 2002, in response to requests from the respondent and petitioners, we published a notice of initiation of this administrative review in the **Federal Register**. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 67 FR 55000 (August 27, 2002). Pursuant to the time limits for administrative reviews set forth in section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Tariff Act), the current deadlines are April 2, 2003 for the preliminary results and July 31, 2003, for the final results. It is not practicable to complete this review within the normal statutory time limit due to a number of significant case issues, such as affiliated resellers, the use of downstream sales, and physical product characteristics. Therefore, the Department is extending the time limits for completion of the preliminary results until July 31, 2003 in accordance with section 751(a)(3)(A) of the Tariff Act. The deadline for the final results of this review will continue to be 120 days after publication of the preliminary results.

This extension is in accordance with section 751(a)(3)(A) of the Tariff Act.

Dated: January 31, 2003.

Joseph A. Spetrini,

Deputy Assistant Secretary for Import Administration, Group III.

[FR Doc. 03–3287 Filed 2–7–03; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–475–824]

Stainless Steel Sheet and Strip in Coils From Italy: Final Results of Antidumping Administrative Review

AGENCY: Import Administration, International Trade Administration, U.S. Department of Commerce.

ACTION: Notice of final results in the antidumping duty administrative review of stainless steel sheet and strip in coils from Italy

SUMMARY: On August 7, 2002, the U.S. Department of Commerce ("Department") published in the **Federal Register** the preliminary results of its administrative review of the antidumping duty order on stainless steel sheet and strip in coils ("SSSS") from Italy. *See Preliminary Results of Antidumping Duty Administrative Review: Stainless Steel Sheet and Strip in Coils from Italy*, 67 FR 51224 (August 7, 2002) ("*Preliminary Results*"). This review covers imports of subject merchandise from ThyssenKrupp Acciai Speciali Terni S.p.A ("TKAST") and ThyssenKrupp AST USA, Inc.("TKASTUSA"). The period of review ("POR") is July 1, 2000 through June 30, 2001.

Based on our analysis of the comments received, we have made changes from our results from the preliminary results of review. Therefore, the final results differ from the preliminary results. The final weighted-average dumping margin for the reviewed firm is listed below in the section entitled "Final Results of the Review."

EFFECTIVE DATE: February 10, 2003.

FOR FURTHER INFORMATION CONTACT: Stephen Bailey or Robert Bolling,

Enforcement Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW., Washington, DC 20230; telephone: 202–482–1102, or 202–482–3434, respectively.

SUPPLEMENTARY INFORMATION:

Background

On August 7, 2002, the Department published in the **Federal Register** the preliminary results of its administrative review of the antidumping duty order on stainless steel sheet and strip in coils from Italy. *See Preliminary Results.* We invited parties to comment on our preliminary results of review.[1] We received written comments on September 6, 2002, from petitioners and respondents. On September 16, 2002, we received rebuttal comments from petitioners and respondents. On January 10, 2003, the Department issued a letter to interested parties requesting comments regarding whether certain selling agents of Ken-Mac Metals ("Ken-Mac") were employees of Ken-Mac. On January 15, 2003, petitioners filed comments.

Under section 751(a)(3)(A) of the Act, the Department may extend the deadline for completion of an administrative review if it determines that it is not practicable to complete the review within the statutory time limit. Accordingly, the Department extended the due date for the notice of final results 40 days, from the original due date of December 5, 2002, to January 14, 2003. *See Stainless Steel Sheet and Strip in Coils from Italy: Extension of Time Limit of Final Results of Antidumping Duty Administrative Review*, 67 FR 75846 (December 10, 2002). In accordance with section 751(a)(3)(A) of the Act, the Department again extended the due date for the notice of final results an additional 20 days, from the revised due date of January 14, 2003 to February 3, 2003. *See Stainless Steel Sheet and Strip in Coils from Italy: Extension of Final Results of Antidumping Duty Administrative Review*, 68 FR 2316 (January 16, 2002). We have now completed the administrative review in accordance with section 751(a) of the Tariff Act of 1930, as amended ("the Act").

[1] Petitioners in this case are Allegheny Ludlum Corporation, AK Steel Corporation, J&L Specialty Steel, Inc., North American Stainless, United Steelworkers of America, AFL-CIO/CLC, Butler Armco Independent Union and Zanesville Armco Independent Organization, Inc.

Scope of Review

For purposes of this administrative review, the products covered are certain stainless steel sheet and strip in coils. Stainless steel is an alloy steel containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. The subject sheet and strip is a flat-rolled product in coils that is greater than 9.5 mm in width and less than 4.75 mm in thickness, and that is annealed or otherwise heat treated and pickled or otherwise descaled. The subject sheet and strip may also be further processed (*e.g.*, cold-rolled, polished, aluminized, coated, *etc.*) provided that it maintains the specific dimensions of sheet and strip following such processing.

The merchandise subject to this review is currently classifiable in the Harmonized Tariff Schedule of the United States ("HTS") at subheadings: 7219.13.0031, 7219.13.0051, 7219.13.0071, 7219.1300.81,[2] 7219.14.0030, 7219.14.0065, 7219.14.0090, 7219.32.0005, 7219.32.0020, 7219.32.0025, 7219.32.0035, 7219.32.0036, 7219.32.0038, 7219.32.0042, 7219.32.0044, 7219.33.0005, 7219.33.0020, 7219.33.0025, 7219.33.0035, 7219.33.0036, 7219.33.0038, 7219.33.0042, 7219.33.0044, 7219.34.0005, 7219.34.0020, 7219.34.0025, 7219.34.0030, 7219.34.0035, 7219.35.0005, 7219.35.0015, 7219.35.0030, 7219.35.0035, 7219.90.0010, 7219.90.0020, 7219.90.0025, 7219.90.0060, 7219.90.0080, 7220.12.1000, 7220.12.5000, 7220.20.1010, 7220.20.1015, 7220.20.1060, 7220.20.1080, 7220.20.6005, 7220.20.6010, 7220.20.6015, 7220.20.6060, 7220.20.6080, 7220.20.7005, 7220.20.7010, 7220.20.7015, 7220.20.7060, 7220.20.7080, 7220.20.8000, 7220.20.9030, 7220.20.9060, 7220.90.0010, 7220.90.0015, 7220.90.0060, and 7220.90.0080. Although the HTS subheadings are provided for convenience and Customs purposes, the Department's written description of the merchandise under review is dispositive.

Excluded from the scope of this review are the following: (1) Sheet and strip that is not annealed or otherwise heat treated and pickled or otherwise descaled, (2) sheet and strip that is cut to length, (3) plate (*i.e.*, flat-rolled stainless steel products of a thickness of 4.75 mm or more), (4) flat wire (*i.e.*, cold-rolled sections, with a prepared edge, rectangular in shape, of a width of not more than 9.5 mm), and (5) razor blade steel. Razor blade steel is a flat-rolled product of stainless steel, not further worked than cold-rolled (cold-reduced), in coils, of a width of not more than 23 mm and a thickness of 0.266 mm or less, containing, by weight, 12.5 to 14.5 percent chromium, and certified at the time of entry to be used in the manufacture of razor blades. *See* Chapter 72 of the HTS, "Additional U.S. Note" 1(d).

Flapper valve steel is also excluded from the scope of this review. This product is defined as stainless steel strip in coils containing, by weight, between 0.37 and 0.43 percent carbon, between 1.15 and 1.35 percent molybdenum, and between 0.20 and 0.80 percent manganese. This steel also contains, by weight, phosphorus of 0.025 percent or less, silicon of between 0.20 and 0.50 percent, and sulfur of 0.020 percent or less. The product is manufactured by means of vacuum arc remelting, with inclusion controls for sulphide of no more than 0.04 percent and for oxide of no more than 0.05 percent. Flapper valve steel has a tensile strength of between 210 and 300 ksi, yield strength of between 170 and 270 ksi, plus or minus 8 ksi, and a hardness (Hv) of between 460 and 590. Flapper valve steel is most commonly used to produce specialty flapper valves in compressors.

Also excluded is a product referred to as suspension foil, a specialty steel product used in the manufacture of suspension assemblies for computer disk drives. Suspension foil is described as 302/304 grade or 202 grade stainless steel of a thickness between 14 and 127 microns, with a thickness tolerance of plus-or-minus 2.01 microns, and surface glossiness of 200 to 700 percent Gs. Suspension foil must be supplied in coil widths of not more than 407 mm, and with a mass of 225 kg or less. Roll marks may only be visible on one side, with no scratches of measurable depth. The material must exhibit residual stresses of 2 mm maximum deflection, and flatness of 1.6 mm over 685 mm length.

Certain stainless steel foil for automotive catalytic converters is also excluded from the scope of this review. This stainless steel strip in coils is a specialty foil with a thickness of between 20 and 110 microns used to produce a metallic substrate with a honeycomb structure for use in automotive catalytic converters. The steel contains, by weight, carbon of no more than 0.030 percent, silicon of no

[2] Due to changes to the HTS numbers in 2001, 7219.13.0030, 7219.13.0050, 7219.13.0070, and 7219.13.0080 are now 7219.13.0031, 7219.13.0051, 7219.13.0071, and 7219.13.0081, respectively.

more than 1.0 percent, manganese of no more than 1.0 percent, chromium of between 19 and 22 percent, aluminum of no less than 5.0 percent, phosphorus of no more than 0.045 percent, sulfur of no more than 0.03 percent, lanthanum of less than 0.002 or greater than 0.05 percent, and total rare earth elements of more than 0.06 percent, with the balance iron.

Permanent magnet iron-chromium-cobalt alloy stainless strip is also excluded from the scope of this order. This ductile stainless steel strip contains, by weight, 26 to 30 percent chromium, and 7 to 10 percent cobalt, with the remainder of iron, in widths 228.6 mm or less, and a thickness between 0.127 and 1.270 mm. It exhibits magnetic remanence between 9,000 and 12,000 gauss, and a coercivity of between 50 and 300 oersteds. This product is most commonly used in electronic sensors and is currently available under proprietary trade names such as "Arnokrome III."[3]

Certain electrical resistance alloy steel is also excluded from the scope of this review. This product is defined as a non-magnetic stainless steel manufactured to American Society of Testing and Materials ("ASTM") specification B344 and containing, by weight, 36 percent nickel, 18 percent chromium, and 46 percent iron, and is most notable for its resistance to high temperature corrosion. It has a melting point of 1390 degrees Celsius and displays a creep rupture limit of 4 kilograms per square millimeter at 1000 degrees Celsius. This steel is most commonly used in the production of heating ribbons for circuit breakers and industrial furnaces, and in rheostats for railway locomotives. The product is currently available under proprietary trade names such as "Gilphy 36."[4]

Certain martensitic precipitation-hardenable stainless steel is also excluded from the scope of this order. This high-strength, ductile stainless steel product is designated under the Unified Numbering System ("UNS") as S45500-grade steel, and contains, by weight, 11 to 13 percent chromium, and 7 to 10 percent nickel. Carbon, manganese, silicon and molybdenum each comprise, by weight, 0.05 percent or less, with phosphorus and sulfur each comprising, by weight, 0.03 percent or less. This steel has copper, niobium, and titanium added to achieve aging, and will exhibit yield strengths as high as 1700 Mpa and ultimate tensile strengths as high as 1750 Mpa after aging, with elongation percentages of 3 percent or less in 50 mm. It is generally provided in thicknesses between 0.635 and 0.787 mm, and in widths of 25.4 mm. This product is most commonly used in the manufacture of television tubes and is currently available under proprietary trade names such as "Durphynox 17."[5]

Also excluded are three specialty stainless steels typically used in certain industrial blades and surgical and medical instruments. These include stainless steel strip in coils used in the production of textile cutting tools (*e.g.*, carpet knives).[6] This steel is similar to AISI grade 420 but containing, by weight, 0.5 to 0.7 percent of molybdenum. The steel also contains, by weight, carbon of between 1.0 and 1.1 percent, sulfur of 0.020 percent or less, and includes between 0.20 and 0.30 percent copper and between 0.20 and 0.50 percent cobalt. This steel is sold under proprietary names such as "GIN4 Mo."[7] The second excluded stainless steel strip in coils is similar to AISI 420–J2 and contains, by weight, carbon of between 0.62 and 0.70 percent, silicon of between 0.20 and 0.50 percent, manganese of between 0.45 and 0.80 percent, phosphorus of no more than 0.025 percent and sulfur of no more than 0.020 percent. This steel has a carbide density on average of 100 carbide particles per 100 square microns. An example of this product is "GIN5"[8] steel. The third specialty steel has a chemical composition similar to AISI 420 F, with carbon of between 0.37 and 0.43 percent, molybdenum of between 1.15 and 1.35 percent, but lower manganese of between 0.20 and 0.80 percent, phosphorus of no more than 0.025 percent, silicon of between 0.20 and 0.50 percent, and sulfur of no more than 0.020 percent. This product is supplied with a hardness of more than Hv 500 guaranteed after customer processing, and is supplied as, for example, "GIN6."[9]

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this administrative review are addressed in the "Issues and Decision Memorandum" ("*Decision Memorandum*") from Joseph A. Spetrini, Deputy Assistant Secretary, Import Administration, to Faryar Shirzad, Assistant Secretary for Import Administration, dated February 3, 2003, which is hereby adopted by this notice. A list of the issues which parties have raised and to which we have responded, are in the *Decision Memorandum*, which is attached to this notice as an Appendix. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in the *Decision Memorandum* which is on file in the Central Records Unit, Room B–099 of the main Department building. In addition, a complete version of the *Decision Memorandum* can be accessed directly on the Web at *http://ia.ita.doc.gov/frn/index.html*. The paper copy and electronic version of the *Decision Memorandum* are identical in content.

Sales Below Cost

We disregarded sales below cost for TKAST during the course of the review.

Changes Since the Preliminary Results

Based on our analysis of comments received, we have made changes in the margin calculations for TKAST. The changes to the margin calculations are listed below:

1. The Department disallowed TKAST's insurance revenue allocation claim for certain sales which were ultimately returned to TKAST. However, the Department made a sales-specific insurance revenue adjustment for certain sales because the information necessary for calculating this adjustment was submitted on the record of this administrative review. *See* Comment 1.

2. The Department is adding home market interest revenue to the home market gross unit price in accordance with section 773(a)(6)(C) of the Act. See Comment 2.

3. The Department made certain changes based on TKAST's reported U.S. commissions. *See Commissions Memorandum from Stephen Bailey to Edward C. Yang dated February 3, 2003.*

4. The Department is adjusting U.S. price to account for the incurred cost of skids and additional U.S. freight. See Comment 7.

5. The Department made certain changes to TKAST's interest expenses. See Comment 5.

6. The Department is adjusting CEP profit to account for an affiliate's further manufacturing in the U.S. *See* Comment 9.

Final Results of Review

We determine that the following percentage margin exists for the period July 1, 2000, through June 30, 2001:

[3] "Arnokrome III" is a trademark of the Arnold Engineering Company.

[4] "Gilphy 36" is a trademark of Imphy, S.A.

[5] "Durphynox 17" is a trademark of Imphy, S.A.

[6] This list of uses is illustrative and provided for descriptive purposes only.

[7] "GIN4 Mo" is the proprietary grade of Hitachi Metals America, Ltd.

[8] "GIN5" is the proprietary grade of Hitachi Metals America, Ltd.

[9] "GIN6" is the proprietary grade of Hitachi Metals America, Ltd.

Producer/manufacturer/exporter	Weighted-average margin
TKAST	5.84%

The Department shall determine, and Customs shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b)(1), we have calculated exporter/importer (or customer)-specific assessment rate for merchandise subject to this review. The Department will issue appraisement instructions directly to the Customs Service within 15 days of publication of these final results of review. We will direct the Customs Service to assess the resulting assessment rates against the entered customs values for the subject merchandise on each of that importer's entries during the review period. For customer's duty-assessment purposes, we will calculate importer-specific assessment rates by dividing the dumping margins calculated for each importer by the total entered value of sales for each importer during the period of review.

Cash Deposit Requirements

The following deposit requirements will be effective upon publication of this notice of final results of administrative review for all shipments of stainless steel sheet and strip in coils from Italy entered, or withdrawn from warehouse, for consumption on or after the date of publication, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for TKAST will be the rate shown above; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in these or any previous reviews conducted by the Department, the cash deposit rate will be the "all others" rate, which is 11.23 percent.

These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

Notification of Interested Parties

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of the antidumping duties or countervailing duties occurred and the subsequent assessment of double antidumping duties or countervailing duties.

This notice also serves as a reminder to parties subject to administrative protective orders ("APOs") of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305, which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing this determination and notice in accordance with sections 751(a)(1) and 771(i) (1) of the Act.

Dated: February 3, 2003.

Faryar Shirzad,

Assistant Secretary for Import Administration.

Appendix—Issues in the Decision Memorandum

1. U.S. Insurance Revenue
2. H.M. Interest Revenue
3. U.S. Commissions
4. Home Market Imputed Credit
5. Cost of Production Adjustments
6. Treatment of Negative Margins
7. Skid and Freight Revenue Adjustments
8. Re-packing Expenses
9. Further Manufacturing

[FR Doc. 03–3288 Filed 2–7–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

[Docket No. 030110008–3008–01]

Proposed Voluntary Product Standard PS 2–02 "Performance Standard for Wood-Based Structural-Use Panels"

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice and request for comments.

SUMMARY: This notice advises the public that the National Institute of Standards and Technology (NIST) is distributing a proposed revision of Voluntary Product Standard PS 2–92, "Performance Standard for Wood-Based Structural-Use Panels." This standard, prepared by the Standing Committee for PS 2, establishes criteria for assessing the acceptability of wood-based structural-use panels for construction sheathing and single-floor applications and provides a basis for common understanding among the producers, distributors, and the users of these products. Interested parties are invited to review the proposed standard and submit comments to NIST.

DATES: Written comments regarding the proposed revision, PS 2–02, should be submitted to the Standards Services Division, NIST, no later than April 28, 2003.

ADDRESSES: An electronic copy (an Adobe Acrobat File) of the proposed standard, PS 2–02, can be obtained at the following Web site *http://ts.nist.gov/ps2revision*. This site also includes an electronic copy of PS 2–92 (the existing standard), a summary of significant changes, and a form for submitting comments. Written comments on the proposed revision should be submitted to Ms. JoAnne Overman, Standards Services Division, NIST, 100 Bureau Drive, Stop 2150, Gaithersburg, MD 20899–2150. Electronic comments may be submitted to *joanne.overman@nist.gov*.

FOR FURTHER INFORMATION CONTACT: Ms. JoAnne Overman, Standards Services Division, National Institute of Standards and Technology, telephone: (301) 975–4037; fax: (301) 975–5414, e-mail: *joanne.overman@nist.gov*.

SUPPLEMENTARY INFORMATION: Proposed Voluntary Product Standard PS 2–02 establishes criteria for assessing the acceptability of wood-based structural-use panels for construction sheathing and single-floor applications. Structural-use panels include: plywood, wafer board, oriented strand board (OSB), structural particle board, and composite panels. The standard provides performance requirements, adhesive bond performance, panel construction and workmanship, dimensions and tolerances, marking, and moisture content of structural-use panels. The standard classifies panels by exposure durability and by grade. It provides test methods, a glossary of trade terms and definitions, and a quality certification program whereby agencies inspect, sample, and test products for qualification under this standard. Information regarding industry practices for reinspection is provided in an appendix.

The proposed revision to the standard "Performance Standard for Wood-Based

Structural-Use Panels" has been developed and is being processed in accordance with Department of Commerce provisions in Title 15 Code of Federal Regulations part 10, Procedures for the Development of Voluntary Product Standards, as amended (published June 20, 1986). The current standard, PS 2–92, was published in 1992.

The Standing Committee for PS 2 has the responsibility for maintaining, revising, and interpreting the standard. The Committee is comprised of producers, distributors, users, and others with an interest in the standard. Considerable research and review has gone into completing this revision; much of the work was performed by the document's sponsor, APA—The Engineered Wood Association.

In addition to format, terminology updates, and general clarification, this revision makes several substantial changes to the standard, including: (1) Revision of bond performance criteria and methods for oriented strand board (OSB); (2) revision of linear expansion criteria and methods; (3) revision to structural performance descriptions; and (4) deletion of requirements and methods for Exposure 2 and stability index.

OSB Bond Performance/Exposure 1—APA began evaluation of quality assurance test methods in 1992 at the request of APA members to identify a more appropriate test. The 1"x5" specimen was viewed as being too small, having an inappropriate orientation (tested on edge), and being poorly related to manufacturing processes and product applications. Several mill trials resulted in the adoption of a flatwise, simple static bending test based on Method D of ASTM D–3043 "Methods of Testing Structural Panels in Flexure." This test has been added to PS 2 in section 7.6, *Small static bending test.*

Products sampled on a quarterly basis were evaluated for structural performance, and resulting properties from the same panels were used to develop industry quality assurance property levels (dry properties in Table 7) for the various roof and floor spans covered in PS 2 and PRP–108 "Performance Standards for Structural-Use Panels." Cycled strength properties for Exposure 1 were established based on a cold-water vacuum soak.

Additional development work was completed in 1998–2000 to update the Exposure 1 criteria. The update was based on industry comments that adding heat to the cycle would be preferable to differentiate among resin modifications. Again, quarterly samples were benchmarked for both structural and Exposure 1 bond performance to establish updated Exposure 1 criteria for small static bending samples after cycling using hot water, vacuum soak, and oven drying (Test 7.16, *Moisture cycle test for bond performance*). The updated Exposure 1 criteria can be found in Table 6, and the application of the test and criteria are shown in sections 5.3.3.1.b and 6.2.4.1.b of PS 2.

Revisions to the linear expansion method were made based on a need to reflect industry performance and serviceability requirements. Industry samples were benchmarked for linear expansion, and a suitable cycle and criteria were evaluated. The criterion was established at an average level, which is common for serviceability applications. The cycle was based on equilibrium at 50% relative humidity, which is viewed to be more representative of installed conditions than the oven-dry condition. Industry surveys were conducted and reviewed to determine acceptable performance using the revised criteria and test methods. Verification of the methods was conducted on a representative subset of products. The criteria and application are updated in sections 5.3.2.1 and 6.2.3. The test method revisions are reflected in section 7.8.

General comments on the structural performance sections indicated the need for improvement in the instructions. Concerns were expressed about applying structural performance criteria to daily mill quality assurance evaluations. Additionally, there were questions about the linearity of deflection requirements for a given increase in spans. The following changes were made:

(a) Revisions to these sections spell out the test provisions more clearly. Each possible scenario is described independently. The actual percentage resulting in passing results is spelled out for each test and criterion explicitly.

(b) Where appropriate, a clause was added to each performance test stating that the average of the tests should meet the designated requirement.

(c) For cases such as Single Floor 32oc, where the deflection requirement is more stringent than a straightforward linear analysis would predict, it was explained that the linear analysis results in excessive movement under typical floor loading conditions.

The Exposure 2 rating for bond performance has become obsolete. There are no known producers using the Exposure 2 rating. There is also no reason to believe the rating will become necessary for future production. Therefore, performance requirements related to the Exposure 2 rating have been deleted.

The stability index, although applied to product qualifications, was demonstrated to not be a very robust test in that panels evaluated never failed to meet the requirement. It was agreed by the Standing Committee that there is little value in retaining the stability index in the standard.

The dead weight stiffness test was added as a non-mandatory test in Section 7.20. As part of the guidance for using the test, Table 8, *Typical pre-loads and test loads,* was included.

Concurrent with this **Federal Register** Notice, the proposed Voluntary Product Standard PS 2–02 is being distributed by the National Institute of Standards and Technology to national experts and other interested parties for review and comment, in order to ensure that the standard constitutes acceptable industry practice. All public comments will be reviewed and considered. The Standing Committee for PS 2 and NIST will revise the standard accordingly.

Dated: February 4, 2003.

Arden L. Bement, Jr.,

Director.

[FR Doc. 03–3289 Filed 2–7–03; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF DEFENSE

Department of the Army

Armament Retooling and Manufacturing Support Executive Advisory Committee

AGENCY: Department of the Army, DoD.

ACTION: Notice of open meeting.

SUMMARY: pursuant to Pub. L. 92–463, notice is hereby given of the next meeting of the Armament Retooling and Manufacturing Support (ARMS) Executive Advisory Committee (EAC).

Date of Meeting: March 13–14, 2003.

Place of Meeting: Sheraton World Resort Hotel, 10100 International Drive, Orlando, FL 32821.

Time of meeting: 1 PM–5 PM on March 13 and 7:30 AM–12 PM on March 14.

Proposed Agenda: The purpose of the meeting is to update the EAC and public on the status of ongoing actions, new items of interest, and suggested future direction/actions. Topics of this meeting will include: Divestiture of ARMS Facilities; Minimization of Negative Impacts upon Tenants; and Allocations of ARMS Program Funding. This meeting is open to the public.

FOR FURTHER INFORMATION CONTACT: Mr. Mike Perez, U.S. Army Joint Munitions

Command, and Attn: AMSJM–CCA–IA, Rock Island Arsenal, IL 61299, phone (309) 782–3360.

SUPPLEMENTARY INFORMATION: The EAC encourages the development of new and innovative methods to optimize the asset value of the Government-Owned, Contractor-Operated ammunition industrial base for peacetime and national emergency requirements, while promoting economical and efficient processes at minimal operating costs, retention of critical skills, community economic benefits, and a potential model for defense conversion. The U.S. Army, Joint Munitions Command, will host this meeting.

A block of rooms has been reserved at the Sheraton World Resort hotel for the nights of March 12–14, 2003. The Sheraton World Resort Hotel is located at 10100 International Drive, Orlando, Florida 32821, local phone (407) 352–1100. Please make your reservations by calling 800–327–0363. Be sure to mention the guest code acronym U.S. Army OSC ARMS Team. Reserve your room prior to February 12th to get the Government Rate of $129.00 a night. Also notify this office of your attendance by notifying Mike Perez, *perezm@osc.army mil*, and (309) 782–3360 (DSN 793–3360). To insure adequate arrangements (transportation, conference facilities, etc.) for all attendees, we request your attendance notification with this office by February 28, 2003. Corporate casual is meeting attire.

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 03–3249 Filed 2–7–03; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Advisory Committee Meeting

AGENCY: Department of the Army, DOD.

ACTION: Notice of meeting.

SUMMARY: In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following meeting:

Name of Committee: Distance Learning/Training Technology Subcommittee of the Army Education Advisory Committee.

Date: March 11–12, 2003.

Place: Newport News, VA.

Time: 8 am–4:30 pm (March 11, 2003). 8 am–12 pm (March 12, 2003).

Proposed Agenda: Initial starting point of meeting will include Updates on The Army Distance Learning Program (TADLP) and infrastructure, followed by discussions that focus on learning and technology.

Purpose of the Meeting: To provide for the continuous exchange of information and ideas for distance learning between the U.S. Army Training and Doctrine Command (TRADOC), HQ Department of the Army, and the academic and business community.

FOR FURTHER INFORMATION CONTACT: All communications regarding this subcommittee should be addressed to Mr. Jim Bradley, at Commander, Headquarters TRADOC, ATTN: ATTG–CF (Mr. Bradley), Fort Monroe, VA 23651–5000; telephone number (757) 788–5591.

SUPPLEMENTARY INFORMATION: Meeting of the advisory committee is open to the public. Because of restricted meeting space, attendance will be limited to those persons who have notified the Advisory Committee Management Office in writing at least five days prior to the meeting of their intention to attend. Contact Mr. Bradley (757–788–5991) for meeting agenda and specific locations.

Any member of the public may file a written statement with the committee before, during, or after the meeting. To the extent that time permits, the committee chairman may allow public presentations or oral statements at the meeting.

Robert E. Seger,

Senior Executive Service, Assistant Deputy Chief of Staff for Training.

[FR Doc. 03–3248 Filed 2–7–03; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Board of Visitors, United States Military Academy

AGENCY: Department of the Army, DoD.

ACTION: Notice of open meeting.

SUMMARY: In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following committee meeting:

Name of Committee: Board of Visitors, United States Military Academy.

Date: Wednesday, March 5, 2003.

Place of Meeting: Veteran Affairs Conference Room, Room 418, Senate Russell Office Building, Washington, DC.

Start Time of Meeting: Approximately 10 a.m.

FOR FURTHER INFORMATION CONTACT: Lieutenant Colonel Edward C. Clarke, United States Military Academy, West Point, NY 10996–5000, (845) 938–4200.

SUPPLEMENTARY INFORMATION: *Proposed Agenda:* Organizational Meeting of the Board of Visitors. Receive updates on Academic, Military and Physical Programs, Athletic Program, Admissions at USMA and USMAPS. All proceedings are open.

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 03–3245 Filed 2–7–03; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Availability for Non-Exclusive, Exclusive, or Partially Exclusive Licensing of U.S. Patent Application Concerning Method for Treating, Preventing, or Inhibiting Enterotoxigenic Escherichia Coli Infections With Bovine Erythrocyte Preparations

AGENCY: Department of the Army, DoD.

ACTION: Notice.

SUMMARY: In accordance with 37 CFR 404.6 and 404.7, announcement is made of the availability for licensing of U.S. Patent Application No. 10/077,804 entitled "Method for Treating, Preventing, or Inhibiting Enterotoxigenic Escherichia Coli Infections with Bovine Erythrocyte Preparations," filed February 20, 2002. The United States Government, as represented by the Secretary of the Army, has rights in this invention.

ADDRESSES: Commander, U.S. Army Medical Research and Materiel Command, ATTN: Command Judge Advocate, MCMR–JA, 504 Scott Street, Fort Detrick, Frederick, MD 21702–5012.

FOR FURTHER INFORMATION CONTACT: For patent issues, Ms. Elizabeth Arwine, Patent Attorney, (301) 619–7808. For licensing issues, Dr. Paul Mele, Office of Research & Technology Assessment, (301) 619–6664, both at telefax (301) 619–5034.

SUPPLEMENTARY INFORMATION: This invention relates generally to bovine erthrocyte preparations. In particular, the present invention relates to methods of using bovine erythrocyte preparations for treating, preventing, or inhibiting

enterotoxigenic *Escherichia coli* infections.

Luz D. Ortiz,
Army Federal Register Liaison Officer.
[FR Doc. 03–3244 Filed 2–7–03; 8:45 am]
BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Availability for Non-Exclusive, Exclusive, or Partially Exclusive Licensing of U.S. Provisional Patent Application Concerning Protective Garment

AGENCY: Department of the Army, DoD.
ACTION: Notice.

SUMMARY: In accordance with 37 CFR 404.6 and 404.7, announcement is made of the availability for licensing of U.S. Provisional Patent Application No. 60/428,750 entitled "Protective Garment," filed November 25, 2002. The United States Government, as represented by the Secretary of the Army, has rights in this invention.

ADDRESSES: Commander, U.S. Army Medical Research and Materiel Command, ATTN: Command Judge Advocate, MCMR–JA, 504 Scott Street, Fort Detrick, Frederick, MD 21702–5012.

FOR FURTHER INFORMATION CONTACT: For patent issues, Ms. Elizabeth Arwine, Patent Attorney, (301) 619–7808. For licensing issues, Dr. Paul Mele, Office of Research & Technology Assessment, (301) 619–6664, both at telefax (301) 619–5034.

SUPPLEMENTARY INFORMATION: The present invention relates to protective garments, providing the wearer improved protection from the inadvertent exposure to materials. The protective garments have an anchoring means for anchoring its sleeves to the wrist or hands of the wearer so as to prevent the sleeve from sliding up the wearer's arm.

Luz D. Ortiz,
Army Federal Register Liaison Officer.
[FR Doc. 03–3243 Filed 2–7–03; 8:45 am]
BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Performance Review Boards Membership

AGENCY: Department of the Army, DOD.
ACTION: Notice.

SUMMARY: This notice amends Performance Review Boards Membership, published November 25, 2002 (67 FR 70584), for the Department of the Army. The following name is added to the Performance Review Board for the U.S. Army Corps of Engineers (USACE): Mr. Thomas E. Caver, Principal Assistant for Civil Works, Directorate of Civil Works, Headquarters, USACE.

EFFECTIVE DATES: November 18, 2002.

FOR FURTHER INFORMATION CONTACT: Ms. Kate Mack, U.S. Army Senior Executive Service Office, Assistant Secretary of the Army, Manpower & Reserve Affairs, 111 Army Pentagon, Washington, DC 20310–0111.

SUPPLEMENTARY INFORMATION: Section 4314(c)(1) through (5) of Title 5, U.S.C., requires each agency to establish, in accordance with regulations, one or more Senior Executive Service performance review boards. The boards shall review and evaluate the initial appraisal of senior executives' performance by supervisors and make recommendations to the appointing authority or rating official relative to the performance of these executives.

Luz D. Ortiz,
Army Federal Register Liaison Officer.
[FR Doc. 03–3247 Filed 2–7–03; 8:45 am]
BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Estuary Habitat Restoration Council; Open Meeting

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DOD.
ACTION: Notice of open meeting.

SUMMARY: In accordance with section 105(h) of the Estuary Restoration Act of 2000, (Title I, Pub. L. 106–457), announcement is made of the forthcoming meeting of the Estuary Habitat Restoration Council. The meeting is open to the public.

DATES: The meeting will be held February 26, 2003, from 10 a.m. to 12 p.m.

ADDRESSES: The meeting will be held at 441 G Street, NW., Washington, DC., room 3M60/70.

FOR FURTHER INFORMATION CONTACT: Ms. Ellen Cummings, Headquarters, U.S. Army Corps of Engineers, Washington, DC 20314–1000, (202) 761–4558; or Ms. Cynthia Garman-Squier, Office of the Assistant Secretary of the Army (Civil Works), Washington, DC., (703) 695–6791.

SUPPLEMENTARY INFORMATION: The Estuary Habitat Restoration Council consists of representatives of five agencies. These are the National Oceanic and Atmospheric Administration, Environmental Protection Agency, U.S. Fish and Wildlife Service, Department of Agriculture, and Army. Among the duties of the Council is development of a national estuary restoration strategy designed in part to meet the goal of restoring one million acres by 2010.

Items the Council will consider at this meeting include revision of the Council's operating procedures and the future role of the Council in estuary habitat restoration.

Current security measures require that persons interested in attending the meeting must pre-register with us before 2 p.m. February 24, 2003. Please contact Ellen Cummings at 202–761–4558 to pre-register. When leaving a voice mail message please provide the name of the individual attending, the company or agency represented, and a telephone number, in case there are any questions. The public should enter on the "G" Street side of the GAO building. All attendees are required to show photo identification and must be escorted to the meeting room by Corps personnel. Attendee's bags and other possessions are subject to being searched. All attendees arriving between one-half hour before and one-half hour after 10 a.m. will be escorted to the hearing. Those who are not pre-registered and/or arriving later than the allotted time will be unable to attend the public meeting.

Luz D. Ortiz,
Army Federal Register Liaison Officer.
[FR Doc. 03–3246 Filed 2–7–03; 8:45 am]
BILLING CODE 3710–92–M

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services; List of Correspondence

AGENCY: Department of Education.
ACTION: List of correspondence from July 1, 2002 through September 30, 2002.

SUMMARY: The Secretary is publishing the following list pursuant to section 607(d) of the Individuals with Disabilities Education Act (IDEA). Under section 607(d) of IDEA, the Secretary is required, on a quarterly basis, to publish in the **Federal Register** a list of correspondence from the Department of Education received by

individuals during the previous quarter that describes the interpretations of the Department of Education of IDEA or the regulations that implement IDEA.

FOR FURTHER INFORMATION CONTACT: Melisande Lee or JoLeta Reynolds. Telephone: (202) 205–5507.

If you use a telecommunications device for the deaf (TDD), you may call (202) 205–5637 or the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain a copy of this notice in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to Katie Mincey, Director of the Alternate Format Center. Telephone: (202) 205–8113.

SUPPLEMENTARY INFORMATION: The following list identifies correspondence from the Department issued from July 1, 2002 through September 30, 2002.

Included on the list are those letters that contain interpretations of the requirements of IDEA and its implementing regulations, as well as letters and other documents that the Department believes will assist the public in understanding the requirements of the law and its regulations. The date and topic addressed by a letter are identified, and summary information is also provided, as appropriate. To protect the privacy interests of the individual or individuals involved, personally identifiable information has been deleted, as appropriate.

Part B—Assistance for Education of all children with disabilities

Section 611—Authorization; Allotment; Use of Funds; Authorization of Appropriations.

Topic Addressed: Grants to States

- Letter dated September 25, 2002 to Rhode Island Department of Education Office of Special Needs Director Dr. Thomas P. DiPaolo, clarifying that although the effective date of a Part B grant cannot be changed, it is possible, subject to certain conditions, to grant pre-award costs to a State to mitigate significant hardship on State and local programs if there is very limited potential harm to the Federal interest.

Topic Addressed: Authorization of Appropriations

- Memorandum dated September 30, 2002 to Governors and Chief State School Officers, regarding nonregulatory guidance pertaining to Federal education programs, including section 611 of IDEA, with advance appropriations in fiscal year (FY) 2002.

Section 612—State Eligibility

Topic Addressed: Confidentiality of Education Records

- Letter dated July 30, 2002 to Pennsylvania Assistant Director of Special Education John Tommasini from Family Policy Compliance Office Director LeRoy S. Rooker, explaining that States must resolve complaints filed by non-parent individuals or organizations even if the parent refuses to consent to the disclosure of personally identifiable information about the student; but, in such cases, the State may not disclose personally identifiable information about the student.
- Letter dated July 29, 2002 to U.S. Representative C.L. "Butch" Otter from Family Policy Compliance Office Director LeRoy S. Rooker, regarding the right of parents to obtain copies of education records and whether a parent's representative can inspect and review education records.
- Letter dated July 18, 2002 to individual, (personally identifiable information redacted), regarding the creation, retention, and destruction of education records, and records handling and storage.

Topic Addressed: Maintenance of Effort

- Letter dated July 16, 2002 to Michael J. Hernandez, Esq., regarding the use of Medicaid reimbursement funds to construct or equip special education classrooms.

Section 615—Procedural Safeguards

Topic Addressed: Due Process Hearings

- Letter dated September 12, 2002 to Louisiana Assistant Legislative Auditor David K. Greer, regarding whether due process hearings under the IDEA may be conducted by Louisiana's administrative law judge panel and clarifying that as a general matter, the Office of Special Education Programs does not interpret State law, or opine about its application, unless State law appears to conflict with Federal requirements.

Part C—Infants and Toddlers with Disabilities

Section 634—Eligibility

Topic Addressed: State Participation

- Letter dated August 13, 2002 to individual, (personally identifiable information redacted), clarifying that participation by States in Part C is voluntary.

Section 636—Individualized Family Service Plan

Topic Addressed: Natural Environments

- Letter dated July 30, 2002 to individual, (personally identifiable information redacted), regarding the history of implementation of the natural environments requirements of Part C of the IDEA since the early intervention program was originally enacted, and clarifying that, based on the child's individualized family services plan (IFSP), appropriate services can be provided in other environments.

Part D—National Activities to Improve Education of Children with Disabilities

Subpart 2—Coordinated Research, Personnel Preparation, Technical Assistance, Support, and Dissemination of Information.

Section 687—Technology Development, Demonstration, and Utilization; and Media Services

Topic Addressed: Captioning

- Letter dated August 8, 2002 to House Education and Workforce Committee Chairman John Boehner, generally describing the process by which grant awards are made under the IDEA to provide support for the captioning of educational, news, and informational television, videos, and materials.

Other Letters Relevant to the Administration of IDEA Programs

Topic Addressed: Child with a disability

- Letter dated July 12, 2002 to U.S. Senator Mary L. Landrieu, regarding the identification and evaluation of handicapped persons under Section 504 of the Rehabilitation Act of 1973.

Topic Addressed: Accountability for Results

- Letter dated August 13, 2002 to Dr. Lucille Linde, clarifying that the Department of Education does not have the authority to mandate the use of specific assessment and instructional/intervention programs in public schools and that these decisions are made at the State and local school district levels.
- Dear Colleague letter dated July 24, 2002, regarding the implementation of the No Child Left Behind Act and statewide accountability systems, and providing guidance on adequate yearly progress.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable

Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/legislation/FedRegister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–800–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.access.gpo.gov/nara/index.html.*

(Catalog of Federal Domestic Assistance Number 84.027, Assistance to States for Education of Children with Disabilities)

Dated: February 5, 2003.

Robert H. Pasternack,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 03–3257 Filed 2–7–03; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–206–001]

ANR Pipeline Company; Notice of Compliance Filing

February 4, 2003.

Take notice that on January 30, 2003, ANR Pipeline Company (ANR), tendered for filing FERC Gas Tariff, Second Revised Volume No. 1, Substitute Fourth Revised Sheet No. 161A.02, with an effective date of January 16, 2003.

ANR states that the tariff sheet is being filed in compliance with the Commission's January 15, 2003 order implementing changes to ANR's Capacity Release provisions of the General Terms and Conditions of its FERC Gas Tariff.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Protest Date: February 12, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–3149 Filed 2–7–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–246–000]

CenterPoint Energy Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

February 4, 2003.

Take notice that on January 31, 2003., CenterPoint Energy Gas Transmission Company (CEGT) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, First Revised Sheet No. 560 and Original Sheet No. 560A, to be effective March 3, 2003.

CEGT states that the purpose of this filing is to revise the provisions of the General Terms and Conditions of CEGT's Tariff relating to capacity releases where the releasing shipper is not creditworthy.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.314 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: February 12, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–3151 Filed 2–7–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–200–095]

CenterPoint Energy Gas Transmission Company; Notice of Negotiated Rates

February 4, 2003.

Take notice that on January 30, 2003., CenterPoint Energy Gas Transmission Company (CEGT) tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheets to be effective February 1, 2003:

First Revised Sheet No. 659
Original Sheet No. 660A
First Revised Sheet No. 660
Original Sheet No. 660B

CEGT states that the purpose of this filing is to reflect an amendment to an existing negotiated rate transaction.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.314 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-

free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: February 12, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–3155 Filed 2–7–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–200–096]

CenterPoint Energy Gas Transmission Company; Notice of Negotiated Rates

February 4, 2003.

Take notice that on January 30, 2003., CenterPoint Energy Gas Transmission Company (CEGT) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, First Revised Sheet No. 685, Original Sheet No. 890, and Sheet Nos. 891–1999, to be effective March 1, 2003.

CEGT states that the purpose of this filing is to describe the provisions of a new negotiated rate transaction and also to submit a non-conforming service agreement along with revised tariff sheets to implement such transaction.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.314 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: February 12, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–3156 Filed 2–7–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–383–046]

Dominion Transmission, Inc.; Notice of Negotiated Rates

February 4, 2003.

Take notice that on January 29, 2003, DTI tendered for filing the following tariff sheet for disclosure of a recently negotiated transaction with Sithe Energy Marketing, LP:

Fourth Revised Sheet No. 1400

DTI states that the tariff sheet relates to a specific negotiated rate transaction between DTI and Sithe Energy Marketing, LP. The transaction provides Sithe Energy Marketing, LP with firm transportation service and conforms to the forms of service agreement contained in DTI's tariff. The term of the agreement is February 1, 2003, through January 31, 2004.

DTI states that copies of its letter of transmittal and enclosures have been served upon DTI's customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.314 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: February 10, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–3157 Filed 2–7–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP03–42–000]

Gulf South Pipeline Company, LP; Notice of Application

February 4, 2003.

Take notice that on January 24, 2003, Gulf South Pipeline Company, LP (Gulf South), 20 East Greenway Plaza, Houston, Texas 77046, filed in Docket No. CP03–42–000, an application pursuant to Sections 7(c) of the Natural Gas Act (NGA), as amended, and part 157 of the regulations of the Federal Energy Regulatory Commission (Commission), to increase the maximum allowable operating pressure (MAOP) of its Index 135 transmission facility in Calcasieu Parish, Louisiana. Gulf South states that the increase will provide sufficient pressure to ensure service to existing markets, all as more fully set forth in the application which is on file with the Commission and open to public inspection. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659.

Specifically, Gulf South states that the increase in MAOP will result in an increase in Index 135's daily design capacity flowing north to south, 148 mmcf/d and on the south to north flow, 69 mmcf/d. Accordingly, the uprate allows Gulf South to continue to serve its traditional markets while augmenting deliverability and delivery by utilizing gas flowing from Index 201–9 for north to south flows.

Any questions concerning this application may be directed to J. Kyle Stephens, Director of Certificates, Gulf

South Pipeline Company, LP, 20 East Greenway Plaza, Houston, Texas 77046, at (713) 544–7309 or fax (713) 544–4818 or email: *kyle.stephens@gulfsouthpl.com.*

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10) by the comment date, below. A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

If the Commission decides to set the application for a formal hearing before an Administrative Law Judge, the Commission will issue another notice describing that process. At the end of the Commission's review process, a final Commission order approving or denying a certificate will be issued.

Comment Date: February 25, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–3140 Filed 2–7–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–245–000]

Kinder Morgan Interstate Gas Transmission LLC; Notice of Tariff Filing

February 4, 2003.

Take notice that on January 29, 2003., Kinder Morgan Interstate Gas Transmission LLC (KMIGT) tendered for filing to become part of KMIGT's FERC Gas Tariff, Fourth Revised Volume Nos. 1–A and 1–B, the tariff sheets listed in Appendix A to the filing, to be effective March 1, 2003..

KMIGT states that it is making this filing pursuant to Section 4 of the Natural Gas Act, 15 U.S.C. 717c, and Section 154.202 of the regulations of the Federal Energy Regulatory Commission (Commission) (18 CFR 54.202). KMIGT submits these tariff sheets to: (1) Implement a new interruptible storage-based park and loan (S–PALS) service under Rate Schedule S–PALS; and, (2) revise certain currently effective tariff sheets to incorporate the S–PALS service.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.314 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: February 10, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–3150 Filed 2–7–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–247–000]

National Fuel Gas Supply Corporation; Notice of Tariff Filing

February 4, 2003.

Take notice that on January 31, 2003., National Fuel Gas Supply Corporation (National) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, Fifty First Revised Sheet No. 9, to become effective February 1, 2003.

National states that under Article II, Section 2, of the settlement, it is required to recalculate the maximum Interruptible Gathering (IG) rate semi-annually and monthly. Further, National is required to charge the recalculated monthly rate on the first day of the following month if the result is an IG rate more than 2 cents above or below the IG rate as calculated under Section 1 of Article II. The recalculation produced an IG rate of $0.25 per dth. In addition, Article III, Section 1 states that any overruns of the Firm Gathering service provided by National shall be priced at the maximum IG rate.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.314 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the

last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: February 12, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–3152 Filed 2–7–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP85–60–015]

Overthrust Pipeline Company; Notice of Report of Refunds

February 4, 2003.

Take notice that on January 30, 2003, Overthrust Pipeline Company, tendered for filing a refund report.

Overthrust states that the report documents refunds of amounts pertaining to and detailing the Deferred Income Tax (DIT) refund payments for the year 2002.

Overthrust states that it is filing the refund report pursuant to a Commission order dated May 21, 1991, Order Approving Settlement with Modifications, in Docket Nos. RP85–60–000 and -002. Overthrust explains that Article V of the settlement, as modified, requires Overthrust to file an annual report 60 days after making the actual DIT refunds.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: February 11, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–3154 Filed 2–7–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–402–003]

Paiute Pipeline Company; Notice of Compliance Filing

February 4, 2003.

Take notice that on January 31, 2003, Paiute Pipeline Company (Paiute) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1–A, the following tariff sheets, to become effective December 1, 2002:

Seventh Revised Sheet No. 63C, Fifth Revised Sheet No. 89.
Second Revised Sheet No. 89A, Original Sheet No. 89B.
Fifth Revised Sheet No. 111, Fifth Revised Sheet No. 112.
Fourth Revised Sheet No. 113, Third Revised Sheet No. 113A.

Paiute indicates that the purpose of its filing is to comply with the directives of the letter order issued on December 23, 2002 in Docket Nos. RP00–402–001 and RP00–402–002, concerning Paiute's compliance with Order No. 637.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Protest Date: February 12, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–3147 Filed 2–7–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–41–001]

PG&E Gas Transmission, Northwest Corporation; Notice Compliance Filing

February 4, 2003.

Take notice that on January 29, 2003, PG&E Gas Transmission, Northwest Corporation (GTN) tendered for filing supporting documentation regarding its shippers' creditworthiness requirements in compliance with the Commission's January 24, 2003. Order on Complaint.

GTN states that a copy of this filing has been served upon its customers and interested state regulatory commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: February 11, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–3153 Filed 2–7–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP02–420–000]

Red Lake Gas Storage, L.P.; Notice of Meeting With the Hualapai Nation Regarding the Proposed Red Lake Gas Storage Project

February 4, 2003.

The staff of the Federal Energy Regulatory Commission (Commission) is issuing this notice to announce the date and location of a meeting with the Hualapai Nation to address certain issues regarding the proposed Red Lake Gas Storage Project. The meeting will be held on February 12, 2003, at 1 pm, at the Hualapai Nation's Tribal Multipurpose Building in Peach Springs, Arizona 86434. This is a rescheduled meeting that was supposed to have been held on January 24, 2003.

The Commission staff will be preparing an environmental assessment (EA) for Red Lake Gas Storage, L.P.'s (Red Lake) proposed project in Mohave County, Arizona, in cooperation with the U.S. Department of the Interior, Bureau of Land Management (BLM), Arizona Department of Environmental Quality (ADEQ), and the Arizona Game and Fish Department (AGFD). The planned facilities would consist of two solution-mined underground salt caverns, about 52 miles of various diameter pipeline, a 25,000-horsepower (hp) compressor station, a 9,000-hp compressor station, four water withdrawal wells, four brine disposal wells, and appurtenant facilities. The EA will be used by the Commission in its decision-making process to determine whether the project is in the public convenience and necessity.

In view of the potential for impacts to resources of special concern to the Hualapai Nation resulting from construction of the proposed project, the meeting will not be open to the public. Attendance at the meeting will be limited to the Hualapai Tribal Council, members of the Hualapai Tribe, and representatives of the Commission, BLM, ADEQ, AGFD, and Red Lake.

Magalie R. Salas,

Secretary.

[FR Doc. 03–3139 Filed 2–7–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER01–3109–000 and ER01–3109–001]

Renaissance Power, L.L.C.; Notice of Issuance of Order

February 4, 2003.

Renaissance Power, L.L.C. (Renaissance), a wholly-owned subsidiary of Dynegy, Inc., submitted for filing a rate schedule under which Renaissance will engage in wholesale electric power and energy transactions at market-based rates. Renaissance also requested waiver of various Commission regulations. In particular, Renaissance requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by Renaissance.

On January 29, 2002, pursuant to delegated authority, the Director, Division of Tariffs and Rates—West, granted requests for blanket approval under part 34, subject to the following:

Any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Renaissance should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is February 14, 2003..

Absent a request to be heard in opposition by the deadline above, Renaissance is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of Renaissance, compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of Renaissances' issuances of securities or assumptions of liability.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Commission's Web site at *http://www.ferc.gov* , using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number filed to access the document. Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. 03–3142 Filed 2–7–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP00–472–004, RP01–31–004, and RP02–443–002]

USG Pipeline Company; Notice of Tariff Filing

February 4, 2003.

Take notice that on January 28, 2003, USG Pipeline Company (USGPC) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, Substitute First Revised Sheet No. 57, Substitute Original Sheet No. 57A, and Substitute First Revised Sheet No. 58, with an October 1, 2002 effective date.

USGPC states that the sole purpose of the instant filing is to incorporate onto the correctly paginated sheets tariff language which was accepted by the Commission's order issued September 25, 2002 in Docket Nos. RP00–472–001 and RP01–31–001, and in an unpublished Letter Order issued September 30, 2002 in Docket No. RP02–443–000.

USGPC states that complete copies of this filing are being provided to its sole customer, United States Gypsum Company, which receives service as certificated under part 157 of the Commission's regulations, and to interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and

Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Protest Date: February 10, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–3148 Filed 2–7–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP03–45–000]

Williston Basin Interstate Pipeline Company; Notice of Application

February 4, 2003.

Take notice that on January 29, 2003., Williston Basin Interstate Pipeline Company (Williston Basin), P.O. Box 5601, Bismarck, North Dakota 58506–5601, filed in Docket No. CP03–37–000, an application pursuant to Section 7(b) of the Natural Gas Act (NGA), as amended, and part 157 of the regulations of the Federal Energy Regulatory Commission (Commission), for permission and approval to abandon compression and appurtenant facilities in Johnson County, Wyoming, all as more fully set forth in the application which is on file with the Commission and open to public inspection. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "FERRIS" link, select "Docket #" and follow the instructions (call 202–208–2222 for assistance).

Williston Basin proposes to abandon a leased 1,478 horsepower compressor unit and appurtenant facilities located within the Billy Creek Compressor Station in Johnson County. It is stated that the compressor unit was installed in 1999 by Williston Basin and owned by KCI, Inc. (KCI), in order for Williston Basin to gain access to additional gas supplies, and it was used to meet the requirements of a firm transportation agreement. Williston Basin asserts that it leased the compressor unit from KCI for $150,000 per year. It is explained that the transportation agreement has expired, with an expiration date of December 20, 2002, and that Williston Basin no longer needs the compressor unit. Williston Basin states that it made the capacity available to its shippers, but that no shipper has expressed interest in acquiring the capacity at this time. It is asserted that Williston Basin would remove the compressor unit and return it to KCI in order to avoid incurring additional leasing costs. It is further asserted that removal of the compressor would have no adverse impact on Williston Basin's current operations or on its customers.

Any questions concerning this application may be directed to Keith A. Tigelaar, Director of Regulatory Affairs, at (701) 530–1560.

This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov* , using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number filed to access the document. For assistance, please contact FERC Online Support at FERC OnlineSupport@ferc.gov or call toll-free at (866)206–3676, or, for TTY, contact (202)502–8659.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages intervenors to file electronically.

If the Commission decides to set the application for a formal hearing before an Administrative Law Judge, the Commission will issue another notice describing that process. At the end of the Commission's review process, a final Commission order approving or denying a certificate will be issued.

Comment Date: February 25, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–3141 Filed 2–7–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC03–49–000, *et al.*]

The AES Corporation, *et al.*; Electric Rate and Corporate Filings

February 3, 2003.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. The AES Corporation, Mountainview Power Company, Mountainview Power Company, LLC, Sequoia Generating LLC

[Docket No. EC03–49–000]

Take notice that on January 28, 2003, The AES Corporation, Mountainview Power Company (Mountainview), Mountainview Power Company, LLC and Sequoia Generating LLC (Sequoia) tendered for filing with the Federal Energy Regulatory Commission (Commission) a Joint Application for Expedited Approval of the Disposition of Jurisdictional Facilities Under Section 203 of the Federal Power Act for the sale of certain jurisdictional assets of Mountainview to Sequoia.

Comment Date: February 18, 2003.

2. Arizona Public Service Company

[Docket No. ER99–3288–009]

Take notice that on January 30, 2003, Arizona Public Service Company (APS) tendered for filing the final Quarterly Refund payments to eligible wholesale customers under the Company's Fuel Cost Adjustment Clause (FAC) from reparation payments made by Burlington Northern and Santa Fe Railway Company.

A copy of this filing has been served upon the affected parties, the California Public Utilities Commission, and the Arizona Corporation Commission.

Customer Name	APS–FPC/ FERC Rate Schedule
Electrical District No. 3	12
Tohono O'odham Utility Authority	52
Arizona Electric Power Cooperative	57
Wellton-Mohawk Irrigation and Drainage District	58
Arizona Power Authority	59
Colorado River Indian Irrigation Project	65
Electrical District No. 1	68
Arizona Power Pooling	70
Town of Wickenburg	74
Southern California Edison Company	120
Electrical District No. 6	126
Electrical District No. 7	128
City of Page	134
Electrical District No. 8	140
Aguila Irrigation District	141
McMullen Valley Water Conservation and Drainage District	142
Tonopah Irrigation District	143
Citizens Utilities Company	207
Harquahala Valley Power District	153
Buckeye Water Conservation and Drainage District	155
Roosevelt Irrigation District	158
Maricopa County Municipal Water Conservation District	168
City of Williams	192
San Carlos Indian Irrigation Project	201
Maricopa County Municipal Water Conservation District at Lake Pleasant	209

Comment Date: February 20, 2003.

3. NewEngland Power Pool, ISO New England, Inc.

[Docket No. ER02–2330–008]

Take notice that on January 28, 2003, ISO New England, Inc., submitted its notice in the above docket of the Designated Congestion Areas (DCAs) and applicable DCA threshold values that will be utilized for calendar year 2003 and has proposed that such designations be effective only after this Commission's order on the informational filing. The NEPOOL Participant Committee joined in that filing for the purposes stated therein.

The ISO has requested that the Commission act no later than February 28, 2003, to allow implementation for the April 2003 markets.

Comment Date: February 18, 2003.

4. PJM Interconnection, L.L.C.

[Docket No. ER02–2470–001]

Take notice that on January 30, 2003, in compliance with the Commission's October 15, 2002 letter order in this proceeding, PJM Interconnection, L.L.C., (PJM) submitted for filing a substitute interconnection service agreement between PJM and National Institutes of Health and a refund report.

PJM states that copies of this filing were served upon all persons on the official service list and National Institutes of Health.

Comment Date: February 20, 2003.

5. PJM Interconnection, L.L.C.

[Docket No. ER02–2471–001]

Take notice that on January 30, 2003, in compliance with the Commission's October 15, 2002 letter order in this proceeding, PJM Interconnection, L.L.C., (PJM) submitted for filing two substitute interconnection service agreements between PJM and PPL West Earl, L.L.C., one notice of cancellation, and a refund report.

PJM states that copies of this filing were served upon all the persons designated on the official service list and PPL West Earl, L.L.C.

Comment Date: February 20, 2003.

6. PJM Interconnection, L.L.C.

[Docket No. ER02–2472–001]

Take notice that on January 30, 2003, in compliance with the Commission's October 15, 2002 letter order in this proceeding, PJM Interconnection, L.L.C., (PJM) submitted for filing two substitute interconnection service agreements between PJM and Tosco Corporation and Tosco Refining Company, one notice of cancellation, and a refund report.

PJM states that copies of this filing were served upon all persons on the official service list and the parties to the agreements.

Comment Date: February 20, 2003.

7. PJM Interconnection, L.L.C.

[Docket No. ER02–2478–001]

Take notice that on January 30, 2003, in compliance with the Commission's October 16, 2002 letter order in this proceeding, PJM Interconnection, L.L.C., (PJM) submitted for filing a substitute interconnection service agreement between PJM and Global Winds Harvest, Inc and P&T Technology AG and a refund report.

Copies of this filing were served upon all persons on the official service list and the parties to the agreement.

Comment Date: February 20, 2003.

8. PJM Interconnection, L.L.C.

[Docket No. ER02–2491–002]

Take notice that on January 30, 2003, PJM Interconnection, L.L.C., (PJM) amended its compliance filing made January 24, 2003 in Docket No. ER02–2491–001 to withdraw an interconnection service agreement designated as Substitute Service Agreement No. 727 included in the compliance filing.

PJM states that copies of this filing were served upon all the persons on the official service list and PPL Martins Creek LLC, the party to the interconnection service agreement.

Comment Date: February 20, 2003.

9. Southern Company Services, Inc.

[Docket Nos. ER03–211–001 and ER03–212–001]

Take notice that on January 30, 2003, Southern Company Services, Inc. (SCS), as agent for Georgia Power Company (Georgia Power), tendered for filing an amendment to SCS's filing in Docket No. ER03–211–000 of an Interconnection Agreement by and between Southern Power Company (Southern Power) and Georgia Power for Southern Power's McIntosh CC Unit 1 and an amendment to SCS's filing in Docket No. ER03–212–000 of an Interconnection Agreement by and between Southern Power and Georgia Power for Southern Power's McIntosh CC Unit 2, as service agreements under Southern Operating Companies' Open Access Transmission Tariff (FERC Electric Tariff, Fourth Revised Volume No. 5).

The amendment contains SCS's response to the December 16, 2002, letter issued in Docket Nos. ER03–211–000 and ER03–212–000 by Mr. Steve P. Rodgers, Director, Division of Tariff and Market Development—South.

Comment Date: February 20, 2003.

10. Las Vegas Cogeneration II, L.L.C.

[Docket No. ER03–222–002]

Take notice that on January 30, 2003, Las Vegas Cogeneration II, L.L.C., filed substitute pages for the proposed market-based rate wholesale power sales rate schedule that LV Cogen filed with the Federal Energy Regulatory Commission in the referenced docket on November 25, 2002.

Comment Date: February 20, 2003.

11. Ameren Services Company

[Docket No. ER03–326–001]

Take notice that on January 30, 2003, Ameren Services Company (ASC) tendered for filing a Network Integration Transmission Service Agreement and Network Operating Agreement between ASC and Ameren Energy Marketing Company. ASC asserts that the purpose of the Agreements is to replace the unexecuted Agreements in Docket No. ER03–326–000 with the executed Agreements.

Comment Date: February 20, 2003.

12. Automated Power Exchange, Inc.

[Docket No. ER03–456–000]

Take notice that on January 29, 2003, Automated Power Exchange, Inc. (APX) submitted for filing an annual report for 2002.

Comment Date: February 20, 2003.

13. Oklahoma Gas and Electric Company

[Docket No. ER03–457–000]

Take notice that on January 29, 2003, Oklahoma Gas and Electric Company (OG&E) submitted for filing a service agreement for power sales (the Agreement) between OG&E and The City of Paris, Arkansas (Paris) under OG&E's Power Sales Tariff.

OG&E requests an effective date of February 1, 2003 for the Agreement. Accordingly, OG&E requests waiver of the Commission's notice requirements. Copies of this filing were served upon Paris and the Oklahoma Corporation Commission.

Comment Date: February 19, 2003.

14. American Electric Power Service Corporation

[Docket No. ER03–458–000]

Take notice that on January 30, 2003, the American Electric Power Service Corporation (AEPSC) tendered for filing an executed Interconnection and Operation Agreement and Memorandum of Understanding between Indiana Michigan Power Company and Berrien Energy Center, LLC. The agreement is pursuant to the AEP Companies' Open Access Transmission Service Tariff (OATT) that has been designated as the Operating Companies of the American Electric Power System FERC Electric Tariff Third Revised Volume No. 6, effective July 31, 2001.

AEP requests an effective date of March 29, 2003. AEPSC states that a copy of the filing was served upon Berrien Energy Center, LLC, the Indiana Utility Regulatory Commission and Michigan Public Service Commission.

Comment Date: February 20, 2003.

15. Ameren Services Company

[Docket No.ER03–459–000]

Take notice that on January 30, 2003, Ameren Services Company (ASC) tendered for filing executed Service Agreements for Firm Point-to-Point Services between ASC and Ameren Energy Marketing Company and Ameren Energy, Inc.(2). ASC asserts that the purpose of the Agreements is to permit ASC to provide transmission services to Ameren Energy Marketing Company and Ameren Energy, Inc. pursuant to Ameren's Open Access Transmission Tariff.

Comment Date: February 20, 2003.

16. Ameren Services Company

[Docket No. ER03–460–000]

Take notice that on January 30, 2003, Ameren Services Company (ASC) tendered for filing an unexecuted Service Agreement for Firm Point-to-Point Services between ASC and Cinergy Services, Inc. ASC asserts that the purpose of the Agreement is to permit ASC to provide transmission service to Cinergy Services, Inc. pursuant to Ameren's Open Access Transmission Tariff.

Comment Date: February 20, 2003.

17. Progress Energy Service Company on behalf of Progress Energy Carolinas

[Docket No. ER03–461–000]

Take notice that on January 30, 2003, Progress Energy Service Company on behalf of Progress Energy Carolinas (Progress Carolinas) tendered for filing a Service Agreement for Network Integration Transmission Service and a Network Operating Agreement with The Town of Waynesville, NC. Service to this Eligible Customer will be in accordance with the terms and conditions of the Open Access Transmission Tariff filed on behalf of Progress Carolinas.

Progress Carolinas is requesting an effective date of January 1, 2003 for this Service Agreement. Progress Carolinas states that a copy of the filing was served upon the North Carolina Utilities Commission and the South Carolina Public Service Commission.

Comment Date: February 20, 2003.

18. PSI Energy, Inc.

[Docket No.ER03–462–000]

Take notice that on January 30, 2003, PSI Energy, Inc. (PSI), tendered for filing the Transmission and Local Facilities (T&LF) Agreement Calendar Year 2001 Reconciliation between PSI and Wabash Valley Power Association, Inc., and between PSI and Indiana Municipal Power Agency. The T&LF Agreement has been designated as PSI's Rate Schedule FERC No. 253.

Comment Date: February 20, 2003.

19. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER03–463–000]

Take notice that on January 30, 2003, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) submitted for filing Notices of Succession of certain Transmission Service Agreements and Network Integration Transmission Service and Operating Agreements entered into by and between (I) Michigan Electric Transmission Company (METC) or Michigan Electric Transmission Company, LLC (Michigan Transco LLC) and various transmission customers; (ii) International Transmission Company (International Transmission) and its corporate parent, DTE Energy Company (DTE Energy) and various transmission

customers; and (iii) the Midwest ISO and various transmission customers.

The Midwest ISO has requested waiver of the sixty (60)-day effective date and has requested an effective date of January 1, 2003, the date the provision of transmission services across the transmission facilities of (I) METC or Michigan Transco LLC and (ii) International Transmission and DTE Energy under various ongoing Transmission Service Agreements and Network Transmission Service and Operating Agreements commenced under the Midwest ISO OATT.

The Midwest ISO has served copies of its filing on all affected customers. In addition, the Midwest ISO has electronically served a copy of this filing, without attachments, upon all Midwest ISO Members, Member representatives of Transmission Owners and Non-Transmission Owners, the Midwest ISO Advisory Committee participants, Policy Subcommittee participants, as well as all state commissions within the region. In addition, the filing has been electronically posted on the Midwest ISO's Web site at *http://www.midwestiso.org* under the heading "Filings to FERC" for other interested parties in this matter. The Midwest ISO will provide hard copies to any interested parties upon request.

Comment Date: February 20, 2003.

20. Ameren Services Company

[Docket No. ER03–464–000]

Take notice that on January 30, 2003, Ameren Services Company (Ameren Services) tendered for filing unexecuted Network Integration Transmission Service Agreements and Network Operating Agreements between Ameren Services and Wabash Valley Power Association and Soyland Power Cooperative, Inc. Ameren Services asserts that the purpose of the Agreements is to permit Ameren Services to provide transmission services to Wabash Valley Power Association and Soyland Power Cooperative, Inc. pursuant to Ameren's Open Access Tariff.

Comment Date: February 20, 2003.

21. Ameren Services Company

[Docket No.ER03–465–000]

Take notice that on January 30, 2003, Ameren Services Company (Ameren Services) tendered for filing Service Agreements for Network Integration Transmission Service and a Network Operating Agreement between Ameren Services and MidAmerican Energy Company. Ameren Services asserts that the purpose of the Agreements is to permit Ameren Services to provide transmission service to MidAmerican Energy Company pursuant to Ameren's Open Access Tariff.

Comment Date: February 20, 2003.

22. Tampa Electric Company

[Docket No. ER03–466–000]

Take notice that on January 30, 2003, Tampa Electric Company (Tampa Electric) tendered for filing a notice of cancellation of a rate schedule comprising of an expired interconnection agreement with Florida Power & Light Company (FPL). Tampa Electric proposes that the cancellation be made effective on October 11, 2002.

Tampa Electric states that copies of the filing have been served on FPL and the Florida Public Service Commission.

Comment Date: February 20, 2003.

23. Gulf States Energy, Inc.

[Docket No. ER03–467–000]

Take notice that on January 30, 2003, Gulf States Energy, Inc. (Gulf States Energy, Inc.) petitioned the Federal Energy Regulatory Commission (Commission) for acceptance of Gulf States Energy, Inc Rate Schedule FERC No. 1; the granting of certain blanket approvals, including the authority to sell electricity at market-based rates; and the waiver of certain Commission regulations.

Gulf States Energy, Inc. states that it intends to engage in wholesale electric power and energy purchases and sales as a marketer. Gulf States Energy, Inc. is not in the business of generating or transmitting electric power. Gulf States Energy, Inc. is a Texas Corporation with its principal place of business and office in Dallas, Texas. Gulf States Energy, Inc. is involved in Fuel Oil and Diesel Marketing, and the consulting of electricity. Gulf States Energy, Inc. states it is not associated with any utilities, investor owned or otherwise. Gulf States Energy, Inc. is privately owned by three principals/investors from Dallas, Texas and Norman, Oklahoma.

Comment Date: February 20, 2003.

24. Duke/Louis Dreyfus L.L.C.

[Docket No. ER03–468–000]

Take notice that, on January 30, 2003, Duke/Louis Dreyfus L.L.C. tendered for filing with the Federal Energy Regulatory Commission (Commission) a Notice of Cancellation pursuant to the 18 CFR 35.15, in order to reflect the cancellation of its Market-Based Rate Schedule, designated as Rate Schedule FERC No. 1, originally accepted for filing in Docket No. ER96–108–000.

Comment Date: February 20, 2003.

25. American Electric Power Service Corporation

[Docket No. ER03–469–000]

Take notice that on January 30, 2003, the American Electric Power Service Corporation (AEPSC) tendered for filing an executed Interconnection and Operation Agreement between Appalachian Power Company and Mirant Danville, LLC. The agreement is pursuant to the AEP Companies' Open Access Transmission Service Tariff (OATT) that has been designated as the Operating Companies of the American Electric Power System FERC Electric Tariff Third Revised Volume No. 6, effective July 31, 2001.

AEP requests an effective date of March 29, 2003.

AEP states that a copy of the filing was served upon Mirant Danville and Virginia State Corporation Commission.

Comment Date: February 20, 2003.

26. DTE East China, LLC DTE Energy Trading, Inc.

[Docket No. ER03–470–000]

Take notice that on January 30, 2003, DTE East China, LLC (DTE East China) and DTE Energy Trading, Inc. (DTE Energy Trading) submitted for filing with the Federal Energy Regulatory Commission (Commission), pursuant to section 205 of the Federal Power Act, and part 35 of the Commission's regulations, an Application requesting that the Commission accept for filing an amendment to DTE East China's FERC Electric Tariff, Original Volume No. 3 (Tariff), which provides for the sale of energy and capacity at negotiated rates subject to a cost-based price ceiling, to permit DTE East China to make sales under the Tariff to its power marketing affiliate, DTE Energy Trading, on the condition that DTE Energy Trading will not re-sell such capacity and energy to an affiliate and any such re-sales to non-affiliates will be subject to the same cost-based price ceiling as currently applies to DTE East China.

Comment Date: February 14, 2003.

27. New York Independent System Operator, Inc.

[Docket No. ER03–471–000]

Take notice that on January 30, 2003, the New York Independent System Operator, Inc., (NYISO) filed revisions to Attachment H of its Open Access Transmission Tariff (OATT) to revise Table 1—Wholesale TSC Calculation Information. The sole change is to reflect a preciously approved change in the information for New York State Electric & Gas Corporation.

The NYISO has served a copy fo this filing upon all parties that have

executed service agreements under the NYISO's Open Access Transmission Tariff or the Market Administration and Control Area Service Tariff and upon the New York State Public Service Commission.

Comment Date: February 20, 2003.

28. Southwest Power Pool, Inc.

[Docket No. ER03–472–000]

Take notice that on January 30, 2003, Southwest Power Pool, Inc. (SPP) submitted for filing an executed service agreement for Firm Point-to-Point Transmission Service with Western Resources d/b/a Westar Energy (Westar) and an executed service agreement for Firm Point-to-Point Transmission Service with Exelon Generation Company LLC (Exelon).

SPP seeks an effective date of January 1, 2003 for these service agreements. SPP states that Exelon and Westar were served with a copy of this filing.

Comment Date: February 20, 2003.

29. Southwest Power Pool, Inc.

[Docket No. ER03–473–000]

Take notice that on January 30, 2003, Southwest Power Pool, Inc. (SPP) submitted for filing an executed service agreement for Firm Point-to-Point Transmission Service with Southwest Public Service Company d/b/a as Xcel Energy (SPSC).

SPP seeks an effective date of January 1, 2003 for this service agreement. SPP states that SPSC was served with a copy of this filing.

Comment Date: February 20, 2003.

30. PECO Energy Company

[Docket No. ER03–64–001]

Take notice that on January 30, 2003, PECO Energy Company (PECO) made a compliance filing in the above docket in order to change the effective date of a Construction Agreement between PECO and Fairless Energy, LLC (Fairless Energy) related to the Fairless Energy Station, to be located in Fairless Hills, Pennsylvania, as required by the Commission's letter order of December 12, 2002. The Construction Agreement is designated as Service Agreement 792 under PJM Interconnection L.L.C.'s (PJM) FERC Electric Tariff Fourth Revised Volume No. 1. The new effective date for the Construction Agreement is December 20, 2002. Copies of this filing were served on Fairless Energy and PJM.

Comment Date: February 20, 2003.

Standard Paragraph

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov* , using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number filed to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. 03–3138 Filed 2–7–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Ready for Environmental Analysis and Soliciting Comments, Recommendations, Terms and Conditions, and Prescriptions

February 4, 2003.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Major New License.

b. *Project No.:* P–2574–032.

c. *Date filed:* April 29, 2002.

d. *Applicant:* Merimil Limited Partnership.

e. *Name of Project:* Lockwood Project.

f. *Location:* On the Kennebec River, in Kennebec County, at the City of Waterville and Town of Winslow, Maine. The project does not affect Federal lands.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791 (a)—825(r).

h. *Applicant Contact:* Mr. F. Allen Wiley, c/o FLP Energy Maine Hydro LLC, 160 Capital Street, Augusta, ME 04330, (207) 623–8415.

i. *FERC Contact:* Nan Allen at (202) 502–6128 or *nan.allen@ferc.gov*.

j. *Deadline for filing comments, recommendations, terms and conditions, and prescriptions:* 60 days from the issuance of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Comments, recommendations, terms and conditions, and prescriptions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the "e-Filing" link.

k. This application has been accepted, and is ready for environmental analysis at this time.

l. The existing Lockwood Project consists of: (1) A 1,035-foot-long dam, incorporating three spillway sections at elevation 52.16 feet M.S.L. with flashboards, a 160-foot-long forebay intake structure, a rock island, and a bridge abutment; (2) a 450-foot-long forebay; (3) an 81.5-acre reservoir with a gross storage capacity of 250 acre-feet; (3) two powerhouses, one containing six generating units and the second containing one generating unit, for a total installed capacity of 6,915 kilowatts (kW); (4) 4,225 feet of buried and overhead transmission facilities; and (5) appurtenant facilities. The project is estimated to generate an average of 42.6 million kW hours annually. The existing dam and project facilities are owned by the applicant.

m. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document.

For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

n. All reply comments must be filed with the Commission within 105 days from the date of this notice.

Anyone may obtain an extension of time for these deadlines from the Commission only upon a showing of good cause or extraordinary circumstances in accordance with 18 CFR 385.2008.

All filings must (1) bear in all capital letters the title "COMMENTS", "REPLY COMMENTS", "RECOMMENDATIONS," "TERMS AND CONDITIONS," or "PRESCRIPTIONS;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person submitting the filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Each filing must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b), and 385.2010.

Procedural schedule and final amendments: The application will be processed according to the following Hydro Licensing Schedule. Revisions to the schedule will be made as appropriate.

Notice of the availability of the draft EIS July 2003 Initiate 10(j) process August 2003 Notice of the availability of the final EIS November 2003 Ready for Commission decision on the applicationMarch 2004

Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of the notice of ready for environmental analysis.

Magalie R. Salas,

Secretary.

[FR Doc. 03–3143 Filed 2–7–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Ready for Environmental Analysis and Soliciting Comments, Recommendations, Terms and Conditions, and Prescriptions

February 4, 2003.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New Major License.

b. *Project No.:* P–5334–019.

c. *Date filed:* October 2, 2001.

d. *Applicant:* Charter Township of Ypsilanti.

e. *Name of Project:* Ford Lake Hydroelectric Station.

f. *Location:* On the Huron River, Washtenaw County, within the township of Ypsilanti, Michigan. The project does not affect Federal lands.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791 (a)—825(r).

h. *Applicant Contact:* Ms. Joann Brinker, Administrative Services/ Human Resources Director, Charter Township of Ypsilanti, 7200 South Huron River Driver, Ypsilanti, Mi 48197, (734) 484–0065.

i. *FERC Contact:* Monte TerHaar, (202) 502–6035 or *monte.terhaar@ferc.gov.*

j. *Deadline for filing comments, recommendations, terms and conditions, and prescriptions:* 60 days from the issuance of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Comments, recommendations, terms and conditions, and prescriptions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the "e-Filing" link.

k. This application has been accepted, and is ready for environmental analysis at this time.

l. The existing Ford Lake Hydroelectric Project consists of: (1) A 1,050 acre reservoir; (2) a 110-foot-long earth embankment dam; (3) a 46.5-foot-long powerhouse with 2 hydroelectric turbines; (4) a 172-foot-long spillway with six bays, each with a 6-foot by 8-foot sluice gate; (5) a 380-foot-long earth embankment; (6) a 175-foot-long emergency spillway; (7) two vertical shaft turbine/generator units with an installed capacity of 1,920 kilowatts at normal pool elevation; and (8) appurtenant facilities. The project operates run-of-river with a normal reservoir elevation maintained between 684.4 and 684.9 feet mean sea level. Average annual generation between 1995 and 2000 has been 8,664 megawatthours. Generated power is sold to Detroit Power. No new facilities are proposed.

m. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

n. All reply comments must be filed with the Commission within 105 days from the date of this notice. Anyone may obtain an extension of time for these deadlines from the Commission only upon a showing of good cause or extraordinary circumstances in accordance with 18 CFR 385.2008.

All filings must: (1) Bear in all capital letters the title "COMMENTS", "REPLY COMMENTS", "RECOMMENDATIONS," "TERMS AND CONDITIONS," or "PRESCRIPTIONS;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person submitting the filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Each filing must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this proceeding, in

accordance with 18 CFR 4.34(b), and 385.2010.

o. The current schedule for preparing the subject EA is as follows:

Milestone: Target Date.

Issue Notice of Ready for Environmental Analysis: January 2003.

Deadline for Filing Agency Recommendations March 2003.

Issue Notice of availability of EA: May 2003.

Public Comments on EA Due: August 2003.

Ready for Commission decision on the applicationSeptember 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–3144 Filed 2–7–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM02–16–000]

Hydroelectric Licensing Regulations Under the Federal Power Act; Notice of Post-Notice of Proposed Rulemaking Regional Workshops and Post-Workshop Drafting Session

February 4, 2003.

After the Federal Energy Regulatory Commission (Commission) issues its Notice of Proposed Rulemaking (NOPR) for a new hydroelectric licensing process, Commission staff will host regional stakeholder workshops and conduct a post-workshop stakeholder drafting session.

Both the regional stakeholder workshops and the post-workshop stakeholder drafting session are not intended to address issues pending in individually docketed hydropower cases before the Commission. Therefore, all participants are requested to address the agenda topics and avoid discussing the merits of individual proceedings.

Post-NOPR Regional Stakeholder Workshops

Five, two-day regional stakeholder workshops, and the one, one-day workshop will be held in the cities and on the dates and times listed in the following table. With the exception of the one-day workshop in Washington, DC, each two-day regional stakeholder workshop provides separate days for tribal and public attendance, although anyone may attend either or both of the workshops. Specific details regarding the structure and procedures for the regional stakeholder workshops will be posted on the Commission's Web site by February 27, 2003.

Location	Date/Time
Portland, Oregon Doubletree Hotel Columbia River 1401 N. Hayden Island Drive (503) 283–2111.	Public: March 13, 2003, 9 am—4 pm. Tribes: March 14, 2003, 9 am—4 pm
Sacramento, California Red Lion Hotel Sacramento 1401 Arden Way (916) 922–8041.	Tribes: March 24, 2003, 9 am—4 pm Public: March 25, 2003, 9 am—4 pm
Charlotte, North Carolina Marriott Charlotte City Center 100 West Trade Street (704) 333–9000.	Public: March 27, 2003, 9 am—4 pm Tribes: March 28, 2003, 9 am—4 pm
Manchester, New Hampshire Holiday Inn Center of New Hampshire 700 Elm Street (603) 625–1000.	Tribes: March 31, 2003 9 am—4 pm Public: April 1, 2003, 9 am—4 pm
Milwaukee, Wisconsin Hyatt Regency Milwaukee 333 West Kilbourn Avenue (414) 276–1234.	Public: April 3, 2003, 9 am—4 pm Tribes: April 4, 2003, 9 am—4 pm
Washington, DC Federal Energy Regulatory Commission 888 First Street, NE Washington, DC 20426.	April 10, 2003, 9 am—4 pm

The goals of the post-NOPR regional stakeholder workshops are for Commission staff to: (1) Hear and consider stakeholder concerns about proposed rule language; and (2) find avenues for stakeholder consensus on solutions to those concerns. All interested persons are invited to attend these workshops.

Post-Workshop Stakeholder Drafting Session

A four-day post-workshop stakeholder drafting session will be held on April 29 and 30, and May 1 and 2, 2003., at 888 First Street, NE., Washington, DC.

The goal of the four-day post-workshop stakeholder drafting session is to develop proposed final rulemaking language. In addition to a full group discussion at the beginning of the first post-workshop drafting day, and at other appropriate times to be decided, participants will again be asked to take part in one of several drafting groups. Specific details regarding the time and location for the drafting session, as well as the subject matter and structure of the full group discussion, and drafting groups will be determined after the last regional workshop on April 10, and posted on the Commission's Web site soon thereafter.

All interested persons are invited to participate in the drafting session, and will need to pre-register on-line at *http://www.ferc.gov* /hydro/hydro2.htm, between April 18, and April 25, 2003.. Anyone without access to the web will need to pre-register by contacting Susan Tseng at (202) 502–6065. In both pre-registration procedures, participants must indicate their preference for a particular drafting group.

Obtaining Transcripts of the Regional Stakeholder Workshops, and Opportunities for Listening and Viewing the April 10, 2003, Workshop from Offsite

The Capitol Connection offers the opportunity for remote listening and viewing of the April 10, 2003, regional stakeholder workshop held in Washington, DC, which is available for a fee, live over the Internet, via C-Band Satellite. Persons interested in receiving the broadcast, or who need information on making arrangements should contact David Reininger or Julia Morelli at the Capitol Connection (703–993–3100) as soon as possible or visit the Capitol Connection Web site at http://www.capitolconnection.gmu.edu and click on "FERC".

The regional stakeholder workshops will be transcribed. Those interested in obtaining a copy of the transcript immediately for a fee should contact Ace-Federal Reporters, Inc. at (202) 347–3700, or (800) 336–6646. Two weeks after each regional workshop, the transcript will be available for free on the Commission's FERRIS system.

Anyone without access to the Commission's Web site and who have questions about the regional stakeholder workshops, and post-workshop stakeholder drafting session should

contact Tim Welch at (202) 502–8760, or e-mail *timothy.welch@ferc.gov*.

Magalie R. Salas,
Secretary.
[FR Doc. 03–3145 Filed 2–7–03; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM98–1–000]

Regulations Governing Off-the-Record Communications; Public Notice

January 31, 2003.

This constitutes notice, in accordance with 18 CFR 385.2201(h), of the receipt of exempt and prohibited off-the-record communications.

Order No. 607 (64 FR 51222, September 22, 1999) requires Commission decisional employees, who make or receive an exempt or a prohibited off-the-record communication relevant to the merits of a contested on-the-record proceeding, to deliver a copy of the communication, if written, or a summary of the substance of any oral communication, to the Secretary.

Prohibited communications will be included in a public, non-decisional file associated with, but not part of, the decisional record of the proceeding. Unless the Commission determines that the prohibited communication and any responses thereto should become part of the decisional record, the prohibited off-the-record communication will not be considered by the Commission in reaching its decision. Parties to a proceeding may seek the opportunity to respond to any facts or contentions made in a prohibited off-the-record communication, and may request that the Commission place the prohibited communication and responses thereto in the decisional record. The Commission will grant such requests only when it determines that fairness so requires.

Any person identified below as having made a prohibited off-the-record communication should serve the document on all parties listed on the official service list for the applicable proceeding in accordance with Rule 2010, 18 CFR 385.2010.

Exempt off-the-record communications will be included in the decisional record of the proceeding, unless the communication was with a cooperating agency as described by 40 CFR 1501.6, made under 18 CFR 385.2201(e)(1)(v).

The following is a list of exempt and prohibited off-the-record communications recently received in the Office of the Secretary. These filings are available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659.

EXEMPT

Docket No.	Date Filed	Presenter or Requester
ER02–2330–001/002/003, EL00–62–052/053/054	1–28–03	Deborah B. Goldberg
CP02–396–000	1–30–03	Tony Froonjian
CP02–396–000	1–30–03	Jeff Wakefield
Project No. 184–000	1–31–03	Sharon Waechter

Magalie R. Salas,
Secretary.
[FR Doc. 03–3146 Filed 2–7–03; 8:45 am]
BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7449–6]

Financial Assistance for an Environmental Professional Intern Program

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: The programmatic objective of this Environmental Professional Intern Program is to provide unique research training opportunities in cooperative study, applied research, research techniques, and developmental activities that would be of major benefit in advancing the number and diversity of environmental professionals in the workforce.

The U.S. Environmental Protection Agency (EPA) announces the availability of Federal Assistance to conduct an Environmental Professional Intern Program (Intern Program) to provide-on-the-job training for graduate and undergraduate students interested in careers in the environmental area. The need for wise stewardship of the Nation's environmental resources is increasing and with it a need to enlarge the pool of skilled environmental professionals while, at the same time, increasing the diversity of this pool. The EPA recognizes that there is a shortage of skilled environmental professionals. The programmatic objective of this Intern Program is to provide unique opportunities for cooperative study, research, and development that would increase the number and diversity of skilled engineers, scientists, policymakers, legal professionals, and managers in the environmental area.

This solicitation is to find a recipient organization to carry out this Intern Program. The student interns will be considered employees of the recipient organization rather than of the EPA during their training period. All student interns must be enrolled in an undergraduate or graduate program, or accepted into an undergraduate or graduate program that will commence within nine months of selection as a student intern. This recipient organization would be responsible for locating candidate interns, selecting the interns and administering the funding to the interns.

The EPA would identify the intern's opportunities at the Agency or at an EPA stakeholder facility, provide advice to the organization in the selection of the candidate interns, and provide space, technical guidance and training to the interns during their internship period at either an EPA facility or an EPA stakeholder facility. All projects awarded under this agreement must be of a research nature. They must relate to the detection, assessment, and evaluation of the effects on and risks to human health from hazardous substances and the detection of hazardous substances in the environment. The internships must be to conduct a survey or to research,

collect, or analyze data which will be used to expand scientific knowledge or understanding of the subject studied. An example of an acceptable project would be to have the intern conduct an analysis of several communities using existing data from available databases and geographical information systems to determine demographics of the populations; numbers of facilities in the determined study area; types of emissions; quantities of specific chemicals; and other relevant data. The findings would be reported by the intern to his/her project advisor.

This program will start on or about June 17, 2003, for one year and may be renewed for two additional years.

DATES: Applications must be postmarked by U.S. Postal Service or date stamped by commercial courier service on or before 11:59 p.m., Eastern Time, April 17, 2003.

ADDRESSES: Applicants must submit one signed original plus two (2) copies of the application including all information required by the application kit.

By U.S. Postal Service: Linda K. Smith, EPA Intern Program, Office of Environmental Justice, U.S. Environmental Protection Agency, Mail Code—2201A, Washington, DC 20460.

By Federal Express, UPS, Airborne Express or other courier service: Linda K. Smith, EPA Intern Program, Office of Environmental Justice, U.S. Environmental Protection Agency, Room 2232 Ariel Rios Building—South, 1200 Pennsylvania Avenue NW., Washington, DC 20004, Telephone: 202–564–2602.

FOR FURTHER INFORMATION CONTACT: Linda K. Smith, U.S. EPA, Phone: 202–564–2602, E-mail: *smith.linda@epa.gov*, or by Fax: 202–501–1162.

SUPPLEMENTARY INFORMATION:

A. Background

The Environmental Professional Intern Program (Intern Program) is designed to provide undergraduate and graduate students from accredited universities and colleges with opportunities for environmental training experiences at EPA and other venues in which the student intern can receive a meaningful learning experience. The Intern Program will be managed by the Office of Environmental Justice. EPA managers at Headquarters, Regional Offices, and Laboratories will develop and sponsor new training or research projects that will further the student interns' understanding of environmental protection and health-related issues and abatement techniques. The projects are sufficiently narrow in scope to allow the student to complete the project in a 3–6 month period by working full-time during the summer and/or part-time during the school year. Students selected to receive an internship are awarded a stipend based on their level of education and length of the project period.

The EPA is expanding its institutional commitment to environmental stewardship and health protection. The Agency has identified several areas in which student interns would benefit by practical, on-the-job research-type training experiences. These areas include but are not limited to:

- Environmental Policy, Regulation, & Law—Training in this area includes participation in the research to develop background to review and evaluate existing policies and regulations, as well as to develop new policies.
- Environmental Management & Administration—This area focuses on the use of research techniques in how to implement and improve management goals or how to develop cooperative environmental management strategies.
- Environmental Science—This area focuses on the conduct of field studies and laboratory research.
- Public Relations and Communications—This broad category provides the intern with the opportunity to receive training in researching how public opinion affects environmental issues. The conduct of Internet surveys, developing tools for presentations, and presenting the findings in pamphlets to inform the public about environmental protection could be part of a training opportunity.
- Computer Programming and Development—The intern could research methods and develop computer programs for reaching different stakeholders.

A primary objective of the Intern Program is to support active stewardship of the environment, protection of the public health, and to sustain communities. The transfer of the EPA's technologies, techniques, and methods to the next generation of environmental professionals is to both increases their capability and to increase their diversity. This Intern Program offers unique opportunities to develop skills that can be transferred to interns through the establishment of this Internship Program. The award of this cooperative agreement will promote these objectives. All projects awarded under this agreement must relate to the detection, assessment, and evaluation of the effects on and risks to human health from hazardous substances and the detection of hazardous substances in the environment. The Internships awarded under this agreement must be of a research nature, *i.e.*, survey, research, collecting and analyzing data which will be used to expand scientific knowledge or understanding of the subject studied. The statutes under which the U.S. EPA will conduct this Intern Program include:

1. Comprehensive Environmental Response, Compensation and Liability Act; Section 311: CERCLA, Section 311(c) authorizes the EPA to fund research grants.

2. Clean Water Act, Section 104(b)(3): Conduct and promote the coordination of research, investigations, experiments, training, demonstration, surveys, and studies relating to the causes, extent, prevention, reduction, and elimination of water pollution.

3. Safe Drinking Water Act, Sections 1442(b)(3): Develop, expand, or carry out a program (that may combine training, education, and employment) for occupations relating to the public health aspects of providing safe drinking water.

4. Solid Waste Disposal Act, Section 8001(a): Conduct and promote the coordination of research, investigations, experiments, training, demonstrations, surveys, public education programs, and studies relating to solid waste management and hazardous waste management.

5. Clean Air Act, Section 103(b)(3): Conduct and promote the coordination and acceleration of research, investigations, experiments, demonstrations, surveys, and studies related to the causes, effects (including health and welfare effects), extent, prevention, and control of air pollution.

6. Toxic Substances Control Act, Section 10(a): Conduct research, development, and monitoring activities on toxic substances.

7. Federal Insecticide, Fungicide, and Rodenticide Act, Section 20(a): Conduct research on pesticides.

8. Marine Protection, Research, and Sanctuaries Act, Section 203: Conduct research, investigations, experiments, training, demonstrations, surveys, and studies relating to the minimizing or ending of ocean dumping of hazardous materials and the development of alternatives to ocean dumping.

B. Catalog of Federal Domestic Assistance (CFDA)

This EPA Intern Program is listed in the Catalog of Federal Domestic Assistance as No. 66.607 Training and Fellowships for the Environmental Protection Agency.

C. Program Description

The objective of the program is to provide research training opportunities to students interested in pursuing environmental careers. The proposed cooperative program will be administered by a single recipient in response to EPA-approved and funded intern opportunities at EPA locations, or at other EPA-approved locations of other Federal organizations or non-Federal organizations where the opportunity exists for students to participate in research training in environmental protection.

In cooperation with the EPA, the recipient will select and employ student interns to work on individual projects in response to internship opportunities established by the program offices within the EPA. Interns are not EPA employees but are employed by the recipient. The recipient, in cooperation with the EPA, will develop an orientation program that will explain the intern's roles, responsibilities, and limitations. The interns must be undergraduate students, graduate students, or college graduates who have been accepted into graduate programs and will begin their studies within 9 months of accepting an internship position. There is no specific course requirement for an intern but some preferred study areas include environmental science, earth science, environmental engineering, geodesy, chemistry, physics, oceanography, biology, fishery science, geography, resource economics, risk assessment, policy analysis, computer science, and law.

The EPA Code of Federal Regulations, 40 CFR 45.135(a), states that "Trainees must be citizens of the United States, its territories, or possessions, or lawfully admitted to the United States for permanent residence."

All internship projects will be carried out under a written research training plan with the technical guidance of a technical advisor from the EPA or other EPA-approved sponsoring organization. These projects must be designed to provide learning experiences for the interns that will make them competitive for employment opportunities in both the public and private sectors. Final details for individual training plans will be developed by the recipient in consultation with the individual technical advisor in accordance with the "Statement of Substantial Involvement between EPA and the Recipient" described below.

The maximum period that an intern may participate in the Intern Program on a full or part time basis with funding from the EPA is six months. The EPA may fund one additional three-month extension of an internship to enable the intern to complete a project.

The recipient, under other funding agreements, may establish other environmental protection internship opportunities with organizations other than the EPA. The EPA may choose to fund and sponsor these other internships or the recipient can obtain sponsorship or funding from non-EPA sources. Please note that under OMB Circular A–122 applicable to assistance agreements with nonprofit organizations, general fund-raising costs are not allowable.

There is no fixed number of internships per year under this program. The actual number will depend on opportunities and funding identified by offices within the EPA.

Internships may be located at the EPA or at facilities of other organizations with missions relating to environmental protection. If interns are required to relocate to either location for any portion of the internship, the EPA will provide financial assistance to the recipient in an amount up to $500 to offset the intern's relocation expenses. The finding of local housing and payment of housing costs is the responsibility of the intern. Interns will be provided individual project assignments for each internship.

Under this Cooperative Agreement, the Recipient will make extra effort in advertising and promoting the availability of internships at Minority Serving Institutions, emphasizing Native Americans, Hispanic Americans, African Americans, Asian Americans, and women.

D. Definitions

1. *Student Intern*—Individual trainee who will be provided with and perform internships under this cooperative agreement.

2. *Project Officer*—The EPA Project Officer is that individual specifically named by the EPA to manage this program.

3. *Technical Advisor*—The EPA employee responsible for providing technical guidance on the specific project(s) assigned to the intern and for monitoring the intern's individual development and progress. Because the student interns will be employees of the recipient organization, EPA technical advisors do not provide day-to-day supervision of student interns but they do oversee the work.

4. *Intern Opportunity/Project*—An opportunity for an internship which is documented and has funds obligated for its costs. In general, these opportunities will be assignments within existing EPA programs and ongoing projects and will be performed at the site of an EPA facility. In some cases, the assignment may involve a project at locations other than an EPA facility such as a community organization facility; a nonprofit organization facility; or a local government, state government, or tribal government facility.

5. *Travel Expenses of Interns*—All travel expense must be paid by the recipient. No EPA travel funds can be used. The funds will be included as part of the original funding to the Recipient at the time the internship project is initiated or at a later date by way of an amendment to the cooperative agreement. The EPA will provide travel and transportation for any intern assigned to EPA projects requiring field work as documented in the description of the Intern Opportunity and the Intern's training plan. Interns will complete Recipient's travel approval form prior to each trip, complete a travel reimbursement form at the conclusion of each trip, and a travel results report at the conclusion of each trip for the Recipient. The U.S. EPA Technical Advisor will sign all forms to acknowledge the trip is consistent with the intern's training plan prior to any action by the Recipient. Travel advances for interns will be available from the Recipient as needed. All travel and transportation required for field work will be paid by the Recipient out of funds included in the intern's amendment to the agreement.

6. *Training Expenses of Interns*—All training expense must be paid by the recipient. No EPA training funds can be used. The funds will be included as part of the original funding to the Recipient at the time the internship project is initiated or at a later date by way of an amendment to the cooperative agreement. The EPA will provide training for any intern when it is decided by the Technical Advisor that training is appropriate. The need for the training must be requested by the intern, approved by the Technical Advisor, prior to requesting the recipient to pay for the training expense. Interns will complete Recipient's training approval form prior to registration. When possible, the Recipient will pay for the training rather than requiring the intern to pay. When necessary, the intern may be asked to pay and then to complete a training reimbursement form at the conclusion, and a training results report at the conclusion of the event for the Recipient. The U.S. EPA Technical Advisor will sign all forms to acknowledge the training is consistent with the intern's training plan prior to

any action by the Recipient. All training will be paid by the Recipient out of funds included in the individual intern's amendment to the original agreement.

E. Maximum EPA Financial Participation in Stipends (Per Week) and General Background Requirements of Internships

1. $450 ($11.25/hr): 1–4 full years of academic study.

2. $550 ($13.75/hr): Undergraduate degree and acceptance in graduate school

3. $650 ($16.25/hr): Undergraduate Degree and superior academic standard (top 1/3, 2.9/4 GPA overall, & 3.5/4 GPA in Major) and accepted into graduate school.

4. $750 ($18.75/hr): Completed 60 hrs Graduate level or completed Masters or law degree and accepted into PhD or L.L.M. program.

Overtime pay is not allowed. In the event that overtime is required, the duration of the internship will be reduced or additional funds will be obligated or compensatory time will be given in lieu of overtime pay to compensate for it.

In the event that an intern voluntarily terminates or is terminated by the recipient for cause (*e.g.*, failing to carry out his or her training plan or engaging in disruptive behavior), the Recipient will make every effort to select another intern and, if not practicable, advises the EPA to de-obligate the remaining funds committed for the internship.

F. Funding Availability

The EPA funding for this Program will be a minimum of $500,000 during the first year. The amount of funding for the second and third years is indefinite but can be as much as $2 million each year. Each internship or group of internships, beyond the first, will be funded as a separate amendment to the master agreement. There is no set timetable for announcement of internships and they may occur throughout the year, depending on the EPA's programmatic decisions.

Matching Requirements—Cost sharing is not required for the internship program.

Type of Funding Instrument—The Environmental Protection Intern Program will be awarded as a Cooperative Agreement since the EPA anticipates that there will be substantial involvement between the EPA, the Recipient, and the Interns (after their selection).

G. Statements of Substantial Involvement Between U.S. EPA and the Recipient

In carrying out the work program set forth in the project description, EPA and the Recipient agree to meet the programmatic objective of this agreement: The programmatic objective of this intern program is to provide unique research training opportunities in cooperative study, applied research, research techniques, and developmental activities that would be of major benefit in advancing the number and diversity of environmental professionals. EPA involvement will consist of the following activities:

1. The EPA will provide descriptions of available student intern opportunities including academic background and prior work experience that would make the internship experience meaningful to the student.

2. EPA personnel will discuss internship opportunities with prospective interns and provide advice to the recipient relating to the "fit" between a prospective intern's academic background and work experience and the project available under the internship opportunity. However, EPA personnel will not select or make offers to prospective interns.

3. After considering the EPA's advice, and making its own assessment of the fit between a prospective intern's qualifications and interests and the internship opportunity, the Recipient is responsible for selecting the intern, making the offer of the internship, and arranging an orientation program and start date.

4. The recipient and the EPA will collaboratively develop the student intern's training plan. The EPA will provide a technical advisor to interact with each student intern as the intern carries out his or her training plan. The technical advisor shall provide technical guidance and support to the intern in developing the skills necessary to perform the work in the chosen environmental area and monitor the intern's progress towards completing his or her training plan. However, the EPA's technical advisor will not supervise the intern.

5. The EPA will provide liaison to interact with the Recipient and Senior Management on the progress of meeting the programmatic objectives of this Cooperative Agreement.

H. Eligibility Criteria

Any nonprofit organization as described in OMB Circular A–122 may submit a proposal. Please note that there are restrictions on the extent to which the EPA can award financial assistance to organizations described by section 501(c)(4) of the Internal Revenue Code who engage in lobbying.

I. Award Period

The initial Master Agreement will be for a period of up to three (3) years. The EPA will consider continued funding for the project beyond the first year upon: (a) Satisfactory progress toward the stated agreement goals, and the determination by the EPA that the continuation of the program would be in the best interest of the Government; and (b) availability of funds. This submission in no way obligates the EPA to extend this agreement, nor is this paragraph to be interpreted as a promise that future funds will be available. Stipend levels, and benefits may be adjusted for Cost of Living Allowances for each continuation year.

Multiple awards may be made from this announcement.

J. Administrative Costs

Funds to support the environmental professional intern program will be given directly to the Recipient. Administrative costs will be negotiated as part of the Master Agreement award and will be based on and paid on a per internship basis. These costs may be fixed, time dependent, intern stipend dependent, or a combination as proposed by the Recipient.

K. Indirect Costs

The total dollar amount of the indirect costs proposed in an application under this program must not exceed the indirect cost rate negotiated and approved by a cognizant Federal agency prior to the proposed effective date of the award or 100 percent of the total proposed direct costs dollar amount in the application, whichever is less.

L. Application Requirements

Each Prospective Recipient will submit a package containing completed:

1. SF–424 (including SF–424A & SF–424B),

2. A budget with necessary supporting details. This budget should be based on a hypothetical intern opportunity at a stipend level of $550 per week, with an allowance for required field trip travel of $2,000, and a relocation allowance of $500. Because it is anticipated that this agreement will be extended to include additional internships beyond the first, supporting information should be included to determine the full cost to the government of additional internships which may have any of the suggested stipend levels, have durations ranging from 12 weeks (3 month

summer intern) to 26 weeks (6 months), to 38 weeks (9 months), and be with or without relocation or travel allowances. This information should also contain details on what services and benefits are included (*i.e.*, sick leave, tax withholding, insurance, *etc.*) and their estimated cost to interns; as well as, what, if any, allowances are made for vacation leave and/or sick leave. Holidays observed by the office hosting the intern will be considered paid holidays.

3. Curriculum Vitae for each individual and critical senior staff assigned to the program.

4. Copy of a current approved Negotiated Indirect Cost Rate Agreement.

5. SF–LLL "Disclosure of Lobbying Activities".

6. "Certifications Regarding Lobbying Activities".

7. EPA Form 5700–49 "Certification Regarding Debarment, Suspension, and Other Responsibility Matters".

8. Proof of Status for First Time Eligible Non-Profit Applicants.

9. EPA Form 4700–4 "Preaward Compliance Review report for All Applicants. * * *"

10. A narrative description of the applicant's proposed plan for carrying out its environmental professional internship program. This narrative will include:

(a) A description of the Intern Program, how they would implement it and conduct its operation. Alternatives and variations with regard to the timing of items 4 and 5 within the *G. Statements of Substantial Involvement between U.S. EPA and the Recipient* detailed above may be proposed.

(b) Proposed method of advertising for and pre-screening candidate Interns and supervising interns as they carry out their training plans.

(c) Proposed benefits offered to Interns (*e.g.*, tax withholding, health insurance, liability insurance, workman's compensation, *etc.*) as employees of the applicant.

(d) Past history of the prospective Recipient in carrying out similar programs, and how carrying out the environmental professional internship program will further the applicant's mission.

(e) Ability to use the Internet for all aspects of the intern program.

Application Forms and Kit

The Grant Application Kit can be obtained by calling 202–564–5310. It is also available in PDF format at *http://www.epa.gov/ogd/AppKit/index.htm*

Project Funding Priorities

The responsiveness of the application to the programmatic objectives of the Intern program as noted in the Summary section and restated in the Type of Funding Instrument section above will be considered in the evaluation process.

M. Evaluation Criteria

The proposals from applicants will be evaluated according to these evaluation factors. Your application must be complete to be considered.

- Description of the intern program, alternatives and variations with regard to timeliness of receiving a request for, and the placement of, an intern. (20)
- Proposed method of advertising for and pre-screening candidate interns, supervising interns as they carry out their training plans. (15)
- Proposed benefits (health insurance, workman's compensation, etc.) to interns. (15)
- Experience of applicant in managing a national program where students are recruited from various universities and colleges throughout the U.S. Past history of the recipient in carrying out similar programs, and how carrying out the internship program will further the recipient's mission. (40)
- Ability to use the internet for all aspects of the intern program. (10)

N. Selection Procedures

Each application will receive an independent, objective review by a panel qualified to evaluate the applications submitted. The Independent Review Panel, consisting of at least three individuals in addition to the EPA Federal Program Officer, will review, evaluate, and rank all applications based on the criteria stated above. The final decision on an award will be based upon the panel's overall ranking of the applications and a determination by the EPA Selecting Official that the Recipient's application meets the Project Funding Priorities.

O. Other Requirements

1. Federal Policies and Procedures

Recipients are subject to all Federal laws and Federal and EPA policies, regulations, and procedures applicable to Federal financial assistance awards.

2. Past Performance

Unsatisfactory performance under prior Federal awards will be considered in evaluating an applicant's proposal.

3. Preaward Activities

If applicants incur any costs prior to an award being made, they do so solely at their own risk of not being reimbursed by the Government. Notwithstanding any verbal or written assurance that may have been received, there is no obligation on the part of the EPA to cover preaward costs except to the extent authorized at 40 CFR 30.25(f).

4. No Obligation for Future Funding

If an application is selected for funding, the EPA has no obligation to provide any additional future funding in connection with the award. Renewal of an award to increase funding or extend the period of performance is at the total discretion of the EPA.

5. Delinquent Federal Debts

No award of Federal funds will be made to an applicant who has an outstanding delinquent Federal debt until either:

i. The delinquent account is paid in full,

ii. A negotiated repayment schedule is established and at least one payment is received, or

iii. Other arrangements satisfactory to the EPA are made.

6. Name Check Review

All nonprofit applicants are subject to a name check review process. Name checks are intended to reveal if any key individuals associated with the applicant have been convicted of or are presently facing criminal charges such as fraud, theft, perjury, or other matters which significantly reflect on the applicant's management honesty or financial integrity. Key individuals cannot be currently suspended, debarred, or otherwise ineligible from participating in Federal financial assistance.

7. Primary Applicant Certifications

All primary applicants must submit a completed form CD–511, "Certifications Regarding Debarment, Suspension and Other Responsibility Matters; Drug-free Workplace Requirements and Lobbying," and the following explanations are hereby provided:

i. *Nonprocurement Debarment and Suspension.* Prospective participants (as defined at 15 CFR part 26, § 105) are subject to 15 CFR part 26, "Nonprocurement Debarment and Suspension" and the related section of the certification form prescribed above applies;

ii. *Drug-Free Workplace.* Recipients (as defined at 15 CFR part 26, § 605) are subject to 15 CFR part 26, subpart F, "Government requirements for Drug-Free Workplace (Grants)" and related section of the certification form prescribed above applies;

iii. *Anti-Lobbying.* Persons (as defined at 15 CFR part 26, § 105) are subject to the lobbying provisions of 31 U.S.C. 1352, "Limitations on use of appropriated funds to influence certain Federal contracting and financial transactions," and the lobbying section of the certification form prescribed above applies to applications/bids for grants, cooperative agreements, and contracts for more than $100,000 * * *"

iv. *Anti-Lobbying Disclosures.* Any applicant that has paid or will pay for lobbying using any funds must submit an SF–LLL, "Disclosure of Lobbying Activities," as required under 15 CFR part 28, appendix B.

8. False Statements

A False statement on an application is grounds for denial or termination of funds and grounds for possible punishment by a fine or imprisonment as provided in 18 U.S.C. 1001.

9. Intergovernmental Review

Applications under this program are not subject to executive Order 12372, "Intergovernmental Review of Federal Programs."

10. Paperwork Reduction

Notwithstanding any other provision of law, no person is required to respond to nor will a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB control number.

11. Dispute Resolution Process

Any disputes concerning the award of this agreement will be handled in accordance with 40 CFR 30.63 and part 31, subpart F.

12. Confidential Business Information

Applicants should clearly mark information considered confidential, and the EPA will make final confidentiality decisions in accordance with Agency regulations at 40 CFR part 2, subpart B.

P. Restrictions

Short-Term Training—This is a short term training program for students. Interns will not be used to replace EPA employees formerly employed under the Office of Personnel Management student appointing authorities, to replace temporary or term appointments, or to replace or fill-in for full or part-time EPA positions vacated by the Voluntary Separation Program or Reduction in Force. Participants will not be selected or used to perform personal services. The Recipient and the Agency shall avoid any actions that create the appearance that the intern is a Federal employee or is being used by the EPA to obtain personal services. This would circumvent the civil service laws and reflect negatively on EPA staff using this participant in this manner. The relationship between the Recipient and Interns is that of Employer and Employees. The Recipient must provide a health benefits option, must deduct applicable state and federal taxes, and is responsible for payment, discipline, leave approval, termination, etc. for each Intern. Nothing in this agreement or its supplements will be deemed to create an employer-employee relationship between the EPA and an Intern. All interns must qualify as students to participate in the program.

Former EPA Employee Restrictions—Former EPA employees are not eligible for this program within two years of employment at the EPA. Former EPA employees must qualify as students to participate in the program.

Dated: February 4, 2003.

Barry E. Hill,

Director, Office of Environmental Justice.

[FR Doc. 03–3238 Filed 2–7–03; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket No. 96–45; DA 03–25]

Wireline Competition Bureau Seeks Comment on Updating Line Counts and Other Limited Information Used in Calculating High-Cost Universal Service Support for Non-Rural Carriers

AGENCY: Federal Communications Commission.

ACTION: Notice; solicitation of comments.

SUMMARY: In this document, the Wireline Competition Bureau sought comment on how line count and other discrete input values should be updated in the universal service cost model used to estimate non-rural carrier's forward-looking economic costs of providing the services supported by the federal universal service high-cost support mechanism.

DATES: Comments are due on or before March 3, 2003. Reply comments are due on or before March 12, 2003.

ADDRESSES: Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Katie King or Thomas Buckley, Attorneys, Wireline Competition Bureau, Telecommunications Access Policy Division, (202) 418–7400, TTY (202) 418–0484.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Public Notice, CC Docket No. 96–45, released January 7, 2003. The Wireline Competition Bureau (Bureau) released an order adopting certain modifications to the forward-looking cost model for determining high-cost support for non-rural carriers. In particular, the Bureau incorporated specific technical improvements and translated a portion of the model from Turbo-Pascal to Delphi computer language. In that order, the Bureau also deferred using this revised version of the model to determine support amounts until the effective date of a Commission order in the separate proceeding addressing the non-rural high-cost support methodology adopted in the *Ninth Report and Order,* 64 FR 67416, December 1, 1999 which was remanded to the Commission by the United States Court of Appeals for the Tenth Circuit. The Bureau now seeks comment in this Public Notice on how line count and other discrete input values should be updated for purposes of determining support upon implementation of the revised version of the model.

On October 21, 1999, the Commission adopted two orders completing implementation plans for a new high-cost universal service support mechanism for non-rural carriers. The mechanism provides support based on the forward-looking economic cost of providing services eligible for support, as determined by the Commission's universal service cost model. The Commission also emphasized the importance of updating the inputs used in the cost model as technology and other conditions change. In the *2001 and 2002 Line Counts Update Orders,* 65 FR 81759, December 27, 2000 and 67 FR 3118, January 23, 2002, the Bureau updated the cost model with year-end line counts and other discrete input values for purposes of estimating forward-looking costs and determining support for the years 2001 and 2002, respectively.

Consistent with past precedent, the Bureau seeks comment on using year-end 2001 line counts filed July 31, 2002, as input values for purposes of estimating average forward-looking costs and determining support for non-rural carriers upon implementation of the Commission decision on the Tenth Circuit remand. In addition, the Bureau seeks comment on whether to continue to adjust high-cost support amounts

each quarter using wire center line count data reported by carriers each quarter.

When line counts were updated in the past, the Bureau also used information obtained from the 1999 Data Request to allocate switched lines among the classes of switched service and to allocate special access lines to the appropriate wire centers. The Bureau seeks comment on continuing this line count disaggregation methodology. The Bureau also seeks comment on whether to apply the method used in past decisions for matching line count data to wire centers used in the model for purposes of calculating support.

Finally, in the *2002 Line Counts Update Order*, the Bureau also updated the model's input values with annually collected ARMIS data and traffic parameter data available from the National Exchange Carrier Association to estimate investment in general support facilities (GSF) and switching costs. The Bureau seeks comment on whether to update the tables in the model used to calculate GSF investment and switching costs using the same methodology employed in the *2002 Line Counts Update Order*.

Pursuant to § 1.415 and 1.419 of the Commission's rules, interested parties may file comments as follows: comments are due on or before March 3, 2003, and reply comments are due on or before March 12, 2003. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

Comments filed through the ECFS can be sent as an electronic file via the Internet to *http://www.fc.gov/e-file/ecfs.html*. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to *ecfs@fcc.gov*, and should include the following words in the body of the message, "get form<get form<your e-mail address>." A sample form and directions will be sent in reply.

Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Vistronix, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal service first-class mail, Express Mail, and Priority Mail should be addressed to the Commission's Secretary, Marlene H. Dortch, Office of the Secretary, Federal Communications Commission.

Parties also must send three paper copies of their filing to Sheryl Todd, Telecommunications Access Policy Division, Wireline Competition Bureau, Federal Communications Commission, 445 12th Street, SW., Room 5–B540, Washington, DC 20554. In addition, commenters must send diskette copies to the Commission's copy contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554.

Pursuant to § 1.1206 of the Commission's rules, 47 CFR 1.1206, this proceeding will be conducted as a permit-but-disclose proceeding in which ex parte communications are permitted subject to disclosure.

Federal Communications Commission.

Eric N. Einhorn,

Acting Division Chief, Wireline Competition Bureau Telecommunications Access Policy Division.

[FR Doc. 03–3158 Filed 2–7–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

Guidance for the Use of Portable (Hand-Held) Radiological Instruments

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice of availability of final guidance.

SUMMARY: We (FEMA) have developed the final guidance for the use of portable (hand-held) radiological instruments, identified as FEMA–REP–22, for the detection of radioactive contamination on persons in association with peacetime nuclear accidents. Three documents pertaining to the final guidance are available for use.

ADDRESSES: You may obtain copies of the final guidance documents from the FEMA Distribution Center, (800) 480–2520, or *www.fema.gov/rrr/rep/fr.shtm*.

FOR FURTHER INFORMATION CONTACT: William F. McNutt, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–2857, or (e-mail) *william.mcnutt@fema.gov*.

SUPPLEMENTARY INFORMATION: The three available documents are:

(a) Contamination Monitoring Guidance for Portable Instruments Used for Radiological Emergency Response to Nuclear Power Plant Accidents, FEMA–REP–22, (12 pages);

(b) Background Information on Contamination Monitoring Guidance for Portable Instruments Used for Radiological Emergency Response to Nuclear Power Plant Accidents (62 pages); and

(c) Statements of Consideration for Contamination Monitoring Guidance for Portable Instruments Used for Radiological Emergency Response to Nuclear Power Plant Accidents (12 pages).

We developed this guidance in response to a request from the Conference of Radiation Control Program Directors (CRCPD). The CRCPD asked us to develop portable instrument guidance that affords protection to the public equivalent to the portal monitor standard (FEMA–REP–21) that we established and published in the **Federal Register** on March 23, 1995 (60 FR 15290–15291).

We worked through the Federal Radiological Preparedness Coordinating Committee (FRPCC) and its Offsite Emergency Instrumentation Subcommittee to develop and coordinate the portal monitor standard and the guidance for portable instruments. We chair the FRPCC and, with the Department of Energy, co-chair the Offsite Emergency Instrumentation Subcommittee, which includes members from several Federal agencies. Members of the CRCPD's E–6 Committee (composed of State radiological health officials) participated in meetings of this Subcommittee as ex-officio members.

We made the draft guidance available to FEMA Regional staff, CRCPD constituents in all 50 States and the general public for review and comment. We have addressed and resolved their comments.

While we developed only one standard for portal monitors, we developed guidance for four (4) types of portable instruments because of the instrument-specific factors that influence the manner in which radiation is detected and measured. We developed the guidance for portable instruments through extensive empirical tests of different portable radiological instruments currently in use today by State and local government personnel. Despite instrument-specific differences between portal monitors and portable instruments, use of this guidance will afford protection to individuals equivalent to that afforded by the portal monitor standard.

Based on extensive consultation with Federal and State officials, the primary issue involving this guidance is the extended period of time required to monitor an individual adequately with some types of portable radiological instruments. Empirical studies undertaken since 1991 have substantiated per-person monitoring time frames for different types of radiological instruments ranging from 2.6 minutes to as high as 19 minutes (for a CD V–700 with standard GM side window probe) for total body scans to detect spot contamination. The planning criterion for monitoring individuals using a portable CD V–700 radiation survey instrument is 300 counts per minute (CPM) above background levels.

The range of times required to monitor individuals is critical, as is the need for State and local governments to provide sufficient resources to monitor at least 20% of the plume exposure pathway emergency planning zone (EPZ) population in about twelve (12) hours. This may require State and local governments with certain types of radiological instruments to re-examine their radiological emergency planning and preparedness for accidents involving commercial nuclear power plants. This issue is extensively documented and addressed in the three documents previously cited, and we provide suggestions on how State and local governments may address this issue and related resource requirements.

Dated: February 4, 2003.

Joe M. Allbaugh,

Director.

[FR Doc. 03–3185 Filed 2–7–03; 8:45 am]

BILLING CODE 6718–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 6, 2003.

A. Federal Reserve Bank of Boston (Richard Walker, Community Affairs Officer) 600 Atlantic Avenue, Boston, Massachusetts 02106-2204:

1. Butler Bancorp, MHC, Lowell, Massachusetts, and Butler Bancorp, Inc., Lowell, Massachusetts; to become bank holding companies by acquiring 100 percent of the voting shares of Butler Bank, Lowell, Massachusetts.

B. Federal Reserve Bank of New York (Betsy Buttrill White, Senior Vice President) 33 Liberty Street, New York, New York 10045-0001:

1. Interchange Financial Services Corporation, Saddle Brook, New Jersey; to merge with Bridge View Bancorp, Englewood Cliffs, New Jersey, and thereby indirectly acquire Bridge View Bank, Englewood Cliffs, New Jersey.

C. Federal Reserve Bank of Minneapolis (Richard M. Todd, Vice President and Community Affairs Officer) 90 Hennepin Avenue, Minneapolis, Minnesota 55480-0291:

1. Waumandee Bancshares, Ltd., Waumandee, Wisconsin; to become a bank holding company by acquiring 100 percent of the voting shares of Waumandee State Bank, Waumandee, Wisconsin.

Board of Governors of the Federal Reserve System, February 4, 2003.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 03–3178 Filed 2–7–03; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than February 24, 2003.

A. Federal Reserve Bank of Chicago (Phillip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690-1414:

1. Ronald W. Plassman, Fort Wayne, Indiana; to acquire voting shares of Knisely Financial Corp., Butler, Indiana, and thereby indirectly acquire voting shares of Knisely Bank, Butler, Indiana.

Board of Governors of the Federal Reserve System, February 4, 2003.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 03–3179 Filed 2–7–03; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Federal Open Market Committee; Domestic Policy Directive of January 28 and 29, 2003

In accordance with § 271.25 of its rules regarding availability of information (12 CFR part 271), there is set forth below the domestic policy

directive issued by the Federal Open Market Committee at its meeting held on January 28 and 29, 2003.[1]

The Federal Open Market Committee seeks monetary and financial conditions that will foster price stability and promote sustainable growth in output. To further its long-run objectives, the Committee in the immediate future seeks conditions in reserve markets consistent with maintaining the federal funds rate at an average of around 1¼ percent.

By order of the Federal Open Market Committee, February 3, 2003.

Vincent R. Reinhart,

Secretary, Federal Open Market Committee.

[FR Doc. 03–3242 Field 2–7–03; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL TRADE COMMISSION

Public Forum: Spam Email

AGENCY: Federal Trade Commission (FTC).

ACTION: Notice announcing public forum.

SUMMARY: The FTC is planning to host a public forum to explore the issues regarding the proliferation of and potential solutions to unsolicited commercial email ("UCE" or "spam"). The forum will also look at how the unique qualities of spam contribute to and hinder both fraud and its prosecution.

DATES: The workshop will be held on April 30–May 2, 2003, from 8:30 a.m. to 5:30 p.m. at the Federal Trade Commission, 601 New Jersey Avenue, NW., Washington, DC. The event is open to the public, and there is no fee for attendance. Pre-registration is not required.

Requests to Participate as a Panelist: Written requests to participate as a panelist in the forum must be filed by March 25, 2003. For further instructions, please see the "Requests to Participate as a Panelist in the Workshop" section. Persons filing requests to participate as a panelist will be notified by April 8, 2003, if they have been selected.

ADDRESSES: Written requests to participate as a panelist in the forum should be submitted to: Secretary, Federal Trade Commission, Room 159, 600 Pennsylvania Avenue, NW., Washington, DC 20580. In the alternative, they may be emailed to *SpamForum@ftc.gov*.

FOR FURTHER INFORMATION CONTACT: Brian Huseman, Attorney, (202) 326–3320, or Lisa Tobin, Investigator, (202) 326–3218, Division of Marketing Practices, Federal Trade Commission, 600 Pennsylvania Avenue, NW., Washington, DC 20580. A detailed agenda and additional information on the forum will be posted on the FTC's Web site, *www.ftc.gov*, by April 8, 2003.

SUPPLEMENTARY INFORMATION:

Background and Forum Goals

Unsolicited commercial email ("UCE" or "spam") is any commercial electronic mail message that is sent, often in bulk, to a consumer without the consumer's prior request or consent. The very low cost of sending spam differentiates it from other forms of unsolicited marketing, such as direct mail or telemarketing. Those marketing techniques, unlike spam, impose costs on marketers that may serve to limit their use.

As a result of the low costs associated with sending bulk commercial email, the volume of spam that consumers and businesses receive is substantial and has continued to increase over time. A recent study by the Radicati Group, a market research group, estimated that 32 percent of the 7.3 billion email messages sent each day are spam and that the figure is likely to increase substantially in the future.[1] Another study recently conducted by the Symantec corporation found that 65 percent of those surveyed reported spending more than 10 minutes each day dealing with spam. Moreover, 37 percent of the survey respondents stated they received more than 100 spam email messages each week.[2] This increased volume of spam imposes financial and operational costs on Internet service providers ("ISPs"), burdens consumers, and impacts e-commerce generally."

In addition, the increased volume of spam has increased the potential for fraud on the Internet, such as deceptive content within spam messages or deceptive means of sending email. Although not all spam is fraudulent, fraud operators have seized on the Internet's capacity to reach literally millions of consumers quickly and at a low cost through spam. Fraud operators also can misuse technology to conceal their identity. Many spam messages contain false information about the sender and where the message was routed from, making it difficult to trace the spam back to the actual sender. Spam messages often contain misleading subject lines that lead consumers to open email messages they otherwise would delete without reading. Thus, the proliferation of spam, and deceptive spam particularly, poses a threat to consumer confidence and participation in online commerce.

The Commission has taken law enforcement actions against deceptive spam and has engaged in several research efforts to explore how spam affects consumers and online commerce. For example, this year the Commission conducted a surf in which the FTC and law enforcement partners tested whether "remove me" or "unsubscribe" options in spam were being honored. The law enforcement agencies discovered that 63 percent of the removal representations were not honored.

Further, in its "Spam Harvest," the Commission conducted an examination of what online activities place consumers at risk for receiving spam. The examination discovered that one hundred percent of the email addresses posted in chat rooms received spam; the first received spam only eight minutes after the address was posted. Eighty-six percent of the email addresses posted at newsgroups and Web pages received spam; as did 50 percent of addresses at free personal Web page services; 27 percent from message board postings; and nine percent of email service directories. The "Spam Harvest" also found that the type of spam received was not related to the sites where the email addresses were posted. For example, email addresses posted to investment-related newsgroups did not receive solely investment-related spam, but also received a large amount of adult content and work-at-home-spam.

In addition to law enforcement and research, the Commission has engaged in education efforts about how consumers and businesses can reduce the amount of unwanted spam they receive. These materials can be found on the FTC's Web site, *www.ftc.gov/spam*.

Despite the research the Commission has conducted, its law enforcement actions, and education initiatives, there are other topics concerning spam that could benefit from additional study. To explore the impact that spam has on consumers' use of email, email marketing, and the Internet industry, the

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[1] Copies of the Minutes of the Federal Open Market Committee meeting on January 28 and 29, 2003, which includes the domestic policy directive issued at the meeting, are available upon request to the Board of Governors of the Federal Reserve System, Washington, D.C. 20551. The minutes are published in the Federal Reserve Bulletin and in the Board's annual report.

[1] *See www.radicati.com.*

[2] An article describing the survey can be found at: *http://rtnews.globetechnology.com/servlet/ArticleNews/tech/RTGAM/20021202/gtspammy/Technology/techBN/HYPERLINK* (visited Dec. 3, 2002).

Commission will convene a public forum on April 30–May 2, 2003. Email marketers, "anti-spammers," ISPs, ISP abuse department personnel, spam filter operators, other email technology professionals, consumers, consumer groups, and law enforcement officials are especially encouraged to participate.

Panel #1 will consist of consumers, email marketers, anti-spammers, ISP abuse department personnel and filter programmers discussing their daily experiences with spam.

Panel #2 will focus on the email address gathering process and the implications that address gathering technology has on consumer participation in e-commerce and the Internet. The harvesting of email addresses from the Web, newsgroups and chat rooms will be discussed, along with lists available for sale. Panelists also will speak about the distribution of email to those lists through spamware. The panel also will address the issue of consent and disclosures in voluntarily obtaining consumers' email addresses.

Panel #3 will address the aspects of spam that can be falsified by senders, including false from and reply-to addresses, false routing information, deceptive subject lines, and fraudulent removal representations.

Panel #4 will explore the costs and benefits of spam to consumers, ISPs, and email marketers. Panelists will comment on the costs of sending spam relative to traditional forms of marketing. The amounts spent by ISPs on filtering, bandwidth, and customer service will be explored. How those ISP costs are passed onto consumers will be addressed, as well as consumers' costs in time and decreased Internet participation.

Panel #5 will cover security weaknesses inherent in email transfer technology and the way that spammers exploit these weaknesses. Open Relays, Open Proxies and FormMail Scripts will be discussed in terms of their legitimate purposes, costs to the open technology providers, use in sending spam, and processes for securing those weaknesses.

Panel #6 will address blacklists, which consist of lists of domain names or Internet Protocol ("IP") addresses of suspected spammers. Maintained by private entities, the lists are used to block email from those names and IP addresses. Issues for the panel include standards for being placed on blacklists, how to remove one's IP address or domain name from a blacklist, and whether the use of such lists constitutes an unfair business practice.

Panel #7 will discuss nefarious files that are downloaded with the content of email messages, including viruses, Web beacons, and spyware.

Panel #8 will cover issues specific to wireless devices, including the nature of text-based messaging and wireless email. The economic burdens that recipients incur in per-message and per-minute service rates will be of particular interest, along with the international experience and forecasts for increased wireless messaging.

Panel #9 will explore current and proposed legislation, including U.S. federal and state bills. Consumer and ISP private right of action clauses and the preemption of state law by federal law will be issues of prominence, as well as the effect legislation might have on email marketing. The panel also will examine any constitutional limitations on legislation.

Panel #10 will examine proposed and current international spam legislation, including policy decisions behind those statutes. Panelists also will discuss their experience and plans for enforcing international laws.

Panel #11 will discuss recent private and governmental spam law enforcement actions and the challenges of litigating spam cases. Some of the challenges that will be discussed include cost-effectiveness, tracking spammers, collecting evidence across borders, and effecting relief against international entities.

Panel #12 will focus on best practices for e-mail senders and receivers. E-mail recipient topics will include keeping e-mail addresses private, evaluating privacy policies and consent terms, using filters and responding to removal requests. E-mail sender topics include providing removal mechanisms, providing valid "from" addresses, and using opt-in or confirmed recipient lists.

Panel #13 will explore evolving technologies that aim to eliminate spam or offset its negative effects. The technologies include filtering technology, such as white lists and bonded sender programs, among others.

Panel #14 will discuss possible structural changes to the way e-mail is sent and delivered, including new mail transfer protocols and proposals to reverse the cost model of e-mail.

Requests To Participate as a Panelist in the Forum

Those parties who wish to participate as panelists in the forum must notify the FTC in writing of their interest by March 25, 2003, either by mail to the Secretary of the FTC or by e-mail to *SpamForum@ftc.gov*. Requests to participate as a panelist should be captioned "Spam Forum—Request to Participate, P024407." Parties are asked to include in their requests the name and number of the panel on which they would like to participate, a statement setting forth their expertise in or knowledge of the issues on which the panel will focus, and their contact information, including a telephone number, facsimile number, and e-mail address. If requesting by mail, please submit an original and two copies of each document. Panelists will be notified by April 8, 2003, whether they have been selected.

Using the following criteria, FTC staff will select a limited number of panelists to participate in the forum:

1. The party has expertise in or knowledge of the issues that are the focus of the forum.

2. The party's participation would promote a balance of interests being represented at the forum.

3. The party has been designated by one or more interested parties as a party who shares group interests with the designator(s).

In addition, there will be time during the forum for those not serving as panelists to comment or ask questions.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 03–3162 Filed 2–7–03; 8:45 am]

BILLING CODE 6750–01–U

FEDERAL TRADE COMMISSION

[Docket No. 9303]

Lentek International, Inc., et al.; Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the complaint and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before March 5, 2003.

ADDRESSES: Comments filed in paper form should be directed to: FTC/Office of the Secretary, Room 159–H, 600 Pennsylvania Avenue, NW., Washington, DC 20580. Comments filed in electronic form should be directed to: *consentagreement@ftc.gov*, as prescribed below.

FOR FURTHER INFORMATION CONTACT: Elena Paoli or Carol Jennings, FTC,

Bureau of Consumer Protection, 600 Pennsylvania Avenue, NW., Washington, DC 20580, (202) 326–2974 or (202) 326–3010.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46(f), and § 3.25(f) of the Commission's Rules of Practice, 16 CFR 3.25(f), notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for February 4, 2003), on the World Wide Web, at *http://www.ftc.gov/os/2003/02/index.htm.* A paper copy can be obtained from the FTC Public Reference Room, Room 130–H, 600 Pennsylvania Avenue, NW., Washington, DC 20580, either in person or by calling (202) 326–2222.

Public comments are invited, and may be filed with the Commission in either paper or electronic form. Comments filed in paper form should be directed to: FTC/Office of the Secretary, Room 159–H, 600 Pennsylvania Avenue, NW., Washington, DC 20580. If a comment contains nonpublic information, it must be filed in paper form, and the first page of the document must be clearly labeled "confidential." Comments that do not contain any nonpublic information may instead be filed in electronic form (in ASCII format, WordPerfect, or Microsoft Word) as part of or as an attachment to e-mail messages directed to the following e-mail box: *consentagreement@ftc.gov.* Such comments will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice, 16 CFR 4.9(b)(6)(ii)).

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, an agreement to a proposed consent order by respondents Lentek International, Inc., Joseph Durek, individually, and Lou Lentine, individually and as an officer of the corporation.

The proposed consent order has been placed on the public record for thirty (30) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement and take other appropriate action or make final the agreement's proposed order.

This matter concerns practices related to the advertising, offering for sale, sale, and distribution of various air cleaning products and ultrasonic/electromagnetic pest control devices. The Commission's complaint charged that respondents violated the Federal Trade Commission Act, 15 U.S.C. 41 *et seq.*, by making numerous representations that were false and/or for which they lacked a reasonable basis of substantiation. These representations concerned the following: the ability of Lentek's Sila Air Cleaning Products to eliminate various pollutants from indoor air; the health benefits of using the Sila Air Cleaning Products; the ability of Lentek's PestContro products to repel or eliminate various animal or insect pests from a user's home or outdoor space; the ability of various PestContro products to eliminate animal or insect pests within a space of a given size; the ability of the electromagnetic devices to drive away pests by altering the electromagnetic field inside the walls and wiring of a home; the ability of Lentek's MosquitoContro Products to repel mosquitoes from a user's body; and that the MosquitoContro Products are an effective alternative to the use of chemical pesticides or other products formulated to kill or repel mosquitoes in the prevention of West Nile Virus.

Part I of the proposed order prohibits any representation that any air cleaning product will eliminate, remove, clear, clean, neutralize, sanitize, oxidize, control, or reduce any indoor air pollutant, or that use of such product will prevent, reduce the incidence of, or provide relief from any medical or health-related condition, unless respondents possess competent and reliable scientific evidence that substantiates the representation.

Part II of the proposed order prohibits any representation that PestContro products (or similar pest control products utilizing sonic, ultrasonic, and/or electromagnetic technology) will repel, control, or eliminate, temporarily or indefinitely, any rodent, insect, or other animal pest, or that they will do so in an area of a certain size, unless respondents possess competent and reliable scientific evidence that substantiates the representation.

Part III of the proposed order prohibits any representation that PestContro products, or substantially similar products, will alter the electromagnetic field inside the walls or wiring of a home in a manner that drives away insects, rodents, and other animal pests, unless the representation is true and respondents possess competent and reliable scientific evidence that substantiates the representation.

Part IV of the proposed order prohibits any representation that MosquitoContro products, or substantially similar products, will repel mosquitoes from a user's body, or that such products are an effective alternative to the use of chemical pesticides or other products formulated to kill or repel mosquitoes, unless the representation is true and respondents possess competent and reliable scientific evidence that substantiates the representation.

Part V of the proposed order prohibits unsubstantiated representations about the benefits, performance, or efficacy of any product.

Part VI of the proposed order is a record keeping provision that requires the respondents to maintain certain records for five (5) years after the last date of dissemination of any representation covered by the order. These records include: (1) All advertisements and promotional materials containing the representation; (2) all materials relied upon in disseminating the representation; and (3) all evidence in respondents' possession or control that contradicts, qualifies, or calls into question the representation or the basis for it.

Part VII of the proposed order requires distribution of the order to current and future principals, officers, directors, and managers, and to current and future employees, agents, and representatives having responsibilities with respect to the subject matter of the order.

Part VIII of the proposed order requires that the Commission be notified of any change in the corporation that might affect compliance obligations under the order. Part IX of the proposed order requires that for a period of ten (10) years, each individual respondent notify the Commission of the discontinuance of his current business or employment or of his affiliation with any new business or employment involving the sale of consumer products or services.

Part X of the proposed order requires the respondents to file a compliance report with the Commission.

Part XI of the proposed order states that, absent certain circumstance, the order will terminate twenty (20) years from the date it is issued.

The purpose of this analysis is to facilitate public comment on the

proposed consent order. It is not intended to constitute an official interpretation of the agreement and proposed order or to modify their terms in any way.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 03–3163 Filed 2–7–03; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–03–42]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 498–1210.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Send comments to Anne O'Connor, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Project

Potential Reproductive and Neurological Effects of Exposure to Acrylamide—NEW—The National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention (CDC).

The mission of the National Institute for Occupational Safety and Health (NIOSH) is to promote safety and health at work for all people through research and prevention. Consistent with this mission, NIOSH is undertaking a study of the reproductive and neurobehavioral effects of occupational exposure to acrylamide. Acrylamide workers and control workers (n=100 per group) will be recruited from manufacturing, end-user, and non-exposed settings. Exposure will be characterized by acrylamide hemoglobin adduct and urinary metabolite levels, ambient area, personal air, and dermal sampling. Reproductive effects will be evaluated by examining semen quality, sperm DNA integrity, reproductive hormone levels, and prostate specific antigen levels (PSA).

Neurobehavioral effects will be assessed using sensation-tactile, postural stability, grooved pegboard, and simple reaction time tests. Two questionnaires will be administered on one occasion. Questionnaire information will be collected concurrently to augment test interpretation, adjust for potential confounders and covariates during regression analysis, correlate specific jobs and job activities with exposure measurements, and for validation purposes. Findings from this study will clarify if the adverse reproductive effects observed in animal studies are also present in acrylamide-exposed workers, and if preclinical neurobehavioral deficits are present at acrylamide doses currently considered to be within safe limits. This study is scheduled for implementation during 2003 and 2004. There are no costs to respondents.

Survey questionnaires	Number of respondents	Number of responses/ respondent	Average burden/response (in hrs.)	Total burden (in hrs.)
Medical & Reproductive History Questionnaire	200	1	13/60	43
Occupational History Questionnaire	200	1	34/60	113
Non-participant Questionnaire	50	1	2/60	2
Total				158

Dated: February 4, 2003.

Thomas Bartenfeld,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention.

[FR Doc. 03–3128 Filed 2–7–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–4051–N]

Medicare Program; Renewal of the Advisory Panel on Medicare Education (APME) and Notice of Meeting of the Advisory Panel—February 27, 2003

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice of renewal and notice of meeting.

SUMMARY: This notice announces the renewal of the Advisory Panel on Medicare Education (APME or the Panel). The Panel advises and makes recommendations to the Secretary of the Department of Health and Human Services and the Administrator of the Centers for Medicare & Medicaid Services on opportunities to enhance the effectiveness of consumer education strategies concerning the Medicare program. This notice announces the signing of the APME charter renewal by the Secretary on January 21, 2003. The charter will terminate on January 21, 2005, unless renewed by the Secretary.

In accordance with the Federal Advisory Committee Act, 5 U.S.C. Appendix 2, section 10(a) (Pub. L. 92–463) this notice also announces a meeting of the Advisory Panel on Medicare Education (the Panel) on

February 27, 2003. This meeting is open to the public.

DATES: The meeting is scheduled for Thursday, February 27, 2003, from 9:15 a.m. to 4 p.m., e.s.t.

Deadline for Submission of Presentations and Comments: February 20, 2003, 12 noon, e.s.t.

ADDRESSES: The meeting will be held at the Wyndham Washington Hotel, 1400 M Street, NW., Washington, DC, 20005, (202) 429–1700.

FOR FURTHER INFORMATION CONTACT: Lynne Johnson, Health Insurance Specialist, Division of Partnership Development, Center for Beneficiary Choices, Centers for Medicare & Medicaid Services, 7500 Security Boulevard, S2–23 05, Baltimore, MD, 21244–1850, (410) 786–0090. Please refer to the CMS Advisory Committees Information Line (1–877–449–5659 toll free)/(410–786–9379 local) or the Internet (*http://www.cms.gov/faca/apme/default.asp*) for additional information and updates on committee activities, or contact Ms. Johnson via E-mail at *ljohnson3@cms.hhs.gov*. Press inquiries are handled through the CMS Press Office at (202) 690–6145.

SUPPLEMENTARY INFORMATION:

I. Background

Section 222 of the Public Health Service Act (42 U.S.C. 217a), as amended, grants to the Secretary the authority to establish an advisory panel if the Secretary finds the panel necessary and in the public interest. The Secretary signed the charter establishing this panel on January 21, 1999 (64 FR 7849), and approved the renewal of the charter on January 18, 2001. The Panel advises and makes recommendations to the Secretary and the Administrator of the Centers for Medicare & Medicaid Services (CMS) on opportunities to enhance the effectiveness of consumer education strategies concerning the Medicare program. The goals of the panel are as follows:

- Develop and implement a national Medicare education program that describes the options for selecting a health plan under Medicare.
- Enhance the Federal government's effectiveness in informing the Medicare consumer, including the appropriate use of public-private partnerships.
- Expand outreach to vulnerable and underserved communities, including racial and ethnic minorities, in the context of a national Medicare education program.
- Assemble an information base of best practices for helping consumers evaluate health plan options and build a community infrastructure for information, counseling, and assistance.

The current members of the panel are: Dr. Jane Delgado, Chief Executive Officer, National Alliance for Hispanic Health; Joyce Dubow, Senior Policy Advisor, Public Policy Institute, AARP; Timothy Fuller, Executive Director, National Gray Panthers; John Graham IV, Chief Executive Officer, American Diabetes Association; Dr. William Haggett, Senior Vice President, Government Programs, Independence Blue Cross; Thomas Hall, Chairman and Chief Executive Officer, Cardio-Kinetics, Inc.; David Knutson, Director, Health System Studies, Park Nicollet Institute for Research and Education; Brian Lindberg, Executive Director, Consumer Coalition for Quality Health Care; Katherine Metzger, Director, Medicare and Medicaid Programs, Fallon Community Health Plan; Dr. Laurie Powers, Co-Director, Center on Self-Determination, Oregon Health Sciences University; Dr. Marlon Priest, Professor of Emergency Medicine, University of Alabama at Birmingham; Dr. Susan Reinhard, Co-Director, Center for State Health Policy, Rutgers University and Chairperson of the Advisory Panel on Medicare Education; Dr. Everard Rutledge, Vice President of Community Health, Bon Secours Health Systems, Inc.; Jay Sackman, Executive Vice President, 1199 Service Employees International Union; Dallas Salisbury, President and Chief Executive Officer, Employee Benefit Research Institute; Rosemarie Sweeney, Vice President, Socioeconomic Affairs and Policy Analysis, American Academy of Family Physicians; and Bruce Taylor, Director, Employee Benefit Policy and Plans, Verizon Communications.

II. Provisions of this Notice

A. Renewal

This notice announces the signing of the Advisory Panel on Medicare Education charter renewal by the Secretary on January 21, 2003. The charter will terminate on January 21, 2005, unless renewed by the Secretary before the expiration date.

B. Meeting Notice

The agenda for the February 27, 2003, meeting will include the following items:

- Recap of the previous (November 19, 2002) meeting.
- Center for Beneficiary Choices update.
- Promoting the use of Medicare preventive benefits.
- Eliminating disparities in the use of Medicare preventive benefits.
- 2003/2004 Medicare Education Campaign.
- Update on Home Health Quality Initiative.
- Public comment.
- Listening session with CMS leadership.
- Next steps.

Individuals or organizations that wish to make a 5-minute oral presentation on an agenda topic should contact Ms. Johnson by 12 noon, February 20, 2003. A written copy of the oral presentation should also be submitted to Ms. Johnson by 12 noon, February 20, 2003. The number of oral presentations may be limited by the time available. Individuals not wishing to make a presentation may submit written comments to Ms. Johnson by 12 noon, February 20, 2003. The meeting is open to the public, but attendance is limited to the space available. Individuals requiring sign language interpretation for the hearing impaired or other special accommodations should contact Ms. Johnson at least 15 days before the meeting.

III. Copies of the Charter

You may obtain a copy of the Secretary's charter for the APME by submitting a request to Lynne Johnson, Health Insurance Specialist, Division of Partnership Development, Center for Beneficiary Choices, Centers for Medicare & Medicaid Services, 7500 Security Boulevard, S2–23–05, Baltimore, MD, 21244–1850, (410) 786–0090 or contact Ms. Johnson via E-mail at *ljohnson3@cms.hhs.gov*. A copy of the charter will also be available on the Internet at (*http://www.cms.gov/faca/apme/default.asp*).

Authority: Sec. 222 of the Public Health Service Act (42 U.S.C. 217(a) and sec. 10(a) of Pub. L. 92–463 (5 U.S.C. App. 2, sec. 10(a) and 41 CFR 102–3).

(Catalog of Federal Domestic Assistance Program No. 93.733, Medicare—Hospital Insurance Program; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program.)

Dated: February 4, 2003.

Thomas A. Scully,

Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 03–3073 Filed 2–7–03; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 03N–0016]

Agency Information Collection Activities; Proposed Collection; MedWatch: The FDA Medical Products Reporting Program; Comment Request

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information and to allow 60 days for public comment in response to the notice. This notice solicits comments on the "MedWatch: The FDA Medical Products Reporting Program" forms (Form FDA 3500—voluntary version and Form FDA 3500A—mandatory version). These forms are currently used to report to the agency about adverse events, product problems, and medication errors that occur with FDA regulated products, including drugs, biologicals, medical devices, and special nutritional products.

DATES: Submit written or electronic comments on the collection of information by April 11, 2003.

ADDRESSES: Submit electronic comments on the collection of information to *http://www.accessdata.fda.gov/scripts/oc/dockets/edockethome.cfm*. Submit written comments on the collection of information to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document. Submit written requests for single copies of the revised MedWatch reporting forms, Form FDA 3500 (voluntary) and Form FDA 3500A (mandatory), to MedWatch: The FDA Safety Information and Adverse Event Reporting Program (HFD–410), Food and Drug Administration, 5600 Fishers Lane, rm. 15B–18, Rockville, MD 20857. Send one self-addressed adhesive label to assist that office in processing your request. See the **SUPPLEMENTARY INFORMATION** for electronic access to the MedWatch reporting forms.

FOR FURTHER INFORMATION CONTACT: Karen L. Nelson, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1482.

SUPPLEMENTARY INFORMATION:

I. Background

Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

MedWatch: The FDA Medical Products Reporting Program, Forms FDA 3500 and FDA 3500A (OMB Control Number 0910–0291)—Extension

Under sections 505, 512, 513, 515, and 903 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355, 360b, 360c, 360e, and 393); and section 351 of the Public Health Service Act (42 U.S.C. 262), FDA has the responsibility to ensure the safety and effectiveness of drugs, biologics, and devices. Under section 502(a) of the act (21 U.S.C. 352(a)), a drug or device is misbranded if its labeling is false or misleading. Under section 502(f)(1) of the act it is misbranded if it fails to bear adequate warnings, and under section 502(j), it is misbranded if it is dangerous to health when used as directed in its labeling.

Under section 4 of the Dietary Supplement Health and Education Act of 1994 (the DSHEA) (21 U.S.C. 341), section 402 of the act (21 U.S.C. 342) is amended so that FDA must bear the burden of proof to show a dietary supplement is unsafe.

To carry out its responsibilities, the agency needs to be informed whenever an adverse event, product problem or medication error occurs. Only if FDA is provided with such information, will the agency be able to evaluate the risk, if any, associated with the product, and take whatever action is necessary to reduce or eliminate the public's exposure to the risk through regulatory action ranging from labeling changes to the rare product withdrawal. To ensure the marketing of safe and effective products, certain adverse events must be reported. Requirements regarding mandatory reporting of adverse events or product problems have been codified in parts 310, 314, 600, and 803 (21 CFR 310, 314, 600, and 803), specifically §§ 310.305, 314.80, 314.98, 600.80, 803.30, 803.50, 803.53, and 803.56.

To implement these provisions for reporting of adverse events, product problems and/or medication error with medications, devices, biologics, and special nutritional products, as well as any other products that are regulated by FDA, two very similar forms are used, Form FDA 3500 is used for voluntary (i.e., not mandated by law or regulation) reporting of adverse events, product problems, and medication errors by health professionals and the public. Form FDA 3500A is used for mandatory reporting (i.e., required by law or regulation).

Respondents to this collection of information are health professionals, hospitals and other user-facilities (e.g., nursing homes, etc.), consumers, manufacturers of biological and drug products, medical devices, and importers.

II. Use of the Voluntary Version (FDA Form 3500)

The voluntary version of the form is used to submit all adverse event, product problems, and medication error reports not mandated by Federal law or regulation.

Individual health professionals are not required by law or regulation to submit adverse event, product problem, or medication error reports to the agency or the manufacturer, with the exception of certain adverse reactions following immunization with vaccines as mandated by the National Childhood

Vaccine Injury Act (NCVIA) of 1986. Those mandatory reports are submitted by physicians to the joint FDA/Centers for Disease Control and Prevention (CDC) Vaccines Adverse Event Reporting System (VAERS) on the VAERS–1 form (see *http://www.vaers.org* for pdf version) rather than the FDA 3500 or 3500A forms.

Hospitals are not required by Federal law or regulation to submit adverse event reports, product problems, or medication errors associated with medications, biological products or special nutritional products. However, hospitals and other user facilities are required by Federal law to report medical device related deaths and serious injuries.

Manufacturers of dietary supplements do not have to prove safety or efficacy of their products prior to marketing, nor do they have mandatory requirements for reporting adverse reactions to FDA. However, the DSHEA puts the onus on FDA to prove that a particular product is unsafe. The agency is dependent on the voluntary reporting by health professionals and consumers of suspected adverse events associated with the use of dietary supplements.

III. Use of the Mandatory Version (FDA Form 3500A)

A. Drug and Biologic Products

In sections 505(j) and 704 (21 U.S.C. 374) of the act, Congress has required that important safety information relating to all human prescription drug products be made available to FDA so that it can take appropriate action to protect the public health when necessary. Section 702 of the act (21 U.S.C. 372) authorizes investigational powers to FDA for enforcement of the act. These statutory requirements regarding mandatory reporting have been codified by FDA under parts 310 and 314 (drugs) and 600 (biologics). Parts 310, 314, and 600 mandate the use of the FDA Form 3500A form for reporting to FDA on adverse events that occur with drug and biologics.

[Note: Most pharmaceutical manufacturers already use a one-page modified version of the 3500A form where Section G from the back of the form is substituted for Section D on the front of the form.]

B. Medical Device Products

Section 519 of the act (21 U.S.C. 360i) requires manufacturers and importers of devices intended for human use to establish and maintain records, make reports, and provide information as the Secretary of Health and Human Services may by regulation reasonably require to assure that such devices are not adulterated or misbranded and to otherwise assure its safety and effectiveness. Furthermore, the Safe Medical Devices Act of 1990 (SMDA), signed into law on November 28, 1990, amends section 519 of the act. The amendment requires that user facilities such as hospitals, nursing homes, ambulatory surgical facilities and outpatient treatment facilities report deaths related to medical devices to FDA and to the manufacturer, if known. Serious illnesses and injuries are to be reported to the manufacturer or to FDA if the manufacturer is not known. These statutory requirements regarding mandatory reporting have been codified by FDA under part 803. Part 803 mandates the use of the FDA Form 3500A for reporting to FDA on medical devices.

C. Other Products Used in Medical Therapy

There are no mandatory requirements for the reporting of adverse events or product problems with products such as dietary supplements.

FDA estimates the burden for completing the forms for this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

FDA Center (21 CFR Section)	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
Center for Biologics Evaluation and Research/ Center for Drug Evaluation and Research					
Form 3500	20,074	1	20,074	0.5	10,037
Form 3500A (§§ 310.305, 314.80, 314.98, 600.80)	600	463.86	278,315	1.0	278,315
Center for Devices and Radiological Health					
Form 3500	3,252	1	3,252	0.5	1,626
Form 3500A (§ 803)	1,935	33	63,623	1.0	63,623
Center for Food Safety and Applied Nutrition					
Form 3500	895	1	895	0.5	448
Form 3500A (no mandatory requirements)	0	0	0	1.0	0
Total Hours					354,049
Form 3500					12,111
Form 3500A					341,938

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

NOTE: FDA Form 3500 is for voluntary reporting; FDA Form 3500A is for mandatory reporting.

The figures shown in Table 1 of this document are based on actual fiscal year 2002 reports and respondents for each Center and type of report.

IV. Electronic Access

Persons with access to the Internet may obtain the MedWatch reporting forms, Form FDA 3500 (voluntary) and Form FDA 3500A (mandatory) at *http://www.fda.gov/medwatch/getforms.htm* or by calling 1–800–FDA–1088 and leaving your name and mailing address. Copies of the MedWatch reporting forms, Form FDA 3500 (voluntary) and Form FDA 3500A (mandatory) are available for public examination at *http://www.fda.gov/ohrms/dockets/dockets/dockets.htm* or in the Dockets

Management Branch (see **ADDRESSES**) between 9 a.m. and 4 p.m., Monday through Friday.

Dated: February 4, 2003.

Margaret M. Dotzel,

Assistant Commissioner for Policy.

[FR Doc. 03–3174 Filed 2–7–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4821–N–01]

Notice of Proposed Information Collection: Comment Request; Investor and Issuer Benchmark Surveys

AGENCY: Office of the President of Government National Mortgage Association (Ginnie Mae), HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* April 11, 2003.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Sonya Suarez, Office of Program Operations, Department of Housing and Urban Development, 451–7th Street, SW., Room 6206, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Sonya Suarez, Ginnie Mae, (202) 708–2884 (this is not a toll-free number) for copies of the proposed forms and other available documents.

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

The Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Investor and Issuer Benchmark Surveys.

OMB *Control Number, if applicable:* N/A.

Description of the need for the information and proposed use: Ginnie Mae is currently engaged in assessing how the agency and its products are seen by current and potential issuers of and investors in secondary market securities. This proposed survey research on how Ginnie Mae and its products are perceived compared to competing entities and products in the secondary mortgage market will help Ginnie Mae improve its product offerings, services, communications and outreach to current and prospective issuers and investors in Ginnie Mae securities.

Members of affected public: For-profit business (secondary market mortgage companies and institutional investors).

Estimation of the total number of hours needed to prepare the information collection, including number of respondents, frequency of response, and hours of response: Estimates of the hour burden of collecting information for the forms are as follows:

Number of respondents	Frequency of responses	×	Total of responses	×	Hours. per response	=	Total hours
1,000	1		1,000		.25		250

Status of the proposed information collection: This is a new collection.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: January 17, 2003.

George S. Anderson,

Executive Vice President, Ginnie Mae.

[FR Doc. 03–3126 Filed 2–7–03; 8:45 am]

BILLING CODE 4210–86–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4815–N–03]

Notice of Submission of Proposed Information Collection to OMB: HOPE VI—In Depth Assessment of Family and Neighborhood Outcomes—Wave Two and Three of Panel Study

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments Due Date: March 12, 2003.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval number (2577–0236) and should be sent to: Lauren Wittenberg, OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503; Fax number (202) 395–6974; E-mail *Lauren_Wittenberg@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, AYO, Department of Housing and Urban Development, 451 Seventh Street, Southwest, Washington, DC 20410; e-mail *Wayne_Eddins@HUD.gov;* telephone (202) 708–2374. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35). The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5)

the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the name and telephone number of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

This Notice also lists the following information:

Title of Proposal: HOPE VI—In Depth Assessment of Family and Neighborhood Outcomes—Wave Two and Three of Panel Study.

OMB Approval Number: 2577–0236.

Form Numbers: None.

Description of the Need for the Information and its Proposed Use: Wave Two and Three of Panel Study to learn how housing choices and outcomes for original residents are affected by revitalization efforts at selected HOPE VI sites.

Respondents: Individuals or households, State, Local or Tribal Government.

Frequency of Submission: Twice.

Reporting Burden: Number of Respondents 887; Annual Responses 0.8 × Hours per response 1 = Burden hours 710.

Total Estimated Burden Hours: 710.

Status: Reinstatement, with change.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: February 4, 2003.

Wayne Eddins,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 03–3230 Filed 2–7–03; 8:45 am]

BILLING CODE 4210–72–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4491–N–09]

Notice of Intent To Prepare Draft Environmental Impact Statement for Park Lake Homes, King County, WA

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice of intent.

SUMMARY: HUD gives notice to the public that King County Housing Authority (KCHA) acting under its State Environmental Policy Act (SEPA) authority, and the King County Department of Development and Environmental Services (DDES), as the Responsible Entity in accordance with 24 CFR 58.2, intends to prepare an Environmental Impact Statement (EIS) for redevelopment of the Park Lake Homes public housing community. This notice is in accordance with regulations of the Council on Environmental Quality. Federal agencies having jurisdiction by law, special expertise, or other special interest should report their interests and indicate their readiness to aid in the EIS effort as a "Cooperating Agency."

A Draft EIS will be prepared for the proposed action described herein. Comments relating to the Draft EIS are requested and will be accepted by the contact person listed below. When the Draft EIS is completed, a notice will be sent to individuals and groups known to have an interest in the Draft EIS and particularly in the environmental impact issues identified therein. Any person or agency interested in receiving a notice and making comment on the Draft EIS should contact the person listed below within 30-days after publication of this notice.

Lead Agencies: This EIS will be a joint NEPA and Washington SEPA document intended to satisfy requirements of federal and state environmental statutes. In accordance with specific statutory authority and HUD's regulations at 24 CFR part 58 (Environmental Review Procedures for Entities Assuming HUD Environmental Responsibilities), HUD has allowed NEPA authority and NEPA lead agency responsibility to be assumed by the King County DDES in cooperation with the KCHA, as the SEPA lead agency.

ADDRESSES: All interested agencies, groups, and persons are invited to submit written comments on the project named in this notice, and the Draft EIS to the contact person shown below. The office of the contact person should receive comments and all comments so received will be considered prior to the preparation and distribution of the Draft EIS. Particularly solicited is information on reports or other environmental studies planned or completed in the project area, major issues and dates that the EIS should consider, and recommended mitigation measures and alternatives associated with the proposed project. Federal agencies having jurisdiction by law, special expertise or other special interest should report their interest and indicate their readiness to aid in the EIS effort as a "Cooperating Agency."

FOR FURTHER INFORMATION CONTACT: Greg Borba, Planning Supervisor, King County Department of Development and Environmental Services, 900 Oaksdale Avenue SW., Renton, WA 98055–1219; Phone: (206) 296–7118; FAX: (206) 296–7051; e-mail: *greg.borba@metrokc.gov.*

A. Background

KCHA, acting under its SEPA authority, and the King County DDES, acting under authority of section 104(g) of the Housing and Community Development Act of 1974 (42 U.S.C. 5304(g)) and HUD's regulations at 24 CFR part 58, in cooperation with other interested agencies, will prepare an EIS to analyze potential impacts of redevelopment of the Park Lake Homes public housing community. This EIS will be a joint NEPA and Washington SEPA document intended to satisfy requirements of federal and state environmental statutes.

Park Lake Homes is KCHA's oldest and largest public housing development. Built in 1942 to serve as temporary housing for World War II defense workers, structures have been renovated several times. The KCHA received a HOPE VI grant award from HUD in November 2001, to initiate planning for the revitalization of this public housing development.

The proposed project would involve redevelopment of the existing approximately 95-acre Park Lake Homes public housing community located in the White Center area of unincorporated King County, Washington. The proposed redevelopment is consistent with requirements for a mixed-use, mixed-income housing project as described in the HOPE VI grant. The project site currently contains 569 residential units, a community center, a maintenance shop, a Head Start School, and a secondary building containing a food bank and administrative offices. The residential units are in primarily single story duplex structures.

Many or all of the current buildings on the site are to be demolished in phases, unless renovation for community services use is feasible. The existing Jim Wiley Community Center Building will likely be renovated. In addition, much of the existing infrastructure would be demolished, abandoned, or replaced, also in phases. The site would be redeveloped to provide approximately 900 dwelling units including an estimated 500 units of rental housing and 400 units of for-sale housing. It is anticipated that the rental housing would include approximately 300 units of housing to serve households of very low income, and approximately 200 units of

workforce housing (50%–60% of the area median income). Approximately 34,000 square feet of additional community space would also be developed to provide a range of community uses (*i.e.*, social services, educational facilities, library, neighborhood services, commercial uses).

All existing low-income housing is planned to be replaced either on-site or elsewhere in King County through construction of public housing units on-site and project based Section 8 vouchers in existing or new housing complexes. Existing residents would be displaced and assisted with benefits according to the provisions of the Uniform Relocation Act (42 U.S.C. 4601 *et seq.*). Where possible, displaced residents in good standing would be allowed to return to the public housing units once redevelopment is completed.

B. Need for the EIS

The proposed project may constitute an action significantly affecting the quality of the human environment and an EIS will be prepared on this project by KCHA and the King County DDES in accordance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*). Responses to this notice will be used to, (1) determine significant environmental issues, (2) identify data that the EIS should address, and (3) identify agencies and other parties that will participate in the EIS process and the basis for their involvement.

C. Scoping

A public EIS scoping meeting will be held on February 26, 2003, at 6 p.m. The EIS scoping meeting will provide an opportunity for the public to learn more about the project and provide input to the environmental process. At the meeting, the public will be able to view graphics illustrating preliminary planning work and talk with King County DDES and KCHA staff, and members of the consultant team providing technical analysis to the project. Translators will be available. Written comments and testimony concerning the scope of the EIS will be accepted at this meeting.

The scoping meeting will be held at the Park Lake Homes Jim Wiley Community Center, which is located at 9800 8th Ave. SW., Seattle, WA 98106.

D. EIS Issues

The lead agencies have preliminarily identified the following environmental elements for discussion in the EIS: earth (geology, soils, topography); air quality; water (surface water movement/quantity, runoff/absorption, flooding, groundwater movement/quantity/quality); plants and animals; energy use; noise; land use and socioeconomic factors (land use patterns, relationship to plans/policies and regulations; population; housing and displacements); environmental justice (disproportionately high and adverse effects on minority and low income populations); historic and cultural resources; aesthetics, light and glare; parks and recreation; public services and utilities (fire, police, parks/recreation, communications, water, stormwater, sewer, solid waste); and transportation (transportation systems, parking, movement/circulation, traffic hazards).

Questions may be directed to the individual named in this notice under the heading **FOR FURTHER INFORMATION CONTACT.**

Dated: February 4, 2003.

Nelson R. Bregon,

Acting General Deputy Assistant Secretary for Community Planning and Development.

[FR Doc. 03–3229 Filed 2–7–03; 8:45 am]

BILLING CODE 4210–29–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability of a Draft Habitat Conservation Plan and Receipt of an Application for an Incidental Take Permit for the City and County of Denver's Board of Water Commissioners, Denver, CO

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability and receipt of application.

SUMMARY: This notice advises the public that the City and County of Denver, acting by and through its Board of Water Commissioners (Denver Water) has applied to the Fish and Wildlife Service (Service) for an Incidental Take Permit (ITP) pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended (Act). The permit would authorize the loss and modification of habitat associated with Denver Water's Operations and Maintenance (O&M) activities and the incidental take of Preble's meadow jumping mouse (*Zapus hudsonius preblei*) ("Preble's"), federally listed as threatened. The permit would be in effect for 30 years from the date of issuance.

The Service received Denver Water's ITP Application that includes a proposed Habitat Conservation Plan (HCP) and Environmental Assessment (EA) for the Preble's on Denver Water properties. The proposed HCP/EA is available for public comments. It fully describes the proposed O&M activities and the measures Denver Water would undertake to avoid, minimize, and mitigate project impacts to the Preble's.

The Service requests comments on the HCP/EA for the proposed issuance of an ITP. Pursuant to notice requirements under section 10(c) of the Act and the National Environmental Policy Act regulations (40 CFR 1406.6), all comments on the HCP/EA and permit application will become part of the administrative record and will be available to the public.

DATES: Written comments on the permit application and the HCP/EA should be received on or before April 11, 2003.

ADDRESSES: Comments regarding the permit application and the HCP/EA should be addressed to LeRoy Carlson, Field Supervisor, U.S. Fish and Wildlife Service, Colorado Field Office, 755 Parfet Street, Suite 361, Lakewood, Colorado 80215.

FOR FURTHER INFORMATION CONTACT: Kathleen Linder, Fish and Wildlife Biologist, Colorado Field Office, telephone (303) 275–2370.

SUPPLEMENTARY INFORMATION:

Document Availability

Individuals wishing copies of the HCP/EA and associated documents for review should immediately contact the above office. Documents also will be available for public inspection by appointment, during normal business hours, at the Lakewood, Colorado, Field Office (See **ADDRESSES** above).

Background

Section 9 of the Act and Federal Regulation prohibits the "take" of a species listed as endangered or threatened. Take is defined under the Act, in part, as to kill, harm, or harass a federally listed species. However, the Service may issue permits to authorize "incidental take" of listed species under limited circumstances. Regulations governing permits for threatened species are promulgated in 50 CFR 17.32.

The applicant's plan to conduct O&M activities necessary for Denver Water to meet its mission of providing a safe and high quality water supply to its customers covers properties that may constitute Preble's habitat in Boulder, Jefferson, and Douglas Counties in Colorado. Such activities would include repair and maintenance of infrastructures and facilities (*e.g.*, conduits, siphons), ditch/canal maintenance, road repair and maintenance, construction of new

conduits, burial of pipeline, and other activities necessary for municipal water supply. The planning area for the permit application covers approximately 2,428 hectares (6,000 acres) of properties that may constitute Preble's habitat. The O&M activities could permanently alter no more than 4 hectares (10 acres) of potential Preble's habitat, but are estimated to only permanently impact 0.4 hectare (1 acre). Additionally, up to 30 hectares (74 acres) of potential Preble's habitat could be temporarily impacted, with total impacts not to exceed 30 hectares (75 acres) (either 0.4 hectare (1 acre) permanent and 30 hectares (74 acres) temporary or ranging up to no more than 4 hectares (10 acres) permanent and 26 hectares (65 acres) of temporary disturbance). As discussed below, Denver Water proposes a number of measures to mitigate possible impacts of the proposed action.

Alternatives considered were—No Action; individual ITPs on a site-by-site/project-by-project basis, as needed; waiting for approval of and participating in three separate countywide HCPs; waiting for and participating in a single Statewide HCP; and the Preferred Alternative—a single incidental take permit held by Denver Water, achieved through the proposed HCP. None of these alternatives, except No Action, eliminated potential take of Preble's.

To mitigate impacts that may result from incidental take the HCP provides mitigation that includes—restoration of temporary disturbance to a specified level of success, creation of riparian shrub and upland habitat, revegetation of social trails no longer in use, weed management, education to Denver Water employees conducting O&M activities, maintenance and management of a potential Preble's habitat linkage corridor, population monitoring, and conducting Preble's trapping to assess status. All efforts will be made to avoid and minimize disturbances to Preble's habitat according to Best Management Practices specified in the HCP.

Denver Water is committed to providing the necessary funding to support the implementation of the HCP/EA. Denver Water will allocate necessary funds into its budget under an account that is established specifically for the HCPs mitigation, monitoring, and compliance requirements.

This notice is provided pursuant to section 10(c) of the Act. The Service will evaluate the permit application, the EA/HCP, and comments submitted therein to determine whether the application meets the requirements of section 10(a)(1)(B) of the Act. If it is determined that those requirements are met, a permit will be issued for the incidental take of the Preble's in conjunction with Denver Water's activities on properties that may constitute Preble's habitat. The final permit decision will be made no sooner than 60 days from the date of this notice.

Dated: January 29, 2003.

John A. Blankenship,

Deputy Regional Director.

[FR Doc. 03–3133 Filed 2–7–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–310–1310–PB–24 1A]

Extension of Approved Information Collection, OMB Control Number 1004–0196

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Bureau of Land Management (BLM) is requesting the Office of Management and Budget (OMB) to extend an existing approval to collect certain information from operators and operating rights owners who apply for designation of National Petroleum Reserve-Alaska (NPRA) unit agreements. We collect nonform information to determine whether to grant approval to operate under a unit plan for NPRA Federal lands. We require operators to retain and provide data to determine whether proposed unit agreements meet the requirements for unitized exploration and development of oil and gas resources of the NPRA.

DATES: You must submit your comments to BLM at the address below on or before April 11, 2003. BLM will not necessarily consider any comments received after the above date.

ADDRESSES: You may mail comments to: Bureau of Land Management, (WO–630), Eastern States Office, 7450 Boston Blvd., Springfield, Virginia 22153.

You may send comments via Internet to: *WOComment@blm.gov*. Please include "ATTN: 1004–0196" and your name and return address in your Internet message.

You may deliver comments to the Bureau of Land Management, Administrative Record, Room 401, 1620 L Street, NW., Washington, DC.

All comments will be available for public review at the L Street address during regular business hours (7:45 a.m. to 4:15 p.m.), Monday through Friday.

FOR FURTHER INFORMATION CONTACT: You may contact Barbara Gamble, Fluid Minerals Group, on (202) 452–0338 (Commercial or FTS). Persons who use a telecommunication device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) on 1–800–877–8330, 24 hours a day, seven days a week, to contact Ms. Gamble.

SUPPLEMENTARY INFORMATION: 5 CFR 1320.12(a) requires that BLM provide a 60-day notice in the **Federal Register** concerning a collection of information to solicit comments on:

(a) Whether the collection of information is necessary for the proper functioning of the agency, including whether the information will have practical utility;

(b) The accuracy of our estimates of the information collection burden, including the validity of the methodology and assumptions we use;

(c) Ways to enhance the quality, utility, and clarity of the information collected; and

(d) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

The Naval Petroleum Reserves Production Act of 1976, as amended (42 U.S.C. 6501 et seq.), the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.), and the National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 et seq.), and 43 CFR 3133, 3135, 3137, and 3138 require affected oil and gas operators and operating rights owners to maintain records or provide information to apply for suspensions of royalty; apply for suspensions of operations; form and maintain unit agreements; and to enter into subsurface storage agreements, respectively. All recordkeeping burdens are associated with the nonform items requested.

The reporting burden of each provision for the information collection, including recordkeeping, depends on which information is required. The respondents are oil and gas operators and operating rights owners. The frequency of response varies from one-time only to occasionally to routine, depending on activities conducted. We estimate 35 responses per year and a total annual burden of 410 hours. We based this estimate on our experience managing the program. The table below summarizes our estimates.

Information collection (43 CFR)	Requirement	Hours per response	Respondents	Burden hours
3133.4	Royalty reduction	16	1	16
3135.3	Suspension of operations	4	1	4
3135.6	Notification of operations	.25	1	.25
3137.23	Unit designation	80	3	240
3137.25	Notification of unit approval	1	3	3
3137.52	Certification for modification	4	1	4
3137.60	Acceptable Bonding	.5	3	1.5
3137.61	Change of unit operator	.75	2	1.5
3137.70	Certification of unit obligation	2	3	6
3137.71	Certification of continuing development	2	3	6
3137.84	Productivity for a PA	12	2	24
3137.87	Unleased tracts	3	1	3
3137.88	Notification of productivity	.5	1	.5
3137.91	Notification of productivity for non-unit well	.5	1	.5
3137.92	Production information	1	1	1
3137.112	Lease extension	3	1	3
3137.113	Inability to conduct operations activities	2	1	2
3137.130	Unit termination	1	2	2
3137.135	Impact mitigation	4	3	12
3138.11	Storage agreement	80	1	80
Total			35	410

BLM will summarize all responses to this notice and include them in the request for OMB approval. All comments will become a matter of public record.

Dated: February 4, 2003.

Michael H. Schwartz,

Bureau of Land Management, Information Collection Clearance Officer.

[FR Doc. 03–3258 Filed 2–7–03; 8:45 am]

BILLING CODE 4310–84–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–310–1310–PB–24 1A]

Extension of Approved Information Collection, OMB Control Number 1004–0132

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Bureau of Land Management (BLM) is requesting the Office of Management and Budget (OMB) to extend an existing approval to collect certain information from entities interested in the development of geothermal steam resources on lands BLM manages. BLM uses Form 3260–2, Geothermal Drilling Permit; Form 3260–3, Geothermal Sundry Notice; Form 3260–4, Geothermal Well Completion Report; Form 3260–5, Monthly Report of Geothermal Operations; to collect this information. This information allows BLM to approve proposed operations and to ensure compliance with terms and conditions of approved operations.

DATES: You must submit comments to BLM at the address below on or before April 11, 2003. BLM will not necessarily consider any comments received after the above date.

ADDRESSES: You may mail comments to: Bureau of Land Management, (WO–630), Eastern States Office, 7450 Boston Blvd., Springfield, Virginia 22153.

You may send comments via Internet to: *WOComment@blm.gov*. Please include "ATTN: 1004–0132" and your name and return address in your Internet message.

You may deliver comments to the Bureau of Land Management, Administrative Record, Room 401, 1620 L Street, NW., Washington, DC.

All comments will be available for public review at the L Street address during regular business hours (7:45 a.m. to 4:15 p.m.), Monday through Friday.

FOR FURTHER INFORMATION CONTACT: You may contact Barbara Gamble, Fluids Minerals Group, (202) 452–0338 (Commercial or FTS). Persons who use a telecommunication device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) on 1–800–877–8330, 24 hours a day, seven days a week, to contact Ms. Gamble.

SUPPLEMENTARY INFORMATION: 5 CFR 1320.12(a) requires BLM to provide a 60-day notice in the **Federal Register** concerning a collection of information to solicit comments on:

(a) Whether the proposed collection of information is necessary for the proper functioning of the agency, including whether the information will have practical utility;

(b) The accuracy of our estimates of the information collection burden, including the validity of the methodology and assumptions we use;

(c) Ways to enhance the quality, utility, and clarity of the information collected; and

(d) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

The Geothermal Steam Act of 1970 (30 U.S.C. 1001 et seq.) authorizes the Secretary of the Interior to issue leases and prescribe regulations so that geothermal resources on certain Federal lands may be developed and used. Tribal lands under the Indian Mineral Development Act (25 U.S.C. 2101–2108) also allow geothermal leasing operations. The BLM supervises operations of the leases granted under this authority by the regulations in 43 CFR part 3260. The regulations contain information collection requirements that we need to grant the lessees permits to perform specific operations and to report the completion and progress of such work. Specifically, the regulations require operators to submit a Geothermal Drilling Permit (Form 3260–2); a Geothermal Sundry Notice (Form 3260–3); a Geothermal Well Completion Report (Form 3260–4); and a Monthly Report of Geothermal Operations (Form 3260–5).

The information the lessee of record, a designated operator, or an approved agent acting on behalf of the lessee or

operator provides, allows BLM to conduct or modify operations under the terms and conditions of a Federal geothermal lease or an Indian geothermal contract. The information enables BLM to approve both geothermal explorations and modifications to existing wells.

Form 3260–2, Geothermal Drilling Permit

This is a permit to drill, redrill, deepen or plug back a well on Federal lands. It provides a basis for evaluating the proposed well's feasibility and to determine whether we should disapprove or approve the application; and, if we approve, whether any special conditions of approval are made part of the permit. Without the information, there would be no assurance that drilling and associated activities, when and if authorized, are technically and environmentally feasible and ensure proper conservation of the resources.

Form 3260–3, Geothermal Sundry Notice

We require the sundry notice for planned well work or change of plans previously approved, road site and facilities construction and miscellaneous activities related to other previously approved operations. The lessee must also file a subsequent report of the work performed. Without this information, BLM cannot adequately evaluate the feasibility and environmental impacts of the proposed activity.

Form 3260–4, Geothermal Well Completion Report

We use the well completion report to obtain information on a complete and accurate log and history, in chronological order, of all operations conducted on the well. The logs are kept by lessees as normal, routine procedures and are not imposed as an additional requirement by BLM. We use this information to facilitate future operations, protect water supplies and Federal geothermal resources, and to allow accurate appraisal of down-hole conditions related to proper management of the resource.

Form 3260–5, Monthly Report of Geothermal Operations

We use the form to obtain information for monthly production for royalty reporting and production verification from geothermal wells. BLM uses the report to monitor the technical aspects of drilling, production, and injection activities for each well. We require the information on a monthly basis because of a direct link to royalty payments due from the lessee on a monthly basis and the associated production verifications. Without this information, BLM could not adequately evaluate activity and performance of non-abandoned wells and production facilities for individual leases. This includes drilling and other well operations and engineering data for individual well production and injection. The lessee also reports any environmental monitoring conducted.

Based on our experience administering the activities described above, we estimate it takes from 1 to 10 hours per response to complete the required information, depending on which form the respondent submits. Respondents are lessees and operators of Federal geothermal leases and Indian geothermal contracts subject to BLM oversight. We estimate 760 responses per year and a total annual burden of 1,700 hours. The estimates are summarized in the table below.

Information collection (43 CFR)	Form number/title	Responses	Hours per response	Burden hours	Frequency
3264.2	3260–2; Geothermal Drilling Permit	60	10	600	Nonrecurring.
3264.2–2	3260–3; Geothermal Sundry Notice	100	1	100	On occasion.
3262.5–1;	3260–4; Geothermal Well Completion Report	200	2	400	On occasion.
3264.2–3		40	6	240	
3264.2–4;	3260–5; Monthly Report of Geothermal Operations.	360	1	360	Monthly.
3265.2–5					
Totals		760		1,700	

BLM will summarize all responses to this notice and include them in the request for OMB approval. All comments will become a matter of public record.

Dated: February 4, 2003.

Michael H. Schwartz,

Bureau of Land Management, Information Collection Clearance Officer.

[FR Doc. 03–3259 Filed 2–7–03; 8:45 am]

BILLING CODE 4310–84–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–310–1310–PB–24 1A]

Extension of Approved Information Collection, OMB Control Number 1004–0134

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Bureau of Land Management (BLM), is requesting the Office of Management and Budget (OMB) to extend an existing approval to collect certain information from operators and operating rights owners of Federal and Indian (except Osage) oil and gas leases. We collect nonform information to determine whether BLM may approve proposed operations and to enable us to monitor compliance with terms and conditions of approved operations. Approvals include drilling plans, prevention of waste, protection of resources, development of a lease, measurements, production verification, and protection of public health and safety.

DATES: You must submit your comments to BLM at the address below on or before April 11, 2003. BLM will not necessarily consider any comments received after the above date.

ADDRESSES: You may mail comments to: Bureau of Land Management, (WO–630), Eastern States Office, 7450 Boston Blvd.; Springfield, Virginia 22153.

You may send comments via Internet to: *WOComment@blm.gov*. Please include "ATTN: 1004–0134" and your name and return address in your Internet message.

You may deliver comments to the Bureau of Land Management, Administrative Record, Room 401, 1601 L Street, NW., Washington, DC.

All comments will be available for public review at the L Street address during regular business hours (7:45 a.m. to 4:15 p.m.), Monday through Friday.

FOR FURTHER INFORMATION CONTACT: You may contact Barbara Gamble, Fluid Minerals Group, on (202) 452–0338 (Commercial or FTS). Persons who use

a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) on 1–800–877–8330, 24 hours a day, seven days a week, to contact Ms. Gamble.

SUPPLEMENTARY INFORMATION: 5 CFR 1320.12(a) requires that we provide a 60-day notice in the **Federal Register** concerning a collection of information to solicit comments on:

(a) Whether the collection of information is necessary for the proper functioning of the agency, including whether the information will have practical utility;

(b) The accuracy of our estimates of the information collection burden, including the validity of the methodology and assumptions we use;

(c) Ways to enhance the quality, utility, and clarity of the information collected; and

(d) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

The Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1701 *et seq.*); the Mineral Leasing Act of 1920, as amended (30 U.S.C. 181 *et seq.*); the Mineral Leasing Act for Acquired Lands of 1947, as amended (30 U.S.C. 351–359); the various Indian leasing acts; and the National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), and BLM's implementing regulations at 43 CFR part 3160 require affected Federal and Indian (except Osage) oil and gas operators and operating rights owners to maintain records and submit nonform information.

The recordkeeping and nonform information items required under various provisions of 43 CFR part 3160 pertain to data the operator or operating rights owner must submit. We will use the information the operator or operating rights owner provides to approve proposed operations and to enable us to monitor compliance with terms and conditions of approved operations. The specific requirements are listed by regulation section.

The information we require under 43 CFR part 3160 covers a broad range of possible operations, and rarely will any specific operator have to obtain or provide each item. Many of the requirements are one-time filings used to gain approval to conduct a variety of oil and gas operations. Others are routine data the operating rights owners or operators submit that we use to monitor production and ensure compliance with lease terms, regulations, Orders, Notices to Lesses, and conditions of approval. We use production information from each producing lease to verify volumes and disposition of oil and gas produced on Federal and Indian lands. All recordkeeping burdens are associated with the nonform items requested.

Based on our experience managing the activities described above, we estimate the public reporting burden of each provision for the information collection, including recordkeeping, ranges from 10 minutes to 16 hours per response, depending on which information is required. The respondents are operators and operating rights owners of Federal and Indian (except Osage) oil and gas leases. The frequency of response varies from one-time only to occasionally to routine, depending on activities conducted on oil and gas leases and on operational circumstances. We estimate 193,855 responses per year and a total annual burden of 96,885 hours. The table below summarizes our estimates.

Information collection (43 CFR)	Requirement	Hours per response	Respondents	Burden hours
3162.3–1(a)	Well-Spacing Program	.5	150	75
3162.3–1(e)	Drilling Plans	8	2,875	23,000
3162.6	Well Markers	.5	300	150
3162.5–2(b)	Direction Drilling	1	[1] 165	165
3162.4–2(a)	Drilling Tests, Logs, Surveys	1	[2] 330	330
3162.3–4(a)	Plug and Abandon for Water Injection	1.5	1,200	1,800
3162.3–4(b)	Plug and Abandon for Water Source	1.5	1,200	1,800
3162.7–1(d)	Additional Gas Flaring	1	400	400
3162.5–1(c)	Report of Spills, Discharges, or Other Undesirable Events.	2	200	400
3162.5–1(b)	Disposal of Produced Water	2	1,500	3,000
3162.5–1(d)	Contingency Plan	16	50	800
3162.4–1(a) and 3162.7–5(d)(1)	Schematic/Facility Diagrams	4	2,350	9,400
3162.7–1(b)	Approval and Reporting of Oil in Pits	.5	520	260
3164.1 (Order No. 3)	Prepare Run Tickets	.2	90,000	18,000
3162.7–5(b)	Records on Seals	.2	90,000	18,000
3165.1(a)	Application for Suspension	8	100	800
3165.3(b)	State Director Review	16	100	1,600
3162.7–5(c)	Site Security	7	2,415	16,905
Totals			193,855	96,885

[1] Or 5% of wells.
[2] Or 10% of wells.

The respondents already maintain the types of information collected for their own recordkeeping purposes and need only submit the required information. This approval includes all information collections under 43 CFR part 3160 that do not require a form.

BLM will summarize all responses to this notice and include them in the request for OMB approval. All comments will become a matter of public record.

Dated: February 3, 2003.

Michael H. Schwartz,

Bureau of Land Management, Information Collection Clearance Officer.

[FR Doc. 03–3260 Filed 2–7–03; 8:45 am]

BILLING CODE 4310–84–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–310–1310–PB–24 1A]

Extension of Approved Information Collection, OMB Control Number 1004–0160

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Bureau of Land Management (BLM) is requesting the Office of Management and Budget (OMB) to extend an existing approval to collect certain information from geothermal lessees to determine if the lessee qualifies for least extensions. We collect nonform information under 43 CFR Part 3208 to determine if a lessee is making diligent and bona fide efforts to utilize and produce geothermal resources.

DATES: You must submit your comments to BLM at the address below on or before April 11, 2003. BLM will not necessarily consider any comments received after the above date.

ADDRESSES: You may mail comments to: Bureau of Land Management, (WO–630), Eastern States Office, 7450 Boston Blvd., Springfield, Virginia 22153.

You may send comments via Internet to: *WOComment@blm.gov*. Please include "ATTN: 1004–0160" and your name and return address in your Internet message.

You may deliver comments to the Bureau of Land Management, Administrative Record, Room 401, 1620 L Street, NW., Washington, DC.

All comments will be available for public review at the L Street address during regular business hours (7:45 a.m. to 4:15 p.m.), Monday through Friday.

FOR FURTHER INFORMATION CONTACT: You may contact Barbara Gamble on (202) 452–0338 (Commercial or FTS). Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service at 1–800–877–8330, 24 hours a day, seven days a week, to contact Ms. Gamble.

SUPPLEMENTARY INFORMATION: 5 CFR 1320.12(a) requires that we provide a 60-day notice in the **Federal Register** concerning a collection of information to solicit comments on:

(a) Whether the collection of information is necessary for the proper functioning of the agency, including whether the information will have practical utility;

(b) The accuracy of our estimates of the information collection burden, including the validity of the methodology and assumptions we use;

(c) Ways to enhance the quality, utility, and clarity of the information collected; and

(d) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

The Geothermal Steam Act of 1970 (30 U.S.C. 1001–1025) as amended, authorizes the Secretary of the Interior to issue leases for geothermal development. The legislation allows for lease extensions when the Secretary of the Interior determines a lessee made a substantial investment to develop the geothermal resources. It also allows leases to continue beyond the primary terms if there are wells capable of producing geothermal resources. The regulations 43 CFR 3208 specifically address extended lease terms. Lessees may request a lease extension beyond the primary term by: drilling, diligent efforts, production of byproducts, and unit commitment. We use the nonform information to determine if a lessee qualifies to extend its geothermal lease. The lessee submits the following nonform reports, as needed, to support a lease extension:

(1) Diligent Efforts Report—This report includes a description of negotiations for sales contracts, marketing agreements, and planned or conducted operations to define geothermal resources;

(2) Bona Fide Efforts Report—This report includes:

(a) Operations conducted during the primary term of the lease and currently in progress to identify and define the geothermal resource, including a summary of results on those operations;

(b) Actions completed in support of operations, including obtaining permits, environmental studies, or meeting permit requirements, or other related activities;

(c) Actions completed during the primary term of the lease and currently in progress to negotiate marketing agreements, sales contracts, drilling agreements, financial arrangements, electric transmission or wheeling arrangements, or other related actions; and

(d) Current economic factors and conditions that affect the lessee's efforts to produce or utilize geothermal steam in commercial quantities.

(3) Significant Expenditures Report—This report includes:

(a) Expenditures to conduct actual drilling operations on the lease;

(b) Expenditures for road or generating facilities construction on the lease;

(c) Architectural or engineering services procured for the design of generating facilities located on the lease; and

(d) Environmental studies required by State or Federal law. BLM does not require the lessee to submit this report if they choose to make payments in lieu of commercial quantities production.

Based on our experience administering the activities described above, we estimate the public reporting burden for each report is two hours per response. The respondents include individuals, small business, and large corporation. We estimate 75 responses per year and a total annual burden of 150.

BLM will summarize all responses to this notice and include them in the request for OMB approval. All comments will become a matter of public record.

Dated: February 5, 2003.

Michael H. Schwartz,

Bureau of Land Management, Information Collection Clearance Officer.

[FR Doc. 03–3261 Filed 2–7–03; 8:45 am]

BILLING CODE 4310–84–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–160–03–1220–DU–241E]

Notice of Intent To prepare a Recreation Area Management Plan and an Amendment to the Gunnison Resource Management Plan for the Hartman Rocks Recreation Area

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent to prepare a Recreation Area Management Plan (RAMP) and an amendment to the Gunnison Resource Management Plan (RMP) for the Hartman Rocks Recreation Area in Gunnison County, Colorado.

SUMMARY: The Bureau of Land Management (BLM) intends to prepare a RAMP with an associated Environmental Assessment (EA) for the Hartman Rocks area near Gunnison, Colorado. The planning area encompasses approximately 10,000 acres of public land. This proposed action is being taken in response to increasing use and the changing needs and interests of public land users of this popular recreation area located near the city of Gunnison. The BLM will work collaboratively with interested parties to identify the management decisions that

are best suited to local, regional, and national needs and concerns. The public scoping process will identify planning issues and develop planning criteria, including an evaluation of the existing management direction in the context of the needs and interests of the public. It is probable that the collaborative planning process will recommend changes to the Gunnison RMP for this area so this notice provides for this contingency. If desired management actions identified in the planning process can be carried out within the existing guidance of the RMP then an RMP Amendment will not be necessary.

DATES: This notice initiates the public scoping process. Comments on issues and planning criteria may be submitted in writing to the address listed below and will be accepted throughout the creation of the Draft RAMP/Draft EA. All public meetings will be announced through the local news media, newsletters, and other mediums at least 15 days prior to the event. The minutes and list of attendees for each meeting will be available to the public and open for 30 days to any participant who wishes to clarify the views they expressed. Public meetings will be held throughout the plan scoping and preparation period. To ensure local community participation and input, public meetings will be scheduled at times that are convenient for the public to attend. Early participation is encouraged to help determine the future management of the Hartman Rocks Recreation Area.

ADDRESSES: Written comments should be sent to Bureau of Land Management, Gunnison Field Office, 216 N. Colorado St., Gunnison, CO 81230; Fax (970) 642–4425. Documents pertinent to this proposal may be examined at the Gunnison Field Office. Comments, including names and street addresses of respondents, will be available for public review at the Gunnison Field Office during regular business hours (7:30am to 4:30pm), Monday through Friday, except holidays, and may be published as part of the EA. Individual respondents may request confidentiality. If you wish to withhold your name or street address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comment. Such requests will be honored to the extent allowed by law. All submissions from organizations and businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be available for public inspection in their entirety.

FOR FURTHER INFORMATION CONTACT: For further information and/or to have your name added to our mailing list, contact Arden Anderson, Telephone—(970) 642–4454; E-mail—*Arden_Anderson@co.blm.gov*

SUPPLEMENTARY INFORMATION: The Hartman Rocks Recreation Area is a popular site for a variety of recreation activities in the urban interface zone near Gunnison, Colorado. The increased use over the years as well as changing needs and interests of the public necessitates a more detailed management strategy beyond the general guidelines contained in the Gunnison RMP (completed in 1993). Preliminary issues and management concerns have been identified by BLM personnel, other agencies, and in meetings with individuals and user groups. They represent the BLM's knowledge to date on the existing issues and concerns with current management. The major issue themes that will be addressed in the plan include: Management and protection of public land resources; recreation/visitor use and safety; access and transportation on the public lands; integrating management with the needs of the community and other agencies; reducing conflicts between different public land visitors and balancing multiple uses.

After gathering public comments on what issues the plan should address, the suggested issues will be placed in one of three categories:

1. Issues to be resolved in the plan;
2. Issues resolved through policy or administrative action; or
3. Issues beyond the scope of this plan.

Rationale will be provided in the plan for each issue placed in category two or three. In addition to these major issues, a number of management questions and concerns will be addressed in the plan. The public is encouraged to help identify these questions and concerns during the scoping phase.

An interdisciplinary approach will be used to develop the plan in order to consider the variety of resource issues and concerns identified. Disciplines involved in the planning process will include specialists with expertise in outdoor recreation, rangeland management, archaeology, wildlife, fisheries and soils.

Dated: December 6, 2003.

Barry A. Tollefson,

Gunnison Field Manager.

[FR Doc. 03–3165 Filed 2–7–03; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–116–6310–PB; HAG03–0031]

Notice of Intent To Prepare an Environmental Impact Statement for the Development of the Timber Mountain/John's Peak Off-Highway Vehicle Management Plan

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Notice of Intent to prepare an environmental impact statement (EIS) for the development of the Timber Mountain/John's Peak Off-Highway Vehicle (OHV) Management Plan, and initiation of public scoping.

SUMMARY: The Medford District of the Bureau of Land Management (BLM) is developing an Environmental Impact Statement (EIS) for the management of off-highway vehicle (OHV) use in the Timber Mountain/John's Peak OHV area. The BLM designated the Timber Mountain/John's Peak area "specifically to provide for OHV use" in the 1995 Medford District Resource Management Plan (RMP). The RMP directs the agency to, "Manage off-highway vehicle use on BLM-administered land to protect natural resources, provide visitor safety, and minimize conflicts among various users." The development of the Timber Mountain/John's Peak OHV Management Plan will provide site-specific guidance for managing OHV use in accordance with the Medford District RMP direction. Approximately 13,865 acres of public land in Oregon are being considered in this planning effort. The public scoping process will be used to identify interested and affected individuals and groups, and to identify issues associated with the management of OHV use in the Timber Mountain/John's Peak area. Issues identified through the scoping process will be used to explore a range of possible alternatives for managing OHV use in this area.

DATES: Comments concerning the scope of the analysis should be received in writing 30 days from publication of this notice, to ensure timely consideration. Public scoping meetings and/or field tours will be held to provide the public with information on the planning process and to provide for opportunities for the public to share their concerns and ideas with the BLM. Meeting dates and locations will be announced through mailings, the local news media, and on the BLM Web site (*http://www.or.blm.gov*).

ADDRESSES: Send written comments to: Richard J. Drehobl, Ashland Field Manager, Medford District Bureau of Land Management, 3040 Biddle Road, Medford Oregon, 97504.

Pursuant to 7 CFR Part 1, Subpart B, § 1.27, all written submissions in response to this notice, public scoping letters, and draft and final Environmental Impact Statements will be made available for public inspection including the submitter's name and address, unless the submitter specifically requests confidentiality. If you wish to withhold your name or address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comment. Such requests will be honored to the extent allowed by law. All submissions from organizations or businesses, submitted on official letterheads, and from individuals identifying themselves as representatives or officials of organization or businesses, will be made available for public inspection in their entirety.

FOR FURTHER INFORMATION CONTACT: Kristi Mastrofini at (541) 618–2384 or Don Ferguson at (541) 618–2292. Fax or E-mail can be sent to the attention of Kristi Mastrofini or Don Ferguson at (541) 618–2400, or *110mb@or.blm.gov.*

SUPPLEMENTARY INFORMATION: OHV enthusiasts have recreated in the Timber Mountain/John's Peak area for 40 to 50 years. The 1995 Medford District Resource Management Plan (RMP) designated public lands in the Timber Mountain/John's Peak area as an OHV use area. The area is comprised of a checkerboard of BLM administered lands mixed with private lands (including lands owned by the City of Jacksonville, Motorcycle Riders Association, and Boise Corporation), increasing the complexity of managing trails and public access in the area. Off-highway vehicle use has increased tremendously in recent years, leading to the proliferation of new unauthorized trails on both public and private lands. Many existing trails are in good condition, while other trails are experiencing erosion that is leading to resource degradation. Due to the close proximity to the City of Jacksonville and adjacent wildland urban interface areas, and the checkerboard pattern of land ownership, there is also a high level of unauthorized access across private lands and vandalism (*e.g.* illegal dumping, sign shooting, etc). The Timber Mountain/John's Peak OHV Management Plan is needed to provide for OHV use in accordance with the Medford District RMP.

Preliminary public scoping for the Timber Mountain/John's Peak Management Plan began in 1998; however, due to limited funding, work on this project was temporarily deferred. The following issues were identified to be associated with OHV use in the Timber Mountain/John's Peak OHV area: Effects to water quality and riparian conditions; effects on sensitive soils; effects to Threatened or Endangered plants, fish, and wildlife; and impacts to private land owners associated with the incidence of trespass on private lands. Through additional public scoping and specialist review, this list of issues will be refined. Issues determined to be significant to the planning process will be used to develop a range of alternatives for managing OHV use in the Timber Mountain/John's Peak OHV area.

The National Environmental Policy Act encourages the use of cooperative relationships with Federal, State, and local agencies to capture opportunities where the decision-making authorities or special expertise of other agencies can enhance the planning process. The Medford District BLM, as the Lead Agency for this EIS, has identified opportunities to work cooperatively with Jackson County, the City of Jacksonville, the State of Oregon Parks and Recreation Department, Boise Cascade, and the Motorcycle Riders Association. The Medford District BLM will seek cooperative relationships with these local agencies and affected landowners to enhance this planning effort.

As public scoping progresses, other opportunities for cooperative relationships may become apparent.

Dated: November 15, 2002.

Richard J. Drehobl,

Field Manager, Ashland Resource Area.

Ron Wenker,

District Manager, Medford District BLM.

[FR Doc. 03–3164 Filed 2–7–03; 8:45 am]

BILLING CODE 3710–AR–U

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–930–1430–ES; N–76527]

Notice of Realty Action: Recreation and Public Purposes (R&PP) Act Classification; Conveyance of Public Lands Near Beatty, NV

AGENCY: Bureau of Land Management, Interior.

ACTION: Classification of public land for conveyance pursuant to the Recreation and Public Purposes Act.

SUMMARY: The following described public land in Nye County, Nevada has been examined and found suitable for conveyance under provisions of the Recreation and Public Purposes Act of June 14, 1926, as amended (43 U.S.C. 869 *et seq.*), for the purposes of operating a municipal solid waste transfer station. These lands are hereby classified as suitable for conveyance in accordance with section 7 of the Taylor Grazing Act, 43 U.S.C. 315f, and Executive Order No. 6910:

Mount Diablo Meridian, Nevada

T. 12 S., R. 46 E.,
sec 13, S½NW¼NW¼NW¼.
Containing 5 acres more or less.

The solid waste transfer station will occupy a total of ten acres, five of which were previously classified under a notice for the existing Beatty Landfill (N–35639).

The lands are not needed for Federal purposes. Conveyance is consistent with BLM land use planning and would be in the public interest. Patent will be issued to Nye County and will be subject to the provisions of the Recreation and Public Purposes Act and applicable regulations of the Secretary of the Interior, and will contain the following reservations to the United States:

1. A right-of-way thereon for ditches or canals constructed by the authority of the United States, pursuant to the Act of August 30, 1890 (43 U.S.C. 945);

2. All minerals shall be reserved to the United States, together with the right to prospect for, mine, and remove such deposits from the same under applicable law and regulations to be established by the Secretary of the Interior.

Patent will contain the following provisions:

1. Nye County a political subdivision of the State of Nevada, assumes all liability for and shall defend, indemnify, and save harmless the United States and its officers, agents, representatives, and employees (hereinafter referred to in this clause as the United States), from all claims, loss, damage, actions, causes of actions, expense, and liability (hereinafter referred to in this clause as claims), resulting from, brought for, or on account of, any personal injury, threat of personal injury, or property damage received or sustained by any person or persons (including the patentees employees) or property growing out of, occurring, or attributable directly or indirectly, to the disposal of solid waste

on, or the release of hazardous substances from Mount Diablo Meridian, Nevada, T. 12 S., R. 46 E., sec. 13, S½NW¼NW¼NW¼, N½SW¼NW¼NW¼, regardless of whether such claims shall be attributable to: (1) The concurrent, contributory, or partial fault, failure or negligence of the United States;

2. A portion of the above described land was used as a solid waste disposal site, and will continue to be used as solid waste transfer station. Upon closure, the site may contain small quantities of commercial and household wastes as determined in the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6901), and defined in 40 CFR 261.4 and 261.5. Although there is no indication these materials pose any significant risk to human health or the environment, future land uses should be limited to those which do not penetrate the liner of final cover of the site unless excavation is conducted subject to applicable State and Federal requirements;

3. No portion of the land shall under any circumstances revert to the United States if any portion has been used for solid waste disposal or for any other purpose which may result in the disposal, placement, storage, or release of any hazardous substance;

and will be subject to valid existing rights.

Detailed information concerning this action is available for review at the office of the Bureau of Land Management, Tonopah Field Station, 1553 South Main Street, Tonopah, Nevada. The subject lands were previously classified and segregated for the purposes of a lease authorizing a sanitary landfill pursuant to the Recreation and Public Purposes Act. Further segregation will not be required.

For a period of 45 days from the date of publication of this Notice in the **Federal Register**, interested parties may submit comments regarding the proposed conveyance or classification of the lands to the Assistant Field Station Manager, Tonopah Field Station, PO Box 911, Tonopah, NV 89049.

Classification Comments

Interested parties may submit comments involving the suitability of the land for use as a municipal solid waste transfer station. Comments on the classification are restricted to whether the land is physically suited for the proposal, whether the use is consistent with local planning and zoning, or if the use is consistent with State and Federal programs.

Application Comments

Interested parties may submit comments regarding the specific use proposed in the application and plan of development, whether the BLM followed proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the land for the uses described.

Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the classification of the land will become effective 60 days from the date of publication of this Notice in the **Federal Register**. The lands will not be conveyed until after the classification becomes effective.

Dated: January 6, 2003.

William S. Fisher,

Assistant Field Manager, Tonopah.

[FR Doc. 03–3170 Filed 2–7–03; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–050–5853–EU]

Notice of Reality Action: Modified Competitive Sale of Public Lands in Clark County, Nevada, to the City of Las Vegas, N–74816 and N–74822

AGENCY: Bureau of Land Management, Interior.

ACTION: Modified Competitive Sale.

SUMMARY: The following described lands have been designated for disposal under Pub. L. 105–263, the Southern Nevada Public Land Management Act of 1998 (112 Stat. 2343); they will be sold modified competitively in accordance with section 203 and section 209 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2750, 43 U.S.C. 1713, 1719) at not less than the appraised fair market value (FMV).

Mount Diablo Meridian, Nevada

T. 20S., R. 59E.,
Sec. 12, E½NE¼NE¼NE¼,
T. 19S., R. 60E.,
Sec 21, S½S½SE¼NE¼SE¼,
T. 20S., R. 60E.,
Sec. 7, lots 8 and 9
Consisting of 18.61 acres, more or less.

These parcels of land, situated in the Las Vegas Valley are being offered as a modified competitive sale to the City of Las Vegas.

When the land is sold, conveyance of the locatable mineral interests will occur simultaneously with the sale of the land. The locatable mineral interests being offered have no known mineral value. Acceptance of a sale offer will constitute an application for conveyance of those mineral interests. The applicant will be required to pay a $50.00 non-refundable filing fee for processing of the conveyances of the locatable mineral interests for N–74816 and N–74822.

The terms and conditions applicable to the sale are as follows:

All Parcels are Subject to the Following:

1. All leasable and salable mineral deposits are reserved on land sold; permittees, licensees, and lessees, retain the right to prospect for, mine, and remove the minerals owned by the United States under applicable law and regulations that the Secretary of the Interior may prescribe, including all necessary access and exit rights.

2. A right-of-way is reserved for ditches or canals constructed by the authority of the United States, under the Act of August 30, 1890 (43 U.S.C. 945).

3. All land parcels are subject to all valid existing rights. Parcels may also be subject to applications received prior to publication of this notice if processing the application would have no adverse effect on the FMV. Encumbrances of record are available for review during business hours, 7:30 AM to 4:15 PM, Monday through Friday, at the BLM, Las Vegas Field Office (LVFO), at 4701 N. Torrey Pines, Las Vegas, Nevada.

4. All land parcels are subject to reservations for roads, public utilities and flood control purposes both existing and proposed, in accordance with the local governing entities' Transportation Plans.

5. All purchasers/patentees, by accepting a patent, agree to indemnify, defend, and hold the United Stated harmless from any costs, damages, claims, causes of action, penalties, fines, liabilities, and judgments of any kind or nature arising from the past, present, and future acts or omissions of the patentee or their employees, agents, contractors, or lessees, or any third-party, arising out of, or in connection with, the patentee's use, occupancy, or operations on the patented real property. This indemnification and hold harmless agreement includes, but is not limited to, acts and omissions of the patentee and their employees, agents, contractors, or lessees, or any third party, arising out of or in connection with the use and/or occupancy of the patented real property which has already resulted or does hereafter result in: (1) Violations of federal, state, and local laws and regulations that are now, or may in the future become, applicable to the real property; (2) Judgments, claims or demands of any kind assessed

against the United States; (3) Costs, expenses, or damages of any kind incurred by the United States; (4) Other releases or threatened releases of solid or hazardous waste(s) and/or hazardous substances(s), as defined by federal or state environmental laws, off, on, into or under land, property and other interests of the United States; (5) Other activities by which solids or hazardous substances or wastes, as defined by federal and state environmental laws are generated, released, stored, used or otherwise disposed of on the patented real property, and any cleanup response, remedial action, or other actions related in any manner to said solid hazardous substances or wastes; or (6) Natural resource damages as defined by federal state law. This covenant shall be construed as running with the patented real property and may be enforced by the United States in a court of competent jurisdiction.

Each parcel will be offered by sealed bid. All sealed bids must be received at the BLM, LVFO, 4701 N. Torrey Pines Dr., Las Vegas, Nevada, 89130, no later than 4:15 PM, PST, on March 3, 2003. Sealed bid envelopes must be marked on the lower front left corner with the parcel number and sale date. Bids must be for not less than the appraised FMV and a separate bid must be submitted for each parcel.

Each sealed bid shall be accompanied by a certified check, money order, bank draft, or cashiers check made payable to the BLM for not less that 10 percent of the amount bid. Sealed bids will be opened at 10 AM on March 4, 2003, at the BLM, LVFO.

If no sealed bids are received, the parcels will be sold to the City of Las Vegas at the appraised FMV.

The City of Las Vegas shall have the right to meet the highest bid. Refusal or failure to meet the highest bid shall constitute a waiver of the City's preferential consideration. If the City meets the highest bid, it must submit the required bid deposit by 4:15 PM on the day of the sale in the form of cash, personal check, bank draft, cashiers check, money order or any combination thereof, made payable to the BLM, for not less than 20 percent of the amount bid.

The remainder of the full bid price must be made within 180 calendar days of the sale date. Failure to pay the full price within 180 days will disqualify the apparent high bidder and cause the entire bid deposit to be forfeited to the BLM.

Federal law required bidders to be U.S. citizens 18 years of age of older; a corporation subject to the laws of any State of the United States; a State, State instrumentality, or political subdivision authorized to hold property; or an entity including, but not limited to associations or partnerships capable of holding property or interests therein under the law of the State of Nevada. Certification of qualification, including citizenship or corporation or partnership, must accompany the bid deposit.

In order to determine the fair market value of the subject public lands through appraisal, certain assumptions have been made of the attributes and limitations of the lands and potential effects of local regulations and policies on potential future land uses. Through publication of this Notice of Realty Action, the BLM gives notice that these assumptions may not be endorsed or approved by units of local government. Furthermore, no warranty of any kind shall be given or implied by the United States as to the potential uses of the lands offered for sale, and conveyance of the subject lands will not be on a contingency basis. It is the buyers' responsibility to be aware of existing projects and use of nearby properties. When conveyed out of Federal ownership, the lands will be subject to applicable reviews and approvals by the respective unit of local government for proposed future uses, and any such reviews and approvals would be the responsibility of the buyer. Any land lacking access from a public road or highway will be conveyed as such, and future access acquisition will be the responsibility of the buyer.

Upon publication of this Notice and until the completion of the sale, the Bureau of Land Management (BLM) is no longer accepting land use applications affecting any of those parcels being offered at this sale. After publication of this Notice any application filed for rights-of-way, permits, leases, and other uses of the offered parcels will be rejected and retuned to the applicant.

Detailed information concerning the sale, including the reservations, sale procedures and conditions and planning and environmental documents are available for public review at the BLM, LVFO, at 4701 N. Torrey Pines, Las Vegas, Nevada, 89130, or by calling (702) 515–5000. Appraisals for each parcel are also available for public view.

For a period of 45 days from the date of publication of this Notice in the **Federal Register**, the general public and interested parties may submit comments to the Field Manager, LVFO, 4701 N. Torrey Pines, Las Vegas, Nevada, 89130. Any adverse comments will be reviewed by the State Director, who may sustain, vacate, or modify this realty action. In the absence of any adverse comments, this realty action will become the final determination of the Department of the Interior. The BLM may accept or reject any or all offers, or withdraw any land or interest in the land from sale, if, in the opinion of the authorized officer, consummation of the sale would not be fully consistent with FLPMA and other applicable laws or is determined not in the publics interest. Any comments received during this process, as well as the commentor's name and address, will be available to the public in the administrative record and/or pursuant to a Freedom of Information Act request. You may indicate for the record that you do not wish your name and/or address be made available to the public. Any determination by the BLM to release or withhold the names and/or addresses of those who comment will be made on a case-by-case basis. A commentor's request to have their name and/or address withheld from public release will be honored to the extent permissible by law.

The Land will not be offered for sale until at least 60 days after the date of publication of this Notice in the **Federal Register**.

Dated: November 18, 2002.

Mark T. Morse,

Field Manager.

[FR Doc. 03–3171 Filed 2–7–03; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UT–100–1430–03; UTU–78364]

Notice of Realty Action

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice of realty action; Recreation and Public Purposes (R&PP) Act Classification; Utah.

SUMMARY: The following public land, located in Washington County, Utah, has been examined and found suitable for classification for lease or conveyance to the Northwestern Special Service District under the provision of the Recreation and Public Purposes Act. As amended (43 U.S.C. 869 *et.seq.*):

Salt Lake Meridian, Utah

T. 39 S., R. 16 W.,
Sec. 28, NE¼NE¼NW¼SW¼,
Containing 1.5 acres, more or less.

SUPPLEMENTARY INFORMATION: The Northwestern Special Service District proposes to use the land to construct, operate and maintain a fire station. The

land is not needed for Federal purposes. Leasing or conveying title to the affected public land is consistent with current BLM land use planning and would be in the public interest.

The lease or patent, when issued, would be subject to the following terms, conditions, and reservations:

1. Provisions of the Recreation and Public Purposes Act and all applicable regulations of the Secretary of the Interior.

2. A right-of-way for ditches and canals constructed by the authority of the United States.

3. All minerals shall be reserved to the United States, together with the right to prospect for, mine, and remove the minerals.

4. Those rights for water well, water pipeline and road access purposes granted to Veyo Culinary Water Association by right-of-way U–74785.

5. Those rights for road access purposes granted to James Wilson by right-of-way U–71135.

Detailed information concerning this action is available at the office of the Bureau of Land Management, St. George Field Office, 345 E. Riverside Drive, St. George, Utah 84790. Upon publication of this notice in the **Federal Register**, the land will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for leasing or conveyance under the Recreation and Public Purposes Act and leasing under the mineral leasing laws. For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested persons may submit comments regarding the proposed classification, leasing or conveyance of the land to the Field Office Manager, St. George Field Office.

Classification Comments

Interested parties may submit comments involving the suitability of the lands for a fire station. Comments on the classification are restricted to whether the land is physically suited for the proposal, whether the use will maximize the future use or uses of the land, whether the use is consistent with local planning and zoning, or if the use is consistent with State and Federal programs.

Application Comments

Interested parties may submit comments regarding the specific use proposed in the Northwestern Special Service District's application, whether the BLM followed proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the land for fire station purposes. Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the classification will become effective 60 days from the date of publication of this notice.

Dated: January 10, 2003.

James D. Crisp

Field Office Manager.

[FR Doc. 03–3166 Filed 2–7–03; 8:45 am]

BILLING CODE 4310–$$–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–030–03–1220–PD–241A]

Final Supplementary Rules for the Sand Mountain and the Walker Lake Recreation Areas; Churchill and Mineral Counties, NV

AGENCY: Bureau of Land Management, Interior.

ACTION: Final supplementary rules.

SUMMARY: The Carson City Field Office Manager establishes these supplementary rules to provide for the protection of persons, property, and public lands and resources. They consolidate and clarify rules published in previous **Federal Register** notices, establish that Sand Mountain will be subject to a user fee collection and establish additional supplemental rules of conduct for visitors to the Sand Mountain and the Walker Lake Recreation Areas.

EFFECTIVE DATE: March 12, 2003.

ADDRESSES: Mail: Manager, Carson City Field Office, 5665 Morgan Mill Road, Carson City, Nevada 89701. Personal or messenger delivery: 5665 Morgan Mill Road, Carson City, Nevada 89701. Internet e-mail: *Christina_Miller@nv.blm.gov*

FOR FURTHER INFORMATION CONTACT: Chris Miller, Outdoor Recreation Planner, or Chuck Pope, Assistant Manager, Non-Renewable Resources, Carson City Field Office, 5665 Morgan Mill Road, Carson City, Nevada 89701. Telephone (775) 885–6000. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339, 24 hours a day, 7 days a week.

SUPPLEMENTARY INFORMATION:

I. Background
II. Discussion of Rule
III. Responses to Comments
IV. Procedural Matters

I. Background

BLM published the interim final supplementary rules at 43 CFR part 8365 on August 22, 2002. These supplementary rules were intended to amplify rules that were originally published in 1992. The period for public comment on the interim final rules expired on September 23, 2002. BLM received 36 public comment letters or other communications during this comment period.

The public lands affected by these restrictions are described as follows:

Sand Mountain Recreation Area

Mt. Diablo Meridian

T. 16 N., R 32 E.,
- Sec. 4: Lots 1–4 inclusive, SW1/4NE1/4, S1/2NW1/4, N1/2SW1/4, SW1/4SW1/4;
- Sec. 5: Lots 1–4 inclusive, S1/2N1/2, All public land north of U.S. Route 50;

T. 17 N., R 32 E.,
- Sec. 15: S1/2S1/2;
- Sec. 16: SE1/4SE1/4;
- Sec. 20: SE1/4;
- Sec. 21: All
- Sec. 22: W1/2, NE1/4;
- Sec. 28: All
- Sec. 29: All
- Sec. 32: All
- Sec. 33: All

Walker Lake Recreation Area

Includes all public land east of U.S. Route 95 to Walker Lake within:

Mt. Diablo Meridian

T. 10 N., R 29 E.,
- Sec. 5:
- Sec. 8:
- Sec. 17:
- Sec. 20:
- Sec. 29:
- Sec. 32:

II. Discussion of Rules

Certain prohibited activities other than those included in the 1992 supplementary rules were recommended in the Recreation Area Management Plan for the Sand Mountain Recreation Area prepared in 1985. These recommendations subsequently were published as specific prohibited acts in the **Federal Register** on July 1, 1992. The Plan was supplemented in 1993, and these rules require minor modification and clarification.

Certain other supplementary rules are necessary in order to provide for the safety of visitors to the Recreation Areas. Speed limits are needed on access roads and in designated camping areas. Ignition of fireworks is a violation of State law and a danger to both persons and property.

We need to clarify existing rules to protect plant life, wildlife habitat and historic resources, and we are proposing

additional rules due to increases in public use. Indiscriminate vehicle use in that portion of the Sand Mountain Recreation Area, where the off-road vehicle designation is "limited", has destroyed vegetation, caused harassment of wildlife, and threatens the integrity of the Sand Springs Pony Express Station and Desert Study Area. These supplementary rules specifically identify those routes that are open to vehicle use within this "limited" designation area. Rules regarding the closure of certain lands within the Recreation Area to camping were published in the **Federal Register** on July 1, 1992. This notice contains a legal description of those lands and designates the area of Developed Recreation Site for the Walker Lake Recreation Area.

III. Responses to Comments

In this portion of the Supplementary Information, we will discuss the sections of the proposed rules upon which the public commented, or that need to be changed for some other reason. If we do not discuss a particular section or paragraph, it means that no public comments addressed the provision. However, we may change the wording of other sections where we find clarification or style changes necessary or appropriate, and there is no other need for substantive amendment in the final rule.

Section 1.a and Section 3.a: Two comments suggested not requiring whip flags to be attached to motorcycles. BLM considers that any vehicle driving on the dunes may be obscured from view by the crest of a dune and thus not seen by other drivers or pedestrians. The use of whip flags increases vehicle visibility and thereby improves recreation safety.

Section 1.c: We had three comments on lifting the restricted area or limited OHV area status at Sand Mountain. The limited OHV designations have been in place since 1988, CFR, Vol. 53, No. 179, page 35917, Sept. 15, 1988 (NV–030–08–4333–13). The restrictions and limited use areas protect cultural and biological resources, including a Pony Express station, which is a historical landmark surrounded by dune vegetation. This site has been closed to vehicle access since 1988.

Section 1 other comments: There were three comments on making it illegal not to wear helmets or riding double. The BLM feels these are more of a State issue and should be addressed by the State. In addition, there were two comments on using more of California State language for the regulations. The language used in these rules is common Code of Federal Regulation language and is enforceable as is.

Section 2. b. No comments addressed this paragraph of the supplementary rules. However, in the final rules we have extended the no camping restriction to three miles beyond the boundary of the Recreation Area instead of just one mile. Camping in this area to avoid paying camping fees could have serious negative impacts on two sensitive plant species and 35 historic and prehistoric cultural sites. We find the need to protect these resources constitutes good cause for changing this restriction without further opportunity for public comment. In addition, expansion of this camping restriction will protect two watering tanks maintained by a rancher who leases this area for cattle and a Navy radar site.

Section 2. c: We had a comment on how we will enforce some kind of noise regulation, especially at night. This enforcement will be based on the number of complaints law enforcement personnel receive on the situation, and will be focused on the campground proper. Use of the surrounding area is primarily for motorized recreation, so remoteness and tranquility are not resource values to be protected here, but we wish to assure our visitors that they will have a peaceful night's sleep.

Section 2. d and Section 3. j: At least half the comments concerned fees. Some individuals felt that no fees should be charged on public lands. Most felt our proposed weekly use fee of $20 was too high, but that the annual fee was fine. Many of the comments felt that fees are appropriate at Sand Mountain as long as they were used to improve the site. They had opinions on what resource and recreation projects the fees should be used for. The majority of comments said they wanted to see more of a BLM presence on site, law enforcement and otherwise. The BLM's current cost to run Sand Mountain, including facility maintenance and health and safety programs, justifies the current fee schedule.

Section 2. e: This rule was added based on verbal and written complaints about visitors roping off large areas during busy weekends. The campground is limited and there are no reserved spaces, thus the first come first served rule applies.

Section 3. e: Many individuals felt they should be able to light fireworks in the dunes area and did not like this restriction. BLM is complying with a Churchill County ordinance (9.08.020) prohibiting fireworks in the county.

Section 3. f: We received two comments on limiting noise in the campground and how the BLM will enforce this. See the response in Sec. 2 c.

Section 3. g: We had two comments regarding limiting glass containers on the dunes to prevent damaged tires. However, individuals thought they should be allowed to use glass containers in motor homes or closed vehicles. We amended this section to allow for such uses, because many items necessary for daily living in motor homes come in glass containers, the risk of litter from these sources is substantially less if they are used in the motor homes, and BLM is not inclined to perform routine searches of vehicles for glass containers. We will issue citations to persons found with glass containers outside of vehicles and motor homes.

Section 3. I: This section received the second most responses next to the fee issue. Most individuals felt a definition of gray water should be included or that gray water was not an issue. The BLM is concerned about the health and safety of 40,000-plus visitors a year. The definition was changed to prohibit gray water dumping from a vehicle or trailer. Visitors must dump their water at legal dumping stations presently located in Fallon.

Section 3. k: Two comments suggested that we require dogs to be on a leash or controlled by owners. The BLM felt this a reasonable safety request and added this.

Section 3. l: This rule prohibiting rolling object down dunes was added based on two written comments and many verbal comments received during the comment period by BLM staff at Sand Mountain addressing the safety hazard created by rolling tires down the dunes. The BLM felt this was covered under other recreation articles, but added this as a site specific-prohibited act because of ongoing behavior at Sand Mountain.

Supplementary Rules for the Walker Lake Recreation Area. We received no comments addressing Walker Lake. Thus, this section was left as presented in the interim final rule.

IV. Procedural Matters

These supplementary rules are not a significant regulatory action and are not subject to review by Office of Management and Budget under Executive Order 12866. These supplementary rules will not have an effect of $100 million or more on the economy. They will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or

communities. These supplementary rules will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. These supplementary rules do not alter the budgetary effects of entitlements, grants, user fees, or loan programs or the right or obligations of their recipients; nor do they raise novel legal or policy issues.

BLM has determined that the supplementary rules are categorically excluded from environmental review under section 102(2)(C) of the National Environmental Policy Act, pursuant to 516 Departmental Manual (DM), Chapter 2, Appendix 1. In addition, the supplementary rules do not meet any of the 10 criteria for exceptions to categorical exclusions listed in 516 DM, Chapter 2, and Appendix 2. Pursuant to Council on Environmental Quality regulations (40 CFR 1508.4) and the environmental policies and procedures of the Department of the Interior, the term "categorical exclusions" means a category of actions which do not individually or cumulatively have a significant effect on the human environment and that have been found to have no such effect in procedures adopted by a Federal agency and for which neither an environmental assessment nor an environmental impact statement is required.

Congress enacted the Regulatory Flexibility Act of 1980, as amended, 5 U.S.C. 601–612, to ensure that Government regulations do not unnecessarily or disproportionately burden small entities. The RFA requires a regulatory flexibility analysis if a rule would have a significant economic impact, either detrimental or beneficial, on a substantial number of small entities. These supplementary rules are not a "major rule" as defined at 5 U.S.C. 804(2). These rules are limited in scope to a small parcel of public land and are intended to establish rules of conduct and acceptable behavior at the site for the protection of resources and the visiting public.

These supplementary rules do not impose an unfunded mandate on state, local, or tribal governments or the private sector of more than $100 million per year; nor do these supplementary rules have a significant or unique effect on state, local, or tribal governments or the private sector. These supplementary rules do not require funding or resources from state, local, or tribal governments. These supplementary rules do not affect private property or property rights nor are they intended to deny or constrain any valid existing right. Therefore, BLM is not required to prepare a statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*).

These supplementary rules do not represent a government action capable of interfering with constitutionally protected property rights. The supplementary rules are applicable only on public land managed by the BLM and do not extend to adjacent private property. No taking of private property is contemplated in these supplementary rules. Therefore, the Department of the Interior has determined that the supplementary rules would not cause a taking of private property or require further discussion of takings implications under this Executive Order.

The supplementary rules will not have a substantial direct effect on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. These supplementary rules are intended to protect property, resources, and the visiting public on a designated area of public land. The scope and effect of these supplementary rules are limited to those public purposes and do not redefine or impact established governmental structures, responsibilities, policies, or procedures. Therefore, in accordance with Executive Order 13132, BLM has determined that these supplementary rules do not have sufficient Federalism implications to warrant preparation of a Federalism Assessment.

Under Executive Order 12988, we have determined that these supplementary rules will not unduly burden the judicial system and that these supplementary rules meet the requirements of sections 3(a) and 3(b)(2) of the Order. These supplementary rules have been written in plain text and are clearly understandable.

In accordance with Executive Order 13175, we have found that this final rule does not include policies that have tribal implications. These supplementary rules do not impact tribal lands nor are they intended to limit or interfere with any right or privilege granted to Native Americans.

These supplementary rules do not contain information collection requirements that the Office of Management and Budget must approve under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.*

The principal author of these supplementary rules is Stanley Zuber of the Carson City Field Office, Bureau of Land Management, and Department of the Interior.

For the reasons stated in the preamble, and under the authority of 43 CFR part 8360, §§8364.1, 8365, 8365.1–2, 8365.1–6 and 8365.2, the BLM State Director, Nevada, issues the following supplementary rules:

Dated: November 26, 2002.

Robert V. Abbey,

State Director, Nevada.

Supplementary Rules for the Sand Mountain Recreation Area

Sec. 1 Motor Vehicle Rules

a. All motorized vehicles, other than those traveling on maintained roads, must be equipped with an 8 foot whip mast and a six (6) inch by twelve (12) inch solid red or orange colored safety flag. Flags may be pennant, triangle, square, or rectangular shape. The mast must be securely mounted on the vehicle and extend eight (8) feet from the ground to the mast tip when the vehicle is stopped. Safety flags must be attached within 10 inches of the tip of the whip mast with club or other flags mounted below safety flag or on another whip.

b. You must not operate any motorized vehicle in excess of 25 mph on any maintained road within the Recreation Area, or in excess of 15 mph within any designated camping area.

c. Within that portion of the Recreation Area where vehicle use is designated as "limited", there are only two roads open to motorized vehicles. These roads are:

(1) The main access road leading from U.S. Route 50 to the northernmost restroom facility and,

(2) The secondary access road leading from the main access road to the parking area near the Sand Springs Pony Express Station and Desert Study Area.

d. No person shall drink an alcoholic beverage, or have in their possession or on their person any open container that contains an alcoholic beverage, while operating in or on a motorized vehicle.

Sec. 2 Other Restrictions on Recreation Use.

a. At Sand Mountain, you must camp only in the area designated for that purpose. The designated camping area is:

Mt. Diablo Meridian

T. 17 N., R. 32 E.,
Sec. 28 SW1/4:

b. You must not camp on any other public lands within the Sand Mountain Recreation Area, in Sec. 5, T.16N, R.32E, or within three miles of the boundary of the Recreation Area.

c. You must not operate or use any audio equipment, such as a radio,

television, musical instrument, or other noise producing device, or motorized equipment, between the hours of 12 A.M. and 6 A.M. in a manner that makes unreasonable noise that disturbs other visitors; or operate or use a public address system without written authorization from the Field Office Manager.

d. Persons using the area will be subject to a user fee.

e. You must not enter, camp, park, or stay longer than one half hour within the Sand Mountain Recreation Area without properly paying required fees.

f. Reserving of camping spaces is prohibited; sites are allocated on a first come first serve basis.

Sec. 3 Prohibited Acts

You must not:

a. Operate a motorized vehicle in the Recreation Area without the attached safety flag as described under Sec. 1 a. of these supplementary rules;

b. Operate a motorized vehicle in excess of the posted speed limit;

c. Drink an alcoholic beverage, or have in your possession or on your person any open container that contains an alcoholic beverage, while operating in or on a motorized vehicle;

d. Camp outside the designated camping area described in Sec. 2 a. of these supplementary rules;

e. Discharge any firearms, fireworks, or projectiles;

f. Make any unreasonable noise that disturbs other visitors between the hours of 12 A.M. and 6 A.M. as described in Sec. 2 c. of these supplementary rules;

g. Possess or use any glass cup or bottle, empty or not, used for carrying any liquid for drinking purposes outside of enclosed vehicles, or camp trailers.

h. Bring in, dispose of or possess any firewood containing nails, screws, or other metal hardware.

i. Dump gray or wastewater at the Recreation Area directly from a vehicle or trailer. You must empty water and sewage tanks only at legal dumping stations. (The nearest one is presently located in Fallon.)

j. Use Sand Mountain Recreation Area without paying the user fee.

k. Keep animals not on a leash or tied. Animals must be kept on a leash not longer than six feet, whether held by hand or secured to a fixed object, or otherwise physically restricted at all times.

l. Freely roll down the dunes any object that creates a hazard to other users.

Sec. 4 Penalties

Under the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1733(a)), any person failing to comply with the supplemental rules provided in the notice may be subject to imprisonment for not more than 12 months, or a fine in accordance with the applicable provisions of 18 U.S.C. 3571, other penalties in accordance with 43 U.S.C. 1733, or both.

Sec. 5 Administrative and Emergency Use

These supplementary rules do not apply to emergency or law enforcement personnel, or BLM employees engaged in the performance of their official duties.

Supplementary Rules for the Walker Lake Recreation Area

Sec. 1 Motor Vehicle Rules

a. No person shall operate any motorized vehicle in excess of 25 mph on any maintained road within the Recreation Area, or in excess of 15 mph within any designated camping area.

b. No person shall drink an alcoholic beverage, or have in their possession or on their person any open container that contains an alcoholic beverage, while operating in or on a motorized vehicle.

Sec. 2 Developed Recreation Site

The following lands are designated as the developed recreation site as defined in 43 CFR 8360.0–5(c): all public land east of U.S. Route 95 to Walker Lake within—

Mt. Diablo Meridian

T. 10 N., R 29 E.,
Sec. 29;
Sec. 32:
Rules stated in 43 CFR 8365.2 apply to this area.

Sec. 3 Other Restrictions on Recreation Use

No person shall operate or use any audio equipment, such as a radio, television, musical instrument, or other noise producing device, or motorized equipment, between the hours of 12 A.M. and 6 A.M. in a manner that makes unreasonable noise that disturbs other visitors; or operate or use a public address system without written authorization from the Field Office Manager.

Sec. 4 Prohibited Acts

You must not:

a. Operate a motorized vehicle in excess of the posted speed limit;

b. Drink an alcoholic beverage, or have in your possession or on your person any open container that contains an alcoholic beverage, while operating in or on a motorized vehicle;

c. Discharge any firearms, fireworks, or projectiles.

d. Make any unreasonable noise that disturbs other visitors between the hours of 12 A.M. and 6 A.M. as described in Sec. 2 c. of these supplementary rules.

e. Possess or use any glass cup or bottle, empty or not, used for carrying any liquid for drinking purposes outside of enclosed vehicles, or camp trailers.

f. Bring in, dispose of or possess any firewood containing nails, screws, and other metal hardware.

g. Dump gray or wastewater at Walker Lake Recreation Area directly from a vehicle or trailer. You must empty water and sewage tanks only at legal dumping stations. (The nearest one is presently located in Hawthorne.)

h. Keep animals not on a leash or tied. Animals must be kept on a leash not longer than six feet, whether hand held or secured to a fixed object, or otherwise physically restricted at all times.

Sec. 5 Penalties

Under the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1733(a)), any person failing to comply with the supplemental rules provided in the notice may be subject to imprisonment for not more than 12 months, or a fine in accordance with the applicable provisions of 18 U.S.C. 3571, other penalties in accordance with 43 U.S.C. 1733, or both.

Sec. 6 Administrative and Emergency Use

These supplementary rules do not apply to emergency or law enforcement personnel, or BLM employees engaged in the performance of their official duties.

[FR Doc. 03–3168 Filed 2–7–03; 8:45 am]
BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

[NV–012 4700]

Notice of Intent To Prepare a Wild Horse Management Amendment to the Elko Resource Management Plan and Associated Environmental Assessment

AGENCY: Bureau of Land Management.

ACTION: Notice of intent to prepare a Wild Horse Management Amendment to the Elko Resource Management Plan (RMP) and associated environmental assessment (EA).

SUMMARY: This document provides notice that the Bureau of Land Management (BLM), Elko Field Office intends to prepare a Wild Horse Management Amendment to the Elko Resource Management Plan (1987) and

an associated Environmental Assessment to address current issues for four wild horse herd areas (HAs) (Diamond Hills, Little Humboldt, Owyhee, and Rock Creek) in the Elko RMP planning area. The RMP planning area is comprised of approximately 6 million acres of land in northeastern Nevada, of which the BLM administers over 3 million acres. The four HAs are all located in Elko County, NV. They comprise approximately 657,000 acres, of which about 92 percent are public lands. Decisions to be made by the RMP Amendment include designation of "herd management areas" on public lands within these HAs where wild horses can be managed in the long term. The BLM will work collaboratively with interested parties to make decisions best suited to local, regional, state and national needs and concerns for the management of wild horses.

DATES: This notice initiates the public scoping process. Comments on issues and planning criteria can be submitted in writing to the address listed below and will be accepted within 30 days following publication of this notice in the **Federal Register**. The public is also invited to participate in any of three public meetings to discuss the scope of the proposed amendment and environmental assessment. All public meetings will be announced through local news media, newsletters, and the BLM Web site at least 15 days prior to the event. Meetings will be held in Elko, NV; Eureka, NV; and Reno, NV.

ADDRESSES: Written comments for this planning effort may be submitted to BLM at any of the scoping meetings; in addition, comments can be submitted in person to the BLM's Elko Field Office, 3900 Idaho Street, Elko, Nevada, 89801. Comments may also be submitted via facsimile to 775–753–0255. Please address your comments to the attention of Bryan Fuell, Wild Horse Specialist. Documents pertinent to this proposal may be examined at the BLM Elko Field Office (see address above). Preliminary scoping information will also be available at each of the scoping meetings, and may be obtained by visiting the Elko Field Office Web site at *http://www.nv.blm.gov/elko.* If you wish to withhold your name and/or address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your comment. Such requests will be honored to the extent allowed by law. All submissions from an organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be available for public inspection in their entirety.

FOR FURTHER INFORMATION: For further information and/or to have your name added to our mailing list, contact Bryan Fuell, Wild Horse Specialist, Bureau of Land Management, Elko Field Office, 3900 Idaho Street, Elko, Nevada 89801; telephone (775) 753–0200.

SUPPLEMENTARY INFORMATION: HAs are limited to areas of public lands identified as habitat used by wild horses at time of the passage of the Wild Horse and Burro Act in 1971. The Elko RMP (1987) established four wild horse HAs (Diamond Hills, Little Humboldt, Rock Creek, Owyhee) with the objective to manage the wild horse populations and habitat in these areas consistent with other resource uses. Short- and long-term management actions prescribed by the 1987 RMP are to: (1) Manage the four herds at an appropriate management level; (2) monitor wild horse populations and habitat conditions; and (3) conduct wild horse gatherings as needed to maintain numbers. Since completion of the Elko RMP, monitoring of wild horse populations and habitat and completion of wild horse gatherings have occurred.

Approximately 657,000 acres make up the four HAs, of which 53,000 acres are privately owned lands. The Diamond Hills HA is in the southwest corner of the Elko RMP planning area. Due to its proximity to other wild horse HMAs managed by the Ely and Battle Mountain field offices of the BLM, this HA is often referred to as "Diamond Hills North." The Little Humboldt, Rock Creek and Owyhee HAs are in the northwest portion of the planning area, and are next to HMAs that are administered by BLM's Winnemucca Field Office. The 1971 Wild Horse and Burro Act requires removal of wild horses from unfenced private land when requested by the private landowner. Verbal requests have been made to alleviate problems with wild horses on private land within the Rock Creek and Little Humboldt HAs.

The proposed Amendment would designate HMAs, which are established only on areas within HAs which wild horses can be managed for the long term. BLM planning regulations (43 CFR 1610) require preparation of planning issues and criteria to guide amendments or revisions of RMPs. A planning issue is a matter of controversy over a resource management topic that is well defined, about which a decision can be made and is within the BLM's authority and jurisdiction to resolve. Planning criteria are the constraints or ground rules that guide and direct the development of the plan or amendment, and determine how the planning team approaches the development of alternatives and, ultimately, selection of a preferred alternative. They ensure that plans are tailored to identified issues, and that unnecessary data collection and analyses are avoided. Wild horse monitoring and other information collected to support land health assessments since the 1987 Elko RMP was approved is available for use in completing analyses for this Amendment. Preliminary planning issues and criteria, developed internally, will be available for review and comment by the public during the 30-day scoping period established by this notice. The Elko Field Manager will approve the planning criteria following public scoping.

Dated: December 23, 2002.

Helen Hankins,

Field Manager, Elko Field Office.

[FR Doc. 03–3169 Filed 2–7–03; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Notice of Intent To Prepare a Resource Management Plan for the Ely District and Associated Environmental Impact Statement

AGENCY: Bureau of Land Management, Ely Field Office, Interior.

ACTION: Notice of Intent to prepare a comprehensive Resource Management Plan (RMP) and associated Environmental Impact Statement (EIS) for the Ely District, located within Lincoln and White Pine counties and the northeast portion of Nye County, Nevada.

SUMMARY: In compliance with the Federal Land Policy and Management Act of 1976, as amended (43 U.S.C. 1701 *et seq.*), and the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), the Bureau of Land Management (BLM) will prepare a Resource Management Plan to consider a range of alternatives for BLM management of public lands within the Ely District. In conjunction with the RMP, an associated EIS will be prepared to assess the environmental, social, and economic effects of the alternatives considered in the RMP. The BLM will work collaboratively with interested parties to identify the management decisions that are best suited to local, regional, and national needs and concerns. The public scoping process will identify planning

issues and develop planning criteria, including an evaluation of existing land use plans in the context of the needs and interest of the public.

DATES: This notice initiates the public scoping process. Comments on issues and planning criteria can be submitted in writing to the address listed below and will be accepted throughout the creation of the Draft RMP/Draft EIS. All public meetings will be announced through the local news media, newsletters, and the BLM Web site (*http://blm.ensr.com*) at least 15 days prior to the event. The minutes and list of attendees for each meeting will be available to the public and open for 30 days to any participant who wishes to clarify the views they expressed.

Public Involvement: Information on planning issues and planning criteria can be obtained by accessing the BLM Web site (*http://blm.ensr.com*) or by writing to the address listed below. Comments on issues and planning criteria can be submitted in writing to the address listed below and will be accepted throughout the creation of the Draft RMP/Draft EIS. The public will be invited to participate in the scoping process via attendance at public meetings and review of the draft RMP/EIS. All public meetings will be announced through the local news media, newsletters, and the BLM web site (*http://blm.ensr.com.*) The BLM has scheduled six public scoping meetings to obtain input on the issues to be addressed within the Ely RMP/EIS. The meetings will be held at the following locations: BLM Las Vegas Field Office; Mesquite, NV; Ely, NV; Reno, NV; Caliente, NV and Tonopah, NV.

These meetings will provide an opportunity for the public to learn about the Ely RMP/EIS process and to comment directly on the scope of the planning initiative. The public is encouraged to attend the scoping meetings and/or send written comments and suggestions concerning the preparation of the RMP/EIS by following the instructions below.

ADDRESSES: Written comments on the scope of the Ely RMP should be submitted within 60 days of the date of publication of this notice and addressed to: Bureau of Land Management, Gene A. Kolkman, Ely Field Manager, HC 33, Box 33500, Ely, NV 89301–9408; Fax 775–289–1910. Documents pertinent to this proposal may be examined at the Ely Field Office. Freedom of Information Act Considerations: Comments, including names and street addresses of respondents, will be available for public review at the Ely Field Office during regular business hours [7:30 a.m.–4:30 p.m. PST], Monday through Friday, except holidays, and may be published as part of the EIS. Individual respondents may request confidentiality. If you wish to withhold your name or street address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comment. Such requests will be honored to the extent allowed by law. All submissions from organizations and businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be available for public inspection in their entirety.

FOR FURTHER INFORMATION CONTACT: For further information and/or to have your name added to our mailing list, contact Gene Drais, Project Manager for the Ely RMP/EIS, at the above address, telephone (775) 289–1880 or e-mail *gene_drais@nv.blm.gov.*

SUPPLEMENTARY INFORMATION: The BLM's Ely District comprises about 11.4 million acres of public land in all of Lincoln and White Pine counties, and the northeast portion of Nye County, Nevada. Comprehensive land use plan (LUP) evaluations of the Egan Resource Management Plan in 2001 and the Schell and Caliente Management Framework Plans (MFP) in 2002 indicated the need for LUP revisions to provide appropriate management of all BLM programs and to address deteriorating ecological conditions. A comprehensive RMP will be prepared for the entire Ely District. Restoring and maintaining the ecological health of Great Basin landscapes in eastern Nevada must be done in concert with collaborative partners, resource users, and local communities. In addition, the RMP/EIS will provide management direction for future implementation of the Great Basin Restoration Initiative (GBRI) within the Ely District. The restoration effort to implement the GBRI within the Ely District is called the Eastern Nevada Landscape Restoration Project.

Key issues likely to be considered in developing and analyzing alternatives to be addressed within the Ely RMP/EIS include: ecological health; air quality; water resources; cultural and paleontological resources; special status species of flora and fauna; fish and wildlife; wild horses; fire management; livestock grazing; recreation; lands and realty; minerals (including oil, gas, and geothermal); special land use designations (*i.e.* Wild Horse Herd Management Areas, Areas of Critical Environmental Concern); and socioeconomic effects of plan implementation. Based on analysis of these multiple factors, the BLM will select a preferred alternative for implementation in the final RMP, which will provide management direction for all Ely District programs. After gathering public comments on what issues the plan should address, the suggested issues will be placed in one of three categories:

1. Issues to be resolved in the plan;
2. Issues resolved through policy or administrative action; or
3. Issues beyond the scope of this plan.

Rationale will be provided in the plan for each issue placed in category two or three. In addition to these major issues, a number of management questions and concerns will be addressed in the plan. The public is encouraged to help identify these questions and concerns during the scoping phase.

Dated: December 18, 2002.

Gene A. Kolkman,

Field Manager.

[FR Doc. 03–3173 Filed 2–7–03; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–930–1430–ET; NVN–37749]

Notice of Proposed Extension of Withdrawal and Opportunity for Public Meeting; Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management proposes to extend the withdrawal of 10.72 acres of public land in Elko County to protect an administrative site. The withdrawal being extended is Public Land Order No. 6540. This withdrawal will expire on June 25, 2004, unless extended. The land is currently withdrawn from surface entry and mining, but not mineral leasing laws, by Public Land Order No. 6540.

DATES: Comments and requests for a meeting should be received on or before May 12, 2003.

ADDRESSES: Comments and meeting requests should be sent to the Nevada State Director, BLM, 1340 Financial Blvd., P.O. Box 12000, Reno, Nevada 89520.

FOR FURTHER INFORMATION CONTACT: Dennis J. Samuelson, BLM Nevada State Office, 702–861–6532.

SUPPLEMENTARY INFORMATION: On December 10, 2002, a petition was approved allowing the Bureau of Land Management to file an application extend Public Land Order No. 6540 which withdrew 10.72 acres of public land to protect the Elko Field Office Administrative Site (Public Land Order No. 6540, 49 FR 22480, FR Doc. 84–14397, May 30, 1984). An extension, if approved, would continue the withdrawal from all forms of appropriation, including the mining laws, for the following described public land:

Mount Diablo Meridian

T. 34 N., R. 55 E.,
Sec. 1, S½NW¼ (within).

See Public Land Order No. 6540 for a detailed metes and bounds description.

The area described contains 10.72 acres in Elko County.

The BLM proposes to extend the withdrawal an additional 20 years through June 24, 2024. The extension of the withdrawal would protect the Elko Field Office Administrative Site.

This withdrawal extension will be processed in accordance with the regulations set forth in 43 CFR 2300.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal extension may present their views in writing to the Nevada State Director of the Bureau of Land Management.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal extension. All interested persons who desire a public meeting for the purpose of being heard on the proposed extension must submit a written request to the Nevada State Director within 90 days from the date of publication of this notice. Upon determination by the authorized officer that a public meeting will be held, a notice of the time and place will be published in the **Federal Register** and at least one local newspaper 30 days before the scheduled date of the meeting.

Dated: December 18, 2002.

Jim Stobaugh,

Lands Team Lead.

[FR Doc. 03–3167 Filed 2–7–03; 8:45 am]

BILLING CODE 4310–HC–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–486]

In the Matter of Certain Agricultural Tractors, Lawn Tractors, Riding Lawnmowers, and Components Thereof; Notice of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint and motion for temporary relief were filed with the U.S. International Trade Commission on December 27, 2002, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of New Holland North America, Inc. of New Holland, Pennsylvania. The complaint alleges violations of section 337 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain tractors and components thereof by reason of misappropriation of New Holland's trade dress. Supplements to the complaint were filed on January 15 and 16, 2003. The complaint further alleges injury to an industry in the United States as required by subsection (a)(1)(A) of section 337.

The complainant requests that the Commission institute an investigation and, after the investigation, issue a permanent exclusion order and permanent cease and desist orders.

The motion for temporary relief requests that the Commission issue a temporary limited exclusion order and temporary cease and desist orders prohibiting the importation into and the sale within the United States after importation of certain tractors and components thereof that misappropriate New Holland's trade dress during the course of the Commission's investigation.

ADDRESSES: The complaint and motion for temporary relief, except for any confidential information contained therein, are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Room 112, Washington, DC 20436, telephone (202) 205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at (202) 205–2000. General information concerning the Commission may be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS–ON–LINE) at *http://dockets.usitc.gov/eol/public.*

FOR FURTHER INFORMATION CONTACT: David H. Hollander, Jr., Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone (202) 205–2746.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2002). The authority for provisional acceptance of the motion for temporary relief is contained in section 210.58, 19 CFR 210.58.

Scope of Investigation: Having considered the complaint and the motion for temporary relief, the U.S. International Trade Commission, on February 3, 2003, Ordered that—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(A) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain agricultural tractors, lawn tractors, riding lawnmowers, or components thereof by reason of misappropriation of trade dress, the threat or effect of which is to destroy or substantially injure an industry in the United States.

(2) Pursuant to section 210.58 of the Commission's Rules of Practice and Procedure, 19 CFR 210.58, the motion for temporary relief under subsection (e) of section 337 of the Tariff Act of 1930, which was filed with the complaint, be provisionally accepted and referred to the presiding administrative law judge for investigation.

(3) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is—New Holland North America, Inc., 500 Diller Avenue, New Holland, Pennsylvania 17557–9301.

(b) The respondents are the following companies alleged to be in violation of section 337, and are the parties upon which the complaint and the motion for temporary relief are to be served:

Beiqi Futian Automobile Co., Ltd.,
Shayang Road, Shake Town,

Changping District, Beijing 102206, China.

Northwest Products, Inc., 3046 South Star Lake Road, Auburn, Washington 98001–1824.

Cove Equipment, Inc., 2685 Paces Landing Drive, Conyers, Georgia 30012.

(c) David H. Hollander, Jr., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, SW., Room 401–K, Washington, DC 20436, who shall be the Commission investigative attorney, party to this investigation; and

(4) For the investigation and temporary relief proceedings so instituted, the Honorable Sidney Harris is designated as the presiding administrative law judge.

Responses to the complaint, the motion for temporary relief, and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 and 210.59 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13 and 210.59. Pursuant to 19 CFR 201.16(d), 210.13(a), and 210.59, such responses will be considered by the Commission if received not later than 10 days after the date of service by the Commission of the complaint, the motion for temporary relief, and the notice of investigation. Extensions of time for submitting the responses to the complaint, motion for temporary relief, and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint, in the motion for temporary relief, and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint, the motion for temporary relief and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint, the motion for temporary relief, and this notice and to enter both an initial determination and a final determination containing such findings, and may result in the issuance of limited exclusion orders or cease and desist orders or both directed against such respondent.

Issued: February 4, 2003.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 03–3177 Filed 2–7–03; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Comment Request

Action: 60-day notice of information collection under review; affidavit of support under section 213A of the Act, and contract between sponsor and household member; forms I–864.

The Department of Justice, Immigration and Naturalization Service has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for 60 days until April 11, 2003.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Revision of a currently approved collection.

(2) *Title of the Form/Collection:* Affidavit of Support under Section 213A of the Act, Contract Between Sponsor and Household Member, EZ Affidavit of Support under Section 213A of the Act, and Intending Immigrant's Affidavit of Support Exemption.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form I–864, form I–641A, form I–864EZ and form I–864W. Office of Policy and Planning, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. The collection of information is mandated by law for a petitioning relative to submit an affidavit on their relative's behalf. The executed form creates a contract between the sponsor and any entity that provides means-tested public benefits.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 439,500 principal I–864 responses at 6 hours per response; 215,800 I–864A responses at 1.75 minutes per response; 100,000 I–864EZ responses at 2.5 hours per response, and 1,000 I–864W responses at 1 hour per response.

(6) *An estimate of the total public burden (in hours) associated with the collection(s):* 3,265,650 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Regulations and Forms Services Division, Immigration and Naturalization Service, U.S. Department of Justice, Room 4034, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the items(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Office, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Patrick Henry Building, 601 D Street, NW., Suite 1600, Washington, DC 20530.

Dated: February 4, 2003.

Richard A. Sloan,

Department Clearance Officer, Department of Justice, Immigration and Naturalization Service.

[FR Doc. 03–3120 Filed 2–7–03; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Comment Request

ACTION: 60-day notice of information collection under review; Historical

Records Services Request, forms G–1041 and G–1041A.

The Department of Justice, Immigration and Naturalization Service has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for 60 days until April 11, 2003.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* New information collections.

(2) *Title of the Form/Collection:* Genealogy Search Request and Genealogy Records Request.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Forms G–1041 and G–1041A. Historical Records Services Program, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals and households. This form facilitates rapid identification of a particular INS record desired under the Historical Records Services Program.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 10,000 G–1041 responses at 30 minutes (.50 hours) per response; and 6,000 G–1041A responses at 30 minutes (.50 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 8,000 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 4034, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, 1331 Pennsylvania Avenue, NW., Suite 1220, Washington, DC 20530.

Dated: February 4, 2003.

Richard A. Sloan,

Department Clearance Officer, Department of Justice, Immigration and Naturalization Service.

[FR Doc. 03–3121 Filed 2–7–03; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: 30-day notice of information collection under review: application for citizenship and issuance of certificate under section 322; form N–600K.

The Department of Justice, Immigration and Naturalization Service (INS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on May 2, 2002, at 67 FR 22111, allowing for a 30-day public comment period. No public comments were received during this comment period. The OMB approved this collection of information on August 23, 2002.

The INS has revised the collection as a result of the implementation of Public Law 107–273, 21st Century Department of Justice Appropriations Authorization Act, enacted November 2, 2002. One of the immigration related changes made by this legislation is the addition of U.S. citizen grandparents and U.S. citizen legal guardians as eligible to apply for naturalization on behalf of a child born and residing outside the United States pursuant to the section 322 of the Immigration and Nationality Act (INA). Under this amended provision, application by the U.S. citizen grandparent or U.S. citizen legal guardian can be made within five years of the death of a U.S. citizen parent of a child who could otherwise have been the beneficiary of an application pursuant to INA 322. The collection has been revised accordingly.

The purpose of this notice is to allow an additional 30 days for public comments on the revised form. Attached for your review and comment is the revised form. Comments are encouraged and will be accepted until March 12, 2003. This process is conducted in according with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Justice Desk Officer, 725—17th Street, NW., Room 10235, Washington, DC 20530.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Revision of a currently approved information collection.

(2) *Title of the Form/Collection:* Application for Citizenship and Issuance of Certificate under Section 322.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form N–600K, Immigration Services Division, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or Households. This form provides an organized framework for establishing the authenticity of an applicant's eligibility and is essential for providing prompt, consistent and correct processing of such applications for citizenship under section 322 of the Act.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 1,500 responses at 1 hour and 35 minutes (1.583 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 2,374 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Regulations and Forms Services Division, Immigration and Naturalization Service, U.S. Department of Justice, 425 I Street, NW., Room 4034, Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Patrick Henry Building, 601 D Street, NW., Ste. 1600, Washington, DC 20530.

Dated: February 4, 2003.

Richard A. Sloan,

Department Clearance Officer, Department of Justice, Immigration and Naturalization Service.

[FR Doc. 03–3122 Filed 2–7–03; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6861]

State of Alaska Commercial Fisheries Entry Commission Permit #57729N, Naknek, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit #57729N, Naknek, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 29th day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–3188 Filed 2–7–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6862]

State of Alaska Commercial Fisheries Entry Commission Permit #57554C, Naknek, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit #57554C, Naknek, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 29th day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–3189 Filed 2–7–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6863]

State of Alaska Commercial Fisheries Entry Commission Permit #61224S, Naknek, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit #61224S, Naknek, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 29th day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–3190 Filed 2–7–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6865]

State of Alaska Commercial Fisheries Entry Commission Permit #55066S, Naknek, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement

Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit #55066S, Naknek, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 29th day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–3191 Filed 2–7–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6866]

State of Alaska Commercial Fisheries Entry Commission Permit #63111I, Naknek, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit #63111I, Naknek, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 29th day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–3192 Filed 2–7–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6868]

State of Alaska Commercial Fisheries Entry Commission Permit #65037W, Naknek, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit #65037W, Naknek, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 29th day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–3193 Filed 2–7–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6870]

State of Alaska Commercial Fisheries Entry Commission Permit #61342N, Naknek, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit #61342N, Naknek, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 29th day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–3194 Filed 2–7–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6871]

State of Alaska Commercial Fisheries Entry Commission Permit #64862Z, Naknek, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit #64862Z, Naknek, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 29th day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–3195 Filed 2–7–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6872]

State of Alaska Commercial Fisheries Entry Commission Permit #62002U, Naknek, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement

Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit #62002U, Naknek, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 29th day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–3196 Filed 2–7–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6698]

State of Alaska Commercial Fisheries Entry Commission Permit #55443G, Naknek, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit #55443G, Naknek, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 29th day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–3197 Filed 2–7–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6699]

State of Alaska Commercial Fisheries Entry Commission Permit #64185L, Dillingham, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit #64185L, Dillingham, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 11th day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–3198 Filed 2–7–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6700]

State of Alaska Commercial Fisheries Entry Commission Permit #64185L, Dillingham, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit #64185L, Dillingham, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 29th day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–3199 Filed 2–7–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6702]

State of Alaska Commercial Fisheries Entry Commission Permit #61305Z, Dillingham, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit #61305Z, Dillingham, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 29th day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–3200 Filed 2–7–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6701]

State of Alaska Commercial Fisheries Entry Commission Permit #65612Q, Dillingham, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement

Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit #65612Q, Dillingham, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 29th day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–3201 Filed 2–7–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6703]

State of Alaska Commercial Fisheries Entry Commission Permit #64808Q, Dillingham, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit #64808Q, Dillingham, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 29th day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–3202 Filed 2–7–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6853]

State of Alaska Commercial Fisheries Entry Commission Permit #59829U, Manokotak, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit #59829U, Manokotak, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 29th day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–3203 Filed 2–7–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6857]

State of Alaska Commercial Fisheries Entry Commission Permit #59986N, Manokotak, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit #59986N, Manokotak, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 29th day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–3204 Filed 2–7–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6858]

State of Alaska Commercial Fisheries Entry Commission Permit #55654N, Manokotak, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit #55654N, Manokotak, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 29th day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–3205 Filed 2–7–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6859]

State of Alaska Commercial Fisheries Entry Commission Permit #57411A, Manokotak, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement

Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit #57411A, Manokotak, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 29th day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–3206 Filed 2–7–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6860]

State of Alaska Commercial Fisheries Entry Commission Permit #63413S, Naknek, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit #63413S, Naknek, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 29th day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–3207 Filed 2–7–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6714]

State of Alaska Commercial Fisheries Entry Commission Permit #61264K, Dillingham, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit #61264K, Dillingham, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 29th day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–3208 Filed 2–7–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6715]

State of Alaska Commercial Fisheries Entry Commission Permit #56498G, Dillingham, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit #56498G, Dillingham, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 29th day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–3209 Filed 2–7–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6717]

State of Alaska Commercial Fisheries Entry Commission Permit #66951P, Dillingham, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit #66951P, Dillingham, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 29th day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–3210 Filed 2–7–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6718]

State of Alaska Commercial Fisheries Entry Commission Permit #56838E, Dillingham, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement

Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit #56838E, Dillingham, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 29th day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–3211 Filed 2–7–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6719]

State of Alaska Commercial Fisheries Entry Commission Permit #56728W, Dillingham, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit #56728W, Dillingham, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 29th day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–3212 Filed 2–7–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6721]

State of Alaska Commercial Fisheries Entry Commission Permit #64428C, Dillingham, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit #64428C, Dillingham, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 29th day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–3213 Filed 2–7–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6722]

State of Alaska Commercial Fisheries Entry Commission Permit #64887H, Dillingham, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit #64887H, Dillingham, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 29th day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–3214 Filed 2–7–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6723]

State of Alaska Commercial Fisheries Entry Commission Permit #61445Z, Dillingham, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit #61445Z, Dillingham, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 29th day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–3215 Filed 2–7–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6725]

State of Alaska Commercial Fisheries Entry Commission Permit #60635U, Dillingham, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement

Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit #60635U, Dillingham, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 29th day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–3216 Filed 2–7–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6727]

State of Alaska Commercial Fisheries Entry Commission Permit #61444H, Dillingham, AK; Notice of Termination of Investigation

Pursuant to title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), subchapter D, chapter 2, title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002, in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit #61444H, Dillingham, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 29th day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–3217 Filed 2–7–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6729]

State of Alaska Commercial Fisheries Entry Commission Permit #66925Q, Dillingham, AK; Notice of Termination of Investigation

Pursuant to title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), subchapter D, chapter 2, title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002, in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit #66925Q, Dillingham, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 29th day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–3218 Filed 2–7–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6930]

State of Alaska Commercial Fisheries Entry Commission Permit #56944P, New Stuyahok, AK; Notice of Termination of Investigation

Pursuant to title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), subchapter D, chapter 2, title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002, in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit #56944P, New Stuyahok, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 29th day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–3219 Filed 2–7–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6897]

State of Alaska Commercial Fisheries Entry Commission Permit #56939F, Naknek, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), subchapter D, chapter 2, title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002, in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit #56939F, Naknek, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 29th day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–3220 Filed 2–7–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6896]

State of Alaska Commercial Fisheries Entry Commission Permit #56058F, Naknek, AK; Notice of Termination of Investigation

Pursuant to title V of the North American Free Trade Agreement

Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), subchapter D, chapter 2, title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002, in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit #56058F, Naknek, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 29th day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–3221 Filed 2–7–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6736]

State of Alaska Commercial Fisheries Entry Commission Permit #61137K, Egegik, AK; Notice of Termination of Investigation

Pursuant to title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), subchapter D, chapter 2, title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002, in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit #61137K, Egegik, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 29th day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–3222 Filed 2–7–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6734]

State of Alaska Commercial Fisheries Entry Commission Permit #58718W, Egegik, AK; Notice of Termination of Investigation

Pursuant to title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA-TAA and in accordance with section 250(a), subchapter D, chapter 2, title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002, in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit #58718W, Egegik, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 29th day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–3223 Filed 2–7–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6733]

State of Alaska Commercial Fisheries Entry Commission Permit #59807O, Egegik, AK; Notice of Termination of Investigation

Pursuant to title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), subchapter D, chapter 2, title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002, in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit #59807O, Egegik, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 29th day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–3224 Filed 2–7–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6732]

State of Alaska Commercial Fisheries Entry Commission Permit #59340P, Egegik, AK; Notice of Termination of Investigation

Pursuant to title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), subchapter D, chapter 2, title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002, in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit #59340P, Egegik, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 29th day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–3225 Filed 2–7–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6731]

State of Alaska Commercial Fisheries Entry Commission Permit #56145N, Egegik, AK; Notice of Termination of Investigation

Pursuant to title V of the North American Free Trade Agreement

Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), subchapter D, chapter 2, title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002, in response to a petition filed by the Bristol-Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit #56145N, Egegik, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 29th day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–3226 Filed 2–7–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6730]

State of Alaska Commercial Fisheries Entry Commission Permit #61321A, Dillingham, AK; Notice of Termination of Investigation

Pursuant to title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), subchapter D, chapter 2, title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002, in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit #61321A, Dillingham, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 29th day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–3227 Filed 2–7–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

Notice of Meeting

Notice is hereby given of the date and location of an informal meeting to discuss the proposed changes to the federal sector recordkeeping requirements from 29 CFR part 1960, subpart I, to portions of 29 CFR part 1904 regulations, by reference. The meeting will be held on February 25, 2003, starting at 9 a.m., in Room N–4437 B/C/D of the Department of Labor Frances Perkins Building, 200 Constitution Avenue, NW., Washington, DC 20210. The meeting will be open to the public. All persons wishing to attend this meeting must exhibit photo identification to security personnel.

Agenda items will include:

1. Reason for the proposed change.
2. Description of the change.
3. Impact of the change.
4. Implementation of the change.

Anyone wishing to make an oral presentation should notify the Office of Federal Agency Programs by the close of business February 20, 2003. The request should state the amount of time desired, the capacity in which the person will appear, and a brief outline of the content of the presentation. Persons who request the opportunity to speak may be allowed to speak as time permits. Individuals with disabilities who wish to attend the meeting should contact Tom Marple at the address indicated below, if special accommodations are needed.

For additional information, please contact Thomas K. Marple, Director, Office of Federal Agency Programs, U.S. Department of Labor, Occupational Safety and Health Administration, Room N–3622, 200 Constitution Avenue, NW., Washington, DC 20210, telephone number (202) 693–2122. An official record of the meeting will be available for public inspection at the Office of Federal Agency Programs.

Signed at Washington, DC, this 3rd day of February, 2003.

John L. Henshaw,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 03–3186 Filed 2–7–03; 8:45 am]

BILLING CODE 4510–26–M

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of pending NRC action to submit an information collection request to OMB and solicitation of public comment.

SUMMARY: The NRC is preparing a submittal to OMB for review of continued approval of information collections under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Information pertaining to the requirement to be submitted:

1. *The title of the information collection:* 10 CFR part 140, "Financial Protection Requirements and Indemnity Agreements".

2. *Current OMB approval number:* 3150–0039.

3. *How often the collection is required:* As necessary in order for NRC to meet its responsibilities called for in Sections 170 and 193 of the Atomic Energy Act of 1954, as amended (the Act).

4. *Who is required or asked to report:* Licensees authorized to operate reactor facilities in accordance with 10 CFR part 50 and licensees authorized to construct and operate a uranium enrichment facility in accordance with 10 CFR parts 40 and 70.

5. *The number of annual respondents:* 91.

6. *The number of hours needed annually to complete the requirement or request:* 1,382.

7. *Abstract:* 10 CFR part 140 of the NRC's regulations specifies information required to be submitted by licensees to enable the NRC to assess (a) the financial protection required of licensees and for the indemnification and limitation of liability of certain licensees and other persons pursuant to section 170 of the Atomic Energy Act of 1954, as amended, and (b) the liability insurance required of uranium enrichment facility licensees pursuant to section 193 of the Atomic Energy Act of 1954, amended.

Submit, by April 11, 2003, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the burden estimate accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the draft supporting statement may be viewed free of charge at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room O–1 F23, Rockville, MD 20852. OMB clearance requests are available at the NRC worldwide Web site: *http://www.nrc.gov/public-involve/doc-comment/omb/index.html*. The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions about the information collection requirements may be directed to the NRC Clearance Officer, Brenda Jo. Shelton, U.S. Nuclear Regulatory Commission, T–6 E6, Washington, DC 20555–0001, by telephone at (301) 415–7233, or by Internet electronic mail at *INFOCOLLECTS@NRC.GOV*.

Dated at Rockville, Maryland, this 3rd day of February 2003.

For the Nuclear Regulatory Commission.

Brenda Jo. Shelton,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 03–3233 Filed 2–7–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–528, 50–529, AND 50–530]

Arizona Public Service Co.; Notice of Withdrawal of Application for Approval of Transfer of Facility Operating Licenses and Conforming Amendments

The U.S. Nuclear Regulatory Commission (the Commission) has permitted the withdrawal of the application dated April 15, 2002, as supplemented by letter dated July 11, 2002, filed by Arizona Public Service Company (APS) and Pinnacle West Energy Corporation (PWE), which had requested approval of the transfer of the Facility Operating License Nos. NPF–41, NPF–51, and NPF–74 for the Palo Verde Nuclear Generating Station (Palo Verde), Units 1, 2, and 3, to the extent held by APS, to PWE, in connection with a proposed restructuring of APS. The application also requested approval, pursuant to 10 CFR 50.90, of proposed conforming amendments. Palo Verde, Units 1, 2, and 3, are located in Maricopa County, Arizona.

The Commission had previously issued a Notice of Consideration of Approval of Transfer of Facility Operating Licenses and Conforming Amendments, and Opportunity for a Hearing, which was published in the **Federal Register** on July 29, 2002 (67 FR 49044). However, by letter dated December 23, 2002, APS and PWE withdrew the application.

For further details with respect to this action, see the application dated April 15, 2002, as supplemented by letter dated July 11, 2002, and the licensee's letter dated December 23, 2002, which withdrew the application. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams/html*. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, or (301) 415–4737 or by email to *pdr@nrc.gov*.

Dated at Rockville, Maryland, this 4th day of February 2003.

For the Nuclear Regulatory Commission

Jack Donohew,

Senior Project Manager, Section 2, Project Directorate IV, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 03–3232 Filed 2–7–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket 72–30]

Maine Yankee Atomic Power Company, Independent Spent Fuel Storage Installation; Issuance of Environmental Assessment and Finding of No Significant Impact for a Proposed Exemption

The U.S. Nuclear Regulatory Commission (NRC or Commission) is considering issuance of an exemption to Maine Yankee Atomic Power Company (MYAPC or licensee), pursuant to 10 CFR 72.7, from specific provisions of 10 CFR 72.212(a)(2), 72.212(b)(2)(i), 72.212(b)(7), and 72.214. The licensee is planning to use the NAC–UMS Storage System to store spent nuclear fuel from the decommissioning reactor. The requested exemption would allow MYAPC to deviate from requirements of the NAC–UMS Certificate of Compliance #1015 (CoC or Certificate), Appendix A, Limiting Condition for Operation (LCO) Items 3.1.1.1, 3.1.1.2, 3.1.4.1, and 3.1.4.2. Specifically, the exemption would allow MYAPC to increase: (1) Vacuum drying time limits based on canister heat load; (2) vacuum drying time limits after 24 hours of in-pool or forced air cooling; (3) time duration limit from completion of canister helium backfill through completion of canister transfer to the concrete cask; and (4) time duration limit from completion of in-pool or forced air cooling through completion of the canister transfer to the concrete cask.

By letter dated January 15, 2002, the designer of the NAC-UMS system, NAC International, requested an amendment to CoC #1015, that seeks, among several other changes, to increase the vacuum drying time limits. That request was supplemented on November 27, 2002. The information provided in the amendment request, as supplemented, is relevant to the exemption request by MYAPC and provides the safety basis for the time limits increase.

Environmental Assessment (EA)

Identification of Proposed Action

By letter dated November 7, 2002, as supplemented on December 19, 2002, MYAPC requested an exemption from the requirements of 10 CFR 72.212(a)(2), 72.212(b)(2)(i), 72.212(b)(7), and 10 CFR 72.214 to deviate from the requirements in CoC No. 1015, Appendix A, LCO Items 3.1.1.1, 3.1.1.2, 3.1.4.1, and 3.1.4.2. MYAPC has informed the NRC of its plans to store spent nuclear fuel under the general licensing provisions of 10 CFR part 72. The licensee has begun loading spent fuel into the NAC-UMS Storage System at an Independent Spent Fuel Storage Installation (ISFSI) located at the Maine Yankee Atomic Power Station in Wiscasset, Maine.

The current requirements in CoC No. 1015, Appendix A, LCO Items 3.1.1.1, 3.1.1.2, 3.1.4.1, and 3.1.4.2 establish time limits for vacuum drying operations as follows:

(1) LCO 3.1.1.1 limits the vacuum drying time for the fuel canister based on heat load per canister to the following:

(a) 34 hours for heat loads less than or equal to 8 kilowatts (kW).

(b) 30 hours for heat loads greater than 8 kW and less than or equal to 11 kW.

(c) 23 hours for heat loads greater than 11 kW and less than or equal to 14 kW.

(d) 19 hours for heat loads greater than 14 kW and less than or equal to 17.6 kW.

(2) LCO 3.1.1.2 limits canister vacuum drying time after the end of 24 hours of in-pool or of forced air cooling to the following:

(a) 14 hours for heat loads less than or equal to 14 kW.

(b) 10 hours for heat loads greater than 14 kW and less than or equal to 20 kW.

(3) LCO 3.1.4.1 limits the time duration from completion of backfilling the canister with helium through completion of canister transfer to the concrete cask to 48 hours for canister heat loads greater than 14 kW and less than or equal to 17.6 kW.

(4) LCO 3.1.4.2 limits the time duration from completion of in-pool or forced air cooling through completion of canister transfer to the concrete cask to 20 hours for canister heat loads greater than 14 kW and less than or equal to 17.6 kW.

By exempting MYAPC from 10 CFR 72.212(a)(2), 72.212(b)(2)(i), 72.212(b)(7), and 10 CFR 72.214 for this request, MYAPC will be authorized to change the above mentioned time limits as follows:

(1) For LCO 3.1.1.1, the time limits per canister will be increased as follows:

(a) 103 hours for heat loads less than or equal to 8 kW.

(b) 52 hours for heat loads greater than 8 kW and less than or equal to 11 kW.

(c) 40 hours for heat loads greater than 11 kW and less than or equal to 14 kW.

(d) 33 hours for heat loads greater than 14 kW and less than or equal to 17.6 kW.

(2) For LCO 3.1.1.2, the time limits per canister will be increased as follows:

(a) 78 hours for heat loads less than or equal to 8 kW.

(b) 27 hours for heat loads greater than 8 kW and less than or equal to 11 kW.

(c) 16 hours for heat loads greater than 11 kW and less than or equal to 14 kW.

(d) 9 hours for heat loads greater than 14 kW and less than or equal to 17.6 kW.

(3) For LCO 3.1.4.1, the time limit for canister heat loads less than or equal to 17.6 kW, will be increased to 600 hours.

(4) For LCO 3.1.4.2, the time limit for canister heat loads less than or equal to 17.6 kW, will be increased to 600 hours.

The proposed action before the Commission is whether to grant this exemption under the provisions of 10 CFR 72.7. The NRC staff has reviewed the exemption request and determined that the increased LCO time limits for vacuum drying operations are consistent with the safety analyses previously reviewed for the NAC–UMS system, and would have no impact on the design basis and would not be inimical to public health and safety.

Need for the Proposed Action

At the time of the exemption request, MYAPC had loaded approximately seven casks. During these cask loadings, MYAPC discovered that the existing NAC–UMS Technical Specification (TS) limits for vacuum drying and subsequent cool down required the licensee to repeatedly enter into the required actions of the TS. Since successful vacuum drying could not be accomplished within the TS limits, MYAPC was required to take the LCO remedial actions. Specifically, the licensee was required to perform in-pool or forced-air cooling of the canister for a 24 hour period if the canister could not be vacuum dried within the prescribed times. The TS further limits subsequent drying times after this cool-down period.

Consequently, the licensee found it difficult to achieve sufficient vacuum drying on the second drying attempt, thus requiring another cool-down period. The repeated entries into vacuum drying and cool-down periods added to the processing time and to the occupational exposures. The licensee estimated that processing times for each canister was increased by a minimum of 60 hours.

The licensee calculated that the reduction in radiological exposure to the operators, fuel handlers, and security personnel involved in handling, preparing and transferring the canisters would be approximately 5 rem during the remainder of the spent fuel loading campaign. This reduction is a significant percentage of the overall station dose for the entire decommissioning project. The expected savings of 5 rem represents nearly 8% of the 2002 total station dose and will likely represent an even greater percentage of the 2003 station dose.

Environmental Impacts of the Proposed Action

The licensee requested the exemption to increase current vacuum drying time limits specified in CoC No. 1015. The NRC staff performed a safety evaluation of the proposed exemption. Staff reviewed the analysis provided in the NAC–UMS amendment application addressing spent fuel cladding integrity and thermal performance of canisters for increased vacuum drying times. The safety evaluation performed by the staff concludes that the NRC has reasonable assurance that increasing the vacuum drying time limits has no impact on off-site doses, results in a dose savings to workers, and meets the requirements of 10 CFR 72.104, 10 CFR 72.106 and 10 CFR 20.1301, and is therefore acceptable.

Therefore, the environmental impact of increasing vacuum drying time limits is no greater than the environmental impact already assessed in the initial rulemaking for the NAC–UMS storage system (65 FR 62581, dated October 19, 2000).

The proposed action will not increase the probability or consequences of the analyzed accidents, no changes are being made to the types of effluents that may be released offsite, and there is no increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action. Therefore, the staff has determined that there is no reduction in the ability of the NAC–UMS system to perform its safety function, nor significant environmental impacts, as a result of increasing vacuum drying time limits.

Alternative to the Proposed Action

Since there is no significant environment impact associated with the proposed action, alternatives with equal or greater environmental impact are not evaluated. The alternative to the proposed action would be to deny approval of the exemption. Denial of the exemption request will have the same environmental impact, but would likely result in a dose increase to workers involved in cask loading activities.

Agencies and Persons Consulted

This exemption request was discussed with Ms. Paula Craighead, State Nuclear Safety Advisor for the State of Maine, on January 28, 2003. Ms. Craighead sent an e-mail to NRC on January 31, 2003, identifying the State's concerns with the exemption request. The safety concerns raised by Ms. Craighead were addressed by NRC staff in the evaluation of the exemption request and did not provide a basis to deny the exemption request.

Finding of No Significant Impact

The environmental impacts of the proposed action have been reviewed in accordance with the requirements set forth in 10 CFR part 51. Based upon the foregoing EA, the Commission finds that the proposed action of granting the exemption from 10 CFR 72.212(a)(2), 72.212(b)(2)(i), 72.212 (b)(7), and 10 CFR 72.214 and allowing MYAPC to increase the vacuum drying time limits for loading spent fuel in the NAC–UMS storage system will not significantly impact the quality of the human environment. Accordingly, the Commission has determined that an

environmental impact statement for the proposed exemption is not warranted.

The request for exemption was docketed under 10 CFR Part 72, Docket 72–30. For further details with respect to this action, see the exemption request dated November 7, 2002. The NRC maintains an Agencywide Documents Access and Management System (ADAMS), which provides text and image files of NRC's public documents. These documents may be accessed through the NRC's Public Electronic Reading Room on the Internet at *http://www.nrc.gov/reading-rm/adams.html*. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room Reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov*.

Dated at Rockville, Maryland, this 31st day of January, 2003.

For the Nuclear Regulatory Commission.

Stephen C. O'Connor,

Sr. Project Manager, Spent Fuel Project Office, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 03–3234 Filed 2–7–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 40–8968–ML–REN, ASLBP No. 03–809–01–ML–REN]

Hydro Resources, Inc.; Designation of Presiding Officer

Pursuant to delegation by the Commission, *see* 37 FR 28,710 (Dec. 29, 1972), and the Commission's regulations, *see* 10 CFR 2.1201, 2.1207, notice is hereby given that (1) a single member of the Atomic Safety and Licensing Board Panel is designated as Presiding Officer to rule on petitions for leave to intervene and/or requests for hearing; and (2) upon making the requisite findings in accordance with 10 CFR 2.1205(h), the Presiding Officer will conduct an adjudicatory hearing in the following proceeding: Hydro Resources, Inc., Crownpoint Uranium Project, Crownpoint, New Mexico, (Materials License Renewal).

The hearing will be conducted pursuant to 10 CFR part 2, subpart L, of the Commission's Regulations, "Informal Hearing Procedures for Adjudications in Materials and Operator Licensing Proceedings." This proceeding concerns a request for hearing and petition for leave to intervene submitted by Bonnie Benally Yazzie on January 14, 2003, in response to a notice of timely receipt and consideration of an application of Hydro Resources, Inc., for renewal of its 10 CFR part 40 source materials license for uranium production at the Crownpoint Uranium Project, Crownpoint, New Mexico. The notice of opportunity to provide comments and to request a hearing was published in the **Federal Register** on December 16, 2002 (67 FR 77,084).

The Presiding Officer in this proceeding is Administrative Judge Thomas S. Moore. Pursuant to the provisions of 10 CFR 2.722, 2.1209, Administrative Judge Thomas D. Murphy has been appointed to assist the Presiding Officer in taking evidence and in preparing a suitable record for review.

All correspondence, documents, and other materials shall be filed with Judges Moore and Murphy in accordance with 10 CFR 2.1203. Their addresses are:

Thomas S. Moore, Administrative Judge, Presiding Officer, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

Thomas D. Murphy, Administrative Judge, Special Assistant, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

Issued at Rockville, Maryland, this 4th day of February 2003.

G. Paul Bollwerk, III,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 03–3231 Filed 2–7–03; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 25924; 812–12886]

Van Kampen Investment Advisory Corp., et al.; Notice of Application

February 3, 2003.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of an application under section 6(c) of the Investment Company Act of 1940 (the "Act") for an exemption from sections 18(c) and 18(i) of the Act, under sections 6(c) and 23(c)(3) of the Act for an exemption from rule 23c–3 under the Act, and pursuant to section 17(d) of the Act and rule 17d–1 under the Act.

SUMMARY OF APPLICATION: Applicants request an order to permit certain registered closed-end management companies to issue multiple classes of shares and to impose asset-based distribution fees and early withdrawal charges.

APPLICANTS: Van Kampen Prime Rate Income Trust ("Prime Rate") and Van Kampen Senior Floating Rate Fund ("Senior Floating Rate") (each a "Fund" and collectively, the "Funds"), Van Kampen Investment Advisory Corp. ("Adviser"), Van Kampen Funds Inc. ("Distributor") and Van Kampen Investments Inc. ("Van Kampen Investments").

FILING DATES: The application was filed on September 25, 2002 and amended on January 31, 2003.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on February 28, 2003, and should be accompanied by proof of service on the applicants, in the form of an affidavit, or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Commission, 450 Fifth Street, NW., Washington, DC 20549–0609; Applicants, c/o A. Thomas Smith III, Van Kampen Investments Inc., 1 Parkview Plaza, Oakbrook Terrace, IL 60181–5555.

FOR FURTHER INFORMATION CONTACT: Jean E. Minarick, Senior Counsel, at (202) 942–0527 or Nadya B. Roytblat, Assistant Director, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549–0102 (telephone (202) 942–8090).

Applicants' Representations

1. The Funds are closed-end management investment companies registered under the Act and organized as Massachusetts business trusts. The Adviser is registered as an investment adviser under the Investment Advisers Act of 1940 and serves as investment adviser to the Funds. The Distributor, a

broker-dealer registered under the Securities Exchange Act of 1934 ("1934 Act"), distributes each Fund's shares. The Adviser and the Distributor are both wholly-owned subsidiaries of Van Kampen Investments. The Distributor and Van Kampen Investments act as administrator to Prime Rate and Senior Floating Rate, respectively. Van Kampen Investments is an indirect, wholly-owned subsidiary of Morgan Stanley.

2. Applicants request that the order also apply to any other registered closed-end management investment company that may be organized in the future for which the Adviser, the Distributor or Van Kampen Investments or any entity controlling, controlled by, or under common control with the Adviser, the Distributor or Van Kampen Investments acts as investment adviser, principal underwriter or administrator and which provides periodic liquidity with respect to its shares pursuant to rule 13e–4 under the 1934 Act or operates as an interval fund pursuant to rule 23c–3 under the Act.[1]

3. The investment objective of each of the Funds is to provide a high level of current income, consistent with the preservation of capital. The Funds invest primarily in adjustable rate senior loans. In normal market conditions, each Fund plans to invest at least 80% of its total assets in adjustable senior rate loans. Each Fund may also invest up to 20% of its total assets in any combination of the following: (a) warrants, equity securities and junior debt securities, in each case that are acquired in connection with the acquisition, restructuring or disposition of a senior loan, and (b) high quality short-term debt securities.

4. The Funds continuously offer their shares to the public at net asset value. Shares of Prime Rate and shares of Senior Floating Rate are currently sold without a front-end sales charge, although they are subject to early withdrawal charges ("EWCs") payable to the Distributor if the shareholder redeems his or her shares during the first five years or first year, respectively, after purchasing the shares. The Funds' shares are not offered or traded in the secondary market and are not listed on any exchange or quoted on any quotation medium. The Funds consider each quarter to offer to repurchase a portion of their outstanding shares at their then current net asset value pursuant to rule 13e–4 under the 1934 Act. The Funds may in the future operate as "interval funds" pursuant to rule 23c–3 under the Act and make periodic repurchase offers to their shareholders.

5. The Funds seek the flexibility to be structured as multiple class funds and currently intend to offer three different classes of shares. The Funds may offer shares at net asset value, plus a front-end sales charge ("Class A Shares"). The Funds may issue shares similar to certain classes of shares issued by other funds in the Van Kampen group of investment companies in that such shares are offered at net asset value with no front-end sales charge and are subject to a deferred sales charge. Prime Rate currently offers shares at net asset value without a sales charge, but subject to an EWC on shares that are repurchased by Prime Rate within five years of the date of purchase ("Class B Shares"). Senior Floating Rate currently offers shares at net asset value without a sales charge, but subject to an EWC on shares that are repurchased within one year of the date of purchase and an annual asset-based service fee of up to 0.25% of average daily net assets ("Class C Shares"). Prime Rate may add a class of shares, designated as Class C Shares, similar to the Class C Shares of Senior Floating Rate, and Senior Floating Rate may add a class of shares, designated as Class B Shares, similar to Class B Shares of Prime Rate. The Funds' shares may become subject to an annual asset-based distribution fee of up to 0.75% of average daily net assets, as well as to an annual asset-based service fee of up to 0.25% of average daily net assets. The Funds may in the future offer additional classes of shares with a front-end sales charge, an EWC and/or asset-based service or distribution fees.

6. Applicants represent that any asset-based service and distribution fees will comply with the provisions of rule 2830(d) of the Conduct Rules of the National Association of Securities Dealers, Inc. ("NASD Sales Charge Rule"). Applicants also represent that each Fund will disclose in its prospectus, the fees, expenses and other characteristics of each class of shares offered for sale by the prospectus, as is required for open-end multiple class funds under Form N–1A.

7. Each Fund will allocate all expenses incurred by it among the various classes of shares based on the net assets of the Fund attributable to each class, except that the net asset value and expenses of each class will reflect distribution fees, service fees, and any other incremental expenses of that class. Expenses of a Fund allocated to a particular class of shares will be borne on a *pro rata* basis by each outstanding share of that class. Each Fund may create additional classes of shares in the future that may have different terms from Class B and Class C shares. Applicants state that each Fund will comply with the provisions of rule 18f–3 under the Act as if it were an open-end investment company.

8. Each Fund may waive the EWC for certain categories of shareholders or transactions to be established from time to time. With respect to any waiver of, scheduled variation in, or elimination of the EWC, each Fund will comply with rule 22d–1 under the Act as if the Fund were an open-end investment company.

9. Each Fund may offer its shareholders an exchange feature under which shareholders of the Fund may, during the Fund's periodic repurchase periods, exchange their shares for shares of the same class of other registered open-end investment companies or registered closed-end investment companies in the Van Kampen group of investment companies. If either Fund operates pursuant to rule 23c–3, Fund shares so exchanged will count as part of the repurchase offer amount as specified in rule 23c–3 under the Act. Any exchange option will comply with rule 11a–3 under the Act as if the Fund were an open-end investment company subject to that rule. In complying with rule 11a–3, each Fund will treat the EWCs as if they were a contingent deferred sales charge ("CDSC").

Applicants' Legal Analysis

Multiple Classes of Shares

1. Section 18(c) of the Act provides, in relevant part, that a closed-end investment company may not issue or sell any senior security if, immediately thereafter, the company has outstanding more than one class of senior security. Applicants state that the creation of multiple classes of shares of the Funds may be prohibited by section 18(c).

2. Section 18(i) of the Act provides that each share of stock issued by a registered management investment company will be a voting stock and have equal voting rights with every other outstanding voting stock. Applicants state that multiple classes of shares of the Funds may violate section 18(i) of the Act because each class would be entitled to exclusive voting rights with respect to matters solely related to that class.

3. Section 6(c) of the Act provides that the Commission may exempt any person, security or transaction or any class or classes of persons, securities or transactions from any provision of the Act, or from any rule thereunder, if and

[1] Any registered closed-end management investment company relying on this relief in the future will do so in a manner consistent with the terms and conditions of the application. Applicants represent that each entity presently intending to rely on the requested relief is listed as an applicant.

to the extent such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants request an exemption under section 6(c) from sections 18(c) and 18(i) to permit the Funds to issue multiple classes of shares.

4. Applicants submit that the proposed allocation of expenses and voting rights among multiple classes of the Funds is equitable and will not discriminate against any group or class of shareholders. Applicants submit that the proposed arrangements would permit the Funds to facilitate the distribution of their securities and provide investors with a broader choice of shareholder services. Applicants assert that their proposal does not raise the concerns underlying section 18 of the Act to any greater degree than open-end investment companies' multiple class structures that are permitted by rule 18f–3 under the Act. Applicants state that each Fund will comply with the provisions of rule 18f–3 as if it were an open-end investment company.

Early Withdrawal Charges

1. Section 23(c) of the Act provides, in relevant part, that no registered closed-end investment company will purchase securities of which it is the issuer, except: (a) On a securities exchange or other open market; (b) pursuant to tenders, after reasonable opportunity to submit tenders given to all holders of securities of the class to be purchased; or (c) under other circumstances as the Commission may permit by rules and regulations or orders for the protection of investors.

2. Rule 23c–3 under the Act permits a registered closed-end investment company (an "interval fund") to make repurchase offers of between five and twenty-five percent of its outstanding shares at net asset value at periodic intervals pursuant to a fundamental policy of the interval fund. Rule 23c–3(b)(1) under the Act provides that an interval fund may deduct from repurchase proceeds only a repurchase fee, not to exceed two percent of the proceeds, that is reasonably intended to compensate the fund for expenses directly related to the repurchase.

3. Section 23(c)(3) provides that the Commission may issue an order that would permit a closed-end investment company to repurchase its shares in circumstances in which the repurchase is made in a manner or on a basis that does not unfairly discriminate against any holders of the class or classes of securities to be purchased. As noted above, section 6(c) provides that the Commission may exempt any person, security or transaction from any provision of the Act, if and to the extent that the exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Because the Funds may operate in the future pursuant to rule 23c–3 under the Act, Applicants request relief under sections 6(c) and 23(c) from rule 23c–3 to permit them to impose EWCs on shares of the Funds submitted for repurchase that have been held for less than a specified period.

4. Applicants believe that the requested relief meets the standards of sections 6(c) and 23(c)(3). Rule 6c–10 under the Act permits open-end investment companies to impose CDSCs, subject to certain conditions. Applicants state that EWCs are functionally similar to CDSCs imposed by open-end investment companies under rule 6c–10. Applicants state that EWCs may be necessary for the Distributor to recover distribution costs. Applicants will comply with rule 6c–10 as if that rule applied to closed-end investment companies. The Funds also will disclose EWCs in accordance with the requirements of Form N–1A concerning CDSCs. Applicants further state that the Funds will apply the EWC (and any waivers or scheduled variations of the EWC) uniformly to all shareholders in a given class and consistently with the requirements of rule 22d–1 under the Act.

Asset-Based Distribution Fees

1. Section 17(d) of the Act and rule 17d–1 under the Act prohibit an affiliated person of a registered investment company or an affiliated person of such person, acting as principal, from participating in or effecting any transaction in connection with any joint enterprise or joint arrangement in which the investment company participates unless the Commission issues an order permitting the transaction. In reviewing applications submitted under section 17(d) and rule 17d–1, the Commission considers whether the participation of the investment company in a joint enterprise or joint arrangement is consistent with the provisions, policies and purposes of the Act, and the extent to which the participation is on a basis different from or less advantageous than that of other participants.

2. Rule 17d–3 under the Act provides an exemption from section 17(d) and rule 17d–1 to permit open-end investment companies to enter into distribution arrangements pursuant to rule 12b–1 under the Act. Applicants request an order under section 17(d) and rule 17d–1 under the Act to permit the Funds to impose asset-based distribution fees. Applicants have agreed to comply with rules 12b–1 and 17d–3 as if those rules applied to closed-end investment companies.

Applicants' Condition

Applicants agree that any order granting the requested relief will be subject to the following condition:

Applicants will comply with the provisions of rules 6c–10, 11a–3, 12b–1, 17d–3, 18f–3, and 22d–1 under the Act, as amended from time to time, as if those rules applied to closed-end management investment companies, and will comply with the NASD Sales Charge Rule, as amended from time to time.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–3118 Filed 2–7–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meetings during the week of February 10, 2003: Closed Meetings will be held on Tuesday, February 11, 2003 at 10 a.m., and on Thursday, February 13, 2003 at 10 a.m.

Commissioner Campos, as duty officer, determined that no earlier notice thereof was possible.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meetings. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (7), (9)(B) and (10) and 17 CFR 200.402(a)(3), (5), (7), (9)(ii) and (10), permit consideration of the scheduled matters at the Closed Meetings.

The subject matter of the Closed Meeting scheduled for Tuesday, February 11, 2003 will be:

Formal orders of investigation;

Institution and settlement of administrative proceedings of an enforcement nature;
Institution and settlement of injunctive actions; and an Opinion.

The subject matter of the Closed Meeting scheduled for Thursday, February 13, 2003 will be:
Institution and settlement of administrative proceedings of an enforcement nature; and
Institution and settlement of injunctive actions.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted, or postponed, please contact:

The Office of the Secretary at (202) 942–7070.

Dated: February 5, 2003.

Jonathan G. Katz,

Secretary.

[FR Doc. 03–3311 Filed 2–5–03; 4:18 pm]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

In the Matter of International Biochemical Industries, Inc.; Order of Suspension of Trading

February 6, 2003.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of International BioChemical Industries, Inc. ("IBCL") because of questions regarding the accuracy of assertions by IBCL in press releases that indicated that the Federal government had contacted IBCL to discuss the effectiveness of the company's products in the war on bioterrorism.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed company.

Therefore, it is ordered, pursuant to section 12(k) of the Securities Exchange Act of 1934, that trading in the above-listed company is suspended for the period from 9:30 a.m. e.s.t. on February 6, 2003, through 11:59 p.m. e.s.t. on February 20, 2003.

By the Commission.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 03–3382 Filed 2–6–03; 2:30 pm]

BILLING CODE 8010–01–P

SMALL BUSINESS ADMINISTRATION

Federal Assistance Grant for Women's Business Centers To Provide Financial Counseling and Other Technical Assistance to Women

AGENCY: Small Business Administration.

ACTION: Program Announcement No. OWBO–2003–019.

SUMMARY: The U.S. Small Business Administration (SBA) plans to issue program announcement No. OWBO–2003–019 to invite applications from eligible nonprofit organizations to conduct Women's Business Center (WBC) projects. The successful applicant will receive a cooperative agreement to provide counseling, training and other technical assistance to women who want to start or expand businesses. The authorizing legislation is the the Small Business Act, sections 2(h) and 29, 15 U.S.C. 631(h) and 656.

A Women's Business Center is a 5-year community-based project that is funded by the SBA through a grant that requires matching funds. The project is a planned scope of activities that provide business skills services targeted to women. The project must operate as a distinct unit of the recipient's organization having its own budget for facilities, equipment and resources to carry out project activities. The WBC services must include long-term training and counseling pertaining to financial, management and marketing assistance to benefit small business concerns owned and controlled by women. SBA Headquarters must receive applications/proposals by 4 p.m., Eastern Standard Time, on the closing date of March 26, 2003. SBA will select successful applicants using a competitive technical evaluation process. Applicants from states and territories without an SBA-funded Women's Business Center (*i.e.*, Delaware and Guam) will receive special consideration.

Service and assistance areas must include financial, management, marketing, loan assistance, eCommerce, government procurement/certification assistance and training on the business uses of the Internet. Applicants must plan to include women who are socially and economically disadvantaged in the target group. The applicant may propose specialized services that will assist women in Empowerment Zones, agribusiness, rural or urban areas, etc. The applicant may propose to serve women who are veterans, women with home-based businesses, women with disabilities, etc. SBA will request award recipients to provide content and support activities to the SBA Online Women's Business Center, *www.onlinewbc.gov*.

The applicants' technical proposal must contain information about its current status and past performance. Also, the applicant must provide a 5-year plan for service delivery, fund-raising, training and technical assistance activities. The grant will be issued annually through a 5-year term without re-competition. The non-Federal match requirement is one non-Federal dollar for each two Federal dollars in years 1 and 2; and one non-Federal dollar for each Federal dollar in years 3, 4, and 5. Up to one-half of the non-Federal match funds may be in the form of in-kind contributions (*i.e.*, 50% of match must be in cash).

DATES: The opening date of the application period February 19, 2003 and the closing date is March 26, 2003.

FOR FURTHER INFORMATION CONTACT: Interested parties may access Program Announcement No. OWBO–2003–019 and application materials on the application opening date of February 19, 2003 at *http://WWW.onlinewbc.gov/grant.html*. If necessary, contact Sally Murrell WBC Program Manager at (202) 205–6673 or Mina Bookhard, Grant Officer at (202) 205–7080.

Wilma Goldstein,

Assistant Administrator, SBA /Office of Women's Business Ownership.

[FR Doc. 03–3135 Filed 2–7–03; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent to rule on Request To Release Airport Property at the City-County Airport, Madras, OR

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Request to Release Airport Property.

SUMMARY: The FAA proposes to rule and invite public comment on the release of land at City-County Airport under the provisions of Section 125 of the Wendell H. Ford Aviation Investment Reform Act for the 21st Century (AIR 21), now 49 U.S.C. 47107(h)(2).

DATES: Comments must be received on or before March 12, 2003.

ADDRESSES: Comments on this application may be mailed or delivered to the FAA at the following address: Mr. J. Wade Bryant, Manager, Federal Aviation Administration, Northwest Mountain Region, Airports Division, Seattle Airports District Office, 1601

Lind Avenue, SW., Suite 250, Renton, Washington 98055–4056.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Mike Ahern, County Commission Chair or The Honorable Rick Allen, Mayor of City of Madras, at the following address: Mr. Mike Ahern, Jefferson County Commission Chair, Jefferson County Board of Commissioners, 66 SE D Street, Suite A, Madras, OR 97741, The Honorable Rick Allen, Mayor, City of Madras, 71 SE D Street, Madras, OR 97741.

FOR FURTHER INFORMATION CONTACT: Mr. William L. Watson, OR/ID Section Supervisor, Federal Aviation Administration, Northwest Mountain Region, Seattle Airports District Office, 1601 Lind Avenue, SW., Suite 250, Renton, Washington 98055–4056.

The request to release property may be reviewed, by appointment, in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA invites public comment on the request to release property at the City-County International Airport under the provisions of the AIR 21 (49 U.S.C. 47107(h)(2)).

On January 22, 2003, the FAA determined that the request to release property at City-County Airport submitted by the airport meets the procedural requirements of the Federal Aviation Administration. The FAA may approve the request, in whole or in part, no later than March 12, 2003.

The following is a brief overview of the request:

City-County Airport is proposing the release of approximately 20 acres of airport property so the property can be sold to the county for use as a jail site (site currently houses county jail on land leased from the airport). The revenue made from this sale will be used toward Airport Capital Improvement.

Any person may inspect, by appointment, the request in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may, upon appointment and request, inspect the application, notice and other documents germane to the application in person at City-County Airport.

Issued in Renton, Washington on January 22, 2003.

J. Wade Bryant,

Manager, Seattle Airports District Office.

[FR Doc. 03–3271 Filed 2–7–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent to rule on application 03–04–C–00–AZO To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Kalamazoo/Battle Creek International Airport, Kalamazoo, MI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Intent to Rule on Application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Kalamazoo/Battle Creek International Airport under the provisions of the 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before March 12, 2003.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Detroit Airports District Office, Willow Run Airport, East, 8820 Beck Road Belleville, Michigan 48111. The application may be reviewed in person at this location.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Lorence Wenke, Chairman, County of Kalamazoo at the following address: Kalamazoo/Battle Creek International Airport, 5235 Portage Road, Kalamazoo, Michigan, 49002.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the County of Kalamazoo under § 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Ms. Arlene B. Draper, Program Manager, Federal Aviation Administration, Detroit Airports District Office, Willow Run Airport, East, 8820 Beck Road, Belleville, Michigan 48111 (734–487–7282). The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Kalamazoo/Battle Creek International Airport under the provisions of the 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On January 10, 2003, the FAA determined that the application to impose and use the revenue from a PFC submitted by the County of Kalamazoo was substantially complete within the requirements of § 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, not later than May 10, 2003.

The following is a brief overview of the application.

Level of the proposed PFC: $3.00.

Proposed charge effective date. December 1, 2003.

Proposed charge expiration date: May 1, 2007.

Total estimated PFC revenue: $2,080,000.

Brief description of proposed projects: Terminal Design-Land Side: Terminal Design-Gates and Bag Claim; Terminal Design-Security Check Point; Terminal Design-Public Terminal Areas; PFC Financial Consulting Service-Phase 1. PFC Financial Consulting Service-Phase

Class or classes of air carriers, which the public agency has requested to be required to collect PFCs: Non-scheduled Part 135 and air taxi operators.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the County of Kalamazoo.

Issued in Des Plaines, Illinois on January 21, 2003.

Mark McClardy,

Manager, Planning and Programming Branch, Airports Division, Great Lakes Region.

[FR Doc. 03–3272 Filed 2–7–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. FAA–2003–14374]

Rotor Manufacturing Induced Anomaly Database

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed order designating voluntarily submitted information as protected from disclosure.

SUMMARY: The FAA proposes to designate the information and data submitted to them to create the Rotor Manufacturing Induced Anomaly Database (known as the "ROMAN Database") as protected from disclosure under 14 CFR part 193. This proposed designation would require the FAA to protect the information from disclosure under the Freedom of Information Act (5 U.S.C. 552) and other laws. The FAA wants to encourage production approval

holders and suppliers that manufacture high energy rotating gas turbine engine components to voluntarily submit information for inclusion into the ROMAN database.

DATES: Comments must be received on or before March 13, 2003.

ADDRESSES: Send or deliver all comments on the proposed Order to: Docket Management System (DMS), US Department of Transportation, Plaza Level Room 401, 400 Seventh Street, SW., Washington, DC 20590–0001.

FOR FURTHER INFORMATION CONTACT: Dan Kerman, Aviation Safety Inspector-Manufacturing Process Specialist, Manufacturing Inspection Office, ANE–180, Engine and Propeller Directorate, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, MA 01802, telephone 781–238–7195; fax (781) 238–7898.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to comment on the proposed Order listed in this notice by submitting such written data, views, or arguments as they desire to the Docket Management System (DMS), US Department of Transportation, Plaza Level Room 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You should submit two copies of your comments, identifying the docket number "FAA–2003–14374" at the beginning of your comments. If you wish to receive confirmation that your comments were received, include a stamped, self-addressed postcard with your comments. Comments may also be submitted through the DMS Internet address at *http://dms.dot.gov.*

Comments received on the proposed Order may be examined, before and after the comment closing date, in person, in the Docket Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office is on the Plaza Level of the NASSIF Building, Department of Transportation at the above address. Comments received may also be examined on the Internet at *http://dms.dot.gov.* The Associate Administrator for Regulation and Certification will consider all comments received on or before the closing date before issuing the final Order.

Background

Under 49 U.S.C. 40123, Congress authorized the FAA to establish rules that it could designate as protected from disclosure to the public certain voluntarily provided safety and security information. In so doing, Congress sought to encourage persons with knowledge of safety and security issues to voluntarily provide that information and data to the FAA. The aviation industry had expressed reluctance to voluntarily provide the FAA with safety and security information out of concern that the agency would be forced to make those submissions public in response to requests made under the Freedom of Information Act (FOIA) (5 U.S.C. 552) and other laws.

In 14 CFR part 193 (66 FR 33792, June 25, 2001) the FAA established the requirements for designating as protected from mandatory disclosure certain voluntarily submitted information. Before the information can be protected from disclosure however, the FAA must issue an order finding that the information meets the criteria established in 14 CFR part 193. Once the FAA issues an order designating information as protected under 14 CFR part 193, that information will not be disclosed in response to requests made under the FOIA or other laws except as provided for in 14 CFR 193.9. Thus, this proposed order is issued under the provisions of 14 CFR 193.11, which sets out the "notice procedure" for designating information as protected.

Description of the Information Sharing Program

The Aerospace Industries Association (AIA) established an international team of representatives from production approval holders (PAHs), and companies, that supply critical rotating parts to those PAHs to investigate the causal factors that have led to manufacturing induced anomalies in high energy rotating parts of commercial jet engines. The team's charter is to develop a database containing manufacturing induced anomalies in critical rotating parts for aircraft engines, including information on design data that could impact the life-limits of those parts.

Rotating parts, such as disks, in aircraft engines are exposed to extreme temperatures, pressures, and rotational forces. Under those conditions, any anomaly in the material matrix of the part could serve as a site for a crack to initiate. Rotating parts failures resulting from cracks originating from such anomalies have in the past caused aircraft accidents resulting in substantial damage and loss of life. With this database, the team's hopes are to outline recommendations for establishing best manufacturing practices for the fabrication of high-energy rotating engine components. This knowledge will also enable the entire engine industry to identify the precursors to unsafe conditions and to react appropriately in a safe and timely fashion. The report may also be used as a means of identifying shortfalls in existing FAA rules, standards, and policies regarding aircraft engine production and design approvals and for the continuing airworthiness oversight of engine designs currently in service.

The FAA supports this effort as part of the Safer Skies Program, and has agreed to serve as the clearinghouse for the database information submitted by PAHs and suppliers. If implemented, the ROMAN database would be created in a double blind format from data submitted by engine PAHs and suppliers consisting of a very sensitive and proprietary nature. PAHs and suppliers will not share this data with the FAA voluntarily, unless each submitter can do so anonymously, and has assurances that the data they submit would not be disclosed to the public, or to other submitters. With this data, it would be possible for the FAA to identify trends by analyzing adverse experiences on a fleet-wide basis. Such comparisons are not possible today because there are no participants willing to share such sensitive data with other members of industry, or the FAA, without assurances of protection from disclosure. However, the team members are willing to submit in a de-identified form, to allow the FAA and others on the team access to the data, only if the FAA provides assurances that the data will be protected from disclosure to the public. The proposed order protecting the submitted data under 14 CFR part 193 will provide those assurances. By compiling all submissions into a single database, each participant would benefit from defining best manufacturing practices, identifying adverse trends, and improved production efficiency. The flying public would benefit from improved reliability of aircraft engines and a reduction of the severity of the consequences of anomalies regarding integrity of the engine by, for example, the implementation of damage tolerance design methodologies.

The data will be submitted to the FAA anonymously by the participants. These submissions, initially, will include historical data from past years. In the future, the updating of the database will include only recently derived data. The FAA will secure a contractor that will input the data into a computerized database, and that database will be available for review by the participants and the FAA for establishing industry wide cause and corrective action. The computer database will be double blind and thus will not include the names of

the participants. The FAA anticipates that in many cases the participants will use the information to identify and carry out improvements in their production and design techniques without the FAA requiring such action. When appropriate, the FAA will change its policies, standards, and rules to implement improvements based on this data.

Summary of the ROMAN Database Voluntary Information Sharing Program

(1) *Who would participate:* Production approval holders (PAHs) for aircraft engines and aircraft engine components, and suppliers of rotating parts to those PAHs who are members of the Rotor Manufacturing (ROMAN) team.

(2) *What voluntarily provided information would be protected from disclosure under this proposed designation:* Information on manufacturing-induced anomalies, including material attributes and debits, as well as root causes and corrective actions. This information would be provided for those manufacturing anomalies that would impact the integrity of critical rotating parts in aircraft engines.

(3) *How persons would participate:* Participation would be through the ROMAN team. Those manufacturers, PAHs, and suppliers of rotating parts will submit their information to a private contractor for inclusion into, and management of the ROMAN database.

(4) *Duration of this information sharing program:* This program would continue in effect until withdrawn by the FAA.

Proposed Findings Under 14 CFR Part 193

(1) *The information will be provided voluntarily.* The FAA finds that the information will be provided voluntarily, and any participant may withdraw from the program at any time. Note that the information provided by the participants is beyond the scope of that required by the type certification mandatory reporting rules, and that the participants may withdraw from the program at any time. The ROMAN database will provide PAHs and suppliers of critical rotating parts with an opportunity to benefit from each other's adverse experiences and lessons learned that is not available without the protection of 14 CFR part 193. The identification of trends and the establishment of the shortfalls with the base manufacturing processes as a result of the ROMAN database will provide economic benefit to the submitters.

(2) *The information is safety or security related.* The FAA finds that the information is safety related. The ROMAN database will contain comprehensive information on manufacturing-induced anomalies on critical rotating engine components. These anomalies are of the kind that has been known to initiate disk fracture and fatigue failure resulting in aircraft accidents. Also, important background information will be used to relate those anomalies to specific manufacturing methods and materials. The database will be instrumental in identifying manufacturing process and material shortfalls that will assist the industry and the FAA in improving the integrity and safety of rotating parts of jet engines.

(3) *The disclosure of the information would inhibit the voluntary provisions of that type of information.* The FAA finds that the disclosure of the information would inhibit persons from voluntarily providing of that type of information. The information submitted for the ROMAN database would be highly sensitive and commercially valuable information. One of the reasons why such a database does not already exist is the reluctance of each participant to share its data and lessons learned with the FAA as well as each other without the assurances of protection from public disclosure.

(4) *The receipt of this type of information aids in fulfilling the FAA's safety and security responsibilities.* The receipt of information for the ROMAN database will aid the FAA in improving overall engine rotor integrity and decreasing the occurrence and severity of engine rotor failures. Reducing the number of aircraft accidents attributable to the failure of rotating parts in engines is an important part of the FAA's Safer Skies Program. The ROMAN database provides a way to identify manufacturing tends and precursors before they result in anomalies that might cause rotating part failures and aircraft accidents.

(5) *Withholding such information from disclosure, under the circumstances provided in this part, is consistent with the FAA's safety and security responsibilities.* Withholding the information submitted to the FAA to form the ROMAN database from public disclosure is consistent with the FAA's safety responsibilities. The ROMAN database will provide a key method to improving safety in air commerce by identifying manufacturing trends that may contribute to the presence of anomalies in the rotating parts in aircraft engines that could potentially cause the part to fail. Identifying these trends will lead to improve manufacturing processes as well as design practices to eliminate and account for the anomalies in future production and the removal of parts already in service from the actual failure occurs.

The FAA will withhold and release information submitted under this program as specified in 14 CFR 193.9 and 193.11.

The FAA may release activity reports that include the number of PAHs and suppliers who are participating and the number of manufacturing trends identified as a result. Activity reports will not include the names of the PAH's and suppliers who participate, or numbers or details of the anomalies that have been disclosed under this program.

(6) *Summary of how the FAA will distinguish information protected under this program from information the FAA receives from other sources.* The FAA routinely receives data and information from aircraft engine PAHs as part of its regulatory oversight of approved engine designs. The data received from the ROMAN database will be maintained separately by having the ROMAN database managed by a contractor. The ROMAN database will include only information received under this program. Information that is received under this program, and reports generated from the ROMAN database, will be clearly marked as having been received under this program as follows:

"WARNING: The Information in this Document Is Protected from Disclosure under 14 CFR part 193. This Information May Not Be Released Except With Written Permission of the Associate Administrator for Regulation and Certification"

Proposed Designation

Accordingly, the Federal Aviation Administration hereby proposes to designate the information submitted under this program to be protected under 49 U.S.C. 40123 and 14 CFR part 193.

Authority: 49 U.S.C. 40123; and 14 CFR part 193.

Dated: Issued in Washington, DC, on February 4, 2003.

Nicholas A. Sabatini,

Associate Administrator for Regulation and Certification.

[FR Doc. 03–3274 Filed 2–7–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Policy Statement No. ANM–01–115–11; Certification of Strengthened Flight Deck Doors on Transport Category Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of final policy; request for comments.

SUMMARY: The Federal Aviation Administration (FAA) announces the availability of final policy concerning certification of strengthened flightdeck doors.

DATES: Send your comments on or before March 12, 2003.

ADDRESSES: Address your comments to the individual identified under **FOR FURTHER INFORMATION CONTACT**.

FOR FURTHER INFORMATION CONTACT: Jeff Gardlin, Federal Aviation Administration, Transport Airplane Directorate, Transport Standards Staff, Airframe/Cabin Safety Branch, ANM–115, 1601 Lind Avenue SW., Renton, WA 98055–4056; telephone (425) 227–2136; fax (425) 227–1320; e-mail: *jeff.gardlin@faa.gov*.

SUPPLEMENTARY INFORMATION:

Comments Invited

The final policy is available on the Internet at the following address: *http://www.faa.gov/certification/aircraft/anminfo/finalpaper.cfm*. If you do not have access to the Internet, you can obtain a copy of the policy statement by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**.

The FAA invites your comments on this final policy. We will accept your comments, data, views, or arguments by letter, fax, or e-mail. Send your comments to the person indicated in **FOR FURTHER INFORMATION CONTACT**. Mark your comments, "Comments to Policy Statement No. ANM–01–115–11."

Use the following format when preparing your comments:

- Organize your comments issue-by-issue.
- For each issue, state what specific change you are requesting to the final policy.
- Include justification, reasons, or data for each change you are requesting.

We also welcome comments in support of the final policy.

We will consider all communications received on or before the closing date for comments. We may change the final policy because of the comments received.

Background

The final policy provides all transport airplane programs an acceptable method of compliance with 14 CFR part 25 for intrusion resistance and ballistic protection of flightdeck doors. The Frequently Asked Questions (FAQ) section has also been updated.

Issued in Renton, Washington, on January 21, 2003.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–3273 Filed 2–7–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Draft Environmental Impact Statement; Lewis & Clark and Jefferson Counties, MT.

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of availability.

SUMMARY: In compliance with the National Environmental Policy Act of 1969, the FHWA, in cooperation with the Montana Department of Transportation (MDT), has prepared a Draft Environmental Impact Statement (DEIS) for proposed transportation improvements along the I–15 Corridor in Helena, Lewis & Clark and Jefferson Counties, Montana. The Draft EIS identifies Build Alternatives with supporting elements and the No-Action Alternative, and their associated social, economic and environmental impacts. Interested citizens are invited to review the Draft EIS and submit comments. Copies of the Draft EIS may be obtained by telephoning or writing the contact person listed below under Addresses. Public reading copies of the Draft EIS are available at the locations listed under **SUPPLEMENTARY INFORMATION.**

DATES: A 45-calendar-day public review period will begin on February 14, 2003 and conclude on March 31, 2003. Written comments on the alternatives and impacts to be considered must be received by MDT by March 31, 2003. A public hearing to receive oral comments on the Draft EIS will be held at the West Coast Colonial Hotel, 2301 Colonial Drive, Helena, Montana, on March 11, 2003.

ADDRESSES: Written comments on the Draft EIS should be addressed to Mr. Mark Studt, P.E., Project Manager, Montana Department of Transportation, 2701 Prospect Avenue, Helena, MT 59601. Please see **SUPPLEMENTARY INFORMATION** section for a listing of the available documents and formats in which they may be obtained. Copies of the Draft EIS are also available for public inspection and review. See **SUPPLEMENTARY INFORMATION** section for locations.

FOR FURTHER INFORMATION CONTACT: To request copies of the Draft EIS or for additional information, contact Mr. Carl James, Transportation Specialist, FHWA Montana Division, 2880 Skyway Drive, Helena, MT, 59602, Telephone: (406) 449–5302, extension 238; or Mr. Mark Studt, Project Manager, Montana Department of Transportation, 2701 Prospect Avenue, Helena, MT 59601, Telephone: (406) 444–9191.

SUPPLEMENTARY INFORMATION: A Public Hearing will be held March 11, 2003, from 4:30 p.m. to 7:30 p.m. at the West Coast Colonial Hotel (address listed above).

Copies of the Draft EIS are available in hard copy format for public inspection at:

- Montana Department of Transportation, Environmental Services, 2701 Prospect Avenue, Room 111, Helena, MT 59601, 406–444–7228.
- Jefferson County, Clerk & Recorder's Office, Jefferson County Courthouse, Boulder, MT 59632, 406–225–4020.
- Lewis & Clark County, City and County Transportation Office, City and County Building, Room 404, 316 North Park, Helena, MT 59601, 406–447–8457.
- East Helena City Hall, City Clerk's Office, 7 E. Main St., East Helena, MT 59635, 406–227–5321.
- Lewis & Clark County Library, 120 S. Last Chance Gulch, Helena, MT 59601, 406–447–1690.
- Boulder Community Library, 202 South Main, Boulder, MT 59632, 406–225–3241.
- Broadwater Community Library, 201 North Spruce, Townsend, MT 59644, 406–266–5060.
- Clancy Library, 6 North Main, Clancy, MT 59634, 406–933–5254.
- Montana City Store, 1 Jackson Creek Road, Montana City, MT 59634, 406–442–6625.
- Carter & Burgess, Inc., 707 17th Street, Suite 2300, Denver, CO 80202, 303–820–4894.

Background

This Draft EIS provides a detailed evaluation of the proposed transportation improvements along I–15 between the Montana City interchange and the Lincoln Road interchange. The study area lies within Helena, Lewis & Clark and Jefferson Counties, MT. The study area extends approximately 19 kilometers (12 miles) from the Montana

City interchange in the south (RP 187) to the Lincoln Road interchange in the north (RP 200). This Draft EIS includes an examination of the purpose and need, alternatives under consideration, travel demand, affected environment, environmental consequences, and mitigation measures as a result of the improvements under consideration. Two build alternatives with five supporting elements and a No-Action Alternative are presented in the Draft EIS and are under consideration by FHWA and MDT.

The FHWA, MDT, and other local agencies invite interested individuals, organizations, and Federal, State, and local agencies to comment on the evaluated alternatives and associated social, economic, or environmental impacts related to the alternatives.

Issued on: February 4, 2003.

Dale W. Paulson,

Program Development Engineer, Montana Division, Federal Highway Administration, Helena, Montana.

[FR Doc. 03–3132 Filed 2–7–03; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Maritime Administration

Reports, Forms and Recordkeeping Requirements; Agency Information Collection Activity Under OMB Review

AGENCY: Maritime Administration, DOT.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and approval. The nature of the information collection is described as well as its expected burden. The **Federal Register** notice with a 60-day comment period soliciting comments on the following collection of information was published on November 5, 2002. No comments were received.

DATES: Comments must be submitted on or before March 12, 2003.

FOR FURTHER INFORMATION CONTACT: Rodney McFadden, Maritime Administration, 400 Seventh Street, SW., Washington, DC 20590. Telephone: 202–366–2647; FAX 202–493–2180, or e-mail: *rodney.mcfadden@marad.dot.gov*. Copies of this collection can also be obtained from that office.

SUPPLEMENTARY INFORMATION: Maritime Administration (MARAD).

Title: Information to Determine Seamen's Reemployment Rights.

OMB Control Number: 2133–0526.

Type of Request: Extension of currently approved collection.

Affected Public: U.S. merchant seamen who have completed designated national service during a time of maritime mobilization need and are seeking reemployment with a prior employer.

Form(s): None.

Abstract: MARAD is requesting approval of this collection in an effort to implement provisions of the Maritime Security Act of 1996. These provisions grant reemployment rights and other benefits to certain merchant seamen serving aboard vessels used by the United States during times of national emergencies. The Maritime Security Act of 1996 establishes the procedures for obtaining the necessary MARAD certification for reemployment rights and other benefits.

Annual Estimated Burden Hours: 50 hours.

Addresses: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention MARAD Desk Officer.

Comments are Invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

Issued in Washington, DC on February 4, 2003.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 03–3123 Filed 2–7–03; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Ex Parte No. 638]

Procedures To Expedite Resolution of Rail Rate Challenges To Be Considered Under the Stand-Alone Cost Methodology

AGENCY: Surface Transportation Board, DOT.

ACTION: Notice of public hearing.

SUMMARY: The Surface Transportation Board (Board) will hold a public hearing on Thursday, February 27, 2003, at its offices in Washington, DC, to provide interested persons an opportunity to express their views on the subject of expediting resolution of rail rate challenges to be considered under the Board's Stand-Alone Cost (SAC) methodology. Persons wishing to speak at the hearing should notify the Board in writing.

DATES: The public hearing will take place on Thursday, February 27, 2003. Any person wishing to speak at the hearing should file with the Board a written notice of intent to participate, and should indicate a requested time allotment, as soon as possible but no later than February 19, 2003. Each speaker should also file with the Board his/her written testimony by February 21, 2003.

ADDRESSES: An original and 10 copies of all notices of intent to participate and testimony should refer to STB Ex Parte No. 638, and should be sent to: Surface Transportation Board, Attn: STB Ex Parte No. 638, 1925 K Street, NW., Washington, DC 20423–0001.

FOR FURTHER INFORMATION, CONTACT: Jamie P. Rennert, (202) 565–1566. [Federal Information Relay Service (FIRS) (Hearing Impaired): (800) 877–8339.]

SUPPLEMENTARY INFORMATION: The Board will hold a public hearing to provide a forum for the expression of views by rail shippers, railroads, and other interested persons, on expediting resolution of rail rate challenges to be considered under the SAC methodology.

Issues. This public hearing follows the Board's review of comments filed in response to the notice of proposed rulemaking (NPRM) served in this docket on September 4, 2002. In the NPRM, the Board asked for suggestions on ways to streamline resolution of SAC cases, and the Board itself identified several possible measures. These measures included a mandatory pre-filing, non-binding mediation process; discovery standards tailored to the

Board's experience in SAC cases; and establishment of an informal expedited process, using Board staff, for resolving discovery disputes. The Board received comments from various parties in response to the NPRM. This hearing will provide a forum for the oral discussion of these and any other proposals that interested persons might wish to offer to expedite the resolution of SAC cases.

Date of Hearing. The hearing will begin at 10 a.m. on Thursday, February 27, 2003, in the 7th floor hearing room at the Board's headquarters in Washington, DC, and will continue, with short breaks if necessary, until every person scheduled to speak has been heard.

Notice of Intent To Participate. Any person wishing to speak at the hearing should file with the Board a written notice of intent to participate, and should indicate a requested time allotment, as soon as possible but no later than February 19, 2003.

Testimony. Each speaker should file with the Board his/her written testimony by February 21, 2003.

Paper Copies. Each person intending to speak at the hearing should submit an original and 10 paper copies of his/her notice of intent to participate (as soon as possible but no later than February 19, 2003) and testimony (by February 21, 2003).

Board Releases Available Via The Internet. Decisions and notices of the Board, including this notice, are available on the Board's Web site at *http://www.stb.dot.gov.*

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

Dated: February 5, 2003.

Vernon A. Williams,

Secretary.

[FR Doc. 03–3370 Filed 2–7–03; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Ex Parte No. 282 (Sub–No. 20)]

Railroad Consolidation Procedures—Temporary Trackage Rights Exemption

In this docket, the Board is simultaneously serving and will be publishing a notice of proposed exemption and rulemaking (NPR) in which it proposes to modify its trackage rights class exemption at 49 CFR 1180.2(d). The Board's present rule, codified at 49 CFR 1180.2(d)(7), when invoked, authorizes trackage rights indefinitely, regardless of any durational provision in the trackage rights agreement between the parties. The authorization may be terminated only by obtaining authority from the Board to discontinue service.

If a carrier wishes to obtain an authorization that expires automatically on a certain date, the carrier must file an individual petition for exemption. Unlike a filing invoking the class exemption, which becomes effective in 20 days by rule, the relief sought in a petition may be given effect only by a specific decision of the Board. The preparation and issuance of such a decision normally takes significantly longer than 20 days.

Carriers seeking authorizations that expire automatically have adopted the practice of filing a notice invoking a class exemption and simultaneously filing a petition asking that the authorization expire on a particular date. The NPR proposes to add to the Board's rules a class exemption for trackage rights that terminate on a particular date, thereby allowing carriers to obtain such rights promptly with a single filing.

In *Implementation of the Regulatory Flexibility Act*, STB Administrative Matter No. 3, STB Issuance No. 52 (STB served Nov. 8, 2002) (*Implementation of the RFA*), the Board revised its internal procedures implementing the Regulatory Flexibility Act (RFA) to require, *inter alia*, that the Director of the Office of Proceedings determine whether a proposed rule will have a significant economic impact on a substantial number of small entities.[1] If the Director determines that the rule will not have such an impact, the Director must issue a "certification of no significant economic impact." This certification must include a statement explaining the factual basis for the certification.[2]

In accordance with Board RFA procedures, I hereby certify that the proposed rule in this case will not have a significant economic impact on a substantial number of small entities. Rather, by eliminating the need for the requesting party to make a second filing, it will decrease filing costs and increase the efficiency of the regulatory process to the benefit of all filers, including small entities. Moreover, providing temporary trackage rights would not reduce competition. Temporary trackage rights could add service on a line and thereby improve service options or increase competition. Temporary trackage rights proposals that add no service on the line (*e.g.*, overhead, or bridge, service) merely maintain the status quo among carriers and shippers on the line and thus would have no adverse effects for carriers or shippers.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. This certification will be published in the **Federal Register**.

2. This certification will be served on the Chief Counsel for Advocacy, Office of Advocacy, U.S. Small Business Administration, Washington, DC 20416.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Decided: January 31, 2003.

Vernon A. Williams,

Secretary.

[FR Doc. 03–3250 Filed 2–7–03; 8:45 am]

BILLING CODE 4915–00–P

[1] These revised procedures were effective on November 14, 2002.

[2] If the Director determines that the rule *may* have a significant economic impact on a substantial number of small entities, the NPR must include an Initial Regulatory Flexibility Analysis (IRFA), and the final rule must include a Final Regulatory Flexibility Analysis (FRFA). These analyses, in general, describe the justification for the Board's action, any significant alternatives, any mitigating steps that have been or will be taken by the Board, the nature of the impact, and an estimate of the number of entities affected. *See Implementation of the RFA*, at 5–7.

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34309]

The Kansas City Southern Railway Company—Trackage Rights Exemption—Illinois Central Railroad Company

Illinois Central Railroad Company (IC), pursuant to a written trackage rights agreement [1] between the Canadian National Railway Company (CN) and The Kansas City Southern Railway Company (KCS), will grant overhead trackage rights to KCS between the connection to KCS at approximately milepost 160.0 at Jackson, MS, and approximately milepost 67.5 at Palmer, MS (near Hattiesburg, MS), a distance of approximately 92.5 miles (the line).[2]

[1] The trackage rights agreement was concurrently filed under seal, along with a motion for protective order. A protective order was served in this proceeding on February 4, 2003.

[2] According to KCS, on May 1, 1998, KCS and CN agreed that, contingent upon CN obtaining approval to acquire control of IC, IC would grant overhead trackage rights to KCS over the line. CN was granted such approval in *Canadian National Railway Company, Grand Trunk Corporation, and Grand Trunk Western Railroad Incorporated—Control-Illinois Central Corporation, Illinois Central*

Continued

The transaction was scheduled to be consummated on or about February 1, 2003.

The purpose of the trackage rights is to allow KCS to use the line to handle traffic currently handled by IC for KCS pursuant to a haulage agreement, thereby improving its operating efficiency in the Jackson to Gulfport, MS market.

As a condition to this exemption, any employees affected by the trackage rights will be protected by the conditions imposed in *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

This notice is filed under 49 CFR 1180.2(d)(7). If it contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34309, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, one copy of each pleading must be served on William A. Mullins, Troutman Sanders LLP, 401 Ninth Street, NW., Suite 1000, Washington, DC 20004–2134.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov*.

Decided: February 5, 2003.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 03–3252 Filed 2–7–03; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Revenue Procedure 97–19

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Revenue Procedure 97–19, Timely Mailing Treated as Timely Filing.

DATES: Written comments should be received on or before April 11, 2003 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of revenue procedure should be directed to Carol Savage, (202) 622–3945, or through the Internet (*CAROL.A.SAVAGE@irs.gov.*), Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Timely Mailing Treated as Timely Filing.

OMB Number: 1545–1535.

Revenue Procedure Number: Revenue Procedure 97–19.

Abstract: Revenue Procedure 97–19 provides the criteria that will be used by the Internal Revenue Service to determine whether a a private delivery service qualifies as a designated private delivery service under section 7502 of the Internal Revenue Code.

Current Actions: There are no changes being made to the revenue procedure at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 5.

Estimated Time Per Respondent: 613 hours, 48 minutes.

Estimated Total Annual Burden Hours: 3,069.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: February 4, 2003.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 03–3277 Filed 2–7–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Revenue Procedure 2003–4, Revenue Procedure 2003–5, Revenue Procedure 2003–6, and Revenue Procedure 2003–8

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Revenue Procedure 2003–4 (Letter Rulings), Revenue Procedure 2003–5 (Technical Advice), Revenue Procedure 2003–6 (Determination Letters), and Revenue Procedure 2003–8 (User Fees).

Railroad Company, Chicago, Central and Pacific Railroad Company, and Cedar River Railroad Company, STB Finance Docket No. 33556, Decision No. 37 (STB served May 25, 1999). KCS states that, because it was able to operate via haulage rights over the line, it did not exercise its right, granted in the May 1, 1998 agreement, to convert the haulage rights to trackage rights and, therefore, did not previously seek a trackage rights exemption from the Board. Now, due to a change in KCS's operations and marketing plans, KCS desires to implement trackage rights over the line.

DATES: Written comments should be received on or before April 11, 2003 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the revenue procedures should be directed to Carol Savage, (202) 622–3945, or through the Internet (CAROL.A.SAVAGE@irs.gov.), Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Revenue Procedure 2003–4 (Letter Rulings), Revenue Procedure 2003–5 (Technical Advice), Revenue Procedure 2003–6 (Determination Letters), and Revenue Procedure 2003–8 (User Fees).

OMB Number: 1545–1520.

Revenue Procedure Number: Revenue Procedure 2003–4, Revenue Procedure 2003–5, Revenue Procedure 2003–6, and Revenue Procedure 2003–8.

Abstract: The information requested in these revenue procedures is required to enable the Office of the Division Commissioner (Tax Exempt and Government Entities) of the Internal Revenue Service to give advice on filing letter ruling, determination letter, and technical advice requests, to process such requests, and to determine the amount of any user fees.

Current Actions: There are no changes being made to these revenue procedures at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, business or other for-profit organizations, not-for-profit institutions, farms, and state, local or tribal governments.

Estimated Number of Respondents: 83,068.

Estimated Time Per Respondent: 2 hours, 8 minutes.

Estimated Total Annual Burden Hours: 177,986.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: February 4, 2003.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 03–3278 Filed 2–7–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Revenue Procedure 2000–20

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Revenue Procedure 2000–20, Master and Prototype Plans.

DATES: Written comments should be received on or before April 11, 2003 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the revenue procedure should be directed to Carol Savage, (202) 622–3945, or through the Internet (CAROL.A.SAVAGE@irs.gov.), Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Master and Prototype Plans.

OMB Number: 1545–1674.

Revenue Procedure Number: Revenue Procedure 2000–20.

Abstract: The master and prototype revenue procedure sets forth the procedures for sponsors of master and prototype pension, profit-sharing and annuity plans to request an opinion letter from the Internal Revenue Service that the form of a master or prototype plan meets the requirements of section 401(a) of the Internal Revenue Code. The issuance of the opinion letter allows the sponsor to make retroactive changes to the form of the plan to conform with recent changes in statutory requirements.

Current Actions: There are no changes being made to the revenue procedure at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, business or other for-profit organizations, not-for-profit institutions, farms, and state, local or tribal governments.

Estimated Number of Respondents: 266,530.

Estimated Time Per Respondent: 1 hour, 32 minutes.

Estimated Total Annual Burden Hours: 408,563.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate

of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: February 4, 2003.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 03–3279 Filed 2–7–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 2163(c)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13(44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 2163(c), Employment—Reference Inquiry.

DATES: Written comments should be received on or before April 11, 2003 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Carol Savage, (202) 622–3945, or through the Internet *(CAROL.A.SAVAGE@irs.gov.)*, Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Employment—Reference Inquiry.

OMB Number: 1545–0274.

Form Number: 2163(c).

Abstract: Form 2163(c) is used by the Internal Revenue Service to verify past employment history and to question listed and developed references as to the character and integrity of current and potential Internal Revenue Service employees. The information received is incorporated into a report on which a security determination is based.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, business or other for-profit organizations, non-profit institutions, farms, Federal government, and state, local or tribal governments.

Estimated Number of Respondents: 20,000.

Estimated Time Per Respondent: 12 mins.

Estimated Total Annual Burden Hours: 4,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: February 4, 2003.

Glenn P. Kirkland,

IRS Reports Clearance Office.

[FR Doc. 03–3280 Filed 2–7–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Revenue Ruling 2000–8

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Revenue Ruling 2000–8, Negative Elections in Section 401(k) Plans.

DATES: Written comments should be received on or before April 11, 2003 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of revenue ruling should be directed to Carol Savage, (202) 622–3945, or through the Internet (*CAROL.A.SAVAGE@irs.gov.*), Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Negative Elections in Section 401(k) Plans.

OMB Number: 1545–1605.

Revenue Ruling Number: Revenue Ruling 2000–8.

Abstract: Revenue Ruling 2000–8 describes certain criteria that must be met before an employee's compensation can be contributed to an employer's section 401(k) plan in the absence of an affirmative election by the employee. Generally, before an employer can automatically include its employees in the employer's section 401(k) plan, the employees must be notified by the employer that they can elect out and they must be given a reasonable period of time in which to do so.

Current Actions: There are no changes being made to this revenue ruling at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, and not-for-profit institutions.

Estimated Number of Respondents: 1,500.

Estimated Time Per Respondent: 1 hour, 10 minutes.

Estimated Total Annual Burden Hours: 1,750.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: February 4, 2003.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 03–3281 Filed 2–7–03; 8:45 am]

BILLING CODE 4830–01–P

Corrections

Federal Register

Vol. 68, No. 27

Monday, February 10, 2003

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF JUSTICE

[AAG/A Order No. 007–2003]

Privacy Act of 1974; System of Records

Correction

In notice document 03–2253 beginning on page 5048 in the issue of Friday, January 31, 2003, make the following correction:

On page 5048, in the second column, in the ninth line from the bottom, "agencyorganizationtask force" should read, "agency/organization/task force".

[FR Doc. C3–2253 Filed 2–7–03; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Proposed Agency Information Collection Activities; Comment Request—Thrift Financial Report

Correction

In notice document 03–1448 beginning on page 3318 in the issue of Thursday, January 23, 2003 make the following correction:

On page 3323, in the second column, in the heading "**34. Reporting Frequency of Schedule** " should read "**33. Reporting Frequency of Schedule** ".

[FR Doc. C3–1448 Filed 2–7–03; 8:45 am]

BILLING CODE 1505–01–

Federal Register

Monday,
February 10, 2003

Part II

Department of Transportation

Federal Aviation Administration

14 CFR Parts 1, 91, 121, et al.
Enhanced Flight Vision Systems; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 1, 91, 121, 125, and 135

[Docket No. FAA–2003–14449; Notice No. 03–03]

RIN 2120–AH78

Enhanced Flight Vision Systems

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA is proposing to revise its regulations for takeoff and landing under instrument flight rules (IFR) to allow for the use of FAA-certified enhanced flight vision systems (EFVS) that would enable the pilot to meet enhanced flight visibility requirements. The action would allow the use of new technology. This NPRM also contains proposed EFVS-related changes to the FAA's previously published Area Navigation (RNAV) NPRM, which was published on December 17, 2002.

DATES: Send your comments on or before March 27, 2003.

ADDRESSES: Address your comments to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2003–14449 at the beginning of your comments, and you should submit two copies. If you wish to receive confirmation that the FAA has received your comments, include a self-addressed, stamped postcard on which the docket number appears.

You may also submit comments through the Internet to *http://dms.dot.gov.* You may review the public docket containing comments to these proposed regulations in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Dockets Office is on the plaza level of the Nassif Building at the Department of Transportation at the above address. Also, you may review public dockets on the Internet at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Les Smith, Flight Technologies and Procedures Division, Flight Standards Service, AFS–400, Federal Aviation Administration, 800 Independence Ave. SW., Washington, DC 20591; telephone: (202) 385–4586.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. The FAA also invites comments on the economic, environmental, energy, or federalism impacts that might result from adopting the proposals in this document. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA asks that you send two copies of written comments.

The FAA will file in the docket all comments it receives, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. The docket is available for public inspection before and after the comment closing date. If you wish to review the docket in person, go to the address in the **ADDRESSES** section of this preamble between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also review the docket using the Internet at the web address in the **ADDRESSES** section.

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act statement in the **Federal Register** published on April 11, 2002 (65 FR 19477–19478) or you may visit *http://dms.dot.gov.*

Before acting on this proposal, the FAA will consider all comments it receives on or before the closing date for comments. The FAA will consider comments filed late if it is possible to do so without incurring expense or delay. The FAA may change this proposal in light of comments.

If you want the FAA to acknowledge receipt of your comments on this proposal, include with your comments a pre-addressed, stamped postcard on which the docket number appears. The FAA will stamp the date on the postcard and mail it to you.

Availability of Rulemaking Documents

You can get an electronic copy of this document using the Internet by:

(1) Searching the Department of Transportation's electronic Docket Magement System (DMS) Web page (*http://dms.dot.gov/search*);

(2) Visiting the Office of Rulemaking's Web page at *http://www.faa.gov/avr/armhome.htm;* or

(3) Accessing the Government Printing Office's Web page at *http://www.access.gpo.gov/su_docs/aces/aces140.html.*

You can also get a copy by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue, SW., Washington, DC 20591, or by calling 202–267–9680. Be sure to identify the docket number, or notice number with amendment number, of this rulemaking.

List of Abbreviations Used in This Document

APV—Approach procedure with vertical guidance
ASR—Airport surveillance radar
DA—Decision altitude
DH—Decision height
EFVS—Enhanced flight vision system
HUD—Head-up display
IFR—Instrument flight rules
ILS—Instrument landing system
MDA—Minimum descent altitude
PAR—Precision approach radar
RNAV—Area navigation

Background

Section 91.175 of 14 CFR prescribes flight visibility requirements when operating under instrument flight rules (IFR) using natural vision, to identify the approach lights and runway environment. These procedures were developed and improved over the years to provide for a high level of safety when operating an aircraft during reduced visibility conditions; however the current rules on instrument approach procedures do not allow for the use of new technologies such as enhanced flight vision systems (EFVS), which use imaging-sensor technology that provides a real-time image of the external topography, or synthetic vision systems, which uses a database computer-generated image of the external topography. Nor do the present rules define new terms such as "enhanced flight visibility" or "synthetic vision" as they relate to flight operations.

EFVS—As mentioned above, an EFVS uses imaging-sensor technologies that provide a real-time visual image of the external scene topography. During some reduced visibility conditions, an EFVS can display imagery that may significantly improve the pilot's capability to detect objects, such as approach lights and visual references of the runway environment, that may not otherwise be visible. This type of technology would be allowed (but not required) under this NPRM.

Synthetic vision—By contrast, a synthetic vision image is a computer-generated image of the external scene topography from the perspective of the

flight deck that is derived from aircraft attitude, high-precision navigation solution, database of terrain, obstacles, and relevant cultural features. A synthetic vision system is an electronic means to display a synthetic vision image of the external scene topography to the flight crew. This NPRM would not provide for the use of this type of technology in the regulations; however, the FAA wishes to distinguish it from EFVS to be clear that synthetic vision systems are not being proposed as a means to comply with its flight visibility regulations.

Flight visibility— Section 1.1 of 14 CFR defines the term "flight visibility" as "* * * the average forward horizontal distance, from the cockpit of an aircraft in flight, at which prominent unlighted objects may be seen and identified by day and prominent lighted objects may be seen and identified by night." Present rules do not allow the use of an EFVS to determine flight visibility as defined in the FAA's regulations. The proposed rule would allow for the use of an EFVS to determine "enhanced flight visibility," and would permit descent and operation below decision height (DH), decision altitude (DA), or minimum descent altitude (MDA) based on the pilot's observation of images when using an EFVS.

Section 91.175(c) and (d)—Section 91.175(c) and (d) of 14 CFR specifies flight visibility requirements for operations below DA or MDA and landing under IFR and states that, when making an instrument approach to a civil airport, a pilot must use a standard instrument approach procedure prescribed for the airport.

Paragraph (c), Operation below DH or MDA, states that, where a DH or MDA is applicable, no pilot may operate an aircraft, except a military aircraft of the United States, at any airport below the authorized MDA or continue an approach below the authorized DH unless the flight visibility under paragraph (c)(2) is not less than the visibility prescribed in the standard instrument approach being used. Paragraph (c)(3) lists visual references that must also be distinctly visible and identifiable to the pilot.

Paragraph (d), Landing, states that "No pilot operating an aircraft except a military aircraft of the United States, may land that aircraft when the flight visibility is less than the visibility prescribed in the standard instrument approach procedure being used."

Based upon the existing § 91.175 regulation, the pilot cannot descend below the DH or MDA if the flight visibility is less than the visibility prescribed in the standard instrument approach procedure. The present § 91.175(c)(2) flight visibility requirements are not based upon a pilot's use of an EFVS.

Previous type designs—In 2001, the FAA issued special conditions for the airworthiness approval of one manufacturer's type design. The special conditions limited the scope of the intended function to the identification of the visual references listed in § 91.175(c)(3). The system design, under this limited intended function, was not approved for meeting the flight visibility requirements of § 91.175(c)(2) because its infrared sensor did not sense energy in the visual portion of the electromagnetic spectrum. In addition, the current operating rules do not establish criteria for the use of equipment that operates in non-visible portions of the electromagnetic spectrum. The proposed amendment would provide operational criteria for the desired function of an EFVS, which operates outside the visible portion of the electromagnetic spectrum.

Related NPRM

The FAA is conducting a thorough review of its rules to ensure consistency between the operating rules of 14 CFR and future proposed area navigation (RNAV) operations for the National Airspace System (NAS). On December 17, 2002, the FAA published a proposed rule entitled, "Area Navigation (RNAV) and Miscellaneous Amendments" (67 FR 77326; Dec. 17, 2002). That NPRM would enable the use of space-based navigation aid sensors for aircraft RNAV systems through all phases of flight (departure, en route, arrival, and approach) to enhance the safety and efficiency of the NAS.

The December 17, 2002 RNAV proposed rule also introduced the new terms "approach procedure with vertical guidance (APV)" and "decision altitude (DA)." In the NPRM, the FAA proposed to add definitions of these terms to § 1.1 as follows:

"Approach procedure with vertical guidance (APV)" is an instrument approach procedure based on lateral path and vertical glide path. These procedures may not conform to requirements of precision approaches.

"Decision altitude (DA) is a specified altitude at which a person must initiate a missed approach if the person does not see the required visual reference. Decision altitude is expressed in feet above mean sea level."

That NPRM also proposed to change §§ 91.175(c) introductory text, 121.651(c) introductory text and (d) introductory text, 125.381(c), and a portion of 135.225(c), which would also be amended in this NPRM. The proposed amendments to those sections are, therefore, shown in this document with the proposed RNAV-related changes and the proposed EFVS-related changes in place. See the chart comparing the current rules and the RNAV and EFVS proposals following the Section-by-Section analysis below.

Discussion of the Proposal

The FAA proposes to amend its rules to allow for the operational use of an EFVS, which can display imagery that may significantly improve the pilot's capability to detect objects that may not otherwise be visible. The provisions of this NPRM would apply to operations conducted under parts 91, 121, 125, 129, and 135.

The proposal also would provide that the pilot of an aircraft could use this system to determine "enhanced flight visibility" while flying a standard instrument approach procedure. An EFVS would enable the pilot to determine "enhanced flight visibility" at the DA, DH, or MDA, in lieu of "flight visibility" (as currently defined), by using a head-up display (HUD) to display sensor imagery of the approach lights or other visual references for the runway environment at a distance no less than the visibility prescribed in the instrument approach procedure being used.

The FAA would define "enhanced flight visibility" as the average forward horizontal distance, from the cockpit of an aircraft in flight, at which prominent topographical objects may be clearly distinguished and identified by day or night by a pilot using an EFVS. This definition would be substantially equivalent to the flight visibility requirement in § 91.175(c)(2). The pilot would use this enhanced flight visibility and go through a similar decision-making process as required by existing regulations to continue the approach from the DA, DH, or MDA and safely maneuver the aircraft for a landing on the intended runway.

Possible operational benefits—This proposed rule would not require the use of an EFVS. However, using an EFVS would allow operations in reduced visibility conditions that would not otherwise be possible. The proposed rule, therefore, could allow for operational benefits, reduce costs, and increase safety for aircraft equipped with an EFVS. Use of an EFVS with a HUD may improve the level of safety by improving position awareness, providing visual cues to maintain a stabilized approach, and minimizing missed approach situations. In addition

to using an EFVS to satisfy § 91.175(l) requirements, an EFVS may allow the pilot to observe an obstruction on the runway, such as an aircraft or vehicle, earlier in the approach, and observe potential runway incursions during ground operations in reduced visibility conditions. Even in situations where the pilot experiences marginal visibility at the DA, DH, or MDA, he or she could still use an EFVS to have better situational awareness than may be possible without it.

Category I operations—The intent of this proposed rule is to retain the existing straight-in-landing Category I instrument landing system (ILS) or nonprecision instrument approach minima and to authorize the pilot to use FAA-certified EFVS imaging-sensor technologies to determine enhanced flight visibility. This proposed rule would allow a pilot to fly a straight-in landing Category I or nonprecision approach and descend below the DA, DH, or MDA using an EFVS.

Category II and Category III ILS approach procedures—This proposed rule would not allow the use of an EFVS for Category II and III ILS approach procedures. Proposed enhanced flight vision systems for these approaches would have to comply with the more stringent reliability, redundancy, and other criteria, as prescribed in applicable sections of 14 CFR and applicable advisory circulars.

Visual references—Section 91.175(c)(3) lists ten visual references, of which only one is required for the pilot to descend below the DH or MDA. The visual references are: (1) The approach light system, (2) threshold, (3) threshold markings, (4) threshold lights, (5) runway end identifier lights, (6) visual approach slope indicator, (7) touchdown zone or touch down zone markings, (8) touchdown zone lights, (9) runway or runway markings, and (10) the runway lights. If the approach light system is used as the reference, the pilot may not descend below 100 feet above the touchdown zone elevation unless the red terminating bars or the red side row bars are also distinctly visible and identifiable. As a parallel, the proposed rule states that, when using an EFVS, the approach light system (if installed), the runway threshold lights or markings, and the runway touchdown zone lights or markings would have to be distinctly visible and identifiable to the pilot.

Because the imaging-sensor technologies may not sense or display all of the identifying features of the visual references (*e.g.*, may not distinguish colored lights), the FAA is proposing that the approach light system (if installed), or the runway threshold and the touchdown zone, would have to be distinctly visible to the pilot when using the EFVS prior to descent from the DA, DH, or MDA. At 100 feet above the touchdown zone elevation and below, there would have to be sufficient flight visibility (without reliance on an EFVS) for the intended runway to be distinctly visible and identifiable to the pilot to continue to a landing.

Pilot qualifications—To use the EFVS equipment while conducting an instrument approach procedure under this proposal, the pilot(s) would have to be current and qualified in accordance with existing applicable requirements in 14 CFR part 61, 121, 125 or 135. Each foreign pilot would have to be qualified in accordance with the requirements of the civil aviation authority of the State of the operator. Foreign air carriers would be required to comply with this rule and their operations specifications. For all operators, this would include knowledge of the EFVS training requirements, operational procedures, and limitations as prescribed in the approved Airplane or Rotorcraft Flight Manual for the specific system.

Certification process—An EFVS proposed for use under this proposed rule would have to provide the pilot with sufficient guidance and visual cues so that the pilot could manually maneuver the aircraft to a landing on the intended runway. The sensor image alone may not be suitable to maneuver the aircraft. For the pilot(s) to maximize situational awareness while maneuvering the aircraft in the visual segment of the instrument approach procedure, at low altitudes and reduced visibility conditions, the FAA is proposing that several key components be provided by an EFVS to provide an adequate level of safety. The EFVS sensor imagery would have to be presented on a HUD that is centrally located in the pilot's primary field of view and in the pilot's line of vision along the flight path. The imagery must be real-time, independent of the navigation solution derived from the aircraft avionics, and must be clearly displayed so that it does not adversely obscure the pilot field of view through the cockpit window. Aircraft flight symbology, such as airspeed, vertical speed, attitude, heading and altitude would have to be displayed on the HUD and be clearly visible to the pilot. The displayed sensor imagery and aircraft symbology could not adversely obstruct the pilot's vision looking through the aircraft's forward windshield.

The FAA would conduct the certification and evaluation process in accordance with published guidance and current policy. The FAA would also evaluate the capabilities, operational procedures, training and limitations for the specific system as it is designed and flight-tested. In all cases, the applicant for an airworthiness type design would provide the FAA's Aircraft Certification Office (ACO) with a certification plan. The FAA would evaluate the plan to determine if it is addressed by current regulations or if special conditions would have to be established for the certification. The proposed EFVS would be evaluated in an operational context to determine if the system provides an equivalent level of safety when in operation compared to the present rules.

Section-by-Section Analysis

Section 1.1 General Definitions

The FAA proposes to amend § 1.1 to add definitions for the terms "enhanced flight visibility," and "enhanced flight vision system (EFVS)." Including these terms in the FAA's regulations would allow for the use of new technology and establish the characteristics the FAA believes are essential for safe operations.

The FAA also proposes to add definitions for the terms "synthetic vision" and "synthetic vision system." Although this proposed rule would not allow for synthetic vision, which is a database computer-generated image, the FAA believes it is necessary to distinguish it from an enhanced vision system, which uses imaging-sensor technology.

Section 1.2 Abbreviations and Symbols

The FAA is proposing to add the abbreviation "EFVS" to § 1.2 to reflect the addition of the proposed new term "enhanced flight vision system (EFVS)" in § 1.1.

Section 91.175 Takeoff and Landing Under IFR

Paragraph (c)—Paragraph (c) introductory text (as proposed at 67 FR 77341; Dec. 17, 2002), would be further amended to add the phrase "except as provided in § 91.175(l) of this section, * * * ." As discussed below, paragraph (l) would be added to allow the pilot to descend below the DA, DH, or MDA on a standard instrument approach using an EFVS. If a pilot cannot meet the requirements of § 91.175(c) using natural vision, the exception to those requirements as provided in paragraph (l) using an EFVS would apply.

Paragraph (d)—The FAA proposes to revise paragraph (d) to add a new requirement that no pilot operating an aircraft may land that aircraft when, for

operations conducted under proposed paragraph (l), the requirements of proposed paragraph (l)(4) are not met. This would mean that, when the aircraft is operated from 100 feet above the touchdown zone elevation to the runway surface, without reliance on an EFVS, there would have to be sufficient flight visibility for the lights or markings of the threshold or the lights or markings of the touchdown zone to be distinctly visible and identifiable to the pilot to land the aircraft. For all other operations that are not conducted under § 91.175(l), the pilot could not land the aircraft if the flight visibility is less than the visibility prescribed in the standard instrument approach procedure being used.

Paragraph (e)—For the missed approach procedures in § 91.175(e), the FAA is proposing to revise the introduction to (e)(1) to add a reference to proposed paragraph (l). The operator of the aircraft first would have to determine whether the aircraft would be operated in accordance with § 91.175(c) (for flight visibility using natural vision) or with § 91.175(l) (using an EFVS). Once that decision is made, different requirements determine when a missed approach must be executed. If a pilot chose to operate under § 91.175(c) without an EFVS, he or she would follow existing rules for missed approaches. This proposed rule would not change the existing requirements under § 91.175(c).

If, on the other hand, the pilot chose to use an EFVS in accordance with § 91.175(l), the missed approach procedures remain the same as those published on the approach charts. If the pilot could not meet the requirements of § 91.175(l)(1) through (4), a missed approach must be executed. The requirements of § 91.175(l)(1) through (4) differ from the requirements of § 91.175(c)(1) through (3); however, these requirements provide a parallel to the decision-making process in § 91.175(c). For an operation conducted under § 91.175(l) with an EFVS, between the DA, DH, or MDA to 100 feet above the touchdown zone elevation of the runway of intended landing, an appropriate missed approach procedure would have to be immediately executed if the pilot were unable to continuously maintain the aircraft in a position from which a descent to a landing on the intended runway could be made at a normal rate of descent using normal maneuvers. For an operation conducted under part 121 or part 135, an appropriate missed approach procedure would have to be immediately executed if the pilot were unable to control the descent rate of the aircraft to allow touchdown to occur within the touchdown zone of the runway of intended landing. Under (l)(2), for all operations, below DA, DH, or MDA an appropriate missed approach procedure would have to be immediately executed when the pilot determined that the enhanced flight visibility observed by use of an EFVS is less than the visibility prescribed in the standard instrument approach procedure being used. Also if the visual references specified under (l)(3) were not distinctly visible and identifiable to the pilot in the EFVS display, a missed approach would have to be executed. Under (l)(4), for operations, between 100 feet above the touchdown zone elevation of the runway of intended landing and any lower altitude, the pilot would have to immediately execute a missed approach if, without reliance on an EFVS, there were not sufficient flight visibility for either the lights or markings of the threshold or the lights or markings of the touchdown zone to be distinctly visible and identifiable to the pilot.

Paragraph (l)—Paragraph (l) would be added to § 91.175 to describe the requirements for approach to straight-in landing operations below DA, DH, or MDA using an EFVS. The proposed rule would apply to pilots operating under parts 91, 121, 125, 129 and 135, and would require that parts 119 and 125 certificate holders, and part 129 operations specifications holders, be authorized to use an EFVS in their operations specifications.

Paragraph (l)(1) would state that the aircraft must be continuously in a position from which a descent, at normal rate using normal maneuvers, can be made. The proposed paragraph would also state that the descent rate for parts 121 and 135 operations would allow touchdown to occur within the touchdown zone of the runway of intended landing.

Proposed paragraph (l)(2) would provide an enhanced flight visibility requirement that would be equivalent to §§ 91.175(c)(2) and 121.651(c)(2) and (d)(2), except that the pilot could use an EFVS to determine "enhanced flight visibility" as compared to "flight visibility" with natural vision.

Paragraph (l)(3) would specify that the approach light system (if installed) or the runway threshold and the touchdown zone would have to be distinctly visible and identifiable to the pilot in the enhanced flight vision system display at the DA, DH, or MDA.

Paragraph (l)(4) would require that, at 100 feet above the touchdown zone elevation and below, the threshold lights or markings, or the touchdown zone lights or markings, would have to be distinctly visible and identifiable without relying on the enhanced flight vision system for the pilot to continue to a landing.

In (l)(5), the proposed rule would provide that pilots using EFVS-equipped aircraft be qualified in accordance with the applicable requirements of 14 CFR part 61 and part 121, 125, or 135, as applicable. Foreign operators would have to be qualified in accordance with their civil aviation authorities' requirements.

In (l)(6), the proposed rule would authorize EFVS operations for parts 119 and 125 certificate holders and part 129 operations specifications holders through their operations specifications.

In (l)(7), the proposed rule would require that the aircraft be equipped with an EFVS, the display of which would have to be suitable for maneuvering the aircraft. The EFVS and display would be required to have an FAA type design approved by the United States. For foreign-registered aircraft, the EFVS and display would have to be of a type design approved by the United States and comply with all requirements as if the aircraft were registered in the United States.

Paragraph (m)—Proposed paragraph (m) would establish the characteristics and features the FAA would require when approving an EFVS. It would ensure that a pilot using an EFVS remained in his or her normal sitting position and would be looking straight ahead along the forward flight path. The EFVS would have to include a head-up display centrally located in the pilot's primary field of view and would display the sensor imagery and the aircraft's flight's symbology so that the pilot's forward vision would not be adversely obscured. Because the pilot could not rely on the EFVS at 100 feet above the touchdown zone elevation and below for purposes of identifying items in proposed (l)(4), the FAA believes it would be essential for him or her to remain in a forward-looking position and be able to focus outside the cockpit with minimal transition from using the sensor imagery display to visual flying conditions (using natural vision) without the EFVS. The display characteristics and dynamics would have to be suitable for manual control of the aircraft.

Section 121.651 Takeoff and Landing Weather Minimums: IFR: All Certificate Holders

The FAA's Area Navigation (RNAV) NPRM published on December 17, 2002 (67 FR 77341; Dec. 17, 2002), set forth proposed amendments to the current provisions contained in § 121.651. By

this document (*i.e.*, the Enhanced Flight Visibility Systems NPRM), the FAA amends the December 17, 2002 RNAV NPRM regarding this section in three ways.

First, in regard to paragraph (c) in the December 17, 2002 RNAV NPRM, the FAA makes the following amendments: The words "and touch down" would be removed. Thus, *regardless of which proposals are adopted first* (*i.e.*, RNAV or EFVS), those three words would be removed from paragraph (c) of § 121.651. The FAA is proposing to remove those words because it believes they are redundant of the landing requirements in both the existing and the proposed § 91.175(d), which also apply to part 121 operations.

Second, in paragraph (c), the words "if either the requirements of § 91.175(l) of this chapter, or the following requirements are met" would be added at the end. Thus, if the proposed amendments in this EFVS NPRM are adopted at the same time as the RNAV NPRM or after the adoption of the RNAV proposals, then today's proposal would allow for operations under the current requirements of § 121.651(c), or approach to straight-in-landing operations using an EFVS under § 91.175(l) when the EFVS proposals are adopted. By the same token, if the RNAV proposed rules are adopted before the EFVS proposals are adopted, then the language in proposed § 121.651(c) in this document would be adopted but without the reference to § 91.175(l). That is, the FAA would adopt proposed paragraph (c) without the clause "* * * either the requirements of § 91.175(l) of this chapter or * * *.". Thus, in this situation, that language would only be adopted when the substantive EFVS rules are adopted.

Third, in paragraph (d), by this document (*i.e.*, the Enhanced Flight Visibility Systems NPRM), the FAA amends its December 17, 2002 proposal. Paragraph (d) introductory text, as proposed in the FAA's Area Navigation (RNAV) NPRM published on December 17, 2002 (67 FR 77341; Dec. 17, 2002), would be further revised to include the words "the requirements of § 91.175(l) of this chapter, or the following requirements are met" at the end. This would allow for operations under the current requirements of § 121.651(d), or approach to straight-in-landing operations using an EFVS under § 91.175(l). (Note that the abbreviation "PAR" stands for "precision approach radar.") Thus, if the RNAV proposal is adopted first, then the new proposed language in proposed § 121.651(d) in this document (*i.e.*, "* * * the requirements of § 91.175(l) of this chapter, or the following requirements are met: * * *") would not be adopted at that time but would only be adopted when, and if, the proposals in the EFVS NPRM are adopted.

Section 125.381 Takeoff and Landing Weather Minimums: IFR

The FAA is proposing to further amend paragraph (c) as proposed in the FAA's Area Navigation (RNAV) NPRM published on December 17, 2002 (67 FR 77346). There are several reasons for the FAA's actions. First, as currently published in the Code of Federal Regulations, it appears as if a clause that is wholly contained within paragraph (c)(3) only applies to (c)(3), when, in fact, that language was, and is, intended to apply to paragraphs (c)(1), (c)(2) and (c)(3). That language begins "* * * the approach may be continued * * *." Thus, in this proposal, the FAA has reorganized the regulatory language to more clearly set forth the requirements.

Second, the FAA proposes to remove language in the current rule (*i.e.*, "* * * and a landing may be made * * *") and similar language (*i.e.*, "* * * and landing * * *") in the RNAV NPRM. The FAA is proposing this because this language is redundant of the regulatory requirements in the existing § 91.175(d), which does, and would continue to, apply to part 125 operators, and it is redundant of the proposed requirements in proposed § 91.175(d).

Third, all of the following changes to the proposed § 125.381(c) in the RNAV NPRM that are described in this paragraph would be adopted regardless of which rule is adopted first. In other words, the section and paragraph citations below are in reference to the proposed regulatory sections and paragraphs in the RNAV NPRM. Moreover, if the proposals in the EFVS NPRM are adopted first, the changes described below would amend the current § 125.381(c), even though the other proposals in the RNAV NPRM would not have been adopted at that point. The FAA is proposing to amend the end of paragraph (c) introductory text by changing the words, "continue with the approach and landing only if both of the following conditions are met—" to read "continue with the approach only if the requirements of § 91.175(l) of this chapter, or both of the following conditions are met—." The FAA is also proposing to make technical corrections to paragraph (c)(1) to specify that the airplane would have to be in one of the prescribed approach phases of the flight (not a landing phase) when a later weather report is received indicating below minimum conditions, or the pilot in command would not be authorized to continue the approach to DA, DH, or MDA. Also, in (c)(1)(i), the word "approach" would be added after "APV" to improve readability. In (c)(1)(iii), the paragraph would be reworded to define the final approach on ASR/PAR (airport surveillance radar/precision approach radar) procedures and be renumbered as (c)(1)(ii). Paragraph (c)(1)(ii) would be renumbered as (c)(1)(iii) and be rewritten to more specifically describe the airplane position during the nonprecision final approach. In paragraph (c)(2) of the RNAV proposal (and in paragraph (c)(3) of the existing rule), the reference to "MAP" (missed approach point) would be corrected with "MDA." Also in paragraph (c)(2) of the RNAV proposal the reference to the words "in the certificate holder's operations specifications" would be replaced with the words "for the procedure being used" because the minimums would not be prescribed in operations specifications. If only the RNAV proposal is adopted, the changes described above would be included in the RNAV final rule except for references to § 91.175(l).

Section 135.225 IFR: Takeoff, Approach, and Landing Minimums

The FAA is proposing to further amend § 135.225(c) as proposed in the FAA's Area Navigation (RNAV) NPRM published on December 17, 2002 (67 FR 77346). There are several reasons for the FAA's actions. First, as currently published in the Code of Federal Regulations, it appears that the clause, "* * * the approach may be continued and a landing made * * *" in paragraph (c)(3)(ii) only applies to (c)(3)(ii), when, in fact, that language was, and is, intended to apply to paragraphs (c)(1), (c)(2), and (c)(3)(i) as well. Second, in this proposal, the words "and a landing made" would be removed. Additionally, a second clause in (c)(3)(ii) beginning with the words "* * * if a pilot finds * * *" would be recodified as a new condition for paragraph (c). This would be renumbered as (c)(2). All of the paragraphs in (c)(1) would be renumbered and the content of those paragraphs would mirror the proposal of § 125.381 as explained above, except that the word "aircraft" would be used instead of "airplane." The proposed changes to the sections and paragraphs of the RNAV NPRM in this EFVS NPRM would be adopted regardless of which rule is adopted first. However, if only the RNAV proposal is adopted, these proposed changes would be included in the RNAV final rule except for

references to § 91.175(l). The proposed changes in the RNAV NPRM are no longer being considered for adoption.

Comparison of Current Rules and RNAV and EFVS Proposals (§§ 91.175, 121.651, 125.381, and 135.225)

§ 91.175 Current Rule	RNAV Proposed Rule	EFVS Proposed Rule
§ 91.175 Takeoff and landing under IFR.	**§ 91.175 Takeoff and landing under IFR.**	**§ 91.175 Takeoff and landing under the IFR.**
* * *	* * *	* * *
(c) *Operation below DH or MDA.* Where a DH or MDA is applicable, no pilot may operate an aircraft, except a military aircraft of the United States, at any airport below the authorized MDA or continue an approach below the authorized DH unless—	(c) *Operation below DA/DH or MDA.*. Where a DA/DH or MDA is applicable, no pilot may operate an aircraft, except military aircraft of the United States, at any airport below the authorized MDA or continue an approach below the authorized DA/DH unless—	(c) *Operation below DA, DH or MDA.* Except as provided in paragraph (1) of this section, where a DA, DH or MDA is applicable, no pilot may operate an aircraft, except a military aircraft of the United States, at any airport below the authorized MDA or continue an approach below the authorized DA/DH unless—
* * *	* * *	* * *
(d) *Landing.* No pilot operating an aircraft, except a military aircraft of the United States, may land that aircraft, when the flight visibility is less than the visibility prescribed in the standard instrument approach procedure being used.	(e) * * *	(d) Landing. No pilot operating an aircraft, except a military aircraft of the United States, may land that aircraft when—
(e) *Missed approach procedures.* Each pilot operating an aircraft, except a military aircraft of the United States, shall immediately execute an appropriate missed approach procedure when either of the following conditions exist:	(l) * * *	(1) For operations conducted under paragraph (l) of this section, the requirements of (l)(4) of this section are not met; or
(l) Whenever the requirements of paragraph (c) of this section are not met at either of the following times:	(ii) Upon arrival at the missed approach point, including a DA/DH where a DA/DH is specified and its use is required, and at any time after that until touchdown.	(2) For all other part 91 operations and parts 121, 125, 129, and 135 operations, the flight visibility is less than the visibility prescribed in the standard instrument approach procedure being used.
(i) When the aircraft is being operated below MDA; or	* * * * *	* * * * *
(ii) Upon arrival at the missed approach point, including a DH where a DH is specified and its use is required, and at any time after that until touchdown.		(e) * * *
* * * * *		(1) Whenever operating an aircraft pilot operating pursuant to paragraph (c) or (1) of this section and the requirements of that paragraph are not met at either of the following times:
		* * * * *
		(l) *Approach to straight-in landing may land that approach operations below DA, DH, or MDA using an enhanced flight vision system (EFVS).* No pilot operating under this section or §§ 121.651, 125.381, and 135.225 of this chapter may operate an aircraft at any airport at any airport below the authorized MDA or continue an approach below the authorized DA or DH and land unless—
		(1) The aircraft is continuously in a position from which a descent to a landing on the intended runway can be made at a normal rate of descent using normal manuevers, and, for operations conducted under part 121 or part 135 of this chapter, the descent rate will allow touchdown to occur within the touchdown zone of the runway of intended landing:
		(2) The pilot determines that the enhanced flight visibility observed by use of a certified enhanced flight vision system is not less than the visibility prescribed in the standard instrument approach procedure being used;
		(3) The following visual references for the intended runway are distinctly visible and identifiable to the pilot using the enhanced flight vision system:
		(i) The approach light system (if installed); or
		(ii) The runway threshold and the touchdown zone;

§ 91.175 Current Rule	RNAV Proposed Rule	EFVS Proposed Rule
		(4) At 100 feet above the touchdown zone elevation of the runway of intended landing and below that altitude, the flight visibility must be sufficient for the following to be distinctly visible and identifiable to the pilot without reliance on the enhanced flight vision system to continue to a landing: (i) The lights or markings of the threshold; or (ii) The lights or markings of the touchdown zone; (5) The pilot(s) is qualified to use an EFVS as follows: (i) For parts 119 and 125 certificate holders, the applicable training, testing and qualifications provisions of parts 121, 125 and 135 of this chapter; (ii) For foreign persons, in accordance with the requirements of the requirements of the civil aviation authority of the State of the operator; or (iii) For persons conducting any other operation, in accordance with the applicable qualification and proficiency requirements of part 61 of this chapter and the operating limitations specified in the approved Airplane or Rotorcraft Flight Manual; (6) For parts 119 and 125 certificate holders, their operations specifications authorize use of EFVS; and (7) The aircraft is equipped with, and the pilot uses, an enhanced flight vision system, the display of which is suitable for maneuvering the aircraft and his either an FAA type design approval or, for a foreign-registered aircraft, the EFVS is of a type design approved by the United States and complies with all of the requirements of this chapter that would be applicable to that aircraft were it registered in the United States, including the requirements for a U.S. standard airworthiness certificate. (m) For purposes of this section, "enhanced flight vision system" (EFVS) is an installed airborne system comprised of the following features and characteristics: (1) An electronic means to provide a display of the forward external scene topography (natural or manmade features of a place or region especially in a way to show their relative positions and elevation) through the use of imaging sensors, such as a forward-looking infrared, millimeter wave radiometry, millimeter wave radar, and low-light level image intensifying; (2) The EFVS sensor imagery and aircraft flight symbology (*i.e.* at least airspeed, vertical speed, aircraft attitude, heading, altitude) are presented on a head-up display so that they are clearly visible to the pilot flying in his or her normal position and line of vision and looking forward along the flight path; (3) The displayed imagery and aircraft flight symbology does not adversely obscure the pilot's outside view or field of view through the cockpit window; (4) The EFVS includes the display element, sensors, computers and power supplies, indications, and controls. It may receive inputs from an airborne navigation system or flight guidance system; and (5) The display characteristics and dynamics are suitable for manual control of the aircraft.

§ 121.651 Current Rule	RNAV Proposed Rule	EFVS Proposed Rule
§ 121.651 Takeoff and landing weather minimums: IFR: All certificate holders.	**§ 121.651 Amended**	**§ 121.651 Takeoff and landing weather minimums: IFR: All certificate holders.**

§ 121.651 Current Rule	RNAV Proposed Rule	EFVS Proposed Rule
* * *	* * *	* * *
(c) If a pilot has begun the final approach segment of an instrument approach procedure in accordance with paragraph (b) of this section and after that receives a later weather report indicating below-minimum conditions, the pilot may continue the approach to DH or MDA. Upon reaching DH or at MDA, and at any time before the missed approach point, the pilot may continue the approach below DH or MDA and touch down if—	(c) In paragraph (c), replace the term "DH" with the term "DA/DH" wherever it appears.	(c) If a pilot has begun the final approach segment of an instrument approach procedure in accordance with paragraph (b) of this section, and after that receives a later weather report indicating below-minimum conditions, the pilot may continue the approach to DA/DH or MDA. Upon reach DA/DH, or at MDA, and at any time before the missed approach point, the pilot may continue the approach below DA/DH or MDA if either the requirements of § 91.175(l) of this chapter, or the following requirements are met:
* * * * *	* * * * *	* * * * *
(d) A pilot may begin the final approach segment of an instrument approach procedure other than a Category II or Category III procedure at an airport when the visibility is less than the visibility minimums prescribed for that procedure if that airport is served by a operative ILS and an operative PAR, and both are used by the pilot. However, no pilot may operate an aircraft below the authorized MDA, or continue an approach below the authorized DH, unless—	(d) A pilot may begin the final approach segment of a Category I precision approach procedure at an airport when the visibility is less than the visibility minimums prescribed for that procedure if that airport is served by an operative PAR and another operative precision instrument approach system, and both the PAR and the precision approach are used by the pilot. However, no person may continue an approach below the authorized DA, unless—	(d) A pilot may begin the final approach segment of a Category I precision approach procedure at an airport when the visibility is less than the visibility minimums prescribed for that procedure if that airport is served by an operative PAR and another operative precision instrument approach system, and both the PAR and the precision approach are used by the pilot. However, no person may continue an approach below the authorized DA unless the requirements of § 91.175(l) of this chapter, or the following requirements are met:
* * * * *	* * * * *	* * * * *

§ 125.381 Current Rule	RNAV Proposed Rule	EFVS Proposed Rule
§ 125.381 Takeoff and landing weather minimums: IFR.	**§ 125.381 Takeoff and landing weather minimums: IFR.**	**§ 125.381 Takeoff and landing weather minimums: IFR.**
(c) If a pilot initiates an instrument approach procedure when the latest weather report indicates that the specified visibility minimums exist, and a later weather report indicating below minimums conditions is received after the airplane—	(c) If a pilot initiates an instrument approach procedure based on a weather report that indicates that the specified visibility minimums exist and subsequently receives another weather report that indicates that conditions have worsened to below the minimum requirements, then the pilot may continue with the approach and landing only if both of the following conditions are met—	(c) If a pilot initiates an instrument approach procedure based on a weather report that indicates that the specified visibility minimums exist and subsequently receives another weather report that indicates that conditions are below the minimum requirements, then the pilot may continue with the approach only if, the requirement of § 91.175(l) of this chapter, or both of the following conditions are met—
(1) Is on an ILS final approach and has passed the outer marker,	(1) The later weather report is received when the airplane is in one of the following landing phases:	(1) The later weather report is received when the airplane is in one of the following approach phases:
(2) Is on final approach segment using a nonprecision approach procedure, or	(i) The airplane is on a precision approach or APV and has passed the precision final approach fix.	(i) The airplane is on a precision or APV approach and has passed the precision final approach fix;
(3) Is on PAR final approach and has been turned over to the final approach controller, the approach may be continued and a landing may be made if the pilot in command finds, upon reaching the authorized MAP or HD, that actual weather conditions are at least equal to the minimums prescribed in the operations specifications.	(ii) The airplane is on the final approach segment using a nonprecision approach procedure.	(ii) The airplane is on an ASR or PAR final approach and has been turned over to the final approach controller; or
	(iii) The airplane is on a PAR final approach and has been turned over to the final approach controller.	(iii) The airplane is on a nonprecision final approach and the airplane—
	(2) The pilot in command finds, on reaching the authorized MAP or DA/DH, that the actual weather conditions are at or above the minimums prescribed in the certificate holders' operations specifications.	(A) Has passed the appropriate facility or final approach fix; or
		(B) Where a final approach fix is not specified, has completed the procedure turn and is established inbound toward the airport on the final approach course within the distance prescribed in the procedure; and
		(2) The pilot in command finds, on reaching the authorized MDA, or DA/DH, that the actual weather conditions are at or above the minimums prescribed for the procedure being used.

§ 135.225 Current Rule	RNAV Proposed Rule	EFVS Proposed Rule
§ 135.225 IFR: Takeoff, approach and landing minimums.	**§ 135.225 IFR: Takeoff, approach and landing minimums.**	**§ 135.225 IFR: Takeoff, approach, and landing minimums.**
* * *	* * *	* * *
(c) If a pilot has begun the final approach segment of an instrument approach to an airport under paragraph (b) of this section and a later weather report indicating below minimum conditions is received after the aircraft is—	(c) * * *	(c) If a pilot has begun the final approach segment of an instrument approach to an airport under paragraph (b) of this section, and the pilot receives a later weather report indicating that conditions have worsened to below the minimum requirements, then the pilot may continue the approach only if the requirements of § 91.175(l) of this chapter, or both of the following conditions, are met—
(1) On an ILS final approach and has passed the final approach fix; or	(1) On a precision or APV approach and has passed the precision final approach fix; or	(1) The later weather report is received when the aircraft is in one of the following approach phases:
(2) On an ASR or PAR final approach and has been turned over to the final approach controller; or	* * * * *	(i) The aircraft is on a precision or APV approach and has passed the precision final approach fix;
(3) On a final approach using a VOR, NDB, or comparable approach procedure; and the aircraft—	(3) On a nonprecision final approach; and the aircraft—	(ii) The aircraft is on an ASR or PAR final approach and has been turned over to the final approach controller; or
(i) Has passed the appropriate facility or final approach fix; or	* * * * *	(iii) The aircraft is on a nonprecision final approach and the aircraft—
(ii) Where a final approach fix is not specified, has completed the procedure turn and is established inbound toward the airport on the final approach course within the distance prescribed in the procedure; the approach may be continued and a landing made if the pilot finds, upon reaching the authorized MDA or DH, that actual weather conditions are at least equal to the minimums prescribed for the procedure.	(ii) Where a final approach fix is not specified, has completed the procedure turn and is established inbound toward the airport on the final approach course within the distance prescribed in the procedure. The approach may be continued, and a landing made, if the pilot finds, upon reaching the authorized MDA or DA/DH, that actual weather conditions are at or above the minimums prescribed for the procedure.	(A) Has passed the appropriate facility or final approach fix; or
* * * * *		(B) Where a final approach fix is not specified, has completed the procedure turn and is established inbound toward the airport on the final approach course within the distance prescribed in the procedure; and
		(2) The pilot in command finds, on reaching the authorized MDA or DA/DH, that the actual weather conditions are at or above the minimums prescribed for the procedure being used.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) requires that the FAA consider the impact of paperwork and other information collection burdens imposed on the public. The FAA has determined that there are no new information collection requirements associated with this proposed rule.

International Compatibility

In keeping with United States obligations under the Convention on International Civil Aviation, it is the FAA's policy to comply with International Civil Aviation Organization (IGAO) Standards and Recommended Practices to the maximum extent practicable. The FAA has determined that there are no ICAO Standards and Recommended Practices that corresponded to these proposed regulations.

Economic Evaluation

Proposed changes to regulations must undergo several economic analyses. First, Executive Order 12866 directs each Federal agency proposing or adopting a regulation to only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic impact of the regulatory changes on small entities. Third, the Trade Agreements Act (19 U.S.C. 2531–2533) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, the Trade Agreements Act requires agencies to consider international standards and, where appropriate, as the basis of U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 (Pub.L. 104–4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more annually (adjusted for inflation).

In conducting these analyses, FAA has determined this rule: (1) Has benefits that justify its costs, is not a "significant regulatory action" as defined in section 3 (f) of Executive Order 12866, and is not "significant" as defined in DOT's Regulatory Policies and Procedures; (2) will not have a significant economic impact on a substantial number of small entities; (3) will not reduce barriers to international trade; and does not impose an unfunded mandate on state, local, or tribal governments, or on the private sector.

However, for regulations with an expected minimal impact the above-specified analyses are not required. The Department of Transportation Order DOT 2100.5 prescribes policies and procedures for simplification, analysis, and review of regulations. If it is determined that the expected impact is so minimal that the proposal does not warrant a full evaluation, a statement to that effect and the basis for it is included in proposed regulation.

This rulemaking would allow, but does not require, operators to use an enhanced flight vision system on board their aircraft provided their pilots are properly trained. Therefore, this proposed rule would not impose any cost on any operator. As discussed above under "Discussion of the Proposal," the FAA believes that this

NPRM would provide operational benefits and improve the level of safety.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) establishes "as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the business, organizations, and governmental jurisdictions subject to regulation." To achieve that principle, the RFA requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions. The RFA covers a wide-range of small entities, including small businesses, not-for-profit organizations and small governmental jurisdictions.

Agencies must perform a review to determine whether a proposed or final rule will have a significant impact on a substantial number of small entities. If the determination is that it will, the agency must prepare a regulatory flexibility analysis as described in the RFA.

However, if an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the RFA provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

The FAA certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities. The use of the enhanced flight vision system would not be mandatory. This rulemaking would allow the operators the option of using this equipment. Therefore, this rulemaking would not impose any cost on any operators. The FAA solicits comments from the public regarding this determination of no significant economic impact on a substantial number of small entities.

International Trade Impact Analysis

The Trade Agreement Act of 1979 prohibits Federal agencies from establishing any standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards.

The FAA has assessed the potential effect of this proposed rule and determined that it will not apply to foreign entities or to trade with foreign entities. In accordance with the above statute, the FAA has assessed the potential effect of this proposed rule and has determined that it would have only a domestic impact and, therefore create no obstacles to the foreign commerce of the United States.

Unfunded Mandates Assessment

The Unfunded Mandates Reform Act of 1995 (the Act), enacted as Pub. L. 104–4 on March 22, 1995 is intended, among other things, to curb the practice of imposing unfunded Federal mandates on State, local, and tribal governments. Title II of the Act requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed of final agency rule that may result in an expenditure of $100 million or more expenditure (adjusted annually for inflation) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a "significant regulatory action."

The proposed rule would not contain such a mandate. Therefore, the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply.

Executive Order 13132, Federalism

The FAA has analyzed this proposed rule under the principles and criteria of Executive Order 13132, Federalism. The FAA has determined that this action would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, we determined that this notice does not have federalism implications.

Environmental Analysis

FAA Order 1050.1D defines FAA action as that may be categorically excluded from preparation of a National Environmental Policy Act (NEPA) environmental impact statement. In accordance with FAA Order 1050.1D, appendix 4, paragraph 4(j), this proposed rulemaking action qualifies for a categorical exclusion.

Energy Impact

The energy impact of this proposed rule has been assessed in accordance with the Energy Policy and Conservation Act (EPCA) (Pub. L. 94–163, as amended; 42 U.S.C. 6362) and FAA Order 1053.1. The FAA has determined that the proposed rule is not a major regulatory action under the provisions of the EPCA.

List of Subjects

14 CFR Part 1

Air transportation.

14 CFR Part 91

Agriculture, Air traffic control, Aircraft, Airmen, Airports, Aviation safety, Canada, Freight, Mexico, Noise control, Political candidates.

14 CFR Part 121

Air carriers, Aircraft, Airmen, Aviation safety, Charter flights, Safety, Transportation.

14 CFR Parts 125 and 135

Aircraft, Airmen, Aviation safety.

The Proposed Amendments

In consideration of the foregoing, the Federal Administration Aviation proposes to amend chapter I of 14 CFR as follows:

PART 1—DEFINITIONS AND ABBREVIATIONS

1. The authority for part 1 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

2. Amend § 1.1 by adding the following definitions in alphabetical order to read as follows:

§ 1.1 General definitions.

* * * * *

Enhanced flight visibility means the average forward horizontal distance, from the cockpit of an aircraft in flight, at which prominent topographical objects may be clearly distinguished and identified by day or night by a pilot using an enhanced flight vision system.

Enhanced flight vision system (EFVS) means an electronic means to provide a display of the forward external scene topography (natural or manmade features of a place or region especially in a way to show their relative positions and elevation) through the use of imaging sensors, such as a forward looking infrared, millimeter wave radiometry, millimeter wave radar, low light level image intensifying.

* * * * *

Synthetic vision means a computer-generated image of the external scene topography from the perspective of the flight deck that is derived from aircraft attitude, high-precision navigation solution, and database of terrain, obstacles and relevant cultural features.

Synthetic vision system means an electronic means to display a synthetic

vision image of the external scene topography to the flight crew.

* * * * *

3. Section 1.2 is amended by adding the following abbreviation in alphabetical order to read as follows:

§ 1.2 Abbreviations and symbols.

* * * * *

EFVS means enhanced flight vision system

* * * * *

PART 91—GENERAL OPERATING AND FLIGHT RULES

4. The authority citation for part 91 continues to read as follows:

Authority: 49 U.S.C. 106(g), 1155, 40103, 40113, 40120, 44101, 44111, 44701, 44709, 44711, 44712, 44715, 44716, 44717, 44722, 46306, 46315, 46316, 46504, 46506–46507, 47122, 47508, 47528–47531, articles 12 and 29 of the Convention on International Civil Aviation (61 Stat. 1180).

5. Amend § 91.175 by revising paragraphs (c) introductory text, as proposed at 67 FR 77341; Dec. 17, 2002, (d), and (e)(1) introductory text, and by adding paragraphs (l) and (m) to read as follows:

§ 91.175 Takeoff and landing under IFR.

* * * * *

(c) *Operation below DA, DH or MDA.* Except as provided in paragraph (l) of this section, where a DA, DH, or MDA is applicable, no pilot may operate an aircraft, except a military aircraft of the United States, at any airport below the authorized MDA or continue an approach below the authorized DA/DH unless—

* * * * *

(d) *Landing.* No pilot operating an aircraft, except a military aircraft of the United States, may land that aircraft when—

(1) For operations conducted under paragraph (l) of this section, the requirements of paragraph (l)(4) of this section are not met; or

(2) For all other part 91 operations and parts 121, 125, 129, and 135 operations, the flight visibility is less than the visibility prescribed in the standard instrument approach procedure being used.

(e) * * *

(1) Whenever operating an aircraft pursuant to paragraph (c) or (l) of this section and the requirements of that paragraph are not met at either of the following times:

* * * * *

(l) *Approach to straight-in landing operations below DA, DH, or MDA using an enhanced flight vision system (EFVS).* No pilot operating under this section or §§ 121.651, 125.381, and 135.225 of this chapter may operate an aircraft at any airport below the authorized MDA or continue an approach below the authorized DA or DH and land unless—

(1) The aircraft is continuously in a position from which a descent to a landing on the intended runway can be made at a normal rate of descent using normal maneuvers, and, for operations conducted under part 121 or part 135 of this chapter, the descent rate will allow touchdown to occur within the touchdown zone of the runway of intended landing;

(2) The pilot determines that the enhanced flight visibility observed by use of a certified enhanced flight vision system is not less than the visibility prescribed in the standard instrument approach procedure being used;

(3) The following visual references for the intended runway are distinctly visible and identifiable to the pilot using the enhanced flight vision system:

(i) The approach light system (if installed); or

(ii) The runway threshold and the touchdown zone;

(4) At 100 feet above the touchdown zone elevation of the runway of intended landing and below that altitude, the flight visibility must be sufficient for the following to be distinctly visible and identifiable to the pilot without reliance on the enhanced flight vision system to continue to a landing:

(i) The lights or markings of the threshold; or

(ii) The lights or markings of the touchdown zone;

(5) The pilot(s) is qualified to use an EFVS as follows—

(i) For parts 119 and 125 certificate holders, the applicable training, testing and qualification provisions of parts 121, 125, and 135 of this chapter;

(ii) For foreign persons, in accordance with the requirements of the civil aviation authority of the State of the operator; or

(iii) For persons conducting any other operation, in accordance with the applicable qualification and proficiency requirements of part 61 of this chapter and the operating limitations specified in the approved Airplane or Rotorcraft Flight Manual;

(6) For parts 119 and 125 certificate holders, and part 129 operations specifications holders, their operations specifications authorize use of EFVS; and

(7) The aircraft is equipped with, and the pilot uses, an enhanced flight vision system, the display of which is suitable for maneuvering the aircraft and has either an FAA type design approval or, for a foreign-registered aircraft, the EFVS is of a type design approved by the United States and complies with all of the requirements of this chapter that would be applicable to that aircraft were it registered in the United States, including the requirements for a U.S. standard airworthiness certificate.

(m) For purposes of this section, "enhanced flight vision system" (EFVS) is an installed airborne system comprised of the following features and characteristics:

(1) An electronic means to provide a display of the forward external scene topography (natural or manmade features of a place or region especially in a way to show their relative positions and elevation) through the use of imaging sensors, such as a forward-looking infrared, millimeter wave radiometry, millimeter wave radar, and low-light level image intensifying;

(2) The EFVS sensor imagery and aircraft flight symbology (*i.e.* at least airspeed, vertical speed, aircraft attitude, heading, altitude) are presented on a head-up display so that they are clearly visible to the pilot flying in his or her normal position and line of vision and looking forward along the flight path;

(3) The displayed imagery and aircraft flight symbology does not adversely obscure the pilot's outside view or field of view through the cockpit window;

(4) The EFVS includes the display element, sensors, computers and power supplies, indications, and controls. It may receive inputs from an airborne navigation system or flight guidance system; and

(5) The display characteristics and dynamics are suitable for manual control of the aircraft.

PART 121—OPERATING REQUIREMENTS: DOMESTIC FLAG, AND SUPPLEMENTAL OPERATIONS

6. The authority citation for part 121 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 40119, 41706, 44101, 44701–44702, 44705, 44709–44711, 44713, 44716–44717, 44722, 44901, 44903–44904, 44912, 46105.

7. Amend § 121.651 by revising paragraphs (c) introductory text and (d) introductory text, as proposed at 67 FR 77345; Dec. 17, 2002, to read as follows:

§ 121.651 Takeoff and landing weather minimums: IFR: All certificate holders.

* * * * *

(c) If a pilot has begun the final approach segment of an instrument approach procedure in accordance with paragraph (b) of this section, and after

that receives a later weather report indicating below-minimum conditions, the pilot may continue the approach to DA/DH or MDA. Upon reaching DA/DH, or at MDA, and at any time before the missed approach point, the pilot may continue the approach below DA/DH or MDA if either the requirements of § 91.175(l) of this chapter, or the following requirements are met:

* * * * *

(d) A pilot may begin the final approach segment of a Category I precision approach procedure at an airport when the visibility is less than the visibility minimums prescribed for that procedure if that airport is served by an operative PAR and another operative precision instrument approach system, and both the PAR and the precision approach are used by the pilot. However, no person may continue an approach below the authorized DA unless the requirements of § 91.175(l) of this chapter, or the following requirements are met:

* * * * *

PART 125—CERTIFICATION AND OPERATIONS: AIRPLANES HAVING A SEATING CAPACITY OF 20 OR MORE PASSENGERS OR A MAXIMUM PAYLOAD CAPACITY OF 6,000 POUNDS OR MORE; AND RULES GOVERNING PERSONS ON BOARD SUCH AIRCRAFT

8. The authority citation for part 125 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701–44702, 44705, 44710–44711, 44713, 44716–44717, 44722.

9. Amend § 125.381 by revising paragraph (c), as proposed at 67 FR 77346; Dec. 17, 2002, to read as follows:

§ 125.381 Takeoff and landing weather minimums: IFR.

* * * * *

(c) If a pilot initiates an instrument approach procedure based on a weather report that indicates that the specified visibility minimums exist and subsequently receives another weather report that indicates that conditions are below the minimum requirements, then the pilot may continue with the approach only if, the requirements of § 91.175(l) of this chapter, or both of the following conditions are met—

(1) The later weather report is received when the airplane is in one of the following approach phases:

(i) The airplane is on a precision or APV approach and has passed the precision final approach fix;

(ii) The airplane is on an ASR or PAR final approach and has been turned over to the final approach controller; or

(iii) The airplane is on a nonprecision final approach and the airplane—

(A) Has passed the appropriate facility or final approach fix; or

(B) Where a final approach fix is not specified, has completed the procedure turn and is established inbound toward the airport on the final approach course within the distance prescribed in the procedure; and

(2) The pilot in command finds, on reaching the authorized MDA, or DA/DH, that the actual weather conditions are at or above the minimums prescribed for the procedure being used.

* * * * *

PART 135—OPERATING REQUIREMENTS: COMMUTER AND ON-DEMAND OPERATIONS

10. The authority citation for part 135 continues to read as follows:

Authority: 49 U.S.C. 106(g), 44113, 44701–44702, 44705, 44709, 44711–44713, 44715–44717, 44722.

11. Amend § 135.225 by revising paragraph (c), as proposed at 67 FR 77348, Dec. 17, 2002, to read as follows:

§ 135.225 IFR: Takeoff, approach, and landing minimums.

* * * * *

(c) If a pilot has begun the final approach segment of an instrument approach to an airport under paragraph (b) of this section, and the pilot receives a later weather report indicating that conditions have worsened to below the minimum requirements, then the pilot may continue the approach only if the requirements of § 91.175(l) of this chapter, or both of the following conditions, are met—

(1) The later weather report is received when the aircraft is in one of the following approach phases:

(i) The aircraft is on a precision or APV approach and has passed the precision final approach fix;

(ii) The aircraft is on an ASR or PAR final approach and has been turned over to the final approach controller; or

(iii) The aircraft is on a nonprecision final approach and the aircraft—

(A) Has passed the appropriate facility or final approach fix; or

(B) Where a final approach fix is not specified, has completed the procedure turn and is established inbound toward the airport on the final approach course within the distance prescribed in the procedure; and

(2) The pilot in command finds, on reaching the authorized MDA or DA/DH, that the actual weather conditions are at or above the minimums prescribed for the procedure being used.

* * * * *

Issued in Washington, DC on February 4, 2003.

Louis C. Cusimano,

Acting Director, Flight Standards Service.

[FR Doc. 03–3265 Filed 2–7–03; 8:45 am]

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H.J. Res. 13/P.L. 108–4

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[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period January 1, 2001, through January 1, 2002. The CFR volume issued as of January 1, 2001 should be retained.

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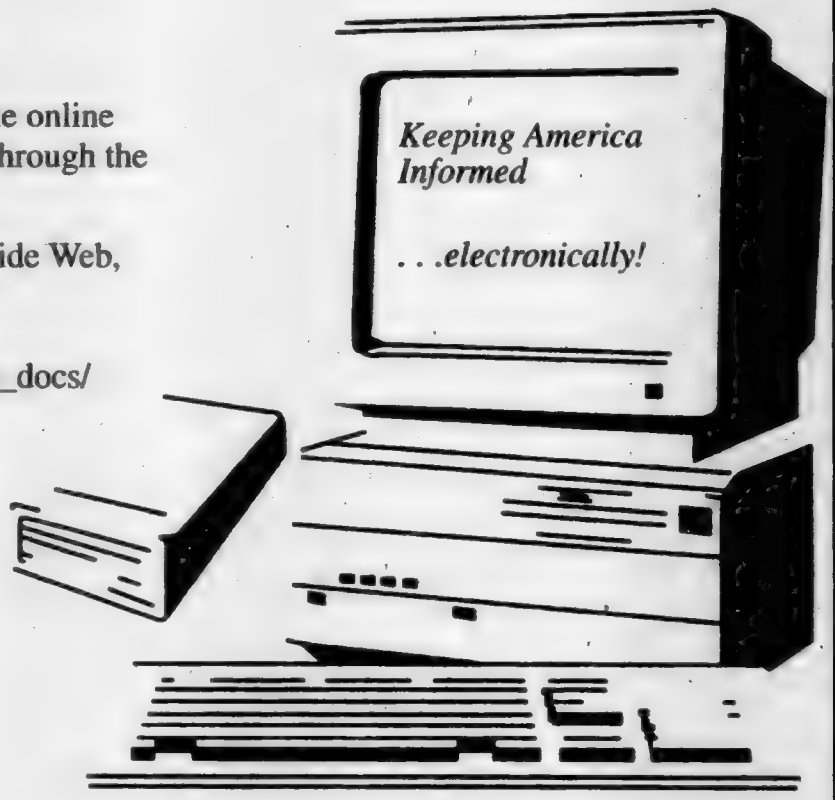

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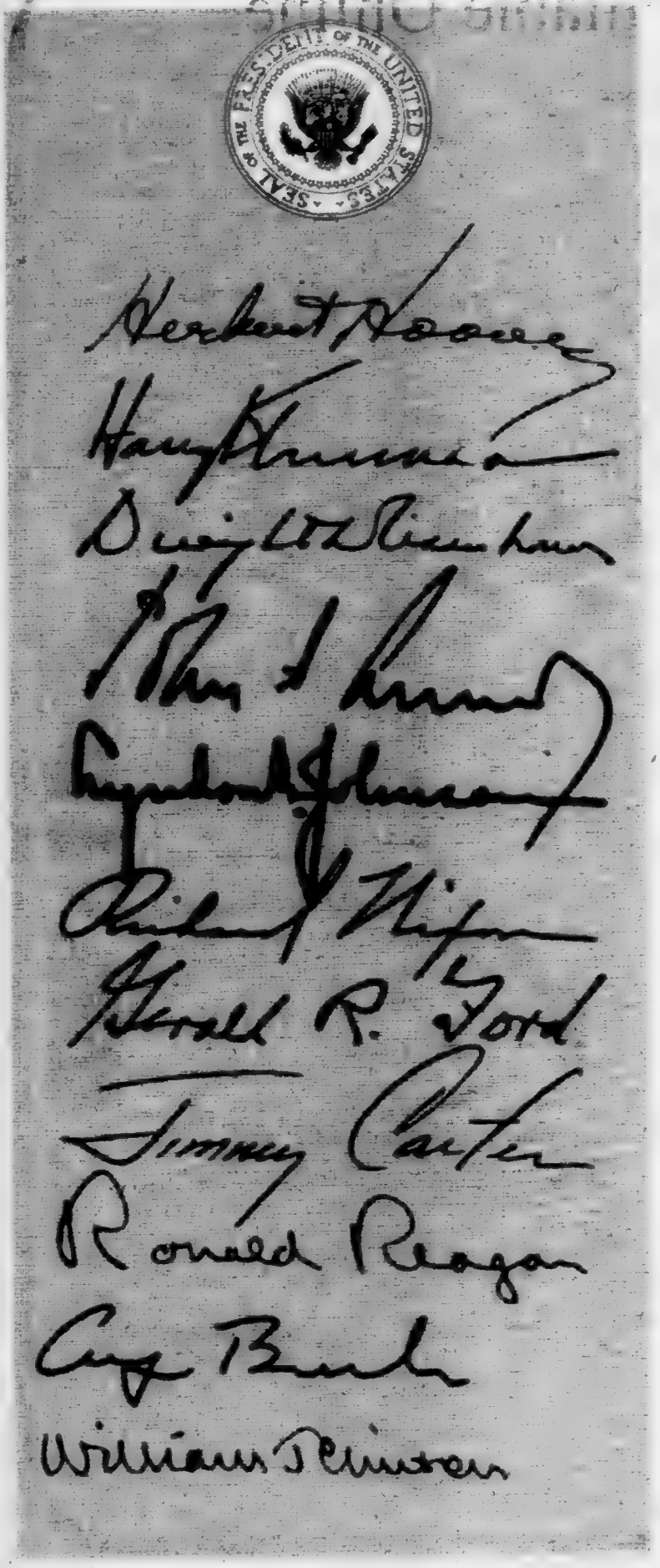

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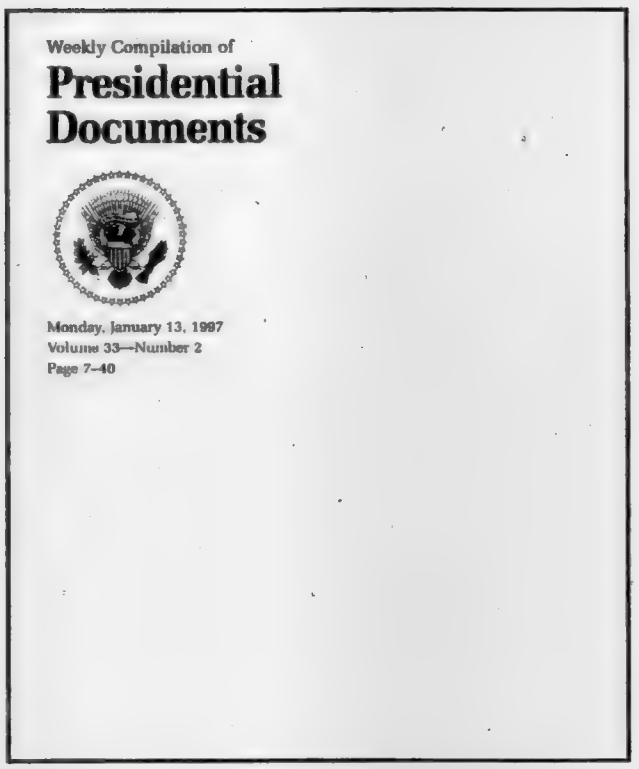

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NE–45–AD; Amendment 39–13049; AD 2003–04–01]

RIN 2120–AA64

Airworthiness Directives; Hartzell Propeller Inc., Model HD–E6C–3B/E13890K Propellers

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), that is applicable to Hartzell Propeller Inc. HD–E6C–3B/E13890K propellers. This amendment requires the reduction of the original hub certified service (fatigue) life from unlimited hours to 37,400 flight hours. This amendment is prompted by a reevaluation by Hartzell Propeller Inc. of the D–5108–( ) original hub service life certification calculations. The actions specified by this AD are intended to prevent fatigue failure of D–5108–( ) hubs, which may result in loss of airplane control.

DATES: Effective March 18, 2003.

ADDRESSES: Information regarding this action may be examined, by appointment, at the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: Tomaso DiPaolo, Aerospace Engineer, Chicago Aircraft Certification Office, FAA, Small Airplane Directorate, 2300 East Devon Avenue, Des Plaines, IL 60018, telephone; (847) 294–7031, fax; (847) 294–7834.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that is applicable to Hartzell Propeller Inc. HD–E6C–3B/E13890K propellers was published in the **Federal Register** on September 23, 2002 (67 FR 59483). That action proposed to require the reduction of the original hub certified service (fatigue) life from unlimited hours to 37,400 flight hours. As a result of an in-service occurrence of a cracked hub, Hartzell Propeller Inc. has reevaluated the service (fatigue) life of the D–5108–( ) hub installed in the HD–E6C–3B/E13890K propeller. Hartzell has reduced the original hub certified service (fatigue) life from unlimited hours to 37,400 flight hours. Exceeding this life limit could result in fatigue failure of the hub, which may result in loss of airplane control. The 37,400 flight hour life limit is documented in the Airworthiness Limitations section of Hartzell Manual 161.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Risk If Life of a Component Is Not Known

One commenter states that the proposal introduces a life limit where there was none previously required. The commenter also states that there is a risk that operators or maintenance organizations may not know the current life of the applicable parts, and that the NPRM does not include any proposal to estimate usage or factoring where the life of a component is not known.

The FAA does not agree. Under 14 CFR 121.380 (a)(2)(ii), each registered certificate holder must keep records of the total time in service of each propeller. The propellers affected by this AD are flown on aircraft used in part 121 operations. Moreover, 14 CFR 121.380 mandates that the records must be retained for an unlimited time and must be transferred with the aircraft. In addition, the Airworthiness Limitations associated with this propeller have always required inspections at prescribed intervals which necessitate that the propeller usage be tracked. Therefore, if a propeller's total time is unknown, then the propeller and the registered certificate holder are not in compliance with the regulations. Presently, the FAA will not pursue policy to approve a general formula for calculating total time on propellers with unknown total times. Please note that the final rule allows for the submittal of data to request and to justify an alternate method of compliance to the AD or an adjustment of the compliance time in the AD.

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Economic Analysis

There are approximately 250 Hartzell Propeller Inc. HD–E6C–3B/E13890K propellers of the affected design in the worldwide fleet. The FAA estimates that 140 propellers installed on aircraft of U.S. registry will be affected by this AD, that it will take approximately 30 work hours per propeller to perform the required actions, and that the average labor rate is $60 per work hour. Required parts will cost approximately $20,000 per propeller. Based on these figures, the total cost of the AD to U.S. operators is estimated to be $3,052,000.

Regulatory Analysis

This final rule does not have federalism implications, as defined in Executive Order 13132, because it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the FAA has not consulted with state authorities prior to publication of this final rule.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

2003–04–01 Hartzell Propeller Inc.: Amendment 39–13049. Docket No. 2000–NE–45–AD.

Applicability: This airworthiness directive (AD) is applicable to Hartzell Propeller Inc., Model HD–E6C–3B/E13890K propellers with D–5108–( ) hubs installed. These propellers are installed on, but not limited to, Fairchild Dornier GmbH 328–100 series airplanes.

Note 1: The parentheses indicate the presence or absence of an additional letter(s) which vary the basic propeller hub model designation. This AD still applies regardless of whether these letters are present or absent on the propeller hub model designation.

Note 2: This AD applies to each propeller identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For propellers that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Compliance with this AD is required as indicated, unless already done.

To prevent fatigue failure of Hartzell D–5108–( ) hubs, which may result in loss of airplane control, do the following:

(a) Remove from service D–5108–( ) hubs before exceeding 37,400 flight hours and replace with a serviceable hub.

(b) After the effective date of this AD, do not install any D–5108–( ) hub that has accumulated 37,400 flight hours.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Chicago Aircraft Certification Office (ACO). Operators must submit their request through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Chicago ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Chicago ACO.

Special Flight Permits

(d) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the aircraft to ■ location where the requirements of this AD can be done.

Effective Date

(e) This amendment becomes effective on March 18, 200■.

Issued in Burlington, Massachusetts, on February 4, 2003.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 03–3309 Filed 2–10–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30352; Amdt. No. 3043]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: This rule is effective February 11, 2003. The compliance date for each SIAP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of February 11, 2003.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located;

3. The Flight Inspection Area Office which originated the SIAP; or,

4. The Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

For Purchase—Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Donald P. Pate, Flight Procedure Standards Branch (AMCAFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 (Mail Address: P.O. Box 25082, Oklahoma City, OK 73125) telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA Forms 8260–3, 8260–4, and 8260–5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the Federal Register expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic

depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (NFDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable, that good cause exists for making some SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Incorporation by reference, and Navigation (Air).

Dated: Issued in Washington, DC on January 31, 2003.

James J. Ballough,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, AND 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/VME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.23RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

Effective February 20, 2003

Franklin, VA, Franklin Muni-John Beverly Rose, VOR RWY 9, Amdt 14B
Franklin, VA, Franklin Muni-John Beverly Rose, VOR/DME RWY 27, Amdt 9C

Effective March 20, 2003

Bullhead City, AZ Laughlin/Bullhead Intl, RNAV (GPS) RWY 16, Orig
Bullhead City, AZ Laughlin/Bullhead Intl, RNAV (GPS) RWY 34, Orig
Bullhead City, AZ Laughlin/Bullhead Inti, GPS RWY 34, Orig-A, CANCELLED
Palmdale, CA, Palmdale Production Flt/Test Instln AF Plant 42, RNAV (GPS) RWY 25, Orig
Washington, DC, Washington Dulles International, ILS RWY 1L, Orig
Washington, DC, Washington Dulles International, ILS RWY 12, Amdt 7
Washington, DC, Washington Dulles International, ILS RWY 19L, Amdt 11
Washington, DC, Washington Dulles International, ILS RWY 19R, Amdt 22
Washington, DC, Washington Dulles International, ILS/DME RWY 1L, Amdt 5A, CANCELLED
Washington, DC, Washington Dulles International, CONVERGING ILS RWY 12, Amdt 4
Washington, DC, Washington Dulles International, CONVERGING ILS RWY 19L, Amdt 5
Washington, DC, Washington Dulles International, CONVERGING ILS RWY 19R, Amdt 5
Washington, DC, Washington Dulles International, RNAV (GPS) RWY 1L, Orig
Washington, DC, Washington Dulles International, RNAV (GPS) RWY 1R, Orig
Washington, DC, Washington Dulles International, RNAV (GPS) Y RWY 12, Orig
Washington, DC, Washington Dulles International, RNAV (GPS) Z RWY 12, Orig
Washington, DC, Washington Dulles International, RNAV (GPS) RWY 19L, Orig
Washington, DC, Washington Dulles International, RNAV (GPS) RWY 19R, Orig
Daytona Beach, FL, Daytona Beach Intl, VOR OR GPS RWY 16, Amdt 18
Daytona Beach, FL, Daytona Beach Intl, NDB OR GPS RWY 7L, Amdt 26
Daytona Beach, FL, Daytona Beach Intl, RADAR–1 Amdt, 8
Daytona Beach, FL, Daytona Beach Intl, RNAV (GPS) RWAY 34, Orig
Tampa, FL, Vandenberg, LOC RWY 23, Orig
Rexburg, ID, Rexburg-Madison county, VOR RWY 35, Amdt 4,
Bay St. Louis, MS, Stennis Intl, NDB RWY 18, Amdt 1
Bay St. Louis, MS, Stennis Intl, ILS RWY 18, Orig
Olive Branch, MS, Olive Branch, LOC RWY 18, Amdt 1, CANCELLED
Olive Branch, MS, Olive Branch, ILS RWY 18, Orig
Omaha, NE, Eppley Airfield, NDB RWY 14R, Amdt 24D
Omaha, NE, Eppley Airfield, ILS RWY 14R, Amdt 3
Omaha, NE Eppley Airfield, ILS RWY 18, Amdt 7
Omaha, NE, Eppley Airfield, RNAV (GPS) RWY 14R, Orig
Omaha, NE, Eppley Airfield, RNAV (GPS) RWY 18, Orig
Omaha, NE, Eppley Airfield, RNAV (GPS) RWY 32L, Orig
Omaha, NE, Eppley Airfield, RNAV (GPS) RWY 36, Orig
Omaha, NE, Eppley Airfield, GPS RWY 32L, Orig-A, CANCELLED
Morristown, NJ, Morristown Muni, RNAV (GPS) 5, Orig
Angel Fire, NM, Angel Fire, RNAV (GPS) RWY 17, Amdt 1
Montauk, MY, Montauk, RNAV (GPS) RWY 24, Orig
Plattsburgh, NY, Plattsburgh Intl, ILS RWY 17, Amdt 1
Plattsburgh, NY, Plattsburgh Intl, RNAV (GPS) RWY 17, Orig
Plattsburgh, NY, Plattsburgh Intl, RNAV (GPS) RWY 35, Orig
Hickory, NC, Hickory Regional, RNAV (GPS) RWY 1, Orig
Hickory, NC, Hickory Regional, RNAV (GPS) RWY 6, Orig
Hickory, NC, Hickory Regional, RNAV (GPS) RWY 19, Orig
Hickory, NC, Hickory Regional, RNAV (GPS) RWY 24, Orig

Hickory, NC, Hickory Regional, GPS RWY 24 Orig, CANCELLED
Mount Pocono, PA, Pocono Mountains Muni, VOR RWY 13, Amdt 6
Mount Pocono, PA, Pocono Mountains Muni, RNAV (GPS) RWY 13, Orig
Amarillo, TX, Amarillo Intl, RNAV (GPS) RWY 13, Orig
Amarillo, TX, Amarillo Intl, RNAV (GPS) RWY 31, Orig
Amarillo, TX, Amarillo Intl, GPS RWY 13, Orig-A, CANCELLED
Amarillo, TX, Amarillo Intl, GPS RWY 31, Orig-A, CANCELLED
Highgate, VT, Franklin County State, VOR/DME RWY 19, Amdt 3
Highgate, VT, Franklin County State, RNAV (GPS) RWY 1, Orig
Highgate, VT, Franklin County State, GPS RWY 1, Orig, CANCELLED

The FAA published an Amendment in Docket No. 30350, Amdt. No. 3041 to Part 97 of the Federal Aviation Regulations (Vol. 68 FR No. 17, page 3811: dated January 27, 2003) under section 97.33 effective March 20, 2003, which is hereby amended to change effective date to read:

23 Jan 03:

Naples, FL, Naples Muni, RNAV (GPS), RWY 05, Amdt 1

[FR Doc. 03–3269 Filed 2–10–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30353; Amdt. No. 3044]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: This rule is effective February 11, 2003. The compliance date for each SIAP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of February 11, 2003.

ADDRESSES: Availability of matter incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;
2. The FAA Regional Office of the region in which affected airport is located; or
3. The Flight Inspection Area Office which originated the SIAP.
4. The Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

For Purchase—Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, US Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Donald P. Pate, Flight Procedure Standards Branch (AMCAFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd. Oklahoma City, OK. 73169 (Mail Address: P.O. Box 25082 Oklahoma City, OK 73125) telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description on each SIAP is contained in the appropriate FAA Form 8260 and the National Flight Data Center (FDC)/Permanent (P) Notices to Airmen (NOTAM) which are incorporated by reference in the amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation's Regulations (FAR). Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the FEDERAL REGISTER expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction of charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes SIAPs. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained in the content of the following FDC/P NOTAMs for each SIAP. The SIAP information in some previously designated FDC/Temporary FDC/T NOTAMs is of such duration as to be permanent. With conversion to FDC/P NOTAMs, the respective FDC/T NOTAMs have been canceled.

The FDC/P NOTAMs for the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these chart changes to SIAPs by FDC/P NOTAMs, the TERPS criteria were applied to only these specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for all these SIAP amendments requires making them effective in less than 30 days.

Further, the SIAPs contained in this amendment are based on the criteria contained in the TERPS. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making these SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are

necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Incorporation by reference, and Navigation (Air).

Issued in Washington, DC, on January 31, 2003.

James J. Ballough,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, and 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, Identified as follows:

. . . *Effective Upon Publication*

FDC date	State	City	Airport	FDIC No.	Subject
01/14/03 ...	UT	Salt lake City	Salt Lake City Intl	3/0326	ILS Rwy 16L, Amdt 1B
01/16/03 ...	DC	Washington	Ronald Reagan Washington National ...	3/0355	LDA/DME Rwy 19, Amdt 2A
01/16/03 ...	FL	Bartow	Bartow Muni	3/0365	RNAV (GPS) Rwy 27R, Orig
01/16/03 ...	FL	Bartow	Bartow Muni	3/0368	RNAV (GPS) Rwy 9L, Orig
01/16/03 ...	WI	Watertown	Watertown Muni	3/0396	VOR/DME Rwy 29, Orig-A
01/16/03 ...	WI	Watertown	Watertown Muni	3/0397	NDB Rwy 5, Amdt 1B
01/17/03 ...	FL	Bartow	Bartow Muni	3/0374	VOR/DME Rwy 9L, Amdt 2A
01/17/03 ...	IA	Cedar Rapids	The Eastern Iowa	3/0412	GPS Rwy 31, Orig-E
01/21/03 ...	AK	Cold Bay	Cold Bay	3/0500	ILS Rwy 14, Amdt 16C
01/22/03 ...	TX	Wichita Falls	Sheppard AFB/Wichita Falls Muni	3/0517	RNAV (GPS) Rwy 15R, Orig
01/22/03 ...	TX	Fort Worth	Fort Worth Meacham Intl	3/0519	ILS Rwy 34R, Amdt 1A
01/22/03 ...	TX	Fort Worth	Fort Worth Meacham Intl	3/0520	ILS Rwy 16L, Amdt 7A
01/22/03 ...	WA	Bremerton	Bremerton National	3/0525	NDB Rwy 1, Amdt 1
01/23/03 ...	WI	Green Bay	Austin Straubel Intl	3/0540	ILS Rwy 6, Amdt 21
01/23/03 ...	ND	Minot	Minot, ND	3/0541	ILS Rwy 31, Amdt 9
01/23/03 ...	KY	Prestonburg	Big Sandy Regional	3/0542	RNAV (GPS) Rwy 22, Orig
01/23/03 ...	TN	Smithville	Smithville Muni	3/0554	RNAV (GPS) Rwy 24, Orig
01/23/03 ...	GA	Brunswick	Malcolm McKinnon	3/0569	RNAV (GPS) Rwy 4, Orig
01/23/03 ...	TX	Fort Worth	Fort Worth Meacham Intl	3/0574	GPS Rwy 34, Orig-B
01/23/03 ...	CA	Daggett	Barstow-Daggett	3/0606	VOR OR TACAN Rwy 22, Amdt 8A
01/24/03 ...	AR	Mountain View	Mountain View Wilcox Memorial Field ..	3/0632	NDB–A, Amdt 2
01/24/03 ...	NY	Rochester	Greater Rochester Intl	3/0653	VOR Rwy 4, Amdt 9A
01/27/03 ...	AR	Pine Bluff	Grider Field	3/0677	ILS Rwyt 17, Amdt 2A
01/28/03 ...	NY	Massena	Masenna Intl-Richards Field	3/0709	ILS Rwy 5, Amdt 2
01/28/03 ...	NY	Watertown	Watertown Intl	3/0710	ILS Rwy 7, Amdt 6B
01/28/03 ...	TX	Harlingen	Valley Intl	3/0719	LOC BC Rwy 35L, Amdt 13
01/28/03 ...	ID	Twin Falls	Joslin Field-Magic Valley Regional	3/0728	ILS Rwy 25, Amdt 8
01/28/03 ...	NE	Scottsbluff	Western Nebraska Regional/William B. Heilig Field.	3/0732	ILS Rwy 30, Amdt 9
01/28/03 ...	NY	Plattsburgh	Plattsburgh/Clinton Co	3/0740	ILS Rwy 1, Amdt 4A

[FR Doc. 03–3268 Filed 2–10–03; 8:45 am]
BILLING CODE 4910–13–M

RAILROAD RETIREMENT BOARD

20 CFR Parts 260 and 320

RIN 3220–AB03

Requests for Reconsideration and Appeals Within the Board; Correction

AGENCY: Railroad Retirement Board.

ACTION: Final rule; correction.

SUMMARY: The Railroad Retirement Board (Board) published in the **Federal Register** of December 17, 2002, a document that simplified the procedures that govern requests for reconsideration and appeals within the Board. Sections 260.9(b) and 320.39(a) inadvertently contained inaccurate terminology. This document corrects that terminology.

DATES: Effective on February 11, 2003.

FOR FURTHER INFORMATION CONTACT: Marguerite P. Dadabo, Assistant General Counsel, Railroad Retirement Board, (312) 751–4945, TDD (312) 751–4701.

SUPPLEMENTARY INFORMATION: The Railroad Retirement Board published a document in the **Federal Register** of December 17, 2002 (67 FR 77152). That document simplified the procedures that govern requests for reconsideration and appeals within the Board. We discovered that inaccurate terminology was contained in § 260.9(b) and § 320.39(a). This document corrects that terminology.

In rule FR Doc. 02–31640 published on December 17, 2002 (67 FR 77152), make the following corrections. On page 77156 in § 260.9(b), in the first column (line 4 thereof), and on page 77157 in § 320.39(a), in the third column (line 21 thereof), remove the word "reconsideration" and insert in their place the words "hearings officer's".

By Authority of the Board.

Dated: February 4, 2003.

For the Board.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 03–3308 Filed 2–10–03; 8:45 am]
BILLING CODE 7905–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Salinomycin

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental abbreviated new animal drug application (ANADA) filed by Intervet, Inc. The supplemental ANADA provides for use of a salinomycin Type A medicated article to make Type C medicated feeds used for the prevention of coccidiosis in roaster and replacement (breeder and layer) chickens and for the prevention of coccidiosis in quail.

DATES: This rule is effective February 11, 2003.

FOR FURTHER INFORMATION CONTACT: Lonnie W. Luther, Center for Veterinary Medicine (HFV–104), Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855, 301–827–8549, e-mail: lluther@cvm.fda.gov.

SUPPLEMENTARY INFORMATION: Intervet, Inc., P.O. Box 318, 405 State St., Millsboro, DE 19966, filed a supplement to ANADA 200–075 that provides for use of SACOX (salinomycin) Type A medicated article to make Type C medicated feeds used for the prevention of coccidiosis in roaster and replacement (breeder and layer) chickens and for the prevention of coccidiosis in quail. The supplemental ANADA is approved as of November 8, 2002, and the regulations are amended in 21 CFR 558.550 to reflect the approval. The basis of approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of 21 CFR part 20 and 21 CFR 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

FDA has determined under 21 CFR 25.33(a)(1) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

This rule does not meet the definition of "rule" in 5 U.S.C. 804(3)(A) because it is a rule of "particular applicability." Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

1. The authority citation for 21 CFR part 558 continues to read as follows:

Authority: 21 U.S.C. 360b, 371.

§ 558.550 [Amended]

2. Section 558.550 *Salinomycin* is amended in paragraph (a)(2) by adding "(d)(2)(i)," numerically.

Dated: January 21, 2003.

Steven D. Vaughn,

Director, Office of New Animal Drug Evaluation, Center of Veterinary Medicine.

[FR Doc. 03–3351 Filed 2–10–03; 8:45 am]
BILLING CODE 4160–01–S

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Part 501

Rules Governing Availability of Information

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Final rule.

SUMMARY: The Office of Foreign Assets Control ("OFAC") of the U.S. Department of the Treasury is issuing a final rule concerning the disclosure of certain civil penalties information. OFAC intends to publish information about civil penalties imposed and informal settlements on a weekly basis. If the publication falls on a holiday, or if required by an emergency, publication may be postponed to the following week.

DATES: This rule is effective February 11, 2003.

FOR FURTHER INFORMATION CONTACT: Chief of Civil Penalties, tel.: 202/622–6140, or Chief Counsel, tel. 202/622–2410.

SUPPLEMENTARY INFORMATION:

Background

OFAC published a proposed rule on June 19, 2002 (67 FR 41658–59), announcing a new practice of releasing certain civil penalty enforcement information on a routine basis. OFAC received public comments on the proposed rule from thirty-two persons, including financial institutions, law firms, trade associations, individuals, and a public interest group. Six commenters generally supported the proposed rule, and many of these also urged the release of other types of information. Nine commenters generally opposed the proposed rule, particularly the proposal to release the names of entities involved in civil penalty actions. Seventeen additional commenters fell in the middle; most of these commenters opposed releasing the names of entities, but otherwise they supported the proposed rule. OFAC appreciates the very useful comments it received in response to the proposed rule, and it has carefully considered all relevant comments and how best to resolve the issues they raise.

Entity Names. Among the commenters expressing reservations with the proposed rule, most opposed the naming of the entities involved in civil penalty actions. Some commenters argued that this information is likely to hurt the reputations of the entities involved, in part because the public may misunderstand the burdens of compliance with the economic sanctions programs OFAC administers. One commenter stated that public identification of foreign companies could trigger legal problems in their home countries, where compliance with U.S. economic sanctions may be prohibited. Some commenters also argued that identifying these entities would deter voluntary disclosures and informal settlements.

After considering these comments, OFAC has concluded that, in most instances, the identities of these entities are already available to the public under the Freedom of Information Act ("FOIA"), 5 U.S.C. 552. Additionally, other governmental agencies, including some within the Department, periodically publish enforcement actions such as civil penalties assessed. Accordingly, OFAC has determined to publicize the identities of entities involved in civil penalty actions by periodic release under this rule. We believe most of the concerns identified in the public comments can be adequately addressed in the descriptions OFAC will provide, including whether the entity voluntarily disclosed the violation and whether the penalty enforcement action was settled without a finding that a violation occurred.

Descriptions of the Violations or Alleged Violations. Some commenters urged OFAC to draw a clear distinction between penalties (which represent a final agency determination that a violation has occurred) and settlements (which do not reflect such a determination) when releasing civil penalties information under this rule. Some also urged OFAC to recognize the entities that have made voluntary disclosures of the violations. OFAC agrees with these points and has revised the final rule accordingly.

One commenter urged OFAC also to distinguish between what it characterized as "minor administrative infractions" and "more serious violations." OFAC expects that the gravity of each incident should be reflected in the brief description to be provided. On a related point, a different commenter asked that companies be permitted to negotiate how the incident is described in the releases of information under this rule. OFAC envisions providing a very brief, factual description of the violation or alleged violation (*e.g.*, "unauthorized funds transfer to SDN bank") and will not negotiate this limited description as part of the civil penalty settlement process. However, if an entity wishes to submit a proposed description, OFAC would certainly consider it, placing a premium on accuracy and brevity.

Advance Notice; Timing. Some commenters requested that OFAC give companies and other entities advance notice of up to 90 days before releasing information under this rule. One commenter urged that the information be released pursuant to a regular, predictable schedule; another commenter urged release within a day of reaching settlement or imposing a penalty. OFAC intends to release information regarding civil penalty actions on a weekly basis, beginning April 4, 2003. However, the final rule provides for disclosure on a "routine basis, not less frequently than monthly," to afford OFAC some regulatory flexibility in preparing and releasing this information in the prescribed format. In the early implementation stages, OFAC intends to notify affected companies before information pertaining to them is made public under this rule.

Some commenters suggested that an entity should be able to avoid disclosure altogether by "correcting" the violation during a short period after a penalty is imposed or settlement reached. OFAC believes these commenters may misunderstand the administrative civil penalties process. An export, import, funds transfer, or other transaction that violates the economic sanctions programs OFAC administers cannot be "corrected" after it occurs. Any prudent person would take steps to prevent future violations, perhaps by investing in an improved compliance program, but these steps do not relieve an entity or individual of responsibility for completed violations.

Scope of Application/Adequacy of FOIA. Several commenters urged that the final rule apply only to penalties imposed or settlements reached after today's publication date. Some commenters argued that this rulemaking is altogether unnecessary because FOIA provides adequate procedures for releasing information to the public. OFAC disagrees with both these points and will implement this rule to include settlements and penalties that have occurred since March 2002. All of the information that OFAC would release under this rule is already subject to public release under FOIA. OFAC records on settlements with entities from May 1998 through March 2002 were publicly released under FOIA and have been placed in the Department of the Treasury's electronic reading room *http://www.treas.gov/foia/err_dof.htm.* OFAC has found, however, that processing FOIA requests for this type of information on an ad hoc basis is not the most efficient use of its limited resources. In the implementation of this rule, OFAC intends to release information on all penalties imposed and settlements reached since the end of March 2002.

Individual Names. In the preamble to the proposed rule, OFAC invited public comments on the potential disclosure of individual names. One commenter urged OFAC to release the identities of individuals whom OFAC penalizes or with whom OFAC reaches settlements. Other commenters opposed releasing the names of company employees who might be implicated in their employer's civil penalty or settlement; one of these commenters argued that any transparency benefits from releasing such employees' identities would be outweighed by the damage to their personal and professional reputations. OFAC is currently studying the issue of releasing individual names, including the names of individuals who were personally the subject of a civil penalties matter. For the present, the final rule provides for the release of information on proceedings against individuals on an aggregate basis, in

language substantially similar to the proposed rule.

Security Risks. Some commenters argued that release of this civil penalties information would provide clues to terrorists or others about which financial institutions have the weakest OFAC compliance programs. OFAC disagrees. The frequency of civil penalty actions does not necessarily correspond to the effectiveness of a financial institution's compliance program; a small community bank should be expected to have fewer incidents than a large financial institution that processes thousands of transactions daily. As noted above, this information about OFAC's civil penalties proceedings is already available to the public under FOIA, and OFAC does not see any substantial security risk in the implementation of this rule.

Additional Information. One commenter sought clarification of proposed section 501.805(d)(1)(iii), which provided that OFAC may, "[o]n a case-by-case basis, * * * release additional information concerning a particular civil penalties proceeding." This subsection has been relocated to section 501.805(d)(4) in the final rule. Section 501.805(d)(4) is intended to clarify that this rule does not restrict OFAC's ability to disclose additional information about a penalty or settlement to the extent authorized by law. For example, the Department of the Treasury occasionally issues press releases to announce the conclusion of noteworthy OFAC civil penalty actions, and these press releases may include more detail than what is contemplated in the routine releases of information under this rule. OFAC does not intend to release any trade secrets or confidential business information it may acquire during the course of a civil penalty action.

A few commenters urged OFAC to publish, in the implementation of this rule, additional information unique to each civil penalty action. Some urged publication of an analysis of aggravating and mitigating factors in each case; others urged that we describe what the affected entity could have done to avoid the incident. With respect to settlements, one commenter urged that OFAC explain why it decided to settle a case rather than pursue a penalty. At this time, OFAC does not intend to release these types of information on a regular basis as part of the implementation of this rule. Some of this information would be privileged, and in each case preparing detailed additional information would encumber the prompt and efficient implementation of this rule.

Other Comments. OFAC received a wide variety of other comments, including suggestions that OFAC develop free compliance software for banks, add a "frequently asked questions" section to its website, and publish its internal civil penalties guidelines. These matters are not addressed in the final rule because they are outside the scope of this rulemaking. We note, however, that OFAC's website does include a "frequently asked questions" section *http://www.treas.gov/ofac* and that OFAC's enforcement guidelines are due to be published in the **Federal Register** in the near future.

Electronic Availability

This document is available as an electronic file on The Federal Bulletin Board the day of publication in the **Federal Register.** By modem, dial 202/512–1387 and type "/GO FAC," or call 202/512–1530 for disk or paper copies. This file is available for downloading without charge in ASCII and Adobe Acrobat7 readable (*.PDF) formats. For Internet access, the address for use with the World Wide Web, Telnet, or FTP protocol is *fedbbs.access.gpo.gov.*

This document and additional information concerning OFAC are available from OFAC's website *http://www.treas.gov/ofac* or via facsimile through OFAC's 24-hour fax-on-demand service, tel: 202/622–0077. Comments on this proposed rule may be viewed electronically via OFAC's website.

Regulatory Flexibility Act, Paperwork Reduction Act, and Executive Order 12866

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, it is hereby certified that this final rule will not have a significant economic impact on a substantial number of small entities. The rule imposes no regulatory burdens on the public and simply announces that OFAC will publicly release certain information about civil penalties imposed and informal settlements. Accordingly, no regulatory flexibility analysis is required.

The Paperwork Reduction Act does not apply because the rule does not impose information collection requirements that would require the approval of the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* A regulatory assessment is not required because this rule is not a "significant regulatory action" as defined in Executive Order 12866.

List of Subjects in 31 CFR Part 501

Administrative practice and procedure, Penalties, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 31 CFR Part 501 is amended as follows:

PART 501—REPORTING AND PROCEDURES REGULATIONS

1. The authority citation continues to read as follows:

Authority: 21 U.S.C. 1901–1908; 22 U.S.C. 287c; 31 U.S.C. 321(b); 50 U.S.C. 1701–1706; 50 U.S.C. App. 1–44.

2. Section 501.805 is amended by adding paragraph (d) to read as follows:

§ 501.805 Rules governing availability of information.

* * * * *

(d) *Certain Civil Penalties Information.* (1) After the conclusion of a civil penalties proceeding that results in either the imposition of a civil monetary penalty or an informal settlement, OFAC shall make available to the public certain information on a routine basis, not less frequently than monthly, as follows:

(i) In each such proceeding against an entity, OFAC shall make available to the public

(A) The name and address of the entity involved,

(B) The sanctions program involved,

(C) A brief description of the violation or alleged violation,

(D) A clear indication whether the proceeding resulted in an informal settlement or in the imposition of a penalty,

(E) An indication whether the entity voluntarily disclosed the violation or alleged violation to OFAC, and

(F) The amount of the penalty imposed or the amount of the agreed settlement.

(ii) In such proceedings against individuals, OFAC shall release on an aggregate basis

(A) The number of penalties imposed and informal settlements reached,

(B) The sanctions programs involved,

(C) A brief description of the violations or alleged violations,

(D) A clear indication whether the proceedings resulted in informal settlements, in the imposition of penalties, or in administrative hearing requests pursuant to the Trading With the Enemy Act (TWEA), 50 U.S.C. 5(b), and

(E) The amounts of the penalties imposed and the amounts of the agreed settlements.

(2) The medium through which information will be released is OFAC's website at *http://www.treas.gov/ofac.*

(3) The information made available pursuant to paragraph (d)(1) of this section shall not include the following:

(i) The name of any violator or alleged violator who is an individual.

(ii) Records or information obtained or created in the implementation of part 598 of this chapter.

(4) On a case-by-case basis, OFAC may release additional information concerning a particular civil penalties proceeding.

Dated: January 10, 2003.

R. Richard Newcomb,

Director, Office of Foreign Assets Control.

Approved: January 14, 2003.

Kenneth E. Lawson,

Assistant Secretary (Enforcement), Department of the Treasury.

[FR Doc. 03–3310 Filed 2–6–03; 11:32 am]

BILLING CODE 4810–25–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 65

[Docket No. FEMA–D–7535]

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Interim rule.

SUMMARY: This interim rule lists communities where modification of the base (1% annual chance) flood elevations is appropriate because of new scientific or technical data. New flood insurance premium rates will be calculated from the modified base flood elevations for new buildings and their contents.

DATES: These modified base flood elevations are currently in effect on the dates listed in the table and revise the Flood Insurance Rate Map(s) (FIRMs) in effect prior to this determination for each listed community.

From the date of the second publication of these changes in a newspaper of local circulation, any person has ninety (90) days in which to request through the community that the Administrator reconsider the changes. The modified elevations may be changed during the 90-day period.

ADDRESSES: The modified base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Michael M. Grimm, Acting Chief, Hazard Study Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–2878, or (email) *Michael.Grimm@fema.gov.*

SUPPLEMENTARY INFORMATION: The modified base flood elevations are not listed for each community in this interim rule. However, the address of the Chief Executive Officer of the community where the modified base flood elevation determinations are available for inspection is provided.

Any request for reconsideration must be based upon knowledge of changed conditions, or upon new scientific or technical data.

The modifications are made pursuant to Section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and with 44 CFR Part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified base flood elevations are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, state or regional entities.

The changes in base flood elevations are in accordance with 44 CFR 65.4.

National Environmental Policy Act. This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act. The Administrator, Federal Insurance and Mitigation Administration, certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community eligibility in the National Flood Insurance Program. No regulatory flexibility analysis has been prepared.

Regulatory Classification. This interim rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism. This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform. This rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 65

Flood insurance, floodplains, reporting and recordkeeping requirements.

Accordingly, 44 CFR Part 65 is amended to read as follows:

PART 65—[AMENDED]

1. The authority citation for Part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 65.4 [Amended]

2. The tables published under the authority of § 65.4 are amended as follows:

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community number
Florida: Monroe	Unincorporated Areas.	January 14, 2003; January 21, 2003; *The Key West Citizen.*	Mr. James Roberts, Monroe County Administrator, 1100 Simonton Street, Key West, Florida 33040.	December 31, 2002	125129 C

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community number
Orange	City of Ocoee	December 4, 2002; December 11, 2002; *The Orlando Sentinel.*	The Honorable S. Scott Vandergift, Mayor of the City of Ocoee, City Hall, 150 North Lakeshore Drive, Ocoee, Florida 34761.	March 12, 2003	120185 E
Orange	Unincorporated Areas.	December 27, 2002; January 3, 2003; *The Orlando Sentinel.*	Dr. M. Krishnamurthy, P.E., Orange County Stormwater Management Manager, 4200 South John Young Parkway, Orlando, Florida 32839.	December 13, 2002	120179 E
Orange	City of Orlando	December 27, 2002; January 3, 2003; *The Orlando Sentinel.*	The Honorable Glenda E. Hood, Mayor of the City of Orlando, 400 South Orange Avenue, Orlando, Florida 32802.	December 13, 2002	120186 E
Santa Rosa	Unincorporated Areas.	January 11, 2003; January 18, 2003; *The Press Gazette.*	Mr. Hunter Walker, Santa Rosa County Administrator, 6495 Caroline Street, Suite D, Milton, Florida 32570–4592.	December 31, 2002	120274 C
Leon	City of Tallahassee	December 17, 2002; December 24, 2002; *Tallahassee Democrat.*	The Honorable Scott Maddox, Mayor of the City of Tallahassee, City Hall 300 Adams Street, Tallahassee, Florida 32301–1731.	March 25, 2003	120144 D
Georgia: Cobb	City of Marietta	December 27, 2002; January 3, 2003; *Marietta Daily Journal.*	The Honorable Bill Dunaway, Mayor of the City of Marietta, 205 Lawrence Street, P.O. Box 3536, Marietta, Georgia 30061.	April 4, 2003	130226 D
Illinois:					
DuPage	Village of Carol Stream.	November 26, 2002; December 3, 2002; *The Daily Herald.*	The Honorable Ross Ferraro, Mayor of the Village of Carol Stream, 500 North Gary Avenue, Carol Stream, Illinois 60188.	December 19, 2002	170202 C
Kane	Unincorporated Areas.	January 14, 2003; January 21, 2003; *Kane County Chronicle.*	Mr. Michael W. McCoy, Chairman of the Kane County Board of Commissioners, 719 South Batavia Avenue, Geneva, Illinois 60134.	December 31, 2002	170896 F
DuPage	Village of Lisle	December 20, 2002; December 27, 2002; *Daily Herald.*	The Honorable Joseph Broda, Mayor of the Village of Lisle, 1040 Burlington Avenue, Lisle, Illinois 60532.	December 12, 2002	170211 B
Indiana: Allen	City of Fort Wayne	November 27, 2002; December 4, 2002; *The Journal Gazette.*	The Honorable Graham Richard, Mayor of the City of Fort Wayne, City-County Building, 1 Main Street, 9th floor, Fort Wayne, Indiana 46802–1804.	March 5, 2003	180003 E
Maryland:					
Frederick	City of Frederick	October 18, 2002; October 25, 2002; *Frederick News Post.*	The Honorable Jennifer P. Dougherty, Mayor of the City of Frederick, 101 North Court Street, Frederick, Maryland 21701.	January 24, 2003	240030 B
Harford	Unincorporated Areas.	January 10, 2003; January 17, 2003; *The Aegis.*	Mr. James M. Harkins, Harford County Executive, 220 South Main Street, Bel Air, Maryland 21014.	April 18, 2003	240040 D
Washington	Unincorporated Areas.	January 17, 2003; January 24, 2003; *The Herald Mail.*	Mr. Rodney Shoop, Washington County Administrator, 100 West Washington Street, Hagerstown, Maryland 21740.	April 25, 2003	240070 B
Massachusetts:					

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community number
Middlesex	Town of Concord	December 5, 2002; December 12, 2002; *Concord Journal.*	Mr. Christopher Whelan, Manager of the Town of Concord, 22 Monument Square, P.O. Box 535, Concord, Massachusetts 01742.	November 22, 2002	250189 B
Michigan: Kent ...	City of Kentwood	January 10, 2003; January 17, 2003; *The Grand Rapids Press.*	The Honorable Bill Hardiman, Mayor of the City of Kentwood, P.O. Box 8848, Kentwood, Michigan 49518–8848.	December 31, 2002	260107 B
Mississippi: Hinds	City of Clinton	January 9, 2003; January 15, 2003; *The Clarion-Ledger.*	The Honorable Rosemary G. Aultman, Mayor of the City of Clinton, P.O. Box 156, Clinton, Mississippi 39060.	December 31, 2002	280071 D
Madison	City of Ridgeland	January 2, 2003; January 9, 2003; *The Clarion-Ledger.*	The Honorable Gene F. McGee, Mayor of the City of Ridgeland, P.O. Box 217, Ridgeland, Mississippi 39158.	April 10, 2003	280110 D
Madison	City of Ridgeland	January 30, 2003; February 6, 2003; *The Clarion-Ledger.*	The Honorable Gene F. McGee, Mayor of the City of Ridgeland, P.O. Box 217, Ridgeland, Mississippi 39158.	May 8, 2003	280110 D
New Hampshire: Grafton	Town of Holderness	December 5, 2002; December 12, 2002; *The Record Enterprise.*	Mr. Steve Huss, Chairman of the Town of Holderness Board of Selectmen, Holderness Town Hall, P.O. Box 203, Holderness, New Hampshire 03245.	March 13, 2002	330059 C
New Jersey: Union	Township of Berkeley Heights.	January 15, 2003; January 22, 2003; *The Courier-News.*	The Honorable David A. Cohen, Mayor of the Township of Berkeley Heights, 29 Park Avenue, Berkeley Heights, New Jersey 07922.	April 23, 2003	340459 E
Atlantic	City of Brigantine	November 29, 2002; December 6, 2002; *The Beachcomer News.*	Mr. George McDermott, Brigantine City Manager, Brigantine Municipal Building, 1417 West Brigantine Avenue, Brigantine, New Jersey 08203.	November 20, 2002	345286 B
New York: Erie	Town of Hamburg ...	December 12, 2002; December 19, 2002; *Hamburg Sun.*	Mr. Patrick H. Hoak, Hamburg Town Supervisor, 6100 South Park Avenue, Hamburg, New York 14075.	June 3, 2003	360244 D
Pennsylvania: *Chester Borough of Downingtown*	January 8, 2003; January 15, 2003; *Daily Local News.*	Mr. Casey Lalonde, Borough of Downingtown, Interim Manager, 4–10 West Lancaster Avenue, Downingtown, Pennsylvania 19335.	December 30, 2002	420275 E.	
York	Township of Springettsbury.	December 20, 2002; December 27, 2002; *The York Dispatch.*	Mr. Robert J. Sabatini, Jr., Springettsbury Township Manager, 1501 Mt. Zion Road, York, Pennsylvania 17402.	March 28, 2003	421031 A
York	Township of Spring Garden.	December 20, 2002; December 27, 2002; *The York Dispatch.*	Mr. Joseph F. Barrons, Spring Garden Township Manager, 558 Ogantz Street, York, Pennsylvania 17403.	March 28, 2003	420937 B
Commonwealth.	Puerto Rico	January 17, 2003; January 24, 2003; *The San Juan Star.*	The Honorable Sila Maria Canderon, Governor of the Commonwealth of Puerto Rico, Office of the Governor, P.O. Box 9020082, San Juan, Puerto Rico 00902.	April 25, 2003	720000 C
Tennessee:					

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community number
Shelby	City of Memphis	December 30, 2002; January 6, 2003; *The Commercial Appeal.*	The Honorable Willie W. Herenton, Ph.D., Mayor of the City of Memphis, 125 North Main Street, Suite 700, Memphis, Tennessee 38103.	December 20, 2002	470177 E
Nashville and Davidson.	Metropolitan Government.	December 13, 2002; December 20, 2002; *The Tennessean.*	The Honorable William Purcell, Mayor of the Metropolitan Government of Nashville and Davidson County, 107 Metropolitan Courthouse, Nashville, Tennessee 37201.	December 6, 2002	470040 F
Shelby	Unincorporated Areas.	December 17, 2002; December 24, 2002 *The Commercial Appeal.*	The Honorable A.C. Wharton, Jr., Mayor of Shelby County, 160 North Main Street, Suite 850, Memphis, Tennessee 38103.	December 10, 2002	470214 E
Virginia: Loudoun	Town of Leesburg	January 3, 2003; *Loudoun Times Mirror.*	The Honorable Kristen Umstattd, Mayor of the Town of Leesburg, 25 West Market Street, P.O. Box 88, Leesburg, Virginia 20178.	December 30, 2002	510091 D
West Virginia: McDowell	Unincorporated Areas.	January 8, 2003; January 15, 2003; *The Welch News.*	Mr. B.G. Smith, McDowell County Administrator, 90 Wyoming Street, Suite 109, Welch, West Virginia 25801.	April 16, 2003	540114 B
Wisconsin: Chippewa	Unincorporated Areas.	January 8, 2003; January 15, 2003; *The Chippewa Herald.*	Mr. Michael Murphy, Chairman of the Chippewa County Board, 711 North Bridge Street, Chippewa Falls, Wisconsin 54729.	December 30, 2002	555549 C
Lincoln	City of Merrill	November 26, 2002; December 3, 2002; *The Tomahawk Leader.*	The Honorable Douglas Williams, Mayor of the City of Merrill, 1004 East First Street, Merrill, Wisconsin 54452.	November 18, 2002	555565 B
Pierce	Unincorporated Areas.	January 15, 2003; January 22, 2003; *Pierce County Herald.*	Mr. Richard Truax, Pierce County Board Chairman, P.O. Box 128, Ellsworth, Wisconsin 54011.	April 21, 2003	555571 B

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance")

Dated: February 3, 2003.

Anthony S. Lowe,

Administrator, Federal Insurance and Mitigation Administration.

[FR Doc. 03–3336 Filed 2–10–03; 8:45 am]

BILLING CODE 6718–04–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 65

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Final rule.

SUMMARY: Modified base (1% annual chance) flood elevations are finalized for the communities listed below. These modified elevations will be used to calculate flood insurance premium rates for new buildings and their contents.

EFFECTIVE DATES: The effective dates for these modified base flood elevations are indicated on the following table and revise the Flood Insurance Rate Map(s) (FIRMs) in effect for each listed community prior to this date.

ADDRESSES: The modified base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Michael M. Grimm, Acting Chief, Hazard Study Branch; Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–2878, or (email) *Michael.Grimm@fema.gov.*

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency makes the final determinations listed below of modified base flood elevations for each community listed. These modified elevations have been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Administrator has resolved any appeals resulting from this notification.

The modified base flood elevations are not listed for each community in this notice. However, this rule includes the address of the Chief Executive Officer of the community where the modified base flood elevation determinations are available for inspection.

The modifications are made pursuant to Section 206 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown

and must be used for all new policies and renewals.

The modified base flood elevations are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, state or regional entities.

These modified elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

The changes in base flood elevations are in accordance with 44 CFR 65.4.

National Environmental Policy Act. This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act. The Administrator, Federal Insurance and Mitigation Administration, certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification. This final rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism. This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform. This rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 65

Flood insurance, floodplains, reporting and recordkeeping requirements.

Accordingly, 44 CFR part 65 is amended to read as follows:

PART 65—[AMENDED]

1. The authority citation for part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 65.4 [Amended]

2. The tables published under the authority of § 65.4 are amended as follows:

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community number
Connecticut:					
Middlesex (FEMA Docket No. D–7531).	City of Middletown ..	September 10, 2002; September 17, 2002; *The Middletown Press.*	The Honorable Domenique S. Thornton, Mayor of the City of Middletown, 245 deKoven Drive, P.O. Box 1300, Middletown, Connecticut 06457.	December 17, 2002	090068 C
Florida:					
Seminole (FEMA Docket No. D–7529).	City of Altamonte Springs.	August 30, 2002; September 6, 2002; *The Orlanda Sentinel.*	Mr. Phillip D. Penland, Manager of the City of Altamonte Springs, 225 Newburyport Avenue, Altamonte Springs, Florida 32701.	December 6, 2002	120290 E
Broward (FEMA Docket No. D–7527).	Unincorporated Areas.	July 8, 2002; July 15, 2002; *Sun-Sentinel.*	Mr. Roger J. Desjarlais, Broward County Administrator, 115 South Andrews Avenue, Room 409, Fort Lauderdale, Florida 33301.	July 1, 2002	125093 F
Charlotte (FEMA Docket No. D–7531).	Unincorporated Areas.	September 19, 2002; September 26, 2002; *Herald Tribune (Charlotte County Edition)* and *Sun Herald.*	Ms. Pamela Brangaccio, Charlotte County Interim Administrator, 18500 Murdock Circle, Port Charlotte, Florida 33948.	September 12, 2002 ...	120061 D
Dade (FEMA Docket No. D–7531).	Unincorporated Areas.	September 13, 2002; September 20, 2002; *The Miami Herald.*	Mr. Steve Shriver, Dade County Manager, 111 N.W. First Street, Suite 910, Miami, Florida 33128.	September 6, 2002	120635 J
Dade (FEMA Docket No. D–7531).	City of Miami	September 10, 2002; September 17, 2002; *The Miami Herald.*	The Honorable Manuel A. Diaz, Mayor of the City of Miami, 3500 Pan American Drive, Miami, Florida 33133.	September 3, 2002	120650 J
Broward (FEMA Docket No. D–7527).	City of Parkland	July 8, 2002; July 15, 2002; *Sun-Sentinel.*	The Honorable Sal Pagliara, Mayor of the City of Parkland, 6600 University Drive, Parkland, Florida 33067.	July 1, 2002	120051 F

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community number
Seminole (FEMA Docket No. D–7529).	Unincorporated Areas.	August 30, 2002; September 6, 2002; *The Orlando Sentinel.*	Mr. Kevin Grace, Manager of Seminole County, Seminole County Services Building, 1101 East First Street, Sanford, Florida 32771.	December 6, 2002	120289 E
Georgia:					
Richmond (FEMA Docket No. D–7531).	City of Augusta	September 5, 2002; September 12, 2002; *The Augusta Chronicle.*	The Honorable Bob Young, Mayor of the City of Augusta, City-County Municipal Building, 530 Greene Street, Augusta, Georgia 30911.	December 12, 2002	130158 E
Catoosa (FEMA Docket No. D–7531).	City of Fort Oglethorpe.	September 4, 2002; September 11, 2002; *Chattanooga Free Press.*	The Honorable Judson L. Burkhart, Mayor of the City of Fort Oglethorpe, P.O. Box 5509, 500 City Hall Drive, Fort Oglethorpe, Georgia 30742.	December 11, 2002	130248 B
Illinois:					
Kane (FEMA Docket No. D–7529).	Village of Sleepy Hollow.	August 9, 2002; August 16, 2002; *The Courier News.*	Mr. Stephen K. Pickett, Village of Sleepy Hollow President, 1 Thorobred Lane, Sleepy Hollow, Illinois 60118.	August 1, 2002	170331
Kane (FEMA Docket No. D–7529).	Village of West Dundee.	August 9, 2002; August 16, 2002; *The Daily Herald.*	Mr. Larry Keller, Village of West Dundee President, 102 South 2nd Street, West Dundee, Illinois 60118..	August 1, 2002	170335
Maine:					
Knox (FEMA Docket No. D–7529).	Town of Camden	August 15, 2002; August 22, 2002; *The Camden Herald.*	Mr. Roger Moody, Manager of the Town of Camden, P.O. Box 1207, Camden, Maine 04843.	July 17, 2002	230074 B
Pennsylvania:					
Bucks (FEMA Docket No. D–7527).	Borough of Richland	August 14, 2002; August 21, 2002; *The Intelligencer.*	Mr. Steven Tamburri, Chairman of the Township of Richland Board of Supervisors, Suite A, 1328 California Road, Quakertown, Pennsylvania 18951.	November 20, 2002	421095 F
Virginia:					
Prince William (FEMA Docket No. D–7527).	Town of Dumfries ...	August 9, 2002; August 16, 2002; *Potomac News.*	The Honorable Melvin Bray, Mayor of the Town of Dumfries, P.O. Box 56, Dumfries, Virginia 22026.	July 31, 2002	510120 D
Independent City (FEMA Docket No. D–7531).	City of Roanoke	September 20, 2002; September 27, 2002; *Roanoke Times.*	The Honorable Ralph K. Smith, Mayor of the City of Roanoke, 215 Church Avenue, S.W., Room 452, Roanoke, Virginia 24011.	September 12, 2002 ...	510130 D
Fauquier (FEMA Docket No. D–7527).	Town of Warrenton	August 15, 2002; August 22, 2002; *Fauquier Citizen.*	Mr. Kenneth L. McLawhon, Warrenton Town Manager, 18 Court Street, Warrenton, Virginia 20186.	July 16, 2002	510057 B
West Virginia:					
Berkeley (FEMA Docket No. D–7531).	Unincorporated Areas.	September 20, 2002; September 27, 2002; *Martinsburg Journal.*	Mr. Howard Strauss, President of Berkeley County, Board of Commissioners, 126 West King Street, Martinsburg, West Virginia 25401.	September 4, 2002	540282 B

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Dated: February 3, 2003.

Anthony S. Lowe,

Administrator, Federal Insurance and Mitigation Administration.

[FR Doc. 03–3335 Filed 2–10–03; 8:45 am]

BILLING CODE 6718–04–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

Final Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: Base (1% annual chance) flood elevations and modified base flood elevations are made final for the communities listed below. The base flood elevations and modified base flood elevations are the basis for the floodplain management measures that

each community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATES: The date of issuance of the Flood Insurance Rate Map (FIRM) showing base flood elevations and modified base flood elevations for each community. This date may be obtained by contacting the office where the maps are available for inspection as indicated on the table below.

ADDRESSES: The final base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Michael M. Grimm, Acting Chief, Hazard Study Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–2878, or (email) *Michael.Grimm@fema.gov*.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA or Agency) makes final determinations listed below of base flood elevations and modified base flood elevations for each community listed. The proposed base flood elevations and proposed modified base flood elevations were published in newspapers of local circulation and an opportunity for the community or individuals to appeal the proposed determinations to or through the community was provided for a period of ninety (90) days. The proposed base flood elevations and proposed modified base flood elevations were also published in the **Federal Register**.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67.

The Agency has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and Flood Insurance Rate Map available at the address cited below for each community.

The base flood elevations and modified base flood elevations are made final in the communities listed below. Elevations at selected locations in each community are shown.

National Environmental Policy Act. This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act. The Administrator, Federal Insurance and Mitigation Administration, certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because final or modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification. This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review; 58 FR 51735.

Executive Order 12612, Federalism. This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform. This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, flood insurance, reporting and recordkeeping requirements.

Accordingly, 44 CFR Part 67 is amended as follows:

PART 67—[AMENDED]

1. The authority citation for Part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.11 [Amended]

2. The tables published under the authority of § 67.11 are amended as follows:

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD) •Elevation in feet (NAVD)
ALABAMA	
Montgomery County (Unincorporated Areas) and City of Montgomery (FEMA Docket No. D–7544)	
City of Montgomery	
Baldwin Slough:	
At the confluence with Catoma Creek	*181
Approximately 600 feet upstream of Vaughn Road	*235
Montgomery County (Unincorporated Areas)	
Catoma Creek:	
Just upstream of Trotman Road	*216
Approximately 12.5 miles upstream of Trotman Road	*247
City of Montgomery, Montgomery County (Unincorporated Areas)	
Catoma Creek Tributary 1:	
At the confluence with Catoma Creek Tributary 1	*216
Approximately 1.5 miles upstream of the confluence with Catoma Creek Tributary 1	*247
City of Montgomery	
Catoma Creek Tributary 1 Branch 1:	
At confluence with Catoma Creek Tributary 1	*206
Approximately 1.7 miles upstream of confluence with Catoma Creek Tributary 1	*223
City of Montgomery	
Catoma Creek Tributary 1 Branch 2:	
At confluence with Catoma Creek Tributary 1	*208
Approximately 1.7 miles upstream of confluence with Catoma Creek Tributary 1	*234
City of Montgomery	
Catoma Creek Tributary 1 Branch 3:	
At confluence with Catoma Creek Tributary 1	*212
Approximately 1.4 miles upstream of the confluence with Catoma Creek Tributary 1	*235
Montgomery County (Unincorporated Areas)	
Dry Creek:	
Approximately 200 feet downstream of Troy Highway	*247
Approximately 0.9 mile upstream of Canty Road	*271
City of Montgomery, Montgomery County (Unincorporated Areas)	
Jenkins Creek:	
Just upstream of CSX Transportation	*208
Approximately 100 feet upstream of Vaughn Road	*222
Montgomery County (Unincorporated Areas)	
Little Catoma Creek:	
Approximately 1.25 miles upstream of Troy Highway	*220
Just upstream of Old Hayneville Road	*268

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD) • Elevation in feet (NAVD)
Montgomery County (Unincorporated Areas)	
Little Catoma Creek Tributary 1:	
Approximately 300 feet upstream from the confluence with Little Catoma Creek ...	*220
Approximately 50 feet upstream of Old Pike Road ...	*259
Montgomery County (Unincorporated Areas), City of Montgomery	
Millies Creek:	
Just upstream of CSX Transportation	*215
Approximately 50 feet upstream of Wallahatchie Road	*238
City of Montgomery	
Oliver Creek:	
Approximately 0.8 mile downstream of CSX Transportation	*173
Approximately 100 feet upstream of Interstate Route 85	*237
Montgomery County (Unincorporated Areas)	
Maps available for inspection at the Montgomery County Engineering Department, 3152 Rolling Road Circle, Montgomery, Alabama.	
City of Montgomery	
Maps available for inspection at the Montgomery City Hall, 103 North Perry, Montgomery, Alabama.	
VIRGINIA	
Shenandoah County and Incorporated Areas (FEMA Docket No. D–7540)	
Shenandoah County (Unincorporated Areas), Town of Strasburg, Town of Mount Jackson, Town of New Market	
North Fork Shenandoah River:	
At the downstream county boundary	*517
Approximately 4,000 feet upstream of State Route 953	*952
Shenandoah County (Unincorporated Areas), Town of Woodstock	
Spring Hollow:	
At the confluence with North Fork Shenandoah River	*676
Approximately 1,500 feet upstream of State Route 763	*930
Shenandoah County (Unincorporated Areas), Town of Edinburg	
Stony Creek:	
At the confluence with North Fork Shenandoah River	*781
Approximately 400 feet downstream of State Route 760	*781
Shenandoah County (Unincorporated Areas)	
Maps available for inspection at the Shenandoah County Planning and Zoning Department, 600 North Main Street, Suite 107, Woodstock, Virginia.	
Town of Edinburg	
Maps available for inspection at the Edinburg Town Office, 101 Town Hall Avenue, Edinburg, Virginia.	
Town of Mount Jackson	
Maps available for inspection at the Mount Jackson Town Hall, 5945 Main Street, Mount Jackson, Virginia.	
Town of New Market	
Maps available for inspection at the New Market Town Office, 9418 John Sevier Road, New Market, Virginia.	
Town of Strasburg	
Maps available for inspection at the Strasburg Town Office, 174 East King Street, Strasburg, Virginia.	
Town of Woodstock	
Maps available for inspection at the Woodstock Municipal Building, 135 North Main Street, Woodstock, Virginia.	

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance")

Dated: February 3, 2003.

Anthony S. Lowe,

Administrator, Federal Insurance and Mitigation Administration.

[FR Doc. 03–3332 Filed 2–10–03; 8:45 am]

BILLING CODE 6718–04–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

Final Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: Base (1% annual chance) flood elevations and modified base flood elevations are made final for the communities listed below. The base flood elevations and modified base flood elevations are the basis for the floodplain management measures that each community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATES: The date of issuance of the Flood Insurance Rate Map (FIRM) showing base flood elevations and modified base flood elevations for each community. This date may be obtained by contacting the office where the maps are available for inspection as indicated on the table below.

ADDRESSES: The final base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Michael M. Grimm, Acting Chief, Hazard Study Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–2878, or (email) *Michael.Grimm@fema.gov.*

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA or Agency) makes final determinations listed below of base flood elevations and modified base flood elevations for each community listed. The proposed base flood elevations and proposed modified base flood elevations were published in newspapers of local circulation and an opportunity for the community or individuals to appeal the proposed determinations to or through the community was provided for a period of ninety (90) days. The proposed base flood elevations and proposed modified base flood elevations were also published in the **Federal Register**.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67.

The Agency has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and Flood Insurance Rate Map available at the address cited below for each community.

The base flood elevations and modified base flood elevations are made final in the communities listed below.

Elevations at selected locations in each community are shown.

National Environmental Policy Act. This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act. The Administrator, Federal Insurance and Mitigation Administration, certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because final or modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification. This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism. This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform. This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, flood insurance, reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is amended as follows:

PART 67—[AMENDED]

1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.11 [Amended]

2. The tables published under the authority of § 67.11 are amended as follows:

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD) • Elevation in feet (NAVD)
NEW JERSEY	
Estell Manor (City), Atlantic County (FEMA Docket No. D–7538)	
Tuckahoe River:	
Approximately 0.7 mile upstream of Cumberland Avenue	*56
At State Route 49	*22
Great Egg Harbor:	
At the confluence of Great Egg Harbor River and South River	*9
Maps available for inspection at the Estell Manor City Municipal Building, 148 Cumberland Avenue, Estell Manor, New Jersey.	
NEW YORK	
Saranac (Town), Clinton County (FEMA Docket No. D–7538)	
Saranac River:	
Approximately 1,050 feet downstream of Duquette Road	*736
Approximately 400 feet upstream of confluence of North Branch Saranac River	*1,111
Approximately 600 feet southwest of the intersection of Cringle Road and State Route 3 and north of State Route 3	*739
Maps available for inspection at the Saranac Town Hall, 3662 Route 3, Saranac, New York.	
TENNESSEE	
Brentwood (City), Williamson County	
Beech Creek:	
Approximately 500 feet downstream of the Private Drive	*637
Approximately 1,960 feet upstream of Murray Lane	*666
Owl Creek:	
Approximately 900 feet downstream of the county boundary	*554
Approximately 2,600 feet upstream of Ragsdale Road	*652
Mill Creek:	
Approximately 0.14 mile downstream of Concord Road	*555
Approximately 900 feet upstream of Concord Road	*557
Maps available for inspection at the Brentwood City Hall, 5211 Maryland Way, Brentwood, Tennessee.	
Rockwood (City), Roane County (FEMA Docket No. D–7542)	
North Fork Black Creek:	
Approximately 300 feet downstream of South Front Avenue	*872
Approximately 200 feet upstream of South Lenoir Avenue	*882
East Fork Black Creek:	
At the upstream side of West Wheeler Street	*880
Approximately 380 feet upstream of North Front Avenue	*912
Black Creek Side Channel:	
At the confluence with Black Creek	*866
At the divergence from North Fork Black Creek	*872
Black Creek:	
Approximately 1,580 feet upstream of U.S. Route 70	*854
Approximately 220 feet upstream of West Rockwood Street	*878
Middle Fork Black Creek:	
Approximately 140 feet downstream of North Chamberlain Avenue	*878
Approximately 2,420 feet upstream of Strang Street	*924
Maps available for inspection at the City Hall Building, 110 North Chamberlain Avenue, Rockwood, Tennessee 37854.	
WISCONSIN	
Belleville (Village), Dane County (FEMA Docket No. D–7504)	
Sugar River:	
At Remy Road	*855
At a point approximately 1.2 miles upstream of Belleville Dam	*864
Maps available for inspection at the Belleville Village Hall, 24 West Main Street, Belleville, Wisconsin.	
Cross Plains (Village), Dane County (FEMA Docket No. D–7504)	
Enchanted Valley Creek:	
At the confluence with Black Earth Creek	*873
Approximately 50 feet downstream of Military Road	*903
Maps available for inspection at the Cross Plains Village Hall, 2417 Brewery Road, Cross Plains, Wisconsin.	
Deerfield (Village), Dane County (FEMA Docket No. D–7504)	
Unnamed Tributary from Mud Creek:	
Approximately 1.1 mile from confluence with Mud Creek	*850
Maps available for inspection at the Deerfield Village Hall, 4 North Main Street, Deerfield, Wisconsin.	

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD) • Elevation in feet (NAVD)
Markesan (City), Green Lake County (FEMA Docket No. D–7538)	
Grand River:	
At downstream corporate limits	*841
Approximately 0.6 mile upstream of the confluence of East Tributary	*855
East Tributary:	
At confluence with Grand River	*851
Approximately 0.6 mile upstream of John Street	*854
West Tributary:	
At confluence with Grand River	*845
Approximately 0.5 mile upstream of Margaret Street	*871
Maps available for inspection at the Markesan City Hall, 150 South Bridge Street, , Markesan, Wisconsin.	
McFarland (Village), Dane County (FEMA Docket No. D–7504)	
Upper Mud Lake (formerly known as Lake Waubesa):	
Entire shoreline within the community	*848
Maps available for inspection at the McFarland Village Municipal Center, 5915 Milwaukee Street, McFarland, Wisconsin.	
Middleton (City), Dane County (FEMA Docket No. D–7504)	
Pheasant Branch:	
Approximately 1,500 feet west of the intersection of Airport Road and Laura Lane	*926
Maps available for inspection at the Middleton City Hall, 7426 Hubbard Avenue, Middleton, Wisconsin.	
Shorewood Hills (Village), Dane County (FEMA Docket No. D–7504)	
Lake Mendota:	
Entire shoreline within community	*852
Maps available for inspection at the Shorewood Hills Village Hall, 810 Shorewood Boulevard, Madison, Wisconsin.	
Sun Prairie (City), Dane County (FEMA Docket No. D–7504)	
Koshkonong Creek:	
Approximately 1,300 feet upstream of Bailey Road	*922
Approximately 1.0 mile upstream of South Bird Street	*925
Maps available for inspection at the Sun Prairie City Hall, 300 East Main Street, Sun Prairie, Wisconsin.	
Waunakee (Village), Dane County (FEMA Docket No. D–7504)	
Sixmile Creek:	
Approximately 145 feet west of intersection of State Route 19 and Dorn Drive	*920
Maps available for inspection at the Waunakee Village Hall, 500 West Main Street, Waunakee, Wisconsin.	

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance")

Dated: February 3, 2003.

Anthony S. Lowe,

Administrator, Federal Insurance and Mitigation Administration.

[FR Doc. 03–3331 Filed 2–10–03; 8:45 am]

BILLING CODE 6718–04–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 54

[CC Docket Nos. 96–45, 98–171, 90–571, 92–237, 99–200, 95–116, 98–170; FCC 03–20]

Federal-State Joint Board on Universal Service

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Commission reconsiders, on its own motion, the definition of "affiliate" adopted in the recent report and order and second further notice of proposed rulemaking modifying rules regarding the assessment and recovery of contributions to the Federal universal service mechanisms. Specifically, the Commission concludes that wireless telecommunications providers are affiliated for purposes of making the single election whether to report actual interstate telecommunications revenues or use the applicable interim wireless safe harbor if one entity directly or indirectly controls or has the power to control another, is directly or indirectly controlled by another, is directly or indirectly controlled by a third party or parties that also controls or has the power to control another, or has an "identity of interest" with another contributor. The Commission also clarifies options for the recovery of universal service contribution costs by wireless telecommunications providers that choose to report actual interstate telecommunications revenues based on a company-specific traffic study.

DATES: Effective February 11, 2003.

FOR FURTHER INFORMATION CONTACT: Diane Law Hsu, Acting Deputy Chief, Wireline Competition Bureau, Telecommunications Access Policy Division or Paul Garnett, Attorney, Wireline Competition Bureau, Telecommunications Access Policy Division, (202) 418–7400.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Order and Order on Reconsideration in CC Docket Nos. 96–45, 98–171, 90–571, 92–237, 99–200, 95–116, and 98–170 ; FCC 03–20, released on January 30, 2003. The full text of this document is available for public inspection during regular business hours in the FCC Reference Center, Room CY–A257, 445 Twelfth Street, SW., Washington, DC, 20554.

I. Introduction

1. In this Order, we reconsider, on our own motion, the definition of "affiliate" adopted in the recent report and order and second further notice of proposed rulemaking modifying rules regarding the assessment and recovery of contributions to the Federal universal service mechanisms. Specifically, we conclude that wireless telecommunications providers are affiliated for purposes of making the single election whether to report actual interstate telecommunications revenues or use the applicable interim wireless safe harbor if one entity (1) directly or indirectly controls or has the power to control another, (2) is directly or indirectly controlled by another, (3) is directly or indirectly controlled by a third party or parties that also controls or has the power to control another, or (4) has an "identity of interest" with another contributor. We also clarify options for the recovery of universal service contribution costs by wireless telecommunications providers that choose to report actual interstate telecommunications revenues based on a company-specific traffic study.

II. Discussion

2. *Definition of Affiliate.* In this Order, we reconsider, on our own motion, the definition of affiliate adopted in the *Universal Service Contribution Methodology Order*, 67 FR 79525, December 30, 2002, for purposes of

wireless providers making a single election whether to report actual interstate telecommunications revenues or use the applicable interim wireless safe harbor. We have become aware that adoption of an affiliate definition in this context that deems a ten percent interest as indicative of control would result in companies being required to make the same election merely because they are related through direct or indirect minority ownership interests of more than 10 percent. We understand that such cross-ownership is common in the wireless telecommunications industry. For example, several major national wireless telecommunications providers may be "affiliated" for purposes of the definition adopted as a result of greater than ten percent ownership interests in certain other wireless telecommunications providers. In short, the definition adopted in the *Universal Service Contribution Methodology Order* may force competing wireless telecommunications providers that are not otherwise under common control to adopt common universal service revenue reporting policies.

3. We conclude that revising the definition of affiliate in this proceeding is necessary to achieve the goals of consistency, equity, and fairness in reporting revenues for purposes of supporting universal service. Entities that are not under common control may have different billing and administrative systems and, consequently, may have legitimate reasons to make different revenue reporting elections. The Commission previously adopted rules in the wireless auction context in order to evaluate affiliations for purposes of determining eligibility for designated entity status. We conclude a similar approach would be reasonable for purposes of revenue reporting for universal service. We, therefore, reconsider on our own motion the definition of "affiliate" adopted in the *Universal Service Contribution Methodology Order*. We now conclude, consistent with § 1.2110(c)(5) of the Commission's rules, that wireless telecommunications providers are affiliated for purposes of making the single election whether to report actual interstate telecommunications revenues or use the applicable interim wireless safe harbor for universal service contribution purposes if one entity (1) directly or indirectly controls or has the power to control another, (2) is directly or indirectly controlled by another, (3) is directly or indirectly controlled by a third party or parties that also controls or has the power to control another, or (4) has an "identity of interest" with another contributor.

4. *CMRS Actual Interstate Revenues.* We note that some parties have suggested two different readings of the Commission's universal service contribution cost recovery limitations for wireless telecommunications providers that choose to report their actual interstate telecommunications revenues based on a company-specific traffic study. Specifically, AT&T and WorldCom read the requirement that telecommunications carriers cannot mark up the universal service line item above the relevant contribution factor to mean that wireless carriers that do not utilize the interim safe harbors must conduct traffic studies on a customer-by-customer basis when recovering contribution costs through a line item. CTIA, on the other hand, reads this requirement to allow wireless carriers that report revenues based on a company-specific traffic study to use the same company-specific percentage to determine interstate revenues to compute contribution recovery line items.

5. We disagree with AT&T and WorldCom's reading of the requirement. For wireless providers that choose to report their actual interstate telecommunications revenues based on a company-specific traffic study, the interstate telecommunications portion of each customer's bill would equal the company-specific percentage based on its traffic study times the total telecommunications charges on the bill. Accordingly, if such providers choose to recover their contributions through a line item, their line items must not exceed the interstate telecommunications portion of each customer's bill, as described above, times the contribution factor. Just as the Commission did not eliminate the option of reporting actual interstate telecommunications revenues either through a company-specific traffic study or some other means, the Commission did not intend to preclude wireless telecommunications providers from continuing to recover contribution costs in a manner that is consistent with the way in which companies report revenues to USAC. We therefore disagree with AT&T and WorldCom that the recovery limitations adopted in the *Universal Service Contribution Order* should be read so narrowly as to require CMRS providers to conduct traffic studies on a customer-by-customer basis to calculate contribution recovery line items.

III. Ordering Clause

6. Accordingly, it is ordered, pursuant to sections 1–4, 201–202, 254, and 405 of the Communications Act of 1934, as amended, and § 1.108 of the Commission's rules, this Order and Order on Reconsideration is adopted.

7. Pursuant to section 553(d)(3) of the Administrative Procedure Act, this Order and Order on reconsideration shall become effective upon publication in the **Federal Register**.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 03–3337 Filed 2–10–03; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 020724175–3022–02; I.D. 062602E]

RIN 0648–AP71

Fisheries of the Exclusive Economic Zone Off Alaska; Amendment 69 to Revise American Fisheries Act Inshore Cooperative Requirements

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS issues a final rule to implement Amendment 69 to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutians Area (FMP). This final rule will allow an American Fisheries Act (AFA) inshore cooperative to contract with a non-member vessel to harvest a portion of the cooperative's pollock allocation. The North Pacific Fishery Management Council (Council) developed Amendment 69 to provide greater flexibility to inshore catcher vessel cooperatives to arrange for the harvest of their pollock allocation, and to address potential emergency situations, such as vessel breakdowns, that would prevent a cooperative from harvesting its entire allocation. This action is designed to be consistent with the environmental and socioeconomic objectives of the AFA, the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), the FMP, and other applicable laws.

DATES: This regulation becomes effective on March 13, 2003, except for

§ 679.62(c), which will become effective after Paperwork Reduction Act approval has been received from the Office of Management and Budget and a **Federal Register** notice has been published to make it effective.

ADDRESSES: Copies of the Regulatory Impact Review/Final Regulatory Flexibility Analysis (RIR/FRFA) prepared for Amendment 69 may be obtained from Lori Durall, NMFS, Alaska Region, P.O. Box 21668, Juneau, AK 99802, 907–586–7247.

FOR FURTHER INFORMATION CONTACT: Kent Lind, 907–586–7650, or *kent.lind@noaa.gov*.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the exclusive economic zone of the Bering Sea and Aleutian Islands Management Area (BSAI) under the FMP. The Council prepared, and NMFS approved, the FMP under the authority of the Magnuson-Stevens Act (16 U.S.C. 1801 *et seq.*) and the AFA (Div. C, Title II, Public Law No. 105–277, 112 Stat. 2681 (1998)). Regulations implementing the FMP appear at 50 CFR part 679. General regulations governing U.S. fisheries also appear at 50 CFR part 600.

The AFA established a limited access program for the inshore sector of the BSAI pollock fishery that is based on the formation of fishery cooperatives around each inshore pollock processor. Regulations governing the formation and operation of inshore catcher vessel cooperatives are set out at 50 CFR 679.62 and are summarized in the final rule to implement AFA-related Amendments 61/61/13/8 (67 FR 79692, December 30, 2002).

Purpose and Need for Amendment 69

Several existing regulations and administrative limitations implementing the American Fisheries Act prevent inshore cooperatives from contracting with non-member vessels to harvest a portion of the cooperative's BSAI pollock allocation. First, NMFS recordkeeping and reporting requirements specify that all landings from the BSAI directed pollock fishery that are made by the member vessels of a cooperative must accrue against that cooperative's annual allocation. The NMFS database in its present form automatically assigns a single cooperative code to each AFA catcher vessel (the code representing the cooperative of which the vessel is a member) and, therefore, precludes a vessel from reporting landings using any different cooperative code during a fishing year. Second, regulations at 50 CFR 679.7(k)(5)(i) prohibit a catcher vessel listed on an AFA inshore cooperative permit to harvest pollock in excess of the cooperative's allocation. This prohibition prevented the member vessels in one cooperative from contracting to harvest a portion of the allocation of another cooperative.

These restrictions, which have the effect of preventing inshore cooperatives from contracting with non-member vessels, were required by paragraphs 210(b)(1)(B) and 210(b)(5) of the AFA.

Amendment 69 has three objectives: (1) Increase efficiency and provide catcher vessel owners with a more functional market for leasing of individual pollock allocations, (2) ensure that an inshore cooperative is able to harvest its entire allocation in the event of vessel breakdowns or other unanticipated emergencies, and (3) improve safety by providing greater flexibility for larger catcher vessels to harvest cooperative allocations during hazardous weather in winter months and when Steller sea lion conservation measures require that fishing be done further offshore.

With respect to the first objective, the AFA allows a cooperative member to lease pollock quota only to those vessel owners who are members of the same cooperative. In cooperatives where a substantial number of the vessels are owned or controlled by the associated processor, owners of independent catcher vessels may have limited opportunities to lease quota to other independent vessel owners in the same cooperative. The problem could become even more acute at certain times of the year when only plant-owned vessels are operating. In this instance, an independent catcher vessel owner could have only one potential customer willing to lease his quota and, therefore, may be in a weak bargaining position. This independent catcher vessel owner likely would benefit from a broader market for his pollock quota. Efficiency could improve if the vessel that is being contracted to harvest the pollock has lower operating costs than the vessel initially granted use rights to the pollock by the cooperative, depending upon the cost and terms of the lease contract.

With respect to the second objective, under existing regulations, if one or more vessels in a cooperative breaks down or is otherwise out of commission, and the other vessels in the cooperative are already operating at full capacity, a catcher vessel owner could be unable to contract with a replacement vessel to harvest his portion of the cooperative's pollock allocation. An unexpected emergency such as a dockside fire or accidents that disable or destroy several member vessels of a cooperative at the same time could result in the cooperative being unable to harvest a large portion of its annual allocation. This final rule gives cooperatives the means to deal with such emergency situations and facilitate their ability to harvest their entire annual allocations.

With respect to the third objective, safety may be improved if the owners of smaller catcher vessels have greater flexibility to enter into contracts with larger (presumably safer) vessels to harvest the smaller vessel's allocation during the more hazardous weather conditions common during winter months and when Steller sea lion protection measures require that fishing be conducted further offshore.

Council Authority to Supersede the AFA

Subsection 213(c) of the AFA authorizes the Council to recommend management measures to supersede certain provisions of the AFA. Any measure recommended by the Council, and approved by the Secretary of Commerce (Secretary), that supersedes a specific provision of the AFA is implemented in accordance with the Magnuson-Stevens Act. In developing Amendment 69, the Council determined that all three objectives for Amendment 69 meet the criteria established in paragraph 213(c)(1) of the AFA, which states that the Council may recommend measures that supersede the AFA "to mitigate adverse effects . . . on owners of fewer than three vessels in the directed pollock fishery...".

The Council, in interpreting paragraph 213(c)(1), understood the term "owners of fewer than three vessels" to reference independent vessel owners who own two or less vessels in the directed pollock fishery. These are the vessel owners who this rule is intended to benefit as is described in the discussion of the three objectives above.

Elements of the Final Rule

This final rule contains the following requirements for inshore cooperatives that wish to contract with non-member vessels to harvest a portion of a cooperative's annual BSAI pollock allocation.

Application process. A cooperative that wishes to contract with a vessel that is a member of another inshore cooperative is required to complete and submit to NMFS a vessel contract form. The form is available from NMFS and requires that the cooperative identify the contract vessel, the contract vessel's home cooperative, and describe how pollock landings by the contract vessel are to be assigned between cooperatives.

Cooperatives are allowed to contract with a non-member vessel to fish for the cooperative for a certain period of time, or to harvest a certain tonnage of pollock. The contract form also must indicate how any harvest overages by the contract vessel will be treated. A vessel contract form is not valid unless it is signed by the cooperative's designated representative, the contracted vessel owner, and the designated representative for the vessel's home cooperative. These signatures are necessary to ensure that all affected parties are in agreement as to the terms of the contract and to avoid any disputes about how a contract vessel's catch is to be attributed.

Fishing for multiple cooperatives. A vessel owner may enter into simultaneous contracts with more than one cooperative. This may occur, for example, at the end of a fishing season when several cooperatives have very small remaining allocations and it is more cost-effective for a single vessel to conduct "mop up" operations for several cooperatives at one time than for each individual cooperative to send a separate vessel to harvest the small remaining tonnages of pollock. If a vessel owner wishes to enter into contracts with more than one cooperative at the same time, then all the affected cooperatives are required to submit their contract applications together, and the contract applications must specify how the contracted vessel's harvest and any overages are to be assigned among the various cooperatives.

Recordkeeping and reporting requirements. Inshore processors are currently required to report in their shoreside electronic delivery reports the name and co-op code of each vessel that makes a delivery to that processor. Under this final rule, this requirement does not change. However, each vessel operator must correctly identify for the processor, the co-op code that should be assigned to each delivery. In the event that a vessel is making a single delivery on behalf of more than one cooperative, the processor must submit a separate delivery report for each cooperative that identifies the tonnage of pollock that is assigned to each cooperative. Cooperatives must report any contracted landings by non-member vessels on their weekly reports to NMFS. Cooperatives also must provide a summary of all contracted fishing by non-member vessels in their preliminary and final annual reports.

Liability. For the purpose of liability, a non-member vessel under contract to a cooperative is considered to be a member of the cooperative for the duration of the terms of the contract. This means that the members of the cooperative may be held jointly and severally liable under § 679.61 for certain fishing violations made by the operator of the contracted vessel.

Effects of contract fishing on future qualification for membership. Under this final rule, BSAI pollock landings made by a vessel while under contract to another cooperative would not be used to determine the vessel's qualification for future membership in a cooperative. Only landings attributed to the vessel's home cooperative will be used to determine which cooperative the vessel is eligible to join in a future year. The purpose of this measure is to prevent contracted fishing activity from affecting which cooperative a vessel is eligible to join in the subsequent fishing year.

Response to Comments

A Notice of Availability of Amendment 69 was published in the **Federal Register** on July 5, 2002 (67 FR 44794), inviting comments on the FMP amendment through September 3, 2002. NMFS received two comment letters on Amendment 69, both of which supported approval of the Amendment. On October 3, 2002, after consideration of the comments received, the Secretary approve Amendment 69 in its entirety.

A proposed rule to implement Amendment 69 was published in the **Federal Register** on August 23, 2002 (67 FR 54610), with comments invited through October 7, 2002. NMFS received two comment letters on the proposed rule which are summarized in the following three comments:

Comment 1: The commenters believe it is important to note that Amendment 69 would actually relax regulatory requirements on participants in the fisheries to allow more operational flexibility. This flexibility is very important to independently-owned catcher vessels, which in many cases do not have adequate options in their own cooperatives. Amendment 69 would provide that flexibility.

Response: The Final Regulatory Flexibility Analysis prepared for Amendment 69 came to the same conclusion.

Comment 2: The commenters believe it is important to note that this amendment has been supported by substantially all affected harvesters and processors throughout the Council process. Furthermore, throughout the entire Council process no opposition to this action arose.

Response: NMFS has not received any indication of opposition to this action.

Comment 3: The commenters noted that two major goals of the AFA were the rationalization and de-capitalization of the Bering Sea harvesting fleet. Amendment 69 will further both goals by providing inshore cooperatives with necessary flexibility and the ability to employ the optimum number and type of harvesting vessels.

Response. Comment noted.

Changes from the Proposed Rule

The structure and numbering of the paragraphs in this final rule were revised from the supplemental proposed rule published on August 23, 2002 (67 FR 54610). These changes were necessary to ensure that the paragraph numbering in this final rule is consistent with the final rule implementing AFA-related Amendments 61/61/13/8 (67 FR 79692, December 30, 2002), which this final rule amends. No other changes were made from the supplemental proposed rule.

Classification

The Administrator, Alaska Region, NMFS, determined that Amendment 69 is necessary for the conservation and management of the BSAI pollock fishery and that it is consistent with the Magnuson-Stevens Act and other applicable laws.

This final rule has been determined to be not significant for purposes of Executive Order 12866.

NMFS prepared a Final Regulatory Flexibility Analysis (FRFA), which describes the impact this final rule may have on small entities. The FRFA incorporates the Initial Regulatory Flexibility Analysis (IRFA) and its findings. A copy of the FRFA is available from NMFS (see **ADDRESSES**). No comments on the IRFA were received during the comment period that would result in findings that differ from those previously described. A description of the impacts of this action on small entities was provided in the proposed rule (67 FR 54610, August 23, 2002). In summary, this final rule modifies an existing form to allow a cooperative to identify a non-member vessel with which the cooperative intends to contract. None of the cooperatives impacted by this final rule are small entities. NMFS is aware of no existing relevant Federal rules which duplicate, overlap, or conflict with this final rule.

This final rule contains collection-of-information requirements subject to the Paperwork Reduction Act (PRA) and which have been approved by the Office of Management and Budget (OMB) under Control Number 0648–0401.

Public reporting burden for recordkeeping and reporting under AFA is as follows: Five minutes to submit a copy of the cooperative contract; 5 minutes to complete the catcher vessel cooperative pollock catch report; 8 hours to complete the cooperative preliminary report; and 8 hours to complete the annual written cooperative final report.

This rule also contains a proposed revision to this information collection that has been submitted to OMB for approval. The revision would require inshore cooperatives that wish to contract with a non-member vessel to harvest a portion of the cooperatives' annual pollock allocation to submit a completed contract fishing application to the Alaska Region, NMFS. Public reporting burden for this collection is estimated to be 30 minutes to complete the application and submit it to NMFS. The number of annual respondents is not expected to exceed 8, which is the maximum number of inshore cooperatives, as provided by the AFA.

Public comment is sought regarding the revision: whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology. Send comments on these or any other aspects of the collection of information to NMFS (see **ADDRESSES** above) and to OMB at the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503 (Attention: NOAA Desk Officer).

Notwithstanding any other provision of law, no person is required to respond to, nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the PRA unless that collection of information displays a currently valid OMB Control Number.

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Recordkeeping and reporting requirements.

Dated: February 5, 2003.

William T. Hogarth,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set forth in the preamble, 50 CFR part 679 is amended as follows:

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

1. The authority citation for 50 CFR part 679 is revised to read as follows:

Authority: 16 U.S.C. 773 *et seq.*, 1801 *et seq.*, and 3631 *et seq.*; Title II of Division C, Pub. L. 105–277; Sec. 3027, Pub. L. 106–31, 113 Stat. 57.

2. In § 679.4, paragraph (l)(6)(ii)(D)(*2*)(*iii*) is added to read as follows.

§ 679.4 Permits.

* * * * *

(l) * * *

(6) * * *

(ii) * * *

(D) * * *

(*2*) * * *

(*iii*) *Harvests under contract to a cooperative.* Any landings made by a vessel operating under contract to an inshore cooperative in which it was not a member will not be used to determine eligibility under paragraph (l)(6)(ii)(D)(*2*).

* * * * *

3. In § 679.7, paragraph (k)(5)(i) is revised to read as follows:

§ 679.7 Prohibitions.

* * * * *

(k) * * *

(5) * * * (i) *Overages by vessel.* Use an AFA catcher vessel listed on an AFA inshore cooperative fishing permit, or under contract to a fishery cooperative under § 679.62(c), to harvest non-CDQ BSAI pollock in excess of the fishery cooperative's annual allocation of pollock specified under § 679.62.

* * * * *

4. In § 679.61, paragraph (a) is revised to read as follows:

§ 679.61 Formation and operation of fishery cooperatives.

(a) *Who is liable for violations by a fishery cooperative and cooperative members?* A fishery cooperative must comply with the provisions of this section. The owners and operators of vessels that are members of a fishery cooperative, including vessels under contract to a cooperative, are responsible for ensuring that the fishery cooperative complies with the directed fishing, sideboard closures, PSC limits and other allocations and restrictions that are applicable to the fishery cooperative. The owners and operators of vessels that are members of a fishery cooperative, including vessels under contract to a cooperative, are responsible for ensuring that all fishery cooperative members comply with the directed fishing, sideboard closures, PSC limits and other allocations and restrictions that are applicable to the fishery cooperative.

* * * * *

5. In § 679.62, paragraph (b) is revised and a new paragraph (c) is added to read as follows:

§ 679.62 Inshore sector cooperative allocation program.

* * * * *

(b) *What are the restrictions on fishing under a cooperative fishing permit?* A cooperative that receives a cooperative fishing permit under § 679.4(l)(6) must comply with all of the fishing restrictions set out in this subpart. The owners and operators of all the member vessels that are named on an inshore cooperative fishing permit and the owners and operators of any vessels under contract to the cooperative under paragraph (c) of this section are jointly and severally responsible for compliance with all of the requirements of a cooperative fishing permit pursuant to § 679.4(l)(6).

(1) *What vessels are eligible to fish under an inshore cooperative fishing permit?* Only catcher vessels listed on a cooperative's AFA inshore cooperative fishing permit or vessels under contract to the cooperative under paragraph (c) of this section are permitted to harvest any portion of an inshore cooperative's annual pollock allocation.

(2) *What harvests accrue against an inshore cooperative's annual pollock allocation?* The following catches will accrue against a cooperative's annual pollock allocation regardless of whether the pollock was retained or discarded:

(i) *Member vessels.* All pollock caught by a member vessel while engaged in directed fishing for pollock in the BSAI by a member vessel unless the vessel is under contract to another cooperative and the pollock is assigned to another cooperative.

(ii) *Contract vessels.* All pollock contracted for harvest and caught by a vessel under contract to the cooperative under paragraph (c) of this section while the vessel was engaged in directed fishing for pollock in the BSAI.

(3) *How must cooperative harvests be reported to NMFS?* Each inshore pollock cooperative must report its BSAI pollock harvest to NMFS on a weekly basis according to the recordkeeping and reporting requirements set out at § 679.5(o).

(c) *Contract fishing by non-member vessels.* A cooperative that wishes to contract with a non-member vessel to harvest a portion of the cooperative's annual pollock allocation must comply with the following procedures.

(1) *How does a cooperative contract with a non-member vessel*? A cooperative that wishes to contract with a non-member vessel must submit a completed contract fishing application to the Alaska Region, NMFS, in accordance with the contract fishing application instructions.

(2) *What information must be included on a contract fishing application*? The following information must be included on a contract fishing application:

(i) *Co-op name(s)*. The names of the cooperative or cooperatives that wish to contract with a non-member vessel.

(ii) *Designated representative(s)*. The names and signatures of the designated representatives for the cooperatives that wish to contract with a non-member vessel and the vessel's home cooperative.

(iii) *Vessel name*. The name and AFA permit number of the contracted vessel.

(iv) *Vessel owner*. The name and signature of the owner of the contracted vessel.

(v) *Harvest schedule*. A completed harvest schedule showing how all catch and any overages by the contracted vessel will be allocated between the contracting cooperative (or cooperatives) and the contract vessel's home cooperative. In the event that multiple cooperatives are jointly contracting with a non-member vessel, the harvest schedule must clearly specify how all catch and any overages will be allocated among the various cooperatives.

(3) *What vessels are eligible to conduct contract fishing on behalf of an inshore cooperative*? Only AFA catcher vessels with an inshore fishing endorsement that are members of an inshore cooperative may conduct contract fishing on behalf of another inshore cooperative.

(4) *Who must be informed*? A cooperative that has contracted with a non-member vessel to harvest a portion of its inshore pollock allocation must inform any AFA inshore processors to whom the vessel will deliver pollock while under contract to the cooperative prior to the start of fishing under the contract.

(5) *How must contract fishing be reported to NMFS*? An AFA inshore processor that receives pollock harvested by a vessel under contract to a cooperative must report the delivery to NMFS on the electronic delivery report by using the co-op code for the contracting cooperative rather than the co-op code of the vessel's home cooperative.

[FR Doc. 03–3379 Filed 2–10–03; 8:45 am]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 68, No. 28
Tuesday, February 11, 2003

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 917

[KY–239–FOR]

Kentucky Abandoned Mine Land Reclamation Plan

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing.

SUMMARY: We are announcing receipt of a proposed amendment to the Kentucky abandoned mine land reclamation plan (Kentucky plan) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). Kentucky proposes to revise the Kentucky plan in its entirety to be consistent with the corresponding Federal regulations and SMCRA.

This document gives the times and locations that the Kentucky plan and the amendment to that plan are available for your inspection, the comment period during which you may submit written comments on the amendment, and the procedures that will be followed for the public hearing, if one is requested.

DATES: We will accept written comments on this amendment until 4 p.m., e.s.t. March 13, 2003. If requested, we will hold a public hearing on the amendment on March 10, 2003. We will accept requests to speak at the hearing until 4 p.m., e.s.t. on February 26, 2003.

ADDRESSES: You should mail or hand deliver written comments and requests to speak at the hearing to William J. Kovacic, Director, Lexington Field Office, at the address listed below.

You may review copies of the Kentucky plan, the amendment, a listing of any scheduled public hearings, and all written comments received in response to this document at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. You may receive one free copy of the amendment by contacting OSM's Lexington Field Office.

William J. Kovacic, Lexington Field Office, Office of Surface Mining Reclamation and Enforcement, 2675 Regency Road, Lexington, Kentucky 40503, Telephone: (859) 260–8400. E-mail: *bkovacic@osmre.gov*.

Department of Surface Mining Reclamation and Enforcement, 2 Hudson Hollow Complex, Frankfort, Kentucky 40601, Telephone: (502) 564–6940.

FOR FURTHER INFORMATION CONTACT: William J. Kovacic, Telephone: (859) 260–8400. *Internet: bkovacic@osmre.gov*.

SUPPLEMENTARY INFORMATION:

I. Background on the Kentucky Plan
II. Description of the Proposed Amendment
III. Public Comment Procedures
IV. Procedural Determinations

I. Background on the Kentucky Plan

The abandoned mine land (AML) reclamation program was established by Title IV of the Act (30 U.S.C. 1201 *et seq.*) in response to concerns over extensive environmental damage caused by past coal mining activities. The program is funded by a reclamation fee collected on each ton of coal that is produced. The money collected is used to finance the reclamation of abandoned coal mines and for other authorized activities. Section 405 of the Act allows States and Indian Tribes to assume exclusive responsibility for reclamation activity within the State or on Indian lands if they develop and submit to the Secretary of the Interior for approval, a program (often referred to as a plan) for the reclamation of abandoned coal mines. On the basis of these criteria, the Secretary of the Interior approved the Kentucky plan on May 18, 1982. You can find background information on the Kentucky plan, including the Secretary's findings, the disposition of comments, and the approval of the plan in the May 18, 1982, **Federal Register** (47 FR 21435). You can find later actions concerning the Kentucky plan and amendments to the plan at 30 CFR 917.20 and 917.21.

II. Description of the Proposed Amendment

By letter dated April 29, 2002 (Administrative Record No. K–70), Kentucky sent us a proposed amendment to its plan under SMCRA (30 U.S.C. 1201 *et seq.*). Kentucky submitted the amendment to propose comprehensive changes to the plan. The formal amendment was preceded by two informal submissions in September 1997, and March 16, 2000 (Administrative Record No. K–67). OSM reviewed the informal submissions and reported findings to Kentucky on March 30, 2001 (Administrative Record No. K–69). It should be noted that Kentucky's formal submission on April 29, 2002, did not identify the specific changes being proposed. We subsequently reviewed the 635 page amendment to determine what revisions were made from the original plan. We completed our review on December 19, 2002. Due to the voluminous nature of the submission, we identified only the major changes in this notice or those that may otherwise be of interest to the public. Any revisions that are not listed concern nonsubstantive wording, organizational, or editorial changes. The full text of the amendment is available for your inspection at the locations listed above under **ADDRESSES.** Kentucky proposes to amend the following sections of the plan. Page numbers pertain to the April 29, 2002, submission.

Acquisition, Management, and Disposal of Lands (p. 6–9): the subtitle "Management of Acquired Lands" has been added.

Organization (p. 10–17): the subtitle "Environmental Scientist Principal" has been added.

Coordination with RAMP [Rural Abandoned Mine Land Program], Indian, and Other Reclamation Plans (p. xvi): "Natural Resources Conservation Service" has been added to clarify the name change from "Soil Conservation Service." This change is reflected throughout the plan.

Maps of Eligible Lands and Waters (p. xix): the reference to 30 CFR 884.13(f)(1) has been changed to 30 CFR 884.13(e)(1).

Problems Occurring on AML Sites (p. xx): the reference to 30 CFR 884.13(f)(2) has been changed to 30 CFR 884.13(e)(2).

Relationship to Existing and Planned Land Uses (p. xx): the reference to 30 CFR 884.13(f)(3) has been changed to 30 CFR 884.13(e)(3).

Social, Economic, and Environmental Conditions (p. xx): the reference to 30 CFR 884.13(f)(5) has been changed to 30 CFR 884.13(f)(1), (2), and (3). A reference to Section 19 of the AML Plan has been added after the requirement of a general description of endangered and threatened plants, fish and wildlife, and their habitats.

Objectives (pp. 3–1, 3–2): subsections (g), (h), (i), pertaining to noncoal mining, and (j), pertaining to construction of public facilities in communities impacted by coal development, have been deleted. Subsection (f) has been revised to reflect the rules contained in 30 CFR 875.12, pertaining to eligible lands affected by noncoal mining. The last paragraph of the section has been revised to address lower priority sites. This section has also been revised to prohibit the use of AML monies for reclamation of sites designated for remedial action pursuant to the Uranium Mill Tailings Radiation Control Act of 1978 and the Comprehensive Environmental Response Compensation and Liability Act of 1980.

Priority I and II Sites (p. 3–2): the heading has been revised to include priority II sites.

Priority III Sites (p. 3–4): this section has been revised to clarify that problems designated as priority I or II sites may also qualify as priority III problems.

Environmental Goals (p.3–5): this section was added. It states that the Commonwealth of Kentucky (Commonwealth) resources to be protected or enhanced through AML reclamation include, but are not limited to, important wildlife habitats, endangered or threatened plants and animals or their critical habitats, natural areas, wild and scenic rivers, wetlands, floodplains, soil and water, recreational resources, and agricultural productivity.

Phase II Inventory (p.3–6): references to the Abandoned Mine Land Inventory System, and the requirements of 30 CFR 886.23(b), pertaining to reporting of completed AML projects to OSM, have been added.

Small Operator Goals (pp. 3–6 to 3–8): this section has been revised to reference the authorizing statute at Kentucky Revised Statutes (KRS) 350.450. Also, it is noted that small operators are now defined as those who are anticipated to mine less than 300,000 tons of coal per year. The principal goal articulated in this section is to maximize the participation of small operators in the bidding for AML reclamation projects that require some incidental coal removal.

Marketable Mineral Recovery (pp. 3–8, 3–9): the next to last paragraph of this section has been revised to allow all contractors, rather than just small operators, to participate in the bidding for AML projects that involve incidental coal removal, although small operators will still receive preference. The change was made because small operators may occasionally lack the expertise, equipment, access, etc., to perform the needed work.

Bond Forfeiture Projects (p. 3–9): the heading has been changed from "Supplementation of Eligible Bond Forfeiture Sites" to "Bond Forfeiture Projects." The section was further revised by deleting all but the first paragraph, and by adding a paragraph that states that it is the policy of the Kentucky Division of Abandoned Mine Lands (DAML) that only eligible bond forfeiture sites are covered by the AML plan and that bond forfeiture sites must meet all priority and grant submission requirements that all other AML problem sites meet.

Water Supply Projects (p. 3–10): a new section has been added to address the requirements at section 403(b)(1) of SMCRA, which authorizes States and Tribes to use up to 30 percent of their annual AML grants to fund projects for water supply facilities in areas that have suffered coal mining related impacts to drinking water supplies.

Project Selection (pp. 4–8 to 4–11): the reference to "supplemental bond forfeiture reclamation" has been deleted. This section has also been revised to reflect the decentralization of the project selection process and the process by which grant application elements are prepared for each project.

Coordination with RAMP, Indian, and Other Reclamation Programs (pp. 5–1 to 5–4): all references to the "Soil Conservation Service" and its acronym, "SCS", were replaced with references to the "Natural Resources Conservation Service" or its acronym, "NRCS." On page 5–1, second paragraph, second sentence, the phrase "30 CFR 884.13(f)(5)(v), Flora and Fauna of the Coalfields," was deleted and replaced with the phrase "30 CFR 884.13(f)(3), Endangered and threatened plant, fish and wildlife and their habitat." This change was made because the Federal regulation at 30 CFR 884.13(f)(5)(v) has been repealed.

Lands for Permanent Facilities (p. 6–1): this section has been revised to incorporate the language at KRS 350.570(3), which authorizes the Commonwealth to acquire any land adversely affected by past coal mining practices, if acquisition is necessary for successful reclamation.

Acquisition of Real Property by Donation (p.6–3): subdivision 2(e), which requires itemizations of any unpaid taxes or assessments levied, assessed or due which could operate as a lien on the interest offered, and subdivision 2(f), which states that a deed of conveyance shall be executed, acknowledged and recorded in the name of the Commonwealth after acceptance of an offer, are being deleted.

Step-by-Step Procedure for Land Acquisition (pp. 6–4 through 6–9): names of departments and titles of certain departmental officials have been updated.

Management of Acquired Lands (p. 6–9): a new section has been added to comply with the requirements at 30 CFR 884.13(c)(4), which requires a description of policies and procedures regarding land acquisition, management and disposal.

Disposition of Reclaimed Lands (p. 6–10): this section has been revised to require that the appraised value of a property be stated in the notice.

Reclamation on Private Lands (pp. 7–4 to 7–6): (1) Levy of Lien: this section has been revised to require that the landowner be provided a statement of the increase in market value, an itemized statement of reclamation expenses, and notice that a lien will or will not be filed in accordance with 30 CFR 882.13. (2) Satisfaction of Liens: the reference to "State Abandoned Mine Reclamation Fund" is changed to "Abandoned Mine Reclamation Fund," and Appendix 7–A and Attachment 7–1 have been deleted.

Rights of Entry (pp. 8–7 and 8–18): the reference to "Division of Abandoned Lands (DAL)" has been changed here and throughout the document to "Division of Abandoned Mine Lands (DAML)."

Personnel Staffing Policies (pp. 11–1 and 11–3): compliance with "Title VII of the Civil Rights Act of 1964 (PL 88–352)" has been added.

Purchasing and Procurement Systems (pp. 12–1, 12–4, and 12–6): page 12–1, paragraph 6, is being revised by deleting the reference to Public Law 95–87 (SMCRA) and adding references to Chapter 3 of the AML Plan, pertaining to Small Operator Goals, and to 30 CFR 884.13(c)(1). The subsection pertaining to purchase requisitions is being revised to reflect the current procedure for reviewing and approving requisitions. Specifically, three new paragraphs are added to the beginning of the Purchase Requisition section on page 12–4. These new paragraphs state that project plans are selectively reviewed and revised, if

necessary, by the staff of the Commissioner of the Department for Surface Mining Reclamation and Enforcement (DSMRE) and, if approved are then returned to the DAML, where a purchase requisition is prepared for the Director to review and sign. After they are signed, the plans are sent to the Division of Administrative Services, which reviews the purchase requisition for accuracy and form, and to insure that sufficient funds are available. The following revision is added to the first paragraph on page 12–6: "When an apparent low bidder is identified for any AML reclamation contract, the Division of Abandoned Lands forwards the low bidder's name, federal tax number, social security numbers and other information as required to the Ownership and Control Review section of the Division of Permits of the Kentucky Department of Surface Mining for an Applicant Violator System (AVS) check for permit eligibility, in accordance with 30 CFR 874.16. Before the contract is awarded to the apparent low bidder an AVS confirmation of permit eligibility will be received from the AVS check." Also on page 12–6, the fourth sentence of the first paragraph is revised by deleting the statement that the Commonwealth has the right to "waive all informalities and technicalities of a bid when, in their judgment, the best interest of the Commonwealth of Kentucky may be served." A sentence is then added immediately after the revised fourth sentence. The new sentence states that "[a]ll rejections of bids or waivers will be in accordance with requirements of Office of Management and Budget (OMB) Circular A–102, and applicable State or local law."

Construction (pp. 12–7 and 12–8): the subsections, "Monthly Reports for Office of Surface Mining", "Final Report for the Office of Surface Mining" and "Change Orders," have been deleted, as was the phrase, "and change orders," at the end of the first paragraph on page 12–7. The sentence "guidelines pertaining to change orders will be developed by the Division Director as needed" has been inserted as the last sentence of the "Project Inspection" subsection.

AML Enhancement Rule (p.12–9): the subsection "AML Enhancement Rule" has been added. In an effort to promote remining, Kentucky has incorporated OSM's AML Enhancement Rule at 30 CFR 874.17 by reference. The rule provides guidance and procedures for AML programs when considering an AML project as government-financed construction under 30 CFR part 707. This rule applies only if the level of funding will be less than 50 percent of the total cost because of planned coal extraction. It will be implemented in conjunction with Kentucky's approved program regulation at 405 KAR 7:030(2)(1)(c).

Reclamation Agreements (p. 12–10): this new subsection has been added. It authorizes the DSMRE, through the DAML, to enter into Reclamation Agreements (Agreement) with private coal mining permittees for the reclamation of AML sites adjacent to or near active mining permits. The Agreements will be site-specific, and will allow for excess spoil removal from the permit area and placement of the spoil on the AML site. Guidelines for the Agreements are also provided for use by DAML when assessing the need for entering into an Agreement. These guidelines state that the proposed disposal must be AML eligible, must be inventoried by the State AML program and registered on the National Mine Land Inventory System, and must be of priority III or greater priority status. Other guidelines require the State AML program to develop a reclamation cost estimate, and state that the anticipated total cost to be borne by the company must represent a savings to the AML program. Finally, the area must be causing off-site environmental damage, but be an unlikely candidate for reclamation under the regular (*i.e.* AML funded) State AML program.

Accounting Systems (p. 13–1): this section has been revised to update organizational title and office changes.

Maps of Eligible Lands and Waters (p. 15–1): the first paragraph is reworded to better clarify AML eligibility by referencing "Section 404 'Eligible Lands and Water' and/or 402(g)(4) of Title IV of Public Law 95–87 and/or KRS 350.560".

Problems Occurring on Abandoned Mine Land Sites (pp. 16–3, 16–5, 16–9 and 16–12): on page 16–3, first paragraph (Environmental Damage), line 3, the phrase "including adverse impacts on endangered and threatened species" is added after the phrase "loss of fish and wildlife habitat." Also on page 16–3, in the paragraph entitled "Surface/Groundwater Contamination," the phrase "including adverse impacts on endangered and threatened species" is added after the phrase "aquatic vegetation." On page 16–5, at the end of the paragraph entitled "Erosion," the following sentence is added: "On-site erosion and sediment control techniques will be used wherever practicable and feasible to minimize erosion and retain sediment within the disturbed area or limit the volume of sediment leaving the project site." On page 16–5, at the end of the paragraph entitled "Reduced Fish and Wildlife Habitat," the following sentence was added: "Unvegetated areas may also cause adverse impacts on endangered and threatened species." On pages 16–6 and 16–7, a new section, entitled "Abandoned Highwalls," was added. This section enumerates and discusses problems generally associated with abandoned highwalls on AML sites. These problems include, but are not limited to, threats to life, health and safety, reduced wildlife habitat, attractive nuisances for children or hikers, and adverse impact on aesthetic, historical, cultural, or recreational resources. The new section also discussed certain reclamation techniques to correct or abate these problems, including highwall reduction by bench reconstruction, re-establishment of wildlife routes by pulling down highwall sections, or screening or covering the highwall with appropriate plant species to enhance wildlife values and reduce aesthetic degradation. On page 16–9, in the paragraph entitled "Limitation of loss of habitat," the sentence has been changed by adding at the end the phrase "and runoff from burned areas may impede or prevent utilization of water resources by aquatic life." Also, a second sentence is added, which states that "[s]uch [forest] fires can have adverse impacts on endangered or threatened species." On page 16–12, at the end of the paragraph entitled "Limitation or loss of fish and wildlife habitat," the following sentence was added: "This [limitation or loss of fish and wildlife habitat] problem is especially serious for those endangered or threatened species, such as federally listed bats, which inhabit caves or mine shafts subject to subsidence."

Relationship to Existing and Planned Land Use (pp. 17 B1, 17–6, and 17–7): this section has been revised to recognize the presence of endangered or threatened species during reclamation and land use planning. A sentence has been added on page 17–6, stating that the Big South Fork National River and Recreation Area has been adversely affected by erosion, sedimentation and acid mine drainage from AML sites. On pages 17–6 and 17–7, it is noted that commercial forest land in the Eastern Kentucky Coalfield includes 670,000 acres of the Daniel Boone National Forest.

Quantities of Land and Water Affected by A.M.L. (p. 18–1): on page 18–1, at the end of the first paragraph, the following two sentences are being added: "Not all of the acres listed are priority I or II sites. The acreages represent an approximation of the total

mined acres in each coalfield, some of which may be determined to be acceptable in their current state or may require limited efforts to correct remaining problems."

Socio-Economic and Cultural Profile of the Coalfields (p. 19–23): the first sentence of "The Redbird Purchase Unit" paragraph has been changed to make it clear that the unit is not purely a recreational area.

Flora and Fauna of the Coalfields (Chapter 21): numerous changes have been made to include: references to the National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C., 4321 *et seq.*) and Executive Orders 11988 and 11990 on page 21–77; a requirement to consult with the Kentucky Department of Fish and Wildlife Resources regarding the existence of federally endangered or threatened species during the NEPA review process on page 21–79; the current title of the "Natural Resources and Environmental Protection Cabinet"; and the incorporation of the NEPA compliance measures into the plan. Thirty-five changes described in the "Errata of the currently approved AML Plan," pages 21–150 to 21–157, have also been incorporated. These changes are composed mostly of additional references to various species of flora and fauna. The currently approved AML Plan, including the Errata changes, can be viewed at the OSM and DSMRE offices referred to above. Two changes of note are found on page 21–78, first paragraph, fourth sentence and on page 21–79, first paragraph, first sentence, wherein references to "environmental assessment" were replaced with requirements to comply with NEPA.

Commercially Minable Coal Seams and Projects Methods of Extraction (pp. 22–5, 22–14, 22–24, and 22–26): the Figure 22–1, "Preliminary Correlation Chart of Coal Beds and Key Beds of the Pennsylvanian Rocks of Eastern Kentucky," has been added and the section has been revised to present options in determining remining feasibility, and to eliminate references to Site Score Sheets and matrices to rank AML sites. These references to be deleted are found on page 22–22 of the currently approved AML plan. The sentences inserted to provide options in determining remining feasibility are found on page 22–14 of this amendment, and state that "Kentucky may use different systems to analyze the consideration for probability for remining. In 1980, the Kentucky Geological Survey developed a system of moderate complexity for ranking probability of remining." On page 22–26, pertaining to non-coal minerals, the reference to the Site Score Sheet is being deleted, but the potential for non-coal mineral recovery remains a factor to be considered when ranking AML sites. In that same paragraph, the following four sentences are being added: "Extraction of these non-coal minerals in the Commonwealth may take place by any of several methods. Petroleum and natural gas are extracted through the sinking of wells. Clay, rock, asphalt, sand and gravel are commonly extracted through methods of surface mining. Limestone, fluorspar, and oil shale, in addition to methods of surface mining, are also commonly extracted through deep mining."

III. Public Comment Procedures

Under the provisions of 30 CFR 884.15(a), we are requesting comments on whether the amendment satisfies the applicable State reclamation plan approval criteria of 30 CFR 884.14. If we approve the amendment, it will become the Kentucky plan.

Written Comments

Send your written or electronic comments to OSM at the address given above. Your written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of your recommendations. We will not consider or respond to your comments when developing the final rule if they are received after the close of the comment period (see **DATES**). We will make every attempt to log all comments into the administrative record, but comments delivered to an address other than the Lexington Field Office may not be logged in.

Electronic Comments

Please submit Internet comments as an ASCII or Word file avoiding the use of special characters and any form of encryption. Please also include "Attn: [KY–239–FOR]" and your name and return address in your Internet message. If you do not receive a confirmation that we have received your Internet message, contact the Lexington Field Office at (859) 260–8400.

Availability of Comments

We will make comments, including names and addresses of respondents, available for public review during normal business hours. We will not consider anonymous comments. If individual respondents request confidentiality, we will honor their request to the extent allowable by law. Individual respondents who wish to withhold their name or address from public review, except for the city or town, must state this prominently at the beginning of their comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public review in their entirety.

Public Hearing

If you wish to speak at the public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4 p.m., e.s.t. on February 26, 2003. If you are disabled and need special accommodations to attend a public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT.** We will arrange the location and time of the hearing with those persons requesting the hearing. If no one requests an opportunity to speak, we will not hold a hearing.

To assist the transcriber and ensure an accurate record, we request, if possible, that each person who speaks at the public hearing provide us with a written copy of his or her comments. The public hearing will continue on the specified date until everyone scheduled to speak has been given an opportunity to be heard. If you are in the audience and have not been scheduled to speak and wish to do so, you will be allowed to speak after those who have been scheduled. We will end the hearing after everyone scheduled to speak and others present in the audience who wish to speak have been heard.

Public Meeting

If only one person requests an opportunity to speak, we may hold a public meeting rather than a public hearing. If you wish to meet with us to discuss the amendment, please request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT.** All such meetings are open to the public and, if possible, we will post notices of meetings at the locations listed under **ADDRESSES.** We will make a written summary of each meeting a part of the administrative record.

IV. Procedural Determinations

Executive Order 12630—Takings

This rule does not have takings implications. This determination is based on the analysis performed for the counterpart Federal regulations.

Executive Order 12866—Regulatory Planning and Review

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866.

Executive Order 12988—Civil Justice Reform

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State and Tribal abandoned mine land reclamation plans and plan amendments because each plan is drafted and promulgated by a specific State or Tribe, not by OSM. Decisions on proposed abandoned mine land reclamation plans and plan amendments submitted by a State or Tribe are based solely on a determination of whether the submittal meets the requirements of Title IV of SMCRA (30 U.S.C. 1231–1243) and 30 CFR Part 884 of the Federal regulations.

Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

In accordance with Executive Order 13175, we have evaluated the potential effects of this rule on Federally recognized Indian tribes and have determined that the rule does not have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes. The basis for this determination is that our decision is on a State regulatory program and does not involve a Federal program involving Indian lands.

Executive Order 13132—Federalism

This rule does not have federalism implications. SMCRA delineates the roles of the Federal and State governments with regard to the regulation of abandoned mine reclamation programs. One of the purposes of SMCRA is to "establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations." Section 405(d) of SMCRA requires State abandoned mine reclamation programs to be in compliance with the procedures, guidelines, and requirements established under SMCRA.

Executive Order 13211—Regulations That Significantly Affect the Supply, Distribution, or Use of Energy

On May 18, 2001, the President issued Executive Order 13211 which requires agencies to prepare a Statement of Energy Effects for a rule that is (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866 and is not expected to have a significant adverse effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

National Environmental Policy Act

This rule does not require an environmental impact statement because agency decisions on proposed State and Tribal abandoned mine land reclamation plans and plan amendments are categorically excluded from compliance with the National Environmental Policy Act (42 U.S.C. 4332) by the Manual of the Department of the Interior (516 DM 6, appendix 8, paragraph 8.4B(29)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the corresponding Federal regulations.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule: (a) Does not have an annual effect on the economy of $100 million; (b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and (c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This determination is based upon the fact that the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation was not considered a major rule.

Unfunded Mandates

This rule will not impose an unfunded mandate on State, local, or tribal governments or the private sector of $100 million or more in any given year. This determination is based upon the fact that the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation did not impose an unfunded mandate.

List of Subjects in 30 CFR Part 917

Intergovernmental relations, Surface mining, Underground mining.

Dated: January 7, 2003.

Brent Wahlquist,

Regional Director, Appalachian Regional Coordinating Center.

[FR Doc. 03–3365 Filed 2–10–03; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 934

[ND–046–FOR, Amendment No. XXXII]

North Dakota Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing on proposed amendment.

SUMMARY: We are announcing receipt of a proposed amendment to the North Dakota regulatory program (hereinafter, the "North Dakota program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). North Dakota proposes revisions to its revegetation policy document. North Dakota intends to revise its program to clarify ambiguities and improve operational efficiency.

This document gives the times and locations that the North Dakota program and proposed amendment to that program are available for your inspection, the comment period during which you may submit written comments on the amendment, and the procedures that we will follow for the public hearing, if one is requested.

DATES: We will accept written comments on this amendment until 4

p.m., [m.s.t.] March 13, 2003. If requested, we will hold a public hearing on the amendment on March 10, 2003. We will accept requests to speak until 4 p.m., [m.s.t.] on February 26, 2003.

ADDRESSES: You should mail or hand deliver written comments and requests to speak at the hearing to Guy Padgett at the address listed below.

You may review copies of the North Dakota program, this amendment, a listing of any scheduled public hearings, and all written comments received in response to this document at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. You may receive one free copy of the amendment by contacting the Office of Surface Mining Reclamation and Enforcement's (OSM) Casper Field Office.

Guy Padgett, Director, Casper Field Office, Office of Surface Mining Reclamation and Enforcement, 100 East "B" Street, Federal Building, Room 2128, Casper, WY 82601–1918, 307/261–6550, *GPadgett@osmre.gov.*

James R. Deutsch, Reclamation Division, 600 E. Boulevard Avenue, Bismarck, ND 5805–0480, 701/328–2400, *jrd@psc.state.nd.us.*

FOR FURTHER INFORMATION CONTACT: Guy Padgett, Telephone: 307/261–6550. Internet: *GPadgett@osmre.gov.*

SUPPLEMENTARY INFORMATION:

I. Background on the North Dakota Program
II. Description of the Proposed Amendment
III. Public Comment Procedures
IV. Procedural Determinations

I. Background on the North Dakota Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its State program includes, among other things, "a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of the Act; and rules and regulations consistent with regulations issued by the Secretary pursuant to [the Act]." *See* 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the North Dakota program on December 15, 1980. You can find background information on the North Dakota program, including the Secretary's findings, the disposition of comments, and conditions of approval of the North Dakota program in the December 15, 1980, **Federal Register** (45 FR 82214). You can also find later actions concerning North Dakota's program and program amendments at 30 CFR 934.12, 934.13, 934.15, 934.16, and 934.30.

II. Description of the Proposed Amendment

By letter dated November 20, 2002, North Dakota sent us a proposed amendment to the North Dakota program (Amendment No. XXXII, administrative record No. ND–GG–01) under SMCRA (30 U.S.C. 1201 *et seq.*). North Dakota's proposed amendment includes the changes made at its own initiative to its revegetation policy document. It proposes to revise its revegetation policy document, "Standards for Evaluation of Revegetation Success and Recommended Procedures for Pre- and Postmining Vegetation Assessments."

Specifically, North Dakota proposes to change the document's cropland and shelterbelt sections, as well as its sampling design, statistical equations, and methods for measuring productivity. The full text of the program amendment is available for you to read at the locations listed above under **ADDRESSES.**

III. Public Comment Procedures

Under the provisions of 30 CFR 732.17(h), we are seeking your comments on whether the amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If we approve the amendment, it will become part of the North Dakota program.

Written Comments

Send your written or electronic comments to OSM at the address given above. Your comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of your recommendations. We will not consider or respond to your comments when developing the final rule if they are received after the close of the comment period (*see* **DATES**). We will make every attempt to log all comments into the administrative record, but comments delivered to an address other than the Casper Field Office may not be logged in.

Electronic Comments

Please submit Internet comments as an ASCII file avoiding the use of special characters and any form of encryption. Please also include "Attn: SATS No. ND–046-FOR" and your name and return address in your Internet message. If you do not receive a confirmation that we have received your Internet message, contact the Casper Field Office at 307/261–6555.

Availability of Comments

We will make comments, including names and addresses of respondents, available for public review during normal business hours. We will not consider anonymous comments. If individual respondents request confidentiality, we will honor their request to the extent allowable by law. Individual respondents who wish to withhold their name or address from public review, except for the city or town, must state this prominently at the beginning of their comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public review in their entirety.

Public Hearing

If you wish to speak at the public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4 p.m., [m.s.t.] on February 26, 2003. If you are disabled and need special accommodations to attend a public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT.** We will arrange the location and time of the hearing with those persons requesting the hearing. If no one requests an opportunity to speak, we will not hold the hearing.

To assist the transcriber and ensure an accurate record, we request, if possible, that each person who speaks at a public hearing provide us with a written copy of his or her comments. The public hearing will continue on the specified date until everyone scheduled to speak has been given an opportunity to be heard. If you are in the audience and have not been scheduled to speak and wish to do so, you will be allowed to speak after those who have been scheduled. We will end the hearing after everyone scheduled to speak and others present in the audience who wish to speak, have been heard.

Public Meeting

If only one person requests an opportunity to speak, we may hold a public meeting rather than a public hearing. If you wish to meet with us to discuss the amendment, please request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT.** All such meetings are open to the public and, if possible, we will post notices of meetings at the locations listed under **ADDRESSES.** We will make a written summary of each meeting a part of the administrative record.

IV. Procedural Determinations

Executive Order 12630—Takings

This rule does not have takings implications. This determination is based on the analysis performed for the counterpart Federal regulation.

Executive Order 12866—Regulatory Planning and Review

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866.

Executive Order 12988—Civil Justice Reform

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments because each program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

Executive Order 13132—Federalism

This rule does not have federalism implications. SMCRA delineates the roles of the Federal and State governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to "establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations." Section 102(a), 30 U.S.C.1202(a). Section 503(a)(1) of SMCRA requires that state laws regulating surface coal mining and reclamation operations be "in accordance with" the requirements of SMCRA. Section 503(a)(7) requires that state programs contain rules and regulations "consistent with" regulations issued by the Secretary pursuant to SMCRA.

Executive Order 13211—Regulations That Significantly Affect the Supply, Distribution, or Use of Energy

On May 18, 2001, the President issued Executive Order 13211 which requires agencies to prepare a Statement of Energy Effects for a rule that is (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866 and is not expected to have a significant adverse effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

National Environmental Policy Act

This rule does not require an environmental impact statement because section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule: (a) Does not have an annual effect on the economy of $100 million; (b) will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and (c) does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This determination is based upon the fact that the state submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation was not considered a major rule.

Unfunded Mandates

This rule will not impose an unfunded mandate on state, local, or tribal governments or the private sector of $100 million or more in any given year. This determination is based upon the fact that the state submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation did not impose an unfunded mandate.

List of Subjects in 30 CFR Part 934

Intergovernmental relations, Surface mining, Underground mining.

Dated: December 6, 2002.

Peter A. Rutledge,

Acting Regional Director, Western Regional Coordinating Center.

[FR Doc. 03–3366 Filed 2–10–03; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP San Diego 03–010]

RIN 2115–AA97

Security Zones; San Diego Bay, CA

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to expand the geographical boundaries of the permanent security zones at Naval Base San Diego; Naval Submarine Base, San Diego; and Naval Base Coronado, California at the request of the U.S. Navy. Modification and expansion of these security zones is needed to ensure the physical protection of naval vessels moored within each zone by accommodating the Navy's placement of anti-small boat barrier booms within the zones. Entry into these zones is prohibited unless authorized by the Captain of the Port (COTP); Commander, Naval Base San Diego; Commander, Naval Air Force, U.S. Pacific Fleet; Commander, Submarine Force, U.S. Pacific Fleet Representative, West Coast; Commander, Naval Base

Coronado; or the Commanding Officer, Naval Station, San Diego.

DATES: Comments and related material must reach the Coast Guard on or before April 14, 2003.

ADDRESSES: You may mail comments and related material to Coast Guard Marine Safety Office San Diego, 2716 North Harbor Drive, San Diego, California, 92101. Marine Safety Office San Diego, Port Operations Department maintains the public docket for these rulemakings. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at Coast Guard Marine Safety Office San Diego, 2716 North Harbor Drive, San Diego, California, 92101, between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Joseph Brown, Port Safety and Security, at (619) 683–6495.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in these rulemakings by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking [COTP San Diego 03–010], indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know your submission reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change these proposed rules in view of them.

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to Marine Safety Office San Diego at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid these rulemakings, we will hold one at a time and place announced by a separate notice in the **Federal Register**.

Background and Purpose

On September 16th and 17th, 2002, the Coast Guard published three temporary final rules suspending 33 CFR 165.1101, 33 CFR 165.1103, and 33 CFR 165.1104 and implementing temporary security zones at Naval Base San Diego, Naval Base Coronado, and Naval Submarine Base San Diego. See 67 FR 58524, 67 FR 58526, and 67 FR 58333. Modified versions of these zones have been in place since 1998 and the Coast Guard has not received any comments during that time and no negative incidents have been reported.

The U.S. Navy requested that Coast Guard implement these security zones in coordination with their installation of anti-small boat barrier booms at the three locations. If you would like to obtain information about the U.S. Navy's action, contact the Assistant Chief of Port Operations, Navy Region Southwest at 619–556–2400.

The Coast Guard proposes to modify the security zones to allow the U.S. Navy to put anti-small boat barrier booms at Naval Base San Diego (33 CFR 165.1101); Naval Submarine Base, San Diego (33 CFR 165.1103); and Naval Base Coronado (33 CFR 165.1104). The modification and expansion of these security zones is needed to ensure the physical protection of naval vessels moored in the area by providing adequate stand-off distance. The Coast Guard's action supports the Navy's action and is limited to the expansion of the existing zones.

The modification and expansion of these security zones will also prevent recreational and commercial craft from interfering with military operations involving all naval vessels home-ported at Naval Base Coronado, Naval Submarine Base San Diego, and Naval Base San Diego, and it will protect transiting recreational and commercial vessels, and their respective crews, from the navigational hazards posed by such military operations. It will also safeguard vessels and waterside facilities from destruction, loss, or injury from sabotage or other subversive acts, accidents, or other causes of a similar nature. Entry into, transit through, or anchoring within this security zone is prohibited unless authorized by the Captain of the Port San Diego; Commander, Naval Air Force, U.S. Pacific Fleet; Commander, Submarine Force, U.S. Pacific Fleet Representative, West Coast; Commander, U.S. Naval Base San Diego; Commander, Navy Region Southwest; Commanding Officer, Naval Station, San Diego; or Commander, Naval Base Coronado.

Discussion of Proposed Rule

Specifically, the Coast Guard is expanding the security zone boundaries at the request of the U.S. Navy so that the U.S. Navy can install anti-small boat barrier booms.

In its effort to thwart terrorist activity, the Coast Guard has increased safety and security measures on U.S. ports and waterways. As part of the Diplomatic Security and Antiterrorism Act of 1986 (Pub. L. 99–399), Congress amended section 7 of the Ports and Waterways Safety Act (PWSA), 33 U.S.C. 1226, to allow the Coast Guard to take actions, including the establishment of security and safety zones, to prevent or respond to acts of terrorism against individuals, vessels, or public or commercial structures. The Coast Guard also has authority to establish security zones pursuant to the Act of June 15, 1917, as amended by the Magnuson Act of August 9, 1950 (50 U.S.C. 191 *et seq.*) and implementing regulations promulgated by the President in Subparts 6.01 and 6.04 of Part 6 of Title 33 of the Code of Federal Regulations.

Vessels or persons violating this section will be subject to the penalties set forth in 33 U.S.C. 1232 and 50 U.S.C. 192. Pursuant to 33 U.S.C. 1232, any violation of the security zone described herein, is punishable by civil penalties (not to exceed $27,500 per violation, where each day of a continuing violation is a separate violation), criminal penalties (imprisonment up to 6 years and a maximum fine of $250,000), and in rem liability against the offending vessel. Any person who violates this section, using a dangerous weapon, or who engages in conduct that causes bodily injury or fear of imminent bodily injury to any officer authorized to enforce this regulation, also faces imprisonment up to 12 years. Vessels or persons violating this section are also subject to the penalties set forth in 50 U.S.C. 192: seizure and forfeiture of the vessel to the United States, a maximum criminal fine of $10,000, and imprisonment up to 10 years, and a civil penalty of not more than $25,000 for each day of a continuing violation.

The Captain of the Port will enforce these zones and may enlist the aid and cooperation of any Federal, State, county, municipal, and private agency to assist in the enforcement of the regulation. This regulation is proposed under the authority of 33 U.S.C. 1226 in addition to the authority contained in 50 U.S.C. 191 and 33 U.S.C. 1231.

Regulatory Evaluation

These proposed rules are not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and do not require an assessment of potential costs and benefits under section 6 (a)(3) of that Order. The Office of Management and Budget has not reviewed them under that Order. They

are not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979).

We expect the economic impact of these proposed rules to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

Due to National Security interests, the implementation of these security zones is necessary for the protection of the United States and its people. The size of the zone is the minimum necessary to provide adequate protection for U.S. Naval vessels, their crews, adjoining areas, and the public. The entities most likely to be affected, if any, are pleasure craft engaged in recreational activities and sightseeing. Any hardships experienced by persons or vessels are considered minimal compared to the national interest in protecting U.S. Naval vessels, their crews, and the public.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether these proposed rules would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that these proposed rules would not have a significant economic impact on a substantial number of small entities because the expanded zones will still allow sufficient room for vessels to transit the channel unimpeded.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that these rules would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree these rules would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding these proposed rules so that they can better evaluate its effects on them and participate in the rulemakings. If the proposed rules would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact LT Joseph Brown, Marine Safety Office San Diego at (619) 683–6495.

Collection of Information

These proposed rules would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed these proposed rules under that Order and have determined that they do not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though these proposed rules would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

These proposed rules would not affect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

These proposed rules meet applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed these proposed rules under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. These rules are not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

Indian Tribal Governments

These proposed rules do not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because they would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. We invite your comments on how these proposed rules might impact tribal governments, even if that impact may not constitute a "tribal implication" under the Order.

Energy Effects

We have analyzed these proposed rules under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that these are not a "significant energy action" under that order because they are not a "significant regulatory action" under Executive Order 12866 and are not likely to have a significant adverse effect on the supply, distribution, or use of energy. They have not been designated by the Administrator of the Office of Information and Regulatory Affairs as significant energy actions. Therefore, they do not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have considered the environmental impact of these proposed rules and concluded that, under figure 2–1, paragraph (34)(g), of Commandant Instruction M16475.lD, these rules are categorically excluded from further environmental documentation because our action is limited to the expansion of existing security zones. The U.S. Navy has separately considered the impact of their proposed project including the placement of anti-small boat barrier booms. While we reviewed the Navy's environmental documentation, our analysis pertains solely to the expanded placement of the small markers designating the security zones already in the waterway. "Categorical Exclusion Determinations" are available in the docket where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191, 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; 49 CFR 1.46.

2. Revise § 165.1101 to read as follows:

§ 165.1101 Security Zone: San Diego Bay, CA.

(a) *Location.* The following area is a security zone: the water area within Naval Station, San Diego enclosed by the following points: Beginning at 32°41′16.5″ N, 117°08′01″ W (Point A); thence running southwesterly to 32°41′02.5″ N, 117°08′08.5″ W (Point B); to 32°40′55.0″ N 117°08′00.0″ W (Point C); to 32°40′ 49.5″ N 117°07′55.5″ W (Point D); to 32°40′44.6″ N, 117°07′49.3″ W (Point E); to 32°40′37.8 N 117°07′43.2″ W, (Point F); to 32°40′30.9″ N, 117°07′39.0″ W (Point G); 32°40′24.5″ N, 117°07′35.0″ W (Point H); to 32°40′17.2″ N, 117°07′30.8″ W (Point I); to 32°40′10.6″ N, 117°07′30.5″ W (Point J); to 32°39′59.0″ N, 117°07′29.0″ W (Point K); to 32°39′49.8″ N, 117°07′27.2″ W (Point L); to 32°39′43.0″ N, 117°07′25.5″ W (Point M); 32°39′36.5″ N, 117°07′24.2″ W, (Point N); thence running easterly to 32°39′38.5″ N, 117°07′06.5″ W (Point O); thence running generally northwesterly along the shoreline of the Naval Station to the place of beginning. All coordinates referenced use datum: NAD 1983.

(b) *Regulations.* (1) In accordance with the general regulations in §165.33 of this part, entry into the area of this zone is prohibited unless authorized by the Captain of the Port San Diego; Commander, Naval Base San Diego; Commander, Navy Region Southwest; or the Commanding Officer, Naval Station, San Diego.

(2) Persons desiring to transit the area of the security zone may contact the Captain of the Port at telephone number 619–683–6495 or on VHF channel 16 (156.8 MHz) to seek permission to transit the area. If permission is granted, all persons and vessels must comply with the instructions of the Captain of the Port or his or her designated representative.

(c) *Authority.* In addition to 33 U.S.C. 1231 and 50 U.S.C. 191, the authority for this section includes 33 U.S.C. 1226.

(d) *Enforcement.* The U.S. Coast Guard may be assisted in the patrol and enforcement of this security zone by the U. S. Navy.

3. Revise °165.1103 to read as follows:

§ 165.1103 Security Zone: San Diego Bay, CA.

(a) *Location.* The following area is a security zone: The water adjacent to the Naval Submarine Base, San Diego commencing on a point on the shoreline of Ballast Point, at 32°41′11.2″ N, 117°13′57.0″ W (Point A), thence northerly to 32°41′31.8″ N, 117°14′00.6″ W (Point B), thence westerly to 32°41′32.7″ N, 117°14′03.2″ W (Point C), thence southwesterly to 32°41′30.5″ N, 117°14′17.5″ W (Point D), thence generally southeasterly along the shoreline of the Naval Submarine Base to the point of beginning, (Point A). All coordinates referenced use datum: NAD 1983.

(b) *Regulations.* (1) In accordance with the general regulations in § 165.33 of this part, entry into the area of this zone is prohibited unless authorized by the Captain of the Port San Diego; Commander, Submarine Force, U.S. Pacific Fleet Representative, West Coast; or Commander, Naval Base San Diego.

(2) Persons desiring to transit the area of the security zone may contact the Captain of the Port at telephone number 619–683–6495 or on VHF channel 16 (156.8 MHz) to seek permission to transit the area. If permission is granted, all persons and vessels must comply with the instructions of the Captain of the Port or his or her designated representative.

(c) *Authority.* In addition to 33 U.S.C. 1231 and 50 U.S.C. 191, the authority for this section includes 33 U.S.C. 1226.

(d) *Enforcement.* The U.S. Coast Guard may be assisted in the patrol and enforcement of this security zone by the U.S. Navy.

4. Revise § 165.1104 to read as follows:

§ 165.1104 Security Zone: San Diego Bay, CA.

(a) *Location.* The following area is a security zone: on the waters along the northern shoreline of Naval Base Coronado, the area enclosed by the following points: Beginning at 32°42′53.0″N, 117°11′45.0″ W (Point A); thence running northerly to 32°42′55.5″N, 117°11′45.0″W, (Point B); thence running easterly to 32°42′57.0″N, 117°11′31.0″W, (Point C); thence southeasterly to 32°42′42.0″N, 117°11′04.0″W (Point D); thence southeasterly to 32°42′21.0″N, 117°10′47.0″W (Point E) thence running southerly to 32 °42′13.0″ N, 117 °10′51.0″ W (Point F); thence running generally northwesterly along the shoreline of Naval Base Coronado to the place of beginning. All coordinates referenced use datum: NAD 1983.

(b) *Regulations.* (1) In accordance with the general regulations in § 165.33, entry into the area of this zone is prohibited unless authorized by the Captain of the Port San Diego; Commander, Naval Air Force, U.S. Pacific Fleet; Commander, Navy Region Southwest; or Commanding Officer, Naval Base Coronado.

(2) Persons desiring to transit the area of the security zone may contact the Captain of the Port at telephone number 619–683–6495 or on VHF channel 16 (156.8 MHz) to seek permission to transit the area. If permission is granted, all persons and vessels must comply with the instructions of the Captain of the Port or his or her designated representative.

(c) *Authority.* In addition to 33 U.S.C. 1231 and 50 U.S.C. 191, the authority for this section includes 33 U.S.C. 1226.

(d) *Enforcement.* The U.S. Coast Guard may be assisted in the patrol and enforcement of this security zone by the U.S. Navy.

Dated: January 28, 2003.

Stephen P. Metruck,

Commander, U.S. Coast Guard, Captain of the Port, San Diego, California.

[FR Doc. 03–3263 Filed 2–10–03; 8:45 am]

BILLING CODE 4910–15–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA–D–7554]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are requested on the proposed base (1% annual chance) flood elevations and proposed base flood elevation modifications for the communities listed below. The base flood elevations are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP):

EFFECTIVE DATE: The comment period is ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

ADDRESSES: The proposed base flood elevations for each community are

available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Michael M. Grimm, Acting Chief, Hazard Study Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–2878, or (e-mail) *Michael.Grimm@fema.gov.*

SUPPLEMENTARY INFORMATION: The Federal Management Agency (FEMA or Agency) proposes to make determinations of base flood elevations and modified base flood elevations for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed base flood and modified base flood elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, state or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

National Environmental Policy Act. This proposed rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act. The Administrator, Federal Insurance and Mitigation Administration, certifies that this proposed rule is exempt from the requirements of the Regulatory Flexibility Act because proposed or modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the NFIP. As a result, a regulatory flexibility analysis has not been prepared.

Regulatory Classification. This proposed rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism. This proposed rule involves no policies that have federal implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform. This proposed rule meets the applicable standards of section 12(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, flood insurance, reporting and recordkeeping requirements.

Accordingly, 44 CFR Part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

1. The authority citation for Part 67 continues to read as follows:

Authority: 42 U.S.C. 4401 *et seq.;* Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.4 [Amended]

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD) •Elevation in feet (NAVD)		Communities affected
		Existing	Modified	
Florida				
Polk County (Unincorporated Areas)				
Lake Myrtle No.2	From the eastern shoreline to the confluence with Peace Creek Drainage Canal.	*119	*120	City of Lake Wales, Polk County, (Unincorporated Areas).
Polk County (Unincorporated Areas)				
Maps available for inspection at the County Engineer Division, 330 West Church Street, Bartow, Florida. Send Comments to Mr. Jim W. Keene, Polk County Manager, PO Box 9005, Drawer CA01, Bartow Florida 33831.				
City of Lake Wales: Maps available for inspection at the Lake Wales City Administration Building, 201 West Central Avenue, Lake Wales, Florida. Send comments to Mr. Tony Otte, Lake Wales City Manager, PO Box 1320, Lake Wales, Florida 33859.				
Illinois				
Sangamon County (Unincorporated Areas)				
Fox Creek	At confluence with Polecat Creek	None	*571	Village of Chatham, Sangamon County (Unincorporated Areas).
	Approximately 1,100 feet upstream of Ptarmigan Drive	None	*587	
Jacksonville Branch	At confluence with Spring Creek	*540	*543	City of Springfield, Village of Jerome, City of Leland Grove, Sangamon County (Unincorporated Areas).
	Approximately 75 feet upstream of Koke Mill Road	None	*603	
Spring Creek	Approximately 1,600 feet downstream of North 8th Street.	*528	*529	City of Springfield, Sangamon County (Unincorporated Areas).
	Approximately 3,300 feet upstream of South Farmingdale Road.	*568	*569	

Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD) •Elevation in feet (NAVD)		Communities affected
		Existing	Modified	
Polecat Creek	Approximately 2,300 feet upstream of confluence with Lick Creek.	None	*563	Village of Chatham, Sangamon County (Unincorporated Areas), City of Springfield
	Approximately 200 feet upstream of Broaddus Road	None	*601	
Jacksonville Branch Tributary.	At the confluence with Jacksonville Branch	*569	*570	City of Leland Grove, City of Springfield.
	Approximately 500 feet upstream of Wiggins Avenue	*574	*573	
Black Branch	Approximately 2,000 feet downstream of CSX Transportation.	None	*541	Sangamon County (Unincorporated Areas), Village of Rochester.
	At Maxhiemer Road	None	*571	
Unnamed Tributary to Lick Creek.	Approximately 0.56 mile downstream of Main Street	None	*598	Sangamon County (Unincorporated Areas), Village of Loami.
	Approximately 200 feet upstream of Center Street	None	*616	

Sangamon County (Unincorporated Areas)

Maps available for inspection at the Springfield-Sangamon County Regional Planning Commission, 200 South 9th Street, Room 212, Springfield, Illinois

Send comments to Mr. Andy Van Meter, Chairman of the Sangamon County Board of Commissioners, 200 South 9th Street, Room 201, Springfield, Illinois 62701.

Village of Chatham:

Maps available for inspection at the Chatham Village Hall, 116 East Mulberry Street, Chatham, Illinois or at the Springfield-Sangamon County Regional Planning Commission, 200 South 9th Street, Room 212, Springfield, Illinois.

Send comments to Mr. Tom Gray, Chatham Village, 116 East Mulberry Street, Chatham, Illinois 62629.

Village of Jerome:

Maps available for inspection at the Jerome Village, 2901 Leonard Street, Springfield, Illinois or at the Springfield-Sangamon County Regional Planning Commission, 200 South 9th Street, Room 212, Springfield, Illinois.

Send comments to Mr. Steve Roth, Jerome Village President, 2901 Leonard Street, Springfield, Illinois 62704.

City of Leland Grove:

Maps available for inspection at the Leland Grove City Hall, 2000 Chatham Road, Springfield, Illinois or at the Springfield-Sangamon County Regional Planning Commission, 200 South 9th Street, Room 212, Springfield, Illinois.

Send comments to the Honorable John A. Davis, Mayor of the City of Leland Grove, 2000 Chatham Road, Springfield, Illinois 62704.

Village of Loami:

Maps available for inspection at the Loami Village Hall, 104 South Main Street, Loami, Illinois or at the Springfield-Sangamon County Regional Planning Commission, 200 South 9th Street, Room 212, Springfield, Illinois.

Send comments to the Honorable Richard W. Mowery, Mayor of the Village of Loami, PO Box 226, Loami, Illinois 62661–0226.

Village of Rochester:

Maps available for inspection at the Rochester Village Hall. 1 Community Drive, Rochester, Illinois or at the Springfield-Sangamon County Regional Planning Commission, 200 South 9th Street, Room 212, Springfield, Illinois.

Send comments to the Mr. David Armstrong, Rochester Village President. 1 Community Drive, Rochester, Illinois 62563.

City of Springfield:

Maps available for inspection at the City of Springfield Public Works Department, 300 East Monroe Street, Room 201, Springfield, Illinois or at the Springfield-Sangamon County Regional Planning Commission, 200 South 9th Street, Room 212, Springfield, Illinois.

Send comments to the Honorable Karen Hasara, Mayor of the City of Springfield, 800 East Monroe Street, Springfield, Illinois 62701.

Beaufort County, North Carolina (Unincorporated Areas)

Pungo River Canal	Approximately 1.5 miles upstream of confluence with Pungo Lake Canal.	None	•7	Beaufort County (Unincorporated Areas).
	Approximately 750 feet downstream of State Route 99	None	•10	
Creeping Swamp	Approximately 0.7 mile downstream of State Route 102.	None	•36	Beaufort County (Unincorporated Areas).
	At the County boundary	None	•47	

•North American Vertical Datum

Town of Aurora:

Maps available for inspection at the Aurora Town Hall, 295 Main Street, Aurora, North Carolina.

Send comments to The Honorable Joe Hooker, Mayor of the Town of Aurora, PO Box 86, Aurora, North Carolina 27806.

Beaufort County (Unincorporated Areas)

Maps available for inspection at the Beaufort County Building Inspection, 220 North Market Street, Washington, North Carolina.

Send comments to Mr. Donald Davenport, Beaufort County Manager, PO Box 1027, Washington, North Carolina 27889.

City of Washington:

Maps available for inspection at the City of Washington Building Inspection Department, 102 East Second Street, North Carolina.

Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD) •Elevation in feet (NAVD)		Communities affected
		Existing	Modified	
Send comments to Mr. R.L. Willoughby, Washington City Manager, PO Box 1988, Washington, North Carolina 27889.				
North Carolina Edgecombe County (Unincorporated Areas)				
Beaverdam Branch	At the confluence with Cokey Swamp	None	•59	Edgecombe County (Unincorporated Areas).
	Approximately 0.8 mile upstream of McKendree Church Road.	None	•73	
Cokey Swamp	Approximately 1,100 feet upstream of Davistown-Mercer Road.	None	•57	Edgecombe County (Unincorporated Areas).
	Approximately 1.1 miles downstream of the confluence with Little Cokey Swamp.	None	•77	
Corn Creek	At the confluence with Town Creek	None	•61	Edgecombe County (Unincorporated Areas).
	Approximately 1.2 miles upstream of Temperance Hall Road.	None	•104	
Deloach Branch	At the confluence with Cokey Swamp	None	•70	Edgecombe County (Unincorporated Areas).
	Approximately 0.7 mile upstream of the confluence with Cokey Swamp.	None	•72	
Dickson Branch	At the confluence with Cokey Swamp	None	•73	Edgecombe County (Unincorporated Areas).
	Approximately 0.8 mile upstream of the confluence with Cokey Swamp.	None	•78	
Little Cokey Swamp	Approximately 0.4 mile upstream of the confluence with Cokey Swamp.	None	•82	Edgecombe County (Unincorporated Areas).
	Approximately 50 feet downstream of Green Pasture Road.	None	•92	
Millpond Branch	At the confluence with Cokey Swamp	None	•66	Edgecombe County (Unincorporated Areas).
	Approximately 0.6 mile upstream of the confluence with Cokey Swamp.	None	•70	
Otter Creek	Approximately 1,000 feet downstream of the confluence with Otter Creek tributary.	None	•47	Edgecombe County (Unincorporated Areas).
	Approximately 0.7 mile upstream of Lewis Road	None	•91	
Otter Creek Tributary	At the County boundary	None	•48	Edgecombe County (Unincorporated Areas).
	Approximately 2.2 miles upstream of the County boundary.	None	•65	
Sasnett Mill Branch	At the confluence with Cokey Swamp	None	•70	Edgecombe County (Unincorporated Areas).
	Approximately 300 feet upstream of Kent Road	None	•64	
Town Creek	Approximately 150 feet upstream of State Route 43	None	•59	Edgecombe County (Unincorporated Areas).
	Approximately 550 feet upstream of the County boundary.	None	•73	
Williamson Branch	At the confluence with Town Creek	None	•70	Edgecombe County (Unincorporated Areas).
	Approximately 2.3 miles upstream of the confluence with Town Creek.	None	•82	
Buck Swamp	At confluence with Tar River	None	•66	Edgecombe County (Unincorporated Areas).
	Approximately 1,750 feet upstream of Melton Road	None	•78	
Walnut Creek	At confluence with Tar River	None	•60	Edgecombe County (Unincorporated Areas).
	Approximately 0.7 mile upstream of Alternate Route 64.	None	•68	
Tar River	At the Edgecombe County boundary	•33	•37	Edgecombe County (Unincorporated Areas).
	At the City of Rocky Mount Extraterritorial Jurisdiction limits.	None	•71	
Beech Branch	At the confluence with the Tar River	None	•63	Edgecombe County (Unincorporated Areas).
	At the City of Rocky Mount Extraterritorial Jurisdiction limits.	None	•88	
Whit Oak Swamp	At confluence with Swift Creek	•62	•61	Edgecombe County (Unincorporated Areas).

Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD) •Elevation in feet (NAVD)		Communities affected
		Existing	Modified	
	Approximately 1.0 mile upstream of Speight's Chapel Road.	None	•107	
Racoon Branch	At the confluence with Penders Mill Run	None	•70	Edgecombe County (Unincorporated Areas).
	Approximately 350 feet upstream of CSX Railroad	None	•88	
Penders Mill Run	At the confluence with Tar River	None	•53	Edgecombe County (Unincorporated Areas).
	Approximately 1.4 miles upstream of Taylor Drive	None	•90	
Kay Branch	At confluence with Tar River	None	•58	Edgecombe County (Unincorporated Areas).
	Approximately 1,160 feet upstream of confluence with Tar River.	None	•62	
Maple Swamp	At confluence with Fishing Creek	•49	•51	Edgecombe County (Unincorporated Areas).
	Approximately 760 feet upstream of O'Neal Road	None	•76	
Leggett Canal	Approximately 0.5 mile upstream of confluence with Swift Creek.	None	•56	Town of Leggett.
	Approximately 1,525 feet upstream of State Route 30	None	•69	
Tar River Tributary	At confluence with Tar River	•49	•58	Edgecombe County (Unincorporated Areas).
	Approximately 1.0 mile downstream of confluence with Tar River.	•49	•50	
Holly Creek	Just upstream of confluence with Hendricks Creek	None	•45	Town of Tarboro.
	Approximately 0.4 mile upstream of U.S. Route 64	None	•105	
Tributary A to Hendricks Creek.	Approximately 150 feet upstream of confluence with Hendricks Creek.	•50	•48	Town of Tarboro.
	At Speight Forest Drive	•78	•77	
Hendricks Creek	At confluence with Tar River	•42	•45	Town of Tarboro.
	Approximately 1.06 miles upstream of Industrial Parkway.	•74	•75	
East Tarboro Canal	At confluence with Tar River	•43	•45	Town of Tarboro.
	Approximately 700 feet upstream of Forest Acres Drive.	None	•55	
Cheeks Mill Creek	At confluence with Tar River	•33	•37	Edgecombe County (Unincorporated Areas).
	Approximately 700 feet downstream of Britt Farm Road.	None	•42	
Conetoe Creek	Approximately 100 feet downstream of the County boundary.	None	•42	Edgecombe County (Unincorporated Areas).
	Approximately 400 feet upstream of North Bowers Road.	None	•76	
NC 42 Canal	At confluence with Conetoe Creek	None	•42	Edgecombe County (Unincorporated Areas), Town of Conetoe.
	Approximately 1,150 feet upstream of Highway 64A	None	•47	
Crisp Creek	At confluence with Conetoe Creek	None	• 48	Edgecombe County (Unincorporated Areas).
	At County boundary	None	• 61	
Fountain Fork Creek	At confluence with Conetoe Creek	None	• 57	Edgecombe County (Unincorporated Areas).
	Approximately 1.0 mile upstream of Route 142	None	• 73	
Moore Swamp	At the confluence with Maple Swamp	None	• 58	Edgecombe County (Unincorporated Areas).
	Approximately 250 feet downstream of a Draughn Road.	None	• 61	
Deep Creek	Approximately 0.7 mile upstream of Dickens Road	54	• 53	Edgecombe County (Unincorporated Areas), Town of Speed.
	Approximately 0.6 mile upstream of County boundary	None	• 62	
Deep Creek Tributary 2	At confluence with Deep Creek	None	• 57	Edgecombe County (Unincorporated Areas).
	Approximately 500 feet downstream of Dickens Road	None	• 60	
Savage Mill Run	At the upstream side of CSX Railroad	• 57	• 58	Edgecombe County (Unincorporated Areas), Town of Speed.
	Approximately 0.8 mile upstream of Mill Pond Road	None	• 74	
Speed Levee Ponding Area	Ponding behind Speed Levee	None	• 51	Edgecombe County (Unincorporated Areas), Town of Speed.

Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD) •Elevation in feet (NAVD)		Communities affected
		Existing	Modified	
Princeville Ponding Area	Ponding behind Princeville Levee	None	• 35	Town of Princeville.

Edgecombe County (Unincorporated Areas)

Maps available for inspection at Edgecombe County (Unincorporated Areas) Planning Department, 201 Saint Andrews Street, Tarboro, North Carolina.
Send comments to Mr. Lorenzo Carmon, Edgecombe County (Unincorporated Areas) Manager, 201 Saint Andrews Street, Tarboro, North Carolina 27866.

Town of Conetoe:
Maps available for inspection at the Conetoe Town Hall, 204 West Church Street, Conetoe, North Carolina.
Send comments to The Honorable Jean Harris, Mayor of the Town of Conetoe, P.O. Box 218, Conetoe, North Carolina 27819.

Town of Leggett:
Maps available for inspection at the Leggett Town Hall, Route 2, Tarboro, North Carolina.
Send comments to The Honorable Charles Corbett, Mayor of the Town of Leggett, Route 2, Box 199A, Tarboro, North Carolina 27886.

Town of Princeville:
Maps available for inspection at the Princeville Town Hall, Planning Office, 310 Mutual Boulevard, Princeton, North Carolina.
Send comments to Mr. Bobby Hopkins, Princeville Town Manager, 310 Mutual Boulevard, Princeton, North Carolina 27886.

Town of Speed:
Maps available for inspection at the Speed Town Hall, 200 Railroad Street, Speed, North Carolina.
Send comments to The Honorable Wilbert Harrison, Mayor of the Town of Speed, P.O. Box 327, Speed, North Carolina 27881.

Town of Tarboro:
Maps available for inspection at the Tarboro Town Hall, Planning Department, 500 Main Street, Tarboro, North Carolina.
Send comments to Mr. Samuel Noble, Tarboro Town Manager, P.O. Box 220, Tarboro, North Carolina 27886.

North Carolina
Franklin County (Unincorporated Areas)

Bear Swamp Creek	Approximately 1,500 feet downstream of Dyking Road	None	•212	Franklin County (Unincorporated Areas).
	Approximately 2.1 miles upstream of Dyking Road	None	•229	
Big Branch Creek	At the confluence with Cedar Creek	None	•193	Franklin County (Unincorporated Areas).
	Approximately 1 mile upstream of San Horton Road ...	None	•243	
Big Peachtree Creek	At the County boundary	None	•204	Franklin County (Unincorporated Areas).
	Approximately 1.2 miles upstream of Gardner Road ...	None	•234	
Big Peachtree Creek Tributary.	At the confluence with Big Peachtree Creek	None	•208	Franklin County (Unincorporated Areas).
	Approximately 0.9 mile upstream of the confluence with Big Peachtree Creek.	None	•231	
Billys Creek	Approximately 1,180 feet upstream of the confluence with the Tar River.	None	•226	Franklin County (Unincorporated Areas).
	Approximately 1.9 miles upstream of the confluence with the Tar River.	None	•243	
Brandy Creek	At the confluence with Cedar Creek	None	•275	Franklin County (Unincorporated Areas), Town of Youngsville.
	Approximately 425 feet upstream of Park Avenue	None	•381	
Brandy Creek Tributary	At the confluence with Brandy Creek	None	•310	Franklin County (Unincorporated Areas).
	Approximately 0.7 mile upstream of the confluence with Brandy Creek.	None	•333	
Buffalo Creek South	Approximately 0.5 mile upstream of the confluence with the Tar River.	None	•213	Franklin County (Unincorporated Areas).
	Approximately 2.7 miles upstream of West River Road	None	•247	
Buffalo Creek	At the confluence with Sandy Creek	None	•271	Franklin County (Unincorporated Areas).
	Approximately 2.5 miles upstream of U.S. 401	None	•355	
Buffalo Creek Tributary 1 ...	At the confluence with Buffalo Creek	None	•283	Franklin County (Unincorporated Areas).
	Approximately 700 feet upstream of Tollie Weldon Road.	None	•327	
Camping Creek	At the confluence with Cedar Creek	None	•231	Franklin County (Unincorporated Areas).
	Approximately 0.7 mile upstream of Hart Road	None	•300	
Camping Creek Tributary 1	At the confluence with Camping Creek	None	•264	Franklin County (Unincorporated Areas).
	Approximately 0.7 mile upstream of the confluence with Camping Creek.	None	•286	

Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD) •Elevation in feet (NAVD)		Communities affected
		Existing	Modified	
Cedar Creek	Approximately 0.8 mile upstream of the confluence with the Tar River.	None	•193	Franklin County (Unincorporated Areas), Town of Franklinton.
	Approximately 1.1 miles upstream of Pocomoke Road	None	•427	
Cedar Creek Tributory 1	At the confluence with Cedar Creek	None	•212	Franklin County (Unincorporated Areas).
	Approximately 1.5 miles upstream of Bennette Perry Road.	None	•252	
Cedar Creek Tributary 2	At the confluence with Cedar Creek	None	•269	Franklin County (Unincorporated Areas).
	Approximately 0.8 mile upstream of Hill Road	None	•338	
Cedar Creek Tributary 3	At the Confluence with Cedar Creek	None	•305	Franklin County (Unincorporated Areas).
	Approximately 0.4 mile downstream of Long Mill Road	None	•380	
Crooked Creek	Approximately 80 feet downstream of NC 98	None	•174	Franklin County (Unincorporated Areas), Town of Bunn.
	Approximately 0.9 mile upstream of Moores Pond Road.	None	•375	
Crooked Creek Tributary 1	At the confluence with Crooked Creek	None	•193	Franklin County (Unincorporated Areas), Town of Bunn.
	Approximately 1.4 miles upstream of Pearces Road	None	•241	
Crooked Creek Tributary 2	At the confluence with Crooked Creek	None	•234	Franklin County (Unincorporated Areas).
	Approximately 1.2 miles upstream of the confluence with Crooked Creek.	None	•270	
Crooked Creek Tributary 3	At the confluence with Crooked Creek	None	•266	Franklin County (Unincorporated Areas).
	Approximately 0.6 mile upstream of U.S. 401	None	•330	
Crooked Creek Tributary 4	At the confluence with Crooked Creek Tributary 3	None	•270	Franklin County (Unincorporated Areas).
	Approximately 0.9 mile upstream of the confluence with Crooked Creek Tributary 3.	None	•325	
Cypress Creek	At the confluence with the Tar River	None	•171	Franklin County (Unincorporated Areas).
	Approximately 1.6 miles upstream of NC 56	None	•260	
Deer Branch	At the confluence with Sandy Creek	None	*185	Franklin County (Unincorporated Areas).
	Approximately 1,200 feet upstream of NC 58	None	•249	
Devile Cradle Creek	At the confluence with Sandy Creek	None	•251	Franklin County (Unincorporated Areas).
	Approximately 1.9 miles upstream of NC 39	None	•379	
Fishing Creek	Approximately 1,450 feet upstream of NC 561	None	•165	Franklin County (Unincorporated Areas).
	Approximately 1.1 miles upstream of NC 561	None	•166	
Flatrock Creek	At the confluence with Devils Cradle Creek	None	•264	Franklin County (Unincorporated Areas).
	Approximately 2.6 miles upstream of Lake View Road	None	•398	
Fox Creek	Approximately 0.5 mile upstream of NC/56 NC 581	None	•204	Franklin County (Unincorporated Areas), Town of Louisburg.
	Approximately 0.9 mile upstream of NC 561	None	•225	
Giles Creek	At the confluence with Tooles Creek	None	•238	Franklin County (Unincorporated Areas).
	Approximately 0.9 mile upstream of the confluence with Tooles Creek.	None	•254	
Jumping Run	Approximately 0.6 mile downstream of East River Road.	None	•195	Franklin County (Unincorporated Areas).
	Approximately 975 feet upstream of East River Road	None	•204	
Little Shocco Creek	At the confluence with Shocco Creek	None	•206	Franklin County (Unincorporated Areas).
	Approximately 2.3 miles upstream of Rod Alston Road	None	•258	
Long Branch	At the confluence with Cypress Creek	None	•236	Franklin County (Unincorporated Areas).
	Approximately 1.4 miles upstream of the confluence with Cypress Creek.	None	•265	
Lynch Creek	Approximately 0.5 mile downstream of Dyking Road	None	•213	Franklin County (Unincorporated Areas).

Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD) •Elevation in feet (NAVD)		Communities affected
		Existing	Modified	
	At the County boundary	None	•332	
Middle Creek	Approximately 1,200 feet upstream of Green Hill Road	None	•242	Franklin County (Unincorporated Areas).
	Approximately 1.8 miles upstream of Green Hill Road	None	•257	
Norris Creek	At the confluence with Crooked Creek	None	•181	Franklin County (Unincorporated Areas).
	Approximately 450 feet upstream of Bethlehem Church.	None	•331	
Norris Creek Tributary 1	At the confluence with Norris Creek	None	•197	Franklin County (Unincorporated Areas).
	Approximately 0.9 mile upstream of Johnson Town Road.	None	•237	
Red Bud Creek	Approximately 1.4 miles downstream of NC 58	None	•194	Franklin County (Unincorporated Areas).
	Approximately 4.2 miles upstream of NC 58	None	•254	
Sandy Creek	At the downstream County boundary	None	•184	Franklin County (Unincorporated Areas).
	Approximately 1 mile upstream of Hightower Road	None	•281	
Sandy Creek Tributary 1	At the confluence with Sandy Creek	None	•187	Franklin County (Unincorporated Areas).
	Approximately 1.3 miles upstream of Reed Road	None	•209	
Sandy Creek Tributary 2	At the confluence with Sandy Creek	None	•193	Franklin County (Unincorporated Areas).
	Approximately 0.8 mile upstream of the confluence with Sandy Creek.	None	•209	
Sandy Creek Tributary 3	At the confluence with Sandy Creek	None	•205	Franklin County (Unincorporated Areas).
	Approximately 630 feet upstream of Douglas Williams Road.	None	•263	
Sandy Creek Tributary 4	At the confluence with Sandy Creek Tributrary 3	None	•207	Franklin County (Unincorporated Areas).
	Approximately 230 feet upstream of JB Leonard Road	None	•231	
Sandy Creek Tributary 5	At the confluence with Sandy Creek	None	•206	Franklin County (Unincorporated Areas).
	Approximately 1.3 m iles upstream of NC 561	None	•314	
Sandy Creek Tributary 6	At the confluence with Sandy Creek	None	•212	Franklin County (Unincorporated Areas).
	Approximately 500 feet upstream af Raymond Tharrington Road.	None	•257	
Sandy Creek Tributary 7	At the confluence with Sandy Creek	None	•236	Franklin County (Unincorporated Areas).
	Approximately 1.4 miles upstream of Person Road	None	•500	
Sandy Creek Tributary 8	At the confluence with Sandy Creek Tributary 7	None	•248	Franklin County (Unincorporated Areas).
	Approximately 1.1 miles upstream of the confluence with Sandy Creek Tributary 7.	None	•284	
Sandy Creek Tributary 9	At the confluence with Sandy Creek	None	•250	Franklin County (Unincorporated Areas).
	Approximately 0.4 mile upstream of the confluence with Sandy Creek.	None	•251	
Sandy Creek Tributary 10	At the confluence with Sandy Creek	None	•265	Franklin County (Unincorporated Areas).
	Approximately 0.8 mile upstream of the confluence with Sandy Creek.	None	•279	
Sandy Creek Tributary 13	At the confluence with Sandy Creek	None	•215	Franklin County (Unincorporated Areas).
	Approximately 0.6 mile upstream of the confluence of Sandy Creek Tributary 15.	None	•270	
Sandy Creek Tributary 14	At the confluence with Sandy Creek Tributary 13	None	•231	Franklin County (Unincorporated Areas).
	Approximately 1.2 miles upstream of the confluence with Sandy Creek Tributary 13.	None	•277	
Sandy Creek tributary 15	At the confluence with Sandy Creek Tributary 13	None	•262	Franklin County (Unincorporated Areas).
	Approximately 0.4 mile upstream of the confluence with Sandy Creek Tributary 13.	None	•270	
Shocco Creek	At the confluence of Fishing Creek	None	•166	Franklin County (Unincorporated Areas).
	Approximately 4.1 miles upstream of the NC 58	None	•206	

Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD) •Elevation in feet (NAVD)		Communities affected
		Existing	Modified	
Sycamore Creek	Approximately 1,000 feet downstream of East River Road.	None	•200	Franklin County (Unincorporated Areas).
	Approximately 1,400 feet downstream of Ronald Tharrington Road.	None	•236	
Tar River Tributary 1	Approximately 5000 feet upstream of the confluence with the Tar River.	None	•197	Franklin County (Unincorporated Areas).
	Approximately 0.9 mile upstream of George Leonard Road.	None	•209	
Taylors Creek	Approximately 750 feet upstream of confluence with the Tar River.	None	•234	Franklin County (Unincorporated Areas).
	Approximately 1.6 miles upstream of the confluence with the Tar River.	None	•240	
Tooles Creek	At the confluence with Lynch Creek	None	•213	Franklin County (Unincorporated Areas).
	Approximately 100 feet downstream of Joe Ward Road.	None	•310	
Wolfpen Branch	Approximately 0.6 mile upstream of the confluence with the Tar River.	None	•197	Franklin County (Unincorporated Areas), Town of Louisburg.
	Approximately 450 feet downstream of of NC 39	None	•212	

Franklin County (Unincorporated Areas)

Map available for inspection at the Franklin County GIS Department, 215 East Nash Street, Louisburg, North Carolina.
Send comments to Dr. John Ball, chairman of the Franklin County Board of Commissioners, 113 Market Street, Louisburg, North Carolina 27549.

Town of Bunn:
Map available for inspection at the Bunn Town Hall, 601 Main Street, Bunn, North Carolina.
Send comments to The Honorable Jerry Kenneth, Mayor of the Town of Bunn, P.O. Box 398, Bunn, North Carolina 27508.

Town of Franklinton:
Map available for inspection at the Franklinton Town Hall, 7 West Mason Street, Franklinton, North Carolina.
Send comments to The Honorable J. Larry Kearney, Mayor of the Town of Franklinton, P.O. Box 309, Franklinton, North Carolina 27525.

Town of Louisburg:
Map available for inspection at the Louisburg Town Hall, 110 West Nash Street, Louisburg, North Carolina.
Send comments to The Honorable Karl T. Pernell, Mayor of the Town of Louisburg, 110 West Nash Street, North Carolina 27549.

Town of Youngsville:
Map available for inspection at the Youngsville Town Hall, 118 North Cross Street, Youngsville, North Carolina.
Send comments to The Honorable Samuel K. Hardwick, Mayor of the Town of Youngsville, P.O. Box 109, Youngsville, North Carolina 27596.

North Carolina
Martin County (Unincorporated Areas)

Ross Swamp	At the confluence with Collie Swamp	None	•42	Martin County (Unincorporated Areas).
	Approximately 1.3 miles upstream of Vanderford Road	None	•61	
Flat Swamp	At the confluence with Tranters Creek	None	•39	Martin County (Unincorporated Areas).
	Approximately 1,400 feet upstream of Matthew Road	None	•65	
Flat Swamp Tributary	At the confluence with Flat Swamp	None	•47	Town of Robersonville, Martin County (Unincorporated Areas).
Collie Swamp	At the confluence with Tranters Creek	None	•34	Martin County (Unincorporated Areas).
	Approximately 1.1 miles upstream of the confluence of Huskanaw Swamp.	None	•47	
Collie Swamp Tributary 1	At the confluence with Collie Swamp	None	•34	Martin County (Unincorporated Areas).
	Approximately 1.5 miles upstream of the confluence with Collie Swamp.	None	•38	
Collie Swamp Tributary 2	At the confluence with Collie Swamp	None	•34	Martin County (Unincorporated Areas).
	Approximately 0.7 mile upstream of Race Track Road	None	•39	
Collie Swamp Tributary 7	At the confluence with Collie Swamp Tributary 4	None	•40	Martin County (Unincorporated Areas).
	Approximately 0.9 mile upstream of the confluence with Collie Swamp Tributary 4.	None	•47	
Collie Swamp Tributary 4	At the confluence with Collie Swamp	None	•40	Martin County (Unincorporated Areas).
	Approximately 1.1 miles upstream of the confluence of Collie Swamp Tributary 7.	None	•45	

Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD) •Elevation in feet (NAVD)		Communities affected
		Existing	Modified	
Collie Swamp Tributary 5 ...	At the confluence with Collie Swamp	None	•41	Martin County (Unincorporated Areas).
	Approximately 0.9 mile upstream of the confluence with Collie Swamp.	None	•45	
Collie Swamp Tributary 6 ...	At the confluence with Collie Swamp	None	•41	Martin County (Unincorporated Areas).
	Approximately 1.5 miles upstream of the confluence of Collie Swamp.	None	•43	
Huskanaw Swamp	At the confluence with Collie Swamp	None	•43	Martin County (Unincorporated Areas).
	Approximately 900 feet upstream of Perkins Road	None	•55	
Turkey Swamp	At the confluence of Bear Grass Swamp	None	•31	Martin County (Unincorporated Areas).
	Approximately 1.0 mile upstream of Jack Robinson Road.	None	•43	
Turkey Swamp Tributary 1	At the confluence with Turkey Swamp	None	•34	Martin County (Unincorporated Areas).
	Approximately 0.7 mile upstream of the confluence with Turkey Swamp.	None	•41	
Tranters Creek	At the confluence of Bear Grass Swamp	None	•31	Martin County (Unincorporated Areas).
	At the confluence of Flat Swamp	None	•39	
Bear Grass Swamp	At the confluence with Tranters Creek	None	•31	Martin County (Unincorporated Areas).
	Approximately 0.5 mile upstream of Lee Road	None	•41	
Crisp Creek	Approximately 2.9 miles downstream of the confluence of Crisp Creek Tributary.	None	•59	Martin County (Unincorporated Areas).
	Approximately 500 feet upstream of the confluence of Crisp Creek Tributary.	None	•70	

Martin County (Unincorporated Areas)

Maps available for inspection at the Martin County Building Inspector's Office, 305 East Main Street, Williamston, North Carolina.
Send comments to Mr. Donnie H. Pittman, Martin County Manager, P.O. Box 668, Williamston, North Carolina 27892.

Town of Robersonville:
Maps available for inspection at the Robersonville Town Hall, 114 South Main Street, Robersonville, North Carolina.
Send comments to Mr. John Pritchard, Robersonville Town Manager, P.O. Box 487, Robersonville, North Carolina 27871.

North Carolina
Onslow County (Unincorporated Areas)

Atlantic Ocean	At Intracoastal Waterway and Salliers By confluence ..	•7	•8	Unincorporated Areas of Onslow County.
	Approximately 2,000 feet east of River Drive and New River Inlet Road intersection.	•15	•18	
Bachelor's Delight Swamp ..	At the confluence with New River	None	•9	Unincorporated Areas of Onslow County.
	Approximately 0.5 mile upstream of the confluence of Bachelor's Delight Swamp Tributary 2.	None	•29	
Bachelor's Delight Swamp Tributary 1.	Approximately 0.5 mile upstream of the confluence with Bachelor's Delight Swamp.	None	•30	Unincorporated Areas of Onslow County.
	Approximately 1,150 feet upstream of Timothy Road ..	None	•34	
Bachelor's Delight Swamp Tributary 2.	At the confluence with Bachelor's Delight Swamp	None	•21	Unincorporated Areas of Onslow County.
	Approximately 1,400 feet upstream of the confluence with Bachelor's Delight Swamp.	None	•26	
Bear Creek	Approximately 150 feet downstream of NC 173	None	•9	Unincorporated Areas of Onslow County.
	Approximately 1.4 miles upstream of NC 172	None	•31	
Bearhead Creek	Approximately 0.8 mile upstream of the confluence with Wallace Creek.	•2	•3	Unicorporated Areas of Onslow County, City of Jacksonville.
	Approximately 1.3 miles upstream of Holcomb Boulevard.	None	•21	
Bell Swamp	Approximately 800 feet upstream of NC 172	None	•10	Unicorporated Areas of Onslow County.
	Approximately 0.5 mile upstream of Hubert Boulevard	None	•32	
Blue Creek	Approximately 1.4 miles upstream of Richlands Highway.	None	•18	Unicorporated Areas of Onslow County.
	Approximately 300 feet upstream of Pony Farm Road.	None	•44	

Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD) •Elevation in feet (NAVD)		Communities affected
		Existing	Modified	
Brick Kiln Branch (at White Oak River).	At the confluence with White Oak River	None	•11	Unicorporated Areas of Onslow County.
	Approximately 0.5 mile upstream of the confluence with White Oak River.	None	•17	
Cartwheel Branch	At the confluence with Holland Mill Creek	None	•8	Uicorporated Areas of Onslow County.
	Approximately 125 feet upstream of Swansboro Loop Road.	None	•10	
Chinkapin Branch	At the confluence with White Oak River	None	•38	Unicorporated Areas of Onslow County.
	Approximately 1.7 miles upstream of the confluence with White Oak River.	None	•42	
Cogdels Creek	Approximately 100 feet upstream of the confluence with New River.	•2	•3	Unicorporated Areas of Onslow County.
	Approximately 0.5 mile upstream of Sneads Ferry Road.	None	•24	
Cowford Branch	At the confluence with New River	None	•39	Unicorporated Areas of Onslow County.
	Approximately 0.56 mile upstream of State Route 24	None	•51	
Cowhead Creek	Approximately 0.6 mile upstream of the confluence with Frenchs Creek.	•2		Unicorporated Areas of Onslow County, City of Jacksonville.
	Approximately 2.5 miles upstream if Sneads Ferry Road.	None	•35	
Cowhorn Swamp	Approximately 950 feet upstream of the confluence with Jenkins Swamp.	•31	•32	Unicorporated Areas of Onslow County.
	Approximately 0.6 mile upstream of Hoffmann Forest Road.	None	•52	
Deep Run	At the confluence with Southwest Creek	None	•27	Unicorporated Areas of Onslow County.
	Approximately 0.8 mile upstream of Ben Williams Road.	None	•51	
Freemans Creek	At the confluence with White Oak River	None	•9	Unicorporated Areas of Onslow County.
	Approximately 0.7 mile upstream of the confluence with White Oak River.	None	•9	
Frenchs Creek	At the confluence of Jumping Run	•2	•3	Unicorporated Areas of Onslow County, City of Jacksonville.
	Approximately 0.6 mile upstream of Marine Road	None	•16	
Gibson Branch	At the confluence of White Oak River	None	•24	Unicorporated Areas of Onslow County.
	Approximately 1.1 miles upstream of White Oak River Road.	None	•41	
Grants Creek	At the confluence of White Oak River	None	•9	Unicorporated Areas of Onslow County.
	Approximately 700 feet upstream of the confluence of Halls Branch (Cummins Creek).	None	•14	
Half Moon Creek	At the confluence with New River	None	•9	Unicorporated Areas of Onslow County, City of Jacksonville.
	Approximately 1.3 miles upstream of Ramsey Road	None	•44	
Half Moon Creek Tributary 1.	At the confluence with Half Moon Creek	None	•24	Unicorporated Areas of Onslow County.
	Approximately 1.830 feet upstream of the confluence with Half Moon Creek.	None	•28	
Hargetts Creek	Approximately 1.4 miles upstream of the confluence with White Oak River.	None	•9	Unicorporated Areas of Onslow County.
	Approximately 1,100 feet downstream of Sloan Farm Road.	None	•15	
Harris Creek	At the confluence with Southwest Creek	None	•24	Unicorporated Areas of Onslow County.
	Approximately 1,900 feet upstream of Harris Creek Road.	None	•42	
Harris Creek Tributary 1	At the confluence with Harris Creek	None	•32	Unicorporated Areas of Onslow County.
	Approximately 500 feet upstream of Burgaw Highway	None	•39	
Haws Run	At the confluence with Southwest Creek	None	•18	Unicorporated Areas of Onslow County.

Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD) •Elevation in feet (NAVD)		Communities affected
		Existing	Modified	
	Approximately 1.0 mile upstream of Haws Run Road	None	•40	
Haws Run Tributary 1	At the confluence with Haws Run	None	•23	Unicorporated Areas of Onslow County.
	Approximately 1,000 feet upstream of the confluence with Haws Run.	None	•23	
Haws Run Tributary 2	At the confluence with Haws Run	None	•27	Unicorporated Areas of Onslow County.
	Approximately 200 feet upstream of Harris Creek Road.	None	•33	
Hicks Run	At the confluence with Southwest Creek	•2	•6	Unincorporated Areas of Onslow County, City of Jacksonville.
	Approximately 0.9 mile upstream of High Hill Road	None	•46	
Holand Mill Creek	Approximately 1.9 miles upstream of the confluence with White Oak River.	None	•8	Unincorporated Areas of Onslow County.
	Approximately 1,250 feet upstream of Belgrade Swansboro Road.	None	•21	
Horse Swamp	At the confluence with Little Northeast Creek	None	•14	Unincorporated Areas of Onslow County.
	Approximately 1.4 miles upstream of Rockey Run Road.	None	•36	
Jenkins Swamp	At the confluence with New River	•25	•24	Unincorporated Areas of Onslow County.
	Approximately 0.4 mile upstream of SR1003 Comfort Road.	None	•55	
Jumping Run	At the confluence with Frenchs Creek	•2	•3	Unincorporated Areas of Onslow County, City of Jacksonville.
	Approximately 1.2 miles upstream of Sneads Ferry Road.	None	•26	
Little Northeast Creek	At the confluence with Northeast Creek	None	•2	Unincorporated Areas of Onslow County, City of Jacksonville.
	Approximately 3.0 miles upstream of the confluence with Horse Swamp.	None	•28	
Mill Run	At the confluence with Southwest Creek	•2	•3	Unincorporated Areas of Onslow County.
	Approximately 2.3 miles upstream of Verona Road	None	•37	
Mill Swamp	At the confluence with New River	•25	•24	Unincorporated Areas of Onslow County, Town of Richards.
	Approximately 1,000 feet upstream of North Wilmington Street.	None	•35	
New River	Approximately 0.4 mile upstream of the confluence with Blue Creek.	None	•7	Unincorporated Areas of Onslow County, City of Jacksonville.
	Approximately 0.5 mile upstream of State Route 1235	None	•73	
New River Tributary 1	At the confluence with New River	None	•50	Unincorporated Areas of Onslow County.
	Approximately 50 feet upstream of A 1 Taylor Road	None	•74	
New River Tributary 2	At the confluence with New River	None	•9	Unincorporated Areas of Onslow County.
	Approximately 1.1 mile upstream of Richlands Highway.	None	•45	
New River Tributary 3	At the confluence with New River Tributary 2	None	•16	Unincorporated Areas of Onslow County.
	Approximately 1.0 mile upstream of the confluence with New River Tributary 2.	None	•33	
New River Tributary 4	At the confluence with New River	None	•19	Unincorporated Areas of Onslow County.
	Approximately 150 feet upstream of Richlands Highway.	None	•44	
New River Tributary 5	At the confluence with New River	None	•22	Unincorporated Areas of Onslow County.
	Approximately 0.4 mile upstream of Duffy Field Road	None	•42	
New River Tributary 6	At the confluence with New River Tributary 5	None	•25	Unincorporated Areas of Onslow County.
	Approximately 1,700 feet upstream of the confluence with New River Tributary 5.	None	•27	

Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD) •Elevation in feet (NAVD)		Communities affected
		Existing	Modified	
New River Tributary 7	At the confluence with New River Tributary 5	None	•26	Unincorporated Areas of Onslow County.
	Approximately 1.7 miles upstream of the confluence with New River Tributary 5.	None	•44	
North Branch at Lauradale Subdivision.	At the confluence with New River	None	•9	Unincorporated Areas of Onslow County.
	Approximately 0.7 mile upstream of the confluence with New River.	None	•9	
Northeast Creek	At the confluence of Little Northeast Creek	None	•2	Unincorporated Areas of Onslow County, City of Jacksonville.
	Approximately 0.6 mile upstream of North Marine Boulevard.	None	•27	
Northeast Creek Tributary 1	At the confluence with Northeast Creek	None	•0	City of Jacksonville.
	Approximately 0.4 mile upstream of the confluence with Northeast Creek.	None	•10	
Northeast Creek Tributary 2	At the confluence with Northeast Creek	None	•7	City of Jacksonville.
	Approximately 0.6 mile upstream of the confluence with Northeast Creek.	None	•9	
Parrot Swamp	Approximately 1,850 feet upstream of Queens Creek Road.	•9	•10	Unincorporated Areas of Onslow County.
	Approximately 1.0 mile upstream of Queens Creek Road.	None	•20	
Poplar Creek	At the confluence with Little Northeast Creek	None	•3	Unincorporated Areas of Onslow County, City of Jacksonville.
	Approximately 0.4 mile upstream of Waters Road	None	•26	
Queen Creek	Approximately 1.2 miles upstream of NC 24	None	•10	Unincorporated Areas of Onslow County.
	Approximately 0.5 mile upstream of Camp Lejeune Railroad.	None	•25	
Rocky Run	At confluence with Little Northeast Creek	None	•8	Unincorporated Area of Onslow County.
	Approximately 1,400 feet upstream of confluence with Little Northeaster.	None	•13	
South Branch at Lauderdale Subdivision.	At the confluence with North Branch at Lauderdale Subdivision.	None	•9	Unincorporated Areas of Onslow County, City of Jacksonville.
	Approximately 1.0 mile upstream of the confluence with North Branch at Lauderdale Subdivision.	None	•36	
Southwest Creek	Approximately 2.5 miles upstream of the confluence with New River.	•2	•3	Unincorporated Areas of Onslow County, City of Jacksonville.
	Approximately 0.6 mile upstream of Five Mile Road	None	•65	
Southwest Creek Tributary 2.	At the confluence with Southwest Creek	None	•46	Unincorporated Areas of Onslow County.
	Approximately 1.2 miles upstream of Red Lane	None	•56	
Southwest Creek Tributary 3.	At the confluence with Southwest Creek	None	•54	Unincorporated Areas of Onslow County.
	Approximately 1.7 miles upstream of the confluence with Southwest Creek.	None	•68	
Southwest Creek Tributary 4.	At the confluence with Southwest Creek Tributary 3	None	•61	Unincorporated Areas of Onslow County.
	Approximately 1,700 feet upstream of Five Mile Road	None	•70	
Starkys Creek	At confluence with White Oak River	None	•10	Unincorporated Areas of Onslow County.
	Approximately 1,750 feet upstream of 1–17	None	•44	
Stump Sound	At the intersection of Chadwick Acres Road and Carroll Street.	•6	•8	Unincorporated Areas of Onslow County.
	Approximately 1,000 feet south of the intersection of Harbor Point Road and Ocracoke Road.	•7	•11	
Wallace Creek	At the upstream side of Norfolk Southern Railway	•2	•3	Unincorporated Areas of Onslow County.
	Approximately 4.2 miles upstream of Holcomb Boulevard.	None	•22	
Wallace Creek Tributary 1	At the confluence with Wallace Creek	None	•14	Unincorporated Areas of Onslow County.
	Approximately 500 feet downstream of Lejeune Boulevard.	None	•27	

Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD) •Elevation in feet (NAVD)		Communities affected
		Existing	Modified	
Webb Creek	At the confluence with White Oak River	None	•9	Unincorporated Areas of Onslow County.
	Approximately 1,200 feet downstream of Parkertown Road.	None	•20	
White Oak River	Approximately 500 feet upstream of the confluence of Webb Creek.	None	•9	Unincorporated Areas of Onslow County.
	At upstream the confluence of Chinkapin Branch	None	•50	
Wolf Swamp	At North Marine Boulevard	None	•22	Unincorporated Areas of Onslow County, City of Jacksonville.
	Approximately 0.9 mile upstream of Ramsey Road	None	•42	

Onslow County (Unincorporated Areas)

Maps available for inspect at the Onslow County Flood plain Administration, 604 College Street, Jacksonville, North Carolina 28540.
Send comments to Mr. Ron Lewis, Onslow County Manager, 118 Old Bridge Street, Jacksonville, North Carolina 28540.

City of Jacksonville:
Maps available for inspection at Jacksonville City Hall, 211 Johnson Boulevard, Jacksonville, North Carolina 28541.
Send comments to The Honorable George Jones, Mayor of the City of Jacksonville, P.O. Box 128, Jacksonville, North Carolina 28541.

Town of Richlands:
Maps available for inspection at Richlands Town Hall, 106 North Wilmington Street, Jacksonville, North Carolina 28540.
Send comments to Mr. Greg Whitehead, Town of Richlands Administrator, P.O. Box 245, Richlands, North Carolina 28574.

North Carolina
Vance County (Unincorporated Areas)

Buffalo Creek (North)	At the confluence with Tar River	•222	•228	Vance County (Unincorporated Areas).
	Approximately 2.3 miles upstream of Dick Smith Road	None	•226	
Cattail Creek	At the confluence with Sandy Creek	None	•329	Vance County (Unincorporated Areas).
	Approximately 1.1 miles upstream of the confluence with Dickies Creek.	None	•352	
Dickies Creek	At the confluence with Sandy Creek	None	•315	Vance County (Unincorporated Areas).
	Approximately 0.4 mile upstream of the confluence with Sandy Creek.	None	•320	
Joes Branch	At the confluence with Ruin Creek	None	•296	Vance County (Unincorporated Areas).
	Approximately 1.2 miles upstream of Old Country Road.	None	•396	
Long Creek	At the confluence with Tabbs Creek	None	•237	Vance County (Unincorporated Areas).
	Approximately 1.1 miles upstream of Kittrell College Road.	None	•291	
Lynch Creek	At the Franklin/Vance County boundary	None	•333	Vance County (Unincorporated Areas).
	Approximately 0.3 mile upstream of Gillburg Road	None	•347	
Martin Creek	At the influence with Sandy Creek	None	•343	Vance County (Unincorporated Areas).
	Approximately 3.0 miles upstream of confluence with Sandy Creek.	None	•429	
Red Bud Creek	At the influence with Ruin Creek	None	•311	Vance County (Unincorporated Areas), City of Henderson.
	Approximately 1.8 miles upstream of the confluence of Red Bud Creek Tributary.	None	•362	
Red Bud Creek Tributary 1	At the confluence with Red Bud Creek	None	•313	Vance County (Unincorporated Areas).
	Approximately 1.8 miles upstream of the confluence with Red Bud Creek.	None	•375	
Ruin Creek	At the confluence with Tabbs Creek	None	•261	Vance County (Unincorporated Areas).
	Approximately 1.7 miles upstream of the confluence of Red Bud Creek.	None	•344	
Sandy Creek	Approximately 0.5 miles downstream of the confluence of Weaver Creek.	None	•298	
	Approximately 900 feet upstream of Highway 1	None	•448	

Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD) •Elevation in feet (NAVD)		Communities affected
		Existing	Modified	
Sandy Creek Tributary 11 ..	At the confluence with Sandy Creek	None	•403	Vance County (Unincorporated Areas), City of Henderson.
	Approximately 700 feet upstream of Route 1	None	•421	
Sandy Creek Tributary 12 ..	At the confluence with Sandy Creek Tributary 11	None	•415	City of Henderson.
	Approximately 0.4 miles upstream of the confluence of Sandy Creek Tributary 11.	None	•424	
Tabbs Creek	Approximately 2.0 miles upstream of the confluence of Tar River.	None	•237	
	Approximately 625 feet upstream of Old Watkins Road.	None	•285	
Weaver Creek	At the confluence with with Sandy Creek	None	•309	Vance County (Unincorporated Areas).
	Approximately 0.5 mile upstream of Vickslow Road	None	•349	
Tar River	At the Franklin/Vance County boundary	•222	•228	Vance County (Unicorporated Areas).
	Approximately 800 feet upstream of Green Hill Road	None	•245	
Fishing Creek	At the Vance/Warren County boundary	None	•345	Vance County (Unincorporated Areas).
	Approximately 0.77 mile upstream of the County boundary.	None	•356	

Vance County (Unincorporated Areas)

Maps available for inspection at the Vance County Code Enforcement and Planning Department, 122 Young Street, Suite B, Henderson, North Carolina.

Send comments to Mr. J. Timothy Program, Chairman of the Vance County Board of Commissioners, 122 Young Street, Suite B, Henderson, North Carolina 27536.

City of Henderson:

Maps available for inspection at the Henderson City Hall, 180 South Beckford Drive, Henderson, North Carolina.

Send comments to The Honorable Robert G. Young, Jr., Mayor of the City of Henderson, P.O. Box 1434, Henderson, North Carolina 27536.

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance")

Dated: February 3, 2003.

Anthony S. Lowe,

Administrator, Federal Insurance and Mitigation Administration.

[FR Doc. 03–3334 Filed 2–10–03; 8:45 am]

BILLING CODE 6718–04–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA–D–7556]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are requested on the proposed base (1% annual chance) flood elevations and proposed base flood elevation modifications for the communities listed below. The base flood elevations are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The comment period is ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

ADDRESSES: The proposed base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Michael M. Grimm, Acting Chief, Hazard Study Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–2878, or (e-mail) *Michael.Grimm@fema.gov.*

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA or Agency) proposes to make determinations of base flood elevations and modified base flood elevations for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed base flood and modified base flood elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, state or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

National Environmental Policy Act. This proposed rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act. The Administrator, Federal Insurance and Mitigation Administration, certifies that

this proposed rule is exempt from the requirements of the Regulatory Flexibility Act because proposed or modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the NFIP. As a result, a regulatory flexibility analysis has not been prepared.

Regulatory Classification. This proposed rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism. This proposed rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform. This proposed rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, flood insurance, reporting and recordkeeping requirements.

Accordingly, 44 CFR Part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

1. The authority citation for Part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.4 [Amended]

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD) •Elevation in feet (NAVD)	
				Existing	Modified
Maine	Beals (Town), Washington County.	Atlantic Ocean	At Alley Point, approximately 2,700 feet west of the intersection of Black Duck Cove Road and Carver Industry Road.	*20	*14
			Approximately 800 feet southeast of the end of Black Field Road.	*25	*13
Maps available for inspection at the Beals Town Office, 11 Big Pond Road, Beals, Maine.					
Send comments to Mr. Velton Peabody, Chairman of the Town of Beals Board of Selectmen, PO Box 189, Beals, Maine 04611.					
Ohio	Gallia County (Incorporated Areas).	Chickamauga Creek	At U.S. Route 35	*569	*570
			Approximately 1600 feet upstream of U.S. Route 35.	*574	*575
		Tributary C	At confluence with Chickamauga Creek	*570	*571
			At Mitchell Extension	*599	*600
		Tributary D	At confluence with Tributary C	*574	*573
			Approximately 100 feet upstream of confluence with Tributary C.	*574	*573
Maps available for inspection at the Gallia County Offices, 18 Locust Street, Gallipolis, Ohio.					
Send comments to Mr. William J. Davis, Jr., President of the Gallia County Board of Commissioners, 18 Locust Street, Gallipolis, Ohio 45631.					
West Virginia.	Oceana (Town), Wyoming County.	Clear Fork	Approximately 330 feet downstream of corporate limits.	None	*1,239
			At upstream corporate limits	*1,295	*1,292
		Laurel Fork	At confluence with Clear Fork	*1,267	*1,265
			Approximately 80 feet upstream of corporate limits.	*1,299	*1,297
Maps available for inspection at the Oceana Town Hall, Route 10, Cook Parkway, Oceana, West Virginia.					
Send comments to The Honorable John Steffey, Mayor of the Town of Oceana, P.O. Box 190, Oceana, West Virginia 24870.					
West Virginia.	Smithers (Town), Fayette and Kanawha Counties.	Smithers Creek	Approximately 60 feet upstream of confluence with Kanawha River.	*627	*626
			Approximately 640 feet upstream of County Route 22.	*655	*652
Maps available for inspection at the Smithers Town Hall, 175 Michigan Avenue, Smithers, West Virginia.					
Send comments to The Honorable Eddie A. Long, Mayor of the Town of Smithers, P.O. Box 489, Smithers, West Virginia 25186.					
Wisconsin	Dane County (Unincorporated Areas).	Vermont Creek	Just upstream of the Sooline Railroad	*807	*810
			A point approximately 0.02 mile upstream of County Highway KP.	None	*814
Maps available for inspection at the Dane County City-County Building, 210 Martin Luther King Jr. Boulevard, Madison, Wisconsin.					
Send comments to Ms. Kathleen Falk, Dane County Executive, 210 Martin Luther Jr. Boulevard, Madison, Wisconsin 53703.					

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Dated: February 3, 2003.

Anthony S. Lowe,

Administrator, Federal Insurance and Mitigation Administration.

[FR Doc. 03–3333 Filed 2–10–03; 8:45 am]

BILLING CODE 6718–04–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AI52

Endangered and Threatened Wildlife and Plants; Proposed Designation of Critical Habitat for the Klamath River and Columbia River Distinct Population Segments of Bull Trout

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; reopening of comment period.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the reopening of the public comment period for the proposal to designate critical habitat for the Klamath River and Columbia River distinct population segments of bull trout (*Salvelinus confluentus*) to allow all interested parties additional time to comment on the proposed rule. Comments previously submitted need not be resubmitted as they will be incorporated into the public record as part of this extended comment period, and will be fully considered in preparation of the final rule.

DATES: We will accept comments on the proposed critical habitat designation until the close of business (5 p.m. Pacific standard time) on May 12, 2003.

ADDRESSES: Written comments and information should be submitted to John Young, Bull Trout Coordinator, U.S. Fish and Wildlife Service, Branch of Endangered Species, 911 NE. 11th Avenue, Portland, OR 97232. Written comments may also be sent by fax to 503/231–6243 or hand-delivered to our office at the above address. You may also send comments by electronic mail (e-mail) to: *R1BullTroutCH@r1.fws.gov*.

You may view comments and materials received, as well as supporting documentation used in the preparation of this proposed rule, by appointment, during normal business hours in the U.S. Fish and Wildlife Service Office at the above address. You may obtain copies of the proposed rule from the above address, by calling 503/231–6131, or from our Web site at: *http://species.fws.gov/bulltrout*.

FOR FURTHER INFORMATION CONTACT: John Young, at the address above (telephone 503/231–6131; facsimile 503/231–6243).

SUPPLEMENTARY INFORMATION:

Background

We published a proposed rule to designate critical habitat for the Klamath River and Columbia River distinct population segments of bull trout (Salvelinus confluentus) on November 29, 2002 (67 FR 71235). The proposed critical habitat designation includes approximately 29,720 kilometers (18,471 miles) of streams and 215,585 hectares (532,721 acres) of lakes, reservoirs, and marshes in Oregon, Washington, Idaho, and Montana. Designation would apply only to the waterways, not the adjacent lands. Under the terms of a court-approved settlement agreement, we are required to submit the final rule designating critical habitat to the **Federal Register** no later than October 1, 2003.

The 90-day comment period on the proposed designation of critical habitat originally closed on January 28, 2003. During that comment period, we received several letters requesting extension of the date for submitting comments. These requests cited the length and scope of the proposal as a key reason for needing additional time to gather information, conduct analyses, and prepare comments. We are re-opening the comment period in response to these requests.

Copies of the proposed designation of critical habitat are available on the Internet at *http://www.r1.fws.gov* or by contacting the Bull Trout Coordinator, U.S. Fish and Wildlife Service (*see* **ADDRESSES** section).

Public Comments Solicited

We are reopening the comment period at this time in order to accept the best and most current scientific and commercial data available regarding the proposed critical habitat designation for the Klamath River and Columbia River distinct population segments of bull trout. Previously submitted comments on the proposed designation need not be resubmitted. We will accept written comments and information during this reopened comment period. If you wish to comment, you may submit your comments and materials concerning this proposal by any of several methods:

You may mail or hand-deliver written comments and information to the Bull Trout Coordinator, U.S. Fish and Wildlife Service Office (*see* **ADDRESSES** section). Hand deliveries must be made during normal business hours.

You may also send comments by e-mail to: *R1BullTroutCH@r1.fws.gov*. If you submit comments by e-mail, please submit them as an ASCII file and avoid the use of special characters and any form of encryption. Please also include a return address in your e-mail message. If you do not receive a confirmation from the system that we have received your e-mail message, contact us directly by calling our office at telephone number 503/872–2766, during normal business hours.

As described in the preamble of the proposed rule, we are conducting an analysis of the economic impacts of designating the proposed critical habitat. We will publish a notice of availability in the **Federal Register** when the draft economic analysis becomes available and provide for a 30 day comment period, during which we will accept comments on the proposal as well as the draft economic analysis. We anticipate publication of the notice of availability within this current 90 day extension. The notice of availability will provide for the comment period to remain open until the end of this current 90 day extension or 30 days after publication of the notice, whichever is later.

Author

The primary author of this notice is Barbara Behan, U.S. Fish and Wildlife Service (*see* **ADDRESSES** section).

Authority

The authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*).

Dated: January 30, 2003.

Craig Manson,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 03–3369 Filed 2–10–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 600

[I.D. 012803C]

Magnuson-Stevens Act Provisions; General Provisions for Domestic Fisheries; Application for Exempted Fishing Permits (EFPs)

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notification of a proposal for EFPs to conduct experimental fishing; request for comments.

SUMMARY: The Administrator, Northeast Region, NMFS (Regional Administrator) has made a preliminary determination that an EFP application from the University of New Hampshire (UNH) Cooperative Extension contains all the required information and warrants further consideration. The Regional Administrator has also made a preliminary determination that the activities authorized under the EFP would be consistent with the goals and objectives of the Northeast (NE) Multispecies Fishery Management Plan (FMP), and does not detrimentally affect the well being of any stock of fish likely to be taken during the experiment. Therefore, NMFS announces that the Regional Administrator proposes to issue an EFP that would allow one vessel to conduct fishing operations that are otherwise restricted by the regulations governing the fisheries of the Northeastern United States. The EFP would allow for an exemption from the Gulf of Maine (GOM) Rolling Closure area restrictions, and for an exemption from the NE multispecies days-at-sea (DAS) notification requirements. The exempted fishing activity would support research to design, develop and test a soft species separation system for commercial flatfish trawls in the GOM. The system is intended to separate roundfish (particularly cod) from flatfish in trawl nets by exploiting behavioral differences between the species. Regulations under the Magnuson-Stevens Fishery Conservation and Management Act require publication of this notification to provide interested parties the opportunity to comment on applications for proposed EFPs.

DATES: Comments on this document must be received on or before February 26, 2003.

ADDRESSES: Written comments should be sent to Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, 1 Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope "Comments on UNH Species Separation System EFP Proposal." Comments may also be sent via facsimile (fax) to (978) 281–9135. Comments will not be accepted if submitted via e-mail or Internet.

FOR FURTHER INFORMATION CONTACT: Jason Blackburn, Fishery Management Specialist, 978–281–9326.

SUPPLEMENTARY INFORMATION: The application for an EFP was submitted by the UNH Cooperative Extension for research being funded through NMFS' Cooperative Research Partners Program. The applicant is requesting an exemption for one commercial vessel from the NE multispecies DAS notification requirements at 50 CFR 648.10(c) and 648.82(a) for 32 days of at-sea gear testing, and from the GOM Rolling Closure area restrictions specified at 50 CFR 648.81 for the same duration. Twelve (12) of the 32 days are carry-over from the first phase of the study which began in September 2002, and will be fished during the 2002 fishing year (through April 30, 2003). The remaining 20 days will be restricted to the 2003 fishing year (May 1, 2003 to April 30, 2004) and are the subject of this EFP request.

The objective of the research is to test a soft species separation system for the purposes of separating flatfish from roundfish in trawl nets and reducing the inadvertent bycatch of roundfish (particularly cod) when fishing for flatfish. The separation device is designed to separate roundfish from flatfish by exploiting behavioral differences that exist between the species. The experimental design consists of a trawl net with a soft species separation panel, or ramp, that would be positioned in front of a double codend. It would take advantage of the tendency of flatfish to swim towards the ocean bottom after encountering the separation panel and thereby into the lower codend portion of the net. Roundfish, which are not expected to swim towards the sea floor after encountering the panel, would swim into the upper codend portion of the net, which could be left open if roundfish were not being retained.

Underwater video equipment would be employed to observe fish behavior and functioning of the experimental selectivity device. Catch and bycatch are proposed to be sampled from each tow. If available, 100 each of cod, haddock, yellowtail flounder, whiting (silver hake), American plaice and witch flounder (including both legal and sub-legal sizes) would be measured from the catch in both the control net (commercial trawl net) and from the experimental trawl net, using alternating tows. The total weight of roundfish and flatfish would be determined from the upper and lower codends of the experimental trawl net, and from the control net. Finally, the catch of each species in the upper and lower codend of the experimental net would be analyzed using statistical methods to calculate a separation index to determine whether the experimental system is effective at separating the species.

The sea trials would be conducted in shallow water (30 to 50 fathoms (54.9 - 91.4 meters)) off the coasts of New Hampshire, southern Maine, and a small portion of northern Massachusetts. UNH researchers would be aboard the vessel during all experimental work. All undersized fish, and/or protected species, would be returned to the sea as quickly as possible after measurement. However, legal-sized fish that would otherwise have to be discarded would be allowed to be retained and sold. The overall catch levels are not expected to have a detrimental impact on the NE multispecies resource. Estimated total landings for the 32 days are: Cod - 9,600 lb (4354.5 kg); flatfish (witch flounder, American plaice, winter flounder, yellowtail flounder) - 9,600 lb (4354.5 kg); and other groundfish (haddock, cusk, white hake, silver hake, red hake, ocean pout, wolffish, etc.) - 6,400 lb (2903 kg). This is approximately one-half the level of landings that would be expected for 32 days of normal commercial fishing for this vessel. The participating vessel would be required to report all of its landings in its Vessel Trip Reports.

This experimental work is important because it could lead to the development of gear that could reduce the inadvertent bycatch of species that are subject to restrictive trip limits, such as cod, when fishing for species which are not subject to restrictive trip limits. The successful development of a soft species separation device could provide the fishing industry with more flexibility in conducting fishing activities, while simultaneously providing additional conservation for overfished species.

Based on the results of the EFP, this action may lead to future rulemaking.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: February 4, 2003.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service

[FR Doc. 03–3291 Filed 2–10–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 030128023–3023–01; I.D. 011503D]

RIN 0648–AQ44

Fisheries of the Exclusive Economic Zone Off Alaska; Increase in Roe Retention Limit for Pollock Harvested in the Bering Sea and Aleutian Islands

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes to increase the percentage of pollock roe that may be retained by operators of catcher/processors and motherships processing pollock harvested in the Bering Sea and Aleutian Islands. The proposed increase is from 7 to 9 percent. This action is necessary because catcher/processors and motherships have been able to increase their pollock roe recovery rate since the passage of the American Fisheries Act (AFA) through cooperative fishing practices and more precise timing of fishing activity. When fishing conditions are ideal, the operators of catcher/processors and motherships have demonstrated that they can recover roe in excess of the current 7–percent roe retention limit that was implemented a decade ago to prevent roe stripping in the directed pollock fishery. This action is intended to be consistent with the environmental and socioeconomic objectives of the Magnuson-Stevens Fishery Management and Conservation Act (Magnuson-Stevens Act) and other applicable laws.

DATES: Comments on the proposed rule must be received on or before March 13, 2003.

ADDRESSES: Comments must be sent to Sue Salveson, Assistant Regional Administrator, Sustainable Fisheries Division, NMFS, Alaska Region, P.O. Box 21668, Juneau, AK 99802, Attn: Lori Durall, or delivered to the Federal Building, Fourth Floor, 709 West 9th Street, Juneau, AK, and marked Attn: Lori Durall. Comments also may be sent by fax to 907–586–7557. Comments will not be accepted if submitted via email or the internet. Copies of the Categorical Exclusion and Regulatory Impact Review prepared for this action may be obtained from the same address.

FOR FURTHER INFORMATION CONTACT: Kent Lind, 907–586–7650, or kent.lind@noaa.gov.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the exclusive economic zone of the Bering Sea and Aleutian Islands Management Area (BSAI) under the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP). The North Pacific Fishery Management Council (Council) prepared, and NMFS approved, the FMP under the authority of the Magnuson-Stevens Act (16 U.S.C. 1801 *et seq.*). Regulations implementing the FMP appear at 50 CFR part 679. General regulations governing U.S. fisheries also appear at 50 CFR part 600.

History of Roe Stripping Regulations

In 1990, the Council identified pollock roe stripping as a management problem in the groundfish fishery of the BSAI and submitted Amendment 14 to the FMP to prohibit the practice of roe stripping. The final rule to implement Amendment 14 published on January 7, 1991 (56 FR 492), established a 10–percent limit on the amount of pollock roe that could be retained on board a vessel relative to the round-weight equivalent of primary products retained on board the vessel during the same fishing trip.

In 1994, after receiving information that vessels were continuing to practice roe stripping on a limited basis by "topping off" with roe to achieve the 10–percent limit, NMFS lowered the maximum retainable percentage to 7 percent in a final rule published March 25, 1994 (59 FR 14121). In determining that 7 percent should be the applicable limit, NMFS reviewed 1993 roe recovery information from vessels that were operating during the roe pollock fishing season, which was conducted between January 20 and April 15. Data from 12 participating vessels, which produced 1,422 mt of pollock roe from 31,772 mt of retained pollock catch, show that the average roe recovery was 4.5 percent during the roe pollock fishing season. The highest roe recovery percentage achieved by any of the 12 vessels was 7.2 percent, and the lowest was 2.0 percent. Therefore, NMFS determined that a maximum allowable rate of 7 percent would minimize amounts of roe that might be discarded as a result of regulations, while still complying with the intent of Amendment 14 and the Magnuson-Stevens Act to prohibit roe stripping.

Since 1994, the BSAI pollock fishery has continued to evolve. On December 3, 1997 (62 FR 63880), NMFS issued a final rule to implement an improved retention/improved utilization (IR/IU) program under Amendment 49 to the FMP. Amendment 49 imposed a 100–percent retention requirement for vessels harvesting pollock in the directed pollock fishery. Under Amendment 49, catcher/processors and motherships must retain a primary product from each pollock brought on board the vessel during the directed pollock fishery. While this regulation was intended to address pollock discards, it also had the effect of tightening the prohibition on roe stripping because pollock roe by definition cannot be used as a primary product to meet the 100–percent retention standard.

Evolution of the BSAI Pollock Fishery Under the AFA

In 1998, Congress passed the AFA (Div. C, Title II, Pub. L. No. 105–277, 112 Stat. 2681 (1998)), which restricted participation in the BSAI pollock fishery to certain eligible vessels and processors, and authorized the formation of fishery cooperatives. Under the AFA, vessels in the BSAI pollock fishery have formed voluntary cooperatives that have eliminated the open access race for fish that characterized the BSAI pollock fishery before the AFA. Under these AFA cooperatives, participating catcher/processors and motherships have been able to dramatically improve product recovery rates by slowing down their operations, using more refined production techniques, and fishing more selectively. This increase in productivity under the AFA was examined in detail in the final Environmental Impact Statement prepared for AFA-related Amendments 61/61/13/8 to the FMPs for the groundfish, crab, and scallop fisheries off Alaska.

In addition to these general gains in productivity, catcher/processors and motherships have achieved higher roe recovery rates under the AFA through an increased ability to time their fishing activity to coincide with periods of peak roe recovery and through an increased ability to selectively target schools of large mature pollock. When circumstances are ideal, some catcher/processors and motherships have reached or exceeded the current 7–percent limit.

In 1999, the Council examined roe recovery rates by catcher/processors in the BSAI and concluded that sufficient rationale existed to raise the maximum retainable roe amount to 9 percent. After reviewing data on roe recovery rates,

NMFS agreed with the Council's rationale.

To determine the appropriate roe retention limit under the AFA, NMFS examined roe recovery information from the 2000, 2001, and 2002 roe seasons, which were managed under AFA cooperatives. During this time period, AFA catcher/processors and motherships processed 26,286 mt of pollock roe and 826,913 mt round-weight equivalent of primary pollock products for an aggregate roe recovery rate of 3.2 percent for the 2000–2002 roe seasons. However, during each of the 3 years, certain vessels were able to achieve roe recovery rates that exceeded 7 percent during weeks of peak roe recovery. In 2000, one catcher/processor achieved roe recovery rates of 8.0 and 9.0 percent during two reporting weeks in March. In 2001, seven catcher/processors exceeded the 7–percent limit during the week of March 24. During that week, these seven catcher/processors achieved an aggregate roe recovery rate of 8.4 percent. In 2002, only one catcher/processor exceeded the 7–percent limit, with a roe recovery rate of 8.3 percent during the week of March 17. During this 3–year time period, a 7–percent limit would have required that catcher/processors discard a total of 185.6 mt of roe product, or 61.9 mt annually.

This action also would affect non-AFA catcher/processors that engage in directed fishing for other groundfish species in the BSAI and encounter incidental catch of pollock. The maximum retainable percentage of pollock is 20 percent for vessels engaged in directed fishing for other groundfish species. Existing 100–percent retention requirements at 50 CFR 679.27 require vessels engaged in directed fishing for groundfish other than pollock to retain their incidental catch of pollock up to the 20–percent limit, and such vessels are also allowed to recover roe from their incidental catch of pollock. The proposed 9–percent roe retention limit also would govern the amount of pollock roe these vessels could retain. In 2001, 58 non-AFA catcher/processors retained and processed pollock in the BSAI. These 58 vessels processed a round-weight equivalent of 11,837 mt of primary pollock products and 199 mt of pollock roe. The roe retention rates of non-AFA catcher/processors ranged from zero to 5.5 percent with an average rate of 1.5 percent. From these data, NMFS concludes that non-AFA catcher/processors are less able to maximize pollock roe recovery than AFA catcher/processors.

Based on these data, NMFS has concluded that, when conditions for roe recovery are ideal in mid to late March, some catcher/processors are able to achieve recovery rates that exceed 7 percent and that 9 percent is a standard that is sufficiently high to accommodate these peak periods of roe recovery without forcing vessels to discard excess roe. NMFS considered and rejected the alternative of eliminating the roe retention limit for several reasons. First, the AFA cooperatives that have produced a more rationalized fishery are not permanently established in regulation. AFA cooperatives, which are voluntary organizations, could dissolve at any point in the future if the members no longer believe that remaining in cooperatives is in their interest. The fishery then could potentially return to a race for fish. Second, non-AFA catcher/processors engaged in directed fisheries for other species are required to retain incidental catch of pollock up to the 20–percent maximum retainable percentage. The 9–percent maximum retainable roe percentage is an additional measure to prevent such vessels from roe stripping, even though the practice is also prohibited by IR/IU regulations. Therefore, the Council and NMFS believe that maintaining a regulatory limit on roe retention is prudent to prevent the potential for a return to the practice of roe stripping in the event that the current AFA cooperatives choose to dissolve and to continue to limit the practice in non-AFA fisheries.

Elements of the Proposed Rule

This proposed rule would amend 50 CFR 679.20(g) by raising the maximum allowable roe retention percentage from 7 to 9 percent. For pollock harvested in the Gulf of Alaska (GOA), the maximum retainable percentage would remain at 7 percent. This distinction is made because the AFA applies only to the BSAI and the conditions that have led to an increase in roe recovery rates in the BSAI do not exist in the GOA. No other regulatory changes are proposed.

Classification

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities as follows: Two groups of vessels currently harvest pollock in the BSAI and retain roe product from the pollock harvested in the BSAI: (1) AFA catcher/processors and motherships that engage in directed fishing for pollock, and (2) non-AFA catcher/processors that encounter pollock as incidental catch in other fisheries.

Under the AFA, 21 catcher/processors and 3 motherships are eligible to engage in directed fishing for pollock in the BSAI. NMFS reviewed the size of these entities in the Environmental Impact Statement (EIS) prepared for AFA-related Amendments 61/61/13/8 to the fishery management plans for the groundfish, crab, and scallop fisheries off Alaska. The EIS concluded that all AFA-eligible catcher/processors are large entities under SBA size criteria because their annual receipts exceed $3.5 million. The 21 individual catcher/processors are owned by 12 companies with annual receipts that are estimated to range from $5 million for the smallest entity to several billion dollars for the largest entities. All three motherships engaged in the directed pollock fishery are also classified as large entities under SBA criteria because the companies that own these three motherships employ more than 500 individuals in their worldwide operations.

In 2001, 58 non-AFA catcher/processors harvested pollock incidentally while engaged in directed fishing for other species. Many of these vessels also retained pollock roe from their incidental catch of pollock. Although we do not have comprehensive knowledge of the ownership characteristics and gross receipts of the companies that own these 58 catcher/processors, we assume that many are small entities.

AFA catcher/processors and mothership production data from 2000–2001 indicate that roe recovery rates generally average between 3 and 5 percent. Vessels only rarely exceed the current 7 percent standard. From 2000–2002 the total annual production of roe in excess of 7 percent averaged 61.88 mt for the fleet, which represents 0.68 percent of the 9,166 mt average total annual roe production for those years. The effect of this action, therefore, is to allow catcher/processors and motherships to retain an additional 61.88 mt of pollock roe that existing regulations require to be discarded.

This action also would potentially affect non-AFA catcher/processors that engage in directed fishing for other groundfish species in the BSAI and encounter incidental catch of pollock. The maximum retainable percentage of pollock is 20 percent for vessels engaged in directed fishing for other groundfish species. Existing regulations at 50 CFR 679.27 require vessels engaged in directed fishing for groundfish other than pollock to retain their incidental

catch of pollock up to the 20–percent limit. Such vessels also are allowed to recover roe from their incidental catch of pollock. The proposed 9- percent roe retention limit would govern the amount of pollock roe these vessels could retain as well. In 2001, 58 non-AFA catcher/processors retained and processed pollock in the BSAI. These 58 vessels processed a round-weight equivalent of 11,837 mt of primary pollock products and 199 mt of pollock roe. The roe retention rates of non-AFA catcher/processors ranged from zero to 5.5 percent with an average rate of 1.5 percent. From these data, NMFS concludes that non-AFA catcher/processors are less able to maximize pollock roe recovery than AFA catcher/processors and, therefore, would gain no benefit, nor incur any cost, from increasing the maximum retainable roe percentage from 7 percent to 9 percent.

Certification of this action is appropriate because this proposed rule relieves a restriction and would result in no increased cost to any entity, small or large, and no adverse impacts on any entities. In addition, the only entities that are expected to benefit directly from this action are large entities. As a result, a regulatory flexibility analysis was not prepared.

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Recordkeeping and reporting requirements.

Dated: February 6, 2003.

William T. Hogarth,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set forth in the preamble, 50 CFR part 679 is proposed to be amended as follows:

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

1. The authority citation for 50 CFR part 679 continues to read as follows:

Authority: Authority: 16 U.S.C. 773 *et seq.*, 1801 *et seq.*, and 3631 *et seq.*; Title II of Division C, Pub. L. 105–277; Sec. 3027, Pub. L. 106–31, 113 Stat. 57.

2. In § 679.20, paragraphs (g)(1)(i), (g)(4)(i)(B), and (g)(4)(ii)(B) are revised to read as follows:

§ 679.20 General limitations.

* * * * *

(g) * * *

(1) * * *

(i) Pollock roe retained on board a vessel at any time during a fishing trip must not exceed the following percentages of the total round-weight equivalent of pollock, as calculated from the primary pollock product on board the vessel during the same fishing trip:

(A) 7 percent in the Gulf of Alaska, and

(B) 9 percent in the Bering Sea and Aleutian Islands.

* * * * *

(4) * * *

(i) * * *

(B) To determine the maximum amount of pollock roe that can be retained on board a vessel during the same fishing trip, multiply the round-weight equivalent by 0.07 in the Gulf of Alaska or 0.09 in the Bering Sea and Aleutian Islands.

* * * * *

(ii) * * *

(B) To determine the maximum amount of pollock roe that can be retained on board a vessel during a fishing trip, add the round-weight equivalents together; then, multiply the sum by 0.07 in the Gulf of Alaska or 0.09 in the Bering Sea and Aleutian Islands.

* * * * *

[FR Doc. 03–3378 Filed 2–10–03; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register
Vol. 68, No. 28
Tuesday, February 11, 2003

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ADVISORY COUNCIL ON HISTORIC PRESERVATION

Meeting

AGENCY: Advisory Council on Historic Preservation.

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given that the Advisory Council on Historic Preservation (ACHIP) will meet on Friday, February 21, 2003. The meeting will be held in the Pavilion Ballroom, U.S. Grant Hotel, 326 Broadway, San Diego, California, beginning at 8:30 a.m.

The ACHIP was established by National Historic Preservation Act of 1966 (16 U.S.C. 470 *et seq.*) to advise the President and the Congress on matters relating to historic preservation and to comment upon Federal, Federally assisted, and Federally licensed undertakings having an effect upon properties listed in or eligible for inclusion in the National Register of Historic Places. The ACHIP's members are the Architect of the Capitol; the Secretaries of the Interior, Agriculture, Defense, and Transportation; the Administrators of the Environment Protection Agency and General Services Administration; the Chairman of the National Trust for Historic Preservation; the President of the National Conference of State Historic Preservation Officers; a Governor; a Major; a Native Hawaiian and eight non-Federal members appointed by the President.

The agenda for the meeting includes the following:

I. Chairman's Welcome
II. Presentation of Chairman's Awards for Federal Achievement in Historic Preservation
III. Report of the Executive Committee
  A. FY 2003 ACHIP Appropriation
  B. FY 2004 ACHIP Budget Request
  C. ACHIP Legislative Priorities for the 108th Congress
  1. ACHIP Reauthorization Legislation
IV. Presidential Initiatives
  A. Preserve America Program Development
  B. Preserving America's Heritage Executive Order Implementation
V. Report of the Preservation Initiatives Committee
  A. Federal Heritage Tourism Summit
  B. Historic Preservation Tax Incentives
VI. Report of the Federal Agency Programs Committee
  A. Security Requirements for Federal Buildings
  B. Surface Transportation Reauthorization Legislation
  C. Telecommunications Working Group Update
  D. Section 106 Cases
VII. Report of Communications, Education, and Outreach Committee
  A. Chairman's Historic Preservation Awards Criteria and Process
  B. ACHIP "Tag Line"
VIII. Chairman's Report
  A. Land Transfer Ceremony, Raymond, Mississippi
IX. Executive Director's Report
X. New Business
XI. Adjourn

Note: The meetings of the ACHIP are open to the public. If you need special accommodations due to a disability, please contact the Advisory Council on Historic Preservation, 1100 Pennsylvania Ave., NW., Room 809, Washington, DC, 202–606–8503, at least (7) days prior to the meeting.

FOR FURTHER INFORMATION CONTACT: Additional information concerning the meeting is available from the Executive Director, Advisory Council on Historic Preservation, 1100 Pennsylvania Ave., NW., #809, Washington, DC 20004.

Dated: February 5, 2003.

John M. Fowler,

Executive Director.

[FR Doc. 03–3368 Filed 1–10–03; 8:45 am]

BILLING CODE 4310–10–M

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

February 5, 2003.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503 *and* to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–6746.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Farm Service Agency

Title: Debt Settlement Policies and Procedures.

OMB Control Number: 0560–0146.

Summary of Collection: Debt Collection Improvement Act (DCIA) of 1996 and 4 CFR part 102, Federal Claim Collection standard and other applicable regulation require each Federal agency to collect debts owed it, and to employ cost effective and efficient procedures and methods to identify, report and collect debts. Provisions under the Federal Claims Collection Standards and the DCIA allow the debtor upon receiving a notification letter and unable to pay debt owed to the Federal Government in one lump sum, to forward a written request and financial statement to the Farm Service Agency (FSA) and

Commodity Credit Corporation (CCC) for establishing an agreed repayment plan in the promissory note using form CCC–279, Promissory Note.

Need and Use of the Information: FSA will collect information on the debtor's assets, liabilities, income and expenses when a debtor requests to enter into an installment agreement to settle their debt. Based on that information a determination can be made on whether the debtor can pay the debt in one lump sum or an installment is necessary. Without this financial information FSA/CC would have no method of allowing debtors to pay their debts in installments while still ensuring that the government's financial interests are protected.

Description of Respondents: Individuals or households; Farms; Federal Government.

Number of Respondents: 250.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 125.

Farm Service Agency

Title: 7 CFR 1951–T Disaster Set-aside Program.

OMB Control Number: 0560–0164.

Summary of Collection: 7 CFR part 1951, subpart T, "Disaster Set-Aside Program," used in support of the Farm Service Agency (FSA) Farm Loan Program (FLP). The Disaster Set-Aside Program (DSA) is made available through the authority granted by the Secretary of Agriculture under the Consolidated Farm and Rural Development Act (7 U.S.C. 1981a) (The Act). The set-aside program is designated to assist borrowers in financial distress that operated a farm or ranch in a political subdivision, typically a county that was declared or designated a disaster area. DSA allows eligible borrowers who are unable to make the payments to quickly eliminate their immediate financial stress. Under this program, FSA farm loan program borrowers can receive immediate financial relief by moving one annual installment for each loan to the end of the loan term. The installment set-aside may be the one due immediately after the disaster or, if that installment is paid to the neglect of other creditors or family living and operating expenses, then the next scheduled installment may be set-aside. FSA will collect information on the borrowers asset values, expenses and income.

Need and Use of the Information: The information is required of FSA farm borrowers and collected by FSA loan servicing officials to determine that disaster victims need payment relief and to support the approval of a set-aside request.

Description of Respondents: Farms; Individuals or households; Business or other for-profit.

Number of Respondents: 1855.

Frequency of Responses: Reporting: On occasion; Annually.

Total Burden Hours: 7,595.

Risk Management Agency

Title: General Administration Regulations; Interpretations of Statutory and Regulatory Provisions.

OMB Control Number: 0563–0055.

Summary of Collection: Section 533 of the 1998 Research Act requires the Federal Crop Insurance Corporation (FCIC) to publish regulation on how FCIC will provide a final agency determination in response to certain inquiries. This section provides procedures when FCIC fails to respond in the established time, the interpretation of the request is considered correct for the crop year. It becomes necessary for the requester, or respondent, to identify himself so they can be provided a response and state his interpretation of the regulation for which he is seeking a final agency interpretation.

Need and Use of the Information: FCIC will use the requester's information to provide a response. The respondent detailed interpretation of the regulation is required to comply with the requirements of Sec. 533 of the 1998 Research Act and to clarify the boundaries of the request to FCIC. If the requested information is not collected with each submission, FCIC would not be able to comply with the statutory mandates.

Description of Respondents: Business or other for-profit; Farm.

Number of Respondents: 45.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 78.

Risk Management Agency

Title: Standard Reinsurance Agreement Plan of Qperations.

OMB Control Number: 0563–NEW.

Summary of Collection: The Federal Crop Insurance Act, Title 7 U.S.C. Chapter 36 Sec. 1508(k) authorizes the Federal Crop Insurance to provide reinsurance to insurance providers approved by FCIC that insure producers of any agricultural commodity under one or more plans acceptable to FCIC. The Standard Reinsurance Agreement is a financial agreement between FCIC and the company to provide subsidy and reinsurance on eligible crop insurance. The Plan of Operation provides the information the insurer is required to file for the initial and each subsequent reinsurance year.

Need and Use of the Information: FCIC uses the information as a basis for the approval of the insurer's financial and operational capability of delivering the crop insurance program and for evaluating the insurer's performance regarding implementation of procedures for training and quality control. If the information is not collected, FCIC would not be able to reinsure the crop business.

Description of Respondents: Business or other for-profit; Farms; Federal Government.

Number of Respondents: 18.

Frequency of Responses: Reporting: Annually.

Total Burden Hours: 8370.

Rural Business-Cooperative Service

Title: 1890 Land Grant Institutions: Rural Entrepreneurial Program Outreach Initiative.

OMB Control Number: 0570–0041.

Summary of Collection: The Rural Business Service mission is to improve the quality of life in rural America by financing community facilities and businesses, providing technical assistance and creating effective strategies for rural development. Funding has been allocated to support the Outreach Initiative developed to help future entrepreneurs and businesses in rural communities that have the most economic need. Funds are awarded on a competitive basis using specific selection criteria.

Need and Use of the Information: The information collected will be used to determine (1) eligibility; (2) the specific purpose for which the funds will be utilized; (3) time frames or dates by which activities surrounding the use of funds will be accomplished; (4) feasibility of the project; (5) applicants' experience in managing similar activities; and (6) the effectiveness and innovation used to address critical issues vital tot he development and sustainability of businesses. Without this information there would be no basis on which to award funds.

Description of Respondents: Business or other for-profit; Farms; State, Local or Tribal Government.

Number of Respondents: 18.

Frequency of Responses: Reporting: Quarterely.

Total Burden Hours: 762.

Rural Utilities Service

Title: 7 CFR Part 1724, Electric Engineering Architectural Services and Design Policies.

OMB Control Number: 0572–0118.

Summary of Collection: The Rural Electrification Act of 1936, 7 U.S.C. 901

et seq., gives authorization to the Rural Utilities Service (RUS) to make loans in several States and Territories of the United States for rural electrification and the furnishing and improving of electric energy to persons in rural areas. Title 7 CFR 1724 requires each borrower to select a qualified architect to perform certain architectural services and to use the designated form that provides for these services. The agency has developed standardized contractual forms used by borrowers to contract for services.

Need and Use of the Information: The information collected from the forms is on an as needed basis or when the individual borrower undertakes certain projects. The standardization of the forms by RUS has resulted in substantial savings to borrowers by reducing preparation of the documentation and the costly review by the government.

Description of Respondents: Business or other for-profit; Not-for-profit.

Number of Respondents: 81.

Frequency of Responses: Reporting: On occasion; Quarterly.

Total Burden Hours: 161.

Animal and Plant Health Inspection Service

Title: Animal Welfare—Guinea Pigs, Hamsters, and Rabbits.

OMB Control Number: 0579–0092.

Summary of Collection: The Laboratory Animal Welfare Act (AWA) enacted in 1966 and amended in 1970 and 1990 requires the U.S. Department of Agriculture to regulate the human care and handling of most warm-blooded animals used for research or exhibition purposes; sold as pets, or transported in commerce. The Animal and Plant Health Inspection Service (APHIS) has the responsibility for enforcing the Animal Welfare Act and its provisions. APHIS collects information and requires certain recordkeeping in order to review and evaluate program compliance by regulated facilities and ensures a workable enforcement system to carry out the requirements of the AWA. Specific information requirements relate to certifications of shipping containers used to transport guinea pigs, hamsters, and rabbits as well as the conditions (e.g., temperature) necessary during transport, and acclimation certificates.

Need and Use of the Information: APHIS collects information from regulated facilities including dealers, exhibitors, and research facilities, intermediate handlers and carriers, and from accredited veterinarians to ensure proper handling and care for guinea pigs, hamsters, and rabbits. Without this information, APHIS would be unable to detect violations and take appropriate actions consistent with the AWA.

Description of Respondents: Business or other for-profit.

Number of Respondents: 1,470.

Frequency of Responses: Recordkeeping; Reporting: On occasion.

Total Burden Hours: 260.

Animal and Plant Health Inspection Service

Title: Importation of Gypsy Moth Host Materials from Canada.

OMB Control Number: 0579–0142.

Summary of Collection: The United States Department of Agriculture (USDA) is responsible for preventing plant diseases or insect pests from entering into the United States, preventing the spread of pests not widely distributed in the United States, and eradicating those imported pests when eradication is feasible. The Plant Protection Act authorizes the Department to carry out this mission. The regulations implementing these Acts are contained in Title 7 of the Code of Federal Regulations, Part 310: Foreign Quarantine Notices. The Plant Protection and Quarantine Division of USDA's Animal and Plant Health Inspection Service (APHIS) are responsible for ensuring that these regulations are enforced. Implementing these regulations is necessary in order to prevent injurious insect pests and plant diseases from entering into the United States, a situation that could produce serious consequences for U.S. agriculture. APHIS will collect information using phytosanitary certificates, certificates of origin, and signed statements from individuals both within and outside the United States.

Need and Use of the Information: APHIS will collect information to ensure that importing foreign logs, trees, shrubs, and other articles do not harbor plant or insect pests such as the gypsy moth. If the information is not collected it would cripple APHIS' ability to ensure that trees, shrubs, logs, and a variety of other items imported from Canada do not harbor gypsy moths.

Description of Respondents: Business or other for-profit; Individuals or households; Not-for-profit institutions; Farms; State, Local or Tribal Government.

Number of Respondents: 2,146.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 81.

Agricultural Marketing Service

Title: Regulations Governing the Inspection and Grading of Manufactured or Processed Dairy Products—Recordkeeping.

OMB Control Number: 0581–0110.

Summary of Collection: The Agricultural Marketing Act of 1946 directs the Department to develop programs that will provide and enable the marketing of agricultural products. One of these programs is the USDA voluntary inspection and grading program for dairy products where these dairy products are graded according to U.S. grade standards by a USDA grader. The dairy products to be graded may be identified with the USDA grade mark. Dairy processors, buyers, retailers, institutional users, and consumers have requested that such a program be developed to assure the uniform quality of dairy products purchased. In order for any service program to perform satisfactorily, there must be written guides and rules, which in this case are regulations for the provider and user.

Need and Use of the Information: The Agricultural Marketing Service will collect information to ensure that the dairy inspection program products are produced under sanitary conditions and buyers are purchasing a quality product. The information collected through recordkeeping are routinely reviewed and evaluated during the inspection of the dairy plant facilities for USDA approval. Without laboratory testing results required by recordkeeping, the inspectors would not be able to evaluate the quality of dairy products.

Description of Respondents: Business or other for-profit.

Number of Respondents: 487.

Frequency of Responses: Recordkeeping.

Total Burden Hours: 1,388.

Agricultural Marketing Service

Title: Regulations for Inspection of Eggs.

OMB Control Number: 0581–0113.

Summary of Collection: Congress enacted the Egg Products Inspection Act (21 U.S.C. 1031–1059) (EPIA) to provide a mandatory inspection program to assure egg products are processed under sanitary conditions, are wholesome, unadulterated, and properly labeled; to control the disposition of dirty and checked shell eggs; to control unwholesome, adulterated, and inedible egg products and shell eggs that are unfit for human consumption; and to control the movement and disposition of imported shell eggs and egg products that are unwholesome and inedible. Regulations developed under 7 CFR part 57 provide the requirements and guidelines for the Department and industry needed to obtain compliance. The Agricultural Marketing Service (AMS) will collect information using several forms. Forms used to collect

information to provide method for measuring workload, record of compliance and non compliance and a basis to monitor the utilization of funds.

Need and Use of the Information: AMS will use the information to assure compliance with the Act and regulations, to take administrative and regulatory action and to develop and revise cooperative agreements with the States, which conduct surveillance inspections of shell egg handlers and processors. If the information is not collected, AMS would not be able to control the processing, movement, and disposition of restricted shell eggs and egg products and take regulatory action in case of noncompliance.

Description of Respondents: Business or other for-profit; Federal Government; State, Local or Tribal Government.

Number of Respondents: 1,004.

Frequency of Responses: Recordkeeping; Reporting: On occasion; Quarterly.

Total Burden Hours: 1,749.

Food Safety and Inspection Service

Title: Consumer Data to Support Risk Assessments, Regulation Development, and Food Safety Education Initiatives.

OMB Control Number: 0583–NEW.

Summary of Collection: The Food Safety and Inspection Service (FSIS) has been delegated the authority to exercise the functions of the Secretary as provided in the Federal Meat Inspection Act (FMIA) (21 U.S.C. 601 *et seq.*), the Poultry Products Inspection Act (PPIA) (21 U.S.C. 451 *et seq.*), and the Egg Products Inspection Act (EPIA) (21 U.S.C. 1031–1056). These statutes mandate that FSIS protect the public by ensuring that meat, poultry, and egg products are safe, wholesome, unadulterated, and properly labeled and packaged. FSIS will conduct a collection of information from U.S. consumers on their food safety practices, concerns, and awareness specific to meat, poultry, and egg products using the FSIS Consumer Survey. The data is needed to support the new administration's program improvement agenda, as well as protect the public health by significantly reducing the prevalence of food borne hazard from meat, poultry, and egg products.

Need and Use of the Information: FSIS will use the data collected in the consumer survey to improve: food safety risk assessment, food safety education campaigns, and product labeling. FSIS will also use the data to support its annual regulatory agenda. Without the data to improve the estimates for food safety risk assessments and data to better target food safety education campaigns, FSIS will have difficulty achieving its goals.

Description of Respondents: Individuals or households.

Number of Respondents: 2400.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 600.

Food and Nutrition Service

Title: Report of School Program Operations.

OMB Control Number: 0584–0002.

Summary of Collection: The Food and Nutrition Service (FNS) administers the National School Lunch Program, the School Breakfast Program, and the Special Milk Program as mandated by the National School Lunch Act, as amended, and the Child Nutrition Act of 1966, as amended. Information on school program operations is collected from state agencies on a monthly basis to monitor and make adjustments to State agency funding requirements. FNS uses form FNS–10 to collect data although 95 percent of the information is collected through electronic means.

Need and Use of the Information: FNS collects quantity information from State agencies on the number of meals served under the various food programs. Information is categorized in a number of areas and States are asked to provide their estimates along with actual data. FNS uses the information collected on school operations to assess the progress of the various programs and to make monthly adjustments to State agency funding requirements. If the information was not collected, FNS would be unable to monitor the proper use of program funds.

Description of Respondents: State, Local, or Tribal Government.

Number of Respondents: 62.

Frequency of Responses: Reporting: Monthly; Annually.

Total Burden Hours: 95,232.

Food and Nutrition Service

Title: Report of the Child and Adult Care Food Program.

OMB Control Number: 0584–0078.

Summary of Collection: The Child and Adult Care Food Program is mandated by section 17 of the National School Lunch Act, as amended. Program implementation is contained in 7 CFR part 226. The Food and Nutrition Service (FNS) collects information using Form FNS–44 to use in managing the Child and Adult Care Food Program. This report is vital since it is the only means by which FNS can obtain current information necessary to make payments to State agency letters of credit, and to plan for future levels of program funding.

Need and Use of the Information: FNS will collect information in order to analyze progress in the program and to make monthly adjustments to State agency funding requirements. If data is not collected, FNS would be unable to monitor the proper use of program funds.

Description of Respondents: State, Local or Tribal Government.

Number of Respondents: 53.

Frequency of Responses: Reporting: Quarterly: Semi-annually; Monthly.

Total Burden Hours: 5,724.

Food and Nutrition Service

Title: Monthly Claim for Reimbursement.

OMB Control Number: 0584–0284.

Summary of Collection: The Child Nutrition Act of 1966 requires that educational agencies disburse and appropriate funds during the fiscal year for the purposes of carrying out provisions of the Special Milk Program (SMP). The National School Lunch Act requires that State educational agency appropriated funds for any fiscal year for the purposes of fulfilling the earned reimbursement set forth in National School Lunch, Breakfast, and Special Milk Programs. The Food and Nutrition Service will use the monthly claim reimbursement form FNS–806A and 806B to fulfill the earned requirements identified in these programs, National School Lunch Program (NSLP), SMP, and the School Breakfast Program (SBP).

Need and Use of the Information: The information is collected electronically from school food authorities that participate in NSLP, School Breakfast Program (SBP), and SMP programs. The forms contain meal and cost data collected from authorized program participants. Also, these forms are an essential part of the accounting system used by the subject programs to ensure proper reimbursement. This information is collected monthly because of the constant fluctuation in school enrollment and program participation. Program participants would not receive the monthly reimbursement earned and the Agency would lose program accountability, if this information were collected less frequently.

Description of Respondents: State, Local or Tribal Government.

Number of Respondents: 209.

Frequency of Responses: Record keeping; Reporting: Monthly.

Total Burden Hours: 1,735.

Food and Nutrition Service

Title: Disaster Food Stamp Program.

OMB Control Number: 0584–0336.

Summary of Collection: Section 5(h) of the Food Stamp Act of 1977 along

with other related legislative authorities of the Secretary of Agriculture to establish temporary emergency standards of eligibility for victims of a disaster so that food assistance can be obtained. This assistance becomes effective in areas designated as a "major" disaster in order to address temporary food needs of families affected. The Food and Nutrition Service (FNS) is delegated the responsibility to administer the program and State agencies handle enrollment and general operation. In order to determine whether an individual is eligible for emergency food stamp assistance an application form must be completed. The State agencies must comply with certain reporting requirements to reconcile the distribution of food stamps and account for discrepancies.

Need and Use of the Information: FNS, through the State agencies, will collect information from the public to ensure that individuals who apply for emergency food stamps are eligible. Without information from these individuals, there would be no means for establishing whether assistance is warranted. State reporting requirements are necessary in order to ensure that States are accountable for the food stamp coupons it maintains and to avoid fraud, waste, and abuse in the Food Stamp Program.

Description of Respondents: State, Local, or Tribal Government; Individuals or households.

Number of Respondents: 6.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 60.

Food and Nutrition Service

Title: Food Stamp Pre-Screening Tool.

OMB Control Number: 0584–NEW.

Summary of Collection: Consistent with Section 5 of the Food Stamp Act of 1977, the Food and Nutrition Service (FNS) has initiated this program to enable potential Food Stamp Program applicants to assess their eligibility and the order of magnitude of the potential benefit they may qualify for. This Pre-Screening Tool also enables citizen advocacy groups to help constituents assess their benefit eligibility. This will also help the Food Stamp Program fulfill its role as a means-tested program in accordance with Section 5 of the Food Stamp Act and part 273 of the Food Stamp Program regulations.

Need and Use of the Information: This Food Stamp Program Pre-Screening Tool will be accessible to the public as an online web-based system. The user will be prompted to enter household size, income, expenses and resource information, and the tool will calculate and provide the user with and estimated range of benefits that the household may be eligible to receive. This information will help FNS determine the degree and type of system usage as well as potential areas for further study.

Description of Respondents: Individuals or households; State, Local, or Tribal Government; Not-for-profit institutions.

Number of Respondents: 48,000.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 8,400.

Forest Service

Title: The Day Use on the National Forests of Southern California.

OMB Control Number: 0596–0129.

Summary of Collection: The Forest and Rangeland Renewable Resources Research Act of 1978 (Pub. L. 95–307, 92 Stat. 353, as amended; 16 U.S.C. 1600 *note*, 1641 *note*, 1641–1647) directs the Secretary of Agriculture to research the multiple uses and products, including recreation of forests and rangelands to facilitate their most effective use. Users of urban proximate National Forests in Southern California come from a variety of ethnic/racial, income, age, educational, and other socio-demographic categories. The activities pursued, sources utilized, and site attributes preferred are just some of the items affected by these differences. Additional information is needed for the managers of the National Forests in Southern California, in part to validate results and in part because of the continuously changing visitor population recreating on the National Forests of Southern California. Without this study the Forest Service (FS) personnel will be ill-equipped to handle management changes required in response to visitor needs and preferences. A direct benefit to the affected public is anticipated through improvements in customer service, more informed recreation management decisions, and increased attention to the diverse customers served by the National Forests. FS will collect information using a questionnaire and face-to-face interviews.

Need and Use of the Information: FS will collect information on gender, age, education, ethnic or racial group affiliation, *etc.* The information will be used to assist resource managers in their effective management of recreation activities in the region studied. The Wildland Recreation and Urban Cultures Project will use the information to further expand its information base on visitor characteristics, communication, and mitigation of depreciative behaviors, such as vandalism. If the information is not collected, resource managers will have to make species management decisions without the views of the recreating public, who will be impacted by many of those choices.

Description of Respondents: Individuals or households.

Number of Respondents: 600.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 150.

Forest Service

Title: Grazing Permit Administration Forms.

OMB Control Number: 0596–0003.

Summary of Collection: Domestic livestock grazing currently exist on approximately 90 million acres of National Forest Service (NFS) lands. This grazing is subject to authorization and administrative oversight by the Forest Service (FS). The information is required for the issuance and administration of grazing permits, including fee collections, on NFS lands as authorized by the Federal Land Policy and Management Act, as amended, and subsequent Secretary of Agriculture Regulation 5 U.S.C. 301, 36 CFR part 222, subparts A and C. The bills for collection of grazing fees are based on the number of domestic livestock grazed on national forest lands and are a direct result of issuance of the grazing permit. Information must be collected on an individual basis and is collected through the permit issuance and administration process. FS will collect information using several forms.

Need and Use of the Information: FS will collect information on the ownership or control of livestock and base ranch property; the need for additional grazing to round out year long ranching operations; and citizenship. The information collected is used by FS in administering the grazing use program on NFS lands. If information is not collected it would be impossible for the agency to administer a grazing use program in accordance with the statutes and regulations.

Description of Respondents: Farms; Business or other for-profit; Individuals or households.

Number of Respondents: 6,000.

Frequency of Responses: Reporting: Annually; Other (as needed basis).

Total Burden Hours: 2,300.

Sondra Blakey,

Departmental Information Collection Clearance Officer.

[FR Doc. 03–3314 Filed 2–10–03; 8:45 am]

BILLING CODE 3410–01–M

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. 00–011N]

FSIS Procedures for Notification of New Technology

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice.

SUMMARY: The Food Safety and Inspection Service (FSIS) is announcing new procedures for meat and poultry official establishments, egg products official plants, and companies that manufacture and sell technology to official establishments and plants, to notify the Agency of any new technology intended for use in official establishments and plants, so that the Agency has an opportunity to decide whether the new technology requires a pre-use review. If a new technology could affect product safety, FSIS regulations, inspection procedures, or the safety of Federal inspection program personnel, FSIS will advise the firm that a pre-use review is necessary. The Agency will cancel FSIS Directive 10,700.1, "Guidelines For Preparing and Submitting Experimental Protocols for In-Plant Trials of New Technologies and Procedures." "Guidelines For Preparing Experimental Protocols for In-plant Trials of New Technologies and Procedures," and issue a revised directive. FSIS is requesting comments on these new procedures. The Agency believes that facilitation of the use of new technology represents an important means of improving the safety of meat, poultry, and egg products.

DATES: This notice is effective February 11, 2003. The Agency must receive comments by April 14, 2003.

ADDRESSES: Submit one original and two copies of written comments within the scope of the rulemaking to the FSIS Docket Room, Docket #00–011N, U.S. Department of Agriculture, Food Safety and Inspection Service, Room 102, Cotton Annex, 300 12th Street, SW., Washington, DC 20250–3700. All comments submitted in response to this proposal will be available for public inspection in the Docket Room Office between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. Guidance material for completing protocols will be available on the Internet at *http://www.usda.gov* and in the Docket Room.

FOR FURTHER INFORMATION: For further information contact Charles Edwards, Director, Technology Program Development Staff, Office of Policy, Program Development, and Evaluation, FSIS, U.S. Department of Agriculture, Room 112, Cotton Annex Building, 300 12th Street, SW., Washington, DC 20250–3700; telephone (202) 205–0675, fax (202) 205–0080.

SUPPLEMENTARY INFORMATION:

Background

On May 25, 1995, FSIS published a notice in the **Federal Register**, "Guidelines for Preparing and Submitting Experimental Protocols for In-Plant Trials of New Technologies and Procedures" (60 FR 27714). This notice stated that the Agency is encouraging industry technological innovation in the meat and poultry industry. At the same time, FSIS established a single entry point for in-plant research protocols.

With the issuance of the Pathogen Reduction/Hazard Analysis Critical Control Point (HACCP) System final rule (61 FR 38806) on July 25, 1996, the Agency shifted away from a command and control approach to one that gives industry greater flexibility to innovate in order to meet food safety requirements.

On October 20, 1999, FSIS published the Sanitation Requirements final rule (64 FR 56400), which was intended to make sanitation requirements less prescriptive and to allow for more innovation on the part of industry.

New technologies have resulted in significant improvements in the safety of meat and poultry in recent years. Steam vacuums, steam pasteurization, and antimicrobials are all examples of advances in food safety technology that have occurred in recent years. The Agency is desirous of seeing these kinds of advances continue.

Therefore, in the spirit of providing an opportunity for further technological advances and innovations, FSIS is establishing new, flexible procedures to actively encourage the development and use of new technologies in meat and poultry establishments and egg products plants. These new procedures provide for a central location in the Agency to handle new technology, instead of having program inspection personnel address individual instances and questions as they arise in establishments and plants. In addition, these procedures are designed to eliminate unnecessary delays and to establish uniform acceptance criteria to facilitate the application of new technology. By screening the initial notifications of new technology, FSIS will eliminate unnecessary submissions of protocols for pre-use review. Consequently, the Agency is announcing its procedures for submitting notifications of new technologies by the meat, poultry, and egg products industries. FSIS will also cancel FSIS Directive 10,700.1, "Guidelines For Preparing Experimental Protocols for In-plant Trials of New Technologies and Procedures," and issue a revised directive to explain these new procedures to inspection program personnel.

FSIS defines "new technology" as new, or new applications of, equipment, substances, methods, processes, or procedures affecting the slaughter of livestock and poultry or processing of meat, poultry, or egg products. The Agency has a regulatory interest in a new technology if the new technology could affect product safety, inspection procedures, or inspection program personnel safety, or if it would require a waiver of a regulation. Substances used as new technology must also meet the requirements for safety and suitability under the Agency's food ingredient approval process. While FDA has the responsibility for determining the safety of food ingredients and additives, as well as prescribing safe conditions of use, FSIS has the authority to determine that new ingredients and new uses of ingredients are suitable for use in meat and poultry products.

Notification

It is important that establishments and plants that are interested in introducing new technology into their operations pursue the introduction in an appropriate manner. Failure to do so is likely to create delays in the introduction of the new technology and interruption in establishment or plant operations. Consequently, firms that are interested in using or selling a new technology should submit documentation to the FSIS Technology Program Development Staff (see address above), describing the operation and purpose of the new technology. The document should explain whether why the new technology will not:

- adversely affect the safety of the product,
- jeopardize the safety of Federal inspection program personnel, or
- interfere with inspection procedures.

The notification also should state whether the technology will require a waiver of any Agency regulation and, if it will, identify the regulation and explain why a waiver would be appropriate.

FSIS will make every effort to review the document and notify the firm within 60 calendar days as to whether the Agency needs to review the new technology, or whether the establishment, plant, or company may proceed to use or sell it. If FSIS

determines that the new technology will not have any of the effects listed above, the Agency will issue a letter of no objection to the use of the new technology to the firm.

If the establishment or plant proceeds with the use of the new technology before the 60 day period has expired or without receiving a no objection notice from FSIS, then the Agency will take appropriate action the product processed using the new technology could be deemed to be adulterated (*see, e.g.*, 21 U.S.C. 453(g)(4); 601(m)(4); and 1033(a)(4)).

If FSIS determines that the proposed use of the new technology could adversely affect product safety, interfere with FSIS inspection procedures, jeopardize the safety of inspection program personnel, or require a waiver of a regulation, then the Agency will so inform the firm. Following are two examples of new technologies that could adversely affect product safety, inspection procedures, inspection program personnel safety, or Agency regulations: A new technology that changed the line speeds for poultry would require a waiver to the regulations for a limited time to test the new technology (*see* 9 CFR 381.67 and 381.68). Devices capable of detecting and sorting contaminated carcasses might also alter the method of carcass presentation to inspection program personnel and thus probably require changes to current inspection procedures.

FSIS will advise the establishment, plant, or company of the information that it needs for full pre-use review of the new technology, including whether a pre-use review of the new technology, including an in-plant trial of the new technology is necessary. An in-plant trial is necessary when the Agency needs data to perform a more informed review of the new technology. If an in-plant trial is necessary, FSIS will request that the firm submit a protocol that is designed to collect relevant data to support the use of the new technology.

Firms that recognize that the use of their new technologyy will likely raise questions about its effects on could affect product safety, the safety of inspection program personnel, or inspection procedures, or that recognize that their new technology is not consistent with FSIS the regulations, may simply contact FSIS about developing information that the Agency will need to make an informed judgment on the new technology a protocol instead of first submitting a notification.

Pre-Use Review and Protocol

The protocol should contain , as applicable, the following information:

- A descriptive title and statement of purpose for the in-plant trial.
- The name of the sponsor and the name and address of the facility at which the trial is to be conducted.
- A description of the experimental design, including the methods for control of bias.
- Identification of the test subjects and control articles.
- The type and frequency of tests, analyses, and measurements to be made.
- The records to be maintained.
- A statement of the proposed statistical methods to be used to analyze the data that are to be generated in the study.
- A time period for the in-plant trial.
- Any applicable research data.
- Any prior approvals from other Federal agencies.

All changes in, or revisions of, an approved protocol must be approved by FSIS and be documented and maintained with the protocol.

If the in-plant trial requires a waiver of any provision of FSIS'' regulations, the submitter must request and obtain the waiver receive written permission from the Agency before proceeding. FSIS regulations (specifically 9 CFR 303.1(h), 381.3(b), and 590.10) authorize the Administrator to waive for limited periods any provisions of the regulations to permit experimentation so that new procedures, equipment, and processing techniques may be tested to facilitate definite improvements. No waiver can be granted if the new technology conflicts with the provisions of the Federal Meat Inspection Act (21 U.S.C. 601, *et seq.*), the Poultry Products Inspection Act (21 U.S.C. 451, *et seq.*), or the Egg Products Inspection Act (21 U.S.C. 1031, *et seq.*).

If, based on the in-plant trial, the submitter plans to petition FSIS for a change in the Agency's regulations to permit the use of the new technology, then the submitter should collect information that will assist the Agency in performing rulemaking analyses required by law and executive orders, such as Executive Order 12866 and the Regulatory Flexibility Act.

FSIS will expect the submitter to provide data throughout the duration of the in-plant trial for the Agency to examine. Data may take several forms: laboratory results, weekly or monthly summary production reports, and or evaluations from inspection program personnel. If, at any time, the Agency determines that the in-plant trial results in product being produced that presents an increased risk to food safety or to the safety of inspection program personnel safety, the trial will be suspended or ended.

If requested by FSIS, the submitter should provide an orientation session for employees of the establishment on each shift before the start of each in-plant trial. The Agency reserves the right to review all data collected and to conduct on-site observations during an in-plant trial.

At the conclusion of the in-plant trial, the establishment or plant will is expected to submit a final report to the Agency and, if applicable, a petition requesting rulemaking to change the pertinent provisions of the regulations. See FSIS Notice, "FSIS Petition Submission and Review Procedures" (58 FR 63570), published December 2, 1993. The Agency may extend the in-plant trial period pending action on the petition.

FSIS will review the final report on the in-plant trial. The Agency's evaluation of the final report could result in a decision to initiate rulemaking in response to a petition, a recommendation of additional in-plant trials, or either acceptance or rejection by FSIS of the use of the new technology.

If the Agency rejects the use of the new technology, the establishment or plant would have the option to submit a revised protocol to address any problems areas identified by FSIS. The Agency will then begin a new review of the revised protocol.

FSIS is requesting comment on these procedures.

Paperwork Analysis

Abstract: FSIS has reviewed the paperwork and recordkeeping requirements in this notice in accordance with the Paperwork Reduction Act and submitted an information collection request to the Office of Management Budget for emergency clearance. FSIS is publishing procedures for meat and poultry official establishments, egg products plants, and companies that manufacture and sell technology to official establishments to notify the Agency of new technology that they propose to use in meat and poultry establishments or egg products plants.

If the new technology could affect FSIS regulations, product safety, inspection procedures, or the safety of Federal inspection program personnel, then the establishment or plant would need to submit a written protocol to the Agency. As part of this process, the submitter will have be expected to conduct in-plant trials of the new

technology. The submitter will need to provide data to FSIS throughout the duration of the in-plant trial for the Agency to examine. Data may take several forms: laboratory results, weekly or monthly summary production reports, and evaluations from inspection program personnel.

Estimate of Burden: FSIS estimates that it will take 8 hours for establishments to answer all of FSIS'' questions for the notification of intent to use new technologies. If the notification involves the submission of a protocol for FSIS approval, FSIS estimates that this will take an additional 80 hours for the submitter to develop. For in-plant trials, FSIS estimates that the data collection and recordkeeping involved will take establishments 10 hours per week over an average of an 8-week (2-month) period.

Respondents: Meat, Poultry and Egg Products establishments, equipment manufacturers.

Estimated Number of Respondents: 250 requests for new technologies. 40 requests for new technologies that require a protocol.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 5,440.

Copies of this information collection assessment can be obtained from John O'Connell, Paperwork Specialist, Food Safety and Inspection Service, USDA, Room 109 Cotton Annex, Washington, DC 20250–3700.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information including the validity of the method and the assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond; including through use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to John O'Connell, see the address above, and to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB) Washington, DC 20253.

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, in an effort to better ensure that minorities, women, and persons with disabilities are aware of this notice, FSIS will announce it and make copies of this **Federal Register** publication available through the FSIS Constituent Update. FSIS provides a weekly Constituent Update, which is communicated via Listserv, a free e-mail subscription service. In addition, the update is available on-line through the Internet at *http://www.fsis.usda.gov*. The update is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, recalls, and any other types of information that could affect or would be of interest to our constituents/stakeholders. The constituent Listserv consists of industry, trade, and farm groups, consumer interest groups, allied health professionals, scientific professionals, and other individuals that have requested to be included. Through the Listserv and web page, FSIS is able to provide information to a much broader, more diverse audience.

For more information contact the Congressional and Public Affairs Office, at (202) 720–9113. To be added to the free e-mail subscription service (Listserv) go to the "Constituent Update" page on the Internet at *http://www.fsis.usda.gov/oa/update/update.htm*. Click on the "Subscribe to the Constituent Update Listserv" link, then fill out and submit the form.

Done at Washington, DC, on: February 6, 2003.

Garry L. McKee,

Administrator.

[FR Doc. 03–3373 Filed 2–10–03; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Forest Service

Eastern Arizona Counties Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Eastern Arizona Counties Resource Advisory Committee will meet in St. Johns, Arizona. The purpose of the meeting is to review possible projects for funding and approve evaluation criteria for the projects.

DATES: The meeting will be held February 7, 2003, at 1 pm.

ADDRESSES: The meeting will be held at the St. Johns Town Hall, 245 West 1st South, St. Johns, Arizona 85936. Send written comments to Robert Dyson, Eastern Arizona Counties Resource Advisory Committee, c/o Forest Service, USDA, P.O. Box 640, Springerville, Arizona 85938 or electronically to *rdyson@fs.fed.us*

FOR FURTHER INFORMATION CONTACT: Robert Dyson, Public Affairs Officer, Apache-Sitgreaves National Forests, (928) 333–4301.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Committee discussion is limited to Forest Service staff and Committee members. However, persons who wish to bring PL 106–393 related matters to the attention of the Committee may file written statements with the Committee staff before or after the meeting. Opportunity for public input will be provided.

Dated: January 14, 2003.

John C. Bedell,

Forest Supervisor, Apache-Sitgreaves National Forests.

[FR Doc. 03–3322 Filed 2–10–03; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Idaho Panhandle Resource Advisory Committee Meeting

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committee Act (Pub. L. 92–463) and under the Secure Rural Schools and Community Self-Determination Act of 2000 (Pub. L. 106–393) the Idaho Panhandle National Forest's Idaho Panhandle Resource Advisory Committee will meet Friday, February 21, 2003 at 9:30 am in Coeur d' Alene, Idaho for a business meeting. The business meeting is open to the public.

DATES: February 21, 2003.

ADDRESSES: The meeting location is the Idaho Panhandle National Forest's Supervisor's Office, located at 3815 Schreiber Way, Coeur d' Alene, Idaho 83815.

FOR FURTHER INFORMATION CONTACT: Ranotta K. McNair, Forest Supervisor and Designated Federal Official, at (208) 765–7369.

SUPPLEMENTARY INFORMATION: The meeting agenda will focus on reviewing project proposals for fiscal year 2003 and recommending funding for projects during the business meeting. The public forum begins at 1 pm.

Dated: February 4, 2002.

Ranotta K. McNair,

Forest Supervisor.

[FR Doc. 03–3323 Filed 2–10–03; 8:45 am]

BILLING CODE 3410–11–M

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Hawaii Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights that a meeting of the Hawaii Advisory Committee to the Commission will convene at 1 p.m. and adjourn at 4 p.m. on April 11, 2003, at the Ala Moana Hotel, 410 Atkinson Drive, Honolulu, Hawaii 96814. The purpose of the meeting is to hold new member orientation, and plan future projects.

Persons desiring additional information, or planning a presentation to the Committee, should contact Philip Montez, Director of the Western Regional Office, 213–894–3437 (TDD 213–894–3435). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least 10 working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated in Washington, DC, February 4, 2003.

Ivy L. Davis,

Chief, Regional Programs Coordination Unit.

[FR Doc. 03–3409 Filed 2–10–03; 8:45 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Nevada Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights that a planning meeting of the Nevada Advisory Committee to the Commission will convene at 10 a.m. and adjourn at 12 p.m. on March 21, 2003, at 3500 Lakeside Court, 2nd Floor, Reno, Nevada 89509. The purpose of the meeting is to discuss civil rights issues and update status of the Nevada Equal Rights Commission subcommittee efforts.

Persons desiring additional information, or planning a presentation to the Committee, should contact Philip Montez, Director of the Western Regional Office, 213–894–3437 (TDD 213–894–3435). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least 10 working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated in Washington, DC, February 4, 2003.

Ivy L. Davis,

Chief, Regional Programs Coordination Unit.

[FR Doc. 03–3411 Filed 2–10–03; 8:45 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the North Dakota Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a planning meeting with briefing of the North Dakota Advisory Committee to the Commission will convene at 1 p.m. and adjourn at 4:30 p.m. on Thursday, February 27, 2003, at the Best Western Doublewood Inn, 1400 E. Interchange, Bismarck, North Dakota 58501. The purpose of the planning meeting with briefing is to review recent development regarding the establishment of civil rights organizations across the State. Briefing will be provided by selected state and local government officials; also by civil rights organizational leaders.

Persons desiring additional information, or planning a presentation to the Committee, should contact, John Dulles, Director of the Rocky Mountain Regional Office, 303–866–1040 (TDD 303–866–1049). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least 10 working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated in Washington, DC, February 5, 2003.

Ivy L. Davis,

Chief, Regional Programs Coordination Unit.

[FR Doc. 03–3410 Filed 2–10–03; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce (DOC) has submitted to the Office of Management and Budget (OMB) for emergency clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act of 1995, Public Law 104–13.

Agency: International Trade Administration (ITA).

Title: ITA Customer Satisfaction Survey.

Agency Form Number: None.

OMB Approval Number: None.

Type of Request: Emergency.

Burden Hours: 400 hours.

Number of Respondents: 1,600.

Average Hours Per Response: 15 minutes.

Needs and Uses: This information will be used for program improvement, strategic planning, allocation of resources within the organization, and the establishment of benchmark performance measures and trend data related to the Government Performance and Results Act (GPRA). Survey responses will be used to assess what services ITA clients need, when ITA clients first used a product or service and to what extent an ITA product or service has met the needs of a user.

Affected Public: Business or other for-profit organizations.

Frequency: One-time.

Respondent's Obligation: Voluntary.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6625, 14th and Constitution, NW., Washington, DC 20230 or via the Internet at *dHynek@doc.gov.*

Written comments and recommendations for the proposed information collection should be sent to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503 within 30 days of the publication of this notice in the **Federal Register**.

Dated: February 6, 2003.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 03–3375 Filed 2–10–03; 8:45 am]

BILLING CODE 3510–25–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act of 1995, Pub. L. 104–13.

Bureau: International Trade Administration.

Title: Participation Agreement, Trade Mission Application and Conditions of Participation.

Agency Form Numbers: ITA–4008P, ITA–4008P–1 and ITA–4008P–A.

OMB Number: 0625–0147.

Type of Request: Regular Submission.

Burden: 2,792 hours.

Number of Respondents: 7,500.

Avg. Hours Per Response: 20 minutes and 70 minutes.

Needs and Uses: The Department of Commerce's International Trade Administration (ITA) sponsors overseas trade promotion events in which U.S. companies display, demonstrate, and promote their goods and services in foreign markets. These events include trade fairs, trade and seminar missions, and catalogue shows. *Form ITA–4008P, Participation Agreement (PA),* is the vehicle by which individual firms agree to participate in ITA's trade promotion program, identify the products and/or services they intend to sell or promote, and record their required financial contribution to the Department of Commerce. Together with the relevant "Conditions of Participation" they form a contract between an individual firm and the U.S. Department of Commerce. *Form ITA–4008P–1, Trade Mission Application,* is used to solicit information only from those firms seeking to participate in Department of Commerce overseas trade missions covered by the Statement of Policy Governing Overseas Trade Missions of the Department of Commerce issued on March 3, 1997. The Secretary's policy statement concluded that companies that wish to be considered for participation on a trade mission must meet certain criteria and make certain certifications. The information collected permits the Department to determine the eligibility and appropriateness of a firm's participation relative to other applicants and to the participation criteria set out in the Secretary's policy statement. This information includes the name and title of the individual(s) participating in the mission, number of employees, U.S. content of the applicant's products, export experience of the firm, line of business, and objectives of participation. Together with the Form ITA–4008P, "Participation Agreement" and ITA–4008P–A, "Conditions of Participation", ITA–4008P–1, Trade Mission Application forms a contract between an individual firm and the U.S. Department of Commerce. For trade missions led by the Secretary of Commerce, a *Supplemental Form for Secretarial Trade Missions* is added to the trade mission application. For security purposes and to protect the safety and integrity of the trade mission and its participants, a background screening is conducted on each trade mission applicant. The information requested for security purposes is not used for any other purpose. The Secretarial Trade Mission Supplement also collects the type of business entity and date and state of formation. This information is used to assist in verifying the legitimacy of the company. Finally, the addendum includes a request for biographical and company information. This information may be used for promotional purposes.

Affected Public: Businesses or other for-profits.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain a benefit, voluntary.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6625, 14th and Constitution, NW., Washington, DC 20230 or via Internet at *dHynek@doc.gov*.

Written comments and recommendations for the proposed information collection should be sent to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503 within 30 days of the publication of this notice in the **Federal Register**.

Dated: February 6, 2003.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 03–3376 Filed 2–10–03; 8:45 am]

BILLING CODE 3510–FP–P

DEPARTMENT OF COMMERCE

Census Bureau

Survey of Housing Starts, Sales, and Completions

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before April 14, 2003.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dhynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Erica Filipek, Census Bureau, Room 2105, FOB 4, Washington, DC 20233–6900, (301) 763–5161.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Census Bureau conducts the Survey of Housing Starts, Sales, and Completions, also known as the Survey of Construction (SOC), to collect monthly data on new residential construction from a sample of owners or builders. The Census Bureau uses the Computer-Assisted Personal Interviewing (CAPI) electronic questionnaires SOC–QI/SF.1 and SOC–QI/MF.1 to collect data on starts and completions dates of construction, physical characteristics of the structure (floor area, number of bathrooms, type of heating system, *etc.*), and if applicable, date of sale, sales price, and type of financing. The SOC program provides widely used measures of construction activity, including the economic indicators Housing Starts and Housing Completions, which are from the New Residential Construction series, and New Residential Sales.

We plan to request a three year extension of the expiration date with no changes to forms SOC–QI/SF.1 and SOC–QI/MF.1.

II. Method of Collection

The Census Bureau uses its field representatives to collect the data. The field representatives conduct interviews to obtain data.

III. Data

OMB Number: 0607–0110.

Form Number: SOC–QI/SF.1 and SOC–QI/MF.1.

Type of Review: Regular Review.

Affected Public: Individuals or households, business, or other for profit institutions.

Estimated Number of Respondents: 8,000.

Estimated Time Per Response: 1.092.

Estimated Total Annual Burden Hours: 8,734.

Estimated Total Annual Cost: The estimated cost to the respondent is $207,591 based on an average hourly pay for respondent to be $23.77. This estimate was taken from the Department of Labor, Bureau of Labor Statistics, Occupational Employment Statistics Survey for 2001.

Respondent's Obligation: Voluntary.

Legal Authority: Title 13, United States Code, Section 182.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: February 6, 2003.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 03–3377 Filed 2–10–03; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–337–803]

Notice of Final Results of Antidumping Duty Administrative Review, Final Determination to Revoke the Order in Part, and Partial Rescission of Antidumping Duty Administrative Review: Fresh Atlantic Salmon From Chile

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On August 7, 2002, the Department of Commerce (the Department) published the preliminary results of its third administrative review of the antidumping duty order on fresh Atlantic salmon from Chile. The review covers sixteen producers/exporters of the subject merchandise. The period of review (POR) is July 1, 2000, through June 30, 2001. Based on our analysis of comments received, these final results differ from the preliminary results. The final results are listed below in the Final Results of Review section.

EFFECTIVE DATE: February 11, 2003.

FOR FURTHER INFORMATION CONTACT: Vicki Schepker or Constance Handley, at (202) 482–1784 or (202) 482–0631, respectively; AD/CVD Enforcement, Office V, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On August 7, 2002, the Department published in the **Federal Register** the preliminary results of the third administrative review of the antidumping duty order on fresh Atlantic salmon from Chile. *See Notice of Preliminary Results of Antidumping Duty Administrative Review, Preliminary Determination to Revoke the Order in Part, and Partial Rescission of Antidumping Duty Administrative Review: Fresh Atlantic Salmon From Chile*, 67 FR 51182 (August 7, 2002) (*Preliminary Results*).

We invited parties to comment on the *Preliminary Results*. On October 3, 2002, we received case briefs from respondents Cultivadora de Salmones Linao Ltda. and Salmones Tecmar S.A. (collectively, Linao and Tecmar)[1], Pesquera Eicosal Ltda., (Eicosal), Los Fiordos, Ltda. (Los Fiordos), Marine Harvest (Chile) S.A., (Marine Harvest), Salmones Mainstream S.A. (Mainstream), Salmones Pacifico Sur S.A. (Pacifico Sur), Pesca Chile S.A. (Pesca Chile), and L.R. Enterprises.[2] On October 8, 2002, L.R. Enterprises filed an unsolicited, revised case brief with regard to Mainstream because its October 3 submission on Mainstream contained numerous inadvertent errors.

On October 10, 2002, we received rebuttal briefs from respondents Cultivos Marinos Chiloe, Ltda. (Cultivos Marinos), Eicosal, Linao and Tecmar, Mainstream, Marine Harvest, Pacifico Sur and L.R. Enterprises.

On October 15, 2002, the Department sent L.R. Enterprises a letter regarding its case brief on Mainstream, requiring the redaction of new factual information contained in the October 3 and 8 versions. On October 16, 2002, L.R. Enterprises submitted redacted versions of the October 3 and 8 versions of its case brief on Mainstream. At the hearing on October 17, 2002, the Department informed L.R. Enterprises that the versions submitted on October 16 still contained information that should have been redacted. The Department instructed L.R. Enterprises to re-submit its case brief on Mainstream with all of the appropriate information redacted by the close of business on October 18, 2002. L.R. Enterprises re-submitted the brief.

On October 22, 2002, Mainstream submitted a letter to the Department stating that the re-submitted, revised version filed by L.R. Enterprises on October 18 continued to contain new factual information that should have been redacted. Mainstream requested that, given that L.R. Enterprise's fourth attempt still contained new factual information, the Department reject as untimely filed L.R. Enterprise's October 18, 2002, submission. Mainstream also provided the Department with its own version of what the correctly redacted case brief should look like. On October 24, 2002, L.R. Enterprises filed a response to Mainstream's October 22, 2002, letter, in which it argued that its October 18 version was correctly redacted and that there was no longer any new factual information contained in the brief. L.R. Enterprises also included in its October 24 filing a revised version of the case brief, removing only the reference to new information contained in Exhibit 1. On October 25, 2002, the Department asked L.R. Enterprises to resubmit its case brief on Mainstream in compliance with the Department's specific redaction instructions contained within that letter. On October 28, 2002, L.R. Enterprises complied with the Department's request and submitted the revised version of its case brief on Mainstream.

Partial Rescission of the Antidumping Duty Administrative Review

Prior to the publication of the preliminary results in this review, respondent Salmones Unimarc S.A. (Salmones Unimarc) certified to the Department that it had not shipped subject merchandise to the United States during the POR. As described in the *Preliminary Results*, U.S. import

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[1] Linao and Tecmar were collapsed in the third administrative review. *See* Preliminary Results at 51186.

[2] L.R. Enterprises is a domestic producer of subject merchandise with operations in Lubec, Maine.

statistics confirmed that the company had not shipped subject merchandise to the United States during the POR. Therefore, the Department preliminarily rescinded the review with respect to this company. No new information has come to the Department's attention in this regard since the publication of the preliminary results. Accordingly, we are rescinding the review with respect to Salmones Unimarc.

Scope of the Review

The product covered by this review is fresh, farmed Atlantic salmon, whether imported "dressed" or cut. Atlantic salmon is the species *Salmo salar*, in the genus *Salmo* of the family *salmoninae*. "Dressed" Atlantic salmon refers to salmon that has been bled, gutted, and cleaned. Dressed Atlantic salmon may be imported with the head on or off; with the tail on or off; and with the gills in or out. All cuts of fresh Atlantic salmon are included in the scope of the review. Examples of cuts include, but are not limited to: crosswise cuts (steaks), lengthwise cuts (fillets), lengthwise cuts attached by skin (butterfly cuts), combinations of crosswise and lengthwise cuts (combination packages), and Atlantic salmon that is minced, shredded, or ground. Cuts may be subjected to various degrees of trimming, and imported with the skin on or off and with the "pin bones" in or out.

Excluded from the scope are (1) fresh Atlantic salmon that is "not farmed" (*i.e.*, wild Atlantic salmon); (2) live Atlantic salmon; and (3) Atlantic salmon that has been subject to further processing, such as frozen, canned, dried, and smoked Atlantic salmon, or processed into forms such as sausages, hot dogs, and burgers.

The merchandise subject to this review is classifiable under item numbers 0302.12.0003 and 0304.10.4093, 0304.90.1009, 0304.90.1089, and 0304.90.9091 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise is dispositive.

Analysis of Comments Received

The issues raised in the case briefs by parties to this administrative review are addressed in the *Issues and Decision Memorandum* to Faryar Shirzad, Assistant Secretary for Import Administration, from Bernard T. Carreau, Deputy Assistant Secretary (*Decision Memorandum*), which is hereby adopted by this notice. A list of the issues addressed in the *Decision Memorandum* is appended to this notice. The *Decision Memorandum* is on file in Room B-099 of the main Commerce building, and can also be accessed directly on the Web at ia.ita.doc.gov. The paper copy and electronic version of the *Decision Memorandum* are identical in content.

Determination to Revoke Order in Part

In accordance with section 351.222(b)(2) of the Department's regulations, we have determined to revoke the antidumping duty order as to Cultivos Marinos, Mainstream, Marine Harvest and Pacifico Sur. These companies have sold subject merchandise in commercial quantities at prices not below their respective normal values for three consecutive annual reviews. Moreover, our analysis of market conditions and other factors does not indicate that the order is otherwise necessary to offset dumping with respect to these companies. *See* Revocation Recommendation in the *Decision Memorandum*.

We have also determined to not revoke the order as to Eicosal and Linao and Tecmar. The Stolt Sea Farm Ltda. acquisition of Eicosal and subsequent affiliation and collapsing issues between Eicosal and Ocean Horizons Chile S.A.[3] lead the Department to conclude that continued imposition of the order is necessary to offset dumping by Eicosal. *See* Comment 8 of the *Decision Memorandum*. With regard to Linao and Tecmar, for the reasons outlined in a proprietary memo,[4] the Department has determined that the order is otherwise necessary to offset dumping by Linao and Tecmar.

Final Results of Review

As a result of our review, we determine that the following weighted-average margins exist for the period of July 1, 2000, through June 30, 2001:

Exporter/Manufacturer	Weighted-Average Margin Percentage
Andes	0.16 (*de minimis*)
Cultivos Marinos	0.10 (*de minimis*)
Eicosal	0.44 (*de minimis*)
Friosur	0.18 (*de minimis*)
Invertec	0.00
Linao and Tecmar	0.29 (*de minimis*)
Los Fiordos	0.04 (*de minimis*)
Mainstream	0.05 (*de minimis*)
Marine Harvest	0.13 (*de minimis*)
Multiexport	0.00
Ocean Horizons	0.07 (*de minimis*)
Pacifico Sur	0.00
Patagonia	0.01 (*de minimis*)
Pesca Chile	0.11 (*de minimis*)
Robinson Crusoe	0.06 (*de minimis*)

Assessment

The Department will determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b)(1) (2002), we have calculated an exporter/importer (or customer)-specific assessment rate for merchandise subject to this review. We will direct the Customs Service to assess such rates against the entered customs values for the subject merchandise on each of the importer's/customer's entries during the review period. The Department will issue appropriate assessment instructions directly to the Customs Service within 15 days of publication of these final results of review.

Cash Deposits

Furthermore, the following deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of these final results of administrative review, as provided by section 751(a) of the Tariff Act of 1930, as amended (the Act): (1) for all exporters/manufacturers covered by this review, the cash deposit rate will be the rate listed above, except where the margin is zero or *de minimis*, no cash deposit will be required; (2) for merchandise exported by producers or exporters not covered in this review but covered in a previous segment of this proceeding, the cash deposit rate will continue to be the company-specific rate published in the most recent final results in which that producer or exporter participated; (3) if the exporter is not a firm covered in this review or in any previous segment of this proceeding, but the producer is, the cash deposit rate will be that established for the producer of the merchandise in these final results of review or in the most recent final results in which that producer participated; and (4) if neither the exporter nor the producer is a firm covered in this review or in any previous segment of this proceeding, the cash deposit rate will be 4.57 percent, the "All Others" rate established in the less-than-fair-value investigation. These deposit requirements shall remain in

[3] On July 3, 2001, Eicosal was fully acquired by Stolt, the parent company of Ocean Horizons.

[4] *See Final Determination to Revoke in Part the Antidumping Duty Order on Fresh Atlantic Salmon from Chile for Marine Harvest and Not to Revoke for Linao and Tecmar* memorandum to Bernard Carreau, Deputy Assistant Secretary, from Daniel O'Brien and Salim Bhabhrawala, Case Analysts, dated February 3, 2003.

effect until publication of the final results of the next administrative review.

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402 (f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred, and in the subsequent assessment of double antidumping duties.

This notice also is the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

We are issuing and publishing these results and notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: February 3, 2003.

Faryar Shirzad,

Assistant Secretary for Import Administration.

APPENDIX

Comment 1: *Regulatory requirements for revocation*
Comment 2: *European Commission's initiation of a dumping investigation of fresh and frozen Atlantic salmon from Chile*
Comment 3: *Accuracy and propriety of the Department's revocation analysis*
Comment 4: *Production capacity*
Comment 5: *The use of fourth review data in the final results of the third review*
Comment 6: *Whether Eicosal's post-POI shipments were made in commercial quantities*
Comment 7: *Eicosal's sales to the United States*
Comment 8: *Stolt Sea Farm Ltda.'s (Stolt) post-POR acquisition of Eicosal*
Comment 9: *Pacifico Sur's U.S. prices and profitability*
Comment 10: *Whether the Department should consider Marine Harvest eligible for revocation*
Comment 11: *Whether the Department should find that Linao and Tecmar are a "new entity" for the purposes of its revocation analysis*
Comment 12: *Whether the Department should have placed a revocation analysis for Linao and Tecmar on the record of this review*
Comment 13: *Whether the Department should revise the monetary correction adjustment and financial expense ratio for Eicosal*
Comment 14: *Marine Harvest's CEP profit calculation*
Comment 15: *Marine Harvest's feed costs*
Comment 16: *Ministerial error contained in Linao's and Tecmar's preliminary results margin calculation program*
Comment 17: *Linao's and Tecmar's cash deposit rate*
Comment 18: *Whether Department should correct data errors made by Los Fiordos for the final results*

[FR Doc. 03–3405 Filed 2–10–03; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–489–805]

Certain Pasta from Turkey: Final Results of Antidumping Duty Administrative Review and Determination Not to Revoke the Antidumping Duty Order in Part

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Final Results of Antidumping Duty Administrative Review and Determination Not to Revoke the Antidumping Duty Order in Part: Certain Pasta from Turkey.

SUMMARY: On August 7, 2002, the Department of Commerce (the Department) published the preliminary results of the administrative review of the antidumping duty order on certain pasta from Turkey. This review covers one exporter/producer of subject merchandise, Filiz Gida Sanayi ve Ticaret A.S. (Filiz). The period of review (POR) is July 1, 2000, through June 30, 2001. Based on our analysis of the comments received, these final results differ from the preliminary results. The final results are listed in the section "Final Results of Review." We are not revoking the antidumping order with respect to Filiz, because Filiz has not had three years of sales in commercial quantities at less than normal value. *See* the "Determination Not to Revoke" section of this notice.

EFFECTIVE DATE: February 11, 2003.

FOR FURTHER INFORMATION CONTACT: Lyman Armstrong or Alicia Kinsey, AD/CVD Enforcement, Office VI, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–3601 or (202) 482–4793, respectively.

SUPPLEMENTARY INFORMATION:

Background

On August 7, 2002, the Department published the preliminary results of its administrative review of the antidumping duty order on pasta from Turkey. *See Certain Pasta from Turkey: Notice of Preliminary Results of Antidumping Duty Administrative Review and Notice of Intent Not To Revoke Order in Part*, 67 FR 51194 (August 7, 2002) (*Preliminary Results*). The review covers one manufacturer/exporter. The POR is July 1, 2000, through June 30, 2001. We invited parties to comment on our preliminary results of review. We received case briefs from Filiz and petitioners[1] on September 19, 2002. We received a rebuttal brief from Filiz on September 26, 2002. On December 2, 2002, the Department published a notice postponing the final results of this review until February 3, 2003 (67 FR 71534). The Department has conducted this administrative review in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act).

Scope of Review

Imports covered by this review are shipments of certain non-egg dry pasta in packages of five pounds (2.27 kilograms) or less, whether or not enriched or fortified or containing milk or other optional ingredients such as chopped vegetables, vegetable purees, milk, gluten, diastases, vitamins, coloring and flavorings, and up to two percent egg white. The pasta covered by this scope is typically sold in the retail market, in fiberboard or cardboard cartons, or polyethylene or polypropylene bags of varying dimensions.

Excluded from the scope of this review are refrigerated, frozen, or canned pastas, as well as all forms of egg pasta, with the exception of non-egg dry pasta containing up to two percent egg white.

The merchandise subject to review is currently classifiable under item 1902.19.20 of the *Harmonized Tariff Schedule of the United States* (HTSUS). Although the *HTSUS* subheading is provided for convenience and Customs purposes, the written description of the

[1] The petitioners are New World Pasta Co., Dakota Growers Pasta Co., Borden Foods Corporation, and American Italian Pasta Co.

merchandise subject to the order is dispositive.

Scope Rulings

The Department has issued the following scope ruling to date:

On October 26, 1998, the Department self-initiated a scope inquiry to determine whether a package weighing over five pounds as a result of allowable industry tolerances is within the scope of the antidumping and countervailing duty orders. On May 24, 1999, we issued a final scope ruling finding that, effective October 26, 1998, pasta in packages weighing or labeled up to (and including) five pounds four ounces is within the scope of the antidumping and countervailing duty orders. *See* Memorandum from John Brinkmann, Program Manager, to Richard Moreland, Deputy Assistant Secretary, Concerning Final Scope Ruling, dated May 24, 1999, in the case file in the Central Records Unit, main Commerce building, room B-099 (the CRU).

Determination Not to Revoke

In the *Preliminary Results* of this review, we found that because Filiz had not sold subject merchandise in the United Sates for three years in commercial quantities within the meaning of 19 CFR 351.222(e), Filiz did not qualify for revocation. *See Preliminary Results* at 51197. Neither Filiz nor petitioners commented on this issue in their case briefs. Thus, we determine not to revoke this order with respect to Filiz.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this administrative review are addressed in the Issues and Decision Memorandum for the Fifth Antidumping Duty Administrative Review (*Decision Memorandum*) from Bernard Carreau, Deputy Assistant Secretary for Import Administration, to Faryar Shirzad, Assistant Secretary for Import Administration, dated concurrently with this notice, which is hereby adopted by this notice. A list of the issues which parties have raised, and to which we have responded in the *Decision Memorandum*, is attached to this notice as an Appendix. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum, which is on file in the CRU. In addition, a complete version of the Decision Memorandum can be accessed on the Web at http://ia.ita.doc.gov. The paper copy and the electronic version of the *Decision Memorandum* are identical in content.

Changes Since the Preliminary Results

Based on our analysis of comments received, we have made certain changes in the margin calculations. We calculated the export price and normal value using the same methodology described in the *Preliminary Results*, except as follows:

- The home market insurance field (*i.e.*, INSURH) reported by Filiz was converted from metric tons to kilograms.
- The Department has corrected the packing cost for one control number reported in the cost of production database to reflect changes in the U.S. sales database.
- The home market discount field (*i.e.*, UMER2DISH) reported by Filiz was deleted from the margin calculation program.
- The brand field submitted by Filiz has been omitted as a model match criterion.

These changes are discussed in the relevant sections of the *Decision Memorandum*.

Final Results of Review

As a result of our review, we determine that the following weighted-average percentage margin exists for the period July 1, 2000, through June 30, 2001:

Manufacturer/exporter	Margin (percent)
Filiz Gida Sanayi ve Ticaret A.S.	0.00

Assessment Rate

The Department shall determine, and Customs shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b), we have calculated importer-specific assessment rates by aggregating the dumping margins for all U.S. sales to each importer and dividing the amount by the total entered value of the sales to that importer. Where the importer-specific assessment rate is above *de minimis*, we will instruct Customs to assess antidumping duties on that importer's entries of subject merchandise. We will direct Customs to assess the resulting percentage margins against the entered Customs values for the subject merchandise on each of that importer's entries under the order during the POR.

Cash Deposit Requirements

The following deposit requirements will be effective upon publication of this notice of final results of administrative review for all shipments of pasta from Turkey entered, or withdrawn from warehouse, for consumption on or after the date of publication, as provided by section 751(a)(1) of the Act: (1) the cash deposit rate for the reviewed company is *de minimis* or zero and we will instruct Customs not to collect cash deposits; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 51.49 percent, the "All Others" rate established in the LTFV investigation. *See Notice of Antidumping Duty Order and Amended Final Determination of Sales at Less Than Fair Value: Certain Pasta from Turkey*, 61 FR 38545 (July 24, 1996). These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

We are issuing and publishing this determination and notice in accordance with sections section 751(a)(1) and 777(i)(1) of the Act.

Dated: February 3, 2003.

Faryar Shirzad,

Assistant Secretary for Import Administration.

APPENDIX I

List of Comments and Issues in the Decision Memorandum

- Conversion of Filiz's Insurance Expense to Turkish Lira per Kilogram
- Clerical Error in Packing Cost in Filiz's Cost of Production (COP) Database
- Calculation of the Countervailing Duty (CVD) Field
- Inclusion of the Brand of Pasta in Product Match Characteristics
- Allowance of Certain Discounts on Filiz's Home Market Sales
- Adjustment of Filiz's COP to Reflect Actual Cost of Vitamins
- Revision of Filiz's COP to Reflect Verified Production Yields
- Revision of Filiz's COP to Reflect Depreciation Revaluation
- Clerical Errors Regarding Filiz's Foreign Exchange Gains and Losses

[FR Doc. 03–3282 Filed 2–10–03; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A-475–818]

Notice of Final Results of Antidumping Duty Administrative Review and Determination Not to Revoke in Part: Certain Pasta from Italy

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Final Results of Antidumping Duty Administrative Review and Determination Not to Revoke in Part.

SUMMARY: On August 9, 2002, the Department of Commerce published the preliminary results and partial rescission of the fifth administrative review and intent not to revoke the order in part, for the antidumping duty order on certain pasta from Italy. The review covers four manufacturers/exporters of the subject merchandise: (1) Pastificio Garofalo S.p.A. ("Garofalo"), (2) Italian American Pasta Company ("IAPC"), (3) Pastificio Guido Ferrara S.r.l. ("Ferrara") and (4) Pastificio Fratelli Pagani S.p.A. ("Pagani"). The period of review ("POR") is July 1, 2000, through June 30, 2001.

Based on our analysis of the comments received, these final results differ from the preliminary results. The final results are listed in the section "*Final Results of Review*" below. For our final results, we have found that during the POR, Garofalo sold subject merchandise at less than normal value ("NV"). We have also found that IAPC, Ferrara, and Pagani did not make sales of the subject merchandise at less than NV (*i.e.*, they had "zero" or *de minimis* dumping margins). We have also determined not to revoke the antidumping duty order with respect to subject merchandise produced and also exported by Pagani.

EFFECTIVE DATE: February 11, 2003.

FOR FURTHER INFORMATION CONTACT: Brian Ledgerwood or Mark Young, AD/CVD Enforcement Office VI, Import Administration, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230; telephone: (202) 482–3836 or (202) 482–6397, respectively.

SUPPLEMENTARY INFORMATION:

Background

On August 9, 2002, the Department published the preliminary results of administrative review of the antidumping duty order on certain pasta from Italy. *See Notice of Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review and Intent Not to Revoke in Part: Certain Pasta from Italy*, 67 FR 51827 (August 9, 2002) ("*Preliminary Results*"). Although the Department initiated the review on seven companies, we rescinded the review for three of those companies (two companies withdrew their requests; we had previously revoked the order with respect to the third company). *See* Partial Rescission section of the *Preliminary Results* for a more detailed explanation. The review covers the remaining four manufacturers/exporters. The POR is July 1, 2000, through June 30, 2001. We invited parties to comment on our *Preliminary Results*. We received case briefs on September 19, 2002, from petitioners, Ferrara, Garofalo, IAPC, and Pagani. On September 26, 2002, petitioners, Ferrara, and Garofalo submitted rebuttal briefs. On November 22, 2002, the Department extended the deadline for the final results of this review until February 3, 2003. *See Certain Pasta From Italy and Turkey: Extension of Final Results of Antidumping Duty Administrative Reviews*, 67 FR 71534 (December 2, 2002).

Scope of Review

Imports covered by this review are shipments of certain non-egg dry pasta in packages of five pounds (2.27 kilograms) or less, whether or not enriched or fortified or containing milk or other optional ingredients such as chopped vegetables, vegetable purees, milk, gluten, diastasis, vitamins, coloring and flavorings, and up to two percent egg white. The pasta covered by this scope is typically sold in the retail market, in fiberboard or cardboard cartons, or polyethylene or polypropylene bags of varying dimensions.

Excluded from the scope of this review are refrigerated, frozen, or canned pastas, as well as all forms of egg pasta, with the exception of non-egg dry pasta containing up to two percent egg white. Also excluded are imports of organic pasta from Italy that are accompanied by the appropriate certificate issued by the Instituto Mediterraneo Di Certificazione, by Bioagricoop Scrl, by QC&I International Services, by Ecocert Italia, by Consorzio per il Controllo dei Prodotti Biologici, by Associazione Italiana per l'Agricoltura Biologica, or by Codex S.R.L.

The merchandise subject to review is currently classifiable under item 1902.19.20 of the *Harmonized Tariff Schedule of the United States* ("*HTSUS*"). Although the *HTSUS* subheading is provided for convenience and Customs purposes, the written description of the merchandise subject to the order is dispositive.

Scope Rulings

The Department has issued the following scope rulings to date:

(1) On August 25, 1997, the Department issued a scope ruling that multicolored pasta, imported in kitchen display bottles of decorative glass that are sealed with cork or paraffin and bound with raffia, is excluded from the scope of the antidumping and countervailing duty orders. *See* Memorandum from Edward Easton, Senior Analyst, Office of AD/CVD Office V, to Richard Moreland, Deputy Assist Secretary, "Scope Ruling Concerning Pasta from Italy," dated August 25, 1997, which is on file in the Central Records Unit (CRU), room B-099 of the main Commerce Department Building.

(2) On July 30, 1998, the Department issued a scope ruling, finding that multipacks consisting of six one-pound packages of pasta that are shrink-wrapped into a single package are within the scope of the antidumping and countervailing duty orders. *See* Letter from Susan H. Kuhbach, Acting Deputy Assistant Secretary for Import Administration, to Barbara P. Sidari, Vice President, Joseph A. Sidari Company, Inc., dated July 30, 1998, which is available in the CRU.

(3) On October 23, 1997, the petitioners filed an application requesting that the Department initiate an anti-circumvention investigation of Barilla, an Italian producer and exporter of pasta. The Department initiated the investigation on December 8, 1997 (62 FR 65673). On October 5, 1998, the Department issued its final determination that Barilla's importation of pasta in bulk and subsequent repackaging in the United States into packages of five pounds or less constitutes circumvention, with respect to the antidumping duty order on pasta from Italy pursuant to section 781(a) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.225(b). *See Anti-circumvention Inquiry of the Antidumping Duty Order on Certain Pasta from Italy: Affirmative Final Determination of Circumvention of the Antidumping Duty Order*, 63 FR 54672 (October 13, 1998).

(4) On October 26, 1998, the Department self-initiated a scope inquiry to determine whether a package weighing over five pounds as a result of allowable industry tolerances is within the scope of the antidumping and countervailing duty orders. On May 24, 1999, we issued a final scope ruling finding that, effective October 26, 1998, pasta in packages weighing or labeled up to (and including) five pounds four ounces is within the scope of the antidumping and countervailing duty orders. *See* Memorandum from John Brinkmann, Program Manager, Office of AD/CVD Enforcement VI, to Richard Moreland, Deputy Assistant Secretary, "Final Scope Ruling," dated May 24, 1999, which is available in the CRU.

The following scope ruling is pending:

(5) On April 27, 2000, the Department self-initiated an anti-circumvention inquiry to determine whether Pagani's importation of pasta in bulk and subsequent repackaging in the United States into packages of five pounds or less constitutes circumvention, with respect to the antidumping and countervailing duty orders on pasta from Italy pursuant to section 781(a) of the Act and 19 CFR 351.225(b). *See Certain Pasta from Italy: Notice of Initiation of Anti-circumvention Inquiry of the Antidumping and Countervailing Duty Orders*, 65 FR 26179 (May 5, 2000).

Intent Not to Revoke Order

For the reasons outlined in the "Issues and Decision Memorandum" ("Decision Memorandum") from Bernard Carreau, Deputy Assistant Secretary for Import Administration, to Faryar Shirzad, Assistant Secretary for Import Administration, dated February 3, 2002, which is hereby adopted by this notice, we have determined not to revoke the antidumping duty order with respect to subject merchandise produced and also exported by Pagani because Pagani failed to demonstrate that for three consecutive years it sold the subject merchandise to the United States in commercial quantities in accordance with 19 CFR 351.222(e).

Use of Facts Available

Ferrara did not provide the Department with cost of production and constructed value information regarding two sales of tricolor pasta which did not have matches in the home market database. Consequently, in the *Preliminary Results*, we applied facts available (FA) to determine Ferrara's dumping margin. *See* the July 31, 2002 Analysis Memorandum for Pastificio Guido Ferrara s.r.l. Pursuant to section 776(a)(2)(A) of the Act, we have continued to apply FA to determine Ferrara's dumping margin in the final results. *See* Decision Memorandum, Comment 16, for further details.

Analysis of Comments Received

All issues raised in the case and rebuttal brief by parties to this administrative review are addressed in the Issues and Decision Memorandum ("Decision Memorandum") from Bernard Carreau, Deputy Assistant Secretary for Import Administration, to Faryar Shirzad, Assistant Secretary for Import Administration, dated concurrently with this notice, which is hereby adopted by this notice. A list of the issues which parties have raised and to which we have responded is attached to this notice as an Appendix. In addition, a complete version of the Decision Memorandum can be accessed directly on the Web at http://ia.ita.doc.gov. The paper copy and electronic version of the Decision Memorandum are identical in content.

Final Results of Review

We determine that the following weighted-average margin percentages exist for the period July 1, 2000, through June 30, 2001:

Manufacturer/exporter	Margin (percent)
Italian American Pasta Company (IAPC)	0.14
Pastificio Guido Ferrara S.r.l. (Ferrara)	0.38
Pastificio Garofalo S.p.A. (Garofalo)	0.55
Pastificio Fratelli Pagani S.p.A. (Pagani)	0.00

Assessment

The Department shall determine, and Customs shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b), we have calculated exporter/importer-specific assessment rates by aggregating the dumping margins for all U.S. sales to each importer and dividing the amount by the total entered value of the sales to that importer. In situations in which the importer-specific assessment rate is above *de miminis*, we will instruct Customs to assess antidumping duties on that importer's entries of subject merchandise. We will direct Customs to assess the resulting percentage margins against the entered Customs values for the subject merchandise on each of that importer's entries under the order during the POR.

Cash Deposit Requirements

The following deposit requirements will be effective upon publication of this notice of final results of the administrative review for all shipments of pasta from Italy entered, or withdrawn from warehouse, for consumption on or after the date of publication, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for the reviewed companies will be the rates shown above, except where the margin is *de minimis* or zero we will instruct Customs not to collect cash deposits; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original less than fair value investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 11.26 percent, the "All Others" rate established in the less than fair value investigation. *See Notice of Antidumping Duty Order and Amended Final Determination of Sales at Less Than Fair Value: Certain Pasta from Italy*, 61 FR 38547 (July 24, 1996). These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

Notification

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties or

countervailing duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement may result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective order ("APO") of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO are sanctionable violations.

We are issuing and publishing this determination and notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: February 3, 2003.

Faryar Shirzad,

Assistant Secretary for Import Administration.

APPENDIX I

List of Comments and Issues in the Decision Memorandum

List of Issues:

Pagani

Comment 1. Revocation

IAPC

Comment 2. Unit of Measure Used in Calculation of Foreign Unit Price in Dollars
Comment 3. Use of Special Charges in the Calculation of U.S. Net Price
Comment 4. Application of Month Identifiers for U.S. and Home Market Sales
Comment 5. Calculation of Variables Used in CEP Profit

Garofalo

Comment 6. Affiliation between Garofalo and Amato
Comment 7. Exclusion of Home Market Sales Outside the Course of Ordinary Trade
Comment 8. Garofalo's Product Classification
Comment 9. Bank Charges for U.S. Sales
Comment 10. U.S. International Freight
Comment 11. Warranty Expenses Offset
Comment 12. Programming Errors
Comment 13. Home Market Commissions
Comment 14. Appropriate Handling of Entries from Certain Importers
Comment 15. Offset of Export Subsidies

Ferrara

Comment 16. The Department's Application of Facts Available
Comment 17. Product Matching Criteria
Comment 18. CVD Adjustment

[FR Doc. 03–3402 Filed 2–10–03; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–813]

Certain Preserved Mushrooms from India: Final Results of Changed-Circumstances Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Final Results of Changed-Circumstances Review.

SUMMARY: On December 24, 2002, the Department of Commerce published a notice of initiation and preliminary results of changed-circumstances review of the antidumping duty order on certain preserved mushrooms from India, in which it preliminarily determined that KICM (MADRAS) Limited is the successor-in-interest to Hindustan Lever Limited for purposes of determining antidumping duty liability. The Department is now affirming its preliminary results.

EFFECTIVE DATE: February 11, 2003.

FOR FURTHER INFORMATION CONTACT: David J. Goldberger or Tinna E. Beldin, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482–4136 or 482–1655, respectively.

SUPPLEMENTARY INFORMATION:

Background

On February 19, 1999, the Department of Commerce ("Department") published in the Federal Register an amended final determination and antidumping duty order on certain preserved mushrooms from India (64 FR 8311), which included a cash deposit rate for Ponds India Limited ("Ponds"). In the course of the first administrative review, the Department noted that Ponds had become Hindustan Lever Limited ("HLL"). *See Certain Preserved Mushrooms From India: Final Results of Antidumping Duty Administrative Review*, 66 FR 42507, 42508 (August 13, 2001). On October 17, 2002, HLL submitted a request that the Department initiate a changed-circumstances review to confirm that its wholly-owned subsidiary, KICM (MADRAS) Limited, is its successor-in-interest and should be entitled to the same cash deposit rate. The Department determined that HLL's request was incomplete and could not serve as a basis to initiate a changed-circumstances review. *See* Letter from Department to HLL Re: Certain Preserved Mushrooms from India: Request for Changed-Circumstances Review (October, 28, 2002). On November 6, 2002, HLL submitted supplemental information and documentation, and renewed its request that the Department conduct a changed-circumstances review to determine whether KICM should receive the same antidumping duty treatment as HLL with respect to the subject merchandise.

On December 24, 2002, we published a notice of initiation and preliminary results of changed-circumstances review (67 FR 78416) in which we preliminarily found that KICM is the successor-in-interest to HLL for purposes of determining antidumping duty liability. We received no comments.

Scope of the Order

The product covered by this order are certain preserved mushrooms whether imported whole, sliced, diced, or as stems and pieces. The preserved mushrooms covered under this order are the species *Agaricus bisporus* and *Agaricus bitorquis*. "Preserved mushrooms" refer to mushrooms that have been prepared or preserved by cleaning, blanching, and sometimes slicing or cutting. These mushrooms are then packed and heated in containers including but not limited to cans or glass jars in a suitable liquid medium, including but not limited to water, brine, butter or butter sauce. Preserved mushrooms may be imported whole, sliced, diced, or as stems and pieces. Included within the scope of the order are "brined" mushrooms, which are presalted and packed in a heavy salt solution to provisionally preserve them for further processing.

Excluded from the scope of this order are the following: (1) all other species of mushroom, including straw mushrooms; (2) all fresh and chilled mushrooms, including "refrigerated" or "quick blanched mushrooms"; (3) dried mushrooms; (4) frozen mushrooms; and (5) "marinated," "acidified" or "pickled" mushrooms, which are prepared or preserved by means of vinegar or acetic acid, but may contain oil or other additives.

The merchandise subject to this order are classifiable under subheadings 2003.10.0027, 2003.10.0031,

2003.10.0037, 2003.10.0043, 2003.10.0047, 2003.10.0053, and 0711.90.4000 of the *Harmonized Tariff Schedule of the United States* (HTSUS). HTSUS subheadings are provided for convenience and customs purposes. The written description of the scope of this order is dispositive.

Final Results

As we received no comments on the preliminary results, for the reasons stated in the preliminary results (67 FR 78416) and based on the facts of record, we find KICM to be the successor-in-interest to HLL. Therefore, the Department is assigning KICM the same cash deposit rate (*i.e.*, 4.29 percent) as its predecessor HHL. This cash deposit rate is effective for all shipments of the subject merchandise from KICM entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this changed-circumstances review.

We are issuing and publishing this determination and notice in accordance with sections 751(b) and 777(i)(1) of the Tariff Act of 1930, as amended ("the Act") and 19 CFR 351.216 (2002).

Dated: February 3, 2003.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 03–3404 Filed 2–10–03; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–878]

Saccharin from the People's Republic of China: Postponement of Final Determination of Antidumping Duty Investigation

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: February 11, 2003.

FOR FURTHER INFORMATION CONTACT: Mark Hoadley (Suzhou Fine Chemicals Group Co., Ltd.) at (202) 482–3148, and Javier Barrientos (Shanghai Fortune Chemical Co., Ltd.) at (202) 482–2243; Office of AD/CVD Enforcement VII, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC.

SUPPLEMENTARY INFORMATION:

Statutory Time Limits

Section 735(a)(1) of the Tariff Act of 1930, as amended (the Act), requires the Department to issue the final determination regarding sales at less than fair value (LTFV) in an investigation within 75 days after the date of its preliminary determination. However, section 735(a)(2) of the Act states that the Department may postpone the final determination until not later than 135 days after the date of publication of the preliminary determination, if, in the case of a proceeding in which the preliminary determination was affirmative, a request in writing for such a postponement is made by exporters who account for a significant portion of the exports of subject merchandise. Section 351.210(e)(2) of the Department's regulations further states that the exporter must also request that the Department extend the provisional measures from a four-month period to a period of not more than six months.

Background

On July 31, 2002, the Department initiated an investigation to determine whether imports of saccharin are being, or are likely to be, sold in the United States at LTFV (67 FR 51536 (August 8, 2002)). On August 30, 2002, the International Trade Commission (ITC) published its preliminary determination that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of saccharin from the PRC. *See Saccharin from China*, 67 FR 55872 (August 30, 2002). On December 27, 2002, the Department published its preliminary determination in this investigation. *See Notice of Preliminary Determination of Sales at Less than Fair Value: Saccharin from the People's Republic of China*, 67 FR 79049 (December 27, 2002). On December 31, 2002, the two respondents selected in this investigation, Shanghai Fortune Chemicals Co., Ltd. and Suzhou Fine Chemicals Group Co., Ltd., as well as Kaifeng Xinghua Fine Chemical Factory, requested that the Department postpone the final determination. On January 7, 2003, the same parties requested that the Department extend the provisional measures period from four months to a period not longer than six months.

Postponement of Final Determination

Given the fact that the Department made an affirmative preliminary determination and exporters/producers of subject merchandise accounting for a significant portion of the exports during the period of investigation requested postponement and also asked that the Department extend the provisional measures from a four-month period to a period of not more than six months, as required by the Department's regulations, we are postponing the final determination until no later than May 12, 2003 (*i.e.*, 135 days after the publication of the preliminary determination; however, since May 11, falls on a weekend, the due date will fall on the next business day, May 12). This extension is in accordance with section 735(a)(2)(A) of the Act and 19 CFR 351.210(g).

Dated: February 3, 2003.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 03–3403 Filed 2–10–03; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–821–817]

Notice of Final Determination of Sales at Less Than Fair Value: Silicon Metal From the Russian Federation

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final determination in the less-than-fair-value investigation of silicon metal from the Russian Federation.

SUMMARY: We determine that silicon metal from the Russian Federation ("Russia") is being, or is likely to be, sold in the United States at less than fair value. On September 20, 2002, the Department of Commerce published a notice of preliminary determination of sales at less than fair value in the investigation of silicon metal from Russia. *See Notice of Preliminary Determination of Sales at Not Less Than Fair Value and Postponement of Final Determination: Silicon Metal from the Russian Federation*, 67 FR 59253 (September 20, 2002) ("*Preliminary Determination*"). This investigation covers two manufacturers of the subject merchandise. The period of investigation ("POI") is July 1, 2001, through December 31, 2001.

Based upon our verification of the data and analysis of the comments received, we have made changes in the margin calculations. Therefore, the final determination of this investigation differs from the preliminary determination. The final weighted-average dumping margin is listed below in the section titled "Continuation of Suspension of Liquidation."

EFFECTIVE DATE: February 11, 2003.

FOR FURTHER INFORMATION CONTACT: James Doyle or Cheryl Werner, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–0159 and (202) 482–2667, respectively.

Background

This investigation was initiated on March 27, 2002. *See Notice of Initiation of Antidumping Duty Investigation: Silicon Metal from the Russian Federation*, 67 FR 15791 (April 3, 2002) (''*Notice of Initiation*''). The Department set aside a period for all interested parties to raise issues regarding product coverage. *See Notice of Initiation*. The Department received no comments on product coverage from interested parties.

On August 27, 2002, the Department determined that Pultwen Ltd. (''Pultwen'') and a U.S. trading company were affiliated through a principal/agent relationship. *See Memorandum For Joseph A. Spetrini, Deputy Assistant Secretary for Import Administration, Group III: Antidumping Investigation of Silicon Metal from Russia; Affiliation Memorandum of Pultwen Limited and U.S. Trading Company*, dated August 27, 2002 (''*Affiliation Memo for Pultwen and U.S. Trading Company*''). On August 28, 2002, we again requested that ZAO Kremny (''Kremny'')/Sual-Kremny-Ural Ltd. (''SKU'') and Pultwen provide their affiliated U.S. trading company's sales and received their response on September 4, 2002. On September 13, 2002, Kremny/SKU and Pultwen submitted an unsolicited additional response to the Department's August 28, 2002, request for the affiliated U.S. trading company's sales. On October 2, 2002, Kremny/SKU and Pultwen submitted an untimely response by their affiliated U.S. trading company to Section C of the Department's antidumping questionnaire and a revised U.S. sales listing which included sales of silicon metal made by the U.S. trading company to its U.S. customers. On October 18, 2002, petitioners submitted comments on the untimely U.S. sales data. On October 31, 2002, the Department rejected the October 2, 2002, response submitted by Kremny/SKU and Pultwen, because it was untimely filed factual information pursuant to 19 CFR 351.302 (d) of the Department's regulations.

On September 26, 2002, Kremny/SKU and Pultwen submitted a request for a hearing pursuant to Section 351.310(c). On September 30, 2002, Bratsk Aluminum Smelter (''BAS'') and Rual Trade Limited (''RTL'') submitted a request for a hearing and on October 18, 2002, petitioners also submitted a request for a hearing.

On September 27, 2002, the Department received a joint submission from BAS, RTL, Kremny/SKU, and Pultwen providing additional surrogate country factor values pursuant to Section 351.301(c)(3)(i). On November 27, 2002, we also received a joint submission from BAS, RTL, Kremny/SKU, and Pultwen providing surrogate country factor values. On December 9, 2002, petitioners submitted additional surrogate country factor values.

On October 9, 2002, through October 11, 2002, the Department conducted a factors of production verification of Kremny. *See Memorandum from Carrie Blozy and Catherine Bertrand, Case Analysts, to the File: Verification of Factors of Production for ZAO Kremny (''Kremny'') plant in the Antidumping Duty Investigation of Silicon Metal from the Russian Federation*, (December 4, 2002) (''*Kremny Verification Report*''). On October 31, 2002, through November 1, 2002, the Department conducted a U.S. sales verification of Pultwen *See Memorandum from James C. Doyle, Program Manager, and Cheryl Werner, Case Analyst, to the File: Verification of U.S. Sales for Pultwen Ltd. (''Pultwen'') in the Antidumping Duty Investigation of Silicon Metal from the Russian Federation*, (December 4, 2002) (''*Pultwen Verification Report*'').

On October 23, 2002, through October 25, 2002, the Department conducted a factors of production verification of BAS. *See Memorandum from James C. Doyle, Program Manager, and Cheryl Werner, Case Analyst, to the File: Verification of Factors of Production for Bratsk Aluminum Smelter (''BAS'') in the Antidumping Duty Investigation of Silicon Metal from the Russian Federation*, (December 5, 2002) (''*BAS Verification Report*''). On October 28, 2002, through October 29, 2002, the Department conducted a U.S. sales verification of RTL. *See Memorandum from James C. Doyle, Program Manager, and Cheryl Werner, Case Analyst, to the File: Verification of U.S. Sales for Rual Trade Limited (''RTL'')* (December 5, 2002) (''*RTL Verification Report*'').

We invited parties to comment on our *Preliminary Determination*. On December 17, 2002, petitioners, BAS and RTL, and Kremny/SKU and Pultwen submitted case briefs with respect to the sales and factors of production verifications and the Department's *Preliminary Determination*. Petitioners, BAS and RTL, and Kremny/SKU and Pultwen submitted their rebuttal briefs on December 24, 2002, with respect to the sales and factors of production verifications and the Department's *Preliminary Determination*. On January 7, 2003, the Department held a public hearing in accordance with 19 CFR 351.310(d)(1). Representatives for petitioners, BAS and RTL, and Kremny/SKU and Pultwen were present. All parties present were allowed an opportunity to make affirmative presentations only on arguments included in that party's case briefs and were also allowed to make rebuttal presentations only on arguments included in that party's rebuttal brief.

On January 28, 2003, the Department placed publicly available surrogate value data for petroleum coke on the record. The Department provided all parties an opportunity to comment on this value. On January 30, 2003, the Department received comments from BAS and RTL and petitioners.

Additionally, on February 3, 2003, the Department continued to find Pultwen and the U.S. trading company were affiliated. *See Memorandum For Joseph A. Spetrini, Deputy Assistant Secretary for Import Administration, Group III: Antidumping Investigation of Silicon Metal from Russia; Final Affiliation Memorandum of Pultwen Limited and U.S. Trading Company*, dated February 3, 2003 (''*Final Affiliation Memo*'').

The Department has conducted and completed the investigation in accordance with section 735 of the Act.

Scope of Investigation

For purposes of this investigation, the product covered is silicon metal, which generally contains at least 96.00 percent but less than 99.99 percent silicon by weight. The merchandise covered by this investigation also includes silicon metal from Russia containing between 89.00 and 96.00 percent silicon by weight, but containing more aluminum than the silicon metal which contains at least 96.00 percent but less than 99.99 percent silicon by weight. Silicon metal currently is classifiable under subheadings 2804.69.10 and 2804.69.50 of the Harmonized Tariff Schedule of the United States (''HTSUS''). This investigation covers all silicon metal meeting the above specification, regardless of tariff classification.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs to this investigation are addressed in the *Issues and Decision Memorandum from Joseph A. Spetrini, Deputy Assistant Secretary, to Faryar Shirzad, Assistant Secretary* (February 3, 2003) (''*Decision Memo*''), which is hereby adopted by this notice. A list of

the issues which parties have raised and to which we have responded, and other issues addressed, is attached to this notice as an Appendix. Parties can find a complete discussion of all issues raised in this investigation and the corresponding recommendations in the Decision Memo, a public memorandum which is on file at the U.S. Department of Commerce, in the Central Records Unit, in room B–099. In addition, a complete version of the *Decision Memo* can be accessed directly on the Web at *http://ia.ita.doc.gov*. The paper copy and electronic version of the *Decision Memo* are identical in content.

Changes Since the Preliminary Determination

Based on our findings at verification, and analysis of comments received, we have made adjustments to the calculation methodology in calculating the final dumping margin in this proceeding. *See Analysis Memorandum of Bratsk Aluminum Smelter and Rual Trade Limited: Final Determination in the Less Than Fair Value Investigation of Silicon Metal from the Russian Federation* (February 3, 2003) ("*BAS and RTL Final Analysis Memo*"). Also, *see Analysis Memorandum of ZAO Kremny/Sual-Kremny-Ural Ltd. and Pultwen Ltd.: Final Determination in the Less Than Fair Value Investigation of Silicon Metal from the Russian Federation* (February 3, 2003) ("*Kremny/SKU and Pultwen Final Analysis Memo*").

Verification

As provided in section 782(i) of the Act, we verified the information submitted by BAS and RTL and Kremny/SKU and Pultwen for use in our final determination. We used standard verification procedures including examination of relevant accounting and production records, and original source documents provided by BAS and RTL and Kremny/SKU and Pultwen. For changes from the *Preliminary Determination* as a result of verification, *see BAS and RTL Final Analysis Memo* or *Kremny/SKU and Pultwen Final Analysis Memo*.

Nonmarket Economy Country

On June 6, 2002, the Department revoked Russia's status as a non-market economy ("NME"), effective April 1, 2002. *See Memorandum from Albert Hsu, Barbara Mayer, and Christopher Smith through Jeffrey May, Director, Office of Policy, to Faryar Shirzad, Assistant Secretary, Import Administration: Inquiry into the Status of the Russian Federation as a Non-Market Economy Country under the U.S. Antidumping Law*, dated June 6, 2002. Because the period of investigation predates the effective date of the Department's determination, we are continuing to utilize the NME methodology in this investigation. Should an antidumping order be issued in this case, the NME antidumping duty rates will remain in effect until they are changed as a result of a review, pursuant to section 751 of the Act, of a sufficient period of time after April 1, 2002.

Separate Rates

In our *Preliminary Determination*, we found that the respondents had met the criteria for the application of separate antidumping duty rates. We have not received any other information since the Preliminary Determination which would warrant reconsideration of our separates rates determination with respect to the respondents. Therefore, we continue to find that the respondents should be assigned individual dumping margins. For a complete discussion of the Department's determination that the respondents are entitled to separate rates, see the Preliminary Determination.

Russia-Wide Rate

For the reasons set forth in the *Preliminary Determination*, we continue to believe that use of adverse facts available for the Russia-wide rate is appropriate. *See Preliminary Determination*.

Use of Facts Otherwise Available

Section 776(a)(2) of the Act provides that, if an interested party withholds information that has been requested by the Department, fails to provide such information in a timely manner or in the form or manner requested, significantly impedes a proceeding under the antidumping statute, or provides information which cannot be verified, the Department shall use, subject to sections 782(d) and (e) of the Act, facts otherwise available in reaching the applicable determination. Thus, pursuant to section 776(a) of the Act, the Department is required to apply, subject to section 782(d), facts otherwise available. Pursuant to section 782(e), the Department shall not decline to consider such information if all of the following requirements are met: (1) The information is submitted by the established deadline; (2) the information can be verified; (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination; (4) the interested party has demonstrated that it acted to the best of its ability; and (5) the information can be used without undue difficulties. In addition, section 776(b) of the Act provides that, if the Department finds that an interested party "has failed to cooperate by not acting to the best of its ability to comply with a request for information," the Department may use information that is adverse to the interests of the party as the facts otherwise available. The statute also provides that such an adverse inference may be based on secondary information, including information drawn from the petition, a final determination in an investigation, any previous administrative review; or any other information placed on the record.

In the *Preliminary Determination*, the Department applied total facts available for the Russia-wide rate using BAS's calculated margin, as it was the highest margin. For the final determination, BAS's calculated margin is less than the margin in the petition. Section 776(b) of the Act also provides that an adverse inference may include reliance on information from the petition. See also Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Rep. No. 103–316 at 870 (1994) ("SAA"). Section 776(c) of the Act provides that where the Department selects from among the facts otherwise available and relies on "secondary information," such as the petition, the Department shall to the extent practicable, corroborate that information from independent sources reasonably at the Department's disposal. The SAA states that "corroborate" means to determine that the information used has probative value: *See* SAA, at 870. The petitioners' methodology for calculating the EP and NV, in the petition, is discussed in the initiation notice. To corroborate the petitioners' EP calculations, we compared the prices in the petition to the prices submitted by respondents for silicon metal. Based on a comparison of the U.S. Census Bureau's official IM–145 import statistics with the average unit values in the petition, we find the export price suggested in the petition to be consistent with those statistics. To corroborate the petitioners' NV calculation, we compared the petitioners' factor consumption data to the data reported by respondents and found them to be similar. Finally, we valued the factors in the petition using the surrogate values we selected for the final determination. However, by using the surrogate values we selected for the final determination, the petition margin is lower than BAS's calculated margin. Therefore, for the final determination, we have continued to apply total facts

available for the Russia-wide rate using BAS's calculated margin for the final determination.

Also in the *Preliminary Determination*, for Kremny/SKU, we applied partial facts available for the quantity of unreported sales by the U.S. trading company. We continue to find partial facts available are appropriate for valuing the quantity of unreported sales by the U.S. trading company and will continue to apply partial adverse facts available for the final determination. *See Decision Memo*, at Comment 19. As discussed above, BAS's calculated margin for the final determination is the highest corroborated margin in this investigation. Therefore, we have continued to apply partial adverse facts available to the quantity of unreported sales by the U.S. trading company using BAS's calculated margin for the final determination.

Additionally, we are applying adverse facts available to certain unreported raw materials by Kremny. *See Decision Memo*, at Comment 11. We are using the highest surrogate value for a mineral to value the quantity of unreported raw materials.

Critical Circumstances

In the Department's *Preliminary Determination*, we determined that critical circumstances exist for imports of silicon metal from Russia manufactured and/or exported by the Russia-wide entity. We preliminarily found, however, that critical circumstances do not exist for BAS and RTL and Kremny/SKU and Pultwen because there was no evidence of "massive imports" based on a five-month comparison period. At the time of the *Preliminary Determination*, the Department received shipment data from BAS and RTL and Kremny/SKU and Pultwen through July 2002. Since the *Preliminary Determination*, BAS and RTL and Kremny/SKU and Pultwen have submitted shipment data through November 2002 . We have reviewed this data and we continue to find that critical circumstances do not exist for BAS and RTL and Kremny/SKU and Pultwen based on the lack of "massive imports" as shown by the six-month shipment data. However, we continue to find that critical circumstances exist for the Russia-wide entity as discussed in the *Preliminary Determination*.

Suspension Agreement

On October 1, 2002, we received a joint request from the two primary exporters of silicon metal from Russia, BAS and Kremny/SKU, proposing a suspension agreement pursuant to 734(c) of the Act. Under a suspension agreement concluded pursuant to section 734(c) of the Act, the normal value cannot exceed the U.S. market price by more than 15 percent. Morever, we may only accept a suspension agreement under 734(c) of the Act if we determine that "extraordinary circumstances are present in a case," such as the suspension of the investigation will be more beneficial to the domestic industry than the continuation of the investigation, and the investigation is complex. No agreement was concluded.

Fair Value Comparisons

To determine whether sales of silicon metal from Russia were made in the United States at less than fair value, we compared export price to NV, as described in the "Export Price" and "Normal Value" sections of the *Preliminary Determination*. In accordance with section 777A(d)(1)(A)(i) of the Act, we calculated weighted-average EPs.

Surrogate Country

For purposes of the final determination, we continue to find that Egypt remains the appropriate primary surrogate country for Russia. For certain factors of production values, where we could not locate usable Egyptian prices, we used Thai import prices (for charcoal) or domestic South African prices (for quartzite and quartzite fines). For further discussion and analysis regarding the surrogate country selection for Russia, see the "Surrogate Country" section of our *Preliminary Determination* and the Issues and Decision Memorandum, at Comments 1–9.

Continuation of Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Act, we are directing the U.S. Customs Service ("Customs") to continue to suspend liquidation of imports of subject merchandise, which is produced by BAS and Kremny/SKU, and entered, or withdrawn from warehouse, for consumption on or after the date of publication of the *Preliminary Determination* in the **Federal Register**. Additionally, in accordance with section 735(c)(1)(B) of the Act, we are directing Customs to continue to suspend liquidation of imports of subject merchandise, which is produced by the Russia-wide entity (all entries of subject merchandise except for entries of Kremny/SKU or BAS material), and entered, or withdraw from warehouse, for consumption on or after the date following 90 days prior to the date of publication of the *Preliminary Determination* in the **Federal Register**. We will instruct Customs to continue to require a cash deposit or the posting of a bond equal to the weighted-average amount by which the NV exceeds the EP, as indicated below. These suspension of liquidation instructions will remain in effect until further notice. The weighted-average dumping margins are as follows:

SILICON METAL

Exporter	Weighted-Average margin (percent)
Kremny/SKU	54.77
BAS	77.51
Russia-Wide Rate	77.51

Disclosure

The Department will disclose calculations performed, within five days of the date of publication of this notice, to the parties in this investigation, in accordance with section 351.224(b) of the Department's regulations.

International Trade Commission Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our affirmative determination of sales at LTFV. As our final determination is affirmative, the ITC will determine within 45 days after our final determination whether imports of silicon metal from Russia are materially injuring, or threaten material injury to, the U.S. industry. If the ITC determines that material injury, or threat of material injury does not exist, the proceeding will be terminated and all securities posted will be refunded or cancelled. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing Customs officials to assess antidumping duties on all imports of the subject merchandise entered for consumption on or after the effective date of the suspension of liquidation.

This notice also serves as a reminder to parties subject to administrative protective order ("APO") of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of return or destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and the terms of APO is a sanctionable violation.

This determination is issued and published in accordance with sections 735(d) and 777(i)(1) of the Act.

Dated: February 3, 2003.

Faryar Shirzad,

Assistant Secretary for Import Administration.

Appendix I

Petitioners' Comments

Comment 1: Egypt as a primary surrogate country
Comment 2: Valuation of quartzite
Comment 3: Valuation of coal
Comment 4: Valuation of petroleum coke
Comment 5: Valuation of wood charcoal
Comment 6: Valuation of electrodes
Comment 7: Valuation of rail freight
Comment 8: Valuation of electricity
Comment 9: Valuation of financial ratios
Comment 10: Valuation of profit
Comment 11: Silicon metal fines
Comment 12: Kremny's unreported raw materials
Comment 13: RTL's date of sale
Comment 14: Pultwen's sales to a certain U.S. customer
Comment 15: Discounts
Comment 16: Brokerage and handling expenses
Comment 17: Expenses Related to a Certain Sale

Kremny/SKU's and Pultwen's Comments

Comment 18: Relationship between Pultwen and the U.S. trading company
Comment 19: Use of Adverse Facts Available regarding the U.S. trading company's sales

BAS's and RTL's Comments

Comment 20: Valuing of inland freight added to surrogate import values for raw materials
Comment 21: Packing materials
Comment 22: Electricity usage
Comment 23: Insurance expense
Comment 24: Labor hours
Comment 25: Electrodes

[FR Doc. 03–3408 Filed 2–10–03; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A-201–822]

Stainless Steel Sheet and Strip in Coils from Mexico; Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative review of stainless steel sheet and strip from Mexico.

SUMMARY: On August 7, 2002, the Department of Commerce (the Department) published the preliminary results of the administrative review of the antidumping duty order on stainless steel sheet and strip in coils from Mexico (67 FR 41523). This review covers one manufacturer/exporter, ThyssenKrupp Mexinox S.A. de C.V. (Mexinox) of the subject merchandise to the United States during the period July 1, 2000 to June 30, 2001. Based on our analysis of the comments received, we have made changes in the margin calculation. Therefore, the final results differ from the preliminary results. The final weighted-average dumping margin for the reviewed firm is listed below in the section entitled "Final Results of Review."

EFFECTIVE DATE: February 11, 2003.

FOR FURTHER INFORMATION CONTACT: Deborah Scott or Robert James, AD/CVD Enforcement, Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230, telephone : (202) 482–2657 or (202) 482–0649, respectively.

SUPPLEMENTARY INFORMATION:

Background

On August 7, 2002, the Department published in the **Federal Register** the preliminary results of the administrative review of the antidumping duty order on stainless steel sheet and strip in coils from Mexico for the period July 1, 2000 to June 30, 2001. *See Stainless Steel Sheet and Strip in Coils from Mexico; Preliminary Results of Antidumping Duty Administrative Review* (67 FR 51204). In response to the Department's invitation to comment on the preliminary results of this review, Mexinox (the respondent) and Allegheny Ludlum, AK Steel Corporation, J&L Specialty Steel, Inc., Butler-Armco Independent Union, Zanesville Armco Independent Union, and the United Steelworkers of America, AFL-CIO/CLC (collectively, petitioners) filed their case briefs on September 12, 2002. Petitioners submitted their rebuttal brief on September 20, 2002 and Mexinox filed its rebuttal brief on September 23, 2002. On November 7, 2002, we published in the **Federal Register** our notice of the extension of time limits for this review (67 FR 67832). This extension established the deadline for this final as February 3, 2003.

Period of Review

The period of review (POR) is July 1, 2000 to June 30, 2001.

Scope of the Review

For purposes of this order, the products covered are certain stainless steel sheet and strip in coils. Stainless steel is an alloy steel containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. The subject sheet and strip is a flat-rolled product in coils that is greater than 9.5 mm in width and less than 4.75 mm in thickness, and that is annealed or otherwise heat treated and pickled or otherwise descaled. The subject sheet and strip may also be further processed (*e.g.*, cold-rolled, polished, aluminized, coated, etc.) provided that it maintains the specific dimensions of sheet and strip following such processing.

The merchandise subject to this order is classified in the Harmonized Tariff Schedule of the United States (HTS) at subheadings: 7219.13.00.31, 7219.13.00.51, 7219.13.00.71, 7219.13.00.81, 7219.14.00.30, 7219.14.00.65, 7219.14.00.90, 7219.32.00.05, 7219.32.00.20, 7219.32.00.25, 7219.32.00.35, 7219.32.00.36, 7219.32.00.38, 7219.32.00.42, 7219.32.00.44, 7219.33.00.05, 7219.33.00.20, 7219.33.00.25, 7219.33.00.35, 7219.33.00.36, 7219.33.00.38, 7219.33.00.42, 7219.33.00.44, 7219.34.00.05, 7219.34.00.20, 7219.34.00.25, 7219.34.00.30, 7219.34.00.35, 7219.35.00.05, 7219.35.00.15, 7219.35.00.30, 7219.35.00.35, 7219.90.00.10, 7219.90.00.20, 7219.90.00.25, 7219.90.00.60, 7219.90.00.80, 7220.12.10.00, 7220.12.50.00, 7220.20.10.10, 7220.20.10.15, 7220.20.10.60, 7220.20.10.80, 7220.20.60.05, 7220.20.60.10, 7220.20.60.15, 7220.20.60.60, 7220.20.60.80, 7220.20.70.05, 7220.20.70.10, 7220.20.70.15, 7220.20.70.60, 7220.20.70.80, 7220.20.80.00, 7220.20.90.30, 7220.20.90.60, 7220.90.00.10, 7220.90.00.15, 7220.90.00.60, and 7220.90.00.80. Although the HTS subheadings are provided for convenience and Customs purposes, the Department's written description of the merchandise under review is dispositive.

Excluded from the scope of this order are the following: (1) Sheet and strip that is not annealed or otherwise heat treated and pickled or otherwise descaled; (2) sheet and strip that is cut to length; (3) plate (i.e., flat-rolled stainless steel products of a thickness of 4.75 mm or more); (4) flat wire (i.e., cold-rolled sections, with a prepared edge, rectangular in shape, of a width of

not more than 9.5 mm); and (5) razor blade steel. Razor blade steel is a flat-rolled product of stainless steel, not further worked than cold-rolled (cold-reduced), in coils, of a width of not more than 23 mm and a thickness of 0.266 mm or less, containing, by weight, 12.5 to 14.5 percent chromium, and certified at the time of entry to be used in the manufacture of razor blades. See Chapter 72 of the HTSUS, "Additional U.S. Note'" 1(d).

In response to comments by interested parties the Department has determined that certain specialty stainless steel products are also excluded from the scope of this order. These excluded products are described below.

Flapper valve steel is defined as stainless steel strip in coils containing, by weight, between 0.37 and 0.43 percent carbon, between 1.15 and 1.35 percent molybdenum, and between 0.20 and 0.80 percent manganese. This steel also contains, by weight, phosphorus of 0.025

percent or less, silicon of between 0.20 and 0.50 percent, and sulfur of 0.020 percent or less. The product is manufactured by means of vacuum arc remelting, with inclusion controls for sulphide of no more than 0.04 percent and for oxide of no more than 0.05 percent. Flapper valve steel has a tensile strength of between 210 and 300 ksi, yield strength of between 170 and 270 ksi, plus or minus 8 ksi, and a hardness (Hv) of between 460 and 590. Flapper valve steel is most commonly used to produce specialty flapper valves for compressors.

Also excluded is a product referred to as suspension foil, a specialty steel product used in the manufacture of suspension assemblies for computer disk drives. Suspension foil is described as 302/304 grade or 202 grade stainless steel of a thickness between 14 and 127 microns, with a thickness tolerance of plus-or-minus 2.01 microns, and surface glossiness of 200 to 700 percent Gs. Suspension foil must be supplied in coil widths of not more than 407 mm, and with a mass of 225 kg or less. Roll marks may only be visible on one side, with no scratches of measurable depth. The material must exhibit residual stresses of 2 mm maximum deflection, and flatness of 1.6 mm over 685 mm length.

Certain stainless steel foil for automotive catalytic converters is also excluded from the scope of this order. This stainless steel strip in coils is a specialty foil with a thickness of between 20 and 110 microns used to produce a metallic substrate with a honeycomb structure for use in automotive catalytic converters. The steel contains, by weight, carbon of no more than 0.030 percent, silicon of no more than 1.0 percent, manganese of no more than 1.0 percent, chromium of between 19 and 22 percent, aluminum of no less than 5.0 percent, phosphorus of no more than 0.045 percent, sulfur of no more than 0.03 percent, lanthanum of between 0.002 and 0.05 percent, and total rare earth elements of more than 0.06 percent, with the balance iron.

Permanent magnet iron-chromium-cobalt alloy stainless strip is also excluded from the scope of this order. This ductile stainless steel strip contains, by weight, 26 to 30 percent chromium, and 7 to 10 percent cobalt, with the remainder of iron, in widths 228.6 mm or less, and a thickness between 0.127 and 1.270 mm. It exhibits magnetic remanence between 9,000 and 12,000 gauss, and a coercivity of between 50 and 300 oersteds. This product is most commonly used in electronic sensors and is currently available under proprietary trade names such as "Arnokrome III."[1]

Certain electrical resistance alloy steel is also excluded from the scope of this order. This product is defined as a non-magnetic stainless steel manufactured to American Society of Testing and Materials (ASTM) specification B344 and containing, by weight, 36 percent nickel, 18 percent chromium, and 46 percent iron, and is most notable for its resistance to high temperature corrosion. It has a melting point of 1390 degrees Celsius and displays a creep rupture limit of 4 kilograms per square millimeter at 1000 degrees Celsius. This steel is most commonly used in the production of heating ribbons for circuit breakers and industrial furnaces, and in rheostats for railway locomotives. The product is currently available under proprietary trade names such as "Gilphy 36."[2]

Certain martensitic precipitation-hardenable stainless steel is also excluded from the scope of this order. This high-strength, ductile stainless steel product is designated under the Unified Numbering System (UNS) as S45500-grade steel, and contains, by weight, 11 to 13 percent chromium, and 7 to 10 percent nickel. Carbon, manganese, silicon and molybdenum each comprise, by weight, 0.05 percent or less, with phosphorus and sulfur each comprising, by weight, 0.03 percent or less. This steel has copper, niobium, and titanium added to achieve aging, and will exhibit yield strengths as high as 1700 Mpa and ultimate tensile strengths as high as 1750 Mpa after aging, with elongation percentages of 3 percent or less in 50 mm. It is generally provided in thicknesses between 0.635 and 0.787 mm, and in widths of 25.4 mm. This product is most commonly used in the manufacture of television tubes and is currently available under proprietary trade names such as "Durphynox 17."[3]

Finally, three specialty stainless steels typically used in certain industrial blades and surgical and medical instruments are also excluded from the scope of this order. These include stainless steel strip in coils used in the production of textile cutting tools (*e.g.*, carpet knives).[4] This steel is similar to ASTM grade 440F, but containing, by weight, 0.5 to 0.7 percent of molybdenum. The steel also contains, by weight, carbon of between 1.0 and 1.1 percent, sulfur of 0.020 percent or less, and includes between 0.20 and 0.30 percent copper and between 0.20 and 0.50 percent cobalt. This steel is sold under proprietary names such as "GIN4 Mo." The second excluded stainless steel strip in coils is similar to AISI 420-J2 and contains, by weight, carbon of between 0.62 and 0.70 percent, silicon of between 0.20 and 0.50 percent, manganese of between 0.45 and 0.80 percent, phosphorus of no more than 0.025 percent and sulfur of no more than 0.020 percent. This steel has a carbide density on average of 100 carbide particles per square micron. An example of this product is "GIN5" steel. The third specialty steel has a chemical composition similar to AISI 420 F, with carbon of between 0.37 and 0.43 percent, molybdenum of between 1.15 and 1.35 percent, but lower manganese of between 0.20 and 0.80 percent, phosphorus of no more than 0.025 percent, silicon of between 0.20 and 0.50 percent, and sulfur of no more than 0.020 percent. This product is supplied with a hardness of more than Hv 500 guaranteed after customer processing, and is supplied as, for example, "GIN6."[5]

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this administrative review are addressed in the "Issues and Decision Memorandum" (Decision Memorandum) from Joseph A. Spetrini, Deputy Assistant Secretary, Group III, Import Administration, to Faryar Shirzad, Assistant Secretary for Import Administration, dated February 3, 2003, which is hereby adopted by this

[1] "Arnokrome III" is a trademark of the Arnold Engineering Company.

[2] "Gilphy 36" is a trademark of Imphy, S.A.

[3] "Durphynox 17" is a trademark of Imphy, S.A.

[4] This list of uses is illustrative and provided for descriptive purposes only.

[5] "GIN4 Mo," "GIN5" and "GIN6" are the proprietary grades of Hitachi Metals America, Ltd.

notice. A list of the issues which parties have raised and to which we have responded, all of which are in the Decision Memorandum, is attached to this notice as an appendix. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum, which is on file in the Central Records Unit, room B-099, of the main Department building. In addition, a complete version of the Decision Memorandum can be accessed directly via the Internet at http://ia.ita.doc.gov. The paper copy and electronic version of the Decision Memorandum are identical in content.

Changes Since the Preliminary Results

Based on our analysis of the comments received, we have made four changes to the margin calculation:

- First, we revised the U.S. indirect selling expense (ISE) ratio by removing raw material sales from the denominator and by deducting an amount attributable to expenses incurred in selling the raw materials from the numerator. We used this revised ratio to recalculate U.S. ISEs.
- Second, we recalculated Mexinox's interest expense ratio by: (1) disallowing its reported offset to short-term interest income and instead estimating short-term interest income based on the consolidated financial statements of ThyssenKrupp AG, its parent at the highest level of consolidation; (2) including an amount representing foreign exchange gains and losses incurred by ThyssenKrupp AG on financing activities; and (3) deducting an amount representing packing expenses from the denominator.
- Third, we recalculated Mexinox's general and administrative (G&A) expense ratio by including employees' statutory profit sharing in the numerator and by deducting packing expenses from the denominator.
- Fourth, we included in the denominator of the assessment rate the entered value of subject merchandise that entered during the previous period of review or during the instant review for consumption in the United States but was sold to unaffiliated parties outside the United States during the instant review.

These changes are discussed in the relevant sections of the Decision Memorandum.

Final Results of Review

We determine that the following weighted-average percentage margin exists for the period July 1, 2000 to June 30, 2001:

Manufacturer/ Exporter	Weighted Average Margin (percentage)
Mexinox	6.15

Assessment

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b), we have calculated importer-specific *ad valorem* duty assessment rates. Where the importer-specific assessment rate is above *de minimis*, we will instruct Customs to assess duties on all entries of subject merchandise by that importer. We will direct the Customs Service to assess the resulting percentage margins against the entered Customs values for the subject merchandise on each of that importer's entries under the relevant order during the review period (*see* 19 CFR 351.212(a)).

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of these final results for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of these final results of administrative review, as provided by section 751(a)(1) of the Tariff Act: (1) the cash deposit rate for the reviewed company will be the rate listed above; (2) if the exporter is not a firm covered in this review, a prior review, or the original less than fair value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (3) the cash deposit rate for all other manufacturers or exporters will continue to be the "all others" rate of 30.85 percent, which is the all others rate established in the LTFV investigation. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

Notification to Interested Parties

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of the antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective orders (APOs) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305, that continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This determination is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Tariff Act.

Dated: February 3, 2003.

Faryar Shirzad,

Assistant Secretary for Import Administration.

Appendix Issues in Decision Memorandum

Adjustments to Normal Value

Comment 1. Additional Circumstance of Sale Adjustment to Normal Value
Comment 2: Home Market Indirect Selling Expenses
Comment 3: Level-of-Trade Adjustment

Adjustments to United States Price

Comment 4: CEP Profit
Comment 5: Duty Drawback
Comment 6: U.S. Indirect Selling Expenses
Comment 7: Additional Mexinox USA Expenses
Comment 8: Calculation of the U.S. Interest Rate
Comment 9: Inventory Carrying Costs

Cost of Production

Comment 10: Interest Expenses
Comment 11: General & Administrative Expenses
Comment 12: Whether to Include Services Supplied by Mexinox USA in Material Costs
Comment 13: Scrap Recovery Values

Further Manufacturing

Comment 14: Value-Added Costs by Ken-Mac

Assessment Rates

Comment 15: Assessment Rate Methodology

Margin Calculations

Comment 16: Treatment of Non-Dumped Sales

[FR Doc. 03–3406 Filed 2–10–03; 8:45 am]
BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A-201–822]

Stainless Steel Sheet and Strip in Coils from Mexico; Antidumping Duty Administrative Review; Time Limits

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Extension of Time Limits.

SUMMARY: The Department of Commerce (the Department) is extending the time limit for the preliminary results of the 2001–2002 administrative review of the antidumping duty order on stainless steel sheet and strip in coils from Mexico. This review covers one manufacturer/exporter of the subject merchandise to the United States and the period July 1, 2001 through June 30, 2002.

EFFECTIVE DATE: February 11, 2003

FOR FURTHER INFORMATION CONTACT: Deborah Scott at (202) 482–2657 or Robert James at (202) 482–0649, Antidumping and Countervailing Duty Enforcement Group III, Office Eight, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION: On August 27, 2002, in response to a request from the respondent, ThyssenKrupp Mexinox S.A. de C.V., we published a notice of initiation of this administrative review in the **Federal Register**. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 67 FR 55000. Pursuant to the time limits for administrative reviews set forth in section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Tariff Act), the current deadlines are April 2, 2003 for the preliminary results and July 31, 2003 for the final results. It is not practicable to complete this review within the normal statutory time limit due to a number of significant case issues, such as major inputs purchased from affiliated suppliers, the reporting of downstream sales, and level of trade. Therefore, the Department is extending the time limit for completion of the preliminary results until July 31, 2003 in accordance with section 751(a)(3)(A) of the Tariff Act. The deadline for the final results of this review will continue to be 120 days after publication of the preliminary results.

This extension is in accordance with section 751(a)(3)(A) of the Tariff Act (19 U.S.C. 1675 (a)(3)(A) (2001)).

Dated: January 30, 2003.

Joseph A. Spetrini,

Deputy Assistant Secretary for Import Administration, Group III.

[FR Doc. 03–3407 Filed 2–10–03; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

Export Trade Certificate of Review

ACTION: Notice of issuance of an amended Export Trade Certificate of Review, application no. 90–5A005.

SUMMARY: The Department of Commerce has issued an amended Export Trade Certificate of Review to the California Kiwifruit Commission ("CKC") and California Kiwifruit Exporters Association ("CKEA") on February 5, 2003. The original certificate was issued on August 10, 1990 (55 FR 33740, August 17, 1990), and previously amended on November 27, 1990 (55 FR 50204, December 5, 1990); January 29, 1991 (56 FR 4601, February 5, 1991); February 24, 1992 (57 FR 6712, February 27, 1992); and January 14, 2002 (67 FR 2636, January 18, 2002).

FOR FURTHER INFORMATION CONTACT: Jeffrey C. Anspacher, Director, Office of Export Trading Company Affairs, International Trade Administration, (202) 482–5131 (this is not a toll-free number), or by E-mail at *oetca@ita.doc.gov*.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. sections 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. The regulations implementing title III are found at 15 CFR part 325 (2001).

The Office of Export Trading Company Affairs ("OETCA") is issuing this notice pursuant to 15 CFR 325.6(b), which requires the Department of Commerce to publish a summary of the certification in the **Federal Register**. Under section 305(a) of the Act and 15 CFR 325.11(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

Description of Amended Certificate

CKC's and CKEA's Export Trade Certificate of Review has been amended to:

1. Add each of the following companies as a new "member" of the certificate within the meaning of section 325.2(1) of the regulations (15 CFR 325.2(1)): Oppenheimer, David & Associates, LP, Seattle, Washington; and Pacific Trellis Fruit, Reedley, California;

2. Delete the following companies as "members" of the certificate: Sunny Cal Farms, Reedley, California; and George Brothers, Sultana, California; and

3. Change the listing of the company names for the current members: Universal Produce Corp. to the new listing Phillips Farms Marketing; Chase National Kiwi Farms, Inc. to the new listing Chase National Kiwi Farms; Kings Canyon/Corrin Sales Corp. to the new listing Kings Canyon Corrin Sales, LLC; Regatta Tropicals to the new listing Regatta Tropicals, Ltd; Stellar Distributing to the new listing Stellar Distributing, Inc.; Sun Pacific Marketing Coop. to the new listing Sun Pacific Marketing Cooperative, Inc.; Trinity Fruit Sales Co. to the new listing Trinity Fruit Sales Company; Venida Packing Co. to the new listing Venida Packing, Inc.; and WKS/Wil-Ker-Son Ranch to the new listing WKS Sales.

The effective date of the amended certificate is November 7, 2002. A copy of the amended certificate will be kept in the International Trade Administration's Freedom of Information Records Inspection Facility, Room 4102, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

Dated: February 5, 2003.

Jeffrey C. Anspacher,

Director, Office of Export Trading, Company Affairs.

[FR Doc. 03–3300 Filed 2–10–03; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 011102267–3025–03; I.D. 100102F]

Financial Assistance for Marine Mammal Stranding Networks Through the John H. Prescott Marine Mammal Rescue Assistance Grant Program

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of solicitation for applications.

SUMMARY: The National Marine Fisheries Service (NMFS) (hereinafter "we" or "us") issues this document to solicit applications for Federal assistance under the John H. Prescott Marine Mammal Rescue Assistance Grant Program (Prescott Grant Program). This document describes how to submit applications and proposals for funding under the 2003/2004 Prescott Grant Program and how we will determine which proposals will be funded. We will provide financial assistance (up to $100,000 in Federal funds, with a 25 percent non-federal match) to eligible stranding network participants working within waters under United States jurisdiction for proposals pertaining to cetaceans and pinnipeds, except walrus. Proposals must fall primarily within one of the following categories: (A) recovery or treatment (i.e., rescue and/or rehabilitation) of live stranded marine mammals, (B) data collection from living or dead stranded marine mammals for scientific research regarding marine mammal health, and (C) facility operations directly related to the recovery or treatment of marine mammals or collection of data from living or dead stranded marine mammals. Proposals will be reviewed for eligibility, technical merit, and consistency with the Prescott Grant Program's national and regional funding priorities. Final selection will be based on results of the on-line reviews, peer reviews, merit review, equitable distribution of funds among regions, as well as other policy considerations.

DATES: Proposal packages for the annual award cycle must be postmarked by April 14, 2003. For proposal packages submitted under the emergency assistance component of the Prescott Grant Program no submission deadline applies (see Section I. A.).

ADDRESSES: Proposal packages for the annual award cycle should be sent to NOAA/NMFS/Office of Protected Resources, Marine Mammal Health and Stranding Response Program, Attn:Michelle Ordono, 1315 East-West Highway, Room 12604, Silver Spring, MD 20910–3283, phone 301–713–2322 ext 177. Proposal packages for the emergency assistance component of the Prescott Grant Program should be sent to the NMFS Regional Office that oversees the area of action (see the NMFS Prescott Grant Program web page at:http://www.nmfs.noaa.gov/prot_res/PR2/Health_and_Stranding_Response_Program/Prescott.html for addresses).

All proposal packages must include: (1) one signed original of the entire proposal and all required forms, and (2) two paper copies of the entire proposal and all required forms (including supporting documentation). One electronic copy on CD or diskette (in Microsoft Word v. 97 or earlier or WordPerfect v. 6.1 or lower) of the entire proposal, including supporting documentation but minus all required forms, is also requested (although not required). Federal forms and required elements of the proposal packages can be obtained from the NMFS Protected Resources Home Page (see section I. L. Electronic Access Addresses). We cannot accept completed applications via the Internet or facsimile at this time.

FOR FURTHER INFORMATION CONTACT: Simona Perry, Marine Mammal Health and Stranding Response Program, phone 301–713–2322 ext 106 or via email:Prescott Grant FR.comments @ noaa.gov.

SUPPLEMENTARY INFORMATION:

I. Introduction

The Marine Mammal Rescue Assistance Act of 2000 amended the Marine Mammal Protection Act (MMPA) to establish the John H. Prescott Marine Mammal Rescue Assistance Grant Program (16 U.S.C. 1421f–1)(hereafter referred to as the Prescott Grant Program). This notice describes how to submit proposals to the Prescott Grant Program for funding using fiscal year (FY) 2003 and 2004 funds and how we will determine which proposals will be funded.

A. Background

The Prescott Grant Program is conducted by the Secretary of Commerce to provide federal assistance to eligible stranding network participants (see section I. E. of this document) for (A) recovery or treatment (i.e., rescue and/or rehabilitation) of live stranded marine mammals[1], (B) data collection from living or dead stranded marine mammals for scientific research regarding marine mammal health, and (C) facility operations directly related to the recovery or treatment of stranded marine mammals and collection of data from living or dead stranded marine mammals. The Prescott Grant Program is administered through the NMFS Marine Mammal Health and Stranding Response Program (MMHSRP).

The MMHSRP was formalized in 1992 to fulfill the mandates of the Marine Mammal Health and Stranding Response Act, which amended the MMPA in 1992 (16 U.S.C. 1421). The MMHSRP was established to achieve 3 broad goals: (1) to facilitate the collection and dissemination of reference data on marine mammals and health trends of marine mammal populations in the wild; (2) to correlate the health of marine mammals and marine mammal populations in the wild with available data on physical, chemical, and biological environmental parameters; and (3) to coordinate effective responses to unusual mortality events. To achieve these goals, the MMHSRP (through close coordination with regional stranding networks) has the following objectives: improve the rescue, care and treatment of stranded marine mammals; collect life history data and other biomedical data from live and dead stranded marine mammals; develop baselines of "normal" stranding causes; improve the rapid detection of unusual mortality events; collect archival samples for future retrospective studies on causes of mortality or illness and for placement in the National Marine Mammal Tissue (and Serum) Bank; and develop comprehensive and consistent guidance for the rescue and rehabilitation of stranded marine mammals, collection of specimens, quality assurance, and analysis of tissue samples. It is anticipated that awards funded through the Prescott Grant Program will facilitate achievement of the MMHSRP goals and objectives by providing financial assistance to eligible stranding network participants.

It is NMFS's intent to also reserve a portion of the funds to make emergency assistance available for unexpected, significant stranding events throughout the year on an as-needed basis. This emergency assistance is available to eligible network participants regardless of whether they are already receiving funds from the Prescott Grant Program's annual award cycle for another project. Responders to such stranding events should contact the NMFS Regional Office that oversees the area of action for further information and submit the proposal package to the NMFS regional stranding coordinator for review and approval of the need for such an award. For addresses of appropriate NMFS Regional Offices and stranding coordinators, see the MMHSRP web site:http://www.nmfs.noaa.gov/prot_res/PR2/Health_and_Stranding_Response_Program/

[1]For purposes of this document, a stranded marine mammal is a marine mammal in the wild that is (1) dead and on a beach, shore, or in waters under the jurisdiction of the United States or (2) is live and on a beach or shore of the United States and unable to return to the water, is in apparent need of medical attention, or is in waters under the jurisdiction of the United States but is unable to return to its natural habitat under its own power or without assistance.

mmhsrp.html. The NMFS regional coordinator will then forward all application materials to the Office of Protected Resources with a letter of concurrence of need. Until further guidance is published, those seeking emergency assistance funding should prepare their proposal packages according to the guidelines outlined in Section III of this document and forward all forms and documentation to the appropriate NMFS Regional Office.

B. Changes from the 2002 Solicitation

As a result of comments received from those who submitted proposals in 2002 and those who took part in the 2002 technical and merit reviews, changes to the solicitation and review processes are being instituted in this competition. Therefore, we encourage applicants who submitted a proposal in 2002, to read this entire document before preparing a proposal for the 2003/2004 cycle.

Four significant changes to the 2003/2004 funding competition include: 3 separate proposal categories that encompass Program goals and funding priorities (see Section I. C. and Section II); all proposal packages for the 2003/2004 award cycle will be sent to NMFS' Office of Protected Resources (see **ADDRESSES**); a new three stage review process, including on-line reviews of each proposal, panel peer reviews of each proposal, and Federal government merit review of each proposal scoring greater than 60 points in either the on-line or peer review (see Section IV); and new review criteria for use by both on-line and peer reviewers (see Section IV).

C. Proposal Categories

For this solicitation, all proposals must fall within one of the 3 following categories: Category A - Recovery or treatment of live stranded marine mammals (i.e., rescue of live stranded marine mammals including treatment, assessment, and/or rehabilitation); Category B - Data collection from living or dead stranded marine mammals (i.e., recovery of stranded marine mammals for collection of Level A, B, or C data, specimen collection, and/or analyses); Category C - Facility operations directly related to the recovery or treatment of stranded marine mammals or collection of data from living or dead stranded marine mammals (i.e., physical plant renovations, maintenance, facility modifications/upgrades, and/or construction).

Successful proposals under Category A will be those that propose to improve live marine mammal stranding recovery or treatment, including, but not limited to:enhancing the rescue and treatment of animals, training of responders and rehabilitators via development of outreach and educational material or workshops, developing and testing of new or novel techniques for transport, treatment, or reporting, and non-construction operational needs (e.g., equipment, supplies, staffing, printing) related to these activities. Successful proposals under Category B will be those that propose to collect data that will allow researchers to correlate physical, chemical, biological, and marine mammal health parameters towards a better understanding of marine mammal population biology, and non-construction operational needs (e.g., equipment, supplies, staffing, printing) related to these activities. Successful proposals under Category C will be those that propose to meet facility operation needs (e.g., physical alterations to facility, maintenance) for stranding response and recovery or conduct facility upgrades (e.g., renovations, build-outs) in order to enhance existing recovery or treatment areas or increase the ability to collect marine mammal health and environmental data before, during, or after stranding events. According to the statute, preference will be given to facility operation needs and upgrades for those facilities that have established records for rescuing or rehabilitating sick and stranded marine mammals.

The applicant must select only one of the 3 categories that best fits their proposal. We recognize that most projects will have overlap with more than one category; however, applicants must determine which one category best fits the overall goals of the proposed project. For additional guidance on the type of expertise that will be used in evaluating proposals, applicants should refer to Section IV. B. and IV. C. In the 2003/2004 award cycle, no Prescott Grant Program funds will go towards basic scientific research on non-stranded marine mammals (i.e., wild population studies).

D. Program Funding Priorities

Each proposal category has a set of national and regional funding priorities that relate to specific national or regional stranding network needs. All proposals must identify at least one national or regional funding priority that is directly related to the projects goals and objectives. These specific funding priorities are outlined in section II of this document and are not in any rank order.

E. Available Program Funds

This solicitation announces that a minimum of $1.3M is available for distribution and that a maximum of $8.8M may be available for distribution under the 2003/2004 Prescott Grant Program. For the 2003/2004 annual cycle there is $1.3M from carryover of FY 2002 funds, and possibly up to $3.76M from FY 2003 appropriations, and up to $3.76M from FY 2004 appropriations. Applicants are hereby given notice that neither funds for FY 2003 nor FY 2004 have been appropriated, and therefore exact dollar amounts cannot be given. The maximum Federal award for each annual award or emergency assistance award cannot exceed $100,000 (with a minimum of 25 percent non-Federal cost share), as stated in the legislative language (16 U. S. C. 1421f–1).

In addition to the annual competitive process, $400K is available from FY 2002 carryover to provide for emergency assistance awards. If appropriations are received for FY 2003 and FY 2004, then additional funds will be set aside for these emergency assistance awards. Of the FY 2003 appropriations, $200K will be set aside. Additionally, FY 2004 appropriations will be set aside as needed or as indicated by previous usage of the emergency assistance fund. All emergency funds set aside and unused will be carried over for awards in subsequent years.

There is no limit on the number of proposals that can be submitted by the same eligible stranding network participant or authorized researcher during the 2003/2004 annual cycle. However, there are insufficient funds to award financial assistance to every applicant. Multiple proposals submitted must clearly identify different projects and must be successful in the competitive review process. In an attempt to ensure that the greatest number of applicants receive assistance during the 2003/2004 funding cycle, eligible stranding network participants can receive no more than two awards in this cycle. The two awards must be for projects that are clearly separate in their objectives, goals, and budget requests. In addition, if eligible researchers are applying as Principal Investigators, and are not independently authorized under the MMPA Section 112(c), the MMPA Section 104 (see implementing regulations at 50 CFR 216.33–44), the MMPA Section 109(h) (see implementing regulations at 50 CFR 216.22), or the National Contingency Plan for Response to Marine Mammal Unusual Mortality Events, then they can receive no more than one award in the 2003/2004 cycle.

Eligible stranding network participants and researchers can be identified as Co-Investigators or Cooperators on an unlimited number of

proposals. In addition, Department of Commerce (DOC) and Department of Interior (DOI) employees may act as Cooperators if they are responsible for performing analyses or interpreting data collected under a Prescott award. However, no Prescott Grant Program funds can be used for salaries or travel of DOC or DOI employees. See section I. F. for Eligibility requirements.

There is no guarantee that sufficient funds will be available to make awards for all qualified projects. Publication of this notice does not oblige NOAA to award any specific project or to obligate any available funds. If an application for a financial assistance award is selected for funding, NOAA/NMFS has no obligation to provide any additional funding in connection with that award in subsequent years. In no event will NOAA or DOC be responsible for proposal preparation costs if this program fails to receive funding or is cancelled because of other agency priorities.

If a recipient of an award incurs any costs prior to receiving an award agreement signed by an authorized NOAA official, they would do so solely at their own risk of these costs not being included under the award. Notwithstanding any verbal or written assurance that applicants have received, pre-award costs are not allowed under the award unless the Grants Officer approves them in accordance with 15 CFR 14.28.

F. Eligibility

There are 5 categories of eligible stranding network participants that can apply for funds under this Program: (1) Letter of Agreement (LOA) holders; (2) LOA designees; (3) researchers; (4) NMFS-recognized Northwest Region participants; and, (5) state, local, or eligible Federal government entities.

In order for these organizations and individuals to apply for award funds under the Prescott Grant Program, they must meet the following eligibility criteria specific to their category of participation:

1. LOA Holder Participant

a. Active as an authorized participant for the past 3 years in network activities.[2]

b. Participating in good standing.[3]

c. Holding a current LOA for stranding response (either live or dead animal response) or rehabilitation from NMFS.

d. Not a current full-time or part-time employee of the DOC or the DOI.

2. LOA Designee Participant

a. Active as an authorized participant for the past 3 years in network activities[2].

b. Participating in good standing[3].

c. Holding a current letter of designation from a NMFS LOA holder.

d. Not a current full-time or part-time employee of DOC or DOI.

3. Researcher Participant

a. Active as an authorized participant for the past 3 years in network activitiess.[2]

b. Holds an authorizing letter from an appropriate NMFS Regional Administrator to salvage or receive salvaged dead stranded marine mammal specimens and parts for the purpose of utilization in scientific research (50 CFR 216.22), unless an exception to notification or prior authorization is cited under 50 CFR 216.22(c)(8). Persons authorized to salvage dead marine mammal specimens under this section must have registered the salvage with the appropriate NMFS Regional Office within 30 days after the taking or death occurs.

c. Holds or has applied for a NMFS scientific research and/or enhancement permit to take marine mammals requested under authority of the MMPA of 1972, as amended (16 U. S. C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the ESA of 1973, as amended (16 U. S. C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered fish and wildlife (50 CFR part 222, subpart C).

d. Have at least one designated co-Investigator(s) that is an active NMFS-authorized stranding network participant in good standing[3].

e. Not a current full-time or part-time employee of DOC or DOI.

4. Northwest Region Participants

a. Active as a NMFS-recognized participant for the past 3 years or more in Northwest Region network activities[2] and named in the Draft 2002 National Contingency Plan for Response to Marine Mammal Unusual Mortality Events.

b. Participating in good standing[3].

c. Not a current full-time or part-time employee of DOC or DOI.

5. State, Local, or Federal Government Participants

a. Actively involved as an authorized participant in stranding response and/or rehabilitation during the past 3 years in an area of geographic need (i.e., municipality or larger region with no existing responder)[2].

b. Participating in good standing[3].

c. State and local government officials or employees participating pursuant to MMPA section 109(h)(16 U.S.C. 1379(h)) for marine mammal species not listed under the Endangered Species Act and fulfilling reporting obligations outlined in 50 CFR 216.22 (i.e., submission of written report to NMFS every 6 months containing description of animal(s) involved, circumstances of taking, method of taking, name and position of official or employee involved, and disposition of animal(s)).

d. Not a current full-time or part-time employee of DOC or DOI.

Applicants must submit the required documentation in their proposal (see section III, How to Apply) as evidence that they are an LOA holder participant, designee participant, researcher participant, NMFS-recognized Northwest Region participant, or a state,

[2]Applications from new network members, such as individuals or groups that have been granted authorization recently, will likely not qualify for eligibility during the first few funding cycles unless those applicants have experience as active Network participants (e.g., as designee or under 109(h)) for the past 3 years. The Act makes clear its intent to provide financial assistance to the active stranding network: "Provide grants to eligible stranding network participants* * *", and preference should be given to: "* * * those facilities that have established records for rescuing or rehabilitating sick and stranded marine mammals." The 3 year period is important to establishing whether or not participants are in good standing by their completion of reporting requirements and level of cooperation.

[3]To be "in good standing", you must meet all of the following criteria:

a. If a Marine Mammal Protection Act (MMPA) or Endangered Species Act (ESA) scientific research or enhancement permit holder and the applicant is a designated Principal Investigator, have fulfilled all permit requirements, including but not limited to submission of all reports, and must have no pending or outstanding enforcement actions under the MMPA or ESA.

b. Have complied with the terms and responsibilities of the appropriate LOA, MMPA section 109(h) authorization, or National Contingency Plan (whichever applies). This includes the following reporting requirements: (1) timely reporting of strandings to NMFS, (2) timely submission of complete reports on basic or Level A data to the Regional Coordinator (includes investigator's name, species, stranding location, number of animals, date and time of stranding and recovery, length and condition, and sex; marine mammal parts retention or transfer; annual reports), and (3) collecting information or samples as necessary and as requested. This also includes the following coordination/cooperation requirements: (1) cooperation with state, local, and Federal officials, and (2) cooperation with other stranding network participants.

c. Have cooperated in a timely manner with NMFS in collecting and submitting Level B (supplementary information regarding sample collection related to life history and to the stranding event) and Level C (necropsy results) data and samples, when requested.

d. Have no current enforcement investigation for the take of marine mammals contrary to MMPA or ESA regulations.

e. Have no record of pending NMFS notice of violation(s) regarding the policies governing the goals and operations of the Stranding Network.

local, or Federal government participant. All eligibility criteria specified for the participant's category must be met in order for a proposal to be considered for funding. Proposals that are not eligible for funding according to the above criteria will be returned to the applicant with explanation.

We support cultural and gender diversity in our programs and encourage eligible women and minority individuals and groups to submit proposals. Furthermore, we recognize the interest of the Secretaries of Commerce and Interior in defining appropriate marine management policies and programs that meet the needs of the U. S. insular areas, so we also encourage proposals from eligible individuals, government entities, universities, colleges, and businesses in U. S. insular areas as described in the Marine Mammal Protection Act (MMPA) (section 3(14), 16 U. S. C. 1362). This includes the Commonwealth of Puerto Rico, the U. S. Virgin Islands, American Samoa, Guam, and the Northern Mariana Islands.

We are also strongly committed to broadening the participation of Minority Serving Institutions (MSIs), which include Historically Black Colleges and Universities, Hispanic Serving Institutions, and Tribal Colleges and Universities, in our programs. The DOC/NOAA/NMFS vision, mission, and goals are to achieve full participation by MSIs, to advance the development of human potential, strengthen the Nation's capacity to provide high-quality education, and increase opportunities for MSIs to participate in and benefit from Federal financial assistance programs. Therefore, we encourage all eligible applicants to include meaningful participation of MSIs whenever practicable.

Applicants are not eligible to submit a proposal under this program if they are an employee of the DOC or DOI. NOAA/NMFS employees (whether full-time, part-time, or intermittent) are not allowed to help in the preparation of proposals. MMHSRP staff (at the regional and national level) are available to provide information regarding statistics on strandings, MMHSRP programmatic goals and objectives, ongoing marine mammal programs, funding priorities for the 2003/2004 Prescott Grant Program cycle, and, along with other Federal Program Officers, can provide guidance on application procedures and proper completion of required Federal forms. Since this is a competitive program, NMFS and NOAA employees cannot provide assistance in conceptualizing, developing, or structuring proposals, or write letters of support for any proposal. NMFS or NOAA employees may provide information to applicants on appropriate analytical techniques including costs and time lines for such analyses. For activities that involve collaboration with current NOAA programs including, but not limited to, the National Marine Mammal Tissue Bank (NMMTB) and laboratories conducting analysis of tissues for contaminants, employees of NOAA or the DOC/National Institute of Standards and Technology can write a letter verifying that they are collaborating with the proposed project, that the applicant is trained to participate in the NMMTB, or that the applicant is currently participating in the National Marine Analytical Quality Assurance Program. Funds from the Prescott Grant Program cannot be used for NOAA or NMFS employee travel or salaries. Proposals selected for funding from a non-NOAA Federal agency will be funded through an inter-agency transfer.

Unsatisfactory performance under prior or current Federal awards can result in proposals not being considered for funding under the 2003/2004 Prescott Grant Program cycle.

G. Other Permits and Approvals

It is the applicant's responsibility to obtain all necessary Federal, state, and local government permits and approvals. In order to determine whether such permits and approvals have been obtained or requested, the applicant must include in the proposal package either:1) an application cover letter from the Prescott applicant to the appropriate authorizing entity requesting permits (e.g., MMPA scientific research permit) or approvals (e.g., Institutional Animal Care and Use Committee (IACUC) review), or 2) a copy of the final permit or approval.

For projects on live stranded or rehabilitated and/or released marine mammals, if the stranding network participant or researcher works for a research facility (e.g., University, Aquarium, animal care facility) with an IACUC, that applicant must have requested or obtained approval from the IACUC prior to applying for funding under this program (as required by the regulations under the Animal Welfare Act, 9 CFR 2.30–2.31). If the proposed project involves intrusive research (50 CFR 216.27(c)(6)) or if animals must be held after rehabilitation has been completed, the applicant must have applied for or obtained a MMPA and/or ESA scientific research and/or enhancement permit before the proposal will be considered for funding. Intrusive research is defined under 50 CFR 216.3. For proposed intrusive research at a research facility, the facility must have applied for registration or already be registered by the U. S. Department of Agriculture, Animal and Plant Health Inspection Service (APHIS) as a research facility. For more information on obtaining research facility registration please refer to the APHIS, Animal Care Program home page at http://www.aphis.usda.gov/ac/.

Activities directly related to the individual animal's health assessment, standard diagnostics, treatment, approved post-release monitoring, or release are separately authorized by NMFS under the authorizations for stranding network participants and therefore do not require an additional permit.

It is the applicant's responsibility to request and obtain all water quality, air quality, or other waste disposal permits as well as wetland and building permits, when required. If applicable, documentation of the requests or approvals of all such environmental permits must be included in the proposal package. Such documentation must include any environmental impact analyses that is required to be submitted to the appropriate Federal, state, or local permitting authority as well as a National Environmental Policy Act (NEPA) checklist (form available on the Prescott Grant Program web site http://www.nmfs.noaa.gov/ prot_res/PR2/ Health_and_Stranding_Response_ Program/Prescott.html). These documents will help the Prescott Grant Program staff determine if the application requires the preparation of an environmental assessment. At initial screening, all applications will be reviewed to ensure that they have sufficient environmental documentation to allow program staff to determine whether the proposal is categorically excluded from further NEPA analysis or whether an environmental assessment is necessary. For those applications needing an environmental assessment, affected applicants will be so informed after the initial screening stage and will be requested to prepare a draft of the assessment by the merit review panel meeting in Summer 2003. Applicants are expected to design their proposals so that they minimize their potential adverse impacts on the environment. Applicants who believe that the work or funding for the work under their applications may require an environmental assessment, for example those proposing construction activities under Category C, should not wait until the initial screening to plan for

conducting an environmental assessment. Category C applicants are encouraged to contact the Prescott Grant Program staff as early as possible for guidance on preparing an assessment. This process is intended to assist NMFS' compliance with NEPA.

If proposed activities in Category A, B, or C will take place within National Marine Sanctuaries, National Parks, National Seashores, and other Federally-designated or State-designated protected areas, it is the applicant's responsibility to request and obtain from the appropriate government agencies any necessary permits or letters of agreement.

For further information on permit requirements and applications procedures for Federal scientific research or MMPA enhancement permits, contact the NMFS Office of Protected Resources (see **FOR FURTHER INFORMATION CONTACT**) or see the following website:http://www.nmfs.noaa.gov/prot_res/PR1/Permits/pr1permits_types.html.

If a proposal is selected for funding, any necessary MMPA and/or ESA scientific research and/or enhancement permits must be received prior to receipt of funds. Failure to obtain other Federal, state, and local permits, approvals, letters of agreement, or failure to provide environmental analyses where necessary (i.e., NEPA environmental assessment) will also delay the receipt of funds if a project is otherwise selected for funding.

H. Duration and Terms of Funding

2003/2004 awards under the Prescott Grant Program will have a maximum project period of 3 years. However, the total Federal award cannot exceed $100,000 regardless of the length of the project period. We will not accept proposals requesting incrementally funded projects exceeding $100,000 in Federal funds.

If an applicant wishes to continue work on a project funded through this program beyond the project period and obligated award funds have not been expended by the end of this period, the applicant can notify the assigned Federal Program Officer 30 days prior to the end of the period to determine eligibility for a no-cost extension. If, however, the money is expended and funds are needed to continue the project, the applicant should submit another proposal during the next competitive award cycle (FY 2005) or seek an alternate source of funding.

If a proposal is selected for funding, we have no obligation to provide any additional future funding in connection with that award. Renewal of an award to increase funding up to the maximum of $100,000 in the Federal share or to extend the period of performance is totally at our discretion.

I. Non-Federal Match or Cost Sharing

Legislation under which the Prescott Grant Program operates requires a non-Federal match, or cost share, in order to leverage the limited funds available for this program and to encourage partnerships among government, private organizations, non-profit organizations, the stranding network, and academia to address the needs of marine mammal health and stranding response. All proposals submitted must provide a minimum non-Federal match of 25 percent of the total budget (i.e., .25 x total project costs = total non-Federal share). Therefore, the total Federal share will be 75 percent or less of the total budget. For example, if the proposed total budget was $133,334, the minimum total non-Federal share would be $33,334 (.25 x $133,334 = $33,334) and the maximum total Federal share would be $100,000 (.75 x $133,334 = $100,000). The applicant can include a non-Federal match for more than 25 percent of the total budget, but this obligation will be binding. In order to reduce calculation error in determining the correct non-Federal match amounts, we urge all applicants to use the cost share calculator on the Prescott Grant Program web page (see section I. L. Electronic Access Addresses).

The Federal Program Officer will determine the appropriateness of all non-Federal match proposals, including the valuation of in-kind contributions, according to the regulations codified at 15 CFR 14.23 and 24.24. An in-kind contribution is a non-cash contribution, donated or loaned, by a third party to the applicant. In general, the value of in-kind services or property used to fulfill a non-Federal match will be the fair market value of the services or property. Thus, the value is determined by the cost of obtaining such services or property if they had not been donated, or of obtaining such services or property for the period of the loan. The applicant must document the in-kind services or property used to fulfill the non-Federal match. If we decide to fund a proposal, we will require strict accounting of the in-kind contributions within the total non-Federal match included in the award document. The Grants Officer (i.e., the Department of Commerce official responsible for all business management and administrative aspects of a grant and with delegated authority to award, amend, administer, close out, suspend, and/or terminate awards) is the final approving authority for the award, including the budget and any non-Federal match proposals.

J. Catalog of Federal Domestic Assistance

The Prescott Grant Program will be listed in the "Catalog of Federal Domestic Assistance" under number 11.439, titled "Marine Mammal Data Program". This information should be included on the Application Form, 424, space 10 (see section III, How to Apply, below).

K. Where to Send Proposals

All proposals for the annual award cycle should be sent to NOAA/NMFS/Office of Protected Resources, Marine Mammal Health and Stranding Response Program, Attn: Michelle Ordono, 1315 East-West Highway, Room 12604, Silver Spring, MD 20910–3283; phone 301–713–2322 ext 177. Proposals for the emergency assistance component of the Prescott Grant Program should be sent to the NMFS Regional Office that oversees the area of action (see the NMFS Prescott Grant Program web page at:http://www.nmfs.noaa.gov/prot_res/ PR2/ Health_and_Stranding_Response_ Program/ Prescott.html for addresses). We cannot accept completed applications via the Internet or facsimile at this time.

L. Electronic Access Addresses

This solicitation, complete proposal packages (including required Federal forms) with instructions, a cost share calculator and addresses for submission are available on the NMFS Prescott Grant Program web page at:http://www.nmfs.noaa.gov/ prot_res/ PR2/ Health_and_ Stranding_ Response_ Program/ Prescott.html.

II. Program Goals and Regional Funding Priorities

For each of the proposal categories, national and regional funding priorities have been identified that are either essential to accomplishing the overarching goals of the Prescott Grant Program or address specific needs of each stranding region. The MMHSRP has identified national funding priorities that are nation-wide in scope or that cross regional boundaries in implementation. For the 2003/2004 annual cycle, each NMFS Region identified regional funding priorities that will improve the capabilities of their regional stranding network. These national and regional funding priorities will be reviewed prior to each annual award cycle in order to incorporate new needs that arise and eliminate priorities that have been met in previous award cycles.

Each proposal must identify one of the 3 categories and at least one national or regional funding priority under that category that is directly related to the project's goals and objectives. Proposals not clearly identifying one of the 3 categories will be returned to the applicant after initial review and will not be considered further in the 2003/2004 cycle.

Category A - Recovery or treatment of live stranded marine mammals (i.e.,rescue of live stranded marine mammals including treatment, assessment, and/or rehabilitation)

1. National Funding Priorities

Enhance the response to live animal strandings including transport, treatment, rehabilitation, or euthanasia.

Enhance rehabilitation practices to protect wild animals in rehabilitation from exposure to novel pathogens and prevent introduction of new or altered diseases into the wild.

2. Regional Funding Priorities

a. Northeast Region

Enhance response to live strandings of large whales (excluding right whale) and mass strandings.

Enhance safe and efficient transport of live stranded marine mammals, especially cetaceans, including aerial transport.

Operational needs to improve access to veterinary care, including on-site (lab or field) equipment or instruments for more rapid assessment and treatment of medical condition(s) and for monitoring of treatment response.

b. Northwest Region

Enhance network operations to respond to, rescue, transport, and treat stranded marine mammals that are sick or injured.

Improve the handling, stabilization, or treatment of live stranded odontocetes.

Train responders to enhance the consistency and quality of assessments and improve documentation of live marine mammal strandings for the potential of human interactions and diseases.

c. Southeast Region

Enhance network preparedness to respond to live strandings of large whales (excluding right whale) and mass strandings of live cetaceans.

Enhance the capability to respond to live stranded marine mammals that are at risk from oil or other hazardous material spills.

Enhance all aspects of live stranded marine mammal response and transport.

Develop outreach and educational materials regarding live stranded marine mammals for both network members and the general public.

d. Southwest Region

California only

Enhance response, treatment, and transport of live stranded marine mammals.

Enhance capability to respond to live stranded marine mammals entangled in fishing gear[4].

Enhance capabilities to respond to live strandings of marine mammals during El Nino years.

Equipment for routine transport of live stranded marine mammals.

Hawaii, Guam, American Samoa, and Northern Mariana Islands

Operational and staffing needs for increasing quality of care, including veterinary care, during live stranding events throughout the U.S. Pacific Islands (e.g., Guam, American Samoa, and Northern Mariana Islands).

Enhance coverage and response to live strandings of marine mammals throughout the U. S. Pacific Islands, particularly in remote or rural areas.

Outreach and training in the U.S. Pacific Islands (e.g., Guam, American Samoa, and Northern Mariana Islands) for response readiness and treatment of live stranded marine mammals.

Public outreach and education on protocols for communication and response to live stranding events.

Facility operation needs to improve access to veterinary care of stranded marine mammals, including facility improvements, on-site (lab or field) equipment, instruments for more rapid assessment of medical condition, and instruments for monitoring of treatment response.

Equipment needs to improve live stranded cetacean response and transport safety.

e. Alaska Region

Enhance response to live strandings of marine mammals throughout the state, particularly in remote and rural areas.

Enhance capability for the care and treatment of live stranded marine mammals.

Respond to live fur seal entanglements on the Pribilof Islands[4]

Facility operation or equipment needs for stranding response and live stranded marine mammal treatment.

[4]Authorization to conduct disentanglement activities on marine mammals can only be carried out under an MMPA Letter of Authority from NMFS or by state, local, or federal officials or employees under MMPA Section 109(h).

Category B - Data collection from living or dead stranded marine mammals (i.e., recovery of stranded marine mammals for collection of level A[5] and level B and C[6] data, specimens, and/or analyses)

1. National Funding Priorities

Collect specimens or data from stranded marine mammals to assess health trends in wild populations of cetaceans and pinnipeds, with emphasis on diseases that have potential for epizootics (e.g., morbillivirus), are endemic and may have a significant impact on survival/reproduction (e.g., herpes and other viruses), or have zoonotic potential.

Collect and assess human impact and post-Unusual Mortality Event data for baseline information on population demographics, life history, movement and distribution, and health, particularly from species of national concern such as beaked whales.

Enhance the quality and quantity of level B and C data[6] collected from stranded marine mammals.

2. Regional Funding Priorities

a. Northeast Region

Equipment to enhance recovery, examination, and necropsy of large whales and mass stranded cetaceans, including transport of carcasses to salvage sites or facilities and ultimately disposal sites.

Collect data to enhance the assessment of the causes of single or mass stranded marine mammals through the use of biological, physiological, or medical diagnostic studies.

Collect data on post-release survival of marine mammals including releases from rehabilitation and/or beach releases.

Collect consistent level A data[5], validate historic data, and improve the collection and sharing of level B and C data6 from stranded marine mammals.

Collect specimens and data from stranded marine mammals for the development of quality training materials on marine mammal anatomy and descriptive pathology.

Collect biological samples from stranded marine mammals in support of cooperative research projects using

[5]Level A data = Reporting which includes investigator's name, species, stranding location, number of animals, date and time of stranding and recovery, length and condition, and sex; marine mammal parts retention or transfer; annual reports. (Data collected through NOAA Form 89-864, OMB No. 0648-0178.)

[6]Level B data = Supplementary information regarding sample collection related to life history and to the stranding event. Level C data = Necropsy results. (Data collection is not required, but is collected on a voluntary basis by stranding network participants.)

quality control techniques (e.g., serological, histopathological, and chemical analyses, and tissue banking).

Develop training for data collection to enhance the consistency and quality of assessing marine mammal strandings for human-induced injuries and mortalities.

Enhance the quality, using quality control techniques (e.g., serological), of biological sample collection from live stranded marine mammals for analysis in support of cooperative research projects.

Upgrade facility information management systems and capabilities to improve or allow access to the Marine Mammal Health and Stranding Response national databases.

b. Northwest Region

Collect data from stranded marine mammals to investigate the incidence of human interactions and diseases affecting marine mammals.

Collect data from stranded marine mammals to use in comparative studies of contaminant exposures and burdens in marine mammals.

Development of protocols for the identification, processing, and disposal of dead marine mammals that carry contaminant burdens exceeding allowable limits for disposal in the environment.

Collect data from stranded southern resident killer whales to investigate overall health parameters.

Collect data from stranded killer whales and harbor porpoise to clarify taxonomic and stock identification in the wild populations of these two species.

c. Southeast Region

Enhance network preparedness to collect information from strandings of large whales (excluding right whale) and mass strandings of cetaceans.

Collect and evaluate information from stranded marine mammals that can be used in assessing the incidence or prevalence of human-induced injury or mortality.

Collect consistent level A data[5], validate historic data, and improve the collection of level B and level C data[6] from stranded marine mammals.

Enhance the capability to record information from stranded marine mammals impacted by oil or other hazardous material spills.

Collect biological samples from stranded marine mammals for analysis in support of marine mammal research projects through cooperative investigations using quality control techniques (e.g., serological, histopathological, and chemical analyses).

Collect post-Unusual Mortality Event data from stranded marine mammals for comparisons with mortality and disease observed during die-offs.

d. Southwest Region

California only

Collect specimens and data from stranded marine mammals to assess health trends in wild populations of cetaceans, with emphasis on diseases that have potential for epizootics (e.g., morbillivirus and others).

Full examination of dead-stranded California sea lions to determine the extent of purposeful human-induced mortality in the Southern California Bight.

Collect specimens and data from stranded marine mammals that will support baseline information on population demographics and life history (e.g., genetics, age-to-maturity, reproductive status, etc.).

Enhance the response to and collection of data from dead-stranded marine mammals.

Hawaii, Guam, American Samoa, and Northern Mariana Islands

Collect specimens and data from stranded marine mammals to assess the overall health trends in wild marine mammal populations.

Collect specimens and data from stranded, rehabilitated marine mammals to assess the conditions that affect releasability and identify health risks to wild populations.

Collect appropriate data to investigate the occurrence of epizootics (e.g., morbillivirus) in live stranded odontocetes.

Conduct thorough necropsies and collect biological samples that will enhance the ability to detect purposeful and incidental human-induced injuries and mortalities.

Collect consistent level A data[5] throughout the jurisdiction, including remote areas, and collect level B and C data6 from strandings of dead marine mammals.

Development of partnerships with marine mammal experts and others, to respond to and conduct studies supporting MMHSRP objectives related to live strandings of marine mammals.

e. Alaska Region

Collect consistent level A data[5] throughout the state, including remote areas.

Collect level B and C data[6] from dead-stranded marine mammals.

Conduct necropsies and diagnostics of stranded marine mammals.

Collect tissue samples appropriate for genetic analysis from stranded harbor seals and Steller sea lions.

Operational needs to improve in-house sample tracking and archiving for participation in the National Marine Mammal Tissue Bank and the Marine Mammal Health and Stranding national database.

Category C - Facility operations directly related to Categories A or B above(i.e., physical plant renovations, maintenance, facility modifications/ upgrades and/or construction)

1. National Funding Priority

Enhance physical plant capabilities to increase the quality of care of live stranded marine mammals or enhance the safety and quality of data or sample collection from living or dead stranded marine mammals.

2. Regional Funding Priorities

a. Northeast Region

Facility operation needs to enhance and support existing rehabilitation facilities in general or to upgrade existing facilities to meet upcoming rehabilitation facility guidelines.

Facility operation needs to improve access to veterinary care, including on-site (lab or field) equipment or instruments for more rapid assessment and treatment of medical condition(s) and for monitoring of treatment response.

b. Northwest Region

Enhance or upgrade facilities to handle and treat stranded marine mammals that must be kept in rehabilitation due to injury or disease.

Upgrade facilities for handling, stabilizing or treating stranded odontocetes.

Enhance or upgrade existing facilities in anticipation of NMFS guidelines on rehabilitation.

c. Southeast Region

Upgrade existing rehabilitation facilities, with special attention to active facilities (based on rehabilitation records and historic data) and facilities requiring improvements to meet upcoming NMFS guidelines on rehabilitation.

Enhancements or upgrades of necropsy facilities involved in analysis of samples collected from stranded marine mammals.

d. Southwest Region

California only

Facility operation needs or upgrades and renovations associated with veterinary care of stranded marine mammals.

Expansion and renovation of existing stranding and rehabilitation facilities.

Facility upgrades associated with treatment and feeding of stranded marine mammals.

Hawaii, Guam, American Samoa, Northern Mariana Islands

Renovations, upgrades, or expansions to live stranding and rehabilitation facilities.

e. Alaska Region

Facility upgrades and renovations for stranding response and live stranded marine mammal treatment.

Facility operation needs to improve in-house sample tracking and archiving for participation in the National Marine Mammal Tissue Bank and the Marine Mammal Health and Stranding national database.

III. Proposal Instructions and Requirements

The instructions in this document are designed to help applicants in preparing and submitting a proposal for federal funding under the 2003/2004 annual cycle and the emergency assistance component of the Prescott Grant Program. All required Federal forms, the narrative description of the budget and proposed project, and applicable supporting documentation must be complete and must follow the format described here. One signed original and two signed copies of the complete proposal package must be submitted. The original proposal and copies should not be permanently bound in any manner and must be printed on one side only. In addition, we are requesting that applicants submit an electronic copy, on diskette or CD (in Microsoft Word v. 97 or earlier or WordPerfect v. 6.1 or lower), of the narrative project description. The required unbound original and two copies, and the optional electronic copy must be sent to the address listed in section I. K. of this document and postmarked by the submission deadline (see **DATES**) in order to be considered in the 2003/2004 annual award cycle. If a package does not contain all of the required Federal forms and proposal elements described in this section it will be returned to the applicant and will not be considered further in the this funding cycle. Note that there will be no extensions of the deadline.

Category A and B proposals and Category C proposals (i.e., those that involve build-outs, alterations, upgrades, and renovations to existing facilities) require different federal forms depending on the percentage of federal funds being requested. That is, Category C proposals with 50 percent or more of their requested federal amount going to construction activities require the federal forms for construction (i.e., SF–424C and SF–424D) and do not require the federal forms for non-construction (i.e, SF–424A and SF–424B).

A. Required Federal Forms for Category A and B Proposals (i.e., non-construction)

Cover Sheets

SF–424 "Application for Federal Assistance" ("Catalog of Federal Domestic Assistance" number is 11.439, and title is "Marine Mammal Data Program")

SF–424B "Assurances - Non-Construction Programs"

Project Budget

SF–424A "Budget Information - Non-Construction Programs"

Certifications and Disclosures

CD–511 "Certification Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying"

SF-LLL "Disclosure of Lobbying Activities" (as required under 15 CFR part 28)

CD–346 "Name Check"

B. Required Federal Forms for Category C Proposals (i.e., construction)

Construction proposals with 50 percent or more of their requested federal amount going to construction activities such as build-outs, alterations, upgrades, and renovations to existing facilities must submit the following forms as part of their proposal package:

Cover Sheets

SF–424 "Application for Federal Assistance" ("Catalog of Federal Domestic Assistance" number is 11.439, and title is "Marine Mammal Data Program")

SF–424D "Assurances - Construction Programs"

Project Budget

SF–424C "Budget Information - Construction Programs"

Certifications and Disclosures

CD–511 "Certification Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying"

SF-LLL "Disclosure of Lobbying Activities" (as required under 15 CFR part 28)

CD–346 "Name Check"

C. Required Elements of all Project Proposals

A complete proposal package must include the following elements in this order:

1. Cover Sheets (Required Federal forms)
2. Project Budget (Required Federal form(s), budget justification and narrative, and, if applicable, a current and approved negotiated indirect cost agreement with the Federal government)
3. Title Page
4. Project Summary (6 sentences or less)
5. Narrative Project Description (10 pages or less, in format described below)
6. Supporting Documentation (other Federal forms, proof of eligibility, proof of non-profit status (if applicable), curriculum vitae/resumes for the Principal and Co-Investigators, and background documents)

Assistance in filling out required forms and avoiding common problems, complete proposal requirements, supplemental instructions for completing all Federal forms and the budget narrative, and questions and answers related to applying for funds under the Prescott Grant Program can be found on the Prescott Grant Program web site:http://www.nmfs.noaa.gov/prot_res/ PR2/ Health_and_ Stranding_ Response_ Program/ Prescott.html.

1. Cover Sheet

Office of Management and Budget (OMB) Standard Forms 424 and 424B or 424D must be the cover sheets for each proposal. Under Standard Form 424, Item 5, "Legal Name" must match the name of the eligible applicant (i.e., LOA holder, LOA designee, authorized researcher, Northwest Contingency Plan participant, or state, local, or Federal entity). To complete item 10 of Standard Form 424, the Catalog of Federal Domestic Assistance number is 11.439, and the title is "Marine Mammal Data Program". Since the 2003/2004 cycle will use funds from two fiscal years, we recommend for item 13 of Standard Form 424 a start date no earlier than December 2003 for project proposals beginning in 2003 and January 2004 for project proposals beginning in 2004.

2. Project Budget

Each proposal must include clear and concise budget information, both on the required federal forms, in summary and in narrative detail.

Category A and B proposals (i.e., proposals requesting a federal amount that does not include construction activities or in which construction activities are less than 50 percent of the total federal amount) must use OMB standard form 424A, "Budget Information - Non Construction Programs" and associated form instructions.

Category C proposals (i.e., proposals requesting a federal amount for construction activities that is equal to or greater than 50 percent of the total

federal amount requested) must use OMB standard form 424C "Budget Information - Construction Programs" and associated form instructions.

All instructions should be read before completing the appropriate budget form(s). Note that both Federal and non-Federal columns on Standard Form 424A must be filled in completely and separately and the amounts per category and total amounts on both the Standard Form 424A and 424C must correspond with the budget narrative and justification.

On a separate sheet, describe and justify in narrative detail or on a spreadsheet the itemized costs per category between Federal and non-Federal shares and the corresponding direct and indirect cost totals. For the non-Federal share, the itemized costs should be separated into cash and in-kind contributions. If in-kind contributions are included, describe briefly the basis for estimating the value of these contributions.

If the applicant currently has a negotiated indirect cost rate with the Federal government, an amount for indirect costs can be included in the budget. Indirect costs are overhead costs for basic operational functions (e.g., lights, rent, water, insurance) that are incurred for common or joint objectives and therefore cannot be identified specifically within a particular project. Indirect costs can be included in both the Federal and non-Federal cost shares as long as the method of calculation is clear and certain rules are followed. The first rule is that generally the Federal share of the indirect costs cannot exceed 25 percent of the total proposed direct costs. The second rule is that if the approved indirect cost rate is above 25 percent of the total proposed direct cost, the amount above the 25–percent level can only be used as part of the non-Federal share if it is part of a negotiated rate. If indirect costs are included, the package should include a copy of the current, approved, negotiated indirect cost agreement with the Federal government. However, if the applicant is still in the process of obtaining or updating an indirect cost rate agreement, then the proposal package should include a copy of the transmittal letter and supporting documentation sent to the appropriate Federal agency (i.e., cognizant agency) in order to establish a new rate. If the applicant has never received a Federal grant, they should contact the Department of Commerce, Office of Executive Assistance Management (DOC/OEAM) via their web site:http://www.osec.doc.gov/oebam/grants.htm before submitting the proposal package to the Prescott Grant Program. DOC/OEAM will help determine what documents must be submitted to obtain an indirect cost rate with the Department of Commerce.

We will not consider fees, fund-raising activities, travel for DOC or DOI employees, salaries for DOC or DOI employees, or profits as allowable costs in the proposed budget. The total costs of a project consist of all allowable costs you incur, including the value of in-kind contributions, in accomplishing project activities during the project period. A project begins on the effective date of an award agreement between you and the Grants Officer and ends on the date specified in the award. Accordingly, we cannot reimburse applicants for time expended or costs incurred in developing a project or preparing the application, or in any discussions or negotiations with us prior to the award. We will not accept such expenditures as part of your cost share.

3. Title Page

A Title Page must be included for each project. The Title Page must list the project title, project duration (with a start date no earlier than December 2003 or January 2004), applicant name (must match the "legal name" on Standard Form 424, Item 5), name of Principal Investigator or Contact, address and phone number of the Principal Investigator or Contact, the proposal category and funding priority under which the project fits (see section II. of this document), the project's objective(s), and a statement regarding the Federal, non-Federal, and total costs of the project.

4. Project Summary

In 6 sentences or less, briefly summarize:project goals and objectives as they relate to the Prescott proposal categories (i.e., Category A, Category B, or Category C), national or Regional funding priorities; proposed activities; geographic area where activities would occur; and expected outcomes and benefits from the activities (e.g., increased number of responses to live stranded cetaceans, greater and higher quality data collected from pinniped strandings, renovate and upgrade a marine mammal rehabilitation facility, etc.) of the project. This summary will be posted on our website if the project is funded.

5. Narrative Project Description

The narrative description of the proposed project must not exceed 10 pages (not including documents in the Supporting Documentation section) and must be typed in Courier size 12 font, either single or double-spaced. The narrative should demonstrate the applicant's knowledge of the need for the project, describe how the applicant will manage the business aspects of the grant (i.e., sound accounting practices), and show how the proposed project builds upon any past and current work in the subject area, presents novel or unique solutions, as well as relates to on-going work in related fields. Applicants should not assume that reviewers already know the relative merits of the project.

The narrative project description must include each of the following elements in the order listed here:

(1) Project goals and objectives (maximum 2 pages). Identify the Prescott Grant Program national or regional funding priorities, listed earlier in this document, to which the project's goals and objective(s) correspond. Identify the problem/opportunity the project intends to address and describe its significance to the marine mammal health and stranding response and rehabilitation community. State expected project accomplishments. Although actual stranding events cannot be predicted, historic stranding data in the region of proposed activities should be used to assess season, species, numbers, and likelihood of future strandings. These data are critical in linking proposed project objectives with the Prescott Grant Program's goals, funding priorities, and in assuring an equitable distribution of funds among regions. Therefore, we encourage applicants to provide stranding data and statistics by year and geographic area in sufficient detail to provide a historic and need-based context to the project.

(2) Project management (maximum 4 pages, excluding resumes, curriculum vitae, and agreements between Principal Investigators and other participants or grant fund managers where applicable). Describe how the proposed project will be organized and managed. Financial accounting systems to be used must be explained and a business point of contact responsible for managing those systems must be given. Identify whether the applicant is applying as an LOA holder, designee, researcher, Northwest Region contingency plan organization/individual, or state, local, or Federal entity under 109(h) of the MMPA. Researchers must describe who will administer the business aspects of the grant (i.e., on their own, through their current employer, an affiliated institution, or through a third-party organization) and why this method of administration has been chosen.

One Principal Investigator must be designated on each project. If a Principal Investigator is not identified, we will return the proposal. The Principal Investigator is responsible for all technical oversight and implementation of the work plan as delineated in the Statement of Work (see below). The Principal Investigator may or may not be the applicant. However, if the applicant is not the Principal Investigator, there must be an explanation of the relationship between the applicant and Principal Investigator (e.g., applicant will be responsible for managing the grant funds and the Principal Investigator will be responsible for completing the project milestones on time and within budget while maintaining the integrity and meet the goals of the project, etc.). Project participants or organizations that will have a significant role in conducting the project should be listed as Co-investigators. Organizations or individuals that support the project, for example, network members contributing data or samples, should be referred to as Cooperators. In this section, provide a statement of no more than one page on the qualifications and experience of consultants and/or subcontractors and any Cooperators that are not named as Co-investigators. Copies of the Principal Investigator's and all Co-investigator's current resumes or curriculum vitaes must be included in the package's Supporting Documentation section. In addition, the proof of eligibility documents (see II. C.6. Supporting Documentation) provided and listed in the Supporting Documents section of the proposal must name the Principal Investigator and/or Co-investigator. Resumes, curriculum vitaes, and proof of eligibility documents will not count as part of the 10 page limit.

Reference should be made to any copies of agreements between the Principal Investigator and other participants in the project, describing the specific activities each participant would perform or any endorsements received from other marine mammal health and stranding response participants related to this project that are included in the Supporting Documentation section.

This section should also explain who will be responsible for carrying out each activity proposed. Describe activities that will be conducted by Co-investigators, Cooperators, sub-contractors, or volunteers. Training of volunteers and use of volunteer staff time to complete project activities, as well as oversight of those volunteers, should be discussed in detail.

If any portion of the project will be conducted through consultants and/or subcontracts, procurement guidance found in 15 CFR part 24, "Grants and Cooperative Agreements to State and Local Governments," and 15 CFR part 14, "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, Other Non-Profit, and Commercial Organizations" must be followed. This section should describe how requirements for competitive subcontracting will be met if applicable.

(3) Project statement of work (maximum 5 pages). This is a narrative of the work plan that will ensure the proposed project's goals and objectives are met within the proposed award period. It should include detailed descriptions of activities, protocols, methodologies, milestones, and expected products resulting from a successfully completed project. The narrative should respond to the following questions:

(a) What specific activities, protocols, and methodologies does the project include and how do these activities, protocols, and methodologies relate to the project's goals and objectives?

(b) What are the project milestones? List milestones, describing specific activities and associated time lines necessary to meet them. Describe the time lines in increments (e.g., month 1, month 2, etc.), rather than by specific dates.

(c) What are the major outcomes, results, or products expected? Describe expected outcomes, results, or products that will directly relate to the Prescott Grant Program proposal Categories A, B or C and the national and regional funding priorities.

(d) How will outcomes, results, or products be disseminated or shared? Describe how project outcomes, results or products will be disseminated to or shared with stranding network participants and other potential users. In addition, describe how activities and results of the project will be shared outside the stranding network for education and outreach purposes. In both cases, indicate the method of information or product transfer (e.g., print media, video, training manual, educational displays, facility sharing, etc.)

(4) Project impacts (maximum 1 page). Describe the potential impacts of this proposed project on both the recovery and treatment of stranded marine mammals and the collection of data from living or dead stranded marine mammals for use in scientific research on marine mammal health. Identify any other potential project impacts.

(5) Project performance evaluation (maximum 1 page). Specify the quantitative and/or qualitative criteria to be used in evaluating the relative success or failure of the project in achieving the stated project goals and objectives. For Category C proposals, performance measures should be based on (but are not limited to) such criteria as meeting or exceeding project time lines within budget and meeting or exceeding environmental and safety standards for construction activities.

(6) Need for government financial assistance(maximum 1 page). Explain the need for government financial assistance in successfully carrying out project activities. Describe resultant products of previous financial assistance, if applicable, referencing a list sources of funding received from the Federal government, either past or current, for this or a closely related project(s) included in the Supporting Documentation section (see below). In this section, describe other sources of Federal funding currently being sought for this same project.

(7) Federal, state, and local government programs and activities (maximum 1 page). List any existing Federal, state, or local government programs or activities that this project would affect and reference any corresponding documentation (i.e., permits, approvals, environmental assessments) included in the proposal package.

(8) Participation by persons or groups other than the applicant (maximum 1 page). Describe how government and non-government entities, particularly other members of the marine mammal health and stranding response community, will participate in the project and the nature of their participation. How much will other members of the marine mammal health and stranding response community participate in the project?

6. Supporting Documentation

Supporting documents will not count as a part of the 10 page limit.

In order to be considered for an award in this funding cycle, the applicant must provide proof of eligibility documents in this section. These include one or more of the following: LOA(s), LOA letter of designation, letter from NMFS Regional Administrator to collect or receive marine mammal specimens and parts under 50 CFR 216.22, if in the Northwest Region (Washington and Oregon) documentation that the applicant is a NMFS-recognized participant and named in the Draft 2002 National Contingency Plan for Response to Marine Mammal Unusual Mortality

Events, or reports sent to NMFS under MMPA Section 109(h)(50 CFR 216.22(b)) as a state, local, or Federal participant. Principal Investigators that are researchers and do not hold LOAs, are not LOA designees, are not NMFS-recognized Northwest Region participants, and are not MMPA Section 109(h) participants must include copies of letters from a NMFS Region or the MMHSRP authorizing them under 50 CFR 216.22, any MMPA and/or ESA scientific research and/or enhancement permits, as well as a Co-investigator's LOA or letter of designation. See section I. F., Eligibility, to determine what specific type of documentation is required.

Applicants requiring MMPA and/or ESA scientific research and/or enhancement permits and/or IACUC approvals must include in this section a copy of either: (1) an application cover letter from the Prescott applicant to NMFS and/or the IACUC, or (2) a copy of the final permit and/or approval.

If applicable, documentation of the requests or approvals of all environmental permits must be included in this section of the proposal. Such documentation should include any environmental analyses required for obtaining such permits, completed NEPA checklists (form available on the Prescott Grant Program web site http://www.nmfs.noaa.gov/ prot__res/ PR2/ Health__and__ Stranding__ Response__ Program/ Prescott.html), and environmental assessments.

Curriculum vitae or resumes of the Principals and Co-Investigators and all other required Federal forms (i.e., CD–511, SF-LLL, CD–346) must be included in this section.

Applicants applying as non-profit organizations must include a letter from the Internal Revenue Service verifying non-profit classification under Internal Revenue Code and tax exempt status under section 501(c)(3) of the Code.

Any other relevant documents and additional information (e.g., maps, additional stranding statistics for your geographic area or region, organizational history and information, schematics and architectural renderings of facility upgrades, photographs, etc.) that will help us to understand the proposed project and the problem/opportunity the project seeks to address should be included in this section.

IV. Screening, Review, and Selection Procedures

Screening, review, and selection procedures will take place in 5 steps, described in detail in this section:initial screening, on-line review, peer review, merit review, and final selection by the Selecting Official (i.e., the Assistant Administrator for Fisheries or AA). The on-line review will involve at least one reviewer per proposal and the peer review will involve at least 3 reviewers per proposal; therefore, all proposals will be subject to review by a minimum of 4 independent reviewers. The AA will make the final decision regarding which proposals will be funded based on recommendations of the merit review team as well as policy considerations such as costs, geographical distribution, financial need, duplication with other Federally funded projects, and equitable distribution of funds among the stranding regions.

A. Initial Screening

The initial screening will ensure that proposal packages have all required forms and proposal elements (listed below and in Section III), clearly relate to the 2003/2004 Prescott Grant Program proposal categories and funding priorities, and meet all of the eligibility criteria identified in Section I. F. of this document. Applicants that do not meet the required eligibility criteria described in section I. F. will not be eligible for funding in the 2003/2004 cycle. In addition, applicants proposing activities that may require an environmental assessment (i.e., Category C proposals) under NEPA must include sufficient environmental analyses (i.e., permit documentation and NEPA checklist) to allow program staff to determine whether or not the proposal can be categorically excluded from further analysis. If insufficient documentation is provided or if proposals cannot be categorically excluded from NEPA review, the applicant will be notified after initial screening that further information or an environmental assessment is necessary. Further documentation must be supplied immediately and the environmental assessments must be completed in time for the merit review panel in late Spring. Proposals requiring further NEPA review will still undergo on-line and peer review, unless there is some other reason for disqualification. Failure to complete an environmental assessment will delay processing of the proposal, and if selected for funding will delay receipt of funds.

Proposal packages received in the Office of Protected Resources and postmarked by the submission deadline will be screened to ensure that they:were postmarked by the due date (see **DATES**); include one original and two signed copies of the entire proposal package; include the correct OMB forms (424, 424A for Categories A and B or 424D for Category C, and 424B for Categories A and B or 424C for Category C) signed and dated (see section III. A and III. B of this document); provide for at least a 25–percent non-Federal cost share (see section I. I); identify a Principal Investigator and provide current resumes or curriculum vitae for both the Principal and all Co-Investigators (see section III. C); provide proof of eligibility (see section I. F.); address one of the 3 proposal categories for species under NOAA's jurisdiction (see section III); include proposal package elements 1 through 6 (see section III. C); include MMPA/ESA permit application cover letters or permits, IACUC letters or approvals, if applicable; include NEPA checklist and other environmental documentation, if applicable; and provide proof of non-profit status, if applicable. Proposals that pass this initial screening will be pooled based on the proposal category (i.e., Category A, B, or C) identified by the applicant and by the coast where activities are proposed resulting in 6 review pools.

The required unbound original and two copies, and the optional electronic copy must be sent to the address listed in section I. K. of this document and postmarked by the submission deadline (see **DATES**) in order to be considered in the 2003/2004 annual award cycle. If a package is not postmarked by the submission deadline, include a signed unbound original with two copies, and does not contain all of the required OMB forms and other documents described in this section it will be returned to the applicant and will not be considered further inthis funding cycle. Only those proposals satisfying all of the basic requirements above will enter the full evaluation phase of the review process, described in the next sections.

B. On-Line Review

After initial screening, on-line reviewers will be asked to evaluate individual proposals in the reviewers' specific area of expertise for technical soundness and feasibility via an on-line process. The on-line review results will be used to provide comments on the technical aspects of each proposal to both the peer and merit review panels (described below).

The proposal category (i.e., Category A, B, or C) and specific activities described in each proposal will be used in selecting the most appropriate expertise needed for the specific review. On-line reviewers will include private and public sector experts according to the Prescott Grant Program's proposal categories: Category A proposals will be reviewed by experts from fields such as marine mammal biology, rehabilitation,

animal husbandry, diagnostic medicine, veterinary medicine, medical science, conservation biology, and education and outreach; Category B proposals will be reviewed by experts in fields such as toxicology, epidemiology, veterinary medicine, veterinary pathology, virology, marine mammal biology, infectious diseases, physiology, acoustics, education, outreach, genetics, conservation biology, and other biological and physical sciences; and Category C proposals will be reviewed by experts in fields such as construction, water systems, life support systems, curation, animal care, architecture, structural engineering, facility managers, and marine mammal biology. Each on-line reviewer will be required to certify that they do not have a conflict of interest concerning the proposal(s) they are reviewing prior to their review.

To determine the technical soundness and feasibility of each proposal, the on-line reviewers will provide an independent review using the weighted criteria outlined in Section IV. D. below. Depending on the type of activities proposed, on-line reviewers may focus their review on issues such as the likelihood of meeting milestones and achieving anticipated results in the time-line specified in the statement of work, the sufficiency of information to evaluate the project technically, the strengths and weaknesses of the technical design relative to securing productive results, and the inclusion of quality assurance considerations. Each proposal will be reviewed by at least one on-line reviewer. On a scale of 0–100, the reviewers will score the proposal in each criteria. An average, weighted score will be generated from each review using the numeric score per criteria and the weights assigned to each criteria (see Section IV. D. for numeric scores and assigned weights per criteria). Along with the peer review scores, these on-line review scores will be used in determining whether proposals will advance to merit review (i.e., each proposal scoring greater than 60 points in either the on-line or peer review will go on to merit review).

C. Peer Review

After the initial screening, each accepted proposal will undergo a peer review by participants in the U. S. marine mammal stranding network. Peer reviewers will be asked to evaluate individual proposals based on the proposal category and funding priorities identified by the applicant, review criteria, and the specific technical evaluation from on-line reviews. The proposal categories (i.e., Category A, B, or C) and the geographic location of proposed activities will be used in selecting appropriate peer reviewers. Scoring and commenting on each proposal will be completed during these meetings. In addition, a summary of panel comments and discussion will be generated for each proposal. The peer review results will be used to numerically rank the proposals (based on the average weighted score of each proposal) and provide programmatic and regional stakeholder comments on each proposal. Each peer reviewer will be required to certify that they do not have a conflict of interest concerning the proposal(s) they are reviewing prior to their review.

To determine the appropriateness of each proposal to the Prescott Grant Program's proposal categories and funding priorities, the peer reviewers will provide independent reviews using the weighted criteria outlined below (Section IV. D.). Depending on the type of activities proposed, peer reviewers will be asked to focus their review on issues such as the likelihood of meeting milestones and achieving anticipated results in the time-line specified in the statement of work, the contribution of potential outcomes, results, or products to the marine mammal stranding and rehabilitation communities, and the amount of collaboration with other stranding network participants. Each proposal will be reviewed by at least 3 peer reviewers. On a scale of 0–100, the reviewers will score the proposal in each criteria outlined in Section IV. D. below. An average, weighted score will be generated for each proposal using the numeric score per criteria and the weights assigned to each criteria (see Section IV. D. for numeric scores and assigned weights per criteria). All proposals will be numerically ranked based on this average, weighted score.

D. Review Criteria

1. Soundness of Project Goals, Objectives, and Activities

Proposals will be evaluated on clear identification of project goals and objectives and the ability to link those goals and objectives to project activities, including protocols and methods proposed, and the applicability of the project's goals and objectives to the Prescott Grant Program's proposal categories and funding priorities. All reviewers will consider the potential environmental impacts (e.g., water quality, air quality, waste disposal, etc.) of the proposed activities. On-line reviewers will consider:the likelihood of meeting milestones and achieving anticipated results in the time-line specified in the statement of work; the sufficiency of information to evaluate the project technically; if such information is sufficient, the strengths and weaknesses of the technical design relative to securing productive results; and if data collection is proposed, the inclusion of quality assurance considerations. In addition to technical aspects of the proposal, peer reviewers will focus on:the contribution of potential outcomes, results, or products to the marine mammal stranding and rehabilitation communities; and, the amount of collaboration with other stranding network participants. (Numeric scores from 1–100; Assigned weight of 50 percent)

2. Adequacy of Project Management

The management of the project will be evaluated based on the adequacy of the proposed project management plan in overseeing the technical aspects and implementation of the work plan as delineated in the proposal's Statement of Work. Reviewers will also review previous, related experiences of the applicant and qualifications of the project's Principal Investigator, Co-investigator(s) and other personnel (i.e., designated contractors, consultants, and Cooperators). Review of the proposal's description of financial accounting systems and grants administration oversight will also be ephasized. Consideration will also be given to previous awards received by the Principal Investigator and outcomes, results, or products resulting from such awards. (Numeric scores of 1–100; Assigned weight of 25 percent)

3. Identification and Suitability of Project Performance Evaluation Methods

Proposals will be scored based on their clear identification of performance evaluation methods and the suitability of those methods for evaluating the success or failure of the project in terms of meeting its original goals and objectives. For Category A and B proposals these methods should include quantitative or qualitative criteria to evaluate relative success of failure of project activities. For Category C proposals these methods should also include criteria for measuring success or failure in meeting project time lines within budget and success of failure in complying with environmental and safety standards for construction activities. (Numerical scores of 1–100; Assigned weight of 10 percent)

4. Justification, Clarity, and Allocation of Project Costs

The proposed costs and overall budget of the project will be evaluated in terms of the work proposed. The itemized costs and the overall budget must be justified, clear to the reviewer, and consistent with fair market values for similar items or services. (Numeric scores of 1–100; Assigned weight of 15 percent)

E. Merit Review

After proposals have undergone review, the MMHSRP staff, NMFS Regional Administrators (RAs) and Office Directors (ODs) will conduct a merit review in consultation with the Marine Mammal Commission and U. S. Fish and Wildlife Service, to consider the review results and develop recommendations for funding. Only those proposals having an average weighted score higher than 60 points in either the on-line or peer review will be evaluated.

In order to make recommendations regarding equitable distribution of funds among regions and to justify any discrepancies between the reviewers' comments and the merit reviewers' recommendations, merit reviewers will review the on-line and peer review comments, discrepancies between the on-line and peer review average, weighted scores, numeric ranking of proposals by the peer reviewers, required proposal elements, stranding statistics by region (i.e., geographic need for proposed projects), environmental assessments or documentation, and the number of applications received by region and by funding year.

Equitable distribution will be determined by review of proposals by stranding region using the best available data on episodic, anomalous or unusual stranding events, average annual strandings and mortalities, and sizes of marine mammal populations within each region. Merit reviewers will also consider the actual stranding statistics per region for the previous 5 non-El Nino years and for the last El Nino year. After proposals are prioritized within the regions using the best available data, preference will be given to facilities within each region that have established records for rescuing or rehabilitating sick or stranded marine mammals and whose activities are planned so that they minimize any potential adverse impacts on the environment.

The merit review team will prepare a written justification for any recommendations for funding that fall outside the peer reviewer's numerical ranking or the equitable distribution order, and for any cost adjustments. In addition, the merit review team will prepare written recommendations regarding additional policy factors that the NMFS AA should consider in making final funding selections.

F. Final Selection Procedures

The NMFS AA will review the funding recommendations from the merit review, comments of the reviewers, and select the projects to be funded. In making the final selections, the AA will consider costs, geographical distribution, financial need, duplication with other federally funded projects, potential environmental impacts, equitable distribution of funds among the designated stranding regions, and other policy factors. As a result, awards are not necessarily made to the highest technically ranked projects.

G. Project Funding

The final, exact amount of funds, the scope of work, and terms and conditions of a successful award will be determined in pre-award negotiations between the applicant and NOAA/NMFS representatives. The funding instrument (grant or cooperative agreement) will be determined by NOAA Grants Management Division. If the proposed work entails substantial involvement between the applicant and NMFS, a cooperative agreement will be utilized. Work requiring substantial involvement between the applicant and NMFS includes the planning and upgrading of rehabilitation facilities, the development of protocols, and other types of projects where a high level of cooperation is necessary to ensure that the applicant is achieving the broader goals of the MMHSRP. Applicants should not initiate any project in expectation of Federal funding until they receive a grant award document signed by an authorized NOAA official in the Grants Management Division.

V. Administrative Requirements

The Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements contained in the **Federal Register** notice of October 1, 2001 (66 FR 49917), as amended by the **Federal Register** notice published on October 30, 2002 (67 FR 66109), is applicable to this solicitation. Copies of this notice can be obtained from the Government Printing Office Website:http://www.access.gpo.gov/su__docs /aces /aces140.html

or the Prescott Stranding Grants Program Website:

http://www.nmfs.noaa.gov /prot__res/PR2/ Health__and__ Stranding__ Response__ Program/ Prescott.html

If costs are incurred prior to receiving an award agreement signed by an authorized NOAA official, applicants do so solely at their own risk of not being reimbursed by the Government. Notwithstanding any verbal or written assurance that applicants have received, the Department of Commerce has no obligation to cover pre-award costs.

Proposals that are not accepted for funding in the 2003/2004 cycle will be filed in the Prescott Grant Program office for a minimum of 3 years from date of receipt.

A. Obligations of Recipients (Successful Applicants)

Applicants awarded a grant or cooperative agreement for a project must:

1. Manage the day-to-day operations of the project, be responsible for the performance of all activities for which funds are granted, and be responsible for the satisfaction of all administrative and managerial conditions imposed by the award.

2. Keep records sufficient to document any costs incurred under the award, and allow access to these records for audit and examination by the Secretary of Commerce, the Comptroller General of the United States, or their authorized representatives; and, submit financial status reports (SF 269) to NOAA's Grants Management Division in accordance with the award conditions.

3. Submit semi-annual and annual reports, and for projects extending beyond a year, final reports within 90 days after completion of each project, to the individual identified as the NMFS Program Officer in the funding agreement. The final report must describe the project and include an evaluation of the work performed and the results and benefits in sufficient detail to enable us to assess the success of the completed project.

We are committed to using available technology to achieve the timely and wide distribution of final reports to those who would benefit from this information. Therefore, we request submission of final reports in electronic format, in accordance with the award terms and conditions, for publication on the NMFS Protected Resources Home Page. Awardees can charge the costs associated with preparing and transmitting their final reports in electronic format to the grant award.

4. In addition to the final report, we request that awardees submit any publications printed with award funds (such as manuals, surveys, etc.) to the NMFS Program Officer for dissemination to the public. These publications should be submitted either

as three hard copies or in an electronic version. Peer-reviewed publications published with or without award funds and manuscripts published without award funds are requested to be submitted to NMFS; however, these publications will not be disseminated to the public.

Classification

Prior notice and an opportunity for public comments are not required by the Administrative Procedure Act or any other law for this notice concerning grants, benefits, and contracts (5 U.S.C. section 553(a)(2)).

Furthermore, a regulatory flexibility analysis is not required for purposes of the Regulatory Flexibility Act (5 U.S.C. section 601 et seq).

This action has been determined to be not significant for purposes of Executive Order 12866.

Applications under this program are subject to Executive Order 12372, "Intergovernmental Review of Federal Programs."

Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA unless that collection of information displays a currently valid OMB control number.

This document contains collection-of-information requirements subject to the Paperwork Reduction Act (PRA). The use of Standard Forms 424, 424A, 424B, 424C, 424D, 269, and SF-LLL have been approved by OMB under the respective control numbers 0348–0043, 0348–0044, 0348–0040, 0348–0041, 0348–0042, 0348–0039, and 0348–0046.

This document also contains collection-of-information requirements that have been approved by OMB under control number 0648–0178. Public reporting burden for the registration of the salvage of dead marine mammals, or for periodic reports by state or local government officials or employees is estimated to average 20 minutes per individual response, response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate, or any other aspect of this data collection, including suggestions for reducing the burden, to NMFS (see **FOR FURTHER INFORMATION CONTACT**).

Dated:February 3, 2003.

William T. Hogarth,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 03–3290 Filed 2–5–03; 4:23 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 020503B]

New England Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public meeting of its Research Steering Committee in February, 2003. Recommendations from the committee will be brought to the full Council for formal consideration and action, if appropriate.

DATES: The meeting will held on Tuesday, February 25, 2003, at 9:30 a.m.

ADDRESSES: The meeting will be held at the Sheraton Colonial, One Audubon Road, Wakefield, MA 0880; telephone: (781) 245–9300.

Council address: New England Fishery Management Council, 50 Water Street, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council; (978) 465–0492.

SUPPLEMENTARY INFORMATION: The Research Steering committee will have a discussion of plans to solicit fishermen's input on collaborative research focusing on habitat-related issues. They will follow up on discussion concerning the NMFS experimental fishing permit program and its impact on collaborative research. Also on the agenda will be the role of the Research Steering Committee in developing Requests for Proposals, as well as reviewing and tracking research projects funded through the sea scallop research set-aside.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (see **ADDRESSES**) at least 5 days prior to the meeting dates.

Dated: February 5, 2003.

Theophilus R. Brainerd,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 03–3292 Filed 2–10–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF EDUCATION

[CFDA No.: 84.031S]

Office of Postsecondary Education; Developing Hispanic-Serving Institutions (HSI) Program

ACTION: Notice inviting applications for new awards for fiscal year (FY) 2003 competition; correction.

Notice to Applicants: On January 29, 2003 a notice inviting applications for new awards for the Hispanic-Serving Institutions (HSI) Program was published in the **Federal Register** (68 FR 4454 through 4456). On page 4454, the Deadline for Intergovernmental Review of "April 30, 2003" is corrected to read "May 2, 2003". Additionally, in column 3 on the same page, the applicability of the "Page Limit" section is corrected to read as follows: "The page limit does not apply to the application cover sheet (ED 424), Dual Submission Certification, the one-page abstract, the Certification Regarding Collaborative Arrangement (ED 851S–8), the Hispanic-Serving Institutions Assurance Form (ED 851S–7), and the Cooperative Arrangement Form (ED 851S–1). The page limit does, however, apply to all remaining parts of the application."

For Applications and Further Information Contact: Louis Venuto, U.S. Department of Education, Title V, Developing Hispanic-Serving Institutions Program, 1990 K Street NW., 6th floor, Washington, DC 20006–8513. Telephone: (202) 502–7763 or via Internet: *title.five@ed.gov*.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative

format (*e.g.* Braille, large print, audiotape, or computer diskette) on request to the program contact person listed under *For Applications and Further Information Contact.*

Individuals with disabilities may obtain a copy of the application package in an alternative format by contacting that person. However, the Department is not able to reproduce in an alternative format the standard forms included in the application package.

Electronic Access to This Document

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To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC area at (202) 512–1530.

Note: The official version of a document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.access.gpo.gov/nara/index.html.*

Program Authority: 20 U.S.C. 1101–1101d, 1103–1103g.

Dated: February 6, 2003.

Sally L. Stroup,

Assistant Secretary, Office of Postsecondary Education.

[FR Doc. 03–3396 Filed 2–10–03; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Reauthorization of the Higher Education Act; Public Hearing

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Notice of open meeting.

SUMMARY: This notice includes the schedule and proposed agenda of the upcoming public hearing regarding proposals for the reauthorization of the Higher Education Act (HEA). The Office of Postsecondary Education (OPE) invites comments from the public regarding proposals for amending and extending the HEA. The meeting will take place in Kansas City, Missouri during the annual Federal Student Aid Spring Update meeting.

Assistance to Individuals with Disabilities at the Public Meeting

The meeting site is accessible to individuals with disabilities. If you will need an auxiliary aid or service to participate in the meeting (*e.g.*, interpreting service, assistive listening device, or materials in an alternate format), notify the contact person listed under **FOR FURTHER INFORMATION CONTACT** no later than Wednesday, February 26, 2003. Although we will attempt to meet a request we receive after that date, we may not be able to make available the requested auxiliary aid or service because of insufficient time to arrange it.

DATES: Friday, March 7, 2003.

Location: Westin Crown Center, Century Ballroom, One Pershing Road, Kansas City, MO, 64108.

Times: 10 a.m.–4:30 p.m.

Meeting Format: This meeting will be held according to the following schedule:

1. Time: 10 a.m.–12:30 p.m.
2. Time: 1:30 p.m.–4:30 p.m.

Attendees: If you would like to attend the meeting listed above, we ask that you register with the Office of Postsecondary Education by e-mail or fax to the address listed under **ADDRESSES**. Please provide us with your name and contact information.

Participants: The hearing will begin with panels of invited speakers. After the presentations by the invited speakers, there will be time for comments from the public.

If you are interested in participating in the public comment period, we request that you reserve time on the agenda of the hearing by contacting the Office of Postsecondary Education by e-mail or fax. Please include your name, the organization you represent if appropriate, and a brief description of the issue you would like to present. Participants will be allowed approximately three to five minutes to present their comments, depending on the number of individuals who reserve time on the agenda. At the hearing, participants are also encouraged to submit two written copies of their comments. Persons interested in making comments are encouraged to address the issues and questions discussed under **SUPPLEMENTARY INFORMATION**.

Given the expected number of individuals interested in providing comments at the hearing, reservations for presenting comments should be made as soon as possible. However, please submit your reservation to comment at the hearing no later than February 28, 2003. Requests to speak during the public comment period of the hearing will be granted on a first-come, first-served basis.

Persons who are unable to obtain reservations to speak during the meeting are encouraged to submit written comments. Written comments will be accepted at the meeting site or may be mailed to the Office of Postsecondary Education at the address listed under **ADDRESSES**.

ADDRESSES: Submit all requests to reserve time on the agenda or to submit written comments to OPE using one of the following methods:

1. *E-mail.* We encourage you to submit your request to reserve time on the agenda or written comments through the Internet to the following address: *HEA.2004@ed.gov.*

2. *Facsimile.* You may submit your request to reserve time on the agenda by facsimile at (202) 502–7875.

3. *Mail.* You may submit your written comments to Jeffrey R. Andrade, Deputy Assistant Secretary for Policy, Planning, and Innovation, Office of Postsecondary Education, 1990 K Street, NW., Room 8046, Washington, DC 20006 ATTENTION: HEA Reauthorization. Due to delays in mail delivery caused by heightened security, please allow adequate time for the mail to be received.

FOR FURTHER INFORMATION CONTACT: To obtain additional information about the hearing, please contact Amy Raaf at (202) 502–7561 or Dan Iannicola, Jr. at (202) 502–7719 or via Internet: *amy.raaf@ed.gov, dan.iannicola@ed.gov.*

To obtain additional information about hotel reservations and the agenda for the Federal Student Aid Spring Update meeting, visit Federal Student Aid's Web site at: *http://edeworkshop.ncspearson.com/KansasCity.htm.*

SUPPLEMENTARY INFORMATION: As the 108th Congress begins to hold hearings on reauthorization of the Higher Education Act and the Administration begins to work on its proposals for amending the HEA, we are interested in hearing from the higher education community and other members of the public about ways to ensure that the significant amounts of funding for the programs authorized in the HEA are wisely spent. We are also looking to build upon successful program results in providing access to students, maintaining high levels of student retention in higher education programs and improving the quality of postsecondary education.

Many of the programs authorized under the HEA work well and provide

a strong foundation of support for higher education. Some need to be made more effective in achieving better results. As part of reauthorization, we are interested in hearing how to make the HEA programs work better and complement the President's efforts to ensure that all Federal programs focus on stronger accountability for results. The goal of this hearing is to receive proposals for solutions to the numerous challenges that are currently facing postsecondary education. Therefore, comments are encouraged in the following priority areas:

a. How can we improve access and promote additional educational opportunity for all students, especially students with disabilities, within the framework of the HEA? How can the Federal Government through the HEA encourage postsecondary students to make consistent progress in the completion of their programs of study and to obtain their certificates or degrees?

b. How can existing HEA programs be changed and made to work more efficiently and effectively? In what ways do they need to be adapted or modified to respond to changes in postsecondary education that have occurred since 1998?

c. How can HEA programs be changed to eliminate any unnecessary burdens on students, institutions, or the Federal Government, yet maintain accountability of Federal funds? How can program requirements be simplified, particularly for students?

d. How can we best prioritize the use of funds provided for postsecondary education and the benefits provided under the HEA programs? How can the significant levels of Federal funding already provided for the HEA programs best help to further the goals of improving educational quality, expanding access, and ensuring affordability?

e. Are there innovative and creative ways the Federal Government can integrate tax credits, deductions, and tax-free savings incentives with the Federal student aid programs in the HEA to improve access to and choice in postsecondary education?

f. What results should be measured in each HEA program to determine the effectiveness of that program?

g. Are there other ideas or initiatives that should be considered during reauthorization that would improve the framework in which the Federal Government promotes access to postsecondary education and ensures accountability of taxpayer funds?

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Note: The official version of the document is published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.access.gpo.gov/nara/index.html.*

Dated: February 6, 2003.

Sally L. Stroup,

Assistant Secretary for Postsecondary Education.

[FR Doc. 03–3397 Filed 2–10–03; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

DOE Response to Recommendation 2002–3 of the Defense Nuclear Facilities Safety Board, Requirements for the Design, Implementation, and Maintenance of Administrative Controls

AGENCY: Department of Energy.

ACTION: Notice.

SUMMARY: The Defense Nuclear Facilities Safety Board Recommendation 2002–3, concerning the requirements for the design, implementation, and maintenance of administrative controls at Department of Energy Defense Nuclear Facilities was published in the **Federal Register** on December 20, 2002 (67 FR 77963). In accordance with section 315(b) of the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2286d(b), the Secretary transmitted the following response to the Defense Nuclear Facilities Safety Board on January 31, 2003.

DATES: Comments, data, views, or arguments concerning the Secretary's response are due on or before March 3, 2003.

ADDRESSES: Send comments, data, views, or arguments concerning the Secretary's response to: Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW., Suite 700, Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT: Beverly Cook, Assistant Secretary, Office of Environment, Safety, and Health, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

Issued in Washington, DC on February 3, 2003.

Mark B. Whitaker, Jr.,

Departmental Representative to the Defense Nuclear Facilities Safety Board.

The Secretary of Energy

Washington, DC 20585

January 31, 2003.

The Honorable John T. Conway, Chairman, Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW., Suite 700, Washington, DC 20004

Dear Mr. Chairman: The Department of Energy (Department) acknowledges receipt of the Defense Nuclear Facilities Safety Board's (Board) Recommendation 2002–3, Requirements for the Design, Implementation, and Maintenance of Administrative Controls. Recommendation 2002–3 was issued on December 11, 2002 and published in the **Federal Register** on December 20, 2002. The Department agrees that we must assure the critical assumptions used in defining and analyzing the basis for safe operations are properly developed, appropriately implemented, and effectively preserved. If the critical assumptions depend on administrative controls, we agree those controls should be treated appropriately. Therefore, the Department accepts the recommendation and will develop an implementation plan to respond to the recommendation.

The Department of Energy's (DOE) implementation plan will address how we will review existing DOE requirements and guidance to determine where further consolidation or clarification is needed to assure proper focus on those administrative controls that perform important safety functions similar to safety-class or safety-significant controls. Additionally, the plan will address how we will evaluate safety basis documents to identify administrative controls critical to preventing or mitigating accident consequences. We will strengthen our processes to ensure those critical administrative controls are properly implemented.

I have asked the Assistant Secretary for Environment, Safety and Health, Beverly Cook, to ensure the successful completion of the implementation plan we will develop in response to your recommendation. Mr. Richard Black, Director of the Office of Nuclear and Facility Safety Policy, is the responsible manager for the preparation of the Department's implementation plan.

Sincerely,

Spencer Abraham.

[FR Doc. 03–3374 Filed 2–10–03; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. EC03–47–001 and ES03–20–001]

Dynegy Inc.; Notice of Filing

February 5, 2003.

Take notice that on January 31, 2003, Dynegy Inc. (Dynegy), on behalf of certain of its public utility subsidiaries (Applicants), filed with the Federal Energy Regulatory Commission (Commission) an amendment to its January 13, 2003, application pursuant to section 203 of the Federal Power Act (FPA) for authorization of a disposition of jurisdictional facilities pursuant to an intra-corporate reorganization. In its January 13, 2003, application, Dynegy sought authorization to create one or more new intermediate holding companies between Dynegy Holdings Inc. and its indirect public utility subsidiaries. Dynegy also requested that the Commission grant Dynegy Power Marketing, Inc. blanket authority pursuant to FPA section 204 to issue securities and assume obligations or liabilities as guarantor, indorser, surety, or otherwise in respect of any security of another person. By the current amendment to the January 13, 2003, application, Dynegy seeks to alter its proposed corporate structure by transferring ownership in certain applicants to a newly-formed indirect, wholly-owned subsidiary of Dynegy.

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866)208–3676, or for TTY, contact (202)502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Comment Date: February 13, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–3358 Filed 2–10–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC03–14–002]

Ameren Services Company, American Transmission Systems, Incorporated, Northern Indiana Public Service Company, GridAmerica LLC, GridAmerica Holdings, Inc.; Notice of Filing

February 5, 2003.

Take notice that on January 31, 2003, GridAmerica LLC, GridAmerica Holdings, Inc., as Managing Member of GridAmerica LLC, and the GridAmerica Companies, which consist of Ameren Services Company, as agent for its electric utility affiliates Union Electric Company d/b/a AmerenUE and Central Illinois Public Service Company d/b/a AmerenCIPS, American Transmission Systems, Incorporated, a subsidiary of FirstEnergy Corp. and Northern Indiana Public Service Company, filed with the Federal Energy Regulatory Commission (Commission) a joint amendment to the request for authorization to transfer functional control over transmission facilities pursuant to section 203 of the Federal Power Act and 18 CFR part 33. The amendment is being submitted in compliance with the Commission's December 19, 2002, Order in Ameren Services Co., 101 FERC § 61,320, at P 185 (2002).

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866)208–3676, or for TTY, contact (202)502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Comment Date: February 21, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–3357 Filed 2–10–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP03–13–000]

Northwest Pipeline Corporation; Notice of Site Visit

February 5, 2003.

On February 19, 2003, the staff of the Office of Energy Projects (OEP) will conduct a site visit of Northwest Pipeline Corporation's (Northwest's) proposed Clackamas River Project in Clackamas County, Washington. The site visit will begin at 1 p.m. at Northwest's Oregon City Compressor Station south of the Clackamas River. Both sides of the Clackamas River crossing will be visited. Representatives of Northwest, the U.S. Fish and Wildlife Service, the NOAA Fisheries, the U.S. Army Corps of Engineers, and the State of Oregon may accompany the staff. Any person interested in attending the site visit should meet with FERC staff at 1 p.m. at the Oregon City Compressor Station and must provide their own transportation.

The address of the Oregon City Compressor Station is 15124 South Springwater Road, Oregon City, OR 97045, phone number (503) 631–2163 x 2460. This station can be accessed by using the Carver exit off Highway 212/224. For further information about the

project, please contact the Commission's Office of External Affairs at (202) 502–8004 or toll free at 1–866–208–3372.

Magalie R. Salas,

Secretary.

[FR Doc. 03–3355 Filed 2–10–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP03–32–000]

Northwest Pipeline Corporation; Notice of Interagency Meeting and Site Visit

February 5, 2003.

On February 18, 2003, the staff of the Office of Energy Projects (OEP) will conduct an interagency meeting and site visit of Northwest Pipeline Corporation's (Northwest's) proposed White River Replacement Project in King County, Washington. The purpose of the meeting and site visit is to facilitate interagency review and discussion of Northwest's project design and mitigation of environmental impacts. The meeting will begin at 1 p.m. inside the Muckleshoot Indian Tribe's Department of Planning and Public Works. Representatives of Northwest, the Muckleshoot Indian Tribe, the U.S. Fish and Wildlife Service, the NOAA Fisheries, the U.S. Army Corps of Engineers, and the State of Washington may accompany the staff. The interagency meeting will be followed by a site visit to both sides of the White River crossing. Any person interested in attending the site visit should meet with FERC staff at 3:30 p.m. in the parking lot of the Muckleshoot Indian Tribe's Department of Planning and Public Works. Those planning to attend must provide their own transportation.

The location of the Muckleshoot Indian Tribe's Department of Planning and Public Works is 40320 Auburn-Enumclaw Road SE. (State Route 164) in Auburn, Washington, 98092, phone number (360) 802–1922. For further information about the project, please contact the Commission's Office of External Affairs at (202) 502–8004 or toll free at 1–866–208–3372.

Magalie R. Salas,

Secretary.

[FR Doc. 03–3356 Filed 2–10–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–13–006]

Portland Natural Gas Transmission System; Notice of Compliance Filing

February 5, 2003.

Take notice that on January 29, 2003, Portland Natural Gas Transmission System (PNGTS) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following revised tariff sheets to become effective on March 1, 2003:

Fourth Revised Sheet No. 100—Alternate Third Revised Sheet No. 100
Second Revised Sheet No. 504—Alternate First Revised Sheet No. 504
First Revised Sheet No. 505

PNGTS states that the purpose of this filing is to comply with the Commission's January 14, 2003, order in the above-captioned docket, which approved an uncontested settlement filed by PNGTS on October 25, 2002. PNGTS states that the settlement resolved all issues set for hearing in this general rate proceeding, and that the Commission's January 14, 2003, order approving the settlement also approved the tendered tariff changes, which were submitted on pro forma tariff sheets as part of the settlement. The Commission's January 14, 2003, order directed PNGTS to file the instant tariff sheets within 15 days of the date of that order.

PNGTS states that copies of this filing are being served on all jurisdictional customers, applicable state commissions, and participants in Docket No. RP02–13–000.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's rules and regulations. All such protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Protest Date: February 10, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–3361 Filed 2–10–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RT01–99–000, RT01–99–001, RT01–99–002, RT01–99–003, RT01–86–000, RT01–86–001, RT01–86–002, RT01–95–000, RT01–95–001, RT01–95–002, RT01–2–000, RT01–2–001, RT01–2–002, RT01–2–003, RT01–98–000, and RT02–3–000]

Regional Transmission Organizations; Bangor Hydro-Electric Company, et al.; New York Independent System Operator, Inc., et al.; PJM Interconnection, L.L.C., et al.; PJM Interconnection, L.L.C., ISO New England, Inc.; New York Independent System Operator, Inc.; Notice

February 5, 2003.

Take notice that PJM Interconnection, L.L.C., New York Independent System Operator, Inc. and ISO New England, Inc. have posted on their internet websites charts updating their progress on the resolution of ISO seams.

Any person desiring to file comments on this information should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). All such comments should be filed on or before the comment date. Comments may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Comment Date: February 26, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–3363 Filed 2–10–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–244–000]

Southern LNG Inc.; Notice of Proposed Changes to FERC Gas Tariff

February 5, 2003.

Take notice that on January 29, 2003, Southern LNG Inc. ("SLNG") tendered for filing the following revised sheets to its FERC Gas Tariff, Original Volume No. 1:

Sixth Revised Sheet No. 5
Sixth Revised Sheet No. 6

SLNG states that the revised sheets track maintenance costs associated with the turning basin and berths for ships calling on the LNG import terminal on Elba Island, Georgia, pursuant to the tracker mechanism of its tariff approved as part of the settlement in Docket No. RP02–129. SLNG states that this filing increases the dredging surcharge from the current $0.0428 per Dth to $0.0529 per Dth. SLNG proposes to make the increased surcharge effective March 1, 2003, as provided in the tariff sheets and the Commission's order approving the settlement.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed n accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: February 10, 2003.

Magalie R. Salas,
Secretary.
[FR Doc. 03–3362 Filed 2–10–03; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2009–016–North Carolina/Virginia]

Virginia Electric and Power Company; Notice

February 5, 2003.

The following Commission staff were assigned to help facilitate resolution of environmental and related issues associated with development of the Roanoke Rapids–Lake Gaston Project license application that was filed on January 28, 1999. The Commission staff will continue to be available to assist the parties, if requested, to resolve issues and facilitate development of a comprehensive settlement agreement during the pendency of the license application. However, the "separated staff" will take no part in Commission review of the application, or deliberations concerning the merits of the application.

Office of Energy Projects

Ronald McKitrick
Monte Terhaar

Different Commission "advisory staff" will be assigned to process the license application, including providing advice to the Commission with respect to it. Separated staff and advisory staff are prohibited from communicating with one another concerning this license application.

Magalie R. Salas,
Secretary.
[FR Doc. 03–3359 Filed 2–10–03; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP02–379–000 and CP02–380–000]

Southern LNG, Inc.; Notice of Availability of the Environmental Assessment for the Proposed Elba Island Expansion Project

February 5, 2003.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared an environmental assessment (EA) on the liquefied natural gas (LNG) facilities proposed by Southern LNG, Inc. (Southern LNG) in the above-referenced docket.

The EA was prepared to satisfy the requirements of the National Environmental Policy Act. The staff concludes that approval of the proposed project, with appropriate mitigating measures, would not constitute a major Federal action significantly affecting the quality of the human environment.

The EA assesses the potential environmental effects of the proposed project which includes expansion of the existing Elba Island LNG import terminal in Chatham County, Georgia. Southern LNG proposes to:

—Construct an LNG unloading slip cut into Elba Island with two ship unloading docks;
—Construct a 1,000,000-barrel double walled LNG storage tank;
—Construct two boil-off gas compressors;
—Construct two first-stage (booster) LNG pumps;
—Construct a recondenser vessel;
—Construct three second-stage LNG pumps;
—Construct three submerged combustion vaporizers; and
—Construct a motor control center.

The proposed facilities would expand the storage and sendout capacity of Southern LNG's existing LNG import terminal in Chatham County, Georgia. The proposal would: (1) Expand the storage capacity of the terminal; and (2) increase the sustainable daily sendout capability to 806 million standard cubic feet per day (MMscf/d) and its peaking capacity to 1,215 MMscf/d. Southern LNG seeks import authorization in Docket No. CP02–379–000.

The EA has been placed in the public files of the FERC. A limited number of copies of the EA are available for distribution and public inspection at: Federal Energy Regulatory Commission, Public Reference and Files Maintenance Branch, 888 First Street, NE., Room 2A, Washington, DC 20426, (202) 502–8371.

Copies of the EA have been mailed to Federal, State and local agencies, public interest groups, interested individuals, newspapers, and parties to this proceeding.

Any person wishing to comment on the EA may do so. To ensure consideration prior to a Commission decision on the proposal, it is important that we receive your comments before the date specified below. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

—Send an original and two copies of your comments to: Secretary, Federal Energy Regulatory Commission, 888 First St., NE., Room 1A, Washington, DC 20426.
—Label one copy of the comments for the attention of Gas Branch 1, PJ 11.1;
—Reference Docket No. CP02–380–000; and
—Mail your comments so that they will be received in Washington, DC on or before March 7, 2003.

Please note that we are continuing to experience delays in mail deliveries from the U.S. Postal Service. As a result, we will include all comments that we receive within a reasonable time frame in our environmental analysis of this project. However, the Commission strongly encourages electronic filing of any comments or interventions or protests to this proceeding. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the "e-Filing" link and the link to the User's Guide. Before you can file comments you will need to create a free account which can be created by clicking on "Login to File" and then "New User Account."

Comments will be considered by the Commission but will not serve to make the commentor a party to the proceeding. Any person seeking to become a party to the proceeding must file a motion to intervene pursuant to rule 214 of the Commission's rules of practice and procedures (18 CFR 385.214).[1] Only intervenors have the right to seek rehearing of the Commission's decision.

Affected landowners and parties with environmental concerns may be granted intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which would not be adequately represented by any other parties. You do not need intervenor status to have your comments considered.

Additional information about the project is available from the Commission's Office of External Affairs, at 1–866–208–FERC or on the FERC Internet Web site (*http://www.ferc.gov*) using the FERRIS link. Click on the FERRIS link, enter the docket number excluding the last three digits in the Docket Number field. Be sure you have selected an appropriate date range. For assistance with FERRIS, the FERRIS helpline can be reached at 1–866–208–3676, TTY (202) 502–8659 or at *FERConlineSupport@ferc.gov*. The FERRIS link on the FERC Internet Web site also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

[1] Interventions may also be filed electronically via the Internet in lieu of paper. *See* the previous discussion on filing comments electronically.

Magalie R. Salas,

Secretary.

[FR Doc. 03–3354 Filed 2–10–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Tendered for Filing With the Commission, Soliciting Additional Study Requests, and Establishing Procedural Schedule for Relicensing and a Deadline for Submission of Final Amendments

February 5, 2003.

Take notice that the following hydroelectric subsequent license application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Subsequent License for a Minor Water Power Project.

b. *Project No.:* P–7264–010.

c. *Date filed:* January 22, 2003.

d. *Applicant:* Fox River Paper Company and N.E.W. Hydro, Inc.

e. *Name of Project:* Middle Appleton Dam Hydroelectric Project.

f. *Location:* On the Lower Fox River, Outagamie County, Wisconsin. This project would not use Federal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791 (a)—825(r).

h. *Applicant Contact:* Mr. John Rom, Manager, Fox River Paper Company, P.O. Box 2215, Appleton, Wisconsin 54913, 920–733–7341 or Mr. Arie DeWaal, Mead and Hunt, Inc., 6501 Watts Road, Madison, Wisconsin 53719, 608–273–6380.

i. *FERC Contact:* John Ramer, *john.ramer@ferc.gov*, (202) 502–8969.

j. *Cooperating Agencies:* We are asking Federal, State, and local agencies and Indian tribes with jurisdiction and/or special expertise with respect to environmental issues to cooperate with us in the preparation of the environmental document. Agencies who would like to request cooperating status should follow the instructions for filing comments described in item k below.

k. Pursuant to section 4.32(b)(7) of 18 CFR of the Commission's regulations, if any resource agency, Indian tribe, or person believes that an additional scientific study should be conducted in order to form an factual basis for complete analysis of the application on its merit, the resource agency, Indian tribe, or person must file a request for a study with the Commission not later than 60 days after the application filing (*i.e.*, by March 22, 2003) and serve a copy of the request on the applicant.

l. *Deadline for filing additional study requests and requests for cooperating agency status:* March 22, 2003.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's rules of practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Additional study requests may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filing. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the "eFiling" link. After logging into the eFiling system, select "Comment on Filing" from the Filing Type Selection screen and continue with the filing process.

m. The application is not ready for environmental analysis at this time.

n. *Project Description:* The Middle Appleton Dam Hydroelectric Project consists of the following existing facilities: (1) A 372-foot-long by about 20-foot-high dam, topped with 15 functional and one non-functional, 20-foot-wide by 10-foot-high, steel Taintor gates; (2) a 35.5-acre reservoir with a gross storage capacity of about 195-acre feet; (3) two power channels, one about 500-feet-long by 40-foot-wide, and another 1700-foot-long and from 120 foot-to 200 foot-wide; (4) three powerhouses containing seven open-flume Francis turbines with a total maximum hydraulic capacity of 1,650 cubic feet per second (cfs) and seven generating units with a total installed generating capacity of 1,190 kilowatts (kW) and producing a total of 8,635,000 kilowatt hours (kWh) annually; (5) two transformer banks and one 4.16-kilovolt (kV) transmission line; along with (6) appurtenant facilities, such as govenors and electric switchgear. The dam and existing project facilities are owned by Fox River Paper Company and N.E.W. Hydro, Inc.

o. A copy of the application is on file with the Commission and is available

for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "FERRIS" link—select "Docket #" and follow the instructions. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676 or for TYY, contact (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

p. With this notice, we are initiating consultation with the Wisconsin State Historic Preservation Officer (SHPO), as required by § 106, National Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36 CFR 800.4.

q. *Procedural schedule and final amendments:* The application will be processed according to the following hydro licensing schedule. Revisions to the schedule will be made as appropriate. The Commission staff proposes to issue one environmental assessment rather than issue a draft and final EA. Comments, terms and conditions, recommendations, prescriptions, and reply comments, if any, will be addressed in an EA issued in the spring of 2004.

Issue Acceptance or Deficiency Letter: June 2003
Issue Scoping Document: July 2003
Notice that application is ready for environmental analysis: October 2003
Notice of the availability of the EA: March 2004
Ready for Commission decision on the application: May 2004

Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of the notice of ready for environmental analysis.

Magalie R. Salas,

Secretary.

[FR Doc. 03–3360 Filed 2–10–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Unlicensed Project Review and Soliciting Comments, Protests and Motions To Intervene

February 5, 2003.

The following notice was issued by the Commission on December 30, 2002, and appeared in the **Federal Register**. The notice was inadvertently omitted from a newspaper publication.

Take notice that the following review has been initiated by the Commission:

a. *Review Type:* Unlicensed project.

b. *Docket No:* UL02–2–000.

c. *Owner:* Indian River Power Supply, LLC.

d. *Name of Project:* Russell/Westfield Paper Company Dam Project.

e. *Location:* The project is located on the Westfield River, in the town of Russell, Hampden County, Massachusetts. This project does not occupy Federal lands or tribal lands.

f. *FERC Contact:* Any questions on this notice should be addressed to Henry Ecton (202) 502–8768, or E-mail address: *henry.ecton@ferc.gov.*

g. *Deadline for filing comments, protests, and/or motions to intervene:* March 5, 2002.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington DC 20426. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper. Any questions, please contact the Secretary's Office. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov.*

Please include the docket number (UL02–2–000) on any comments, protests, or motions to intervene filed.

h. Description of Project: The Russell/Westfield Paper Company Dam Project, a run-of-river project, consists of: (1) A reservoir of 10 acres in area; (2) an existing 150-foot-long, 4-to-22-foot-high concrete gravity dam; (3) a powerhouse of concrete and wood construction, containing two horizontal generator units with a combined output of 705 kW; (4) two steel penstocks, each 7.625 feet in diameter and 60 feet long; (5) an earth embankment with a sheetpile core, along the left bank of the river; and (6) appurtenant facilities.

Pursuant to section 23(b)(1) of the Federal Power Act (FPA), 16 U.S.C. 817(1), a non-Federal hydroelectric project must (unless it has a still-valid pre-1920 Federal permit) be licensed if it (1) is located on a navigable water of the United States; (2) occupies lands of the United States; (3) utilizes surplus water or water power from a government dam; or (4) is located on a body of water over which Congress has Commerce Clause jurisdiction, project construction occurred on or after August 26, 1935, and the project affects the interests of interstate or foreign commerce. The purpose of this notice is to gather information to determine whether the existing project meets any or all of the above criteria, as required by the FPA.

i. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

j. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of rules of practice and procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests, but only those who file a motion to intervene in accordance with the Commission's rules may become a party to the proceeding. Any protests or motions to intervene must be received on or before the specified comment date for the particular application.

k. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Docket Number of the particular review.

l. Agency Comments—Federal, state, and local agencies are invited to file comments on the described review. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments.

Magalie R. Salas,

Secretary.

[FR Doc. 03–3364 Filed 2–10–03; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7451–2]

EPA Science Advisory Board; Notification of Public Advisory Committee Meetings; Science and Technology Review Panel—Notification of Meeting Location

SUMMARY: This notice supplements the information published in the **Federal Register** (67 FR 79912) on December 31, 2002 by providing the location for the following meeting of a review panel of the U.S. EPA Science Advisory Board.

Meeting Date and Time: The Science and Technology Review Panel (STRP) of the U.S. Environmental Protection Agency's Science Advisory Board will conduct a public meeting on February 24–25, 2003. The meeting will begin on February 24, at 9:30 am and adjourn no later than 5:30 pm that day. On February 25, 2003, the meeting may begin as early as 8 am and adjourn no later than 5 pm.

Meeting Location: The meeting will take place at the Hotel Washington, 515 15th Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: For further details concerning this review, including background information, availability of meeting materials, opportunity for public comment, and the charge to the STRP, please refer to the initial **Federal Register** notice (67 FR 79912), dated December 31, 2002. Information concerning related public teleconference meetings is also contained in that notice.

Dated: January 29, 2003.

Vanessa Vu,

Director, EPA Science Advisory Board Staff Office.

[FR Doc. 03–3419 Filed 2–10–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL—7451–3]

EPA Science Advisory Board; Notification of Radiation Advisory Committee Meeting; Request for Comments on the Consultative Panel

Purpose of this Notice: To: (1) Announce a public meeting of a Federal advisory committee, and (2) solicit public comment on the proposed consultative panel.

1. Meeting of the Radiation Advisory Committee—(February 25–27, 2003)

Pursuant to the Federal Advisory Committee Act, Pub. L. 92–463, notice is hereby given that the Radiation Advisory Committee (RAC) of the U.S. EPA Science Advisory Board (SAB) will meet on February 25–27, 2003 to conduct a consultation on two supplements being developed for the Multi-Agency Radiation Survey and Site Investigation Manual (MARSSIM). The RAC will also conduct some general committee business. It will receive briefings and program updates on a variety of EPA Office of Radiation and Indoor Air (ORIA) projects and it will discuss future projects. The meeting is open to the public, however, seating is limited and available on a first-come basis. *Important Notice:* Documents that are the subject of SAB reviews or consultations are normally available from the originating EPA office and are not available from the SAB Office—information concerning availability of documents generated by the SAB and the relevant Program Office is included below.

The meeting will begin on Tuesday, February 25 at 9 a.m. and adjourn no later than 5:30 p.m. that day. On Wednesday, February 26, the meeting will begin no earlier than 8:30 a.m. and adjourn no later than 5:30 p.m. that day. On Thursday, February 27, 2003, the meeting will begin no earlier than 8:30 a.m. and adjourn no later than 3:30 p.m. that day. All times noted are Eastern Time. The meeting will take place in the EPA Headquarters Building East Conference Room 1117A, 1201 Constitution Avenue, NW., Washington, DC 20004. For further information concerning the meeting, please contact the individuals listed at the end of this **Federal Register** notice.

Availability of the Meeting Materials: Materials for the meeting will be available at the meeting. The proposed agenda for the meeting will be posted approximately 10 calendar days prior to the meeting at the SAB's Web site (*http://www.epa.gov/sab*). For questions and information concerning the agenda, please contact Dr. K. Jack Kooyoomjian, Designated Federal Officer for the SAB's RAC at the locations provided below in this notice. For information pertaining to the MARSSIM consultation and ORIA Program Office information, please contact Dr. Mary E. Clark, Assistant Director, ORIA at the locations provided below in this notice.

2. Background on the Consultation

EPA's ORIA has requested the SAB to provide a consultation on two supplements being developed for the Multi-Agency Radiation Survey and Site Investigation Manual (MARSSIM). [The first supplement will be the Multi-Agency Radiation Survey and Assessment of Materials and Equipment (MARSAME), and the second supplement will be the Multi-Agency Radiation Survey and Assessment of Subsurface Soils (MARSASS)]. These projects reflect planning for major extensions of a multi-Agency initiative to provide federal guidance on determining whether a radioactively-contaminated site (including equipment and subsurface soils) has been adequately cleaned up.

The original MARSSIM, which was released in December, 1997, was reviewed by the SAB's RAC. The SAB report on the original review of the MARSSIM topic is also available on the SAB Web site under the reports listings (*http://epa.gov/sab/pdf/rac9708.pdf*) as EPA–SAB–RAC–97–008, entitled An SAB Report: Review of the Multi-Agency Radiation Survey and Site Investigation Manual (MARSSIM), September, 1997. The URL site for the federal MARSSIM which was published after receipt of the SAB advice is *http://www.epa.gov/radiation/marssim/obtain.htm*.

The original scope of MARSSIM was limited to surface soils and building surfaces to expedite the document's release. The SAB's RAN recommended that further expansions of scope be considered for subsequent editions of MARSSIM. The federal MARSSIM workgroup composed of members of the U.S. Environmental Protection Agency (EPA), U.S. Department of Defense (DOD), U.S. Department of Energy (DOE), U.S. Nuclear Regulatory Commission (NRC), and the state of Florida have obtained their respective Agencies' support to expand MARSSIM's scope, as recommended by the SAB, to include survey and assessment of materials and equipment as well as subsurface soils. Prior to preparing two draft documents incorporating these issues, the Federal MARSSIM workgroup will consult with the SAB's RAC so that the best available tools for these survey assessments will be developed.

In the consultation planned for February 25–27, the Agency is seeking advice on whether the technical plans to prepare supplements on subsurface soils and equipment are properly directed, and if there are any items, issues or practical applications that have not been considered that ought to be included by the federal MARSSIM workgroup in the current proposed plans.

3. Solicitation of Public Comment on the Proposed Consultative Panel

A "consultation" is one of several types of formal interaction between the Agency and the Science Advisory Board. The purpose of a consultation is to conduct an early discussion between the Agency and the SAB to help articulate important issues in the development of a project. The meeting is public and consists of briefings and discussions. In some cases a partial document, or an early draft may be available to serve as a basis for discussions. A charge is often used, but is less focused than that used in a formal peer review. No consensus advice is sought and no report is generated by the SAB.

To provide the Agency with meaningful input, we have determined that the following expertise, knowledge and experience is needed for the MARSSIM consultation: general expertise in radiological protection and health physics (includes radiation risk); knowledge of collection and detection techniques; statistical methods for radiological applications; knowledge of hydrogeological considerations (includes knowledge of saturated and unsaturated zone transport, fractured flow mechanics, and transport modeling of such phenomena); and knowledge of practical applications of cleanup and

protection procedures. The EPA Science Advisory Board Staff Office has determined that the RAC, a standing committee of the Board, will conduct this consultation since the RAC already has the appropriate expertise without the need for additional expert consultants. Therefore, we are not soliciting additional experts for this consultation.

The SAB Staff Office will post the names and biosketches for members of the consultative Panel on the SAB Web site at: *http://www.epa.gov/sab.* Public comments will be accepted until February 18, 2003 on the information provided. During this comment period, the public will be requested to provide information, analysis or other documentation relevant to the membership of the panel for the Staff Office's final decision. Information, analysis or documentation must be received by Dr. K. Jack Kooyoomjian, the Designated Federal Officer (DFO) no later than February 18, 2003. Please see the address/contact information noted below.

For the EPA SAB, a balanced review panel (*i.e.,* committee, subcommittee, or panel) is characterized by inclusion of candidates who possess the necessary domains of knowledge, the relevant scientific perspectives (which, among other factors, can be influenced by work history and affiliation), and the collective breadth of experience to adequately address the charge. Information provided by the public will be considered in the selection of the panel, along with information provided by candidates and information gathered by EPA SAB Staff independently on the background of each candidate (*e.g.,* financial disclosure information and computer searches to evaluate a nominee's prior involvement with the topic under review). Specific criteria to be used in evaluating an individual subcommittee member include: (a) Scientific and/or technical expertise, knowledge, and experience (primary factors); (b) absence of financial conflicts of interest; (c) scientific credibility and impartiality; (d) availability and willingness to serve, and (e) ability to work constructively and effectively in committees.

4. General Information

Providing Oral or Written Comments at SAB Meetings: It is the policy of the EPA Science Advisory Board (SAB) to accept written public comments of any length, and to accommodate oral public comments whenever possible. The EPA SAB expects that public statements presented at its meetings will not be repetitive of previously submitted oral or written statements. *Oral Comments:* In general, each individual or group requesting an oral presentation at a face-to-face meeting will be limited to a total time of ten minutes (unless otherwise indicated). For teleconference meetings, opportunities for oral comment will usually be limited to no more than three minutes per speaker and no more than fifteen minutes total. Interested parties should contact the DFO at least one week prior to the meeting in order to be placed on the public speaker list for the meeting. Speakers may attend the meeting and provide comment up to the meeting time. Speakers should bring at least 35 copies of their comments and presentation slides for distribution to the reviewers and public at the meeting. *Written Comments:* Although the SAB accepts written comments until the date of the meeting (unless otherwise stated), written comments should be received in the SAB Staff Office at least one week prior to the meeting date so that the comments may be made available to the review panel for their consideration. Comments should be supplied to Dr. K. Jack Kooyoomjian, the DFO for the Radiation Advisory Committee (RAC) at the address/contact information noted below in the following formats: one hard copy with original signature, and one electronic copy via e-mail (acceptable file format: Adobe Acrobat, WordPerfect, Word, or Rich Text files (in IBM–PC/Windows 95/98 format). Those providing written comments and who attend the meeting are also asked to bring 35 copies of their comments for public distribution. Should comment be provided at the meeting and not in advance of the meeting, they should be in-hand to the DFO up to and immediately following the meeting. The SAB allows a grace period of 48 hours after adjournment of the public meeting to provide written comments supporting any verbal comments stated at the public meeting to be made a part of the public record.

FOR FURTHER INFORMATION CONTACT: Any member of the public wishing further information concerning this meeting, who wish to submit brief oral comments, or have comment on the constitution or balance of Radiation Advisory Committee (RAC) membership, must contact Dr. K. Jack Kooyoomjian, DFO, U.S. EPA Science Advisory Board (1400A), Suite 6450BB, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone/voice mail at (202) 564–4557, fax at (202) 501–0582; or via e-mail at *kooyoomjian.jack@epa.gov.* Requests for oral comments must be *in writing* (e-mail, fax or mail) and received by Dr. Kooyoomjian no later than noon Eastern Time five business days prior to the meeting date, February 18, 2003). For information pertaining to the MARSSIM consultation and ORIA Program Office information, please contact Dr. Mary E. Clark, Assistant Director, ORIA at telephone/voice mail at (202) 564–9348, fax at (202) 565–2043, or via e-mail at *Clark.Marye@epa.gov,* U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

Members of the public desiring additional information about the meeting, such as the agenda, location and directions to the meeting room must contact Ms. Betty Fortune, EPA Science Advisory Board (1400A), Suite 6450, U.S. EPA, 1200 Pennsylvania Avenue, NW.; Washington, DC 20460; telephone/voice mail at (202) 564–4534; fax at (202) 501–0582; or via e-mail at *fortune.betty@epa.gov.*

A copy of the draft agenda for the meeting will be posted on the SAB Web site (*http://www.epa.gov/sab*) (under the AGENDAS subheading) approximately 10 days before the meeting.

Meeting Access: Individuals requiring special accommodation at this meeting, including wheelchair access to the conference room, should contact Dr. Kooyoomjian or Ms. Fortune at least five business days prior to the meeting so that appropriate arrangements can be made.

Dated: February 4, 2003.

Vanessa T. Vu,

Director, EPA Science Advisory Board Staff Office.

[FR Doc. 03–3420 Filed 2–10–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7450–7]

Notice of Proposed Prospective Purchaser Agreement Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as Amended, Ithaca Gun Company Superfund Site

AGENCY: Environmental Protection Agency.

ACTION: Notice; request for public comment.

SUMMARY: Notification is hereby given that a Prospective Purchaser Agreement ("PPA") associated with the Ithaca Gun Company Superfund Site ("Site") located in Ithaca, New York was executed by the Environmental Protection Agency ("EPA") and the

United States Department of Justice. This Agreement is subject to final approval after the comment period. The PPA would resolve certain potential EPA claims under Sections 106 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. 9606 and 9607, against Fall Creek Redevelopment, L.L.C., the prospective purchaser.

The settlement would require the purchaser to pay $50,000 to EPA. The purchaser intends to use a parcel of land that is part of the Site property to create a commercial/residential development in the Ithaca Falls area in the City of Ithaca, New York. That property, and adjoining Site property which is expected to be dedicated as parkland by the City of Ithaca, are currently subject to an EPA response action under CERCLA for the removal of lead-contaminated soils. The purchaser has agreed to provide EPA with an irrevocable right of access to the Site, to conduct all business in compliance with all applicable local, State, and federal laws and regulations, and to exercise due care at the Site. The purchaser will record a notice with the County Clerk's Office that the property is part of the Site subject to the EPA removal action.

For thirty (30) days following the date of publication of this document, the Agency will receive written comments relating to the proposed settlement. The Agency's response to any comments received will be available for public inspection at the U.S. Environmental Protection Agency, Region II, 290 Broadway, New York, New York 10007–1866.

Availability: The proposed settlement is available for public inspection at the U.S. Environmental Protection Agency, Region II, 290 Broadway, New York, New York 10007–1866. A copy of the proposed Agreement may be obtained from George A. Shanahan, Assistant Regional Counsel, U.S. Environmental Protection Agency, Region II, 290 Broadway, New York, New York 10007–1866. Comments should reference the "Ithaca Gun Superfund Site Prospective Purchaser Agreement" and should be forwarded to Mr. Shanahan, at the above address.

FOR FURTHER INFORMATION CONTACT: George A. Shanahan, Assistant Regional Counsel, U.S. Environmental Protection Agency, Region II, 290 Broadway, New York, New York 10007–1866 or at (212) 637–3171.

Dated: January 29, 2003.

William J. Muszynski,

P.E., Deputy Regional Administrator, EPA Region 2.

[FR Doc. 03–3415 Filed 2–10–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7450–6]

Proposed CERCLA Section 122(h) Administrative Agreement for Recovery of Response Costs for the Ithaca Gun Company Superfund Site, City of Ithaca, Tompkins County, NY

AGENCY: Environmental Protection Agency.

ACTION: Notice; request for public comment.

SUMMARY: In accordance with section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. 9622(i), notice is hereby given by the U.S. Environmental Protection Agency ("EPA"), Region II, of a proposed administrative agreement pursuant to section 122(h) of CERCLA, 42 U.S.C. 9622(h), for recovery of response costs concerning the Ithaca Gun Company Superfund Site ("Site") located in the City of Ithaca, Tompkins County, New York. The settlement requires the settling parties, City of Ithaca ("Ithaca") and State Street Associates L.P. II ("SSAII") to pay $150,000 and $165,000, respectively, in reimbursement of EPA's response costs at the Site. The settlement includes a covenant not to sue the settling parties pursuant to section 107(a) of CERCLA, 42 U.S.C. 9607(a), in exchange for their payments. For 30 days following the date of publication of this notice, EPA will receive written comments relating to the settlement. EPA will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations that indicate that the proposed settlement is inappropriate, improper or inadequate. EPA's response to any comments received will be available for public inspection at EPA Region II, 290 Broadway, New York, New York 10007–1866.

DATES: Comments must be submitted on or before March 13, 2003.

ADDRESSES: The proposed settlement is available for public inspection at EPA Region II offices at 290 Broadway, New York, New York 10007–1866. Comments should reference the Ithaca Gun Company Superfund Site located in the City of Ithaca, Tompkins County, New York, Index No. CERCLA–02–2002–2021. To request a copy of the proposed settlement agreement, please contact the individual identified below.

FOR FURTHER INFORMATION CONTACT: George A. Shanahan, Assistant Regional Counsel, New York/Caribbean Superfund Branch, Office of Regional Counsel, U.S. Environmental Protection Agency, 17th Floor, 290 Broadway, New York, New York 10007–1866. Telephone: 212–637–3171.

Dated: January 29, 2003.

William J. Muszynski,

Deputy Regional Administrator, EPA Region 2.

[FR Doc. 03–3414 Filed 2–10–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7450–5]

Proposed CERCLA Administrative Cost Recovery Settlements: Stickney Avenue Landfill and Tyler Street Dump Superfund Sites

AGENCY: Environmental Protection Agency.

ACTION: Notice; request for public comment.

SUMMARY: In accordance with section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended ("CERCLA"), 42 U.S.C. 9622(i), notice is hereby given of two proposed administrative settlements for recovery of past response costs concerning the Stickney Avenue Landfill and Tyler Street Dump Superfund Sites in Toledo, Lucas County, Ohio, between the United States Environmental Protection Agency ("U.S. EPA" or "the Agency") and the following nine settling parties:

International Paper (f.k.a. Chase Bag);
The Dial Corporation;
Earl Scheib of Ohio, Inc.;
Eastman Kodak Company;
Hanson Building Materials America, Inc., (f/k/a Hanson North America, Inc.), as successor to Dura Corporation;
Reichert Stamping Company;
SafetyKleen Envirosystems Company, (f.k.a. Inland Chemical Corporation);
The Sherwin-Williams Company;
Sunoco, Inc. (R&M).

There are two separate settlement agreements. One agreement covers a settlement between U.S. EPA and SafetyKleen Envirosystems Company

(SafetyKleen); the other agreement memorializes the settlement between U.S. EPA and the other nine PRPs. The settlements require the settling parties to pay a total of $244,427 to the Hazardous Substance Superfund. The settlements also include a covenant not to sue the settling parties pursuant to section 107(a) of CERCLA, 42 U.S.C. 9607(a).

For 30 days following the date of publication of this notice, the Agency will receive written comments relating to the settlements. The Agency will consider all comments received and may modify or withdraw its consent to the settlements if comments received disclose facts or considerations which indicate that the settlements are inappropriate, improper, or inadequate. The Agency's response to any comments received will be available for public inspection at the following locations:

Toledo Public Library, Main Branch, Science & Technology Dept., 325 Michigan St., Toledo, OH.
Toledo Public Library, West Toledo Branch, 1320 Sylvania Ave., Toledo, OH.
Toledo Public Library, Point Place Branch, 2744 110th St., Toledo, OH.
Records Center, U.S. EPA, Region 5, 7th Floor, 77 W. Jackson Blvd., Chicago, IL 60604.

DATES: Comments must be submitted on or before March 13, 2003.

Background: The Stickney Site is a 50-acre piece of property located at 3900 Stickney Avenue, in the City of Toledo, Lucas County, Ohio. The Site is approximately 5½ miles upstream from the point where the Ottawa River discharges into Lake Erie. It is bordered to the west and northwest by the Ottawa River, to the north and south by privately-owned property, and to the east by Stickney Avenue. The Stickney site was used for the disposal of municipal waste by the City of Toledo from the late 1950's to about 1966, at which time the landfill was covered with soil, graded, and seeded. In addition to municipal waste, commercial and industrial waste was also disposed at the Site.

The Tyler Site is a 41-acre piece of property located on Tyler Street, in the City of Toledo, Lucas County, Ohio, across the Ottawa River from the Stickney Site (the Ottawa River borders Tyler to the south and east). The Tyler Site is bordered on the north by the F.S. Royster Corporation (Royster) site, by railroad tracks, and by small industrial facilities and residences. The City of Toledo operated the Tyler Site as a municipal co-disposal landfill. According to documents in U.S. EPA files and those of the Ohio Environmental Protection Agency (Ohio EPA), wastes were accepted at the Tyler Site between about 1955 and 1968. Other available records indicate that the Site may have operated as early as 1951 and as late as the early 1970s.

On March 9, 1993, U.S. EPA conducted a Screening Site Inspection (SSI) for the Stickney Site and for the Tyler Site. The SSI indicated that hazardous substances from surface soils and leachate at both Sites were being released or posed a threat of release to the Ottawa River.

Immediately adjacent to the Stickney Site on the south is an area generally referred to as the "XXKem Site" (a.k.a. S.M. Allen or Incorporated Crafts). The 13-acre XXKem facility formerly was occupied by companies which performed waste solvent and waste oil fuel blending operations. The XXKem Site is divided by a fence line which separates the front (east) portion (approximately 6 acres) from the central portion, which contains a closed lagoon. The Stickney Site is hydrogeologically down-gradient of the XXKem Site. Between 1959 and 1969, Borden Chemical Printing Ink of Whitehouse, Ohio, disposed of wastes, presumably related to the manufacturing of inks, at the XXKem Site. Incorporated Crafts, Inc., operated on the XXKem Site between 1974 and 1981, using the lagoon for the disposal of liquid wastes from various industrial processes. Under a 1981 consent decree with the State of Ohio, Incorporated Crafts was ordered to close the lagoon. Under the terms of the decree, liquid wastes were to be removed from the lagoon and transported off site for treatment/disposal. The decree also provided for backfilling the lagoon with non-metallic auto demolition material, capping with clay and topsoil, and seeding. Closure was completed in 1983. However, an Expanded Site Inspection (ESI) conducted in 1994 and a Supplemental ESI performed in 1995 (both of which were conducted by the Ohio Environmental Protection Agency (OEPA) under a Cooperative Agreement with U.S. EPA) indicated that significant subsurface soil contamination remained in the former lagoon area, contamination that had migrated to the groundwater at the XXKem Site and the adjacent Stickney Site, posing a potential threat to the Ottawa River.

In May 1994, U.S. EPA signed an Administrative Order on Consent with a group of six PRPs for the Stickney and Tyler Sites for the performance of an Engineering Evaluation/Cost Analysis (EE/CA) at the Stickney and Tyler Sites. During the EE/CA investigation for the Stickney Site, it became apparent that it would be necessary to cap a portion of the adjacent XXKem Site in order to tie the Stickney cap into native soils (fill at XXKem and Stickney were contiguous). The Final EE/CAs were approved on September 14, 1995, and included separate Streamlined Risk Evaluations (SREs) for the Stickney and Tyler Sites. On January 22, 1996, based on the results of the SREs and the analysis set forth in the EE/CAs, U.S. EPA issued separate Enforcement Action Memoranda (EAM), selecting non time-critical removal actions for the Stickney and Tyler Sites. The Stickney EAM also contained a response action decision for the former lagoon at the XXKem Site. Subsequent investigations of the sludge at the bottom of the disposal lagoon at XXKem and the groundwater impacted by that sludge provided evidence that sludge at the bottom of the closed lagoon contained significant levels of organic pollutants, PCBs, and inorganic pollutants, and that these pollutants were migrating via the groundwater to the Stickney Site and becoming commingled with contaminants in the latter. This led U.S. EPA to issue an action memorandum for the XXKem Site in January 1998 ("XXKem Action Memorandum"). The XXKem Action Memorandum called for the construction of a leachate extraction system near the XXKem/Stickney boundary, the purpose being to stop the migration of XXKem pollutants to the groundwater under the Stickney Site. This Action Memorandum was subsequently implemented through Administrative Orders by Consent negotiated with the City of Toledo and SafetyKleen.

Subsequently, U.S. EPA entered into an administrative consent order with a group of PRPs collectively known as the Stickney/Tyler Administrative Group ("STAG"), which consisted of the original six PRPs who had performed the EE/CA and numerous additional parties. In order to come to agreement with U.S. EPA, STAG conducted a private allocation process, which was presided over by a third-party neutral. Although U.S. EPA was not a party to the allocation process, the Agency subsequently received a copy of the allocator's report and reviewed the rationales set forth in the report. The Administrative Order by Consent (AOC) with STAG was signed by U.S. EPA on February 27, 1998. This AOC required STAG to install landfill caps at the Stickney and Tyler Sites, as required by the Enforcement Action Memoranda for these two Sites.

Cost Recovery Settlements

Based in part on the allocation process completed by STAG, U.S. EPA has determined that the settlements identified above are appropriate to resolve any cost recovery claims of U.S. EPA in connection with the Stickney and Tyler Sites. The settlements proposed in this Notice are with parties who did not join the administrative consent order between U.S. EPA and STAG to perform the response actions at these sites. Specifically, after the administrative consent order with STAG, U.S. EPA identified ten non-settling PRPs who, based on the allocation, had significant liability for the Agency's response costs; U.S. EPA subsequently negotiated cost recovery agreements with nine of these entities, who are identified above (the only remaining PRP is First Medical Group). The agreement reached with the PRPs other than SafetyKleen was based on the allocation of responsibility prepared by the third-party neutral for STAG, as well as information provided during settlement negotiations regarding the level of responsibility attributable to each PRP.

The agreement with SafetyKleen was based on that company's responsibility for its predecessor's disposal activities at the XXKem Site. SafetyKleen's predecessor-in-interest, Inland Chemical Company, was responsible for the disposal of toxic chemicals at the central portion of the XXKem Site, which was capped by STAG as part of the Stickney action. The capped area at XXKem consists of approximately 5.5 acres, while the total capped area covering the Stickney and XXKem Sites is equal to approximately 50 acres. Therefore, the capped area at XXKem represents 11 percent (11%) of the total capped area covering the Stickney and XXKem Sites. This percentage was applied to the United States' unrecovered past costs for the Stickney Site. The resulting calculation of the costs associated with the investigation and capping of the XXKem portion were $53,232. U.S. EPA applied a 15 percent premium to this amount because SafetyKleen had not joined STAG in implementing the remedy for the Stickney Site; this premium yielded $61,217, which was rounded down to $60,000 for purposes of settlement.

U.S. EPA has determined that the cost recovery agreements negotiated with these nine entities are appropriate. In addition, the United States Department of Justice reviewed these agreements and gave its concurrence on December 9, 2002.

ADDRESSES: The proposed settlement is available for public inspection at the following locations:

Toledo Public Library, Main Branch, Science & Technology Dept., 325 Michigan St., Toledo, OH.
Toledo Public Library, West Toledo Branch, 1320 Sylvania Ave., Toledo, OH.
Toledo Public Library, Point Place Branch, 2744 110th St., Toledo, OH.
Records Center, U.S. EPA, Region 5, 7th Floor, 77 W. Jackson Blvd., Chicago, IL.

Comments should reference the Stickney Avenue Landfill, 3900 Stickney Avenue, City of Toledo, Lucas County, Ohio, and/or the Tyler Street Dump, City of Toledo, Lucas County, Ohio and EPA Docket No. V–W–03–C–723 or V–W–03–C–724, and should be addressed to James Cha, Associate Regional Counsel, 77 West Jackson Blvd., Mail Code C–14J, Chicago, Illinois 60604. Copies of the proposed settlements may be obtained from Deloris Johnson, Paralegal, Office of Regional Counsel, 77 West Jackson Blvd., Mail Code C–14J, Chicago, Illinois 60604, (312) 886–6806.

FOR FURTHER INFORMATION CONTACT: James Cha, Associate Regional Counsel, 77 West Jackson Blvd., Mail Code C–14J, Chicago, Illinois 60604, (312) 886–0813.

Dated: January 24, 2003.

William Muno,

Director, Superfund Division.

[FR Doc. 03–3413 Filed 2–10–03; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2593]

Petitions for Reconsideration of Action in Rulemaking Proceedings

February 3, 2003.

Petitions for Reconsideration have been filed in the Commission's rulemaking proceedings listed in this Public Notice and published pursuant to 47 CFR 1.429(e). The full text of this document is available for viewing and copying in Room CY–A257, 445 12th Street, SW., Washington, DC or may be purchased from the Commission's copy contractor, Qualex International (202) 863–2893. Oppositions to these petitions must be filed by February 27, 2003. *See* Section 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject:

Federal-State Joint Board on Universal Service (CC Docket No. 96–45)
1998 Biennial Regulatory Review—Streamlined Contributor Reporting Requirements Associated with Administration of Telecommunications Relay Service, North American Numbering Plan, Local Number Portability, and Universal Service Support Mechanisms (CC Docket No. 98–171)
Telecommunications Services for Individuals with Hearing and Speech Disabilities, and the Americans with Disabilities Act of 1990 (CC Docket No. 90–571)
Administration of the North American Numbering Plan and North American Numbering Plan Cost Recovery Contribution Plan Cost Recovery Contribution Factor and Fund Size (CC Docket No. 92–237, NSD File No. L–00–72)
Number Resource Optimization (CC Docket No. 99–200)
Telephone Number Portability (CC Docket No. 95–116)
Truth-in-Billing and Billing Format (CC Docket No. 98–170)
Number of Petitions Filed: 8.

Marlene H. Dortch,

Secretary.

[FR Doc. 03–3313 Filed 2–10–03; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL COMMUNICATIONS COMMISSION

[DA–03–46]

Freeze on the Filing of TV and DTV "Maximization" Applications in Channels 60–69

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This document announces an immediate freeze on the filing of "maximization" applications, as defined further, by analog and digital television broadcast stations in the 746–806 MHz spectrum band, currently comprising television channels 60–69. Imposition of an immediate freeze will ensure that new maximization applications are not filed in this band in anticipation of future limitations, thus defeating the administrative purpose of the freeze.

ADDRESSES: 445 12th Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Kim Matthews, Policy Division, Media Bureau, Federal Communications Commission, (202) 418–2120.

SUPPLEMENTARY INFORMATION: This is a summary of the Media Bureau's Public Notice ("*PN*"), DA 03–46, adopted and released January 24, 2003. The complete text of this *NPRM* is available for inspection and copying during normal business hours in the FCC Reference Center, Room CY–A257, 445 12th Street, SW., Washington, DC and may also be purchased from the Commission's copy contractor, Qualex International, Portals II, 445 12th Street SW., Room CY–B–402, Washington, DC 20554, telephone (202) 863–2893, facsimile (202) 863–2898, or via e-mail: *qualexint@aol.com*.

Synopsis of Public Notice

1. Beginning immediately, and until further notice, the Commission will not accept for filing modification applications that would increase a television broadcast station's analog or DTV service area in the 746–806 MHz spectrum band, currently comprising television channels 60–69, in one or more directions beyond the combined area resulting from the station's parameters as defined in the following: (1) The DTV Table of Allotments; (2) Commission authorizations (license and/or construction permit); and (3) applications on file with the Commission prior to release of this Public Notice. Since July 7, 1998, the Commission has not accepted requests for modifications for analog stations on channels 60–69 that would result in an overall increase in the service area of the station. The policy we announce herein does not alter this existing policy. The Commission will continue to process applications on file as of the date this Public Notice is released. The Commission may consider, on a case by case basis and consistent with the public interest, amendments to those applications, for example, to resolve interference with other stations or pending applications or resolve mutual exclusivity with other pending applications.

2. The Commission has reallocated and is in the process of recovering channels 60–69 in order to provide spectrum for use by other services, particularly public safety and other land mobile services, and is in the process of considering other issues relating to DTV service maximization as part of its periodic reviews of the digital television conversion process. Portions of these channels have already been licensed to Guard Band and Public Safety entities. Prohibiting the filing of new maximization applications in this band will protect these newly licensed entities from shifts or expansion in existing broadcast service, and will facilitate the eventual clearing of this spectrum and the auction of the commercial portions of the spectrum. Imposition of an immediate freeze will ensure that new maximization applications are not filed in this band in anticipation of future limitations, thus defeating the administrative purpose of the action herein.

3. Consistent with existing policy, the Bureau will consider, on a case-by-case basis, requests for waiver of this freeze where the modification application: (1) Would permit co-location of transmitter sites in a market in circumstances consistent with the Commission's policy of encouraging co-location to reduce the cost of construction, particularly of DTV facilities, or to achieve more efficient spectrum use; or (2) is necessary or otherwise in the public interest for technical or other reasons to maintain quality service to the public, such as where zoning restrictions preclude tower construction at a particular site or where unforeseen events, such as extreme weather events or other extraordinary circumstances, require relocation to a new tower site. As with any request for waiver of our rules, a request for waiver of the freeze imposed in this Notice will be granted only upon a showing of good cause and where grant of the waiver will serve the public interest.

4. The decision to impose this freeze is procedural in nature and therefore the freeze is not subject to the notice and comment and effective date requirements of the Administrative Procedure Act. *See* 5 U.S.C. 553(b)(A), (d); *Kessler* v. *FCC*, 326 F. 2d 673 (D.C. Cir. 1963). Moreover, there is good cause for the Commission's not using notice and comment procedures in this case, or making the freeze effective 30 days after publication in the **Federal Register**, because to do so would be impractical, unnecessary, and contrary to the public interest because compliance would undercut the purposes of the freeze. *See* 5 U.S.C. 553(b)(B), (d)(3).

5. This action is taken by the Chief, Media Bureau pursuant to authority delegated by § 0.283 of the Commission's rules.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 03–3312 Filed 2–10–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting; Sunshine Act

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 10 a.m. on Tuesday, February 11, 2003, the Federal Deposit Insurance Corporation's Board of Directors will meet in closed session, pursuant to sections 552b(c)(2) and (c)(9)(B) of Title 5, United States Code, to consider matters relating to the Corporation's corporate activities.

The meeting will be held in the Board room on the sixth floor of the FDIC Building located at 550 17th Street, NW., Washington, DC.

Requests for further information concerning the meeting may be directed to Mr. Robert E. Feldman, Executive Secretary of the Corporation, at (202) 898–3742.

Dated: February 7, 2003.

Federal Deposit Insurance Corporation.

Robert E. Feldlman,

Executive Secretary.

[FR Doc. 03–3518 Filed 2–7–03; 8:45 am]

BILLING CODE 6714–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Federal Emergency Management Agency, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed revised collection of information. In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)), this notice seeks comments concerning the information collection outlined in 44 CFR Part 61, as it pertains to application for National Flood Insurance Program (NFIP) insurance.

SUPPLEMENTARY INFORMATION: The National Flood Insurance Program (NFIP) is authorized by Pub. L. 90–448 (1968) and expanded by Pub. L. 93–234 (1973). The National Flood Insurance Act of 1968 requires that the Federal Emergency Management Agency (FEMA) provide flood insurance at full actuarial rates reflecting the complete flood risk to structures built or

substantially improved on or after the effective date for the initial Flood Insurance Rate Map (FIRM) for the community, or after December 31, 1974, whichever is later, so that the risks associated with buildings in flood-prone areas are borne by those located in such areas and not by the taxpayers at large. In accordance with Pub. L. 93–234, the purchase of flood insurance is mandatory when Federal or federally related financial assistance is being provided for acquisition or construction of buildings located, or to be located, within FEMA-identified special flood hazard areas of communities that are participating in the NFIP.

Collection of Information

Title: National Flood Insurance Program Policy Forms.

Type of Information Collection: Revision of a currently approved collection.

OMB Number: 3067–0022.

Forms: FEMA Form 81–16, Flood Insurance Application; FEMA Form 81–17, Cancellation/Nullification Request; FEMA Form 81–18, General Change Endorsement; Request for Policy Processing and Renewal Information Letter (RPPRI Letter); FEMA Form 81–25, V-Zone Risk Factor Rating; FEMA Form 81–67, Preferred Risk Application; and the Renewal Premium Notice.

Abstract: In order to provide for the availability of policies for flood insurance, policies are marketed through the facilities of licensed insurance agents or brokers in the various States. Applications from agents or brokers are forwarded to a servicing company designated as fiscal agent by Federal Insurance Administration (FIA). Upon receipt and examination of the application and required premium, the servicing company issues the appropriate Federal flood insurance policy.

Affected Public: Individuals or households; Business or other for-profit; Not-for-profit institutions; Farms; Federal Government; State, Local or Tribal Government.

Estimated Total Annual Burden Hours:

FEMA NFIP policy form	Number of responses	Per form burden hours	Total burden hours
81–16 Flood Insurance Application	20,000	12 min	4,000 hrs.
81–67 Preferred Risk Application	5,000	15 min	1,000 hrs.
81–17 Cancellation	8,000	7.5 min	1,000 hrs.
81–18 Endorsement	75,000	9 min	11,250 hrs.
RPPRI Letters (to obtain missing information required for the applications, endorsements, and renewals)	Because this format is used to obtain information requested but missing on, and required to process, applications, endorsements and renewals, its burden hours are not counted separately, but are included in burden hour totals for those forms.		
81–25 V-Zone Risk Factor Rating Form	50	6 hours	300 hrs.
Renewal Premium Notice	146,000	3 min	7,300 hrs.
Coastal Construction Manual—CD Version	50	30 min	25 hrs.
Total	254,100	.....	24,875 hrs.

Estimated Cost: The average annual estimated dollar cost to the respondent applying for or renewing an NFIP policy is $55.50. This is the average commission amount paid by the NFIP to the insurance agent who completes the paperwork in conjunction with the applicant and submits it on his/her behalf to the NFIP. The NFIP pays the insurance agent 15 percent of the annual premium paid by the applicant. The average annual premium for flood insurance written through the NFIP is $370.

In addition, flood insurance applicants who opt to submit the V-Zone Risk Factor Rating Form certified by a licensed engineer or architect may incur an additional cost of approximately $720 per insured structure. The V-Zone Risk Factor Rating Form is used by the NFIP to evaluate the building site condition, support system, and general building details to determine if rate discount is warranted. The NFIP offers insurance rate discount from 5 to 40 percent if the design and construction of the building exceeds the NFIP minimum requirements. In the past year, applicants submitting the V-Zone Risk Factor rating Form received an average of 20 percent discount on their annual premium. Based on this average percentage premium discount, property owners were able to recoup the additional cost within a one to two year period.

The total annual cost to all respondents is approximately $9,526,500, which is the sum of $9,490,500 for policy applications and renewals and $36,000 for V-Zone Risk Factor Rating.

The projected Operating Expenses (not including claims and claim adjustment expenses) of the NFIP are estimated at approximately $6,800,000 for fiscal year 2003. This amount includes all administrative expenses such as processing flood applications, endorsements, cancellations, and customer service.

Comments: Written comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) evaluate the accuracy of the estimated costs to respondents to provide the information to the agency; (d) enhance the quality, utility, and clarity of the information to be collected; and (e) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses. Comments should be received within 60 days of the date of this notice.

ADDRESSES: Interested persons should submit written comments to Muriel B. Anderson, Chief, Records Management Branch, Information Resources Management Division, Information Technology Services Directorate, Federal Emergency Management

Agency, 500 C Street, SW., Room 316, Washington, DC 20472.

FOR FURTHER INFORMATION CONTACT: Jhun de la Cruz, Senior Underwriter, Federal Insurance and Mitigation Administration at (202) 646–2650 for additional information. You may contact Ms. Anderson for copies of the proposed collection of information at facsimile number (202) 646–3347 or email address *Information.Collections@fema.gov.*

Dated: February 5, 2003.

Edward W. Kernan,

Division Director, Information Resources Management Division, Information Technology Services Directorate.

[FR Doc. 03–3330 Filed 2–10–03; 8:45 am]

BILLING CODE 6718–01–P

FEDERAL HOUSING FINANCE BOARD

[No. 2003–N–3]

Prices for Federal Home Loan Bank Services

AGENCY: Federal Housing Finance Board.

ACTION: Notice of prices for Federal Home Loan Bank services.

SUMMARY: The Federal Housing Finance Board (Finance Board) is publishing the prices charged by the Federal Home Loan Banks (Banks) for processing and settlement of items (negotiable order of withdrawal or NOW), demand deposit accounting (DDA), and other services offered to members and other eligible institutions.

EFFECTIVE DATE: February 11, 2003.

FOR FURTHER INFORMATION CONTACT: Scott L. Smith, Associate Director, Office of Supervision (202) 408–2991; or Edwin J. Avila, Financial Analyst, (202) 408–2871; Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006.

SUPPLEMENTARY INFORMATION: Section 11(e) of the Federal Home Loan Bank Act (Bank Act) (12 U.S.C. 1431(e)) authorizes the Banks to: (1) Accept demand deposits from member institutions; (2) be drawees of payment instruments; (3) engage in collection and settlement of payment instruments drawn on or issued by members and other eligible institutions; and (4) have such incidental powers as are necessary to the exercise of such authority. Section 11(e)(2)(B) of the Bank Act (12 U.S.C. 1431(e)(2)(B)) requires the Banks to make charges for services authorized in that section, which charges are to be determined and regulated by the Finance Board.

Section 975.6(c) of the Finance Board's regulations (12 CFR 975.6(c)) provides for the annual publication in the **Federal Register** of all prices for Bank services. The following fee schedule is for the only Bank that offers item processing services to its members and other qualified financial institutions. Most of the remaining Banks provide other Correspondence Services, which may include securities safekeeping, disbursements, coin and currency, settlement, electronic funds transfer, etc.However, these Banks do not provide services related to processing of items drawn against or deposited into third party accounts held by their members or other qualified financial institutions.

District 1.—Federal Home Loan Bank of Boston (2003 NOW/DDA Services). (Services not provided.)

District 2.—Federal Home Loan Bank of New York (2003 NOW/DDA Services). (Does not provide item processing services for third party accounts.)

District 3.—Federal Home Loan Bank of Pittsburgh (2003 NOW/DDA Services). (Does not provide item processing services for third party accounts.)

District 4.—Federal Home Loan Bank of Atlanta (2003 NOW/DDA Services). (Does not provide item processing services for third party accounts.)

District 5.—Federal Home Loan Bank of Cincinnati (2003 NOW/DDA Services). (Does not provide item processing services for third party accounts.)

District 6.—Federal Home Loan Bank of Indianapolis (2003 NOW/DDA Services).

Fee Schedules Based on One Year Contract

Checking Account Processing

I. Check Services Transaction Charges

Turnaround (daily or cycled)	Monthly volume	Truncated		Complete		Full service image*	
		Per item	Per item	Per item	Per item	Per item	Per statement
0–5,000	$.054	$.0675	$.0875	$.06	$.40	$.02	$.40
5–10,000	.046	.0625	.0855	.06	.40	.02	.40
10–15,000	.045	.0585	.0835	.06	.40	.02	.40
15–25,000	.040	.0515	.0825	.06	.40	.02	.40
25–50,000	.039	.0475	.0805	.06	.40	.02	.40
50–75,000	.035	.0445	.0765	.06	.40	.02	.40
75–100,000	.032	.0415	.0755	.06	.40	.02	.40
100–and up	.030	.0385	.0745	.06	.40	.02	.40

Monthly volume	Image archive limited service*		CD image limited service
	Per item	Per item	Per CD
0–5,000	$.0125	$.0075	$10.00
5–10,000	.0125	.0075	10.00
10–15,000	.0125	.0075	10.00
15–25,000	.0125	.0075	10.00
25–50,000	.0125	.0075	10.00
50–75,000	.0125	.0075	10.00
75–100,000	.0125	.0075	10.00
100–and up	.0125	.0075	10.00

II. Ancillary Service Fees

Service	Cost
Large Dollar Signature Verification	$0.750
Over-the-counters and Microfilm	0.045
Return Items	2.40
Photocopies** and Facsimiles	2.50
Certified Checks	1.00
Invalid Accounts	0.65
Late Returns	0.50
Invalid Returns	0.50
No MICR/OTC	0.50
Settlement Only	[1] $100.00
+Journal Entries	3.00
Encoding Errors	2.75
Fine Sort Numeric Sequence	0.02
High Dollar Return Notification	N/C
Debit Entries	N/C
Credit Entries	N/C
Standard Stmt. Stuffers (up to 2)***	N/C
Statement Stuffing Savings (Non DDA Accounts)	0.20

[1] per month.

Minimum processing fee of $40.00 per month will apply for total NOW services. Also included in the above fees—at *no* additional cost are Federal Reserve fees, incoming courier fees, software changes, disaster recovery, envelope discount and inventory.

*Image Monthly Maintenance Fee of $500.00 for 0–32% of accounts; $300.00 for 33–49% of accounts; and $200.00 for 50%+ will be assessed for Image Statements.

**Photocopy request of 50 or more are charged at an hourly rate of $15.00.

***Each additional (over 2) will be charged at .02 per statement.

ACH Fees	
Tape transmission	$8.50 per tape.
or originations	.045 per item.
NACHA, MPX	Actual Federal Reserve charges.
ACH entries clearing through our R&T number	.25 per item.
Settlement only	65.00 per month.
ACH returns/NOC	2.50 per item.

Collected balances will earn interest at CMS daily-posted rate.
Prices effective April 1, 1993.

Federal Home Loan Bank of Indianapolis

Deposit Services:	
Pre-encoded Items	
City	$0.045 per item.
RCPC	.055 per item.
Other Districts	.09 per item.
Unencoded	.15 per item.
Food Stamp	.14 per item.
Photocopies*	2.50 per copy.
Adjustments on pre-encoded work	2.75 per error.
EZ Clear	.14 per item.
Coupons	8.25 per envelope.
Collections	6.00 per item.
Cash Letter	2.00 per cash letter.
Deposit Adjustments	.30 per adjustment.
Debit Entries	N/C.
Credit Entries	N/C.
Microfilming	N/C.
Mortgage Remittance (Basic Service)	.35.
Settlement only	100.00 per month.
+Journal Entries	3.00 each.
Courier**	
Indianapolis (city)	8.25 per location, per day, per pickup.
Outside Indianapolis	Prices vary per location.

N/C—No Charge.

District 7.—Federal Home Loan Bank of Chicago (2003 NOW/DDA Services.) (Does not provide item processing services for third party accounts.)

District 8.—Federal Home Loan Bank of Des Moines (2003 NOW/DDA Services.) (Does not provide item

processing services for third party accounts.)

District 9.—Federal Home Loan Bank of Dallas (2003 NOW/DDA Services.) (Does not provide item processing services for third party accounts.)

District 10.—Federal Home Loan Bank of Topeka (2003 NOW/DDA Services.) (Does not provide item processing services for third party accounts.)

District 11.—Federal Home Loan Bank of San Francisco (2003 NOW/DDA services.) (Does not provide item processing services for third party accounts.)

District 12.—Federal Home Loan Bank of Seattle (2003 NOW/DDA Services.) (Does not provide item processing services for third party accounts.)

Dated: February 6, 2003.

By the Federal Housing Finance Board.

Stephen M. Cross,

Director, Office of Supervision.

[FR Doc. 03–3399 Filed 2–10–03; 8:45 am]

BILLING CODE 6725–02–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Notice of Interest Rate on Overdue Debts

Section 30.13 of the Department of Health and Human Services' claims collection regulations (45 CFR part 30) provides that the Secretary shall charge an annual rate of interest as fixed by the Secretary of the Treasury after taking into consideration private consumer rates of interest prevailing on the date that HHS becomes entitled to recovery. The rate generally cannot be lower than the Department of Treasury's current value of funds rate or the applicable rate determined from the "Schedule of Certified Interest Rates with Range of Maturities." This rate may be revised quarterly by the Secretary of the Treasury and shall be published quarterly by the Department of Health and Human Services in the **Federal Register**.

The Secretary of the Treasury has certified a rate of 10¾% for the quarter ended December 31, 2002. This interest rate will remain in effect until such time as the Secretary of the Treasury notifies HHS of any change.

Dated: February 4, 2003.

George Strader,

Deputy Assistant Secretary, Finance.

[FR Doc. 03–3306 Filed 2–10–03; 8:45 am]

BILLING CODE 4150–04–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Committee on Vital and Health Statistics: Meeting

Pursuant to the Federal Advisory Committee Act, the Department of Health and Human Services (HHS) announces the following advisory committee meeting.

Name: National Committee on Vital and Health Statistics (NCVHS).

Time and Date: February 26, 2003—9 a.m.–2:30 p.m. February 27, 2003—9 a.m.–1:30 p.m.

Place: Hubert H. Humphrey Building, 200 Independence Avenue SW., Room 705A, Washington, DC 20201.

Status: Open.

Purpose: At this meeting the Committee will hear presentations and hold discussions on several health data policy topics. On the morning of the first day the full Committee will hear updates and status reports from the Department on several topics including an update on HHS Data Council activities and the implementation of the administrative simplification provisions of the Health Insurance Portability and Accountability Act of 1996 (HIPAA). There will also be a presentation on the Consolidated Health Informatics Initiative, and an update on activities at the National Center for Health Statistics. In the afternoon there will be a report from the Subcommittee on Populations on selected activities and an update on the NCVHS 2000–2002 report. There will be Subcommittee breakout sessions late in the afternoon of the first day and prior to the full Committee meeting on the second day. Agendas for these breakout sessions will be posted on the NCVHS website (URL below) when available. On the second day the Committee will hear presentations on ethics requirements related to federal advisory group membership and on population health, followed by a discussion of Committee organizational issues. In the afternoon, each of the NCVHS Subcommittees will report on their breakout sessions from the first day and other activities. Finally, the agendas for future NCVHS meetings will be discussed.

Contact Person for More Information: Substantive program information as well as summaries of meetings and a roster of committee members may be obtained from Marjorie S. Greenberg, Executive Secretary, NCVHS, National Center for Health Statistics, Centers for Disease Control and Prevention, Room 1100, Presidential Building, 6525 Belcrest Road, Hyattsville, Maryland 20782, telephone (301) 458–4245. Information also is available on the NCVHS home page of the HHS Web site: *http://www.ncvhs.hhs.gov/*, where further information including an agenda will be posted when available.

Dated: February 3, 2003.

James Scanlon,

Acting Director, Office of Science and Data Policy, Office of the Assistant Secretary for Planning and Evaluation.

[FR Doc. 03–3305 Filed 2–10–03; 8:45 am]

BILLING CODE 4151–05–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Alternative Fuel Vehicle Acquisition Reports

AGENCY: Department of Health and Human Services (HHS).

ACTION: Notice of availability.

Pursuant to 42 United States Code 13218 (b), the Department of Health and Human Services gives notice that the Department's 1999–2001 alternative fuel vehicle compliance reports are available on-line at *http://www.knownet.hhs.gov/log/afvcompliance.htm*. The 2002 reports are being prepared and will be posted to this site.

FOR FURTHER INFORMATION CONTACT: Steve Mahaney at (202) 690–5663, or via e-mail at *steve.mahaney@hhs.gov*.

Dated: January 27, 2003.

Ed Sontag,

Assistant Secretary for Administration and Management.

[FR Doc. 03–3304 Filed 2–10–03; 8:45 am]

BILLING CODE 4151–17–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration on Aging

Agency Information Collection Activities; Proposed Collection; Comment Request; Senior Medicare Patrol Projects

AGENCY: Administration on Aging, HHS.

ACTION: Notice.

SUMMARY: The Administration on Aging (AoA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the information collection requirements relating to Senior Medicare Patrol Projects.

DATES: Submit written or electronic comments on the collection of information by April 14, 2003.

ADDRESSES: Submit electronic comments on the collection of information to: *barbara.lewis@aoa.gov*. Submit written comments on the collection of information to Administration on Aging, Washington, DC 20201.

FOR FURTHER INFORMATION CONTACT: Barbara Lewis, Administration on Aging, Center for Wellness and Community-Based Services, Office of Consumer Choice and Protection, Washington, DC 20201.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency request or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, AoA is publishing notice of the proposed collection of information set forth in this document. With respect to the following collection of information, AoA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of AoA's functions, including whether the information will have practical utility; (2) the accuracy of AoA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques when appropriate, and other forms of information technology.

This information collection, Senior Medicare Patrol Projects, continues an existing collection, which had been administered by the Office of Inspector General (OIG) to prevent error, fraud and abuse in the Medicare Program. This is now being transferred from the OIG to the Administration on Aging, and administered under Title IV of the Older Americans Act.

Grantees are required by Congress to provide information for use in program monitoring and for GPRA purposes. This information collection reports the number of new trainers trained and other Medicare outreach activities, and the number of dollars recouped for the Medicare Trust Fund.

AoA estimates the burden of this collection of information as follows: a total of 8 hours for each of 51 grantees per year for the two semi-annual reports.

Dated: February 4, 2003.

Josefina G. Carbonell,

Assistant Secretary for Aging.

[FR Doc. 03–3326 Filed 2–10–03; 8:45 am]

BILLING CODE 4154–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 94D–0325]

International Conference on Harmonisation; Revised Guidance on Q3A Impurities in New Drug Substances; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a revised guidance entitled "Q3A(R) Impurities in New Drug Substances." The revised guidance, which updates a guidance on the same topic published in the **Federal Register** of January 4, 1996 (the 1996 guidance), was prepared under the auspices of the International Conference on Harmonisation of Technical Requirements for Registration of Pharmaceuticals for Human Use (ICH). The revised guidance clarifies the 1996 guidance, adds information, and provides consistency with more recently published ICH guidances. The revised guidance is intended to provide guidance to applicants for drug marketing registration on the content and qualification of impurities in new drug substances produced by chemical syntheses and not previously registered in a country, region, or member State.

DATES: The guidance is effective February 11, 2003. Submit written or electronic comments at any time.

ADDRESSES: Submit written requests for single copies of the guidance to the Division of Drug Information (HFD–240), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, or the Office of Communication, Training and Manufacturers Assistance (HFM–40), Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852, or by calling the CBER Voice Information System at 1–800–835–4709 or 301–827–1800. Copies may be obtained from CBER's FAX Information System at 1–888–CBER-FAX or 301–827–3844. Submit written comments on the guidance to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to http://www.fda.gov/dockets/ecomments. Requests and comments should be identified with the docket number found in brackets in the heading of this document. See the **SUPPLEMENTARY INFORAMTION** section of this document for electronic access to the guidance.

FOR FURTHER INFORMATION CONTACT:

Regarding the guidance: Charles P. Hoiberg, Center for Drug Evaluation and Research (HFD–800), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–5918.

Regarding the ICH: Janet Showalter, Office of International Programs (HFG–1), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–0864.

SUPPLEMENTARY INFORMATION:

I. Background

In recent years, many important initiatives have been undertaken by regulatory authorities and industry associations to promote international harmonization of regulatory requirements. FDA has participated in many meetings designed to enhance harmonization and is committed to seeking scientifically based harmonized technical procedures for pharmaceutical development. One of the goals of harmonization is to identify and then reduce differences in technical requirements for drug development among regulatory agencies.

ICH was organized to provide an opportunity for tripartite harmonization initiatives to be developed with input from both regulatory and industry representatives. FDA also seeks input from consumer representatives and others. ICH is concerned with harmonization of technical requirements for the registration of pharmaceutical products among three

regions: The European Union, Japan, and the United States. The six ICH sponsors are the European Commission, the European Federation of Pharmaceutical Industries Associations, the Japanese Ministry of Health, Labour, and Welfare, and the Japanese Pharmaceutical Manufacturers Association, the Centers for Drug Evaluation and Research and Biologics Evaluation and Research, FDA, and the Pharmaceutical Research and Manufacturers of America. The ICH Secretariat, which coordinates the preparation of documentation, is provided by the International Federation of Pharmaceutical Manufacturers Associations (IFPMA).

The ICH Steering Committee includes representatives from each of the ICH sponsors and the IFPMA, as well as observers from the World Health Organization, Health Canada's Health Products and Food Branch, and the European Free Trade Area.

In accordance with FDA's good guidance practices (GGPs) regulation (21 CFR 10.115), this document is now being called a guidance, rather than a guideline.

To facilitate the process of making ICH guidances available to the public, the agency has changed its procedure for publishing ICH guidances. As of April 2000, we no longer include the text of ICH guidances in the **Federal Register**. Instead, we publish a notice in the **Federal Register** announcing the availability of an ICH guidance. The ICH guidance is placed in the docket and can be obtained through regular agency sources (see the **ADDRESSES** section). Draft guidances are left in the original ICH format. The final guidance is reformatted to conform to the GGP style before publication.

In the **Federal Register** of July 20, 2000 (65 FR 45085), FDA published a draft revised tripartite guidance entitled "Q3A(R) Impurities in New Drug Substances." The notice gave interested persons an opportunity to submit comments by September 18, 2000. The draft revised guidance was a revision of ICH guidance on the same topic published in the **Federal Register** of January 4, 1996 (61 FR 372).

After consideration of the comments received and revisions to the guidance by the Quality Expert Working Group of the ICH, a final draft of the guidance was submitted to the ICH Steering Committee and endorsed by the three participating regulatory agencies on February 6, 2002.

ICH Q3A(R) provides guidance on the information for drug marketing registration regarding the content and qualification of impurities in new drug substances produced by chemical syntheses and not previously registered within the three regions of the EC, Japan, and the United States. The guidance is not intended to apply to new drug substances used during the clinical research stage of development. The following types of drug substances are not covered in this guidance: Biological/biotechnological, peptide, oligonucleotide, radiopharmaceutical, fermentation products and semisynthetic products derived therefrom, herbal products, and crude products of animal or plant origin.

Impurities in new drug substances are addressed in the guidance from two different perspectives: (1) Chemistry aspects—classification and identification of impurities in specifications, report generation, listing of impurities in specifications, and a brief discussion of analytical procedures; and (2) safety aspects—guidance for qualifying those impurities that were not present, or were present at substantially lower levels, in batches of the new drug substance used in safety and clinical studies.

The ICH Q3A guidance was revised to add information to certain sections and to provide clarification to other sections of the previous guidance. The most important sections that have been revised are:

- The text on reporting, identification, and qualification thresholds.
- The text on listing impurities in specifications to provide a clear distinction between ICH Q3A (listing impurities) and ICH Q6A (setting specifications).
- The deletion of the exception to conventional rounding practice, i.e., the provision recommending no rounding up to 0.1 percent for values between 0.05 and 0.03 percent.
- Attachment 2—an illustration of reporting impurity results for identification and qualification in an application.
- Attachment 3—a decision tree for identification and qualification.
- Additions and revisions to the previous glossary include definitions for the terms "unspecified impurity," "identification threshold," and "qualification threshold."
- References to more recently published ICH guidances entitled "Q3B(R) Impurities in New Drug Products," "Q3C Impurities: Residual Solvents," and "Q6A Specifications: Test Procedures and Acceptance Criteria for New Drug Substances and New Drug Products: Chemical Substances."

Minor editorial changes were made to improve the clarity and consistency of the document.

This guidance represents the agency's current thinking on impurities in new drug substances. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

II. Comments

Interested persons may submit to the Dockets Management Branch (see **ADDRESSES**) written or electronic comments on the guidance at any time. Two copies of any mailed comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The guidance and received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

Persons with access to the Internet may obtain the document at http://www.fda.gov/cder/guidance/index.htm, http://www.fda.gov/cber/publications.htm, or http://www.fda.gov/ohrms/dockets/default.htm.

Dated: February 4, 2003.

Margaret M. Dotzel,

Assistant Commissioner for Policy.

[FR Doc. 03–3352 Filed 2–10–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 03N–0002]

Medical Devices; Export Certificates; FDA Export Reform and Enhancement Act of 1996; Certification Fees

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the new fees the agency will assess for issuing export certificates for devices. The FDA Export Reform and Enhancement Act of 1996 (EREA) provides that any person who exports a device may request that FDA certify in writing that the exported device meets certain specified requirements. It further provides that FDA shall issue such a certification within 20 days of the receipt of a request for such certification and that FDA may charge up to $175 for each certification that is issued within

the 20 days. FDA's costs to process the device certificates have increased since the inception of the export certification program for devices. Because of the increase, FDA is raising the fees for device export certificates accordingly. This document explains the costs included in the export certification program for devices. This is the first increase of the device export certificate fee under the EREA since the initial fee was established in 1996.

DATES: The fees described in this document for export certificates for devices will be effective March 1, 2003. Submit written or electronic comments by March 13, 2003.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20857. Submit electronic comments to http://www.fda.gov/dockets/ecomments.

FOR FURTHER INFORMATION CONTACT: Leila M. Craddock, Office of Compliance, Center for Devices and Radiological Health (HFZ–305), Food and Drug Administration, 2094 Gaither Rd., Rockville, MD 20850, 301–827–4555, ext. 110, FAX 301–594–4715.

SUPPLEMENTARY INFORMATION:

I. Background

The EREA became law on April 26, 1996 (Public Law 104–134, amended by Public Law 104–180, August 6, 1996). The principal purpose of this law is to expedite the export of FDA regulated products, both approved and unapproved, through amendments to sections 801(e) and 802 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 381(e) and 382). Section 801(e)(4) of the act provides that any person who exports a drug, animal drug, or device may request that FDA certify in writing that the exported drug, animal drug, or device meets the requirements of section 801(e) or 802 of the act, or other applicable requirements of the act. Upon a showing that the product meets the applicable requirements, the law provides that FDA shall issue export certification within 20 days of the receipt of a request for such certification. It also allows FDA to collect fees of up to $175 for each certificate that is issued within the 20-day period. The focus of this notice is on export certificates issued by the Center for Devices and Radiological Health (CDRH).

The original notice on the EREA fees for export certificates was published in the **Federal Register** on November 6, 1996 (61 FR 57445), and became effective October 1, 1996. An updated resource review within CDRH has identified that recoverable costs of the device export certifications have increased since October 1996. Accordingly, the fees have been recalculated so that the aggregate amount of fees collected will meet the aggregate costs to issue device export certificates.

II. Agency Costs and Fees to be Assessed for Export Certificates

The costs of the export certification program for devices have grown since fiscal year 1997 (FY 97), while the export certificate fee has not changed. The increased costs in the export certification program for devices are attributable to two major areas: (1) The volume of requests for certificates and (2) the increase in payroll costs over the past 6 years. These costs account for the major differences between FY 97 and the current year.

The volume of requests for certificates has increased by 100 percent since FY 97. In order to meet this increased volume of requests, the staff size has grown accordingly. In addition, CDRH's average salary has increased by 37 percent during the same time period. Table 1 of this document shows the increase in certificates from FY 97 to FY 02 (the number of certificates for 2002 was estimated):

TABLE 1.—NUMBER OF EXPORT CERTIFICATES FROM FISCAL YEAR 1997 TO FISCAL YEAR 2002

Fiscal Year (FY)	Total Certificates
FY 97	11,140
FY 98	17,107
FY 99	18,954
FY 00	21,292
FY 01	23,737
FY 02	23,000[1]

[1] Estimated.

The estimated costs of the export certification program for devices in FY 03 are: $533,000 for payroll and $267,000 for operating expenses. There are four recoverable cost categories for preparing and issuing export certificates. They are:

1. Direct personnel for research, review, tracking, writing, and assembly;
2. Purchase of equipment and supplies used for tracking, processing, printing, and packaging. Recovery of the cost of the equipment is calculated over its useful life;
3. Billing and collection of fees; and
4. Overhead and administrative support.

As mentioned previously in this document, the agency may charge up to $175 for each certificate. Certificates for some classes of products cost the agency more than $175 to prepare. Subsequent certificates issued for the same product(s) in response to the same request generally cost the agency less than $175. The fee for all subsequent certificates for the same product(s) issued in response to the same request reflects reduced agency costs for preparing those certificates.

The following fees will be assessed starting March 1, 2003, for device export certificates:

TABLE 2.—FEES FOR FIRST AND SUBSEQUENT EXPORT CERTIFICATES

Type of Certificate	Fee (dollars)
First certificate	175
All subsequent certificates issued for the same product(s) in response to the same request.	15

The fee for issuing the first export certificate for a device product is now at the maximum allowable amount. This fee is now consistent with the export certification fees assessed since FY 97 by all other FDA centers who provide export certification. The fees for issuing subsequent certificates continue to differ among the centers, based on varying costs. The agency expects this new fee schedule for device export certificates to remain constant for at least several years. However, if there is an increased cost to the agency in issuing device export certificates, the fee for subsequent certificates for device products may be increased in the future.

III. Request for Comments

Although the EREA does not require that FDA solicit comments on the assessment and collection of fees for export certificates, FDA is inviting comments from interested persons in order to have the benefit of additional views.

Interested persons may submit to the Dockets Management Branch (see **ADDRESSES**) written or electronic comments regarding this document. Submit a single copy of electronic comments or two hard copies of any written comments, except that individuals may submit one hard copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: January 30, 2003.

Linda S. Kahan,

Deputy Director, Center for Devices and Radiological Health.

[FR Doc. 03–3350 Filed 2–10–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection: Comment Request

In compliance with the requirement for opportunity for public comment on proposed data collection projects (section 3506(c)(2)(A) of title 44, United States Code, as amended by the Paperwork Reduction Act of 1995, Public Law 104–13), the Health Resources and Services Administration (HRSA) publishes periodic summaries of proposed projects being developed for submission to OMB under the Paperwork Reduction Act of 1995. To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, call the HRSA Reports Clearance Officer on (301) 443–1129.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: HRSA Competing Training Grant Application, Instructions and Relating Regulations (OMB No. 0915–0060)—Revision

The Health Resources Services Administration uses the information in the application to determine the eligibility of applicants for awards, to calculate the amount of each award and to judge the relative merit of applications. The application contains a basic set of general instructions as well as program-specific instructions which includes the detailed description of the project. The budget is negotiated for all years of the project period based on this application.

The burden estimate is as follows:

Form	Number of respondents	Response per respondent	Total responses	Hours per response	Total burden hours
Progress Report	1,250	1	1,250	56.25	70,313

Send comments to Susan G. Queen, Ph.D., HRSA Reports Clearance Officer, Room 14–45, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: February 4, 2003.

Jane M. Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 03–3298 Filed 2–10–03; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by agencies of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of Federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7057; fax: 301/402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

Scavenger Receptor BI Targeting for the Treatment of Infection, Sepsis and Inflammation

Alexander Bocharov *et al.* (CC)
DHHS Reference No. E–008–03/0 filed 05 Nov 2002
Licensing Contact: Uri Reichman; 301/435–4616; *reichmau@od.nih.gov*

Proinflammatory bacterial cell wall components including lipopolysaccharide (LPS), lipoteichoic acid (LTA) and peptidoglycan (PGN) are major factors determining the development, progression and outcome for a number of infectious diseases. Chaperonin 60 (spn60), another bacterial component, and its human ortholog heat shock protein 60 (hsp60), also play an important role in inflammatory diseases such as arthritis and lupus erythematosus. This invention relates to the discovery that peptides with an amphipathic helical motif block cellular uptake of LPS (lipopolysaccharide) and proinflammatory responses induced by LPS, LTA (lipoteichoic acid), bacterial cpn60 (Chaperonin 60) and human hsp60 (heat shock protein 60) in vitro. These observations suggest that agents with an amphipathic motif targeting SR–BI (scavenger receptor class B type I) could potentially be used to treat sepsis, bacterial and viral infections and inflammatory diseases where LPS, LTA, viral envelope proteins, and/or heat shock proteins contribute to pathogenesis.

4G10, a Monoclonal Antibody Against the Chemokine Receptor CXCR4, Raised Against a Synthetic Peptide of 38 Residues in Length Derived From the N-terminal Sequence of CXCR4

Edward A. Berger and Christopher C. Broder (NIAID)
DHHS Reference No. E–340–2002/0
Licensing Contact: Sally Hu; 301/435–5606; *hus@od.nih.gov*

This invention identifies a monoclonal antibody (4G10) against the chemokine receptor CXCR4 and is a mouse IgG1 antibody. CXCR4 has been identified as a co-receptor mediating entry of HIV–1 into T cells. Subsequently, CXCR4 has been implicated in normal physiological functions, including activation of B cells and B cell progenitors and guiding their migration into the bone marrow (via its ligand SDF–1). CXCR4 also functions in T cell progenitor migration and neural progenitor stem cell activation. Since

4G10 is a monoclonal antibody raised against a synthetic peptide derived from the N-terminus of CXCR4 that may prove useful in the context of the above CXCR4 functions, 4G10 is an excellent reagent for detection and quantitation of CXCR4 by Western blot, immunoprecipitation, ELISA, and flow cytometry. It can also be used to purify CXCR4 by affinity chromatography. With these known characteristics, it would also function in immuno-histochemical assays as well. Thus, this invention is a good research tool and is available for licensing through a Biological Materials License Agreement as no patent application has been filed.

Decreased Side Effects of DRYVAX® Vaccination by Prior Immunization With Highly Attenuated Poxvirus in Immune-Compromised and Competent Hosts

Genoveffa Franchini (NCI)
DHHS Reference No. E–249–02/0 filed 07 Nov 2002
Licensing Contact: Uri Reichman; 301/435–4616; *reichmau@od.nih.gov*

The invention describes new data relating to a vaccine against smallpox. Smallpox was once worldwide in scope; before vaccination was practiced almost everyone eventually contracted the disease. Variole virus is the etiological agent of smallpox. Symptoms of smallpox begin 12–14 days after exposure to the virus and are characterized by the appearance of multiple, eruptive pustules that cover the entire body. The eradication of smallpox was brought about by the use of the vaccinia virus vaccine, known as DRYVAX''. DRYVAX® is a replication competent vaccinia virus distinct from smallpox. Although the vaccine is highly efficacious, it is also associated with significant serious adverse effects. Specifically, DRYVAX® can cause serious side effects in immunocompromised patients, such as AIDS patients. The last natural case of smallpox occurred in 1977. In 1980 the World Health Organization (WHO) declared the global eradication of smallpox and recommended that all countries cease vaccination. The recent events of September 11, 2001, however, brought the issue of smallpox vaccination to the forefront of the national homeland security efforts.

The current invention describes the use of DRYVAX® in conjunction with (modified vaccinia Ankara strain) MVA or NYVAC, an attenuated poxvirus vector obtained from Connaught Technology Corporation (CTC), an Aventis company. Specifically, the inventors demonstrate, with animal studies, that prior immunization with NYVAC or MVA appear to help contain the adverse effects of the DRYVAX® vaccine. The adverse effects were tempered in immune-competent as well as in immune-compromised hosts. The overall concept of the invention is to immunize first with an attenuated poxvirus or an attenuated vaccinia virus and then with DRYVAX® to overcome the side effects of the latter vaccination.

gp64 Pseudotyped Vectors and Uses Thereof

Mukesh Kumar, Joshua Zimmerberg (NICHD)
DHHS Reference No. E–191–01/0 filed 12 Nov 2002
Licensing Contact: Uri Reichman; 301/435–4616; e-mail: *reichmau@od.nih.gov*

This invention relates to a general gene therapy technology which uses an HIV–1 based vector containing a baculovirus gp64 protein. HIV–1 based gene therapy vectors hold great promise due to their ability to deliver genes to non-dividing cells including hematopoietic stem cells. However native HIV only binds to cells with a CD4 receptor, while gene therapy vectors would need to be delivered to a variety of cells. Various different envelope proteins have been tried to replace the native envelope protein of HIV with a new envelope protein whose origin is another enveloped virus (pseudotyping) that has more general binding capabilities. However, to date, no one has been successful for practical purposes, due to either low titers or cytotoxic effects of the expressed proteins. The inventors have developed a family of nontoxic vectors using baculovirus gp64 protein (which binds to a variety of cells) and HIV proteins that efficiently deliver genes of interest to target cells. Furthermore, since gp64 expression in producer cells is not accompanied by cytotoxic side effects, this protein is an ideal candidate for the development of cell lines for constitutive expression of gp64 for the process of construction of the hybrid HIV (packaging cell lines).

Novel Acylthiol Compositions and Methods of Making and Using Them

John K. Inman (NIAID), Atul Goel (NCI), Ettore Appella (NCI), Jim A. Turpin (NCI), and Marco Schito
DHHS Reference No. E–329–00/0 filed 03 Aug 2001
Licensing Contact: Sally Hu; 301/435–5606; *hus@od.nih.gov*

This invention provides a novel family of acylthiols and uses thereof. More specifically, this invention provides effective inhibitors of HIV that selectively target its highly conserved nucleocapsid protein (NCp7) by interacting with metal chelating structures of a zinc finger-containing protein. Because of the mutationally intolerant nature of NCp7, drug resistance is much less likely to occur with compounds attacking this target. In addition, these drugs should inactivate all types and strains of HIV and could also inactivate other retroviruses, since most retroviruses share one or two highly conserved zinc fingers that have the CCHC motif of the HIV NCp7. Finally, this invention could be very useful for the large-scale practical synthesis of HIV inhibitors, because these compounds can be prepared by using inexpensive starting materials and facile reactions. Thus, it opens the possibility that an effective drug treatment for HIV could be made available to much larger populations than is now the case.

This research has been described in Turpin *et al., J. Med. Chem.* 42: 67–86, 1999; Basrur *et al., J. Biol. Chem.* 275: 14890–14897, 2000; Song *et al., Biorganic and Medicinal Chemistry* 10: 1263–1273, 2002; Goel *et al., Biorganic and Medicinal Chemistry Letters* 12: 767–770, 2002; Schito *et al., AIDS Research and Human Retroviruses,* in press.

Dated: February 4, 2003.

Jack Spiegel,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 03–3303 Filed 2–10–03; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 ALTX–4.

Date: February 14, 2003.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Wyndham City Center, 1143 New Hampshire Avenue, Washington, DC 20037.

Contact Person: Rass M. Shayiq, Ph.D., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2182, MSC 7818, Bethesda, MD 20892, 301–435–2359, *shayiqr@csr.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Signaling Pathways Involved in Tumorigenesis.

Date: February 20, 2003.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Syed M. Quadri, Ph.D., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6210, MSC 7804, Bethesda, MD 20892, (301) 435–1211.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Oncological Sciences Integrated Review Group. Metabolic Pathology Study Section.

Date: February 23–25, 2003.

Time: 6 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Ritz-Carlton Hotel, Tysons Corner, 1700 Tysons Boulevard, McLean, VA 22102.

Contact Person: Angela Y. Ng, MBA, Ph.D., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6200, MSC 7804, (For courier delivery, use MD 20817), Bethesda, MD 20892–7804. 301–435–1715, *nga@csr.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Genetic Sciences Integrated Review Group. Genome Study Section.

Date: February 23–25, 2003.

Time: 7:30 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda. One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Sally Ann Amero, Ph.D., Scientific Review Administrator, Center for Scientific Review, Genetic Sciences Integrated Review Group, National Institutes of Health, 6701 Rockledge Drive, Room 2206, MSC–7890, Bethesda, MD 20892–7890, 301–435–1159, *ameros@csr.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Endocrinology and Reproductive Sciences Integrated Review Group, Reproductive Biology Study Section.

Date: February 24–25, 2003.

Time: 8 a.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda. One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814..

Contact Person: Dennis Leszczynski, Ph.D., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6170, MSC7892, Bethesda, MD 20892, (301) 435–1044.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel. ZRG1 SSS W 10B:Small Business:Cardiovascular Devices.

Date: February 24–25, 2003.

Time: 8 a.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave., Bethesda, MD 20814.

Contact Person: Dharam S. Dhindsa, DVM, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5126, MSC 7854, Bethesda, MD 20892, (301) 435–1174, *dhindsad@csr.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Cardiovascular Sciences Integrated Review Group, Cardiovascular and Renal Study Section.

Date: February 24–25, 2003.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave., Bethesda, MD 20814.

Contact Person: Russell T. Dowell, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Dr., Rm. 4128, MSC 7814, Bethesda, MD 20892, (301) 435–1850, *dowellr@csr.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 SSS 10: Small Business: Bioengineering and Physiology.

Date: February 24–25, 2003.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave., Bethesda, MD 20814.

Contact Person: Paul Parakkal, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Dr., Room 5122 MSC 7854, Bethesda, MD 20892, 301–435–1176, *parakkap@csr.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 SSS 3 (03).

Date: February 24, 2003.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Washington Monarch Hotel, 2401 M Street, NW., Washington, DC 20037.

Contact Person: Gopal C. Sharma, DVM, MD PhD, Diplomate American Board of Toxicology, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2184, MSC 7818, Bethesda, MD 20892, (301) 435–1783, *sharmag@csr.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Endocrinology and Reproductive Sciences Integrated Review Group, Human Embryology and Development Subcommittee 1.

Date: February 24–25, 2003.

Time: 8 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave., Bethesda, MD 20814.

Contact Person: Michael Knecht, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6176, MSC 7892, Bethesda, MD 20892, (301) 435–1046.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Musculoskeletal and Dental Sciences Integrated Review Group, Orthopedics and Musculoskeletal Study Section.

Date: February 24–25, 2003.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Silver Spring, 8727 Colesville Road, Silver Spring, MD 20910.

Contact Person: Daniel F. McDonald, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4214, MSC 7814, Bethesda, MD 20892, (301) 435–1215, *mcdonald@csr.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Biobehavioral and Behavioral Process Initial Review Group, Biobehavioral and Behavioral Processes 4, Cognition and Perception.

Date: February 24–25, 2003.

Time: 8:30 a.m. to 7 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road, NW., Washington, DC 20015.

Contact Person: Cheri Wiggs, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3180, MSC 7848, Bethesda, MD 20892, (301) 435–1261.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Biophysical and Chemical Sciences Integrated Review Group, Physical Biochemistry Study Section.

Date: February 24–25, 2003.

Time: 8:30 a.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: Double Tree Rockville, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Gopa Rakhit, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4154, MSC 7806, Bethesda, MD 20892, (301) 435–1721, *rakhitg@csr.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Biobehavioral and Behavioral Process Initial Review Group, Biobehavioral and Behavioral Processes 6, Developmental Disabilities and Child Psychopathology.

Date: February 24–25, 2003.

Time: 9 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Washington Embassy Row, 2015 Massachusetts Ave., NW., Washington, DC 20036.

Contact Person: Karen Sirocco, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3176, MSC 7848, Bethesda, MD 20892, 301–435–0676, *siroccok@csr.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Adult Psychopathology and Disorders of Aging.

Date: February 24–25, 2003.

Time: 9 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Garden Inn, 815 14th Street, NW., Washington, DC 20005.

Contact Person: Jeffrey W. Elias, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3170, MSC 7848, Bethesda, MD 20892, (301) 435–0913, *eliasj@csr.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Molecular, Cellular and Developmental Neurosciences Integrated Review Group, Molecular, Cellular and Developmental Neurosciences 7.

Date: February 25–26, 2003.

Time: 8 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Washington Embassy Row, 2015 Massachusetts Ave., NW., Washington, DC 20036.

Contact Person: Joanne T. Fujii, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5218, Bethesda, MD 20892, (301) 435–1178, *fujiij@drg.nih.gov*.

Name of Committee: Center for Scientific Special Emphasis Panel, Nursing Research: Child and Family.

Date: February 25–26, 2003.

Time: 8:30 a.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn, Tysons Corner, 1960 Chain Bridge Road, McLean, VA 22102.

Contact Person: Karin F. Helmers, PhD., Scientific Review Administrator, Center for Scientific Review/SNEM IRG, 6701 Rockledge Drive, Room 3166, MSC 7770, Bethesda, MD 20892, (301) 435–1017, *helmersk@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel, General Medicine A–1.

Date: February 25–26, 2003.

Time: 8:30 a.m. to 11 a.m.

Agenda: To review and evaluate grant applications.

Place: One Washington Circle Hotel, One Washington Circle, Washington, DC 20037.

Contact Person: Harold M. Davidson, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4216, MSC 7814, Bethesda, MD 20892, 301/435–1776, *davidsoh@csr.nih.gov*

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 IFCN3 (01) Biological Rhythms and Sleep Mechanisms.

Date: February 25, 2003.

Time: 9 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave, Bethesda, MD 20814.

Contact Person: Richard Marcus, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5168, MSC 7844, Bethesda, MD 20892, 301–435–1245, *richard.marcus@nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Biomedical Information and Nanotechnology.

Date: February 25, 2003.

Time: 1 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave, Bethesda, MD 20814.

Contact Person: Paul Parakkal, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Dr., Room 5122 MSC 7854, Bethesda, MD 20892, 301–435–1176, *parakkap@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 SSS2(02) Nonviral and Viral Vectors for Liver-Mediated Gene Therapy.

Date: February 25, 2003.

Time: 2 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: Prabha L. Atreya, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5156, MSC 7842, Bethesda, MD 20872, *atreyap@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 SSS W 50R:PA02–125:Bioengineering Nanotechnology Initiative.

Date: February 25, 2003.

Time: 3 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave, Bethesda, MD 20814.

Contact Person: Dharam S. Dhindsa DVM, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5126 MSC 7854, Bethesda, MD 20892, (301) 435–1174, *dhindsad@csr.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: February 3, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–3301 Filed 2–10–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of Exclusive License: Novel Vaccinia Virus Vector for the Treatment of Human Cancers

AGENCY: National Institutes of Health, Public Health Services, HHS.

ACTION: None.

SUMMARY: This is notice, in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i), that the National Institutes of Health, Department of Health and Human Services, is contemplating the grant of an exclusive license to practice the inventions embodied in U.S. provisional patent application 60/137,126 (DHHS ref. no. E–181–1999/0–US–01) filed May 28, 1999 and entitled, "Combined growth factor-deleted and thymidine kinase-

deleted vaccinia virus," international PCT application PCT/US00/14679 (DHHS ref. no. E–181–1999/0–PCT–02) and entitled, "Combined growth factor-deleted and thymidine kinase-deleted vaccinia virus," and all corresponding foreign patent applications to JENNEREX Pharmaceuticals, of Mill Valley, California. The patent rights in these inventions have been assigned to the United States of America.

The prospective exclusive license territory will be worldwide. The field of use may be limited to the development of an oncolytic vaccinia virus vector for the treatment of recurrent squamous cell carcinoma of the head and neck ("SCCHN").

DATES: Only written comments and/or license applications which are received by the National Institutes of Health on or before April 14, 2003, will be considered.

ADDRESSES: Requests for copies of the patent(s)/patent application(s), inquiries, comments and other materials relating to the contemplated exclusive license should be directed to: Jonathan V. Dixon, Technology Licensing Specialist, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, MD 20852–3804; Telephone: 301.435.5559; Facsimile: 301.402.0220; E-mail: *dixonj@od.nih.gov*.

SUPPLEMENTARY INFORMATION: The above-referenced patent(s)/patent application(s) relate to mutant vaccinia virus expression vectors. The vaccinia vector claimed in this application is useful in that it is substantially non-replicating in non-dividing cells. The new vaccinia virus is deleted of both the growth factor gene and the thymidine kinase gene, which provides for its selective replication properties, and may be useful as a vector for cancer gene therapy or vaccination.

The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless within sixty (60) days from the date of this published notice, the NIH receives written evidence and argument that establish that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Applications for a license in the field of use filed in response to this notice will be treated as objections to the grant of the contemplated exclusive license. Comments and objections submitted to this notice will not be made available for public inspection and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

Dated: February 4, 2003.

Jack Spiegel,

Director, Division of Technology Development and Transfer, Office of Technology Transfer.

[FR Doc. 03–3302 Filed 2–10–03; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Applications for Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications for permit.

SUMMARY: The public is invited to comment on the following applications to conduct certain activities with endangered species and/or marine mammals.

DATES: Written data, comments or requests must be received by March 13, 2003.

ADDRESSES: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 30 days of the date of publication of this notice to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203; fax 703/358–2281.

FOR FURTHER INFORMATION CONTACT: Division of Management Authority, telephone 703/358–2104.

SUPPLEMENTARY INFORMATION:

Endangered Species

The public is invited to comment on the following application(s) for a permit to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*). Written data, comments, or requests for copies of these complete applications should be submitted to the Director (address above).

Applicant: Patrick Foley, Des Moines, IA, PRT–066739.

The applicant requests a permit to import the sport-hunted trophy of two male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: Lee G. Lipscomb, Los Angeles, CA, PRT–066355.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: George C. Hoppert, Jr., Monroe, MI, PRT–066339.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

The U.S. Fish and Wildlife Service has information collection approval from OMB through March 31, 2004, OMB Control Number 1018–0093. Federal agencies may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a current valid OMB control number.

Dated: January 10, 2003.

Michael S. Moore,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. 03–3400 Filed 2–10–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Applications for Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications for permit.

SUMMARY: The public is invited to comment on the following applications to conduct certain activities with endangered species and/or marine mammals.

DATES: Written data, comments or requests must be received by March 13, 2003.

ADDRESSES: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 30 days of the date of publication of this notice to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive,

Room 700, Arlington, Virginia 22203; fax (703) 358–2281.

FOR FURTHER INFORMATION CONTACT: Division of Management Authority, telephone (703) 358–2104.

SUPPLEMENTARY INFORMATION:

Endangered Species

The public is invited to comment on the following application(s) for a permit to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*). Written data, comments, or requests for copies of these complete applications should be submitted to the Director (address above).

Applicant: Olivia Angelloz, Sidney, NE, PRT–067136.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: Entertainment Management & International Animal Exchange, Sarasota, FL, PRT–060762.

The applicant request a permit to export 6.6 captive born tigers (*Panther tigris*) to Akiyoshidai Safari Land, Yamaguchi-pref, Japan, for the purpose of enhancement of the survival of the species through conservation education.

The U.S. Fish and Wildlife Service has information collection approval from OMB through March 31, 2004, OMB Control Number 1018–0093. Federal Agencies may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a current valid OMB control number.

Dated: January 24, 2003.

Charles S. Hamilton,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. 03–3401 Filed 2–10–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice To Extend the Public Comment Period for the Draft Recovery Plan for Three of the Five Distinct Population Segments of Bull Trout (*Salvelinus confluentus*)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of extension of public comment period.

SUMMARY: We, the U.S. Fish and Wildlife Service, give notice that the comment period announced in the November 29, 2002, (67 FR 74139) Notice of Availability of 25 chapters of the Draft Recovery Plan for Three of the Five Distinct Population Segments of the Bull Trout (*Salvelinus confluentus*) will be extended an additional 30 days until March 29, 2003. Substantial public interest in the draft recovery plan led us to distribute additional copies and to provide additional opportunities for the public to comment on the plan.

Bull trout are char which are native to the Pacific northwest and western Canada. We identified five distinct population segments of bull trout in five States (Idaho, Montana, Nevada, Oregon, and Washington), and listed the fish under the Endangered Species Act (Act) (16 U.S.C. 1531 *et seq.*) by distinct population segments during 1998 and 1999. The final listing resulted in all bull trout in the coterminous United States being listed as threatened. At this time, the draft recovery plan addresses three of the five distinct population segments, the Klamath, Columbia, and St. Mary-Belly Rivers. Draft recovery plan chapters for the remaining distinct population segments will become available for public review in approximately 1 year.

Because bull trout in the coterminous United States are widely distributed within a large area, the recovery plan is organized into multiple chapters. The introductory chapter (Chapter 1) discusses programmatic issues that broadly apply to bull trout in the coterminous United States. This chapter describes our range-wide recovery strategy for bull trout and identifies recovery tasks applicable to bull trout in general. Each following chapter focuses on bull trout in specific areas (*i.e.*, recovery units), and describes habitat conditions, defines recovery objectives and criteria, and identifies specific recovery tasks for a particular recovery unit. We have identified 27 recovery units in the 5 distinct population segments of bull trout. This notice of extension of public comment period concerns the introductory chapter (Chapter 1) and the 24 recovery unit chapters within the 3 distinct population segments mentioned above.

DATES: We will consider comments on the 25 chapters of the draft recovery plan for bull trout received on or before March 29, 2003.

ADDRESSES: The document is available online at *http://pacific.fws.gov/bulltrout*. Copies of the 25 chapters of the draft recovery plan are available for inspection, by appointment, during normal business hours at the following locations: Snake River Fish and Wildlife Office, U.S. Fish and Wildlife Service, 1387 S. Vinnell Way, Suite 368, Boise, Idaho 83709 (phone: 208–378–5243); Montana Field Office, U.S. Fish and Wildlife Service, 100 N. Park, Suite 320, Helena, Montana 59601 (phone: 406–449–5322); Nevada Fish and Wildlife Office, U.S. Fish and Wildlife Service, 1340 Financial Blvd., Suite 234, Reno, Nevada 86502 (phone: 775–867–6300); Oregon Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2600 SE. 98th Ave., Suite 100, Portland, Oregon 97266 (phone: 503–231–6179); and Western Washington Fish and Wildlife Office, U.S. Fish and Wildlife Service, 510 Desmond Dr., SE., Suite 102, Lacey, Washington 98503 (phone: 360–753–9440). Requests for copies of the document should be addressed to these offices, as appropriate.

Comments may be submitted electronically to us at the following email address: *FW1SRBOComments@fws.gov*. The subject line must state "Bull Trout Comments," and include the name and address of the person submitting the comments. Written comments may be sent directly to the Supervisor, U.S. Fish and Wildlife Service, Snake River Fish and Wildlife Office, 1387 S. Vinnell Way, Room 368, Boise, Idaho 83709. Comments may also be submitted by facsimile to 208–378–5262; please state in the subject line "Bull Trout Comments," and include the name and address of the person submitting the comments.

FOR FURTHER INFORMATION CONTACT: Jeri Wood, Fish and Wildlife Biologist, 1387 S. Vinnell Way, Room 368, Boise, Idaho 83709 (phone: 208–378–5243).

SUPPLEMENTARY INFORMATION:

Background

Recovery of endangered or threatened animals and plants is a primary goal of our endangered species program and the Act. A species is considered recovered when the species' ecosystem is restored and/or threats to the species are removed so that self-sustaining and self-regulating populations of the species can be supported as persistent members of native biotic communities. Recovery plans describe actions considered necessary for the conservation of the species, establish criteria for downlisting or delisting listed species, and estimate time and cost for implementing the measures needed for recovery.

The Act, requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act requires that public notice and an opportunity for public review and comment be provided during recovery plan development. We will consider all information presented during a public comment period prior to approval of each new or revised recovery plan. We, along with other Federal agencies, will also take these comments into account in the course of implementing approved recovery plans. Individual responses to comments will not be provided.

Bull trout are char native to the Pacific northwest and western Canada. We identified five distinct population segments of bull trout in five states, and issued a final rule listing the Columbia River (Idaho, Montana, Oregon, and Washington) and Klamath River (Oregon) population segments of bull trout as threatened species on June 10, 1998 (63 FR 31647). The Jarbidge River population segment (Idaho and Nevada) was listed as threatened on April 8, 1999 (64 FR 17110). The Coastal-Puget Sound (Washington) and St. Mary-Belly River (Montana) population segments were listed as threatened on November 1, 1999 (64 FR 58910), which resulted in all bull trout in the coterminous United States being listed as threatened.

Bull trout have more specific habitat requirements than most other salmonid fish. Habitat components that influence bull trout distribution and abundance include water temperature, cover, channel form and stability, spawning and rearing substrate conditions, and migratory corridors. Bull trout require colder water than most other salmonids for incubation, juvenile rearing, and spawning. All life-history stages of bull trout are associated with complex forms of cover, including large woody debris, undercut banks, boulders, and pools. Alterations in channel form and reductions in channel stability influence bull trout due to habitat degradation and negative effects on early life-history stages. Channel alterations may reduce the abundance and quality of side channels, stream margins, and pools, which are areas bull trout frequently inhabit. Because bull trout have a relatively long incubation and development period within spawning gravel (greater than 200 days), bedload transport in unstable channels may kill young bull trout. Spawning and rearing areas are often associated with cold-water springs, groundwater infiltration, and the coldest streams in a watershed. Bull trout require loose, clean gravel relatively free of fine sediments for spawning and early rearing. Bull trout use migratory corridors to move from spawning and rearing habitats to foraging and overwintering habitats and back. Different habitats provide bull trout with diverse resources, and migratory corridors allow local populations to connect, which may increase the potential for gene flow and support or refounding of populations.

Bull trout distribution, abundance, and habitat quality have declined range wide. These declines are the results of combined effects of habitat degradation and fragmentation; the blockage of migratory corridors; poor water quality; angler harvest and poaching; diversion structures that cause injuries or fatalities; and introduced nonnative species. Specific land and water management activities that have degraded and continue to depress bull trout populations and degrade habitat include dams and other diversion structures, forest management practices, livestock grazing, agriculture, road construction and maintenance, mining, and urban and rural development.

Because the threatened bull trout population segments are widely distributed over a large area, and population segments were subject to listing at different times, we adopted a two-tiered approach to develop the draft recovery plan for bull trout. The first tier addresses broad aspects of bull trout recovery that apply at the level of population segments. The second tier addresses bull trout recovery in smaller areas, such as specific river basin areas or collections of river basins within population segments, termed "recovery units." We relied on two types of teams to assist in developing the draft recovery plan.

To address "big-picture" issues, such as identifying an overall recovery strategy, designating recovery units, and providing guidance in developing the recovery plan, we convened a recovery oversight team. Membership on the recovery oversight team consisted of our biologists, a representative from State fish and wildlife resource agencies in each of four northwestern States (Idaho, Montana, Oregon, and Washington), and a representative from the Upper Columbia United Tribes (Confederated Tribes of the Colville Reservation, Coeur d'Alene Tribe, Kalispel Tribe, Kootenai Tribe of Idaho, and Spokane Tribe).

To develop local recovery strategies at the recovery unit level, we enlisted the assistance of recovery unit teams, one for each recovery unit or recovery subunit. Membership on the recovery unit teams consisted of persons with technical expertise in various aspects of bull trout biology within each recovery unit, typically representing Federal and State agencies, Tribes, and industry and interest groups. Major tasks of recovery unit teams include: Defining recovery for recovery units, including recovery unit-specific objectives and recovery criteria; reviewing factors affecting bull trout; estimating recovery costs; and identifying site-specific recovery actions. Members of the recovery oversight team coordinated the recovery unit teams to ensure consistency among recovery units.

The draft bull trout recovery plan that is currently available for public comment differs from many recovery plans in that it is organized into multiple chapters. The introductory chapter (Chapter 1) discusses programmatic issues that broadly apply to bull trout in the coterminous United States. This chapter describes our recovery strategy for bull trout, defines recovery, and identifies recovery tasks applicable to bull trout in general. Each following chapter (Chapters 2 through 28) addresses a specific recovery unit, and describes conditions, defines recovery objectives and criteria, identifies specific recovery tasks, and estimates time and cost required to achieve recovery for a particular recovery unit.

The general goal of all recovery plans is to describe courses of actions necessary for the ultimate delisting of a species. The specific goal of the draft bull trout recovery plan is to ensure the long-term persistence of self-sustaining, complex interacting groups of bull trout distributed across the species' native range in the United States. Recovery of bull trout will require reducing threats to the long-term persistence of populations, maintaining multiple interconnected populations of bull trout across the diverse habitats of their native range, and preserving the diversity of bull trout life-history strategies (*e.g.*, resident or migratory forms, emigration age, spawning frequency, local habitat adaptations). To accomplish this goal throughout the coterminous United States, the draft recovery plan recommends the following four objectives: (1) Maintain current distribution of bull trout within core areas in all recovery units as described in recovery unit chapters and restore distribution where recommended in recovery unit chapters; (2) maintain stable or increasing trends in abundance of bull trout in all recovery units; (3) restore and maintain suitable habitat conditions for all bull trout life history stages and strategies; and (4) conserve genetic diversity and provide opportunity for genetic exchange. These objectives would apply

to bull trout in all recovery units. Additional objectives may be necessary to achieve recovery in some recovery units, which will be identified in the respective recovery unit chapters.

The draft recovery plan provides criteria to assess whether actions have resulted in the recovery of bull trout. The overall recovery criterion for bull trout in the coterminous United States is that all recovery units meet their criteria, as identified in the recovery unit chapters. Criteria specific to each recovery unit are presented in each draft recovery unit chapter. Individual chapters may contain criteria for assessing the status of bull trout and alleviation of threats that are unique to one or several recovery units. However, every draft recovery unit chapter contains criteria to address the following four characteristics: (1) The distribution of bull trout in identified and potential local populations in all core areas within the recovery unit; (2) the estimated abundance of adult bull trout within core areas in the recovery unit, expressed as either a point estimate or a range of individuals; (3) the presence of stable or increasing trends for adult bull trout abundance in the recovery unit; and (4) the restoration of passage at specific barriers identified as inhibiting recovery.

The draft recovery plan identifies specific tasks falling within the following seven categories as necessary to promote recovery: (1) Protect, restore, and maintain suitable habitat conditions for bull trout; (2) prevent and reduce negative effects of nonnative fishes and other nonnative taxa on bull trout; (3) establish fishery management goals and objectives compatible with bull trout recovery, and implement practices to achieve goals; (4) characterize, conserve, and monitor genetic diversity and gene flow among local populations of bull trout; (5) conduct research and monitoring to implement and evaluate bull trout recovery activities, consistent with an adaptive management approach using feedback from implemented, site-specific recovery tasks; (6) use all available conservation programs and regulations to protect and conserve bull trout and bull trout habitats; and (7) assess the implementation of bull trout recovery by recovery units, and revise recovery unit plans based on evaluations.

Public Comments Solicited

We solicit written comments on any aspect of the draft recovery plan described, including the estimated costs associated with the recovery tasks outlined in the implementation schedule in each draft recovery unit chapter. All comments received by the date specified above will be considered in developing a final bull trout recovery plan.

Authority: The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533 (f).

Dated: January 27, 2003.

Anne Badgley,

Regional Director, Region 1, Fish and Wildlife Service:

[FR Doc. 03–3307 Filed 2–10–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Issuance of Permit for Marine Mammals

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of issuance of permit for marine mammals.

SUMMARY: The following permits were issued.

ADDRESSES: Documents and other information submitted for these applications are available for review by any party who submits a written request to the U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203; fax (703) 358–2281.

FOR FURTHER INFORMATION CONTACT: Division of Management Authority, telephone 703/358–2104.

SUPPLEMENTARY INFORMATION: On July 5, 2002, a notice was published in the **Federal Register** (volume 67 FR 44873), that an application had been filed with the Fish and Wildlife Service by Charles A. Dorrance for a permit (PRT–058414) to import one polar bear (*Ursus maritimus*) sport hunted from the Northern Beaufort Sea polar bear population, Canada, for personal use.

Notice is hereby given that on January 15, 2003, as authorized by the provisions of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) the Fish and Wildlife Service issued the requested permit subject to certain conditions set forth therein.

On July 9, 2002, a notice was published in the **Federal Register** (volume 67 FR 45530), that an application had been filed with the Fish and Wildlife Service by William A. Jardel, Jr., for a permit (PRT–054887) to import one polar bear (*Ursus maritimus*) sport hunted prior to May 31, 2000, from the M'Clintock Channel polar bear population, Canada, for personal use.

Notice is hereby given that on January 15, 2003, as authorized by the provisions of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) the Fish and Wildlife Service issued the requested permit subject to certain conditions set forth therein.

On December 24, 2002, a notice was published in the **Federal Register** (volume 67 FR 78504), that an application had been filed with the Fish and Wildlife Service by Scott B. Vee for a permit (PRT–065351) to import one polar bear (*Ursus maritimus*) sport hunted from the Western Hudson Bay polar bear population, Canada, for personal use.

Notice is hereby given that on January 23, 2003, as authorized by the provisions of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) the Fish and Wildlife Service issued the requested permit subject to certain conditions set forth therein.

Dated: January 24, 2003.

Charles S. Hamilton,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. 03–3394 Filed 2–10–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Issuance of Permit for Marine Mammals

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of Issuance of Permit for Marine Mammals.

SUMMARY: The following permit was issued.

ADDRESSES: Documents and other information submitted for this application are available for review by any party who submits a written request to the U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203; fax (703) 358–2281.

FOR FURTHER INFORMATION CONTACT: Division of Management Authority, telephone (703) 358–2104.

SUPPLEMENTARY INFORMATION: On November 27, 2002, a notice was published in the **Federal Register** (67 FR 70962), that an application had been filed with the Fish and Wildlife Service by David M. McNeil for a permit (PRT–064723) to import one polar bear (*Ursus maritimus*) sport hunted from the

Southern Beaufort Sea polar bear population, Canada, for personal use.

Notice is hereby given that on December 26, 2002, as authorized by the provisions of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*), and the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*), the Fish and Wildlife Service issued the requested permit subject to certain conditions set forth therein.

Dated: January 10, 2003.

Michael S. Moore,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. 03–3398 Filed 2–10–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Jicarilla Apache Liquor Control Ordinance

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice publishes the Jicarilla Apache Liquor Control Ordinance. It repeals and replaces all previous tribal enactments pertaining to the regulation of liquor on the Jicarilla Apache Reservation. The Ordinance regulates the control, possession and sale of liquor on the Jicarilla Apache Tribe trust lands, to be in conformity with the laws of the State of New Mexico, where applicable and necessary. Although the Ordinance was adopted on September 10, 2001, it does not become effective until published in the **Federal Register**, because the failure to comply with the ordinance may result in criminal charges.

EFFECTIVE DATE: This Ordinance is effective on February 11, 2003.

FOR FURTHER INFORMATION CONTACT: Iris Drew, Office of Tribal Services, Branch of Tribal Relations, 1951 Constitution Avenue, NW, MS 320–SIB, Washington, DC 20245; Telephone (202)513–7628.

SUPPLEMENTARY INFORMATION: Pursuant to the Act of August 15, 1953, Public Law 83–277, 67 Stat. 586, 18 U.S.C. 1161, as interpreted by the Supreme Court in *Rice* v. *Rehner*, 463 U.S. 71 (1983), the Secretary of the Interior shall certify and publish in the **Federal Register** notice of adopted liquor ordinances for the purpose of regulating liquor transactions in Indian country. The Jicarilla Apache Tribe Liquor Control Ordinance, Resolution No. 2001–O–481–09, was duly adopted by the Jicarilla Apache Tribal Council, governing body of the Jicarilla Reservation, on September 10, 2001. The Jicarilla Apache Tribe, in furtherance of its economic and social goals, has taken positive steps to regulate retail sales of alcohol and use revenue to combat alcohol abuse and its debilitating effects among individuals and family members within the Jicarilla Apache Reservation.

This notice is published in accordance with the authority delegated by the Secretary of the Interior to the Assistance Secretary—Indian Affairs by 209 Departmental Manual 8.1.

I certify that by Resolution No. 2001–O–481–09, the Jicarilla Apache Liquor Control Ordinance was duly adopted by the Jicarilla Apache Tribal Council, governing body of the Jicarilla Apache Indian Reservation, on September 10, 2001.

Dated: January 31, 2003.

Aurene M. Martin,

Assistant Secretary—Indian Affairs.

The Jicarilla Apache Liquor Control Ordinance, Resolution No. 2001–O–481–09, reads as follows:

Title 18, Chapter 4. Liquor Licensing

§ 1. Definitions.

As used in this Chapter the following definitions shall apply:

(a) *Commission.* The Jicarilla Apache Alcohol and Gaming Commission.

(b) *Intoxication or Intoxicated.* A state in which a person's mental or physical functions are noticeably impaired as a result of the use of alcohol or drugs.

(c) *Licensed Premises.* The area within a Liquor Establishment in which the Licensee is authorized to sell Liquor.

(d) *Licensee.* Any person who owns a valid, current Tribal Liquor License or his or her valid agent or designee.

(e) *Liquor.* Distilled or rectified spirits, potable alcohol, brandy, whisky, rum, gin, vodka, aromatic bitters, or any similar alcoholic beverage, including blended and fermented beverages, dilutions or mixtures of one or more of the foregoing, containing more than one-half of one percent alcohol, but excluding medicinal bitters. Liquor also includes beer, or any other alcoholic beverage created by the fermentation of any infusion or decoction of barley, malt and hops or other cereals in water, and includes porter, beer, ale, and wine, which means alcoholic beverages obtained by the fermentation of natural sugar contained in fruit or other agricultural products, with or without the addition of sugar or other products, which do not contain less than one-half of one percent alcohol by volume.

(f) *Liquor Establishment.* A location licensed by the Jicarilla Apache Alcohol and Gaming Commission to serve or sell liquor, including the grounds and parking lot of such location.

(g) *Liquor Offenses Section.* Title 7, Chapter 2, Section 12 of the Jicarilla Apache Tribal Code.

(h) *Minor.* Any person under the age of twenty-one (21) years.

(i) *Package.* Any unbroken, unopened container or receptacle used for holding liquor.

(j) *Public Place.* Includes streets, plazas, highways, roads, stores, shopping centers and other businesses, government and other public buildings, schools, churches, public meeting halls, buses and bus depots, on the Reservation which are open to and generally used by the public, and the grounds thereof; it also includes parks and playgrounds and other open spaces on the Reservation which are open to and generally used by the public.

(k) *Purchase.* Includes the exchange, barter, traffic, or receipt, with or without consideration, by any means whatsoever, of liquor.

(l) *Sale.* Includes the exchange, barter, traffic, or donation with or without consideration, in addition to the selling, supplying, or distributing, by any means whatsoever, of liquor.

(m) *Tribal Entity.* Any entity owned by the Jicarilla Apache Tribe or Nation.

(n) *Tribal Lands.* All land within the exterior boundaries of the Jicarilla Apache Reservation, all lands held in trust by the United States for the Jicarilla Apache Tribe and all lands held by the Jicarilla Apache Tribe or Nation subject to a restriction against alienation imposed by the United States.

(o) *Tribal Liquor License.* A license granted by the Jicarilla Apache Alcohol and Gaming Commission in accordance with the provisions of this Chapter to distribute liquor at a liquor establishment.

(p) *Tribal Subdivision.* Any political subdivision or department of the Jicarilla Apache Tribe or Nation.

§ 2. Applicability.

This Chapter shall apply to all persons engaging or seeking to engage in the purchase or sale of liquor on tribal lands; provided, however, that nothing in this Chapter shall apply to:

(a) Liquor used for scientific research or for manufacturing products other than liquor;

(b) Liquor used for medical purposes under the direction of a physician or a hospital, or a mental health, health care, or dental clinic;

(c) Liquor contained in preparations not fit for human consumption such as cleaning compounds; and

(d) Liquor for sacramental use under a religion recognized as valid by the

Commission. Denial of recognition of a religion by the Commission shall be subject to immediate review by the Tribal Council.

§ 3. Jicarilla Apache Alcohol and Gaming Commission.

The Commission shall succeed to all the powers any duties of the Jicarilla Apache Gaming Board created by ordinance 94-O–384–3. Two of the members of the Commission shall serve on a part-time basis and one on a full-time basis. Each member shall serve for a term of three years commencing on the date of appointment; provided that the initial Commission appointed after adoption of this ordinance shall consist of a full-time member with a four-year term, one part-time member with a two-year term and one part-time member with a three-year term. The President shall appoint one Commission member to serve as Chairman.

In addition to the restrictions set forth in Title 18, Chapter 5, Section 7(e), no person may serve on the Commission if he or she:

(1) Has within five (5) years been convicted of a liquor-related misdemeanor; or

(2) Has any direct financial interest in, or is a manager of, any liquor establishment. A tribal member will not be disqualified from serving on the Commission on the basis of the Tribe's ownership of a liquor establishment.

In addition to the powers and duties under Title 18, Chapter 5, Section 7(f), the Commission shall be empowered to:

(1) Review applications for a tribal liquor license and either grant a tribal liquor license or deny the application;

(2) Conduct, or cause to be conducted, a background investigation of any person having or seeking to have an ownership interest in, or who is or is seeking to be a manager of, a liquor establishment;

(3) Inspect, on its own initiative or in response to an affidavit based on a reasonable, good faith belief that a violation may have occurred, on its own or in collaboration with the tribal police, alleged violations by licensees of this Chapter;

(4) Conduct, on its own initiative or in response to a complaint, hearings on alleged violations by licensees of this Chapter. The Commission may issue subpoenas and compel any licensee, or his agent or servant, to appear before it and to provide any information or documents it requires. The Commission may order any licensee to take any appropriate action it deems necessary to comply with this Chapter;

(5) Bring, in the name of the Tribe, any civil action in tribal court or in any court of competent jurisdiction of any state or the United States to enforce the provisions of this Chapter or to enjoin or otherwise prevent any violation of this Chapter. The Commission may also refer suspected criminal violations of this Chapter to the appropriate governmental authority for investigation and prosecution;

(6) Adopt an annual operating budget which shall be subject to the approval of the Tribal Council and, in accordance with this budget, employ a staff as it deems necessary to fulfill its responsibilities under this Chapter. The Commission shall submit an annual report of the revenues it receives to the Tribal Council; such revenues shall be used to fund the operations of the Commission;

(7) Promulgate and adopt regulations, subject to approval by the Tribal Council, to assist in the implementation of this Chapter and to govern the purchase and sale of liquor on tribal lands; and

(8) Require payment of reasonable fees associated with licensing a liquor establishment additional to those set forth in this Chapter.

§ 4. Licensing.

(a) General Qualifications for License; Standards for Evaluating A License Application.

(1) *Applicants.* If the applicant for a tribal liquor license is an individual person, the person must be an enrolled member of the Jicarilla Apache Tribe who has not been convicted of a liquor-related misdemeanor within the last five (5) years or a felony, and who is at least twenty-one (21) years of age. If the applicant is a corporation, partnership, or other business entity, majority ownership and control of the entity must be held by the Jicarilla Apache Tribe, tribal entities, tribal subdivisions and enrolled members of the Tribe; and the manager of the proposed licensed premises must be a person who has not been convicted of a liquor-related misdemeanor within the last five (5) years or a felony, and who is at least twenty-one (21) years of age. For purposes of this section, majority ownership and control means the right to 51 percent or more of the profits and losses of the entity and the power to direct the management, policy and operations of the entity. No person may own or control ten percent (10%) or more of an entity holding a Tribal Liquor License if that person has been convicted of a liquor-related misdemeanor within the last five (5) years or a felony, or is less than twenty-one (21) years of age.

(2) *Evaluation of Application.* The Commission shall issue a Tribal liquor license only if the qualifications set forth in this Chapter are satisfied and, in addition, if the Commission concludes within its discretion that issuing the license will serve the best interests of the Reservation community and the regulatory goals of this Chapter. The Commission shall not issue a tribal liquor license if the Commission determines that:

(A) The proposed activity is likely to undermine economic development on the Reservation;

(B) The proposed activity is likely to impose undue burdens on public safety;

(C) The applicant has failed to demonstrate financial capability to meet all obligations of this Chapter, or

(D) The applicant has failed to identify adequate procedures to prevent violations of this Chapter on the proposed licensed premises.

(3) *Factors to be Considered by Commission.* In deciding whether a proposed license will serve the best interests of the Reservation community, the Commission may consider the following factors, among others:

(A) Whether the application is for the operation of a new or an existing Liquor Establishment;

(B) Whether the applicant is in compliance with applicable tribal and federal law;

(C) Whether the applicant has violated any provision of this Chapter, and if so, whether the violation has been remedied;

(D) The location, number and density of liquor establishments on the Reservation;

(E) Whether food is sold at the establishment; and

(F) The health and welfare of the public.

(4) *Public Comments.* Before the issuance of any Tribal liquor license, the Commission shall allow comments from the public at a time and place advertised in a local newspaper of general circulation.

(5) *Location of Licensed Premises.* The Commission shall not grant a Tribal liquor license to any proposed liquor establishment which is located within 400 feet of the property boundary of a church or school. The Commission may designate other areas that are similarly to be protected.

(b) *Specific License Application Requirements.*

In order to apply for a Tribal liquor license, an applicant must:

(1) Submit to the Commission a written application for the license under oath, on a form prescribed by and stating the information required by the

Commission, together with a nonrefundable application fee of five hundred dollars ($500);

(2) Submit to the Commission for its approval floor plans which show the proposed licensed premises for which the license application is submitted;

(3) Submit to the Commission an area map designating the location of the proposed licensed premises; and

(4) Submit such additional information as the Commission may require.

(c) *Fingerprints.*

If required by the Commission, a non-tribal applicant for a Tribal liquor license, if an individual, shall file with the application two complete sets of the applicant's fingerprints taken under the supervision of and certified to by an officer of the tribal police or a state, county or municipal police department. If the applicant is a corporation, it shall, upon request by the Commission, file two complete sets of fingerprints of each principal officer, and of the agent responsible for the operation of the licensed business and the receipt of service. If the applicant is a limited partnership, it shall, upon request by the Commission, submit two complete sets of fingerprints of each general partner, and of the agent responsible for the operation of the licensed business and the receipt of service. If the applicant is a limited liability company or other business entity, it shall, upon request by the Commission, submit fingerprints as required by the Commission. The Commission may issue a temporary license pending resolution of the background clearances, subject to revocation by the Commission at any time, with or without cause.

(d) *Classes of License; Special Restrictions on License.*

The Commission is authorized to establish by regulation various classes of tribal liquor licenses and to specify the activities authorized by each class, including but not limited to licenses for restaurants, bars, package sales, home brewing, and special events. When the Commission grants a tribal liquor license, it may grant such license with any special restrictions, such as restrictions on type of liquor served or hours of operation, as it deems appropriate. The Commission shall explain in writing the reasons for imposing any special restrictions on a license. A licensee may appeal the imposition of any special restrictions to the Tribal Council as provided in Section 10 of this Chapter.

(e) *Commission Action on Application.*

After reviewing the complete application, the Commission shall send the applicant a proposed decision on the application. The applicant shall have twenty (20) working days to respond in writing to the proposed decision, and may request a hearing before the Commission. The Commission may conduct a hearing on any application on its own initiative, with notice to the applicant. Following any hearing on the application and the expiration of the time allowed for a written response to the proposed decision, the Commission shall issue a final written decision. The written decision shall include findings of fact and an explanation of the grounds for the decision.

(f) *Annual Renewal of License.*

Each person or entity holding a tribal liquor license shall apply to renew that license annually on a form provided by the Commission with a nonrefundable renewal fee in an amount set by regulation of the Commission. The Commission may decline to renew a tribal liquor license only for good cause, such as repeated and intentional violation of any of the provisions of this Chapter, or failure to submit in a timely manner the renewal application and the renewal fee. The Commission may renew a tribal liquor license with special restrictions in addition to any imposed on the expired license. Denial of an application to renew a tribal liquor license or the imposition of special restrictions shall be appealable under Section 10 of this Chapter.

(g) *Amendments of Applicable Law.*

All tribal liquor licenses are subject to any amendment of the tribal code or regulations of the Commission which may be adopted or made effective after the license is approved.

§ 5. Transfer or Lease of Tribal Liquor License.

No tribal liquor license shall be transferred or leased other than with approval of the Commission through the procedure set forth in Section 4 of this Chapter.

§ 6. Reporting.

Every licensee shall keep, in current and available form on the licensed premises, records of all purchases, sales, quantities on hand and such other information as the Commission may reasonably require, including but not limited to, copies of audits, tax returns, and any forms that the Commission may require to be filled out. The Commission may require a licensee to provide it with periodic reports, and it may require the production of any book, record, document, invoice, or voucher kept, maintained, received, or issued by any such licensee in connection with his or her business. If a licensee fails or refuses to furnish within a reasonable period of time any reports or information requested by the Commission, the Commission or its designee may enter the premises of such licensee where the records are kept and make such examination as it deems necessary.

A licensee who is convicted of a violation of the Liquor Offenses Section shall, within two (2) working days of such conviction, report the conviction to the Commission. In addition to any other civil assessment imposed under tribal law, there shall be an assessment of $100 for each day a licensee is late in reporting this information to the Commission.

§ 7. Violation of Liquor Offenses Section.

Any violation of the Liquor Offenses Section by a licensee is a violation of this Chapter.

§ 8. Restrictions on Liquor Sales.

(a) *Sales Only by Holders of Tribal Liquor License and Only at Licensed Premises; Exception.*

No sale of liquor shall be made within tribal lands except by persons holding a tribal liquor license and except at licensed premises; provided, however, that nothing in this Chapter shall prohibit social gifts of liquor to someone who would not otherwise be prevented from obtaining liquor under this Chapter or other applicable law. The Commission may issue a special use permit to enrolled tribal members authorizing specific sales of liquor for specific time periods not to exceed one (1) week, on terms to be established by its regulations.

(b) *Hours and Days of Business; Election Days.*

(1) Liquor may be sold, served, or consumed on any licensed premises only during hours authorized by the Commission. The Commission shall set hours of operation for each liquor establishment individually, subject to appeal under Section 10 of this Chapter to the Tribal Council.

(2) Alcoholic beverages shall not be sold, served, or consumed on licensed premises during voting hours on the days of any tribal, state, or federal election.

(3) The Tribal Council may prohibit the purchase, sale, or consumption of liquor during days and hours in addition to those set forth in this Section.

(4) Nothing in this Section 8(b) shall prohibit, or authorize the prohibition of, the consumption at any time of liquor in guest rooms of hotels or by people in

their own homes, or by people who are guests in the home of another.

(c) *Sales to be Made by Adults.*

All sales of liquor pursuant to this Chapter shall be made by persons twenty-one (21) years of age or older.

(d) *Evidence of Age and Identity.*

Evidence of age and identity of a purchaser of liquor must be shown by a current and valid driver's license or a United States passport, which contains the signature, birth date, and picture of the holder of the license or passport, or any other form of identification acceptable to the Commission.

(e) *Demand for Identification.*

Liquor establishments shall have the authority to demand of any person the production of proper evidence of age and identity before making a sale of liquor to such person.

(f) *Right/Duty to Refuse Sale.*

A liquor establishment shall have the authority and duty to refuse to sell liquor to any person who is unable to produce proper evidence of age and identity as prescribed by this Section, any person who the seller believes is already under the influence of liquor, or to anyone else if the seller reasonably believes that the transaction would lead to a violation of this Chapter. The operator of a liquor establishment shall have the authority to require that a person who the operator reasonably believes is already under the influence of liquor vacate the licensed premises.

(g) *Wholesale Liquor Distributors.*

A person holding a valid tribal liquor license may purchase liquor from any wholesale liquor distributor validly licensed in the jurisdiction of its principal place of business. Wholesale liquor distributors are expressly prohibited from selling liquor within tribal lands or for distribution within tribal lands to anyone not holding a tribal liquor license, subject to the exception set forth in Section 8(a) of this Chapter.

(h) *Sales Only to Be Made by Certified Servers; Alcohol Server Training Required for License Renewal.*

All sales of liquor authorized by this Chapter shall be made by persons who have successfully completed a liquor server training program approved by the Commission and are certified as having completed the course by the Commission or the entity that provides the training program. Any licensee seeking renewal of a license shall submit to the Commission, as a condition of license renewal, proof that each server employed by the licensee during the prior licensing year has completed an alcohol server program approved by the Commission.

(i) *Happy Hours.*

The Commission may adopt a policy on happy hours and on pricing schemes where liquor is sold on certain occasions or at certain times for a price that is substantially lower than the price it is sold for at other times. The Commission may at any time request from a liquor establishment a written description of its policies on such happy hours and pricing schemes and either approve or disapprove such policies. Disapproval of such a policy shall be appealable to the Tribal Council under the procedure set forth in Section 10 of this Chapter.

§ 9. Suspension or Revocation of Liquor License; Special Restrictions; Monetary Sanctions.

The Commission is authorized to revoke or suspend a tribal liquor license or to impose special restrictions on a license for a violation or violations of any provision of this Chapter, after the licensee is given at least seven (7) calendar days notice of the proposed action and the opportunity to appear and to be heard before the Commission, either in person or through a representative, and to submit such evidence as the Commission deems relevant to the matter at issue. Such suspensions, revocations, and imposition of special restrictions are appealable to the Tribal Council under Section 10 of this Chapter. In addition to any civil assessment provided by tribal law, the Commission may initiate an action in Tribal Court for the imposition of monetary sanctions against a Licensee for a violation of this Chapter, to compensate the Tribe for economic losses it suffers, directly or indirectly, as a result of the violation.

§ 10. Appeal to Tribal Council.

(a) *Appealable Actions.* Any person or entity who is denied a tribal liquor license, or whose tribal liquor license is suspended or revoked, or whose tribal liquor license has been limited by special restrictions may appeal the adverse action to the Tribal Council within thirty (30) days of final action by the Commission.

(b) *Record on Appeal.* The record on appeal shall consist of the final written decision of the Commission, all evidence presented to or relied on by the Commission, a taped or transcribed record of any hearing, and any other records of the Commission or any other information requested by the Tribal Council.

(c) *Stay Pending Appeal.* Suspension or revocation of a tribal liquor license may be stayed pending an appeal under this Section, at the discretion of the Tribal Council. The Tribal Council may request that the appellant post an appeal bond in an amount set by the Council.

(d) *Decision of Council Final.* All decisions of the Tribal Council on appeals under this section shall be final.

§ 11. Private Right of Action.

Subject to the limitations of Section 12 of this Chapter, any person who suffers personal injury or property damage as a result of a violation of Section 7 or Section 8 of this Chapter shall have a right of action for money damages against the person or entity whose violation of Section 7 or Section 8 of this Chapter caused or contributed to his or her injury.

§ 12. No Waiver of Sovereign Immunity.

Nothing in this Chapter is intended to be or shall be construed as authorizing any waiver of the sovereign immunity of the Jicarilla Apache Tribe or any of its subdivisions or of any business entity owned in whole or in part by the Tribe.

§ 13. Severability.

If any provision of this Ordinance is found to be invalid or unenforceable, all remaining provisions shall be given full force and effect the fullest extent practicable.

[FR Doc. 03–3385 Filed 2–10–03; 8:45 am]

BILLING CODE 4310–4J–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Seneca Nation of Indians Liquor Ordinance

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice publishes the Seneca Nation of Indians Liquor Ordinance governing the possession, consumption and sale of liquor on Seneca Nation Territory (Allegany Territory, except for excluded portions of the City of Salamanca, and Cattaraugus and Oil Springs Reservations) as well as the Seneca Nation Alcoholic Beverages Control Act, section 12 of the Ordinance, governing the possession, consumption and sale of liquor on restricted fee land acquired pursuant to the Seneca Nation Land Claims Settlement Act of 1990, 25 U.S.C. 1774f(c), in conformity with the laws of the State of New York, where applicable and necessary. Although the Ordinance, including section 12, was adopted on November 16, 2002, it does not become effective until published in the **Federal Register**, because the failure

to comply with the Ordinance may result in criminal charges.

EFFECTIVE DATE: This Ordinance, as well as the Alcoholic Beverages Control Act of the Seneca Nation of Indians, is effective on February 11, 2003.

FOR FURTHER INFORMATION CONTACT: Iris Drew, Office of Tribal Services, 1849 C Street, NW., MS 320–SIB, Washington, DC 20240–4001; Telephone (202) 513–7629.

SUPPLEMENTARY INFORMATION: Pursuant to the Act of August 15, 1953, Public Law 83–277, 67 Stat. 586, 18 U.S.C. 1161, as interpreted by the Supreme Court in *Rice* v. *Rehner*, 463 U.S. 713 (1983), the Secretary of the Interior shall certify and publish in the **Federal Register** notice of adopted liquor ordinances for the purpose of regulating liquor transactions in Indian country. The Seneca Nation of Indians Liquor Ordinance, including its Alcoholic Beverages Control Act (section 12 of the Ordinance), was duly adopted by the Seneca Nation Council, governing body of the Seneca Nation, on November 16, 2002. The Seneca Nation, in furtherance of its economic and social goals, has taken positive steps to regulate retail sales of alcohol and use revenue to combat alcohol abuse and its debilitating effects among individuals and family members within the jurisdiction of the Seneca Nation.

This notice is published in accordance with the authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 Departmental Manual 8.1.

I certify that the Seneca Nation Liquor Ordinance, including the Alcoholic Beverages Control Act, was duly adopted by the Seneca Nation Council, governing body of the Seneca Nation of Indians, on November 16, 2002.

Dated: January 31, 2003.

Aurene M. Martin,

Acting Assistant Secretary—Indian Affairs.

The Seneca Nation of Indians Liquor Ordinance, including its Alcoholic Beverages Control Act, reads as follows:

Seneca Nation of Indians—Use and Distribution of Liquor Ordinance

Section 1.—Authority and Purpose

(1) The authority for this Ordinance and its adoption by the Council of the Seneca Nation of Indians (Nation Council) is found in the Article XIII of the Constitution of the Seneca Nation of Indians of 1848, as amended, and in the Act of August 15, 1953, Public Law 83–277, 18 U.S.C. 1161.

(2) This Ordinance is for the purpose of:

(a) regulating the possession and prohibiting the sale of intoxicating beverages on Seneca Nation Territory; and

(b) regulating the purchase, introduction, possession, sale and consumption of alcoholic liquor on lands placed in restricted fee status for the Seneca Nation of Indians (the Nation) pursuant to the Seneca Nation Land Claims Settlement Act of 1990, 25 U.S.C. 1774f(c).

Section 2.—Relation to Other Seneca Nation Regulations

Nation Ordinance No. 89–01, duly adopted by the Nation on January 21, 1989, is hereby repealed and replaced. Any and all prior ordinances, resolutions, regulations or other form of control of the Nation, whether written or unwritten, which authorize, prohibit, or deal with the sale of alcohol are hereby repealed and have no further force and effect. No Nation ordinance or regulation shall be applied in a manner inconsistent with the provisions of this Ordinance.

Section 3.—Application of Ordinance to Seneca Nation Territory and Restricted Fee Lands

The Seneca Nation Territory to which this Ordinance applies is the Indian Country within the exterior boundaries of the Territory that is subject to the jurisdiction of the Nation, except for Allegany Territory which is within the City of Salamanca and is not included in the area set aside for Seneca Nation Housing Authority Project 40–9. For the purposes of this Ordinance, these lands shall be referred to as the Seneca Nation Territory. The restricted fee lands to which Section 12 of this Ordinance applies are those lands placed in restricted fee status for the Nation pursuant to the Seneca Nation Land Claims Settlement Act of 1990, 25 U.S.C. 1774f(c).

Section 4.—Unlawful Sale and Introduction of Intoxicating Beverages Within Seneca Nation Territory

The sale, and introduction for purposes of sale, of intoxicating beverages shall be unlawful within the Seneca Nation Territory.

Section 5.—Unlawful Possession of Intoxicating Beverages Within Seneca Nation Territory

The possession and consumption of intoxicating beverages shall be unlawful on the public lands of the Seneca Nation Territory, including public highways, bridges, Nation property, parking lots, driveways, and grounds surrounding Nation buildings.

Section 6.—Possession by Minors Within Seneca Nation Territory

It shall be unlawful for any person under the age of 21 to possess or consume intoxicating beverages, or for any person to give intoxicating beverages to any person under the age of 21, within the Seneca Nation Territory.

Section 7.—Maintaining Premises Where Intoxicating Beverages are Consumed, Possessed or Served Within Seneca Nation Territory

It shall be unlawful for any person to maintain premises within Seneca Nation Territory where intoxicating beverages are: (1) Consumed, possessed, or served to any person under the age of 21; or (2) consumed, possessed or served in violation of this Ordinance.

Section 8.—Conformity With State Laws and This Ordinance

The possession of intoxicating beverages shall be lawful within the Seneca Nation Territory provided that such possession is not prohibited by this Ordinance and is in conformity with the laws of the State of New York pursuant to 18 U.S.C. 1161.

Section 9.—Violations Within Seneca Nation Territory—Remedies

(a) The Nation may bring an action in the Peacemakers Courts against any person for violation of the provisions of this Ordinance regulating the possession and prohibiting the sale of intoxicating beverages on Seneca Nation Territory. The action shall be initiated by the filing of a written complaint with the court of the tribal prosecutor, sworn to by a person having personal knowledge of the charged violation, or by a Marshall or Seneca Nation law enforcement officer having personal knowledge of the charged violation. The complaint shall set forth the essential facts charging that a named individual has violated this Ordinance. Such action, including any appeal which is taken from the decision of the Peacemakers Court, shall be governed by the Seneca Nation Civil Procedure Rules.

(b) Any person found to have violated any of Sections 4 through 7 of this Ordinance shall pay a fine of:

(1) No more than $5,000 and no less than $0 for a Section 4 violation, plus court costs.

(2) No more than $5,000 and no less than $0 for a Section 5 violation, plus court costs.

(3) No more than $5,000 and no less than $0 for a Section 6 violation, plus court costs.

(4) No more than $5,000 and no less than $0 for a Section 7 violation, plus court costs.

In addition to the penalty described for such a violation, all intoxicating beverages confiscated from any person found to have violated this Ordinance shall be destroyed.

(c) In lieu of imposing a fine pursuant to subsection (b) above, the Peacemakers Court may employ the procedure provided in section 4–102(a), (b) of the Seneca Nation of Indians Civil Procedure Code.

(d) Any person found to have violated this Ordinance who is charged with a second subsequent violation may be referred to any other jurisdiction which the Peacemakers Court determines has concurrent jurisdiction over the charge.

(e) In addition to other remedies, the Peacemakers Court may enjoin any person in violation of this Ordinance.

Section 10.—Enforcement Within Seneca Nation Territory

The Marshals, the Seneca Nation Conservation Officers, and officers of the Seneca Nation Law Enforcement Department are authorized to enforce this Ordinance within the Seneca Nation Territory.

Section 11.—Unlawful Intoxicating Beverages Within Seneca Nation Territory to be Confiscated

The Marshals, the Seneca Nation Conservation Officers, and law enforcement officers shall confiscate and preserve as evidence all intoxicating beverages sold, introduced for purposes of sale, or possessed in violation of this Ordinance within the Seneca Nation Territory.

Section 12.—Lawful Purchase, Introduction, Sale, Possession and Consumption of Liquor on Lands Placed in Restricted Fee Status Pursuant to the Seneca Nation Land Claims Settlement Act of 1990

Pursuant to the inherent sovereignty of the Nation and in the exercise of the Nation powers for the purpose of protecting the welfare, health, peace, morals and safety of Nation members, the Nation adopts the following Seneca Nation Alcoholic Beverages Control Act for the purpose of regulating the purchase, introduction, sale, possession and consumption of liquor on lands placed in restricted fee status pursuant to the Seneca Nation Land Claims Settlement Act of 1990, 25 U.S.C. 1774f(c).

(1) *Title and Purpose.* This Seneca Nation Alcoholic Beverages Control Act is enacted for the purpose of regulating the purchase, introduction, sale, possession, and consumption of liquor on lands placed in restricted fee status pursuant to the Seneca Nation Land Claims Settlement Act of 1990, 25 U.S.C. 1774f(c).

(2) *Definitions.* To the extent that definitions are consistent with Nation and federal law, terms used herein shall have the same meaning as defined in New York Consolidated Laws, Chapter 3–B (Alcoholic Beverage Control Law) and in Title 9, Subtitle B, Chapter I of the New York Regulations (Rules of the New York State Liquor Authority).

(a) *Alcohol.* Ethyl alcohol, hydrated oxide of ethyl or spirit of wine from whatever source or by whatever process produced.

(b) *Alcoholic Beverage.* Any liquid suitable for human consumption, which contains one-half of 1 percent or more of alcohol by volume.

(c) *Barter or Bartering.* The trading for any commodity, act or consideration whether or not there is intrinsic value in the item traded.

(d) *Beer.* Includes any fermented beverages of any name or description, manufactured from malt, wholly or in part, or from any substitute therefor.

(e) *Distilled Spirits.* Any alcoholic beverage that is not beer, wine, sparkling wine or alcohol.

(f) *Liquor.* Includes any and all distilled or rectified spirits, brandy, whiskey, rum, gin, cordials or similar distilled alcoholic beverages, including all dilutions and mixtures of one or more of the foregoing.

(g) *Minor.* Any person under 21 years of age.

(h) *Nation Council.* The duly elected governing body of the Seneca Nation of Indians, a federally recognized tribe.

(i) *Nation Enterprise.* For purposes of this Act only, this term shall mean those corporations chartered by the Nation and authorized to conduct Class III gaming and related commercial activities pursuant to the Seneca Nation Land Claims Settlement Act of 1990 and that is licensed by the Nation Council after paying the appropriate fee set forth by the Nation Council by Resolution at not less than two hundred ($200) dollars and not more than five thousand ($5,000) dollars annually.

(j) *Possession or Possessing.* The exercise of proprietorship or control over a thing or over property and includes constructive possession through control without regard to ownership.

(k) *Purchase.* The exchange, barter, traffic, receipt, with or without consideration, in any form.

(l) *Sale.* The exchange, barter, traffic, donation, with or without consideration, in addition to the selling, supplying or distribution by any means, by any person to any person.

(m) *Transport.* The introduction of alcoholic beverage onto the Seneca Nation Territory by any means of conveyance for the purpose of sale, or distribution, to any licensed dealer.

(3) *Scope of Permissible Activity.* It shall be lawful for any Nation Enterprise, as defined by this Act, operating on lands placed in restricted fee status pursuant to the Seneca Nation Land Claims Settlement Act of 1990, 25 U.S.C. 1774f(c), to purchase liquor from duly licensed New York State wholesalers, to introduce and possess such liquor, and to sell such liquor on-premises to persons over the age of 21. It shall also be lawful for persons over the age of 21 to possess and consume such liquor at any Nation Enterprise facility located on lands placed in restricted fee status pursuant to the Seneca Nation Land Claims Settlement Act of 1990, as set forth in this Act.

(4) *Prohibition.* The purchase, introduction, sale, possession and consumption of liquor on lands placed in restricted fee status pursuant to the Seneca Nation Land Claims Settlement Act of 1990, 25 U.S.C. 1774f(c), other than by a Nation Enterprise or person authorized pursuant to this Act is prohibited.

(5) *Penalties.* Any person or entity purchasing, introducing, possessing, selling, bartering, or otherwise trafficking in liquor in violation of this Act or any rule or regulation adopted pursuant to this ordinance shall be subject to a fine or forfeiture, as applicable, of not more than five thousand dollars ($5,000) and may be barred from admission to a licensed Nation Enterprise facility or to Nation Territory or restricted fee lands through due process of law. In addition, persons or entities subject to the full jurisdiction of the Nation may be subject to such other appropriate actions as the Nation Council may determine. All contraband merchandise shall be confiscated by the Nation and disposed of as directed by the Nation Council.

(6) *Conformity With State Law.* Nation standards for the purchase, introduction, possession, sale and consumption of liquor on Seneca Nation Territory land pursuant to this Section 12 shall meet or exceed those required by the State of New York, pursuant to 18 U.S.C. 1161, including but not limited to:

(a) *Hours of Sale, Wine, Beer and Mixed Beverages.* A Nation Enterprise may sell or offer for sale wine, beer and mixed beverages at all times authorized.

(b) *Minor.* A minor is any person who has not celebrated his or her 21st birthday.

(c) *Purchase of Alcohol by a Minor.* Purchase of an alcoholic beverage by a minor on the premises of a Nation Enterprise facility is prohibited.

(d) *Sales to Minor.* Sale of an alcoholic beverage to a minor by a Nation Enterprise facility employee is prohibited.

(e) *Consumption of Alcohol by a Minor.* Consumption of an alcoholic beverage by a minor on the premises of a Nation Enterprise facility is prohibited.

(f) *Possession of Alcohol by a Minor.* Possession of an alcoholic beverage by a minor on a Nation Enterprise facility is prohibited unless such minor is in possession of the alcoholic beverage while in the course and scope of his employment and he is an employee of the Nation Enterprise.

(g) *Purchase of Alcohol for a Minor, Furnishing Alcohol to a Minor.* A person commits a violation of this Act if he knowingly purchases an alcoholic beverage for or knowingly gives or makes available an alcoholic beverage to a minor.

(h) *Misrepresentation of Age by a Minor.* A minor is in violation of this Ordinance if he falsely states that he or she is 21 years of age or older or presents any document that indicates he/she is 21 years of age or older to a person engaged in selling or serving alcoholic beverages at a Nation Enterprise facility.

(i) *Employment of Minors.* A Nation Enterprise shall not employ any person less than 18 years of age to sell, prepare, serve, or otherwise handle liquor, or to assist in doing so. A Nation Enterprise may, however, employ a person less than 18 years of age to work in any capacity other than the actual selling, preparing, serving or handling of liquor.

(7) *Prohibition of Sales During Emergencies or Dates and Times Established by the Nation Council.* The Nation Council President, by authority of Nation Council Resolution, may on an emergency basis and for a period of time not to exceed 5 business days, by written order, act, directive or notice, prohibit the sale of liquor at any Nation Enterprise facility until such emergency order can be considered by the Nation Council which may in its discretion, terminate or extend such order for any length of time it deems necessary, or may issue emergency rules, regulations, directions or orders concerning the sale of liquor which will be valid during the stated emergency period. The Nation Council may likewise issue orders prohibiting or limiting the sale of liquor at any Nation Enterprise facility for any period not to exceed 72 consecutive hours.

(8) *Enforcement.* This Act shall be enforced by the Nation Council, or any other Agency vested with such enforcement authority pursuant to Nation Council Resolution.

Section 13.—Sovereign Immunity Preserved

Nothing in this Ordinance is intended nor shall be construed as a waiver of sovereign immunity by the Nation. No officer, manager or employee of a Nation enterprise shall be authorized nor shall attempt to waive the sovereign immunity of the Nation.

Section 14.—Disclaimers

Nothing in this Ordinance shall be construed to authorize or require the criminal trial and punishment of non-Indians by the Nation except to the extent allowed by an applicable present or future act of Congress or any applicable laws.

Section 15.—Regulations

The Nation Council shall have the exclusive authority to adopt and enforce rules and regulations to implement the purchase, introduction, possession, sale, and consumption of liquor on the Seneca Nation Territory and to further the purposes of this Ordinance. Such rules and regulations shall have the force of law upon promulgation by Nation Council Resolution.

Section 16.—Severability

If any clause, part or section of this Ordinance shall be adjudged invalid, such judgment shall not affect or invalidate the remainder of the ordinance but shall be confined in its operation to the clause, part or section directly involved in controversy in which such judgment was rendered.

Section 17.—Effective Date

This Ordinance shall be effective on February 11, 2003.

Section 18.—Duration

The duration of this Ordinance shall be perpetual until repealed or amended by Nation Council Resolution.

[FR Doc. 03–3386 Filed 2–10–03; 8:45 am]

BILLING CODE 4310–4J–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–230–1020–PB–24 1A]

Extension of Approved Information Collection, OMB Control Number 1004–0058

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Bureau of Land Management (BLM) is requesting the Office of Management and Budget (OMB) to extend an existing approval to collect certain information from Federal timber purchasers to allow BLM to determine compliance with timber export restrictions. BLM uses Form 5460–17, Substitution Determination, to collect this information. This information allows BLM to administer export restrictions on BLM timber sales and to determine whether there was a substitution of Federal timber for exported private timber in violation of 43 CFR 5400.0–3(c).

DATES: You must submit your comments to BLM at the address below on or before April 14, 2003.

ADDRESSES: You may mail comments to: Bureau of Land Management, (WO–630), Eastern States Office, 7450 Boston Blvd., Springfield, Virginia 22153.

You may send comments via Internet to: *WOComments@blm.gov*. Please include "ATTN: 1004–0058" and your name and return address in your Internet message.

You may deliver comments to the Bureau of Land Management, Administrative Record, Room 401, 1620 L Street, NW., Washington, DC.

All comments will be available for public review at the L Street address during regular business hours (7:45 a.m. to 4:15 p.m.) Monday through Friday.

FOR FURTHER INFORMATION CONTACT: You may contact Michael J. Haske, WO–230, on (202) 452–7758 (Commercial or FTS). Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) on 1–800–877–8330, 24 hours a day, seven days a week, to contact Mr. Haske.

SUPPLEMENTARY INFORMATION: 5 CFR 1320.12(a) requires that we provide a 60-day notice in the **Federal Register** concerning a collection of information to solicit comments on:

(a) Whether the collection of information is necessary for the proper

functioning of the agency, including whether the information will have practical utility;

(b) The accuracy of our estimates of the information collection burden, including the validity of the methodology and assumptions we use;

(c) Ways to enhance the quality, utility, and clarity of the information collected; and

(d) Ways to minimize the information collection burden on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

BLM manages and sells timber located on the revested Oregon and California Railroad and the reconveyed Coos Bay Wagon Grants Lands under the authority of the Act of August 28, 1937 (50 Stat. 875, 43 U.S.C. 1181e). Under the Act of July 31, 1947, as amended (61 Stat. 681, 30 U.S.C. 601 *et seq.*), BLM also manages and sells timber located on other lands under our jurisdiction. The Department of the Interior and Related Agencies Appropriation Acts of 1975 and 1976 contained a requirement for the inclusion of provisions in timber sale contracts that will ensure that unprocessed timber sold from public lands under the jurisdiction of the BLM will not be exported or used by the purchasers as a substitute for timber they export or sell for export. The regulations at 43 CFR 5400, Sales of Forest Products, General, cover these provisions.

Timber purchasers or their affiliates must submit the information listed at 43 CFR 5424.1(a) using Form 5460–17, Substitution Determination. We collect the purchaser's name, timber contract number, processing facility location, total volume of Federal timber purchases on an annual basis, total volume of private timber exported on an annual basis, and method of measuring the volume. The regulation 43 CFR 5424.1(b) requires that the purchasers or affiliates retain a record of Federal timber acquisitions and private timber exports for three years from the date they activity occurred. BLM uses this information to determine if there was a substitution of Federal timber for exported private timber in violation of 43 CFR 5400.0–3(c). We could not protect against export and substitution if we did not collect this information.

Based on BLM's experience administering timber contracts, we estimate the public reporting burden to collect the information is one hour per response. The respondents are Federal timber purchasers who exported private timber within one year preceding the purchase date of Federal timber and/or affiliates of a timber purchaser who exported private timber within one year before the acquisition of Federal timber from the purchaser. The frequency of response is annually. We estimate 25 responses per year and a total annual burden of 25 hours.

BLM will summarize all responses to this notice and include them in the request for OMB approval. All comments will become a matter of public record.

Dated: February 5, 2003.

Michael H. Schwartz,

Bureau of Land Management, Information Collection Clearance Officer.

[FR Doc. 03–3327 Filed 2–10–03; 8:45 am]

BILLING CODE 4310–84–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–958–6310–PF–24 1A]

Extension of Approved Information Collection, OMB Control Number 1004–0168

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Bureau of Land Management (BLM) is requesting the Office of Management and Budget (OMB) to extend an existing approval to collect certain information from private landowners. BLM uses Form OR 2812–6, Report and Road Use, to collect this information. This information allows the BLM to determine road use and maintenance fees for logging road right-of-way permits issued under the O&C Logging Road Right-of-Way regulations (43 CFR part 2812).

DATES: You must submit your comments to BLM at the address below on or before April 14, 2003. BLM will not necessarily consider any comments received after the above date.

ADDRESSES: You may mail comments to: Bureau of Land Management, (WO–630), Eastern States Office, 7450 Boston Blvd., Springfield, Virginia 22153.

You may send comments via Internet to: *WOComment@blm.gov*. Please include "ATTN: 1004–0168" and your name and return address in your Internet message.

You may deliver comments to the Bureau of Land Management, Administrative Record, Room 401, 1620 L Street, NW., Washington, DC.

All comments will be available for public review at the L Street address during regular business hours (7:45 a.m. to 4:15 p.m.), Monday through Friday.

FOR FURTHER INFORMATION CONTACT: You may contact John Styduhar, BLM Oregon State Office, on (503) 952–6454 (Commercial or FTS). Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8330, 24 hours a day, seven days a week, to contact Mr. Styduhar.

SUPPLEMENTARY INFORMATION: 5 CFR 1320.12(a) requires that we provide a 60-day notice in the **Federal Register** concerning a collection of information to solicit comments on:

(a) Whether the collection of information is necessary for the proper functioning of the agency, including whether the information will have practical utility;

(b) The accuracy of our estimates of the burden of the proposed collection of information, including the validity of the methodology and assumptions we use;

(c) Ways to enhance the quality, utility, and clarity of the information collected; and

(d) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

BLM may authorize private landowners in western Oregon to transport their timber over BLM-controlled roads under Title V of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1761). The logging road right-of-way permits that BLM issues are subject to the requirements of the O&C Logging Road Right-of-Way regulations (43 CFR part 2812). As a condition of each right-of-way permit, a permittee must provide us with a certified statement containing the amount of timber removed, the lands from which the timber was removed, and the BLM roads used to transport the timber. Permittees must submit this information on a quarterly basis using the Form OR–2812–6, Report of Road Use.

The monies we receive for road use contributes to the recovery of costs incurred in the construction of forest access roads. The fees we collect for road maintenance are reimbursements for services we provide to maintain roads the permittee's use. If we did not require the collection of information included in the Report of Road Use Form, it would not be possible to

determine payment amounts, ledger account status, or monitor a permittee's compliance with the terms and conditions of the permit. The cost for services we provide would not be collected in a timely manner if we reduce the frequency of reporting. This has a direct effect on the ability of BLM to properly maintain its road system, protect the road investment, and provide safe and efficient access to the public lands.

Based on our experience administering the activities described above, we estimate the public reporting burden for the information collected is 1 hour per response. The 400 respondents include individuals, partnerships, and corporations engaged in removing and transporting timber and other forest products. The frequency of response is quarterly. We estimate 1,600 responses per year and a total annual burden of 1,600 hours.

BLM will summarize all responses to this notice and include them in the request for OMB approval. All comments will become a matter of public record.

Dated: February 5, 2003.

Michael H. Schwartz,

Bureau of Land Management, Information Collection Clearance Officer.

[FR Doc. 03–3328 Filed 2–10–03; 8:45 am]

BILLING CODE 4310–84–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–220–1050–PF–24–1A]

Extension of Approved Information Collection, OMB Control Number 1004–0182

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Bureau of Land Management (BLM) is requesting the Office of Management and Budget (OMB) to extend an existing approval to collect certain information from Alaska Natives interested in reindeer grazing activities on public lands BLM administers. BLM uses AK Form 4201–1, Grazing Lease or Permit Application, and AK Form 4132–2, Reindeer Grazing Permit, to collect this information. This information allows BLM to determine assessment of the compatibility of reindeer grazing on public lands with multiple-use objectives (43 CFR part 4300).

DATES: You must submit your comments to BLM at the address below on or before April 14, 2003. BLM will not necessarily consider any comments received after the above date.

ADDRESSES: You may mail comments to: Bureau of Land Management, (WO–630), Eastern States Office, 7450 Boston Blvd., Springfield, Virginia 22153.

You may send comments via Internet to: *WOComment@blm.gov*. Please include "ATTN: 1004–0182" and your name and return address in your Internet message.

You may deliver comments to the Bureau of Land Management, Administrative, Record, Room 401, 1620 L Street, NW., Washington, DC.

All comments will be available for public review at the L Street address during regular business hours (7:45 a.m. to 4:15 p.m.), Monday through Friday.

FOR FURTHER INFORMATION CONTACT: You may contact Larry Field, BLM Northern Field Office, on (907) 474–2343 (Commercial or FTS). Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8330, 24 hours a day, seven days a week, to contact Mr. Field.

SUPPLEMENTARY INFORMATION: 5 CFR 1320.12(a) requires that we provide a 60-day notice in the **Federal Register** concerning a collection of information to solicit comments on:

(a) Whether the collection of information is necessary for the proper functioning of the agency, including whether the information will have practical utility;

(b) The accuracy of our estimates of the burden of the proposed collection of information, including the validity of the methodology and assumptions we use;

(c) Ways to enhance the quality, utility, and clarity of the information collected; and

(d) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

The Act of September 1, 1937 (50 Stat. 900; 25 U.S.C. 500 *et seq.*) authorizes the Secretary of the Interior to manage the reindeer industry in Alaska to maintain a self-sustaining industry for Natives of Alaska. The Act also authorizes the Secretary to issue permits to those Natives for grazing reindeer on public lands. The regulations at 43 CFR part 4300 authorizes Alaska Natives to apply to BLM to permits to graze reindeer and to construct improvements on the land.

BLM requires that applicant use the AK Form 4201–1, Grazing Lease or Permit Application, and the AK Form 4132–2, Reindeer Grazing Permit, to submit the following information:

(a) Name and address;

(b) A legal description of the land applied for;

(c) Whether the applicant is an Alaska Native, citizen of the United States, or a qualified corporation;

(d) Whether the applicant has examined the land and whether there are any improvements on the land, in which case the applicant needs to provide a list of the surface owners;

(e) Whether the applicant has previously used the land;

(f) How many acres of adjoining land, if any, the applicant controls;

(g) Whether the applicant can furnish a statement of financial responsibility;

(h) The types of numbers of livestock the applicant intends to graze on the land;

(i) The number of years that livestock are permitted to graze and a description of the land on which they may graze; and

(j) The Reindeer Grazing Permit requires a permittee to file an annual report on the grazing operations and to agree to observe covenants involving assignments of permits and reindeer crossing permit applications.

We use the information the applicant provides to determine whether the applicant qualifies to receive a reindeer grazing permit or lease and whether permittee or lessee meets the terms and conditions of the granted permit or lease. If we did not collect this information, BLM would not be able to manage the Alaska reindeer grazing activities.

Based on our experience administering the activities described above, we estimate the public reporting burden for the information collected is 1 hour per application and 15 minutes for the annual report. The respondents are Alaska Natives. We estimate 6 responses per year and a total annual burden of 7 hours.

BLM will summarize all responses to this notice and include them in the request for OMB approval. All comments will become a matter of public record.

Dated: February 6, 2003.

Michael H. Schwartz,

Bureau of Land Management, Information Collection Clearance Officer.

[FR Doc. 03–3329 Filed 2–10–03; 8:45 am]

BILLING CODE 4310–84–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–080–5882–PF–SB01; GP3–0047]

Resource Advisory Committee Meetings

AGENCY: Bureau of Land Management, Interior.

ACTION: Meeting notice for the Salem, Oregon, Bureau of Land Management (BLM) Resource Advisory Committee under section 205 of the Secure Rural Schools and Community Self Determination Act of 2000 (Pub. L. 106–393).

SUMMARY: This notice is published in accordance with section 10(a)(2) of the Federal Advisory Committee Act. Meeting notice is hereby given for the Salem Oregon BLM Resource Advisory Committee pursuant to section 205 of the Secure Rural Schools and Community Self Determination Act of 2000, Public Law 106–393 (the Act). Topics to be discussed by the Salem BLM Resource Advisory Committee include: reviewing 2003 project applications, developing funding recommendations for 2003 projects, monitoring progress of previously approved projects, and scheduling field reviews of projects.

DATES: The Salem Resource Advisory Committee will meet at the BLM Salem District Office, 1717 Fabry Road, Salem, Oregon 97306, 9 a.m. to 3 p.m., on March 20, July 24, and August 7, 2003. We have also set aside several dates for potential field trips to view progress of existing projects and/or look at new proposed project areas. The dates for the field trips are June 26, July 10, and September 11, 2003.

SUPPLEMENTARY INFORMATION: Pursuant to the Act, five Resource Advisory Committees have been formed for western Oregon BLM districts that contain Oregon & California (O&C) Grant Lands and Coos Bay Wagon Road lands. The Act establishes a six-year payment schedule to local counties in lieu of funds derived from the harvest of timber on Federal lands, which have dropped dramatically over the past 10 years.

The Act creates a new mechanism for local community collaboration with Federal land management activities in the selection of projects to be conducted on Federal lands or that will benefit resources on federal lands using funds under title II of the Act. The BLM Resource Advisory Committees consist of 15 local citizens (plus six alternates) representing a wide array of interests.

FOR FURTHER INFORMATION CONTACT: Additional information concerning the Salem BLM Resource Advisory Committee may be obtained from Trish Hogervorst, Salem BLM Public Affairs, 1717 Fabry Rd. SE, Salem, Oregon 97306. (503–375–5657).

Dated: February, 5, 2003.

Denis Williamson,

District Manager.

[FR Doc. 03–3324 Filed 2–10–03; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR110–6333–DQ, HAG03–0046]

Notice of Availability of the Kelsey Whisky Landscape Management Plan, Proposed Amendments to the Medford Resource Management Plan, and Final Environmental Impact Statement

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Availability of the Kelsey Whisky Landscape Management Plan (LMP), Proposed Amendments to the Medford Resource Management Plan (RMPA), and Final Environmental Impact Statement (EIS).

SUMMARY: In accordance with section 202 of the National Environmental Policy Act of 1969, a Final EIS has been prepared for the Glendale Resource Area, Kelsey Whisky LMP, and Proposed Amendments to the Medford RMP. The analysis area encompasses approximately 104,000 acres of public land managed by the Glendale Resource Area, Medford District and located in Josephine, Douglas and Curry counties in southwestern Oregon. The Final EIS was completed after extensive collaboration between Bureau staff and interested parties to ensure the proposed management decisions meet agency responsibilities with relation to the resource management issues identified and reflect public input.

DATES: Written comments on the implementation portion of the RMPA/LMP will be accepted for 30 days following the date the notice is published in the **Federal Register**.

Documents referenced in this final EIS may be examined at the Medford District Office during normal working hours. Comments must be received on or before the end of the comment period at the address listed below. Written protests on the Final EIS will be accepted if postmarked within 30 calendar days from the date that a Notice of Availability is published in the **Federal Register** by the Environmental Protection Agency. Instructions for filing protests are included below under Supplemental Information.

No public meetings, open houses or field tours of the project area have been scheduled at this time. If there is sufficient public interest, public meetings will be arranged to discuss the management alternatives and answer questions. At least 15 days public notice will be given for activities where the public is invited to attend. All meetings will be published on the Medford District planning Web site at *http://www.or.blm.gov/Medford/planning/Medplanningdocs.html;* meeting notices can also be found in the Grant's Pass Courier and Umpqua Free Press newspapers.

ADDRESSES: Written protests must be filed at the following address: Director (210), Bureau of Land Management, Attention: Brenda Williams, PO Box 66538, Washington, DC 20035. In addition, you may use the overnight address (FedEx or USPS) as an option for next day delivery: Director (210), Bureau of Land Management, Attention: Brenda Williams, 1620 L Street, NW., Suite 1075, Washington, DC 20036. Although not a requirement, we suggest that you send your protest by certified mail, return receipt requested.

Written comments should be sent to Lynda L. Boody, Field Manager, Glendale Field Office, Bureau of Land Management, 3040 Biddle Road, Medford, Oregon, 97504, (541) 618–2279, or fax to (541) 618–2400, or e-mail to *110mb@or.blm.gov.*

Comments, including names and addresses of those who comment, will be available for public review. Individual respondents may request confidentiality. If you wish to withhold your name and/or address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comment. Such requests will be honored to the extent allowed by law. All submissions from organizations or businesses and from individuals identifying themselves as representatives or officials of organizations or businesses will be made available for public inspection in their entirety.

FOR FURTHER INFORMATION CONTACT: Lynda L. Boody, Field Manager, Glendale Field Office, Bureau of Land Management, Medford District Office, 3040 Biddle Road, Medford, Oregon, 97504, (541) 618–2279.

SUPPLEMENTARY INFORMATION: Single copies of the document are available at

the Medford District Office. Single copies will also be available for inspection during normal working hours at the Oregon State Office, Public Room, 333 SW., 1st Avenue, Portland, Oregon, 97204. The document may also be reviewed on the Medford District planning Web site at *http://www.or.blm.gov/Medford/planning/Medplanningdocs.html*. The public has the opportunity to protest the proposed RMP amendment components, as described in the Final EIS. The BLM planning regulations, 43 CFR 1610.5–2, state that any person who participated in the planning process and has an interest which may be adversely affected, may protest. A protest may only raise those issues that were submitted for the record during the planning process. The BLM will make its decisions after review of protests (if any).

To be considered complete, your protest must contain, at a minimum, the following information:

- Name, mailing address, telephone number and the affected interest of the person filing the protest(s).
- A statement of the issue (or issues) being protested.
- A statement of the part (or parts) of the proposed plan amendment being protested. To the extent possible, reference specific pages, paragraphs and sections of the document.
- A copy of all your documents addressing the issue (or issues) which were discussed with BLM for the record.
- A concise statement explaining why the proposed decision is believed to be incorrect. This is the critical part of your protest. Document all relevant facts, as much as possible, referencing or citing the planning and environmental analysis documents. A protest that merely expresses disagreement with State Director's proposed decisions without any data will not provide us with the benefit of your information and insight. In this case, the Director's review will be based on the existing analysis and supporting data.

Since this plan is a combination of RMP amendments and subordinate implementation or activity plans, the planning protest provision only applies to the proposed amendments and related findings. The subordinate actions, such as forest health treatments and individual timber sales will be subject to applicable administrative review and appeal provisions at later dates. The planning protest process does not provide for consideration of objections to those actions at this time.

The FEIS analyzes three action alternatives and a no-action alternative, each developed with differing emphasis. The alternatives were designed to address, in different ways, the land and resource management issues identified in the early stages of the planning process. The range of management actions includes timber harvest of anywhere from 3.1 to 11.9 million board feet (MMBF), 5,000–6,000 acres of fuel hazard reduction treatments, restoration activities, road decommissioning, water source enhancement projects, and other land management direction. Public participation has occurred throughout the planning process. Public comments were solicited during scoping and through a 90 day comment period for the draft EIS. The comments were analyzed and utilized where applicable to clarify and strengthen the FEIS.

Dated: December 30, 2002.

Mary Smelcer,

Acting District Manager, Medford District Office.

[FR Doc. 03–3372 Filed 2–10–03; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Outer Continental Shelf (OCS), Alaska OCS Region

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of availability of the final Environmental Impact Statement (EIS) for the proposed oil and gas lease sales in the Beaufort Sea, Alaska.

SUMMARY: MMS announces the availability of the final EIS prepared by MMS for the proposed OCS lease sales 186 (2003), 195 (2005), and 202 (2007) offshore Beaufort Sea, Alaska.

FOR FURTHER INFORMATION CONTACT: Minerals Management Service, Alaska OCS Region, 949 East 36th Avenue, Anchorage, Alaska 99508–4363, Attention: Mr. Paul Lowry, telephone: (907) 271–6574 or toll free 1–800–764–2627.

SUPPLEMENTARY INFORMATION: This EIS assesses three lease sales in the final 2002–2007, 5-year oil and gas leasing program for the Beaufort Sea OCS planning area, Sale 186 is scheduled for 2003; sale 195 for 2005; and sale 202 for 2007.

Federal Regulations (40 CFR 1502.4) suggest analyzing similar or like proposals in a single EIS. The proposal for each sale is to offer 1,877 whole or partial lease blocks in the Beaufort Sea planning area, covering about 9.8 million acres (3.95 million hectares) for leasing. The proposed sale area is seaward up to 60 miles offshore of the State of Alaska submerged land boundary in the Beaufort Sea. It extends from the Canadian border on the east to near Barrow, Alaska, on the west.

EIS Availability: Persons interested in reviewing the final EIS "OCS EIS/EA, MMS 2003–01" (volumes I through IV) can contact the MMS Alaska OCS Region. The documents are available for public inspection between the hours of 8 a.m. and 4 p.m., Monday through Friday at: Minerals Management Service, Alaska OCS Region, Resource Center, 949 East 36th Avenue, Room 330, Anchorage, Alaska 99508–4363, telephone: (907) 271–6070, or (907) 271–6621, or toll free at 1–800–764–2627. Requests may also be sent to MMS at *akwebmaster@mms.gov*. You may obtain single copies of the final EIS, or a CD/ROM version, or the Executive Summary from the same address. The Executive Summary (MMS 2003–02) is available in English or Native Inupiaq languages.

You may look at copies of the final EIS in the following libraries:

Alaska Pacific University, Academic Support Center Library, 4101 University Drive, Anchorage, Alaska;

Alaska Resources Library and Information Service, U.S. Department of the Interior, 3150 C Street, Suite 100, Anchorage, Alaska;

Alaska State Library, Government Publications, State Office Building, 333 Willoughby, Juneau, Alaska;

Canadian Joint Secretariat Librarian, Inuvikon Northwest Territories, Canada;

Department of Indian and Northern Affairs, Yellowknife, Northwest Territories, Canada;

Fairbanks North Star Borough, Noel Wien Library, 1215 Cowles Street, Fairbanks, Alaska;

George Francis Memorial Library, Kotzebue, Alaska:

Ilisaavik Library, Shishmaref, Alaska;

Juneau Public Library, 292 Marine Way, Juneau, Alaska;

Kaveolook School Library, Kaktovik, Alaska;

Kegoyah Kozpa Public Library, Nome, Alaska;

North Slope Borough School District, Library/Media Center, Barrow, Alaska;

Northern Alaska Environmental Center Library, 218 Driveway, Fairbanks, Alaska;

Tikigaq Library, Point Hope, Alaska;

Tuzzy Consortium Library, Barrow, Alaska;

University of Alaska Anchorage, Consortium Library, 3211 Providence Drive, Anchorage, Alaska;

University of Alaska Fairbanks, Elmer E. Rasmuson Library, Government Documents, 310 Tanana Drive, Fairbanks, Alaska;

University of Alaska Fairbanks, Geophysical Institute, Government Documents, Fairbanks, Alaska;
University of Alaska Fairbanks, Institute of Arctic Biology, 311 Irving Building, Fairbanks, Alaska;
University of Alaska, Southeast, 11120 Glacier Highway, Juneau, Alaska;
U.S. Army Corps of Engineers Library, U.S. Department of Defense, Elmendorf Air Force Base, Anchorage, Alaska;
Valdez Consortium Library, 200 Fairbanks Street, Valdez, Alaska;
Z. J. Loussac Library, 3600 Denali Street, Anchorage, Alaska.

Dated: January 17, 2003.

Thomas A. Readinger,

Associate Director for Offshore Minerals Management.

Approved:
Dated: January 22, 2003.

Willie R. Taylor,

Director, Office of Environmental Policy and Compliance.

[FR Doc. 03–3367 Filed 2–10–03; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—DVD Copy Control Association ("DVD CCA")

Notice is hereby given that, on January 6, 2003, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), DVD Copy Control Association ("DVD CCA") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Amusewell Technology Corp., Taipei, TAIWAN; Cheertek Inc., Hsinchu, TAIWAN; Concord Disc Manufacturing Corp., Anaheim, CA; Daesung Eltec Co., Ltd., Seoul, REPUBLIC OF KOREA; Dai Hwa Industrial Co., Ltd., Chungli, TAIWAN; Elegent Technologies Inc., Fremont, CA; Force NO A/S, Oslo, NORWAY; Hertz Engineering Co., Ltd., Tokyo, JAPAN; Hyundai Autonet Co., Ltd., Kyoungki-do, REPUBLIC OF KOREA; Jeong Moon Information Co., Ltd., Kyeongki-do, REPUBLIC OF KOREA; Nakamichi Corporation, Tokyo, JAPAN; Profilo Telra Elektronik San. Ve Tic. A.S., Istanbul, TURKEY; Soft4D Co., Ltd., Seoul, REPUBLIC OF KOREA; Taijin Media Co., Ltd., Seoul, REPUBLIC OF KOREA; and Ulead Systems, Inc., Taipei, TAIWAN have been added as parties to this venture. The following member has changed its name: Singhale Development Limited to Starlight Video Limited, Hong Kong, HONG KONG–CHINA.

Also, Edge Electronics, Inc., Ronkonkoma, NY; Hibino Corporation, Tokyo, JAPAN; and Winbond Electronics Corp., Hsinchu, TAIWAN have been dropped as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and DVD CCA intends to file additional written notification disclosing all changes in membership.

On April 11, 2001, DVD CCA filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on August 3, 2001 (66 FR 40727).

The last notification was filed with the Department on October 8, 2002. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on December 5, 2002 (67 FR 72428).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 03–3295 Filed 2–10–03; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Petroleum Environmental Research Forum Project No. 01–08

Notice is hereby given that, on January 13, 2003, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), ExxonMobil Research & Engineering Company, on behalf of PERF Project No. 01–08, titled "Downstream Waste Management Cooperative," has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities of the parties are ExxonMobil Research & Engineering Company, Fairfax, VA; BP Products North America Inc., Naperville, IL; Petrozyme Technologies, Inc., Guelph, Ontario, CANADA; Shell Global Solutions U.S. Inc., Houston, TX; and Aramco Services Company, Houston, TX. The nature and objectives of the research program performed in accordance with PERF Project No. 01–08 are to provide exchange technology and experience in the minimization treatment and disposal of downstream waste. The program will be carried out by compiling, presenting, and exchanging technology, practices, or research related to achieving the objectives.

Membership in this research group remains open, and the participants intend to file additional written notification disclosing all changes in membership or planned activities.

Information about participating in PERF Project No. 01–08 may be obtained by contacting Mr. Steven Smith, ExxonMobil Research & Engineering Company, Fairfax, VA.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 03–3294 Filed 2–10–03; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Rotorcraft Industry Technology Association

Notice is hereby given that, on January 13, 2003, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Rotorcraft Industry Technology Association ("RITA") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, The Ohio State University College of Engineering, Columbus, OH has been added as an Associate Member of RITA. Also, University of California, Los Angeles, CA; Old Dominion University, Norfolk, VA; and Naval Postgraduate School, Monterey, CA have been dropped as Associate Members of RITA; and Rolls Royce Corporation (formerly Allison Engine

Company), Indianapolis, IN has been dropped as a Supporting Member.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and RITA intends to file additional written notification disclosing all changes in membership.

On September 28, 1995, RITA filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on April 3, 1996 (61 FR 14817).

The last notification was filed with the Department on September 27, 2002. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on November 6, 2002 (67 FR 67649).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 03–3293 Filed 2–10–03; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Sarnoff Corporation

Notice is hereby given that, on January 8, 2003, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Sarnoff Corporation has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities of the parties are Sarnoff Corporation, Princeton, NJ; and E. I. du Pont de Nemours & Company, Wilmington, DE. The nature and objectives of the venture are to develop and demonstrate printable organic electronic materials and fabrication technologies for the production of thin film transistors on plastic substrates for use in low-cost displays.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 03–3297 Filed 2–10–03; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—VSI Alliance

Notice is hereby given that, on January 13, 2003, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), VSI Alliance has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Wael Badawy (individual member), Calgary, Alberta, CANADA; Barcelona Design, Inc., Newark, CA; Beijing Microelectronics Technology Institute, Fengtai, Beijing, PEOPLE'S REPUBLIC OF CHINA; CNRS–Centre Nationel De Recherche Scientifique, Paris, FRANCE; CPO Technologies Corporation, Sunnyvale, CA; Digeo Interactive LLC, Longmont, CO; Carolyn Hayden (individual member), Ottawa, Ontario, CANADA; Tomislav Ilic (individual member), San Francisco, CA; Jeda Technologies, Los Altos, CA; LSI Design & Integration Corporation (LDIC), San Jose, CA; NEC Electronics Corporation, Nakahara-ku Kawasaki, JAPAN; Vincent Ratford (individual member), San Jose, CA; WIS Technologies, San Jose, CA; and Christopher Wang (individual member), Costa Mesa, CA have been added as parties to this venture.

Also, Antrim Design Systems, Inc., Scotts Valley, CA; Co-Design Automation, Los Altos, CA; Dolphin Integration, Meylan, FRANCE; Embedded Solutions, Ltd., Abingdon, UNITED KINGDOM; Kyoto University-Department of Communications & Computer Engineering, Kyoto, JAPAN; Zainalabedin Navabi (individual member), Boston, MA; NEC Corporation, Nakahara-Ku Kawasaki, JAPAN; Nortel Networks, Nepean, Ontario, CANADA; Semifore Technologies, Irvine, CA; Simplex Solutions, Inc., Sunnyvale, CA; Spiratech Ltd., Radcliffe, UNITED KINGDOM; Spirea AB, Kista, SWEDEN; TransEDA, Eastleigh, UNITED KINGDOM; Prab Varma (individual member), Mountain View, CA; Vector 12 Corporation, Richmond, British Columbia, CANADA; and Verplex Systems, Inc., Milpitas, CA have been dropped as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and VSI Alliance intends to file additional written notification disclosing all changes in membership.

On November 29, 1996, VSI Alliance filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on March 4, 1997 (62 FR 9812).

The last notification was filed with the Department on October 9, 2002. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on November 8, 2002 (67 FR 68177).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 03–3296 Filed 2–10–03; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Penick Corporation, Inc., Grant Registration to Import Schedule II Substances

I. Background

On April 11, 2000, Penick Corporation, Inc. (Penick) applied to the Drug Enforcement Administration (DEA) for registration under 21 U.S.C. § 958(i) as an importer of coca leaves, raw opium, poppy straw, and poppy straw concentrate (narcotic raw materials or NRMs), all Schedule II controlled substances. On the same day, Penick also applied with DEA for registration as a manufacturer of a number of Schedule II controlled substances, including oxycodone, hydrcodone, morphine, hydromorphone and codeine. Pursuant to 21 CFR 1301.34(a), Mallinckrodt, Inc. (Mallinckrodt), and Normacò of Delaware, Inc. (Normaco), requested a hearing on Penick's application for registration as an importer of raw opium and concentrate of poppy straw (CPS). A hearing was held in Arlington, Virginia, on July 9 through 13 and August 13 through 15, 2001, with Penick, Noramco, Mallinckrodt and the Government participating and represented by counsel. All parties called witnesses to testify and introduced documentary evidence. After the hearing, all parties filed proposed findings of fact, conclusions of law, and argument. Penick, Moramco, and Mallinckrodt filed reply briefs.

On May 29, 2002, the Administrative Law Judge (ALJ) filed her Opinion and Recommended Ruling, Findings of Fact, Conclusions of Law and Decision of the Administrative Law Judge. The ALJ recommended that Penick's Application be granted. Mallinckrodt and Noramco filed exceptions to the ALJ's recommended decision. Penick filed a response to the exceptions filed by Mallinckrodt and Noramco. After considering all of the evidence and post hearing submissions, the Deputy Administrator adopts the Filings of Fact, Conclusions of Law, and Decision of the Administrative Law Judge in their entirety. They are incorporated into this final order as through they were set forth at length herein. The adoption of the ALJ's opinion is in no manner diminished by any recitation of facts, issues and conclusions herein, or of any failure to mention a matter of fact or law.

II. Preliminary Matters

A. Regulatory Context

Because Penick is applying for both a renewal of its registration and permission to import, this proceeding is a combined adjudication and rulemaking. The rulemaking determines whether Penick may lawfully import into the United States the Schedule II controlled substances raw opium and CPS pursuant to 21 U.S.C. § 952(a). Penick has the burden of proof, and must establish by a preponderance of the evidence that such a rule can be issued. In order to do this, Penick must show by a preponderance of the evidence that the raw opium and CPS that it intends to import are "necessary" to provide for medical, scientific or other legitimate purposes.

The adjudication determines whether DEA should grant Penick's application for registration as an importer of the Schedule II controlled substances raw opium and CPS. In accordance with the DEA Statement of Policy and Interpretation on Registration of Importers, 40 FR 43,745 (1975), the Deputy Administrator will not grant Penick's application unless Penick establishes that the requirements of 21 U.S.C. § 958(a) and § 823(a) and 21 CFR 301.34(b)(1)–(7) are met to show that Penick's registration to import is in the public interest. DEA has the discretion to determine the weight assigned to each of the factors that must be considered to determine whether Penick's registration to import will granted. MD Pharmaceutical, Inc. v. DEA, No. 95–1267, 1996 U.S. App. LEXIS 1229 (D.C. Cir. 1996) (unpublished opinion.)

B. The Right to a Hearing

On December 19, 2000, Penick filed various motions requesting *inter alia*, that the objections to their registration be struck and that their application be summarily granted. As the basis for Penick's Motions, Penick asserted that because Organichem, Mallinckrodt, and Normaco are not bulk manufactures of the substances that Penick seeks to import, none of them had standing to object, comment upon, or request a hearing on Penick's application. Penick further asserted that none of the objecting manufactures had prudential standing to comment, object or request a hearing.

After a thorough review of the relevant parts of the Controlled Substances Act (CSA), the implementing regulations and the CSAS's legislative history, the ALJ found that the objecting manufacturers had standing to challenger DEA's action if it granted Penick's application. The ALJ also found that the CSA and its regulation do not expressly grant a right to hearing to importers of NRMs upon the application of another manufacture to import the same substance. She concluded, however, that DEA has the discretionary authority to afford that hearing right and that it has done so in other proceedings as well as the instant matter. On that basis, the ALJ denied the motion to strike. With respect to Penick's motion for an order, the ALJ determined that she has no jurisdiction over Penick's application to import coca leaves or poppy straw, which was not part of the hearing. Accordingly, the ALJ denied the Motion for an Order. The Deputy Administrator adopts the well-reasoned ruling of the ALJ in denying Penick's motions.

C. Designations of Confidentiality

Pursuant to a Protective Order issued by the Administrative Law Judge on April 26, 2001, and a Revised Protective Order issued on May 24, 2002, the parties filed various motions, both before and after the hearing, for the designation of certain testimony and exhibits as "confidential" and "highly confidential." Some of the parties objected to the requests for confidentiality filed by other parties. After the hearing, the parties were provided an opportunity to file by motion requests for specifying such confidential material within the transcript. The Deputy Administrator has reviewed the pleadings on this issue, and hereby concurs with the Administrative Law Judge's orders on designations of confidentiality.

D. Motion To Reopen Record

On December 5, 2001, Normaco filed a letter asserting that Penick had changed its position with respect to the standard for registering applicants to import in a letter commenting on another manufacturers's application to import. Noramco moved to reopen the record in order for the ALJ to consider this letter. The ALJ concluded that no useful purpose would be served by considering Pencik's purported change of position, and denied Normaco's request. The Deputy Administrator concurs with the ALJ's decision denying the motion.

III. Final Order

The Deputy Administrator has carefully reviewed the entire record in this matter, as defined above, and hereby issues this final rule and final order prescribed by 21 CFR 1316.67 and 21 CFR 1301.46, based upon the following findings and conclusions.

A. The Rulemaking

As explained above, Penick cannot be registered as an importer of NRMs unless the Deputy Administrator finds that Penick will be allowed to import NRMs pursuant to 21 U.S.C. 952(a)(1). Because Penick is the proponent of such a rule, it must establish by a preponderance of the evidence that such a rule can be issued.

21 U.S.C. 952(a)(1) makes it unlawful to import controlled substances in Schedule I or II except "such amounts of crude opium, poppy straw, concentrate of poppy straw and coca leaves as the Attorney General finds to be necessary to provide for medical scientific or other legitimate purposes." Whether Penick's importation of opium and CPS is "necessary" was not highly disputed at the hearing of this matter.

The ALJ found that it is undisputed that Penick seeks to import narcotic raw materials for legitimate uses. She also noted that the actual amounts of NRMs necessary for those uses is made in subsequent proceedings to establish quotas pursuant to 21 U.S.C. 826 and to grant permits to import pursuant to 21 CFR Part 1312, which are not part of this case. Accordingly, the Deputy Administrator adopts the ALJ's ruling and finds that Penick shall be permitted to import raw opium and CPS.

B. The Adjudication

Longstanding Federal policy prohibits the cultivation of the opium poppy in the United States, and also generally prohibits the importation of bulk narcotic alkaloids such as morphine and codeine. The NRMs raw opium and CPS therefore must be imported into the

United States for purposes of extracting morphine and codeine for pharmaceutical use. Following the extraction of these alkaloids, the manufacturers convert them into active pharmaceutical ingredients (APIs), such as oxycodone and hydrocodone. These APIs are then sold to other manufacturers to produce either dosage formulations or other APIs. The formulated drugs are then sold to drug wholesalers or directly to health care entities.

Noramco and Mallinckrodt are the only companies registered with DEA as importers of NRMs and bulk manufacturers of codeine and morphine. Penick has applied with DEA to be registered as an importer of NRMs, so that the company can manufacture its own codeine and morphine. Noramco and Mallinckrodt oppose Penick's application.

Any company that wishes to import NRMs must comply with the "80–20 rule," which requires that 80 percent of the NRMs imported into the United States have their original source as Turkey and India. The remaining 20 percent must come from Yugoslavia, France, Poland, Hungary, or Australia. 21 CFR 1312.13(f).

Pursuant to 21 U.S.C. §§ 958a and 823(a), DEA is required to register Penick as an importer of Schedule I and II substances if the registration is "consistent with the public interest and with United States obligations under international treaties, conventions, or protocols in effect on May 1, 1971." In determining the public interest, DEA must consider the factors enumerated at U.S.C. 823(a)(1)–(6) and 21 CFR 1301.34(b)(1)–(7), some of which are identical. Accordingly, the Deputy Administrator will first consider United States obligations under international treaties, then each of the factors delineated in 21 U.S.C. 823(a) and 21 CFR 1301.34(b)(1)–(7), as follows.[1]

1. Treaty Obligations

As the ALJ found, there is no evidence that the importation of NRMs by Penick would be inconsistent with United States obligations under international treaties, conventions or protocols. Under the United Nations Single Convention on Narcotic Drugs of 1961, as amended by the 1972 Protocol (collectively, the Single Convention), the United States is obligated to take all necessary measures to ensure that the international movement of narcotics is limited to legitimate medical and scientific needs. Peter B. Bensinger, former Administrator of DEA, and Chuck Koczwara, Mallinckrodt's Director of Purchasing and Strategic Procurement, both testified that the primary goals of the Single Convention are to limit the manufacture, trade, and consumption of narcotic drugs to legitimate medical and scientific purposes; and ensuring availability of these drugs for medical use. Peter B. Bensinger also testified that any new registrant represents a potential for diversion, and that inasmuch as it is impossible to reduce the risk of diversion to zero, it is in the public interest to limit access to NRMs to a much smaller number of companies than would be appropriate in a free market.

The ALJ found, however, as explained below in consideration of the possibility of diversion of controlled substances, there is no evidence that entry of Penick into the market for importation of NRMs would result in significant diversion or contravene the Single Convention.

2. Maintenance of Effective Controls Against Diversion of Particular Controlled Substances and any Controlled Substance in Schedule I or II Compounded Therefrom Into Other Than Legitimate, Medical, Scientific, Research or Industrial Channels, by Limiting the Importation of and Bulk Manufacture of Such Controlled Substances to a Number of Establishments Which can Produce an Adequate and Uninterrupted Supply of These Substances Under Adequately Competitive Conditions for Legitimate Medical, Scientific Research, and Industrial Purposes

a. Diversion

The ALJ found that there is no evidence that specific activities involving Penick's importation of NRMs would increase diversion of those substances. John McRoberts, Penick's Vice President of Operations, testified extensively about Penick's internal security measures. The DEA Diversion Investigator (DI) who conducted the investigation of Penick's application testified favorably about Penick's security for shipments of NRMs from India and Turkey and Penick's distribution of its products via common carriers. The DI further testified that Penick's security systems and employee screenings met the requirements of DEA regulations. Neither Noramco nor Mallinckrodt adduced evidence that Penick's security arrangements were faulty.

Noramco Vice President Michael Kindergan testified that Penick's use of inefficient technology would increase the likelihood of diversion of opium in India because it would cause an increase in demand and in cultivation and production. Mr. Kindergan stated further that he believes that DEA personnel involved in investigating Penick's application focus on security within the manufacturing plant. Noramco does not claim that diversion from Penick's facility is likely; indeed, the manufacturing plant is probably the "area of least exposure." However, because of the 80/20 rule, any new production of morphine will come from India, and in taking any action DEA should also consider that action's impact on the NRM market and on diversion at the grower level.

As the ALJ noted, however, there is nothing in the Single Convention treaty that would require a government agency to consider the impact on overseas diversion of NRMs. Accordingly, the ALJ found that DEA is not required to consider the impact on diversion in India in assessing Penick's application, a conclusion with which the Deputy Administrator agrees. Moreover, the Deputy Administrator found that even if the registration of Penick were to cause diversion of NRMs overseas, there is nothing in the Single Convention or DEA regulations that would require DEA to limit registration to import NRMs to only two companies, regardless of the adequacy of competition. Accordingly, the Deputy Administrator finds that this factor weighs in favor of Penick.

b. Adequate Competition

The issue of whether there is adequate competition in the NRM processing market was highly disputed. The ALJ conducted a thorough review of the evidence offered by the parties in coming to her conclusions. Under 21 CFR 1301.34(d), the Deputy Administrator is obligated to consider the following factors in determining whether competition is adequate.

(1) The extent of price rigidity in light of changes in raw materials and other costs and conditions of supply and demand.

(2) The extent of service and quality competition among the domestic manufacturers for shares of the domestic market including (i) shifts in market shares and (ii) shifts in individual customers among domestic manufacturers.

(3) The existence of substantial differentials between domestic prices

[1] In this proceeding, Penick, as the applicant, has the burden of proof of showing that the public interest will be served by its registration to import NRMs. 21 CFR §§ 1301.44(c). Noramco and Mallinckrodt, however, have the burden of proving any propositions of fact or law asserted by them in the hearing. Id.; Roxane, 63 FR 55,891 (DEA 1998).

and the higher of prices generally prevailing in foreign markets or the prices at which the applicant for registration to import is committed to undertake to provide such products in the domestic market in conformity with the Act. In determining the existence of substantial differentials hereunder, appropriate consideration should be given to any additional costs imposed on domestic manufactures by the requirement of the Act and such other cost-related and other factors as the Administrator may deem relevant. In no event should an importer's offering prices in the United States be considered if they are lower than those prevailing in the foreign market or markets from which the importer is obtaining his/her supply.

(4) The existence of competitive restraints imposed upon domestic manufacturers by governmental regulations and

(5) Such other factors as may be relevant to the determinations required under this paragraph.

Michael I. Cragg, Ph.D. testified on behalf of Penick. Dr. Cragg concluded that Penick's reentry into the market will result in lower prices and a more reliable supply of narcotic products. Dr. Cragg relied upon theories of competition presented in economics literature to support the proposition that prices fall as the number of competitors increases. Dr. Cragg also testified that based upon the criteria used by the United States Department of Justice, competition in the narcotics industry is limited and Penick's reentry will increase competition. He found that at the critical stage of the production chain, competition is especially inadequate in the market for semi-processed APIs as there are only two importers and producers of semi-processed APIs, Johnson & Johnson and Mallinckrodt. Dr. Cragg explained that this situation creates a competitive bottleneck that affects all levels of the production chain. Despite this level of concentration, there has been no significant entry into the API market in the last decade. Furthermore, no entry has occurred despite the 150 percent increase in the size of the narcotics finished goods market from 1995 to 2000 and an almost five-fold increase in API revenues over that same period.

Dr. Cragg further testified that during this period of static duopoly, the prices of narcotic APIs have risen faster than when there were more competitors. From 1995 to 2000 estimated profits for narcotic APIs grew from $26 million to $246 million—a growth rate of 57 percent annually. Dr. Cragg concluded that these returns arose because revenues were growing faster than costs during the period when the number of importers was limited to only two. With respect to Penick's reentry into the NRM and API markets, Dr. Cragg expected such entry to raise the level of competition in the API market and lead to lower API prices.

Mark A. King, a consultant, testified on behalf of Noramco. He testified that Dr. Cragg's conclusions were incorrect, because they were based largely upon (1) a failure to consider structural factors inherent in the narcotic market as a whole; and (2) inaccurate data for NRM and API prices, and/or (3) selective application of general free market economic theories to one of the world's most highly regulated industries. Mr. King argued, in part, that NRM price increases have consistently outstripped the prices charged for narcotic APIs by Noramco during the period from 1995 to 2000; therefore, the value-added margins of narcotic APIs produced have declined, not increased. Mr. King also testified that Dr. Cragg's analysis was faulty because (1) he relied on Mallinckrodt's list prices in place of actual prices, (2) that U.S. API prices are driven not by industry concentration, but by DEA's policy of prohibiting the domestic cultivation and processing of opium poppies and (3) there is no persuasive evidence that Noramco or Mallinckrodt have been able to exert inordinate power over purchasers of APIs.

Walter H.A. Vandaele, Ph.D. testified on behalf of Mallinckrodt. Dr. Vandaele concluded generally that there is considerable competition between Mallinckrodt and Noramco in the bulk narcotic API market. Dr. Vandaele argued that significant discounting of list price and frequent switching by large customers from one bulk supplier to another evidence a significant degree of competition in the current market. Significant increases in bulk API prices reflect higher marginal costs of supplying increased demand in the face of tight supplies of raw material. Bulk suppliers' partial downstream integration into finished products provides no increase in their ability to price anti-competitively. Dr. Vandaele further argued that Penick's entry as an NRM importer and bulk API supplier would provide an insignificant impact on the level of competition in either the bulk API market or the narcotic finished product market, and no measurable impact on consumer prices.

The Deputy Administrator agrees with the ALJ that Penick has demonstrated that the opiate API market was not operating under "adequately competitive conditions" as of the date of the hearing. As the ALJ noted, it is undisputed that prices of APIs increased substantially during the 1990s. With respect to the other factors listed in 21 CFR 1301.34(d), The Deputy Administrator also agrees with the ALJ that the customer switches referenced in the records do not demonstrate strong competition. With respect to the other factors listed, the Deputy Administrator agrees with the ALJ that they are not relevant in this case or the record is not sufficient to warrant a finding. Having found that the market is not adequately competitive, the Deputy Administrator concludes that this factor weights in favor of granting Penick's application, even though Noramco and Mallinckrodt are capable of maintaining an adequate and uninterrupted supply.

3. Compliance with Applicable State and Local Law;

Penick adduced evidence that it was substantially in compliance with state and local law, and Noramco and Mallinckrodt did not produce evidence to the contrary. The Deputy Administrator therefore finds that this factor weighs in favor of granting Penick's application.

4. Promotion of Technical Advances in the Art of Manufacturing these Substances and the Development of new Substances.

The evidence showed that Penick has patented processes to produce oxycodone and narcotic antagonists from morphine or codeine instead of thebaine, and has invented processes to produce hydrocodone and hydromorphone. There was also evidence that Penick has a more efficient process to produce oxycodone from thebaine in that Penick is able to utilize both opium and CPS as the raw materials for producing various opiate APIs. There was further evidence that Penick plans to upgrade its facilities and has committed at least $30 million to the projects.

Noramco adduced evidence, on the other hand, that Penick's proposed technology for producing oxycodone is not as efficient as Noramco's technology, and both Noramco and Mallinckrodt emphasized that Penick's proposed processes have not been tested in commercial production. Noramco also claimed that Penick had not demonstrated the necessary commitment of resources to adequately upgrade its operation.

While there is controversy over the quality of Penick's proposed technology that cannot be resolved by the record in this matter, The Deputy Administrator concludes that Penick's patents and

development of manufacturing processes promote technical advances in the manufacture of controlled substances. Therefore this factor weighs in favor of granting Penick's application.

5. Prior Conviction Record of Applicant under Federal and State Laws Relating to the Manufacture, Distribution, or Dispensing of such Substances;

It is undisputed that neither Penick nor any of its officer, agents, or key employees has been convicted of any Federal or State law relating to the manufacture, distribution, or dispensing of controlled substances. The Deputy Administrator therefore concludes that this factor weighs in favor of granting Penick's application.

6. Past Experience in the Manufacture of Controlled Substances and the Existence in the Establishment of Effective Controls Against Diversion.

The evidence showed that Penick manufactured narcotics from 1947 until sometime in the 1990s. Although Mallinckrodt and Noramco asserted that regulatory requirements have changed since Penick exited the market, they adduced no evidence that Penick would be unable to comply with current or future requirements.

Penick presented evidence of its security systems and procedures, and Noramco and Mallinckrodt acknowledge that there is little likelihood of diversion from Penick's plant. The Deputy Administrator therefore concludes that this factor weighs in favor of granting Penick's application.

7. Such other Factors as may be Relevant to and Consistent with the Public Health and Safety.

The ALJ found three factors relevant to the public health and safety:

a. *Diversion of Opium:* Both Noramco and Mallinckrodt asserted that Penick's importation of NRMs would be likely to result in increased diversion of opium in India. The ALJ found that DEA is not required to consider the impact on diversion in India in assessing Penick's application. She also found that such claims were speculative at best. The Deputy Administrator agrees that this consideration need not be addressed under this factor. The Deputy Administrator also finds, however, that nothing in the Single Treaty or DEA regulations requires DEA to attempt to eliminate diversion by limiting the licensing of NRM importers to two companies, despite the absence of competition.

b. *Waste of Narcotic Raw Materials:* Noramco and Mallinckrodt also asserted that Penick's unproven technology will result in the waste of scarce NRMs. The ALJ found these assertions speculative because Penick could not begin its scaling up of operations until it obtained a registration to manufacture Schedule II controlled substances. The Deputy Administrator agrees with the ALJ that these contentions are too speculative to warrant consideration.

c. *Compliance with Federal Statutes and Regulations:* Although DEA found Penick to have committed numerous record keeping violations in a 1988 investigation, with Penick paying $40,000 to settle a consequent civil action, the DI testified that subsequent DEA regulatory investigations indicated that Penick was substantially in compliance with DEA requirements. With respect to FDA regulations, Penick has not been cited for any deficiencies since a 1993 warning letter. With respect to EPA requirements, the evidence showed that Penick hold the requisite permits and is operating within them and that any remediation issues with the New Jersey Department of Environmental Protection are the responsibility of Bestfoods rather than of Penick.

C. Exceptions

Both Noramco and Mallinckrodt filed exceptions to the Administrative Law Judge's Recommended Ruling, Findings of Fact, Conclusions of Law and Decision. Penick responded to those exceptions. Having considered the record in its entirety, including the parties' exceptions and responses, the Deputy Administrator finds no merit in Noramco and Mallinckrodt's exceptions, all of which concerned matters that were addressed at length at the hearing. The exceptions were extensive and are part of the record. Only some of the exceptions merit further discussion, and they will not be restated at length herein.

In its exceptions, Noramco contends that the ALJ failed to give consideration to the risk of diversion both inside and outside the United States, (2) securing an adequate supply to meet the needs of the medical community and (3) ensuring that the prices consumers pay for pain medication and narcotic APIs are reasonable and not inflated.

With regard to diversion within the United States, Noramco urges consideration of Penick's compliance history. At the hearing, however, the ALJ considered Penick's compliance history and did not find it evidence of the possibility of increased diversion. The DI testified that although a 1988 DEA investigation revealed numerous record keeping violations, requiring Penick to pay $40,000 to settle a civil action, inspections since 1994 have shown Penick to be substantially in compliance with record keeping requirements. In May 1990 the FDA found three deficiencies. Penick promised to correct two of them and to make some corrections to the third. Pursuant to an anonymous compliant that Penick was making narcotics and antibiotics in an unsanitary manner, FDA investigators conducted another inspection in June 1991; the inspectors found no problems. The FDA inspected Penick again in January and February 1993 and raised a number of concerns. A warning letter was issued to Penick in March 1993 alleging various deficiencies in Penick's validation processes and record keeping and a lack of sufficient quality control personnel. Following correspondence between the FDA and Penick, the FDA inspected again in September 1993 and found that Penick has corrected the deficiencies. Penick underwent another FDA inspection in August 1996 and no deficiencies were found. Thus, while Penick has regulatory problems in 1988, it has been substantially in compliance with DEA regulations since 1994. The 1988 violations, and the apparently minor problems with FDA regulatory compliance on a few occasions in the 90s, do not rise to a level that would warrant a denial of Penick's registration based on the possibility of increased diversion.

Noramco also argues that registration of *any* new participants increases the risk of diversion, and that the ALJ correctly determined that Noramco and Mallinckrodt have the means and capacity to produce an adequate and uninterrupted supply of APIs. As these issues were adequately discussed in the ALJ's recommended decision, there is not need for further discussion here.

Noramco also contends that competition is adequate in the active pharmaceutical ingredient market, citing the ALJ's statement that she did expect Penick's entry into the market to have a significant impact on the prices that consumers pay for opiate drugs. Noramco fails to note, however, that despite conclusion, the ALJ also concluded that Penick has demonstrated that the opiate active pharmaceutical ingredient market was not operating under "adequately competitive conditions."

Mallinckrodt also filed exceptions to the ALJ's opinion and recommended ruling. In its first exception, Mallinckrodt argues that the ALJ erred in finding that competition was inadequate. The Deputy Administrator finds, however, that all of

Mallinckrodt's arguments in this regard were thoroughly considered by the ALJ at the hearing and in her opinion and recommended ruling. Accordingly, the exception does not warrant consideration.

Mallinckrodt further argues that it is not in the public interest to register Penick when supply is adequate. Mallinckrodt contends that the ALJ failed to take into account the large investments of Noramco and Mallinckrodt, versus the lesser amount of investment by Penick. Mallinckrodt fails to provide a reasonable explanation, however, of how the size of the parties' investments would effect the adequacy of supply.

Mallinckrodt also contends that Penick's technology does not support its registration. It asserts that there is no evidence that Penick has an efficient technology for producing hydrocodone and that Penick's method of making oxycodone is outdated. As the ALJ noted, however, there is clearly some controversy over the quality of Penick's proposed technology, a controversy that the ALJ concluded the record was not sufficient to resolve. The ALJ concluded, however, that Penick's patents and development of processes promote technical advances in the manufacture of controlled substances. Under 21 U.S.C. 823(a)(3), that factor, along with the development of new substances, is all that is to be considered. Accordingly, the Deputy Administrator agrees with the ALJ and concludes that this factor weighs in favor of granting Penick's registration.

Mallinckrodt argues further that the ALJ erred in not considering the impact on diversion in the overseas NRM market. Mallinckrodt contends that in later cases, DEA has taken the position that such issues are relevant. This issue has been fully discussed in the ALJ's recommended decision and hereinabove. Moreover, the Deputy Administrator finds that even if the possibility of increased diversion overseas were taken into account, Noramco and Mallinckrodt's arguments in this regard are too speculative to warrant serious consideration.

Finally, Mallinckrodt argues that at a minimum, the ALJ should have recommended that conditions be placed on Penick's registration. Having reviewed the record in it's entity, the Deputy Administrator concludes that the evidence showed that Penick does not intend to use its registration as a "shelf registration." There is sufficient evidence, and no controverting evidence, that Penick had made concrete plans to upgrade and expand its controlled substance manufacturing facilities once it is clear that Penick will receive requisite DEA registrations.

IV. Conclusion

Based upon the foregoing, the Deputy Administrator finds that it is in the public interest, as defined by 21 U.S.C. 823(a)(1)–(6) and 21 CFR 1301.34(b)(1)–(7), to grant Penick's application to be registered as an importer of NRMs. In light of Penick's long experience in manufacturing bulk pharmaceuticals, including opiates, it is not necessary to grant a conditional application. This decision is effective March 13, 2003.

Dated: January 29, 2003.

John B. Brown, III,

Deputy Administrator.

[FR Doc. 03–3299 Filed 2–10–03; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Office of Justice Programs

[OJP(OVAW)–1373]

Meeting of the National Advisory Committee on Violence Against Women

AGENCY: Office on Violence Against Women, Office of Justice Programs, Justice.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming public meeting of the National Advisory Committee on Violence Against Women (hereinafter "the Committee").

DATES: The meeting will take place on February 20 from 9 a.m.–5 p.m., and on February 21 from 9 a.m.–2:15 p.m.

ADDRESS: The meeting will take place at the Adolphus Hotel, 1321 Commerce Street, Dallas, Texas 75202.

FOR FURTHER INFORMATION CONTACT: Omar A. Vargas, Special Assistant, The National Advisory Committee on Violence Against Women, 810 Seventh Street, NW, Washington, DC 20531. Telephone: (202) 307–6026. E-mail: *AskNAC@ojp.usdoj.gov* Fax: (202) 307–3911. View the Committee's Web site at: *http://www.ojp.usdoj.gov/vawo/nac/welcome.html*

SUPPLEMENTARY INFORMATION: The Committee is chartered by the Attorney General, and co-chaired by the Attorney General and the Secretary of Health and Human Services (the Secretary), to provide the Attorney General and the Secretary with practical and general policy advice concerning implementation of the Violence Against Women Act of 1994, the Violence Against Women Act of 2000, and related laws, and will assist in the efforts of the Department of Justice and the Department of Health and Human Services to combat violence against women, especially domestic violence, sexual assault, and stalking.

In addition, because violence is increasingly recognized as a public health problem of staggering human cost, the Committee will bring national attention to the problem of violence against women and increase public awareness of the need for prevention and enhanced victim services.

This meeting will primarily focus on organizational and planning aspects of the Committee's work; however there will be an opportunity for public comment on the Committee's role in providing general policy guidance on implementation of the Violence Against Women Act of 1994, the Violence Against Women Act of 2000, and related legislation.

Meeting Format

This meeting will be held according to the following schedule:

1. *Date:* Thursday, February 20, 2003.
Time: 9 a.m.–5 p.m., including breaks.
2. *Date:* Friday, February 21, 2003.
Time: 9 a.m.–11:45 am, sub-committees will convene in sessions not open to the public. 12 p.m.–2:15 p.m., the whole Committee will reconvene in a session open to the public.

The meeting scheduled for February 20, 2003 will begin with presentations from invited speakers representing Violence Against Women Act implementation by the Departments of Justice, and Health and Human Services. After the presentations by invited speakers, Committee members will consider their charge and convene subcommittees. Time will be reserved for comments from the public, beginning at 4:30 p.m. and ending at 5 p.m. See the section below on Reserving Time for Public Comment for information on how to reserve time on the agenda.

The meeting scheduled for February 21, 2003, will consist of review and discussion by the Committee of the charge and reports by the subcommittees regarding the Committee's work-plan and forthcoming recommendations to the Attorney General and the Secretary.

Attending the Meeting

The meeting on February 20, and the afternoon session of the meeting on February 21, will be open to the public. (The Committee will convene in closed sub-committee sessions on the morning of February 21, 2003, pursuant to 41

CFR 102–3.160.) Registrations for the public sessions will be accepted on a space available basis. Members of the public who wish to attend must register at least six (6) days in advance of the meeting by contacting Omar A. Vargas, Special Assistant, at the e-mail address or fax number listed above. Access to the meeting will not be allowed without registration, and all attendees will be required to sign in at the meeting registration desk. Please bring photo identification and allow extra time prior to the meeting.

Individuals who will need special accommodations for a disability in order to attend the meetings should notify Omar A. Vargas, Special Assistant, at the above e-mail address or by fax, no later than February 14, 2003. We will attempt to meet requests after this date, but cannot guarantee availability of the requested accommodation. The meeting site is accessible to individuals with disabilities.

Submitting Written Comments

Interested parties are invited to submit written comments to the Committee, by September 30, 2003, using one of the following methods: by e-mail to *AskNAC@ojp.usdoj.gov;* by fax on (202)–307–3911; or by mail to The National Advisory Committee on Violence Against Women, 810 Seventh Street, NW., Washington, DC 20531. Due to delays in mail delivery caused by heightened security, please allow adequate time for the mail to be received (we recommend 3–4 weeks).

Reserving Time for Public Comment

If you are interested in participating during the public comment period of the meeting, on the implementation of the Violence Against Women Act of 1994, and the Violence Against Women Act of 2000, you are requested to reserve time on the agenda by contacting the Office on Violence Against Women, Office of Justice Programs, U.S. Department of Justice by e-mail or fax. Please include your name, the organization you represent, if appropriate, and a brief description of the issue you would like to present. Participants will be allowed approximately 3 to 5 minutes to present their comments, depending on the number of individuals who reserve time on the agenda. Participants are also encouraged to submit two written copies of their comments at the meeting.

Given the expected number of individuals interested in providing comments at the meetings, reservations for presenting comments should be made as soon as possible. Persons who are unable to obtain reservations to speak during the meetings are encouraged to submit written comments, which will be accepted at each meeting site or may be mailed to the Committee at the address listed under the section on **Submitting Written Comments**.

Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act.

Diane Stuart,

Director, Office on Violence Against Women.

[FR Doc. 03–3383 Filed 2–10–03; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

[Application No. D–11100]

Proposed Class Exemption For Release of Claims and Extensions of Credit in Connection With Litigation

AGENCY: Employee Benefits Security Administration, Department of Labor.

ACTION: Notice of proposed class exemption.

SUMMARY: This document contains a notice of a proposed class exemption from certain prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (ERISA or the Act) and from certain taxes imposed by the Internal Revenue Code of 1986, as amended (the Code). The proposed class exemption would apply to transactions engaged in by a plan in connection with the settlement of litigation. This exemption is being proposed in response to concerns raised by the pension community regarding the impact of ERISA's prohibited transaction provisions on the settlement of litigation by employee benefit plans with parties in interest. The proposed exemption, if granted, would affect all employee benefit plans, the participants and beneficiaries of such plans, and parties in interest with respect to those plans engaging in the described transactions.

DATES: Written comments and requests for a public hearing shall be submitted to the Department before March 28, 2003.

ADDRESSES: All written comments and requests for a public hearing (preferably 3 copies) should be sent to: U. S. Department of Labor, Employee Benefits Security Administration, Room N–5649, 200 Constitution Avenue, NW., Washington, DC 20210, Attention: Plan Settlement Class Exemption Proposal. Comments may be sent by fax to (202) 219–0204 or by e-mail to *moffittb@pwba.dol.gov*. The application for exemption (Application Number D–11100), as well as all comments received, will be available for public inspection in the Public Documents Room, Employee Benefits Security Administration, U.S. Department of Labor, Room N–1513, 200 Constitution Avenue, NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Andrea W. Selvaggio, Office of Exemption Determinations, Employee Benefits Security Administration, U.S. Department of Labor, Washington DC 20210 (202) 693–8540 (not a toll-free number).

SUPPLEMENTARY INFORMATION: This document contains a notice that the Department is proposing a class exemption from the restrictions of section 406(a)(1)(A), (B) and (D) of the Act and from the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A), (B) and (D) of the Code. The exemption described herein is being proposed by the Department on its own motion pursuant to section 408(a) of the Act and section 4975(c)(2) of the Code, and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, August 10, 1990).[1]

I. General Background

Questions have been raised regarding whether a fiduciary that agrees to settle litigation or threatened litigation by releasing the plan's claims against a party in interest in exchange for consideration has engaged in a prohibited transaction. In this regard, the prohibited transaction provisions of the Act generally prohibit transactions between a plan and a party in interest (including a fiduciary) with respect to such plan. Specifically, section 406(a)(1)(A), (B) and (D) of the Act states that a fiduciary with respect to a plan shall not cause the plan to engage in a transaction, if he knows or should know that such transaction constitutes a direct or indirect—

(A) Sale or exchange, or leasing, of any property between the plan and a party in interest;

(B) Lending of money or other extension of credit between the plan and a party in interest; or

[1] Section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996) generally transferred the authority of the Secretary of the Treasury to issue exemptions under section 4975(c)(2) of the Code to the Secretary of Labor. For purposes of this exemption, references to specific provisions of Title I of the Act, unless otherwise specified, refer also to the corresponding provisions of the Code.

(D) Transfer to, or use by or for the benefit of, a party in interest, of any assets of the plan.

As noted in the General Information section of the Preamble of this proposed class exemption, the fact that a transaction is subject to an administrative exemption is not dispositive of whether the transaction is in fact a prohibited transaction. Rather, the proposed exemption is being published in response to uncertainty expressed on the part of plan fiduciaries charged with the responsibility under ERISA for determining whether it is in the interests of a plan's participants and beneficiaries to enter into a settlement agreement with a party in interest. The Department believes that this exemption will remove the uncertainty surrounding this issue and allow plan fiduciaries to properly carry out their responsibilities under ERISA.

II. Discussion of the Proposed Exemption

The Department is proposing this class exemption on its own motion in order to facilitate settlement of litigation by plans. Currently, two class exemptions provide limited relief for prohibited transactions that may arise as a result of the remedy proposed by the parties and/or the court in settlement of litigation or potential litigation where the Department or the Internal Revenue Service (the Service) is involved (the remedial transactions). PTE 79–15 [2] exempts certain remedial transactions or activities specifically authorized or required by a judicial order or a judicially approved settlement decree where the Department or the Service is a party to the litigation. PTE 79–15 requires, among other things, that the transaction or activity be approved by the court prior to its occurrence. Similarly, PTE 94–71 [3] exempts certain remedial transactions authorized, prior to the occurrence of such transactions, by the Department. PTE 94–71 is available only to settle issues arising out of a Department of Labor investigation of a plan. No relief is provided for the transactions originally cited as violations by the Department. Under PTE 94–71, relief is conditioned, among other things, on approval by the Department, a written settlement agreement and notice to affected participants and beneficiaries.

PTEs 79–15 and 94–71 recognize that, in some situations, the most appropriate resolution for certain ERISA violations may be a remedy that would otherwise be prohibited. For example, a plan may have purchased property from a party in interest in violation of section 406(a)(1)(A) of the Act. In attempting to resolve this prohibited transaction, the parties may find that another party in interest is the only person willing and able to purchase the property from the plan. However, without an exemption, this remedial transaction would also violate section 406(a)(1)(A) of the Act. It is this second transaction, the remedial transaction, that is the subject of relief under PTEs 79–15 and 94–71, not the original transaction that led to the controversy.

The current proposed class exemption is more limited than PTEs 79–15 and 94–71. It covers the transaction that occurs when the plan exchanges or releases its cause of action in exchange for consideration from parties in interest [4] in settlement of litigation or threatened litigation. It also covers certain limited extensions of credit incident to the settlement. Unlike PTEs 79–15 and 94–71, this proposed exemption does not provide relief for any remedial prohibited transactions that the parties or the court may consider in an effort to achieve a settlement. In the Department s view, it would not be sufficiently protective of the interests of participants and beneficiaries to permit such remedial prohibited transactions without any involvement by either the Department or the Service. Therefore, absent an applicable statutory, class, or individual exemption, remedial prohibited transactions may not be entered into as part of a settlement pursuant to this proposed exemption. However, the proposed exemption does cover the receipt of cash by a plan in exchange for the release by the plan of a claim against a party in interest in partial or complete settlement of such claim.

The Department notes that many situations in which a plan settles litigation involve no question of a prohibited transaction triggering the need for an exemption. For example, if the parties in interest alleged to have committed prohibited transactions agreed to correct these transactions and this correction complies with section 4975 of the Code, the Department has taken the position that the correction itself will not result in a separate prohibited transaction under Title I of the Act.[5]

Similarly, if a party in interest is willing to reimburse the plan for its losses without requiring a release of the plan's claims, no question of a prohibited transaction would arise because the plan, having not given up its claim, has not engaged in a transaction with a party in interest prohibited under section 406 of the Act. This may occur, for example, where the plan sponsor, concerned that it might be sued for breach of fiduciary duty, decides to make the plan whole for losses.[6]

The Service recently confirmed its position that such a payment may be "a restoration payment" not a contribution.[7]

Finally, the Department noted in AO 95–26A (October 17, 1995) that, where a service provider and the plan are settling a dispute related to the provision of services or incidental goods to the plan, the statutory exemption found in section 408(b)(2) of the Act may apply.

The Department has recently received a number of informal inquires regarding the settlement of class-action securities fraud cases where the plan and/or its participants are shareholders. In many securities fraud cases, the plan may also have a cause of action against some of the same parties, based on ERISA violations. The defendants in the ERISA case are likely to overlap with the defendants in the securities fraud litigation. Given the rise in the number of cases in which plans are involved, either as individual litigants or members of the class action, the Department has determined that it would be appropriate to provide an exemption for parties in interest in order to facilitate the settlement of litigation with plans.

III. Description of the Proposed Exemption

The Department is proposing a retroactive and prospective exemption from the restrictions of section 406(a)(1)(A), (B) and (D) of the Act and from the taxes imposed by section

[2] 44 FR 26979 (5/8/79).

[3] 59 FR 51216 (10/7/94), as corrected 59 FR 60837 (11/28/94).

[4] Throughout this discussion we refer to consideration paid by or on behalf of a party in interest settling the case. This would include consideration paid by a third party, such as an insurance company, on behalf of the party in interest. It would also include consideration paid by another party in interest, including a fiduciary.

[5] It should be noted that the Department has no jurisdiction with respect to the meaning of the term correction under section 53.4941(e)–1(c)(1) of the Foundation Excise Tax Regulations, which applies to correction of prohibited transactions under section 4975 of the Code, by reason of Temporary Pension Excise Tax Regulation section 141.4975–13.

[6] For example, see PTE 97–32, 62 FR 31631 (6/10/97).

[7] Rev. Rul. 2002–45, 2002–29 IRB 116 (06/26/02). For the payments to be considered restoration payments, not contributions, there must be a reasonable risk of liability for breach of fiduciary duty.

4975(a) and (b) of the Code by reason of section 4975(c)(1)(A), (B) and (D) of the Code, for the following transactions effective January 1, 1975: (1) The release by the plan of a legal or equitable claim against a party in interest in exchange for consideration in settlement of litigation; and (2) an extension of credit by a plan to a party in interest in connection with a settlement whereby the party in interest agrees to repay, in installments, an amount owed to the plan.

a. Conditions Applicable to All Transactions

Both the retroactive and prospective parts of the proposed exemption are conditioned upon the existence of a genuine controversy involving the plan. The Department believes that this condition is necessary to prevent the plan and parties in interest from engaging in a sham transaction purporting to fall within this class exemption, thus shielding a transaction, such as an extension of credit, that would otherwise be prohibited. The existence of a genuine controversy must be determined by an attorney retained to advise the plan. That attorney must be independent of the other parties to the litigation.

The terms and conditions of the settlement must be negotiated by a fiduciary that has no relationship to, or interest in, the other parties involved in the litigation, other than the plan, that might affect its best judgment as a fiduciary. The Department intends a flexible standard for fiduciary independence, recognizing that the exemption will encompass a wide range of situations, both in terms of the type of litigation and the cost of pursuing such litigation. For example, in some instances where there are complex issues and significant amounts of money involved, it may be appropriate to hire an independent fiduciary having no prior relationship to the plan, its trustee, any parties in interest, or any other parties to the litigation. In other instances, the plan's current trustee, assuming that the trustee's conduct is not at issue, may be an appropriate fiduciary to make the decision on behalf of the plan as to whether to settle the litigation.

The proposed exemption also provides that the settlement must not be part of an agreement, arrangement, or understanding designed to benefit a party in interest. The intent of this condition is not to deny direct benefits to other parties to a transaction but, rather, to exclude transactions that are part of a broader overall agreement, arrangement or understanding designed to benefit parties in interest.

b. Conditions Applicable to Retroactive Transactions

In addition to the conditions applicable to all transactions, if the transactions addressed in this class exemption occurred between January 1, 1975 and the date of publication of the final exemption, the retroactive exemption with respect to any extensions of credit is conditioned upon those extensions of credit bearing a reasonable interest rate taking into account all the facts and circumstances of the settlement.

c. Conditions Applicable to Prospective Transactions

In addition to the conditions applicable to all transactions, the prospective exemption is conditioned upon all terms of the settlement being specifically described in a written agreement or consent decree. Further, the plan must participate in the settlement on a basis no less favorable to the plan than the participation of similarly situated persons that are not plans. As discussed below, in some instances the plan may be able to negotiate a more favorable resolution of the issues than the other parties, given the additional causes of action available under ERISA.

The exemption is conditioned upon the settlement being reasonable, given the likelihood of full recovery and the risk of litigation. Settlement must be in the best interests of the participants and beneficiaries of the plan. The Department notes that, under ERISA, the plan may have additional causes of action not available to the other plaintiffs in the same case. For example, where shareholders have brought a class action securities fraud case against the Company and its officers, the Company's employee benefit plan may be named as a member of the class because it holds employer securities. Such a plan may also have ERISA claims against the Company and some or all of its officers, as well as against other parties. Before entering into a settlement, the plan fiduciary should consider the value of these additional claims. The plan fiduciaries may also be able to pursue claims against defendants not named in the securities fraud case, including knowing participants in the breach. Under certain circumstances, the plan will have additional sources of recovery, including fiduciary liability insurance, the plan's fidelity bond, and the personal assets of the defendants, including their own employee benefit plan accounts.[8]

Where a settlement includes an extension of credit to a party in interest for purposes of repaying an amount owed in settlement of litigation, the prospective exemption requires that the credit terms, including the interest rate, be reasonable, but in no case may the rate be less than the underpayment rate defined in section 6621(a)(2) of the Code.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act which require, among other things, that a fiduciary discharge his duties respecting the plan solely in the interests of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of plans and their participants and beneficiaries and protective of the rights of the participants and beneficiaries of plans;

(3) If granted, the proposed class exemption will be applicable to a particular transaction only if the transaction satisfies the conditions specified in the class exemption; and

(4) The proposed exemption, if granted, will be supplemental to, and not in derogation of, any other provisions of ERISA and the Code, including statutory or administrative exemptions and transitional rules.

[8] Section 206(d)(4) of the Act permits a plan to offset the benefits of a participant under an employee pension plan against an amount that the participant is ordered or required to pay, if the order or requirement to pay arises under a judgment or conviction of a crime involving the plan, a civil judgment, including a consent order or decree, entered into by a court, or where there is a settlement agreement between the participant and the Secretary of Labor or the PBGC in connection with a violation of Part IV of ERISA.

Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

Executive Order 12866

Under Executive Order 12866, the Department must determine whether a regulatory action is "significant" and therefore subject to the requirements of the Executive Order and subject to review by the Office of Management and Budget (OMB). Under section 3(f), the order defines a "significant regulatory action" as an action that is likely to result in a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also referred to as "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of the Executive Order, it was determined that this action is "significant" under Section 3(f)(4) of the Executive Order. Accordingly, this action has been reviewed by OMB.

Paperwork Reduction Act

As part of its continuing effort to reduce paperwork and respondent burden, the Department of Labor conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA 95) (44 U.S.C. 3506(c)(2)(A)). This helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

Currently, EBSA is soliciting comments concerning the information collection request (ICR) included in this Notice of Proposed Class Exemption For Release of Claims and Extensions of Credit in Connection with Litigation. Address requests for copies of the ICR to Joseph S. Piacentini, Office of Policy and Research, U.S. Department of Labor, Employee Benefits Security Administration, 200 Constitution Avenue, NW, Room N–5718, Washington, DC 20210. Telephone (202) 693–8410; Fax: (202) 219–5333. These are not toll-free numbers.

The Department has submitted a copy of the proposed revision of a currently approved information collection to OMB in accordance with 44 U.S.C. 3507(d) for review. The Department and OMB are particularly interested in comments that:

Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

Evaluate the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

Enhance the quality, utility, and clarity of the information to be collected; and

Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses. Comments should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503; Attention: Desk Officer for the Employee Benefits Security Administration.

Although comments may be submitted through April 14, 2003 OMB requests that comments be received within 30 days of publication of the Notice of Class Exemption For Release of Claims and Extensions of Credit in Connection with Litigation to ensure their consideration.

The proposed class exemption would cover certain transactions engaged in by a plan in connection with litigation. If adopted, the class exemption would make clear that, under specified conditions, plans may settle litigation by: (1) Releasing their claims against parties in interest in exchange for payment by or on behalf of a party in interest; and (2) entering into agreements with parties in interest for payments of agreed-upon amounts in settlement of claims in installments. Without this exemption, for reasons described in detail in the General Background section of this notice, questions may be raised regarding whether a fiduciary or party in interest that agrees to a settlement on behalf of the plan has engaged in a prohibited transaction under sections 406(a)(1)(A), (B), or (D) of the Act, which state, in pertinent part, that a fiduciary shall not cause a plan to engage in a transaction that constitutes a direct or indirect:

Sale or exchange, or leasing, of any property between the plan and a party in interest;

Lending of money or other extension of credit between the plan and a party in interest; or

Transfer to, or use by or for the benefit of, a party in interest, or any assets of the plan.

The Department recognizes that in certain instances it may be advantageous to the plan that is or potentially may be a party to litigation for the plan fiduciary to settle the litigation and release its claims. Settling a cause of action may be of greater benefit to a plan than engaging in lengthy and possibly costly litigation, or pursuing claims that defendants are unlikely to be capable of satisfying, even where a settlement does not fully satisfy amounts at issue. However, questions have been raised with the Department as to whether such a settlement and release of claims, as well as certain arrangements that may be made for payment in satisfaction of a settlement, would result in a prohibited transaction between the plan and the party in interest. Accordingly, the Department is proposing this class exemption in order to facilitate the settlement of litigation with plans.

In order to grant an exemption pursuant to section 408(a) of the Act, the Department must, among other things, make a finding that the terms of the exemption are protective of the rights of participants and beneficiaries of a plan. To support making such a finding, the Department normally imposes certain conditions on fiduciaries and parties in interest that may make use of the exemption. The information collection provisions of the proposed exemption are among these conditions. The information collection provisions are found in sections IV (a), IV (e), and V (a). These requirements are summarized as follows:

Written Agreement. The proposed prospective exemption requires that the terms of the settlement be specifically described in a written agreement or consent decree. The Department believes that execution of a written agreement between parties to litigation is usual and customary business practice. Therefore, no additional burden for a written settlement agreement is expected to be associated with the exemption.

Acknowledgement by a Fiduciary. The proposed prospective exemption also requires that a fiduciary acting on behalf of the plan acknowledge in writing that it is a fiduciary with respect to the settlement of the litigation. Under the Act, a person that exercises any authority or control respecting disposition of [the plan's] assets,[9] is considered a fiduciary. It is anticipated that the applicable plan fiduciary will incorporate this acknowledgement in the written agreement outlining the terms and conditions of its retention as a plan service provider, and already in existence, as part of usual and customary business practice. As such, a written acknowledgement is not expected to impose any measurable additional burden.

Recordkeeping. The proposed prospective exemption would require a plan to maintain for a period of six years the records necessary to enable certain persons to determine whether the conditions of the proposed exemption had been met. The six-year recordkeeping requirement is consistent with the requirements in section 107 of the Act as well as general recordkeeping requirements for tax information under the Code. The requirement is also consistent with other statutory requirements. As such, the Department has not accounted for a burden related to the recordkeeping requirement of this proposed exemption.

The proposed prospective exemption may affect all employee benefit plans, the participants and beneficiaries of those plans, and parties in interest to plans engaging in the specified transactions. It is not possible to estimate the number of respondents or frequency of response to the information collection requirements of the proposed exemption due to the wide variety of litigation involving plans, parties to that litigation, and jurisdictions in which litigation occurs. However, the lack of an ascertainable number of settlements would not impact the hour or cost burden because, as noted, no additional burden is expected to be associated with the information collection requirements of the proposed exemption.

The Department has on other occasions exempted classes of transactions involving settlement agreements under specific circumstances. Pursuant to PTE 94–71 (59 FR 51216), the Department determined that the restrictions of sections 406(a)(1)(A) through (E) and the taxes imposed by sections 4975(a) and 4975(b) of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to a transaction or activity that is authorized by a remedial settlement agreement resulting from an investigation of an employee benefit plan conducted by the Department. Because this proposed exemption applies to settlement agreements involving plans and parties in interest, and the release of claims by the plan, the subject matter is considered to be sufficiently similar to suggest that both the public and the government would be served by combining the clearance of the information collection requests of both exemptions under one OMB control number.

Type of Review: Revision of a currently approved collection.

Agency: Employee Benefits Security Administration, Department of Labor.

Title: Settlement Agreements Between a Plan and Party In Interest (Prohibited Transaction Class Exemption 94–71; and Application No. D–11100).

OMB Number: 1210–0091.

Affected Public: Individuals or households; Business or other for-profit institutions; Not-for-profit institutions.

Frequency of Response: On occasion.

Total Respondents: 4 for existing ICR; no additional for proposed revision.

Total Responses: 1,080 for existing ICR; no additional for proposed revision.

Estimated Burden Hours: 40 for existing ICR; no additional for proposed revision.

Estimated Annual Costs (Operating and Maintenance): $0.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of the information collection request; they will also become a matter of public record.

Written Comments

All interested persons are invited to submit written comments or requests for a public hearing on the proposed exemption to the address and within the time period set forth above. All comments will be made a part of the record. Comments and hearing requests should state the reasons for the writer's interest in the proposed exemption. Comments received will be available for public inspection at the address set forth above.

Section I. Covered Transactions

Effective January 1, 1975, the restrictions of section 406(a)(1)(A), (B) and (D) of the Act, and the taxes imposed by section 4975(a) and (b) of the Code, by reason of section 4975(c)(1)(A), (B) and (D) of the Code, shall not apply to the following transactions, if the relevant conditions set forth in sections II through IV below are met:

(a) The release by the plan of a legal or equitable claim against a party in interest in exchange for consideration, given by, or on behalf of, a party in interest to the plan in partial or complete settlement of the plan's claim; and

(b) An extension of credit by a plan to a party in interest in connection with a settlement whereby the party in interest agrees to repay, in installments, an amount owed to the plan in settlement of a legal or equitable claim by the plan against the party in interest.

Section II. Conditions Applicable to Transactions Described in Section I

(a) An attorney or attorneys retained to advise the plan on the claim, and having no relationship to any of the parties, other than the plan, determines that there is a genuine controversy involving the plan;

(b) The terms and conditions of the transaction are negotiated at arms' length by a fiduciary who has no relationship to, or interest in, any of the parties involved in the litigation, other than the plan, that might affect the exercise of such person s best judgment as a fiduciary; and

(c) The transaction is not part of an agreement, arrangement, or understanding designed to benefit a party in interest.

Section III. Retroactive Conditions for Transactions Described in Section I (b)

In addition to the conditions described in section II, the following condition applies to the transactions described in section I (b) entered into on or before the date of publication of the final exemption in the **Federal Register**

(a) Any extension of credit by the plan to a party in interest in connection with the settlement of a legal or equitable claim against the party in interest is on terms, including the interest rate, that are reasonable.

Section IV. Prospective Conditions for Transactions Described in Section I (a) and (b)

In addition to the conditions described in section II, the following conditions apply to the transactions described in section I (a) and (b) entered into after the date of publication of the final exemption in the **Federal Register:**

(a) All terms of the settlement are specifically described in a written agreement or consent decree;

(b) The plan participates in the settlement on a basis no less favorable to the plan then the participation of

[9] [10]: Section 3(21)(A)(i) of ERISA.

similarly situated persons that are not plans;

(c) Assets other than cash may be received by the plan from a party in interest in connection with a settlement only to the extent necessary to rescind a transaction that is the subject of the litigation. Such assets must be valued at their fair market value, as of the date of the settlement;

(d) The settlement is reasonable in light of the plan's likelihood of full recovery and the risks of litigation, and is in the best interest of the participants and beneficiaries of the plan;

(e) The fiduciary acting on behalf of the plan has acknowledged in writing that it is fiduciary with respect to the settlement of the litigation on behalf of the plan; and

(f) Any loan or extension of credit to a party in interest by the plan in connection with the settlement of a legal or equitable claim against the party in interest is on terms, including the interest rate, that are reasonable, but in no event is the interest rate less than the underpayment rate defined in section 6621(a)(2) of the Code.

Section V. General Conditions

In addition to the conditions described in section II and IV, the following conditions apply to all transactions described in section I entered into after the date of publication of the final exemption in the **Federal Register:**

(a) The plan maintains or causes to be maintained for a period of six years the records necessary to enable the persons described below in paragraph (b) to determine whether the conditions of this exemption have been met, including documents evidencing the steps taken to satisfy section IV (d), such as correspondence with attorneys or experts consulted in order to evaluate the plan's claims, except that:

(1) This recordkeeping condition shall not be violated if, due to circumstances beyond the control of the party responsible for recordkeeping, the records are lost or destroyed prior to the end of the six-year period,

(2) No party in interest other than the party responsible for recordkeeping shall be subject to the civil penalty that may be assessed under section 502(i) of the Act or to the taxes imposed by section 4975(a) and (b) of the Code if the records are not maintained or are not available for examination as required by paragraph (b) below; and

(b) (1) Except as provided below in paragraph (b)(2) and notwithstanding any provisions of section 504(a)(2) and (b) of the Act, the records referred to in paragraph (a) are unconditionally available at their customary location for examination during normal business hours by—

(i) Any duly authorized employee or representative of the Department or the Internal Revenue Service,

(ii) Any fiduciary of the plan or any duly authorized employee or representative of such fiduciary,

(iii) Any employer of participants and beneficiaries and any employee organization whose members are covered by the plan, or any authorized employee or representative of these entities; or

(iv) Any participant or beneficiary of the plan or the duly authorized employee or representative of such participant or beneficiary;

(2) None of the persons described in paragraph (b)(1)(ii)–(iv) shall be authorized to examine trade secrets or commercial or financial information which is privileged or confidential.

Signed at Washington, DC this 6th day of February, 2003.

Ivan L. Strasfeld,

Director, Office of Exemption Determinations, Employee Benefits Security Administration, Department of Labor.

[FR Doc. 03–3393 Filed 2–10–03; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Employment and Training Administration

[SGA/DFA 03–102]

Work Incentive Grants

AGENCY: Employment and Training Administration (ETA), DOL.

ACTION: Notice of availability of funds; solicitation for grant applications (SGA).

This notice contains all of the necessary information and forms needed to apply for grant funding.

SUMMARY: The U.S. Department of Labor (DOL), Employment and Training Administration (ETA), announces the availability of approximately $17 million to award competitive grants designed to enhance the employability, employment and career advancement of people with disabilities through enhanced service delivery in the new One-Stop delivery system established under the Workforce Investment Act of 1998 (WIA). The Work Incentive Grant program will provide grant funds to consortia and/or partnerships of public and private non-profit entities working in coordination with the One-Stop delivery system to augment the existing programs and services and ensure programmatic access and streamlined, seamless service delivery for people with disabilities.

DATES: Applications will be accepted commencing on February 11, 2003. The closing date for receipt of applications under this announcement is March 28, 2003. Applications must be received by 4 p.m. (ET) at the address below. No exceptions to the mailing and hand-delivery conditions set forth in this notice will be granted. Applications that do not meet the conditions set forth in this notice will not be honored.

ADDRESSES: Applications shall be mailed to: U.S. Department of Labor, Employment and Training Administration, Division of Federal Assistance, Attention: B. Jai Johnson, SGA/DFA 03–102, 200 Constitution Avenue, NW., Room S–4203, Washington, DC 20210. Telefacsimile (FAX) applications will not be accepted. Applicants are advised that mail in the Washington area may be delayed due to mail decontamination procedures.

FOR FURTHER INFORMATION CONTACT: B. Jai Johnson, Grants Management Specialist, Division of Federal Assistance, Telephone (202) 693–3301 (this is not a toll-free number). You must specifically ask for B. Jai Johnson. Questions can also be faxed to B. Jai Johnson, Telephone (202) 693–2879, please include the SGA/DFA 03–102, a contact name, fax and phone numbers. This announcement will also be published on the Internet on the ETA's disAbility online Home Page at: *http://wdsc.doleta.gov/disability/*, and the ETA homepage at *http://www.doleta.gov*. Award notifications will also be published on the ETA homepage.

SUPPLEMENTARY INFORMATION:

Part I. Delivery of Applications

1. *Late Applications.* Any application received after the exact date and time specified for receipt at the office designated in this notice will not be considered, unless it is received before awards are made and it—(a) was sent by U.S. Postal Service registered or certified mail not later than the fifth calendar day before the date specified for receipt of applications (*e.g.*, an application submitted in response to a solicitation requiring receipt of applications by the 20th of the month must have been post marked by the 15th of that month); or (b) was sent by the U.S. Postal Service Express Mail Next Day Service to addressee not later than 5 p.m. at the place of mailing two working days prior to the date specified for receipt of applications. The term "working days" excludes weekends and Federal holidays. "Post marked" means

a printed, stamped or otherwise placed impression (exclusive of a postage meter machine impression) that is readily identifiable, without further action, as having been supplied or affixed on the date of mailing by an employee of the U.S. Postal Service.

2. *Withdrawal of Applications.* Applications may be withdrawn by written notice or telegram (including mail gram) received at any time before an award is made. Applications may be withdrawn in person by the applicant or by an authorized representative thereof, if the representative's identity is made known and the representative signs a receipt of the proposal.

3. *Hand-Delivered Proposals.* It is preferred that applications be mailed at least five days prior to the closing date. To be considered for funding, hand-delivered applications must be received by 4 p.m., ET, at the specified address. Failure to adhere to the above instructions will be basis for a determination of non-responsiveness. Overnight express mail from carriers other than the U.S. Postal Service will be considered hand-delivered applications and *must be received* by the above specified date and time.

Part II. Authority

Provisions relating to the One-Stop delivery system are at sections 121, 134(c), 189(c) of the Workforce Investment Act (29 U.S.C. 2841, 2864(c), 2939(c); Wagner-Peyser Act (29 U.S.C. 49f(d) and (e) and Department of Labor Appropriations Act for 2002 [Pub. L. 107–116]. Regulations governing the Workforce Investment Act are at 20 CFR parts 652, 660–671, (65 FR 49294 (August 11, 2000)).

Part III. Background

The Workforce Investment Act of 1998 (WIA) establishes comprehensive reform of existing Federal job training programs with amendments impacting service delivery under the Wagner-Peyser Act, Adult Education and Literacy Act, and the Rehabilitation Act. WIA also repeals and supersedes the Job Training Partnership Act. A number of other Federal programs are also identified as required partners in the One-Stop delivery system in order to provide comprehensive services for all Americans to access the information and resources available to assist them in the development and implementation of their career goals. The intention of the One-Stop system is to establish programs and employment service providers in co-located and integrated settings that are accessible for individuals and businesses alike in approximately 600 workforce investment areas established throughout the nation.

WIA establishes State and Local Workforce Investment Boards focused on strategic planning, policy development, and oversight of the workforce system with significant authority for the Governor and chief elected officials in local areas to build on existing reforms in order to implement innovative and comprehensive workforce investment systems. Recognizing that many One-Stop delivery systems may not currently have the capacity to provide comprehensive services to people with disabilities, the Work Incentive Grant is designed to provide seed monies to support the development of the One-Stop infrastructure with an objective of achieving model, seamless and comprehensive services for people with disabilities.

Many people with disabilities are looking to the new workforce investment system to address their employment and training needs in a progressive, enlightened environment with cutting-edge technologies. They also expect the One-Stop delivery system to provide comprehensive services to meet multiple barriers, which frequently limit their access to a productive, economically rewarding work life. These services may include, but are not limited to, the availability of basic skill development; vocational skill training or advanced educational opportunities; apprenticeship and entrepreneurial training; transportation assistance to reach training or employment sites; housing assistance or advice on retaining existing housing upon employment; and access to medical health coverage upon employment. Twenty-three Work Incentive Grants were awarded at the end of October 2000 for a thirty-month period. A second round of Work Incentive Grants were awarded in May 2002 for a twenty-four month period. If you would like more information on round one and two Work Incentive Grant awards, please go to *http://wdsc.doleta.gov/disability/.*

This Solicitation for Grant Applications (SGA) is for grant awards for the Work Incentive Grant program with funds made available July 1, 2002, under the DOL Fiscal Year 2002 appropriation. The Work Incentive Grant program is consistent with the objectives of the President's New Freedom Initiative. This year's Work Incentive Grant announcement continues an emphasis on addressing infrastructure inadequacies and programmatic access of the One-Stop system for people with disabilities, including grant funds available for procuring assistive technology. Statement of Work criteria continues an emphasis on support for staffing capacity but with additional language that is *modeled on* a joint ETA/SSA Disability Program Navigator initiative that will soon be piloted in several states. For more information on the Navigator initiative, please go to: *http://wdsc.doleta.gov/disability/.*

Part IV. Funding Availability and Period of Performance

The Department of Labor anticipates awarding approximately 20–40 grants ranging from $100,000 to $700,000. Awards to one or more local Workforce Investment Boards will generally be limited to no more than $300,000. Awards to state-wide grantees (including a single local Workforce Investment area State) will generally be limited to no more than $700,000. Awards to current Work Incentive Grantees that submit proposals under this SGA will be limited to $150,000 for one or more local Workforce Investment Boards and $500,000 to state-wide grant proposals. The period of performance will be approximately 24 months from the date of execution by the Department. The grant funds will be available for expenditure until June 30, 2005. The Department may elect to extend these grants based on the availability of new funds and satisfactory performance; but in no case may the FY 2002 Work Incentive Grant funds made available under this notice be expended after June 30, 2005.

Part V. Eligible Applicants

Eligible applicants are state departments of labor or applicable state entity administering the Wagner-Peyser and Title I Workforce Investment Act programs; state level Workforce Investment Boards; an individual local Workforce Investment Board; or several local Workforce Investment Boards applying jointly.

The Department of Labor encourages applicants to work in partnership with other disability-related public and private organizations. Partners may include: state/local public agencies such as Vocational Rehabilitation; State Councils for Independent Living; local Centers for Independent Living (CIL's); state mental health agencies, state mental retardation and Developmental Disability Councils; Temporary Assistance for Needy Families (TANF) agencies; and private, non-profit organizations such as disability advocacy and provider organizations, federally-funded disability grant entities, including faith-based entities,

which provide services for people with disabilities.

Statewide applications must propose strategies for enhancing and improving services to people with disabilities involving all local workforce investment areas in the state. The Department will consider statewide proposals from a local Workforce Investment Board, or Boards submitting jointly, but letters of commitment from the state level Workforce Investment Board must be included in the application.

Applications that are not statewide projects but which involve one or more local workforce investment areas should also include letters of commitment from each Local Board covered under the grant, or one letter of commitment signed by all Local Boards in the local area (if all commitments cannot be obtained, explanation must be provided).

Current Work Incentive grantees may apply under this solicitation but must identify significant need and address outstanding deficiencies or propose a significant improvement to the local workforce investment system that has not been accomplished under the current grant. *Provisions regarding eligible applicants identified in the first paragraph of this Part V are still required.*

Indian and Native American Tribal entities, or consortia of Tribes, may apply for Work Incentive Grants. These grants would involve coordination of services and enhancements to a One-Stop system approach for people with disabilities in a specific Indian community or covering multiple Tribal entities that may cut across multiple States and/or workforce investment areas. In such cases, letters of commitment from Local Boards are not required. Grants to Indian and Native American tribal grantees are treated differently because of sovereignty and self-governance established under the Indian Self-Determination and Education Assistance Act allowing for the government-to-government relationship between the Federal and Tribal Governments.

Note: Except as specifically provided, DOL/ETA acceptance of a proposal and an award of federal funds to sponsor any program(s) does not provide a waiver of any grant requirement and/or procedures. For example, the OMB circulars require that an entity's procurement procedures must require that all procurement transactions must be conducted, as practical, to provide open and free competition. If a proposal identifies a specific entity to provide the services, the DOL/ETA's award does not provide the justification or basis to sole-source the procurement, i.e., avoid competition.

Part VI. Format Requirements for Grant Application

General Requirements—Applicants must submit one (1) copy with an original signature and 2 additional copies of their proposal. The Application Narrative must be double-spaced, and on single-sided, numbered pages with the exception of format requirements for the Executive Summary. The Executive Summary must be limited to no more than two single-spaced, single-sided pages. A font size of at least twelve (12) pitch is required throughout.

There are three required sections of the application. Requirements for each section are provided in this application package. Applications that fail to meet the requirements will not be considered.

Section I—Project Financial Plan
Section II—Executive Summary—Project Synopsis
Section III—Project Narrative (including Attachments, not to exceed 40 pages)

Section I. Project Financial Plan—Section I of the application must include the following three required parts:

- Completed "SF 424—Application for Federal Assistance" (See Appendix A of this SGA for required form)
- Completed "Budget Information Form" by line item for all costs required to implement the project design effectively. (See Appendix B of this SGA for required forms.)
- Budget narrative/justification, which provides sufficient information to support the reason-ableness of the costs, included in the budget in relation to the service strategy and planned outcomes.

The application must include one SF 424 with the original signatures of the legal entity applying for grant funding and 2 additional copies. Applicants shall indicate on the SF 424 the organization's IRS Status, if applicable. Under the Lobbying Disclosure Act of 1995, Section 18 (29 U.S.C. 1611), an organization described in section 501(c)(4) of the Internal Revenue Code of 1986 which engages in lobbying activities shall not be eligible for the receipt of federal funds constituting an award, grant, or loan. For item 10 of the SF 424, the Catalog of Federal Domestic Assistance (CFDA) number for the program is 17.207.

The Project Financial Plan will not count against the application page limits. The financial plan must describe all costs associated with implementing the project that are to be covered with grant funds. All costs should be necessary and reasonable according to the Federal guidelines set forth in the "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments," (also known as the "Common Rule") codified at 29 CFR part 97, and "Grants and Agreements with Institutes of Higher Education, Hospitals, and Other Non-Profit Organizations (also known as OMB Circular A–110), codified at 29 CFR part 95, and must comply with the applicable OMB cost principles circulars, as identified in 29 CFR 95.27 and 29 CFR 97.22(b).

Please Note: Work Incentive Grant project designs may incorporate procurement or implementation of software or hardware to assure assistive and accessible technologies in the One-Stop setting, which may equal up to 40% of the grant award.

Section II. Executive Summary—Project Synopsis [*Format requirements for the Executive Summary are limited to no more than two single-spaced, single-sided pages*] Each application shall include a project synopsis, which identifies the following:

The applicant;

The type of organization the applicant represents;

Identification of consortium partners and the type of organizations they represent;

The project service area;

Whether the service area is an entire local workforce investment area, more than one local area, or all local areas in a State;

The amount of funds requested;

The planned period of performance;

The comprehensive strategy proposed for providing seamless service delivery, for addressing the multi-faceted barriers to training and employment that affect people with disabilities, and for improving access for people with disabilities in the mainstream workforce system (i.e., WIA Title I and Wagner Peyser funded programs);

The ways in which the proposal is coordinated with other disability related grant initiatives from DOL, Department of Education (ED), Department of Health & Human Services (HHS), Social Security Administration (SSA), Department of Housing & Urban Development (HUD) or other Federal partners;

—How counseling and other support needs will be addressed in the One-Stop Center system;

—The actions already taken by the State or Local Workforce Investment Board to address the needs of people with disabilities in the One-Stop delivery system;

—The extent to which the One-Stop facilities and satellite site(s) incorporate physical access for people with disabilities;

—The extent to which Vocational Rehabilitation is integrated or coordinated with the One-Stop delivery system;

—Data on the extent to which people with disabilities have been served under the Wagner-Peyser Act, and WIA and previously, under the Job Training Partnership Act;

—The level of commitment the applicant and consortium members have to serving people with disabilities; and

—The extent and manner in which the needs of individuals with disabilities from diverse cultural and/or ethnic groups will be addressed.

Section III. Project Narrative [*Project Narrative plus attachments are limited to no more than forty (40) double-spaced, single-sided, numbered pages. Letters of general support or recommendation for a proposal should NOT be submitted and will count against the page limits.* **Note:** *The Executive Summary is not included in this forty (40)-page limit.*].

The Section III Project Narrative requirements are described below under Part IV—Government Requirements/ Statement of Work section.

Part VII. Government Requirements/ Statement of Work

The Project Narrative, or Section III of the grant application, should provide complete information on how the applicant will address the following Department of Labor priorities for the Program Year (PY) 2002 Work Incentive Grant program to achieve enhancements to the basic infrastructure and service delivery of the One-Stop system, in particular Wagner-Peyser and WIA-funded programs:

(1) Developing comprehensive One-Stop Centers which are welcoming and are valued providers of choice by customers with disabilities seeking workforce assistance by assuring the availability of staff trained on disability issues, personalized employment counseling, knowledgeable support related to addressing employment barriers and work incentives, and availability of accommodations and assistive technologies for diverse disability needs.

(2) Implement strategies, which significantly increase opportunities for skill training, career and job development for people with disabilities resulting in self-sustaining employment and career advancement through participation in the One-Stop system.

Proposals will be rated based upon addressing the areas listed in the four criteria in terms of a comprehensive strategic approach that addresses the Department's priorities noted above. The four criteria (Statement of Need, Comprehensive Service Strategy, Innovation and Model Services, and Demonstrated Capability) must be addressed and include applicant accomplishments or status with regard to each item. *However, the Department does not expect the applicant to incorporate every item listed as part of their strategy and proposal design.* The Department recognizes that the needs and requirements of each state and/or local workforce investment area may be different, and, therefore, some of the options identified may be more relevant than others in order to address the Department's priorities in a particular state and/or local area. For example, a state may have already provided extensive assistive technology throughout their One-Stop Career Centers and need to focus more on other accessibility or accommodation issues, outreach to the disability community and coordination with partner programs and, therefore, the proposal would identify this fact and not direct significant (or any) resources to procuring assistive technology.

With regard to the Department's priority to increase the availability of skill training, employment opportunities and career advancement for persons with disabilities, it has established the following Government Performance and Results Act (GPRA) goals for PY 2003 (July 1, 2003–June 30, 2004):

"Increase the capacity and quality of One-Stop system services for people with disabilities who are registered in the workforce investment area(s) receiving Work Incentive Grants." The performance indicators for achieving this goal are:

- 5% more individuals with disabilities will be served than were served in the workforce area(s) in PY 2001 under the adult, dislocated worker and youth programs;
- Of those with disabilities served, 5% more individuals with disabilities will be placed in unsubsidized employment after program exit than were placed in PY 2001; and

Of those placed in the first quarter after program exit, 5% more individuals with disabilities will be employed in the third quarter after exit than were retained in PY 2001.

Note: When determining the focus and objectives of the applicant proposal, it will be helpful for applicants to also review past products and approaches taken by former grantees that are identified on the One-Stop Toolkit Web site at: *http://www.onestoptoolkit.org/* In addition to obtaining strategic approaches that may be helpful, the Department would like to encourage leveraging of products that have been previously developed and reduce duplication where possible.

1. Statement of Need [25 points]

The purpose of the Statement of Need criteria is to establish the overall status of disability related issues in the applicant's workforce investment area, identify strengths and deficiencies to be addressed by the applicant proposal, identify the overall scope of proposal objectives and design, and present the applicant's need for Work Incentive Grant resources to achieve improvements to their workforce system for persons with disabilities. All items must be addressed although a number of them are for information purposes. This criteria will be rated based upon applicant needs identified and proposed approaches to address these needs in the context of the Department's priorities.

For proposals targeted to a specific Indian community or covering multiple Tribal entities which may cut across multiple States and/or local areas, describe the overall approach of the project, and identify the inadequacies and deficiencies of the service delivery to the applicable community, and how the project expects to address these.

A. Identify the number of workforce investment areas in the State and the geographic jurisdiction of each local workforce investment area(s) in the State.

B. Identify which local area(s) in the State will be covered by the project and whether the project is Statewide, involves multiple local areas or is for a single local area.

C. Identify whether a Work Incentive Grant award was received in the October 2000 or May 2002 award announcements covering the identified workforce investment areas in this application and the reasons for application under this Solicitation for Grant Application.

D. Identify partners/consortium members if any, their primary mission irrespective of participation in the grant proposal, and what political and geographic jurisdictions (*e.g.*, cities, counties, subsections of cities/counties) they cover.

E. Describe how the project will address a primary objective of the Work Incentive Grant program to assure the integration of people with disabilities into the workforce investment system, including the availability of Wagner-Peyser and WIA Title I programs and services.

F. Identify the percentage of people with disabilities in the State and/or

local area, including the percentage of people who are beneficiaries of Social Security Disability Insurance (SSDI) and/or Social Security Income Program (SSI).

G. Identify the most recent unemployment rate(s) in the workforce investment area(s) covering the project.

H. Describe any significant deficiencies in the State or local workforce investment system that represent barriers to employment for people with disabilities and what will be accomplished under this grant to address them.

I. Identify additional State and/or local funds and resources that will be used to support the overall objectives of the grant and which will assist in addressing the identified issues the grant project is addressing.

J. Recognizing that the One-Stop delivery system may not have extensive knowledge or skills in working with people with disabilities, describe the level of expertise of the One-Stop system in the local area(s) addressed in the grant and the projects plans for addressing inadequacies.

K. Describe the overall status and actions taken to-date by the One-Stop delivery system to address services to people with disabilities. This should include actions that assured that: (1) State and/or local facilities are physically and programmatically accessible; (2) training is provided to staff; (3) the number and percent of people with disabilities receiving services under WIA and Employment Service programs (or Job Training Partnership Act (JTPA) if applicable, during the previous three years compared with that of people without disabilities.

L. Describe how the applicant will increase services, skill training, employment outcomes, job retention and career advancement for persons with disabilities and how it will achieve the GPRA goals identified above.

2. Comprehensive Service Strategy [25 points]

The purpose of the Comprehensive Service Strategy criteria is to identify the approach proposed by the grantee to establish a welcoming and seamless service delivery system for persons with disabilities. In general, this requires extensive linkages and on-site knowledge of applicable resources that address multiple disability issues and barriers to employment that are commonly experienced by persons with disabilities. Disability issues are often very complex and the disability community is very diverse. These factors present significant challenges to the workforce system in providing first class services to individuals with disabilities. At the same time, the comprehensive nature of the One-Stop Career Center system establishes an infrastructure on the workforce that is uniquely positioned to provide the kind of seamless service delivery that the disability community has long been seeking. A centralized location where information on transportation, housing, Medicare, Medicaid, SSA benefits as well as skill training and employment services can be obtained. The Department will be rating this criteria on the approach proposed by the applicant to address these concerns.

The first item listed below establishes aspects of staff capacity that may be incorporated into the applicant proposal. Please note that applicants are not required to implement Disability Program Navigator positions. However, it has been the experience of many previous Work Incentive Grantees that this kind of staff capacity has been very successful in improving overall services delivery of their One-Stop Career Centers. As with other criteria, the Navigator description provided is neither prescriptive, nor necessarily all inclusive, but establishes examples of the roles and functions of such a position depending upon the needs of the One-Stop and the skills and talents of the individual Navigator.

A. *Staff Capacity—Disability Program Navigator:* Identify how you will ensure that trained staff are available to provide counseling or employment planning support who have adequate knowledge of diverse disabilities. This staff capacity may include knowledge and skills that are very similar to those incorporated in the Disability Program Navigator initiative (joint ETA/SSA initiative identified in Part II, Background). The Disability Program Navigator ("Navigator") has expertise in and knowledge of a broad range of Federal, State, local, and private work incentive and other employment support programs. The Navigator provides service and information to persons with disabilities, including SSI and SSDI beneficiaries, on how to enter, re-enter, or retain unsubsidized, competitive employment, including SSA work incentives, other employment support programs and the Ticket to Work program. The Navigator also provides information on these resources to other staff and will work directly with people with disabilities to access, facilitate, and "navigate" the complex provisions under various programs, including SSA's employment support programs. Navigators also develop comparable expertise and provides training to One-Stop Center staff and other staff on available resources under One-Stop programs, SSA employment support programs and other programs, as well as to individuals with disabilities in order to deliver a comprehensive, seamless delivery of One-Stop services and access to programs that will meet the needs of persons with disabilities in an effective manner. Navigators network and partner with other agencies and organizations such as Benefits Planning, Assistance and Outreach organizations (BPAOs), Protection and Advocacy systems (P&As), Employment Networks (ENs), (including State Vocational Rehabilitation (VR) Agencies), etc. (*e.g.*, SSA FOs, BPAOs, P&As, ENs) to obtain correct information or properly refer individuals with disabilities for additional information and services to assist them transition to careers or maintain current employment. The Navigator may also:

- Provide information on the following programs that support successful entry or re-entry into the workforce: TANF programs and services for people with disabilities, state and local mental health and developmental disability programs and providers, Medicaid and Medicare provisions; state and local housing provisions and supports; transportation subsidies and programs; and other state and/or local services designed to support employment and transition from public benefits to careers.
- Assess, on an ongoing basis, One-Stop Career Center facilities, services, programs and equipment to insure these are accessible to people with disabilities;
- Work with designated Equal Employment Opportunity officer(s), the Local Workforce Investment Board and the One-Stop Operator to ensure that One-Stop Career Center facilities, services, programs and equipment are accessible to people with disabilities, including ensuring the availability of publications and materials in alternate formats; and
- Develop expertise on state of the art rehabilitation technology and local or regional resources that facilitate their application in the One-Stop Center(s) and employer workplace to accommodate diverse functional disabilities.
- Train the One-Stop Career Center Operator and Staff on: disability etiquette; facility, communication and program accessibility requirements; Americans with Disability Act (ADA), Section 504 (Part 32) of the Rehabilitation Act; WIA section 188

(Part 37) definitions and requirements; assessment tools and their applicability.

• Assure provision of a welcoming environment for people with disabilities through development of competence and familiarity of issues affecting persons with disabilities throughout the local workforce investment system.

B. *Other Comprehensive One-Stop Strategies:*

i. Describe changes to be achieved under the grant to create seamless service delivery for One-Stop customers with disabilities.

ii. Describe the process that will be used to maintain and expand the service structure for individuals with disabilities accessing the workforce investment system, including capacity building of the Employment Service delivery component of the One-Stop system.

iii. Identify plans and strategies to develop the capacity of the comprehensive One-Stop Career Center to function as an Employment Network under the Ticket to Work and Work Incentive Improvement Act (TWWIIA). Project plans in this regard should involve building the capacity of the WIA Title I programs and One-Stop system so that more in-depth services and information will be readily available to individuals with disabilities at the comprehensive One-Stop Career Center. The description of increased capacity should be in addition to the State Vocational Rehabilitation Agency since they are an automatic Employment Network provider under Ticket to Work.

iv. Describe linkages with the State and local Independent Living Center (CIL) systems; Mental Health Departments, Mental Retardation/ Developmental Disability Agencies, State Councils on Developmental Disabilities, State Vocational Rehabilitation, and Councils on Employment and other local provider or advocate organizations serving individuals with developmental and/or psychiatric disabilities, including how these agencies fit in a comprehensive service delivery strategy.

v. Describe how people with disabilities who are not eligible for Vocational Rehabilitation services or do not fall under the State's Order of Selection will be served through Wagner-Peyser services or WIA services through the Adult, Dislocated Worker, Youth or National Programs, including programs and services under the Older Americans Act.

vi. Identify the provisions of Memoranda of Understanding or other agreements between the partners, State Vocational Rehabilitation (VR) Agency, the State Rehabilitation Council, and the State or Local Boards in terms of the provision of services to people with disabilities; the plans for cost sharing; the arrangements for referral of people with disabilities between WIA Title I programs and VR as appropriate; the extent of integration and co-location of VR in One-Stop Centers, including sharing of Management Information Systems (MIS) or participation in case management data base technologies; the extent to which there is joint funding of participant services or leveraging of funds to expand access to services; and use of Individual Training Accounts (ITA's) for people with disabilities.

Describe coordination and linkage with regional Disability Business and Technical Assistance Centers (DBTAC's) and State Governors Committees on Employment of People with Disabilities. For example, have DBTAC's provided training to the One-Stop delivery system on the Americans with Disabilities Act (ADA), section 504 of the Rehabilitation Act, or other disability-related training? If not, are plans to do so incorporated into the applicant project?

Identify public and private non-profit provider entities participating under WIA and Employment Service programs, and which barriers to employment their programs and services that are contributing to the overall applicant proposal may address. Specifically, describe State or local area provisions regarding Medicaid and/or Medicare coverage; current transportation infrastructure; how individuals with all types of disabilities will access training, employment, housing, food stamps and other supportive services.

vii. Describe coordination and linkages with Learning Disabilities and Training Dissemination hub centers established under grants from the U.S. Department of Education's Office of Vocational and Adult Education and how these may be used to provide services to people with learning and other disabilities.

viii. Describe how the project will be coordinated with grant programs, which are funded under the SSA Benefits Planning, Assistance and Outreach Cooperative Agreement and HHS Medicaid Infrastructure Grant programs, if applicable.

ix. Describe how the project is expected to have a positive effect in the operation of the One-Stop delivery system.

3. Innovation and Model Services [25 points]

The purpose of the Innovation and Model Services criteria is to identify strategies the applicant is planning to increase services and employment outcomes for persons with disabilities that access One-Stop Career Centers. This should be within the context of the WIA Title I and Wagner-Peyser programs, utilizing the training or other resources that are available since the Work Incentive Grant program is not typically for direct services to individuals (with the exception of staff capacity such as a Program Navigator described above).

A. Describe your strategy for substantially increasing the number and percent of people with disabilities served, trained and entered into unsubsidized employment through the One-Stop Center system, particularly in WIA Title I programs. This should be related to, or refer back to, the first year of WIA identified under the Statement of Need and service delivery history under JTPA where applicable.

B. Describe the status of accessible technologies within the Comprehensive One-Stop and plans to procure and implement accessible technologies, including video interpreting services for clients who are deaf or electronic door openers for wheelchair users, and how they address current system deficiencies.

C. Identify the scope of technology implementations, if applicable, and the extent to which implementation is comprehensive and across the workforce area(s) and/or statewide.

D. Describe approaches for employment involvement and how these will respond to meeting employer skill shortage needs.

E. Describe how opportunities for competitive employment for individuals with disabilities will be provided or developed within the local workforce investment area and how this is unique or different than what is normally performed by the applicant(s).

F. Describe specific approaches for developing relationships with and support of area employers that establish employment opportunities for individuals with disabilities accessing the One-Stop delivery system, including any commitments by employers to hire these individuals.

G. Describe linkages with Business Leadership Networks (BLNs) (that have been established in approximately 30 states) if applicable.

H. Describe strategies to foster entrepreneurial and self-employment options using ITA's, Plans for Achieving Self-Support (PASS) and other SSA work incentives, and Medicaid coverage for individuals with disabilities who start or return to work.

I. Identify available Federal and State tax incentives available to employers when hiring an individual with a disability; how this information will be marketed and disseminated to employers, the individual and workforce staff; and how employers may use such tax credits to address structural and technological accommodation needs.

L. Describe opportunities for increasing integrated, competitive employment through use of strategies such as individualized job development for individuals with the most significant disabilities currently working in segregated facilities or waiting for employment services.

M. Identify whether assessment tools are used to identify individuals with learning disabilities in the One-Stop delivery system, including plans and processes to identify applicable assessment tools, train staff and incorporate such assessments as part of the service delivery structure.

N. Describe how public supports needed by people with disabilities may be affected by their employment or training and State or local conditions, and actions to sustain benefits and services following successful job placement. For example, does the State or local area have provisions to continue supported or Section 8A housing (The Housing Act of 1992, Title IV), where applicable, for individuals who enter unsubsidized employment?

O. Has the State adopted Medicaid "buy-in" options, or are there Medicaid waivers that extend health care coverage for individuals who enter employment?

P. Describe plans for outreach and marketing to the disability community and organizations that represent or work with people with disabilities; and plans for training disability-related organizations on the resources and programs available to them in the One-Stop system.

Q. Identify individualized strategies that establish client control of training funds, VR funds, ITA's, or other funding sources to which these individuals may have access, and co-mingle funds in a seamless, customer friendly manner, including plans for obtaining waivers to the extent program requirements necessitate this.

R. Identify plans or strategies to deploy Ticket to Work voucher provisions for beneficiaries of SSDI and recipients of SSI.

4. Demonstrated Capability [25 points]

The purpose of the Demonstrated Capability criteria is to determine whether the applicant has developed adequate plans, including staff, disability partners and other resources, to effectively carry out the objectives and scope of the proposed project. The Department will rate this criteria based upon the ability of the applicant to do this.

Identify how whether the State or Local Boards will include the disability community in plans.

Identify the critical activities, time frames and responsibilities for effectively implementing the project, including the management and evaluation process for assuring successful implementation of grant objectives.

Include a project organizational chart, which identifies the staff with key management responsibilities, including a matrix of organizational responsibilities of key entities and participating consortium organizations, where applicable.

Describe the specific experience of the applicant(s) in serving people with disabilities, in providing workforce services, in addressing specific barriers to employment, in achieving expected outcomes in the delivery of such services/programs, and in implementing and administering specific project plans of the grant project. For example, such information might include the local Department of Transportation as a key partner agency addressing transportation barriers and how this entity has participated in similar efforts in the past and the success of these past efforts, and potential success of coordination on the applicant(s) grant project.

Part VIII. Monitoring and Reporting

Monitoring: The Department shall be responsible for ensuring the effective implementation of each competitive grant project in accordance with the provisions of this announcement and the terms of the grant award document. Applicants should assume that Department staff, or their designees will conduct on-site project reviews, periodically. Reviews will focus on timely project implementation, performance in meeting the grant's programmatic goals and objectives, expenditure of grant funds on allowable activities, integration and coordination with other resources and service providers in the local area, and project management and administration in achieving project objectives. Work Incentive Grants may be subject to other additional reviews at the discretion of the Department.

Reporting: Grantees will be required to submit quarterly financial and narrative progress reports under the Work Incentive Grant program covering the workforce area(s) included in the grant project design. DOL will analyze data of workforce investment area(s) reports submitted annually under the Workforce Investment Standardized Record Data (WIASARD) for workforce areas covered under the grant [Note: Information on the WIASRD can be found under performance accountability at http://doleta.gov/usworkforce/wia.asp].

Financial reporting will be required quarterly using the on-line electronic reporting system for the Standard Form 269—Financial Status Report (FSR).

A narrative progress report will be required quarterly.

The Department of Labor's evaluation of the Work Incentive Grant program includes a process evaluation that includes extensive information pertaining to achievements of under the grant (*e.g.*, training provided to staff, coordination with disability entities, etc.), summary information pertaining to WIA implementation and the numbers of people with disabilities registered, receiving services, and employed through the One-Stop system, among other areas.

The Department has established performance goals that are consistent with the Department's (GPRA) goals as noted in the introduction of Part VII—Government Requirements/Statement of Work. Work Incentive Grantees will be expected to achieve these performance goals.

Part IX. Review Process and Evaluation Criteria

All applications will be reviewed for compliance with the requirements of this notice. A careful evaluation of applications will be made by a technical review panel, which will evaluate the applications against the rating criteria listed in this SGA. The panel results are advisory in nature and not binding on the Grant Officer. The Department may elect to award grants either with or without discussion with the offeror. In situations without discussions, an award will be based on the offeror's signature on the SF 424, which constitutes a binding offer. The Grant Officer may consider any information that is available and will make final award decisions based on what is most advantageous to the Government, considering factors such as:

Panel findings;

Geographic distribution of the competitive applications; and the availability of funds.

Signed at Washington, DC, this 6th day of February, 2003.

James W. Stockton,

Grant Officer.

BILLING CODE 4510–30–P

APPLICATION FOR FEDERAL ASSISTANCE

APPENDIX "A"

OMB Approval No. 0348-0043

1. TYPE OF SUBMISSION: Application / Construction / Non-Construction; Preapplication / Construction / Non-Construction		2. DATE SUBMITTED	Applicant Identifier
		3. DATE RECEIVED BY STATE	State Application Identifier
		4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

5. APPLICANT INFORMATION

Legal Name:	Organizational Unit:
Address (give city, county, State and zip code):	Name, telephone number and fax number of the person to be contacted on matters involving this application (give area code):

6. EMPLOYER IDENTIFICATION NUMBER (EIN):

☐☐-☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: (enter appropriate letter in box) ☐

A. State
B. County
C. Municipa
D. Township
E. Interstate
F. Intermunicipal
G. Special District
H Independent School Dist.
I State Controlled Institution of Higher Learning
J . Private University
K Indian Tribe
L. Individual
M. Profit Organization
N. Other (Specify): _____

8. TYPE OF APPLICATION:
New Continuation Revision

If Revision, enter appropriate letter(s) in box(es): ☐ ☐

A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other (specify):

_____

9. NAME OF FEDERAL AGENCY:

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER:

☐☐-☐☐☐

TITLE:

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT (cities, counties, States, etc.):

13. PROPOSED PROJECT:		14. CONGRESSIONAL DISTRICTS OF:	
Start Date	Ending Date	a. Applicant	b. Project

15. ESTIMATED FUNDING:		
a. Federal	$	.00
b. Applicant	$	.00
c. State	$	.00
d. Local	$	.00
e. Other	$	.00
f. Program Income	$	.00
g. TOTAL	$	.00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON

DATE _____

b. NO. PROGRAM IS NOT COVERED BY E.O. 12372

OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

Yes If "Yes," attach an explanation. No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT. THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED.

a. Typed Name of Authorized Representative	b. Title	c. Telephone number

d. Signature of Authorized Representative	e. Date Signed

Previous Editions Not Usable

Standard Form 424 (REV 4-88)
Prescribed by OMB Circular A-102

Authorized for Local Reproduction

INSTRUCTIONS FOR THE SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which ave established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item: **Entry:**

1. Self-explanatory.

2. Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).

3. State use only (if applicable)

4. If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.

5. Legal name of applicant, name of primary organizational unit which will undertake this assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.

6. Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.

7. Enter the appropriate letter in the space provided.

8. Check appropriate box and enter appropriate letter(s) in the space(s) provided.

   - "New" means a new assistance award.
   - "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date.
   - "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.

9. Name of Federal agency from which assistance is being requested with this application.

10. Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is required.

11. Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of the project.

12. List only the largest political entities affected (e.g., State, counties, cities.

13. Self-explanatory.

14. List the applicant's Congressional District and any District(s) affected by the program or project.

15. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate only the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.

16. Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.

17. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.

18. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

Item: **Entry:**

PART II - BUDGET INFORMATION

SECTION A - Budget Summary by Categories **APPENDIX "B"**

	(A)	(B)	(C)
1. Personnel	$		
2. Fringe Benefits (Rate)			
3. Travel			
4. Equipment			
5. Supplies			
6. Contractual			
7. Other			
8. Total, Direct Cost (Lines 1 through 7)			
9. Indirect Cost (Rate %)			
10. Training Cost/Stipends			
11. TOTAL Funds Requested (Lines 8 through 10)			

SECTION B - Cost Sharing/ Match Summary (if appropriate)

	(A)	(B)	(C)
1. Cash Contribution			
2. In-Kind Contribution			
3. TOTAL Cost Sharing / Match (Rate %)			

NOTE: Use Column A to record funds requested for the initial period of performance (i.e. 12 months, 18 months, etc.); Column B to record changes to Column A (i.e. requests for additional funds or line item changes; and Column C to record the totals (A plus B).

SECTION A - Budget Summary by Categories

1. **Personnel:** *Show salaries to be paid for project personnel which you are required to provide with W2 forms.*

2. **Fringe Benefits:** *Indicate the rate and amount of fringe benefits.*

3. **Travel:** *Indicate the amount requested for staff travel. Include funds to cover at least one trip to Washington, DC for project director or designee.*

4. **Equipment**: *Indicate the cost of non-expendable personal property that has a useful life of more than one year with a per unit cost of $5,000 or more. Also include a detailed description of equipment to be purchased including price information.*

5. **Supplies:** *Include the cost of consumable supplies and materials to be used during the project period.*

6. **Contractual:** *Show the amount to be used for (1) procurement contracts (except those which belong on other lines such as supplies and equipment); and (2) sub-contracts/grants.*

7. **Other:** *Indicate all direct costs not clearly covered by lines 1 through 6 above, including consultants.*

8. **Total, Direct Costs:** *Add lines 1 through 7.*

9. **Indirect Costs:** *Indicate the rate and amount of indirect costs. Please include a copy of your negotiated Indirect Cost Agreement.*

10. **Training /Stipend Cost:** *(If allowable)*

11. **Total Federal funds Requested:** *Show total of lines 8 through 10.*

SECTION B - Cost Sharing/Matching Summary

Indicate the actual rate and amount of cost sharing/matching when there is a cost sharing/matching requirement. Also include percentage of total project cost and indicate source of cost sharing/matching funds, i.e. other Federal source or other Non-Federal source.

NOTE: PLEASE INCLUDE A DETAILED COST ANALYSIS OF EACH LINE ITEM.

[FR Doc. 03–3338 Filed 2–10–03; 8:45 am]
BILLING CODE 4510–30–C

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6800]

State of Alaska Commercial Fisheries Entry Commission Permit No. 59286C, Kokhanok, AK; Notice of Termination of Investigation

Pursuant to title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), subchapter D, chapter 2, title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit No. 59286C, Kokhanok, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 29th day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–3339 Filed 2–10–03; 8:45 am]
BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6801]

State of Alaska Commercial Fisheries Entry Commission Permit No. 56376Q, Kokhanok, AK; Notice of Termination of Investigation

Pursuant to title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), subchapter D, chapter 2, title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit No. 56376Q, Kokhanok, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 29th day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–3340 Filed 2–10–03; 8:45 am]
BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6802]

State of Alaska Commercial Fisheries Entry Commission Permit No. 68179E, Kokhanok, AK; Notice of Termination of Investigation

Pursuant to title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), subchapter D, chapter 2, title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit No. 68179E, Kokhanok, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 29th day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–3341 Filed 2–10–03; 8:45 am]
BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6804]

State of Alaska Commercial Fisheries Entry Commission Permit No. 58060L, Koliganek, AK; Notice of Termination of Investigation

Pursuant to title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), subchapter D, chapter 2, title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit No. 58060L, Koliganek, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 29th day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–3342 Filed 2–10–03; 8:45 am]
BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6805]

State of Alaska Commercial Fisheries Entry Commission Permit No. 57953U, Koliganek, AK; Notice of Termination of Investigation

Pursuant to title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), subchapter D, chapter 2, title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit No. 57953U, Koliganek, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 29th day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–3343 Filed 2–10–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6806]

State of Alaska Commercial Fisheries Entry Commission Permit No. 57144U, Koliganek, AK; Notice of Termination of Investigation

Pursuant to title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), subchapter D, chapter 2, title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit No. 57144U, Koliganek, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 29th day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–3344 Filed 2–10–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6809]

State of Alaska Commercial Fisheries Entry Commission Permit No. 56224J, Koliganek, AK; Notice of Termination of Investigation

Pursuant to title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), subchapter D, chapter 2, title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit No. 56224J, Koliganek, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 29th day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–3345 Filed 2–10–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6876]

State of Alaska Commercial Fisheries Entry Commission Permit No. 57050O, Naknek, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), subchapter D, chapter 2, title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit # 57050O, Naknek, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 29th day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–3346 Filed 2–10–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6877]

State of Alaska Commercial Fisheries Entry Commission Permit # 65600J, Naknek, AK; Notice of Termination of Investigation

Pursuant to title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), subchapter D, chapter 2, title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002, in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit # 65600J, Naknek, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 29th day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–3347 Filed 2–10–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6878]

State of Alaska Commercial Fisheries Entry Commission Permit #60600O, Naknek, Alaska; Notice of Termination of Investigation

Pursuant to title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), subchapter D, chapter 2, title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002, in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit # 60600O, Naknek, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 29th day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–3348 Filed 2–10–03; 8:45 am]

BILLING CODE 4510–30–P

NEIGHBORHOOD REINVESTMENT CORPORATION

Regular Board of Directors Meeting

Time & Date: 10 a.m., Friday, February 14, 2003.

Place: Neighborhood Reinvestment Corporation, 1325 G Street, NW., Suite 800 Boardroom, Washington, DC 20005.

Status: Open.

Contact Person for More Information: Jeffrey T. Bryson, General Counsel/Secretary, 202–220–2372.

Agenda:

I. Call to order.
II. Approval of minutes: December 11, 2002, regular meeting.
III. Resolution appointing assistant treasurer.
IV. Audit Committee meeting 1/29/03.
V. Budget Committee meeting 1/31/03.
VI. Treasurer's report.
VII. Executive directors quarterly report .
a. National Insurance Task Force.
VIII. Adjournment.

Jeffrey T. Bryson,

General Counsel Secretary.

[FR Doc. 03–3465 Filed 2–6–03; 5:12 pm]

BILLING CODE 7570–01–M

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meeting Notice

AGENCY HOLDING THE MEETING: Nuclear Regulatory Commission.

DATE: Weeks of February 10, 17, 24, March 3, 10, 17, 2003.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of February 10, 2003

Monday, February 10, 2003

10 a.m.—Briefing on status of Office of Nuclear Reactor Regulation (NRR) Programs, Performance, and Plans (public meeting) (contact: Michael Case, 301–415–1275).

This meeting will be webcast live at the Web address— *http://www.nrc.gov.*

Tuesday, February 11, 2003

10 a.m.—Briefing on Status of Office of the Chief Financial Officer (OCFO) Programs, Performance, and Plans (public meeting) (contact: Patrice Williams-Johnson, 301–415–5732).

This meeting will be webcast live at the Web address— *http://www.nrc.gov.*

Week of February 17, 2003—Tentative

There are no meetings scheduled for the Week of February 17, 2003.

Week of February 24, 2003—Tentative

Monday, February 24, 2003

2 p.m.—Meeting with National Association of regulatory Utility Commissioners (NARUC) (public meeting)

This meeting will be webcast live at the Web address— *http://www.nrc.gov.*

Week of March 3, 2003—Tentative

Monday, March 3, 2003

10 a.m.—Briefing on Status of Office of Nuclear Material Safety and Safeguards (NMSS) Programs—Waste Safety (public meeting) (contact: Claudia Seelig, 301–415–7243).

This meeting will be webcast live at the Web address— *http://www.nrc.gov.*

2 p.m.—Discussion of Security Issues (closed—ex. 1).

Week of March 10, 2003—Tentative

There are no meetings scheduled for the Week of March 10, 2003.

Week of March 17, 2003—Tentative

Thursday, March 20, 2003

10 a.m.—Briefing on Status of Office of Nuclear Security and Incident Response (NSIR) Programs, Performance, and Plans (closed—ex. 1).

2 p.m.—Discussion of Management issues (closed—ex. 2)

The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415–1292. Contact person of more information: David Louis Gamberoni (301)415–1651.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/what-we-do/policy-making/schedule.html.*

* * * * *

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969. In addition, distribution of this meeting notice over the internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to *dkw@nrc.gov.*

Dated: February 6, 2003.

David Louis Gamberoni,

Technical Coordinator, Office of the Secretary.

[FR Doc. 03–3484 Filed 2–7–03; 12:05 pm]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension:

Rule 17Ac2–1, SEC File No. 270–95, OMB Control No. 3235–0084;
Rule 19d–2, SEC File No. 270–204, OMB Control No. 3235–0205.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) the Securities and Exchange Commission ("Commission") is soliciting comments on the collections of information summarized below. The Commission plans to submit these existing collections of information to the Office of Management and Budget for extension and approval.

Rule 17Ac2–1 under the Securities Exchange Act of 1934 (the "Act") is used by transfer agents to register with the Commission, the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, or the Federal Deposit Insurance Corporation, and to amend their registration.

It is estimated that on an annual basis, the Commission will receive approximately 100 applications for registration on Form TA–1 from transfer agents required to register as such with the Commission. Included in this figure are amendments made to Form TA–1 as required by Rule 17Ac2–1(c). Based upon past submissions, the staff estimates that the average number of hours necessary to comply with the requirements of Rule 17Ac2–1 is one

and one-half hours, with a total burden of 150 hours.

Rule 19d–2 under the Act prescribes the form and content of applications to the Commission by persons desiring stays of final disciplinary sanctions and summary action of self-regulatory organizations ("SROs") for which the Commission is the appropriate regulatory agency.

It is estimated that approximately 30 respondents will utilize this application procedure annually, with a total burden of 90 hours, based upon past submissions. The staff estimates that the average number of hours necessary to comply with the requirements of Rule 19d–2 is 3 hours.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Kenneth A. Fogash, Acting Associate Executive Director/CIO, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549.

Dated: January 31, 2003.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–3316 Filed 2–10–03; 8:45 am]

BILLING CODE 8010–01–U

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available from: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension:

Rule 12f–1 SEC File No. 270–139, OMB Control No. 3235–0128

Rule 12f–3 SEC File No. 270–141, OMB Control No. 3235–0249

Rule 24b–1 SEC File No. 270–205, OMB Control No. 3235–0194

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget requests for extension of the previously approved collections of information discussed below.

• Applications for permission to reinstate unlisted trading privileges

Rule 12f–1, originally adopted in 1934 pursuant to Sections 12(f) and 23(a) of the Securities Exchange Act of 1934 (the "Act") and as modified in 1995, sets forth the information which an exchange must include in an application to reinstate its ability to extend unlisted trading privileges to any security for which such unlisted trading privileges have been suspended by the Commission, pursuant to Section 12(f)(2)(A) of the Act. An application must provide the name of the issuer, the title of the security, the name of each national securities exchange, if any, on which the security is listed or admitted to unlisted trading privileges, whether transaction information concerning the security is reported in the consolidated transaction reporting system contemplated by Rule 11Aa3–1 under the Act, and any other pertinent information. Rule 12f–1 further requires a national securities exchange seeking to reinstate its ability to extend unlisted trading privileges to a security to indicate that it has provided a copy of such application to the issuer of the security, as well as to any other national securities exchange on which the security is listed or admitted to unlisted trading privileges.

The information required by Rule 12f–1 enables the Commission to make the necessary findings under the Act prior to granting applications to reinstate unlisted trading privileges. This information is also made available to members of the public who may wish to comment upon the applications. Without the rule, the Commission would be unable to fulfill these statutory responsibilities.

There are currently eight national securities exchanges subject to Rule 12f–1. The burden of complying with Rule 12f–1 arises when a potential respondent seeks to reinstate its ability to extend unlisted trading privileges to any security for which unlisted trading privileges have been suspended by the Commission, pursuant to Section 12(f)(2)(A) of the Act. The staff estimates that each application would require approximately one hour to complete. Thus each potential respondent would incur on average one burden hour in complying with the rule.

The Commission staff estimates that there could be as many as eight responses annually and that each respondent's related cost of compliance with Rule 12f–1 would be $53.55, or, the cost of one hour of professional work needed to complete the application. The total annual related reporting cost for all potential respondents, therefore, is $428.40 (8 responses × $53.55/response).

Compliance with Rule 12f–1 is mandatory. Rule 12f–1 does not have a record retention requirement *per se*. However, responses made pursuant to Rule 12f–1 are subject to the recordkeeping requirements of Rules 17a–3 and 17a–4 of the Act. Information received in response to Rule 12f–1 shall not be kept confidential; the information collected is public information.

• Termination or suspension of Unlisted Trading Privileges

Rule 12f–3, which was originally adopted in 1934 pursuant to Sections 12(f) and 23(a) of the Act, and as modified in 1995, prescribes the information which must be included in applications for and notices of termination or suspension of unlisted trading privileges for a security as contemplated in Section 12(f)(4) of the Act. An application must provide, among other things, the name of the applicant; a brief statement of the applicant's interest in the question of termination or suspension of such unlisted trading privileges; the title of the security; the name of the issuer; certain information regarding the size of the class of security and its recent trading history; and a statement indicating that the applicant has provided a copy of such application to the exchange from which the suspension or termination of unlisted trading privileges are sought, and to any other exchange on which the security is listed or admitted to unlisted trading privileges.

The information required to be included in applications submitted pursuant to Rule 12f–3, is intended to provide the Commission with sufficient information to make the necessary findings under the Act to terminate or suspend by order the unlisted trading privileges granted a security on a national securities exchange. Without the rule, the Commission would be unable to fulfill these statutory responsibilities.

The burden of complying with Rule 12f–3 arises when a potential respondent, having a demonstrable bona fide interest in the question of termination or suspension of the unlisted trading privileges of a security, determines to seek such termination or

suspension. The staff estimates that each such application to terminate or suspend unlisted trading privileges requires approximately one hour to complete. Thus each potential respondent would incur on average one burden hour in complying with the rule.

The Commission staff estimates that there could be as many as ten responses annually and that each respondent's related cost of compliance with Rule 12f–3 would be $53.55, or, the cost of one hour of professional work needed to complete the application. The total annual related reporting cost for all potential respondents, therefore, is $535.50 (10 responses × $53.55/response).

Compliance with the application requirements of Rule 12f–3 is mandatory, though the filing of such applications is undertaken voluntarily. Rule 12f–3 does not have a record retention requirement *per se*. However, responses made pursuant to Rule 12f–3 are subject to the recordkeeping requirements of Rules 17a–3 and 17a–4 of the Act. Information received in response to Rule 12f–3 shall not be kept confidential; the information collected is public information.

• Rule 24b–1 Documents To Be Kept Public By Exchanges

Rule 24b–1 requires a national securities exchange to keep and make available for public inspection a copy of its registration statement and exhibits filed with the Commission, along with any amendments thereto. Implementing the requirements of Section 24(a), the rule requires that upon Commission action granting an exchange's application for registration or exemption from registration as a national securities exchange, the exchange must make available for public inspection at its offices during reasonable business hours a copy of the registration statement and exhibits filed with the Commission (along with any amendments thereto). However, the rule exempts those portions of this information to which the exchange has filed with the Commission an objection to disclosure and when the Commission has not overruled the objection. While the rule does not specify a retention period, the exchanges generally maintain this information for five years.

There are nine national securities exchanges that spend approximately one half hour each complying with this rule, for an aggregate total compliance burden of four hours per year. The staff estimates that the average cost per respondent is $62.58 per year, calculated as the costs of copying ($13.41) plus storage ($49.17), resulting in a total cost of compliance for the respondents of $563.22.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Written comments regarding the above information should be directed to the following persons: (a) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503; and (b) Kenneth A. Fogash, Acting Associate Executive Director/CIO, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549. Comments must be submitted to Office of Management and Budget within 30 days of this notice.

Dated: January 29, 2003.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–3317 Filed 2–10–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47312; File No. SR–Amex–2002–96]

Self-Regulatory Organizations; Order Approving a Proposed Rule Change and Amendment No. 1 Thereto by the American Stock Exchange LLC to Permit Limited Side-by-Side Trading and Integrated Market Making of Certain iShares Lehman Treasury Index Exchange-Traded Fund Shares and Their Related Options

February 5, 2003.

I. Introduction

On November 18, 2002, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b-4 thereunder,[2] a proposed rule change to permit limited side-by-side trading and integrated market making of certain iShares Lehman Treasury Index exchange-traded fund shares and their related options.[3] The Exchange filed Amendment No. 1 to the proposed rule change on December 3, 2002.[4] The proposed rule change, as amended, was published for comment in the **Federal Register** on December 27, 2002.[5] The Commission received no comment letters on the proposed rule change. This order approves the proposed rule change, as amended.

After careful review, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[6] In particular, the Commission finds that the proposed rule change to permit limited side-by-side trading and integrated market making of iShares Lehman Treasury Index ETFs and their related options is consistent with Section 6(b)(5) of the Act.[7]

Previously, the Commission approved a similar proposed rule change by the Amex to allow side-by-side trading and integrated market making of ETFs and trust issued receipts ("TIRs") and their related options, so long as the component securities of the ETF or TIR satisfy certain criteria.[8] The Exchange now proposes to permit side-by-side trading and integrated market making of broad based iShares Lehman Treasury Index ETFs (composed of highly liquid treasury securities) and their related options. The Commission believes that this proposal does not raise significant new regulatory issues. Specifically, ETFs and TIRs are securities that are based on groups of stocks and whose prices are based on the prices of their component securities. Accordingly, the Commission believes that a market participant's ability to manipulate the price of the ETF, TIR or related option is limited. In addition, the Treasury securities that compose the iShares Lehman Treasury Index ETFs have more than $150 million par outstanding and

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The exchange traded funds ("ETFs") covered by this proposal are the iShares Lehman 1–3 Year Treasury Bond Fund (the "1–3 Year Bond Fund"), the iShares Lehman 7–10 Year Treasury Bond Fund (the "7–10 Year Bond Fund"), the iShares Lehman 20+ Year Treasury Bond Fund (the "20+Year Bond Fund") (collectively, the "iShares Lehman Treasury Index ETFs").

[4] *See* letter from Jeffrey P. Burns, Assistant General Counsel, Amex, to Kelly McCormick-Riley, Senior Special Counsel, Division of Market Regulation ("Division"), Commission, dated November 27, 2002 ("Amendment No. 1").

[5] *See* Securities Exchange Act Release No. 47071 (December 18, 2002), 67 FR 79174.

[6] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[7] 15 U.S.C. 78f(b)(5).

[8] *See* Securities Exchange Act Release No. 46213 (July 16, 2002), 67 FR 48232 (July 23, 2002). The criteria that the component securities of an ETF or TIR must meet are set forth in Commentary .03(a) to Amex Rule 1000 and Commentary .02(a) to Amex Rule 1000A.

are highly liquid, which should reduce the likelihood that any market participant has an unfair information advantage about the ETF, its related options, or its component securities, or that a market participant would be able to manipulate the prices of the ETF or related options. Moreover, to address concerns about any market participant having an unfair competitive advantage over others in the crowd, Exchange Rule 174 requires integrated specialists in a side-by-side trading environment to disclose trading interest on the limit order book in iShares Lehman Treasury Index ETFs and related options upon request.[9] Lastly, the Commission expects the Exchange to continuously surveil these trading arrangements regularly and to assess its surveillance procedures to determine whether they are adequate for the new trading arrangements to ensure that market participants do not engage in manipulative or improper trading practices.

II. Conclusion

For the foregoing reasons, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[10] that the proposed rule change (SR-Amex-2002-96), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03-3381 Filed 2-10-03; 8:45 am]

BILLING CODE 8010-01-P

[9] Telephone conversation between Jeffrey P. Burns, Assistant General Counsel, Amex, and Christopher Solgan, Attorney, Division, Commission, on February 4, 2003.

[10] 15 U.S.C. 78s(b)(2).

[11] 17 CFR 200.30-3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47318; File No. SR-CBOE-2002-49]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to RAES Access Rules for Broad-Based Index Options and Options on Exchange-Traded Funds on Broad-Based Indexes

February 5, 2003.

I. Introduction

On November 1, 2002, the Chicago Board Options Exchange, Inc. ("CBOE" or the "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b-4 thereunder,[2] a proposed rule change relating to RAES eligibility requirements for market makers in broad-based index options and options on exchange traded funds on broad based indexes. The **Federal Register** published the proposed rule change for comment on December 27, 2002.[3] The Commission received no comments on the proposal. This order approves the proposed rule change.

II. Description of Proposal

Currently, the eligibility of CBOE market-makers to participate in trades through the Retail Automatic Execution System ("RAES") in option classes on broad-based indexes, including OEX and SPX, as well as option classes on exchange traded funds ("ETFs")[4] on broad-based indexes (collectively, "index-related options") is governed under three different Exchange rules. CBOE Rule 8.16 governs RAES eligibility for all options classes other than DJX, OEX, and SPX. CBOE Rule 24.17 addresses RAES eligibility for market-makers in OEX and DJX. Finally, CBOE Rule 24.16, which is separate yet functionally identical to CBOE Rule 24.17,[5] governs RAES eligibility for market makers in the SPX.

The proposed rule change would broaden CBOE Rule 24.17 to apply to market-makers in all index-related options, and delete the current text of CBOE Rule 24.16, while reserving the rule number for possible future use. The proposal also would amend CBOE Rule 8.16 and clarify that RAES eligibility under CBOE Rule 8.16 would apply only to option classes *other than* broad-based indexes and options on ETFs on broad-based indexes.

In addition, CBOE proposes to add to CBOE Rule 24.17 one set of provisions already present in the current CBOE Rule 8.16 in order to increase and make more consistent the enforcement of market-maker obligations in index-related options. These provisions currently exist as CBOE Rule 8.16(a)(iii) and the related Interpretations and Policies .01-.02. CBOE proposes to add the provisions to CBOE Rule 24.17(b)(vii) and Interpretations and Policies .03-.04. These provisions would authorize the appropriate Market Performance Committee to establish and enforce maximum percentages of transaction and contract volume that market-makers can execute through RAES transactions.

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[6] Specifically, the Commission believes that the proposed rule change is consistent with the Section 6(b)(5)[7] requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest.

The Commission believes that consolidation of CBOE's RAES eligibility rules for index-related options under one rule should clarify and simplify the treatment of index-related options under CBOE rules and help to

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b-4.

[3] Securities Exchange Act Release No. 47033 (December 19, 2002), 67 FR 79198.

[4] For purposes of this rule, trust issued receipts or holding company depositary receipts (as defined in Interpretation .04 to CBOE Rule 1.1), as well as index portfolio receipts (as defined in Interpretation .02 to CBOE Rule 1.1) and index portfolio shares (as defined in Interpretation .03 to CBOE Rule 1.1), are all included within the meaning of the term "exchange-traded fund."

[5] While a few subsections of CBOE Rule 24.16 are phrased somewhat differently than their counterparts in CBOE Rule 24.17, they are interpreted and applied by the CBOE as being equivalent. *Compare* CBOE Rules 24.16(a)(ii), (c)(i), and (d)(i) with CBOE Rules 24.17(b)(ii), (c)(i), and (d)(i) (enabling market-makers to "designate" that their RAES trades be placed into an individual, joint, or nominee account in which the market-maker participates); *also compare* CBOE Rule 24.16(a)(iii) with CBOE Rule 24.17(b)(ii)-(iv) (establishing requirements for personally logging onto RAES and remaining in the trading crowd while logged in.)

[6] In approving the proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[7] 15 U.S.C. 78f(b)(5).

provide consistent RAES eligibility treatment for market-makers in the various index-related options. In addition, the proposal would authorize the appropriate Market Performance Committee to establish and enforce maximum percentages of transaction and contract volume that market-makers can execute through RAES transactions. The Commission believes that this should help to ensure that market-makers standing in an index-related option crowd live up to their obligations to improve, update, and honor competitive markets in their appointed option classes in person, and do not simply stand there for the purpose of accepting RAES trades.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[8] that the proposed rule change (SR–CBOE–2002–49), is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–3380 Filed 2–10–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47308; File No. SR–NASD–2003–14]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. To Make Permanent Nasdaq's Pilot Program That Makes Available Certain Nasdaq Services and Facilities Until 6:30 P.M. Eastern Time

February 4, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 31, 2003, the National Association of Securities Dealers, Inc. ("NASD"), through its subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by Nasdaq. Nasdaq filed the proposal pursuant to Section 19(b)(3)(A) of the Act,[3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposal effective upon filing with the Commission.[5] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes to make permanent its pilot program that makes available several Nasdaq services and facilities until 6:30 p.m. Eastern Time. The text of the proposed rule change is available at Nasdaq and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Association has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

In October 1999, the Commission approved a pilot program ("Program") that made available certain Nasdaq systems and facilities until 6:30 p.m. Eastern Time.[6] Under the original Program, Nasdaq provided, until 6:30 p.m., the following services: (1) SelectNet Service ("SelectNet"); (2) Automated Confirmation Transaction Service ("ACT"); (3) Nasdaq Quotation Dissemination Service ("NQDS"); and (4) Nasdaq Trade Dissemination Service ("NTDS").

In August 2002, Nasdaq modified the terminology applicable to the Program to reflect the pending introduction of Nasdaq's SuperMontage system.[7] Since its original approval, the Program has been extended numerous times and has operated continuously.[8] Nasdaq now proposes to make the Program permanent.

Nasdaq proposes no substantive or technical changes to the pilot program. Nasdaq's permanent after-hours program will operate in the same manner as the current Program. Like the pilot, the posting of quotations and/or trading of securities by NASD members during the period of time after Nasdaq's normal market close and before 6:30 p.m. Eastern Time will be entirely voluntary. Quotes entered after-hours will continue to be disseminated by Nasdaq via NQDS,[9] and Nasdaq's ACT system will continue to accept trade reports up to 6:30 p.m. Eastern Time. Nasdaq will also continue to disseminate transaction reports to the public via the SIP. The after-hours session will continue to operate under the following general terms and conditions as set forth in the Commission's original approval order of the pilot:

- Any Nasdaq market maker that wishes to post quotations and trade during the 4 p.m. to 6:30 p.m. time period shall be obligated to post firm two-sided quotations when opening and making its market but may thereafter enter or leave the market on the hour or half-hour up to 6:30 p.m.
- NASD member firms that do not wish to open their market and instead simply send customer or proprietary orders to other market participants for display and/or execution will likewise not be obligated to post firm two-sided quotes.[10]
- Regardless of an NASD member's quotation activity, all transactions in Nasdaq National Market, SmallCap, Convertible Debt and over-the-counter equity securities executed between the hours of 9:30 a.m. and 6:30 p.m. Eastern Time must be reported to Act within 90 seconds.
- NASD members who participate in the after-hours session must operate in conformity with all NASD Rules except those that are limited by their express

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[8] 15 U.S.C. 78s(b)(2).

[9] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

[5] Nasdaq asked the Commission to waive the five-day pre-filing notice requirement and the 30-day operative delay. 17 CFR 240.19b–4(f)(6).

[6] *See* Securities Exchange Act Release No. 42003 (October 13, 1999), 64 FR 56554 (October 20, 1999)(SR–NASD–99–57).

[7] *See* Securities Exchange Act Release No. 46398 (August 22, 2002), 67 FR 55290 (August 28, 2002)(SR–NASD–2002–114).

[8] *See* Securities Exchange Act Release Nos. 42003 (October 13, 1999), 64 FR 56554 (October 20, 1999)(SR–NASD–99–57); 42481 (March 1, 2000), 65 FR 12310 (March 8, 2000)(SR–NASD–2000–07); 43302 (September 19, 2000), 65 FR 57852 (September 26, 2002)(SR–NASD–2002–56); 43953 (February 12, 2001), 66 FR 10927 (February 22, 2001)(SR–NASD–2001–12); 45503 (March 5, 2002), 67 FR 10955 (March 11, 2002)(SR–NASD–2002–29). The pilot is currently scheduled to terminate on January 31, 2003. See Securities Exchange Act Release No. 46532 (September 23, 2002), 67 FR 61367 (September 30, 2002)(SR–NASD–2002–118).

[9] The best bid and best offer in a particular security will be sent to the consolidated Securities Information Processor ("SIP") for full public dissemination.

[10] NASD market makers that do not elect to open their quotes would still be obligated to trade report transactions during the 4:00 p.m. to 6:30 p.m. time period consistent with current trade reporting rules.

terms, or by an official interpretation of the NASD, to a specific time period outside of the 4 p.m. to 6:30 p.m. time period. This obligation applies with particular force to the requirement to protect customer limit orders set forth in NASD IM–2110–2.

• The NASD's Short Sale Rule (NASD Rule 3350) will not apply during the after-hours session.

Nasdaq staff will continue to initiate trading halts,[11] and adjudicate clearly erroneous trade disputes in the after-hours session, using the same standards and methods as employed during traditional market hours.[12]

Nasdaq believes the transparency and investor protection benefits resulting from the availability of Nasdaq's systems and facilities after the traditional trading day have proven their worth and should now become permanent.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A of the Act,[13] in general, and with Section 15A(b)(6) of the Act,[14] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, remove impediments to a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

[11] Nasdaq notes that this trading halt authority will be limited to individual stocks only and will be undertaken in consultation with other markets operating after 4:00 p.m. Eastern Time. Market-wide trading halt rules currently in effect rely solely on percentage-based declines in the Dow Jones Industrial Average ("DJIA"), which is not calculated after the 4:00 p.m. close. In the event that a circuit breaker halt, triggered during regular market hours, prevents a normal close of U.S. primary markets, there will be no after-hours trading session that day.

[12] As during the pilot period, NASD Regulation, Inc. ("NASD Regulation") is of the view that nothing in the instant proposal modifies or limits an NASD member's obligation to comply with the rules of NASD Regulation's Order Audit Trail System ("OATS") when reporting trading activity taking place between 4:00 p.m. and 6:30 p.m. Eastern Time.

[13] 15 U.S.C. 78o–3.

[14] 15 U.S.C. 78o–3(b)(6).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not:

(i) Significantly affect the protection of investors or the public interest;

(ii) impose any significant burden on competition; and

(iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[15] and Rule 19b–4(f)(6) thereunder.[16] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

Nasdaq has requested that the Commission waive the five-day pre-filing notice requirement and the 30-day operative delay. The Commission believes waiving the five-day pre-filing notice requirement and the 30-day operative delay is consistent with the protection of investors and the public interest. Acceleration of the operative date will allow Nasdaq's after-hours trading program to operate without interruption. For these reasons, the Commission designates the proposal to be effective and operative upon filing with the Commission.[17]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to file number SR–NASD–2003–14 and should be submitted by March 4, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[18]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–3318 Filed 2–10–03; 8:45 am]

BILLING CODE 8010–01–P

[15] 15 U.S.C. 78s(b)(3)(A).

[16] 17 CFR 240.19b–4(f)(6).

[17] For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[18] 17 CFR 200.30–3(a)(12).

Securities and Exchange Commission

[Release No. 34–47307; File No. SR–NASD–2002–134]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Granting Approval to Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 1 to the Proposed Rule Change Relating to Exemptions from Options Position and Exercise Limits

February 3, 2003.

I. Introduction

On October 1, 2002, the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exhange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and rule 19b–4 thereunder,[2] a proposed rule change to amend NASD rule 2860(b)(3)(A) by eliminating options position and exercise limits for positions entered into under certain enumerated hedge strategies and establishing position and exercise limits of five times the standard limit for certain of those strategies when they include an over-the-counter (OTC) option contract. On December 23, 2002, the NASD filed Amendment No. 1 to the proposed rule change.[3] The proposed

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b-4.

[3] *See* letter from Gary L. Goldsholle, Associate General Counsel, Office of General Counsel, NASD, to Katherine A. England, Assistant Director, Division of Market Regulation ("Division"), Commission, dated December 20, 2003 ("Amendment No. 1"). In Amendment No. 1, the

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rule change was published for comment in the **Federal Register** on December 30, 2002.[4] The Commission received no comments on the proposal. This order approves the proposed rule change, and notices and grants accelerated approval to Amendment No. 1 to the proposed rule change.

II. Description of the Proposal

The proposed rule change amends NASD's options position and exercise limits. The proposed rule change establishes six qualified hedge strategies:

1. Where each option contract is "hedged" or "covered" by 100 shares of the underlying[5] security or securities convertible into the underlying security, or, in the case of an adjusted option, the same number of shares represented by the adjusted contract: (a) Long call and short stock; (b) short call and long stock; (c) long put and long stock; or (d) short put and short stock.

2. *Reverse Conversions*—A long call position accompanied by a short put position, where the long call expires with the short put, and the strike price of the long call and short put is equal, and where each long call and short put position is hedged with 100 shares (or other adjusted number of shares) of the underlying security or securities convertible into such underlying security.

3. *Conversions*—A short call position accompanied by a long put position where the short call expires with the long put, and the strike price of the short call and long put is equal, and where each short call and long put position is hedged with 100 shares (or other adjusted number of shares) of the underlying security or securities convertible into such underlying security.

4. *Collars*—A short call position accompanied by a long put position, where the short call expires with the long put and the strike price of the short call equals or exceeds the strike price of the long put position and where each short call and long put position is hedged with 100 shares (or other adjusted number of shares) of such the underlying security or securities convertible into such underlying security. Neither side of the short call/long put position can be in-the-money at the time the position is established.

5. *Box Spreads*—A long call position accompanied by a short put position with the same strike price and a short call position accompanied by a long put position with a different strike price.

6. *Back-to-Back Options*—A listed option position hedged on a one-for-one basis with an OTC option position on the same underlying security. The strike price of the listed option position and corresponding OTC option position must be within one strike price interval of each other and no more than one expiration month apart.

Under the proposed rule change, there would be no position and exercise limits when such qualified hedge strategies are effected solely with standardized equity options. In addition, the proposed rule change establishes standardized equity option position and exercise limits of five times the standard limit when one component of such strategies is an OTC option contract. Further, within the list of proposed hedge strategies, NASD proposes that the option component of a reversal, a conversion or a collar position can be treated as one contract rather than as two contracts.

The proposed rule change also modifies the conventional equity options position and exercise limits. First, the proposed rule change expands the hedge exemption for conventional options to include all of the qualified hedge strategies. Second, the proposed rule change increases the conventional equity options position and exercise limits for such qualified hedge strategies to five times the standard limits. Third, the proposed rule change provides that conventional equity options positions under the hedge strategies not be aggregated with other options positions similar to the way that positions under the current equity option hedge exemption and OTC collar aggregation exemption are not aggregated with other options positions.

Under the proposed rule change, the standard position and exercise limits will remain in place for unhedged equity options positions. Once an account reaches the standard limit, positions identified as a qualified hedge strategy would be subject to the increased position limits, or exempted from position limit calculations, as appropriate. The exemption would be automatic (*i.e.*, it will not require pre-approval from NASD) to the extent that a member identifies that a pre-existing qualified strategy is in place or is employed from the point that an account's position reaches the standard limit and provides the required supporting documentation to NASD.[6] The exemption would remain in effect to the extent that the exempted position remains intact and NASD is provided with any required supporting documentation.

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities associations[7] and, in particular, the requirements of section 15A of the Act[8] and the rules and regulations thereunder. The Division finds specifically that the proposed rule change is consistent with section 15A(b)(6) of the Act[9] because it is designed to promote just and equitable principles of trade, and to protect investors and public interest.

Position and exercise limits serve as a regulatory tool designed to address potential manipulative schemes and adverse market impact surrounding the use of options. The NASD proposes to expand the hedge exemption from position and exercise limits. The NASD also proposes to modify the conventional equity options position and exercise limits. The Commission believes it is permissible to expand the current equity hedge exemption without risk of disruption to the options or underlying cash markets. The Commission believes that existing position and exercise limits, procedures for maintaining the exemption, and the reporting requirements imposed by the NASD will help protect against potential manipulation. The Commission notes that the existing standard position and exercise limits will remain in place for unhedged equity option positions. To further ensure against market disruption, the NASD will establish a position and exercise limit equal to no greater than five times the standard limit for those hedge strategies that include an OTC option component.

In addition, according to the NASD, once an account reaches the standard

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NASD corrected grammatical errors in the rule language text of the proposed rule change.

[4] *See* Securities Exchange Act Release No. 47080 (December 23, 2002), 67 FR 79676 (December 30, 2002).

[5] NASD represents that the phrase "securities convertible into the underlying security" does not include single stock futures products. Telephone Conversation between Gary L. Goldsholle, Associate General Counsel, Office of General Counsel, NASD and Tim Fox, Law Clerk, Division, Commission on December 6, 2002.

[6] Under the proposed rule change, the existing reporting procedures that serve to identify and document hedged positions above a certain threshold continue to apply. Paragraph (b)(5) of NASD rule 2860 requires reporting to NASD of aggregate positions of 200 more contracts of the put class and the call class on the same side of the market covering the same underlying security.

[7] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[8] 15 U.S.C. 78*o*-3.

[9] 15 U.S.C. 78*o*-3(b)(6).

limit, positions identified as a qualified hedge strategy would be subject to the increased position limits, or exempted from position limit calculations, as appropriate. The exemption would be automatic (*i.e.*, it will not require pre-approval from NASD) to the extent that a member identifies that a pre-existing qualified strategy is in place or is employed from the point that an account's position reaches the standard limit and provides the required supporting documentation to NASD.[10] The exemption would remain in effect to the extent that the exempted position remains intact and NASD is provided with any required supporting documentation.

The Commission notes that it has previously approved changes to similar rules of the options exchanges that eliminated standardized equity option position and exercise limits for certain qualified hedge strategies and established position and exercise limits of five times the standard limit for certain of those strategies when they include an over-the-counter (OTC) option contract.[11] The Commission does not believe that the proposed rule changes raises novel regulatory issues that were not already addressed and should benefit NASD members by permitting them greater flexibility in using hedge strategies advantageously, while providing an adequate level of protection against the opportunity for manipulation of these securities and disruption in the underlying market.

The Commission finds good cause for approving Amendment No. 1 to the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. Amendment No. 1 merely provides technical corrections and clarification to the proposed rule text. The Commission, therefore, believes that granting accelerated approval of Amendment No. 1 is appropriate and consistent with section 15A(b)(6)[12] and section 19(b)[13] of the Act.

[10] Under the proposed rule change, the existing reporting procedures that serve to identify and document hedged positions above a certain threshold continue to apply. Paragraph (b)(5) of NASD rule 2860 requires reporting to NASD of aggregate positions of 200 more contracts of the put class and the call class on the same side of the market covering the same underlying security.

[11] *See* Securities Exchange Act Release No. 45603 (March 20, 2002), 67 FR 14751 (March 27, 2002) (CBOE–2000–12); Securities Exchange Act Release No. 45650 (March 26, 2002), 67 FR 15638 (Apr. 2, 2002) (AMEX–2001–71); Securities Exchange Act Release No. 45737 (April 11, 2002), 67 FR 18975 (Apr. 17, 2002) (PCX–2000–45); Securities Exchange Act Release No. 45899 (May 9, 2002), 67 FR 34980 (May 16, 2002) (PHLX–2002–33); and Securities Exchange Act Release No. 46228 (July 18, 2002), 67 FR 48689 (July 25, 2002) (ISE–2002–15).

[12] 15 U.S.C. 78o–3(b)(6).

[13] 15 U.S.C. 78s(b).

[14] 15 U.S.C. 78s(b)(2).

[15] 17 CFR 200.30–3(a)(12).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 1, including whether it is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–2002–134 and should be submitted by March 4, 2003.

V. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[14] that the proposed rule change (File No. SR–NASD–2002–134), as amended, be and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–3319 Filed 2–10–03; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47310; File No. SR–NASD–2003–12]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc., To Extend the Pilot for Limit Order Protection of Securities Priced in Decimals

February 4, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 31, 2003, the National Association of Securities Dealers, Inc. ("NASD" or "Association"), through its subsidiary, the Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by Nasdaq. Nasdaq filed the proposal pursuant to Section 19(b)(3)(A) of the Act,[3] and Rule 19b–4(f)(6)[4] thereunder, which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes to extend through May 31, 2003, the current pilot price-improvement standards for decimalized securities contained in NASD Interpretative Material 2110–2—Trading Ahead of Customer Limit Order ("Manning Interpretation" or "Interpretation"). Without such an extension these standards would terminate on January 31, 2003. Nasdaq does not propose to make any substantive changes to the pilot; the only change is an extension of the pilot's expiration date through May 31, 2003. Nasdaq requests that the Commission waive both the 5-day notice and 30-day operative requirements contained in Rule 19b–4(f)(6)(iii)[5] of the Act. If such waivers are granted by the Commission, Nasdaq will implement this rule change immediately.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for its proposal and discussed any comments it received regarding the proposal. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

[5] 17 CFR 240.19b–4(f)(6)(iii).

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

NASD's Manning Interpretation requires NASD member firms to provide a minimum level of price improvement to incoming orders in NMS and SmallCap securities if the firm chooses to trade as principal with those incoming orders at prices superior to customer limit orders they currently hold. If a firm fails to provide the minimum level of price improvement to the incoming order, the firm must execute its held customer limit orders. Generally, if a firm fails to provide the requisite amount of price improvement and also fails to execute its held customer limit orders, it is in violation of the Manning Interpretation.

On April 6, 2001,[6] the Commission approved, on a pilot basis, Nasdaq's proposal to establish the following price improvement standards whenever a market maker wished to trade proprietarily in front of its held customer limit orders without triggering an obligation to also execute those orders:

(1) For customer limit orders priced at or inside the best inside market displayed in Nasdaq, the minimum amount of price improvement required is $0.01; and

(2) For customer limit orders priced outside the best inside market displayed in Nasdaq, the market maker must price improve the incoming order by executing the incoming order at a price at least equal to the next superior minimum quotation increment in Nasdaq (currently $0.01).[7]

Since approval, these standards have operated on a pilot basis and are currently scheduled to terminate on January 31, 2003. After consultation with Commission staff, Nasdaq seeks an extension of its current Manning pilot until May 31, 2003. Nasdaq believes that such an extension provides for an appropriate continuation of the current Manning price-improvement standard while the Commission analyzes the issues related to customer limit order protection for decimalized securities, and reviews Nasdaq's separately filed rule proposal to make this pilot permanent.[8]

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act[9] in that it is designed to: (1) Promote just and equitable principles of trade; (2) foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to and facilitating transactions in securities; (3) perfect the mechanism of a free and open market and a national market system; and (4) protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not:

(i) Significantly affect the protection of investors or the public interest;

(ii) impose any significant burden on competition; and

(iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, it has become effective pursuant to Section 19(b)(3)(A) of the Act[10] and Rule 19b–4(f)(6) thereunder.[11] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

Nasdaq has requested that the Commission waive both the 5-day notice and the 30-day operative delay. The Commission believes waiving the 5-day notice and 30-day operative delay is consistent with the protection of investors and the public interest. Acceleration of the operative date will allow the pilot to continue uninterrupted through May 31, 2003, and will allow Nasdaq and the Commission to analyze the issues related to customer limit order protection in a decimals environment. For these reasons, the Commission designates the proposal to be effective and operative upon filing with the Commission.[12]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of Nasdaq. All submissions should refer to file number SR–NASD–2003–12 and should be submitted by March 4, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–3320 Filed 2–7–03; 8:45 am]

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[6] *See* Securities Exchange Act Release No. 44165 (April 6, 2001), 66 FR 19268 (April 13, 2001) (order approving proposed rule change modifying NASD's Interpretative Material 2110–2 —Trading Ahead of Customer Limit Order).

[7] Pursuant to the terms of the Decimals Implementation Plan for the Equities and Options Markets, the minimum quotation increment for Nasdaq securities (both National Market and SmallCap) at the outset of decimal pricing is $0.01. As such, Nasdaq displays priced quotations to two places beyond the decimal point (to the penny). Quotations submitted to Nasdaq that do not meet this standard are rejected by Nasdaq systems. *See* Securities Exchange Act Release No. 43876 (January 23, 2001), 66 FR 8251 (January 30, 2001).

[8] *See* SR–NASD 2002–10.

[9] 15 U.S.C. 78o–3(b)(6).

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6).

[12] For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47309; File No. SR–NASD–2003–11]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc., To Extend the Pilot for the Operation of the Short Sale Rule in a Decimals Environment

February 4, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 31, 2003, the National Association of Securities Dealers, Inc. ("NASD" or "Association"), through its subsidiary, the Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by Nasdaq. Nasdaq filed the proposal pursuant to Section 19(b)(3)(A) of the Act,[3] and Rule 19b–4(f)(6)[4] thereunder, which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes to extend through May 31, 2003, the penny ($0.01) legal short sale standard contained in NASD Interpretative Material 3350 ("IM–3350"). Without such an extension this standard would terminate on January 31, 2003. Nasdaq does not propose to make any substantive changes to the pilot; the only change is an extension of the pilot's expiration date through May 31, 2003. Nasdaq requests that the Commission waive both the 5-day notice and 30-day operative requirements contained in Rule 19b–4(f)(6)(iii)[5] of the Act. If such waivers are granted by the Commission, Nasdaq will implement this rule change immediately.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

[5] 17 CFR 240.19b–4(f)(6)(iii).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for its proposal and discussed any comments it received regarding the proposal. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On March 2, 2001, the Commission approved, on a one-year pilot basis ending March 1, 2002,[6] Nasdaq's proposal to establish a $0.01 above the bid standard for legal short sales in Nasdaq National Market securities as part of the Decimals Implementation Plan for the Equities and Options Markets. The pilot program has been continuously extended since that date and is currently set to expire on January 31, 2003.[7] Nasdaq now proposes to extend, through May 31, 2003, that pilot program. Extension until May 31st, will allow Nasdaq and the Commission to continue to evaluate the impact of the penny short sale pilot and thereafter take action on Nasdaq's separate pending proposal to make the penny short sale standard permanent.[8] If approved, Nasdaq would continue during the pilot period to require NASD members seeking to effect "legal" short sales when the current best (inside) bid displayed by Nasdaq is lower than the previous bid, to execute those short sales at a price that is at least $0.01 above the current inside bid in that security. Nasdaq believes that continuation of this pilot standard appropriately takes into account the important investor protections provided by the short sale rule and the ongoing relationship of the valid short sale price amount to the minimum quotation increment of the Nasdaq market (currently also $0.01).

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act[9] in that it is designed to: (1) Promote just and equitable principles of trade; (2) foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to and facilitating transactions in securities; (3) perfect the mechanism of a free and open market and a national market system; and (4) protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not:

(i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, it has become effective pursuant to Section 19(b)(3)(A) of the Act[10] and Rule 19b–4(f)(6) thereunder.[11] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

Nasdaq has requested that the Commission waive both the 5-day notice and the 30-day operative delay. The Commission believes waiving the 5-day notice and 30-day operative delay is consistent with the protection of investors and the public interest. Acceleration of the operative date will allow the pilot to continue uninterrupted through May 31, 2003, and will provide Nasdaq and the Commission with an opportunity to evaluate the impact of the penny short sale pilot. For these reasons, the Commission designates the proposal to

[6] Securities Exchange Act Release No. 44030 (March 2, 2001), 66 FR 14235 (March 9, 2001).

[7] Securities Exchange Act Release No. 46585 (October 2, 2002), 67 FR 63182 (October 10, 2002).

[8] *See* SR–NASD 2002–09.

[9] 15 U.S.C. 78o–3 (b)(6).

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6).

be effective and operative upon filing with the Commission.[12]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of Nasdaq. All submissions should refer to file number SR–NASD–2003–11 and should be submitted by March 4, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–3321 Filed 2–10–03; 8:45 am]

BILLING CODE 8010–01–P

SMALL BUSINESS ADMINISTRATION

Data Collection Available for Public Comments and Recommendations

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Small Business Administration's intentions to request approval on a new, and/or currently approved information collection.

DATES: Submit comments on or before April 14, 2003.

ADDRESSES: Send all comments regarding whether this information collections is necessary for the proper performance of the function of the agency, whether the burden estimates are accurate, and if there are ways to minimize the estimated burden and enhance the quality of the collections, to Margie Rich, Financial Analyst, Office of Financial Assistance, Small Business Administration, 409 3rd Street, SW., Suite 8300, Washington DC 20416

FOR FURTHER INFORMATION CONTACT: Margie Rich, Financial Analyst, (202) 205–7512 or Curtis B. Rich, Management Analyst, (202) 205–7030.

SUPPLEMENTARY INFORMATION:

Title: Microloan Program Electronic Reporting System (MPERS).

Form No: N/A.

Description of Respondents: Microloan Program Intermediary Lenders

Annual Responses: 2600.

Annual Burden: 107.

Jacqueline White,

Chief, Administrative Information Branch.

[FR Doc. 03–3388 Filed 2–10–03; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Public Federal Regulatory Enforcement Fairness Hearing; Region III Regulatory Fairness Board

The Small Business Administration Region III Regulatory Fairness Board and the SBA Office of the National Ombudsman will hold a public hearing on Thursday, February 20, 2003, at 1 p.m. (e.s.t.) at the Martin Luther King, Jr. Memorial Library, 901 G Street, NW., A–5 Auditorium, Washington, DC 20001, to receive comments and testimony from small business owners, small government entities, and small non-profit organizations concerning regulatory enforcement and compliance actions taken by Federal agencies.

Anyone wishing to attend or to make a presentation must contact Sheila Thomas in writing or by fax, in order to be put on the agenda. Sheila Thomas, U.S. Small Business Administration, Washington District Office, 1110 Vermont Avenue, NW., Suite 900, P.O. Box 34500, Washington, DC 20005, phone (202) 606–4000 ext 276, fax (202) 481–5567, e-mail *sheila.thomas@sba.gov.*

For more information, see our Web site at *www.sba.gov/ombudsman.*

Dated: February 4, 2003.

C. Edward Rowe, III,

Counsel, Office of the National Ombudsman.

[FR Doc. 03–3349 Filed 2–10–03; 8:45 am]

BILLING CODE 8025–01–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Technical Corrections to the Harmonized Tariff Schedule of the United States

AGENCY: Office of the United States Trade Representative.

ACTION: Notice.

SUMMARY: Pursuant to authority delegated to the United States Trade Representative ("USTR") in Presidential Proclamation 6969 of January 27, 1997 (62 FR 4415), USTR is making technical corrections to subchapter III of chapter 99 of the Harmonized Tariff Schedule of the United States ("HTS") as set forth in the annex to this notice. These modifications correct several inadvertent errors and omissions in subheadings 9903.72.30 through 9903.74.24 of the HTS so that the intended tariff treatment is provided.

EFFECTIVE DATE: The corrections made in this notice are effective with respect to articles entered, or withdrawn from warehouse for consumption, on or after the dates set forth in the annex to this notice.

FOR FURTHER INFORMATION CONTACT: Office of Industry, Office of the United States Trade Representative, 600 17th Street, NW., Room 501, Washington, DC 20508. Telephone (202) 395–5656.

SUPPLEMENTARY INFORMATION: On March 5, 2002, pursuant to section 203 of the Trade Act of 1974, as amended (the "Trade Act") (19 U.S.C. 2253), the President issued Proclamation 7529 (67 FR 10553), which imposed tariffs and a tariff-rate quota on (a) certain flat steel, consisting of: slabs, plate, hot-rolled steel, cold-rolled steel, and coated steel; (b) hot-rolled bar; (c) cold-finished bar; (d) rebar; (e) certain tubular products; (f) carbon and alloy fittings; (g) stainless steel bar; (h) stainless steel rod; (i) tin mill products; and (j) stainless steel wire, as provided for in subheadings 9903.72.30 through 9903.74.24 of the Harmonized Tariff Schedule of the United States ("HTS") ("safeguard measures") for a period of three years plus 1 day. Effective with respect to goods entered, or withdrawn from warehouse for consumption, on or after 12:01 a.m., e.s.t., on March 20, 2002, Proclamation 7529 modified subchapter III of chapter 99 of the HTS so as to provide for such increased duties and a tariff-rate quota. Proclamation 7529 also delegated to the USTR the authority to consider requests for exclusion of a particular product submitted in accordance with the procedures set out in 66 FR 54321, 54322–54323 (October

[12] For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[13] 17 CFR 200.30–3(a)(12).

26, 2001) and, upon publication in the **Federal Register** of a notice of his finding that a particular product should be excluded, to modify the HTS provision created by the annex to that proclamation to exclude such particular product from the pertinent safeguard measure. On April 5, 2002, USTR published a notice in the **Federal Register** excluding particular products from the safeguard measures, and modified the HTS accordingly. 67 FR 16484. On July 3, the President issued Proclamation 7576, which extended the period for granting exclusions until August 31, 2002. On July 12, 2002, and August 30, 2002, USTR published notices in the **Federal Register** excluding additional products from the safeguard measures, and modified the HTS accordingly. 67 FR 46221 and 67 FR 56182.

On March 19, 2002, June 4, 2002, July 12, 2002, August 30, and November 14 of 2002, USTR published **Federal Register** notices (67 FR 12635, 67 FR 38541, 67 FR 46221, 67 FR 56182 and 67 FR 69065, respectively) making technical corrections to subchapter III of chapter 99 of the HTS to remedy several technical errors introduced in the annex to Proclamation 7529. These corrections ensured that the intended tariff treatment was provided. Since the publication of these **Federal Register** notices, additional technical errors and omissions in subchapter III of chapter 99 have come to the attention of USTR. The annex to this notice makes technical corrections to the HTS to remedy these errors and omissions. In particular, the annex to this notice corrects errors in the descriptions of the physical dimensions or chemical composition of certain products excluded from the application of the safeguard measures.

Proclamation 6969 authorized the USTR to exercise the authority provided to the President under section 604 of the Trade Act of 1974 (19 U.S.C. 2483) to embody rectifications, technical or conforming changes, or similar modifications in the HTS. Under authority vested in the USTR by Proclamation 6969, the rectifications, technical and conforming changes, and similar modifications set forth in the annex to this notice shall be embodied in the HTS with respect to goods entered, or withdrawn from warehouse for consumption, on or after the dates set forth in the Annex to this notice.

Robert B. Zoellick,

United States Trade Representative.

ANNEX

Subchapter III of chapter 99 of the Harmonized Tariff Schedule (HTS) is modified as set forth in this annex, with bracketed matter included to assist in the understanding of the modifications. The following provisions supersede matter now in the HTS, with the new subheadings being inserted by this notice set forth in columnar format and the material inserted in the HTS columns entitled "Heading/ Subheading", "Article Description", "Rates of Duty 1 General", "Rates of Duty 1 Special", and "Rates of Duty 2", respectively. Subheadings 9903.73.32 and 9903.73.33 shall be effective with respect to goods entered, or withdrawn from warehouse for consumption, on or after 12:01 a.m. e.d.t., July 12, 2002. The remaining provisions of this annex shall be effective with respect to goods entered, or withdrawn from warehouse for consumption, on or after 12:01 a.m. e.s.t., on March 20, 2002, or, in the case of corrections in existing provisions, on or after the date of the inclusion in, or of the previous correction of, the individual HTS provision being corrected.

1. U.S. note 11 to such subchapter III is hereby modified as follows:

(A) In subdivision (c)(xxx)(J), "N" is deleted at each instance and "N/mm^2;" is inserted in lieu thereof;

(B) In subdivision (c)(xxxix), the language "during the 12-month period beginning on July 3, 2002, or July 3, 2003, or during the period July 3, 2004, through March 20, 2005, inclusive;" is inserted after "30,000";

(C) In subdivision (c)(ccvii), "designated as X–083" is inserted after ", inclusive;";

(D) Subdivision (c)(cliv) is deleted and the following new provisions are inserted in lieu thereof:

"(cliv) Stainless steel products, designated as N–378, meeting the characteristics described below:

(A) Straight bars and rods, or round wire on spools or in coils, all the foregoing specifications:

(I) Chemical composition (percent by weight): carbon not over 0.08, silicon not over 0.70, manganese not over 0.50, chromium 20.50 to 23.50, aluminum 5.0 to 6.0 and balance iron; sometimes referred to as (but not limited to) products known as "Kanthal APM.";

(II) Chemical composition (percent by weight): carbon not over 0.08, silicon not over 0.70, manganese not over 0.50, chromium 20.50 to 23.50, aluminum 4.30 to 5.30 and balance iron; sometimes referred to as (but not limited to) products known as "Kanthal D";

(III) Chemical composition (percent by weight): carbon not over 0.08, silicon not over 0.07, manganese not over 0.40, chromium 20.50 to 23.50, aluminum 4.80 to 5.8 and balance iron; sometimes referred to as (but not limited to) products known as "Kanthal AF"; or

(IV) Chemical composition (percent by weight): carbon not greater than 0.08, silicon not greater than 0.70, manganese not greater than 0.40, aluminum 5.30 to 6.30, chromium 20.50 to 23.50 and balance iron; sometimes referred to as (but not limited to) products known as "Kanthal A–1"; or

(V) Chemical composition (percent by weight): carbon not over 0.10, manganese not over 1.00, silicon 1.60 to 2.50, chromium 18.0 to 21.0, nickel 34.0 to 37.0 and balance iron; sometimes referred to as (but not limited to) products known as "Nikrothal 40";

(B) Round wire on spools or in coils, the specifications:

(I) Chemical composition (percent by weight): carbon not over 0.08, silicon not over 0.70, manganese not over 0.50, chromium 20.50 to 23.50, aluminum 4.60 to 5.60 and balance iron; sometimes referred to as (but not limited to) products known as "Kanthal DT";

(II) Chemical composition (percent by weight): carbon not over 0.08, silicon not over 0.70, manganese not over 0.50, chromium 20.50 to 23.50, aluminum 4.80 to 5.80 and balance iron; sometimes referred to as (but not limited to) products known as "Kanthal A"; or

(III) Chemical composition (percent by weight): carbon not over 0.08, silicon not over 0.70, manganese not over 0.50, chromium 14.00 to 16.00, aluminum 3.80 to 4.80 and balance iron; sometimes referred to as (but not limited to) products known as "Alkrothal 14";

(E) In subdivision (c)(xxviii)(A), "397 MPa or more" is deleted and "335 to 420 MPa" is inserted in lieu thereof; "450 MPa or more" is deleted and "385 to 465 MPa" is inserted in lieu thereof;

(F) In subdivision (c)(xxiv)(B), the word "maximum" should be inserted after "manganese 0.40" the word "maximum" should be inserted after "chromium 5.40" and the word "maximum" should be inserted after "molybdenum 1.70";

(G) In subdivision (c)(xxiv)(C), the word "maximum" should be inserted after "molybdenum 0.65";

(H) In subdivision (c)(xxiv)(D), the word "maximum" should be inserted after "molybdenum 3.50";

(I) In subdivision (c)(xxiv)(E), the word "maximum" should be inserted after "molybdenum 0.80";

(J) In subdivision (c)(xxiv)(F), the word "maximum" should be inserted after "molybdenum 0.40";

(K) In subdivision (c)(cxxiii), the word "silicon" is deleted and "sulfur" is inserted in lieu thereof;

(L) In subdivision (c)(cxlviii), each instance of "0.25 percent or more but" should be deleted;

(M) In subdivision (c)(lx)(A), the phrase "sulphur 0.15 maximum" is deleted and "sulfur 0.15 minimum" is inserted in lieu thereof and the phrase "tellurium added 0.03 minimum" is deleted and "tellurium added 0.010 to 0.070" is inserted in lieu thereof;

2. The enumerated subheadings in such subchapter III are modified as follows:

(A) In subheading 9903.72.51, "or N–408" should be inserted after "X–134";

(B) In subheading 9903.72.72, "or N–408" should be inserted after "X–134";

(C) In subheading 9903.72.74, the language "and entered in an aggregate annual quantity not to exceed 750,000 t" should be inserted after "X–087"

(D) In subheading 9903.73.30, "(A) and (B)" is inserted after " 11(b)(xliv)"

(E) In subheading 9903.75.22, the language "and entered in an aggregate annual quantity not to exceed 1,550 t" should be inserted after "subchapter";

(F) In subheading 9903.77.69, the language "and entered in an aggregate annual quantity not to exceed 1,500 t" should be inserted after "subchapter";

(G) Subheading 9903.77.71 is deleted;

(H) Subheading 9903.73.47 is deleted;

3. The following new subheadings are inserted in numerical sequence:

	[Flat-rolled...:]			
	[Goods...:]			
"9903.73.32	Enumerated in U.S. note 11(b)(xliv)(C) to this subchapter and entered in an aggregate annual quantity not to exceed 36,000 t.	No change ...	No change ...	No change.
9903.73.33	Enumerated in U.S. note 11(b)(xliv)(D) to this subchapter and entered in an aggregate annual quantity not to exceed 40,000 t.	No change ...	No change ...	Nochange.
	[Goods...:]			
9903.74.59	Enumerated in U.S. note 11(c)(cxviii) to this subchapter	No change ...	No change ...	No change.
9903.74.60	Enumerated in U.S. note 11(c)(cxix) to this subchapter	No change ...	No change ...	No change.
9903.76.23	Enumerated in U.S. note 11(c)(cxl) to this subchapter	No change ...	No change ...	No change".

Conforming changes

Subheading 9903.72.57 is modified by deleting "9903.74.58" and by inserting in lieu thereof "9903.74.60".

Subheading 9903.73.18 is modified by deleting "9903.76.22" and by inserting in lieu thereof "9903.76.23".

[FR Doc. 03–3395 Filed 2–10–03; 8:45 am]

BILLING CODE 3190–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–55 (Sub–No. 627X)]

CSX Transportation, Inc.—Abandonment Exemption—in Floyd County, KY

CSX Transportation, Inc. (CSXT), has filed a notice of exemption under 49 CFR 1152 subpart F—*Exempt Abandonments* to abandon an approximately 13.4-mile line of railroad between milepost CON 3.1 at Salisbury and milepost CON 16.5 near Clear Creek Junction in Floyd County, KY. The line traverses United States Postal Service Zip Codes 41604, 41606, 41631, 41636, 41647, and 41649.

CSXT has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic on the line; (3) no formal complaint filed by a user of rail service on the line (or by a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed. Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on March 13, 2003, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by February 21, 2003. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by March 3, 2003, with: Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423.

A copy of any petition filed with the Board should be sent to CSXT's representative: Natalie S. Rosenberg, 500 Water Street, J150, Jacksonville, FL 32202.

If the verified notice contains false or misleading information, the exemption is void ab initio.

CSXT has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. SEA will issue an environmental assessment (EA) by February 14, 2003. Interested persons may obtain a copy of the EA by writing to SEA (Room 500, Surface Transportation Board, Washington DC 20423) or by calling SEA, at (202) 565–1552. (Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339). Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historical preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), CSXT shall file a notice of consummation with the Board to signify that it has exercised the authority

[1] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis (SEA) in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[2] Each OFA must be accompanied by the filing fee, which currently is set at $1,100. See 49 CFR 1002.2(f)(25).

granted and fully abandoned its line. If consummation has not been effected by CSXT's filing of a notice of consummation by February 11, 2004, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our website at "www.stb.dot.gov."

Decided: February 5, 2003.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 03–3371 Filed 2–10–03; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Revenue Procedure 97–22

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Revenue Procedure 97–22, 26 CFR 601.105 Examination of returns and claims for refund, credits or abatement; determination of correct tax liability.

DATES: Written comments should be received on or before April 14, 2003 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the revenue procedure should be directed to Carol Savage, (202) 622–3945, or through the internet (*CAROL.A.SAVAGE@irs.gov.*), Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION: *Title*: 26 CFR 601.105 Examination of returns and claims for refund, credits or abatement; determination of correct tax liability.

OMB Number: 1545–1533.

Revenue Procedure Number: Revenue Procedure 97–22.

Abstract: This revenue procedure provides guidance to taxpayers who maintain books and records by using an electronic storage system that either images their paper books and records or transfers their computerized books and records to an electronic storage media, such as an optical disk. The information requested in the revenue procedure is required to ensure that records maintained in an electronic storage system will constitute records within the meaning of Internal Revenue Code section 6001.

Current Actions: There are no changes being made to the revenue procedure at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, business or other for-profit organizations, not-for-profit institutions, farms, Federal Government, and state, local or tribal governments.

Estimated Number of Respondents: 50,000.

Estimated Time Per Respondent: 20 hours, 1 minute.

Estimated Total Annual Burden Hours: 1,000,400.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: February 5, 2003.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 03–3389 Filed 2–10–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Forms 6559 and 6559–A

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 6559, Transmitter Report and Summary of Magnetic Media and Form 6559–A, Continuation Sheet for Form 6559.

DATES: Written comments should be received on or before April 14, 2003 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Carol Savage, (202) 622–3945, or through the internet (CAROL.A.SAVAGE@irs.gov.), Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Transmitter Report and Summary of Magnetic Media (Form 6559) and Continuation Sheet for Form 6559 (Form 6559–A).

OMB Number: 1545–0441.

Form Numbers: 6559 and 6559–A.

Abstract: Forms 6559 and 6559–A are used by filers of Form W–2 Wage and Tax Data to transmit filings on magnetic media. SSA and IRS need signed jurat and summary data for processing purposes. The forms are used primarily by large employers and tax filing services (service bureaus).

Current Actions: There are no changes being made to the forms at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, not-for-profit institutions, farms, and Federal, state, local or tribal governments.

Estimated Number of Respondents: 90,000.

Estimated Time Per Respondent: 18 min.

Estimated Total Annual Burden Hours: 27,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: February 5, 2003.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 03–3390 Filed 2–10–03; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[INTL–116–90]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing notice of proposed rulemaking, INTL–116–90, Allocation of Charitable Contributions (§ 1.861–8).

DATES: Written comments should be received on or before April 14, 2003, to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulation should be directed to Carol Savage, (202) 622–3945, or through the Internet (*CAROL.A.SAVAGE@irs.gov.*), Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Allocation of Charitable Contributions.

OMB Number: 1545–1240.

Regulation Project Number: INTL–116–90.

Abstract: Section 1.861–8(e) of the regulation provides guidance concerning the allocation and apportionment of deductions for charitable contributions. It would require a taxpayer to allocate a deduction for charitable contributions solely to United States source gross income or solely to foreign source gross income in certain cases. The required records will be used on audit to verify the United States allocation of these deductions.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 500.

Estimated Time Per Respondent: 1 hour.

Estimated Total Annual Burden Hours: 500.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: February 5, 2003.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 03–3391 Filed 2–10–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[FI–54–93]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an

existing final regulation, FI–54–93(TD 8554), Clear Reflection of Income in the Case of Hedging Transactions (§ 1.146–4(d)).

DATES: Written comments should be received on or before April 14, 2003 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulation should be directed to Carol Savage, (202) 622–3945, or through the internet (*CAROL.A.SAVAGE@irs.gov.*), Internal Revenue Service, Room 6407, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Clear Reflection of Income in the Case of Hedging Transactions.

OMB Number: 1545–1412.

Regulation Project Number: FI–54–93.

Abstract: This regulation provides guidance to taxpayers regarding when gain or loss from common business hedging transactions is recognized for tax purposes and requires that the books and records maintained by a taxpayer disclose the method or methods used to account for different types of hedging transactions.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 110,000.

Estimated Time Per Respondent: 12 minutes.

Estimated Total Annual Burden Hours: 22,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: February 5, 2002.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 03–3392 Filed 2–10–03; 8:45 am]

BILLING CODE 4830–01–P

VALLES CALDERA TRUST

National Environmental Policy Act (NEPA) Procedures of the Valles Caldera Trust for the Valles Caldera National Preserve

AGENCY: Valles Caldera Trust.

ACTION: Notice of proposed procedures to implement NEPA and request for comments.

SUMMARY: The Board of Trustees of the Valles Caldera Trust proposes to adopt procedures for implementation of National Environmental Policy Act (NEPA) to aid the overall management and public use of the Valles Caldera National Preserve. The NEPA procedures for the Trust are intended to supplement federal NEPA procedures of the Council on Environmental Quality (CEQ) found at 40 CFR part 1500 through 1508 and adopted by the Board of Trustees on August 8, 2001. The final NEPA procedures of the Trust are to be maintained by the Trust and will be readily available to the public. It is anticipated that as experience is gained in the implementation of the Trust's NEPA procedures, appropriate improvements will be proposed. Notice of the adoption of final NEPA procedures will be published in the **Federal Register**. The proposed procedures will apply to the fullest extent practicable to analyses and documents begun before adoption of the final procedures by the Board of Trustees of the Valles Caldera Trust.

DATES: Written comments should be submitted by March 31, 2003.

ADDRESSES: Please submit comments to Gary Ziehe, Executive Director, Valles Caldera Trust, 2201 Trinity Drive, Suite C, Los Alamos, NM 87544. Comments can be emailed to: *nepaprocedures@vallescaldera.gov.*

FOR FURTHER INFORMATION CONTACT: Gary Ziehe, Executive Director, Valles Caldera Trust, 2201 Trinity Drive, Suite C, Los Alamos, NM 87544. Telephone: (505) 661–3333

SUPPLEMENTARY INFORMATION:

I. Introduction

The Valles Caldera Preservation Act, Public Law 106–248, (the Act) created the Valles Caldera Trust (the Trust), a wholly owned government corporation, to manage the newly created Valles Caldera National Preserve (the Preserve, formerly the Baca Ranch). The Trust assumed responsibility for managing the lands and resources of the Preserve on August 2, 2002. The Preserve includes approximately 89,000 acres in north-central New Mexico, comprising the majority of the 1860 land grant known as the Baca Location No. 1. A nine-member Board of Trustees governs the Trust and the Executive Director oversees management of the Trust and the Preserve.

The Act established the Preserve to protect and preserve the scientific, scenic, geologic, watershed, fish, wildlife, historic, cultural, and recreational values of the Preserve, and to provide for multiple use and sustained yield of renewable resources within the Preserve. Under the Act, the Trust will operate the Preserve as a working ranch, consistent with these previously listed purposes. The Trust will develop a plan to achieve a financially self-sustaining operation within 15 years.

The Trust seeks to institutionalize an adaptive management regime for actions it authorizes on the Preserve. These procedures are proposed to integrate the planning, implementation, and monitoring activities of the Trust into a systematic process that will provide transparency in decisionmaking, flexibility in implementation, a strong emphasis on the monitoring of outcomes, and an open opportunity for public input into the system.

II. Legislative History of the Trust

(a) *A unique experiment in managing public land.* The Valles Caldera National Preserve is a unique experiment in the administration of public land. Public Law 106–248 authorizing creation of the Preserve established several findings and purposes for the management of the Preserve.

Congress finds that:

(1) The Baca ranch comprises most of the Valles Caldera in central New Mexico, and constitutes a unique landmass, with significant scientific, cultural, historic, recreational, ecological, wildlife, fisheries, and productive values;

(2) The Valles Caldera is a large resurgent lava dome with potential geothermal activity;

(3) The land comprising the Baca ranch was originally granted to the heirs of Don Luis Maria Cabeza de Vaca in 1860;

(4) Historical evidence, in the form of old logging camps and other artifacts, and the history of territorial New Mexico indicate the importance of this land over many generations for domesticated livestock production and timber supply;

(5) The careful husbandry of the Baca ranch by the current owners, including selective timbering, limited grazing and hunting, and the use of prescribed fire, have preserved a mix of healthy range and timber land with significant species diversity, thereby serving as a model for sustainable land development and use;

(6) The Baca ranch's natural beauty and abundant resources, and its proximity to large municipal populations, could provide numerous recreational opportunities for hiking, fishing, camping, cross-country skiing, and hunting;

(7) The Forest Service documented the scenic and natural values of the Baca ranch in its 1993 study entitled 'Report on the Study of the Baca Location No. 1, Santa Fe National Forest, New Mexico', as directed by Public Law 101–556;

(8) The Baca ranch can be protected for current and future generations by continued operation as a working ranch under a unique management regime which would protect the land and resource values of the property and surrounding ecosystem while allowing and providing for the ranch to eventually become financially self-sustaining;

(9) The current owners have indicated that they wish to sell the Baca ranch, creating an opportunity for Federal acquisition and public access and enjoyment of these lands;

(10) Certain features on the Baca ranch have historical and religious significance to Native Americans which can be preserved and protected through Federal acquisition of the property;

(11) The unique nature of the Valles Caldera and the potential uses of its resources with different resulting impacts warrant a management regime uniquely capable of developing an operational program for appropriate preservation and development of the land and resources of the Baca ranch in the interest of the public;

(12) An experimental management regime should be provided by the establishment of a Trust capable of using new methods of public land management that may prove to be cost-effective and environmentally sensitive; and

(13) The Secretary may promote more efficient management of the Valles Caldera and the watershed of the Santa Clara Creek through the assignment of purchase rights of such watershed to the Pueblo of Santa Clara.

(b) *Purposes for management of the Preserve.* The Act established five purposes for the management of the Preserve:

(1) To authorize Federal acquisition of the Baca ranch;

(2) To protect and preserve for future generations the scientific, scenic, historic, and natural values of the Baca ranch, including rivers and ecosystems and archaeological, geological, and cultural resources;

(3) To provide opportunities for public recreation;

(4) To establish a demonstration area for an experimental management regime adapted to this unique property which incorporates elements of public and private administration in order to promote long term financial sustainability consistent with the other purposes enumerated in this subsection; and

(5) To provide for sustained yield management of Baca ranch for timber production and domesticated livestock grazing insofar as is consistent with the other purposes stated in the Act.

(c) *Management of the Preserve.* A nine-member Board of Trustees appointed by the President is to oversee management of the Preserve and establish operating principles. The Trust is a wholly owned government corporation known as the Valles Caldera Trust. The Trust is empowered to conduct business in the State of New Mexico and elsewhere in the United States in furtherance of its corporate purposes and possess all necessary and proper powers for the exercise of the authorities vested in it. The Trust is to:

(1) Provide management and administrative services for the Preserve;

(2) Establish and implement management policies which will best achieve the purposes and requirements of this title;

(3) Receive and collect funds from private and public sources and to make dispositions in support of the management and administration of the Preserve; and

(4) Cooperate with Federal, State, and local governmental units, and with Indian tribes and Pueblos, to further the purposes for which the Preserve was established.

III. Transition to Implementation of NEPA Procedures

During the consideration of the proposed procedures described here and prior to adoption of final procedures, the Trust will undertake appropriate management actions for the administration of the Valles Caldera National Preserve. Actions that may have environmental consequences within the Preserve will undergo appropriate environmental review following CEQ regulations as adopted by the Trust. The Trust will follow the proposed procedures in the development of proposed actions and decisions. Following the adoption of final procedures, the Trust will make appropriate revisions in accordance with the final procedures to any proposed actions on which a final decision has not been made.

IV. Proposed Procedures for Management of the Preserve

In furthering the intent of Congress and to clarify the operating principles of the Trust, it is necessary and appropriate to establish procedures for the consideration of pending management actions of the Trust and implementation of the NEPA. The following proposed procedures are intended to effectively and efficiently implement the principles of the NEPA and create a collaborative working relationship among the Trust and tribal governments, citizens, and federal, state, and local authorities. A section-by-section description of the proposed procedures follows.

100 Title. This section displays the title of the proposed procedures with its numbering system beginning with 100.

100.1 Authority. This section lists the federal authorities from which the proposed procedures are developed.

100.2 Purpose. The purpose of the proposed procedures is displayed in paragraphs (a) to (d). It is important to note that the proposed procedures are intended to amplify Congressional intent to provide innovative ways to implement effective and efficient management of the Preserve. The proposed procedures are intended to integrate NEPA with the planning and decisionmaking of the Trust, make NEPA more useful to decisionmakers and the public, and ensure that environmental information is readily available before, during, and after decisions are made. The proposed procedures are intended to supplement government-wide NEPA procedures found at 40 CFR 1500–1508. The government-wide, NEPA procedures were adopted by the Board of Trustees on August 8, 2001.

101 Integration of NEPA with Planning and Decisionmaking of the Trust. Sections 101.1 to 101.10 describe the process proposed for integrating NEPA with the planning and decisionmaking of the Trust. In presenting this proposal, it is useful to describe the proposed planning and decisionmaking envisioned by the Trust, as well as specific references to the integration of NEPA procedures.

Each of the sections of the proposed procedures is described below.

101.1 Purposes and Principles. Paragraph (a) references the findings of Congress regarding the purposes and principles for management of the Preserve. The comprehensive management of the Preserve called for in the enabling legislation, is to be achieved through the delegated authorities of the Board of Trustees. The Responsible Official is the person who has the delegated authority to plan and make decisions as authorized by the Board. In the absence of delegation, the Chair of the Board is the Responsible Official.

Paragraph (b) emphasizes the vital role of citizens in the overall management, use, and enjoyment of the Preserve. The monitoring and evaluation of on-the-ground stewardship actions by citizens and the Trust provide the basis for the consideration of future stewardship actions.

The vital role of monitoring and considering new information among the Trust and the public is emphasized in paragraph (c).

Paragraph (d) presents the 10 guiding principles for management of the Preserve adopted by the Board on December 13, 2001. These principles are intended to guide the consideration of all proposed stewardship actions and the evaluation of outcomes. Noteworthy, is the recognition that the whole of the Preserve is greater than the sum of the parts. The stewardship actions implemented within the Preserve are intended to complement the whole of the Preserve and enhance the unique character of the Preserve envisioned by the Congress and enjoyed by the occasional or frequent visitor.

101.2 Terminology. This section of the proposed procedures lists 16 terms and their meanings as they are used throughout the text. It is important to review these terms and their meanings to ensure that they are understood in the context of the proposed procedures. It is intended that these terms are to be used consistently by the Board, staff of the Trust, and citizens involved in the planning and decisionmaking of the Trust.

101.3 Overall Procedures. In paragraphs (a) to (e) of this section, the overall procedures for integrating NEPA within the planning and decisionmaking of the Trust are presented. Paragraph (a) points out that comprehensive management of the Preserve is achieved through strategic guidance adopted by the Board and through the selection and implementation of appropriate stewardship actions. As described in section 101.4 of the proposed procedures, stewardship actions may be site-specific actions as well as broader, planning-related goals, objectives, and performance requirements that set the stage for future stewardship actions. It is the intent of the Trust to maintain open and collaborative working relationships with all government and private parties interested in the Preserve. Positive working relationships are envisioned during the consideration, implementation, and monitoring of stewardship actions. The paragraph concludes with a statement that the information regarding a stewardship action is available to the public in accordance with applicable law.

Paragraph (b) establishes a standard that a clear statement of the purpose and need for each stewardship action must accompany the proposal for action by the Responsible Official. This requirement is made to ensure that each proposed stewardship action has a clear explanation of why it is necessary.

Paragraph (c) states that the Responsible Official, based on public comments or other reasons, may prepare an environmental document to improve understanding of a proposal before making an implementing decision. For many stewardship actions, an environmental document is required. The requirements related to the evaluation of stewardships action and the preparation of the appropriate environmental documents are described section 101.5 of the proposed procedures.

It is stated in paragraph (c) that the outcomes of implemented stewardship actions are monitored to provide information to aid future choices, consistent with the principles of adaptive management. "Adaptive management," though not described in the section 101.2, Terminology, is the preferred means for managing complex natural systems, builds on learning based on common sense, experience, experimentation, and monitoring results. Practices within the Preserve are to be adjusted based on what is learned. It is the intent of the Trust to respond positively to change. Through adaptive management, the Trust's focus is on accelerated learning and adapting through partnerships based on finding common ground where managers, scientists, and citizens learn together to create and maintain sustainable ecosystems. Learning in the achievement of sustainable ecosystems requires an array of strategies and partnerships of managers and citizens working directly with scientists to provide a holistic view of desired conditions and positive, creative responses to change. Through adaptive management, the Trust will provide for multiple use and sustained yield of renewable resources of the Preserve. A requirement to prepare a concise account of the systematic review of monitored outcomes along with review of other information is described in general terms in paragraph (d). This summary of monitored outcomes provides the technical and scientific basis for the development and subsequent revision of the comprehensive management program described in section 101.8, Preparing and Approving the Comprehensive Management Program.

Section 101.3 of the proposed procedures concludes with paragraph (e) which is a statement describing the ongoing review of monitored outcomes and interpretation of information to guide current and future stewardship actions. The overall procedures are intended to efficiently and effectively achieve the goals of the Trust and NEPA and eliminate unnecessary or redundant paperwork.

101.4 Proposing a Stewardship Action and Following its Progress. Paragraphs (a) to (d) describe how a stewardship action is proposed for consideration and the requirements that must be followed. Paragraph (a) states that the Responsible Official may propose a stewardship action at any time. However, each stewardship action must be accompanied by a clear statement of its purpose and need and recorded in a stewardship register. The required items of a stewardship register are displayed in Exhibit I. If the Board approves consideration of a proposed stewardship action, the stewardship register will be made available to the public through appropriate media as soon as practicable and throughout the process, leading either to termination of the proposal or to an implementing decision.

If the Board is proposing a stewardship action for the Preserve as an element of stewardship guidance, the Chair of the Board is the Responsible Official and must evaluate the proposal and follow the procedures in section 101.5, Evaluating a Stewardship Action. This requirement is proposed to ensure that all actions that may have a significant effect on the Preserve are considered through the environmental review procedures of the Trust. It is important to note that each stewardship action proposed by the Board must contain a goal, objective, and performance requirement. The Board may have previously adopted one or more of these three required items prior

to proposing a particular stewardship action. Because of the relationship of goals to objectives and relevant performance requirements, the adoption of one or more of the three required items cannot be proposed without the identification of each in a proposed stewardship action. The consideration of a stewardship action as an element of strategic guidance by the Board must be documented in a stewardship register as described in Exhibit I.

Paragraph (b) states that the public and government officials have many opportunities to review the activities of the Trust and may be asked to comment on a proposed stewardship action. If comments are requested and received within the dates specified, the Responsible Official must consider the comments before making an implementing decision. In keeping with the intent of the Trust to maintain open and collaborative working relationships, comments from the public or government officials may include a wide variety of media including, but not limited to, personal discussion, written text, photos, or electronic communication.

The procedures for amending and keeping the stewardship registers current are described in paragraph (c). The Trust staff responsible for any entry in a stewardship register must record their name and the date of entry to provide an accurate record. The Trust staff may prepare additional documents or electronic media to manage activities associated with one or more stewardship actions and other matters related to administration of the Preserve. These additional documents are intended to aid in the planning, execution, and general management of Trust activities.

Section 101.4 concludes with paragraph (d) that states that the Executive Director of the Trust is responsible for the overall review of agency NEPA compliance and preparation of any necessary environmental documents.

101.5 Evaluating a Stewardship Action. This section and the three that follow, sections 101.51 to 101.53, describe the procedures the Responsible Official must follow in considering the environmental effects of a proposed stewardship action. Section 101.5 in paragraphs (a) through (c) describes how the Responsible Official determines which environmental document is appropriate to aid in consideration of a proposed stewardship action. Paragraph (a) specifies that the Responsible Official must consider the environmental consequences of the proposed stewardship action and the preparation of an environmental document before making an implementing decision.

Paragraph (b) points out that the Responsible Official may, in the absence of extraordinary circumstances, make an implementing decision without the preparation of an environmental document for proposed stewardship actions that do not individually or cumulatively have a significant effect on the human environment.

Paragraph (c) states that if a stewardship action is not within a category of exclusion, the Responsible Official must prepare an environmental document (an environmental assessment, finding of no significant impact, notice of intent, or environmental impact statement) before an implementing decision can be made. The following sections, 101.51 to 101.53, describe the environmental impact statement, environmental assessment, and finding of no significant impact. Procedures for the preparation of a notice of intent to prepare an environmental impact statement are described in CEQ regulations at 40 CFR 1501.7.

101.51 Environmental Impact Statement. This section in paragraphs (a), (b), and (c) describes when the Responsible Official must prepare an environmental impact statement before making an implementing decision for a proposed stewardship action. In paragraph (a) the content and procedures for the preparation of an environmental impact statement are referenced to 40 CFR part 1502. An environmental impact statement must be prepared if the outcome of a proposed stewardship action is known or suspected to create a significant effect on the human environment or if it is otherwise desirable to prepare a statement. If the Responsible Official knows or suspects that implementation of a stewardship action may have a significant impact on the human environment, an environmental impact statement must be prepared.

Paragraph (b) states that an implementing decision for one or more stewardship actions described in an environmental impact statement must be documented in a record of decision. Except for special circumstances outlined in CEQ regulations at 40 CFR 1506.10(d), 1506.11, and 1502.9(c), a record of decision cannot be signed by the Responsible Official until 30 after the final environmental impact statement is made available to the public by the Environmental Protection Agency. The environmental impact statement and record of decision is appended by reference to one or more appropriate stewardship registers.

Paragraph (c) specifies when an environmental impact statement must be prepared. An environmental impact statement is normally required for the following implementing decisions:

(1) Adoption of one or more stewardship actions that guide or prescribe alternative uses of the Preserve upon which future stewardship actions will be based that may be significant as described in 40 CFR 1508.27;

(2) Construction and operation of a visitor center with associated public access to the Preserve; and

(3) Activities or groups of activities within one or more stewardship actions that are anticipated to create outcomes that may be significant as described in 40 CFR 1508.27. Examples are listed for (c)(1) and (3) in the proposed procedures. The implementing decisions described in (c)(1) are typically referred to as "planning-related decisions". These decisions, elements of strategic guidance (101.2), typically do not undertake specific actions on the ground, except for those that may modify one or more ongoing stewardship actions. Stewardship actions by the Board are critical choices in setting the stage, the expectations and bounds, for future stewardship actions. These decisions are intended to follow the portrayal of federal actions that guide or prescribe alternative uses of federal resources upon which future agency action will be based as described in CEQ regulations at 40 CFR 1508.18(b)(2). Many people regard these planning-related decisions and their potentially significant consequences as paramount factors in the effective stewardship of natural resources. It is appropriate to consider the effects of these decisions before their adoption by the Board.

101.52 Environmental Assessment. This section, in paragraphs (a) through (d), describes the format for preparation of an environmental assessment. Paragraph (e) lists the types of implementing decisions that are anticipated to have environmental assessments prepared to aid their consideration by the Responsible Official and the public.

Paragraph (a) states that an environmental assessment is prepared by the Responsible Official to aid in determining whether to prepare an environmental impact statement, to prepare a finding of no significant impact, to otherwise aid compliance with NEPA, or to facilitate preparation of an environmental impact statement when one is necessary. This is an

important aspect of NEPA procedures that is often overlooked or not well understood. The environmental assessment is a systematic means to review the consequences of a proposed stewardship action, consider reasonable alternatives to the proposal, and evaluate the overall consequences. Often, through public comment, dialog, and study of the proposal, substantial improvements can be identified.

Paragraph (b) describes a very useful method the Trust is proposing to reduce unwanted paperwork and improve overall effectiveness. The environmental assessment of one or more stewardship actions is combined with one or more relevant stewardship registers to create a concise document or set of documents that describe one or more stewardship actions and alternatives that meet the identified purpose and need. The environmental analysis of the proposed stewardship action and alternatives is appended to or integrated with one or more stewardship registers (40 CFR 1506.4).

The following paragraph, (c), describes a very important principle guiding the environmental review of a proposal. The purpose of the appended or integrated information is to study, develop, and describe appropriate alternatives to recommended courses of action in any proposal, which involves unresolved conflicts concerning alternative uses of available resources. The preceding sentence, similar to section 102 (E) of NEPA, is the basis for developing alternative means to meet the identified purpose and need for a proposed stewardship action. It is anticipated that the public will play a vital role in aiding the Trust in identifying reasonable alternatives to proposals. Paragraph (d) states that the combined document includes a brief discussion of the purpose and need for the proposal, of alternatives, of the environmental impacts of the proposal and alternatives, and a listing of agencies and persons consulted. It is anticipated that the integration of these four items within the stewardship register will provide a very efficient and effective means to accomplish and record appropriate environmental reviews.

Section 101.52 concludes with paragraph (e) that describes the types of implementing decisions that are normally accompanied by an environmental assessment.

101.53 Finding of No Significant Impact. This section of the proposed procedures in paragraphs (a) and (b) describes the preparation and documentation of a finding that, based on the information in an environmental assessment, the Responsible Official determines that the proposed stewardship action will not have a significant impact on the human environment. Paragraph (a) states. If, based on the information in the combined document (101.52(d)), the Responsible Official determines that the environmental consequences of the proposal will not have a significant effect on the human environment, the finding and reasons for it must be stated in a finding of no significant impact.

Paragraph (b) describes the content of a finding of no significant impact by stating that a finding of no significant impact is combined with the stewardship register and environmental assessment. The paragraph and section concludes with a statement that if such a finding cannot be made, or it is otherwise desirable, the Responsible Official may cancel, modify, or postpone the proposal while additional information is made available, or issue a notice of intent that an environmental impact statement will be prepared and considered.

Paragraphs (c) and (d) describe the content of a finding of no significant impact and procedures for public review.

The section concludes with paragraph (e) that is a requirement that the Responsible Official must use the factors of "significantly" as defined in 40 CFR 1508.27 for the determination that a proposal will have no significant effect on the human environment.

101.6 Categorical Exclusions. The categories of stewardship actions that may be excluded from the preparation of an environmental document are listed in this section.

101.7 Public Involvement. The procedures for engaging the public in the consideration of a proposed stewardship action are presented in paragraphs (a) through (e) of this section. Paragraph (a) states. Opportunities for the public to provide input and maintain a dialogue with the Trust regarding a proposed stewardship action may be triggered by a combination of notice through appropriate media, public meetings, targeted outreach, agency consultation, scoping, and public review of relevant documents.

Paragraph (b) states that the Trust will identify the appropriate stages during the consideration of a proposed stewardship action and for specific forms of public review and input to the Responsible Official. For stewardship actions involving natural and cultural resources on the Preserve, the Responsible Official will notify the public that the stewardship action is being proposed, and that a stewardship register is available for review. The Trust will take into account public input received at this stage of the proposal to help determine the appropriate goals, objectives, and performance requirements that will guide further development of the proposed stewardship action.

Paragraph (c) explains that the public's reaction to a proposed stewardship action will be critical in planning for the appropriate level of public involvement throughout the rest of the NEPA process. The public's reaction will also help determine the extent to which the Trust develops alternatives to the proposed action.

Paragraph (d) has the requirement that all proposed stewardship actions involving the lands, resources, and facilities of the Preserve will require authorization by the Board of Trustees at a public meeting, during which public comments will be considered and recorded.

The section concludes with paragraph (e) that states that the Trust will provide a reasonable time period for public review and comment upon the completion of an environmental assessment, unless the Responsible Official determines that:

(1) Emergency circumstances exist requiring immediate implementation of the proposed action; or

(2) Based on public input earlier in the process, the level of public interest does not warrant a comment period.

101.8 Making and Recording an Implementing Decision. This section of the proposed procedures contains three requirements in paragraphs (a), (b), and (c) regarding making and recording an implementing decision for a proposed stewardship action. The section begins with paragraph (a) that states the Responsible Official may make an implementing decision to authorize a stewardship action after completion of 101.5 and compliance with the listed conditions.

Paragraph (b) requires signature of the Responsible Official and date of the implementing decision.

Paragraph (c) has a provision for making minor corrections or adjustments to stewardship actions to improve efficiency, correct minor errors, or otherwise improve performance.

101.9 Monitoring Outcomes and Considering New Information. This section describes the steps necessary to ensure that new information is considered and, if relevant to on-going or planned stewardship actions, appropriately acted upon by the Responsible Official. Paragraph (a) requires that the Responsible Official

must evaluate each monitored outcome identified in the stewardship register. As information from monitoring is obtained and interpreted, conclusions are to be recorded in the appropriate stewardship register by the responsible Trust staff.

Paragraph (b) is a requirement to consider new information and the influence that information may have upon ongoing or completed stewardship actions.

101.10 Preparing and Approving the Comprehensive Management Program.

This is the final section of the proposed procedures. In paragraphs (a) to (c), this section describes the content, preparation, and approval of the comprehensive management program for the Preserve. The comprehensive management program is intended to provide an easy to use record of the management of the Preserve and a readily available reference for interested citizens. Paragraph (a) states that the comprehensive management program summarizes monitored outcomes, describes past and ongoing stewardship actions of the Preserve, and displays the strategic guidance for the Preserve adopted by the Board of Trustees. The comprehensive management program provides a basis for determining the cumulative effects of the management of the Preserve and provides convenient public communication of accomplishments and desired outcomes.

Paragraph (b) has the requirement that a comprehensive management program must be prepared by the Responsible Official two years after the Trust assumes management responsibility of the Preserve, thereafter, it must be reviewed and appropriately updated at least once every five years or when appropriate as determined by the Board of Trustees.

The section concludes in paragraph (c) with a requirement that upon completion by the Responsible Official, the comprehensive management program must be reviewed and approved by the Board of Trustees or returned to the Responsible Official for additional preparation.

Valles Caldera Trust—National Environmental Policy Act Procedures for the Valles Caldera National Preserve

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100 Authority and Purpose

100.1 Authority. The National Environmental Policy Act of 1969 (NEPA), Pub. L. 91–190, the Environmental Quality Improvement Act of 1970, as amended (42 U.S.C. 4371 *et seq.*), sec. 309 of the Clean Air Act, as amended (42 U.S.C. 7609), E.O. 11514, Mar. 5, 1970, as amended by E.O. 11991, May 24, 1977, CEQ regulations at 40 CFR Parts 1500 though 1508, and The Valles Caldera Preservation Act, Pub. L. 106–248.

100.2 Purpose. To implement the comprehensive program for the management of the lands, resources, and facilities of the Valles Caldera National Preserve and achieve the purposes of NEPA, it is necessary and appropriate to establish these procedures. It is the intent of the Trust and managers of the Preserve to:

(a) Integrate the principles and requirements of NEPA with the planning and decisionmaking processes of the Trust;

(b) Implement these procedures to make the NEPA process more useful to decisionmakers and citizens by eliminating unwanted paperwork and utilizing a wide variety of means to gain understanding of the human environment and natural resources of the Preserve and communicate this to the public;

(c) Ensure that environmental information is readily available in a variety of useful forms to decisionmakers and citizens before decisions are made, and ensure that environmental information is utilized to guide adaptive management during and after actions are taken; and

(d) Adopt these procedures in supplement to the regulations at 40 CFR parts 1500 through 1508, referred to as the CEQ regulations for implementing the procedural provisions of the NEPA.

101 Integration of NEPA With Planning and Decisionmaking of the Trust

101.1 Purposes and Principles.

(a) The findings of Congress (Public Law 106–248, Title I, section102) describe the unique character of the Valles Caldera. The purposes for management of the Preserve and the management authorities of the Valles Caldera Trust are described in Title I, section 105 and section 106 of Public Law 106–248. The comprehensive management of the lands, resources, and facilities of the Preserve is achieved through stewardship actions authorized by the Trust's Board of Trustees.

(b) Citizens play a vital role in the overall management, use, and enjoyment of the Preserve.

(c) Monitoring and evaluation of stewardship actions, research, and detailed studies provide the public and the Trust with the basis for adapting future stewardship actions to achieve the goals of the Trust and the requirements of NEPA.

(d) Stewardship of the Preserve addresses all programs of the Preserve with the recognition that the whole is greater than the sum of the parts. Management of the Preserve is guided by the following values of the Trust and vision adopted by Board of Trustees on December 13, 2001:

(1) We will administer the Preserve with the long view in mind, directing our efforts toward the benefit of future generations;

(2) Recognizing that the Preserve imparts a rich sense of place and qualities not to be found anywhere else, we commit ourselves to the protection of its ecological, cultural, and aesthetic integrity;

(3) We will strive to achieve a high level of integrity in our stewardship of the lands, programs, and other assets in our care. This includes adopting an ethic of financial thrift and discipline and exercising good business sense;

(4) We will exercise restraint in the implementation of all programs, basing them on sound science and adjusting them consistent with the principles of adaptive management;

(5) Recognizing the unique heritage of northern New Mexico's traditional cultures, we will be a good neighbor to surrounding communities, striving to avoid negative impacts from Preserve activities and to generate positive impacts;

(6) Recognizing the religious significance of the Preserve to Native Americans, the Trust bears a special responsibility to accommodate the religious practices of nearby tribes and pueblos, and to protect sites of special significance;

(7) Recognizing the importance of clear and open communication, we commit ourselves to maintaining a productive dialogue with those who would advance the purposes of the

Preserve and, where appropriate, to developing partnerships with them;

(8) Recognizing that the Preserve is part of a larger ecological whole, we will cooperate with adjacent landowners and managers to achieve a healthy regional ecosystem;

(9) Recognizing the great potential of the Preserve for learning and inspiration, we will strive to integrate opportunities for research, reflection and education in the programs of the Preserve; and

(10) In providing opportunities to the public we will emphasize quality of experience over quantity of experiences. In so doing, while we reserve the right to limit participation or to maximize revenue in certain instances, we commit ourselves to providing fair and affordable access for all permitted activities.

101.2 Terminology.

Comprehensive management program. "Comprehensive management program" means the document or set of documents describing the comprehensive program for the management of the lands, resources, and facilities of the Preserve that includes all stewardship registers, a summary of monitored outcomes, and the strategic guidance adopted by the Board of Trustees.

Environmental documents. "Environmental documents" include the documents specified in 40 CFR 1508.9 (environmental assessment), 1508.11 (environmental impact statement), 1508.13 (finding of no significant impact), and 1508.22 (notice of intent).

Extraordinary circumstances. "Extraordinary circumstances" means conditions associated with a stewardship action that is normally categorically excluded and recognized as likely to create one or more outcomes that may significantly affect the human environment.

Goal. "Goal" means a desirable condition of the Preserve sought by the Responsible Official and/or a desirable condition as described in Public Law 106–248 or within the values and vision adopted by the Trust (101.1(d)).

Finding of no significant impact. "Finding of no significant impact" means a document by a Federal agency briefly presenting the reasons why an action, not otherwise excluded (40 CFR 1508.4), will not have a significant effect on the human environment and for which an environmental impact statement therefore will not be prepared. It shall include the environmental assessment or a summary of it and shall note any other environmental documents related to it (40 CFR 1501.7(a)(5)). If the assessment is included, the finding need not repeat any of the discussion in the assessment but may incorporate it by reference (40 CFR 1508.13).

Implementing decision. "Implementing decision" means the authorization by the Responsible Official to implement or adopt one or more stewardship actions.

Monitored outcome. "Monitored outcome" means the short-, mid-, or long-term outcome selected for systematic evaluation.

Objective. "Objective" means the desired outcome that can be meaningfully evaluated by location and timing within the Preserve.

Outcome. "Outcome" means the result or consequence of a stewardship action that can be meaningfully evaluated by location and time of occurrence. For purposes of these procedures, this term has the same meaning as impact or effect. For convenience in communication, "outcomes" may be beneficial or detrimental, and are grouped from their date of origin considering their anticipated duration as: short-term, anticipated to occur over 0 to 3 years; mid-term, anticipated to occur over 3 to 10 years; and long-term, anticipated to occur for 10 years or longer.

Performance requirement. "Performance requirement" means the limitation placed on the implementation of a stewardship action necessary for compliance with applicable laws, regulations, standards, mitigating measures, or generally accepted practices.

Purpose and need. "Purpose and need" means a concise explanation why a stewardship action is being proposed.

Responsible Official. "Responsible Official" means the official of the Trust with authority delegated by the Board of Trustees to make an implementing decision and, in the absence of delegation, the Chair of the Board of Trustees.

Stewardship action. "Stewardship action" means:

(a) An activity or group of activities associated with the Preserve consisting of at least one goal, objective, and performance requirement proposed or implemented by the Responsible Official; or

(b) An element of strategic guidance for the Preserve consisting of at least one goal, objective, and performance requirement proposed or adopted by the Board of Trustees.

Stewardship register. "Stewardship register" means a concise document available to the public and readily amended and/or appended over time depicting the location, development, implementation, and monitoring of a stewardship action.

Strategic guidance. "Strategic guidance" means adoption by the Board of Trustees of one or more of the following elements:

(a) One or more goals for all or a portion of the Preserve;

(b) Direction to consider one or more stewardship actions or an administrative matter related to the operation of the Preserve; or

(c) One or more stewardship actions.

Summary of monitored outcomes. "Summary of monitored outcomes" means a concise account of the systematic review of monitored outcomes based on interpretive information from, but not limited to, observations, studies, public comment, research investigations, natural resources data or information summaries, and other sources to provide the technical and scientific basis for considering the cumulative effects of the past, present, and reasonably future actions of the Trust.

101.3 Overall Procedures.

(a) The Trust achieves comprehensive management of the Preserve by adopting strategic guidance and selecting and implementing appropriate stewardship actions. It is the intent of the Trust to maintain open and collaborative working relationships among all interested and affected citizens, Tribal governments, federal and state agencies, and others during the consideration, implementation, and monitoring of all stewardship actions. Information regarding stewardship actions is recorded within stewardship registers that are available to the public in accordance with applicable law.

(b) The Responsible Official, as authorized by the Board of Trustees, may propose a stewardship action only if it is accompanied by a clear statement of its purpose and need.

(c) Based on the known or suspected outcomes of a stewardship action, or for other reasons, the Responsible Official may prepare an environmental document to improve understanding and to assist in making an implementing decision. The outcomes of implemented stewardship actions are monitored to aid future choices, consistent with the principles of adaptive management.

(d) The Responsible Official must prepare a summary of monitored outcomes at least once every five years beginning on August 2, 2002. The summary of monitored outcomes provides the technical and scientific basis for the comprehensive management program of the Preserve.

(e) The on-going review of monitored outcomes, public dialog, and the interpretation of evolving natural and social environments aids the Trust and others in the consideration of the purpose and need for necessary and appropriate stewardship actions within the Preserve. The overall procedures are intended to efficiently and effectively achieve the goals of the Trust and NEPA and eliminate unnecessary or redundant paperwork.

101.4 Proposing a Stewardship Action and Following Its Progress.

(a) When a stewardship action is proposed and its purpose and need is described by the Responsible Official and authorized for continued consideration by the Board of Trustees, the stewardship register (Exhibit I) will be made available to the public through appropriate media as soon as practicable and throughout the process, leading either to termination of the proposal or to an implementing decision. The stewardship register will also, as relevant, contain information regarding completion of the stewardship action and monitoring of one or more outcomes.

(b) The public and government officials are provided many opportunities to review the activities of the Trust and may be requested by the Responsible Official to comment on a proposed stewardship action, its purpose and need, and/or anticipated outcomes. If comments are requested and received within the dates specified, the Responsible Official must consider the comments before making an implementing decision.

(c) As information in the stewardship register is amended and/or appended, the date and nature of the change to the stewardship register and name of the person transcribing the amended or appended information must be recorded to provide an accurate record. The Trust may prepare and use documents or appropriate electronic media depicting administrative operations to aid the planning, execution, and record keeping of stewardship actions or for other purposes.

(d) To further the purposes of the Trust and NEPA, the Executive Director of the Trust is responsible for overall review of agency NEPA compliance and preparation of any necessary environmental documents.

101.5 Evaluating a Stewardship Action.

(a) To aid in the understanding of the purpose and need and/or the anticipated outcome of a pending stewardship action, the Responsible Official must consider the environmental consequences of the stewardship action and the preparation of an environmental document before making an implementing decision.

(b) The Responsible Official, in the absence of extraordinary circumstances, may make an implementing decision without the preparation of an environmental document for those stewardship actions that do not individually or cumulatively have a significant effect on the human environment and which have been found to have no such effect.

(c) If a stewardship action is not within a categorical exclusion listed in 101.6, an environmental document must be prepared and considered before the Responsible Official can make an implementing decision.

101.51 Environmental Impact Statement.

(a) The Responsible Official must prepare and consider an environmental impact statement as described in 40 CFR part 1502 if the outcome of a proposed stewardship action may create a significant impact on the human environment or it is otherwise desirable.

(b) An implementing decision for one or more stewardship actions under review in an environmental impact statement must be documented in a record of decision. Except for special circumstances described in CEQ regulations at 40 CFR 1506.10(d), 1506.11, and 1502.9(c), a record of decision cannot be signed by the Responsible Official until 30 days after the final environmental impact statement is made available to the public by the Environmental Protection Agency. The final environmental impact statement and record of decision, if completed, is appended by reference to one or more appropriate stewardship registers.

(c) An environmental impact statement is normally required for the following implementing decisions:

(1) Adoption of one or more stewardship actions that guide or prescribe alternative uses of the Preserve upon which future stewardship actions will be based that may be significant as described in 40 CFR 1508.27. Examples of these implementing decisions include, but are not limited to, the adoption of goals, objectives, and performance requirements by the Board of Trustees for programs of:

(A) Long-term grazing for livestock over most or all of the Preserve;

(B) Long-term general public access and recreation over most or all of the Preserve; and

(C) Long-term active management of forests and forest-related products over most or all of the forested land within the Preserve.

(2) Construction and operation of a visitor center with associated public access to the Preserve; and

(3) Activities or groups of activities within one or more stewardship actions that are anticipated to create outcomes that may be significant as described in 40 CFR 1508.27. Examples include, but are not limited to, an implementing decision by the Responsible Official for activities and groups of activities associated with the implementation of:

(A) Long-term grazing for livestock over most or all of the Preserve;

(B) Long-term general public access and recreation over most or all of the Preserve; and

(C) Long-term active management of forests and forest-related products over most or all of the forested land within the Preserve.

101.52 Environmental Assessment.

(a) An environmental assessment is prepared by the Responsible Official to aid in determining whether to prepare an environmental impact statement, to prepare a finding of no significant impact, to otherwise aid compliance with NEPA, or to facilitate preparation of an environmental impact statement when one is necessary.

(b) The environmental assessment of one or more stewardship actions is combined with one or more relevant stewardship registers to create a concise document or set of documents that describe one or more stewardship actions and alternatives that meet the identified purpose and need. The environmental analysis of the proposed stewardship action and alternatives is appended to or integrated with one or more stewardship registers (40 CFR 1506.4).

(c) The purpose of the appended or integrated information is to study, develop, and describe appropriate alternatives to recommended courses of action in any proposal, which involves unresolved conflicts concerning alternative uses of available resources.

(d) The combined document includes a brief discussion of the purpose and need for the proposal, of alternatives, of the environmental impacts of the proposal and alternatives, and a listing of agencies and persons consulted.

(e) The following stewardship actions within the Preserve and authorized by the Responsible Official in an implementing decision are normally accompanied by an environmental assessment:

(1) Establishing or substantively revising a program or policy for the permitting of seasonal or short-term backcountry recreation or special use

actions which could potentially result in greater than incidental ground disturbing activities;

(2) Establishing an integrated program of scientific investigations utilizing land, resources, and facilities of the Preserve where the effects of performing the investigations within the Preserve are anticipated to be short-term and minor in scope;

(3) Livestock management actions utilizing land, resources, and facilities of the Preserve, defined in location and time, the effects of which are anticipated to be short-term and minor in scope.

(4) Forest treatments, which may include the removal of trees or managed fire, designed to establish or enhance stand characteristic trends toward or into an historic range of variability affecting a clearly defined segment of the forested land or a specified forest type within the Preserve; and

(5) Reconstruction, repair, and use of roadways and trails, and construction of minor trail segments within the Preserve which are not anticipated to significantly alter the magnitude and frequency of anticipated use.

101.53 Finding of No Significant Impact.

(a) If, based on the information in the combined document (101.52(d)), the Responsible Official determines that the environmental consequences of the proposal will not have a significant effect on the human environment, the finding and reasons for it must be stated in a finding of no significant impact (FONSI).

(b) A FONSI is combined with the stewardship register and environmental assessment. If such a finding cannot be made, or it is otherwise desirable, the Responsible Official may cancel, modify, or postpone the proposal while additional information is made available, or issue a notice of intent that an environmental impact statement will be prepared and considered.

(c) The FONSI itself need not be detailed, but must succinctly state the reason for deciding that the action will have no significant environmental effects, and, if relevant, must show which factors were weighted most heavily in the determination. In addition to this statement, the FONSI must include or attach and incorporate by reference, the environmental assessment.

(d) The Responsible Official may seek public review of a FONSI before making an implementing decision. In some circumstances, the Responsible Official must make the FONSI available for public review (including state and area-wide clearinghouses) for 30 days before the Responsible Official makes a final determination whether to prepare an environmental impact statement and before the action may begin. The circumstances are:

(1) The proposed action is, or is closely similar to, one, which normally requires the preparation of an environmental impact statement under the Trust's procedures; or

(2) The nature of the proposed action is one without precedent.

(e) The Responsible Official must use the factors of "significantly" as described in 40 CFR 1508.27 for the determination that a proposal will have no significant impact on the human environment.

101.6 Categorical Exclusions.

The Responsible Official may undertake the following stewardship actions, in the absence of extraordinary circumstances, without preparation of an environmental document:

(a) Policy development, planning and implementation which relate to routine activities, such as personnel, organizational changes, record management, internal communications, financial management, or similar administrative functions;

(b) Orders issued to provide short-term resource protection or to protect public health and safety;

(c) Location and maintenance of landline boundaries and geographic sites;

(d) Routine repair and maintenance of facilities and administrative sites including, but not limited to, buildings, fences, water systems, roads, trails, signs, and ancillary facilities associated with the administration and management of the Preserve, or the installation, routine repair and maintenance of a removable communication facility of not more than 250 square feet, the primary purpose of which is to facilitate communication associated with the administration and management of the Preserve;

(e) Use and care for horses or other stock for administrative purposes that are clearly limited in context and intensity;

(f) Repair and maintenance of recreation sites;

(g) Reconstruction or maintenance of utilities within a designated corridor;

(h) Inventories, research activities, and studies, such as resource inventories and routine data collection when such actions are clearly limited in context and intensity;

(i) Implementation or modification of minor management practices to improve range conditions and/or animal distribution;

(j) Treatment of forest structure and fuel conditions for the purpose of reducing the hazard of large, stand-replacing crown fires in areas where such high severity fires are outside an historic range of variability. Projects under this category are limited to an aggregate area of no more than 640 acres in a calendar year, and may involve prescribed fire and/or the cutting of live trees, the diameter of which will be:

(1) No larger than nine inches diameter at breast height; or

(2) Determined by publicly available site-specific size class information used to define an appropriate diameter and basal area distribution of trees to be removed;

(k) Removal of brush or hazard trees near roads or buildings, where such action is necessary to protect historic structures or the health and safety of the public and/or employees, and when such action is clearly limited in context and intensity; and

(l) Permitting of seasonal or short-term backcountry recreation or special use actions that do not result in more than incidental ground disturbing activities.

101.7 Public Involvement.

(a) Opportunities for the public to provide input and maintain a dialogue with the Trust regarding a proposed stewardship action may be triggered by a combination of notice through appropriate media, public meetings, targeted outreach, agency consultation, scoping, and public review of relevant documents.

(b) In the preparation of a stewardship register, the Trust will identify the appropriate stages during the process leading up to a decision, and if the decision is to go forward with an action, the implementation of that decision, where specific forms of public review and input will be most useful and informative to the Responsible Official.

(1) For stewardship actions involving natural and cultural resources on the Preserve, the Responsible Official will notify the public that the stewardship action is being proposed, and that a stewardship register is available for review.

(2) The Trust will take into account public input received at this stage of the proposal to help determine the appropriate goals, objectives, and performance requirements that will guide further development of the proposed stewardship action.

(c) The public's reaction to a proposed stewardship action will be critical in planning for the appropriate level of public involvement throughout the rest of the NEPA process. The public's reaction will also help determine the

extent to which the Trust develops alternatives to the proposed action.

(d) All proposed stewardship actions involving the management of the lands, resources, and facilities of the Preserve will require authorization by the Board of Trustees at a public meeting, during which public comments will be considered and recorded.

(e) The Trust will provide a reasonable time period for public review and comment upon the completion of an environmental assessment, unless the Responsible Official determines that:

(1) Emergency circumstances exist requiring immediate implementation of the proposed action; or

(2) Based on public input earlier in the process, the level of public interest does not warrant a comment period.

101.8 Making and Recording an Implementing Decision.

(a) The Responsible Official may make an implementing decision to authorize a stewardship action after completion of 101.5, if and only if:

(1) The available information regarding the purpose and need for the proposal and the anticipated outcomes are suitable; and

(2) At least one monitored outcome is identified in the stewardship register.

(b) The implementing decision must be recorded in the stewardship register by signature of the Responsible Official and dated.

(c) After an implementing decision for one or more stewardship actions is made, minor corrections or adjustments to the stewardship action to improve efficiency, correct minor errors, or otherwise improve performance may be made by the responsible Trust staff, if and only if:

(1) The corrections or adjustments do not significantly alter the nature or extent of the stewardship action or its goals, objectives, or performance requirements;

(2) The anticipated consequences of the stewardship action remain essentially the same as those described in the relevant environmental documents; and

(3) Such minor corrections or adjustments are recorded in the appropriate stewardship register as described in 101.4(c).

101.9 Monitoring Outcomes and Considering New Information.

(a) The Responsible Official must evaluate each monitored outcome identified in the stewardship register. As information from monitoring is obtained and interpreted, conclusions are to be recorded in the appropriate stewardship register by the responsible Trust staff.

(b) If, based on monitoring conclusions or other new information available to the Responsible Official, the observed outcomes of stewardship actions described in one or more stewardship registers as amended and/or appended differ significantly from those anticipated or if new information has a meaningful bearing on the anticipated consequences of one or more stewardship actions, the Responsible Official must consider such information and:

(1) Consider the preparation or supplementation of an environmental document as described in 101.5 and CEQ regulations;

(2) If appropriate, propose a stewardship action and/or continue, modify, or terminate one or more stewardship actions as described in 101.4; and

(3) Appropriately, amend and/or append the stewardship register to incorporate the new information and/or change to the stewardship action or description of consequences in the relevant appended environmental document.

101.10 Preparing and Approving the Comprehensive Management Program.

(a) The comprehensive management program summarizes monitored outcomes, describes past and ongoing stewardship actions of the Preserve, and displays the strategic guidance for the Preserve adopted by the Board of Trustees. The comprehensive management program provides a basis for determining the cumulative effects of the management of the Preserve and provides convenient public communication of accomplishments and desired outcomes.

(b) A comprehensive management program must be prepared by the Responsible Official two years after the Trust assumes management responsibility of the Preserve, thereafter, it must be reviewed and appropriately updated at least once every five years or when appropriate as determined by the Board of Trustees.

(c) Upon completion by the Responsible Official, the comprehensive management program must be reviewed and approved by the Board of Trustees or returned to the Responsible Official for additional preparation.

Exhibit I— Stewardship Register

Descriptive name of Stewardship Action:

File Number:

Target Start Date:

Actual Start Date:

Target Completion Date:

Actual Completion Date:

Location: Identify the location of the stewardship action in the Preserve in a readily accessible and understandable form.

Purpose and Need: Concisely explain why the stewardship action is proposed.

Description: Describe the stewardship action and, through appropriate media, describe the related physical, biological, social, and/or economic environment.

Goal: Identify the goal(s) sought by adoption or implementation of the stewardship action.

Objective: Describe the desired outcome of the stewardship action in measurable terms including, but not limited to, anticipated quantity, location, and timing.

Performance Requirements: List the performance requirements needed to guide or limit resource use in accomplishment of the objective. A checklist may be used.

Append Environmental Document, if applicable.

Agencies and Persons Consulted:

Signature of Responsible Official

Date Authorized

Monitored Outcomes: List one or more outcomes that will be meaningfully evaluated after implementation of the stewardship action. Describe the nature, size, and location of each monitored outcome anticipated to occur in the short-, mid-, and/or long-term.

Evaluation of Monitoring Information: As information from monitoring is evaluated, describe conclusions and any new information as guided by 101.7(b).

Dated: February 5, 2003.

William deBuys,

Chairman, Valles Caldera Trust.

[FR Doc. 03–3325 Filed 2–10–03; 8:45 am]

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Federal Register

Tuesday,
February 11, 2003

Part II

Department of Veterans Affairs

38 CFR Parts 3 and 4
Schedule for Rating Disabilities; the Musculoskeletal System; Proposed Rule

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Parts 3 and 4

RIN 2900–AE91

Schedule for Rating Disabilities; the Musculoskeletal System

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: The Department of Veterans Affairs (VA) is proposing to amend that portion of its Schedule for Rating Disabilities that addresses musculoskeletal conditions. The intended effect is to update this portion of the rating schedule to ensure that it uses current medical terminology and unambiguous criteria, and that it reflects medical advances that have occurred since the last review. We also propose to make nonsubstantive editorial changes throughout this portion of the Schedule.

DATES: Comments must be received on or before April 14, 2003.

ADDRESSES: Mail or hand-deliver written comments to: Director, Office of Regulatory Law (02D), Department of Veterans Affairs, 810 Vermont Ave., NW., Room 1154, Washington, DC 20420; or fax comments to (202) 273–9289; or e-mail comments to *OGCRegulations@mail.va.gov*. Comments should indicate that they are submitted in response to "RIN 2900–AE91." All comments received will be available for public inspection in the Office of Regulatory Law, Room 1158, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays).

FOR FURTHER INFORMATION CONTACT: Caroll McBrine, M.D., Consultant, Regulations Staff (211A), Compensation and Pension Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Ave., NW., Washington, DC 20420, (202) 273–7210.

SUPPLEMENTARY INFORMATION: As part of its first comprehensive review of the rating schedule since 1945, VA published in the **Federal Register** of December 28, 1990 (55 FR 53315), an advance notice of proposed rulemaking advising the public that it was preparing to revise and update the portion of VA's Schedule for Rating Disabilities (the rating schedule) that addresses the musculoskeletal system. On June 3, 1997, we published in the **Federal Register** a final rule (62 FR 303235) revising § 4.73, which addresses muscle injuries. This proposed rule addresses the remainder of the musculoskeletal system, § 4.71a, which addresses primarily bone and joint disabilities. In the document revising § 4.73, we stated our intent to designate the remainder of the musculoskeletal system as the orthopedic system. However, because some of the provisions of § 4.71a also apply to muscle injuries, and some of the conditions are rheumatologic, rather than orthopedic, conditions, we now propose to retain the current designation, musculoskeletal system.

In response to the advance notice of proposed rulemaking, we received two comments, one from the American Legion and one from a physician in the Department of Orthopedics at the University of Washington.

One commenter recommended that this revision include revisions of the rating and examination guidelines in 38 CFR 4.40 to 4.70 as they relate to musculoskeletal disabilities. We are proposing to make many changes to these sections, and they are discussed in detail below.

The same commenter stated that the current rating schedule does not reflect the use of new diagnostic methods, such as computed tomography (CT) and magnetic resonance imaging (MRI) scans, or reflect new operative procedures for joint replacements. We agree that the schedule is outdated in these areas and propose changes to update the schedule for many disabilities. For example, we propose to accept not only X-ray findings, but also reports from other imaging procedures (such as MRI or CT scans), as evidence of arthritis and other musculoskeletal conditions.

The commenter also recommended that there be a review of the Veterans Health Administration's "Physician's Guide for Disability Evaluation Examinations" (a manual no longer in use that gave guidance to examining physicians who do compensation and pension examinations). The commenter felt that medical advances present an increased need for the examiner to provide specific findings and detailed measurement and assessment of disabling conditions. This comment is no longer pertinent because the former "Physician's Guide" is no longer in existence. (A new Clinician's Guide or handbook for examiners is, however, under development.) In place of the former Physician's Guide, VA developed a series of disability examination worksheets for various individual conditions or groups of conditions to assure that examiners provide all information necessary for rating. These worksheets, which are periodically updated as medical advances or rating needs arise, are now in use.

A second commenter provided a set of guidelines for evaluating spine disabilities. We are revising certain parts of the current musculoskeletal portion of the rating schedule separately. These include ankylosis and limitation of motion of the digits of the hand, disabilities of the spine, and intervertebral disc syndrome (published as a proposed rule in the **Federal Register** of February 24, 1997 (62 FR 8204)). Since these disabilities are not included in this proposed rule, this comment concerning the evaluation of spine disabilities will be addressed in the separate proposed rule providing criteria for evaluating disabilities of the spine.

In addition to publishing an advance notice, we also hired an outside contract consultant to recommend changes to the evaluation criteria to ensure that the schedule uses current medical terminology and unambiguous criteria, and that it reflects medical advances that have occurred since the last review. The consultant convened a panel of non-VA specialists to review the portion of the rating schedule dealing with the musculoskeletal system in order to formulate recommendations. We are proposing to adopt many, although not all, of the recommendations the contractor submitted. In some cases, evaluations based on the revised criteria will be lower, in some cases, higher, and, in some cases, unchanged.

Sections 4.40 through 4.46, 4.57 through 4.59, 4.61 through 4.64, and .66 through 4.71 in subpart B of 38 CFR part 4 deal with a variety of issues, including circulatory disturbances, osteomyelitis, loss of use of both buttocks, painful motion, foot deformities, dominant hand, and examination and assessment of the bones and joints. Much of the information in these sections was originally included in rating schedules of 1925, 1933 or 1945 to provide background medical information that was not otherwise available. We propose to consolidate and reorganize these sections and to delete the parts that are simply statements of medical fact rather than substantive rules of general applicability, statements of general policy, or interpretations of general applicability that raters must follow. A regulation is an agency statement of general applicability and future effect, which the agency intends to have the force and effect of law, that is designed to implement, interpret, or prescribe law or policy, or to describe the procedure or practice requirements of an agency (5 U.S.C. 551(4)). General medical information that is available in standard textbooks and other material that neither prescribes VA policy nor

establishes procedures a rater must follow fall outside of those parameters, and are therefore not appropriate in a regulation. We propose to retain, with editorial and sometimes substantive changes, §§ 4.40, 4.42, 4.45, 4.46, 4.59, 4.67, 4.68, 4.69, 4.71, and 4.71a. We propose to delete §§ 4.41, 4.43, 4.44, 4.57, 4.58, 4.61, 4.62, 4.63, 4.64, 4.66, and 4.70. The proposed changes are explained in detail below.

In addition, we are proposing to make a number of editorial changes throughout this portion of the rating schedule to condense and clarify the schedule in the interests of efficiency, ease of use, and elimination of ambiguity.

Introductory §§ 4.40 through 4.45 are directed in part at examiners and in part at raters. Much of the material is medical information, some of it outdated, about musculoskeletal diseases. We propose to remove the nonregulatory material, that is, material that does not prescribe VA policy or establish procedures a rater must follow, and the material directed toward examiners because this material is not appropriate in a regulation.

Section 4.40, currently titled "Functional loss," describes disability of the musculoskeletal system as primarily the inability, due to damage or infection in parts of the system, to perform the normal working movements of the body with normal excursion, strength, speed, coordination and endurance. It states that it is essential that the examination on which ratings are based adequately portray the anatomical damage and functional loss with respect to all of these elements. It also states that weakness is as important as limitation of motion, and that a part that becomes painful on use must be regarded as seriously disabled. The intent of this section appears to be to provide a general description of musculoskeletal disability and guidelines to examination rather than a specific method for evaluating these functions in musculoskeletal disabilities. As discussed above, there are disability examination worksheets that provide examiners with detailed requirements for musculoskeletal examinations. The current criteria for musculoskeletal diseases do not always call for a rating commensurate with "serious" disability when there is pain on use of a joint. (*See*, for example, fibromyalgia, diagnostic code 5025 in § 4.71a, a condition that, by definition, includes widespread musculoskeletal pain, and flatfoot, diagnostic code 5276.) Pain is, in fact, almost the hallmark of musculoskeletal disease. We therefore propose to revise § 4.59, to be titled "Evaluation of pain in musculoskeletal conditions," and to provide criteria for the evaluation of pain, if appropriate, when pain is not taken into account in the evaluation criteria for a particular condition. Although pain is a subjective complaint, the more severe it is, the more likely there are to be correlative physical or laboratory findings, and this fact is the basis of the criteria in § 4.59.

Of the other characteristics of musculoskeletal disability listed in § 4.40—impairment of normal excursion, strength, speed, endurance, and coordination—speed and endurance are not readily measurable in the setting of a medical examination, and there is no method of evaluating them consistently. They are therefore less useful than limitation of motion as measures of the extent of disability. Coordination is an issue in only a limited number of musculoskeletal conditions, being seen more often in neurological conditions, and is unlikely to occur due to musculoskeletal disorders in the absence of other findings, such as weakness, atrophy, or limitation of motion. In summary, the information in § 4.40 does not prescribe VA policy or establish clear procedures a rater must follow. It is therefore not appropriate in a regulation, and we propose to delete it.

We propose to retitle § 4.40 "Evaluation of musculoskeletal disabilities" and to state that, except for application of the pain scale in § 4.59 when appropriate, the evaluation criteria provided under the diagnostic codes are to be the sole basis of evaluation. Factors such as fatigability and impairment of coordination, speed, and endurance, are common in musculoskeletal disabilities, and § 4.40 would state that disability due to those functions is encompassed by the evaluation criteria that are provided. An evaluation based on one of these factors over and above what is called for under the evaluation criteria will therefore not be assigned. This change would eliminate the need to assess functions that cannot be consistently or readily assessed and would therefore promote consistency of evaluations in musculoskeletal conditions. To promote consistency in assessing muscle strength, we propose to address the evaluation of muscle strength in § 4.46.

Because § 4.41, "History of injury," is a restatement of parts of §§ 4.1, 4.2, 4.6, and 4.9, we propose to delete it.

Section 4.42, "Complete medical examination of injury cases," discusses the importance of a complete initial examination, rephrasing basic rating principles that are stated in 38 CFR 4.1 and 4.2 and reflected in the examination worksheets. This material is therefore redundant, and we propose to delete it.

We propose to retitle § 4.42 "Examination of joints". It would state that the range of motion of a joint will be determined by measurement with a goniometer and indicate that, for VA rating purposes, the normal ranges of motion for major joints and the spine are provided on plates in § 4.71a.

Current § 4.43, "Osteomyelitis," outlines the principles of evaluating osteomyelitis. It states that osteomyelitis will be regarded as a continuously disabling process and will be entitled to a permanent rating unless the affected part is removed by amputation. This information is not consistent with modern medical knowledge; osteomyelitis can often be treated and cured without resort to amputation, and continuous disability is not always the aftermath. We are proposing revised guidelines for the evaluation of osteomyelitis under diagnostic code 5000 that we believe are clear and comprehensive enough to require no additional guidelines. The proposed criteria are also based on contemporary medical knowledge. We therefore propose to delete this section.

Current § 4.44, "The bones," states that osseous abnormalities due to injury or disease should be depicted by study and observation of all available data from time of injury, through treatment, convalescence, progress of recovery, and permanent residuals. It also discusses the effect of angulation and deformity of bone, including the effect on other joints, which are medical facts or judgment. Sections 4.2 and 4.6 regulate interpretation of examination reports and the evaluation of evidence which § 4.44 attempts to restate. Since § 4.44 does not prescribe VA policy or establish procedures a rater must follow, is redundant with §§ 4.2 and 4.6, and is not based on current medical knowledge, we propose to delete it.

Section 4.45, "The joints," lists some of the functional effects of joint disability, including whether there is less movement than normal, more movement than normal, weakened movement, excess fatigability, incoordination, impaired ability to execute skilled movements smoothly, pain on movement, swelling, deformity, or atrophy of disuse, but does not address how to evaluate them. Since modern information about joint disability is available from numerous medical sources, and this portion of the section does not prescribe VA policy or establish procedures a rater must follow, we propose to delete this material. We propose to provide clear criteria for

evaluating specific conditions affecting joints under specific diagnostic codes and in § 4.59, as discussed later in this document.

Section 4.45 also defines major and minor joints and their rating significance. It states that for the purpose of rating disability from arthritis, the shoulder, elbow, wrist, hip, knee, and ankle are considered major joints, and that multiple involvements of the interphalangeal, metacarpal, and carpal joints of the upper extremities, the interphalangeal, metatarsal and tarsal joints of the lower extremities, the cervical vertebrae, the dorsal vertebrae, and the lumbar vertebrae, are considered groups of minor joints, ratable on a parity with major joints. It also states that the lumbosacral articulation and both sacroiliac joints are considered to be a group of minor joints, ratable on disturbance of lumbar spine functions.

Since this information is necessary for rating, we propose to retain regulatory definitions of major and minor joints for purposes of evaluating arthritis, but to revise them for clarity. We propose to retitle this section "Major and Minor Joints for Arthritis Evaluations," which better describes the content. We propose to include two paragraphs, with paragraph (a) (Major joints) stating that for purposes of rating disability from arthritis, each shoulder, elbow, wrist, hip, knee and ankle joint is a major joint, and all other joints are minor joints. Paragraph (b) (Groups of minor joints) would state that a group of minor joints with arthritis will be rated as a major joint. A group of minor joints is defined as any combination of three or more interphalangeal or metacarpo-phalangeal joints of a single hand, any combination of three or more interphalangeal, metatarso-phalangeal, tarso-metatarsal, or tarso-tarsal (or intertarsal) joints of a single foot; any combination of two or more cervical vertebral joints; any combination of two or more thoracolumbar vertebral joints; or a combination of the lumbosacral joint and both sacroiliac joints. This revision would resolve ambiguity in the current language by clearly indicating, for example, that the combination of minor joints in different parts of the body, such as two interphalangeal joints of one hand and a single cervical or thoracolumbar intervertebral joint, does not constitute a major joint and that the combination of one interphalangeal, one metatarso-phalangeal, and one intertarsal joint of a single foot would constitute a group of minor joints. These issues have been a source of confusion in applying the current schedule. This revision would also remove the vague term "multiple involvements" and specify the number of minor joints in various areas that would constitute a group of minor joints. The revision would also name specific joints, rather than naming bones, in order to eliminate confusion about determining, for example, whether or not the term "carpal joints" includes the radiocarpal joint (between the radius and the carpal bones) the carpo-carpal (or intercarpal) joints (between two or more carpal bones), and the carpo-metacarpal joints (between the carpals and the metacarpals). Since all of these joints are involved in wrist motion, we propose to consider them all part of the wrist joint, and therefore part of a major joint.

Section 4.46, "Accurate Measurement," points out the importance of accurate measurements of the length of stumps, excursion of joints, and dimensions and locations of scars with respect to landmarks, in the disability examination process. It also states that a goniometer is indispensable in measuring limitation of motion. The importance of an adequate examination, which this section attempts to set forth, is already stated in § 4.2, "Interpretation of examination reports". Disability examination worksheets for examiners give detailed guidelines for examining and measuring in the musculoskeletal system. We propose to put the requirement for use of a goniometer to measure joint range of motion in revised § 4.42. We therefore propose to delete the contents of § 4.46 because the material is redundant.

We propose to retitle § 4.46, "Evaluation of muscle strength," and to state that, for VA rating purposes, muscle strength or weakness will be evaluated using a standard muscle grading table that is provided in paragraph (a). This will assure that assessment of muscle strength will be consistent and based on the system recommended by the consultants as the system used most widely by orthopedic surgeons, neurologists, physiatrists, and physical therapists. This system uses six levels of muscle grading: Absent (0): No palpable or visible muscle contraction; Trace (1): Palpable or visible muscle contraction, but muscle produces no movement, even with gravity eliminated; Poor strength (2): Muscle produces movement only when gravity is eliminated; Fair strength (3): Muscle produces movement against gravity but not against any added resistance; Good strength (4): Muscle produces movement against some, but no more than moderate, resistance; and Normal strength (5): Muscle produces movement against full or "normal" resistance. This system is derived from "Aids to the Investigation of the Peripheral Nervous System," published by the Medical Research Council of Great Britain in 1945. The consultants pointed out that, although it is largely subjective, it has some objectivity in measuring strength by using gravity resistance in the assessment, and the term "normal" resistance is generally understood in medical usage. This table can be used for assessing both muscle and (motor) nerve disability. For convenience of use in assessing both musculoskeletal and neurologic disabilities, we also plan to add the table to the neurologic portion of the rating schedule when it is revised. We propose to add a second paragraph to § 4.46 to provide a guide to the use of the results of the muscle grading system in assessing loss of muscle function, as follows: complete, no motor function (muscle grading system 1 or 0); incomplete, severe, marked weakness associated with muscle atrophy (muscle grading system 2); incomplete, moderate, weakness (muscle grading system 3); and incomplete, mild, weakness (muscle grading system 4). In our judgment, this material would assist raters in making consistent determinations of muscle strength or weakness, based on the muscle grading system, and it is in general accord with the recommendations of the consultants.

Section 4.57, "Static foot deformities," discusses in detail how to clinically differentiate flatfoot (pes planus) that is congenital from flatfoot that is acquired and discusses when flatfoot should be service-connected. Material that pertains more to a determination of service connection than to evaluation is not appropriate in the rating schedule, which is a guide to the evaluation of disabilities, and we propose to delete this material. Section 4.57 also states that in the absence of trauma or other definite evidence of aggravation, service connection is not in order for pes cavus, a foot deformity that is typically a congenital or juvenile disease. Differentiating congenital from acquired foot deformities is more of a medical determination than a rating determination. None of the information in this section is pertinent to how raters should evaluate flatfeet or pes cavus, and we therefore propose to delete this section.

Current § 4.58, "Arthritis due to strain" discusses when it is appropriate to service connect, on a secondary basis, arthritis of joints that are subject to direct strain when there has been amputation or shortening of a lower extremity, or amputation or injury of an upper extremity. This material also

addresses the issue of service connection rather than evaluation. In addition, the determination of whether arthritis in a particular joint is secondary to another condition often requires a medical opinion. Since this material is not a guide to evaluation, and therefore is not appropriate in the rating schedule, and in addition is more of a medical than an adjudicatory decision, we propose to delete this section.

Current § 4.59, "Painful motion," states that painful motion is an important factor of disability and that the intent of the schedule is to recognize painful motion with joint or periarticular pathology as productive of disability. It states that painful, unstable, or malaligned joints are entitled to at least the minimum compensable rating for the joint, and indicates how joints should be tested. However, the instructions for evaluating pain are ambiguous and subject to individual interpretation, for example, in that they direct the examiner to note facial expression, wincing, etc., on pressure or manipulation. Furthermore, the current rating schedule does not always follow these guidelines. For example, a zero-percent evaluation is assigned for lumbosacral strain (under diagnostic code 5295) when there are slight subjective symptoms (which would almost always include pain); for degenerative arthritis (under diagnostic code 5003) when there is limitation of motion due to pain unless there is objective confirmation; and for a fracture of the humerus (under diagnostic code 5202) when there is malunion that is less than moderate. The instructions also fail to provide a way for raters to assign higher evaluations for extreme pain, which can be totally disabling in some cases. We propose to delete the current information in this section because it does not provide clear and objective instructions to raters on how to assess pain nor does it indicate how pain due to musculoskeletal conditions other than joint disability should be assessed. This follows the recommendation of the consultants, who felt that the additional disability resulting from pain may not be adequately considered in the current schedule and that we may wish to include more information on the evaluation of pain. They did not make specific recommendations about how to do this. Based in part on consultation with a committee of orthopedic surgeons from the Veterans Health Administration (the VHA Orthopedic Committee), we propose to change the name of this section to "Evaluation of pain in musculoskeletal conditions" in order to clarify the scope of the section and propose a specific set of criteria to be used for the evaluation of pain in these conditions. We propose that when the evaluation criteria for a condition listed in § 4.71a do not take pain into account, but pain is present, that raters combine an evaluation based on the criteria under the particular diagnostic code with an evaluation for pain under § 4.59. A single (combined) evaluation for the condition would then be assigned under the appropriate diagnostic code for the condition.

We propose to provide a wide range of evaluations for pain in § 4.59, with 100-;, 30-, 20-, 10-, and zero-percent evaluation levels. The evaluation criteria are based on a combination of the degree of the subjective complaint of pain, which is largely unmeasurable, and associated correlative clinical or laboratory findings that are more objective. We propose that a 100-percent evaluation for pain be assigned when there is complaint of pain that globally interferes with and severely limits daily activities, as long as the requirements for a 30-percent evaluation for pain are met, and a psychiatric evaluation has excluded other processes to account for the pain. We propose that a 30-percent evaluation for pain be assigned when there is complaint of pain at rest, with pain on minimal palpation or on attempted range of motion on physical examination, plus X-ray or other imaging abnormalities, plus abnormal findings on a vascular or neurologic special study. We propose that a 20-percent evaluation for pain be assigned when there is complaint of pain on any use, with pain on palpation and through at least one-half of the range of motion on physical examination, plus X-ray or other imaging abnormalities. We propose that a 10-percent evaluation for pain be assigned when there is complaint of pain on performing some daily activities, with pain on motion (through any part of the range of motion) on physical examination, plus X-ray or other imaging abnormalities. We propose that a zero-percent evaluation for pain be assigned when there is complaint of mild or transient pain on performing some daily activities, with correlative finding(s) on physical examination (for example, pain on palpation or pain on stressing the joint), but without X-ray or other imaging abnormalities. Establishing these criteria for pain evaluation would assure that pain is taken into consideration in all cases where it is present, either under the criteria in § 4.59 or in the criteria under the diagnostic code specific to the condition (if pain is part of those criteria). By linking the complaints of pain with objective findings, it will promote the consistent evaluation of pain. It would also provide a 100-percent level of evaluation for pain that severely limits all daily activities, an effect that is not addressed in the current rating schedule.

We also propose to add two notes to § 4.59. The first would direct that a rater not combine a 100-percent evaluation under this section with any other evaluation for the same condition. The second would state that the provisions of § 4.68, "Limitation of combined evaluation of musculoskeletal and neurologic disabilities of an extremity," will apply to the evaluation of conditions evaluated wholly or partly under § 4.59, except for a 100-percent evaluation, that is, this will allow assignment of a 100-percent evaluation based on pain even if it would exceed the limits of an evaluation under the provisions of § 4.68 (Limitation of combined evaluation of musculoskeletal and associated neurologic disabilities of an extremity).

This set of criteria would replace all the current material in § 4.59, which we propose to delete.

Current § 4.61, "Examination," discusses the need for a thorough examination of all major joints, including the need to examine Haygarth's and Heberdon's nodes, in order to properly evaluate a claimant's disability due to arthritis. However, the presence or absence of these nodes has no bearing on evaluation. Furthermore, the term "Haygarth's nodes," which means a swelling of joints related to rheumatoid arthritis, is no longer in common medical use. The examiner determines the type of arthritis that is present based on many factors, such as which joints are affected, the history, laboratory and imaging studies, physical findings, etc. Guidance for examiners in providing information sufficient to allow raters to evaluate joint disease is contained in disability examination worksheets. Since the material in this section is not pertinent to the evaluation of arthritis, is outdated, and is similar to material in §§ 4.1 and 4.2, we propose to delete it.

Current § 4.62, "Circulatory disturbances," reminds the rater not to overlook circulatory disturbances, especially of the lower extremity following injury to the popliteal space, and to rate them generally as phlebitis. Medical records should make it clear when a vascular injury is associated with a lower extremity injury. Evaluation will depend on the findings

on examination in the particular case. In our judgment, this section is unnecessary because it does not prescribe VA policy nor establish procedures a rater must follow, and we propose to delete it.

Current § 4.63, "Loss of use of hand or foot," and § 4.64, "Loss of use of both buttocks," are duplicates of 38 CFR 3.350(a)(2) and 3.350(a)(3), portions of VA's adjudication regulations that implement statutory requirements for entitlement to special monthly compensation (SMC). Since this material addresses requirements for SMC rather than evaluating disabilities, it is not appropriate in part 4, and we propose to delete it.

Current § 4.66, "Sacroiliac joint," describes disability of the sacroiliac joints. For example, it describes the clinical findings of sacroiliac joint disability, the X-ray findings of arthritis of the sacroiliac joints, and other material more pertinent to examiners than to raters. This medical information neither prescribes VA policy nor establishes procedures a rater must follow, and we propose to delete it. The section also includes a direction to consider the lumbosacral and sacroiliac joints as one anatomical segment. Section 4.45(b) states that the lumbosacral articulation and both sacroiliac joints are to be rated together as a group of minor joints. The § 4.45 statement is a clearer explanation of the relationship of these joints than the statement in § 4.66, and is more pertinent to the needs of raters. We therefore propose to delete all of § 4.66.

Section 4.67, "Pelvic bones" directs that pelvic bone fractures be evaluated based on faulty posture, limitation of motion, muscle injury, painful motion of the lumbar spine manifest by muscle spasm, mild to moderate sciatic neuritis, peripheral nerve injury, or limitation of hip motion. We propose to revise the title to more clearly indicate the subject matter of the section by changing it to "Pelvic bone fractures." We also propose to provide clearer and more succinct instructions on evaluation by directing that pelvic fractures be evaluated based on the specific residuals, such as "limitation of motion of the spine or hip, muscle injury, or sciatic or other peripheral nerve neuropathy."

Current § 4.68, "Amputation rule," states that the combined rating for disabilities of an extremity will not exceed the rating for the amputation at the elective level, were amputation to be performed. Although this section is included in the musculoskeletal subdivision of the rating schedule, there has been confusion about whether it applies to disabilities of body systems other than the musculoskeletal system that might affect the extremities, such as the neurologic, skin, and cardiovascular systems. Therefore, we propose to revise it to clarify that the amputation rule applies to only musculoskeletal and associated neurological disabilities of an extremity. There are several nonmusculoskeletal disabilities of an extremity in the current rating schedule that can be evaluated at a level higher than an amputation at a comparable level would be evaluated. For example, in § 4.104 in the cardiovascular section of the rating schedule, arteriosclerosis obliterans (diagnostic code 7114), thrombo-angiitis obliterans (diagnostic code 7115), varicose veins (diagnostic code 7120), and post-phlebitic syndrome (diagnostic code 7121) can all be evaluated at percentages that could exceed the percentage evaluation for amputation. Arteriosclerosis obliterans of a single lower extremity can be evaluated at 100 percent if there is ischemic limb pain at rest and either deep ischemic ulcers or an ankle/brachial index of 0.4 or less. There is no requirement that the arteriosclerosis obliterans affect a particular extent of a lower extremity for this evaluation to apply. Therefore, a 100-percent evaluation could be assigned when only the lower two-thirds of the extremity is affected, although an amputation of the extremity through even the upper one-third of the thigh warrants only an 80-percent evaluation. Section 4.68 currently states that painful neuroma of a stump after amputation shall be assigned the evaluation for the elective site of reamputation. This represents an exception to the rule based on the presence of a neurologic condition. In view of these facts, plus the fact that the amputation rule is located in the musculoskeletal system portion of subpart B (Disability Ratings) of the rating schedule rather than in subpart A, which addresses general rating policies, VA originally intended this rule to apply only to musculoskeletal disabilities. Injuries of an extremity may involve muscles, nerves, ligaments, joints, etc. The effects of these injuries are commonly inseparable. Nerve injuries, for example, may affect muscle strength and motion and produce effects almost identical to those of a muscle injury in the same area. We intend the rule to assure that the evaluation of the combined effects of even a severe musculoskeletal injury (including neurologic damage) will not exceed the evaluation for amputation, because, in general, all of these problems would be superseded or removed if an amputation were to be performed. However, § 4.68 does not limit evaluations for the cardiovascular conditions mentioned above, nor would it be reasonable for it to do so, since an amputation might not "cure" or remove the disability. We therefore propose to clarify this section by stating that the combined rating for musculoskeletal and neurologic disabilities of an extremity will not exceed the rating that would be assigned for an amputation of the extremity at the level that would remove the affected areas, unless the evaluation criteria for a particular disability allow a higher evaluation. We also propose to revise the title of this section for further clarity to "Limitation of combined evaluation of musculoskeletal and associated neurologic disabilities of an extremity." We propose to retain, but edit, the portion of the current section pertaining to a painful stump neuroma that develops following amputation.

Current § 4.69, "Dominant hand," was revised in 1997. The revision modernized the terms "major" and "minor" to "dominant" and "nondominant," which are now the preferred terms. We propose only editorial changes in this section.

We propose to delete § 4.70, "Inadequate Examinations," from this section of the schedule as redundant since its provisions are not limited to the musculoskeletal system and are similar to material in §§ 4.1 and 4.2, which apply to all VA disability examinations.

Section 4.71, "Measurement of ankylosis and joint motion," explains Plates I and II in the schedule, which show standard anatomical positions of the joints of the upper and lower extremities and their ranges of motion. It also describes the exceptions to using the anatomical position as the zero baseline for joint measurement. The section also mentions Plate III, bones of the hand, and explains how to measure limitation of motion of the fingers, which is information provided in the part of the schedule that addresses the evaluation of ankylosis and limitation of motion of the fingers. We propose to delete the redundant reference to measurement of motion of the fingers, but propose no other substantive change to this section. We do propose to revise the title to "Baseline for joint motion measurement."

We propose to retain the illustrations currently in Plates I and II, demonstrating the normal range of motion of the upper and lower extremities. These plates are important for the evaluation of disabilities of the joints because they provide a

standardized description of joint measurements.

Current Plate III, showing bones of the hand, and current Plate IV, showing bones of the foot, are incomplete and outdated, so we propose to remove them and replace them with updated Plates III and IV.

We propose to add one additional plate to the musculoskeletal section of the rating schedule to illustrate range of motion of the cervical and dorsolumbar (thoracolumbar) spine (Plate V). This will be included with the separate regulation that would revise the portions of the musculoskeletal system that address disabilities of the spine.

In the current rating schedule, next to the percentage evaluations following diagnostic codes 5054, 5104 through 5130, 5160 through 5167, 5250, and 5275, superscripts are included directing that entitlement to special monthly compensation be considered. We are replacing the numbered superscript with asterisks that will refer to a single footnote containing similar information that will follow diagnostic code 5275, at the end of the area of the schedule that addresses shortening of the lower extremity, which is the last area of the musculoskeletal system in which special monthly compensation might be applicable. We propose to add a note at the beginning of § 4.71a, preceding the coded evaluations of disabilities, instructing raters to refer to § 3.350 whenever they rate an injury that has resulted in anatomical loss or loss of use of a limb. We believe that this will adequately notify the rater to ensure that there is a complete review for special monthly compensation. There is a footnote at diagnostic codes 5126 through 5130 indicating that entitlement to special monthly compensation is established if there is amputation of the thumb and any three fingers of a hand, since this is equivalent to the loss of use of one hand. This is not explicitly stated in § 3.350, which is the regulation that addresses special monthly compensation (SMC). However, it is not appropriate in part 4, because it addresses SMC rather than the evaluation of disabilities, and we therefore propose to remove this rule from part 4 and add it to 38 CFR 3.350.

Current table II, "Ratings for multiple losses of extremities with dictator's rating code and 38 CFR citation," was prepared for use by raters when dictating a rating decision for transcription, but the codes are out of date. The updated codes, which are not regulatory, are located in Appendix A of VA's Adjudication Procedures Manual, M21–1. The codes are not needed for disability evaluation, and we therefore propose to delete Table II.

Osteomyelitis

The current evaluation criteria for osteomyelitis, diagnostic code 5000, provide ratings of 100 percent for osteomyelitis of the pelvis, vertebrae, or extending into major joints, or with multiple localization or with long history of intractability and debility, anemia, amyloid liver changes, or other continuous constitutional symptoms; 60 percent for frequent episodes, with constitutional symptoms; 30 percent if there is definite involucrum or sequestrum, with or without discharging sinus; 20 percent if there is a discharging sinus or other evidence of active infection within the past 5 years; and 10 percent if the infection is inactive, following repeated episodes, without evidence of active infection in past 5 years. There are also two complex notes under this diagnostic code.

The current evaluation criteria are complex and difficult to apply consistently, and do not reflect the effectiveness of modern treatment techniques, such as aggressive antibiotic therapy and microsurgery. Although the consultants suggested no major changes to the current criteria, we propose substantial revisions for the sake of clarity, ease of use, and consistency of evaluations. We propose to restructure the criteria based on which bone or bones are affected, whether the infection is active or inactive, whether or not there are debilitating complications (such as anemia, septicemia, or amyloidosis), and the number of recurrences, if any, within the past 5 years.

We propose to provide a 100-percent evaluation for chronic intractable osteomyelitis of any site when it is associated with debilitating complications such as anemia and amyloidosis. These criteria better define when chronic osteomyelitis is so disabling that it warrants a 100-percent evaluation. We also propose to evaluate osteomyelitis of the spine, pelvis, shoulder, elbow, wrist, hip, knee or ankle, or of two or more non-contiguous bones, when active or acute, with constitutional signs and symptoms, such as fever, fatigue, malaise, debility, and septicemia, at 100 percent. We propose to evaluate osteomyelitis at one of these sites that is inactive or chronic at 60 percent, if there were two or more recurrent episodes of active infection (following the initial infection) within the past 5 years; at 30 percent if there was one recurrent episode of active infection (following the initial infection) within the past 5 years; and at zero percent if there were no recurrent episodes of active infection within the past 5 years.

We propose to evaluate osteomyelitis that does not involve the spine, pelvis, shoulder, elbow, wrist, hip, knee or ankle, does not involve two or more non-contiguous bones, and does not involve only a finger or toe, at 40 percent if osteomyelitis is active or acute; at 30 percent if the infection is inactive or chronic, with two or more recurrent episodes of active infection (following the initial infection) within the past 5 years; at 20 percent if the infection is inactive or chronic and there was one recurrent episode of active infection (following the initial infection) within the past 5 years; and at zero percent if there were no recurrent episodes of active infection within the past 5 years.

We propose to evaluate osteomyelitis of a single finger or toe at 10 percent when the infection is active or acute, at 10 percent when the infection is inactive and chronic, with two or more recurrent episodes of active infection (following the initial infection) within the past 5 years, and at zero percent when the infection is inactive or chronic, with one or no recurrent episodes of active infection (following the initial infection) within the past 5 years. These evaluations would be assigned even when they exceed the evaluation for amputation of a finger or toe, as is the case in the current schedule. The proposed criteria, although similar in scope to the current criteria, are clearer, less complex, and more objective and would promote more consistent evaluations. The proposed criteria are also more in keeping with disability due to osteomyelitis under modern medical treatment.

We also propose to revise the notes under diagnostic code 5000. The current first note states that a rating of 10 percent, as an exception to the amputation rule, is to be assigned in any case of active osteomyelitis where the amputation rating for the affected part is no percent. It goes on to say that this 10-percent rating and the other partial ratings of 30 percent or less are to be combined with ratings for ankylosis, limited motion, nonunion or malunion, shortening, *etc.*, subject, of course, to the amputation rule, and that the 60-percent rating, as it is based on constitutional symptoms, is not subject to the amputation rule. Finally, it states that a rating for osteomyelitis will not be applied following cure by removal or radical resection of the affected bone.

The second note states that the 20-percent rating on the basis of activity within the past 5 years is not assignable

following the initial infection of active osteomyelitis without subsequent reactivation, that two or more episodes following the initial infection are required to assign a 10-percent rating, and that the 10- or 20-percent rating will be assigned only once to cover disability at all sites of previously active infection with a future ending date for the 20-percent rating. These notes are so complex that they have become not only a source of confusion, they are also inconsistently interpreted and applied. We propose to remove both notes and substitute two new notes, with similar information, but in clearer language. Note (1) would direct the rater, subject to the provisions of § 4.68, to combine an evaluation for inactive or chronic osteomyelitis under diagnostic code 5090 with an evaluation for chronic residuals, such as limitation of motion, ankylosis, *etc.*, and for pain (under § 4.59) when appropriate, under the appropriate diagnostic code. Note (2) would direct the rater to evaluate, after removal or resection of the infected bone, under the diagnostic code most appropriate for evaluating the residuals, such as amputation, shortening, limitation of motion, etc., but not under the criteria for diagnostic code 5000. Removing the ambiguities and providing instructions for rating in more succinct and clearer language would promote consistency of ratings.

Arthritis

Rheumatoid arthritis, diagnostic code 5002, is currently evaluated either as an active process or on the basis of chronic residuals. For active arthritis, a 100-percent evaluation is assigned if there are constitutional manifestations and active joint involvement, and the condition is totally incapacitating. A 60-percent evaluation is assigned when the criteria for a 100-percent evaluation are not met, but there are weight loss and anemia productive of severe impairment of health, or severely incapacitating exacerbations occurring four or more times a year, or a lesser number over prolonged periods. A 40-percent evaluation is assigned for symptom combinations productive of definite impairment of health objectively supported by examination findings or if there are incapacitating exacerbations occurring three or more times a year. A 20-percent evaluation is assigned if there are one or two exacerbations a year in a well-established diagnosis. Alternatively, chronic residuals, such as limitation of motion or ankylosis, favorable or unfavorable, are rated under the appropriate diagnostic codes for the specific joints involved. When the limitation of motion of the specific joints is noncompensable, 10 percent is assigned for each major joint or group of minor joints with limitation of motion, and these are combined. A note states that ratings for the active process will not be combined with the residual ratings for limitation of motion or ankylosis.

The consultants suggested minor changes under diagnostic code 5002, such as listing specific constitutional manifestations that might occur. However, because the current criteria contain language that is subjective and undefined, such as "severe" and "definite" impairment of health, "severely incapacitating" and "incapacitating" exacerbations, we propose to replace them with more objective criteria that are in accord with the consultants' recommendations. We propose that a 100-percent evaluation be assigned based on constant or near-constant debilitating signs and symptoms due to a combination of inflammatory synovitis (pain, swelling, tenderness, warmth, and morning stiffness in and around joints) and destruction of multiple joints, plus extra-articular (other than joint) manifestations. These are findings that represent the most severe, advanced form of rheumatoid arthritis. We propose that evaluations other than 100 percent be based on the frequency and total duration of incapacitating exacerbations or flares of rheumatoid arthritis. The 60-percent evaluation would require incapacitating exacerbations or flares with a total duration of at least six weeks during the past 12-month period due either to inflammatory synovitis and destruction of multiple joints, or to a combination of joint problems and extra-articular manifestations. The 40-percent evaluation would require exacerbations or flares with a total duration of at least 4 weeks, but less than 6 weeks, during the past 12-month period due to inflammatory synovitis, weakness, and fatigue. The 20-percent evaluation would require incapacitating exacerbations or flares with a total duration of at least 2 weeks but less than 6 weeks during the past 12-month period due to inflammatory synovitis, weakness, and fatigue. The 10-percent evaluation would require incapacitating exacerbations or flares with a total duration of at least 1 week but less than 2 weeks during the past 12-month period due to inflammatory synovitis, weakness, and fatigue. These criteria are similar to those in the current schedule and to those recommended by the consultants, and are also consistent with the evaluation levels we have provided for other conditions characterized by incapacitating episodes, such as hepatitis C, diagnostic code 7354, in the digestive portion of the rating schedule.

We propose to add four notes under diagnostic code 5002 to further assist evaluation. Note (1) would direct that rheumatoid arthritis be evaluated based either on the evaluation criteria under diagnostic code 5002 or on the combined evaluation of chronic residuals of affected joints, whichever method results in a higher evaluation. This is similar to instructions in a current note.

Note (2) would direct that when evaluating based on chronic joint residuals, each affected major joint or group of minor joints will be evaluated on findings such as limitation of motion, ankylosis, joint instability, etc., under the appropriate diagnostic code, and each will be combined with an evaluation for pain under § 4.59 when appropriate. We propose to remove the current provision requiring that 10 percent be assigned for each major joint or group of minor joints with limitation of motion that is less than 10-percent disabling, because painful motion would be assessed under the provisions of § 4.59, and limitation of motion otherwise will be evaluated at the same level as limitation of motion due to other conditions. This would promote both internal consistency in the rating schedule and consistency in rating veterans with similar degrees of disability due to different conditions. Proposed note (3) would direct raters to separately evaluate extra-articular manifestations of rheumatoid arthritis, such as pulmonary fibrosis; pleural inflammation; weakness or atrophy of muscles; emaciation; anemia; vasculitis (of skin or systemic); neuropathy, such as peripheral nerve neuropathy, entrapment neuropathy, and cervical myelopathy; pericarditis; Sjogren's syndrome (dry eyes and mouth); and eye complications (such as scleritis and episcleritis), under the appropriate diagnostic code, unless they have been used to support an evaluation at 60 or 100 percent under diagnostic code 5002. This will assure that all disabling manifestations of rheumatoid arthritis are appropriately evaluated, while also avoiding evaluating the same disability twice (see proposed § 4.14, "Avoiding overlapping of evaluations"). The current schedule does not provide directions for evaluating extra-articular manifestations.

Proposed note (4) would define an incapacitating exacerbation or flare as one requiring bedrest or wheelchair use and treatment by a health care provider. This is similar to the definition of

incapacitating episodes we have provided for evaluating chronic liver disease without cirrhosis (diagnostic code 7345) and hepatitis C (diagnostic code 7354) in § 4.114 of the rating schedule.

We propose to change the heading of diagnostic code 5003 from "Arthritis, degenerative (hypertrophic or osteoarthritis)" to "Osteoarthritis (degenerative or hypertrophic arthritis)," as recommended by the consultants, because the disease is now most commonly referred to as osteoarthritis. Osteoarthritis established by X-ray findings is currently evaluated on the basis of limitation of motion under the appropriate diagnostic codes for the specific joint or joints involved. When the limitation of motion of the specific joint or joints is noncompensable, a rating of 10 percent is assigned for each major joint or group of minor joints with limitation of motion, and this 10 percent is combined, not added, under diagnostic code 5003. The limitation of motion must be objectively confirmed by findings such as swelling, muscle spasm, or satisfactory evidence of painful motion. There are additional directions: (1) In the absence of limitation of motion, when there is X-ray evidence of involvement of 2 or more major joints or 2 or more minor joint groups as the sole finding, with occasional incapacitating exacerbations, 20 percent will be assigned, and (2) with X-ray evidence of involvement of 2 or more major joints or 2 or more minor joint groups as the sole finding, 10 percent will be assigned. Two notes address how to apply these ratings based on X-ray findings and state that they will not be used to rate conditions under diagnostic codes 5013 to 5024. The consultants suggested no substantive change to these criteria.

The current provisions concerning evaluation of osteoarthritis are complex and have sometimes been misinterpreted. The criteria based on limitation of motion, including a noncompensable degree of limitation of motion, are the same as the current instructions for evaluating the chronic residuals of rheumatoid arthritis, and we propose changes similar to those we are proposing for rheumatoid arthritis, and for the same reasons. We propose to replace the current evaluation criteria for osteoarthritis with a direction to separately evaluate each major joint or group of minor joints affected with osteoarthritis based on limitation of motion, ankylosis, joint instability, etc., under the appropriate diagnostic code and to combine that evaluation with an evaluation for pain under § 4.59 when appropriate.

Osteoarthritis tends to be a steadily progressive disease (although it may be better or worse at times), rather than being subject to the incapacitating exacerbations or flares that are common in rheumatoid arthritis, and we therefore do not propose evaluation criteria based on exacerbations or incapacitating episodes. As with rheumatoid arthritis, we propose to remove evaluations based on noncompensable limitation of motion, because pain is the most common symptom of osteoarthritis, and we are proposing to combine an evaluation based on other disabling findings with an evaluation for pain. In our judgment, limitation of motion in osteoarthritis that does not reach the level of a compensable evaluation would not warrant a higher evaluation than a comparable degree of limitation of motion due to other conditions, and pain would be assessed under the provisions of § 4.59, the same as pain due to any other type of musculoskeletal condition.

We also propose to remove the evaluations based on X-ray findings alone or on X-ray findings plus incapacitating exacerbations because abnormal X-ray findings in the absence of signs or symptoms do not justify a compensable evaluation, as there would be no functional impairment. In fact, most people with X-ray evidence of osteoarthritis are asymptomatic (without any symptoms) ("Osteoarthritis: Presentation, Pathogenesis, and Pharmacologic Therapy," Paulette C. Hahn, M.D. and Lawrence Edwards, M.D., Clin. Rev. Summer: 9–13, 1998). More than 90 percent of people over the age of 40 have X-ray evidence of osteoarthritis in weight-bearing joints, but only 30 percent are symptomatic ("Harrison's Principles of Internal Medicine" Eugene Braunwald, M.D., et al eds., ch. 322, 5, 15th ed. 2001). When pain is present, an evaluation under § 4.59 would appropriately compensate the individual. In addition, since incapacitating exacerbations are not characteristic of osteoarthritis, they are not an appropriate basis of evaluation, and we propose to remove that criterion as well. The proposed criteria are clearer and easier to apply than the current criteria, and would promote internal consistency within the rating schedule and consistency in ratings among veterans with similar disabling effects from different musculoskeletal conditions.

We also propose to add three notes. The first note would require that the diagnosis of osteoarthritis of any joint be confirmed (one time only) by X-ray or other imaging procedure. Modern imaging procedures such as magnetic resonance imaging, computed tomography, and bone scans may be used in some cases instead of or in addition to conventional X-rays, and the proposed note would assure that these more sophisticated procedures will be equally accepted for diagnosing osteoarthritis for VA disability compensation purposes.

There is currently no regulatory guidance on whether osteoarthritis is or is not a systemic generalized disease. This has implications for compensation claims because if service-connected osteoarthritis is regarded as a generalized or systemic disease, osteoarthritis developing in other joints in the future would be considered part of the same disease process, and subject to additional compensation. The lack of guidance on this issue has led to inconsistency in rating. Having consulted with the VHA Orthopedic Committee and reviewed the medical literature, we propose to clarify this issue by establishing guidelines about generalized and localized osteoarthritis in two more notes.

Current medical thinking is that osteoarthritis is a group of overlapping distinct diseases. One classification is based on whether the disease is localized or generalized, with indications that the generalized type is a distinct subtype that often affects the hands, hips, knees, and spine. Some clinicians consider osteoarthritis to be generalized only if three extra-spinal (other than spine) joints are affected. The concept of localized and generalized osteoarthritis is also discussed in a recent book on osteoarthritis ("Diagnosis and Nonsurgical Management of Osteoarthritis" by Kenneth D. Brandt, M.D., 1996), which states that idiopathic osteoarthritis is divided into localized and generalized types and that the generalized type involves three or more joint groups. The book references a 1952 classic article in the *British Medical Journal* ("Generalized Osteoarthritis and Heberden's Nodes," J. H. Kellgren, F.R.C.P., F.R.C.S. and R. Moore, M.R.C.P., *British Medical Journal*, 1952. 1:181–187), which also described generalized osteoarthritis as involving three or more joint groups. A new standard medical textbook (Harrison's, ch. 322, 1) also differentiates between localized and generalized osteoarthritis, indicating that primary localized osteoarthritis is present when there is involvement of the hands, feet, knees, hips, spine, or other single sites, such as the glenohumeral (shoulder) joint,

sacroiliac joints, or temperomandibular joints and that primary generalized osteoarthritis is characterized by involvement of three or more joints or groups of joints (distal interphalangeal and proximal interphalangeal joints are counted as one group each). The VHA Orthopedic Committee also suggested that we consider osteoarthritis to be the generalized type if there is positive evidence of osteoarthritis on X-ray or other imaging procedure and on physical examination of at least three joints during service.

Therefore, with the generalized type of osteoarthritis, we propose that additional joints that later develop osteoarthritis would be recognized as part of the same generalized systemic process. If less than three joints have positive evidence of osteoarthritis on X-ray or other imaging procedure and on physical examination, the condition would be considered localized osteoarthritis, and joints later developing osteoarthritis would not be considered part of the same process. Since arthritis is a chronic condition subject to presumptive service condition under the provisions of 38 CFR 3.309(a), meaning that osteoarthritis of a joint is presumed to be service-connected if it manifests to at least a 10-percent level of disability within 1 year of the date of separation from service, we propose to include the 1-year period for presumptive service connection in our guidelines that determine when generalized osteoarthritis is present. We propose to add a second note titled "Generalized osteoarthritis," which states that if osteoarthritis is diagnosed on the basis of positive X-ray or other imaging procedure and positive physical findings in three or more joints (major joints, groups of minor joints, or both) during service or within 1 year following the date of separation from service, the condition will be considered to be generalized osteoarthritis and recognized as a systemic condition. It also says that once generalized osteoarthritis has been established based on these criteria, all joints subsequently diagnosed with osteoarthritis will be considered to be part of the same condition.

We propose to add a third note titled "Localized osteoarthritis" that would state that osteoarthritis diagnosed on the basis of positive X-ray or other imaging procedure and positive physical findings in fewer than three joints (major joints, groups of minor joints, or both) during service or within 1 year following the date of separation from service will be considered to be localized osteoarthritis rather than a systemic condition. It also says that with localized osteoarthritis, any joints subsequently diagnosed with osteoarthritis will not be considered to be part of the same condition. Adding notes (2) and (3) would promote more consistent determinations about when joints with osteoarthritis diagnosed after service and the 1-year period following separation from service will and will not be considered to be part of the osteoarthritis already related to service, and this guidance is consistent with current medical thinking.

Other types of arthritis are currently evaluated under diagnostic code 5004 (Arthritis, gonorrheal), 5005 (Arthritis, pneumococcic), 5006 (Arthritis, typhoid), 5007 (Arthritis, syphilitic), 5008 (Arthritis, streptococcic), 5009 (Arthritis, other types (specify)), 5010 (Arthritis, due to trauma, substantiated by X-ray findings), and 5017 (Gout or pseudogout), with directions that all but traumatic arthritis are to be rated as rheumatoid arthritis. Since the specific infectious types of arthritis are uncommon, we propose to combine them all under diagnostic code 5004, to be retitled "Infectious arthritis (gonorrheal, pneumococcic, typhoid, syphilitic, streptococcic, etc.)." We propose to retitle diagnostic code 5009 as "Other types of noninfectious inflammatory arthritis (including ankylosing spondylitis, Reiter's syndrome, psoriatic arthritis, arthritis associated with inflammatory bowel disease, and other seronegative types of arthritis)." We propose to retitle diagnostic code 5017, currently "Gout," as "Gout or pseudogout" to make it clear that it encompasses both conditions. These changes will provide the rater with clear instructions on evaluating each of these disabilities. The groupings are possible because of the similar effects of each of these groups of arthritis.

Infectious arthritis is currently evaluated on the same basis as rheumatoid arthritis. However, infectious arthritis is ordinarily an acute condition involving only one joint. In about 60 percent of cases, the infection will heal without residuals if treatment is prompt and adequate, particularly with the use of modern antibiotics. However, some cases of infectious arthritis involve multiple joints, and some are intractable to treatment and leave severe joint disability. Infectious arthritis is therefore unlike rheumatoid arthritis, which is a chronic disease affecting multiple joints, and the current direction to evaluate as rheumatoid arthritis is not ideal. Infectious arthritis is somewhat similar in behavior to osteomyelitis. We therefore propose to provide two bases of evaluation that are similar to those for osteomyelitis, with one set of criteria to be used for evaluation during the active infection and for three months following cessation of therapy for active infectious arthritis, with the evaluation depending on which joint or joints are infected, as with osteomyelitis. The other set of criteria would be used for evaluating the chronic residuals of infectious arthritis after the three-month period following the cessation of therapy for the active infection has ended. We propose that active infectious arthritis of the spine, the pelvis, or a major joint be evaluated at 100 percent during and for three months following cessation of therapy; that active infectious arthritis not involving the spine, the pelvis, or a major joint, and not limited to a single finger or toe be evaluated at 40 percent during and for three months following cessation of therapy; and that active infectious arthritis of a single finger or toe be evaluated at 10 percent during and for three months following cessation of therapy. While the course may be prolonged, there are not usually multiple recurrences as with osteomyelitis, and we do not propose to use evaluation criteria based on recurrences as we have for osteomyelitis. We propose to add a note under diagnostic code 5004 directing that raters separately evaluate chronic residuals, if any, of each joint affected with infectious arthritis, based on limitation of motion, ankylosis, joint instability, post-surgical residuals (such as arthroplasty), *etc.*, under the appropriate diagnostic code, and combine the evaluation for chronic residuals of each joint with an evaluation for pain under § 4.59 when appropriate, subject to the limitations of § 4.68. This method of evaluating residuals is proposed because, although many active infections heal without residuals, some result in destruction of a joint resulting in arthritis, instability, etc., and some lead to such severe residuals that arthroplasty is required. These proposed criteria are more specific to the effects of infectious arthritis than the current criteria and provide a broad range of objective evaluations for both the active stage of infection and any chronic disability that might develop.

We propose to retitle diagnostic code 5009, "Arthritis, other types," as "Other types of noninfectious inflammatory arthritis (including ankylosing spondylitis, Reiter's syndrome, psoriatic arthritis, arthritis associated with inflammatory bowel disease, and other seronegative types of arthritis)" for clarity. There is currently a direction to

evaluate the types of arthritis specified under diagnostic codes 5004 through 5009 as rheumatoid arthritis (5002). We propose to continue evaluating other types of noninfectious arthritis under the same criteria and range of evaluation as rheumatoid arthritis, except for providing a list of extra-articular manifestations more specific to these types of arthritis, namely, fever, eye problems (such as conjunctivitis, iritis, uveitis), genitourinary or gynecologic problems (such as urethritis, cystitis, prostatitis, cervicitis, salpingitis, vulvovaginitis), or heart problems (pericarditis, aortic valvular disease, heart block), in a note. We also propose to add four notes similar to those under diagnostic code 5002.

For traumatic arthritis, diagnostic code 5010, we propose to remove from the current title the reference to a requirement for X-ray evidence and add a note stating that the diagnosis of traumatic arthritis of any joint must be confirmed (one time only) by X-ray or other imaging procedure. X-ray evidence of traumatic arthritis is currently required by the schedule, but newer imaging procedures are now often substituted for X-rays and provide comparable or better information about the presence of arthritis, so this provision is in keeping with current medical practice. Once traumatic arthritis has been demonstrated, there is no need for repeat X-rays or other imaging procedures, so we are requiring confirmation by imaging procedure only once to avoid unnecessary imaging studies. We also propose to add to the title the term "secondary osteoarthritis" because traumatic arthritis can occur, due not only to trauma, but also to other diseases, such as tuberculosis or gout, deformity of other joints, or stress due to amputation. Traumatic arthritis is currently evaluated as degenerative arthritis. We propose to continue this method of evaluation, since the findings clinically and on X-ray of traumatic and osteoarthritis are usually indistinguishable. For the convenience of raters, we propose to repeat the evaluation criteria for osteoarthritis under diagnostic code 5010.

Caisson Disease, Benign and Malignant Bone Neoplasms, Osteomalacia, Osteoporosis

We propose to update the title of diagnostic code 5011, "Bones, caisson disease of," to "Caisson disease (residuals of decompression sickness or "the bends")" and to broaden its scope by providing rating instructions for the evaluation of residuals other than those affecting bone. We propose that evaluation be made under an appropriate diagnostic code based on the actual residuals, such as aseptic necrosis or delayed osteoarthritis of the shoulder or hip or neurologic manifestations (such as weakness or paraplegia of lower extremities, vestibular dysfunction with vertigo, or paresthesias of the extremities). These are the most common disabling long-term effects of Caisson disease, and there is no other appropriate diagnostic code under which to rate them.

We propose to modernize the title of diagnostic code 5012 from "Bones, new growths of, malignant" to "Malignant neoplasm of bone." The current schedule provides a 100-percent evaluation for one year following surgery or the cessation of antineoplastic therapy. This provision is applied at the time of rating by assigning a one-year total evaluation with a prospective reduction consistent with the protected or minimum evaluation. In our judgment, evaluating based on impairment of function due to the actual residuals found is the most accurate and equitable basis for evaluating residuals of malignancy, so, as we have done in the revisions of other portions of the rating schedule, for example, diagnostic code 7528 in § 4.115b, "Malignant neoplasms of the genitourinary system," we propose to continue a 100-percent rating following the cessation of surgical, X-ray, antineoplastic chemotherapy or other therapeutic procedure. Six months after discontinuance of such treatment, the appropriate disability evaluation shall be determined on the basis of a VA examination, or on available medical records if sufficient for evaluation. Before any reduction in evaluation based upon the examination can be made, the provisions of § 3.105(e) (which would provide notice of any proposed reduction and afford claimants the opportunity to present evidence showing that a proposed reduction should not be made) must be implemented. Evaluation is then made on residuals if there has been no metastasis or recurrence.

The current schedule evaluates "Osteoporosis, with joint manifestations" (diagnostic code 5013) based on limitation of motion of affected parts as degenerative arthritis. Osteoporosis is an age-related condition characterized by decreased bone mass and structural deterioration of bone tissue, leading to bone fragility and an increased susceptibility to fractures—especially of the vertebral bodies of the spine, the hip (particularly the neck and intertrochanteric regions of the femur), and the wrist (distal radius). It is ordinarily asymptomatic until a fracture occurs. Joint manifestations are not always present; vertebral fractures, for example, may result primarily in neurologic complications. We therefore propose to revise the title to "Osteoporosis" and direct the rater to evaluate under the appropriate diagnostic code based on a combination of the residuals of fractures (such as shortening, deformity, limitation of motion, osteoarthritis) with an evaluation for pain (under § 4.59) when appropriate, and to evaluate separately any secondary complications, such as neurologic manifestations, pulmonary restriction due to thoracic deformity from vertebral fractures, *etc.* These criteria would provide more specific and accurate guidance to raters concerning the disabling effects of osteoporosis.

Diagnostic code 5014, "Osteomalacia," is currently evaluated based on limitation of motion as osteoarthritis (diagnostic code 5003). Osteomalacia is a form of metabolic bone disease resulting from vitamin D deficiency. In children, the same condition is called rickets. In adults, osteomalacia is characterized by easy fatigability, malaise, poorly defined or localized bone pain, often with bone tenderness, and sometimes muscle weakness. Pathological fracture (due to weakened bone) or aseptic (avascular) necrosis of a bone may occur and be the initial evidence of the condition. Most cases are associated with chronic renal disease, but osteomalacia may also be associated with diseases of the gastrointestinal tract or other body systems. X-rays will usually show evidence of the condition. We propose to provide more detailed guidance on evaluation by directing the rater to evaluate under the appropriate diagnostic code, based on aseptic necrosis, residuals of fracture (such as shortening, deformity, limitation of motion, osteoarthritis), to be combined with an evaluation for bone pain (under § 4.59) when appropriate. Constitutional manifestations, such as malaise and easy fatigability, would be evaluated as part of the underlying metabolic disease, such as renal or gastrointestinal disease, that has caused the osteomalacia.

As with malignant neoplasms of bone, we propose to update the title of diagnostic code 5015, "Bones, new growths of, benign," to "Benign neoplasm of bones." The current schedule directs that these neoplasms be evaluated as degenerative arthritis based on limitation of motion. That method of evaluation would be appropriate when the neoplasm involves a joint, but many do not. At

times bone pain or pathologic fracture is the major problem. Many are asymptomatic and discovered as an incidental finding when a bone is X-rayed for another problem. We therefore propose to expand the directions to include evaluation under the appropriate diagnostic code based on osteoarthritis (diagnostic code 5003), residuals of fracture (such as shortening, limitation of motion), *etc.*, to be combined with an evaluation for bone pain (under § 4.59) when appropriate.

Paget's Disease, Gout and Pseudogout

We propose to update the title of diagnostic code 5016, currently "Osteitis deformans" to the modern name for this disease, "Paget's disease." Paget's disease is currently evaluated based on limitation of motion as osteoarthritis. It is a disease characterized by enlarged, heavily calcified, and often deformed, but also weak, bones in any area of the body, most commonly the pelvis, femur, tibia, skull, vertebrae, clavicle, and humerus. The most common symptom is bone pain, and deformity, arthritis, and fractures may occur. Pressure on cranial nerves due to enlargement of the skull by the disease can lead to impaired hearing or vision. We therefore propose to provide a broader set of evaluation criteria that encompass more of the disabling effects of Paget's disease by directing raters to evaluate it based on osteoarthritis or residuals of fracture, combined with an evaluation for pain (under § 4.59) when appropriate, and to separately evaluate complications such as impaired hearing or vision.

"Gout" (diagnostic code 5017), which we propose to retitle "Gout or pseudogout," is currently evaluated as rheumatoid arthritis. However, there are major differences between rheumatoid arthritis and gout. Gout, for example, which is a type of arthritis in which uric acid crystals are deposited around joints, usually involves acute inflammation of only a single joint at a time, rather than the widespread joint involvement common in rheumatoid arthritis. Also, gout is not associated with the same types of extra-articular manifestations as rheumatoid arthritis, and there may be none at all except late in the course of the disease when tophi (deposits of sodium urate that develop in gout) have been deposited in tissues other than joint areas. Pseudogout (caused by deposits of calcium pyrophosphate crystals in joint tissues) has manifestations that are similar to gout, but usually milder. We therefore propose to provide a modified version of the rheumatoid arthritis evaluation criteria for evaluating gout and pseudogout. We propose not to provide a 100-percent evaluation level for gout or pseudogout, since neither condition is likely to be totally disabling. We propose to retain 60-, 40-, and 20-percent evaluation levels and to add a 10-percent evaluation level for gout and pseudogout based on inflammatory synovitis with such findings as weakness and fatigue, acute pain, swelling, heat, tenderness, or limitation of motion. The 60-percent level would require incapacitating exacerbations or flares with a total duration of at least 6 weeks during the past 12-month period requiring treatment by a health care provider, due to inflammatory synovitis with such findings as weakness and fatigue, acute pain, swelling, heat, tenderness, or limitation of motion of multiple joints. The 40-percent level would be the same except that it requires incapacitating exacerbations or flares of multiple joints with a total duration of at least 4 weeks but less than 6 weeks during the past 12-month period. The 20-percent level would require incapacitating exacerbations or flares with a total duration of at least 2 weeks but less than 4 weeks during the past 12-month period of multiple joints. The 10-percent evaluation would require incapacitating exacerbations or flares with a total duration of at least 1 week but less than 2 weeks during the past 12-month period of a single joint or multiple joints. This would provide appropriate criteria to evaluate the acute attacks of inflammation of either single or multiple joints. We propose to provide notes similar to those under diagnostic code 5002 (rheumatoid arthritis). The first note would direct that evaluation be made either on the basis of incapacitating exacerbations or flares under the criteria for diagnostic code 5017 or on the combined evaluation of chronic residuals of gout or pseudogout, whichever results in the higher evaluation. The second note would direct that if not evaluating under the criteria under diagnostic code 5017, chronic residuals of each major joint or group of minor joints with gout or pseudogout will be separately evaluated based on limitation of motion, ankylosis, joint instability, *etc.*, under the appropriate diagnostic code. It further directs that an evaluation for chronic residuals of each major joint or group of minor joints be combined with an evaluation for pain under § 4.59 when appropriate. The third note would direct that manifestations of gout other than joint disease, such as urinary tract calculi or gouty nephropathy, be separately evaluated. The fourth note would define an incapacitating exacerbation or flare as one requiring bedrest or wheelchair use and treatment by a health care provider. The proposed criteria are more specific to gout and pseudogout than the current criteria and will therefore promote consistent and appropriate evaluations in veterans with one of these joint diseases.

Joint Effusion, Bursitis, Tenosynovitis, Synovitis, Myositis, Periostitis, Myositis Ossificans

Diagnostic code 5018 is titled "Hydrarthrosis, intermittent," which means fluid occurring in a joint from time to time. This finding may be a sign of various joint diseases and does not indicate a specific diagnosis. We propose updating the title of this code to "Joint effusion," which is the current medical term for this condition. The current schedule directs that evaluation be based on limitation of motion as osteoarthritis. Since osteoarthritis is one of the conditions that may result in joint effusion, it is more likely that osteoarthritis would be evaluated as joint effusion than vice versa. Joint effusion, being a nonspecific response to injury or disease of a joint, may result from any number of types of injury, both bone and soft tissue; from almost any type of arthritis, including infectious arthritis; from osteomyelitis; from surgery in or near a joint; *etc.* The criteria for evaluation under this diagnostic code would be used in evaluating musculoskeletal conditions where joint effusion is the predominant finding. We propose that evaluation of joint effusion be based on limitation of motion, a common concomitant of joint effusion, and this evaluation would be combined with an evaluation for pain under § 4.59 when appropriate. The current schedule requires that the joint effusion be "intermittent," but does not define "intermittent". To promote consistency, we propose to add a statement that a joint effusion that is present constantly, or nearly so, or if intermittent, that occurred at least two times during the past 12-month period, may be evaluated under this diagnostic code and that evaluation will be based on limitation of motion, to be combined with an evaluation for pain under § 4.59 when appropriate. We require at least two episodes of joint effusion because a single episode would represent only an acute condition that might never recur. These criteria are both more objective and more specific to joint effusion than the current criteria.

"Bursitis," diagnostic code 5019, is currently evaluated based on limitation of motion as osteoarthritis, as are all the conditions in diagnostic codes 5013 through 5024 except gout. Bursae are

fluid-filled structures that assist motion between adjacent structures (skin, bones, muscles, tendons) by decreasing friction. Bursitis is an inflammation of the lining of the bursa, which is a sac made up of synovial tissue, the same tissue that lines joints. Bursitis is commonly due to chronic overuse or an injury, although it may also be associated with systemic diseases such as rheumatoid arthritis or scleroderma. The bursae in the area of the hip, patella or other knee area, shoulder, and olecranon process of the ulna are common sites of bursitis. Signs and symptoms of bursitis include pain, tenderness, redness, heat, swelling, and limitation of motion. We therefore propose to revise the evaluation criteria to base evaluation on limitation of motion, to be combined with an evaluation for pain under § 4.59 when appropriate.

The causes of, and findings in, tenosynovitis, diagnostic code 5024, and synovitis, diagnostic code 5020, are similar to those for bursitis, and they may also be infectious in origin. Tenosynovitis (also called tendinitis) is an inflammation of the tendon and tendon sheath and may result in pain, limitation of motion, tenderness, and swelling. Synovitis is an inflammation of the synovial (joint-lining) tissue only. We propose to provide the same evaluation criteria for synovitis and tenosynovitis as for bursitis.

Myositis (diagnostic code 5021) is an inflammation of muscles with pain, tenderness, and sometimes swelling. It may be due to trauma or a virus, or may be drug-related. We propose that it be evaluated based on limitation of motion, to be combined with an evaluation for pain under § 4.59 when appropriate. There is another category of more widespread myositis that includes systemic autoimmune connective tissue diseases like polymyositis, dermatomyositis, and inclusion body myositis. They are diseases that may also affect joints, the heart, lungs, intestines, and skin. Because these types of myositis affect multiple body systems, they are more appropriately evaluated in the "Infectious Diseases, Immune Disorders and Nutritional Deficiencies (Systemic Conditions)" portion of the rating schedule, perhaps analogous to systemic lupus erythematosus (diagnostic code 6350), rather than under this diagnostic code.

Periostitis (diagnostic code 5022) is another inflammatory condition (of the periosteum or outer covering of a bone) that may develop as a result of overuse or infection. At times it follows severe tenosynovitis. Periostitis is one of the causes, along with stress fractures and tenosynovitis, of shin splints (pain in the lower leg that occurs during exercise) or posterior tibial stress syndrome or lower leg stress. Tennis elbow (periostitis of the lateral epicondyle of the humerus, often following tendinitis of the extensor carpi radialis brevis in the area of the lateral epicondyle), golfer's elbow (periostitis of the medial epicondylitis of the humerus often following tendinitis of the flexor pronator muscles), and osteitis pubis are other common types of periostitis. We propose to evaluate this condition based on limitation of motion, and to combine this with an evaluation for pain under § 4.59 when appropriate.

Myositis ossificans, diagnostic code 5023, is a condition in which there is ossification (bone formation) in soft tissues such as muscle and tendons. It most often results from trauma or repetitive stress, sometimes representing an ossified intramuscular hematoma. In many cases, the cause is unknown. It may result in pain, tenderness, redness, heat, a palpable mass, and decreased range of motion. We therefore propose to evaluate it based on limitation of motion, and to combine this with an evaluation for pain under § 4.59 when appropriate.

Other than terminology changes, which we are proposing to adopt, the consultants offered few suggestions for changes under diagnostic codes 5011 to 5024. One exception was osteoporosis (diagnostic code 5013), for which they suggested evaluation levels of zero, 20, 50, and 100 percent, based on such criteria as X-ray evidence of "some" "moderate," "severe" demineralization, on the severity of spine pain ("mild," "moderate," or "disabling"), and on the history of fractures (requiring a history of two fractures for 50 percent, and three or more fractures for 100 percent). These criteria would require subjective determinations of various degrees of spine pain and X-ray findings. In addition, in our judgment, how many fractures have occurred is not as significant as how disabling the residuals of those fractures are. We therefore propose to evaluate based on the actual residuals of fractures and any secondary complications, as discussed above. We believe these criteria would provide an evaluation that presents a truer picture of disability and would promote consistent evaluations by correlating evaluations with disabling residuals of fractures rather than simply with numbers of fractures.

Prosthetic Joint Implants

The diagnostic codes for prosthetic joint implants (joint replacements or arthroplasties) (5051 through 5056) currently provide a 100-percent evaluation for one year of convalescence following hospital discharge. This provision is applied at the time of rating by assigning a 100-percent evaluation for one month under § 4.30 ("Convalescent ratings"), followed by a 100-percent evaluation with a prospective reduction one year later based on medical findings. As the consultants recommended, we propose to continue the 100-percent evaluation indefinitely from date of hospital admission and to examine the veteran six months following discharge from the hospital, because almost all individuals are stabilized within six months of implant. Any reduction in the 100-percent evaluation would be effected under 38 CFR 3.105(e) in the same manner as proposed under diagnostic code 5012 (malignant neoplasm of bone). This would ensure that a veteran receives advance notice of any reduction and has the opportunity to submit additional evidence showing that the reduction is not warranted. We also propose to state that the same method of evaluation will be applied when an arthroplasty is revised or redone, since this procedure is at least as disabling as the original arthroplasty.

The consultants suggested deleting separate evaluations for dominant and nondominant upper extremity joint replacements. We do not propose to do so, because joint replacements of a dominant side—that is, the side normally used for writing, feeding, grooming, and other important tasks—would clearly be more disabling to an individual than joint replacement of the less used nondominant side.

Diagnostic code 5051, "Shoulder replacement (prosthesis)" is currently evaluated at 100 percent for one year following implantation; at 60 or 50 percent (for dominant or nondominant side) if there are chronic residuals consisting of severe, painful motion or weakness in the affected extremity; analogous to diagnostic codes 5200 (ankylosis of scapulohumeral articulation) and 5203 (impairment of clavicle or scapula) if there are intermediate degrees of residual weakness, pain, or limitation of motion; and at 30 or 20 percent as a minimum evaluation. The consultants suggested no change. We propose to revise and update the title to "Total or partial shoulder arthroplasty or replacement (with prosthesis)" and to make similar changes to the titles of arthroplasty of all major joints, elbow (diagnostic code 5052), wrist (diagnostic code 5053), hip (diagnostic code 5054, knee (diagnostic code 5055), and ankle (diagnostic code

5056). These changes would indicate that evaluation is the same whether the entire joint or only one side of the joint has been replaced, (and whether this is an initial or a revision arthroplasty, as the note preceding the prosthetic implants diagnostic codes states) since complications and residuals may be the same. We also propose to revise the criteria to remove subjective language such as "severe" painful motion or weakness and "intermediate" degrees of weakness, pain, or limitation of motion, which could be subject to different interpretations by different individuals.

We propose to replace these criteria with more objective criteria in order to promote consistent ratings. For example, we propose that 60 or 50 percent be assigned if abduction (movement of the arm away from the body) is not possible beyond 45 degrees; and that the minimum evaluation of 30 or 20 percent following arthroplasty be unchanged. We also propose to add a note directing that if there is ankylosis of the glenohumeral joint, evaluation is to be made under diagnostic code 5200 (ankylosis of glenohumeral articulation (shoulder joint)). There may be neurologic or other complications following arthroplasty. We therefore propose to add a second note directing that complications, such as peripheral neuropathy, causalgia (a severe burning pain that occasionally occurs following injury to a nerve), and reflex sympathetic dystrophy (soft tissue and bony changes that accompany causalgia), be separately evaluated under an appropriate diagnostic code and combined with an evaluation under diagnostic code 5051 that is less than total, as long as limitation of abduction is not used to support an evaluation for a complication. We propose to add a third note directing that an evaluation under diagnostic code 5051 be combined with an evaluation for pain under § 4.59 when appropriate.

Elbow replacement (diagnostic code 5052), following the initial 100-percent evaluation, is currently evaluated at 50 or 40 percent if there is severe painful motion or weakness; by analogy to diagnostic codes 5205 through 5208 (which provide evaluation criteria for ankylosis or limitation of motion of the elbow) if there are intermediate degrees of residual weakness, pain or limitation of motion; and at 30 or 20 percent as a minimum evaluation. These criteria contain subjective language, and we propose to revise them to more objective criteria, directing the rater to evaluate based on the criteria under diagnostic codes 5205, 5206, 5207, or 5208, whichever results in the highest evaluation, combining this evaluation with an evaluation for pain under § 4.59 when appropriate. We propose to retain the minimum evaluations of 30 (for dominant side) or 20 percent following arthroplasty.

Wrist replacement (5053) is currently evaluated under the same criteria as elbow arthroplasty, but with evaluations of 40 or 30 percent if there is severe painful motion or weakness; by analogy to diagnostic code 5214 (ankylosis of wrist) if there are intermediate degrees of residual weakness, pain or limitation of motion; and at 20 percent as a minimum evaluation. We propose to revise these criteria to make them more objective, as we have proposed for other upper extremity arthroplasties, by directing the rater to evaluate based on ankylosis (diagnostic code 5214) or limitation of motion (diagnostic code 5215), whichever results in a higher evaluation, combining this evaluation with an evaluation for pain under § 4.59 when appropriate. We propose to retain the minimum 20-percent evaluation following arthroplasty.

Hip replacement (diagnostic code 5054) is currently evaluated at 100 percent for 1 year, as discussed above; at 90 percent if there is painful motion or weakness such as to require the use of crutches; at 70 percent if there is markedly severe residual weakness, pain, or limitation of motion; at 50 percent if there are moderately severe residuals of weakness, pain, or limitation of motion; and at 30 percent as a minimum. The consultants did not suggest substantive changes, other than to recommend that the 100-percent evaluation be reassessed six months following implantation, as for all joint prostheses.

We propose to retitle 5054 as "Total or partial hip arthroplasty or replacement (with prosthesis)". In addition to following the consultants' recommendation concerning the 100-percent evaluation, we propose other changes to make the criteria more objective, after consultation with the VHA Orthopedic Committee. For example, the consultants did not address the subjective language such as "markedly" and "moderately" severe in the current criteria. We propose to revise the criteria for the 90-percent evaluation to "requiring use of two crutches or a walker for ambulation," because a walker is equivalent to two crutches and is an indication of significant impairment in ambulation. We propose to base the next two lower levels of evaluation on the extent of need for ambulatory support, which is an objective basis of evaluation, assigning a 70-percent evaluation if one crutch or two canes are required for most ambulation, due to pain, instability, or weakness (muscle strength grade zero to 2 out of 5), and a 50-percent evaluation if one crutch or two canes are required only for ambulating long distances (500 feet or more), due to pain, instability, or weakness (muscle strength grade 3 to 4 out of 5), since the need to use two canes or one crutch is another indication of difficulty ambulating, and they are approximately equivalent. We propose to add a 40-percent level, to be assigned if one cane is required for ambulation, due to pain, instability, or weakness, or if there is recalcitrant thigh pain of longer than 2 years' duration, and to retain a 30-percent minimum evaluation following arthroplasty. The VHA Orthopedic Committee described the residual of thigh pain as a disabling finding that is common enough to be addressed and which could be the primary residual after 2 years. We also propose to add a note directing raters not to combine an evaluation under these criteria with an evaluation for pain under § 4.59. Pain as a residual of arthroplasty is taken into account in these evaluation criteria.

Knee replacement (diagnostic code 5055) currently has the same relatively subjective criteria as other arthroplasties, with 60 percent assigned if there are chronic residuals consisting of severe painful motion or weakness in the affected extremity; rating by analogy to diagnostic codes 5256, 5261, or 5262 (the codes for ankylosis of the knee, limitation of extension of the leg, and impairment of the tibia and fibula) if there are intermediate degrees of residual weakness, pain or limitation of motion; and a minimum evaluation of 30 percent. The consultants recommended criteria that retained much of the same subjective language. After consultation with the VHA Orthopedic Committee, however, we propose to provide more objective criteria that parallel the evaluation criteria for hip arthroplasty based on ambulation, plus criteria based on the extent of limitation of the normal whole arc of motion (the full range of flexion and extension) of the knee after arthroplasty, which is 0 degrees of extension to 110 degrees of flexion. As with hip arthroplasty, we propose to assign a 90-percent evaluation for residuals requiring use of two crutches or a walker for ambulation; a 70-percent evaluation for residuals requiring the use of one crutch or two canes for most ambulation, due to pain, instability, or weakness (muscle strength grade zero to 2 out of 5) or if there is loss of more than 40 degrees of the full arc of motion; at

50 percent if requiring use of one crutch or two canes only for ambulating long distances (500 feet or more), due to pain, instability, or weakness (muscle strength grade 3 to 4 out of 5), or if there is loss of 21 to 40 degrees of the full arc of motion; and at 40 percent if residuals require the use of one cane or brace for ambulation, due to pain, instability, or weakness, or if there is loss of 10 to 20 degrees of the full arc of motion. We propose to retain a 30-percent evaluation for residuals as a minimum following arthroplasty. We also propose to add two notes, the first stating that a full arc of motion of the knee after arthroplasty is a range of motion of 0 to 110 degrees, and the second directing raters not to combine an evaluation under these criteria with an evaluation for pain under § 4.59. Pain as a residual of arthroplasty is taken into account in these evaluation criteria.

Ankle replacement (diagnostic code 5056), is currently evaluated under the same criteria as other arthroplasties, with 40 percent assigned if there are chronic residuals consisting of severe painful motion or weakness in the affected extremity; rating by analogy to diagnostic codes 5270 or 5271 if there are intermediate degrees of residual weakness, pain or limitation of motion; and a minimum evaluation of 20 percent. We propose similar changes for this arthroplasty, removing the current subjective criteria and directing that evaluation be based on ankylosis (under diagnostic code 5270) or limitation of motion (under diagnostic code 5271), whichever results in a higher evaluation, combining this evaluation with an evaluation for pain under § 4.59 when appropriate. We propose to retain the 20 percent minimum evaluation level.

Anatomical Loss and Loss of Use of Hands and Feet

The current list of potential combinations of disabilities under diagnostic codes 5104 through 5111 is incomplete because it does not include "loss of use of one hand and anatomical loss of the other hand" or "loss of use of one foot and anatomical loss of the other foot." We propose to combine "Anatomical loss of both hands" (diagnostic code 5106) and "Loss of use of both hands" (diagnostic code 5109) into one code, diagnostic code 5106, titled "Anatomical loss or loss of use of one hand and anatomical loss or loss of use of the other hand." Similarly, we propose to combine "Anatomical loss of both feet" (diagnostic code 5107) and "Loss of use of both feet" (diagnostic code 5110) into one code, diagnostic code 5107, titled "Anatomical loss or loss of use of one foot and anatomical loss or loss of use of the other foot." These changes will make diagnostic codes 5109 and 5110 redundant, and we propose to delete them. Finally, we propose to combine "Anatomical loss of one hand and loss of use of one foot" (diagnostic code 5104), "Anatomical loss of one foot and loss of use of one hand" (diagnostic code 5105), "Anatomical loss of one hand and one foot" (diagnostic code 5108), and "Loss of use of one hand and one foot" (diagnostic code 5111) into one code, diagnostic code 5104, titled "Anatomical loss or loss of use of one hand and anatomical loss or loss of use of one foot." Diagnostic codes 5105, 5108, and 5111 will then be redundant, and we propose to delete them.

Other Amputations

Diagnostic codes 5123, 5124, and 5125 currently pertain to amputation of the forearm. Under diagnostic codes 5123, "Forearm, amputation of, above insertion of pronator teres" and 5124, "Forearm, amputation of, below insertion of pronator teres," we propose to add the alternative titles of "short, below elbow amputation" and "long, below elbow amputation," respectively, since these are terms commonly used in medical practice to distinguish levels of amputation. The insertion of the pronator teres is located at the middle one-third of the lateral surface of the radius, and, for the sake of clarity, we also propose to add that definition to the titles of diagnostic codes 5123 and 5124. We propose to revise the current title of diagnostic code 5125 from "Hand, loss of use of" to "Wrist disarticulation," because a wrist disarticulation procedure results in anatomical loss of the hand.

Under the subheading "Multiple finger amputations," we propose to edit paragraphs (a) through (f) and rename them notes, numbered one through five, consistent with the way we have designated rating instructions throughout this section. We also propose to move the notes from their current position following the diagnostic codes for multiple finger amputations to the beginning of the applicable diagnostic codes, for clarity and ease of reference. The last of these paragraphs defines loss of use of the hand. This is a duplication of § 3.350 (a)(2), and we propose to delete it as unnecessary. We propose to change the term middle finger to long finger for disabilities resulting from finger amputations and ankylosis of the fingers because this is the current medical term for this finger.

We propose to retitle diagnostic code 5160, now titled "Disarticulation, with loss of extrinsic pelvic girdle muscles" under amputation of thigh, to "Disarticulation of hip, with loss of extrinsic pelvic girdle muscles" for the sake of clarity about the site of amputation.

We propose to make editorial changes in the language of diagnostic codes 5163, 5164, and 5165, regarding leg amputations and diagnostic codes 5172 and 5173, regarding amputation of toes, for clarity. No substantive change is intended.

Shoulder and Arm

Ankylosis of the shoulder is currently rated under diagnostic code 5200, which is titled "Scapulohumeral articulation, ankylosis of." Since the common term for the shoulder joint is the glenohumeral, rather than the scapulohumeral joint, we propose to change the heading of diagnostic code 5200 and other references to the joint accordingly. For the sake of clarity, we propose to change the word "piece" to "unit" when referring to the scapula and humerus in the evaluation criteria under diagnostic code 5200. The current criteria for ankylosis of the shoulder are 50 and 40 percent (dominant and nondominant sides) for unfavorable ankylosis with abduction limited to 25 degrees from side; 40 and 30 percent for intermediate ankylosis between favorable and unfavorable; and 30 and 20 percent for favorable ankylosis, with abduction to 60 degrees, can reach mouth and head.

The consultants suggested an 80-percent evaluation for unfavorable ankylosis, defined as abduction limited to 25 degrees from side, and a 40-percent evaluation for favorable ankylosis, defined as abduction of 60 degrees, can reach mouth and head. The consultants suggested removing the intermediate level because ankylosis is either favorable or unfavorable and suggested elevating the unfavorable ankylosis to 80 percent and the favorable to 40 percent based on the same criteria for favorable and unfavorable as the current criteria. We consulted further with the VHA Orthopedic Committee, however, and the Committee indicated that an intermediate level is possible. We therefore propose to retain evaluations of 40 and 30 percent for intermediate ankylosis, which we propose to define as ankylosis with abduction limited to between 26 and 59 degrees, and to retain evaluations of 50 and 40 percent for unfavorable ankylosis and 30 and 20 percent for favorable ankylosis, retaining the current criteria. This

would encompass those with limited motion of a degree that does not meet the criteria for either favorable or unfavorable. We also do not propose to adopt the higher levels suggested, as the consultants did not specify why they believe this condition is more disabling than it is currently evaluated.

We propose to change the title of diagnostic code 5201 from "Arm, limitation of motion of" to "Limitation of active abduction of shoulder" to indicate that the criteria under this code are limited to the evaluation of active abduction of the shoulder rather than limitation of arm motion in general. The consultants suggested no other change. We propose no change other than to objectively specify in degrees the movements currently designated by reference to side and shoulder positions, that is, by changing "Midway between side and shoulder" to "to between 26 degrees and 89 degrees from side" and changing "At shoulder level" to "to shoulder level (90 degrees)". This more objective measurement of the disability will promote more consistent evaluations.

Diagnostic code 5202 is currently called "Humerus, other impairment of." For the sake of clarity, we propose to change the title to "Residuals of fracture of humerus and residuals of dislocation of glenohumeral (shoulder) joint," because these are the specific conditions covered under this diagnostic code. In the current evaluation criteria, the term "flail shoulder" is a parenthetical expression after loss of head of humerus. However, we propose to delete the reference to flail shoulder joint because this is a neurological condition due to paralysis of shoulder motion from such things as brachial plexus or other nerve injuries or poliomyelitis, and is properly evaluated under the neurological section of the rating schedule. The level of evaluation for the paralysis would depend on the extent of loss of function. The term "false flail joint" is currently a parenthetical expression after nonunion of a fracture of the humerus. That term is rarely used medically, and we propose to delete it and replace it with "nonunion of head of humerus with motion at fracture site" because that phrase describes the disability in correct and commonly used medical terms. The current criteria include evaluation percentages of 80 and 70 (for dominant and nondominant side) for loss of head of humerus (flail shoulder), 60 and 50 for nonunion of humeral head (false flail joint), and 50 and 40 for fibrous union of humeral head. We propose to reduce the rating for loss of the head from 80 and 70 to 60 and 50 percent because the consultants stated that this impairment is more amenable to treatment under modern medical techniques. We propose to retain the same evaluation percentages for nonunion and fibrous union.

This diagnostic code (5202) also contains criteria for evaluating recurrent dislocation at the scapulohumeral (glenohumeral) joint, providing 30 and 20 percent for frequent episodes and guarding of all arm movements and 20 and 20 percent for infrequent episodes and guarding of movement only at shoulder level. We propose to change the subtitle to "Recurrent dislocation of glenohumeral (shoulder) joint," which is the more common, current term, and to retain the percentage evaluations for frequent and infrequent episodes. We do, however, plan to specify what is meant by frequent (every 2 months or more frequently) and infrequent (less often than every 2 months, but at least once per year) episodes and to add a 10-percent level for evaluation when there has been at least one recurrence. We propose to add guarding of external rotation to the evaluation of infrequent dislocations under this code because this is a clearer description of the disability. These criteria are more clearly defined and will promote consistency.

Diagnostic code 5202 also includes evaluation criteria for malunion of the humerus, with evaluations of 30 and 20 percent for "marked" and 20 and 20 percent for "moderate." The consultants indicated that malunion is disabling only if it is symptomatic or there is functional impairment. We therefore propose to follow their recommendation and provide an evaluation level of 30 and 20 percent if the malunion is symptomatic and there is more than 45 degrees of angulation in the anterior-posterior plane or varus-valgus plane and a level of 20 percent if the malunion is symptomatic and there is 30 to 45 degrees of angulation in the anterior-posterior plane or varus-valgus plane. These criteria are less subjective and better define the degree of deformity and indicate that symptoms are required. These changes would promote consistency of evaluations.

Current diagnostic code 5203, "Clavicle or scapula, impairment of," provides evaluations of 20 and 20 percent (for dominant and nondominant sides) for dislocation, 20 and 20 percent for nonunion with loose movement, 10 and 10 percent for nonunion without loose movement, and 10 and 10 percent for malunion. The consultants said that the impairments from these conditions are less than current criteria would indicate, and suggested a 10-percent evaluation for any of the following: acromioclavicular separation with chronic pain, sternoclavicular separation with chronic pain, and nonunion of the clavicle and scapula with chronic pain. Because their suggested criteria were no more objective than the current criteria, we consulted with the VHA Orthopedic Committee, who suggested the following more objective criteria, which we propose to adopt: For resection of the end of the clavicle; nonunion of the clavicle or scapula; or malunion of the clavicle or scapula with skin breakdown, skin irritation, or thoracic outlet syndrome, 20 and 10 percent; for dislocation of the acromioclavicular joint with pain and osteoarthritis; or painful sternoclavicular anterior dislocation, 10 and 10 percent; for malunion of the clavicle or scapula zero and zero percent unless skin breakdown, skin irritation or thoracic outlet syndrome is present. The thoracic outlet is an area behind each clavicle where an artery, a vein, and nerves cross over the first rib. Upper extremity symptoms, known as the thoracic outlet syndrome, can develop on one or both sides when the nerves or blood vessels in this area are compressed by any of several causes, including an abnormal position or shape of the clavicle after an injury. The symptoms may include pain, numbness, tingling, weakness, and aching of an arm or hand, and there also may be swelling and enlarged veins.

Untreated sternoclavicular posterior dislocations will be evaluated separately, on the basis of complications, such as from pressure on blood vessels or trachea. We propose to add a note stating that these criteria encompass pain, so an evaluation under diagnostic code 5203 is not to be combined with an evaluation for pain (under § 4.59). We propose to add a second note to explain what is meant by a thoracic outlet syndrome and to indicate that it can be separately evaluated if not used to support an evaluation under diagnostic code 5203. These objective criteria are more clearly related to the likely functional impairment of these various conditions, based on orthopedic experience.

We propose to add a new diagnostic code, 5204, for "Rotator cuff dysfunction and impingement syndrome," two common shoulder disabilities that warrant a separate diagnostic code because they may currently be rated under a variety of existing codes and therefore may not be rated consistently. The rotator cuff is a group of 4 muscles (the subscapularis, supraspinatus, infraspinatus, and teres minor, all originating from the scapula)

and their tendons that surround the glenohumeral (shoulder) joint. These structures stabilize the shoulder joint and allow the arm to rotate ("Essentials of Musculoskeletal Care" 114 (Robert K. Snider, M.D., ed., 1999)). The rotator cuff may become symptomatic as a result of bursitis, tendinitis, or a tear or sprain affecting structures in the area. Both repetitive activity and acute injury can lead to rotator cuff damage. The major symptoms are pain, weakness, and loss of motion. Rotator cuff dysfunction is often associated with impingement syndrome, which is a condition in which the acromion or coracoid process of the scapula, the coracoacromial ligament, and the acromioclavicular joint press on the underlying bursa, biceps, tendon, and rotator cuff (Snider, 108). Impingement may lead to rotator cuff damage. Pain, weakness, and loss of function are possible outcomes of impingement syndrome. Because the effects of rotator cuff dysfunction and impingement syndrome are similar, and they often occur together, they can be rated under the same set of criteria. The consultants suggested adding impingement syndrome to the schedule with a single evaluation level of 10 percent for either side, based on the presence of the diagnosis and a positive impingement sign (a clinical test of arm movement that indicates the impingement syndrome is present). We propose to follow their suggestion for a 10-percent evaluation but to add an evaluation level of 20 and 20 percent for those with limitation of motion of internal rotation, external rotation, flexion, and abduction, since this limitation of motion would be more disabling than the presence of a positive impingement sign alone would warrant. Furthermore, since limitation of abduction alone may be rated under diagnostic code 5201 (limitation of active abduction of shoulder) at higher levels, we propose to add a note directing that evaluation be made under diagnostic code 5201 if a higher evaluation could be assigned based on limitation of abduction, but this evaluation may not be combined with an evaluation under diagnostic code 5204. We also propose to add a note directing the rater to combine an evaluation based on the criteria under diagnostic code 5204 with an evaluation for pain under § 4.59 when appropriate, since pain may be the predominant symptom. These criteria would take into account the usual manifestations of these conditions in an objective way, and also take into account any pain that is present under a standardized method of evaluation.

Elbow and Forearm

Current diagnostic code 5205, "Elbow, ankylosis of," has evaluation levels of 60 and 50, 50 and 40, and 40 and 30 percent, based on whether the ankylosis is unfavorable, at an angle of less than 50 degrees or with complete loss of supination or pronation; intermediate, at an angle of more than 90 degrees or between 70 degrees and 50 degrees; or favorable, at an angle between 90 degrees and 70 degrees. The consultants recommended that all degrees of elbow ankylosis be rated at 80 percent because elbow ankylosis is very disabling regardless of position and it is impossible to distinguish between levels of disability. The VHA Orthopedic Committee also felt that the current criteria for unfavorable ankylosis would be equivalent to an above elbow amputation and agreed that a rating of 80 (for dominant) and 70 (for non-dominant) percent for unfavorable elbow ankylosis, at an angle of less than 50 degrees, or with complete loss of supination or pronation, is appropriate. They also felt that the intermediate and favorable ankylosis evaluations should be elevated, but not to the level that is equivalent to an amputation above the elbow. We therefore propose to retain the same criteria for elbow ankylosis, with editorial changes, but to elevate the evaluations for each level to 80 and 70 percent for unfavorable, 60 and 50 percent for intermediate, and 50 and 40 percent for favorable ankylosis. These evaluation levels are more consistent with the extent of disability these degrees of ankylosis produce, based on orthopedic experience and judgment.

Diagnostic codes 5206, 5207, and 5208 currently refer to limitation of flexion and extension of the forearm. Because extension and flexion are actually functions of the elbow joint, we propose to change the word "forearm" to "elbow" in the headings of diagnostic codes 5206, 5207, and 5208. We propose to retain the same criteria except for two nonsubstantive changes under diagnostic code 5207 that we are making because of language that has been a source of confusion. We propose to change the phrase "extension limited to X degrees" to "extension is limited to minus X degrees (lacks X degrees of full extension)" because full extension is zero degrees, and if less than full extension is possible, a negative number is required, since the range of extension is zero to minus 145 degrees. For example, if there is 110 degrees of limitation of extension (or, extension is limited by 110 degrees), it means that only minus 35 degrees of full extension is possible or that extension is limited to minus 35 degrees. For the sake of clarity, we propose to revise this language, using zero degrees as the reference point for full extension, as Plate I indicates is correct. Also currently, a 10-percent evaluation is provided both for limitation of extension to 60 degrees and for limitation of extension to 45 degrees. We propose to revise the criteria for a 10-percent level of evaluation to encompass both, by proposing a 10-percent evaluation if extension is limited to between minus 45 and minus 74 degrees (extension lacks at least 45 but less than 75 degrees of full extension). This eliminates the need for two sets of criteria for the 10-percent evaluation level. Similarly, for diagnostic code 5208, we propose to change the current language of the title (and evaluation criteria) from "Forearm, flexion limited to 100 degrees and extension to 45 degrees" to "Flexion of elbow is limited to 100 degrees, and extension is limited to minus 45 degrees (lacks 45 degrees of full extension).

Diagnostic code 5209, "Elbow, other impairment of," calls for evaluations of 60 and 50 percent for a flail joint, and of 20 and 20 percent for joint fracture, with marked cubitus varus or cubitus valgus deformity or with ununited fracture of head of radius. The consultants recommended no changes. However, we propose to remove the criterion of "flail joint" from this section, since it refers to complete paralysis at the elbow, a neurologic condition that would be more appropriately evaluated under § 4.124a in the neurologic portion of the rating schedule. The specific diagnostic code and evaluation would depend on the exact findings. Complete paralysis of the shoulder and elbow due to upper radicular (fifth and sixth cervical nerves) impairment would warrant a 70- or 60-percent evaluation (for dominant and non-dominant side, respectively). If only the middle radicular cervical nerve group is impaired, the evaluation for complete paralysis of adduction, abduction, and rotation of arm, plus flexion of elbow and extension of wrist would also warrant a 70-or 60-percent evaluation. It is unlikely that elbow movements alone would be completely paralyzed in a given situation because the same nerves that innervate the muscles about the elbow innervate muscles that affect the movement of other parts of the arm. The VHA Orthopedic Committee stated that the normal position of the elbow is 10–15 degrees of valgus and that any degree of cubitus varus (*i.e.*, any degree of varus greater than zero degrees) will greatly

interfere with positioning of the hand and would be considered "marked." They also indicated that marked cubitus valgus essentially doesn't occur. They also suggested we add an evaluation level of 10 percent for excision of the radial head and add malunion of radial head at the 20-percent level. Based on this information, we propose to revise the criteria for the 20 and 20 percent level to "Joint fracture with cubitus varus deformity; or ununited or malunited head of radius' and to add a level of 10 and 10 percent for "excised radial head."

We propose no change to diagnostic code 5210, "Radius and ulna, nonunion of with flail false joint" except for revising the title to "Nonunion of radius and ulna, with motion at the fracture site," since the term "false flail joint" is seldom used medically, and the revised title would adequately describe the disability.

We propose to revise the criteria for diagnostic codes 5211, "Ulna, impairment of" and 5212, "Radius, impairment of," for the sake of clarity and in order to provide guidance on evaluating nonunion in the upper half of the ulna or the lower half of the radius with false movement when there is either deformity or loss of bone substance, but not both. Currently 40 or 30 percent is assigned under diagnostic code 5211 for nonunion in the upper half of the ulna with false movement with loss of bone substance and marked deformity, and 30 or 20 percent is assigned for nonunion in the upper half of the ulna without loss of bone substance or deformity. There is no guidance on evaluating an intermediate condition where either deformity or loss of bone substance, but not both, is present. We propose to retain the 40 or 30 percent with the same criteria, but to assign 30 or 20 percent if there is either deformity or loss of bone substance and 20 percent if neither deformity nor loss of bone substance is present. Providing a third method of evaluating nonunion in the upper half of the ulna would promote consistent evaluations for those who have the intermediate level of disability.

We propose to provide a similar intermediate evaluation under diagnostic code 5212, with 30 or 20 percent assigned if there is nonunion of the lower half of the radius with false movement and either deformity or loss of bone substance and 20 percent if neither deformity nor loss of bone substance is present. For both diagnostic code 5211 and 5212, we propose to change the current criterion for 10 percent from "Malunion of, with bad alignment" to "Malunion of, symptomatic" because disability from these types of injuries is related to function rather than position of the joint. We also propose to add a note under each diagnostic code (5211 and 5212) directing that, alternatively, malunion (of the ulna or the radius) be evaluated based on limitation of motion if that would result in a higher evaluation. We also propose, for both diagnostic codes 5211 and 5212, to remove the word "marked" which currently precedes "deformity" in the evaluation criteria at the 40- and 30-percent level. This disability level will be distinguished from the next lower one by whether or not both deformity and loss of bone substance are present.

Impairment of supination and pronation of forearm, diagnostic code 5213, is currently evaluated at 40 or 30 percent (for dominant and nondominant side, respectively) if there is bone fusion and the hand is fixed in supination or hyperpronation; at 30 or 20 percent if the hand is fixed in full pronation; and at 20 percent if the hand is fixed near the middle of the arc or moderate pronation. For limitation of pronation, 30 or 20 percent is assigned if motion is lost beyond the middle of the arc, and 20 percent is assigned for motion lost beyond the last quarter of the arc, the hand does not approach full pronation. For limitation of supination, 10 percent is assigned for supination to 30 degrees or less. We propose to clarify the evaluation criteria by specifying in degrees what is meant by currently used terms such as "hyperpronation", "Motion lost beyond middle of arc," etc., in order to remove any ambiguity. We propose that when there is bone fusion, an evaluation of 40 or 30 percent be assigned when the hand is fixed in supination (between one and 85 degrees of supination) or in hyperpronation (in greater than 80 degrees of pronation); of 30 or 20 percent be assigned when the hand is fixed in full pronation (at 80 degrees of pronation); and of 20 percent when the hand is fixed at 40 to 45 degrees of pronation. We propose to evaluate limitation of pronation at 30 or 20 percent when pronation is limited to 40 degrees and at 20 percent when pronation is limited to 60 degrees. We propose to evaluate limitation of supination at 10 percent when supination is limited to 30 degrees. We also propose to edit the note that currently says that in all forearm and wrist injuries, codes 5205 through 5213, multiple impaired finger movements due to tendon tie-up, muscle or nerve injury, are to be separately rated and combined not to exceed rating for loss of use of hand. We propose instead to have the note say that evaluations for forearm and wrist injuries, diagnostic codes 5205 through 5213, will be combined with separate evaluations for limitation of motion of the fingers, subject to the provisions of § 4.68 (which limits the combined evaluation of musculoskeletal and associated neurologic disabilities of an extremity).

Wrist

The consultants suggested no changes for diagnostic code 5214, "Wrist, ankylosis of," except for suggesting that we add a second note stating that bilateral wrist ankyloses are more functional if one wrist is in a flexed position and the other is in an extended position. We propose no change based on this comment. We propose to continue rating each wrist separately as though only one is impaired, a method that would in general be more beneficial to the veteran, and a method that the VHA Orthopedic Committee believe to be appropriate. It seems unlikely, in any case, that more than a few veterans would be service-connected for ankylosis of both wrists. There is currently a note under 5214 stating that extremely unfavorable ankylosis will be rated as loss of use of hands under diagnostic code 5125, but the note does not define "extremely unfavorable ankylosis." We propose to remove this instruction because there is already a provision in § 3.350 (a)(2) of this chapter (the criteria for determining when loss of use of a hand or foot is present) that indicates that special monthly compensation is payable when no effective function of the hand remains. This applies, whatever the cause, and need not be repeated here. We also propose editorial changes for clarity.

We propose to revise the evaluation criteria under diagnostic code 5215, "Wrist, limitation of motion of," by changing the current criteria for a 10-percent evaluation, "Dorsiflexion less than 15 degrees" or "Palmar flexion limited in line with forearm" to "Dorsiflexion limited to 14 degrees, or palmar flexion limited to zero degrees (no palmar flexion possible)". These are clarifying, rather than substantive, changes.

Upper Extremity Digit Ankylosis and Limitation of Motion, Fractures of Hand and Feet Phalanges, Metacarpals, and Metatarsals

Revised criteria and guidance for the evaluation of upper extremity digit ankylosis and limitation of motion (diagnostic codes 5216 through 5227) will be addressed in a separate rulemaking, so they are not being addressed in this proposed rule.

There are currently no diagnostic codes in the rating schedule for the evaluation of disability due to fractures of the phalanges of the hand or foot or of the metacarpals of the hand or carpals of the wrist. These disabilities must now be rated by analogy to other conditions. Since they are such common injuries in veterans, we propose to add three new diagnostic codes: 5231 for residuals of fracture of a phalanx of finger or thumb, 5232 for residuals of fracture of a carpal or metacarpal bone, and 5233 for residuals of fracture of a phalanx of a toe (residuals of fractures of the tarsals and metatarsals can be evaluated under diagnostic code 5283, "Malunion or nonunion of tarsal or metatarsal bones (except talus and calcaneus)"). We propose that each of these fractures be evaluated based on the specific residuals, such as limitation of motion or ankylosis, under the appropriate code(s), to be combined with an evaluation for pain under § 4.59 when appropriate.

Hip and Femur

Diagnostic code 5250, "Hip, ankylosis of," currently provides for an evaluation of 90 percent if the ankylosis is extremely unfavorable, with the foot not reaching the ground and crutches necessary; an evaluation of 70 percent if the ankylosis is intermediate; and an evaluation of 60 percent if the ankylosis is favorable, in flexion at an angle between 20 degrees and 40 degrees, with slight adduction or abduction. The consultants suggested that we remove the intermediate level because there is no middle ground with this disability. They also suggested we revise the criteria for favorable ankylosis to "in slight flexion, at an angle between 20 degrees and 40 degrees and minimal adduction or abduction, not requiring assistive devices." The VHA Orthopedic Committee indicated that unfavorable ankylosis would be present when there is more than 60 degrees of flexion so that the foot cannot reach the ground and crutches are required. We propose to adopt both suggestions in part and make the evaluation criteria more specific. For a 90-percent evaluation, we propose that the criteria be "Unfavorable ankylosis, meaning fixed in more than 60 degrees of flexion so that the foot cannot reach the ground, and crutches are required for ambulation." We propose that the criteria for a 60-percent evaluation be "Favorable ankylosis, meaning fixed in 20 degrees to 39 degrees of flexion, in slight adduction or abduction, and assistive devices are not required." These criteria are similar to the current criteria and the criteria recommended by the consultants. This leaves ankylosis in flexion at an angle between 40 and 60 degrees undefined, and we therefore propose to retain the 70-percent level of evaluation with criteria of "Intermediate ankylosis, meaning fixed in 40 to 60 degrees of flexion, and assistive devices may be needed."

We propose to change the title of diagnostic code 5251 from "Thigh, limitation of extension of" to "Limitation of extension of hip'; the title of diagnostic code 5252 from "Thigh, limitation of flexion of" to "Limitation of flexion of hip'; and the title of 5253 from "Thigh, impairment of" to "Limitation of abduction, adduction, or rotation of hip" to reflect more clearly that these diagnostic codes refer to movement at the hip joint.

The current evaluation criteria for diagnostic code 5251, "Thigh, limitation of extension of," provide a single level of evaluation of 10 percent for limitation of extension of the thigh to five degrees. The consultants recommended no change. However, we propose to revise the criteria because the current criterion for a 10-percent evaluation does not take into account the fact that some individuals have only 10 degrees of extension normally. According to the VHA Orthopedic Committee, comparing the affected and non-affected sides would be a better indicator of the extent of disability, because some people have a small degree of limitation of extension with no symptoms. We therefore propose to assign a 10-percent evaluation if there is limitation of extension of the affected hip that is at least 10 degrees more than the limitation of extension of the non-affected hip, and there is a positive Thomas test (test for flexion contracture of the hip). The normal range of motion of the hip for flexion and extension is zero degrees (full extension) to 125 degrees (full flexion). A Thomas test shows the degree of flexion deformity (contracture) of a hip and confirms the limitation of extension (which is the equivalent of a flexion contracture, since extension is always limited to less than zero if there is a flexion contracture). In the Thomas test, the patient is supine (lying on back), with one leg flexed so that the knee touches the chest, and the angle between the other hip and the examination table represents the degree of flexion deformity or contracture (limitation of extension) that is present.

We propose no change in the criteria for limitation of flexion of the hip under diagnostic code 5252. We propose no change in the criteria for limitation of abduction, adduction, or rotation of the hip under diagnostic code 5253, except for editorial changes.

Diagnostic code 5254 is currently titled "Hip, flail joint" with a single evaluation level of 80 percent based solely on the diagnosis. "Flail joint" is an obsolete term, and we propose to modernize the title to "Resection arthroplasty of hip (removal of femoral head and neck without replacement by a prosthesis)", as recommended by the consultants, and to continue a single evaluation of 80 percent for the condition.

We propose to change the title of diagnostic code 5255 from "Femur, impairment of" to "Residuals of fracture of femur" because that is the condition evaluated under this diagnostic code. This diagnostic code currently includes evaluation criteria for fractures of the shaft or anatomical neck with nonunion, for fracture of the surgical neck with a false joint, and for malunion with knee or hip disability. Fracture of the shaft or anatomical neck of the femur with nonunion, with loose motion (spiral or oblique fracture) is currently evaluated at 80 percent. If there is nonunion without loose motion and weightbearing is preserved with the aid of a brace, it is evaluated at 60 percent. Sixty percent is also assigned for fracture of the surgical neck of the femur with a false joint. Malunion of a fracture of the femur is currently rated at 30 percent if there is malunion and marked knee or hip disability, at 20 percent if there is moderate knee or hip disability, and at 10 percent if there is slight knee or hip disability. These criteria contain subjective adjectives such as "marked" and "moderate" and do not provide the rater with objective criteria for evaluating the disability.

The consultants suggested a reorganization and expansion of the types of fractures and residuals, and we propose to do that, as well as to remove the subjective language. They also pointed out that these conditions respond well to treatment, and impairment under current treatment is not as great as in past years, so some reductions in percentage levels are warranted. We propose to follow their recommendations. We propose that a fracture of the femoral neck, intertrochanteric area, or shaft be evaluated at 60 percent if there is symptomatic malunion or symptomatic nonunion; at 40 percent if there is asymptomatic nonunion, or if there is a fracture of the femoral head or subcapital area with excision of 25 percent or more of the weightbearing portion; and at 30 percent if there is a fracture of the femoral shaft with symptomatic malunion and either more

than 10 degrees of angulation in the varus-valgus plane or more than 15 degrees of angulation in the anterior-posterior plane. We also propose to add two notes. The first directs that a fracture of the femoral head or subcapital area with excision of less than 25 percent of the weightbearing portion be evaluated as aseptic necrosis under diagnostic code 5265. The second defines malunion of an intertrochanteric fracture as having a varus deformity, shortening, or rotation. These criteria are based on modern medical treatment and focus on the femoral impairment. Currently, additional disability of the knee or hip resulting from a femoral fracture is evaluated at 10, 20, or 30 percent, depending on whether the impairment is mild, moderate, or marked. These criteria are subjective and therefore difficult to apply consistently, and any hip or knee impairment can be separately rated as a secondary condition to the femoral shaft fracture. Therefore it is unnecessary to take into consideration impairment of the hip or knee in evaluating femoral shaft fracture, and we propose to remove those criteria.

Knee and Lower Leg

Ankylosis of the knee, diagnostic code 5256, is currently evaluated at 60 percent if the ankylosis is extremely unfavorable, in flexion at an angle of 45 degrees or more; at 50 percent if the ankylosis is in flexion between 20 and 45 degrees; at 40 percent if the ankylosis is in flexion between 10 and 20 degrees; and at 30 percent if the ankylosis is at a favorable angle in full extension, or flexion between zero and 10 degrees. We propose to revise the criteria to avoid the overlap of the required degrees of flexion in the current criteria by making the required flexion be more than 45 degrees for 60 percent; between 21 and 45 degrees for 50 percent; between 11 and 20 degrees for 40 percent; and in full extension, or in flexion between zero and 10 degrees for 30 percent.

Diagnostic code 5257 is currently titled "Knee, other impairment of," but the criteria are based only on the extent of recurrent subluxation or lateral instability. Thirty percent is assigned if the condition is "severe," 20 percent if it is "moderate," and 10 percent if it is "slight." We propose to change the title to "Knee instability" because this more precisely describes the content. The consultants recommended that evaluations be based on whether the instability is correctable by bracing and the extent to which it interferes with activities of daily living and athletic activities, such as running and jumping. We propose to follow this recommendation, providing a 30-percent evaluation if there is documented instability that is not correctable by bracing and that interferes with activities of daily living; a 20-percent evaluation if there is documented instability that is correctable with bracing, but that interferes at times with activities of daily living and that prevents activities such as running and jumping; and a 10-percent evaluation if there is documented instability that is correctable by bracing and that does not interfere with activities of daily living, but at times may interfere with activities such as running and jumping. We also propose to add a note directing that an evaluation under diagnostic code 5257 may be combined with an evaluation for pain (under § 4.59) when appropriate. The proposed criteria are more objective than the current criteria, a change that will promote consistent evaluations.

Diagnostic code 5258 is currently titled "Cartilage, semilunar, dislocated, with frequent episodes of 'locking,' pain, and effusion into the joint". It provides a single evaluation level of 20 percent. The consultants suggested we change the title of diagnostic code 5258 to "Meniscus, tear with episodes of give way, locking and/or swelling". They suggested a single evaluation level of 10 percent, because they felt the impairment is not as great as in the original schedule. Diagnostic code 5259 is currently titled "Cartilage, semilunar, removal of, symptomatic," with a single evaluation level of 10 percent. The consultants suggested changing the condition to "Patellofemoral subluxation or dislocation" and to base evaluation on the frequency of episodes.

We propose to follow their suggestion in part by combining meniscus injuries, pre-or post-operatively, under diagnostic code 5258 and by changing the title to "Injury of meniscus (semilunar cartilage) of knee (pre-or post-operatively)," which is both a more current medical term and more reflective of the content. We also propose to provide a 20-percent evaluation for meniscus injury with episodes of giving way, locking, or joint effusion that interfere at times with activities of daily living and prevent activities such as running and jumping, and a 10-percent evaluation for meniscus injury with episodes of giving way, locking, or joint effusion that do not interfere with activities of daily living, but that at times interfere with activities such as running and jumping. We propose that evaluation alternatively be based on instability, degenerative arthritis, *etc.*, depending on the specific findings, under the appropriate diagnostic code, because these are possible effects of meniscus injury or surgery. We also propose to add a note directing that an evaluation under diagnostic code 5258 be combined with an evaluation for pain (under § 4.59) when appropriate. Diagnostic code 5259 would be unnecessary under this reorganization, and we propose to remove it.

Diagnostic codes 5260 and 5261 currently pertain to limitation of flexion of the leg and limitation of extension of the leg, respectively. Because the terms extension and flexion are functions of the knee joint, we propose to change the word "leg" to "knee" in the titles of diagnostic codes 5260 and 5261. We propose to retitle diagnostic code 5260 "Limitation of flexion of knee." Flexion of the knee limited to 15 degrees is currently evaluated at 30 percent, flexion limited to 30 degrees is evaluated at 20 percent, flexion limited to 45 degrees is evaluated at 10 percent, and flexion limited to 60 degrees is evaluated at zero percent. The consultants pointed out that 30, 60, and 90 degrees are the important angles of measurement and are better measures of impairment than those in the current schedule. The VHA Orthopedic Committee agreed. We therefore propose to provide a 30-percent evaluation if flexion is limited to 30 degrees, a 20-percent evaluation if it is limited to 60 degrees, and a 10-percent evaluation if it is limited to 90 degrees.

Under diagnostic code 5261, currently "Leg, limitation of extension of," which we propose to retitle "Limitation of extension of knee," current evaluations are 50 percent if extension is limited to 45 degrees, 40 percent if it is limited to 30 degrees, 30 percent if it is limited to 20 degrees, 20 percent if it is limited to 15 degrees, 10 percent if it is limited to 10 degrees, and zero percent if it is limited to 5 degrees. The consultants pointed out that the three relevant ranges of measurement for limitation of extension are lack of extension of 5 to 15 degrees, lack of extension of 15 to 30 degrees, and lack of extension of 30 degrees or more. We therefore propose to provide evaluation levels of 50 percent if extension is limited to more than minus 30 degrees (lacks more than 30 degrees of full extension), 30 percent if extension is limited to between minus 16 and 30 degrees (lacks 16 to 30 degrees of full extension), and 10 percent if extension is limited to between minus 5 and 15 degrees (lacks 5 to 15 degrees of full extension). Reducing the number of levels of evaluation for limitation of flexion and extension to three will help simplify the

rating process and will be in accord with the consultants' recommendation about relevant ranges. These levels will also be clearer in reference to Plate II, which shows the range of motion of the knee as zero to 140 degrees (which includes both flexion and extension of the knee), and which therefore requires that less than full extension be expressed as a negative number.

Diagnostic code 5262, Tibia and fibula, impairment of, currently has evaluation criteria pertaining to residuals of fracture of the tibia or fibula. Evaluations are 40 percent if there is nonunion, with loose motion, requiring a brace, 30 percent if there is malunion with marked knee or ankle disability, 20 percent if there is malunion with moderate knee or ankle disability, and 10 percent if there is malunion with slight knee or ankle disability. The consultants suggested no change. However, we propose changes in order to eliminate the subjective terms "marked," "moderate," and "slight" and the indefinite term "ankle or knee disability." We propose to use evaluation criteria similar to those we are proposing for fractures of the femur. We propose a 40-percent evaluation if there is nonunion, with loose motion, requiring a brace; a 30-percent evaluation if there is an asymptomatic nonunion; a 20-percent evaluation if there is a symptomatic malunion with either more than 10 degrees of angulation in the varus-valgus plane or more than 15 degrees of angulation in the anterior-posterior plane; and a 10-percent evaluation if there is a symptomatic malunion with neither more than 10 degrees of angulation in the varus-valgus plane nor more than 15 degrees of angulation in the anterior-posterior plane. These would provide more objective criteria to promote consistent evaluations. We also propose to revise the title to "Nonunion or malunion of fracture of tibia or fibula," in order to better identify the content of this diagnostic code.

We propose to delete diagnostic code 5263, "Genu recurvatum," since the consultants said this diagnosis is no longer used. Some degree of genu recurvatum (which means backward curving or hyperextended knee) is normal in females, and when acquired, is a finding that occurs as part of other conditions, such as nerve paralysis or osteoarthritis, rather than being a primary diagnosis or disability. Its evaluation would be encompassed by the evaluation for the primary underlying condition.

Aseptic Necrosis of Femoral Head

We propose to add a new diagnostic code, 5265, for aseptic necrosis (or avascular necrosis or osteonecrosis) of the femoral head. The consultants recommended this addition and suggested criteria similar to those we propose, although they used subjective terms that we have replaced with more objective criteria. For example, they suggested a 100-percent evaluation for a "severe" level with "severe" pain requiring use of ambulatory support, a 50-percent evaluation for a "moderate" level with "moderate" pain aggravated by activity and requiring intermittent ambulatory support, a 10-percent level for a "mild" level with previous severe or moderate disease that has stabilized, without collapse of the femoral head (at least 2 years after onset) and minimal pain; and a zero-percent evaluation for a "minimal" level with previous severe or moderate disease that has stabilized (at least 2 years after onset) with minimal residual deformity. They felt that if there is mild or minimal aseptic necrosis, there should also be an assessment of limitation of motion, with the higher rating being given.

Aseptic necrosis (or avascular necrosis or osteonecrosis) of the hip is seen commonly if there has been interference of the blood supply to the head of the femur due to trauma, metabolic disease, vascular disease, etc., with resulting bone death of part or all of the femoral head. Eventually, the affected bone collapses. It is likely that it would currently be rated analogous to fracture of the femur (diagnostic code 5255), which has current evaluations ranging from 10 to 80 percent (and for which we propose to have evaluation levels of 30 to 60 percent, as described above). The proposed new criteria under diagnostic code 5255 are not appropriate for aseptic necrosis of the femur because a fracture of the femur is not always present, and the findings are not necessarily similar. Aseptic necrosis may be painless early but then cause progressive pain with weight bearing or even at rest. Eventually, a hip replacement may be needed because of bone destruction. We propose to base evaluations on whether ambulatory support is needed and whether the femoral head is collapsed, and to evaluate pain, when present, separately under § 4.59, rather than assessing pain on the subjective criteria of whether it is "mild," "moderate," or "severe". We propose to evaluate aseptic necrosis at 60 percent if there is collapse of the femoral head and constant ambulatory support is required; at 40 percent if there is collapse of the femoral head and intermittent ambulatory support is required; and at 10 percent if there is evidence of aseptic necrosis without collapse of the femoral head. We do not propose to include a 100-percent evaluation as the consultants suggested because their evaluation levels included subjective complaints of pain, and we propose to add a note directing that an evaluation under diagnostic code 5265 will be combined with a separate evaluation for pain under § 4.59 when appropriate. We also propose to add a note indicating that the condition may be alternatively evaluated as limitation of motion of the hip combined with an evaluation for pain when appropriate, if that would result in a higher evaluation.

Other Knee Conditions

There are two relatively common areas of disability of the knee that are not addressed in the current schedule—fracture, subluxation, or dislocation of the patella and patellofemoral pain syndrome. The consultants recommended we add diagnostic codes for these conditions, and we propose to do so.

We propose to add diagnostic code 5266 as "Patellar fracture and instability." This would include subluxation and dislocation of the patella, residuals of patellectomy (removal of the patella), and patellar fracture. The consultants suggested two levels of evaluation for subluxation and dislocation of the patella, with 20 percent assigned for patellofemoral subluxation or dislocation that is "frequent," occurring more than once a month, and 10 percent for patellofemoral subluxation or dislocation that is "infrequent," occurring less than once a month. They also suggested a separate diagnostic code for patellar fracture, with a 30-percent evaluation for symptomatic nonunion and a 20-percent evaluation for patellectomy. We propose instead that all of these conditions be evaluated under a single diagnostic code with three levels of evaluation. We propose to evaluate subluxation (a partial dislocation in which the patella spontaneously goes back into normal position) based on different criteria from the more severely disabling dislocation (which requires manual replacement of the patella). We propose an evaluation of 30 percent if there is symptomatic nonunion of a fracture of the patella, or if there is patellectomy, or if there is recurrent patellar dislocation occurring six or more times during the past 12-month period. We propose a 20-percent evaluation if there is patellofemoral subluxation (partial or incomplete dislocation of the patella) occurring

three or more times per month during the past 12-month period or if there is recurrent patellar dislocation occurring three to five times during the past 12-month period. We propose a 10-percent evaluation if there is patellofemoral subluxation one to two times per month during the past 12-month period or if there is recurrent patellar dislocation occurring one or two times during the past 12-month period. The VHA Orthopedic Committee felt that patellectomy warrants a higher rating than the consultants recommended because it can result in substantial functional impairment of the knee, and we propose to follow that recommendation. We also propose to add a note indicating that the evaluation criteria for diagnostic code 5266 encompass pain, since pain is ordinarily present in these conditions, so a separate evaluation for pain under § 4.59 is not warranted.

We also propose to add diagnostic code 5267 for patellofemoral pain syndrome (chondromalacia of patella, retropatellar pain syndromes, patellofemoral syndrome). This diagnostic code includes a group of disorders characterized by anterior knee pain between the patella and the femur, especially on climbing or descending stairs or on squatting. There may be deep tenderness on palpation and pressure on the patella, crepitus on motion, a grinding sensation behind the patella, and occasionally swelling. The diagnosis may be made clinically or based on X-ray or other imaging procedure or on arthroscopic findings. We propose that the condition be evaluated based on pain, which is the main disabling effect, under the criteria in § 4.59.

Ankle and Foot

Diagnostic code 5270, ankylosis of the ankle, currently provides a 40-percent evaluation if the ankylosis is in plantar flexion at more than 40 degrees or in dorsiflexion at more than 10 degrees, or with abduction, adduction, inversion, or eversion deformity; a 30-percent evaluation if it is in plantar flexion between 30 and 40 degrees or in dorsiflexion between zero and 10 degrees; and a 20-percent evaluation if it is in plantar flexion at less than 30 degrees. The consultants suggested evaluations ranging from zero to 40 percent for 10 different situations that apply to foot and ankle ankylosis and fusion. For example, they suggested a 40-percent evaluation for fusion of the ankle in poor weightbearing position and a 20-percent evaluation for fusion of the ankle in good weightbearing position; a 20-percent evaluation for fusion of the subtalar joint in poor weightbearing position and a 10-percent evaluation for fusion of the subtalar joint in good weightbearing position, *etc.* However, they did not define "good" and "poor" weightbearing positions. The VHA Orthopedic Committee indicated that good weightbearing would mean the foot is in a plantigrade position, meaning it is in the proper position for walking. In our judgment, neither of these provides more objective guidance for rating than the current criteria, and we therefore propose only editorial changes.

The evaluation criteria for evaluating limitation of motion of the ankle (diagnostic code 5271) are currently divided into levels of 20 and 10 percent, based on whether the disability is "marked" or "moderate." These terms are subjective, and we propose to substitute the more objective criteria recommended by the consultants. We propose to assign 20 percent if there is less than 5 degrees passive dorsiflexion or less than 10 degrees passive plantar flexion and 10 percent if there is less than 15 degrees passive dorsiflexion or less than 30 degrees passive plantar flexion. These more objective criteria should promote consistent evaluations.

Diagnostic code 5272 is currently titled "Subastragalar or tarsal joint, ankylosis of." In order to reflect current medical terminology, we propose to change the term "subastragalar" to "subtalar" and retitle 5272 as "Ankylosis of subtalar or tarsal joint." We propose no change in the criteria except to add "no varus, no valgus" to clarify what "good weightbearing position" means and to add "not in plantigrade position" to indicate what "poor weightbearing position" means.

Diagnostic code 5273 is currently titled "Os calcis or astragalus, malunion of." We propose to update the language and retitle 5273 as "Malunion of calcaneus (os calcis) or talus." Currently, the condition is evaluated at 20 percent if there is "marked" deformity and at 10 percent if there is "moderate" deformity. These are subjective criteria that allow for different interpretations. The consultants suggested no change in the criteria. However, the VHA Orthopedic Committee offered objective criteria that we propose to adopt. They suggested that marked deformity would mean deformity of the talocalcaneal joint or spreading of the calcaneus deforming the weightbearing surface of the heel, because either deformity would interfere with walking. They also suggested a higher evaluation would be warranted for such deformities, and we propose to assign a 30-percent evaluation for this deformity. They suggested that moderate deformity would mean malunion of either the talus or calcaneus without deformity of the subtalar joint or weightbearing surface of the heel.

Diagnostic code 5274 is currently titled "Astragalectomy." We propose to update the term "astragalectomy" to "talectomy," which is the only change suggested by the consultants. We propose to further change the title to "Total or partial talectomy without subsequent arthrodesis," as suggested by the VHA Orthopedic Committee. The Committee also suggested this is much more disabling than the current evaluation of 20 percent because it causes a severe disruption of the entire mechanism of the ankle, and we therefore propose to assign a 40-percent evaluation for talectomy.

There is currently a single diagnostic code, 5275, for "Bones, of the lower extremity, shortening of" under the heading "Shortening of the Lower Extremity." Under this diagnostic code there are six levels of evaluation between 10 and 60 percent, but the criteria overlap. For example, a 10-percent evaluation is assigned for shortening of 1¼ to 2 inches and a 20-percent evaluation for shortening of 2 to 2½ inches so that a shortening of 2 inches could be evaluated at either 10 or 20 percent. The consultants suggested eliminating all but the 10-, 20-, and 40-percent levels because they felt these levels are more precisely related to impairment than the original levels, but their suggested criteria did not remove the overlap. We propose to retain the current levels since the objectivity of the criteria allows us to readily distinguish six levels closely related to incremental degrees of shortening. The VHA Orthopedic Committee suggested no change in the current criteria. We do propose to eliminate the overlapping, for example, by assigning 10 percent if there is shortening of at least 1¼ but less than 2 inches (3.2 to less than 5.1 cm.) and 20 percent if there is shortening of at least 2 but less than 2½ inches (5.1 to less than 6.4 cm.). These represent only minimal changes in the criteria for the sake of clarity. We also propose to edit the instructions in two notes for measuring leg length and the prohibition against combining shortened leg with other evaluations for fracture or faulty union in the same extremity.

Diagnostic code 5276 is currently titled "Flatfoot, acquired." We propose to remove the term "acquired" because, as the consultants noted, it is not of assistance in distinguishing this condition, which may or may not have

preexisted service, may or may not have been congenital, and, if preexisting service, may or may not have undergone aggravation during service. Making all of those determinations is part of the rating process that decides whether the condition should be service-connected, but they are not inherent to evaluation. We also propose to add the term "pes planus" to the title, since this is the medical term for flatfoot. The current criteria provide an evaluation of 50 percent if bilateral and 30 percent if unilateral for the pronounced condition, with marked pronation, extreme tenderness of the plantar surfaces of the feet, marked inward displacement and severe spasm of the tendo achillis on manipulation, not improved by orthopedic shoes or appliances. It provides an evaluation of 30 percent if bilateral and 20 percent if unilateral for the severe condition, with objective evidence of marked deformity (pronation, abduction, etc.), pain on manipulation and use accentuated, indication of swelling on use, characteristic callosities. It provides an evaluation of 10 percent for either the unilateral or bilateral condition if it is moderate, with weightbearing line over or medial to great toe, inward bowing of the tendo achillis, pain on manipulation and use of the feet. It also provides an evaluation of zero percent if mild, with symptoms relieved by built-up shoe or arch support.

The consultants suggested only three levels of disability with deletion of the "pronounced" category, which they said was not clearly differentiated from the "severe" category. Raters have also been confused by the criteria for the "severe" and "pronounced" levels. The consultants suggested new, more detailed and comprehensive criteria ranging from 40 percent (for the bilateral condition) to zero percent. We propose to adopt their criteria, with one exception. Instead of the single evaluation level of 10 percent for unilateral or bilateral flatfeet of moderate deformity that they suggested, we propose to evaluate each foot separately at every level, since it is clearly more disabling to have deformed feet bilaterally than unilaterally, and assigning the same evaluation whether only one foot or both feet are involved is not equitable. We propose to assign a 20-percent evaluation for deformity with, on weightbearing, significant eversion of the heel, flattened arch, collapse of the midfoot structures with the talar head displaced both medial and plantar, forefoot abduction; pain in the arch; not significantly relieved by the use of appliances, orthoses, or orthopedic shoes. We propose a 10-percent evaluation for deformity with a perpendicular position to slight eversion of the heel, the presence of a slight arch on non-weightbearing which totally collapses on weightbearing; forefoot abduction; pain in the arch and legs; partially relieved by the use of appliances, orthoses, or orthopedic shoes. We propose a zero-percent evaluation if there is deformity but a normal arch on non-weightbearing, a perpendicular heel position; tenderness in the arch or muscles and tendons attaching to the midfoot; symptoms completely relieved by, or do not require, the use of appliances, orthoses, or orthopedic shoes. We propose to add a note directing that each foot be separately evaluated, with the evaluations to be combined. This would represent a change in procedure from the current criteria and is warranted because flatfoot may be either a unilateral or bilateral condition and is clearly more disabling if both feet are affected, even at the milder level. In addition, the feet may not be at the same level of severity, and these evaluations allow an individual assessment of each foot. We propose to add a second note, for the sake of clarity, directing raters not to combine an evaluation under this diagnostic code with an evaluation for pain under § 4.59 because pain is encompassed by these evaluation criteria.

Diagnostic code 5277 is currently titled "Weak foot, bilateral." This is a vague condition. The consultants suggested a change to "Compromised (or weak) foot, bilateral" because this is how the condition is described in current medical practice and suggested it be rated based on the underlying condition, with a minimum evaluation of 10 percent. They noted that it may include single or multiple conditions affecting function, including muscle atrophy, loss, weakness, and stiffness; bone atrophy or loss; joint stiffness; vascular compromise; or neurological compromise. We propose instead to delete this diagnostic code, as suggested by the VHA Orthopedic Committee, because there are specific rating criteria under other diagnostic codes for disabilities such as arthritis; neuropathy, and vascular disease that may affect the foot, and the existing and recommended criteria under 5277 are not necessary for evaluation.

Diagnostic code 5278 is currently titled "Claw foot (pes cavus), acquired," and we propose to update it to "Pes cavus (clawfoot)," removing "acquired," because the consultants pointed out that it is difficult to distinguish an acquired pes cavus from a congenital one. It is currently evaluated at 50 percent if bilateral and 30 percent if unilateral if there is marked contraction of the plantar fascia with dropped forefoot, all toes hammertoes, very painful callosities, and marked varus deformity. It is evaluated at 30 percent if bilateral and 20 percent if unilateral if all toes tend to dorsiflexion, and there are limitation of dorsiflexion at ankle to right angle, shortened plantar fascia, and marked tenderness under metatarsal heads. It is evaluated at 10 percent whether bilateral or unilateral if the great toe is dorsiflexed, and there are some limitation of dorsiflexion at ankle and definite tenderness under metatarsal heads. If the condition is "slight," it is evaluated at zero percent. These criteria contain several subjective terms, for example, "marked," "definite," and "slight," that inject an element of subjectivity.

The consultants recommended three levels instead of four, with 40 percent the highest level, when bilateral, comparable to other lower extremity conditions. They also suggested that 10 percent be assigned for moderate pes cavus bilaterally, because the impairment is considerably less. We propose to revise the criteria, with each foot being separately evaluated, using the most objective of the criteria related to disability as a basis of evaluation, namely, whether appliances, orthoses, or orthopedic shoes are required and whether they relieve symptoms of pain and tenderness, and callosities, if present. These criteria represent a modification of the consultants' recommendations. We propose that a 20-percent evaluation be assigned if symptoms and callosities are not significantly relieved by appliances, orthoses, or orthopedic shoes; a 10-percent evaluation if symptoms and callosities are partially relieved by appliances, orthoses, or orthopedic shoes; and a zero-percent evaluation if symptoms are completely relieved by, or do not require, the use of appliances, orthoses, or orthopedic shoes. We propose to add two notes under this diagnostic code, the first directing that each foot be separately evaluated, with the evaluations to be combined. This would allow each foot to be separately evaluated, which will be of value when the condition differs in severity from one foot to the other. We propose to add a second note stating that in the absence of trauma or other specific cause of aggravation, pes cavus is to be considered a congenital or developmental abnormality.

Diagnostic code 5279 is currently titled "Metatarsalgia, anterior (Morton's disease), unilateral, or bilateral". There

is currently a single evaluation level of 10 percent. We propose to change the title to "Metatarsalgia (including Morton's neuroma)" for clarity. Metatarsalgia is a term that refers to chronic pain in the ball of the foot from any of a variety of causes, one of which is Morton's neuroma. Morton's neuroma (or disease) is a painful neuropathy of the digital plantar nerve that usually results in pain in the ball of the foot between the third and fourth metatarsal heads. The consultants suggested no change in the evaluation criteria but did suggest we add a note saying that treatment should be attempted before the patient is given a permanent disability rating. We propose to incorporate some of this information within the revised criteria. The rating we give, however, is not necessarily a permanent one in most cases because we frequently re-evaluate veterans with disability if they have a condition that is not stable and is subject to improvement. As with pes cavus and flatfoot, the symptoms of metatarsalgia may be unilateral or bilateral, and may be relieved with appliances, orthoses, or orthopedic shoes. Occasionally, surgery is needed for relief. We propose to use this information as a basis of evaluation and to direct that each foot be evaluated separately, with the evaluations to be combined. Assigning a separate evaluation for each foot will allow more appropriate evaluation of the total disabling effects, since bilateral metatarsalgia is clearly more disabling than unilateral metatarsalgia, and the severity of the effects may not be the same in both feet when the condition is bilateral. We propose that 10 percent be assigned if there is pain in the ball of the foot not significantly relieved by the use of appliances, orthoses, or orthopedic shoes, or by surgery, if that was done, and that zero percent be assigned if there is pain in the ball of the foot largely or completely relieved by, or does not require, the use of appliances, orthoses, or orthopedic shoes, or by surgery, if that was done.

Diagnostic code 5280 is currently titled "Hallux valgus, unilateral." The consultants suggested we add "with or without bunion deformity" to the title to make the description more complete. We rely on the examiner to make the diagnosis and do not propose to add the suggested language because it would not assist in evaluation. We do propose to remove "unilateral" from the title and add, as for the other foot conditions, a note indicating that each foot is to be separately evaluated, and the evaluations combined. There are currently two criteria for a 10-percent evaluation, the only level defined. They are "operated, with resection of metatarsal head" and "severe, if equivalent to amputation of great toe." The consultants suggested we delete the reference to resection of the metatarsal head since that is no longer done, and we propose to do so. They also suggested we add "symptomatic" to the other criterion, since not all individuals have symptoms. The major findings in hallux valgus (bunion) are pain or discomfort in the first metatarsophalangeal joint (the joint at the base of the great toe) or under the ball of the foot, deformity at that joint, and sometimes redness and swelling. The VHA Orthopedic Committee felt evaluation based on amputation was inappropriate and suggested that criteria be based on symptoms and their response to treatment. Taking both of these suggestions into account, we propose to provide a 10-percent evaluation if there are symptoms that are not significantly relieved by the use of appliances, orthoses, or orthopedic shoes, or by surgery, if that was done, and a zero-percent evaluation if symptoms are largely or completely relieved by, or not requiring, the use of appliances, orthoses, or orthopedic shoes, or by surgery, if that was done. These criteria are more appropriate to the condition than assessing whether it is equivalent to an amputation, which is likely to result in interference with walking and a gait abnormality rather than pain as a primary symptom, as in the case of hallux valgus. We propose to add a second note, for the sake of clarity, directing raters not to combine an evaluation under diagnostic code 5280 with an evaluation for pain under § 4.59, because pain is encompassed by these evaluation criteria.

Diagnostic code 5281 is currently titled "Hallux rigidus, unilateral, severe." The consultants suggested we include the term "hallux limitus," another name for the condition, in the title, and we propose to do so. Hallux rigidus is a painful degenerative arthritis with limited or no motion at the first metatarsal-phalangeal joint. We propose to add a note directing that each foot be evaluated separately, as other foot conditions are, rather than using "unilateral" in the title. It is currently evaluated as severe hallux valgus, with a 10% evaluation. At the suggestion of the VHA Orthopedic Committee, we propose to remove the current note stating that this condition is not to be combined with claw foot ratings because the condition has nothing to do with clawfoot. The consultants suggested no change from the current evaluation. However, the VHA Orthopedic Committee felt that hallux rigidus with ankylosis of the first metatarsal-phalangeal joint warrants a 20-percent evaluation because it results in pain on any activity, such as walking or running, and may affect the gait. We therefore propose to revise the criteria to provide three levels of evaluation based on the extent of limitation of motion and extent of pain. We propose a 20-percent evaluation if there is pain with any motion of the joint, including walking, with ankylosis (no motion) of the first metatarsal-phalangeal joint and gait abnormality; a 10-percent evaluation if there is pain on walking, with limitation of motion of the first metatarsal-phalangeal joint; and a zero-percent evaluation if there is pain only on extremes of motion, with limitation of motion of the first metatarsal-phalangeal joint. These criteria are more specific to hallux rigidus than the criteria for hallux valgus and should support more consistent evaluations. We propose to delete the note that now reads "not to be combined with claw foot ratings" as unnecessary, since these conditions are unrelated and unlikely to occur together.

Diagnostic code 5282 is currently titled "Hammer toe." We propose to add "contracted or deviated toes" to the heading of hammertoe, as suggested by the consultants, in order to describe this category of disability more accurately. The condition is currently evaluated at 10 percent if all toes of one foot are affected, without clawfoot, and at zero percent if a single toe is affected, The consultants simply suggested that "clawfoot" be replaced with "pes cavus." We propose criteria that are based on signs and symptoms rather than solely on the presence of the condition, since not everyone with this condition is equally disabled. Some develop painful calluses on top of the toe or on the ball of the feet, some have occasional muscle cramping and weakness, and some require surgery because of these problems. We therefore propose criteria similar to those for other foot problems discussed above, based on symptoms and response to treatment.

We propose to assign a 10-percent evaluation if there is hammertoe with pain and calluses not relieved by the use of appliances, orthoses, or orthopedic shoes, or by surgery, if that was done; and a zero-percent evaluation if there is hammertoe with pain and calluses largely or completely relieved by, or not requiring the use of, appliances, orthoses, or orthopedic shoes, or by surgery, if that was done. These criteria better correlate with

disability from hammertoe. We propose to add a note directing that each foot, but not each toe, be evaluated separately, with the evaluations to be combined, and we propose to add a second note directing that an evaluation not be assigned both under diagnostic code 5282 and diagnostic code 5278 (pes cavus (clawfoot)) because the findings may be similar and overlapping.

Diagnostic code 5283, malunion or nonunion of the metatarsal or tarsal bones, currently provides levels of 30, 20, and 10 percent, and each percentage level is determined by whether the disability is "severe," "moderately severe," or "moderate." No criteria are provided to explain what these words are intended to mean. The consultants suggested criteria for the three levels of "extreme, not amenable to surgical correction," "severe," and "moderate." These criteria, however, would not adequately remove the subjectivity of the current criteria. The VHA Orthopedic Committee suggested we develop criteria based on symptoms interfering with activities of daily living, athletic activity, and response to treatment, and we propose to follow their suggestion. We propose that a 30-percent evaluation be assigned if there are signs and symptoms (such as pain, calluses, abnormal or limited motion of affected bones or joints) that interfere with activities of daily living and that are not significantly relieved by appliances, orthoses, or orthopedic shoes, or by surgery, if that was done; a 20-percent evaluation if there are signs and symptoms that are partly relieved by appliances, orthoses, or orthopedic shoes, or by surgery, if that was done, but that interfere at times with activities of daily living and with most athletic activity; and a ten-percent evaluation if there are signs and symptoms that are largely or completely relieved by appliances, orthoses, or orthopedic shoes, or by surgery, if that was done, and that do not interfere with activities of daily living but that may at times prevent activities such as running and jumping. These are more objective than the current criteria and provide guidelines that should promote consistent evaluations. They provide levels of 30, 10, and zero rather than 30, 20, and 10 because these levels are more fitting to these criteria and are consistent with the evaluations for malunion of the talus and calcaneus. We propose to add to the title "except talus and calcaneus" because these tarsal bones are evaluated under diagnostic code 5273. There is currently a note under diagnostic code 5283 directing that if there is actual loss of use of the foot, the evaluation should be 40 percent. We propose to delete this note, as these criteria are adequate for evaluating this condition. Disability that approaches loss of use of a foot is likely to have neurologic or vascular compromise and would be more appropriately evaluated under another diagnostic code.

We propose to change the title of diagnostic code 5284, currently "Foot injuries, other." The category of disability this code is intended to cover is so vague, and its evaluation criteria so subjective, consisting of 30 percent for "severe," 20 percent for "moderately severe," and 10 percent for "moderate," that it is unclear what conditions would be evaluated under this code and on what basis. There are several other diagnostic codes with clear criteria under which foot injuries can be appropriately rated, but we propose to title this diagnostic code "Neurotrophic disorders of the foot" because these are common conditions that do not fall under any other specific diagnostic code, either in the orthopedic or neurologic sections of the rating schedule. This category would include Charcot's foot, diabetic neurotrophic feet, etc. The VHA Orthopedic Committee recommended its addition. We propose four levels of evaluation, with 30 percent assigned for chronic ulceration that cannot be controlled by the use of orthoses; 20 percent for recurrent ulcers that can be controlled by the use of orthoses; 10 percent for pain that is not relieved by orthoses or shoe modification; and zero percent for pain that is relieved by orthoses or shoe modification. We also propose to add a note directing that if there is osteomyelitis of the foot (which may be associated with chronic ulcers that are infected), it will be rated under diagnostic code 5000 (osteomyelitis). We propose to add a second note directing that a 20- or 30-percent evaluation under diagnostic code 5284 may be combined with an evaluation for pain under § 4.59.

Skull

Under the subheading of "The Skull," diagnostic code 5296 encompasses loss of part of the inner and outer tables of the skull. The current criteria are 80 percent if there is a brain hernia; and if there is not a brain hernia, 50 percent if there is an area larger than a 50-cent piece or 1.140 square inches (7.355 square centimeters); 30 percent if the area is intermediate; and 10 percent if the area is smaller than the size of a 25-cent piece or 0.716 square inches (4.619 square centimeters). We propose to delete the references to coins and round off the measurements, which are carried out to more decimal places than are reasonably measurable or are necessary. If a skull defect has been repaired by a cranioplasty (covering of the defect by bone, metal, or other material), it is not considered disabling. For this reason, we propose to add to the title the phrase "without cranioplasty (covering of defect by bone, metal, or other material)." A current note directs that intracranial complications, such as seizures or paralysis, be rated separately. We propose to add a second note stating that skull loss covered by bone or a prosthesis will not be used in calculating the area of skull loss, because these lessen the danger of injury to the brain.

Ribs

We propose only minor changes, largely editorial, in diagnostic code 5297, "Ribs, removal of" under the subheading "The Ribs." A current note states that the rating for rib resection or removal is not to be applied with ratings for purulent pleurisy, lobectomy, pneumonectomy or injuries of pleural cavity. Purulent pleurisy no longer has a diagnostic code in the rating schedule, and we propose to change the note to read: "Do not combine an evaluation under diagnostic code 5297 with an evaluation under diagnostic code 6844 (post-surgical residual (lobectomy, pneumonectomy, etc.)) or 6845 (chronic pleural effusion or fibrosis)".

Coccyx

We propose to change the current heading of diagnostic code 5298 from "Coccyx, removal of," to "Partial or complete removal of the coccyx," and to retain a 10-percent evaluation if there are painful residuals. We propose to remove the zero-percent criterion "without painful residuals" as unnecessary (*see* § 4.31 of this part).

Section 4.14

We also propose, for the sake of clarity, to revise 38 CFR 4.14, "Avoidance of pyramiding," in subpart A of part 4 (General Policy in Rating) because evaluating orthopedic disabilities commonly requires application of this section, and the principles in this section have sometimes been misunderstood. Section 4.14 currently states that the evaluation of the same disability under various diagnoses is to be avoided and that both the use of manifestations not resulting from service-connected disease or injury in establishing the service-connected evaluation, and the evaluation of the same manifestation under different

diagnoses are to be avoided. This has sometimes been unclear to raters. We propose to retitle this section "Avoiding overlapping of evaluations," which more clearly reflects its intent. We propose that there be four paragraphs, with the first (a) directing raters not to use the same sign(s) or symptom(s) to support more than one evaluation (under different diagnostic codes) for a single disability. We propose that paragraph (b) direct raters not to use the same sign(s) or symptom(s) to support an evaluation for more than one disability. Paragraphs (c) and (d) would be the converse of (a) and (b), with (c) directing raters not to evaluate the same disability at the same time (under different diagnostic codes) using the same sign(s) or symptom(s) as the basis of evaluation, and (d) directing raters not to evaluate more than one disability using the same sign(s) or symptom(s) as the basis of evaluation. This section means, for example, that low back pain present in someone who has both lumbar intervertebral disc syndrome (diagnostic code 5293) and limitation of motion of the lumbar spine due to degenerative arthritis (diagnostic code 5292) cannot be used to support separate evaluations for these two back conditions, and cold injury residuals such as numbness of the toes cannot be used to support both an evaluation for cold injury under diagnostic code 7122 (cold injury residuals) and another evaluation for peripheral neuropathy with numbness due to cold injury under diagnostic code 8521 (paralysis of external popliteal nerve). In our judgment, the revised language is more straightforward and clearer and will resolve the difficulty raters have had in interpreting the current language.

Executive Order 12866

This regulatory amendment has been reviewed by the Office of Management and Budget under the provisions of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993.

Paperwork Reduction Act

This document contains no provisions constituting a collection of information under the Paperwork Reduction Act (44 U.S.C. 3501–3521).

Unfunded Mandates

The Unfunded Mandates Reform Act requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before developing any rule that may result in an expenditure by State, local, or tribal governments, in the aggregate, or by the private sector of $100 million or more in any given year. This rule would have no consequential effect on State, local, or tribal governments.

Regulatory Flexibility Act

The Secretary hereby certifies that this proposed regulatory amendment would not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. The reason for this certification is that this proposed regulatory amendment would not directly affect any small entities. Only VA beneficiaries could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), this proposed regulatory amendment is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

The Catalog of Federal Domestic Assistance numbers are 64.104 and 64.109.

List of Subjects

38 CFR Part 3

Administrative practice and procedure, Claims, Disability benefits, Health care, Pensions, Veterans, Vietnam.

38 CFR Part 4

Disability benefits, Pensions, Veterans.

Approved: October 24, 2002.

Anthony J. Principi,

Secretary of Veterans Affairs.

For the reasons set out in the preamble, we propose to amend 38 CFR parts 3 and 4 as set forth below:

PART 3—ADJUDICATION

Subpart A—Pension, Compensation, and Dependency and Indemnity Compensation

1. The authority citation for part 3, subpart A continues to read as follows:

Authority: 38 U.S.C. 501(a), unless otherwise noted.

2. In § 3.350 paragraph(a)(2)(i)(*c*) is added to read as follows:

§ 3.350 Special monthly compensation ratings.

* * * * *

(a) * * *

(2) * * *

(i) * * *

(*c*) Amputation of the thumb and any three fingers of a single hand will constitute loss of use of the hand.

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PART 4—SCHEDULE FOR RATING DISABILITIES

3. The authority citation for part 4 continues to read as follows:

Authority: 38 U.S.C. 1155, unless otherwise noted.

Subpart A—General Policy in Rating

4. Section 4.14 is revised to read as follows:

§ 4.14 Avoiding overlapping of evaluations.

(a) Do not use the same sign(s) or symptom(s) to support more than one evaluation (under different diagnostic codes) for a single disability.

(b) Do not use the same sign(s) or symptom(s) to support an evaluation for more than one disability.

(c) Do not evaluate the same disability at the same time (under different diagnostic codes) using the same sign(s) or symptom(s) as the basis of evaluation.

(d) Do not evaluate more than one disability using the same sign(s) or symptom(s) as the basis of evaluation.

(Authority: 38 U.S.C. 1155)

Subpart B—Disability Ratings

5. Section 4.40 is revised to read as follows:

§ 4.40 Evaluation of musculoskeletal disabilities.

The evaluation criteria provided for each condition, or to which the rater is referred for evaluating a given condition, are generally to be the sole basis of evaluation. In conditions where pain is a complaint, but pain is not addressed in the evaluation criteria under the diagnostic code for the condition, however, apply the provisions of § 4.59, combining an evaluation for pain with an evaluation under the diagnostic code for the condition. Factors such as fatigability or impaired coordination, speed, or endurance are encompassed by the evaluation criteria under each diagnostic code. An additional evaluation based on one of these factors will not be assigned.

(Authority: 38 U.S.C. 1155)

§ 4.41 [Removed and Reserved]

6. Section 4.41 is removed and reserved.

7. Section 4.42 is revised to read as follows:

§ 4.42 Examination of joints

For VA rating purposes, the range of motion of a joint must be determined by measurement with a goniometer. The normal ranges of motion for major joints

and the spine are provided on Plates I, II, and V in § 4.71a.

(Authority: 38 U.S.C. 1155)

§§ 4.43 and 4.44 [Removed and Reserved]

8. Sections 4.43 and 4.44 are removed and reserved.

9. Sections 4.45 and 4.46 are revised to read as follows:

§ 4.45 Major and Minor Joints for Arthritis Evaluations.

For the purpose of rating disability from arthritis, the various joints are classified as follows:

(a) *Major Joints:* Each shoulder, elbow, wrist, hip, knee and ankle joint is a major joint. All other joints are minor joints.

(b) *Groups of Minor Joints to be Rated as Major Joints:* A group of minor joints with arthritis will be rated as a major joint. Any of the following constitutes a group of minor joints:

(1) Any combination of three or more interphalangeal or metacarpo-phalangeal joints of a single hand.

(2) Any combination of three or more interphalangeal, metatarso-phalangeal, tarso-metatarsal, or tarso-tarsal (or intertarsal) joints of a single foot.

(3) Any combination of two or more cervical vertebral joints.

(4) Any combination of two or more thoracolumbar vertebral joints.

(5) A combination of the lumbosacral joint and both sacroiliac joints.

(Authority: 38 U.S.C. 1155)

§ 4.46 Evaluation of muscle strength.

(a) Evaluate muscle strength or weakness for rating purposes based on the following muscle grading system:

Muscle grading	Description
Absent (0)	No palpable or visible muscle contraction.
Trace (1)	Palpable or visible muscle contraction, but muscle produces no movement, even with gravity eliminated.
Poor strength (2)	Muscle produces movement only when gravity is eliminated.
Fair strength (3)	Muscle produces movement against gravity but not against any added resistance.
Good strength (4)	Muscle produces movement against some, but no more than moderate, resistance.
Normal strength (5)	Muscle produces movement against full or "normal" resistance.

(b) Evaluate loss of muscle function as follows:

(1) Complete: No motor function (muscle grading system 1 or zero).

(2) Incomplete, severe: Marked weakness associated with muscle atrophy (muscle grading system 2).

(3) Incomplete, moderate: Weakness (muscle grading system 3).

(4) Incomplete, mild: Weakness (muscle grading system 4).

(Authority: 38 U.S.C. 1155)

§§ 4.57 and 4.58 [Removed and Reserved]

10. Sections 4.57 and 4.58 are removed and reserved.

11. Section 4.59 is revised to read as follows:

§ 4.59 Evaluation of pain in musculoskeletal conditions.

When the evaluation criteria for a condition in § 4.71a are based on signs and symptoms *other than* pain, and pain is a complaint, combine (do not add) the evaluation based on criteria other than pain with an evaluation for pain based on the following scale, and assign a single (combined) evaluation for the condition under the appropriate diagnostic code:

(a) Complaint of pain that globally interferes with and severely limits daily activities; meets the requirement for a 30-percent evaluation under this section; and a psychiatric evaluation has excluded other processes to account for the pain 100

(b) Complaint of pain at rest, with pain on minimal palpation or on attempted range of motion on physical examination; X-ray or other imaging abnormalities; and abnormal findings on a vascular or neurologic special study 30

(c) Complaint of pain on any use, with pain on palpation and through at least one-half of the range of motion on physical examination; and X-ray or other imaging abnormalities 20

(d) Complaint of pain on performing some daily activities, with pain on motion (through any part of the range of motion) on physical examination; and X-ray or other imaging abnormalities 10

(e) Complaint of mild or transient pain on performing some daily activities, with correlative finding(s) on physical examination (for example, pain on palpation or pain on stressing the joint), but without X-ray or other imaging abnormalities 0

Note (1): Do not combine a 100-percent evaluation assigned under this section with any other evaluation for the same condition.

Note (2): The provisions of § 4.68, "Limitation of combined evaluation of musculoskeletal and neurologic disabilities of an extremity," will apply to the evaluation of conditions evaluated wholly or partly under § 4.59, except that a 100-percent evaluation may be assigned under § 4.59 when appropriate, regardless of the percentage evaluation allowed under a particular diagnostic code.

(Authority: 38 U.S.C. 1155)

§§ 4.61 through 4.64 and 4.66 [Removed and Reserved]

12. Sections 4.61 through 4.64, and 4.66, are removed and reserved.

13. Sections 4.67 through 4.69 are revised to read as follows:

§ 4.67 Pelvic bone fractures.

Evaluate fractures of the pelvic bones based on the specific residuals, such as limitation of motion of the spine or hip, muscle injury, or sciatic or other peripheral nerve neuropathy.

(Authority: 38 U.S.C. 1155)

§ 4.68 Limitation of combined evaluation of musculoskeletal and neurologic disabilities of an extremity.

Unless the evaluation criteria for a particular condition allow for a higher evaluation, the combined evaluation for musculoskeletal and neurologic disabilities of an extremity will not exceed the rating that would be assigned for an amputation of the extremity at the level that would remove the affected areas. When a painful stump neuroma develops following amputation, the amputation will be evaluated as though it had been performed one level higher (as described under the diagnostic codes for evaluation of amputations of the extremities) than the actual amputation site.

(Authority: 38 U.S.C. 1155)

§ 4.69 Dominant hand.

Handedness, for the purpose of assigning a dominant or nondominant rating, will be determined by the evidence of record or by testing on examination. Only one hand will be considered dominant; the other will be considered nondominant. In the case of an ambidextrous individual, the injured hand, or the more severely injured hand, will be considered the dominant hand, for rating purposes.

(Authority: 38 U.S.C. 1155)

§ 4.70 [Removed and Reserved]

14. Section 4.70 is removed and reserved.

15. Section 4.71 is revised to read as follows:

§ 4.71 Baseline for joint motion measurement

Plates I and II show the normal range of motion of joints of the upper and lower extremities. The baseline for joint range of motion measurement, or zero degrees, is the normal anatomical position (arms at side, palms forward, legs extended), with two exceptions:

(a) The zero degrees position for shoulder rotation is the arm abducted to 90 degrees, the elbow flexed to 90 degrees, and the forearm pronated to 90 degrees. The forearm is then midway between internal and external rotation of the shoulder (Plate I).

(b) The zero degrees position for forearm supination and pronation is the arm next to the body in normal anatomical position and the elbow flexed to 90 degrees. The forearm is then midway between supination and pronation (Plate I).

(Authority: 38 U.S.C. 1155)

16. Section 4.71a is amended by:

a. Removing Diagnostic Codes 5005 through 5008, 5105, 5108 through 5111, 5259, 5263, and 5277.

b. Revising Diagnostic Codes 5000 through 5004, 5009 through 5024, 5051 through 5056, 5104, 5106, 5107, 5120 through 5156, 5160 through 5167, 5170 through 5173, 5200 through 5203, 5205 through 5215, 5250 through 5258, 5260 through 5262, 5270 through 5276, 5278 through 5284, and 5296 through 5298.

c. Adding Diagnostic Codes 5204, 5231 through 5233, and 5265 through 5267.

The revisions and additions read as follows:

§ 4.71a Schedule of ratings—musculoskeletal system.

ACUTE, SUBACUTE, OR CHRONIC DISEASES

	Rating
Note: When evaluating any disability of the musculoskeletal system, refer to § 3.350 of this chapter to determine whether the veteran may be entitled to special monthly compensation due either to anatomical loss or loss of use of a limb or to combinations of losses with other specified disabilities.	
5000 Osteomyelitis, acute, subacute, or chronic:	
Chronic intractable osteomyelitis of any site associated with debilitating complications such as anemia and amyloidosis	100
Osteomyelitis of the spine, pelvis, shoulder, elbow, wrist, hip, knee or ankle, or of two or more non-contiguous bones:	
When active or acute, with constitutional signs and symptoms, such as fever, fatigue, malaise, debility, and septicemia	100
When inactive or chronic, with two or more recurrent episodes of active infection (following the initial infection) within the past 5 years	60
When inactive or chronic, with one recurrent episode of active infection (following the initial infection) within the past 5 years	30
When inactive or chronic, without a recurrent episode of active infection within the past 5 years	0
Osteomyelitis not involving the spine, pelvis, shoulder, elbow, wrist, hip, knee or ankle, not involving two or more non-contiguous bones, and not involving only a single finger or toe:	
When active or acute	40
When inactive or chronic, with two or more recurrent episodes of active infection (following the initial infection) within the past 5 years	30
When inactive or chronic, with one recurrent episode of active infection (following the initial infection) within the past 5 years	20
When inactive or chronic, without a recurrent episode of active infection within the past 5 years	0
Osteomyelitis of a single finger or toe (these evaluations apply even if they exceed the evaluation for amputation of a finger or toe, *i.e.*, they are exceptions to § 4.68):	
When active or acute	10
When inactive or chronic, with two or more recurrent episodes of active infection (following the initial infection) within the past 5 years	10
When inactive or chronic, with one or no recurrent episodes of active infection (following the initial infection) within the past 5 years	0
Note (1): Subject to the limitations of § 4.68, combine an evaluation for inactive or chronic osteomyelitis under diagnostic code 5000 with an evaluation for chronic residuals, such as limitation of motion, ankylosis, etc., under the appropriate diagnostic code and for pain (under § 4.59) when appropriate.	
Note (2): After removal or resection of the infected bone, evaluate under the diagnostic code most appropriate for evaluating the residuals, such as amputation, shortening, limitation of motion, etc., but not under the criteria for diagnostic code 5000.	
5001 Bones and joints, tuberculosis of, active or inactive:	
Active	100
Inactive: Rate under § 4.88c or 4.89, whichever is appropriate.	
5002 Rheumatoid arthritis:	
Constant or near-constant debilitating signs and symptoms due to a combination of inflammatory synovitis (pain, swelling, tenderness, warmth, and morning stiffness in and around joints), destruction of multiple joints, and extra-articular (other than joint) manifestations	100
Incapacitating exacerbations or flares with a total duration of at least 6 weeks during the past 12-month period, due either to inflammatory synovitis and destruction of multiple joints or to a combination of joint problems and extra-articular manifestations	60
Incapacitating exacerbations or flares with a total duration of at least 4 weeks but less than 6 weeks during the past 12-month period due to inflammatory synovitis, weakness, and fatigue	40
Incapacitating exacerbations or flares with a total duration of at least 2 weeks but less than 4 weeks during the past 12-month period due to inflammatory synovitis, weakness, and fatigue	20
Incapacitating exacerbations or flares with a total duration of at least 1 week but less than 2 weeks during the past 12-month period due to inflammatory synovitis, weakness, and fatigue	10
Note (1): Evaluate rheumatoid arthritis based either on the evaluation criteria under diagnostic code 5002 or on the combined evaluation of chronic residuals of affected joints, whichever method results in a higher evaluation.	

ACUTE, SUBACUTE, OR CHRONIC DISEASES—Continued

	Rating
Note (2): When evaluating based on chronic joint residuals, evaluate each affected major joint or group of minor joints on findings such as limitation of motion, ankylosis, joint instability, *etc.*, under the appropriate diagnostic code, and combine each with an evaluation for pain under § 4.59 when appropriate.	
Note (3): Separately evaluate extra-articular manifestations of rheumatoid arthritis, such as pulmonary fibrosis; pleural inflammation; weakness or atrophy of muscles; emaciation; anemia; vasculitis (of skin or systemic); neuropathy, such as peripheral nerve neuropathy, entrapment neuropathy, and cervical myelopathy; pericarditis; Sjogren's syndrome (dry eyes and mouth); and eye complications (such as scleritis and episcleritis), under the appropriate diagnostic code(s), unless used to support an evaluation under diagnostic code 5002.	
Note (4): An incapacitating exacerbation or flare means one requiring bedrest or wheelchair use and treatment by a health care provider.	
5003 Osteoarthritis (degenerative or hypertrophic arthritis):	
Separately evaluate each major joint or group of minor joints affected with osteoarthritis based on limitation of motion, ankylosis, joint instability, *etc.*, under the appropriate diagnostic code, and combine that evaluation with an evaluation for pain under § 4.59 when appropriate, subject to the limitations of § 4.68.	
Note (1): The diagnosis of osteoarthritis of any joint must be confirmed (one time only) by X-ray or other imaging procedure.	
Note (2): *Generalized osteoarthritis.* If osteoarthritis is diagnosed on the basis of positive X-ray or other imaging procedure and positive physical findings in three or more joints (major joints, groups of minor joints, or both) during service or within 1 year following the date of separation from service, the condition will be considered to be generalized osteoarthritis and recognized as a systemic condition. Once generalized osteoarthritis has been established based on these criteria, consider all joints subsequently diagnosed with osteoarthritis to be part of the same condition.	
Note (3): *Localized osteoarthritis.* Osteoarthritis diagnosed on the basis of positive X-ray or other imaging procedure and positive physical findings in fewer than three joints (major joints, groups of minor joints, or both) during service or within 1 year following the date of separation from service will be considered to be localized osteoarthritis rather than a systemic condition. With localized osteoarthritis, do not consider any joints subsequently diagnosed with osteoarthritis to be part of the same condition.	
5004 Infectious arthritis (gonorrheal, pneumococcic, typhoid, syphilitic, streptococcic, etc.):	
During and for 3 months following cessation of therapy for active infectious arthritis of the spine, the pelvis, or a major joint	100
During and for three months following cessation of therapy for active infectious arthritis not involving the spine, the pelvis, or a major joint and not limited to a single finger or toe	40
During and for three months following cessation of therapy for active infectious arthritis of a single finger or toe	10
Note: Following the three-month period after cessation of therapy, separately evaluate chronic residuals, if any, of each joint affected with infectious arthritis, based on limitation of motion, ankylosis, joint instability, post-surgical residuals (such as arthroplasty), *etc.*, under the appropriate diagnostic code, and combine the evaluation for chronic residuals of each joint with an evaluation for pain under § 4.59 when appropriate, subject to the limitations of § 4.68.	
5009 Other types of noninfectious inflammatory arthritis (including ankylosing spondylitis, Reiter's syndrome, psoriatic arthritis, arthritis associated with inflammatory bowel disease, and other seronegative types of arthritis):	
Constant or near-constant debilitating signs and symptoms, due to a combination of inflammatory synovitis (pain, swelling, tenderness, warmth, and morning stiffness in and around joints), destruction of multiple joints, and extra-articular (other than joint) manifestations	100
Incapacitating exacerbations or flares with a total duration of at least 6 weeks during the past 12-month period, due either to inflammatory synovitis and destruction of multiple joints or to a combination of joint problems and extra-articular manifestations	60
Incapacitating exacerbations or flares with a total duration of at least 4 weeks but less than 6 weeks during the past 12-month period due to inflammatory synovitis, weakness, and fatigue	40
Incapacitating exacerbations or flares with a total duration of at least 2 weeks but less than 4 weeks during the past 12-month period due to inflammatory synovitis, weakness, and fatigue	20
Incapacitating exacerbations or flares with a total duration of at least 1 week but less than 2 weeks during the past 12-month period due to inflammatory synovitis, weakness, and fatigue	10
Note (1): Evaluate based either on the evaluation criteria under diagnostic code 5009 or on the combined evaluation of chronic residuals of affected joints, whichever method results in a higher evaluation.	
Note (2): When evaluating based on chronic joint residuals, evaluate each major joint or group of minor joints with arthritis based on limitation of motion, ankylosis, joint instability, *etc.*, under the appropriate diagnostic code, and combine each with an evaluation for pain under § 4.59 when appropriate.	
Note (3): Separately evaluate the extra-articular manifestations of the arthritis under the appropriate diagnostic code(s), unless they have been used to support an evaluation under diagnostic code 5009. Extra-articular manifestations include such findings as fever, eye problems (such as conjunctivitis, iritis, uveitis), genitourinary or gynecologic problems (such as urethritis, cystitis, prostatitis, cervicitis, salpingitis, vulvovaginitis), and heart problems (such as pericarditis, aortic valvular disease, heart block).	
Note (4): An incapacitating exacerbation or flare means one requiring bedrest or wheelchair use and treatment by a health care provider.	
5010 Traumatic arthritis (secondary osteoarthritis):	
Separately evaluate each major joint or group of minor joints with traumatic arthritis based on limitation of motion, joint instability, ankylosis, *etc.*, under the appropriate diagnostic code, and combine that evaluation with an evaluation for pain under § 4.59 when appropriate subject to the limitations of § 4.68.	
Note: The diagnosis of traumatic arthritis of any joint must be confirmed (one time only) by X-ray or other imaging procedure.	
5011 Caisson disease (residuals of decompression sickness or the bends):	
Evaluate using the criteria under an appropriate diagnostic code based on the actual residuals, such as aseptic necrosis or delayed osteoarthritis of the shoulder or hip, or neurologic manifestations (such as weakness or paraplegia of lower extremities, vestibular dysfunction with vertigo, or paresthesias of the extremities).	
5012 Malignant neoplasm of bone	100

ACUTE, SUBACUTE, OR CHRONIC DISEASES—Continued

	Rating
Note: A rating of 100% shall continue beyond the cessation of any surgical, X-ray, antineoplastic chemotherapy or other therapeutic procedure. Six months after discontinuance of such treatment, the appropriate disability evaluation shall be determined on the basis of a VA examination, or on available medical records if sufficient for evaluation. Any reduction in the evaluation based upon that or any subsequent examination shall be subject to the provisions of § 3.105(e) of this chapter. If there has been no local recurrence or metastasis, rate on residuals.	
5013 Osteoporosis:	
Evaluate under the appropriate diagnostic code based on the residuals of fractures (such as shortening, deformity, limitation of motion, osteoarthritis) and combine the evaluation based on residuals of fracture with an evaluation for pain (under § 4.59) when appropriate. Separately evaluate any secondary complications, such as neurologic manifestations, pulmonary restriction due to thoracic deformity from vertebral fractures, *etc.*	
5014 Osteomalacia:	
Evaluate under the appropriate diagnostic code, based on aseptic necrosis, residuals of fracture (such as shortening, deformity, limitation of motion, osteoarthritis), and combine with an evaluation for bone pain (under § 4.59) when appropriate. Evaluate constitutional manifestations of osteomalacia, such as malaise and easy fatigability, as part of the underlying metabolic condition, such as renal disease or gastrointestinal disease, that has caused the osteomalacia.	
5015 Benign neoplasm of bones:	
Evaluate under the appropriate diagnostic code based on osteoarthritis (diagnostic code 5003), residuals of fracture (such as shortening, limitation of motion), *etc.*, and combine with an evaluation for bone pain (under § 4.59) when appropriate.	
5016 Paget's disease:	
Evaluate based on osteoarthritis (5003) or on residuals of fracture (such as shortening, limitation of motion, *etc.*) of any affected bones, and combine with an evaluation for bone pain (under § 4.59) when appropriate. Separately evaluate complications such as loss of hearing or visual impairment.	
5017 Gout or pseudogout:	
Incapacitating exacerbations or flares with a total duration of at least 6 weeks during the past 12-month period requiring treatment by a health care provider, due to inflammatory synovitis with such findings as weakness and fatigue, acute pain, swelling, heat, tenderness, or limitation of motion of multiple joints	60
Incapacitating exacerbations or flares with a total duration of at least 4 weeks but less than 6 weeks during the past 12-month period requiring treatment by a health care provider, due to inflammatory synovitis with such findings as weakness and fatigue, acute pain, swelling, heat, tenderness, or limitation motion of multiple joints	40
Incapacitating exacerbations or flares with a total duration of at least 2 weeks but less than 4 weeks during the past 12-month period requiring treatment by a health care provider, due to inflammatory synovitis with such findings as weakness and fatigue, acute pain, swelling, heat, tenderness, or limitation motion of multiple joints	20
Incapacitating exacerbations or flares with a total duration of at least 1 week but less than 2 weeks during the 12-month period requiring treatment by a health care provider, due to inflammatory synovitis with such findings as weakness and fatigue, acute pain, swelling, heat, tenderness, or limitation of motion of a single joint or multiple joints	10
Note (1): Evaluate either on the basis of the total duration of incapacitating exacerbations or flares under the criteria for diagnostic code 5017 or on the combined evaluation of chronic residuals of gout or pseudogout, whichever results in the higher evaluation.	
Note (2): If not evaluating under the criteria under diagnostic code 5017, separately evaluate chronic residuals of each major joint or group of minor joints with gout or pseudogout based on limitation of motion, ankylosis, joint instability, etc., under the diagnostic code for that finding. Combine the evaluation for chronic residuals of each major joint or group of minor joints with an evaluation for pain under § 4.59 when appropriate.	
Note (3): Separately evaluate manifestations of gout other than joint disease, such as urinary tract calculi or gouty nephropathy.	
Note (4): An incapacitating exacerbation or flare means one requiring bedrest or wheelchair use and treatment by a health care provider.	
5018 Joint effusion (Hydrarthrosis):	
A joint effusion that is present constantly, or nearly so, or if intermittent, that occurred at least two times during the past 12-month period, may be evaluated under this diagnostic code.	
Evaluate based on limitation of motion, and combine with an evaluation for pain under § 4.59 when appropriate.	
5019 Bursitis:	
Evaluate based on limitation of motion, and combine with an evaluation for pain under § 4.59 when appropriate.	
5020 Synovitis:	
Evaluate based on limitation of motion, and combine with an evaluation for pain under § 4.59 when appropriate.	
5021 Myositis:	
Evaluate based on limitation of motion, and combine with an evaluation for pain under § 4.59 when appropriate.	
5022 Periostitis:	
Evaluate based on limitation of motion, and combine with an evaluation for pain under § 4.59 when appropriate.	
5023 Myositis ossificans:	
Evaluate based on limitation of motion, and combine with an evaluation for pain under § 4.59 when appropriate	
5024 Tenosynovitis:	
Evaluate based on limitation of motion, and combine with an evaluation for pain under § 4.59 when appropriate.	

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PROSTHETIC IMPLANTS

	Rating	
	Dominant	Nondominant
Note: The 100-percent evaluation for implantation of Prosthesis (diagnostic codes 5051 through 5056) will be assigned as of the date of hospital admission. Six months following the date of hospital discharge, the appropriate disability evaluation shall be determined on the basis of a VA examination, or on available medical records if sufficient for evaluation. Any reduction in evaluation based upon that or any subsequent examination is subject to the provisions of § 3.105(e) of this chapter. The same method of evaluation will be applied when an arthroplasty is revised or redone.		
5051 Total or partial shoulder arthroplasty or replacement (with prosthesis):		
From date of hospital admission for arthroplasty, either initial or revision	100	100
With inability to abduct (move the arm away from the body) more than 45 degrees	60	50
Minimum evaluation following arthroplasty	30	20
Note (1): If there is ankylosis of the glenohumeral joint, evaluate under diagnostic code 5200 (ankylosis of glenohumeral articulation (shoulder joint)).		
Note (2): Separately evaluate complications, such as peripheral neuropathy, causalgia, and reflex sympathetic dystrophy, under an appropriate diagnostic code. An evaluation for a complication may be combined with an evaluation under diagnostic code 5051 that is less than total, as long as limitation of abduction is not used to support an evaluation for a complication.		
Note (3): Combine an evaluation under diagnostic code 5051 with an evaluation for pain under § 4.59 when appropriate.		
5052 Total or partial elbow arthroplasty or replacement (with prosthesis):		
From date of hospital admission for arthroplasty, either initial or revision	100	100
Evaluate residuals based on ankylosis of elbow (under diagnostic code 5205), limitation of flexion of elbow (under diagnostic code 5206), limitation of extension of elbow (under diagnostic code 5207), or for limitation of flexion and extension of elbow (under diagnostic code 5208), whichever results in the highest evaluation, combining this evaluation with an evaluation for pain under § 4.59 when appropriate.		
Minimum evaluation following arthroplasty	30	20
5053 Total or partial wrist arthroplasty or replacement (with prosthesis):		
From date of hospital admission for arthroplasty, either initial or revision	100	100
Evaluate residuals based on ankylosis (under diagnostic code 5214) or limitation of motion (under diagnostic code 5215), whichever results in a higher evaluation, combining this evaluation with an evaluation for pain under § 4.59 when appropriate.		
Minimum evaluation following arthroplasty	20	20
5054 Total or partial hip arthroplasty or replacement (with prosthesis):		
From date of hospital admission for arthroplasty, either initial or revision		100
Requiring use of two crutches or a walker for ambulation		[1] 90
Requiring use of one crutch or two canes for most ambulation, due to pain, instability, or weakness (muscle strength grade zero to 2 out of 5)		70
Requiring use of one crutch or two canes only for ambulating long distances (500 feet or more), due to pain, instability, or weakness (muscle strength grade 3 to 4 out of 5)		50
Requiring use of one cane for ambulation, due to pain, instability, or weakness; or with recalcitrant thigh pain of longer than 2 years' duration		40
Minimum evaluation following arthroplasty		30
Note: Do not combine an evaluation under this diagnostic code with an evaluation for pain under § 4.59.		
5055 Total or partial knee arthroplasty or replacement (with prosthesis):		
From date of hospital admission for arthroplasty, either initial or revision		100
Requiring use of two crutches or a walker for ambulation		[1] 90
Requiring use of one crutch or two canes for most ambulation, due to pain, instability, or weakness (muscle strength grade zero to 2 out of 5); or with loss of more than 40 degrees of the full arc of motion		70
Requiring use of one crutch or two canes only for ambulating long distances (500 feet or more), due to pain, instability, or weakness (muscle strength grade 3 to 4 out of 5); or with loss of 21 to 40 degrees of the full arc of motion		50
Requiring use of one cane or brace for ambulation, due to pain, instability, or weakness; or with loss of 10 to 20 degrees of the full arc of motion		40
Minimum evaluation following arthroplasty		30
Note (1): A full arc of motion of the knee after arthroplasty is a range of motion of 0 to 110 degrees.		
Note (2): Do not combine an evaluation under this diagnostic code with an evaluation for pain under § 4.59.		
5056 Total or partial ankle arthroplasty or replacement (with prosthesis):		
From date of hospital admission for arthroplasty, either initial or revision		100
Evaluate residuals based on ankylosis (under diagnostic code 5270) or limitation of motion (under diagnostic code 5271), whichever results in a higher evaluation, combining this evaluation with an evaluation for pain under § 4.59 when appropriate.		
Minimum evaluation following arthroplasty		20

[1] Review for entitlement to special monthly compensation. Refer to § 3.350 for specific instructions regarding claims involving loss of loss of use of limbs.

COMBINATIONS OF DISABILITIES

		Rating
5104	Anatomical loss or loss of use of one hand and anatomical loss or loss of use of one foot	[1] 100
5106	Anatomical loss or loss of use of one hand and anatomical loss or loss of use of the other hand	[1] 100
5107	Anatomical loss or loss of use of one foot and anatomical loss or loss of use of the other foot	[1] 100

[1] Review for entitlement to special monthly compensation. Refer to § 3.350 for specific instructions regarding claims involving loss of loss of use of limbs.

AMPUTATIONS: UPPER EXTREMITY

		Rating	
		Dominant	Nondominant
	Amputation of upper extremity:		
5120	Disarticulation	[1] 90	[1] 90
5121	Above insertion of deltoid	[1] 90	[1] 80
5122	Below insertion of deltoid	[1] 80	[1] 70
	Amputation of forearm:		
5123	Amputation of forearm above insertion of pronator teres (located at the middle one-third of the lateral surface of the radius), also called short, below elbow amputation	[1] 80	[1] 70
5124	Amputation of forearm below insertion of pronator teres (at the middle one-third of the lateral surface of the radius), also called long, below elbow amputation	[1] 70	[1] 60
5125	Wrist disarticulation	[1] 70	[1] 60

Multiple Finger Amputations

Note (1): These ratings apply only to amputations at the proximal interphalangeal joints or through proximal phalanges.

Note (2): Amputation through middle phalanges will be rated as unfavorable ankylosis of the fingers.

Note (3): Except for negligible losses, amputations at distal joints or through distal phalanges will be rated as favorable ankylosis of the fingers.

Note (4): Amputation or resection of more than one-half the metacarpal bones in injuries of multiple fingers will be assigned an evaluation of 10 percent added to (not combined with) the evaluations for multiple finger amputations, subject to the provisions of § 4.68.

Note (5): Combinations of finger amputations at various levels, or finger amputations with ankylosis or limitation of motion of the fingers will be rated on the basis of the grade of disability, *i.e.*, amputation, unfavorable ankylosis, most representative of the levels or combinations. With an even number of fingers involved, and adjacent grades of disability, select the higher of the two grades.

5126	Amputation of five fingers of one hand	[1] 70	[1] 60
	Amputation of four fingers of one hand:		
5133	Thumb, index and ring	60	50
5134	Thumb, index and little	60	50
5135	Thumb, long and ring	60	50
5136	Thumb, long and little	60	50
5137	Thumb, ring and little	60	50
5138	Index, long and ring	50	40
5139	Index, long and little	50	40
5140	Index, ring and little	50	40
5141	Long, ring and little	40	30
	Amputation of two fingers of one hand:		
5142	Thumb and index	50	40
5143	Thumb and long	50	40
5144	Thumb and ring	50	40
5145	Thumb and little	50	40
5146	Index and long	40	30
5147	Index and ring	40	30
5148	Index and little	40	30
5149	Long and ring	30	20
5150	Long and little	30	20
5151	Ring and little	30	20

Single Finger Amputations

Note: These single finger amputation ratings are the only ratings that may be applied to amputations of all or part of a single finger.

5152	Amputation of thumb:		
	With metacarpal resection	40	30
	At metacarpophalangeal joint or through proximal phalanx	30	20
	At distal joint or through distal phalanx	20	20
5153	Amputation of index finger:		
	With metacarpal resection (more than one-half the bone lost)	30	20
	Without metacarpal resection, at proximal interphalangeal joint or proximal thereto	20	20
	Through middle phalanx or at distal joint	10	10

AMPUTATIONS: UPPER EXTREMITY—Continued

	Rating	
	Dominant	Nondominant
5154 Amputation of long finger:		
With metacarpal resection (more than one-half the bone lost)	20	20
Without metacarpal resection, at or proximal to the interphalangeal joint	10	10
5155 Amputation of ring finger:		
With metacarpal resection (more than one-half the metacarpal bone lost)	20	20
Without metacarpal resection, at or proximal to the Interphalangeal joint	10	10
5156 Amputation of little finger:		
With metacarpal resection (more than one-half the bone lost	20	20
Without metacarpal resection, at or proximal to the interphalangeal joint	10	10
* * * * * * *		
5160 Disarticulation of hip, with loss of extrinsic pelvic girdle muscles		[1] 90
5161 Amputation through the upper one-third of the thigh, one-third of the distance from the perineum to the knee joint measured from perineum		[1] 80
5162 Amputation through the middle or lower third of thigh		[1] 60
5163 Amputation of lower extremity, at or below knee, with defective stump, thigh amputation indicated		[1] 60
5164 Amputation of lower extremity below the knee at a level not permitting prosthesis controlled by natural knee action		[1] 60
5165 Amputation of lower extremity below the knee at a level permitting prosthesis controlled by natural knee action		[1] 40
5166 Amputation of forefoot proximal to the metatarsal bones (with more than one-half of the metatarsals amputated)		[1] 40
5167 Loss of use of foot		[1] 40
5170 Amputation of all toes, without metatarsal loss		30
5171 Amputation of great toe:		
With removal of metatarsal head		30
Without removal of metatarsal head		10
5172 Amputation of one or two toes, other than great toe:		
With removal of metatarsal head		20
Without removal of metatarsal head		0
5173 Amputation of three or four toes, without metatarsal involvement:		
Including great toe		20
Not including great toe		10

[1] Review for entitlement to special monthly compensation. Refer to § 3.350 for specific instructions regarding claims involving loss or loss of use of limbs.

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HUMERUS, CLAVICLE, AND SCAPULA

	Rating	
	Dominant	Nondominant
5200 Ankylosis of glenohumeral articulation (shoulder joint):		
Note: The scapula and humerus move as one unit.		
Unfavorable, abduction limited to 25 degrees from side	50	40
Intermediate, abduction limited to between 26 degrees and 59 degrees	40	30
Favorable, abduction limited to 60 degrees, but can reach mouth and head	30	20
5201 Limitation of active abduction of shoulder:		
Abduction limited to 25 degrees from side	40	30
Abduction limited to between 26 degrees and 89 degrees from side	30	20
Abduction limited to shoulder level (90 degrees)	20	20
5202 Residuals of fracture of humerous and residuals of dislocation of glenohumeral (shoulder) joint:		
At least one recurrence of dislocation	10	10
Malunion of fracture of humerus:		
Symptomatic, with more than 45 degrees of angulation in the anterior-posterior plane or varus-valgus plane	30	20
Symptomatic, with 30 to 45 degrees of angulation in the anterior-posterior plane or varus-valgus plane	20	20
5203 Impairment of clavicle or scapula:		
Resection of the end of the clavicle; nonunion of the clavicle or scapula; malunion of the clavicle or scapula with skin breakdown, skin irritation, or thoracic outlet syndrome (upper extremity symptoms due to compression of nerves or blood vessels)	20	10
Dislocation of the acromioclavicular joint with pain and localized osteoarthritis; or painful sternoclavicular anterior dislocation	10	10
Malunion of clavicle or scapula without skin breakdown, skin irritation, or thoracic outlet problems	0	0
With untreated sternoclavicular posterior dislocation, separately evaluate complications, such as from pressure on blood vessels or trachea.		

HUMERUS, CLAVICLE, AND SCAPULA—Continued

	Rating	
	Dominant	Nondominant
Note (1): These criteria encompass pain, so do not combine an evaluation under diagnostic code 5203 with an evaluation for pain under § 4.59.		
Note (2): Thoracic outlet syndrome is a group of symptoms, mainly of the upper extremity, that may include pain, weakness, numbness, and tingling of an arm or hand, as well as swelling and enlargement of veins of the arm or chest. It is due to compression of the area behind each clavicle where an artery, a vein, and nerves cross. Thoracic outlet syndrome can be evaluated separately as long as it is not used to support an evaluation under diagnostic code 5203.		
5204 Rotator cuff dysfunction and impingement syndrome:		
Limitation of internal rotation, external rotation, flexion, and abduction	20	20
Minimum, with positive impingement sign	10	10
Note (1): Combine an evaluation based on the criteria under diagnostic code 5204 with an evaluation for pain under § 4.59 when appropriate.		
Note (2): Evaluate under diagnostic code 5201 if a higher evaluation could be assigned based on limitation of abduction, but do not combine with an evaluation under diagnostic code 5204.		

THE ELBOW AND FOREARM

	Rating	
	Dominant	Nondominant
5205 Ankylosis of elbow:		
Unfavorable, at an angle of less than 50 degrees or with complete loss of supination or pronation	80	70
Intermediate, at an angle of more than 90 degrees or between 70 degrees and 50 degrees	60	50
Favorable, at an angle between 90 degrees and 70 degrees	50	40
5206 Limitation of flexion of elbow:		
Flexion limited to 45 degrees	50	40
Flexion limited to 55 degrees	40	30
Flexion limited to 70 degrees	30	20
Flexion limited to 90 degrees	20	20
Flexion limited to 100 degrees	10	10
Flexion limited to 110 degrees	0	0
5207 Limitation of extension of elbow:		
Extension is limited to minus 110 degrees (lacks 110 degrees of full extension)	50	40
Extension is limited to minus 100 degrees (lacks 100 degrees of full extension)	40	30
Extension is limited to minus 90 degrees (lacks 90 degrees of full extension)	30	20
Extension is limited to minus 75 degrees (lacks 75 degrees of full extension)	20	20
Extension is limited to between minus 45 and minus 74 degrees (lacks at least 45 but less than 75 degrees of full extension)	10	10
5208 Flexion of elbow is limited to 100 degrees, and extension is limited to minus 45 degrees: (lacks 45 degrees of full extension)	20	20
5209 Other impairment of elbow:		
Joint fracture with cubitus varus deformity (any degree of varus greater than zero degrees); or ununited or malunited head of radius	20	20
Excised radial head	10	10
5210 Nonunion of radius and ulna, with motion at the fracture site	50	40
5211 Impairment of ulna:		
Nonunion in upper half, with false movement, deformity, and loss of bone substance (1 inch (2.5 cm.) or more)	40	30
Nonunion in upper half, with false movement, with either deformity or loss of bone substance (1 inch (2.5 cm.) or more)	30	20
Nonunion in upper half, with false movement, without deformity and without loss of bone substance (1 inch (2.5 cm.) or more); or nonunion in lower half	20	20
Malunion of, symptomatic	10	10
Note: Alternatively, evaluate malunion of the ulna based on limitation of motion if that would result in a higher evaluation.		
5212 Impairment of radius:		
Nonunion in lower half, with false movement, deformity, and loss of bone substance (1 inch (2.5 cm.) or more)	40	30
Nonunion in lower half, with false movement, with either deformity or loss of bone substance (1 inch (2.5 cm.) or more)	30	20
Nonunion in lower half, with false movement, without deformity and without loss of bone substance (1 inch (2.5 cm.) or more); or nonunion in upper half	20	20
Malunion of, symptomatic	10	10
Note: Alternatively, evaluate malunion of the radius based on limitation of motion if that would result in a higher evaluation.		
5213 Impairment of supination and pronation of forearm:		
(1) With bone fusion:		
The hand fixed in supination (between one and 85 degrees of supination) or in hyperpronation (in greater than 80 degrees of pronation)	40	30

THE ELBOW AND FOREARM—Continued

	Rating	
	Dominant	Nondominant
The hand fixed in full pronation (at 80 degrees of pronation)	30	20
The hand fixed at 40 to 45 degrees of pronation	20	20
(2) Limitation of pronation:		
Pronation limited to 40 degrees	30	20
Pronation limited to 60 degrees	20	20
(3) Limitation of supination: Supination limited to 30 degrees	10	10
Note: Evaluations for forearm and wrist injuries, diagnostic codes 5205 through 5213, will be combined with separate evaluations for limitation of motion of the fingers, subject to the provisions of § 4.68.		

THE WRIST

	Rating	
	Dominant	Nondominant
5214 Ankylosis of the wrist:		
Unfavorable, meaning fixed in any degree of palmar flexion, or with ulnar or radial deviation	50	40
Intermediate, meaning fixed in any position other than that for favorable or unfavorable	40	30
Favorable, meaning fixed in 20 degrees to 30 degrees dorsiflexion, without ulnar or radial deviation	30	20
5215 Limitation of motion of wrist:		
Dorsiflexion limited to 14 degrees, or palmar flexion limited to zero degrees (no palmar flexion possible)	10	10
5231 Fracture of phalanx of finger or thumb:		
Evaluate based on residuals, such as limitation of motion or ankylosis of digit under the appropriate code(s), and combine with an evaluation for pain under § 4.59 when appropriate.		
5232 Fracture of carpal or metacarpal bone:		
Evaluate based on residuals under the appropriate code(s), such as limitation of motion or ankylosis of wrist, and combine with an evaluation for pain under § 4.59 when appropriate.		
5233 Fracture of phalanx of toe:		
Evaluate based on residuals under the appropriate code(s), such as limitation of motion or ankylosis of toe (for example, using criteria for diagnostic codes 5278 through 5283), and combine with an evaluation for pain under § 4.59 when appropriate.		

THE HIP AND THIGH

	Rating
5250 Ankylosis of hip:	
Unfavorable ankylosis, meaning fixed in more than 60 degrees of flexion so that the foot cannot reach the ground, and crutches are required for ambulation	[1] 90
Intermediate ankylosis, meaning fixed in 40 to 60 degrees of flexion, and assistive devices may be needed	70
Favorable ankylosis, meaning fixed in 20 degrees to 39 degrees of flexion, in slight adduction or abduction, and assistive devices are not required	60
5251 Limitation of extension of hip (normal full extension is zero degrees):	
If there is limitation of extension of the affected hip that is at least 10 degrees more than the limitation of extension of the non-affected hip, and there is a positive Thomas test (test for flexion contracture of hip)	10
5252 Limitation of flexion of hip:	
Flexion limited to 10 degrees	40
Flexion limited to 20 degrees	30
Flexion limited to 30 degrees	20
Flexion limited to 45 degrees	10
5253 Limitation of abduction, adduction, or rotation of hip:	
Abduction limited to 10 degrees	20
Adduction limited, so that cannot cross legs; or rotation limited, so that cannot toe-out more than 15 degrees	10
5254 Resection arthroplasty of hip (removal of femoral head and neck without replacement by a prosthesis)	80
5255 Residuals of fracture of femur:	
Fracture of the femoral neck, intertrochanteric area, or shaft with symptomatic malunion or symptomatic non-union	60
Fracture of the femoral neck, intertrochanteric area, or shaft with asymptomatic non-union; or fracture of the femoral head or subcapital area with excision of 25% or more of the weightbearing portion	40
Fracture of the femoral shaft with symptomatic malunion and either more than 10 degrees of angulation in the varus-valgus plane or more than 15 degrees of angulation in the anterior-posterior plane	30
Note (1): Evaluate fracture of the femoral head or subcapital area with excision of less than 25% of the weightbearing portion as aseptic necrosis of the femoral head, diagnostic code 5265.	
Note (2): Malunion of an intertrochanteric fracture is indicated by a varus deformity, shortening, or rotation.	

[1] Review for entitlement of special monthly compensation. Refer to § 3.350 for specific instructions regarding claims involving loss or loss of use of limbs.

THE KNEE AND LEG

	Rating
5256 Ankylosis of knee:	
Ankylosed in more than 45 degrees of flexion	60
Ankylosed in flexion, between 21 and 45 degrees	50
Ankylosed in flexion, between 11 and 20 degrees	40
Ankylosed in full extension, or in flexion between zero and 10 degrees	30
5257 Knee instability:	
Documented instability that is not correctable by bracing and that interferes with activities of daily living	30
Documented instability that is correctable by bracing, but that interferes at times with activities of daily living and prevents activities such as running and jumping	20
Documented instability that is correctable by bracing and that does not interfere with activities of daily living, but at times may interfere with activities such as running and jumping	10
Note: Combine with an evaluation for pain (under § 4.59) when appropriate.	
5258 Injury of meniscus (semilunar cartilage) of knee (pre- or post-operatively):	
With episodes of giving way, locking, or joint effusion that interfere at times with activities of daily living and prevent activities such as running and jumping	20
With episodes of giving way, locking, or joint effusion that do not interfere with activities of daily living, but that at times interfere with activities such as running and jumping	10
Alternatively, depending on the specific findings, evaluate based on instability, degenerative arthritis, etc., under the appropriate diagnostic code.	
Note: Combine an evaluation under diagnostic code 5258 with an evaluation for pain (under § 4.59) when appropriate.	
5260 Limitation of flexion of knee (normal full flexion is 140 degrees):	
Flexion limited to 30 degrees	30
Flexion limited to 60 degrees	20
Flexion limited to 90 degrees	10
5261 Limitation of extension of knee (normal full extension is zero degrees):	
Extension is limited to more than minus 30 degrees (lacks more than 30 degrees of full extension)	50
Extension is limited to between minus 16 and 30 degrees (lacks 16 to 30 degrees of full extension)	30
Extension is limited to between minus 5 and 15 degrees (lacks 5 to 15 degrees of full extension)	10
5262 Nonunion or malunion of fracture of tibia or fibula:	
Nonunion, with loose motion, requiring brace	40
Asymptomatic nonunion	30
Symptomatic malunion with either more than 10 degrees of angulation in the varus-valgus plane or more than 15 degrees of angulation in the anterior-posterior plane	20
Symptomatic malunion with neither more than 10 degrees of angulation in the varus-valgus plane nor more than 15 degrees of angulation in the anterior-posterior plane	10
5265 Aseptic necrosis (or avascular necrosis or osteonecrosis) of the femoral head:	
With collapse of the femoral head, and requiring constant ambulatory support	60
With collapse of the femoral head, and requiring intermittent ambulatory support	40
Without collapse of the femoral head	10
Note: Combine an evaluation under diagnostic code 5265 with an evaluation of pain under § 4.59 when appropriate. Alternatively, evaluate as limitation of motion of the hip, combined with an evaluation for pain under § 4.59 when appropriate, if that would result in a higher evaluation.	
5266 Patellar fracture and instability:	
Symptomatic nonunion of fracture of patella; or patellectomy; or recurrent patellar dislocation occurring six or more times during the past 12-month period	30
Patellofemoral subluxation (partial or incomplete dislocation of the patella) occurring three or more times per month during the past 12-month period; or recurrent patellar dislocation occurring three to five times during the past 12-month period	20
Patellofemoral subluxation occurring one to two times per month during the past 12-month period; or recurrent patellar dislocation occurring one or two times during the past 12-month period	10
Note: The evaluation criteria for diagnostic code 5266 encompass pain, so a separate evaluation for pain under § 4.59 is not warranted.	
5267 Patellofemoral pain syndrome (chondromalacia of patella, retropatellar pain syndrome, patellofemoral syndrome):	
Evaluate based on pain under § 4.59.	

THE ANKLE

	Rating
5270 Ankylosis of the ankle:	
Ankylosed in more than 40 degrees of plantar flexion; or ankylosed in more than 10 degrees of dorsiflexion; or ankylosed with abduction, adduction, inversion or eversion deformity	40
Ankylosed in 30 to 40 degrees of plantar flexion; or ankylosed in zero to 10 degrees of dorsiflexion	30
Ankylosed in less than 30 degrees of plantar flexion	20
5271 Limitation of motion of the ankle:	
Less than 5 degrees passive dorsiflexion; or less than 10 degrees passive plantar flexion	20
Less than 15 degrees passive dorsiflexion; or less than 30 degrees passive plantar flexion	10
5272 Ankylosis of subtalar or tarsal joint:	
In poor weightbearing position (not in plantograde position)	20
In good weightbearing position (no varus, no valgus)	10
5273 Malunion of calcaneus (os calcis) or talus:	
Deformity of the talocalcaneal joint or spreading of the calcaneus deforming the weightbearing surface of the heel	30

THE ANKLE—Continued

	Rating
Malunion of either the talus or calcaneus without deformity of the subtalar joint or weightbearing surface of the heel	10
5274 Total or partial talectomy without subsequent arthrodesis	40

SHORTENING OF THE LOWER EXTREMITY

	Rating
5275 Shortening of bones of lower extremity:	
Of 4 inches (10.2 cm.) or more	[1]60
Of at least 3½ but less than 4 inches (8.9 to less than 10.2 cm.)	[1]50
Of at least 3 but less than 3½ inches (7.6 to less than 8.9 cm.)	40
Of at least 2½ but less than 3 inches (6.4 to less than 7.6 cm.)	30
At least 2 but less than 2½ inches (5.1 to less than 6.4 cm.)	20
At least 1¼ but less than 2 inches (3.2 to less than 5.1 cm.)	10
Note (1): Each lower extremity will be measured from the anterior superior spine of the ilium to the internal malleolus of the tibia.	
Note (2): Do not combine an evaluation under diagnostic code 5275 with an evaluation for healed fracture, malunion, or nonunion of a fracture in the same extremity.	

[1] Review for entitlement to special monthly compensation. Refer to § 3.350 for specific instructions regarding claims involving loss or loss of use of limbs.

THE FOOT

	Rating
5276 Flatfoot (pes planus):	
Deformity, including, on weightbearing, significant eversion of the heel, flattened arch, collapse of the midfoot structures with the talar head displaced both medial and plantar, and forefoot abduction; pain in the arch; and symptoms not significantly relieved by the use of appliances, orthoses, or orthopedic shoes	20
Deformity, including a perpendicular position to slight eversion of the heel, the presence of a slight arch on non-weightbearing which totally collapses on weightbearing, and forefoot abduction; pain in the arch and legs; and symptoms partially relieved by the use of appliances, orthoses, or orthopedic shoes	10
Deformity, but a normal arch on non-weightbearing and a perpendicular heel position; tenderness in the arch or muscles and tendons attaching to the midfoot; and symptoms completely relieved by, or not requiring, the use of appliances, orthoses, or orthopedic shoes	0
Note (1): Evaluate each foot separately and combine the evaluations.	
Note (2): Pain is encompassed by these evaluation criteria, so do not combine an evaluation under diagnostic code 5276 with an evaluation for pain under § 4.59.	
5278 Pes cavus (clawfoot):	
Symptoms of pain and tenderness, and callosities, if present, not significantly relieved by the use of appliances, orthoses, or orthopedic shoes	20
Symptoms of pain and tenderness, and callosities, if present, partially relieved by the use of appliances, orthoses, or orthopedic shoes	10
Symptoms of pain and tenderness, and callosities, if present, completely relieved by, or do not require, the use of appliances, orthoses, or orthopedic shoes	0
Note (1): Evaluate each foot separately and combine the evaluations.	
Note (2): In the absence of trauma or other specific cause of aggravation, consider pes cavus to be a congenital or developmental abnormality.	
5279 Metatarsalgia (including Morton's neuroma):	
Pain in the ball of the foot not significantly relieved by the use of appliances, orthoses, or orthopedic shoes, or by surgery, if that was done	10
Pain in the ball of the foot largely or completely relieved by, or does not require, the use of appliances, orthoses, or orthopedic shoes, or by surgery, if that was done	0
Note: Evaluate each foot separately and combine the evaluations.	
5280 Hallux Valgus:	
Symptoms not significantly relieved by the use of appliances, orthoses, or orthopedic shoes, or by surgery, if that was done	10
Symptoms largely or completely relieved by, or not requiring, the use of appliances, orthoses, or orthopedic shoes, or by surgery, if that was done	0
Note (1): Evaluate each foot separately and combine the evaluations.	
Note (2): Pain is encompassed by these evaluation criteria, so do not combine an evaluation under diagnostic code 5280 with an evaluation for pain under § 4.59.	
5281 Hallux limitus, hallux rigidus:	
Pain with any motion of the joint, including walking, with ankylosis (no motion) of the first metatarsal-phalangeal joint and gait abnormality	20
Pain on walking, with limitation of motion of the first metatarsal-phalangeal joint	10
Pain only on extremes of motion, with limitation of motion of the first metatarsal-phalangeal joint	0
Note: Evaluate each foot separately, regardless of number of toes affected by hammertoe, and combine the evaluations.	
5282 Hammertoe, contracted or deviated toes:	
Hammertoe with pain and calluses not significantly relieved by the use of appliances, orthoses, or orthopedic shoes, or by surgery, if that was done	10

THE FOOT—Continued

	Rating
Hammertoe with pain and calluses largely or completely relieved by, or not requiring, the use of appliances, orthoses, or orthopedic shoes, or by surgery, if that was done	0
Note (1): Evaluate each foot, but not each toe, separately, and combine the evaluations.	
Note (2): Do not assign an evaluation for the same foot both under diagnostic code 5282 and under diagnostic code 5278 (pes cavus (clawfoot)).	
5283 Malunion or nonunion of tarsal or metatarsal bones (except talus and calcaneus):	
Signs and symptoms (such as pain, calluses, abnormal or limited motion of affected bones or joints) that interfere with activities of daily living and that are not significantly relieved by appliances, orthoses, or orthopedic shoes, or by surgery, if that was done	30
Signs and symptoms (such as pain, calluses, abnormal or limited motion of affected bones or joints) that are partly relieved by appliances, orthoses, or orthopedic shoes, or by surgery, if that was done, but that interfere at times with activities of daily living and with most athletic activity	20
Signs and symptoms (such as pain, calluses, abnormal or limited motion of affected bones or joints) that are largely or completely relieved by appliances, orthoses, or orthopedic shoes, or by surgery, if that was done and that do not interfere with activities of daily living but that may at times prevent activities such as running and jumping	10
5284 Neurotrophic disorders of the foot (Charcot joint, diabetic foot, *etc.*):	
Chronic ulceration not controlled by the use of orthoses	30
Recurrent ulcers controlled by the use of orthoses	20
Pain not relieved by orthoses or shoe modification	10
Pain relieved by orthoses or shoe modification	0
Note (1): If osteomyelitis of the foot is present, evaluate under diagnostic code 5000 (osteomyelitis), and do not assign an evaluation under diagnostic code 5284.	
Note (2): A 20- or 30-percent evaluation under diagnostic code 5284 may be combined with an evaluation for pain under § 4.59.	

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THE SKULL

	Rating
5296 Loss of part of both inner and outer tables of skull without cranioplasty (covering of defect by bone, metal, or other material).	
With brain hernia	80
Without brain hernia:	
Area larger than 1.1 sq. inches (7.4 sq. cm.)	50
0.7 to 1.1 sq. inches (4.6 to 7.4 sq. cm.)	30
Area smaller than 0.7 sq. inches (4.6 sq. cm.)	10
Note (1): Rate intracranial complications, such as seizures or paralysis, separately.	
Note (2): Skull loss covered by bone or a prosthesis will not be used in calculating the area of skull loss.	

THE RIBS

	Rating
5297 Removal of ribs:	
More than six	50
Five or six	40
Three or four	30
Two	20
Removal of one, or resection of two or more ribs without regeneration	10
Note (1): Do not combine an evaluation under diagnostic code 5297 with an evaluation under diagnostic code 6844 (post-surgical residuals of lobectomy, pneumonectomy, etc.) or 6845 (chronic pleural effusion or fibrosis).	
Note (2): Evaluate rib resection as rib removal when thoracoplasty has been performed for collapse therapy or to obliterate space, and combine with the evaluation for lung collapse, lobectomy, pneumonectomy, or the graduated evaluations for pulmonary tuberculosis.	

THE COCCYX

	Rating
5298 Partial or complete removal of the coccyx:	
With painful residuals	10

(Authority: 38 U.S.C. 1155)

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Federal Register

Tuesday,
February 11, 2003

Part III

Securities and Exchange Commission

17 CFR Parts 270 and 275
Compliance Programs of Investment Companies and Investment Advisers; Proposed Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 270 and 275

[Release Nos. IC–25925, IA–2107; File No. S7–03–03]

RIN 3235–AI77

Compliance Programs of Investment Companies and Investment Advisers

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: The Securities and Exchange Commission is publishing for comment new rules under the Investment Company Act of 1940 and the Investment Advisers Act of 1940 that would require each investment company and investment adviser registered with the Commission to adopt and implement policies and procedures reasonably designed to prevent violation of the federal securities laws, review those policies and procedures annually for their adequacy and the effectiveness of their implementation, and appoint a chief compliance officer to be responsible for administering the policies and procedures. The Commission also seeks comment on other ways to involve the private sector in fostering compliance by investment companies and investment advisers with the federal securities laws. The proposed rules are designed to protect investors by being the first step towards enhanced compliance achieved through private initiative.

DATES: Comments must be received on or before April 18, 2003.

ADDRESSES: To help us process and review your comments more efficiently, comments may be sent to us in either paper or electronic format. Comments should not be sent by both methods.

Comments in paper format should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Comments in electronic format may be submitted at the following e-mail address: *rule-comments@sec.gov*. All comment letters should refer to File No. S7–03–03; if e-mail is used, this file number should be included on the subject line. Comment letters will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549. Electronically submitted comment letters will also be posted on the Commission's Internet Web site *(http://www.sec.gov)*.[1]

FOR FURTHER INFORMATION CONTACT: Hester Peirce, Senior Counsel, Office of Regulatory Policy at (202) 942–0690, or Jamey Basham, Special Counsel, Office of Investment Adviser Regulation at (202) 942–0719.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission ("SEC" or "Commission") is requesting public comment on proposed rule 38a–1 [17 CFR 270.38a–1] under the Investment Company Act of 1940 [15 U.S.C. 80a] ("Investment Company Act"), proposed rule 206(4)–7 [17 CFR 275.206(4)–7] under the Investment Advisers Act of 1940 [15 U.S.C. 80b] ("Investment Advisers Act" or "Advisers Act"), and proposed amendments to rule 204–2 under the Advisers Act [17 CFR 275.204–2].

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I. Background

Mutual funds and other types of investment companies provide access to the capital markets for millions of small and large investors.[2] The tremendous growth of funds reflects the confidence investors have in funds and the regulatory protections provided by the federal securities laws.

The Commission regulates mutual funds and other investment companies under the Investment Company Act, and regulates the investment advisers that provide investment management services to those funds and to other clients under the Advisers Act.[3] The Investment Company Act provides a comprehensive regulatory structure designed to protect largely passive investors in funds, while the Advisers Act, which contains a less detailed regulatory scheme, imposes a broad fiduciary duty on advisers, requiring them to act in the best interest of their clients.[4] These statutes contain common elements: they require registration with us;[5] proscribe certain types of harmful conduct;[6] and give us the authority to require the disclosure of certain information[7] and the maintenance of certain records.[8] They give us authority to examine the records of funds and advisers.[9] During fiscal year 2002, our staff conducted examinations of 278 fund complexes[10] and 1,570 investment advisers.

The Commission's examination of funds and advisers is a key element of our investor protection program. During

[1] We do not edit personal or identifying information, such as names or e-mail addresses, from electronic submissions. Submit only information you wish to make publicly available.

[2] In this release, we use the term "fund" to mean a registered investment company or a business development company defined in section 2(a)(48) of the Investment Company Act [15 U.S.C. 80a–2(a)(48)], and the term "mutual fund" to mean a registered investment company that is an open-end management company defined in section 5(a) of the Investment Company Act [15 U.S.C. 80a–5(a)].

[3] Funds and advisers are also subject to other federal securities laws, including the Securities Act of 1933 [15 U.S.C. 77] and the Securities Exchange Act of 1934 [15 U.S.C 78] ("Exchange Act").

[4] *Transamerica Mortgage Advisors v. Lewis*, 444 U.S. 11, 17 (1979).

[5] *See* Section 8(a) of the Investment Company Act [15 U.S.C. 80a–8(a)] and section 203 of the Advisers Act [15 U.S.C. 80b–3].

[6] *See, e.g.*, sections 10(f) [15 U.S.C. 80a–10(f)] (prohibiting funds from acquiring securities during the existence of an underwriting syndicate in which an affiliate participates), 12(d) [15 U.S.C. 80a–12(d)] (prohibiting funds from acquiring securities of other funds above certain limits), and 17(a) [15 U.S.C. 80a–17(a)] (prohibiting certain persons from engaging in certain purchase, sale, and loan transactions with an affiliated fund) of the Investment Company Act; and section 206 of the Advisers Act [15 U.S.C. 80b–6] (prohibiting fraud).

[7] *See, e.g.*, section 30(e) of the Investment Company Act [15 U.S.C. 80a–29(e)] (authorizing Commission to require funds to transmit certain information to stockholders) and section 204 of the Advisers Act [15 U.S.C. 80b–4] (authorizing Commission to require advisers to disseminate certain information).

[8] *See* Section 31(a) of the Investment Company Act [15 U.S.C. 80a–30(a)] (authorizing Commission to require funds to maintain records) and section 204 of the Advisers Act (authorizing Commission to require advisers to maintain records).

[9] *See* Section 31(b) of the Investment Company Act [15 U.S.C. 80a–30(b)] (authorizing Commission to examine fund records) and section 204 of the Advisers Act (authorizing Commission to examine adviser records).

[10] In this release, we use the term "fund complex" to indicate a group of funds that share a compliance program and often also have a common investment adviser or distributor.

a compliance examination, our staff visits the offices of the fund or adviser, reviews business records and interviews personnel to determine whether the fund or adviser is acting in compliance with the federal securities laws. Our examinations permit us to identify compliance problems at an early stage, identify practices that may be harmful to investors, and provide a deterrent to unlawful conduct. In many respects, our examiners are like "cops on the beat" watching for unlawful conduct in a neighborhood.

Like police officers, our examiners cannot be everywhere at all times. Approximately 5,030 funds and 7,790 advisers are currently registered with us.[11] Collectively, these funds and advisers control over $21 trillion of assets, and engage in tens of millions of transactions each year. Our current resources permit us to conduct routine examinations of each of the 966 fund complexes and each adviser only once every five years, and during these examinations we are unable to review every transaction. Instead, our compliance examinations focus on the effectiveness of the internal controls that the fund or adviser has established to prevent and detect violations of the federal securities laws.

Our experience is that funds and advisers with effective internal compliance programs administered by competent compliance personnel are much less likely to violate the federal securities laws. If violations do occur, they are much less likely to result in harm to investors. In contrast, we have learned to regard weak controls as an indicator that undetected (and uncorrected) violations may have occurred, and we have assumed that, until improved controls are implemented, investors are at risk. Accordingly, our staff focuses its examination efforts on testing the effectiveness of controls and related compliance procedures, and requests that management correct any weaknesses that the staff discovers. This focus allows us to leverage our limited examination resources; we are able to direct additional resources to firms with weaker compliance controls, and may examine them more closely and more frequently.[12]

Our ability to protect fund investors and advisory clients has in many respects come to rely upon the effectiveness of these compliance programs. They provide the first line of investor protection. Many funds and advisers have established effective programs staffed with competent and trained professionals.[13] However, neither the federal securities laws nor our rules *require* funds and advisers to adopt and implement comprehensive compliance programs, and not all firms registered with us have adopted and implemented adequate compliance programs. The consequences of inadequate compliance programs are well documented in our releases through which we publicize our enforcement actions.[14]

Because of the importance of these compliance programs to investors and to the administration of our examination authority under the Investment Company Act and Advisers Act, we are proposing two new rules (one for funds and one for advisers) that would require funds and advisers to (i) adopt and implement policies and procedures designed to prevent violations of the securities laws, (ii) review these policies and procedures at least annually for their adequacy and the effectiveness of their implementation, and (iii) designate a chief compliance officer responsible for administering the policies and procedures.[15] We discuss each of the rules in more detail below.

We also are asking for comment on other possible roles for the private sector in overseeing compliance by funds and advisers with the federal securities laws. Specifically, we ask comment on the following possible avenues towards enhanced private sector involvement: (i) Periodic third-party compliance reviews of funds and advisers, (ii) an expansion of the scope of the fund audits performed by independent public accountants, (iii) the formation of one or more self-regulatory organizations, and (iv) a fidelity bonding requirement for advisers.

II. Discussion

The Commission is proposing new rule 38a–1 under the Investment Company Act and new rule 206(4)–7 under the Advisers Act. In this release, we will refer to the rules collectively as the "Proposed Rules."[16] Together the Proposed Rules would require *all* investment companies and advisers registered with us to adopt and

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[11] As of November 2002, these registered investment companies were organized into 966 fund complexes and comprised nearly 33,000 fund series and portfolios.

[12] *See* Lori A. Richards, Director, SEC Office of Compliance Inspections and Examinations, The Evolution of the SEC's Inspection Program for Advisers and Funds: Keeping Apace of a Changing Industry, Remarks at Conference on Compliance and Inspection Issues for Investment Advisers and Investment Companies (Oct. 30, 2002) (transcript available at: *http://www.sec.gov/news/speech/spch597.htm*) ("[E]xaminers will ask about your compliance and control policies and procedures, and evaluate their implementation and effectiveness. If we can conclude that your controls are working effectively, we will adjust the depth and amount of test-checking we do to reflect that fact. If we find weaknesses in controls, however, our test-checking will be greater, inasmuch as the likelihood of violations will be greater."). *See also* H.R. Rep. No. 104–622 (1996) ("[T]he goal of examinations effected by the Commission staff should not be simply to duplicate the role played by a fund's internal compliance staff. If a fund has a well-functioning system of internal controls, the Commission's limited resources could be directed to other areas of fund operations, or to other funds.").

[13] One reason that funds and advisers may have adopted and implemented comprehensive compliance procedures is to defend themselves against a charge by us that they (or their officers or supervisory personnel) failed to supervise their employees (or other supervised persons). Section 203(e)(6) of the Advisers Act [15 U.S.C. 80b–3(e)(6)] provides that a person shall not be deemed to have failed to supervise any person if: (i) The adviser had adopted procedures reasonably designed to prevent and detect violations of the federal securities laws; (ii) the adviser had a system in place for applying the procedures; and (iii) the person had reasonably discharged his supervisory responsibilities in accordance with the procedures and had no reason to believe the supervised person was not complying with the procedures.

[14] *See, e.g.*, Millennium Capital Advisors, Investment Advisers Act Release No. 2092 (Dec. 13, 2002) (unauthorized trading in client account and concealment of this trading were facilitated by adviser's vague and insufficient compliance procedures and absence of independent monitoring of portfolio manager); Gintel Asset Management, Investment Advisers Act Release No. 2079 (Nov. 8, 2002) (repeated improper cross trades, principal transactions, and personal trading resulted in part from inadequate procedures to prevent violation of the adviser's code of ethics); Back Bay Advisors, Investment Advisers Act Release No. 2070 (Oct. 25, 2002) (excessive reliance on self-reporting and self-monitoring by portfolio managers to determine whether the firm was in compliance with the federal securities laws resulted in improper cross-trades); Western Asset Management, Investment Advisers Act Release No. 1980 (Sept. 26, 2001) (subadviser had not established adequate procedures to detect portfolio manager's fraudulent activities with respect to the purchase and pricing of private placement securities); Scudder Kemper Investments, Investment Advisers Act Release No. 1848 (Dec. 22, 1999) (adviser did not have in place procedures that could have prevented and detected trader's unauthorized trading for investment company accounts); Rhumbline Advisers, Investment Advisers Act Release No. 1765 (Sept. 29, 1998) (absence of procedures enabled chief investment officer to engage in unauthorized trading and to misrepresent resultant losses); Kemper Financial Services, Investment Advisers Act Release No. 1494 (June 6, 1995) (adviser had no guidelines or procedures in place to address conflicts of interest and funds' portfolio manager misappropriated funds' investment opportunity on behalf of private profit-sharing plan he also managed).

[15] The Investment Company Institute (ICI) submitted a rulemaking proposal to the Commission in November 1994 that recommended we adopt rules similar to the ones that we are proposing today ("ICI Proposal"). A copy of that proposal is available in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549 (File No. S7–03–03).

[16] We also are proposing related amendments to rule 204–2 under the Advisers Act. *See infra* section II.D. These proposed amendments also will be included in the term "Proposed Rules."

implement internal compliance programs containing elements described in the rules.[17]

• We request comment on whether we should provide for one or more exceptions. Is there a subset of funds or investment advisers with operations so limited or staffs so small that the adoption of an internal compliance program would not be beneficial? If so, are there alternative measures that these funds and advisers could take to promote their compliance with the federal securities laws?

A. Adoption and Implementation of Policies and Procedures

The Proposed Rules would require funds and advisers to adopt and implement policies and procedures reasonably designed to prevent violation of the federal securities laws.[18] They must be written and, in the case of a fund, must be approved by the fund's board of directors, including a majority of the fund's independent directors.[19] A fund's policies and procedures must be designed to prevent violation of the federal securities laws by the fund, its investment adviser, principal underwriter, and administrator in connection with their provision of services to the fund.[20] An adviser's policies and procedures must be designed to prevent violation of the Advisers Act by the adviser and its supervised persons.[21]

The Proposed Rules would require funds and advisers to adopt a system of controls that promotes compliance with the securities laws. Internal control systems have long been used to assure the integrity of financial reporting. Congress recently recognized the importance of internal control systems in the Sarbanes-Oxley Act of 2002, which effectively requires public companies to adopt and periodically review the effectiveness of a system of internal controls.[22] Broker-dealers have long been required to adopt compliance procedures.[23] Banks are required to maintain internal controls that include compliance procedures.[24] Several foreign regulators already require funds or advisers registered with them to adopt compliance policies and procedures.[25] The Proposed Rules do not enumerate specific elements that funds and advisers must include in their required policies and procedures.[26] Funds and advisers are too varied in their operations for the Commission to impose a single list of required elements. The policies and procedures required by the Proposed Rules should take into consideration the nature of each organization's operations.[27] They should be designed to *prevent* violations

[17] The rules also would require business development companies, which are unregistered closed-end investment companies, to adopt and implement such programs.

[18] Proposed rules 38a–1(a)(1) and 206(4)–7(a). Under proposed rule 206(4)–7(a), the policies and procedures would need to address only compliance with the Advisers Act.

[19] Proposed rule 38a–1(a)(2). Fund directors are commonly referred to as "independent directors" if they are not "interested persons" of the fund. The term "interested person" is defined in section 2(a)(19) of the Investment Company Act [15 U.S.C. 80a–2(a)(19)]. If the fund is a unit investment trust, the fund's principal underwriter or depositor must approve the policies and procedures. Proposed rule 38a–1(b).

[20] The ICI, in its submission to us suggesting a similar rulemaking, favored requiring the policies and procedures to cover the fund, but not the fund's service providers, such as its adviser. See ICI Proposal, *supra* note 15, at 20. Typically, however, a fund has no employees; personnel of its adviser, principal underwriter and/or administrator conduct all of its activities. It is unclear to us whether the ICI's proposal, limited in this manner, would require a fund to adopt sufficiently comprehensive policies and procedures. Therefore, proposed rule 38a–1 would require a fund's procedures to cover the fund's adviser, principal underwriter and administrator, but only with respect to their activities in connection with the operations of the fund.

[21] A "supervised person" is "any partner, officer, director (or other person occupying a similar status or performing similar functions), or employee of an investment adviser, or other person who provides investment advice on behalf of the investment adviser and is subject to the supervision and control of the investment adviser." Section 202(a)(25) of the Advisers Act [15 U.S.C. 80b–2(a)(25)].

[22] *See* Sarbanes-Oxley Act of 2002 [Pub. L. No. 107–204, 116 Stat. 745 (2002)] ("Sarbanes-Oxley Act"). Section 404 of the Sarbanes-Oxley Act requires us to prescribe rules requiring each annual report required by section 13(a) or 15(d) of the Securities Exchange Act of 1934 [15 U.S.C. 78m(a) and 78o(d)] to include internal control reports containing an assessment of the effectiveness of those controls, and further requires that the auditors for an issuer attest to the assessment made by the management of the issuer. In October 2002, we proposed rules to implement the provisions of Section 404. Disclosure Required by Sections 404, 406, and 407 of the Sarbanes-Oxley Act of 2002, Investment Company Act Release No. 25775 (Oct. 22, 2002) [67 FR 66208 (Oct. 30, 2002)]. Section 302 of the Sarbanes-Oxley Act required us to adopt rules under which the principal executives and financial officers of public issuers must certify the information contained in the issuer's quarterly and annual reports. These rules also were to require these officers to certify that: they are responsible for establishing, maintaining, and regularly evaluating the effectiveness of the issuer's internal controls; they have made certain disclosures to the issuer's auditors and the audit committee of the board of directors about the issuer's internal controls; and they have included information in the issuer's quarterly and annual reports about their evaluation and whether there have been significant changes in the issuer's internal controls or in other factors that could significantly affect internal controls subsequent to the evaluation. On August 29, 2002, we adopted rules implementing Section 302. Certification of Disclosure in Companies' Quarterly and Annual Reports, Investment Company Act Release No. 25722 (Aug. 29, 2002) [67 FR 57276 (Sept. 9, 2002)].

[23] Broker-dealers are required by the National Association of Securities Dealers ("NASD") to establish and maintain written procedures "that are reasonably designed to achieve compliance with applicable securities laws and regulations, and the applicable Rules of [the NASD]." NASD Conduct Rule 3010(b). *See also* New York Stock Exchange ("NYSE") Rule 342. Both the NASD and the NYSE recently have proposed to enhance these procedures by, among other things, requiring the annual testing and verification of broker-dealers' internal controls by persons independent of the supervision of the underlying activities. NASD Rulemaking: Supervisory Control Amendments, Exchange Act Release No. 46859 (Nov. 20, 2002) [67 FR 70990 (Nov. 27, 2002)] and NYSE Rulemaking: Amendments to Exchange Rule 342 ("Offices—Approval, Supervision and Control") and its Interpretation, Rule 401 ("Business Conduct"), Rule 408 ("Discretionary Power in Customers' Accounts"), and Rule 410 ("Records of Orders"), Exchange Act Release No. 46858 (Nov. 20, 2002) [67 FR 70994 (Nov. 27, 2002)].

[24] Under section 39 of the Federal Deposit Insurance Act [12 U.S.C. 1831p-1], banks and thrifts are required by their regulators (the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation and the Office of Thrift Supervision (collectively, "Banking Regulators")) to adopt internal controls that are "appropriate to the size of the institution and the nature, scope and risk of its activities and that provide for: (1) An organizational structure that establishes clear lines of authority and responsibility for monitoring adherence to established polices; (2) effective risk assessment; (3) timely and accurate financial, operational and regulatory reports; (4) adequate procedures to safeguard and manage assets; and (5) compliance with applicable laws and regulations." Standards for Safety and Soundness, 60 FR 35674 (July 10, 1995) ("Interagency Guidelines"), codified at 12 CFR part 30 (Office of the Comptroller of the Currency), 12 CFR part 208, appendix D–1 and part 263, subpart I (Board of Governors of the Federal Reserve System), 12 CFR part 364 (Federal Deposit Insurance Corporation), and 12 CFR part 570 (Office of Thrift Supervision).

[25] *See, e.g.*, Financial Services Authority (FSA), FSA Handbook of Rules and Guidance, Systems and Controls § 3.2.6 ("Areas covered by systems and controls: Compliance") (United Kingdom); Commission des Opérations de Bourse, L'Instruction du 15 Decembre 1998 Relative aux [Organisme de Placement Collective en Valeurs Mobilieres] Prise en Application du Reglement, L'Annexe IV No. 89–02, Bulletin Mensuel COB 369 (June 2002) (France); Securities and Futures Commission, Fund Manager Code of Conduct § 1.6.3 (1997) (Hong Kong).

[26] The required polices and procedures should incorporate the policies and procedures funds have adopted pursuant to other requirements in the federal securities laws, a number of which we identify in succeeding notes. These policies and procedures need not be contained in the same document.

[27] The NASD directs its broker-dealer members to "implement a supervisory system that is tailored specifically to the member's business." *See* NASD Notice to Members 99–45, at 294 (June 1999). The Banking Regulators have taken a similar approach with respect to compliance programs for banks and thrifts. *See* Interagency Guidelines, *supra* note 24, at 35676. *See also* Office of Comptroller of the Currency, *Comptroller's Handbook: Compliance Management System (Consumer Compliance Examination)*, at 2 (Aug. 1996); Federal Deposit Insurance Corporation, *Compliance Examination Manual*, at B–2 (July 1999); Board of Governors of the Federal Reserve System, *Examination Manual for U.S. Branches and Agencies of Foreign Banking Organizations* § 5000.1 (Compliance), at 1 (Sept. 1997); Office of Thrift Supervision, *Compliance Self-Assessment Guide: Components of an Effective Compliance Program*, at 2 (Dec. 2002).

(by, for example, separating operational functions such as trading and reporting), *detect* violations of securities laws (by, for example, requiring a supervisor to review employees' personal securities transactions), and *correct* promptly any material violations.

We would expect that policies and procedures of funds and (to the extent relevant) advisers would, at a minimum, address:

- Portfolio management processes, including allocation of investment opportunities among clients and consistency of portfolios with guidelines established by clients, disclosures, and regulatory requirements;[28]
- Trading practices, including procedures by which the adviser satisfies its best execution obligation, uses client brokerage to obtain research and other services ("soft dollar arrangements"), and allocates aggregate trades among clients;
- Proprietary trading of the adviser and personal trading activities of supervised persons;[29]
- The accuracy of disclosures made to investors, including information in advertisements;
- Safeguarding of client assets from conversion or inappropriate use by advisory personnel;
- The accurate creation of required records and their maintenance in a manner that secures them from unauthorized alteration or use and protects them from untimely destruction;[30]
- Processes to value client holdings and assess fees based on those valuations;
- Safeguards for the protection of client records and information;[31] and
- Business continuity plans.

Fund procedures would ordinarily cover a number of additional areas, including:

- Pricing of portfolio securities and fund shares;[32]
- Processing of fund shares;
- Identification of affiliated persons with whom the fund cannot enter into certain transactions, and compliance with exemptive rules and orders that permit such transactions;[33]
- Compliance with fund governance requirements; and
- Prevention of money laundering.[34]

While funds and advisers could delegate compliance functions to service providers, their policies and procedures should provide for effective oversight of these service providers. We request comment on our proposed requirement that advisers and funds adopt compliance policies and procedures.

- Should either rule specify certain minimum policies and procedures? If so, what specific required policies and procedures should we include, and in which rule should we include them?
- We anticipate that if we adopt the Proposed Rules, we will provide guidance to funds and advisers in our adopting release similar to what we have provided above (regardless of whether the rules, as adopted, include specific minimum requirements). We request comment on the guidance that we have provided and urge commenters to provide suggestions as to additional areas our guidance should cover.
- Should the policies and procedures of funds or advisers be designed to prevent violations by persons other than those listed in the Proposed Rules?

B. Annual Review

Under the Proposed Rules, each fund and adviser must review its policies and procedures at least annually to determine their adequacy and the effectiveness of their implementation.[35] These provisions are designed to require advisers and funds to evaluate periodically whether their policies and procedures continue to work as designed and whether changes are needed to assure their continued effectiveness.

- Should we require more frequent review of the policies and procedures? Our proposed rules implementing Section 404 of the Sarbanes-Oxley Act would require that executives of issuers evaluate the company's internal controls for financial reporting *quarterly*.[36]

C. Chief Compliance Officer

The policies and procedures of a firm, no matter how well-crafted, will be ineffective unless well-trained, competent personnel administer them. Therefore, we are proposing to require that each fund and adviser designate an individual responsible for administering the compliance policies and procedures.[37] The chief compliance officer should be competent and knowledgeable regarding the applicable federal securities laws and should be empowered with full responsibility and authority to develop and enforce appropriate policies and procedures for the adviser or the fund complex.[38]

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[28] Rule 206(4)–6 under the Advisers Act [17 CFR 275.206(4)–6] requires investment advisers to adopt and implement written policies and procedures that are reasonably designed to ensure that the adviser votes proxies in the best interest of clients. Similarly, funds must disclose the policies and procedures that they use to determine how to vote proxies relating to portfolio securities. Form N–1A, Item 13(f) [17 CFR 239.15A; 274.11A]; Form N–2, Item 18.16 [17 CFR 239.14; 274.11a–1]; Form N–3, Item 20(o) [17 CFR 239.17a; 17 CFR 274.11b]; and Form N–CSR, Item 7 [17 CFR 249.331; 17 CFR 274.128].

[29] Section 204A of the Advisers Act [15 U.S.C. 80b–4a] requires each adviser registered with us to have written policies and procedures reasonably designed to prevent the misuse of material non-public information by the adviser or persons associated with the adviser. Rule 17j–1(c)(1) under the Investment Company Act [17 CFR 270.17j–1(c)(1)] requires a fund and each investment adviser and principal underwriter of the fund to "adopt a written code of ethics containing provisions reasonably necessary to prevent" certain persons affiliated with the fund, its investment adviser or its principal underwriter from engaging in certain fraudulent, manipulative, and deceptive actions with respect to the fund.

[30] Rule 31a–2(f)(3) under the Investment Company Act [17 CFR 270.31a-2(f)(3)] and rule 204–2(g)(3) under the Advisers Act [17 CFR 275.204–2(g)(3)] require funds and advisers that maintain records in electronic formats to establish and maintain procedures to safeguard the records.

[31] Regulation S–P ("Privacy of Consumer Financial Information") [17 CFR Part 248.30] requires funds and investment advisers to "adopt policies and procedures that address administrative, technical, and physical safeguards for the protection of customer records and information."

[32] Rule 2a–7(c)(7) under the Investment Company Act [17 CFR 270.2a–7(c)(7)] requires boards of money market funds to establish written procedures "reasonably designed * * * to stabilize the money market fund's net asset value per share."

[33] Rule 10f–3(b)(10) under the Investment Company Act [17 CFR 270.10f–3(b)(10)] requires boards of funds that purchase securities in an underwriting in which certain persons serve as principal underwriters to adopt certain procedures to govern those purchases. Rule 17a–7(e) under the Investment Company Act [17 CFR 270.17a–7(e)] requires boards of funds that engage in purchase or sale transactions with certain affiliated persons to adopt procedures "reasonably designed" to achieve compliance with the conditions on such transactions set forth in the rule.

[34] Under 31 CFR 103.130(c), funds must develop an anti-money laundering program, which includes the establishment and implementation of "policies, procedures, and internal controls reasonably designed to prevent the mutual fund from being used for money laundering or the financing of terrorist activities and to achieve compliance with the applicable provisions of the Bank Secrecy Act and the implementing regulations thereunder."

[35] Proposed rules 38a–1(a)(3) and 206(4)–7(b). The NASD and the NYSE recently have proposed annual reviews of the internal controls, and reports to senior management. *See supra* note 23.

[36] Investment Company Act Release No. 25775, *supra* note 22.

[37] Proposed rules 38a–1(a)(4) and 206(4)–7(c). In the case of an adviser, the individual would have to be a supervised person of the adviser. *See supra* note 21, regarding the definition of "supervised person." Although the NASD does not require its member broker-dealers to appoint a chief compliance officer, NASD Conduct Rule 3010(a)(2) does direct them to designate principals responsible for supervision, which "ensure[s] that there is an identifiable individual who has ultimate responsibility for implementing the member's supervisory system and written procedures for each type of business the member conducts." NASD Notice to Members 99–45, at 295–96 (June 1999).

[38] Designation of a person by an adviser as its chief compliance officer would not, in and of itself, impose upon the person a duty to supervise another person. Thus, a chief compliance officer appointed in compliance with the Proposed Rules would not necessarily be subject to a sanction by us for failure

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We understand that many funds and advisers have designated a person to serve as the chief compliance officer.[39] Not all firms have taken this step, which we believe is critical to an effective compliance program. We expect that the primary effect of the rule on funds and larger advisory firms would be to require the compliance personnel to report to one individual with overall responsibility to coordinate the fund's (or firm's) compliance efforts and to establish procedures for annual review of its compliance programs.[40]

In the case of a fund, the fund's board of directors, including a majority of the independent directors, would have to approve the chief compliance officer, who would have additional duties that reflect the important role of fund boards in overseeing fund compliance with the federal securities laws.[41] Proposed rule 38a-1 would require the chief compliance officer to furnish the fund's board of directors annually with a written report on the operation of the fund's policies and procedures, including (i) any material changes to the policies and procedures since the last report, (ii) any recommendations for material changes to the policies and procedures as a result of the annual review, and (iii) any material compliance matters requiring remedial action that occurred since the date of the last report.[42] The rule would thus require board oversight of the fund's compliance program, but would not require directors to become involved in the day-to-day administration of the program. We designed the proposed rule to reflect the way many fund complexes' compliance personnel currently administer fund codes of ethics under rule 17j–1 of the Investment Company Act.

- Rule 17j–1 requires that funds, their investment advisers, and principal underwriters certify annually that they have adopted procedures reasonably necessary to prevent violations of their codes of ethics adopted under the rule.[43] Should we similarly require each chief compliance officer to certify the fund's compliance policies and procedures?
- The USA PATRIOT Act requires funds to establish anti-money laundering programs that designate an anti-money laundering compliance officer,[44] but the implementing rules permit multiple persons to serve in this role.[45] Should our rule permit multiple compliance officers?
- Should we require that the chief compliance officer be a member of senior management of the fund or the adviser?[46]

D. Recordkeeping

We are proposing to require that funds and advisers maintain a copy of their policies and procedures.[47] Funds would have to keep the annual written report by the fund's chief compliance officer.[48] Advisers would have to keep records documenting their annual review.[49] Funds and advisers would have to keep the required documents for five years.[50] These records are designed to provide our examination staff with a basis to determine whether the adviser or fund has complied with the rules.

We request comment on the recordkeeping requirements. Specifically, as required by section 31(a)(2) of the Investment Company Act [15 U.S.C. 80a-30(a)(2)], we request commenters to address whether there are feasible alternatives to the Proposed Rules that would minimize the recordkeeping burdens, the necessity of these records in facilitating the examinations carried out by our staff, the costs of maintaining the required records, and any effects that the proposed recordkeeping requirements would have on the nature of firms' internal compliance policies and procedures.

E. Request for Comment on Further Private Sector Involvement

As we note above, the number of funds and advisers (and the amount of assets they control) has grown significantly.[51] This growth has substantially exceeded the growth in our resources[52] as well as those resources we have been able to allocate to our investment company and investment adviser programs.[53] Although the Commission's resources may increase substantially in the future,[54] other program areas will have competing needs for those resources.[55]

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to supervise. A compliance officer that does have supervisory responsibilities will have available the defense discussed above. *See supra* note 13.

[39] Form ADV, the registration form that advisers use to register with us under the Advisers Act, requires each adviser to report the name of its chief compliance officer, but does not require the adviser to *have* a chief compliance officer. Form ADV, Part 1, Schedule A, Item 2(a) [17 CFR 279.1].

[40] The ICI, in its 1994 submission to us, urged that multiple individuals be permitted to perform this role because the knowledge about compliance in specific areas may not be concentrated in any one individual. *See* ICI Proposal, *supra* note 15, at 23. Our proposal, which would require appointment of a single individual, would accommodate a large and diverse compliance organization, but would require the many compliance officers to report ultimately to one individual. The Hong Kong Securities and Futures Commission has taken a similar approach. *See* Fund Manager Code of Conduct at § 1.6.1 (1997) (Hong Kong registered fund managers must have a "designated compliance officer").

[41] Proposed rule 38a–1(a)(4)(i). If the fund is a unit investment trust, the fund's principal underwriter or depositor must approve the chief compliance officer. Proposed rule 38a–1(b).

[42] Proposed rule 38a–1(a)(4)(ii).

[43] Rule 17j–1(c)(1)(2).

[44] *See* section 352 of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, Pub. L. No. 107–56, 115 Stat. 272 ("USA PATRIOT Act"), amending 31 U.S.C 5318(h).

[45] 31 CFR 103.130(c)(3).

[46] In the United Kingdom, the FSA requires that firms allocate to a "director" or "senior manager" responsibility for oversight of the firm's compliance and reporting. FSA Handbook of Rules and Guidance, Systems and Controls § 3.2.8 ("Areas covered by systems and controls: Compliance") (United Kingdom).

[47] Proposed rules 38a-1(c)(1) and 204–2(a)(17)(i).

[48] Proposed rule 38a-1(c)(2). A fund's board's deliberations in connection with the approval of the compliance policies and procedures and their annual review of the chief compliance officer's report would be documented in the minute books of the fund board, which must be maintained pursuant to rule 31a-1(b)(4) under the Investment Company Act [17 CFR 270.31a-1(b)(4)].

[49] Proposed rule 204–2(a)(17)(ii).

[50] Funds and advisers would be required to maintain copies of all policies and procedures that are in effect or were in effect at any time during the last five years. Proposed rules 38a-1(c)(1) and 204–2(a)(17)(i). Funds would be required to maintain the annual compliance reports to the board for at least five years after the end of the fiscal year in which the report was provided to the board, the first two years in an easily accessible place. Proposed rule 38a-1(c)(2). Advisers would be required to maintain any records documenting their annual review in an easily accessible place for at least five years after the end of the fiscal year in which the review was conducted, the first two years in an appropriate office of the investment adviser. Proposed rule 204–2(e)(1).

[51] The number of registered investment companies has increased approximately 44% in the past 10 years, from approximately 3,500 in 1991 to approximately 5,030 currently. Investment company assets have grown over 400%; from $1.2 trillion to $6.4 trillion over the same period. Although the number of advisers registered with us decreased during the period (as a result of the enactment of the National Securities Markets Improvement Act, Pub. L. No. 104–290, 110 Stat. 3416 (1996) (codified in Section 203A of the Advisers Act [15 U.S.C 80b-3a] and other scattered sections of the United States Code)), which prohibited most smaller state-registered advisers from registering with us, the amount of assets under the management of registered advisers has grown from $10.7 trillion in 1997 to over $21 trillion currently, an increase of nearly 100%.

[52] *See* United States General Accounting Office, *SEC Operations: Increased Workload Creates Challenges*, at 11 (Mar. 2002) ("GAO Study") (during the past decade, "the increases in SEC's workload substantially outpaced the increases in SEC's staff").

[53] *See* GAO Study, *supra* note 52, at 13 ("total assets under management by investment companies (IC) and investment advisers (IA) increased by about 264 percent over 10 years, while the number of IC and IA examination staff increased by 166 percent").

[54] Section 601 of the Sarbanes-Oxley Act, *supra* note 22, authorized us to spend $776 million in fiscal year 2003, which, if appropriated, would be a substantial increase over our appropriation of $487.2 million in fiscal year 2002.

[55] Section 408 of the Sarbanes-Oxley Act, *supra* note 22, for example, requires us, based upon

Moreover, even if we are able to substantially expand our examinationstaff, it is unlikely that future growth in our resources will ever keep pace with future growth of investment advisers and investment companies. We therefore are exploring ways in which we may make the best use of limited government resources to protect the interests of the millions of investors who invest in funds, participate in pension funds managed by investment advisers, or use the services of a personal financial planner or money manager.

One promising way of leveraging government resources would be for the Commission to rely more heavily on the private sector, *i.e.*, on the advisers and funds that are the indirect beneficiaries of our compliance program and the federal tax dollars that today support our regulatory efforts. The rules we are proposing today are one step in this direction. Others may also be appropriate to consider, including those we describe briefly below. We invite interested persons to submit comments as to the advisability of pursuing any or all of them, as well as other approaches for involving the private sector in enhancing compliance with the federal securities laws. We request that commenters address the Commission's authority to effect through rulemaking each of the approaches.

1. Compliance Reviews

One approach might be to require each fund and adviser to undergo periodic compliance reviews by a third party that would produce a report of its findings and recommendations. Our examination staff could use these reports to identify quickly areas that required attention, permitting us to allocate examination resources better and, as a result, to increase the frequency with which our staff could examine funds and advisers. Funds and advisers with reports indicating that they have effective compliance programs could be examined less frequently, which would reduce the burdens on them of undergoing more frequent examination by our staff.

There are many organizations that provide compliance reviews, including "mock audits" for investment advisers and funds, and have personnel that have experience in designing, implementing, and assessing the effectiveness of compliance programs.[56] As a condition to the settlement of an enforcement action, we frequently require an adviser or fund to engage a compliance consultant.[57] The USA PATRIOT Act requires financial institutions (including mutual funds), as part of their anti-money laundering programs, to have an independent audit function to test their programs.[58]

We request comment on the advantages and disadvantages of requiring advisers and funds to undergo compliance reviews. If we adopt such a requirement, should we exclude certain types of funds or advisers? Would the cost of these reviews be prohibitive for smaller advisers? Would some fund groups or advisers hire the least expensive compliance consultant regardless of the quality of the consultant's work? If so, how could we ensure that a high quality compliance review is conducted? If we adopt such a requirement, should we require the third parties who conduct such reviews to satisfy certain minimum standards for education and experience? What criteria should be included in the rule to determine whether a third party compliance expert is independent? How frequently should we require such reviews to be conducted? What is the proper scope for third party reviews? Should we require the third party consultant to file its report with us? If so, what should the scope of the report be?

2. Expanded Audit Requirement

Another approach might be to expand the role of independent public accountants that audit fund financial statements to include an examination of fund compliance controls. Such an approach would involve the performance by fund auditors of certain of the compliance review procedures currently performed by our staff in a compliance examination.[59]

Our rules today require fund auditors to submit internal control reports to fund boards.[60] In these reports, the auditor must identify any material weaknesses in the accounting system, the system of internal accounting controls, and the procedures for safeguarding securities of which they become aware while planning and performing the audit on the fund's financial statements.[61] The auditor's responsibilities could be augmented to require the identification of material weaknesses in the internal controls or a report on other aspects of the internal controls that are not required to be reviewed in planning and performing an audit of the financial statements. Expanding the auditor's responsibilities could, to some extent, serve as a substitute for staff examination or reduce the frequency of staff examination of funds with strong internal compliance programs, which would free Commission resources to focus on other areas of fund operations and permit us to examine funds with weaker internal compliance programs more often.

We request comment on this approach. Should we expand the responsibilities of the fund auditor? If so, what specific areas would it be appropriate for auditors to review? What type of assurance report should be provided?[62]

3. Self-Regulatory Organization

The formation of one or more self-regulatory organizations (SROs) for funds and/or advisers also would be a means to involve the private sector in support of our regulatory program. An SRO would function in a manner analogous to the national securities exchanges and registered securities associations under the Securities Exchange Act of 1934 by (i) establishing business practice rules and ethical standards, (ii) conducting routine examinations, (iii) requiring minimum education or experience standards, and (iv) bringing its own actions to

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consideration of certain enumerated criteria, to review the disclosures, including the financial statements made by issuers reporting under the Securities Exchange Act of 1934, at least once every three years.

[56] *See, e.g.*, Jeremy Kahn, *Practice Audits Pay Off*, Fortune, June 24, 2002, at 40 (discussing mock audits of investment advisers); Nancy Opiela, "*They're Here* * * *.", 15 Journal of Financial Planning 52 (2002) (discussing use of mock auditors by financial planners preparing for audits by our staff).

[57] *See, e.g.*, Gintel Asset Management, Investment Advisers Act Release No. 2079 (Nov. 8, 2002); Performance Analytics, Investment Advisers Act Release No. 2036 (June 17, 2002); ND Money Management, Investment Advisers Act Release No. 2027 (Apr. 12, 2002); Stan D. Kiefer & Associates, Investment Advisers Act Release No. 2023 (Mar. 22, 2002).

[58] Section 352 of the USA PATRIOT Act, *supra* note 44. *See also* 31 CFR 103.130(c)(2) (requiring mutual funds, as a part of their written anti-money laundering programs, to provide for "independent testing for compliance to be conducted by the mutual fund's personnel or by a qualified outside party").

[59] We first raised this idea in a concept release we issued in 1983. Concept of Utilizing Private Entities in Investment Company Examinations and Imposing Examination Fees, Investment Company Act Release No. 13044 (Feb. 23, 1983) [48 FR 8485 (Mar. 1, 1983)].

[60] Rule 30a-1 [17 CFR 270.30a-1]; Item 77B of Form N-SAR [17 CFR 249.330; 17 CFR 274.101].

[61] Item 77B, *supra*, note 60.

[62] *See, e.g.*, American Institute of Certified Public Accountants (AICPA), Statement on Auditing Standards No. 70 Service Auditor's Report; AICPA, Statement on Standards for Attestation Engagements, AT §§ 500.54–61 ("Compliance Attestation Reporting")).

discipline members for violating its rules and the federal securities laws.

SROs play an increasingly important role in the regulation of financial services in the United States. SROs participate with us in overseeing the public securities markets, including broker-dealers.[63] They also oversee the municipal bond market,[64] and the system of clearance and settlement of securities trades.[65] An SRO also plays an important part in the oversight of the futures markets, including futures commissions merchants, commodity pool operators, and commodity trading advisers.[66] In the Sarbanes-Oxley Act, Congress affirmed the role of private sector regulatory organizations by establishing the Public Company Accounting Oversight Board, which is charged with overseeing the audit of public companies.[67]

United States Supreme Court Justice Stewart stated that the purpose of the provisions of the Exchange Act creating SROs was "to delegate governmental power to working institutions which would undertake, at their own initiative, to enforce compliance with ethical as well as legal standards in a complex and changing industry."[68] Our experience with SROs suggests that this delegation of authority can have many advantages: SROs can marshal resources not available to the Commission and can have greater access to industry expertise. They can act more nimbly than a government agency, which is subject to significant personnel, contracting, and procedural requirements. An SRO can require its members to adhere to higher standards of ethical behavior than we can require under the securities laws. Moreover, industry leaders who participate in the regulatory process acquire a greater sense of their stake in the process.[69]

Proposals to create SROs for funds or investment advisers have been considered by Congress, the Commission, and members of the investment management industry in past years. In 1983, we requested comment on the concept of designating an "inspection-only" SRO for funds.[70] And in 1989, we submitted legislation to Congress requesting authority to designate one or more SROs for investment advisers.[71] Both initiatives reflected the concern of the Commission that our resources were inadequate to address the growth of investment advisers and funds.[72] Any SRO would be subject to the pervasive oversight of the Commission. We would examine its activities, require it to keep records, and approve its rules only if we conclude that they further the goals of the federal securities laws. Disciplinary actions could be appealed to the Commission. We would expect to be vigilant in preventing SRO rules that impose a burden on competition not necessary to further a regulatory purpose. Our staff would continue to examine the activities of funds and advisers, both to ensure adequate examination coverage and to provide oversight of the SRO examination program.

We request comment on whether one or more SROs should be established for funds and/or investment advisers. Should the SROs be limited in their authority? For example, should they be limited to conducting examinations? How should the activities of an SRO be financed?[73]

4. Fidelity Bonding Requirement for Advisers

Another means to privatize some of the compliance function would be to require investment advisers to obtain fidelity bonds from insurance companies. Fidelity bonds provide a source of compensation for advisory clients who are victims of fraud or embezzlement by advisory personnel. They result in additional oversight of advisers by insurance companies, which are unwilling to issue bonds to advisers that place their assets at risk by having poor controls or that hire employees with criminal or poor disciplinary records. The cost of that oversight is reflected in the premiums charged for the bond. High-risk advisers would be denied bonds or would be charged

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[63] National Securities Exchanges register with us as SROs pursuant to Section 6 of the Exchange Act [15 U.S.C. 78f]. Currently, there are nine active securities exchanges. Section 15A of the Exchange Act [15 U.S.C. 78*o*-3] authorizes us to register one or more national securities associations to regulate the activities of member broker-dealers. NASD is the only national securities association currently registered under this section. Section 15A was added in 1938 to regulate the activities of brokers who traded securities of issuers that were not listed on the exchanges. Maloney Act, Pub. L. No. 75–719, 52 Stat. 1070 (1938).

[64] The Securities Amendments Act of 1975 [Pub. L. No. 94–29, 87 Stat. 97 (1975)] added section 15B to the Exchange Act [15 U.S.C. 78*o*-4], which directed the Commission to establish the Municipal Securities Rulemaking Board ("MSRB"). Unlike the other SROs, the MSRB was created by Congress solely to write rules governing the municipal securities market; it is not a membership organization and does not have authority to discipline its members.

[65] Clearing agencies register with us pursuant to Section 17A(b) of the Exchange Act [15 U.S.C. 78q-1(b)]. Currently, there are 13 clearing agencies registered with us.

[66] *See* Commodity Futures Trading Commission ("CFTC") Rule 170.15 [17 CFR 170.15] (membership in a registered futures association mandatory) and National Futures Association ("NFA") Bylaw 1101 (membership in the NFA mandatory for any registered party that transacts futures business with the public). The NFA performs various functions for the CFTC, including processing of applications for registration and conducting proceedings to deny, condition, suspend, restrict or revoke the registration of persons registered with the CFTC.

[67] Section 101 of the Sarbanes-Oxley Act, *supra* note 22.

[68] *Silver* v. *New York Stock Exchange*, 373 U.S. 341, 371 (1963) (Stewart, J., dissenting).

[69] *See* Report of Special Study of Securities Markets of the Securities and Exchange Commission, H.R. Doc. No. 88–95, pt. 4, at 722 (1963) ("Special Study").

[70] Investment Company Act Release No. 13044, *supra* note 59.

[71] The legislation was introduced as S. 1410 and H.R. 3054, 101st Cong. (1989). Consideration by the Commission of an SRO for investment advisers appears to have first begun in 1963 when our Special Study of the Securities Markets recommended that membership in an SRO should be required of all registered investment advisers. Special Study, *supra* note 69, pt. 1, at 158–59. In 1976, the Commission asked Congress for the authority to conduct a formal study of the feasibility of establishing one or more SROs for investment advisers. S. Rep. No. 94–910, at 10 (1976).

In 1986, the NASD conducted a pilot program to determine the feasibility of examining the investment advisory activities of its members who were also registered as investment advisers. *See* Staff of the Securities and Exchange Commission, *Report on Financial Planners to House Comm. on Energy and Commerce, Subcomm. on Telecommunications and Finance*, at 118–23 (Feb. 1988). In 1993, the House of Representatives passed a bill that, among other things, would have amended the Advisers Act to authorize the creation of an "inspection-only" SRO for investment advisers. H.R. 578, 103rd Cong. (1993).

Industry organizations and their members and commenters have, from time-to-time, also called for the creation of an SRO for investment advisers. *See* Note, *Financial Planning: Is It Time for a Self-Regulatory Organization?*, 53 Brook. L. Rev. 143 (1987); Charles Lefkowitz, *The World of Financial Planning: Why an SRO Makes Sense*, 87 Best's Review, Dec. 1986, at 32. In 1985, the International Association of Financial Planners proposed the creation of an SRO for financial planners based on the NASD model. *See* Letter from Hubert L. Harris, Executive Director of the International Association for Financial Planning, to Kathryn B. McGrath, Director of the Commission's Division of Investment Management (June 19, 1985) (transmitting summary of proposal for financial planner SRO adopted by the Association's board of directors) (available in File No. S7–03–03). Not all industry participants have supported the creation of an SRO. *See* David Tittsworth, Executive Director, Investment Counsel Association of America, Statement for our Roundtable on Investment Adviser Regulatory Issues (May 23, 2000) ("We continue to oppose the creation of a self-regulatory organization for the advisory profession * * * [which] is unwarranted and would impose a new layer of cost and bureaucracy on the profession.") (available at: *http://www.sec.gov/rules/other/f4–433/tittswo1.htm)*. Others object to being regulated by a particular SRO. *See* Aaron Luccetti, *NASD's Push to Extend Its Reach Spurs Anger of Investment Advisers*, Wall St. J., Nov. 12, 1998, at C1.

[72] We issued the 1983 concept release out of a concern, in part, that the growth in money market funds (which were then a novel type of fund) would outstrip our examination resources. In 1983, money market funds had $179 million of assets under management. Today, they have nearly $2.3 trillion of assets. Investment Company Institute, *2002 Mutual Fund Fact Book* 86.

[73] Other financial SROs, for example, are financed by fees imposed on members and users of their services rather than by public funds.

higher amounts to compensate the insurance company for assuming greater risk.

Investment advisers are among the only financial service providers handling client assets that are not required to obtain fidelity bonds.[74] The Advisers Act does not require advisory firms to have a minimum amount of capital invested, and many have few assets.[75] When we discover a serious fraud by an adviser, often the assets of the adviser are insufficient to compensate clients. The losses are borne by clients who may lose their life's savings, or be unable to afford a college education for their children or a comfortable retirement.

Should advisers be required to obtain a fidelity bond from a reputable insurance company? If so, should some advisers be excluded?[76] Alternatively, should advisers be required to maintain a certain amount of capital that could be the source of compensation for clients?[77] What amount of capital would be adequate?[78]

III. General Request for Comment

The Commission requests comment on the Proposed Rules, suggestions for additions to the Proposed Rules, and comment on other matters that might have an effect on the proposals contained in this release. We note that the comments that are of greatest assistance are those that are accompanied by supporting data and analysis of the issues addressed in those comments.

IV. Cost-Benefit Analysis

We are sensitive to the costs and benefits that result from our rules. The Proposed Rules would require each fund and adviser to adopt and implement policies and procedures reasonably designed to prevent violations of the securities laws, to review these annually, and to designate an individual as chief compliance officer. We have identified certain costs and benefits, which are discussed below, that may result from the proposals. We request comment on the costs and benefits of the Proposed Rules. We encourage commenters to identify, discuss, analyze, and supply relevant data regarding these or any additional costs and benefits.

A. Benefits

We anticipate that fund investors, advisory clients, funds, and advisers will benefit from the Proposed Rules. The Proposed Rules would benefit fund investors and advisory clients (collectively, "investors") by requiring funds and advisers to design and implement a comprehensive internal compliance program. Although many funds and advisers already have such programs in place, the Proposed Rules would make this standard practice for all firms. Investors would be less likely to be harmed by violations of the securities laws because experience has shown that strong internal compliance programs lower the likelihood of securities laws violations occurring and enhance the likelihood that any violations that do occur will be detected and corrected. In addition, because the Proposed Rules are designed to complement the Commission's examination program, the Commission's ability to protect investors would be enhanced. The existence of a structured compliance program, together with the designation of a chief compliance officer to serve as a point of contact, would facilitate the examination staff's efforts to conduct each examination in an organized and efficient manner and thus to allocate resources to maximize investor protection.

Although the Proposed Rules would impose additional compliance costs on many funds and advisers, they would benefit funds and advisers by diminishing the likelihood of securities violations, Commission enforcement actions, and private litigation. For a fund or adviser, the potential costs associated with a securities law violation may consist of much more than merely the fines or other penalties levied by the Commission or civil liability. Advisers may be denied eligibility to advise funds.[79] In addition, advisers could be precluded from serving in other capacities.[80] The reputation of a fund or adviser may be significantly tarnished, resulting in redemptions (in the case of an open-end fund) or lost clients.

B. Costs

The Proposed Rules would result in some additional costs for funds and advisers, which, in the case of funds, we expect would be passed on to investors. However, since all funds and most advisers currently have some written compliance policies and procedures in place, the costs in many instances already are reflected in the fees investors currently pay. Funds and larger advisory firms typically have adopted and implemented comprehensive, written policies and

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[74] Fidelity bonds are required to be obtained by: broker-dealers (NASD Conduct Rule 3020; NYSE Rule 319; American Stock Exchange Rule 330); transfer agents (NYSE Listed Company Manual § 906.01); investment companies (17 CFR 270.17g–1); national banks (12 CFR 7.2013); and federal savings associations (12 CFR 563.190). Section 412 of the Employee Retirement Income Security Act (ERISA) [29 U.S.C. 1112] requires investment advisers to obtain a fidelity bond with respect to any employee benefit plan assets the adviser manages, and many state laws require state-registered advisers to obtain fidelity bonds. *See, e.g.*, Ala. Admin. Code r. 830-x-3-.06(4) (2002) (requiring $50,000 bond for advisers that have custody of or discretionary authority over customer assets); Mass. Regs. Code tit. 950, § 12.205(5)(b) (2002) (requiring $10,000 bond for advisers that have custody of or discretionary authority over client assets or receive prepayments); Minn. R. 2875.1930, Subpart 1 (2002) (requiring $25,000 bond for advisers that have custody of or discretionary authority over client assets); N.J. Admin. Code tit. 13, § 47.A–2.2 (2002) (requiring $25,000 bond or $25,000 minimum capital for advisers that have custody of client assets); 21 Va. Admin. Code 5–80–180(B) (requiring $25,000 bond or $25,000 minimum capital for advisers). Similarly, independent financial advisers registered with the FSA in the United Kingdom must maintain professional indemnity insurance. Prudential Rules for Independent Financial Advisers § 13.13R (Nov. 2001).

[75] In 1992, both the Senate and House of Representatives passed bills that would have given us authority to require advisers to obtain fidelity bonds. S. 2266, § 5, 102nd Cong. (1992), and H.R. 5726, § 107, 102nd Cong. (1992). Because differences in the two bills were never reconciled, neither became law.

[76] The 1992 legislation would have given us authority to require bonding of advisers that have custody of client assets or that have discretionary authority over client assets. Section 412 of ERISA requires plan fiduciaries to obtain a bond with respect to plan assets "handled" by the plan fiduciary. Department of Labor rules clarify that handling plan assets includes having discretionary authority over them. 29 CFR 2580.412–6.

[77] In 1973, a Commission advisory committee recommended that Congress authorize us to adopt minimum financial responsibility requirements for investment advisers, including minimum capital requirements. Advisory Committee on Investment Management Services for Individual Investors, *Small Account Investment Management Services: Recommendations for Clearer Guidelines and Policies* 64–66 (Jan. 1973). Three years later, in 1976, the Senate Committee on Banking, Housing, and Urban Affairs reported a bill that, among other things, authorized the Commission to adopt rules requiring advisers (i) with discretionary authority over client assets, (ii) with access to client funds or securities, or (iii) that advise registered investment companies, to meet financial responsibility standards. S. Rep. No. 94–910, at 14–15 (1976) (reporting favorably S. 2849). S. 2849 was never enacted.

[78] Section 412 of ERISA requires that the bond required under that section be no less than 10% of the amount of funds handled.

[79] Section 9(a) of the Investment Company Act [15 U.S.C. 80a–9(a)] prohibits a person from serving as an adviser to a fund if, within the past 10 years, the person has been convicted of certain crimes or is subject to an order, judgment, or decree of a court prohibiting the person from serving in certain capacities with a fund, or prohibiting the person from engaging in certain conduct or practice.

[80] *See, e.g.*, 29 U.S.C. 1111(a) (prohibiting a person from acting in various capacities for an employee benefit plan, if within the past 13 years, the person has been convicted of, or has been imprisoned as a result of, any crime described in section 9(a)(1) of the Investment Company Act [15 U.S.C. 80a–9(a)(1)].

procedures. Many of these advisers also have well-staffed compliance departments. Many conduct periodic reviews of their compliance programs and some hire independent compliance experts to review the adequacy of their compliance programs and the effectiveness of their implementation. We would expect that funds and advisers with substantial commitments to compliance would incur only minimal costs in connection with the adoption of the Proposed Rules as they reviewed their internal compliance programs for adequacy.

It is our experience that small funds and advisers are less likely than their larger counterparts to have comprehensive, written internal compliance programs in place. The Proposed Rules would impose larger relative costs on these firms. Based on our examination experience, we estimate that as many as one half of SEC-registered investment advisers do not have comprehensive, written internal compliance programs in place. These firms would incur costs in order to develop a compliance program or to convert their current compliance activities into a systematic program. However, we expect a number of factors will enable these firms to control and minimize these costs. Because these small firms typically engage in a limited number and range of transactions and have one or two employees, their internal compliance programs would be markedly less complex than those of their large firm counterparts. In addition, we anticipate that these firms will turn to a variety of industry representatives, commentators, and organizations that have developed outlines and model programs that these firms can tailor to fit their own situations. If these firms need individualized outside assistance, we expect that the number of independent compliance experts will grow to fill this demand at competitive prices, as has been the case in comparable situations.

The requirement that each firm designate a chief compliance officer likely would impose only a minimal cost. Many firms already have large compliance staffs headed by an individual who effectively serves as a chief compliance officer. For other firms, costs associated with designating a chief compliance officer also would be minimized by the fact that the Proposed Rules would not require firms to hire an individual exclusively charged with serving in this capacity.

We anticipate that costs associated with the annual review requirement also would be limited. Many large firms with comprehensive compliance programs periodically review portions of their compliance programs. These firms would incur a cost associated with transforming their periodic reviews into a more systematic annual review, but this cost is difficult to quantify. Most of the firms without any review mechanism in place are small. For these firms, the annual review requirement likely would be less extensive and, therefore, less costly than for their larger counterparts.

C. Request for Comment

We request comment on the potential costs and benefits identified in the proposal and any other costs or benefits that may result from the Proposed Rules. For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996,[81] the Commission also requests information regarding the impact of the proposed rule on the economy on an annual basis. Commenters are requested to provide data to support their views.

V. Consideration of Promotion of Efficiency, Competition and Capital Formation

Section 2(c) of the Investment Company Act [15 U.S.C. 80a–2(c)] and section 202(c) of the Advisers Act [15 U.S.C. 80b–2(c)] require the Commission, when engaging in rulemaking that requires it to consider or determine whether an action is necessary or appropriate in the public interest, to consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation.[82]

As discussed above, the Proposed Rules would require funds and investment advisers to adopt and implement written policies and procedures designed to prevent violations of the federal securities laws, and review those policies and procedures at least annually. Although we recognize that a compliance program may divert resources from funds' and advisers' primary businesses, we expect that the Proposed Rules may indirectly increase efficiency in a number of ways. These compliance programs would increase efficiency by deterring securities law violations, or by facilitating the fund's or adviser's early intervention to decrease the severity of any violations that do occur. In addition, funds and advisers would be required to carry out their internal compliance functions in an organized and systematic manner, which may be more efficient than their current approach to these functions. The existence of an industry-wide compliance program requirement may enhance efficiency further by encouraging third parties to create new informational resources and guidance to which industry participants can refer in establishing and improving their compliance programs.

Since the Proposed Rules would apply equally to all funds and advisers, we do not anticipate that any competitive disadvantages would be created. To the contrary, the Proposed Rules may encourage competition on a more level basis than exists in the current environment, in which compliance-oriented industry participants incur greater costs to maintain compliance programs than other firms.

We anticipate the Proposed Rules would indirectly foster capital formation. It has been our experience that funds and advisers with effective compliance programs are less likely to violate the securities laws and harm to investors is less likely to result. To the extent such an environment enhances investor confidence in funds and client confidence in investment advisers, investors and clients are more likely to make assets available through these intermediaries for investment in the capital markets.

We request comment on whether the Proposed Rules, if adopted, would impose a burden on competition. We also request comment on whether the Proposed Rules, if adopted, would promote efficiency, competition, and capital formation. Commenters are requested to provide empirical data and other factual support for their views, if possible.

VI. Paperwork Reduction Act

The Proposed Rules would impose "collection of information" requirements within the meaning of the Paperwork Reduction Act of 1995.[83] If adopted, these collections of information would be mandatory. Two of the collections of information are new. The Commission has submitted these new collections to the Office of Management and Budget ("OMB") for review in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11. The titles of these new collections are "Rule 38a–1" and "Rule 206(4)–7." The OMB has not yet assigned these collections control numbers. The other collection of information takes the form of

[81] Pub. L. No. 104–121, Title II, 110 Stat. 857 (1996).

[82] Although proposed rule 206(4)–7 is not based on a statutorily-mandated public interest determination, in the interest of comprehensiveness, we include it in this analysis.

[83] 44 U.S.C. 3501 to 3520.

amendments to a currently approved collection titled "Rule 204–2," under OMB control number 3235–0278. The Commission also has submitted the amendments to this collection to the OMB for review in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

The collection of information under rule 38a–1 is necessary to assure that investment companies maintain comprehensive internal programs that promote the companies' compliance with the federal securities laws. The respondents are investment companies registered with us and business development companies. Our staff, conducting the Commission's examination and oversight program, would use the information collected to assess funds' compliance programs. Responses provided to the Commission in the context of its examination and oversight program are generally kept confidential.[84] Rule 38a–1 requires that certain records be retained for at least five years.[85]

The collection of information under rule 206(4)–7 is necessary to assure that investment advisers maintain comprehensive internal programs that promote the advisers' compliance with the Advisers Act. The respondents are investment advisers registered with us. Our staff, conducting the Commission's examination and oversight program, would use the information collected to assess investment advisers' compliance programs. Responses provided to the Commission in the context of its examination and oversight program are generally kept confidential.[86]

The collection of information under rule 204–2 is necessary for the Commission staff to use in its examination and oversight program. The respondents are investment advisers registered with us. Responses provided to the Commission in the context of its examination and oversight program are generally kept confidential.[87] The records that an adviser must keep in accordance with the Proposed Rules must be retained for at least five years.[88]

[84] See section 31(c) of the Investment Company Act [15 U.S.C. 80a–30(c)].

[85] *See* Proposed rule 38a–1(c).

[86] *See* section 210(b) of the Advisers Act [15 U.S.C. 80b–10(b)].

[87] *Id.*

[88] *See* proposed rule 204–2(a)(17)(i) and rule 204–2(e)(1) [17 CFR 275.204–2(e)(1)].

A. Rule 38a–1

There are currently approximately 5,030 registered investment companies and 53 business development companies.[89] Thus, approximately 5,083 funds would be subject to proposed rule 38a–1. We estimate that the average annual hour burden for a fund to document the policies and procedures that make up its compliance program would be 60 hours. While each fund would be required to maintain written policies and procedures under rule 38a–1, this average estimate takes into account that most funds are located within a fund complex. Based on our staff's experience in connection with our examination and oversight program, we expect that each fund in a complex would be able to draw extensively from the fund complex's "master" compliance program to assemble appropriate compliance policies and procedures. It also has been our experience that many fund complexes already have written policies and procedures documenting their compliance programs. Further, a fund needing to develop policies and procedures on one or more topics in order to achieve a comprehensive compliance program can draw on a number of outlines and model programs available from a variety of industry representatives, commentators, and organizations.

We also estimate that each fund would spend five hours annually, on average, documenting the conclusions of its annual compliance review for its board of directors. Finally, we estimate that each fund would spend 0.5 hours annually, on average, maintaining the records required by proposed rule 38a-1. In total, the collections of information under rule 38a–1 would entail 332,936.5 burden hours.[90]

B. Rule 206(4)–7

There are currently approximately 7,790 investment advisers registered with us.[91] We estimate that the average annual hour burden for each adviser to document the policies and procedures that make up its compliance program would be 80 hours, for a total burden of 623,200 hours.[92] While each adviser registered with us would be subject to the requirement to maintain written policies and procedures under proposed rule 206(4)–7, this average estimate takes into account that many advisers would be the primary drafters of compliance policies and procedures for funds under proposed rule 38a–1. We expect that these advisers would be able to draw extensively from their fund compliance programs to supplement, as necessary, compliance policies and procedures for the advisory firm.

It also has been our staff's experience in connection with our examination and oversight program that approximately half of the investment advisers registered with us already have drafted procedures addressing many aspects of their compliance programs, and many investment advisers in this group have drafted comprehensive procedures. Further, while it has been our experience that a significant number of smaller registered investment advisers—who typically employ one or a few persons and have complete oversight of their business operations—have not adopted written policies and procedures, these advisers can draw on a number of outlines and model programs available from a variety of industry representatives, commentators, and organizations. Based on our experience, these smaller advisers are less likely to participate in arranging or effectuating securities transactions that they recommend to their clients, thereby greatly simplifying the scope of the policies and procedures they would be required to document under the proposed rule.

C. Rule 204–2

The currently-approved annual aggregate information collection burden under rule 204–2 is 1,625,638.5 hours. This approved annual aggregate burden was based on estimates that 7,687 advisers were subject to the rule, and each of these advisers spends an average of 211.48 hours preparing and preserving records in accordance with the rule. Based upon the most recently available data, there are 7,790 registered investment advisers. The increase in the number of registered investment advisers increases the total burden hours of current rule 204–2 from 1,625,638.5 to 1,647,429.2,[93] an increase of 21,790.7 hours.[94]

[89] These numbers are based on Commission filings and are current as of January 2003.

[90] (5,083 funds (5,030 registered investment companies + 53 business development companies)) × (60 hours for documenting compliance policies and procedures + 5 hours for documenting conclusions of annual compliance review + 0.5 hours for maintaining records) = 332,936.5 burden hours.

[91] This is the number of investment advisers registered with us on our Investment Adviser Registration Depository System as of January 14, 2003.

[92] 7,790 registered investment advisers × 80 annual average burden hours = 623,200 hours.

[93] 7,790 registered investment advisers × 211.48 hours = 1,647,429.2 hours.

[94] 1,647,429.2 hours—1,625,638.5 hours = 21,790.7 hours.

The proposed amendments to rule 204–2 would require a registered investment adviser to maintain copies of the written policies and procedures drafted under proposed rule 206(4)–7. In addition, the proposed amendments would require a registered investment adviser to retain copies of any records documenting the adviser's annual review of its policies and procedures under proposed rule 206(4)–7. The collection of information under rule 204–2 is necessary for the Commission staff to carry out its examination and oversight program. The adviser would be required to maintain these records for five years.[95]

We estimate that these proposed amendments would increase each registered investment adviser's average annual collection burden under rule 204–2 by 0.5 hours to 211.98 hours,[96] and would increase the rule's annual aggregate burden by 3,895 hours.[97] If the proposed amendments to rule 204–2 are adopted, the rule's aggregate annual burden would be 1,651,324.2 hours.[98]

D. Request for Comment

We request comment on whether these estimates are reasonable. Pursuant to 44 U.S.C. 3506(c)(2)(B), the Commission solicits comments to: (i) Evaluate whether the proposed collections of information are necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (ii) evaluate the accuracy of the Commission's estimate of the burden of the proposed collections of information; (iii) determine whether there are ways to enhance the quality, utility, and clarity of the information to be collected; and (iv) determine whether there are ways to minimize the burden of the collections of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology.

Persons wishing to submit comments on the collection of information requirements should direct them to the Office of Management and Budget, Attention: Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Room 3208, New Executive Office Building, Washington, DC 20503, and also should send a copy to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609 with reference to File No. S7–03–03.

OMB is required to make a decision concerning the collections of information between 30 and 60 days after publication, so a comment to OMB is best assured of having its full effect if OMB receives the comment within 30 days after publication of this release. Requests for materials submitted to OMB by the Commission with regard to these collections of information should be in writing, refer to File No. S7–03–03, and be submitted to the Securities and Exchange Commission, Records Management, Office of Filings and Information Services, 450 Fifth Street, NW, Washington, DC 20549.

VII. Summary of Initial Regulatory Flexibility Analysis

We have prepared an Initial Regulatory Flexibility Analysis ("IRFA") in accordance with 5 U.S.C. 603 regarding the proposed rule 38a–1 under the Investment Company Act, and proposed rule 206(4)–7 and proposed amendments to rule 204–2 under the Advisers Act. The following summarizes the IRFA.

The IRFA summarizes the background of the proposals. The IRFA also discusses the reasons for the proposals and the objectives of, and legal basis for, the proposals. Those items are discussed above.

The IRFA discusses the effect of the Proposed Rules on small entities. For purposes of the Regulatory Flexibility Act, a fund is a small entity if the fund, together with other funds in the same group of related funds, has net assets of $50 million or less as of the end of its most recent fiscal year.[99] An investment adviser is a small entity if it (i) manages less than $25 million in assets, (ii) has total assets of less than $5 million on the last day of its most recent fiscal year, and (iii) does not control, is not controlled by, and is not under common control with another investment adviser that manages $25 million or more in assets, or any person (other than a natural person) that had total assets of $5 million or more on the last day of the most recent fiscal year.[100] The staff estimates, based on Commission filings, that there are 200 small open- and closed-end investment companies and 29 small business development companies.[101] The staff further estimates that there are approximately 7,790 registered investment advisers, of which approximately 172 are small entities.[102]

The IRFA explains that the Proposed Rules would impose no new reporting requirements, but would impose compliance requirements on funds and advisers, including small funds and advisers. A fund would be required to adopt and implement written policies and procedures reasonably designed to prevent violation of the federal securities laws, obtain approval of the policies and procedures from its board of directors, review the policies and procedures at least annually, and provide a written report on the review to its board of directors. A fund also would be required to designate a chief compliance officer, and to maintain copies of the policies and procedures and reports to the board for at least five years. An adviser would be required to adopt and implement written policies and procedures reasonably designed to prevent violation of the Advisers Act and review the policies and procedures at least annually. An adviser would be required to designate a chief compliance officer, and to maintain copies of the policies and procedures and any records documenting the annual review for at least five years.

The IRFA states that we have not identified any federal rules that conflict with the Proposed Rules. The IRFA explains that the written policies and procedures that would be required by the Proposed Rules would include some policies and procedures required by other rules under the federal securities laws, but the Proposed Rules would not require them to be duplicated.[103] The IRFA further explains that some of the records a fund would be required to maintain under the Proposed Rules also may be required records under the general recordkeeping provisions of rule 31a-1 of the Investment Company Act, but that the overlap would be limited

[95] Proposed rule 204–2(a)(17)(i) would require advisers to maintain a copy of any policies and procedures in effect during the past five years. Pursuant to proposed rule 204–2(e)(1), the records documenting the adviser's annual review of those policies and procedures would have to be maintained and preserved in an easily accessible place for five years, the first two in an office of the investment adviser.

[96] 211.48 hours + 0.5 hours = 211.98 hours.

[97] 7,790 registered investment advisers × 0.5 hours = 3,895 hours.

[98] 1,625,638.5 (currently-approved burden) + 21,790.7 (adjustment attributable to increase in number of investment advisers registered with us) + 3,895 (additional burden hours associated with the proposed amendments to rule 204–2) = 1,651,324.2 hours.

[99] 17 CFR 270.0–10.

[100] 17 CFR 275.0–7.

[101] These numbers, which are current as of June 2002, are derived from analyzing information from databases such as Morningstar and Lipper. Some or all of these entities may contain multiple series or portfolios. If a registered investment company is a small entity, the portfolios or series it contains are also small entities.

[102] The number of small investment advisers is derived from information submitted by investment advisers registered with us on Form ADV, or amendments thereto, through January 14, 2003.

[103] *See supra* notes 26, and 29 through 34.

and the Commission would not require the fund to maintain duplicate copies.

The Regulatory Flexibility Act directs the Commission to consider significant alternatives that would accomplish the stated objectives, while minimizing any significant economic impact on small entities. The IRFA explains that we currently believe that different compliance requirements for small entities could not be established, because the compliance requirements are integral to achieving the objectives of the Proposed Rules. The IRFA also states that we currently believe it would not be necessary to establish different recordkeeping requirements, because the recordkeeping requirements of the Proposed Rules impose an inconsequential burden on small entities. The IRFA also describes our current view that these compliance and recordkeeping provisions could not be consolidated, and that there would be no reason to simplify or clarify them because they are not technical or complex.

As the IRFA explains, the Proposed Rules would rely on performance standards rather than design standards. Each small entity would be afforded the flexibility to implement policies and procedures, and to determine qualifications for its chief compliance officer that are appropriate in light of its business operations.

The IRFA also explains our present view that the objectives of the Proposed Rules could not be achieved if small entities were exempted from coverage of any part of the Proposed Rules, because it has been our experience that small funds and advisers are less likely to have comprehensive, written compliance programs and are more likely to have the kinds of compliance deficiencies that could be remedied by such programs.

We encourage comment with respect to any aspect of the IRFA. We specifically request comment on the number of small entities that would be affected by the Proposed Rules, and the likely impact of the Proposed Rules on small entities. Commenters are asked to describe the nature of any impact and provide empirical data supporting the extent of the impact. These comments will be considered in connection with the adoption of the Proposed Rules, and will be placed in the same public file as comments on the Proposed Rules themselves. A copy of the IRFA may be obtained by contacting Hester Peirce, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0506.

VIII. Statutory Authority

The Commission is proposing new rule 38a-1 under the Investment Company Act pursuant to the authority set forth in sections 31(a) and 38(a) of the Act [15 U.S.C. 80–30(a) and 80a–37(a)].[104] The Commission is proposing new rule 206(4)–7 pursuant to the authority set forth in sections 206 and 211(a) under the Advisers Act [15 U.S.C. 80b–6 and 80b–11(a)].[105] The Commission is proposing amendments to rule 204–2 pursuant to the authority set forth in sections 204 and 211 of the Advisers Act [15 U.S.C. 80b–4 and 80b–11].

List of Subjects

17 CFR 270

Investment companies, Reporting and recordkeeping requirements, Securities.

17 CFR 275

Reporting and recordkeeping requirements, Securities.

Text of Proposed Rules

For reasons set forth in the preamble, Title 17, Chapter II of the Code of Federal Regulations is proposed to be amended as follows:

PART 270—RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940

1. The authority citation for Part 270 continues to read in part as follows:

Authority: 15 U.S.C. 80a–1 *et seq.*, 80a–34(d), 80a–37, 80a–39, unless otherwise noted;

* * * * *

2. Section 270.38a–1 is added to read as follows:

§ 270.38a–1 Compliance procedures and practices of registered investment companies.

(a) Each registered investment company and business development company ("fund") must:

(1) *Policies and procedures.* Adopt and implement written policies and procedures reasonably designed to prevent violation of the Federal Securities Laws by the fund, or by its investment adviser, principal underwriter or administrator in connection with their provision of services to the fund;

(2) *Board approval.* Obtain the approval of the policies and procedures of the fund by the board of directors of the fund, including a majority of directors who are not interested persons of the fund;

(3) *Annual review.* Review, no less frequently than annually, the adequacy of the policies and procedures established pursuant to this section and the effectiveness of their implementation;

(4) *Chief compliance officer.* Designate an individual responsible for administering the policies and procedures adopted under paragraph (a)(1) of this section who must:

(i) Be approved by the board of directors of the fund, including a majority of directors who are not interested persons of the fund; and

(ii) No less frequently than annually, provide a written report to the board on:

(A) Existing policies and procedures, any material changes made to the policies and procedures since the date of the last report, and any material changes to the policies and procedures recommended as a result of the annual review conducted pursuant to paragraph (a)(3) of this section; and

(B) Any material compliance matters requiring remedial action that occurred since the date of the last report.

(b) *Unit investment trusts.* If the fund is a unit investment trust, the fund's principal underwriter or depositor must approve the fund's policies and procedures and chief compliance officer, and receive all annual reports.

(c) *Recordkeeping.* The fund must maintain:

(1) A copy of the fund's policies and procedures that are in effect, or at any time within the past five years were in effect, in an easily accessible place; and

(2) Written reports provided to the board of directors pursuant to paragraph

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[104] Section 38(a) authorizes the Commission to "make * * * such rules and regulations * * * as are necessary or appropriate to the exercise of the functions and powers conferred upon the Commission elsewhere in [the Investment Company Act]." We are proposing rule 38a–1 as necessary and appropriate to the exercise of the authority specifically conferred on us elsewhere in the Act, including section 31(b) of the Investment Company Act [15 U.S.C. 80a–30(b)] (authority to examine funds) and section 42 of the Investment Company Act [15 U.S.C. 80a–41] (authority to enforce the provisions of the Investment Company Act). Further, requiring the maintenance of internal compliance policies and procedures and an annual compliance report would fall under the authority granted to us under section 31(a), which authorizes us to require funds to maintain and preserve records, including memoranda, books, and other documents.

[105] Section 206(4) permits the Commission to define conduct as fraudulent under the Advisers Act, and to adopt rules reasonably designed to prevent fraud. We are proposing rule 206(4)–7 as a means reasonably necessary to prevent fraud by investment advisers. Further, section 211(a) of the Advisers Act authorizes the Commission to "make * * * such rules and regulations * * * as are necessary or appropriate to the exercise of the functions and powers conferred upon the Commission elsewhere in [the Act]." We are proposing rule 206(4)–7 as necessary and appropriate to the exercise of the authority specifically conferred on us elsewhere in the Act, including section 204 of the Advisers Act (authority to examine advisers) and section 209 of the Advisers Act [15 U.S.C. 80b–9] (authority to enforce the provisions of the Advisers Act).

(a)(4)(ii) of this section for at least five years after the end of the fiscal year in which the report is provided to the board, the first two years in an easily accessible place.

(d) For purposes of this section, *Federal Securities Laws* means the Securities Act of 1933 (15 U.S.C. 77a), the Securities Exchange Act of 1934 (15 U.S.C. 78a), the Sarbanes-Oxley Act of 2002 (Pub. L. 107–204, 116 Stat. 745 (2002)), the Investment Company Act of 1940 (15 U.S.C. 80a), the Investment Advisers Act of 1940 (15 U.S.C. 80b), Title V of the Gramm-Leach-Bliley Act (15 U.S.C. 6801), any rules adopted by the Commission under any of these statutes, the Bank Secrecy Act (31 U.S.C. 5311) as it applies to funds, and any rules adopted thereunder by the Commission or the Department of the Treasury.

PART 275—RULES AND REGULATIONS, INVESTMENT ADVISERS ACT OF 1940

3. The authority citation for Part 275 continues to read in part as follows:

Authority: 15 U.S.C. 80b–2(a)(11)(F), 80b–2(a)(17), 80b–3, 80b–4, 80b–6(4), 80b–6a, 80b–11, unless otherwise noted.

* * * * *

4. Section 275.204–2 is amended by adding new paragraph (a)(17) and by revising paragraph (e)(1). The additions and revisions read as follows:

§ 275.204–2 Books and records to be maintained by investment advisers.

(a) * * *

(17)(i) A copy of the investment adviser's policies and procedures formulated pursuant to § 275.206(4)–7(a) of this chapter that are in effect, or at any time within the past five years were in effect, and

(ii) Any records documenting the investment adviser's annual review of those policies and procedures conducted pursuant to § 275.206(4)–7(b) of this chapter.

* * * * *

(e)(1) All books and records required to be made under the provisions of paragraphs (a) to (c)(1), inclusive, of this section (except for books and records required to be made under the provisions of paragraphs (a)(11), (a)(16), and (a)(17)(i) of this section), shall be maintained and preserved in an easily accessible place for a period of not less than five years, from the end of the fiscal year during which the last entry was made on such record, the first two years in an appropriate office of the investment adviser.

* * * * *

5. Section 275.206(4)–7 is added to read as follows:

§ 275.206(4)–7 Compliance procedures and practices.

If you are an investment adviser registered or required to be registered under section 203 of the Investment Advisers Act of 1940 (15 U.S.C. 80b–3), it is a fraudulent, deceptive or manipulative act, practice or course of business within the meaning of section 206(4) of the Act (15 U.S.C. 80b–6(4)) for you to provide investment advice to clients unless you:

(a) *Policies and procedures.* Adopt and implement written policies and procedures reasonably designed to prevent violation, by you and your supervised persons, of the Act and the rules that the Commission has adopted under the Act;

(b) *Annual review.* Review, no less frequently than annually, the adequacy of the policies and procedures established pursuant to this section and the effectiveness of their implementation; and

(c) *Chief compliance officer.* Designate an individual (who is a supervised person) responsible for administering the policies and procedures that you adopt under paragraph (a) of this section.

By the Commission.

Dated: February 5, 2003.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 03–3315 Filed 2–10–03; 8:45 am]

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Federal Register

Tuesday,
February 11, 2003

Part IV

The President

Proclamation 7647—Establishment of the Governors Island National Monument

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Federal Register
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Tuesday, February 11, 2003

Presidential Documents

Title 3—

The President

Proclamation 7647 of February 7, 2003

Establishment of the Governors Island National Monument

By the President of the United States of America

A Proclamation

On the north tip of Governors Island, at the confluence of the Hudson and East Rivers, stand two fortifications that served as an outpost to protect New York City from sea attack. These two important historic objects, Castle Williams and Fort Jay, are part of a National Historic Landmark District designated in 1985. Between 1806 and 1811, these fortifications were constructed as part of the First and Second American Systems of Coastal Fortification. Castle Williams and Fort Jay represent two of the finest examples of defensive structures in use from the Renaissance to the American Civil War. They also played important roles in the War of 1812, the American Civil War, and World Wars I and II.

These fortifications were built on the most strategic defensive positions on the island. Fort Jay, constructed between 1806 and 1809, is on the highest point of the island from which its glacis originally sloped down to the waterfront on all sides. Castle Williams, constructed between 1807 and 1811, occupies a rocky promontory as close as possible to the harbor channels and served as the most important strategic defensive point in the entrance to the New York Harbor.

Governors Island was managed by the United States Army and the United States Coast Guard for nearly 200 years, but is no longer required for defense or Coast Guard purposes. It provides an excellent opportunity for the public to observe and understand the harbor history, its defense, and its ecology. Its proximity to lower Manhattan also makes it an appropriate location from which to reflect upon the tragic events of September 11, 2001.

Section 2 of the Act of June 8, 1906 (34 Stat. 225, 16 U.S.C. 431) (the "Antiquities Act"), authorizes the President, in his discretion, to declare by public proclamation historic landmarks, historic and prehistoric structures, and other objects of historic or scientific interest that are situated upon the lands owned or controlled by the Government of the United States to be national monuments, and to reserve as a part thereof parcels of land, the limits of which in all cases shall be confined to the smallest area compatible with the proper care and management of the objects to be protected.

A Governors Island National Monument was established by Proclamation 7402 of January 19, 2001, in order to protect the two fortifications. The monument, however, remained subject to Public Law 105–33, section 9101, 111 Stat. 670 (August 5, 1997), which required the entire island, including the monument lands, to be sold with a right of first offer to the State and City of New York.

WHEREAS the State and City of New York each executed a consent and waiver of the right of first offer regarding Governors Island; and

WHEREAS the portion of Governors Island described on the accompanying land description was sold to the National Trust for Historic Preservation (National Trust), on January 31, 2003, and the remainder of Governors Island was sold to the Governors Island Preservation and Education Corporation (GIPEC) of the State and City of New York, on January 31, 2003; and

WHEREAS the National Trust, on January 31, 2003, relinquished and conveyed to the United States of America all lands owned by the National Trust on Governors Island; and

WHEREAS such relinquishment and conveyance have been accepted by the Secretary of the Interior (Secretary) pursuant to the Antiquities Act; and

WHEREAS it appears that it would be in the public interest to preserve Castle Williams, Fort Jay, and certain lands and buildings necessary for the care and management of the Castle and Fort as the Governors Island National Monument;

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by the authority vested in me by section 2 of the Act of June 8, 1906 (34 Stat. 225, 16 U.S.C. 431), do proclaim that there are hereby set apart and reserved as the Governors Island National Monument for the purpose of protecting the objects identified above, all lands and interests in lands owned or controlled by the United States within the boundaries described on the accompanying land description, which is attached to and forms a part of this proclamation. The Federal land and interests in land reserved consist of approximately 22 acres, together with appurtenant easements for all necessary purposes and any associated federally owned personal property of historic interest, which is the smallest area compatible with the property care and management of the objects to be protected.

All Federal lands and interests in lands within the boundaries of this monument are hereby appropriated and withdrawn from all forms of entry, location, selection, sale, or leasing or other disposition under the public land laws, including but not limited to withdrawal from location, entry, and patent under the mining laws, and from disposition under all laws relating to mineral and geothermal leasing.

The Secretary shall manage the monument consistent with the purposes and provisions of this proclamation. For the purpose of preserving, restoring, and enhancing the public visitation and appreciation of the monument, the Secretary shall prepare a management plan for the monument within 3 years of the date of this proclamation. Further, to the extent authorized by law, the Secretary shall promulgate any additional regulations needed for the proper care and management of the objects identified above.

The establishment of this monument is subject to valid existing rights, if any such rights are present.

Nothing in this proclamation shall be deemed to revoke any existing withdrawal, reservation, or appropriation; however, the national monument shall be the dominant reservation.

Warning is hereby given to all unauthorized persons not to appropriate, injure, destroy, or remove any feature of this monument and not to locate or settle upon any of the lands thereof.

IN WITNESS WHEREOF, I have hereunto set my hand this seventh day of February, in the year of our Lord two thousand three, and of the Independence of the United States of America the two hundred and twenty-seventh.

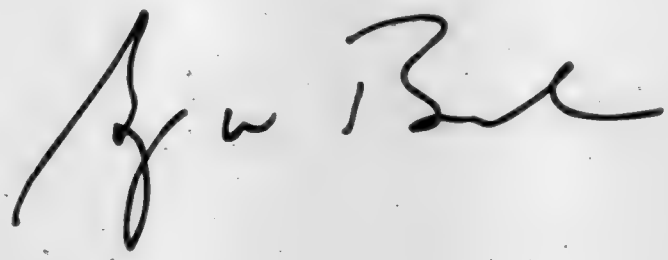

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Description of Lands in Governors Island National Monument

This document describes the lands that are set apart and reserved as the Governors Island National Monument pursuant to the accompanying proclamation. The national monument boundaries include the lands identified as Tract 01–101, Tract 01–102, Tract 01–103, and Tract 01–104. Legal descriptions of these tracts are set out below. These tracts also appear on the map entitled "Governors Island National Monument, Boundary Map," dated August 20, 2002, map number 019/80,001A, which is attached to this document for reference purposes.

The United States owns Tract 01–101, Tract 01–102, and Tract 01–103 in fee simple. Within Tract 01–104, the United States owns a perpetual and exclusive right and easement consisting of the right, but not the obligation, to utilize, occupy, manage, reconstruct, remodel, maintain, and improve approximately 1,000 square feet on the first (1st) floor in the Building known as "Building 140" located on that portion of the land known and identified as Tract 01–104. As set out in the accompanying proclamation, the National Park Service will manage all property owned by the United States within the national monument boundary.

The national monument will also include all rights, hereditaments, easements, and appurtenances to property owned by the United States, belonging or otherwise appertaining, as well as any associated federally owned personal property of historic interest.

Tract 01–101

All that certain tract or parcel of land lying and being situated on Governors Island in the City of New York, New York County, State of New York, and being more particularly described as follows:

Beginning at a point at the intersection of the southerly side of Andes Road and the base of a concrete retaining wall on the southerly side of Andes Road, said point of beginning being South 14° 28' 10" West, 141.01 feet from the southeasterly corner of Building 107, said point of beginning being further described as being at North 677,056.72 and East 626,751.86, said coordinates being based upon the New York State Plane Coordinates, East Zone, NAD 1983; thence from said point of beginning, severing the lands of the subject owner, the following forty four (44) courses and distances:

1. South 80° 58' 48" East, along the said intersection of the southerly side of Andes Road and the base of a concrete retaining wall on the southerly side of Andes Road, 55.80 feet to a point;

2. South 45° 14' 55" East, along the intersection of the base of a concrete retaining wall and sidewalk, 4.40 feet to a point;

3. South 24° 46' 24" East, along the said intersection of the base of a concrete retaining wall and sidewalk, 13.37 feet to a point;

4. South 16° 56' 20" East, along the said intersection of the base of a concrete retaining wall and sidewalk, 13.16 feet to a point;

5. South 10° 05' 36" East, along the said intersection of the base of a concrete retaining wall and sidewalk, 15.64 feet to a point on the westerly edge of a brick sidewalk;

6. South 05° 40' 25" West, along the said westerly edge of a brick sidewalk, 274.67 feet to a point;

7. North 84° 45' 49" West, along the northerly edge of said brick sidewalk, 84.24 feet to a point;

8. South 45° 45' 14" West, along the northwesterly edge of said brick sidewalk, 24.85 feet to a point on the back of the concrete curb on the northerly side of the cul-de-sac on Evans Road;

9. A non-tangent curve to the left, along the said back of the concrete curb on the northerly side of the cul-de-sac on Evans Road, having a radius of 34.00 feet, a central angle of 132° 11' 45" and an arc length of 78.45 feet to a point, said curve having a chord bearing and distance of South 69° 51' 24" West, 62.17 feet;

10. North 81° 25' 23" West, leaving the said back of the concrete curb and crossing the Parade Ground, 764.47 feet to a point on the northeasterly face of a concrete curb on the northeasterly side of Comfort Road;

11. North 23° 06' 23" West, along the said northeasterly face of a concrete curb on the northeasterly side of Comfort Road, 94.46 feet to a point of curve;

12. A curve to the right, along the said northeasterly face of a concrete curb on the northeasterly side of Comfort Road, having a radius of 80.00 feet, a central angle of 41° 01' 44" and an arc length of 57.29 feet to a point of reverse curve;

13. A curve to the left, along the said northeasterly face of a concrete curb on the northeasterly side of Comfort Road, having a radius of 70.67 feet, a central angle of 41° 04' 47" and an arc length of 50.67 feet to a point of tangent;

14. North 23° 09' 26" West, along the intersection of the northeasterly side of Comfort Road and the said face of a concrete curb on the northeasterly side of Comfort Road, 240.84 feet to a point;

15. North 46° 15' 33" West, along the said intersection of the northeasterly side of Comfort Road and the said face of a concrete curb on the northeasterly side of Comfort Road and its northwesterly projection thereof, 111.36 feet, crossing Tampa Road to a point at the intersection of the northerly side of an access road and the face of a concrete curb on the northerly side of the access road;

16. South 86° 21' 32" West, along the said intersection of the northerly side of an access road and the face of a concrete curb on the northerly side of the access road and its westerly projection thereof, 133.51 feet to a point;

17. North 85° 02' 31" West, crossing Hay Road and along the back of a concrete curb on the southerly side of an asphalt parking lot, 139.69 feet to a point at the intersection of the easterly side of an access road and the face of a concrete curb on the easterly side of the access road;

18. North 06° 11' 10" East, along the said intersection of the easterly side of an access road and the face of a concrete curb on the easterly side of the access road, 8.97 feet;

19. North 84° 30' 23" West, passing through a brick connecting-wall between Building 513A and Building 515, and along the back of a concrete curb, 200.29 feet to a point at the intersection of the easterly side of Carder Road and the face of a concrete curb on the easterly side of Carder Road;

20. North 09° 30' 51" East, along the said intersection of the easterly side of Carder Road and the face of a concrete curb on the easterly side of Carder Road and its northerly projection thereof, 35.34 feet to a point;

21. North 16° 40' 16" East, along the said easterly side of Carder Road, 98.56 feet to a point at the intersection of the easterly side of Carder Road and the face of a concrete curb on the easterly side of Carder Road;

22. North 17° 39' 33" East, along the said intersection of the easterly side of Carder Road and the face of a concrete curb on the easterly side of Carder Road, 180.86 feet to a point;

23. North 23° 48' 41" East, along the said intersection of the easterly side of Carder Road and the face of a concrete curb on the easterly side of Carder Road, 83.68 feet to a point of curve;

24. A curve to the right, along the said intersection of the easterly and southerly side of Carder Road and the face of a concrete curb on the easterly and southerly side of Carder Road, having a radius of 100.46 feet, a central angle of 69° 53' 28" and an arc length of 122.55 feet to a point of tangent;

25. South 86° 17' 52" East, continuing along the said intersection of the southerly side of Carder Road and the face of a concrete curb on the southerly side of Carder Road and its easterly projection thereof, 149.02 feet, crossing Hay Road to a point;

26. South 08° 57' 35" West, along the easterly side of Hay Road, 120.18 feet to a point;

27. South 12° 12' 20" East, 62.43 feet, crossing Andes Road to a point at the intersection of the southerly side of Andes Road and the face of a concrete curb on the southerly side of Andes Road;

28. A non-tangent curve to the right, along the said intersection of the southerly side of Andes Road and the face of a concrete curb on the southerly side of Andes Road, having a radius of 58.00 feet, a central angle of 48° 54' 20" and an arc length of 49.51 feet to a point of tangent, said curve having a chord bearing and distance of North 70° 02' 51" East, 48.02 feet;

29. South 85° 29' 59" East, along the said intersection of the southerly side of Andes Road and the face of a concrete curb on the southerly side of Andes Road and its easterly projection thereof, 123.62 feet to a point;

30. South 85° 29' 44" East, along the said intersection of the southerly side of Andes Road and the face of a concrete curb on the southerly side of Andes Road, 428.81 feet to a point;

31. South 85° 17' 33" East, along the southerly face of a concrete curb on the southerly side of Andes Road, 107.02 feet to a point;

32. South 83° 11' 58" East, along the said southerly face of a concrete curb on the southerly side of Andes Road, 49.20 feet to a point;

33. South 82° 30' 10" East, along the said southerly face of a concrete curb on the southerly side of Andes Road, 49.51 feet to a point;

34. South 81° 33' 52" East, along the said southerly face of a concrete curb on the southerly side of Andes Road, 86.61 feet to a point;

35. A non-tangent curve to the right, along the said southerly face of a concrete curb on the southerly side of Andes Road, having a radius of 8.50 feet, a central angle of 47° 16' 55" and an arc length of 7.01 feet to a point, said curve having a chord bearing and distance of North 75° 41' 40" East, 6.82 feet;

36. South 80° 39' 53" East, along the said southerly face of a concrete curb on the southerly side of Andes Road, 8.32 feet to a point;

37. A non-tangent curve to the right, along the said southerly face of a concrete curb on the southerly side of Andes Road, having a radius of 8.00 feet, a central angle of 46° 10' 15" and an arc length of 6.45 feet to a point, said curve having a chord bearing and distance of South 57° 34' 45" East, 6.27 feet;

38. South 79° 00' 27" East, along the said southerly face of a concrete curb on the southerly side of Andes Road, 41.54 feet to a point;

39. South 70° 49' 07" East, along the said southerly face of a concrete curb on the southerly side of Andes Road, 61.48 feet to a point of curve;

40. A curve to the right, along the southwesterly face of a concrete curb on the southwesterly side of Andes Road, having a radius of 257.96 feet, a central angle of 21° 12' 48" and an arc length of 95.51 feet to a point of compound curve;

41. A curve to the right, along the westerly face of a concrete curb on the westerly side of Andes Road, having a radius of 154.12 feet, a central angle of 48° 42' 34" and an arc length of 131.02 feet to a point of tangent;

42. South 00° 53' 45" East, along the intersection of the westerly side of Andes Road and the face of a concrete curb on the westerly side of Andes Road, 83.86 feet to a point of curve;

43. A curve to the left, along the said intersection of the westerly side of Andes Road and the face of a concrete curb on the westerly side of Andes Road, having a radius of 148.98 feet, a central angle of 16° 25' 57" and an arc length of 42.73 feet to a point of tangent; and,

44. South 17° 19' 42" East, along the said intersection of the westerly side of Andes Road and the face of a concrete curb on the westerly side of Andes Road and its southerly projection thereof, 155.84 feet to the point of beginning.

The above bearings are based on Grid North, New York State Plane Coordinates, East Zone, NAD 1983.

The above-described parcel is more particularly shown and described on a survey plat by Clough, Harbour & Associates, LLP.

Containing 21.69 acres, more or less.

Tract 01–102

All that certain tract or parcel of land lying and being situated on Governors Island in the City of New York, New York County, State of New York, and being more particularly described as follows:

Beginning at a point on the northerly side of Dock 102 on a line being the westerly projection of the northerly face of the lower concrete seawall, said point of beginning being South 74° 39' 57" East, 535.78 feet from the southeasterly corner of Building 107, said point of beginning being further described as being at North 677,051.57 and East 627,303.76, said coordinates being based upon the New York State Plane Coordinates, East Zone, NAD 1983; thence from said point of beginning, severing the lands of the subject owner, the following eight (8) courses and distances:

1. South 88° 24' 18" East, to and along said northerly face of the lower concrete seawall, 84.29 feet to a point;

2. South 01° 35' 54" West, continuing along the easterly face of the lower concrete seawall, 22.82 feet to a point;

3. South 87° 30' 04" East, along the wood face of Dock 102, 100.26 feet to a point;

4. South 02° 05' 32" West, continuing along the said wood face of Dock 102, 19.27 feet to a point;

5. North 87° 31' 51" West, continuing along the said wood face of Dock 102, 101.94 feet to a point on the easterly face of a stone or granite seawall;

6. South 00° 14' 20" West, along the said easterly face of the stone or granite seawall, 6.34 feet to a point;

7. South 89° 25' 54" West, to and along the southerly side (back) of the southerly concrete curb, 80.69 feet to a point; and,

8. North 00° 34' 06" West, 51.53 feet to the point of beginning.

The above bearings are based on Grid North, New York State Plane Coordinates, East Zone, NAD 1983.

The above-described parcel is more particularly shown and described on a survey plat by Clough, Harbour & Associates, LLP.

Containing 0.14 of an acre, more or less (6,084 +/- square feet).

Tract 01–103

All that certain tract or parcel of land lying and being situated on Governors Island in the City of New York, New York County, State of New York, and being more particularly described as follows:

Beginning at a point at the intersection of the easterly side of Andes Road and the face of the concrete curb on the easterly side of Andes Road, said point of beginning being South 59° 06' 01" West, 60.15 feet from the southeasterly corner of Building 107, said point of beginning being further described as being at North 677,162.36 and East 626,735.48, said coordinates being based upon the New York State Plane Coordinates, East Zone, NAD 1983; thence from said point of beginning, severing the lands of the subject owner, the following thirteen (13) courses and distances:

1. North 17° 19' 42" West, 50.11 feet along the said intersection of the easterly side of Andes Road and the face of the concrete curb on the easterly side of Andes Road to a point of curve;

2. A curve to the right, along the said intersection of the easterly side of Andes Road and the face of the concrete curb on the easterly side of Andes Road, having a radius of 133.04 feet, a central angle of 16° 26" 45' and an arc length of 38.19 feet to a point of tangent;

3. North 00° 53' 45" West, along the said intersection of the easterly side of Andes Road and the face of the concrete curb on the easterly side of Andes Road, 83.86 feet to a point of curve;

4. A curve to the left, along the said intersection of the easterly side of Andes Road and the face of the concrete curb on the easterly side of Andes Road, having a radius of 169.95 feet, a central angle of 10° 50' 45" and an arc length of 32.17 feet to a point of reverse curve;

5. A curve to the right, along the said intersection of the easterly side of Andes Road and the face of the concrete curb on the easterly side of Andes Road, having a radius of 20.64 feet, a central angle of 108deg; 22' 59" and an arc length 39.04 feet to a point of tangent;

6. South 83° 21' 31" East, along the intersection of the southerly side of the access road between Building 107 and Building 108 and the face of the concrete curb on the southerly side of said access road, 69.23 feet to a point of curve;

7. A curve to the right, along the said intersection of the southerly side of the access road between Building 107 and Building 108 and the face of the concrete curb on the southerly side of said access road, having a radius of 16.08 feet, a central angle of 78° 17' 48" and an arc length of 21.97 feet to a point of tangent;

8. South 05° 03' 43" East, along the intersection of the westerly side of the access road between Building 107 and Building 135A, B & C and the face of the concrete curb on the westerly side of the access road, 10.73 feet to a point;

9. South 06° 11' 02" West, 106.20 feet to a point;

10. South 08° 26' 06" West, 37.63 feet to a point;

11. South 06° 06' 28" West, 39.06 feet to a point;

12. North 85° 53' 21" West, along the southerly side of the retaining wall and steps/banister, 20.09 feet to a point; and,

13. South 72° 31' 49" West, through the sidewalk adjacent to Building 106, 41.42 feet to the point of beginning.

The above bearings are based on Grid North, New York State Plane Coordinates, East Zone, NAD 1983.

The above-described parcel is more particularly shown and described on a survey plat by Clough, Harbour & Associates, LLP.

Containing 0.44 of an acre, more or less (19,354 +/- square feet).

Tract 01–104

All that certain tract or parcel of land lying and being situated on Governors Island in the City of New York, New York County, State of New York, and being more particularly described as follows:

Beginning at a point on the northerly side of Carder Road on the southerly projection of the easterly face (back) of the concrete curb at the east end of the parking lot immediately adjacent to Building 140, said point of beginning being South 80° 04' 13" East, 115.55 feet from the southeasterly corner of Building 140, said point of beginning being further described as being at North 677,594.25 and East 626,794.40, said coordinates being based upon the New York State Plane Coordinates, East Zone, NAD 1983; thence from said point of beginning, severing the lands of the subject owner, the following ten (10) courses and distances:

1. North 83° 26' 43" West, 87.06 feet to a point in said Carder Road;

2. North 75° 34' 32" West, 181.16 feet to a point in said Carder Road;

3. North 14° 25' 29" East, 4.94 feet to a point at the intersection of the northerly side of Carder Road and the face of the concrete curb on the northerly side of Carder Road;

4. North 75° 50'11" West, along the said intersection of the northerly side of Carder Road and the face of the concrete curb on the northerly side of Carder Road, 12.81 feet to a point;

5. A non-tangent curve to the right, along the said intersection of the northerly side of Carder Road and the face of the concrete curb on the northerly side of Carder Road, having a radius of 12.88 feet, a central angle of 75° 32' 13" and an arc length of 16.98 feet to a point, said curve having a chord bearing and distance of North 19° 31' 30" West, 15.78 feet to a point;

6. North 35° 19' 06" East, along the intersection of the easterly side of the Soissons Docks access road and the face of the concrete sidewalk on the easterly side of the Soissons Docks access road, 57.05 feet to a point;

7. South 50° 30' 54" East, 7.92 feet to a point on the eastern side of a brick retaining wall;

8. North 35° 17' 38" East, along and parallel to the said eastern side of a brick retaining wall, 15.36 feet to a point on the southerly side of the granite seawall;

9. South 75° 38' 30" East, along the southerly side of the granite seawall, 255.90 feet to a point; and,

10. South 14° 18' 59" West, 70.64 feet to the point of beginning.

The above bearings are based on Grid North, New York State Plane Coordinates, East Zone, NAD 1983.

The above-described parcel is more particularly shown and described on a survey plat by Clough, Harbour & Associates, LLP.

Containing 0.51 of an acre, more or less (22,265 +/- square feet).

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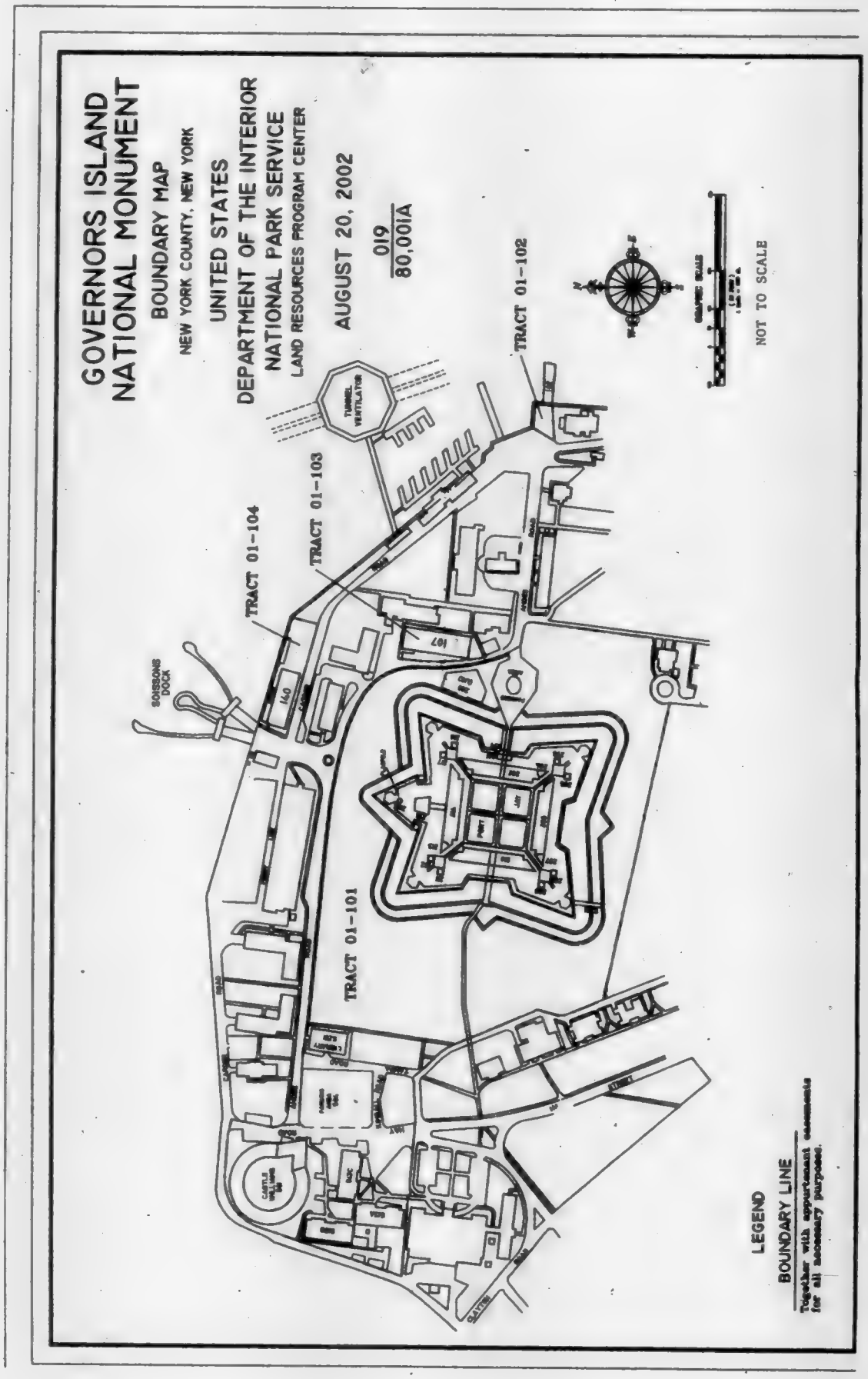

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H.J. Res. 18/P.L. 108–5
Making further continuing appropriations for the fiscal year 2003, and for other purposes. (Feb. 7, 2003; 117 Stat. 9)

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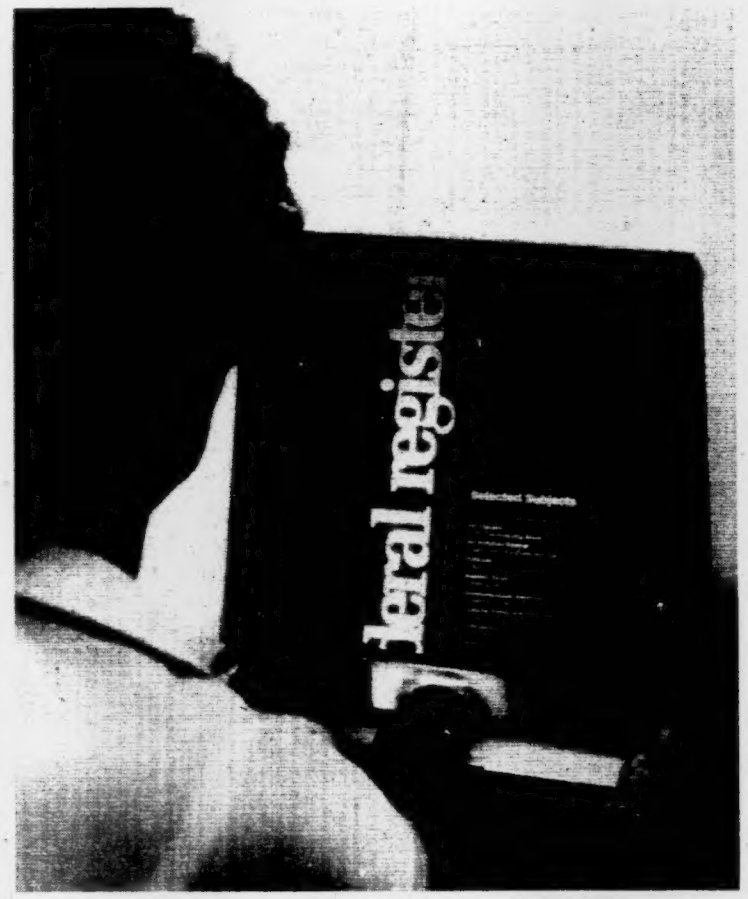

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